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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

WILTON Q. GREENE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000339

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT #: 2013-GS-08-0755
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
WILTON Q. GREENE	)	
	)	
Defendant	)	
	)	
	)	

JURY TRIAL

VOLUME 1 (OF 3)

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit
in the Berkeley County Courthouse
Moncks Corner, South Carolina
on May 20, 2013 Commencing at 10:25 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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No exhibits were introduced

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1 PROCEEDINGS

2 THE COURT: Let me see we've got. Mr. Greene?

3 MR. GREENE: Yes, sir.

4 THE COURT: Are you Mr. Greene?

5 MR. GREENE: Yes, sir.

6 THE COURT: All right Mr. Green, I understand you

7 have a motion concerning your attorney that you have

8 filed is that correct?

9 MR. GREENE: Yes, sir.

10 THE COURT: I'll be glad to hear you on that

11 motion.

12 MR. GREENE: The reason why I filed it is because I

13 don't feel like he was representing me to the best.

14 Evidence that would help me a lot he failed to pretty

15 much get like the ---

16 THE COURT: --- he failed to what?

17 MR. GREENE: He failed to receive evidence or even

18 investigate ---

19 THE COURT: --- well tell me what he failed to do

20 from your perspective.

21 MR. GREENE: The victim said that I was inside the

22 store but I never was inside the store. So all he had to

23 do was go ahead and ask the owner and he could pretty

24 much give an answer. But I kept asking Chad about the

25 video and he never told me nothing about the video so I

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1 had my mother call the store to ask them if they had the
2 video and they said they couldn't give her the answer; my
3 lawyer would have to contact them. But he still didn't
4 do it; he didn't do it.

5 Then in January that's when he let me know that the
6 previous owner left and now they didn't have no owner.
7 The previous owner left in August but I was arrested May
8 22nd and nobody did nothing to contact the previous owner
9 from May to August.

10 And then a comment that he made I told him there was
11 nobody in the store but the victim. He was the only one
12 inside the store. And he told me well, you know the jury
13 could say -- possibly could say a lot of black people
14 look alike so they could make that mistake. I feel like
15 he's not really trying to represent me. I don't think
16 he's doing it at all.

17 And another key evidence inside the video the victim
18 said I did not want the money. He told them that I
19 didn't want the money. But he did not let me know that
20 it was inside the video. He told me he would go through
21 the positive and the negatives that possibly would help
22 me. When he told me the positives that would help me he
23 never mentioned the video so something told me to ask for
24 the video. When I got the video that's when I heard at
25 the end the victim told him I did not want the money. So

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1 I'm saying if I never asked for the video he would have
2 never had that piece of evidence going to my positive
3 side. So I feel like he wasn't representing me to the
4 best ability. I had to find out things that would help
5 me -- facts that would help me.

6 THE COURT: All right. He did not talk to a store
7 owner. Is that what you're telling me?

8 MR. GREENE: Yes, sir.

9 THE COURT: You've been talking so fast and so low
10 and muttering I couldn't understand what you were saying.

11 MR. GREENE: I'm saying he failed ---

12 THE COURT: --- what did he not do?

13 MR. GREENE: He failed to speak to the store owner.

14 THE COURT: To the store owner?

15 MR. GREENE: Yes. He could have verified that I
16 was never inside the store. The victim made it up saying
17 I was inside the store but ---

18 THE COURT: --- so you wanted him to go to the
19 alleged store owner. What are you charged with?

20 MR. GREENE: Kidnapping ---

21 THE COURT: --- kidnapping ---

22 MR. GREENE: --- and armed robbery ---

23 THE COURT: --- and armed robbery?

24 MR. GREENE: Yes, sir.

25 [Whereupon, the court reviews documents]

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1 THE COURT: Let me see deadly weapon defendant Bing
2 Ho Zhang. So you wanted him to talk to Bing Ho Zhang?
3 How do you pronounce his last name?

4 MR. GREENE: No.

5 MR. DEJEU: Zhang.

6 THE COURT: Zhang? You wanted him to talk to Mr.
7 Zhang is that correct?

8 MR. GREENE: No

9 THE COURT: Who did you want him to talk to?

10 MR. GREENE: To Jai Patel -- Jai Patel. No as a
11 matter of fact I wanted him to talk to the first owner of
12 the store. He's not on the list. He said they can't get
13 in contact with them. But I'm saying the man that I
14 addressed -- the man is not hiding -- how can nobody get
15 it touch with him.

16 THE COURT: What does the first owner of the store
17 have to do with this Zhang man?

18 MR. GREENE: Because they could prove that he's
19 lying. That would hurt his credibility from the start.

20 THE COURT: Prove that he is lying?

21 MR. GREENE: He's lying. He said I was in the
22 store. I never was inside the store. He was the only
23 person in the store so you could not mistake me for
24 another black man if you were the only one inside the
25 store. The owner -- that would hurt the victim's

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1 creditability right there because I was never inside the
2 store.

3 THE COURT: Okay. What's the gentleman's name you
4 wanted your lawyer to talk with?

5 MR. GREENE: They never got the name. Nobody seems
6 to know the name. When I tell ---

7 THE COURT: --- pardon?

8 MR. GREENE: Nobody seems to know the owner's name.

9 THE COURT: Well, do you know his name?

10 MR. GREENE: I don't know. When I talked to --
11 when I let my people call ---

12 THE COURT: --- so Mr. Zhang doesn't own the store?

13 MR. GREENE: No, sir. That's the victim.

14 THE COURT: He's the victim? Was he -- did he live
15 in the -- was Zhang in the store as a customer or what?

16 MR. GREENE: Yes, he was inside the store.

17 THE COURT: As a customer?

18 MR. GREENE: Yes, sir.

19 THE COURT: Okay.

20 MR. SHELTON: Your Honor, I don't know if this is
21 the proper venue to talk about it at all but the
22 confrontation first started outside the store. The
23 alleged incident occurred in the car, not in the store.
24 And so we have -- we had made attempts. We talked to Mr.
25 Patel about videos that would have been available at that

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1 point in time. There were no videos available for inside
2 the store. In addition the police officer and we
3 verified what was in the police statements, the police
4 attempted to obtain video from outside the store to see
5 the first initial confrontation or the first initial ---

6 THE COURT: --- so all of it occurred outside the
7 store not inside the store?

8 MR. SHELTON: Yes, Your Honor. And there were no
9 cameras for outside the store. And Mr. ---

10 THE COURT: --- have you talked to this owner?

11 MR. SHELTON: Yes, Your Honor. Our office talked
12 to Mr. Patel.

13 THE COURT: So you've -- your office -- who talked
14 to him your investigator?

15 MR. SHELTON: Our -- we don't have an investigator
16 on staff but our secretary and paralegals talked to him.

17 THE COURT: Okay. Have you talked to him?

18 MR. SHELTON: Not personally, no Your Honor.

19 THE COURT: Okay.

20 MR. GREENE: Excuse me, can I say something?

21 THE COURT: Now your secretary talked to him?

22 MR. SHELTON: Yes, Your Honor.

23 THE COURT: Was he going to be of any benefit to
24 you?

25 MR. SHELTON: No, Your Honor.

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1 THE COURT: Pardon?

2 MR. SHELTON: No, Your Honor.

3 THE COURT: Did y'all take a statement from him?

4 MR. SHELTON: Over the phone yes, Your Honor.

5 THE COURT: Do you have -- has it been reduced to
6 writing?

7 MR. SHELTON: No, Your Honor.

8 THE COURT: What did he say?

9 MR. SHELTON: That there is no video from inside
10 the store. There is no video outside the store because
11 the video cameras -- there were no video cameras outside
12 the store.

13 THE COURT: Okay. But did he say anything about
14 this gentleman or know this gentleman?

15 MR. SHELTON: He would have no knowledge of this
16 incident. He didn't come on the scene until three months
17 after this incident.

18 THE COURT: Okay. Yes sir, you wanted to say
19 something?

20 MR. GREENE: That's what I wanted to say Jai Patel
21 he has nothing really to do with it. And even though the
22 incident didn't occur inside the store I feel like the
23 police and investigators they went there looking for
24 video even when it didn't happen there because they felt
25 like it was important. And I feel like it's important

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1 too because ---
2 THE COURT: --- what was important?
3 MR. GREENE: To verify his story. Going to ---
4 THE COURT: --- he said there was no video on the
5 outside so how are you going to look at a video that
6 doesn't exist?
7 MR. GREENE: That's what I'm saying. The previous
8 owner was there. He was there May 22nd. I got arrested
9 May 22nd. The previous owner was there. Nobody
10 questioned him. Nobody questioned him to verify my story
11 that I never was inside the store. It was a lie from the
12 jump start. Nobody questioned ---
13 THE COURT: --- well what difference does it make
14 if you were inside the store or not inside the store if
15 the incident occurred outside the store?
16 MR. GREENE: Because this is what I'm trying to
17 say.
18 THE COURT: Pardon?
19 MR. GREENE: This is what I'm saying. If you're
20 going to lie about one small thing what else are you
21 lying about? That could have proved that he was lying.
22 That would have helped me a lot. That would have showed
23 that he was lying; I never was in the store.
24 THE COURT: That who was lying?
25 MR. GREENE: The victim is lying. I was never in

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1 the store. If you contact the previous owner and he told
2 you that I wasn't in the store that would have helped me
3 out a lot.

4 THE COURT: Does the victim say it occurred inside
5 the store or outside the store?

6 MR. DEJEU: Outside the store, Your Honor.

7 THE COURT: Okay. Well what is he talking about
8 the victim said he was inside the store?

9 MR. GREENE: He told him I was inside ---

10 THE COURT: --- shut up and quit interrupting.
11 Okay? I'll listen to you but you're not going to
12 interrupt. I'm trying to make a decision do you
13 understand?

14 MR. GREENE: Yes, sir.

15 THE COURT: Please tell me.

16 MR. DEJEU: No, Your Honor. Everything he states
17 -- everything happened outside the store at the gas pump.

18 THE COURT: So the victim never said anything
19 occurred inside the store?

20 MR. DEJEU: Not to my knowledge.

21 THE COURT: All right. Now what do you want to
22 tell me? He says the victim is not going to testify
23 about anything that occurred inside the store.

24 MR. GREENE: He got it in a motion, sir. He got it
25 in a motion. He's got it on video. I heard him; he's

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1 lying. It's in the video and it's in the motion. I've
2 looked at my motion over 40 times. I'm telling you
3 what's in there. It's on video proof of all of that.
4 That's why I'm letting you know they're lying.

5 THE COURT: Do you know what he's talking about?

6 MR. SHELTON: Your Honor, I know -- I know exactly
7 what he's talking about and I hesitate to say too much
8 before this trial starts. I think that the victim is
9 very confusing on the video ---

10 THE COURT: --- well shouldn't all this come out at
11 trial? What does this have to do with your preparation?

12 MR. SHELTON: Exactly, Your Honor. I think there
13 are some confusing parts about what the victim is saying
14 and the police officer -- I believe the police officer
15 leads him to certain answers, Your Honor and ---

16 THE COURT: --- all right well let me ask you this.
17 What do you interpret him -- what does he want you to do?
18 I'm not real sure I understand what he wants you to do.

19 MR. SHELTON: He wants me to get video from the
20 inside of the store that will show he is not present
21 inside the store. According to the summary of the police
22 officers statement -- or the police officer made a
23 summary of the victim's statement it seems to be that the
24 victim is saying Mr. Greene followed him from the store,
25 inside the store.

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1 THE COURT: Well that's going to be part of cross-
2 examination of the victim not preparation for trial.

3 MR. SHELTON: Yes, Your Honor.

4 THE COURT: All right. Anything you want to tell
5 me before I make a decision on your motion to relieve
6 your counsel?

7 MR. GREENE: All I want to say is questions were
8 not asked that needed to be answered.

9 THE COURT: Well, the questions are going to be
10 asked at trial Mr. Greene, okay.

11 MR. GREENE: I'm just saying he hasn't really sit
12 down and let me know how he is going to go about my
13 trial. I asked him to show me some notes ---

14 THE COURT: --- well he probably doesn't know
15 because he doesn't know what the prosecutor is going to
16 say. He doesn't know what the witness is going to say so
17 y'all are going to have to confer some during the trial.
18 Do you understand?

19 MR. GREENE: [No response]

20 THE COURT: Do you understand?

21 MR. SHELTON: Your Honor, and it's not 100 percent
22 necessary but for purposes of the record I have explained
23 to him the trial theory and theme, Your Honor. I
24 explained to him that we don't know what these people are
25 going to say on the stand so I can't wrote down what

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1 questions I'm going to ask these people that have not
2 said it yet. So I couldn't show him those notes because
3 it hasn't happened yet.

4 THE COURT: I think he's probably been watching too
5 much television.

6 MR. GREENE: Can I say something, Your Honor?

7 THE COURT: Yes, sir?

8 MR. GREENE: One question that you can ask you
9 don't even have to be prepared for is ask the detective
10 why would he write -- type down the motion. It put
11 everything inside ---

12 THE COURT: --- well I suggest you write the
13 question down and give it to your lawyer ---

14 MR. GREENE: --- I'm just saying when I told him I
15 wanted him to ask the question he's telling me don't tell
16 him how to do his job. I'm just saying this is my life.
17 This is my life ---

18 THE COURT: --- I suggest you write the question
19 down, hand it to your attorney, and he can answer it --
20 ask him. Do you understand?

21 MR. GREENE: Well, if I cannot relieve him I'd like
22 to represent myself.

23 THE COURT: No, sir.

24 MR. GREENE: Yes. I don't him to ---

25 THE COURT: --- both motions denied ---

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1 MR. GREENE: --- I want to represent myself.
2 THE COURT: Pardon?
3 MR. GREENE: I would like to represent myself.
4 THE COURT: The motion is denied to relieve your
5 counsel.
6 MR. GREENE: I would like to represent myself.
7 THE COURT: You want to go -- be pro se?
8 MR. GREENE: I don't understand.
9 THE COURT: Pardon?
10 MR. GREENE: What does that mean?
11 THE COURT: Well see the problem you have is you
12 want to represent yourself because you think you know
13 more than your lawyer but you don't ---
14 MR. GREENE: --- no, I think he's not representing
15 me to the best of ---
16 THE COURT: --- I've already told you not to
17 interrupt. Do you understand? Don't interrupt me again.
18 And you need to listen. If you go pro se, that's fine.
19 But you're going to be -- have to follow the rules of
20 evidence, you're going to be required to know the law and
21 know the procedures. Do you understand?
22 MR. GREENE: Yes, sir.
23 THE COURT: But see, you don't even know what pro se
24 means. Do you know what it means?
25 MR. GREENE: I thought it was to relieve counsel.

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1 THE COURT: Do you know what pro se means?
2 MR. GREENE: No, I thought it was to relieve
3 counsel.
4 THE COURT: Pardon?
5 MR. GREENE: I thought it was to relieve counsel.
6 [Whereupon, the court reviews documents]
7 THE COURT: All right. Mr. Green how old are you?
8 MR. GREENE: 24.
9 THE COURT: How far did you go in school?
10 MR. GREENE: 12th grade.
11 THE COURT: Did you complete the 12th grade?
12 MR. GREENE: No, sir.
13 THE COURT: Do you have a G-E-D?
14 MR. GREENE: No, sir.
15 THE COURT: You don't even have a high school
16 diploma?
17 MR. GREENE: No, sir.
18 THE COURT: Have you ever worked anywhere?
19 MR. GREENE: Yes, sir.
20 THE COURT: What type of work have you done?
21 MR. GREENE: Wilbur Plastics in Orangeburg, then I
22 worked at a Charlie's -- in Jamestown, Burger King, --
23 Seafood Restaurant.
24 THE COURT: Have you ever been treated for abuse of
25 alcohol or drugs?

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1 MR. GREENE: No, sir.

2 THE COURT: Have you ever been treated for mental
3 illness?

4 MR. GREENE: No, sir.

5 THE COURT: Take any medications or drugs in the
6 last 24 hours?

7 MR. GREENE: No, sir.

8 THE COURT: Are you under the influence of any
9 alcohol, medication or drugs today?

10 MR. GREENE: No, sir.

11 THE COURT: Aware of any physical or emotional
12 condition to keep you from understanding what you're
13 doing?

14 MR. GREENE: No, sir.

15 THE COURT: Ever been examined by a doctor to
16 determine your mental competency?

17 MR. GREENE: No, sir.

18 THE COURT: Have you ever studied law?

19 MR. GREENE: No, sir.

20 THE COURT: Have you ever been in Magistrates Court
21 before?

22 MR. GREENE: No, sir.

23 THE COURT: Ever been in any court before?

24 MR. GREENE: Yes, sir.

25 THE COURT: What court have you been in before?

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1 MR. GREENE: Just a little small for disorderly
2 conduct -- disorderly conduct.
3 THE COURT: Where?
4 MR. GREENE: Disorderly conduct in Denmark.
5 THE COURT: Okay. What did you do in Denmark?
6 MR. GREENE: Disorderly conduct.
7 THE COURT: Okay. That's the only time you've
8 ever been in court?
9 MR. GREENE: No, for strong arm robbery.
10 THE COURT: When were you in court on the strong
11 arm robbery?
12 MR. GREENE: 2011.
13 THE COURT: Did you have a trial?
14 MR. GREENE: No, sir.
15 THE COURT: Was there a plea?
16 MR. GREENE: Yes, sir.
17 THE COURT: When was this?
18 MR. GREENE: 2011 December 14th I think.
19 THE COURT: Do you understand you're charged with
20 Kidnapping?
21 MR. GREENE: Yes, sir.
22 THE COURT: Charged with Armed Robbery?
23 MR. GREENE: Yes, sir.
24 THE COURT: Solicitor, what's the max on the Armed
25 Robbery?

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1 MR. DEJEU: Its fifteen to thirty years.
2 THE COURT: Pardon?
3 MR. DEJEU: Ten to thirty.
4 THE COURT: Kidnapping?
5 MR. DEJEU: Zero to thirty.
6 THE COURT: Do you understand you can receive up to
7 thirty years for your Armed Robbery?
8 MR. GREENE: Yes, sir.
9 THE COURT: Do you understand you can receive up to
10 thirty years for the Kidnapping?
11 MR. GREENE: Yes, sir.
12 THE COURT: Do you understand you could receive a
13 total of sixty years?
14 MR. GREENE: Yes, sir.
15 THE COURT: Have any questions about it?
16 MR. GREENE: No, sir.
17 THE COURT: Do you realize if you represent
18 yourself you're on your own?
19 MR. GREENE: Yes, sir.
20 THE COURT: I cannot tell you how you should try
21 your case or even advise you as to how to try your case.
22 Do you understand?
23 MR. GREENE: Yes, sir.
24 THE COURT: Are you familiar with the rules of
25 evidence in South Carolina?

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1 MR. GREENE: Not really.

2 THE COURT: Then how are you going to try the case?

3 MR. GREENE: I need to just state the facts.

4 THE COURT: Pardon?

5 MR. GREENE: All I want to do is state the facts
6 and ask questions.

7 THE COURT: No, you're not. You're going to follow
8 the rules of evidence. If you don't know the rules of
9 evidence how are you going to follow them?

10 MR. GREENE: I think I'll get along pretty good.

11 THE COURT: Pardon?

12 MR. GREENE: I think I'll get along pretty good.

13 THE COURT: You do?

14 MR. GREENE: Yes, sir.

15 THE COURT: You think you know enough to get along?

16 MR. GREENE: Yes, sir.

17 THE COURT: But you don't know the rules of
18 evidence. You're going to be required to follow the
19 rules of evidence do you understand?

20 MR. GREENE: Yes, sir.

21 THE COURT: Because I'm going to make you follow
22 them. Now if you don't understand them how are you going
23 to try this case?

24 MR. GREENE: Just like I said I think I'll get
25 along.

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1 THE COURT: Do you understand the rule against
2 hearsay?

3 MR. GREENE: Yes, sir.

4 THE COURT: What does hearsay mean to you?

5 MR. GREENE: Somebody telling me something by word
6 of mouth really; not solid evidence --

7 THE COURT: Are you aware of the exceptions to the
8 hearsay rule?

9 MR. GREENE: No, sir.

10 THE COURT: Are you familiar with the South
11 Carolina Rules of Criminal Procedure?

12 MR. GREENE: No, sir.

13 THE COURT: Do you realize that some of those rules
14 govern the way in which a criminal action is tried?

15 MR. GREENE: No, sir.

16 THE COURT: Pardon?

17 MR. GREENE: No, sir.

18 THE COURT: Do you know the elements of the crime
19 of Armed Robbery?

20 MR. GREENE: [No response]

21 THE COURT: Do you know the elements of the crime
22 of Armed Robbery?

23 MR. GREENE: Yes.

24 THE COURT: What are they?

25 MR. GREENE: A weapon.

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1 THE COURT: What else?
2 MR. GREENE: Force.
3 THE COURT: What else?
4 MR. GREENE: Threatening.
5 THE COURT: Do you know the elements of Kidnapping?
6 MR. GREENE: Yes, sir.
7 THE COURT: What are they?
8 MR. GREENE: Forcing a person to move, threaten a
9 person to move, order them at gunpoint, knifepoint, make
10 no move without their permission.
11 THE COURT: Do you understand an attorney could
12 help you with the Rules of Evidence and the hearsay
13 rules, exception to hearsay, and elements of the charges.
14 Do you understand that?
15 MR. GREENE: Yes, sir.
16 THE COURT: The only thing I can say to you is I
17 advise you in my opinion you would be far better defended
18 by a trained lawyer than you can be by yourself. I think
19 it's wise that you try to represent yourself -- unwise
20 for you to represent yourself. You're not familiar with
21 the law, you don't know the rules of evidence, you don't
22 know the rules of court, you're not familiar with the
23 court procedure. I strongly urge you not to represent
24 yourself. Do you understand?
25 MR. GREENE: Yes, sir.

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1 THE COURT: In light of the penalty that you might
2 serve if you are found guilty, in light of all the
3 difficulties representing yourself is it still your
4 desire to represent yourself and give up your right to be
5 represented by your lawyer?

6 MR. GREENE: I don't know.

7 THE COURT: Pardon?

8 MR. GREENE: I said I don't know.

9 THE COURT: Well you said you wanted to represent
10 yourself and we're going through it. I'm explaining it
11 to you. I understand you're angry at your lawyer. I
12 understand he may not be doing things exactly like you
13 think they need to be done.

14 The question here is can you proceed representing
15 yourself and do an effective job? I don't understand how
16 you're going to be able to do that if you don't know the
17 rules of evidence, you don't know the procedures, you
18 don't know -- you basically don't know anything. You
19 don't even know what pro se means.

20 MR. GREENE: I don't really know -- I don't...

21 THE COURT: It's sort of like if you go to a
22 dentist you go to a dentist because of his knowledge and
23 skill in treating your mouth or your teeth. Do you
24 understand?

25 MR. GREENE: Yes, sir.

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1 THE COURT: You don't go to a veterinarian that
2 treats animals to get your teeth treated do you?

3 MR. GREENE: No, sir.

4 THE COURT: Then why do you want to represent
5 yourself when you've got a lawyer very capable, very
6 competent that can represent you?

7 MR. GREENE: Because ---

8 THE COURT: --- and you'll have an opportunity to
9 testify if you so choose. And you can say whatever you
10 want to once you get on the witness stand. You'll have
11 your say assuming you decide to testify. Do you
12 understand?

13 MR. GREENE: Yes, sir.

14 THE COURT: Now I get the impression you just want
15 to have your say and you want your lawyer to ask certain
16 questions. I've already told you all you have to do is
17 write the question down and he'll ask it.

18 MR. GREENE: Well he told me don't tell him how to
19 do his job. So obviously he's not going to even ask none
20 of my questions.

21 THE COURT: Well, I don't know if he will or not.
22 All I said is you can write them down and ask him to ask
23 the question. What do you want to do?

24 MR. GREENE: I think I'll keep him.

25 THE COURT: Pardon?

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1 MR. GREENE: I'll keep him.
2 THE COURT: You'll what?
3 MR. GREENE: I'll keep him.
4 THE COURT: You'll keep him?
5 MR. GREENE: Yes, sir.
6 THE COURT: Okay. Thank you very much. All
7 right. Is the State ready to proceed?
8 MR. DEJEU: Yes, Your Honor. Briefly, the State
9 has a short motion in limine regarding the victim's
10 illegal immigration status. I think it's not relevant to
11 the case and the State does not want inquires regarding
12 that that.
13 THE COURT: You want to do what now?
14 MR. DEJEU: The motion in limine ---
15 THE COURT: --- okay ---
16 MR. DEJEU: --- regarding the victim's -- whether
17 he is legally here or not. I think the defense should
18 not ask that.
19 THE COURT: Are you planning on asking that? In
20 other words whether he has a green card and is legally in
21 the country or not legally in the country?
22 MR. DEJEU: Yes, sir.
23 MR. SHELTON: Your Honor, I think it goes to
24 creditability.
25 THE COURT: Goes to what?

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1 MR. SHELTON: Goes to creditability.

2 THE COURT: Why would it go to his creditability?

3 MR. SHELTON: His being here illegally
4 undocumented. He's come to the country without going
5 through the proper channels. He's lying essentially and
6 I would ask that we be able to cross-examine him.

7 THE COURT: All right. That motion is denied.
8 Anything else?

9 MR. DEJEU: Nothing.

10 THE COURT: All right. I've got the defendant's
11 Voir Dire. Have you seen it?

12 MR. DEJEU: Yes, Your Honor.

13 THE COURT: You got any objections to it?

14 MR. DEJEU: No, Your Honor.

15 THE COURT: Do you have any Voir Dire you want the
16 court ---

17 MR. DEJEU: --- no, Your Honor.

18 THE COURT: Defendant, can you give me a witness
19 list? I've got the State's witness list.

20 MR. SHELTON: There is one possible witness, Your
21 Honor, a D --

22 THE COURT: Who?

23 MR. SHELTON: D. Manigault.

24 THE COURT: Just write it down for me if you would,
25 please.

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1 [Whereupon, Mr. Shelton complies and proffers
2 documents to the court]
3 MR. SHELTON: It's Daniel Manigault.
4 THE COURT: Okay. Anybody else?
5 MR. SHELTON: No.
6 [Off the record momentarily]
7 THE COURT: Y'all want to try to draw it now or
8 y'all want to take a break for lunch? What do you want
9 to do?
10 MR. DEJEU: Do it now, Your Honor.
11 THE COURT: Pardon?
12 MR. DEJEU: Pick the jury now.
13 THE COURT: Because it's 12:30 right now.
14 MR. DEJEU: We're fine to go forward unless...
15 MR. ALFARO: We're going to do pleas this afternoon
16 and start the trial tomorrow morning. Whether you want
17 to select a jury now or take a break and select it ---
18 THE COURT: --- it doesn't matter. I don't know if
19 we can get it all done in thirty minutes.
20 MR. ALFARO: It's fine with us as long as we --
21 we're doing pleas this afternoon so we have some time if
22 you want to pick the jury after lunch it's up to you,
23 Your Honor.
24 THE COURT: What's y'all's preference?
25 MR. SHELTON: No preference, Your Honor. We've got

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1 to be here no matter what.

2 THE COURT: Got to be here regardless. Mr. Greene,
3 do you have a preference?

4 MR. GREENE: No, sir.

5 THE COURT: Pardon?

6 MR. GREENE: No, sir.

7 THE COURT: All right. Why don't we do this.

8 It's 12:30. Let's just go ahead and draw the jury now
9 and it will be done with. Whenever we get the jury drawn
10 we'll take a lunch break at that time, okay. Since the
11 jury is here and -- isn't it raining outside? No sense
12 sending the jury out in the rain. So they can stay under
13 the roof of the courthouse.

14 JURY VOIR DIRE

15 [Whereupon, the jury panel enters at 12:30 p.m.]

16 THE COURT: Solicitor, if you want to call your
17 case please?

18 MR. DEJEU: Yes, Your Honor, thank you. May it
19 please the court? The State is calling State v Wilton
20 Q. Greene, Indictment 2013-GS-08-755 for Armed Robbery,
21 2013-GS-08-00756 for Kidnapping.

22 THE COURT: All right ladies and gentlemen of the
23 jury we're getting to strike the jury in the case that
24 the Solicitor just called. He read out the Indictments
25 and the charges against the defendant. These Indictments

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1 are not evidence; it's not anything for you to consider
2 in making a determination as to the innocence or guilt of
3 the defendant in the case. It's merely the means by
4 which the defendant is brought before the court for
5 trial. Now I'm going to ask some questions -- as soon as
6 I find the sheet of paper I had here.

7 [Whereupon, the court views documents]

8 THE COURT: Here it is. I am going to call out a
9 list of names and I'm going to ask you the same question
10 about each name. I'm going to ask you do you know the
11 individual, have you had any contact with the individual,
12 are you related by blood or marriage.

13 The first name is Anthony S. Judy of the Moncks
14 Corner Police Department. Is anybody related by blood or
15 marriage or does anybody know Anthony Judy. If so,
16 please stand. The next name is Bing Ho Zhang. Is
17 anybody related by blood or marriage or does anybody know
18 Bing Ho Zhang. If so please stand.

19 The next name is Tony M. Edwards of the Moncks
20 Corner Police Department. Does anybody know Tony Edwards
21 or is anybody related by blood or marriage. If so please
22 stand. The next name is Arnold C. Scarborough, Moncks
23 Corner Police Department. Is anybody related by blood or
24 marriage or does anybody know Arnold C. Scarborough. If
25 so please stand. The next name is Jai Patel. Is

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1 anybody related by blood or marriage or does anybody know
2 Jai Patel. The next name is Daniel Manigault. Is
3 anybody related by blood or marriage or does anybody know
4 Daniel Manigault. If so please stand.

5 Is any member of the jury panel or member of your
6 close family ever or currently working in law
7 enforcement? If so please stand. Yes ma'am, your name?

8 MS. SHARP: Danielle Sharp, juror number 168.

9 THE COURT: Number 160?

10 MS. SHARP: 168.

11 THE COURT: Ms. Sharp?

12 MS. SHARP: My cousin is a sheriff for Summerville
13 Police Department.

14 THE COURT: How long has he ---

15 MS. SHARP: --- I'm sorry, a sergeant at the
16 Summerville Police Department.

17 THE COURT: How long has he worked there?

18 MS. SHARP: Ages.

19 THE COURT: Eight years?

20 MS. SHARP: Ages. I don't know the exact number; a
21 while. I mean he's been a police officer for as long as
22 I can remember.

23 THE COURT: Okay. How would that affect you
24 sitting on this jury?

25 MS. SHARP: I don't know.

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1 THE COURT: Pardon?

2 MS. SHARP: I'm not sure.

3 THE COURT: You're not sure? Do you think it would
4 have an effect on you?

5 MS. SHARP: Not really.

6 THE COURT: Why not?

7 MS. SHARP: Because -- I mean he does what he's
8 supposed to do but I don't think that he's always right.

9 THE COURT: Okay. Well, I guess most wives would
10 say that, huh. I'm sure mine would. Do you think you
11 can set that aside and be fair to both the State and the
12 defendant?

13 MS. SHARP: Yes, sir.

14 THE COURT: Can you base your decision on testimony
15 you hear here in the courtroom?

16 MS. SHARP: Yes, sir.

17 THE COURT: All right. Thank you very much. Does
18 any member of the jury panel tend to believe that
19 testimony -- yes sir, your name?

20 MR. HYDRICK: James Hydrick.

21 THE COURT: Your number.

22 MR. HYDRICK: 80.

23 THE COURT: Yes sir, Mr. Hydrick.

24 MR. HYDRICK: My brother serves as a police officer
25 in Goose Creek and I have a sister-in-law that is a state

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1 trooper.

2 THE COURT: Would that affect you in any way Mr.
3 Hydrick sitting on a jury?

4 MR. HYDRICK: I don't believe so, sir.

5 THE COURT: Can you set that aside and be fair to
6 both the State and the defendant?

7 MR. HYDRICK: Yes, sir.

8 THE COURT: Can you base your decision on testimony
9 you hear in the courtroom?

10 MR. HYDRICK: Yes, sir.

11 THE COURT: Thank you, Mr. Hydrick. Does any
12 member of the jury panel tend to believe the testimony of
13 a police officer or a government employee over that of a
14 lay person? If you believe that please stand.

15 Is any member of the jury panel or a member of your
16 family a member or contribute to any of the following
17 groups that are affiliated or support law enforcement
18 such as, MADD Mothers Against Drunk Driving, SADD which
19 is Students Against Drunk Driving, CAV which is Citizens
20 Against Violence, or the Sheriff's Association. If you
21 are a member of any of those organizations or contribute
22 any money to those organizations please stand? Yes sir,
23 your name?

24 MR. REESE: Kato Reese, 154.

25 THE COURT: Yes sir, Mr. Reese, which one?

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1 MR. REESE: MADD.

2 THE COURT: MADD?

3 MR. REESE: Yes.

4 THE COURT: How long you been a member of MADD?

5 MR. REESE: Well, I'm a supporter. I wouldn't say I
6 am a member because of my baby brother.

7 THE COURT: Okay.

8 MR. REESE: He's a paraplegic right now.

9 THE COURT: Because of a drunk driver?

10 MR. REESE: Yes.

11 THE COURT: Okay. But you don't contribute money
12 to the organization?

13 MR. REESE: I will.

14 THE COURT: Pardon?

15 MR. REESE: I have and I will.

16 THE COURT: Oh, you have. Are you doing it now?

17 MR. REESE: No, I have donated before.

18 THE COURT: Okay. Would that influence you in
19 sitting on this jury?

20 MR. REESE: I have to think about it sir.

21 THE COURT: Okay. Take your time; let me know.

22 MR. REESE: I think I'll lean towards the court
23 system because ---

24 THE COURT: --- I'm sorry, what?

25 MR. REESE: May I approach the bench?

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1 THE COURT: Yes sir, you may come up here. The
2 lawyers may join me up here.

3 [Whereupon, a bench conference is held with the
4 court, Mr. Reese, the attorneys, and the court reporter]

5 THE COURT: Why don't you go ahead and have a seat
6 for a second. Let me see the lawyers up here just a
7 second.

8 [Whereupon, Mr. Reese returns to the jury panel]

9 [Whereupon, an off the record bench conference is
10 held with the court and counsel]

11 [Whereupon, Kato Reese, juror number 154 is excused
12 for cause]

13 THE COURT: Solicitor, if you will stand and
14 introduce yourself.

15 MR. DEJEU: Yes, Your Honor.

16 MR. DEJEU: My name is Adrian Dejeu. I'm an
17 Assistant Solicitor in Berkeley County. With me
18 assisting is Deputy Solicitor Bryan Alfaro and -- Brown
19 who is also working in our office. Berkeley County is
20 part of the ninth judicial circuit, which includes
21 Berkeley and Charleston Counties. Our boss is Scarlett
22 Wilson; elected official and she is the Solicitor for the
23 circuit. Thank you very much.

24 THE COURT: Is there any member of the jury panel
25 has a close personal friend or related to anyone in the

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1 Solicitor's Office either here or in Berkeley County? If
2 so please stand. Mr. Shelton, if you'll stand and
3 introduce yourself please sir?

4 MR. SHELTON: My client also, Your Honor?

5 THE COURT: Pardon?

6 MR. SHELTON: My client also?

7 THE COURT: Okay.

8 MR. SHELTON: Chad Shelton with the Berkeley County
9 Public Defender's Office. I represent Wilton Greene.
10 Sitting with me is David Schwacke and the circuit Public
11 Defender for both Berkeley and Charleston Counties is
12 Ashley Pennington.

13 THE COURT: Is any member of the jury panel close
14 personal friends with anyone in the Public Defender's
15 Office either here in Berkeley County or Charleston
16 County? If so please stand. Is any member of the jury
17 panel related or know Wilton Q. Greene? If so please
18 stand. Yes ma'am, your name?

19 MS. TAYLOR: Catherine Taylor.

20 THE COURT: Your number?

21 MS. TAYLOR: 187.

22 THE COURT: Yes ma'am, Ms. Taylor. How do you know
23 Mr. Greene?

24 MS. TAYLOR: I went to school with him actually.

25 THE COURT: You went to school together -- high

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1 school?

2 MS. TAYLOR: Yes, sir.

3 THE COURT: How long ago?

4 MS. TAYLOR: 2007 -- well probably ---

5 THE COURT: --- six or seven years ago?

6 MS. TAYLOR: Yes.

7 THE COURT: Were y'all close friends?

8 MS. TAYLOR: We kind of ran in the same...

9 THE COURT: Y'all ran in the same group?

10 MS. TAYLOR: Yes.

11 THE COURT: In the last five or six years have you

12 seen him very often?

13 MS. TAYLOR: No.

14 THE COURT: When's the last time you saw him?

15 MS. TAYLOR: When he was being -- and that was

16 about...

17 THE COURT: How -- how would knowing him and having

18 gone to high school with him even though you haven't seen

19 him recently how would that affect you sitting on this

20 jury?

21 MS. TAYLOR: It wouldn't.

22 THE COURT: It wouldn't affect you at all?

23 MS. TAYLOR: [Indicates Negatively].

24 THE COURT: You can be fair to both the State and

25 the defendant?

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1 MS. TAYLOR: Yes, sir.

2 THE COURT: You can base your decision on testimony
3 you hear in the courtroom?

4 MS. TAYLOR: Yes, sir.

5 THE COURT: Thank you, Ms. Taylor. Is any member
6 of the jury panel, your family or close friends ever been
7 falsely accused of anything; in particular any crime? If
8 so please stand.

9 Has any member of the jury panel ever had a close
10 friend or relative who has ever been the victim of any
11 type of crime? If so please stand. In other words any
12 member of the jury panel or close friends or a member of
13 your family been a victim of a crime? If so please
14 stand. Mr. Reese I know about you. You can have a seat.

15 MR. REESE: It's another situation also, Your Honor.

16 THE COURT: I understand. I know about you; just
17 have a seat. Yes sir, your name?

18 MR. WILLIAMS: Xavier Williams and my number is 208.

19 THE COURT: 208. Yes sir, Mr. Williams, who was
20 the victim?

21 MR. WILLIAMS: My uncle.

22 THE COURT: Your uncle?

23 MR. WILLIAMS: Yes, sir.

24 THE COURT: What happened to him?

25 MR. WILLIAMS: He got convicted of armed robbery and

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1 he already had a rap sheet and he was sentenced to
2 seventeen years.

3 THE COURT: All right. So he was the defendant in
4 the case?

5 MR. WILLIAMS: Yes, sir.

6 THE COURT: Okay. How would that affect you in
7 sitting on this jury?

8 MR. WILLIAMS: It wouldn't affect me.

9 THE COURT: You can be fair to both the State and
10 the defendant?

11 MR. WILLIAMS: Yes, sir.

12 THE COURT: Okay Mr. Williams. Thank you very
13 much. Yes sir, your name?

14 MR. REID: Travis Reid, juror number 155.

15 THE COURT: 155? Okay Mr. Reed?

16 MR. REID: I had a brother that was murdered in 2006

17 --

18 THE COURT: In 2006?

19 MR. REID: Yes, sir.

20 THE COURT: Was anybody ever arrested?

21 MR. REID: Yes, sir. The guy was arrested and they
22 gave him 30 years to life.

23 THE COURT: Was it a trial or a plea -- trial. Did
24 you participate in it?

25 MR. REID: No, sir.

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1 THE COURT: Were you present?

2 MR. REID: No, sir.

3 THE COURT: Do you have any bias or prejudice
4 towards defendants in general as a result of that?

5 MR. REID: No, sir.

6 THE COURT: Can you be fair in this case?

7 MR. REID: Yes, sir.

8 THE COURT: Can you base your decision on testimony
9 you hear in the courtroom?

10 MR. REID: Yes, sir.

11 THE COURT: Thank you, Mr. Reid. Yes ma'am, your
12 name?

13 MS. WELCH: Ginger Welch, 203.

14 THE COURT: Yes, ma'am?

15 MS. WELCH: It's been like ten years ago, fifteen
16 years ago my daughter was molested and...

17 THE COURT: Was anybody ever arrested?

18 MS. WELCH: No, it ended up being my step-son that
19 was doing the molestation.

20 THE COURT: Okay. Was ---

21 MS. WELCH: --- and myself years before I was raped.

22 THE COURT: So there were no criminal charges
23 brought?

24 MS. WELCH: The only criminal charge against my
25 step-son was he was not to be around my daughter. Not to

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1 be within 500 feet of her.

2 THE COURT: Okay. Do you have any bias or
3 prejudice as a result of that Ms. Welch?

4 MS. WELCH: I don't think I could be fair.

5 THE COURT: You don't think you could be fair?

6 MS. WELCH: No, sir.

7 THE COURT: Okay, then I'll excuse you Ms. Welch.
8 Thank you so very much. You may have a seat. Excuse
9 juror 203 please.

10 [Whereupon, juror number 203 is excused]

11 THE COURT: Yes, ma'am?

12 MS. BROWN: Patricia Brown, number 24.

13 THE COURT: What number?

14 MS. BROWN: 24.

15 THE COURT: Okay. Yes ma'am, Ms. Brown.

16 MS. BROWN: My mother was murdered 36 years ago. He
17 was found guilty. The punishment was natural life and he
18 died in prison.

19 THE COURT: Do you have any bias or prejudice as a
20 result of that?

21 MS. BROWN: No.

22 THE COURT: Can you be fair to both the State and
23 the defendant?

24 MS. BROWN: Yes.

25 THE COURT: Thank you Ms. Brown. Yes, sir?

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1 MR. MCCAILE: My name is Michael McCale, juror 115.

2 THE COURT: Let me find you; hold on.

3 MR. MCCAILE: Okay.

4 THE COURT: Okay, Mr. McCale?

5 MR. MCCAILE: About fifteen years ago three guys
6 broke into my mother's house and she returned home and
7 walked in on the burglars as they were tearing -- taking
8 things out of the house. They scuffed her up pretty bad.
9 One of the guys was arrested but he was later turned
10 loose.

11 THE COURT: So nobody was ever prosecuted?

12 MR. MCCAILE: No, sir.

13 THE COURT: Do you have any bias or prejudice
14 towards the police as a result of not having arrested
15 someone?

16 MR. MCCAILE: No.

17 THE COURT: Do you have any bias or prejudice as a
18 result of that experience?

19 MR. MCCAILE: No, not really.

20 THE COURT: Can you be fair to both sides?

21 MR. MCCAILE: I think so.

22 THE COURT: Base your decision on testimony you
23 hear in the courtroom?

24 MR. MCCAILE: Yes.

25 THE COURT: Thank you Mr. McCale. Has any member

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1 of the jury panel ever been a witness to a criminal
2 offense whether the criminal offense was reported or not
3 reported? If so please stand. Has any member of the
4 jury panel formed an opinion concerning the innocence or
5 guilt of the defendant in this case? If so please stand.

6 In a criminal case the State has the burden of
7 proving the defendant guilty beyond a reasonable doubt
8 for the crime of which he is charged. Is there any
9 member of the jury panel that does not understand that
10 please stand? If there is any member of the jury panel
11 that is not willing to accept that legal theory please
12 stand.

13 Is any member of the jury panel aware of any bias or
14 prejudice towards either the State or the defendant in
15 this case? If so please stand. Has any member of the
16 jury panel formed or expressed an opinion about any issue
17 involved in this case? If so please stand.

18 Does any member of the jury panel know of any reason
19 personal or otherwise as to why they cannot serve on this
20 jury? If so please stand. Any further questions from
21 the State?

22 MR. DEJEU: No, Your Honor.

23 THE COURT: Any from the defendant?

24 MR. SHELTON: None, Your Honor.

25 THE COURT: How long y'all need before you are

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1 ready to strike? Let me see the lawyers up here just a
2 second.

3 [Whereupon, an off the record bench conference is
4 held]

5 THE COURT: I'll give you about three to five
6 minutes to take a look at the strike sheet.

7 [Whereupon, court is in recess from 12:58 p.m. until
8 1:02 p.m.]

9 STRIKING OF THE JURY

10 THE COURT: All right. Madame Clerk if you will
11 give us a jury.

12 CLERK OF COURT: Ladies and gentlemen of the jury
13 as I call your name please come forth and bring your
14 personal belongings with you. If I say seat the juror
15 please have a seat in the jury box to my right. If I say
16 excuse the juror please return to your original seat.
17 And please follow the instructions of the Bailiff that is
18 standing right here [indicates]. Juror 132, Danny
19 Norris.

20 [Whereupon, Mr. Norris comes forward]

21 CLERK OF COURT: What sayeth the State?

22 MR. DEJEU: Please excuse Mr. Norris.

23 CLERK OF COURT: Excuse the juror.

24 [Whereupon, Mr. Norris returns to the audience]

25 CLERK OF COURT: Juror 192, Kevin Tingler.

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1 [Whereupon, Mr. Tingler comes forward]
2 CLERK OF COURT: What sayeth the State?
3 MR. DEJEU: Please present Mr. Tingler.
4 CLERK OF COURT: What sayeth the defense?
5 MR. SHELTON: Please accept Mr. Tingler.
6 CLERK OF COURT: Seat the juror.
7 [Whereupon, Mr. Tingler is seated in the jury box as
8 a juror]
9 CLERK OF COURT: Juror 134, Cheryl Osborne.
10 [Whereupon, Ms. Osborne comes forward]
11 CLERK OF COURT: What sayeth the State?
12 MR. DEJEU: Please present Ms. Osborne.
13 CLERK OF COURT: What sayeth the defense?
14 MR. SHELTON: Please excuse Ms. Osborne.
15 CLERK OF COURT: Excuse the juror.
16 [Whereupon, Ms. Osborne returns to the audience]
17 CLERK OF COURT: Juror 84, Alice Jean-Charles.
18 [Whereupon, Ms. Jean-Charles comes forward]
19 CLERK OF COURT: What sayeth the State?
20 MR. DEJEU: Please present Ms. Jean-Charles.
21 CLERK OF COURT: What sayeth the defense?
22 MR. SHELTON: Please excuse Ms. Jean-Charles.
23 CLERK OF COURT: Excuse the juror.
24 [Whereupon, Ms. Jean-Charles returns to the
25 audience]

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1 CLERK OF COURT: Juror 42, Nicole Cox.
2 [Whereupon, Ms. Cox comes forward]
3 CLERK OF COURT: What sayeth the State?
4 MR. DEJEU: Please seat Ms. Cox.
5 CLERK OF COURT: What sayeth the defense?
6 MR. SHELTON: Please seat Ms. Cox.
7 CLERK OF COURT: Seat the juror.
8 [Whereupon, Ms. Cox is seated in the jury box as a
9 juror]
10 CLERK OF COURT: Juror 206, Brenda Williams.
11 [Whereupon, Ms. Williams comes forward]
12 CLERK OF COURT: What sayeth the State?
13 MR. DEJEU: Please present Ms. Williams.
14 CLERK OF COURT: What sayeth the defense?
15 MR. SHELTON: Please seat Ms. Williams.
16 CLERK OF COURT: Seat the juror.
17 [Whereupon, Ms. Williams is seated in the jury box
18 as a juror]
19 CLERK OF COURT: Juror 81, Susan Ingle.
20 [Whereupon, Ms. Ingle comes forward]
21 CLERK OF COURT: What sayeth the State?
22 MR. DEJEU: Please present Ms. Ingle.
23 CLERK OF COURT: What sayeth the defense?
24 MR. SHELTON: Please excuse Ms. Ingle.
25 CLERK OF COURT: Excuse the juror.

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1 [Whereupon, Ms. Ingle returns to the audience]
2 CLERK OF COURT: Juror 127, Travon Middleton.
3 [Whereupon, Mr. Middleton comes forward]
4 CLERK OF COURT: What sayeth the State?
5 MR. DEJEU: Please excuse Mr. Middleton.
6 CLERK OF COURT: Excuse the juror.
7 [Whereupon, Mr. Middleton returns to the audience]
8 CLERK OF COURT: Juror 199, Danielle Walker.
9 [Whereupon, Ms. Walker comes forward]
10 CLERK OF COURT: What sayeth the State?
11 MR. DEJEU: Please present Ms. Walker.
12 CLERK OF COURT: What sayeth the defense?
13 MR. SHELTON: Please excuse Ms. Walker.
14 CLERK OF COURT: Excuse the juror.
15 [Whereupon, Ms. Walker returns to the audience]
16 CLERK OF COURT: Juror 27, Drayton Callahan.
17 [Whereupon, Mr. Callahan comes forward]
18 CLERK OF COURT: What sayeth the State?
19 MR. DEJEU: Please excuse Ms. Callahan.
20 CLERK OF COURT: Excuse the juror.
21 [Whereupon, Ms. Callahan returns to the audience]
22 CLERK OF COURT: Juror 70, William Harder.
23 [Whereupon, Mr. Harder comes forward]
24 CLERK OF COURT: What sayeth the State?
25 MR. DEJEU: Please present Mr. Harder.

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1 CLERK OF COURT: What sayeth the defense?
2 MR. SHELTON: Please seat Mr. Harder.
3 CLERK OF COURT: Seat the juror.
4 [Whereupon, Mr. Harder is seated in the jury box as
5 a juror]
6 CLERK OF COURT: Juror 211, Taylor Wilson.
7 [Whereupon, Ms. Wilson comes forward]
8 CLERK OF COURT: What sayeth the State?
9 MR. DEJEU: Please present Ms. Wilson.
10 CLERK OF COURT: What sayeth the defense?
11 MR. SHELTON: Please excuse Ms. Wilson.
12 CLERK OF COURT: Excuse the juror.
13 [Whereupon, Ms. Wilson returns to the audience]
14 CLERK OF COURT: Juror 92, Michele Keys.
15 [Whereupon, Ms. Keys comes forward]
16 CLERK OF COURT: What sayeth the State?
17 MR. DEJEU: Please present Ms. Keys.
18 CLERK OF COURT: What sayeth the defense?
19 MR. SHELTON: Please excuse Ms. Keys.
20 CLERK OF COURT: Excuse the juror.
21 [Whereupon, Ms. Keys returns to the audience]
22 CLERK OF COURT: Juror 147, Jeffrey Powell.
23 [Whereupon, Mr. Powell comes forward]
24 CLERK OF COURT: What sayeth the State?
25 MR. DEJEU: Please present Mr. Powell.

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1 CLERK OF COURT: What sayeth the defense?

2 MR. SHELTON: Please seat Mr. Powell.

3 CLERK OF COURT: Seat the juror.

4 [Whereupon, Mr. Powell is seated in the jury box as
5 a juror]

6 CLERK OF COURT: Juror 144, Kevin Posey.

7 [Whereupon, Mr. Posey comes forward]

8 CLERK OF COURT: What sayeth the State?

9 MR. DEJEU: Please present Mr. Posey.

10 CLERK OF COURT: What sayeth the defense?

11 MR. SHELTON: Please seat Mr. Posey.

12 CLERK OF COURT: Seat the juror.

13 [Whereupon, Mr. Posey is seated in the jury box as a
14 juror]

15 CLERK OF COURT: Juror 1, Jacob Ackerman.

16 [Whereupon, Mr. Ackerman comes forward]

17 CLERK OF COURT: What sayeth the State?

18 MR. DEJEU: Please present Mr. Ackerman.

19 CLERK OF COURT: What sayeth the defense?

20 MR. SHELTON: Please seat Mr. Ackerman.

21 CLERK OF COURT: Seat the juror.

22 [Whereupon, Mr. Ackerman is seated in the jury box
23 as a juror]

24 CLERK OF COURT: Juror 48, Edith Derosa.

25 [Whereupon, Ms. Derosa comes forward]

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1 CLERK OF COURT: What sayeth the State?
2 MR. DEJEU: Please seat Ms. Derosa.
3 CLERK OF COURT: What sayeth the defense?
4 MR. SHELTON: Please seat Ms. Derosa.
5 CLERK OF COURT: Seat the juror.
6 [Whereupon, Ms. Derosa is seated in the jury box as
7 a juror]
8 CLERK OF COURT: Juror 187, Catherine Taylor.
9 [Whereupon, Ms. Taylor comes forward]
10 CLERK OF COURT: What sayeth the State?
11 MR. DEJEU: Please excuse Ms. Taylor.
12 CLERK OF COURT: Excuse the juror.
13 [Whereupon, Ms. Taylor returns to the audience]
14 CLERK OF COURT: Juror 60, Bryan Ganey.
15 [Whereupon, Mr. Ganey comes forward]
16 CLERK OF COURT: What sayeth the State?
17 MR. DEJEU: Please seat Mr. Ganey.
18 CLERK OF COURT: What sayeth the defense?
19 MR. SHELTON: Please excuse Mr. Ganey.
20 CLERK OF COURT: Excuse the juror.
21 [Whereupon, Mr. Ganey returns to the audience]
22 CLERK OF COURT: Juror 22, Cynthia Brewer.
23 [Whereupon, Ms. Brewer comes forward]
24 CLERK OF COURT: What sayeth the State?
25 MR. DEJEU: Please seat Ms. Brewer.

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1 CLERK OF COURT: What sayeth the defense?
2 MR. SHELTON: Please excuse Ms. Brewer.
3 CLERK OF COURT: Excuse the juror.
4 [Whereupon, Ms. Brewer returns to the audience]
5 CLERK OF COURT: Juror 148, Rufus Prince, Jr.
6 [Whereupon, Mr. Prince comes forward]
7 CLERK OF COURT: What sayeth the State?
8 MR. DEJEU: Please seat Mr. Prince.
9 CLERK OF COURT: What sayeth the defense?
10 MR. SHELTON: Please seat Mr. Prince.
11 CLERK OF COURT: Seat the juror.
12 [Whereupon, Mr. Prince is seated in the jury box as
13 a juror]
14 CLERK OF COURT: Juror 174, Jennifer Smith.
15 [Whereupon, Ms. Smith comes forward]
16 CLERK OF COURT: What sayeth the State?
17 MR. DEJEU: Please seat Ms. Smith.
18 CLERK OF COURT: What sayeth the defense?
19 MR. SHELTON: Please seat Ms. Smith.
20 CLERK OF COURT: Seat the juror.
21 [Whereupon, Ms. Smith is seated in the jury box as a
22 juror]
23 CLERK OF COURT: Juror 155, Travis Reid.
24 [Whereupon, Mr. Reid comes forward]
25 CLERK OF COURT: What sayeth the State?

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1 MR. DEJEU: Please seat Mr. Reid.
2 CLERK OF COURT: What sayeth the defense?
3 MR. SHELTON: Please excuse Mr. Reid.
4 CLERK OF COURT: Excuse the juror.
5 [Whereupon, Mr. Reid returns to the audience]
6 CLERK OF COURT: Juror 173, James Smith, II.
7 [Whereupon, Mr. Smith comes forward]
8 CLERK OF COURT: What sayeth the State?
9 MR. DEJEU: Please seat Mr. Smith.
10 CLERK OF COURT: What sayeth the defense?
11 MR. SHELTON: Please seat Mr. Smith.
12 CLERK OF COURT: Seat the juror.
13 [Whereupon, Mr. Smith is seated in the jury box as a
14 juror]
15 CLERK OF COURT: Juror 143, George Pollard, Jr.
16 [Whereupon, Mr. Pollard comes forward]
17 CLERK OF COURT: What sayeth the State?
18 MR. DEJEU: Please seat Mr. Pollard.
19 CLERK OF COURT: What sayeth the defense?
20 MR. SHELTON: Please excuse Mr. Pollard.
21 CLERK OF COURT: Excuse the juror.
22 [Whereupon, Mr. Pollard returns to the audience]
23 CLERK OF COURT: The defense has ten strikes.
24 Juror 52, Robin Dunn.
25 [Whereupon, Ms. Dunn comes forward]

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1 CLERK OF COURT: What sayeth the State?
2 MR. DEJEU: Please seat Ms. Dunn.
3 CLERK OF COURT: Any cause or challenge from the
4 defense.
5 MR. SHELTON: No cause or challenge.
6 CLERK OF COURT: Seat the juror.
7 [Whereupon, Ms. Dunn is seated in the jury box as a
8 juror]
9 CLERK OF COURT: Alternate; one?
10 THE COURT: All right. We're going to draw two
11 alternates, two and one.
12 CLERK OF COURT: Juror 49, Gilbert Downer.
13 [Whereupon, Mr. Downer comes forward]
14 CLERK OF COURT: What sayeth the State?
15 MR. DEJEU: Please seat Mr. Downer.
16 CLERK OF COURT: What sayeth the defense?
17 MR. SHELTON: Please excuse Mr. Downer.
18 CLERK OF COURT: Excuse the juror.
19 [Whereupon, Mr. Downer returns to the audience]
20 CLERK OF COURT: Juror 65, Sandra Griffin.
21 [Whereupon, Ms. Griffin comes forward]
22 CLERK OF COURT: What sayeth the State?
23 MR. DEJEU: Please seat Ms. Griffin.
24 CLERK OF COURT: What sayeth the defense?
25 MR. SHELTON: Please seat Ms. Griffin.

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1 CLERK OF COURT: Seat the juror.
2 [Whereupon, Ms. Griffin is seated in the jury box as
3 an alternate juror]
4 CLERK OF COURT: Second alternate. Juror 158,
5 Sherri Roberts.
6 [Whereupon, Ms. Roberts comes forward]
7 CLERK OF COURT: What sayeth the State?
8 MR. DEJEU: Please seat Ms. Roberts.
9 CLERK OF COURT: What sayeth the defense?
10 MR. SHELTON: Please excuse Ms. Roberts.
11 CLERK OF COURT: Excuse the juror.
12 [Whereupon, Ms. Roberts returns to the audience]
13 CLERK OF COURT: Juror 198, Joseph Von Bricken.
14 [Whereupon, Mr. Von Bricken comes forward]
15 CLERK OF COURT: What sayeth the State?
16 MR. DEJEU: Please excuse Mr. Von Bricken.
17 CLERK OF COURT: Excuse the juror.
18 [Whereupon, Mr. Von Bricken returns to the audience]
19 CLERK OF COURT: Juror 168, Danielle Sharp.
20 [Whereupon, Ms. Sharp comes forward]
21 CLERK OF COURT: Any cause or challenge from the
22 State?
23 MR. DEJEU: No. Please seat Ms. Sharp.
24 CLERK OF COURT: What sayeth the defense?
25 MR. SHELTON: Please excuse Ms. Sharp.

