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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

CHRISTOPHER BROADNAX,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-001270

APPENDIX

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1 this white bag?

2 **A** Yes.

3 **MR. MAY:** All right. Permission to publish this
4 picture to the jury.

5 **THE COURT:** Yes, sir.

6 **Q** (By Mr. May) Now, when Ms. Simpson was asking you
7 questions, you said you didn't touch anything,
8 correct?

9 **A** That's correct.

10 **Q** The reason why you didn't is because of training,
11 right?

12 **A** That is correct.

13 **Q** Because you want to allow the Columbia Police
14 Department to allow to collect as much evidence as
15 possible and you don't want to contaminate something
16 with your fingerprints so that that way fingerprints
17 can be tested for?

18 **A** Correct.

19 **Q** Yes? Or your DNA?

20 **A** Correct.

21 **Q** So this is part of your training. You preserve the
22 crime scene until somebody else can come in there and
23 take the necessary evidence that needs to be taken?

24 **A** Correct.

25 **Q** Thank you. Beg the Court's indulgence. Thank you,

1 Your Honor. No further questions at this time.

2 **THE COURT:** Anything further?

3 **MS. SIMPSON:** Nothing further from the State.

4 **THE COURT:** All right. You may come down, sir.

5 May this witness be excused?

6 **MR. MAY:** Without objection, Your Honor.

7 **THE COURT:** Without objection. Call your next
8 witness.

9 **MS. CAMPBELL:** The State would call Jennifer
10 Blair, Your Honor, out of order with the permission
11 of the Court.

12 JENNIFER BLAIR, after being duly sworn,
13 testifies as follows:

14 **THE CLERK:** Thank you.

15 **THE WITNESS:** I'm Jennifer Blair.

16 DIRECT EXAMINATION

17 **BY MS. CAMPBELL**

18 **Q** Ms. Blair, where are you employed?

19 **A** I am employed with the City of Columbia 911 Center.

20 **Q** And what do you do there, ma'am?

21 **A** I am the administrative physical officer there at the
22 911 Center.

23 **Q** And do you keep certain records in the normal course
24 of your business?

25 **A** Yes, I do.

1 Q And does that include recordings of 911 calls?

2 A Yes.

3 Q And at our request, or at law enforcement's request,
4 did you turn over a 911 tape involving an armed
5 robbery from the Church's Chicken from May the 24th
6 of 2009?

7 A Yes.

8 Q And would that fairly and accurately depict the 911
9 call that was recorded in this case?

10 A Yes.

11 Q And I show you what's been marked as State's Exhibit
12 No. 31, although we've put the disk in the thing.
13 That would be what you had turned over to us?

14 A Yes.

15 MS. CAMPBELL: Your Honor, at this time we'd
16 offer State's Exhibit No. 31 into evidence, without
17 objection I believe.

18 MR. MAY: Without objection, Your Honor.

19 THE COURT: Without objection.

20 (WHEREUPON, State's Exhibit No. 31 is admitted
21 into evidence.)

22 MS. CAMPBELL: Your Honor, permission to publish
23 the 911 call.

24 THE COURT: Go ahead.

25 MS. CAMPBELL: Thank you.

1 (Whereupon, the 911 tape is played for the jury)

2 **Q** (By Ms. Campbell) Just a couple of follow-up
3 questions.

4 **THE COURT:** Certainly.

5 **MS. CAMPBELL:** A couple of follow-up questions?

6 **THE COURT:** Go ahead.

7 **Q** I notice at one point there's a recording that
8 interrupts the actual call. That doesn't mean it's
9 two separate calls, does it?

10 **A** No.

11 **Q** And why is that recording in there? Or does it just
12 automatically do that?

13 **A** It's automatically when I record every call. And
14 that's for the authenticity of the tape. It tells
15 you exactly what time we received this call in the
16 911 Center. It's automatically stamped with the date
17 and time.

18 **Q** It's automatically stamped?

19 **A** Yes.

20 **Q** And the fact that the call itself was interrupted
21 with another stamp doesn't mean it was a separate
22 call?

23 **A** No.

24 **Q** And that was one call?

25 **A** Yes.

1 Q Thank you, ma'am. I don't have any further questions
2 of this witness.

3 THE COURT: Any questions?

4 CROSS EXAMINATION

5 BY MR. MAY

6 Q You're the custodian of the records. So, therefore,
7 you weren't the person on the tape, were you?

8 A No. I'm not the person taking the call.

9 Q You're just the person who makes sure that they're
10 all kept safe and, therefore, they can be properly
11 introduced in a court of law?

12 A Yes.

13 Q Outside that, you have no dog in the fight. That's
14 the only reason why you're here?

15 A I'm here to testify on behalf of 911, yes.

16 MR. MAY: Thank you, Your Honor. No further
17 questions.

18 THE COURT: All right, ma'am. You may come
19 down. May this witness be excused?

20 MR. MAY: Without objection.

21 THE COURT: Without objection.

22 MR. MAY: May we approach real quick?

23 THE COURT: Yes, sir.

24 (Whereupon, a bench conference is had)

25 THE COURT: All right, ladies and gentlemen.

1 That will conclude the testimony for today. Now,
2 tomorrow we're going to have a little bit different
3 schedule. I have to be at the State Grand Jury which
4 is -- well, I needn't get into all that. But it's
5 the State Grand Jury, not the County Grand Jury for
6 the annual bringing in of the new Grand Jury and the
7 swearing in of the new Grand Jury. That's supposed
8 to take place in the morning. So I'm not going to
9 reconvene court until 1:00 tomorrow. In other words,
10 you're free until 1:00.

11 Now, I will tell you we've made a lot of
12 progress today. I know who the potential witnesses
13 are. Of course I read them out to you to begin with.
14 But we're moving right along. So I don't think we're
15 going to -- we're certainly not going to extend this
16 case past this week. But we are on schedule. So I
17 don't think the starting late in the morning is going
18 to put us that far behind. But that's something that
19 just can't be avoided. It's been scheduled for
20 several months now. And the attorneys know about it.
21 And so they'll have their witnesses ready at 1:00.
22 All right.

23 Again I'm going to ask you not to discuss the
24 case among yourselves when you return to the jury
25 room or try to do any independent research about it

1 over the evening hours. I'm sure there is -- well,
2 the most important baseball game of the season was
3 played last night. I see some heads shaking one way
4 or the other.

5 Well, anyway, we're happy that both of our teams
6 are going to Omaha, and we hope they are both
7 successful out there. So, anyway, I'm sure you have
8 plenty to do tonight without thinking about this
9 case. We'll think about it tomorrow starting again
10 at 1:00, and I hope you have a pleasant evening, and
11 you're now excused. Again, don't discuss the case
12 when you return to the jury room either. Thank you
13 very much.

14 **JUROR:** Can we leave our notes here?

15 **THE COURT:** You can leave your pads in the
16 seats. The bailiff will collect them and probably
17 turn them upside down and probably have them in the
18 jury room for you when you return at 1:00 tomorrow.
19 Thank you. The bailiff will take care of them.

20 (Jury out at 5:05 p.m.)

21 **THE COURT:** Anything for the record at this
22 point?

23 **MR. MAY:** Yes, Your Honor. Your Honor, the
24 defense would renew its objection at this point to
25 the limitation of the cross examination of Charles

1 Green. Charles Green's rap sheet reflects a 1979
2 assault and battery with intent to kill where he got
3 convicted to 18 months, is what the rap sheet says.
4 Give me one second. I'll just see if I can identify
5 the warrant number.

6 **THE COURT:** That's all right. I think the State
7 agrees with you on that.

8 **MR. MAY:** The State agrees that there is a 1979
9 conviction.

10 **MS. CAMPBELL:** For purposes of this hearing. We
11 haven't independently corroborated it, but that's
12 what shows on his rap sheet. I have no reason to
13 think otherwise.

14 **THE COURT:** Go ahead.

15 **MR. MAY:** The 1979 assault and battery with
16 intent to kill conviction, the defense's position,
17 with what Mr. Green confessed to in his confession, I
18 believe that it's abundantly clear that the State
19 could easily have charged him under the hand of one,
20 hand of all theory to armed robbery as well as
21 kidnapping, that his cooperation in testifying as
22 well as giving Investigator Thomas a statement
23 insured that he would not be charged in such a way.
24 But had he been charged in such a way, he would have
25 been subject to life without parole.

1 I believe that under State v. Mizell, State v.
2 Mizell at 349 SC 326, State v. Sims at 348 SC 16, as
3 well as Delaware v. VanArsdale is ripe for the
4 defense to go into possible bias. And, Your Honor, I
5 believe the bias is not only from when he actually
6 wrote his statement which has completely minimized
7 his involvement but also to the time he takes the
8 stand.

9 I believe that it's proper impeachment material
10 which the defense was precluded from getting into per
11 a ruling that you made in your chambers, Your Honor.
12 So I guess technically the first objection is to him
13 not being able to get life without parole, and the
14 second objection is that he could have been charged
15 with both the armed robbery as well as the three
16 kidnappings.

17 **THE COURT:** The State's position.

18 **MS. CAMPBELL:** Your Honor, the State's position
19 is the conviction from 31 years ago for assault and
20 battery with intent to kill. The defendant in this
21 case was never charged with armed robbery. It's not
22 like this was a charge, which I agree it might come
23 in if we had reduced it from an armed robbery. The
24 only charge Mr. Green has ever faced is accessory
25 after the fact of armed robbery.

1 We think that that was an appropriate charge in
2 this case based on the evidence in the case; and as
3 such, we do not feel that he should be allowed to
4 cross examine on hypotheticals of what if we had
5 charged him with the charge that wasn't appropriate.

6 **MR. MAY:** Your Honor, the defendant's only
7 response would be that this goes towards bias. Bias
8 is all encompassing. And it goes towards any bias.
9 And we believe that it is proper fodder for cross
10 examination.

11 **THE COURT:** All right. Well, as I told you in
12 chambers, once he was charged with accessory after
13 the fact, the issue of life without parole became
14 moot. And had he been charged with armed robbery
15 and/or kidnapping or any most serious offense and
16 then agreed to testify for the reduction, where a
17 reduced charge, I might have more sympathy for your
18 position.

19 I think the State made the charge. They've got
20 to live with the charge. And I don't think it would
21 be proper to allow you to cross examine this witness
22 about something that might have been, which is pretty
23 speculative in my opinion. So I must respectfully
24 deny your motion.

25 **MR. MAY:** Thank you, Your Honor.

1 **THE COURT:** Yes, sir.

2 **MR. MAY:** 1:00 tomorrow?

3 **THE COURT:** 1:00 Wednesday, June 16th.

4 **MR. MAY:** Thank you very much.

5 (Whereupon, the proceedings are concluded, to be
6 reconvened tomorrow afternoon)

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Wednesday, June 16, 2010

(WHEREUPON, State's Exhibit No. 32 is marked for identification.)

(WHEREUPON, State's Exhibit No. 33 is marked for identification.)

(WHEREUPON, State's Exhibit No. 34 is marked for identification.)

(WHEREUPON, State's Exhibit No. 35 is marked for identification.)

(WHEREUPON, State's Exhibit No. 36 is marked for identification.)

(WHEREUPON, State's Exhibit No. 37 is marked for identification.)

(WHEREUPON, State's Exhibit No. 38 is marked for identification.)

(WHEREUPON, State's Exhibit No. 39 is marked for identification.)

(WHEREUPON, State's Exhibit No. 40 is marked for identification.)

(WHEREUPON, State's Exhibit No. 41 is marked for identification.)

THE COURT: All right, counsel. A juror has failed to appear. According to the statute, we will draw an alternate between juror number 205 and juror number 306, the two alternates. Any objection?

1 **MS. CAMPBELL:** Your Honor, I understood they
2 were checking one more time to see if the juror was
3 around. But I have no objection if he's not.

4 **THE COURT:** Well, it's 30 minutes past time the
5 juror is supposed to be here. The jury assembly room
6 is locked. The jury assembly clerk is not here. The
7 juror is not here. And everybody else is here and
8 ready to go. Any objection to the procedure?

9 **MS. CAMPBELL:** No, sir.

10 **MR. MAY:** None from defense, Your Honor.

11 **THE COURT:** Do we have a child under the age of
12 seven or a blind person?

13 **MS. CAMPBELL:** None available.

14 **MR. MAY:** Ike. I believe Ike is.

15 **THE COURT:** Sir?

16 **MR. MAY:** I believe Ike from the canteen. I
17 believe the statute says they have to be blind.

18 **THE COURT:** Well, any objection to my law clerk
19 drawing out of the cup?

20 **MR. MAY:** Not from the defense, Your Honor.

21 **MS. CAMPBELL:** None.

22 **THE COURT:** You agree that 205 and 256 are the
23 numbers. Draw the name, please. Read the name.

24 **LAW CLERK:** 205.

25 **THE COURT:** Who happens to be the first

1 alternate drawn. All right. We got a bailiff? Tell
2 them to bring the jury. Bring the jury, please.

3 (Jury in at 1:33 p.m.)

4 **THE BAILIFF:** The jury is all present, Your
5 Honor.

6 **THE COURT:** All right. Thank you very much.
7 Ladies and gentlemen, as you probably are aware, one
8 of our jurors has not appeared. We have been unable
9 to locate that juror but the case must go on. So I
10 have followed a statutory procedure and have drawn
11 the name -- I mean the juror -- number 205, juror
12 number 205. You are now -- please take your seat as
13 a member of the regular grand -- the regular jury. I
14 hope you understand now why we have to draw alternate
15 jurors. All right. Is the State ready to proceed?

16 **MS. CAMPBELL:** The State is ready, Judge.

17 **THE COURT:** Defense ready to proceed?

18 **MR. MAY:** Yes, Your Honor.

19 **THE COURT:** Solicitor, call your next witness.

20 **MS. CAMPBELL:** May it please the Court. The
21 State calls Officer Brayboy.

22 JONATHAN BRAYBOY, after being duly sworn,
23 testifies as follows:

24 **THE CLERK:** Thank you very much. Have a seat in
25 the witness stand, please. Give the court reporter

1 your name.

2 **THE WITNESS:** Jonathan Brayboy.

3 DIRECT EXAMINATION

4 **BY MS. CAMPBELL**

5 **Q** Officer Brayboy, where are you employed?

6 **A** The City of Columbia Police Department.

7 **Q** How long have you been there, sir?

8 **A** Almost four years.

9 **Q** What do your duties include at the City of Columbia
10 Police Department?

11 **A** To respond to calls for service involving police, the
12 police department.

13 **Q** And what region are you currently assigned to, sir?

14 **A** The Metro.

15 **Q** And what area of town is the Metro Region?

16 **A** It encompasses downtown and the Two Notch Road area.

17 **Q** Back in May of 2009 what region were you assigned to?

18 **A** I was assigned to Metro Region.

19 **Q** I want to turn your attention to the evening, around
20 5:30 or a little bit thereafter on May the 24th.

21 Were you working that evening?

22 **A** Yes, ma'am, I was.

23 **Q** What shift were you working?

24 **A** I was on the day shift.

25 **Q** And what time were you supposed to get off that day?

1 **A** At 6:30 that afternoon.

2 **Q** Prior to you getting off work that day, do you
3 remember receiving a call about the Church's Fried
4 Chicken?

5 **A** Yes, ma'am.

6 **Q** And can you explain to the jury what first alerted
7 you to the call and what you did?

8 **A** Yes. I was going back through the district which is
9 at Two Notch Road and Covenant, and we received a
10 tone which is a priority call, and it goes out to all
11 the regions, and I was fairly close, for an armed
12 robbery at the Church's Chicken. I turned around in
13 a parking lot and proceeded to Church's Chicken from
14 Two Notch and Covenant.

15 **Q** And you just went straight down Two Notch Road then?

16 **A** Yes, ma'am.

17 **Q** And were you one of the first officers on the scene?

18 **A** Yes, ma'am.

19 **Q** Were there other officers that also responded to the
20 Church's Fried Chicken that day?

21 **A** Yes, ma'am.

22 **Q** And without naming all of them, that would include
23 Officer Baire?

24 **A** Yes, ma'am.

25 **Q** And other officers were actually there, too?

1 **A** Yes, ma'am.

2 **Q** During the time you were there, did you make contact
3 with any of the victims in the case?

4 **A** Yes, ma'am.

5 **Q** And do you remember specifically who you made contact
6 with and where that contact took place?

7 **A** Yes, ma'am. I made contact with Mr. Arthur out front
8 along with the other gentleman was there that was off
9 work I think that day.

10 **Q** And that would be Mr. Donald?

11 **A** Yes, ma'am.

12 **Q** When you made contact with them, what was your
13 primary focus at that point as far as getting
14 information out over the radio?

15 **A** To make sure everybody was safe, no one was hurt and
16 to find out as much information about the suspects
17 that I could.

18 **Q** And specifically on the way to the Church's, had some
19 information already been put out on the radio that
20 you were aware of?

21 **A** Yes, ma'am.

22 **Q** And without saying what that information was; that
23 would be hearsay, was that specific about a vehicle
24 that may have been involved?

25 **A** Yes, ma'am.

1 Q And on the way to the Church's, did you yourself
2 observe anything that caught your eye?

3 A Yes, ma'am. I passed an older model gray Dodge
4 pick-up at Laurel and Two Notch Road.

5 Q And are you familiar with Arthur Ridgeway and Officer
6 Spires?

7 A Yes, ma'am, I am.

8 Q And at the time you were proceeding down Two Notch,
9 were you aware of where they were in connection with
10 you?

11 A They were right behind me.

12 Q Right behind you?

13 A Yes, ma'am. I passed them at Chestnut and Two Notch.

14 Q And when you got to the scene, were you trying to get
15 additional information about the Dodge pick-up?

16 A Yes, ma'am.

17 Q When you passed the Dodge pick-up, could you tell how
18 many people you observed in the car?

19 A I only saw one person.

20 Q And where was the person that you saw in the vehicle?

21 A In the driver's seat.

22 Q Did you see anyone in the passenger's seat?

23 A No, ma'am, I didn't.

24 Q How many blocks is the corner of Laurel and Two Notch
25 from the actual Church's itself approximately?

1 **A** Approximately two to three blocks.

2 **Q** As you were out front with the two young men you
3 referred to, were they giving you as much information
4 as they could about what they observed?

5 **A** Yes, ma'am.

6 **Q** Did that include a clothing description?

7 **A** Yes.

8 **Q** Without saying what it was. And were you trying to
9 get that information out?

10 **A** Yes, ma'am.

11 **Q** And you were with Metro Region?

12 **A** Yes, ma'am.

13 **Q** Which channel were you on that day?

14 **A** I called out in route to the Church's Chicken on
15 Metro, and the dispatcher responded. And then once I
16 got on the scene at the Church's Chicken, I switched
17 over to the South Region, being that the armed
18 robbery had taken place in the South Region.

19 **Q** And were you trying to put information out on that?

20 **A** Yes, ma'am. That's the reason I switched over to
21 South Region. Being that it took place in South
22 Region, I switched over to South Region because I
23 knew South Region had officers in route to get them a
24 better -- as much information as I could to them.

25 **Q** Was there to your knowledge information being put out

1 both on the channel for Metro Region as well as South
2 Region?

3 **A** Yes, ma'am.

4 **Q** So there was some confusion there?

5 **A** Yes, ma'am.

6 **Q** While you were there at the scene, did you become
7 aware of the fact that a vehicle had been stopped?

8 **A** I did. I briefly heard it over the radio for Metro.

9 **Q** And after that information came over the radio, did
10 you then take certain steps to see whether or not the
11 person or persons in the vehicle could be identified?

12 **A** Yes, ma'am, I did.

13 **Q** And tell the jury what you did and what was the
14 purpose for that?

15 **A** I talked to Mr. Arthur and I asked -- I knew we had a
16 vehicle stopped with a subject in it. I asked
17 anybody who had seen him if they could identify the
18 suspect or the vehicle. And Mr. Arthur stated yes.
19 He then proceeded to show me where the vehicle was
20 parked which was two buildings behind the Church's
21 Chicken. And he told me that the vehicle was
22 occupied at one time, that he saw him and he didn't
23 know where the suspect that had just robbed the
24 Church's Chicken had went. He believed it was in
25 that vehicle. And he proceeded to tell me the

1 vehicle made a right-hand turn onto Millwood which
2 turns into Two Notch Road after you cross over Taylor
3 Street and proceeded northbound on Two Notch.

4 Q And would that be consistent with the gray Dodge
5 truck you observed coming down Two Notch?

6 A Yes, ma'am. He confirmed it was an older model
7 pick-up.

8 Q And from the time that you were there at Covenant
9 which is two or three blocks past Chestnut. Is that
10 correct?

11 A It's about five or six blocks away from Chestnut.

12 Q Five or six blocks from Chestnut?

13 A Yes, ma'am.

14 Q To the time you were inbound going to the Church's,
15 did you observe any other gray Dodge pick-ups?

16 A No, ma'am, I did not.

17 Q Once you had made contact with Mr. Haynes, did you
18 then take him anywhere?

19 A Yes, ma'am, I did.

20 Q And where did you take Mr. Haynes?

21 A I took him to the actual stop at Chestnut and Two
22 Notch.

23 Q And that's the person you're referring to as
24 Mr. Arthur?

25 A Yes, ma'am.

1 Q And when you got to the corner of Chestnut and Two
2 Notch, tell the jury what happened as you approached
3 that area?

4 A Mr. Haynes was seated in the back seat of my patrol
5 vehicle which is separated by a cage. And I opened
6 the window, and Mr. Haynes stated, yes, that's the
7 truck, that's the --

8 MR. COCHRAN: Objection. Hearsay.

9 THE COURT: Yes. Sustained.

10 MS. CAMPBELL: Res gestae, Your Honor? Let me
11 establish a foundation.

12 Q (By Ms. Campbell) During the time period when you
13 talked to the people that had been robbed, what was
14 their demeanor like?

15 A The one female that was there -- I can't remember her
16 name -- she was very distraught. She could barely
17 talk. She was crying, very emotional. Mr. Haynes
18 and the other victims in the restaurant were kind of
19 upset and didn't know what to do. And I tried to
20 settle them down to see if I could get as much
21 information out of them as I could.

22 Q Would you describe their condition as still being
23 upset about what had happened to them?

24 A Yes. Definitely.

25 Q And during the time period even up until the time

1 when you drove down to where the car was located, how
2 much time passed between the time that you arrived at
3 Church's Fried Chicken and that you took him down to
4 see the car?

5 **A** A couple of minutes.

6 **Q** And was he still upset about what --

7 **MR. COCHRAN:** Objection. Leading.

8 **THE COURT:** Don't lead your witness.

9 **Q** What was his demeanor like still?

10 **A** He was very upset. He was cursing. He was very
11 upset.

12 **MS. CAMPBELL:** Your Honor, at this time we'd
13 offer it under res gestae, excited utterance.

14 **MR. COCHRAN:** Your Honor, I would say that in
15 terms of excited utterance, they had driven for like
16 two miles at this point. And in terms of the things
17 that he was talking about, he was talking about the
18 other witnesses. That's completely irrelevant in
19 terms of whether it was an excited utterance. I
20 would say that this is the exact opposite of an
21 excited utterance because he's taken with police to
22 do a specific task.

23 **MS. CAMPBELL:** State vs. Mandel Sims. I believe
24 there's a 12-hour period of time that elapsed.

25 **MR. COCHRAN:** We're not objecting to the time.

1 **THE COURT:** He's not objecting to time. He's
2 objecting to the fact that he wrote the police
3 officer during which -- I sustain the objection.

4 **MR. COCHRAN:** Thank you, Your Honor.

5 **Q** (By Ms. Campbell) Without saying what he said, was
6 he able to identify the truck?

7 **MR. COCHRAN:** Objection. Leading.

8 **THE COURT:** Overruled. Go ahead.

9 **Q** Was he able to identify the truck?

10 **A** Yes, ma'am, he was.

11 **Q** As you pulled around or onto -- did you actually pull
12 onto Chestnut Street?

13 **A** Yes, ma'am, I did.

14 **Q** And describe to the jury, how many people were out
15 there?

16 **A** There was a couple of officers and the driver that I
17 saw. And there was another gentleman standing
18 outside the vehicle in a striped shirt which matched
19 the description that Mr. Haynes had given me.

20 **Q** Okay. You mentioned that one of the men out there
21 that was being detained at the time --

22 **A** Yes, ma'am.

23 **Q** -- was the man you saw driving the truck?

24 **A** Yes, ma'am.

25 **Q** And I show you State's Exhibit No. 27. Do you

1 recognize that?

2 A Yes, ma'am.

3 Q And how do you recognize that?

4 A That is the driver of the gray Dodge pick-up.

5 Q And is that one of the two men you saw that day when
6 you took Mr. Haynes to the scene?

7 A Yes, ma'am.

8 Q Up where the truck was?

9 A Correct.

10 Q And you also mentioned there was another man in a
11 striped shirt?

12 A Yes, ma'am.

13 Q And I show you this, state's Exhibit No. 1. Do you
14 recognize that?

15 A Yes, ma'am.

16 Q And how do you recognize this?

17 A That's the gentleman they had standing on the
18 passenger's side of the truck detained.

19 Q And without saying exactly what Mr. Haynes told you,
20 was he able to identify one or both of the people?

21 A Yes, ma'am.

22 Q While you were out there, what, if any -- did you do
23 anything to influence his identification?

24 A No, ma'am.

25 Q Did you do any -- did anyone else influence him in

1 any way?

2 **A** No, ma'am. There was just me and him in the vehicle.

3 **Q** Did you pass along the information that Mr. Haynes
4 gave you to other police officers?

5 **A** Yes, ma'am, I did.

6 **Q** And what information did you pass along?

7 **A** I passed along that the suspect vehicle was an older
8 model gray Dodge pick-up.

9 **MR. COCHRAN:** Objection, Your Honor. I would
10 object to hearsay. He is telling what he is
11 dispatching to other people. And I think they're
12 certainly providing it for the truth of the matter
13 asserted. I don't see why else they would be doing
14 it.

15 **THE COURT:** Ask your question again.

16 **Q** What information did you put out over the radio?

17 **A** It was an older model gray pick-up truck, and the
18 suspect that --

19 **THE COURT:** The objection is overruled.

20 **MR. COCHRAN:** Thank you, Your Honor.

21 **Q** Thank you.

22 **A** And the suspect that had just committed the armed
23 robbery was wearing a striped shirt.

24 **Q** Did other police officers also talk to the witnesses
25 there at the scene?

1 **A** Yes, ma'am.

2 **Q** And, in fact, I believe that Officer Baire was the
3 one that took down more of the specific information
4 and actually wrote the incident report?

5 **A** Yes, ma'am.

6 **MR. COCHRAN:** Objection. Leading and
7 speculation and relevance.

8 **THE COURT:** Just ask him -- I understand.

9 **MR. COCHRAN:** Thank you, Your Honor.

10 **THE COURT:** Just ask him the question. Try not
11 to lead your witness.

12 **Q** At the scene at the Church's Fried Chicken, who was
13 the officer who had the most contact with the victims
14 in the case and wrote the incident report?

15 **A** Officer Baire did, because I left.

16 **Q** So he would have gotten more information than you
17 would have?

18 **A** Correct.

19 **MR. COCHRAN:** Objection. Leading. Speculation.

20 **THE COURT:** Ask the question.

21 **Q** What information would he have gotten?

22 **MR. COCHRAN:** Objection. Speculation.

23 **THE COURT:** Overruled. Overruled. Just --

24 **A** He would have gotten a better detailed description of
25 the suspect and the vehicle.

1 Q And as far as you know, you had some contact with Mr.
2 Kirby I believe and Mr. Haynes. But did you have any
3 contact with the other two witnesses that you
4 remember?

5 A After I went back.

6 Q After you went back?

7 A Correct.

8 Q But Officer Baire had remained at the scene and
9 gotten the information?

10 A Correct.

11 Q You didn't participate in the actual stop of the
12 truck, did you?

13 A No, ma'am, I did not.

14 Q Once you took Mr. Haynes down to the area where the
15 truck was stopped and you pulled by, you mentioned
16 that you saw two men. One of them had been the
17 driver?

18 A Yes, ma'am.

19 Q And the other man in the stripped shirt, you
20 mentioned that you saw him, do you see him here in
21 the courtroom?

22 A Yes, I do.

23 Q Will you identify him for the jury?

24 A He is the defendant sitting at the defense table with
25 the blue shirt.

1 Q With the blue shirt?

2 A Yes, ma'am.

3 Q Sitting next to his lawyers?

4 A Correct.

5 Q Thank you. Your Honor, may the record reflect he's
6 identified --

7 **THE COURT:** The record will so reflect the
8 witness identified the defendant. Cross.

9 **MR. COCHRAN:** Thank you, Your Honor. May it
10 please the Court.

11 CROSS EXAMINATION

12 **BY MR. MAY**

13 Q Officer, when did you get the call?

14 A I don't know the exact time that I got the call.

15 Q Do you remember the time between when you got the
16 call and how long it took you to get to the Church's
17 Chicken?

18 A Not very long. About two minutes.

19 Q Two minutes. Less? Between two and five minutes,
20 something like that?

21 A Between two and three minutes. It wasn't very long.

22 Q Okay. You said between two and three minutes. And
23 on your way there you saw a gray Dodge pick-up truck?

24 A Correct.

25 Q Now, the jury has seen a video. You passed by. The

1 video was from the car that was directly behind you,
2 correct?

3 A Correct.

4 Q Okay. So you essentially saw the gray pick-up truck
5 the same time that they saw on the video the gray
6 pick-up truck, correct?

7 A No, sir.

8 Q No?

9 A I saw it pass just before Laurel and Two Notch. From
10 the video, the other patrol car behind me passed it
11 at Laurel and Two Notch.

12 Q And you were just before Laurel and Two Notch?

13 A Correct.

14 Q Did it idle for your emergency lights?

15 A No, sir.

16 Q On the other side of the road?

17 A No, sir.

18 Q Was it tearing down the road? Was it speeding?

19 A No, sir.

20 Q Okay. And you said that that car, Officer Spires's
21 patrol car, was right behind you. Correct?

22 A Correct.

23 Q You saw one person in the truck?

24 A Correct.

25 Q You could see into the truck?

1 **A** Yes. As I passed the vehicle.

2 **Q** And you saw one person in the truck?

3 **A** Correct.

4 **Q** When you got to the Church's Chicken, you spoke
5 primarily -- did you speak with all four but just
6 primarily with Mr. Kirby and Mr. Haynes?

7 **A** I spoke primarily to Mr. Haynes.

8 **Q** Okay. And just for the jury, that's the first person
9 who testified. He is the one who went with you in
10 your patrol car, correct?

11 **A** Correct.

12 **Q** Okay. And you talked to Mr. Kirby as well?

13 **A** Yes, I did. Very briefly.

14 **Q** And you stated to Ms. Campbell that you got a call
15 while you were at the Church's that they had stopped
16 a gray pick-up truck, right?

17 **A** Correct.

18 **Q** And you stated to Ms. Campbell that you asked the
19 people there at the Church's who could identify him,
20 correct?

21 **A** Correct.

22 **Q** Mr. Haynes said he could identify him?

23 **A** Yes.

24 **Q** Mr. Kirby was at the Church's Chicken at that time,
25 correct?

1 **A** Correct.

2 **Q** Mr. Kirby did not tell you that he could identify the
3 person who robbed the store?

4 **A** At the time that I asked Mr. Haynes who could better
5 identify him, Mr. Haynes said he could. Because he
6 had taken me around the back of the building and
7 showed me where the pick-up truck was actually
8 parked.

9 **Q** But Mr. Kirby never told you that day right after --
10 I mean, you said it was between two and three
11 minutes, correct?

12 **A** Correct.

13 **Q** Mr. Kirby did not tell you within two or three
14 minutes after the robber left that he could identify
15 the robber on that day, correct?

16 **A** I didn't ask him.

17 **Q** You didn't ask him?

18 **A** No, I did not. I was talking to Mr. Haynes, and Mr.
19 Kirby had went back inside the Church's Chicken.

20 **Q** Mr. Kirby? You were talking to him?

21 **A** No. I was talking to Mr. Haynes, Mr. Arthur Haynes.

22 **Q** You said to Ms. Campbell that you asked the people
23 present at Church's Chicken. You said people, not
24 person. You didn't say Arthur Haynes. You said you
25 asked the people present at Church's Chicken whether

1 or not they could identify the robber, correct?

2 **A** Correct. And that's when Mr. Arthur Haynes stated
3 yes, I can. He said: I'll show you where the
4 pick-up was parked. And me and him walked around the
5 corner of the building.

6 **Q** So you wanted to take Mr. Haynes because you thought,
7 or because he thought he could identify the robber,
8 correct?

9 **A** Correct.

10 **Q** But you would want as an investigating officer at
11 this point who is investigating an armed robbery, you
12 would want each person, each and every person who
13 could positively identify him to do so, correct?

14 **A** That would be correct.

15 **Q** But you didn't ask the others if they could
16 positively identify him?

17 **A** I just took Mr. Haynes.

18 **Q** You just took Mr. Haynes?

19 **A** Yes.

20 **Q** Even though there were three other victims, correct?

21 **A** Correct.

22 **Q** But for an investigation it would be better if you
23 had more than one person to go accomplish that
24 identification, wouldn't it?

25 **A** Correct.

1 Q But you didn't get the other three to do that,
2 correct?

3 A Correct.

4 Q When you got there -- you have been in here for all
5 the testimony, correct?

6 A Correct.

7 Q When you got to the Church's Chicken, did you stand
8 outside the front door of the Church's Chicken with
9 Mr. Kirby who is the more heavysset gentleman who
10 testified from the Church's Chicken; did you stand
11 outside the front door with him and look at the gray
12 pick-up truck as it sat at a red light?

13 A No, sir, I didn't. I passed the gray pick-up at
14 Laurel and Two Notch which is approximately two
15 blocks away from Church's Chicken.

16 Q And that could be considered an absurdity to think
17 that you as a police officer would stand with a
18 victim of an armed robbery and just stare at the
19 suspect as they were idled at a red light, correct?

20 A Correct. I wouldn't have stood there.

21 Q You would do something about it, correct?

22 A Correct.

23 Q We've spoken about this before. You took Mr. Kirby
24 out to identify the robber, correct?

25 A No, sir. I took Mr. Haynes.

1 Q Oh, Mr. Haynes. I'm sorry. You took Mr. Haynes out
2 to identify the robber, correct?

3 A Correct.

4 Q When you were getting him to your car, you said:
5 Let's go see if you can identify the two suspects in
6 the truck. Correct?

7 A Correct.

8 Q At that time you had only seen one suspect in the
9 truck, correct?

10 A Correct.

11 Q At that time Mr. Haynes had only seen one suspect in
12 the truck, correct?

13 A Correct.

14 Q But you said: Let's go see if you can identify the
15 two suspects in the truck. Correct?

16 A Correct.

17 Q You took Mr. Haynes out to the truck, correct?

18 A Yes, sir.

19 Q The window in the back seat where Mr. Haynes was
20 sitting was open, correct?

21 A I don't recall.

22 Q You don't recall. It was hot that day, wasn't it?

23 A I'm unsure.

24 Q It was hot that day, so you opened the window for Mr.
25 Haynes?

- 1 **A** I don't know if it was hot or not.
- 2 **Q** I believe you've testified to that.
- 3 **A** I know the window -- I don't recall if the window was
4 up or down.
- 5 **Q** At this point you don't recall whether the window was
6 up or down?
- 7 **A** No, sir.
- 8 **Q** But either way, you drove him past the gray pick-up
9 truck, correct?
- 10 **A** Yes, sir.
- 11 **Q** And when you passed the gray pick-up truck, the first
12 thing that he said was: That's the truck, that's the
13 truck. Correct?
- 14 **A** Correct.
- 15 **Q** And there were two black men sitting outside the
16 truck, correct?
- 17 **A** Correct.
- 18 **Q** And there were several officers also standing outside
19 the truck, correct?
- 20 **A** Yes, sir.
- 21 **Q** And the two black gentlemen who were in front of the
22 truck or behind the truck, with the gray pick-up
23 truck were handcuffed, correct?
- 24 **A** I don't remember if they were handcuffed. I know
25 they were detained. I don't know if they were

1 handcuffed.

2 **Q** There were no African-American police officers there,
3 were there?

4 **A** I don't recall seeing any there.

5 **Q** There were no plain clothes police officers there,
6 were there?

7 **A** No, sir.

8 **Q** They were all in uniforms, correct?

9 **A** Correct.

10 **Q** There was a patrol car in front of the truck,
11 correct?

12 **A** Yes, sir.

13 **Q** There was a patrol car, a big patrol marked SUV
14 behind the truck, correct?

15 **A** I don't recall an SUV being behind the pick-up truck,
16 sir.

17 **Q** Is this a fair and accurate representation -- I'm
18 sorry. For the record, this is State's Exhibit 28.
19 Is that a fair and accurate representation of
20 Chestnut Street and --

21 **A** Yes, sir. That's behind the store.

22 **Q** The vehicle stopped?

23 **A** Yes. That's behind the store.

24 **Q** And in that photograph, that's a fair and accurate
25 representation of the placing of the car that day,

1 correct?

2 A Correct.

3 Q And there is a squad car in front of the truck?

4 A Correct.

5 Q And behind the truck, correct?

6 A Correct.

7 Q And the two African-American gentlemen who you took
8 Mr. Haynes to go identify were standing at the rear
9 of the truck, correct?

10 A One of them, one of the individuals was standing on
11 the driver's side. The other was on the passenger's
12 side just --

13 Q Which was on the passenger's side? It was Mr.
14 Broadnax, correct?

15 A Correct. And the driver was on the driver's side.

16 Q And this is Chestnut Street, correct?

17 A Correct.

18 Q Which way did you come down Chestnut?

19 A I made a left off of Two Notch onto Chestnut.

20 Q So you came towards me?

21 A Correct.

22 Q If I am standing on Chestnut, you're coming towards
23 me?

24 A Correct. Yes, sir.

25 Q And Mr. Haynes said: That's the truck, that's the

1 truck, correct?

2 A Correct. Yes, sir.

3 Q And you guys are on Two Notch -- or I'm sorry -- on
4 Chestnut going towards me, correct?

5 A Yes, sir.

6 Q Mr. Broadnax is standing behind the gray pick-up
7 truck on the passenger's side, correct?

8 A Yes, sir.

9 Q And there is a squad car parked in front of the
10 truck, correct?

11 A Correct.

12 Q And Mr. Haynes said: That's the truck and that's
13 that s.o.b., same pants, correct?

14 A He said: That's the s.o.b. that robbed us.

15 Q He said the same pants?

16 A I don't recall him saying the same pants.

17 Q And did you take a written statement from him?

18 A No, sir, I did not.

19 Q So you're not aware that he said same pants in that
20 statement?

21 A No, sir.

22 Q You were talking to Ms. Campbell earlier. You said
23 that you wanted to get all of the relevant
24 information from the folks at the Church's Chicken
25 when you got there, right?

1 **A** Correct.

2 **Q** But you only asked one if you could go identify the
3 man who robbed them, correct?

4 **A** Correct. Because they had told me that they had a
5 vehicle stopped that matched the description. And I
6 was around the corner of the building away from the
7 other two victims with Mr. Haynes. So I asked him if
8 he could identify him. He said yes.

9 **Q** When you got that information, were you with Mr.
10 Haynes?

11 **A** Yes, I was.

12 **Q** How did that information come to you?

13 **A** Over the radio.

14 **Q** Over that radio that's on your chest?

15 **A** No, sir. It's not. It's a different one.

16 **Q** Okay. Was it an earpiece?

17 **A** Yes, sir, it was.

18 **Q** Could Mr. Haynes hear it?

19 **A** No, sir.

20 **Q** So you got the call that a truck had been stopped
21 with two suspects in it. You're with Mr. Haynes and
22 you say: Let's go. We're going to see if we can
23 identify the two guys in the pick-up truck. Correct?

24 **A** Correct.

25 **Q** And you wanted to get all the relevant information

1 for this investigation, correct?

2 A Correct.

3 Q Did anybody at the Church's Chicken tell you that the
4 gray pick-up truck had stopped at the red light right
5 in front of the Church's Chicken?

6 A No, sir.

7 Q No? Did anybody tell you that while the gray pick-up
8 truck was stopped at the red light in front of the
9 Church's Chicken the driver looked out the window and
10 talked to two homeless gentlemen or two
11 African-American gentlemen?

12 A No, sir.

13 Q They didn't tell you that?

14 A No, sir.

15 Q If they had told you that, would you want to find
16 those two homeless gentlemen?

17 A Yes, sir.

18 Q To talk to them?

19 A Yes, sir.

20 Q And you would want to find out if they could see if
21 somebody was in the truck at that time, correct?

22 A Correct.

23 Q But nobody offered that information to you, correct?

24 A No one told me that.

25 Q And nobody told you that they had seen his entire

1 face, correct? They just told you that they had seen
2 a mask, correct?

3 **A** I didn't go into great detail with that.

4 **Q** You didn't go into great detail?

5 **A** No, sir. I was more concerned with finding out the
6 direction the pick-up truck had traveled and trying
7 to find out who was driving it.

8 **Q** So you were mostly interested in the pick-up, not in
9 the details like that. And you were only there for a
10 short period of time before you took Mr. Haynes out
11 to do the identification, correct?

12 **A** Correct.

13 **Q** No more questions at this time, Your Honor. Thank
14 you. Thank you, Officer.

15 **THE COURT:** Redirect?

16 REDIRECT EXAMINATION

17 **BY MS. CAMPBELL**

18 **Q** He asked you about information about the truck. As a
19 police officer, what information are you trying to
20 get about the vehicle escaping from the crime? And
21 were you able to get that in this case?

22 **A** Yes, ma'am, I was. I was -- I'm trying to find out,
23 you know, color, make and model. If they've got a
24 license plate that would be great. But I only got
25 that it was an older model gray pick-up.

1 Q And was it important to you to get the direction the
2 truck went in?

3 A Yes, because it was a very short time.

4 Q And were you able get that information passed along?

5 A Yes, ma'am, I did.

6 Q And it wouldn't have been your responsibility to take
7 a statement from anyone in the case?

8 A Not at that time.

9 Q Thank you. I don't have anything further.

10 THE COURT: Anything further?

11 MR. COCHRAN: Nothing, further, Your Honor.

12 Thank you.

13 THE COURT: You may come down. May the witness
14 be excused?

15 MR. COCHRAN: No objection, Your Honor.

16 THE COURT: Without objection. Next witness.

17 MS. CAMPBELL: The State would call Veronica
18 Williams.

19 THE CLERK: Raise your right hand, please.

20 VERONICA WILLIAMS, after being duly sworn,
21 testifies as follows:

22 MS. CAMPBELL: May we approach?

23 (Whereupon, a bench conference is had)

24 DIRECT EXAMINATION

25 BY MS. CAMPBELL

- 1 Q Ms. Williams, where are you employed?
- 2 A Church's Chicken on Devine Street.
- 3 Q On which street?
- 4 A Devine.
- 5 Q On Devine Street?
- 6 A Yes, ma'am.
- 7 Q And how long have you been working with Church's
- 8 Fried Chicken?
- 9 A Two years.
- 10 Q What are your duties at the Church's Fried Chicken?
- 11 A I am the general manager. I do everything pertaining
- 12 to the store.
- 13 Q You do everything?
- 14 A Yes, ma'am.
- 15 Q But you're the manager of the Devine Street store?
- 16 A Yes, ma'am.
- 17 Q I want to turn your attention back to May the 24th of
- 18 last year. Were you working at the same store?
- 19 A Yes, ma'am.
- 20 Q That one on Devine?
- 21 A Yes, ma'am.
- 22 Q And on the evening of that Sunday night, did you
- 23 receive a telephone call from employees from another
- 24 Church's?
- 25 A Yes, ma'am.

1 Q And do you remember who actually made the phone call
2 to you?

3 A It was Danny Weaver.

4 Q Danny Weaver?

5 A Yes, ma'am.

6 Q And what information -- without saying what he said
7 to you, as a result of that, did you then respond to
8 the Church's Fried Chicken?

9 A Yes, ma'am.

10 Q Even though you weren't the manager there?

11 A Yes, ma'am.

12 Q And why was that?

13 A They couldn't get in touch with anyone else, the
14 district manager or their own general manager.

15 Q And would that be protocol to then contact you if
16 they couldn't get in touch with either the general
17 manager or their own manager?

18 A Yes, ma'am.

19 Q And that was done in this case?

20 A Yes, ma'am.

21 Q And did you actually go to the Church's that night?

22 A Yes, ma'am.

23 Q And do you remember approximately what time it was
24 when you got there?

25 A Maybe about 5:30, quarter to 6.

1 Q Somewhere in there?

2 A Yes, ma'am.

3 Q You aren't sure of the exact time?

4 A No, ma'am.

5 Q Once you got there, had the robbery already taken
6 place?

7 A Yes, ma'am.

8 Q And that information had already been related to you
9 in a phone call. Is that correct?

10 A Yes, ma'am.

11 Q When you got there, primarily what was your focus?
12 What were you going to do?

13 A Making sure that the employees were taken care of.

14 Q And were you there when the EMT's actually came and
15 checked out Gracious?

16 A Yes, ma'am.

17 Q And did you do what you needed to to make sure that
18 they were taken care of?

19 A Yes, ma'am.

20 Q While you were there also, did you observe the two
21 registers in the store?

22 A Yes, ma'am.

23 Q And as part of your duties as a manager, would it be
24 your duty then to assert if any money had been taken?

25 A Yes, ma'am.

1 Q And at the time did you actually try to account for
2 how much money had been taken?

3 A After the police officers did what they needed to do
4 in the back, then I went.

5 Q Then you went in and did your thing?

6 A After I brought them back from the police station.

7 Q After you brought them back. Okay. Well, let me go
8 through it chronologically then. The police officers
9 were there?

10 A Yes, ma'am.

11 Q And you allowed them to do -- that evening did you
12 also take some of your employees down to the police
13 station on Washington Street downtown?

14 A Yes, ma'am.

15 Q And you didn't actually give a statement at that
16 time, but you made sure that they met with the police
17 officers?

18 A Correct.

19 Q And after that you returned back to the store?

20 A Yes, ma'am.

21 Q Was the store secured while you were gone?

22 A Yes, ma'am. We left the officers there.

23 Q And as part of your protocol, do you also try to
24 ascertain if any money has been taken?

25 A Yes, ma'am.

1 Q And at the time you would have counted that money out
2 and turned it over to the district office as far as
3 money being missing?

4 A Yes, ma'am.

5 Q And in this case was money missing?

6 A Yes, ma'am.

7 Q And without saying the exact amount, was that money
8 in excess of \$150?

9 A Yes, ma'am.

10 Q And at the time you would have turned over your
11 figure. And as far as accounting goes, there are
12 some variations from store to store?

13 A Yes.

14 Q But it was a significant amount of money? Over \$150?

15 A Yes, ma'am.

16 Q In the store at that time there are what appears to
17 be video cameras in the store. Was there any video
18 system working in the store then?

19 A No, ma'am.

20 Q And why was that?

21 A We didn't have them at that time.

22 Q You didn't have them at that time?

23 A No, ma'am.

24 Q So any camera that may be seen in here, it didn't
25 work?

1 **A** Correct.

2 **Q** And there was no video to be retrieved or that could
3 be retrieved in that store?

4 **A** Yes, ma'am.

5 **Q** Since then has that store as well as your store, do
6 they all have video cameras?

7 **A** Yes, ma'am.

8 **Q** But at the time they didn't?

9 **A** No, ma'am.

10 **Q** Thank you. I don't have anything further.

11 **MR. MAY:** Yes, sir. Your Honor, I'll be brief.

12 CROSS EXAMINATION

13 **BY MR. MAY**

14 **Q** So from Church's Chicken we don't have any loss
15 account, no sheet that says how much money was in the
16 registers or the tills at that time?

17 **A** No, sir.

18 **Q** Okay. And you're the person who drove Donald,
19 Gracious, Arthur and Danny down to the police
20 headquarters?

21 **A** Yes, sir.

22 **Q** They were pretty shook up about the whole thing,
23 correct?

24 **A** Yes, sir.

25 **Q** Thank you. No further questions.

1 **THE COURT:** Anything further?

2 **MS. CAMPBELL:** No, sir.

3 **THE COURT:** You may come down, ma'am. You're
4 free to go. Thank you very much.

5 **THE WITNESS:** Thank you.

6 **THE COURT:** Without objection?

7 **MR. COCHRAN:** Without objection, Your Honor.

8 **THE COURT:** Without objection. Next witness.

9 **MS. CAMPBELL:** The State would call Buddy Rose.

10 WALTER ROSE, after being duly sworn, testifies
11 as follows:

12 **THE CLERK:** Have a seat in the witness stand.
13 Give the court reporter your name, please.

14 **THE WITNESS:** Officer Walter Rose, Columbia
15 Police Department.

16 DIRECT EXAMINATION

17 **BY MS. CAMPBELL**

18 **Q** Officer Rose, where are you employed?

19 **A** The Columbia Police Department.

20 **Q** And what do you do there, sir?

21 **A** I work in the crime scene unit.

22 **Q** And tell this jury as a crime scene investigator what
23 some of your duties include?

24 **A** We're to collect, preserve evidence and analyze
25 certain evidence.

1 Q And how long have you been in the crime scene unit?

2 A February -- let's see. February of 2005 was when I
3 started. So a little over five years.

4 Q I want to turn your attention back to May the 24th of
5 2009. Did you respond to an armed robbery at the
6 Church's Fried Chicken on Taylor Street?

7 A I did.

8 Q And do you remember approximately what time of night
9 it was when you got there?

10 A It was shortly after the dispatch time. I heard it
11 dispatched. We work off the same channel as the
12 channel it was dispatched on. I just started heading
13 that way probably five to seven minutes after it was
14 dispatched.

15 Q And once you got to the Church's Fried Chicken, were
16 there other officers already there?

17 A Yes, ma'am.

18 Q Including Officers Baire, Brayboy and quite a few
19 more officers. Is that correct?

20 A Yes, ma'am.

21 Q And at that time, what, if anything, did you try to
22 assess there at the scene?

23 A I'm not sure which officer it was. The first thing I
24 do when I get there is ask one of the officers what
25 happened. By the time I got there, they should have

1 most of the information, and they told me what had
2 happened. Then I had asked if anyone talking to the
3 witnesses, if anyone knows if there is a video of the
4 incident, which their response was no. I'm not sure
5 which witness told me that.

6 Q Okay.

7 A And the second follow-up question to that is, was
8 there any gloves being worn. And I had one of the
9 witnesses told me yes.

10 Q During the time period while you're there, too,
11 assessing things, do you also try to determine
12 whether or not any items may have been touched for
13 purposes of dusting for fingerprints?

14 A Yes, ma'am. And that's the next questions I asked
15 the witnesses.

16 Q And were you aware of where the money was taken from?

17 A Yes.

18 Q And is it important to you in order to determine
19 whether or not to try to dust for fingerprints
20 whether or not a surface has been touched?

21 A Yes.

22 Q And in this case on the information that was given to
23 you by the witnesses, had the defendant touched any
24 of the registers?

25 A No, ma'am.

1 Q And, in fact, who had actually gotten the money?
2 Were you made aware of who actually got the money and
3 put it into the bag?

4 A It was one of the witnesses. I'm not sure which one
5 it was.

6 Q So did you try to dust the actual registers
7 themselves or the interior of the registers for
8 prints?

9 A No, ma'am.

10 Q And why is that? It's a stupid question.

11 A Well, the suspect didn't touch anything.

12 Q And in order to leave a fingerprint -- this sounds
13 stupid I know -- you have to touch something?

14 A Yes, ma'am.

15 Q And let me ask you this, Officer, in your opinion.
16 If someone comes up and just touches an item, are
17 they necessarily going to leave what's known as a
18 usable latent print?

19 A No, ma'am. It's an impression of the finger.

20 Q Explain some of the factors to the jury?

21 A Everything you touch, you will leave at least an
22 impression of a finger which is pretty much the shape
23 of the finger or it looks like you touched it. There
24 is no fingerprint on everything you touch. A
25 fingerprint would be the -- it would be an image of

1 your ridges in your fingers. If you look on your
2 finger, the lines and the grooves in your finger make
3 up the print. You would sometimes leave that;
4 sometimes you won't. It just depends on the surface,
5 how you touched it and what happened when you did
6 touch it.

7 **Q** So if I walk up to you in front of you right here and
8 put my finger down like that, is that necessarily
9 going to leave a fingerprint with enough ridge detail
10 to make a further comparison?

11 **A** Not necessarily, it won't, no; unless we lift it and
12 look at it.

13 **Q** But in order to actually leave anything I have to
14 actually touch something?

15 **A** Yes, ma'am.

16 **Q** In this case were you made aware that the defendant
17 actually entered through the front door?

18 **MR. MAY:** Objection, Your Honor. I believe
19 she's leading.

20 **THE COURT:** I'll allow it for the purposes of
21 introduction.

22 **MS. CAMPBELL:** Thank you, Your Honor.

23 **A** Yes, ma'am. He came in through the front.

24 **Q** And in an establishment such as Church's Fried
25 Chicken, did you make an assessment of whether or not

1 you would be able to get any usable fingerprint
2 information from that front door?

3 **A** No, ma'am. It would be prints on top of prints on
4 top of prints on top of prints. I didn't know what
5 part of the door. We didn't have a video. It would
6 be impressions, smears, smudges; no telling what
7 could be on that door.

8 **Q** And in a high traffic area, especially in a food
9 establishment such as this, the front door, is it
10 pretty much touched by people over and over and over?

11 **A** Yes.

12 **Q** And in your experience as a crime scene investigator,
13 does it do you absolutely any good to try to
14 fingerprint, say, the front door handle just in case
15 he doesn't use his arm on the door handle?

16 **MR. MAY:** Objection, Your Honor. She has
17 testified.

18 **THE COURT:** Just don't lead your witness, Ms.
19 Campbell.

20 **MS. CAMPBELL:** Yes, sir.

21 **THE COURT:** Just ask questions.

22 **Q** As far as the front door goes, was there any
23 investigative value to trying to print the front
24 door?

25 **A** Door handles and doorknobs are one of the worst

1 things to try to get a print off. I mean, you just
2 don't leave a good print on them. You cover prints
3 with prints. There are smears, smudges. As you pull
4 your hand off it, you'll wipe a print. Turning the
5 knob, you'll smear a print. We'll typically get them
6 off -- you know, if you've got a video of pushing the
7 glass on the door, you'd have better luck with that.
8 But there was no indication that that had happened.
9 And normally you would see the hand print.

10 **Q** And you did inspect the front door to see if there
11 could be anything of value in this case you might try
12 to lift fingerprints?

13 **A** Yes, ma'am. It was filthy. You couldn't see
14 anything on it.

15 **Q** And so in your -- as being a crime scene investigator
16 you made the assessment that it would not be of any
17 value?

18 **A** Yes, ma'am.

19 **MR. MAY:** Objection, Your Honor.

20 **THE COURT:** Sustained.

21 **Q** As a crime scene investigator, what assessment did
22 you make?

23 **A** That the -- first off, again, I was told there was
24 gloves involved by one of the witnesses. And I
25 didn't feel there was any prints to compare it, by

1 wearing gloves. I looked at the door and grease was
2 all over the door. I didn't see any usable
3 fingerprints on it, weren't able to process it. So I
4 wasn't able to find -- didn't even know where to even
5 start to even attempt to process that. It's just
6 smudges and smears everywhere.

7 Q So in your assessment there was nothing of value that
8 could have been gotten off the door?

9 A No, ma'am. Not at all.

10 Q Gloves or no gloves?

11 A Yes, ma'am.

12 Q You're also familiar with DNA testing or swabbing for
13 DNA?

14 A Yes, ma'am.

15 Q And you're familiar with a phrase called touch DNA?

16 A I am.

17 Q And explain that to the jury?

18 A Through the training we've had through the South
19 Carolina Law Enforcement Association and working with
20 the analysts at SLED, the way it's told to us in
21 training was that touch DNA, just merely touching and
22 sliding an object, briefly touching an item will not
23 give you sufficient DNA to type or to test, for the
24 analyst to test. Extended use or extended touching,
25 you'll leave enough DNA to do it. Driving a stolen

1 car; plenty of DNA on the steering wheel because you
2 have it for a period of time. Pulling cords off of a
3 VCR or pushing a door open, those types of brief
4 touching does not leave a sufficient sample for the
5 analyst at SLED to test.

6 Q And in this case did you swab any of the areas inside
7 the Church's? Well, let me ask you this. In certain
8 crimes there are body fluids such as blood? Certain
9 body fluids can be left at a scene?

10 A Yes, ma'am. There is.

11 Q And what types of body fluids are significant as to
12 DNA testing?

13 A Blood, saliva, urine, semen, any body fluid.

14 Q Any body fluid?

15 A Yes, ma'am.

16 Q And in this case did you also make the assessment of
17 whether or not anyone had been wounded and/or may
18 have left body fluids there inside the Church's?

19 A No, ma'am.

20 Q And was that critical as far as your trying to do any
21 DNA testing, such as if you'd seen blood?

22 A Yes.

23 Q Was there any evidence of any blood in this case?

24 A There was not.

25 Q Any semen?

1 **A** No, ma'am.

2 **Q** Any saliva?

3 **A** No, ma'am.

4 **Q** If those items had been present, what, if anything,
5 would you have done?

6 **A** I would have collected it with a swab.

7 **Q** You also mentioned the fact, we talked about this
8 touch DNA. Again, what factors go into the ability
9 to leave touch DNA?

10 **A** By the training we've gotten and from the information
11 from the SLED analysts, it's an extended period of
12 touching an item. It's not merely just pushing on
13 something, touching an item, moving it over. It just
14 doesn't get a sufficient sample to test.

15 **Q** So as far as your investigation, did you swab for any
16 DNA there at the scene?

17 **A** No, ma'am.

18 **Q** And would it or could it have aided in this
19 investigation?

20 **A** No, ma'am.

21 **Q** While you were at the Church's Fried Chicken, did you
22 receive a call to proceed to another location here in
23 the City of Columbia?

24 **A** I did.

25 **Q** And where was that, sir?

1 **A** That was on Chestnut and Two Notch.

2 **Q** And I want to show you what's been marked as State's
3 Exhibits 28, 29, 30, 36 and 37 that are already in
4 evidence. Do you recognize those, sir?

5 **A** Yes, ma'am.

6 **Q** And were those photos you actually took once you
7 proceeded to Chestnut Street where the truck was?

8 **A** Yes, ma'am.

9 **Q** And those were actually -- and just for the record,
10 you weren't present for the show-up ID or anything
11 like that?

12 **A** No, ma'am. I was still at the scene.

13 **Q** And you would have proceeded there afterwards?

14 **A** Yes, ma'am.

15 **Q** And I want to show you 38, 39, 40, and 41. Are these
16 additional photographs that were taken at the scene
17 that day?

18 **A** Yes, ma'am.

19 **Q** And those were actually taken by you?

20 **A** Yes, ma'am.

21 **Q** And are these also the exterior of the truck that's
22 mentioned in the other ones?

23 **A** They are.

24 **MS. CAMPBELL:** Your Honor, at this time we'd
25 offer them into evidence. I believe without

1 objection.

2 **MR. MAY:** Without objection, Your Honor.

3 **THE COURT:** Without objection.

4 (WHEREUPON, State's Exhibit No. 38 is admitted
5 into evidence.)

6 (WHEREUPON, State's Exhibit No. 39 is admitted
7 into evidence.)

8 (WHEREUPON, State's Exhibit No. 40 is admitted
9 into evidence.)

10 (WHEREUPON, State's Exhibit No. 41 is admitted
11 into evidence.)

12 **Q** And these all show just different angles of the
13 truck, including the tag and the actual VIN number?

14 **A** Yes.

15 **MS. CAMPBELL:** Your Honor, permission to
16 publish?

17 **THE COURT:** Yes, ma'am.

18 **MS. CAMPBELL:** Thank you.

19 **Q** (By Ms. Campbell) Did you also photograph some of
20 the interior of the truck?

21 **A** Yes, ma'am. I did that first.

22 **Q** And I want to show you what's been marked as State's
23 Exhibit No. 3 that's already into evidence. Do you
24 recognize that one?

25 **A** I do.

1 Q And is that a photograph you took of the interior of
2 the truck?

3 A Yes, ma'am.

4 Q And I also want to show you State's Exhibits 32, 33,
5 34 and 35 and ask first, do you recognize those?

6 A Yes.

7 Q And are those photographs of the interior of the
8 truck as it was when you got there that day?

9 A Yes, ma'am. We did -- we took photographs there and
10 then at headquarters.

11 Q And then at headquarters? And make sure I didn't mix
12 them up.

13 A If you'll stand by for one second.

14 Q Yes, sir.

15 A Yes, ma'am. I believe these were at the scene.

16 Q At the scene?

17 A Yeah.

18 MS. CAMPBELL: Your Honor, at this time we'd
19 offer State's Exhibits 32 through 35.

20 MR. MAY: We might have a point, a matter of
21 law.

22 (Whereupon, a bench conference is had)

23 MS. CAMPBELL: Your Honor, at this time we'd
24 offer State's Exhibit 33 into evidence. The others
25 have to stay. They've been marked.

1 **COURT REPORTER:** 33 in evidence, Your Honor?

2 **THE COURT:** Without objection?

3 **MR. MAY:** Without objection.

4 (WHEREUPON, State's Exhibit No. 33 is admitted
5 into evidence.)

6 **Q** State's Exhibit 3 and 33, what areas of the car does
7 that show?

8 **A** That shows the interior of the car. On the
9 floorboard of the passenger's seat is Exhibit 3. And
10 33 is the seat, the bench seat. And the center focus
11 is that middle part of the seat with the hat and the
12 cup in it.

13 **Q** And do you recall in your assessment when you looked
14 in this car, what kind of transmission did this car
15 have?

16 **A** That's a stick shift, manual transmission.

17 **Q** Stick shift, manual transmission?

18 **A** Yes, ma'am.

19 **Q** And there's an actual stick coming out of the floor?

20 **A** Yes, ma'am.

21 **Q** With the gears?

22 **A** Mm-hmm (affirmative).

23 **Q** Once you had photographed some of the interior,
24 what's been allowed into evidence, did you also --
25 when you looked inside, were you able to see

1 something coming out from underneath the passenger --

2 A Yes, ma'am.

3 Q -- side of the -- and what was it you observed when
4 you just looked in the car?

5 A It was a white plastic bag.

6 Q And State's Exhibit 3, can you see that white plastic
7 bag?

8 A Yes, ma'am.

9 Q And is that right here?

10 A Yes, ma'am.

11 Q And when you looked down and you looked into the
12 floorboard itself on the passenger's side of this
13 vehicle at the white plastic bag, were you able to
14 observe anything in the plastic bag?

15 A Yes, ma'am.

16 Q What was that, sir?

17 A You can see the dark spot on the bottom of the
18 picture is a handle of a weapon.

19 Q A handle of a weapon?

20 A Yes.

21 Q And the dark spot you're referring to, is this right
22 here?

23 A Yes, ma'am. With the picture it doesn't show it very
24 well. But right here. And then there is some coins,
25 coin change right up in here.

1 Q Coin change right up in here?

2 A Yes, ma'am.

3 Q And the handle. Am I approximately right?

4 A Yes, ma'am.

5 Q So where my finger is would be where you could
6 actually see coin change and the weapon. Where I've
7 got my hand is where the actual handle is? And is it
8 unusual when you take photographs for it not to show
9 up as clearly as what you can see?

10 A Yes. That happens.

11 Q That happens? Did you do a full search of the
12 vehicle there at the scene that day?

13 A No, ma'am.

14 Q And, in fact, did you have the car towed?

15 A Investigator Thomas did when he arrived.

16 Q Where was it towed to?

17 A It was towed to headquarters on Justice Square at the
18 police department.

19 Q And prior to it being towed to headquarters, did you
20 secure any evidence that you thought it was prudent
21 to take at that point?

22 A Yes, ma'am.

23 Q And what evidence was that, sir?

24 A The weapon that was inside the bag that you can see.

25 Q The weapon?

1 **A** Yes, ma'am.

2 **Q** I'm going to show you what's been marked as State's
3 Exhibit No. 4 first. Is that the weapon you secured
4 that day?

5 **A** Yes, ma'am.

6 **Q** And why did you think it was prudent to take the
7 weapon prior to the car being towed?

8 **A** For safety for the weapon. I mean, it's going to be
9 towed with a tow truck. I don't want it to fire if
10 it's loaded. And just destruction of it.

11 **Q** Did you also collect certain money that's also
12 collected in the same bag with it?

13 **A** Yes, ma'am. That was in the bag with the weapon.

14 **Q** And did you also go ahead and secure it?

15 **A** I did.

16 **Q** And I show you what's been marked as -- we'll remark
17 it as State's Exhibit No. 5.

18 (Exhibit sticker had fallen off)

19 **Q** What's now marked as State's Exhibit 5?

20 **A** Yes, ma'am. That's it.

21 **Q** And is that the money you actually collected that was
22 in the same bag as the gun?

23 **A** Yes, ma'am.

24 **Q** And those were the items that you collected from
25 State's Exhibit No. 3 from this bag that's shown

1 there?

2 **A** Yes, ma'am.

3 **Q** And that would be under which side of the front seat?

4 **A** That's the passenger front seat. It's in the
5 floorboard.

6 **MS. CAMPBELL:** Your Honor, at this time we'd
7 offer State's Exhibits 4 and 5 into evidence.

8 **MR. MAY:** Subject to prior objection, Your
9 Honor.

10 **THE COURT:** Overruled. Over defense objection
11 they're admitted.

12 (WHEREUPON, State's Exhibit No. 4 is admitted
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 5 is admitted
15 into evidence.)

