

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Honorable J. Mark Hayes, Circuit Court Judge

BOYD RASHAEEN EVANS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001287

APPENDIX

LAURA R. BAER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29201-1549
(803) 734-3790

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

RECEIVED
JAN 20 2017
S.C. SUPREME COURT

VOLUME II OF II
Pages 501-736

INDEX

INDEX	i
TRIAL TRANSCRIPT HELD JANUARY 11-14, 2010.....	1
<u>ANDERS</u> BRIEF OF APPELLANT FILED JUNE 14, 2011	625
UNPUBLISHED OPINION, <u>State v. Evans</u> , Opinion No. 2012-UP-299 (Ct. App. filed May 16, 2012).....	638
APPLICATION FOR POST-CONVICTION RELIEF FILED FEBRUARY 20, 2013	640
STATE'S RETURN DATED APRIL 28, 2015	647
AMENDED APPLICATION FOR POST-CONVICTION RELIEF DATED SEPTEMBER 28, 2015	653
POST-CONVICTION RELIEF HEARING TRANSCRIPT HELD JANUARY 15, 2016	655
ORDER OF DISMISSAL FILED MAY 25, 2016	719
INDICTMENTS	729

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

State's Exhibits 30-32 and 40-50 (photographs)¹

¹ Pursuant to Rules 210(f) and 243(f), SCACR, transportation is being requested for these exhibits because they could not be accurately reproduced by copying into the Appendix.

TAMMY COLEMAN - REDIRECT EXAMINATION BY MS. HAHN

1 MS. COLEMAN: No, I just thought he was someone ---

2 THE COURT: Please wait until, ---

3 MS. COLEMAN: --- about the ---

4 THE COURT: --- please wait until I rule if there's an
5 objection. What's the objection, please.

6 MR. MALDONADO: She's leading.

7 THE COURT: All right. Rephrase the question please,
8 Ms. Hahn.

9 BY MS. HAHN:

10 Q. Did you understand what organization he worked for?

11 A. Yes.

12 Q. Okay. And what organization was that?

13 A. He said the solicitor's office.

14 Q. And did you understand why he was there?

15 A. No, not really.

16 Q. Okay. Is there any reason that you would have been
17 concerned what you might say to him?

18 A. No.

19 Q. Did you feel defensive at all when you were talkin' to
20 him?

21 A. Yes, sir -- yes, ma'am, I'm sorry.

22 Q. And why was that?

23 A. He -- one thing he told me about the dates, the second
24 thing he started makin', he didn't actually make threats but
25 he was sayin', You know they could go away for a long time and

BILAL HAYNESWORTH - DIRECT EXAMINATION BY MS. HAHN

1 Boyd, the more evidence is on Boyd, maybe your son Lywone was
2 just there and we try to get the bottom of it and that Boyd
3 would be goin' away for thirty years or more.

4 Q. And how did that make you feel?

5 A. It it made me feel real sad and defensive like whys I'm
6 explain somethin' to him when he's tellin' me all a this. I
7 just left it as, You wanna speak to me, speak to me in front
8 of the lawyer and I'm not about to sign no paper, no
9 statements, no nothing.

10 Q. Thank you, Ms. Coleman.

11 THE COURT: Recross, Mr. Maldonado?

12 MR. MALDONADO: No, Your Honor.

13 THE COURT: Mr. Miller?

14 MR. MILLER: I I have nothing.

15 THE COURT: Thank you. Thank you. You may step down.

16 (Whereupon, the witness left the stand.)

17 THE COURT: You may call your next witness.

18 MS. HAHN: Your Honor, I call Bilal Haynesworth.

19 BILAL HAYNESWORTH, having
20 been first duly sworn, testified as follows:

21 THE CLERK: Have a seat, please. Once you're seated
22 speak up loud and clear statin' your full name spelling your
23 last please.

24 MR. HAYNESWORTH: Bilal Sincie (phonetic) Haynesworth,
25 H-A-Y-N-E-S-W-O-R-T-H.

BILAL HAYNESWORTH - DIRECT EXAMINATION BY MS. HAHN

1 DIRECT EXAMINATION BY MS. HAHN:

2 Q. Thank you. Mr. Haynesworth, could you tell us how old
3 you are.

4 A. I'm 14.

5 Q. And what school do you go to?

6 A. Swansea High School.

7 Q. Where do ya live?

8 A. Gaston.

9 Q. Okay. Do you know Lywone Capers?

10 A. Yes, ma'am, that's my brother.

11 Q. Have you always lived here in Gaston?

12 A. No, ma'am.

13 Q. Where did you live back in July of 2007?

14 A. North Carolina.

15 Q. Okay. And what city in North Carolina?

16 A. Charlotte.

17 Q. Okay. Do you remember towards the end of July 2007?

18 A. Yes, ma'am.

19 Q. How was Lywone doin' in the later part of July 2007?

20 A. He wasn't feeling so well.

21 Q. Okay. What was wrong with him?

22 A. I think he had like a slight cold.

23 Q. Okay. And was he sick for a few days?

24 A. Yes, ma'am.

25 Q. Okay. Do you remember that he had any pets during that

BILAL HAYNESWORTH - DIRECT EXAMINATION BY MS. HAHN

1 time?

2 A. Yes, ma'am.

3 Q. Okay. What kinda pets did he have?

4 A. A cat.

5 Q. Okay. Do you remember the night of July twenty-si --
6 25th of 2007?

7 A. Yes, ma'am.

8 Q. Okay. And what was goin' on that night?

9 A. Well usually my brother be in my room. He'd be
10 downstairs in my room basically.

11 Q. All right. So he stays in your room. Do you remember
12 that night whether he left at any point during during the
13 night?

14 A. No, ma'am.

15 Q. Okay. And you said he was sick, is that right?

16 A. Yes, ma'am.

17 Q. Okay. To your knowledge was he there all night?

18 A. Yes, ma'am.

19 Q. Okay. Do you happen to know what time he left the next
20 day?

21 A. No, ma'am.

22 Q. You don't know.

23 MS. HAHN: Okay. Beg the Court's indulgence. No further
24 questions, Your Honor.

25 THE COURT: All right. Mr. Maldonado?

BILAL HAYNESWORTH - CROSS-EXAMINATION BY MR. MALDONADO

1 MR. MALDONADO: Thank you, Your Honor.

2 CROSS-EXAMINATION BY MR. MALDONADO:

3 Q. Good afternoon, Mr. Haynesworth. How are you doing?

4 A. Fine.

5 Q. Lywone's your brother?

6 A. Yes, sir.

7 Q. You guys live together?

8 A. Yes, sir.

9 Q. Still living together?

10 A. Yes, sir.

11 Q. You love him?

12 A. Yes, sir.

13 Q. Do anything for him?

14 A. Yes, sir.

15 Q. What about July 26th or 25th in 2007 that you -- stands
16 out in your mind?

17 A. Him and his cat.

18 Q. So you guys -- he had a cat?

19 A. Yes, sir.

20 Q. How long had he had a cat?

21 A. Like a few days or so, something like that.

22 Q. A few days?

23 A. Yes, sir.

24 Q. What -- how long after did he, did he have a cat?

25 A. He still had it while she was arrested. It still was

BILAL HAYNESWORTH - CROSS-EXAMINATION BY MR. MALDONADO

1 living in my house.

2 Q. Oh it was?

3 A. Yes.

4 Q. Okay. So months later it was still in your house?

5 A. Yes, sir.

6 Q. So this wasn't like the last day of the cat.

7 A. No, sir.

8 Q. So few months of having a -- of him having a cat why is
9 this one day in particular special to you?

10 A. Because I remember my momma had a discussion about the
11 cat. She usually say kick him out, stuff like that.

12 Q. Okay. And and that made you look at a calendar and know
13 which day this this happened?

14 A. Yes, sir.

15 Q. Do you remember which day of the week this was?

16 A. A Thursday.

17 Q. Thursday. Was that -- how do you remember that?

18 A. I just remember 'cause that week he wasn't feelin' so
19 well.

20 Q. Okay. Was that the 25th that was Thursday or was that
21 the 26th like ---

22 A. It's the 25th or the 26th.

23 Q. You don't remember now?

24 A. I think it's the 26th though.

25 Q. Okay. Did anybody come over that night?

BILAL HAYNESWORTH - CROSS-EXAMINATION BY MR. MALDONADO

- 1 A. Yes, sir.
- 2 Q. Who was that?
- 3 A. Teshima Capers, Tidleek Capers, that's it.
- 4 Q. Were you in your -- in the room with your brother the
- 5 whole time?
- 6 A. No, sir, I was downstairs.
- 7 Q. Okay. And he stayed --- while while you were downstairs
- 8 he was up in his ro -- your room.
- 9 A. Yes, sir.
- 10 Q. Okay. What -- do you know he was -- does he have a
- 11 room?
- 12 A. He shares a room with me, him and his girl.
- 13 Q. Okay. Oh, and so it's all a ya'lls room.
- 14 A. Yes, sir.
- 15 Q. Okay. Was he there by himself?
- 16 A. No, sir.
- 17 Q. Who was there with him?
- 18 A. Jaid.
- 19 Q. Whadya have for dinner that day?
- 20 A. Um, I think some chicken, some rice, some macaroni.
- 21 Q. Was this a a family dinner? Did ya'll eat together?
- 22 A. Yes, sir.
- 23 Q. Did Lywone eat with ya'll?
- 24 A. Um, I don't think he did.
- 25 Q. Do you remember?

BILAL HAYNESWORTH - CROSS-EXAMINATION BY MR. MALDONADO

1 A. He usually take his plate. He go upstairs and eat his
2 food.

3 Q. Okay. Did he do that this time, I mean, as far as you
4 remember?

5 A. Yes, sir.

6 Q. Did he have any other kinda different food?

7 A. Nah.

8 Q. Nobody brought him anything?

9 A. Some medicine.

10 Q. Who who cooked the the dinner?

11 A. My mom and my dad usually prepare the food.

12 Q. Was your ant there?

13 A. She just had came later on to bring medicine, that's
14 it.

15 Q. What kinda medicine?

16 A. I think like some cough syrup or somethin' like that.

17 Q. Now if he'd been sick for a few days why was he just
18 gettin' medicine?

19 A. I think he already had some medicine ---

20 Q. Okay.

21 A. --- and probly ran out, that's probly why she brought
22 medicine over that day.

23 Q. Now did you ever -- when did you find out about the
24 robbery?

25 A. When he was arrested. They said he had been arrested,

BILAL HAYNESWORTH - CROSS-EXAMINATION BY MR. MALDONADO

1 somethin' like that.

2 Q. And did they tell you the date that it happened
3 when ---

4 A. Um, they really didn't tell me nothin'. They just said
5 he was arrested and I was upset.

6 Q. Okay. So how long before you found out the date?

7 A. And then I found out the date like a few days later or
8 somethin' like that and also somebody had came out to my house
9 like a while back when I was stayin' in Swansea and told me
10 the date and time and stuff like that.

11 Q. Okay. When ya heard that, did you, did you call any
12 police to to tell 'em that that your brother was with you at
13 the time and ---

14 A. No, sir.

15 Q. You didn't offer to give a statement to the police?

16 A. No, sir.

17 Q. You know about what time he went to bed that night?

18 A. I can't really say.

19 Q. Did you go to bed in the same room with him?

20 A. Yes, sir.

21 Q. About what time did you go to bed?

22 A. I went to bed around like 8:30.

23 Q. That's pretty early. Any reason it was early?

24 A. No, that's a rea -- that's my curfew: 8:30, 9:00.

25 Q. Okay. Was he in bed at the time?

BILAL HAYNESWORTH - CROSS-EXAMINATION BY MR. MALDONADO

1 A. Um, I'm not really sure.

2 Q. You said he was in your room. Did he ever leave your
3 room?

4 A. Yeah, um, I think his girl was right there layin' on the
5 bed when I went in there.

6 Q. His girl or -- with him or just ---

7 A. Yeah, with him.

8 Q. And you went to sleep?

9 A. Yes, sir.

10 Q. Did you ever talk to Investigator Crutchlow about this?

11 A. He came out to my house. I don't know with how he look.
12 I know he was like kinda chubby.

13 Q. Okay. And you told him that -- did you give him a
14 statement about what happened?

15 A. I I didn't really get -- he asked me how do I know for
16 sure that my brother was there that day and I told him I
17 remember the cat, exactly what I told you.

18 Q. He -- did he give you a date of when it happened? Did he
19 tell you the date?

20 A. Yes, sir.

21 Q. What date did he tell you?

22 A. He said it supposed to happen around the 25th or the
23 26th.

24 Q. Did he offer you --- offer for you to give a statement?

25 A. Yes.

BILAL HAYNESWORTH - CROSS-EXAMINATION BY MR. MALDONADO

1 Q. And you decided not to?

2 A. Yes, sir.

3 Q. Yes, you -- I'm sorry, that because of that yes you did
4 not wanna give a statement?

5 A. No, sir.

6 Q. Okay. Why not?

7 A. I said that I had to be in fronta my brother's lawyer to
8 give a statement, to write a statement.

9 Q. Why do you feel that if you're just tellin' the truth?

10 A. I am telling the truth.

11 Q. Okay.

12 A. And he also said that, um, I would be locked up and stuff
13 like that.

14 Q. That you'll be locked up?

15 A. Yes, me and my mom.

16 Q. So you didn't wanna give a statement to help your
17 brother.

18 A. No, sir, but I I gave a statement to my brother's lawyer.

19 Q. And this was how how long after you found out about the
20 the robbery?

21 A. Um, ---

22 Q. You said you found out about about September is when when
23 you ---

24 A. I didn't say no date.

25 Q. Okay. When did you find out about the robbery ---

BILAL HAYNESWORTH - CROSS-EXAMINATION BY MR. MALDONADO

1 A. I just -- it was just more detailed stuff that come in
2 around me and then we kept goin' to the solicitor's office.

3 Q. Okay. But when you first heard about it ---

4 A. That's around the ---

5 Q. --- when ---

6 A. --- time my brother got lo -- got arrested.

7 Q. Okay. That's about September, correct?

8 A. I'm not sure.

9 Q. Well. How how much -- how long after he was arrested did
10 the investigator come around and talk to you?

11 A. It was like a year or so.

12 Q. A year?

13 A. When I stayed in Swansea, that's when the investigator
14 came out ---

15 Q. Okay.

16 A. --- for the first time.

17 Q. So in that whole year you didn't call the police?

18 A. I didn't see no investigators. I didn't call no
19 police.

20 Q. You didn't tell anybody that you you ---

21 A. I just tried to visit him that's it.

22 MR. MALDONADO: Okay. Nothing further, Your Honor.

23 THE COURT: Mr. Miller?

24 MR. MILLER: No questions for this witness.

25 THE COURT: Redirect, Ms. Ms. Hahn?

TIDLEEK CAPERS - DIRECT EXAMINATION BY MS. HAHN

1 MS. HAHN: None, Your Honor.

2 THE COURT: Thank you. Thank you, sir. You may step
3 down.

4 (Whereupon, the witness left the stand.)

5 THE COURT: You may call your next witness.

6 MS. HAHN: Your Honor, I would call Tidleek Capers.

7 (Whereupon, a discussion was held off the record.)

8 THE CLERK: Right here (indicating), Ms. Capers.

9 TIDLEEK CAPERS, having been
10 first duly sworn, testified as follows:

11 THE CLERK: Have a seat right up there (indicating) for
12 me please, ma'am, need you to speak up loud and clear statin'
13 your full name and if you will spell your first name for us
14 please, ma'am.

15 MS. CAPERS: My full name is Tidleek Capers. My name is
16 spelled T-I-D-L-E-E-K.

17 DIRECT EXAMINATION BY MS. HAHN:

18 Q. Good afternoon, Ms. Capers.

19 A. Good afternoon.

20 Q. How do you know Lywone Capers?

21 A. That's my nephew.

22 Q. Okay. And how long have you known him?

23 A. All his life.

24 Q. All right. Where do you live now?

25 A. New York.

TIDLEEK CAPERS - DIRECT EXAMINATION BY MS. HAHN

1 Q. Have you always lived in New York?

2 A. No.

3 Q. Where were you living in July of 2007?

4 A. Charlotte, North Carolina.

5 Q. Okay. Did you see Lywone Capers on July 25th and twenty-
6 si -- and 26th?

7 A. Yes.

8 Q. Okay. Why did you see him on the 25th?

9 A. The 25th I stopped by before I go to work like I usually
10 do to check on him ---

11 Q. Okay. What time ---

12 A. --- and he was sick also.

13 Q. What time was that?

14 A. Around 11:45 when after I got off from work.

15 Q. Was that in the morning or the evening?

16 A. The evening.

17 Q. Okay. And do you remember anything special about comin'
18 to see him that one time?

19 A. On that day?

20 Q. Um-hum.

21 A. Other than he was sick and had the flu.

22 Q. Okay. Did you bring anything with you that day?

23 A. No. The next day I did.

24 Q. Okay. What did you bring?

25 A. The next day I brung soup, I brung Motrin and cough

TIDLEEK CAPERS - DIRECT EXAMINATION BY MS. HAHN

1 syrup.

2 Q. Okay. Did you see Lywone then?

3 A. Yes.

4 Q. Okay. And how long were you there?

5 A. From 11:45 to like 2:30 in the morning.

6 Q. Okay. Do you know whether Lywone had any pets?

7 A. Yes.

8 Q. Okay. What animals were there that day?

9 A. They had a kitten and they have a pitbull, Princess.

10 Q. Okay. Now did anybody come with you to Lywone's house?

11 A. My daughter.

12 Q. All right. And I believe you testified that you left
13 later on the morning of the next day, is that right?

14 A. Yes.

15 Q. Okay. Did -- was Lywone there the whole time ---

16 A. Yes.

17 Q. --- that you were there? Were you around him the whole
18 time you were there?

19 A. Yes. He came down from upstairs, he ate some a his soup,
20 took some cough medicine, he sat down there like thirty
21 minutes. After that he went back upstairs in his room with
22 Jaid.

23 Q. Did you see him again after he'd gone back upstairs?

24 A. Yes. Before I left I went upstairs to check on him and
25 tell him that I was leaving.

TIDLEEK CAPERS - DIRECT EXAMINATION BY MS. HAHN

1 Q. Okay. What time was that?

2 A. Right before I left, like 2:30 in the morning.

3 Q. Okay. Now let's talk about the next day the 26th --
4 well, excuse me, by the time you left later on that same day,
5 excuse me.

6 A. Um-hum.

7 Q. Did -- do you know what Lywone did that day?

8 A. Before I left?

9 Q. No, after you left ---

10 A. Um-hum.

11 Q. --- the afternoon of that that same day.

12 A. Him and my daughter they went to pick up my check from my
13 job.

14 Q. And why did they have to go pick up your check?

15 A. I worked a double.

16 Q. Okay. And where did they go to pick up your check?

17 A. To Baxter Street in Charlotte, North Carolina to my job
18 office.

19 Q. All right. And what time did they pick up the check?

20 A. Between 4:30 and 5.

21 Q. Was there any reason they picked up the check at that
22 time?

23 A. They have to get there before she close and I had to make
24 sure it was okay with my boss for my daughter and him to come
25 pick up my check.

TIDLEEK CAPERS - CROSS-EXAMINATION BY MR. UNDERWOOD

1 Q. Okay. Do you know Glynnessa Evans?

2 A. Yes.

3 Q. How does -- excuse me. Do you know that Glynnessa Evans
4 was in a custody dispute with Emma Evans?

5 A. Yes.

6 Q. And did that cause any kind of rift in the family?

7 A. Yes.

8 Q. Okay.

9 MS. HAHN: Beg the Court's indulgence, Your Honor.

10 THE COURT: Yes, ma'am.

11 MS. HAHN: Nothing further, Your Honor.

12 THE COURT: Mr. Underwood?

13 MR. UNDERWOOD: Thank you, Your Honor.

14 CROSS-EXAMINATION BY MR. UNDERWOOD:

15 Q. Good afternoon, Ms. Capers.

16 A. Good afternoon.

17 Q. You said that Lywone is your nephew?

18 A. Yes.

19 Q. Okay. And what's your relationship to Boyd?

20 A. That's my brother and my cousin.

21 Q. And you said that in July of 2097 you lived in
22 Charlotte?

23 A. Yes.

24 Q. How often would you go and visit them?

25 A. Every day.

TIDLEEK CAPERS - CROSS-EXAMINATION BY MR. UNDERWOOD

1 Q. And is there a particular time of day or reason why you
2 saw them every day?

3 A. No, that's my family. I just stop by and visit and back
4 and forth.

5 Q. So but you saw 'em every day?

6 A. Yes.

7 Q. And you say that on the the 25th of July 2007 you went in
8 to check on him 'cause he was sick?

9 A. Yes.

10 Q. Okay. And then the next day you brought him some soup
11 and medicine a -- the day after that?

12 A. Yes, he was runnin' out and I brought some medicine.

13 Q. You said that he had a kitten with him?

14 A. No, he had a kitten in the house.

15 Q. Okay. How long did he have that kitten.

16 A. Probly when I found out maybe two, three weeks by then.

17 Q. So he had it for two or three weeks?

18 A. Um-hum.

19 Q. And did you stay for -- earlier you said you got in --
20 what time did you get in there that night?

21 A. 11:45.

22 Q. Okay. So were you there for dinner that night?

23 A. No.

24 Q. Okay. Do you know when Lywone ate dinner that night?

25 A. No.

TIDLEEK CAPERS - CROSS-EXAMINATION BY MR. UNDERWOOD

1 Q. Do you know what he ate?

2 A. No. Other than the soup that I fixed him when I got
3 there I don't know what he ate prior to that. I was at
4 work.

5 Q. It -- you said that the day after that on the 26th that
6 he went to pick up your paycheck?

7 A. Yes, sir.

8 Q. And I'm not exactly sure what was the reason that he went
9 to go pick up your check that you didn't get it?

10 A. I worked first shift and I 'posed to went home. They
11 asked me to work another shift so that leaves me to work a
12 double and I could not pick it up so he went with my daughter
13 to pick up my check from my job.

14 Q. Okay. So when was the first shift?

15 A. It's from 6:45 to 3:00.

16 Q. Okay. And that's on the, on the 26th?

17 A. Um-hum.

18 Q. And when did the second shift start?

19 A. It starts at 3:15 to 11 and it ends at 11 p.m.

20 Q. You remember what kind of soup that you brought him?

21 A. I brought him wonton soup.

22 Q. Wonton soup?

23 A. Do you know like what kinda wonton soup? Was it, I mean,
24 did -- where did you get it?

25 A. I got it from the chinese restaurant on my break when I

TIDLEEK CAPERS - CROSS-EXAMINATION BY MR. MILLER

1 was at work.

2 MR. UNDERWOOD: No further questions, Your Honor.

3 THE COURT: Mr. Miller?

4 CROSS-EXAMINATION BY MR. MILLER:

5 Q. Hi, ma'am. I represent Boyd Evans and I believe you
6 said, uh, testified that you knew him?

7 A. Yes.

8 Q. Okay. And do you know -- and you were living in --
9 were -- you were living in Charlotte at this time July of
10 2007?

11 A. Yes.

12 Q. Was he living in Charlotte also?

13 A. Yes. And do you know was he living with with ya'll or
14 was he living just with Emma, do you know?

15 A. He was living with my mother.

16 Q. Okay. And do you remember seeing him over this period a
17 time?

18 A. Yes.

19 Q. Okay. I don't have any further questions.

20 THE COURT: Redirect, Ms. Hahn?

21 MS. HAHN: Very briefly, Your Honor.

22 REDIRECT EXAMINATION BY MS. HAHN:

23 Q. Ms. Capers, ---

24 A. Yes.

25 Q. --- Lywone picked up your check on the 26th, is that

TESHIMA CAPERS - DIRECT EXAMINATION BY MS. HAHN

1 right?

2 A. Yes.

3 Q. And you were there very early that morning and the
4 evening the night before on the 25th, is that correct?

5 A. No, in the evening.

6 Q. Okay.

7 MS. HAHN: Thank you, Your Honor. Thank you. No further
8 questions.

9 THE COURT: Recross, Mr. Maldonado -- oh, excuse me,
10 Mr. Underwood?

11 MR. UNDERWOOD: No, Your Honor.

12 THE COURT: Thank you very much, Ms. Capers. You may
13 step down. All right. You may call your next witness.

14 MS. HAHN: Your Honor, may we approach?

15 THE COURT: Yes, ma'am.

16 (Whereupon, a bench conference was held off the record.)

17 MS. HAHN: I call Teshima Capers.

18 THE CLERK: Right up here (indicating), Ms. Capers.

19 TESHIMA CAPERS, having been
20 first duly sworn, testified as follows:

21 THE CLERK: Have a seat up there (indicating) please,
22 ma'am. Once you're seated state your full name spelling your
23 first, please.

24 MS. CAPERS: Teshima Capers, T-E-S-H-I-M-A C-A-P-E-R-S.

25 DIRECT EXAMINATION BY MS. HAHN:

TESHIMA CAPERS - DIRECT EXAMINATION BY MS. HAHN

- 1 Q. Thank you, Ms. Capers. How do you know, Lywone Capers?
- 2 A. That's my cousin.
- 3 Q. Okay. And how long have you known him?
- 4 A. All my life, eighteen years.
- 5 Q. And how old are -- you're 18 now.
- 6 A. Um-hum.
- 7 Q. Okay. And where do you live now?
- 8 A. I live in New York.
- 9 Q. Have you always lived in New York?
- 10 A. No.
- 11 Q. Where did you live in July of 2007?
- 12 A. In Charlotte.
- 13 Q. All right. Did you live close to Lywone?
- 14 A. Yes, I did.
- 15 Q. Okay. And do you remember going to visit him on July
- 16 25th and tve -- and -- or excuse me, do you remember seeing
- 17 him at the end of July on the 25th?
- 18 A. Yes.
- 19 Q. Okay. And how did you see him on the 25th?
- 20 A. The 25th was me and my mother we went to take him
- 21 soup.
- 22 Q. On that ---
- 23 A. We took medicine.
- 24 Q. You took him soup ---
- 25 A. Medicine, ---

TESHIMA CAPERS - DIRECT EXAMINATION BY MS. HAHN

1 Q. --- and medicine?

2 A. --- um-hum, 'cause he was sick.

3 Q. Okay. And what was wrong with him?

4 A. We don't know. He just was running a fever and he was
5 spittin' up and everything but we didn't know what technically
6 was wrong with him 'cause he didn't wanna go to the doctor.

7 Q. Okay. And what time did ya'll get there that night?

8 A. It was between -- it was after eleven because my mother
9 gets offa work at eleven so it takes us around twenty-five
10 minutes to get there so but I don't know approximately what
11 time did we get there.

12 Q. Who else was at the house when you got there?

13 A. It was just my -- oh, when I got there?

14 Q. Yes.

15 A. It was my aunt, my cousins, his father, and my Aunt
16 Tidleek, and his girlfriend.

17 Q. Okay. Did Lywone have any pets?

18 A. Yes.

19 Q. And what animals do they have?

20 A. Dogs.

21 Q. Okay. Now at any point when you were there did Lywone
22 leave?

23 A. No.

24 Q. Okay. Now did you see him on the 26th?

25 A. Yes.

TESHIMA CAPERS - CROSS-EXAMINATION BY MR. UNDERWOOD

1 Q. And to what were the circumstances where you saw him on
2 the 26th?

3 A. I came to get him outta the house so he can go with me to
4 my mother's job to pick up a check.

5 Q. Okay. What time was that?

6 A. Between four and five because the office closes at five.

7 Q. And did anybody go with ya'll?

8 A. His girlfriend.

9 Q. Okay. So when you picked up the check did you do
10 anything else?

11 A. No. We went to pick up the check and we came back.

12 Q. Okay. So when you left he was at his house, is that
13 right?

14 A. Um-hum.

15 Q. Okay.

16 MS. HAHN: Nothing further, Your Honor.

17 THE COURT: Thank you, Ms. Hahn. Mr. Underwood?

18 MR. UNDERWOOD: Thank you, Your Honor.

19 THE COURT: Thank you.

20 CROSS-EXAMINATION BY MR. UNDERWOOD:

21 Q. Afternoon, Ms. Capers. I just wanna make sure that you
22 said that Lywone was your cousin?

23 A. Uh-huh (affirmative.)

24 Q. And what's your relationship to Boyd Evans?

25 A. That's my cousin to too.

TESHIMA CAPERS - CROSS-EXAMINATION BY MR. UNDERWOOD

1 Q. He's also your cousin?

2 A. Well technically he's my uncle 'cause my grandmother --
3 he's adopted by my grandmother so that makes him my mother's
4 brother so technically that makes him my uncle and my cousin.

5 Q. Okay. I think I got that. Let's see, now you say that
6 you remember seeing Lywone on the 25th, is that right?

7 A. Um-hum.

8 Q. How do you remember the 25th versus any other day?

9 A. Because, I remember because the day before we we -- I was
10 over there by myself and we was talkin' about how my
11 grandmo -- father's birthday was that day and then I came over
12 the next day, that's how I remember.

13 Q. All right. Now you said that your mo -- you and your mom
14 went over there to take him was it medicine or was it soup?

15 A. It was both.

16 Q. All right. And you said it's -- you said that as far as
17 pets go he ha -- they have a -- wha'd they have?

18 A. My my aunt has a dog that she have for a long time,
19 Princess, and there was puppies that was my cousin's.

20 Q. And which which cousins are those. You mentioned there
21 were several children there?

22 A. Oh, my little cousin Bilal. They was his puppies.

23 Q. And then you said on which day was it you went to get
24 your mom's paycheck?

25 A. On the 26th.

TESHIMA CAPERS - CROSS-EXAMINATION BY MR. UNDERWOOD

- 1 Q. And who was it you went with?
- 2 A. It was me myself, him and his girlfriend Jaid.
- 3 Q. And what time did you go there?
- 4 A. Between four and five.
- 5 Q. When you went there and you took the medicine and the
- 6 soup, you remember what kinda soup it was?
- 7 A. No, 'cause my mother already had it in the bag.
- 8 Q. Do you know where she got it from?
- 9 A. No.
- 10 Q. And how long did you guys stay there?
- 11 A. Stay where?
- 12 Q. That night on that little, on the 25th when you went to I
- 13 guess your ant's house and you saw Lywone. How long ---
- 14 A. Oh, ---
- 15 Q. --- did you guys stay there?
- 16 A. --- um, I would say no more than two hours.
- 17 Q. And, Ms. Capers, when did you find out that, I ask you
- 18 both of your cousins, whendyou find out that they had been
- 19 arrested?
- 20 A. Actually, I was with them on the night that they was
- 21 arrested.
- 22 Q. So you were with them when they got arrested.
- 23 A. Um-hum.
- 24 Q. Did you know why they were being arrested?
- 25 A. No.

TESHIMA CAPERS - CROSS-EXAMINATION BY MR. UNDERWOOD

1 Q. So no one told you at that point in time why they were
2 arrested?

3 A. No, I knew weeks later.

4 Q. Okay. And when was that that they were arrested?

5 A. It was sometime in September and we was all together
6 because it's -- it was my cousin's birthday, his sister
7 Shilan, so we was all together.