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1 CLERK OF COURT: Excuse the juror.
2 [Whereupon, Ms. Sharp returns to the audience]
3 CLERK OF COURT: Juror 130, Reginald Murphy.
4 [Whereupon, Mr. Murphy comes forward]
5 CLERK OF COURT: Any cause or challenge from the
6 State?
7 MR. DEJEU: No. Please seat Mr. Murphy.
8 CLERK OF COURT: Any cause or challenge from the
9 defense?
10 MR. SHELTON: No cause or challenge. Please seat
11 Mr. Murphy.
12 CLERK OF COURT: Seat the juror.
13 [Whereupon, Mr. Murphy is seated in the jury box as
14 an alternate juror]
15 THE COURT: All right. Members of the jury I'm
16 going to ask you to go to the jury room. Please don't
17 discuss the case amongst yourselves. I'll get you back
18 in very shortly. Follow the Bailiff please.
19 [Whereupon, the jury exits at 1:19 p.m.]
20 THE COURT: Any motions on the drawing of the jury
21 from the State?
22 MR. DEJEU: Nothing from the State, Your Honor.
23 THE COURT: Any from the defendant?
24 MR. SHELTON: None, Your Honor.
25 THE COURT: Okay. There is one lady who wanted to

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1 talk to the Judge. I'll be glad for you to come around
2 at this time and I'll be happy to speak with you. The
3 other members of the jury panel you've got to call that
4 number. Is there anybody that does not have that call in
5 number?

6 [No response]

7 THE COURT: Call that number after 6 o'clock.
8 There will be instructions for the jury panel. Follow
9 those instructions. It may be report tomorrow. It may
10 be call in tomorrow night but follow those instructions.
11 I'll ask you again is there anybody that does not have
12 the number to call in? If you don't have it, raise your
13 hand.

14 [No response]

15 THE COURT: All right. Thank you so very much.
16 You're excused. You're welcome to stay if you want to
17 stay.

18 [Whereupon, the jury panel exits at 1:20 p.m.]

19 [Whereupon, a juror, the court, and counsel confer
20 at the bench]

21 THE COURT: What time y'all want to -- y'all want
22 to start with this trial tomorrow is that correct?

23 MR. DEJEU: Yes, Your Honor.

24 THE COURT: What time do you want to start with
25 this jury tomorrow?

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1 MR. DEJEU: 9:30 is fine.

2 THE COURT: 9:30?

3 MR. SHELTON: 9:30 works for me, yes Your Honor.

4 THE COURT: Would you bring us the panel please.

5 [Whereupon, the jury enters at 1:23 p.m.]

6 THE COURT: Members of the jury panel, Mr. Harder?

7 MR. HARDER: Yes, sir.

8 THE COURT: If you will swap seats with this young
9 lady here [indicates] I'm going to appoint you as
10 Foreman.

11 [Whereupon, Mr. Harder complies]

12 THE COURT: The rest of you can sit in whatever
13 chairs you so choose but the Foreman sit in that chair
14 and the alternates sit in the two chairs you're in.
15 We're not going to start the trial today. We're going to
16 start in the morning at 9:30 -- if you'll be back in the
17 courthouse at 9:30. When you come to the courthouse come
18 straight to the jury room. And the Bailiff will show you
19 what door to come to tomorrow.

20 Now don't discuss the case with anyone. I don't
21 want you reading anything in the paper about it or
22 listening to anything on television if there is anything.
23 I want you to base your decision on what you hear in the
24 courtroom; not what someone tells you outside the
25 courtroom. So please don't discuss the case amongst

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1 yourselves or with anyone else. I'll see you in the
2 morning at 9:30. Have a good evening.

3 [Whereupon, the jury exits at 1:25 p.m.]

4 THE COURT: We'll adjourn until 2:45. Thank you
5 very much.

6 [Whereupon, the jury trial adjourns at 1:25 p.m.]

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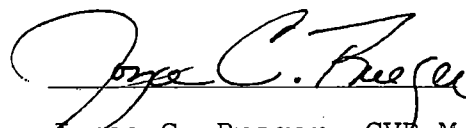
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, reported by Susan
Perron, transcribed by Joyce Rueger, relative to appeal,
in the Court of General Sessions for Berkeley County,
South Carolina on the 20th day of May, 2013.

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

December 16, 2013


Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT #: 2013-GS-08-0755
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
WILTON Q. GREENE	)	
	)	
Defendant	)	
	)	
	)	

JURY TRIAL

VOLUME 2 (OF 3)

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit
in the Berkeley County Courthouse
Moncks Corner, South Carolina
on May 21, 2013 Commencing at 9:45 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
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STATE

<u>No.</u>	<u>Description</u>	<u>Marked</u> / <u>Admitted</u>
1	Photo	150
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DEFENDANT

<u>No.</u>	<u>Description</u>	<u>Marked</u> / <u>Admitted</u>
1	Transcript of interview	94 (I.D. only)

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1 PROCEEDINGS

2 THE COURT: Let me see the attorneys up here just a
3 second please.

4 [Whereupon, an off the record bench conference is
5 held]

6 [Whereupon, Jennifer Smith, juror number 174 enters
7 the courtroom]

8 THE COURT: Hey Ms. Smith. If you will just have a
9 seat right here [indicates] in this chair and turn around
10 and I'll be happy to talk with you.

11 [Whereupon, Ms. Smith complies]

12 THE COURT: The Clerk and the Bailiff says that you
13 have some problems with your work schedule is that
14 correct?

15 MS. SMITH: Actually I had a vacation kind of sort
16 of planned with my continuing education that was going to
17 start on Wednesday.

18 THE COURT: What kind of education?

19 MS. SMITH: Continuing education. I'm a registered
20 nurse and we have to have continuing education units,
21 about 30 every couple of years. So I had already had
22 this planned out. I was waiting on it for about a month
23 and a half. And I didn't -- I was surprised when I got
24 picked for the ---

25 THE COURT: --- well, did you bring that up with

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1 general qualification with Judge Young?

2 MS. SMITH: The reason ---

3 THE COURT: --- did you tell him you had this
4 Wednesday?

5 MS. SMITH: No. The reason I didn't was because one
6 of the issues was I've already had a transfer and that
7 was one of the stipulations that was given. So when I
8 was speaking with this young lady on yesterday that's why
9 I said I didn't see where my situation had fallen under
10 the stipulations that were given because I had already
11 had a transfer in April.

12 THE COURT: Okay. Because I know yesterday I
13 asked a question did anybody have any reason personal or
14 otherwise why they cannot serve and nobody stood up. I
15 asked the question on purpose. My problem now is I've
16 got the panels gone and I don't have any way of replacing
17 you at this point in time.

18 MS. SMITH: Well, that's fine. I -- my biggest
19 concern yesterday was not being able to be reimbursed for
20 the money that I had already spent for the hotel. When I
21 left here after speaking ---

22 THE COURT: --- where are you going?

23 MS. SMITH: I was going to the Beach House Resort in
24 Hilton Head for ---

25 THE COURT: --- that's where you were going for the

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1 continuing education?

2 MS. SMITH: Yes.

3 THE COURT: If you had just said something to me
4 yesterday I probably would have had no problem letting
5 you go or transferring you.

6 MS. SMITH: It's fine. I've already spoken to them.
7 I spoke with the hotel yesterday. They are not charging
8 me because they gave you like three days prior to the
9 arrival time.

10 THE COURT: I guess the problem is communication.
11 If you had just communicated that with me I probably
12 would have said fine, go. But my difficulty now is I
13 can't replace you.

14 MS. SMITH: And I understand that. Like I said I've
15 already spoken to the hotel on yesterday.

16 THE COURT: So you're willing to serve?

17 MS. SMITH: Yes.

18 THE COURT: Okay.

19 MS. SMITH: That's fine.

20 THE COURT: Okay. But I -- the Clerk said you had
21 a problem and I wanted to bring you out and discuss it
22 with you ---

23 MS. SMITH: --- right ---

24 THE COURT: --- to see if I could help work around
25 your schedule.

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1 MS. SMITH: Right. The problem was -- the problem
2 that I had yesterday was not knowing if I would have to
3 be reimbursed or how much of the hotel's expenses that I
4 would be held accountable for. I didn't know what I
5 would be losing as far as monetary wise. So when I left
6 here after having the conversation yesterday I called the
7 hotel and they went ahead and kind of cancelled my
8 reservation and ---

9 THE COURT: --- so you're comfortable serving?

10 MS. SMITH: Yes, yes.

11 THE COURT: Okay. Don't have any problem?

12 MS. SMITH: I worked all of that out yesterday.

13 THE COURT: Okay. I was just trying to
14 accommodate you if I could.

15 MS. SMITH: Yes, I appreciate that. My -- the
16 reason I didn't go into a whole lot of detail was because
17 I already had a transfer from April to this time. So I'm
18 fine.

19 THE COURT: Well, there's no rule that says you
20 can't be transferred again, okay.

21 MS. SMITH: Well when I had spoke with a lady last
22 month when I told her ---

23 THE COURT: --- as a judge I tend -- if people have
24 been transferred one time I tend not to be very liberal
25 with them in excusing them, okay. But there is no hard

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1 and fast rule; you've just got to communicate and tell us
2 what the problem is okay?

3 MS. SMITH: Okay. That's fine.

4 THE COURT: All right. Thank you so very much.
5 You can go on back to the jury room. Thank you very
6 much.

7 [Whereupon, Ms. Smith exits the courtroom]

8 THE COURT: All right. Is there anything else
9 from the State before we bring the jury?

10 MR. DEJEU: No, Your Honor.

11 THE COURT: Anything from the defense?

12 MR. SHELTON: Just a motion to sequester the
13 witnesses.

14 THE COURT: You got a what?

15 MR. SHELTON: A motion to sequester the witnesses,
16 Your Honor.

17 THE COURT: Any objection?

18 MR. DEJEU: Your Honor, I would like for the victim
19 and the case officer to remain.

20 THE COURT: Well, the victim can stay and the
21 police officer can stay. I can't sequester them even if
22 I wanted to.

23 MR. DEJEU: No -- then I have no objection. No
24 other objection.

25 THE COURT: All right. Which police officer are

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1 you going to keep in with you?

2 MR. DEJEU: Officer Judy.

3 THE COURT: Where is Officer Judy? And the victim,
4 where is the victim?

5 MR. DEJEU: Mr. Zhang is here [indicates].

6 THE COURT: Okay. Are the other witnesses in the
7 courtroom?

8 MR. DEJEU: Just Officer Edwards is here.

9 THE COURT: I wish you would tell your witnesses
10 they are going to be sequestered. Don't get off the
11 witness stand and go out in the hall and tell them what
12 transpired okay.

13 MR. DEJEU: Okay.

14 THE COURT: And is your witness here, Mr.
15 Manigault?

16 MR. SHELTON: Yes, Your Honor.

17 THE COURT: Where is Manigault?

18 MR. SHELTON: He's outside.

19 THE COURT: Okay. Tell him to stay outside okay.

20 MR. SHELTON: Yes, Your Honor.

21 THE COURT: Anything else before we bring the jury?

22 MR. SHELTON: No, Your Honor.

23 MR. DEJEU: No, Your Honor.

24 THE COURT: Y'all ready for opening statements?

25 MR. SHELTON: Yes.

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1 MR. DEJEU: Yes, Your Honor.

2 THE COURT: Bring the jury please.

3 [Whereupon, the jury enters at 9:53 a.m.]

4 THE COURT: How many jurors would like to take
5 notes? The Clerk will provide you with note pads and the
6 pens and pencils. However, let me tell you this;
7 whenever you put your name on the notepads put them in
8 your chair. And when you leave the Clerk will collect
9 them and give them to you every time you come back in the
10 courtroom.

11 At the end of the trial I'll let you take them back
12 to the jury room at that time but in the meantime the
13 Clerk will maintain control over the notepads. Just
14 write your name in the front of the notepad so we'll know
15 whose notes they belong to.

16 JUROR: We didn't know if you wanted a name or a
17 juror number.

18 THE COURT: I want your name. You're not a number
19 anymore; you've still got a name okay. She's going to go
20 get the pads. In the meantime the Clerk is going to
21 swear you okay.

22 CLERK OF COURT: Please stand and raise your hand
23 to be sworn.

24 [Whereupon, the jury comply]

25 [Whereupon, the jury is sworn by the Clerk of Court]

1 THE COURT: I'm going to tell you very briefly the
2 trial procedure and what to expect from the trial
3 procedure. I'm not going into the case itself but I'm
4 going to very briefly and especially while you're waiting
5 on the notes I want you to have your notepads while the
6 attorneys are making opening statements.

7 After we get the notepads the attorneys will make
8 opening statements to you. In the opening statement the
9 attorneys will tell you what they plan on proving during
10 the course of the trial. After the opening statements
11 are made the State will call witnesses. And the State
12 will have each witness on what we call direct
13 examination.

14 After the State finishes asking questions of each
15 witness the defense will have an opportunity to cross-
16 examine that witness. The difference between direct
17 examination and cross-examination is on direct you are
18 not supposed to ask leading questions. A leading
19 question is a question that suggests an answer.

20 Now during the course of the trial the attorneys may
21 make objections. And it's my responsibility to decide
22 whether the question asked is appropriate under the rules
23 of evidence or not appropriate. And the attorneys are
24 doing this not to hide anything from you, but it's their
25 duty and responsibility if they think something is

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1 objectionable or not admissible under our rules of
2 evidence it's their responsibility and duty to make the
3 objection. If I use the words overrule I disagree with
4 the attorney, I think it's admissible, and you will hear
5 it. If I use the word sustain that means I agree with
6 the attorney and the question won't be answered and the
7 question won't be given and it's not evidence in the
8 trial.

9 Now after the State has presented all of their
10 testimony at that time the defense can offer testimony if
11 they so choose. They are not obligated to offer any
12 testimony in a criminal trial but they may if they so
13 choose. It's the State's responsibility to prove the
14 defendant guilty beyond a reasonable doubt.

15 In South Carolina a defendant is not obligated to
16 prove his innocence. So if they offer testimony the
17 roles will reverse. The defense will have the witness on
18 direct and the State will have the witness on cross-
19 examination.

20 After all the testimony has come in if the defendant
21 testifies -- or if the defendant offers testimony then
22 the State will have an opportunity to reply to that
23 testimony. And then the State would have them on direct
24 and the defense on cross. After all the testimony has
25 come into evidence and exhibits have been introduced into

1 evidence then we will have closing arguments. The
2 attorneys will argue their case before you on how they
3 interpret the evidence and why they think you should take
4 whatever position they are posing.

5 Obviously the State will ask for a conviction and
6 the defense will ask for an acquittal. But they will
7 make arguments on why you should convict him. The
8 defense will make arguments on why you should acquit the
9 defendant and find the defendant not guilty.

10 After all the closing arguments are made then I will
11 charge you on the law in the case. And after I have
12 charged you on the law then you will go to your jury room
13 to make a determination in the case. As far as the law
14 is concerned I will read it to you orally and I will also
15 give you a copy of it for you to use in the jury room.

16 And as I told you during qualifications I want you
17 to make a decision on what you hear in the courtroom, and
18 what evidence is introduced in the courtroom not what
19 someone outside the courtroom tells you because they
20 don't know; they haven't heard it.

21 Everybody has opinions about everything. But I want
22 your opinion to be formed based on what you hear in the
23 courtroom, not outside the courtroom. So what we're
24 going to do now is pass out the notes, give y'all an
25 opportunity to write your name inside the notepads and

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1 then we'll start opening statements after we have done
2 it. Everybody who wants a notepad feel free to take it.

3 [Whereupon, notepads and pens are provided to the
4 jury]

5 THE COURT: Does everybody have pads and something
6 to write with? If you don't have it raise your hand. If
7 you'll write your name on the front of the pad so we can
8 make sure you get your notes. Everybody just write their
9 name on the front of the pad please.

10 [Whereupon, the jury complies]

11 THE COURT: Is the State ready for opening
12 statements?

13 MR. DEJEU: Yes, sir.

14 THE COURT: Yes sir, please proceed.

15 OPENING STATEMENT

16 BY MR. DEJEU:

17 It's May 22, 2012. It's around 10 in the morning.
18 The weather is quite hot and Mr. Bing Zhang is on his way
19 to work. He works as a cook at an Asian restaurant in
20 Moncks Corner. But before he gets to work he decides to
21 get some gas.

22 So he stops at the gas station on old Highway 52,
23 it's called the Corner Stop, right behind CVS here in
24 Moncks Corner. He prepays the gas, he's at his car and a
25 man approaches him. The man is asking him for a ride to

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1 McDonalds. Mr. Zhang kindly agrees and says take the
2 front passenger seat and I will take you. Minutes later
3 they both drive away from the gas station. They proceed
4 to the first traffic light and immediately the man pulls
5 out a knife puts it to Mr. Zhang's side, gets his money,
6 gets his wallet.

7 Repaying good with evil; that's what this case is
8 all about. The man who decided to do good by offering a
9 ride is paid back not with a thank you but with a knife
10 to his side. Ladies and gentlemen, this case has violent
11 facts but the case is not one of those week long trials
12 where you have a lot of witnesses coming in and a case
13 that you can read in the newspapers about.

14 But please do not let this fact make you think that
15 this is not an important case. It is a very important
16 case for the city of Moncks Corner for the Berkeley
17 County citizens, for Ms. Zhang; the victim in the case.
18 And I'm sure it's an important case for this defendant.

19 As you heard the defendant is charged with Armed
20 Robbery and Kidnapping. The State we have to prove
21 regarding Armed Robbery that this defendant committed a
22 robbery while armed with a pistol, dirk, sling shot,
23 metal knuckles, razor or other deadly weapon. Regarding
24 Kidnapping we have to prove that this defendant
25 unlawfully seized, confined, inveigled, or enticed,

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1 decoy, kidnap, abduct or carry away any other person by
2 means whatsoever without the authority of law. These are
3 the elements that we have to prove beyond a reasonable
4 doubt. Now what's reasonable doubt? Well, reasonable
5 doubt is a doubt that would cause a reasonable person to
6 hesitate to act.

7 And we have to prove all this beyond a reasonable
8 doubt. That's our burden; the State's burden. And we
9 are embracing it. We are embracing it because at the end
10 of the trial you will be firmly convinced that this
11 defendant committed these crimes. That's what proving
12 beyond a reasonable doubt means. It means that after you
13 hear all the evidence and you hear all the testimony you
14 are firmly convinced of the defendant's guilt. Now proof
15 beyond a reasonable doubt does not mean proof beyond all
16 doubt or proof beyond any shadow of a doubt. No, it's
17 proof beyond a reasonable doubt.

18 Ladies and gentlemen you are the best people in this
19 county to judge the facts. And the only tools you need
20 is your common sense. Please use your common sense in
21 this case. And also don't be afraid of the obvious in
22 deliberating. Thank you.

23 THE COURT: Mr. Shelton.

24 MR. SHELTON: Thank you, Your Honor. May it please
25 the court?

1 | OPENING STATEMENT

2 BY MR. SHELTON:

3 Miscommunication; that's what this case is about.
4 My freshman year of college I worked at a gas station.
5 It was a small town gas station. It was family owned and
6 there's not much of those around anymore. It had three
7 bays to it where we could fix flat tires and that sort of
8 thing at night. It actually had a full service pump to
9 it too. So we'd have to go out and fill up the car and
10 clean the windshields.

11 I learned a lot from that first year when I worked
12 at that gas station. One of the things I learned was I
13 had to give directions. Almost every night there was
14 somebody that came in and asked for directions. Being
15 new to the town and the school I was at I didn't know
16 streets so I had to give landmarks.

17 I had to tell people to go down to the next stop
18 light and take a right, go down two stop lights and
19 actually as similar in this case there was actually a
20 bank in the middle of town. And we'd tell people go to
21 the bank, turn right if you take a left there are some
22 little shops and some places to eat. So that was a
23 popular place for people to go and ask for directions how
24 to get there. But I remember because when I started
25 learning the streets I would try to use the street names

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1 and people would just get confused; they weren't
2 understanding, so I would stick to the landmarks. And
3 actually learned over time to not even use left and right
4 because I remember a car going and doing a circle even
5 though I said left then right, and ended up doing left,
6 left, left, and ended up doing a circle.

7 So I learned that you say behind the bank. You say
8 next to the bank. Or there was a restaurant that had a
9 clock and it was go to the restaurant with the clock.
10 And so I learned some valuable lessons from that in
11 giving directions and communication.

12 This trial, Mr. Zhang, he's going to take the
13 witness chair. He's going to sit up here. He's going to
14 tell you that he was robbed. If he didn't tell you that
15 we wouldn't be here. He's going to tell you that.
16 Wilton pled not guilty. He's telling you he didn't do
17 this.

18 This is a miscommunication. It's not the jury's job
19 to solve the crimes, to figure out what happened. It's
20 your job to see that the State has met their burden. And
21 it's a high burden. They have to prove the case beyond a
22 reasonable doubt.

23 And I'm confident when you hear -- and all I can ask
24 is that you listen to how everything was given at the
25 time and how confusing everybody was. How confused

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1 everybody was at the time because today they've had
2 chances to think about everything, had chances to go over
3 everything. But listen to how everything was done at the
4 time and I'm confident that when you do that you'll find
5 that the State has not met their burden. You'll find
6 Wilton not guilty. Thank you.

7 THE COURT: If you'll call your first witness
8 please?

9 MR. DEJEU: The State calls Bing Ho Zhang.

10 [Whereupon, Mr. Zhang comes forward]

11 [Whereupon, the witness is duly sworn by the Clerk
12 of Court]

13 CLERK OF COURT: Please be seated. State your
14 name, spell your name for the court reporter.

15 THE WITNESS: My name is Bing Zhang. Bing is
16 B-I-N-G; Zhang is Z-H-A-N-G.

17 - - - - -

18 BING ZHANG,

19 Having been first duly sworn,

20 Was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DEJEU:

23 Q. Mr. Zhang?

24 A. Yes?

25 Q. Good morning.

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1 A. Good morning.
2 Q. How old are you?
3 A. 39.
4 Q. And you are a chef correct?
5 A. Yes, I'm a chef, yes.
6 Q. How long -- where do you work?
7 A. I work in Moncks Corner at the Kobe Restaurant.
8 Q. And do you have any kids?
9 A. Yes, two kids.
10 Q. What are their ages?
11 A. They are eight -- they both is ten.
12 Q. Okay. How long have you been in the United States?
13 A. About 17 or 18 years.
14 Q. Where do you live now?
15 A. Now in Moncks Corner here.
16 Q. And back in May 22, 2012 where did you live?
17 A. Moncks Corner too.
18 Q. Tell us -- do you remember that day?
19 A. Yes.
20 Q. Tell us what happened on that day?
21 A. Okay. Every day the cell phones -- is 10 o'clock.
22 So every morning I get in about 10 o'clock -- about ten
23 minutes in the car outside, to the gas station about
24 10:15; like that. And that day I go to the gas station,
25 pay the money and come back and enter the gas. I just

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1 entered the gas at the time and one guy is across from
2 the other street, across the street he come down here and
3 he tell me he said today is very hot.

4 He said today is very hot could you ride me a little
5 bit down to the McDonalds Restaurant. I say its okay, no
6 problem. By the way I say okay sit down in my car.

7 And then he sit in the car. And then I just left
8 the gas station -- the gas station just a little bit; one
9 traffic light. I just passed one traffic light he pulled
10 a knife to under here [indicates] --

11 Q. Mr. Zhang, where was the gas station located?

12 A. The gas station is Citgo.

13 Q. Citgo?

14 A. Yes, Citgo just across the Bi-Lo shopping center --
15 no, no it's Big Lot, Big Lot shopping center.

16 Q. Across from Big Lots here in Moncks Corner?

17 A. Yes, yes.

18 Q. So you said you paid for gas and you were -- where
19 were you when the man came to you? When the man came and
20 asked for a ride did he ---

21 A. --- yes, he just -- I don't know, he's from across
22 the street. He's just asking me to ride a little bit
23 down to the McDonalds, the restaurant there.

24 Q. So he came from across the street. And where were
25 you -- were you at the car at that point? Were you

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1 pumping the gas ---

2 A. --- I was just pumping the gas at the time.

3 Q. So he asked you for a ride to you said to McDonalds?

4 A. Yes, McDonalds Restaurant -- I --

5 Q. What happened? What happened next? You said you
6 got in the car with him and started driving.

7 A. Okay. I start my car driving and it just passed
8 the one light he just take a knife from his right hand
9 here [indicates] and he say go to your bank. First time
10 right -- I mean this morning -- nobody robbed me so I
11 didn't believe.

12 He say it one more time a little bit louder, he say
13 go to your bank. I said wow, what happened to you. Then
14 I said I didn't have any account in a bank because I just
15 work in the restaurant..

16 He don't believe me, he say you have money. I take
17 the money I said this is my all money -- my money you can
18 take it because that time the money only 20 dollars --
19 something. Maybe he see -- he said you have wallet. I
20 said okay wallet in the right -- here.

21 I give him the wallet and then he open the wallet
22 and just take a look because my wallet don't have the
23 money; just my I.D. everything inside. And at that time
24 I keep trying to stop the car. He said don't stop the
25 car, keep moving. But that time he was still putting

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1 always the knife here [indicates].
2 Q. Mr. Zhang, did you see the knife?
3 A. Yes, I did see the knife. He put it right here
4 [indicates].
5 Q. And he said -- he told you to go to your bank?
6 A. Yes.
7 Q. He said your bank?
8 A. Yes, he said to my bank. Yes, he said go to your
9 bank. Always he say it.
10 Q. And you said I don't have a bank?
11 A. Yes, I said I just working here. You know working
12 here not long time I don't have any open -- any account
13 in this bank.
14 Q. Is that when he asked you for your wallet ---
15 MR. SHELTON: --- objection, Your Honor ---
16 Q. [Mr. Dejeu] --- for the money?
17 THE COURT: I'm sorry, what?
18 MR. SHELTON: Leading.
19 THE COURT: Don't lead your witness please.
20 Q. [Mr. Dejeu] So he said go to your bank. And what
21 happened next?
22 A. He said go to my bank. I told him I don't have any
23 account here. Then he say you have the money. And then
24 at that time I scared. He always put a knife here
25 [indicates]. I said okay I give you all money here. I

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1 take money to him. He said maybe too less 25 dollar --
2 20 bucks; something. Then he asked me you have the
3 wallet. I said I have the wallet too yes, I give you the
4 wallet.

5 And then I tell him I don't have any money in the
6 wallet. Just my I.D. in the wallet. He opened it to
7 take a look. Then he pushed my wallet and my money all
8 to him -- and at that time I tell him you can get the
9 money, go away, give me the I.D. back right. I can stop
10 and you can go away.

11 But he said -- he didn't answer anything. He just
12 put the knife here [indicates] and he said go to your
13 bank; he still say that. And at that time I don't have
14 any idea.

15 And then I keep trying to find some police car. I
16 know a lot of police cars go through there. I keep
17 trying to find one police to help me. But that time no
18 way. He said still go, go, keep move, don't stop.

19 And then I driving not too fast. Then about almost
20 go to the McDonalds there the traffic light is red so I
21 stopped there.

22 I saw the left side had the one police car stopped
23 there and wait for the light too and a lot of customers.
24 And when the light turned green I quickly turned left, go
25 to the middle of the road and then pressed the horn. I

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1 keep doing it so everybody know what happened to my car.
2 And then I always press the horn right at that time the
3 other way the police and a lot of cars.

4 He stopped there and said what happened to this car
5 and then my car turned a little bit just like to go to
6 that side. At that time I quick opened the window and
7 that somebody robbed me and he held me.

8 And then that guy he saw the police car there he
9 quickly opened the door and run out. And the police they
10 know what happened. He quickly turned around -- for the
11 guy.

12 And then at that time I wanted to try to get my
13 wallet and I.D. back and I followed the police car to the
14 place. And I saw the police catch the guy.

15 Q. Mr. Zhang, when the man that you had in your car
16 pulled a knife were you afraid?

17 A. Yes, I'm afraid. I'm afraid so I give him all the
18 money -- I said that's all. That's all I have. You can
19 take it all.

20 Q. And then you said you said you were driving and you
21 saw a police car coming on the other lane?

22 A. Yes.

23 Q. And you drove towards the police car and honked the
24 horn ---

25 MR. SHELTON: --- objection, leading.

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1 MR. DEJEU: The witness already testified...
2 THE COURT: Overruled. Go ahead.
3 Q. [Mr. Dejeu] Is that your testimony you just gave?
4 Were you able -- you said you followed the police car.
5 Were you able to -- you said you followed the police car
6 correct?
7 MR. SHELTON: Objection ---
8 A. --- yes, they drive ---
9 THE COURT: --- hold on a second. What's your
10 legal objection?
11 MR. SHELTON: Leading.
12 THE COURT: I think he was summarizing and asking
13 another question. Overruled. Go ahead.
14 Q. [Mr. Dejeu] So you testified you followed the
15 police car isn't that right Mr. Zhang?
16 A. I was following the same way because the police car
17 they drive away quickly. I just same way go to there
18 because not far on the right side the police catch him
19 and take him. I drive car and stop there too.
20 Q. Were you able to recover your I.D. and wallet?
21 A. Yes.
22 Q. Who gave it to you?
23 A. The police and then they take the I.D. and the money
24 from the guy that take it and they show me that's you? I
25 say yes, this is mine and the police take a picture and

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1 they give me the I.D. and the money back.

2 Q. Mr. Zhang, I want to show you a picture that has
3 been previously marked as State's exhibit 2. Do you
4 recognize this picture?

5 [Whereupon, the witness is shown photograph]

6 A. Yes, that's my I.D. and the money. They are all
7 from my pocket.

8 Q. Is that -- so that's your money and your I.D.

9 A. Yes.

10 Q. Did you see the man being arrested by the police?

11 A. [No response]

12 Q. Did you see the police catching the guy that day?

13 A. Yes.

14 Q. You did?

15 MR. DEJEU: Beg the court's indulgence.

16 [Whereupon, Mr. Dejeu and Mr. Alfaro confer]

17 Q. [Mr. Dejeu] So this picture I just showed you is
18 this a fair and accurate representation? Is this what
19 belonged to you?

20 A. That's mine, yes.

21 Q. And you recovered this stuff?

22 A. Yes.

23 MR. DEJEU: Your Honor, the State is moving to have
24 State's Exhibit 2 admitted.

25 THE COURT: Any objection?

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1 MR. SHELTON: No objection.

2 THE COURT: Okay. State's exhibit number 1 [sic]
3 admitted without objection.

4 [Whereupon, State's exhibit number 2 is entered into
5 evidence by the court]

6 MR. DEJEU: It's 2.

7 Q. [Mr. Dejeu] Please answer any questions Mr. Shelton
8 may have.

9 CROSS-EXAMINATION

10 BY MR. SHELTON:

11 Q. Mr. Zhang, how you doing?

12 A. Good. How about you sir?

13 Q. Good. You said you've been in the United States
14 about 17 years?

15 A. About, yes 17 or 18 years. I've been a long time
16 here.

17 Q. But you're here undocumented?

18 A. What?

19 Q. Illegally?

20 A. Illegal, yes.

21 Q. You don't have the -- you haven't gone through the
22 proper procedures to become a legal citizen of the United
23 States?

24 A. Say -- please repeat again?

25 Q. You have not gone through the procedures to become

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1 and fill out paperwork to become a legal United States
2 citizen?

3 A. You mean -- now I have the green card for the --
4 citizen something.

5 Q. Are you aware of the U-Visa?

6 A. Huh?

7 Q. A U-Visa?

8 A. At immigration?

9 Q. Where if you are a victim of a crime then you can
10 become and fill out paperwork to become a legal U.S.
11 citizen?

12 A. No, my father is an immigrant. My father before
13 they have the citizen -- so I am immigration.

14 Q. Has the Solicitor helped you with any procedures to
15 become a legal citizen?

16 A. Please repeat again -- I can't understand what
17 you...

18 Q. We'll move on. Let's go to the incident. This
19 isn't the first time you've given somebody a ride
20 correct? You've given other people rides?

21 A. Yes, first time, yes.

22 Q. But this is not the first time that you've given
23 people rides?

24 A. You mean the first -- not first time gave the people
25 ride right?

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1 Q. Not the first time you've given a stranger a ride?
2 A. It's the first time --
3 Q. You met -- this was the first time you ever met Mr.
4 Green?
5 A. First time, yes.
6 Q. Okay. It was the first time you ever gave him a
7 ride?
8 A. Yes.
9 Q. But you've given other people rides?
10 A. No, I didn't give other people ride.
11 Q. Okay.
12 A. Because you know ---
13 Q. --- do you remember meeting with a police officer
14 Scarborough? You went to the -- after the incident you
15 went to the police station and you met with a bigger guy
16 and you gave a statement?
17 A. Police station?
18 Q. You went to the police station -- the Moncks Corner
19 police station.
20 A. You mean the day of?
21 Q. Yes, the day of?
22 A. The day, yes I go to the police station, yes and
23 take the record.
24 Q. And you talked with a bigger guy about the incident,
25 about what just happened?

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- 1 A. Yes.
- 2 Q. Okay. Do you remember doing that?
- 3 A. I remember. Yes, I had the record in my pocket too.
- 4 Q. You have what?
- 5 A. The police gave me the record, yes.
- 6 Q. Okay. And you know that the police officer was
7 recording that conversation that y'all were having?
- 8 A. Yes.
- 9 Q. Have you had a chance to listen to that recording?
- 10 A. You mean me or the police?
- 11 Q. You?
- 12 A. Yes.
- 13 Q. Okay. And so you remember that you told him that
14 you've given other people rides before?
- 15 A. Give other people rides? I didn't tell him I give
16 other people rides.
- 17 Q. You didn't -- you said that you went to -- you gave
18 somebody a ride to Walmart because they were tired?
- 19 A. To Walmart retired?
- 20 Q. Because they were tired?
- 21 A. To Walmart? I didn't say they go to Walmart -- its
22 tired...
- 23 Q. Would it be helpful -- can you ---
- 24 A. --- I can't understand what ---
- 25 Q. --- you can read English, correct?

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1 A. Huh?

2 Q. You can read English?

3 A. Just a little bit maybe. I try this -- maybe --

4 Q. Would it be helpful for your memory to see a

5 transcript of that conversation you had with the officer?

6 A. I go to the police officer right?

7 Q. Right.

8 A. He just ask me what happened today.

9 Q. Right.

10 A. Okay. So I just tell them -- just like I say what

11 happened today.

12 Q. Right. And he asked you a bunch of questions and

13 you answered the questions and he tried to help out maybe

14 some confusing parts of what you were saying happened

15 right?

16 A. What do you mean this one because ---

17 Q. --- he asked you questions?

18 A. Uh huh.

19 Q. And he wanted to get clarification -- he drew a

20 picture for you.

21 A. Police officer take picture, no ---

22 Q. --- he drew a picture?

23 A. Huh?

24 Q. He drew a picture on a piece of paper.

25 A. Drew whose picture?

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1 Q. Drew a picture of the area like the gas station,
2 where you were living.

3 A. Uh huh.

4 Q. He drew a picture trying to get a better idea of
5 exactly what you were saying?

6 A. No, I tell police where I living. I say I living
7 here. I go to the gas station. He said how far? I said
8 depends on which way.

9 [Whereupon, defendant's exhibit number 1 is marked
10 for I.D. only by the court reporter]

11 THE COURT: Do you have an extra copy of the
12 statement?

13 MR. SHELTON: It's the transcript.

14 THE COURT: Is that the only one you have? How
15 about give him a copy of it and just give him a few
16 minutes to read it please?

17 [Whereupon, the witness reviews document]

18 THE COURT: Mr. Zhang, do you need some time to
19 read it? Can you read it okay? You can't read it?

20 THE WITNESS: I can't read it.

21 THE COURT: You can't read the English, okay.

22 Q. [Mr. Shelton] So your testimony today ---

23 THE COURT: --- hold on just a second. Mr.
24 Foreman, ladies and gentlemen of the jury I'm going to
25 have to ask you to go to the jury room. I need to take

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1 up a matter. Leave your notepads in the chairs.

2 [Whereupon, the jury exits at 10:30 a.m.]

3 THE COURT: Solicitor, who wrote the statement? Is
4 it typed or what?

5 MR. DEJEU: I believe it -- I've never seen that
6 transcript. It's probably the audio recording of the
7 interview he gave right after the police ---

8 THE COURT: --- now he says he can't read it.

9 MR. SHELTON: Yes, Your Honor.

10 THE COURT: And I know you probably don't have an
11 interpreter available do you?

12 MR. SHELTON: No, Your Honor.

13 THE WITNESS: Sir?

14 THE COURT: Pardon?

15 THE WITNESS: Can I try it because...

16 THE COURT: What I'm going to do is I think I'm
17 going to get somebody to read it to you and take a break
18 while they read it to him. I'm not trying to interfere
19 with your cross-examination. My concern is I don't think
20 he understands what anybody is even asking him, okay.

21 MR. SHELTON: Yes, Your Honor, absolutely.

22 THE COURT: What nationality is he?

23 MR. DEJEU: He's from China.

24 THE COURT: Pardon?

25 MR. DEJEU: Chinese.

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1 THE COURT: Chinese?
2 THE WITNESS: Chinese.
3 THE COURT: Mandarin or what Chinese do you speak?
4 THE WITNESS: Mandarin.
5 THE COURT: Mandarin?
6 THE WITNESS: Uh huh.
7 THE COURT: I'm sure we couldn't find a Mandarin
8 interpreter on short notice I'm sure. Solicitor, I'm
9 going to take a break. Read the English to him and then
10 I'll let him continue his cross okay.
11 MR. DEJEU: Yes, Your Honor.
12 THE COURT: If you would please? Or do you want to
13 do this on the record?
14 MR. SHELTON: I trust the...
15 MR. DEJEU: No, I'm fine just reading it to him. I
16 don't want to put it on the record.
17 THE COURT: Pardon?
18 MR. DEJEU: I don't want to put it on the record.
19 THE COURT: All right. Just read it to him
20 because he says he can't read English. Let me see the
21 attorneys up here just a second.
22 [Whereupon, an off the record bench conference is
23 held]
24 THE COURT: All right. We'll take a short break
25 while you take a look at it okay. Mr. Zhang, take your

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1 time and read what you can okay?
2 THE WITNESS: Okay.
3 THE COURT: And we're going to take a short break.
4 [Whereupon, court is in recess from 10:36 a.m. to
5 10:44 a.m.]
6 THE COURT: All right. I understand after our
7 conference in chambers you have found an interpreter is
8 that correct?
9 MR. DEJEU: Yes, Your Honor.
10 THE COURT: You want to talk to me up here first?
11 MR. DEJEU: Yes, sir.
12 THE COURT: Okay.
13 [Whereupon, an off the record bench conference is
14 held]
15 MR. SCHWACKE: Your Honor, can we approach?
16 THE COURT: You don't want to put it on the record?
17 MR. SCHWACKE: Yes sir, just one more thing I
18 guess.
19 [Whereupon, an off the record bench conference is
20 held]
21 THE COURT: All right. For the record the court
22 stopped the trial during the middle of the cross-
23 examination by defendant's attorney because the court was
24 concerned about having observed Mr. Zhang's ability to
25 understand the English language and respond as far as his

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1 ability in communicating through the English language.
2 And I stopped the testimony and asked to see if the State
3 could find an interpreter. And I understand the State
4 has found an interpreter is that correct?
5 MR. ALFARO: Yes, Your Honor.
6 THE COURT: Would you bring her around please and
7 let me ask her some questions.
8 [Whereupon, the interpreter comes forward]
9 THE COURT: Yes ma'am, what is your name?
10 INTERPRETER: My name is Xu Na.
11 THE COURT: And you work I believe at Tricounty --
12 where are you employed?
13 INTERPRETER: Yes I work as a -- teacher to teach
14 Mandarin Chinese at Berkeley High.
15 THE COURT: Okay. And you speak what dialect of
16 Chinese?
17 INTERPRETER: It doesn't matter in Chinese.
18 THE COURT: It doesn't matter in Chinese, okay. Do
19 you think you are able to communicate with Mr. Zhang in
20 Chinese?
21 INTERPRETER: I will try. I will try to help him to
22 interpret.
23 THE COURT: Because what I would like for you to do
24 is interpret the question as given in English by the
25 attorneys to him in his dialect of Chinese.

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1 INTERPRETER: Okay.

2 THE COURT: And then let him respond. Now if he
3 can respond in English that's fine. If he has to respond
4 in Chinese through you, that's fine too. I just was not
5 real clear about whether he could understand the English
6 questions that were being asked and interpret that
7 question, convert it to Chinese, convert it back to
8 English and then give the answer.

9 INTERPRETER: Okay. I will try.

10 THE COURT: Will it help for you to talk to him in
11 Chinese very briefly to see if you think you can
12 interpret for him?

13 INTERPRETER: Okay. I think maybe I need a few
14 minutes to talk to him.

15 THE COURT: Okay. Why don't you come around and
16 talk to him in Chinese and see if y'all can converse,
17 okay, in Chinese if you would and then I'll swear you as
18 an interpreter, okay.

19 INTERPRETER: Thank you so much.

20 THE COURT: If you'll come around and talk with
21 him. Mr. Zhang, do you understand what's happening?
22 Did you understand what I said?

23 THE WITNESS: Yes, yes.

24 [Whereupon, the Interpreter and the witness confer]

25 THE COURT: Yes ma'am, were you able to communicate

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1 with him?

2 INTERPRETER: Yes. I think I got what happened to
3 -- I know what happened to the -- yes -- to the person.

4 THE COURT: So you think you can understand what
5 he's saying to you Chinese and he can understand what
6 you're saying to him in Chinese?

7 INTERPRETER: Yes.

8 THE COURT: And then you can convert that to
9 English for the court and the jury?

10 INTERPRETER: Yes.

11 THE COURT: All right. Would you raise your right
12 hand?

13 [Whereupon, the Interpreter was duly sworn by the
14 court as follows: do you swear to interpret correctly
15 and interpret to Mr. Zhang everything that is said in
16 English, convert it to Chinese to him, and then correctly
17 interpret from him back to English for the court and the
18 jury and the lawyers? Yes or no?

19 INTERPRETER: Yes.

20 THE COURT: All right. Now, you can go have a
21 seat.

22 INTERPRETER: Okay, thank you.

23 [Whereupon, the Interpreter complies]

24 THE COURT: Let me put on the record I think I put
25 very briefly on the record that the court on its own

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1 initiative stopped the testimony and raised the issue of
2 whether Mr. Zhang -- I think he has -- I think he can
3 communicate in simple English language. But the court
4 was of the opinion that anything other than very simple
5 sentences and simple words he was not able to interpret.

6 And the court talked to the attorneys and the
7 Interpreter has been found and the court finds that the
8 Interpreter is competent to interpret for the court and
9 the jury as well as the attorneys involved. Now is there
10 anything that the State would like to put on the record?

11 MR. ALFARO: Your Honor, the State would just like
12 to reiterate its position that Mr. Zhang was responsive
13 on direct to the questions that were asked and the State
14 believes that he did understand the questions that were
15 asked and did accurately respond to the questions as they
16 were asked and responded in a responsive manner.

17 We understand the court's concern was to ensure that
18 the jury understood what was being said as well as the
19 defendant was given a fair trial because questions were
20 being accurately asked and accurately answered without
21 any difficulty in translation and we understand.

22 The State believes that because -- based on Your
23 Honor's request that the clarity of an Interpreter might
24 be beneficial that the court has inquired correctly as to
25 her qualifications as well as her ability to effective

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1 translate the remainder of this witness's cross-
2 examination and his redirect.

3 THE COURT: Okay. Anything that the defense would
4 like to put on the record?

5 MOTION FOR MISTRIAL

6 MR. SCHWACKE: Your Honor, the defense would object
7 to bringing an Interpreter into the process at this
8 point. As we mentioned at sidebar this isn't golf; there
9 is no mulligan's. The State had the opportunity on
10 direct examination; they were satisfied with their direct
11 examination as they in fact concluded it and passed the
12 witness to the defense.

13 We are in the middle of our cross-examination. It
14 would be a different tenor to now have an Interpreter
15 suddenly introduced into this process. We believe that
16 the State should have realized during their preparation
17 with the witness that an Interpreter was necessary, that
18 they failed to do so and that the court at this time
19 should not be correcting their error.

20 And we believe because of that that the case should
21 be mistried with prejudice to the State based on the fact
22 that they should have realized and known that they needed
23 the Interpreter. One moment, Your Honor.

24 [Whereupon, Mr. Schwacke and Mr. Shelton confer]

25 MR. SCHWACKE: Your Honor, in the event that you

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1 overrule that part of our argument we still believe that
2 the woman who has appeared this morning to act as an
3 Interpreter has not yet been certified or demonstrated to
4 the court that she is in fact able to adequately state to
5 the court and to the jury an actual verbatim recital of
6 what the witness will be testifying to ---

7 THE COURT: --- well, let me ask you this ---

8 MR. SCHWACKE: --- she is not in fact certified by
9 the ---

10 THE COURT: --- I understand you saying you don't
11 think she's qualified to interpret. Is there anything
12 else that you would like for me to ask her or is there
13 anything that you would like to ask her about her ability
14 to interpret? She -- I don't understand Chinese so I
15 couldn't understand the conversation between the two of
16 them.

17 But she has had a conversation with the defendant
18 and she tells me that she understands what he is saying.
19 He understands her and she said under oath that she will
20 do it correctly and truthfully. Now what else would you
21 like for the court to ask her or I'll give you an
22 opportunity to ask any questions you would like to ask of
23 her about her ability to interpret pursuant to your
24 motion.

25 MR. SCHWACKE: The motion -- just understand ---

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1 THE COURT: --- I know it's a motion for a
2 mistrial.

3 MR. SCHWACKE: Yes, sir.

4 THE COURT: And I'm going to rule on it very
5 shortly.

6 MR. SCHWACKE: That's the first part of it. The
7 other is dealing with what her qualifications are. She's
8 not in fact a licensed certified Interpreter. It's my
9 understanding and if we're going to get to that point and
10 you're going to overrule me that there is in fact a Court
11 Administration certified Interpreter available to the
12 State tomorrow.

13 I'm just -- in terms of this particular person who
14 seeks to act as an Interpreter that we've had no
15 demonstration that she is able to follow up with one
16 requirement that she be able to not only translate what
17 he's saying but communicate it to the court and to the
18 jury. And that's not been demonstrated at this point yet
19 this morning.

20 THE COURT: Okay.

21 [Whereupon, the court reviews documents]

22 THE COURT: All right. Before I -- ma'am, would
23 you come back around for a minute please and would you
24 come over by the witness?

25 [Whereupon, the Interpreter complies]

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1 THE COURT: What I'm going to do for the record I'm
2 going to ask you some questions to ask Mr. Zhang and I
3 want you to ask him that question in Chinese and get his
4 response. But before I do that I would like for you to
5 tell him that his response can be in English if he so
6 chooses or his response can be in Chinese to you. Would
7 you explain that to him please, ma'am.

8 INTERPRETER: Your Honor, could you repeat it again?
9 I'm sorry.

10 THE COURT: Pardon?

11 INTERPRETER: Could you repeat it? Could you repeat
12 it?

13 THE COURT: My question for you to ask him is does
14 he understand that he can respond in English to your
15 Chinese question or he can respond in Chinese.

16 INTERPRETER: Okay.

17 [Whereupon, the Interpreter and the witness confer]

18 INTERPRETER: He said in Chinese.

19 THE COURT: Which does he prefer respond in Chinese
20 or respond in English? Ask him that?

21 INTERPRETER: In Chinese.

22 THE COURT: In Chinese? He would prefer responding
23 in Chinese. All right, I'm going to ask you some
24 questions to ask him and let him respond and then you
25 state what is answered, okay. Would you ask him where

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1 was he was born?

2 THE WITNESS [through Interpreter]: China.

3 THE COURT: Where in China?

4 THE WITNESS [through Interpreter]: Fujian
5 [phonetic] province.

6 THE COURT: Will he tell me where in China -- where
7 is that physically located?

8 INTERPRETER: In southern part of China ---

9 THE COURT: --- I want you to ask him that
10 question.

11 THE WITNESS [through Interpreter]: In the southern
12 part of China and opposite to Taiwan.

13 THE COURT: Will you ask him how many brothers and
14 sisters he has and what are they names?

15 THE WITNESS [through Interpreter]: He said he has
16 three older brothers and one younger brother.

17 THE COURT: Does he know their ages?

18 [Whereupon, the Interpreter and witness confer]

19 THE COURT: What is his response?

20 THE WITNESS [through Interpreter]: The younger
21 brother is 37 years old. And his older brother he did
22 not remember clearly but just two or three years between
23 the ages.

24 THE COURT: All right. Will you please tell him if
25 he doesn't know the answer or doesn't remember the answer

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1 he is free to say that okay, to any question asked of
2 him. Just explain that to him.

3 [Whereupon, the Interpreter and witness confer]

4 INTERPRETER: Your Honor, could you say that
5 sentence again because I explained to him -- I remember
6 you say --

7 THE COURT: Tell him when a question is asked he
8 can respond to it yes or no or he doesn't know or he
9 doesn't remember okay.

10 [Whereupon, the Interpreter and witness confer]

11 THE WITNESS [through Interpreter]: He said he
12 doesn't remember his youngest brother -- the age of his
13 youngest brother but his older brother he didn't remember
14 the age clearly.

15 THE COURT: Okay. Ask him if he is married?

16 THE WITNESS [through Interpreter]: Yes.

17 THE COURT: How long has he been married?

18 THE WITNESS [through Interpreter]: He got married
19 in 1997.

20 THE COURT: Is his wife in the United States or in
21 China?

22 THE WITNESS [through Interpreter]: In the United
23 States.

24 THE COURT: How many children does he have?

25 THE WITNESS [through Interpreter]: Two.

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1 THE COURT: Two, okay. All right. When you're
2 interpreting what I need you to do is don't have a little
3 conversation with him just interpret what he says okay?

4 INTERPRETER: Okay.

5 THE COURT: Ask him a question that is asked by the
6 attorneys and then repeat in English what his answer is
7 okay? In other words don't have a little conversation
8 with him. Can you do that?

9 INTERPRETER: Yes.

10 THE COURT: Do you have any questions about the
11 process that we go through when the jury is here?

12 INTERPRETER: No.

13 THE COURT: What I'm going to do is have you sit by
14 him and the attorney will ask the question, you'll tell
15 him what the question is in Chinese let him respond in
16 Chinese and then you tell the attorney, the jury, and the
17 court reporter what his response was. Do you think you
18 can do that?

19 INTERPRETER: Thank you.

20 THE COURT: Are you confident of that? And how
21 long have you been teaching? How long have you been
22 teaching?

23 INTERPRETER: I have been an English teacher in
24 China for almost -- for nine years.

25 THE COURT: Nine years.

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1 INTERPRETER: And then in 2012 in June -- sorry, in
2 July I came to the United States. And in August I teach
3 students Mandarin Chinese.

4 THE COURT: Have you ever interpreted in the court
5 before?

6 INTERPRETER: No.

7 THE COURT: Have you ever interpreted any type of
8 formal proceedings?

9 INTERPRETER: In China I have interpreted some
10 papers, just for school not -- yes.

11 THE COURT: All right. The court makes a finding
12 she is qualified as an Interpreter and the court is not
13 going to require a State certified Interpreter and we're
14 going to proceed with this Interpreter. Your motion to
15 find her non-qualified is denied. Your motion for --
16 anything else you want to tell me before I rule on your
17 mistrial?

18 MR. SCHWACKE: Well, Your Honor, if I could just
19 revisit just briefly ---

20 THE COURT: --- yes sir ---

21 MR. SCHWACKE: --- her qualifications ---

22 THE COURT: --- yes, sir. I'll be glad for you to.

23 MR. SCHWACKE: Just to put on the record again our
24 objection to her being qualified. As you have observed
25 there were a number of conversations that went back and

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1 forth between them that were not translated to us. They
2 were having a colloquy among themselves and it happened
3 on at least five different questions. And because of
4 that unless our court reporter has suddenly become
5 competent in Mandarin Chinese there would be an absence
6 in the record of the exact conversation.

7 And that's why she is not a court certified -- South
8 Carolina Court Administration certified Interpreter --
9 does not know how to do that and one that would be
10 available to us.

11 THE COURT: Well, I think I have instructed her
12 what to do. She's never done it before. I think I have
13 told her don't have the conversation with him. Interpret
14 what he says, interpret what the lawyer says and I think
15 she understands that and she's willing to do that. I
16 agree with you and I viewed that as a problem but I think
17 I have corrected it and she's agreed to do it properly.

18 MR. SCHWACKE: Yes, sir. To just note our objection
19 to her ---

20 THE COURT: --- I understand. I'll note your
21 objection. Anything else you'd like to put on the
22 record?

23 MR. SCHWACKE: Not related to that, Your Honor.

24 THE COURT: Okay. Anything else you want to put
25 on the record as far as your mistrial is concerned?

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1 MR. SCHWACKE: I think I've covered that.

2 THE COURT: Okay. I'll be glad to hear from the
3 State on both motions.

4 MR. ALFARO: Your Honor, regarding her
5 qualification as an Interpreter I believe Your Honor has
6 asked the appropriate follow up questions and instructed
7 her on the proper manner in which to conduct the
8 interpretation.

9 Regarding the mistrial motion regarding it would be
10 the State's error that an Interpreter was not provided at
11 the beginning of trial. During the course of preparation
12 for trial Mr. Dejeu has had conversations with the victim
13 without the use of an Interpreter and was able to
14 communicate with him to the extent that he believed that
15 one was not necessary for the trial.

16 And what I observed during the direct examination
17 was the questions were asked in English to the witness,
18 he responded in English, and as I said was responsive to
19 the questions that were asked, which at the end of direct
20 as Mr. Schwacke indicated we were satisfied with the
21 direct because we ended the direct.

22 We believe that he was able to articulate his
23 responses and that he was a competent witness to the
24 extent that he understood what was asked and responded
25 appropriately. We don't think there was any error by the

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1 State in not providing an Interpreter. At the initial
2 stages Your Honor has indicated that one may be -- we
3 made phone calls required to find Ms. Na. But as Your
4 Honor stated there was no error on our part in not having
5 an Interpreter in the beginning stages of the trial.

6 THE COURT: Okay. Thank you very much. Anything
7 in reply to his response?

8 MR. SCHWACKE: Other than obviously the State had
9 the opportunity to prepare the witness for his direct
10 examination. There is no way they could fully prepare
11 him for cross-examination but that is something that the
12 defendant is entitled to is to unfettered cross-
13 examination.

14 The State chose to bring him as their witness
15 without the benefit of an Interpreter. And because of
16 that we feel like the remaining testimony of the witness
17 should proceed in a like manner.

18 THE COURT: Okay.

19 [Whereupon, the court reviews documents]

20 THE COURT: All right. Let me put on the record
21 that during the first portion of trial the witness, Mr.
22 Zhang was responsive to simple questions on direct and
23 the attorney summarized questions and asked a simple
24 question -- summarized testimony and asked a simple
25 question and Mr. Zhang did appear to understand. However

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1 during the course of the testimony the court became
2 concerned about the ability of the defendant to express
3 himself completely and his limited ability of
4 understanding the English language and interpreting the
5 questions.

6 So the court sua sponte stopped the trial and
7 discussed the matter with the attorneys and ultimately an
8 Interpreter has been brought into the court by the State
9 at the court's request. The court finds that the State
10 has done no wrong in initially calling the witness. It
11 was the court's decision in an effort to make hopefully
12 allow the testimony to be clear to the jury, to the
13 court, and everyone else.

14 And under Rule 611 the court shall exercise
15 reasonable control over the mode and order of presenting
16 evidence. And under Rule 611 the court took this step to
17 bring an Interpreter into the trial at this time to
18 assist the triers of the fact in making a determination
19 in listening to the testimony and be fully appraised of
20 the testimony based upon the interpretation by the
21 Interpreter. And the motion for mistrial is denied.

22 MR. SCHWACKE: Thank you, Your Honor. Just note
23 our objection.

24 THE COURT: Pardon?

25 MR. SCHWACKE: Just note our objection.

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1 THE COURT: I think you've made it several times.
2 It's been noted, okay. Anything else? It's now five
3 minutes to 12. The jury -- I'm not sure what time we
4 broke. Does anybody know? About 11 o'clock, 10:30?

5 THE COURT REPORTER: 10:36.

6 THE COURT: So they've been in the jury room for
7 about an hour and a half. Are y'all ready to proceed or?

8 MR. DEJEU: The State is ready, Your Honor.

9 THE COURT: Is the defense ready to proceed on your
10 cross-examination?

11 MR. SCHWACKE: Yes, Your Honor.

12 THE COURT: All right. Do you understand what I'm
13 asking you to do? I don't want you to have a private
14 conversation with him. I just want you to interpret what
15 is being said to him and interpret what his response is.
16 Now, Interpreters do it different ways. They wait until
17 the end of the sentence and then interpret or they
18 interpret as they go along. In other words when the
19 attorney is asking a question which do you prefer doing?