16 **MS. CAMPBELL:** For the record, we do have a gun
17 lock on the gun.

18 **THE COURT:** No ammunition in there?

19 **MS. CAMPBELL:** There is ammunition in here. Do
20 you want me to mark it separately? State's Exhibit
21 4A.

22 (WHEREUPON, State's Exhibit No. 4A is marked for
23 identification and received in evidence.)

24 **Q** (By Ms. Campbell) When you secured the money in
25 State's Exhibit No. 5, was it counted and verified as

1 far as the amount?

2 **A** Yes, ma'am.

3 **Q** As noted on this bag?

4 **A** Yes, ma'am.

5 **Q** And what was the total amount?

6 **A** \$219.08.

7 **Q** And in this bag, what types of currency are in it?

8 **A** They've got --

9 **Q** As far as bills?

10 **A** -- \$20 bills, \$5 bills, \$1 bills in U.S. currency.

11 Three rolls of nickels, two rolls of dimes. And it's
12 hard to read the ink. 43 pennies, 24 nickels, 67
13 dimes and 51 quarters.

14 **Q** And you mentioned the plastic bag that you also
15 recovered. I show you what's been marked as State's
16 Exhibit No. 19. Do you recognize that?

17 **A** Yes, ma'am. These were inside the bag with all the
18 rest of the evidence.

19 **MS. CAMPBELL:** Your Honor, at this time we'd
20 offer State's Exhibit 19 into evidence.

21 **MR. MAY:** Without objection, Your Honor.

22 **THE COURT:** Without objection.

23 (WHEREUPON, State's Exhibit No. 19 is admitted
24 into evidence.)

25 **Q** And when you looked down, this is the type of bag you

1 were talking about that you could see through?

2 **A** Yes, ma'am.

3 **Q** Just like you can see ...?

4 **A** Your hand.

5 **Q** And that was collected along with the other items?

6 **A** Yes, ma'am.

7 **Q** The gun when you collected it, as per protocol when
8 you collect any weapon, do you check to see whether
9 or not it's loaded?

10 **A** Yes, ma'am.

11 **Q** And I show you what's been marked as State's Exhibit
12 4 and State's Exhibit 4A. When you collected State's
13 Exhibit 4, was it loaded?

14 **A** Yes, ma'am.

15 **Q** And what ammunition did it have in it?

16 **A** There are seven .22 long rifle shells.

17 **Q** And would that be the appropriate ammunition for that
18 gun?

19 **A** Yes, ma'am.

20 **Q** And what type of gun is that?

21 **A** It's a .22 caliber automatic or semi-automatic
22 pistol.

23 **Q** And in 4A, that's the actual I believe magazine and
24 seven --

25 **A** Seven rounds.

1 Q And those were live rounds?

2 A Yes, ma'am.

3 Q So they would be able to be shot?

4 A Yes, ma'am.

5 Q And the gun itself, how would you describe it?

6 A It's a .22 caliber, .22 long rifle semi-automatic
7 pistol.

8 Q Once you got to the scene that day, after you'd
9 photographed it and before collecting this evidence,
10 do you get certain information as to determine
11 whether or not you are going to try to fingerprint
12 the vehicle?

13 A Yes, ma'am.

14 Q And as far as the relationship between the two people
15 in custody and the vehicle, what information did you
16 get about that?

17 A That Mr. Broadnax was in the floorboard of a truck
18 where the bag was found. It was on top of this
19 evidence here. And any of the other fingerprinting
20 would be done or directed by Investigator -- if I'm
21 correct -- by Investigator Thomas later. But we
22 didn't do any --

23 Q As far as any investigative tool as far as
24 fingerprints go, if a person is found in a vehicle,
25 would the fingerprints give you any additional

1 information?

2 A No, ma'am. None at all.

3 Q And also as far as doing -- did you also inspect the
4 truck there at the scene to see whether or not there
5 were any possible body fluids or any evidence of any
6 injury, which we wouldn't find in this case. Anyway,
7 did you look for that?

8 A No, ma'am.

9 Q There was no evidence of any?

10 A There was none.

11 Q As far as doing any testing for DNA, say, from the
12 money or the bag or anything like that, did you feel
13 it was prudent in this case?

14 A No, ma'am.

15 Q Why not?

16 A Well, it was underneath Mr. Broadnax.

17 Q So would it have any probative value as far as --

18 A None at all.

19 Q And why is that?

20 A Because he was in possession of all this.

21 Q Finally, days later, I believe at least a week later,
22 did you also help in the execution of a search
23 warrant of the vehicle after it had been towed?

24 A Yes, ma'am.

25 Q And what were your duties at that point?

1 **A** I photographed the car. It was Investigator Dow and
2 Investigator Thomas involved in the actual search of
3 the -- doing the search warrant. And that was
4 photographed and held, collected into the evidence.

5 **Q** And again, just -- could I get this marked?

6 (WHEREUPON, State's Exhibit No. 42 is marked for
7 identification.)

8 **Q** State's Exhibit No. 42 for ID purposes, is this just
9 a general picture of the --

10 **A** Yes, ma'am.

11 **Q** And is that a photograph you took the day you
12 executed the search warrant?

13 **A** Yes, ma'am.

14 **MS. CAMPBELL:** Your Honor, at this time we'd
15 offer State's Exhibit 42.

16 **MR. MAY:** Without objection.

17 **THE COURT:** Without objection.

18 (WHEREUPON, State's Exhibit No. 42 is admitted
19 into evidence.)

20 **Q** You had already actually photographed the interior of
21 the vehicle prior to it being towed?

22 **A** Yes, ma'am.

23 **Q** So did you then go -- once you just photographed the
24 exterior of the vehicle at the compound, did you then
25 collect certain evidence from inside?

1 **A** Yes, ma'am.

2 **Q** And not all the evidence, but I want to show you
3 what's been marked as State's Exhibit 62 and 18. 26
4 and 18. Excuse me. Do you recognize those two
5 items?

6 **A** I do.

7 **Q** And were those two items collected by you in the
8 execution of a lawful search warrant?

9 **A** Yes, ma'am.

10 **Q** And I believe it was executed on June the 9th. Does
11 that sound right?

12 **A** June 8th.

13 **Q** June the 8th?

14 **A** Yes, ma'am.

15 **Q** Sorry.

16 **MS. CAMPBELL:** Your Honor, at this time we'd
17 offer State's Exhibits 18 and 26.

18 **MR. MAY:** Without objection, Your Honor.

19 **THE COURT:** Without objection.

20 (WHEREUPON, State's Exhibit No. 18 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 26 is admitted
23 into evidence.)

24 **Q** And why did you collect these items?

25 **A** Those were listed in the search warrant and they were

1 in the front of the truck.

2 Q They were in the front of the truck?

3 A Yes, ma'am.

4 Q And would that be -- let me refer to a picture not in
5 evidence, specifically, State's Exhibit No. 35 which
6 is just for ID purposes.

7 A Yes, ma'am.

8 Q Does that show the location where State's Exhibit
9 No. 18 was found?

10 A It does. It's at the floorboard on the passenger's
11 side where the white bag was found.

12 Q On the floorboard. And how was it found in proximity
13 to the white bag? Was it near or far away?

14 A Yes, ma'am. It was right there at it, in the same
15 area.

16 Q Right there?

17 A Yes, ma'am.

18 Q Don't show it to the jury.

19 MR. MAY: Objection, Your Honor.

20 THE COURT: What's the objection?

21 MR. MAY: He published the picture to the jury.

22 THE COURT: Those are not in evidence?

23 MR. MAY: Correct.

24 MS. CAMPBELL: We won't publish it to the jury.

25 Q (By Ms. Campbell) State's Exhibit No. 32, this item,

1 State's Exhibit No. 26, where was that located?

2 A It's on the driver's side of the truck on the
3 floorboard by the gas pedal it looks like.

4 Q One thing I forgot to do, too. Let me back up for a
5 minute. Also while you were at the scene at the
6 Church's Fried Chicken prior to going to where the
7 truck was there on the 24th, did you take some
8 photographs of this interior?

9 A I did.

10 Q And I want you to look through these, State's
11 Exhibits 11 -- let me get them in order. Somebody
12 has got them out. State's Exhibits 7, 9, 10 and 11
13 and then State's Exhibit 12 through 17; were those
14 all photographs you took that day?

15 A Yes, ma'am. These are all -- yes, ma'am.

16 Q And those were the photographs you took when you got
17 to Church's that day?

18 A It is.

19 Q Okay. For the record, finally, while you were
20 executing the search warrant when it was at the
21 compound, I want to show you two photographs which
22 will be 43 and 44.

23 (WHEREUPON, State's Exhibit No. 43 is marked for
24 identification.)

25

1 (WHEREUPON, State's Exhibit No. 44 is marked for
2 identification.)

3 Q Are those photographs you took after the car had been
4 towed during the search warrant?

5 A Yes, ma'am.

6 Q Prior to collecting some of these items?

7 A Yes.

8 MS. CAMPBELL: I'd offer these into evidence.

9 MR. MAY: Without objection, Your Honor.

10 THE COURT: Without objection.

11 (WHEREUPON, State's Exhibit No. 43 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 44 is admitted
14 into evidence.)

15 MS. CAMPBELL: Beg the Court's indulgence. Beg
16 the Court's indulgence. That's all I'd have, Your
17 Honor.

18 THE COURT: Cross examination.

19 MR. MAY: Yes, sir. May it please the Court,
20 Your Honor.

21 CROSS EXAMINATION

22 BY MR. MAY

23 Q You've been in the crime scene unit for about five
24 years. Is that correct?

25 A Yes, sir.

1 Q And the crime scene unit is very important?

2 A Yes, sir.

3 Q Because it's objective evidence?

4 A Yes, sir.

5 Q It's objective evidence that can be tested, that can
6 be verified and is free of passion and prejudice,
7 correct?

8 A Yes.

9 Q People's perceptions can be off. People's
10 identifications can be off. What can't be off is
11 science because it can be tested and verified. And
12 that's where you come in, correct? You bring the
13 science --

14 A I don't analyze.

15 Q But you collect scientific data --

16 A I collect data.

17 Q -- that can be tested and verified, correct?

18 A I do collect evidence.

19 Q Okay.

20 A And that's what I do.

21 Q But that's an important thing because it helps
22 beginning to narrow down suspects?

23 A Yes.

24 Q It helps to exonerate wrongly accused suspects? Yes?

25 A I guess it could.

1 Q But the problem is is you have to actually test. You
2 actually have to collect evidence for anybody to be
3 able to run the test. Is that fair?

4 A In certain cases, yes.

5 Q Correct. Well, I mean, if you never try to pick up a
6 fingerprint, you'd have no fingerprints to compare
7 against?

8 A Yes, sir.

9 Q If you never try to collect DNA, you have no DNA to
10 conspire it against, correct?

11 A If circumstances are open for that evidence to have
12 been left, yes.

13 Q Okay. Well, let's talk about fingerprints.

14 A Okay.

15 Q Okay. Now, you've been sitting here the entire
16 trial, haven't you?

17 A Yes, sir.

18 Q And there has not been a single word about gloves?

19 A No, sir.

20 Q Not in anybody's statements they gave to Investigator
21 Thomas, nor did anybody on the stand say anything
22 about a glove?

23 A No, sir.

24 Q All right. So now let's talk about different ways
25 you can take fingerprint evidence.

1 **A** Okay.

2 **Q** The traditional black powder dusting, correct?

3 **A** Yes, sir.

4 **Q** And just explain a little bit to the jury what that
5 entails?

6 **A** Taking black powder on a nylon brush, a feather
7 brush, and you sprinkle it over or work it over an
8 area that you think the fingerprint is. And it will
9 stick to any moisture. Fingerprints, water or oil,
10 it sticks to it very quickly, and you'll develop a
11 fingerprint, a latent fingerprint.

12 **Q** And now, May 24th is in May. In Columbia, South
13 Carolina, I mean, our city motto is Famously Hot?

14 **A** Yes, sir.

15 **Q** It was a warm day. And especially on a piece of
16 metal that also has oil, a gun is a great place to
17 try to lift fingerprints?

18 **A** No, it's not, sir.

19 **Q** It's not?

20 **A** No, sir.

21 **Q** You have oil on it, correct?

22 **A** If you take care of your weapon, you would have oil
23 on it. Most people don't take care of their weapons,
24 and it's usually a dry surface.

25 **Q** When it's hot people are sweating, correct?

1 **A** Yes, sir.

2 **Q** People are putting out more oil on their hands?

3 **A** Yes, sir.

4 **Q** So May 24th whomever robbed this building had more
5 oil on their hands than, say, in January most likely.
6 That's a fair assumption, correct? Because it's hot.

7 **A** You can make that assumption.

8 **Q** So when the person, as the witnesses said, racked the
9 gun time and time again, they have their hands on it.
10 They said there were no gloves?

11 **A** Yes, sir.

12 **Q** So a gun would be a good place -- may I approach the
13 board, Your Honor?

14 **THE COURT:** Yes, sir.

15 **Q** The gun would have been a valid place to at least
16 attempt to grab some fingerprints from. Yes?

17 **A** No, sir.

18 **Q** It's not?

19 **A** We don't have very good luck with guns.

20 **Q** But you don't know unless you try. You have no idea
21 unless you try to get the fingerprints, do you?

22 **A** No, sir.

23 **Q** All right. So you have a gun which people say was
24 used in a robbery?

25 **A** Mm-hmm (affirmative).

1 Q And the police are saying that this gun right here
2 was used in the robbery and it's found within
3 minutes --

4 A Yes, sir.

5 Q -- of a robbery. On a hot day?

6 A Yes, sir.

7 Q All right. Additionally, in a gun -- now, I notice
8 that you have a service weapon on you?

9 A I do.

10 Q All right. Now, every time I've handled a gun you
11 have to put your thumb to put the bullets into the
12 clip, correct?

13 A Yes.

14 Q All right. Would a thumbprint -- could a thumbprint
15 get developed off the rounds?

16 A Again, that's a difficult thing to do. As you know,
17 a fingerprint is very fragile. Pushing a bullet into
18 a spring loaded magazine would more than likely give
19 you a smear or a smudge --

20 Q Okay.

21 A -- due to the fact you're putting pressure onto the
22 finger onto the brass.

23 Q Got you.

24 A And it is a rounded surface. So as soon as you do
25 it, you are familiar with weapons where you do load

1 the bullet, your finger never just pushes straight
2 down. You go in a forward or a backwards motion
3 depending on how you hold the magazine. So, yeah,
4 that would be a smear across that. I'd agree with
5 that.

6 **Q** But as you're loading it, you hold it with the other
7 hand?

8 **A** Yes, sir.

9 **Q** You're holding it with the other hand. There is no
10 smudging here. You're holding it with the other
11 hand. And I imagine; hey, you can even see my
12 fingerprints I just put on it.

13 **A** Yes, sir.

14 **Q** So you're holding it with the other hand. So the
15 magazine is always a good place to look?

16 **A** Well, when you take it in and out of the well of the
17 gun, that is a machine fit, so you do take a chance
18 of smearing that.

19 **Q** But you never know unless you test, correct?

20 **A** You don't.

21 **Q** And to be fair, you never tested the magazine?

22 **A** I did not.

23 **Q** You never tested the gun? You never tested the
24 rounds?

25 **A** No, sir.

1 Q All right. Also you never tested the plastic bag or
2 the money?

3 A Oh. No, sir.

4 Q All right. Now, black dusting is not the only way to
5 test for fingerprints, is it?

6 A No, sir.

7 Q You have fuming?

8 A We do.

9 Q Can you please explain to the jury what fuming is?

10 A You basically put the item in a chamber and you heat
11 up superglue. The fumes of the superglue will stick
12 to the fingerprints. It hardens the fingerprint so
13 that you can work on it. Because again, they're
14 really, really fragile.

15 Q And so that when it's fragile, the fuming, especially
16 if you have a small item such as a gun or a magazine,
17 fuming is a good way to really solidify fingerprints
18 that you might think would be a little fragile at
19 times?

20 A They are definitely fragile. And, yes, we do fume.
21 And that is a process to use.

22 Q And you didn't fume this one?

23 A I did not.

24 Q Okay. And now, I don't know if Columbia Police
25 Department, do y'all use fluorescent dyes?

1 **A** We do not.

2 **Q** Do you all use any other kind of chemicals or lasers
3 to test for fingerprints?

4 **A** We do use chemicals, not lasers.

5 **Q** What kind of chemicals do ya'll use?

6 **A** Ninhydrin.

7 **Q** Is that the only one?

8 **A** Yes, sir.

9 **Q** Please explain to the jury what that means, what that
10 process is?

11 **A** Ninhydrin is a chemical that you use on porous items,
12 paper. And it will -- a fingerprint, if you leave a
13 fingerprint on a piece of paper, the print sits on
14 top of the paper for a short term and then it soaks
15 into the paper. So you have to use ninhydrin to
16 develop the fingerprint that's in the paper. It
17 reacts to amino acids and it forms the fingerprint.
18 It will not form it, but it develops the fingerprint
19 so that we can process it.

20 **Q** I've got you. Well, just not to belabor the point
21 but to belabor it a little bit; of these items that
22 fingerprints could have been tested on, you didn't
23 attempt to test it on a single one. You said: Hey,
24 we got the guy in the car; that's good enough for us;
25 that's good enough for government work?

1 **A** That's not what I said. But, no, I did not process
2 that, sir.

3 **Q** Okay. You didn't process it. Now let's talk about
4 DNA a little bit.

5 **A** Okay.

6 **Q** Now, I do not know what y'all's standards is, but the
7 Department of Justice's standards is what I've done
8 my research on. And you might have to just educate
9 me a little bit about the Columbia Police Department.
10 Okay. Now, you just identified what the State is
11 saying is a mask, correct?

12 **A** Yes.

13 **Q** All right. A mask that in a robbery was alleged to
14 have been worn around somebody's face, correct?

15 **A** Yes.

16 **Q** Now, did you ever test it, the mask, for DNA?

17 **A** I don't test any items for DNA.

18 **Q** All right. Did you try to collect DNA from the mask?

19 **A** I would not collect it from that. There was no --
20 none of it went to SLED for any analysis.

21 **Q** Okay. But why not?

22 **A** That is determined later on throughout the
23 investigation.

24 **Q** All right. But you're crime scene unit guy, right?

25 **A** Yes, sir.

1 Q And you've heard a mask was just used in a robbery, a
2 mask that covered somebody's face that somebody
3 talked through. So saliva is going forward?

4 A Yes, sir.

5 Q Sweat is coming down. Skin and hair are getting
6 collected on that mask?

7 A Yes, sir.

8 Q So you have a mask that's full of DNA of the actual
9 person who robbed the Church's Chicken, and you
10 didn't submit it for DNA evidence?

11 A No, I did not.

12 Q Okay. And the reason why you didn't is because --
13 let me get the exact quote that you gave Ms.
14 Campbell. It was under Mr. Broadnax. It was in his
15 possession. So if something is under your seat, so
16 if I put something under your seat, you're not going
17 to test it? You find something near somebody --

18 A I believe she was talking about a fingerprint on
19 that.

20 Q That was actually referring to the DNA.

21 A And the DNA, it's not my decision to send it to SLED.
22 No request came in to send it to SLED. That's
23 developed throughout the investigation. That's why
24 it didn't go to SLED.

25 Q So when you're collecting DNA evidence, it's just up

1 to somebody else. You just say: Hey, I've done my
2 job. Hey, you don't want to look for DNA on this?

3 **A** No, sir. We collect the evidence.

4 **Q** Okay.

5 **A** We store it properly in our evidence room, and it
6 awaits there until a decision is made to do something
7 with it.

8 **Q** Okay. So you're saying it would have been
9 Investigator Thomas's decision?

10 **A** Whatever the outcome of the investigation, whatever
11 he develops out of that, yes.

12 **Q** All right. So that goes also for the hat that was --
13 or the alleged hat that was used?

14 **A** That would go for any piece of evidence.

15 **Q** So for any piece of evidence. So even though you're
16 with the crime scene unit, you don't actually look
17 for DNA?

18 **A** No, sir. We look for all the evidence that we can
19 find. The evidence that you see here is collected by
20 us.

21 **Q** Okay. So you just do the cursory?

22 **A** Yes.

23 **Q** You don't look for the objective? I mean, it's
24 somebody else's job. Hey, don't worry about it, is
25 your stance?

- 1 **A** The evidence that we collect --
- 2 **Q** Okay.
- 3 **A** -- is -- if it's marijuana or a fingerprint, we
- 4 analyze that.
- 5 **Q** Okay.
- 6 **A** Anything outside of that is analyzed by the State Law
- 7 Enforcement Division.
- 8 **Q** And who makes that decision?
- 9 **A** That would be Investigator Thomas --
- 10 **Q** Okay. So --
- 11 **A** -- in this case.
- 12 **Q** -- did you tell him that, hey -- in you all's
- 13 conversations did you say: Hey, you might want to
- 14 push this mask forward; I believe it could have DNA?
- 15 **A** No. He was there with a search warrant. He knows
- 16 everything that was taken in.
- 17 **Q** So he was there with you. But you're the expert?
- 18 **A** Yes, sir.
- 19 **Q** And you didn't give him your opinion?
- 20 **A** No, sir.
- 21 **Q** You didn't say: Hey, that's a pretty good piece of
- 22 DNA?
- 23 **A** He is as familiar with it as I am, sir.
- 24 **Q** So your only job is to collect the evidence and then
- 25 to look for fingerprints unless there's marijuana

1 there. Is that fair?

2 **A** And any other evidence that's associated with the
3 crime.

4 **Q** And just to rehash, even though there was plenty of
5 opportunities to collect fingerprints and to check
6 them against a person whom is being prosecuted for a
7 crime, even though you could have, you didn't? You
8 could have given these people, the jury, more
9 information, a complete picture, objective, clear,
10 scientific evidence as opposed to you're just asking
11 them to listen to people's stories, listen to
12 people's memories? You didn't test for fingerprints?

13 **A** What's your question?

14 **Q** Yes or no?

15 **A** No.

16 **Q** Did you test for fingerprints?

17 **A** I did not test for fingerprints for the information
18 that I had.

19 **Q** Beg the Court's indulgence. A few more questions.
20 You said the evidence was stored properly?

21 **A** Yes, sir.

22 **Q** Correct?

23 **A** Yes, sir.

24 **Q** The evidence was stored properly so that if
25 Investigator Thomas wanted to get DNA he could have?

1 **A** Yes, sir.

2 **Q** And when Officer Delage testified, he said that he
3 approached the car and made sure not to touch
4 anything because he didn't want to contaminate the
5 scene?

6 **A** Right.

7 **Q** And I'm sure that when you got all the evidence out
8 of the truck, you make sure that you went through the
9 proper safeguarding procedures so that nothing was
10 contaminated, correct?

11 **A** In reference to I packaged the evidence.

12 **Q** You packaged the evidence. But when you got it out,
13 you made sure that you just didn't grab it with your
14 bare hands --

15 **A** Oh, no.

16 **Q** -- and pick it up?

17 **A** Yeah. I used gloves.

18 **Q** Sure. So, I mean, you used it to make sure the
19 evidence was maintained so that if Investigator
20 Thomas ever wanted to, he could have tested the
21 evidence?

22 **A** Yes.

23 **Q** Okay. No further questions, at this time.

24 **THE COURT:** Redirect.

25 **MS. CAMPBELL:** Just a couple of questions.

REDIRECT EXAMINATION

BY MS. CAMPBELL

Q We've gone through -- in order to leave -- what's the best way for you to get DNA evidence? Through what body?

A Oh, from blood, would be the best.

Q Was there any blood at this crime scene?

A No.

Q And can you date how long DNA or a fingerprint has been somewhere?

A Oh, I can't.

Q So, say, if this was found underneath the defendant, if it had his DNA on it, would it be probative as to how long it had been there or whether or not he'd worn it during a robbery or whether or not --

MR. MAY: Objection, Your Honor.

Q Or anything?

THE COURT: Overruled. Go ahead. Ask your question.

A Not at all.

Q And in this case your decision not to collect DNA evidence, was that appropriate?

A Yes.

Q He also asked you about the gun, the bullets and things of that nature which you tried to explain.

1 Explain to this jury why it's hard to get
2 fingerprints off of a gun?

3 A The gun, the slide. For instance, you go to pull
4 back on that slide, when you go to pull back, it's
5 spring loaded, I guess would be an easy term to put
6 it. There's a lot of tension there. When you pull
7 back, you're just going to slide your hand back with
8 it. Just like when you turn a doorknob, you're going
9 to slide your hand. The only print you're going to
10 leave is a smear going straight across it.

11 That magazine, well, that's another moving part.
12 It's going to rub inside another piece of a gun. A
13 fingerprint is that fragile. It's nothing but water
14 and oil. Loading it, you're pushing pressure onto
15 it. You're sliding your thumb right across that
16 bullet to get it in there.

17 So you touch the bullet and leave it there,
18 sure, you'll get a fingerprint all day long. But
19 when you sit and manipulate those pieces on the gun,
20 especially the slide in this instance, you're going
21 to smear that print. Your fingers aren't going to
22 stay in one place.

23 Q And the fact -- he asked you about that it's
24 important to gather evidence, especially such as this
25 gun and the money that were found within minutes

1 underneath the defendant?

2 **A** Yes.

3 **Q** And he talked about DNA and fingerprint evidence. Is
4 the fact the defendant is sitting on the money from
5 the robbery, the mask and the gun within seconds
6 having been stopped by police hiding in the
7 floorboard --

8 **MR. MAY:** Objection, Your Honor. She's
9 testifying.

10 **THE COURT:** Overruled. Go ahead.

11 **Q** Is that pretty good evidence?

12 **A** Yes.

13 **MS. CAMPBELL:** I don't have anything further,
14 Your Honor.

15 **MR. MAY:** Briefly.

16 **THE COURT:** Recross.

17 **MR. MAY:** Yes, sir. May it please the Court,
18 Your Honor.

19 RECROSS EXAMINATION

20 **BY MR. MAY**

21 **Q** Now, when you grab the gun, one hand is on top and
22 one hand is holding it, correct?

23 **A** Yes, sir.

24 **Q** So the hard one to get fingerprints from is the one
25 that's racking it is what you just said?

1 **A** Yes, sir.

2 **Q** But you have another five fingers that are holding
3 the actual weapon?

4 **A** And if you are familiar with that weapon, sir, when
5 you're trying to rack that gun, there's quite a bit
6 of pressure on that other hand holding it. If not,
7 you can injure yourself. But when you go to pull
8 that weapon, all you're doing is flattening and
9 distorting those prints pretty good.

10 **Q** Yes, sir.

11 **A** And again, with my experience and our experience of
12 processing these guns, that's what we're finding.

13 **Q** Yes, sir. Now, fingerprints aren't new?

14 **A** No.

15 **Q** They have been around since the 1800's?

16 **A** They have been.

17 **Q** I mean, Mark Twain even wrote a book, *Puddin' Head*
18 *Wilson* --

19 **A** Right.

20 **Q** -- where the main thing is somebody in the
21 courtroom --

22 **MS. CAMPBELL:** Objection, Your Honor, to him
23 talking about a book.

24 **THE COURT:** I understand. Overruled. Go ahead.
25 It's cross examination.

1 Q *Puddin' Head Wilson*, 1886 I believe is when it's
2 published, it dealt with courtroom drama and
3 fingerprints. All right. Now, you said it's hard to
4 get fingerprints from a gun, but it's impossible when
5 you don't try, isn't it?

6 A Yes.

7 Q Now, Ms. Campbell just said, started couching it as
8 it was your decision -- she said: Was it your
9 decision not to try to get DNA? You just told us it
10 wasn't your decision. You said it was completely
11 Investigator Thomas's decision.

12 A She was talking about the scene. It was secured
13 then. No DNA was taken. I didn't try to look for
14 any DNA at the scene at all. All that was packaged
15 for the 8th of June when we did the search warrant.

16 Q The search warrant?

17 A It was then collected. And then, the decision would
18 then be made then.

19 Q The decision was with Investigator Thomas?

20 A She was talking about the scene, sir, we did not make
21 a decision for DNA.

22 Q And everything was in a position and stored in a
23 manner so DNA could get taken had Investigator Thomas
24 wanted to?

25 A Everything was stored properly, sir. Yes.

1 Q Thank you.

2 THE COURT: All right, sir. You may come down.

3 Thank you very much. May the witness be excused?

4 MR. MAY: Without objection.

5 THE COURT: Without objection. All right,
6 ladies and gentlemen. Let's take a short afternoon
7 break. Go to your jury room. Don't discuss the case
8 among yourselves while you're in the jury room.
9 We'll call you in just a few minutes. Just have a
10 cup of coffee or a cold drink, refresh yourself. And
11 we'll be ready to go in a few minutes.

12 (Jury out at 3:00 p.m.)

13 THE COURT: Ms. Campbell, will your next witness
14 be --

15 MS. CAMPBELL: Ms. Glover.

16 THE COURT: Hmm?

17 MS. CAMPBELL: Ms. Glover.

18 THE COURT: Oh, okay. I thought it was
19 Mr. Thomas.

20 MS. CAMPBELL: No, sir. But we do have to put
21 one thing on the record as far as Mr. Thomas's coming
22 up. As far as this defendant, he was taken into
23 custody, Your Honor. He was transported to police
24 headquarters. And at that point Mr. Thomas -- he was
25 placed in a room. Mr. Thomas approached him and told

1 him he was under arrest for armed robbery, at which
2 point the defendant replied that he didn't want to
3 talk to anybody without a lawyer present, at which
4 point he exited.

5 We would stop any kind of -- we aren't going to
6 go into that he requested a lawyer. We're just going
7 to stop and say he informed him he was under arrest
8 for armed robbery and stop right there. And so it
9 may be abrupt, and I wanted to just explain why and I
10 want to make sure we don't violate anything, just for
11 the record.

12 **MR. MAY:** The defense has no problem with that.

13 **THE COURT:** All right. We'll stand at ease for
14 ten minutes.

15 (Whereupon, a break is taken)

16 **THE COURT:** Is the State ready for the jury?

17 **MR. MAY:** The defense has one issue we'd like to
18 take up about the next witness.

19 **THE COURT:** Can you handle it, Ms. Simpson?

20 **MS. SIMPSON:** I would prefer that we wait on Ms.
21 Campbell. As a matter of fact, I will go find her.

22 **THE COURT:** No, no. No, no. You sit down.
23 What's the issue?

24 **MR. MAY:** Your Honor, the State intends to
25 introduce employees from the Alvin S. Glenn Detention

1 Center --

2 **THE COURT:** Yeah.

3 **MR. MAY:** -- to talk about the clothing as well
4 as the pictures that were taken. The defense
5 stipulates that the clothing was what the defendant
6 was wearing, as well as the picture is a fair and
7 accurate representation of both he and the
8 co-defendant at the day. Therefore, we don't have to
9 get into any testimony from anybody from Alvin S.
10 Glenn.

11 **THE COURT:** All right. Now I know what it is.

12 **MS. CAMPBELL:** Sorry, judge.

13 **THE COURT:** All right. Ms. Campbell, the
14 defense says that they stipulate that the clothing
15 which is in evidence was worn by the defendant on the
16 day of his arrest and that the pictures that are in
17 evidence are of the defendant as of the day of his
18 arrest. They stipulate that.

19 **MS. CAMPBELL:** I think we have the right to
20 prove our case even if they choose to stipulate. I
21 don't think we can be forced to stipulate.

22 **THE COURT:** I'm not arguing that. I'm just
23 telling you that they stipulate.

24 **MS. CAMPBELL:** It won't take five minutes for us
25 to put up our witness to talk about it.

1 **THE COURT:** Do you want the stipulation or don't
2 you?

3 **MS. CAMPBELL:** No, sir.

4 **THE COURT:** They don't agree.

5 **MR. MAY:** Yes, sir. Then we would object to the
6 witness coming forward as it is overly prejudicial,
7 that they are coming from Alvin S. Glenn saying that
8 these are the clothing in evidence as well as that
9 these are what are going to be in effect mugshots of
10 the defendant and co-defendant, Your Honor. Your
11 Honor, that prejudicial effect will be given towards
12 the defendant. And I believe that that is overly
13 prejudicial where there is no reason, and they don't
14 need it for their trial whatsoever.

15 **THE COURT:** How about that?

16 **MS. CAMPBELL:** Your Honor, we specifically have
17 told the witness not to mention that we just
18 subpoenaed these clothes the last few weeks in
19 preparation for trial. If she would just testify to
20 the fact that these were the clothes he was wearing
21 at the time he was booked in. There is no dispute in
22 this case he was arrested for armed robbery. He was
23 subsequently indicted for it. That he would be
24 booked into the jail will come out with testimony
25 from Investigator Thomas, that that is testimony in

1 every criminal case when person has been charged.

2 **THE COURT:** Well, we seldom have jail personnel
3 that need to come testify.

4 **MR. MAY:** Yes, sir. I believe that Investigator
5 Thomas can get both the clothing as well as the
6 pictures without ever referring to or having any
7 reference to Alvin S. Glenn Detention Center. The
8 word "detention center" I believe is overly
9 prejudicial.

10 **MS. CAMPBELL:** And I would say that if we are
11 trying to reference the fact that he's been in jail
12 since these charges, that would be prejudicial
13 perhaps, Your Honor. But the fact that he was booked
14 in and this is what he was wearing at the time from
15 an independent witness --

16 **THE COURT:** She saw it?

17 **MS. CAMPBELL:** She is the custodian of record
18 and can testify that that was what he was wearing and
19 that was turned over to us.

20 **THE COURT:** She didn't see him?

21 **MS. CAMPBELL:** Did not see him.

22 **THE COURT:** Well, then how about the pictures?

23 **MS. CAMPBELL:** She will also testify that those
24 were the photographs that were taken as he was booked
25 in.

1 **THE COURT:** So they're mugshots?

2 **MR. MAY:** Yes, sir.

3 **MS. CAMPBELL:** Yes, sir. I mean, but it's not a
4 mugshot from a prior arrest which would be
5 prejudicial or a subsequent arrest. It's the mugshot
6 from that day on the 24th.

7 **THE COURT:** I still don't see the purpose in
8 introducing these -- bringing these witnesses if the
9 material that they will testify about is stipulated
10 in evidence other than taking up the Court's time.

11 **MS. CAMPBELL:** I am not trying to take up the
12 Court's time, Your Honor. I am just trying to bring
13 in an independent witness to show what they were
14 wearing.

15 **THE COURT:** They agree.

16 **MS. CAMPBELL:** Okay, Judge. We'll stipulate.

17 **THE COURT:** Stipulate. That's fine.

18 **MR. MAY:** Thank you.

19 **MS. CAMPBELL:** What's the stipulation? I want
20 to have it written out.

21 **MR. MAY:** The stipulation is that --

22 **THE COURT:** It's being written down.

23 **MR. MAY:** -- that the clothes that are in
24 evidence, the striped shirt and grayish/greenish
25 pants were what the defendant was wearing the day he

1 was arrested and that --

2 **MS. CAMPBELL:** At the time of the arrest.

3 **MR. MAY:** At the time of the arrest and that
4 those pictures are a fair and accurate representation
5 of the defendant and the co-defendant at the time of
6 arrest as well.

7 **MS. CAMPBELL:** But this would be subsequent to
8 the arrest. This would be that evening. Because
9 there has been no testimony that we photographed when
10 they were basically taken into custody.

11 **THE COURT:** I will grant your motion. You can
12 use them in closing. They're evidence. They'll take
13 them to the jury room.

14 **MS. CAMPBELL:** The only thing I'm asking about
15 is the wording of the stipulation.

16 **THE COURT:** Do you want her to read it back?

17 **MS. CAMPBELL:** Yes, sir.

18 (Whereupon, the court reporter read back the
19 stipulation)

20 **MS. CAMPBELL:** Or were taken subsequent to
21 arrest is the only thing I would say.

22 **THE COURT:** All right.

23 **MS. CAMPBELL:** On that day.

24 **THE COURT:** Make that a part of the stipulation.
25 I don't think they disagree with it.

1 **MS. CAMPBELL:** Okay. Thank you.

2 **THE COURT:** You ready for Mr. Thomas? Is
3 Mr. Thomas the next witness?

4 **MS. CAMPBELL:** Yes, sir.

5 **THE COURT:** Bring the jury, please. I'll
6 announce the stipulation to the jury.

7 **MS. CAMPBELL:** Thank you.

8 (Jury in at 3:40 p.m.)

9 **THE BAILIFF:** All the jury is present, Your
10 Honor.

11 **THE COURT:** All right. Thank you very much.
12 Ladies and gentlemen, while you were out, the
13 parties; that is, the State and the defense, agreed
14 to what is known as a stipulation. Stipulations are
15 basically an agreement as to the evidence that comes
16 in, that may come in during the course of a case.

17 The parties have stipulated that the striped
18 shirt and the light green pants are the clothing that
19 was being worn by the defendant on the day he was
20 arrested and that the photographs which you have been
21 shown are accurate depictions of the defendant at the
22 time he was arrested and of the co-defendant at the
23 time he was arrested.

24 So those facts are in evidence and they are
25 facts that can be considered by you in making your

1 deliberations on the guilt or innocence of the
2 defendant. All right, Solicitor. Call your next
3 witness.

4 **MS. CAMPBELL:** The State calls Investigator
5 Thomas.

6 ARTHUR L. THOMAS, after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Thank you. Have a seat in the
9 witness stand, please. And give the court reporter
10 your name.

11 **THE WITNESS:** Investigator Arthur L. Thomas.

12 DIRECT EXAMINATION

13 **BY MS. CAMPBELL**

14 **Q** Investigator Thomas, where are you employed?

15 **A** With the City of Columbia Police Department.

16 **Q** And how long have you been working at the Columbia
17 Police Department, sir?

18 **A** For 20 years.

19 **Q** As an investigator with the City, tell this jury a
20 little bit about what your job entails?

21 **A** I work for the homicide and violent crimes
22 investigative section. We work in conjunction with
23 other investigative areas, but we primarily do
24 homicide, robbery, assault and battery with intent to
25 kill, those type of cases.

1 Q So in some cases are you one of the people that
2 actually responds to a crime scene when a crime has
3 been committed?

4 A That is correct.

5 Q And do you also do follow-up investigations, such as
6 taking of statements, running out other leads, things
7 of that nature?

8 A That is correct.

9 Q I want to turn your attention back to May 24th of
10 2009. Did you respond to the Church's Fried Chicken
11 on Taylor Street?

12 A I did.

13 Q And that's at the corner of what streets?

14 A That's at the intersection where it splits to Forest,
15 Taylor, Millwood and Two Notch. On each side of the
16 street the name changes.

17 Q And I want to show you what's been marked as State's
18 Exhibit No. 22. Is this an aerial view of the
19 intersection you've just described?

20 A Yes, it is.

21 MS. CAMPBELL: Your Honor, at this time we'd
22 offer State's Exhibit No. 22 into evidence.

23 MR. MAY: Without objection.

24 THE COURT: Without objection.

25

1 (WHEREUPON, State's Exhibit No. 22 is admitted
2 into evidence.)

3 Q And without getting up, basically this A, this red
4 mark here, does that basically show the location of
5 the Church's Fried Chicken?

6 A It does.

7 Q And you also mentioned there's an intersection there.
8 And these bright lines, do those line up actually
9 with those roads?

10 A That's correct. Yes.

11 Q And if you're coming from downtown going out Taylor
12 Street towards this direction, where does Taylor
13 Street actually turn into another street?

14 A Right at the crossing of Taylor and Millwood. It
15 will turn into Forest Drive.

16 Q And so at this point it's Forest Drive?

17 A That is correct.

18 Q And this is the Church's that's located right here,
19 kind of on this corner sitting back a little?

20 A That is correct.

21 Q And if you're coming up from Millwood, up Millwood
22 going outbound, northbound, as it hits the
23 intersection of Taylor and Forest Drive where the
24 Church's is, does it then turn into a different road?

25 A Yes. It turns into Two Notch Road right at that

1 intersection.

2 Q And if you were to proceed from the Church's and to
3 Chestnut Street, how would you travel from the
4 Church's Fried Chicken to get to Chestnut?

5 A You would travel, you proceed northbound crossing
6 over that intersection where it changes, and it then
7 would change into Two Notch.

8 Q And Chestnut would be up here?

9 A And Chestnut would be approximately three blocks up.

10 Q And are you familiar with the intersection of Laurel
11 and Two Notch Road?

12 A Yes.

13 Q And approximately how many blocks is that from the
14 Church's Fried Chicken?

15 A It's approximately two blocks away.

16 Q On May the 24th, when you got to the Church's Fried
17 Chicken that evening, were there other officers
18 already there?

19 A Yes. Upon receiving the call about the robbery, I
20 was advised that there were already officers on the
21 scene and they had arrived in a very short period of
22 time.

23 Q Once you got the call about the armed robbery
24 occurring, did you proceed to the Church's Fried
25 Chicken?

1 **A** I did so.

2 **Q** And when you got there, what, if anything, did you
3 do?

4 **A** Upon arriving on the scene I spoke with the
5 responding officers that had testified earlier to try
6 to get an idea of what went on in the robbery itself.
7 Also those officers introduced me to three of the
8 victims. They were actually on scene. I was not
9 able to really speak with them indefinitely because
10 information was given about a second location where
11 they needed my presence.

12 **Q** And where was that second location where your
13 presence was needed?

14 **A** The second location was approximately three or four
15 blocks up the street at Two Notch and Chestnut. They
16 had a vehicle stopped with respect two subjects in
17 the vehicle.

18 **Q** So they had a vehicle stopped at that point?

19 **A** Correct.

20 **Q** And by the time you got -- did you then proceed to
21 the Chestnut Street address?

22 **A** I did proceed to the Chestnut location. They had
23 taken one of the victims, Arthur Haynes I think it
24 was, to the location; and he had already identified
25 both parties as a participant in the robbery.

1 Q And when you proceeded up the street and went to the
2 incident location, did you also become aware of
3 whether or not the money and the gun used in the
4 robbery, the money taken, had been recovered?

5 A Yeah. Upon arriving on the scene; again, being
6 informed that the subjects had been identified, I
7 encountered the patrolman. I encountered CSI Rose
8 who informed me that the weapon and funds were
9 observed in plain sight under the seat on the
10 passenger's side where Mr. Broadnax was actually
11 curled up hiding when officers pulled the truck over.

12 Q Did you make any arrangements for the defendant and
13 the co-defendant, Charles Green, to be transported
14 down to headquarters?

15 A I did.

16 Q And were they in fact transported to headquarters
17 that evening?

18 A They were. They were transferred separately in
19 separate units so that they could not communicate
20 with one another. And also the victim was
21 transported as well.

22 Q And actually I believe a manager from Church's
23 actually transported the victims?

24 A She agreed to do so. Everybody was too shaken to
25 drive or what have you.

1 Q At that point did you then proceed back to
2 headquarters?

3 A I did.

4 Q And first, what was the first thing you wanted to do
5 as far as witnesses?

6 A I wanted to -- I had Investigator Rice who was also
7 on call assist me with at least one, which was
8 Mr. Arthur Haynes. He was the actual eye witness
9 individual and also actually chased the defendant out
10 of the thing. I had him interview him. And I went
11 from room to room. I had everybody in different
12 rooms. I went room to room to corroborate my
13 victims' statements, my witnesses's statements with
14 the evidence we had at hand and with what I had as
15 far as suspect's vehicle and so forth. So kind of
16 just room to room listening to their statements as
17 they were writing or giving them.

18 Q And did each of the witnesses actually write out
19 themselves a statement and you saw them do that?

20 A Each witness provided a written statement that they
21 wrote themselves accounting what they could recall
22 happening. Three of the witnesses were pronouncedly
23 shaken by the incident. Mr. Haynes, Arthur Haynes
24 seems to be the most collected out of the three. He
25 was also the older of the three. And so he made for

1 a better detailed statement at that particular time.

2 Q After that did you then make contact with Christopher
3 Broadnax, the defendant?

4 A I did.

5 Q And when you made contact with him, what, if
6 anything, did you inform him of as far as his arrest
7 status?

8 A I informed him of what he was going to be charged
9 with.

10 Q And what was that, sir?

11 A Armed robbery, kidnapping.

12 Q After making contact with Mr. Broadnax, did you also
13 make contact with Mr. Green?

14 A I did.

15 Q And again, for the record, was he being kept separate
16 from Mr. Broadnax?

17 A All parties were separated.

18 Q Once you made contact with Mr. Green, what did you
19 do?

20 A Once I made contact with Mr. Green I also advised him
21 that he would be charged in this particular incident,
22 and I also advised him of his rights prior to
23 questioning him. Mr. Green waived his rights and
24 agreed to speak with me. I spoke to Mr. Green after
25 getting corroborative information from every witness

1 involved in the actual incident and speaking with the
2 officers involved.

3 When I spoke with Mr. Green about the facts of
4 the case that I had, he then gave a confessional
5 statement to his part in participating in this
6 particular robbery and gave an implicational
7 statement against Christopher Broadnax.

8 Q And you can't say what was said to you; but was his
9 statement pretty much corroborated by what the
10 witnesses had told you?

11 A The details given in Mr. Green's statement, similar
12 to what he stated on the stand on yesterday,
13 corroborated the information given by each and every
14 victim along with law enforcement as far as his part
15 and the part that he could observe.

16 Q After interviewing Mr. Green as well as the eye
17 witnesses, was there any evidence of more than one
18 person entering the Church's and robbing it that day?

19 A No. There was not.

20 Q Was Mr. Green also placed under arrest that day?

21 A Yes, he was.

22 Q And what was he charged with based on his
23 participation?

24 A Mr. Green was charged with participating accessory
25 after the fact. He drove the get-away vehicle, in

1 essence; and he was charged with such.

2 Q You had personal contact with both of the men that
3 day?

4 A I did.

5 Q I show you what's been marked as State's Exhibit No.
6 27. Is that how Mr. Green appeared that day?

7 A That's exactly how he appeared and that's the
8 clothing he had on that day.

9 Q And that included a what colored shirt?

10 A A red shirt.

11 Q And did it have any stripes on it?

12 A No.

13 Q I show you what's been marked as State's Exhibit
14 No. 1.

15 A Yes.

16 Q And does that accurately reflect what Mr. Broadnax
17 looked like?

18 A It does.

19 Q Both when you made contact with him out at the place
20 where the van, car, automobile -- excuse me -- truck
21 was stopped, as well as when you made contact with
22 him downtown?

23 A Yes, it does.

24 Q I show you what's been marked as State's Exhibits I
25 believe 25 and 26. Do you recognize this?

1 **A** Yeah. Those are articles of clothing that
2 Mr. Christopher Broadnax was wearing that day.

3 **Q** And were those significant in corroborating your
4 witnesses's account of who robbed him?

5 **A** Yes, they were. The statements given by the victims
6 all mentioned a striped shirt. It varied in color,
7 but it did corroborate what Mr. Broadnax had on at
8 the time he was stopped.

9 **Q** Was there any physical characteristic about the
10 defendant that was significant to you in your
11 investigation?

12 **A** It was overtly obvious that he did in fact have the
13 lazy eye or cock eye that was mentioned by at least
14 two of the eye witnesses. Or victims at the time.
15 Excuse me.

16 **Q** Approximately ten days or so or sometime at the first
17 part of June, were you also there when a search
18 warrant was executed --

19 **A** I was.

20 **Q** -- at the truck? And what had happened to the truck
21 the night of the 24th?

22 **A** I had the truck towed to the police station in the
23 bay area where we do search warrants on vehicles.
24 And we store those vehicles in a safe area.

25 **Q** And were you aware that prior to that vehicle being

1 towed that certain items as shown in State's Exhibit
2 No. 3 had been removed from the automobile for safety
3 purposes?

4 **A** Yes, I was.

5 **Q** And did that include State's Exhibits 4 and 4A?

6 **A** Yes.

7 **Q** Which would be the gun?

8 **A** That's correct.

9 **Q** And also State's Exhibit No. 5?

10 **A** Correct. But No. 5 was in a plastic grocery bag at
11 the time along with the weapon.

12 **Q** And I show you State's Exhibit No. 19. Was that the
13 type grocery bag?

14 **A** That's the grocery bag.

15 **Q** Among other items we won't go into?

16 **A** Correct.

17 **Q** And there has been some questions. At any point did
18 you request any of these items be tested in any
19 further manner?

20 **A** I did not.

21 **Q** And why is that, sir?

22 **A** In the past I've had some incidents where I've tried
23 to retrieve fingerprints from weapons, bullets and
24 things that the defense brought up earlier, and have
25 been unsuccessful. The corroborated information

1 received in this robbery and the evidence received in
2 this robbery, I deemed it not necessary to try to
3 fish for any additional DNA or fingerprints at the
4 time.

5 Q And you're familiar with DNA evidence as well as
6 fingerprint evidence?

7 A I am.

8 Q And in what proximity to your knowledge during the
9 course of your investigation were those items found
10 as far as when the defendant was removed from the
11 truck?

12 A The information I had through my investigation is
13 that the defendant was crouched under the dashboard
14 between the seats over the evidence that was
15 recovered from the vehicle itself. So I deemed it
16 not necessary to do DNA or fingerprints on either of
17 those articles.

18 Q And that's reflected, the area where those were
19 recovered, in State's Exhibit No. 3?

20 A That is reflected in that particular photo.

21 Q As far as the 911 tape, have you had an opportunity
22 to review that tape?

23 A Yes. I heard the 911 tape.

24 Q And in the time period approximately from the moment
25 that Ms. Tucker initiated, was first reporting, to

1 the time period when you can hear sirens, do you know
2 approximately how long that was?

3 A It was approximately two, almost three minutes, at
4 tops. It was very, very quick response time when law
5 enforcement got there.

6 Q Are you familiar with the red light at the corner of
7 Taylor, Forest, what all those streets are?

8 A I actually am. I am familiar with that light.

9 Q And how would you characterize that light?

10 A If you go to that particular intersection, it is a
11 longer light than you normally take in some of the
12 other intersections. It seems to be a little longer
13 than the average light. So I was not surprised to
14 know that the vehicle had stopped at that light and
15 sat there a little while before it changed. And you
16 can go there yourself, and it will take a minute or
17 better prior to changing.

18 Q And you have experience investigating armed
19 robberies?

20 A Yes, I do.

21 Q And you mentioned that this was a very quick response
22 time?

23 A Extremely quick response time for a robbery.

24 Q And if a person in your experience is leaving the
25 scene of a crime and they weren't --

1 **MR. MAY:** Objection, Your Honor. It calls for
2 speculation. He's not been qualified as an expert.

3 **THE COURT:** Overruled. I think it's within his
4 common knowledge.

5 **Q** In your experience, a person leaving a crime scene,
6 do they want to draw attention to themselves by
7 running red lights, screeching off, things of that
8 nature?

9 **A** Generally, to allude law enforcement and have a
10 successful escape, if you drove the speed limit,
11 obeyed all traffic stop signs, lights and so forth,
12 you would have some success in law enforcement
13 passing you and actually alluding law enforcement.
14 So a lot of defendants will walk off from the crime
15 scene, not run, will not speed or peel out to draw
16 attention to themselves while leaving the scene. And
17 in this case that occurred.

18 **Q** And in your investigation, too, is there any evidence
19 that Mr. Green or the defendant knew that they had
20 been spotted in the truck?

21 **A** Yes.

22 **Q** And what was that evidence?

23 **A** In his statement he advised that he'd seen law
24 enforcement turn around on the truck.

25 **Q** But that was after he'd gone through the intersection

1 we're referring to?

2 A Correct.

3 Q Prior to that is there any evidence?

4 A No.

5 Q As far as the physical descriptions of the two people
6 located in the truck in this case, was there a
7 significant difference in their appearance?

8 A A drastic difference in the appearance of both
9 parties. Mr. Green actually looked better on
10 yesterday than he did at the time of the incident.
11 With his hair bushier, he looked much older. And of
12 course Mr. Broadnax was much younger. So it's a
13 drastic difference in their appearances.

14 Q And other than interviewing the witnesses, responding
15 to the scenes, interviewing the witnesses, telling
16 Mr. Broadnax he was under arrest, interviewing Mr.
17 Green and assisting in the search warrant, was that
18 pretty much your involvement in this case?

19 A Yes.

20 Q And is that unusual in a case where someone, a
21 perpetrator, is caught near the scene?

22 A No, it's not.

23 Q The person that you arrested for this armed robbery,
24 do you see him here in the courtroom?

25 A Yes, I do.

1 Q And can you point him out for the jury?

2 A Yes. The African-American male in the light baby
3 blue golf shirt sitting next to his attorneys.

4 Q You also had an opportunity to personally observe the
5 actual truck that was used in this case?

6 A Yes, I did.

7 Q In what condition was it in?

8 A It was a beat up, older Dodge truck. It had a number
9 of dents and pings and so forth. And that was how it
10 was described.

11 Q And are you familiar with what kind of transmission
12 it had in it?

13 A It looked like it had a gearshift type transmission,
14 manual transmission that I can recall.

15 Q That's all I have. Thank you.

16 MR. MAY: May it please the Court.

17 THE COURT: Cross examination.

18 MR. MAY: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. MAY

21 Q Good afternoon.

22 A Hello. How you doing?

23 Q Now, just let's start clearing up some stuff that you
24 just testified to.

25 A Certainly.

1 Q All right. Now, we've worked together quite a few
2 times?

3 A Yes, we have.

4 Q And you've said you haven't had that best of success
5 getting fingerprints from guns. But you've had
6 success getting fingerprints from guns?

7 A I haven't had success. I've heard of success getting
8 fingerprints from guns.

9 Q Cases that we've been together on there has been.
10 So. All right. Now, let's start going with other
11 things. Now, you just testified that it was three to
12 four blocks away from the Church's when Mr. Green's
13 truck was stopped?

14 A Approximately.

15 Q All right. Now, let's take a look on here. I always
16 heard a city block you should be able to run in about
17 a minute. This is where, I'm correct, where the
18 Church's is?

19 A Right.

20 Q And Chestnut is down here about seven blocks away?

21 A Okay.

22 Q I mean, it's three to four blocks, maybe seven
23 blocks?

24 A Again, I use the terminology approximately.

25 Q Okay. Approximately.

- 1 **A** Mm-hmm (affirmative).
- 2 **Q** All right. Now, on the -- you've had a chance to
3 observe the dashboard camera?
- 4 **A** Yes, I have.
- 5 **Q** You have. And now, the officers on the dashboard cam
6 to your knowledge starts somewhere over here,
7 correct?
- 8 **A** The dash cam started over off of Sligh Avenue. The
9 officer was being picked up from the shop.
- 10 **Q** Correct. And so they went a pretty good distance in
11 a short amount of time. They responded in a quick
12 amount of time?
- 13 **A** Yes, they did.
- 14 **Q** Now, it is the State's theory of the case that they
15 traveled all that distance. And this is after a 911
16 call. So you still have the lag time with the 911
17 call, correct?
- 18 **A** Correct.
- 19 **Q** Because the 911 call is not instantaneous?
- 20 **A** Okay.
- 21 **Q** So you have the lag time for them to travel all that
22 distance and they pass a truck less than two blocks
23 away?
- 24 **A** Correct.
- 25 **Q** So, I mean, the times just don't really match up?

1 **A** Well, as Mr. Green testified to on yesterday, the
2 truck was not the most functional truck. You had to
3 literally roll down the hill to get it to start.
4 That's not the best get-away vehicle. Again, that
5 light on Taylor Street is long. You can go by there
6 and test it for yourself. And apparently he was not
7 driving fast. He drove at the normal pace and speed.

8 **Q** I mean, from looking at the closed incident report --
9 have you had a chance to look at it?

10 **A** No, I have not.

11 **Q** Well, what I'm passing to you is a closed incident
12 report.

13 **A** Okay.

14 **Q** From the time of the call to the time of the
15 response, about five minutes?

16 **A** Okay.

17 **Q** Five minutes to go two blocks, even in the most
18 rickety truck, even if -- I think you and I could
19 probably push the truck two blocks in five minutes?

20 **A** Okay.

21 **Q** Now, let's talk about more. As the lead investigator
22 on this case, this is your case, correct?

23 **A** Yes, it is.

24 **Q** You're the quarterback?

25 **A** I'm the man.

1 Q You're the head coach?

2 A That's correct.

3 Q You decide what happens?

4 A That's right.

5 Q You decide what's tested, what's not tested?

6 A I do.

7 Q Now, we just heard Investigator Rose from the crime
8 scene unit testify he was looking for you, it was up
9 to you to determine whether or not DNA would be
10 tested?

11 A He is correct.

12 Q All right. Now, May 24th in Columbia, South
13 Carolina, hot day. May 24th with somebody wearing a
14 mask over their face -- well, that's the hat -- the
15 mask over their face, spitting in it, sweating in it,
16 having hair, whiskers, skin come off in it --

17 A Correct.

18 Q -- that is a DNA magnet; a DNA rag, if you will?

19 A Okay.

20 Q That you could use. And it could have been -- I
21 mean, Investigator Rose said it was properly
22 preserved, correct?

23 A It was.

24 Q And you chose not to have it tested?

25 A I did.

1 Q You said that: Hey, good enough for me. Hey, he was
2 in the truck. Hey, if you're in the truck, that's
3 good enough for me?

4 A No. The collaborative information that I received
5 and the evidence I received in this case, I deemed it
6 not necessary to go and do fingerprints any further
7 than what I had already or DNA. The individual was
8 caught hovering over the evidence, covering it, all
9 right, and had to be drawn out of the vehicle. So I
10 deemed it not necessary to push any further.

11 Q Well, and you'd agree with me that DNA is objective.
12 It's not based on somebody's opinion, somebody's
13 perception. If somebody is looking at a gun in their
14 face --

15 A Correct.

16 Q -- it's objective?

17 A Correct. I agree with you.

18 Q And DNA has exonerated a lot of people who have gone
19 to jail for crimes they didn't commit on the word of
20 people who said: Well, I saw him do it?

21 A It has.

22 Q It has?

23 A Mm-hmm (affirmative).

24 Q So DNA, the great exonerator, was ignored in this
25 case. You said: I've got it good enough?

1 **A** Again, I chose not to process the mask or any other
2 article for fingerprints --

3 **Q** All right. Your Honor, may I approach to write?

4 **THE COURT:** Yes, sir.

5 **Q** All right. So the mask, let's just look at the DNA
6 that we could have gotten had we wanted to. Sweat.
7 Is that fair?

8 **A** Possibly.

9 **Q** Saliva. I can't spell it. Why don't we say spit?

10 **A** Okay.

11 **Q** Hair. Skin.

12 **A** Okay.

13 **Q** All right.

14 **A** Yes.

15 **Q** The hat. We have a skull cap here. And one of the
16 witnesses described a skull cap?

17 **A** Okay.

18 **Q** Skull cap, very similar. You could have gotten
19 sweat, hair, let's say dandruff because that's dead
20 skin cells.

21 **A** Okay.

22 **Q** Hair. Oh, I already said hair. Or skin cells, live
23 skin cells. What else could we have gotten DNA from
24 that we chose not to?

25 **A** Well, you seem to have covered it well.

1 Q Well, I mean, we could have tested the gun. We had
2 the latent fingerprints, the latent DNA because that
3 is of course also oil based?

4 A Correct.

5 Q Correct?

6 A Mm-hmm (affirmative).

7 Q And as Investigator Rose testified and as all the
8 witnesses said, if somebody was holding the gun in
9 the Church's, never put it down, was holding the gun
10 showing it all around, because that's what they
11 primarily remember is that guy holding that gun,
12 right?

13 A That's correct.

14 Q That gun. And you just touch it; I mean, I can see
15 my fingerprints, man. But y'all chose again not to
16 look for DNA or fingerprints. You chose not to look
17 for the objective evidence that could give a jury the
18 ability to know. You said we went on conjecture and
19 eye witnesses which are known to be unreliable?

20 A Okay. As lead investigator, the evidence that's been
21 presented this week I believed was definitely enough
22 evidence for probable cause for arrest and enough
23 evidence for a prudent jury --

24 MR. MAY: Objection, Your Honor. I believe that
25 goes beyond his --

1 **THE COURT:** You don't need to editorialize.
2 Just answer the question, please.

3 **THE WITNESS:** I'm sorry, Your Honor.

4 **MR. MAY:** I ask that it be stricken from the
5 record.

6 **THE COURT:** Strike that from the record.

7 **Q** So you have a guy who is arrested in a car. And
8 because stuff is under the seat where admittedly he
9 is crouched in front of --

10 **A** That's correct.

11 **Q** -- that's good enough? There is no reason to test,
12 no reason to be sure; just, hey, I think it's him --

13 **A** No. I think there has been --

14 **Q** -- it's good enough for me?

15 **A** I think there has been evidence adduced here that
16 goes far beyond that, counsel.

17 **Q** Now, you said the pictures of the two men or the
18 appearance of the two men were drastically different?

19 **A** Correct.

20 **Q** Both middle-aged black men. Yes?

21 **A** Correct.

22 **Q** Both taller than average height?

23 **A** I think five-ten, maybe six-two.

24 **Q** Five-eleven versus six-two?

25 **A** Correct.

1 Q Okay. One of the 911 tapes said that the guy had a
2 red shirt on?

3 A Correct.

4 Q Okay. Now, another person said the person had a
5 skull cap on them and a mask. So the bushy hair is
6 hidden by a skull cap? Yes? Could be?

7 A It's possible.

8 Q So all of a sudden you have three inches difference.
9 And you have the same person who observed the person
10 leaving the Church's Fried Chicken on a ruler on the
11 side of the door said the person is five-five. Now,
12 we have between Mr. Broadnax and Mr. Green a lot
13 closer in height difference than Mr. Broadnax and the
14 man who was identified leaving?

15 A Okay.

16 Q So --

17 A In my experience, dealing with a number of victims,
18 several of you could see an occurrence and each of
19 you will give me details that will differ in that
20 same occurrence. And this happened in this
21 particular case. The young lady that gave the
22 five-five needed assistance by EMS. So she was more
23 traumatically traumatized by this incident than
24 Mr. Arthur Haynes who gave chase. So it's not
25 uncommon to have the variances of height, weight

1 given by witnesses or victims.

2 Q Now, when you originally went and talked to Mr. Green
3 you said that you initially charged him with
4 something?

5 A Say it again?

6 Q When you first made contact with Mr. Green at the
7 police station you said you charged him with
8 something.

9 A Okay.

10 Q Did you charge him before or after he gave a
11 statement?

12 A He was charged with what he gave after the statement.

13 Q So he was charged after the statement?

14 A Right.

15 Q Now, just to clear it up just so there's no
16 confusion.

17 A Certainly.

18 Q Now, you said when you were referring, using he, he,
19 he when responding to Ms. Campbell. In this incident
20 I just want to make sure that this is clear. He gave
21 a statement that he saw blue lights behind him. That
22 was Charles Green giving that statement, correct?

23 A Charles Green during his verbal conversation with me
24 gave more details than he gave in his written
25 conversation and in his verbal conversation, yes.

1 Q Okay. But it was -- that's the he that you're
2 referring to?

3 A Yeah. Mr. Green, the get-away driver.

4 Q Now, in your experience --

5 A Mm-hmm (affirmative).

6 Q -- do you normally just not tape record or videotape
7 people beforehand? Wouldn't that be up to the jury
8 as well as everybody involved a more accurate --

9 MS. CAMPBELL: Objection, Your Honor. That's
10 not admissible.

11 THE COURT: Go ahead. It's cross examination.

12 Q Let me rephrase.

13 A Go ahead.

14 Q Let me start again.

15 A Certainly.

16 Q You didn't videotape any of the witnesses?

17 A I did not.

18 Q You didn't tape record any of the witnesses?

19 A I did not.

20 Q You didn't videotape or record Charles Green, the
21 co-defendant?

22 A I did not.

23 Q You didn't do that. And you didn't do that so that
24 way you could tailor the questions?

25 A I chose not to do any of that. I gave them

1 opportunities to write their statements in their own
2 handwritings and give it as such.

3 Q All right. Beg the Court's indulgence for one
4 second. Just briefly. Again, the choice to not get
5 objective, verifiable evidence was your choice and
6 your choice only? It was a unilateral decision by
7 you to not have objective evidence?

8 A It was my decision to build this case on the evidence
9 we produced today, yes.

10 Q Could you have gotten DNA? Could we still get DNA
11 from the evidence so that way we could know who did
12 this?

13 A Well, we could do a number of things, counsel, yes.

14 Q But the fact of the matter is that you made the
15 unilateral decision that it was good enough for you;
16 and, therefore, no reason to test anything?

17 A I made the decision to produce the evidence that was
18 produced in this courtroom this week.

19 Q And it was also your decision to produce evidence or
20 to not produce evidence that was not produced. In
21 other words, it was your decision not to seek the DNA
22 or fingerprints that could have been vital to this
23 case?

24 A Again, counselor, I made the decision to produce the
25 evidence that was produced to the jury this week.

1 **MR. MAY:** Thank you, Your Honor. No further
2 questions at this time.

3 **THE COURT:** Redirect.

4 REDIRECT EXAMINATION

5 **BY MS. CAMPBELL**

6 **Q** I just want to ask you about the time period.

7 **A** Yes.

8 **Q** And he tried to make it into five minutes.

9 **A** Right.

10 **Q** As far as the time period in this case -- and it's on
11 the actual 911 tape that's in evidence -- from the
12 point where Gracious Tucker who was the first one to
13 report, right?

14 **A** Correct.

15 **Q** Until the time on the tape when officers were at the
16 scene, including Officer Brayboy, is less than how
17 many minutes?

18 **A** Less than three minutes. About two minutes and forty
19 something seconds or so.

20 **Q** It may have been -- in fairness, it may have been
21 longer before the actual truck was stopped?

22 **A** Correct.