8 Q. And after that you said a few weeks later you found out
9 what he was being arrested for.

10 A. Um-hum.

11 Q. Did you ever go to the police and say, I saw my cousin on
12 that date here in Charlotte, that it couldn't have been him?
13 Did you ever tell anybody that?

14 A. Well he was in South Carolina I think at the time when I
15 had found out he was already down here.

16 Q. But did you ever tell anybody say, Hey, he just he didn't
17 do it, I saw him in Charlotte that night, he couldn't have
18 been there. Did you ever tell anybody that?

19 A. No. I told the lawyer when the lawyer called.

20 Q. But before before ---

21 A. Prior to not.

22 Q. --- before that never told anybody and since then you
23 never went to the police to say anything about it?

24 A. No.

25 MR. UNDERWOOD: No further questions, Your Honor.

TESHIMA CAPERS - CROSS-EXAMINATION BY MR. MILLER

1 THE COURT: Mr. Miller?

2 CROSS-EXAMINATION BY MR. MILLER:

3 Q. Ms. Capers, how are you going?

4 A. Fine.

5 Q. I represent Boyd Evans. My name's David Miller. You you
6 mentioned to the State that you knew Boyd as well?

7 A. Yeah.

8 Q. How long have you known him?

9 A. I would say since I was 6 is when my grandmother got
10 them.

11 Q. Okay. And his sister Cherise, you know her?

12 A. Yes.

13 Q. Okay. Well?

14 A. Yes.

15 Q. Okay. Do you know where she was working at the time?

16 A. Church's.

17 Q. Church's Chicken up in Charlotte?

18 A. Um-hum.

19 Q. Okay. I don't have any further questions.

20 THE COURT: Redirect, Ms. Hahn?

21 MS. HAHN: Just one question.

22 REDIRECT EXAMINATION BY MS. HAHN:

23 Q. The animals that were there that the night can you tell
24 us which ones were there again.

25 A. The dogs, Princess, and there was puppies, I don't know

MOTIONS AND MATTERS

1 their names.

2 MS. HAHN: Okay. No further questions, Your Honor.

3 THE COURT: Recross, Mr. Underwood?

4 MR. UNDERWOOD: One moment, Your Honor?

5 THE COURT: Yes, sir.

6 MR. UNDERWOOD: No further questions, Your Honor.

7 THE COURT: Thank you. Thank you very much. Wait wait
8 just a minute. Recross, Mr. Miller?

9 MR. MILLER: I have no further questions.

10 THE COURT: Thank you very much, ma'am. You may step
11 down. Is your next witness about this long?

12 MS. HAHN: Your Honor, may I approach?

13 THE COURT: Yes, ma'am.

14 (Whereupon, a bench conference was held off the record.)

15 THE COURT: All right. Perhaps we've come to a a good
16 point to take our evening recess. I would remind you, ladies
17 and gentlemen, during this recess you're not to discuss this
18 case with anyone, that includes your fellow jurors, family,
19 friends or anyone else. If anyone tries to talk with you
20 about the trial, please let me know. Remember, do not do any
21 independent investigation or any investigation on the internet
22 or otherwise, do not watch, read or listen to any news reports
23 about the case should there be any. Remember to keep an open
24 mind, do not to begin your deliberations until you've heard
25 all the evidence and testimony and the charge on the law by

MOTIONS AND MATTERS

1 the Court. I appreciate your patience and your continued
2 focus and attention in the trial of this case and there is a
3 light at the end of the tunnel, it's not a oncoming train or
4 anything like that. We'll press on tomorrow. The attorneys
5 for all the parties have worked very hard and will continue to
6 do so. If you'd be back in your jury room promptly at 9:30 in
7 the morning, promptly at 9:30. Hope ya'll have a pleasant
8 evening. Thank you very much. If you'd leave your notes on
9 your chair.

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

12 THE COURT: All right. Anything further from the State?

13 MR. MALDONADO: No, Your Honor.

14 THE COURT: From the defense, Ms. Hahn?

15 MS. HAHN: No, Your Honor.

16 THE COURT: Mr. Miller?

17 MR. MILLER: No, sir.

18 THE COURT: All right. Thank you. Thank you very much.
19 See you at 9:30 in the morning.

20 MR. MILLER: Thank you, Judge.

21 (Proceedings January 14, 2010)

22 THE COURT: All right. Anything from the State before we
23 bring our jury out?

24 MR. MALDONADO: No, Your Honor.

25 THE COURT: From the defense, Ms. Hahn?

MOTIONS AND MATTERS

1 MS. HAHN: No, Your Honor.

2 THE COURT: Mr. Miller?

3 MR. MILLER: No, Your Honor.

4 THE COURT: All right. Bring us our jury, please.

5 THE BAILIFF: All right, sir.

6 (Whereupon, a discussion was held off the record.)

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

8 THE COURT: Good morning, ladies and gentlemen of the
9 jury panel. I hope ya'll had a pleasant evening. We're
10 continuing the trial of the case by the continuation of
11 testimony by the defendant Mr. Capers. Please continue to
12 give the parties your complete and undivided attention.

13 Ms. Hahn, you may call your next witness.

14 MS. HAHN: Your Honor, at this ---

15 THE BAILIFF: Excuse, me ---

16 MS. HAHN: --- time the defense rests.

17 THE BAILIFF: --- just a moment, sir.

18 (Whereupon, the jurors' notepads were distributed.)

19 THE COURT: All right. Ms. Hahn.

20 MS. HAHN: Your Honor, at this time we would rest our
21 case.

22 THE COURT: All right. So the defendant Capers rests, is
23 that correct?

24 MS. HAHN: Yes, Your Honor.

25 THE COURT: All right. Ms. Hahn, I don't know if you're

CHERISE EVANS - DIRECT EXAMINATION BY MR. MILLER

1 required to renew your motions at this stage; however, would
2 you do so for the record formally and I will hear them at a
3 later time.

4 MS. HAHN: Yes, Your Honor. At this time I would renew
5 all prior objections and motions.

6 THE COURT: All right. Thank you. Thank you very much.
7 All right. Ladies and gentlemen, you've heard all the
8 testimony and evidence you're gonna hear on behalf of the
9 defendant Lywone Capers in his case in chief. We would now go
10 to Mr. Miller and ask Mr. Miller does the defendant Boyd Evans
11 intend to present any evidence or testimony?

12 MR. MILLER: He does, Your Honor.

13 THE COURT: All right. You may call your first witness.

14 MR. MILLER: Okay. Mr. Evans calls Cherise Capers --
15 Evans, excuse me. I think she's out there. She was.

16 THE CLERK: Right up here (indicating), Ms. Evans.

17 CHERISE EVANS, having been
18 been first duly sworn, testified as follows:

19 THE CLERK: Please have a seat up there (indicating),
20 ma'am. Once you're seated state your full name spelling your
21 first for us, please.

22 MS. EVANS: Cherise Evans, C-H-E-R-I-S-E.

23 DIRECT EXAMINATION BY MR. MILLER:

24 Q. Good morning, Ms. Evans, ---

25 A. Good morning.

CHERISE EVANS - DIRECT EXAMINATION BY MR. MILLER

1 Q. --- how are you doing?

2 A. Fine.

3 Q. Good. Basically, I want to -- you to tell the jury if
4 you will a little bit about yourself. Can you tell me how old
5 you are?

6 A. I'm 22-years-old.

7 Q. Twenty-two years old. And where do you live at?

8 A. I reside in South Carolina, Columbia.

9 Q. Okay. Have you always lived here?

10 A. No.

11 Q. Where else have you lived.

12 A. I lived in Charlotte, North Carolina.

13 Q. Okay. When when were you in Charlotte?

14 A. I stayed in, I stayed in Charlotte in '07.

15 Q. Okay. During -- were you in Charlotte over July of
16 2007 ---

17 A. Yes.

18 Q. --- at the date that this incident occurred?

19 A. Yes.

20 Q. Okay. When did you first learn about this incident?

21 A. September when they arrested them at my house.

22 Q. Okay. So the arrest was at your house?

23 A. Yes.

24 Q. Were you living with Boyd at the time?

25 A. Yes, he lived with me.

CHERISE EVANS - DIRECT EXAMINATION BY MR. MILLER

- 1 Q. Who else lived there?
- 2 A. Just me and him and my brother John.
- 3 Q. Okay. At -- where did you work at this time?
- 4 A. I worked at Church's Chicken and I worked for Serenity
- 5 Nursing.
- 6 Q. Okay. And which Church's Chicken?
- 7 A. The one on Wilkinson Boulevard.
- 8 Q. Okay. Now typically -- now did you drive yourself?
- 9 A. No.
- 10 Q. Okay. How did you normally get to and from work?
- 11 A. My mother or either Boyd would drive me to work ---
- 12 Q. Okay.
- 13 A. --- 'cause my mother always didn't drive.
- 14 Q. Okay. And how -- did they also pick you up?
- 15 A. Yes.
- 16 Q. Okay. Over July 25th, 26th of 2007 being the date of
- 17 this incident, do you recall whether who, if anyone, picked
- 18 you up from work?
- 19 A. Yes.
- 20 Q. Who was that?
- 21 A. My brother Boyd.
- 22 Q. Boyd Evans?
- 23 A. Yes.
- 24 Q. Okay. And at any time to your knowledge had he left the
- 25 Charlotte, North Carolina area over those dates?

CHERISE EVANS - DIRECT EXAMINATION BY MR. MILLER

1 A. No.

2 Q. Okay. Now, Ms. Evans, at that time were you dating
3 anybody?

4 A. Yes, we had broke up recently.

5 Q. Okay. And who was that?

6 A. Solo.

7 Q. Can you spell that.

8 A. S-O-S.

9 Q. Okay. And let let me ask you this: Does Boyd ever go by
10 any nicknames?

11 A. He went by two nicknames.

12 Q. What were they?

13 A. Boyd his first name and we called him Blacky or
14 Pocketbook.

15 Q. Okay. And so Black or Blacky?

16 A. No, it wasn't black, it's Blacky.

17 Q. Blacky?

18 A. Yeah.

19 Q. And did you ever know anybody else to go by those
20 nicknames?

21 A. He had a friend that went by the name of, a nickname of
22 Black.

23 Q. Okay. So not Blacky but Black.

24 A. Yeah.

25 Q. Okay. What was his real name?

CHERISE EVANS - DIRECT EXAMINATION BY MR. MILLER

1 A. Um, Garrett.

2 Q. Okay. Was there anything that -- and did you know
3 Garrett or Gary?

4 A. Yes.

5 Q. How well did you know him?

6 A. I knew him pretty well. He came to the house. He stayed
7 the nights.

8 Q. Okay. How many -- how long a period a time did you know
9 him?

10 A. Over a year.

11 Q. Okay. And was that prior to this incident?

12 A. Yes.

13 Q. Okay. And was there anything distinguishing or special
14 about Gary?

15 A. What do you mean distinguishing or anything?

16 Q. Anything that, anything similar to to Boyd or anything
17 that that you found dis ---

18 MR. MALDONADO: Your Hon ---

19 MR. MILLER: --- tinguishing?

20 MR. MALDONADO: --- Your Honor, we ---

21 MS. EVANS: Yes.

22 MR. MALDONADO: --- would object ---

23 MS. EVANS: From a distance they looked, ---

24 THE COURT: Ma'am, please don't ---

25 MS. EVANS: --- from a dist ---

CHERISE EVANS - CROSS-EXAMINATION BY MR. UNDERWOOD

1 THE COURT: Ma'am, don't answer a question when somebody
2 objects. Wait till I -- I sustain the objection. You may ask
3 your next question now, ---

4 MR. MILLER: Okay.

5 THE COURT: --- Mr. Miller.

6 BY MR. MILLER:

7 Q. And were you ever -- were you friends with Garrett or
8 were you -- did you ever date Garrett?

9 A. Yes, I had dated him.

10 Q. Okay. But again, you were working at Church's chicken
11 over this period a time?

12 A. Yes.

13 Q. Okay. And you to your, to your knowledge and belief Boyd
14 was there to pick you up and take you to work over the date of
15 this incident?

16 A. Yes.

17 Q. Okay. I don't have any further questions for this
18 witness.

19 THE COURT: Thank you. Thank you, Mr. Miller.
20 Mr. Underwood?

21 CROSS-EXAMINATION BY MR. UNDERWOOD:

22 Q. Good morning, Ms. Evans.

23 A. Good morning. Just a few very quick questions for you.
24 You said that you were present when your brother would -- I'm
25 sorry, you said your brother. Boyd's your brother?

CHERISE EVANS - CROSS-EXAMINATION BY MR. UNDERWOOD

- 1 A. Yes.
- 2 Q. Okay. You said that you were present when he was
3 arrested?
- 4 A. Yes.
- 5 Q. Who else was there?
- 6 A. It was me, my niece Tay, a couple a my brother friends
7 and Lywone Capers.
- 8 Q. Okay. And when when did that happen?
- 9 A. That happened September.
- 10 Q. Do you know what day in September?
- 11 A. I'm not too sure about the date but I know it was right
12 before my sister' birthday.
- 13 Q. And you said that off and on you worked at -- well, you
14 worked at Church's Chicken.
- 15 A. Yes.
- 16 Q. And you didn't drive yourself to work?
- 17 A. No.
- 18 Q. And that alternating off and on your mother and Boyd
19 would pick ya up, drop ya off?
- 20 A. Yes.
- 21 Q. Okay. And and that would change frequently ---
- 22 A. No.
- 23 Q. --- between the two of 'em?
- 24 A. My mother have a bad leg and she can't see that good at
25 night so Boyd would take me to work and pick me up.

CHERISE EVANS - CROSS-EXAMINATION BY MR. UNDERWOOD

1 Q. Now on July 25th you say that you, the best that you
2 recall Boyd picked you up. How how do you remember July 25th
3 as opposed to any other day?

4 A. Because my sister' birthday's the rd and my
5 grandfather' birthday is the th and I had the 23rd and 24th
6 off and the 25th I had to be to work.

7 Q. And your your grandfather's birthday which which
8 grandfather is this?

9 A. That be my mother's, my mother's husband.

10 Q. Okay. And just so that I understand your family's
11 arrangement, ho -- is is that grandfather related to Lywone
12 Capers?

13 A. Yes.

14 Q. How?

15 A. That's his grandfather but I was, since I'm adopted I
16 just call him grandfather like everybody else did.

17 Q. Okay.

18 MR. UNDERWOOD: No further questions, Your Honor.

19 THE COURT: Thank you. Ms. Hahn?

20 MS. HAHN: No questions for this witness, Your Honor.

21 THE COURT: Redirect, Mr. Miller?

22 MR. MILLER: None. Thank you.

23 THE COURT: Thank you. Thank you very much, ma'am. You
24 may step down.

25 (Whereupon, the witness left the stand.)

LARRY CRUTCHLOW - DIRECT EXAMINATION BY MR. MALDONADO

1 THE COURT: All right. Mr. Miller, you may call your
2 next witness.

3 MR. MILLER: Your Honor, Mr. Evans' defense rests.

4 THE COURT: All right. Thank you very much. Is there
5 any evidence or testimony in reply from the State?

6 MR. MALDONADO: Yes, Your Honor.

7 THE COURT: All right. Ladies and gentlemen, you heard
8 the defendant Boyd Evans has rested his case in chief. The
9 State has the opportunity to present evidence in reply to any
10 new evidence that was brought up during the course of either
11 Mr. Capers' defense or Mr. Evans' defense.

12 All right, Mr. Maldonado, you may call your first
13 witness.

14 MR. MALDONADO: Thank you, Your Honor. The State calls
15 Deputy Larry Capers -- I mean, Crutchlow.

16 THE COURT: Deputy Crutchlow? All right.

17 LARRY CRUTCHLOW, having been
18 first duly sworn, testified as follows:

19 THE CLERK: Have a seat, please. Once you're seated
20 state your full name spelling your last.

21 DEPUTY CRUTCHLOW: Larry Crutchlow, last name
22 C-R-U-T-C-H-L-O-W.

23 DIRECT EXAMINATION BY MR. MALDONADO:

24 Q. Good morning, Mr. Crutchlow or Deputy Crutchlow. Can you
25 tell the jury where it is you work.

LARRY CRUTCHLOW - DIRECT EXAMINATION BY MR. MALDONADO

1 A. I work for the Richland County Sheriff's Department.

2 Q. How long have you worked there?

3 A. About three months.

4 Q. Okay. Where'd you work before that?

5 A. I worked for the Eleventh Circuit Solicitor's Office as a
6 violent crimes investigator.

7 Q. Okay. Did you happen to have an opportunity to
8 investigate this incident?

9 A. Yes, I did.

10 Q. Okay. And did you talk to any witnesses?

11 A. Yes, I did. I spoke with Ms. Tammy Coleman and Ms., I'm
12 gonna try to say it's Ms. Haynesworth. I can't pronounce the
13 first name.

14 Q. Is it -- okay, Bilat -- Bilal?

15 A. Bilal.

16 Q. Okay. And when was that?

17 A. That was October the 6th of 2008.

18 Q. Okay. And those the witnesses that testified here today?

19 A. Yes, they ---

20 Q. Testified ---

21 A. --- testified yesterday, yes, sir.

22 Q. What happened in that conversation?

23 A. I originally went out there because I got notice that
24 they were gonna present a alibi defense at this trial. I went
25 out there to basically verify their alibi and see

LARRY CRUTCHLOW - DIRECT EXAMINATION BY MR. MALDONADO

1 what -- get a statement from them basically stating what it
2 was they were gonna give an alibi to concerning the incident
3 date, memorable events surrounding it, things of that nature.

4 Q. Okay. And if get evidence if it helps the defense or
5 hurts the defense? I mean, ---

6 A. Yeah, like anything working for the prosecutor when I go
7 to investigate things further if I get information that's
8 favorable to the defense I have to turn it over. If I get
9 things that are favorable to the prosecution, obviously I have
10 to turn it over. What I was looking for was if there was
11 something favorable to the defense obviously I woulda turned
12 it over and the prosecutor woulda made a decision regarding
13 the evidence that I turned over.

14 Q. Okay. So were you out there just seeking, seeking to
15 just just sink the the defendants?

16 A. Not at all. That that is not what my job entailed. My
17 job entailed looking at it from a nonbia -- not from a biased
18 perspective. I would look at the case and I would basically
19 brief the prosecutor on the strengths and weaknesses of the
20 case and they would decide whether or not to go forward or
21 dismiss the case for lack of evidence.

22 Q. All right. So tell me how the conversation went. Where
23 did you meet with them?

24 A. I met with them at their house which was St. Mathews
25 Road in the Swansea area of Lexington County. When I arrived,

LARRY CRUTCHLOW - DIRECT EXAMINATION BY MR. MALDONADO

1 I met with Ms. Coleman and Ms. Haynesworth, um, ---

2 Q. I'm sorry ---

3 A. --- ident ---

4 Q. --- is that Mr. Haynesworth?

5 A. I'm sorry Mr. Haynesworth. I identified myself and told
6 'em where I worked and really what, kinda what my job
7 responsibilities were. I asked 'em if they would give a
8 written statement concerning the alibi and they did not want
9 to but they did agree to talk with me verbally and I took
10 notes.

11 Q. Okay. What they say?

12 A. Well, again, I was trying to ascertain whether or not
13 their -- the alibi was -- I could verify it through them and
14 get the incident date and I asked 'em a couple of questions
15 basically, you know, just common questions: When did the
16 incident occur, things of that nature. Neither one of them
17 had really any idea of when the date actually occurred. I did
18 not give them any dates because that would have -- there
19 would have been no point in giving them a date if I was trying
20 to verify an alibi so I was just asking, you know, what month
21 did it occur, what day did it occur and neither one of 'em
22 really had any idea of when it actually occurred.

23 Q. Okay. So you didn't tell 'em it was on the 10th or 12th
24 or ---

25 A. No, I did not.

LARRY CRUTCHLOW - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Okay. Did you make any threats to them about talking to
2 you or ---

3 A. Absolutely not.

4 Q. Okay. And so what -- how did they, how did they remember
5 the the incident?

6 A. They remembered it, Ms. Coleman remembered it as then
7 because she had to go pick up a payroll check from I believe
8 Tidleek and they al -- she also remembered saying they had a
9 discussion about his girlfriend living at the house at the
10 time.

11 Q. Okay.

12 A. Um, ---

13 Q. Did she mention anything about any birthdays?

14 A. No.

15 Q. Did they mention anything about any special occasions
16 around the incident?

17 A. No.

18 Q. Were they willing to give you a statement, a written
19 statement?

20 A. No, they were not.

21 Q. Okay. I'm sorry. And then what else? Anything else
22 that they they remembered specifically?

23 A. I got a feeli -- I got a feeling they didn't obviously
24 know when it happened so I di -- I asked 'em, I said, you
25 know, How are you gonna actually gonna give an alibi defense

LARRY CRUTCHLOW - CROSS-EXAMINATION BY MS. HAHN

1 for your son or your brother if you don't know when the events
2 occurred, couldn't even tell me when the month it occurred in?
3 And Ms. Coleman stated that she saw, she saw it in the paper
4 when the offense occurred and she also said that in speaking
5 with her son's attorney that she knew that's when the offense
6 occurred.

7 Q. Okay. Did she say anything else? She ask you any
8 questions?

9 A. She did. It was rather strange. She asked me why didn't
10 the two other men get arrested. The reason that was strange
11 was because during the investigation there were two
12 unidentified men that were allegedly involved in the
13 robbery.

14 Q. And she knew about them.

15 A. Yes, sir, and that, again, that's why I quoted that in
16 the report because that was strange and it stood out.

17 Q. Was that public knowledge?

18 A. No, it was not. I do not believe so.

19 Q. Okay. No further questions.

20 THE COURT: Thank you, Mr. Maldonado. Ms. Hahn?

21 MS. HAHN: Yes, Your Honor.

22 CROSS-EXAMINATION BY MS. HAHN:

23 Q. Good morning, Deputy Crutchlow.

24 A. Morning.

25 Q. Just a few questions. I I think you referred twice to

LARRY CRUTCHLOW - CROSS-EXAMINATION BY MR. MILLER

1 Bilal Haynesworth as Ms. Haynesworth, is that correct?

2 A. Yes, I did.

3 Q. Had you forgotten that that Mr. Haynesworth is a teenage
4 boy?

5 A. No, I I did not. It was a mistake.

6 Q. Okay. And you worked at this point very closely with the
7 solicitor who was prosecuting this case, is that right?

8 A. Yes, I did.

9 Q. Okay. Did you have access to the rest of the file and
10 know what was going on with everything else in the case?

11 A. Specifically -- what specifically are you asking?

12 Q. I'm asking if you had reviewed the file and whether you
13 were familiar with the allegations and the statements and the
14 police reports and all that.

15 A. At the time when I went out there I had not reviewed the
16 entire file.

17 Q. Okay.

18 MS. HAHN: Your Honor, I have no further questions.

19 THE COURT: Thank you, Ms. Hahn. Mr. Miller?

20 CROSS-EXAMINATION BY MR. MILLER:

21 Q. Deputy Crutchlow, hey, good morning.

22 A. Good morning.

23 Q. Just briefly it appears from the date on your
24 investigative report that the interview took place September
25 2008, is that correct, or excuse me, Oct -- I'm sorry ---

LARRY CRUTCHLOW - CROSS-EXAMINATION BY MR. MILLER

1 A. October ---

2 Q. --- October ---

3 A. --- 6th 2008.

4 Q. Yeah, okay. And that's actually over almost a year and a
5 half from the time the incident occurred, correct?

6 A. Yes, sir.

7 Q. So if if people had a little difficulty understanding
8 what was going on while you were there, you would understand
9 after a year and a half that they might not know that.

10 A. They might not know what they were gonna get an alibi
11 for?

12 Q. No, they might not know why you were there, they might
13 not understand what was going on, that they might be a little
14 confused.

15 A. I explained why I was there very clearly.

16 Q. Okay. I don't have any further questions.

17 THE COURT: Redirect, Mr. Maldonado?

18 MR. MALDONADO: No, Your Honor.

19 THE COURT: Thank you. Thank you very much, Deputy ---

20 DEPUTY CRUTCHLOW: Yes, sir.

21 THE COURT: --- Crutchlow.

22 (Whereupon, the witness left the stand.)

23 THE COURT: All right. Mr. Maldonado, you may call your
24 next witness.

25 MR. MALDONADO: No no further witnesses, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: All right. Thank you. Any evidence or
2 testimony and served by Ms. Hahn?

3 MS. HAHN: No, Your Honor.

4 THE COURT: Mr. Miller?

5 MR. MILLER: None, Your Honor. All right. Thank you
6 very much. Ladies and gentlemen, the point we're at now is
7 you've heard all the evidence, all the testimony, all the
8 documents that are gonna be presented have been presented in
9 this case so now is the stage of the closing arguments by the
10 attorneys. The way we will conduct that procedure is the
11 attorneys for the defendant will go first, will present
12 their -- well let me ask ya this: Is the State gonna open?

13 MR. MALDONADO: Not unless the defense asks for that.

14 THE COURT: Defendant require the State to open, Ms. Hahn
15 or Mr. Miller?

16 MS. HAHN: No, Your Honor.

17 MR. MILLER: No.

18 THE COURT: All right. And who's going to close first on
19 behalf of which client?

20 MS. HAHN: Your Honor, Mr. Cornwell's gonna close first
21 for Mr. Caper -- well, he's gonna close for Mr. Capers. I
22 believe that he's gonna go first ---

23 THE COURT: All right and then, and then Mr. Miller?

24 MS. HAHN: Yes, Your Honor.

25 THE COURT: All right. I I was just trying to get it

MOTIONS AND MATTERS

1 straight. So the procedure we'll follow is Mr. Cornwell will
2 be first on behalf of Mr. Capers then Mr. Miller on behalf of
3 Mr. Evans and then Mr. Maldonado or Mr. Underwood, I do -- I'm
4 not sure.

5 MR. MALDONADO: I would, Your Honor.

6 THE COURT: Mr. Maldonado on behalf of the the State in
7 this case. After you've heard the closing arguments, which is
8 not evidence but the attorneys may comment on the facts of the
9 case, the law, inferences to be drawn from the facts of the
10 case and how that may be affected by the law in the case,
11 after you've heard all the closing arguments of the attorneys
12 I will do what is known as "charge" you the law in the case.
13 I'll charge you the law on armed robbery, kidnapping,
14 possession of a weapon during the commission of a violent
15 crime and both the specific law and the general law that
16 applies in all criminal cases. I'm not sure the exact amount
17 of time that procedure will take, I will give ya'll a break
18 before we start it 'cause I'm gonna ask the attorneys about
19 how long they think they would need to present their closing
20 arguments to you. After you've heard the closing arguments,
21 after you've heard the charge on the law by the Court, the
22 case will then be submitted to you for your deliberations for
23 your verdict. So I think we'll take about a fifteen-minute
24 recess. I'll have you back out here and upon your return
25 we'll go right into the closing arguments. Please go with

MOTIONS AND MATTERS

1 your jur -- jury or bailiff, remember do not discuss the case
2 during this brief recess.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Mr. Miller, I neglected to protect you on the
6 record as far as your motion. I'm not sure you would have to
7 make them at the close of your defense but I will note that I
8 did that with Ms. Hahn. On behalf of Mr. Capers, I also do
9 that for the record ---

10 MR. MILLER: Okay, and I -- yeah, for the record I would
11 renew my objection at this time.

12 THE COURT: Ms. Hahn, do you have any motion?

13 MS. HAHN: Your Honor, at this time I I don't have any
14 more motions. I would, however, request that any of the
15 sequestered witnesses be allowed to return to the courtroom.

16 THE COURT: All right. And, Mr. Miller, do you have any
17 motions?

18 MR. MILLER: No, Your Honor. I don't have any further
19 motions.

20 THE COURT: All right. All of the motions as far as
21 directed verdicts and all are so noted and I will reaffirm my
22 rulings at the end the State's case and deny that motion as I
23 did at the end of the State's case. Any specific request to
24 charge?

25 MR. MALDONADO: Hand of one is the hand of all, Your

MOTIONS AND MATTERS

1 Honor, that's the -- other than the obviously standard law but
2 that's the ---

3 THE COURT: All right.

4 MR. MALDONADO: --- certain specific one.

5 THE COURT: Any comment as to that, Ms. Hahn, and/or any
6 specific request to charge?

7 MS. HAHN: Yes, Your Honor. I don't have any comment on
8 the attorney general's requested ---

9 THE COURT: All right.

10 MS. HAHN: --- construction. Here are mine.

11 (Whereupon, counsel handed the document to the Court.)

12 THE COURT: I would -- I will cover your multiple
13 defendants, that will be covered in my general charge. I
14 usually do not comment on a dismissed indictment at all. Do
15 you have any position on that, Mr. Maldonado?

16 MR. MALDONADO: Yes, Your Honor. I mean, you know,
17 that's if you comment on it, I'm I'm -- it brings it to to
18 light and ---

19 THE COURT: I mean, that was just a action by the Court.
20 I don't think it's anything yet any of the attorneys can argue
21 either 'cause that was just by operation of law or my
22 interpretation of the law so I generally do not comment on
23 that. I mean, I'll be glad to hear from ya on that,
24 Ms. Hahn.

25 MS. HAHN: My only worry is that since there were two

MOTIONS AND MATTERS

1 ki -- kidnapping charges, one for each victim, that the jury
2 might infer somethin' from the fact that one was dismissed and
3 one was not and they might think that there -- they should
4 give more weight to the one that wasn't dismissed. That's the
5 only reason I would request that.

6 THE COURT: And ---

7 MR. MALDONADO: I think the opposite would be the case.
8 The ones dismissed they might wonder, you know, why isn't the
9 other one dismissed so that cuts both ways.

10 THE COURT: Do you have a position on that, Mr. Miller?

11 MR. MILLER: Well, Your Honor, I mean, I I kinda side
12 with Mr. Maldonado on most and yes I certainly under
13 Ms. Hahn's point but I guess my fear would be to kinda cut the
14 wrong way and they may infer from that that there is
15 sufficient evidence to keep the other one and find them guilty
16 on that maybe for a different reason than they should.

17 THE COURT: Well it's not in evidence.

18 MR. MILLER: Correct, I mean, that's ---

19 THE COURT: I mean, it's it's -- I'm commenting on
20 somethin' that's not even in evidence but ---

21 MR. MILLER: Yeah, I ---

22 THE COURT: --- obviously I'm gonna -- I'm not
23 commenting on reinstructing on something that's not in
24 evidence. I -- I'm going to instruct on failure to testify of
25 course because that's that's a requirement constitutionally.

MOTIONS AND MATTERS

1 I'm I'm gonna decline to charge that.

2 The next one, burden of proof for each charge, I I
3 generally cover that in my general charge and I also add the
4 alibi, the standard alibi defense. All right.

5 MS. HAHN: Your Honor, can I have a a copy of my
6 requested charges made a Court's Exhibit?

7 THE COURT: Certainly. Do you have a copy? So I'm I'm
8 gonna charge generally I'm chargin' 1, 3 and 4, maybe not in
9 your precise language. I'm declining to charge your Request
10 No. 2.