20 INTERPRETER: [No response]

21 THE COURT: Which would be easier for you?

22 INTERPRETER: As process goes.

23 THE COURT: Pardon?

24 INTERPRETER: As process goes. I like to interpret
25 maybe one or two sentence and then I translate.

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1 THE COURT: Okay. Then what I'm going to do with
2 the attorneys I'm going to tell them to pause during
3 their question, give you a chance to interpret and then
4 continue the question, do you understand because
5 different Interpreters do it different; I've seen it done
6 both ways. But she prefers for you to start the
7 question, ask a few words and then let her interpret and
8 then pick up. Okay. Can you do that Mr. Shelton?

9 MR. SHELTON: I'll try my best. Yes, Your Honor.

10 THE COURT: Okay. Now if the attorney is going
11 too fast for you to interpret let me know and I'll slow
12 them down okay?

13 INTERPRETER: Okay. Thank you.

14 THE COURT: Please don't be bashful about doing
15 that okay?

16 INTERPRETER: Thank you.

17 THE COURT: Anything else before we bring the jury?

18 MR. DEJEU: No, Your Honor.

19 MR. SHELTON: No, Your Honor.

20 THE COURT: All right. Bring us the jury please.

21 [Whereupon, the jury enters at 11:57 a.m.]

22 THE COURT: Can you sort of move around so that
23 when you're interpreting the jury will be able to hear
24 you? Can you do it there? Come forward so he can hear
25 you and she -- in other words when you interpret it look

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1 at the jury so they can hear you okay?

2 INTERPRETER: Okay.

3 THE COURT: All right. Mr. Foreman and ladies and
4 gentlemen of the jury I apologize for keeping you in the
5 jury room so long. But during the testimony the court
6 was of the opinion that Mr. Zhang's English --
7 interpretation of English and responding in English was
8 somewhat limited.

9 So the court has brought in an Interpreter that is
10 going to interpret for Mr. Zhang. And the attorney is
11 going to ask questions, the Interpreter is going to tell
12 Mr. Zhang the question in Chinese, he is going to respond
13 in Chinese and the Interpreter is going to tell you his
14 answer. Please continue cross-examination please.

15 MR. SHELTON: Thank you, Your Honor.

16 CROSS-EXAMINATION RESUMES

17 BY MR. SHELTON:

18 Q. Mr. Zhang, you had the chance to review the
19 transcript?

20 A. [Through Interpreter] He said no thank you.

21 Q. Have you read the transcript?

22 A. [Through Interpreter] He said he needed to review
23 that again because at the police station he had not said
24 that and also understands what is shown here.

25 Q. I'm sorry, could you repeat that?

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1 INTERPRETER: I'm sorry. Mr. Zhang said...
2 A. [Through Interpreter] He needed to read it again
3 because what he said at the police station is true.
4 Q. [Mr. Shelton] So what he said at the police station
5 is true?
6 A. [Through Interpreter] What happened on that day he
7 said he told it to the police and what he said was true.
8 Q. Okay. And you had a chance to read page 21?
9 [Whereupon, the witness is shown document]
10 Q. And line 11. That's when you say you had taken
11 somebody to Walmart.
12 A. [Through Interpreter] He said last year on 22nd in
13 May he didn't take anybody to Walmart.
14 Q. Right. When you talked with the police officer at
15 the station -- the police station you told them you met
16 Mr. Greene at a Sonoco.
17 A. [Through Interpreter] Could you repeat the place?
18 Q. Sonoco Gas Station.
19 A. [Through Interpreter] He said not a Sonoco.
20 Q. You told the police that you met him at the Sonoco
21 Gas Station.
22 A. [Through Interpreter] He said when the police asked
23 him he didn't remember the place clearly so he told the
24 police officer the place should be Sonoco. But after
25 that he realized it's not the place.

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1 Q. You realized that it was not Sonoco when the police
2 officer told you that it couldn't have been Sonoco?

3 A. [Through Interpreter] He said when he told the
4 police where it happened he said just the place beside
5 the CVS.

6 Q. The first thing you told police was it happened at
7 Sonoco.

8 A. [Through Interpreter] He said he was very nervous
9 when the police asked him and he didn't remember the name
10 clearly. But it seems like a Sonoco but it turned out
11 not. It's Cico, C-I-C-O [sic].

12 Q. And the police officer told you that that's was what
13 the gas station was.

14 THE COURT: No conversations; question and answer
15 okay.

16 A. Okay.

17 A. [Through Interpreter] He said no.

18 Q. Okay.

19 A. [Through Interpreter] He said when the police asked
20 him he answered Sonoco. But the policeman asked him
21 there is no Sonoco gas station here so then he answered
22 the place say the Citgo.

23 Q. After the police officer said corner station that's
24 when you then said it was the Citgo?

25 A. [Through Interpreter] When he told the police

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1 officer it happened in the place of Sonoco the police
2 officer said there should be no Sonoco gas station. So
3 he just explained it's just beside -- it's a place beside
4 CVS.

5 And then the police officer asked him whether it is
6 corner station he answered it's the place opposite to the
7 corner station.

8 Q. When you talked with Officer Scarborough --

9 A. [Interpreter] Sorry?

10 Q. When you talked with Officer Scarborough --

11 A. [Interpreter] Could you repeat the name?

12 Q. Scarborough at the police department -- you
13 indicated that Mr. Greene came from inside the store?

14 A. [Through Interpreter] He said he didn't say Mr. --
15 I'm sorry, I didn't remember the name -- Mr. Greene he
16 said he didn't say that Mr. Greene entered the store and
17 he just -- he entered the store and then paid the money
18 and then come out to get some gas.

19 Q. If he would turn to page 11 of the transcript?

20 [Whereupon, the witness reviews document]

21 Q. Line 8 and line 9 it says he comes out of the gas
22 station. And your response was uh huh.

23 A. [Through Interpreter] He said he didn't say he come
24 out the gas station.

25 Q. The officer didn't say that -- or that's not what

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1 happened? That's not what happened? He didn't come out
2 the gas station; he came across the street from Big Lots?
3 A. [Through Interpreter] He said he just come out from
4 the opposite street. He didn't know where he -- which
5 the exact place.
6 Q. Okay. Officer at the police department asked you
7 to describe the person that was in the car with you and
8 you gave a description of someone wearing a white shirt.
9 Is that true?
10 A. [Through Interpreter] Yes.
11 Q. And then you talk about how he asked for a ride
12 towards the McDonalds?
13 A. [Through Interpreter] Yes.
14 Q. And then very soon after that you see a knife?
15 A. [Through Interpreter] Yes.
16 Q. You have to speak okay. Do you mind saying yes or
17 no?
18 A. Yes, yes.
19 Q. And when you talked to -- you described the knife as
20 a fold out knife?
21 A. [Interpreter] I'm sorry -- is a?
22 Q. A knife that opens up.
23 A. Yes, I said open -- the fold out, yes.
24 Q. That's how you describe the knife. And you're
25 pretty sure about that?

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1 A. [Through Interpreter] He described it yes; this size
2 [indicates] the knife.

3 Q. And the knife opened up?

4 A. [Through Interpreter] He said he didn't notice that
5 whether it's open or not but the knife is already to him.

6 Q. Okay. We'll get to that part. The officer at the
7 police department he pulled out his own knife to ask you
8 if it was like this [indicates] type of knife.

9 A. [Through Interpreter] He said the police officer
10 asked him whether it is of similar shape and he said yes.

11 Q. And he asked you if it folded out; if it opened up?

12 A. [Through Interpreter] Could you repeat that again?

13 Q. You -- he also asked you if it folded up -- if it
14 folded out -- opened up.

15 A. [Through Interpreter] Yes.

16 Q. And that was the type of knife that he showed you
17 that he gave -- the officer pulled a knife out of his
18 pocket.

19 A. [Through Interpreter] He said the police didn't get
20 his own knife out. Is this your question just ask me to
21 say the police officer got his own knife out.

22 Q. Yes, the police officer got his own knife out?

23 A. [Through Interpreter] He said in the police station
24 the police officer got something like a pen to ask him to
25 see whether it is the similar size. And he didn't

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1 remember clearly whether the police officer got a knife.
2 Q. Okay. But you're sure that when you're in the car
3 the person uses his right hand to get the knife out of
4 his right pocket?
5 A. [Through Interpreter] Yes.
6 Q. And he leans across the car and puts the knife to
7 you?
8 A. [Through Interpreter] Yes.
9 Q. And at some point in time he gets money from him.
10 A. [Interpreter] Sorry -- at some point ---
11 Q. --- at some point in time he gets money from you.
12 INTERPRETER: Could you explain he got the money or
13 he won't get the money? How can I explain to him?
14 Q. [Mr. Shelton] At some point in time he had gotten
15 the money?
16 INTERPRETER: He has got his money?
17 A. [Through Interpreter] He asks me whether the person
18 get money before he pull his knife or after he pull his
19 knife.
20 Q. [Mr. Shelton] Is it before or after he pulled the
21 knife?
22 A. [Through Interpreter] After he pulled his knife, yes
23 got his money.
24 Q. And he also got your wallet at some point in time?
25 A. [Through Interpreter] Yes.

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1 Q. This is while you were driving?

2 INTERPRETER: This is while you are driving?

3 Q. [Mr. Shelton] He had gotten both of those things
4 while you're driving?

5 A. [Through Interpreter] Could you repeat your question
6 because Mr. Zhang said while he is driving he -- what do
7 you want to know whether he gave the money and also with
8 his wallet to that person.

9 Q. You were driving the car.

10 A. [Through Interpreter] Yes.

11 Q. He had a knife to you.

12 A. [Through Interpreter] Yes.

13 Q. You were giving your wallet and your money to give
14 to him.

15 A. [Through Interpreter] First time he told Mr. Zhang
16 let him drive to the bank -- to his bank. The first time
17 he didn't take any notice because it's daytime and he
18 just think the person is kidding.

19 Q. You didn't take what?

20 A. [Through Interpreter] He didn't take seriously
21 because he think its daytime and the person asked him to
22 drive to the bank to get money. He just think he's
23 kidding.

24 Q. Right. And you didn't really understand what he was
25 saying?

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- 1 A. [Through Interpreter] He said he understand what the
2 person talk about but he think maybe he's just kidding
3 for just for the first time.
- 4 Q. The first thing he asks you is to go to the bank.
- 5 A. [Interpreter indicates affirmatively]
- 6 Q. And then he asked you for money?
- 7 A. [Through Interpreter] And then because the person
8 just say very low wise after the first time and to see
9 Mr. Zhang didn't pay attention.
- 10 So he just raise his voice to say it again to go to
11 your bank. And then Mr. Zhang turned to see yes, it's a
12 robbery. And he also asked what happened.
- 13 Q. Well, at some point in time he had to put the knife
14 away.
- 15 INTERPRETER: Sorry -- put...
- 16 Q. [Mr. Shelton] At some point in time while you're in
17 the car the knife had to have been taken -- he had to
18 have taken the knife away from you?
- 19 A. [Through Interpreter] He said no, the person keep
20 the knife to him all the time.
- 21 Q. Okay. When you stopped for the police you started
22 -- you moved from -- strike that. The road that you are
23 going down 52, Highway 52?
- 24 A. [Through Interpreter] Yes.
- 25 Q. Has two lanes and a middle lane?

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1 A. [Interpreter indicates affirmatively]
2 Q. And you go -- when you see the police officer you go
3 from the right lane to the middle lane.
4 A. Yes.
5 Q. Okay. And at that point in time Mr. Greene asked
6 you what are you doing.
7 A. [Through Interpreter] He said when Mr. Greene saw
8 the police and he just said shit, the bad word, and then
9 opened the door and run away.
10 Q. You work for Mr. Hibachi correct?
11 A. At Kobe.
12 Q. I'm sorry, I apologize. You work at Kobe. And
13 that's in the area with Ye Ole Fashion. Isn't that in
14 the area with Ye Ole Fashion?
15 A. Ye Ole.
16 Q. The complex with -- where is Kobe?
17 A. Highway 52 right -- go down to the McDonald, go to
18 left maybe one more block, little bit on the right side.
19 Q. On the right side?
20 A. Yes.
21 Q. There is a place Ye Ole Fashion Restaurant -- the
22 restaurant Ye Ole Fashion.
23 A. Ye Ole Fashion.
24 Q. Okay. There is also as you're going down towards
25 Kobe there is a Bojangles on your right?

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1 A. You know Hibachi right? Hibachi on this side
2 [indicates] Kobe on the other side.
3 Q. Right.
4 A. The road the other side.
5 Q. Right. But as you're going towards Kobe there is a
6 Bojangles on your right.
7 INTERPRETER: Bojangles?
8 Q. Bojangles, a chicken restaurant.
9 A. Oh Bojangles, yes.
10 Q. Okay.
11 A. Go a little bit more.
12 Q. And right next to that is a bank?
13 A. Right next is a bank, yes.
14 Q. Okay. And behind that are some apartments?
15 A. Apartments -- no apartments is a little bit before.
16 Apartments? Yes there are apartments there, yes.
17 Q. So if you're going down the road towards Bojangles
18 towards the bank and then you start getting over into the
19 left lane that would mean that you're not going to the
20 bank. That means you're turning; you're going somewhere
21 else.
22 A. Go to the bank.
23 Q. Sorry, I'll strike that. At some point in time Mr.
24 Greene was getting frustrated.
25 A. [Through Interpreter] Mr. Zhang said how can he tell

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1 Mr. Greene is frustrated? Mr. Zhang said the person who
2 feel very sad should be him because Mr. Greene had a
3 knife just point at him.

4 Q. When you testified earlier with Mr. Dejeu, earlier a
5 couple of hours ago you testified with Mr. Dejeu?

6 INTERPRETER: Could you repeat the name -- the
7 person's name?

8 Q. [Mr. Shelton] Dejeu.

9 INTERPRETER: Could you repeat the person's name?
10 You said Mr. Zhang passed to who?

11 Q. [Mr. Shelton] Mr. Dejeu was asking you questions.

12 INTERPRETER: Asking me?

13 Q. [Mr. Shelton] Asking Mr. Zhang.

14 A. No.

15 Q. Did you not say earlier that Mr. Greene when you
16 were stopped by the police told you to run?

17 INTERPRETER: Could you...

18 Q. [Mr. Shelton] Did you say that -- when you were
19 stopped by the police did you say that Mr. Greene told
20 you to run?

21 A. [Through Interpreter] Mr. Zhang said when he saw the
22 policeman he just get the windows down and raise his hand
23 to say robbery. And Mr. Greene saw that and then run
24 away. And he also keep the horn, yes, keep the horn;
25 just press the horn.

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1 Q. You never got out the car.
2 A. No.
3 Q. The police never searched your car.
4 A. No.
5 Q. You could have at any point in time pulled over and
6 ran from the car.
7 A. [Through Interpreter] He said when Mr. Greene saw
8 the police he run away. He didn't.
9 Q. But Mr. Greene didn't control the steering wheel.
10 Mr. Green didn't control the locks in the car.
11 INTERPRETER: The locks right?
12 Q. The locks.
13 A. [Through Interpreter] No.
14 Q. You could have gotten out of your car.
15 INTERPRETER: I think Mr. Zhang didn't understand it
16 clearly because he just answered my question saying Mr.
17 Greene has already run away. He didn't run again. But I
18 think I can explain to him just while driving -- can I do
19 that again.
20 Q. That's all right. That's all right.
21 INTERPRETER: Okay.
22 Q. You never -- in this transcript you never tell the
23 police that he had a knife to you.
24 A. [Through Interpreter] He said he told the policeman
25 that the knife just pointed at him.

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1 [Whereupon, Mr. Shelton and Mr. Schwacke confer]
2 MR. SHELTON: No further questions.
3 THE COURT: Redirect?
4 MR. DEJEU: Very briefly, Your Honor.
5 THE COURT: Pardon?
6 MR. DEJEU: Very briefly.
7 REDIRECT EXAMINATION
8 BY MR. DEJEU:
9 Q. Mr. Zhang, you are here legally correct?
10 A. Yes.
11 Q. In fact on this picture that's your green card is
12 that right?
13 [Whereupon, the witness is shown photograph]
14 A. Yes.
15 Q. And you said you've been here for 18, 19 years and
16 that green card you had it the day this thing happened is
17 that right -- when you were robbed.
18 INTERPRETER: Could you repeat it again?
19 Q. [Mr. Dejeu] When you were robbed you had your green
20 card with you in your wallet -- your I.D.?
21 A. [Through Interpreter] He said he just bring the
22 copy for his green card.
23 Q. So you do have a green card?
24 A. Yes.
25 Q. And the Solicitor's Office did not help you in any

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1 way to get anything like that is that right?
2 A. [No response]
3 Q. Our office did not give you the green card?
4 INTERPRETER: Your office didn't give him the green
5 card?
6 Q. [Mr. Dejeu] The green card, yes. We did not help
7 you get the green card. You already had it.
8 A. [Through Interpreter] Yes, he has his green card.
9 Q. That's it. Thank you.
10 THE COURT: Any recross?
11 MR. SHELTON: No, Your Honor.
12 THE COURT: You may step down. Thank you so very
13 much. And ma'am you may step down.
14 THE INTERPRETER: Thank you.
15 THE COURT: Thank you very much for interpreting.
16 THE INTERPRETER: Thank you.
17 THE COURT: Can I see the attorneys up here just a
18 second. Tell him he may step down and go back and have a
19 seat.
20 THE WITNESS: Take this all ---
21 THE COURT: --- just leave it there.
22 [Whereupon, the witness and the Interpreter are
23 excused and exit the witness stand]
24 THE COURT: If you would just hang on just a second
25 okay?

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1 INTERPRETER: Okay.

2 [Whereupon, an off the record bench conference is
3 held]

4 THE COURT: All right. Mr. Foreman and ladies and
5 gentlemen of the jury I normally break at 1:00. It's now
6 12:35 so we're going to take a lunch break at this time.
7 Please don't discuss the case with anyone. Leave your
8 notepads in the chairs and be back in the jury room at 2
9 o'clock and we'll get started at that time. If you'll
10 follow the Bailiff they'll show you where to go.

11 [Whereupon, the jury exits at 12:36 p.m.]

12 THE COURT: Ma'am, would you write your name down
13 for her?

14 INTERPRETER: Yes, sir.

15 THE COURT: Thank you so very much. All right.
16 Anything from the State before we adjourn?

17 MR. DEJEU: No, Your Honor.

18 THE COURT: Anything from the defendant?

19 MR. SHELTON: No, sir.

20 THE COURT: All right. We'll adjourn until 2
21 o'clock. Thank you very much.

22 [Whereupon, court is in recess from 12:40 p.m. until
23 2:34 p.m.]

24 THE COURT: I'm sorry I was late. I was thinking
25 it was 2:30 but I said 2:00. I made a mistake and I

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1 apologize for being late. Anything from the State before
2 we bring the jury?

3 MR. DEJEU: No, Your Honor.

4 THE COURT: Anything from the defense before we
5 bring the jury?

6 MR. SHELTON: No, Your Honor.

7 THE COURT: Bring us the jury please. Who is your
8 next witness:

9 MR. DEJEU: Officer Shane Judy -- Anthony Shane
10 Judy.

11 THE COURT: Pardon?

12 MR. DEJEU: Anthony Judy.

13 THE COURT: Oh, okay.

14 [Whereupon, the jury enters at 2:35 p.m.]

15 THE COURT: Does everybody have their notepads?
16 Okay. If you will call your next witness please, sir.

17 MR. DEJEU: Thank you, Your Honor. May it please
18 the court? The State calls Anthony Shane Judy.

19 [Whereupon, Mr. Judy comes forward]

20 [Whereupon, the witness is duly sworn by the Clerk
21 of Court]

22 CLERK OF COURT: Please be seated and state your
23 name. Spell your last name for the record.

24 THE WITNESS: My name is Anthony S. Judy -- Shane
25 Judy, J-U-D-Y.

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1 A. Yes, I was.

2 Q. Please tell us how you got involved in this case.

3 A. I was on routine patrol. I was headed southbound on
4 U.S. 52; actually I was just patrolling. I didn't have
5 anywhere I was going until I arrived at Walgreens.

6 I came through the red light and had a dark in color
7 vehicle; it was a green vehicle, approach me head-on from
8 the oncoming lane.

9 Q. And what did you -- where did the green vehicle come
10 -- how far from its lane came on your lane?

11 A. When I caught notice of the vehicle I had just come
12 through the traffic light and I was parallel with the
13 Walgreens parking lot on my right.

14 And when I caught notice of the vehicle the nose of
15 the vehicle was coming through the median. And I locked
16 the brakes up and that's where -- it was about five feet,
17 he stopped five feet from me. There was about five feet
18 distance between us.

19 Q. What happened next?

20 A. As I exited the vehicle -- I didn't want to be
21 caught in my vehicle in case I was being ambushed I got
22 out of my vehicle very quickly to not be caught in the
23 car. I noticed the driver had a very wild look in his
24 face. And I got out and retreat -- was about to retreat
25 to the rear of my vehicle and the driver bailed out

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1 yelling he robbed me, he robbed me. At this time I took
2 notice of the car and noticed that there was a black male
3 passenger. The black male exited the vehicle quickly and
4 began running towards the Huddle House northbound.

5 Q. What did you do once you saw the black male running
6 out the vehicle?

7 A. Seeing how frantic the driver was I realized there
8 definitely was a problem and the black male was exiting
9 and leaving the area.

10 I got back in my vehicle and quickly turned around,
11 went around his vehicle and proceeded back northbound in
12 behind the subject. At one point I was actually running
13 parallel with him down the sidewalk, lights on siren
14 flashing -- siren on.

15 We passed in front of the Huddle House and coming up
16 on the old Thornley Oil parking lot I saw an entrance to
17 turn in. And he was cutting across at an angle and I
18 cut into the parking lot and cut him off in the parking
19 lot.

20 Q. You already testified other than the driver and the
21 man that got out of the passenger seat did you see
22 anybody else getting out of that car?

23 A. No.

24 Q. Just the two individuals?

25 A. Just the two individuals.

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1 Q. I want to show you some pictures. They have been
2 marked State's exhibit 7 -- 5, 6, 7, and 8. Take a look
3 at them and see if you can recognize them.

4 [Whereupon, the witness is shown photographs]

5 A. This one here is a southbound ---

6 Q. --- just -- do you recognize them?

7 A. Yes.

8 Q. Are they -- how do you recognize them?

9 A. I took those pictures.

10 Q. And are they a fair and accurate representation of
11 what you saw that day?

12 A. Yes, sir.

13 MR. DEJEU: The State would move to have State's
14 exhibits 5 through 7 admitted -- and 8 as evidence.

15 THE COURT: What numbers?

16 MR. DEJEU: 5, 6, 7, and 8.

17 THE COURT: 5, 6, 7, and 8. Any objection?

18 MR. SHELTON: No objection, Your Honor.

19 THE COURT: State's exhibits 5, 6, 7, and 8
20 admitted without objection.

21 [Whereupon, State's exhibit numbers 5, 6, 7, and 8
22 are entered into evidence by the court]

23 MR. DEJEU: And requesting permission to publish
24 for the jury?

25 THE COURT: Yes, sir.

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1 Q. [Mr. Dejeu] On number 5 tell us what -- if you're
2 looking back on the screen over there [indicates] tell us
3 a little bit of what that [indicates] is representing.

4 A. That's the southbound view coming up on Walgreens.
5 The Huddle House is on the left. This is the view I had
6 just before I proceeded through the traffic light and met
7 the subject 100 yards up.

8 MR. DEJEU: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 Q. [Mr. Dejeu] I have here a laser pointer if it works.
11 So this [indicates] is the location where you encountered
12 the other vehicle correct?

13 A. Right, well about 100 yards up. I was about right
14 there [indicates] is where we ran -- where we come head
15 on with each other.

16 Q. So you saw -- you said you saw the man getting out
17 the car. What happened next? Did you pursue him?

18 A. When he exited the car -- remember this thing
19 happened fast, the driver bails out yelling he robbed me,
20 he robbed me.

21 I didn't exactly get my bearings together to why he
22 was running head on with me other than just trying to
23 avoid being hit.

24 When I realized that there was a subject running
25 from the car it -- I knew that I had to pursue him being

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1 that he was fleeing.

2 Q. And were you able to catch him?

3 A. Yes.

4 Q. At any point did you lose sight of the man that was
5 running away?

6 A. No, I did not.

7 Q. And what happened next as you caught him?

8 A. I cut across the parking lot -- are there more
9 pictures I can...

10 Q. This is State's 7.

11 [Whereupon, photographs are shown]

12 A. As he -- this is the entrance right here [indicates]
13 where I entered with my vehicle. These trucks
14 [indicates] were not here. This was a vacant lot. This
15 man was here [indicates] but these trucks [indicates]
16 were not here; it was a vacant lot.

17 The subject was running. This is [indicates] the
18 Huddle House. The subject came off the sidewalk and was
19 running across this lot [indicates] this way. I turned
20 my vehicle up into here [indicates] and cut him off at an
21 angle and I caught him right here [indicates].

22 And I stopped my car and he ran into the side of my
23 car. When he ran into the front right corner of my car
24 he fell off the car onto the ground. I exited my vehicle
25 and came around the rear of the vehicle and drew my taser

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1 because at this time I had not seen a weapon in his hands
2 at all during the run. I drew my taser and ordered him
3 to stop. The subject got up and started running again.

4 At this time we probably had about three feet from
5 each other. I'm trying to keep up with him and where
6 this truck [indicates] is parked at right here
7 [indicates] about where the rear of this truck
8 [indicates] is we're running this distance across here
9 [indicates] because he's stumbling getting up.

10 About this point here [indicates] at the corner of
11 the parking lot the subject turns and looks at me.
12 While he's running he turns towards me and he reaches in
13 his right pocket.

14 As he's pulling his hand out of his right pocket I
15 see a shiny metal. I drop my taser, I pull my .45 issued
16 Gap -- issued .45 Gap pistol and I shouted orders to
17 stop, put the weapon down ---

18 Q. --- did he ---

19 A. --- and at this time he started -- as this time he
20 was trying to run, pull the item out of his pocket and he
21 tripped over his feet and went into a barrel roll on the
22 ground.

23 I covered him at a safe distance. And the knife --
24 when he hit the ground the knife fell out of his hand and
25 rolled across the parking lot.

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1 Q. Did you get to see the knife?

2 A. I did.

3 Q. Were you able to recover the knife?

4 A. I did. I never touched it. I covered him. Deputy
5 Taylor who is the S-R-O at Timberland High School Deputy
6 Taylor saw the incident going on and I was on top of the
7 subject trying to keep him under control. And Deputy
8 Taylor pulled in and helped me restrain the subject.

9 The knife stayed there until my supervisor got there
10 and we were able to get a grasp of what was going on
11 because it was still chaos at that time.

12 Q. Other than Deputy Taylor did any other officer come
13 to help you?

14 A. Tony Edwards was my corporal. He's the one that
15 processed the knife and the pictures at the scene.

16 Q. Is -- it was Officer Taylor -- Edwards that took the
17 knife into evidence?

18 A. Right; Corporal Edwards.

19 Q. Obviously this happened in Moncks Corner. Is that
20 in Berkeley County?

21 A. Yes.

22 Q. Officer Judy, do you see the man that you chased and
23 arrested that day in court?

24 A. Yes, sir.

25 Q. Where is he?

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1 A. He's seated at the defendant's table.

2 MR. DEJEU: He -- may the record reflect the
3 officer indicated the defendant -- pointed at the
4 defendant.

5 THE COURT: Okay. The record shall so reflect.

6 Q. [Mr. Dejeu] What did you do after you arrested the
7 defendant?

8 A. Of course you know he's handcuffed, double lock...

9 Q. Were you involved in collecting any other evidence?

10 A. At that moment you have to understand my adrenalin
11 is pumping so I stepped away from the scene and allowed
12 other officers to process the scene.

13 My job was more to keep control of him and the
14 evidence gathering was done by Corporal Edwards.

15 Q. After this incident you say you took these pictures.
16 Did you try -- did you take any other pictures?

17 A. I took the view -- the pictures of the highway, the
18 scene from the store all the way back to the highway
19 where it ended up at. I did not take the -- the pictures
20 of the knife were taken by Corporal Edwards.

21 Q. Let me show you State's exhibits 3 and 4 and see if
22 you recognize them.

23 [Whereupon, the witness is shown photographs]

24 A. Yes sir, I do.

25 Q. How do you recognize them?

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1 A. Because I took them.
2 Q. Are those again a fair and accurate representation?
3 A. Yes, sir.
4 Q. What are they?
5 A. That's the pictures of the store in which Mr. Zhang
6 stated that he had picked the subject up at.
7 MR. DEJEU: Your Honor, the State is moving to have
8 State's exhibits 3 and 4 admitted into evidence.
9 THE COURT: Any objection?
10 MR. SHELTON: No objection, Your Honor.
11 THE COURT: All right, 3 and 4 admitted without
12 objection.
13 [Whereupon, State's exhibit numbers 3 and 4 are
14 entered into evidence by the court]
15 MR. DEJEU: Request to publish for the jury?
16 THE COURT: Yes, sir.
17 [Whereupon, photographs are shown]
18 Q. [Mr. Dejeu] About how long after this incident did
19 you go and take these pictures of the store if you can
20 remember?
21 A. I think it may have been a week, two weeks.
22 Q. A week after?
23 A. Yes. My lieutenant contacted me and asked me to go
24 take the pictures.
25 Q. Please look at the -- what is that [indicates]?

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1 [Whereupon, the witness views photographs]
2 A. That's the store front. That's the front door. I
3 took it that way because of the numerics on the building.
4 Q. And State's 4?
5 A. That's the view from the Big Lots. There's a car
6 wash here [indicates] on the left and Big Lots is here
7 [indicates] on the right, a Sears Center. But that's the
8 view of the storefront.
9 Q. Did you try to obtain any surveillance, video
10 surveillance from this location from the gas station?
11 A. I asked the owner if he had any video surveillance
12 and he stated no.
13 MR. DEJEU: Beg the court's indulgence.
14 THE COURT: Yes, sir.
15 [Whereupon, Mr. Dejeu and Mr. Alfaro confer]
16 Q. [Mr. Dejeu] Please answer any questions Mr. Shelton
17 may have.
18 THE COURT: Cross-examination?
19 CROSS-EXAMINATION
20 BY MR. SHELTON:
21 Q. Officer Judy, you were not in the car so you don't
22 know what was said or what took place inside the car?
23 A. In...
24 Q. Mr. Zhang's car?
25 A. No, I was not.

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1 Q. And you have no idea how long they were in the car
2 together, where they had been?

3 A. I don't.

4 Q. Okay. But at some point in time you learned that
5 Mr. Zhang told maybe Officer Scarborough that it started
6 at the corner store?

7 A. The -- all the information running around that
8 afternoon I already knew that it had started from there
9 when they were asking Mr. Zhang.

10 Truthfully after we were removed from the scene and
11 I turned him over to the county jail I didn't -- I never
12 talked to patrolman Scarborough or anything about any
13 further information.

14 Q. Okay. But you went there to try to find some video
15 and there was no video to the outside?

16 A. Right. The lieutenant asked me to go back up and
17 take pictures of the store front and ask if there was any
18 video surveillance.

19 Q. Okay. What about on the inside of the store?

20 A. I asked the owner do you have video surveillance and
21 he stated no.

22 Q. All together ---

23 A. --- all together ---

24 Q. --- outside or inside? And you did have -- you
25 booked Mr. Green into the jail?

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1 A. Yes.

2 Q. And you did ask him some questions, talk to Mr.
3 Greene?

4 A. I asked him name and date of birth and his
5 information.

6 Q. Well, you did -- he did maintain to you that he was
7 a victim of circumstance?

8 A. I think he -- in the middle of rambling yes, he may
9 have said something like that.

10 Q. And that he wanted to be dropped off by the bank?

11 MR. DEJEU: Objection. That calls for hearsay.

12 THE COURT: Overruled. Go ahead.

13 Q. [Mr. Shelton] That he wanted to be dropped off by
14 the bank?

15 A. I don't remember.

16 Q. You completed a report correct?

17 A. Right.

18 Q. And so you have a -- you put in your report what you
19 talked about.

20 [Whereupon, the witness is shown documents]

21 A. Okay.

22 Q. And so he said that he -- he asked him to take him
23 to Bojangles and to drop him off by the bank beside it.

24 A. Yes, he did. He said this is bull. I asked him to
25 take me to Bojangles and drop me off by the bank beside

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1 it.

2 Q. Right. And he said he was a victim of circumstance.
3 And you asked him about the knife and he said that he was
4 sitting on it. It was in his back pocket and he
5 retrieved it so it wouldn't cut him?

6 A. Yes, that's what he had quoted to me.

7 Q. Okay. Are you aware that Mr. Zhang gave a complete
8 wrong description of the knife?

9 A. I don't -- again, I wasn't there for the interview
10 and I...

11 Q. What about the shirt that Wilton was wearing, do you
12 remember that?

13 A. No, I don't. I think he had on dark colored
14 clothes.

15 Q. Like a grayish shirt?

16 A. Yes, it was dark colored clothes.

17 Q. And you also in your report mentioned that Mr. Zhang
18 didn't have any injuries or any complaint of any
19 injuries.

20 A. No.

21 Q. But Mr. Zhang had left -- he had actually gotten out
22 of the car? He had started running away from the car?

23 A. I remember Mr. Zhang exiting the car and stating he
24 robbed me, he robbed me; screaming, the horn was blowing.
25 When the car was coming across the median and the horn

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1 was on I just knew I was getting ready to get hit and I
2 didn't know what was going on. I was in more of a
3 retreat mode at first until I realized that there was
4 more to it.

5 Q. And then all of a sudden two people just take off
6 running outside ---

7 A. --- well, not two people running. It was one exited
8 the car frantic, the other exited running.

9 Q. Okay. But you never searched Mr. Zhang's car or
10 had any reason to?

11 A. I didn't have time and really I didn't have reason
12 to. My attention was on the suspect that was fleeing.

13 Q. Right. And that was based off what Mr. Zhang was
14 telling you.

15 A. That was just based off common sense.

16 Q. Okay.

17 A. You had somebody that was scared. He looked like --
18 I mean he had a deer in the headlight look. It was
19 enough to get my attention much less the car head-on with
20 me.

21 Q. But that's what he -- that's what he was telling you
22 occurred?

23 A. Yes.

24 Q. And Wilton said something later different?

25 A. Yes.

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1 Q. Okay.

2 THE COURT: Any redirect?

3 MR. DEJEU: No, Your Honor.

4 THE COURT: Okay. You may step down. Thank you
5 very much.

6 [Whereupon, the witness is excused and exits the
7 witness stand]

8 THE COURT: Call your next witness.

9 MR. DEJEU: The State calls Tony Edwards to the
10 stand.

11 [Whereupon, Mr. Edwards comes forward]

12 [Whereupon, the witness is duly sworn by the Clerk
13 of Court]

14 CLERK OF COURT: Please be seated and state your
15 name spelling your last name for the record.

16 THE WITNESS: Tony Edwards, E-D-W-A-R-D-S.

17 - - - - -

18 TONY EDWARDS,

19 Having been first duly sworn,

20 Was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DEJEU:

23 Q. Officer Edwards, how long have you been in the line
24 of duty?

25 A. Close to forty years.

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1 Q. And how long with the Moncks Corner Police
2 Department?

3 A. Twenty-two.

4 Q. Were you working on May 22, 2012?

5 A. Yes, sir.

6 Q. How did you get involved in this case?

7 A. I heard Judy's radio transmission that he was in
8 foot pursuit of a suspect near the Huddle House. I was
9 maybe three or four blocks away.

10 Q. Tell us what you did -- what did you see once you
11 arrived?

12 A. When I got to the what is a vacant lot now directly
13 behind the Huddle House Officer Judy's car was there. He
14 was standing just a very short distance in front of the
15 car and had a black male in custody. When I got out he
16 told me basically what he knew. He said the victim, Mr.
17 Zhang ---

18 MR. SHELTON: --- objection, Your Honor, hearsay.

19 THE COURT: Pardon?

20 MR. SHELTON: Hearsay.

21 THE COURT: Well, I don't know what he's going to
22 say at this point in time. Overruled.

23 Q. [Mr. Dejeu] Please go on.

24 A. He said Mr. Zhang almost hit him head-on almost in
25 front of Walgreens on 52. He got out the car and another

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1 fellow got out of the car and ran. And Mr. Zhang told
2 him that the man had robbed him.

3 Q. So Officer Judy already had somebody in custody?

4 A. He had that gentleman [indicates] in custody.

5 Q. Did you get involved in collecting any evidence?

6 A. Yes, sir. There was a knife laying no further from
7 me to you apart on the ground that Judy said he dropped.

8 Q. I'll show you what's marked as State's exhibit 1 and
9 see if you can recognize it.

10 [Whereupon, the witness is shown photograph]

11 A. Yes sir, this is the photo I took. This is the
12 knife.

13 Q. Is that a fair and accurate presentation?

14 A. Yes, sir.

15 MR. DEJEU: The State moves to have State's 1
16 admitted.

17 THE COURT: Any objection?

18 MR. SHELTON: No objection.

19 THE COURT: State's number 1 admitted without
20 objection.

21 [Whereupon, State's exhibit number 1 is entered into
22 evidence by the court]

23 Q. [Mr. Dejeu] I want to show you another exhibit
24 Officer. I'll show you what is marked State's 9 for
25 identification and see if you recognize this --

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1 [Whereupon, the witness is shown exhibit]
2 A. Yes, this is my handwriting indicating where the
3 knife was found, the case number, I believe a brief
4 description of it.
5 Q. Can you open it and take a look at it and see if you
6 can...
7 [Whereupon, the witness complies]
8 A. Yes sir, that's it.
9 Q. When did you see that knife the first time?
10 A. Laying on the ground about from me to you when you
11 was at the podium behind Officer Judy.
12 Q. Is that the same knife as you found it?
13 A. Yes, sir.
14 MR. DEJEU: The State moves to have State's
15 exhibit...
16 THE COURT: Any objection to State's exhibit number
17 9?
18 MR. DEJEU: Nine.
19 MR. SHELTON: No objection.
20 THE COURT: All right. Number 9 admitted without
21 objection.
22 [Whereupon, State's exhibit number 9 is entered into
23 evidence by the court]
24 THE COURT: Are you going to use the knife anymore?
25 MR. DEJEU: Excuse me, Your Honor?

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1 THE COURT: Are you going to use it anymore in the
2 courtroom?

3 MR. DEJEU: No, Your Honor.

4 THE COURT: Hand it up here please sir.

5 [Whereupon, Mr. Dejeu complies]

6 THE COURT: Thank you. If you need it it will be
7 up here okay.

8 MR. DEJEU: Request to publish -- yes, sir --
9 publish number 1; the picture of the knife?

10 [Whereupon, the photograph is shown]

11 Q. [Mr. Dejeu] Is this [indicates] the knife?

12 A. Yes, sir.

13 Q. I'll show you a picture that has already been
14 admitted into evidence as State's number 2 and see if you
15 recognize this?

16 [Whereupon, the witness is shown photograph]

17 A. Yes, sir. This is a picture that I took on the hood
18 of one of the cars of the victim's wallet. I believe it
19 was some type of Chinese I.D. card and about twenty-two
20 dollars in cash.

21 Q. Where did you find all these items? How did you...

22 A. Officer Judy and myself found the wallet in his
23 right front pocket, in Mr. Greene's right front pocket,
24 and the money was in the left front pocket.

25 Q. The defendant's correct?

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1 A. Yes, sir.
2 Q. Were you involved in this case in any other way?
3 A. Other than helping Officer Judy get the photos I
4 took some of the photos and logged them into evidence.
5 And after he made the trip to Berkeley County jail and
6 back we secured all the evidence and put it up in the
7 evidence locker.
8 Q. The I.D. and the money belonged to the victim you
9 said.
10 A. We returned it to him then.
11 Q. That day the day of the incident?
12 A. Yes sir, as far as I know.
13 Q. Tell me again where did you find them?
14 A. Found the wallet in his right front pocket and the
15 money was in the left front pocket.
16 Q. And him you mean the defendant?
17 A. Yes, Wilton Greene's pocket.
18 MR. DEJEU: Court's indulgence.
19 Q. Thank you Mr. Edwards. Please answer any questions
20 Mr. Shelton may have.
21 CROSS-EXAMINATION
22 BY MR. SHELTON:
23 Q. Officer Edwards that knife it can't be folded. It's
24 a straight knife?
25 A. Yes, sir. It looks like a paring knife out of a

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1 kitchen.
2 Q. Okay. It's not a pocket knife that can be folded
3 up in any way?
4 A. No.
5 Q. No further questions.
6 THE COURT: Any redirect?
7 MR. DEJEU: No, Your Honor. Thank you.
8 THE COURT: You may step down. Thank you very
9 much.
10 [Whereupon, the witness is excused and exits the
11 witness stand]
12 MR. DEJEU: The State calls Jai Patel.
13 [Whereupon, Mr. Patel comes forward]
14 [Whereupon, the witness is duly sworn by the Clerk
15 of Court]
16 CLERK OF COURT: Please be seated. State your name
17 and spell your last name for the record.
18 THE WITNESS: Jainit, J-A-I-N-I-T Patel, P-A-T-E-L
19 - - - - -
20 JAINIT PATEL,
21 Having been first duly sworn,
22 Was examined and testified as follows:
23 DIRECT EXAMINATION
24 BY MR. DEJEU:
25 Q. Good afternoon, Mr. Patel. Tell us what you do for

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1 a living?

2 A. I own a gas station right on old Highway 52.

3 Q. What is that gas station called?

4 A. Corner Stop --

5 Q. Corner Stop. When did you become an owner of that
6 gas station?

7 A. August 1st, 2012.

8 Q. August 2012?

9 A. Uh huh.

10 Q. When you took over did you have -- did the gas
11 station have any surveillance outside the store?

12 A. Not outside. I put outside camera out. I put like
13 three cameras outside and there was like four cameras
14 inside the store.

15 Q. Okay. You put those -- do you remember when you
16 put those?

17 A. I believe it was September or so.

18 Q. September 2012?

19 A. End of September, yes.

20 Q. Thank you. I don't have any further questions.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. SHELTON:

24 Q. Did you obtain any videos or surveillance from the
25 previous owner?

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1 A. Well, like I said he just only had four cameras in
2 the store and he took that system with him when he left.

3 Q. So you didn't have access.

4 A. I didn't have any ---

5 Q. --- to any of the stuff inside?

6 A. No.

7 Q. Did you receive a call from my office about possible
8 surveillance inside?

9 A. Well somebody came by the store and asked me about
10 it but I told them I don't have nothing from previous
11 owner.

12 Q. Thank you.

13 THE COURT: Any redirect?

14 MR. DEJEU: No, Your Honor.

15 THE COURT: You may step down. Thank you very
16 much.

17 MR. DEJEU: May this witness be excused, Your
18 Honor.

19 THE COURT: Yes, sir.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 THE COURT: Call your next witness.

23 MR. DEJEU: Your Honor, at this point the State
24 rests.

25 THE COURT: All right. Mr. Foreman and members of

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1 the jury I have to take up certain motions with the
2 parties at this time. It's some legal matters that I
3 have to deal with so I'm going to ask you to go to the
4 jury room and I will get you back just as soon as I have
5 finished. Please leave your notepads and don't discuss
6 the case amongst yourselves.

7 [Whereupon, the jury exits at 3:10 p.m.]

8 THE COURT: All right. First of all does the
9 State have any motions?

10 MR. DEJEU: No, Your Honor.

11 THE COURT: Does the defense have any motions?

12 MR. SHELTON: Yes, Your Honor. First...

13 [Whereupon, Mr. Shelton and Mr. Schwacke confer]

14 THE COURT: First of all Mr. Schwacke if you want
15 to renew your previous motions I'll be glad to hear from
16 you.

17 MR. SHELTON: Yes, Your Honor.

18 THE COURT: And I'll let him take the other motions
19 but do you want to renew your motion?

20 MR. SCHWACKE: I do, Your Honor. We would move to
21 renew our motion that the court improperly authorized an
22 interpreter who was not qualified and that the court
23 failed to grant a mistrial upon the State's self
24 determined failure to use an Interpreter in their direct
25 testimony to begin with.

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1 THE COURT: Okay. That motion for mistrial is
2 denied.

3 MR. SCHWACKE: Yes, Your Honor.

4 THE COURT: I'll be glad to hear you. Do you have
5 any motions?

6 MR. SHELTON: Yes, Your Honor, toward the directed
7 verdict motion I move that both the Kidnapping and Armed
8 Robbery be dismissed and that our directed verdict be
9 granted. Viewing the evidence most favorable to the
10 State I don't believe that there has been -- the evidence
11 would rise for the Kidnapping specifically.

12 The testimony of the victim had the ability to
13 leave. He was in control of the vehicle at all points in
14 time. He could have left so there -- was an ability for
15 him to leave and he was in essence not kidnapped. Your
16 Honor, for the Armed Robbery just that, Your Honor ---

17 THE COURT: --- I'm sorry. What about the Armed
18 Robbery?

19 MR. SHELTON: For the Armed Robbery, Your Honor we
20 just move that the State hasn't met their burden for a
21 directed verdict on any of the elements.

22 THE COURT: Okay. As far as the Armed Robbery,
23 motion denied. I'll be glad to hear you on the
24 Kidnapping.

25 MR. DEJEU: Thank you, Your Honor. May it please

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1 the court? I think the court is not concerned with the
2 -- is only concerned with existence of evidence not it's
3 weight. I believe the testimony was that the defendant
4 -- the victim was held at knife -- threatened with a
5 knife for the duration of the ride from the gas station
6 all the way to the time when he saw the police car.

7 He did testify he was in fear. He felt like he had
8 to obey all the commands from the defendant. I think
9 there is substantial evidence to submit a case to the
10 jury in a light most favorable to the State.

11 THE COURT: Okay. Anything you have in rebuttal
12 or reply very briefly?

13 MR. SHELTON: Just Your Honor, he did admit that
14 the doors weren't locked, that he was in control of that
15 vehicle at all points in time and I just...

16 THE COURT: Okay. Motion denied.

17 MR. SHELTON: Thank you.

18 THE COURT: Is your -- is the defendant going to
19 testify? Do you want me to give him his Fifth Amendment
20 Rights and let him make a decision on whether he wants to
21 testify or not or how do you want to proceed, Mr.
22 Shelton?

23 MR. SHELTON: Yes, Your Honor. If you don't mind
24 giving him his rights ---

25 THE COURT: --- I don't mind at all ---

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1 MR. SHELTON: --- I would like to discuss briefly
2 with him about what has already come out and his
3 decision.

4 THE COURT: Okay.

5 FIFTH AMENDMENT RIGHTS

6 THE COURT: Mr. Greene, if you would stand please
7 sir and raise your right hand?

8 [Whereupon, the witness is duly sworn by the court]

9 THE COURT: Now before we start this questioning
10 I'm going to explain to you your Fifth Amendment Rights.
11 I don't want to go into the facts of the case. I'm not
12 asking you to tell me anything about the case. I'm not
13 concerned about that okay?

14 MR. GREENE: Yes, sir.

15 THE COURT: And during the course of asking you the
16 questions or explaining to you your Fifth Amendment
17 Rights if you have any questions of the court or your
18 attorneys please let me know and I will stop and allow
19 you to discuss the questions that I ask you with your
20 attorneys okay? Can you do that?

21 MR. GREENE: Yes, sir.

22 THE COURT: Under the South Carolina Constitution
23 and the United States Constitution the Fifth Amendment
24 Right provides that no person shall be compelled in any
25 criminal case to be a witness against themselves. In

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1 other words no one can force you to testify. Do you
2 understand?

3 MR. GREENE: Yes, sir.

4 THE COURT: This is a right and privilege which the
5 law extends to you. It's your personal privilege; it's
6 your individual privilege do you understand?

7 MR. GREENE: Yes, sir.

8 THE COURT: It doesn't belong to the lawyers; it
9 belongs to you. You have the right to testify but you
10 also have the right not to testify. Do you understand?

11 MR. GREENE: Yes, sir.

12 THE COURT: The court will grant the right to your
13 counsel or the lawyers before you make a decision if you
14 want to discuss it further with your attorney I will give
15 you time to do that. Do you understand?

16 MR. GREENE: Yes, sir.

17 THE COURT: If you elect not to testify I will
18 inform the jury that it cannot be used against you as
19 inference of guilt and your failure to testify cannot be
20 considered by the jury in their deliberations in any
21 manner whatsoever. Do you understand?

22 MR. GREENE: Yes, sir.

23 THE COURT: Now if you do elect to testify you will
24 be required to answer the questions if they are
25 appropriate under the rules of evidence and the rules of

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1 court. Do you understand?

2 MR. GREENE: Yes, sir.

3 THE COURT: It's not like you see on television
4 where somebody takes the witness stand and asks one
5 question and they take the Fifth Amendment and then they
6 answer the next question. You either decide to testify
7 or you decide not to testify. Do you understand?

8 MR. GREENE: Yes, sir.

9 THE COURT: If you take the Fifth Amendment and do
10 not get on the witness stand but once you take the
11 witness stand you are obligated to answer the questions.
12 Do you understand?

13 MR. GREENE: Yes, sir.

14 THE COURT: Do you have any question about that?

15 MR. GREENE: No, sir.

16 THE COURT: Now you will be subject to cross-
17 examination and any rules of evidence that apply to
18 cross-examination. Do you understand?

19 MR. GREENE: Yes, sir.

20 THE COURT: Now as I said to you earlier it's your
21 personal decision. It's not your lawyer's decision; it's
22 yours. Your lawyers can advise you on whether to testify
23 or not testify. But the final decision is yours. And
24 your decision to testify or not testify must be freely,
25 voluntarily, intelligently given. Has anybody forced you

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1 to testify?

2 MR. GREENE: No, sir.

3 THE COURT: Has anybody threatened you if you
4 testify?

5 MR. GREENE: No, sir.

6 THE COURT: Has anybody put any pressure on you to
7 testify or not to testify?

8 MR. GREENE: No, sir.

9 THE COURT: Have you understood the questions that
10 I have asked you?

11 MR. GREENE: Yes, sir.

12 THE COURT: Have you discussed your ability to
13 testify or not testify with your attorney?

14 MR. GREENE: Yes, sir.

15 THE COURT: Did you understand the conversations
16 that you had with your attorney?

17 MR. GREENE: Yes, sir.

18 THE COURT: Do you understand what I have explained
19 to you?

20 MR. GREENE: Yes, sir.

21 THE COURT: Do you desire to discuss it any further
22 with your attorneys on whether you want to testify or not
23 testify? I'll give you some time to do that as I said
24 earlier if you want to?

25 MR. GREENE: No, sir.

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1 THE COURT: Pardon?
2 MR. GREENE: No, sir.
3 THE COURT: Are you ready to make your decision?
4 MR. GREENE: Yes, sir.
5 THE COURT: All right. Do you wish to testify?
6 MR. GREENE: Yes, sir.
7 THE COURT: You desire to testify?
8 MR. GREENE: Yes, sir.
9 THE COURT: Okay. I find that the defendant has
10 freely, voluntarily, intelligently made the decision to
11 testify with the advice of counsel. I do not know what
12 counsel advised him but I'm not going to go into that.
13 Let me just ask you one question. Does he have a prior
14 record?
15 MR. SHELTON: Yes, Your Honor.
16 THE COURT: Is it an impeachable type of record or
17 what is it?
18 MR. SHELTON: It's Strong Armed Robbery.
19 THE COURT: Pardon?
20 MR. SHELTON: It's Strong Armed Robbery, Your
21 Honor.
22 THE COURT: So it was a Strong Armed Robbery?
23 MR. SHELTON: Yes, Your Honor.
24 THE COURT: So that would be an impeachable offense
25 is that correct?

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1 MR. SHELTON: Yes, Your Honor.
2 THE COURT: Does he have any other record Solicitor
3 that you know of that you plan on using?
4 MR. DEJEU: No, Your Honor, I don't believe so.
5 THE COURT: When was the Strong Armed Robbery? Was
6 it within the ten years?
7 MR. SHELTON: Yes, Your Honor.
8 MR. DEJEU: From 2011.
9 THE COURT: Pardon?
10 MR. DEJEU: From 2011.
11 THE COURT: All right. Does he have any other
12 criminal history?
13 MR. SHELTON: Not that I see in his rap sheet, Your
14 Honor.
15 THE COURT: Okay.
16 MR. DEJEU: No, Your Honor.
17 THE COURT: All right. Mr. Greene, let me advise
18 you that I don't know if they are going to or not but the
19 State can ask you about that prior conviction. Do you
20 understand?
21 MR. GREENE: Yes, sir.
22 THE COURT: If you decide to testify do you
23 understand?
24 MR. GREENE: Yes, sir.
25 THE COURT: Okay. Do you have any questions about

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1 it?

2 MR. GREENE: No, sir.

3 THE COURT: All right. Knowing that they can use
4 that Strong Armed Robbery against you on cross-
5 examination do you still desire to testify?

6 MR. GREENE: Yes, sir.

7 THE COURT: All right. Thank you so very much.
8 You may have a seat. Thank you.

9 [Whereupon, the witness complies]

10 THE COURT: We'll take about a ten minute -- five
11 or ten minute break and give you a chance to get ready
12 for whoever you're going to call first okay?

13 MR. SHELTON: Thank you, Your Honor. Do you want
14 him in the box before the jury comes back?

15 THE COURT: In the box? You talking about the jury
16 to see -- you talking about the witness chair?

17 MR. SHELTON: Yes, Your Honor. He has ankle braces
18 -- so before I call him...

19 THE COURT: Are you going to call him first or are
20 you going to call Mr. Manigault first?

21 MR. SHELTON: I believe I'm going to call somebody
22 else first, Your Honor.

23 THE COURT: What I'll do if it's alright with you
24 when you finish with Manigault I'll send the jury out and
25 y'all can put -- I'll let you -- let him go in the

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1 witness chair so they don't see the ankle braces.

2 MR. SHELTON: There is one matter I forgot, Your
3 Honor.

4 THE COURT: I'm sorry, what?

5 MR. SHELTON: There is one matter but we can do it
6 after break that I'd like to discuss at a side bar.

7 THE COURT: Okay. You want to do it now?

8 MR. SHELTON: We can do it now.

9 THE COURT: Okay. Come on up. Just remind me to
10 send them out and I'll let him take the witness stand so
11 they don't at least see the -- what is it ankle
12 bracelets?

13 MR. SHELTON: He does have ankle bracelets, yes.

14 [Whereupon, an off the record bench conference is
15 held]

16 [Whereupon, court is in recess from 3:21 p.m. to
17 3:40 p.m.]

18 THE COURT: Before we took a break and we were
19 talking about Mr. Greene's Fifth Amendment Rights to
20 remain silent and during the course of me asking
21 questions Mr. Shelton I did not give you an opportunity
22 to put anything on the record that you may want to put on
23 the record concerning Mr. Green's decision to testify or
24 not testify. I'll be glad to hear you on that.

25 MR. SHELTON: Just that I have -- we have gone over

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1 extensively his decision to testify or not to testify and
2 everything that could come out in addition to what it
3 means to testify and what it means as far as last
4 argument, introducing evidence. I've explained
5 everything in the trial procedural wise and his decision
6 to testify and introducing evidence.

7 And it's against my advice but he knows that it's
8 his decision and only his decision and he's decided to
9 testify. But it is against my advice, Your Honor.

10 THE COURT: Okay. So you had advised him not to
11 testify?

12 MR. SHELTON: Yes, Your Honor.

13 THE COURT: Okay. But you did explain to him it's
14 his decision?

15 MR. SHELTON: Absolutely. Yes, Your Honor.

16 THE COURT: Okay. Mr. Greene, is there anything
17 you would like to add to the conversation that you had
18 with your attorney on your right to testify or not
19 testify?

20 MR. GREENE: No, sir.

21 THE COURT: All right. Is the State ready to
22 proceed?

23 MR. DEJEU: Yes, Your Honor.

24 THE COURT: Is the defense ready to proceed?

25 MR. SHELTON: Yes, Your Honor.

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1 THE COURT: Okay. Bring us the jury please.

2 [Whereupon, the jury enters at 3:41 p.m.]

3 THE COURT: Does everybody have their pads? Y'all
4 are getting to where you file in just like you know which
5 way to file in to get the right pad without swapping them
6 around. Would you call your first witness please?

7 MR. SHELTON: Yes, Your Honor. May it please the
8 court? The defense calls D. Manigault.

9 [Whereupon, Mr. Manigault comes forward]

10 [Whereupon, the witness is duly sworn by the Clerk
11 of Court]

12 CLERK OF COURT: Please be seated. State your name
13 and spell your last name for the record.

14 THE WITNESS: My last name -- D. Manigault.

15 CLERK OF COURT: Spell your last name?

16 THE WITNESS: M-A-N-I-G-A-U-L-T.

17 - - - - -

18 D. MANIGAULT,

19 Having been first duly sworn,

20 Was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SHELTON:

23 Q. Mr. Manigault, speak clearly into the microphone and
24 if you don't mind speak to the jury. How old are you?

25 A. Eighty two years old.

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1 Q. You have a lot of life experience.

2 A. Very much so.

3 Q. Did you graduate high school?

4 A. Yes, I did.

5 Q. Did you graduate college?

6 A. Yes.

7 Q. What college?

8 A. City College in New York City.

9 Q. And what has been your experience in New York? What
10 did you do in New York?

11 A. In New York I've always worked as a youth counselor
12 for the New York Police dealing with kids from 16 to 21
13 as a go-between between the police and the parent who
14 couldn't relate; and that was the connection I did.

15 Q. Did you also serve in the military?

16 A. Yes. I served in Korea in 1951 through '53.

17 Q. And how long did you work with New York Police?

18 A. I worked for New York near 25 years -- 25 years.

19 Q. And at some point you found yourself down here in
20 the Lowcountry?

21 A. Yes. After I had left the New York Police
22 Department I moved to Chicago and I worked with Barak O.
23 as -- when he was an organizer.