23 **Q** And on that video he has referred to -- and the time
24 stamps are on that, too, right? The video?

25 **A** The video, yes.

1 Q You can actually see the truck go by as the officers
2 are headed the other direction?

3 A Yes, you can.

4 Q And that time period is on there, too?

5 A Yes, it is.

6 Q He referred to the fact that some witness referred to
7 the defendant wearing a skull cap. Is there any
8 evidence in any of your investigation of anyone
9 wearing a skull cap?

10 A I can't recall the statement of a skull cap. I
11 believe there was a baseball cap maybe mentioned.

12 Q And I believe only one witness said he could have had
13 a hat?

14 A Only one witness said he could have had a hat.
15 That's not uncommon.

16 Q He didn't say anything about a skull cap?

17 A No, he did not.

18 Q He also asked you about Ms. Tucker on the 911 tape
19 referring to the shirt that the person was wearing?

20 A Correct.

21 Q And, in fact, she mentions the word red or burgundy
22 but she says she's not sure; it was striped?

23 A That's correct.

24 Q DNA evidence, why is it significant as far as -- can
25 you tell -- say, if I pick up this gun and spit on

1 it, can you tell whether I did that today, yesterday,
2 last week or years ago?

3 **A** No, I could not.

4 **Q** And as with fingerprints, can you tell how long?

5 **A** No, you cannot.

6 **Q** And if I even come up and touch this gun, am I going
7 to necessarily leave DNA evidence?

8 **A** Not necessarily.

9 **Q** Does it depend?

10 **A** It does depend.

11 **Q** So just because an item can be tested doesn't mean
12 there's going to be any DNA that can be tested?

13 **A** No, it does not.

14 **Q** And even if these items come back with the
15 defendant's DNA on them, is that -- because of his
16 proximity to those items in the truck which is
17 undisputed?

18 **A** Exactly.

19 **Q** Does that negate its probative value in this case?

20 **A** No, it doesn't.

21 **Q** And there is no dispute that the person wearing these
22 clothes, matching this description, curled up on top
23 of these items when the police stopped them was
24 Christopher Broadnax?

25 **A** No question. That was definitely Mr. Broadnax.

1 Q He talks about objective evidence. All the evidence
2 in this case, what does it point to?

3 A Christopher Broadnax as the suspect in this robbery
4 and kidnapping.

5 Q Even if those items had been tested and, say, you
6 found my DNA on them because at some point in the
7 past I had had that gun, would that be significant as
8 to the guilt or innocence of him?

9 A No, it wouldn't.

10 Q Because you can't --

11 MR. MAY: Objection, Your Honor, actually.

12 THE COURT: What's the objection?

13 MR. MAY: Pre-trial motion. May we approach?

14 THE COURT: Yes, sir.

15 (Whereupon, a bench conference is had)

16 THE COURT: I'll allow you to put it on the
17 record.

18 MR. MAY: Thank you.

19 THE COURT: Overruled.

20 MS. CAMPBELL: Thank you.

21 THE COURT: Any recross?

22 MR. MAY: Yes, sir. Briefly. May it please the
23 Court, Your Honor.

24 THE COURT: Yes, sir.

25 RE CROSS EXAMINATION

1 **BY MR. MAY**

2 **Q** I have the search warrant here.

3 **A** Search warrant. Yes, sir.

4 **Q** You filled it out?

5 **A** That is my search warrant. If I can take a look at
6 it.

7 **Q** Right there, that pretty John Hancock is A. L.
8 Thomas?

9 **A** Yeah. That's my scribble.

10 **Q** All right. Now, in it you're asking for anything,
11 forensic evidence, including DNA. And DNA is listed
12 as something that you were searching for in the
13 search warrant?

14 **A** Okay.

15 **Q** Okay? So DNA is pertinent to the crime. And as
16 opposed to the way Ms. Campbell laid it out; DNA, if
17 DNA from somebody else with an armed robbery was on
18 there, that would make a difference in your case?
19 You would have looked at the person. You would have
20 talked to the person. So had somebody else's DNA
21 been on the gun and on the mask and in the hat and
22 somebody else's fingerprints matching that DNA had
23 been on the gun, that would have changed this
24 investigation. This investigation would not have
25 been just right here?

1 **A** Not given the corroborated facts --

2 **Q** You wouldn't have looked at it at all?

3 **A** -- that led up to Mr. Broadnax's arrest.

4 **Q** You wouldn't have looked at it at all?

5 **A** Not given the corroborative facts that led to Mr.
6 Broadnax's arrest, no. There would be no need for
7 that. There is no time stamp on that.

8 **MR. MAY:** Thank you. No further questions.

9 **THE COURT:** All right, sir. You may come down.
10 Thank you very much. Next witness.

11 **MS. CAMPBELL:** Beg the Court's indulgence.

12 (Pause)

13 **MS. CAMPBELL:** The State would rest, Your Honor.

14 **THE COURT:** All right. All right, ladies and
15 gentlemen. That concludes the evidence on behalf of
16 the State. As I indicated to you at the beginning of
17 the trial, the defense now has the opportunity to
18 present a defense but need not do so.

19 However, before we move on to that phase of the
20 trial, there are several matters of law that I need
21 to take up with the attorneys. And there's no sense
22 at 4:30, no sense in you sitting here through that.
23 And besides that, this case is going into tomorrow
24 anyway. So I'm going to dismiss you at this time and
25 ask you to return to the jury room at 9:00 in the

1 morning, at which time we'll resume the trial.

2 It's likely that the case will wrap up tomorrow,
3 but I'm not sure. I never know until I see it
4 exactly what's going to take place. So again, I
5 caution you about doing any independent research over
6 the evening hours. Please honor my instructions in
7 that regard and don't discuss the case among
8 yourselves when you return to the jury room. We'll
9 see you at 9:00 tomorrow morning. Thank you very
10 much.

11 (Jury out at 4:25 p.m.)

12 **THE COURT:** All right. At this time I wish -- I
13 want to advise the defendant of his rights to --

14 **MR. MAY:** Your Honor, first can we put some
15 stuff on the record before we do that?

16 **THE COURT:** Well, do it either way. Sure.

17 **MR. MAY:** I just want to make sure I don't
18 forget.

19 **THE COURT:** Any motions then?

20 **MR. MAY:** Yes, sir. First we'd like to make the
21 motion that we made at the bench a part of the
22 record, as the pre-trial motion of the State not to
23 use the word innocent, innocence as it confuses the
24 jury, as its burden shift on them as it is not a
25 standard in this courtroom, his innocence. It's not

1 guilty. The State in her redirect of Mr. Thomas used
2 the word innocence. I'd like to put that on the
3 record. We'd additionally --

4 **THE COURT:** What are you moving for?

5 **MR. MAY:** We'd move for a mistrial.

6 **THE COURT:** Denied.

7 **MR. MAY:** Thank you. Then additionally, Your
8 Honor, we'd like to renew all objections at the close
9 of the State's evidence, renew all objections and
10 pre-trial motions. And at this time we'd move for a
11 directed verdict.

12 **THE COURT:** The State's position.

13 **MS. CAMPBELL:** We feel like in a light most
14 favorable to the State we have reached our burden as
15 far as proving the elements of armed robbery and the
16 defendant's identity.

17 **THE COURT:** Well, it's not the Court's role to
18 weigh the evidence. There certainly has been
19 evidence presented from which a jury could determine
20 guilt of the defendant. And I must respectfully deny
21 your motion for a directed verdict at this time.

22 **MR. MAY:** Thank you, Your Honor.

23 **THE COURT:** All right.

24 **MR. MAY:** Advisement?

25 **THE COURT:** Yes.

1 **MR. MAY:** Please stand up, Chris.

2 **THE COURT:** Mr. Broadnax, at this time I am
3 going to explain to you certain of your rights. If
4 you do not understand anything I say, please let me
5 know. If you want me to explain anything in more
6 detail, please let me know. Do you understand?

7 **MR. BROADNAX:** Yes, I do.

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

19 If you decide to testify, you will be subject to
20 the same rules that govern any and all other
21 witnesses, and you may be examined and cross examined
22 on any relevant issue in the case.

23 In addition, if you have any convictions
24 involving dishonesty or false statement or for crimes
25 punishable by imprisonment for more than one year and

1 this Court determines that the probative value of
2 admitting this evidence outweighs its prejudicial
3 effect to you, the solicitor will be able to
4 introduce your record to attack your credibility.

5 If you decide to testify, this decision on your
6 part must be freely, voluntarily, intelligently made
7 with knowledge of the protections given to you by the
8 Fifth Amendment to the Constitution and the
9 consequences of your decision to testify.

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

15 It's left entirely up to you whether or not you
16 choose to testify. You may talk with your attorney,
17 your family and friends or anyone else, but the final
18 decision will be left entirely up to you. Do you
19 understand what I have explained to you?

20 **MR. BROADNAX:** Yes, I have, Your Honor.

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

23 **MR. BROADNAX:** No, sir, Your Honor.

24 **THE COURT:** Have you discussed with your lawyers
25 whether you should testify or not?

1 **MR. BROADNAX:** Not yet, but I'd like to do so at
2 this time.

3 **THE COURT:** Well, I'm going to give you the
4 evening hours to do that. You don't have to do that
5 at this point. And I will ask you in the morning
6 whether or not you choose to testify. All right. Be
7 seated.

8 Now, for the purposes of considering whether the
9 defendant should testify or should not, we need to
10 settle his record, which parts of his record may or
11 may not be used as impeachment evidence. For
12 impeachment purposes is what I meant to say. What's
13 his record?

14 **MS. CAMPBELL:** Your Honor, as far as his record,
15 and I'm just --

16 **THE COURT:** Go slow.

17 **MS. CAMPBELL:** -- going into the last ten years.

18 **THE COURT:** Go slow because I am writing it
19 down.

20 **MS. CAMPBELL:** Yes, sir. For just the last ten
21 years, what the State would seek to introduce, he was
22 convicted in 1991 of three counts of armed robbery.

23 **THE COURT:** Okay.

24 **MS. CAMPBELL:** And for purposes of that, Your
25 Honor, what is significant is he was then paroled on

1 February 27th of 1991.

2 **THE COURT:** Wait a minute. He was convicted in
3 '91 --

4 **MS. CAMPBELL:** Yes.

5 **THE COURT:** -- and paroled in '91?

6 **MS. CAMPBELL:** Excuse me. I'm sorry.
7 March 26th of 2001. I apologize.

8 **THE COURT:** 3-26-01..

9 **MS. CAMPBELL:** He was paroled the first time.

10 **THE COURT:** Paroled.

11 **MS. CAMPBELL:** Then on October 31st of 2006 his
12 parole was revoked.

13 **THE COURT:** In '06?

14 **MS. CAMPBELL:** Yes, sir. And then he served
15 that sentence, the rest of the armed robbery
16 sentence, until May the 1st of 2008.

17 **THE COURT:** That's when he was released from all
18 custody?

19 **MS. CAMPBELL:** Yes, sir. Which we would say
20 either date would put it in the last ten years.

21 **THE COURT:** The revocation or the release?

22 **MS. CAMPBELL:** The initial parole --

23 **THE COURT:** Or the parole.

24 **MS. CAMPBELL:** -- or the subsequent revocation
25 and release.

1 **THE COURT:** Does the defendant agree or disagree
2 with that?

3 **MR. MAY:** Your Honor, --

4 **THE COURT:** Just for purposes of the time limit.

5 **MR. MAY:** Your Honor, I believe the time limit
6 is satisfied under Al-amin and its --

7 **THE COURT:** Just -- we'll get there.

8 **MR. MAY:** Hold on. Beg the Court's indulgence.
9 Yes, Your Honor. After consulting with my client, he
10 does agree that he was released from the Department
11 of Corrections in '01. He does say the '06 to 08,
12 that was not a full revocation.

13 **THE COURT:** Well, it still would --

14 **MR. MAY:** He ended his incarceration within ten
15 years of today's date.

16 **THE COURT:** Right. Okay. So it satisfies the
17 ten-year time limit under 690(b). All right.
18 Continue.

19 **MS. CAMPBELL:** Your Honor, the next conviction
20 would be for financial transaction card theft in June
21 of '02.

22 **THE COURT:** In June?

23 **MS. CAMPBELL:** The 13th of '02.

24 **THE COURT:** Conviction?

25 **MS. CAMPBELL:** Yes, sir.

1 **THE COURT:** And what was the --

2 **MS. CAMPBELL:** The ones I've cited are all
3 convictions only. I'm skipping the --

4 **THE COURT:** What was the disposition of that?

5 **MS. CAMPBELL:** Five years suspended, 30 months
6 credit for 81 days jail time.

7 **THE COURT:** So time served?

8 **MS. CAMPBELL:** I don't think 30 months is 81
9 days. I think that he just got credit for the 81
10 days off the 30 months.

11 **THE COURT:** Oh. All right. And you -- okay.
12 Go ahead.

13 **MS. CAMPBELL:** And apparently at the same time
14 he was convicted of receiving stolen goods, two
15 counts.

16 **THE COURT:** On that '02 date?

17 **MS. CAMPBELL:** Yes, sir. Because it looks like
18 he got 81 days on both of those.

19 **THE COURT:** The same -- you've got --

20 **MS. CAMPBELL:** And the disposition date is the
21 same.

22 **THE COURT:** All right.

23 **MS. CAMPBELL:** The next one, Your Honor, would
24 be --

25 **THE COURT:** Was that transaction card theft or

1 fraud. It was theft. Okay. Go ahead.

2 **MS. CAMPBELL:** It was theft, Your Honor. In
3 2004 -- excuse me. The conviction was May of 2005.

4 **THE COURT:** For what?

5 **MS. CAMPBELL:** For burglary in the third degree
6 and grand larceny.

7 **THE COURT:** Okay.

8 **MS. CAMPBELL:** And then in 2006 --

9 **THE COURT:** What was the disposition on it?

10 **MS. CAMPBELL:** Beg the Court's indulgence. He
11 received five years suspended, three years probation.
12 Then that was revoked in 2006.

13 **THE COURT:** That was the revocation?

14 **MS. CAMPBELL:** And he got a straight three-year
15 revocation. And then he got an additional petit
16 larceny conviction.

17 **THE COURT:** That's the revocation -- instead of
18 a parole revocation, that's probably a revocation of
19 his --

20 **MS. CAMPBELL:** It probably is.

21 **THE COURT:** -- of his probation.

22 **MS. CAMPBELL:** And then --

23 **THE COURT:** -- which put him back in the
24 Department of Corrections.

25 **MS. CAMPBELL:** Yes, sir. And he also got an

1 additional petit larceny on that. And that would be
2 the extent of what -- there are other convictions or
3 dismissals, but as far as what we intend --

4 **THE COURT:** You would use all of those for
5 impeachment purposes?

6 **MS. CAMPBELL:** Yes, sir. And I've skipped over
7 the ones that were non-convictions or the ones that
8 don't fit under the rule, like malicious injury to
9 property or other charges or anything too old.

10 **THE COURT:** All right. What's the defense
11 position?

12 **MR. MAY:** Your Honor, the defense would argue
13 that the 1991 armed robbery convictions, while they
14 fall within the ten-year timeframe, because of the
15 last time that Mr. Broadnax was incarcerated in the
16 South Carolina Department of Corrections, I believe
17 that State v. Bryant, 369 SC 511 is controlling.

18 And State v. Bryant is a South Carolina Supreme
19 Court decision from 2006. And I am quoting exactly:
20 Furthermore, a conviction for a robbery, burglary,
21 theft and drug possession beyond the basic crime
22 itself is not probative for truthfulness.

23 Your Honor, it would be our position financial
24 transaction card theft, receiving -- burglary third
25 and the armed robberies do not fit within the crimes

1 of dishonesty when we are talking about the defendant
2 himself when the defendant is afforded much more
3 protections. And while the State is going to argue
4 Al-amin, I believe that Al-amin was a decision by the
5 South Carolina Court of Appeals, not by the Supreme
6 Court, and this decision is subsequent to that.

7 **THE COURT:** Let me ask you this.

8 **MR. MAY:** Yes, sir.

9 **THE COURT:** With regard to Bryant, --

10 **MR. MAY:** Yes, sir.

11 **THE COURT:** -- Bryant cites a Federal District
12 Court, in the Northern District Court of Illinois, a
13 federal citation.

14 **MR. MAY:** Yes, sir.

15 **THE COURT:** Do you attach any significance to
16 that?

17 **MR. MAY:** Well, Your Honor, I believe one looks
18 at the -- I think that -- I believe it was Justice
19 Anderson -- or I'm sorry -- Judge Anderson who wrote
20 Al-amin. And if you go through Al-amin, robbery is
21 not normally considered a crime of dishonesty in the
22 United States.

23 **THE COURT:** In the federal courts or the state
24 courts?

25 **MR. MAY:** I believe through the entire -- I

1 think that when you -- I believe when you look at it,
2 when one reads Al-amin, the actual term is the crime
3 itself is of dishonesty: Giving false information to
4 police officers, perjury, those kind of crimes that
5 in and of themselves are the dishonesty, and that in
6 Al-amin, the author which I still believe is
7 Anderson.

8 **THE COURT:** It's Anderson.

9 **MR. MAY:** Anderson says: If this court chooses
10 not to follow the nationwide trend not to have
11 robbery be considered a crime of dishonesty.

12 **THE COURT:** Wait a minute. Wait a minute.

13 **MS. CAMPBELL:** That's not right.

14 **THE COURT:** Page 14 --

15 **MR. MAY:** Okay.

16 **THE COURT:** -- says: We hold that armed robbery
17 is a crime of dishonesty. Clear language in the
18 case. In conclusion: Armed robbery is a crime of
19 dishonesty under 609(a)(2). We are in agreement with
20 the majority of other state courts which have
21 considered the question of robbery as a crime of
22 dishonesty for purposes of Rule 609(a)(2). I am
23 reading it.

24 **MR. MAY:** Yes, Your Honor. I beg the Court's
25 indulgence for one second.

1 **THE COURT:** That's all right. All right. It's
2 right at the end of Section C.

3 **MR. MAY:** Yes, sir. I see that. I just beg the
4 Court's indulgence.

5 **THE COURT:** All right.

6 (Pause)

7 **MR. MAY:** Your Honor, I just contend that State
8 v. Bryant is a more recent opinion.

9 **THE COURT:** It is a more recent opinion.

10 **MR. MAY:** Where they do in no heightened terms
11 say that it is not a crime of dishonesty, that it nor
12 burglary are crimes of dishonesty.

13 **THE COURT:** It says it's not probative. It
14 doesn't say that. It says it's not probative of
15 truthfulness.

16 **MR. MAY:** And I believe that that's what the
17 whole issue is. Because it's about impeaching a
18 defendant on the record, impeaching a defendant in
19 front of a jury.

20 **THE COURT:** How do I get around this language in
21 Al-amin on the next page? We hold Rule 609(a)(2)
22 provides for automatic admission of evidence of a
23 prior crime of dishonesty without balancing the
24 probative value against the prejudicial effect. This
25 conclusion is supported by the juxtaposition of Rule

1 609(a)(1), 609(a)(2). There is absolutely no
2 language in 609(a)(2) compelling a balancing test for
3 admission in regard to a crime of dishonesty. And
4 they've just held that armed robbery is a crime of
5 dishonesty. Tell me how you get around that.

6 **MR. MAY:** Your Honor, I believe that it is in
7 State v. Bryant. I mean, I believe it's State v.
8 Brian.

9 **THE COURT:** They don't overrule Al-amin. I am
10 not sure -- certiorari was denied on Al-amin in 2004.
11 It's been to the Supreme Court. They declined to
12 overrule it.

13 **MS. CAMPBELL:** Your Honor.

14 **THE COURT:** I'm doing okay. I'll hear from you.

15 **MS. CAMPBELL:** All right.

16 **MR. MAY:** Your Honor, it's the defense's
17 position that --

18 **THE COURT:** All right. So your total, your sole
19 reliance is on the Bryant case which happened to be a
20 firearms case.

21 **MR. MAY:** Yes, sir.

22 **THE COURT:** And I understand. Go ahead.

23 **MR. MAY:** Just additionally, Your Honor, for
24 this I would for the record argue against -- even if
25 you are inclined to go with Al-amin in the reading of

1 armed robbery, I would argue that in any testimony,
2 any evidence that is presented must meet the 403
3 basic hurdle.

4 And while I understand what Al-amin says, I
5 believe the South Carolina rules of evidence are
6 clear that all evidence must meet two basic
7 thresholds, one of 401 and one of 403. While I'd
8 argue this doesn't meet 401, I don't think it makes
9 it any more or less likely that the defendant
10 committed this crime. So I'd argue that it is not
11 relevant under 403.

12 It is highly prejudicial, Your Honor. This is
13 cumulative evidence, if nothing else. The State is
14 just lumping it on for no other reason to say: Hey,
15 he's an armed robber; he must have committed this
16 armed robbery. If you are inclined to go with
17 Al-amin --

18 **THE COURT:** I'm just telling you what I'm
19 looking at. I haven't made a decision yet.

20 **MR. MAY:** But there is -- furthermore, there is
21 no reason in the State's case whatsoever that they
22 need this. And, Your Honor, I believe that this is a
23 pertinent issue that is more than reversal -- I mean,
24 that could lead to reversible error.

25 **THE COURT:** Okay. What's the State's position?

1 **MS. CAMPBELL:** Your Honor, I would hand up the
2 case he is referring to and has quoted in Brian, the
3 Illinois case. In that case it even goes further.
4 It says that Smith's convictions for robbery,
5 burglary and theft are not crimes involving deceit or
6 false statement within the meaning of Rule 609(a)(2).
7 And this is the narrow federal interpretation.

8 It goes on to say: There is an aspect of
9 dishonesty inherent in each of these offenses. These
10 convictions are then somewhat probative of Smith's
11 credibility.

12 So it distinguishes between -- in our rule we've
13 got dishonesty or false statement. It distinguishes
14 that they don't go to false statement. But that
15 whole case which he is relying on in Bryant does say
16 that they are inherently probative of credibility as
17 far as the dishonesty aspect. And I can hand that
18 case up. So even the case they're relying on --

19 **THE COURT:** What case are you referring to?

20 **MS. CAMPBELL:** United States vs. Smith case.

21 **THE COURT:** Oh, the Smith case.

22 **MS. CAMPBELL:** Out of the Northern District of
23 Illinois, which I wouldn't say is controlling anyway,
24 Your Honor. But I would just distinguish the
25 language in Smith itself.

1 **THE COURT:** Well, I'll consider it.

2 **MS. CAMPBELL:** Okay.

3 **THE COURT:** Do you want to hand it up?

4 **MS. CAMPBELL:** Your Honor, beyond that, I think
5 as to the argument of just that it should be under
6 403, the rule itself specifically provides in its
7 first Subsection, 1(a)(1) that a 403 analysis should
8 apply. Specifically, in the case law that is
9 controlling as well as in the part two, there is no
10 reference to 403 balancing. And Al-amin is clear,
11 and as you've noted, went up on cert and could have
12 been overruled by Bryant or any other case. It is
13 clear that there is no balancing test to be applied.

14 In Al-amin it says: These crimes are
15 automatically admissible for impeachment purposes
16 because they have the greatest probative value on the
17 issue of truth and veracity.

18 **THE COURT:** Well, let me hear your -- we've
19 argued -- I've heard arguments as to the armed
20 robbery. Tell me what your position is with regard
21 to the credit card theft, receiving stolen goods and
22 burglary third, Mr. May.

23 **MR. MAY:** Yes, sir. I'll be happy to, Your
24 Honor. And I can just -- I apologize for not being
25 more precise.

1 **THE COURT:** We've got all night.

2 **MR. MAY:** Yes, sir. And I'll tie this also to
3 the armed robbery. Looking at Al-amin, the majority
4 of -- the reason -- your question was: Why is it a
5 federal case? And it's because the majority of
6 federal courts encompassing the federal rules talk
7 about that those are not -- that robbery is not a
8 crime of dishonesty. That's what Al-amin talks
9 about.

10 Your Honor, it would be the defense's position
11 that the rules of evidence are procedural due
12 process. And while this is procedural due process,
13 the State of South Carolina cannot limit more so than
14 the federal government the defendant's procedural due
15 process rights.

16 I believe that when we look at the rights that
17 are bestowed upon a defendant, our state can give
18 more protection but it cannot have less protection
19 than what the federal government allows.

20 Saying that, looking at federal courts as our
21 guidance, we can have a more constrictive
22 interpretation of the due process or the procedural
23 due process rights afforded the defendants through
24 rules of evidence, but we can't have a lackser [sic]
25 rule.

1 It would be my argument, Your Honor, that a more
2 constrictive or a more open for the prosecution
3 interpretation of 609(a)(2) is in violation of his
4 due process rights, procedural due process. We can
5 see it because Congress enacted the federal rules of
6 evidence, and that is a guideline that we should go
7 for, and that we as a state cannot restrict the
8 rights more so. It's --

9 **THE COURT:** Tell that to Arizona.

10 **MR. MAY:** And I think that --

11 **THE COURT:** You don't have to comment.

12 **MR. MAY:** -- maybe South Carolina.

13 **THE COURT:** Well, my question was --

14 **MR. MAY:** Yes, sir. I believe that it --

15 **THE COURT:** How do you treat --

16 **MR. MAY:** Oh, I apologize.

17 **THE COURT:** -- transaction card theft, receiving
18 stolen goods and burglary third, grand larceny and
19 petit larceny? The State wishes to introduce those
20 also. I just want your position.

21 **MR. MAY:** Yes, sir.

22 **THE COURT:** If it's the same, it's the same.

23 **MR. MAY:** Yes, sir. I believe it's the same. I
24 believe it's a procedural due process argument and
25 that the rules --

1 **THE COURT:** So you disagree that transaction
2 card theft is a crime of dishonesty?

3 **MR. MAY:** Looking towards the federal courts for
4 guidance --

5 **THE COURT:** Well, show me a federal court that
6 says it's not.

7 **MR. MAY:** I believe it does say -- doesn't
8 Bryant say it is not a crime of -- probative for
9 truthfulness? Furthermore, a conviction for robbery,
10 burglary, theft and drug possession.

11 **THE COURT:** You'd better read it. Because I
12 will tell you --

13 **MR. MAY:** Yes, sir.

14 **THE COURT:** -- that State v. Cauth says
15 convictions for theft-related crimes are probative of
16 credibility.

17 **MR. MAY:** Yes, sir. I believe Cauth also has a
18 five-point analysis. Because isn't Cauth looking at
19 a beyond a remote conviction? And if the Court would
20 like a five-point analysis for all these crimes, I
21 think that would be actually an appropriate way to
22 evaluate and see if whether or not these crimes
23 should come in.

24 **THE COURT:** Well, it just says that theft is a
25 crime of dishonesty.

1 **MR. MAY:** Yes, sir.

2 **THE COURT:** Now, receiving stolen goods.

3 **MR. MAY:** I think that as one goes all will
4 fall.

5 **THE COURT:** Not a crime of dishonesty.

6 **MR. MAY:** As one goes all will fall.

7 **THE COURT:** Burglary third, not a crime of
8 dishonesty?

9 **MR. MAY:** Your Honor, just looking at --

10 **THE COURT:** I'm just going down the list.

11 **MR. MAY:** Yes, sir. Yes, sir. It would be our
12 position that a crime of dishonesty is the -- I did
13 awful in Latin. The crime in falsely -- the crime of
14 falsifying is what the people who made the rules
15 envisioned it as. And that's the defense's position,
16 that these crimes do not -- and even if they do, at
17 least for the armed robbery, it is way too
18 prejudicial with zero probative effect because the
19 State has other crimes that are impeachable.

20 **THE COURT:** All right. Anything further?

21 **MS. CAMPBELL:** No, sir.

22 **THE COURT:** Do you want to consult with your
23 lawyer?

24 **MS. CAMPBELL:** I consulted.

25 **THE COURT:** You've already done it?

1 **MS. CAMPBELL:** Maybe I'd better again.

2 **MR. MAY:** Beg the Court's indulgence one second.
3 Your Honor, my trial -- my co-counsel has pointed
4 something out in the annotated part of 609, regarding
5 the determination of if a conviction is too remote,
6 it is in the province of the trial counsel. While we
7 are not -- while we understand the ruling of Al-amin,
8 that is --

9 **THE COURT:** Oh, I know. The buck stops here.

10 **MR. MAY:** Yes, sir.

11 **THE COURT:** I understand that.

12 **MR. MAY:** But it is when I was eleven years old,
13 when Charlie was eight, was when this occurred.

14 **MS. CAMPBELL:** I was an adult.

15 **MR. MAY:** I was going to bring that up.

16 **THE COURT:** You talking about 1991?

17 **MR. MAY:** Yes, sir. I was eleven. Charlie was
18 eight.

19 **THE COURT:** I wouldn't have said that if I were
20 you. All right. Anything further? Mr. May, if you
21 find anything over the evening hours --

22 **MR. MAY:** Yes, sir.

23 **THE COURT:** -- I'll be glad to consider it in
24 the morning.

25 **MR. MAY:** I'll be happy to.

1 **THE COURT:** I'll give you my ruling in the
2 morning.

3 **MR. MAY:** Thank you very much.

4 **THE COURT:** At that time I will want to know if
5 Mr. Broadnax wishes to testify or not.

6 **MR. MAY:** Thank you very much, Your Honor.

7 **THE COURT:** We'll stand at ease until 9:00.

8 (Whereupon, the proceedings are concluded for
9 the day, to be reconvened tomorrow morning)

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1 Thursday, June 17, 2010

2 **THE COURT:** All right. With reference to the
3 prior record of the defendant, it's my ruling that
4 the prior armed robbery conviction is admissible for
5 impeachment purposes under 609(a)(2). Transaction
6 card theft is admissible for impeachment under
7 609(a)(2). Receiving stolen goods, I fail to see
8 that that meets the definition of dishonesty. If I
9 apply a 403 test to that, I don't see that there's
10 any probative value to the receiving stolen goods
11 charge.

12 The grand larceny charge obviously also involves
13 theft, and I find that admissible for impeachment
14 purposes under 609(a)(2). Petit larceny, I find that
15 is also a crime of theft which is admissible for
16 impeachment purposes under 609(a)(2).

17 I question the burglary conviction. I don't
18 think it clearly comes within the purview of Al-amin.
19 Burglary can be for many different purposes.
20 Burglary frequently, most frequently is for some sort
21 of assault or crime of violence and is not
22 necessarily a crime involving theft which seems to be
23 the focus of Al-amin.

24 I'll hear from the State and the defense on the
25 burglary charge, on the burglary conviction, but at

1 this point I feel that that would not meet the test
2 of Al-amin.

3 **MR. MAY:** Yes, sir. If I can just address one
4 thing for the record.

5 **THE COURT:** Yes, sir.

6 **MR. MAY:** Regarding the two armed robberies from
7 '91.

8 **THE COURT:** Wait a minute. Hold it. Three
9 armed robberies.

10 **MR. MAY:** Three armed robberies from '91. If I
11 just may address it and put it on the record?

12 **THE COURT:** Sure.

13 **MR. MAY:** I thought you said we could supplement
14 the arguments this morning.

15 **THE COURT:** Then I stand to be convinced
16 otherwise.

17 **MR. MAY:** Yes, sir. I understand. I just want
18 to make sure the record is clear. We're also
19 including a due process argument under the Fourteenth
20 Amendment. Now, this is applying of course death
21 penalty standards, which admittedly this case is not.
22 But in *Donnelly v. DeChristifino* which is 416 US 637
23 provides that based on the totality of the
24 circumstances if evidence would so infect the trial
25 with unfairness as to make an unfair denial of due

1 process, then the evidence should be inadmissible.

2 I believe that the rules of evidence are there
3 to be a procedural due process guarantee. But as
4 Justice Scalia stated in Crawford, that we've now
5 allowed the rules of evidence to circumvent the
6 Constitution when the Constitution is applicable.
7 Just because it's is admissible through the rules of
8 evidence does not mean that there's some kind of
9 Constitutional privilege.

10 And, Your Honor, we would argue that three
11 convictions for armed robbery in an armed robbery
12 trial would so infect this trial as to deny Mr.
13 Broadnax the guarantee of due process which is
14 guaranteed under the Fourteenth Amendment.

15 I believe that other cases that would support
16 that -- now, granted, in all candor to the Court,
17 these are death penalty cases; but I believe it is
18 the defense's position at the very first day of
19 motions that this has the effect of taking his life,
20 maybe not by lethal injection but by any other future
21 chance of freedom. Other cases would be Dawson v.
22 Delaware as well as Paine vs. Tennessee. Of course
23 Paine vs. Tennessee, the only standard is the
24 Fourteenth Amendment in that forum of death penalty.

25 The Fourteenth Amendment does apply here, and I

1 believe it's still a burden and a hurdle that the
2 State must jump over. I don't see how he can get a
3 fair trial when three armed robberies are admitted
4 for really no other reason but for cumulative effect.

5 And even if -- I understand that the court has
6 ruled that Al-amin is applicable and Al-amin says
7 there is no 403 analysis. I believe that there is no
8 way you can avoid a Fourteenth Amendment analysis as
9 well.

10 **THE COURT:** State's position?

11 **MS. CAMPBELL:** All we ask is that you follow --

12 **THE COURT:** It's an interesting argument. I say
13 it is an interesting argument.

14 **MS. CAMPBELL:** It's maybe an interesting
15 argument and I understand his opinion as far as it's
16 taking his life and everything. But, Your Honor, we
17 just ask that you follow the law of Al-amin and the
18 South Carolina state law. And they would be
19 admissible for purposes of credibility, not as to
20 infect his trial. I would -- and I don't know if the
21 defense would want a limiting instruction.

22 **THE COURT:** I'm sorry?

23 **MS. CAMPBELL:** I don't know if the defense would
24 be requesting a limiting instruction as far as the
25 prior record.

1 **THE COURT:** Oh, I will give that --

2 **MS. CAMPBELL:** Okay.

3 **THE COURT:** -- anyway.

4 **MR. MAY:** I mean, it would just be that there
5 has not been -- that this is just so infectious as to
6 deny the defendant due process -- it denies his right
7 of due process to a fair trial as guaranteed under
8 the Fourteenth Amendment.

9 **THE COURT:** Well, you may be absolutely right,
10 but I think it's for our court to determine that.
11 Al-amin is just a -- when I read it the first time
12 several years ago, I knew it was a significant
13 departure from what I had always assumed would be the
14 manner in which prior convictions would be considered
15 basically under a 403 analysis.

16 And I am not one that normally allows much of
17 anything in terms of prior record. But Al-amin is so
18 emphatic in terms of its analysis of various state
19 laws. And it never mentions the prejudicial effect.
20 It may well be that our courts should sit back and
21 reflect on this and the significance of Al-amin when
22 it comes to cases such as this where -- I mean,
23 Al-amin obviously was a murder case and was not an
24 armed robbery case. I stand to be corrected.

25 **MR. MAY:** Your Honor, at this point we ask for

1 guidance as far as, as that is the Court's ruling, we
2 would have of course a standing objection to any
3 mention of prior armed robberies. And I'd ask for
4 guidance from the Court as to how we could not be
5 hamstrung. Can Mr. Cochran ask and elicit testimony
6 without us waiving that objection now that the Court
7 has ruled?

8 **THE COURT:** I'm not clear as to your question.

9 **MR. MAY:** Yes, sir. Now the Court has ruled
10 that that is coming in.

11 **THE COURT:** It's admissible for impeachment
12 purposes.

13 **MR. MAY:** Okay. It's admissible for an
14 impeachment purpose. But I just want to make sure
15 that the record reflects that Mr. Cochran would not
16 elicit such testimony but for the ruling of the
17 Court. Does that make sense?

18 **THE COURT:** Yes, sir.

19 **MR. MAY:** I just want to make sure that's clear
20 on the record, that the only reason why we're
21 doing --

22 **THE COURT:** Why you would go into it.

23 **MR. MAY:** Correct.

24 **THE COURT:** You're not waiving your objection.

25 **MR. MAY:** Yes, sir. We're not waiving our

1 objection. We're just wanting to not have the first
2 time be exploited by Ms. Campbell's cross
3 examination.

4 **THE COURT:** I understand.

5 **MR. MAY:** And just for -- and it is my
6 understanding that this is only for impeachment
7 purposes and it's not for of course propensity. And
8 if such an objection arises, we would of course make
9 it on the record.

10 **THE COURT:** The State will not go into the
11 elements or facts of those prior convictions.

12 **MS. CAMPBELL:** Yes, sir.

13 **THE COURT:** Now, so as to the burglary charge.

14 **MR. MAY:** Oh, I'm sorry. I believe that, as
15 Your Honor correctly said, without further
16 information regarding the burglaries, we do not know
17 as to the underlying crime therein.

18 **MS. CAMPBELL:** Well, we do know in this case
19 what the underlying crime therein is. But it's the
20 grand larceny that accompanies it.

21 **MR. MAY:** I mean, if you have an indictment,
22 then I think that --

23 **THE COURT:** Well, I'm going to put the burden on
24 them at this point. I think it's not -- it doesn't
25 fall under Al-amin.

1 **MS. CAMPBELL:** We understand the Court's ruling.

2 **MR. MAY:** Thank you, Your Honor.

3 **THE COURT:** All right. Now, Mr. Broadnax.

4 **MR. BROADNAX:** Yes, sir.

5 **MR. MAY:** Can we have just two minutes just to
6 explain the Court's rulings?

7 **THE COURT:** Yes.

8 (Pause)

9 **MR. MAY:** Your Honor, I believe he has an answer
10 for you.

11 **THE COURT:** Mr. Broadnax, for the record, do you
12 wish to testify?

13 **MR. BROADNAX:** Yes, sir, Your Honor, I do.

14 **THE COURT:** All right. That's fine.

15 **MR. MAY:** Your Honor.

16 **THE COURT:** Yes, sir.

17 **MR. MAY:** Per pre-trial motions --

18 **THE COURT:** He can be unshackled.

19 **MR. MAY:** Thank you.

20 **THE COURT:** Joe, he can be for testimony
21 purposes.

22 (Pause)

23 **THE COURT:** The State ready?

24 **MS. CAMPBELL:** The State's ready, Your Honor.

25 **THE COURT:** Defense ready for the jury?

1 **MR. MAY:** Yes, Your Honor.

2 **THE COURT:** Bring the jury.

3 (Jury in at 9:32 a.m.)

4 **THE BAILIFF:** The jury is all present, Your
5 Honor.

6 **THE COURT:** Good morning, ladies and gentlemen.
7 As I told you yesterday, the State has completed
8 their case. The defense now has the opportunity to
9 present a defense. And, Mr. May, Mr. Cochran, you
10 may proceed.

11 **MR. COCHRAN:** Thank you, Your Honor. The
12 defense calls Christopher Broadnax to the stand.

13 CHRISTOPHER BROADNAX, after being duly sworn,
14 testifies as follows:

15 **THE CLERK:** Thank you. Have a seat in the
16 witness stand, please. Give the court reporter your
17 name.

18 **THE WITNESS:** Christopher Broadnax.

19 **MR. COCHRAN:** Thank you, Your Honor. May it
20 please the Court.

21 DIRECT EXAMINATION

22 **BY MR. COCHRAN**

23 **Q** Chris, did you do this?

24 **A** No, sir, I did not.

25 **Q** Now, when I say "this", I mean the armed robbery at

1 the Church's Chicken on May 24th, 2009. Did you do
2 it?

3 **A** I understand that that's what you mean. And, no, I
4 did not do this.

5 **Q** Do you remember May 24th, 2009?

6 **A** That's the day I was arrested for the armed robbery
7 that I did not do.

8 **Q** Where were you when you were arrested?

9 **A** Well, I actually have a problem, drug problem. I
10 smoke drugs. I had just bought some, and I was
11 coming down Edgewood, coming down Two Notch when I
12 saw Chuck's truck and I flagged him down.

13 **Q** So you were on Two Notch when you flagged down you
14 said Chuck. Who is Chuck?

15 **A** Charles Green.

16 **Q** The man who testified before?

17 **A** Right.

18 **Q** So you know Charles Green?

19 **A** Yeah. We frequently get high together.

20 **Q** You get high together?

21 **A** Yeah.

22 **Q** What kind of drug do y'all use?

23 **A** Crack cocaine.

24 **Q** So you smoked crack together?

25 **A** Yes, sir.

1 Q You addicted to it?

2 A Yes, I was.

3 Q So when you were arrested you were with Charles
4 Green?

5 A At that time, yes, I was. I was in his truck.

6 Q You were in his truck?

7 A Yes, sir.

8 Q Now, you've been sitting here listening to all this
9 testimony, right?

10 A Right.

11 Q Okay. And you've heard about the areas that are at
12 issue in this case, correct?

13 A Correct.

14 Q Where were you when you flagged down Charles Green?

15 A I was in the right-hand lane. I can't say whether
16 it's north, south, east or west. But I was in the
17 right-hand lane when he was coming down Two Notch.

18 Q So you were on the same side of the road where he was
19 coming towards you?

20 A Yes.

21 Q Two Notch?

22 A Right.

23 Q And you said, you mentioned before Edgewood Avenue?

24 A Yes.

25 Q Okay. And this map looks familiar?

- 1 **A** Mm-hmm (affirmative).
- 2 **Q** Okay. So this is Edgewood?
- 3 **A** Right.
- 4 **Q** You're somewhere in this area when you flagged him
- 5 down?
- 6 **A** No. I was a little closer to the Benedict stadium.
- 7 **Q** Which is over here?
- 8 **A** Mm-hmm (affirmative).
- 9 **Q** So you were a little bit over this way?
- 10 **A** Right. I was trying to go down Read Street. I was
- 11 going to go to another friend of mine's house, T.Y,
- 12 because he smokes, too.
- 13 **Q** Okay. And he was coming up with this way?
- 14 **A** Right.
- 15 **Q** Okay. Before you flagged down Charles Green, had you
- 16 heard sirens?
- 17 **A** Yeah, I heard sirens; and I actually saw two police
- 18 cars.
- 19 **Q** You saw two police cars? What did you do when you
- 20 saw the two police cars?
- 21 **A** I stepped over behind the bushes.
- 22 **Q** You stepped behind the bushes. Why did you step
- 23 behind the bushes?
- 24 **A** I've got drugs and drug paraphernalia in my pocket.
- 25 **Q** You had crack on you?

1 **A** Yes, I did.

2 **Q** And a crack pipe?

3 **A** And a crack pipe. I actually had the crack pipe in
4 my pocket and the crack in my sock.

5 **Q** And then after the police went by, you flagged down
6 Charles Green?

7 **A** Yeah. After I saw the second car go by, I figured
8 I'd better shag-tail it across the street and dogleg
9 down to Read Street and get out of the area because I
10 didn't know, you know, what was going on.

11 **Q** Okay. But then what happened?

12 **A** When I flagged Charles down, he pulls over. I get
13 in. We go about maybe a block, a block and a half,
14 and he said -- excuse my language. He said: Shit,
15 the cops are behind me. So that's when I pulled my
16 stem, crack stem out of my pocket. And I threw it
17 out the window. It busted in the street.

18 **Q** So it was glass?

19 **A** Yes. It was glass.

20 **Q** Okay. And it shattered in the street?

21 **A** Yes, it did.

22 **Q** So how long were you in Charles Green's truck before
23 you were pulled over by the police?

24 **A** 30, 45 seconds.

25 **Q** Just seconds?

- 1 **A** Seconds.
- 2 **Q** And you said you went about a block or a block and a
3 half. Is that what you just said?
- 4 **A** About a block and a half.
- 5 **Q** Now, he said: Oh, the cops are behind us. What did
6 you do?
- 7 **A** After I threw the stem out the window, I went down to
8 my sock and I got the crack out of it. And I
9 crouched down and I started eating it.
- 10 **Q** You started to eat the crack?
- 11 **A** I started eating the drugs. I didn't want to get
12 caught with it.
- 13 **Q** So you were crouched down in the pick-up truck
14 getting the crack out of your sock and eating it?
- 15 **A** I was eating it.
- 16 **Q** Why were you doing that?
- 17 **A** I was getting rid of evidence.
- 18 **Q** So were you concerned that you got pulled over?
- 19 **A** Yeah.
- 20 **Q** Why were you concerned you got pulled over?
- 21 **A** I didn't want to get -- I didn't want to go to jail
22 for having crack.
- 23 **Q** Okay. So at that point you thought that the traffic
24 stop was about the crack?
- 25 **A** Yeah. That's what I thought.

1 Q About the trucks? All right. So now the truck is
2 stopped. You are crouched down in the floorboard
3 eating crack. Describe what happened next?

4 A When he pulled over. Well, I wasn't really paying
5 any attention to him. He pulled over and I asked
6 him, I said: What's he doing now? And he said:
7 He's coming up. And I said: Okay. So I'm still
8 chewing. But apparently I chewed too much too fast.
9 So I started choking and gagging.

10 Q Now, Chris, actually let me interrupt you. Assuming
11 that the jurors are not familiar with crack cocaine,
12 what is the consistency of crack cocaine?

13 A Oh. I would imagine it's about -- it's cocaine and
14 either baking soda or some other kind of ingredient
15 that they mix it with to harden it into a little
16 rock, pebble. It's about the size of maybe your
17 thumbnail and about an eighth of an inch thick.

18 Q So it's hard?

19 A It's hard.

20 Q And you said you were trying to swallow it?

21 A I was chewing. I had three pieces. I was trying to
22 chew it up.

23 Q And the officers at this point are getting out of the
24 car. Describe what happens next?

25 A An officer came around to the driver's side and

1 opened the door for Charles. And an officer opened
2 the door on my side of the truck. He said: Get out.
3 So I got out. And as I am still chewing, trying to
4 hope he don't see little flecks around my mouth, he
5 starts telling me to come to the back of the truck.
6 So I did. But I'm coughing and chewing at the same
7 time.

8 Q You were coughing. Why were you coughing?

9 A Because I was choking with it.

10 Q You were choking?

11 A Yeah.

12 Q On the crack?

13 A Yeah.

14 Q And you were taken to the back of the truck you said,
15 the rear of the truck?

16 A To the rear of the truck.

17 Q Okay. And you were down -- you were behind the bed
18 of the truck?

19 A Well, actually more to the right where the taillight
20 is.

21 Q Okay. So describe what was happening then?

22 A As I'm standing there and I'm choking and coughing I
23 heard --

24 Q Were you looking down or looking up?

25 A I was actually bent over, had my hands on the back of

1 the truck, and I was spitting some of it back out.

2 Q Okay.

3 A And the officer said: Turn around and look at me.

4 So I said: Hold it a second.

5 Q Wait a minute. What did the officer do?

6 A He told me to turn around and look at him.

7 Q Okay.

8 A And I asked him to hold for a second. And I saw --

9 when I looked up at him, I saw other cars coming

10 around, other police cars. So I kind of stage

11 whispered to Charles: What the hell did you do? And

12 the officer said: Put your hands behind your back.

13 I put my hands behind my back. He handcuffed me.

14 And that's when he started yelling at me again,

15 said: Look up at me, look at me. So I looked at

16 him. And he moved and he looked back. And when he

17 looked back, I'm looking to see what he's looking at.

18 And I see another patrol car come by, and there was a

19 guy in the back seat looking out the window like

20 this.

21 Q Did you look at him?

22 A Yeah, I looked at him.

23 Q Mr. Broadnax, Chris, you were in that truck?

24 A Yes.

25 Q And there was a gun underneath your seat?

1 **A** I didn't know that.

2 **Q** You didn't know that there was a gun?

3 **A** I swear I did not know there was a gun under that
4 seat.

5 **Q** Do you have a lazy eye?

6 **A** Yes. I do have a lazy eye, but I like to call it
7 slow.

8 **Q** A slow eye?

9 **A** Yeah.

10 **Q** How did that happen?

11 **A** I was about 11 years old when I was playing around
12 this old abandoned house, and a sliver of glass went
13 into my eyeball. And it sat there for about three
14 days before anybody noticed it.

15 **Q** Okay. And it's been lazy ever since then, since you
16 were about 11 years old?

17 **A** That was about 35 years ago.

18 **Q** And when the officer yelled at you to look up, you
19 looked up and you made eye contact with somebody in a
20 squad car?

21 **A** Yeah. I actually thought it was the guy, Black, that
22 I just bought the dope from. And then I -- but I
23 couldn't be sure because during my choking and
24 carrying on, my eyes had teared up. So I wasn't sure
25 whether it was him telling them yeah. Because I

1 heard over the radio we have a positive ID. And I
2 was like, oh, man, I know him. He sold me dope. He
3 ain't going to tell the police he sold it to me. But
4 it turned out not to be him.

5 Q Now, Mr. Broadnax, from 1991 you have three
6 convictions for armed robbery?

7 A I pled guilty to those.

8 Q You pled guilty to those. And you have a conviction
9 for a credit card theft?

10 A I pled guilty to it.

11 Q And for grand larceny?

12 A I pled guilty.

13 Q And petit larceny?

14 A I pled guilty.

15 Q Chris, did you rob Church's Chicken on May 24th,
16 2009?

17 A I've been saying this ever since I met you, Mr.
18 Broadnax. No, I did not. I did not do this.

19 Q Thank you. Chris, please answer truthfully any
20 questions that the State has for you.

21 CROSS EXAMINATION

22 **BY MS. CAMPBELL**

23 Q You knew Charles Green?

24 A As a crack smoker, yeah. An acquaintance.

25 Q And he is a crack smoker?

- 1 **A** Yes, he is.
- 2 **Q** Because you were the one smoking crack with him?
- 3 **A** Yes.
- 4 **Q** And what happens to you when you smoke crack?
- 5 **A** I imagine, as with any other drugs, you get high.
- 6 **Q** Well, you know what happens because you just
7 testified that you were addicted and you smoked
8 crack.
- 9 **A** Is that a question?
- 10 **Q** I'm asking you what happens when you smoke crack?
- 11 **A** You get high.
- 12 **Q** And on the date in question, had you been smoking
13 crack?
- 14 **A** Not then. No, ma'am.
- 15 **Q** So you were sober at the time of this event?
- 16 **A** Which event? The robbery?
- 17 **Q** Mm-hmm (affirmative).
- 18 **A** I don't know. Because I -- as far as I know, I'm
19 sober, yeah, because I hadn't smoked any dope yet.
- 20 **Q** And for the record, is this the shirt you were
21 wearing that day?
- 22 **A** Yes, it is.
- 23 **Q** And are these the pants you were wearing that day?
- 24 **A** Yes, it is.
- 25 **Q** And your testimony here today is that when -- let me

1 back up a minute. You're walking down Two Notch
2 Road?

3 **A** No. Actually I'm on Ridgeway.

4 **Q** You're on Ridgeway Road?

5 **A** I'm on Ridgeway.

6 **Q** Where is Ridgeway?

7 **A** That's about a block before you get to Chestnut if
8 you're coming from that direction.

9 **Q** So you're about a block before you get to Chestnut?

10 **A** Yes.

11 **Q** And your testimony today is that you're walking down
12 the street and you've just bought crack cocaine?

13 **A** Right.

14 **Q** Who did you buy crack cocaine from?

15 **A** I just told you. Black.

16 **Q** Black. And where does Black live?

17 **A** He doesn't live anywhere; on the street as far as I
18 know.

19 **Q** And at that point you mentioned that you are on this
20 other road. So you aren't on Two Notch Road?

21 **A** Not yet, no.

22 **Q** And do you end up on Two Notch Road?

23 **A** Yes, I do.

24 **Q** And at that point you happened to see Charles Green,
25 a man you happened to smoke crack with on a regular

1 basis, coming down the road?

2 A Yes.

3 Q And you mentioned in your direct testimony that you'd
4 already heard the sirens?

5 A Yes, I did.

6 Q In what direction were the sirens coming from?

7 A I didn't know. I didn't know which way they was
8 coming from. That's the reason I stepped over into
9 the bushes.

10 Q And so you're hiding in the bushes because you heard
11 the siren because you've got crack cocaine in a crack
12 pipe?

13 A Yes.

14 Q So did you stay in the bushes until the sirens went
15 away?

16 A Well, when the first car went by, I figured, okay,
17 let me get on over here where I'm trying to go. As I
18 took about six or seven steps, I heard another siren.
19 So I stepped back over into the bushes. That's when
20 I saw the second car going the same direction.

21 Q And you continued to hear the sirens as Mr. Green
22 came up?

23 A They were fading away though.

24 Q Fading away a little bit?

25 A Mm-hmm (affirmative).

1 Q So you felt safe and you could come out of the bushes
2 with your three pieces of crack cocaine and your
3 crack pipe and you could then flag down a ride that
4 happened by?

5 A Well, I wasn't looking to flag down a ride. Like I
6 said, I was trying to get across the street over to
7 Read Street to go around to T.Y.'s house.

8 Q So you just happened to as you're crossing the street
9 look up; and, lo and behold, there is Mr. Green's
10 truck?

11 A There's his truck.

12 Q And how did you stop his truck?

13 A I gave him the universal signal.

14 Q What's the universal signal?

15 A Like this.

16 Q Okay.

17 A That means stop. I've got some --

18 Q And how --

19 A -- if you want some.

20 Q Excuse me. I didn't mean to interrupt you.

21 A Go ahead.

22 Q How far down the road was it when you saw his truck
23 coming?

24 A Maybe a block.

25 Q Maybe a block?

1 **A** Mm-hmm (affirmative).

2 **Q** And how fast was Mr. Green going?

3 **A** He wasn't going fast at all.

4 **Q** And when you flagged down Mr. Green, at that point
5 did you tell him you needed a ride, where you were
6 going? Or how did that happen?

7 **A** That's what that means. I need a ride, pull over,
8 I've got it. I mean, it's universal for crack
9 smokers.

10 **Q** So you see him a block away. He's not going very
11 fast?

12 **A** No.

13 **Q** In fact, he is going slow enough that he has time to
14 definitely stop and pick you up?

15 **A** Well, he didn't completely come to a full stop.

16 **Q** So he made a -- how does that work?

17 **A** What?

18 **Q** When you don't come to a complete stop and you get
19 into an automobile or a truck?

20 **A** You just go very slowly, open the door. Like, as he
21 testified, the truck is not very operable.

22 **Q** So you were able to walk or run beside the car and
23 get in?

24 **A** No. Just take a couple of steps, open the door and
25 get in.

1 Q And which lane was he in?

2 A The left-hand lane.

3 Q The left-hand lane?

4 A Yes, ma'am.

5 Q So there were no other cars around?

6 A No.

7 Q So you were able to run out into the middle of the
8 street. The car slowed down some but didn't stop and
9 you were able to get in?

10 A Yes.

11 Q And at that point what did you say to Mr. Green?

12 A I said: What's up?

13 Q And what did he say?

14 A He said: What's happening? Ain't nothing going on.
15 And he just completed -- continued on down Two Notch.

16 Q Was anybody else in the car when you got in it?

17 A No.

18 Q And how -- you only got to go another block or two
19 before the police are right behind you?

20 A Right.

21 Q So you're going to tell this jury you didn't hear the
22 sirens coming up as Mr. Green slowed down and the
23 police fall behind as soon as you get in the car?

24 A The police weren't behind us when I got in the car.

25 Q You couldn't hear the sirens coming back towards you?

1 **A** No. I didn't even see the police cars.

2 **Q** But they stopped you within a block or a block and a
3 half is your testimony, correct?

4 **A** Right.

5 **Q** And you didn't hear any sirens at that point that
6 caused alarm?

7 **A** No. I just took it in and said they're still fading
8 away.

9 **Q** So you didn't see the blue lights coming up behind
10 you?

11 **A** No.

12 **Q** But they were able to stop you within a block or a
13 block and a half and you didn't see any that?

14 **A** Hmm-mm (negative).

15 **Q** Because if you had seen that, you would have hidden?

16 **A** I would have what?

17 **Q** You would have hidden?

18 **A** Hidden?

19 **Q** Hidden. Like you did in the bushes.

20 **A** If I had seen them? I didn't have to see them. He
21 told me: The police are behind me. I took his word
22 for it.

23 **Q** So you flagged down Mr. Green. He doesn't come to a
24 complete stop. You then get into the vehicle. You
25 say: Hey, what's up? Hey, what's going on? And

1 then he says: The police are behind?

2 **A** No. We're going about a block, a block and a half.

3 And he said: Oh, shit, the cops are behind me.

4 **Q** And you didn't hear them coming or see the blue
5 lights behind you or anything like that even though
6 they were there within a matter of just a few
7 seconds?

8 **A** No. I didn't pay it no attention.

9 **Q** Because if you heard them, you would have hidden in
10 the bushes?

11 **A** No. I was already in the truck.

12 **Q** So now your testimony is is you're like, oh. So at
13 this point you throw out your crack pipe?

14 **A** Right.

15 **Q** Was that while you were on Two Notch or in the
16 driveway where the store is?

17 **A** I don't understand the question.

18 **Q** Where was the truck when you threw the crack pipe out
19 that disintegrated on the ground?

20 **A** We had actually passed back past Ridgeway. And I
21 knew he was going to make a left on Chestnut.

22 **Q** So you knew he was going to make a left on Chestnut.
23 So he's still on Two Notch?

24 **A** Yeah.

25 **Q** When you -- and at this point at least you hear the

1 things. He's already told you the cops are behind
2 you?

3 A Right.

4 Q So could you tell the cops were right behind you?

5 A I couldn't tell where they were, but I knew they were
6 back there somewhere.

7 Q But Mr. Green knew they were right behind him. So he
8 got that information to you. So at that point the
9 information you have is the cops are right behind
10 you. So you throw the crack pipe out the window?

11 A Right.

12 Q Did you throw the crack cocaine out the window?

13 A No.

14 Q Why not?

15 A Because there's a big difference between getting
16 caught with a crack pipe and the actual crack itself.

17 Q It's worse to get caught with a crack pipe than with
18 the crack cocaine itself?

19 A They wasn't going to get the crack pipe. It would be
20 easier for me to throw the pipe out, bust it up.
21 That way if they're not really behind us to pull us
22 over, I've still got my crack and I can smoke it
23 later.

24 Q So it was a self-preservation thing. You get rid of
25 the pipe. And it's not because it's worse to be

1 caught with a pipe. But you're going to keep the
2 crack just in case you get away?

3 **A** That's right. That's an addict's thinking.

4 **Q** And how fast are things happening?

5 **A** Pretty quick.

6 **Q** Pretty quick?

7 **A** Yeah.

8 **Q** You said that -- do you remember him pulling into the
9 parking lot, or did he pull onto Chestnut Street,
10 like you said?

11 **A** I don't know. I was crouched down in the truck. I
12 was actually trying to get information from him.
13 Where are they? Did they go by?

14 **Q** Why are you crouched down in the truck?

15 **A** Because I don't want nobody to see me eating this
16 crack.

17 **Q** So you are in a truck. And the police aren't after
18 you for doing the armed robbery. So why are you
19 concealing your identity if you're just another
20 person on the street?

21 **A** I wasn't concealing my identity. I was concealing
22 the fact that I was eating evidence. Because just as
23 sure as they would have saw me in the truck just
24 sitting up eating crack like it's popcorn, they of
25 course would make me spit it out. They actually

1 would grab me and put a chokehold on me and make me
2 spit it out.

3 Q So your testimony is these officers who you can't see
4 behind you, whom you don't see until you actually get
5 out of the truck, right?

6 A Right.

7 Q Are going to be able to see you eating crack cocaine
8 in the front of the truck from them being behind you?

9 A It has happened.

10 Q And that's what was going on in your mind?

11 A It has happened before.

12 Q So you weren't crouching down in that truck to
13 conceal your identity from anyone?

14 A No.

15 Q You were crouching down in that truck so you could
16 eat some crack cocaine?

17 A That's correct.

18 Q Did you get sick?

19 A No.

20 Q Eating three pieces of crack cocaine didn't make you
21 sick?

22 A No, it didn't.

23 Q Did you request any medical help?

24 A No. No, I didn't.

25 Q So you're down there eating the crack cocaine,

1 crouched down there not to conceal your identity from
2 the armed robbery you didn't do, but because you want
3 to eat your crack cocaine so the police can't see you
4 when they come up behind you?

5 A That's correct.

6 Q And you never knew the gun and the money from a
7 robbery that happened less than two minutes before --

8 A No, ma'am. I sure did not.

9 Q -- you were sitting on it?

10 A I sure did not know that was in there.

11 Q At that point your testimony is is that you're eating
12 the crack, you're choking?

13 A Mm-hmm (affirmative).

14 Q And the police officers get you out of the truck?

15 A Yeah. They asked me to step out.

16 Q And at that point you're still chewing?

17 A Well, I'm trying to conceal the fact that I am
18 chewing. So I'm more or less like sucking on it like
19 candy.

20 Q You're sucking on crack cocaine like it's candy?

21 A Yeah. It will dissolve.

22 Q And at that point they take you to the back of the
23 truck. So, at that point do you ask them --

24 A I didn't ask them anything.

25 Q You didn't ask them anything?

1 **A** I didn't ask them anything.

2 **Q** So then your testimony is while you're back there you
3 see a car come by. And how many minutes passed
4 before that happens?

5 **A** I'm not sure.

6 **Q** And while it takes several minutes, would you agree
7 with me, at any point did it occur to you to say:
8 Why are you all holding me? Why am I here?

9 **A** No. I figured eventually they would get around to
10 telling me why they pulled him over. I figured, hey,
11 it's his truck. It's a traffic violation. They'll
12 tell him why they pulled him over.

13 **Q** Okay. So your testimony is this was a traffic
14 violation for which they get you out of the car, put
15 you in handcuffs, detain you. You're eating crack
16 cocaine. But you never asked them: Why are you
17 detaining me?

18 **A** No.

19 **Q** And then you've testified that you saw another patrol
20 car go by. There was a guy in the back seat?

21 **A** Yes, I did.

22 **Q** And you thought it might be the guy that had sold you
23 the crack?

24 **A** Had sold me the crack.

25 **Q** So at that point you also testified you heard it's a

1 positive ID?

2 A Yeah. I heard that come over the radio.

3 Q So at that point did you look at the officers and go:

4 A positive ID for what?

5 A No. I didn't think they were referring to me.

6 Q While you were there at the scene, did they tell you
7 you were under arrest?

8 A I'm not sure. I don't remember if they placed me
9 under arrest at the scene or not.

10 Q For armed robbery?

11 A No.

12 Q They never mentioned, you never heard anybody talk
13 about an armed robbery there at the scene?

14 A Not to me, no.

15 Q And did you hear on the radio they were talking about
16 an armed robbery? Because there was a lot of
17 commotion going on, a lot of officers talking about
18 armed robbery.

19 A I didn't hear -- I didn't hear the words armed
20 robbery mentioned. No.

21 Q Okay. Did you hear the words Church's Fried Chicken
22 mentioned?

23 A No, I didn't.

24 Q So the only thing you heard that day while all these
25 officers were talking back and forth is: There is a

1 positive ID. And you didn't even ask them: What's a
2 positive ID for?

3 **A** Like I said, I didn't think they were referring to
4 me.

5 **Q** Well, then at the point that they put you in the back
6 of the patrol car and left you there, did you think
7 maybe at that point they were detaining you for
8 something other than a traffic stop?

9 **A** I had no idea why they were detaining me.

10 **Q** At any point did you ask them: Why are you detaining
11 me?

12 **A** I told you I didn't ask them anything.

13 **Q** At the point when they transferred you downtown --

14 **A** That's when I was told I was being arrested for armed
15 robbery.

16 **Q** And at that point did you say: Listen, I was just
17 out there buying crack cocaine?

18 **MR. MAY:** Objection, Your Honor.

19 **THE COURT:** Sustained.

20 **MR. MAY:** Should we approach?

21 **THE COURT:** Sustained.

22 **MS. CAMPBELL:** Your Honor, we have a matter of
23 law I need to take up.

24 **THE COURT:** All right, ladies and gentlemen.

25 I've got a matter of law to take up with the

1 attorneys. Just go to your jury room for just a
2 minute. I'll call you when we're ready.

3 (Jury out at 9:57 a.m.)

4 **MS. CAMPBELL:** May I approach, Your Honor?

5 **THE COURT:** No. I don't know what the objection
6 is yet.

7 **MR. MAY:** Your Honor, objection to a Doyle
8 violation.

9 **THE COURT:** Explain it.

10 **MR. MAY:** Yes, sir. Her --

11 **THE COURT:** For the record.

12 **MR. MAY:** Yes, sir. Her question was: Did you
13 ever say --

14 **THE BAILIFF:** Sir, did you say something to me?

15 **THE COURT:** No, ma'am.

16 **THE BAILIFF:** Oh, I'm sorry.

17 **MR. MAY:** Her question was: Did you ever say --
18 did you ever say --

19 **THE COURT:** Let's get it correct. What was the
20 question, Madam Court Reporter?

21 (Whereupon, the court reporter reads back the
22 last question)

23 **MR. MAY:** Your Honor, I believe that is a direct
24 and/or an indirect comment on his right to remain
25 silent. The State concedes that the defendant at the

1 headquarters lawyered up as soon as they came in
2 there and said: Here, you're being charged with
3 armed robbery. The question was in reference to:
4 When you were charged with armed robbery, did you
5 just go up there and say this? I believe that is a
6 direct violation of Doyle, and at this time the
7 defense would move for a mistrial.

8 **THE COURT:** Okay.

9 **MS. CAMPBELL:** Your Honor, we did research this
10 issue last night. Doyle is only triggered once
11 Miranda warnings were given. There were no Miranda
12 warnings ever given in this case. I would hand up
13 Brown vs. State, State vs. McIntosh, State vs.
14 Weston.

15 **THE COURT:** I'm familiar. Doyle was only a
16 violation after Miranda.

17 **MS. CAMPBELL:** Yes, sir. There were no Miranda
18 rights ever given in this case.

19 **THE COURT:** Go ahead and proffer your questions.
20 Do you intend to pursue this?