11 MS. HAHN: Thank you, Your Honor.

12 THE COURT: Did you have any comment on what I'm charging
13 otherwise, Mr. Maldonado?

14 MR. MALDONADO: No, Your Honor.

15 THE COURT: All right. And do you have any particular
16 request to charge, Mr. Miller?

17 MR. MILLER: Your Honor, the only one that and I didn't
18 know how you dealt with this I I used Anderson's book and
19 under Section 17 about the defendant not testifying. If you
20 cover that in your standard, otherwise I I don't have
21 any ---

22 THE COURT: I do cover it in my standard charge. I I
23 don't know if it's out of Judge Anderson's book or not. It's
24 the one I use that I -- it's about a two paragraph charge I
25 would say.

MOTIONS AND MATTERS

1 MR. MILLER: Yeah.

2 THE COURT: I'll I'll be glad to let you look at it.
3 It's still back there in my office.

4 MR. MILLER: I think I've got, and the one I printed out
5 is I think just that it's it's a two paragraph charge ---

6 THE COURT: All right.

7 MR. MILLER: --- in this book, that's -- and that's fine.
8 I can, I can hand this one up but if you've got your own that
9 you use there's no -- I'll just make ---

10 THE COURT: All right.

11 MR. MILLER: --- a copy so ---

12 THE COURT: Hand it up and if I see it's any different or
13 anything additional I'll point that out to you ---

14 MR. MILLER: Okay.

15 THE COURT: --- before we ---

16 MR. MILLER: Otherwise, I have no other request.

17 THE COURT: All right. How long you need to argue,
18 Mr. Cornwell?

19 MR. CORNWELL: Your Honor, it's kinda hard for me to
20 gauge at this point. I know I do have about three or four
21 pages of printed things that I kinda want as as an outline. I
22 don't know if I can gauge time from that but I'll try to keep
23 it as precise as possible.

24 THE COURT: I'm not asking you to be brief or long, I
25 just wanna -- I'm gonna kinda give the jury an idea about how

MOTIONS AND MATTERS

1 long the procedure'll take. If I tell 'em about thirty
2 minutes an attorney but and I'll tell 'em I'm not gonna hold
3 'em to that, I mean, if you go ---

4 MR. CORNWELL: Your Honor, I I don't think I'll go thirty
5 minutes ---

6 THE COURT: Right.

7 MR. CORNWELL: --- but we like I said ---

8 THE COURT: Now I'll tell 'em, you know, I'm not watchin'
9 the clock, they don't need to either. They need to be
10 listening to ya'll. I'm just tryin' to get an idea because I
11 may break between the arguments if if it, if it goes, you
12 know, between you and Mr. Miller if it's an hour they sit here
13 for an hour, I may break before we go to Mr. Maldonado just
14 'cause they may need a break, not because of you and Mr.
15 Miller just because they've set out here an hour and they
16 gonna be out here another thirty minutes.

17 MR. CORNWELL: Okay. There -- if if if you could say
18 thirty minutes---

19 THE COURT: All right.

20 MR. CORNWELL: --- I think that would be sufficient.

21 THE COURT: And that that -- that's about with you also,
22 Mr. Miller?

23 MR. MILLER: I actually think, Judge, I'll probly be a
24 little less than that, I mean, ---

25 THE COURT: All right.

MOTIONS AND MATTERS

1 MR. MILLER: --- I'm not gonna repeat everything he said
2 but I've got my own pages of notes so I -- I'd say somewhere
3 about fifteen to twenty minutes.

4 THE COURT: All right. If his, if his argument's real
5 good you could perhaps tape it and just so ---

6 (Laughter.)

7 MR. MILLER: No, I'll make my own but, uh, yeah, ---

8 THE COURT: I'm pickin' at ya.

9 MR. MILLER: --- but I'd say fifteen to twenty minutes,
10 Your Honor.

11 THE COURT: How 'bout you, Mr. Maldonado, is that about
12 right?

13 MR. MALDONADO: That sounds about right about twenty
14 minutes I guess, Your Honor, ---

15 THE COURT: All right. Why don't we take us about
16 fifteen minutes and we'll come back, we'll we'll go into
17 the -- I'll look at this failure to testify and then we'll go
18 into the closings. Thank ya'll very much.

19 (Defendant's requested charge marked Court's Exhibit No.
20 2.)

21 (Whereupon, a recess was taken.)

22 THE COURT: You have a chance to look at that charge on
23 the failure to testify?

24 MS. HAHN: I have, Your Honor.

25 THE COURT: All right. Any problems with that?

MOTIONS AND MATTERS

1 MS. HAHN: No, Your Honor.

2 THE COURT: Mr. Miller?

3 MR. MILLER: No problems, Your Honor.

4 THE COURT: All right. Thank you. All right if you'd
5 bring us our jury, please.

6 (Whereupon, a discussion was held off the record.)

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

8 THE COURT: All right. Welcome back, ladies and
9 gentlemen. As I told you before the break, we're now at the
10 stage of the closing arguments. The procedure which we will
11 follow is the attorney will present the closing argument on
12 behalf of Mr. Capers first, then on behalf of Mr. Evans, then
13 on behalf of the State. These arguments may take thirty
14 minutes or so each. I'm not a clock-watcher. I don't --
15 thirty minutes I don't have a hook and pull the attorneys off;
16 if they quit before thirty minutes, that's fine. As I told
17 ya'll in the beginning it's not a judicial marathon, it's an
18 important issue to both the State and to the defendants and
19 we're gonna give them their opportunity to present their
20 closing arguments. They may comment on the facts, the
21 inferences to be drawn from the facts, and how those facts and
22 inferences to be drawn apply to the law that I will charge you
23 after all the closing arguments. Remember, the attorneys are
24 not witnesses. What they say is not evidence but it's very
25 important part of the process, very important part of the

CLOSING ARGUMENTS

1 process when an attorney has the opportunity to address the
2 jury; there's only two times in the trial that they may do
3 that: in the opening and in the closing. I would advise any
4 of the spectators I do not allow any moving about during this
5 process while the attorneys are are making their comments,
6 their arguments to the jury. You may leave between arguments.
7 You may not leave, no one may enter the courtroom during the
8 argument. Sheriff, if you would make make sure no one enters
9 the courtroom during the closing arguments, I'm not sure I
10 have a bailiff posted back there this morning. But, ladies
11 and gentlemen, if you'd please give the attorneys your
12 complete and undivided attention as you have done to all the
13 parties throughout the course of this process. With that
14 being said, Mr. Cornwell, you may address the jury on behalf
15 of Mr. Capers.

16 MR. CORNWELL: Thank you, Your Honor. Good morning,
17 ladies and gentlemen of the jury, how you doin'? We haven't
18 kept you that long this week, maybe a little longer that each
19 side expected but I hope that it's been an interesting process
20 for you and I just wanna reassure you as the judge has said
21 and as anyone in this courtroom can agree that the role that
22 you're playing today is one of the most important roles that
23 you will ever play in your life, all right. It my not seem
24 like much, it may seem like, you know, you've just wasted some
25 time in court but I hope that you've been givin' both sides

CLOSING ARGUMENTS

1 your undivided attention, I hope that you've been absorbing
2 everything in, taking everything in, taking all the
3 information in. I like it that you guys asked to take notes,
4 that's a sign that you're at least interested in what's being
5 said today. You may see that I've brought my own notes up
6 here which frankly, I usually don't do in a closing but this
7 case is very important, there are a lot of issues that need to
8 be addressed and I I feel like sometimes I may have to refer
9 to my notes so therefore I brought 'em up here with me.

10 One thing that I think is important to consider in
11 closing and one thing that each side is gonna do is they're
12 gonna address the weaknesses and strengths of each side and
13 usually this is the part where I come in and I attack whatever
14 weaknesses I see in the State's case and I'm not gonna change
15 the formula. I'm gonna keep with it because from my
16 perspective the State's case is not strong enough to overcome
17 reasonable doubt and that's what we talked at the beginning
18 and that's what the judge will instruct you on exactly what
19 reasonable doubt is later.

20 There's an obvious lack of any physical evidence here.
21 One of the first things or one of the first things that jumped
22 out at us as the attorneys on a case no fingerprints, no DNA,
23 no money recovered. They said they had guns, no guns
24 recovered. They say a cell phone was stolen, no cell phone
25 recovered. Nothing. At least not from the people they accuse

CLOSING ARGUMENTS

1 of doing the crime. Where are these items at? Where are
2 they? No one knows. It wasn't recovered. They didn't even
3 search the homes of the individuals. They didn't do a lotta
4 things that one would think in the course of an ordinary
5 investigation would be done. You heard the detective come up
6 and speak about the difficulty in lifting fingerprints, the
7 difficulty in getting fingerprints from the scene and how a
8 lotta times they don't get fingerprints. A lot -- they say
9 that rarely do they get good fingerprints, something to that
10 effect. I mean, if finding fingerprints at a crime scene was
11 such a rare occurrence, why even have a fingerprintin' person
12 on the staff, why dedicate resources solely for that guy to go
13 to school and learn how to do it? It's just not credible, all
14 right. The investigation wasn't done, it wasn't thorough.
15 They took the word of a biased eyewitness, in our opinion, or
16 not an eyewitness, a biased witness who watched grainy video
17 footage and said, Hey I know those guys, Hey, that voice
18 sounds familiar and went out and arrested somebody based on
19 that, based on watching grainy pixilated video footage, it's
20 choppy, it's not even natural movement on the video and then
21 attribute this voice they -- to a person that they, you heard
22 the witness on the stand, seen once since 2005, maybe once.
23 She didn't even know my client Lywone Capers but she says, Oh,
24 I can recognize that voice even though she hadn't heard the
25 voice in over, what, two years to that point? And even when

CLOSING ARGUMENTS

1 she was on the stand she admitted, Well I didn't really really
2 exchange a lotta words, he kinda came and then went across the
3 street to his ex-girlfriend's house according to her testimony
4 because the fact of the matter is Mr. Capers wasn't even
5 there. You heard the witnesses get on the stand. You heard
6 them testify to the fact that he was in Charlotte that night
7 sick with the flu or a cold. We don't know. It's -- he
8 didn't wanna go to the doctor so they kinda treated him at
9 home, it's not uncommon flu-like symptoms, cold-like symptoms,
10 a lot of us kinda tough it out at home with some Theraflu or
11 medication, whatever medication we have and drink some soup
12 just as he did. You heard the testimony of his family
13 members. You heard 'em testify why that date stuck out in
14 their head; one, the grandfather's death. Grandfather died on
15 July 24th, not that particular year but some time ago, and
16 they memorialized that by reminiscing and lookin' at photos.
17 That stuck out in our client's mom's mind. So when she did go
18 speak to her son's attorney, which is the first time she was
19 told about when the dates were the crime occurred, it jumped
20 out in her mind like, Hey, wait a minute, I remember that day
21 'cause 24th is when her grandfather died, is when dad died and
22 we did our usual get together and reminiscing and then the
23 next day I remember that because Mr. Capers was sick, my son
24 was sick and he wasn't out, he wasn't out and about for a
25 better part of a week at least and my sister brought some soup

CLOSING ARGUMENTS

1 over and some medicine over 'cause we ran outta medicine and
2 he was in the bed that night and I remember 'cause the next
3 day he and his cousin went out to go pick up her check 'cause
4 she had to work a double shift. The mere mention of that
5 date, that time a year brought back that memory.

6 Now they brought -- you heard Mr. Crutchlow get on the
7 stand to I guess try to present his version of events when he
8 went out and interviewed Ms. Coleman and he made a a big deal
9 about, you know, It was kinda suspicious to me that she knew
10 details of the case when in fact I had not discussed those
11 with her. There's nothin' suspicious about it. She had
12 already talked to her son's lawyer. Of course she's gonna
13 talk about the details of the case, of course she's gonna know
14 there are four individuals they were lookin' for, of course it
15 would concern her that they arrest her son and another guy and
16 not those other two guys, of course she's gonna ask the
17 question, but also what is obvious to me and obvious to a
18 lotta people is that of course she's gonna have reservations
19 about talkin' to somebody so closely tied to law enforcement.
20 It's it's kind of a common sense to think that if somebody
21 arrests your son on such scant evidence why would you talk to
22 them? How could you trust them? Why would you open up and
23 just kinda tell everything you know about your alibi when
24 you're not even sure they're gonna listen to a word you say
25 because they've already shown that they're not willing to look

CLOSING ARGUMENTS

1 at the evidence as you see it, to look at the facts as you see
2 it and give you the benefit of the doubt. No, they arrest you
3 based on some grainy video footage and some obscure photo
4 identification and some obscure voice identification, I mean,
5 because it's clear to me as I look at this (indicating)
6 picture, I clearly see the eyes of my client, I clearly see
7 'em in this picture and his nose is so clear, it's so distinct
8 and I am being sarcastic because in no way is that noise
9 distinct, in no way do I see eyes and in no way would I be
10 able to identify anyone from this photo. I couldn't look at
11 this photo and identify myself and I see me every day when I
12 wake up and look in the mirror. This is a lady who hadn't
13 seen this guy in at least two years, at least two years and
14 from her own testimony she said the last time she went up in
15 '05 when she supposedly saw him, I don't think she actually
16 said she saw him, she said that, We're not allowed in the room
17 with the boys. So let's assume she didn't see him, I
18 mean, 'cause according to her own testimony she said they're
19 not allowed in the room with the boys, then the last time she
20 saw him was over seven years ago: 2000 or 2002 or whatever
21 date she picks because as we know and you heard from the
22 testimony the dates vary. She says that they visited on
23 holidays and she says they came down on the weekends but as
24 you heard the family members testify there was no -- there was
25 a rift in this family. This family wasn't close. They didn't

CLOSING ARGUMENTS

1 get together for holidays. They didn't come down for weekend
2 jaunts at cousin Glynnessa's house. That didn't happen. In
3 her mind, in her perceptions, I mean, maybe it did. I mean,
4 after all she thinks she can clearly identify somebody from
5 this (indicating) grainy photograph so, ya know, who's to say,
6 maybe in her mind that happened, I don't know, but according
7 to our client's witnesses that didn't happen. That's not how
8 this family gets along and it's all because of the incident we
9 heard Ms. Glynnessa testify to. All right. You heard her say
10 she was convicted of voluntary manslaughter for killin' her
11 sister. That caused a rift in this family.

12 MR. MALDONADO: Objection, Your Honor.

13 THE COURT: Yes, sir, I'll -- I will sustain that
14 objection. There's no evidence or testimony except she was
15 convicted of involuntary manslaughter and I struck that other
16 testimony from the record and I advised the jury that they
17 will put that aside, that they can only consider the fact that
18 she was convicted of involuntary manslaughter. And further in
19 that regard, ladies and gentlemen, I will give you a charge
20 during my closing charge to you that the fact that a person
21 has a prior criminal history does not disqualify that person
22 from being a witness in a criminal case. That evidence may be
23 used by you, if at all, solely on the issue of a witness's
24 credibility. That's solely a decision for you, the jury, to
25 determine. Thank you very much. You may continue ---

CLOSING ARGUMENTS

1 MR. CORNWELL: And I apologize to the Court, Your Honor,
2 it was a mistake on my part. As I was sayin', these things
3 caused a rift between the family, specifically between
4 Glynnessa and the rest of the family. Custody battles of her
5 children those things were a continuing cause, a source of
6 agitation between the family. and as the judge says, that's
7 not to say that she's not a a -- she can't be a witness but it
8 goes to show that she had a reason to hold a grudge against
9 them, goes to show that she had a motive to not necessarily be
10 as credible, to not necessarily be truthful about what she was
11 saying, okay. Michael Rhaney is her fiancée. Is he gonna get
12 on the stand and go against what his fiancée says? Is he
13 gonna go on the stand and possibly subject her to any kinda
14 trouble? no, he's gonna back her up.

15 Now, let's get to the issue of this truck. This truck is
16 kinda confusing to me, I don't know about you guys, but I've
17 heard that it was green and brown truck, I've heard blue and
18 brown truck and I've heard that it was a black truck. I've
19 heard three different license tag numbers, two of which were
20 wrong, one of which was right. What does that mean? No,
21 really what does that mean? Think about it. He got two
22 license tag numbers from two different people, neither one of
23 them were legitimate license tag number so he kinda
24 arbitrarily says, Well, let's rearrange these numbers and
25 letters and, voila, we got a license tag number that is a real

CLOSING ARGUMENTS

1 license tag number. Okay, whose license tag number is that?
2 And then they find some rival, some guy up in Charlotte.
3 Really? Really? Is that how it works now, I mean, is we just
4 kinda throw darts at letters and numbers, come up with a
5 license tag number because we couldn't get a legitimate one
6 from people who say they saw this vehicle, from two people who
7 described two different vehicles. You heard Rosa Lugo say, Oh
8 oh, it was a black one. You heard Michael Rhaney say it was a
9 blue and brown one and both of 'em gave different tag numbers.
10 I don't think so. I don't think that's legitimate. No, I
11 mea -- it -- that is just not how we put together a case, that
12 is not the kinda evidence that we put people in jail for,
13 okay? That is not what do.

14 Let's talk about, some more about the alibi for my
15 client. Let's talk about where my client was: Charlotte
16 North, Carolina in the bed sick the night of the robbery. You
17 heard his aunt testify she came by the house at 11:45. The
18 robbery took place at a little on twelve in the morning, a
19 little after twelve in the morning on July 26th of '07. He --
20 unless they have a vehicle that has warp drive I don't think
21 there's anyway he could have been there. I might be wrong but
22 there's no way you can be in two places at the same time.
23 They haven't invented that technology yet, we don't know, we
24 we don't have that yet, all right. You only only -- you not
25 only heard her but you heard people who were at the house,

CLOSING ARGUMENTS

1 people who were literally in the room with him at the time
2 testify as to where he was. Much was made about, you know,
3 you heard the State try to, you know, trip up the witness on
4 some details: How many cans of soup? What kind of soup? She
5 clearly said she brought some soup and she was clearly sayin',
6 I don't know, I guess it was, it was '07. Do ya really think
7 that they would remember details that specific: who cooked
8 the meal, what -- how many cans of soup, okay. There's a
9 limit to memory. I can understand you remembering that he was
10 there, I can understand you remembering, Oh, we did this that
11 day and we did that that day, but to start trying to nitpick
12 on those kinda details just goes to show that they're they're
13 reaching, it's reaching for somethin', trying to make the
14 witness look bad because she couldn't remember how many cans a
15 soup or if there were any cans of soup in the bag. All she
16 remembered was that soup was brought to the house that day and
17 that's all any of us can be expected to remember that
18 specifically. It's amazing she remembered that and the only
19 reason events from that day stuck out in her head was because
20 her grandfather's death and let's not forget the cat. She
21 hates those cats. She hates cats. She let, she let the cat
22 stick around as long as it did because she loves her son
23 Lywone. Lywone liked the cat. Lywone wanted the cat to stay
24 in the house and this definitely caused a family crisis of
25 sorts. They had to have a talk because on that day, yet

CLOSING ARGUMENTS

1 another reason that this day was memorable, the cat apparently
2 caused a little bitta destruction at the house, let's just
3 keep it at that, tore up some things so the cat had to go.
4 You heard Ms. Coleman say that. They had a discussion, the
5 cat ended up stayin' a little while longer but that is another
6 reason that day sticks out in her head, that is another
7 reason. And you heard almost all the witnesses testify to the
8 fact there was a discussion about this cat. Only one witness
9 couldn't seem to recall the cat.

10 Let's talk about some more things. Let's talk some more
11 about Glynnessa's testimony. She was on the stand. She's the
12 one who supposedly IDs this guy as allegedly as my client
13 Lywone Capers. All right. She's also the one who allegedly
14 hears a voice and identifies that voice as Mr. Capers'. All
15 right. Let's talk about normal human behavior. I'm running,
16 you're with me, I'm telling you to come on, do I keep running
17 this (demonstrating) way and say, C'mon or do I say, C'mon?
18 Normal huma -- human behavior is to look at or look back at
19 the person that you're yelling at to c'mon. Let's look at
20 this video. You've seen this video many times but I wanna
21 make sure you really see it. This is the night in question.

22 (Whereupon, the video was played.)

23 MR. CORNWELL: Who looked back? Who looked back?
24 Individual in the blue wave cap looked back at the precise
25 moment that the words, "C'mon son," were uttered. Who did

CLOSING ARGUMENTS

1 Glynnessa Evans identify as my client? Does he have a blue
2 wave cap? Does he have a blue wave cap? no. no. What was
3 he doin' if if this is -- clearly, he's all the way across
4 here (indicating). As a matter of fact, the person she
5 identifies as Lywone Capers looks back after the individual
6 with the blue cap says, "C'mon, son," to see who said it.
7 She's wrong. She's wrong about the voice identification.
8 She's wrong about her identification of my client being there
9 at all. And it's our position that not only she's wrong but
10 she knows she's wrong. She's not tellin' the truth. She has
11 every reason to not tell the truth. She has bias. She has
12 motive to make up these things about our client. It exists in
13 her heart. And I kinda end the closing, you know, it's a
14 terrible burden that the State has to overcome. They said
15 they embrace that burden wholeheartedly and that burden is the
16 burden of reasonable doubt. It's not your job, as I said at
17 the beginning of the trial, to go try to find our client
18 guilty, to go back there and try to find a reason to convict
19 him, it's not -- that's not your job, okay. Your job is to go
20 back there, look at the evidence they presented and say, Well
21 did they prove their case beyond a reasonable doubt? That's
22 your duty. I submit to you they haven't. They have not
23 proved their case beyond a reasonable doubt. I mean, it's
24 okay and it's perfectly all right to decide races, to decide
25 sporting events, to decide any number of things less serious

CLOSING ARGUMENTS

1 than this by a nose. This is a trial, people. This is a
2 man's life at stake, okay. This is his freedom at stake. We
3 don't make decisions by a nose. If grainy video footage and
4 grainy photos ever proved anything beyond a reasonable doubt,
5 we'd have a zoo fulla Bigfoots by now. We'd already have the
6 Loch Ness monster tagged and bagged. I'd be ridin' around in
7 a UFO right now. Nothing has ever been proven by grainy
8 photos and choppy video footage. Nothing. I submit to you
9 that the State has proven nothing today with their case.

10 Thank you.

11 THE COURT: Thank you. Thank you, Mr. Cornwell.
12 Mr. Miller?

13 MR. MILLER: Thank you, Your Honor. May it please the
14 Court.

15 THE COURT: Yes, sir.

16 MR. MILLER: Ladies and gentlemen, good morning. I told
17 you when we started back on Monday that I would talk to you
18 again at the end of the trial and I assumed like Mr. Cornwell
19 said we all assumed it would be a little sooner than that but
20 appreciate your attention today. I know that he's covered a
21 lot of this with you but, and I'm not gonna just repeat
22 everything he said, but I may wanna approach it a little bit
23 differently. I want ya to think about not just Lywone Capers
24 but Boyd Evans and I want you to remember that we are almost,
25 you know, to the end of this so it's kinda of like that

CLOSING ARGUMENTS

1 marathon or that race, you know, kinda buck up and keep goin'
2 and get through it and do your best because when you're done
3 then you can rest, you know, and that's where we almost are.

4 You as a jury serve probably one of the most important
5 functions especially on a criminal jury. I know sometimes
6 maybe some of you had served on a civil jury for a civil case
7 before and, you know, sometimes it's about money, the bottom
8 line, and maybe it's a breach of contract and maybe it's just
9 not that interesting. This, like Mr. Cornwell said about his
10 client and I'll tell you the same about Boyd Evans, you're
11 looking at a young man not even 21-years-old who faces
12 possibly half of the rest of his life ---

13 MR. MALDONADO: Objection, Your Honor. I don't think
14 sentencing is appropriate ---

15 THE COURT: Yes, that's correct. Ladies and gentlemen,
16 your decision is whether or not the defendant is guilty or not
17 guilty. Obviously, if a defendant were found guilty, any
18 punishment would be up to the Court up to the Court entirely,
19 that's not within your realm to determine what punishment may
20 or may not be imposed on an individual; yours is the focus on
21 the facts of the case and whether the individual's guilty or
22 not guilty. Thank you. You may proceed, Mr. Miller.

23 MR. MILLER: Thank you and I apologize to the Court I ---

24 THE COURT: All right.

25 MR. MILLER: --- said that incorrectly but it's his

CLOSING ARGUMENTS

1 freedom at stake and I think that we had better be extremely
2 sure, extremely sure without hesitation beyond a reasonable
3 doubt that this incident, this event occurred and that he did
4 it, okay, and there's simply no way to do that based on the
5 evidence in this case. But you all serve that function and so
6 we thank you for being here because this is, and you've heard
7 it before you want your day in court, this is his, this is
8 Mr. Capers' and it's up to the twelve of you.

9 I like what Mr. Cornwell said about the State reaching in
10 its case. The lack of evidence is overwhelming. When we talk
11 about proving a case beyond a reasonable doubt, and he said it
12 is not your job to go back there and find our client guilty,
13 it's your job to listen to the people at this (indicating)
14 table, the State, and make sure that they have proven beyond a
15 reasonable doubt every element of the offense for which you
16 would -- for which they would ask that you convict our
17 clients. To do that, it's like I told you in the beginning,
18 it's like building a house when I said brick by brick. Okay
19 they -- you you can't reach, you can't jump, you can't leave
20 out a foundation or a roof, you have to build the evidence.
21 So when you go back and review the evidence did they show you
22 reasonably every element of the offense that they want you to
23 convict our clients of and you have to ask yourself that based
24 on the evidence. So let's review the evidence. Let's review
25 who we've heard from, okay? First ya heard from Sue Anne

CLOSING ARGUMENTS

1 Irick and Ed Lasseter, and they were the victims in this,
2 neither one of them, I'm not here in any way to to make them
3 hurt more or to disparage them at all, they're wonderful
4 people, hardworking people just like all of us, none of us
5 want to be in that position ever, ever, you know if it were me
6 I probly woulda been down on the ground cryin' so, I mean, I
7 tell you that is scary and I can't imagine, I can't imagine,
8 but neither one of them as far as the evidence in this case
9 goes can make any positive ID. They were both there. They
10 they didn't have to see the grainy vid -- video footage or see
11 the still pictures, they saw it take place. They saw these
12 people up close. They still couldn't make any ID. The fact
13 is they simply presented no evidence to help you in your
14 decision.

15 Now the two people who actually could or did in this case
16 attempt to make an identification were Michael Rhaney and
17 Glynnessa Evans so let's really pay attention to them. Let's
18 determine one thing: see, it's your job as a jury, you get to
19 decide how much weight; in other words, to give to give to
20 evidence to give to testimony. Are these witnesses credible?
21 So when I say credible do you believe them? Well, there are
22 certain things that, you know, are allowed to come into
23 evidence; for example, Glynnessa Evans convicted of
24 involuntary manslaughter. What does that tell you? Well,
25 there are certain times that people do things in life, it

CLOSING ARGUMENTS

1 doesn't make them, doesn't end your life, okay, her life goes
2 on, doesn't make her the world's worst person or the world's
3 best person but it may cause her testimony, for you to believe
4 her testimony is a little bit less believable, less credible,
5 not only because of a conviction, you know, but because of the
6 case with her and the relationship to her family. And, you
7 know, Mr. Cornwell covered that and I'm not gonna go back into
8 it but it's quite clear that not -- and I'm not -- not from
9 her testimony but from the testimony of other family members,
10 you know, they didn't -- there were reasons that they didn't
11 get along, you know. There were reasons they didn't get
12 along. And you heard her testify that after she went to
13 prison, you know, she had to to fight to get her child back.
14 She had to fight to get her child back. You know, she said
15 that that that didn't cause any ill feelings and any ill will,
16 well that's up to you to determine if that's credible, that's
17 up to you to determine how would you feel in that situation.
18 So when I say credibility we think about witnesses, we think
19 about testimony and we say, Is this person telling the truth
20 or is there some reason that maybe they don't.

21 Michael Rhaney is committing -- well, excuse me, is
22 accused of a breach of trust issue over a period of time that
23 begins before this incident and ends right afterwards taking
24 seventeen hundred dollars (\$1,700) in some in in Greenbax
25 cards and points from the store, from the very store where he

CLOSING ARGUMENTS

1 works and he's cooperating with the officers. The reality is
2 Michael Rhaney when we got up here -- he got up on the stand
3 and what did you hear him say? he met Boyd Evans in 2005.
4 Boyd Evans moved to Charlotte in 2005. He didn't see him
5 again until allegedly he sees this person, you know, nearly
6 hit him running a stop sign and then he goes back, nothing.
7 That's the only other time he's -- he thinks he's seen him,
8 recognizes him, just immediately recognizes him. Ya had --
9 you haven't seen a person in two years, you only knew him for
10 a short period of time and just immediately he almost got hit.
11 I don't think he was focused on, you know, like making a
12 positive ID of this person. He may have noticed the type of
13 truck that was being driven, he may have even noticed that it
14 was a white or a black male or a female or something but a
15 positive ID? He goes back and has to turn around and run back
16 to work, okay. He he saw -- just anything he saw was for such
17 a brief amounta time. You just put yourself in that position
18 and if if you feel like you can make that positive ID then
19 maybe you believe he did.

20 Glynnessa. Let's talk about her briefly. Let's talk
21 about her history. Okay, Boyd is born in 1989. They lived
22 together as a family until her father passes away in 2002.
23 She really doesn't see him again until maybe the birth of her
24 child but right before she's convicted of involuntary
25 manslaughter in '99, doesn't see him again until 2005 and now

CLOSING ARGUMENTS

1 you can imagine by this time he's no longer a little
2 4-year-old child and then all -- never sees him until again
3 allegedly just happens to see the same thing her fiancée saw
4 in 2007. Now it's one thing to say, Hey, I think I saw Boyd
5 Evans or Lywone Capers down here, maybe they made a trip from
6 Charlotte, well there's a problem with that too. You have
7 family member after family member after, you know, a friend or
8 relative coming up here and telling you he was in Charlotte,
9 okay, he picked me up from work, I didn't have another way
10 home, obviously, you know, I closed the restaurant, I got
11 picked up from work, I got picked up -- he picked me up from
12 work all the time and it was over that period of time. I
13 mean, show knows when she worked at Church's Chicken. She
14 knows that, you know, her mom can't pick her up after dark.
15 Boyd picked her up and gave her a ride home. If he's in
16 Charlotte, is it possible he wasn't down here and you just
17 have to ask yourself that. So we're talking about Michael
18 Rhaney and Glynnessa and credibility. Look at this video.
19 You -- you've seen it a million times. I'm not gonna play it
20 for you, okay. The the video's the video. It it shows what
21 it shows but what did it show? Be honest with yourself, okay.
22 Certainly it showed something. It showed these four men
23 coming in with their heads completely covered, you see a
24 little bitta their body, you see a little bitta their back,
25 cash register drops, Sue Anne Irick and Ed Lasseter are in the

CLOSING ARGUMENTS

1 way of everything here, they're, you know, he's on the ground,
2 she's over here tryin' to get the money out as fast as she can
3 and then you hear a couple voices and these witnesses for the
4 State want you to believe that these voices that you hear,
5 you've heard the video, I don't need to beat it into your head
6 at all, these voices that you hear, you can identify those? I
7 don't know. I can't. I couldn't. They were so quick. I
8 think they said maybe three things: "Hurry up. C'mon, son."
9 You can identify after barely seeing anybody for two years and
10 in some cases almost for the life? You can tell me that
11 that's Boyd Evans' voice? Can you tell me that's Lywone
12 Capers' voice? Can't see their face. Can barely see their
13 body but you can identify that voice? I mean, you heard the
14 voices, there's static, there's noise, cash register drawer is
15 dropping, people are are yelling, crying. You can identify
16 their voices with one hundred percent certainty? They'd have
17 you believe that but you all tell me what credibility, what
18 weight do you give that? Is that real? You can try but if
19 it's possible that it's not them, do we send people away? You
20 can't see their face, there's no credible evidence that they
21 were even here and you wanna send 'em away because maybe that
22 was their voice that I heard? Really none of them knew either
23 client well enough to be able to make any kind of ID and be
24 able to tell you what was on that video and who was who.