24 And I joined with him and we were travelling all
25 over the United States in every state except Hawaii and

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1 Alaska voter registration. And that's what I did and I
2 still do that even now.

3 Q. And you worked with Foster Adopt --

4 A. Then in Chicago -- in Illinois I'm a licensed
5 counselor so I dealt with foster care dealing with the
6 courts, dealing with adoptive parents, foster parents,
7 caseworker, social worker and so forth.

8 So in that case I was under a 24-hour call if
9 something happened that we need a parent, a caseworker,
10 or something happen with a child then I would be called
11 to pick them up and to place them with somebody or in the
12 care of somebody else.

13 Q. At some point in time it was through you voter
14 registration I believe that you met Wilton's father.

15 A. Oh, yes. In voter registration I met Wilton's
16 father. That was what fifteen years ago -- sixteen years
17 ago.

18 And he joined with me in voter registration and we
19 became very good friends and as a result I met the older
20 brother and the father and the whole family. So I got
21 involved with the whole family as a result of that.

22 Q. So how long have you known -- would you say you've
23 known Wilton then?

24 A. Wilton? I've known him seven and half years now.

25 Q. He's the III -- Wilton the III because he's named

1 after his father?

2 A. There are three Wiltons. The oldest father is
3 Wilton Greene, I. His father is the II, and this is
4 Wilton Greene the III.

5 Q. And did at some point in time you take in Wilton?

6 A. Yes, Wilton -- I lived at [REDACTED] Epson Plantation
7 Gardens and Wilton lived with me for a while.

8 Q. And...

9 A. At that address.

10 Q. For the members of the jury can you explain where
11 that address is -- is located?

12 A. It's right near where Bojangles is. Bojangles or
13 the motor vehicle Bureau.

14 Q. The D-M-V?

15 A. The D-M-V, they are right together.

16 Q. It's right off 52?

17 A. I think that is 52, yes.

18 Q. And there is a bank also?

19 A. There is a what?

20 Q. Is there a bank in there?

21 A. Yes, there is a bank which is the -- what's the name
22 of the bank -- I have --

23 Q. Is it maybe First Federal?

24 A. Yes.

25 Q. You remember when Wilton was arrested for this

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1 offense that we are here today?

2 A. The morning of -- yes, I do.

3 Q. May 22nd?

4 A. Yes, 9:30 that morning.

5 Q. Okay. And ---

6 A. --- he left me at 9:30 that morning.

7 Q. He left at 9:30?

8 A. He left me at 9:30 in the morning and I asked him
9 where he was going. He told me that he had to make a
10 stop near Big Lots -- he was going to Big Lots and he
11 would be back within an hour. And the next thing I heard
12 that he had been arrested.

13 Q. And was he with you the night before?

14 A. Yes, the night before he was with me.

15 Q. Was his girlfriend also staying with you?

16 A. His girlfriend who works -- I forgot what the
17 company she works for, she was with me -- they spent the
18 night at my house that night.

19 And she left -- she gave him some money, which was a
20 total of -- I think she gave him 150 dollars and I gave
21 him some money. When he left he had about supposedly
22 about 300 dollars.

23 Q. Okay. And you gave Wilton money when he asked
24 and...

25 A. At all times. Money was no problem.

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1 Q. Money was no problem?

2 A. No.

3 Q. Wilton was staying with you?

4 A. Yes; at the time when he got arrested.

5 Q. No further questions.

6 THE COURT: Cross-examination?

7 MR. DEJEU: Thank you, Your Honor. May it please
8 the court?

9 CROSS-EXAMINATION

10 BY MR. DEJEU:

11 Q. Mr. Manigault, you don't have -- you don't exactly
12 what happened that day -- what the defendant did do you?

13 A. I wasn't with him. I told you he left me at 9:30;
14 only what he told me and what I heard about.

15 Q. So you don't know anything about the incident that
16 we're here in court today -- about the facts about what
17 happened that day?

18 A. What do you mean the facts? What do you mean?

19 Q. You don't know anything about how he took a ride
20 with this man [indicates] and put the gun -- the knife to
21 him?

22 A. I was told. I spoke to Detective Roach. Detective
23 Roach and I talked and he explained to me what had
24 happened.

25 Q. So somebody else told you about what happened? You

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1 don't know ---

2 A. --- no, I was not there.

3 Q. Thank you. Thank you, sir.

4 THE COURT: Any redirect?

5 MR. SHELTON: No, Your Honor.

6 THE COURT: You may step down. Thank you very
7 much.

8 MR. SHELTON: May Mr. Manigault be excused, Your
9 Honor?

10 THE COURT: Mr. Manigault you are welcome to say if
11 you so choose otherwise you may be excused. Thank you so
12 very much.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 MR. SHELTON: Your Honor, at this time...

16 THE COURT: You're going to call the defendant?

17 MR. SHELTON: Yes, Your Honor.

18 THE COURT: All right. Mr. Foreman and ladies and
19 gentlemen of the jury y'all are going to need some
20 skates; I'm going to have to send you back out to the
21 jury room very briefly. Leave your notepads in the
22 chair.

23 [Whereupon, the jury exits at 3:52 p.m.]

24 THE COURT: Bring the defendant around to the
25 witness stand please? He's just on leg chains is that

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1 all?
2 DEPUTY: Yes, sir.
3 [Whereupon, Mr. Greene takes the witness stand]
4 THE COURT: Are you ready to proceed?
5 MR. SHELTON: Yes, Your Honor.
6 THE COURT: Bring us the jury please?
7 [Whereupon, the jury enters at 3:54 p.m.]
8 THE COURT: Okay. Your witness?
9 MR. SHELTON: Thank you, Your Honor. Your Honor.
10 - - - - -
11 WILTON GREENE
12 DIRECT EXAMINATION
13 BY MR. SHELTON:
14 Q. Wilton, how you doing?
15 A. Doing all right.
16 Q. Tell the jury -- how old are you?
17 A. Twenty-four.
18 Q. And how far did you get in school?
19 A. Twelfth grade.
20 THE COURT: You want to swear the witness please?
21 I'm sorry.
22 [Whereupon, the witness is duly sworn by the Clerk
23 of Court]
24 CLERK OF COURT: Please state your name for the
25 record.

1 THE WITNESS: Wilton Greene.

2 THE COURT: How do you spell your last name Mr.

3 Greene?

4 THE WITNESS: G-R-E-E-N-E.

5 - - - - -

6 WILTON GREENE,

7 Having been first duly sworn,

8 Was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SHELTON:

11 Q. [Mr. Shelton] Wilton, how old are you?

12 A. Twenty-four.

13 Q. And how far did you get in school?

14 A. Twelfth.

15 Q. Where did you grow up?

16 A. Mostly St. Stephen and Alvin.

17 Q. And is that where you went to school -- Timberland
18 area?

19 A. Yes, sir.

20 Q. And then right before this incident on May 22, 2012
21 where were you staying?

22 A. I was staying in Jamestown for a little bit but most
23 of the time I was staying in Moncks Corner with my
24 Godfather.

25 Q. With D?

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1 A. Yes, sir.

2 Q. And your girlfriend stayed with you?

3 A. Yes. We was at my father's house but he didn't
4 allow us having sex in the house so that's why I started
5 going over to his house more often.

6 Q. Okay. Where was Mr. Manigault's place?

7 A. Behind Bojangles next to a South Carolina Federal I
8 think.

9 Q. Okay. And the night before did you go out with
10 your girlfriend the night before?

11 A. We went to the bank.

12 Q. And what happened when you went to the bank?

13 A. Got some money out.

14 Q. Okay. And what happened that morning?

15 A. That morning I told my girl I would be back. I took
16 100 dollars with me. Before I left I went to my
17 Godfather and asked him did he have an extra pair of
18 pants because I had basketball shorts on when I came
19 there the 21st on that night I already had those pants
20 on.

21 So I asked him if he extra pants. He had other
22 nephews that stay over there so he gave me some pants to
23 put on and then I left.

24 Q. And then where did you go?

25 A. I went to Big Lots.

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1 Q. Okay. And what else do you want to tell us about
2 this incident?

3 A. I went to Big Lots. I went -- with the 100 dollars
4 I took 80 dollars of it I bought drugs; about 3 grams
5 worth of crack cocaine.

6 Q. Okay. What else?

7 A. And I started waiting out there for a sale. It was
8 hot. I had two pants on. I probably stood out there
9 probably 30 minutes; it wasn't long. I didn't stay out
10 there pretty much long. My girlfriend told me to be back
11 at a certain time.

12 So I saw time was running down so I decided to
13 leave. When I started leaving Big Lots parking lot
14 that's when I saw Mr. Bing. I met with Mr. Bing before.
15 I did business with Mr. Bing.

16 And I saw his car facing the way going back to
17 Bojangles so when I approached him he smiled at me. He
18 asked me if I was working. In other words he asked me
19 did I have drugs on me. I told him yes. So I asked him
20 could he give me a ride.

21 He asked me where did I need to go and I said
22 Bojangles. He said Bojangles? When he said Bojangles he
23 said it like he didn't understand me. I said yes,
24 Bojangles. Then he said Bojangles again. So I stepped
25 away from his car and walked closer to the sidewalk to

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1 the left to see if I could see Bojangles so I could point
2 it out for him but I saw McDonalds. I told him yes, it
3 is near McDonalds.

4 He said okay so he started pumping his gas. So I
5 waited while he pumped his gas and after he finished he
6 went in the front seat and started clearing out stuff in
7 the front seat. He had a lot of junk in the front seat.

8 So I sat in the car and we drive off. Before we
9 drive off though we was riding real slow and I asked him
10 what did he want. He said first he said 40 but I tell
11 him how about 60.

12 But he told me he didn't have much money at the time
13 and I tell him if you credit from me you'll have to pay
14 me 120 if I give you 60. He said all right but he didn't
15 have money.

16 So when I did business with him the first time he
17 gave me his wallet for collateral. He had a green card
18 in his wallet. So that's what he gave me the first time
19 and he give it to me again. So while we was riding he
20 told me to hold the steering wheel while he was driving.

21 And while he was driving he lit up -- he told me to
22 cut the piece and he told me to go under the seat and he
23 said something about a kitchen knife. So I reached under
24 the seat and I cut pieces of the crack cocaine and I gave
25 it to Mr. Bing. He hit it and then we started driving.

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1 And then I started moving in the front seat because he
2 had a lot of junk in there so I got up and I moved some
3 things in the back. I sloughed up and I moved some stuff
4 in the back.

5 There was stuff still poking me so when I got up I
6 reached up again like this [indicates] and I had a Swiss
7 Army blade in my pocket and a small Swiss probably about
8 this big right here [indicates], small fold knife in my
9 pocket.

10 And when I pulled it out that's when Mr. Bing said
11 what happened to you? I said just drop me off to the
12 bank. Then he said to the bank. I said yes, drop me off
13 by the bank.

14 He said why you want me to drop you at the bank. I
15 said just drop me off to the bank because that's where I
16 want to go. He said no McDonalds. I said no, the bank.
17 I said its close by McDonalds.

18 That's when he said oh I get it you want all the
19 money. You want all the money. I said no; just take me
20 to the bank. That's where I want to go at. So once I
21 told him that Mr. Bing -- I'm trying to remember, I'm
22 trying to remember.

23 He started acting a little funny. I kept telling
24 him go to the bank. He would keep saying I don't got no
25 money. I told him I didn't want his money. When I had

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1 the knife I folded the knife up and I put it inside the
2 bag with the drugs. I put it inside the bag with the
3 drugs.

4 And then that's when he reached in his pocket and he
5 pulled out like -- it was five dollar bill and a couple
6 of ones. He handed the money to me and I said I don't
7 want the money. I said you don't got all my money I want
8 all my money.

9 Then he was like take the money. I was like no, I
10 want all the money. I said when you pay me I want all
11 the money. And he said here, this is all I have. Then I
12 was like when you give me this money you still going to
13 owe me 160 -- I mean 120.

14 He was like okay and he said give me my wallet. I
15 said I can't give you your wallet until you pay me my
16 money like we did last deal.

17 So then I cut him another piece and I gave him the
18 drug -- I cut him another piece and put the folded knife
19 back inside. And the knife that he gave me was in -- he
20 told me to get from under the seat it was in the console
21 where the cup holder be at.

22 So he took another hit and he was driving real slow
23 and I know I had drugs on me and I know when I stay at
24 Bojangles the police they eat at Bojangles they eat
25 breakfast there and it was in the morning. I was telling

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1 him drive faster, drive faster but he still kept going
2 real slow. So when he hit it again that's when he starts
3 saying give me my wallet. I said I tell you you already
4 got my drugs. You got to give me 160 and I'll give you
5 wallet back.

6 So then that's when he saw the police. I said if
7 the police stop us we got to run. Then he said I'm not
8 going to run. I said well you're going to get locked up
9 I told him I was going to run.

10 So he said he wasn't going to run and when we saw
11 the police off in the distance we was driving real slow.
12 So then he looked at the knife -- he still was asking me
13 for my wallet.

14 He looked at the knife that he had in the console --
15 he looked at it and I'm watching him because he -- after
16 he started acting funny. When he looked at it I'm
17 looking at him and when he go to reach for the knife I
18 snatched it.

19 I moved his arm out the way. With my left arm I
20 moved it out the way and that's when he swerved. And as
21 soon as he stopped I ran to get the drugs off me; that I
22 could throw the drugs off me.

23 Q. And you have a conviction?

24 A. Yes, sir.

25 Q. What's the conviction for?

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1 A. I plead to Strong Armed Robbery.

2 Q. No further questions.

3 THE COURT: Cross-examination?

4 MR. ALFARO: Yes, Your Honor.

5 THE COURT: Before you start I want to ask one
6 question. Mr. Greene, do you spell your name G-R-E-E-N-E
7 -- have an E after the N?

8 THE WITNESS: It is. Originally it was not
9 supposed to have E on the end but my father changed it; I
10 don't know why. But it was without the E.

11 THE COURT: But your father's name has an E after
12 the N?

13 THE WITNESS: Yes, he changed it legally.

14 THE COURT: And that's the name you go by?

15 THE WITNESS: Well most people call me by my
16 nickname?

17 THE COURT: I know. But what does your driver's
18 license say?

19 THE WITNESS: Wilton Greene.

20 THE COURT: Does it show G-R-E-E-N-E?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. Thank you. Please proceed.

23 MR. ALFARO: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. ALFARO:

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1 Q. Mr. Greene, before we get to the drug deal story
2 that you told on direct I want to ask you a couple of
3 questions and see if we can agree on some things. You
4 admit you met the victim in the parking lot of that gas
5 station correct?

6 A. Yes, sir.

7 Q. Not inside, but outside in the parking lot?

8 A. Yes, outside.

9 Q. And you asked him if he would give you a ride?

10 A. Yes.

11 Q. And he smiled at you and agreed to give you a ride?

12 A. Yeah.

13 Q. And you waited for him to pump the gas?

14 A. Yes, sir.

15 Q. And then got in the car with him?

16 A. Yes, sir.

17 Q. Just you two in the car correct?

18 A. Yes, sir.

19 Q. Him driving and you in the passenger seat?

20 A. Yes, sir.

21 Q. And at some point during your ride from the gas
22 station towards up 52 at some point you came into
23 possession of the victim's wallet correct?

24 A. Before we even pulled out.

25 Q. Before you even left the parking lot?

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1 A. Yes. Basically before we left out he gave me his
2 wallet because that's the deal we had last time I dealt
3 with him.

4 Q. Okay. So he's pumping gas. You come up and ask
5 for a ride. He gets in the car and in the middle of a
6 parking lot -- this is daytime correct?

7 A. Yes, sir.

8 Q. In the middle of the parking lot in the daytime he
9 just pulls his wallet out and hands it to you?

10 A. No, once we get inside the car. Before we left the
11 parking lot that's when he gave me the wallet. I gave
12 him the drugs first, he gave me the wallet.

13 Q. So you get in the car with him and then he hands you
14 his wallet?

15 A. Yes, sir.

16 Q. And that's the wallet that had his green card, some
17 looks like some Band-Aids, and an identification card;
18 State's exhibit 2? Is that what was in the wallet?

19 [Whereupon, the witness is shown photograph]

20 A. Yes. The money was not in the wallet.

21 Q. Okay. So you got the money from him separately.
22 You got the wallet from him in the parking lot?

23 A. No, I get money from him -- he handed me a five
24 dollar bill and some ones but he didn't have no money in
25 the wallet. I checked the wallet and he didn't have no

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1 money in the wallet.
2 Q. Do you know where the victim lives?
3 A. No.
4 Q. So under your drug deal story you were going to take
5 a wallet that had a green card, Chinese identification
6 card, give him drugs and that was the collateral?
7 A. That was the collateral.
8 Q. With no way to collect because you had no idea where
9 he lived?
10 A. I collected -- the first time I collected from Mr.
11 Bing we would meet. Sometimes he would pay me that same
12 day but he would let me know when to meet him back.
13 Wherever he dropped me off at he would tell me to
14 come back in an hour or so and I would wait there.
15 Mostly at Big Lots; I would wait at Big Lots.
16 Q. But supposedly if you had done this before this time
17 was different because you didn't wait.
18 A. That's what I'm saying. He wouldn't drop me off.
19 He said he didn't have much money then on him. So I was
20 going to go back -- tell him to drop me off at Bojangles
21 and then we was going to meet wherever he dropped me off
22 at.
23 Q. And can we also agree that you had the knife in your
24 hand at the time that he swerved towards where the cops
25 were?

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1 A. No, sir. I had the knife in my pocket.
2 Q. Which knife did you have in your pocket?
3 A. I had the folded knife. I had the folded knife in
4 the bag inside my pocket!
5 Q. Are you saying full knife or folding knife?
6 A. Folding knife; the folding knife.
7 Q. What about the knife that doesn't fold?
8 A. The knife that doesn't fold I first took that from
9 under the seat when he told me to cut the drugs. When I
10 cut it I took it from under the seat and I put it in the
11 console where the cup -- the cup holder.
12 Q. I thought you testified on direct that when he
13 started going towards the cops you saw him look at the
14 knife and you picked that knife up.
15 A. That's when we swerved. When we swerved that was
16 the last -- that's when I picked the knife -- I picked
17 the knife up at the last moment. That's when I picked
18 the knife up.
19 Q. Okay. And that's what I asked you. When the time
20 that you swerved at the cops you had that knife in your
21 hand?
22 A. But I put it in my pocket, yes.
23 Q. Which pocket did you put it in?
24 A. I think I put in my right pocket, my right pocket.
25 MR. ALFARO: Can I see the knife, Your Honor?

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1 Q. [Mr. Alfaro] I'm going to show you what is in
2 evidence as State's exhibit number 9.

3 [Whereupon, the witness is shown exhibit]

4 Q. Is this the knife that you said was in the cup
5 holder that you took at the time that he swerved?

6 A. Yes, sir.

7 Q. Okay. Then you took this knife that doesn't fold
8 and put it in your pocket?

9 A. Yes because he was reaching for it so I took it out
10 of his reach. I guess he was tripping off the drugs so I
11 took it out of his reach.

12 Q. Okay. So you're swerving -- you're coming towards
13 the cops and you're swerving towards the cops and you
14 decide you're going to grab the knife? Not throw it in
15 the backseat, not throw it back under the seat, you're
16 just going to grab a knife and put it in your pocket?

17 A. Because we -- when he panicked I panicked. That's
18 when I grabbed -- I grabbed the knife at the last moment.
19 I didn't think about throwing the knife inside the car.
20 I was thinking about just getting away from the police
21 because I had drugs on me.

22 Q. So you were just getting away not because you robbed
23 him at knifepoint but because you had drugs?

24 A. No, I never did rob him. I had no use to rob him.
25 My girl gave me money and my Godfather gave me money. I

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1 didn't need to rob him.

2 Q. You said you left the house that morning with 100
3 dollars.

4 A. I left with 100 and spend 80. I had 20 left over.

5 Q. Okay. But you didn't need any money?

6 A. I didn't need no money. I left money at the house.

7 Q. And the wallet was just collateral?

8 A. Yes, collateral.

9 Q. Okay. Now, you remember speaking to Officer Judy
10 at the time that you were arrested correct?

11 A. Yes, sir.

12 Q. Let me backtrack one second. That knife that I
13 showed you that's the knife that you had in your
14 possession when you ran from the police?

15 A. Yes, sir.

16 Q. And that's the knife you pulled out of your pocket
17 at the time the officer challenged you with his weapon
18 and told you to drop it?

19 A. Yes, sir. It was poking me so I took it out my
20 pocket.

21 Q. What happened to the folding knife that you were
22 talking about?

23 A. I put it inside the bag with the drugs and that's
24 why I wanted to run just to get the drugs off me.

25 Q. Okay. So you threw the drugs away while you were

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1 running?

2 A. I didn't really like toss it but when I was running
3 I didn't want him to see me throw it so when I'm running
4 I like dropped it. I didn't toss it. I didn't want him
5 to see me doing it.

6 Q. What pocket were you carrying your drugs in?

7 A. I had them in my right.

8 Q. Which pocket were you carrying that knife in?

9 A. Right.

10 Q. And so you reached into your pocket with that knife
11 that doesn't fold?

12 A. Yeah.

13 Q. Did you cut your hand?

14 A. I had cuts on my hand but I don't know if it was
15 from the knife.

16 Q. And all this is going on while you're running away
17 from the police?

18 A. Yes, sir.

19 Q. You're being chased?

20 A. Yes, sir.

21 Q. Okay. And you while running go into your pocket
22 and pull the bag of drugs with the folding knife out,
23 don't cut yourself on that knife, take that out and throw
24 that as you're running. That's your story today?

25 A. Yes. The sandwich bag is pretty big -- that knife

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1 can't really cut me like that. And I didn't have no
2 tight jeans on. I had big jeans that I got from my
3 Godfather was big loose jeans. The knife had plenty of
4 space in my pants; it couldn't cut me.

5 Q. So that reaching in while you're running because --
6 I mean you may run different than me but when I run my
7 leg moves.

8 A. Yeah.

9 Q. And when my leg moves my pocket moves.

10 A. Yeah.

11 Q. And if I'm reaching in my pocket while my legs are
12 moving I'm not doing that with a knife that doesn't fold
13 that's sticking up or down ---

14 A. --- the knife was sticking down. And that's why --
15 when I was running -- when I ran into the car that's when
16 I took it out. It was downward -- the blade was downward
17 so it was impossible to cut me.

18 The only thing it was doing was poking my leg. So
19 when he hit me I know he would have seen me throw the
20 knife so I wasn't trying to throw the knife to hide it
21 from him. I was taking the knife out because it was
22 poking me.

23 Q. So you cut your leg while you were running?

24 A. No, it was just poking me. I didn't feel it until
25 after he hit me. When he hit me that's when I felt it.

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1 I felt the knife poke me and that's when I took the knife
2 out.

3 Q. So you had the presence of mind and the eye hand
4 coordination and the ability to pull the drugs out, drop
5 the drugs, didn't cut yourself and also didn't think to
6 drop that knife at the same time?

7 A. I don't see why -- it wasn't -- my knife I wasn't
8 using it for no type of harm. The knife was pointed
9 downward so the handle is going to be the first thing I
10 touched and it was a sandwich bag so I touched the bag
11 before I touched the knife. The blade was downward; I
12 touched the handle.

13 Q. Would it -- so you're saying that you were thinking
14 enough and had enough life experience to know that you
15 didn't want the cops to catch you with drugs in your
16 pocket.

17 A. Yeah.

18 Q. But you didn't have enough life experience and
19 knowledge to know that you didn't want the police to
20 catch you with a knife in your pocket after they are
21 chasing you.

22 A. Because I'm not thinking I'm going to get in trouble
23 for a knife that wasn't mine. I'm thinking I got 3 grams
24 of drugs on me -- a little less since I gave him some.
25 I'm thinking about getting the drugs off me. I'm not

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1 thinking about a knife that wasn't mine.

2 Q. You don't think that -- so you weren't concerned
3 that if the cops are chasing you, and he chased you a
4 good way; from the Walgreens, past the Huddle House to
5 that parking lot correct?

6 A. Yeah.

7 Q. And at some point during that run is when you
8 managed to get the drugs out and drop them?

9 A. Yeah.

10 Q. You didn't think that cops get nervous when someone
11 they are chasing has a knife in their pocket and that's
12 how people sometimes get shot? You weren't thinking
13 about that?

14 A. He didn't know I had no knife in my pocket so I
15 don't see why he would get nervous. He got nervous once
16 I took it out my pocket.

17 He never knew I had a knife in my pocket because I
18 never -- when I exited the car I had the knife in my
19 pocket. I didn't have it in my hand.

20 Q. Now do you remember Officer Judy asking you -- he
21 asked you how you got the wallet and the money that
22 belonged to Mr. Zhang?

23 A. Yes.

24 Q. Do you remember what you told him?

25 A. I told him he gave it to me.

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1 Q. Okay. And do you remember him then asking you how
2 come he says you had a knife to his belly? Do you
3 remember what you told him then?

4 A. Yes. But I looked at my motion like forty times
5 and what he is saying doesn't make sense. That's
6 something almost a retarded person would say.

7 The answer doesn't match up with his question he was
8 saying. So I did not say that. I know what I said to
9 him. But in that motion I did not say that.

10 Q. So you didn't say I sat on it in my back pocket and
11 I retrieved it so it wouldn't cut me?

12 A. No, that doesn't make sense. He asked me how -- why
13 did the victim said the knife get in your belly -- how
14 did the knife get to his belly.

15 So the correct answer for that or response would be
16 I took the knife out and put it to his belly. But in the
17 motion he's saying that I said oh, the knife was poking
18 me so I took it out. That doesn't make sense. I'm a
19 little more intelligent than that.

20 Q. So you -- when the cops -- when you came into
21 contact with the cops you ran, didn't leave the drugs or
22 the knife in the car; you took those with you?

23 A. Yes. I don't see why I would leave it. I panicked.

24 Q. You didn't want the cops to catch you with the drugs
25 right?

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1 A. Yes, I just wanted to get out. I already had it on
2 me. I'm not going to take it and throw it inside a car
3 and take off running.

4 I know I wasn't going to get away. Bojangles was
5 all the way down there; I know I wasn't going to get
6 away. I just wanted to get the drugs off me.

7 Q. So you wanted to get the drugs off of you but you
8 didn't want to get them off of you by just leaving them
9 in the car?

10 A. I wasn't thinking about that. When I see the police
11 I got drugs on me; I'm not thinking. I'm not thinking
12 too correctly at the time so I'm not thinking about
13 leaving it inside the car.

14 Q. And I believe on your direct you said that the
15 victim started acting funny when you pulled out the
16 pocket knife?

17 A. He started acting a little funny before that when --
18 once he tested the drug. But when I put the knife and I
19 tell him to drop me off by the bank that's when he went
20 what happened to you? What happened to you. So I keep
21 telling him to drop me off to the bank.

22 Q. I want to make sure I understood your direct
23 testimony correctly. Before you got to the cops or
24 before you got out of the car and ran you told the victim
25 you wanted all the money?

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1 A. Yes, all the money that he owed me.

2 Q. So you told him you wanted all the money that he
3 had.

4 A. I told him I wanted all the money that he owned me;
5 not that he had. He didn't have no much money. He
6 pulled him money out.

7 Q. Okay. And you got out of the car, ran with the
8 drugs and the knife, dropped them when the cops were
9 chasing you correct?

10 A. Correct.

11 Q. And how long did you talk to Officer Judy after you
12 were arrested?

13 A. I can't say. It wasn't long. It wasn't long at
14 all.

15 Q. Just an estimate -- how many, ten minutes, twenty
16 minutes, thirty minutes?

17 A. Five, ten minutes; no more than that I don't think.

18 Q. How long would you say you were around Officer Judy
19 from the time he took you into custody until the time you
20 made it to the jail were you around Officer Judy or other
21 cops?

22 A. I think like fifteen minutes. I can't really -- I
23 can remember his face but not that good. I remember
24 Detective Roach more than him. I can't really...

25 Q. You talked to Detective Roach that day too?

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1 A. Yes, I think I talked to Detective Roach first. I
2 talked to him once he was transporting me to Berkeley
3 County. I talked to Detective Roach first.

4 Q. Then is it fair to say that today is the first time
5 you've told anybody about this being a drug deal gone
6 bad?

7 A. Say again?

8 Q. Is it fair to say that today is the first time
9 you've told anybody about this being a drug gone bad?

10 A. No, this is not my first day.

11 Q. But you didn't tell Officer Judy that did you?

12 A. I told Detective Roach.

13 Q. Okay. But Officer Judy was the one you were
14 talking to about -- when Judy asked you how you got the
15 wallet and the money that belonged to Mr. Zhang you
16 didn't tell him at that time that it was a drug deal?

17 A. To be honest ---

18 Q. --- yes or no. Did you tell him it was a drug deal
19 gone bad?

20 A. I have to explain because to be honest I don't
21 remember Judy asking me that. Detective Roach asked me
22 those questions. He did not ask me -- he asked me my
23 name and date of birth. He didn't really ask me no
24 questions. Detective Roach was the one that asked me
25 that question.

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1 Q. So you don't remember -- even though you testified a
2 little bit different earlier you don't remember Judy
3 saying how come he says you had a knife to his belly?

4 A. No, I can remember him asking questions but he never
5 -- Detective Roach asked me those questions.

6 [Whereupon, Mr. Alfaro and Mr. Dejeu confer]

7 Q. [Mr. Alfaro] So we're clear the wallet and the
8 collateral that the victim -- or the wallet and the I.D.
9 that the victim gave you that was just collateral for
10 your drug deal?

11 A. Yes. He had no money. I don't need a wallet.

12 Q. I'm sorry?

13 A. I said I don't need a wallet. He had no money in
14 there. If it's a robbery I'm not going to take his
15 wallet.

16 Q. Well, if you don't need the wallet -- you just said
17 you took the wallet.

18 A. For collateral. He's got a green card. That's the
19 only reason I took the wallet. That's the only thing he
20 had in the car that was important to him when I first did
21 business with him I think in February. Other than that
22 there was no money in the wallet, but to be robbing him
23 for a wallet...

24 Q. So he's got no money.

25 A. He had a five dollar bill and some ones. But when I

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1 took the money from him some change fall. All he had was
2 five dollar bill and some ones that I saw.

3 Q. So you took the five dollar bill and some ones from
4 him?

5 A. He handed it to me and I took -- first I told him
6 no. I told him several times no. I told him I wanted
7 all my money.

8 Q. Okay. So how much crack cocaine are we supposedly
9 talking about here?

10 A. Three grams; but it was less than three grams after
11 I gave Bing...

12 Q. How much is 3 grams of crack cocaine?

13 A. I don't -- 3 grams you can get it differently. Some
14 people charge higher, some people don't. Some people for
15 a gram you can get a hundred.

16 Q. What were you supposedly charging him?

17 A. Sixty dollars worth of drugs. I didn't get him a
18 gram. Sixty dollars is you cut it into sizes of twenty
19 pieces.

20 Q. So you were supposedly selling him sixty dollars
21 worth of drugs not in exchange for sixty dollars but in
22 exchange for a Chinese I.D. card, a green card, and a
23 wallet with no money in it?

24 A. No, I'm exchanging it for money. I did business
25 with him before and he paid me back so I trusted him. As

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1 long as I got his wallet he would give me my money.

2 Q. Thank you.

3 THE COURT: Any redirect?

4 MR. SHELTON: No, Your Honor.

5 THE COURT: All right. You may step down. Mr.

6 Foreman and ladies and gentlemen of the jury I'm going to

7 have to ask you to step out just very...

8 [Whereupon, the jury exits at 4:21 p.m.]

9 THE COURT: All right. Mr. Greene, you may step
10 down.

11 [Whereupon, the witness is excused and exits the
12 witness stand]

13 THE COURT: Can I see the attorneys up here just a
14 second.

15 [Whereupon, an off the record bench conference is
16 held]

17 THE COURT: Bring us the jury please.

18 [Whereupon, the jury enters at 4:23 p.m.]

19 THE COURT: All right. Mr. Foreman, ladies and

20 gentlemen of the jury we may have some additional

21 testimony in the morning or we may not. If we do we'll

22 listen to that testimony and then we will have closing

23 arguments and the charge. If we don't have any

24 additional testimony in the morning we will have closing

25 arguments and charge in the morning. Please leave your

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1 notepads in the chairs. Please don't discuss the case
2 with anyone tonight. I'll see you in the morning at
3 9:30. Have a good evening.

4 [Whereupon, the jury exits at 4:25 p.m.]

5 THE COURT: Anything from the State before we
6 adjourn?

7 MR. DEJEU: No, Your Honor.

8 THE COURT: Anything from the defendant?

9 MR. SHELTON: Your Honor, I haven't officially
10 rested I think.

11 THE COURT: I know. I'll let you do that in the
12 morning.

13 MR. SHELTON: I want to think about the last
14 witness.

15 THE COURT: Pardon?

16 MR. SHELTON: I may call Officer Scarborough but
17 I'm not 100 percent sure ---

18 THE COURT: --- I'm sorry. Call who?

19 MR. SHELTON: I may call Officer Scarborough but
20 I'm not ---

21 THE COURT: --- okay, that's fine ---

22 MR. SHELTON: --- 100 percent sure right now.

23 THE COURT: Whenever you're ready to rest, rest
24 okay. I told them testimony; I didn't tell them who it
25 was coming from.

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1 MR. SHELTON: Yes, Your Honor.

2 THE COURT: Okay. See you in the morning. Thank
3 you very much.

4 MR. SHELTON: Thank you.

5 MR. DEJEU: Thank you, Your Honor.

6 THE COURT: Why don't we do this while we got a few
7 minutes if you don't mind because I guess the rules say I
8 have to do it. Y'all want to come up here for a minute
9 and we'll have a very informal charge conference.

10 [Whereupon, an off the record bench conference is
11 held]

12 [Whereupon, court adjourns at 4:27 p.m.]

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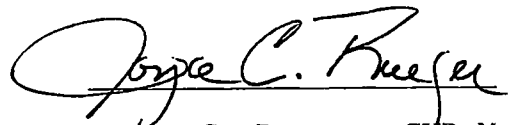
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, reported by Mia Perron,
transcribed by Joyce Rueger, relative to appeal, in the
Court of General Sessions for Berkeley County, South
Carolina on the 21st day of May, 2013.

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

December 16, 2013



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT #: 2013-GS-08-0755
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
WILTON Q. GREENE	)	
	)	
Defendant	)	
	)	
	)	

JURY TRIAL

VOLUME 3 (OF 3)

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit
in the Berkeley County Courthouse
Moncks Corner, South Carolina
on May 22, 2013 Commencing at 9:30 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
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1 PROCEEDINGS
2 THE COURT: Is the defendant going to call any more
3 witnesses?
4 MR. SHELTON: Yes, Your Honor --
5 THE COURT: Pardon?
6 MR. SHELTON: Yes, Your Honor. We have Officer
7 Scarborough.
8 THE COURT: Okay. Is he here?
9 MR. SHELTON: Yes, Your Honor.
10 THE COURT: Okay. If you'll bring us the jury
11 please, ma'am.
12 [Whereupon, the jury enters at 9:34 a.m.]
13 THE COURT: It looks like everybody has their pads
14 and pencils. If you'll call your next witness, please?
15 MR. SHELTON: Your Honor, the defense calls Officer
16 Scarborough.
17 [Whereupon, Officer Scarborough comes forward]
18 [Whereupon, the witness is duly sworn by the Clerk
19 of Court]
20 CLERK OF COURT: Have a seat and state your name
21 and would you spell your last name for us.
22 THE WITNESS: Chris Scarborough,
23 S-C-A-R-B-O-R-O-U-G-H.
24 - - -
25 - - -

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1 CHRIS SCARBOROUGH
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. SHELTON:
6 Q. Officer Scarborough, bear with me. I'm usually on
7 the other side of this.
8 A. Yes, sir.
9 Q. How long have you been in law enforcement?
10 A. Twelve years.
11 Q. Okay. And with Moncks Corner?
12 A. I've been with Moncks Corner for four years.
13 Q. Okay. Where were you working before?
14 A. I worked for four years in Rome County, Tennessee
15 which is east Tennessee for the Sheriff's Department and
16 four years at the Cobb County Sheriff's Department in
17 Georgia.
18 Q. Okay. And how did you become involved in this
19 case?
20 A. I was asked by Sergeant Norvel [phonetic] to
21 interview the victim in the case.
22 Q. And that's Mr. Zhang?
23 A. Yes, sir.
24 Q. Okay. And how did you -- did you use any type of
25 materials to help in your interview?

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1 A. I used a digital voice recorder, audio recorder.

2 Q. Okay. And you had a chance to review the audio
3 recording?

4 A. Yes, sir.

5 Q. And you've had a chance to review a transcript very
6 briefly?

7 A. Yes, sir.

8 Q. And you remember talking to Mr. Zhang on May 12th --
9 or May 22nd?

10 A. Yes, sir.

11 Q. Was he hard to understand?

12 A. It was a little challenging but not overly so.

13 Q. Okay. Going into the interview did Mr. Zhang talk
14 to you about giving other people rides?

15 A. Yes, sir.

16 Q. Okay. Can you explain that?

17 A. When I first went into the interview room I didn't
18 know a whole lot about the case beforehand. And so I
19 just simply asked him to tell me what happened. And he
20 said that he was giving a gentleman a ride.

21 Q. Did he talk to you about maybe at the end of the
22 interview about giving other people rides?

23 A. I don't recall that.

24 Q. Okay. Would it help to see the transcript?

25 A. Yes, sir.

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1 Q. If you would turn to page 21. It starts with line
2 11.

3 [Whereupon, the witness reviews documents]

4 A. Yes, sir.

5 Q. Did that refresh your memory?

6 A. Yes, sir.

7 Q. Okay. And so he talked about giving at least one
8 other person a ride?

9 A. Yes, sir.

10 Q. At the beginning of the interview was Mr. Zhang was
11 he confused about the gas station?

12 A. Yes, sir. He at first when he was telling me what
13 happened he said that he was at the Sonoco gas station.
14 There's two Sonoco's in Moncks Corner; one at the Tail
15 Race and one at 6 and 17.

16 And then as he was telling the story it was a little
17 bit confusing to me where he was at. And so I asked him
18 which gas station it was and he said it was the one
19 across from the Big Lots.

20 Well, there is not a Sonoco across from Big Lots so
21 I asked him -- I thought maybe he was talking about
22 Walmart. So I asked him if it was the one across from
23 Walmart and he said no, it was the one across from Big
24 Lots behind the CVS Pharmacy. So then through a little
25 bit more conversation I figured out he was talking about

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1 the Corner Stop gas station.
2 Q. And you told him about the Corner Stop.
3 A. Yes, sir.
4 Q. Where did Mr. Zhang tell you that Mr. Greene came
5 from?
6 A. He said that Mr. Greene was in the store and Mr.
7 Zhang had gone in to prepay for his gas. And he said he
8 had seen Mr. Greene in there and when he came out to
9 start pumping his gas he said that Mr. Greene came out
10 and approached him about a ride.
11 Q. And he came out of the store -- he didn't mention
12 anything about Big Lots?
13 A. No, sir. My understanding was that -- what he said
14 was that Mr. Greene had come out of the gas station and
15 approached him.
16 Q. And you were trying to get some more information
17 about the incident about getting specific details down.
18 A. Yes, sir.
19 Q. And one of those details was you wanted him to
20 describe the knife.
21 A. Yes, sir.
22 Q. What did he -- how did he describe the knife?
23 A. It was -- at first I had an ink pen in my hand and
24 he said it was about the size of an ink pen; maybe a
25 little bit bigger. And I was asking him questions trying

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1 to see if it was a pocket knife or what kind of knife it
2 was. I had a pocket knife in my pocket at the time so I
3 asked him if it was one that had a blade that opened and
4 closed or if it was a fixed blade or whatever.

5 And he indicated it was a -- at first he indicated
6 it was like a pocket knife that had a foldable blade. I
7 asked him if he could remember the color of the handle or
8 anything and he said he couldn't remember because the guy
9 had his hand on it and he couldn't see it.

10 Q. But he was sure that it was a folded knife. It was
11 one that opened.

12 A. He was pretty sure. It was shortly after the
13 incident had occurred and he was appeared to be still
14 anxious and...

15 Q. You also asked him to describe Mr. Greene or the
16 person that was in the car.

17 A. Yes, sir.

18 Q. And so do you remember what that description was?

19 A. I remember he said it was a black man tall and
20 skinny I believe was...

21 Q. Do you remember what he said he was wearing?

22 A. I believe he said it was a white shirt, maybe a
23 white t-shirt and dark colored pants. I remember he said
24 they weren't black pants but sort of dark and through a
25 conversation with him it was more like a dark charcoal

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1 grey I guess.

2 Q. And so at this point in time that you were giving --
3 you are talking with Mr. Zhang you don't have any
4 physical evidence or pictures of any evidence?

5 A. No sir, I didn't have anything.

6 Q. So you wouldn't have been able to tell if he was
7 mistaken or anything like that?

8 A. Not at that time, no sir.

9 Q. Do you remember what Mr. Zhang -- how Mr. Zhang
10 described Mr. Greene holding the knife?

11 MR. DEJEU: Objection, Your Honor. May we
12 approach?

13 THE COURT: Yes, sir.

14 [Whereupon, an off the record bench conference is
15 held]

16 Q. [Mr. Shelton] Do you remember -- do you remember
17 what hand Mr. Zhang kept the knife in?

18 MR. DEJEU: Objection, leading.

19 THE COURT: I'll sustain the objection.

20 Q. [Mr. Shelton] Do you remember Mr. Zhang talking
21 about the incident and ---

22 MR. DEJEU: --- objection, Your Honor, that's
23 hearsay.

24 THE COURT: I'll sustain the objection.

25 [Whereupon, Mr. Shelton and Mr. Schwacke confer]

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1 Q. [Mr. Shelton] What did -- you were trying to get
2 some final information from Zhang at the end of the
3 interview, some final description of what happened and
4 just tie up some loose ends.

5 A. Yes, sir.

6 Q. Do you remember -- what did Mr. Zhang say about
7 change, coins?

8 A. During that conversation he had told me that the
9 individual in the car had asked for his money and that he
10 had given him money out of his pocket.

11 And I asked him if he could remember how much money
12 or what kind of money it was. And to the best of my
13 recollection he said that he gave him some dollar bills,
14 some bills, and also some coins. I don't remember
15 exactly.

16 Q. Would it help to refresh it on page 23?

17 [Whereupon, the witness reviews documents]

18 Q. Its line 22 and 23.

19 A. Yes sir, I remember.

20 Q. Okay. So what did that say about the coins?

21 A. That he -- the suspect didn't want the coins.

22 Q. Okay. No further questions.

23 THE COURT: Cross-examination.

24 MR. DEJEU: Just briefly, Your Honor.

25 CROSS-EXAMINATION

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1 BY MR. DEJEU:

2 Q. Detective Scarborough, you said that Sergeant Norvel
3 told you to meet with this victim correct?

4 A. He asked me if I would, yes sir.

5 Q. And you didn't know anything about the incident at
6 that point?

7 A. No, sir.

8 Q. When you talked to Mr. Zhang obviously -- you've
9 already said that he looked agitated; he obviously went
10 through an armed robbery. But did he -- did you see
11 anything that would indicate that he was under the
12 influence of drugs or alcohol?

13 A. No, sir.

14 Q. Thank you.

15 THE COURT: Any redirect?

16 MR. SHELTON: Nothing, Your Honor.

17 THE COURT: You may step down. Thank you very
18 much.

19 [Whereupon, the witness is excused and exits the
20 witness stand]

21 THE COURT: Any further witnesses?

22 MR. SHELTON: The defense rests, Your Honor.

23 THE COURT: Okay. Does the State have any reply
24 witnesses?

25 MR. DEJEU: Yes, Your Honor. The State has one

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1 witness, Detective Roach.

2 THE COURT: Pardon?

3 MR. DEJEU: Lieutenant Roach?

4 THE COURT: Lieutenant Brooks?

5 MR. DEJEU: Roach.

6 THE COURT: All right. If you want to bring him
7 in.

8 MR. DEJEU: The State calls Lieutenant Roach.

9 [Whereupon, Lieutenant Roach comes forward]

10 [Whereupon, the witness is duly sworn by the Clerk
11 of Court]

12 CLERK OF COURT: State your name and spell your
13 last name for us.

14 THE WITNESS: Michael Roach, R-O-A-C-H.

15 MR. SHELTON: Your Honor, can we approach?

16 THE COURT: Yes, sir.

17 [Whereupon, an off the record bench conference is
18 held]

19 - - - - -

20 MICHAEL ROACH,

21 Having been first duly sworn,

22 Was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. DEJEU:

25 Q. Lieutenant Roach, how long have you been in law

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1 enforcement?

2 A. August will make 24 years.

3 Q. And where are you working now?

4 A. Moncks Corner Police Department.

5 Q. You were involved in -- obviously you were working
6 on -- were you working on May 22, 2012?

7 A. I was.

8 Q. Were you involved in any way in this case?

9 A. I prepared the arrest warrants.

10 Q. Did you have a chance to talk to -- to speak to the
11 defendant, Mr. Greene?

12 A. I did.

13 Q. At any point in the conversation did he mention to
14 you anything about this was a drug deal that went bad or
15 a drug transaction?

16 A. He made no indications of any kind. We would have
17 followed up on it.

18 Q. Thank you. No other questions.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. SHELTON:

22 Q. You did talk to Mr. Greene?

23 A. Briefly.

24 Q. Okay. You didn't write any reports?

25 A. No. My involvement in the case was very limited.

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1 He was arrested near the scene. Patrol Officer Judy ---

2 Q. --- we understand. But you didn't write up any
3 reports?

4 A. No.

5 Q. No further questions.

6 THE COURT: Any reply?

7 MR. DEJEU: No, Your Honor.

8 THE COURT: All right. You may step down. Thank
9 you so very much.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 THE COURT: Any further witnesses in reply?

13 MR. DEJEU: No, Your Honor.

14 THE COURT: All right. Mr. Foreman and ladies and
15 gentlemen of the jury I have to hear certain motions at
16 this time. I'm going to ask you to leave your note pads
17 in the chair and go to the jury room. I'll get back
18 hopefully very shortly.

19 [Whereupon, the jury exits at 9:53 a.m.]

20 THE COURT: All right. Let the record reflect
21 that at the end of the defendant's case the defendant
22 wanted to renew their motions. However, the court waited
23 until after reply testimony and I would hear your motions
24 at that time. But the defendant did offer to make those
25 motions but the court said no, I will hear them at the

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1 end of the reply testimony. I'll be glad to hear you on
2 your motions.

3 MR. SHELTON: Thank you, Your Honor. Renew all
4 motions made specifically the motions for the use of
5 improper Interpreter and the denial of the mistrial
6 motion, Your Honor. In addition renew our motion for
7 directed verdict specifically for the kidnapping.

8 There was testimony from the witnesses that he
9 invited the defendant into his car. He did have -- the
10 doors weren't locked. He would have had opportunity to
11 leave. And I'd ask that the directed verdict be directed
12 on the Kidnapping charge and just that they haven't
13 proven the elements of the Armed Robbery, Your Honor.

14 THE COURT: Okay. All those motions are denied.
15 I think there were four of them if I remember correctly.
16 But all the motions are denied.

17 MR. SHELTON: Thank you, Your Honor.

18 THE COURT: All right. Are ya'll ready -- do y'all
19 need some time to get ready for your closing statements
20 or do y'all ---

21 MR. DEJEU: --- the State is ready, Your Honor.

22 THE COURT: Pardon?

23 MR. DEJEU: The State is ready.

24 THE COURT: Is the defense ready?

25 MR. SHELTON: I'm practically ready in like five or

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1 ten minutes.

2 THE COURT: You want about ten minutes?

3 MR. SHELTON: Yes, Your Honor.

4 THE COURT: That's fine. I'll give you about ten
5 minutes. We'll adjourn until five minutes after ten
6 okay?

7 MR. SHELTON: Thank you, Your Honor.

8 THE COURT: I'll give you ten minutes. Thank you
9 very much.

10 [Whereupon, court is in recess from 9:55 a.m. until
11 10:10 a.m.]

12 THE COURT: Is the State ready to proceed?

13 MR. DEJEU: Yes, Your Honor.

14 THE COURT: Is the defense ready to proceed?

15 MR. SHELTON: Yes, Your Honor.

16 THE COURT: Okay. Bring us the jury please.

17 [Whereupon, the jury enters at 10:10 a.m.]

18 THE COURT: Solicitor?

19 MR. DEJEU: Thank you, Your Honor. May it please
20 the court?

21 CLOSING ARGUMENTS

22 MR. DEJEU: Ladies and gentlemen, now I have
23 opportunity to talk to you a little bit about the law in
24 the case. As you already know the defendant is charged
25 with Armed Robbery and Kidnapping. The Armed Robbery in

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1 South Carolina the law requires that the defendant -- the
2 State has to prove that the defendant committed a robbery
3 while armed with a pistol, dirk, slingshot, metal
4 knuckles, razors, or other deadly weapon. What is a
5 robbery? Robbery is a larceny from a person or in the
6 immediate presence of another by violence, intimidation,
7 or by putting such person in fear. What's Larceny?
8 Well, Larceny is the taking and carrying away property of
9 another against the will of the owner and with intent to
10 steal.

11 The violence and intimidation can be a personal
12 violence or threat of violence. The degree of force used
13 does not matter as long as the force of the threat is
14 actually sufficient to overcome the victim's resistance.
15 So all you need -- all the State needs to show is that
16 the defendant was afraid. He felt threatened, he felt
17 like he couldn't do anything but to comply. And the
18 second element of Armed Robbery is obviously the deadly
19 weapon. There are some examples, pistols, a knife can be
20 a deadly weapon.

21 Regarding Kidnapping; Kidnapping as you can see is
22 defined in South Carolina as an unlawfully seizing,
23 confining, inveigling, or enticing, decoying, kidnapping,
24 abducting or carrying away any other person. One thing I
25 would like to mention about kidnapping this is not like

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1 in Hollywood movies where somebody gets kidnapped, tied,
2 taken from the street, put in a place maybe a room or the
3 trunk of a car or something and kept there. That's not
4 what South Carolina law requires.

5 The law requires that somebody be taken away and
6 kept in -- abducted or seizing, unlawfully seizing
7 somebody by means whatsoever; whatever the defendant can
8 use to unlawfully seize a person that counts. And
9 without authority of law that means basically that the
10 defendant, the person that commits the Kidnapping does
11 not have authority by law to seize a person. Obviously
12 an officer has an authority of law when he is
13 investigating a crime and he's catching somebody.

14 Only two more things I'd like to mention in my
15 opening on the law is that I mentioned to you in the
16 beginning about common sense. That's all you need when
17 you listen to the facts and when you go to deliberate now
18 just think about common sense and do not disregard the
19 obvious.

20 This element that I just showed we have to prove,
21 the State has to prove it beyond a reasonable doubt. And
22 maybe you remember I told you what reasonable doubt it.
23 It's that doubt that causes a reasonable person to
24 hesitate. It's not proof beyond all doubt; it's not
25 proof beyond any shadow of doubt. It's just proof beyond

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1 a reasonable doubt. Common sense and don't be afraid --
2 don't disregard the obvious. Thank you.

3 THE COURT: Mr. Shelton.

4 MR. SHELTON: Thank you, Your Honor. May it please
5 the court?

6 CLOSING ARGUMENTS

7 MR. SHELTON: I'll bring my notes up. He gets to
8 come back up but this is the only time I can talk to
9 y'all so I want to make sure I get everything up to you.

10 Miscommunication. There are reasons not to believe
11 Mr. Zhang. Now Wilton testified; you don't have to
12 believe anything he says. That does not change the
13 burden of the case. The burden is on the State. They
14 have to prove beyond all reasonable doubt what Mr. Zhang
15 said.

16 First, I was confused. I don't know if y'all were
17 confused but it was a very confusing testimony by Mr.
18 Zhang. I told you that -- look at -- in the opening I
19 told you to look at what he said right after the incident
20 compared to today because he's going to have a chance to
21 prepare with the State. That was quite obvious.

22 You notice he didn't have an Interpreter when the
23 State was asking him questions. But when he wasn't
24 anticipating certain questions or didn't know what type
25 of question was going to be asked that's when he needed

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1 an Interpreter. It's confusing; he's confused. Common
2 sense. What's common sense? Well, let's think about
3 this. The chain of events is very weird. What person
4 that is going to rob somebody first asks to go to the
5 bank. And then asks for what money you have. And then
6 ask for the wallet. If you're robbing somebody you're
7 going to ask for their money first and then go to the
8 bank and then I guess -- but going to the bank first
9 almost leads right to the miscommunication; directions.

10 What about driving strangers around; drive some
11 strangers around this -- doesn't know -- not taking any
12 money. Somebody that is committing a robbery and he's
13 not taking any money. He refuses. And Mr. Zhang said it
14 on direct if you caught it, but he said that Mr. Greene
15 or the person in the car, Mr. Greene told him to run.
16 Why would he tell him to run? And when he testified he
17 said he didn't leave the car. Well, that's not what
18 Officer Judy said. Officer Judy said he bailed out; took
19 off running.

20 Why should we focus on the little things? I know I
21 went into a lot with the knife. Why should we focus on
22 that? Well, the little things are what can be verified.
23 You notice the State didn't call Officer Scarborough.
24 They called Officer Judy, Officer Edwards, then
25 Lieutenant Roach but they rested their case before they

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1 called Officer Scarborough. Why not? It's because as we
2 saw his testimony about what Zhang said after the
3 incident was different than what he testified to there's
4 some differences in there. Some things that don't make
5 sense. Was that why they didn't call him? They decided
6 not to call him. They have to prove their case beyond
7 all reasonable doubt; a high, high burden. So what was
8 different? The gas station, Sunoco; maybe Sunoco. And
9 then Mr. Zhang yesterday morning was pretty clear that it
10 was Citgo because that's what the officer told him it
11 was. He was wrong at first but the officer had to get
12 some more information from him and draw a picture. I'm
13 just asking you not to forget how confusing yesterday
14 morning was.

15 What about where Mr. Greene came from? You heard
16 Officer Scarborough today that Mr. Zhang the day of the
17 incident said that Mr. Greene came out of the store but
18 yesterday he said he came from Big Lots across the
19 street; not from outside the store. And you saw the
20 pictures, the picture of the store; and Officer Judy said
21 Big Lots is across the street.

22 What about the knife? Hold that knife; you'll get
23 the knife in evidence. That's not a fold out knife.
24 That's a straight knife; that can't be folded in and out.
25 I asked Mr. Zhang if he remembered Officer Scarborough

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1 showing him an example of his knife and that was
2 confusing. He didn't I guess understand what I was
3 asking. But he said no, he didn't remember that.
4 Officer Scarborough today testified that yes, he did. He
5 showed him an example of his knife that was a fold out
6 knife and he said it was like that. He remembered the
7 pen because that's about how the length of it was.

8 But a fold out knife the State is going to want to
9 tell you that it doesn't matter. Maybe he didn't
10 understand what was going on or couldn't see it. But
11 they are going to tell you it didn't matter because it's
12 wrong. So that's why they are going to tell you it
13 doesn't matter.

14 Keeping the knife in his right hand the whole time?
15 The officers testified that they found a wallet in his
16 right pocket. How do you keep a knife in your right hand
17 the whole time and then somehow get the wallet in your
18 pocket. At some point in time you've got to take that
19 knife away.

20 Kidnapping? He let him in. He takes other people,
21 gives strangers a ride. He let him go in that car; he
22 gave him a ride. He had control of that car. The locks
23 weren't locked. He could have got out and he could have
24 ran. Not kidnapped. So what do we know? Mr. Zhang had
25 a tough time understanding. Maybe it's just the way I

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1 talk but he couldn't understand my questions. Could he
2 understand Wilton? Mr. Manigault testified that he lives
3 behind the bank. That is where Mr. Manigault testified
4 Wilton was going. He lives behind the bank.

5 We know that Wilton was asking for a ride because it
6 was hot. At some point in time he's getting a ride.
7 When you get a ride you have to give them directions.
8 Bottom line is the State has the burden of proof. There
9 are some weird things in the case.

10 The benefit of the doubt does not go to Mr. Zhang.
11 The Interpreter wanted to try to ask me questions to then
12 try to explain it to Mr. Zhang better. The benefit
13 doesn't go to him. This [indicates] is Mr. Greene. This
14 is Wilton's life and freedom at stake. The benefit of
15 the doubt goes to him. At the end of the day due to all
16 this confusing testimony of Mr. Zhang the State has not
17 reached their burden. You must find Wilton not guilty.
18 Thank you.

19 THE COURT: Solicitor?

20 CLOSING ARGUMENTS

21 MR. DEJEU: Repaying good with evil. That's what I
22 said yesterday this case is all about. Here we have Mr.
23 Zhang, normal day he goes to work at 10 a.m., he stops to
24 get some gas, a man comes and says hey, can I get a ride
25 to McDonalds? What does Mr. Zhang do? He could have

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1 said. He says yes. He wants to help him. He gets in
2 the car and they start driving. As soon as they go
3 through the first traffic light the man he just picked up
4 and tried to help pulls a knife and puts it to his
5 stomach. What does that tell you about this defendant's
6 intention?

7 So Mr. Zhang is a little confused. I mean you heard
8 him on the stand. He says you know I thought it was a
9 joke. I mean it's 10 in the morning, broad daylight.
10 Who would rob somebody like that in broad daylight?
11 Well, this defendant would and he did it.