21 **MS. CAMPBELL:** Yes, sir. I think we have a
22 right to talk about this why this is the first we've
23 heard this story. Miranda was never given to this
24 defendant.

25 **MR. MAY:** I believe it was Investigator Thomas's

1 testimony, the reason why -- or was what we put on
2 the record -- the reason why Miranda was never given
3 was because as soon as he went in there to serve the
4 armed robbery notice, Mr. Broadnax says: I want my
5 lawyer. So he's invoking at that point.

6 **THE COURT:** Even without a warrant.

7 **MR. MAY:** Correct.

8 **THE COURT:** I think he can do that. I think he
9 can invoke.

10 **MS. CAMPBELL:** He can invoke, Your Honor. We
11 did not go into that because the defense wanted that.
12 However, that doesn't have to do with Doyle. Doyle
13 is where the police go to the point where they give
14 Miranda and assure a person that their silence or
15 whatever will not be used against them.

16 **THE COURT:** I know that's true. That's the law.
17 I understand that. The question I've got is: When
18 did he invoke his right to remain silent regardless
19 of whether he had the warning or not, the Miranda
20 warning or not? If he invoked, and I don't know at
21 what time. Mr. May says it's when he talked to
22 Officer Thomas. And what I assumed you were -- the
23 point in time you were questioning him was when he
24 arrived at police headquarters. So, I mean, there's
25 a time disconnect here that I don't understand.

1 **MS. CAMPBELL:** But, Your Honor, even if --
2 assume for purposes of this hearing that he has said
3 at that point, and I'm asking him after that; Doyle
4 does not apply when Miranda is not given. That's the
5 case law. Therefore, just because he says it's
6 something, it's the police assuring him they will not
7 use it against him that triggers Doyle. It's only
8 when Miranda -- and the case law is clear, Your
9 Honor -- is given. The fact that he invokes is not a
10 Doyle violation. And I've got the case law I'd like
11 to hand up.

12 **THE COURT:** Yes, ma'am. You can hand it up.

13 **MS. CAMPBELL:** One of which is --

14 **THE COURT:** But I don't think it says that.

15 **MS. CAMPBELL:** And I didn't either until I
16 researched it.

17 (Document handed to the Court)

18 **THE COURT:** Which case specifically are you
19 talking about? You just handed me a stack of
20 documents.

21 **MS. CAMPBELL:** Your Honor, in Brown vs. State,
22 which is the first case: In this case no
23 governmental action induced the petitioner to remain
24 silent before arrest.

25 **THE COURT:** You know, under that theory, he can

1 never invoke his right to remain silent on his own.

2 **MS. CAMPBELL:** I think he can invoke his right
3 to remain silent on his own which the officer
4 observed. That's his right at that point. That
5 doesn't mean that we can't then comment on it.
6 That's a different issue.

7 **THE COURT:** And I don't know what happened at
8 the police station. Did he respond to the question,
9 any questions at the police --

10 **MS. CAMPBELL:** In this case, this was a case, in
11 Brown, where he remained silent, as in this case.

12 **THE COURT:** You talking about the latest case?

13 **MS. CAMPBELL:** Brown.

14 **THE COURT:** Supreme Court case?

15 **MS. CAMPBELL:** I'm talking about Brown vs.
16 State. I've also referred to State vs. McIntosh and
17 all the cases I handed up.

18 **THE COURT:** You're talking about U.S. Supreme
19 Court --

20 **MS. CAMPBELL:** In this case they're quoting
21 Doyle. In this case no governmental action induced
22 petitioner to remain silent for arrest. The failure
23 to speak occurred before the petitioner was taken
24 into custody and given Miranda warnings.
25 Consequently, the fundamental unfairness present in

1 Doyle is not present in this case. We hold
2 pre-arrest in this case, post-arrest silence does not
3 violate the Fourteenth Amendment. And that can be
4 commented on.

5 And, Judge, I mean, I did the research on this
6 issue for this very reason, because this is a
7 somewhat different situation than any other I've ever
8 had. Of course if he had been advised of his Miranda
9 rights, we would not be allowed to go in it. But in
10 these cases it talks about the reason you can't go in
11 it -- and it would be a Fourteenth or whichever
12 amendment violation -- is because the police have
13 gone forward and assured this person that their
14 silence will not be used against them. Therefore,
15 it's fundamentally unfair.

16 **THE COURT:** I understand that part.

17 **MS. CAMPBELL:** So this is a different issue.
18 And Brown and McIntosh are pretty much directly on
19 point. And they will talk about Fletcher vs. Weir
20 and other U.S. Supreme Court cases. So this isn't
21 something unique to South Carolina. This is
22 basically the case law. Every case says that Miranda
23 is the triggering event that causes it to be a Doyle
24 violation, that any other silence or any other thing
25 would not be a Doyle violation.

1 **THE COURT:** Go ahead with your proffer of your
2 questions. And then I'll --

3 **MS. CAMPBELL:** The questioning would be along
4 the lines of --

5 **THE COURT:** Go ahead.

6 **MS. CAMPBELL:** -- did you tell them that you
7 were just smoking crack cocaine? And this is
8 basically leading up to he had --

9 **THE COURT:** Ask your questions.

10 **Q** (By Ms. Campbell) Did you tell the officers at that
11 point that you weren't involved in the armed robbery
12 and you were just smoking crack cocaine?

13 **A** No, I didn't.

14 **Q** At any time since May 24th of 2009, have you told the
15 police or contacted the police to tell them that you
16 were just smoking crack or buying crack cocaine?

17 **A** No. I spoke to my attorneys.

18 **Q** So the first time we've ever heard this is here
19 today, other than your attorneys?

20 **A** I don't know how often you've heard it, but I've said
21 it to my attorneys numerous times, that I did not do
22 this.

23 **THE COURT:** Is that it?

24 **MS. CAMPBELL:** That's pretty much it.

25 **THE COURT:** All right.

1 (Pause)

2 **MS. CAMPBELL:** Your Honor, to simplify it, I
3 will limit my question to, did you tell -- the
4 questions I've asked, if that would make it easier.
5 And did you tell the police that at that point?

6 **THE COURT:** Well, I don't know that makes it any
7 easier.

8 **MS. CAMPBELL:** Okay.

9 **THE COURT:** Because the question is a comment on
10 post-arrest silence and your ability to use that in
11 closing arguments. And whether it's one question or
12 ten questions, it's the same issue. Mr. May, do you
13 have an answer?

14 **MR. MAY:** Yes, sir, I do. Your Honor, I believe
15 that most of these cases actually deal with post -- I
16 mean pre-arrest silence. Some of them do address
17 post-arrest silence. But I believe that Ms. Karen
18 Williams, the former chief judge of the Fourth
19 Circuit who recently about two or three years ago
20 wrote an opinion overruling Miranda, and in her
21 opinion she writes that Miranda is prophylactic.
22 It's because everybody knows your rights. So,
23 therefore, this is just something that we don't need
24 and, therefore, Miranda is trumped.

25 The common conscience and the common knowledge

1 of America, everybody can recite Miranda warnings.
2 You have the right to remain silent. If you choose
3 to remain silent, your silence can't be used against
4 you. By invoking his right, he is saying: I remain
5 silent because I know that I'm protected by the
6 Fourteenth and Fifth Amendments and that by remaining
7 silent -- because the police at that time, he was in
8 custody, had not followed Miranda, or we saying that
9 he has less rights than had they followed proper
10 procedure?

11 And, therefore, that if any time that a
12 defendant invokes his rights without being prompted,
13 then is the proper course of the police then to not
14 give Miranda, so that way the State can always
15 comment on the right to remain silent? Because this
16 is a dangerous Pandora's box the State is going
17 towards.

18 **THE COURT:** Well, I think that was my question.

19 **MR. MAY:** Further, Your Honor, if I may, in
20 Wainwright v. Greenfield, a case that is cited in all
21 these cases, it's an opinion by Justice Stevens. And
22 he writes: In Doyle we held that Miranda warnings
23 contain an implied promise rooted in the Constitution
24 that silence will carry no penalty.

25 If the promise is rooted in the Constitution,

1 then by invoking his Fifth Amendment rights, he is
2 invoking the right which is so rooted in the
3 Constitution. And because the police did not follow
4 procedure doesn't allow for the State to back-door in
5 comments, both indirect or direct, on the defendant's
6 silence.

7 **THE COURT:** Well, --

8 **MS. CAMPBELL:** Your Honor, if I may. In
9 Wainwright --

10 **THE COURT:** In what?

11 **MS. CAMPBELL:** In Wainwright, the case, it says
12 the point of the Doyle holding is that it's
13 fundamentally unfair to promise an arrested person
14 that his silence will not be used against him and
15 thereafter breach that promise using silence to
16 impeach his trial testimony. In that case it's
17 holding that post-conviction pre-sentencing silence
18 does not resemble post-arrest silence induced by ,
19 assurances in Miranda warnings.

20 **THE COURT:** Well, why -- let me ask you this.

21 **MS. CAMPBELL:** I'm just -- I mean, the case law
22 says it's because the government promises it won't be
23 used against him is the reason. As far as his police
24 conduct, all he did was he didn't question him any
25 further. He never gave a Miranda warning.

1 **THE COURT:** Well, let me ask you this just on
2 the side, as an aside. This objection never came up
3 until he reached the police station. Right?

4 **MS. CAMPBELL:** Mm-hmm (affirmative). I don't
5 think there's any dispute up until the point when --
6 and we can --

7 **THE COURT:** When he invokes.

8 **MR. MAY:** Well, I think we both can stipulate
9 that this all happened after -- that when he walked
10 in there --

11 **MS. CAMPBELL:** There's a period of time I think
12 we can clearly -- I mean, he won't disagree with this
13 either -- that he was taken to the station. He was
14 there at the scene. And he never told this story.

15 **MR. MAY:** And I think Ms. Campbell will agree --

16 **THE COURT:** And today is when -- he never told
17 any story.

18 **MR. MAY:** Correct. He never told any story.

19 **MS. CAMPBELL:** He never told any story.

20 **MR. MAY:** And I believe that Ms. Campbell can
21 stipulate as well that at the time when the car was
22 stopped he was in custody that he was not free to
23 leave.

24 **MS. CAMPBELL:** I have no problem with that.

25 **THE COURT:** All right.

1 **MS. CAMPBELL:** But the record is clear, as in
2 Brown vs. State and State vs. McIntosh, he was never
3 advised of his rights.

4 **THE COURT:** But he never invoked either.

5 **MS. CAMPBELL:** He chose to remain silent which
6 means he --

7 **THE COURT:** He chose to remain silent. But he
8 didn't tell the officers that he wanted a lawyer,
9 that he was invoking his right to remain silent.

10 **MS. CAMPBELL:** That is correct, Your Honor.

11 **THE COURT:** Hmm?

12 **MS. CAMPBELL:** That's correct.

13 **MR. MAY:** I believe that's the lynchpin.

14 **MS. CAMPBELL:** We would just -- the case law
15 says the lynchpin is the advice of rights, the
16 assurances by the government that it won't be used
17 against him.

18 **THE COURT:** Well, there is certainly an
19 implication that when somebody says: I am not going
20 to speak; I want a lawyer, that whether they've been
21 advised or not that is the spirit of the Miranda
22 warnings, that he does have a right to remain silent.
23 I'm going to sustain the objection.

24 **MR. MAY:** Thank you, Your Honor. We'd ask that
25 it be stricken from the record.

1 **THE COURT:** I'll do it.

2 **MR. MAY:** And we'd ask for a mistrial.

3 **THE COURT:** I am not going to do that.

4 **MR. MAY:** Okay.

5 **MS. CAMPBELL:** So, Your Honor, I am free to
6 question him about him telling the story up until the
7 point when he made contact with Investigator Thomas.

8 **THE COURT:** Yeah.

9 **MR. MAY:** Now, again, Your Honor, we would
10 object --

11 **THE COURT:** There's no objection to that
12 testimony.

13 **MS. CAMPBELL:** Thank you.

14 **MR. MAY:** Well, I mean, it hasn't been elicited
15 yet, has it?

16 **MS. CAMPBELL:** No. I've got to go back through
17 it.

18 **MR. MAY:** It hasn't been elicited.

19 **MS. CAMPBELL:** Are you objecting to it?

20 **MR. MAY:** I'm objecting to any post-arrest, any
21 detention silence from that point on.

22 **THE COURT:** But you didn't object.

23 **MR. MAY:** Well, because she didn't elicit that
24 testimony.

25 **THE COURT:** All this talk about being at the car

1 and outside the car and --

2 **MR. MAY:** But she never asked the question: Did
3 you ever tell somebody that you had crack on you or
4 that you were -- regarding the crack at that time.

5 **MS. CAMPBELL:** I think I have gone into that.

6 **MR. MAY:** If you have, I can stand corrected.

7 **THE COURT:** All right. I overrule that
8 objection.

9 **MR. MAY:** Okay.

10 **THE COURT:** Even if you go with this McIntosh
11 case, the State may point out the defendant's silence
12 prior to arrest or his silence after arrest but prior
13 to giving Miranda warnings in order to impeach his
14 testimony at trial. Due process is not violated.
15 Because such silence is probative, it does not rest
16 on any implied assurance by law enforcement
17 authorities and it will carry no penalty.

18 **MR. MAY:** Your Honor, just for direction from
19 the Court; upon redirect, will you want me to
20 redirect? Because it was Mr. Cochran's witness and I
21 objected.

22 **THE COURT:** I want Mr. Cochran to redirect.

23 **MR. MAY:** Okay. I just wanted to clarify.

24 **THE COURT:** Well, read that question back one
25 more time, please.

1 (Whereupon, the court reporter read back the
2 following testimony)

3 "Q At the point when they transferred you
4 downtown --

5 "A That's when I was told I was being arrested for
6 armed robbery."

7 **THE COURT:** Okay. I'm not sure that any
8 curative is going to -- the jury is going to
9 understand what we have talked about and call more
10 attention to it. If you want me to do it, I'll try
11 to do it.

12 **MR. MAY:** Your Honor, I believe to preserve the
13 record and preserve the mistrial motion, we will have
14 to ask for a curative, object to it, and then move
15 again for a mistrial.

16 **THE COURT:** Wait a minute.

17 **MR. MAY:** To preserve the record.

18 **THE COURT:** Say what?

19 **MR. MAY:** That's what I've been taught.

20 **THE COURT:** Well, tell me what you want me to
21 do.

22 **MR. MAY:** I leave it in the Court's discretion.
23 If you -- I would ask you --

24 **THE COURT:** I would say disregard the last
25 question.

1 **MR. MAY:** All right. And then we'd still move
2 for a mistrial, just for the record.

3 **THE COURT:** Well, fine.

4 **MR. MAY:** Yes, sir.

5 **THE COURT:** Denied.

6 **MR. MAY:** Thank you.

7 **THE COURT:** Bring the jury, please.

8 (Jury in at 10:20)

9 **THE BAILIFF:** The jury is all present, Your
10 Honor.

11 **THE COURT:** Thank you very much. All right,
12 ladies and gentlemen. I'm going to ask you to just
13 disregard the last question. I don't even believe
14 there was an answer before the objection. Just
15 strike that from your memory. You may continue.

16 **MS. CAMPBELL:** Thank you, Your Honor.

17 **Q** (By Ms. Campbell) Let me back up for a minute.
18 There at the scene you have officers all around you?

19 **A** Yes, I do.

20 **Q** And you can hear the radios because you heard that
21 there was a positive ID?

22 **A** I could hear some over the radios. Yes, ma'am.

23 **Q** And your testimony here today is you never heard them
24 mention an armed robbery?

25 **A** No, I didn't.

1 Q And there at the scene where you're being detained
2 for a traffic stop for Charles Green, you didn't tell
3 them that you didn't do an armed robbery?

4 A I didn't know what the stop was for.

5 MR. MAY: Again, Your Honor, objection for the
6 record.

7 THE COURT: Overruled.

8 Q And how long were you there at the scene?

9 A Maybe 15 minutes.

10 Q And so when these officers take you, you're in
11 handcuffs, and they put you in the back of the car
12 and detain you, you didn't ask why?

13 A No, I didn't.

14 Q They didn't have your crack pipe, did they?

15 A No, they didn't.

16 Q They didn't have your crack cocaine, did they?

17 A No, they didn't.

18 Q So you never asked why you were being handcuffed, put
19 in the back of a police car and transported downtown?

20 A Ms. Campbell, --

21 Q Sir.

22 A -- if I asked why, then that gives them the reason to
23 start questioning me. And I didn't want them
24 questioning me about anything because I didn't want
25 to talk. I've still got a mouthful of crack that I'm

1 still trying to chew.

2 Q So your testimony is that it took you from the time
3 period before your stop when you start chewing three
4 pieces of crack cocaine that are the size of what?

5 A A thumbnail.

6 Q A thumbnail?

7 A A thumbnail, an eighth of an inch thick.

8 Q An eighth of an inch thick. It took you from the
9 time before you were stopped until the stop was
10 initiated until you were taken out of the car until
11 at least 15 minutes or so passed for the ID to be
12 made, and then you were transported downtown and you
13 didn't talk because you were still chewing three
14 pieces of crack?

15 A That's correct.

16 Q And at the point when you were being transported
17 downtown, you never asked that police officer: Why
18 are you detaining me?

19 A No, ma'am, I didn't.

20 Q Did you know why?

21 A No, I didn't.

22 Q But you never asked?

23 A Never asked.

24 Q And you never asked them what: Do you mean there was
25 a positive identification?

1 **A** No, ma'am. I didn't. I never asked them anything.

2 **Q** So you just wrong place, wrong time?

3 **A** Apparently.

4 **Q** Back in 1991 you were convicted of three counts of
5 armed robbery?

6 **A** I pled guilty to those.

7 **Q** Then in 2002 you were convicted of financial
8 transaction card theft?

9 **A** I pled guilty to that.

10 **Q** And then in 2005 you were convicted of grand larceny?

11 **A** I pled guilty to that.

12 **Q** And then in 2006 you were convicted of petit larceny?

13 **A** I pled guilty to that.

14 **MS. CAMPBELL:** That's all I have, Your Honor.

15 **THE COURT:** Redirect?

16 **MR. COCHRAN:** Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 **BY MR. COCHRAN**

19 **Q** You didn't tell the police that you had crack in your
20 mouth because you didn't want them to know you had
21 crack in your mouth, correct?

22 **A** That's correct. That was the whole purpose of
23 putting it in my mouth.

24 **Q** And now, the screen was not facing you; but you could
25 hear the audio when the jury watched that video,

1 correct?

2 **A** Right.

3 **Q** And could you hear -- and this is the video that the
4 jury is going to take back to the jury room with
5 them -- could you hear anywhere on that video the
6 police talking about an armed robbery in all the
7 dispatch that was going on that Ms. Campbell was
8 describing?

9 **A** No, I didn't.

10 **Q** Just for the record, you were saying Ridgeway Street.
11 Is there a street that you were on -- you told me it
12 was Edgewood. I don't think there is any Ridgeway.
13 I think you were --

14 **A** Well, I was thinking Officer Ridgeway.

15 **Q** Officer Ridgeway. Okay.

16 **A** That's why I said it.

17 **Q** Edgewood is the street you were on?

18 **A** Yes.

19 **Q** That's the street that you were coming off of.
20 Nothing more, Your Honor.

21 **THE COURT:** Any recross?

22 **MS. CAMPBELL:** No, sir.

23 **THE COURT:** You may come down, sir. Thank you
24 very much. Next witness.

25 **MR. MAY:** Your Honor, the defense rests.

1 **THE COURT:** Any reply?

2 **MS. CAMPBELL:** Potentially, yes, Your Honor.

3 **THE COURT:** Ma'am?

4 **MS. CAMPBELL:** Yes, sir. I just need a moment
5 to get some people here. I couldn't anticipate when
6 they would rest.

7 **THE COURT:** All right, ladies and gentlemen.
8 Well, approach the bench.

9 (Whereupon, a bench conference is had)

10 **THE COURT:** All right. We've got a short
11 holdup, ladies and gentlemen. There's an officer
12 that needs to be here that is on his way we
13 understand. He would be the final witness in this
14 case. The defense has rested. You've heard all the
15 evidence from both the State and the defense with the
16 exception of this one officer.

17 And it's just a trial procedure issue that after
18 the defense rests the State has an opportunity to, if
19 any new matter comes up, to reply, what's called
20 reply. So I was trying to get a handle on where that
21 officer is. Other than on his way, I don't know. So
22 it's going to be a few minutes. So I guess the best
23 thing for you to do is relax in the jury room. Is
24 there coffee or refreshments in there?

25 **THE BAILIFF:** They had them there earlier. I

1 assume there still are some. We can get them more.

2 **THE COURT:** Is there something in there?

3 **MR. FOREMAN:** Yes, sir.

4 **THE COURT:** All right. I'm going to ask you to
5 go to the jury room. Just again don't discuss the
6 case among yourselves. As soon as the officer
7 arrives, I'll call you back. And that will be the
8 last witness in this case.

9 Let me just say this. After which the attorneys
10 are going to present their final arguments to you and
11 I will give you, explain to you the law of South
12 Carolina as it applies to this case. Then it will be
13 turned over to you. Thank you very much.

14 (Jury out at 10:30 a.m.)

15 **MR. MAY:** Briefly, Your Honor.

16 **THE COURT:** Yes, sir.

17 **MR. MAY:** We just renew all objections and
18 motions made throughout the trial.

19 **THE COURT:** All right. Court is still in
20 session. All right. I respectfully deny your
21 motions.

22 **MR. MAY:** Thank you, Your Honor.

23 **THE COURT:** Now, I'll give you an opportunity to
24 argue for directed verdict after the reply witness
25 appears. As far as jury charges, any specific

1 requests to charge?

2 **MS. CAMPBELL:** I believe the only one we would
3 have would be voluntary intoxication since he said he
4 was an addict.

5 **MR. MAY:** We would ask for mere presence.

6 **MS. CAMPBELL:** And I think we both agree to
7 those.

8 **THE COURT:** What?

9 **MS. CAMPBELL:** I think we've agreed that --

10 **THE COURT:** Voluntary intoxication.

11 **MS. CAMPBELL:** And he is asking for a mere
12 presence.

13 **MR. MAY:** And you're okay with that?

14 **MS. CAMPBELL:** (Nods head affirmatively).

15 **THE COURT:** How does mere presence apply?

16 **MR. MAY:** Because it was the defense's
17 contention he is merely present next to the articles
18 in the truck.

19 **THE COURT:** Oh. Oh. I thought you were
20 admitting he was present at the Church's Fried
21 Chicken.

22 **MR. MAY:** No, sir. That he was merely present
23 in the truck and that the articles do not necessarily
24 attach to his possession.

25 **THE COURT:** Any objection to that?

1 **MS. CAMPBELL:** No, sir.

2 **THE COURT:** Okay. I'd just like to review the
3 charge at some point. Do you want a full set, as
4 usual?

5 **MR. MAY:** Yes, sir.

6 **THE COURT:** We'll give you a full set in a few
7 minutes.

8 **MR. MAY:** We can share it.

9 **THE COURT:** All right. Let's be at ease for
10 about -- let me know when the officer gets here.

11 **MR. MAY:** Yes, sir.

12 **MS. CAMPBELL:** Thank you, Your Honor.

13 (Whereupon, a break is taken)

14 **THE COURT:** The State ready for the jury?

15 **MS. CAMPBELL:** Yes, Your Honor. We're ready to
16 proceed. Did you want to take up the matter about
17 that charge? You want to wait for that?

18 **THE COURT:** I'm sorry. Mr. May is not here.

19 **MR. COCHRAN:** Yes, Your Honor. We sent the
20 clerk down to go get him. I'm not sure where he is.
21 I think he misunderstood how long we were going to be
22 before we started up with this.

23 **THE COURT:** Well, did somebody go get him?

24 **MR. COCHRAN:** Yes. I've got somebody down there
25 going to get him.

1 **THE COURT:** Counsel, approach the bench.

2 (Whereupon, a bench conference is had)

3 **THE COURT:** Ready for the jury? I'm sorry. Any
4 further comments on the proposed charges? The State
5 objects to the defendant's proposed modification of
6 the mere presence charge to include the arrest
7 location. And it's my understanding the State
8 objects to that language. Is that correct?

9 **MS. CAMPBELL:** Yes, Your Honor. We are fine
10 with your mere presence/scene that you handed up to
11 us. If you wanted to modify that, we would just
12 object to the use of the language of "arrest
13 location".

14 **THE COURT:** I have modified it to read scene or
15 vicinity. Any objection?

16 **MR. MAY:** And then what is --

17 **THE COURT:** From the State?

18 **MS. CAMPBELL:** None from the State.

19 **THE COURT:** Both locations where the word
20 "scene" is used I've added the two words "or
21 vicinity".

22 **MR. MAY:** Your Honor, we would ask that "scene"
23 be stricken and just have "vicinity".

24 **THE COURT:** Do what?

25 **MR. MAY:** Just have "scene" stricken and just

1 have "vicinity".

2 **THE COURT:** I think it's one and the same.

3 Thank you. All right. Anything further before we
4 bring the jury?

5 **MS. CAMPBELL:** Just, Your Honor, am I doing the
6 law as soon as they get done with testimony?

7 **THE COURT:** Well, let's see where we are.

8 **MS. CAMPBELL:** Okay.

9 **THE COURT:** I don't know how long the cross
10 examination is going to be. I'll tell you that is a
11 good possibility. Bring the jury, please.

12 (Jury in at 11:26 a.m.)

13 **THE BAILIFF:** The jury is all present, Your
14 Honor.

15 **THE COURT:** All right, Ms. Campbell. Call your
16 next witness.

17 **MS. CAMPBELL:** The State would call Officer
18 Ridgeway.

19 **THE COURT:** You've already been sworn. You
20 understand that. You're still under oath.

21 MICHAEL RIDGEWAY, after being recalled and
22 reminded he is still sworn, testifies as follows:

23 DIRECT EXAMINATION

24 **BY MS. CAMPBELL**

25 **Q** Officer Ridgeway, I apologize for having to call you

1 back to court.

2 A That's okay.

3 Q Yesterday you testified about what transpired. And
4 since then some other issues have come up. When you
5 removed the defendant from the passenger's side of
6 the truck, you mentioned yesterday that he was
7 coughing?

8 A Yes, ma'am.

9 Q And when you observed him coughing, what did you
10 actually observe?

11 A Well, I just observed that he was -- you know, he --
12 he was coughing. It seemed like he couldn't catch
13 his breath for approximately 45 seconds to a minute.

14 Q And during that time period did you feel like he
15 needed any medical assistance?

16 A No. I did not. He was still breathing. He was just
17 coughing.

18 Q Did you notice anything about him that alarmed you
19 enough that you thought you maybe should get EMT's or
20 anything else at that point?

21 A No, ma'am.

22 Q You also mentioned yesterday in your testimony that
23 you actually detained this defendant, as well as Mr.
24 Green was detained?

25 A Yes, ma'am.

1 Q And do you have a certain protocol you go through
2 whenever you detain someone or handcuff them?

3 A Generally whenever I handcuff them or handcuff a
4 person or detain them, I explain to them why they're
5 being handcuffed at that point.

6 Q And in this case when you detained after removing him
7 from the truck -- and how long was it before you
8 actually detained him or handcuffed him? Was it
9 right away?

10 A It was within a matter of minutes.

11 Q And at that point after you got him out of the truck
12 as you were handcuffing him; what, if anything, did
13 you tell this defendant?

14 A I told him and Mr. Green that they were being
15 detained because the vehicle fit the description of
16 the vehicle that had just been involved in an armed
17 robbery and that we were going to detain them for a
18 few minutes to determine if they were indeed --

19 MR. MAY: Objection, Your Honor. It's hearsay.

20 MS. CAMPBELL: It's what he's saying.

21 THE COURT: That's what he said to your client.

22 MR. MAY: I agree, Your Honor. Hearsay is an
23 out of court statement for the truth of the matter.

24 THE COURT: Overruled.

25 Q Sorry. Back up. You can say what you were trying to

1 say.

2 **A** Right. We were detaining them and that the vehicle
3 that they were driving fit the description of the
4 vehicle that had just been involved in an armed
5 robbery and that we were going to detain them for a
6 few minutes to determine if they were involved or
7 not; and if they were involved, then, well, we would
8 burn that bridge later, but if they were not
9 involved, we would be free to let them go
10 momentarily.

11 **Q** But you clear in advising both this defendant and Mr.
12 Green that they had been implicated in an armed
13 robbery?

14 **A** That's correct.

15 **Q** And that's the terminology you used in speaking to
16 him that day?

17 **A** Yes, ma'am.

18 **Q** At any point did he ever ask anything --

19 **A** No, ma'am.

20 **Q** -- or say anything to you?

21 **A** Not at all.

22 **Q** After the first seconds you say you saw him coughing,
23 did you continue to see him chew or appear to do any
24 kind of weird movement with his mouth?

25 **A** No, ma'am.

1 Q Did you ever see him spit into the dirt?

2 A Not that I can recall.

3 Q The entire time he was out there, did you ever see
4 him spitting anything out?

5 A No, ma'am. Not that I recall.

6 Q And in whose custody for the first ten or fifteen
7 minutes was this defendant?

8 MR. MAY: Objection, Your Honor. She's
9 constantly leading.

10 THE COURT: That was a question that's not
11 leading. Go ahead.

12 A He was in my custody.

13 Q And you observed him the entire time?

14 A Yes, ma'am.

15 Q At any point during the 15 or so minutes you were out
16 there with him before placing him into the squad car
17 after the identification had been made, did you
18 observe anything about him that alarmed you so that
19 you might alert EM --

20 MR. MAY: Objection, Your Honor. She's still
21 leading.

22 THE COURT: Overruled.

23 Q Did you observe anything that alarmed you?

24 A Not at all.

25 Q And what was his demeanor like out there on the

1 scene?

2 **A** Well, once his coughing fit was over, he was calm.

3 **Q** And that was over within the first minute?

4 **A** Yes, ma'am.

5 **Q** Did he exhibit any signs of having ingested a large
6 quantity of drugs?

7 **A** No, ma'am.

8 **Q** And you've trained at the academy I believe?

9 **A** Yes, ma'am. We are familiarized at the academy.

10 **Q** And over your years of experience, have you observed
11 people that have ingested crack cocaine?

12 **A** Yes, ma'am.

13 **Q** And what is typically the reaction of someone that
14 ingests crack --

15 **MR. MAY:** Objection, Your Honor. He's not an
16 expert.

17 **THE COURT:** Overruled.

18 **Q** And you've observed people that have ingested crack
19 cocaine?

20 **A** I have.

21 **Q** And does that manifest itself in anything you can
22 observe when someone ingests crack cocaine?

23 **A** Profuse sweating, extreme agitation.

24 **Q** Did you observe any of that with this defendant for
25 the 15 minutes or so that you had him out there that

1 day?

2 **A** He was sweating, but there was no other agitation or
3 any -- the best way to describe it would be that he
4 didn't appear that there would be anything else wrong
5 with him.

6 **Q** And was it hot out there that day?

7 **A** It was warm.

8 **Q** Okay. And other than that though, did you see
9 anything that would alarm you? And if you see
10 someone or have someone that's ingested crack
11 cocaine, is it important to get them medical
12 treatment?

13 **A** Absolutely.

14 **Q** And did you see anything out there that day that
15 indicated to you that this man needed any kind of
16 medical treatment, having consumed crack cocaine?

17 **A** No, ma'am.

18 **Q** And also are you familiar with how crack cocaine
19 appears when it is sold?

20 **A** Yes, ma'am.

21 **Q** And typically, explain to this jury how crack cocaine
22 is sold?

23 **A** Crack cocaine is typically sold in what they call
24 rocks which are approximately I would say a quarter
25 to a third of an inch in width and diameter.

1 Q And if someone was -- and they vary in size. Is that
2 correct?

3 A That's correct.

4 Q And the bigger it is the more it costs?

5 A That's right.

6 Q And if someone has three rocks of crack cocaine that
7 are the size of your thumbnail and an eighth of an
8 inch thick --

9 MR. MAY: Objection, Your Honor. She's calling
10 for speculation where the witness is not an expert.

11 THE COURT: He's not an expert but he's observed
12 it, and I'm going to allow him to testify.

13 MS. CAMPBELL: Thank you.

14 Q (By Ms. Campbell) How would you describe that amount
15 of crack cocaine?

16 A Just to clarify, you are speaking in terms of
17 approximately the size of a thumbnail and an eighth
18 of an inch thick?

19 Q Mm-hmm (affirmative).

20 A That would be approximately the size of two street
21 sized crack rocks that I have seen.

22 Q And so sometimes they're sold in larger quantities
23 and smaller quantities?

24 A That's correct.

25 Q So if someone ingested three rocks that size which is

1 typically the two typical rocks --

2 **A** Correct.

3 **Q** -- would that be a significant amount of crack
4 cocaine or not?

5 **A** It would.

6 **Q** If someone ingested three, would there have been a
7 physical manifestation?

8 **MR. MAY:** Objection, Your Honor.

9 **THE COURT:** Sustained.

10 **Q** If someone ingests -- have you observed people that
11 have ingested smaller amounts of crack cocaine than
12 that?

13 **A** I have.

14 **MR. MAY:** Objection, Your Honor. Arguing things
15 that are not for this jury.

16 **THE COURT:** Overruled. Go ahead.

17 **Q** You've observed that?

18 **A** I have.

19 **Q** And even if they have even half that much crack
20 cocaine, would it have manifested itself and you
21 would have been able to observe it?

22 **A** In my experience, yes, ma'am.

23 **Q** Did you observe anything consistent with that about
24 this defendant when you were out there with him?

25 **A** No, ma'am.

1 Q And you would expect to observe that within a few
2 minutes of ingesting?

3 A Yes, ma'am.

4 Q If they ate it?

5 A Correct.

6 MS. CAMPBELL: I don't have anything further.

7 THE COURT: Mr. May.

8 MR. MAY: May it please the Court, Your Honor.

9 CROSS EXAMINATION

10 BY MR. MAY

11 Q Now, you're not a doctor?

12 A No.

13 Q You're not a pharmacist. You're not anything like
14 that. You're a police officer and you do your job?

15 A That's correct.

16 Q Okay. The good thing -- the thing about crack or the
17 reason why a lot of people make crack is because it's
18 cheap, correct?

19 A Correct.

20 Q Because people control the amount of cocaine that's
21 put in each crack rock?

22 A That's correct.

23 Q So, just because a crack rock is the size of a -- I
24 don't know -- a pebble or the size of my big thumb,
25 it just depends on how much cocaine is in that

1 particular rock?

2 A That's correct.

3 Q And cocaine is the actual drug that gives you the
4 effects which Ms. Campbell was eliciting from you,
5 correct?

6 A To my knowledge.

7 Q Yes. It's not the baking powder. So depending on
8 how much the crack rock costs, it is generally
9 determined on how much cocaine is in it, correct?

10 A Correct.

11 Q Depending on how much cocaine is in the crack rock
12 depends on how powerful it is?

13 A Correct.

14 Q Correct. And there has been -- have been crack rocks
15 out there that actually have no cocaine in them; it's
16 just baking powder, because people are trying to scam
17 addicts?

18 A That's true.

19 Q Okay. Now, turn your attention to this date. When
20 you testified either yesterday or the day before -- I
21 don't know; it's all kind of running together for
22 me -- you testified that you really don't remember
23 that much, that he had gray pants on, don't remember
24 the shirt. I mean, it's been a year ago?

25 A Correct.

1 Q Thirteen months. And, I mean, you've had a lot more
2 encounters with drug addicts, had a lot more vehicle
3 pull overs, correct?

4 A Correct.

5 Q And, I mean, it all kind of runs together. Is that
6 fair?

7 A That's fair.

8 Q Okay. So you're out there and it's just kind of
9 running together. And, I mean, you remember that he
10 was coughing, correct?

11 A Correct.

12 Q You remember that he was coughing and having a hard
13 time when you first pulled him out?

14 A Correct.

15 Q Once people cough, sometimes stuff comes out of their
16 mouth?

17 A Sometimes.

18 Q And this was a long time ago. Now, beg the Court's
19 indulgence for one second.

20 (Pause)

21 Q Now, you were called in today to testify to specific
22 things, correct?

23 A Correct.

24 Q You got a call from the Solicitor's Office saying,
25 hey, we need you to talk about specific things,

1 correct?

2 **A** No. I was just called and told I needed to be here.

3 **Q** Okay. No further questions at this time.

4 **MS. CAMPBELL:** Just a couple.

5 REDIRECT EXAMINATION

6 **BY MS. CAMPBELL**

7 **Q** You never saw anything come out of his mouth?

8 **A** Not to my recollection.

9 **Q** And he talked about everything just runs together.
10 This was what kind of call?

11 **A** This was an armed robbery.

12 **Q** And does that stick out in your mind verses a traffic
13 stop if somebody is speeding?

14 **A** It does.

15 **Q** Everything you testified to are your observations?

16 **A** Yes, ma'am.

17 **Q** What did you tell the defendant about why he was
18 being detained?

19 **MR. MAY:** Objection, Your Honor. Outside the
20 scope of cross.

21 **THE COURT:** Overruled.

22 **Q** You may proceed.

23 **A** I explained to the defendant and Mr. Green that they
24 were being detained because the vehicle fit the
25 description of one that had just been implicated in

1 an armed robbery. I explained to them that they were
2 both being placed in investigative detention and that
3 if further investigation revealed that they were
4 possibly the suspects, then, you know, there would be
5 further investigation; but, if not, then they would
6 be free to go in a few moments.

7 Q When you told him that, what was his reaction?

8 A There was no reaction.

9 Q Did he say anything to you?

10 A No, ma'am.

11 MS. CAMPBELL: I don't have anything further,
12 Your Honor.

13 MR. MAY: Briefly.

14 THE COURT: Yes, sir.

15 RECROSS EXAMINATION

16 BY MR. MAY

17 Q You never testified to that yesterday or the day
18 before, did you? You never testified that you
19 informed anybody of anything?

20 A I can't remember exactly if I did or not.

21 Q I mean, we can have Jenny re-read it. But you never
22 testified to that until Ms. Campbell called you back
23 to the stand. No further questions, Your Honor.

24 THE COURT: You may come down, sir. Thank you
25 very much. Next witness.

1 **MS. CAMPBELL:** The State would call Investigator
2 Thomas.

3 **THE COURT:** Mr. Thomas, I'll remind you you're
4 still under oath.

5 **THE WITNESS:** Yes, sir. Good morning.

6 ARTHUR L. THOMAS, after being recalled and
7 reminded he is still sworn, testifies as follows:

8 DIRECT EXAMINATION

9 **BY MS. CAMPBELL**

10 **Q** Investigator Thomas, you actually went out to where
11 the truck had been stopped that day on the 24th?

12 **A** That's correct.

13 **Q** And at that point did you observe the defendant?

14 **A** I observed both defendants, yes.

15 **Q** And when you observed the defendant, did you notice
16 anything about his demeanor or his appearance that
17 would alarm you?

18 **A** No. He was very calm the entire time.

19 **Q** At any point did you think while you were out there
20 at the scene with the defendant it was necessary to
21 call EMS to look at him?

22 **A** No. Neither defendant did I observe any condition
23 where they needed EMS. We actually had EMS at
24 Church's. So I would have called if I thought that
25 anyone needed assistance or anything of that nature.

1 Q That day the defendant was also transported down to
2 headquarters?

3 A That's correct.

4 Q And did you have an opportunity to observe him over
5 the next period, over a period of time at
6 headquarters?

7 A I have.

8 Q And approximately how long was he at headquarters
9 while you were observing him on and off?

10 A Approximately two hours or two and a half hours.

11 Q And have you been trained at the academy?

12 A Yes.

13 Q And you've been in law enforcement how many years?

14 A Twenty years.

15 Q And you're familiar with narcotics such as crack
16 cocaine?

17 A I am.

18 Q And are you familiar with the effects an amount of
19 crack cocaine can have on a person --

20 A I am.

21 Q -- when it's ingested orally?

22 A I am quite familiar with it, yes.

23 Q And what have you observed when people take even
24 small amounts of crack cocaine?

25 A In my experience, I worked on several task forces.

1 When we did narcotics stings we've had subjects
2 consume crack and so forth. Normally after
3 consumption of such they will start perspiring
4 profusely, tremoring, shaking, so forth. And
5 normally we will provide medical attention. In some
6 instances they would have a heart attack if they have
7 consumed too much.

8 Q During the time that the defendant, you observed him
9 on and off for that two-hour period or so at
10 headquarters, did you see any signs that he needed
11 any kind of medical attention that would be
12 consistent with what you just testified to?

13 A No signs of that. Actually he was just extremely
14 calm, and that stood out to me. There was no sign of
15 being nervous, even in being brought to headquarters.

16 Q At any point did you think it was appropriate that
17 night, observing him at the scene or any other time,
18 did it ever go through your mind that you needed to
19 get him medical attention for a drug overdose?

20 A No. Just the victims themselves.

21 Q You said he was there for about two hours. During
22 that period of time, you were also taking statements
23 from witnesses?

24 MR. MAY: Objection, Your Honor.

25 MS. CAMPBELL: I'll rephrase.

1 Q What were you doing?

2 A Kind of a round-robin. I was going from room to room
3 with the victims, the witnesses --

4 MR. MAY: Objection, Your Honor. May we
5 approach?

6 THE COURT: Overruled.

7 MR. MAY: May we approach?

8 THE COURT: Approach the bench.

9 (Whereupon, a bench conference is had)

10 Q I'm sorry, sir. You can continue.

11 A All right. As I was saying, kind of a round-robin.
12 I went from room to room with the victims, witnesses
13 and the suspects. And during that time I made
14 observations of all parties.

15 Q Thank you, sir.

16 THE COURT: Cross examination.

17 MR. MAY: Briefly.

18 CROSS EXAMINATION

19 BY MR. MAY

20 Q Investigator Thomas.

21 A Mr. May.

22 Q You're not a doctor, not a pharmacist?

23 A No, sir, I'm not.

24 Q Have no degree in pharmacology?

25 A No, sir, I don't.

- 1 Q And as Officer Ridgeway said, the effects of crack
2 are dependent directly upon how much cocaine is in
3 the actual rock itself?
- 4 A That's correct.
- 5 Q And that depends on whoever makes the drugs?
- 6 A That's correct.
- 7 Q So you can have a crack cocaine piece the size of
8 your fist that has the same amount of drugs as the
9 size of a pebble?
- 10 A It depends on what it's mixed with.
- 11 Q It depends on who makes it?
- 12 A And what you cut it with.
- 13 Q Yeah. It depends on what the consistency is, depends
14 on what the percentages of the drug dealer who makes
15 it?
- 16 A That's correct?
- 17 Q Now, you said he was very nervous, correct?
- 18 A Who?
- 19 Q I'm sorry. You said he wasn't very nervous?
- 20 A No, no. What was shocking to me, that he was
21 extremely calm.
- 22 Q Extremely calm?
- 23 A Mr. Green was nervous but --
- 24 Q So Mr. Green was nervous?
- 25 A That's right.

1 **Q** Mr. Green was nervous but Mr. Broadnax was not?

2 **A** No. He was extremely calm.

3 **Q** Thank you. No further questions at this time.

4 **THE COURT:** Redirect?

5 **MS. CAMPBELL:** No, sir.

6 **THE COURT:** All right. You may come down, sir.

7 **MS. CAMPBELL:** May we approach?

8 **THE COURT:** You all are wearing out the carpet.

9 **MS. CAMPBELL:** I apologize, Your Honor.

10 (Whereupon, a bench conference is had)

11 **THE COURT:** All right, ladies and gentlemen of
12 the jury. The parties, counsel have stipulated that
13 the defendant did not require medical attention, that
14 he showed no outward signs of needing medical
15 attention after he was taken to police headquarters
16 and any time thereafter. All right. Anything
17 further?

18 **MS. CAMPBELL:** No, sir.

19 **THE COURT:** Anything further from the defense?

20 **MR. MAY:** No, sir.

21 **THE COURT:** All right, ladies and gentlemen.

22 Now that completes all the testimony in the case.

23 Now, there is one matter I need to take up with the
24 attorneys before we start the closing arguments. And
25 as you have already placed your luncheon orders, I'm

1 going to check on those while you're out for just a
2 minute and I'm going to check on your luncheon
3 orders. And I just have to clear up before we start
4 the final arguments one thing with the attorneys
5 after which we're going to take a lunch break, and
6 we'll keep on moving. That's the best I can tell
7 you.

8 All right. Just go to your jury room for just a
9 minute, and I'm going to check on lunch and then
10 we'll start with final arguments. Don't discuss the
11 case among yourselves yet. But we're getting close.

12 (Jury out at 11:48 a.m.)

13 **THE COURT:** Any motions?

14 **MR. MAY:** Yes, Your Honor. First, just for the
15 record --

16 **THE COURT:** They're all for the record.

17 **MR. MAY:** Yes, sir. Yes, sir. We just would
18 like to put on the record the objection which was
19 overruled. I believe it was an indirect comment
20 about the defendant's right to remain silent under
21 Doyle when Investigator Thomas said that he was at
22 the police station for two hours and was doing a
23 round-robin to each room and each witness. I believe
24 that's an indirect comment upon the defendant's right
25 to remain silent. It implicates that he did not give

1 a statement as every other witness at the police
2 station did.

3 **THE COURT:** I'm not sure he said every witness
4 gave a statement.

5 **MR. MAY:** I think that was in their case in
6 chief, that every witness that went up there had
7 given a statement at some point.

8 **THE COURT:** Okay.

9 **MR. MAY:** And then, Your Honor, for the record,
10 we'd also renew all objections and motions to this
11 point.

12 **THE COURT:** And are you making a motion for
13 something?

14 **MR. MAY:** Well, Your Honor, I believe we already
15 made a motion for a directed verdict and it was
16 denied.

17 **THE COURT:** Well, I know. I know that, but
18 there's been more evidence.

19 **MR. MAY:** I move again for a directed verdict.

20 **THE COURT:** Okay. Respectfully denied.

21 **MR. MAY:** And, Your Honor, we would -- Mr.
22 Cochran tells me that the indictment goes back with
23 the jury.

24 **THE COURT:** Yeah.

25 **MR. MAY:** We would object to that. We would ask

1 that your charge to the jury as on the indictments be
2 sufficient and let them discuss it from there.

3 **THE COURT:** All right. Overruled. It's my
4 practice to send the indictments back if they don't
5 contain any prejudicial -- I don't mean
6 prejudicial -- I mean anything that would mislead the
7 jury, such as a second offense, third offense or
8 multiple charges contained in one indictment. So
9 now, have we called on the lunches?

10 **THE CLERK:** Yes, sir. I called. And Joe is
11 going to go about 1:00.

12 **THE COURT:** It's about 12:00.

13 **THE CLERK:** He's going to leave at 12.

14 **THE COURT:** Going to leave at 12.

15 **THE CLERK:** Yes, sir.

16 **THE COURT:** All right. Let's take a ten-minute
17 break. And be prepared. I think the best thing to
18 do is let the State open on the law, then break for
19 lunch. Then it's going to be a two-hour lunch break.
20 I'm trying to get the lunches here so they'll have
21 something to do. Mr. Dye, let me see you a minute.
22 Ms. Cox.

23 (Pause)

24 **THE COURT:** We'll stand at ease for about five
25 minutes.

1 (Whereupon, a break is taken)

2 **THE COURT:** Is the State ready to proceed?

3 **MS. CAMPBELL:** One other matter, Your Honor.

4 Earlier the defense moved that we be prohibited from
5 using the word "innocent" or "innocence" in our
6 closing argument. It's part of your charge.

7 **THE COURT:** I know that.

8 **MS. CAMPBELL:** Presumption of innocence. I
9 don't know under what theory they're using preventing
10 that we can't use a certain word.

11 **THE COURT:** I can't prevent you from using the
12 term.

13 **MS. CAMPBELL:** Thank you.

14 **MR. MAY:** Your Honor, may I just have a standing
15 objection to any use?

16 **THE COURT:** Yes, sir.

17 **MR. MAY:** Thank you.

18 **THE COURT:** I had a case one time involving a
19 woman who had a phobic reaction to a snake. And the
20 defense counsel asked that the word "snake" not be
21 used throughout the entire trial.

22 **COURT REPORTER:** I remember that.

23 **THE COURT:** And Plaintiff's counsel took the
24 position that they didn't want to unduly cause stress
25 to the lady, that they would use the word "snake"

1 whenever they felt like it. At that point the woman
2 fell out on the floor and went into a paroxysms and
3 shaking, crying. We compromised so that throughout
4 the trial we referred to "it", the "it". Now, that
5 was a civil trial. Bring the jury, please. As a
6 matter of fact, every time she went out she had to
7 have friends go with her because she was afraid she'd
8 see an "it". So she called them her "it" patrol.
9 True story. It's on the public record.

10 (Jury in at 12:02 p.m.)

11 **THE BAILIFF:** The jury is all present, Your
12 Honor.

13 **THE COURT:** Thank you very much. All right,
14 ladies and gentlemen. We're now ready to begin the
15 closing arguments. And I do want to say something
16 before they start. I know sometimes jurors get the
17 feeling there's a lot of up and down and in and out
18 and wonder why that takes place.

19 Well, it all involves the protection of the
20 defendant's rights. And that's my job. And I hope
21 you'll understand that we're not just being arbitrary
22 when we make these -- when counsel makes objections
23 and I have to deal with them. So they are just a
24 part of every trial that goes on. So I hope you'll
25 bear with us.

1 Now, the procedure we're going to use from this
2 point forward is the State is going to what we call
3 open on the law; in other words, explain to you what
4 their theory of the law is that applies to this case.
5 Now, eventually it will be my responsibility to --
6 and they will tell you that, to give you the final
7 charge on the law, but they have a right to discuss
8 that with you and how it applies to this case,
9 following which your lunch should be here. And I
10 think we'll just take a break for lunch, allow you to
11 eat your lunch here and either go out. Well, I'll
12 discuss that with you when that occurs. So, all
13 right, Ms. Campbell. You may begin.

14 **MS. CAMPBELL:** May it please the Court?

15 **THE COURT:** Yes, ma'am.

16 **MS. CAMPBELL:** Good afternoon. The first thing
17 I would like to do on behalf of the State of South
18 Carolina, the citizens of Richland County, and the
19 victims in this case: Gracious Tucker, Danny Weaver,
20 Arthur Haynes, Danny Weaver, is to thank you for your
21 service in this case.

22 I know when you showed up here on Monday morning
23 you may or may not have had anticipated that you
24 would actually sit on a jury. You have been chosen
25 to be fair and impartial. And over the course of the

1 last several days you've paid attention. We've
2 observed you. And I just want to thank you for your
3 service in this case.

4 Now, as the judge just told you, I am going to
5 have the opportunity right now to stand up before you
6 and talk to you a little bit about what the law is.
7 And then the defense is going to get up and argue
8 their version of the case, and then I will have the
9 final opportunity to address you.

10 If I misquote the law in any way during this
11 time, it's not intentional. You take the law exactly
12 as the judge gives it to you because he is the judge
13 of the law. And in that same fashion, if anyone
14 misquotes or mischaracterizes the sworn testimony in
15 this case, you remember it. Because the roles in
16 this courtroom are very well defined under our
17 Constitution, as they should be.

18 The prosecution's role is to get before you all
19 the admissible, relevant evidence as to what happened
20 back on May the 24th. The defense role is obvious,
21 to defend the client to the best of his ability. The
22 Judge's role, as you've heard, you've been in and
23 out; it's to determine what is admissible, what you
24 can hear and make rulings on the law and ultimately
25 to tell you what the law is.

1 But the most important role in this courtroom,
2 ladies and gentlemen, there is no dispute, is yours.
3 Each of you individually and when you go back into
4 that jury room after you've heard the final arguments
5 collectively, because each of you must determine what
6 the relevant, credible evidence shows as to what
7 happened back on May the 24th last year at the
8 Church's Fried Chicken.

9 Now, you have heard all the testimony. You will
10 have the evidence back upon which you can base your
11 verdict, the testimony and the physical evidence.
12 And the judge will instruct you -- or he may not
13 instruct you -- but you aren't to base it on
14 questions by the lawyers, innuendo, speculation,
15 conjecture or just plain wishful thinking. It must
16 be based on what is the relevant, believable,
17 credible evidence that has been brought before you.

18 Now, I want to apologize if over the last
19 several days if we have done anything to offend you.
20 Ms. Simpson or myself. At times my questioning has
21 been inartful. The form has been bad, been clumsy,
22 even sloppy. Please don't hold that against the
23 State of South Carolina, against the victims in this
24 case. Please don't hold it against us in any way.
25 It was not intentional.

1 And a criminal case you may have observed is
2 somewhat unique. Because the defendant has, as he
3 should, an absolute right to confront each and every
4 witness against him. In this case you have heard
5 reference to witness statements. You have heard
6 reference to reports done by officers. Those are not
7 admissible. The person themselves that made the
8 observations or created the reports is required to
9 come in before you and testify.

10 In a murder case the pathologist must testify.
11 In cases where people are injured the doctors must
12 testify. And that includes the police officers. And
13 that's because the defendant has a right to cross
14 examine each witness. There are no video
15 depositions, no audio depositions, no separate
16 statements that are admissible. And that's why you
17 heard from each and every witness in this case.

18 And in that same vein, you may have heard about
19 other witnesses that were referenced, such as Officer
20 Ridgeway was in the car with Officer Spires. Because
21 Officer Ridgeway had actual contact with the
22 defendant. He was the primary officer in that
23 scenario.

24 Even though you will see Officer Spires in the
25 video in parts of it, he was not called to testify,

1 because that's called cumulative testimony. We can't
2 bring forward each and every police officer that was
3 out there that day to say the same thing over and
4 over and over. And some officers may not know much,
5 if anything at all. So we brought before you all the
6 relevant, credible testimony that is allowed.

7 Now, the burden of proof in criminal cases is on
8 the State of South Carolina to prove a defendant's
9 guilt beyond a reasonable doubt. It is the highest
10 level of proof we have in any court, as it should be,
11 to protect this defendant's rights. And, ladies and
12 gentlemen, I submit in this case in this courtroom
13 with these facts, that is a burden State welcomes.

14 What is proof beyond a reasonable doubt? Now,
15 the judge will charge you as to his definition. And
16 it comes from some of the case law in South Carolina.
17 The easiest way to define reasonable doubt is the
18 type of doubt that would make a reasonable person
19 hesitate to act.

20 But the courts have gone further than that. And
21 they have defined reasonable doubt in the following
22 way. He'll first tell you about how in civil court
23 it just has to be more probable than not that a fact
24 is true. In criminal court the requirements are
25 somewhat more than that. Proof beyond a reasonable

1 doubt is proof that leaves you firmly convinced of
2 the defendant's guilt. There are very few things in
3 this world that we know with absolute certainty, and
4 in criminal cases the law does not require proof that
5 overcomes every possible doubt.

6 If based on your consideration of the evidence
7 you are firmly convinced, firmly convinced that the
8 defendant is guilty of the crime charged, you must
9 find him guilty. If on the other hand you think that
10 there is a real possibility that this defendant is
11 not guilty, then you must find him not guilty. Proof
12 that leaves you firmly convinced.

13 The law recognizes that anyone can doubt
14 anything. Is it a reasonable doubt? And that's just
15 a guidance that the judge will charge you. It's
16 something you can consider when determining whether
17 or not the State has proved this defendant's guilt
18 beyond a reasonable doubt. And I submit, Ladies and
19 Gentlemen, in this case the evidence is overwhelming.

20 Now, when you go back there, you're going to
21 have four different verdicts that you must consider,
22 each of those separately. You don't have to vote one
23 way on one or the other. Each of them must be
24 considered separately by each of you individually and
25 then collectively because your verdict must be

1 unanimous. Whatever it is, all 12 of you must agree.

2 So the first charge I want to talk to you about
3 is armed robbery, because in this case there was one
4 indictment that the Grand Jury came back with for
5 armed robbery, and then three indictments for
6 kidnapping, all involving the employees of the
7 Church's Fried Chicken on that evening back on May
8 the 24th.

9 Now, the first one is the armed robbery. In
10 that case the victims actually alleged to be the
11 person that had to get the money out of the register.
12 That would be Mr. Weaver. Under our law a person who
13 commits robbery while armed with a pistol, dirk,
14 slingshot, metal knuckles, razor or other deadly
15 weapon, or even while alleging either by actions or
16 words he was armed while using a representation of a
17 deadly weapon or any object which a person present
18 during the commission of the robbery reasonably
19 believed to be a deadly weapon is guilty of armed
20 robbery.

21 Now, the judge will talk about the underlying
22 elements of armed robbery. There is no lesser
23 offense in this case. But very simply, if a person
24 walks into a business -- and this is a pretty classic
25 armed robbery, an armed robbery of a convenience

1 store, an armed robbery of a fast food store; it's
2 pretty classic. When a person walks into a business
3 and armed with a weapon robs someone else, it's an
4 armed robbery. But our Legislature has gone further
5 than that, because they understand inherently that
6 when a person has a weapon or even alleges to have a
7 weapon -- because you notice, you don't even have to
8 be armed; you just have to represent that you're
9 armed, either a finger under a coat; I've got a gun;
10 give me the money, things of that nature. Because
11 bad things happen when people choose to arm
12 themselves, in this case with a loaded gun and walk
13 into a restaurant and rob the employees.

14 Armed robbery is the taking away of the property
15 of another, this time from the presence of Danny
16 Weaver. The property actually belonged to the
17 Church's Chicken, with the intent to permanently
18 deprive. And nobody I submit, ladies and gentlemen,
19 is going to get up here and argue that this wasn't an
20 armed robbery.

21 The three other indictments that will go back
22 with you to the jury are all for kidnapping. Each of
23 them has a different victim involved because they
24 can't all be put on one indictment. In this case it
25 was the people out in the area where he was. There

1 is not one, you understand for Mr. Arthur Haynes
2 because he was back in the back. His actions weren't
3 controlled as much as the three out in the lobby.
4 You may have wondered during the questioning why I
5 asked each of them: Were you free to go? That's a
6 pretty -- not the brightest question in the world.
7 The reason for that is because they weren't free to
8 go.

9 In kidnapping, traditionally, when people think
10 of a kidnapping, they may think of like someone gets
11 someone, puts them in the trunk of the car and drives
12 them over state lines. That is not what the law is
13 in this state as far as kidnapping. It's just like
14 with armed robbery; you don't have to have a dollar
15 amount. Listen carefully to the judge. He won't say
16 that it has to be \$10 or more. Anything that you
17 take has any value whatsoever, in this case it's
18 going to be a little over \$200, is an armed robbery.

19 **MR. MAY:** Objection, Your Honor. Misstating the
20 facts.

21 **THE COURT:** Overruled. Go ahead.

22 **MS. CAMPBELL:** Thank you. Is an armed robbery.
23 But kidnapping, you aren't going to hear that a
24 person has to be detained for a period of time
25 without lawful authority. It doesn't have to happen

1 over a day or over a week.

2 Whoever shall unlawfully seize, confine,
3 inveigle, decoy, kidnap, abduct or carry away any
4 other person by any means whatsoever without
5 authority of law shall be guilty of kidnapping.

6 The law traditionally says that it starts at the
7 moment one's freedom is denied and continues until
8 freedom is restored. So the kidnapping indictments
9 in this case, ladies and gentlemen, cover a period of
10 time at which the defendant controlled those victims'
11 actions while he wielded the gun. They weren't free
12 to go. They didn't even want to do the things that
13 he forced them to do.

14 He moved them. Remember? With Mr. Kirby, he
15 had the gun, throw down the gun. He controlled his
16 actions. He inhibited his ability to move around.
17 His freedom was taken from him at that point. And it
18 continues until the moment he walks away and they
19 feel free to go.

20 So what do these things mean? Seize, confine,
21 inveigle, decoy? We don't have to prove all of
22 those. All that we have to prove is one or more that
23 apply here. And in this case the most likely one is
24 confinement. Basically they weren't free to move
25 about as they should be. And it has to be without

1 authority of law. This doesn't apply to someone who
2 is acting lawfully. And no one is going to get up
3 here and argue that anyone was acting lawfully in the
4 Church's that day.

5 Now, what do these terms mean? The judge will
6 define some or all of these for you. You listen to
7 him. Seize means to take hold of suddenly or
8 forcibly. Confine means to limit, restrict or
9 enclose within bounds, to limit. Their movement was
10 limited. It actually went further than that. They
11 were forced into different areas of the store. I
12 submit, ladies and gentlemen, I don't -- no one
13 should get up here and argue that these weren't
14 kidnappings. That is not the issue in this case.

15 Now, there has been some testimony about some
16 drug use in this case by the defendant. And the law
17 addresses that specific situation. The law
18 recognizes that when a person voluntarily goes out
19 and either takes intoxicating liquors or drugs and
20 renders themselves intoxicated or in somewhat altered
21 state, if they do that voluntarily, they are still
22 held to the same standard as a sober person if they
23 committed a crime.

24 In other words, it doesn't mitigate, drug use
25 doesn't mitigate the crime where you aren't held

1 responsible. The law recognizes that people may tend
2 to commit crimes while in an intoxicated state. That
3 does not relieve them of the -- or render it less
4 culpable. They are still held responsible in the
5 same manner as anyone else whether they're sober or
6 intoxicated.

7 Voluntary intoxication is never an excuse or a
8 defense to a crime. A person who voluntarily renders
9 himself intoxicated is no less responsible for his
10 acts while in such condition. If a person
11 voluntarily drinks intoxicating liquors or takes
12 drugs and becomes intoxicated and if while in that
13 condition commits an act which would be a crime if it
14 had been committed by a sober person, the fact of
15 drunkenness or intoxication would not relieve the
16 intoxicated person from responsibility. And that's
17 the law in this state.

18 Now, the judge is going to tell you that there
19 are two different kinds of evidence you can consider
20 in cases typically. Not all cases have two different
21 kinds of evidence. In this case you do. There is
22 what's called direct evidence or circumstantial
23 evidence. And the judge is also going to tell you
24 that no greater importance is to be given one or the
25 other.

1 In this case the direct evidence basically
2 corroborates the circumstantial evidence. And what's
3 the definition? Direct evidence is the type of
4 evidence that one perceives through their senses,
5 typically eye witness testimony. In this case you
6 heard from several people who are eye witnesses to
7 the crime and then from Charles Green who was an eye
8 witness to the escape from the crime. It's the type
9 of evidence that's perceived through the senses; what
10 you see, hear, touch, feel. That's direct testimony,
11 eye witness testimony.

12 In this case you're also going to hear about
13 circumstantial evidence. And the judge will instruct
14 you circumstantial evidence is merely a number of
15 facts that when taken together lead you to a
16 conclusion, a reasonable conclusion. In this case
17 the fact that the defendant is found crouching in the
18 passenger's side of the car over the mask, over the
19 gun, over the money, that's circumstantial evidence
20 of guilt.

21 Now, in every case the judge will tell you you
22 don't have to have one or both. In this case you do.
23 You've got eye witness testimony that is totally and
24 completely corroborated by the circumstantial
25 evidence.

1 Circumstantial evidence has once been
2 illustrated like, say, I go to sleep at night; I look
3 out the window and the ground is bare. It's brown.
4 It's winter. When I wake up the next morning, as far
5 as I can see, it's covered with snow. I didn't see
6 it snow. However, it is reasonable to infer that
7 while I was asleep it snowed. That's a reasonable
8 inference.

9 What may not be a reasonable inference is that
10 my nextdoor neighbor went out and decided to play a
11 trick on me and rented a snow machine for \$5,000 and
12 created snow all around me so that when I woke up I
13 would think it snowed. That would not be reasonable.
14 It's what's a reasonable inference from
15 circumstantial evidence.

16 Now, in every criminal case we must prove
17 criminal intent. The easiest way to define that is
18 it's an conscious wrongdoing. It's an intentional
19 act of wrongdoing on behalf of the defendant. This
20 case wreacks of criminal intent.

21 The judge will instruct you that there is no way
22 we can take someone and dissect their brain to figure
23 out what their intent was at the very moment. We
24 can't figure it to a mathematical certainty. What he
25 will tell you is what you need to look at are the

1 circumstances around and at the time of the actual
2 crime itself and after. Those are all things you can
3 use in determining whether or not this defendant
4 acted with criminal intent. And I submit, ladies and
5 gentlemen, no one is going to say this wasn't a
6 criminal act.

7 Now, another thing you are going to consider and
8 the judge is going to instruct you on is
9 identification. In this case there were a number of
10 witnesses that were able to identify the person that
11 actually perpetrated the crime, and also the get-away
12 driver identified the person who got in the truck
13 with the bag.

14 Identification, the judge will tell you, and
15 there are number of factors. You may have heard me
16 ask some other silly questions. What was the
17 lighting like? Could you see? Was anything
18 obstructing your view? Those are important factors,
19 and the judge will give you a number of them: The
20 time. Were they paying attention to what was going
21 on? Was this the type of event that would make them
22 pay attention? Did they get a good look at the
23 defendant's face? Those are the types of things as
24 to whether or not a person can make an
25 identification, and those are the factors you would

1 consider.

2 Another issue in this case as the judge is going
3 to instruct you; and this is the law, a person's
4 presence at a scene or the vicinity there around
5 alone is not enough. It's not sufficient to prove
6 guilt. There must be more than that.

7 Just because a person is seen in or around a
8 crime scene or he associates himself with people
9 associated with a crime does not make him guilty just
10 because of the mere presence. And I submit, ladies
11 and gentlemen, in this case we are way beyond mere
12 presence at or around the crime scene.

13 The final thing I want to talk to you about is
14 credibility, believability. Because in this case you
15 have basically -- and let me be the first to tell
16 you, the burden is on the State of South Carolina.
17 The defense has absolutely no burden to put up any
18 case. It's still on the State of South Carolina.
19 But once they choose to put up evidence, you judge
20 that evidence the same way that you judge each and
21 every other witness that came before you.