25 Now the SUV that's interesting. Mr. Cornwell told you

CLOSING ARGUMENTS

1 we've heard three different versions of what it looked like.
2 Everybody who gave a license plate number that was wrong where
3 were they? they were right up on the vehicle. Well it ran a
4 stop sign, I looked around. You -- okay, now you're looking
5 around as it almost hits you and it goes by. Now I believe
6 that. You're lookin' at a license plate. You're not lookin'
7 at the driver, you're lookin' at the license plate. Here I am
8 stopped, I'm going, Oh, he ran a stop sign. Now you might
9 look at a license plate up close, you might remember that,
10 okay. Rosa Lugo in in the trailer park in Rolling Meadows
11 walking, you know, kind of I I guess back to her office, back
12 to her home, truck zooms by. Okay, you you might look at that
13 and get a license plate, that's up close. Both were wrong.
14 Now the interesting thing is what does the license plate trace
15 back to? Would have been one thing if it was Boyd's SUV,
16 would have been one thing if it was Lywone's SUV or somebody
17 else's SUV who they knew. Who was it? Frederick Neal?
18 Frederick Neal. Where's Mr. Neal? Now that's -- my clients
19 don't know Mr. Neal. Who's Mr. Neal? That's that's really
20 honestly a question you have to ask yourself and where is he?
21 Now Detective Prestigacomo is a good detective, there's
22 no question, okay. His investigation oddly enough did not
23 center on the person whose license plate this traced back to.
24 Why? Where is he? He interviewed him. Now I understand the
25 detective after some time said, In my opinion he didn't match

CLOSING ARGUMENTS

1 the description, you know, of the suspects from from my
2 opinion. Well what would have been the harm in taking this
3 man's picture and showing it to the witnesses? Well we have,
4 we have Michael Rhaney and Glynnessa Evans. Take a look at
5 this guy, tell me what you think. Sue Anne Irick, Ed Lasseter
6 just take a look at him and tell me what ya think 'cause this
7 is the SUV here. This belongs to him, okay. Maybe he came
8 down with his North Carolina plates and his SUV and
9 participated in some way in this. I don't know. The point is
10 the investigation was never done. It was never made. We
11 don't know where this man is. He was talked to but he's not
12 here. You know, I think again, we we we look at reasonable
13 doubt. We look at what was done. Is the State building their
14 house with their bricks? no, they're reaching, they're
15 stretching, they're not investigating. They found somebody
16 who said, This'll make your case easy, here's some people that
17 I, you know, honestly don't like and I think might have been
18 involved, you know, let's just go investigate them, there's
19 nothing wrong with that but is that all we do? Is that all we
20 do in a case this serious? No, I don't think so.

21 We looked at and we heard from Lieutenant Grimes-Gould
22 absolutely no latent prints, no physical evidence. Nothing,
23 okay. And again, I know that some of you, you know, you may,
24 like I told you in the beginning and it's okay, you may
25 develop certain personal feelings about the defendant, about

CLOSING ARGUMENTS

1 me, about the State but I would ask you to put those aside
2 'cause sometimes we say to ourselves, and there's nothing
3 wrong with this, we're human, I, yeah, I think, Yeah, well
4 that's a little suspicious, well, it's okay. If you have
5 hesitation, if you have maybe, that's not beyond a reasonable
6 doubt. It's just not. You have your personal feelings but
7 now we're talking about in a sense business, we're talking
8 about the law as the judge is gonna charge it to you and the
9 oath that you took when you sat down as jurors, okay, to
10 listen fairly, impartially and to find beyond a reasonable
11 doubt.

12 Rosa Lugo next witness. It's been two years since she'd
13 seen Boyd but again, thinks that she sees some some guy that
14 she's gonna say, Yeah, that's Boyd Evans. Well that's because
15 people had already asked her about Boyd Evans. So we we have
16 to, we have to think why did she get the wrong license plate,
17 you know, why did she think the SUV was black when it was
18 right next to her. Clearly, a blue and gold SUV is not black.
19 We've got some discrepancies and we've got to have answers to
20 those. What are the answers? State hasn't provided 'em.
21 That's their job.

22 I don't wanna keep you all all day. I do wanna, you
23 know, hit a couple points because I think it's really
24 important, okay. What was a motive in this case? These
25 people had nothing to do with this Pitt Stop store, had

CLOSING ARGUMENTS

1 nothing to do with Sue Anne Irick, nothing to do with Ed
2 Lasseter, okay. They had no motive to rob this store. They
3 had no motive. They had no reason and it would be one thing
4 if if they were, if they were here. Well at best the
5 witnesses are saying they might have come down to visit and
6 they were here before three, they were told to leave and we
7 never saw 'em again, okay. They had guns in the video. There
8 were at least two guns. Now if they were staying with
9 Glynnessa or with Emma or with and, you know, wherever but
10 they had a home where they had lived before were those places
11 searched, were any guns found? no, no guns were recovered.
12 Cell phone? No cell phone recovered. Now these two were
13 arrested. They could have searched Emma Evans' home, they
14 could have searched wherever Lywone was living in his home,
15 they could have searched Glynnessa and Michael Rhaney's home.
16 Again, I'm not criticizing the detective personally but I'm
17 saying there's a job to be done and you didn't do it. You
18 just didn't. Tie these loose ends up for me and they'll --
19 you'll show me something, okay. But there are things you have
20 to ask yourself. Where are the guns? Where's the cell phone?
21 Where's the money, okay. I mean, there is -- there are
22 witnesses that put our clients in Charlotte, multiple
23 witnesses who put them in Charlotte at the time this incident
24 took place and again, you have to ask yourself also
25 credibility about our witnesses. Do you believe them or do

CLOSING ARGUMENTS

1 you not but what was their motive, what if any to lie. That's
2 up to you as the jury. You give that the weight but think
3 about it.

4 I guess that I will close by by just telling you this: I
5 used to clerk for a judge before I, before I started
6 practicing. This judge will tell you right here exactly the
7 law on reasonable doubt and you're probly thinking, I'm so
8 tired of hearing that word "reasonable doubt", quit plugging
9 it in my brain but we hit it over and over because it's such a
10 high standard and my judge used to do it like this: he would
11 say it's very much like the scales of justice, okay. There
12 are different burdens under the law and there's really three,
13 okay. One is called "preponderance of the evidence" and that
14 is if you have the scales of justice, okay, evenly balanced,
15 if at the end of the case one side has caused those scales to
16 tip ever so slightly in favor of one one party, you must find
17 for that party. So if it tips ever so slightly fifty-one
18 percent, forty-nine percent in favor of a plaintiff or a
19 defendant, that's enough for you to find for that party, okay.
20 The other burden is clear and convincing evidence. Clear and
21 convincing if somebody: your kids, your parents, your friends
22 they wanna tell you a story, they wanna tell you something
23 that they want you to really believe, okay, it it has to be
24 convincing, okay, convincing, clearly convincingly so and that
25 would be, really it's hard to demonstrate but just picture it

CLOSING ARGUMENTS

1 obviously is gonna have to be a lot weightier, it's gonna have
2 to be more. It's not just enough, Well maybe I think maybe I
3 believe you, maybe but, you know, there's a -- no, it's clear
4 and convincing. So picture beyond a reasonable doubt. The
5 State's gonna tell ya it's not beyond any doubt. It's very
6 true but beyond a reasonable doubt is even greater than clear
7 and convincing. Picture that. Even greater. It's not beyond
8 any doubt but it is beyond any reasonable doubt and if you
9 have to go back there, one or all of you and you say, I don't
10 like these guys, I'll be honest with ya I'm tired, I don't
11 like 'em, I think they did it but reality is you're gonna sit
12 down and you're gonna look at the evidence piece by piece
13 'cause that's your oath and you're good people and you're
14 gonna sit there and you're gonna look at the evidence and
15 you're gonna follow it and you're -- if there are loose ends
16 that aren't tied up, you gotta ask why, if there are other
17 possibilities, okay, and if you have to hesitate, if you think
18 maybe maybe they did it, it's just not enough and you must
19 return a verdict of not guilty. You don't always have to like
20 it but in this case it would be fair and it would be just.
21 See, we don't have any idea who those people were and we don't
22 have any idea that it was those (indicating) two people.
23 Interestingly enough we don't even have the other two people.
24 If Detective Prestigacombo is so sure that Michael Rhaney and
25 Glynnessa Evans' ID was dead-on and he sat up here and tried

CLOSING ARGUMENTS

1 to tell you that we we investigated, we talked to him but it's
2 just kind of a reasonable suspicion. Really? Well not a
3 reasonable suspicion with these two and that -- that's
4 probable cause? He knows all four people. He knows where
5 they're at. The reality is Glynessa Evans and Michael Rhaney
6 they didn't have enough for him, they didn't and they didn't
7 have enough for these two so when you're going back there and
8 you're thinking beyond a reasonable doubt, look at every piece
9 of evidence, ask yourself why. Look at those two defendants
10 (indicating). Look at Boyd Evans, that's that's their lives
11 and their freedom. Okay this is something that's very
12 serious. You have been very attentive. I thank you so much
13 for your service and I thank you for your time.

14 THE COURT: Thank you. Thank you very much, Mr. Miller.
15 Mr. Maldonado.

16 MR. MALDONADO: Thank you, Your Honor. May it please the
17 Court. Good morning. It's almost the end and I appreciate
18 your attention. I wanna start off by saying Ah hah. Ah hah
19 (shows photographs). Ladies and gentlemen, that must have
20 been what Investigator Prestigacomo thought when he took a
21 close look at this. This is -- this isn't CSI. This isn't
22 Perry Mason. These TV moments never really happen. Take a
23 look at the video. Ah hah. Ladies and gentlemen, it's the
24 telltale scar. When you get back there, you didn't hear a
25 --the defense attorney once talk to you about this, didn't

CLOSING ARGUMENTS

1 mention that at all. He took his shirt off, he showed it to
2 you, it's still there and if you look, and you can compare
3 with the pictures, the other scar right on on his shou -- on
4 elbow right there (indicating). They didn't talk to you about
5 it. This isn't something somebody made up. This isn't
6 something somebody framed, came up to frame someone. There's
7 (indicating) the evidence. Ah hah. It do -- kinda moments
8 like this don't happen. You -- you're gonna have the video in
9 evidence, uh, probly have to come back out here to watch it
10 but I wanted you guys to know that you can watch it again, you
11 can ask, you may, guys, wanna pick which camera angle you
12 want, that's gonna be in evidence. See it, hear it, see it.
13 I was gonna come in here and and had some props and I was, you
14 know, gonna like well maybe I can cover my face and can you
15 recognize me? You've only known me for four days. I think
16 you could recognize me. You know my voice. Glynnessa Evans
17 and Michael Rhaney they know 'em, they're family. Glynnessa
18 lives with him. Now this has gotta be the hardest thing
19 they've had to do in I don't know how long and I don't know,
20 I'll be honest with ya, I don't know how they got through it
21 but they had to tell the truth. This is -- if this is as
22 it -- your -- you you have two choices in this case: the
23 defense's case where this is a big frame-up; the State's case.
24 This is the defendant's: Frame-up. If this is the the frame
25 is this is the luckiest frame up in the history of frame-ups.

CLOSING ARGUMENTS

1 Glynnessa just happens to luck out there's a robbery the day
2 before her court date in her neighborhood, lucks out there's
3 four guys fit the description of the people she wants to frame
4 and has the scar just outta luck. Then luckily Michael Rhaney
5 who gets this information first goes to work, he figures out,
6 Hey Glynnessa might wanna frame them, I'm gonna give the guy,
7 the investigator their names just in case Glynnessa wants to
8 frame them. Then when Glynnessa gets -- talks to the
9 investigator sees the pictures in the second it takes her to
10 to look at the pictures she thinks, I have an opportunity, I'm
11 gonna frame my brother and my cousin, frame 'em in that second
12 and I'm gonna and it happens to match with what Michael Rhaney
13 had already planned. Boy she is a genius. Stars aligned.
14 And had the scar. Same guy, I mean, a a a guy fitting the
15 description with a scar happens to rob the gas station in the
16 neighborhood. That is just amazing.

17 Ladies and gentlemen, as I've stated there are just too
18 many coincidences in this case. When you're evaluating this
19 case, you do get to evaluate the evidence. The greatest asset
20 you have is your common sense. You're evaluating the weight
21 of the evidence and you take that and you use your common
22 sense to see if they committed these crimes just like, you
23 know, the -- there's definitions of reasonable doubt and and
24 everyone has proposed to you but in the law ultimately it's
25 what you believe it is following the instruction of the Court

CLOSING ARGUMENTS

1 but beyond your reasonable doubt with your common sense.

2 Now what does that mean hesitate to act? Everybody's
3 throwin' out these words. I mean, you have to evaluate some
4 evidence. When when my daughter who's five, you know, comes
5 in with you see the the donut bag out on the counter and she's
6 got, ya know, powder on her face, I know beyond a reasonable
7 doubt she went in and got a donut without permission and got
8 the donut and ate the donut. Is it possible her little
9 brother came in took the powder, put it on her lips and framed
10 her? possible, not very reasonable. So when you're evaluating
11 it, you just have to use your common sense. What makes sense
12 in this case? Was it a complete frame-up job? Does that make
13 sense? I don't think so.

14 Now, and I forgot to mention, not only was it a lucky
15 coincidence that these people matched the description, it's a
16 lucky coincidence that I guess some people met her the day
17 before and in driving the car, you know, that Rosa Lugo talked
18 about the incident. That incident seemed to match yet a
19 completely third party remembering the incident outside where
20 this SUV almost hit her and boy, that was another coincidence
21 that she got Rosa Lugo to get in on this, on his whole deal
22 too, she confirming that story. Boy, that that is just an
23 amazing coincidence.

24 Let's talk about the testimony of witnesses. Michael
25 Rhaney. Officer had no name, no no idea who it could be, he

CLOSING ARGUMENTS

1 recognized them enough to be able to look at the pictures and
2 say, That's who they are, gave 'em names. That's how well he
3 knows 'em. They can argue about, you know, how many times he
4 saw him four, eight, ten, twelve. He's family. He goes to
5 visit. Obviously somebody talks when they visit I'm hoping.
6 He knows them just like you know your family. Cousins you
7 might not see every day but you recognize them. He has no
8 reason to lie about this. He's not trying to frame anybody.
9 He's one hundred percent certain. That's what he said on the
10 stand. He is one hundred percent certain the defendants are
11 in the video.

12 Glynnessa Evans. This tearing the family apart. You
13 think she has a reason to lie because of the kids? She had
14 her ki -- she got her kids back. This isn't -- this doesn't
15 have anything to do with her kids. This doesn't have anything
16 to -- there obviously wa -- wasn't a rift with Boyd Evans and
17 they came down to visit her the day before or, you know, the
18 morning of or however you describe it 'cause it happened
19 around midnight so they came down to visit. There was no rift
20 and their friends there, they live there. They, two years
21 later they still know the people in that neighborhood well
22 enough to go around to the different trailers. The gas
23 station right up this (indicating) street, right in the same
24 area. You actually have to go past it to get to the highway.
25 There's another exit out here (indicating) but a if you're

CLOSING ARGUMENTS

1 goin', it's a whole lot quicker. They knew people. They knew
2 the area. That's the opportunity. Need some money let's go
3 right there (indicating). I know how we can do it. We'll
4 cover our faces. They'll never recognize us. Good plan
5 almost but due to credit beyond imagination Glynnessa Evans
6 and Michael Rhaney they didn't have to, they came in here to
7 tell you the truth and I just don't -- I I I don't understand
8 how she got the strength but she did.

9 Don't forget Rosa Lugo confirming their story. This
10 isn't something they just made up. There's no reason for her
11 to come in and say, you know, she almost got hit by this Ford
12 Ex -- Ford Explorer. She got the color wrong, you know,
13 things happen. But she remembers the incident almost getting
14 hit. She didn't, you know, she's not makin' stuff up. She
15 coulda came in here and said all kindsa things: Oh, I drove
16 by the gas station, I know exactly who did it, you know, just
17 saying what what she saw.

18 Let's talk about the defense's case. When you're
19 evaluating witnesses, obviously you got to see them on the
20 stand, you get to evaluate their demeanor, you get to evaluate
21 their reasons for for testifying and you get to evaluate their
22 stories and, I mean, I I know I don't have to remind you but I
23 hope you caught the, you know, the tale of the soup. There's
24 a little bit of a difference between can soup and soup from a
25 Chinese restaurant. Now my co-counsel made a comment to me

CLOSING ARGUMENTS

1 and and he's exactly right the devil's in the details. When
2 you're tellin' a lie, you get caught in that web. The devil's
3 in the details. There's a huge difference between, you know,
4 goin' to a restaurant gettin' soup and actually cooking canned
5 soup. Totally different. And she remembers all this from
6 that night. She said she was sure, you know, she remembers
7 the soup, she remembers that night, she remembers him being
8 there, she remembers their argument, remembered the cat. Was
9 there a cat? Was there even a cat? Was the cat -- was that
10 the last night? She said that was the last night for the cat.
11 Other people said, No, the other cat was there about two
12 weeks; No, the cat was there for two more months. Was there a
13 cat or was not a cat? The devil's in the details. The little
14 brother said the cat was there for two more months. Little
15 brother saw saw some stuff. He went to bed at 8:30. They
16 didn't get there 'til -- the the sister didn't get there 'til
17 11:30 about. That's the other thing. It struck me Tidleek
18 Capers she was there, you -- evaluate the story. She was
19 there until about 2:30 in the morning she said, 2:30 a.m. She
20 had just gotten off work, decided to go over to their house,
21 stayed there 'til 2:30. The I believe her daughter or said
22 that it takes about twenty-five minutes to get there so she
23 leaves, goes home on this, you know, twenty-five minutes, 3:00
24 she gets home, maybe a half an hour to get to bed, get ready
25 and actually go to sleep, 3:30, it's 3:30 in the morning now

CLOSING ARGUMENTS

1 then she says she's gotta get up and go to work at 6:45 then
2 work a double. Does that make sense to you? Is that what
3 she's gonna do? Does that even make sense? And then she
4 says, No, it wasn't the 25th, it was the 26th she brought the
5 soup. Now as I said the devil is in the details. And don't
6 forget Cherise when she testified on behalf of Mr. Boyd. She
7 remembers him takin' her to work or whatever but not when
8 police come stormin' in your house to arrest him. What day
9 did that happen? I don't know. It's pretty major but, Oh, I
10 remember he drove me to work on some amorphous day months ago.

11 Now they're charged with armed robbery, kidnapping,
12 possession of a pistol during commission of a violent crime.
13 Armed robbery, kidnapping, possession of a pistol during the
14 commission of a violent crime. No one has argued that those
15 elements didn't happen. You have to evaluate the law and
16 fir -- your first I guess, you know, step would be to evaluate
17 did that happen. We obviously saw there was an armed robbery.
18 We saw the gun in the video. Money was taken. No one argued
19 that there wasn't a kidnapping. They took, they took the
20 victim around the counter to get the money. Now how much of a
21 kidnapping that's not, that's not the typical definition of
22 most people think of as kidnapping and and believe me, I
23 understand that. People think kidnapping, I'm gonna take you
24 and I'm gonna, you know, drive you somewhere and and drop you
25 off and sure that is kidnapping but under South Carolina law

CLOSING ARGUMENTS

1 doesn't matter how much the the little bit of kidnapping is or
2 keeping you somewhere, it doesn't have a time frame when you
3 don't wanna be -- because that's dangerous, especially at
4 gunpoint. You know, keeping you somewhere where and and you
5 just wanna get away, she just wanted to get away, but that's
6 kidnapping. Now, you know, how bad that is as the judge
7 stated before, you know, that's, you know, that could be
8 considered in the sentencing, it's his responsibility the
9 sentencing but your job, ladies and gentlemen, it's just to
10 evaluate the law and the law of kidnapping this fits the
11 description and no ones even argued that it doesn't. I mean,
12 the, just to read it through on armed robbery, "It shall be
13 unlawful to take personal property from the person or presence
14 of another person without that person's consent carry it away
15 while armed with a pistol, dirk, slingshot, metal knuckles,
16 razor or other deadly weapon or while alleging either by
17 actions or words that he was armed while using the
18 representation of a deadly weapon." What does that mean? I
19 mean, representation that's just like this just give me all
20 your money and you think everyone thinks it's a gun, you may
21 not be armed with a gun, but you're saying I'll I'll shoot
22 you. Did that -- did this happen? I don't even know what a
23 dirk is but it's a weapon and but everyone agrees that this is
24 what happened.

25 Kidnapping: It shall be unlawful to seize, confine,

CLOSING ARGUMENTS

1 veigle, decoy, kidnap, abduct, carry away. You know, the
2 law's tryin' to be very broad. You can't, even inveigle you
3 can't even, you know, trick people to come with you. That's
4 against the law too. You know, what -- how -- like if you
5 say, you know, take -- tell a kid, Oh, your mom is is with me
6 and we gotta go get her, they get the car and take the kid
7 away. It's tricking him even though the kid went willingly.
8 That's still kidnapping. That's what that is. But, ladies
9 and gentlemen, I submit to you there there was a kidnapping in
10 this case.

11 Possession of a pi -- firearm during the commission of a
12 violent crime. It should be unlawful to be in possession of a
13 firearm or visibly display what appears to be a firearm or
14 visibly display a knife during the commission of a violent
15 crime to be convicted of committing or attempting to commit a
16 violent crime as defined in the section. A firearm may be any
17 machine gun, automatic rifle, revolver or any weapon. Now of
18 course the law is is actually what the the judge is gonna
19 instruct you on so obviously if there's any differences,
20 listen to him, he's he's the master of the law as they say.

21 Armed robbery and kidnapping. What violent crime means
22 and why they, why they quote a section doesn't mean there has
23 to be violence. You know, it doesn't have to be you have to
24 beat the person down or anything like that. What the law says
25 is these are violent crimes, just for construction we're gonna

CLOSING ARGUMENTS

1 say, you know, we've taken these and we categorize these
2 crimes, some are considered violent, some are considered
3 nonviolent and they list armed robbery and kidnapping as
4 violent crimes so it's not, we're not saying that that they
5 had a pistol while they committing violence but while they're
6 committing these crimes so that obviously there's no argument
7 that that didn't happen in this case. There was an armed
8 robbery. If you find that there's an armed robbery, then you
9 can find that they had possession of a pistol during the
10 commission of a violent crime.

11 Now the other thing I wanted talk to you about is the
12 dru -- judge is gonna instruct you you on the law of South
13 Carolina being the hand of one is the hand of all. What that
14 means is when several people come in to commit the crime
15 they're all responsible for what anybody does in furtherance
16 of that crime. If, as it says, "If a crime is committed by
17 two or more people who are acting together in committing a
18 crime, the act of one is the act of all. A person who joins
19 with another to commit an unlawful act is criminally
20 responsible for everything done by the other person which
21 happens to be a probable or natural consequences of the acts
22 done in carrying out the common scheme, the common plan and
23 purpose." What that means is any of these: the kidnapping,
24 the armed robbery, the possession of a pistol because they all
25 planned it together, just because only one person had the gun

CLOSING ARGUMENTS

1 doesn't mean they all didn't commit the armed robbery. They
2 all did and a pretty good sign of that is the fact they all
3 had masks so they were all comin' in there together to do the
4 same thing and it wasn't like one person just wandered in and
5 and just happened to be in in the gas station at the time that
6 this was being robbed. We're pretty clear that this has all
7 happened and that their intent was to do it together and when
8 that happens, when one person does something, they're all
9 responsible for so only one person has to grab the money,
10 they're all responsible for that robbery.

11 Now this is the defendants' day in court, both of 'em,
12 this is their day in court, but one thing that often gets lost
13 in this is this is the victims' day in court. This is their
14 only one they're gonna get. Sue Anne Irick and Ed -- Edward
15 Lasseter this is, don't forget this is hugely important to
16 them. They are the victims in this case. Defendants have
17 rights, victims have rights and we're just asking you to
18 remember them, remember the videos, look at the pictures.
19 Remember her crying? Remember how scared she is on the stand?
20 She has to relive this for ya'll and it's hugely important and
21 we ask you please to remember them when you're evaluating the
22 case how serious this is. Turned her life around. She's no
23 longer working there.

24 The -- now I've been doing this a while and they always
25 say to try to come up with a theme, how -- how's it gonna get

JURY CHARGE

1 the jury to remember and and I apologize, this is hugely corny
2 and I couldn't come up with anything better and so but I want
3 you to remember when you get in there if the scars fit you
4 must convict. Just remember that. I know it's corny and I
5 know but please, I hope it helps you remember the evidence,
6 most importantly all the rest of it does support it. When
7 we're -- when I was talking about the the law, no one's
8 arguing the the law of what happened so I guess the only issue
9 is identity, is the defendants the ones who committed this
10 crime. So when you're evaluating that, all of that, all of
11 the evidence goes to the weight, they do it? yes, family
12 members can recognize them on the video and to confirm their
13 story the scars convince. They aren't lying, ladies and
14 gentlemen. Please follow your oath. Your oath is just to
15 find the facts true, not true. You know, the judge's job is
16 to go beyond that if you do find guilt, if you find this is
17 true, this happened, they did it. Evaluate the evidence.
18 Please find Boyd Evans and Lywone Capers guilty of armed
19 robbery, kidnapping and possession of pistol during the
20 commission of a violent crime. Thank you.

21 THE COURT: Thank you, Mr. Maldonado. Would you mind
22 taking the computer down. Madam forelady, ladies and
23 gentlemen of the jury, my charge is about thirty minutes..
24 Everybody all right? If they are, we're gonna press on.

25 (No response.)

JURY CHARGE

1 THE COURT: All right. Very good. The the way I cover
2 the charge is I will give you the general law that applies to
3 all criminal cases in South Carolina. I will then go to the
4 specific counts in the indictments which are armed robbery,
5 kidnapping and possession of a weapon during the commission of
6 a violent crime. I will -- generally, when I go from one
7 paragraph to another, I will give you the caption of the
8 paragraph I'm fixing to cover.

9 The charge, arrest, indictment are not evidence. The
10 indictments charge the defendants with armed robbery,
11 kidnapping and possession of a firearm during the commission
12 of a violent crime. I remind you that the fact the defendant
13 was arrested, charged and indicted in this case is not
14 evidence in the case and cannot be considered by you as
15 evidence of guilt nor does it create any presumption or
16 inference of guilt. These documents, these indictments again,
17 are simply the formal written instruments which contain the
18 charges made against the defendants. They are the formal
19 documents by which this case is brought into court.

20 Multiple Charges. The indictments in this case allege
21 several different offenses against the defendant. The charges
22 are Indictment 07-GS-32-3335 as to Lywone Capers armed
23 robbery, Indictment 07-GS-32-3336 Lywone Capers, kidnapping as
24 to Sue Anne Irick and Indictment 07-GS-32-3339 Lywone Capers,
25 possession of a firearm during the commission of a violent

JURY CHARGE

1 crime. Indictment 07-GS-32-3358 Boyd Evans, kidnapping as to
2 Sue Anne Irick, Indictment 07-GS-32-3359 Boyd Evans, armed
3 robbery and Indictment 07-GS-32-3360 Boyd Evans, possession of
4 a firearm during the commission of a violent crime. Each
5 indictment charges a separate and distinct offense. You must
6 decide each indictment separately and distinctly on the
7 evidence and the law that applies to it uninfluenced by your
8 decision as to any other indictment. The defendant may be
9 convicted or acquitted of any or all of the offenses charged.
10 You will be asked to write a separate verdict of guilty or not
11 guilty as to each indictment.

12 Multiple Defendants. I charge you that there are two
13 defendants in this case each of whom is charged with armed
14 robbery, kidnapping and possession of a firearm during the
15 commission of a violent crime. The case of each defendant and
16 the evidence and the law concerning that defendant should be
17 considered by you separately and individually. Your verdict
18 does not have to be the same for both defendants. The fact
19 that you may find one defendant guilty or not guilty should
20 not control your verdict as to the other defendant. Where
21 more than one person is charged with a crime, if the evidence
22 warrants it, you may convict one and acquit the other or you
23 may acquit both or you may convict both, it will depend upon
24 your view of the testimony and the evidence. You must take
25 each defendant and consider the evidence as to that defendant

JURY CHARGE

1 and my instructions to you on the law, you will then write a
2 separate verdict of guilty or not guilty as to each defendant
3 as to each indictment.

4 Presumption of Innocence. And, ladies and gentlemen,
5 many times I again will use the singular, it applies
6 pluraly -- plur -- it applies to both defendants also. The
7 defendants have pled not guilty to these indictments and that
8 plea puts the burden on the State to prove the defendant
9 guilty. A person charged with committing a criminal offense
10 in South Carolina is never required to prove himself innocent.
11 I charge you that it is an important rule of the law that the
12 defendant in a criminal trial no matter what the seriousness
13 of the charge may be will always be presumed to be innocent of
14 the crime for which the indictment was issued unless guilt has
15 been proven by evidence satisfying you of that guilt beyond a
16 reasonable doubt. This presumption of innocence does not end
17 when you begin your deliberations but it accompanies the
18 defendants throughout the trial until you reach a verdict of
19 guilt based upon the evidence satisfying you of that guilt
20 beyond a reasonable doubt. The presumption of innocence has
21 been said to be like a robe of righteousness placed about the
22 shoulders of the defendant which remains with the defendant
23 until it has been stripped from the defendant by evidence
24 satisfying you of the defendant's guilt beyond a reasonable
25 doubt. The presumption of innocence is not a mere legal

JURY CHARGE

1 theory. It is not just a legal phrase. It is a substantial
2 right to which every defendant is entitled unless you, the
3 jury, are satisfied from the evidence of the defendant's guilt
4 beyond a reasonable doubt.

5 Reasonable Doubt. What is reasonable doubt in the law?
6 A reasonable doubt is the kind of doubt that would cause a
7 reasonable person to hesitate to act. The State has the
8 burden of proving the defendant guilty beyond a reasonable
9 doubt. Some of you may have served as jurors in civil cases
10 where you were told that it is only necessary to prove that a
11 fact is more likely true than not true which is known as the
12 greater weight or the preponderance of the evidence. In
13 criminal cases the State -- State's proof must be more
14 powerful than that, it must be beyond a reasonable doubt.
15 Proof beyond a reasonable doubt is proof that leaves you
16 firmly convinced of the defendant's guilt. There are very few
17 things in this world that we know with absolute certainty and
18 in criminal cases the law does not require proof that
19 overcomes every possible doubt. If based on your
20 consideration of the evidence you are firmly convinced that
21 the defendant is guilty of the crime charged, you must find
22 the defendant guilty. If, on the other hand, you think there
23 is a real possibility that the defendant is not guilty, you
24 must give the defendant the benefit of the doubt and find him
25 not guilty.