12 So what does Mr. Zhang do next? What does he do?
13 He complies you know he gives him cash and he gives him
14 his wallet. And you heard him he said he's reluctant to
15 give away his wallet because his I.D.'s are there. Now
16 we all know how frustrating and difficult it is to get
17 new I.D.'s so you can understand Mr. Zhang's reluctance
18 in handing those out. But he has nothing else -- has no
19 other option. The knife is to his to his stomach so he
20 complies.

21 But you know the defendant doesn't care about how
22 difficult it is to get some I.D.'s if you lose them or --
23 after all he's just robbing a good Samaritan; a man who
24 tried to help him. Let's go a little bit to the
25 testimony just briefly because I'm sure y'all paid

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1 attention. But I want to go over briefly the testimony
2 that was provided yesterday and just kind of show you how
3 -- what the witnesses said on the stand ties in with what
4 the elements that the State has to prove are. And here's
5 a -- so we already talked about this.

6 Mr. Zhang, so he is going to work and he stops,
7 defendant comes and asks for a ride, as soon as he drives
8 through the traffic light here's a knife, tells him to go
9 to the bank, takes his cash, takes his wallet, tells Mr.
10 Zhang not to stop and actually that came across when
11 defense counsel asked him on cross-examination Mr. Zhang
12 said he told him not to stop the car when he was slowing
13 down.

14 And then keeps the knife to his stomach and drives
15 towards -- and what does he do? He drives towards the
16 police in the other lane. He sees a police -- Mr. Zhang
17 sees a police so he drives in the other lane, blows the
18 horn, yells for help says he robbed me, I was robbed.
19 And the defendant says shit and gets out of the car
20 running. That was Mr. Zhang's testimony.

21 Officer Judy, he's in the car and was about to -- he
22 thought he was going to get hit. He sees the car driving
23 towards him, the car is blowing the horn, driver sees --
24 the victim, Mr. Zhang and sees the defendant, a black
25 man, getting out the passenger side and starts running,

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1 sees Mr. Zhang with a wild look on his face. That's what
2 actually Officer Judy said yesterday; Mr. Zhang had a
3 wild look on his face. And you can understand why.

4 Here's Mr. Zhang saying he robbed me, he robbed me
5 pursues the defendant who is running away and sees the
6 defendant pulling a knife from his pocket and that's when
7 Officer Judy said he transitioned and dropped the taser
8 and got a gun because he saw the blade and he saw the
9 knife and arrests the defendant.

10 Officer Edwards hears the call on the radio. He
11 comes to help Officer Judy. He sees the suspect in
12 custody, sees the knife, takes pictures of the knife, and
13 then takes the knife into evidence. And what else? He
14 finds Mr. Zhang's wallet and money in the defendant's
15 pockets and then returns them to the victim, Mr. Zhang.

16 There are some undisputed facts. And when the
17 defendant took the stand he didn't dispute the fact that
18 he took a ride from Mr. Zhang. The defendant said he was
19 at the Corner Stop so whether it was Sonoco or whatever;
20 that doesn't matter. The defendant said it was the
21 Corner Stop and the victim said it was the Corner Stop.

22 The defendant took Mr. Zhang's wallet and cash. He
23 said that Mr. Zhang did drive across the middle lane
24 towards Officer Judy's police car and defendant, Mr.
25 Greene did have the knife on him when Officer Judy chased

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1 him. And the defendant still had Mr. Zhang's cash and
2 wallet on him when he was arrested.

3 Ladies and gentlemen, the Judge will instruct you
4 about creditability or believability of a witness. So
5 when you deliberate you will think about all the
6 witnesses that took the stand, what they said, what
7 reason do they have, were they telling the truth, how did
8 they come across to you. And you can factor all that in
9 in your deliberations.

10 And we heard in this case from the defendant. The
11 defendant took the stand. So you're going to have on one
12 hand you have a victim, Mr. Zhang. A married man, two
13 kids, works, Good Samaritan who says the same thing today
14 as he said it on May 22, 2012 you know. He offers to
15 help somebody. He's robbed. He goes towards the police
16 car.

17 Then you have Officer Judy, fifteen years in law
18 enforcement. He sees with his own eyes, he sees this guy
19 the defendant getting out the victim's car running. He
20 sees him with the knife. Officer Edwards finds the money
21 in the defendant's pocket. The victim's I.D. is still
22 there. This is minutes after this incident -- after this
23 crime occurred. You have Lieutenant Roach -- Officer
24 Edwards said he has forty years in law enforcement
25 experience. So you have in one hand -- in one hand you

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1 have all these officers and all these witnesses. And the
2 other hand what do we have? Well, the defendant's story.
3 It's nothing else but a story.

4 And what does he want you to believe? Do you want
5 to believe this story that he did not tell Officer Roach,
6 and that's why we called him, because he said, the
7 defendant said yesterday that yes I talked to Lieutenant
8 Roach and I told him this was a drug deal. Well, that's
9 why we brought Officer Roach. Did he talk to you? Yes.
10 Did he say anything about drugs? No. So this is --
11 yesterday was the first time we hear about this imaginary
12 drug deal that occurred.

13 This defendant did commit an armed robbery and
14 here's why. He took the victim's cash and wallet, put in
15 his knife, put the knife to the victim's stomach. He
16 tried to get away and call police. He was scared. He
17 yelled. Those are the elements of the robbery. Here's
18 the cash and the I.D. Here's the knife he used.

19 The second element armed with a deadly weapon.
20 Well, that knife qualifies as a deadly weapon. The
21 elements of the Armed Robbery are met. Kidnapping,
22 unlawfully seized, confined. Well, what did he do? He
23 used a pretext I need a ride to McDonalds to get close to
24 the victim. And then what did he do? He pulls a knife,
25 put it to his stomach, got his money, got his cash, his

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1 wallet, told him not to stop. Well, I don't know about
2 you but when somebody has a knife to you and you're
3 driving it doesn't matter whether the doors of the car
4 are locked or unlocked. What else can you do? Here's a
5 guy with a knife to your stomach. What are you supposed
6 to do; jump out of the car as the car is moving. He was
7 trying to slow down and the defendant said no, don't
8 stop. So he seized him.

9 The second element of Kidnapping by means whatsoever
10 while threatening the victim with a knife qualifies as a
11 way of kidnapping somebody. We've already talked about
12 authority of law. He's not an officer and he has no
13 authority to seize.

14 Common sense, creditability, just a few things you
15 should consider. Ladies and gentlemen, we live today in
16 a diverse world. We just had a case that happened in
17 Moncks Corner in Berkeley County. The victim is born in
18 China. The case is prosecuted by a prosecutor born in
19 Romania assisted by a prosecutor who has roots in the
20 Philippines.

21 Yes, we do live in a diverse world; people of
22 different languages and shapes and sizes. But you know
23 there is a universal language. It doesn't matter where
24 you are whether in Romania, in China, Philippines; when
25 somebody sticks a knife to your stomach you know what

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1 that means. You don't need an Interpreter to tell you
2 you're being robbed. But that's exactly what happened in
3 this case.

4 And it's wrong, it's wrong in Romania and China it's
5 wrong here in Moncks Corner Berkeley County. But you
6 know what? Today you have a chance to make this -- to
7 right this wrong. And that's your job and you can do
8 this. You can make a thing that's wrong make it right.
9 Thank you.

10 CHARGE OF THE COURT

11 THE COURT: All right. Mr. Foreman and ladies and
12 gentlemen of the jury the court has permitted you to take
13 notes during the course of the trial. You've not been
14 obligated to take notes. But if you have taken notes
15 these notes should be used only as memory aids. You
16 should not give your notes precedent over your
17 independent recollection of the evidence.

18 If you have chosen not to take notes you should rely
19 on your own independent recollection of the proceedings
20 and you should not be influenced by the notes of other
21 jurors. I emphasize that notes are not entitled to any
22 greater weight than the recollection and impression of
23 each juror as to what the testimony may have been.
24 Whether these notes are your notes and you may destroy
25 them yourselves or the court will destroy them for you.

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1 I'll give you a copy of these instructions in written
2 form. During your deliberations you may refer to the
3 instructions to guide your decision making. You must
4 consider the instructions as a whole and not follow some
5 and ignore others. Please return the instructions to the
6 court after you've reached a verdict, Mr. Foreman.

7 The defendant has pled not guilty to these
8 indictments, which places the burden on the State to
9 prove the defendant guilty. A person charged with
10 committing a criminal offense in South Carolina is never
11 required to prove himself innocent. I charge you that it
12 is a vital important rule of the law that the defendant
13 in a criminal trial, no matter what the seriousness of
14 the charge may be, must always be presumed to be innocent
15 until his guilt has been proven beyond a reasonable
16 doubt.

17 His presumption of innocence remains with the
18 defendant at all times from the moment he appears in this
19 court throughout the trial and until you, the jury, reach
20 a verdict of guilty beyond a reasonable doubt based on
21 the testimony and the evidence presented. The
22 presumption of innocence is a substantial right to which
23 every defendant is entitled unless and until you reach a
24 verdict of guilty beyond a reasonable doubt. If you,
25 the jury do not find the defendant guilty beyond a

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1 reasonable doubt it is your duty to acquit the defendant.
2 Now what is reasonable doubt? A reasonable doubt is the
3 kind of doubt that would cause a reasonable person to
4 hesitate to act.

5 The State has the burden of proving the defendant
6 guilty beyond a reasonable doubt. Some of you may have
7 served as jurors in civil cases where you were told it's
8 only necessary to prove that a fact is more likely true
9 than not true, such as by the greater weight or
10 preponderance of the evidence.

11 In criminal cases the State's proof must be more
12 powerful than that. It must be beyond a reasonable
13 doubt. Proof beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the defendant's guilt.
15 There are very few things in this world that we know with
16 absolute certainty.

17 And in criminal cases the law does not require proof
18 that overcomes every possible doubt. If based on your
19 consideration of the evidence you are firmly convinced
20 the defendant is guilty of the crime charged you must
21 find the defendant guilty.

22 On the other hand if you think there is a real
23 possibility the defendant is not guilty you must give the
24 defendant the benefit of the doubt and find him not
25 guilty. Now there are two types of evidence which is

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1 generally presented during a trial; direct evidence and
2 circumstantial evidence. Direct evidence is the
3 testimony of a person who claims to have actual knowledge
4 of a fact such as an eyewitness. It is evidence which
5 immediately establishes the main fact to be proved.
6 Circumstantial evidence is proof of a chain of facts and
7 circumstances indicating the existence of a fact. It is
8 evidence which immediately establishes collateral facts
9 from which a main fact may be inferred.

10 Circumstantial evidence is based on inference and
11 not on personal knowledge or observation. The law makes
12 absolutely no distinction between the weight or value to
13 be given to either direct or circumstantial evidence, nor
14 is a greater degree of certainty required of
15 circumstantial evidence than of direct evidence. You
16 should weigh all the evidence in the case. After
17 weighing all the evidence if you're not convinced of the
18 defendant's guilt beyond a reasonable doubt you must find
19 the defendant not guilty.

20 The evidence or lack of evidence on which you are to
21 decide the facts include the following: the sworn
22 testimony of the witness both on direct and cross
23 examination regardless of who called the witness, the
24 exhibits that have been received into evidence by the
25 court, and any facts agreed to or stipulated to by the

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1 lawyers. The following things are not evidence and you
2 may not consider them in deciding the facts: arguments
3 and statements made by the lawyers are not evidence. The
4 lawyers are not witnesses. Their opening statements,
5 closing arguments and other statements are intended to
6 help you interpret the evidence, but are not evidence.

7 If the facts as you remember them differ from the
8 lawyer's statement, your memory controls. Questions and
9 objections by the lawyers are not evidence. Lawyers have
10 a duty to their client to make objections when they
11 believe a question is improper under the rules of
12 evidence.

13 You should not allow any objections, or the court's
14 ruling on the objections to influence you. Testimony
15 that has been stricken that you may have been instructed
16 to disregard is not evidence and must not be considered.
17 Anything that you may have seen on television, read in
18 the paper or on the Internet or heard from others when
19 court is not in session is not evidence.

20 You should base your decisions solely on the sworn
21 testimony of the witnesses, exhibits received into
22 evidence by the court, and any facts agreed to or
23 stipulated by all the attorneys. The fact that the
24 defendant was arrested, charged, and indicted in this
25 case is not evidence and cannot be considered as evidence

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1 of guilt, nor does it create any presumption or inference
2 of guilt. The indictment is simply the formal written
3 instrument which contains the charges made against the
4 defendant.

5 Under our Constitution and Code of Laws only you the
6 jury can make findings of facts in this case. I'm not
7 permitted to indicate to you how I may feel about the
8 testimony and evidence which has been presented.
9 Throughout the trial it's been my intention to be fair
10 and impartial towards each of the parties involved.

11 Necessarily you must determine the creditability of
12 the witnesses who have testified in this case.
13 Creditability simply means believability. It's your duty
14 as jurors to analyze and evaluate the evidence and
15 determine which evidence convinces you of its truth. As
16 you decide whether or not to believe a witness's
17 testimony about a particular matter you may consider the
18 following:

19 The manner and appearance of the witness while on
20 the witness stand. Was he or she straight forward or
21 hesitant in answering? The testimony of a witness. Was
22 it consistent or inconsistent? How the witness came to
23 know the facts that he or she testified to. Was the
24 witness present during the incident, or did the witness
25 happen on the scene after the incident occurred. The

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1 reason the witness would give testimony which would help
2 or hurt one side or the other. Has the witness exhibited
3 to you any interest, bias, prejudice or other motive in
4 the case that you may consider whether a particular
5 witness may gain some other reward, payment, personal
6 advantage, or vindication throughout his or her
7 testimony.

8 The strength of the witness -- the testimony of the
9 witness. Was the testimony of the witness strengthened
10 or weakened by other testimony or evidence. The duration
11 and length of time between the incident and when they
12 were reported. Would the duration or length of the time
13 weaken or strengthen the witness's memory of the
14 incident.

15 All prior statements. Were prior statements made by
16 the witness consistent or inconsistent with the witness's
17 testimony. In determining the believability of a witness
18 who has testified in this case you may believe one
19 witness over several witnesses or several over one. You
20 may believe a part of the testimony of a witness and
21 reject the remaining part of the testimony of the same
22 witness. You may believe the testimony of a witness in
23 its entirety or reject the testimony of a witness in its
24 entirety. The same Constitution and laws which
25 designate and make you the finders of fact make me the

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1 sole instructor of the law. It's my duty to charge you
2 on the law applicable to this case and it's your duty as
3 jurors to accept and apply the law as I now state it to
4 you. The lawyers are not the instructors of the law.
5 You must accept the law and apply the law exactly as I
6 state it to you. You must not base your decision making
7 on your idea of what the law is or what you think the law
8 should be.

9 Kidnapping. The defendant is charged with
10 Kidnapping. The State must prove beyond a reasonable
11 doubt that the defendant knowingly and unlawfully seized,
12 confined, inveigled, decoyed, kidnapped, abducted or
13 carried away another person without authority of law.
14 Knowingly means with knowledge or consciously not
15 accidentally.

16 Seize means to take hold suddenly or forcibly.
17 Confine means to limit, restrict, or enclose within
18 bounds in prison or shut or keep in. Inveigle means to
19 lure, entice, or lead astray by false representation,
20 promises or other deceitful means.

21 Decoy means to lure by or if by decoy you decoy
22 something to entice a person to a trap. Kidnap is to
23 remove a person against his will by unlawful force or by
24 fraud. Abduct means to carry off secretly or by force
25 for illegal purpose. Carry away means to remove. The

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1 State does not have to prove that the defendant did all
2 these things. Instead if you find beyond a reasonable
3 doubt that the defendant did any of these things you may
4 find the defendant guilty of Kidnapping.

5 Something done without authority of law is something
6 which the law does not sanction, permit, allow, condone
7 or provide justification for. Kidnapping does not have
8 to be for any personal or monetary gain, for any illegal
9 purpose but may be for any reason whatsoever.

10 Armed Robbery. The defendant is charged with Armed
11 Robbery. In order to prove this offense the State must
12 prove beyond a reasonable doubt that the defendant took
13 personal property from a person or presence of another
14 person.

15 Property is in the presence of a person if it is
16 within the person's reach, inspection, observation, or
17 control so that the person could, if not overcome with
18 violence or prevented by fear, keep possession of the
19 property.

20 The State must also prove beyond a reasonable doubt
21 that the defendant carried the property away, intended to
22 permanently deprive the owner of the property and to keep
23 the property for the defendant's own use. The slightest
24 removal of the property or the complete possession of the
25 property even for an instant by the defendant is

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1 sufficient to show a taking and carrying away of the
2 property. The taking and carrying away of the property
3 must have been done with violence or by putting the owner
4 of the property in fear of violence.

5 Finally the defendant [sic] must prove beyond a
6 reasonable doubt that the defendant was armed with a
7 deadly weapon during the robbery. A deadly weapon is any
8 instrument or article or substance which is likely to
9 cause death or great bodily harm. Whether an instrument
10 has been used as a deadly weapon depends on the facts and
11 circumstances of each case.

12 The following are examples of instruments which may
13 be deadly weapons: a pistol, a shotgun, a rifle, a dirk,
14 a dagger, a knife, a slingshot, metal knuckles, a razor,
15 gasoline, a firebomb, Molotov cocktail, and lighter
16 fluid. A gun may be a deadly weapon even if it is not
17 operating.

18 Now you've been selected as fair and impartial
19 jurors to impartiality try and determine the facts of
20 this case. And when you have complied with your oath to
21 do so then no one will have the right to criticize your
22 verdict and you will have fully discharged your duties as
23 jurors. You will decide this case according to testimony
24 that you've heard from the sworn witnesses along with the
25 other evidence introduced. I charge you as jurors you

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1 must make your decision in this case without bias and
2 without prejudice to any party. You cannot allow
3 yourself to be governed by sympathy, prejudice, passion,
4 public opinion, or any other arbitrary factor.

5 Both the State and the defendant have the right to
6 expect that each one of you will carefully and
7 impartially consider all the evidence in this case and
8 that you will follow the law as I have explained it to
9 you.

10 Nothing I may have said or done during the course
11 of this trial has been in any way intended to express or
12 suggest a view of this case or an opinion as to the
13 facts, the weight of the evidence or creditability of the
14 witnesses. If you believe any of my actions or words
15 have indicated otherwise you must disregard such and form
16 your own view of this case or your own opinion as to the
17 facts, the weight of the evidence, or the creditability
18 of the witnesses.

19 Now Mr. Foreman and ladies and gentlemen of the jury
20 I have prepared two verdict forms. At the top it has the
21 State of South Carolina versus Wilton Q. Greene. It has
22 the case number at the top. As to Kidnapping we the jury
23 by unanimous consent find the defendant guilty of
24 Kidnapping or not guilty, a place for the Foreman to sign
25 and date. The other verdict form is as to Armed Robbery

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1 and is exactly like it. We the jury by unanimous consent
2 find the defendant guilty of Armed Robbery or not guilty
3 and a place to sign and date. As I said in the verdict
4 form your verdict has to be unanimous; all twelve of you
5 have to agree.

6 I will tell you to respect each other's opinions.
7 It's a give and take process. It's a collective
8 reasoning process on the twelve of y'all's part. Listen
9 to each other's opinion and if possible if necessary
10 possibly reevaluate your opinion if you think that's
11 necessary. If not, don't reevaluate those opinions. But
12 as I said it is a collective reasoning process on your
13 twelve people's part and I would ask you to review the
14 evidence and reach a fair and just verdict.

15 Now, Mr. Foreman I am going to ask you to go to the
16 jury room. You may take your notes with you but please
17 don't begin your deliberations because I have to take my
18 charge up with the lawyers. I may have to bring you back
19 and add something or take something away and you may
20 begin your deliberations after the Bailiff has brought
21 the verdict form, the charge book and all the evidence
22 that has been introduced at the trial. And the two
23 alternates if you'll just keep your seats please. You
24 may follow the bailiff to the jury room.

25 [Whereupon, the jury exits at 10:50 a.m.]

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1 THE COURT: Any exception to the charge from the
2 State?

3 MR. DEJEU: No, Your Honor.

4 THE COURT: Any exception from the defendant on the
5 charge?

6 MR. SHELTON: No, Your Honor.

7 THE COURT: All right. Would y'all come forward
8 and make sure all the exhibits are present and we'll give
9 them to the bailiff and let them start their
10 deliberations.

11 MR. SCHWACKE: Do you send back items that could
12 potentially harm jurors?

13 THE COURT: Pardon?

14 MR. SCHWACKE: Do you allow objects that could ---

15 THE COURT: --- yes, I probably do.

16 MR. SCHWACKE: You do?

17 THE COURT: Yes. I normally don't let bullets and
18 guns go back there together. I wish I had a plastic
19 knife but...

20 MR. SCHWACKE: That's just as bad.

21 THE COURT: Huh?

22 MR. SCHWACKE: That's just as bad going back
23 together.

24 THE COURT: But I don't.

25 MR. SCHWACKE: Yes, Your Honor.

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1 THE COURT: I normally let knives go back okay.

2 MR. SCHWACKE: Yes, sir. I just -- because there
3 is an exhibit number 1 that has a photograph of it.

4 [Whereupon, counsel review the exhibits]

5 THE COURT: All right. Are all the exhibits
6 present?

7 MR. DEJEU: Yes, Your Honor.

8 THE COURT: Would you take the -- have they already
9 taken them? Tell them to begin their deliberations.

10 [Whereupon, exhibits to the jury at 10:53 a.m.]

11 THE COURT: The two alternates if y'all will step
12 out in the hall I'll speak with you very briefly. We'll
13 stand at ease awaiting the jury verdict. Whenever you're
14 ready for whatever you got to do let me know. I'll be in
15 the office.

16 MR. DEJEU: Yes, sir.

17 [Whereupon, court is in recess from 10:53 a.m. until
18 3:29 p.m.]

19 [Whereupon, the testimony of the defendant, Wilton
20 Greene and the victim, Bing Zhang are played for the
21 jury]

22 THE COURT: Okay. As you know Judge Nicholson had
23 to go to the doctor. The jury sent in a note saying
24 they're decided on one charge, deadlocked on another.
25 They voted three times; some are unwavering. Judge

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1 Nicholson asked me to take up anything that came up. So
2 I propose to give an Allen Charge on the second charge.
3 He's asked if I would take the first verdict and I'll be
4 glad to take it and hold onto it. I won't announce what
5 it is until we either get a second verdict or declare a
6 mistrial on it. Does that work for everybody?

7 MR. SHELTON: Yes, Your Honor.

8 MR. DEJEU: Yes, sir.

9 THE COURT: Okay. Let's bring the jury in.

10 [Whereupon, the jury enters at 3:29 p.m.]

11 ALLEN CHARGE

12 THE COURT: Well welcome back, folks. You didn't
13 think you'd see me again did you? Judge Nicholson had to
14 go to a doctor's appointment this afternoon. It's not
15 life threatening or anything like that but it did need to
16 get taken care of this afternoon. And so he asked me to
17 take over until tomorrow to handle anything that come up
18 this afternoon on this.

19 So y'all have sent in a note that says you've
20 decided on one charge. You're deadlocked on the second
21 charge and that you voted a couple of times. That's
22 fine. I don't want to ask you what your verdict is on
23 the one that you're deadlocked on what the charge is.
24 What I would like you to do the one -- do you have the
25 verdict form?

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1 THE FOREPERSON: I have it in there.

2 THE COURT: Okay. What I'd like you to do is --
3 go get that and then bring that back and then I will hold
4 on to that and seal it until we figure out what we're
5 doing on the second charge. All right. Would you hand
6 that to the Bailiff please?

7 [Whereupon, the documents are provided to the court]

8 THE COURT: Okay. What I'm going to do is hold
9 onto this. I will seal it and give it to the Clerk until
10 we decide what we're going to do about the second charge.
11 What I'd like to do about the second charge is this.
12 There are twelve of you here deliberating. It's not easy
13 as you've figured out to decide what to do on some of
14 these things.

15 And it sounds like you got some pretty firmly held
16 decisions or opinions about the outcome of that second
17 charge should be. That's fine; we respect that. We've
18 asked y'all to come in do a very, very difficult job and
19 that is listen to what the evidence is, listen to what
20 the Judge tells you the law is, and come up a unanimous
21 decision.

22 That is not easy under the best of circumstances.
23 Obviously there are some very contested facts here. What
24 we ask when we ask you folks to come in is when you go
25 back in that jury room you express your views. But we

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1 also ask you to listen to the views of other folks,
2 listen to what they have to say, and listen and discuss
3 with an open mind. That's all we can ask people to do.
4 Everybody on this jury individually has a right to your
5 own opinion. And we would never ask you to give up a
6 firmly held conviction at all. That is your right.

7 The only thing that we do ask you to do is to keep
8 an open mind and consider with an open mind the views of
9 others. Don't feel like you need so come to a decision
10 just because you want to get along with everybody. If
11 you're in the majority consider the views of the
12 minority. If you're in the minority consider the views
13 of the majority. But just listen and discuss this with
14 an open mind.

15 The -- everybody's position hopefully is based on
16 reasonableness, on correctness, on impartiality. You're
17 not being influenced by outside influences. Make sure
18 that your opinion is based on those things and not things
19 that are unreasonable or that you bring in with a
20 partiality or a prejudice or there is some kind of
21 outside influence.

22 Check yourself, listen to what other people have to
23 say and go does that sound reasonable to me. All we're
24 asking you to do is deliberate with an open mind all
25 right. If y'all can't resolve this charge then I'll have

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1 to declare a mistrial as to that second charge all right.
2 And what that means is we'll have to bring another jury
3 in, they'll hear the same evidence essentially that you
4 heard. There won't be anything new. The same lawyers
5 will be here, the same witnesses, the Judge will charge
6 the same law.

7 We don't really have any reason to expect that we're
8 going to find twelve fairer people than we got for this
9 jury all right. So if we have to declare a mistrial then
10 that's what the result will end up being. But we don't
11 have any reason to suspect that they can do a better job
12 than you do.

13 So what I would like you to do is go back and give
14 it another try. Listen to what the other people say.
15 Speak your mind. Speak it openly and freely. Consider
16 though what the other people are saying and after that
17 then see if you can come to an agreement.

18 If you can't then you've done all that we ask you to
19 do. But I would ask that you go back and try a little
20 bit more. And listen to those things that I asked you to
21 listen to but most importantly listen to the opinions of
22 other people and see if y'all can't come to some sort of
23 agreement on the second charge okay. Thank you for your
24 patience.

25 [Whereupon, the jury exits at 3:35 p.m.]

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1 THE COURT: All right. I'm going to give this
2 verdict to the Clerk and ask her to keep it sealed and we
3 will read it once we have either got another verdict or a
4 mistrial declared on that one okay. Let me know if
5 anything else comes up.

6 [Whereupon, court is in recess from 3:36 p.m. to
7 4:42 p.m.]

8 THE COURT: Okay. The defendant -- you're the
9 defendant?

10 MR. GREENE: Yes, sir.

11 THE COURT: Let the record reflect the defendant is
12 in the courtroom. Bring the jury in.

13 [Whereupon, the jury enters at 4:42 p.m.]

14 VERDICT

15 THE COURT: All right. Mr. Foreman, I understand
16 you have reached a verdict on the other charge as well is
17 that correct?

18 THE FOREPERSON: Yes, sir.

19 THE COURT: Is it unanimous?

20 THE FOREPERSON: It is, sir.

21 THE COURT: All right. Will you hand it to the
22 bailiff please?

23 [Whereupon, the Foreperson complies]

24 THE COURT: Thank you, sir. All right. Will the
25 defendant rise?

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1 [Whereupon, the defendant stands]

2 THE COURT: On Indictment 2013-GS-08-0755 State of
3 South Carolina versus Wilton Q. Green as to the charge of
4 Armed Robbery the verdict is guilty; signed and dated by
5 the Foreman.

6 On Indictment 2013-GS-08-0756 the charge is
7 Kidnapping. The State of South Carolina versus Wilton Q.
8 Greene the verdict is guilty of Kidnapping; also signed
9 by the Foreman of the jury. You may be seated.

10 [Whereupon, the defendant complies]

11 THE COURT: All right. Let's poll the jury to
12 make sure that this is in fact your verdict.

13 POLLING OF THE JURY

14 CLERK OF COURT: Starting with the Foreperson juror
15 number 70, William Harder. Is this your verdict?

16 MR. HARDER: It is.

17 CLERK OF COURT: Is it still your verdict?

18 MR. HARDER: It is.

19 THE COURT: Juror 192, Kevin Tingler. Is this your
20 verdict?

21 MR. TINGLER: Yes.

22 CLERK OF COURT: Is it still your verdict?

23 MR. TINGLER: Yes.

24 CLERK OF COURT: Juror 42, Nicole Cox. Is this
25 your verdict?

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1 MS. COX: Yes.
2 CLERK OF COURT: Is it still your verdict?
3 MS. COX: Yes.
4 CLERK OF COURT: Juror 206, Brenda Williams. Is
5 this your verdict?
6 MS. WILLIAMS: Yes.
7 CLERK OF COURT: Is it still your verdict?
8 MS. WILLIAMS: Yes.
9 CLERK OF COURT: Juror 147, Jeffrey Powell. Is
10 this your verdict?
11 MR. POWELL: Yes.
12 CLERK OF COURT: Is it still your verdict?
13 MR. POWELL: Yes.
14 CLERK OF COURT: Juror 144, Kevin Posey. Is this
15 your verdict?
16 MR. POSEY: Yes.
17 CLERK OF COURT: Is it still your verdict?
18 MR. POSEY: Yes.
19 CLERK OF COURT: Juror number 1, Jacob Ackerman.
20 Is this your verdict?
21 MR. ACKERMAN: Yes, ma'am.
22 CLERK OF COURT: Is it still your verdict?
23 MR. ACKERMAN: Yes, ma'am.
24 CLERK OF COURT: Juror 48, Edith Derosa. Is this
25 your verdict?

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1 MS. DEROSA: Yes.
2 CLERK OF COURT: Is it still your verdict?
3 MS. DEROSA: Yes.
4 CLERK OF COURT: Juror 148, Rufus Prince. Is this
5 your verdict?
6 MR. PRINCE: Yes.
7 CLERK OF COURT: Is it still your verdict?
8 MR. PRINCE: Yes.
9 CLERK OF COURT: Juror 174, Jennifer Smith. Is
10 this your verdict?
11 MS. SMITH: Yes.
12 CLERK OF COURT: Is it still your verdict?
13 MS. SMITH: Yes.
14 CLERK OF COURT: Juror 173, James T. Smith, II. Is
15 this your verdict?
16 MR. SMITH: Yes.
17 CLERK OF COURT: Is it still your verdict?
18 MR. SMITH: Yes.
19 CLERK OF COURT: Juror 52, Robin Dunn. Is this
20 your verdict?
21 MS. DUNN: Yes.
22 CLERK OF COURT: Is it still your verdict?
23 MS. DUNN: Yes.
24 CLERK OF COURT: Your Honor, I've polled the jury.
25 THE COURT: All right. Now ladies and gentlemen

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1 let me -- Mr. Foreman, you signed this but didn't date
2 it. Let me just hand that back to the clerk and ask that
3 you put the date on there for us.

4 [Whereupon, the Foreperson complies]

5 THE COURT: Folks, I want to thank you for your
6 service this week on this case. Obviously I wasn't the
7 presiding Judge but these cases are never easy
8 considering the seriousness of the charge.

9 They are always difficult cases so clearly the
10 amount of time that you deliberated showed that you folks
11 did exactly what we asked you to do; listen to the case,
12 listen to the facts, listen to what the Judge tells you
13 the law is and then go in there and decide amongst
14 yourselves what the verdict should be.

15 And it sounds like you folks did exactly that. And
16 that's all that we can ask. You've done your civic duty
17 in that regard and we want to thank you on behalf of the
18 citizens of Berkeley County and the State of South
19 Carolina.

20 We are now -- it will be the last -- I'm still doing
21 a trial down the hall and I'll start another one in the
22 morning but I believe Judge Nicholson is finished with
23 trials for this week. And so I've drawn my jury for my
24 case tomorrow so you won't need to come back the rest of
25 this week. You don't need to call the telephone number.

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1 If you want to come back tomorrow and watch proceedings
2 or anything or if you want to come down and watch a civil
3 trial you're certainly welcome to. But you're no longer
4 required to.

5 Judge Nicholson will impose sentence tomorrow. And
6 he will be back in the morning probably around 10
7 o'clock. So if you want to come back and find out what
8 the sentence is or if you want to just call the Clerk's
9 Office later on you can do that. But you're not required
10 to come back. But just as matter of curiosity if you
11 want to you can come back.

12 So I won't delay you any longer. I want to thank
13 you for your service this week. I hope that you enjoyed
14 the opportunity to serve. We depend on that for people
15 to enjoy it. Everybody gets the note and when they first
16 get it they go man I'd like to do this you know; some
17 other time.

18 But it has been my experience once people get in,
19 especially if they get picked to serve on a jury they
20 truly do enjoy it. They learn a lot about the
21 experience. They learn a lot about our process. They
22 learn about the way things happen and it's not always
23 like T.V. But it's usually pretty interesting. I kind
24 of feel sorry for the people that are involved in some of
25 my cases that I'm doing down the hall this week; they're

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1 not that interesting. But this you know sounds like it
2 was probably a pretty interesting trial. So I hope you
3 enjoyed your jury service. I hope that you will -- if
4 you did tell other people about it because you know
5 that's the way we get people to show up is we have things
6 that we can do if they don't show up that we sometimes
7 have to send Sheriff's deputies out and stuff like that.

8 But primarily we count on people to do it out of a
9 sense of civic duty and that you know it helps when
10 they've talked to other people that have been on a jury
11 and spoke favorably of the experience. And I hope that
12 you did. And if you don't well let us know so we can
13 always figure out ways to improve.

14 But again, I won't take up any more of your time.
15 You are free to go. Thank you for your service. And
16 again if you want to come back tomorrow for sentencing I
17 believe Judge Nicholson will probably be here by 10
18 o'clock or so okay. Thank you for your patience.

19 [Whereupon, the jury exits at 4:50 p.m.]

20 THE COURT: All right. Well, the defendant will
21 remain in the custody of the Berkeley County Sheriff's
22 Office tonight and they will bring him back over tomorrow
23 morning. Judge Nicholson will impose sentencing in the
24 morning. He also said to tell you he will hear any
25 motions I guess that you have on other cases or anything

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1 like that; any motion you have on this case and any other
2 okay.

3 MR. SCHWACKE: And I just want us to, Your Honor
4 because we were not asked if we had any objections to
5 your Allen charge. At the conclusion of it we would not
6 have had any for the record.

7 THE COURT: Well, thank you for pointing that out
8 all right. Well, I'm getting so absent minded it seems
9 like I forgot to introduce the defendants and their
10 lawyers on both my cases this morning but it's been that
11 kind of day you know. So hopefully it's just one of
12 those stressful days. The computer system was down; I
13 was trying to draw two juries. Hopefully it's not a sign
14 of old age. Thank you.

15 MR. SCHWACKE: Thank you.

16 MR. DEJEU: Thank you.

17 [Whereupon, court's exhibit numbers 1, 2 and 3 are
18 marked by the court reporter]

19 [Whereupon, jury trial concludes at 4:57 p.m.]
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21
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23
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25

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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, reported by Mia Perron,
transcribed by Joyce Rueger, relative to appeal, in the
Court of General Sessions for Berkeley County, South
Carolina on the 22nd day of May, 2013.

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

December 16, 2013



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) 2013-GS-08-0755 and
COUNTY OF BERKELEY) 2013-GS-08-0756

The State of South Carolina,)
)
 vs.)
)
Wilton Q. Greene, III,) TRANSCRIPT OF RECORD
)
 Defendant.)

)

May 23, 2013
Moncks Corner, South Carolina

B E F O R E:

HONORABLE J. C. NICHOLSON, JR., JUDGE.

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

ADRIAN G. DEJEU, ESQUIRE
Attorney for the State

CHAD S. SHELTON, ESQUIRE
Attorney for the Defendant

Crystal Holmes
Official Court Reporter

E X H I B I T S

2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
3		(REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE		
4		HEARING.)		

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14	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
15	(REPORTER'S NOTE: NO WITNESSES TESTIFIED AT THE				
16	HEARING.)				

1 Thursday, May 23, 2013:

2 THE COURT: Did y'all make your motions
3 yesterday or do you need to make those this morning?

4 MR. SHELTON: We need to make those, Your Honor.

5 THE COURT: That's what I thought. Since Judge
6 Young hadn't heard the case, I didn't think he should
7 hear the motions.

8 MR. SHELTON: Yes, sir.

9 THE COURT: I will be glad to hear your motions
10 from the convictions on Mr. Greene on the armed robbery
11 and apparently the conviction on Mr. Greene on the
12 kidnapping.

13 MR. SHELTON: Yes, Your Honor.

14 THE COURT: I believe they returned the armed
15 robbery first and later the kidnapping, is that correct?

16 MR. SHELTON: I wasn't sure of the order but
17 that was a guess.

18 THE COURT: All right. I will be glad to hear
19 any motions. Do you want the 10 days to put them in
20 writing or do you want to make them today?

21 MR. SHELTON: Your Honor ---

22 THE COURT: I will be happy to give you the 10
23 days if you want it.

24 MR. SHELTON: No, I think we can make the
25 post-trial motions, Your Honor.

1 THE COURT: Okay. I will be glad to hear.

2 MR. SHELTON: In addition to the post-trial
3 motions, I just want to put on the record, because I
4 don't think it was on the record, of the first note by
5 the jury was for the police report and the transcript.
6 And the police report, I think the response by the Court
7 was that the police report was hearsay and the transcript
8 was not introduced into evidence.

9 And then the second not was ---

10 THE COURT: Do we have the notes? Do we have
11 ---

12 MR. SHELTON: I'm not sure if they were.

13 THE COURT: Well, let's see if we can't find
14 them and I'll mark them as Court's Exhibits. There were
15 two or three notes that the jury wrote. Did y'all throw
16 those away?

17 THE CLERK: No, sir, they're downstairs with the
18 evidence.

19 THE COURT: Go down and get them and what I'll
20 do is mark them as Court's Exhibits.

21 MR. SHELTON: Yes, sir.

22 THE COURT: But you referred to the note where
23 they asked for the police report and the transcript of
24 the oral conversation between your client and the police,
25 right?

1 MR. SHELTON: Yes, sir.

2 THE COURT: And the Court's response was ---

3 MR. DEJEU: No.

4 MR. SHELTON: It's with the victim.

5 MR. DEJEU: The victim.

6 THE COURT: The victim, excuse me. The Court's
7 response in writing was that the police report was not
8 admissible and the transcript had not been offered into
9 evidence. Therefore, they could not see it.

10 MR. SHELTON: Right, yes, Your Honor.

11 THE COURT: Okay.

12 MR. SHELTON: And the second note that they
13 wanted to hear the testimony of the victim and the
14 Defendant. And I believe the Court's response was that
15 they would have to listen to all of the testimony and
16 they could not deliberate during the testimony.

17 THE COURT: And I think that's what they did.

18 MR. SHELTON: Yes, I believe so.

19 THE COURT: Okay.

20 MR. SHELTON: And then the third note I believe
21 Judge Young was -- did put on the record that they had
22 one verdict and they were deadlocked on the second and so
23 he took the one ---

24 THE COURT: He gave them an Allen charge ---

25 MR. SHELTON: And gave them an Allen charge on

1 the second.

2 THE COURT: --- on the second ---

3 MR. SHELTON: Yes, sir.

4 THE COURT: --- indictment.

5 MR. SHELTON: So I just want to place those on
6 the record, make sure those are on the record.

7 But we respectfully renew all motions including
8 the directed verdict motion with the previous argument,
9 Your Honor, and the motion that the use of the improper
10 interpreter and renew our mistrial motion -- and renew
11 the motion, that mistrial motion, based on the
12 interpreter, Your Honor.

13 And so we renew all of those motions and
14 previous motions.

15 THE COURT: All right. Those motions are
16 denied.

17 MR. SHELTON: Thank you, Your Honor.

18 THE COURT: All right. Do you have any other
19 motions?

20 MR. SHELTON: No, Your Honor.

21 THE COURT: Okay. All right, Solicitor, what's
22 his prior criminal history?

23 MR. DEJEU: Your Honor, his prior record is a
24 strong armed robbery. The date of that incident is July
25 8, 2011. He received a YOA suspended. And then

1 subsequently he was arrested for the armed robbery and
2 the kidnapping that he went to trial on.

3 THE COURT: What was the date on the strong
4 armed?

5 MR. DEJEU: The date of the strong armed was
6 July 8, 2011.

7 THE COURT: July the 8th of '11. Was it -- was
8 the original charges indicted as armed robbery reduced to
9 strong or what?

10 MR. DEJEU: It was a strong arm robbery
11 indicted.

12 THE COURT: Strong arm from the very beginning?

13 MR. DEJEU: Yes.

14 THE COURT: It was not armed robbery and
15 reduced?

16 MR. DEJEU: No, Your Honor, it was -- always has
17 been a strong armed robbery.

18 THE COURT: Okay, all right. Can you give me
19 some of the -- do you know any of the facts on that?

20 MR. DEJEU: No, Your Honor, I don't. I know
21 that he was revoked and -- of that YOA on December 14th,
22 2011 because of this -- the new charges that he committed
23 on May and those are the charges that we went to trial
24 on.

25 THE COURT: Did he go to -- did he go to jail to

1 serve YOA?

2 MR. DEJEU: I think -- he's currently
3 incarcerated serving some on that revocation.

4 MR. SHELTON: He did. He did serve his YOA,
5 finished out that YOA sentence. He never bonded out
6 during that time, Your Honor.

7 THE COURT: Okay. How long has he been in jail
8 on this charge?

9 MR. SHELTON: Since he was arrested May 22nd,
10 2012.

11 THE COURT: May 22nd, 2012, okay.

12 (Pause.)

13 THE COURT: I will be glad to hear you on
14 sentencing.

15 MR. DEJEU: Thank you, Your Honor. May it
16 please the Court.

17 I don't have a lot -- a lot more to say. Your
18 Honor heard the testimony, heard the victim, you heard
19 the officers, and even you had the chance to listen from
20 the Defendant. Because of his prior record which is, you
21 know, back dates to 2011, strong armed robbery charge and
22 conviction. And then because of the randomness of this
23 crime he committed, I believe, Your Honor, that an
24 appropriate sentence ---

25 THE COURT: What?

1 MR. DEJEU: Randomness, he just picked up this
2 guy he never met and robbed him.

3 THE COURT: Okay.

4 MR. DEJEU: And because of that, I believe that
5 the range between 25, 30 years would be appropriate, Your
6 Honor, just because of that and the seriousness of the
7 charges.

8 THE COURT: Okay. Anything else?

9 MR. DEJEU: No, that's it, thank you.

10 THE COURT: I'll be glad to hear you.

11 MR. SHELTON: Thank you, Your Honor. And -- and
12 I do apologize, I do need to put on the record a motion
13 for a new trial, based on the previous motions, Your
14 Honor.

15 THE COURT: Well, that's what I asked you
16 earlier ---

17 MR. SHELTON: I'm sorry, Your Honor.

18 THE COURT: --- if you had anymore motions.
19 Motion for a new trial is denied.

20 MR. SHELTON: Thank you, Your Honor. As it
21 regards to sentencing, Wilton is 24 years of age, Your
22 Honor.

23 THE COURT: All right. Let me just back up just
24 a second. I've got all three of these -- all three of
25 these notes from the jury, they're marked Court's Exhibit

1 1, 2 and 3.

2 Okay.

3 MR. SHELTON: Thank you, Your Honor.

4 Wilton is 24 years old, Your Honor. He is from
5 the Jamestown area of Berkeley County. Your Honor, his
6 father was in the courtroom yesterday during jury
7 deliberations, during the closings. I have had
8 conversations with his mother. Mr. Manigault, his
9 godfather, has been at all proceedings. He had been ---

10 THE COURT: Are they here today?

11 MR. SHELTON: --- proceedings. They're not here
12 today, Your Honor.

13 THE COURT: Okay.

14 MR. SHELTON: He does have a family member that
15 is in the courtroom today.

16 THE COURT: I'll be glad to hear from them if
17 you want me to hear from them.

18 MR. SHELTON: No -- no one wants to necessarily
19 address the Court, Your Honor.

20 THE COURT: Okay.

21 MR. SHELTON: However, I have represented Wilton
22 for this -- for this last year. It's been an up and down
23 relationship. At one point in time he was in the
24 Department of Corrections where we were communicating
25 through letters. I know that that was difficult in

1 itself.

2 But, Your Honor, when Wilton brings the wall
3 down and -- puts up a wall, when he brings the wall down,
4 he is a very good person. There is something in there
5 that's good.

6 Your Honor, I -- I would -- he is 24 years of
7 age. I would ask Your Honor to take that into
8 consideration, take into consideration his age. I do
9 believe that drugs were a part of this. Your Honor, the
10 victim did receive their stuff back, it doesn't excuse
11 what happened to them. The victim wasn't injured in this
12 and Wilton was caught right away.

13 But I would ask -- ask Your Honor to have as
14 much mercy as possible. He did testify so you were able
15 to hear at least what he had to say. But I would ask
16 Your Honor to have as much mercy as possible.

17 THE COURT: Mr. Greene, anything you would like
18 to say?

19 THE DEFENDANT: I would like to say ---

20 THE COURT: I'm sorry, what?

21 THE DEFENDANT: I just want to say it was a
22 misunderstanding.

23 THE COURT: What was a misunderstanding?

24 THE DEFENDANT: The whole -- the whole incident,
25 that it was a misunderstanding. Never intended on

1 robbing him. It was on \$22, 20 of it was mine. I only
2 took \$2 from him. It was a misunderstanding. The wallet
3 had no money so I -- I wouldn't of took a wallet that had
4 no money. There's a reason for everything, the wallet
5 had no money, I would not have took the wallet that
6 didn't have no money.

7 That's all I want to say.

8 THE COURT: Anything else?

9 THE DEFENDANT: No, sir.

10 THE COURT: So you want -- you still refute --
11 you still deny what occurred?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Pardon?

14 THE DEFENDANT: Yes, sir.

15 (Pause.)

16 THE COURT: All right, Mr. Greene, indictment
17 number 0755, that's the armed robbery, sentenced to the
18 State Department of Corrections for period of 20 years,
19 run that concurrent, give you credit for jail time since
20 May 22nd, 2012. The indictment number 0756, that's the
21 kidnapping, sentenced to the Department of Corrections
22 for a period of 20 years, that's concurrent, give you
23 credit for jail time since May the 22nd, 2012.

24 Thank you very much.

25 MR. SHELTON: Your Honor, just for record, the

1 kidnapping is not sexual in nature.

2 THE COURT: Yeah, I'll write that on there.

3 MR. DEJEU: Yes, sir.

4 THE COURT: Thank you.

5 MR. SHELTON: Thank you, Your Honor.

6 MR. DEJEU: Thank you, sir.

7 ----- END OF TRANSCRIPT OF RECORD -----

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1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF RICHLAND)

5

6 I, Crystal Holmes, Official Court Reporter for the
7 Fifth Judicial Circuit of the State of South Carolina, do
8 hereby certify that the foregoing is a true, accurate and
9 Complete Transcript of Record of the proceedings had and
10 evidence introduced in the hearing of the captioned case,
11 relative to appeal, in the Court of General Sessions for
12 Berkeley County, South Carolina, on the 23rd day of May,
13 2013.

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

16

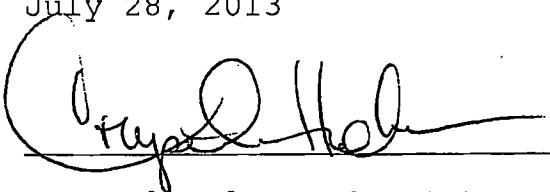
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July 28, 2013

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Crystal Holmes, Court Reporter

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The State v. Greene

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILTON Q. GREENE,

APPELLANT

APPELLATE CASE NO. 2013-001184

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Violating Appellant's state and federal constitutional rights to a fair trial, the trial judge erred in appointing a teacher from the local high school to act as an interpreter where the teacher was not a certified interpreter and the record failed to disclose she was "otherwise qualified" as an interpreter as required by South Carolina statutory law.

STATEMENT OF THE CASE

On April 17, 2013, a Berkeley County Grand Jury indicted Appellant for armed robbery (2013-GS-08-755) and kidnapping (2013-GS-08-756). R. 197. The prosecution called the case for trial before the Honorable J.C. Nicholson, Jr., and a jury on May 20, 2013. R. 1. Adrian G. Dejeu and Bryan Alfaro represented the state, and Chad D. Shelton and David Schwacke represented Appellant. R. 2. The jury convicted Appellant as charged. R. 156, lines 2-9.¹ Judge Nicholson sentenced Appellant to twenty years' imprisonment for armed robbery and twenty years' imprisonment for kidnapping, which were to be served concurrently. R. 180, lines 16-23.

Appellant filed a timely notice of appeal. This brief follows.

¹ The verdict was received by the Honorable Roger M. Young because Judge Nicholson had an appointment. R. 151, line 22 – R. 152, line 6; R. 157, line 20 – R. 158, line 2; R. 171, lines 5-7.

STATEMENT OF THE FACTS

Bing Zhang was the star witness for the prosecution in the case against Appellant. Zhang claimed that on May 22, 2012, a man approached him in the parking lot of a gas station asking for a ride to McDonald's. Zhang agreed, and the two left the gas station in Zhang's car. Almost immediately after leaving the gas station, the man allegedly pulled a knife on Zhang and instructed him to drive to Zhang's bank. R. 9, line 16 – R. 10, line 10; R. 11, lines 5-13. When Zhang said he had no bank account, the man disbelieved him. Zhang then gave the man all the money he had on him – approximately \$20. R. 11, lines 16-20. Zhang also gave the man his wallet, which contained no money. R. 11, lines 21-23. During this interaction, Zhang was looking for the police. While stopped at a red light, Zhang saw a police car stopped nearby and quickly turned left to get nearer the police car. Zhang drove to the middle of the road and pressed his horn. R. 13, lines 15-25.

Zhang opened his window and yelled that someone had robbed him. The man ran, and the police chased. R. 14, lines 6-11. Zhang followed the police and observed the officer catch the man. R. 14, lines 12-14. The police returned Zhang's wallet and its contents to him shortly after catching the man. R. 15, line 20 – R. 16, line 1.

Although Zhang testified on direct examination without the aid of an interpreter and with very little trouble communicating, the trial judge decided to appoint an interpreter shortly after the initiation of cross-examination. During the initial part of the cross-examination without an interpreter, Zhang claimed he had never given other people rides. R. 19, lines 9-10. When Appellant tried to impeach him with his audio-recorded statement to police, in which he stated he had given rides to other people, Zhang's ability to testify suddenly changed. When Appellant asked questions, Zhang did not answer, but asked

questions in return. R. 19, line 1 – R. 20, line 22. When Appellant asked if Zhang could read English because Appellant planned to impeach him with a transcript of his statement to police, Zhang answered: “Just a little bit maybe.” R. 21, lines 2-3. When Appellant gave Zhang the transcript to read, Zhang claimed he could not read it. R. 22, lines 11-20. Thereafter, the judge sua sponte stopped the proceedings. R. 22, line 23 – R. 23, line 1.

The judge inquired of the prosecutor concerning the availability of an interpreter. The prosecutor informed the court he had no interpreter available. R. 23, lines 10-12. The judge instructed the solicitor to read the transcript to Zhang in English during a break. The judge opined: “I don’t think he understands what anybody is even asking him.” R. 23, line 16 – R. 25, line 5. Later, the judge elaborated that he was “concerned about having observed Mr. Zhang’s ability to understand the English language and respond as far as his ability in communicate through the English language.” He stopped the trial “to see if the state could find an interpreter.” R. 25, line 21 – R. 26, line 3. When the break ended, the judge announced that the prosecutor had found an interpreter. R. 26, lines 3-5.

Xu Na appeared before the court as the proposed interpreter. She informed the Court that she taught Mandarin Chinese at Berkeley High. When the judge inquired what dialect of Chinese she spoke, she answered that “it doesn’t matter in Chinese.” R. 26, lines 9-17. The judge explained he wanted her to “interpret the question as given in English by the attorneys to [Zhang] in his dialect of Chinese.” R. 26, lines 23-25. Then, she was to let Zhang respond. If Zhang had to respond in Chinese, that was fine. R. 27, lines 2-4. The judge then gave Na an opportunity to converse with Zhang in Chinese. R. 27, lines 10-18. Zhang informed the judge he understood what was transpiring. R. 27, lines 20-23. After speaking with Zhang, Na informed the court that she understood what had happened to him.

R. 28, lines 2-3. She also stated the two could understand each other. R. 28, lines 4-10. Thereafter, the judge swore Na in as an interpreter. The oath required Na “to interpret correctly and to interpret to Mr. Zhang everything that is said in English, convert it to Chinese to him, and then correctly interpret from him back to English for the court and the jury and the lawyers.” R. 28, lines 13-19.

After doing so, the judge noted that Zhang could “communicate in simple English language.” However, the judge “was of the opinion that anything other than very simple sentences and simple words he was not able to interpret.” R. 29, lines 2-5. The judge found Na “competent to interpret.” R. 29, lines 6-10. The prosecution responded that Zhang had been responsive on direct to the questions asked; however, the prosecution did not object to the qualifications of Na or to Na interpreting for Zhang during the remainder of cross-examination and the entirety of re-direct. R. 29, line 11 – R. 30, line 2.

Appellant, on the other hand, objected to Na’s qualifications and moved for a mistrial based upon the use of an interpreter during the middle of cross-examination. Appellant noted the prosecution should have realized that an interpreter was necessary during its preparation of the case. Appellant argued the court should not correct the state’s error. Thus, Appellant argued a mistrial was appropriate. R. 30, lines 6-23. Appellant further argued Na was not qualified to act as an interpreter because she had not demonstrated an ability to give “an actual verbatim recital” of what the witness will say. R. 30, line 25 – R. 31, line 6. Appellant noted Na was not a certified interpreter and that one was available the following day. Appellant explained there had been no demonstration of Na’s ability to translate what Zhang was saying and communicate that to the jury and the court. R. 32, lines 6-19.

In response to this objection, the judge engaged in an additional colloquy with Na and Zhang. He explained that he would ask questions of Zhang in English and that Na must ask those questions of Zhang in Chinese and get his response. R. 33, lines 1-4. When the judge asked Na to tell Zhang that his responses could be in English or Chinese, Na required the judge to repeat his request. R. 33, lines 1-7. The following then transpired:

The Court: My question for you to ask him is does he understand that he can respond in English to your Chinese questions or he can respond in Chinese.

Interpreter: Okay.

[Whereupon, interpreter and witness confer]

Interpreter: He said Chinese.

R. 33, lines 13-18. Recognizing that the answer was not responsive to the judge's yes-or-no question, the judge attempts to clean it up by asking, "Which does he prefer respond in Chinese or respond in English? Ask him that?" The interpreter responded: "Chinese." R. 33, lines 19-21.

The judge then asked a series of questions for the interpreter to ask to Zhang in Chinese and relate back in English. After learning of the Chinese province where Zhang was born – Fujian, the judge followed up by asking for the physical location of the province. The interpreter failed to ask Zhang, but offered her own answer to the question. The judge had to instruct the interpreter to ask Zhang. R. 33, line 25 – R. 34, line 10. When the judge asked the interpreter to explain that if Zhang did not know an answer, he should respond that he did not know, the interpreter conferred with Zhang, but then had the judge repeat the instruction. R. 34, line 24 – R. 35, line 9. During this exchange, the judge admonished Na:

“When you’re interpreting what I need you to do is don’t have a little conversation with him just interpret what he says.” R. 36, lines 1-9.

Upon further inquiry by the judge, Na stated she had been an English teacher in China for nine years. R. 36, lines 20-25. At the time of the trial, Na had been in the United States for less than a year, having arrived in July 2012. Starting in August 2012, Na had been teaching Mandarin Chinese to students. R. 37, lines 1-3. Na candidly admitted she had never interpreted in court. R. 37, lines 4-6. When the judge inquired if Na had ever interpreted any type of formal proceedings, Na responded, “In China I have interpreted some papers, just for school not - - yes.” R. 37, lines 7-10.

Elaborating on the objection, Appellant noted:

As you observed there were a number of conversations that went back and forth between them that were not translated to us. They were having a colloquy among themselves and it happened on at least five different questions. And because of that unless our court reporter has suddenly become competent in Mandarin Chinese there would be an absence in the record of the exact conversation.

R. 37, line 23 – R. 38, line 6.

The judge again found that Na was “qualified as an interpreter.” Therefore, the judge did not require a certified interpreter for the proceedings although one was available the following day. He denied Appellant’s motion to find Na not qualified as an interpreter. R. 37, lines 11-17. The judge determined he had resolved any problems by instructing the interpreter on what to do and explained the problem was a result of the interpreter never having done it before. R. 38, lines 11-17.

Concerning the motion for mistrial, the prosecution explained that in preparing for trial, the prosecutor had communicated with Zhang without the use of an interpreter and without difficulty. The prosecutor also explained that during direct examination, questions

were asked in English, and responses were given in English. Zhang's responses were responsive to the questions asked demonstrating understanding on Zhang's part to the English questions asked. R. 39, line 4 – R. 40, line 5.

The judge agreed that Zhang had been asked questions in English and was responsive in English. The judge emphasized the questions were "simple" and that Zhang "did appear to understand." The judge, however, was "concerned about the ability of the defendant [sic] to express himself completely and his limited ability of understanding the English language and interpreting the questions." Due to this concern, the judge requested an interpreter. He determined the prosecutor had not erred in failing to provide an interpreter initially. Citing Rule 611, SCRE, the judge stated that he had required an interpreter to assist the jury "in making a determination in listening to the testimony and be fully appraised of the testimony based upon the interpretation by the interpreter." Therefore, he denied the motion for mistrial. R. 40, line 20 – R. 41, line 21.