22 Credibility, believability; this case boils down
23 to it. Is there a bias or a prejudice to testify a
24 certain way, to tell a certain story? Is there
25 something to gain or something to lose? The judge

1 will tell you you can consider a witness's demeanor.
2 Were they forthright, hesitant? You can also
3 consider was the witness's testimony corroborated in
4 a large part or not on another part. You can
5 consider when the witness came forward with the
6 information. Things of that nature. You can believe
7 all of a witness's testimony, none of it, part of it.
8 It's totally up to you.

9 In this case you heard from four eye witnesses,
10 two of whom got a good enough look to identify the
11 person. And, ladies and gentlemen, that's what makes
12 it credible. Not each and every one of them came up
13 here and just pointed a finger because they could.
14 They told you what they could. Gracious Tucker, she
15 was so frightened, EMS had to come. She never got
16 past the gun. She knows what he was wearing, which
17 just happens to match that. That's what's credible.
18 Each and every witness.

19 And are the details a little bit different?
20 They'd better be. It's like in a car wreck. Two
21 people, one standing on one corner, another standing
22 across the street on another corner. They see a car
23 come through a red light. One describes the car as
24 tan; one describes the car as green. One is not sure
25 what color the car is. That's credible.

1 If they all come up here and say the exact same
2 thing over and over and over, then it's a script, and
3 you need to be worried. This is real life. These
4 people who choose to work for a living at the
5 Church's Fried Chicken came before you and gave you
6 their testimony and what they believe. Credible.

7 Do they have something to gain or lose? They've
8 never seen him before. They are the ones that were
9 put in fear of their life. What do they have to gain
10 or lose? Don't you think they want the man that
11 robbed them off the street, not just some crackhead?

12 Credibility. This case boils down to it.
13 Because either it happened the way the defendant said
14 it did or the way the victims said it did. In this
15 case those are the options.

16 You also heard from some of the State's
17 witnesses about a prior record. You can consider
18 that. I believe Mr. Kirby had a 2001 drug
19 conviction. Mr. Haynes had a drug conviction from
20 the 2000's. Things of that nature. Whenever a
21 witness elects to take the stand, then their prior
22 record comes in. That you can consider on each and
23 every witness as far as credibility goes.

24 The judge will instruct you that just because a
25 person has a prior record, it doesn't mean they

1 aren't credible to testify. That's just another
2 consideration. And, ladies and gentlemen, I beg you;
3 judge their credibility. Gracious Tucker, Danny
4 Weaver, Donald Kirby, Arthur Haynes. What do they
5 have to gain or lose by pointing to him? What did
6 they have to gain or lose that day when one of the
7 first things they told Officer Baire was about a lazy
8 eye? They just were able to anticipate that a man
9 fitting that description wearing the same clothing
10 was going to get in a truck with the get-away driver?
11 Credible? This is real life. And all we ask you is
12 to consider the credible evidence that will be before
13 you. Thank you.

14 **THE COURT:** All right, ladies and gentlemen. At
15 this time we'll take our lunch break, and the
16 remaining final arguments will take place beginning
17 at 2:00. I believe your lunch is here. And of
18 course you're welcome to stay in the jury room and
19 eat it or take it with you. But we're going to
20 reconvene at 2:00, at which time we'll conclude the
21 trial.

22 So you're now dismissed until 2:00, after which,
23 as I say, we will conclude the trial. And again,
24 don't start discussing the case until all the
25 arguments are finished and I give you my charge on

1 the law. Thank you very much.

2 (Jury out at 12:28 p.m.)

3 **THE COURT:** All right, ladies and gentlemen.

4 I'm going to take my court reporter to lunch for the
5 last time. We'll stand at ease until 2:00.

6 (Whereupon, a lunch break is taken)

7 **MS. CAMPBELL:** Your Honor, there was one other
8 request to charge that I forgot to hand up.

9 **THE COURT:** Never take a break.

10 **MS. CAMPBELL:** I believe it's without objection
11 from the defense.

12 **THE COURT:** Ready for the jury?

13 **MS. CAMPBELL:** Your Honor, as long as one of the
14 back doors is shut, one of my victims is having a
15 hard time getting a parking space, but he's on his
16 way.

17 **THE COURT:** It won't be shut until I start the
18 charges.

19 **MS. CAMPBELL:** Okay.

20 **THE COURT:** Bring the jury, please.

21 (Jury in at 2:05 p.m.)

22 **THE BAILIFF:** The jury is all present.

23 **THE COURT:** All right. Mr. May.

24 **MR. MAY:** Yes, sir. May it please the Court,
25 Your Honor. When I was in third grade I went to

1 elementary school off St. Andrews Road. It's called
2 Leaphart Elementary School. It's where I went from I
3 guess kindergarten through sixth grade. In third
4 grade I had a math teacher who was the only teacher
5 I've ever had who made me really love math. She made
6 me just absolutely love everything about it. The way
7 she did it was she had a big sign on the wall that
8 says: The easy answer is not always the right
9 answer.

10 She liked to use brainteasers. I will remember
11 a couple. One of them is: How many months have 28
12 days? Of course, the whole class's hands shot up.
13 And the answer is one. It's only one. It's
14 February. It has 28 days. Every student was sure.
15 It's right there in front of you. Hey, that has to
16 be the answer. She said that actually is no, no.
17 It's actually all 12 have 28 days.

18 And as third graders, we were just devastated.
19 We were just: What do you mean? What do you mean?
20 Because she would always promise us something, no
21 homework tonight, if you get the answer right. So we
22 were devastated.

23 Then as summer came along, it was: Does England
24 have the Fourth of July? And again we were promised
25 an ice cream party if we got the answer right as a

1 class. The class huddled together and said: Of
2 course England doesn't have the Fourth of July. The
3 Fourth of July is our day. And as we all know, they
4 have the 4th of July; they just don't celebrate it as
5 Independence Day.

6 The thing is is the State is going to say the
7 easy answer here is right here in front of you. You
8 have a guy that's caught in a car, is crouching down,
9 sitting on top of what appears to be money from a
10 robbery and a gun. The easy answer would be to find
11 him guilty and go home.

12 Ladies and gentlemen, the State wants you to go
13 in there and say: Well, we all think he did this.
14 Thinking he did it is not the standard in this
15 courtroom. You have to know he did it. I'm going to
16 ask you to go back there. I'm going to ask you to
17 challenge each other to look beyond what's right
18 there in front of you and take a look and start
19 looking further.

20 Since the advent of DNA there have been numerous
21 people who get off convictions because DNA is tested.
22 The Innocence Project alone has had 257 cases where
23 DNA has exonerated the people. Of those cases,
24 75 percent have been based on faulty eye witness
25 testimony, and there's overlap, and 19 percent of

1 cases are based where there is a snitch or a rat.

2 Why do I tell you this? Because in those cases
3 the easy answer was much like this. The easy answer
4 is right there. And, hey, let's vote; let's go home.
5 I'm going to ask you to put in the time and the
6 effort that's going to be needed. Because for Mr.
7 Broadnax, this is the most important decision that
8 will ever affect him. This is his life and it is in
9 you all's hands.

10 Now, we started to look at what the State has
11 put up in front of you. Now, the State asks you to
12 let them have their cake and eat it, too. Ms.
13 Campbell just said: Hey, they were nervous. They
14 couldn't get everything right; but believe them all
15 the way.

16 I have no doubt that the four people who were in
17 that Church's testified to the best of their ability.
18 I have no doubt that the four people in that Church's
19 Chicken truly believed what they said up there.

20 Let's look at what they say. Arthur Haynes is
21 the hero. Arthur Haynes does something that most of
22 us probably wouldn't do. Arthur Haynes followed a
23 man who had a gun. Now, if we really look at his
24 testimony, Arthur Haynes was in the back cooking the
25 chicken. Arthur Haynes says most of the stuff he

1 could hear.

2 He said he saw the robber come in but he didn't
3 pay him no attention. He just thought it was another
4 customer. He dropped the chicken and went on until
5 he said he started hearing commotion from what the
6 robber was doing.

7 Arthur Haynes followed the robber out. Arthur
8 Haynes puts the robber getting into a gray Dodge
9 pick-up truck. Now, he never sees it. He never says
10 he hears a door slam. But he says that a gray Dodge
11 pick-up truck quickly exited.

12 Now, you have Donald Kirby. Donald Kirby seems
13 like a very nice young man. He's 31. He lives with
14 his parents. He wants to be the hero. Now, nowhere
15 before did he ever say he could make the
16 identification until he sits in the courtroom,
17 watches pre-trial and watches the first part.
18 Nowhere did he ever say he could make identification.

19 All right. Then you have Gracious Tucker who
20 just tells you exactly. I don't know what happened.
21 Well, I take that back. She knows what happened.
22 She's like I can't identify him. I didn't look at
23 his face. I was just so scared I was looking at the
24 gun, as most people do when a gun is pointed at them.
25 Thank goodness I've never had a gun pointed in my

1 face. But it's called a muzzle focus. You look at
2 where the danger comes from.

3 And then you have Danny Weaver who never gives
4 an in-court identification, never gives an
5 identification at all. Those are the four people.

6 Now, the Supreme Court of the United States has
7 said a show-up ID is highly suggestive. Why have
8 they said that? Well, look at what happened in this
9 case. There are police that have a car blocked in.
10 The police have a car blocked in. And they take Mr.
11 Haynes who had just been a part of a place that is
12 robbed. They take him there. And he said: Hey, the
13 gray pick-up truck.

14 Listen to the tape. They say we're going to
15 have somebody come out and identify the gray pick-up
16 truck. They take him there. And the gray pick-up
17 truck, you have two men there with handcuffs behind
18 them, two men who are directed to look at Mr. Haynes.

19 Now, the State is going to make a big deal out
20 of Mr. Broadnax's left eye. And you know what?
21 Chris has a lazy left eye. Now, the question is,
22 does the left eye come -- did the identification of
23 the left eye come before the show-up ID or after?
24 That's something y'all are going to have to figure
25 out. All right. And we're going to trust that you

1 all talk about it and you figure this out.

2 Now, we all have times in our life where we mix
3 up memories. Now, there is a saying that -- I'm
4 sorry. Let me get it right. Memory is a
5 reconstruction, not a reproduction. Your memory is
6 not a picture. Your memory is chemicals firing and
7 trying to help you understand a situation.

8 When I was in college, it was my junior year; we
9 were playing Ole Miss that week and we were getting
10 ready for the game. We had been at practice all
11 night the night before and me and my roommates stayed
12 up late talking about playing Ole Miss.

13 I went to sleep. I got a phone call that
14 morning, and it was September the 11th, and my dad
15 woke me up. He said: Son, we're under attack. You
16 need to get up and watch the television. I got up.
17 I got my roommates up, all except for one person.
18 Wally stayed in bed the entire day.

19 Well, obviously we had a long practice. We
20 stayed up late. And Wally stayed in bed. A week and
21 a half afterwards, we were talking about 911, how
22 awful it is, what's going to happen to our country,
23 what's going to happen to the world as we know it.
24 And Wally says: I will never forget that day. I was
25 sitting right there next to you on the couch. I

1 said: Wait a second, Wally. You never were.

2 To this day Wally's memory is that he sat next
3 to me. That often happens in national emergencies or
4 natural crises because it gives everybody a point of
5 reference.

6 Way too young to remember John Fitzgerald
7 Kennedy. My mom swears that she was watching
8 television. She was actually at school. When
9 Oklahoma City, the Alfred Murrah Building was bombed,
10 the first reports were that people of Middle Eastern
11 dissent were seen running away from the building. We
12 know that to be absolutely incorrect. But at that
13 time people wanted to help solve the crime.

14 Ladies and gentlemen, that show-up ID is the
15 very same idea. Arthur Haynes wants to solve the
16 crime. He wants to make sense of what happened to
17 him. He was in the back. And as he said, the robber
18 never turned around as he was leaving as he followed
19 him. The time he saw his eyes, ladies and gentlemen,
20 it was at the actual ID.

21 There are so -- any time you have a traumatic
22 event you're going to have inconsistencies. Now, the
23 State is going to say that shows that their case is
24 right. But they're also going to say, hey, if you
25 believe them, you have to find Mr. Broadnax guilty.

1 I don't believe those are two mutually exclusive
2 things. It's not mutually exclusive that you must
3 believe the victims or Mr. Broadnax. The victims got
4 up here and told the truth. They were robbed that
5 day. Nobody is saying they weren't. The thing is is
6 were they robbed by Mr. Broadnax? And we say no.
7 You need to look at this.

8 Look at what Officer Ridgeway said. Officer
9 Ridgeway when he was called back up today said that
10 he informed both Chris and Charles Green that they
11 were being held for armed robbery. I said: Well,
12 you didn't say that yesterday. He says: I don't
13 remember what I said. He said that after talking to
14 Ms. Campbell. We all need our memories prompted by
15 things, and we all want to help whenever we can.

16 Donald Kirby I believe is the best example of
17 that. He wants to be a hero just like Arthur Haynes.
18 He wanted to get in here and give an identification,
19 the first identification he ever gave. He never said
20 he could give an identification.

21 Now, Officer Baire who was at the scene, Ms.
22 Campbell alluded to in her opening on the law, said
23 something about everybody said something about the
24 lazy eye. Well, we know that's not true. Why do we
25 know that's not true? Because we've had testimony of

1 people up here. And only two people said anything
2 about a lazy eye. Those are the two people that
3 identified the defendant as the robber, being Mr.
4 Haynes who was taken to a show-up ID and Mr. Kirby
5 who is trying to be a hero just like Mr. Haynes.

6 Shirts, we know this is the shirt that Chris was
7 wearing that day. No doubt about that. The shirt
8 that the robber wore has been described from
9 everything from, I believe it was Mr. Haynes'
10 testimony, green like my shirt. Y'all know the shirt
11 he was wearing? It was like a bowling shirt. It was
12 bright green and black. He said green and black like
13 my shirt but horizontal stripes to red. Listen to
14 the 911 tape I ask you. At that time Gracious Tucker
15 describes the shirt as red or burgundy.

16 Now, the State is going to say the easy answer
17 lies in the fact that money and a gun were found in
18 the gray Dodge pick-up truck. Well, on July 27th,
19 1996, another time of I guess at least a pseudo
20 national tragedy, I was in downtown Atlanta working a
21 concession stand for my high school football team.
22 On July 27th, 1996, a bomb went off in Centennial
23 Park about a half a mile from where I was.

24 I don't know if y'all remember it, but everybody
25 initially turned all attention to a man named Richard

1 Jewell. Richard Jewell was tried in the media and
2 Richard Jewell as far as anybody was concerned was
3 the guy who blew up the bomb in Centennial Park.

4 The FBI gets involved and the FBI starts to test
5 the items found in Richard Jewell's house because in
6 Richard Jewell's house there were items that quote,
7 unquote were bomb making material. They were items
8 from the explosion.

9 At that time, had they stopped and not done any
10 testing, Richard Jewell would be in jail. Actually
11 he passed away about a year ago. But Richard Jewell
12 would have been in jail from that point on had no
13 testing been done. Of course Eric Rudolph we find
14 out later bombs other places, and through the testing
15 they can match Eric Rudolph to Centennial Park as
16 well as the Birmingham bombings.

17 And a man was tried about two years ago. This
18 man was tried for killing his wife. The entire time,
19 he was tried actually twice, and but for jurors like
20 yourself, he'd be serving a life sentence for the
21 murder of his wife. His defense begged the jury not
22 to convict unless they tested the evidence.

23 After two trials they actually went and tested
24 the evidence. And you know what it came out? That
25 somebody else had actually killed his wife. And now

1 that other person is being prosecuted. Now, that
2 prosecution, those first two, when they had evidence
3 they could have tested, their office prosecuted them.
4 His name is Justin Mallory. Justin Mallory was
5 prosecuted twice for a crime he didn't do when there
6 was DNA that could have been tested but it wasn't.

7 Ladies and gentlemen, we're in the same
8 situation right here. We have DNA that could be
9 tested. We had -- at the time of the arrest you had
10 fingerprints that could have been tested. In 1883
11 *Puddin' Head Wilson*, Mark Twain writes about
12 fingerprints in a courtroom. Some 127 years later we
13 have prosecutions which are going forward without
14 giving jurors objective evidence.

15 Ladies and gentlemen, I think you can look at
16 this and say that we know one person is lying. And
17 it's your decision as to who is lying. Is
18 Christopher Broadnax lying or is Charles Green lying?
19 Because everybody else's stories match up. Everybody
20 else's stories can be completely accurate. The
21 question is, which of those two men are lying?

22 Well, Charles Green got on the stand and he
23 admitted to lying. Well, he didn't admit to lying
24 but he got caught in a lie when he said Chris
25 Broadnax sat up next to him throughout the entire

1 drive. We know by Donald Kirby who stood there on
2 the corner looking into the truck and Arthur Haynes
3 who saw Charles Green talking to somebody on the side
4 of the street. We know nobody was sitting up in that
5 truck. We further know because Officer Brayboy
6 passed him. Watch the video. It's hard to see, I
7 admit. But it appears that there is one person and
8 one person only sitting up in that truck.

9 So the question is, is that everybody's stories
10 could match up but for two. And your job is truly
11 going to be to find out who is lying. I think it's
12 that simple. The victims aren't lying. Now, they
13 could be mistaken by a few things. But they're not
14 lying. They're trying to do their best. The
15 question is: Who is lying?

16 Now, Charles Green, he is a rat. He is
17 testifying for his own self. I don't know if y'all
18 know what the reason is why we call them rats, people
19 who testify at the expense of others. Because rats
20 will do anything to save their own life.

21 In Dresden in February of 1945 the Royal Air
22 Force bombed Dresden, Germany. They bombed them with
23 what were called incendiary bombs, bombs that are
24 made only to start a fire. Dresden was a wooden town
25 at the time.

1 Kurt Vonnegut writes about it a little bit in
2 *Slaughterhouse-Five*. Kurt Vonnegut was one of the
3 POW's to survive there. But as that wooden city went
4 up like a tinder box, the rats actually trampled one
5 another leaving the town. Rats do anything to
6 survive. Rats when ships sink drown each other
7 trying to get away. No, they don't care if the
8 person is guilty or not guilty; they're going to do
9 what they can to survive.

10 I have no idea if Charles Green is involved in
11 this robbery. And I don't care. But Charles Green
12 has stuff that makes him look like he's involved in a
13 robbery. The last thing that Investigator Thomas
14 said I think speaks volumes. I think his last answer
15 answers more than the entire trial does together.

16 Officer Thomas's -- I'm sorry. Investigator
17 Thomas's last thing was: I found it odd that Chris
18 was sitting there calm and Charles Green was nervous.
19 When you get pulled over by a police officer, I don't
20 know if anybody has ever actually been pulled over by
21 a police officer when you were doing absolutely
22 nothing wrong. I've had it happen one time. I was
23 cool as a cucumber because I knew what I did was not
24 wrong. I was even driving ten and two, driving the
25 speed limit. When he came up, I said: Officer, how

1 can I help you? Let me help you. I wasn't nervous.

2 Every other time I've ever been pulled over by
3 the police officers, I have been going crazy. I
4 mean, I was speeding, driving without my seatbelt,
5 probably even talking on my cellphone. I know that
6 when they came up to that car that day, those days
7 I'm nervous, I'm trying to get myself out of trouble.

8 I've never driven around with the proceeds of an
9 armed robbery. I sure as heck haven't sat on it. If
10 I was sitting on the proceeds from an armed robbery,
11 I'd be nervous. Investigator Thomas stated to you
12 that he wasn't nervous at all. The reason why he
13 wasn't nervous is because he did nothing wrong.

14 He was in a car with a friend. Now, ladies and
15 gentlemen, you can believe everybody. The problem
16 with this case is that you have no objective
17 evidence, zero objective evidence. All you have is
18 the subjective thoughts and recollections of fallible
19 people. That's where we are.

20 They chose yet again, just as in Justin Mallory,
21 not to test the evidence, not to give the jury the
22 full evidence of what occurred that day. Ladies and
23 gentlemen, DNA, as Investigator Rose said, was all
24 over or would have been all over the mask if that
25 mask was used. The State could have come up and told

1 you who wore the mask. And they would have told you
2 Christopher Broadnax did not. The hat is the same
3 deal. They never tested for fingerprints. Ladies
4 and gentlemen, they took the easy answer.

5 Now, the deputies sitting around, Deputy
6 Barefoot and Joe is up there, downstairs in holding
7 they have a sign that says: In God we trust and all
8 others we check. Why? Because they know that people
9 are fallible. They know that people don't always get
10 it right. They demand proof, as so should y'all,
11 especially when it goes to a man's life. They demand
12 proof.

13 Think about this. My name is Jim May. That's
14 what I go by. James Hunter May. I challenge any of
15 you all to go down to the Bank of America -- that's
16 where I bank -- and say: Hey, I need to get out
17 \$500. They're going to ask for proof.

18 Think about the government. Now, mind y'all,
19 this is the government. This table represents the
20 power of the entire government of the state of South
21 Carolina, as well as they can go get help from the
22 federal government. Think about what the government
23 asks from us when we're audited. If we're audited
24 for taxes, they demand more than meets bringing in
25 two buddies saying: Hey, he did everything right.

1 Or five or six people who work with them. They
2 demand proof. Why do we demand proof? Because we're
3 a society that understands people mess up.

4 Ladies and gentlemen, the standard that y'all
5 have to come back and decide is if you know that
6 Christopher Broadnax did this. You know. That's
7 what it really boils down to. Beyond a reasonable
8 doubt means you know. If you think he did this, if
9 you think he might have, ladies and gentlemen, that's
10 not guilty. If you'd like to see what that DNA would
11 have come back, that's not guilty as well.

12 Ladies and gentlemen, the question that you're
13 going to have to decide is who do you believe? Do
14 you hesitate at all when you believe Charles Green?

15 Now, in third grade that teacher's name was
16 Ms. Schrop at Leaphart Elementary. Ms. Schrop, as I
17 said, was a math teacher. And she demanded proof
18 that we did our work the correct way. We had to work
19 out all the problems.

20 Ms. Schrop also taught us that sometimes the
21 easy answer can be the right answer. Now, the reason
22 why I say that is this. She asked us a question, a
23 brainteaser, so we didn't have to do homework. How
24 many bricks did it take to finish Leaphart Elementary
25 School.

1 I went across the street with my mom and asked
2 Dr. Hawkins who at that time was the superintendent
3 of Lexington/Richland 5. Dr. Hawkins called up the
4 contractor who built the school. He said, man, we
5 can't tell you that. So my mom and I spent four
6 hours counting down and then across and multiplying
7 how many walls there are trying to figure out the
8 number of how many bricks it took to complete
9 Leaphart Elementary. How many bricks it took to
10 complete Leaphart Elementary was one, that last
11 brick.

12 Ladies and gentlemen, you've seen the rigmarole
13 that the State of South Carolina has put the defense,
14 you, all of the court staff through. Ladies and
15 Gentlemen, the easy answer was to test the DNA and to
16 test the fingerprints. If they had done that, we
17 wouldn't be here right now.

18 We ask you to look at the evidence, and we're
19 going to ask you to come back with a verdict of not
20 guilty because Christopher Broadnax did not commit
21 this robbery.

22 **THE COURT:** Ms. Campbell.

23 **MS. CAMPBELL:** May it please the Court. In
24 every case as you're preparing for trial you try and
25 anticipate what the defense may be. And in armed

1 robbery cases typically it's pretty straightforward.
2 Because in armed robbery cases, either it's just
3 that, well, it's the wrong guy, the defendant gets
4 away from the scene, he's not arrested until later,
5 one person might pick him out in a subsequent hearing
6 down the road, never recover the goods. That's an ID
7 case.

8 Or it can be, well, he wasn't armed. Therefore,
9 it's not an armed robbery because the gun was never
10 recovered, no one actually saw a gun itself. They
11 thought he might have had one. Or even it could be
12 something as simple as it wasn't really an armed
13 robbery; it was just like a drug deal gone bad. It's
14 over drugs.

15 But this case is unique, not to be anticipated,
16 the defense. Because in this case you have the story
17 of what the victims tell you, which the defense just
18 got up here and said that they aren't lying, they are
19 telling the truth; which we submit they are. But
20 twists that. Because in with the victims, this must
21 be some type of conspiracy, even though they're
22 telling the truth, to frame this poor, innocent
23 victim seated right here who did nothing wrong.
24 Those were his words. Poor, innocent Christopher
25 Broadnax is a victim here.

1 And in the closing argument it was more about
2 stories and brain twisters, talk about what we don't
3 have and ignore or just minimize the overwhelming
4 evidence that is before you. Because, ladies and
5 gentlemen, the simple fact of the matter is, most
6 cases aren't solved by DNA or fingerprints. Most
7 cases don't happen on a videotape; home invasions,
8 sexual assaults, robberies in stores that don't have
9 cameras. That's most cases.

10 In most cases, and this isn't a burglary where
11 there are fingerprints at the point of entry on the
12 glass window that was shoved up. This isn't a case
13 of a rape where there's a sexual assault kit and
14 semen from the sexual assault is matched. That's a
15 DNA case. And this isn't a case where someone is
16 stabbed, killed or murdered and there is blood from
17 the victim on the defendant's clothing or on the
18 knife recovered in his car. Those are DNA cases.

19 Under his theory of you can't convict because
20 there is no DNA and no fingerprint, 90 percent of the
21 time no one would be convicted. Because this is a
22 case that's done the good, old fashioned way, with
23 good police work, good communication, even though
24 they were on separate channels.

25 And guess what? One person gets caught

1 red-handed sitting on -- undisputed the victims
2 aren't lying -- the money that's taken from the
3 robbery and the gun taken from the robbery. And he
4 talks about it. And I want to talk about, the
5 defense in the beginning talked about in the opening
6 statement the fallibility of human beings. That
7 statement I think I wrote down he used at least
8 between eight and ten times. Excuse me. The
9 fallibility of human nature, the fallibility of human
10 nature.

11 Because according to the defense, these people
12 who have no bias, nothing against this person who
13 wanted the person that robbed them held responsible,
14 they simply under no circumstance can make a positive
15 identification.

16 And the other reason in the opening that they
17 talked about how you can't convict Christopher
18 Broadnax is because the co-defendant you're going to
19 hear from, he has a criminal record. He's a liar, is
20 what they called him. Because he has a criminal
21 record he is a liar?

22 They talked about no video, no DNA, and no
23 fingerprints. And, ladies and gentlemen, no, they
24 didn't test for fingerprints at the point of entry
25 because you can't get fingerprints when a door is

1 opened that much. That was explained to you. And he
2 didn't touch anything inside. You heard from each
3 and every witness. He never even touched the money.
4 He made sure, because he knew what he was doing, that
5 they poured it in the bag.

6 When he left and he thought he'd gotten away,
7 they find the stuff. This is an extremely fast
8 response time. And then they talk about how you
9 can't convict because the DNA testing would show so
10 much. Suppose they did the DNA testing and it comes
11 back with his DNA. What does that show you? The
12 experts told you you can't determine how long DNA has
13 been there.

14 **MR. MAY:** Objection, Your Honor.

15 **THE COURT:** Overruled.

16 **MS. CAMPBELL:** He's sitting on the evidence. If
17 it gets tested and it comes back to him, which they
18 say is good evidence, guess what? It's not probative
19 of anything. The reason to do DNA testing is to
20 prove a fact. He is sitting on it. They're going to
21 say you didn't do any DNA testing on the gun. He's
22 sitting on the gun. His story would have been then:
23 Oh, well, I reached up and I might have touched the
24 gun.

25 The officer told you -- and they did good police

1 work -- the reasons those things weren't tested in
2 this case. Because no one, not even the defense, can
3 get up here and dispute that within two minutes of
4 this robbery occurring, two to three minutes, that
5 this man is hiding in the front seat of the get-away
6 car sitting on the gun, the money and the ammunition.

7 So that's their defense. You know, there's an
8 old joke, and it talks about a lawyer and a preacher
9 walking down the street on the sidewalk. And they
10 look over and there's a puddle right next to the
11 sidewalk, mud in the bottom. And in the middle of
12 the puddle you can see a silver dollar.

13 And the preacher looks over and he points down
14 and he says to the lawyer: Look, there is a silver
15 dollar. And the lawyer picks up a stick and he
16 starts stirring up the water so that the mud and the
17 silt and the water becomes cloudy and you can't see
18 it any more. And then he says: What silver dollar?

19 Well, ladies and gentlemen, I want to take this
20 opportunity to talk to you a little bit about the
21 actual cold, hard facts that no one, not even this
22 defendant, can overcome as far as what went on.

23 And also, when judging credibility and deciding
24 who was lying, this case boils down to either you
25 believe the victims, the co-defendant and everything

1 else that points to who did this, or Christopher
2 Broadnax is the victim of the most unbelievable
3 mistaken identity case ever. Unbelievable.

4 The point he brought out was we don't know when
5 they said he had a lazy eye? That's undisputed.
6 Officer Baire testified. He stayed at the scene. He
7 never went to anything. You will see, it's on the
8 videotape, it's a matter of ten minutes or more
9 before any identification procedures are done with
10 the one witness.

11 What stood out to him when he initially talked,
12 he's one of the first two officers on the scene. The
13 lazy eye description along with the striped shirt and
14 everything else.

15 It is absolutely unbelievable that these
16 victims, all of whom describe the defendant to the
17 officers at the scene, would have the wherewithal and
18 just unbelievable, uncanny ability to predict that
19 Charles Green who they specifically say didn't do
20 this and he doesn't match the description would
21 manage to pick up his good friend, Christopher
22 Broadnax, an addict, crack addict on his way from
23 fleeing from a crime scene? Because is their theory
24 that Charles Green did this, or is their theory that
25 someone else did this, dumped the stuff in Charles

1 Green's truck and then walked off? They didn't tell
2 you because they don't have a theory that makes any
3 sense.

4 **MR. MAY:** Objection, Your Honor.

5 **THE COURT:** Overruled.

6 **MS. CAMPBELL:** And that's the reason they didn't
7 tell you. Because if you look at the cold, hard
8 facts involving what each and every witness in this
9 case told you, each and every credible witness, there
10 is only one conclusion. And that's what's tough for
11 the defense in this case. But, you know, they say
12 that the truth is hard to get around. And, ladies
13 and gentlemen, let's talk about what the truth is in
14 this case.

15 Now, you've heard from a number of witnesses.
16 And the defense just got up here. And, oh, by the
17 way, he's better at telling stories. He has a lot of
18 stories. He's got more stories than I've heard from
19 him since I've known him.

20 He talked about how the Supreme Court says that
21 certain identification procedures are highly
22 suggestive. He talked about how his family members
23 and friends have bad memories. He talked about
24 several other cases that have nothing to do with
25 here, that didn't involve eye witness testimony and

1 that did involve blood at a crime scene. They
2 weren't armed robberies. That was evidence that
3 should be tested, blood at a crime scene.

4 He's talked about every possible person that has
5 nothing to do with this case. I want to focus right
6 now on these people, on this testimony. This isn't a
7 case, ladies and gentlemen, as those that he talked
8 about The Innocence Projects have been overturned
9 where one person identified someone that raped them
10 in the dark and then 25 years later DNA testing is
11 going to exonerate.

12 Because, ladies and gentlemen, no matter whose
13 DNA is or is not on those, they have an explanation
14 if it is and they have an explanation if it isn't.
15 We don't know who handled the gun before he got it.
16 We don't know who may have handled the mask or
17 anything else.

18 If DNA is found on anything, they're going to
19 say: What does it matter? He was in the car with it
20 after he did his drug deal. It's called, as my
21 nephew says, it's talking out of both sides of your
22 mouth. They want you to believe, oh, the witnesses
23 aren't lying, they're just mistaken. Don't you
24 think, and I bet that Donald Kirby, Arthur Haynes,
25 don't you think they want the person that actually

1 robbed them held responsible? Why?

2 And they were even -- and Mr. Haynes when he's
3 taken to this suggestive line-up; by the way, which
4 the judge says is admissible, when they're taking him
5 to this line-up, what does he say specifically? He
6 distinguishes. That's the driver. And look at him.
7 This is the driver.

8 Listen to the tape. On the tape the description
9 that's given before any ID's is given is a black male
10 in his forties. Nobody mentions gray hair because
11 there isn't any. As far as the robber is concerned.
12 With a striped shirt. Nobody has gotten up here or
13 can get up here and say that Mr. Green was wearing
14 anything but a solid shirt.

15 And the great thing, ladies and gentlemen, is
16 you do have the video. And you can hear
17 communications. And I want to get back to this. The
18 911 tape, the information being given on the radio,
19 as well as the victim's testimony. And the purpose
20 of that is because it corroborates what the victims
21 told you. And they don't wait and give descriptions
22 to the police about the lazy eye. They give it to
23 Officer Baire, the first officer on the scene, before
24 any procedures are done. Like it or not, that's the
25 facts in this case.

1 Arthur Haynes -- and he is by the way, a hero.
2 And I'm not mocking him. Donald Kirby is a hero.
3 And I am not mocking him. Because they're real
4 people. Do they have past criminal records? Yes.
5 But they are out there working for a living. They
6 have made mistakes. They have jobs they have to show
7 up to.

8 And while in that job what do they get as a
9 reward from people like Christopher Broadnax? They
10 get the reward of having someone come into that
11 business with a gun, threatened their lives. That's
12 their reward for trying to get their lives in order.

13 And what's significant about the two people that
14 are able to do identifications in court? The
15 testimony was that the defendant walks in and at that
16 point the two people that are kind of standing back
17 and not involved in the actual -- remember? He's got
18 the gun on Danny Weaver. He's got the gun on
19 Gracious.

20 Gracious is so scared, she tells you -- and
21 that's what makes this credible. Nobody is trying to
22 set him up. She told you all she could focus on was
23 the gun. They are the ones that are having to do
24 things, do things. They aren't having the
25 opportunity, like Mr. Haynes, like Mr. Kirby, who are

1 actually sitting back. Remember Mr. Kirby is
2 standing there. He is watching him for every second.
3 He is observing him. Mr. Haynes, he is watching him.
4 He is observing him. He showed you how far away we
5 were. The lighting, all those questions. Do you
6 think he had an adequate opportunity to observe?
7 They were observing. They were able to see the face
8 more clearly. They didn't have the gun pointed at
9 them or jumping over the counter. That's credible
10 evidence.

11 Officer Baire, the lazy eye, immediately. That
12 wasn't later. The striped shirt, the gray Dodge
13 pick-up. Isn't it amazing that within three
14 minutes -- and I'll get to the times in a minute --
15 this defendant is sitting on the gun and the money
16 from the robbery in the gray Dodge pick-up truck?

17 The easy answer? It is the answer. There is no
18 video. That doesn't mean a crime didn't occur and it
19 doesn't mean a crime can be solved.

20 You heard from these people. You heard from Ms.
21 Williams about how much money was taken. She went
22 there that night. You hear also those witnesses gave
23 statements to the police that night about what they
24 saw, the description of what they saw and what they
25 heard. You've got the 911 tape.

1 Charles Green, the criminal, the liar, the rat.
2 We just heard about rats, their whole lifestyle. You
3 heard about how Charles Green was nervous but his
4 client was calm. And that speaks volumes of this
5 case? He is caught red-handed. And when he is told
6 by Officer Ridgeway that he's being detained for an
7 armed robbery, he says nothing.

8 He has just chewed up three rocks, according to
9 him, large rocks of crack cocaine, the equivalent of
10 like six hits. And he's cool as a cucumber. He's
11 not down throwing up. He's not having a heart
12 attack. And this is because we don't know what
13 quality the crack cocaine was? He admits he's an
14 addict, been addicted, crack user, has to have his
15 crack.

16 And, by the way, what do addicts do in order to
17 pay for their addiction? What's the easiest way to
18 get money if you aren't working and you need to pay
19 for your addiction? Get a gun and rob people. His
20 own defense gives us the motive. That's what crack
21 addicts do.

22 You heard from a number of officers at the
23 scene. Most importantly, you have heard from Officer
24 Ridgeway, Officer Delage, Officer Brayboy, Officer
25 Rose, Investigator Thomas. And what did Investigator

1 Thomas do? This isn't the rat that came in here some
2 year and a couple of months later suddenly saying:
3 Oh, he's the guy. The testimony is Charles Green was
4 advised of his rights that night. He gave a
5 statement to Investigator Thomas. And he immediately
6 told what he knew about it.

7 Did he get up here and minimize part of it? Was
8 he mistaken about whether or not he was sitting up or
9 not? Did he minimize? Whatever. He knows he's
10 nervous because he didn't do the armed robbery but he
11 knows who did and he knows who did was sitting right
12 there next to him.

13 He told Investigator Thomas that night when he
14 was informed about the armed robbery what his role
15 was and what he knew about what that man did. And
16 what did he tell you? Because, ladies and gentlemen,
17 this isn't a script. This is real life. This is
18 good police work.

19 What he did tell you was that Broadnax wanted a
20 ride, got out of the car. He parks down the street.
21 Did he suspect what was going on? Yes. That he left
22 with a bag, that he came back with one. And he is
23 the rat, the liar and whatever other names?

24 You can't believe him because he has a criminal
25 record? He has petit larceny. He has other

1 obtaining, I think the description was, by fraud;
2 other charges like that. So you can't believe him
3 because he is the criminal. That's what they said
4 about him.

5 What other evidence do you have? The 911 tape.
6 And on the 911 tape you can hear Gracious talking.
7 And it's important. And look at this timeline.
8 Because the robbery occurs. And these victims who
9 you're supposed to believe immediately call 911.
10 Gracious does. And remember Danny Weaver immediately
11 gets on and tries to find a supervisor.

12 The 911 tape, she calls. You hear her. And on
13 the 911 tape when you play it, or you can time it
14 with your watch, time passes. She tries to get a
15 description. Oh. And then they allude -- and I
16 don't know why -- because on the tape she says: What
17 was he wearing? And Gracious says: I'm not sure.
18 And then if I'm misquoting, you take it. You'll have
19 the evidence. I'm not sure. It was striped. I
20 think burgundy, red or something. The first thing
21 she says is: I am not sure, but stripes, maybe
22 burgundy, red or something. That's what she says.

23 Within two minutes and 38 seconds you can hear
24 the sirens in the background. It may be 2:37. It
25 may be 2:39. You listen. In that timeframe, right

1 around that time you can hear the sirens as they're
2 approaching. Which means after she makes the call,
3 gets in touch with the operator, tells them an armed
4 robbery has occurred, the operator confirms that and
5 then dispatches out the tone, whatever they call it,
6 and the call. All in around two and a half minutes
7 officers are responding to where you can hear the
8 siren. Within 11 seconds later the police are out
9 front, according to Gracious, on that.

10 And why is that significant? Because the time
11 period is significant because there's not a lot of
12 time left. Remember the testimony? The response
13 time on this call was faster than usual, much faster
14 than usual because officers happened to be in the
15 area. And, ladies and gentlemen, I submit for that
16 he would have gotten away with it.

17 You also heard or saw an actual tape, the video.
18 The time periods on that are significant. On the
19 video you see where after about a minute they've been
20 in the car, they're going down the road, the tone
21 comes on. It's this big buzzing sound. They
22 activate the blue lights. It's right there around
23 the railroad tracks.

24 Within 47 seconds you see them traveling down
25 Two Notch Road and you can see the gray Dodge truck

1 on the left-hand side of the road passing them.
2 They're going opposite directions. That's at Laurel
3 and Two Notch. Then about a minute later you see
4 where -- and the defendant's testimony, I'll get to
5 that in a minute -- it wasn't that they fell in
6 behind the truck and came around behind it. Remember
7 the truck had already pulled off the road. You can
8 hear Ridgeway talking about; there, they've turned
9 off, when they're still three or four blocks down the
10 street. They aren't behind it. They're three or
11 four blocks down and they've turned off into a
12 parking lot and are sneaking around the back at that
13 point. Because this wasn't a case where they pull up
14 behind them and stop them. They cut them off right
15 there at Chestnut Street.

16 You even see, because the description, and it's
17 on there, a description comes out of a black male
18 with a striped shirt. There are some other details.
19 It's already been given out to police on that
20 channel, plus another description more detailed on
21 another channel possibly that wasn't recorded.

22 **MR. MAY:** Objection, Your Honor. Calls for
23 speculation and arguing stuff that's not in evidence.

24 **THE COURT:** Overruled. Go ahead.

25 **MS. CAMPBELL:** Thank you. There was testimony

1 the two different channels were being used, the one
2 for Metro and the one for South. That information is
3 getting put out. And what's the description of the
4 defendant? A black male in his forties, striped
5 shirt.

6 When they pull up and they see the driver, they
7 say: Oh, my God, that's probably not going to be
8 him. He doesn't match the description. Charles
9 Green doesn't match the very basic description that's
10 initially put out, not even the supplemental one.

11 The defendant is curled up on the passenger
12 floorboard hiding, sitting on the money, the gun, the
13 plastic bag, a mask which may or may not have been
14 the mask used -- nobody got up here and said that was
15 the mask -- wearing a striped shirt and the pants
16 that matched the description.

17 That's all on the video. The defendant got up
18 here and testified. And as I said before, they have
19 absolutely no burden; but once they choose to put up
20 evidence, you judge it in the same manner that you
21 judge any witness's credibility. Is it corroborated
22 by the testimony? Is it corroborated by the physical
23 evidence? Is it corroborated by any of the
24 videotapes? Is it corroborated by sheer common
25 sense?

1 His testimony is that he is a drug user, an
2 addict. He was out buying drugs that day on some
3 street. I never did figure out what the name of the
4 street was. But he is not even on Two Notch. But he
5 hears -- remember? This is his testimony. He hears
6 the police officers, the two cars -- he's specific;
7 he knows it's two cars -- go by.

8 And when he hears the two cars go by he hides in
9 the bushes because he has a crack pipe and crack
10 cocaine. But then he comes out of the bushes because
11 they go on by. And, granted, you have the map. The
12 place where he says he was is somewhere around here
13 on Edgewood Avenue or somewhere. It's the next
14 street down from Laurel Street.

15 So these officers go all the way down here to
16 turn around and come back. And he says he can't hear
17 the sirens any more. So he thinks it's safe. So
18 wherever he is on Edgewood, he then proceeds out to
19 Two Notch, where supposedly, I presume under the
20 defense theory, Charles Green, the rat, is making his
21 escape from his armed robbery.

22 But then he sees Charles about a block down the
23 road. Remember he still can't hear any sirens even
24 though they're only three or four blocks further.
25 And he gives the universal sign. And Charles doesn't

1 stop to pick him up but kind of rolls over to the
2 point where this defendant -- because Charles I guess
3 under the theory is now fleeing this armed robbery
4 he's just committed in the shirt he's wearing and
5 picks him up because they're old friends and they
6 smoke crack together.

7 And at that point they only go another block
8 because there is only one more block to go before
9 they're stopped. But they don't even go a block. So
10 his own testimony doesn't make sense, because they
11 had to turn before they get to Chestnut Street,
12 because they turn into the store next to the one, the
13 Magic Market on the corner.

14 And he has the wherewithal to grab his crack
15 pipe and throw it out the window where he sees it
16 shatter. But then he still has the crack cocaine.
17 But at some point in this block or block and a half
18 which doesn't exist because the police are behind
19 him, even though they aren't, he decides he needs to
20 eat it.

21 And he eats a phenomenal amount of crack
22 cocaine. And the defense got up here and says you
23 don't know what concentration it is. He is the
24 addict. He is the expert. He's not going out there
25 to by bad crack cocaine. He's familiar with it, by

1 his own admission. And he eats six hits of crack
2 cocaine? Never convulses, never has a heart attack,
3 never is treated, never even becomes jittery.

4 And his testimony was nobody ever tells him he
5 is detained for armed robbery. And let me be the
6 first to apologize. I can't anticipate what the
7 defense is going be to. It is my fault for not
8 asking Officer Ridgeway that specific question.
9 Please don't hold that against the State because I
10 couldn't anticipate that, that that was going to be
11 an issue.

12 Officer Ridgeway got up here and told you what
13 he remembered and what he didn't remember. But what
14 he did remember was specifically telling him: You're
15 being detained in an investigation for armed robbery;
16 this vehicle matches the description. Or whatever
17 words. You heard it.

18 And at that point this man who supposedly had
19 just eaten six rocks of crack cocaine says nothing.
20 He'll hide from the police when he thinks that they
21 might even suspect he's got three rocks in his socks,
22 but when he's told he's being detained for armed
23 robbery: Nothing.

24 And I submit, ladies and gentlemen, that's
25 because Christopher Broadnax knew at that point he'd

1 been caught red-handed. The defense has talked about
2 how there's no DNA because that would solve the case.
3 Or there's no fingerprints. And then they got the
4 defendant up here and he's testified to his crime of
5 being in a addict. It's called the art of confessing
6 error. Try to get the jury to believe, oh, I was
7 doing something bad but it just wasn't this bad. The
8 art of confessing error.

9 And I submit, ladies and gentlemen, all this is
10 is an attempt to divert your attention on the
11 credible, relevant evidence in this case. They want
12 you to ignore -- well, no, it's not true. Believe
13 Arthur Haynes; just don't believe Arthur Haynes
14 identified the man that robbed him, even though he
15 had just been robbed within minutes. Do you think
16 that face wasn't etched in his mind? He was the one
17 with the opportunity to observe the defendant.

18 You're supposed to believe Donald Kirby; but,
19 no, he wasn't able to identify the person that did
20 him, that robbed them, the person that threatened him
21 when he tried to call 911, because he is not
22 believable on that point, even though you can believe
23 him on everything else.

24 And Gracious Tucker, she gave the description, a
25 striped shirt. She wasn't sure what color. That's

1 credible. So you can believe her as to what
2 happened, that this was an armed robbery/kidnapping,
3 but just don't believe her as far as her description
4 of the striped shirt.

5 And Danny Weaver gave the description of the
6 man, a black male. Oh. And her thing: Five-six,
7 five-seven, going out the door; but they want you to
8 believe Charles Green who is at least six-two is the
9 person versus this person who is about five-ten?
10 Charles Green, the rat, you don't need to go into
11 that any more. Can't believe him. He's a criminal.
12 You can't believe anything he said.

13 Description of the clothing, the shirt and the
14 pants, it's less than three minutes 'til from the
15 time the call goes out until the time the stop is
16 made. The 911 tape, Officer Baire, the first officer
17 on the scene, immediately stood out to him as the
18 witness was telling him about the lazy eye.

19 The clothing description, all that. And let's
20 get one thing straight. If it had been any
21 different, it would have been cross examined.

22 Ridgeway, Brayboy, Delage, Rose, the bag, the
23 gun, the money, the lazy eye, the striped shirt, the
24 physical description. This isn't a game where anyone
25 is trying to pull the wool over your eyes. The facts

1 in this case, this is a classic case. This defendant
2 literally got caught red-handed. He's alluded to
3 these other cases where maybe there's one ID from in
4 the dark, mistaken. This isn't that case, ladies and
5 gentlemen.

6 I beg you: Believe these witnesses. They don't
7 have a dog in any fight with Christopher Broadnax.
8 They simply wanted the person that robbed them held
9 accountable. The evidence in this case is
10 overwhelming. If you take what the defense says, no
11 one that commits a crime could be convicted.

12 **MR. MAY:** Objection, Your Honor.

13 **THE COURT:** Overruled.

14 **MR. MAY:** It's improper.

15 **MS. CAMPBELL:** No one could be convicted. On
16 May 24th Christopher Broadnax needed to get some
17 money to fix his habit, his addiction. And he sure
18 couldn't get a job and he sure couldn't do anything
19 else. So he comes up -- and, by the way, Charles
20 Green, we didn't pick him. That's his friend, this
21 rat, the snitch, the whatever else he called him.
22 That's who he got the ride from.

23 Charles Green did not commit this offense.
24 There is no evidence that Charles Green was anything
25 but an accessory in this case. Charles Green was not

1 identified. Charles Green was not described.

2 Charles Green's clothing would not apply.

3 And what's absolutely amazing is supposedly if
4 Charles Green did this, he has just committed this
5 armed robbery. Because they have no other theory;
6 they have no one else to point to. He manages to
7 change his clothing. He manages to grow several
8 inches. He manages to get gray hair. All within
9 three minutes.

10 And then while he's escaping from the scene
11 where he's committed this, he stops. And this is
12 what makes him credible. He's talking to some people
13 out there; homeless people that didn't come forward,
14 granted. And then he goes on down. And this is the
15 same Charles Green that then he's leaving from an
16 armed robbery?

17 And, by the way, he's just -- nobody is going to
18 dispute this -- passed the officers going to the
19 Church's. It's on the video. We can see it. Yet he
20 stops to pick up Christopher Broadnax while fleeing
21 from an armed robbery where he's just seen the police
22 two blocks away?

23 Incredible. His story simply is the best he
24 could do. It doesn't work. Who is the liar? Who
25 has something to gain or to lose? Who has bias or

1 prejudice? Because, ladies and gentlemen, either or
2 you believe Danny Kirby, Arthur Haynes, the police
3 officers and everyone else, the other witnesses; or
4 you believe him. That's what this case boils down
5 to.

6 And I submit when you look at this case, using
7 your common sense, applying the law as far as
8 credibility, he is right; there is one person that's
9 not telling the truth, who is trying desperately to
10 not be held accountable for his choices, whether he
11 was sober or not, his actions, his threats back on
12 May the 24th.

13 I submit, ladies and gentlemen, right here, with
14 nothing else, none of this, there is enough evidence
15 from Arthur Haynes alone to convict this man of armed
16 robbery beyond a reasonable doubt. His ID was so
17 certain. He was specific when he was taken to the
18 scene. There is the truck. That's the driver.
19 Remember he got a good look at his face. That's not
20 the driver. That's the robber. That alone is enough
21 to convict Christopher Broadnax.

22 Donald Kirby, Gracious Tucker, Danny Weaver, all
23 of this, every piece of evidence in this case, points
24 to the guilt of one person for this armed robbery and
25 one person alone.

1 We aren't in this courtroom to talk about
2 memories of friends. We aren't in this courtroom to
3 talk about other trials. This is about the evidence
4 in this case that is specific to this case. And,
5 ladies and gentlemen, when you consider all the
6 evidence, it's overwhelming.

7 All we ask is that you follow the law as the
8 judge gives it to you to the standards that are
9 appropriate and to the evidence that is probative in
10 this case. And, ladies and gentlemen, when you
11 consider all the evidence, the only just and true
12 verdict -- remember verdict comes from the Latin
13 phrase, veredicto, that means to speak the truth --
14 all we ask is that you hold him responsible for what
15 he did, for his choices and find him guilty of the
16 armed robbery and the kidnappings that he needed to
17 do to help his addiction. Thank you.

18 **THE COURT:** Let's move the -- Mr. May, put them
19 up on the evidence table, please. The gun.

20 **MR. MAY:** Yes, sir. Anything else, Your Honor?

21 **THE COURT:** That's it. All right, ladies and
22 gentlemen. You have now heard all the testimony in
23 this case. You've heard all the arguments of both
24 the State and the defendant, and you will take to the
25 jury room with you all the evidence in this case

1 that's been introduced.

2 Now, sometimes juries ask me to send them a copy
3 of what I'm about to tell you. That's generally
4 speaking not possible. So I'm going to ask you to
5 pay close attention to my instructions at this time.
6 And some of this may be repetitive as to what I told
7 you in the beginning, but it's important that I
8 emphasize it again.

9 Remember that under our Constitution and Code of
10 Laws only you, the jury, can make findings of fact in
11 this case. I'm not permitted to indicate to you how
12 I might feel about the facts. If I have done or said
13 anything in this case which would indicate to you
14 that I have an opinion concerning the facts, then you
15 should disregard that. You must independently weigh
16 the evidence presented in this trial and render a
17 verdict based solely on that evidence. And the same
18 Constitution and laws which designate and make you
19 the finders of fact also make me the instructor of
20 the law.

21 If you have some idea of what the law is or what
22 the law ought to be and it does not agree with what I
23 now tell you the law is, you are obligated under your
24 oath to abandon that preconception on your part and
25 accept and apply the law precisely as I now state it

1 to you.

2 I remind you again the defendant has been
3 charged by indictment in this case with armed robbery
4 and three counts of kidnapping. The fact that the
5 defendant was arrested and indicted is not evidence
6 in this case, cannot be considered by you as evidence
7 of guilt, nor does it create any presumption or
8 inference of guilt. These documents are simply the
9 formal written instruments which contain the charges
10 made against the defendant. They are the formal
11 documents by which a case is brought into court.

12 Now, Mr. Broadnax has pled not guilty to each of
13 these indictments, and that plea puts the burden on
14 the State to prove the defendant guilty. A person
15 charged with committing a criminal offense in South
16 Carolina is never required to prove himself or
17 herself innocent.

18 I charge you it's an important rule of law that
19 a defendant in a criminal trial, no matter how
20 serious the charge may be, will always be presumed
21 innocent of the charge or the crime for which the
22 indictment was issued unless guilt has been proven by
23 evidence that's satisfying you of that guilt beyond a
24 reasonable doubt.

25 This presumption of innocence does not actually

1 end when you begin your deliberations, but it
2 accompanies the defendant throughout the trial and
3 until you reach a unanimous verdict of his guilt
4 based on the evidence satisfying you of that guilt.

5 The presumption of innocence again is not a mere
6 legal theory. It's not just a legal phrase. It is a
7 substantial right to which every defendant is
8 entitled unless you, the jury, are satisfied from the
9 evidence of the defendant's guilt beyond a reasonable
10 doubt. The State is not required to prove guilt of
11 the defendant beyond all doubt or beyond every
12 possible doubt but beyond a reasonable doubt.

13 Well, what is a reasonable doubt at law? A
14 reasonable doubt is the kind of doubt that would
15 cause a person to hesitate. Let me repeat that. A
16 reasonable doubt is the kind of doubt that would
17 cause a reasonable person to hesitate to do
18 something.

19 The State has the burden of proving the
20 defendant guilty beyond a reasonable doubt. Some of
21 you may have served as jurors in civil cases where
22 you were told it's only necessary to prove that a
23 fact is more likely true than not, such as by the
24 greater weight of the evidence or preponderance of
25 the evidence. But in criminal cases the State's

1 proof must be more powerful than that. It must be
2 beyond a reasonable doubt.

3 To think that a defendant is probably guilty or
4 that circumstances are suspicious is not enough.
5 Proof beyond a reasonable doubt is proof that leaves
6 you firmly convinced of the defendant's guilt.

7 There are very few things in this world we know
8 with absolute certainty. In criminal cases the law
9 does not require proof that overcomes every possible
10 doubt. If based on your consideration of the
11 evidence you are firmly convinced that the defendant
12 is guilty of the crime charged, you must find the
13 defendant guilty. On the other hand, if you think
14 there is a real possibility the defendant is not
15 guilty, you must give the defendant the benefit of
16 the doubt and find him not guilty.

17 Now, as mentioned by one of the attorneys, there
18 are generally two types of evidence which are
19 presented during a trial: Direct evidence and
20 circumstantial evidence. Direct evidence is the
21 testimony of a person who claims to have actual
22 knowledge of a fact, such as an eye witness. We've
23 had eye witnesses in this case. It is evidence which
24 immediately establishes the main fact to be proved.

25 Circumstantial evidence on the other hand is

1 proof of a chain of facts and circumstances
2 indicating the existence of some fact. It is
3 evidence which immediately establishes collateral
4 facts from which the main fact may be inferred.

5 Circumstantial evidence is based on inference
6 and not on personal knowledge or observation. But
7 the law makes absolutely no distinction between the
8 weight or value to be given to either direct or
9 circumstantial evidence, nor is a greater degree of
10 certainty required of circumstantial evidence than of
11 direct evidence.

12 You should weigh all of the evidence in the
13 case; and after weighing all the evidence, if you are
14 not convinced of the guilt of the defendant beyond a
15 reasonable doubt, you must find the defendant not
16 guilty.

17 Now, necessarily, you must determine the
18 credibility of the witnesses who have testified.
19 Credibility simply means believability. It becomes
20 your duty as jurors to analyze and evaluate the
21 evidence and determine which evidence convinces you
22 of its truth.

23 In determining the believability of witnesses
24 who have testified, you may believe one witness or
25 several witnesses or one witness over several

1 witnesses. You may believe a part of the testimony
2 of a witness and reject the remaining part of the
3 testimony of the same witness.

4 You may believe the testimony of a witness in
5 its entirety or reject that witness's testimony in
6 its entirety. You may consider whether any witness
7 has exhibited to you any interest or bias or
8 prejudice or other motive in this case. And you can
9 consider the appearance and manner of the witness
10 while on the witness stand.

11 These considerations you do not exercise
12 arbitrarily. Your objective, ladies and gentlemen,
13 is to seek the truth regardless of its source. In
14 exercising your mental processes in determining what
15 you consider to be true, the law simply requires that
16 you exercise your good judgment, your common sense,
17 your sense of logic and reason and your experiences
18 in life.

19 You then apply these attributes to the evidence
20 and determine what you, the jury, consider to be the
21 truthful evidence. You will then take and apply the
22 law as it is now stated to you and thus arrive at a
23 true verdict in this case.

24 Now, a witness, a person who appears as a
25 witness who has a past criminal record is competent

1 to testify during a trial. A past record does not
2 affect the ability of that witness to testify. A
3 past record may be considered by you only if at all
4 in determining the witness's believability. Remember
5 again you are the sole judges of the facts in this
6 case and of the believability of any and all of the
7 witnesses.

8 You've heard evidence that the defendant was
9 convicted of a crime other than the one for which the
10 defendant is now on trial. This evidence may be
11 considered by you if you can conclude it is true only
12 in deciding whether the defendant's testimony is
13 believable and for no other purpose. You must not
14 consider the defendant's prior record as any evidence
15 of the defendant's guilt of the charge that we are
16 trying here today.

17 Now, one issue in this case is the
18 identification of the defendant as the person who
19 committed the crime charged. The State again has the
20 burden of proving identity beyond a reasonable doubt.
21 You must be satisfied beyond a reasonable doubt of
22 the accuracy of the identification of the defendant
23 before you may convict the defendant.

24 Identification testimony is an expression or
25 belief or impression by a witness. You must

1 determine the accuracy of the identification of the
2 defendant. You must consider the believability of
3 each of the identification witnesses in the same way
4 as any other witness.

5 You may consider whether the witness had an
6 adequate opportunity to observe the offender at the
7 time of the offense. This will be affected by things
8 like how long, short a time was available, how close
9 or how far the witness was, the lighting conditions
10 and whether the witness had a chance to see or know
11 the person in the past.

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

21 Now, in order to establish criminal liability,
22 criminal intent is required. Criminal intent must be
23 proven by the State beyond a reasonable doubt.
24 Criminal intent is always a matter that must be
25 determined by the jury from the circumstances

1 surrounding the situation.

2 There is no way to prove intent to a
3 mathematical certain. There is no way medical
4 science can dissect a person's brain and determine
5 what the person had in mind. So the law says that
6 criminal intent may be inferred from the
7 circumstances shown to have existed at the time and
8 place. This is how you make the determination of
9 whether or not the element requiring intent was
10 present.

11 Criminal intent is a mental state, a conscious
12 wrongdoing. It's up to you to determine what the
13 defendant intended to do based on the circumstances
14 shown to have existed at the time and place.

15 Now, as you know, the indictments in this case
16 allege several different offenses against the
17 defendant. Each indictment charges a separate and
18 distinct offense. You must decide -- each decide --
19 you must decide each indictment separately on the
20 evidence and the law applicable to it uninfluenced by
21 your decision as to any other indictment. The
22 defendant may be convicted or acquitted on any or all
23 of the offenses charged. You will be asked to write
24 a separate verdict of guilty or not guilty on each
25 indictment.

1 Now, according to our state statute, armed
2 robbery is codified or put in our code book as what
3 we call Section 16-11-330. The defendant is charged
4 with armed robbery. In order to prove this offense,
5 the State must first prove beyond a reasonable doubt
6 that the defendant took personal property from
7 another person or from the presence of another
8 person. Property is in the presence of a person if
9 it is within the person's reach or inspection or
10 observation or control so that the person could if
11 not overcome by violence or prevented by fear keep
12 possession of that property.

13 Next the State must prove beyond a reasonable
14 doubt the defendant carried the property away
15 intending to permanently deprive the owner of the
16 property and to keep the property for the defendant's
17 own use.

18 The slightest removal of the property or the
19 complete possession of the property even for an
20 instant by the defendant is sufficient to show a
21 taking and carrying away of the property.

22 The taking and carrying away of the property
23 must have been done with violence or by putting the
24 owner of the property in fear of violence. And
25 finally the State must prove beyond a reasonable

1 doubt either that the defendant was armed with a
2 deadly weapon during the robbery or that the
3 defendant alleged by actions or words that he was
4 armed using a representation of a deadly weapon or
5 any object which a person present during the
6 commission of the robbery reasonably believed to be a
7 deadly weapon.

8 A deadly weapon is an article, instrument or
9 substance which is likely to cause death or great
10 bodily harm. Some examples of that might be a pistol
11 or a knife or metal knuckles or a razor or any deadly
12 weapon. And a gun may be a deadly weapon even if
13 it's not operating or if it's not loaded.

14 The defendant is charged with three counts of
15 kidnapping. The State must prove beyond a reasonable
16 doubt that the defendant knowingly and unlawfully
17 seized or confined or what he call inveigled or
18 decoyed or kidnapped or abducted or carried away
19 another person without the authority of law.

20 To do a thing unlawfully is to do it willfully
21 against the law. And knowingly obviously means with
22 knowledge, conscientiously not accidentally. To
23 seize means to take hold of or suddenly or forcibly.
24 And confine means to limit or restrict or enclose
25 within bounds, imprison or shut or keep in.

1 Inveigle means to lure, entice or lead astray by
2 false representations. To decoy means to lure as if
3 by a decoy. A decoy is something to entice a person
4 to do something. To kidnap is to remove a person
5 against his will by unlawful force or by fraud. And
6 to abduct means to carry off secretly or by force or
7 for an illegal purpose. And carry away obviously
8 means to remove.

9 Now, the State does not have to prove that the
10 defendant did all of these things. Instead, if you
11 find beyond a reasonable doubt that the defendant did
12 any of these things, may find the defendant guilty of
13 kidnapping.

14 Something done without the authority of law is
15 something which the law does not sanction, permit,
16 allow, condone or provide justification for. The
17 kidnapping does not have to be for any personal or
18 monetary gain or for any illegal purpose but may be
19 for any reason whatsoever.

20 As I said, kidnapping occurs when someone
21 confines or abducts or carries away another person by
22 any means whatsoever without authority of law.
23 Kidnapping commences when one is wrongfully deprived
24 of his freedom and continues until that freedom is
25 restored.

1 Now, mere presence at the scene or in the
2 vicinity of a crime is not sufficient to prove
3 someone guilty of a crime. The burden is on the
4 State to prove every element of the crime charged.
5 If you find after reviewing all the evidence that the
6 State has proved that the defendant was only present
7 at the scene or in the vicinity of a crime and that
8 they have not proved beyond a reasonable doubt any
9 other participation in the crime, then you must find
10 the defendant not guilty. The law is that proof of
11 mere presence at the scene or in the vicinity of a
12 crime is not sufficient to find someone guilty.

13 I further charge you that voluntary intoxication
14 is never an excuse or a defense to a crime. A person
15 who voluntarily renders himself or herself
16 intoxicated is no less responsible for his acts while
17 in such condition.

18 If a person voluntarily drinks intoxicating
19 liquors or takes drugs and becomes intoxicated and if
20 while in that condition commits an act which would be
21 a crime if it had been committed by a sober person,
22 the fact of intoxication would not relieve the
23 intoxicated person from responsibility.

24 Now, Mr. Foreman and ladies and gentlemen, I
25 charge you that the punishment provided by law to an

1 offense or the offenses charged in this indictment or
2 these indictments is a matter exclusively within the
3 province of the Court and should never be considered
4 by the jury in any way whatsoever in arriving at a
5 fair and impartial verdict as to the guilt or
6 innocence of the defendant.

7 I am required to declare the law as I've done
8 through these instructions to help guide you to a
9 just and lawful verdict. Whether some of these
10 instructions will apply will depend on what you find
11 to be the facts.

12 The fact that I've instructed on various
13 subjects must not be taken by you as indicating an
14 opinion of this Court as to what you should find to
15 be the facts or as to which party is entitled to your
16 verdict.

17 Your verdict must represent the considered
18 judgment of each juror. In order to return a
19 verdict, it is necessary that each juror agree. Your
20 verdict, in other words, must be unanimous. All 12
21 of you must agree on the verdict. Your verdict
22 cannot be based on sympathy, passion, prejudice,
23 emotion or any other consideration that's not in
24 evidence in this case.

25 Remember at all times you are not partisans

1 favoring one party over the other. You are judges,
2 judges of the facts. Your sole interest is to seek
3 the truth from the evidence in this case.

4 Now, Mr. Foreman, when you retire to the jury
5 room all the evidence will go with you, as I told
6 you. The video that you saw is available for you to
7 see again if you wish to do so. It will take a few
8 minutes obviously to bring the equipment in and set
9 it up and I guess show you how to run it if you wish
10 to do so. That's available to you. I'm not going to
11 send the equipment back right now. I'll send the
12 video with you. I'll send the gun to you, but I
13 ain't going to send the ammunition.

14 If you want to see the ammunition, bring the gun
15 out, and I'll send in the ammunition. And the 911
16 tape, that's available to you also. So if you want
17 anything to be heard or seen, let us know and we'll
18 make arrangements.

19 Mr. Foreman, also with you will go the four
20 indictments. On what we call the face of the
21 indictment; you might call it the back, in the bottom
22 left-hand corner is a place for your verdict. Once
23 the jury has reached a decision on each and every
24 indictment, if you will indicate not guilty or
25 guilty, sign your name and date it, knock on the jury

1 room door, and we will receive your verdict.

2 Now, I'm going to ask you to retire to the jury
3 room and not begin your deliberations until all the
4 evidence comes in, the indictments come in, at which
5 time you can begin your deliberations. All right.
6 Thank you very much.

7 (Jury out at 3:34 p.m.)

8 **THE COURT:** Any exceptions to the charge from
9 the State?

10 **MS. CAMPBELL:** No, Your Honor.

11 **THE COURT:** From the defense?

12 **MR. MAY:** Not from the defense, Your Honor.

13 **THE COURT:** All right. Thank you very much. If
14 you'll please --

15 **MR. MAY:** Look at the evidence?

16 **THE COURT:** -- review the evidence, make sure
17 it's all here so the bailiff can take it to the jury.

18 (Pause)

19 **THE COURT:** Come to order, please. Mr. May, Ms.
20 Campbell, any objection to releasing the alternate?

21 **MS. CAMPBELL:** It's up to you, Your Honor.

22 **MR. MAY:** Pardon me?

23 **THE COURT:** Thank you. Any objection to
24 releasing the alternate?

25 **MR. MAY:** No, sir.

1 **THE COURT:** Tell them to bring the alternate.

2 Wait a minute.

3 (Whereupon, the alternate is excused)

4 (Whereupon, the jury begins deliberating at

5 3:40 p.m.)

6 **THE COURT:** All right. We'll stand at ease

7 until we hear from the jury.

8 (Whereupon, a break is taken)

9 (WHEREUPON, Court's Exhibit No. 3 is marked for
10 identification.)

11 **THE COURT:** All right, Ms. Campbell.

12 **MS. CAMPBELL:** Sir?

13 **THE COURT:** The jury has indicated they've
14 reached a verdict.

15 **MS. CAMPBELL:** Yes, sir.

16 **THE COURT:** Are you ready to receive the
17 verdict?

18 **MS. CAMPBELL:** Yes, sir. I just wanted to tell
19 them --

20 **THE COURT:** You ready to receive the verdict?

21 **MR. MAY:** Yes, sir.

22 **THE COURT:** Have a seat.

23 **MS. CAMPBELL:** Thank you, Your Honor.

24 **THE COURT:** Bring the jury, please.

25 (Jury in at 4:47 p.m.)

1 **THE BAILIFF:** The jury is all present, Your
2 Honor.

3 **THE COURT:** Thank you very much. Mr. Foreman --
4 there we are.

5 **JUROR:** You didn't miss me.

6 **THE COURT:** Mr. Foreman, is the
7 verdict --Ms. Cox.

8 **BAILIFF:** Yes, sir.

9 **THE COURT:** Thank you. Has the jury reached a
10 verdict?

11 **MR. FOREMAN:** Yes, sir, Your Honor.

12 **THE COURT:** Will you hand it to the bailiff,
13 please.

14 (Foreman complies)

15 **THE COURT:** All right, Madam Clerk. You may
16 publish the verdict, please.

17 **THE CLERK:** Yes, Your Honor.

18 **THE COURT:** Let me see those again just one
19 minute.

20 **THE CLERK:** The State of South Carolina, in the
21 County of Richland, in the matter of The State vs.
22 Christopher Broadnax, an indictment for armed
23 robbery, indictment number 2009-GS-40-4539; we, the
24 jury, find the defendant guilty.

25 On indictment number 2009-GS-40-4541, an

1 indictment for kidnapping, the jury finds the
2 defendant guilty.

3 On indictment number 2009-GS-40-4540, an
4 indictment for kidnapping, the jury finds the
5 defendant guilty.

6 And on 2009-GS-40-4542, an indictment for
7 kidnapping, the jury finds the defendant guilty.

8 Mr. Foreman, is this your verdict and the
9 verdict of the entire jury?

10 **MR. FOREMAN:** Yes, ma'am.

11 **CLERK:** Thank you.

12 **THE COURT:** Any desire to poll the jury?

13 **MR. MAY:** Yes, please, Your Honor.

14 **THE COURT:** Madam Clerk, if you would poll the
15 jury.

16 **THE CLERK:** Yes, Your Honor. Ladies and
17 gentlemen of the jury and Mr. Foreman, I want to call
18 out your number, and I'm going to ask each of you two
19 questions, and please answer the question. Number 1,
20 was this your verdict?

21 **JUROR:** Yes.

22 **THE CLERK:** Is it still your verdict?

23 **JUROR:** Yes.

24 **THE COURT:** Thank you. Number 96, was this your
25 verdict?

1 **JUROR:** Yes, it was.

2 **THE CLERK:** Is it still your verdict?

3 **JUROR:** Yes, it is.

4 **THE CLERK:** Number 121, was this your verdict?

5 **JUROR:** Yes.

6 **THE CLERK:** Is it still your verdict?

7 **JUROR:** Yes.

8 **THE CLERK:** Number 167, was this your verdict?

9 **JUROR:** Yes.

10 **THE CLERK:** Is it still your verdict?

11 **JUROR:** Yes.

12 **THE CLERK:** Number 159, was this your verdict?

13 **JUROR:** Yes.

14 **THE CLERK:** Is it still your verdict?

15 **JUROR:** Yes.

16 **THE CLERK:** Number 166, was this your verdict?

17 **JUROR:** Yes.

18 **THE CLERK:** Is it still your verdict?

19 **JUROR:** Yes.

20 **THE CLERK:** Number 53, was this your verdict?

21 **JUROR:** Yes.

22 **THE CLERK:** Is it still your verdict?

23 **JUROR:** Yes.

24 **THE CLERK:** Number 59, was this your verdict?

25 **JUROR:** Yes.

1 **THE CLERK:** Is it still your verdict?

2 **JUROR:** Yes.

3 **THE CLERK:** Number 24, was this your verdict?

4 **JUROR:** Yes.

5 **THE CLERK:** Is it still your verdict?

6 **JUROR:** Yes.

7 **THE CLERK:** Number 17, was this your verdict?

8 **JUROR:** Yes.

9 **THE CLERK:** Is it still your verdict?

10 **JUROR:** Yes.

11 **THE CLERK:** Number 101, was this your verdict?

12 **JUROR:** Yes.

13 **THE CLERK:** Is it still your verdict?

14 **JUROR:** Yes.

15 **THE CLERK:** Number 205, was this your verdict?

16 **JUROR:** Yes.

17 **THE CLERK:** Is it still your verdict?

18 **JUROR:** Yes.

19 **THE CLERK:** The jury has been polled, Your
20 Honor.

21 **THE COURT:** Thank you very much. All right,
22 ladies and gentlemen. That will complete your
23 service this week. And as you were probably told in
24 your initial qualification that this would give you
25 an additional two years of exemption from jury

1 service if you wish to exercise that exemption.

2 I'm going to dismiss you now, but let me just
3 tell you what is yet to come. In South Carolina and
4 particularly in this jurisdiction; that is, in
5 Columbia, we have so many cases that we sentence
6 immediately following a verdict. We just don't have
7 the luxury as they do on television or Law & Order of
8 waiting and taking some time between verdicts and
9 sentencing. We just have so many cases backed up we
10 have to do it immediately, which will be done
11 immediately, right after this, in just a few minutes.

12 There is some paperwork that has to be filled
13 out, and once that is done I will sentence the
14 defendant. Now, you are certainly welcome to watch
15 that, observe that sentencing procedure. And I find
16 juries frequently like to do that just for some sort
17 of closure as to what happened after I left or after
18 the actual verdict.

19 So the bailiffs are going to show you and tell
20 you -- I'm going to release you in just a minute to
21 go back to your jury room. And they will tell you if
22 you'd like to stay how to do that. You'll have to
23 come around and sit as a group in the gallery.

24 But if you choose not to stay, you're certainly
25 free to go. You can call your fellow juror if you

1 wish to do that later. I will tell you that it's not
2 likely, but if you were to leave at this point and I
3 doubt that would happen, I was going to say that
4 sometimes lawyers like to talk to jurors after the
5 case. You certainly can talk to anybody you want to
6 after the case is over. But you don't have to talk
7 to anybody. All you have to do is say: I'd rather
8 not talk about it. And the lawyers know that that's
9 enough of a signal for them to just back off.

10 But I do want to before I let you go and
11 before -- if you chose to stay, I do want to say
12 this. This system can do without me. It can do
13 without these attorneys. There are a number of
14 attorneys in the courtroom. It can do without this
15 whole staff at the clerk's office. But it can't do
16 without you.

17 I mean, you are such an important part of the
18 judicial system of this county, this state and this
19 nation that your role in this system was written into
20 the Constitution of the United States. It's an
21 important role that you fill. We can't operate
22 without citizens who are willing to come and sit and
23 decide these matters in our community. And they must
24 be decided. And this is our system.

25 So I want to -- I hope you will understand my

1 expression of thanks to you from all of our
2 participants for you being here. Sometimes jurors
3 are reluctant to come and sit. And I understand some
4 of the reasons. But fortunately most citizens who
5 are asked to perform this civic duty do so and do so
6 willingly. So good luck to all of you. Thank you
7 very much.

8 Those of you who wish to stay may do so. All
9 right. But at this moment the clerk is going to talk
10 to you in the jury room and after which in about five
11 or ten minutes we'll do the sentencing in this case.
12 Thank you very much.

13 (Jury excused from the case at 4:55 p.m.)

14 **THE COURT:** We'll stand at ease for about five
15 minutes or ten minutes. Any motions?

16 **MR. MAY:** Yes, Your Honor.

17 **THE COURT:** I'm sorry. I didn't mean to say
18 stand at ease. Ms. Campbell.

19 **MS. CAMPBELL:** Yes, sir.

20 **THE COURT:** The defense may have some motions.

21 **MS. CAMPBELL:** Yes, sir.

22 **MR. MAY:** Yes, Your Honor.

23 **THE COURT:** Yes, sir.

24 **MR. MAY:** At this time the defense would move
25 for a new trial as well as renew all objections and

1 the previous motions at this time.

2 **THE COURT:** On what basis?

3 **MR. MAY:** On what basis? I will be happy to go
4 through all the motions we have made.

5 **THE COURT:** Well, the motion for a new trial is
6 specifically --

7 **MR. MAY:** Specifically the motion for a new
8 trial, Your Honor, I believe that the Fourteenth
9 Amendment dictates the defendant must be given every
10 right of due process. Again, I believe that the
11 State elicited testimony that he has three
12 convictions for armed robbery from 1991 so denied him
13 the fundamental due process of a fair trial that he
14 was prejudiced and, therefore, he could not get a new
15 trial. Additionally, I believe that the State --

16 **THE COURT:** Or not get a fair trial.

17 **MR. MAY ATTORNEY:** Pardon me?

18 **THE COURT:** Not get a fair trial.

19 **MR. MAY:** Yes, sir. Additionally, I believe
20 that the State misusing the word "innocent"
21 throughout the trial I believe, as well as that's a
22 burden shifting issue. I believe that the State also
23 performed some Doyle violations. And for those
24 reasons, at this time, Your Honor, the defense
25 requests a new trial.

1 **THE COURT:** All right. Well, I think the jury
2 had sufficient evidence on which to base their
3 verdict, and I don't feel that any rulings that were
4 made during the course of the trial were such that
5 would compel me to grant a new trial. So I must
6 respectfully deny your motions.

7 **MR. MAY:** Your Honor, at this time again we'd
8 renew all previous objections and motions.

9 **THE COURT:** All right. For the record. Thank
10 you very much. How about your documents? You ready?

11 **MS. CAMPBELL:** Can you just give us five
12 minutes?

13 **THE COURT:** Yeah. Tell me when you're ready.

14 **MS. CAMPBELL:** We'll tell you.

15 (Pause)

16 (WHEREUPON, Court's Exhibit No. 4 is marked for
17 identification.)

18 **THE COURT:** Is the State ready to proceed?

19 **MS. CAMPBELL:** Just another minute or two, Your
20 Honor. We just have to do paperwork.

21 **THE COURT:** All right. I assumed that they were
22 ready.

23 (Pause)

24 **MS. CAMPBELL:** The State's ready, Your Honor.

25 **THE COURT:** Defense ready?

1 **MR. MAY:** Yes, Your Honor.

2 **THE COURT:** Bring your client. Solicitor.

3 **MS. CAMPBELL:** May it please the Court, Your
4 Honor. As far as his prior record, it starts back in
5 March of 1979 where he had his first arrest for armed
6 robbery which was pled down to accessory to strong
7 arm robbery for which he received a three-year
8 suspended sentence to probation.

9 In 1980 he had his first conviction for armed
10 robbery for which he received an active 15-year
11 sentence. In 1980 it looks like he was also
12 convicted of housebreaking and grand larceny, three
13 counts. He was released on those charges and then
14 convicted of his next three armed robbery convictions
15 from 1991 for which he received a total of a 21-year
16 sentence which he was released from in 1991.
17 Subsequently his parole was revoked in 2006, and then
18 he was released again in 2008. In the meantime, in
19 the year 2000 --

20 **THE COURT:** So he just got out of jail in 2008?

21 **MS. CAMPBELL:** Yes, sir. From his last
22 incarceration from his parole revocation from his
23 second set of armed robberies. In 2002 he was
24 convicted of financial transaction card theft, also
25 convicted of two counts of receiving stolen goods.

1 It looks like -- I can't tell if that's a revocation
2 or not. He was then in 2002 also convicted of
3 malicious injury to property. In 2004 he was
4 convicted of burglary in the third degree and grand
5 larceny for which he received an active sentence. It
6 looks like that would be concurrent with his parole
7 revocation. Those are non-convictions.

8 In 2006 is when he was committed on the burglary
9 third and grand larceny and also pled to an
10 additional petit larceny charge. He was released in
11 2008. These offenses -- this offense occurred in
12 2009. And he does have I believe four other pending
13 armed robberies in our office.

14 **THE COURT:** Four other pending armed robberies?

15 **MS. CAMPBELL:** Yes, sir; that occurred prior to
16 this one. Your Honor, I've handed up as Court's
17 Exhibit No. 4. I would like to make that part of the
18 record. That is our notice. Under the strike law
19 this defendant is eligible under multiple prior
20 convictions for most serious offenses. Specifically
21 we have noticed the four prior armed robbery charges.

22 **THE COURT:** He is eligible. But it's mandatory.

23 **MS. CAMPBELL:** It's mandated.

24 **THE COURT:** It's mandatory, is it not?

25 **MS. CAMPBELL:** It's a mandatory sentence.

1 **THE COURT:** Sir.

2 **MR. MAY:** I'm sorry. I was talking to him.

3 **THE COURT:** It's a mandatory life without parole
4 after this many offenses. Is that correct?

5 **MS. CAMPBELL:** Yes, sir.

6 **THE COURT:** Serious offenses. In other words,
7 armed robberies, burglaries, those types of serious
8 cases. Is that correct?

9 **MS. CAMPBELL:** In this --

10 **THE COURT:** Including kidnapping.

11 **MS. CAMPBELL:** Yes, sir. In this case the
12 kidnapping and armed robbery would trigger. But the
13 prior armed robbery convictions, specifically all
14 four of them, would be the triggering events. Any
15 one would be sufficient.

16 **THE COURT:** All right. And that has been
17 mandated by our state Legislature. Is that correct?

18 **MS. CAMPBELL:** Yes, sir.

19 **THE COURT:** All right. Mr. May.

20 **MR. MAY:** Yes, sir. May it please the Court,
21 Your Honor. The defense would take exception under
22 the mandated part. At this time we move first off,
23 Your Honor, we have a pre-trial motion that has yet
24 been dealt with. That is a motion to withdraw notice
25 of LWOP as unconstitutional for the State to impose

1 the sentence on crimes committed while the defendant
2 is under 18. This would be based on Grant v.
3 Florida, the recent Supreme Court opinion, Your
4 Honor. We have provided to the Court a birth
5 certificate which states the defendant was under the
6 age of 18 when the first --

7 **THE COURT:** When his first one was committed.

8 **MR. MAY:** Correct.

9 **THE COURT:** Well, I can't make them withdraw it.

10 **MR. MAY:** Yes, sir. Additionally, we'd move,
11 Your Honor, to have the Court not impose the sentence
12 of life without parole as it is in violation of Bush
13 v. Gore. We litigated this in pre-trial. We move to
14 also have the State not impose life without parole
15 due to the fact that the defendant was never informed
16 in any of his pleas to armed robbery, in violation of
17 his Sixth Amendment right to counsel.

18 Your Honor, we would also move to have the Court
19 not impose life without parole due to the violation
20 of separation of powers. We would also move to have
21 the Court not impose life without parole due to the
22 arbitrary and capricious nature of the service of
23 life without parole; as well as we'd move for the
24 Court not to impose life without parole due to the
25 disproportionality under Reid and that in this case

1 nor in any other cases that we believe was anybody
2 hurt. Your Honor, we'd move for that at this point.

3 **THE COURT:** Respectfully, I've ruled.

4 **MR. MAY:** Yes, sir.

5 **THE COURT:** And I'm not going to grant the
6 motion at this time. The Legislature has mandated
7 this sentence and it's my responsibility to impose
8 it. It's not my responsibility to make the laws or
9 say that I might agree with them or don't. That's
10 not my job.

11 **MR. MAY:** Yes, sir.

12 **THE COURT:** My job is to enforce the law.

13 **MR. MAY:** Your Honor, I would -- we understand
14 that. We just want to make that clear for the record
15 that we renewed all motions at this current time.

16 Your Honor, briefly, this in mine and
17 co-counsel's opinion was a gigantic waste of court
18 and State resources. We were willing to plead him
19 out a year ago and we made that known to all parties.

20 **THE COURT:** You can't plead somebody to life
21 without parole.

22 **MR. MAY:** I agree. That's the ethical problem
23 that Charlie and I were placed in. And just for the
24 record, Mr. Broadnax's family has been here through
25 the time, his sister and his brother-in-law. And we

1 understand what sentence you must impose or that you
2 are going to impose. We would object to it on the
3 grounds that were just mentioned.

4 **THE COURT:** All right. Mr. Broadnax, do you
5 have anything you want to say?

6 **MR. BROADNAX:** Not at this time.

7 **THE COURT:** All right, sir. The sentence of the
8 court on all charges is that you be committed to the
9 State Department of Corrections for the balance of
10 your natural life; that is, life without the
11 possibility of parole on all four; that is, the armed
12 robbery and three kidnapping cases. All sentences
13 are to run concurrent. Good luck to you, sir. Thank
14 you very much.

15 **MR. MAY:** Thank you, Your Honor.

16 **MS. SIMPSON:** Thank you, Your Honor.

17 **THE COURT:** Court's adjourned.

18 **MS. CAMPBELL:** Thank you, Your Honor.
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25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 11th, 14th, 15th, 16th and 17th days of June, 2010.

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

August 16, 2010

Jenny H. Williams
Jenny H. Williams, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER BROADNAX,

APPELLANT

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in admitting appellant's three prior armed robbery convictions for impeachment purposes according to Rule 609(a)(2), SCRE, during his testimony when the admission was overly prejudicial under Rule 403, SCRE, and a violation of his due process right to a fair trial?
2. Did the trial court err in denying appellant's motion to withdraw the life without parole (LWOP) notice due to the arbitrary use of the prosecutor's discretion in the plea bargaining process which was a violation of the Fourteenth Amendment's guarantee to due process?
3. Did the trial court err in denying appellant's motion to withdraw LWOP because there is no standard to guide solicitors in when to seek a sentence of LWOP pursuant to S.C. Code Section 17-25-45 which is a violation of the Equal Protection Clause of the Fourteenth Amendment?
4. Did the trial court err in denying appellant's motion that the jury be informed that appellant was facing the mandatory sentence of LWOP which denied appellant his due process right to a fair trial?

STATEMENT OF THE CASE

In November 2009, the Richland County Grand Jury indicted Christopher Broadnax on the charges of armed robbery and four counts of kidnapping. On June 10, 14 – 16, 2010, Broadnax proceeded to trial before the Honorable G. Thomas Cooper, Jr., and a jury. He was represented by James May and Charles Cochran. The state was represented by Kathryn Luck Campbell. The jury returned verdicts of guilty as indicted on all charges. Judge Cooper sentenced Broadnax to the mandatory sentence of life without the possibility of parole (LWOP) as the state had served a notice they were seeking LWOP based on three prior armed robbery convictions. Broadnax's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

I.

The trial court erred in admitting appellant's three prior armed robbery convictions for impeachment purposes according to Rule 609(a)(2), SCRE, during his testimony when the admission was overly prejudicial under Rule 403, SCRE, and a violation of his due process right to a fair trial under the Fourteenth Amendment.

On May 24, 2009, a gunman entered the restaurant, Church's Fried Chicken at 2436 Taylor Street in Columbia, and held four employees at gunpoint as one of the employees took the money from a cash register and gave it to the gunman. One of the employees, Arthur Haynes, followed the gunman from the restaurant. Haynes saw an old Dodge Ram pick-up leave the scene with an older man driving. No one else was seen in the truck. R. 77, ll. 8 – 25; R. 78, ll. 1 – 25; R. 79, ll. 1 – 25; R. 80, ll. 1 – 11.

The police were called and the truck was seen on Two Notch Road. The police followed the truck to where it stopped at Chestnut and Two Notch which was only minutes from the scene of the robbery. R. 80, ll. 11 – 19.

As the police approached the truck, they got the driver, Charles Green, and found Broadnax crouching down in the floorboard of the passenger's side along with a bag containing a gun and money. R. 81, ll. 1 – 18. The police took Arthur Haynes to view the two men, and he identified the truck, and Broadnax as the robber. R. 105, ll. 1 – 25; R. 106, ll. 1 – 25; R. 107, ll. 1 – 25; R. 108, ll. 1 – 25; R. 108, ll. 1 – 25. Broadnax was arrested and charged with armed robbery. R. 192 – 197.

Broadnax told the judge that he was going to testify. The judge then proceeded to settle Broadnax's prior record to determine which parts could be used for impeachment

purposes. R. 286, ll. 1 – 25; R. 287, ll. 1 – 13. The state said that they wanted to introduce the three counts of armed robbery for which Broadnax was convicted in 1991. R. 288, ll. 1 – 25; R. 289, ll. 1 – 25; R. 289, ll. 1 – 18. The state also wanted to be able to introduce a prior financial transaction card theft; a prior receiving stolen goods; a prior burglary third degree; a prior grand larceny; and prior petit larceny. R. 290 – 292.

Defense counsel argued that any testimony must “meet the 403 hurdle.” He argued that the admission of the armed robberies was “highly prejudicial” and cumulative, and violated Broadnax’s due process rights under the Fourteenth Amendment. R. 299, ll. 1 – 25. He said that the state’s only reason to admit them was to say that Broadnax was an armed robber, so therefore he must have committed this robbery. R. 293, ll. 23 – 25; R. 294, ll. 1 – 25.

The state argued that although the Rule 403 provided that a 403 analysis should be done, that the case law as in State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003), made no reference to a 403 balancing. She argued that Al-Amin, *id.*, ruled that these crimes were automatically admissible for impeachment purposes because they “have the greatest probative value on the issue of truth and veracity.” R. 295, ll. 1 – 25; R. 296, ll. 1 – 25.

Defense counsel then argued that the Federal Rules of Evidence provide that robbery was not a crime of dishonesty, and that the rules of evidence were procedural due process. He argued that South Carolina cannot provide more limitations on due process than the federal government. Counsel argued that a more “constrictive” interpretation of Rule 609 (a) (2) would violate appellant’s due process rights. R. 297, ll. 1 – 25; R. 298, ll. 1 – 25.

The judge ruled that the armed robberies, the transaction card theft, the grand larceny, and the petit larceny were admissible for impeachment under Rule 609 (a) (2). R. 298, ll. 1 – 25. Defense counsel told the court that due to the court’s ruling admitting those prior offenses, appellant was not waiving his objection to their admission but that defense counsel wanted to bring those offenses out during direct instead of leaving it to the solicitor to do for the first time during cross examination. The court responded that they were not waiving the objection. R. 301, ll. 25; R. 302, ll. 1 – 25; R. 303, ll. 1 – 12.

Rule 609 (a) (2), SCRE, provides that: “For the purpose of attacking the credibility of a witness, evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.” Broadnax testified that he did not commit this armed robbery at Church’s Chicken on May 24, 2009. He admitted that he had a drug problem, and said that he and Charles Green, the co-defendant, frequently got high together. On the day of the robbery, he had just bought drugs, and saw Green driving down Two Notch. Broadnax flagged him down just moments before they heard the police sirens and were stopped by the police. Broadnax ate the crack when they were pulled over by the police. R. 305, ll. 18 – 25; R. 306, ll. 1 – 25; R. 307, ll. 1 – 25; R. 308, ll. 1 – 25; R. 309, ll. 1 – 25; R. 310, ll. 1 – 25.

On cross examination, the solicitor questioned Broadnax on the likelihood that he stopped Green at the same time that the robbery had just occurred. The solicitor also asked him if he told the police he did not commit the robbery, and he said no. The solicitor asked him if he had been convicted of the three prior armed robberies and he responded that he pled guilty to those. R. 315, ll. 22 – 25; R. 316 – R. 330; R. 337, ll. 1 – 23; R. 346, ll. 9 – 25; R. 347 – 349.

In State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003), the Court of Appeals held that armed robbery was a “crime of dishonesty” so evidence of the defendant’s prior armed robbery conviction was admissible in his murder trial to attack the defendant’s credibility because the larcenous element of taking property of another which made the action dishonest.

Broadnax’s case is distinguished from Al-Amin because Al-Amin was charged with murder, and not armed robbery. Broadnax was on trial for armed robbery, and the prior offense being admitted were three armed robberies. This was prejudicial.

The Court of Appeals analysis in State v. Al-Amin, Id., that it was the “larcenous element of the taking of the property of another which made the action dishonest” was really saying that the larceny was the dishonest action, and not the armed robbery. Larceny is a separate offense from armed robbery.

In State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006), the Supreme Court held that the evidence of the defendant’s prior convictions for the unlawful possession of a weapon by a convicted felon and pointing and presenting a firearm were inadmissible for impeachment purposes in his trial for murder and the unlawful possession of a weapon by a convicted felon as the prior convictions had nothing to do with the defendant’s credibility, and the evidence was more prejudicial than probative in light of his charged offenses. The Court cited State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000) which listed five factors a trial judge should consider in deciding whether to admit prior convictions:

- (1) The impeachment value of the prior crime;
- (2) The point in time of the past crime and the charged crime;
- (3) The similarity of the past crime and the charged crime;

- (4) The importance of the defendant's testimony;
- (5) The centrality of the credibility issue.

The Supreme Court also wrote in State v. Bryant, *supra*, that when the prior offense was similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission.

The Court stated:

Furthermore, a conviction for **robbery** [emphasis added], burglary, theft, and drug possession beyond the basic crime itself, is not probative of truthfulness.

Citing United State v. Smith, 181 F. Supp.2d 904 (N.D.Ill.2002).

In State v. Mueller, 319 S.C. 266, 460 S.E.2d 409 (Ct. App. 1995), the Court of Appeals held that if a party has obtained a final ruling on the admissibility of impeachment evidence, that party does not lose his right to challenge the admissibility of the evidence by eliciting the evidence during direct examination.

The trial court erred in admitting Broadnax's prior armed robberies for impeachment as they were more prejudicial than probative. They were the same crime for which he was on trial; they occurred in 1991 R. 287, ll. 3 – 23.

ARGUMENT

II.

The trial court erred in denying appellant's motion to withdraw the life without parole (LWOP) notice due to the arbitrary use of the prosecutor's discretion in the plea bargaining process which was a violation of the Fourteenth Amendment's guarantee to due process.

During pretrial motions, defense counsel informed the court that Broadnax was willing to plead guilty. Counsel wanted to call Investigator A.L. Thomas to testify that the Thomas was willing for Broadnax to plead guilty, but that the solicitor “had it out for him (Broadnax). R. 55, ll. 12 – 25; R. 56, ll. 1 – 5. Counsel argued that the solicitor “having it out for him” was arbitrary and capricious as far as which defendants were served with LWOP notice. R. 56 ll. 6 – 11.

The judge allowed defense counsel to call as a witness to proffer this testimony, his law clerk, Jacob Taylor Bell. Mr. Bell testified when he went with defense counsel to view evidence at the Columbia Police Department, they ran into Investigator Thomas. Defense counsel told Investigator Thomas that Broadnax would plead guilty to twenty years “right now.” R. 57, ll. 1 – 25. According to Bell's testimony, investigator Thomas told them explicitly that the solicitor “had her fangs out for Broadnax.” The judge denied the motion. R. 58, ll. 1 – 22.

Defense counsel argued that there was no requirement for the solicitor to serve LWOP but was at the solicitor's discretion. Counsel told the court;

With no standard as to directing people, then yu have people like Mr. Broadnax who are caught in the crosshairs who would like to plead but are precluded due to the fact that

there is no standard for guidance and you just may get the solicitor who does not want to offer a plea regardless of what a defendant will take.

R. 61, ll. 1 – 25.

The solicitor argued that the case law said the solicitor has discretion to some extent, and that the new statute grants discretion to the solicitor to seek LWOP or not. R. 62, ll. 1 – 25; R. 63, ll. 1 – 24.

Defense counsel argued to the court that when there was no standard for the entire state on when to apply LWOP, when a solicitor “has her fangs out” for a person, then that person was being treated differently which was a violation of the Fourteenth Amendment. R. 59, ll. 13 – 25. Defense counsel argued that it was a waste of judicial resources to serve a person with LWOP when the person wanted to plead guilty. He said the solicitors do not go forward on every LWOP when there were triggering offenses. The judge denied the motion but said it was a good appellate argument. R. 64, ll. 25; R. 65, ll. 1 – 16.

After the verdict, defense counsel renewed all prior objections and motions and asked for a new trial as the Fourteenth Amendment dictated that Broadnax must be given every right of due process as Broadnax did not get a fair trial. R. 417, ll. 24 – 25; R. 418, ll. 1 – 25.

S.C. Code Section 17-25-45(G) provides that the decision to invoke sentencing under this section is in the discretion of the solicitor. A defendant has no constitutional right to plea bargain. State v. Caldwell, 378 S.C. 268, 662 S.E.2d 474 (Ct. App. 2008).

The importance to the public as well as to individuals suspected or accused of crimes, that these discretionary functions be exercised with the highest degree of integrity and impartiality, and with the appearance thereof cannot be easily overstated. In the Matter

of Richland County Magistrate's Court, 389 S.C. 408, 699 S.E.2d 161 (2010). In carrying out his duty, the prosecutor independently decides whether to prosecute, decides what evidence to submit to the court, and negotiates the state's position in plea bargaining. Id.

A defendant may, as part of a plea bargain, agree to plead guilty to a crime for which he has been indicted (or to which he has waived grand jury presentment), but of which he is not guilty even though the facts would not support such a lesser charge. Rollison v. State, 346 S.C. 506, 552 S.E.2d 290 (2001); Berry v. State, 381 S.C. 630, 675 S.E.2d 425 (2009).

The Fourteenth Amendment provides that no state can deprive a person of life, liberty, or property without due process; nor deny within its jurisdiction the equal protection of the laws. U.S. Const. Amend. XIV.

The solicitor's refusal to offer a plea bargain denied Broadnax his due process right to a fair trial. The evidence that she was "out to get Broadnax" was prejudicial and not in line with the law that requires impartiality and integrity.

ARGUMENT

III.

The trial court erred in denying appellant's motion to withdraw LWOP because there is no standard to guide solicitors in when to seek a sentence of LWOP pursuant to S.C. Code Section 17-25-45 which is a violation of the Equal Protection Clause of the Fourteenth Amendment.

In a pretrial motion, defense counsel argued to the trial court that South Carolina's law on LWOP was unconstitutional as it violated the Equal Protection Clause of the Fourteenth Amendment because there was no standard state wide as to when the solicitors should seek LWOP. He cited the case of Bush v. Gore, 531 U.S. 98 (2000) which held that "when fundamental rights are involved, the Equal Protection Clause of the fourteenth Amendment requires that there be uniform and specific standards to prevent the arbitrary and disparate treatment of similarly situated people." R. 59, ll. 7 – 25.

In Bush v. Gore, Id., counsel explained that some people's votes were counted and some were not depending on which precinct they were in. The United States Supreme Court held that this was a violation of the Equal Protection Clause as there needed to be a defined standard. Since there was not, the recount of the votes could not continue. R. 60, ll. 1 – 25.

Counsel argued that whether a person was served with LWOP or not for a triggering event depended on which county they were in, and which solicitor was assigned to their case. The new law making the decision discretionary further complicated the issue. R. 60, ll. 11 – 25; R. 61, ll. 1 – 25.

Counsel argued that the remedy was to withdraw LWOP as a sentence, or to grant him a continuance to survey all prosecutorial circuits in the state to see what standards were being used. R. 60, ll. 19 – 25.

Counsel told the court that the testimony that the solicitor “had her fangs out for Broadnax” and that she was “out to get him,” indicated that he was being treated differently than another defendant. R. 59, ll. 19 – 25; R. 60, ll. 1 – 10.

In Bush v. Gore, *supra*, the U.S. Supreme Court acknowledged that the right to vote was not contained in the text of the constitution. However, the right to life and liberty is contained in the fourteenth Amendment. Because this is a fundamental right, the Equal Protection Clause applies.

The federal government developed a “federal protocol” for capital cases set out in United States Attorneys’ Manual (USAM), Section 9-10.010 which is entitled “The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capital case Review.” In Part I, B. the article provides that this protocol requires United States Attorneys to submit cases involving the death penalty to the Capital Case Unit of the Criminal Division which reviews all death penalty cases. The appropriate cases are then reviewed by a committee of senior Justice Department lawyers. The Attorney General makes the final decision. The procedure “is designed to promote consistency and fairness.” A sentence of LWOP takes a person’s life for all practical purposes. Therefore, standards should apply just as they do for the federal death penalty.

In State v. Benjamin, 353 S.C. 441, 579 S.E.2d 289 (2003), the Supreme Court held that Benjamin was properly sentenced to LWOP for two qualifying offenses that occurred in the same crime spree. Justice Waller wrote a dissent where he said:

Moreover, to read Section 17-25-45 in isolation, as the majority does here, permits the solicitor unfettered discretion to treat similarly situated defendants differently, based solely upon whether the solicitor elects to try the charges together, or separately, such that there is a “prior conviction.” For example, if two defendants commit multiple offenses at one time, such as armed robbery, burglary, kidnapping, and murder, then whether each defendant is subject to a LWOP sentence depends entirely upon whether the solicitor elects to try the offenses separately, in which case there is a “prior conviction,” or jointly, in which case there is not. Further, under this factual situation, one defendant may be subjected to a LWOP sentence while another, equally culpable defendant, is not. Not only could such a scenario give rise to equal protection violations, but, in my opinion, the Legislature could not have intended such a result.

ARGUMENT

IV.

The trial court erred in \denying appellant's motion that the jury be informed that appellant was facing the mandatory sentence of LWOP which denied appellant his due process right to a fair trial.

During pretrial motions, defense counsel moved for the jury be informed that Broadnax was facing a sentence of life without the possibility of parole (LWOP). Counsel argued that it was a violation of Broadnax's constitutional due process rights for the jury not to know that the sentence was LWOP before they rendered their verdict. R. 69, ll. 6 – 25; R. 70, ll. 1 – 25.

Counsel cited the case of Graham v. Florida, 130 S.Ct.2011 (2010), which held that the Cruel and Unusual Punishment Clause of the Eighth Amendment did not permit a juvenile offender to be sentenced to life in prison without parole for a non-homicide offense. Counsel told the court that the United States Supreme Court in Graham v. Florida, Id., “spoke of the severity and the Draconian nature of LWOP as it was comparable to the death penalty in that it steals a life through incarceration.” R. 71, ll. 1 – 25.

In Graham v. Florida, *supra*, the United States Supreme Court wrote that LWOP was the second most severe penalty permitted by law. The Court wrote:

It is true that a death sentence is unique in its severity and irrevocability; yet life without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency- the

remote possibility of which does not mitigate the harshness of the sentence.

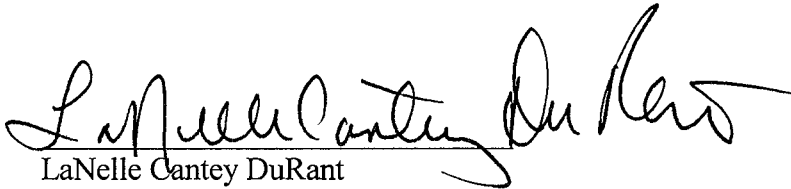
In State v. Atkins, 293 S.C. 294, 360 S.E.2d 302 (1987), the Supreme Court held that both the case law and S.C. Code Section 16-3-20(D) “make it clear that the trial court’s discretion does not extend so far as to authorize it to refuse counsel the right to conduct any examination at all in a capital case. The Court held that the trial court’s excusal of prospective jurors on the basis of their opposition to the death penalty prior to their examination by defense counsel was error.

Jurors in death penalty cases know they will be deciding a possible death sentence for the defendant. They are questioned in depth during voir dire concerning their views on the death penalty. Broadnax should be given the same due process right as his life was taken as far as any personal liberties and freedom.

CONCLUSION

Based on the above, the conviction and sentence should be reversed and the case remanded for a new trial, or in the alternative, a new sentencing hearing not subject to LWOP.

Respectfully submitted,

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is fluid and cursive, with the first name "LaNelle" being the most prominent part.

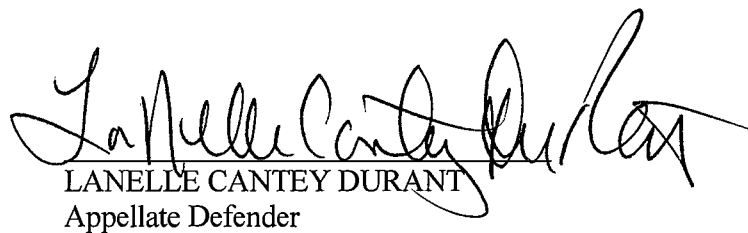
LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of August, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

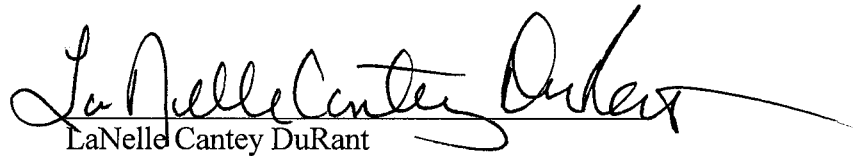
V.

CHRISTOPHER BROADNAX,

APPELLANT

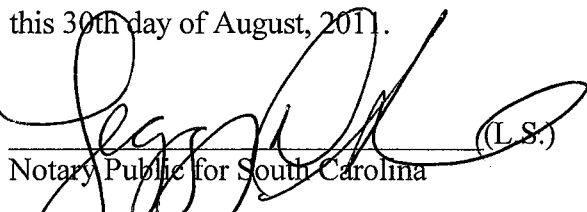
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 30th day of August, 2011.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of August, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017 .

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
Honorable G. Thomas Cooper, Judge

THE STATE.

Respondent.

vs.

CHRISTOPHER BROADNAX.

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. The defendant says the admission of his three prior armed robbery convictions for impeachment, Rule 609(a)(2), SCRE, was overly prejudicial under Rule 403, SCRE, and a violation of his due process right to a fair trial, and the defendant asks whether that evidence was properly admitted. (Appellant's Statement of Issues on Appeal 1).
2. The defendant says the prosecutor's discretion was used arbitrarily in the plea bargaining process in violation of the Fourteenth Amendment's guarantee to due process and asks whether the court erred in denying his motion to withdraw the life without parole notice. (Appellant's Statement of Issues on Appeal 2).
3. The defendant says there is no standard for seeking life without parole, § 17-25-45, and that is a violation of the Fourteenth Amendment's Equal Protection Clause. The defendant asks whether the court erred in denying his motion to withdraw life without parole. (Appellant's Statement of Issues on Appeal 3).
4. The defendant says the court's not informing the jury that he was facing the mandatory sentence of life without parole denied him the due process right to a fair trial. (Appellant's Statement of Issues on Appeal 4).

STATEMENT OF THE CASE

The Richland County Grand Jury charged the defendant with armed robbery (2009-GS-40-4539) and three counts of kidnaping (2009-GS-40-4540, 2009-GS-40-4541, and 2009-GS-40-4542). The defendant and his counsel came to trial June 10, and 14-16, 2010 before the Honorable G. Thomas Cooper, Jr., Judge, and a jury. The jury found the defendant guilty of the charges, and the court sentenced the defendant to concurrent terms of life without the possibility of parole. The defendant served a timely notice of appeal upon opposing counsel.

DESCRIPTION OF THE ROBBERY AND THE POLICE RESPONSE

Arthur Haynes was working at Church's off of Taylor and Two Notch when a masked assailant with a distinctive and immediately noticeable left eye, armed with a silver automatic gun, demanded the money from the register. The gunman took the cash in a bag, balled it up, and walked slowly out of the store. Haynes saw a different man look at him and drive away quickly in an old, gray Dodge truck and head north on Two Notch Road. The police were not long in arriving, and Haynes gave descriptions. An officer then asked Haynes to go with him down Two Notch where Haynes identified the truck, the man who drove the truck, and the man who had robbed him - the defendant. (ROA. pp. 90-121).

Employee Kirby also witnessed the robbery and identified the defendant to be the armed robber. (ROA. pp. 143-162).

Officer Ridgeway riding with another officer (Spires) received a description of the robber and the vehicle from his dispatcher when he was about a mile and a quarter from the Church's and in route to the scene. He spotted the older model gray Dodge Ram pick-up heading north on Two Notch. They pursued, stopped the vehicle at Two Notch and Chestnut (about three blocks from the Church's), and found that while the driver was visible, the defendant was curled up in the passenger side floorboard. (ROA. pp. 181-204; 215)

Charles Green recalled giving the defendant a ride in his 1986 Dodge pick-up to Church's and saw the defendant get out with a plastic bag. He drove away with the defendant in the passenger seat. When a police car got behind them, the defendant got down into the floorboard, and Green thought the police stopped his vehicle for something related to Church's. (ROA. pp. 2240-235).

A grocery store type plastic bag under the seat of the truck appeared to contain a silver colored handgun and paper currency. (ROA. pp. 242-244).

ARGUMENT

I.

The defendant introduced his previous armed robbery convictions into evidence, impeached himself, and the court committed no error.

The defendant says the admission of his three prior armed robbery convictions for impeachment, Rule 609(a)(2), SCRE, was overly prejudicial under Rule 403, SCRE, and a violation of his due process right to a fair trial, and the defendant asks whether that evidence was properly admitted. (Appellant's Statement of Issues on Appeal 1).

After the court's in camera ruling that the prior convictions were potentially admissible for impeachment, the defendant announced his intention of introducing the testimony himself in anticipation of the state's introducing it – and still preserving an assignment of error to the trial judge on the basis of the in camera ruling. The court acknowledged the defendant's position that he was not waiving his objection by intending to introduce the evidence in anticipation that the state might do it. (ROA. pp. 300-303, line 12). Thereafter, the defendant testified to his misfortune of getting a ride with Charles Green. (ROA. pp. 305-314). At the close of this account, the defendant shared his lengthy criminal record. (ROA. p. 315).

The defendant excuses the want of a contemporaneous trial objection and, further, allows himself to both introduce the evidence and assign error to the trial judge for its admission. State v. Mueller, 319 S.C. 266, 460 S.E.2d 409 (Ct. App. 1995)(after prosecution rested, court held hearing on the admissibility of defense witness' prior convictions for impeachment purposes and witness immediately testified before jury; since no evidence was taken between the in camera ruling and the defendant's trial testimony, the ruling was in no

way preliminary; the defendant could then introduce her prior criminal convictions herself and, on appeal, assign error to the trial judge's in camera ruling).

There are other views and authority applicable to the preservation of the instant point for appellate review. A "defendant who preemptively introduces evidence of a prior conviction on direct examination may not on appeal claim that the admission of such evidence was error." Ohler v. United States, 529 U.S. 753, 129 S.Ct. 1851, 146 L.Ed.2d 826 and n. 3 (2000)(defendant charged with importation of marijuana and possession of marijuana with intent to distribute; trial court ruled in limine government could introduce defendant's prior felony drug conviction as impeachment evidence under Federal Rule of Evidence 609(a)(1); defendant testified and admitted on direct examination her 1993 conviction for possession of methamphetamine; defendant sought to avoid consequences of the well established commonsense principle that, generally, a party cannot introduce evidence and then complain on appeal that evidence was erroneously admitted; defendant's position on appeal would prevent trial court from ruling based upon actual evidence introduced at trial; possible harm from only an in limine ruling is speculative; defendant could not introduce evidence and preserve on appeal a claim of error in the admission of that evidence); Brown v. State, 817 A.2d 241 (Md. App. 2003)(declining to follow states that have rejected Ohler and citing Mueller). The issue is not preserved for appellate review under either this State's earlier authority or that of the Court.

Assume for argument that the court finds the issue preserved for appellate review. The trial judge relied on State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003). Armed robbery is a crime of dishonesty under Rule 609(a)(2), SCRE, and the rule provides for automatic admission of a prior crime of dishonesty without the balancing of probative

value against prejudicial effect. State v. Al-Amin. There was neither error in the trial court's in camera ruling nor error in the defendant's subsequent introduction of his prior armed robbery convictions.

II.

The court soundly denied the defendant's motion to withdraw the life without parole notice.

The defendant says the prosecutor arbitrarily used discretion in the plea bargaining process in violation of the Fourteenth Amendment's guarantee to due process and asks whether the court erred in denying his motion to withdraw the life without parole notice. (Appellant's Statement of Issues on Appeal 2).

The defendant acknowledged pleading guilty to armed robberies in 1979 and the early 1990's, but he did not know about the later possibility of life without parole. (ROA. pp. 42-46). At trial defense counsel noted that [before trial] he had run into an investigator at the police department. Defense counsel offered to plead and take twenty years, and the investigator responded that an assistant solicitor had her "fangs out" for the defendant. The defendant thought that the "fangs out" remark demonstrated an "arbitrary and capricious" exercise of discretion in seeking life without the possibility of parole and wanted to either withdraw the notice or seek a continuance to survey the state about standards used for pursuing life without the possibility of parole. The court denied the motion. (ROA. pp. 56-58).

Instead of viewing the investigator's comment as informally communicating that investigator's personal, summary feeling for the assistant solicitor's position, the defendant seeks to excise the comment from its context and to use it - apart from his acknowledged and remarkable criminal history - to void his liability and increased punishment for his recidivism.

No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, 1; S.C. Const. art. I, 3. In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt.

Sloan v. Board of Physical Therapy Examiners, 370 S.C. 452, 483, 636 S.E.2d 598 (2006)(citation and internal quotation omitted). Assume for argument that the defendant's passing reference to "arbitrary and capricious" was sufficient to allege a denial of substantive due process, nothing supports his bare self-serving use of the term. Rather, the record demonstrates the defendant's criminal history and establishes the criminal conduct that triggered the solicitor's sound exercise of discretion and application of the recidivist statute.

III.

The defendant demonstrated no denial of equal protection, and the court soundly denied his motion to withdraw life without parole.

The defendant says there is no standard for seeking life without parole, § 17-25-45, and that is a violation of the Fourteenth Amendment's Equal Protection Clause. The defendant asks whether the court erred in denying his motion to withdraw life without parole. (Appellant's Statement of Issues on Appeal 3).

At trial defense counsel canvassed the "fangs out" remark summarized in Argument II. The defendant thought that it reflected a denial of equal protection since there was no standard for the entire state, and the defendant was being treated differently. The defendant asked to either withdraw the notice of life without the possibility of parole or have a continuance to survey the state and see what standards are used. The assistant solicitor noted the new law making §17-25-45 discretionary, just recently effective, and the defendant's existing four armed robbery convictions. The court denied the motion. (ROA. pp. 57-58).

On appeal, the defendant again [please see Argument II] seeks to avoid liability for his recidivism by reference to an investigator's "fangs out" remark. Contrary to the defendant's assertion, a sentence of life without the possibility of parole takes the freedom [not life] of one who has demonstrated - through his record of criminal recidivism - an unwillingness to live within the law. Further, the defendant conveniently ignores the statutory mandates that qualify one for eligibility for a life sentence without the possibility of parole and limit the solicitor's exercise of discretion. The record supports the court's denial of the trial motion.

IV.

The court correctly did not inform the jury that the defendant was facing the mandatory sentence of life without the possibility of parole.

The defendant says the court's not informing the jury that he was facing the mandatory sentence of life without parole denied him the due process right to a fair trial. (Appellant's Statement of Issues on Appeal 4).

The defendant asserted a due process right in informing the jury of the life without parole sentence. The defendant was facing life without parole. It was his life and an important factor for him. The court found no merit in the contention. (ROA. pp. 69-71, line 10).

Informing the jury that the defendant was facing the mandatory sentence of life without parole could only serve as either a basis upon which to invite the jury to substitute its wisdom for that of the legislature in writing the laws and encouraging jurors to nullify the law if it were not to their liking, a basis for eliciting the sympathy of jurors and acquitting the defendant, or a basis for eliciting the jury's disfavor and convicting the defendant upon that status. The jury was soundly not concerned with the punishment fixed by law. State v. Dingle, 376 S.C. 643, 659 S.E.2d 101 (2008)(noting that parole is a privilege and not a right, and interpreting legislative intent and plain meaning of statute is for the Court); State v. Brooks, 271 S.C. 355, 247 S.E.2d 436 (1978)(stating general rule that punishment and parole are not for jury's consideration).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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August 12, 2011

IN THE COURT OF APPEALS

Appeal From Richland County
Honorable G. Thomas Cooper, Judge

THE STATE,

Respondent,

vs.

CHRISTOPHER BROADNAX,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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ATTORNEYS FOR RESPONDENT

August 12, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
Honorable G. Thomas Cooper, Judge

THE STATE,

Respondent,

vs.

CHRISTOPHER BROADNAX,

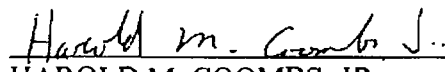
Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., 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 his attorney of record, LaNelle C. DuRant, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 12th day of August, 2011.


HAROLD M. COOMBS, JR.

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ATTORNEY FOR RESPONDENT

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Christopher Broadnax, Appellant.

Appellate Case No. 2010-166606

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Published Opinion No. 5071
Heard May 8, 2012 – Filed January 9, 2013

REVERSED AND REMANDED

Appellate Defender LaNelle C. Durant, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, and Senior Assistant
Attorney General Harold M. Coombs, Jr., all of
Columbia, for the State.

LOCKEMY, J.: In this appeal from his criminal conviction, Christopher Broadnax contends the trial court erred in: (1) admitting his three prior armed robbery convictions for impeachment purposes; (2) denying his motion to withdraw the life without parole (LWOP) notice based on the arbitrary use of the prosecution's discretion in the plea bargaining process; (3) denying his motion to withdraw the LWOP notice based on the lack of any standards to guide solicitors

regarding when they should seek a sentence of LWOP; and (4) denying his motion that the jury be informed he was facing the mandatory sentence of LWOP. We reverse and remand to the trial court.

FACTS

On May 24, 2009, Broadnax entered a Church's Fried Chicken (Church's) around 5:00 p.m. He pointed a gun at three of the employees and forced one to remove all the register's money. Broadnax then placed the money into a bag and fled the scene. An employee followed Broadnax outside and observed him getting into a truck that subsequently drove away. The police responded, and they were able to track a similar truck several blocks away from the Church's. The police stopped the truck and removed the driver. Broadnax was found inside, crouched down in the passenger seat. A gun and a bag of clothing were located underneath the passenger seat. On November 19, 2009, a grand jury indicted Broadnax for armed robbery, and on June 10, 2010, the case was called to trial before a jury.

In a pre-trial hearing, Broadnax admitted he was convicted of armed robbery in 1979 and 1991.¹ The State had served him with notice of LWOP on May 18, 2010, based on those previous armed robbery charges. Broadnax argued he was not adequately informed of the possibility of LWOP at the time of his prior convictions; thus, it was a violation of his Sixth Amendment rights. Further, he maintained he relinquished his right to go to trial in 1991 in reliance on the representation and assurance of his attorney, who did not inform him of the subsequent possibility of LWOP; thus, his rights under the Fifth and Fourteenth Amendments as well as all the South Carolina constitutional equivalent provisions were violated. The trial court withheld ruling on the issue to allow the State to submit case law on the issues. At the end of the pre-trial hearing, the State submitted case law, but there was no ruling made from the bench on the issue.²

Broadnax further objected to the solicitor's total discretion in noticing LWOP sentences under section 17-25-45 of the South Carolina Code (Supp. 2011), and maintained the unfettered discretion violated his substantive due process rights. Broadnax stated he had been willing to plead guilty to his current charge, but the solicitor had "it out for him." Broadnax stated that in the interest of judicial

¹ Broadnax had three armed robbery convictions from 1991, but only one armed robbery conviction from 1979.

² This issue was not raised on appeal; thus, it is not preserved.

economy, the prosecution sometimes uses the threat of LWOP as a method to induce a plea, and they will choose not to go forward with LWOP when a defendant will plea. He requested to proffer testimony from Investigator A. L. Thomas to show the prosecution's arbitrary and capricious actions. However, instead of proffering Investigator Thomas's testimony, Broadnax proffered testimony from a law clerk, Jacob Taylor Bell, who could testify to the same evidence. Bell stated he was present for a conversation regarding plea offers between Investigator Thomas and Broadnax's counsel. In that conversation, Broadnax indicated he was willing to plead to twenty years, but Bell testified Investigator Thomas "explicitly said [the prosecutor] had her fangs out for Broadnax." The trial court explained that "when you've got the notice that lists three or four different armed robbery offenses, I fail to see that there is any arbitrariness in the use of the life without parole notice," and denied Broadnax's motion.

Broadnax then argued section 17-25-45 violated the Equal Protection Clause and maintained the statutory discretion given to solicitors in deciding whether to notice LWOP was capricious and arbitrary. He contended it would depend on the county, "[o]r even less, it [would] depend[] on which solicitor a defendant draws as to whether or not they will get LWOP when they are willing to plead to something." He contended that with no defined standard to guide prosecutors, a situation is created where similarly situated defendants are treated differently depending on the county jurisdiction. In support of his argument, Broadnax cited *Bush v. Gore*, 531 U.S. 98 (2000). The trial court denied that motion as well.

During the trial, Broadnax decided to testify in his own defense, and the trial court conducted an inquiry into his prior record to determine which convictions could be admitted into evidence. The trial court found three out of his four prior armed robbery convictions were admissible, in addition to prior convictions for transaction card theft, grand larceny, and petit larceny, pursuant to Rule 609(a)(2), SCRE.³ The trial court noted *State v. Al-Amin*, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003) supported its decision that the armed robbery convictions were crimes of dishonesty. However, the trial court also stated *Al-Amin* involved a defendant on trial for murder, whereas Broadnax was charged with armed robbery, noting the difference had the potential to increase the prejudicial impact of admitting the prior armed robbery convictions. Despite that distinction, the trial court followed the

³ No issue was raised relating to the time element established in Rule 609(b), SCRE.

court in *Al-Amin*, and determined that case made it clear no Rule 403 analysis applied to any convictions admitted for impeachment purposes under Rule 609(a)(2). Defense counsel then requested permission to elicit testimony from Broadnax on direct examination about the prior convictions without having waived his objection to that same testimony. He did not want to be "hamstrung" and wished to avoid the prior convictions being exploited by the State on cross-examination. "[I]t [was defense counsel's] understanding that this [was] only for impeachment purposes and it's not for [] propensity. And if such an objection arises, [he] would of course make it on the record." The trial court agreed to Broadnax's strategy of eliciting testimony about the prior convictions on direct examination but not waiving his objection to that testimony.

After the jury returned with a guilty verdict, Broadnax renewed all his objections. He also moved for a new trial based on violations of the Fourteenth Amendment. Specifically, Broadnax contended the State denied him his due process right to a fair trial by eliciting testimony of his three prior convictions for armed robbery and by misusing the word "innocent" so as to improperly shift the burden to the defendant.⁴ The trial court denied all his motions, and this appeal followed.

ISSUES ON APPEAL

Did the trial court err in admitting Broadnax's three prior armed robbery convictions for impeachment purposes pursuant to Rule 609(a)(2)?

Did the trial court err in denying Broadnax's motion to withdraw the notice of LWOP based on the arbitrary use of the prosecution's discretion in the plea bargaining process?

Did the trial court err in denying Broadnax's motion to withdraw the notice of LWOP based on the lack of standards guiding solicitors in when they should seek a sentence of LWOP?

Did the trial court err in denying Broadnax's motion that the jury be instructed Broadnax was facing a mandatory sentence of LWOP?

⁴ Broadnax did not raise the issue of the State's alleged misuse of "innocent" on appeal.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) (citing *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001)). "This [c]ourt is bound by the trial court's factual findings unless they are clearly erroneous." *Id.* (citing *State v. Quattlebaum*, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000)).

LAW/ANALYSIS

Prior Convictions

Broadnax argues the trial court erred in admitting the prior armed robbery convictions into evidence for purposes of impeachment under Rule 609(a)(2). Specifically, Broadnax maintains that since the armed robberies should not have been admitted for impeachment purposes pursuant to Rule 609(a)(2), the trial court should have analyzed them pursuant to Rule 609(a)(1); thus, a balancing test was necessary. We agree.

As a threshold matter, we address the State's argument that Broadnax did not preserve this issue for our review. *See State v. Liverman*, 386 S.C. 223, 243, 687 S.E.2d 70, 80 (Ct. App. 2009) (holding issues must be raised to and ruled upon by trial court to be preserved for review); *see also State v. Hoffman*, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994) ("A contemporaneous objection is required to properly preserve an error for appellate review."); *State v. Burton*, 326 S.C. 605, 609, 486 S.E.2d 762, 764 (Ct. App. 1997) ("Failure to object when the evidence is offered constitutes a waiver of the right to object."). We disagree.

Broadnax raised his objection directly prior to taking the stand in his own defense. After the trial court issued its ruling on admissibility, Broadnax stated he would be eliciting the challenged testimony in order to avoid having the State exploit it. Thus, we believe this issue was properly preserved for our review. *See State v. Mueller*, 319 S.C. 266 at 267-69, 460 S.E.2d 409, 410-11 (Ct. App. 1995) (finding that because no evidence was presented between the ruling on impeachment evidence and the defendant's testimony, there was no basis for the trial court to change its ruling, and "if a party has obtained a final ruling on the admissibility of impeachment evidence, that party does not lose his right to challenge on appeal the admissibility of the evidence by eliciting the evidence during direct examination"). We continue now to the merits of Broadnax's argument.

Rule 609(a), SCRE provides that for the purpose of attacking the credibility of a witness:

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

"Under Rule 609(a)(2), SCRE, if a crime is viewed as one involving dishonesty, the court must admit the prior conviction because, prior convictions involving dishonesty or false statement must be admitted regardless of their probative value or prejudicial effect." *State v. Bryant*, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006); *see State v. Al-Amin*, 353 S.C. 405, 425-27, 578 S.E.2d 32, 43-44 (Ct. App. 2003) (stating crimes involving dishonesty or false statements are "automatically admissible for impeachment purposes because they have the greatest probative value on the issue of truth and veracity").

Our supreme court held in *State v. Bryant*, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006) that "a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of truthfulness." *See United States v. Smith*, 181 F.Supp.2d 904 (N.D. Ill. 2002) (stating that since the government did not show that any of the convictions of robbery, burglary, theft, or drug possession involved any false statements or acts of deceit beyond the basic crime itself, they were not admissible under the Federal Rule of Evidence 609(a)(1)). Unlike in *Al-Amin*, our supreme court has stated stealing is not always a crime of dishonesty if there are no additional affirmative false statements or acts of deceit beyond the crime itself.

If the crime of armed robbery is not considered a crime of dishonesty under 609(a)(2), it may still be admitted under Rule 609(a)(1), but it would be subject to

a balancing test. Under Rule 609(a)(1), the trial court must determine if the probative value of admitting the evidence outweighs its prejudicial effect to the accused. Moreover, our supreme court laid out other various factors to consider when determining whether to admit prior convictions under 609(a)(1): (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 of the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. *Bryant*, 369 S.C. at 517 n.1, 633 S.E.2d at 155 n.1 (citing *State v. Martin*, 347 S.C. 522, 530-31, 556 S.E.2d 706, 710-11 (Ct. App. 2001)).

After careful consideration of previous case law, we take this opportunity to follow *Bryant* in deciding these prior armed robberies, without more, are not crimes of dishonesty.⁵ We are not ruling that the prior armed robberies are *per se* inadmissible; however, as the court in *Bryant* stated, to be admissible under Rule 609(a)(2), there simply must be something beyond the basic crime. In the present case, the State did not show any further affirmative false statements or acts of deceit beyond the basic crime itself. Accordingly, we find the trial court erred in admitting Broadnax's prior convictions of armed robbery pursuant to Rule 609(a)(2), SCRE, and the probative value of Broadnax's prior armed robbery convictions should have been weighed against their prejudicial effect prior to their admission pursuant to Rule 609(a)(1).

"Error is harmless where it could not reasonably have affected the result of the trial." *Bryant*, 369 S.C. at 518, 633 S.E.2d at 156 (citing *In re Harvey*, 355 S.C. 53, 63, 584 S.E.2d 893, 897-98 (2003)). "Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." *Id.* (citing *State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991)). "Thus, an insubstantial error not affecting the result of the trial is harmless where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." *Id.* (citing *State v. Bailey*, 298 S.C. 1, 4-5, 377 S.E.2d 581, 583-84 (1989)). "The circumstances of each individual case are to be considered." *Id.*

⁵ We recognize this court held in *Al-Amin* that armed robbery was a crime of dishonesty pursuant to Rule 609(a)(2). *State v. Al-Amin*, 353 S.C. 405, 425, 578 S.E.2d 32, 43 (Ct. App. 2003). However, since *Al-Amin*, our supreme court has decided *Bryant*.

Because Broadnax's prior convictions were the identical charge as the offense in the present case, we cannot conclude Broadnax was not prejudiced by the admission of those prior convictions. *See State v. Howard*, 396 S.C. 173, 180-81, 720 S.E.2d 511, 515-16 (Ct. App. 2011); *see also Bryant*, 369 S.C. at 517-18, 633 S.E.2d at 156 (holding that when a prior offense is similar to the charged offense the "danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission"); *State v. Scriven*, 339 S.C. 333, 343-44, 529 S.E.2d 71, 76-77 (Ct. App. 2000) (holding that the prior convictions are "similar or identical to charged offenses, and the likelihood of a high degree of prejudice to the accused is inescapable"). Because we find the admission of Broadnax's prior armed robberies created such a high degree of prejudice in this case, we reverse and remand for a new trial.

The determination of this issue is dispositive, and thus, we decline to address Broadnax's remaining arguments relating to a solicitor's discretion in noticing LWOP and the trial court's denial of his request to inform the jury of his potential LWOP sentence. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that if an appellate court's ruling on a particular issue is dispositive of an appeal, rulings on remaining issues are unnecessary).

CONCLUSION

For the foregoing reasons, we reverse and remand for a new trial.

REVERSED AND REMANDED.

WILLIAMS, J., concurs.

THOMAS, J. (concurring in part and dissenting in part): I agree with the majority that Broadnax's prior armed robbery convictions, without more, were not admissible under Rule 609(a)(2) for impeachment purposes, but would remand on the issue of whether or not they could have been admitted under Rule 609(a)(1).

As the majority notes, the South Carolina Supreme Court held in *State v. Bryant*, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006), that "a conviction for robbery, burglary, theft, and drug possession, *beyond the basic crime itself*, is not probative of truthfulness." (emphasis added). By including the phrase "beyond the basic crime itself," the court has declined thus far to hold that such crimes are never

probative of truthfulness. Rather, in qualifying its ruling, it allowed for the possibility that upon a proper showing, a witness could be impeached by a conviction for not only one of these crimes, but convictions for other crimes that are rarely if ever recognized as crimes involving dishonesty or false statement. *See id.* (noting violations of narcotics laws as well as firearms violations, "are generally not probative of truthfulness" (emphasis added)). Therefore, our supreme court has not completely prohibited the admission of convictions for robbery, burglary, theft, drug possession or other narcotics violations, and firearms violations under Rule 609(a)(2) if the proponent can show through evidence such as prior plea colloquies, indictments, or other reliable information from previous proceedings that the witness to be impeached gave a false statement or otherwise behaved dishonestly when committing the offense leading to the conviction sought to be admitted. If so, the conviction at issue could be admitted in trial courts of this State under Rule 609(a)(2) even though the underlying offense itself is not "in the nature of *crimen falsi*, the commission of which involves some element of deceit, untruthfulness, or falsification bearing on the accused's propensity to testify truthfully." *State v. Shaw*, 328 S.C. 454, 457 n.4, 492 S.E.2d 402, 404 n.4 (Ct. App. 1997) (quoting Notes of Conference Report, H.R. No. 93-1597, *reprinted in 3 Weinsteins's Evidence* 609-39 (1976), *quoted in United States v. Ortega*, 561 F.2d 803, 806 (9th Cir. 1977)).

Here, the trial judge, relying on *State v. Al-Amin*, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003), admitted Broadnax's prior armed robbery convictions for impeachment purposes under Rule 609(a)(2) as crimes "involv[ing] dishonesty or false statement." *See* Rule 609(a)(2), SCRE. I agree with the majority that *Bryant*, which was issued by the South Carolina Supreme Court after this court decided *Al-Amin*, gives guidance to this court. Armed robbery, absent presentation of facts and circumstances by the State to demonstrate an act of dishonesty or false statement was involved in the crime, is not *per se* a crime that "involved dishonesty or false statement" that would be admissible under Rule 609(a)(2). As the majority points out, the State did not show any false statements or dishonest conduct beyond the convictions themselves. Under *Bryant*, without this additional information, the corresponding armed robbery convictions would not be probative of Broadnax's truthfulness as a witness and would therefore be inadmissible under Rule 609(a)(2).

As the majority has done, I agree it would then be appropriate to inquire whether Broadnax's prior armed robbery convictions could have been admitted under Rule

609(a)(1).⁶ Under Rule 609(a)(1), evidence of these convictions "shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused." However, I am reluctant to have this court make this determination without first giving the trial court the opportunity to rule on the issue. *See State v. Scriven*, 339 S.C. 333, 340, 529 S.E.2d 71, 74 (Ct. App. 2000) ("[Rule 609(a)(1)] requires *the trial judge* to balance the probative value of the evidence for impeachment purposes against the prejudice to the accused." (emphasis added)). We have followed this practice even when the similarity between the prior offenses and the offense on which the accused was tried raised a potential for prejudice. *See id.* at 340-44, 529 S.E.2d at 74-77 (holding the trial court must conduct a balancing test under Rule 609(a)(1) to determine whether an accused facing trial on charges for distributing cocaine and marijuana could be impeached with his prior drug convictions).

Therefore, I agree with the majority that the trial court erred in holding Broadnax's prior convictions for armed robbery were admissible for impeachment purposes pursuant to Rule 609(a)(2), but would remand for a determination by the trial court of their admissibility for impeachment purposes pursuant to Rule 609(a)(1).

⁶ The record indicates a reference was made to Rule 609(a)(1), SCRE, when counsel presented their arguments as to whether Broadnax's convictions were admissible to impeach his credibility, thus indicating that if the trial court determined they were not admissible under Rule 609(a)(2), the State was prepared to argue that they could be admitted under Rule 609(a)(1).

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
COA Appellate Case No. 2010-166606

THE STATE,

Petitioner,

vs.

CHRISTOPHER BROADNAX,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI**I.**

The Court of Appeals erred in holding that armed robbery is not a crime of dishonesty under Rule 609(a)(2), SCRE.

II.

Additionally, the Court of Appeals erred when it refused to remand the case to the trial court in order for the trial court to conduct an on-the-record Rule 609, SCRE, balancing test as required by State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000).

III.

Furthermore, the Court of Appeals erred in not applying the harmless error standard because any error in admitting Respondent's armed robbery convictions was harmless due to the overwhelming evidence of guilt.

STATEMENT OF THE CASE

Procedural History

In November 2009, a Richland County Grand Jury indicted Respondent on the charges of armed robbery and four counts of kidnapping. On June 10, 2010, Respondent proceeded to trial before the Honorable G. Thomas Cooper, Jr. Attorneys James May and Charles Cochran represented Respondent. Attorneys Kathryn Luck Campbell and Nicole Simpson represented the State.

On June 16, 2010, the jury found Respondent guilty as charged. Judge Cooper sentenced Respondent to the mandatory sentence of life without the possibility of parole based on Respondent's three prior armed robbery convictions. On June 23, 2010, Respondent served a Notice of Appeal.

On May 8, 2012, the Court of Appeals heard arguments on the matter. On January 9, 2013, the Court of Appeals issued an opinion in which it reversed Respondent's conviction and sentence and remanded the case for a new trial. State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013).

On February 1, 2013 Petitioner served a Petition for Rehearing. On February 22, 2013, the Court of Appeals issued an order denying the Petition for Rehearing.

Factual History

On May 24, 2009, Respondent entered a Church's Fried Chicken and held four of the employees at gunpoint while he stole the money in the cash register. (R. pp. 91-94.)

At trial, the State presented testimony from two of the victims who positively identified Respondent as the armed assailant. (R. pp. 137-138; R. p. 162). The victims testified that the robber pointed a silver automatic gun at the victims. (R. p. 111.) Additionally, the two victims described the robber as a black male with a lazy eye, who

wore a striped shirt. (R. p. 98; R. p. 109; R. p. 122; R. p. 151.) The victims also testified that the robber put a mask on his face when he walked into the building. (R. p. 122.)

After the robber exited the building, one of the victims saw the robber walk towards a gray Dodge truck. (R. pp. 103-106.) When the police pulled over the truck a few blocks from the Church's Fried Chicken, they found Respondent crouching on the floorboard of the truck over a plastic bag. (R. pp. 191-192.) Respondent, who was wearing a striped shirt and had a lazy eye like the victims identified, was lying on top of a silver gun, money, and a mask. (R. p. 244.)

Furthermore, Respondent's co-defendant testified against Respondent at trial. The co-defendant testified that he took Respondent to the Church's Fried Chicken and saw Respondent go inside the restaurant. (R. pp. 226-227.) The co-defendant also testified that Respondent was wearing a striped shirt and light colored pants on the day of the robbery. Moreover, Respondent carried a plastic bag inside the restaurant. (R. pp. 226-227.)

Before Respondent testified, the trial judge went over which convictions the State could use to impeach Respondent. (R. pp. 287.) The State told the trial court that it wanted to use Respondent's three prior convictions for armed robbery. (R. p. 287.) Respondent's trial counsel objected to the use of the prior armed robbery convictions. (R. pp. 292-296.) However, the trial judge ruled that the armed robbery convictions were admissible for impeachment purposes under Rule 609(a)(2), SCRE. (R. p. 298.)

ARGUMENT

I.

The Court of Appeals erred in holding that armed robbery is not a crime of dishonesty under Rule 609(a)(2), SCRE.

Petitioner asks this Court to grant certiorari because the Court of Appeals erred in holding that armed robbery is not crime of dishonesty under Rule 609(a)(2), SCRE. Additionally, the Court of Appeals erred in conducting its own Rule 609, SCRE balancing test. The Court of Appeals should have remanded the case to the trial court in order for the trial judge to conduct an on-the-record balancing test because the trial judge was in the best position to weigh the evidence. Furthermore, even if the trial judge erred in admitting Respondent's prior armed robbery convictions, any error was harmless due to the overwhelming evidence of guilt against Respondent.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The reviewing court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

The admission or exclusion of evidence rests on the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error

of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). Moreover, “[a] trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.” State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995); see also State v. Navy, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010) (stating appellate courts must uphold the trial court’s findings regarding whether a defendant was in custody when statements were made if the trial judge’s ruling is supported by the record).

The Court of Appeals erred in holding that armed robbery is not a crime of dishonesty under Rule 609(a)(2), SCRE. Armed robbery is a crime of dishonesty and automatically admissible under Rule 609(a)(2), SCRE.¹

For the purposes of attacking the credibility of a witness, Rule 609(a)(2), SCRE provides the following: “[E]vidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.” Moreover, if the witness’ prior conviction falls under Rule 609(a)(2), SCRE, the court does not have to engage in a probative versus prejudicial analysis. See State v. Bryant, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006). Simply put, the prior conviction is automatically admissible if it falls under Rule 609(a)(2), SCRE. See Id.

Specifically, the Court of Appeals cited State v. Bryant, 369 S.C. at 517, 633 S.E.2d at 155, in support of its holding that the trial judge erred in admitting Respondent’s prior armed robbery convictions for impeachment purposes under Rule 609(a)(2), SCRE. Although this Court in Bryant stated, “a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of

¹ Furthermore, Respondent waived his right to challenge the admissibility of his prior convictions in light of Ohler v. United States, 529 U.S. 753 (2000) (holding a party cannot introduce evidence and then complain on appeal that the evidence was erroneously admitted).

truthfulness[,]" the issue under consideration in that case was not whether a prior conviction for robbery was a crime of dishonesty under Rule 609(a)(2). See Bryant, 369 S.C. at 515, 633 S.E. 2d at 154. Instead, the issue in Bryant was whether or not the defendant's prior firearm conviction was properly admitted. Id. Thus, this Court's statement that "a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of truthfulness" was merely dicta and not binding in future cases. See e.g., Humphrey's Ex'r v. United States, 295 U.S. 602, 627 (1935) (instructing dictum is not controlling but may be followed if sufficiently persuasive).

In the past, South Carolina courts have taken a favorable approach for Petitioner's position in applying Rule 609(a)(2), SCRE. In State v. Shaw, 328 S.C. 454, 456-57, 492 S.E.2d 402, 403-04 (Ct. App. 1997), the Court of Appeals specifically rejected the federal position in ruling that a shoplifting conviction involved dishonesty for purposes of Rule 609(a)(2). The Court stated:

Common sense tells us that anyone who, in violation of the shoplifting statute, takes and carries away a storekeeper's merchandise with intent to deprive the owner of its possession without paying for it, or alters or removes a label or price tag in an attempt to buy a product at less than its value, or transfers merchandise from its proper container for the purpose of depriving a storekeeper of its value acts dishonestly. We, therefore, hold a prior conviction for shoplifting can be used to impeach a witness under Rule 609(a)(2), SCRE.

Id. at 456-57, 492 S.E.2d at 403-04. Furthermore, this Court expressly adopted the reasoning and holding in Shaw. See State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999).

Moreover, this Court in Bryant, the case in which the Court of Appeals and Respondent primarily rely upon, expressly recognized shoplifting as a crime of

dishonesty. Bryant, 369 S.C. at 517, 633 S.E.2d at 155 (“Under Rule 609(a)(2), SCRE, if a crime is viewed as one involving dishonesty, the court must admit the prior conviction because, prior convictions involving dishonesty or false statement must be admitted regardless of their probative value or prejudicial effect. Thus, Petitioner’s convictions for shoplifting and writing bad checks were properly admitted and Petitioner does not dispute this.”).

It would thus seem, therefore, that if shoplifting, a form of stealing, is a crime of dishonesty, then armed robbery, which contains an element of larceny, is also a crime involving dishonesty.² See State v. Frazier, 386 S.C. 526, 533, 689 S.E.2d 610, 613-14 (2010); State v. Keith, 283 S.C. 597, 598, 325 S.E.2d 325, 325-26 (1985); S.C. Code Ann. § 16-11-330(a) (2008); see also State v. Colf, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998) (citing Shaw, and stating: “Although theft-related convictions are probative of credibility”); See State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000). In discussing the issues, the Colf court noted: “The fact that *larceny reflects on credibility*

² Section 16-13-110 (a)(1) of the South Carolina Code provides the following:

(A) A person is guilty of shoplifting if he:

(1) takes possession of, carries away, transfers from one person to another or from one area of a store or other retail mercantile establishment to another area, or causes to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value[.]

S.C. Code Ann. §16-13-110 (a)(1).

Thus, subsection (a)(1) is essentially the crime of larceny. See State v. Sweat, 221 S.C. 270, 70 S.E.2d 324 (1952) (larceny is the trespassory taking and carrying away of the property of another with intent to steal); State v. Haynie, 221 S.C. 45, 68 S.E.2d 628 (1952) (larceny is always included in the offense of robbery).

and the importance of credibility are both factors the trial court should have weighed . . .”) (emphasis added). Thus, this Court has indicated that larceny bears on credibility.

In another well-reasoned opinion, the Court of Appeals in State v. Al-Amin, 353 S.C. 405, 425, 578 S.E.2d 32, 43 (Ct. App. 2003), held that a prior conviction for armed robbery was admissible under Rule 609(a)(2), SCRE, as a crime of dishonesty. Id. at 425, 578 S.E.2d at 43. In reaching that decision, the court reasoned that “[t]o restrict the application of Rule 609(a)(2) only to those offenses which evidence an element of affirmative misstatement or misrepresentation of fact would be to ignore the plain meaning of the word ‘dishonesty.’” Id. The court noted that the common definition for dishonesty is a “‘disposition to lie, cheat, or steal.’” Id. (citations omitted).

Furthermore, while the comment to Rule 608, SCRE, mentions the restrictive *crimen falsi* definition in its discussion of the “probative of truthfulness or untruthfulness” standard for cross-examination with specific instances of conduct, the notes to Rule 609, SCRE do not contain such a discussion despite their presence in the comments to Rule 609, FRE. This indicates an intent by the drafters of the South Carolina Rules of Evidence not to adopt the restrictive federal interpretation. See, e.g., City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (“ ‘the canon of construction ‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius exclusio alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or the alternative.’ ””) (citations omitted). Moreover, many courts have held that a prior robbery conviction is admissible under Rule 609(a) (2) as a crime involving dishonesty.³

³ The following is a list of where the various state jurisdictions generally fall on the issue of whether robbery is a crime of dishonesty under Rule 609. Many states, of course, have variations on Rule 609, but the principles are generally applicable.

YES OR PROBABLY: AL, AK, AR, CO, CT, DE, DC, FL, ID, IL, IN, IA, KS, ME, MD, MI, MS, NV, NJ, NM, NY, NC, OH, OK, OR, PA, TN, TX, WA, WI

NO OR PROBABLY NOT: AZ, GA, LA, MT, ND, UT, VT, WY

DEPENDS ON FACTS: HI, MN, NH, NE, WV

N/A: CA, KY, MA, MO, RI, VA

UNCLEAR: SD

As evident, most states have found robbery to be a crime of dishonesty. See also Al-Amin, 353 S.C. at 416, 578 S.E.2d at 38. The following is a listing of all the states in alphabetical order with a short discussion of their relevant cases on this issue.

- (1) **ALABAMA:** **PROBABLY.** The Alabama Court of Criminal Appeals held that 3rd degree theft qualified as a crime involving dishonesty. The Court recognized the contrary federal interpretation and legislative history, but concluded that its holding was more “logical” and consistent with the state’s prior case law that theft was a crime of moral turpitude. Robbery was also a crime of moral turpitude, so the same reasoning should apply. The court also quoted a portion of its local civil procedure treatise which referred to looking at the underlying facts of the crime. Huffman v. State, 706 So.2d 808 (Ala. Crim. App. 1997), cert denied, (Ala. Nov. 21, 1997). My searches did not reveal any definitive statement by the Alabama Supreme Court.
- (2) **ALASKA** **YES.** The Alaska Supreme Court recognized the contrary federal precedent, but still ruled that larceny and robbery “disclose the kind of dishonesty and unreliability which bear upon the veracity of persons perpetrating those crimes.” Alexander v. State, 611 P.2d 469, 475 (Alaska 1980). See also Jensen v. Goreson, 881 P.2d 1119 (Alaska 1994) (holding that conspiracy to poach fish was a crime of dishonesty).
- (3) **ARIZONA** **NO.** The Arizona courts have ruled that the crime must involve the element of deceit or falsification. State v. Malloy, 639 P.2d 315 (Ariz. 1981) (in banc) (burglary does not qualify); State v. Terrell, 753 P.2d 189 (Ariz. Ct. App. 1988) (superseded by statute on other grounds) (attempt to receive stolen property does not qualify).
- (4) **ARKANSAS** **YES.** The Arkansas Supreme Court has held that theft, while not probative of truthfulness or untruthfulness under Ark. R. Evid. 608(b), which pertains to when specific instances of conduct may be used to impeach a witness, is a crime involving dishonesty. Laughlin v. State, 316 Ark. 489, 872 S.W.2d 848 (1994); Rhodes v. State, 276 Ark. 203, 634 S.W.2d 107 (1982). As such, the court has expressly allowed the use of prior theft convictions to impeach a witness’s credibility under Rule 609(a)(2). See, e.g., Webster v. State, 284 Ark. 206, 680 S.W.2d 906 (1984) (allowing use of prior conviction for grand larceny as a crime involving dishonesty); Floyd v. State, 278 Ark. 86, 643 S.W.2d 555 (1982) (allowing evidence of prior convictions for burglary and theft under Rule 609(a)(2)); James v. State, 274 Ark. 162, 622 S.W.2d 669 (1981) (finding that prior convictions for grand larceny and theft involved dishonesty).

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- (5) **CALIFORNIA** N/A. California uses moral turpitude. Robbery is a crime involving "moral turpitude" and thus is probative of a witness's credibility. People v. Collins, 722 P.2d 173 (Cal. 1986).
- (6) **COLORADO** **PROBABLY.** The Colorado Supreme Court held that shoplifting is a crime of dishonesty. People v. Segovia, 196 P.3d 1126 (Colo. 2008).
- (7) **CONN.** **YES.** Connecticut still uses case law-established evidentiary rules, but it has noted its rules roughly follow Rule 609. Crimes involving larcenous intent fall within its "dishonesty" category. State v. Dawkins, 681 A.2d 989 (Conn. 1996); State v. Banks, 755 S.E.2d 279 (Conn. App. Ct. 2000).
- (8) **DELAWARE** **YES.** Gregory v. State, 616 A.2d 1198 (Del. 1992) ("we have further defined the term 'dishonesty' as the act or practice of lying, deceiving, cheating, stealing or defrauding"); see also Paskins v. State, 655 A.2d 1225 (Del. 1995) (holding robbery is a crime of dishonesty).
- (9) **D.C.** **YES.** Bates v. United States, 403 A.2d 1159 (D.C. 1979) (noting that House Report for the DC statute includes robbery as crime involving dishonesty, and quoting with approval the D.C. Circuit in stating that acts such as stealing reflect on a man's honesty and trustworthiness).
- (10) **FLORIDA** **YES.** State v. Page, 449 So.2d 813 (Fla. 1984) (ruling that all crimes within the "Theft, Robbery, and Related Crimes" section of the criminal statutes involve dishonesty).
- (11) **GEORGIA** **NO.** See Adams v. States, 644 S.E.2d 426 (Ga. Ct. App. 2007) (holding prior conviction for misdemeanor theft by receiving stolen property is not a crime involving dishonesty within the meaning of OCGA § 24-9-84.1(a)(3)).
- (12) **HAWAII** **DEPENDS ON FACTS.** State v. Pacheco, 26 P.3d 572 (Haw. 2001).
- (13) **IDAHO** **PROBABLY.** Idaho's rule is different and requires that the crime not only be a felony but also relevant to the witness's credibility. In an older case under a slightly different rule, the court held burglary relevant to credibility and quoted with approval: "On the other hand robbery, larceny, and burglary, while not showing a propensity to falsify, do disclose a disregard for the rights of others which might reasonably be expected to express itself in giving false testimony whenever it would be to the advantage of the witness. If the witness had no compunction against stealing another's property or taking it away from him by physical threat or force, it is hard to see why he would hesitate to obtain an advantage for himself or friend in a trial by giving false testimony. Furthermore, such criminal acts, although evidenced by a single conviction, may represent such a marked break from sanctioned conduct that it affords a reasonable basis of future prediction upon credibility...." Idaho v. Ybarra, 634 P.2d 435 (Idaho 1981).
- (14) **ILLINOIS** **YES.** Illinois's rule applies a "probative substantially outweighed by prejudice" standard to both the "one-year" and dishonesty categories. It has held that

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- “crimes involving . . . stealing press heavily on the probative side of the scale,” and also has held that misdemeanor theft is a crime involving dishonesty. Torres v. Irving Press, Inc., 707 N.E.2d 248 (Ill. Ct. App. 1999).
- (15) **INDIANA** **YES.** Theft is a crime of dishonesty in a 609 analysis. Newman v. State, 719 N.E.2d 832 (Ind. Ct. App. 1999). Therefore, robbery should be a crime of dishonesty as well.
- (16) **IOWA** **YES.** Armed robbery is a crime of dishonesty in an impeachment analysis. State v. Latham, 366 N.W.2d 181 (Iowa 1985). See also State v. Mickens, 462 N.W.2d 296 (Iowa Ct. App. 1990) (theft is crime of dishonesty).
- (17) **KANSAS** **YES.** The rule in Kansas prevents use of convictions for impeachment unless the crime involves dishonesty or false statement. Also, such impeachment cannot be done against a testifying criminal defendant unless the defendant puts his credibility at issue. State v. Johnson, 907 P.2d 144 (Kan. Ct. App. 1995). A juvenile theft conviction involving dishonesty or false statement is admissible to attack the credibility of a witness following a sufficient proffer. State v. Mahkuk, 551 P.2d 869 (Kan. 1976). “Crimes which are impulsive or which are committed in the heat of passion, or crimes which are founded on negligence, or crimes which in no way reflect a dishonest nature, would not normally reflect on the credibility of the witness and should not be admissible. On the other hand, there are crimes which are inherently dishonest, whether because of their willful character, disregard for decency, or general lack of fairness.” State v. Brown, 630 P.2d 731, 734 (Kan. Ct. App. 1981).
- (18) **KENTUCKY** **N/A.** Kentucky uses a case law-based system. Their old rule allowed impeachment only with “dishonest” felonies, including stealing. Now, however, identification of prior convictions can only be introduced if the witness denies any felony convictions during cross-examination. Commonwealth v. Richardson, 674 S.W.2d 515 (Ky. 1984).
- (19) **LOUISIANA** **PROBABLY NOT.** Louisiana’s evidentiary statute is modeled after Rule 609. In one case, the court cited McCormick on Evidence for the proposition that crimes involving force, such as robbery, are not dishonest per se. Williams v. United Fire & Casualty Co., 594 So.2d 455 (La. Ct. App. 1991). The court has held that embezzlement by an employee is a crime of dishonesty, but embezzlement is an easy fit because of the employee’s position of trust. Hebert v. Hartford Ins. Co., 649 So.2d 631 (La. Ct. App. 1994).
- (20) **MAINE** **YES.** Maine has Rule 609, but applies a pragmatic relevance test to both the “one-year” and dishonesty categories. Thus, the issue whether armed robbery is dishonest is generally moot because it also satisfies the “one-year” category. In any event, the courts have still held that robbery is “dishonest.” State v. Charest, 424 A.2d 718, 719 (Me. 1981) (“Under Maine law, it is the category of the offense which establishes whether it is an offense involving dishonesty or false

statement and not the underlying facts leading to the prior conviction.") (quoting State v. Gervais, 394 A.2d 1183, 1186 (Me. 1978) (" '[A]cts of deceit, fraud, cheating, or stealing ... are universally regarded as conduct which reflects adversely on ... honesty and integrity.' ") and State v. Toppi, 275 A.2d 805, 810 n. 5 (Me. 1971)). See also State v. Hanscome, 459 A.2d 569 (Me. 1983).

(21) MARYLAND

PROBABLY. Maryland has a modified version of Rule 609 which allows impeachment of "infamous crimes" (moral turpitude) as well as other crimes "relevant to the witnesses' credibility." A pragmatic relevance test is applied to both categories. Jackson v. State, 668 A.2d 8 (Md. Ct. App. 1995). The court has held that theft qualifies as *crimen falsi* because it is the "embodiment of deceitfulness." Beales v. State, 619 A.2d 105 (Md. Ct. App. 1993). Robbery has been held to qualify as an "infamous crime." Passamichali v. State, 569 A.2d 733 (Md. Ct. Spec. App. 1990).

(22) MASS.

N/A. Massachusetts has a markedly different rule in which various types of crimes (e.g. misdemeanor, felony with no or suspended sentence, felony with jail time) are excluded after certain time periods unless there were subsequent convictions. Mass. Gen L., ch. 233, § 21 (1999). The court has had no problems with impeachment with armed robbery, but, of course, whether it is a crime involving dishonesty is not a test under Massachusetts law. In a discussion on the subject, the court noted that while robbery was not a probative as perjury, robbery "does involve theft and is a serious crime that shows conscious disregard for the rights of others. Such conduct reflects more strongly on credibility than, say, crimes of impulse, or simple narcotics or weapons possession." But robbery "is generally less probative than crimes that involve deception or stealth." The court cited with approval a federal case which held that robbery does NOT fall within the automatic "dishonesty" category. Commonwealth v. Ruiz, 493 N.E.2d 511 (Mass. App. Ct. 1986).

(23) MICHIGAN

YES. Michigan's Rule 609 is different in that it specifically requires that the crime either contain an element of theft or be characterized as dishonest. Moreover, all crimes must satisfy the "one year" requirement. Rule 609, MRE. Thus, obviously armed robbery qualifies because it has an element of theft. However, one opinion stated that while robbery is less probative than other theft offenses, it "is an indicator that [the] defendant is of dishonest character." People v. Cross, 508 N.W.2d 144, 146-47 (Mich. Ct. App. 1993).

(24) MINNESOTA

POSSIBLY (depends on facts). Minnesota has held that robbery is not a crime of dishonesty. However, the court has noted that while shoplifting does not qualify as a crime involving dishonesty, theft by swindle does. The court has implied that the facts of the prior crime may decide the issue. State v. Sims, 526 N.W.2d 201 (Minn. 1994). Presumably such an argument could be made for an appropriate armed robbery.

(25) MISS.

YES. See Bogard v. State, 624 So.2d 1313, 1316 (Miss.1993) (noting that robbery conviction may be introduced pursuant to M.R.E. 609(a)(2) as crime of "dishonesty" for purpose of impeaching defendant's credibility as witness in his own behalf).

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- (26) **MISSOURI** **N/A.** The Supreme Court of Missouri has interpreted § 491.050, its impeachment statute, as conferring an absolute right to use prior convictions of any witness, including the accused, in order to impeach his credibility in a subsequent criminal or civil case. State v. Giffin, 640 S.W.2d 128, 132 (Mo.1982).
- (27) **MONTANA** **NO.** Montana's Rule 609 provides that evidence of a criminal conviction is NOT admissible to impeach a witness. However, under Rule 608 Montana allows inquiry into specific instances of conduct, even though they might have ultimately resulted in a criminal conviction. Of these acts, burglary and theft do not qualify as dishonest acts sufficient to bring them within the "probative of truthfulness" standard in Rule 608(b). See, e.g. State v. Martin, 926 P.2d 1380 (Mont. 1996); State v. Gollehon, 864 P.2d 249 (Mont. 1993).
- (28) **NEBRASKA** **POSSIBLY (depends on facts).** Nebraska's Rule 609 is similar to the federal rule, and its opinions have cited the various federal authorities to hold that only crimes of *crimen falsi* apply. The court has ruled however, that if inquiry into the facts show that a petit larceny involved **deceit or deception**, then the crime is *crimen falsi*. State v. Ellis, 303 N.W.2d 741 (Neb. 1981) (disapproved on other grounds (citation omitted)).
- (29) **NEVADA** **PROBABLY.** Nevada allows impeachment if a conviction is punishable by more than one year, and the crime is not more than one year old. There is no dishonesty category. However, the court has implied that a robbery conviction reflects on truthfulness, which enhances its probative value in a pragmatic relevance test. Wesley v. State, 916 P.2d 793 (Nev. 1996).
- (30) **N.H.** **DEPENDS ON FACTS.** See State v. Long, 12 A.3d 1289 (N.H. 2011). However, in Long, New Hampshire Supreme Court cited to an Ohio case, State v. Taliaferro, 2 Ohio App.3d 405, 442 N.E.2d 481, 482 (1981) ("We hold that the offenses of attempted forgery, petty theft and attempted receiving stolen property are offenses involving dishonesty and that the trial court therefore did not err in permitting the introduction into evidence of the defendant's prior convictions for those offenses for the purpose of impeaching his credibility.").
- (31) **N.J.** **YES.** New Jersey's Rule 609 allows impeachment with all criminal convictions unless excluded within the discretion of the trial judge. State v. Brunson, 625 A.2d 1085 (N.J. 1993). However, the court held under its old rules that an armed robbery conviction was a crime involving dishonesty and thus properly admitted for impeachment. State v. Pennington, 575 A.2d 816 (N.J. 1990).
- (32) **N. MEXICO** **YES.** Robbery has been held to be a crime of dishonesty under Rule 609. State v. Day, 617 P.2d 142 (N.M. 1980).
- (33) **NEW YORK** **YES.** Robbery and petit larceny are crimes of dishonesty and thus admissible for impeachment of a criminal defendant. People v. Moody, 645 N.Y.S.2d 375 (N.Y. App. Div. 1996).
- (34) **N. CAR.** **YES.** Robbery is a crime of dishonesty and therefore admissible for impeachment under Rule 609. In one particular case, the court ruled that since the defendant's credibility was crucial to the case, an over-age robbery

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- conviction was more probative than prejudicial. State v. Holston, 518 S.E.2d 216 (N.C. Ct. App. 1999) (citing State v. Lynch, 445 S.E.2d 581 (N.C. 1994)).
- (35) **N. DAKOTA** **NO.** The court, citing various federal authorities, has ruled that crimes of force, such as robbery, and crimes of stealth, such a burglary, are not crimes of dishonesty automatically admissible under Rule 609. State v. Bohe, 447 N.W.2d 277 (N.D. 1989).
- (36) **OHIO** **YES.** The courts have ruled that theft is a crime of dishonesty under Rule 609, despite the Staff Note to the state rule indicating an intent to adopt the restrictive federal version. Ohio v. Tolliver, 514 N.E.2d 922 (Ohio Ct. App. 1986).
- (37) **OKLAHOMA** **PROBABLY.** Under Oklahoma's old impeachment statute, which also had the 609-style "dishonesty" and "one-year" categories, the court ruled breaking and entering to be a crime involving dishonesty. The court believed the crime dishonest because it involves the elements of intent to commit a felony, larceny, or malicious mischief. Parks v. State, 746 P.2d 200 (Okla. Crim. App. 1987).
- (38) **OREGON** **YES.** Oregon has held both theft and armed robbery to be crimes of dishonesty. State v. Gallant, 764 P.2d 920 (Or. 1988); State v. Sims, 692 P.2d 575 (Or. 1984).
- (39) **PA.** **YES.** Pennsylvania's 609 allows impeachment only if the crime involves dishonesty or false statement. Robbery is deemed to be a crime involving dishonesty. Commonwealth v. Jackson, 561 A.2d 335 (Pa. Sup. Ct. 1989).
- (40) **R.I.** **N/A.** Rhode Island allows conviction with any crime but requires an *in camera* offer of proof if the crime is a misdemeanor involving dishonesty. State v. Simpson, 606 A.2d 677 (R.I. 1992). There are no cases interpreting this statute and robbery.
- (41) **S.D.** **UNCLEAR.** No cases were found interpreting the dishonesty category in South Dakota's version of Rule 609.
- (42) **TENN.** **YES.** Under Tennessee's version of Rule 609, robbery is a crime involving dishonesty. State v. Galmore, 994 S.W.2d 120 (Tenn. 1999).
- (43) **TEXAS** **PROBABLY.** Texas's Rule 609 allows the use of felonies and crimes involving moral turpitude, after the judge performs a pragmatic relevance test. However, the impeachment value, or whether the crime involves dishonesty and deception, is a relevant factor in judging probativeness. Theus v. State, 845 S.W.2d 874 (Tex. Crim. App. 1992). Robbery has been held to constitute a crime of dishonesty, but the courts have said it is "unclear" whether robbery involves deception. Simpson v. State, 886 S.W.2d 449 (Tex. Ct. App. 1994); Wilson v. State, 1995 W.L. 232744 (Tex. Ct. App. 1995) (unpublished).
- (44) **UTAH** **NO.** Utah has a similar version of Rule 609 but has held that robbery is not automatically admissible under the dishonesty category. State v. Morrell, 803 P.2d 292 (Utah Ct. App. 1990).

- (45) **VERMONT** **PROBABLY NOT.** Vermont's Rule 609 allows impeachment with any crime if it either involves a statutory element of "untruthfulness or falsification" or is a "one-year" felony, and it passes a pragmatic relevance test. The Reporter's Comments to the rule note the intent to take the restrictive federal interpretation, and states that the word "untruthfulness" was deliberately used to avoid the flap over the meaning of "dishonesty". V.R.E. 609. See generally State v. Ashley, 623 A.2d 984 (Vt. 1993).
- (46) **VIRGINIA N/A.** Virginia allows impeachment with either felonies, or misdemeanors involving moral turpitude. Luck v. Commonwealth, 515 S.E.2d 325 (Va. Ct. App. 1999); Johnson v. Commonwealth, 345 S.E.2d 343 (Va. Ct. App. 1986).
- (47) **WASH.** **YES.** Washington has a version of Rule 609 similar to South Carolina's. Robbery is a crime of dishonesty and is therefore automatically admissible. State v. Rivers, 921 P.2d 495 (Wash. 1996).
- (48) **W. VA.** **POSSIBLY (depends on facts).** The court has discussed with approval the more restrictive federal interpretation that robbery is not a crime of dishonesty per se. However, the court has indicated that it will look at the facts of the underlying crime when making this determination. State v. Rahman, 483 S.E.2d 273 (W. Va. 1996); Wilkinson v. Bowser, 483 S.E.2d 92 (W. Va. 1996).
- (49) **WISC.** **PROBABLY.** Wisconsin allows impeachment with any crime after application of a pragmatic relevance test. Wis. Stat § 906.09 (1999). In any event, at least one unpublished case has stated that robbery's probative value was enhanced because it is a crime involving dishonesty. State v. Fry, 1993 W.L. 38300 (Wisc. Ct. App. 1993) (unpublished).
- (50) **WYO.** **PROBABLY NOT.** Wyoming has discussed with approval the restrictive federal definition of crimes amounting to dishonesty or false statement. Jones v. State, 735 P.2d 699 (Wyo. 1987). However, the court has indicated a willingness to look at the facts of the crime in determining its probativeness. Miller v. State, 784 P.2d 209 (Wyo. 1989) (prior conviction more probative because it contradicted defendant's testimony on his use of aliases).

2. Federal Jurisdictions

- (1) **1st Cir.** **POSSIBLY (depends on facts).** The First Circuit has held that robbery is not a crime of dishonesty per se. However, the court has noted that if it is shown the crime was committed by "fraudulent or deceitful" means, then it could qualify as automatically admissible under Rule 609(a)(2). United States v. Sullivan, 85 F.3d 743 (1st Cir. 1996) (theft); United States v. Levesque, 681 F.2d 75 (1st Cir. 1982); United States v. Grandmont, 680 F.2d 867 (1st Cir. 1982).
- (2) **2nd Cir.** **POSSIBLY (depends on facts).** In an older opinion, the court cited with approval a D.C. Circuit opinion which concluded that attempted robbery was not a crime of dishonesty per se. United States v. Hawley, 554 F.2d 50 (2d Cir. 1977). However, the court has noted it "will look beyond the elements of the offense to determine whether the conviction rested upon facts establishing

-
- dishonesty or false statement.” United States v. Payton, 159 F.3d 49 (2d Cir. 1998).
- (3) 3rd Cir. **NO.** The Third Circuit has indicated it will only look to the statutory elements in determining whether a crime involves dishonesty or false statement. Cree v. Hatcher, 969 F.2d 34 (3d Cir. 1992) (willful failure to file federal tax return NOT a crime involving dishonesty) (citing United States v. Lewis, 626 F.2d 940, 946 (D.C. Cir.1980)). But see United States v. Bianco, 419 F.Supp. 507, 508-09 (E.D.Pa.1976), aff’d, 547 F.2d 1164 (3d Cir. 1977) (unpublished).
- (4) 4th Cir. **PROBABLY NOT.** The court has cited with approval the restrictive interpretation generally given to “dishonesty” by federal authorities. Indeed, the court has held insufficient a conviction for “worthless checks” where nothing indicated the charges were for anything more than insufficient funds. United States v. Cunningham, 638 F.2d 696 (4th Cir. 1981). The court has also seemed only to engage in a analysis of the crime’s elements rather than the underlying facts. United States v. Rogers, 853 F.2d 249 (4th Cir. 1988) (N.C.’s worthless checks statute contains elements of dishonesty); United States v. Blackshear, 1992 W.L. 36809 (4th Cir. 1992) (unpublished) (defendant does not contest finding that interstate transportation of stolen goods involves an element of dishonesty).
- (5) 5th Cir. **PROBABLY NOT (may depend on facts).** The Court has ruled that bank robbery does not fall within Rule 609(a)(2) despite earlier precedent implying the contrary. United States v. Preston, 608 F.2d 626, 638 n. 15 (5th Cir. 1979). See also Coursey v. Broadhurst, 888 F.2d 338 (5th Cir. 1989) (cattle theft not crime of dishonesty). But see United States v. Cathey, 591 F.2d 268, 276 n. 16 (5th Cir. 1979) (noting that certain petit larcenies involve dishonesty and the court must look at the underlying facts). But see United States v. Livingston, 816 F.2d 184 (5th Cir. 1987) (bad check conviction would be admissible but defendant failed to explain nature of crime or whether it involved intent to defraud).
- (6) 6th Cir. **NO.** Armed robbery is not a crime of dishonesty or false statement under Rule 609(a)(2). United States v. Scisney, 885 F.2d 325, 326 (6th Cir.1989).
- (7) 7th Cir. **POSSIBLY (depends on facts).** The court has indicated willingness to consider the facts of a theft conviction to determine whether the crime falls within dishonesty or false statement. United States v. Wiman, 77 F.3d 981 (7th Cir. 1995); United States v. Rodriguez, 62 F.3d 948 (7th Cir. 1995). United States v. Amaechi, 991 F.2d 374 (7th Cir. 1993) (noting that petty shoplifting is not a crime involving dishonesty, but left the question open on whether a more serious shoplifting qualifies).
- (8) 8th Cir. **NO.** The court has stated that theft is not a crime involving dishonesty. “It involves stealth and a lack of respect for property rights, and is not characterized by deceit or deliberate interference with judicial truthseeking.” United States v. Yeo, 739 F.2d 385 (8th Cir. 1984).

As the Court of Appeals pointed out in Al-Amin,

An essential element of robbery is that the perpetrator of the offense steals the goods and chattels of another . . . Stealing is defined in law as larceny. Larceny involves dishonesty. The fact that the perpetrator of the crime manifests or declares his dishonesty by brazenly committing the crime does not make him an honest person.

353 S.C. at 421. 578 S.E.2d at 40-41.

Because precedent set by the federal circuit courts is not binding on this Court⁴ and the statement in Bryant was merely dicta, this Court should follow the sound

(9) 9th Cir.

NO. Robbery is not a per se crime of dishonesty and thus it is inadmissible under Rule 609(a)(2). United States v. Alexander, 48 F.3d 1477 (9th Cir. 1995). But see United States v. Mehrmenesh, 689 F.2d 822 (9th Cir. 1982) (smuggling has conviction did not involve dishonesty when government did not present any facts demonstrating conviction actually involved fraud or deceit); see also United States v. Bracken, 969 F.2d 827 (9th Cir. 1992) (holding that armed robbery is not a crime of dishonesty per se).

(10) 10th Cir.

POSSIBLY (depends on facts). Reasoning that an absence of respect for property rights is not probative of truthfulness, the Tenth Circuit has stated that theft, robbery, and shoplifting are not crimes which per se fall within the "dishonesty" category. United States v. Dunson, 142 F.3d 1213 (10th Cir. 1998). However, the court has noted that it will look at the underlying facts of a conviction not involving a per se dishonest crime to see if it rested on facts establishing honesty or false statement. *Id.* See also United States v. Mejia-Alarcon, 995 F.2d 982 (10th Cir. 1993); United States v. Whitman, 665 F.2d 313, 320 (10th Cir. 1981) (larceny conviction resulting from land fraud scheme was crime of dishonesty or false statement).

(11) 11th Cir.

NO. The Eleventh Circuit has stated that theft, robbery, and shoplifting do not fall within the category in Rule 609(a)(2). United States v. Sellers, 906 F.2d 597 (11th Cir. 1990). However, the court has stated that "[p]rior misdemeanor theft convictions are usually not sufficiently probative of veracity," which may be read to imply a willingness to look at the underlying facts. United States v. Farmer, 923 F.2d 1557 (11th Cir. 1991).

(12) D.C. Cir.

NO. Robbery, larceny, and shoplifting are not crimes of dishonesty or false statement. United States v. Lipscomb, 702 F.2d 1049, 1057 n. 29 (D.C. Cir. 1983).

⁴ State v. Al-Amin, 353 S.C. at 416, 578 S.E.2d at 38.

reasoning in Al-Amin, which held armed robbery, which is a crime involving the taking of property that the perpetrator of the crime has no honest right to possess, is automatically admissible under 609(a)(2) as a crime of dishonesty.

II.

Additionally, the Court of Appeals erred when it refused to remand the case to the trial court in order for the trial court to conduct an on-the-record Rule 609, SCRE, balancing test as required by State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000).

Moreover, the Court of Appeals erred in conducting its own Rule 609(a)(1), SCRE balancing test. Thus, if this Court concludes that armed robbery is not a crime of dishonesty, this Court should remand this case to the trial court in order for the trial judge to make an on-the-record Rule 609(a)(1), SCRE finding.

In State v. Colf, 337 S.C. 622, 628-29, 525 S.E.2d 246, 249 (2000), this Court held that the Court of Appeals erred in conducting a Rule 609 balancing test instead of remanding the issue to the trial court in order to make the determination. This Court stated the following:

The Court of Appeals went on to “consider in more detail the probative value of these convictions, and whether this probative value ‘substantially outweighs’ the prejudicial effect.” **This was error.** The Court of Appeals should not have undertaken the Rule 609(b) balancing test itself, but should have remanded the question to the trial court.

Id. (citation omitted) (emphasis added).

Moreover, in its reasoning, this Court instructed: “It is difficult, if not impossible, for an appellate court to balance the interests at stake when the record does not contain the specific facts and circumstances necessary to a decision.” Id.

Under Rule 609(a)(1), SCRE, evidence of an accused’s prior conviction is admissible so long as the “the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted . . . and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused.” Rule 609(a)(1), SCRE.

Thus, the Court of Appeals should have remanded this case, in accordance with Colf, to the trial court in order for the trial judge to conduct a Rule 609 balancing test. See also State v. Howard, 384 S.C. 212, 223, 682 S.E.2d 42, 48 (Ct. App. 2009) (noting that an appellate court should not undertake a Rule 609 balancing test but rather should remand the issue to the trial court).

In summary, the Court of Appeals erred in conducting its own Rule 609, SCRE balancing test instead of remanding the case to the trial court to conduct the test because the trial judge was in the best position to weigh the evidence.

III.

Furthermore, the Court of Appeals erred in not applying the harmless error standard because any error in admitting Respondent's armed robbery convictions was harmless due to the overwhelming evidence of guilt.

In the case at hand, the State presented overwhelming evidence of guilt against Respondent. Thus, any error in admitting Respondent's prior convictions for armed robbery was harmless. See State v. Scott, 326 S.C. 448, 452, 484 S.E.2d 110, 112 (Ct. App. 1997)) (overwhelming evidence of guilt leads to harmless error). After an error is discovered, the appellate court must then determine whether the error was harmless. See State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless.").

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error generally depends on the materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). "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." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

In the case at hand, the evidence of Respondent's guilt was absolutely overwhelming, rendering any error in admitting the prior convictions harmless. The State presented testimony from two of the victims who positively identified Respondent as the armed assailant. (R. pp. 137-138; R. p. 162). The victims testified that the robber pointed a silver automatic gun at the victims. (R. p. 111.) Additionally, the two victims described the robber as a black male with a lazy eye, who wore a striped shirt. (R. p. 98; R. p. 109; R. p. 122; R. p. 151.) The victims also testified that the robber put a mask on his face when he walked into the building. (R. p. 122.) Moreover, after the robber exited the building, one of the victims saw the robber walk towards a gray Dodge truck. (R. pp. 103-106.) When the police pulled over the truck a few blocks from the Church's Fried Chicken, they found Respondent crouching on the floorboard of the truck over a plastic bag. (R. pp. 191-192.) Respondent, who was wearing a striped shirt and had a lazy eye like the victims identified, was lying on top of a silver gun, money, and a mask. (R. p. 244.). Furthermore, Respondent's co-defendant testified against Respondent at trial. The co-defendant testified that he took Respondent to the Church's Fried Chicken and saw Respondent go inside the restaurant. (R. pp. 226-227.) The co-defendant also testified that Respondent was wearing a striped shirt and light colored pants on the day of the robbery. Moreover, Respondent carried a plastic bag inside the restaurant. (R. pp. 226-227.)

Based on the absolutely overwhelming evidence of guilt consisting of the positive in-court and out-of-court identifications of Respondent as the gunman in the robberies, the fact the robber had a lazy eye just like Respondent, the fact the robber wore a striped shirt just like Respondent, the accomplice's testimony implicating Respondent in the crimes, the discovery of the silver gun underneath Respondent's body, the discovery of a

substantial quantity of money lying underneath Respondent, and the discovery of a mask underneath Respondent's body, Respondent's guilt was conclusively established beyond a reasonable doubt. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt).

In summary, this Court should grant certiorari in this case and reverse the Court of Appeal's decision.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted. In requesting this relief, counsel for Petitioner certifies a petition for rehearing was made and finally ruled upon by the Court of Appeals.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

March 25, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
 Appeal from Richland County
 Honorable G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

Petitioner,

vs.

CHRISTOPHER BROADNAX,

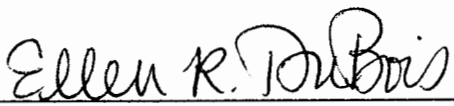
Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Petition for Writ of Certiorari on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey Durant, 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 25th day of March, 2013.


 ELLEN R. DuBOIS
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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

MAY 21 2013

Certiorari to Richland County

S.C. Supreme Court

G. Thomas Cooper, Circuit Court Judge

THE STATE,

PETITIONER,

V.

CHRISTOPHER BROADNAX,

RESPONDENT

APPELLATE CASE NO. 2013-000615

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR RESPONDENT

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QUESTION PRESENTED

1. The Court of Appeals correctly held that armed robbery is not a crime of dishonesty pursuant to Rule 609(a)(2), SCRE.
2. The Court of Appeals correctly performed the necessary balancing test under rule 609, SCRE.
3. The Court of Appeals was correct in not applying the harmless error standard because the admission of Broadnax's prior armed robberies was not harmless as the evidence of guilt was not overwhelming, and the prior convictions were prejudicial.

STATEMENT OF THE CASE

In November 2009, the Richland County Grand Jury indicted Christopher Broadnax on the charges of armed robbery and four counts of kidnapping. On June 10, 14 – 16, 2010, Broadnax proceeded to trial before the Honorable G. Thomas Cooper, Jr., and a jury. He was represented by James May and Charles Cochran. The state was represented by Kathryn Luck Campbell. The jury returned verdicts of guilty as indicted on all charges. Judge Cooper sentenced Broadnax to the mandatory sentence of life without the possibility of parole (LWOP) as the state had served a notice they were seeking LWOP based on three prior armed robbery convictions.

Broadnax's attorney filed a notice of appeal. The Court of Appeals reversed Broadnax's conviction and sentence and remanded the case for a new trial on January 9, 2013. State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013). App. 1 – 10.

The state filed a petition for rehearing which the Court of Appeals denied on February 22, 2013. App. 30. The state then filed a petition for writ of certiorari to the Court of Appeals on March 25, 2013. This return to the petition for writ of certiorari follows.

QUESTIONI.

The Court of Appeals correctly held that armed robbery is not a crime of dishonesty pursuant to Rule 609(a)(2), SCRE.

On May 24, 2009, a gunman entered the restaurant, Church's Fried Chicken at 2436 Taylor Street in Columbia, and held four employees at gunpoint as one of the employees took the money from a cash register and gave it to the gunman. One of the employees, Arthur Haynes, followed the gunman from the restaurant. Haynes saw an old Dodge Ram pick-up leave the scene with an older man driving. No one else was seen in the truck. R. 77, ll. 8 – 25; R. 78, ll. 1 – 25; R. 79, ll. 1 – 25; R. 80, ll. 1 – 11.

The police were called and the truck was seen on Two Notch Road. The police followed the truck to where it stopped at Chestnut and Two Notch which was only minutes from the scene of the robbery. R. 80, ll.11 – 19.

As the police approached the truck, they apprehended the driver, Charles Green, and found Broadnax crouching down in the floorboard of the passenger's side along with a bag containing a gun and money. R. 81, ll. 1 – 18. The police took Arthur Haynes to view the two men, and he identified the truck, and Broadnax as the robber. R. 105, ll. 1 – 25; R. 106, ll. 1 – 25; R. 107, ll. 1 – 25; R. 108, ll. 1 – 25; R. 108, ll. 1 – 25. Broadnax was arrested and charged with armed robbery. R. 192 – 197.

Broadnax told the judge that he was going to testify. The judge then proceeded to settle Broadnax's prior record to determine which parts could be used for impeachment purposes. R. 286, ll. 1 – 25; R. 287, ll. 1 – 13. The state said that they wanted to introduce the three counts of armed robbery for which Broadnax was convicted in 1991. R. 288, ll. 1 – 25; R. 289, ll. 1 – 25; R. 289, ll.

1 – 18. The state also wanted to be able to introduce a prior financial transaction card theft; a prior receiving stolen goods; a prior burglary third degree; a prior grand larceny; and prior petit larceny. R. 290 – 292.

Defense counsel argued that any testimony must “meet the 403 hurdle.” He argued that the admission of the armed robberies was “highly prejudicial” and cumulative and violated Broadnax’s due process rights under the Fourteenth Amendment. R. 299, ll. 1 – 25. He said that the state’s only reason to admit them was to say that Broadnax was an armed robber, so therefore he must have committed this robbery. R. 293, ll. 23 – 25; R. 294, ll. 1 – 25.

The state argued that although the Rule 403 provided that a 403 analysis should be done, that the case law as in State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003), made no reference to a 403 balancing. She argued that Al-Amin, id. ruled that these crimes were automatically admissible for impeachment purposes because they “have the greatest probative value on the issue of truth and veracity.” R. 295, ll. 1 – 25; R. 296, ll. 1 – 25.

Defense counsel then argued that the Federal Rules of Evidence provide that robbery was not a crime of dishonesty, and that the rules of evidence were procedural due process. He argued that South Carolina cannot provide more limitations on due process than the federal government. Counsel argued that a more “constrictive” interpretation of Rule 609 (a) (2) would violate appellant’s due process rights. R. 297, ll. 1 – 25; R. 298, ll. 1 – 25.

The judge ruled that the armed robberies, the transaction card theft, the grand larceny, and the petit larceny were admissible for impeachment under Rule 609 (a) (2). R. 298, ll. 1 – 25. Defense counsel told the court that due to the court’s ruling admitting those prior offenses, Broadnax was not waiving his objection to their admission but that defense counsel wanted to bring those offenses out during direct instead of leaving it to the solicitor to do for the first time during

cross examination. The trial court responded that they were not waiving the objection. R. 301, ll. 25; R. 302, ll. 1 – 25; R. 303, ll. 1 – 12.

On appeal, the state argued in their petition for certiorari, that Broadnax waived his right to challenge the admissibility of his prior convictions because he introduced them during his testimony. This is incorrect as the trial judge assured defense counsel prior to the admission that her objection was protected.

In State v. Mueller, 319 S.C. 266, 460 S.E.2d 409 (Ct. App. 1995), the Court of Appeals held that if a party has obtained a final ruling on the admissibility of impeachment evidence, that party does not lose his right to challenge the admissibility of the evidence by eliciting the evidence during direct examination.

In State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006), the Supreme Court held that the evidence of the defendant's prior convictions for the unlawful possession of a weapon by a convicted felon and pointing and presenting a firearm were inadmissible for impeachment purposes in his trial for murder and the unlawful possession of a weapon by a convicted felon as the prior convictions had nothing to do with the defendant's credibility, and the evidence was more prejudicial than probative in light of his charged offenses. The Court cited State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000) which listed five factors a trial judge should consider in deciding whether to admit prior convictions:

- (1) The impeachment value of the prior crime;
- (2) The point in time of the past crime and the charged crime;
- (3) The similarity of the past crime and the charged crime;
- (4) The importance of the defendant's testimony;
- (5) The centrality of the credibility issue.

The Supreme Court also wrote in State v. Bryant, *supra*, that when the prior offense was similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission.

The Court stated:

Furthermore, a conviction for **robbery** [emphasis added], burglary, theft, and drug possession beyond the basic crime itself, is not probative of truthfulness.

Citing United State v. Smith, 181 F. Supp.2d 904 (N.D.Ill.2002).

On appeal, the state argued that the Supreme Court's ruling in Bryant, that robbery is not a crime of dishonesty was mere dicta. This is in error. The Court had ruled that the defendant's prior conviction for pointing and presenting a firearm was not admissible for impeachment purposes because it had nothing to do with the defendant's credibility. The Court then went on to list other crimes that were not probative of truthfulness which included robbery.

The Court of Appeals was correct in holding that the trial court erred in admitting Broadnax's prior armed robberies for impeachment as they were more prejudicial than probative. They were the same crime for which he was on trial; they occurred in 1991 R. 287, ll. 3 – 23.

QUESTION2

The Court of Appeals correctly performed the necessary balancing test under rule 609, SCRE.

The state relied on the case of State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000), for the proposition that the trial court must conduct the balancing test to determine if the probative value outweighed the prejudicial impact of the prior convictions for impeachment purposes. However, the Supreme Court wrote in Colf, id. :

The balancing test required by Rule 609(b), SCRE, must be conducted by the trial court.

Colf is distinguished from Broadnax because the rule at issue in Broadnax was Rule 609(a), SCRE which concerns prior crimes and crimes of dishonesty. The issue in Colf concerned a prior conviction more than ten years old which is governed by Rule 609(b), SCRE.

The court in Colf also stated that it was impossible for the appellate court to balance the "interest at stake when the record does not contain the specific facts and circumstances necessary to a decision." Again, this is distinguished from Broadnax in that the Court of Appeals had a detailed record sufficient to show that the prior convictions of Broadnax were the same as the current conviction at issue. The record indicated that there were three prior convictions of armed robbery that were the same as the armed robbery conviction at issue.

Thus the Court of Appeals had the specific facts and circumstances to show that the prejudicial impact far outweighed the probative value.

The state also cites State v. Howard, 384 S.C. 2121, 682 S.E.2d 42 (Ct. App. 2009), which does involve a prior conviction pursuant to Rule 609(a), SCRE. However, the Court of Appeals relied on the holding in State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006) for the holding that when the prior offense was similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission.

In State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984), the Supreme Court held that when the previous alleged bad act was strikingly similar to the one for which the appellant was being tried, the danger of prejudice was enhanced.

This was sufficient for a finding of high prejudice by the Court of Appeals. It would be pointless and a waste of judicial economy to remand Broadnax's case for a balancing test when the record clearly shows the prejudice outweighs the probative value.

QUESTION3.

The Court of Appeals was correct in not applying the harmless error standard because the admission of Broadnax's prior armed robberies was not harmless as the evidence of guilt was not overwhelming, and the prior convictions were prejudicial.

The harmless error standard was not appropriate to Broadnax's case as the admission of the three prior armed robbery convictions was highly prejudicial, especially in light of the fact that he was on trial for armed robbery. The evidence was not overwhelming because the victims testified that the robber put on a mask when he entered the building. R. p. 122; R. p. 151.

Broadnax testified that he did not commit this armed robbery at Church's Chicken on May 24, 2009. He admitted that he had a drug problem, and said that he and Charles Green, the co-defendant, frequently got high together. On the day of the robbery, he had just bought drugs, and saw Green driving down Two Notch. Broadnax flagged him down just moments before they heard the police sirens and were stopped by the police. Broadnax ate the crack when they were pulled over by the police. R. 305, ll. 18 – 25; R. 306, ll. 1 – 25; R. 307, ll. 1 – 25; R. 308, ll. 1 – 25; R. 309, ll. 1 – 25; R. 310, ll. 1 – 25.

In State v. Morris, 289 S.C. 294, 345 S.E.2d 477 (1986), the Supreme Court wrote that they recognized that where a trial court error is harmless beyond a reasonable doubt, it does not constitute grounds for reversible error. The Court continued to write, however, that "it is a doctrine which should be employed guardedly on a case by case basis."

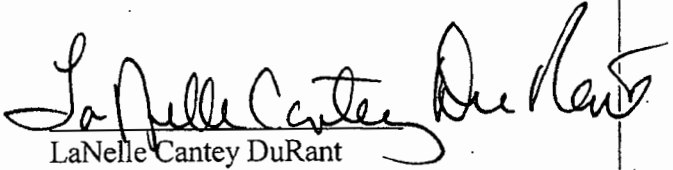
In State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) the Supreme Court wrote that an error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. The court continued to write from Pagan , Id. that an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.

The evidence in Broadnax's case was not sufficient to apply the harmless error standard and was not sufficient to overcome the prejudice from the admission of his three prior armed robbery convictions.

CONCLUSION

Based on the above, the state's petition for a writ of certiorari should be denied and the decision of the Court of Appeals affirmed.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 21st day of May, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

PETITIONER,

V.

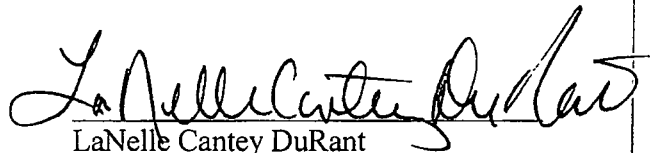
CHRISTOPHER BROADNAX,

RESPONDENT

APPELLATE CASE NO. 2013-000615

CERTIFICATE OF SERVICE

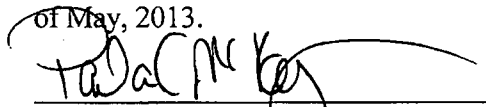
I certify that a true copy of the return to petition for writ of certiorari in this case have been served on Julie Kate Keeney, Esquire, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 21st day of May, 2013.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 21st day
of May, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2013-000615

THE STATE,

Petitioner,

vs.

CHRISTOPHER BROADNAX,

Respondent.

BRIEF OF PETITIONER

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STATEMENT OF ISSUES ON CERTIORARI**I.**

The Court of Appeals erred in holding that armed robbery is not a crime of dishonesty under Rule 609(a)(2), SCRE.

II.

Additionally, the Court of Appeals erred when it refused to remand the case to the trial court in order for the trial court to conduct an on-the-record Rule 609, SCRE, balancing test as required by State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000).

III.

Furthermore, the Court of Appeals erred in not applying the harmless error standard because any error in admitting Respondent's armed robbery convictions was harmless due to the overwhelming evidence of guilt.

STATEMENT OF THE CASE

Procedural History

In November 2009, a Richland County Grand Jury indicted Respondent on the charges of armed robbery and four counts of kidnapping. On June 10, 2010, Respondent proceeded to trial before the Honorable G. Thomas Cooper, Jr. Attorneys James May and Charles Cochran represented Respondent. Attorneys Kathryn Luck Campbell and Nicole Simpson represented the State.

On June 16, 2010, the jury found Respondent guilty as charged. Judge Cooper sentenced Respondent to the mandatory sentence of life without the possibility of parole based on Respondent's three prior armed robbery convictions. On June 23, 2010, Respondent served a Notice of Appeal.

On May 8, 2012, the Court of Appeals heard arguments on the matter. On January 9, 2013, the Court of Appeals issued an opinion in which it reversed Respondent's conviction and sentence and remanded the case for a new trial. State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013).

On February 1, 2013 Petitioner served a Petition for Rehearing. On February 22, 2013, the Court of Appeals issued an order denying the Petition for Rehearing.

Factual History

On May 24, 2009, Respondent entered a Church's Fried Chicken and held four of the employees at gunpoint while he stole the money in the cash register. (R. pp. 91-99, R. pp. 147-156.)

At trial, the State presented testimony from two of the victims who positively identified Respondent as the armed assailant. (R. pp. 137-138; R. p. 162). The victims testified that the robber pointed a silver automatic gun at the victims. (R. p. 95; R. pp.

111-112, R. p. 159.) Additionally, the two victims described the robber as a black male with a lazy eye, who wore a striped shirt. (R. p. 98; R. p. 101; R. p. 109; R. p. 122; R. p. 151; R. pp. 159-160.) The victims also testified that the robber put a mask on his face when he walked into the building. (R. p. 98; R. p. 122.)

After the robber exited the building, one of the victims saw the robber walk towards a gray Dodge truck. (R. pp. 103-106.) When the police pulled over the truck a few blocks from the Church's Fried Chicken within minutes of the robbery, they found Respondent crouching on the floorboard of the truck over a plastic bag. (R. pp. 191-192.) Respondent, who was wearing a striped shirt and had a lazy eye like the victims described, was lying on top of a silver gun, money, and a mask. (R. p. 212; R. p. 244; R. p. 246; R. p. 261.) One of the victims, Arthur Haynes ("Haynes"), was brought to the scene and confirmed the gray truck was indeed the one he had seen. (R. pp. 107-108.) Haynes also immediately identified Respondent as the perpetrator based on his clothing and physical features, specifically noting the lazy eye. (R. pp. 108-109; R. p. 138.)

Furthermore, Respondent's co-defendant, Charles Green ("Green") testified against Respondent at trial. The co-defendant testified that he took Respondent, who was wearing a striped shirt, to the Church's Fried Chicken and saw Respondent go inside the restaurant with a plastic bag. (R. p. 155; R. pp. 226-227.) Green reported that Respondent crouched down when he saw police cars. (R. p. 229.) Green was described as "a black male, older black male with a gray beard and a red shirt," whose appearance was drastically different than that of Respondent. (R. p. 212; R. p. 266.) Haynes and Kirby were clear that the man driving the truck was not the robber. (R. pp. 118-120, R. pp. 158-159.) An officer also noted they had seen no other gray Dodge trucks in the area during their pursuit of Green and Respondent. (R. p. 213.)

Before Respondent testified, the trial judge went over which convictions the State could use to impeach Respondent. (R. pp. 287.) The State told the trial court that it wanted to use Respondent's three prior convictions for armed robbery. (R. p. 287.) Respondent's trial counsel objected to the use of the prior armed robbery convictions. (R. pp. 292-296.) However, the trial judge ruled that the armed robbery convictions were admissible for impeachment purposes under Rule 609(a)(2), SCRE. (R. p. 298.)

ARGUMENT

I.

The Court of Appeals erred in holding that armed robbery is not a crime of dishonesty under Rule 609(a)(2), SCRE.

Petitioner asks this Court to grant certiorari because the Court of Appeals erred in holding that armed robbery is not crime of dishonesty under Rule 609(a)(2), SCRE. Additionally, the Court of Appeals erred in conducting its own Rule 609, SCRE, balancing test. If such test is necessary, the Court of Appeals should have remanded the case to the trial court in order for the trial judge to conduct an on-the-record balancing test because the trial judge was in the best position to weigh the evidence. Furthermore, even if the trial judge erred in admitting Respondent's prior armed robbery convictions, any error was harmless due to the overwhelming evidence of guilt against Respondent.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The reviewing court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

The admission or exclusion of evidence rests on the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error

of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). Moreover, “[a] trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.” State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995); see also State v. Navy, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010) (stating appellate courts must uphold the trial court’s findings regarding whether a defendant was in custody when statements were made if the trial judge’s ruling is supported by the record).

The Court of Appeals erred in holding that armed robbery is not a crime of dishonesty under Rule 609(a)(2), SCRE. Armed robbery is a crime of dishonesty and automatically admissible under Rule 609(a)(2), SCRE.¹

For the purposes of attacking the credibility of a witness, Rule 609(a)(2), SCRE provides the following: “[E]vidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.” Moreover, if the witness’ prior conviction falls under Rule 609(a)(2), SCRE, the court does not have to engage in a probative versus prejudicial analysis. See State v. Bryant, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006). Simply put, the prior conviction is automatically admissible if it falls under Rule 609(a)(2), SCRE. See Id.

Specifically, the Court of Appeals cited State v. Bryant, 369 S.C. at 517, 633 S.E.2d at 155, in support of its holding that the trial judge erred in admitting Respondent’s prior armed robbery convictions for impeachment purposes under Rule 609(a)(2), SCRE. Although this Court in Bryant stated, “a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of

¹ Furthermore, Respondent waived his right to challenge the admissibility of his prior convictions in light of Ohler v. United States, 529 U.S. 753 (2000) (holding a party cannot introduce evidence and then complain on appeal that the evidence was erroneously admitted).

truthfulness[.]” the issue under consideration in that case was not whether a prior conviction for robbery was a crime of dishonesty under Rule 609(a)(2). See Bryant, 369 S.C. at 515, 633 S.E. 2d at 154. Instead, the issue in Bryant was whether or not the defendant’s prior firearm conviction was properly admitted. Id. Thus, this Court’s statement that “a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of truthfulness” was merely dicta and not binding in future cases. See e.g., Humphrey’s Ex’r v. United States, 295 U.S. 602, 627 (1935) (instructing dictum is not controlling but may be followed if sufficiently persuasive).

In the past, South Carolina courts have taken a favorable approach for Petitioner’s position in applying Rule 609(a)(2), SCRE. In State v. Shaw, 328 S.C. 454, 456-57, 492 S.E.2d 402, 403-04 (Ct. App. 1997), the Court of Appeals specifically rejected the federal position in ruling that a shoplifting conviction involved dishonesty for purposes of Rule 609(a)(2). The Court stated:

Common sense tells us that anyone who, in violation of the shoplifting statute, takes and carries away a storekeeper’s merchandise with intent to deprive the owner of its possession without paying for it, or alters or removes a label or price tag in an attempt to buy a product at less than its value, or transfers merchandise from its proper container for the purpose of depriving a storekeeper of its value acts dishonestly. We, therefore, hold a prior conviction for shoplifting can be used to impeach a witness under Rule 609(a)(2), SCRE.

Id. at 456-57, 492 S.E.2d at 403-04. Furthermore, this Court expressly adopted the reasoning and holding in Shaw. See State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999).

Moreover, this Court in Bryant, the case which the Court of Appeals and Respondent primarily rely upon, expressly recognized shoplifting as a crime of

dishonesty. Bryant, 369 S.C. at 517, 633 S.E.2d at 155 (“Under Rule 609(a)(2), SCRE, if a crime is viewed as one involving dishonesty, the court must admit the prior conviction because, prior convictions involving dishonesty or false statement must be admitted regardless of their probative value or prejudicial effect. Thus, Petitioner's convictions for shoplifting and writing bad checks were properly admitted and Petitioner does not dispute this.”).

It would thus seem, therefore, that if shoplifting, a form of stealing, is a crime of dishonesty, then armed robbery, which contains an element of larceny, is also a crime involving dishonesty.² See State v. Frazier, 386 S.C. 526, 533, 689 S.E.2d 610, 613-14 (2010); State v. Keith, 283 S.C. 597, 598, 325 S.E.2d 325, 325-26 (1985); S.C. Code Ann. § 16-11-330(a) (2008); see also State v. Colf, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998) (citing Shaw, and stating: “Although theft-related convictions are probative of credibility”); See State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000). In discussing the issues, the Colf court noted: “The fact that *larceny reflects on credibility*

² Section 16-13-110 (a)(1) of the South Carolina Code provides the following:

(A) A person is guilty of shoplifting if he:

(1) takes possession of, carries away, transfers from one person to another or from one area of a store or other retail mercantile establishment to another area, or causes to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value[.]

S.C. Code Ann. §16-13-110 (a)(1).

Thus, subsection (a)(1) is essentially the crime of larceny. See State v. Sweat, 221 S.C. 270, 70 S.E.2d 324 (1952) (larceny is the trespassory taking and carrying away of the property of another with intent to steal); State v. Haynie, 221 S.C. 45, 68 S.E.2d 628 (1952) (larceny is always included in the offense of robbery).

and the importance of credibility are both factors the trial court should have weighed....”) (emphasis added). Thus, this Court has indicated that larceny bears on credibility.

In another well-reasoned opinion, the Court of Appeals in State v. Al-Amin, 353 S.C. 405, 425, 578 S.E.2d 32, 43 (Ct. App. 2003), held that a prior conviction for armed robbery was admissible under Rule 609(a)(2), SCRE, as a crime of dishonesty. Id. at 425, 578 S.E.2d at 43. In reaching that decision, the court reasoned that “[t]o restrict the application of Rule 609(a)(2) only to those offenses which evidence an element of affirmative misstatement or misrepresentation of fact would be to ignore the plain meaning of the word ‘dishonesty.’” Id. The court noted that the common definition for dishonesty is a “‘disposition to lie, cheat, or steal.’” Id. (citations omitted).

Furthermore, while the comment to Rule 608, SCRE, mentions the restrictive *crimen falsi* definition in its discussion of the “probative of truthfulness or untruthfulness” standard for cross-examination with specific instances of conduct, the notes to Rule 609, SCRE, do not contain such a discussion despite their presence in the comments to Rule 609, FRE. This indicates an intent by the drafters of the South Carolina Rules of Evidence not to adopt the restrictive federal interpretation. See e.g., City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (“ ‘the canon of construction ‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius exclusio alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or the alternative.’ ”) (citations omitted). Moreover, many courts have held that a prior robbery conviction is admissible under Rule 609(a) (2) as a crime involving dishonesty.³

³ The following is a list of where the various state jurisdictions generally fall on the issue of whether robbery is a crime of dishonesty under Rule 609. Many states, of course, have variations on Rule 609, but the principles are generally applicable.

1. Out-of-State Authority

YES OR PROBABLY: AL, AK, AR, CO, CT, DE, DC, FL, ID, IL, IN, IA, KS, ME, MD, MI, MS, NV, NJ, NM, NY, NC, OH, OK, OR, PA, TN, TX, WA, WI

NO OR PROBABLY NOT: AZ, GA, LA, MT, ND, UT, VT, WY

DEPENDS ON FACTS: HI, MN, NH, NE, WV

N/A: CA, KY, MA, MO, RI, VA

UNCLEAR: SD

As evident, most states have found robbery to be a crime of dishonesty. See also Al-Amin, 353 S.C. at 416, 578 S.E.2d at 38. The following is a listing of all the states in alphabetical order with a short discussion of their relevant cases on this issue.

- (1) **ALABAMA:** **PROBABLY.** The Alabama Court of Criminal Appeals held that 3rd degree theft qualified as a crime involving dishonesty. The Court recognized the contrary federal interpretation and legislative history, but concluded that its holding was more “logical” and consistent with the state’s prior case law that theft was a crime of moral turpitude. Robbery was also a crime of moral turpitude, so the same reasoning should apply. The court also quoted a portion of its local civil procedure treatise which referred to looking at the underlying facts of the crime. Huffman v. State, arm (Ala. Crim. App. 1997), cert denied, (Ala. Nov. 21, 1997). My searches did not reveal any definitive statement by the Alabama Supreme Court.
- (2) **ALASKA** **YES.** The Alaska Supreme Court recognized the contrary federal precedent, but still ruled that larceny and robbery “disclose the kind of dishonesty and unreliability which bear upon the veracity of persons perpetrating those crimes.” Alexander v. State, 611 P.2d 469, 475 (Alaska 1980). See also Jensen v. Goreson, 881 P.2d 1119 (Alaska 1994) (holding that conspiracy to poach fish was a crime of dishonesty).
- (3) **ARIZONA** **NO.** The Arizona courts have ruled that the crime must involve the element of deceit or falsification. State v. Malloy, 639 P.2d 315 (Ariz. 1981) (in banc) (burglary does not qualify); State v. Terrell, 753 P.2d 189 (Ariz. Ct. App. 1988) (superseded by statute on other grounds) (attempt to receive stolen property does not qualify).
- (4) **ARKANSAS** **YES.** The Arkansas Supreme Court has held that theft, while not probative of truthfulness or untruthfulness under Ark. R. Evid. 608(b), which pertains to when specific instances of conduct may be used to impeach a witness, is a crime involving dishonesty. Laughlin v. State, 316 Ark. 489, 872 S.W.2d 848 (1994); Rhodes v. State, 276 Ark. 203, 634 S.W.2d 107 (1982). As such, the court has expressly allowed the use of prior theft convictions to impeach a witness’s credibility under Rule 609(a)(2). See, e.g., Webster v. State, 284 Ark. 206, 680 S.W.2d 906 (1984) (allowing use of prior conviction for grand larceny without need to consider the prejudicial effect as a crime involving dishonesty); Floyd v. State, 278 Ark. 86, 643 S.W.2d 555 (1982) (allowing evidence of prior

- convictions for burglary and theft under Rule 609(a)(2)); James v. State, 274 Ark. 162, 622 S.W.2d 669 (1981) (finding that prior convictions for grand larceny and theft involved dishonesty).
- (5) **CALIFORNIA** N/A. California uses moral turpitude. Robbery is a crime involving "moral turpitude" and thus is probative of a witness's credibility. People v. Collins, 722 P.2d 173 (Cal. 1986).
- (6) **COLORADO** **PROBABLY.** The Colorado Supreme Court held that shoplifting is a crime of dishonesty. People v. Segovia, 196 P.3d 1126 (Colo. 2008).
- (7) **CONN.** **YES.** Connecticut still uses case law-established evidentiary rules, but it has noted its rules roughly follow Rule 609. Crimes involving larcenous intent fall within its "dishonesty" category. State v. Dawkins, 681 A.2d 989 (Conn. 1996); State v. Banks, 755 A.2d 279 (Conn. App. Ct. 2000).
- (8) **DELAWARE** **YES.** Gregory v. State, 616 A.2d 1198 (Del. 1992) ("we have further defined the term 'dishonesty' as the act or practice of lying, deceiving, cheating, stealing or defrauding"); see also Paskins v. State, 655 A.2d 1225 (Del. 1995) (holding robbery is a crime of dishonesty).
- (9) **D.C.** **YES.** Bates v. United States, 403 A.2d 1159 (D.C. 1979) (noting that House Report for the DC statute includes robbery as crime involving dishonesty, and quoting with approval the D.C. Circuit in stating that acts such as stealing reflect on a man's honesty and trustworthiness).
- (10) **FLORIDA** **YES.** State v. Page, 449 So.2d 813 (Fla. 1984) (ruling that all crimes within the "Theft, Robbery, and Related Crimes" section of the criminal statutes involve dishonesty).
- (11) **GEORGIA** **NO.** See Adams v. State, 644 S.E.2d 426 (Ga. Ct. App. 2007) (holding prior conviction for misdemeanor theft by receiving stolen property is not a crime involving dishonesty within the meaning of OCGA § 24-9-84.1(a)(3); while adopting narrow view, does not preclude showing that crime was committed by deceitful means, and State bears burden of making such showing).
- (12) **HAWAII** **POSSIBLY (depends on facts).** State v. Pacheco, 26 P.3d 572 (Haw. 2001).
- (13) **IDAHO** **PROBABLY.** Idaho's rule is different and requires that the crime not only be a felony but also relevant to the witness's credibility. In an older case under a slightly different rule, the court held burglary relevant to credibility and quoted with approval: "On the other hand robbery, larceny, and burglary, while not showing a propensity to falsify, do disclose a disregard for the rights of others which might reasonably be expected to express itself in giving false testimony whenever it would be to the advantage of the witness. If the witness had no compunction against stealing another's property or taking it away from him by physical threat or force, it is hard to see why he would hesitate to obtain an advantage for himself or friend in a trial by giving false testimony. Furthermore, such criminal acts, although evidenced by a single conviction, may represent such a marked break from sanctioned conduct that it affords a reasonable basis of future prediction upon credibility...." State v. Ybarra, 634 P.2d 435 (Idaho

1981). See also State v. Grist, 152 Idaho 786, 275 P.3d 12 (Idaho App. 2012)(current rule requires all potential prior used for impeachment subject to analysis of (1) whether fact or nature of conviction is relevant to credibility and (2) whether probative value outweighs prejudicial effect; crimes of theft and robbery fall into a middle category with "only a general relationship with honesty," but must review facts and circumstances of each case to determine whether a particular conviction is relevant to credibility; also noted that a theft or robbery statute requiring fraud or deceit may be stronger indicator of witness' credibility); State v. Griffith, 144 Idaho 356, 161 P.3d 675 (Idaho App. 2007)(grand theft conviction admitted).

(14) ILLINOIS

YES. Illinois's rule applies a "probative substantially outweighs by prejudice" standard to both the "one-year" and dishonesty categories. It has held that "crimes involving . . . stealing press heavily on the probative side of the scale," without need to look at the facts of each conviction and also has held that misdemeanor theft is a crime involving dishonesty. Torres v. Irving Press, Inc., 707 N.E.2d 248 (Ill. Ct. App. 1999).

(15) INDIANA

YES. Theft is a crime of dishonesty in a 609 analysis. Rowe v. State, 704 N.E.2d 1104 (Ind.App. 1999) (under common law burglary and theft convictions are admissible as involving dishonesty and reflecting upon credibility for truth and veracity; these convictions would also be admissible under Ind. Rule 609); Newman v. State, 719 N.E.2d 832 (Ind. Ct. App. 1999). Therefore, robbery should be a crime of dishonesty as well.

(16) IOWA

YES. Armed robbery is a crime of dishonesty in an impeachment analysis. State v. Latham, 366 N.W.2d 181 (Iowa 1985). See also State v. Mickens, 462 N.W.2d 296 (Iowa Ct. App. 1990) (theft is crime of dishonesty).

(17) KANSAS

YES. The rule in Kansas prevents use of convictions for impeachment unless the crime involves dishonesty or false statement. Also, such impeachment cannot be done against a testifying criminal defendant unless the defendant puts his credibility at issue. State v. Johnson, 907 P.2d 144 (Kan. Ct. App. 1995). A juvenile theft conviction involving dishonesty or false statement is admissible to attack the credibility of a witness following a sufficient proffer. State v. Mahkuk, 551 P.2d 869 (Kan. 1976). "Crimes which are impulsive or which are committed in the heat of passion, or crimes which are founded on negligence, or crimes which in no way reflect a dishonest nature, would not normally reflect on the credibility of the witness and should not be admissible. On the other hand, there are crimes which are inherently dishonest, whether because of their willful character, disregard for decency, or general lack of fairness." State v. Brown, 630 P.2d 731, 734 (Kan. Ct. App. 1981).

(18) KENTUCKY

N/A. Kentucky uses a case law-based system. Their old rule allowed impeachment only with "dishonest" felonies, including stealing. Now, however, identification of prior convictions can only be introduced if the witness denies any felony convictions during cross-examination. Commonwealth v. Richardson, 674 S.W.2d 515 (Ky. 1984).

- (19) **LOUISIANA** **PROBABLY NOT.** Louisiana's evidentiary statute is modeled after Rule 609. In one case, the court cited McCormick on Evidence for the proposition that crimes involving force, such as robbery, are not dishonest per se. Williams v. United Fire & Casualty Co., 594 So.2d 455 (La. Ct. App. 1991). The court has held that embezzlement by an employee is a crime of dishonesty, but embezzlement is an easy fit because of the employee's position of trust. Hebert v. Hartford Ins. Co., 649 So.2d 631 (La. Ct. App. 1994).
- (20) **MAINE** **YES.** Maine has Rule 609, but applies a pragmatic relevance test to both the "one-year" and dishonesty categories. Thus, the issue whether armed robbery is dishonest is generally moot because it also satisfies the "one-year" category. In any event, the courts have still held that robbery is "dishonest." State v. Charest, 424 A.2d 718, 719 (Me. 1981) ("Under Maine law, it is the category of the offense which establishes whether it is an offense involving dishonesty or false statement and not the underlying facts leading to the prior conviction.") (quoting State v. Gervais, 394 A.2d 1183, 1186 (Me. 1978) ("[A]cts of deceit, fraud, cheating, or stealing ... are universally regarded as conduct which reflects adversely on ... honesty and integrity.")) and State v. Toppi, 275 A.2d 805, 810 n. 5 (Me. 1971)). See also State v. Hanscome, 459 A.2d 569 (Me. 1983).
- (21) **MARYLAND** **PROBABLY.** Maryland has a modified version of Rule 609 which allows impeachment of "infamous crimes" (moral turpitude) as well as other crimes "relevant to the witnesses' credibility." A pragmatic relevance test is applied to both categories. Jackson v. State, 668 A.2d 8 (Md. Ct. App. 1995). The court has held that theft qualifies as *crimen falsi* because it is the "embodiment of deceitfulness." Beales v. State, 619 A.2d 105 (Md. Ct. App. 1993). Robbery has been held to qualify as an "infamous crime." Passamichali v. State, 569 A.2d 733 (Md. Ct. Spec. App. 1990).
- (22) **MASS.** **N/A.** Massachusetts has a markedly different rule in which various types of crimes (e.g. misdemeanor, felony with no or suspended sentence, felony with jail time) are excluded after certain time periods unless there were subsequent convictions. Mass. Gen L., ch. 233, § 21 (1999). The court has had no problems with impeachment with armed robbery, but, of course, whether it is a crime involving dishonesty is not a test under Massachusetts law. In a discussion on the subject, the court noted that while robbery was not as probative as perjury, robbery "does involve theft and is a serious crime that shows conscious disregard for the rights of others. Such conduct reflects more strongly on credibility than, say, crimes of impulse, or simple narcotics or weapons possession." But robbery "is generally less probative than crimes that involve deception or stealth." The court cited with approval a federal case which held that robbery does NOT fall within the automatic "dishonesty" category. Commonwealth v. Ruiz, 493 N.E.2d 511 (Mass. App. Ct. 1986).
- (23) **MICHIGAN** **YES.** Michigan's Rule 609 is different in that it specifically requires that the crime either contain an element of theft or be characterized as dishonest. Moreover, all crimes must satisfy the "one year" requirement. Rule 609, MRE. Thus, obviously armed robbery qualifies because it has an element of theft. However, one opinion stated that while robbery is less probative than other theft

- offenses, it "is an indicator that [the] defendant is of dishonest character." People v. Cross, 508 N.W.2d 144, 146-47 (Mich. Ct. App. 1993).
- (24) MINNESOTA **POSSIBLY (depends on facts).** Minnesota has held that robbery is not a crime of dishonesty. However, the court has noted that while shoplifting does not qualify as a crime involving dishonesty, theft by swindle does. The court has implied that the facts of the prior crime may decide the issue. State v. Sims, 526 N.W.2d 201 (Minn. 1994). Presumably such an argument could be made for an appropriate armed robbery.
- (25) MISS. **YES.** See Bogard v. State, 624 So.2d 1313, 1316 (Miss.1993) (noting that robbery conviction may be introduced pursuant to M.R.E. 609(a)(2) as crime of "dishonesty" for purpose of impeaching defendant's credibility as witness in his own behalf).
- (26) MISSOURI **N/A.** The Supreme Court of Missouri has interpreted § 491.050, its impeachment statute, as conferring an absolute right to use prior convictions of any witness, including the accused, in order to impeach his credibility in a subsequent criminal or civil case. State v. Giffin, 640 S.W.2d 128, 132 (Mo.1982).
- (27) MONTANA **NO.** Montana's Rule 609 provides that evidence of a criminal conviction is NOT admissible to impeach a witness. However, under Rule 608 Montana allows inquiry into specific instances of conduct, even though they might have ultimately resulted in a criminal conviction. Of these acts, burglary and theft do not qualify as dishonest acts sufficient to bring them within the "probative of truthfulness" standard in Rule 608(b). See, e.g. State v. Martin, 926 P.2d 1380 (Mont. 1996); State v. Gollehon, 864 P.2d 249 (Mont. 1993).
- (28) NEBRASKA **POSSIBLY (depends on facts).** Nebraska's Rule 609 is similar to the federal rule, and its opinions have cited the various federal authorities to hold that only crimes of *crimen falsi* apply. The court has ruled however, that if inquiry into the facts show that a petit larceny involved **deceit or deception**, then the crime is *crimen falsi*. State v. Ellis, 303 N.W.2d 741 (Neb. 1981) (disapproved on other grounds (citation omitted)).
- (29) NEVADA **PROBABLY.** Nevada allows impeachment if a conviction is punishable by more than one year, and the crime is not more than one year old. There is no dishonesty category. However, the court has implied that a robbery conviction reflects on truthfulness, which enhances its probative value in a pragmatic relevance test. Wesley v. State, 916 P.2d 793 (Nev. 1996).
- (30) N.H. **DEPENDS ON FACTS.** See State v. Long, 12 A.3d 1289 (N.H. 2011). However, in Long, New Hampshire Supreme Court cited to an Ohio case, State v. Taliaferro, 2 Ohio App.3d 405, 442 N.E.2d 481, 482 (1981) ("We hold that the offenses of attempted forgery, petty theft and attempted receiving stolen property are offenses involving dishonesty and that the trial court therefore did not err in permitting the introduction into evidence of the defendant's prior convictions for those offenses for the purpose of impeaching his credibility.").

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- (31) N.J. YES. New Jersey's Rule 609 allows impeachment with all criminal convictions unless excluded within the discretion of the trial judge. State v. Brunson, 625 A.2d 1085 (N.J. 1993). However, the court held under its old rules that an armed robbery conviction was a crime involving dishonesty and thus properly admitted for impeachment. State v. Pennington, 575 A.2d 816 (N.J. 1990).
- (32) N. MEXICO YES. Robbery has been held to be a crime of dishonesty under Rule 609. State v. Day, 617 P.2d 142 (N.M. 1980).
- (33) NEW YORK YES. Robbery and petit larceny are crimes of dishonesty and thus admissible for impeachment of a criminal defendant. People v. Moody, 645 N.Y.S.2d 375 (N.Y. App. Div. 1996).
- (34) N. CAR. YES. N.C.'s rule does not distinguish crimes of dishonesty and permits a broad range of offenses to be admitted to attack credibility. Nonetheless, it has been noted that robbery is a crime of dishonesty and therefore highly probative for impeachment under Rule 609. In one particular case, the court ruled that since the defendant's credibility was crucial to the case, an over-age robbery conviction was more probative than prejudicial. State v. Holston, 518 S.E.2d 216 (N.C. Ct. App. 1999) (citing State v. Lynch, 445 S.E.2d 581 (N.C. 1994)).
- (35) N. DAKOTA NO. The court, citing various federal authorities, has ruled that crimes of force, such as robbery, and crimes of stealth, such as burglary, are not crimes of dishonesty automatically admissible under Rule 609(a)(2). State v. Bohe, 447 N.W.2d 277 (N.D. 1989).
- (36) OHIO YES. The courts have ruled that theft is a crime of dishonesty under Rule 609, despite the Staff Note to the state rule indicating an intent to adopt the restrictive federal version. Ohio v. Tolliver, 514 N.E.2d 922 (Ohio Ct. App. 1986).
- (37) OKLAHOMA PROBABLY. Under Oklahoma's old impeachment statute, which also had the 609-style "dishonesty" and "one-year" categories, the court ruled breaking and entering to be a crime involving dishonesty. The court believed the crime dishonest because it involves the elements of intent to commit a felony, larceny, or malicious mischief. Parks v. State, 746 P.2d 200 (Okla. Crim. App. 1987).
- (38) OREGON YES. Oregon has held both theft and armed robbery to be crimes of dishonesty. State v. Gallant, 764 P.2d 920 (Or. 1988); State v. Sims, 692 P.2d 575 (Or. 1984).
- (39) PA. YES. Pennsylvania's 609 allows impeachment only if the crime involves dishonesty or false statement. Robbery is deemed to be a crime involving dishonesty. Commonwealth v. Jackson, 561 A.2d 335 (Pa. Sup. Ct. 1989).
- (40) R.I. N/A. Rhode Island allows conviction with any crime but requires an *in camera* offer of proof if the crime is a misdemeanor involving dishonesty. State v. Simpson, 606 A.2d 677 (R.I. 1992). There are no cases interpreting this statute and robbery.
- (41) S.D. UNCLEAR. No cases were found interpreting the dishonesty category in South Dakota's version of Rule 609.

- (42) TENN. YES. Under Tennessee's version of Rule 609, robbery is a crime involving dishonesty. State v. Galtmore, 994 S.W.2d 120 (Tenn. 1999).
- (43) TEXAS PROBABLY. Texas's Rule 609 allows the use of felonies and crimes involving moral turpitude, after the judge performs a pragmatic relevance test. However, the impeachment value, or whether the crime involves dishonesty and deception, is a relevant factor in judging probativeness. Theus v. State, 845 S.W.2d 874 (Tex. Crim. App. 1992). Robbery has been held to constitute a crime of dishonesty, but the courts have said it is "unclear" whether robbery involves deception. Simpson v. State, 886 S.W.2d 449 (Tex. Ct. App. 1994); Wilson v. State, 1995 W.L. 232744 (Tex. Ct. App. 1995) (unpublished).
- (44) UTAH NO. Utah has a similar version of Rule 609 but has held that robbery is not automatically admissible under the dishonesty category. State v. Morrell, 803 P.2d 292 (Utah Ct. App. 1990) (while not automatically admissible under 609(a)(2), opinion suggests inquiry may be made at court's discretion to determine if theft may be admissible under 609(a)(2) based on facts).
- (45) VERMONT PROBABLY NOT. Vermont's Rule 609 allows impeachment with any crime if it either involves a statutory element of "untruthfulness or falsification" or is a "one-year" felony, and it passes a pragmatic relevance test. The Reporter's Comments to the rule note the intent to take the restrictive federal interpretation, and states that the word "untruthfulness" was deliberately used to avoid the flap over the meaning of "dishonesty". V.R.E. 609. See generally State v. Ashley, 623 A.2d 984 (Vt. 1993).
- (46) VIRGINIA N/A. Virginia allows impeachment with either felonies, or misdemeanors involving moral turpitude. Luck v. Commonwealth, 515 S.E.2d 325 (Va. Ct. App. 1999); Johnson v. Commonwealth, 345 S.E.2d 343 (Va. Ct. App. 1986).
- (47) WASH. YES. Washington has a version of Rule 609 similar to South Carolina's. Robbery is a crime of dishonesty and is therefore automatically admissible. State v. Rivers, 921 P.2d 495 (Wash. 1996).
- (48) W. VA. POSSIBLY (depends on facts). The court has discussed with approval the more restrictive federal interpretation that robbery is not a crime of dishonesty per se. However, the court has indicated that it will look at the facts of the underlying crime when making this determination. State v. Rahman, 483 S.E.2d 273 (W. Va. 1996); Wilkinson v. Bowser, 483 S.E.2d 92 (W. Va. 1996).
- (49) WISC. PROBABLY. Wisconsin allows impeachment with any crime after application of a pragmatic relevance test. Wis. Stat § 906.09 (1999). In any event, at least one unpublished case has stated that robbery's probative value was enhanced because it is a crime involving dishonesty. State v. Fry, 1993 W.L. 38300 (Wisc. Ct. App. 1993) (unpublished).
- (50) WYO. PROBABLY NOT. Wyoming has discussed with approval the restrictive federal definition of crimes amounting to dishonesty or false statement. Jones v. State, 735 P.2d 699 (Wyo. 1987). However, the court has indicated a willingness to look at the facts of the crime in determining its probativeness.

Miller v. State, 784 P.2d 209 (Wyo. 1989) (prior conviction more probative because it contradicted defendant's testimony on his use of aliases).

2. Federal Authority

- (1) 1st Cir. **POSSIBLY (depends on facts).** The First Circuit has held that robbery is not a crime of dishonesty per se. However, the court has noted that if it is shown the crime was committed by "fraudulent or deceitful" means, then it could qualify as automatically admissible under Rule 609(a)(2). United States v. Sullivan, 85 F.3d 743 (1st Cir. 1996) (theft); United States v. Levesque, 681 F.2d 75 (1st Cir. 1982); United States v. Grandmont, 680 F.2d 867 (1st Cir. 1982).
- (2) 2nd Cir. **POSSIBLY (depends on facts).** In an older opinion, the court cited with approval a D.C. Circuit opinion which concluded that attempted robbery was not a crime of dishonesty per se. United States v. Hawley, 554 F.2d 50 (2d Cir. 1977). However, the court has noted it "will look beyond the elements of the offense to determine whether the conviction rested upon facts establishing dishonesty or false statement." United States v. Payton, 159 F.3d 49 (2d Cir. 1998).
- (3) 3rd Cir. **NO.** The Third Circuit has indicated it will only look to the statutory elements in determining whether a crime involves dishonesty or false statement. Cree v. Hatcher, 969 F.2d 34 (3d Cir. 1992) (willful failure to file federal tax return NOT a crime involving dishonesty) (citing United States v. Lewis, 626 F.2d 940, 946 (D.C. Cir. 1980)). But see United States v. Bianco, 419 F.Supp. 507, 508-09 (E.D.Pa. 1976), aff'd, 547 F.2d 1164 (3d Cir. 1977) (unpublished).
- (4) 4th Cir. **PROBABLY NOT.** The court has cited with approval the restrictive interpretation generally given to "dishonesty" by federal authorities. Indeed, the court has held insufficient a conviction for "worthless checks" where nothing indicated the charges were for anything more than insufficient funds. United States v. Cunningham, 638 F.2d 696 (4th Cir. 1981). The court has also seemed only to engage in a analysis of the crime's elements rather than the underlying facts. United States v. Rogers, 853 F.2d 249 (4th Cir. 1988) (N.C.'s worthless checks statute contains elements of dishonesty); United States v. Blackshear, 1992 W.L. 36809 (4th Cir. 1992) (unpublished) (defendant does not contest finding that interstate transportation of stolen goods involves an element of dishonesty).
- (5) 5th Cir. **PROBABLY NOT (may depend on facts).** The Court has ruled that bank robbery does not fall within Rule 609(a)(2) despite earlier precedent implying the contrary. United States v. Preston, 608 F.2d 626, 638 n. 15 (5th Cir. 1979). See also Coursey v. Broadhurst, 888 F.2d 338 (5th Cir. 1989) (cattle theft not crime of dishonesty). But see United States v. Cathey, 591 F.2d 268, 276 n. 16 (5th Cir. 1979) (noting that certain petit larcenies involve dishonesty and the court must look at the underlying facts). But see United States v. Livingston, 816 F.2d 184 (5th Cir. 1987) (bad check conviction would be admissible but defendant failed to explain nature of crime or whether it involved intent to defraud).

As the Court of Appeals pointed out in Al-Amin,

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- (6) 6th Cir. NO. Armed robbery is not a crime of dishonesty or false statement under Rule 609(a)(2). United States v. Scisney, 885 F.2d 325, 326 (6th Cir.1989).
- (7) 7th Cir. POSSIBLY (depends on facts). The court has indicated willingness to consider the facts of a theft conviction to determine whether the crime falls within dishonesty or false statement. United States v. Wiman, 77 F.3d 981 (7th Cir. 1995); United States v. Rodriguez, 62 F.3d 948 (7th Cir. 1995). United States v. Amaechi, 991 F.2d 374 (7th Cir. 1993) (noting that petty shoplifting is not a crime involving dishonesty, but left the question open on whether a more serious shoplifting qualifies).
- (8) 8th Cir. NO. The court has stated that theft is not a crime involving dishonesty. "It involves stealth and a lack of respect for property rights, and is not characterized by deceit or deliberate interference with judicial truthseeking." United States v. Yeo, 739 F.2d 385 (8th Cir. 1984).
- (9) 9th Cir. NO. Robbery is not a per se crime of dishonesty and thus it is inadmissible under Rule 609(a)(2). United States v. Alexander, 48 F.3d 1477 (9th Cir. 1995). But see United States v. Mehrmenesh, 689 F.2d 822 (9th Cir. 1982) (smuggling has conviction did not involve dishonesty when government did not present any facts demonstrating conviction actually involved fraud or deceit); see also United States v. Bracken, 969 F.2d 827 (9th Cir. 1992) (holding that armed robbery is not a crime of dishonesty per se).
- (10) 10th Cir. POSSIBLY (depends on facts). Reasoning that an absence of respect for property rights is not probative of truthfulness, the Tenth Circuit has stated that theft, robbery, and shoplifting are not crimes which per se fall within the "dishonesty" category. United States v. Dunson, 142 F.3d 1213 (10th Cir. 1998). However, the court has noted that it will look at the underlying facts of a conviction not involving a per se dishonest crime to see if it rested on facts establishing honesty or false statement. Id. See also United States v. Mejia-Alarcon, 995 F.2d 982 (10th Cir. 1993); United States v. Whitman, 665 F.2d 313, 320 (10th Cir.1981) (larceny conviction resulting from land fraud scheme was crime of dishonesty or false statement).
- (11) 11th Cir. NO. The Eleventh Circuit has stated that theft, robbery, and shoplifting do not fall within the category in Rule 609(a)(2). United States v. Sellers, 906 F.2d 597 (11th Cir. 1990). However, the court has stated that "[p]rior misdemeanor theft convictions are usually not sufficiently probative of veracity," which may be read to imply a willingness to look at the underlying facts. United States v. Farmer, 923 F.2d 1557 (11th Cir. 1991).
- (12) D.C. Cir. NO. Robbery, larceny, and shoplifting are not crimes of dishonesty or false statement. United States v. Lipscomb, 702 F.2d 1049, 1057 n. 29 (D.C. Cir. 1983).

An essential element of robbery is that the perpetrator of the offense steals the goods and chattels of another . . . Stealing is defined in law as larceny. Larceny involves dishonesty. The fact that the perpetrator of the crime manifests or declares his dishonesty by brazenly committing the crime does not make him an honest person.

353 S.C. at 421. 578 S.E.2d at 40-41.

Because precedent set by the federal circuit courts is not binding on this Court⁴ and the statement in Bryant was merely dicta, this Court should follow the sound reasoning in Al-Amin, which held armed robbery, which is a crime involving the taking of property that the perpetrator of the crime has no honest right to possess, is automatically admissible under 609(a)(2) as a crime of dishonesty.

II.

Additionally, the Court of Appeals erred when it refused to remand the case to the trial court in order for the trial court to conduct an on-the-record Rule 609, SCRE, balancing test as required by State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000).

Moreover, the Court of Appeals erred in conducting its own Rule 609(a)(1), SCRE balancing test. Thus, if this Court concludes that armed robbery is not a crime of dishonesty, this Court should remand this case to the trial court in order for the trial judge to make an on-the-record Rule 609(a)(1), SCRE finding.

In State v. Colf, 337 S.C. 622, 628-29, 525 S.E.2d 246, 249 (2000), this Court held that the Court of Appeals erred in conducting a Rule 609 balancing test instead of remanding the issue to the trial court in order to make the determination. This Court stated the following:

⁴ State v. Al-Amin, 353 S.C. at 416, 578 S.E.2d at 38.

The Court of Appeals went on to “consider in more detail the probative value of these convictions, and whether this probative value ‘substantially outweighs’ the prejudicial effect.” **This was error.** The Court of Appeals should not have undertaken the Rule 609(b) balancing test itself, but should have remanded the question to the trial court.

Id. (citation omitted) (emphasis added).

Moreover, in its reasoning, this Court instructed: “It is difficult, if not impossible, for an appellate court to balance the interests at stake when the record does not contain the specific facts and circumstances necessary to a decision.” Id.

Under Rule 609(a)(1), SCRE, evidence of an accused’s prior conviction is admissible so long as the “the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted . . . and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused.” Rule 609(a)(1), SCRE.

Thus, the Court of Appeals should have remanded this case, in accordance with Colf, to the trial court in order for the trial judge to conduct a Rule 609 balancing test. See also State v. Howard, 384 S.C. 212, 223, 682 S.E.2d 42, 48 (Ct. App. 2009) (noting that an appellate court should not undertake a Rule 609 balancing test but rather should remand the issue to the trial court).

In summary, the Court of Appeals erred in conducting its own Rule 609, SCRE, balancing test instead of remanding the case to the trial court to conduct the test because the trial judge was in the best position to weigh the evidence.

III.

Furthermore, the Court of Appeals erred in not applying the harmless error standard because any error in admitting Respondent's armed robbery convictions was harmless due to the overwhelming evidence of guilt.

In the case at hand, the State presented overwhelming evidence of guilt against Respondent. Thus, any error in admitting Respondent's prior convictions for armed robbery was harmless. See State v. Scott, 326 S.C. 448, 452, 484 S.E.2d 110, 112 (Ct. App. 1997)) (overwhelming evidence of guilt leads to harmless error). After an error is discovered, the appellate court must then determine whether the error was harmless. See State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless.").

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error generally depends on the materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). "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." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

In the case at hand, the evidence of Respondent's guilt was absolutely overwhelming, rendering any error in admitting the prior convictions harmless. The State presented testimony from two of the victims who positively identified Respondent as the armed assailant. (R. pp. 137-138; R. p. 162). The victims testified that the robber pointed a silver automatic gun at the victims. (R. p. 111.) Additionally, the two victims described the robber as a black male with a lazy eye, who wore a striped shirt. (R. p. 98; R. p. 109; R. p. 122; R. p. 151.) The victims also testified that the robber put a mask on his face when he walked into the building. (R. p. 122.) Moreover, after the robber exited the building, one of the victims saw the robber walk towards a gray Dodge truck. (R. pp. 103-106.) When the police pulled over the truck a few blocks from the Church's Fried Chicken, they found Respondent crouching on the floorboard of the truck over a plastic bag. (R. pp. 191-192.) Respondent, who was wearing a striped shirt and had a lazy eye like the victims identified, was lying on top of a silver gun, money, and a mask. (R. p. 244.). Furthermore, Respondent's co-defendant testified against Respondent at trial. The co-defendant testified that he took Respondent to the Church's Fried Chicken and saw Respondent go inside the restaurant. (R. pp. 226-227.) The co-defendant also testified that Respondent was wearing a striped shirt and light colored pants on the day of the robbery. Moreover, Respondent carried a plastic bag inside the restaurant. (R. pp. 226-227.)

Based on the absolutely overwhelming evidence of guilt consisting of the positive in-court and out-of-court identifications of Respondent as the gunman in the robberies, the fact the robber had a lazy eye just like Respondent, the fact the robber wore a striped shirt just like Respondent, the accomplice's testimony implicating Respondent in the crimes, the discovery of the silver gun underneath Respondent's body, the discovery of a

substantial quantity of money lying underneath Respondent, the discovery of a mask underneath Respondent's body, and the truck matching the witnesses' description, all within minutes of the robbery, Respondent's guilt was conclusively established beyond a reasonable doubt. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt). Moreover, three additional theft crimes (grand larceny, petit larceny, and financial transaction card theft) were admitted for impeachment of Respondent's testimony without challenge. (R. p. 298; R. p. 315.)

In summary, this Court should reverse the Court of Appeal's decision because even if the three convictions were erroneously admitted, the error was harmless.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals should be reversed and the judgment and conviction of the trial court be reinstated.

Respectfully submitted,

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July 14, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
Honorable G. Thomas Cooper, Circuit Court Judge
Appellate Case No. 2013-000615

THE STATE,

Respondent,

vs.

RUSHAN COUNTS,

Petitioner.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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ATTORNEYS FOR RESPONDENT

July 14, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

Petitioner,

vs.

CHRISTOPHER BROADNAX,

Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Brief of Petitioner on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 14th day of July, 2014.


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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

PETITIONER,

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CHRISTOPHER BROADNAX,

RESPONDENT

APPELLATE CASE NO. 2013-000615

BRIEF OF RESPONDENT

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ISSUES PRESENTED

1. The Court of Appeals correctly held that armed robbery is not a crime of dishonesty pursuant to Rule 609(a)(2), SCRE.
2. The Court of Appeals correctly performed the necessary balancing test under rule 609, SCRE.
3. The Court of Appeals was correct in not applying the harmless error standard because the admission of Broadnax's prior armed robberies was not harmless as the evidence of guilt was not overwhelming, and the prior convictions were prejudicial.

STATEMENT OF THE CASE

In November 2009, the Richland County Grand Jury indicted Christopher Broadnax on the charges of armed robbery and four counts of kidnapping. On June 10, 14 – 16, 2010, Broadnax proceeded to trial before the Honorable G. Thomas Cooper, Jr., and a jury. He was represented by James May and Charles Cochran. The state was represented by Kathryn Luck Campbell. The jury returned verdicts of guilty as indicted on all charges. Judge Cooper sentenced Broadnax to the mandatory sentence of life without the possibility of parole (LWOP).

Broadnax's attorney filed a notice of appeal. The Court of Appeals reversed Broadnax's conviction and sentence and remanded the case for a new trial on January 9, 2013. State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013). App. 1 – 10.

The state filed a petition for rehearing which the Court of Appeals denied on February 22, 2013. App. 30. The state then filed a petition for writ of certiorari to the Court of Appeals on March 25, 2013. Appellate counsel filed a return to the petition for writ of certiorari. The Supreme Court granted the state's petition for a writ of certiorari to review the Court of Appeal's decision on June 12, 2014. The state filed Brief of Petitioner on July 14, 2014. This Brief of Respondent follows.

STATEMENT OF FACTS

On May 24, 2009, a gunman entered the restaurant, Church's Fried Chicken at 2436 Taylor Street in Columbia, and held four employees at gunpoint as one of the employees took the money from a cash register and gave it to the gunman. One of the employees, Arthur Haynes, followed the gunman from the restaurant. Haynes saw an old Dodge Ram pick-up leave the scene with an older man driving. No one else was seen in the truck. R. 77, ll. 8 – 25; R. 78, ll. 1 – 25; R. 79, ll. 1 – 25; R. 80, ll. 1 – 11.

The police were called and the truck was seen on Two Notch Road. The police followed the truck to where it stopped at Chestnut and Two Notch which was only minutes from the scene of the robbery. R. 80, ll. 11 – 19.

As the police approached the truck, they apprehended the driver, Charles Green, and found Broadnax crouching down in the floorboard of the passenger's side along with a bag containing a gun and money. R. 81, ll. 1 – 18. The police took Arthur Haynes to view the two men, and he identified the truck, and Broadnax as the robber. R. 105, ll. 1 – 25; R. 106, ll. 1 – 25; R. 107, ll. 1 – 25; R. 108, ll. 1 – 25; R. 108, ll. 1 – 25. Broadnax was arrested and charged with armed robbery. R. 192 – 197.

Broadnax told the judge that he was going to testify. The judge then proceeded to settle Broadnax's prior record to determine which parts could be used for impeachment purposes. R. 286, ll. 1 – 25; R. 287, ll. 1 – 13. The state said that they wanted to introduce the three counts of armed robbery for which Broadnax was convicted in 1991. R. 288, ll. 1 – 25; R. 289, ll. 1 – 25; R. 289, ll. 1 – 18. The state also wanted to be able to introduce a prior financial transaction card theft; a prior receiving stolen goods; a prior burglary third degree; a prior grand larceny; and prior petit larceny. R. 290 – 292.

Defense counsel argued that any testimony must “meet the 403 hurdle.” He argued that the admission of the armed robberies was “highly prejudicial” and cumulative and violated Broadnax’s due process rights under the Fourteenth Amendment. R. 299, ll. 1 – 25. He said that the state’s only reason to admit them was to say that Broadnax was an armed robber, so therefore he must have committed this robbery. R. 293, ll. 23 – 25; R. 294, ll. 1 – 25.

The solicitor argued that although Rule 403 required that a balancing analysis should be done, that the case law as in State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003), made no reference to a 403 balancing. The solicitor argued that Al-Amin, id., ruled that these crimes were automatically admissible for impeachment purposes because they “have the greatest probative value on the issue of truth and veracity.” R. 295, ll. 1 – 25; R. 296, ll. 1 – 25.

Defense counsel then argued that the Federal Rules of Evidence provide that robbery was not a crime of dishonesty, and that the rules of evidence were procedural due process. He argued that South Carolina cannot provide more limitations on due process than the federal government. Counsel argued that a more “constrictive” interpretation of Rule 609 (a) (2) would violate appellant’s due process rights. R. 297, ll. 1 – 25; R. 298, ll. 1 – 25.

The judge ruled that the armed robberies, the transaction card theft, the grand larceny, and the petit larceny were admissible for impeachment under Rule 609 (a) (2). R. 298, ll. 1 – 25. Defense counsel told the court that due to the court’s ruling admitting those prior offenses, Broadnax was not waiving his objection to their admission but that defense counsel wanted to bring those offenses out during direct instead of leaving it to the solicitor

to do for the first time during cross examination. The trial court responded that they were not waiving the objection. R. 301, ll. 25; R. 302, ll. 1 – 25; R. 303, ll. 1 – 12.

ARGUMENTI

The Court of Appeals correctly held that armed robbery is not a crime of dishonesty pursuant to Rule 609(a)(2), SCRE.

In State v. Mueller, 319 S.C. 266, 460 S.E.2d 409 (Ct. App. 1995), the Court of Appeals held that if a party has obtained a final ruling on the admissibility of impeachment evidence, that party does not lose his right to challenge the admissibility of the evidence by eliciting the evidence during direct examination.

In State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006), the Supreme Court held that the evidence of the defendant's prior convictions for the unlawful possession of a weapon by a convicted felon and pointing and presenting a firearm were inadmissible for impeachment purposes in his trial for murder and the unlawful possession of a weapon by a convicted felon as the prior convictions had nothing to do with the defendant's credibility, and the evidence was more prejudicial than probative in light of his charged offenses. The Court cited State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000) which listed five factors a trial judge should consider in deciding whether to admit prior convictions:

- (1) The impeachment value of the prior crime;
- (2) The point in time of the past crime and the charged crime;
- (3) The similarity of the past crime and the charged crime;
- (4) The importance of the defendant's testimony;
- (5) The centrality of the credibility issue.

The Supreme Court also wrote in State v. Bryant, *supra*, that when the prior offense was similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission.

The Court stated:

Furthermore, a conviction for **robbery** [emphasis added], burglary, theft, and drug possession beyond the basic crime itself, is not probative of truthfulness.

Citing United States v. Smith, 181 F. Supp.2d 904 (N.D.Ill.2002).

On appeal, the state argued that the Supreme Court's ruling in Bryant, that robbery is not a crime of dishonesty was mere dicta. This is in error. The Court had ruled that the defendant's prior conviction for pointing and presenting a firearm was not admissible for impeachment purposes because it had nothing to do with the defendant's credibility. The Court then went on to list other crimes that were not probative of truthfulness which included robbery.

The state presented a review of their research of the other states regarding robbery being a crime of dishonesty. However, the great majority of the research referred to robbery or larceny and not armed robbery in particular. Therefore, the research is not applicable to Broadnax's case without more facts.

According to this Court and the opinion of the Court of Appeals, dishonesty focuses on acts of deceit or false statements. Shoplifting involves acts of deceit as opposed to armed robbery where items are taken by force with the open use of a weapon. Therefore armed robbery does not involve deceit.

The Court of Appeals was correct in holding that the trial court erred in admitting Broadnax's prior armed robberies for impeachment as they were more prejudicial than

probative. They were the same crime for which he was on trial, and they occurred in 1991 R. 287, ll. 3 – 23. The state did not present any other evidence of acts of deceit or false statements committed by Broadnax.

ARGUMENT

II.

The Court of Appeals correctly performed the necessary balancing test under rule 609, SCRE.

The state relied on the case of State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000), for the proposition that the trial court must conduct the balancing test to determine if the probative value outweighed the prejudicial impact of the prior convictions for impeachment purposes. However, the Supreme Court wrote in Colf, id. :

The balancing test required by Rule 609(b), SCRE, must be conducted by the trial court.

Colf is distinguished from Broadnax because the rule at issue in Broadnax was Rule 609(a), SCRE which concerns prior crimes and crimes of dishonesty. The issue in Colf concerned a prior conviction more than ten years old which is governed by Rule 609(b), SCRE.

The court in Colf also stated that it was impossible for the appellate court to balance the “interest at stake when the record does not contain the specific facts and circumstances necessary to a decision.” Again, this is distinguished from Broadnax in that the Court of Appeals had a detailed record sufficient to show that the prior convictions of Broadnax were the same as the current conviction at issue. The record indicated that there were three prior convictions of armed robbery that were the same as the armed robbery conviction at issue.

Thus the Court of Appeals had the specific facts and circumstances to show that the prejudicial impact far outweighed the probative value.

The state also cites State v. Howard, 384 S.C. 2121, 682 S.E.2d 42 (Ct. App. 2009), which does involve a prior conviction pursuant to Rule 609(a), SCRE. However, the Court

of Appeals relied on the holding in State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006) for the holding that when the prior offense was similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission.

In State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984), the Supreme Court held that when the previous alleged bad act was strikingly similar to the one for which the appellant was being tried, the danger of prejudice was enhanced.

This was sufficient for a finding of high prejudice by the Court of Appeals. It would be pointless and a waste of judicial economy to remand Broadnax's case for a balancing test when the record clearly shows the prejudice outweighs the probative value.

ARGUMENT

III.

The Court of Appeals was correct in not applying the harmless error standard because the admission of Broadnax's prior armed robberies was not harmless as the evidence of guilt was not overwhelming, and the prior convictions were prejudicial.

The harmless error standard was not appropriate to Broadnax's case as the admission of the three prior armed robbery convictions was highly prejudicial, especially in light of the fact that he was on trial for armed robbery. The evidence was not overwhelming because the victims testified that the robber put on a mask when he entered the building. R. p. 122; R. p. 151.

Broadnax testified that he did not commit this armed robbery at Church's Chicken on May 24, 2009. He admitted that he had a drug problem, and said that he and Charles Green, the co-defendant, frequently got high together. On the day of the robbery, he had just bought drugs, and saw Green driving down Two Notch. Broadnax flagged him down just moments before they heard the police sirens and were stopped by the police. Broadnax ate the crack when they were pulled over by the police. R. 305, ll. 18 – 25; R. 306, ll. 1 – 25; R. 307, ll. 1 – 25; R. 308, ll. 1 – 25; R. 309, ll. 1 – 25; R. 310, ll. 1 – 25.

In State v. Morris, 289 S.C. 294, 345 S.E.2d 477 (1986), the Supreme Court wrote that they recognized that where a trial court error is harmless beyond a reasonable doubt, it does not constitute grounds for reversible error. The Court continued to write, however, that “it is a doctrine which should be employed guardedly on a case by case basis.”

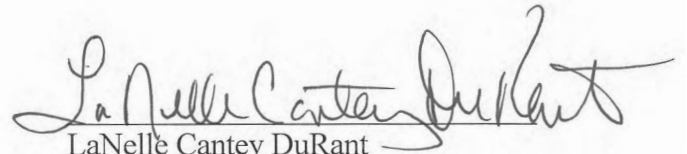
In State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) the Supreme Court wrote that an error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. The court continued to write from Pagan, Id. that an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.

The evidence in Broadnax's case was not sufficient to apply the harmless error standard and was not sufficient to overcome the prejudice from the admission of his three prior armed robbery convictions.

CONCLUSION

Based on the above, the decision of the Court of Appeal's should be affirmed.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 23rd day of July, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari from Richland County
G. Thomas Cooper, Judge

THE STATE,

PETITIONER,

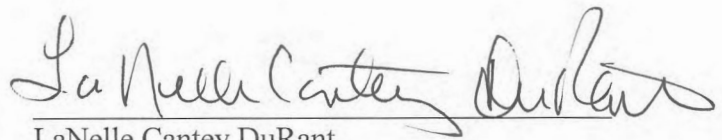
V.

CHRISTOPHER BROADNAX,

RESPONDENT

CERTIFICATE OF SERVICE

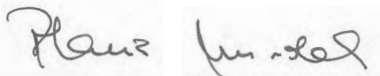
The undersigned attorney hereby certifies that a true copy of the Brief of Respondent in the above referenced case has been served upon Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Christopher Broadnax, #099356, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 23rd day of July, 2014.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR RESPONDENT.

SUBSCRIBED AND SWORN TO before me
this 23rd day of July, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Petitioner,

v.

Christopher Broadnax, Respondent.

Appellate Case No. 2013-000615

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 27545
Heard February 4, 2015 – Filed July 8, 2015

REVERSED IN PART, AFFIRMED IN PART

Attorney General Alan McCrory Wilson, Assistant
Attorney General Julie Kate Keeney and Assistant
Attorney General Mary Shannon Williams, all of
Columbia, for Petitioner.

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Respondent.

Rec'd 7/9/2015
src

CHIEF JUSTICE TOAL: The State of South Carolina appeals the court of appeals' decision reversing Christopher Broadnax's (Respondent) convictions for armed robbery and kidnapping, and remanding for a new trial. We reverse in part and affirm in part the decision of the court of appeals.

FACTUAL/PROCEDURAL HISTORY

At 5:30 p.m. on May 24, 2009, a masked gunman entered Church's Chicken on Two Notch Road in Columbia. He held one of the employees at gunpoint while the employee emptied the cash registers. Three other employees locked themselves in the kitchen. The gunman was wearing a striped shirt, had a distinctive "lazy eye," and carried a clear plastic bag.

After the employee filled the bag with money from the registers, the gunman calmly exited the store, climbed into a "gray Dodge old model truck" driven by an accomplice, and left the scene. One of the employees chased the gunman outside and saw him riding in the passenger seat of the gray truck as the driver pulled out of the parking lot onto Two Notch Road.

Police responded to the scene within approximately three minutes, and based on the employees' descriptions of the getaway vehicle, stopped the driver a short distance from the Church's Chicken on Two Notch Road.¹ When officers approached the vehicle, they found Respondent crouched down on the floorboard of the passenger side. Officers immediately noticed that Respondent had a "lazy eye." The police officers found a gun and a bag full of money (matching the employees' descriptions) jammed under the truck's passenger seat, adjacent to Respondent. Further, one of the employees identified Respondent as the gunman in a "show-up" identification, and testified that he recognized Respondent's distinctive facial features, build, and clothing.²

¹ A testifying officer stated that the truck was distinctive because it was in poor condition and "had a number of dents and pings and so forth."

² Several of the employees also made in-court identifications of Respondent as the perpetrator of the crimes. Furthermore, Respondent's accomplice testified against him at trial.

Respondent was charged with one count of armed robbery and four counts of kidnapping.

After the State rested, Respondent indicated that he would testify in his own defense. Consequently, the State moved to admit Respondent's prior criminal record for purposes of impeachment. The trial court heard arguments and conducted an inquiry into which of Respondent's prior convictions should be admitted. Pursuant to Rule 609(a)(2), SCRE, and the court of appeals' opinion in *State v. Al-Amin*, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003), the trial court admitted three of Respondent's four prior armed robbery convictions.³

During his testimony, Respondent denied any involvement in the robbery. However, Respondent's counsel elicited testimony regarding Respondent's prior convictions for armed robbery.⁴ The State likewise questioned Respondent about his prior convictions.

The trial judge then instructed the jury:

You've heard evidence that the defendant was convicted of a crime other than the one for which the defendant is now on trial. This evidence may be considered by you if you can conclude it is true only in deciding whether the defendant's testimony is believable and for no other purpose. You must not consider the defendant's prior record as any evidence of the defendant's guilt of the charge that we are trying here today.

The jury found Respondent guilty of armed robbery and four counts of kidnapping, and the trial judge sentenced Respondent to a mandatory minimum sentence of life imprisonment without the possibility of parole based on Respondent's prior armed robbery convictions.

On appeal to the court of appeals, Respondent argued, *inter alia*, that the

³ The trial court also admitted Respondent's prior convictions for transaction card theft, grand larceny, and petit larceny.

⁴ The trial court permitted Respondent's counsel to elicit the prior conviction testimony during his direct examination without waiving his objection to the admission of that testimony.

trial court erred in admitting his prior armed robbery conviction for impeachment purposes. *See State v. Broadnax*, 401 S.C. 238, 241, 736 S.E.2d 688, 689 (Ct. App. 2013). The court of appeals reversed and remanded the case to the trial court for a new trial. *Id.* Specifically, the court of appeals found: (1) Respondent's prior armed robbery convictions, without more, did not constitute crimes of dishonesty, and therefore, the trial court should have conducted a balancing test prior to admitting testimony regarding Respondent's prior armed robbery convictions; and (2) such error was not harmless beyond a reasonable doubt. *Id.* at 244–48, 736 S.E.2d at 691–93.

ISSUES PRESENTED

- I. Whether the court of appeals erred in finding that Respondent's prior armed robbery convictions were not crimes of dishonesty, and were therefore inadmissible under Rule 609(a)(2), SCRE?
- II. Whether the court of appeals erred in refusing to find any error in the admission of Respondent's prior criminal record harmless beyond a reasonable doubt?

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission or exclusion of evidence rests in the sound discretion of the trial judge, and will not be reversed on appeal absent an abuse of discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002) (citation omitted); *see also State v. Kelly*, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." (citation omitted)). "An abuse of discretion occurs where the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000) (citation omitted).

LAW/ANALYSIS

I. Prior Armed Robbery Convictions

The State argues that the court of appeals erred in reversing the trial court

because armed robbery is a "crime of dishonesty or false statement" such that it is automatically admissible under Rule 609(a)(2), SCRE. We disagree.

Rule 609(a), SCRE, provides:

For the purpose of attacking the credibility of a witness;

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

In *State v. Al-Amin*, the court of appeals considered the question of whether the appellant was entitled to a new trial after the trial court admitted his prior armed robbery conviction without first weighing the probative value and prejudicial effects of the admission. 353 S.C. at 408–09, 414, 578 S.E.2d at 34, 37. Noting that "[t]here is disagreement among federal circuit courts and state courts construing Rule 609(a)(2) as to which crimes are included," the court of appeals explained that "[t]he disagreement revolves around whether convictions for theft crimes, such as larceny, robbery, and shoplifting, should be admitted under the rule as involving dishonesty or false statement." *Id.* at 415, 578 S.E.2d at 37. The court of appeals acknowledged that a majority of federal courts has adopted a narrow approach to the question, but declined to follow federal precedent, instead adopting an expansive approach to determining what constitutes a "crime of dishonesty or false statement." *Id.* at 416, 578 S.E.2d at 38. The court of appeals reasoned:

"An essential element of robbery is that the perpetrator of the offense steals the goods and chattels of another or, in the case of an attempt to commit robbery, intends to steal the goods or chattels of the person assaulted. If this element is not present, the crime is not robbery or an attempted robbery. Stealing is defined in law as larceny. Larceny

involves dishonesty. The fact that the perpetrator of the crime manifests or declares his dishonesty by brazenly committing the crime does not make him an honest person."

Id. at 421, 578 S.E.2d at 40–41 (quoting *State v. Goad*, 692 S.W.2d 32, 37 (Tenn. Crim. App. 1985)). Thus, the court of appeals concluded, "It is the larcenous element of taking property of another which makes the action dishonest. Larceny is a lesser-included offense of armed robbery." *Id.* at 425, 578 S.E.2d at 43 (citations omitted). The court of appeals, citing several dictionary definitions, found further,

To restrict the application of Rule 609(a)(2) only to those offenses which evidence an element of affirmative misstatement or misrepresentation of fact would be to ignore the plain meaning of the word "dishonesty." "Dishonesty" is, by definition, a "disposition to lie, cheat, or steal." "To be dishonest means to deceive, defraud or steal." "In common human experience[,] acts of deceit, fraud, cheating, or stealing . . . are universally regarded as conduct which reflects adversely on a man's honesty and integrity."

Id. (internal citations omitted).

More recently, however, we decided *State v. Bryant*, in which we held that the trial court erroneously admitted the petitioner's prior firearms convictions under Rule 609 without weighing the probative value and prejudicial effects of their admission because the firearms offenses were not crimes involving dishonesty. 369 S.C. 511, 517, 633 S.E.2d 152, 155–56 (2006). In so holding, we stated:

Violations of narcotics laws are generally not probative of truthfulness. See *State v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (2001) (citing *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000)). **Furthermore, a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of truthfulness.** *United States v. Smith*, 181 F. Supp. 2d 904 (N.D. Ill. 2002).⁵ Likewise, firearms violations also are not generally probative

⁵ In *Smith*, the court stated:

[E]vidence that any witness has been convicted of a crime involving dishonesty or false statement is admissible without regard to its

of truthfulness. Accordingly, Petitioner's prior firearms convictions do not involve dishonesty and their probative value should have been weighed against their prejudicial effect prior to their admission pursuant to Rule 609(a)(1).

Id. (emphasis added).

Here, the State argues that because *Bryant* involved convictions for firearms offenses, and not explicitly a prior armed robbery conviction, the above language is merely dicta. Therefore, the State relies on earlier precedents from our courts—namely *Al-Amin*—and points to other states' precedents to support its argument that armed robbery is a crime of dishonesty, such that no balancing test is required.

We take this opportunity to overrule *Al-Amin*, and reaffirm the rule as formulated in *Bryant* that armed robbery is not a crime of dishonesty or false statement for purposes of impeachment under Rule 609(a)(2). While many states have adopted a broader interpretation of the Rule, we find the analysis to be more nuanced than that undertaken by the *Al-Amin* court.⁶ Under *Al-Amin*'s and the

prejudicial effect. Fed. R. Evid. 609(a)(2). Smith's forgery conviction is admissible under Rule 609(a)(2). However, his convictions for robbery, burglary, theft, and drug possession convictions are not, as the government has not shown that any of them involved false statements or acts of deceit beyond the basic crime itself, and as to the theft convictions has not shown that it involved items of significant value.

181 F. Supp. 2d at 909 (internal citations omitted).

⁶ See Stuart P. Green, *Deceit and the Classification of Crimes: Federal Rule of Evidence 609(a)(2) and the Origins of Crimen Falsi*, 90 J. Crim. L. & Criminology 1087, 1119 (2000) ("The problem with [a broad reading of the term 'crime of dishonesty'] . . . is that it blurs the moral distinction between stealing and lying. A person who steals is certainly dishonest; she rejects the idea of making an honest living; she cheats; she takes something to which she is not entitled; she disobeys the rules. But there is no particular reason to think that she is deceitful. Indeed, what little empirical evidence there is indicates that a prior conviction for larceny (stealing by stealth) says little or nothing about a witness'[s] propensity to lie." (footnote omitted)).

concurrence's rationale, the exception contained in Rule 609(a)(2), which permits the automatic admission of certain prior convictions, swallows the rule contained in Rule 609(a)(1), in which discretion regarding the admission of prior convictions rests with the trial judge. We think this interpretation is contrary to the intent of the Rule.

Thus, we hold that for impeachment purposes, crimes of "dishonesty or false statement" are crimes in the nature of *crimen falsi* "that bear upon a witness's propensity to testify truthfully." *Adams v. State*, 644 S.E.2d 426, 431–32 (Ga. Ct. App. 2007) (footnote omitted) (surveying federal and state treatment of the issue, and adopting the more narrow federal definition); *see also United States v. Smith*, 551 F.2d 348, 362–63 (D.C. Cir. 1976) ("[I]n its broadest sense, the term '*crimen falsi*' has encompassed only those crimes characterized by an element of deceit or deliberate interference with a court's ascertainment of truth." (emphasis added)). Armed robbery, therefore, is not per se probative of truthfulness.

The Federal Rules of Evidence specifically identify *crimena falsi* in Rule 609(a)(2), FRE, as crimes which by their very nature permit the impeachment of a witness convicted of a crime of "dishonesty or false statement." Green, *supra* note 6, at 1090. In fact,

[t]he original Conference Report makes the link between Rule 609(a)(2) and the *crimena falsi* explicit, defining the phrase "crimes involving dishonesty or false statement" as "crimes such as perjury, subornation of perjury, false statements, criminal fraud, embezzlement, or false pretense, or any other offense in the nature of *crimen falsi*, the commission of which involves some element of deceit, untruthfulness, or falsification bearing on the accused's propensity to testify truthfully."

Id. at 1090–91 (emphasis added) (footnote omitted) (quoting H.R. Conf. Rep. No. 93-1037, at 9 (1975)). While the State emphasizes that South Carolina did not adopt this explanatory language when it adopted Federal Rule 609, the notion of *crimen falsi* in the evidentiary context is long-established in the common law of South Carolina. *See, e.g., State v. Peterson*, 35 S.C. 279, 282, 14 S.E. 617, 618 (1892) ("The old, well-settled rule was that one who had been convicted of a crime belonging to the class known as the '*crimen falsi*' was said to be infamous, and incompetent to testify."). Thus, the State's argument is unavailing. *Cf. Williams v. Condon*, 347 S.C. 227, 247, 553 S.E.2d 496, 507 (Ct. App. 2001) ("A strong

presumption . . . exists that the General Assembly does not intend to supplant common law principles when enacting legislation." (citations omitted)).⁷

Here, the trial judge felt constrained by *Al-Amin* to forgo a balancing test, even though he noted that *Al-Amin* was a "significant departure" from what he understood the law to be, especially because the State sought to admit *three* prior convictions identical to the one for which Respondent was currently on trial. We agree with the trial judge that the prejudicial effect of admitting prior convictions for the exact same offense is often very high. See *State v. Scriven*, 339 S.C. 333, 343–44, 529 S.E.2d 71, 76–77 (Ct. App. 2000) (stating that because the prior convictions were "similar or identical to charged offenses, . . . the likelihood of a high degree of prejudice to the accused [was] inescapable"). For this reason, a rule that places discretion with the trial judge is even more desirable, and unlike the concurrence, we think the trial judge is the best arbiter of whether a very prejudicial piece of evidence should be admitted in this situation—unless of course the prior crime specifically relates to a defendant's penchant to tell the truth on the witness stand. Importantly, our holding today does not preclude the admission of prior convictions for armed robbery; rather, it merely enables a trial judge to conduct a balancing test pursuant to Rule 609(a)(1) when the State seeks prior convictions for armed robbery to impeach a criminal defendant's testimony.

Ultimately, the Rule is designed to help the jury discern the truth. It is not a tool for the State to bolster its case against the criminal defendant for the mere fact that the defendant has engaged in prior criminal activity. The balance we strike today cuts to the heart of our system's conceptions of fair trial and fair play.

Thus, we affirm the court of appeals' finding that armed robbery is not a crime of "dishonesty or false statement," rendering it admissible pursuant to Rule

⁷ While the concurrence criticizes our reliance on the federal interpretation of the Rules, we note that we routinely look to the federal interpretation of the Rules of Evidence to guide us in our interpretation of our own Rules of Evidence. See, e.g., *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 594, 748 S.E.2d 781, 786 (2013) ("Because our appellate courts have not definitively addressed Rule 60(b)(5), we have looked to the federal courts' interpretation as our rule is similar to the federal rule."); *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 474 n.10, 674 S.E.2d 154, 162 n.10 (2009) ("The language of Rule 26(c), SCRPC, mirrors that of federal Rule 26(c). Because there is no South Carolina precedent construing this rule, federal interpretation of Rule 26(c) is persuasive authority." (citation omitted)).

609(a)(2), SCRE.⁸

II. Harmless Error

Next, the State argues that any error in admitting the prior armed robbery convictions was harmless beyond a reasonable doubt. We agree.

While we agree with the court of appeals that in many instances, the admission of identical prior convictions for impeachment purposes enhances its prejudicial nature, it does not conclusively render the error so prejudicial that it is not subject to a harmless error analysis. Rather,

[w]hether the improper introduction of this evidence is harmless requires us to look at the other evidence admitted at trial to determine whether the defendant's "guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached."

State v. Brooks, 341 S.C. 57, 62–63, 533 S.E.2d 325, 328 (2000) (quoting *State v. Parker*, 315 S.C. 230, 234, 433 S.E.2d 831, 833 (1993)).

Here, the other evidence implicating Respondent in these crimes was overwhelming. Respondent was positively identified by several employees who recalled Respondent's distinctive facial features and clothing. Furthermore, one of the employees watched as Respondent's accomplice drove him away from the scene in a dented gray truck, which the police stopped a only a short distance away within minutes after the employees reported the robbery. Inside the getaway vehicle, police found Respondent crouching in the floorboard area, sitting adjacent to a gun and a bag of money matching the employees' descriptions.

Therefore, in spite of the error in admitting Respondent's prior convictions for armed robbery, we find such error was harmless beyond a reasonable doubt, and we reverse the part of the court of appeals' decision finding otherwise. *See, e.g., State v. Mizzell*, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002) ("Harmless beyond a reasonable doubt" means the reviewing court can conclude the error did

⁸ We note that—contrary to the concurrence's assertion—whether or not shoplifting is a crime of dishonesty has never been decided by *this* Court and is not before us at this time.