JURY CHARGE

1 Duties of Jury and Trial Judge. I remind you that during
2 this trial you and I have certain duties to perform. As the
3 trial judge it is my responsibility to preside over the trial
4 and I also have the duty to rule on the admissibility of the
5 evidence offered during the trial. You are to consider only
6 the competent evidence before you. If there was any testimony
7 ordered stricken from the record in this case during the
8 trial, you must disregard that testimony. You are to consider
9 only the testimony which has been presented from the witness
10 stand and any exhibits which have been made a part of the
11 record in this case. I have the additional duty to charge you
12 the law that applies to this case. As the presiding judge, I
13 am the sole judge of the law of this case and it is your duty
14 as jurors to accept and apply the law as I now state it to
15 you. If you already have any idea as to what the law is or
16 what the law ought to be and it does not agree with what I now
17 tell you the law is, you must abandon your idea because you
18 are sworn to accept the law and apply the law exactly as I
19 state it to you. In every case tried in this court before a
20 jury, the jury becomes the sole and exclusive judge of the
21 facts in a case. A trial judge cannot intimate, state,
22 comment on or make any statement to a trial jury about the
23 facts in a case. Since you, the jury, are the sole judge of
24 the facts you are not to infer from what I have said during
25 the progress of this trial in ruling upon the admissibility of

JURY CHARGE

1 evidence or otherwise or anything that I say now to you during
2 the course of this instruction that I have any opinion about
3 the facts of this case. The law does not allow me to have an
4 opinion about the facts in this case, that is a matter solely
5 for you, the jury, to determine. As jurors it is your duty to
6 determine the effect, the value, the weight and the truth of
7 the evidence that has been presented during this trial.

8 Direct and Circumstantial Evidence. There are two types
9 of evidence which are generally presented during a trial:
10 direct evidence and circumstantial evidence. Direct evidence
11 is basically that which we perceive through one of our human
12 senses. It is the testimony of a person who claims to have
13 actual knowledge of a fact such as an eyewitness or an
14 earwitness. It is evidence which immediately establishes the
15 main fact to be proved. Circumstantial evidence is proof of a
16 chain of facts and circumstances indicating the existence of a
17 fact. It is evidence which immediately establishes a
18 collateral facts from which the main fact may be inferred.
19 Circumstantial evidence is based on inference and not on
20 personal knowledge or observation. The law, our law, makes
21 absolutely no distinction between the weight or the value to
22 be given to either direct or circumstantial evidence nor is
23 there a greater degree of certainty required of circumstantial
24 evidence than of direct evidence. You should weigh all of the
25 evidence in the case. After weighing of the evidence if you

JURY CHARGE

1 are not convinced of the guilt of the defendant beyond a
2 reasonable doubt, you must find the defendant not guilty. If,
3 on the other hand, after weighing all of the evidence if you
4 are convinced of the guilt of the defendant beyond a
5 reasonable doubt, you must find the defendant guilty.

6 Credibility of Witnesses. Necessarily you must determine
7 the credibility of the witnesses who have testified in this
8 case. Credibility simply means believability. It becomes
9 your duty as jurors to analyze and to evaluate the evidence
10 and determine which evidence convinces you of its truth. In
11 determining the believability of the witnesses who have
12 testified in this case using your good judgment and your
13 common sense individually and collectively, you may believe
14 one witness over several or several witnesses over one. You
15 may believe the part of the testimony of a witness and reject
16 the remaining part of the testimony of that same witness. You
17 may believe the testimony of a witness in its entirety or
18 reject the testimony of a witness in its entirety. You may
19 consider whether any witness has exhibited to you any
20 interest, bias, prejudice or other motive in this case. You
21 may also consider the appearance and manner of a witness while
22 on the witness stand. A person who has a past criminal record
23 is competent to testify during a trial. A past record does
24 not affect the ability of that witness to testify. The past
25 record may only be considered by you, if at all, in

JURY CHARGE

1 determining the witness's credibility. In other words, that
2 would be a factor for you to consider if you choose to do so
3 and give it whatever weight and whatever value you decide to
4 give it. Remember, you are the sole judges of the facts in
5 the case and of the believability of any and all of the
6 witnesses. I further instruct you and emphasize that the fact
7 that the defendants did not testify is not a factor to be
8 considered by you in any way in your deliberation and in your
9 consideration on the question of the guilt or the innocence of
10 the defendants. It must not be considered by you in any
11 manner whatsoever. A defendant has the constitutional right
12 to remain silent and the assertion of his right must not be
13 considered by you during your deliberations. I repeat, under
14 your oath you are to draw no conclusion whatsoever from the
15 fact that the defendants in this case did not testify. The
16 fact that this -- these defendants did not testify should not
17 even be discussed in the jury room. The burden of proof as I
18 have stated to you is on the State. The defendant or the
19 defendants are not required to prove themselves innocent. The
20 burden of proof remains on the State to prove guilt beyond a
21 reasonable doubt.

22 Hand of One, Hand of All. If a crime is committed by two
23 or more people who are acting together in committing a crime,
24 the act of one is the act of all. A person who joins with
25 another to commit an unlawful act is criminally responsible

JURY CHARGE

1 for everything done by the other person which happens as a
2 natural or probable consequence of the act done in carrying
3 out the common plan and purpose. For example, this is just by
4 way of example, two people can be guilty of killing another
5 person when only one of the two had a gun, there was only one
6 bullet and only one of the two fired the shot that caused the
7 death. If two or more people are together acting together,
8 assisting each other in committing the offense, the act of one
9 is the act of all and it is sometimes said the hand of one is
10 the hand of all.

11 Identification. An issue in this case is the
12 identification of the defendant or defendants as the persons
13 who committed the crimes charged. The State has the burden of
14 proving identification beyond a reasonable doubt. You must be
15 satisfied beyond a reasonable doubt of the accuracy of the
16 identification of the defendants before you may convict
17 either, before you may convict that defendant. Identification
18 testimony is an expression of belief or impression by a
19 witness. You must determine the accuracy of the
20 identification of the defendants. You must consider the
21 believability of each identification witness in the same way
22 as any other witness.

23 Ladies and gentlemen, besides the formal verdict that is
24 the general law in the case and I'm going to now cover the
25 elements of the specific crimes that for which each defendant

JURY CHARGE

1 has been indicted. First I'm goin' to cover armed robbery.
2 It's a statute in South Carolina, you do not have to remember
3 the number, 1611 -- 16-11-330. The defendant is charged with
4 armed robbery. Each defendant is charged with armed robbery.
5 In order to prove this offense, the State must first prove
6 beyond a reasonable doubt that the defendant took personal
7 property from the person or presence of another person.
8 Property is in the presence of a person if it is within the
9 person's reach, inspection, observation or control so that the
10 person could, if not overcome with violence or prevented by
11 fear, keep possession of the property. The State must also
12 prove beyond a reasonable doubt that the defendant carried the
13 property away intending to permanently deprive the owner of
14 the property and to keep the property for the defendant's own
15 use and the taking and carrying away of the property must have
16 been done with violence or by putting the owner of the
17 property in fear of violence. Finally, the State must prove
18 beyond a reasonable doubt that the defendant was armed with a
19 deadly weapon during the robbery. A deadly weapon, for
20 purposes of the armed robbery statute, is any article,
21 instrument or substance which is likely to cause death or
22 great bodily harm. Whether an instrument had been used as a
23 deadly weapon depends on the facts and circumstances of each
24 case. The following are examples of instruments which may be
25 deadly weapons: A pistol, a shotgun, rifle, dirk, dagger,

JURY CHARGE

1 knife. A gun may be a deadly weapon even if it is not
2 operating. That is the charge of armed robbery.

3 Next, I'm going to cover kidnapping which is statute in
4 South Carolina 16-9-910. Each defendant is charged with
5 kidnapping. The State must prove beyond a reasonable doubt
6 that the defendant knowingly and unlawfully seized, confined,
7 inveigled, decoyed, kidnapped, abducted or carried away
8 another person without authority of law. To do anything
9 unlawfully is to do it wilfully against the law. Knowingly
10 means with knowledge consciously, not accidentally. Seize
11 means to take hold of suddenly or forcibly. Confine means to
12 limit, restrict or enclose within bounds in prison or shut or
13 keep in. Kidnap is to remove a person against his or her will
14 by unlawful force. Carry away means to remove. The State
15 does not have to prove that the defendant did all of these
16 things. Instead, if you find beyond a reasonable doubt that
17 the defendant did any of these things you may find the
18 defendant guilty of kidnapping. Something done without
19 authority of law is something which the law does not sanction,
20 commit, permit, allow, condone or provide justification for.
21 A kidnapping does not have to be for any personal or monetary
22 gain for any illegal purpose but may be for any reason
23 whatsoever.

24 And, finally, possession of a weapon during the
25 commission of or attempt to commit a violent crime under

JURY CHARGE

1 section 16-23-490. Each defendant is charged with possession
2 of a weapon during the commission of a violent crime. The
3 State must prove beyond a reasonable doubt that the defendant
4 was in possession of a firearm or visibly displayed what
5 appeared to be a firearm during the commission of a violent
6 crime. For purposes of this section, a firearm means any
7 machine gun, automatic rifle, revolver, pistol or any weapon
8 which will or is designed to or may be readily converted to
9 expel a a projectile. In order to find the defendant guilty
10 of possession of a weapon during the commission of a violent
11 crime, you must first find the defendant guilty of either
12 committing a violent crime or attempting to commit a violent
13 crime. I charge you that armed robbery and kidnapping are
14 violent crimes.

15 Alibi. Each defendant has raised a defense of alibi. In
16 order to establish an alibi, it must be shown that the
17 defendant was at another specified place at the time the crime
18 was committed and that it was therefore impossible for the
19 defendant to have been at the scene of the crime. Mere denial
20 of of presence at the scene of a crime does not constitute an
21 alibi. There is no burden on the defendant to prove an alibi.
22 The burden is on the State to prove beyond a reasonable doubt
23 that the defendant was actually present at the scene of the
24 crime, actually participated in it and was not somewhere else.
25 In other words, the State has the burden of disproving the

JURY CHARGE

1 defendant's alibi defense.

2 Now ladies and gentlemen, that is the charge on the
3 general law and the specific statutes involved in this case.
4 There are several possible verdicts and I'm gonna go over them
5 with you briefly, ladies and gentlemen. And, madam forelady,
6 you will have in the jury room with you verdict forms. I
7 separated 'em out as to each defendant. There's a caption on
8 it. In other words, it's just to identify which defendant it
9 is the State of South Carolina vs. Lywone Capers, the other
10 form of course State of South Carolina vs. Boyd Evans. The
11 the numbers of the indictments are obviously different 'cause
12 they have differently numbered indictments but the forms are
13 the same in all other respects. There are a nu -- number of
14 possible verdicts that you may return in the case. I'll come
15 to Mr. Capers's verdict form first and the way I have it is
16 No. 1, 2 and 3. I have armed robbery, under that kidnapping,
17 under that possession of a firearm during the commission of a
18 violent crime and your verdicts on each and every indictment
19 must be unanimous. All twelve of you must agree on the
20 verdict. If after your determination of the facts in the case
21 you determine that the State has met its burden of proof as to
22 the armed robbery as to Mr. Capers, madam forelady, under that
23 it has guilty or not guilty, you would check, place a check
24 mark to the left of guilty, if that's your finding and
25 unanimous finding of the jury and circle both the check mark

JURY CHARGE

1 and the word "guilty." If, on the other hand, after your
2 determination of the facts in the case you determine the State
3 has failed to meet its burden of proof as to the armed robbery
4 charge as to Mr. Capers your unanimous verdict is not guilty,
5 you will check to the left of the words "not guilty" and then
6 circle both your check mark and the two words "not guilty."

7 The next is kidnapping. The same procedure. You find
8 beyond a reasonable doubt the State has met its burden of
9 proof kidnapping as to Mr. Capers, you check to the left of
10 guilty, circle the check mark and circle the word "guilty",
11 the state has failed to prove it's case, your unanimous
12 verdict is not guilty, you will check to the left of not
13 guilty, circle the check mark and the two words "not guilty."

14 As to the charge of possession of a firearm during the
15 commission of a violent crime, as you recall in my substantive
16 charge to you you may only find a defendant guilty of that if
17 the defendant has also been found guilty of a violent crime.
18 Obviously, if you find a defendant not guilty of armed
19 robbery, not guilty of kidnapping, the defendant may not be
20 found guilty of possession of a firearm during the commission
21 of a violent that they didn't -- that you found they did not
22 commit. This -- the the formal verdict form is the same as to
23 Mr. Evans: armed robbery first, kidnapping second, possession
24 of a firearm during the commission of a violent crime. Once
25 the jury has reached its unanimous verdict as to all counts

JURY CHARGE

1 against each defendant if you would please, madam forelady,
2 sign your name as the presiding juror and date it, what --
3 whatever date you return your verdict, I believe today's 14
4 January of 2010.

5 Ladies and gentlemen, there is absolutely no significance
6 whatsoever in the order in which I have listed the verdicts.
7 One has to be listed first: Guilty or not guilty. There's no
8 significance whatsoever, as I say one has to be listed first.
9 Your verdict may not be based on passion, prejudice, emotion
10 or any consideration not in evidence in this case. Your
11 verdict must be based on facts, reasonable inferences to be
12 drawn from the facts and the law as I have explained the law
13 to you. Once ya'll have reached that unanimous verdict, you
14 have signed and dated the verdict form, madam forelady, if you
15 would please then knock on the jury room door, inform the
16 bailiff that you have reached a verdict, we will then receive
17 you back into the courtroom for your verdict. I'm gonna ask
18 you but before I do that if during the course of your
19 deliberations you have any questions, madam forelady, just
20 write it out on a note for me, knock on the jury room door,
21 bailiff will be posted outside, they'll get it to me. I know
22 Mr. Maldonado had said something about the videotape. If
23 there's someone that can run the equipment, I'll see if we can
24 get some equipment in there where you don't have to come back
25 out into the courtroom. If you want that, just write me a

JURY CHARGE

1 note, let me know. You should have -- it's on a disc?

2 MR. MALDONADO: Yes, Your Honor.

3 THE COURT: We should have that equipment available in
4 the courthouse somewhere, if not you can come back out in the
5 courtroom and and look at it. Let me know if you want the
6 equipment. I'll see if we have it. Any other questions or
7 concerns you have as I say just write out a note. I have to,
8 the law requires me to confer with the attorneys one final
9 time outside of your presence, hopefully one final time, I
10 may -- they have that opportunity to confer with me before I
11 submit it to you for your deliberations. If I do not have to
12 bring you back out here for any further charges or
13 instructions, what'll happen everybody everybody looks well
14 today our alternates, Ms. Lawson and Mr. Mr. Tanner, they will
15 come out of the jury room, the items of evidence will be
16 brought to you by the bailiff and you will then be instructed
17 to begin your deliberations. Do not begin your deliberations
18 until you are instructed to do so. I may have to bring you
19 back out. All right. I will allow you to take your notes
20 with you at this time. Do not refer to 'em though until such
21 time as I advise you to begin your deliberations, all right?
22 Thank you very much. If you'd now go with your bailiffs.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: All right. Any exceptions or additions from

JURY CHARGE

1 the State, Mr. Maldonado?

2 MR. MALDONADO: No, Your Honor.

3 THE COURT: From the defendant, Ms. Hahn?

4 MS. HAHN: No, Your Honor.

5 MR. MILLER: None.

6 THE COURT: All right. Thank you. Thank you very much.
7 All right if ya'll would please check the evidence with our
8 court reporter.

9 (Whereupon, a discussion was held off the record.)

10 THE COURT: All right. Did you have the opportunity to
11 check the evidence, Mr. Maldonado?

12 MR. MALDONADO: We did, Your Honor.

13 THE COURT: And, Ms. Hahn, Mr. Miller?

14 MR. MILLER: Yes, Your Honor.

15 THE COURT: And you're all satisfied with that?

16 MR. CORNWELL: We are.

17 MR. MILLER: Yes, Your Honor.

18 THE COURT: And you're all good on the formal verdict?

19 MS. HAHN: Yes, Your Honor.

20 MR. MILLER: Yes.

21 THE COURT: Mr. Miller?

22 MR. MILLER: Yes, Your Honor.

23 THE COURT: All right. Well then I'll have 'em submit it
24 to the jury and I'll have 'em bring the al -- alternates out.
25 All right. All right. We'll be waiting on a verdict. Thank

VERDICT

1 you very much.

2 (Whereupon, the alternate jurors were released.)

3 (Whereupon, the jury began deliberations at 12:17 p.m.)

4 (Whereupon, the jury reached a verdict at 1:21 p.m.)

5 THE COURT: All right. All parties and attornies are now
6 present. Bring us our jury, please.

7 THE BAILIFF: All right, sir.

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

9 THE COURT: All right. Our jury's back present in the
10 courtroom. To all those that are spectators please remember
11 that I do not tolerate any show of emotions or anything of
12 that nature. If you feel like you cannot control your
13 emotions, I'd ask you to please leave now 'cause I'll have the
14 sheriff take anyone into custody that shows out in any manner.
15 Madam Clerk.

16 THE CLERK: Madam forelady, have you reached your
17 verdicts?

18 THE FORELADY: Yes, ma'am.

19 THE CLERK: Please pass 'em up by the bailiff.

20 THE COURT: All right. Madam clerk, if you would publish
21 the verdicts and publish the four I've handed to you.

22 THE CLERK: Yes, sir.

23 THE COURT: Thank you.

24 THE CLERK: Indictment 2007-GS-32-3335, 3336 and 3339 the
25 State vs. Lywone Capers: Indictment No. 2007-GS-32-3335 as to

VERDICT

1 the armed robbery, we the jury unanimously find the defendant
2 not guilty; Indictment No. 2007-GS-32-3336 as to kidnapping of
3 Sue Anne Irick, we the jury unanimously find the defendant not
4 guilty; Indictment No. 2007-GS-32-3339 as to the possession of
5 a firearm during the commission of violent crime, we the jury
6 unanimously find the defendant not guilty and it is so signed
7 Ms. Rucker, foreperson.

8 And on the matter of 2007-GS-32-3358, 3359 and 3360 the
9 State vs. Boyd R. Evans: Indictment No. 2007-GS-32-3359 as to
10 armed robbery, we the jury unanimously find the defendant
11 guilty; Indictment No. 2007-GS-32-3358 as to the kidnapping of
12 Sue Anne Irick, we the jury unanimously find the defendant
13 guilty; Indictment No. 2007-GS-32-3360 as to the possession of
14 a firearm during the commission of a violent crime, we the
15 jury unanimously find the defendant guilty and it is so signed
16 Christina Rucker, foreperson.

17 Madam forelady, ladies and gentlemen of the jury, if this
18 is your verdicts please indicate each of you by raising your
19 right hand. All hands are raised, Your Honor.

20 THE COURT: Thank you. Thank you very much, madam clerk.
21 Anything additional for the jury from the defendant
22 Mr. Capers, Ms. Hahn?

23 MS. HAHN: No, Your Honor.

24 THE COURT: Defendant Evans, Mr. Miller?

25 MR. MILLER: No, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: Anything from the State?

2 MR. MALDONADO: No, Your Honor.

3 THE COURT: All right. Thank you. Thank you very much.

4 (Whereupon, the jury was released.)

5 THE COURT: All right. As to Mr. Lywone Capers, is there
6 any other matter in which he's being held, Mr. Maldonado,
7 other than the charges that were pending?

8 MR. MALDONADO: There was one possession of a pistol, I
9 believe it. ---

10 THE CLERK: It's ---

11 MR. MALDONADO: --- was a possession of pistol.

12 THE CLERK: --- unlawful possession of a pistol that was
13 not called for trial on both defendants.

14 THE COURT: Oh, yeah. What is going to be the status of
15 that charge?

16 MR. MALDONADO: We're going to nol-pros ---

17 THE COURT: All right. So Mr. Capers is then free to go?

18 MR. MALDONADO: Yes, Your Honor.

19 THE COURT: And he is released from his bond?

20 MR. MALDONADO: Yes, Your Honor.

21 THE COURT: All right. Mr. Capers is released from the
22 custody of the Lexington County Sheriff's Department.
23 Sheriff, you may momentarily deal with Mr. Evans. I'm gonna
24 step outta the courtroom. I'll be back in in about ten
25 minutes to to sentence Mr. Evans, all right?

MOTIONS AND MATTERS

1 THE POLICE OFFICER: All right.

2 THE COURT: All right. If you'd take Mr. Evans into
3 custody for me, please.

4 (Whereupon, a recess was taken.)

5 THE COURT: All right. If you'd come around please
6 Mr. Evans, Mr. Miller.

7 MR. MILLER: Judge, as a point of order ---

8 THE COURT: Yes, sir.

9 MR. MILLER: --- if I could if I'm to make any motions.

10 THE COURT: Yes, sir, certainly. Please if you'd
11 get --- if you'd come over by the microphone, ---

12 MR. MILLER: Sure, yeah.

13 THE COURT: --- sure I'll be glad to hear your motions.

14 MR. MILLER: Okay. Your Honor, for the record we make a
15 motion on behalf of Mr. Evans for a new trial based on all the
16 prior motions and objections that were made throughout the
17 course of the trial on the basis that the jury's verdict was
18 one of passion, prejudice. I believe a reasonable jury would
19 not have found Mr. Evans guilty beyond a reasonable doubt
20 particularly given the fact any witnesses in the case saw both
21 him and Mr. Capers that to find Mr. Capers not guilty and
22 Mr. Evans guilty would be the basis that a reasonable jury
23 would not have been able to reach.

24 THE COURT: All right. Thank you. Thank you very much.
25 I I would respectfully deny your motion. I believe there was

MOTIONS AND MATTERS

1 more than sufficient evidence for the jury to reach the
2 verdict that they did reach. I think the significant
3 difference is the identification as far as the scarring to
4 Mr. Evans's body on his upper left shoulder and his elbow area
5 that you can see in the still photographs, that you can see in
6 the video and that you can see on his body so I will
7 respectfully deny your motion and reaffirm all my previous
8 trial rulings. Any other motions, Mr. Miller?

9 MR. MILLER: No, Your Honor.

10 THE COURT: All right. Anything additional from the
11 State before sentence is imposed, Mr. Maldonado?

12 MR. MALDONADO: Yes, Your Honor, just briefly. As far as
13 a prior record, he has no prior convictions. As far as the
14 victim, she obviously wanted me to convey how serious she
15 feels about the situation and but she did not wanna speak on
16 the record and I wanna ask you again did you change your mind?
17 She prefers not to speak, Your Honor. Obviously she's been
18 very emotional throughout this. The State is obviously asking
19 for a significant sentence.

20 THE COURT: The State what?

21 MR. MALDONADO: Is asking for a significant sentence.

22 THE COURT: All right. Thank you. Thank you very much,
23 Mr. Maldonado. Mr. Miller, I'll be glad to hear from ya.

24 MR. MILLER: Thank you, Your Honor. May it please the
25 Court. And at the appropriate time I'd like to have two

MOTIONS AND MATTERS

1 members of his family come forward and ---

2 THE COURT: Certainly.

3 MR. MILLER: --- speak as well.

4 THE COURT: I'll be glad to hear from them.

5 MR. MILLER: First, Your Honor, I I wanna I guess clarify
6 with regard to the kidnapping charge this obviously was
7 something that had no sexual component to it and while there
8 is a sex offense registry I'd ask that he not be placed on
9 that. Mr. Evans has no no criminal record as the State has
10 already conveyed. This was a obviously a serious matter and I
11 understand the victim's upset. Thankfully nobody was hurt. I
12 don't think the intent was ever to hurt anybody when they went
13 in there. I think the intent was probably to steal money.
14 Nobody did get hurt physically, obviously emotionally they
15 are.

16 Mr. Evans very young and I think he was barely 19 when this
17 was committed and he's not even 21 at this time. He he does
18 have a life. I've spoken with people during our investigation
19 of this case, ex-girlfriends and their families and so forth,
20 who wouldn't let them hang out with him unless he changed his
21 ways and for a long time he did. I think he has a lot of
22 potential to to not get in with the wrong people. I think he
23 has a lotta potential to not act in this manner in the future
24 and I'd like to see him have some life left to when he gets
25 out to be able to to work with. As you can see there's a

MOTIONS AND MATTERS

1 huge amounta family support here. I mean, both Lywone has a
2 cousin of his and all of the extended family as well as his
3 mother Emma and his sister Cherise. Your Honor, I -- I'd have
4 them speak on his behalf in just a moment but certainly he's
5 already served almost approximately two and a quarter years
6 and I'd ask that he get credit for that time against whatever
7 his sentence is and that any of the sentences would run
8 concurrent.

9 THE COURT: Thank you. Thank you, Mr. Miller. I'll be
10 glad to hear from anyone you want me to hear from, Mr. Miller.

11 MR. MILLER: All right. Emma, Cherise, if you'd like to
12 come up.

13 (Whereupon, a discussion was held off the record.)

14 THE COURT: All right. Yes, ma'am, tell me your name,
15 please.

16 MS. EVANS: Cherise Evans.

17 THE COURT: All right. I'll be glad to hear from you.

18 MS. CHERISE EVANS: I'm sorry that this happened, for
19 what he did, but I don't think -- I want my brother to get out
20 and, you know, I don't want him to have a long long time
21 because he do have a life ahead of him. He is going back to
22 school whenever he do get out and he's gonna finish. Boyd is
23 all -- he's always at the house, he's always there. He's
24 considerate with his family and his friends. It's just I'm
25 sorry that this happened but I don't want him to go away for a

MOTIONS AND MATTERS

1 very long time. I would like to have my brother home with me
2 and, you know, I can't do this, but that's all I have to say
3 right now.

4 THE COURT: Thank you. Thank you very much for being
5 here. Yes, Ma'am, and your name, please.

6 MS. EMMA EVANS: My name is Emma Evans.

7 THE COURT: All right, Ms. Evans. I'll be glad to hear
8 from you.

9 MS. EMMA EVANS: Well I'm Boyd's, I'm not a mother by
10 law, I'm really his aunt. Boyd' father died when he was two
11 yet he been in the system 'til 7. I had him there since he
12 was 7. Well when I got Boyd he was shy with me, he didn't
13 talk. The therapy and all that it did help, got him back
14 emotionally to talk instead of bein' withdrawn but with a
15 lotta love and affection he got pretty normal. We all love
16 him, not a bad child. How this happened to him I don't know.
17 Maybe he was there, maybe he was in the wrong place at the
18 wrong time, the right place at the right time. You can't be
19 two places in one time. So I'm asking you to do all you can
20 for him. I had him from 7 to 21. He hasn't been a bad child.
21 We all love him and his grandfather died in '72. I'm the only
22 woman in the house. I adopted five kids altogether and one I
23 just had custody of and I think they all did pretty well
24 except Boyd happen to get in some trouble but I appreciate if
25 you would give him a little help. Thank you.

SENTENCE

1 THE COURT: Thank you, Ms. Evans. Yes, ma'am, your name,
2 please.

3 MS. TASHEKA: I'm Tasheka. I'm his cousin. We all grew
4 up together not in the same house but around each other and
5 this is like my second closest cousin Boyd. We all went to
6 school together except the time we was livin' in New York we
7 aint together. Besides growing up together or even that mean
8 the ties are still good and I would just ask that you be
9 considerate and send him home to us in a timely fashion,
10 that's all.

11 THE COURT: All right. Thank you. Thank you very much.
12 All right. Anything you'd like to say, Mr. Evans?

13 THE DEFENDANT: Yes, sir. I'm sorry that it ever
14 happened, sir. Sorry for wastin' -- well sorry. I know you
15 had something better to do than sit here all your week. I
16 know you fou -- they found me guilty. I just, I just ask for
17 that I know I know I'm gonna get time, right. I know it. I
18 know I was gonna get time when I first came, right, but I just
19 asking like it won't be a lotta time, that it, that's all I
20 have to say.

21 THE COURT: All right. Anything further, Mr. Miller?

22 MR. MILLER: No, Your Honor. That's all from the
23 defense.

24 THE COURT: All right.

25 (Pause.)

SENTENCE

1 THE COURT: 07-GS-32-3359 armed robbery, 3358 kidnapping,
2 3360 possession of a firearm during the commission of violent
3 crime: As to the armed robbery, defendant's committed to the
4 State Department of Corrections for a determinate term of
5 twenty-one (21) years; as to kidnapping, defendant's committed
6 to the State Department of Corrections a determinate term of
7 twenty-one (21) years; as to possession of a firearm during
8 the commission of a violent crime, the defendant's committed
9 to the State Department of Corrections determinate term of
10 five (5) years. Those are concurrent. He's given credit for
11 all time served. It is notated on the kidnapping sentencing
12 sheet that the defendant shall not be placed on the sex
13 offender registry as the facts do not support such a finding.
14 You agree with that, Mr. Maldonado?

15 MR. MALDONADO: I do, Your Honor.

16 THE COURT: All right. Thank you. Thank you very much.
17 Good luck to you, Mr. Evans.

18 THE DEFENDANT: Thank you.

19 MR. MILLER: Thank you, Your Honor.
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on January 11, 12, 13 and 14, 2010 at the time and place heretofore set forth; and that the foregoing pages numbered from 11 through 623, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

June 30, 2010

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOYD EVANS,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT.....5

CONCLUSION.....9

PETITION TO BE RELIEVED AS COUNSEL 10

TABLE OF AUTHORITIES**Cases**

<u>State v. Mizell</u> , 349 S.C. 326, 563 S.E.2d 315 (2002)	8
<u>State v. Saltz</u> , 346 S.C. 114, 551 S.E.2d 240 (2001)	7
<u>State v. Turner</u> , 373 S.C. 121, 644 S.E.2d 693 (2007).....	5, 6, 7
<u>United Staes v. Lopez</u> , 611 F.2d 44 (4 th Cir. 1979).....	6, 7

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to allow cross-examination of a witness in regard to conditions and medications that may have affected her memory when the witness testified that appellant, her brother, visited her from North Carolina the afternoon before the robbery, placing appellant in the vicinity of the robbery, when identity was a key issue at trial?

STATEMENT OF THE CASE

In November of 2007, the Lexington County Grand Jury indicted Evans for armed robbery, two counts of kidnapping, possession of a firearm during the commission of a violent crime and possession of a pistol by person under twenty one, indictments #2007-GS-32-3356, 3357, 3358, 3359, 3360. On January 11, 2010, Evans and his co-defendant, Lywone Capers proceeded to a joint jury trial before the Honorable R. Knox McMahon on all charges except possession of a pistol by person under twenty one, 07-GS-32-3356, which was dismissed by the State on January 14, 2009. At the close of the State's case the judge directed a verdict of acquittal for one of the kidnapping charges, 07-GS-32-3357. On January 14, 2010, the jury returned verdicts of not guilty on all charges as to the co-defendant but verdicts of guilty on all charges as to Evans. Judge McMahon sentenced Evans to twenty one years for armed robbery, twenty one years concurrent for kidnapping, noting that Evans shall not be placed on the sexual offender registry, and five years concurrent for possession of a pistol during the commission of a violent crime. A timely notice of intent to appeal was filed on January 22, 2010. This appeal follows.