Before the cross-examination resumed, the judge again admonished Na not to have a private conversation with Zhang, but to interpret what was being said to him and interpret his response. Na informed the judge that she would prefer the attorney to say a sentence or two and then allow her to interpret. R. 42, line 12 – R. 43, line 8.

During the remainder of cross-examination, the interpreter failed to understand the question: "And at some point in time he gets money from him?" The interpreter asked how to explain getting the money. R. 50, lines 9-13. Then, Zhang responded multiple times without the use of an interpreter as noted by the court reporter's lack of notation "Through Interpreter." R. 53, lines 2-6; R. 53, line 10 – R. 54, line 24; R. 56, lines 1-6. When the interpreter was involved again, confusion reigned. The interpreter was not aware of the

prosecutor's name and had defense counsel repeat it several times. The interpreter also thought the questions were directed to the interpreter personally, instead of Zhang. R. 55, lines 4-13. The interpreter even interjected her belief that Zhang did not understand a question based on the way he had answered a question. R. 56, lines 15-19.

ARGUMENT

Violating Appellant's state and federal constitutional rights to a fair trial, the trial judge erred in appointing a teacher from the local high school to act as an interpreter where the teacher was not a certified interpreter and the record failed to disclose she was "otherwise qualified" as an interpreter as required by South Carolina statutory law.

"[W]henever a party, witness or victim in a criminal legal proceeding does not sufficiently understand or speak the English language to comprehend the proceeding or to testify, the court must appoint a certified or otherwise qualified interpreter to interpret the proceedings to the party or victim or to interpret the testimony of the witness." S.C. Code Ann. § 17-1-50(B)(1). A certified interpreter is "an interpreter who meets the standards contained in [section 17-1-50(A)(4)] and is certified by the administrative office of the United States courts, by the office of the administrator for the state courts, or by a nationally recognized professional organization." S.C. Code Ann. § 17-1-50(A)(1). A qualified interpreter is a person who is at least eighteen years of age, is not a family member of a party or a witness, is not a party confined to an institution, and "has education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a non-English speaking person, or from the language of that person into spoken English." S.C. Code Ann. § 17-1-50(A)(4). Although the statute requires maintenance of a centralized list of certified and otherwise qualified interpreters by Court Administration, the statute permits the use of a qualified interpreter who is not on the list as long as the "interpreter meets the requirements of [section 17-1-50(A)(4)] and submits

a sworn affidavit to the court specifying his qualifications or submits to voir dire by the court.” S.C. Code Ann. § 17-1-50(D).²

Additionally, Rule 604 of the South Carolina Rules of Evidence provides that “[a]n interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.” In light of the Rules’ classification of the interpreter as an expert, she must be qualified by the court based upon knowledge, skill, experience, training or education under Rule 702. The qualification of a witness as an expert and the subsequent admission of that witness’s opinion testimony are matters within the sound discretion of the trial judge. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); Lee v. Suess, 318 S.C. 283, 285, 457 S.E.2d 344, 345 (1995); Manning v. City of Columbia, 297 S.C. 451, 453, 377 S.E.2d 335, 336-337 (1989); Honea v. Prior, 295 S.C. 526, 530, 369 S.E.2d 846, 849 (Ct. App. 1988). Therefore, an appellate court reviews a trial judge’s ruling concerning an expert witness’ qualification and the admission of opinion testimony for an abuse of discretion. Strange v. South Carolina Dep’t of Highways & Pub. Transp., 307 S.C. 161, 163, 414 S.E.2d 138, 139 (1992); Honea, 295 S.C. at 530; 369 S.E.2d at 849. “An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support.” Fields v. Reg’l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005); see also, Suess, 318 S.C. at 285, 457 S.E.2d at 345. If the ruling is “manifestly arbitrary, unreasonable, or unfair,” then the trial court abused his discretion. Id.

² Noteworthy, the South Carolina Judicial Department’s website states that “[o]nly interpreters who are in our directory may be utilized in our courts.” <http://www.sccourts.org/courtreporter/HowtoBecomeCourtInterpreter.cfm> (last visited on May 27, 2014).

Rule 702 of the South Carolina Rules of Evidence governs when the admission of expert testimony is appropriate and supplies the bases by which an expert may be qualified to give an opinion. Specifically, the Rule provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. Thus, several criteria must be met prior to the admission of expert testimony. First, the trial court must determine that such evidence will assist the jury to understand the evidence or determine a fact in issue. Second, the witness must be qualified as an expert due to experience or training. Third, the trial court must determine whether the proposed expert testimony satisfies a reliability threshold for the jury's ultimate consideration. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009).

The first criterion requires the trial judge to determine whether the proffered testimony, which is based upon specialized knowledge, will assist the jury in understanding evidence or determining a fact. A matter understood without any specialized knowledge does not require the witness to be qualified as an expert. Additionally, if the testimony will not assist the jury's understanding of a relevant matter, then no expert testimony is needed. See Manning, 297 S.C. at 453-454, 377 S.E.2d at 337 (holding that "[t]o qualify as an expert, a person must have acquired by study or practical experience a special knowledge of a subject matter about which the jury's good judgment and average knowledge is inadequate"); Honea, 295 S.C. at 531, 369 S.E.2d at 849.

The third criterion requires the trial judge to ensure the proffered testimony "meets a reliability threshold for the jury's ultimate consideration." White, 382 S.C. at 270, 676 S.E.2d at 686. As explained by the South Carolina Supreme Court, "[r]eliability is a central

feature of Rule 702 admissibility.” Id. Although the factors to be considered for reliability differ depending upon the type of evidence offered, typically, when scientific evidence is offered, the trial court must consider (1) the publications and peer review of the technique, (2) prior application of the method to the type of evidence involved in the case, (3) the quality control procedures used to ensure reliability, and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999). When non-scientific expert testimony is offered, reliability factors similar to those reviewed for scientific expert testimony but tailored to fit the particular evidence offered. White, 382 S.C. at 272, 676 S.E.2d at 687 (listing six factors to consider for dog tracking evidence).

The second criterion, which is at issue in Appellant’s case and parallels the statute, requires that the expert’s proffered testimony be based upon “knowledge, skill, experience, training, or education.” In order for a witness to be competent to testify as an expert, the “witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.” O’Tuel v. Villani, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995). Qualification as an expert “depends on the particular witness’ reference to the subject.” Gooding v. St. Francis Xavier Hospital, 326 S.C. 248, 253, 487 S.E.2d 596, 598 (1997); Suess, 318 S.C. at 285, 457 S.E.2d at 346. “[A]n expert is not limited to any class of persons acting professionally.” Gooding, 326 S.C. at 253, 487 S.E.2d at 598 (citing Botelho v. Bycura, 282 S.C. 578, 586, 320 S.E.2d 59, 64 (Ct. App. 1984)). In addition, our courts place no exact requirement regarding how that knowledge or skill must be acquired by the witness. Honea, 295 S.C. at 531, 369 S.E.2d at 849. In fact,

“[e]ven where the problem presented may be one that usually requires some scientific knowledge or training, a person with long experience may testify as an expert although he or she did not pursue a special study of the matter.” Id.

In McDill v. Mark's Auto Sales, 367 S.C. 486, 491, 626 S.E.2d 52, 55 (Ct. App. 2006), this Court held the trial judge did not err in refusing to qualify a state trooper as an expert in accident reconstruction. Although the trooper had experience in investigating accidents and took a six-week accident reconstruction course along with updating courses, the trooper was not a member of the Highway Patrol's accident reconstruction team. The trooper did not use any particular reconstructive techniques in making his determination of the car speeds; rather, he relied upon statements from the drivers as to their speeds. The trooper had testified in federal court previously concerning his opinion as to accident investigation, not reconstruction. Id. As this Court noted, “if investigating an accident qualified an officer as an expert in accident causation, then every highway patrolman would qualify as an expert.” Id.

On the other hand, in Gooding, 326 S.C. at 252, 487 S.E.2d at 597, the South Carolina Supreme Court held an emergency medical technician (EMT) and paramedic, was qualified to testify as an expert in intubation. The EMT testified that in addition to being a certified paramedic, he had intubated over one hundred patients, and instructed and tested physicians on intubation and extubation procedures. Id. at 251, 487 S.E.2d at 597.

In State v. Ellis, 345 S.C. 175, 177-178, 547 S.E.2d 490, 491 (2001), the Supreme Court held a police officer, who was qualified to testify as an expert in crime scene processing and fingerprint identification exceeded the scope of his expertise when he testified as to his conclusion drawn from the measurements and observations he made. In

Ellis, the victim was found dead as a result of gunshot wounds near his bicycle and a knife. The defendant admitted to shooting the victim, but claimed he acted in self-defense when the victim dropped his bike and approached the defendant with the knife. When the victim refused to stop, the defendant shot the victim. The prosecution's theory of the case was that the defendant shot the victim while the victim remained on the bike. Id. at 176, 547 S.E.2d at 491. The police officer testified that the victim was on his bike when he was shot based upon his measurements and observations of the crime scene. Id. at 177-178, 547 S.E.2d at 491. Further, the Court held the error in allowing the officer to testify was not harmless in light of the defendant's contention that he was acting in self-defense. Id. at 178, 547 S.E.2d at 491. The Court held the prosecutor was free to argue that the evidence supported an inference that the victim was on the bicycle at the time of the shooting, and the jury could have concluded as such, but the officer "was not qualified to give such an 'expert' opinion." Id.

In addition to the statute and the rules govern expert testimony, South Carolina established Rules of Professional Conduct for Court Interpreters, providing guidance in determining whether an individual is "otherwise qualified" as required by the statute. Rule 511, SCACR. The Preamble to the Rule provides that "[a]nyone serving as a court interpreter should be required to understand and abide by the precepts set out in these Rules." The Rule's Applicability section states that "[t]hese Rules shall guide and be binding upon all persons, agencies, and organizations who administer, supervise use of, or deliver interpreting services to the judiciary." Clearly, the Rules apply equally to interpreters deemed "otherwise qualified" and to certified court reporters.

Interpreters are required to render “a complete and accurate interpretation ... without altering, omitting or adding anything to what is stated or written and without explanation or summarization.” Rule 1, RPCCI, Rule 511, SCACR. Per the commentary, an interpreter must interpret “[e]very spoken statement, even if it appears non-responsive, obscene, rambling or incoherent.” Additionally, “[i]nterpreters should never interject their own words, phrases, or expressions.”

Concerning an interpreter’s competency, the commentary to Rule 2 explains that “[a]cceptance of a case by an interpreter conveys linguistic competency in legal settings.” (emphasis added). The commentary to Rule 8, which requires interpreters to assess and report impediments to performance, encourages interpreters “to make inquiries as to the nature of a case whenever possible before accept an assignment” to enable “interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.” Whenever the language and subject matter of a case “is likely to exceed their skills or capabilities,” interpreters “should refrain from accepting a case.” Along these lines, South Carolina’s Judicial Department website refers those interested in being interpreters to the Occupational Outlook Handbook, 2012-2013 Edition. <http://www.sccourts.org/courtreporter/HowtoBecomeCourtInterpreter.cfm> (last visited May 27, 2014). The Handbook is a product of the United States Department of Labor. It defines legal or judiciary interpreters as individuals who “typically work in courts and other legal settings. ... As a result, they must understand legal terminology. ... Both interpreters and translators must have strong understanding of legal terminology in both languages.”

<http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-2>

(last visited May 27, 2014).

The trial judge erred in finding Na “otherwise qualified” as an interpreter. The statute requires the interpreter to have the “education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a non-English speaking person, or from the language of that person into spoken English.” S.C. Code Ann. § 17-1-50(A)(4). Na simply did not possess the education, training, or experience to enable her to interpret English and Spanish in a legal setting. Na’s only experience was as an educator. For nine years, Na had taught English in China. For less than one year, Na had resided in the United States where Na taught Mandarin Chinese to students. Na had no experience with legal terminology or translating in a legal setting. The judge’s repeated instructions to Na to stop having discussions with Zhang and to interpret everything he said and only what the lawyers said displayed Na’s lack of understanding of her role. Na’s interjection during the testimony that Zhang must not have understood her interpretation because his answer was non-responsive further demonstrated her lack of understanding of her role.

Further, Na’s claim that dialect does not matter in Chinese is preposterous. There are seven major modern Chinese dialects, including Mandarin, Wu, Xiang, Gan, Kejia, Min, and Yue. Hongyuan Dong, A History of The Chinese Language, 156 (Routledge 2014). Although it appeared that both Na and Zhang were speaking Mandarin, one of the seven major dialects in Chinese, the inquiry into the dialects should not have ended there as dialect does matter in Chinese. Although there are commonly shared features of the Mandarin

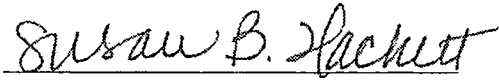
dialects, there remain subgroups exhibiting various distinctions. Id. at 158. Of particular importance to the instant matter is that Zhang was born in the Fujian Province. According to Howard French, “[e]ven by the standards of China’s complicated language matrix, Fujian Province stands out for its richness, a dense thicket of tongues laid down by waves of migration over time from central China.” In his article, French quoted Zhang Zhenxing, a noted linguist from Fujian at the Chinese Academy of Social Sciences in Beijing: “‘We have an expression, that if you drive five miles in Fujian the culture changes, and if you drive ten miles, the language does.’” Zhenxing described the number of dialects in Fujian as “‘extraordinary.’” French explained that “[t]o drive a few miles down the road from one village to another is indeed to plunge into a new linguistic universe. Things can be as confusing for someone from the next town as they are for the total outsider.” Howard French, Uniting China to Speak Mandarin, the One Official Language: Easier Said Than Done, N.Y. Times, July 10, 2005.

The case before the jury was no easy matter as demonstrated by the jury’s struggle over its verdict. The jury asked for the possibility of a lesser-included charge. R. 194. Receiving a negative reply to the initial inquiry, the jury then asked for the testimony of Zhang and Appellant to be replayed. R. 195. After hearing the testimony, the jury wanted the police report and the transcript of Zhang’s statement to police. R. 196. Even after the additional clarifications and three votes, the jury was still deadlocked. R. 151, lines 22-25. Thereafter, the judge instructed the jurors pursuant to Allen v. United States, 164 U.S. 492 (1896). R. 152, line 12 – R. 155, line 24. Only then did the jurors return a unanimous verdict.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentences in light of the trial court's error in appointing an unqualified court interpreter.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILTON Q. GREENE,

APPELLANT

CERTIFICATE OF SERVICE

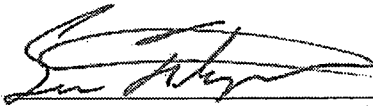
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of October, 2014.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1th day of October, 2014.



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October 1, 2014

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Re: The State v. Wilton Q. Greene

Dear Jennifer:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/smf

Enclosure

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-001184

THE STATE,

Respondent,

v.

WILTON Q. GREENE,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly appointed an interpreter for the victim after finding her qualified following extensive voir dire in accordance with the statute governing the use of interpreters in criminal proceedings.

STATEMENT OF THE CASE

A Berkeley County Grand Jury indicted Appellant for armed robbery and kidnapping. (R. 197-198; 200-201) On May 20-23, 2013, Appellant proceeded to trial before a jury. Chad Shelton, Esquire, and David Schwacke, Esquire, represented Appellant, and Adrian G. Dejeu, Esquire, and Bryan Alfaro, Esquire, represented the State. The jury found Appellant guilty on both charges. (R. 156.) The Honorable J.C. Nicholson, Jr., sentenced him to twenty years' imprisonment on each charge, to be served concurrently. (R. 167.)

On May 28, 2013, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

On May 22, 2012, at approximately 10:15 a.m., Appellant approached Bing Zhang (Victim) at a gas station and asked him for a ride to McDonald's. (R. 9, line 16-R. 10, line 5.) Victim agreed to give Appellant a ride and they left the gas station. (R. 10, lines 5-9.) After Victim drove through the first traffic light, Appellant pulled a knife on him and told him to go to Victim's bank. (R. 11, lines 7-9; R. 12, lines 2-9.) Victim told him he did not have a bank account and offered him all the money he had, which was approximately twenty dollars. (R. 11, lines 14-19.) Appellant then asked for Victim's wallet and Victim gave him the wallet, which contained no money but had his identification inside. (R. 11, lines 19-23; R. 13, lines 2-6.) As Appellant continued to hold the knife on him, Victim began looking for a police car nearby. (R. 13, lines 11-17.) As he stopped at a red light, Victim noticed a stopped police car. (R. 13, lines 19-23.) When the light turned green, Victim drove toward the police car honking his horn. (R. 13, lines 24-25; R. 60, lines 6-18.) He opened his window and told the police officer he was being robbed. (R. 14, lines 6-7.) At that point, Appellant jumped out of the car and ran. (R. 14, lines 8-9; R. 61, lines 1-4.) The officer chased Appellant in his patrol vehicle, eventually cutting him off in a parking lot and catching him. (R. 14, line 14; R. 61, lines 15-19; R. 61, lines 10-19; R. 64, line 2-R. 66, line 8.) Appellant was arrested and proceeded to trial on charges of armed robbery and kidnapping. (R. 66, line 22-141, line 7; R. 197-198; 200-201)

At trial, Victim testified Appellant came from across the street while he was at a gas station and asked him for a ride. (R. 10, lines 1-23.) Once Appellant was in the car, he held a knife on Victim and demanded he drive to his bank. (R. 11, lines 7-10.) Victim told Appellant he had no bank account and gave him the only money he had,

approximately twenty dollars, and his wallet containing his identification. (R. 11, lines 12-23.) Victim told him to keep the money but asked for his ID back. (R. 13, lines 7-10.) Victim testified he was able to attract the attention of a police officer by driving directly toward the patrol vehicle, honking his horn, rolling down the window, and telling the officer somebody robbed him. (R. 13, line 22-R. 14, line 7.) He testified Appellant jumped out of the car and ran, but he saw the police catch Appellant. (R. 14, lines 8-14.)

Defense counsel began cross-examination by asking Victim about his immigration status. (R. 17, line 13-R. 18, line 13.) Victim asked defense counsel to repeat some of his questions because he could not understand them. (R. 17, lines 21-24; R. 18, line 14-17.) When defense counsel asked about his statement to police, the trial judge suggested Victim be given time to read the transcript of the statement. (R. 22, lines 4-17.) However, Victim informed the trial judge he could not read it. (R. 22, lines 18-21.) At that point, the trial judge sent the jury out and suggested someone read the transcript to Victim. (R. 23, lines 1-18.) The trial judge also stated, "I'm not trying to interfere with your cross-examination. My concern is I don't think he understands what anybody is asking him, okay." (R. 23, lines 19-20.) The trial judge commented, "I'm sure we couldn't find a Mandarin interpreter on short notice I'm sure. Solicitor, I'm going to take a break. Read the English to him and then I'll let him continue his cross okay." (R. 24, lines 7-10.) After the break, an off-the-record conference in chambers, and an off-the-record bench conference, the following exchange took place:

The Court: All right. For the record the court stopped the trial during the middle of the cross-examination by defendant's attorney because the court was concerned about having observed [Victim]'s ability to understand the English language and respond as far as his ability in communicating through the English language. And I stopped the testimony and asked to see if the State could

find an interpreter. And I understand the State has found an interpreter[;] is that correct?

[The State]: Yes, Your Honor.

The Court: Would you bring her around please and let me ask her some questions.

(R. 25, line 21-R. 26, line 7.)

The trial judge then began extensive voir dire with the potential interpreter, Xu Na. He asked her where she was employed, what dialect of Chinese she spoke, and whether she was able to communicate with Victim in Chinese. (R. 26, lines 9-20.) She responded that she was a teacher of Mandarin Chinese at Berkeley High School. (R. 26, lines 11-14.) She took a few minutes to talk to Victim in Chinese to ascertain whether she could interpret for him. (R. 27, lines 9-24.) After conferring with Victim, Na reported to the trial court that she and Victim could understand what each was saying to the other in Chinese. (R. 27, line 25-R. 28, line 10.) At that time, the trial judge swore Na in as an interpreter. (R. 28, lines 11-19.) The following exchange took place:

The Court: Let me put on the record I think I put very briefly on the record that the court on its own initiative stopped the testimony and raised the issue of whether [Victim]—I think he has—I think he can communicate in simple English language. But the court was of the opinion that anything other than very simple sentences and simple words he was not able to interpret.

And the court talked to the attorneys and the Interpreter has been found and the court finds that the Interpreter is competent to interpret for the court and the jury as well as the attorneys involved.

...

[The State]: The State believes that because—based on Your Honor's request that the clarity of an Interpreter might be beneficial that the court has inquired correctly as to her qualifications as well as her ability to effective[ly] translate the remainder of this witness's cross-examination and his redirect.

(R. 28, line 24-R. 30, line 2.)

Appellant then objected to bringing in an interpreter at that point in the proceedings and moved for a mistrial. (R. 30, lines 6-23.) Specifically, he argued “the State should have realized during their preparation with the witness that an Interpreter was necessary, that they failed to do so and that the court . . . should not be correcting their error.” (R. 30, lines 16-19.) In addition, Appellant argued the woman who was brought in to act as an interpreter “has not yet been certified or demonstrated to the court that she is in fact able to adequately state to the court and to the jury an actual verbatim recital of what the witness will be testifying to” (R. 31, lines 1-6.) At that point, the trial judge asked if there was anything else Appellant would like for him to ask her or if there was anything Appellant would like to ask her about her ability to interpret. (R. 31, lines 11-14.) He pointed out:

But she has had a conversation with the defendant and she tells me that she understands what he is saying. He understands her and she said under oath that she will do it correctly and truthfully. Now what else would you like for the court to ask her or I’ll give you an opportunity to ask any questions you would like to ask of her about her ability to interpret pursuant to your motion.

(R. 31, lines 17-24.) Appellant did not conduct voir dire of the interpreter, even though the trial judge offered him the opportunity to do so.

Appellant argued “we’ve had no demonstration that she is able to follow up with one requirement that she be able to not only translate what he’s saying but communicate it to the court and to the jury.” (R. 32, lines 14-18.) In response, the trial court stated:

“What I’m going to do for the record I’m going to ask you some questions to ask [Victim] and I want you to ask him that question in Chinese and get his response. But

before I do that I would like for you to tell him that his response can be in English if he so chooses or his response can be in Chinese to you. Would you explain that to him please, ma'am." (R. 33, lines 1-7.)

The trial judge proceeded to ask questions of Victim through the interpreter, including where he was born and details about his family. (R. 33, line 23-R. 36, line 9.) During the exchange between the interpreter and Victim, the trial judge reminded the interpreter that she need not have conversation with Victim but rather just needed to interpret what he said. (R. 36, lines 1-4.) He specifically asked the interpreter, "What I'm going to do is have you sit by him and the attorney will ask the question, you'll tell him what the question is in Chinese let him respond in Chinese and then you tell the attorney, the jury, and the court reporter what his response was. Do you think you can do that?" (R. 36, lines 13-18.) He then asked Na questions about how long she had been teaching and whether she had interpreted in court before. (R. 36, line 20-R. 37, line 10.) Na answered that she had been an English teacher in China for almost nine years before coming to the United States in July 2012 to teach Mandarin Chinese. (R. 36, line 23-R. 37, line 3.) She had not interpreted in court before, but she had interpreted some papers for school in China. (R. 37, lines 4-10.) After making those inquiries, the following exchange took place:

The Court: All right. The court makes a finding she is qualified as an Interpreter and the court is not going to require a State certified Interpreter and we're going to proceed with this Interpreter. Your motion to find her non-qualified is denied. Your motion for – anything else you want to tell me before I rule on your mistrial?

[Appellant]: Well, Your Honor, if I could just revisit just briefly . . . her qualifications.

The Court: --yes, sir. I'll be glad for you to.

[Appellant]: Just to put on the record again our objection to her being qualified. As you have observed there were a number of conversations that went back and forth between them that were not translated to us. They were having a colloquy among themselves and it happened on at least five different questions. And because of that unless our court reporter has suddenly become competent in Mandarin Chinese there would be an absence in the record of the exact conversation.

...

The Court: Well, I think I have instructed her what to do. She's never done it before. I think I have told her don't have the conversation with him. Interpret what he says, interpret what the lawyer says and I think she understands that and she's willing to do that. I agree with you and I viewed that as a problem but I think I have corrected it and she's agreed to do it properly.

(R. 37, line 11-R. 38, line 17.) The trial court then noted Appellant's objection and asked him if he wanted to put anything else on the record regarding his mistrial motion, which he declined. (R. 38, line 18-R. 39, line 1.) At that time, the State responded to Appellant's motion, arguing the trial judge made the appropriate inquiries and instructed the interpreter on the proper manner in which to conduct the interpretation. (R. 39, lines 2-8.) Furthermore, the State defended its decision to conduct direct examination without an interpreter, pointing out that Victim was responsive to the questions asked. (R. 39, lines 9-25.) Appellant then argued that because the State had examined Victim without the benefit of an interpreter, Victim's remaining testimony should proceed in the same manner. (R. 40, lines 14-17.) The trial court denied the mistrial motion, stating:

Let me put on the record that during the first portion of trial the witness, [Victim,] was responsive to simple questions on direct and the attorney summarized questions and asked a simple question – summarized testimony and asked a simple question and [Victim] did appear to understand. However, during the course of the testimony

the court became concerned about the ability of the defendant to express himself completely and his limited ability of understanding the English language and interpreting the questions.

So the court sua sponte stopped the trial and discussed the matter with the attorneys and ultimately an Interpreter has been brought in to the court by the State at the court's request. The court finds that the State has done no wrong in initially calling the witness. It was the court's decision in an effort to make [sic] hopefully allow that testimony to be clear to the jury, the court, and everyone else.

And under Rule 611 the court shall exercise reasonable control over the mode and order of presenting evidence. And under Rule 611 the court took this step to bring an Interpreter into the trial at this time to assist the triers of the [sic] fact in making a determination in listening to the testimony and be fully [apprised] of the testimony based upon the interpretation by the Interpreter. And the motion for mistrial is denied.

(R. 40, line 20-R. 41, lines 21.) The trial proceeded, and the trial judge again reminded the interpreter not to have a private conversation with Victim but rather to interpret what is being said to him and what his response is. (R. 42, lines 12-15.) Cross-examination resumed with the interpreter, during which the trial court reminded her once more not to have conversations with Victim. (R. 46, lines 14-16.)

Next, Officer Shane Judy of the Moncks Corner Police Department testified he was on routine patrol on May 22, 2012, when a car drove straight toward him at a traffic light. (R. 59, line 7-R. 60, line 18.) Officer Judy exited his patrol vehicle and witnessed the driver of the other vehicle yelling, "He robbed me! He robbed me!" (R. 60, line 20-R. 61, line 1.) He then saw a black male passenger exit the other vehicle and run. (R. 61, lines 1-4.) He testified he got back into his patrol car and followed the suspect until he was able to cut him off in a parking lot. (R. 61, lines 10-19.) Officer Judy was able to catch the suspect without ever losing sight of him during the chase. (R. 64, lines 2-6.) At

one point the suspect tripped and fell, dropping a knife as he went down. (R. 65, lines 19-25.) Another deputy assisted Judy in restraining the suspect, while a different officer took the knife into evidence. (R. 66, lines 4-18.) In court, Officer Judy identified Appellant as the man he chased and arrested. (R. 66, line 22-R. 67, line 5.)

Officer Tony Edwards testified that when he arrived on the scene, Officer Judy already had Appellant in custody. (R. 75, line 10-R. 76, line 4.) Officer Edwards was involved in collection of evidence, including the knife Appellant dropped. (R. 76, line 5-R. 79, line 7.) Officer Edwards also testified he found Victim's wallet in Appellant's right front pocket and Victim's money, approximately \$22, in Appellant's left front pocket and returned them to Victim. (R. 78, line 21-R. 79, line 17.)

After the State rested, Appellant renewed his argument "that the court improperly authorized an interpreter who was not qualified and that the court failed to grant a mistrial upon the State's self[-]determined failure to use an Interpreter in their direct testimony to begin with." (R. 80, lines 20-25.) The trial court again denied the motion for mistrial. (R. 81, lines 1-2.)

Appellant testified in his defense that the alleged robbery was actually a drug deal between him and Victim. (R. 93, line 8-14.) He explained they made a crack cocaine deal and he took Victim's wallet as collateral because Victim did not have the money to pay for the drugs. (R. 93, line 12-19.) Appellant claimed he asked Victim to drop him off by the bank, and Victim told him he had no money but then gave him a five-dollar bill and a couple of ones. (R. 94, line 11-R. 95, line 8.) He claimed Victim was doing "hits" of the crack while he was driving. (R. 93, lines 21-25; R. 95, lines 22-25.) After Victim saw the police, Appellant claimed Victim looked at the knife he had in the car's console

and started acting funny. (R. 96, lines 6-16.) When Victim reached for the knife, Appellant grabbed it. (R. 96, lines 16-18.)

When questioned during cross-examination on whether he told anyone about "this being a drug deal gone bad," Appellant testified he did not tell Officer Judy about it but did tell Detective Michael Roach. (R. 111, lines 8-12.) The State called Detective Roach on reply, and Detective Roach testified Appellant made no indication there was a drug deal or they would have followed up on it. (R. 123, lines 10-17.)

Ultimately, the jury found Appellant guilty on both charges and the trial court sentenced him to twenty years' for each charge to be served concurrently. (R. 156, lines 2-9; R. 167.)

ARGUMENT

The trial court properly appointed an interpreter for the victim after finding her qualified following extensive voir dire in accordance with the statute governing the use of interpreters in criminal proceedings.

Appellant argues the trial judge erred in appointing Na as an interpreter, contending she was not a certified interpreter and the record failed to disclose she was “otherwise qualified” as an interpreter as required by South Carolina statutory law. Specifically, he claims this violated Appellant’s state and federal constitutional rights to a fair trial. To the contrary, the trial judge correctly followed the guidelines of the statute by only finding the interpreter qualified after conducting voir dire. Na teaches Mandarin in Berkeley County and is well-qualified to act as an interpreter. Thus, this Court should affirm his decision and Appellant’s conviction and sentence.

The role of an interpreter in a court proceeding is to take a phrase in a language not understood by the court and jury and translate it into the comparable English phrase, such that the jury, attorneys, and court can understand the testimony of a witness. As the Fifth Circuit Court of Appeals pointed out in United States v. Perez, 651 F.2d 268, 272 (5th Cir. 1981), court interpreters “stand somewhere between an expert witness called by the court and the court reporter. As to such persons, the fundamental question is normally one of qualification, not of veracity or fidelity. In absence of special circumstances, the latter qualities are assumed.” In another Fifth Circuit case, the court noted that “[a] trial court’s decision to appoint an interpreter is reviewed under an abuse of discretion standard.” United States v. Ball, 988 F.2d 7, 9 (5th Cir. 1993). In Ball, the main witness was deaf. Defense counsel objected to the State’s proposal to allow the witness’s wife to act as an interpreter. However, defense counsel offered no alternative.

After giving both parties the opportunity to question the wife regarding her qualifications, the trial court found the two were able to communicate and qualified her as an expert pursuant to Rules 604 and 702 of the Federal Rules of Evidence. Id.

The statute governing the use of an interpreter in a criminal trial is section 17-1-50 of the South Carolina Code. It provides:

(A)(4) “Qualified interpreter” means a person who:

- (a) is eighteen years of age or older;
- (b) is not a family member of a party or a witness;
- (c) is not a person confined to an institution; and
- (d) has education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English.

...

(D) The Division of Court Administration must maintain a centralized list of certified or otherwise qualified interpreters to interpret the proceedings to a party and testimony of a witness. **A party or a witness is not precluded from using a qualified interpreter who is not on the centralized list as long as the interpreter meets the requirements of subitem (A)(4) and submits a sworn affidavit to the court specifying his qualifications or submits to a voir dire by the court.**

S.C. Code Ann. § 17-1-50 (2014) (emphasis added).

Appellant cites Rule 604 of the South Carolina Rules of Evidence, which provides that an “interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.” By extension, he argues the court must qualify an interpreter based on the requirements of

Rule 702, SCRE. He argues three criteria must be met prior to the admission of the interpreter's "expert testimony." First, the trial court must determine that such evidence will assist the jury to understand the evidence or determine a fact in issue. This criterion is easily met, as the "specialized knowledge" that "will assist the trier of fact to understand the evidence or to determine a fact in issue" is Na's specialized knowledge of Mandarin such that she is able to assist the jury in understanding Victim's testimony, which is evidence. Third, the court must determine whether the proposed expert testimony satisfies a reliability threshold for the jury's ultimate consideration. Because an interpreter does not testify regarding her own account of an event, but rather simply translates into English the account of a witness, no reliability threshold applies to the actual account the interpreter relates at trial. Thus, the only way this criterion could apply to an interpreter is that the interpreter herself must be found reliable. Here, the trial judge did not abuse his discretion when he found Na's interpreting skills reliable based on her experience, training, and ability to communicate with Victim.

Appellant acknowledges the issue in this case is the second criterion, whether the expert's proffered testimony is based upon "knowledge, skill, experience, training, or education." The State agrees with Appellant that this criterion parallels the statute, which already requires the interpreter "has education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English." S.C. Code Ann. § 17-1-50 (A)(4)(d) (2014). The cases Appellant cites regarding expert testimony have absolutely no bearing on the case at hand. (Indeed, Appellant makes no argument as to how each case relates to the situation here.) All of

them deal with true expert testimony designed to assist the trier of fact: accident reconstruction, intubation, and crime scene processing. As stated above, an interpreter does not provide any additional evidence based on her own knowledge and skill; rather, she simply translates what a witness (in this case the victim) says on the stand.

Appellant argues the South Carolina Rules of Professional Conduct for Court Interpreters also provide guidance in determining whether one is “otherwise qualified” as required by statute. Specifically, he cites Rule 511 of the South Carolina Appellate Court Rules. While Appellant spends a lot of time explaining what is required by this rule, he never applies it to the situation in this case. Thus, this particular portion of the argument seems to have been abandoned due to his simple explanation of the rule and conclusory statements without the required argument relating it to the case at hand. See First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding an issue is abandoned where the appellant fails to provide argument or supporting authority).

In any event, the trial judge instructed Na to interpret without holding conversations with Victim, correcting any earlier misunderstandings on her part. After Appellant complained that Na and Victim had too many conversations, the trial judge stated, “I think I have told her don’t have the conversation with him. Interpret what he says, interpret what the lawyer says and I think she understands that and she’s willing to do that. I agree with you and I viewed that as a problem but I think I have corrected it and she’s agreed to do it properly.” (R. 38, lines 12- 17.) Thus, the trial judge listened to Appellant’s complaint, agreed with it, and corrected it.

Appellant also argues the trial judge erred in finding Na “otherwise qualified” under the statute. He claims without support that Na did not possess the skills to enable

her to interpret English and Spanish in a legal setting.¹ However, nowhere in the statute is there a requirement that one can interpret in a legal setting or that one has experience with legal terminology. Rather, all that is required is that the interpreter “has education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English.” If the Legislature wanted to require the interpreter to have a background in the law, it certainly could have and would have written that requirement into the statute. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the express intent of the legislature.”); In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998) (stating that under the plain meaning rule, the court should not alter the meaning of a clear and unambiguous statute); Charleston Cnty. Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993) (stating the cardinal rule of statutory construction is to ascertain and give effect to the intent of the Legislature).

Na fit into the statutory requirements to be qualified as an interpreter. Although the trial court did not ask her age, it was clear through her experience as a teacher that she had to be over eighteen. Further, there was no testimony that she was related to any party or witness. She was obviously not confined to an institution. And, as described above, she had the education and training required. Appellant noted in a footnote in his brief that the South Carolina Judicial Department website states, “Only interpreters who are in

¹ The State assumes Appellant meant Chinese, not Spanish.

our directory may be utilized in our courts.” (App. Br. 11, fn. 2.) However, the statute is clear:

(D) The Division of Court Administration must maintain a centralized list of certified or otherwise qualified interpreters to interpret the proceedings to a party and testimony of a witness. A party or a witness is not precluded from using a qualified interpreter who is not on the centralized list as long as the interpreter meets the requirements of subitem (A)(4) and submits a sworn affidavit to the court specifying his qualifications or submits to a voir dire by the court.

S.C. Code Ann. § 17-1-50 (2014) (emphasis added). Thus, because Na met the requirements of (A)(4) and submitted to voir dire by the court, she was able to become qualified regardless of not being on a centralized list.

Appellant also took issue with the trial judge having to remind Na to simply interpret what Victim said rather than having conversations with him. However, once the cross-examination actually began, the trial judge only had to remind her once not to have conversations with Victim. (R. 46, lines 14-16.) Appellant complains “Na’s interjection during the testimony that Victim must not have understood her interpretation because his answer was non-responsive demonstrated her lack of understanding of her role.” (App. Br. 17.) Rather than indicate Na did not understand her role as interpreter, the fact that she stopped and told the trial judge when she thought Victim misunderstood the question shows she was trying to make sure the interpretation was accurate. Notably, she did not have a conversation with Victim as the trial judge instructed her not to do, but rather asked the trial judge about it. Additionally, after she did stop and ask if she could explain the question, defense counsel just said, “That’s all right. That’s all right.” (R. 56, line 20.)

Additionally, Appellant argues “Na’s claim that dialect does not matter in Chinese is preposterous.” (App. Br. 17.) While Appellant’s brief is certainly educational regarding the seven modern Chinese dialects, this argument is nonetheless meritless. The trial judge asked her whether she was able to communicate with Victim in Chinese. (R. 26, lines 9-20.) She took a few minutes to talk to Victim in Chinese to ascertain whether she could interpret for him. (R. 27, lines 9-24.) After conferring with Victim, Na reported to the trial court that she and Victim could understand what each was saying to the other in Chinese. (R. 27, line 25-R. 28, line 10.) Only then did the trial judge swear Na in as an interpreter. (R. 28, lines 11-19.) At that point, the trial judge asked if there was anything else Appellant would like for him to ask her or if there was anything Appellant would like to ask her about her ability to interpret. (R. 31, lines 11-14.) Appellant did not ask about the dialect or make any specific objection on that basis. Therefore, this particular portion of his argument is not preserved. See State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.”).

In any event, all that matters under the statute is that the interpreter “has education, training, or experience that enables h[er] to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English.” Because the trial judge determined Na and Victim were able to communicate, any alleged issue regarding the particular dialect did not hinder Na’s ability to translate.

In Melton v. Olenik, 379 S.C. 45, 54, 664 S.E.2d 487, 492 (Ct. App. 2008), this Court indicated a showing of prejudice was necessary to support a finding that a trial

court abused its discretion in regard to an interpreter issue. Here, even if this Court were to find the trial judge did abuse his discretion in appointing the interpreter, Appellant has made no showing of prejudice. His only allegation that could remotely be seen as prejudice is his argument that the jury was still deadlocked after rehearing Victim's (and Appellant's) testimony and thus required an Allen charge before reaching a unanimous verdict. This certainly does not rise to the level of prejudice found in Melton, where the lack of an interpreter affected Melton's ability to contest the damages due to the limitations of her poor English proficiency.

Finally, even if the trial court did err in appointing an interpreter during cross-examination, any error was harmless in light of the overwhelming evidence of guilt. See State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (quotations and citations omitted) ("The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained."); State v. Bell, 302 S.C. 18, 27, 393 S.E.2d 364, 369 (1990) (finding exclusion of evidence is reversible only where error and prejudice are shown); State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.").

Officer Judy testified that Victim stopped his patrol car and told him he was being robbed, and Judy then chased Appellant from the time he jumped out of Victim's car until he caught him, never losing sight of him. Appellant testified the whole encounter was a drug deal and denied he robbed Victim, but the officer he allegedly told this story refuted Appellant's claim. However, nothing related to the interpreter's translation

changed the testimony of Victim, the officers, or Appellant. Thus, the jury was entirely reasonable in its guilty verdict based on the evidence introduced at trial. Therefore, the trial court properly appointed a qualified interpreter in accordance with the statute, and the trial court's decision should be affirmed.

CONCLUSION

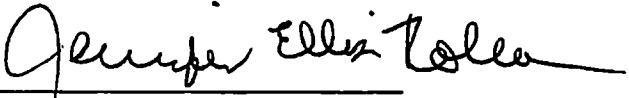
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 29, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-001184

THE STATE,

Respondent,

v.

WILTON Q. GREENE,

Appellant.

CERTIFICATE OF COUNSEL

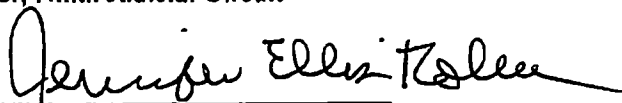
The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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ATTORNEYS FOR RESPONDENT

September 29, 2014

STATE OF SOUTH CAROLINA

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Appeal from Berkeley County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-001184

THE STATE,

Respondent,

v.

WILTON Q. GREENE,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 29th day of August, 2014.



ANGELA BENNETT
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Wilton Q. Greene, Appellant.

Appellate Case No. 2013-001184

Appeal From Berkeley County
J. C. Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-086
Submitted January 1, 2015 – Filed February 25, 2015

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("An

15 MAR 16 AM 11:01
CLERK OF COURT
BERKELEY COUNTY S.C.

FILED
KJM

KJM

abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); S.C. Code Ann. § 17-1-50(B)(1) (2014) ("[W]henever a party, witness, or victim in a criminal legal proceeding does not sufficiently understand or speak the English language to comprehend the proceeding or to testify, the court must appoint a certified or otherwise qualified interpreter to interpret the proceedings to the party or victim or to interpret the testimony of the witness."); S.C. Code Ann. § 17-1-50(A)(4)(d) (2014) (defining "qualified interpreter" as a person who "has education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English").

AFFIRMED.¹

WILLIAMS, GEATHERS, and McDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1880
FAX: (803) 734-1839
www.sccourts.org

March 13, 2015

The Honorable Mary P. Brown
PO Box 219
Moncks Corner SC 29461-0219

REMITTITUR

Re: The State v. Wilton Q. Greene
Lower Court Case No. 2013GS0800755, 2013GS0800756
Appellate Case No. 2013-001184

FILED
15 MAR 16 AM 11:01
J. P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Susan Barber Hackett, Esquire
Jennifer Ellis Roberts, Esquire
Scarlett Anne Wilson, Esquire
The Honorable J. C. Nicholson, Jr.

Kwm

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF BerkeleyWilton D. Greene #351286
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-08-1964

APPLICATION FOR

POST-CONVICTION RELIEF

* w/ MOTION FOR A SPEEDY

Remedy ART 1, SECT 9

INSTRUCTIONS - READ CAREFULLY

S.C. CONST ①

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

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

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

1. Place of detention Lieber Correctional Institution, Sumterville, SC
2. Name and location of Court which imposed sentence Berkeley County 9th Circuit
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-08-955 Armed Robbery
 - (b) 2013-GS-08-00756 Kidnapping
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 23rd 2013 Armed Robbery 20 yrs. Concurrent
 - (b) May 23rd 2013 Kidnapping 20 yrs. Concurrent

Revised 3/2003

1
PCD CITING MANER V. MANER (1983)

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Denied the right to effective assistance of Counsel. Guaranteed
 (b) by the sixth and 5th and 14th Amendments
 (c) - PROSECUTORIAL MISCONDUCT -

11. State concisely and in the same order the facts which support each of the grounds set out in (10): SEE ATTACHED ISSUES p 8-1-16

- (a) Counsel fail to introduce video evidence showing that the victim had
 (b) two different stories, therefore its prejudicial because it shows a sign of innocence
 (c) ~~Counsel fail to present that if discover evidence that would support~~
~~the victim's testimony~~

12. Prior to this application have you filed with respect to this conviction:

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

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. N/A
 iii. N/A
 iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- 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?
- _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

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

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

- (a) the name and address of each attorney who represented you:
- i. Chad Shelton 219 W Hwy 52, Suite E, Post Office Box 1187 Rock Hill S.C. 29141
 - ii. Susan B. Hackett, 1330 Lady Street, Suite 401 Columbia S.C. 29201
 - iii. P.O. Box 11589
- (b) the proceedings at which each such attorney represented you:
- i. Chad Shelton - Trial and Sentencing, Susan B. Hackett - Appeal
 - ii. _____
 - iii. _____

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

Reversed - NEW TRIAL

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

N/A

STATE OF SOUTH CAROLINA)

County of Berkeley)

VERIFICATION

I, Wilton Greene, 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.

Wilton Greene

SWORN to and subscribed before me this 17
day of July, 2015.

William S. Glover (L.S.)
Notary Public

My Commission Expires: March 4, 2025

FILED
2015 AUG 19 PM 2:42
CLERK OF COURT
BERKELEY COUNTY, SC

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

Wilbur Greene
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Walter Green
Applicant

SWORN or affirmed to and subscribed before me this

17 day of October, 2015.

William B. Glone
Notary Public

My Commission Expires: March 4, 2025

HONORABLE JUDGE
 CLERK OF COURT
 BERKELEY COUNTY, SC

2015 AUG 19 PM 2:42

1. The first step is to identify the problem or question that needs to be addressed. This involves understanding the context and the specific requirements of the task.

Attachment to PCR.

Issue one (A)

Trial Counsel provided ineffective Assistance of Counsel when he failed to request a balancing Test to be Conducted Pur. to S.C.R.E. 609 (A) Prior to Introduction of a offense similar to offense Applicant was on trial for.

Facts

Applicant was on trial for Armed Robbery - The state sought to impeach on a prior so called "Strong Arm Robbery" (No such offense exists in South Carolina) - the correct offense would be common law robbery which may have intersected confusion into Jurors mind. (C.E. Armed Robbery = Strong Armed Robbery).

The trial Judge at time Applicant was Voila Dile of his Right to testify @ 11:5 L.S. - The Court: When was the Strong Arm Robbery?

@ 17 Allright Mr. Greene let me advise you that I don't know if they are going to

OR Not but the State can ask you about that
Prior Conviction. Do you understand?

Trial Counsel on Direct Examination @ Pg 183 L. 23 -

184, L1 Questioned Applicant,

- Q. And you Have A Conviction?
- A. Yes Sir
- Q. Whats that Conviction for?
- A. I plead to Strong Armed Robbery.

* This was the last Question Asked by Counsel who failed
to clarify the conviction was for Common Law Robbery.

Not Strong Armed Robbery

First, trial counsel was Grossly Ineffective when he
preemptively brought to the Jury Attention that his
client had a Strong Armed robbery @ Conviction without
first requiring the trial court to conduct a SCRE (b)(7)(A)
Balancing Test; (b)(7)(D) States The evidence of the prior
conviction should be Admitted only if the court determines
that the Probative Value of the evidence outweighs
the Prejudicial Effect to the Accused SCRE (b)(7)(A)

For Counsel to do this is totally Deficient Representation.

340 N. State v. Colf 337 S.C. 622 (2000) The Supreme

Court Mandated that A Trial Judge Must Conduct a
balancing Test And Articulate its Finding into the Record.
The Court pointed out that evidence of similar offenses suggests
to the jury that the defendant has a propensity to commit
the crime that he is being tried for. Because of this, the Court
held the safe guards must be pursued. In companion case
on 10/4/00 State v. Scriven, 339 S.C. 333 (2000) the Court again
held prior convictions which are similar or identical to the case
on trial, Infect A likelihood of a high degree of prejudice,
because of this the trial judge is required to conduct a
meaningful Analysis to balance the impeachment value of
prior convictions Against the prejudicial Impact. In
State v. Martin, 347 S.C. 522 (2001) The Court went on further
and held it would be reversible Error For the Judge Not
to Articulate the required balancing Test.

In the Strickland v. Washington, 104 S.Ct. 2052 (1984)
"Error And prejudice Analysis" Relevant to
this case. Applicant will show he can meet Both
Prongs of that test.

Clearly, Counsel Representation fell below an objective Standard of Reasonableness. Strickland v. Washington Sup Ct, when he failed to invoke the procedural protections of Rule 609(a) To Require the Court conduct a balancing Test.

And had he requested one, the Court, bound by State v. Colt SUPRA, would have Required by Law to conduct the (5) Factor Analysis set forth in State v. Green 338 SC 478 (2000) to weigh the probative value of the prior conviction against the prejudicial effect.

And based upon the Similarity of the Prior Crime (EG) - Strong Arm Robbery) to the offense Applicant was on trial for Armed Robbery, there is a "reasonable Probability" that the Court would have either (A) excluded the similar / identical conviction or (B) Required State to state only Applicant had been convicted on a Felony - to mitigate prejudice.

This was a Error by Trial Counsel Not to.

- ① Would A Average Juror even know the Difference between Strong Arm Robbery and Armed Robbery? That in itself is doubtful.

1342 The Procedural Protections of Rule 609 (A)'.
Which again are mandatory in S.C. Jurisprudence
and fall below a "Objective Standard of Reasonableness".

Presudice:

Ref. to Strickland v. Washington SUPRA, there is
a "Reasonable Probability 'but for' Counsel Error
the result of the proceeding would have been different".
To undermine the confidence in the verdict.

This was a case of who the Jury believed - the
Victim - A illegal Immigrant - who could barely
understand English (1) claimed he was Robbed for
\$2022 (P.B. 80-130).

The Applicant testified he sold Victim some crack
and one he snatched the crack basically started tripping.
And swooned in front of Police, Presumably because Applicant
had take his I.D. for collateral, including a Green Card.
(Pg. 174-201)

So this was a case of credibility - one man word
against the other. How prejudicial it was when (2)
In Fact a Interpreter had to be used during cross-
Examination.

The Very Last Thing Counsel Did was make sure
Jury knew he had a prior for Strong Armed Robbery -
For a client on trial for Armed Robbery, this similar/
Identical crime had to have resonated with the Jury.

"Oh, he's a robber by trade, therefore, he probably
committed this one too" (Dunger articulated in State v. Sevens.)

This undermines the confidence in the verdict as propensity
evidence was considered by Jury.

- Issue One (B) -

Trial Counsel "Compounded his Error" in not requesting
a balancing Test set fourth in Issue One (A) by the
failure to request a Cautionary Instruction - on the
evidentiary value of the prior Strong Armed Robbery conviction,
only to be used for Impeachment.

Facts

As set fourth (A) issue one (A), Incorporated herein,
when the Strong Arm Robbery was Interjected by Counsel
to the Jury on Direct examination without a
balancing Test - trial Counsel Compounded that
Error by Failing to

Request that the prior conviction could only be considered
344 by the Jury, to Impeach the Credibility of the Accused
Not as Substantive Evidence of Guilt - (E.G.) that Applicant
was a Robber by Trade -

This is Per SE Reversible Error As it Allowed the Jury
Consider Similar / Identical other crimes evidence As
Propensity Evidence.

In State v Hamilton, 327 SC 446 (1997) the Supreme Court
held that the Injection of a Defendants Prior Criminal record
has a "Inherent danger of prejudice", the prior record must
be for a specific Purpose And if the prior convictions are
Allowed the trial Judge must instruct the Jury to Limit
its consideration to the particular Purpose it is offered!

In the case At BAIL, trial Judge gave no Limiting Instruction
the offense was used for Impeachment only.

This is Per SE Reversible error, in a case where it was
Victim word against that of the Applicant, Prejudice is
manifest unto itself.

Counsel Failed to Request Limiting Instruction Gross

I.A.C.

Rule 609 of the S.C. Rules of evidence permits one to attack the credibility of a witness by producing evidence of prior convictions. However, the rule provides that the evidence of the prior conviction should be admitted only if the court determines that the probative value of evidence outweighs the prejudicial effect to the accused. In the case at bar, the trial judge made no such finding. This is a violation of the Rule as well as the case law which is outlined below:

In State v. Hall 337 S.C. 622 (2000), the Court mandated that trial judge must conduct a balancing test and articulate its finding in the record. The Court pointed out that evidence similar offenses suggests to the jury that the defendant has a propensity to commit the crime that he is being tried for. Because of this, the Court held that safeguards must be pursued.

In State v. Scriven 339 S.C. 333 (2000), the Court held that prior convictions which are fairly remote and which are similar or identical to the case on trial, present a likelihood of a high degree of prejudice. Because of this, the judge is required to conduct a meaningful analysis to balance the impeachment value of prior convictions against the prejudicial impact.

In State v. Martin 347 S.C. 522 (2001), the Court again held that trial judge must balance the probative value of impeachment evidence against the prejudice to the accused. The Court went further and held that it would be reversible error for the judge not to articulate the required balancing test. In Martin, the Court was concerned about the fact that prior convictions were similar crimes and would result in prejudice. The Court also noted that the State made no presentation as to the probative value of convictions.

In the case at bar, the solicitor made no showing about the probative value that the prior convictions had. In addition, the trial judge did not articulate the balancing test of the impeachment value against the prejudicial impact.

Trial Counsel was ineffective when he failed to request a Lesser Included offense of common law Robbery

View in the light most favorable to the accused,
 There was evidence in the record in which the jury could
 have found Applicant Guilty of common law Robbery as
 Applicant testified he did not use or brandish the weapon (2)
 Victim, but victim testified he did and took his wallet.

The jury could have believed a portion of each of their
 testimony, and thus based on the conflicting testimony could
 have returned a verdict of a lesser charge had the been
 so instructed.

State v. Laroche 470 SE 2d 316 (1986) Jury could have found
 he took the wallet but did not, as he testified, use a weapon.

Trial Counsel representation on this crucial aspect
 of case was deficient per. Strickland v. Washington Supra.

* It must be noted, Trial Judge Ran
Both Sentences Concurrent to the Armed Robbery.
If Jury would have convicted of Common Law
Robbery the conviction/sentence for kidnapping
would have been concurrent for a max of 13 years
or less! So Applicant would be entitled to a New
Trial on Both Offenses or at least be resentenced
on the kidnapping as well as a New trial on
Common Law Robbery being submitted to Jury. AS
A lesser Included offense.

(11)

Issue three (A)

Trial Counsel provided Ineffective Assistance of Counsel when he failed to introduce Audio Recording of the Victim's Statement he made on 5/22/12.

Facts

At Page 119 L. 23, the victim testified and said, "He didn't say he (Applicant) came out the gas station." However, in the Audio of the Interview the Victim stated Applicant and he met Inside the Store and he proceeded to give Applicant a ride.

Now At Page 117 L. 3, ~~the~~ Victim stated (through Interpreter) "What he said at the Police Station is true." With that being said, Victim's testimony was not the same as his Audio Recording he made at the Police Station.

At Page 120 L. 19-20, Trial Counsel asked, "And when you talked to -- you described the knife as a fold out knife?"

Victim concurred by saying, "yes, I said open -- the fold out, yes". (L. 23)

Then on Page 121 L. 3, Trial Counsel attempted to get clarification and asked, "And the knife opened up?" His response through Interpreter -- "He said he didn't notice if it's open or not but the knife is already to him". (Pg. 121, L. 4-5).

Officer Scarborough testified and said he pulled out his own fold out knife and victim was pretty sure it was a fold out and the Audio could prove that

On Audio Recording Victim stated that the Applicant always kept the knife to his stomach, with that being said, on Pg. 12, 8 L. 24-25 (Through Interpreter) "He said he told the Policeman that the knife just pointed at him."

This was a case that came down to the witnesses Credibility. Victim claims he was robbed and Applicant claims it was a drug deal, and the Victim became paranoid after smoking the crack cocaine.

Counsel's Failure to Introduce the Audio Recording damaged the Applicant's case. Wherefore if it was presented to the Jury they could compare testimony and find it excessively inconsistent.

Again, this would have destroyed the victim's Credibility in a case that rested upon the Credibility of each Party.

Issue three (B)

Trial Counsel provided ineffective assistance when he failed to introduce the transcript of the Audio Recording to the Jury.

During deliberation the Jury sent a note to the Court requesting to review the Police report and the transcript of the Audio Review. The Court denied their request and told the Jury that the Police report is hearsay and they couldn't review the transcript because it was not admitted into evidence.

Again this would have damaged the victim's credibility but instead the Applicant received the damage. Trial Counsel was grossly unprofessional and fell below a reasonable standard of effective assistance of Counsel.

Issue three (C)

Trial Counsel Provided Ineffective Assistance of Counsel when he failed to introduce Evidence Sheet that Proves Drug Paraphernalia was found.

FACTS

Victim claimed he was robbed and the Applicant claimed it was a drug deal. Prosecution didn't mention Drug Paraphernalia was found. The officers who testified did not mention Drug Paraphernalia was found and neither did trial Counsel mention the fact.

The Applicant was the only one who stated drugs was involved. Applicant went to court for Possession of Drug Paraphernalia and was found Not Guilty. This fact is also on record and trial Counsel knew that Applicant was found Not Guilty.

By Trial Counsel's failure to introduce that evidence it damaged Applicant's case, being that it was no trace or evidence that drugs was involved. By that being presented it would show favor to the Applicant's testimony when he testifies it was a drug deal and the victim was smoking crack cocaine (Crack pipe found).

Trial Counsel was Grossly Ineffective and this fact manifested itself.

- Issue Four (A) -

Prosecutorial Misconduct

The State Committed A Brady Violation
When they Failed to Disclose Evidence
Favorable to the Accused, And material to
Guilt or Innocence or Impeaching to State
Witness.

The Police who Investigated this Alleged
Robbery met with the store owner And was
Informed of Existence of a videotape. Upon
Review of videotape and victim's statement,
it was known that video contradicted victim's
testimony that he met Applicant inside the
store but Rather met Applicant outside the store.

This would have Destroyed Credibility
of victim.

Page 144, L. 19-23 - Officer Judy was being questioned
by trial counsel was there ~~any~~ video surveillance.
Officer Judy testified it was None All together. which
was false statement.

on cross examination trial counsel asked Mr. Patel on
Page 155 L. 24-25 "Did you obtain any video or surveillance
from the previous owner?"

Patel stated on pg. 156 L. 1-2 "Well, like I said he just only
had four cameras in the store and he took that system
with him when he left."

With that being said Video Surveillance was in the inside.

The State Withheld This Evidence And acted to
Hide location of store owner on 5/22/12.

352 BRADY v. Maryland, 373 US 83 (1963) held

That Prosecutors must disclose any evidence
in the prosecution's possession that may be
favorable to accused. Porter v. State, 368 SC 378,
384 (2006)

This video evidence was favorable to accused.
Riddle v. Ozmint, 1637 SE2d 70 (2006)

II.

Issue Par (P)

Solicitor Allowed knowingly Allowed
~~presentation of false testimony~~

Police testified that there was no video surveillance
altogether - inside or out. This was false testimony
As of 5/22/12 there was inside surveillance.

Police testified falsely, Solicitor knew about it
and help to conceal Name/Location of owners
of store on 5/22/12.

This is a prosecutorial misconduct per to Riddle
v. Ozmint, the failure to correct false testimony
is as reprehensible as its presentation. And constitutes
reversible error per Giglio v. US, 405 US 150, 153
(1972) cited in Riddle v. Ozmint, Supra.

Relief

NEW TRIAL

8/12/15

I VERIFY UNDER OATH

S/Willis Gae

(16)

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Wilton Q. Greene, #351286,

2015-CP-08-1964

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on August 19, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. The Applicant was indicted by the April 2013 term of the Charleston County Grand Jury for one (1) count of Armed Robbery and (1) count of Kidnapping (2013-GS-08-0755; -0756). Chad Shelton, Esquire, represented him. On May 23, 2013, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable J.C. Nicholson, Jr. sentenced the Applicant to confinement for twenty (20) years for each charge. The sentences run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Greene Op. No. 2015-UP-086 (filed on February 25, 2015). The Remittitur was issued on March 18, 2015.

II.

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

1. "Ineffective Assistance of Trial Counsel"
 - a. "Guaranteed by the sixth and 5th and 14th Amendments"
 - b. "Counsel fail (sic) to introduce video evidence showing that the victim had two different stories, therefore its (sic) prejudice (sic) because it shows a sign of innocence"
2. "Prosecutorial Misconduct"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal

cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v.

Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicants' burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

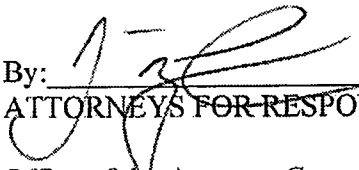
Respectfully submitted,

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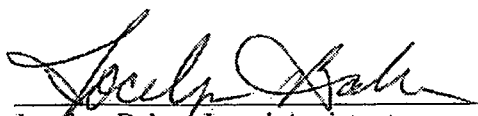
MAY 13th, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2015-CP-08-1964
	)	
WILTON Q. GREENE, #351286	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney D. Davis, Esquire
Lowcountry Law Office
4000 Faber Place Drive, Suite 300
Charleston, SC 29405

DATED this 13th day of May, 2016.


 Jocelyn Baker, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BERKELEY NINTH JUDICIAL CIRCUIT
2015-CP-08-1964

WILTON Q. GREENE,
APPLICANT,
VS.
THE STATE OF SOUTH
CAROLINA,
RESPONDENT.

)
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TRANSCRIPT OF
RECORD

DECEMBER 4, 2017
MONCKS CORNER, SC

B E F O R E:

HONORABLE MICHAEL G. NETTLES

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

JULIE A. COLEMAN, ESQUIRE
Attorney for the Respondent

RODNEY D. DAVIS, ESQUIRE
Attorney for the Applicant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

I N D E X

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1 (The following proceedings were held
2 December 4, 2017, Berkeley County, South Carolina,
3 @ 11:15 a.m.)

4 THE COURT: Mr. Davis, you are
5 recognized.

6 MR. DAVIS: Thank you, Judge. Your
7 Honor, this is Wilton Greene and I represent him.
8 He is in the courtroom with us today. This is
9 docket number 2015-1964. It has been scheduled and
10 docketed previously, Your Honor. In fact, I
11 believe looking at my notes here I believe we were
12 before Your Honor at the last term.

13 On July 31st before Your Honor there
14 was a motion to be relieved. At that time I
15 explained there had been four letters from my
16 client to me. I had sent three to him. We had
17 talked, he and I, about the PCR process, the risk
18 and benefits. He had certain complaints about me,
19 but at the time seemed to suggest to me and to the
20 Court that those concerns were dealt with and you
21 ultimately ruled that I would remain on the case
22 and it would be continued until this term, which it
23 was.

24 I have made attempts to talk with him.
25 He is in custody obviously at Perry Correctional

1 Institution and I can place on the record the times
2 I have set up phone calls to speak with him.
3 Additionally, while you have been handling other
4 hearings today I attempted to speak with him in
5 lockup. Judge, he has since the July date on a
6 prior phone call and then again today indicated
7 that he did not want me to represent him.

8 Ultimately today he did say that he
9 wanted to go forward with me; however, Your Honor,
10 in trying to discuss the issues that can be argued
11 at a PCR hearing, the scope of PCR versus issues
12 that he may be frustrated about, but are not
13 appropriate for this venue, it's gotten very
14 difficult again, Your Honor. For the record at one
15 point I said to him today, Mr. Greene, I'm not sure
16 how I get across to you how I talk to you to help
17 you understand things. I am trying to work with
18 you, but I'm not sure on that.

19 I had prepared again today, Your Honor,
20 because of the difficulty with communication
21 another motion in order to be relieved. I do this
22 on the basis of two things. His request since our
23 last hearing that he said to me verbally on the
24 phone and despite his indication today that he
25 would like to continue with me, it's kind of

1 either/or, Judge. Either I would ask you to
2 relieve me, perhaps he can work better with another
3 attorney, or if he is not asking for that today or
4 you are not inclined to do that, Judge, when we get
5 to the meat and potatoes of his argument it always
6 becomes a difficult conversation. I would attempt
7 to elicit what he wanted me to today, but as
8 compared to another case today I'm not as prepared
9 as I should be in candor to the Court.

10 So I guess it's kind of a hybrid
11 motion, Your Honor. I can't ignore what he said
12 earlier so there's a motion to be relieved. If you
13 are inclined to have me continue on then, Judge,
14 given the difficulty in communication I would ask
15 that this be moved. I believe the next term is
16 January 29th. So it is not a long delay, but --

17 THE COURT: Mr. Greene, stand where you
18 are and raise your right hand so the clerk can
19 administer the oath.

20 WILTON GREENE

21 having been duly sworn, testifies as follows:

22 THE CLERK: Please state your full name
23 for the record and spell your last name.

24 THE WITNESS: Wilton Greene,
25 G-R-E-E-N-E.

1 THE COURT: Mr. Greene, the options
2 that you have available today is to go forward on
3 your own or to go forward with assistance of your
4 lawyer. Which do you choose?

5 THE WITNESS: I would like to go on
6 with assistance of my lawyer.

7 THE COURT: Very good. Mr. Davis, you
8 may proceed.

9 MR. DAVIS: Judge, has the procedural
10 history been put on the record?

11 THE COURT: Not yet.

12 MS. COLEMAN: I am happy to read that,
13 Your Honor. This is Wilton Greene versus the State
14 of South Carolina. Docket number 2015-CP-08-1964.
15 Applicant is presently incarcerated with the South
16 Carolina Department of Corrections pursuant to
17 orders of commitment of the Berkeley County Clerk
18 of Court.

19 The applicant was indicted by the
20 April 13th term of the Berkeley County grand jury
21 for armed robbery and kidnapping. Chad Shelton,
22 Esq. represented him on the charges. On May 23rd,
23 2013, the applicant proceeded to a jury trial at
24 which he was found guilty as indicted. The
25 Honorable J.C. Nicholson, Jr. sentenced the

1 applicant to confinement for 20 years for each
2 charge. The sentences ran currently.

3 A notice of appeal was filed on
4 applicant's behalf and an appeal was perfected
5 pursuant to Anders vs. California. And the South
6 Carolina Court of Appeals affirmed applicant's
7 conviction and sentence. The remittitur was issued
8 on March 18, 2015.

9 Applicant filed a timely application
10 for post-conviction relief on January 30th, 2017
11 alleging that he was being held in custody
12 unlawfully based on the following allegations;
13 ineffective assistance of counsel and Brady
14 violation prosecutorial misconduct. The State
15 filed its return on May 13th, 2016 and he is
16 present today and represented by Mr. Rodney Davis.

17 THE COURT: Mr. Davis, you may call
18 your first witness.

19 MR. DAVIS: If I may have just another
20 moment, Your Honor.

21 (Brief pause.)

22 MR. DAVIS: Your Honor, we would call
23 Wilton Greene.

24 THE COURT: Mr. Greene, please come
25 forward, please, sir. I remind you that you are

1 still oath. Speak loud and clearly and slowly. I
2 want to hear everything you have to say. Let's
3 start with your full name, please, sir.

4 THE WITNESS: Wilton Greene, III.

5 MR. DAVIS: Judge, forgive me, I should
6 have asked this at the very beginning, but while he
7 is under oath, we have talked about the risks and
8 benefits of him going forward. If you could go
9 through that with him on the record I'd appreciate
10 it.

11 THE COURT: Have you advised him of
12 that?

13 MR. DAVIS: I have, Your Honor.

14 THE COURT: Very good.

15 DIRECT EXAMINATION

16 BY MR. DAVIS:

17 Q. Thank you, Your Honor. Mr. Greene, how
18 old are you?

19 A. Twenty-nine.

20 Q. How far did you go in school?

21 A. Twelfth grade.

22 Q. Did you graduate?

23 A. No, sir.

24 Q. Have you gotten your diploma or GED
25 following that?

1 A. I'm in the process of getting my GED.

2 Q. So you do not have a diploma or GED?

3 A. No, sir.

4 Q. And we are here based on a PCR for
5 convictions of what charges, can you tell the
6 Court, do you recall?

7 A. Armed robbery, kidnapping.

8 Q. And that happened here in Berkeley
9 County?

10 A. Yes, sir.

11 Q. Who was your attorney who represented
12 you on those charges?

13 A. Mr. Chad Shelton and David Schwacke
14 would assist him.

15 Q. The lead attorney was Chad Shelton?

16 A. Yes, sir.

17 Q. Can you tell the Court what first of
18 all, and the judge has the record of these things,
19 but was this a trial or a guilty plea?

20 A. It was a trial.

21 Q. Can you tell the judge prior to going
22 to trial how many times you met with your attorney?

23 A. I would say maybe about three times
24 because I was on probation and I got violated so I
25 went to a YOA for ten months so communication was

1 not the best.

2 THE COURT: How many times did you say?

3 THE WITNESS: About three times I
4 think.

5 BY MR. DAVIS:

6 Q. Let's slow that down just a second for
7 everyone to understand. You were arrested and
8 charged here in Berkeley County and were originally
9 here at the Berkeley County Detention Center,
10 correct?

11 A. Yes, sir.

12 Q. But after arrest and before trial you
13 were transferred to the Department of Corrections?

14 A. Yes, sir.

15 Q. And again what was that for?

16 A. Probation violation.

17 Q. And how long did you serve on that
18 violation?

19 A. Ten months.

20 Q. Where did you serve that?

21 A. Turbeville.

22 Q. Now, did your attorney ever visit you
23 at Turbeville?

24 A. No, sir.

25 Q. Did your attorney ever set up any phone

1 calls to speak with you there?

2 A. No, sir.

3 Q. So in these three meetings you had
4 after arrest and before trial, can you tell the
5 judge approximately how long each meeting would
6 have lasted?

7 A. I would say about 30 minutes.

8 Q. And in any of these meetings did he
9 attend with a paralegal or Mr. Schwacke or an
10 investigator?

11 A. No, sir.

12 Q. During these meetings did he ever
13 discuss with you the elements of the charges?

14 A. Yes, sir.

15 Q. So he went over what the State would
16 have to prove to convict you of each of your
17 charges?

18 A. Yes, sir.

19 Q. Did you understand that? Did you have
20 any questions for him about that?

21 A. No, sir.

22 Q. During these meetings did he ever
23 discuss with you trial strategy?

24 A. No, sir.

25 Q. Was there any discussion of potential

1 defenses?

2 A. No, sir.

3 Q. Was there any discussion of in the
4 alternative of going to trial entering any type of
5 plea agreement? Was there any discussion of that?

6 A. He asked me would I take the -- drop
7 the armed robbery to strong armed robbery for ten
8 years nonviolent. He did that three times. Like a
9 week before trial he asked me would I take strong
10 armed robbery, drop the kidnapping to ten
11 nonviolent. I declined and then before we picked
12 the jury he asked me again and during trial when
13 cross-examination was stopped for an hour
14 and-a-half and then he came and asked me again
15 would I take ten nonviolent. I told him I would
16 take five, but he said the solicitor wouldn't go
17 lower than ten.

18 Q. Discussions then twice before trial and
19 once during trial, right?

20 A. Yes, sir.

21 Q. Okay. Is it your testimony each time
22 you indicated you were not interested in the
23 ten-year offer, correct?

24 A. Yes, sir.

25 Q. What happened after you indicated you

1 were interested in a five-year offer?

2 A. He during -- like I had said,
3 cross-examination was stopped for like an hour
4 and-a-half. They had to get an interpreter, look
5 for an interpreter and he told me that he was going
6 to speak to the solicitor.

7 So he went to speak to the solicitor.
8 The solicitor shook his head. He came back and
9 told me he was not going to go under ten.

10 Q. But he did relay that to the State?

11 A. Yes, sir.

12 Q. And your trial continued after that
13 point?

14 A. Yes, sir, that's correct.

15 Q. Ultimately as trial continued you
16 testified on your behalf, correct?

17 A. Yes, sir.

18 Q. Prior to trial, prior to trial even
19 starting during these three meetings was there any
20 discussion about you testifying or not?

21 A. During trial?

22 Q. The question was prior to trial, during
23 these three original meetings, were there any
24 discussions about you testifying?

25 A. No, sir.

1 Q. Now, during trial was there any
2 discussion with your attorney about you testifying
3 or not?

4 A. Yes, sir.

5 Q. Would that have been before or after
6 you answered the judge's questions about
7 testifying?

8 A. That was before.

9 Q. And you indicated to Mr. Shelton you
10 did wish to testify?

11 A. Yes, sir.

12 Q. You indicated to the judge on the
13 record you wished to testify, correct?

14 A. Yes.

15 Q. But you already told Judge Nettles
16 there was no strategy sessions and no talk about
17 defenses. So what preparation, if any, did you and
18 Mr. Shelton have about you testifying?

19 A. Before I got on the stand he was
20 letting me know that my prior charges could come
21 about. So he was asking me do I want -- would I
22 like to take the stand. I told him yes, I would.
23 Because my alleged victim was saying one thing and
24 I have to give my side of the story, that's what I
25 felt it was the proper thing to do.

1 Q. Was there any discussion about how to
2 testify or how to answer questions or the process?

3 A. No, sir.

4 Q. What was Mr. Shelton's advice about
5 whether you should testify or not?

6 A. He said I shouldn't because they could
7 bring up my prior charge.

8 Q. And, in fact, you have a -- what was
9 the prior charge?

10 A. Common law robbery.

11 Q. And you have reviewed the transcript of
12 the discussion about that on the record with the
13 judge, correct?

14 A. Yes, sir.

15 Q. You and I have also discussed about the
16 legal standard for that to used for impeachment
17 purposes, right?

18 A. Yes.

19 Q. Do you feel that that process was
20 handled appropriately?

21 A. No, I do not feel it was handled
22 appropriately.

23 Q. What do you think was not done that
24 should have been done?

25 A. Mr. Chad Shelton, he brought up to the

1 jury that I had a strong armed robbery that --

2 Q. Before we get to his questioning of
3 you, I'm talking about before you testified there
4 was a discussion about your prior record with the
5 judge, right?

6 A. Yes, sir.

7 Q. And you have a problem with that
8 process, do you not, the discussion with the judge?

9 A. I am not understanding what you are
10 asking me.

11 Q. The -- do you understand that the judge
12 ruled that they could or could not use your prior
13 record if you testified?

14 A. Yes, I understand that.

15 Q. Which, they could or they could not?

16 A. That they could.

17 Q. Do you think that process that the
18 judge deciding that was handled appropriately or
19 not?

20 A. No, I don't think it was.

21 Q. What is it that was not done that you
22 think should have been done?

23 A. He supposed to conduct a Batson test
24 pursuant to South Carolina Rules of Evidence 609
25 (a) prior offense similar to an offense I was going

1 on trial for.

2 Q. And when you say he, you are talking
3 about the judge, correct?

4 A. Yes, sir.

5 Q. And there's nothing in the record where
6 the judge articulates his thought process to the
7 decision to allow them to question you, is there?

8 A. He just stated that he don't know if
9 the State is going to bring up my prior history or
10 not.

11 Q. But if you testified they could,
12 correct?

13 A. Yes.

14 Q. But there's nothing in the record from
15 the judge on why he made that decision, correct?

16 A. There is nothing. He did not
17 articulate any findings.

18 Q. And did your attorney object to that
19 lack of explanation?

20 A. He never objected.

21 Q. One more thing before we get to your
22 actual testimony. Did the judge indicate, however,
23 that there would be an explanation to the jury
24 about your prior record?

25 A. Say that one more time.

1 Q. Did the judge indicate, however, that
2 there would be an explanation to the jury about
3 your prior record if it was asked about?

4 A. He stated that he would give them
5 instructions, court related instructions, but he
6 never did.

7 Q. So at the end of the testimony during
8 jury instructions there was no instruction about
9 prior record from the judge?

10 A. No.

11 Q. Was there any objection by your
12 attorney to the lack of that instruction?

13 A. No.

14 Q. You then testified in your defense,
15 correct?

16 A. Yes, sir.

17 Q. And you explained what you recall the
18 events of the incident, correct?

19 A. Yes, sir.

20 Q. Do you recall, can you remind the judge
21 what the very last question from your attorney was
22 during your direct examination?

23 A. Very last question he asked was do I
24 have a conviction. I told him yes, I did. He
25 asked me what was the conviction for. I told him

1 petty strong armed robbery.

2 Q. What is your complaint to Judge Nettles
3 about your attorney asking you about your prior
4 record?

5 A. That that was the last question asked
6 by counsel, for failure to clarify conviction was
7 for common law armed robbery, not strong armed
8 robbery. It was brought to the jury's attention
9 that his client had a strong armed robbery
10 conviction without first requiring the trial court
11 to conduct a South Carolina Rules of Evidence 609
12 Batson test. 609 (a) states the evidence of a
13 prior conviction to be admitted only if the Court
14 determines that the probative value of the evidence
15 outweighs the prejudicial effect to recuse South
16 Carolina Rules of Evidence 609.

17 Q. So that goes back to again he did not
18 object to the judge not saying out loud why he made
19 the decision, correct?

20 A. Yes, sir.

21 Q. Do you have -- what specifically -- do
22 you have any problem with the fact that your
23 attorney asked you about your prior record?

24 A. Yes, I do.

25 Q. And what's that?

1 A. That was the very last thing counsel
2 did, make sure the jury was aware of a prior strong
3 armed robbery where client was found guilty for
4 armed robbery. This undermined the confidence in
5 the verdict as propensity evidence was considered
6 by the jury. Trial counsel also compounded his
7 error in not requesting a 609 Batson test set forth
8 by a failure to request a cautionary instruction
9 when the evidence and true value of the prior
10 strong armed robbery conviction wanted to be used
11 for impeachment.

12 Q. In the three meetings that you had
13 before trial did you ever in those three meetings
14 explain to your attorney your recollection of the
15 events of the incident?

16 A. Yes, sir.

17 Q. Were there things that you wished he
18 had done based on your explanation to him of what
19 happened that he failed to do prior to trial?

20 A. Well, first there was this audio that
21 the victim gave testimony and on the audio he is
22 claiming that I was in the store, he first saw me
23 inside the store, but when he got on the stand he
24 said something totally different. That audio would
25 have proved -- would have contradicted his

1 testimony on trial. He had inconsistent statements
2 numerous times. I even asked him to present the
3 audio. He told me why should he present the audio
4 when I already testified what happened? I told him
5 that I still believe that they should hear the
6 audio. Then I had another paralegal come, I think
7 her name was Patricia. She came up and she was
8 telling me also, she was convincing me that the
9 jury don't need to hear the audio because I already
10 testified. So I felt like I had no other choice.
11 I had two lawyers pressuring me so I just left it
12 alone.

13 Q. You're aware that audio recording of
14 the accuser's story was made by law enforcement?

15 A. It was his voice. He testified.

16 Q. Again, Mr. Greene, my question is are
17 you aware that there was an audio recording of the
18 accuser's story?

19 A. Yes, sir.

20 Q. Was that ever played for you by your
21 attorney?

22 A. He played it before trial.

23 Q. Did you prior to trial explain to your
24 attorney how it was that you came into possession
25 of the accuser's wallet?

1 A. I told him it was a drug deal. He gave
2 me his wallet. He had no money inside his wallet,
3 but he had his green card which was very important
4 to him so I had his wallet for collateral.

5 Q. You testified to that at trial,
6 correct?

7 A. Yes, sir.

8 Q. But prior to that in one of these three
9 meetings or did you mention it to your attorney in
10 one or more than one of the meetings?

11 A. When we first met I told him it was a
12 drug deal.

13 Q. And based on --

14 THE COURT: Am I understanding
15 correctly that there was an audiotape of the
16 accuser's version of what happened, however, it was
17 not played at trial. Was that audio version
18 inculpatory or exculpatory?

19 MR. DAVIS: The first two issues, yes.
20 It existed. It was not used at trial. I'm not
21 sure how to answer the last one. Arguably both.

22 THE COURT: Okay.

23 MR. DAVIS: I think I would either
24 proffer from either witness, either Mr. Greene or
25 Mr. Shelton at the appropriate time, but I believe

1 that certainly the accuser gave a vastly different
2 account of the actions and motives; however, there
3 were things that he said that were not consistent
4 with Mr. Greene's account. So it could have been
5 argued either way.

6 THE COURT: Very good. That would sort
7 be like a strategic decision.

8 MR. DAVIS: We will see what Mr.
9 Shelton says, Your Honor. Yes, Your Honor.

10 THE WITNESS: Your Honor, can I say
11 something?

12 THE COURT: You can answer his
13 questions.

14 BY MR. DAVIS:

15 Q. We are going to stay on that subject
16 for a little while longer, okay? What I just asked
17 you about -- we will get back to that in just one
18 second, okay? But what I just asked you about was
19 that you notified Mr. Shelton that this was not a
20 kidnapping or robbery, it was a drug deal that went
21 bad, correct?

22 A. Yes.

23 Q. Based on you telling him that at the
24 first meeting with him is there something about
25 that that he should have investigated that he

1 didn't?

2 A. Yes. When the victim got on the stand
3 he never questioned him about any drug deal. He
4 never mentioned drugs at all and just never
5 mentioned that drug paraphernalia was found. The
6 police officer didn't mention that drug
7 paraphernalia was found. I have an evidence sheet
8 right here the drug paraphernalia was found. And
9 my argument is that it was a drug deal and drug
10 paraphernalia was found. I'm the only one saying
11 this about drugs. I think it would have been in my
12 best interest for him to present this evidence.

13 Q. In fact, it is not just it was found,
14 you were charged with paraphernalia, were you not?

15 A. And I was found not guilty for that.

16 Q. My question was, Mr. Greene, you were
17 charged with paraphernalia, were you not?

18 A. Yes, sir.

19 Q. So that proves there was something
20 found by law enforcement because you were charged
21 with it, correct?

22 A. But they never said where they found
23 it.

24 Q. I understand that. But that was
25 charged in magistrate court, correct?

1 A. Yes, but that's in my motion.

2 Q. I understand. It was charged in
3 magistrate court, correct?

4 A. Yes.

5 Q. Did Mr. Shelton ever appear in
6 magistrate court with you?

7 A. No, he didn't.

8 Q. But did you make him aware of that
9 charge?

10 A. Yes, I did.

11 Q. Was it also in the Rule 5 or discovery
12 you received from your attorney?

13 A. Yes. I have that here today.

14 Q. So did he do any investigation on that
15 charge that you are aware of?

16 A. He did no investigation. When I told
17 him I found out about it he said nothing. He
18 didn't speak about it.

19 Q. And was that -- was the fact that
20 paraphernalia was found presented in defense of you
21 at your trial at all?

22 A. It was never mentioned. No one
23 mentioned it. I was the only one saying anything
24 about drugs. Nobody mentioned it. In fact, they
25 asked the officer did he found any other evidence

1 and he stated that he could not remember, but drug
2 paraphernalia was found. But it was never stated
3 where it was found at. And the odd thing about
4 that was I went to trial -- to court for that a
5 year later. I didn't have no idea I was even
6 charged with drug paraphernalia. I went a year
7 later. I was hit blind sided. The officer who
8 said he found the drug paraphernalia, he never
9 showed up.

10 Q. He didn't show up for court and you
11 were found not guilty?

12 A. Yes. I gave the judge my side of the
13 story. He asked where the officer was. The
14 officer couldn't be found so he found me not
15 guilty.

16 Q. Before I move on to other investigative
17 issues, let's circle back to the statement by the
18 accuser. You said that was played by your
19 attorney, correct? You heard it?

20 A. Yes, I heard it.

21 Q. Did you ever see a transcript that was
22 developed from that audio recording?

23 A. Yes, sir, I seen the transcript of the
24 audio.

25 Q. Was there any discussions about how

1 that audio statement or the transcript might be
2 used at your trial?

3 A. No, he never mentioned how he was going
4 to use it. I didn't find out about the transcript
5 until the day of trial. I took some time to review
6 it.

7 Q. The incident location, this gas station
8 quick stop, was there something about that location
9 that you had asked your attorney to investigate
10 that he did not?

11 A. Yes. On the audio the victim gave the
12 testimony, he told Officer Scarborough that I was
13 inside the store. After he turned over that audio
14 to Officer Jordy his lieutenant told him to go back
15 to the corner stop and receive video surveillance.
16 There was cameras on the inside. The State witness
17 testified there was three to four cameras on the
18 inside, but he took them when he left. He left in
19 August. Officer Jordy went back during June so
20 there had to be cameras on the inside. But they
21 was received. They lied about it. Officer Jordy
22 lied on the stand and he said that there was no
23 cameras altogether inside or out, but the State
24 witness testified there were four cameras on the
25 inside.

1 Q. Not only did the accuser testify about
2 cameras, but again specifically he said that you
3 first had contact with him inside the store,
4 correct?

5 A. Yes, sir.

6 Q. And your testimony is that you did or
7 did not have?

8 A. I never met him inside the store and
9 the camera would prove that.

10 Q. When would you have indicated that the
11 video from the store was important -- when would
12 you have told your attorney about that?

13 A. I told him from the very beginning
14 before we even went to trial. I told him about the
15 video. Like I said, Officer Jordy, he lied about
16 the video, said there was no video inside. But the
17 State witness testified there were four cameras
18 inside.

19 Q. I am focusing on what you told Mr.
20 Shelton. What, if anything, did he do after you
21 informed -- Mr. Shelton -- informed him about the
22 importance of the store video?

23 A. He just made a simple phone call. He
24 said one of his secretaries made a phone call and
25 asked the store owner did video surveillance exist

1 and that's all he did.

2 Q. What was the results of that effort?

3 A. He said that the secretary said there
4 was no cameras, but the State witness said
5 otherwise.

6 Q. Your Honor, if I could have just one
7 moment?

8 THE COURT: Yes.

9 (Brief pause.)

10 BY MR. DAVIS:

11 Q. A few more questions, Mr. Greene. What
12 was your attorney's advice about whether you should
13 go to trial or accept the plea offer?

14 A. During the very last time that the plea
15 was offered he told me, his exact words was will
16 you take ten nonviolent. I told him I am ready to
17 go home. He told me if you don't take this plea
18 you won't be going home.

19 Q. When was that conversation?

20 A. During cross-examination that was
21 stopped for an hour and-a-half. That's when he
22 approached me about it.

23 Q. Basically in the middle of trial?

24 A. Yes, sir.

25 Q. Were there any discussions about --

1 advice about trial versus guilty plea before trial
2 started?

3 A. No, sir.

4 Q. As far as discussions that Mr. Shelton
5 had with you, are there any other complaints about
6 the discussions he had with you in the three
7 meetings or during trial that you want to tell
8 Judge Nettles about?

9 A. Say that one more time.

10 Q. During the three meetings prior to
11 trial or the discussion during trial is there any
12 other complaints that you had about those
13 discussions that you want to tell Judge Nettles
14 about?

15 A. Not that I can think of right now.

16 Q. Other than using the audiotape of the
17 accuser at trial, is there any -- and the
18 paraphernalia charge, are there any other items
19 that you want to complain that Mr. Shelton did not
20 use but should have used at trial?

21 A. The audio, the transcript, the drug
22 paraphernalia evidence sheet that proved that drug
23 paraphernalia was found, especially when that case
24 rested upon the credibility of the witnesses. No
25 witnesses -- it's my word against his word. I

1 think he should have definitely provided the
2 evidence sheet that showed drug paraphernalia was
3 found. And my argument was it was a drug deal.

4 Q. With this being a swearing match case,
5 is there anything other than failing to seek the
6 store video in a timely manner, is there any other
7 error in the investigation you want to tell Judge
8 Nettles about?

9 A. For the record I think it was unfair in
10 the beginning when they did no investigation and
11 they gave the alleged victim the money that was
12 found in my pocket on same exact day. I was
13 treated like I was guilty from the very start. The
14 jury also sent notes requesting to see particular
15 evidence, was one the police report. That was
16 denied because the judge said it was hearsay and I
17 believe it was -- the jury, they wanted to see the
18 transcript of the audio and I believe the audio
19 testimony, but Judge Nicholson stated that the jury
20 cannot review it because Mr. Shelton didn't have it
21 admitted into evidence. So the jury was denied
22 their right to review any evidence. From my
23 knowledge we didn't have any evidence for the jury
24 to look at, but we had it in our possession.

25 It was three notes the jury sent. And

1 I think another one is I think it was very
2 ineffective when Judge Young filed an Allen charge.
3 The jury sent -- the first note they sent they
4 voted three times for my kidnapping. They was
5 deadlocked three times. I think he should have
6 objected to that Allen charge being that Judge
7 Young was not ever over my trial. He came during
8 deliberations. Judge Nicholson, he had to go to
9 the hospital and Judge Young stated that it was not
10 even life threatening. So Judge Young, he had no
11 knowledge of my case except that it was armed
12 robbery and kidnapping. The jury sent a note
13 saying they were deadlocked. Three times they
14 voted. Deliberations lasted for roughly over four
15 hours.

16 MS. COLEMAN: Your Honor, I object to
17 any allegations about failure to object to the
18 Allen charge. That's outside the scope of this
19 application.

20 THE COURT: I will allow him to testify
21 as to that. We will address the merits of it at
22 the conclusion.

23 THE WITNESS: He gave the Allen charge.
24 Judge Young stated in the record that some jurors
25 were unwavering. They stand firm and once he give

1 that Allen charge they went back for an hour and
2 they came with a guilty verdict. I don't think
3 that was fair. And Judge Young didn't give Mr.
4 Shelton a chance to object to that. He never asked
5 do you object to the Allen charge. Mr. Shelton
6 didn't argue. He never objected to the Allen
7 charge. In fact, David Schwacke who reminded Judge
8 Young that he forgot to even mention would they
9 like to object. Even then he stated that he would
10 not like to object. It was found at the conclusion
11 that I was guilty. I find that highly ineffective.

12 Q. In addition to not objecting to the
13 that charge, you argue that he didn't object to the
14 admission of your prior record, correct?

15 A. Yes, sir.

16 Q. And then, in fact, didn't object to
17 there being no instructions to the jury about,
18 correct?

19 A. Yes.

20 Q. Is there anything else about the
21 admission of your prior strong armed robbery
22 conviction you want to complain to Judge Nettles
23 about?

24 A. Just that by bringing that up it had --
25 has prejudice because that was the last thing the

1 jury heard. They jury could have taken that
2 propensity as a propensity to act like I had a
3 habit of robbing people. I was a robber by trade.
4 Didn't give the jury any type of instructions to
5 let them know don't judge him solely on my prior
6 convictions.

7 Q. Judge, just -- I believe that's all the
8 questions I have. Before I turn the witness over I
9 believe included in the transcript are the three
10 notes, Court's Exhibit 1, 2 and 3. They should be
11 part of the record that we have today.

12 Mr. Greene, answer any questions the
13 attorney general has.

14 CROSS-EXAMINATION

15 BY MS. COLEMAN:

16 Q. Mr. Greene, you testified at trial,
17 right?

18 A. Yes, ma'am.

19 Q. And before you testified we discussed
20 earlier the judge informed you that the State could
21 use your prior record against you, right?

22 A. Yes, he did.

23 Q. And that's on page 160 of the record
24 for your reference, Your Honor. And you discussed
25 that with your attorney, right, that they could use

1 that against you if you testified?

2 A. Yes.

3 Q. And you're complaining today that he
4 brought that up -- Mr. Shelton asked you on
5 cross-examination -- on direct examination about
6 your prior conviction; is that right?

7 A. Yes.

8 Q. But the State was going to use that
9 against you anyway, right?

10 A. State never brought it up.

11 Q. But they could have if he had not done
12 that, right?

13 A. They could, but they didn't.

14 Q. So you told the jury your whole side of
15 the story, right, that you were selling drugs to
16 the victim and you weren't robbing him?

17 A. Yes.

18 Q. So they heard all of that. Is that
19 still your story today?

20 A. Yes, ma'am.

21 Q. Now, the victim's testimony, you claim
22 in the audio transcript of the victim's testimony
23 that before the trial that you were inside of the
24 gas station; is that right?

25 A. I never said I was inside. He said I

1 was inside.

2 Q. Right. That the victim said that you
3 were inside the gas station, right?

4 A. Yes, ma'am.

5 Q. But at trial he testified that you
6 actually came from across the street?

7 A. Yes.

8 Q. So are saying that they should have
9 used that audio transcript to impeach him with
10 that, right? Mr. Shelton should have used that
11 against the victim to show he was lying; is that
12 right?

13 A. Yes, because he lied several times. He
14 said that audio was beneficial to me.

15 Q. But Mr. Shelton did cross-examine him
16 on that when he was on the stand at trial, right?

17 A. I mean you could tell the jury one
18 thing, but when you have evidence it's a whole
19 different ball game when you have evidence, which
20 we had.

21 Q. But none of that actually matters, does
22 it, because the robbery wasn't in the gas station?
23 You robbed him in his car down the road later?

24 A. If it doesn't matter why would the
25 State take the time to go look for video

1 surveillance? Just like if a woman said she was
2 raped and a man said he didn't rape her and then
3 they asked the woman where did y'all meet, she said
4 we meet in the hotel. They go check the camera and
5 see she wasn't in the hotel. Why would you lie
6 about something like that? Something is not adding
7 up.

8 Q. But there's no question that you were
9 inside the car with the victim, right?

10 A. Yes, he let me inside the car.

11 Q. You were in the car with him driving
12 down the road. The only thing is he claims that
13 you robbed him at knifepoint and you said that you
14 didn't, it was just a drug deal?

15 A. Yes.

16 Q. So the video from inside the gas
17 station couldn't change that you were in the car
18 with him later?

19 A. The video got witnesses. He said I was
20 inside the store. When he got on the stand he said
21 -- he never said I was inside the store.

22 Q. But the jury heard that when he
23 cross-examined him, right?

24 A. I guess they did.

25 Q. Okay. And the videotapes, as far as

1 those go, do you have those videotapes with you
2 today?

3 A. State never turned them over.
4 Exculpatory evidence in favor with me, they never
5 turned them over. Can't present something you
6 don't have.

7 Q. Does the State have a copy of those
8 videotapes?

9 A. Evidently they are hiding them because
10 their own witness testified it was four cameras on
11 the inside.

12 Q. But the witness testified that he
13 didn't have access to those cameras, right, that
14 was the old owner?

15 A. Once they left. Previous owner left in
16 August, Officer Jordy went back in June. So that
17 means the previous owners were still there. So why
18 wasn't the cameras received.

19 Q. But to your knowledge today have you
20 ever seen a copy of those videotapes?

21 A. Like I had said, the prosecutor didn't
22 turn it over.

23 Q. But you don't even know if they exist,
24 right?

25 A. Store owner, he testified they did

1 exist. He said there were four cameras on the
2 inside.

3 Q. But he didn't have access to those,
4 right?

5 A. When the officer went there they went
6 to the pervious owner. Of course he wouldn't have
7 it because he was gone.

8 Q. Right. So they did not have the tapes,
9 right?

10 A. They didn't turn them over.

11 Q. Do you have proof that the State has
12 these videotapes?

13 A. Their own State's witness testified
14 there was three to four cameras on the inside. So
15 if there were three or four cameras on the inside
16 and it was taken when he left, the previous owner
17 left in August. Officer Jordy went back in June so
18 if he went in June and their own witness testified
19 there were four cameras inside why wasn't the
20 cameras received.

21 Q. And, again, even if you had these
22 videotapes that would show that you were inside the
23 gas station that doesn't matter because you were in
24 the car?

25 A. I wasn't inside the gas station.

1 Credibility of your words. There's no eyewitness
2 so everything he say should be consistent and the
3 truth should never change. The truth changed
4 numerous times.

5 Q. And you brought up this issue with the
6 videotapes to the judge before the trial, right?

7 A. Yes.

8 Q. You tried to relieve your attorney
9 because you said he had not investigated the tapes
10 and you wanted him to find then?

11 A. Yes. All he did was a simple phone
12 call. He said nobody never took any reports down.
13 He didn't know the name of the secretary who
14 called. When Mr. Shelton asked Patel did somebody
15 call his office he didn't even concur that somebody
16 called.

17 Q. And you explained all that to the trial
18 judge before the trial started, right?

19 A. Yes, I did.

20 Q. So you tried to relieve your attorney
21 and in the end you decided to keep him, right, and
22 have him represent you at trial?

23 A. I am trying to figure out what
24 relevance does this have.

25 Q. Just answer the question, please.

1 A. Yes.

2 Q. He did represent you at trial then,
3 right?

4 A. Yes, he did.

5 MS. COLEMAN: Thank you. Nothing
6 further.

7 THE COURT: Any redirect?

8 MR. DAVIS: No, Your Honor.

9 THE COURT: We are going to stand at
10 ease for an hour and 15 minutes. We will be back
11 at 1:15. Under these circumstances you can't
12 discuss the case with your lawyer or the State.
13 You can't -- you are not allowed to discuss your
14 testimony during the break. We will stand at ease
15 until 1:15.

16 (A luncheon recess transpired.)

17 THE COURT: Mr. Davis, do you have
18 anything further?

19 MR. DAVIS: Judge, I have a request.
20 Everything that was put on the record at the
21 beginning of the hearing and having the lunch break
22 now after, we did conclude testimony by Mr. Greene;
23 however, out of an abundance of caution I would ask
24 to be able to recall him as to one issue if the
25 Court would allow that.

1 THE COURT: What is the issue?

2 MR. DAVIS: The issue would be a
3 complaint about not requesting any lesser included
4 which, of course, the outcome in this case is a
5 jury trial convicted him of the initial charges.
6 But for our purposes to show ineffective assistance
7 of counsel and the outcome could have been
8 different, one alternate outcome could have been a
9 lesser included so I think that could fall within
10 Strickland.

11 THE COURT: Is the State in a position
12 to stipulate that the lesser included offense was
13 not requested?

14 MS. COLEMAN: Yes, I can stipulate.

15 THE COURT: If you want to call him to
16 the stand to do that, otherwise there's a
17 stipulation to that effect. We will, I assume,
18 hear from the trial lawyer.

19 MR. DAVIS: We understand that, Judge.
20 With the stipulation and the Court certainly has
21 the record, we would rely on that then. And with
22 that being made part of the record we would rest
23 the applicant's case.

24 THE COURT: Ms. Coleman, you are
25 recognized.

1 MS. COLEMAN: Thank you, Your Honor.
2 The State calls Chad Shelton.

3 CHAD SHELTON

4 having been duly sworn, testifies as follows:

5 THE CLERK: Please state your name and
6 spell your last name.

7 THE WITNESS: Chad Shelton,
8 S-H-E-L-T-O-N.

9 DIRECT EXAMINATION

10 BY MS. COLEMAN:

11 Q. Mr. Shelton, how long have you been
12 practicing law?

13 A. Ten years.

14 Q. And were you appointed to this case?

15 A. Yes, I was in the public defender's
16 office.

17 Q. Do you recall when you were appointed
18 to the case?

19 A. It was around May or June 12th is the
20 first time I met with Mr. Greene at the detention
21 center.

22 Q. How many times did you meet with the
23 applicant before his trial?

24 A. As Mr. Greene testified to, he was very
25 shortly after on -- being assigned to the case and

1 meeting with him he did have to go start a youthful
2 act sentence. And so he went to the Department of
3 Corrections for about ten months or so and so then
4 he came back in March or April of 2013 and I did
5 sit down and meet with him a couple times prior to
6 trial. It was scheduled for trial in May of 2013.
7 We did have him -- so at the detention center maybe
8 four or five times. I did have him transported
9 once from the Department of Corrections to discuss
10 the plea offer and to see if he wanted to take the
11 plea offer or not. And that was in January of
12 2013, had him transported from the Department of
13 Corrections. However, I did communicate with him
14 through letters from July. I have a letter July,
15 August, September, October, November, and then
16 February.

17 Q. Did the applicant cooperate during the
18 course of your representation?

19 A. He did cooperate.

20 Q. Did you file any Brady or Rule 5
21 motion?

22 A. I did file a Brady motion June of 2012.

23 Q. Did you review the discovery material
24 with the applicant?

25 A. I did.

1 Q. What kind of investigation did you do
2 for this case?

3 A. As far as investigation I did, my
4 office did call the gas station. By the time we
5 had gotten a chance to look into that material,
6 they had indicated there would not have been a
7 video available if they did not make a copy within
8 30 days so we would not have been able to obtain
9 any video. I got a transcript of the victim's
10 statement and got that prepared as to be used for
11 cross-examination. I talked with officers. I
12 looked into different possibilities, talked with
13 his uncle, a Dean Manigault, about his version of
14 some of the events and where he was staying, just
15 looking into his life. I did talk briefly with his
16 mother. I can't recall if I did talk to his
17 father. I tried to reach out to some family
18 members that he would give me contact information
19 for.

20 Q. Prior to the trial did you discuss with
21 the applicant the elements of the crimes that the
22 State was required to prove?

23 A. Yes, absolutely.

24 Q. Did he seem to understand those
25 discussions?

1 A. Yes.

2 Q. And did you -- first will you please
3 tell us the facts of the case as the State alleged?

4 A. As the State alleged? Mr. Greene met
5 the victim at a gas station, asked for a ride
6 because it was hot. Victim gave him a ride. As
7 the victim gave him a ride Mr. Greene pulled out a
8 knife, put it to his throat, asked for his wallet,
9 got his wallet. The victim stopped -- actually saw
10 a police officer, stopped the car or waved down the
11 police officer. Stopped the car. Mr. Greene got
12 out of the car, took off running. Police officer
13 was chasing him. As the police officer got to him
14 he pulled out a shiny object which then was
15 determined to be the knife. He fell. At one point
16 officer got a taser. When he pulled out the shiny
17 object officer then dropped his taser, pulled out a
18 gun. At that point Mr. Greene was apprehended and
19 he had the victim's wallet in his right pocket.

20 Q. And I believe you testified that he
21 held the knife to his throat. Would you agree with
22 me the transcript said maybe he held it to his
23 stomach instead of his throat?

24 A. The victim alleged that, yeah.

25 Q. But he was chased and apprehended by

1 the police at the crime scene?

2 A. At the crime scene.

3 Q. What was the applicant's version of the
4 facts?

5 A. His version changed throughout. At
6 first it was he was getting a ride, he needed a
7 ride to his uncle's place which was near a bank and
8 when I asked him about why he ran, it was because
9 he had marijuana on him and he was on probation so
10 that was the reason he ran. He couldn't -- just
11 happened to have a knife on him. It then changed
12 later on and including some information that he
13 provided me that indicated that he committed the
14 armed robbery. And then it changed to that he was
15 an -- it was a drug deal.

16 Q. And knowing that the applicant has
17 waived his attorney/client privilege by filing a
18 post-conviction relief application, obviously
19 you're entitled to discuss your discussions. So
20 you testified that he admitted to robbing him; is
21 that right?

22 A. So in January I had him transported
23 back up to discuss the plea offer because I thought
24 it was in his best interest to consider the plea
25 offer. And I brought his -- who he considered his

1 uncle, Dean Manigault, with me because those are
2 the two people -- the person that was really
3 helping with communicating with Wilton. And we
4 brought him in the back and he did admit that to me
5 and Dean that at the time he was on drugs and he
6 committed the armed robbery to get money for drugs.

7 Q. Okay. And what was the story that he
8 eventually testified at trial?

9 A. That he was selling the victim drugs
10 and was just a kind of miscommunication.

11 Q. Okay. What was your trial strategy in
12 this case?

13 A. So my trial strategy was to -- that it
14 was going to be -- I was going to go to the
15 miscommunication, but I wanted to minimize the
16 selling of drugs. I don't think from a trial
17 strategy that that's the best strategy is my
18 personal opinion, is that makes you sound like a
19 bad person in front of the jury. So what I wanted
20 to concentrate on was the miscommunication and the
21 dialect just maybe misunderstanding of where Wilton
22 was going and where his uncle lived and just how
23 there could have been a miscommunication. And so
24 that's what my trial strategy was.

25 Q. And just for the judge's background on

1 this since he is not familiar with the transcript,
2 would you describe the victim a bit and how that
3 miscommunication strategy fit in?

4 A. Yes. The prosecutor told me that he
5 could speak English, but it was a very broken
6 English and actually during trial we had to stop
7 trial because he could not answer my questions and
8 try to find an interpreter that would come in and
9 interpret. I believe it was Chinese. I'm not 100
10 percent sure. He worked at a Japanese restaurant,
11 but spoke Chinese or the other way around. But it
12 was very broken English. It was hard to
13 understand. Somewhat hard to understand and so
14 that was the -- I guess the strategy that giving
15 directions and where the directions go and whether
16 that was going to -- it was a misunderstanding.

17 Q. What kind of -- what other defenses, if
18 any, did you discuss with the applicant?

19 A. I don't know if there was too much
20 other than that we could -- there wouldn't have
21 been self-defense. Wouldn't have been -- it was
22 nothing to indicate that. There was nothing to
23 indicate misidentification. He was found right on
24 the scene. So it was more just what actually
25 occurred in the car.

1 Q. Would you briefly describe the State's
2 evidence against the applicant?

3 A. They had the victim testify. The
4 victim testified about giving Wilton a ride and him
5 then pulling a weapon out on him and getting his
6 money. And then the police officer testified that
7 they were flagged down and they chased Wilton and
8 he had the knife. They observed a shiny object
9 which later determined to be a knife and then they
10 found the victim's wallet in his pocket.

11 Q. In whose pocket?

12 A. In Wilton's pocket.

13 Q. Would you -- how would you characterize
14 the State's evidence? Would you describe it as
15 strong or overwhelming?

16 A. Yes, it was very strong, overwhelming,
17 yes.

18 Q. Did the applicant ever give you any
19 potential witnesses or leads to investigate?

20 A. Well, he gave me the -- his uncle, so I
21 was in contact with him and he did testify at trial
22 also about -- I believe he testified or at least we
23 had talked about him testifying about where he
24 lived so that we could describe how he can be
25 asking him to go to the bank, that sort of thing.

1 And so we had Dean to testify, but as far as other
2 witnesses, didn't really have any other witnesses.

3 Q. Did you have time to prepare for trial?

4 A. Yes.

5 Q. As far as -- I will start with the drug
6 paraphernalia. The applicant has alleged that you
7 should have investigated the drug paraphernalia
8 that was discovered in the car wherever and used it
9 to support his defense that he was selling drugs to
10 the victim, not robbing him. Did you investigate
11 any of this?

12 A. It just didn't fit with my trial
13 strategy what I thought was in his best interest
14 and based off what he had -- information he had
15 provided to me.

16 Q. What was your advice to the applicant
17 about testifying at trial?

18 A. My advice was not to testify. But I
19 always -- obviously he did testify so it's always
20 his decision to testify and I always tell them
21 that. My advice was definitely not to testify. At
22 that point in time in trial we hadn't had anything
23 really bad against him. It was still the
24 miscommunication. And so by him testifying saying
25 he's a drug dealer he got up there and really hurt

1 our case.

2 Q. Were you aware of his prior conviction
3 of strong armed robbery before the trial?

4 A. Yes, definitely.

5 Q. Was he aware of that?

6 A. Yes, he was.

7 Q. Did you have a discussion with him
8 about the State being able to use that to impeach
9 him if he testified?

10 A. Yes. And it is included in one of the
11 letters I sent him, too, that the State could be
12 using that against him if he comes to testify at
13 trial.

14 Q. Did you see any reason at the time to
15 object to that coming in?

16 A. I didn't at the time.

17 Q. Okay. Was there any reason to object
18 to an Allen charge being given?

19 A. There was no reason that I could see.

20 Q. Was there a plea offer before the
21 trial?

22 A. There was a plea offer. The State
23 would never lower it from the armed robbery and I
24 included that correspondence in my letter to
25 Wilton. The lowest they were offering was the ten

1 years and so or the lowest offer was 12 negotiated
2 with 15 if he didn't want to take the 12 negotiated
3 and argue for something less than. So between the
4 10 and 12. We wanted to argue 10 to 12 and their
5 offer was going to be 15 unless they offered
6 12 years negotiated.

7 Q. And did you communicate those offers to
8 the applicant?

9 A. I did.

10 Q. And did he choose to accept or reject
11 those?

12 A. He rejected those offers.

13 Q. Okay. Did you advise him to accept
14 that offer?

15 A. I did. I said it would be in his best
16 interest.

17 Q. Okay.

18 A. But I reiterated if he didn't want to I
19 still was happy to defend him.

20 Q. Okay. The cameras and the videotape
21 issue that the applicant has testified about today,
22 was this brought to the trial court's attention
23 before the trial began to your recollection?

24 A. I believe so, but I'm not --

25 Q. Was that something that he had asked

1 you to investigate before the trial?

2 A. Yes.

3 Q. And you testified earlier that you did
4 look into videotapes from the gas station?

5 A. Yes.

6 Q. Okay. In your opinion if you had had
7 those videotapes from inside the gas station would
8 that have changed the outcome of the proceedings in
9 any way?

10 A. Not in my opinion.

11 Q. And why is that?

12 A. Really was a minor issue that I mean
13 didn't go -- the victim admitted that he let him
14 come into the car, that he voluntarily brought him
15 in the car. So I don't see how that necessarily
16 would have made any difference in the outcome.

17 Q. Okay. You testified that you had the
18 transcript of the victim's statement; is that
19 correct?

20 A. Yes, that's correct.

21 Q. Did you use that at trial in any way?

22 A. I did. And I also called the officer
23 that took the statement to the stand to,
24 cross-examine for or to direct more on that
25 statement and the differences.

1 Q. Did you bring to the victim's attention
2 on cross-examination that he had stated that he
3 might have been inside the store versus across the
4 street?

5 A. I believe so.

6 Q. Okay. We will defer to the transcript
7 on that.

8 A. Yes.

9 MS. COLEMAN: Nothing further. Thank
10 you.

11 THE COURT: There has been some mention
12 of the judge explaining his rationale with regards
13 to the balancing test concerning his prior record.
14 What do you have to say about that?

15 THE WITNESS: I don't recall that at
16 this time. I just -- I am sorry. I didn't have --

17 THE COURT: How about just in theory?
18 Can you object to a judge not putting his rulings
19 on the record, his rationale with regards to
20 criminal history?

21 THE WITNESS: Usually I could try to
22 get more information or ask the judge to. But if
23 they don't then kind of have to go with what they
24 decide.

25 THE COURT: All right. Did you see any

1 reason why he should not let the record in?

2 THE WITNESS: I didn't see any reason
3 why. It is similar so I know I have argued in
4 other cases and some -- I am not sure why I didn't
5 argue it in this one -- that if they are similar to
6 change it to just a felony, being convicted of a
7 felony instead of what the charge was. So I'm not
8 quite sure why I didn't do that in this one. I am
9 trying to remember the case that came down and I
10 don't know if it was after this or not, but I know
11 I have done that on other cases. I don't know why
12 I didn't do it on this one.

13 THE COURT: He has complained about you
14 asking -- the applicant is complaining about you
15 asking the applicant about his criminal record.
16 What was the strategy behind that?

17 THE WITNESS: I tried to minimize it
18 because I knew the solicitor was going to bring it
19 up. So if I was able to get out my client's story,
20 get out what he wanted to say on direct examination
21 and then hopefully get the jury on our side and
22 then mention the record but not draw attention to
23 it, and then the State -- kind of takes away the
24 State's sails I guess.

25 THE COURT: Makes it appear you are

1 being forthright?

2 THE WITNESS: Right, being honest with
3 them, absolutely.

4 THE COURT: Takes the teeth out of the
5 lion?

6 THE WITNESS: Yes.

7 THE COURT: All right.

8 MS. COLEMAN: May I ask one followup
9 question based on your questioning? Thank you.
10 The prior conviction for strong armed robbery, was
11 that within the ten-year period?

12 THE WITNESS: Absolutely. It was five
13 months before the incident.

14 MS. COLEMAN: So it was admissible in
15 this circumstance?

16 THE WITNESS: Yes.

17 MS. COLEMAN: Thank you.

18 THE COURT: Anything further, Mr.
19 Davis?

20 MR. DAVIS: Your Honor, just a moment.

21 (Attorney confers with client.)

22 MR. DAVIS: Mr. Shelton, just a few
23 questions about the handling of the accuser.

24 CROSS-EXAMINATION

25 BY MR. DAVIS:

1 Q. Do you recall questioning or pointing
2 out inconsistencies about the description that he
3 gave of the knife versus the actual knife, whether
4 it was a fold up knife or not? Do you remember
5 questioning him about that?

6 A. I don't remember. I am sorry. But a
7 lot of the problems that I ran into was the victim
8 was very easily able to answer the prosecutor's
9 questions, but couldn't answer mine or could not
10 understand what I was saying. And so that's why a
11 lot of what I decided to do was in the middle of it
12 bring the officer back up on the stand and called
13 him to the stand to testify about his statement.
14 So I don't remember.

15 Q. So if the record shows that you
16 specifically showing him the item of evidence
17 versus his description, if it shows that wasn't
18 done you would rely on the record?

19 A. Yes.

20 Q. And you talked about it during direct.
21 I think you caught yourself and misstated how the
22 accuser claimed a knife was used. There was some
23 description about that, about whether it was
24 pointed at his stomach or at his throat or simply
25 pointed at him. Do you recall there was some

1 discrepancy about how it was displayed?

2 A. Yes. In my notes I know I was starrng
3 that so I noticed there was some discrepancy with
4 that.

5 Q. Back up to general overall questions.
6 Certainly the -- this was a swearing match case for
7 lack of a better way to term it; is that correct?

8 A. Yes.

9 Q. So the credibility of the accuser and
10 Mr. Greene, the Defendant, were crucial in this
11 determination, correct?

12 A. Absolutely.

13 Q. So that cross-examining the accuser on
14 any inconsistencies as compared to the original
15 statement was crucial as well?

16 A. That is correct.

17 Q. So if he indicated to the officer that
18 the knife was just pointed at him, but then later
19 indicated it was in his -- pushed into his stomach,
20 that's a contradiction, correct?

21 A. That's correct.

22 Q. And if the record reflects that you
23 didn't cross-examine him about that you will rely
24 on the record?

25 A. Rely on the record.

1 Q. You and I have had discussions prior to
2 the hearing to prepare for this hearing?

3 A. Correct.

4 Q. I don't think this has been testified
5 to though for Judge Nettle's purposes. Is it fair
6 to say that your direct examination of Mr. Greene
7 was sparse on questions from you?

8 A. That's correct.

9 Q. So it was more that he testified in
10 narrative fashion?

11 A. Yes. And I approached the judge about
12 that.

13 Q. And can you put on the record for Judge
14 Nettles why it was handled that way?

15 A. Because of what he had told me about
16 him comitting the armed robbery and then now he
17 wanted to testify to something different to that.
18 I couldn't -- I didn't feel ethically I could bring
19 that -- I could elicit that testimony so I felt I
20 needed to approach the judge and just let him know
21 that I was proceeding with questioning under the
22 narrative.

23 Q. For the record, that is unique and
24 different than the way you would cross -- direct
25 examine another client?

1 A. That's correct.

2 Q. It's also unique and different than the
3 way other witnesses in the trial were questioned?

4 A. That's correct.

5 Q. My understanding is from your
6 testimony -- my understanding is that your
7 testimony is Mr. Greene gave you basically three
8 different versions of the events?

9 A. Yes.

10 Q. First of all, an explanation that he
11 was visiting an uncle and that could be some kind
12 of explanation of his intent other than to commit
13 the crime?

14 A. Right.

15 Q. Another explanation is, and I believe
16 you testified this would have been a meeting that
17 you had him brought back from the Department of
18 Corrections where you and a family member and he
19 met?

20 A. Yes.

21 Q. And that one is where you are
22 indicating he admitted to the basic facts as
23 presented by the accuser?

24 A. Right.

25 Q. The third meeting is his indication

1 that it was a miscommunication or misunderstanding
2 of a drug deal?

3 A. Right.

4 Q. Isn't it possible that any of those are
5 true?

6 A. Well, he couldn't answer my question
7 when it was just a miscommunication of how he got
8 the wallet. And so in my opinion that wasn't --
9 that was going to be a big issue how you end up
10 with the victim's wallet. And so that was I guess
11 the basis for the drug deal is that that's how he
12 got the wallet was because it was a drug deal.

13 Q. And if that's true that would explain
14 or could explain that, correct?

15 A. Right.

16 Q. So given the fact that -- so in your
17 opinion the first one, some explanation of just a
18 miscommunication, you didn't believe that that
19 could be factually accurate, but whether it was the
20 actual crime or a drug deal gone bad, the facts
21 would support either; is that fair, could support
22 either?

23 A. I guess there was nothing really to
24 show that it was a drug deal.

25 Q. Again back to the --

1 A. He said/she said.

2 Q. Back to a swearing match at trial?

3 A. Right.

4 Q. So given that you decided to have him
5 testify in narrative without knowing for sure that
6 his narrative was a fabrication?

7 A. I believed it was based off him -- his
8 communication with me.

9 MR. DAVIS: If I can have one moment.

10 THE COURT: Mr. Davis, let me ask a
11 legal question about that issue. You do criminal
12 work other than --

13 MR. DAVIS: I do Your, Honor.

14 THE COURT: -- collateral stuff. If a
15 client admits to you that he's guilty of a crime
16 would you still -- he gives you a number of
17 different versions, would you still question him
18 direct questions and argue his version of the story
19 to the jury if he had indeed told you he did it?

20 MR. DAVIS: I think Mr. Shelton and
21 anyone in this position is in a very difficult
22 position because the question I was just asking
23 right there, only once in my career have I been in
24 a similar situation. But in that sense the
25 evidence was --

1 THE COURT: I think that's what the
2 rules require, is that you ask them to testify in a
3 narrative fashion, and not only that, you can't
4 argue their version of the facts to the jury.

5 MR. DAVIS: And my understanding is if
6 you know that the version being presented is an
7 inaccurate concrete lie basically, we don't want to
8 support perjury.

9 THE COURT: Three different versions,
10 they all can't be true.

11 MR. DAVIS: No, they can't, but
12 certainly I have argued alternative defenses in
13 front of a jury. Didn't do it, but if he did then
14 in this case if you believe there was some unlawful
15 exchange of property, if you don't believe it was
16 with a weapon then he is guilty of the lesser.
17 First of all, you argue do not commit an armed
18 robbery. Even if you think, you don't buy the
19 miscommunication of the drug deal gone bad, if you
20 don't believe he had a weapon, so I have argued the
21 alternatives to a jury factually.

22 THE COURT: I think that's different --
23 proof is different, but when you are eliciting
24 something from a Defendant who you represent you
25 got an obligation to handle it consistent with the

1 rules of professional responsibility.

2 MR. DAVIS: Certainly. And the
3 difficulty --

4 THE COURT: Do you think he was wrong?
5 I am asking you do you think he was wrong in doing
6 so in this case?

7 MR. DAVIS: I'm not sure, Judge. I'm
8 not sure.

9 THE COURT: That's my call then.

10 MR. DAVIS: Yes, sir. I'm not sure. I
11 think it's a very difficult decision.

12 THE COURT: Is there ever a legitimate
13 objection, do you have any case it's a legitimate
14 objection to an Allen charge?

15 MR. DAVIS: In this case, Judge, I will
16 tell you I reviewed --

17 THE COURT: I think you can give it --
18 you can't give it more than once, I know that. But
19 once the judge decides he is going to do it, he can
20 either do it or not. Is there a way to object to
21 that?

22 MR. DAVIS: I, first of all, reviewed
23 to make sure it wasn't given twice and the record
24 seems to reflect it was only given once so I double
25 checked that. Again, it's a very difficult

1 decision. I can recall since you are asking me
2 directly a time where I objected to the Allen
3 charge. I don't know the judge, but the judge said
4 what else would you rather me do, Rodney?

5 THE COURT: Wait.

6 MR. DAVIS: I don't have another -- so
7 I think as a defense attorney I think we need to
8 carry the water that this is maybe coercive even
9 though the language said hold on to your conscience
10 and don't bend, but I think we have an obligation
11 to push that perhaps that's not the appropriate
12 way.

13 THE COURT: An Allen charge is good or
14 bad for the Defendant?

15 MR. DAVIS: Well, I think that depends
16 on the case.

17 THE COURT: I think it's pretty neutral
18 really.

19 MR. DAVIS: It is certainly designed to
20 be, but depending on the time that the jury has
21 been out, if they have been out for hours, come in
22 and say that to the judge and it's certainly
23 written try to walk the line, to ride the fence,
24 but simply by saying try again, that does assert
25 some pressure to think about it and perhaps change

1 your mind. So I think defense attorneys who do
2 object to it are carrying the water.

3 On the other hand, our courts have not
4 given us an appropriate alternative. So I have
5 limited it in the crux of I object. Well, what
6 else would you have me do? I don't have anything
7 else, Judge, but note my objection. And that's of
8 course playing for the second fight on appeal. But
9 I do not -- it was only given once so we have no
10 objection there. The language of it is certainly
11 rather standard so I don't have a specific language
12 objection. But on behalf of my client, certainly I
13 would argue that once a jury has deliberated for
14 the judge then to force them to rethink by giving
15 an appropriately worded Allen charge, we would rely
16 on that as potentially affecting the outcome.

17 THE COURT: Any further testimony?

18 MR. DAVIS: Let me see if there is any
19 notes. I don't believe so, Your Honor.

20 (Attorney confers with client.)

21 MR. DAVIS: Your Honor, couple more
22 questions.

23 BY MR. DAVIS:

24 Q. Mr. Shelton, back to the description
25 and the admission of a knife, the knife was

1 admitted into evidence in this case?

2 A. I believe so.

3 Q. Isn't it accurate it was not -- the
4 knife was admitted, that the arresting officer
5 claimed Mr. Greene discarded some items including a
6 knife; is that accurate?

7 A. That's accurate.

8 Q. Arresting officer seized those items
9 and held on to them as evidence; is that accurate?

10 A. That's correct.

11 Q. And the knife that was claimed to have
12 been thrown by Mr. Greene and seized was presented
13 at the trial?

14 A. Yes.

15 Q. It was not a folding knife?

16 A. I don't recall, but I take your word
17 for it.

18 Q. And yet in describing it the victim
19 would have described it as a folding knife; do you
20 recall that?

21 A. During the testimony or was it
22 different in his statement?

23 Q. I apologize. In his statement to the
24 law enforcement, I apologize, yes.

25 A. He did say it was a folding knife.

1 Q. And did you testify earlier you did not
2 have the transcript?

3 A. I did have a transcript, not of the
4 trial.

5 Q. May I approach, Your Honor?

6 THE COURT: Yes.

7 Q. I have shown the attorney general
8 page 188 of the transcript. And it's out of
9 context so you can scroll through as you need to.
10 But on page 188, the question are you saying a full
11 knife or a folding knife is the question. Answer
12 is folding knife, the folding knife. And scroll
13 back. It was 188.

14 So, Mr. Shelton, in reviewing that does
15 that refresh your memory as to that assertion that
16 there was a folding knife?

17 A. Yes, he said it was a folding knife.

18 Q. In reviewing this does that refresh
19 your memory, and I believe you just corrected me,
20 that is from the transcript of the statement?

21 A. Right, that's from the transcript of
22 the statement.

23 Q. Of the accuser?

24 A. Of the accuser.

25 Q. Now, with the actual knife and

1 description of the knife contradicting each other
2 did you make any objection to the admission of the
3 knife?

4 A. No, I didn't.

5 MR. DAVIS: Your Honor, with that we
6 have no other questions.

7 REDIRECT EXAMINATION

8 BY MS. COLEMAN:

9 Q. The knife that was admitted into
10 evidence, is this the knife that was found on or
11 near his person when he was arrested?

12 A. Yes. That's what it was testified to.

13 Q. Was there any reason to object to it
14 coming in under that basis?

15 A. No.

16 Q. So regardless of the description of the
17 knife they found the knife on him when he was
18 chased down and arrested?

19 A. Yes.

20 Q. Thank you.

21 THE COURT: You may step down.

22 MS. COLEMAN: No further witnesses from
23 the State.

24 THE COURT: Anything from anybody?

25 MR. DAVIS: No other witnesses, just if

1 I would be allowed to summarize quickly.

2 THE COURT: Yes.

3 MR. DAVIS: Thank you, Your Honor.

4 Judge, I would like to start on the second prong of
5 Strickland and point out what we did earlier in the
6 record that you have. Note one from the jury, is
7 there a possibility of a lesser included charge
8 signed by the foreperson. And the response was
9 given by the judge on the record.

10 Secondly, Court's No. 2, can we have
11 Mr. Zang who is the accuser and Mr. Greene, the
12 Defendant, my client today, testimony read back to
13 us or a copy. The judge indicated the court
14 reporter will play back all the testimony to you in
15 the jury room. That was done.

16 Third question. We would like to see
17 the police report of the incident and the
18 transcript, meaning the transcript that was just
19 testified about, the accuser's audio statement to
20 law enforcement. And then the judge responded
21 police report is not admissible because it's
22 hearsay. The transcript was not admitted into
23 evidence, therefore, you cannot have either. You
24 decide the case on the evidence and testimony
25 presented, Judge Nicholson, dated it.

1 The reason I start there is our second
2 obligation is show the outcome would have been
3 different. Three different notes, Allen charge,
4 this jury was close to hung, hung up, couldn't make
5 a determination. And I would certainly argue that
6 by showing the outcome would have been different it
7 could be that jury would have found him not guilty,
8 but if we satisfied that second element we show
9 that the jury could have never reached a verdict.

10 Even without everything that's been
11 testified here today, they were close to not coming
12 to a verdict. And so then we would ask you to
13 focus on, and I will briefly summarize them, Judge,
14 because you have the entirety of the record, but
15 one of the more damaging pieces of evidence we
16 believe if it's a close call like that, a swearing
17 match, credibility is the key issue.

18 And in this case my client used his
19 right to give up his right to right to remain
20 silent and testify. But in doing so the Court
21 ruled his prior strong armed robbery, of course he
22 is on trial for kidnapping and armed robbery, was
23 admissible. We object to the procedure in which
24 the Court found it was admissible, ten-year rule,
25 crime of violence and that finally the probative

1 value is outweighed by the prejudicial effect.

2 While the judge may or may not have
3 done that in their head, it was not certainly
4 articulated in the record the justification
5 therefore. Similar, even though the judge
6 indicated he would give a cautionary instruction, a
7 curative instruction, the typical instruction for
8 why a prior record is allowed for impeachment
9 purposes only, it was not given to the jury at the
10 end of the trial. And neither the State nor did
11 Mr. Shelton object to either the judging's ruling
12 to admit or in failing to give the charge at the
13 end of the trial.

14 In a case where credibility,
15 believability of the witnesses is the crux of the
16 case, that could have been the tipping stone,
17 especially after three attempts to come to a
18 verdict and they did not. Finally they did, but we
19 would argue that in and of itself could have
20 changed the outcome of this case and the
21 ineffectiveness is failing to object or force
22 articulation -- attempted forced articulation of
23 the ruling by the judge.

24 Additionally, to support Mr. Greene's
25 testimony that it was a drug deal gone bad, while

1 that flew in the face of Mr. Shelton's preferred
2 strategy, we must present the strategy that we are
3 afforded by our client and by the evidence.

4 Mr. Greene testified that this was a
5 drug deal gone bad, therefore even though that was
6 not the strategy Mr. Shelton would have preferred,
7 the paraphernalia arrest becomes crucial as well.
8 Again credibility. If it's shown in addition to a
9 knife being dropped, in addition to a wallet being
10 obtained, but also there was drug paraphernalia,
11 that's one more credence to Mr. Greene's testimony
12 and again when the jury is uncertain.

13 THE COURT: Don't you think it could be
14 a legitimate strategy for trial counsel not to do
15 that because we all know in our every day -- just
16 from our everyday living that drug users rob
17 people. First of all, they spend all their money
18 and they steal from the family. They start robbing
19 people. A lot of people know. And do you think
20 that's a legitimate strategy to downplay the drug
21 dealing aspect of it? Essentially what you are
22 asking trial counsel to do is to prove that your
23 client is a drug abuser and/or dealer.

24 MR. DAVIS: But not an armed robber.
25 And we have certainly --

1 THE COURT: What I am saying is that
2 don't you think it is -- I know that's your theory
3 here today, but don't you think that kind of lend
4 itself to a deduction that drug dealers and users
5 rob people?

6 MR. DAVIS: Not necessarily, perhaps.
7 But again that's a jury decision. And the better
8 answer to your question, you're right, I was a
9 little cavalier, the better answer to your question
10 is what I said a moment ago. We can have all the
11 trial strategies in the world as his attorney, but
12 what we have to base that around is what the facts
13 are and what our client present.

14 THE COURT: Whose call is the strategy?
15 Is it the Defendant or the trial counsel?

16 MR. DAVIS: I agree it's trial counsel.
17 Again, limited by what we are able to work with and
18 in this case Mr. Greene was going to testify and
19 did testify.

20 THE COURT: And might be that the trial
21 strategy proving that the applicant was a drug
22 dealer and a drug user might have been a better
23 strategy, but it's a legitimate strategy to
24 downplay that.

25 MR. DAVIS: It is if the client had

1 consented to that, but his testimony contradicted
2 that. And one final thing, Judge. You make a good
3 point about what we see day in and out in the
4 courtrooms with society. But I'm sure you have
5 either presided over or certainly known about drug
6 deals gone bad where murders have occurred. So the
7 fact that a drug deal does not go as planned and
8 then some violence or some crime or some
9 misunderstanding there happens --

10 THE COURT: Certainly that's a factual
11 issue that could be admitted to the jury. The
12 question for me is whether it's a legitimate
13 strategy.

14 MR. DAVIS: Correct. And why it was
15 ineffective in this case is it was contradicted by
16 Mr. Greene's testimony. His testimony was it was a
17 drug deal gone bad so it is our argument that his
18 attorney should have adopted that strategy and
19 therefore the paraphernalia arrest was crucial to
20 support his argument, support his testimony.

21 And, finally, the final one I want to
22 focus on, which I appreciate the State's
23 stipulating to is the fact that some of my
24 questions was about the knife and the description
25 of the knife, whether it was used or not, whether

1 Mr. Shelton suggested it was held to his neck and
2 the State reminded him that the records say to his
3 stomach and yet the accuser had told law
4 enforcement he pointed it at me. If again
5 factually the jury was uncertain or disbelieved the
6 use of a knife then that would bring in a lesser
7 included of strong arm robbery which was not
8 requested by Mr. Shelton and when the jury -- first
9 question from the jury is there a possibility of a
10 lesser included. Had that request been made by Mr.
11 Shelton I believe factually the Court could have
12 instructed that and if the Court would have
13 instructed that then the first note from the jury
14 suggesting they were looking for it.

15 So for all those reasons we would argue
16 a couple of different routes we have shown
17 ineffective assistance of counsel and we have shown
18 that either a jury could have hung up with the
19 performance being better or we have an argument
20 that with a lesser included the jury would have
21 found a lower conviction which would greatly have
22 benefitted Mr. Greene.

23 So we believe we have met our burden
24 and we would ask that you vacate the sentences and
25 remand him to custody of the county to face these

1 charges.

2 MS. COLEMAN: Thank you, Your Honor.
3 And I apologize, it occurred to me in the middle of
4 his argument there that I did not get any testimony
5 on his strategy about why he did or did not or why
6 he chose not to request the lesser included charge.
7 If the Court would allow me to recall him very
8 briefly on this issue.

9 THE COURT: What does the applicant
10 have to say about that?

11 MR. DAVIS: Judge, it's in your
12 discretion certainly, but the State had full
13 opportunity to direct.

14 THE COURT: I believe you did a similar
15 thing earlier.

16 MR. DAVIS: I did, Judge. It's in your
17 discretion.

18 THE COURT: I will allow her to do
19 that. The alternative might be ultimately that the
20 appellate court would say it's remanded for that
21 purpose.

22 MS. COLEMAN: The State calls Chad
23 Shelton.

24 THE COURT: I will remind you that you
25 are still under oath.

1 BY MS. COLEMAN:

2 Q. Thank you, Your Honor, just very
3 briefly. Why did you choose not to request the
4 lesser included?

5 A. Just because there was a knife that was
6 present. There was a knife that the victim alleged
7 and if there was no knife or dangerous weapon, I
8 absolutely would have, but there was one and it was
9 found on scene. The police officers said they saw
10 him with it so that's why.

11 THE COURT: It's your position it was
12 armed robbery or not.

13 THE WITNESS: Right.

14 MS. COLEMAN: Thank you.

15 THE COURT: Do you have any questions?

16 MR. DAVIS: No questions, Your Honor.

17 THE COURT: Mr. Shelton, you have been
18 doing this for ten years now?

19 THE WITNESS: Yes, sir.

20 THE COURT: How many times have you had
21 a post-conviction relief allegation made against
22 you when you asked for a lesser included offense?
23 Question was a situation like this and they
24 convicted him of the lesser included offense and
25 they make an allegation it was ineffective for you

1 to ask for it?

2 THE WITNESS: I think I have had that
3 once.

4 THE COURT: It does happen from time to
5 time. So it's quite often the strategy because if
6 there is a compromise quite often they will go with
7 the compromise and it could be guilty or not
8 guilty. So that's a judgment call, wouldn't you
9 think?

10 THE WITNESS: Yes.

11 MS. COLEMAN: Thank you, Your Honor,
12 for allowing me to do that. Briefly in response to
13 his closing argument there, as far as the Allen
14 charge goes, the Allen charge was proper under the
15 law. There was nothing objectionable about it. As
16 he stated, it was only offered once. I don't think
17 there was a reason for him to legitimately object
18 to that. And he's made his argument that there
19 could be prejudice because the jury was waffling.
20 There were wavering, they had to give the Allen
21 charge. However, and correct me if I'm wrong, but
22 I believe the transcript shows that the jury was
23 only hung on one charge and they had already
24 convicted him of the other charge.

25 My argument would be there is no

1 prejudice there because he received a 20-year
2 sentence for both charges. So even if he was
3 eventually found not guilty of the second charge he
4 was already convicted of the first charge. And he
5 would still be serving a 20 year sentence.

6 The videotapes, I will touch on that
7 briefly. There is obviously no prejudice because
8 inside the gas station had nothing to do with the
9 robbery that happened later. Everyone admitted
10 that he was in the car with the victim. I believe
11 the trial of strategy avoiding the topic of drugs
12 was legitimate and I believe that trial counsel had
13 an ethical obligation to do that to avoid allowing
14 him to lie on the stand and he had to proceed in
15 the narrative fashion.

16 The prior bad act that came in as an
17 impeachment, the act was within the ten-year
18 period. It was five months prior I believe to the
19 trial the testimony showed. The judge may have
20 weighed it. I think we have to assume without
21 proof otherwise that the judge may have run that
22 test in his mind and just not placed it on the
23 record. And again that might be a direct appeal
24 issue, but we don't know -- he hasn't proven that
25 the test wasn't done. It wasn't evaluated. I

1 would also submit there's no prejudice from the
2 prior bad act being admitted because of the strong
3 evidence against him and again it all came down,
4 there's no question that the applicant was in the
5 car with the victim. He had a knife on him. They
6 chased him down, arrested him, found a knife. It
7 all comes down to whether the jury believed
8 evidence that he robbed him or not. I believe
9 that's everything. We ask you to deny the PCR.
10 Thank you.

11 THE COURT: I'm going to deny the
12 application of post-conviction relief and ask that
13 Ms. Coleman prepare an order that establishes that
14 the trial counsel did indeed file the Brady motion
15 and Rule 5. He reviewed the discovery with the
16 Defendant. The Defendant did indeed do an adequate
17 and professional investigation of the case. He did
18 go to the gas station and it was -- he made the
19 discovery that they have a policy of, I don't know
20 for whatever reason, they can't have it after the
21 30 days. I would assume that it rewinds and starts
22 taping over it is typically the problem. But the
23 bottom line is they did check to see if they could
24 have and they didn't have it. And in this case the
25 post-conviction relief burden is on the applicant

1 to establish their case and it would be incumbent
2 upon the applicant to provide a video that would
3 indeed be exculpatory.

4 However, I think everybody has agreed
5 here today at least for argument purposes that the
6 real issue that the jury had to debate was whether
7 or not the robbery took place, and it did not take
8 place in the gas station. I think it is important
9 to point out that everyone agreed, even the
10 Defendant's testimony indicated that he was indeed
11 in the car. And if he were stating that he wasn't
12 there or it was mistaken identity or whatever it
13 might be a bit more relevant, but still unless he
14 is going to have to prove and establish and present
15 and proffer here today a video that would prove to
16 be exculpatory.

17 The trial counsel did indeed get a
18 transcript of the statement of the victim. He used
19 that effectively in cross-examining the victim.
20 Clearly based on the testimony presented here today
21 and from the trial counsel and the applicant
22 himself that he went over with him the elements of
23 the crime. He understood those. And I think it's
24 important to set out in the order that the
25 Defendant did admit to trial counsel that he did

1 engage in an armed robbery. There were other
2 versions that were given. Of course once the
3 Defendant tells his attorney that he's guilty of
4 the crime for which he is charged it does limit him
5 ethically and I think the rule applies in this case
6 and the facts would require ethically that trial
7 counsel proceed forward in this fashion. I think
8 it would have been a grievable offense which would
9 have put the trial counsel's license in jeopardy if
10 he would have done any differently. I think it's
11 an appropriate thing to do under these
12 circumstances.

13 There was indeed overwhelming evidence.
14 You had the testimony of the victim. You have the
15 testimony of the police officer who saw the victim
16 in distress at the time and a knife was found at
17 the scene and the Defendant indeed had in his
18 possession the wallet. I think all of that is
19 overwhelming evidence and whether or not it is a
20 folding knife or one that's a fixed knife I think
21 is really a distinction without a difference. I
22 think it's a legitimate trial strategy for trial
23 counsel to downplay the fact that the Defendant
24 contended that he was a drug dealer or a user.

25 The giving of the Allen charge is

1 appropriate. It's been mandated by the Supreme
2 Court when a jury fails to reach a verdict. It's
3 within the discretion of the trial judge to give an
4 Allen charge and I find the Supreme Court is the
5 one who drafted the Allen charge and I think under
6 these circumstances it was appropriate for him to
7 give it. Everyone agrees that the Allen charge was
8 only given once. I think that's important and no
9 one has objected to the language of the Allen
10 charge. I think that under these circumstances --
11 under these circumstances it is appropriate not to
12 request a lesser included offense because there
13 indeed was a weapon found at the scene.

14 THE APPLICANT: Two different knives.
15 Ain't nobody telling you the whole story. It was
16 two different knives. I testified that I had a
17 knife. You ain't getting the whole story. I
18 testified that I had a knife. I testified that I
19 had a folding knife.

20 Where was the folding knife? I
21 testified that I threw it away.

22 (Thereupon, the applicant spit on
23 applicant's counsel.)

24 THE APPLICANT: Bitch. Get the fuck
25 out of here.

1 (Thereupon, the Defendant was removed
2 from the courtroom.)

3 THE COURT: I will tell you what we are
4 going to do is at the conclusion of the trial we
5 are going to bring the Defendant back before the
6 Court. I'll hear from -- I will ask that you
7 prepare the order on that consistent with my ruling
8 and I'm going to allow the -- the rules with
9 regards to contempt in the event I give him less
10 than six months in addition to what he already
11 received, he is not entitled to counsel. Of course
12 we could indict him for his conduct here today and
13 I would like to hear from the State as to whether
14 or not -- what their position would be.

15 MS. COLEMAN: Regarding the indictment?

16 THE COURT: Regarding whether or not I
17 handle the matter as a contempt and limit it to six
18 months or whether or not he be indicted.

19 MS. COLEMAN: I have no objection to
20 you handling that today.

21 THE COURT: Limit it to six months.

22 MS. COLEMAN: Yes, Your Honor.

23 THE COURT: All right. Very good. I
24 will indeed. We are going to give him an
25 opportunity to ponder on his actions and we will

1 bring him back at the conclusion of our business
2 today and we will sentence him with regard to his
3 contempt. Very good.

4 MR. DAVIS: Judge, for the record, I
5 would not seek to file criminal charges. I
6 understand it's not completely --

7 THE COURT: Did he spit on you?

8 MR. DAVIS: Yes, sir.

9 THE COURT: He did.

10 THE DEPUTY: Affirmative.

11 MR. DAVIS: Judge, I would seek -- I
12 personally would seek not to have him charged with
13 that. Certainly you have powers for what happens
14 in the courtroom, but beyond that just for the
15 record.

16 THE COURT: Very good. We will -- I'm
17 going to ask if you could to take the necessary
18 precautions. If you need some help with regards to
19 security and whatever, do you have the ability --
20 do you have a mask?

21 THE DEPUTY: Yes.

22 THE COURT: Let's put him in a mask and
23 let's put him in shackles as well. Anything
24 further from the State?

25 MS. COLEMAN: Nothing.

1 MR. DAVIS: Yes. If you did, Judge, I
2 apologize. Could you address the impeachment
3 charge issue, the prior offense? I don't know that
4 you addressed the fact that a prior strong armed
5 robbery was brought out.

6 THE COURT: Yes. I think under these
7 circumstances it was appropriate to do that. It
8 was consistent with the presentation here today.
9 Clearly it was within -- it was only five months
10 prior to the incident offense and the applicant has
11 not proven or established that the trial judge did
12 not engage in the balancing test.

13 MR. DAVIS: And then the failure to
14 give the curative instruction on that issue?

15 THE COURT: Yes, same as well.

16 MR. DAVIS: Finally, Judge, not to
17 split hairs, the difference between being admitted
18 as the actual offense of strong armed robbery or --
19 and Mr. Shelton even testified to this, he didn't
20 object, can we address that in the order?

21 THE COURT: I think that there needs to
22 be a strong emphasis on the overwhelming evidence
23 that's established in this case and taking the
24 trial as a whole it was appropriate to proceed
25 forward just as he did.

1 MS. COLEMAN: When I submit that
2 proposed order I will, of course, send it to Mr.
3 Davis. And he is welcome to add to it whatever he
4 thinks is appropriate. Thank you, Your Honor.

5 (These proceedings were adjourned at
6 2:28 p.m.)

7 (Whereupon, the Court conducted other
8 post-conviction relief proceedings.)

9 (The following proceedings were held at
10 5:00 p.m.)

11 THE COURT: We are here for contempt
12 proceedings against Mr. Greene. We had a
13 post-conviction relief hearing and during my
14 issuing an order he became disruptive. He spoke
15 out. I think some of the conversation or some of
16 the statements that were made were focused on the
17 knife and whether it was a folding or not. And as
18 he was being escorted out of the courtroom he spit
19 on his counsel, Mr. Davis, and he uttered
20 profanities and I'm going to ask Ms. Coleman if she
21 can give a rendition of her recollection of what
22 transpired.

23 MS. COLEMAN: Yes, Your Honor. As Your
24 Honor was ruling and denying the post-conviction
25 relief matter, the applicant raised some objections

1 I guess to the testimony as it was presented and
2 began yelling. As you explained as he was being
3 escorted out he spit on his attorney, I believe
4 called him a bitch. Said some other choice phrases
5 as he was being escorted out and Your Honor chose
6 to I believe institute a contempt proceeding here
7 today.

8 THE COURT: And, Mr. Davis, what do you
9 recall happening?

10 MR. DAVIS: I think that's both -- you
11 all recited what happened and once he exited the
12 courtroom Your Honor was concerned about what
13 appropriate steps to take and whether to seek a
14 charge, criminal offense and/or contempt of court.
15 Mr. Greene was not here at the time.

16 I would like to reiterate on the record
17 that I am not seeking the charge be filed against
18 him for any type of assault and battery.

19 THE COURT: What happened to you?

20 MR. DAVIS: He spat on me. But it's
21 certainly your discretion based on conduct in the
22 courtroom to control your courtroom and have a
23 contempt proceeding. It is up to you whether you
24 want to see that it is a criminal proceeding or a
25 civil proceeding. Certainly if you are inclined

1 it's civil he would not be entitled to counsel. We
2 talked about that briefly. I don't know that you
3 had decided for sure which route, but you had held
4 out those possible alternatives. Certainly up to
5 law enforcement whether to bring changes or not. I
6 am letting everyone know on the record that I am
7 not seeking to have him criminally arrested or
8 charged, but what the Court sees fit to do for his
9 behavior I certainly understand.

10 THE COURT: There was -- I think Mr.
11 Curry was in the courtroom. What do you recall
12 transpiring?

13 MR. CURRY: Your Honor, at the end of
14 the presentation when Your Honor was ruling Mr.
15 Greene objected to the knife and --

16 THE COURT: I am sorry. Your full name
17 once again.

18 MR. CURRY: Eduardo Curry, Your Honor.
19 He objected to the fact the knife was folded. He
20 said there were two knives. Once Your Honor ruled
21 he got up, he spat on his counsel, called him a
22 bitch and said that you crackers are in collusion.
23 He left pretty angry. That's what I saw.

24 THE COURT: Mr. Greene, if you would
25 like to say anything now is the time.

1 THE APPLICANT: No.

2 THE COURT: You don't want to say
3 anything?

4 THE APPLICANT: I did once. I didn't
5 do it. What am I supposed to say?

6 MR. DAVIS: Judge, just one thing for
7 Mr. Greene's benefit. His family was here and
8 observed the entire hearing. I spoke with them
9 following that. Of course you held him in custody
10 for this matter. I told them he would be back in
11 the courtroom. They indicated they did not wish to
12 be here for the proceeding. But I explained to
13 them the possible consequences. I will be happy to
14 reach out to them and let them know.

15 THE COURT: Under these circumstances I
16 am not going to sentence him to more than six
17 months for this matter so he is not entitled to a
18 lawyer. This is a very unusual situation because
19 you are a victim of this incident, but you are his
20 lawyer and have not been relieved. You can say
21 something on his behalf or not, whatever you would
22 -- how the spirit moves you. I'm going to
23 recognize you. I don't want to cut you off if you
24 want to say anything, but you aren't compelled to
25 because of the circumstance.

1 MR. DAVIS: I understand, Judge, and
2 for what it is worth, that thought had gone through
3 my mind, whether you would -- depending on which
4 way you would handle it whether he is entitled to
5 an attorney or not. I have not been relieved. He
6 had indicated to me at the end of the proceedings
7 he wishes me to appeal your decision which I will.
8 I have told his family about that. Each of them
9 apologizes profusely. It was inappropriate
10 behavior, but I would ask you, he has got a 20-year
11 sentence at 85 percent. You have ruled against us.
12 We will appeal it. But as we keep continuing this
13 process his likelihood of success diminishes. I
14 would ask you not to give him the full six months
15 civil contempt. Certainly it's in your discretion,
16 but thankfully not injured whatsoever.
17 Embarrassed, surprised, shocked. While it's been
18 contentious in my representation I had never felt
19 fearful of him. He never gave me the indication
20 that he would act out physically ever. Most of our
21 conversations were by the phone, but never
22 indication to that.

23 If you are inclined to punish him for
24 his behavior in your courtroom for contempt of
25 court, I would ask you to consider not the maximum.

1 THE COURT: Mr. Greene, in order for
2 the courtroom to have any -- in order to instill
3 faith in our judicial system in the courtroom we
4 can't allow conduct such that. It is
5 inappropriate. If you don't agree with my decision
6 you certainly have the ability to appeal that to
7 the Court of Appeals of South Carolina, the Supreme
8 Court. There are methods by which you can do that.
9 But it absolutely cannot be tolerated for
10 disruptions such as that, physical assaults of your
11 attorney, that cannot be tolerated in a civilized
12 society and I will not allow that. I am going to
13 ask that Ms. Coleman draft an order sentencing him
14 to six months to run consecutive to his previous
15 sentence and good luck to you.

16 (These proceedings were concluded at
17 5:07 p.m., December 4, 2017, Berkeley County, South
18 Carolina.)
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1 CERTIFICATE OF REPORTER

2
3 I, Ruth C. Weese, Registered Diplomate
4 Reporter for the State of South Carolina at Large,
5 do hereby certify that the foregoing transcript is
6 a true, accurate, and complete record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 27th day of March, 2018 at
12 Charleston, Charleston County, South Carolina.

13
14 *Ruth C Weese*

15
16 _____
17 Ruth C. Weese

18 Registered Diplomate

19 Reporter
20
21
22
23
24
25

Is there a possibility of a
Lesser included charge

William J Harder

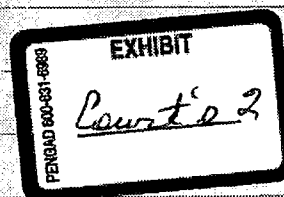
NO



Can we have MR Zhang and MR Greene's
testimony Read Back to US or a
copy

William J. Hand

The court reporter will play
back all the testimony to you
in the jury room.



We would like to see the police
Report of the incident and
transcript

William G. Buck

A police report is not admissible
in SC because it is hearsay.

The transcript was not admitted
in evidence.

Therefore, you cannot have
either. You are to decide the case
on the evidence & testimony presented.

[Signature]
Circuit Judge
5/22/13



STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Wilton Q. Greene, #351286,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2015-CP-08-1964

ORDER OF DISMISSAL

2018 JAN 30 PM 2:08
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 19, 2015. Respondent submitted its return on May 13, 2016. An evidentiary hearing into the matter was convened on December 4, 2017, at the Berkeley County Courthouse. Applicant was present at the hearing and was represented by Rodney Davis, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Before this Court were the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, the Court of Appeals direct appeal opinion, the State's Return, and the application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Wilton Greene ("Applicant") is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. Applicant was indicted by the April 2013 term of the Charleston County Grand Jury for armed robbery and kidnapping (2013-GS-08-0755; -0756). Chad D. Shelton, Esquire, represented him on the charges. On May 23, 2013, Applicant

proceeded to a jury trial and was found guilty as indicted. The Honorable J.C. Nicholson, Jr. sentenced Applicant to confinement for twenty years for each charge. The sentences run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Greene Op. No. 2015-UP-086 (filed on February 25, 2015). The Remittitur was issued on March 18, 2015.

II. ALLEGATIONS

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel

- a. "Trial counsel provided ineffective assistance when he failed to request a balancing test to be conducted pursuant to Rule 609(A), SCRE prior to introduction of an offense similar to offense Applicant was on trial for"
 - i. Applicant was on trial for armed robbery
 - ii. The State sought to impeach on a prior so-called "strong arm robbery" (no such offense exists in South Carolina) the correct offense would be common law robbery, which may have interjected confusion into jurors' minds.
 - iii. The trial judge at time Applicant was questioned about his right to testify told Applicant the State could ask him about that conviction
 - iv. Counsel asked Applicant if he had a prior conviction but Counsel failed to clarify the conviction was for common law robbery not strong arm robbery.
 - v. Counsel was ineffective for preemptively bringing this to the jury's attention without first requiring the Court to conduct an analysis under Rule 609(A), SCRE
 - vi. Based on the similarity of strong arm robbery to armed robbery, there is a "reasonable probability" that had counsel requested the court perform the analysis, the court would have either (A) excluded the conviction or (B) required state to state only that Applicant had been convicted on a felony to mitigate prejudice
 - vii. "The very last thing counsel did was make sure the jury knew he had a prior for strong arm robbery for a client on trial for armed robbery"
- b. Counsel compounded his error by not requesting a 609(A) balancing test

by the failure to request a [limiting] instruction on the evidentiary value of the prior strong arm robbery conviction only to be used for impeachment

- i. Counsel should have requested the prior conviction only be considered by the jury to impeach the credibility of the accused not as substantive evidence of guilt – e.g. that Applicant was a robber by trade.
- c. Counsel was ineffective for failing to request the lesser included offense of common law robbery
 - i. There was evidence in the record in which the jury could have found Applicant guilty of common law robbery as Applicant testified he did not use or brandish the weapon at victim, but victim testified he did and took his wallet.
 - ii. Jury could have believed a portion of each of their testimony, and thus based on the conflicting testimony, could have returned a verdict of a lesser charge had it been so instructed
 - iii. Jury could have found that he took the wallet but did not, as he testified use a weapon
 - iv. If jury would have convicted of common law robbery, the conviction/sentence for kidnapping would have been concurrent for a max of fifteen years or less so Applicant would be entitled to a new trial on both offenses or at least be resentenced on the kidnapping as well as a new trial on common law robbery being submitted to jury as a lesser included offense
- d. Counsel failed to introduce audio recording of the victim's statement he made on 5/22/12
 - i. Victim testified "he didn't say he (Applicant) came out the gas station." However, in the audio of the interview the victim stated Applicant and he met inside the store and he proceeded to give Applicant a ride
 - ii. "What he said at the police station is true. With that being said, Victim's testimony was not the same as his audio recording he made at the police station;
 - iii. Victim testified the knife was a fold out knife but when questioned by trial counsel, Applicant said he didn't notice "if it's open or not but the knife is already to him";
 - iv. Officer Scarborough testified and said he pulled out his own fold out knife and victim was pretty sure it was a fold out and the audio could prove that
 - v. On the audio recording Victim stated that the Applicant always kept the knife to his stomach but at trial he said he told the policeman that the knife was just pointed at him
 - vi. This was a case that came down to the witnesses' credibility. Victim claims he was robbed and Applicant claims it was a drug deal, and the victim became paranoid after smoking the crack cocaine.
 - vii. If Counsel had introduced the audio recording, the jury could have

- compared the testimony and found it excessively inconsistent
- e. Counsel was ineffective for failing to introduce the transcript of the audio recording to the jury.
 - i. The jury sent a note during deliberation requesting to review the police report and the transcript of the audio review [sic]. The Court denied their request and told the jury that the police report is hearsay and they could not review the transcript because it was not admitted into evidence
- f. Counsel failed to introduce evidence sheet that proves drug paraphernalia was found
 - i. Victim claimed he was robbed and Applicant claimed it was a drug deal. Prosecution didn't mention drug paraphernalia was found, the officers who testified didn't mention drug paraphernalia was found, and neither did trial counsel mention the fact.
 - ii. Applicant was the only one who states drugs were involved. Applicant went to court for possession of drug paraphernalia and was found not guilty. This fact was on record and trial counsel knew that Applicant was found not guilty.
 - iii. If it had been presented, it would have shown favor to Applicant's testimony when he testified it was a drug deal and Victim was smoking crack cocaine (crack pipe found)

2. Prosecutorial Misconduct

- a. The State committed a Brady Violation when they failed to disclose evidence favorable to the accused, and material to guilt or innocence or impeaching to State witness.
 - i. The police who investigated this allege robbery met with the store owner and was informed existence of a videotape upon review of video tape and Victim's statement it was known that video contradicted Victim's testimony that he met Applicant inside the store but rather met Applicant outside the store. This would have destroyed credibility of the victim.
 - ii. Officer Judy was being questioned by trial counsel was there any video surveillance. Officer Judy testified it was none all together which was a false statement.
 - iii. On cross-examination trial counsel asked Mr. Patel "Did you obtain any video or surveillance from the previous owner?" Well like I said he just only had four cameras in the store and he took that system with him when he left" With that being said video surveillance was in the inside
 - iv. The State withheld this evidence and acted to hide location of store owner on 5/22/12
- b. Solicitor knowingly allowed presentment of false testimony
 - i. Police testified that there was no video surveillance all together inside or out. This was false testimony. As of 5/22/12 there was inside surveillance. Police testified falsely, solicitor knew about it and help to conceal name/location of owner.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Chad D. Shelton, Esquire.

Applicant's testimony

Applicant testified that he met with Trial Counsel three times before his trial, and each meeting was about thirty minutes long. He stated they did not discuss trial strategy or potential defenses. Applicant testified there was a plea offer for a ten year sentence for strong armed robbery where the State would drop the kidnapping charge, but he rejected the offer. He stated he wanted a five year offer, and Trial Counsel relayed this to the State, but the Solicitor would not go lower than ten years. Applicant stated there were no discussions about him testifying at trial before the trial began, but they discussed it during the trial before the trial judge asked him questions about testifying. He stated Trial Counsel advised him not to testify, but he wanted to tell the jury his side of the story.

Applicant testified that he does not feel the process of his trial was handled appropriately. He stated the trial judge did not conduct a balancing test of prejudice and probativeness before he allowed the State to introduce his prior record, and Trial Counsel did not object. He stated there was no curative jury instruction regarding his prior record. Applicant testified that in the audio recording of the victim's statement from before trial, the victim testified Applicant was inside the store at the gas station before he got in his vehicle, but at trial he testified that Applicant walked from across the street before he got in the vehicle. He stated he wanted Trial Counsel to play the audio recording of his prior statement to impeach his credibility and show the jury the victim was lying.

Applicant testified Trial Counsel never cross-examined the victim about a drug deal, but he should have to support Applicant's testimony at trial that it was a drug deal gone wrong. He testified that Trial Counsel investigated the gas station where the crime occurred but said there were no video cameras inside the store to prove Applicant was not in the store. However, he stated the State's witnesses said there were cameras inside the store, but they did not have the tapes because the cameras were taken with the previous owner when he sold the store. Applicant stated he brought this up before trial to the trial court. Applicant testified Trial Counsel should have objected to the Allen charge being given during trial because the jury was hung on one of the charges.

Trial Counsel's testimony

Trial Counsel testified that he has been practicing law for ten years, and he was appointed to this case. He stated he met with Applicant for the first time on June 12, 2012, and he met with him four or five times prior to trial. He stated they wrote letters back and forth, and he wrote Applicant letters in July, August, September, October, November, and February before the trial in May of 2013. Trial Counsel testified the State was alleging that Applicant met the victim at a gas station and asked for a ride, and as the victim drove him down the street away from the gas station, Applicant held a knife to the victim's throat and robbed him. He stated the victim drove in front of a police car and stopped the car in the middle of the intersection, then Applicant got out of the car as the victim was yelling for help, and Applicant ran down the street while being chased by the police officer. He stated the police found a knife that Applicant had thrown during the chase, and he was tackled and apprehended in a nearby parking lot. He stated Applicant was arrested and had the victim's wallet in the pocket of his pants.

Trial Counsel stated he had Applicant transported in January to discuss the State's plea offer for ten years, and Applicant's uncle, D. Manigault, was there. He stated Applicant admitted to him that he was on drugs on the day of the crime and he robbed the victim. He stated that because Applicant confessed his guilt to him, he had an ethical obligation to direct examine Applicant in a narrative fashion when he testified at trial, and he could not cross-examine the victim on the alleged drug deal in Applicant's testimony. Trial Counsel testified that his trial strategy was to argue that this incident was a miscommunication because the victim was Chinese and spoke in broken English. He stated he wanted to minimize Applicant's story about selling drugs and advised Applicant not to testify about a drug deal because it would make him look like a bad person to the jury and the jury would not be favorable towards him.

Trial Counsel testified that he investigated the videos at the gas station, but he discovered that no video was available after thirty days. He stated he spoke with the officers, Applicant's mother, and Applicant's uncle, who he had testify at trial. He stated the evidence against Applicant was very strong, and included the testimony of the victim, the testimony of the police officer who chased Applicant and arrested him, the knife that was found on Applicant when he was arrested, and the victim's wallet, which was found in Applicant's front pocket when he was arrested.

Trial Counsel testified the victim's audio taped statement was a minor issue because he cross-examined the victim on whether Applicant approached him from inside the store or across the street, and the victim admitted that he let Applicant into his car to give him a ride. He stated he used the transcript of the victim's statement at trial to cross-examine the victim on the differences in his testimony. Trial Counsel testified that he has argued to keep prior convictions out at other trials, and he cannot recall why he did not do so here, but he did not believe there

was any reason to object at the time. He stated he asked Applicant about his prior record on the stand to minimize it before the Solicitor brought it up on cross-examination. He stated he wanted to be forthright with the jury and not appear to be hiding anything. He stated Applicant's prior conviction was five months before the trial, so it was within the ten year period allowed by the rule.

Trial Counsel testified that he believed Applicant's drug deal story was a fabrication. He stated there was no legitimate objection for him to make to the Allen charge because there was nothing improper or coercive about the language, and it was only given once. He stated he had no objection to the admission of the knife into evidence, even though it was not a folding knife. He stated he did not request the lesser included offense because there was a knife present on Applicant when he was arrested, and because he did not want to give the jury another option to convict him when Applicant may instead be acquitted if they did not believe the State's allegations. Trial Counsel stated he did not use the drug paraphernalia found in the vehicle at trial to support the drug deal story because he wanted to downplay the drug sale testimony and emphasize instead that the situation was only a miscommunication.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Trial Counsel was ineffective in his representation surrounding his trial. This Court finds Trial Counsel was not ineffective in any regard. It is clear from the record before the court and the testimony presented at the evidentiary hearing that Trial Counsel filed

Brady and Rule 5 motions and reviewed the discovery materials with Applicant. Trial Counsel thoroughly investigated the case and the results of his investigation showed he could not get any videotapes from inside the gas station store because they were destroyed after thirty days. Trial Counsel explained the elements of the crime to Applicant, who understood this discussion. The testimony shows Applicant admitted to Trial Counsel that he did engage in an armed robbery. Accordingly, Trial Counsel was ethically obligated to proceed in narrative fashion, and any other strategy would have been a grievable offense. This Court finds this was reasonable under the circumstances.

This Court further finds Trial Counsel's decision not to object to the giving of the Allen charge was reasonable under the circumstances. Allen charges are mandated by the Supreme Court, and they are given in the discretion of the trial judge. This Court finds the Allen charge here was appropriate under the circumstances, and there was nothing objectionable about the language used. Accordingly, Trial Counsel was not deficient for failing to object to the charge. All other specific allegations are addressed as follows:

*Failure to request a Rule 609(A) balancing test for prior conviction
or request curative jury instruction*

Applicant's allegation that Trial Counsel was ineffective for failing to request a Rule 690(A), SCRE, balancing test for his prior conviction for his prior conviction for strong armed robbery is meritless. Applicant's prior conviction was within the ten year period allowed under the rules of evidence, and its introduction at trial was not objectionable in any manner other than its potential prejudice as a similar offense with little probative value. However, this Court finds Trial Counsel was not deficient, and there can be no resulting prejudice from any alleged deficiency based on the overwhelming evidence against Applicant.

Under Rule 609(a)(1), SCRE, prior convictions punishable by more than one year imprisonment are admissible for impeaching the credibility of a defendant who testifies when “the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused.” Our Supreme Court has adopted a five-factor analysis for weighing the probative value for impeachment of prior convictions against the prejudice to the accused. State v. Colf, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000). The following factors, along with any other relevant factors, should be considered by the trial court: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. Id.

Although the trial judge in the case at hand did not explicitly place this balancing test on the record at trial, Applicant has not met his burden of showing that the trial judge failed to conduct the balancing test. It is possible that the trial judge conducted the balancing test but did not specifically explain each factor of the test for the record. Trial Counsel credibly testified he saw no reason to object to the admission of the prior conviction at the time of trial. Although he was unsure at the evidentiary hearing why he did not make that argument, he did not believe at the time of trial that an objection was necessary. “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough v. Gentry, 540 U.S. 1, 6, 124 S.Ct. 1, 157 L.Ed.2d 1 (2003). This Court finds Trial Counsel’s failure to object to request curative instruction was not deficient.

More importantly, even if Trial Counsel were deficient in failing to object or request the balancing test, Applicant can show no prejudice that would entitle him to a new trial. “To

warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice.” State v. Howard, 396 S.C. 173, 178, 720 S.E.2d 511, 514 (Ct. App. 2011) (citing Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005)). The evidence against Applicant was overwhelming (see ruling below on overwhelming evidence of guilt). At trial, the victim testified about the entire encounter. The police officer, who met the victim and Applicant at the scene of the crime while it was happening and chased Applicant down the street until he tackled and arrested him, also testified. The State introduced the knife, which Applicant threw away from him as he was being chased, right before he was apprehended. Finally, the victim’s wallet with his identification card was found in Applicant’s front pocket as he was arrested and was introduced at trial. Accordingly, this Court finds any error in admitting this prior conviction had no prejudicial effect on the outcome of the trial, and Applicant cannot meet the second prong of the Strickland test. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to request the lesser included offense of common law robbery

Applicant’s allegation that Trial Counsel is ineffective for failing to request the lesser included offense is meritless. Trial Counsel credibly testified that he did not request the lesser included offense of common law robbery here because he was apprehended and arrested with a knife, and the undisputed evidence shows Applicant had a knife on him during the crime. He further explained that he wanted his client to be acquitted if the jury did not believe the State’s allegations rather than facing a conviction under a lesser included offense. This Court finds it was appropriate and reasonable not to request a lesser included offense. Applicant has failed to prove deficiency or any resulting prejudice under the Strickland test. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to introduce audio recording or transcript of victim's statement

Applicant's allegation that Trial Counsel was ineffective for failing to introduce the transcript or the audio recording of the victim's statement is meritless. The record shows Trial Counsel did effectively cross-examine the victim with the transcript of his prior statement. The issue that Applicant raises has no prejudicial effect whatsoever on the outcome of the trial. Applicant contends that victim's inconsistent statement about whether he saw Applicant come out of the store rather than from across the street does not affect the testimony that the victim agreed to give Applicant a ride, gave him permission to get in his car, and drove him some distance down the street until Applicant robbed him at knifepoint. The victim's prior statement matched the narrative of these events that he gave at trial. This Court finds no deficiency or prejudice under Strickland, and this allegation is denied and dismissed with prejudice.

Failure to introduce drug paraphernalia found in victim's vehicle

Applicant's allegation that Trial Counsel was ineffective for failing to introduce evidence of the drug paraphernalia found in the victim's vehicle to support his drug deal story is meritless. Trial Counsel credibly testified his trial strategy was to downplay the evidence of Applicant's drug usage or his alleged drug deal because the jury would not look favorably on a drug dealer. This Court finds this was a legitimate and reasonable trial strategy under the circumstances. The Court also notes that Trial Counsel had an ethical obligation not to argue what he believed to be Applicant's fabricated version of events to the jury because Applicant admitted his guilt to him. The introduction of this evidence did not support Trial Counsel's trial strategy, and this Court finds his decision not to use it reasonable. This Court finds no deficiency or resulting prejudice from this decision, and this allegation is denied and dismissed with prejudice.

OVERWHELMING EVIDENCE

Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt):

At trial, the victim testified about the entire encounter. The police officer, who met the victim and Applicant at the scene of the crime while it was happening and chased Applicant down the street until he tackled and arrested him, also testified. The State introduced the knife, which Applicant threw away from him as he was being chased, right before he was apprehended. Finally, the victim's wallet with his identification card was found in Applicant's front pocket as he was arrested and was introduced at trial.

The testimony at the PCR hearing reflected the exact evidence used at trial was correct. Applicant did not dispute the evidence against him. This is clearly overwhelming evidence of Applicant's guilt. As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of trial counsel could have reasonably changed the outcome of trial, and these allegations are denied and dismissed with prejudice.

PROSECUTORIAL MISCONDUCT

Applicant alleges prosecutorial misconduct for the State's failure to turn over Brady material and their knowing use of false testimony at trial based on the alleged videotapes from inside the gas station that would impeach the victim's credibility. It is Applicant's burden to prove actual prosecutorial misconduct. *Alabama v. Smith*, 490 U.S. 794, 109 S. Ct. 2201 (1989). Applicant has failed to meet his burden, and this allegation is denied.

Brady v. Maryland, 373 U.S. 83 (1963) requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

The issue of the alleged gas station videotapes was raised before the trial began, and Applicant expressed his concern over these videos to the trial judge. The record and the testimony presented at the evidentiary hearing shows that there were no videotapes available from inside the gas station on the day in question. Accordingly, Applicant cannot prove a Brady violation because the State was not in possession and did not know about any actual videotapes that would prove Applicant was not inside the gas station as the victim said he was before the crime. Furthermore, this nonexistent evidence is not material in any way to the issue of guilt or

innocence. If the tapes did exist, Applicant contends that they would only show that he was not inside the gas station—in other words, it would be a tape of the inside of the gas station that did not show the victim, Applicant, the crime, or anything relevant to the crime. The armed robbery occurred in the victim's vehicle down the road, away from the gas station. Applicant testified and admitted to being inside the car. The crime did not occur in the gas station, and no evidence from inside the gas station would prove or disprove the allegation that Applicant robbed the victim at knifepoint in his vehicle down the road. This Court finds Applicant has failed to prove a Brady violation under these factors.

Furthermore, this Court finds that, even if there were a Brady violation and these videotapes could have been turned over to Applicant, there is no reasonable probability that the result of the trial would have been different. Finally, the Court finds the State did not present false testimony by the investigating officer regarding these videotapes. Accordingly, these allegations are denied and dismissed with prejudice.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

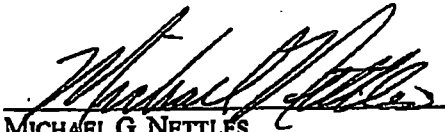
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate

review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 23 day of Jan., 2018.


MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Florence, South Carolina

Lowcountry Law Office

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101

E-Mail: Davis@LowcountryLawOffice.com

February 12, 2018

Julie A. Coleman, Assistant Attorney General
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

RE: Wilton Q. Greene v State of SC; Case #: 2015-CP-08-1964

Dear Ms. Coleman:

Enclosed is a duplicate set of Appeal documents that I have forwarded, via email and US Mail, to the Clerk of the Supreme Court of South Carolina concerning the above-listed Post Conviction Relief (PCR) case.

Should you need anything further, please do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis

South Carolina Bar #: 12396

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

(843) 323-4353

Davis@LowcountryLawOffice.com

✓ Enclosure. As stated above.
RDD/mmt

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

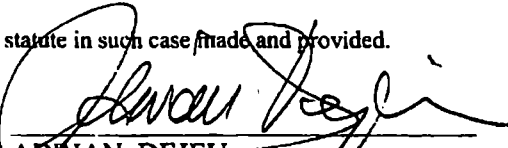
INDICTMENT

At a Court of General Sessions, convened on April 17, 2013 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

That WILTON Q. GREENE did in Berkeley County, South Carolina, on or about May 22, 2012, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a knife, the Defendant, WILTON Q. GREENE, did take and carry away goods and/or monies from the person or immediate presence of Bing Hao Zhang, with the intent to permanently deprive him of possession thereof, in violation of §16-11-0330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ADRIAN DEJEU
ASSISTANT SOLICITOR

DEJ2012-05-00716

Roach

WITNESSES

Moncks Corner Police Department

AGENCY CASE NUMBER

12-1058

ARREST WARRANT NUMBER

2013GS0800755

DATE OF ARREST

May 22, 2012

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: *04.17.13*

VERDICT

Guilty

William G. Hardin
Foreperson of Petit Jury

5-22-13

Date:

INDICT

DOCKET NO. 2013GS0800755

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

April Term

THE STATE

vs.

WILTON Q. GREENE

DOB: [REDACTED]

B/M

Indictment for

Armed Robbery

§16-11-0330(A)

CDR: 0139

FILED
13 APR 17 AM 11:41
CLERK OF COUNTY
BERKELEY COUNTY S.C.

[Handwritten mark]

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Berkeley
 STATE VS.
Wilton Q. Greene

AKA:

Race: BLACK Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Jamestown, SC 29453DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Armed Robbery

INDICTMENT/CASE#: 2013GS0800755A/W#: 2013GS0800755Date of Offense: 5/22/2012S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

Dejeu, Adrian765241
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. SINCE 5/22/12☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Crystal Holmes

SCCA/217 (03/2011)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge [Signature]Judge Code: 15/23/13Sentence Date: 5/23/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

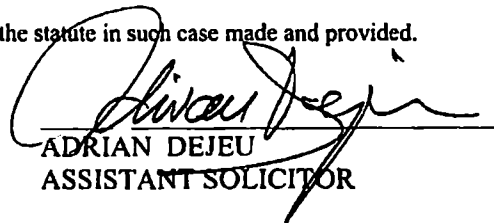
INDICTMENT

At a Court of General Sessions, convened on April 17, 2013 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That WILTON Q. GREENE did in Berkeley County, South Carolina, on or about May 22, 2012, willfully, unlawfully and feloniously kidnap, seize or confine Bing Hao Zhang without authority of law and against said Bing Hao Zhang's will and/or consent. This action is in violation of §16-03-0910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ADRIAN DEJEU
ASSISTANT SOLICITOR

DEJ2012-05-00716 *Roach*

WITNESSES

Moncks Corner Police Department

AGENCY CASE NUMBER

12-1058

ARREST WARRANT NUMBER

2013GS0800756

DATE OF ARREST

May 22, 2012

ACTION OF GRAND JURY

True Bill*W. Bondrich*
Foreperson of Grand Jury
Date: 04-17-13

VERDICT

*Guilty**William G. Harch*
Foreperson of Petit Jury5-22-13
Date:

INDICT

DOCKET NO. 2013GS0800756

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

April Term

THE STATE

vs.

WILTON Q. GREENE

DOB: [REDACTED]

B/M

Indictment for

Kidnapping

§16-03-0910

CDR: 0095

FILED
 13 APR 17 AM 11:41
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

Jan

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
 STATE VS.
Wilton Q. Greene
 AKA:
 Race: BLACK Sex: M Age: 24
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Jamestown, SC 29453
 DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Kidnapping.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0800756

A/W#: 2013GS0800756

Date of Offense: 5/22/2012

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Dejeu, Adrian 70541 SC Bar# [REDACTED] Defendant Attorney for Defendant SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. S.C.C. 5/22/12

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Crystal Holmes

SCCA/217 (03/2011)

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: THERE WAS NO

SEXUAL ACTIVITY WITH

THE KIDNAPPING

☐ Appointed PD or appointed other counsel.
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: [REDACTED]

Sentence Date: 5/23/13