ARGUMENT

The trial judge erred in refusing to allow cross-examination of a witness in regard to conditions and medications that may have affected her memory when the witness testified that appellant, her brother, visited her from North Carolina the afternoon before the robbery, placing appellant in the vicinity of the robbery, when identity was a key issue at trial.

The jury convicted Evans of robbing the Pitt Stop Convenience store in Lexington County on July 26, 2007. The police obtained a video tape from the store on the night of the robbery and showed the tape to employees of the Pitt Stop, including Michael Rhaney. Rhaney dated appellant's sister, Glynnessa Evans. Rhaney identified appellant as one of the individuals shown on the video tape of the armed robbery. The police then showed the video to appellant's sister and she identified appellant also. Appellant was living in North Carolina at the time of the robbery.

Prior to the start of trial, the State moved to exclude any testimony regarding Glynnessa Evans' mental issues pursuant to State v. Turner, 373 S.C. 121, 644 S.E.2d 693 (2007). (R. p. 51, lines 13-25). It appears the State was moving to exclude evidence that the witness had been evaluated for competency to stand trial prior to her conviction for involuntary manslaughter. (R. p. 51, lines 19-20). Appellant did not oppose the State's motion and the judge found the evidence inadmissible. (R. p. 52, lines 1-25).

At trial Glynnessa Evans testified that on July 25, 2007, the afternoon before the robbery of the Pitt Stop, her brother, appellant, and the co-defendant visited her from North Carolina. (R. p. 308, lines 1-25). At the time of the robbery Glynnessa Evans and Rhaney lived about a mile from the Pitt Stop. (R. p. 254, lines 14-20; p. 306, lines 9-19). During the cross examination of Ms. Evans, co-defendant's counsel asked if Ms. Evans suffered from

any kind of condition that caused confusion. Ms. Evans responded, "Yes." (R. p. 330, lines 12-15). The State objected and a hearing was held outside the presence of the jury.

Counsel for the co-defendant again asked Ms. Evans if she suffered from any conditions that caused confusion and Ms. Evans again responded that she did. (R. p. 331, lines 21-23). When asked a third time if she suffered from a condition that caused confusion, Ms. Evans then testified, "No. I supposed to been only on depression medicine from my parents, losing my parents. They put me on Dyprexa 2.5 milligrams that I didn't need. Only think I need was a counselor really so they just put me on medicine for sumtin' that I ain't need." R. p. 332, lines 12-16).

Counsel for appellant asked, "Ms. Evans, what what specifically was the condition for which you were being treated?" (R. p. 334, lines 16-17). Ms. Evans answered, "They was talkin' about I was mild retardation." (R. p. 334, line 18). Ms. Evans then testified that she took the medication Dyprexa and the medication made her feel "drugged up" and sleepy. (R. p. 335, lines 1-25). Ms. Evans could not remember when in 2007, she took Dyprexa but testified that she was not on any medication in July of 2007, when the robbery took place. (R. p. 336, lines 1-14).

Counsel for appellant argued that he should be able to challenge Ms. Evans' ability to remember the date she was visited by appellant and the co-defendant. (R. p. 338, lines 8-17; p. 339, lines 25 – p. 340, lines 1-14). The judge ruled, relying on State v. Turner, 373 S.C. 121, 644 S.E.2d 693 (2007) and United Staes v. Lopez, 611 F.2d 44 (4th Cir. 1979), that Ms. Evans' condition and the medication she took in 2007 were not relevant. (R. p. 340, lines 22 – p. 341, 342, lines 1-9). The judge erred.

The right to a meaningful cross-examination of an adverse witness is included in the defendant's Sixth Amendment right to confront his accusers. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). Trial courts retain wide latitude, as the Confrontation Clause is concerned, to impose reasonable limits on cross-examination based on concerns about, among other things, prejudice, confusion of the issues, or interrogation that is only marginally relevant. Id. The judge's limitation of the cross examination of Ms. Evans was not reasonable and constituted a prejudicial abuse of discretion in the present case.

The case is distinguished from State v. Turner, 373 S.C. 121, 644 S.E.2d 693, (2007). In Turner the victim testified that she took medications and admitted that if she did not take her medication, she became confused, forgetful and heard voices. The trial judge refused to allow Turner to question the victim about her diagnosis of schizophrenia and to question her about the names of her medications. The South Carolina Supreme Court affirmed the finding of the trial judge finding that Turner failed to show that he was unfairly prejudiced by the limitation on cross examination. In the present case, the jury was never made aware that the witness had taken medications sometime during 2007, the year the robbery took place, and the medications made her feel drugged and sleepy.

The case is also distinguished from United Staes v. Lopez, 611 F.2d 44 (4th Cir. 1979). In Lopez the Court found that the judge did not abuse his discretion in refusing to permit cross examination about an evaluation of Lopez for competency to stand trial. In the present case, appellant did not oppose the State's motion to exclude evidence of a competency evaluation prior to the witness's conviction for involuntary manslaughter. In the present case appellant sought to cross examine the witness in regard to conditions and

medications that would have affected her ability to remember the date her brother visited from North Carolina.

Ms. Evans' testimony was critical in the present case. Her testimony in regard to the date her brother visited placed her brother about a mile from the Pitt Stop the afternoon before the robbery. Identity was a key issue at trial. The jury rejected Ms. Evans' identification of the co-defendant, acquitting him on all charges. Appellant presented an alibi defense at trial. Cherise Evans, another sister of appellant, testified that on the night of the robbery, appellant was in Charlotte, North Carolina. (Tr. pp. 532-537). Appellant was prejudiced by the judge's limitation on the cross examination of Glynnessa Evans. The prejudicial limitation on cross examination constitutes reversible error. See State v. Mizell, 349 S.C. 326, 563 S.E.2d 315 (2002).

CONCLUSION

Based on the above argument, the convictions and sentences should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of June, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Lexington County

 R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOYD EVANS,

APPELLANT

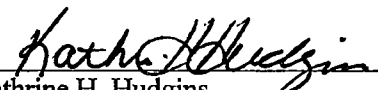
 PETITION TO BE RELIEVED AS COUNSEL

Counsel for Boyd Evans states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on January 14, 2010, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Boyd Evans.

Respectfully submitted,


 Kathrine H. Hudgins
 Appellate Defender

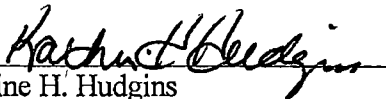
ATTORNEY FOR APPELLANT

This 14th day of June, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability 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."

June 14, 2011


Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

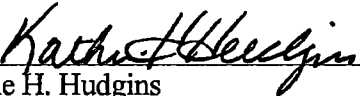
V.

BOYD EVANS,

APPELLANT

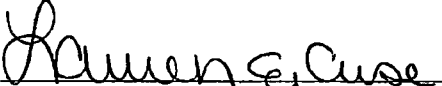
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, Columbia, SC; and a copy of the Final Anders Brief of Appellant and Record on Appeal have been served on Boyd Evans, # 338854 at Lee Correctional Institution, this 14th day of June, 2011.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of June, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Boyd Evans,

Appellant.

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2012-UP-299
Submitted March 1, 2012 – Filed May 16, 2012

APPEAL DISMISSED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, and Assistant
Deputy Attorney General Salley W. Elliott, all of
Columbia; and Solicitor Donald V. Myers, of
Lexington, for Respondent.

PER CURIAM: Boyd Evans appeals his convictions for armed robbery, kidnapping, and possession of a firearm during the commission of a violent crime, arguing the circuit court erred in refusing to allow him to question a witness about the witness's memory. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ the appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

FEW, C.J., and HUFF and SHORT, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

ORIGINAL

FORM 5

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

COUNTY OF Lexington

2013 FEB 20 P 2:54

Royd Rashaeen EVANS #338854

Full name and prison number (if any) of Applicant

Attorney General v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2013CP3200614

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution Bishopville, SC
2. Name and location of Court which imposed sentence Court of General Sessions, Lexington, SC
3. Name(s) of co-defendant(s) (if any) Lywone Capers, John Sosa-Evans, Anton Coleman.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS 32-3358, Kidnapping
 - (b) 2007-GS 32-3359, Armed Robbery
 - (c) 2007-GS 32-3360, Possession of a firearm during Commission of Violent Crime
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JANUARY 14, 2010 21 years
 - (b) JANUARY 14, 2010 21 years
 - (c) JANUARY 14, 2010 5 years

A TRUE COPY

Revised 3/2005

Lex. Co. C.C.C.P., G.S. & F.C.

2013CP3200614

FILED

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

2013 FEB 20 2:54

(c) after a plea of nolo contendere _____

DETH A. CARINGG

6. Did you appeal from the judgment of conviction or the imposition of sentence? _____

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. Direct Appeal And S.C Supreme Court

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Denied & Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. MARCH 1, 2012

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NO - 2012 - up - 299

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

2013CP3200614

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) Counsel failed to make an objection to a Suggestive Photo and body Show up at trial on my behalf.
- (b) Counsel failed to inform the Court that after a Warrant has been issued, Section 22-5-320 Requires that a Preliminary hearing be granted and held upon
- (c) A demand in writing of the defendant made at least ten days before Convening of the next Court of General Sessions.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

South Carolina Supreme Court

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

FILED

2013 FEB 20 PM 2:54

CLERK OF COURT

1. State Concisely and in the Same order the facts which support each of the 643 grounds set out in.

2) Counsel failed to get Alibi's and information when i gave him the Right name's in Address's was giving to him.

3) Counsel failed to make motions and matters before the defendant Closing Arguments. My Counsel just went along with everything that my Co-defendant Counsel was saying. That's not defending me.

4) Counsel didn't inform the jury on the evidence as best as he could because he kept on saying my Co-defendant Counsel covered most of the Argument so he don't go back into it.

5) Counsel failed to get me Common Plea in writing or a Plea At All.

6) Counsel failed to inform the Court that after a warrant has been issued, Section 22-5-320 Requires that A Preliminary hearing be granted and held upon A demand in writing of the defendant made before Convening of the Next Court of General Sessions.

2013CP3200614

FILED

2013 FEB 20 2:54

CLERK OF COURT
COURT HOUSE
100 N. 3RD ST.
DENVER, CO 80202

2013CP3200614

FILED

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

2013 FEB 20 P 2:54

LETIA CARRIGG

DEPT. CLERK

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes(b) your trial, if any? yes(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

yes(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? yes

2013CP3200614

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Please Pursuant to the Record of
ii. Clerk of the Court in this Matter
iii. _____

(b) the proceedings at which each such attorney represented you:

- i. All of 16 Above
ii. _____
iii. _____

18. State clearly the relief you seek in filing this application.

New Trial

19. Are you now under sentence from any other court that you have not challenged?

No

FILED

2013 FEB 20 2:25 PM

2013CP3200614

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF

Lee

VERIFICATION

I, Boyd Rashawn Evans, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Boyd Rashawn Evans

Sworn to and subscribed before me

This 13th day of Feb, 2013

Janice L. Melton L.S.

Notary Public for South Carolina

My Commission Expires 4-26-2014

2013 FEB 20 2:54

FILED

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Boyd Rashawn Evans, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Boyd Rashawn Evans
Applicant

Sworn to and subscribed before me

This 13th day of Feb, 2013

Janice L. Melton L.S.

Notary Public for South Carolina

My Commission Expires: 4-26-2014

2013 FEB 20 2:54

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Boyd Rashaeen Evans,	)	C.A. No. 2013-CP-32-0614
S.C.D.C. No. 338854	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed February 20, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. The Applicant was indicted at the November 2007 term of the Court of General Sessions for Lexington County for kidnapping (2007-GS-32-3358); armed robbery (2007-GS-32-3359); and possession of a firearm during a violent crime (2007-GS-32-3360). The Applicant was represented by David Miller, Esq. From January 11-14, Applicant proceeded to trial before a jury and was convicted of all charges as indicted. The Honorable R. Knox McMahon sentenced Applicant to a term of twenty-one (21) years imprisonment for kidnapping, twenty-one (21) years for armed robbery, and five (4) years for the weapons provision. Judge McMahon ordered that the sentences be served concurrently.

A notice of appeal was filed on Applicant's behalf and perfected pursuant to Anders v. California¹ by Kathrine Hudgins, Esq. The Court of Appeals dismissed Applicant's appeal in an unpublished opinion. State v. Boyd Evans, (2012-UP-299, filed May 16, 2012).

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the transcript from Applicant's trial, and records from Applicant's appeal. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance Counsel; specifically
 - a. Counsel failed to make an objection to a suggestive photo and body show up at trial on Applicant's behalf;
 - b. Counsel failed to inform the Court that after a warrant has been issued, Section 22-5-320 requires that a preliminary hearing be granted and held upon a demand in writing of the defendant made at least ten days before convening of the next Court of General Sessions;
 - c. Counsel failed to get alibis and information when Applicant gave him the right names and addresses;
 - d. Counsel failed to make motions and matters before the defendant closing arguments, Applicant's Counsel just went along with everything that co-defendant's counsel was saying instead of defendant Applicant;
 - e. Counsel did not inform the jury on the evidence as best as he could because he kept on saying his co-defendant's counsel covered most of the argument so he did not go back into it;

¹ 386 U.S. 738, 87 S.Ct. 1396 (1967).

- f. Counsel failed to get Applicant's common plea in writing or a plea at all;
- g. Counsel failed to inform the Court that after a warrant has been issued, Section 22-5-320 requires that a preliminary hearing be granted and held upon a demand in writing of the defendant made before convening of the next Court of General Sessions.

III.

The Applicant's sole claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry,

300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: *J. Walt Whitmire*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 28th, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
BOYD RASHAEEN EVANS, #338854	)	2013-CP-32-0614
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mrs. Kristy Grafton Goldberg, Esquire
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 303
Columbia, SC 29201

DATED this 1ST day of May, 2015.

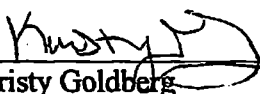

 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Boyd Evans, #338854,	)	2013-CP-32-614
Applicant,	)	
v.	)	
	)	AMENDED APPLICATION
State of South Carolina,	)	
<u>Respondent.</u>	)	

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective assistance of counsel in that counsel failed to adequately present evidence and testimony during trial to support the Applicant's alibi defense.
- (b) Ineffective assistance of counsel in that counsel failed to adequately argue and present the Applicant's alibi defense during trial.
- (c) Ineffective assistance of counsel for unreasonably advising client that he should not testify.


 Kristy Goldberg
 Attorney for Applicant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 301
 Columbia, SC 29201
 803-252-2299
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 28th day of September, 2015

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

Boyd Evans, #338854,)
 Applicant,)

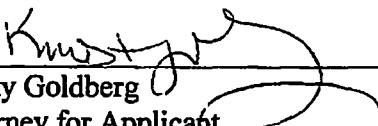
2013-CP-32-614

v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Applicant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 301
 Columbia, SC 29201
 803-252-2299
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 28TH day of September, 2015

1 State of South Carolina

Court of Common Pleas

2 County of Lexington

3

4 Boyd Rashaeen Evans,)

Transcript of Record

5 Applicant,)

2013-CP-32-0614

6 vs.)

7

The State of South Carolina.)

8

9

January 15, 2016

10

Lexington, South Carolina

11

12 B E F O R E:

13 The Honorable J. Mark Hayes, Judge

14

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

16 Patrick Schmeckpeper, Assistant Attorney General
Attorney for the State

17

Kristy G. Goldberg, Esquire
Attorney for Defendant

18

19

20

Stacy S. Johnson, RPR
Circuit Court Reporter

21

22

23

24

25

1	<u>I N D E X</u>	
2		<u>PAGE</u>
3	Boyd Rashaeen Evans	
4	Direct Examination by Ms. Goldberg	8
5	Cross-Examination by Mr. Schmeckpeper	19
6	Redirect Examination by Ms. Goldberg	29
7	Yacia Montgomery	
8	Direct Examination by Ms. Goldberg	30
9	Cross-Examination by Mr. Schmeckpeper	35
10	David Miller	
11	Direct Examination by Mr. Schmeckpeper	36
12	Cross-Examination by Ms. Goldberg	49
13	Redirect Examination by Mr. Schmeckpeper	55
14	Certificate of Reporter	64
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	Court's 1		4	
4	Court's 2		4	
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

(The following proceedings were held on January 15, 2016.)

MS. GOLDBERG: Your Honor, the next case is Boyd Evans, but I do need to go in the lobby to get some of my witnesses, so if we can take a brief recess.

THE COURT: All right. I'll step down for a few moments.

(Recess taken.)

(Court's 1 and 2 were marked for identification.)

BAILIFF: All rise. Court's now in session.

THE COURT: You may be seated.

MR. SCHMECKPEPER: Thank you, Your Honor. May it please the Court? This is Boyd Rashaeen Evans versus the State of South Carolina, 2013-CP-32-0614. Applicant is presently incarcerated. He was convicted of armed robbery, kidnapping and possession of a firearm during a violent crime in 2010 in front of Judge McMahon. Judge McMahon sentenced the Applicant to twenty-one years for kidnapping, twenty-one years for armed robbery and four years for violation of the weapons provision to be served concurrently.

The Applicant filed his application on February 20, 2013. Looking at his amended application, the allegations appear to be that counsel was ineffective for failing to

1 present evidence and argue an alibi defense and ineffective
2 for advising Applicant not to testify.

3 At this time I believe counsel has a motion.

4 **MS. GOLDBERG:** Thank you, Your Honor. May it please
5 the Court? There are two witnesses that were very
6 important to go forward today. One is present. The
7 second one is Mr. Evans' sister, Cherise Evans. She did
8 testify at the original trial. One of the arguments
9 that we planned to present is that that testimony was
10 incomplete and that she has additional things that need
11 to be testified to. As I said, Ms. Cherise Evans is Boyd
12 Evans' sister. She has called me upwards of fifteen times
13 checking on his case. I've had long conversations with
14 her, I've written her letters. She's expressed multiple
15 times her desire and willingness to be here today. She is
16 not here. I -- I did ask -- the break was -- the length
17 of the break was due to the fact that I asked a family
18 member to step out to their car where the cell phones are
19 and tried to reach her. She has informed us that she is
20 at work. I'm not sure why she did not tell me this in
21 advance or ask for a work note or anything, but she's not
22 here.

23 I'm not going to ask for a continuance on that motion
24 because we do have witnesses who are prepared to go
25 forward today. What I would ask -- what I need to say

1 is that due to the substantial amount of time I've talked
2 to her and things we've talked about and the fact that
3 they are related, I did not think it was necessary to
4 subpoena her, so she's not under subpoena today. I cannot
5 send a deputy out to get her. What I would ask this Court
6 for is an opportunity to hold the record open so that I
7 can subpoena her for a hearing where only she would need
8 to testify. Everybody else can go ahead and go forward
9 today. Obviously whether you're, of course, inclined to
10 do that or not, I don't know, but this is Mr. Evans only
11 opportunity for PCR. I do think she's a necessary or
12 extremely helpful witness and I would just ask for that
13 opportunity.

14 **MR. SCHMECKPEPER:** Your Honor, I would object to
15 holding the record open at this point. First off, I mean,
16 all the witnesses are here today. It doesn't mean that
17 -- I haven't heard what Ms. Evans is gonna say, I don't
18 know if we're gonna need any additional witnesses to rebut
19 what she's gonna say. In addition, Ms. Evans testified
20 at trial. From what I understand, Ms. Goldberg has an
21 exhibit that she's gonna introduce that pretty much says
22 what Ms. Evans is gonna testify to. I don't think it's
23 necessary to have her here. I understand this is
24 Mr. Evans' only shot though, but we would object to any
25 -- holding the record open or any continuances.

1 **THE COURT:** Well, since I'm not being asked to
2 continue the case and I generally -- with nonjury matters,
3 including PCR matters, I generally don't like holding the
4 record open because I would like to -- since I'm the one
5 that has to make the decisions I like to receive the
6 information all at one time. So the best that I can tell
7 you since the issue is holding the record open is to let
8 you proceed and then at the closing of the presentation
9 of the evidence I'll let you know about my feelings on
10 leaving the record open.

11 **MS. GOLDBERG:** That's fair, Your Honor.

12 **THE COURT:** Okay.

13 **MS. GOLDBERG:** All right. At this time, Your Honor,
14 we would go forward with the post-conviction action of
15 Mr. Evans. There should be in your file an amended
16 application filed September 30, 2015. Those are the only
17 allegations that we are going forward on today. At this
18 time I would call Boyd Evans to the stand.

19 **THE COURT:** Mr. Evans, just come right over here, if
20 you would. Just come over here and -- yes, sir.

21 BOYD RASHAEEN EVANS,
22 having been duly sworn, testified as follows:

23 **THE COURT:** All right, sir. Be careful as you're
24 stepping up, but just step up and have a seat in that
25 chair and pull the chair up to the microphone, if you

1 would.

2 DIRECT EXAMINATION

3 BY MS. GOLDBERG:

4 Q. All right. Can you state your name, please?

5 A. Boyd Rashaeen Evans.

6 Q. And you filed a PCR challenging all of your
7 convictions; is that right?

8 A. Yes, ma'am.

9 Q. What sentence did you receive?

10 A. Twenty-one years.

11 Q. You understand that especially armed robbery carries
12 a mandatory minimum sentence of ten years and a maximum
13 sentence of thirty?

14 A. Yes, ma'am.

15 Q. Okay. You understand if you win at PCR you could go
16 back to court and face these charges again without any
17 guarantee as to what sentence you will receive?

18 A. Yes, ma'am.

19 Q. Do you still want to go forward with these
20 allegations?

21 A. Yes.

22 Q. When were you arrested?

23 A. September 19, 2007.

24 Q. Okay. Do you remember the dates when this incident
25 allegedly took place?

1 A. July.

2 Q. July?

3 A. 25th.

4 Q. 2007?

5 A. Yes, ma'am.

6 Q. After you were arrested in September, did you stay in
7 jail until trial?

8 A. Yes, ma'am. I came from Charlotte, North Carolina.

9 Q. You were extradited?

10 A. Yes.

11 Q. You never bonded out though?

12 A. No, ma'am.

13 Q. Who was appointed to be your attorney first?

14 A. I had -- I don't know. I had an appointed attorney,
15 but something happened with them and I got another
16 attorney, something happened and then I got David Miller.

17 Q. Okay. But you don't really remember what happened?

18 A. No.

19 Q. Do you remember approximately when Mr. Miller became
20 your attorney?

21 A. Like '08, I believe.

22 Q. What year was your trial?

23 A. 2010. January the 10th.

24 Q. During that significant period of time when he
25 represented you, did he come to the jail to meet with you?

1 A. Yes, he came.

2 Q. Did he go over the case with you, help you prepare
3 for trial?

4 A. To be honest, he -- we talked, but he was really
5 trying to get me to plea.

6 Q. Did you talk with him about doing an investigation?

7 A. Yes.

8 Q. Did he hire an investigator?

9 A. I think -- I believe it was Carlisle McNair.

10 Q. In your discussions with Mr. Miller, did you tell him
11 that you had an alibi?

12 A. Yes.

13 Q. Did you give him names of witnesses you wanted him to
14 talk to about the alibi?

15 A. Yes.

16 Q. What names?

17 A. I gave him -- okay. One witness I gave him, but he
18 was looking for somebody wrong. I don't have the paper
19 today.

20 Q. What was the name that you gave him or intended to
21 give him?

22 A. Kiandra Lovett.

23 Q. Okay. Who else?

24 A. Cherise Evans. A Garren Sawyer.

25 Q. Who else?

1 A. Aiesha Lov -- Aiesha Scott.

2 Q. Uh-huh.

3 A. And Yacia Montgomery.

4 Q. Garren Sawyer, that was not about the alibi, was it?

5 A. No.

6 Q. Okay. To your knowledge, did Mr. Miller meet with
7 or talk with these people or attempt to talk with these
8 people?

9 A. To be honest, I don't know. I know he talked to
10 Cherise.

11 Q. As far as his attempts to talk to the other ones or
12 his investigator's attempts, are you saying you don't know
13 or do you know anything about that?

14 A. No, I don't know because I spoke to the investigator
15 one time and he -- he ain't asked me about none of them.

16 Q. He didn't ask you about those individuals?

17 A. No.

18 Q. When your trial started in 2010, you were tried with
19 your co-defendant?

20 A. Yes.

21 Q. What's his name?

22 A. Well, I have three co-defendants.

23 Q. Which one were you tried with?

24 A. Lywone Capers.

25 Q. What evidence generally did the State have against

1 you and Lywone?

2 A. They had a witness testimony.

3 Q. Well, let's start here. Was there a video?

4 A. Yes, ma'am.

5 Q. Okay. Did the State use the video against both of
6 you?

7 A. Yes.

8 Q. Were faces seen in the video?

9 A. No.

10 Q. No faces?

11 A. No, ma'am.

12 Q. Okay. Now tell me about the witness. Was the witness
13 present during the robbery?

14 A. No, ma'am.

15 Q. What did the witness testify about?

16 A. That she know these people.

17 Q. She watched the video?

18 A. Uh-huh.

19 Q. She thought she recognized the people in the video?

20 A. Yes.

21 Q. Without seeing their faces?

22 A. Yes.

23 Q. Okay. Lywone put up an alibi defense; is that right?

24 A. Yes.

25 Q. Do you know how many witnesses were called to help

1 him with that?

2 **MR. SCHMECKPEPER:** Your Honor, I'd object to
3 relevance. We're not here on Mr. Caper's PCR.

4 **THE COURT:** I don't know if it's relevant or not yet,
5 so I'm gonna let her -- give her an opportunity to lay a
6 foundation. Go ahead.

7 BY MS. GOLDBERG:

8 Q. Do you know about how many witnesses were called?

9 A. I believe four.

10 Q. Did Lywone testify?

11 A. No.

12 Q. Do you have any personal knowledge as to why he didn't
13 testify?

14 A. No.

15 Q. When it was time for your portion of the case, did you
16 put up an alibi defense?

17 A. Yes, I did, but --

18 Q. Go ahead.

19 A. -- but it wasn't everybody that I asked for.

20 Q. Okay. How many witnesses were called for your
21 defense?

22 A. One.

23 Q. Was that Cherise Evans?

24 A. Yes, ma'am.

25 Q. What did Ms. Evans testify -- you've read the

1 transcript, right?

2 A. Yes.

3 Q. Have you read it recently?

4 A. Yes.

5 Q. What did Ms. Evans testify to?

6 A. That -- to be honest, they really wasn't talking about
7 the case like that. He asked her about a Garren Sawyer
8 and he asked her did I pick her up. That's basically -- I
9 believe that's all.

10 Q. He asked her if you picked her up from work?

11 A. Yes.

12 Q. Did he ever ask her what time she got off work?

13 A. I don't think so.

14 Q. Did you and your lawyer have any conversations about
15 whether or not you would testify in your own defense?

16 A. Yes.

17 Q. How did -- what was said?

18 A. Well, I told the lawyer -- I mean, the judge that I
19 wanted to testify, but he told me not to.

20 Q. Was there a discussion about whether you should or
21 shouldn't?

22 A. Well, at first we didn't discuss it until I told the
23 judge I wanted to and then when I came back to the table
24 he was just like -- he feels that it wasn't best for me to
25 testify.

1 Q. Did he say why?

2 A. No.

3 Q. Did you agree with him?

4 A. Yes.

5 Q. Why?

6 A. Because he's my lawyer.

7 Q. Did you want to testify?

8 A. Yes.

9 Q. At the end of your presentation of your case, at the
10 end of Ms. Evans' testimony, did the judge come back to you
11 and ask again if you wanted to testify or not?

12 A. No, ma'am.

13 Q. To your knowledge, do you have any prior convictions
14 that would have been used against you in trial?

15 A. No.

16 Q. If you had testified in trial, we're gonna give you
17 this opportunity now to go ahead and testify as if you
18 would have, so what would you have said in your own defense
19 at trial?

20 A. Well, I woke up like -- at like eight, but I know I
21 had to take my sister to work at nine.

22 Q. AM on PM?

23 A. AM.

24 Q. What day?

25 A. The 25th.

1 Q. Okay. Go ahead.

2 A. She work at Church's Chicken on Wilkinson Boulevard in
3 Charlotte, North Carolina, and when I got there I picked
4 her up and came back to my house.

5 Q. Go ahead. You can just keep going.

6 A. Okay. I walked my dog to my mother's house. I was
7 taking out my hair at the time. As I took out my hair, I
8 went back and I met Yacia at the store.

9 Q. Okay. What time was this and what day?

10 A. This was like at 1:00.

11 Q. PM?

12 A. Yes, ma'am.

13 Q. On the 25th?

14 A. Uh-huh.

15 Q. Okay. Go ahead.

16 A. We talked for a little second at the store and I asked
17 her did she want to come over later, she told me later, so
18 when I got back I was at the house and I called Kiandra to
19 see could she do my hair and I went to pick her up and then
20 we came back to my house and she fixed doing my hair for
21 me.

22 Q. What time was this?

23 A. That was like at two.

24 Q. PM?

25 A. Yes, ma'am.

1 Q. Okay. Go ahead.

2 A. Around like at three like Aiesha, Lavon, they came
3 over.

4 Q. Okay.

5 A. Yeah, me and Lavon was just playing a game while Yacia
6 was -- Yacia came over like at six.

7 Q. PM?

8 A. Yes, because it was like the sun was going down
9 somewhat.

10 Q. Okay.

11 A. Yeah, so Kiandra, she was finishing doing my hair and
12 me and Lavon was playing the video game until I had to go
13 pick up my sister.

14 Q. What time did you go pick up your sister?

15 A. Like I believe I left at like 11:30.

16 Q. PM?

17 A. Yes, ma'am.

18 Q. Where was her work where you picked her up?

19 A. On Wilkinson Boulevard.

20 Q. In what city?

21 A. In Charlotte.

22 Q. That date again?

23 A. July 25th.

24 Q. The testimony that you just gave about being at the
25 house playing games, doing your hair, what city is that

1 house in?

2 A. Charlotte.

3 Q. After you went to pick up your sister, then what?

4 A. We came back to the house.

5 Q. The same house in Charlotte?

6 A. Yes, ma'am.

7 Q. What time did you get home?

8 A. I believe like at twelve something. Twelve.

9 Q. Midnight?

10 A. Yes.

11 Q. Now this was in 2007; is that right?

12 A. Yes, ma'am.

13 Q. How do you remember this?

14 A. Because I have to. This is -- this is what I got
15 twenty-one years for.

16 Q. Is there anything specific that stands out about all
17 this that helps you remember it?

18 A. What you mean?

19 Q. Anything special about these dates that make you
20 remember them?

21 A. Like the only thing I can remember to remember this
22 day is that I had a little sister but she passed away and
23 her birthday was right -- the day before, but other than
24 that...

25 Q. The State's evidence regarding the robbery, what city

1 did that robbery take place in?

2 A. Lexington, South Carolina.

3 Q. What -- what time of day?

4 A. At night -- well, early in the morning.

5 Q. Do you remember about what they were saying what time?

6 A. 12:25, 12:20, something like that.

7 Q. Like right after midnight?

8 A. Uh-huh.

9 Q. The same evidence was used against you and Mr. Capers;
10 is that right?

11 A. Uh-huh.

12 Q. What was the outcome of Mr. Capers' trial?

13 A. Well, he won his trial.

14 Q. He was found not guilty?

15 A. Yes, ma'am.

16 **MS. GOLDBERG:** No further questions.

17 **MR. SCHMECKPEPER:** May it please the Court?

18 CROSS-EXAMINATION

19 BY MR. SCHMECKPEPER:

20 Q. Good morning, Mr. Evans.

21 A. Good morning.

22 Q. You were in Charlotte that whole day on the 25th?

23 A. Yes, ma'am -- yes, sir.

24 Q. So you weren't in Columbia or Lexington the entire
25 day or in South Carolina the entire day?

1 A. No.

2 Q. Do you remember testimony presented at your trial?

3 A. That I testified?

4 Q. Do you remember anybody else testifying at trial?

5 A. Yes.

6 Q. Do you remember anybody testifying that you were in
7 Columbia that day or you were in Lexington that day?

8 A. Yes.

9 Q. And that's the same person who identified you in the
10 video; is that correct?

11 A. Yes.

12 Q. Who was that?

13 A. Glenessa.

14 Q. Glenessa what?

15 A. Rainey.

16 Q. What was her last name at the time?

17 A. Evans.

18 Q. Is there any relation there?

19 A. Yes.

20 Q. What's the relation?

21 A. My stepsister.

22 Q. Your stepsister?

23 A. Yes.

24 Q. So you're saying you were identified by your sister?

25 A. My stepsister, yes.

1 Q. Stepsister. So the person who identified you knew
2 you?

3 A. Yes.

4 Q. I mean, could you recognize Glenessa Rainey right now
5 if she walked in there?

6 A. Yes, if I see her face.

7 Q. Did anybody else identify you?

8 A. No.

9 Q. No? Nobody else saw the video and said it was you?

10 A. He say I believe this is -- I believe I know these
11 people.

12 Q. And who did he say they were?

13 A. He never said. Glenessa said it.

14 Q. He never testified --

15 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

16 Your Honor, may I approach?

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

18 **MS. GOLDBERG:** Let me grab my transcript.

19 **THE WITNESS:** You're talking about at trial?

20 BY MR. SCHMECKPEPER:

21 Q. Yes.

22 A. My fault. I thought you were talking about in his
23 statement he wrote, but at trial, yes, he did point me
24 out.

25 Q. Okay.

1 **MR. SCHMECKPEPER:** Your Honor, I no longer need to
2 approach.

3 BY MR. SCHMECKPEPER:

4 Q. So who -- who pointed you out?

5 A. Michael.

6 Q. Michael who?

7 A. Rainey.

8 Q. And what is his relation to you?

9 A. Well, nothing.

10 Q. Did you know him?

11 A. No, not like that.

12 Q. Had you ever seen him before?

13 A. Yes.

14 Q. How many times?

15 A. Like three.

16 Q. Like three times recently?

17 A. No, not recently.

18 Q. And do you remember them testifying that you were in
19 Columbia that entire -- in Columbia at their house the day
20 before the robbery?

21 A. Uh-huh.

22 Q. On the 25th?

23 A. Yes.

24 Q. And you're saying it was not true?

25 A. Yes, sir.

1 Q. Because you were in Charlotte the whole day?

2 A. Yes, sir.

3 Q. Let's talk about these alibi witnesses. You told your
4 attorney -- what were the names?

5 A. Kiandra Lovett.

6 Q. Okay.

7 A. Cherise Evans.

8 Q. Okay.

9 A. Aiesha Scott.

10 Q. Okay.

11 A. Lavon Scott.

12 Q. Lavon Scott?

13 A. Uh-huh.

14 Q. And you gave those names to your attorney?

15 A. Yes. And I gave him Garren also.

16 Q. Who?

17 A. Garren Sawyer.

18 Q. But that wasn't an alibi witness?

19 A. No, he wasn't an alibi.

20 Q. How many times did you meet with your attorney?

21 A. I honestly can't remember that.

22 Q. I mean, was it more than once?

23 A. Yeah, it was more than once.

24 Q. Was it less than a hundred?

25 A. Yes.

- 1 Q. Less than ten?
- 2 A. It probably been around ten.
- 3 Q. Around ten. What did you guys talk about?
- 4 A. Really me pleading.
- 5 Q. Did he go over the State's evidence against you?
- 6 A. Yes.
- 7 Q. Did he talk to you about Glenessa Evans or Glenessa
- 8 Rainey?
- 9 A. Yes.
- 10 Q. Did he talk about Michael Rainey?
- 11 A. Yes.
- 12 Q. Did he go over any -- what other evidence did he go
- 13 over with you?
- 14 A. Really nothing else.
- 15 Q. So he just went over two witnesses?
- 16 A. Basically.
- 17 Q. But you did tell him about the alibi witnesses?
- 18 A. Uh-huh.
- 19 Q. Did he ever discuss with you before trial your right
- 20 to testify?
- 21 A. No.
- 22 Q. Did he explain your constitutional rights to you?
- 23 A. No.
- 24 Q. Now you talked to the judge, correct? The judge
- 25 explained your constitutional right to testify; isn't that

1 correct?

2 A. Yes, sir.

3 Q. And you said you wanted to testify?

4 A. Yes.

5 Q. And then you said just a minute ago to Ms. Goldberg
6 the next morning -- you never testified, correct?

7 A. No, sir.

8 Q. And why not?

9 A. Because my lawyer advised me not to when I sat back
10 -- when sat back down.

11 Q. So you just said he advised you not to?

12 A. Yes. He never explained himself why.

13 Q. Did he threaten you?

14 A. No.

15 Q. Did he promise you anything?

16 A. No.

17 Q. So your lawyer just said I don't think you should
18 testify?

19 A. Say that again.

20 Q. Your lawyer just said I don't think you should
21 testify?

22 A. Yes.

23 Q. Now Ms. Goldberg also asked you about your
24 co-defendant, Mr. Capers; is that correct?

25 A. Yes.

1 Q. Now the State had -- the State presented different
2 evidence between you and Mr. Capers; is that correct?

3 A. I believe so.

4 Q. For example, who had a closer connection with Glenessa
5 Evans, you or Mr. Capers?

6 A. Me.

7 Q. Is there anything else in the evidence that the State
8 had on you they didn't have on Mr. Capers?

9 A. Yes, but some of those things never came about in
10 trial, I don't believe.

11 Q. Let talk about a scar. You have a scar; is that
12 correct?

13 A. Yes.

14 Q. And that was prominent -- it was in the video. There
15 was a scar on the person in the video?

16 A. Uh-huh.

17 Q. And it was similar to your scar?

18 A. I believe so.

19 Q. And the jury saw that scar, correct?

20 A. Yes.

21 Q. Was there anything like that for Mr. Capers?

22 A. No.

23 Q. Do you remember or have you heard from the reports
24 what kind of vehicle was used in this armed robbery?

25 A. Yes.

1 Q. What was it? It was a blue SUV, right?

2 A. Yeah. A blue Explorer, yeah.

3 Q. A blue Ford Explorer, I think?

4 A. Yes.

5 Q. Did you have a -- did you ever drive a blue Ford
6 Explorer?

7 A. No, I got a -- I had a Nissan Maxima.

8 Q. But you never drove a blue Ford Explorer in South
9 Carolina?

10 A. No.

11 Q. Did the State present any evidence that you had driven
12 that vehicle?

13 A. No.

14 Q. Any testimony?

15 A. What you mean?

16 Q. So Michael Rainey never testified that he saw you in
17 a blue Ford Explorer on the day of the armed robbery?

18 A. Yes.

19 Q. And that blue Ford Explorer was also in the video at
20 the gas station, correct?

21 A. Uh-huh.

22 Q. The one that Michael Rainey said he saw you in?

23 A. Yes, but at trial nobody really could say because
24 they had so many different license plate numbers.

25 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

1 Your Honor, may I approach? Your Honor, I'm at Page 261,
2 Lines 1 through 10 or probably right around 5 to 10.

3 BY MR. SCHMECKPEPER:

4 Q. I'm showing you the testimony of Michael Rainey. If
5 you could just read to yourself Lines 5 through 10. No,
6 on this side. I apologize.

7 A. (Reading.)

8 Q. So Mr. Rainey identified you in a blue SUV; is that
9 correct?

10 A. Yes.

11 Q. And how do you remember -- how did he know it was
12 you? Or how did he remember it? Was there anything
13 specific that he remembered?

14 A. No. Well, you're talking about what I just read?

15 Q. Yes.

16 A. He said something about I don't have a license.

17 Q. So he saw you and he said he knows you don't have
18 a license after he saw you in that blue SUV; is that
19 correct?

20 A. Well, why would he say that?

21 Q. That's what I'm asking.

22 A. I don't know.

23 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

24 BY MR. SCHMECKPEPER:

25 Q. And I think you said you were in Charlotte the entire

1 day?

2 A. Yes, sir.

3 Q. You told this to your attorney?

4 A. Yes, sir.

5 Q. So he had all this information. The only thing you
6 talked about was you were in Charlotte and there were two
7 witnesses against you and you should plead?

8 A. Basically our whole discussion was about me pleading
9 and testifying against some other person.

10 **MR. SCHMECKPEPER:** Your Honor, I have no further
11 questions.

12 **THE COURT:** And redirect limited to what he went
13 into?

14 **MS. GOLDBERG:** Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. GOLDBERG:

17 Q. Mr. Evans, Glenessa and Michael both testified that
18 they had seen you in Lexington that day, correct?

19 A. Yes, ma'am.

20 Q. And that what they -- and that when they saw you you
21 were with Lywone Capers that day?

22 A. Yes.

23 Q. And that they watched the video and they thought it
24 was you and Lywone Capers?

25 A. Yes.

1 Q. And Mr. Capers put up an alibi defense, correct?

2 A. Yes, ma'am.

3 Q. And he was found not guilty?

4 A. Yes.

5 MS. GOLDBERG: Nothing further.

6 THE COURT: Thank you, sir. You may step down. Be
7 careful stepping down. Watch your step stepping down.

8 MS. GOLDBERG: Your Honor, at this time the Applicant
9 would call Yacia Montgomery.

10 THE COURT: Ma'am, just come right up here.

11 If you would, just place your left hand on the Bible
12 and raise your right hand.

13 YACIA MONTGOMERY,

14 having been duly sworn, testified as follows:

15 THE COURT: Thank you, ma'am. Just be careful
16 stepping up and just have a seat in the chair and pull the
17 chair up to the microphone.

18 DIRECT EXAMINATION

19 BY MS. GOLDBERG:

20 Q. Yes, ma'am. State your name for the record.

21 A. Yacia Montgomery.

22 Q. How old are you?

23 A. Twenty-five.

24 Q. Do you work or go to school?

25 A. Yes.

1 Q. What do you do?

2 A. I work at Taco Bell and I go to school for bakery and
3 pastry arts.

4 Q. Do you know Boyd Evans?

5 A. Yes.

6 Q. How do you know him?

7 A. We met during the summers. I used to go to my aunt's
8 house in Charlotte.

9 Q. Do you remember approximately what year or how old you
10 were or any point of reference for that?

11 A. Maybe about sixteen, seventeen.

12 Q. So maybe about nine years ago?

13 A. Yes, ma'am.

14 Q. Did your family -- what is -- you said you stayed with
15 who during the summers?

16 A. My aunt, Cheryl Watson.

17 Q. Cheryl Watson?

18 A. Uh-huh.

19 Q. Did Ms. Watson live near Mr. Evans? How did you end
20 up meeting?

21 A. She lived by the store -- by the store that he lived
22 near, so not too far away.

23 Q. How well did you know Boyd Evans?

24 A. I would say pretty well.

25 Q. Were you aware that at one point he was arrested for

1 the charges he's in prison for now?

2 A. No, not until recently.

3 Q. Okay. Are you now aware that the charges he's in for,
4 those incident dates, was the late night July 25, 2007,
5 early morning July 26, 2007?

6 A. Yes.

7 Q. You've been informed of that now?

8 A. Yes.

9 Q. Now while Boyd Evans was in jail, did any attorney or
10 any investigator ever try to contact you?

11 A. No, ma'am.

12 Q. Or I can't say tried. Did anyone ever actually
13 contact you?

14 A. No, ma'am.

15 Q. Did you ever speak with any attorney or any
16 investigator about Boyd Evans' case?

17 A. No, ma'am.

18 Q. For the State or for the defense?

19 A. No, ma'am.

20 Q. Okay. At this time are you able to remember what
21 happened in 2007 on -- in July, these dates?

22 A. Yeah, just bits and pieces, not a whole lot, but I do
23 remember that day.

24 Q. Okay. How do you -- well, tell me -- I guess tell me
25 first what you remember.

1 A. I remember meeting Mr. Evans at the store. Well, not
2 meeting him there, but seeing him there. I remember going
3 over to the house. I cooked for everybody that was in the
4 house. I remember he was getting his hair done. Him and
5 Lavon was playing a game. I do remember when he left. I'm
6 not sure what time it was. I remember it was late night
7 and he went to go get Cherise because when he came back he
8 had Cherise with him. I remember being outside when he
9 came back with Ms. Kiandra Lovett.

10 Q. When you say store, what city is the store in?

11 A. Charlotte.

12 Q. When you say house, what city was the house in?

13 A. Charlotte.

14 Q. You testified that you recall him going to pick up his
15 sister and then coming back?

16 A. Yes, ma'am.

17 Q. Do you have any approximation on what time of day that
18 would have been?

19 A. It was late. Not late late, but it was in the late
20 evening, early morning.

21 Q. Late evening, early morning?

22 A. Yes, ma'am.

23 Q. In the midnight range?

24 A. Right.

25 Q. Now right now it's 2016.

1 A. Yes.

2 Q. Why or how do you remember what happened on these
3 particular dates in 2007?

4 A. That was honestly the last time I was in Charlotte.
5 That was the last summer I was in Charlotte until recently
6 when I went back, 2000 -- the end of 2014, beginning of
7 2015.

8 Q. And just as to the specific days, July 25th and 26th,
9 why do you remember what happened those specific days?

10 A. We always had fun. We always joked and laughed and
11 played around. It was just good memories.

12 Q. Has anyone asked you to give this -- aside from me
13 asking you to be here today, has anybody asked you to give
14 any particular testimony?

15 A. No, ma'am.

16 Q. Do you have any -- what is your relationship with
17 Boyd Evans today?

18 A. We're just friends.

19 Q. If an investigator or attorney had contacted you
20 before his trial, would you have testified on his behalf?

21 A. Yes, ma'am.

22 Q. Would you have testified as you did today?

23 A. Yes, ma'am.

24 **MS. GOLDBERG:** No further questions.

25 **MR. SCHMECKPEPER:** May it please the Court?

CROSS-EXAMINATION

BY MR. SCHMECKPEPER:

Q. Good morning.

A. Good morning.

Q. I just have a few quick questions. So you're telling me that you weren't aware when Mr. Evans was arrested?

A. No.

Q. You don't remember the date or you just didn't know?

A. I didn't know he was arrested at all.

Q. When did you find out?

A. When I visited -- when I recently visited Charlotte.

Q. Do you remember the exact date?

A. New Year's of -- the ending of 2014, 2015. It was the New Year's. I was out partying.

Q. So let me just go through this real quick.

A. Okay.

Q. So you remember bits and pieces of July 25, 2007, nine years ago?

A. Yes.

Q. So you remember the exact day nine years ago because you had a good time?

A. That was the last time I seen him. That was the last time I seen him and his family.

MR. SCHMECKPEPER: Your Honor, I have no further questions.

1 **THE COURT:** Any redirect limited to what he went into?

2 **MS. GOLDBERG:** No, Your Honor.

3 **THE COURT:** Thank you, ma'am. You may step down. Be
4 careful stepping down.

5 (Witness excused.)

6 **MS. GOLDBERG:** Applicant rests at this time.

7 **MR. SCHMECKPEPER:** Your Honor, the State calls David
8 Miller, Applicant's trial counsel.

9 **THE COURT:** Sir, just come right up here and I'll
10 swear you in.

11 **THE WITNESS:** Your Honor, may I bring a couple of the
12 notes with me? Thank you.

13 **THE COURT:** Just place your left hand on the Bible and
14 raise your right hand.

15 DAVID MILLER,

16 having been duly sworn, testified as follows:

17 **THE COURT:** Just have a seat in the chair and pull the
18 chair up to the microphone.

19 **MR. SCHMECKPEPER:** Thank you, Your Honor. May it
20 please the Court?

21 DIRECT EXAMINATION

22 BY MR. SCHMECKPEPER:

23 Q. Good afternoon -- or good morning, Mr. Miller.

24 A. Good morning.

25 Q. How are you doing today?

1 A. I'm doing well. How are you?

2 Q. Not too bad. How is your recollection of the case?

3 A. That is a good broad-based question. This was a very,
4 very -- probably in twelve years of practice probably one
5 of the longest and most -- most thorough investigation in
6 cases. I believe it was almost a four-day trial, so I have
7 good recollection of the case.

8 Q. You have a pretty good memory?

9 A. Yes.

10 Q. Do you remember the beginning of your representation
11 of Mr. Evans?

12 A. I do. I was trying to review the file to see the
13 exact date. I know the order is in there somewhere. I
14 believe it was in '08 at some point; end of '07 or
15 beginning of '08.

16 Q. Was he in jail when you met with him?

17 A. Yes.

18 Q. What did y'all talk about?

19 A. We met on several -- several occasions. I believe he
20 was pretty correct in his testimony. It was at least ten.

21 Q. Are these five-minute meetings?

22 A. No. No. In fact, one meeting was so lengthy that we
23 -- I ended up having to wait in the back room of the jail
24 with him until the guards came back from lunch to release
25 us out. No, they were probably anywhere from forty-five

1 minutes to two hours every single time we met.

2 Q. What did you all -- did you all go over discovery?

3 A. Yes.

4 Q. So you went over the State's evidence against him?

5 A. In detail. In fact, one time they either transported
6 him here or I went back to the back room of the jail with
7 a computer to show him the video. We reviewed every piece
8 of discovery, every witness that he gave us, all the
9 investigation my investigator would do, as well as the --
10 the actual video of the robbery.

11 Q. What did he tell you happened that day?

12 A. His story to us remained -- and I'm gonna answer all
13 of these as best as I can. I'm sorry if it's lengthy. The
14 -- I hired Carlisle McNair. He was an ex-captain with the
15 Lexington County Police Department. He'd worked with me on
16 several cases before this case. We actually had to go back
17 to the Court to get extra money for him. And I wanted him
18 on the case because this was tracking down witnesses in
19 Orangeburg, Charlotte. We -- and ask me -- ask me your
20 question one more time so I don't go too far afield.

21 Q. I was asking what Mr. Evans told you he did that day.
22 Did he tell you he did it?

23 A. No. His story from the beginning had been that he
24 absolutely was not there and did not do it.

25 Q. And where did he say he was?

1 A. He said that he was in Charlotte that day.

2 Q. He was there the entire time?

3 A. That was his testimony, yes.

4 Q. Did you investigate that?

5 A. Absolutely. In fact --

6 Q. Did he provide any -- I'm sorry.

7 A. No, go ahead.

8 Q. Did he provide any witnesses that could corroborate
9 that?

10 A. No witnesses to corroborate that. There was -- to
11 give you a better idea, when I would speak to him it was
12 almost difficult to communicate with him to the extent that
13 he -- he was throwing out names and relationships that
14 weren't really correct. He was throwing out a lot of
15 nicknames, you know, whether they were street names,
16 whatever they were, and we -- Carlisle and I asked him
17 over and over to please clarify, we need to know who is
18 -- he would tell us, for example, you know, Emma Evans in
19 the case was his aunt, but she became his adoptive mother.

20 We were trying to track down relations in Charlotte.
21 The ones in Columbia were much easier. Cherise, for
22 example. The -- when we -- he gave us -- the main issue
23 of the case was that there was another guy that he was
24 talking about, that Boyd was talking to me about, allegedly
25 named -- nicknamed Black, which was his nickname, who also

1 had an exact replica of his scar or birthmark on the exact
2 same spot on the shoulder that he had, and that that person
3 was in Charlotte. My investigator was sent to Charlotte
4 by me to investigate that. The name that he gave us was
5 either -- and to this day I'm not sure if it's Gary,
6 Garrett or Garren Sawyer, was supposedly, according to my
7 notes dated November 6, 2008, in a meeting with him. Gary
8 was then found to be somebody who had moved to Orangeburg.
9 My investigator was sent to Orangeburg. I have his notes.
10 I don't have -- I'm not sure if they're completely
11 exhaustive, he may have other reports for some reason that
12 I don't have, but was never able to locate this Garren
13 Sawyer. Nobody knew of anybody else named Black except for
14 a relative who did say that there was this -- this other
15 person named Black that they, quote, fooled around with.
16 We could not find this gentleman. We searched high and
17 low. I have a note from Mr. McNair dated May 12, 2009.
18 I asked Boyd if Garren committed the robbery; he answered
19 no. I asked Boyd why he wanted me to locate him. Boyd
20 answered because he has a scar on his left shoulder like
21 me.

22 Q. Now he said that this other person named Black did not
23 commit the robbery?

24 A. That's what -- yes.

25 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

1 BY MR. SCHMECKPEPER:

2 Q. Then why was he looking for -- why did he ask you to
3 look for him?

4 A. I asked Boyd why he wanted me to locate Sawyer. Boyd
5 answered because he has a scar on his left shoulder like
6 me. I asked Boyd what good would it do to find Sawyer.
7 Boyd answered it would show I'm not the only person with a
8 scar on my shoulder. And so that's the best I can give
9 you. Carlisle and I were very close. We worked on a lot
10 of cases together. In this particular case, I even visited
11 relatives in that mobile home park with him while he was
12 packing no less because we were nervous.

13 Q. Did you talk to the State's witnesses?

14 A. Yes, anybody that was a witness. Because of the way
15 this is there were so many witnesses and what he was -- let
16 me rephrase that. The number of witnesses that he was
17 sending us to talk to in Columbia, Charlotte, Orangeburg,
18 that area, Carlisle did -- either I went with him or he
19 went himself and wrote me a detailed report and we would
20 review that with Boyd. Carlisle actually came to the jail
21 to meet with Boyd and myself on probably at least fifty
22 percent of the occasions I met with him.

23 Q. How many alibi witnesses do you think you went
24 through?

25 A. The main issue with the alibi was that -- and this was

1 our problem from the beginning. I wanted to believe Boyd.
2 He's my client. I want to zealously represent him. He's
3 telling me this and he's -- and after two years he refused
4 to change his story at all. We went through all of these,
5 and I'm looking at the various reports, I'm not gonna read
6 them all, but there was issues with a gentleman, Frederick
7 Neal, who knows him as Black, he said he wasn't gonna
8 testify. We either couldn't track down the people that he
9 talked about and we did make obviously a valiant effort to
10 do it. You know, if we could have done more, then it's
11 my fault, but I don't know how we could have done more.
12 People had, you know, identified him from photographs from
13 the video.

14 Q. And who -- who was that? Who identified him?

15 A. Well, let me -- and let me just finish it this way.
16 We went through Cherise, we went through and we talked
17 obviously with all of the family. Cherise was the only one
18 who could provide him an alibi to the extent that he took
19 her to work and picked her up from work at the Church's
20 Chicken, so that will complete my answer as to that.

21 And ask me your next question again. Let me say it
22 this way. There was a woman who ran or was in charge of
23 the mobile home park where he -- where the incident --
24 where he was staying when he came down. He, Boyd, had
25 previously lived in that mobile home park. Supposedly he

1 had come down. People, including Michael Rainey, had
2 identified him in the blue Ford Explorer with the gold
3 trim and --

4 Q. What was -- and I'm sorry to interrupt you. What was
5 the relationship between Michael Rainey and the Applicant?

6 A. I believe it was his sister or his cousin Glenessa,
7 it was her fiancée, if I'm not mistaken, and they lived in
8 that mobile home park. It was my understanding that
9 Glenessa as soon as he showed up at the house had said no,
10 you know, I don't want you here, get out, we don't want
11 you here. Michael turned around and came back to talk to
12 her that day when Boyd had almost hit them coming down the
13 road in the SUV, in the Explorer, because he said what is
14 he -- what's he doing here, is your brother down, why is he
15 here, does he have a license, he almost hit me coming down
16 the road, and, you know, Glenessa didn't want him there.
17 She was not in any way, shape or form a favorable witness
18 to Boyd.

19 Q. And what day was that and what time was that?

20 A. Oh, goodness.

21 Q. It was the day before the robbery?

22 A. Yeah, it would have been the day that, correct, they
23 allegedly came down. I would need to review my notes as
24 to whether they came down on the 24th or the 25th exactly
25 as to when it happened. Rosa is the lady who was in

1 charge of the park, the mobile home park, and she
2 recognized them also from having lived there before.

3 And the issue -- if this is responsive to your question,
4 the issue with regard to the alibi was the main thing we
5 investigated the whole time because either it was him or
6 it wasn't on the video. The video was the major problem
7 and he'd reviewed it. I --

8 Q. Well, let me stop you right there. This video, can
9 you describe this video? Is it just one security camera
10 in the corner of a gas station?

11 A. It's a security camera in a gas station.

12 Q. How many security cameras were there?

13 A. I do not know.

14 Q. More than one?

15 A. Yes.

16 Q. Was it more than five?

17 A. I don't know.

18 Q. All right.

19 A. The -- they were various stills that would go forward
20 so that you could see a group of people come in and, you
21 know, I believe it was four people, and make a motion of
22 having a gun. They had -- at least the one who was alleged
23 to be Boyd had a ski mask on. The problem was this person
24 decided to wear a tank top and ski mask and it's an exact
25 body and build frame of Boyd Evans and it has the birthmark

1 or the scar tissue, whichever it is, on his left shoulder
2 and it's dead-on in the camera on multiple angles. It was
3 there -- when he says that I spoke to him about pleading,
4 of course I did because when -- you know, if he had told us
5 that we -- there was somebody else named Black who looked
6 like him who was down in Columbia and we could have proven
7 that, it would have been great. We couldn't even locate
8 the person that he was talking about after multiple
9 attempts. There really was no alibi outside of Cherise.
10 The reason I talked to him strenuously about pleading was
11 that we couldn't find anybody else. Multiple people put
12 him down here with Lywone, people who had known him before
13 when he lived down here. He has this scar, you could see
14 the video, and I didn't -- you know, my job is not -- I'm
15 not trying to take the easy way out. I have to advise him
16 properly as to the risks of what will happen if we go
17 forward versus a potential plea deal.

18 Q. Did you ever hear of Yacia Montgomery before?

19 A. I have never heard of her before today.

20 Q. So Mr. Evans never gave you her name as a potential
21 witness?

22 A. No. She apparently had not heard of it before this
23 year, so.

24 Q. Let's go over Mr. Evans' right to testify. Mr. Evans
25 did not testify; is that correct?

1 A. He ultimately did not testify.

2 Q. He initially wanted to?

3 A. Well -- and this is another reason I always say I
4 wish I'd kind of gotten Carlisle up here. He was there
5 for many of these discussions. No, we didn't know what
6 he wanted to do. He would not -- have you ever talked to
7 somebody who just won't come out and say what they're
8 trying to say? We talked to Boyd so many times in the
9 prison -- in the jail and I -- I want to put on the record
10 I like Boyd a lot. We got along -- I thought we got along
11 very well, I did my best for him, but he would never --
12 it was almost like a distrust of some kind that we just
13 -- he would never come out and just give us straight
14 answers to things. I did explain to him at the jail all
15 of his constitutional rights, what was coming up, but as
16 we got closer to trial and preparing for what would happen
17 at trial and then ultimately when we were at the counsel
18 table, you know, what was the judge was gonna say to him,
19 you know, what advisements he would get, whether he wanted
20 to testify or not. He only had -- I think he had one
21 charge that had got nol-prosed from Mecklenburg or
22 something. He didn't have a record. There was no reason
23 for him not to except that I didn't -- and he wasn't
24 telling me that he was lying. I wasn't gonna be suborning
25 perjury, he could totally testify. It was his decision.

1 We didn't know until literally we came back from break
2 after the judge talked to him on the record and we sat down
3 and he said -- and, you know, this is to the best of my
4 recollection, he said I'm not testifying, I don't want to
5 testify. Why, I don't know, and I don't know what he would
6 have said other than, you know, I wasn't here, I was in
7 Charlotte, which is absolutely his right to say it, but we
8 could find no way to substantiate that.

9 Q. And I apologize from bouncing around. I just want to
10 talk about Mr. Capers, the co-defendant, for a moment.

11 A. Okay.

12 Q. The same witness that identified him as identified
13 Mr. Evans; is that correct?

14 A. Yes, they were all kind of always together.

15 Q. Was the relationship closer with the witnesses of
16 Mr. Evans or the witnesses of Mr. Capers?

17 A. I'm not sure I can give you an answer to that. I
18 don't know. It was kind of like running with a group of
19 your friends. They were kind of all together hanging out.
20 I don't know.

21 Q. Was the evidence stronger against Mr. Evans or
22 Mr. Capers?

23 A. The evidence was I would say stronger by some -- some
24 substantial amount against Mr. Evans in my opinion. There
25 were witnesses who testified with regard to Mr. Capers

1 that kind of like the scar on Boyd they said that they
2 could recognize him, and I forget which one it was, could
3 recognize him by his eyes and his nose. I -- I could never
4 really figure it out when I looked at him exactly how those
5 features stood out, you know, he's a very normal looking
6 guy, but ultimately, you know, I think in the closing his
7 attorney, Casey Cornwell, you know, made a good point;
8 that, you know, if that's really what you're going off of
9 the issue with Boyd was the scar and the lack of being able
10 to find that other person who had the same build, the same
11 scar in the same place, with the same nickname.

12 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

13 BY MR. SCHMECKPEPER:

14 Q. Talking about Cherise Evans, her testimony was that
15 over July 25th and 26th she didn't know whether or not --
16 she did not think that Mr. Evans left Charlotte, correct?

17 A. That's correct.

18 Q. Or that she said that he did not to her knowledge
19 leave the Charlotte area?

20 A. Correct. And she indicated that he had taken her to
21 work and picked her up. The note I have from October 28,
22 2008, said Boyd picked her up at one. I take that to be
23 1:00 in the afternoon. I don't know that for a fact. She
24 was working at Church's, the 21st through the 28th, until
25 close, so maybe that's one in the morning. I don't know

1 whether that was the following day, the day before, the day
2 of, you know. That was not made clear, but --

3 Q. But you interviewed her prior to trial?

4 A. We did and she testified, yeah.

5 **MR. SCHMECKPEPER:** Your Honor, I have no further
6 questions. Please answer any questions from Ms. Goldberg.

7 **MS. GOLDBERG:** Thank you, Your Honor. May it please
8 the Court?

9 CROSS-EXAMINATION

10 BY MS. GOLDBERG:

11 Q. Good morning, Mr. Miller.

12 A. Good morning, Ms. Goldberg.

13 Q. So you testified that in two years of representing
14 Mr. Evans he never changed his story; is that right?

15 A. He -- no, he never did.

16 Q. He always said he was in Charlotte the whole time?

17 A. He -- he either said he was in Charlotte or he said,
18 you know, that was not me, there was another guy, like I
19 said, yeah.

20 Q. And he didn't have any prior convictions, right?

21 A. Other than that one thing from Mecklenburg. It was
22 small, whatever it was. I don't remember the charge. It
23 was -- I think it was nol-prosed.

24 Q. But you didn't prepare with him to testify -- for him
25 to testify in his trial, did you?

1 A. So I absolutely did, yeah.

2 Q. You did?

3 A. Yeah. I mean, I went over it with him verbally, you
4 know, here's what might happen, you know, and you need to
5 tell the truth. And that was the -- that was the big
6 issue, whether he was telling the truth or not. If he was,
7 then he could know what happened.

8 Q. Now you just testified that had he testified in his
9 own behalf you don't know what he would have said; is that
10 right?

11 A. The only thing we talked about is what I would assume
12 he would have said. I mean, this is two years of him
13 saying the same thing like you just indicated. I mean, I
14 was in Charlotte, I took my -- I think I took my sister to
15 work, I was in Charlotte, and that's probably what he would
16 have testified to, yeah.

17 Q. Probably what he would have testified to?

18 A. Yeah. I don't know. He didn't testify.

19 Q. Why not encourage him to testify?

20 A. Well, you're asking my strategy on the case. I --
21 honestly, my strategy, and I consider myself to be a fairly
22 good attorney, I did not -- I've done a lot of criminal
23 work. I had no reason -- Boyd never indicated to me hey,
24 buddy, I did it, put me on the stand, I'll lie. He never
25 said that. I told him like I do everybody. There's a yin

1 and a yang. Here are your options. You can testify.
2 Here's what they will be able to do or not do to you. He
3 didn't have a record, so that was good. You know, if you
4 want to testify, you will be subject to cross. You can
5 certainly put your story out there. If you choose not to
6 testify, I went over the same warnings. It's the same way
7 I give a closing argument today. I tell them what a judge
8 is gonna tell them and then the judge will instruct them on
9 their rights and -- and that was what I -- what I told him.
10 I mean, you know, he had overwhelming, in my opinion,
11 evidence against him and it had almost become a joke with
12 him that he was looking to try to play kind of like a
13 junior lawyer and find these little -- little things that
14 we could do, little loopholes, but he was never addressing
15 the fact that there was a video and there was no alibi
16 witness and -- no matter how many times we went over that
17 with him. So, you know, he had every right to testify. I
18 didn't encourage him one way or the other.

19 Q. You just said there was no alibi witness. Mr. Evans
20 could have testified as to his own alibi, correct?

21 A. Absolutely.

22 Q. So he would be one alibi witness?

23 A. He would be his own witness, yes.

24 Q. And Ms. Evans was called to testify as well, correct?

25 A. Cherise?

1 Q. Cherise Evans.

2 A. Yes.

3 Q. All right. So her testimony -- let's look
4 specifically at Page 534. Do you have a copy of the
5 transcript?

6 A. I do, ma'am.

7 **MS. GOLDBERG:** Does Your Honor have a copy of the
8 transcript?

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

10 BY MS. GOLDBERG:

11 Q. What was the purpose of calling Ms. Evans as a
12 witness?

13 A. Ms. Evans was -- at the time had been, like I said,
14 working at Church's Chicken and supposedly he either picked
15 her up or took her to work or both and that was rotated
16 with her -- I believe her mom or her mom had a problem with
17 her leg or something so Boyd was usually the one to drive
18 her unless she took the bus.

19 Q. So the whole reason to call her at all was for the
20 alibi; is that fair?

21 A. Yeah, absolutely.

22 Q. She wasn't a character witness or anything like that?

23 A. No, she was an alibi, yeah.

24 Q. On Page 534, starting around Page 6 -- well, pretty
25 much the whole page, I suppose, that's where you generally

1 ask her who picked her up from work on July 25th; is that
2 right?

3 A. I believe Line 16 through 18, yes.

4 Q. And she said that her brother, Boyd Evans, picked her
5 up from work?

6 A. Correct.

7 Q. And she did in a few lines above that clarify -- or
8 actually it's below that, clarified that this happened in
9 Charlotte, North Carolina, right? Line 25.

10 A. I'm sorry. Yes.

11 Q. Okay. You never asked her what time she got off work?

12 A. Well, what I -- what I -- to clarify, what I asked
13 her was at any time to your knowledge had he left the
14 Charlotte, North Carolina, area over those dates. She
15 indicated no.

16 Q. Okay. You never asked her what time she got off work?

17 A. No, I did not.

18 Q. You never asked her in front of the jury if she worked
19 first shift, second shift, third shift, anything like that?

20 A. No, apparently -- if it's not in here, I did not.

21 Q. For all the jury could have assumed, she could have
22 gotten off work at noon that day; is that right?

23 A. Well, the jury can assume what they want. That
24 question that I asked her, if at any time to your knowledge
25 had he left the Charlotte, North Carolina area over those

1 dates, would pretty clearly cover whatever time she got
2 off work.

3 Q. In your closing argument -- have you gone back and
4 reviewed that portion of the transcript?

5 A. I did not review the closing again. No, he had asked
6 me to review just basically the alibi witnesses and I've
7 done that. Take me to where you want me to be.

8 Q. Well, actually I can't do that. If I were to say that
9 the closing -- the record of the closing argument doesn't
10 have any reference or argument at all to an alibi, do you
11 have any reason to think that that would be wrong?

12 A. I would have to review it. I trust you as an attorney
13 and know you, so I will take your word for it. I -- we
14 definitely -- and I will say we worked in conjunction
15 because we did make a -- there was a motion for severance,
16 it was never granted, so we definitely were trying this
17 case together. And when I say we, Sarah Hahn and Casey
18 Cornwell from the Public Defender's Office, and myself
19 representing Boyd Evans, so we -- there were times
20 throughout the trial that I made motions they joined with,
21 they made motions I joined with and we kind of worked the
22 closing the same way. So I was very comfortable with my
23 closing. If you say I did not mention an alibi, then --
24 then I did not.

25 Q. You recently testified that you had notes that said

1 that Cherise Evans told you that Boyd Evans picked her up
2 at closing?

3 A. I have a note right here just going back through my
4 notes that were personal that I made when I interviewed
5 him that -- I have a note Cherise, Church's Chicken, 21st
6 through 28th till close, Boyd picked up at one.

7 **MS. GOLDBERG:** No further questions.

8 **THE COURT:** Any redirect limited to what she went
9 into?

10 **MR. SCHMECKPEPER:** Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. SCHMECKPEPER:

13 Q. Mr. Miller, you elicited testimony from Ms. Evans,
14 and that's Cherise Evans, that over the 25th and 26th to
15 her knowledge the Applicant was in Charlotte; is that
16 correct?

17 A. That's correct.

18 Q. And you joined in all the objections with Ms. Hahn
19 and Mr. Cornwell?

20 A. We all did. In fact, at one point we told the judge
21 rather than continue to do this through the whole trial it
22 would just be a continuing joint objection. And I would
23 just say, if I could briefly while I'm up here, you know,
24 I'm big on, you know, if I made a mistake or an attorney
25 made a mistake, and the most important thing is that

1 justice is done for a client, I absolutely believe that.
2 This really and truly was one of the most thorough
3 investigations I can ever remember and I will say that,
4 you know, a lot of my advice had to be whether he wanted
5 to hear it or not. There -- if I could have established
6 any other alibi, if we found this guy Black, believe me,
7 he would have been here, we would have been putting that
8 straight up and we would have probably -- I don't know
9 what would have happened. We may have resolved it before
10 trial. I had to discuss the plea with him. There was no
11 other guy Black that anybody could find and my guy is not
12 just some investigator. He was an ex-captain with the
13 Lexington PD, he knew everybody, we couldn't find him.
14 There was, in my opinion as an attorney, which is my job,
15 overwhelming evidence against him and I had to consider
16 that in everything I did at that trial and my discussions
17 with Boyd.

18 Q. And your closing argument that you focussed on was
19 what you felt were the Applicant's strongest defenses?

20 A. Absolutely, yes.

21 **MR. SCHMECKPEPER:** Thank you, Your Honor. I have no
22 further questions.

23 **THE COURT:** Thank you, sir. You may step down. And
24 watch your step when you're stepping down.

25 **THE WITNESS:** Thank you, your Honor.

1 (Witness excused.)

2 **MR. SCHMECKPEPER:** And, Your Honor, the State rests
3 at this point.

4 **THE COURT:** Any reply witness?

5 **MS. GOLDBERG:** No reply witness. Just brief argument.

6 **THE COURT:** All right. Yes, ma'am.

7 **MS. GOLDBERG:** Thank you, Your Honor. May it please
8 the Court? A couple of things that I'd like to point out.
9 All of our allegations are -- kind of go towards the same
10 point; that an alibi defense could have been well presented
11 and was not. It is clear from the record and the testimony
12 given today that the co-defendant, Lywone Capers, did put
13 up an alibi defense with four witness and was found not
14 guilty, so it may have made a difference in his trial. I
15 will not venture to say there's a probability it may have
16 made a difference.

17 This is what I want to focus on. First of all, the
18 defense only put up one witness total. This -- Mr. Evans'
19 defense only put up one witness total. That witness solely
20 was there to testify about alibi, yet defense counsel does
21 not mention alibi in his closing argument. He doesn't
22 even argue the defense he put up a witness for. But more
23 importantly than any of that, the testimony of Mr. Miller
24 shows that he was aware that Cherise Evans could testify
25 that her brother, Boyd Evans, picked her up at closing at

1 1:00 at Church's Chicken. On Page 534 he asks: July 25th,
2 26th being the date of this incident, do you recall whether
3 who or if anyone picked you up from work? And she said
4 it was my brother, Boyd Evans. There is absolutely no
5 reference to any specific time of day that was. He then
6 followed it up with: At any time to your knowledge had he
7 left Charlotte over those days? She says no, but provides
8 absolutely no basis for that answer, provides no testimony
9 as to why she thought that, if she was with him at any
10 particular hour on the 25th, any particular hour on the
11 26th. There's no information there. Mr. Miller had the
12 witness available. He was aware of what she could testify
13 to and he simply did not ask her the question.

14 I think Your Honor is probably well aware of the case
15 law regarding alibi. Most of it involves when a charge --
16 an alibi charge is necessary or required or allowed and
17 it's extremely clear that an alibi charge is allowed or
18 an alibi defense is deemed presented when it presents an
19 impossibility that the defendant could not have been in
20 two places at one time. That's what the lawyer requires.
21 This incident happened around midnight on the 26th. If
22 Ms. Evans had picked -- it is entirely possible that the
23 jury has no idea what happened as far as Cherise Evans
24 and Boyd Evans on the 25th and 26th. Just because she had
25 seen him over that weekend does not mean he couldn't have

1 travelled to Lexington and back; however, if she had
2 offered the testimony, which she could have, that she
3 picked her up -- that he picked her up from work around
4 midnight, which is the exact same time this incident took
5 place, it would have been a physical impossibility for him
6 to be in Lexington and Charlotte at the same time.

7 I'm not -- Ms. Montgomery -- Boyd Evans testified
8 today that he provided counsel with her name and asked her
9 -- him to investigate her. Counsel provided testimony
10 today that he had never heard that name before. Leaving
11 that part alone, counsel knew there was an alibi witness
12 and if -- if Mr. Evans had testified in his own alibi, that
13 would have been even more information to corroborate. But
14 Mr. Miller had this information available, had the witness
15 on the stand, simply did not ask her the question of what
16 time she was with him and how she knew it was an alibi
17 and, therefore -- and then further did not argue it.

18 And so my allegation is not so much as a failure to
19 investigate as it is a failure to present evidence that he
20 already had. You know, Mr. Miller has testified regarding
21 his version of what the evidence was and it almost comes
22 to the point where he's trying to convince this Court that
23 he believes my client was guilty. Well, that's great, but
24 he has a duty to put forth the best case he can and he did
25 not do that by failing to ask this very specific question

1 of what time were you with Mr. Evans. So I think that
2 that is sufficient basis for ineffective assistance of
3 counsel.

4 **MR. SCHMECKPEPER:** Thank you, Your Honor. I didn't
5 hear anything about the failure to -- or ineffective for
6 advising the Applicant not to testify, so I'm assuming
7 we're gonna rest on the record there.

8 **MS. GOLDBERG:** I will rest on the record. The
9 only thing I did say about it was that if Mr. Evans had
10 testified as to his own alibi it would have enhanced the
11 alibi defense, but I think everything else was sufficiently
12 testified to regarding the testimony.

13 **MR. SCHMECKPEPER:** Thank you, Your Honor. And, just
14 briefly, I think Mr. Miller testified quite credibly as to
15 the tremendous amount of effort he put into this case, the
16 tremendous amount of investigation. He talked to every
17 witness it sounds like that Mr. Evans told him to that he
18 could to figure out who it was. Concerning Ms. Cherise
19 Evans, again, Mr. Miller elicited the testimony that he
20 dropped her off -- picked her up and/or dropped her off
21 from work and that she -- he was not to her knowledge gone
22 from Charlotte at any point or in Columbia at any point.

23 In any event, I think the main issue here is whether
24 or not evidence of guilt is overwhelming. Mr. -- I think
25 Mr. Evans' testimony here today that he was in Charlotte

1 the entire time is not credible in light of the evidence
2 presented at trial, specifically eyewitness testimony
3 placed him in Columbia the day leading up to the actual
4 crime from his sister or stepsister and her boyfriend,
5 both of them who knew him quite well. There were a number
6 of cameras who caught him in the getaway vehicle which
7 another eyewitness had put him in earlier that day. There
8 was evidence -- or there were cameras that caught his
9 scar, which the jury saw, it was a very specific scar.

10 Your Honor, I don't think there was any -- ever
11 really any chance that this was gonna result in an
12 acquittal, especially in light of the fact that the
13 evidence was so much stronger against Mr. Evans than
14 it was against Mr. Capers, the closeness of the
15 relationships of the witnesses to Mr. Evans as opposed to
16 Mr. Capers, in addition to the evidence that he was seen
17 in the vehicle and the scar that the jury saw. And if I
18 may, Your Honor.

19 (Discussion between Mr. Schmeckpeper and Mr. Miller.)

20 **MR. SCHMECKPEPER:** Other than that, Your Honor, I
21 would just rest on the record.

22 **THE COURT:** Any brief reply?

23 **MS. GOLDBERG:** Your Honor, the only -- the only brief
24 thing, I do think it's clear that the jury disregarded
25 the testimony of these alleged witnesses who saw them in

1 Lexington that day as the co-defendant was found not
2 guilty.

3 I guess the only thing from here procedurally,
4 Cherise Evans, the sister witness who did testify, that
5 presented the alibi or almost alibi information, she's the
6 one who I wanted or expected to be here today. Now I do
7 think Mr. Miller testified sufficiently that she did tell
8 him that she worked until closing and got off at one and I
9 think it would be improper for me to say what I expected
10 her to testify to today, but that information is in the
11 record that he did have that knowledge prior to trial.

12 If Your Honor would like to hear more from her as
13 to if she -- how she would have answered had she been
14 asked additional questions, we can hold this open for her
15 testimony, but if Your Honor's heard enough, then -- then,
16 you know, we'll respect any ruling you make, but I just
17 want make sure to make it clear and bring us back to that
18 remaining issue.

19 **THE COURT:** Well, I think the issue that deals with
20 what we're dealing with here on a PCR, I think you've made
21 a sufficient record as to what counsel knew. He's admitted
22 that he knew it. The records from the proceeding seems
23 clear that that question was not asked. So not knowing
24 what else she would testify to, I really don't see a need
25 in having -- in keeping the record open. So if by chance

1 counsel for the Applicant wishes to somehow secure that
2 testimony, you could offer it -- well, what's the phrase?
3 You could make it part of the record, but I won't be
4 looking at it.

5 **MS. GOLDBERG:** I understand.

6 **THE COURT:** All right. I'll let you know. Thank you
7 very much.

8 **MR. SCHMECKPEPER:** Thank you, Your Honor.

9 (Whereupon, the proceedings were concluded at
10 12:06 PM.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 15th day of January, 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

August 22, 2016

s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Boyd Rashaeen Evans,
S.C.D.C. No. 294211

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) ELEVENTH JUDICIAL CIRCUIT

) C.A. No. 2013-CP-32-0614

ORDER OF DISMISSAL
(with prejudice)BETH A. LARRIGG
CLERK OF COURT
LEXINGTON COUNTY, SC

2016 MAY 25 PM 2:42

SP
FILED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 20, 2013. Respondent filed its Return on May 4, 2015. An evidentiary hearing into the matter was convened on January 15, 2016, at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Kristy Goldberg, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. He was indicted at the November 2007 term of the Court of General Sessions for Lexington County for kidnapping (2007-GS-32-3358); armed robbery (2007-GS-32-3359); and possession of a firearm during a violent crime (2007-GS-32-3360). Applicant was represented by David Miller, Esquire. From January 11-14, he proceeded to trial before a jury and was convicted of all charges as indicted. The Honorable R. Knox McMahon sentenced him to a term of twenty-one (21) years

imprisonment for kidnapping, twenty-one (21) years for armed robbery, and five (4) years for the weapons provision. Judge McMahon ordered that the sentences be served concurrently.

A timely notice of appeal was filed on Applicant's behalf and perfected pursuant to Anders v. California¹ by Kathrine Hudgins, Esquire. The Court of Appeals dismissed Applicant's appeal in an unpublished opinion. State v. Boyd Evans, (2012-UP-299, filed May 16, 2012).

Allegations

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance Counsel; specifically
 - a. Counsel failed to make an objection to a suggestive photo and body show up at trial on Applicant's behalf;
 - b. Counsel failed to inform the Court that after a warrant has been issued, Section 22-5-320 pcr requires that a preliminary hearing be granted and held upon a demand in writing of the defendant made at least ten days before convening of the next Court of General Sessions;
 - c. Counsel failed to get alibis and information when Applicant gave him the right names and addresses;
 - d. Counsel failed to make motions and matters before the defendant closing arguments, Applicant's Counsel just went along with everything that co-defendant's counsel was saying instead of defendant Applicant;

¹ 386 U.S. 738, 87 S.Ct. 1396 (1967).



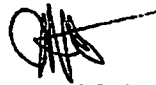
- e. Counsel did not inform the jury on the evidence as best as he could because he kept on saying his co-defendant's counsel covered most of the argument so he did not go back into it;
- f. Counsel failed to get Applicant's common plea in writing or a plea at all;
- g. Counsel failed to inform the Court that after a warrant has been issued, Section 22-5-320 requires that a preliminary hearing be granted and held upon a demand in writing of the defendant made before convening of the next Court of General Sessions.

An amended Application was filed by counsel on November 1, 2013 to include the following allegations:

- a. Ineffective assistance of counsel in that counsel failed to adequately present evidence and testimony during trial to support the Applicant's alibi defense.
- b. Ineffective assistance of counsel in that trial counsel failed to adequately argue and present the Applicant's alibi defense during trial.
- c. Ineffective assistance of counsel for unreasonably advising client that he should not testify.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the post-conviction relief transcript, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-



27-80 (2015), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.



Alibi Defense

This Court finds Applicant has failed to meet his burden to show his right to the effective assistance of counsel was violated.

Deficient Performance

Cherise Evans

At trial, counsel presented Cherise Evans as an alibi witness for Applicant. Ms. Evans testified that on the day of the robbery, Applicant picked her up and dropped her off from work. Tr. p. 537, l. 13-16. Ms. Evans did not testify as to what time she was dropped off and picked up by Mr. Evans. Counsel acknowledged at the evidentiary hearing that he did not ask Ms. Evans when she got off work the night in question. Applicant offered evidence that Ms. Evans would have said Applicant was picking her up from work at roughly the same time the armed robbery occurred. This court is convinced that trial counsel had information (the time the alibi witness got off of work) in his file that would have strengthened the alibi defense. However, this information was not presented to the jury either by testimony or in closing argument. The court is persuaded that failure by trial counsel to ask the question and argue this point to the jury was an error by trial counsel.

Yosea Montgomery

Applicant also alleges counsel was ineffective in failing to call Yosea Montgomery as a witness. This allegation is similarly without merit. This Court finds that the evidence presented at the evidentiary hearing indicates that Ms. Montgomery was not known to trial counsel until the day of the PCR hearing. Counsel offered credible testimony that he went through every alibi witness Applicant gave to him, but that Ms. Evans was the only one who could actually provide



an alibi. Applicant did not list Ms. Montgomery as one of the alibi witnesses he told counsel about.

Applicant has not alleged counsel was ineffective in failing to investigate. In any event, trial counsel appears to have performed a proper investigation into the case. Counsel is only required to conduct *reasonable* investigations. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007). One component of that duty is to investigate alibi witnesses identified by a defendant. Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (emphasis added); see also Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993) ("This court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial) *overruled on other grounds by* Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). As stated above, there is nothing in the record to suggest Applicant identified Ms. Montgomery to counsel as a potential alibi witness. Nor is there anything in the record to indicate counsel did not otherwise conduct a reasonable investigation. If Ms. Montgomery had been called at trial, her testimony would have benefited the alibi defense. But, this court is not persuaded that trial counsel erred in not calling her. Applicant has therefore failed to meet his burden to prove counsel deficient for failing to call Ms. Montgomery as an alibi witness.

Prejudice

Even with the above error, this court is not convinced the alibi defense would likely have led to a different outcome. In order to prove prejudice in the context of ineffective assistance of counsel, Applicant has the burden to prove that but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. Cherry at 117-18, 386 S.E.2d 624, 625. As the trial judge pointed out in denying Applicant's motion for a



new trial, there was “. . . more than sufficient evidence for the jury to reach the verdict that they did reach,” including “the significant difference in the identification as far as the scarring to [Applicant’s] body on his upper left shoulder and his elbow area that you can see in the still photographs, that you can see in the video and that you can see on his body” Tr. p. 618, l. 1-6.

Further, after a review of the trial transcript, the primary identification witness was Glynnessa Evans. The Court is mindful that Applicant’s co-defendant, whom Ms. Evans identified as being on the video tape of the robbery, was found not guilty. However, her relationship and prior contact with the co-defendant was very different than with Applicant. Applicant was her step-brother. Applicant also had an identifiable scar, which was visible in the video of the armed robbery. Tr. p. 326, l. 25- p. 327, l. 1. Applicant’s co-defendant did not have the same sort of identifiable marks. Further, Ms. Evans’ credibility and the reliability of her identification was attacked by aggressive cross-examination at trial. They were also attacked in closing argument. As a result, this court is not convinced that even with the extra alibi information, the defense would have overcome the identification testimony presented by Ms. Evans and Mr. Rainey. Applicant’s claim was not that he came to Lexington and returned to Charlotte, but, rather, that he was in Charlotte the entire day. Accordingly, Applicant has failed to show a reasonable possibility that but for counsel’s error the outcome of his proceeding would have been different. This allegation is therefore denied and dismissed.

Right to Testify

This Court also finds Applicant has not met his burden as to the claim of ineffective assistance of counsel for improperly advising him not to testify. When an attorney’s advice not to testify falls below an objective standard of reasonableness, such advice may constitute



deficient performance. Horton v. State, 306 S.C. 252, 411 S.E.2d 223 (1991). The Supreme Court of South Carolina has found such advice deficient when based upon an error of law. Id. at 255, 411 S.E.2d at 224-25. Even assuming counsel was deficient, a PCR applicant must still show prejudice to obtain relief. Id.

This court first finds Applicant has failed to meet his burden to show counsel's performance was deficient. Specifically, the record reflects that the decision whether or not to testify was entirely Applicant's, and that counsel did not give Applicant any erroneous advice.

The trial judge informed Applicant that the decision about whether or not to testify was *his* decision, and his alone. Tr. p. 476, l. 9-11. The judge further emphasized that while he expected that Applicant had conferred with his attorney and others, the decision about whether or not to testify was Applicant's alone. Tr. p. 476, l. 11-14. Applicant acknowledged that he understood. Id. The trial judge then asked Applicant whether he had any questions about his right to testify, explaining *again* that "you can testify if you want to or you can choose not to testify, that's entirely up to you." Tr. p. 477, l. 24 – p. 478, l. 2. Applicant responded that he had no questions about his right to testify. Tr. p. 478, l. 3. The trial judge also informed Applicant that he had an absolute right to remain silent. Tr. p. 474, l. 6-7. The solicitor stated on the record that they did not intend to introduce any prior convictions as impeachment. Tr. p. 475, l. 13-22.

At the evidentiary hearing, Applicant said that he did not testify because counsel told him not to. Counsel testified that Applicant did not know what he wanted to do. Counsel said Applicant would never come out and give a straight answer on whether or not he wanted to testify. Counsel stated that the decision on whether or not to testify was Applicant's to make,



and that he did not know what the decision was until after the break, when Applicant came back and said "I'm not testifying."

This Court first finds that Applicant testimony at the evidentiary hearing on this subject is not credible. It is directly refuted by his statements to the trial judge that he understood the right to testify was his decision to make, and his decision alone. On the other hand, counsel's testimony that the decision was Applicant's is credible and consistent with Applicant's responses to the trial judge. Accordingly, Applicant has failed to meet his burden and overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." See Lomax v. State, 379 S.C. 93, 100, 655 S.E.2d 164, 167 (2008). Moreover, in light of the finding above that the eyewitness testimony against Applicant, this Court further finds Applicant has failed to show that but for counsel's purported deficiency, the outcome of the proceeding would have been different. This allegation is therefore denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

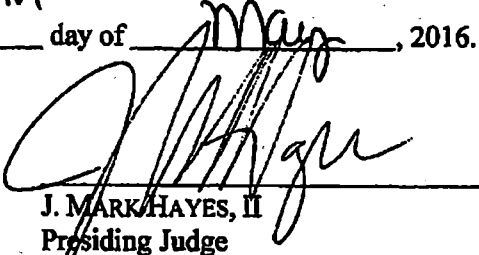


This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedure after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 17th day of May, 2016.


 J. MARK HAYES, II
 Presiding Judge
 Eleventh Judicial Circuit

Lexington, South Carolina

25
26

WITNESSES

Lexington County Sheriffs Department

Prestigiacomo

DSG

ARREST WARRANT NUMBER

J845399

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreman

Foreperson of Grand Jury

Date: 11-26-07

VERDICT

Guilty

Christina Rucker

Foreperson of Petit Jury

Date: 1.14.10

DOCKET NO. 2007-GS-32- 3359

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2007

THE STATE

vs.

Boyd Rashaeen Evans

CDR #: 0139

Indictment for

Armed Robbery

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

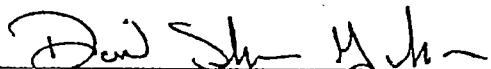
STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Armed Robbery
§ 16-11-0330(A)

At a Court of General Sessions, convened on November 2007, the Grand Jurors of Lexington County present upon their oath:

That **Boyd Rashaeen Evans** did, along with Lywone S. Capers and two other people unknown to the Grand Jury at this time, in Lexington County, South Carolina on or about July 26, 2007 knowingly and willfully while armed with a deadly weapon and/or having possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that they were armed, to wit: a handgun, did feloniously take from the person or presence of Sue Anne Irick, an employee of Pitt Stop Convenience Store, by means of force, threats or intimidation goods or monies being described as follows: U.S. Currency, with intent to permanently deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

627
WITNESSES

Lexington County Sheriffs Department

Prestigiacomo

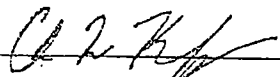
DSG

ARREST WARRANT NUMBER

J845401

ACTION OF GRAND JURY

TRUE BILL

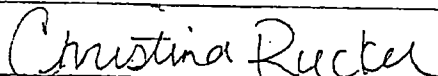

Foreman

Foreperson of Grand Jury

Date: 11-26-07

VERDICT

Guilty


Foreperson of Petit Jury

Date: 1.14.10

DOCKET NO. 2007-GS-32- 3360

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2007

THE STATE

vs.

Boyd Rashaeen Evans

CDR #: 0549

Indictment for

Possession of a Firearm during the
Commission of a Violent Crime

§ 16-23-0490

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

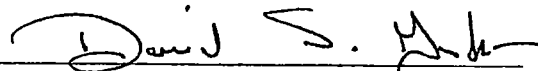
INDICTMENT FOR
Possession of a Firearm during the Commission
of a Violent Crime

§ 16-23-0490

At a Court of General Sessions, convened on November 2007, the Grand Jurors of Lexington County present upon their oath:

That **Boyd Rashaeen Evans** did, along with Lywone Capers and two other persons unknown to the Grand Jury at this time, in Lexington County, South Carolina on or about July 26, 2007 knowingly and willfully, possess a firearm and/or visibly display what appeared to be a firearm, to wit: a handgun, during the commission of a violent crime or an attempt to commit a violent crime, to wit: Armed Robbery and/or Kidnapping, in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Prestigiacomo

DSG

ARREST WARRANT NUMBER

J845402

ACTION OF GRAND JURY

TRUE BILL

Ch 2 K

Foreman

Foreperson of Grand Jury

Date: 11-26-07

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-32- 3356

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2007

THE STATE

vs.

Boyd Rashaeen Evans

CDR #: 2364

Indictment for

Possession of a Pistol by person under
twenty-one

§ 16-23-0030; 16-23-0050(A)

DONALD V. MYERS, SOLICITOR

NOLLE PROSSED BY SOL:

DATE: 11/14/10

****SEE ATTACHED****

A TRUE COPY

Don
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR

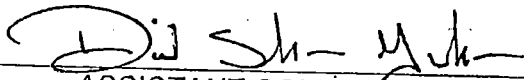
Possession of a Pistol by person
under twenty-one

§ 16-23-0030; 16-23-0050(A)

At a Court of General Sessions, convened on November 2007, the Grand Jurors of Lexington County present upon their oath:

That **Boyd Rashaeen Evans** did in Lexington county, South Carolina on or about July 26, 2007, while under the age of 21 knowingly did possess or acquire a handgun; in violation of Section 16-23-30 (A) (3), Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

31
WITNESSES

Lexington County Sheriffs Department

Prestigiacomio

DSG

ARREST WARRANT NUMBER

1845400

ACTION OF GRAND JURY

TRUE BILL

A. J. K.

Foreman

Foreperson of Grand Jury

Date: 11-26-07

VERDICT

Guilty

Christina Rucker

Foreperson of Petit Jury

Date: 1-14-10

DOCKET NO. 2007-GS-32- 3358

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2007

THE STATE

vs.

Boyd Rashaeen Evans

CDR #: 0095

Indictment for

Kidnapping

§ 16-03-0910

DONALD V. MYERS, SOLICITOR

A TRUE COPY

[Signature]
Lex. Co. C.C.O.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

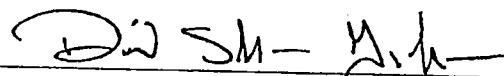
INDICTMENT FOR
Kidnapping

§ 16-03-0910

At a Court of General Sessions, convened on November 2007, the Grand Jurors of Lexington County present upon their oath:

That **Boyd Rashaeen Evans** did, along with Lywone Capers and two other people unknown to the Grand Jury at this time, in Lexington County, South Carolina on or about July 26, 2007, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Sue Anne Irick by any means whatsoever without authority of law, and without her consent, to wit: the defendant held the victim at gunpoint against her will and demanded money from the cash register, in violation of § 16-3-910 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR