

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Jan 12 2022

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No.: 2021-001136

Rasheed Glover, 367438,

Petitioner,

vs.

State of South Carolina,

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

2015-GS-26-01237

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

(Volume I of II)

vs.)

October 12, 2015

RASHEED TAMIR GLOVER,)

Defendant.)

B E F O R E:

Honorable R. Ferrell Cothran
Horry County Courthouse
Conway, South Carolina

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

Lauree Richardson, Esquire
Thomas G. Terrell, III, Esquire
Attorney for Plaintiff

Jonny Gardner, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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VOIR DIRE

6

1 (OCTOBER 12, 2015 - 11:36 A.M.)

2 BY THE COURT:

3 THE COURT: All right. You may call your case, Mr.
4 Terrell.

5 MR. TERRELL: This is the State of South Carolina versus
6 Rasheed Tamir Glover. He is charged with true-billed
7 indictment 2015-GS-26-01237, true-billed indictment, Your
8 Honor, for armed robbery.

9 VOIR DIRE:

10 THE COURT: Ladies and gentlemen of the Jury, if you'll
11 give me your attention, we're about to begin the trial of
12 Rasheed Tamir Glover. Is there any member of the jury panel
13 connected by blood or marriage, close personal friend, social
14 relations with the Defendant in this case, Mr. Glover. If so,
15 please stand.

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Do you have a list of witnesses?

18 While he's looking for the list. I didn't introduce
19 myself to y'all. My name is Ferrell Cothran. I'm a Circuit
20 Judge from Clarendon County, from Manning, and I've been
21 assigned to hold court here this week. I'm glad to be here.
22 It's a bit wet in Manning, of course it's a bit wet here. It
23 was an adventure to get down here but at least it's drier
24 here.

25 Sometimes it takes a while to get the wheels of justice

VOIR DIRE

1 turning.

2 Okay. Ladies and gentlemen, I'm gonna read you out a
3 list of potential witnesses in this case and I need to know
4 whether you are connected by blood or marriage, close personal
5 friends, social relations with any of these potential
6 witnesses. Detective Christopher Johnson; Sergeant Dale Long;
7 Don Wooten; Earl Mason; Mark Bobbitt; James Rhodes; Officer
8 Dailey; Officer Jeff Gordan; Richard Edwards; Derrick Ard;
9 Glen Guyett; Jonathan Martin; Angie Lee Gilchrest or Christ;
10 Tyrone Williams; Thomas Kilbride; Aaron Maurer; Daniel Todd,
11 Daniel Brooks Todd; Tabitha O'Riley; Asia Collier; Brad
12 Townsend; and Mathew Stephenson. And I probably butchered a
13 couple of those names, but anybody connected by blood or
14 marriage, close personal friends, social relations with any of
15 those potential witnesses? If so, please stand.

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Okay. I'm sorry, the lawyers in this case
18 representing the State of South Carolina, Lauree Richardson
19 and Tom Terrell. Any members of the jury panel connected by
20 blood or marriage, close personal friends, social relations or
21 have ever been represented by these attorneys? If so, please
22 stand.

23 (REPORTER'S NOTE: No response.)

24 THE COURT: Representing the Defendant in this case is
25 Johnny Gardner. Any member of the jury panel connected by

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VOIR DIRE

8

1 blood or marriage, close personal friends, social relations or
2 have been represented by Mr. Gardner in the past? If so,
3 please stand.

4 THE COURT: Okay. Yes, sir. Can you give ---

5 JUROR 310: Last year, I was divorced and his firm,
6 Heather -- ends with a K.

7 THE COURT: Okay. Are they still representing you?

8 JUROR 310: No, sir.

9 THE COURT: The fact that his firm had represented you in
10 -- is it a domestic case? It's a divorce case?

11 JUROR 310: yes, sir.

12 THE COURT: The fact that his firm represented you in the
13 past, would that affect your ability to be fair and impartial
14 in this trial?

15 JUROR 310: It would not affect my ability whatsoever.

16 THE COURT: Okay. Thank you, sir. Give me your name and
17 number, please, sir?

18 JUROR 310: My name is Timothy Selba. Phone number is
19 843- ---

20 THE COURT: No, your juror number.

21 JUROR 310: I'm sorry, 301 [sic].

22 THE COURT: Okay. 301.

23 JUROR 310: I'll give you my phone number, too, if you
24 want that.

25 THE COURT: No, I don't need that. Thank you.

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VOIR DIRE

9

1 Anyone else?

2 (REPORTER'S NOTE: No response.)

3 THE COURT: This alleged armed robbery occurred on or
4 about January the 2nd of 2015. Anybody on the jury panel know
5 anything about this case at all?

6 (REPORTER'S NOTE: No response.)

7 THE COURT: Anybody formed or expressed an opinion about
8 any of the issues and matters involved in this case?

9 (REPORTER'S NOTE: No response.)

10 THE COURT: Any member of the jury panel aware of any
11 bias or prejudice that you have toward the State of South
12 Carolina or this Defendant? If so, please stand.

13 (REPORTER'S NOTE: No response.)

14 THE COURT: Any member of the jury panel were a member of
15 the Grand Jury that indicted this case? If so, please stand.

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Any member of the jury panel due to religious
18 or moral reason -- I'm sorry -- unable to sit in judgment of
19 your fellow man? If so, please stand.

20 (REPORTER'S NOTE: No response.)

21 THE COURT: Any member of the jury panel know of any
22 reason whatsoever they can't give the State of South Carolina
23 and this Defendant a fair and impartial trial? If so, please
24 stand.

25 (REPORTER'S NOTE: No response.)

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JURY SELECTION

10

1 THE COURT: Any further questions from the State?

2 MS. RICHARDSON: No, sir, Your Honor.

3 THE COURT: From Defense?

4 MR. GARDNER: No, Your Honor.

5 THE COURT: Okay. Madame Clerk, if you'll give me a
6 jury. It'll be five and ten.

7 JURY SELECTION:

8 CLERK: When I call your name and juror number, if you'll
9 please come to the front of the courtroom about right here in
10 front of the Defense and State table, face the back of the
11 courtroom and bring any belongings that you have with you.

12 Juror Number 142, Elaine Green. Yes, ma'am, that's fine.
13 If you'll just turn around and face the back of the courtroom.

14 What say the State?

15 MS. RICHARDSON: Please excuse this particular juror.

16 CLERK: You're excused from this particular case. You
17 can go back and have a seat.

18 377, Deborah Whitty.

19 What say the State?

20 MS. RICHARDSON: Please present the juror.

21 CLERK: Defense?

22 MR. GARDNER: Swear the juror, Your Honor.

23 CLERK: Please be seated in the jury box.

24 345, Steven Swayger.

25 What say the State?

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JURY SELECTION

11

1 MS. RICHARDSON: Please present the juror.

2 CLERK: Defense?

3 MR. GARDNER: Please excuse this juror from this
4 particular case, Your Honor.

5 CLERK: You are excused from this particular case.
6 112, Kelvin Farmer.

7 What say the State?

8 MS. RICHARDSON: Please present the juror.

9 CLERK: Defense?

10 MR. GARDNER: Please excuse this juror from this
11 particular case.

12 CLERK: You are excused from this particular case.
13 36, Casey Brown.

14 What say the State?

15 MS. RICHARDSON: Please excuse this particular juror.

16 CLERK: You are excused from this particular case.

17 50, Audrey Casey.

18 What say the State?

19 MS. RICHARDSON: Please present the juror.

20 CLERK: Defense?

21 MR. GARDNER: Swear the juror, Your Honor.

22 CLERK: Please be seated in the jury box.

23 212, Alena Lopez.

24 What say the State?

25 MS. RICHARDSON: Please present the juror.

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JURY SELECTION

12

1 CLERK: Defense?

2 MR. GARDNER: Please swear the juror, Your Honor.

3 CLERK: Please be seated in the jury box.

4 19, Nicholas Bartholomew.

5 What say the State?

6 MS. RICHARDSON: Please present the juror.

7 CLERK: Defense?

8 MR. GARDNER: Swear the juror, Your Honor.

9 CLERK: Please be seated in the jury box.

10 286, Ronald Prady.

11 What say the State?

12 MS. RICHARDSON: Please present the juror.

13 CLERK: Defense?

14 MR. GARDNER: Swear the juror, Your Honor.

15 CLERK: Please be seated in the jury box.

16 80, Donna Crownover.

17 What say the State?

18 MS. RICHARDSON: Please present the juror.

19 CLERK: Defense?

20 MR. GARDNER: Please excuse the juror from this case,

21 Your Honor.

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

23 27, Tristan Bland.

24 What say the State?

25 MS. RICHARDSON: Please excuse the juror.

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13

JURY SELECTION

1 CLERK: You are excused from this particular case.
2 118, Julie Flynn.
3 What say the State?
4 MS. RICHARDSON: Please present the juror.
5 CLERK: Defense?
6 MR. GARDNER: Please swear the juror.
7 CLERK: Please be seated in the jury box.
8 205, Robert Leonard.
9 What say the State?
10 MS. RICHARDSON: Please seat the juror.
11 CLERK: Defense?
12 MR. GARDNER: Please swear the juror, Your Honor.
13 CLERK: Please be seated in the jury box.
14 282, Sandra Pirozzi.
15 What say the State?
16 MS. RICHARDSON: Please present the juror.
17 CLERK: Defense?
18 MR. GARDNER: Please excuse this juror, Your Honor.
19 CLERK: You are excused from this particular case.
20 253, Lisa Morrow.
21 What say the State?
22 MS. RICHARDSON: Please present the juror.
23 MR. GARDNER: Swear the juror, Your Honor.
24 CLERK: Please be seated in the jury box.
25 75, Stephanie Cowan.

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JURY SELECTION

14

1 What say the State?

2 MS. RICHARDSON: Please present her.

3 CLERK: Defense?

4 MR. GARDNER: Please excuse the juror, Your Honor.

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

6 61, Amanda Cole.

7 What say the State?

8 MS. RICHARDSON: Please present her.

9 CLERK: Defense?

10 MR. GARDNER: Please swear the juror, Your Honor.

11 CLERK: Please be seated in the jury box.

12 265, Jamie Orner.

13 What say the State?

14 MS. RICHARDSON: Please present him.

15 MR. GARDNER: Swear the juror, Your Honor.

16 CLERK: Please be seated in the jury box.

17 77, Paula Cranford.

18 What say the State?

19 MS. RICHARDSON: Please present the juror.

20 CLERK: Defense?

21 MR. GARDNER: Please swear the juror, Your Honor.

22 CLERK: Please be seated in the jury box.

23 337, Taheilia Stephenson.

24 What say the State?

25 MS. RICHARDSON: Please present the juror.

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BY THE COURT

15

1 CLERK: Defense?
2 MR. GARDNER: Please swear the juror, Your Honor.
3 CLERK: Please be seated in the jury box.
4 THE COURT: Do we need one or two alternates?
5 MR. GARDNER: One?
6 MS. RICHARDSON: I'm good with one.
7 THE COURT: Okay.
8 CLERK: 224, Charles Mansell.
9 What say the State?
10 MS. RICHARDSON: Please present him.
11 MR. GARDNER: Swear the juror.
12 CLERK: Please be seated in the jury box.
13 THE COURT: Are there any matters of law pertaining to
14 the selection of the Jury on behalf of the State?
15 MS. RICHARDSON: No, sir, Your Honor.
16 THE COURT: And Defense?
17 MR. GARDNER: No, Your Honor.
18 BY THE COURT:
19 THE COURT: Okay. Ladies and gentlemen who were not
20 selected to serve, I need you to call the Clerk's office back
21 after 6 o'clock tonight. Hopefully, nobody will be there and
22 so you'll get a recording so you can't argue with it, it's
23 simply gonna tell you when to be back. And I don't know when
24 that'll be but somebody will put a recording on there to tell
25 you when you'll need to report back or call back. You have a

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BY THE COURT

16

1 nice day. Thank you.

2 (REPORTER'S NOTE: Remaining Jury Venire exits courtroom.

3 11:58 A.M.)

4 (REPORTER'S NOTE: A bench conference was held off the record
5 in the presence of but out of hearing of the Jury.)

6 THE COURT: Ladies and gentlemen, I've got some matters
7 of law that I need to take up outside of your presence. So,
8 instead of having you sitting back in the jury room, I'm gonna
9 send you to lunch and we're gonna deal with those matters. I
10 ask you to be back at 2 o'clock. Now, you don't know anything
11 about this case, I don't need you to talk about it, I don't
12 want you to Google anybody, I don't want you to do any
13 research because I'm looking for a fair and impartial juror
14 and, everything you know about this case, I need you to learn
15 in this courtroom. So, if you'll keep that in mind when you
16 go to lunch, just don't talk about this case or allow somebody
17 to talk about it. When you get back, I'll explain your role
18 in this case and tell you what you're to do throughout this
19 trial but if you would just do that. If for some reason you
20 have an emergency over lunch and you're not gonna be back at 2
21 o'clock, please call the Clerk's office and let us know
22 because if I haven't heard from you and you don't come back
23 and you don't call, then I'm gonna send the sheriffs to look
24 for you to bring you in. And it needs to be an emergency. I
25 had a situation one time where one of the jurors didn't come

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BY THE COURT

17

1 back and -- because Days of Our Lives was on and they weren't
2 gonna miss it. That's not an emergency. So, please be back
3 at 2 o'clock. If you've got an emergency, call us and I'll
4 see you at 2:00. You have a nice lunch. Thank you.

5 (REPORTER'S NOTE: Jury exits courtroom. 12:01 P.M. The
6 following takes place outside the presence of the Jury.)

7 THE COURT: Okay. Are we ready?

8 MS. RICHARDSON: Your Honor, would you require testimony
9 from my assistant to say that she sent the subpoenas or do you
10 just want to look at his ---

11 THE COURT: What's your position on that?

12 MS. RICHARDSON: This is just saying that we can go
13 forward in his absence and he had notice to be here today.

14 MR. GARDNER: I've never done a TIA so know if he had --
15 we need to put on -- I've tried to talk with him.

16 THE COURT: I don't know what y'all normally do here.
17 Normally, the Clerk's office gets on the stand and puts the
18 bond in.

19 MS. RICHARDSON: Okay. So, the Clerk just puts the bond
20 in?

21 THE COURT: Yeah, normally what happens is, in the old
22 school, you never know ---

23 MS. RICHARDSON: Not in General Sessions, Your Honor, not
24 like a Magistrate.

25 THE COURT: Normally what happens is that somebody from

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BY THE COURT

18

1 the Clerk's office gets on the stand and testifies that they
2 are the official record keepers for the records on the Court
3 of General Sessions and in their official capacity they have a
4 bond and, you know, in the Defendant's name and it's
5 returnable for such and such a date and each term thereafter
6 and they signed on there that they've been under -- that they
7 were put on notice that if they were not present, they could
8 be tried in their absence. And that's what most bonds say and
9 usually the Clerk testifies to that and gets in the record as
10 a Court's exhibit. It gives me jurisdiction to proceed.

11 MS. RICHARDSON: Okay. All right.

12 THE COURT: Can you -- do you have a copy or can you go
13 get it or what and I'll ---

14 CLERK: I can get the original if we need to, Your Honor.

15 THE COURT: Well, it technically needs to be in the
16 record to give me jurisdiction. Now, you can testify from it
17 and that gets it in the record but from -- you know, if --
18 that satisfies, you know, the notice requirement. Now, you
19 know, and that was pretty clear cut and that is pretty
20 consistent throughout the State and that's the way everybody
21 did it back before 1987.

22 MS. RICHARDSON: I believe we put our assistants up
23 there, too, just to say that we sent notice to ---

24 THE COURT: Because normally, that was all the notice
25 required, the Solicitors didn't send notice because they had

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BY THE COURT

19

1 roll and everybody had to be here.

2 MS. RICHARDSON: Okay.

3 THE COURT: Since the crime wave hit in '87, you know,
4 every Solicitor and circuit does things different and sends
5 out notices and so it just needs to be on the record that he
6 in fact had notice. But the legal requirement is usually on
7 the bond.

8 MS. RICHARDSON: Okay. Your Honor, may I -- can we break
9 until 1:30. We'll come back 1:30 and put this on the record.

10 THE COURT: Sure.

11 MS. RICHARDSON: 1:30?

12 THE COURT: Sure.

13 *****OFF THE RECORD*****

14 (On the Record - 1:32 P.M.)

15 THE COURT: Okay. Are you ready?

16 MS. RICHARDSON: Yes, sir, Your Honor.

17 THE COURT: All right.

18 MS. RICHARDSON: Your Honor, we're gonna just put on the
19 record that we have supplied the Defendant sufficient notice
20 that, one, he was gonna be tried this week and that if he was
21 -- if he failed to appear that he will be tried in his
22 absence.

23 THE COURT: Okay.

24 MS. RICHARDSON: Your Honor, the State would first call
25 Heather Lewis ---

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BY THE COURT

20

1 THE COURT: All right.

2 MS. RICHARDSON: --- from the Clerk's office.

3 THE COURT: I guess I need to swear you in, don't I.

4 MS. LEWIS: Yes, sir.

5 HEATHER LEWIS, HAVING BEEN DULY
6 SWORN, TESTIFIES AS FOLLOWS:

7 THE COURT: Is that a Gideon Bible you just put your hand
8 on?

9 MS. LEWIS: Yes, sir.

10 THE COURT: And does Horry County have the most Gideon
11 Bibles in the State?

12 MS. LEWIS: Probably so.

13 THE COURT: Okay.

14 DIRECT EXAMINATION OF HEATHER LEWIS BY MS. RICHARDSON:

15 Q: Ms. Lewis, where are you employed?

16 A: I work for the Horry County Clerk's office.

17 Q: Are you the official record keeper for the Clerk's office?

18 A: Yes.

19 Q: Okay. Mr. Rasheed Glover, he was charged with an armed
20 robbery from January 2nd of 2015?

21 A: Yes, ma'am. I know he was charged. I'm not exactly sure
22 of the date, though, without looking at an indictment.

23 Q: Okay. Were you able to look at his bond paperwork?

24 A: Yes, ma'am.

25 Q: Is that something that you hold in your office, that you

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HEATHER LEWIS - DIRECT BY RICHARDSON

21

1 keep record of?

2 A: It is.

3 Q: Okay. And who was his bondsman?

4 A: It was -- do you have one I can refer to?

5 Q: Sure.

6 A: I actually have the original over there if we need to get
7 the original.

8 MS. RICHARDSON: Do we need to mark it?

9 THE COURT: It's marked as a Court's Exhibit.

10 COURT'S EXHIBIT NUMBER ONE

11 MARKED FOR IDENTIFICATION

12 BY MS. RICHARDSON:

13 Q: I'm gonna hand you what's been marked as Court's Exhibit
14 One. Whose name is on that form, the Defendant's name?

15 A: It's Rasheed Tamir Glover.

16 Q: Okay. And does it have his charges listed on there?

17 A: It does.

18 Q: What charge is that?

19 A: It's armed robbery.

20 Q: Okay. Does it have a date on there for which he was
21 charged?

22 A: It's got the date that it was signed by the Judge.

23 Q: Okay. And what was that date?

24 A: It was January 3rd, 2015.

25 Q: Okay. And who is his bondsman?

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HEATHER LEWIS - DIRECT BY RICHARDSON

22

1 A: Donnell and Ladawn Bail Bondsmen.

2 Q: Okay. And what kind of bond was he on?

3 A: It's a surety bond.

4 Q: Okay.

5 A: It's a cash or surety bond.

6 Q: Okay. I'm gonna refer you to the back page of this. And
7 can you just read those three lines into the record and tell
8 me whose signature that is below that.

9 A: It says, I understand that if I violate any condition of
10 this order, a warrant for my arrest will be issued. I
11 understand and have been informed that I have the right and
12 obligation to be present at trial and should I fail to attend
13 the Court, the trial will proceed in my absence. It has been
14 explained to me that if I fail to appear before the Court as
15 required, a warrant for my arrest will be issued. And it's
16 got signature of the Defendant, which is Rasheed Glover.

17 Q: Okay. Let me hold that just one second. And is there an
18 address on that form for which we are to send notice?

19 A: There is.

20 Q: And what is that address?

21 A: It's Conway, South
22 Carolina, 29527.

23 Q: Thank you. Court's indulgence just a moment.

24 THE COURT: Okay.

25 MS. RICHARDSON: That's all from the State, Your Honor.

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HEATHER LEWIS - DIRECT BY RICHARDSON

23

1 THE COURT: Do you have any questions?

2 CROSS EXAMINATION OF HEATHER LEWIS BY MR. GARDNER:

3 Q: Madame Clerk, nothing in that paperwork tells him when the
4 trial is gonna be or the trial is today, is there?

5 A: No, sir.

6 MR. GARDNER: That's all, Your Honor.

7 THE COURT: Can I see that? Okay. I see on the form
8 that he was required initially to be on April the 10th, 2015
9 and remain throughout each term and if the case wasn't
10 disposed of, he was to appear on each succeeding term until
11 his final disposition. And he initialed that. Okay. Thank
12 you.

13 MS. RICHARDSON: The State would now call Ms. Gayle
14 Jordan.

15 GAYLE JORDAN HAVING BEEN DULY SWORN,
16 TESTIFIES AS FOLLOWS:

17 CLERK: If you'd please state your full name and spell
18 your last name.

19 MS. JORDAN: Gayle Jordan, J-O-R-D-A-N.

20 DIRECT EXAMINATION OF GAYLE JORDAN BY MS. RICHARDSON:

21 Q: Ms. Jordan, where are you employed?

22 A: Horry County Solicitor's office.

23 Q: And you work as my assistant; is that correct?

24 A: I do.

25 Q: And part of your duties with the Solicitor's office, do

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HEATHER LEWIS - CROSS BY GARDNER

24

1 you send out subpoenas?

2 A: I do.

3 COURT'S EXHIBIT NUMBER TWO

4 MARKED FOR IDENTIFICATION

5 Q: I'm gonna show you what's been marked as Court's Exhibit
6 Number Two and see if you can identify that for me?

7 A: Yes, they are the subpoenas for Rasheed Glover.

8 Q: And where were -- those were the subpoenas that you sent?

9 A: Yes.

10 Q: Or they are copies of the subpoenas you sent?

11 A: Yes, we send the originals.

12 Q: What address did you send those subpoenas to?

13 A: We sent one to _____, Conway,
14 29527. And we sent one to _____
15 Conway, 29527.

16 Q: Do you know where the _____ address comes from?

17 A: Not unless we had a change of address, but I don't know
18 that.

19 Q: But we sent it to those two addresses?

20 A: Yes.

21 Q: And when did you mail those subpoenas?

22 A: We mailed them on September the 18th.

23 Q: And did we also send one to the bonding company?

24 A: Yes, we did.

25 Q: And what bonding company was that?

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GAYLE JORDAN - DIRECT BY RICHARDSON

25

1 A: Donell and Ladawn Bail Bonds.

2 Q: Okay. And when did we send that one?

3 A: Also on September the 18th.

4 Q: And was that for Rasheed Glover?

5 A: Yes, it is.

6 Q: In regards to Mr. Glover's subpoenas, when was he
7 subpoenaed to be in court?

8 A: He was subpoenaed to be here on October the 2nd at 8:30
9 and each day this term of court until -- or until the
10 disposition of the case.

11 MS. RICHARDSON: Nothing further, Your Honor.

12 THE COURT: Okay. Any questions?

13 CROSS EXAMINATION OF GAYLE JORDAN BY MR. GARDNER:

14 Q: Was today on that -- was that a normal scheduled week or
15 was that add on?

16 A: It is the second week of our normal schedule.

17 Q: Thank you.

18 MS. RICHARDSON: Nothing further from this witness.

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

20 MS. RICHARDSON: That would be the State's showing as to
21 trying Mr. Rasheed Glover in his absence, Your Honor.

22 THE COURT: Anything you'd like to say?

23 MR. GARDNER: No, Your Honor, I'd just renew my motion
24 for a continuance.

25 BY THE COURT:

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GAYLE JORDAN - CROSS BY GARDNER

26

1 THE COURT: Okay. And I'll respectfully grant -- deny
2 that motion. I find that this Court has jurisdiction, that
3 Mr. Glover was notified pursuant to his bond papers that he
4 had to appear on the April 10th term and each court thereafter
5 until his case was disposed of. That he received notice of
6 this term and he's not here and that the State may proceed in
7 his absence. Okay.

8 I guess we just got to wait till the Jury comes back? We
9 got any other matters we need to deal with?

10 MS. RICHARDSON: Not to my knowledge, Your Honor.

11 THE COURT: Okay.

12 MR. GARDNER: Nothing.

13 THE COURT: Okay.

14 (RECESS - 1:42 P.M.)

15 *****OFF THE RECORD*****

16 (On the Record - 2:04 P.M.)

17 (REPORTER'S NOTE: Jury enters courtroom. 2:04 P.M.)

18 BY THE COURT:

19 THE COURT: Madame Clerk, you may swear the Jury.

20 CLERK: Please stand and raise your right hand.

21 Do you solemnly swear or affirm you will well and truly
22 try the issues joined in this case and a true verdict render
23 according to the law and evidence so help you God?

24 (REPORTER'S NOTE: Jury unanimously responds.)

25 CLERK: Thank you.

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BY THE COURT

27

1 THE COURT: Ladies and gentlemen, we're about to begin
2 the trial of the State versus Rasheed Glover. And basically
3 what I intend to tell you is just some introductory remarks
4 and explain to you what your role is and what my role is and
5 what your responsibilities are. Mr. Glover is indicted with
6 the crime of armed robbery and I'll explain to you the
7 elements of the armed robbery at the end of the trial when I
8 charge you on the law. But to this indictment, he's entered a
9 plea of not guilty and therefore it placed a burden upon the
10 State to prove each and every element of this indictment to
11 you beyond a reasonable doubt. Your job is to determine what
12 the true facts are. Your job is to listen to testimony that
13 will come before you in this trial. In determining what the
14 true facts are in this case, the -- and you need to pay close
15 attention because it's important that you get it right because
16 if you make a mistake it is very difficult to correct your
17 mistake as far as the facts are concerned. If I make a
18 mistake in the law, then it's some other time and some other
19 place that will be reviewed but it's important that you make
20 -- get this right. And your job is to listen to the evidence
21 and it's gonna basically come to you in three forms. First of
22 all, through sworn testimony from the witness stand.
23 Witnesses will come before you under oath and testify to us
24 about the things that they know or have observed. The other
25 way is through any introductions into exhibits or photographs

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BY THE COURT

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1 or something that either party may introduce in this case.
2 And the third way you're gonna receive evidence is possibly
3 through stipulations of the attorneys. That's how you're
4 gonna receive evidence in this case and you'll decide this
5 case based on the evidence. The attorneys are gonna get up in
6 the few minutes and make an opening statement to you. That
7 opening statement is not evidence. That's simply the
8 attorneys trying to explain to you what this case is about and
9 what they think the evidence is gonna show or not show in this
10 case. Then you're gonna hear the testimony and evidence in
11 this case and then their lawyer is gonna get up and make a
12 closing argument to you and they gonna argue to you as to what
13 they think the evidence show or didn't show in this case.
14 Then, I'm going to charge you on the law and give you this
15 case to decide. My job is to rule upon what evidence under
16 our rules you're entitled to hear and to charge you on the law
17 and your job is to listen closely to the facts and determine
18 what's the truth in this case. You determine the guilt or
19 innocence of this Defendant based on the facts that you hear
20 in this courtroom. And so, I will try to stop every hour or
21 hour and a half for a break. And I usually try to stop
22 between witnesses. Sometimes a witness is so long, you know,
23 we have to go -- we stop in the middle of the testimony.
24 Having said that, if at any time during the trial you need a
25 break or for any reason whatsoever, you just need simply raise

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BY THE COURT

29

1 your hand and let me know and we'll take a break, as I need
2 each one of you to play close attention and if you're
3 uncomfortable for some reason, you can't pay attention. So,
4 if you need a break, we'll take one and we'll come back and
5 resume the case.

6 Having said that, I'm gonna instruct you, you can't talk
7 about this case until I tell you can talk about this case.
8 And the reason being, you, you know, if you decide -- after
9 one witness, we take a break and you go back in the jury room
10 and you start talking about this witness' testimony -- and
11 many of you will think, well, why can't we do that? And the
12 reason I don't want you to do that, because if you do, then at
13 the end of the case, you're gonna want to defend that opinion
14 you had in the beginning of the case to your fellow juror and
15 I don't want you to start forming opinions and expressing
16 those opinions to each other until you've heard all the
17 evidence in the case. Then and only then, would it be proper
18 for you to discuss this case among yourselves. And when we go
19 home -- we won't finish this case today and when you go home
20 tonight, your family is gonna want to know what you've been
21 doing all day. And I understand it's tough not to tell them
22 but if your family is anything like my family, and when you
23 tell them what you've done and what you've heard, they gonna
24 have an opinion as to what you ought to do and they haven't
25 been here and I don't want you to use their opinion. You've

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1 got to decide this case based on your own observations and
2 your own knowledge and what you hear in this courtroom because
3 both sides are entitled to a fair and impartial juror, that's
4 what you're here for. And when you do it that way, the
5 system works. So, at the end of the case, you can tell them
6 anything you want to, you can talk to anybody you want to
7 about the case, but I just need you to have an open mind, I
8 mean, not be influenced by anything outside of this courtroom
9 until you decide what the truth in this case. And your job is
10 simply to determine what the truth is based on the facts that
11 you hear. And I'm not allowed to have an opinion about the
12 facts, so don't try to judge what I'm doing based on what you
13 think I think about the facts because I'm not allowed under
14 our law. I'm simply to rule upon the admissibility of the
15 evidence and charge you on the law. It is your job to
16 determine what the true facts are, so if you'd pay close
17 attention throughout this trial. The attorney is gonna get up
18 and make an opening statement to you, the State has the burden
19 of proof and they go first. The Defense goes second but they
20 don't even have to make an opening statement because the
21 Defense doesn't have to prove anything. The State has the
22 burden of proof in this case. Most of the time, both sides do
23 make an opening statement and both sides do make a closing
24 argument but that's their right. So, if you'd pay close
25 attention, we'll begin with the opening statements.

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BY THE COURT

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1 Madame Solicitor, Mr. Solicitor, which ---

2 MR. TERRELL: Thank you, Your Honor. May it please the
3 Court?

4 THE COURT: Yes, sir.

5 OPENING STATEMENT BY TERRELL:

6 MR. TERRELL: A ten, two fives and eight ones. On the
7 morning of January 2nd, 2015, just up 501 here in Conway at
8 the Scotchman convenience store, Angie Gilchrist was robbed at
9 gunpoint for a ten, two fives and eight ones. She was working
10 that night, she was working the third shift, 11:00 P.M. to
11 7:00 A.M. This happened approximately at 1:30 that morning.
12 There are some people who work for what they've got. Angie
13 Gilchrist is one of those people. There are other people in
14 the world who take what's not theirs. They feel that they can
15 just take a gun, put it in someone's face and demand what
16 isn't rightfully theirs. Rasheed Glover belongs in this group
17 of takers. He took what wasn't his to take. To be fair, he
18 wasn't alone, he's not the only taker in the world. On this
19 night, he wasn't the only taker. There were four other people
20 acting in concert. This isn't their day. This is Rasheed
21 Glover's day in court. Don't worry about the rest of them for
22 right now. You'll hear from one of them, she was the driver,
23 you'll hear from her. The others will have their day in court
24 but this day is about Rasheed Glover, what he did that night
25 that made him a taker.

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OPENING STATEMENT BY TERRELL

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1 As I said, this happened about 1:30 in the morning.
2 Let's go back a few hours, January the 1st, New Year's Day of
3 this year. All the Codefendants, Mr. Glover and his four
4 Codefendants, Asia Collier, who as I said was the driver,
5 Amontre Ellerbe, Aikeem Coles and Tyreke Phillips, they were
6 all hanging out at Rasheed's mom's house. They're hanging out
7 in the living room, presumably enjoying the New Year's Day and
8 they hatch a plan. That plan was to forever change how they
9 would be considered in society. We're gonna become takers
10 instead of the workers. They decide that they're gonna rob a
11 convenience store. So, they talk about it throughout the day,
12 all five of them. They talk about it in the living room. The
13 time comes, they get Rasheed's brother's car that's titled in
14 his mom's name, we'll hear about that. It's Rasheed's
15 brother's car. They all get in, Asia is the driver. They
16 make a quick stop at Walmart to pick up what they need,
17 Walmart right here in Conway. Drive right up 501 to the
18 intersection of Four Mile and 501. She drives past the store.
19 She turns right onto Four Mile and drives a little bit past
20 the store and parks on the shoulder of the road. All four of
21 the males she was with get out of the car. She can't see the
22 store. She can't see the parking lot of the store. All she
23 knows is that four men get out of her vehicle and she's left
24 there. They run in the direction of the store. Angie
25 Gilchrist, she was working the convenience store that night,

OPENING STATEMENT BY TERRELL

1 she'll tell you that she was held at gunpoint by two
2 individuals. What did they get? A ten, two fives and eight
3 ones. They get a couple of other things that the store had.
4 They had a box of cigarillos. They took Angie's phone, her
5 cell phone and its purple case. With that and the meager
6 amount of money, they ran out of the store. A few minutes
7 after they got out of Rasheed's car and left Asia, they come
8 back, all four of them come back. She hears them running, she
9 can tell they're out of breath. They get in her car, she
10 drives a little farther down Four Mile Road. There's a
11 subdivision just past the Adult Education Center called
12 Country Estates or Country Manor, I'm sorry, County Manor.
13 They pull in there. Asia calls them a cab. She doesn't want
14 them in her car anymore. She says, I'm gonna get y'all a cab.
15 She calls the cab, they wait for him, wait in the parking lot.
16 The cab driver comes. When the cab driver gets there, Asia
17 sees the four males that were in her car get into the cab.
18 When she sees this happening, she gets in her car or Rasheed's
19 car, Rasheed's brother's car and she pulls out of Country
20 Manor to the left taking her farther away from the convenience
21 store. The taxi cab, unknown to her, apparently leaves right
22 after her and turns right. Now, a BOLO, a be-on-the-look-out
23 had been issued for the suspects in this case. One of things
24 the officer remembers hearing about that is one of the
25 suspects was wearing a red-in-color sweatshirt. What the taxi

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OPENING STATEMENT BY TERRELL

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1 driver doesn't know is, and presumably none of these other
2 four guys do too, there are officers all around the area.
3 There are two sitting on a small secondary road off, just
4 waiting, waiting, looking, they'd been looking in the area for
5 suspects that fit this description. The taxi cab drives by
6 and the officers headlights shine in the front passenger
7 window. And what does he see? He sees a male matching the
8 description, wearing a red sweatshirt. He pulls in behind
9 them, behind them and pulls them over thinking that, hey, he
10 matches the description. Where do they pull over? As fate
11 may have it, they're pulled over in the Scotchman convenience
12 store parking lot and this has been approximately an hour
13 since the call came out, probably a little less than an hour
14 since the panic alarm button in the Scotchman had gone off.
15 They're pulled over there. The place is swarming with police
16 officers. They get out the man wearing the red sweatshirt.
17 The store clerk, Angie, comes out while the suspect is talking
18 to one of the officers and says, points at him and says that's
19 one of the guys who just robbed me. You'll hear her say she
20 comes out, she takes about three or four steps out, sees him,
21 stops, says that's one of the men who just robbed me. Based
22 on that, everybody is brought out of the taxicab. It's a van,
23 all four of them are brought out and what do they find, what
24 do they find in the van? They find a box of cigarillos, they
25 find two guns, they find the clerk's cell phone, the clerk's

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OPENING STATEMENT BY TERRELL

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1 cell phone cover, the purple case.

2 One thing I like to be able to tell you at the beginning
3 is why. I can't do that here. A ten, two fives and eight
4 ones; that's what this was over. Now, remember, five people
5 are charged with this crime. You'll hear from one of them.
6 The others will have their day in court. Don't worry about
7 them right now. This is Rasheed Glover's day in trial. It's
8 his day in court and we're gonna give it to him.

9 When you've heard all the evidence presented at the
10 witness stand, you've heard the Codefendant talk about what
11 was going on earlier that day, we believe that you'll have
12 enough when the time comes and we ask you to find this
13 Defendant guilty of what he did as armed robbery. Five people
14 are charged with it, five people are guilty of it. Two
15 might've gone in but all five are guilty of it. Rasheed
16 Glover is one of those individuals. Probably by this time
17 tomorrow we'll be asking that you find them so. Thank you
18 very much.

19 THE COURT: Mr. Gardner?

20 MR. GARDNER: If Your Honor please.

21 OPENING STATEMENT BY GARDNER:

22 MR. GARDNER: Ladies and gentlemen of the Jury, I'm
23 Johnny Gardner and I represent Rasheed Glover. I won't
24 belabor this thing and I'll get right to it. There's three
25 constitutional principles I want to briefly discuss with you.

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OPENING STATEMENT BY GARDNER

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1 The Judge has talked about two of them, maybe all three of
2 them but I just want to talk a little more about them. What
3 is presumption of innocence? Any Defendant that comes to
4 court is presumed to be innocent. A good way that I've found
5 to explain that to people is that if I asked you today to go
6 back right now and deliberate on this case and come back with
7 a verdict, the only verdict you could come back with would be
8 not guilty because there's no record for you to deliberate on,
9 there's been no evidence and my client is presumed to be
10 innocent. I think that's a good way to explain that.

11 That rolls right into the burden of proof, the burden of
12 proof the Judge said earlier is always on the State. The
13 State has the burden of proof in this case. The level of
14 burden of proof is beyond a reasonable doubt. You've probably
15 heard that before on TV, you're gonna hear it all week long
16 probably. The best way to explain that I've found is by
17 explaining what it's not. Most people that come to court,
18 they come to court for civil stuff, car wreck, a breach of
19 contract, maybe an uncontested divorce. The burden of proof
20 in those cases are civil. If you've seen those scales on the
21 court where they fill them, it's one side in one and all the
22 evidence on the other. Whichever one is tilting so slightly,
23 that side would win the case. That doesn't work in criminal
24 court because in criminal court, the level is beyond a
25 reasonable doubt. I don't know what the number is for that

OPENING STATEMENT BY GARDNER

1 but it's a great deal of evidence, it's a big burden and it's
2 always on the State and the State has to do that. Another
3 reason the scales don't work for criminal court is, in the
4 civil court you put the evidence from each side on either side
5 of the scale. In a criminal court case, the majority of the
6 time there will be no evidence from the Defense, that's the
7 way the system is set up, the Defense doesn't have to call
8 witnesses. I try to explain that to people by, if you thought
9 about it, you might be able to come up with some scenarios
10 where a completely innocent person was not able to prove his
11 innocence is because of the circumstances beyond his control.
12 So, when the framers were coming up with how we can do things
13 in America, we decided our citizens were never, ever gonna
14 have to prove their innocence. If the State, with all its
15 resources, wanted to bring these charges, then the State would
16 have to prove that. Okay? The elements of the crime, the
17 Judge will tell you about that at the end of the case, what to
18 expect, whenever you have more than one element, the Judge
19 will tell you that the State has to prove beyond a reasonable
20 doubt, each and every one of those. The Defendant doesn't --
21 not only does he not have to prove any of that stuff, he
22 doesn't have to call witnesses. He himself doesn't even have
23 to testify if he doesn't want to. Okay? He doesn't even have
24 to come to court and he's not here. He may join us later
25 today, he may join us tomorrow, but the Judge will tell you

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OPENING STATEMENT BY GARDNER

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1 that that is not anything that you can concern yourselves,
2 that is not anything that you could consider in your
3 deliberations. The Solicitor told you that three of these
4 other people would have their day in court; they've already
5 had their days in court. Three of these other people have
6 already pled guilty to this charge. So, their day in court is
7 gone. This is Rasheed Glover's day in court. At the end of
8 this case, we're gonna get right back up here. I don't go
9 into the facts of the case because I don't know what the facts
10 are. I'm not gonna be call -- I have an idea of what this
11 case is about, don't let me -- I'm not trying to fool you or
12 anything, but I'm not gonna be calling police officers to
13 testify. I'm sorry this lady got robbed. My client says that
14 he didn't do it. He has pled not guilty to this. So, I'm not
15 going to be calling her as a witness. I will tell you that I
16 believe that she has identified two people that came in the
17 store, one wearing a red hoodie, one wearing a dark blue or
18 black hoodie, both wearing jeans. It's my understanding that
19 Rasheed Glover was not wearing jeans or hoodies that match
20 that. So, I'll leave the facts for the Solicitor to get into.
21 But, at the end of the case, match up the facts with what's
22 presented today to what you see and what you hear here and
23 listen to the Judge's description of the law and I'll be back
24 here again and there will only be one verdict for Mr. Glover
25 and that will be not guilty.

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OPENING STATEMENT BY GARDNER

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1 Thank you very much.

2 THE COURT: Solicitor?

3 MS. RICHARDSON: Thank you, Your Honor. The State would
4 call Ms. Angie Gilchrist.

5 THE COURT: Okay. If you come around please, ma'am, and
6 place your left hand on the Bible and raise your right.

7 CLERK: Raise your right hand and place your left hand on
8 the Bible.

9 ANGIE GILCHRIST, HAVING BEEN
10 DULY SWORN, TESTIFIES AS FOLLOWS:

11 CLERK: If you would state your full name and spell your
12 last name.

13 MS. GILCHRIST: Angie Gilchrist, G-I-L-C-H-R-I-S-T.

14 DIRECT EXAMINATION OF ANGIE GILCHRIST BY MS. RICHARDSON:

15 Q: Angie, I'm gonna hand you some water. I know you're
16 nervous. And I'm gonna stand back here and I need you to talk
17 loudly. Okay? I can already tell you're gonna be a little
18 soft-spoken. So, speak up for me loudly, okay, I'll do my
19 best to not pace and stand back here to force you to talk to
20 me.

21 Where are you employed?

22 A: Scotchman.

23 Q: How long have you been employed there?

24 A: Two years.

25 Q: Okay. And what do your duties consist of at the

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ANGIE GILCHRIST - DIRECT BY RICHARDSON

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- 1 Scotchman?
- 2 A: I'm a cashier, customer service, I stock, I make
- 3 doughnuts, ring up customers.
- 4 Q: What shift do you work?
- 5 A: I worked a variety of shifts, third shift, first shift,
- 6 second shift.
- 7 Q: So, whenever you're needed?
- 8 A: Yeah.
- 9 Q: Were you working on the night of January 1st, 2015?
- 10 A: Yes, I was.
- 11 Q: Okay. And who else was working with you?
- 12 A: I was working by myself.
- 13 Q: What was the crowd like on that night? Was it busy?
- 14 A: No. It was rather slow.
- 15 Q: What shift were you working; do you remember?
- 16 A: Third shift, 11:00 P.M. to 7:00 A.M.
- 17 Q: Why do you recall this evening so well?
- 18 A: I was robbed at gunpoint.
- 19 Q: Okay. I'm just gonna kind of walk you through that.
- 20 Okay? How many people came in the store?
- 21 A: Not that many. I hadn't had a customer in a while. I had
- 22 just got done making doughnuts in the bakery goods and had a
- 23 pan -- plated them and was getting ready to put them out in
- 24 the doughnut case.
- 25 Q: What did you hear?

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ANGIE GILCHRIST - DIRECT BY RICHARDSON

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1 A: I was walking up with the muffins and I heard scuffling of
2 the feet. Our door alarm didn't work. And I couldn't see the
3 front door because of where the cigarette display is and the
4 tobacco items sits, it blocks the doorway but I could hear
5 feet scuffling on the floor. And two gentlemen appeared in
6 front of me. One aimed a silver handgun at my head while the
7 other gentleman ran behind me and I saw him, he was wearing
8 red, but he ran so fast. Then, at that point, I thought they
9 were having a shootout with each other, confrontation with
10 each other, I didn't realize it was me. So, I threw the
11 muffins in the air and I threw myself on the floor to get out
12 of the way. It was then that one of them ordered me to get up
13 off the floor and pulled the back of my work shirt. I managed
14 to pull myself together and get up. I felt the gentleman who
15 had ran behind me shove something into my back and I knew the
16 gentleman who was standing in front of me was still there
17 because I could see his shoes in front of me. So, I stood up,
18 I put my hands up and I put my head down then he pushed
19 whatever into my back and told me to walk. And so I turned
20 and I started walking behind the kid who put the gun in my
21 face and we walked single file behind the register.
22 Q: Okay. Can I stop you there for just a minute? We'll get
23 back up with that. I want to clarify some things, okay? You
24 said kid why are you calling them kids?
25 A: They looked young, sounded young.

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ANGIE GILCHRIST - DIRECT BY RICHARDSON

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- 1 Q: Do you recall whether or not they had on masks?
- 2 A: I don't remember that.
- 3 Q: Okay. Do you recall whether or not they had on gloves?
- 4 A: The gentleman who pointed the silver gun at me had black
- 5 gloves on.
- 6 Q: Okay. Let's -- okay, so we're talking about the guy who
- 7 points the silver gun at you. Is there any other identifying
- 8 traits or clothing that you remember from him?
- 9 A: He had on these studded round fake diamond earrings. He
- 10 had on skinny blue jeans.
- 11 Q: Do you recall his shoes?
- 12 A: He had white sneakers that went past his ankles and they
- 13 had the Nike emblem on them.
- 14 Q: Okay. All right. Do you recall what color Nike emblem?
- 15 A: Black.
- 16 Q: Black. So, white shoes with a black emblem and he had a
- 17 silver handgun holding it at your face?
- 18 A: Yes.
- 19 Q: The other gentleman that ran past you initially, do you
- 20 recall what he was wearing?
- 21 A: He had on red sneakers going past his ankles with a white
- 22 emblem on them. I don't remember what the emblem was. And he
- 23 had on a red sweatshirt.
- 24 Q: Did you notice anything else about their shoes?
- 25 A: They were muddy.

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1 Q: And why is it that their shoes stick out in your mind so
2 much?

3 A: Because I spent a great deal of time looking down at the
4 floor.

5 Q: I know this seems like a silly question but, what was
6 going through your mind at that time?

7 A: I just wanted to live and I thought that if I looked down
8 I had a great chance to live through it.

9 Q: All right. When you were telling us your story, I
10 interrupted you on the part where you said that y'all were
11 walking single file back behind the cash register. What
12 happens after that?

13 A: They told me not to do anything stupid and they said, open
14 it. I presume they were talking about the cash register so I
15 stepped forward and I hit the no-sale button and the till
16 popped open. I stepped back. The boy/gentlemen took out the
17 money, which was a ten, two fives and eight ones. They then
18 turned to the safe and the kid behind me said open it. I
19 said, I can't, I don't have a key. And they said, yes, you
20 can. And I said, no, it's a time safe, I don't have a key to
21 that. And the gentleman in the red sweatshirt opened the
22 cabinet, I presumed looking for a key. Then, the other boy
23 was playing with the safe like moving the levers and just
24 examining the safe and he picked up the box of pennies and he
25 threw it on the floor. And it was about that time when the

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- 1 kid behind me said, let's get out of here. And so they ran
2 out from behind the counter and the boy in the red sweatshirt
3 turned around and aimed a black gun at me, while they were
4 running out the door, and when the kid in the red sweatshirt
5 reached the door, I reached over and hit the panic button.
6 Q: So, both of them were armed?
7 A: Yeah. Yes.
8 Q: Did you see what direction they left in?
9 A: When they exited the door, they went to my left of the
10 store.
11 Q: So, when they came out of the door, they went to the left?
12 A: Yes.
13 Q: And what's on that side of the store?
14 A: That side of the store would be our doughnut freezer, our
15 dumpster and just the back of the store.
16 Q: Because on one side of the store, correct me if I'm wrong,
17 what road is that?
18 A: That's Four Mile.
19 Q: And what road runs in front of it?
20 A: Runs in front of my store?
21 Q: Yeah.
22 A: 501.
23 Q: Again, silly question, what county is it located in?
24 A: Horry County.
25 Q: Okay. So, they run around the side to the dumpster?

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- 1 A: Yes.
- 2 Q: Did you ever see anybody else that was involved in the
3 robbery?
- 4 A: No.
- 5 Q: You only saw two people?
- 6 A: Yes, ma'am.
- 7 Q: What all was taken from the store?
- 8 A: A ten, two fives, eight ones, a box of blunts and my cell
9 phone.
- 10 Q: When you say a box of blunts, what is that?
- 11 A: Dutch Palma green cigarillos.
- 12 Q: Is that something -- I guess, you smoke it?
- 13 A: I guess, yes.
- 14 Q: And was just a pack taken or was that a whole box?
- 15 A: A whole box.
- 16 MS. RICHARDSON: Court's indulgence just a moment.
- 17 THE COURT: Okay.
- 18 BY MS. RICHARDSON:
- 19 Q: Ms. Gilchrist, does your store have a surveillance system?
- 20 A: It is supposed to but it was not working during that time.
- 21 Q: Did you attempt to you view that surveillance system?
- 22 A: I didn't personally but my Assistant Manager and the GM
23 and the law enforcement did.
- 24 Q: To your knowledge, were they ever able to see anything?
- 25 A: To my knowledge, they were not successful in seeing

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1 anything.

2 Q: Tell us a little bit about your cell phone, what kind of
3 cell phone did you have at the time?

4 A: It was an LG touch screen smart phone and it had a purple
5 case.

6 Q: Were you present when the taxi cab was pulled over in the
7 parking lot?

8 A: I was at the store but I was in the store and I was not
9 paying attention to what was going on outside the store.

10 Q: I apologize, I kinda jumped a little. So, they leave to
11 the left, you press the panic button. What happens after
12 that?

13 A: I squatted down real quick because I had hit the panic
14 button and I didn't know if they had seen me do that and I
15 didn't want him to come back in and shoot me, so I had
16 squatted down. And, after a couple of moments, I stood back
17 up and when I stood up I observed a white pickup truck, huge
18 pickup truck pull up to Pump 3 and a gentleman get out, and
19 when I saw him get out I started waving my arms to tell him
20 not to come towards the store because I didn't know where the
21 two gentlemen were that had just robbed me. I didn't want him
22 to get hurt. And that was when I started looking around for
23 my cell phone I wanted to call my Assistant Manager and let
24 her know that I had been robbed and I couldn't find my cell
25 phone. So, I grabbed the store phone and I tried to make a

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- 1 phone call out and there was no dial tone, so I started
2 panicking and I went to the front door and I yelled to the
3 gentleman in the white truck to grab his phone and call 911
4 that I had been robbed. He ran to the trunk grabbed his phone
5 and called 911. At that point, I had a dial tone on the
6 landline to the store and I called my Assistant Manager and I
7 told her that I was robbed.
- 8 Q: At some point, were you asked to identify your cell phone?
9 A: I was.
- 10 Q: Who asked you to do that?
11 A: An officer.
- 12 Q: And was that your phone?
13 A: Yes, it was my phone.
- 14 Q: What happened to the purple case?
15 A: I don't know what happened to the purple case but it was
16 not on the phone, it was beside my phone.
- 17 Q: Did you get the case back?
18 A: I did, yes.
- 19 Q: And what else was returned to you that afternoon or that
20 morning?
21 A: My phone.
- 22 Q: What about the cigarillos?
23 A: That was returned to the store.
- 24 Q: What about the money?
25 A: To my knowledge, we never received the money.

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- 1 Q: So, you don't know what happened with money?
- 2 A: No.
- 3 Q: Okay. You said you were inside when the taxi cab was
- 4 pulled over?
- 5 A: Yes.
- 6 Q: At some point, were you asked by the police to step
- 7 outside?
- 8 A: Yes.
- 9 Q: And what was that for?
- 10 A: The officer came in and he said, we pulled over a taxi
- 11 with some gentleman in it who fit the description of the men
- 12 who robbed the store and we would like you to come out and see
- 13 if anything looked -- if they look familiar.
- 14 Q: And did they look familiar?
- 15 A: When I walked out, I noticed a man or a gentleman with a
- 16 red sweatshirt on and the red sneakers and I noticed the
- 17 gentleman with the blue skinny jeans and his earrings and his
- 18 white sneakers with the Nike emblem.
- 19 Q: And what did you tell the officers?
- 20 A: I said those with them.
- 21 Q: At that moment you saw -- did you see all four of them?
- 22 A: No.
- 23 Q: So, you only saw two individuals?
- 24 A: Yes.
- 25 Q: And let's -- just to be fair, why did you ID those two

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1 individuals as being the individuals who robbed you?

2 A: Because they were wearing what I saw in the store when I
3 was being robbed.

4 Q: That's all from the State.

5 CROSS EXAMINATION OF ANGIE GILCHRIST BY MR. GARDNER:

6 Q: Good afternoon, ma'am. I'm sorry you went through that
7 and I'm sorry you're back here today. I'll try to be brief;
8 I've only got a couple of questions. Stuff that I mainly want
9 to clear up for me.

10 Did both of the boys in the store have muddy shoes?

11 A: Yes.

12 Q: Okay. And when I was talking earlier, it was my
13 understanding one of the guys had a red sweatshirt or a red
14 hoodie, is that right?

15 A: Yes.

16 Q: Is there a difference -- was it a hoodie or was it a
17 sweatshirt or is that the same thing?

18 A: To me, it's the same thing.

19 Q: Fair enough. And the other one had on skinny jeans; is
20 that right?

21 A: Blue jeans, skinny blue jeans, yes.

22 Q: Skinny blue jeans, okay. And you said something about his
23 earring. It was a big hearing not a hoop; is that right?

24 A: Correct.

25 Q: And, the fellow not wearing the red, the other fellow, was

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- 1 he wearing black or dark blue?
- 2 A: I don't remember that.
- 3 Q: Okay. You don't remember what sweatshirt or hoodie he was
4 wearing?
- 5 A: No.
- 6 Q: And do you remember talking to the police about what they
7 were wearing?
- 8 A: I do.
- 9 Q: Okay. So, you think you probably gave them a statement of
10 what you remembered that night?
- 11 A: Yes.
- 12 Q: Okay. Do you think that night it was probably closer in
13 your mind what they were wearing than it is today?
- 14 A: Yes.
- 15 Q: That makes sense. The two people that you pointed out
16 when the police brought you over to the taxi cab, neither of
17 those was Rasheem Glover, right?
- 18 A: I have no idea.
- 19 Q: Okay. All right. Did both of them have on blue jeans,
20 the ones that you pointed out?
- 21 A: I don't remember the other kid. I just remember the blue
22 jeans on the one and the red sweatshirt and the red shoes on
23 the other.
- 24 Q: And the one that you don't remember the color of the
25 shirt, he is the one that had the big earring?

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1 A: Yes.

2 Q: But not a hoop, a big ---

3 A: It was like a stud, like a diamond studded, bling, bling,
4 big.

5 Q: Thank you very much. Is there anything I left out,
6 anything -- we're just trying to find out which two boys came
7 in.

8 A: I don't think so.

9 Q: Okay. Thank you.

10 THE COURT: Anything further?

11 MS. RICHARDSON: No, sir, Your Honor, not on those
12 questions.

13 THE COURT: Okay. Thank you, ma'am, you can step down.

14 MS. RICHARDSON: Your Honor, may I ask that she be
15 excused from her subpoena if she so desires.

16 THE COURT: Okay. She may be excused.

17 MR. TERRELL: The State calls Steven Dailey, Your Honor.

18 CLERK: Sir, please raise your right hand and place your
19 left hand on the Bible.

20 STEVEN DAILEY, HAVING BEEN DULY
21 SWORN, TESTIFIES AS FOLLOWS:

22 CLERK: If you will state your full name and spell your
23 last name.

24 MR. DAILEY: Officer Steven Dailey, D-A-I-L-E-Y.

25 DIRECT EXAMINATION OF STEVEN DAILEY BY MR. TERRELL:

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- 1 Q: Good afternoon, Officer Dailey. Could you please tell the
2 Court where you work?
- 3 A: For the past eight years I have worked with Horry County
4 Police Department.
- 5 Q: And before then?
- 6 A: I was in the US Army.
- 7 Q: Do you currently work for Horry County Police Department?
- 8 A: I do, sir. I am a member of the Street Crimes Unit, which
9 is an active investigation unit within the Horry County
10 Narcotics Division.
- 11 Q: Do you recall if you were working that night of January
12 1st, in the morning of January 2nd of this year?
- 13 A: I was; I do recall.
- 14 Q: Were you employed in the same position that day?
- 15 A: Yes, I was, sir.
- 16 Q: What were you doing that day?
- 17 A: That evening, we -- earlier that evening, we had
18 operations as usual conducting interdiction stops in the
19 traffic in the Myrtle Beach area. Later that evening, we
20 responded to assist, Conway City in a armed robbery that
21 happened in their jurisdiction.
- 22 Q: Do you remember about what time you got that call?
- 23 A: Around 1 o'clock.
- 24 Q: Where in Myrtle Beach were you when that call came out?
- 25 A: We were in the area of Robert Grissom and Highway 31.

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1 Q: So, about how long, if you had to guess, about how long
2 would it take you to respond up to Conway?

3 A: Roughly speaking, ten to fifteen minutes.

4 Q: What route of traffic did you take?

5 A: Myself and Officer Stephenson rode International to
6 Carolina Forest and Carolina Forest straight out 501 towards
7 501 Business. And I believe I took 501 Business and 701 North
8 to 319. Officer Stephenson took 501 to Oak Street to Oak
9 Street Extension. Therefore, I diverted and went to him.

10 Q: What were you tasked with doing when you got into Conway?

11 A: We were tasked with saturating the area and assisting the
12 dog team -- well, let me rephrase that. We operate as a team
13 and one of the members of the team is a canine handler.

14 Q: You said saturate the area. Can you describe what that
15 entails?

16 A: With the, once the track or the dog team gets on scene, we
17 like to keep a somewhat of a perimeter, circle the area, make
18 sure the individuals they are tracking don't leave the area by
19 a way of going down the road or getting in a vehicle.

20 Q: And, so that's what you were doing that night. How long
21 were you doing that?

22 A: I believe the dog was tracking for approximately 30 to 35
23 minutes.

24 Q: And you weren't part of that at dog tracking?

25 A: No, I was not.

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1 Q: What area were you in?

2 A: Via radio I was told that the dog was tracking due north
3 from the incident location, so I was concentrating on the
4 highest avenue of approach which was For Mile Road, just north
5 of that.

6 MR. TERRELL: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. TERRELL:

9 Q: I'm handing you what's been marked as State's Exhibit One
10 for identification purposes only. Do you generally know what
11 that is?

12 A: Yes, sir, it's an aerial or a satellite image of the
13 incident location which is down here and the cross streets of
14 Highway 501 and Four Mile Road.

15 Q: How familiar are you with this are?

16 A: Very familiar.

17 Q: Does this appear to be an accurate representation of the
18 way it was on that evening, other than the lighting?

19 A: It does.

20 MR. TERRELL: The State move State's Exhibit One into
21 evidence.

22 MR. GARDNER: No objection, Your Honor.

23 THE COURT: All right. One is in without objection.

24 STATE'S EXHIBIT NUMBER ONE

25 ADMITTED INTO EVIDENCE

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1 MR. TERRELL: Thank you, Your Honor.

2 BY MR. TERRELL:

3 Q: All right. So, on that map, if you could point it toward
4 the Jury just a little so that they understand what you're
5 talking about. Could you point out where the alarm came out,
6 the incident location?

7 A: The store, the BP station is right here at the corner of
8 Highway 501 and Four Mile Road.

9 Q: Could you, just for demonstrative purposes, could you run
10 your finger along 501.

11 A: This way, towards the beach.

12 Q: And Four Mile?

13 A: Four Mile Road is this way.

14 Q: Thank you. And you said the Scotchman is right there on
15 that corner?

16 A: That's correct.

17 Q: So, when you say the dog was tracking in that area, I
18 believe you said in the northerly direction, where would that
19 have been going, where would that be?

20 A: The -- when the -- again, I wasn't on scene when they put
21 the dog in tracking mode, but from what my Corporal was
22 advising, he was running north paralleling Highway --
23 paralleling Four Mile Road.

24 Q: Thank you. I'll take that from you so you don't have to
25 keep holding it. We'll come back to it in just a minute.

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- 1 I know you answered this and I forgot the answer, I
2 apologize. How long were you saturating the area?
3 A: I would say thirty to thirty-five minutes.
4 Q: What, if anything, were you told to be aware and be
5 looking for?
6 A: The -- according to Horry County dispatch, information
7 came out that the individuals that supposedly were involved in
8 the armed robbery was wearing a red shirt, a black male,
9 wearing a red shirt, younger. And the items that were taken
10 were a cell phone from the victim. I can't remember the color
11 of the cell phone but the -- and there was two firearms
12 involved. One was I believe silver and black and the other
13 one was all black, handguns.
14 Q: So, you're saturating the area of those roads that are on
15 that map generally?
16 A: Yes, sir.
17 Q: What was traffic like on those roads that night?
18 A: Minimal. The -- I believe we only saw two cars other than
19 the -- other police cars on that road.
20 Q: And so, at that time of night, at one point did you see a
21 van coming down Four Mile?
22 A: Yes, I saw a van enter the roadway.
23 Q: Where were you located when that happened, if you could
24 pick up with that -- I'm sorry, here, let me hold it for you.
25 A: Once the Corporal called off the track, they were -- they

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1 were in the vicinity of this wood line, just north of the
2 store but on the south side of Four Mile Road. Myself and
3 Officer Stephenson were positioned at this intersection at Old
4 Dunn Lane. I was facing Four Mile Road and he was pulled in
5 window-to-window with me facing Highway 501.

6 Q: And at one point you see a van enter Four Mile Road; is
7 that correct?

8 A: I do. Out in the distance, the -- there's two or three
9 entrances that enter Four Mile Road right here. Out in this
10 area, I saw a van enter Four Mile Road and start proceeding
11 towards Highway 501.

12 Q: And why did that attract your attention that evening?

13 A: Well, the -- that's the Horry County Schools Education
14 building. Obviously, it being in the ballpark of 2 o'clock in
15 the morning, I didn't think anyone was obviously working there
16 at that time, so...

17 Q: And the van pulls out. Which direction is it going? Is
18 it towards you or away from you?

19 A: It's coming towards me, going -- heading towards Highway
20 501.

21 Q: As it approaches, tell me what's going through your head.

22 A: As it approaches, I recognize that it's a taxi by the
23 markings and coloring. Sitting in the front passenger seat is
24 a black male wearing a red shirt.

25 Q: So, what do you do when you realize ---

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- 1 A: I advise my partner that that was a black male wearing a
2 red shirt in a taxi, I'm gonna stop it and identify the
3 individuals in it.
- 4 Q: By partner, who are you referring to?
- 5 A: Officer Stephenson, I apologize.
- 6 Q: And he's sitting next to you?
- 7 A: That's correct, sir.
- 8 Q: So, what do you do?
- 9 A: I pull out onto the roadway and I conduct a traffic stop
10 on that vehicle actually at the incident location at the
11 corner of Highway 501 and Four Mile Road.
- 12 Q: What do you notice as you're behind the vehicle and
13 approaching it?
- 14 A: The -- there were several people inside the vehicle and
15 there's a lot of movement, movement with the individuals'
16 hands shuffling some items around.
- 17 Q: Could you tell what they were moving?
- 18 A: No, sir.
- 19 Q: Could you tell how many there were?
- 20 A: Including the driver, I believe there were six.
- 21 Q: Where -- as you approached, which side of the taxi ---
- 22 A: Initially, I did a driver-side approach to talk with the
23 driver. The -- while I did the driver-side approach, I asked
24 the driver where he was coming from, you know, and where did
25 he pick the individuals up from the vehicle. He said he

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1 picked them up from Country Manor and at that time I asked the
2 driver to put the car in park and shut the car off and to have
3 everyone in the vehicle to place their hands on the ceiling
4 because of the shuffling and moving around still inside the
5 vehicle. For officer safety reasons, I asked them just place
6 their hands on the ceiling.

7 Q: And you could see where each of the individuals inside the
8 van was located, correct?

9 A: The windows were tinted but I could see the images of the
10 individuals, yes, sir.

11 Q: Let's talk about that. Could you describe the van for the
12 Jury?

13 A: Yellow and white van, I believe it was a Dodge, if I'm not
14 mistaken, Dodge or Chrysler style van.

15 Q: How many doors were there?

16 A: Four doors and a hatchback in the back.

17 Q: So, in this particular van, both the passenger side had a
18 sliding door and the driver side had a sliding door?

19 A: That's correct.

20 Q: And at what point were you able to see inside everybody
21 who was in there?

22 A: Very briefly through the front passenger side.

23 Q: The -- what's the seat layout inside? The middle seat, is
24 it a bench seat or are there two individual seats?

25 A: They were what they call the captain's seats. There was

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1 two front seats and then two back seats and then a bench seat
2 in the back.

3 Q: The driver seat, I'm assuming, was occupied when you
4 pulled it over; is that correct?

5 A: That's correct.

6 Q: The -- you already testified that the front passenger was
7 the one you identified as wearing the red sweatshirt?

8 A: That's correct.

9 Q: That seat was occupied. What about the two middle seats,
10 were they occupied?

11 A: Yes, sir.

12 Q: One person in each seat?

13 A: Yes, sir.

14 Q: Could you tell who was in the backseat?

15 A: I knew there was an individual in the backseat but I
16 couldn't tell them exactly who it was.

17 Q: Do you remember one or two people in that backseat?

18 A: I don't recall.

19 Q: At one point, do you pull anybody out of the van?

20 A: Yes, sir. I started with the front passenger, the
21 individual wearing the red shirt. I asked him to step out of
22 the vehicle and I walked him over to another patrol car to get
23 his driver -- his date of birth and name and information along
24 those lines.

25 Q: Why did you ask him to step out in the first place?

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1 A: From past training, past knowledge, it's a lot easier to
2 talk to one individual at a time. I wanted him away from
3 everyone else in the vehicle because stories may change doing
4 a interview with individuals.

5 Q: So, you pull him out, what do you do -- what are y'all
6 talking about?

7 A: Just the -- where they're coming from, where they're going
8 and the -- his name and date of birth.

9 Q: So, you're getting his identifying information. Why are
10 you doing that?

11 A: Well, I wanted to identify exactly who he was and I also
12 noticed that his shoes and the bottom of his pants legs were
13 muddy and wet signifying that the, you know, anyone that was
14 possibly running through the woods might have the same type of
15 wetness or mud on their shoes.

16 Q: At some point, do you go and talk to the victim in this
17 case?

18 A: I do.

19 Q: Where is she?

20 A: She is inside the store, which is within ten yards, maybe
21 fifteen yards of where this individual was. By this time, I
22 believe that a Conway City officer had pulled out another
23 individual to do the same thing, just identify who they were.

24 Q: And do you remember which individual you were speaking
25 with?

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- 1 A: The -- I remember his first name started with a T and I
2 couldn't remember his last name. Maybe Tyreke or ---
- 3 Q: Okay. And why do you -- you said you did go in at one
4 point and speak with the clerk?
- 5 A: I went into -- inside the store and asked the clerk to
6 step out just to see if -- because the individual that I was
7 speaking with met all the descriptors of the possible suspect
8 and I asked the store clerk to step out to see if she would
9 recognize any of the people in the van.
- 10 Q: And did she do that?
- 11 A: Yes, she did.
- 12 Q: What happened next?
- 13 A: I walked out with her. She advised that the individual in
14 the red shirt that I was speaking to was the person that
15 committed the armed robbery. At that time, I detained that
16 individual in handcuffs.
- 17 Q: What did you -- after you did that, did you place him in
18 your car?
- 19 A: No, I -- at that time, he was still outside of the car.
20 He was just detained.
- 21 Q: Were you in charge of transporting him?
- 22 A: No, sir. The -- it being in Conway City's jurisdiction,
23 Conway City detectives were already on scene. I handed all
24 the information and all the information and the individuals
25 over to Conway City.

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1 Q: Do you know if at some point the van was searched?

2 A: Yes, sir. I know that the van was searched.

3 Q: Were you a part of that search?

4 A: No, I was not.

5 Q: Okay. If you had to place a time on it, I guess, if you
6 will, from the time the initial call came out when you said
7 you were down in Myrtle Beach and the time you conducted the
8 traffic stop on the taxi cab, about how long would you say
9 that was?

10 A: I would say in the ballpark about an hour and thirty
11 minutes.

12 Q: I have no further questions for you. Please answer any
13 questions Mr. Gardner has for you.

14 A: Absolutely.

15 CROSS EXAMINATION OF STEVEN DAILEY BY MR. GARDNER:

16 Q: Officer Dailey, you were in the Army? What branch?

17 A: I was in the Army, sir.

18 Q: What branch of the Army, what was your ---

19 A: 11 Bravo.

20 Q: Infantry?

21 A: Yes, sir.

22 Q: Excellent. When dispatch said that one of the men was
23 wearing a red shirt, did they say the other one was wearing a
24 blue or dark blue shirt?

25 A: They -- I don't recall, sir.

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STEVEN DAILEY - CROSS BY GARDNER

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1 Q: You don't recall?

2 A: Huh-uh (negative response).

3 Q: Is there anything that we can get to help you recall what
4 they said about it being a redshirt or a blue shirt?

5 A: I only recall the -- one of the individuals wearing a red
6 shirt, sir.

7 Q: Okay. I thought your testimony earlier was that dispatch
8 said that one man was wearing a red shirt and that's why you
9 pulled the cab over?

10 A: That's correct, sir.

11 Q: So, do you recall if dispatch said there was two men? I
12 mean, dispatch is pretty good, two men just robbed the place,
13 they're generally gonna say two men just robbed the place and
14 if they can describe those men, they're gonna do that; isn't
15 that right?

16 A: Absolutely.

17 Q: So, two men robbed this place and one is wearing a red
18 shirt and the other one is wearing a -- you don't remember?

19 A: I don't remember, sir.

20 Q: Is there anything that you've got that could refresh your
21 memory about that? Did you take some notes or ---

22 A: I wrote an informational report, sir.

23 Q: Okay.

24 A: But I don't believe I put the second suspect information
25 in the informational report.

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1 Q: All right. Well, I'm gonna come back in a little bit but
2 I want to skip right to that guy. That guy that you arrested,
3 that was Tyreke Phillips, right?
4 A: Okay.
5 Q: Is that right?
6 A: Say that again, sir.
7 Q: You ultimately arrested a fellow on location; is that
8 right?
9 A: I did not place any charges on the individual.
10 Q: Did you put handcuffs on somebody?
11 A: Yes, sir.
12 Q: Okay. He thought he was under arrest, I bet you. Don't
13 you think?
14 A: I advised him that he was being detained, sir.
15 Q: I'm not trying to trick you when I say you arrested a guy
16 there, you put handcuffs on a guy, right?
17 A: Yes, sir.
18 Q: Because you thought he robbed the place, right?
19 A: Yes, sir.
20 Q: And his name was Tyreke Phillips, right?
21 A: Yes, sir.
22 Q: Not Glover, right?
23 A: No, sir.
24 Q: Okay. And Tyreke Phillips had muddy shoes and wet jeans,
25 right?

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STEVEN DAILEY - CROSS BY GARDNER

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1 A: That's correct, sir.

2 Q: Okay. You said six people were in the van including the
3 driver; is that right?

4 A: Yes, sir.

5 Q: Do you remember who the other people were?

6 A: No, sir.

7 Q: Okay. Do you remember which fellow had the stud earring?

8 A: No, I don't, sir.

9 Q: Did you see Glover?

10 A: I -- if he was here today, I wouldn't be able to recognize
11 him, sir.

12 Q: You never had any contact with Glover?

13 A: No, sir.

14 Q: Okay. Thank you, sir.

15 REDIRECT EXAMINATION OF STEVEN DAILEY BY MR. TERRELL:

16 Q: Were you the primary responding officer in this case?

17 A: No, sir.

18 Q: Do you know who was?

19 MR. GARDNER: Your Honor, this is improper redirect. I
20 didn't ask him anything about who the primary was.

21 MR. TERRELL: It goes to his role that night which was

22 ---

23 THE COURT: All right. Ask him about his role then.

24 BY MR. TERRELL:

25 Q: All right. Were you the arresting officer?

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STEVEN DAILEY - REDIRECT BY TERRELL

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1 A: No, sir.

2 Q: All right. Why were you not the arresting officer?

3 A: It was Conway City's jurisdiction and Conway City's case.
4 I was merely there to assist them.

5 Q: Thank you. No further questions.

6 THE COURT: You may step down.

7 A: Thank you.

8 MS. RICHARDSON: We would ask that he be released from
9 his subpoena, Your Honor.

10 MR. GARDNER: I may call him in our case since he doesn't
11 have his notes.

12 MS. RICHARDSON: Your Honor, may we approach?

13 THE COURT: Sure.

14 (REPORTER'S NOTE: A bench conference was held off the record
15 in the presence of but out of hearing of the Jury.)

16 MS. RICHARDSON: Your Honor, this is moving along a lot
17 quicker than I anticipated. We had two witnesses today. We
18 will everybody else here tomorrow morning at 8:30.

19 THE COURT: Okay. We'll stop for the day then.

20 BY THE COURT:

21 THE COURT: Ladies and gentlemen, we'll start back at
22 9:30 in the morning. Okay? So, I don't mind you -- you can't
23 discuss this case, allow anyone to discuss it with you. You
24 can't read anything in the newspaper or on TV, you can't
25 Google anybody, don't do any research. I'll see you at 9:30

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BY THE COURT

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1 in the morning. And if you have an emergency, call us.

2 (REPORTER'S NOTE: Jury exits courtroom. 3:10 P.M.)

3 THE COURT: How you doing? The Bailiff instructed me
4 that you have some conflict for the rest of the week?

5 JUROR 265: I was unaware that vacation would be
6 considered dismissal but actually was supposed to leave this
7 morning for Daytona. Actually, it's not just personal, it's
8 business as well. I'm looking at purchasing another business
9 down in Florida.

10 THE COURT: Okay. I wish you had ---

11 JUROR 265: I can be here tomorrow.

12 THE COURT: Okay.

13 JUROR 265: It won't interfere that badly. So, I ---

14 THE COURT: If you could be here tomorrow, maybe we'll be
15 able to finish this case, but if I'd have known earlier, I
16 could've dealt with it but ---

17 JUROR 265: If I would've thought about it sooner, I
18 apologize about that but, yeah, I'll be here tomorrow.

19 THE COURT: Okay. That's good.

20 COURT REPORTER: Judge, I need his number.

21 THE COURT: Tell me your number. Or just tell me your
22 name.

23 JUROR 265: Jamie Orner, 265.

24 THE COURT: Thank you, sir.

25 JUROR 265: Thank you.

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BY THE COURT

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1 MS. RICHARDSON: Thank you, Your Honor.

2 THE COURT: Okay. And I'll see -- anything else y'all
3 need me to do before in the morning?

4 MS. RICHARDSON: No, sir. I apologize.

5 THE COURT: That's okay.

6 (RECESS - 3:12 P.M.)

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1 (OCTOBER 13, 2015 - 9:48 A.M.)

2 BY THE COURT:

3 THE COURT: Are you ready?

4 MS. RICHARDSON: Yes, sir.

5 THE COURT: Okay. Bring me the Jury.

6 (REPORTER'S NOTE: Jury enters courtroom. 9:49 A.M.)

7 THE COURT: Okay. You may call your next witness.

8 MS. RICHARDSON: Thank you, Your Honor. The State calls
9 Brooks Todd.

10 THE COURT: If you'd come around, please, sir, and place
11 your left hand on that Bible and raise your right.

12 DANIEL BROOKS TODD, HAVING BEEN DULY
13 SWORN, TESTIFIES AS FOLLOWS:

14 CLERK: If you'll speak into the microphone. State your
15 full name and spell your last name.

16 MR. TODD: My name is Daniel Brooks Todd, T-O-D-D.

17 DIRECT EXAMINATION OF DANIEL BROOKS TODD BY MS. RICHARDSON:

18 Q: Okay. You're a little soft-spoken, so speak up for me,
19 okay? I'm gonna try to stay back here so it'll force you to
20 speak louder.

21 A: Daniel Brooks Todd.

22 Q: Okay. Mr. Todd, are you from around here?

23 A: Yes, ma'am.

24 Q: Where are you from?

25 A: Born and raised in Conway.

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DANIEL BROOKS TODD - DIRECT BY RICHARDSON

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- 1 Q: Okay. Were you in Conway on New Years of this year, 2015?
- 2 A: Yes, ma'am.
- 3 Q: Okay. What were you doing that night?
- 4 A: I was out with some friends. We'd got together. I ain't
- 5 seen them in a while, since we graduated from high school.
- 6 Q: Speak up for me a little bit. You can come closer to that
- 7 mic if you need to. Okay? I just want to make sure everybody
- 8 hears you.
- 9 A: I was out with some friends, just riding around.
- 10 Q: At approximately -- well, did you make a stop at the
- 11 Scotchman on 501?
- 12 A: Yes, ma'am.
- 13 Q: Okay. What time of day was that?
- 14 A: I'm not so sure. It was late at night.
- 15 Q: It was late at night?
- 16 A: Yes, ma'am.
- 17 Q: Okay. What happened when you arrived at that Scotchman?
- 18 A: I pulled into the gas station and I was getting ready to
- 19 pump gas and I seen two males running out of the gas station.
- 20 And I looked over and I seen the gas station clerk, looked
- 21 like she was trying to scream and she was waiving her hands
- 22 around. So, I walked to the gas station and she asked me to
- 23 call 911. And so I walked back to my truck because I forgot
- 24 my phone in there and I went back and called 911 and handed
- 25 the phone off to her.

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1 MS. RICHARDSON: Your Honor, may I approach the witness?

2 THE COURT: Yes.

3 BY MS. RICHARDSON:

4 Q: I'm just gonna move this a little closer to you. I'm
5 sorry. This courtroom, it just doesn't pick up well. Okay.
6 I know you feel like you're right up on it but it's okay.

7 All right. What kind of vehicle do you drive?

8 A: At that time I was driving a 2009 white GMC Sierra.

9 Q: Okay. Now, you pull up to the Scotchman, what direction
10 were you coming from?

11 A: Walmart, if I'm not mistaken.

12 Q: All right. So, and I'm sorry, I'm not good with north,
13 east, south or west. So, you're headed towards Aynor?

14 A: Yes, ma'am.

15 Q: Okay. Leaving Conway from Walmart?

16 A: Yes, ma'am.

17 Q: So you -- that would mean you turned right into the gas
18 station?

19 A: Yes, ma'am.

20 Q: Okay. When you pull up, what direction is your vehicle
21 facing?

22 A: I was facing towards the gas station.

23 Q: You said you saw two gentlemen run out of the store?

24 A: Yes, ma'am.

25 Q: What did they look like?

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- 1 A: Kind of tall, a little bit taller than I am. One had --
2 the one that was closest to me had a hood on, if I'm not
3 mistaken at the time it seemed like. And I couldn't really
4 see the other one.
- 5 Q: Do you recall what they were wearing?
- 6 A: Blue jeans, black jackets, it looked like.
- 7 Q: Okay. What direction did they head?
- 8 A: They went right around the gas station.
- 9 Q: Okay. So, if you're looking at the gas station, they went
10 to your right?
- 11 A: Yes, ma'am.
- 12 Q: Okay. And what did you do after you saw them leave?
- 13 A: That's when I looked in the gas station and I seen the
14 clerk.
- 15 Q: And what did you think had happened?
- 16 A: I wasn't too sure at the time, I didn't know. Honestly, I
17 didn't know what to think.
- 18 Q: Were they carrying anything?
- 19 A: The one that was closest to me did look like he had
20 something in his hands.
- 21 Q: Could you tell what that was?
- 22 A: No, ma'am.
- 23 Q: So, you said you actually went inside the store?
- 24 A: Yes, ma'am.
- 25 Q: And what did you do at that point?

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- 1 A: I didn't stay in there long. That's when she asked me to
2 call 911.
- 3 Q: Did you do that?
- 4 A: Yes, ma'am.
- 5 Q: Did you secure the store in any kind of way?
- 6 A: Whenever I went back to hand her the phone, she'd done
7 walked back outside. When I first walked in, if I'm not
8 mistaken, I think she locked the door and then that's whenever
9 we walked back outside. And by that time, another boy came up
10 to the store and he rode around back and after that, that's
11 when the officers pulled up there within a few seconds.
- 12 Q: How long do you think it was that you were there before
13 law enforcement arrived?
- 14 A: Maybe ten, twenty seconds at the most.
- 15 Q: So, within a minute, law enforcement was there?
- 16 A: Yes, ma'am.
- 17 Q: Okay. And just -- did you walk around back or try to do
18 your own investigation or anything?
- 19 A: I just walked right there to the corner of the store.
- 20 Q: And were you able to see anybody?
- 21 A: No, ma'am.
- 22 Q: So, I just want to be clear, all you saw were two people?
- 23 A: Two people.
- 24 Q: You never saw two other individuals?
- 25 A: No, ma'am.

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DANIEL BROOKS TODD - CROSS BY GARDNER

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1 Q: Could you tell what race they were?

2 A: No, ma'am.

3 Q: Okay. Were your shoes muddy that night?

4 A: I don't remember them being muddy.

5 Q: Okay.

6 A: I'm pretty sure they were, though.

7 Q: Okay. That's cemented right there, right?

8 A: Yes, ma'am.

9 MS. RICHARDSON: That's all from the State, Your Honor.

10 THE COURT: Okay.

11 CROSS EXAMINATION OF DANIEL BROOKS TODD BY MR. GARDNER:

12 Q: Mr. Todd, could you tell if the two boys, one had a red
13 shirt, sweatshirt or hoodie?

14 A: I looked like the one that was closest to the store
15 might've had a red shirt on.

16 Q: And the other one had a dark blue or black sweatshirt or
17 hoodie?

18 A: Yes, sir. It looked like maybe a navy blue -- like a dark
19 navy blue or maybe black.

20 Q: All right. Thank you, sir.

21 MS. RICHARDSON: Nothing on those questions, Your Honor.
22 We would ask that he be excused.

23 MR. GARDNER: No objection, Your Honor.

24 THE COURT: Okay. Thank you.

25 MR. TERRELL: The State calls Richard Edwards.

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JAMES RICHARD EDWARDS - DIRECT BY TERRELL

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1 CLERK: Sir, please raise your right hand and place your
2 left hand on the Bible.

3 JAMES RICHARD EDWARDS, HAVING BEEN
4 DULY SWORN, TESTIFIES AS FOLLOWS:

5 CLERK: Please be seated. State your full name and spell
6 your last name.

7 MR. EDWARDS: Officer James Richard Edwards, last name is
8 E-D-W-A-R-D-S.

9 DIRECT EXAMINATION OF JAMES RICHARD EDWARDS BY MR. TERRELL:

10 Q: Could I have you scoot a little closer to the microphone.

11 A: Sure.

12 Q: Officer Edwards, where are you employed?

13 A: Conway City Police Department.

14 Q: What's your job title there?

15 A: Patrol officer.

16 Q: How long have you been employed in that position?

17 A: Two years.

18 Q: Two years. What about before then, what did you do?

19 A: DOT.

20 Q: Were you employed in your present capacity on January the
21 2nd of this year?

22 A: Yes.

23 Q: Do you remember if you were working that morning?

24 A: Yes.

25 Q: What are your job duties with patrol?

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- 1 A: Just any patrol duty, anything in the City of Conway as
2 far as, you know, calls for service.
- 3 Q: Do you remember a call that came out that night for an
4 armed robbery to the Scotchman on 501 and Four Mile?
- 5 A: Yes, sir.
- 6 Q: Do you remember about what time that came out?
- 7 A: I'm thinking around 1:30, maybe, around in that area.
- 8 Q: What did -- where were you when you got that call?
- 9 A: Right at 16th and Church, around by Coastal Mall.
- 10 Q: Did you respond immediately to the gas station?
- 11 A: Oh, yes, sir.
- 12 Q: How long about did it take you to get there?
- 13 A: Just a few minutes, I mean, couple of minutes.
- 14 Q: When you arrived on scene were any other officers there?
- 15 A: Everybody was kinda, you know, merging in together because
16 there was a couple of officers with me responding.
- 17 Q: Who was with you?
- 18 A: Detective Rhodes was right there in the same area with me.
19 So, I mean, I could see different cars on the way.
- 20 Q: When you pull up, not in law enforcement, do you see?
- 21 A: I got the two gentlemen standing by the door and the
22 female at the door.
- 23 Q: What do you do when you arrive?
- 24 A: I get out, walk up and start talking with the three that
25 was standing there.

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JAMES RICHARD EDWARDS - DIRECT BY TERRELL

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1 Q: They were all standing there together?

2 A: Well, yeah, two was to my right and the female was up and
3 to my left towards the door.

4 Q: Do you remember who the female was?

5 A: She was an employee there. I couldn't tell you her name.

6 Q: Did you start having a conversation with them?

7 A: Yes.

8 Q: What was that conversation about?

9 A: About what had happened. It was about the descriptions of
10 -- they had said they had been robbed and they starting giving
11 me descriptions.

12 Q: Who informed you they had been robbed?

13 A: Well, when the witness came out -- the witness, the male
14 subject was to my right. The Complainant come out and said
15 that they -- she had just been robbed. At that time, both of
16 them were trying to describe where they had went and what they
17 were wearing.

18 Q: So, they were both trying to describe it to you kind of at
19 the same time?

20 A: Yeah, you kinda getting it from both sides, but I mean,
21 you're trying to make it out cause you could tell it was kind
22 of a shaky situation.

23 Q: What was the result of that description? What description
24 did you wind up with?

25 A: From the two I got a description of two black males. One

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1 wearing a red hoodie, one wearing a black hoodie or a darker
2 blue hoodie.

3 Q: Were you ever told what had transpired inside the store?

4 A: Not at the time. At that time, I was given the
5 description. They had stated that they had made their way
6 around the side of the store.

7 Q: Which side of the store?

8 A: It would be the side towards Conway, like if you came --
9 if you were walking out of the door, it would be to your left.
10 Where I was facing, it would've been to your right.

11 Q: And so if you're facing the store, it's around to the
12 right?

13 A: Yes, sir. It would've been to the right.

14 Q: And so when they were running out, they would've turned to
15 the left?

16 A: Yes, sir.

17 Q: Same way? Okay. What did you do with the description you
18 were given?

19 A: When I was told they went around the store, I kinda went
20 to that area because I weren't sure how long my timeframe was
21 and at that time I relayed that over dispatch radio for the
22 other units that were arriving that that was the description
23 we had.

24 Q: So, you did walk around the side?

25 A: I kinda walked to that area but then I actually made my

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JAMES RICHARD EDWARDS - DIRECT BY TERRELL

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1 way back.

2 Q: Did you see anything when you walked over there?

3 A: As I was walking off, there was a item laying on the
4 ground. I weren't sure what it was but I made my way and then
5 I came -- when I came back you could see some footprints
6 around back but I couldn't tell, you know, who the footprints
7 were.

8 Q: Describe the item you remember seeing laying on the
9 ground.

10 A: It was a like a black clothing item or cloth item just
11 laying there.

12 Q: Did you pick it up?

13 A: No, sir.

14 Q: What did you do with it?

15 A: I just left it.

16 Q: Once you come around back to the front, what do you start
17 doing?

18 A: I make contact with my witness and start getting
19 statements and get them to write down what they had seen.

20 Q: When you get there, how was -- you called her the
21 Complainant, the lady, how was she acting?

22 A: She was nervous.

23 Q: How so? What was she doing?

24 A: Just -- you could tell she was -- her nervous reaction,
25 emotional. To be honest with you, I was thinking she wanted a

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JAMES RICHARD EDWARDS - DIRECT BY TERRELL

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1 cigarette real bad.

2 Q: What about the two males that you were speaking with. Did
3 they have any kind of demeanor that stuck out to you?

4 A: Nah, they were, I mean, calm. One was giving -- I mean,
5 he was actually giving real good accounts of what he had seen
6 when we was pulling up.

7 Q: Did you ask him to give a witness statement?

8 A: Yes, sir.

9 Q: What about the lady, did you ask her to give a witness
10 statement?

11 A: Yes, sir.

12 Q: And those were both written statements?

13 A: Yes, sir.

14 Q: All right. Were they filling them out in front of you?

15 A: They started to fill them out and as they were filling
16 them out, you know, I was doing other things, trying to help
17 assist with anything. They were in the process of filling
18 them out. I mean, I weren't standing right there.

19 Q: What were your duties while you there?

20 A: At that time, as, you know, all the other units responded,
21 my duty was to make sure that nothing -- nobody went in or out
22 of the store. I stayed there with the witness, got his
23 statement and just kinda made sure everybody stayed back from
24 the area.

25 Q: Did anybody else show up? Non law enforcement?

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1 A: A couple of people pulled up trying to get gas but, you
2 know, we just advised them that, you know, the store was
3 closed.

4 Q: Law enforcement pulled up, about how many law enforcement
5 officers?

6 A: A lot.

7 Q: What agencies were there?

8 A: There was our agency and Horry County.

9 Q: If you had to take a ballpark guess at how many officers
10 were there that night?

11 A: I would say I knew at least ten to twelve cars and usually
12 one person in a car, so...

13 Q: Were you on scene when the traffic stop was initiated?

14 A: Yes, sir.

15 Q: Were you involved in that at all?

16 A: I was backup for the contact officers.

17 Q: So, kind of walk me through when you see the taxi get
18 pulled over. What happens?

19 A: I'm standing over to the side. The traffic stop comes
20 over the radio. It's actually coming up from the location
21 from behind the store. You can see up Four Mile Road and you
22 can see the blue lights coming. The cab actually pulls into
23 where we are and that puts the cab and me at the back driver's
24 side.

25 Q: About how long had you been on scene when that stop was

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- 1 occurring?
- 2 A: Maybe thirty, thirty, forty-five -- I'm not really aware
3 of the actual time of it.
- 4 Q: But you'd guess about thirty or forty-five minutes?
- 5 A: Could be, yes.
- 6 Q: And what was your job in relation to that traffic stop?
- 7 A: Just cover while the contact officer made contact from the
8 passenger side.
- 9 Q: And when you say cover, what do you mean?
- 10 A: Just keeping everybody inside the cab, making sure that
11 nobody is moving around or anything is, you know, just keeping
12 everybody around the area safe, making sure that they're --
13 where their hands are and just making -- just covering for
14 them to make contact.
- 15 Q: So, you were able to see inside the taxi from where you
16 were?
- 17 A: I could see inside the -- like I said it's a van, so I
18 could see inside the back, where the backseat was and the back
19 of the passengers in the front.
- 20 Q: Okay. So, could you see the occupants of the vehicle?
- 21 A: Pretty much.
- 22 Q: Do you recall how many people were inside the vehicle?
- 23 A: There was the driver of the taxi and four other
24 passengers.
- 25 Q: You're sure about that, there were four others?

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JAMES RICHARD EDWARDS - DIRECT BY TERRELL

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- 1 A: Yes, sir.
- 2 Q: Do you remember where they were sitting?
- 3 A: Not by name.
- 4 Q: I'm not asking you by name. What seats they were in.
- 5 A: One was in the passenger seat beside the driver, there was
- 6 two directly behind the passenger and the driver and then one
- 7 in the back on the bench seat in the back.
- 8 Q: Do you remember -- did you ever have contact with any of
- 9 the -- with any of those four occupants?
- 10 A: Once everybody was being removed from the cab, yes, sir.
- 11 Q: Do you remember who?
- 12 A: At first, I made contact with the one that was directly
- 13 behind the driver.
- 14 Q: Okay.
- 15 A: He was asked to step out and then the rest exited and at
- 16 that time I just pulled one over -- got him over to one of the
- 17 patrol cars and just had him to standby.
- 18 Q: Do you remember anything about what any of the people in
- 19 the van were wearing other than the driver?
- 20 A: The one in the back had just -- the one in the rear seat,
- 21 I could tell he just had a like a white t-shirt.
- 22 Q: Do you recall anything about any of the others, what they
- 23 were wearing?
- 24 A: Not, you know, nothing -- nothing that stood out except,
- 25 you know, like I said, the front passenger was wearing a red

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JAMES RICHARD EDWARDS - DIRECT BY TERRELL

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- 1 hoodie.
- 2 Q: Did you ever search the van ---
- 3 A: No, sir.
- 4 Q: --- inside the van and any of the belongings? You don't
- 5 know what was in there?
- 6 A: I never made contact inside the van.
- 7 Q: Okay. All right. Were you responsible for transporting
- 8 any of the people who were eventually arrested -- let me ask
- 9 you this, did you arrest any of the individuals?
- 10 A: I never placed anyone under arrest. I was just a
- 11 transporter.
- 12 Q: So, you did transport one of them?
- 13 A: Yes, sir.
- 14 Q: Do you remember which one you transported?
- 15 A: Mr. Glover.
- 16 Q: Do you remember where -- about how long after he was
- 17 pulled over was he arrested; do you remember?
- 18 A: Not actual minute time, I'm not sure, but when he was
- 19 advised -- I know once we took photos, some photos, we -- I
- 20 transported him -- escorted him to my car, put him in the
- 21 back. One of the detectives came over and talked with him,
- 22 read him his rights and talked with him again and advised him
- 23 he was under arrest. I didn't -- I don't know if he was
- 24 advised prior.
- 25 Q: All right. Did you -- you said pictures, did you

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1 personally take any pictures?

2 A: No, sir. That was our crime scene.

3 Q: So, correct me if I'm wrong, in essence, your job once you
4 got there was just to lock -- basically lock down the store,
5 keep people from going in and out?

6 A: Yes, sir, just to pretty much secure the scene.

7 Q: And -- just a second. Did you remember by any chance
8 about what time you got to J. Reuben Long with the individual
9 you were transporting?

10 A: I think it was around two hours after arriving. It took a
11 while to get everything organized.

12 Q: All right. So, that would put you at about maybe 3:00 ---

13 A: 3:00, 3:30 or so.

14 Q: I don't have any other questions at this time. Please
15 answer any questions Mr. Gardner has.

16 CROSS EXAMINATION OF JAMES RICHARD EDWARDS BY MR. GARDNER:

17 Q: Thank you. Officer Edwards, you say the front passenger
18 is the fellow wearing the red -- excuse me, red hoodie; is
19 that right?

20 A: Beside the driver, yes, sir.

21 Q: Beside the driver.

22 A: Yes, sir.

23 Q: Driver, red hoodie. Do you recall that fellow's name?

24 A: No, sir.

25 Q: It wasn't Glover?

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- 1 A: No, sir.
- 2 Q: What was Glover wearing?
- 3 A: A white t-shirt.
- 4 Q: A white t-shirt, okay. And he was in the back?
- 5 A: Yes, sir.
- 6 Q: All right. And when you talked to the witnesses, the two
- 7 boys that went into the store and robbed, one was wearing a
- 8 red hoodie, that would be probably the guy that's in the front
- 9 of the ---
- 10 A: That was the -- that was the description given to me.
- 11 Q: Okay. And the other one was wearing a navy blue or dark
- 12 blue or black hoodie?
- 13 A: That's what I was given.
- 14 Q: Okay. And did you happen to take a look at Glover's feet?
- 15 They weren't muddy, were they?
- 16 A: Glover's feet, I -- whether they were muddy, I -- right
- 17 now, I'm unsure because, I mean, I escorted him to the car.
- 18 Like I say, I know he was wearing a white t-shirt. I know,
- 19 when one of the doors -- the passenger behind the driver, he
- 20 had mud on his shoes but Glover, I'm kinda vague on whether he
- 21 had mud on his shoes.
- 22 Q: All right. Did you see one of the officers take the
- 23 fellow in the red shirt over to the lady, the clerk of the
- 24 store and ask her if this was the guy?
- 25 A: No, sir.

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1 Q: Did you see anybody take any of the other fellows over to
2 the witness?

3 A: No, sir.

4 Q: All right. Did you hear about that happening?

5 A: No, sir.

6 Q: Okay. All right. So, you weren't involved in that part?

7 A: I was -- I was in -- they were making contact from the
8 passenger side, I was at the back of the other side. What
9 they were doing with the occupants, I'm unaware.

10 Q: Steven Dailey -- you know who that is? That's a ---

11 A: That was the officer that initiated the traffic stop, from
12 my understanding.

13 Q: And so you didn't get to see him take one of the boys over
14 to the witness?

15 A: No, sir.

16 Q: Okay. All right. And Glover did not have a stud earring,
17 did he?

18 A: When he was in my car, he did have an earring in his left
19 ear.

20 Q: It was a hoop, though, not a stud?

21 A: I -- it was a earring. I'm aware of the earring.

22 Q: But you couldn't say it was a stud?

23 A: I'm not gonna say.

24 Q: Okay. Good. Thank you, sir.

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

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1 THE COURT: Okay.

2 MR. TERRELL: We'd ask that he be excused from his
3 subpoena.

4 MR. GARDNER: No objection.

5 THE COURT: Okay. Thank you.

6 A: Thank you.

7 MS. RICHARDSON: The State would call Matt Stephenson

8 CLERK: Sir, please raise your right hand and place your
9 left hand on the Bible.

10 MATTHEW STEPHENSON, HAVING BEEN DULY
11 SWORN, TESTIFIES AS FOLLOWS:

12 CLERK: Please be seated. Speak into the microphone.
13 State your full name and spell your last name.

14 MR. STEPHENSON: Matthew Stephenson, S-T-E-P-H-E-N-S-O-N.

15 DIRECT EXAMINATION OF MATTHEW STEPHENSON BY MS. RICHARDSON:

16 Q: Officer Stephenson, how are you?

17 A: Good.

18 Q: Where are you employed?

19 A: Horry County Police Department.

20 Q: How long have you been employed there?

21 A: Approximately nine years.

22 Q: What are your duties with Horry County?

23 A: I'm assigned to our Street Crimes Unit that assists
24 Narcotics.

25 Q: And is that what you were doing in January of this year?

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1 A: Yes, ma'am.

2 Q: Did you have occasion to respond to the Scotchman as it
3 related to an armed robbery on 501?

4 A: I did.

5 Q: Do you remember what day that was?

6 A: I don't remember exactly what the day was, I think it was
7 the 3rd of January.

8 Q: Was it the beginning of the year?

9 A: Yes, ma'am.

10 Q: Okay. And I just want to make sure we're talking about
11 the same incident. Where -- what Scotchman are you referring
12 to?

13 A: The one at 501 and Four Mile Road.

14 Q: Okay. What were your duties as it relates to that armed
15 robbery?

16 A: I was there to -- we were called upon to assist Conway
17 City in trying to locate the suspects that had just recently
18 robbed a convenience store.

19 Q: Is that something that commonly happens?

20 A: Yes, ma'am. We're requested quite a bit to assist other
21 agencies.

22 Q: Okay. So, what were your duties as assisting?

23 A: Just to saturate the area and just try to find anything
24 that looks suspicious in the area that might've matched a
25 description that we were given while we were responding to the

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1 scene.

2 Q: And I'm sorry, what does it mean to saturate the area?

3 A: Just ride the roads, look for anything that stands out,
4 looks out of place. Anybody that's walking up and down the
5 roads in an area, just stop and identify them, things like
6 that.

7 Q: Were you notified as soon as the call came out? How do
8 you get notified when something that happens in Conway City?

9 A: We were actually working another incident that happened at
10 62nd Avenue, which was an armed robbery and we were notified
11 of the armed robbery at Four Mile Road over our dispatch
12 channel and at that point we responded to assist Conway City.

13 Q: Okay. I'm gonna show you -- well, do you work with
14 Officer Dailey?

15 A: I do.

16 Q: Are you guys assigned to the same task force?

17 A: Yes, ma'am.

18 Q: Do you recall seeing a taxi cab on Four Mile Road that
19 night?

20 A: I do.

21 Q: Okay. Did you see which way it was coming from?

22 A: It was coming from the area of near the Horry County
23 School building.

24 Q: Okay. I'm gonna show you what's been marked as State's
25 Exhibit One. All right. This being Four Mile Road and that

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1 being 501 and here's the gas station, just to kind of orient
2 you with it.
3 A: Yes, ma'am.
4 Q: Where were you when you saw the taxi cab?
5 A: Myself and Officer Dailey were actually at the
6 intersection of Old Dunn Lane and Four Mile Road.
7 Q: And where did you first see that taxi cab?
8 A: When it passed by us going towards 501.
9 Q: Okay. So, you didn't see it when it was back here?
10 A: No, ma'am.
11 Q: Did you see it turn onto the road?
12 A: I did not.
13 Q: Okay. And what stood out about that taxi cab?
14 A: When the taxi cab passed us, I was -- we were sitting
15 window to window, I was actually facing down Old Dunn Road and
16 Officer Dailey was facing Four Mile Road right there at the
17 intersection. When the taxi cab actually passed us, I
18 observed the cab, but Officer Dailey said that -- he
19 immediately said, there's a black male in the front passenger
20 seat wearing a red sweatshirt which was a description we were
21 given of one of the suspects.
22 Q: Do you recall the other description that was given out?
23 Was one description given out on dispatch or two?
24 A: We had two given out. We had two black males, one was
25 wearing a red hoodie sweatshirt and the other was wearing a

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- 1 dark color, possibly black or blue.
- 2 Q: Okay. Did you initiate a traffic stop on that vehicle?
- 3 A: I did not. I assisted Officer Dailey. He was the primary
- 4 officer that stopped the vehicle.
- 5 Q: Okay. So, what did you do?
- 6 A: I was more or less the support, backup officer. I
- 7 approached the passenger side, once we got the vehicle stopped
- 8 in the parking lot. And I was standing there just watching
- 9 the subjects inside the vehicle to make sure that while
- 10 Officer Dailey was speaking with the driver that they weren't
- 11 trying to do anything to harm us or anything like that.
- 12 Q: And what were the subjects doing?
- 13 A: They were -- from what I could observe, they were
- 14 extremely nervous, they kept asking what they were being
- 15 stopped for. They just kept repetitively asking questions of
- 16 what did they do, that they didn't do anything, why are we
- 17 being stopped, things of that nature.
- 18 Q: And were you responding to those questions?
- 19 A: I was. I just -- I advised them that we were working an
- 20 active investigation and we would let them know as soon as we
- 21 sorted things out.
- 22 Q: Now, were you involved in removing any of the subjects
- 23 from the vehicle?
- 24 A: Not that I recall.
- 25 Q: What were you able to observe inside the vehicle?

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1 A: I -- when Officer Dailey asked the front passenger, which
2 had on the red sweatshirt, to step out of the vehicle, when he
3 stepped out of the vehicle, I actually observed the -- the
4 description of the cell phone that we were given that was
5 taken from the victim, I observed a phone matching that
6 description laying in the front floorboard of the vehicle.

7 Q: And what was that description?

8 A: It was a black color cell phone with a purple case.

9 Q: Okay. And you observed that cell phone?

10 A: Yes, ma'am.

11 Q: The taxi cab driver, what was his demeanor?

12 A: He was a little nervous. He didn't really know what was
13 going on. I think he -- he let us know that he kind of knew
14 what was going on just based on all the commotion at the store
15 and the fact that they were being stopped right there. I
16 think he kind of knew what was going on but ---

17 MR. GARDNER: I have to object to that, Judge, I don't
18 know if he can know what somebody -- what's going on in
19 somebody's mind.

20 THE COURT: I'll sustain the objection.

21 BY MS. RICHARDSON:

22 Q: Was he helpful in your investigation?

23 A: Yes, ma'am. He was cooperative.

24 Q: He was cooperative?

25 A: Yes.

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1 Q: Were you ever -- were you a part of the search of that
2 vehicle?

3 A: I was.

4 Q: Okay. Tell me what you found inside that vehicle.

5 A: I searched the front passenger area. And as soon as I --
6 the first place I looked was under the passenger side seat and
7 there I observed a black-in-color handgun up under the seat in
8 close proximity to the victim's cell phone.

9 Q: Were the subjects inside the vehicle or outside of the
10 vehicle when you observed them?

11 A: At that point, the three rear passengers were still in the
12 vehicle.

13 Q: Okay. So, what happens next?

14 A: At that point, I advised the other officers that there was
15 a gun in the vehicle. And at that time, one of the -- the
16 passenger that was sitting on the driver side, it was -- the
17 cab actually both side doors opened, he was -- they were all
18 -- all three were removed out of the driver-side door of the
19 cab. I can't -- I don't recall which officer detained who but
20 at that point, after the gun was found, all of the subjects
21 were asked -- removed from the vehicle and detained.

22 Q: Did you continue with the search of that vehicle?

23 A: I did.

24 Q: What else was found in the vehicle?

25 A: A black-in-color hoodie sweatshirt was observed between

1 the -- the two center passenger seats were captain's chairs
2 and there was a dark-colored hoodie sweatshirt laying between
3 those and also in the very back passenger seat, which was a
4 bench seat, there was a white plastic bag that contained
5 cigars and another handgun.

6 Q: I'm gonna show you some pictures and see if you can
7 identify them, please. I'm gonna show you what's been marked
8 as State's Exhibit Eleven. Can you identify that for me?

9 A: Yes, ma'am. That's the handgun that was found under the
10 front passenger seat.

11 Q: Okay. And that's what you observed on that night?

12 A: Yes, ma'am.

13 Q: Okay. Changed or altered in any kind of way?

14 A: No, ma'am.

15 MS. RICHARDSON: State would request to admit State's
16 Exhibit Eleven into evidence.

17 MR. GARDNER: No objection.

18 THE COURT: So, Eleven is in without objection.

19 STATE'S EXHIBIT NUMBER ELEVEN

20 ADMITTED INTO EVIDENCE

21 BY MS. RICHARDSON:

22 Q: I'm going to show you what's been marked as State's
23 Exhibit Ten. Can you identify that for me?

24 A: Yes, ma'am. The purple phone case in the passenger seat
25 was what I observed in the vehicle and was given as the

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1 description of the victim's phone.

2 Q: And is that where you observed it?

3 A: No, ma'am. It was in the floorboard when I observed it.

4 Q: When you initially -- so, it had been moved?

5 A: Yes, ma'am.

6 Q: But that is the taxi?

7 A: Yes, ma'am, that is the taxi.

8 Q: Okay. All right.

9 MS. RICHARDSON: State would request to admit State's
10 Exhibit Ten?

11 THE COURT: Any objection?

12 MR. GARDNER: No, sir.

13 THE COURT: It's in without objection.

14 STATE'S EXHIBIT NUMBER TEN

15 ADMITTED INTO EVIDENCE

16 BY MS. RICHARDSON:

17 Q: I'm going to show you what's been marked as State's
18 Exhibit Thirteen. Can you identify that for me?

19 A: Yes, ma'am. That's the cell phone I observed in the
20 floorboard.

21 Q: Okay. And is that how it appeared that night?

22 A: Yes, ma'am. From what I can recall.

23 Q: Okay. Now, do you know whose cell phone that is?

24 A: I do not.

25 Q: Okay. But that's what you observed on that night?

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1 A: Yes, ma'am.

2 Q: And that's where it was located from what you can recall?

3 A: Yes, ma'am.

4 MS. RICHARDSON: The State would request to admit State's
5 Exhibit Thirteen into evidence.

6 MR. GARDNER: No objection.

7 THE COURT: Without objection.

8 STATE'S EXHIBIT NUMBER THIRTEEN

9 ADMITTED INTO EVIDENCE

10 BY MS. RICHARDSON:

11 Q: I'm going to show you what's been marked as State's
12 Exhibit Twelve. What is that?

13 A: Black glove and two separate cell phones.

14 Q: Was that located inside the vehicle to your memory?

15 A: I don't recall whether it was in the vehicle or not.

16 Q: Okay. I guess before I ask you what it is, tell me if you
17 can identify it, yes or no.

18 A: Yes, ma'am.

19 Q: Okay. What is that?

20 A: That is a black ski mask and a purple cell phone case.

21 Q: Okay. And was that located inside that vehicle?

22 A: Yes, ma'am.

23 Q: Do you recall seeing those items inside the vehicle?

24 A: I do recall seeing those items.

25 Q: And where were they inside the vehicle?

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1 A: Again, the, the mask was, I believe was -- I'm gonna say
2 it was under the seat but I can't say for sure

3 Q: Okay. What about the purple cell phone case?

4 A: The purple cell phone case, from what I remember was in
5 the floorboard.

6 Q: Okay.. So, those items had been moved at that point in
7 time?

8 A: Yes, ma'am. As far as I can tell, yes, ma'am.

9 Q: But is that the items that were found inside that vehicle?

10 A: Yes, ma'am.

11 Q: Okay.

12 MS. RICHARDSON: State would request to admit State's
13 Exhibit Fourteen.

14 MR. GARDNER: I think I have an objection. If it's been
15 moved, I don't think it's a fair and accurate depiction of the
16 item as it was ---

17 THE COURT: My understanding from his testimony, that is
18 the same phone and ski mask he saw in the floor, but at the
19 time the photo was taken, those items had been moved to the
20 seat. So, the authenticity of the phone and the ski mask, I
21 think he's testified to. The fact that when he saw it it was
22 on the floor and it's now in the seat ---

23 MR. GARDNER: Can I add ---

24 THE COURT: Go ahead.

25 MR. GARDNER: Can I ask if it's yes, then who moved it?

1 That might clear it up for us.

2 THE COURT: Okay. I don't know that he knows that but
3 you can ask him that.

4 MS. RICHARDSON: I don't know if he knows that either.

5 BY MS. RICHARDSON:

6 Q: Do you know who moved it?

7 A: I don't know.

8 Q: Did you move it?

9 A: Not that I recall.

10 Q: Were there other officers that there?

11 A: There were.

12 Q: Who was searching the vehicle with you?

13 A: As far as I can remember, there were possibly three other
14 officers. I know the County Patrol Sergeant, Sergeant Ashley
15 Hardee was assisting with the search. And I believe there was
16 a couple of Conway City officers but I don't recall who they
17 were.

18 Q: Okay.

19 THE COURT: I find that he's authenticated the items.
20 And the fact that they were moved prior to the photo,
21 obviously the Jury can determine what weight they want to give
22 that but he's identified those items as the one that he saw at
23 the scene that night. So, he's authenticated those. And then
24 the photographs of those are fair and accurate. It's just the
25 location may be different and the Jury is apprised of that, so

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1 I'll allow it.

2 MS. RICHARDSON: Thank you, Your Honor.

3 MR. GARDNER: Thank you, Judge.

4 STATE'S EXHIBIT FOURTEEN

5 ADMITTED INTO EVIDENCE

6 BY MS. RICHARDSON:

7 Q: I'm going to show you -- tell me if you can identify it
8 first, yes or no?

9 A: Yes, ma'am.

10 Q: Okay. What is that?

11 A: That is the black-in-color hoodie that was found and also
12 the white bag that was found in the rear passenger seat and
13 that's inside the cab also.

14 Q: And I'm sorry, I'm referring to what's been marked as
15 State's Exhibit Sixteen. And is that the way you recall it
16 from that night?

17 A: Yes, ma'am.

18 MS. RICHARDSON: State would request to admit State's
19 Exhibit Sixteen into evidence.

20 THE COURT: Any objection?

21 MR. GARDNER: No objection, Your Honor.

22 THE COURT: Okay. It's in without objection.

23 STATE'S EXHIBIT NUMBER SIXTEEN

24 ADMITTED INTO EVIDENCE.

25 BY MS. RICHARDSON:

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1 Q: And in that picture, can you tell me what's in that bag?

2 A: Yes, ma'am, that is actually a box of Dutch Master cigars
3 that also were given as a description of items that were taken
4 from the store.

5 Q: Okay. I'm gonna show you what we've already entered into
6 evidence, State's Exhibit Number Eleven. You said that's the
7 gun. What else do you see in that picture?

8 A: A red hoodie, what appears to be a red sweatshirt.

9 Q: And do you recall finding a red sweatshirt inside of that
10 taxi cab?

11 A: Yes. There was a -- the red sweatshirt was actually
12 behind the front seat, the front passenger seats.

13 Q: Do you recall on the driver side or passenger side?

14 A: It was kind of in the middle between the back seats -- it
15 was -- it was kind of in the floorboard behind the front seats
16 but it was kinda in the middle of the two captain's chairs in
17 the middle.

18 Q: So, from your recollection, you found a gun under the
19 passenger seat?

20 A: Yes, ma'am.

21 Q: A red sweatshirt in between the two captain's chairs.

22 A: Yes, ma'am.

23 Q: In the middle section?

24 A: Yes, ma'am.

25 Q: And then the bag with the cigarillos in the back?

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- 1 A: Yes, ma'am.
- 2 Q: Okay. And then you had the purple cell phone cover?
- 3 A: Yes, ma'am.
- 4 Q: In the floorboard where?
- 5 A: In front of the front passenger seat.
- 6 Q: Okay. Anything else that you can remember that was found
- 7 inside that vehicle?
- 8 A: No, ma'am. Other than the fact that there was another
- 9 handgun in the back, in the very back seat.
- 10 Q: In the very back?
- 11 A: Yes, ma'am. It was actually inside of the bag with the
- 12 cigarillos.
- 13 Q: Okay. Do you recall -- did you look at that handgun?
- 14 A: I do -- I remember it was a silver handgun, semiautomatic
- 15 handgun, I don't remember which -- what brand or anything.
- 16 Q: Okay. What was your responsibilities after searching the
- 17 taxi cab?
- 18 A: At that point I just kind of assisted in securing the
- 19 scene and then that was about it. Didn't really have any
- 20 other say-so in what went on the investigation.
- 21 Q: Did you formerly charge anybody?
- 22 A: No, ma'am.
- 23 Q: Why is that?
- 24 A: Because it was -- the robbery occurred in the City
- 25 jurisdiction of Conway City and it was their case.

1 Q: Did you transport anybody?
2 A: I did not.
3 MS. RICHARDSON: That's all for right now, Judge.
4 MR. GARDNER: Thank you, Judge.
5 CROSS EXAMINATION OF MATTHEW STEPHENSON BY MR. GARDNER:
6 Q: Officer Stephenson, if I understood it right, you were
7 helping Officer Dailey and when y'all got to the gas station,
8 some of these individuals out of the taxi cab were taken to
9 different spots; is that right?
10 A: Yes, sir.
11 Q: And I believe Officer Dailey took Tyreke Phillips out of
12 the front passenger side.
13 A: Yes, sir.
14 Q: He had a red hoodie on and he was taken to the clerk of
15 the store and she said words to the effect of that's one of
16 the boys that came in and robbed me.
17 A: From what I remember, yes, sir.
18 Q: Okay. All right. Now, Glover, he was taken to the clerk
19 and she said words to the effect that he was not one of them;
20 is that right?
21 A: I don't recall. I don't know
22 Q: Are you familiar with that?
23 A: I was not.
24 Q: Okay. Did you get to see Glover's shoes, they were not
25 muddy?

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- 1 A: I don't remember whether his shoes were muddy; I didn't
2 pay any attention to his shoes.
- 3 Q: Well, did you pay any attention to Tyreke Phillips? His
4 shoes were muddy?
- 5 A: I do remember that his shoes were muddy.
- 6 Q: And do you ever -- do you have any idea why those shoes
7 were muddy?
- 8 A: I do not.
- 9 Q: Did you go behind the store?
- 10 A: No, sir.
- 11 Q: Okay. All right. So, you stayed in the parking lot up
12 front?
- 13 A: Yes, sir.
- 14 Q: So, the parking lot up front where people get gas, that's
15 a paved surface; is that right?
- 16 A: Yes, sir.
- 17 Q: And you don't know whether or not the back of the store is
18 paved or not?
- 19 A: I didn't -- from prior knowledge, I know that the back
20 parking lot is not paved.
- 21 Q: Is not paved? And it had been raining, so it was muddy
22 back there?
- 23 A: Right.
- 24 Q: All right. Thank you, sir.
- 25 THE COURT: Anything further?

1 MS. RICHARDSON: No, sir, Your Honor. We would request
2 that he be excused.

3 MR. GARDNER: No objection, Your Honor.

4 THE COURT: Okay. Thank you, sir. You can be excused.

5 A: Thank you.

6 MR. TERRELL: The State calls Don Wooten.

7 CLERK: Please raise your right hand and place your left
8 hand on the Bible.

9 DON F. WOOTEN, HAVING BEEN DULY

10 SWORN, TESTIFIES AS FOLLOWS:

11 CLERK: Please state your full name and spell your last
12 name.

13 MR. WOOTEN: It's Don F. Wooten, W-O-O-T-E-N.

14 MR. TERRELL: Thank you, sir. Court's indulgence for
15 just a second.

16 DIRECT EXAMINATION OF DON F. WOOTEN BY MR. TERRELL:

17 Q: Good morning, sir.

18 A: Good morning.

19 Q: I apologize for that. Where do you work?

20 A: Right now, I'm working for a local sign company.

21 Q: How long have you been there?

22 A: Since April of this year.

23 Q: What were you doing before then?

24 A: Working as a Crime Scene Investigator with the City of
25 Conway.

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- 1 Q: How long were you employed there?
- 2 A: Approximately five years.
- 3 Q: Were you employed there on January 2nd of this year?
- 4 A: Yes, I was.
- 5 Q: Do you recall working that morning?
- 6 A: I was called out that morning.
- 7 Q: Where were you called out to?
- 8 A: Four Mile and 501.
- 9 Q: And did you say what you did with the City of Conway?
- 10 A: Yes, a Crime Scene Investigator.
- 11 Q: What are your duties as a Crime Scene Investigator when
- 12 you get called to a scene?
- 13 A: Basically, it depends on the scene but it's all the same.
- 14 It's basically find, collect and preserve any kind of physical
- 15 evidence.
- 16 Q: Do you have a standard operation you do when you arrive at
- 17 a scene?
- 18 A: I do but basically it also depends on what the crime scene
- 19 is as to which way I start.
- 20 Q: Okay. What -- why were you called out to the Scotchman?
- 21 A: I was called out for an armed robbery.
- 22 Q: Do you remember about what time it was?
- 23 A: I believe the call came in about 1:30. It usually takes
- 24 me about fifteen or twenty minutes to get to the scene.
- 25 Q: When you responded to the scene, who else was on scene?

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1 A: It was two of our detectives and some of our road patrol
2 officers were there.

3 Q: What's the first thing you do when you arrive on scene?

4 A: Whenever I arrive on scene, I try to find out exactly
5 either from the person that was involved, which is actually
6 either the victim or a witness and my detectives to find out
7 exactly what had transpired during that time.

8 Q: What were you told had transpired that night?

9 A: Basically just four suspects entered the store, armed
10 robbery, took the cash and then left the scene.

11 Q: Are you sure on the number of suspects?

12 MR. GARDNER: Objection to the question.

13 THE COURT: How about rephrase the question.

14 BY MR. TERRELL:

15 Q: To your recollection, are you sure that that was the
16 number you were given of the suspects?

17 A: Yes, it was.

18 Q: When -- so, once you're given that idea of what happened,
19 what did you do next?

20 A: Usually what I try to do is first observe any video
21 surveillance that may be there.

22 Q: Was there any in this case?

23 A: No. The system was malfunctioning so we weren't able to
24 review the video. Then what I do is I back back out and then
25 I start taking my photographs of the outside and the inside of

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1 the business.

2 Q: You attempted to get the surveillance video; is that
3 correct?

4 A: That's correct.

5 Q: Who was it that told you that it was malfunctioning?

6 A: I believe it was the Assistant Manager or one of -- the
7 person that was there. We tried to work on it and it didn't
8 work.

9 Q: How many people were trying to get it to work?

10 A: I think there was three of us trying to get it to work.

11 Q: And that was unsuccessful?

12 A: That was unsuccessful, yes.

13 Q: So, you backed out and started taking pictures?

14 A: Yes.

15 MR. GARDNER: No objection to these exhibits, Your Honor.

16 THE COURT: Okay. And how many are they?

17 MR. TERRELL: Your Honor, this is State's Exhibits Two,
18 Three, Four, Five, Six, Seven, Eight, Nine. If I could
19 approach the witness?

20 THE COURT: Hang on just a minute. Any objection at all?

21 MR. GARDNER: No.

22 THE COURT: So, they're all in without objection. So,
23 you don't need -- you just proceed as if they're all in.

24 MR. TERRELL: Thank you very much.

25 THE COURT: It'll save some time.

1 STATE'S EXHIBITS NUMBER TWO THROUGH NINE

2 ADMITTED INTO EVIDENCE

3 BY MR. TERRELL:

4 Q: Could you go through each of those -- I believe the

5 numbers are on the back, what exhibit it is -- could you say

6 what exhibit it is and explain what that picture is of?

7 A: Okay. State's Exhibit Number Two is a picture of a floor

8 with currency and two dollar bills and some change.

9 Q: And where was that located?

10 A: Just around the cash register area. Exhibit Number Three

11 is actually behind, next to the drink machines and stuff, it's

12 actually the muffins and stuff that were knocked over onto the

13 floor. State's Exhibit Number Four is actually of some of the

14 mud prints that were going around the cash register area.

15 Q: Did you notice multiple prints when you were inside the

16 store?

17 A: I noticed a couple of them, a lot of them were really

18 smudged. State's Exhibit Five was actually behind the cash

19 register with the box of coins and stuff that was knocked

20 over.

21 Q: So, this is behind the cash register?

22 A: Yes. State's Exhibit Six is same picture just a little

23 bit further back showing more of the coins and the cabinets

24 that were opened behind the cash register. State's Exhibit

25 Seven was actually from standing just inside the doorway

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1 showing the muffin rack and you can see the tray on the floor
2 and also where the shoe prints were going around.

3 Q: So, this is just inside the door?

4 A: That was me standing just beside the door shooting in.

5 State's Exhibit Eight is actually just a shot of the cash
6 register area. And State's Exhibit Nine is just a shot to the
7 left showing the area behind going toward the offices, the
8 manager's office.

9 Q: So, when you went inside the store that night for the
10 first time, what showing in Exhibits Two through Nine is what
11 you remembered seeing?

12 A: That's correct.

13 Q: What stuck out to your mind in words when you were inside?

14 A: Basically, the path that the shoe, the muddy prints went
15 around the back with the muffins on the floor and then as you
16 walked around to the cash register, what you couldn't see
17 behind because there was a high raised cash area, that's
18 whenever you seen all the coins and the cabinets open.

19 Q: Once you take those pictures, do you do anything else
20 inside the store?

21 A: Yeah, then what I do is I -- with the help of the video
22 but at this time we didn't have, I then go around and try to
23 process whatever I can that I thought they had touched or
24 disturbed in order to get any kind of fingerprints.

25 Q: How do you do that?

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1 A: Usually with black powder. It's kind of like toner. You
2 just basically brush it on and if there's any kind of good
3 print, it'll bring it up to where you can transfer it onto a
4 latent card.

5 Q: And you did that in this case?

6 A: Yes.

7 Q: What all did you sprinkle with the dust?

8 A: What did I sprinkle with the dust? The cabinet that was
9 opened, the box that was -- fell on the floor, the little
10 coin, the plastic coin holders, the top of the cabinet, the
11 inside and outside and the entrance door was all processed.

12 Q: Why did you decide to process those places?

13 A: Just by trying to figure out where exactly everything had
14 happened and what they had touched. We know they had to come
15 in and out of the door. We know they went around the corner
16 and went right back behind the cash register. So, any kind of
17 open doors, the coins on the floor, basically anything we
18 thought they maybe picked up and touched.

19 Q: From all that, were you able to find any fingerprints?

20 A: No, I wasn't.

21 Q: How long have you been in crime scene?

22 A: A total of twelve years.

23 Q: You said five of those were in Conway?

24 A: Correct.

25 Q: Where else were you?

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- 1 A: Seven years in Palm Beach County, Florida. . .
- 2 Q: And that immediately proceeded the five years in Conway?
- 3 A: Yes.
- 4 Q: Has it happened before that you've gone to a scene where
- 5 clearly things have been moved and turned around and you
- 6 weren't able to find fingerprints?
- 7 A: That's correct.
- 8 Q: Were you still on scene when a traffic stop was initiated
- 9 in the parking lot?
- 10 A: Yes, I was still inside the store.
- 11 Q: Did you ever go out to the taxi cab?
- 12 A: Yes, I was finally advised that the taxi cab was outside.
- 13 Q: Kind of walk me through that process. What were you
- 14 doing, who told you where to go?
- 15 A: It was one of the detectives, I believe, told me they had
- 16 pulled, the County had pulled over a taxi cab and it had
- 17 possible four male subjects in it. I waited until I was
- 18 advised what was going on and whenever they said that they
- 19 found some stuff inside of it, that's whenever I went ahead
- 20 and took my photographs of the van.
- 21 Q: When you say some stuff inside of it, can you be more
- 22 specific? Do you remember?
- 23 A: I believe one of the County officers had located a weapon
- 24 underneath the front passenger seat.
- 25 Q: So, were you outside when that was located?

1 A: No, I was still inside the store.

2 Q: Still inside. So, when you're coming outside, what's

3 happening with the occupants of the vehicle?

4 A: I believe they were conversing with them. That's all I

5 can recall.

6 Q: All right. And at some point, did you search that taxi

7 cab?

8 A: Yes, I did.

9 Q: When you were conducting your search, were the occupants

10 still in the vehicle?

11 A: No.

12 Q: They had been removed?

13 A: Yes.

14 Q: What do you remember seeing inside the vehicle?

15 A: Cell phones, some -- a black toboggan style knit cap,

16 gloves, and there was a like a Gap bag in the backseat and I

17 believe a hooded shirt.

18 Q: What -- what if anything did you do with that -- with

19 those items?

20 A: Basically, I put them on the hood of my car and

21 photographed them individually and then bagged them and tagged

22 them.

23 Q: Why did you do that?

24 A: Basically, to secure the evidence.

25 Q: Okay. Did you take photographs of this?

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1 A: Yes.

2 Q: Inside the van?

3 A: Yes.

4 Q: Did you also photograph it on your hood?

5 A: Yes.

6 MR. GARDNER: We don't object to any of these, Your
7 Honor.

8 THE COURT: Okay. Give me those numbers.

9 MR. TERRELL: Yes, sir, Your Honor. State's Exhibits
10 Number Twelve, Fifteen, Seventeen, Eighteen and Nineteen.

11 THE COURT: Okay. Twelve, Fifteen, Seventeen, Eighteen
12 and Nineteen.

13 MR. TERRELL: That's correct, Your Honor.

14 THE COURT: Okay. They're in without objection.

15 STATE'S EXHIBITS TWELVE, FIFTEEN, SEVENTEEN, EIGHTEEN
16 AND NINETEEN ADMITTED INTO EVIDENCE

17 MR. TERRELL: May I approach the witness?

18 THE COURT: Yes, sir.

19 BY MR. TERRELL:

20 Q: This is State's Exhibit Twelve. What's, what's in that
21 picture?

22 A: A black knit cap, two cell phones and a black glove.

23 Q: Can you tell where these were photographed?

24 A: They were in one of the pass -- one of the seats.

25 Q: Is that where you found them?

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- 1 A: Yes.
- 2 Q: And you photographed them as you found them?
- 3 A: Yes.
- 4 Q: Can you tell if that's a front seat, back seat, middle
5 seat?
- 6 A: I don't recall which one it was, yeah.
- 7 Q: This is State's Fifteen. Do you recognize that?
- 8 A: Yes. That's another knit cap that was found.
- 9 Q: Can you -- let me hold it right way, that might help.
- 10 A: Yeah, that was in the front passenger seat.
- 11 Q: This is State's Seventeen. Do you recognize that?
- 12 A: Yes.
- 13 Q: Where is that photograph taken?
- 14 A: That's taken on the hood of my car.
- 15 Q: Okay. What's it a photograph of?
- 16 A: Clothing that was found in the back area and inside the
17 Gap bag.
- 18 Q: Do you remember specifically if this was inside the Gap
19 bag or if it was just in the back area?
- 20 A: It was -- I believe the hooded sweatshirt was in the back
21 area. Everything else came out of that Gap bag.
- 22 Q: This is a picture, it's State's Eighteen.
- 23 A: Yeah, that's two pictures of the weapons that were
24 located.
- 25 Q: Where is that photograph taken?

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- 1 A: On the hood of my vehicle.
- 2 Q: And these weapons were found inside the van; is that
3 correct?
- 4 A: Yes.
- 5 Q: Do you recall where?
- 6 A: The small black handgun was found underneath the front
7 seat of -- passenger seat. The bigger, larger gun was found
8 inside the Gap back in the rear seat.
- 9 Q: And this is State's Nineteen. Do you recognize that?
- 10 A: Yes, that's the red hooded sweatshirt that's photographed
11 on the hood of my truck.
- 12 Q: What else is in that picture?
- 13 A: A pair of gloves.
- 14 Q: Do you remember -- so you said that was on the hood of
15 your car?
- 16 A: Yeah, it's on the hood of my car.
- 17 Q: Do you remember where you found it?
- 18 A: I believe it was in the Gap bag or in the backseat area.
- 19 Q: What did you do with all those items you photographed?
- 20 A: They were individually bagged for preservation.
- 21 Q: Let me show you what's already in evidence -- this is
22 State's Exhibit Thirteen. Do you recognize that?
- 23 A: Yeah, that's the cell phone that was found in the front
24 passenger floorboard.
- 25 Q: All right. Now, look very closely at that. Can you tell

1 what make of phone that is?
2 A: It looks like an LG.
3 Q: All right. How are you able to tell that?
4 A: There is little LG right down at the bottom area of the
5 phone.
6 Q: All right.
7 A: It's not clear but you can somewhat make it out.
8 Q: And you said that was where?
9 A: The front passenger floorboard.
10 Q: I'm gonna show you both of these together. These are
11 already in evidence as State's Ten and Fourteen. What do you
12 recognize?
13 A: The mask with the cell phone cover that was in the front
14 passenger seat.
15 Q: So, once -- I'm sorry -- once you get everything into
16 evidence from the van, was there anywhere else that you
17 searched?
18 A: No, not -- that was it for the inside of the van.
19 Q: Was there anything else on the scene that you wound up
20 searching?
21 A: The only thing else that we collected on scene that was
22 outside was another mask that was found in the parking lot.
23 Q: Did you collect that?
24 A: Yes, I did.
25 Q: Where was it located?

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1 A: Just as you exit the doors off to the left-hand side just
2 past the parking curb.

3 Q: Can you describe it?

4 A: It was just a black knit cap.

5 Q: Why did you collect that as evidence?

6 A: It was inside the crime scene and most likely if anybody
7 had run out, tripped or anything like that and had dropped it,
8 it could've been of evidentiary value.

9 Q: Now, are there tests that can be done on, say, articles of
10 clothing such as what you found in the van ---

11 A: Yes.

12 Q: --- or found in the parking lot that can determine maybe
13 at some point who might've had control or custody over those
14 items?

15 A: Yes.

16 Q: What tests are those?

17 A: Basically it's a DNA test. We don't do it. It's
18 basically sent to SLED for analysis and they will do their
19 testing on it to see if it's -- in order to get DNA off of it.

20 Q: So, from the City Police, Conway Police's side of things,
21 what's involved in that process?

22 A: Basically just collection, make sure it's put in a
23 separate bag by itself, because you're worried about cross
24 contamination. You can send it up but you have to send it up
25 with a DNA swab if you have suspects in custody, that way they

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1 can compare. If they don't, then they can send it up for --
2 we can send it up for a no-suspect DNA and that's whenever it
3 gets entered into CODIS.

4 Q: Are you responsible for that?

5 A: I am responsible for it but we did not -- if any suspects
6 on scene do not want to give a DNA standard, I can't force
7 them to get one, so the detectives would have to do -- get it
8 through the court order.

9 Q: Are you involved in that process at all?

10 A: No, I'm not.

11 Q: Are you aware of that being done at the scene?

12 A: Not that I'm aware of.

13 Q: So, once everything is taken into custody, as you said
14 that was bagged and tagged, where is it stored?

15 A: It's stored in our evidence room.

16 Q: Have you done anything with it since then?

17 A: No.

18 Q: The two handguns that you found, did you do anything with
19 that after the fact?

20 A: We -- I did process them for fingerprints and got no
21 results. They were then ran -- on scene, they were run
22 through NCIC, through the Horry County Dispatch, they were
23 reported stolen out of Conway.

24 Q: Why did you do that?

25 A: It's normal that we run weapons that we find on anybody to

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1 see if they actually are stolen. It's protocol for there and
2 then once they were, then we try to get the reports to find
3 out what case numbers, which they're listed in my report, and
4 then I run them through the NTC trace, which is National
5 Tracing Center with the ATF to find out who they may belong to
6 or if they were reported stolen through the ATF.

7 Q: And what was the result of that?

8 A: That I don't know. I don't have that.

9 Q: But you did run them through NCIC?

10 A: Yes, I did.

11 Q: And what was the result of that?

12 A: Both were reported stolen.

13 Q: Do you remember where they were stolen out of?

14 A: Both of them, I believe, they were both stolen out of
15 Conway. One of them back in 2014 and one back in 2012.

16 Q: To your recollection, did you do anything else in this
17 case? Did you talk to any of the witnesses?

18 A: No.

19 Q: Did you talk to any of the suspects?

20 A: No.

21 Q: Was there any other crime scene related thing that you did
22 while you were on scene?

23 A: The only other thing that we did was I photographed all
24 four suspects that were in the cab and to include all the
25 clothing that they were wearing at the time including any shoe

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1 prints or their shoes, the bottom of their shoes.

2 MR. TERRELL: Court's indulgence for just a minute.

3 MR. GARDNER: No objection to any of these, Your Honor.

4 THE COURT: Okay. Give me those numbers.

5 MR. TERRELL: Your Honor, this is State's Exhibits Twenty
6 through Thirty-three.

7 THE COURT: Okay. They're in without objection.

8 MR. TERRELL: Thank you, Your Honor.

9 STATE'S EXHIBIT NUMBERS TWENTY THROUGH THIRTY-THREE

10 ADMITTED INTO EVIDENCE

11 BY MR. TERRELL:

12 Q: So, you said you took photos of the individuals that day?

13 A: That's correct.

14 Q: Which individuals did you take photographs of?

15 A: Name-wise I can't remember unless I look at my report.

16 Q: Okay. The -- how many people were in the van, to your
17 knowledge?

18 A: Four.

19 Q: Other than the driver?

20 A: Other than the driver.

21 Q: And are those the four you photographed?

22 A: That's correct.

23 Q: And if I were to show you one, you might not be able to
24 tell me that person's name, would you?

25 A: No.

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1 Q: But, you're comfortable saying this was an individual that
2 was inside the van?

3 A: Yes.

4 Q: And when you had contact with them, this is what they were
5 wearing?

6 A: Correct.

7 Q: Could you look through those for just a second and give me
8 a rundown of, if you could, the shots that you took and why
9 you decided to take those shots? For example, the fuller body
10 pictures, the ---

11 A: I usually, whenever I take photographs of anybody, I
12 always try to take a full body photograph showing exactly what
13 they're wearing from head to toe but, due to the darkness, I
14 had to actually split it up a little bit. But the reason why
15 is because there was a shoe impression that was left on the
16 inside of the store that was actually giving a little bit of a
17 pattern and when the officers noticed the mud on these guys
18 shoes, I went ahead and took the photograph of them, what they
19 were wearing and their shoes in order to see if any of their
20 shoeprints matched what was found on the inside of the store.

21 Q: And after comparison, did they match?

22 A: No, they did not.

23 Q: All right. I have no further questions for you. Please
24 answer any questions Mr. Gardner has.

25 CROSS EXAMINATION OF DON E. WOOTEN BY MR. GARDNER:

1 Q: Good morning, Mr. Wooten.

2 A: Good morning, Mr. Gardner.

3 Q: Looks like they may've saved the best for last. I want to

4 take a look at these, these last pictures. Is that these

5 here? All right. If you don't know, just tell me. Do you

6 know who that is?

7 A: No, not right off-hand, I don't.

8 Q: All right. But is it fair to say that that picture

9 matches up with that shoe?

10 A: Most likely, yes. I'd have to see the bottom part of his

11 shot.

12 Q: Okay. Well, I'm gonna -- I'll lay it whatever -- you

13 think that's him? I'm trying to figure out how to connect all

14 these together so we make sure we know which -- who is who.

15 We don't need to know -- if we don't know their names, that's

16 fine, but we want to know who matches up with what shoe.

17 A: I'll do this the best I can. That's about the best I can

18 do.

19 Q: That's fine. All right. Okay. So, this fellow, you

20 don't know his name, or do you?

21 A: No.

22 Q: Okay. But that is him, we think?

23 A: To the best of my knowledge, yes.

24 Q: And that's probably the bottom of his shoes?

25 A: Correct.

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- 1 Q: All right. And what we -- for the record, what we're
2 talking about is State's Exhibit Number Thirty-one, State's
3 Exhibit Thirty-two. Do you see any mud on those shoes?
4 A: No, sir, I don't.
5 Q: And that goes together with that fellow. And State's
6 Exhibit Thirty-three is -- goes with those other two?
7 A: As far as I know, yes.
8 Q: And is there any mud on those shoes?
9 A: No, sir.
10 Q: So, just to be fair, we're talking State's Exhibit Thirty-
11 one, Thirty-two and Thirty-three, this fellow and his shoes do
12 not have any mud on them; is that right?
13 A: That's correct.
14 Q: Okay. Now, the rest of these fellows, they -- that fellow
15 has mud on his shoes; is that right?
16 A: Correct.
17 Q: And that is State's Twenty, Twenty-one and Twenty-three,
18 mud on the shoes. Okay.
19 And mud on the shoes?
20 A: Correct.
21 Q: I'm showing you State's Exhibit Twenty-nine, and I'm
22 guessing that goes with this fellow.
23 A: To the best of my knowledge, yes.
24 Q: And that's State's Twenty-eight. So, Twenty-eight and
25 Twenty-nine, mud on the shoes, that fellow.

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1 This is the guy with the red hoodie. He's got all kinds
2 of mud on his shoes; is that right?

3 A: That's correct.

4 Q: And the fellow with the red hoodie is Number Twenty-four
5 and Twenty-five.

6 You weren't in here earlier to hear testimony, I believe
7 it's been established who the red hoodie was but do you know
8 who this fellow is?

9 A: No, sir.

10 Q: Okay. All right. Would it surprise you to know that the
11 fellow with no shoes is the fellow on trial today, Glover,
12 Exhibit Thirty-one -- oh, I just read it wrong -- Thirty-one,
13 Thirty-two and Thirty-three. It wouldn't surprise you, would
14 it?

15 A: No, sir.

16 Q: Thank you, sir. That's all I've got.

17 MR. TERRELL: No more questions, Your Honor.

18 THE COURT: Okay.

19 MR. TERRELL: The State ask that he be excused from his
20 subpoena.

21 MR. GARDNER: No objection, Your Honor.

22 THE COURT: Okay. He can be excused.

23 MS. RICHARDSON: Your Honor, may we approach?

24 THE COURT: Yes.

25 (REPORTER'S NOTE: A bench conference was held off the record

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1 in the presence of but out of hearing of the Jury.)

2 THE COURT: All right. Ladies and gentlemen, we'll take
3 our morning break. We'll break for about fifteen minutes and
4 I'll get you back out and we'll have the next witness.

5 I'll remind you, don't discussing the case yet. Thank
6 you.

7 (REPORTER'S NOTE: Jury exits courtroom. 11:05 A.M.)

8 THE COURT: Okay. We'll be in recess fifteen minutes.

9 MS. RICHARDSON: Thank you, Your Honor.

10 MR. GARDNER: Thank you, Judge.

11 (RECESS - 11:05 A.M.)

12 *****OFF THE RECORD*****

13 (On the Record - 11:22 A.M.)

14 THE COURT: Bring me the Jury.

15 (REPORTER'S NOTE: Jury enters courtroom. 11:23 A.M.)

16 THE COURT: Okay. Go ahead.

17 MS. RICHARDSON: Thank you, Your Honor. The State would
18 now call Asia Collier.

19 THE COURT: Okay.

20 CLERK: Please raise your right hand, place your left
21 hand on the Bible.

22 ASIA COLLIER, HAVING BEEN DULY SWORN,
23 TESTIFIES AS FOLLOWS:

24 CLERK: Speak into the microphone and state your full
25 name and spell your last name.

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ASIA TASHAY COLLIER - DIRECT BY RICHARDSON

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1 MS. COLLIER: My name is Asia Tashay Collier, C-O-L-L-I-
2 E-R.

3 DIRECT EXAMINATION OF ASIA TASHAY COLLIER BY MS. RICHARDSON:

4 Q: Good morning, Asia. I'm gonna be the one talking to you,
5 okay? I know you're nervous, so I'm gonna give you some water
6 just to start off.

7 Asia, let's just start right off with it. You were
8 arrested in this incident, were you not?

9 A: Yes, ma'am.

10 Q: What were you charged with?

11 A: Armed robbery.

12 Q: And what role did you play in this armed robbery?

13 A: Assisting.

14 Q: What did you do?

15 A: Drove.

16 Q: Okay. Who did you drive?

17 A: Rasheed Glover, Amontre Ellerbe, Tyreke Phillips and
18 Aikeem Coles.

19 Q: Okay. Where did you take them?

20 A: To the Four Mile Road Scotchman.

21 Q: Okay. And you also drove them away from that scene; is
22 that correct?

23 A: Yes, ma'am.

24 Q: I'm gonna back up a little bit, okay, to earlier in that
25 day. Do you recall what day this was?

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- 1 A: The same -- well, yes, January the 2nd, 2015.
- 2 Q: Okay. That was the day you were actually -- were you
- 3 arrested that day?
- 4 A: No, ma'am.
- 5 Q: When were you arrested?
- 6 A: February the 17th, 2015.
- 7 Q: Okay. We'll get into that in a few minutes, okay? I'm
- 8 gonna back you up to earlier in the day. What were you doing
- 9 that day?
- 10 A: The day like ---
- 11 Q: The day of the robbery.
- 12 A: Well, the day of the robbery was around -- it was January
- 13 the 2nd but like the day was January the 1st because it went
- 14 into late that night which turned into the morning.
- 15 Q: Okay. Do you remember what time the robbery occurred,
- 16 about what time?
- 17 A: Maybe around 12:30 or 1:00 o'clock morning.
- 18 Q: In the morning?
- 19 A: Yeah.
- 20 Q: We're talking about the night of the 1st and the morning
- 21 of the 2nd?
- 22 A: Yes, ma'am.
- 23 Q: Okay. So, when I say what happened earlier in the day,
- 24 what were you doing on January the 1st?
- 25 A: We were sitting in EME Apartments, which is Cherry Hill

1 and we were at his mom's house in the living room, smoking
2 hookah and just talking. His mom was in the kitchen.
3 Q: I'm gonna have to stop you, okay?
4 A: That's all right.
5 Q: You're giving us a lot of information and that's okay, I'm
6 just gonna slow you down. Whose house were you at?
7 A: Roselyn, Roselyn Glover which is the mom of Rasheed
8 Glover.
9 Q: Okay. What is your relationship with Rasheed Glover?
10 A: He's my ex-boyfriend.
11 Q: Okay. What is your relationship with the other
12 Codefendants?
13 A: Just I was the girlfriend of his friends or the girlfriend
14 of Rasheed, which I was just around like a friend, I guess, or
15 an associate.
16 Q: So, you were friends through Rasheed?
17 A: Yes, ma'am.
18 Q: Rasheed is the common denominator?
19 A: Yes, ma'am.
20 Q: Okay. So, you're at Rasheed's momma's house. How long
21 have you been there?
22 A: About all day.
23 Q: Okay. So, all day on the 1st?
24 A: Yes, ma'am, back and forth.
25 Q: Who else was present at the house?

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1 A: William Glover, which was in the room asleep, that's
2 Rasheed Glover's brother; Aikeem Coles; Tyreke Phillips;
3 Amontre Ellerbe; and myself; and Roselyn Glover, which is the
4 mother of Rasheed Glover.

5 Q: Okay. Now, William Glover, that's Rasheed's brother?

6 A: Yes, ma'am.

7 Q: Did he have anything to do with this armed robbery?

8 A: No, ma'am.

9 Q: Did he know about it in any kind of way?

10 A: No, ma'am.

11 Q: What about -- and I apologize, I don't remember what you
12 said her name was, what about Rasheed's mom?

13 A: Roselyn Glover; no, ma'am.

14 Q: Did she have any part of it?

15 A: No, ma'am.

16 Q: Did she know anything about it?

17 A: No, ma'am.

18 Q: What was being discussed at Rasheed's house?

19 MR. GARDNER: Your Honor, I'm gonna object to hearsay.

20 Q: What were you talking about, what did you hear at
21 Rasheed's house?

22 A: What was I talking about or what did I hear?

23 Q: What conversation was being talked about in regards to the
24 armed robbery?

25 MR. GARDNER: I'm still gonna object; the conversation is

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1 hearsay.

2 THE COURT: You can't go ---

3 MS. RICHARDSON: Your Honor, she can talk about a
4 Codefendant's statement as far as a plan and what she observed
5 in that.

6 THE COURT: Now, is she testifying about what the
7 Defendant said or somebody else?

8 MS. RICHARDSON: Okay. I can be more specific, Your
9 Honor.

10 THE COURT: Okay.

11 BY MS. RICHARDSON:

12 Q: What did you hear Rasheed Glover talking about that day?

13 A: That they were gonna rob a store.

14 Q: Okay. And who is they?

15 A: All of my Codefendants, Amontre Ellerbe, Rasheed Glover,
16 Aikeem Coles and Tyreke Phillips.

17 Q: And what part, again, were you to play in that robbery?

18 A: Assisting, driving.

19 Q: Whose vehicle did you drive?

20 A: Well, William Glover, Rasheed brother -- Rasheed Glover's
21 brother drive the truck but the truck is Roselyn Glover's,
22 which his their mom.

23 Q: Okay. So, it's registered in her name but William, is
24 that what ---

25 A: He's the driver of it.

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- 1 Q: Is that what he goes by?
- 2 A: Yes, ma'am, William.
- 3 Q: Okay. But he drives it?
- 4 A: Yes, ma'am.
- 5 Q: Okay. So, you drove his car or their mom's car?
- 6 A: Yes, ma'am.
- 7 Q: Okay. What does that vehicle look like?
- 8 A: It's black and it's a Trailblazer and it has like mud
- 9 tires on it and it has rails on the front and the back.
- 10 Q: Okay. What about the windows, what do they look like?
- 11 A: They're tinted.
- 12 Q: Why were y'all robbing the store?
- 13 A: They wanted money, I guess, and product.
- 14 Q: Do you know what the money was for?
- 15 A: No, ma'am.
- 16 Q: What did you hear Rasheed say his role was going to be?
- 17 A: Going into the store.
- 18 Q: Who else was supposed to go in that store with Rasheed?
- 19 A: Amontre Ellerbe.
- 20 Q: So, that was the plan from the beginning?
- 21 A: Yes, ma'am.
- 22 Q: What about Tyreke and Aikeem, what were their roles?
- 23 A: They also went into the store, but they were supposed to
- 24 stand behind the store.
- 25 Q: Okay. So, did you actually take them to the Scotchman?

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1 A: No, ma'am. I didn't take them exactly to it. They got
2 out the truck and walked down on the side and like ran to the
3 store.

4 Q: Let me back you up a little bit. Where did you go before
5 the Scotchman?

6 A: Nowhere. From, straight from EME -- oh, Walmart, sorry.

7 Q: It's okay. Just take your time. I know you're nervous
8 and it's okay. I'm not trying to trick you or anything. I'm
9 just trying to walk you through what happened.

10 A: Yes, ma'am. Before, before Scotchman, they went to -- I
11 drove them to Walmart and they brung out in a bag, black
12 gloves, and I didn't see anything but black gloves and it was
13 in a Walmart bag.

14 Q: So, from Walmart, you go to the Scotchman; is that
15 correct?

16 A: Well, not exactly to that vicinity but on the like the
17 roadside, I guess, that you would take.

18 Q: Are you familiar with those roads right there?

19 A: That's Four Mile Road, yes, ma'am, to the left.

20 Q: The road that runs beside it?

21 A: Yes, ma'am, and turn right and then you get on Four Mile
22 Road, to your right is the Scotchman, basically, well, when
23 you turn to the right and then that's -- the same right is
24 where I was pulled over to probably not even a quarter of a
25 mile down from the store, if that's the right distance.

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- 1 Q: I'm going to show you on the map and see if you can
2 identify to me where you were. Okay. This is 501 and this is
3 Four Mile Road and this is the store. Where were you?
4 A: The store is right -- do I talk in the mic?
5 Q: Yeah, talk in the mic, sorry.
6 A: The store is like right there (indicating), so driving --
7 where I was exactly at like right there.
8 Q: So, about where that wood line started?
9 A: Yes, ma'am.
10 Q: Okay. And were you parked in the woods?
11 A: No, ma'am. On the side of the road, like it -- where the
12 -- where the grass is and the woods, it was like a wide range
13 from -- it was wide, you know what I mean, like -- I don't
14 know how to explain it but I was like close to the -- like
15 close to the woods but like facing that way.
16 Q: So, facing away from the store?
17 A: Yes, ma'am.
18 Q: Okay.
19 A: So, anything that came behind me, I didn't see until it
20 was passing in front of me.
21 Q: I want to make sure we're clear, so please tell me if I'm
22 wrong. It was a wide like grassy area that you were parked
23 on?
24 A: Yes, ma'am.
25 Q: So, you're on the side of the road but you're on the

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1 grass?

2 A: Yes, ma'am.

3 Q: Okay. Close to that wood line?

4 A: Yes, ma'am.

5 Q: When you get -- when you get to Four Mile Road, how far
6 are you from the gas station?

7 A: You mean after I'm parked?

8 Q: Yeah, after you're parked.

9 A: Running distance. Walking distance as well but like not
10 close enough where I can see what's going on.

11 Q: Okay. So, further than the distance of this courtroom?

12 A: Yeah.

13 Q: Okay.

14 A: Just a little -- by a little bit.

15 Q: Okay. But again, you're turned away from the store?

16 A: Yes, ma'am.

17 Q: Who gets out of the vehicle when you park?

18 A: Rasheed Glover, Tyreke Phillips, Amontre Ellerbe and
19 Aikeem Coles.

20 Q: Who gets back into the vehicle?

21 A: All four of them.

22 Q: How long were they gone for?

23 A: Well, honestly, I was freaking out. It seemed like a
24 really, really long time but I'm pretty sure it was probably
25 five, six minutes maybe but it seemed like forever.

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- 1 Q: Okay. In any of that time when they left the vehicle,
2 they were out of the vehicle, did anybody stay back?
- 3 A: No, ma'am.
- 4 Q: So, all four, to your knowledge, approached the store?
- 5 A: Yes, ma'am.
- 6 Q: When they get back in the car, what is their demeanor?
- 7 A: Drive, drive, drive, panicking, I'm already panicking.
8 Just craziness, telling me where to go.
- 9 Q: Okay. And where did you go?
- 10 A: Country Manor to the left of Four Mile Road.
- 11 Q: I'm sorry, we need to back up a little bit more. Who had
12 a weapon if anybody that you saw?
- 13 A: Amontre Ellerbe and Tyreke Phillips.
- 14 Q: Both of them had weapons?
- 15 A: Yes, ma'am.
- 16 Q: Do you recall what color they were?
- 17 A: No, ma'am.
- 18 Q: How do you know they had weapons?
- 19 A: Because I seen it in their hand. Like I seen it, it was
20 like a glance.
- 21 Q: Okay. And they were both in their hands when you saw
22 them?
- 23 A: Yes, ma'am.
- 24 Q: And when did you see those handguns?
- 25 A: Whenever they got back in the car.

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- 1 Q: Okay.
- 2 A: When they were running back to the car and I looked back
3 to just be aware of my surroundings.
- 4 Q: So, and you said it's like an SUV; is that right?
- 5 A: Trailblazer truck.
- 6 Q: Okay. So, can you tell me where everybody is sitting that
7 you remember?
- 8 A: Uh-huh (affirmative response). Rasheed Glover was to the
9 right of me; behind me to the left of me was Tyreke Phillips;
10 Aikeem Coles; and then Amontre Ellerbe right behind Rasheed
11 Glover to the right on the passenger side.
- 12 Q: Okay. And that's the way they were sitting when they get
13 back in the car?
- 14 A: Yes, ma'am.
- 15 Q: Okay. Do you notice anything about their clothing?
- 16 A: Well, Amontre was taking off a black North Face jacket and
17 I didn't -- like they're feeling on their feet and stuff and
18 there was like a bunch of sand and stuff in the car like mud
19 but that's the only thing I seen was Amontre Ellerbe take off
20 the -- and he had on some type of like hat thing and he was
21 just stripping from that.
- 22 Q: And I'm sorry, I'm kind of jumping all over.
- 23 A: You're fine.
- 24 Q: But when you left Rasheed's mom's house, did you notice
25 anything in Rasheed's hands?

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- 1 A: Yes. He had black shoes.
- 2 Q: So, Rasheed had another pair of shoes ---
- 3 A: Yes, ma'am.
- 4 Q: --- when you left the house?
- 5 A: Yes, ma'am.
- 6 Q: Do you know what shoes he had on when he went into the
- 7 store or when he got out of your vehicle?
- 8 A: When he got out the vehicle, he had on the same shoes that
- 9 Amontre Ellerbe had on, red, black and gold Nike Flights but
- 10 they were the low-tops.
- 11 Q: Is that what you recall seeing him in when he got back in?
- 12 A: I wasn't paying attention because I was more worried about
- 13 what's behind me and my surroundings than as to whenever he
- 14 got in the front seat to the right of me.
- 15 Q: You said you went to Country Manor?
- 16 A: Yes, ma'am.
- 17 Q: What did you do at Country Manor?
- 18 A: Pulled into a parking space and sat there and I got out
- 19 the car and that's whenever I just started pacing because at
- 20 that point I'm freaking out, I'm not, all right, like y'all
- 21 got to get out of here. Like, I can't do this, y'all got to
- 22 get out. And I, I was like, I came up with the idea to call a
- 23 cab. Called the cab, and then I had -- I asked for Mr. Aaron
- 24 because I used to catch a cab -- catch the cab, because like I
- 25 told you before, David Wellon and my grandpa, they're like

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1 friends and he's the owner of it and I could always catch
2 rides with them. And so, I always had Mr. Aaron to pick me up
3 because me and him made a bond or whatever. And so I called
4 him to come get them and that's whenever the cab came -- am I
5 supposed to be like ---

6 Q: It's okay. You're all right.

7 A: And when the cab came, they got out the car, got in the
8 cab and I went -- like I left.

9 Q: Why did you call a cab?

10 A: Because I was freaking out at that point, I didn't want
11 them in the car with me, I was scared.

12 Q: What -- when they got back in the car, what if anything
13 did you notice them having in their hands?

14 A: When they got back in the car?

15 Q: Yeah, from the store.

16 A: Oh, Amontre had these like cigar packs and guns.

17 Q: Do you know what they took from the store, from your
18 knowledge do you know?

19 A: From my knowledge -- well, from what I seen was the cigar
20 packs and like a little bit of money.

21 Q: Do you know how much money?

22 A: No, ma'am. It wasn't a lot, it was like a little amount.

23 Q: What were you supposed to get for driving that night?

24 A: They were gonna like give me money but they didn't.

25 Q: Was this your first time in trouble with the law?

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- 1 A: Oh, yeah, this kind of trouble; yes, ma'am. I have two
2 minor charges, assault and battery, third degree and breach of
3 trust.
- 4 Q: Magistrate level offenses?
- 5 A: Yes, ma'am.
- 6 Q: Why did you do this?
- 7 A: Honestly, I -- but like, around the time but I was still
8 with Rasheed, he was very manipulative. Like he could get me
9 to do anything. It's embarrassing to say but it's true. And
10 I just, I felt like I wasn't -- like I just wanted to be
11 accepted by him a little bit better than I have been, you know
12 what I mean, and I felt like maybe this was my way to prove it
13 to him.
- 14 Q: When you were at Country Manor and they get out -- are you
15 there when the taxi arrived?
- 16 A: Yes, ma'am.
- 17 Q: Okay. And was it your friend that came, do you know, to
18 pick them up?
- 19 A: Mr. Aaron, yes, ma'am.
- 20 Q: And he works for that taxi cab company?
- 21 A: I'm not sure if he's still there but at that time, yes,
22 ma'am.
- 23 Q: All right. Did he have any involvement in this armed
24 robbery?
- 25 A: The taxi driver?

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1 Q: Yes.

2 A: No, ma'am.

3 Q: Who got out of your vehicle, I say your vehicle knowing
4 that it's not really your vehicle.

5 A: Yes, ma'am, but yeah.

6 Q: Who got out of the vehicle when the taxi cab arrived?

7 A: All four of them.

8 Q: You say all four of them?

9 A: Yes, ma'am. Rasheed Glover, Tyreke Philips, Amontre
10 Ellerbe and Aikeem Coles.

11 Q: Did they take anything with them?

12 A: Yes, ma'am. All the stuff that they had except for the ID
13 that was left in there, the black shoes and gloves.

14 Q: What did you do after you left Country Manor?

15 A: I was supposed to meet them at Crabtree Commons.

16 Q: Who lives there?

17 A: Well, Tyreke's mom was up there but that's just where they
18 told me to go.

19 Q: Okay. Were y'all going to Tyreke's house or were y'all
20 just meeting there?

21 A: Meeting.

22 Q: Okay.

23 A: And like I was just sitting there for about five to ten
24 minutes and I'm like, something is not right. And just taking
25 them forever, I mean.

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- 1 Q: What were you doing during that time period?
- 2 A: Ma'am?
- 3 Q: What were you doing during that time period?
- 4 A: Throwing away the stuff that they told me to throw away
- 5 before they got out to get in the cab.
- 6 Q: Okay. Who told you to throw away something?
- 7 A: Rasheed.
- 8 Q: What did he tell you to throw away?
- 9 A: Well, he just told me to throw away the shoes and the
- 10 gloves but then when I was doing that, I came across Amontre's
- 11 ID, so I threw that away as well.
- 12 Q: Where was Amontre's ID?
- 13 A: In the back like seat pocket.
- 14 Q: So, on the ---
- 15 A: Behind the chair in the pocket to it.
- 16 Q: Did you find anything else left over in that vehicle?
- 17 A: No, ma'am.
- 18 Q: But everything you found, you threw away?
- 19 A: Yes, ma'am.
- 20 Q: Okay. I'm sorry. So, you say you're there and you're
- 21 waiting, something's not right.
- 22 A: And ---
- 23 Q: What happens next?
- 24 A: And then so, I don't know, something told me to just go to
- 25 the Waffle House right there at the top of 378 across from

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1 Ryan's and so as I was sitting there, like a bunch of Counties
2 are flying down east or -- yeah, well, flying down 378 going
3 to -- I'm sitting like and when I see all these Counties fly
4 by, I'm like, yeah, well, they got caught. And then that's
5 whenever I just left from there and I drove home, well, I
6 drove the car back to EME Apartments, which is Rasheed's mom's
7 house and I parked it there and then I walked home to my
8 grandparents' house.

9 Q: Do you live close by Rasheed's at that time?

10 A: Well, yeah, I still actually do live close by. My mom's
11 house is right, right behind EME Apartments condo and then my
12 grandma lives right there on 4th Avenue, so I live -- it's
13 just a skip and a hop to either/or both houses.

14 Q: Do you recall what time you got home that night?

15 A: Probably about 3:00 maybe, 2:00, 3:00, 3 o'clock because
16 then that's whenever I got the call from Rasheed Glover.

17 Q: What did he say?

18 A: I already knew like he was in jail and stuff because of
19 the call and he was just telling like, you know, how he was in
20 jail for -- I don't remember exactly what the conversation was
21 but I knew he was in jail and he didn't really say much on
22 that inside call but, yeah, I already knew.

23 Q: At some point you were arrested?

24 A: Yes, ma'am.

25 Q: How did that come about?

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- 1 A: Well, what do you mean? Like how?
- 2 Q: How is it that you were -- when were you arrested?
- 3 A: February the 17th. Well, my mom took me down to the
- 4 police department because Mr. -- the Detective Tyrone
- 5 Williams, he contacted my mom and he -- I guess, he told her
- 6 that I had a warrant for my arrest and so my mom was like, all
- 7 right -- I think that was a Friday actually and it was -- it
- 8 was a Friday that my mom called me because I was at my
- 9 grandma's house and my momma called me and she was like you
- 10 have a warrant for your arrest. And then I was like, for
- 11 what? Honestly, I was like, for what, like, you know what I
- 12 mean. And then I -- I got in and then that's whenever, a
- 13 couple of days later, well, we waited till about Monday but --
- 14 it was Tuesday. He told my mom to just bring me on down there
- 15 and we get everything in place or whatever and then that's
- 16 whenever my mom took me by Tuesday, February 17th, 2015, we
- 17 went to the police department in Conway like past Laurel
- 18 Street, I'm not really sure but we went there and he basically
- 19 arrested me.
- 20 Q: Were you given an opportunity to give a statement at that
- 21 time?
- 22 A: Yes, ma'am.
- 23 Q: And did you give a statement at that time?
- 24 A: Yes, ma'am.
- 25 Q: And is that statement consistent with what you're saying

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1 here today?

2 A: No, ma'am.

3 Q: Why?

4 A: Because I was afraid.

5 Q: Okay. What did you originally tell the police happened?

6 A: I can't even remember. It's all a blur.

7 Q: Who told you what to tell the police?

8 A: Rasheed Glover.

9 Q: He was still contacting you from jail?

10 A: Yes, ma'am.

11 MS. RICHARDSON: Court's indulgence just a moment. May I
12 approach, Your Honor?

13 THE COURT: Yes.

14 BY MS. RICHARDSON:

15 Q: I'm going to show you some pictures. These pictures are
16 already in evidence but we don't have names for them. Okay?

17 A: Yes, ma'am. Since they're your Codefendants, I want to
18 let you put some names to them.

19 Q: I'm referring to State's Exhibit Thirty-one; who is that?

20 A: Rasheed Glover.

21 Q: Okay. And this is the person who is on trial today?

22 A: Yes, ma'am.

23 Q: Okay. And I'm referring now to State's Exhibit Thirty-
24 two. Do you know who that is?

25 A: That's Rasheed Glover's because the jogger pants because

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1 of the, the tightness at the bottom of them.

2 Q: Okay. Is that what you recall him having on that night?

3 A: Yes, ma'am.

4 Q: Okay. I'm sorry. I'm trying to put them together. I'm
5 referring to State's Exhibit Twenty-four; who is that?

6 A: Tyreke Phillips.

7 Q: Okay. Was he also charged in this incident?

8 A: Yes, ma'am.

9 Q: Okay.

10 A: Tyreke Phillips.

11 Q: Okay. That is State's Exhibit Twenty-five. And I don't
12 know if you can identify the bottom of a shoe, so I'm not
13 gonna ask -- well, can you identify the bottom of shoes?

14 A: No. I mean, I mean, that's a basketball shoe.

15 Q: Do you know whose shoe that is?

16 A: Tyreke Phillips.

17 Q: Okay. How do you know that? This is State's Exhibit
18 Twenty-seven.

19 A: Because the bottom of the shoe just matches what the top
20 of the shoe in that picture looked like.

21 Q: Okay. So, you're using ---

22 A: Yes, ma'am; yes, ma'am.

23 Q: The pants -- He's the one with khaki pants on. Okay. And
24 who is that?

25 A: Tyreke Phillips.

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1 Q: And this is State's Exhibit Twenty-six. Is this what you
2 recall him having on that night?

3 A: Yes, ma'am.

4 Q: Now, which one of these, who all wears earrings in this
5 group?

6 A: Amontre had on earrings and I'm not sure -- I know Rasheed
7 Glover, he wears earrings but I'm not sure if he had on a pair
8 of earrings that night. And Aikeem Coles also wears earrings
9 but I'm not sure if -- I didn't recall those earrings in his
10 ear that night.

11 Q: Okay. You said Amontre wears earrings, do you know what
12 kind of earrings he wears?

13 A: Like some like goldish diamondish earrings.

14 Q: Like a loop or a stud?

15 A: A stud.

16 Q: Okay. And while we're talking about him, who is that?

17 A: Amontre Ellerbe.

18 Q: This is State's Exhibit Number Twenty. Is this what you
19 recall him having on that night?

20 A: He had on a black jacket.

21 Q: On top of this?

22 A: Yes, ma'am. And a black hat.

23 Q: Okay. Let's go with State's Exhibit Twenty-three, do you
24 know who that is?

25 A: Amontre Ellerbe.

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- 1 Q: And is that what you recall him looking like that night?
- 2 A: Yes, ma'am.
- 3 Q: Okay. Do you know whose shoes those are, State's Exhibit
- 4 Twenty-one?
- 5 A: Amontre Ellerbe, even though him and Rasheed Glover had
- 6 the same shoes on.
- 7 Q: Okay. How do you know that that's Amontre and not
- 8 Rasheed?
- 9 A: The foot is bigger.
- 10 Q: Okay. Now I'm confusing myself. Who is this? I'm
- 11 referring to State's Exhibit Twenty-eight. Who is this?
- 12 A: Aikeem Coles.
- 13 Q: Okay. Is that what you recall him wearing that night?
- 14 A: He had on like some type of hood jacket. I can't remember
- 15 exactly what kind of jacket it was but he had on something
- 16 over that.
- 17 Q: Do you remember him having on something over that?
- 18 A: Yes, ma'am.
- 19 Q: Do you remember what color it was?
- 20 A: No, ma'am.
- 21 Q: And State's Exhibit Twenty-nine, do you know whose shoes
- 22 those are?
- 23 A: Aikeem Coles.
- 24 Q: Is that what you recall him having on?
- 25 A: Those shoes and those jeans, yes, ma'am.

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1 Q: Okay. So, you say Amontre wears earrings -- I'm sorry,
2 did you say whether he had them in that night or not?

3 A: I think he actually did have them in that night. He
4 actually did have them in that night. He had on like some
5 small like stud, it's like goldish and diamondish, cubic
6 zirconia, I guess you would call it.

7 Q: And what about Rasheed? Does Rasheed wear earrings?

8 A: Yes, ma'am.

9 Q: What ---

10 A: He usually wears like one like little gold hoop in his
11 right ear.

12 Q: And Tyreke Phillips, does he wear earrings?

13 A: He never wears, no, ma'am.

14 Q: And ---

15 A: Aikeem.

16 Q: Aikeem Coles?

17 A: Yes, he wears earrings but I really don't remember those
18 earrings being in his ear that night.

19 Q: And when you say those earrings being ---

20 A: The ones that are on the pictures.

21 Q: Okay, I'm looking at -- so we know what we're referring
22 to. State's Exhibit Twenty-eight, is that the earrings you're
23 referring to?

24 A: Yes, ma'am.

25 Q: And you don't recall him wearing those that night?

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ASIA TASHAY COLLIER - DIRECT BY RICHARDSON

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- 1 A: No, ma'am.
- 2 Q: Was it common for these boys to change -- to share
3 clothes?
- 4 A: Yes, ma'am.
- 5 Q: Was it common for them to dress alike?
- 6 A: Yes, ma'am.
- 7 Q: Who was the mastermind behind this robbery?
- 8 A: Rasheed Glover.
- 9 Q: It was Rasheed's plan all along?
- 10 A: Not alone. You mean -- do you mean by himself was it his
11 plan by himself?
- 12 Q: I guess I'll just ask from the beginning, was it Rasheed's
13 plan to rob the store?
- 14 A: Rasheed and Amontre both.
- 15 Q: So, those are the two ringleaders?
- 16 A: Yes, ma'am.
- 17 Q: And just to be perfectly honest with this Jury, from where
18 you were positioned, you couldn't see who actually went in
19 that store?
- 20 A: Yes, ma'am; that's correct. I could not see exactly from
21 where I was positioned who went in that store.
- 22 Q: But four got out and four get back in?
- 23 A: Yes, ma'am.
- 24 Q: That's all from the State, Your Honor.
- 25 THE COURT: Okay. Mr. Gardner.

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ASIA TASHAY COLLIER - CROSS BY GARDNER

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1 MR. GARDNER: Thank you, Your Honor.

2 CROSS EXAMINATION OF ASIA TASHAY COLLIER BY MR. GARDNER:

3 Q: Ms. Collier, could -- I can't see whether it's morning or
4 afternoon, but greetings. How about that?

5 A: How are you?

6 Q: I want to -- before we get too far, I want to establish a
7 few things, you're Glover's ex-girlfriend?

8 A: Yes, sir.

9 Q: And you're charged with armed robbery?

10 A: Yes, sir.

11 Q: And you're testifying for the State today to get a deal,
12 right?

13 A: No, sir.

14 Q: Well, you're looking at thirty years in prison and you're
15 hoping by testifying you're gonna get less than that, right?

16 A: Yes, sir.

17 Q: You hesitated, are you hoping for thirty?

18 A: No, I'm not hoping for thirty.

19 Q: You're hoping for probation, aren't you?

20 A: Yes, sir, hopefully.

21 Q: Ma'am?

22 A: Hopefully.

23 Q: Hopefully because by your testifying you're hoping that
24 the Jury will convict Glover, your ex, right?

25 A: Yes, sir.

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1 Q: And you'd kill two birds with one stone because you'll be
2 rewarded by getting probation instead of thirty years, right?

3 A: No, not necessarily probation, I mean ---

4 Q: Well, you're gonna get a deal. You don't -- are you
5 looking from an answer for them?

6 A: No, sir.

7 Q: Well, that's your lawyer over there in the blue coat,
8 right, in the courtroom?

9 A: Uh-huh (affirmative response).

10 Q: Sitting with the Solicitors? Is he sitting with the
11 Solicitors, the prosecutor.

12 A: He's behind them.

13 Q: Ma'am?

14 A: He's behind them, he's not sitting with them.

15 Q: Was that a yes or no; I'm sorry.

16 THE COURT: She said he's behind them.

17 Q: Behind them, okay. Thank you. All right. And while I'm
18 up here, I couldn't see the pictures that you were sharing,
19 that the Solicitor was asking you about and I want to make
20 sure that I've got it right. So, not to belabor the point but
21 just to make sure that I understand. State's Exhibit Thirty-
22 one, State's Exhibit Thirty-two, State's Exhibit Thirty-three;
23 that's Glover; is that right?

24 A: Yes, sir.

25 MR. GARDNER: May I publish this to the Jury, Your Honor?

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ASIA TASHAY COLLIER - CROSS BY GARDNER

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1 THE COURT: Yes.

2 BY MR. GARDNER:

3 Q: That's your ex-boyfriend, right?

4 A: Yes, sir.

5 Q: Now, you told the Solicitor that you have a prior
6 conviction for breach of trust, that's lying, right, breach of
7 trust?

8 A: Well, no, it's -- well, what I ---

9 Q: It's violating somebody's trust; is that right?

10 A: Yeah.

11 Q: Okay. And I -- are you familiar with the term motion of
12 discovery?

13 A: Yes, sir.

14 Q: What does that mean?

15 A: All the evidence you have right there.

16 Q: Okay. And you reviewed that prior to giving your last
17 statement, the most recent statement to the cops, you reviewed
18 all the discovery in this case prior to that, didn't you?

19 A: I reviewed, yes, I reviewed all the ---

20 Q: To prepare for making your statement, right?

21 A: What do you mean?

22 Q: Well, you were gonna be asked questions by the cops about
23 what happened.

24 A: Exactly.

25 Q: So, you reviewed all the evidence so you'd be ready to

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ASIA TASHAY COLLIER - CROSS BY GARDNER

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1 answer those questions; is that right?

2 A: No. That's not right. I -- whenever I answered those
3 questions and I was already told by Rasheed Glover what to say
4 to the cops, to cover him basically.

5 Q: Yeah, we can get into that in a little bit if we need to
6 but right now I'm talking about the motion of discovery, the
7 evidence, okay? The motion is actually two pages that the
8 lawyers sent the prosecutor but the discovery is what they
9 send back. And that's about one and half to two inches thick
10 of pieces of paper; is that right?

11 A: Yes, sir.

12 Q: And you met with the cops last week or week before last;
13 is that right? The Solicitor ---

14 A: No, I didn't meet with the cops.

15 Q: Okay. Did you meet with somebody about this case last
16 week?

17 A: Solicitor Lauree Richardson and Solicitor Tom, and my
18 lawyer, yes, sir.

19 Q: Okay. And you made a statement, right?

20 A: Yes, sir.

21 Q: And they recorded that statement?

22 A: Yes, sir.

23 Q: And prior to you making that statement, you reviewed all
24 the State's Evidence, right?

25 A: A couple of months ago.

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1 Q: It wasn't a surprise to you, you knew what the evidence
2 was, right?

3 A: Yes, sir, a little bit of it.

4 Q: Which part did you not know?

5 A: What do you mean, I -- like the evidence in the packet, I
6 knew like once I read it, I didn't even know the evidence -- I
7 didn't know the evidence until I received a motion for
8 discovery.

9 Q: And that got you ready to make this statement, right?

10 A: No. Rasheed got me to make the statement.

11 Q: Okay. All right. Your first statement that you made to
12 the police, that was also a lie; is that right?

13 A: The very first one?

14 Q: Yeah.

15 A: Yes, sir.

16 Q: And that was you lied to them because you were trying to
17 protect yourself, right?

18 A: I lied because I was scared, didn't know what to do, never
19 been in that kind of trouble, trying to cover for somebody
20 else and not looking after myself.

21 Q: Well, it's not covering for other people, you were --
22 according of the testimony, you're the driver in an armed
23 robbery, right?

24 A: Yes, sir.

25 Q: You're the one that organized the people that day, drove

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ASIA TASHAY COLLIER - REDIRECT BY RICHARDSON

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1 them to the place, picked them up, if we believe your
2 testimony. The question from the Solicitor was who was the
3 mastermind, it looks like you're the mastermind, isn't it?

4 A: Definitely not, sir.

5 Q: I'm just going by your testimony. Glover wore a hoop
6 earring, right?

7 A: Uh-huh (affirmative response).

8 Q: And Amontre wore the stud?

9 A: Glover didn't have any earrings in. I was answering
10 Lauree Richardson's question from being around him at that
11 time, being his girlfriend.

12 Q: Okay. All right.

13 A: But that night, Amontre had earrings in.

14 Q: Stud?

15 A: Yes, sir.

16 Q: All right; that's it. Thank you.

17 REDIRECT EXAMINATION OF ASIA TASHAY COLLIER BY MS. RICHARDSON:

18 Q: Asia, what have I promised you?

19 A: You haven't promised me anything.

20 Q: And I just want to be clear for myself because I did get a
21 little confused with that. You recall Amontre having earrings
22 in that night?

23 A: Yes.

24 Q: Okay. Then to your recollection or do you know did Glover
25 have earrings in that night?

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ASIA TASHAY COLLIER - REDIRECT BY RICHARDSON

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1 A: No, ma'am. He didn't have earrings in.

2 Q: He did not have any earrings?

3 A: No, ma'am. Glover did not have any earrings then; Ellerbe
4 did.

5 Q: Okay. That's all, Your Honor.

6 THE COURT: Okay. You can step down. Thank you.

7 MS. RICHARDSON: Your Honor, we would ask that she be
8 excused from her subpoena.

9 THE COURT: Any objection?

10 MR. GARDNER: No, Your Honor.

11 THE COURT: Okay.

12 MS. RICHARDSON: Your Honor, can we approach briefly?

13 THE COURT: Okay.

14 (REPORTER'S NOTE: A bench conference was held off the record
15 in the presence of but out of hearing of the Jury.)

16 MS. RICHARDSON: The State would now call Amontre
17 Ellerbe.

18 THE COURT: Okay.

19 CLERK: Please raise your right hand and place your left
20 hand on the Bible.

21 AMONTRE ELLERBE, HAVING BEEN DULY

22 SWORN, TESTIFIES AS FOLLOWS:

23 CLERK: If you would, state your full name and spell your
24 last name.

25 MR. ELLERBE: Amontre Hakeem Ellerbe, E-L-L-E-R-B-E.

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AMONTRE ELLERBE - DIRECT BY RICHARDSON

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1 DIRECT EXAMINATION OF AMONTRE HAKEEM ELLERBE BY MS.

2 RICHARDSON:

3 Q: Mr. Ellerbe, hey. I'm Lauree Richardson on behalf of the
4 State. I'm gonna ask you the obvious question, okay. Why are
5 you wearing orange or in a jumpsuit today?

6 A: Because I'm currently incarcerated.

7 Q: What are you incarcerated for?

8 A: Armed robbery.

9 Q: The armed robbery of what location?

10 A: It's a gas station, I'm not sure which one.

11 Q: Okay. Okay. Who are your Codefendants in this case?

12 A: Tyreke Phillips, Aikeem Coles, Rasheed Glover and Asia
13 Collier.

14 Q: And you pled guilty to those charges; is that correct?

15 A: Yes, ma'am.

16 Q: How do you know Rasheed Glover?

17 A: Well, we grew up together.

18 Q: Are you from Conway?

19 A: Yes, ma'am.

20 Q: Did you go to school together?

21 A: Yes, ma'am.

22 Q: Okay. What school did you go to?

23 A: Conway High and we went to Conway Elementary together.

24 Q: Mr. Ellerbe, I'm just gonna jump right in. What role did
25 you play in this armed robbery?

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AMONTRE ELLERBE - DIRECT BY RICHARDSON

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- 1 A: I was one of the two that went in the store.
- 2 Q: Did you have a weapon on you?
- 3 A: Yes, ma'am.
- 4 Q: Who else went in that store with you?
- 5 A: Rasheed Glover.
- 6 Q: To your knowledge, did he have a weapon on him?
- 7 A: No, ma'am.
- 8 Q: No, he did not or you don't know?
- 9 A: Can you repeat the question?
- 10 Q: Did Rasheed Glover have a weapon?
- 11 A: Yes, ma'am.
- 12 Q: He did?
- 13 A: Yes, ma'am.
- 14 Q: What color was your weapon?
- 15 A: Silver.
- 16 Q: Do you know what color his was?
- 17 A: I want to say it was like -- it wasn't black but it was
- 18 like -- it was dark, I'm not sure if it was brown or bronze.
- 19 Q: Okay. If I show you a picture, see if you can tell me
- 20 maybe. I'm referring to State's Exhibit Eighteen. What is
- 21 that? Do you recognize those?
- 22 A: Yes, ma'am.
- 23 Q: I know I'm close to you but you're gonna have to speak up,
- 24 okay, because they still have to hear you. Okay?
- 25 A: Yes, ma'am.

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- 1 Q: Were these the weapons that were used in the armed
2 robbery?
- 3 A: Yes, ma'am.
- 4 Q: Which weapon did you have?
- 5 A: The top one or this one (indicating).
- 6 Q: I'm sorry. Okay. And whose gun is that?
- 7 A: It was neither one of ours. We got it from somewhere.
- 8 Q: Who did you get it from?
- 9 A: I got it from Tyreke Phillips.
- 10 Q: Okay. And whose weapon is that? Who had that weapon that
11 night?
- 12 A: At first, Aikeem had the weapon but during the robbery,
13 Rasheed had the weapon.
- 14 Q: Okay. What did you take from the store, what did you get
15 from the store?
- 16 A: I took approximately \$15.
- 17 Q: Okay. Did you get anything else?
- 18 A: No, ma'am.
- 19 Q: What about the clerk's cell phone?
- 20 A: No, ma'am. I grabbed cigars, I did grab cigars, Dutch
21 Masters.
- 22 Q: Okay. Who took the cell phone?
- 23 A: I guess Rasheed. I didn't know about the cell phone until
24 we got arrested that night.
- 25 Q: Okay. When -- what role did Tyreke and Aikeem play?

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- 1 A: Well, at first, all four of us were going to do it but
2 those two backed out, so they really just stood behind the
3 store not doing nothing.
- 4 Q: So, the original plan was all four were going to enter?
- 5 A: Yes, ma'am.
- 6 Q: But for some reason, they didn't?
- 7 A: Yes, ma'am.
- 8 Q: Are you sure they didn't go in the store?
- 9 A: A hundred percent positive.
- 10 Q: And are you sure who went in the store with you?
- 11 A: Rasheed Glover.
- 12 Q: When you got -- whose vehicle were y'all in? When you got
13 to the drove up the store, whose car were you in?
- 14 A: Oh, we was in Rasheed's brother's car then.
- 15 Q: Okay. Do you recall what kind of vehicle that is?
- 16 A: I want to say a Ta or was it a Trailblazer, I think.
- 17 Q: Do you know what color it is?
- 18 A: Black.
- 19 Q: Where were you when you got -- so after the robbery had
20 taken place and you got back in the vehicle, where were you
21 sitting?
- 22 A: I was sitting -- well, me, Tyreke and Aikeem was in the
23 backseat or the middle seat. And then Rasheed's girlfriend
24 was driving and he was on the passenger seat.
- 25 Q: What did you notice Rasheed doing?

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- 1 A: Changing his clothes.
- 2 Q: Okay. And what was he changing -- what was he wearing
- 3 that night?
- 4 A: During ---
- 5 Q: During the robbery, what was he wearing?
- 6 A: I reddish burgundy hoodie, black pants, I want to say, and
- 7 during the robbery the shoes, I think were black Vanns.
- 8 Q: What were you wearing during the robbery?
- 9 A: I was wearing the same Jordans that Rasheed had on when he
- 10 got arrested. We both had on the same shoes when we were
- 11 arrested.
- 12 Q: Why did he change shoes?
- 13 A: I guess he was smart.
- 14 Q: Or at least thought he was.
- 15 A: Yes, ma'am.
- 16 Q: Let me show you what's been identified or in evidence as
- 17 State's Exhibit Thirty-one. Who is that?
- 18 A: Rasheed.
- 19 Q: And is that what Rasheed was wearing when he went in the
- 20 store with you?
- 21 A: No, ma'am.
- 22 Q: I'm gonna show you what's been marked as State's Exhibit
- 23 Thirty-two. Who is that?
- 24 A: Rasheed.
- 25 Q: Okay. How do you know that?

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AMONTRE ELLERBE - DIRECT BY RICHARDSON

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1 A: Because my shoes had mud on them and I know what pants he
2 had on.

3 Q: Okay. Are those the shoes you recall Rasheed wearing
4 during the robbery?

5 A: No, ma'am.

6 Q: Okay. It seems like a silly question. Who is that?

7 A: Me, Amontre Ellerbe.

8 Q: And that's State's Exhibit Twenty. Is that what you were
9 wearing the robbery?

10 A: Except the hoodie.

11 Q: Except the hoodie, so you had on a hoodie?

12 A: Yes, ma'am.

13 Q: What color was your hoodie?

14 A: Black.

15 Q: Okay. I'm referring to State's Exhibit Twenty-three.

16 A: That's me again.

17 Q: Okay. And is that what you were wearing, your pants?

18 A: Yes, ma'am.

19 Q: And are those the shoes you were wearing?

20 A: Yes, ma'am.

21 Q: Now, to your knowledge, do you know what happened to
22 Rasheed's black shoes?

23 A: They was in the truck still, his brother's truck.

24 Q: Okay. When you got into the taxi, do you recall if
25 Rasheed had those shoes with him?

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AMONTRE ELLERBE - CROSS BY GARDNER

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1 A: No, ma'am.

2 Q: I'm sorry. I asked it confusingly. Did he have those
3 shoes with him?

4 A: In the cab?

5 Q: Yes.

6 A: No, ma'am.

7 Q: Okay. Whose plan was it to rob this store?

8 A: Rasheed's.

9 Q: But no doubt that you took part in that as well?

10 A: Yes, ma'am.

11 MS. RICHARDSON: Nothing else from the State, Your Honor.

12 THE COURT: Okay.

13 CROSS EXAMINATION OF AMONTRE ELLERBE BY MR. GARDNER:

14 Q: Mr. Ellerbe, you pled guilty yesterday to armed robbery;
15 is that right?

16 A: Correct.

17 Q: But prior to that, you had already, you were already a
18 convicted felon because you had already pled guilty to some
19 other charge back in 2014, breaking into automobile tanks
20 where fuel was store; does that ring a bell?

21 A: Yes, sir.

22 Q: All right. What did you get for that?

23 A: Probation.

24 Q: Probation, okay. And Asia Collier, do you know who that
25 is?

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AMONTRE ELLERBE - CROSS BY GARDNER

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- 1 A: Yes, sir.
- 2 Q: Okay. She has not pled guilty or do you know whether or
3 not she's pled guilty?
- 4 A: No, sir, I do not know.
- 5 Q: Okay. The other two boys you mentioned, do you know
6 whether or not they have pled guilty?
- 7 A: Yes, sir.
- 8 Q: Okay. So, they've pled guilty and you've pled guilty.
- 9 A: Yes, sir.
- 10 Q: And you're hoping to get your sentence reduced as a result
11 of testifying today; is that right?
- 12 A: No, sir.
- 13 Q: You don't care if your sentence gets reduced?
- 14 A: No, sir.
- 15 Q: When you pled guilty, was it part of your guilty plea to
16 testify?
- 17 A: No, sir.
- 18 Q: So, you're just testifying on your own?
- 19 A: Yes, sir, because Rasheed tried to blame everything on me.
- 20 Q: On you?
- 21 A: Yes, sir.
- 22 Q: Okay. You're getting back at him, aren't you?
- 23 A: Not getting back, I'm just telling the truth.
- 24 Q: Okay. Did you talk to Officer Dailey?
- 25 A: I don't recall that officer.

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AMONTRE ELLERBE - CROSS BY GARDNER

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- 1 Q: He was the one that at the -- when the van got pulled over
2 at the gas station, do you remember that?
- 3 A: Yes, sir.
- 4 Q: You were in it, right?
- 5 A: Yes, sir.
- 6 Q: Okay. Who was sitting -- if I'm the driver, who was
7 sitting in the passenger seat?
- 8 A: Beside the driver?
- 9 Q: Yes, sir.
- 10 A: Tyreke Phillips.
- 11 Q: Tyreke Phillips?
- 12 A: Yes, sir.
- 13 Q: And a County officer took Tyreke over by himself and
14 talked to him a little bit and Tyreke had a red ---
- 15 A: Yes, sir.
- 16 Q: --- sweatshirt or a hoodie on, right?
- 17 A: Yes, sir.
- 18 Q: Okay. And you definitely went in the store, right?
- 19 A: Yes, sir.
- 20 Q: Are you aware that the store clerk and the officer that
21 took Tyreke Phillips said that he was the one, the other, the
22 second one that went in the store?
- 23 A: No, sir, I'm not aware of that.
- 24 Q: Okay. All right. Did anybody talk to you earlier about
25 the shoes before you testified or when you pled guilty?

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AMONTRE ELLERBE - REDIRECT BY RICHARDSON

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1 A: Oh, no, sir. No, sir.

2 Q: Okay. How did you know about the shoes?

3 A: What do you mean how did I know about the shoes?

4 Q: Well, today, I'm hearing for the first time that there is
5 a second pair of shoes. Has anybody talked to you about that?

6 A: Oh, no, sir.

7 Q: Okay. You didn't talk to Asia about it?

8 A: No, sir. I haven't spoken to Asia except one time since
9 whole thing happened. I seen her -- actually, when I first
10 got out of jail in July, I seen her at McDonald's.

11 Q: Okay. All right. Is she the ringleader in this thing or
12 the, that's what the Solicitor said, or mastermind?

13 A: No, sir.

14 Q: Okay. Was it you?

15 A: No, sir.

16 Q: All right. But you went in the store?

17 A: Yes, sir.

18 Q: That's all I've got. Thank you.

19 REDIRECT EXAMINATION OF AMONTRE ELLERBE BY MS. RICHARDSON:

20 Q: Just one question. Who was the mastermind?

21 A: Rasheed Glover.

22 MS. RICHARDSON: That's all from the State, Your Honor.

23 THE COURT: Okay. Thank you. You can step down.

24 MS. RICHARDSON: The State rests, Your Honor.

25 THE COURT: Okay. How about y'all approach just a

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MOTIONS

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1 second.

2 (REPORTER'S NOTE: A bench conference was held off the record
3 in the presence of but out of hearing of the Jury.)

4 THE COURT: Ladies and gentlemen, it seems to be a good
5 time to stop for lunch and I'll need you back in the jury room
6 by quarter till 2:00, 1:45, if you can. I'll remind you don't
7 discuss this case or allow anyone to discuss it with you.
8 I'll see you at 1:45 and will continue with this case. Thank
9 you.

10 (REPORTER'S NOTE: Jury exits courtroom. 12:20 P.M.)

11 THE COURT: Okay. Do we need to deal with any matters of
12 law or anything?

13 MR. GARDNER: Do you want me to do my motion now or when
14 we come back?

15 THE COURT: What -- we're probably now, or you know, if
16 we do it when we come back, we need to be a little bit earlier
17 where I can bring the Jury out ---

18 MOTIONS:

19 MR. GARDNER: I'd just move for a directed verdict.

20 THE COURT: Okay. And I'll respectfully deny your
21 motion. I think there's sufficient evidence in the record to
22 let this thing go to the Jury.

23 BY THE COURT:

24 And as far as charges are concerned, when we come back,
25 you'll get last argument since you didn't put up any evidence,

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BY THE COURT

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1 so the State will and then you'll go and I'll charge. Now, I
2 was gonna do the standard charge of reasonable doubt, armed
3 robbery, the hand of one is the hand of all.

4 MR. GARDNER: Mere presence, Your Honor?

5 THE COURT: I'll have to think about that. I don't know
6 if there's any evidence that he -- mere presence, I'm gonna
7 instruct them don't -- I'll certainly tell the Jury that, you
8 know, I'll instruct them to the fact that he was not present,
9 they cannot consider that in anyway and the fact that he
10 didn't testify that they can't consider that in any way. And
11 I'll think about mere presence. There's absolutely no
12 evidence in the record in this case that he was merely
13 present, I don't think. All right. But I'll let you know
14 when we get back at a quarter till 2:00.

15 MR. GARDNER: Thank you, Judge.

16 MS. RICHARDSON: Thank you, Your Honor.

17 MR. TERRELL: Thank you, Your Honor.

18 (RECESS - 12:22 P.M.)

19 *****OFF THE RECORD*****

20 (On the Record - 1:53 P.M.)

21 THE COURT: I asked the Jury to select a foreperson. I
22 asked the Bailiff to go in and ask them because I found out
23 they usually do better when they select the person than when I
24 appoint somebody. So, Jamie Orner, Number 265, has been
25 selected as the foreperson.

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1 CHARGE CONFERENCE:

2 THE COURT: Anyway, and when a mere presence charge, even
3 though I'm not really sure there's any evidence of it, out of
4 an abundance of caution, I'll probably charge it, simply --
5 especially on a TIA, you know, you ---

6 MR. GARDNER: I appreciate that and I have a theory that
7 may ---

8 THE COURT: I mean, I understand that. It may be a
9 scintilla of the issues that he were mere present but I don't
10 know. I guess the -- it seems from all the evidence that he
11 participated and he just wasn't standing there watching but I
12 think that ---

13 MR. GARDNER: Well, we have competing versions of what
14 happened, one from the witness clerk saying it was the other
15 fellow, not Campbell [sic] and then the other witness himself
16 said it was him and Campbell -- so one of this, two of those
17 three and the other two according to the State's last witness
18 said the remaining two weren't doing anything. So, if
19 Campbell was one of the ones not doing anything, then mere
20 presence would be appropriate to find in my opinion.

21 THE COURT: And you -- certainly, if you want to argue
22 this issue, I -- I'm not always sure the Court of Appeals is
23 gonna tell me. You know, I figure because there's a --
24 sometime the Appellate level looks down on TIAs to some
25 degree. So, under precaution, I was trying to cover at least

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1 every basis. It would be really tough to get reversed because
2 I didn't charge mere presence, when I really don't think
3 that's what your evidence -- but having said that, I don't
4 think based on the evidence in this case that the charge is
5 gonna hurt the State either.

6 MR. TERRELL: If Your Honor is inclined to charge then
7 the State is find with it but I don't think it's necessary but
8 I agree with your abundance of caution, Your Honor.

9 THE COURT: Okay. All right. I can't figure out what
10 the Court of Appeals thinks sometimes. Supreme Court I can
11 pretty well understand their rationale but sometimes I don't
12 understand the Court of Appeals rationale, but having said
13 that, it doesn't seem like the Supreme Court agrees with them
14 most of the time either. I think they get reversed more than
15 all of us put together. So, we'll see.

16 Okay. Anything else?

17 MR. GARDNER: You want -- I'll rest when they come out
18 and then we'll go straight into it?

19 THE COURT: Okay. That'll be fine and y'all ready to do
20 closing? How long do you think your closing will be?

21 MS. RICHARDSON: Fifteen minutes for both, Your Honor.

22 MR. GARDNER: Sure.

23 *****OFF THE RECORD*****

24 (On the Record.)

25 THE COURT: If y'all are ready, we'll bring the Jury in.

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CLOSING STATEMENT BY RICHARDSON

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1 (REPORTER'S NOTE: Jury enters courtroom. 1:59 P.M.)

2 THE COURT: Okay.

3 MR. GARDNER: Your Honor, the Defense rests.

4 THE COURT: Okay. Ladies and gentlemen, you have heard
5 all of the evidence that you're going to hear in this case.
6 Now, you're gonna hear the closing arguments of the attorneys.
7 I will charge you on the law that applies to this case and
8 give you this case to decide. So, if you'd pay close
9 attention to the attorneys, they will give you their closing
10 argument.

11 Madame Solicitor?

12 MS. RICHARDSON: Thank you, Your Honor.

13 CLOSING ARGUMENT BY MR. RICHARDSON:

14 MS. RICHARDSON: Good afternoon, ladies and gentlemen.
15 We've talked to you a lot about armed robbery. It seems like
16 a no-brainer what it actually is but I'm gonna talk to you
17 specifically on how the law defines what an armed robbery is
18 and again it's kind of what it seems to be. But it's the
19 taking away of personal property of another person which you
20 don't have a right to take and your intent is to permanently
21 deprive that person of that property. And you do that while
22 you are armed with deadly weapon.

23 So, these are the questions we're asking you to determine
24 whenever you get in the back. Now, the State's burden of
25 proof is beyond a reasonable doubt. What is that? What is

1 reasonable doubt? It still amazes me that what is a semester
2 long in law school we expect jurors to get in a three-minute
3 rendition of that. What is reasonable doubt? All I can tell
4 you is that you folks are reasonable people. That's why we
5 picked you. Okay? My burden is not all doubt. There are
6 very few things in life that I can prove to you beyond all
7 doubt, beyond a shadow of any doubt. That's not my burden.
8 My burden is reasonable doubt. What is reasonable in this
9 case. And that's what I ask you to ask yourself. Ask
10 yourself these questions: Was Angie Gilchrist robbed at
11 gunpoint. Was her personal property or the property of the
12 Scotchman taken? I submit to you that we have proved that to
13 you beyond a reasonable doubt. I submit to you that you'll
14 get to the see the pictures in the back. There's no doubt
15 something happened in that store. There's no doubt that
16 police responded that night. There's no doubt that cigarillos
17 were taken. How do we know that? Because the Defendant is
18 arrested in the vehicle with the cigarillos. There's no doubt
19 her cell phone was taken. How do we know that? Because the
20 Defendant was found in the vehicle that has the stolen cell
21 phone with the purple cell phone case. You'll get to see
22 those pictures. There's no doubt that they were armed with
23 deadly weapons. How do you know that? Because the Defendant
24 was found in the vehicle with the stolen weapons, with the
25 weapons, I'm sorry, they happened to be stolen. Ms. Gilchrist

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1 testified that both of the gentlemen who came in were armed.
2 Two had guns, two guns were found. Now, the next logical
3 question is was it Rasheed Glover. You've got to ask yourself
4 that question because he's the one on trial here today.
5 There's two ways you can get to Rasheed Glover in the State of
6 South Carolina. One, you can find that he is guilty because
7 he entered that store. We submit to you that that's what
8 happened and I'll go into that in just a minute. There's
9 another way in South Carolina that you can find him guilty of
10 this armed robbery. And that is under the theory, the hand of
11 one is the hand of all. And what that law says is basically,
12 again, if you have a group of people who are conspiring to do
13 something, whether that be murder, whether that be a robbery
14 or whatever it may be. When there's a plan to do something
15 and you are involved in carrying that plan through, no matter
16 what part you played, you played a part in that plan. You're
17 not just planning it, you're actually playing a part in it,
18 then you're guilty of that underlying offense, in this case,
19 the armed robbery. We know there was a plan. Asia told you
20 there was a plan. They had been planning it. Why? Why,
21 Asia, why do you do this? You've got a simple assault and a
22 battery and a breach of trust on your record, Magistrate level
23 offenses. That's not gonna prevent you from doing anything in
24 life. Why in the world do you get involved in an armed
25 robbery? And I still for the life of me don't understand it.

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1 When we started, we sit here in the beginning and we said, we
2 can't tell you why. Why is it that people think that they can
3 take other people's property? Why is it that a ten, two fives
4 and eight ones were worth getting a gun held to you? It still
5 just baffles me, and I'm sorry because I'm off on a tangent
6 because I don't understand it, I don't.

7 But you judge whether or not she was telling you the
8 truth. What was her demeanor? What was her emotion? Do you
9 think she was lying to you? All of those things are valid
10 questions. I encourage you to ask yourself those questions.
11 What does Asia have to gain? She's charged with armed
12 robbery, too. She told you and I submit to you she'd be lying
13 if she told you anything different. She hopes she gets
14 something out of it, she does. She wants to because she wants
15 to change her life around, she doesn't want this fall on her.
16 But she also told you, I haven't promised her anything. I
17 haven't promised her one thing. She sat there and admitted
18 her involvement in this. She told you. I submit to you, I
19 won't be trying Asia because she admitted everything under
20 oath of what she did that night. There was a plan. I was
21 supposed to drive them. I did drive them. I dropped them
22 off. All four got out, I can't tell you who went in. Don't
23 you think that that testimony would have been more valuable to
24 me if she could tell me who went in that store? She didn't
25 try to lie with that. I can't tell you who went in, my back

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1 was turned to them. All I can tell is all four get out, it
2 seems like an eternity, realistically I think she said it was
3 five to six minutes. I don't even know if it was that long
4 based upon the testimony of the police and stuff. They come
5 back, all four get in. What did they have? Two have guns.
6 She says she starts freaking out. She's panicking at this
7 point. What have I got myself into? At first, I was trying
8 to prove myself to my boyfriend who is Rasheed Glover. But
9 now what have I got myself into? They go to Country Manor,
10 ask yourself, who was telling her where to go? Who was
11 controlling her? Who had the power over her to control her?
12 It wasn't Ellerbe; it wasn't Aikeem Coles; and it wasn't
13 Tyreke Phillips; it was Rasheed Glover. He's the one that had
14 the power over her. That's why she submitted to his plan.
15 They go to Country Manor, you can see it on the map, you'll
16 have all that stuff back there with you. I'm not good at
17 distances, I would say a mile or less than a mile down the
18 road from where the actual Scotchman is. They see some police
19 cars, she really is freaking out. So, it's her idea to call
20 the cab because she wants to separate herself at this point in
21 time from what they were doing. They were supposed to meet --
22 I don't remember the name of the development and I apologize
23 for that -- back behind the Walmart. They never show up so
24 she goes to Huddle House and waits. She sees cars and police
25 cars and knows that they've been caught.

1 Rasheed Glover asked her to throw away the shoes, get rid
2 of the shoes, get rid of the gloves. Why? Why? Ladies and
3 gentlemen, he didn't want the police finding those pair of
4 shoes. Why? Remember crime scene guy, Wooten, Don Wooten, he
5 told you -- he took the picture of the bottom of their shoes
6 because none of the shoes matched the print that was inside.
7 Hmm, strange. Why? Because the shoe with the print is now in
8 the garbage back behind Walmart at the instruction of Rasheed
9 Glover.

10 I've done my best to separate these for you as to what
11 belongs to who. You can pretty much tell by the pants of
12 whose shoes belong to who. This is Amontre, this is who you
13 heard from. Okay? We'll get into his testimony in just a
14 minute.

15 Mud on the shoes. It had been raining that night. I
16 believe somebody testified that the back parking lot was all
17 dirt, it's muddy back there, especially when it rains. It had
18 been raining that night.

19 Excuse me, this is Tyreke Phillips. This is who the
20 clerk IDs, this is who is in that passenger seat. Let me talk
21 to you about that for a minute. There is a reason why in the
22 South Carolina Courts, we don't allow show up lineups.
23 There's a reason for that because they're unduly suggestive.
24 When I have -- when there are three, four individuals that
25 have committed a crime and I pull one out of a vehicle and ask

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1 you if this is the one who did it while two other ones are
2 inside that vehicle, it's not fair. And if we were trying
3 this guy, that would never be allowed in, it just wouldn't,
4 because it's unduly suggestive and there's a reason for that.
5 Think about what she testified to, I remember a red shirt and
6 blue jeans, red hoodie and blue jeans, a dark hoodie and blue
7 jeans. It was dark, don't know if it was dark blue or black
8 but it was a dark hoodie. That was the ID that went out.
9 That was the BOLO, the be-on-the-lookout that went out, red
10 hoodie, jeans, dark hoodie, jeans; no khaki pants, no khaki
11 pants. Does he have mud on his shoes? Absolutely. Was he
12 involved? Absolutely. He's still wearing the same shoes.
13 His shoe print don't match the shoe on the inside.

14 Let's talk about Mr. Coles. Mr. Coles has the mud on his
15 shoes, he does. He has the diamond-studded earrings, he does.
16 Nobody else has on earrings. He's got the diamond-studded
17 earrings. Asia says, I don't know those earrings. I don't
18 remember him having any earrings in. Rasheed, I know wears
19 earrings, but I asked her specifically, did Rasheed have his
20 earrings in, no. I don't remember him wearing his earrings
21 that night either. What about Amontre? Amontre wears
22 earrings? Yeah, he wears earrings. Mr. Coles has on purple
23 shoes and they have mud on them. Was he involved?
24 Absolutely, he was involved. You've heard him, they've all
25 pled guilty. He's admitted his involvement and he was

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1 involved.

2 Now, let's talk about Rasheed Glover, he's the one on
3 trial here today. This is his day. It is January 2nd at 1:30
4 in the morning. He has on a t-shirt. He has on a t-shirt.
5 There's two more that have on t-shirts, too. Who is the one
6 that's not wearing a t-shirt? Tyreke. Now, you tell me, does
7 it make sense that if you were the one who went inside, if
8 Tyreke is the one who went inside, does it make sense that all
9 these others are changing clothes but yet the one inside keeps
10 a sweatshirt on? That don't make sense. He kept his clothes
11 on because he didn't think he had anything to hide, that's why
12 he kept his clothes on. He had something to hide. 1:30 in
13 the morning, no sweatshirt.

14 Now, sometimes it's in cases that what you don't see or
15 what you don't hear, speaks a little bit louder than
16 everything else. Want to know how we know Rasheed changes his
17 shoes besides the fact that Amontre told you he did and Asia
18 told you he did and they hadn't seen each other except one
19 time, I believe at McDonald's but didn't talk about the case
20 and you heard it ain't in the discovery, how do they know
21 about the shoes? Because that's what happened. How do we
22 know about the shoes? Take a look at Mr. Glover. What do you
23 see on his pants? He's got mud on the bottom of his pants.
24 Now, you tell me how do you get mud on the bottom of your
25 pants but your shoes are clean as a whistle. How does that

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1 happen? Because you changed your shoes. He thought he was
2 outsmarting us. He thought he was being clever. What he
3 didn't expect is that Asia would turn on him. What he didn't
4 expect is that Amontre would turn on him. But, ladies and
5 gentlemen, they told you what happened. Amontre told you, I
6 did it, I went inside, I was armed, I was. I've pled guilty
7 to that. But guess who went in with me because if I'm going
8 down, we all going down and you went in with me. Rasheed
9 Glover was the mastermind. Rasheed Glover was the mastermind.
10 I'm not trying to get even, I'm just telling you the truth;
11 that's what he said.

12 Ladies and gentlemen, five were charged, three have pled
13 guilty, four have admitted their guilt. Today is the day that
14 we tell Rasheed Glover that he is just as guilty.

15 Thank you for your time and attention.

16 CLOSING STATEMENT BY MR. GARDNER:

17 MR. GARDNER: If Your Honor please, Madame Solicitor, Mr.
18 Foreman, ladies and gentlemen of the Jury thank you for your
19 attention for the last two days. It's been a -- I thought it
20 would be a simple trial and I think it has been. You know,
21 basically this case -- I could sum this case up with two
22 questions. One, would you go into business with Asia Collier?
23 Would you have relied on her information and make a decision
24 affecting your financial welfare or your children's or your
25 own self; would you rely on her to do that? I submit that

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1 y'all are reasonable people and you wouldn't and I'd also
2 submit to you you shouldn't rely on her today. She is a
3 convicted, a person who breaches people's trust. She has a
4 pending armed robbery, looking at thirty years. She is
5 already lied to the police one time. She prepared herself by
6 looking through the State's evidence. She met with the
7 solicitors to get ready to sell y'all a bill of goods today.
8 If there is anybody that's been a ringleader or mastermind, I
9 would submit it would be her. The shoes -- for the last two
10 days I told you I didn't have to -- the way the system works,
11 we are not usually not able to but we certainly don't have to
12 put up evidence and things like that. The last two days I've
13 told you the facts as I understood them to what they would
14 come out would be the two boys went in the store. One was
15 wearing a red hoodie or sweatshirt, whatever it was, and the
16 other one was wearing black or dark blue. I don't know if it
17 was black or if it was dark blue. But, I don't think that
18 that is an issue anymore. I think everybody has decided
19 that's what happened. And I also -- I spent two days talking
20 about the shoes, that Glover's shoes were not -- did not have
21 mud on them like the other guys that went into the store.
22 And, in the ninth hour how does the State solve the problem,
23 they put on Asia to talk about a different pair shoes that we
24 don't know anything about. They'll have that shoes. The last
25 guy that testified, that was sad, you know, you can dress it

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1 up anyway you want to but he is here to retaliate and that is
2 all there is to it. He wants you to believe that he is not
3 trying to get his sentence cut and you can believe that if you
4 want to. I don't think anybody that's reasonable is going to
5 believe that. I think he wants his sentence cut. But, I
6 think we all know that he is here to retaliate and he said as
7 much on the stand. But, what troubled me, he said that Glover
8 is trying to blame it on -- Glover is not blaming anybody for
9 anything. You know, you heard one of the police officers say
10 that a police officer read him his rights, took a statement
11 from him. We don't know what that statement is, they haven't
12 played any statement, Glover hasn't got on the stand and
13 blamed anybody for any of this stuff. I've been trying case
14 is a long time and this is one of the first times, if not the
15 first time, where I've seen witnesses get on the stand to say
16 one thing and say that one thing in then at the closing
17 argument to have the Solicitor say, well, that's not what they
18 meant, they didn't mean that part. That was my witness but
19 she didn't mean that or talk about stuff that wouldn't be
20 admissible if that person was on trial. None of that makes
21 any sense to me. I talked to yell at the beginning about
22 reasonable doubt. If you wanted to look at an example of
23 reasonable doubt, I can come up with a better one than that.
24 Let me talk about, which goes along with that, is the
25 burden of proof. The Solicitor talked about she thought that

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1 she had proved the robbery had occurred. There's no doubt
2 about that; I told y'all that in the beginning. Two boys went
3 in and Rob to this place and I'm sorry, I told the lady I'm
4 sorry about that, sorry you're testifying about this but
5 Glover -- I haven't seen any evidence that Glover went in
6 there except for the last fellow. He is the only one that
7 said it that he said he was retaliating about it. You know,
8 the best evidence about who went in that store, if you believe
9 Ellerbe, whatever the guy, the last fellow testified, you
10 believe him, the guy in the prison suit is that he went in the
11 store. Okay? And the police officer that took the other
12 fellow, not Glover, to the witness, the witness right after it
13 happened when she said, on the stand, that her memory would be
14 better right after it happened than it would yesterday, that
15 it was another guy. Those are your two guys that went in the
16 store, not Glover. So, the State has proved a robbery, we
17 know that, that's not a surprise, but they haven't proved that
18 Glover was a part of the robbery and certainly hadn't proved
19 that he went in the store.

20 Let's talk about the burdens of proof for a minute. I
21 talked to you yesterday about the classic definition of what
22 is not in the civil case, the civil case and a criminal case.
23 Now that we are -- this thing is about to be over, you're
24 gonna -- the Judge is gonna talk to you, give me some law and
25 you're gonna go to deliberate. I think it's real important to

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1 talk about the different levels so we can have some
2 comparison. I think it's -- I submit to you it would be
3 helpful. The different levels of burden of proof, there's a
4 thing called a scintilla of evidence. The only reason I have
5 ever heard of that is because the United States Supreme Court
6 has used it to say that that's nothing, not a scintilla of
7 evidence. If you were going up the chain, that would be on
8 the bottom because it's nothing. The next step of proof would
9 be a reasonable suspicion. That would allow a cop to pull
10 somebody over if he had a reasonable suspicion to pull
11 somebody over. I've been pulled over for speeding before,
12 stuff like that. The next level would be probable cause.
13 From TV shows and everything, probably everybody has heard of
14 that. That's just slightly higher than a reasonable
15 suspicion. You may have heard of Grand Juries, that's what,
16 if you were to go to them Magistrate, he would be looking for
17 probable cause; that's just to get warrant or to submit
18 something to the Grand Jury, it's a very low level. The next
19 level of proof we talked about yesterday is the preponderance
20 of evidence. That's 50.001 percent. You know, that's getting
21 there but that's still a pretty low level of proof. The next
22 level of proof is clear and convincing evidence. That's what
23 the government uses to take people's children away from them,
24 terminate parental rights. The next level of proof is
25 reasonable doubt and that's the highest level of proof that we

1 have and that's pretty high. But to convict somebody in the
2 United States, the government has to prove beyond that
3 reasonable doubt. Okay? You have to go beyond that. So,
4 that is a high standard. I have always found that helpful and
5 I submit that to you if you are looking at something to gauge
6 what level of proof somebody has got to do. There's no
7 mathematical figure but that is a backdrop that you can look
8 at. Speaking of that, you know, it fits like a glove with the
9 preponderance of evidence we talked about yesterday. I submit
10 to you the Judge is gonna tell you a little bit about it when
11 he starts charging you on this stuff. I would just add to you
12 that that was not only yesterday, is today and he goes into
13 the jury room with you. So, when you start deliberating, your
14 deliberations are still on the default of the not guilty. If
15 you think the State has proved beyond a reasonable doubt each
16 and every element -- the Solicitor talked to you about the
17 elements, I don't disagree with the elements, robbery is
18 robbery and I don't disagree that it was a robbery. Our
19 contention is that Glover was not the person that did the
20 robbery. Okay?

21 At the beginning of this I said two questions. Go back
22 to my questions. The second question, Would it help me
23 resolve this case? I submit it would be helpful for you is if
24 Asia Collier hat and said what she said, would you be
25 surprised? And, of course, the answer to that is, yes, you

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1 would be surprised. She's bargaining for her life. She's got
2 to sell it and she's got to sell it to the twelve of you. She
3 is trying to get probation or minimum time on a thirty-year
4 deal. She laughed, I submit there is nothing funny about
5 this. She cried, if I was looking at thirty years I would cry
6 to, I would try to sell it, too, I don't blame her for that.
7 But, what I didn't tell you is, we can't let that send him to
8 prison. Okay? And I just wanted over to my desk over there,
9 he's not there and we talked about that yesterday. I told you
10 he might come yesterday you might come today, he might not
11 come at all. The Judge will tell you that that can't even
12 enter into your discussions. Okay? And, it should. The
13 State either proved it or they did it. You don't need him
14 here, he's not -- he doesn't have to testify, there's nothing
15 he can add to this just whether or not the State proved that
16 Glover went in the store; he didn't. Did he have any planning
17 to do with it? He didn't. The last guy, I know it was sad,
18 but a couple of things he said took some glimmer from, I
19 learned a little bit about this case. He said that two of the
20 boys didn't do anything. Okay? So, if that's the truth, they
21 have pled guilty -- people plead guilty for all kinds of
22 reasons. There's no doubt, it's undisputed, that the two boys
23 he was talking about pled guilty to the armed robbery. But if
24 they didn't do anything, that's fine. But, two boys out of
25 the four didn't do anything. I submit to the more accurate

1 picture would be that Campbell was one of the two boys they
2 didn't do anything and merely being present at the scene of
3 the crime is not enough to be guilty of. Okay? A good
4 example, in this case along, the cab driver, he might've been
5 present, he certainly was there when the cops came but he
6 wasn't arrested. They're not saying he was a part of it. You
7 know, there are all kinds of scenarios out there we could play
8 out that would show you that Glover is not guilty of this. I
9 mean, he could have -- cabs pick people up, you know, we
10 didn't hear from the cab driver. That would've -- I would've
11 liked for you to have heard from the cab driver. Did he pick
12 up all of them at the same time? Did he pick up three of them
13 and then pick up Glover? What were they doing at the Estates
14 Manner or Conway Manner, whatever that housing development is.
15 Does somebody have a house there? I mean, how was that
16 chosen? I just don't think we've got enough there to send
17 somebody to prison for that long on this kind of charged in
18 this kind of flimsy evidence. I was told a long time ago,
19 when I went to the Solicitor's office that if you're looking
20 for what direction the wind is blowing in, don't look at the
21 trunk of the tree, you look at the leaves, you look at the
22 little things. What are the little things in this case?
23 Everybody's story -- and we really didn't hear anything
24 concrete. If you're gonna make a business decision that
25 affects you or your loved ones, did we hear anything from

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1 anybody from this witness stand that will be sound advice. If
2 you're getting ready to buy stock, by boat, by a car, go on a
3 trip somewhere, I mean, is this the kind of advice that you
4 want to hear? No, you want to hear something more solid.
5 Witnesses don't remember what happened, police officers don't
6 bring their notes, they don't bring the recordings, we didn't
7 hear from a detective, we didn't hear statement. You know,
8 one of the things that the Judge will tell you that will help
9 the Jury is that -- it was one of the hardest things I had to
10 learn as a lawyer that Judges will tell you that you can
11 believe a witness, you can believe part of what a witness
12 said, you can believe all of what a witness said, you can
13 believe none of what a witness says. That's important for
14 people like Asia, there's no doubt that she, in my mind, that
15 she planned this thing. She was the driver, she did pick up,
16 she did the, you know, the stuff that got done. You can
17 believe whatever you want to about that but you can also
18 disbelieve the part about her having -- to saying that Glover
19 was involved. Because if she doesn't say Glover is involved,
20 she's not getting a deal and she's going to the penitentiary.
21 You've heard enough from me. Unfortunately, you haven't
22 heard enough from the stand, you haven't seen enough evidence
23 to do a conviction. I told you yesterday when I got up here
24 today, there would be only one verdict that would be
25 reasonable and that's not guilty. Thank you for being

1 attentive.

2 CHARGE TO JURY:

3 THE COURT: now, ladies and gentlemen, that you've heard
4 all the evidence in this case as well as the closing arguments
5 of the attorneys, I'm going to charge you on the law that you
6 are to apply in this case. And under our Constitution and
7 code of laws, only the Jury can make a finding of fact in a
8 case. So, if I've said anything or done anything in this
9 trial that you think I have an opinion about the facts, you
10 are to disregard that because you and only you can decide this
11 case based on the facts. And under the same Constitution and
12 code of law that makes me or makes you the exclusive judges of
13 the facts, it makes me the exclusive judge of law. So, if you
14 have an idea as to what you think the law is or what the law
15 ought to be in it differs from what I tell you the law is now,
16 you are to disregard your ideas and apply the law exactly as I
17 give it to you. And the fact that this Defendant was arrested
18 and charged and indicted in this case is not evidence in this
19 case, it should not be considered by you as evidence of guilt
20 in this case. The indictment is simply a formal written
21 document that brings these cases to court. To that
22 indictment, this Defendant has entered a plea of not guilty,
23 therefore, it placed the burden on the State of South Carolina
24 to prove each and every element of that indictments beyond a
25 reasonable doubt. A person charged with committing a criminal

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CHARGE TO JURY

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1 offense in South Carolina is never required to prove himself
2 or herself innocent and I instruct you and emphasize to you
3 the fact that the Defendant was not present and did not
4 testify in this case is not a factor to be considered by you
5 in any way in your deliberations or in your consideration of
6 the question of guilt or innocence. It must not be considered
7 by you in any manner whatsoever. The Defendant has a
8 constitutional right to remain silent and an assertion of that
9 right cannot be considered in your deliberations. And I
10 repeat, under your oath, you are to draw no conclusions
11 whatsoever by the fact that the Defendant is not present and
12 did not testify. You can't even discuss that in the jury room
13 because it is an important rule of law in this country that a
14 defendant in a criminal trial will always be presumed innocent
15 of the crime for which he or she is indicted unless and until
16 his guilt has been proven by evidence that satisfies you of
17 that guilt beyond a reasonable doubt. The presumption of
18 innocence is not a mere legal theory, it is not just a legal
19 phrase, it is a substantial constitutional right to which
20 every defendant is entitled. This presumption of innocence
21 accompanies the Defendant from the time he is arrested and
22 charged in throughout the trial until you reach a verdict of
23 guilt based on evidence that satisfies you of that guilt
24 beyond a reasonable doubt. Now reasonable doubt is a doubt
25 which makes an honest, sincere, conscientious juror in search

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CHARGE TO JURY

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1 of the truth to hesitate to act. Proof beyond a reasonable
2 doubt must be therefore, must be proved of such a convincing
3 character that a reasonable person would not hesitate to rely
4 on and act upon it and most important of his or her own
5 affairs. Proof beyond a reasonable doubt can also be
6 described as proof that leaves you firmly convinced of the
7 Defendant's guilt. There are very few things in this world
8 that we know with absolute certainty. In a criminal case, the
9 law does not require proof that overcomes every possible
10 doubt. If based on your consideration of the evidence, you
11 are firmly convinced that the Defendant is guilty of the crime
12 charged, you must find him guilty. If, on the other hand, you
13 think there's a real possibility that he is not guilty, you
14 must give him the benefit of that doubt and find him not
15 guilty.

16 Now, in determining what the facts are in the case, you
17 must necessarily pass upon the credibility which simply means
18 the believability of the witnesses and there's a valuable
19 weight and the weight to be given to their testimony. You
20 alone must decide the force and effect of the truth of their
21 testimony. Making these decisions there are many things that
22 you should take into consideration such as the manner and the
23 appearance of the witness on the witness stand sometimes
24 referred to as the demeanor of the witness. Was the witness
25 forthright or hesitant? Was the witness' testimony consistent

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CHARGE TO JURY

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1 or did it contain discrepancies? What was the ability of the
2 witness to know about the facts of which he or she testified?
3 Did the witness have any calls or reason to be bias or
4 prejudice in favor of the testimony he or she gave? Was the
5 testimony of a witness corroborated or made stronger by the
6 testimony and evidence or was it made weaker or impeached by
7 such other testimony or evidence? As a juror you have a right
8 to believe a small portion of witness' testimony and disregard
9 the larger or, vice versa, you may believe all a witness
10 testimony or none. You may believe the testimony of a single
11 witness against that of meaning or the other way around.

12 Now, in a criminal trial, one of the necessary elements
13 that must be proved by the State beyond a reasonable doubt is
14 criminal intent. Criminal intent is always a matter that must
15 be determined by the jury from the circumstances surrounding
16 the situation. There is no way to prove intent to a
17 mathematical certainty. There is no way medical science can
18 dissect a person's brain and determine what he or she had in
19 mind so the law states that criminal intent may be inferred
20 from the circumstances shown to have existed both before and
21 after the fact and this is how you, the Jury, make a
22 determination as to whether or not the elements implying
23 intent was present. Criminal intent is the state of mind that
24 operates jointly with an act or omission in the commission of
25 crime. Criminal intent is the mental state of conscious

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1 wrongdoing so it is up to you, the Jury, to determine what the
2 Defendant intended based on the circumstances shown to have
3 existed at the time. And I tell you that the state must prove
4 criminal intent just as the state must prove each of beyond a
5 reasonable doubt.

6 There are two types of evidence which are generally
7 presented during the trial, direct evidence and circumstantial
8 evidence. Direct evidence directly proves the existence of a
9 fact and does not require a deduction. Circumstantial
10 evidence is proof of a chain of facts and circumstances
11 indicating the existence of a fact. Crimes may be proven by
12 circumstantial evidence and the law makes no distinction
13 between the weight or value to be given to either direct or
14 circumstantial evidence. However, to the extent that the
15 State relies on circumstantial evidence, all the circumstances
16 must be consistent with each other and when taken together
17 point conclusively to the guilt of the accused beyond a
18 reasonable doubt. If these circumstances merely portray the
19 Defendant's behavior as suspicious, the proof has failed. The
20 State has the burden of proving the Defendant guilty beyond a
21 reasonable doubt and this burden rests with the State
22 regardless of whether the State relies on direct evidence,
23 circumstantial evidence or the combination of the two. Now,
24 mere presence at the scene is not sufficient to prove someone
25 guilty of a crime. A Defendant is present where a crime is

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CHARGE TO JURY

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1 being committed or merely associated with persons who have
2 committed a crime does not make the Defendant and accomplice
3 or an aider or abettor of the person committing the crime.
4 The burden is upon the State to prove every element of the
5 crime charged. If you find, after reviewing all of the
6 evidence, that the State has proved the Defendant was only
7 present at this crime scene and that they have not proven
8 beyond a reasonable doubt any other participation in the crime
9 then you must find the Defendant not guilty. The law is that
10 the proof, proof that the Defendant was at the scene is not
11 sufficient to find him guilty unless there was some
12 participation by the Defendant.

13 Now, the Defendant is charged with the crime of armed
14 robbery. In order to prove this offense, the State must first
15 prove beyond a reasonable doubt that the Defendant took
16 personal property from the person or presence of another
17 person. Property is in the presence of a person if it is
18 within the person's reach, inspection, observation or control.
19 So, that the person could, if not overcome with violence or
20 prevented by fear keep possession of the property. The State
21 must also prove beyond a reasonable doubt the Defendant
22 carried the property away intending to permanently deprive the
23 owner of the property and to keep the property for the
24 Defendant's on use. The slightest removal of the property or
25 the complete possession of the property even for instance by

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1 the Defendant is sufficient to show a taking and carrying away
2 of the property. Taking and carrying away of the property
3 must have been done with violence or by putting the owner of
4 the property in fear of violence. And, finally, the State
5 must prove beyond a reasonable doubt that the Defendant was
6 armed with a deadly weapon during the robbery. A deadly
7 weapon is any article, instrument or substance which is likely
8 to cause death or great bodily harm. Whether an instrument
9 has been used as a deadly weapon depends on the facts and
10 circumstances shown to have existed in each case. The
11 following are examples of instruments which may be deadly
12 weapons; a pistol, a shotgun, a rifle, a dire, a dagger, a
13 knife, a slingshot, middle knuckles, a racer, gasoline, a
14 firebomb, a Molotov cocktail, lighter fluid. A gun maybe a
15 deadly weapon even if it does not operate.

16 Now, if a crime has been committed by two or more people
17 who are acting together in committing the crime, the act of
18 one is the act of all. A person who joins with another to
19 commit a crime or an unlawful act is criminally responsible
20 for everything done by the other person which happens as the
21 probable and natural consequences of the acts done in carrying
22 out the common plan or purpose. For example, two people can
23 be guilty of killing another person when only one of the two
24 had a gun, there was only one bullet fired and only one of the
25 two fired the gun or the shot that caused that death. If two

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CHARGE TO JURY

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1 or more people are together acting together, assisting each
2 other in committing the crime or the offense the act of one is
3 the act of all. It is sometimes referred to as the hand of
4 one is the hand of all. Prior knowledge that a crime is going
5 to be committed without more is not sufficient to make a
6 person guilty of the crime. Mere knowledge that another
7 person is going to commit a crime, even if the Defendant is
8 present when a crime is committed is not sufficient to convict
9 the Defendant as a principal. Guilt as a principal is shown
10 by actual or constructive presence of the crime scene as a
11 result of a prior arrangement. Therefore, finding a prior
12 arrangement, a plan or the common scheme is necessary for a
13 finding guilt as a principal. The State must prove beyond a
14 reasonable doubt by competent evidence that the theory of the
15 hand of one is the hand of all. A principal in a crime is one
16 who either actually commits the crime or who is present,
17 aiding, abetting or assisting in the committing of the crime.
18 When a person does an act in the presence of and with the
19 assistance of another the act is done by both. Where two or
20 more are acting with a common plan or intent are present at
21 the commission of crime, it does not matter who actually
22 commits the crime, all are guilty, the hand of one is the hand
23 of all. The presence at the commission of a crime means to be
24 sufficiently near to aid, abet and assist in the commission of
25 a crime. However, mere presence at a crime scene is not

1 sufficient to convict one as a principal on the theory of
2 aiding and abetting.

3 Intent is also a necessary element but there must have
4 been a common design or intent to commit the crime and the
5 crime must have been committed pursuant to these, pursuant
6 thereto where the person is aiding, abetting by some overt
7 act. Intent means the result which actually occurs, not
8 accidentally or involuntarily. Intent may be shown by acts
9 and conduct of the Defendant and other circumstances from
10 which you may naturally and reasonably infer intent and the
11 State must prove these elements beyond a reasonable doubt.

12 Ladies and gentlemen, you are not partisans for the State
13 of South Carolina or this Defendant. You don't serve as
14 jurors to punish your enemies or reward your friends. That
15 system of justice simply would not be tolerated. You have
16 been selected by both the State and the Defense to be fair and
17 impartial jurors and through your joint deliberation determine
18 the truth in this case giving to this Defendant the benefit of
19 every reasonable doubt to each and every issue and then to the
20 facts that you determined to be true to apply the law that I
21 have given you and arrive at a verdict that speaks to the
22 truth. And when you have accomplished is, you would have
23 satisfied your duties to this Court.

24 Now, Mr. Foreman, I have had my law clerk type up a
25 verdict form in this case and it's simply the caption of the

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CHARGE TO JURY

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1 case and the case number and it says, We, the Jury, find the
2 Defendant, (1) guilty of armed robbery or (2) We, the Jury,
3 find the Defendant not guilty of armed robbery. Your decision
4 must be unanimous, which means all twelve of you must agree.
5 And, when you have made that decision, Mr. Foreman, you are to
6 check whatever block y'all have decided, sign your name to it
7 and knock on the door. And the order that he put these in is
8 no consequences, we just had to put them in some order, so you
9 are not to read anything from the order that my clerk has put
10 these in.

11 Now, I am going to have to consult with the attorneys to
12 be sure I haven't left anything out in my charge. If I have,
13 if they think there is some other law that I need to charge
14 you on, then I'll bring you back out and charge you on that
15 additional law. If they think I've covered everything, than
16 what I will do is send this verdict form along with the
17 exhibits back to the jury room. And when you have received
18 this verdict form, that will be your indicator to start your
19 deliberation.

20 When you talk about this case and deliberate this case,
21 all twelve of you must be present in the room. If one of you
22 need to be excused and need to go to the restroom, you've got
23 to stop talking about the case and you can only talk about it
24 when all twelve of you are there and it must be a unanimous
25 verdict, all twelve of you must decide on this verdict.

1 Now, Mr. Alternate, I don't need you to go back because I
2 only needed to you if I lost a juror to sickness or something
3 in the trial. Look like everybody's gonna make it, so if
4 you'll just hang with me.

5 I send you back to the jury room. Either I'll bring you
6 back out in a few minutes or I send this in with the evidence
7 and when you get that you can start your deliberations. And,
8 when you've reached a verdict, if you'll just simply knock on
9 the door and will bring you out and receive that verdict.

10 Okay?

11 (REPORTER'S NOTE: Jury exits courtroom. 2:49 P.M. The
12 following takes place outside the presence of the Jury.)

13 THE COURT: Mr. Alternate, you stay with me. I'm sorry.
14 Any exceptions or deletions on behalf of the State?

15 MS. RICHARDSON: No, sir, Your Honor.

16 MR. GARDNER: No, Your Honor.

17 BY THE COURT:

18 THE COURT: Okay. If y'all would get the evidence
19 together with the Court Reporter agree, because if something
20 don't go back, it's gonna be y'all's fault, not my Court
21 Reporter's fault.

22 Mr. Alternate, I appreciate you serving and you got to
23 listen to the whole case and then not participate in the
24 decision but I only needed you if somebody got sick. So, I'm
25 going to excuse you for this case. I've been telling you you

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BY THE COURT

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1 couldn't talk about it and now you can talk about it to
2 anybody you want to.

3 The -- now, Madame Solicitor, what -- does he need to
4 call back? What's the plan for tomorrow?

5 MS. RICHARDSON: I believe that they do have matter for
6 tomorrow.

7 CLERK: They are to report in the morning, Judge, at
8 9:30.

9 THE COURT: All right. Well, you got to be back at 9:30
10 in the morning.

11 JUROR 224: Report here in the morning.

12 THE COURT: Yes, sir. They claim they may start another
13 case. Thank you so much.

14 JUROR 224: Thank you.

15 (REPORTER'S NOTE: Counsel confers and agrees on exhibits to
16 be submitted to Jury. Exhibits and Verdict form submitted to
17 Jury and deliberations begin. 2:53 P.M.)

18 (RECESS - 2:53 P.M.)

19 *****OFF THE RECORD*****

20 (On the Record - 3:20 P.M.)

21 (REPORTER'S NOTE: Jury enters courtroom. 3:20 P.M.)

22 THE COURT: Mr. Foreman, I understand you have a verdict?

23 JUROR 265: Yes, sir, we do.

24 THE COURT: It is unanimous?

25 JUROR 265: Yes.

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VERDICT OF JURY

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1 THE COURT: If you will pass it up, please, sir.

2 (REPORTER'S NOTE: Court reviews verdict form.)

3 VERDICT OF THE JURY:

4 CLERK: Indictment Number 2015-GS-26-1237, State of South
5 Carolina, County of Horry versus Rasheed Tamir Glover, we, the
6 Jury, find the Defendant guilty of armed robbery. Signed by
7 Foreperson Jamie Orner, Juror Number 265.

8 Ladies and gentlemen of the Jury, if this is your
9 verdict, so signify by raising your right hand.

10 (REPORTER'S NOTE: Jury unanimous confirms.)

11 THE COURT: Anything for me to decide before I dismiss
12 the Jury?

13 MS. RICHARDSON: Not from the State, Your Honor.

14 MR. GARDNER: No, Your Honor.

15 BY THE COURT:

16 THE COURT: Okay. Ladies and gentlemen, I want to thank
17 you for your service. I've been telling you all week you
18 couldn't talk about this case and now you can talk about it
19 anybody you want to. If you don't want to, you don't have to.
20 And my understanding is they won't need you back tomorrow, so
21 you won't have to do this again for three years, but I
22 appreciate your service to the citizens of Horry County. I've
23 enjoyed being here this week. Y'all have a great rest of the
24 week. And if you need work stuff, I guess, the Clerk can
25 provide it for you and they're gonna send you a huge check in

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BY THE COURT

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1 the mail. You won't be able to get far with it but if they
2 paid you for what you're worth, you couldn't pay your property
3 taxes, so thank you so much. You have a nice week.

4 (REPORTER'S NOTE: Jury exits courtroom. 3:23 P.M.)

5 THE COURT: Okay. If you'll give me a sentencing sheet
6 and if you'll give me a envelope. Does he have a prior
7 record?

8 MS. RICHARDSON: Your Honor, let me look. Your Honor, it
9 looks like -- no, sir. He has a 2014 assault and battery,
10 third degree.

11 THE COURT: Okay. And I assume there's a bench warrant
12 out there for his arrest?

13 MS. RICHARDSON: He has a 2014 public disorderly, a
14 couple of charges with no disposition. Your Honor, we had
15 issued a bench warrant for him -- we have, we've -- our Deputy
16 has to sign it so that it can go multistate but there is a
17 bench warrant out.

18 THE COURT: Okay. Well, when he's arrested, I don't know
19 if I'll still be here or not but you can bring him before some
20 judge and he'll open this sentence and read it to him and see
21 what happens.

22 (ADJOURNED - 3:26 P.M.)
23
24
25

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CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Rasheed T. Glover, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on October 12-13, 2015.

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

Kay H. Richardson

Official Court Reporter

April 25, 2016.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2015-GS-26-01237
STATE OF SOUTH CAROLINA,)
Plaintiff,) **Transcript of Record**
vs.) Sentencing and Motion to Reconsider
RASHEED TAMIR GLOVER,) March 15 and 17, 2016
Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Lauree Richardson, Esquire
Attorney for Plaintiff

Jarrett Bouchette, Esquire
Johnny Gardner, Esquire

Attorney for Defendant

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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I N D E X

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E X H I B I T S

<u>No.</u>	<u>ID</u>	<u>EV</u>

(No Exhibits were marked during hearing.)

State v. Glover - 2015-GS-26-1237
BY THE COURT

1 (MARCH 15, 2016)

2 MS. RICHARDSON: Your Honor, this is the State of South
3 Carolina versus Rasheed Glover. It is true-billed indictment
4 2015-GS-26-1237, Your Honor. He was tried in his absence on
5 October 12th and 13th. A jury came back with a guilty
6 sentence on October 13th for the armed robbery charge. Judge
7 Cothran at that time did sentence him, sealed his sentence and
8 that is what we are before you today to reveal that sealed
9 sentence.

10 THE COURT: The attorney representing him at the time was
11 Mr. Gardner?

12 MS. RICHARDSON: It is, Your Honor. It was. Mr. Gard
13 is in trial right now with our office. However, a
14 representative from his office is present.

15 THE COURT: All right. So, we're going to -- All right.
16 2015-GS-26-1237, State of South Carolina, Count of Horry
17 versus Rasheed Tamir Glover regarding armed robbery. The jury
18 having found the Defendant guilty on this charge on October
19 13th, 2015. Judge Cothran entered a sentence. The sentence
20 of the Court is Defendant is committed to the State Department
21 of Corrections for a determinate term of twenty-five years.

22 All right.

23 MS. RICHARDSON: Thank you, Your Honor.

24 THE COURT: Any matter -- I'm sorry. First, any matters
25 from the Defense at this point in time, sir?

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BY THE COURT

4

1 MR. BOUCHETTE: No motions from the Defense, Judge.

2 THE COURT: All right, sir. Well, I appreciate it but
3 and that's probably one of the reasons I was asking if Mr.
4 Gardner was to be present. If you want to -- want me to hold
5 this in abeyance for a -- until Mr. Gardner is available this
6 particular week, you understand should you have any objections
7 to the sentence, you want the sentence modified in any way, if
8 you want to ask the Court to change it in any way, you need to
9 do that while this matter is now open. You have the ability
10 to do so. The Supreme Court has said so in more than one
11 case. But now is the time to do that.

12 MR. BOUCHETTE: Your Honor, we would like to hold it in
13 abeyance. I believe Mr. Gardner is expected to be in trial
14 all week. We weren't aware about this until this afternoon
15 but just to preserve any and all arguments, since I was not
16 there at the actual trial, we would like to go ahead and just
17 request that.

18 THE COURT: All right. Solicitor, what's your
19 understanding regarding that particular case that Mr. Gardner
20 is involved in?

21 MS. RICHARDSON: Your Honor, my understanding is that it
22 was supposed to be over as far as Wednesday.

23 THE COURT: All right. And I appreciate it, I'm sorry.
24 I did not mean to interrupt and I'm sorry about that.

25 Thursday morning, 9:30, we'll reconvene, hold it open

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MOTIONS

1 until that time and you can have Mr. Gardner here. Do not
2 send Mr. Glover to the Department of Corrections. Keep him at
3 the Detention Center until Thursday morning at 9:30. Thank
4 you very much.

5 MS. RICHARDSON: Thank you, Your Honor.

6 (RECESS.)

7 *****OFF THE RECORD*****

8 (On the Record.)

9 (MARCH 17, 2016)

10 THE COURT: All right. This is 2015-GS-26-1237, State of
11 South Carolina versus Rasheed Tamir Glover regarding the
12 matter -- the Court opened a sealed sentence on Mr. Glover.
13 He was tried in his absence and was thereafter located and
14 secured by the law enforcement officers and brought before the
15 Court for the opening of the sentence. Mr. Gardner, you were
16 involved in the trial in another matter and unavailable to
17 make any motions. You understand that once that Court opens
18 the sealed sentence, that is the time for the Defense if they
19 have any issues as to the prior matter to bring those to the
20 Court's attention. So, I continued it until now so that you
21 would be available.

22 MR. GARDNER: I appreciate that, Judge. We would make
23 our standard post-trial motions, which I know it's different
24 in criminal than they are civil. I believe the remedy we
25 would ask for would be a new trial and in the alternative a.

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MOTIONS

6

1 I don't know -- I've done a little bit research but like you
2 said I was in the middle of that other trial. I don't know if
3 this Court has the power -- I think it does -- in the
4 alternative to reconsider the sentence.

5 THE COURT: I do and that's part of what the Supreme
6 Court, it may not seem -- there may be some logical
7 inconsistencies with it, whoever opens the sealed sentence by
8 that Supreme Court decision does have the authority to change
9 the prior sentence issued in this matter. So, if you'd like
10 to argue against the prior sentence given by Judge Cothran of
11 twenty-five years, I'll be glad to hear from you.

12 MR. GARDNER: Thank you, Judge, I appreciate that. And
13 we most certainly would. I -- to the best of my information,
14 Rasheed Glover has no prior record. This is his first
15 conviction. I understand it was a big one but by comparison,
16 I would point out to the -- I believe the Solicitor can tell
17 me if I'm wrong, I believe that the Codefendants all got ten
18 years and there's one waiting to be sentenced that testified.
19 And I think that the ten-year mark is probably fair and I'd
20 ask the Court to consider that based on he's twenty -- I'm
21 sorry, Judge -- he's twenty years old, he lives here in Horry
22 County and no children and not married.

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

24 All right, Solicitor. Be glad to hear your arguments.

25 MS. RICHARDSON: Thank you, Your Honor. This case was

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MOTIONS

1 tried before the Honorable Judge Cothran. Your Honor, Mr.
2 Gardner is correct in what the Codefendants received. If I
3 could just explain a little bit of that?

4 THE COURT: Yes, ma'am, please.

5 MS. RICHARDSON: There were four gentlemen who were
6 involved in an armed robbery and one female who acted as the
7 driver. Two of the guys went in, as we discovered through
8 testimony, two boys go in, two stay outside. The two who
9 stayed outside pled guilty the morning of trial, that first
10 Monday morning. They received ten years as part of their role
11 in the planning and the carrying out of armed robbery. The
12 two guys who went in was this Defendant as well as Amontre
13 Ellerbe. Amontre Ellerbe received a fifteen-year sentence.
14 After he received his fifteen years, he did voice to the State
15 that he wished to testify against this Codefendant and he did
16 do just that. After Mr. Glover was found guilty, we brought
17 Mr. Ellerbe back in front of Judge Cothran. I recommended a
18 thirteen-year -- it was either a twelve or a thirteen-year
19 sentence at that point in time and Judge Cothran, after
20 hearing the trial said that his testimony was essential. He
21 gave him ten years for that. So, he is correct in saying that
22 they did all get ten years. Again, Mr. Ellerbe got ten
23 because of his cooperation with the State in the trial of Mr.
24 Glover.

25 Your Honor, during the trial, we heard that both guys

State v. Glover - 2015-GS-26-1237
MOTIONS

8

1 were armed. One kept repeatedly putting the gun in her face,
2 this was planned from the beginning. It was a -- and I
3 apologize, it was a convenience store on Highway 501, the
4 Scotchman. It was during the time where a lot of clerks were
5 getting killed. Your Honor, it was a very, very serious
6 crime. She -- the victim in the case did testify. She's
7 obviously very fearful. She was at the time. The State would
8 oppose any reduction in sentence just based upon the fact that
9 Judge Cothran was the sentencing judge. He's the trial judge,
10 he's the one who heard the facts in the case. If Your Honor
11 is inclined it reduce the sentence, the State would ask that
12 you not reduce it below twenty years.

13 THE COURT: Thank you, ma'am.

14 Anything else, Mr. Gardner?

15 MR. GARDNER: May I have one moment, Your Honor?

16 THE COURT: Yes, sir.

17 MR. GARDNER: I just want to make sure that Mr. Glover
18 was able to tell me a couple of things, Your Honor.

19 THE COURT: Yes, sir.

20 MR. GARDNER: We appreciate that Your Honor, and I
21 believe that the -- obviously, that sentence was much higher
22 than the other people because the fact that he wasn't there
23 and I would ask the Court again just to consider somewhere
24 around a ten or fifteen-year sentence.

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

State v. Glover - 2015-GS-26-1237
RULING OF THE COURT

1 RULING OF THE COURT:

2 THE COURT: Based upon the matters in front of me,
3 obviously, I do not have the transcript of the proceedings,
4 there is no transcript of the proceedings at this point in
5 time, so I do not have that available to review and,
6 obviously, I was not the trial Judge who listened to all of
7 the testimony in this matter. I'm basing my decision based
8 upon the obvious thing, the sentence for armed robbery for a
9 minimum of ten up to thirty years. It's a -- classified as a
10 violent and most serious offense by the State of South
11 Carolina. It -- I'm taking into consideration what the State
12 has said as far as the facts and circumstances relayed to the
13 Court of the fact that this Defendant was an actual
14 participant in the crime in which was armed, there was -- and,
15 as indicated, an armed robbery and he was one of the
16 participants in that particular matter in the Scotchman store.
17 Based upon that, I respectfully decline to grant the request
18 of the Defense to change the sentence of Judge Cothran.

19 As to any other matters as far as the granting of a new
20 trial in this matter, the Court has not been presented with
21 any matters that the Court believes would be sufficient to
22 grant such a request and therefore, based upon that, there
23 being nothing from the Court that the Court believes is of a
24 nature that would cause the Court to grant a new trial, I
25 respectfully decline to grant Defense's request for a new

State v. Glover - 2015-GS-26-1237
RULING OF THE COURT

10

1 trial.

2 Thank you very much.

3 MR. GARDNER: Thank you, Your Honor.

4 MS. RICHARDSON: Thank you, Your Honor.

5 (ADJOURNED.)

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State v. Glover - 2015-GS-26-1237
CERTIFICATE OF COURT REPORTER

1.

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Rasheed Tamir Glover, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on March 15 and 17, 2016, taken by Dixie C. Eubank.

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

Kay H. Richardson

Official Court Reporter

May 4, 2016.

COUNTY OF Horry
 STATE VS.
Rasheed Tamir Glover

AKA: _____
 Race: _____ Sex: M Age: 20
 DOB: SS#:
 Address: 1911 9th Ave Apt A3
 City, State, Zip: Conway, SC 29527
 DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Armed Robbery

INDICTMENT/CASE#: 2015GS2601237

A/W#: 2015A2610200023

Date of Offense: 1/2/2015

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ARREST: Richardson, Lauree SCB76142 SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$; provided that upon the service of _____ days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$133.90 + \$40.00 = \$173.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 25.00 beginning 11/13/2014

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Nelanie Huggins-Ward

Court Reporter: Dixie Eubank

SOCA/217 (03/2011)

Presiding Judge [Signature]

Judge Code: 2144

Sentence Date: Feb. 13, 2015

WITNESSES

Tyrone Williams Conway Police Department

DOCKET NO. 2015-GS-26-01237

The State of South Carolina

County of Horry

Lauree Richardson

15H00178

COURT OF GENERAL SESSIONS

MARCH, 2015 TERM

ARREST WARRANT NUMBER

2015A2610200023

CDR: 0139 16-11-0330(A)

DOA: 1/2/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 26 2015

VERDICT

Foreperson of Petit Jury
Date:

vs.

Rasheed Tamir Glover
/ M
1911 9th Ave Apt A3
Conway, SC 29527

ATTORNEY: J. M. "Buddy" Long, III

Indictment for

ARMED ROBBERY

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY

2015 MAR 27 PM 4:32

MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on March 26, 2015, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Rasheed Tamir Glover did in Horry County on or about January 2, 2015, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Scotchman Store 3058 from or in the immediate presence of Angie Gilchrist, an employee or agent of Scotchman Store with intent to deprive Scotchman Store 3058 of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

ARREST WARRANT

2015A2610200023

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE

2015000101

against

Rasheed Tamir Glover

Address: 1911 9Th Ave Apt D6

Conway, SC 29527-5417

Phone: SSN: [REDACTED]

Sex: M Race: Height: 5 11 Weight: 165

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0260200

Prosecuting Agency: Conway Police Department

Prosecuting Officer: Tyrone Williams - 0125

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

RASHEED Glover
1/2/15

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
-PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant Tyrone Williams who being duly sworn deposes and says that defendant Rasheed Tamir Glover

did within this county and state on or about 1/2/2015 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Horry) in the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on January 2, 2015, at 3410 West Hwy 501 (Scotchman) in the city Conway county of Horry, one Rasheed Tamir Glover did take from the victim with intent to deprive while armed with a , a deadly weapon. Along with co-defendants.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 200 Laurel Street

Conway 29526-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/2/2015 defendant Rasheed Tamir Glover

did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Horry) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me on 1/2/2015

Signature of Issuing Judge

Aaron C. Butler

Judge Code: 5022

(L.S.)

Judge's Address J. Ruben Long Detention Center

Conway, SC 29526-1071

Judge's Telephone (843)365-9222

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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ORIGINAL

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

WITNESSES

C. Dale Long Conway Police Department

ARREST WARRANT NUMBER

N260090

CDR: 0079 16-11-0311

DOA: 1/14/2013

ACTION OF GRAND JURY

20

TRUE BILL

APR 25 2013

Foreperson of Grand Jury

Date:

APR 25 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-26- 01831

The State of South Carolina

County of Horry

Bradley C. Richardson

13H00449

COURT OF GENERAL SESSIONS

May, 2013 TERM

THE STATE

vs.

Rasheed Tamir Glover

/ M

1911 9Th Ave Apt D6

Conway, SC 29527-5417

ATTORNEY: Long, III, J. M. "Buddy"

Indictment for

BURGLARY, FIRST DEGREE

Jimmy A. Richardson, II, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT
BURGLARY, FIRST DEGREE

At a Court of General Sessions, convened on April 25, 2013, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Rasheed Tamir Glover did in Horry County on or about January 8, 2013, enter the dwelling of Khalilah Cooper located at [REDACTED] Holmes Court, Conway, without consent and with the intent to commit a crime therein and the defendant did so in the nighttime, in violation of Section 16-11-0311(A), S. C. Code of Law, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

**State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit**

Scott R. Hixson
Chief Deputy Solicitor

1301 2nd Avenue
P.O. Drawer 1276
Conway, SC 29528
Phone: (843) 915-5460
Fax: (843) 915-6461



JIMMY A. RICHARDSON, II
Solicitor

Alicia A. Richardson
Deputy Solicitor

401 Cleland Street
P.O. Box 1688
Georgetown, SC 29442
Phone: (843) 545-3169
Fax: (843) 545-3268

DISMISSAL/NOLLE PROSSE FORM

TO: Horry County Clerk of Court

FROM: BRADLEY C. RICHARDSON, SENIOR ASSISTANT SOLICITOR

DATE: APRIL 22, 2014

RE: STATE OF SC VS. RASHEED TAMIR GLOVER
CASE NO: 13H00449

FILED
HORRY COUNTY
2014 APR 25 PM 12:57
HELANIE HUGGINS-WARD
CLERK OF COURT

PLEASE BE ADVISED THAT THE CHARGE(S) LISTED BELOW HAVE BEEN DISMISSED OR NOLLE PROSSED (PLEASE PLACE X IN APPROPRIATE COLUMN).

Warrant #	Charge	Indict #	T/B Date	D/M	N/P	DOA
N260090	Burglary, 1st degree	2013GS2601831	4/25/2013		X	1/14/2013

Assistant Solicitor

ORIGINAL

ARREST WARRANT

N-260090

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Conway

THE STATE

2013000568

against

Rasheed Tamir Glover

Address: 1911 9Th Ave Apt D6

Conway, SC 29527-5417

Phone: SSN: [REDACTED]

Sex: M Race: Height: 5 11 Weight: 165

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0260200

Prosecuting Agency: Conway Police Department

Prosecuting Officer: Dale Long - 4857

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Rasheed Tamir Glover

on 1-14-13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Conway

Personally appeared before me the affiant Dale Long

being duly sworn deposes and says that defendant Rasheed Tamir Glover

did within this county and state on or about 1/8/2013 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Conway)

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON THE ABOVE DATE DURING THE NIGHT TIME HOURS THE DEFENDANT DID UNLAWFULLY ENTER THE RESIDENCE AT [REDACTED] HOLMES COURT N. IN THE CITY OF CONWAY WITH THE INTENT TO COMMIT A CRIME. THAT WHILE THEREIN THE DEFENDANT DID ASSAULT A FIFTEEN YEAR OLD FEMALE. THAT THE ACTS OF THE ACCUSED CONSTITUTE THE OFFENSE OF BURGLARY FIRST DEGREE.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Conway

Affiant's Address 200 Laurel Street

Conway, SC 29526-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/8/2013 defendant Rasheed Tamir Glover

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Conway) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 1/11/2013

Signature of Issuing Judge

Janc A. Mackey

Judge Code: 6184

Judge's Address Post Office Box 1428

Conway, SC 29528-1428

Judge's Telephone (843)248-1765

Issuing Court: ☐ Magistrate ☒ Municipal☐ Circuit

ORIGINAL

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ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

who

FILED
MUNICIPALITY
CLERK OF COURT
2013 JAN 23 AM 10:49

WITNESSES

Timothy Troxell Horry County Police Department

DOCKET NO. 2013-GS-26- 01832

ND
12/13/13

The State of South Carolina
County of Horry

Bradley C. Richardson
13H00840

COURT OF GENERAL SESSIONS

May, 2013 TERM

ARREST WARRANT NUMBER

M844163
CDR: 0139 16-11-0330(A)
DOA: 2/14/2013

THE STATE

vs.

Rasheed Tamir Glover
1911 9Th Ave Apt D6
Conway, SC 29527-5417

B/ M

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: *[Signature]*

APR 25 2013

VERDICT

ATTORNEY: Long, III, J. M. "Buddy"

Indictment for
ARMED ROBBERY

Jimmy A. Richardson, II, Solicitor

ORIGINAL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT
ARMED ROBBERY

At a Court of General Sessions, convened on April 25, 2013, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Rasheed Tamir Glover and/or his co-defendant did in Horry County on or about February 12, 2013, while armed with a deadly weapon, to wit: a pistol, take and carry away personal property of Viola McWhirt from or in the immediate presence of Viola McWhirt with intent to deprive Viola McWhirt of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

**State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit**

Scott R. Hixson
Chief Deputy Solicitor

1301 2nd Avenue
P.O. Drawer 1276
Conway, SC 29528
Phone: (843) 915-5460
Fax: (843) 915-6461



JIMMY A. RICHARDSON, II
Solicitor

Alicia A. Richardson
Deputy Solicitor

401 Cleland Street
P.O. Box 1688
Georgetown, SC 29442
Phone: (843) 545-3169
Fax: (843) 545-3268

DISMISSAL/NOLLE PROSSE/RESTORE/CD/FTA FORM

TO: Horry County Clerk of Court

FROM: BRADLEY C. RICHARDSON, SENIOR ASSISTANT SOLICITOR

DATE: DECEMBER 9, 2013

RE: STATE OF SC VS. RASHEED TAMIR GLOVER
CASE NO: 13H00840

**FILED
HORRY COUNTY
2013 DEC 13 PM 2:32
MELANIE HUGGINS-WARD
CLERK OF COURT**

PLEASE BE ADVISED THAT THE CHARGE(S) LISTED BELOW HAVE BEEN DISMISSED/NOLLE PROSSED OR RESTORED (PLEASE PLACE X IN APPROPRIATE COLUMN).

Warrant #	Charge	Indict #	Dismissed	N/P	Restored	CD/FTA
M844163	Armed Robbery	2013GS2601832		X		

Assistant Solicitor

ORIGINAL

ARREST WARRANT

M-844163

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE

13013128

against

Rasheed Tamir Glover

Address: 1911 9Th Ave Apt D6

Conway, SC 29527-5417

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 11 Weight: 165

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0260400

Prosecuting Agency: Horry County Police Department

Prosecuting Officer: Timothy Troxell - 3048

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 02/14/13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant

Timothy Troxell

who

being duly sworn deposes and says that defendant Rasheed Tamir Glover

did within this county and state on or about

2/12/2013

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Horry

in the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On February 12, 2013 Rasheed Glover, defendant, along with three co-defendants entered a residence located at [REDACTED] Dunn Shortcut Road in the Conway section of Horry County while a fourth co-defendant remained in an awaiting getaway vehicle. Once inside the residence the defendants, while armed with an unknown pistol, encountered several occupants. During the encounter one of the defendants presented a pistol and demanded money and property. The defendants did take, steal, and carry away from approximately \$400 in United States Currency and a bottle of liquid Hydrocodone. Said information is based upon a positive identification of the defendant by a co-defendant and post Miranda admissions made by the defendant. Based on the above listed facts there is probable cause to believe Rasheed Glover violated South Carolina Criminal Code of Laws Section 16-11-0330; Armed Robbery. Case Number 13-013128.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 2560 N. Main Street

Conway, SC 29526-

Affiant's Telephone (843)915-5350

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/12/2013

defendant Rasheed Tamir Glover

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Horry

) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 2/13/2013

(L.S.)

Signature of Issuing Judge

Bradley Dwyer Mayers

Judge Code: 508

Judge's Address 1201 Third Avenue

Conway, SC 29526-5105

Judge's Telephone (843)915-5290

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

WITNESSES

Tyrone Williams Conway Police Department

DOCKET NO. 2015-GS-26- 03952

The State of South Carolina

County of Horry

Lauree Richardson

15H00178

COURT OF GENERAL SESSIONS

SEPTEMBER, 2015 TERM

THE STATE

VS.

Rasheed Tamir Glover
B/ M
1911 9Th Ave Apt D6
Conway, SC 29527-5417
[REDACTED]
[REDACTED]

ATTORNEY: Johnny Gardner

Indictment for

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

Jimmy A. Richardson, II, Solicitor

ORIGINAL

2015 SEP 18 PM 1:12

MELANIE HUBBARD-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

NP
10-27-15

ARREST WARRANT NUMBER

2015A2620400072

CDR: 0549 16-23-0490

DOA: 2/19/2015

ACTION OF GRAND JURY

TRUE BILL

Lauree Richardson
Foreperson of Grand Jury
Date: SEP 17 2015

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Rasheed Tamir Glover and/or a codefendant did in Horry County, on or about January 2, 2015, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976. as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

**State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit**

Scott R. Hixson
Chief Deputy Solicitor

1301 2nd Avenue
P.O. Drawer 1276
Conway, SC 29528
Phone: (843) 915-5460
Fax: (843) 915-6461



JIMMY A. RICHARDSON, II
Solicitor

Alicia A. Richardson
Deputy Solicitor

401 Cleland Street
P.O. Box 1688
Georgetown, SC 29442
Phone: (843) 545-3169
Fax: (843) 545-3268

DISMISSAL/NOLLE PROSSE FORM

TO: Horry County Clerk of Court

FROM: Lauree Richardson, Assistant Solicitor

DATE: OCTOBER ²⁷ 23, 2015

RE: STATE OF SC VS. RASHEED TAMIR GLOVER
CASE NO: 15H00178

FILED
 2015 OCT 27 PM 12:28
 CLERK OF COURT
 MELANIE J. RICHARDSON

PLEASE BE ADVISED THAT THE CHARGE(S) LISTED BELOW HAVE BEEN DISMISSED OR NOLLE PROSSED (PLEASE PLACE X IN APPROPRIATE COLUMN).

Warrant #	Charge	Indict #	T/B Date	D/M	N/P	DOA
2015A2620400072	Poss Firearm During Crime	2015GS2603952	9/17/2015		X	2/19/2015

Assistant Solicitor



ORIGINAL

WITNESSES

Tyrone Williams Conway Police Department

DOCKET NO. 2015-GS-26-03953

The State of South Carolina

County of Horry

Lauree Richardson

15H00178

COURT OF GENERAL SESSIONS

SEPTEMBER, 2015 TERM

THE STATE

vs.

Rasheed Tamir Glover
B/ M
1911 9Th Ave Apt D6
Conway, SC 29527-5417

ATTORNEY: Johnny Gardner

Indictment for

KIDNAPPING

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
Horry County

2015 SEP 18 PM 1:12

MELANIE HUGHES WARD
CLERK OF COURT

DATE RECEIVED FROM

GRAND JURY

NP
10-27-15

ARREST WARRANT NUMBER

2015A2620400071

CDR: 0095 16-03-0910

DOA: 2/19/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: SEP 17 2015

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Rasheed Tamir Glover and/or a codefendant did in Horry County on or about January 2, 2015, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away one Angie Lee Gilchrist, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

**State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit**



Scott R. Hixson
Chief Deputy Solicitor

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Solicitor

Alicia A. Richardson
Deputy Solicitor

401 Cleland Street
P.O. Box 1688
Georgetown, SC 29442
Phone: (843) 545-3169
Fax: (843) 545-3268

DISMISSAL/NOLLE PROSSE FORM

TO: Horry County Clerk of Court

FROM: Lauree Richardson, Assistant Solicitor

DATE: OCTOBER ²⁷ 23, 2015

RE: STATE OF SC VS. RASHEED TAMIR GLOVER
CASE NO: 15H00178

FILED
2015 OCT 27 PM 12:28
NELA A. RICHARDSON
CLERK OF COURT

PLEASE BE ADVISED THAT THE CHARGE(S) LISTED BELOW HAVE BEEN DISMISSED OR NOLLE PROSSED (PLEASE PLACE X IN APPROPRIATE COLUMN).

Warrant #	Charge	Indict #	T/B Date	D/M	N/P	DOA
2015A2620400071	Kidnapping	2015GS2603953	9/17/2015		X	2/19/2015

Assistant Solicitor



ORIGINAL

ARREST WARRANT

2015A2620400071

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Conway

THE STATE

against

2015000101

Rasheed Tamir Glover

Address: 1911 9Th Ave Apt D6

Conway, SC 29527-5417

Phone: SSN: [REDACTED]
Sex: M Race: B Height: 5 11 Weight: 175

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0260200

Prosecuting Agency: Conway Police Department

Prosecuting Officer: Christopher Wayne Johnson - 3632

Offense: Kidnapping / Kidnapping

Offense Code: 0095

Code/Ordinance Sec: 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on Rashed T Glover
12-19-15

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

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ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Conway

Personally appeared before me the affiant Christopher Wayne Johnson

being duly sworn deposes and says that defendant Rasheed Tamir Glover

did within this county and state on or about 1/2/2015

State of South Carolina (or ordinance of

☐ County/☒ Municipality of

Conway

in the following particulars:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON THE ABOVE DATE THE DEFENDANT ALONG WITH CO-DEFENDANTS DID ENTER THE SCOTCHMAN STORE AT 3410 HWY 501 IN THE CITY OF CONWAY AND DID HOLD AT GUNPOINT ANGIE LEE GILCHRIST. THAT THE VICTIM WAS HELD IN SAID BUSINESS AGAINST HER WILL. THAT THE ACTS OF THE ACCUSED CONSTITUTE THE OFFENSE OF KIDNAPPING.

WARRANT OBTAINED FOR DET. TYRONE WILLIAMS

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Conway

Affiant's Address 200 Laurel Street

Conway, SC 29526-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/2/2015

defendant Rasheed Tamir Glover

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/☒ Municipality of

Conway

) as set forth below:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me

on 1/26/2015

Signature of Issuing Judge

Jane A. Mackey

Judge Code: 6184

Judge's Address

Post Office Box 1428

Conway, SC 29528-1428

Judge's Telephone

(843)248-1765

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ARREST WARRANT

2015A2620400072

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Conway

THE STATE
against

2015000101

Rasheed Tamir Glover

Address: 1911 9Th Ave Apt D6

Conway, SC 29527-5417

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 11 Weight: 175

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0260200

Prosecuting Agency: Conway Police Department

Prosecuting Officer: Christopher Wayne Johnson - 3632

Offense: Weapons / Possession of weapon during violent
crime, if not also sentenced to life without parole

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant onRasheed Tamir Glover
2/19-2/25[Signature]
Signature of Constable/Law Enforcement Officer

927

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Conway

Personally appeared before me the affiant Christopher Wayne Johnson

being duly sworn deposes and says that defendant Rasheed Tamir Glover

did violate the criminal laws of the State of South Carolina (or ordinance of) 1/2/2015

in the following particulars: ☐ County/ ☒ Municipality of Conway

DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON THE ABOVE DATE AT SCOTCHMAN STORE IN THE CITY OF CONWAY THE DEFENDANT ALONG WITH CO-DEFENDANTS WERE IN POSSESSION OF HANDGUNS DURING AN ARMED ROBBERY. THAT THE ACTS OF THE ACCUSED CONSTITUTE THE OFFENSE OF POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME.

WARRANT OBTAINED FOR DET. TYRONE WILLIAMS

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Conway

Affiant's Address 209 Laurel Street

Conway, SC 29526

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/2/2015

defendant Rasheed Tamir Glover

did violate the criminal laws of the State of South Carolina (or ordinance of)

☐ County/ ☒ Municipality of Conway as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 1/26/2015

[Signature]
Signature of Issuing Judge
Jane A. Mackey

Judge Code: 6184

Judge's Address Post Office Box 1428

Conway, SC 29528-1428

Judge's Telephone (843)248-1765

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

ORIGINAL

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ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

who

violate the criminal laws of the

**State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit**



Scott R. Hixson
Chief Deputy Solicitor

1301 2nd Avenue
P.O. Drawer 1276
Conway, SC 29528
Phone: (843) 915-5460
Fax: (843) 915-6461

Alicia A. Richardson
Deputy Solicitor

401 Cleland Street
P.O. Box 1688
Georgetown, SC 29442
Phone: (843) 545-3169
Fax: (843) 545-3268

JIMMY A. RICHARDSON, II
Solicitor

DISMISSAL/NOLLE PROSSE FORM

TO: Horry County Clerk of Court

FROM: SETH OSKIN, ASSISTANT SOLICITOR

DATE: MARCH 31, 2016

RE: STATE OF SC VS. RASHEED TAMIR GLOVER
CASE NO: 16H00934

FILED
 Horry County
 2016 APR -4 PM 2:19
 MELANIE HUSCHARDT
 CLERK OF COURT

PLEASE BE ADVISED THAT THE CHARGE(S) LISTED BELOW HAVE BEEN DISMISSED OR NOLLE PROSSED (PLEASE PLACE X IN APPROPRIATE COLUMN).

Warrant #	Charge	Indict #	T/B Date	D/M	N/P	DOA
2015A2610202430	Prisoners / Removing, des		0/0/0	XX		2/26/2016
2015A2610202429	Escape			XX		2/26/2016

Seth Oskin
Assistant Solicitor

ORIGINAL

**State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit**



Scott R. Hixson
Chief Deputy Solicitor

1301 2nd Avenue
P.O. Drawer 1276
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Alicia A. Richardson
Deputy Solicitor

401 Cleland Street
P.O. Box 1688
Georgetown, SC 29442
Phone: (843) 545-3169
Fax: (843) 545-3268

JIMMY A. RICHARDSON, II
Solicitor

DISMISSAL/NOLLE PROSSE FORM

TO: HORRY COUNTY CLERK OF COURT

FROM: SETH OSKIN, ASSISTANT SOLICITOR

DATE: MARCH 31, 2016

RE: STATE OF SC VS. RASHEED TAMIR GLOVER
CASE NO: 16H00934

FILED
 Horry County
 2016 APR -4 PM 2:19
 MELANIE HUGGINS, CLERK OF COURT

PLEASE BE ADVISED THAT THE CHARGE(S) LISTED BELOW HAVE BEEN DISMISSED OR NOLLE PROSSED (PLEASE PLACE X IN APPROPRIATE COLUMN).

Warrant #	Charge	Indict #	T/B Date	D/M	N/P	DOA
2015A2610202430	Prisoners / Removing, des		0/0/0	XX		2/26/2016
2015A2610202429	Escape			XX		2/26/2016

Seth Oskin
Assistant Solicitor

ORIGINAL

ARREST WARRANT

2015A2610202429

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE

15-003556

against

Rasheed Tamir Glover

Address 1911 9Th Ave Apt A 3

Conway, SC 29527-5417

Phone _____ SSN: _____
Sex: M Race: B Height: 5 10 Weight: 185

DL State: SC DL #: _____

DOB: _____ Agency ORI #: SC0260000

Prosecuting Agency: Horry County Sheriff

Prosecuting Officer: Michael Bryant - 4297

Offense: Escape / Escape

Offense Code: 2570

Code/Ordinance Sec: 00-00-0000

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Rasheed Glover
on 2-26-16

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant Michael Bryant whobeing duly sworn deposes and says that defendant Rasheed Tamir Gloverdid within this county and state on or about 10/12/2015

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Horry)

in the following particulars

DESCRIPTION OF OFFENSE: Escape / Escape

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following factsOn 10/12/2015 at 0212 Home Detention received a strap tamper on Rasheed Tamir Glover. His last GPS location was the parking
lot of Canterbury Apartments in the Carolina Forest section of Horry County. Deputy Bryant, with the Horry County Sheriff's Office
went to the location of the GPS device assigned to Rasheed Tamir Glover. The device was located just in the parking lot. The strap
was cut causing the tamper.

r/o Bryant, M: C#15-003556

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 1301 Second Ave

Conway, SC 29526-

Affiant's Telephone (843) 516-9536

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/12/2015 defendant Rasheed Tamir Glover

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry) as set forth below.

DESCRIPTION OF OFFENSE: Escape / Escape

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 10/12/2015

Judge's Address

J. Ruben Long Detention Center

(L.S.)

Conway, SC 29526-1071

Judge's Name

Dennis Earl Phipps

Judge's Telephone

(843)365-9222

Judge Code: 5373

Issuing Court:

☒

Magistrate

☐

Municipal

☐

Circuit

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ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

ARREST WARRANT

2015A2610202430

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE

15-003556

against

Rasheed Tamir Glover

Address: 1911 9Th Ave Apt A 3

Conway, SC 29527-5417

Phone: _____ SSN: _____
 Sex: M Race: B Height: 5 10 Weight: 185
 DL State: SC DL #: _____
 DOB: _____ Agency ORI #: SC0260000

Prosecuting Agency: Horry County Sheriff

Prosecuting Officer: Michael Bryant - 4297

Offense: Prisoners / Removing, destroying, or circumventing operation of electronic monitoring device

Offense Code: 3769

Code/Ordinance Sec: 24-13-0425

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant Rasheed Glover
 on 2-26-16

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
 PO Box 677
 1301 2nd Avenue
 Conway, SC 29528

ORIGINAL

ORIGINAL

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ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

AFFIDAVIT

ORIGINAL

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

Personally appeared before me the affiant Michael Bryant whobeing duly sworn deposes and says that defendant Rasheed Tamir Gloverdid within this county and state on or about 10/12/2015

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Horry)

in the following particulars:

DESCRIPTION OF OFFENSE: Prisoners / Removing, destroying, or circumventing operation of electronic monitoring device

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 10/12/2015 at 0212 Home Detention received a strap tamper on Rasheed Tamir Glover. His last GPS location was the parking lot of Canterbury Apartments in the Carolina Forest section of Horry County. Deputy Bryant, with the Horry County Sheriff's Office went to the location of the GPS device assigned to Rasheed Tamir Glover. The device was located just in the parking lot. The strap was cut causing the tamper.

r/o Bryant, M;C#15-003556

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 1301 Second AveConway, SC 29526-Affiant's Telephone (843) 516-9536

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/12/2015defendant Rasheed Tamir Glover

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry) as set forth below:

DESCRIPTION OF OFFENSE: Prisoners / Removing, destroying, or circumventing operation of electronic monitoring device

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 10/12/2015

Judge's Address

J. Ruben Long Detention CenterConway, SC 29526-1071

Judge's Telephone

(843)365-9222Issuing Judge
Dennis Earl PhippsJudge Code: 5373

Issuing Court.

☒ Magistrate☐ Municipal☐ Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF GENERAL
SESSIONS IN THE FIFTEENTH
JUDICIAL CIRCUIT
CASE NO. 2015-GS-26-01237

VERDICT FORM

vs.)

Rasheed Tamir Glover,)

Defendant,)

WE THE JURY FIND THE DEFENDANT:

Yes GUILTY OF ARMED ROBBERY

OR

WE THE JURY FIND THE DEFENDANT:

_____ NOT GUILTY OF ARMED ROBBERY

Jamie J. J. #265
FOREPERSON

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RASHEED T. GLOVER,

APPELLANT

APPELLATE CASE NO 2016-000675

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR APPELLANT

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<u>Davis v. State</u> , 336 S.C. 329, 520 S.E.2d 801 (1999).....	6
<u>State v. Brouwer</u> , 346 S.C. 375, 550 S.E.2d 915 (Ct. App. 2001).....	6
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STATEMENT OF ISSUE ON APPEAL

Did the judge who unsealed and pronounced sentence following a trial in the Appellant's absence abuse his discretion in refusing to reconsider the twenty five year sentence imposed by the trial judge when a co-defendant received a lesser sentence and the record fails to reflect an appropriate basis for the disparate sentence?

STATEMENT OF THE CASE

In March of 2015, the Horry County Grand Jury indicted Appellant Glover for armed robbery, indictment #2015-GS-26-1237. On October 12, 2015, Appellant was tried in his absence before a jury with the Honorable R. Ferrell Cothran presiding. Johnny Gardner represented Appellant in his absence. Lauree Richardson and Thomas G. Terrell, III prosecuted the case. The jury returned a verdict of guilty and Judge Cothran sealed the sentence. On March 15, 2016, Appellant appeared before the Honorable Steven H. John for sentencing. Judge John unsealed and pronounced that Judge Cothran sentenced Appellant to twenty-five (25) years. On March 17, 2016, Appellant moved to reconsider sentence which Judge John denied. A timely notice of intent to appeal was served on March 24, 2016. This appeal follows.

ARGUMENT

The judge who unsealed and pronounced sentence following a trial in the Appellant's absence abused his discretion in refusing to reconsider the twenty five year sentence imposed by the trial judge when a co-defendant received a lesser sentence and the record fails to reflect an appropriate basis for the disparate sentence.

On January 2, 2015, the Scotchman convenience store in Conway was robbed. The clerk working on the night of the robbery testified that two young men came into the store and one of the men pointed a silver gun at her. (R. p. 44, lines 1-8). The other young man, wearing a red sweatshirt, ran behind her. (R. pp. 44-45). The clerk testified that the young man with the silver gun was wearing studded round fake diamond earrings, skinny blue jeans and white above the ankle Nike sneakers. (R. p. 45, lines 6-13). She testified that the young man wearing the red sweatshirt was wearing red above the ankle sneakers with a white emblem. (R. p. 45, lines 19-23). Both young men had mud on their shoes. (R. p. 45, lines 24-25). They demanded money from the register and as they were leaving the store the young man in the red sweatshirt pointed a black gun at the clerk. (R. p. 47, lines 1-7). In addition to money, the men took a box of cigarillos and the clerk's phone. (R. pp. 48-49).

Officer Steven Dailey with the Horry County Police Department testified that he was notified by dispatch about an armed robbery involving individuals, one of whom was described as a young black male wearing a red shirt. (R. p. 59, lines 6-13). Officer Dailey testified that he saw a young black male in a red shirt riding in the front passenger seat of a taxi van. (R. p. 60, lines 6-24). Officer Dailey stopped the van and identified the front passenger in the red shirt as Tyreke. (R. pp. 63-65). The store clerk identified Tyreke as the robber. (R. p. 65, lines 5-16). There were three other passengers in the taxi van. (R. p. 86, lines 15-24). Appellant Glover was seated in the far back of the taxi van, wearing a white t-shirt. (R. pp. 88-90).

One of the other passengers in the van, Amontre Ellerbe, testified against Appellant at trial. According to Ellerbe, he and Appellant went in the store and committed the armed robbery while Tyreke Phillips and Aikeem Coles, other passengers in the taxi van, stood behind the store. (R. pp. 162-165). When officers searched the taxi van they found a black gun and the clerk's cell phone in the front passenger area where Tyreke Phillips had been seated. (R. p. 98, lines 4-8). A red sweatshirt was found behind the front seat. (R. p. 105, lines 11-17). Ellerbe claimed that Appellant changed clothes and shoes after the robbery. (R. pp. 165-166). The silver gun and the box of cigarillos were found in a bag on the far back seat of the van. (R. p. 106, lines 6-15). Ellerbe admitted having the silver gun. (R. p. 163, lines 14-15). Ellerbe also admitted taking the cigars but denied taking the clerk's cell phone. (R. p. 164, lines 19-24).

Asia Collier, Appellant's former girlfriend, admitted that she drove Appellant, Ellerbe, Phillips and Coles to the Scotchman. (R. pp. 136-139). The four approached the store but Collier could not see who went inside. (R. p. 140, lines 1-5; R. p. 154, lines 14-23). Collier testified that when the four returned to the car, Ellerbe and Tyreke Phillips had weapons. (R. p. 140, lines 11-25). Collier drove the four to a neighborhood where the four caught the taxi van that was stopped shortly later by Officer Dailey. (R. pp. 142- 145).

Appellant, Ellerby, Phillips, Coles and Collier were all charged with armed robbery. Phillips and Coles pled guilty and received ten year sentences. (R. p. 215, lines 7-11). Ellerby initially pled guilty and received a fifteen year sentence. (R. p. 215, lines 12-13). Ellerby's sentence was later reduced to ten years as a result of his cooperation in the case against Appellant. (R. p. 215, lines 14-24).

Appellant moved before the Honorable Judge Steven H. John for reconsideration of the twenty five year sentenced imposed by the Honorable R. Ferrell Cothran. (R. p. 214, lines 12-

22). When Judge Cothran sealed the sentence he stated, "Okay. Well, when he's arrested, I don't know if I'll still be here or not but you can bring him before some judge and he'll open this sentence and read it to him and see what happens." (R. p. 206, lines 18-21). Judge John denied the motion to reconsider sentence. (R. p. 217-218). The judge erred in refusing to reconsider the twenty five year sentence imposed.

In denying the motion to reconsider sentence Judge John acknowledged that he was not the trial judge who heard the testimony and he did not have a transcript of the trial to review. (R. p. 217, lines 2-7). Judge John stated:

I'm basing my decision based upon the obvious thing, the sentence for armed robbery for a minimum of ten up to thirty years. It's a – classified as a violent and most serious offense by the State of South Carolina. It – I'm taking into consideration what the State has said as far as the facts and circumstances relayed to the Court of the fact that this Defendant was an actual participant in the crime in which was armed, there was – and as indicated, an armed robbery and he was one of the participants in that particular matter in the Scotchman store. Based upon that, I respectfully decline to grant the request of the Defense to change the sentence of Judge Cothran.

(R. p. 217. 9, lines 7-18).

A review of the trial testimony reflects that Ellerby and Appellant were equal participants in the robbery. Prior to Ellerby cooperating with the State and testifying against Appellant, he received a fifteen year sentence. Appellant, however, received a twenty five year sentence after exercising his right to a jury trial.

In State v. Follin, 352 S.C. 235, 257–58, 573 S.E.2d 812, 824 (Ct. App. 2002) (emphasis in original), the South Carolina Court of Appeals wrote:

We rule a sentencing judge may *NOT* improperly consider a defendant's decision to proceed with a jury trial. We conclude that, when the record clearly reflects an appropriate basis for a disparate sentence, the sentencing judge may impose a different sentence on a co-defendant in a criminal trial. We caution the Bench that a trial judge abuses his or her discretion in sentencing when the judge considers the fact that the defendant exercised the right to a jury trial.

The record in the present case does not reflect an appropriate basis for the disparate initial fifteen year sentence imposed upon Ellerby and the twenty five year sentence imposed upon Appellant. Appellant received a ten year trial tax. The judge abused his discretion in refusing to reconsider the twenty five year sentence imposed when the sentencing judge considered Appellant's decision to proceed with a jury trial when he imposed the disparate sentence. In Castro v. State, 417 S.C. 77, 789 S.E.2d 44, 47 (2016), the South Carolina Supreme Court wrote:

When a trial judge considers the fact that the defendant exercised his or her constitutional right to a jury trial as a factor in sentencing the defendant, it is an abuse of discretion. See Davis v. State, 336 S.C. 329, 520 S.E.2d 801 (1999) (holding counsel was ineffective in failing to object when the trial judge indicated the reason he sentenced Davis more harshly than two similarly-situated offenders who, unlike Davis, had pled guilty was because those offenders admitted their guilt); State v. Hazel, 317 S.C. 368, 453 S.E.2d 879 (1995) (holding the trial judge abused his discretion when the judge considered the fact that Hazel did not plead guilty in declining to grant Hazel's request for sentencing under the Youthful Offender Act).

See also State v. Brouwer, 346 S.C. 375, 388, 550 S.E.2d 915, 922 (Ct. App. 2001) (remanding for a new sentencing hearing pursuant to Hazel, *supra*, stating, "Although the [trial judge] herein also stated it had never, and never would, 'punish someone for exercising their right to a jury trial,' we believe the mere disavowal of wrongful intent cannot remove the taint inherent in the [trial judge's] commentary, especially since the record fails to reflect an otherwise appropriate basis for Brouwer's disparate sentence."). The record in the present case fails to reflect an otherwise appropriate basis for Appellant's disparate sentence. The judge abused his discretion in refusing to reconsider the sentence.

CONCLUSION

Based on the above argument, Appellant's sentence should be reversed and the case remanded for a new sentencing hearing.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of October, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RASHEED T. GLOVER,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rasheed T. Glover 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 Steven H. John, which was held on October 12-13, 2015 (Trial), 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 Rasheed T. Glover.

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 10th day of October, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RASHEED T. GLOVER,

APPELLANT

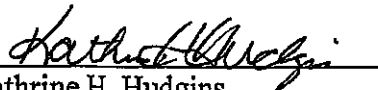
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment and sentencing sheet;
- (2) Trial Transcript October 12-13, 2015;
- (3) Sentencing Transcript, March 15, 2016, and Motion to Reconsider Sentence Transcript, March 17, 2016.

I certify that this designation contains no matter which is irrelevant to this appeal.

October 10, 2016


Kathrine H. Hudgins
Appellate Defender

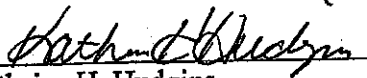
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 10, 2016.


Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

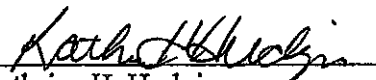
V.

RASHEED T. GLOVER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Rasheed T. Glover, #367438, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 10th day of October, 2016.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of October, 2016.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 03/01/2026

**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.

Rasheed Tamir Glover, Appellant.

Appellate Case No. 2016-000675

Appeal From Horry County
R. Ferrell Cothran, Jr., Circuit Court Judge
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2017-UP-210
Submitted May 1, 2017 – Filed May 17, 2017

APPEAL DISMISSED

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

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.¹

GEATHERS, MCDONALD, and HILL, JJ., concur.

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



RECEIVED
01026A

JUN - 5 2017

ATTORNEY GENERALS
OFFICE

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 02, 2017

The Honorable Renee Elvis
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: The State v. Rasheed T. Glover
Lower Court Case No. 2015GS2601237
Appellate Case No. 2016-000675

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Rasheed Tamir Glover, 367438
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Kathrine Haggard Hudgins, Esquire
The Honorable R. Ferrell Cothran, Jr.
The Honorable Steven H. John

FORM 5

STATE OF SOUTH CAROLINA

County of Horry

Rasheed Glover 367438
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

18 APR 28 2728

APPLICATION FOR
POST-CONVICTION RELIEF

RECEIVED
CLERK OF COURT
JUL 1 2 10 55 AM '18

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution

2. Name and location of Court which imposed sentence Horry County
Courthouse Conway, SC

3. Name(s) of co-defendant(s) (if any) Amontre Ellerbe, Ikeem
Coles, Tyreke Phillips, Asia Collier

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2015G82601237 Armed Robbery

(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 13 2015 sentence sealed
- (b) March 15 2016 sentence opened 25 years
- (c) March 17 2016 sentence reconsidered denied
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. submitted May 1, 2017 - Filed May 17, 2017 - Remittitur June 21
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Ineffective Assistance of Counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Rule 43 of the Federal Rules of Criminal Procedure
- (b) Castro v. State 417 S.C. 77, 789 S.E.2d 44, 47 (2016)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. Direct Appeal
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. S.C. Court of Appeals 1220 Senate St, Columbia, SC 29201

Issue on P.C.R.: Did my acting Counsel assist me unprofessionally leading up to, during and after trial by refusing to stop trial from beginning in my absence and refusing to object to the 25 years when co-defendants received lesser?

Page 3. 11. (a)

Rule 43 of the Federal Rules of Procedure states that

(a) The defendant must be present at:

- (1) the initial appearance, the initial arraignment, and plea.
- (2) every trial stage, including jury impanelment and the verdict, and sentencing.

(b) When not required. A defendant need not be present under any of the following circumstances:

- (1) Organizational Defendant. The defendant is an organization represented by counsel who is present.
- (2) Misdemeanor offense
- (3) Conference or Hearing on a Legal Question
Sentence Correction

(c) Waiving Continued Presence:

(1) In General. A defendant who was initially present at trial, or had pleaded guilty or not contendere, waives the right to be present under the following circumstances:

- (A) when the defendant is voluntarily absent after the trial has begun.
- (B) in a non capital case when the defendant is voluntarily absent.
- (C) when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior.
- (2) Waiver's effect. If the defendant waives the right to be present, the trial may proceed

during the defendant absence.

My Counsel Johnny Gardner failed to raise the above issue before the courts resulting in trial to permit in my absence, with me having no knowledge that trial would permit in my absence. To my knowledge I (Hasheed Glover) was not present at the above (a) (1), (a) (2) and for trial to permit in my absence is a violation of my fifth, sixth and fourteenth Amendments which protects me as a matter of due process. Johnny Gardner's failings to propose this issue to the courts resulted in trial to begin in my absence.

Page 3. 11. (b)

By the Sixth Amendment I have a right to a jury trial. Although I (Kasheed Glover) was absent of my jury trial from the beginning I recieved a much harsher sentence of 25 years compared to my three Co-defendants 10 years and Co-defendant who serves no time. During the opening and reconsideration of my sealed sentence my Counsel, Johnny Gardner failed to object when the judge who opened ~~it~~, but who didn't give the sentence, denied reconsidering the 25 years I recieved for exercising my right to a jury trial. Castro v. State, 417 S.C. 77, 769 S.E.2d 44, 47 (2016), the South Carolina Supreme Court wrote:

"when a trial judge considers the fact that the defendant exercise his or her constitutional right to a jury trial as a factor in sentencing the defendant, it is an abuse of discretion,

Conclusion:

My Counsel, who's been appointed to me before and during also at the opening of my sentence by the State did not assist my case with professionalism. By the given facts, he (Johnny Gardner) and/or partners were not effective at protecting my interest or making sure the law works as it should, which altered the outcome of my case by far. Therefore the sentence should be reversed and the case remanded.

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. Appeal dismissed

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. Filed May 17 2017

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

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective Assistance of Counsel
- (b) Ineffective Assistance of Counsel
- (c) _____

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

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

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

- (a) the name and address of each attorney who represented you:
 - i. Johnny Gardner 212 Main St. Conway SC 29526
 - ii. Kathrine H. Hulgins Division of Appellate Defense
1330 Lady Street, Suite 401 Columbia, SC 29201-3332
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty verdict - Ineffective Assistance of Counsel
 - ii. Appeal dismissed - relied as Counsel
 - iii. _____

19. State clearly the relief you seek in filing this application:

Being heard in court to reconsider the
given sentence.

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

No

20 18 JPMO 2728

STATE OF SOUTH CAROLINA

County of

Horry

VERIFICATION

I, Rashad Glover, 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.

[Signature]

SWORN to and subscribed before me this

day of

April

27
2018

Uniqua Greene
Notary Public

(L.S.)

My Commission Expires:

9-29-2027

2018 MAY -2 10:12:55
NOTARY PUBLIC
SOUTH CAROLINA

Revised 3/2003

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

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

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

Rasheed Glover
Applicant

SWORN or affirmed to and subscribed before me this
27 day of April, 2018.

Uniqua Greene
Notary Public

My Commission Expires: 9-29-2027

FILED
2018 MAY -2 PM 12:54
CLERK
HON. - COURT 16, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Rasheed Glover,) Case No.: 2018-CP-26-02728
S.C.D.C. No. 367438,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN AND MOTION TO DISMISS

2018 AUG -2 PM 4:25
HORRY COUNTY
CLERK OF COURT
SC

In response to the application for post-conviction relief filed by Rasheed Glover (Applicant) on May 2, 2018, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the March 2015 term of the Horry County Grand Jury for armed robbery (2018-GS-26-01237).

In the middle of the night on January 2, 2015, Applicant, with the help of four other co-conspirators robbed the Scotchman convenience store near Four Mile Road in Conway, SC, by pointing a pistol at the attending clerk, emptying the register, and stealing the clerk's phone and a box of cigarillos. (Tr. 39-44). The group was captured shortly after the robbery, but Applicant was released on bond and did not appear for trial. (Tr. 19-26; 57-63). Two of Applicant's co-conspirators testified against Applicant at trial; Amontre Ellerbe confirmed Applicant was personally armed during the robbery. (Tr. 128-69).

Johnny Gardner, Esq. represented Applicant; Lauree Richardson, Esq., and Thomas G. Terrell, III, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On October 12,

2015, trial proceeded against Applicant *in absentia* before the Honorable R. Ferrell Cothran and a jury. The jury found Applicant guilty as indicted on October 13, 2015. Judge Cothran prepared a sentence and sealed it pending Applicant's arrest and appearance. On March 15, 2016, Applicant appeared before the Honorable Steven H. John, who unsealed and pronounced the sentence of imprisonment for a term of 25 years. Applicant thereafter moved the Court reconsider its sentence, and Judge John denied the motion on March 17, 2016.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Katherine H. Hudgins, Esq., filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Glover, Op. No. 2017-UP-210 (S.C. Ct. App. filed May 17, 2017). The Remittitur was issued on June 2, 2017.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

I. "Ineffective Assistance of Counsel"

- a. Applicant cites to and reproduces Fed.R.Crim.P. 43, and thereafter argues:
- b. "My counsel Johnny Gardner failed to raise the above issue before the Courts resulting in trial to permit in my absence, with me having no knowledge that trial would permit in my absence. To my knowledge, I (Rasheed Glover) was not present at the above (a)(1), (a)(2) and for trial to permit in my absence is a violation of my fifth, sixth and fourteenth Amendments which protects me as a matter of due process. Johnny Gardner's failings to propose this issue to the Courts resulted in trial to begin in my absence."

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of

Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but

for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test, and his allegations raise no questions of fact that the record does not conclusively refute. “It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence.” State v. Ravenell, 387 S.C. 449, 455, 692 S.E.2d 554, 557 (Ct. App. 2010). “A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence. The judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend.” Id., 387 S.C. at 455-56, 692 S.E.2d at 557-58 (citations omitted); see also Rule 16, SCCrimP. “[N]otice of the term of court in which a defendant will be tried is sufficient notice to enable the defendant to make an effective waiver of his right to be present at his trial. Further, a bond form that provides notice that a defendant can be tried in absentia may serve as the requisite warning that he may be tried in his absence should he fail to appear.” Id., 387 S.C. at 456, 692 S.E.2d at 558 (citations omitted). Where a defendant does not appear, Counsel may seek a continuance, but “a trial court’s denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion.” State v. McKennedy, 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002) (quotations omitted). “In fact, reversals of a continuance are as rare as the proverbial hens’ teeth.” Id. (quotations omitted).

Applicant’s reliance on the Federal Rules of Criminal Procedure is misplaced. The Federal Rules of Criminal Procedure “govern the procedure in all criminal proceedings in the United States district courts, the United States courts of appeals, and the Supreme Court of the

United States.” Fed.R.Crim.P. 1(a)(1). The rule cited by Applicant is of no consequence to a prosecution in a South Carolina Court of General Sessions. Procedure in General Sessions is governed by the South Carolina Rules of Criminal Procedure. Rule 37, SCCrimP.

Applicant’s absence from his own trial was conspicuous at the outset and the trial court properly took testimony to establish Applicant was informed of the term of court and that the State could proceed in his absence. (Tr. 19-26). Judge John made specific findings of fact to that end on the record and properly denied Counsel’s request for a continuance within his discretion. (Tr. 26, ll. 1-7). Counsel’s request for a continuance was the extent of what he could do in the circumstances. As such, Applicant cannot meet either prong of Strickland and, in the absence of any other allegations of ineffectiveness, the application should be summarily dismissed pursuant to Rule 56, SCRCP, and S.C. Code Ann. § 17-27-70.

IV.

Respondent denies each allegation not expressly admitted, qualified, or explained.

[Conclusion and signature on following page]

V.

WHEREFORE, Respondent respectfully requests that this Court summarily dismiss the application for post-conviction relief.

Respectfully submitted,

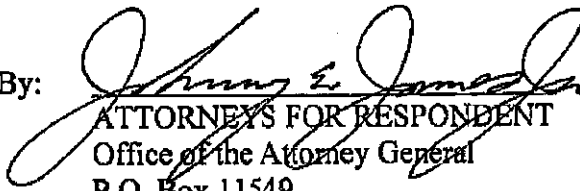
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

1 Aug. 2018

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

RASHEED GLOVER, #367438,
Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

2018-CP-26-2728

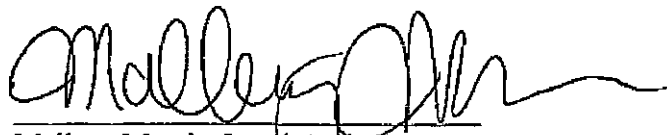
AFFIDAVIT OF SERVICE BY MAIL

HORRY COUNTY
2018 AUG -2 PM 4:25
RECEIVED
CLERK OF COURT
HORRY COUNTY, SC

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

James K. Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 1st day of August, 2018.


Mallory Morris, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Rasheed Glover, 367438,)
Applicant,)

2018-CP-26-02728

v.)

MOTION FOR DISCOVERY

State of South Carolina,)
Respondent.)

FILED
CLERK OF COURT
HORRY COUNTY, SC
2019 MAY -6 AM 9:37

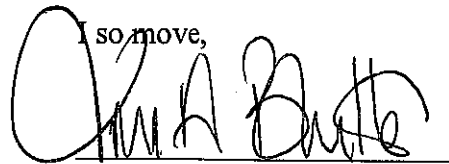
COMES NOW Applicant, by and through his undersigned attorney, and requests that this Court enter an Order for Production of Discovery pursuant to S.C. Code Ann. §17-27-150(a) (2008).

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on May 2, 2018. Tricia A. Blanchette, Esquire, was substituted in as counsel for Applicant via Order signed on September 7, 2018 and filed on September 25, 2018.

Following her substitution as counsel, the undersigned requested and obtained a copy of Applicant's file from trial counsel. Upon review of that file, Applicant, through counsel, would move for the opportunity to invoke discovery to obtain any correspondence or documents pertaining to notice provided to Applicant and/or counsel regarding Applicant's trial date and the scheduling of the hearing to open Applicant's sentence. Applicant submits this discovery request is necessary to properly prepare his claims prior to an evidentiary hearing. Furthermore, the Applicant, through counsel, submits that this request is not being made as a fishing expedition, but it is only being submitted to the Court due to the importance of the requested materials in Applicant obtaining "one full bite of the apple." See Poston v. State, 339 S.C. 37, 528 S.E.2d 422 (2000), Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

Therefore, to ensure that Applicant has the case materials needed to properly prepare his case for an evidentiary hearing, Applicant would respectfully request the opportunity to issue requests and/or subpoenas to obtain the above referenced materials from Johnny Gardner, Esquire, the Horry County Solicitor's Office and the Horry County Clerk of Court pursuant to S.C. Code Ann. §17-27-150(a) (2008). Additionally, Applicant would ask the Court to find that if a party fails to comply or does not have a file or requested item to produce, a written explanation must be provided for the failure to produce said file or item to Applicant's counsel.

THEREFORE, based upon the foregoing the Applicant respectfully requests that this Court hold a hearing and/or enter an Order for Discovery, which allows counsel to issue requests and/or subpoenas to the appropriate parties, offices and agencies for the above requested case materials that are necessary for the presentation of Applicant's case.

I so move,


Tricia A. Blanchette
Attorney at Law
Bar #74904
PO Box 2147
Leesville, SC 29070

May 1, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Rasheed Glover, 367438,)
Applicant,)

2018-CP-26-02728

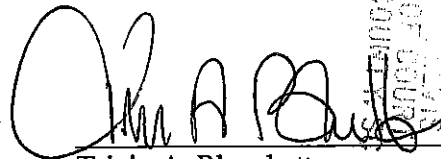
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the U.S. mail this 1st day of May 2019, a copy of Motion for Discovery, with postage prepaid and the return address clearly shown on said envelope to the Office of the Attorney General at:

Office of the Attorney General
ATT: Johnny E. James, Jr., Assistant AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Attorney at Law
PO Box 2147
Leesville, SC 29070

CLERK OF COURT
HORRY COUNTY

2019 MAY -6 AM 9:37

FILED

May 1, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Rasheed Glover, 367438,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2018-CP-26-02728

ORDER AUTHORIZING DISCOVERY

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on May 2, 2018. Tricia A. Blanchette, Esquire, was substituted in as counsel for Applicant via Order signed on September 7, 2018 and filed on September 25, 2018. On May 6, 2019, Applicant, through counsel, filed a Motion for Discovery. A motion hearing was scheduled on June 20, 2019, but the matter was continued due to illness of the court.

On October 10, 2019, a motion hearing was conducted at the Horry County Courthouse in front of the Honorable William H. Seals, Jr. Applicant was present and was represented by Tricia A. Blanchette, Esquire. Respondent was represented by Johnny E. James, Jr., Assistant Attorney General.

By way of the written motion and at the motion hearing, counsel explained that she had obtained a copy of Applicant's file from trial counsel. As a result of the review of that file, counsel moved the Court for the opportunity to invoke discovery to obtain any correspondence or documents pertaining to notice provided to Applicant and/or trial counsel regarding plea offers or negotiations, the trial date, and the scheduling and/or date of the hearing to open Applicant's sentence. Respondent did not oppose Applicant's request.

Additionally, both parties requested that the matter not be scheduled for an evidentiary hearing while discovery was pending. This Court finds this joint request shall be granted.

Furthermore, to ensure that Applicant has the case materials needed to properly prepare his case for an evidentiary hearing, this Court grants Applicant's motion to invoke discovery to obtain the above referenced materials from Johnny Gardner, Esquire, the Horry County Solicitor's Office and the Horry County Clerk of Court pursuant to S.C. Code Ann. §17-27-150(a)(2008). This Court finds that if a person, office or agency does not have the requested discovery to provide, Applicant's counsel must be provided with a written response and explanation for the absence of it. Applicant's counsel is to provide the Office of Attorney General with the opportunity to copy all discovery received pursuant to this Order.

IT IS THEREFORE ORDERED:

1. That Applicant's counsel is permitted to serve a subpoena and/or submit a request, along with a copy of this Order, upon the above listed people, offices or agencies for the above listed items.
2. That any person, office or agency in receipt of a subpoena pursuant to this Order may file a timely objection with the Chief Administrative Judge for the Fifteenth Judicial Circuit.
3. That an evidentiary hearing shall not be scheduled during the time period in which discovery pursuant to this Order is pending.

AND, IT IS SO ORDERED.


William H. Seals, Jr.
Judge, Fifteenth Judicial Circuit

Nov 9, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Rasheed Glover, 367438,)
Applicant,)

2018-CP-26-02728

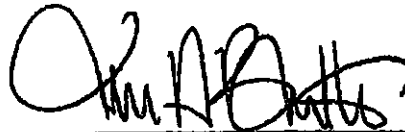
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the U.S. mail this 19th day of November 2019, a copy of an Order for Discovery, with postage prepaid and the return address clearly shown on said envelope to the Office of the Attorney General at:

Office of the Attorney General
ATT: Jacob Isenberg, Assistant AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Attorney at Law
PO Box 2147
Leesville, SC 29070

November 19, 2019

2019 NOV 19 10:00 AM
CLERK OF COURT
FIFTEENTH JUDICIAL CIRCUIT
LEESVILLE, SC

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Rasheed Glover, 367438,)
Applicant,)

2018-CP-26-02728

v.)

State of South Carolina,)
Respondent.)

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

FILED
HORRY COUNTY
JANEE N. ELVIS
CLERK OF COURT
HORRY COUNTY
FEB 24 P 2:38

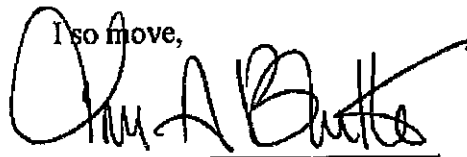
This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on May 2, 2018. Respondent filed a Return and Motion to Dismiss on August 2, 2018. On May 6, 2019, Applicant, through counsel, filed a Motion for Discovery. On October 10, 2019, a motion hearing was conducted in front of the Honorable William H. Seals, Jr. at the Horry County Courthouse. As a result of the ruling at the motion hearing, an Order Authorizing Discovery was issued by the Honorable William H. Seals, Jr. on November 9, 2019, which was filed on November 21, 2019.

Based upon the record and discovery received, Applicant, through counsel, would move to amend his Application, as addressed below. Additionally, Applicant would ask the Court for the relief in the form of having his conviction and sentences vacated to allow for a new trial and/or whatever relief the Court deems proper, which may be in the form of a reconsideration hearing. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial.

Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

1. Ineffective assistance of counsel for failure to actively negotiate a plea offer and/or ensure that Applicant had the opportunity to properly reject the opportunity to enter a guilty plea.
2. Ineffective assistance of counsel for failure to properly advise Applicant about being tried in his absence if he did not appear for trial.
3. Ineffective assistance of counsel for failure to move for a continuance prior to jury selection and/or object to the trial in Applicant's absence.
4. Ineffective assistance of counsel for failure to offer meaningful representation during the sentencing phase of Applicant's trial.
5. Ineffective assistance of counsel related to the hearing to open Applicant's sentence and for post trial motions, specifically, but not limited to:
 - a. Failure to have knowledge of, prepare for and be present at the hearing opening Applicant's sentence. Additionally, failure to ensure that the representative that appeared on his behalf was properly prepared and advocating for Applicant.
 - b. Ineffective assistance of counsel for failure to make an oral or written request and/or objection for additional time and/or for the trial court to hear Applicant's post trial motions.
 - c. Ineffective assistance of counsel for failure to be properly prepared to provide information beneficial to Applicant or make arguments at the final motion hearing.

I so move,


Tricia A. Blanchette
Attorney at Law
Bar #74904
PO Box 2147
Leesville, SC 29070

February 20, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Rasheed Glover, 367438,)
Applicant,)

2018-CP-26-02728

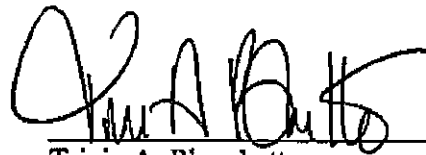
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the U.S. mail this 20th day of February 2020, a copy of an Amendment to Application for Post Conviction Relief, with postage prepaid and the return address clearly shown on said envelope to the Office of the Attorney General at:

Office of the Attorney General
ATT: Lindsey McCallister, Assistant Deputy AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Attorney at Law
PO Box 2147
Leesville, SC 29070

February 20, 2020

FILED
HORRY COUNTY
2020 FEB 24 P 2:38
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2018-CP-26-02728

Rasheed Glover,	)	
	)	
Petitioner,	)	Transcript of Record
	)	
vs.	)	
	)	March 31, 2021
State of South Carolina,	)	
	)	
Respondent.	)	

B E F O R E:

Honorable Paul Burch
Horry County Courthouse
Conway, South Carolina

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

Tricia Blanchette, Esquire
Attorney for Petitioner

William Ray, Esquire
Attorney for Respondent

Sallie Beth Todd
Circuit Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

RASHEED GLOVER

By Ms. Blanchette 13

By Mr. Ray 31

SAMANTHA DALEY

By Ms. Blanchette 42

ROSLYN GLOVER

By Ms. Blanchette 45

JOHNNY GARDNER

By Ms. Blanchette 47 70

By Mr. Ray 62

Certificate of Court Reporter 83

E X H I B I T S

<u>No.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>
P1	Letter from Solicitor 3/16/15		X	17
P2	Character Letters		X	43

1 **THE COURT:** Hopefully, everybody can hear me. Good
2 afternoon to everyone.

3 **MS. GLOVER:** Good afternoon.

4 **THE COURT:** We're right on time. Ms. Blanchette, I
5 believe you're petitioner's attorney.

6 **MS. BLANCHETTE:** That's correct, Your Honor.

7 **THE COURT:** Okay. Looking at your computer have we got
8 everybody concerned that we need on board?

9 **MS. BLANCHETTE:** Your Honor, for some reason, I'm not
10 seeing Ms. Glover, but I think it's because she's a call-in,
11 but your law clerk has confirmed that she is present.

12 **THE COURT:** Okay. You may proceed.

13 **MS. BLANCHETTE:** Your Honor, did you want the state to
14 call the case, or did you want me to call the case?

15 **THE COURT:** You can go ahead.

16 **MS. BLANCHETTE:** Okay. Your Honor, this is Rasheed Glover
17 versus the State. His inmate number is 367438. This is PCR
18 application 2018-CP-26-02728 and it was filed May 2nd, 2018.
19 It's my typical practice at this time that the state usually
20 gives the procedural history from their return and then I have
21 a short opening for Your Honor after that.

22 **THE COURT:** Okay. Let's see, we got -- hold on, let me
23 get my paperwork straight.

24 **MR. RAY:** Can you hear me okay, Your Honor?

25 **THE COURT:** Yes. Okay. I think I've got everything I

1 need and Mr. Ray -- Attorney General Ray?

2 **MR. RAY:** Thank you, Your Honor. May it please the
3 Court? The applicant is presently confined in the Department
4 of Corrections. He was indicted in March 2015 by the Horry
5 County Grand Jury for armed robbery. That was indictment
6 number 2018-GS-26-01237. The indictment relates to an armed
7 robbery of a Scotchman Convenience Store in Conway, South
8 Carolina. He was represented by Mr. Johnny Gardner, who is
9 present today and the Solicitor Laurie Richardson and Thomas
10 G. Terrell of the Fifteenth Circuit Solicitor's Office
11 prosecuted the case. In October of 2015, Mr. Gardner
12 proceeded to a jury trial presided by The Honorable Ferrell
13 Cothran. However, Mr. Gardner did not show up on the day of
14 his trial and the trial proceeded in absentia. The jury
15 found, Mr. Glover, I'm sorry. The jury found Mr. Glover
16 guilty as indicted on October 13th, 2015. He was then, Judge
17 Cothran then prepared a sentence sheet and sealed it pending
18 his arrest on the bench warrant that was issued due to his
19 failure to appear for his trial. However, March 15, 2016, he
20 was apprehended and brought before The Honorable Steven H.
21 John where he pronounced the sentence. He was subsequently
22 sentenced for a term of imprisonment for 25 years. Mr. -- Mr.
23 Glover, through counsel, then moved for a reconsideration of
24 the sentence, which was denied by Judge John on March 17th,
25 2016. Applicant did appeal and the appeal was perfected by

1 Catherine Hudgins who filed an Anders Brief. The state -- the
2 Court of Appeals dismissed the appeal via an unpublished
3 opinion and the application for post convictions relief
4 followed.

5 **MS. BLANCHETTE:** Your Honor, at this time, I have
6 prepared just a brief opening to give you just a summary of
7 where we intend to proceed today, and just to maybe address
8 the virtual nature of this and make sure we're all on the same
9 page procedurally before I call my first witness, if that's
10 okay?

11 **THE COURT:** Sure, you may proceed.

12 **MS. BLANCHETTE:** Your Honor, first of all, I've sent an
13 email that has the two potential exhibits attached to all the
14 parties. I didn't receive any responses that no one -- that
15 there was any trouble accessing that; did everyone receive
16 that yesterday?

17 **THE COURT:** Yes.

18 **MR. RAY:** Yes.

19 **MS. BLANCHETTE:** And, Your Honor, in that email, I also
20 stated it's been my practice in these virtual hearings, and I
21 hope this is acceptable to you, that since I am not at the
22 table with my client as we would be in a regular courtroom,
23 that at the conclusion of my questioning of Mr. Gardner, if I
24 could ask if he needs to speak with me before I rest, which
25 would also be resting the case and if he does, if we can step

1 away and have the opportunity to have a brief phone call?

2 **THE COURT:** Sure, no problem.

3 **MS. BLANCHETTE:** Thank you, Your Honor. As the state
4 mentioned, the amendment was filed on February 24th of 2020.
5 Those are the allegations that we intend to go forward on
6 today. Our primary focus is going to be on the sentencing,
7 the opening of that sealed sentence, and the reconsideration
8 hearings held by Judge John.

9 With that said, Your Honor, the witnesses that I intend
10 to call today are obviously Mr. Rasheed Glover and I intend to
11 call Mr. Johnny Gardner. And this is a unique situation for
12 me, so I just wanted to make sure I was up front with the
13 Court about it. One of the allegations is that Mr. Gardner
14 was ineffective in the reconsideration hearing. So the two
15 that have been admitted as panelists, Ms. Roslyn Glover, she's
16 Rasheed Glover's mom and Samantha Daley, she's his current
17 girlfriend. I would ask that they be allowed to address the
18 Court in the manner they would have at a reconsideration
19 hearing. I have also worked with them to get, which I have
20 already provided as a potential exhibit, letters, that were
21 provided to the Assistant Attorney General, to demonstrate
22 what could have been presented to the Court in
23 reconsideration. So it's not the typical calling of a witness
24 to ask them facts and things of that nature; it's just to
25 address the Court in the manner that they would have at a

1 reconsideration hearing.

2 **THE COURT:** Okay.

3 **MS. BLANCHETTE:** I just wanted to make sure Your Honor was
4 aware of that. I also had submitted some cases, if Your Honor
5 would like, I could address the reasons for submitting those
6 now or at the conclusion of the hearing whatever your
7 preference is.

8 **THE COURT:** I have looked at these in the file. Go ahead
9 -- it'll make the record a little more clear.

10 **MS. BLANCHETTE:** Yes, Your Honor. First of all, there was
11 a group of cases that I submitted that deal with the
12 reconsideration matter; State v. Smith is the first case, that
13 was decided in 1981. Mr. Smith also had a trial in his
14 absence; that was on a DUI 3rd charge. His sentence was
15 published on April 29th of 1980. His motions were marked
16 heard, but they were scheduled for a hearing on a later date,
17 which was June 3rd of 1980. The Trial Court denied his
18 motions holding that he did not have jurisdiction and the
19 Trial Court was reversed on that ruling. It was remanded for
20 reconsideration on the Motion to Alter or Amend or Change the
21 sentence. The reason why I provided this, is this is kind of
22 the paramount case that sets a precedent for the hearing of
23 these motions and how jurisdiction is conferred. It also
24 discusses a sealed sentence jurisdiction and the discretion
25 that the Court can exercise in a reconsideration hearing

1 following the unsealing of the sentence.

2 State v. Warren I also provided that's a 2011 case, and
3 you'll see in that case it cites the State v. Smith and it
4 addresses a scenario like we have today.

5 Then, Your Honor, it's not something I would typically do
6 and if it's not appropriate, you know, please disregard it or
7 the state can argue against it, but I have provided a copy of
8 a Supreme Court Order in Kennedy v. State, which was a PCR
9 matter that I was involved in. I provided that Order just to
10 demonstrate that there the Court granted just a resentencing
11 hearing and so when I put Mr. Glover on the stand, we're going
12 to ask this Court as he did in his amendment, that the
13 sentence be vacated or overturned, or if the Court deems
14 proper, to grant a resentencing or reconsideration hearing.
15 So I provided those cases in line with that.

16 The second group of cases are all cited in the appellate
17 brief. There were two specific cases that I wanted to
18 provide. Those cases deal with the issue raised on appeal,
19 which is the disparate sentencing of codefendants, or as it's
20 commonly called a trial tax.

21 In State v. Brouwer, that was a Court of Appeals decision
22 in 2001. There, the issue looked at, as I said was disparate
23 sentencing between codefendants that pled guilty and went to
24 trial. Here, the majority cites to Davis, which is a PCR
25 case, as well as the dissent by Judge Anderson, he goes into

1 at length the discretion to be exercised, and the factors to
2 consider when fashioning sentences, and when reconsidering
3 sentences.

4 I've also provided a copy of Castro v. State. That is a
5 2016 Supreme Court decision that deals with the ineffective
6 assistance of counsel for failing to object when the Trial
7 Court improperly considered that the applicant had proceeded
8 to trial and that case was reversed and sent back to the Trial
9 Court to address that matter.

10 So those are the reason that I submitted those. I'm
11 happy once testimony has been offered to tie all that together
12 for the Court, but I did want to explain on the front-end for
13 submitting this. Your Honor, unless you have any questions of
14 me, I am prepared to call my first witness.

15 **THE COURT:** Okay. All of us are familiar with these
16 post-conviction relief hearings. This is a little different
17 than we normally have. Seems like the issue is concerning the
18 reconsideration of the sentence. Let me pose a question to
19 the state before we go into the testimony. Is there any
20 agreement that could be reached between the state and
21 petitioner through Ms. Blanchette to agree to have this motion
22 to reconsider, I guess the appropriate legal term would be
23 agree to remand it back to Judge Cochran, when he had
24 jurisdiction to reconsider it? Because I notice that Judge
25 John is the one that who would be the most likely -- well,

1 he's the resident judge here, but I don't know if he was
2 Administrative Judge, but anyway, bottom line is there any
3 agreement that could be reached to let Judge Cothran review
4 this since he was the Trial Judge and the sentencing judge?

5 **MR. RAY:** Well, Your Honor, we would oppose that. We
6 believe that the -- the motion to reconsider was properly
7 raised and properly heard and properly decided upon. We would
8 also assert that we believe the proper remedy for Mr. Glover
9 here is not a new reconsideration hearing it would be a new
10 trial post-conviction relief. We are not aware of any cases
11 that have been, or any opinions that have been formerly issued
12 or indicate otherwise based upon issues such as these.

13 **THE COURT:** Well this is novel to me this particular
14 issue. I just -- I just wondered if you had anything in mind
15 that you might be able to come up with to work it out. All
16 right. With that said, Ms. Blancette, it's back to you. You
17 may call your first witness.

18 **MR. RAY:** Your Honor, if I may?

19 **THE COURT:** Yes, sir, go ahead.

20 **MR. RAY:** I have one -- one matter I would like to
21 handle before we call -- she calls her first witness?

22 **THE COURT:** Okay.

23 **MR. RAY:** I would just ask that the Court take judicial
24 notice of the five allegations raised; namely the failure to
25 actively negotiate the plea offer and provide Mr. Glover with

1 an opportunity to reject -- or to accept the plea. The second
2 one is the ineffective assistance of counsel for failure to
3 properly advise Mr. Glover about the ramifications of the
4 trial in absentia. The third one is the failure or
5 ineffective assistance for failure to move for a continuance
6 prior to the jury selection or object to the trial in
7 absentia. The fourth one would then be the ineffective
8 assistance for failure to offer meaningful representation in
9 the sentencing phase. And then the fifth one it's a three
10 part allegation it's ineffective assistance related to the
11 opening of Mr. Glover's sentence and for post-trial motions.

12 We believe that the first part, failure to have knowledge
13 of or prepared for to be present at the hearing and failure to
14 ensure that the representative who appeared on Mr. Gardner's
15 behalf was properly prepared. The second part reads
16 ineffective assistance of counsel for failure to make an oral
17 or written request and/or objection for additional time for
18 the Court to hear applicant's post-trial motions. And then
19 finally, ineffective assistance of counsel for failure to
20 properly prepare for -- to provide information beneficial to
21 Mr. Glover or make arguments at the final motion hearing.

22 **THE COURT:** Okay. It's my understanding from your
23 opening statement, Ms. Blanchette, those are not -- you're not
24 pursuing any of those other than the reconsideration?

25 **MS. BLANCHETTE:** No, Your Honor, and I'm sorry, I don't

1 know if it's my connection, but it is cutting in and out a
2 little bit, so I hope that everybody else isn't experiencing
3 that, but I did understand what Mr. Ray was saying, it just
4 cut out a couple of times. I'm sorry, when I began spoking, I
5 meant to say, or speaking, I meant to say that we are
6 proceeding on the amendment, but I wanted to focus on those
7 other claims. Since Mr. Glover only has one opportunity to
8 file a PCR application, we are going forward on all those
9 claims today, but our primary claims deal with the
10 reconsideration.

11 **THE COURT:** Okay.

12 **MS. BLANCHETTE:** And, Your Honor, this case just since
13 the discovery hearing has had three different Assistant
14 Attorney Generals on it and I have proposed what Your Honor
15 did, that if we could come to any type of agreement, just on
16 the granting of a reconsideration. And since that was my
17 understanding, they weren't agreeable to that, that was why we
18 were going forward on the full amendment.

19 **THE COURT:** Okay.

20 **MS. BLANCHETTE:** Your Honor, would you like me to call my
21 first witness at this time?

22 **THE COURT:** Yes.

23 **MS. BLANCHETTE:** Your Honor, I would call Rasheed Glover
24 to the stand?

25 **THE COURT:** All right. Mr. Glover, can you hear me?

1 Mr. Glover, can you hear me?

2 MR. GLOVER: Yes, sir, Your Honor, I can hear you.

3 RASHEED GLOVER, HAVING BEEN DULY

4 SWORN TESTIFIES AS FOLLOWS:

5 THE COURT: All right, counsel.

6 MS. BLANCHETTE: Thank you, Your Honor.

7 DIRECT EXAMINATION OF RASHEED GLOVER BY MS. BLANCHETTE:

8 Q: Mr. Glover, can you hear me?

9 A: Yes, ma'am.

10 Q: All right. Is there any way that you can get closer to
11 your microphone?

12 A: Yes. Is that better?

13 Q: It is.

14 MS. BLANCHETTE: And, Your Honor, can you hear Mr. Glover
15 okay?

16 THE COURT: Yes.

17 MS. BLANCHETTE: Okay. And please let me know if at any
18 time if I'm going to quickly or if anyone has any trouble
19 hearing me as I will not be -- be able to read your faces that
20 well on this screen if anything is wrong. Specifically, Madam
21 Court Reporter, if I need to slow down or repeat anything,
22 please let me know.

23 BY MS. BLANCHETTE:

24 Q: Mr. Glover, we're here today because you filed a PCR
25 application back on May 2nd of 2018; is that correct?

1 A: Yes, ma'am.

2 Q: Okay. And we are here today about an indictment that
3 stems from an incident on January 2nd, 2015 that occurred at
4 the Scotchman Store in Horry County?

5 A: Yes, ma'am.

6 Q: And that indictment, there was a trial that went forth on
7 October 12th through 13th, 2015 in front of Judge Cothran; is
8 that your understanding?

9 A: Yes, ma'am.

10 Q: And you were not present at that trial?

11 A: No, I wasn't.

12 Q: And as a result of that trial you were sentenced to 25
13 years which was opened by Judge John on March 15th of 2016; is
14 that correct?

15 A: Yes, ma'am.

16 Q: Okay. And did you have any codefendants on these
17 charges?

18 A: Yes, ma'am. I did.

19 Q: And who were those codefendants?

20 A: Asia Collier, Ikeem Coles, Tyreke Phillips and Amantree
21 Ellerbe.

22 Q: And did any of those codefendants testify at your trial?

23 A: Yes, ma'am.

24 Q: And who testified at your trial?

25 A: Amantree Ellerbe and Asia Collier.

1 Q: And are you aware of the outcome of their cases, what
2 sentence they received?

3 A: They all received 10 years besides Asia Collier, my
4 understanding her charges have been dismissed.

5 Q: Now when I began questioning you, you affirmed that you
6 have filed the instant PCR application. You also, with my
7 assistance, filed an amendment in February of last year; is
8 that correct?

9 A: Yes, ma'am.

10 Q: Okay. And you have a copy of that amendment in front of
11 you today?

12 A: Yes, ma'am.

13 Q: Okay. And by way of that amendment, because your
14 application had not properly requested this, you requested a
15 new trial or whatever relief the Court deems proper, which may
16 be in the form of a reconsideration hearing; is that what
17 you're asking the Court for today?

18 A: Yes, ma'am.

19 Q: Okay. And you want to go forward on these allegations
20 and with your application; is that correct?

21 A: Yes, ma'am.

22 Q: Okay. Let's first talk about when this incident took
23 place and you got arrested, were you appointed or did you
24 obtain counsel?

25 A: I was appointed counsel.

1 Q: Okay. Who were you appointed?

2 A: I was appointed Buddy Long.

3 Q: Did Mr. Buddy Long remain your attorney, or were you
4 appointed a second attorney?

5 A: No, ma'am. I was appointed a second attorney.

6 Q: And who was that attorney?

7 A: That attorney was Johnny Gardner.

8 Q: And what was your understanding as to why you were
9 subsequently appointed Mr. Gardner?

10 A: It was a conflict of interest because Buddy Long was
11 representing one of my codefendants, Ikeem Coles.

12 Q: Okay. And at any time during Mr. Gardner's
13 representation was a plea offer communicated to you?

14 A: Yes, ma'am.

15 Q: And what was that plea offer and how was that
16 communicated to you?

17 A: It was communicated to me on a roll call day, 10 to 15
18 years.

19 Q: Okay. And what was your response when that was
20 communicated to you?

21 A: I asked for a lower plea and possibly a YOA.

22 Q: And was there a certain amount of time you communicated
23 to Mr. Gardner?

24 A: A cap of 10 years down to a YOA.

25 Q: Okay. And Mr. Glover, I have previously provided you a

1 document that we obtained through the discovery process in the
2 PCR and it is a document dated March 16th, 2015 and it's from
3 the fifteenth -- the office of the Solicitor of the Fifteenth
4 Judicial Circuit; do you have a copy of that there in front of
5 you?

6 A: Yes, ma'am. I do.

7 Q: Okay. And have you reviewed that document?

8 A: Can you repeat that, ma'am?

9 Q: Have you reviewed that document?

10 A: Yes, ma'am.

11 Q: Okay. And what does that document communicate?

12 A: If I would plead guilty to armed robbery the state
13 offered the following 10 to 15 years.

14 Q: Your Honor, at this time, I would move what I would call
15 the plea offer sheet dated March 15th, 2015, in as applicant's
16 number 1?

17 **THE COURT:** Madam Court Reporter, do you have that?

18 **COURT REPORTER:** Yes, sir.

19 **THE COURT:** Any objection?

20 **MR. RAY:** No objection, Your Honor.

21 **THE COURT:** All right. It's in. Motion granted.

22 **PLAINTIFF'S EXHIBIT NUMBER 1**

23 **ADMITTED INTO EVIDENCE**

24

25 **MS. BLANCHETTE:** And I'm sorry, is Madam Court Reporter

1 ready?

2 **THE COURT:** Yes.

3 **MS. BLANCHETTE:** All right. And I can not see her
4 picture, so I will just ask.

5 **COURT REPORTER:** Do you need me to turn it on?

6 **THE COURT:** No.

7 **BY MS. BLANCHETTE:**

8 Q: Mr. Glover, so you said that the plea offer was
9 communicated to you. Were any other offers ever communicated
10 to you?

11 A: No, ma'am.

12 Q: Now did you have an opportunity to meet with Mr. Gardner
13 close in time to your October 12th trial date?

14 A: Yes, ma'am.

15 Q: Okay. And do you recall when you meet with him? How
16 shortly before trial?

17 A: Can you repeat that question?

18 Q: Yes. Do you recall kind of what day or how shortly
19 before the trial on Monday October 12th when you met with him?

20 A: It was the week before.

21 Q: Okay. And in that last meeting with him, what did you
22 discuss regarding a plea and proceeding to trial?

23 A: He told me that once I came to trial that I could
24 possibly detained and even that if I'm not convicted of armed
25 robbery, it's possible that I could be convicted of a lesser

1 charge.

2 Q: At that meeting did you walk away, or even during that
3 meeting did you want to proceed with the trial?

4 A: No, ma'am.

5 Q: What did you want to do?

6 A: I had wanted to accept the plea offer.

7 Q: Okay. Did you communicate that to Mr. Gardner?

8 A: Yes.

9 Q: But you were up for trial on that Monday and you were
10 aware of that, correct?

11 A: Yes, ma'am.

12 Q: Okay. Did he give you any advice about what would happen
13 if you did not show up for your trial that was scheduled on
14 October 12th?

15 A: No, ma'am.

16 Q: Now, let's skip again to October 12th. Did you attend
17 your trial?

18 A: No, ma'am.

19 Q: Why did you not attend your trial?

20 A: Initially it was like out of fear. Me feeling that I
21 wasn't prepared to go to trial and I -- I didn't want to go, I
22 felt like I was being forced to go like there was no other
23 option.

24 Q: And how old were you at this time?

25 A: I was 19. No, I had just turned 20, excuse me.

1 Q: Okay. And had you just turned 20 in October?

2 A: Yes, ma'am, October 2nd.

3 Q: Okay. Now, the day of your trial, do you recall ever
4 speaking with Mr. Gardner or anyone from his office?

5 A: No, ma'am.

6 Q: Now the Court has before him and I believe everyone has a
7 copy of the transcript or record on appeal; do you have that
8 in front of you, Mr. Glover?

9 A: Can you repeat that?

10 Q: Do you have a copy of the transcript of the record on
11 appeal in front of you?

12 A: Yes, ma'am.

13 Q: Okay. And the trial obviously starts with you not
14 present and Mr. Gardner, on page 17 says that he has never
15 done one before, that he has tried to reach out to you. You
16 just stated though that you don't recall speaking with him?

17 A: Yes, ma'am.

18 Q: Okay. But you don't refute that you he may have tried?

19 A: Can you repeat that question?

20 Q: Yes. You don't refute that he may have tried to reach
21 out to you?

22 A: No, ma'am.

23 Q: Okay. And then if you skip ahead to page 25, Mr.
24 Gardner, after the state goes through the procedure of calling
25 the necessary witnesses to proceed in your absence, says that

1 he has nothing further to say, but he does move for a
2 continuance. Would you have wanted the case to be continued
3 so that you could have been present or entered a guilty plea?

4 A: Yes, ma'am.

5 Q: And during the course of the trial Asia Collier, your
6 codefendant, testified against you or for the state, I'm
7 sorry, as well as Amantree Ellerbe. Were you aware that they
8 were going to be called as state's witnesses?

9 A: I was aware of Asia Collier, but not Amantree Ellerbe.

10 Q: Okay. And Mr. Ellerbe essentially testified and this is
11 reflected on pages 165 and 168, that it was your plan, that
12 you were the mastermind and that he had pled guilty, but he
13 wasn't expecting any deal from it. But it's your
14 understanding, his sentence was reduced after he testified; is
15 that correct?

16 A: Yes, ma'am.

17 Q: Now, the trial concluded with the jury deliberating for
18 about 30 minutes and then your sentencing begins on page 203
19 and ends on page 203 of the transcript of record on appeal.
20 During that sentencing, nothing is said by your attorney on
21 your behalf; would you have wanted him to speak on your behalf
22 if given the opportunity?

23 A: Yes, ma'am.

24 Q: And then it concludes with the Court saying on page 203
25 on lines 18 through 23, when you get arrested to bring you in

1 front of some judge and see what happens. So, let's jump
2 forward to when you were arrested. Where were you when you
3 were arrested?

4 A: I was in a suite on College Apartments in Conway, South
5 Carolina.

6 Q: Okay. And when you were arrested, then were you taken to
7 the detention center?

8 A: Yes, ma'am.

9 Q: And then let's jump forward to March 15th, 2016, which is
10 the date as reflected in the transcript when Judge John opened
11 your sealed sentence. Just kind of take us through, from your
12 perspective, what happened on March 15th?

13 A: March 15th, transportation came and arrived at the jail
14 and transported me to the courthouse. I didn't know exactly
15 what was going on because I wasn't told. I just figured it
16 had something to do with the charges. Once I arrived here I
17 was told a lawyer would meet with you in the back if they
18 didn't make it to the jail. I went inside the courtroom and
19 Johnny Gardner's partner, Mr. Bouchette, was present and I was
20 given the sentence of 25 years.

21 Q: Let me kind of kind of take you through what appears in
22 the transcript and then I have some questions for you. At the
23 beginning on page 3 of that sentencing transcript, the state
24 indicates that you all are there to open the sealed sentence,
25 and Judge John inquires about whether Johnny Gardner

1 represented you and where he was at and they responded he's
2 currently in a trial. Was any of that communicated to you
3 before you were brought into the courtroom?

4 A: No, ma'am.

5 Q: And then Judge John, on page 3, line 15, reads your
6 sentence before, Mr. Bouchette, your representative was even
7 allowed to speak and then he asked if there's any matters from
8 the defense and Mr. Bouchette said there's no motions. I have
9 a couple of questions for you here. Had you -- did you speak
10 with Mr. Bouchette before this hearing?

11 A: No, ma'am.

12 Q: Did you know he was going to be there on Mr. Gardner's
13 behalf?

14 A: No, ma'am.

15 Q: Had you all discussed any motions that would be needed to
16 be made or would be presented to Judge John at that juncture?

17 A: No, ma'am.

18 Q: And then the transcript reflects that Judge John actually
19 explains that now is the time to make motions and he makes the
20 decision to hold it in abeyance and reconvene on Thursday
21 morning with Mr. Gardner and that's reflected on page 4. But
22 when Judge John held it in abeyance until you could reconvened
23 on March 17th, did you have the opportunity to meet with Mr.
24 Gardner or talk with him on the phone while you were at the
25 detention center?

1 A: No, ma'am.

2 Q: Did you have the opportunity to speak with him as you
3 were going into the courtroom on the 17th?

4 A: Yes, ma'am.

5 Q: Can you take us through that conversation?

6 A: As I entered the courtroom, we spoke briefly, but it was
7 so much in a rush before we got in front of the judge, we
8 really didn't get to speak anything if I remember.

9 Q: Okay. Just going through the transcript, this begins of
10 page 5 of the sentencing/reconsideration transcript, the Judge
11 said that he continued the matter so that your counsel could
12 bring matters to his attention that needed to be brought to
13 his attention and then Mr. Gardner says that he's going to
14 make a standard posttrial motions. He did a little research
15 while he was in the middle of another trial and he thinks the
16 Court has the power to reconsider it and that's pages 5
17 through 6. Were you concerned that your attorney had been
18 pulled in there in the middle of another trial and it sounded
19 like he hadn't had ample time to be prepared?

20 A: Can you repeat that question?

21 Q: Yes, and I'm sorry. Are you hearing a lot of feedback on
22 your end that I'm hearing?

23 A: Can you say that one more time?

24 Q: Yes, and Mr. Glover, I asked are you hearing a tremendous
25 amount of feedback; I'm hearing a lot on my end?

1 A: Yes, ma'am.

2 Q: All right. So, just let me know if I need to slow down
3 and if you can't hear this. Your attorney says on pages 5 to
4 6, that he was in the middle of another trial and he's done
5 some research and he addresses whether or not the Court has
6 jurisdiction to even hear the motion. Were you concerned that
7 your attorney had been pulled out of another trial and was
8 admitting that he's had limited time to prepare?

9 A: Yes, ma'am.

10 Q: And again, had he prepared with you at all for what you
11 wanted the Court to reconsider?

12 A: No, ma'am.

13 Q: Judge John then says on page 6, line 5, that per the
14 Supreme Court, he entered he does have jurisdiction and so
15 your attorney can go forward and argue against the sentence
16 given by Judge Cothran. Was it ever discussed with you why
17 Judge Cothran was not hearing your reconsideration motion?

18 A: No, ma'am.

19 Q: Would you have wanted Judge Cothran to be the Judge to
20 reconsider the sentence handed down by Judge Cothran?

21 A: Yes, ma'am.

22 Q: Then your attorney made some comments on your behalf,
23 beginning on line 12 of page 6. He said that he thinks all
24 your codefendants got 10 years and one's waiting to be
25 sentenced; that you're 20 with no kids and he understands that

1 this was a big conviction, but it was your first one. Would
2 you have wanted him to offer additional information on your
3 behalf?

4 A: Yes, ma'am.

5 Q: Would you have wanted him to get together letters or
6 people to speak on your behalf in reconsideration?

7 A: Yes, ma'am.

8 Q: And have we done that today to demonstrate our burden for
9 this PCR application?

10 A: Yes, ma'am.

11 Q: So, you're asking the Court to consider the two witnesses
12 that we have available to speak as well as the letters that
13 you have worked, together with myself in getting together; is
14 that correct?

15 A: Yes, ma'am.

16 Q: But you didn't have time to do with Mr. Gardner?

17 A: No, ma'am.

18 Q: Would you have wanted to address the Court?

19 A: Yes, ma'am.

20 Q: What specifically would you have wanted to say?

21 A: I would have wanted to speak on my character. I felt
22 like it was more to me than just being 20 with no kids. He
23 didn't really speak on my academic achievements or anything of
24 my character, I know we didn't know each other too well. We
25 hadn't really met often, but but I felt like it was worth it

1 to be said.

2 Q: Okay. And you said you'd want to speak on your character
3 and speak on your academic achievements. You are the
4 applicant and you have the burden here, so can you
5 specifically tell the Court what it is you would have wanted
6 to speak on?

7 A: Can you repeat that question?

8 Q: Yes. This is your opportunity to establish what you
9 would have said, so can you specifically explain the character
10 or achievements you would have wanted to tell the Court about?

11 A: Yes, ma'am. That I finished high school, I attend
12 college, that I was well loved in my community, by my family
13 and friends. That I would give a hand to anybody that needed
14 it.

15 Q: Now, in this is there anything further you would like to
16 say, I'm sorry, Mr. Glover?

17 A: No, ma'am.

18 Q: Okay. The state in response, which is pages 7 through 8
19 and the transcript talks about the sentences received by your
20 codefendant, they object to a reduction of less than 20 and
21 then on page line 7 through 10, they specifically argue that
22 Judge Cothran was the sentencing judge. He heard the facts,
23 so they oppose it simply on that basis. If you have known
24 that the state was going to oppose any reduction in sentence
25 because Judge John was not Judge Cothran, who would you have

1 wanted to hear the motion?

2 A: Judge Cothran.

3 Q: Now, at that time, then Mr. Gardner asked for a break and
4 he talks with you and he asks for 10 to 15 years. What
5 happened during that brief somewhat on the record or in the
6 courtroom discussion?

7 A: As far his questioning me, I don't really remember it
8 well. I remember what I said to him and it was that I would
9 like to receive whatever time my codefendants had gotten.

10 Q: And so then Mr. Gardner asked for 10 to 15 years and
11 thereafter the Judge made his ruling. I'm just going to take
12 you through that. On page 9 of the transcript of 217 in the
13 record on appeal; do you have that there in front of you?

14 A: Yes, ma'am.

15 Q: Okay. And so the Judge notes he has no transcript to
16 review; would you have wanted your attorney to obtain a
17 transcript for the Court to review?

18 A: Yes, ma'am.

19 Q: He also notes that he's not the Trial Judge who heard the
20 testimony. I don't want to beat a dead horse, but you have
21 wanted the Trial Judge to be the one making the decision if
22 that was going to be a hang-up for Judge John?

23 A: Yes, ma'am.

24 Q: And even if it wasn't going to be a hang-up, would you
25 have wanted Judge Cothran to be the one that heard the motion?

1 A: Yes, ma'am.

2 Q: He then, as he's concluding, says that he's going to
3 decline to grant a request to change the sentence of Judge
4 Cothran. One thing I didn't ask you before, is if it would
5 have been Judge Cothran, would you have wanted the chance to
6 explain to him why you didn't show up for your trial?

7 A: Yes, Your Honor.

8 Q: And would you have taken ownership for that and explained
9 in that you were simply scared and did not show up?

10 A: Yes, ma'am.

11 Q: But you didn't have that opportunity because it was Judge
12 John who wasn't your trial judge, correct?

13 A: Yes, ma'am, that's correct.

14 Q: I just want to ask you a little bit about the issue
15 raised on appeal and how that connects to the issues you're
16 raising today. But is there anything else regarding the trial
17 sentencing and reconsideration that you would like to address?

18 A: No, ma'am.

19 Q: Okay. Now, on appeal the issue raised in the appellate
20 brief, we've gone over that many times, but I'm just going to
21 read it into the record here. Did the Judge who unsealed and
22 pronounced sentence following the trial in the appellant's
23 absence abuse his discretion in refusing to reconsider the 25
24 year sentence imposed by the trial judge, when a codefendant
25 received a lesser sentence and the record fails to reflect an

1 appropriate basis for the disparate sentence.

2 Now in that brief, your appellate defender argues the
3 difference of the disparity between your sentence and your
4 codefendants, and she raises the issue that goes along with
5 the case law that we provided to the Court of a trial tax.
6 That you received more time than your codefendants that didn't
7 go to trial. Have you reviewed that brief?

8 A: Yes, ma'am.

9 Q: Okay. And he also points out in there that Judge John,
10 when he decided not to reduce your sentence, acknowledged that
11 he wasn't the trial judge, and he didn't have the transcript.
12 Would you have wanted Judge Cothran to be able to answer or
13 address whether there was a disparity in the sentences simply
14 because you went to trial?

15 A: Yes, ma'am.

16 Q: And as -- as far as you know from being in the sentencing
17 hearing when your sentence was unsealed at the reconsideration
18 hearing, was that issue ever brought up that you were punished
19 more severely because you went to trial?

20 A: No, ma'am.

21 Q: And who would have been the appropriate one for your
22 attorney to ask if a trial tax had been imposed?

23 A: Judge Cothran.

24 Q: And was that ever done on your behalf?

25 A: No, ma'am.

1 Q: Mr. Glover, we were prepared to go to court last March
2 when the pandemic hit, and you had prepared with me virtually
3 and over the phone for today's hearing. I know this is
4 different than any of us anticipated it to be, but I want to
5 make sure that I've addressed everything you wanted to address
6 today. Is there anything that you would like to tell the
7 Court in support of your allegations that I have failed to
8 elicit from you?

9 A: No, ma'am.

10 **MS. BLANCHETTE:** Your Honor, I have no further questions
11 of Mr. Glover.

12 **THE COURT:** Mr. Ray?

13 **MR. RAY:** Thank you, Your Honor. Just one moment.

14 **CROSS EXAMINATION OF RASHEED GLOVER BY MR. RAY:**

15 Q: Mr. Glover, you -- do you remember that your trial was
16 back in October of 2015; is that correct?

17 A: Yes, sir.

18 Q: And you had been arrested prior to that; is that correct?

19 A: Yes, sir.

20 Q: Were you in the Department of Corrections or the county
21 jail at the time of your trial or had you been released on
22 bond?

23 A: I was released on bond.

24 Q: And when you were released, did they have any sort of
25 ankle monitoring or any GPS tracking of you?

1 A: Yes, sir.

2 Q: They did?

3 A: I think it was. Yes, sir.

4 Q: Okay. And so when you did not show up for your trial,
5 were you still wearing your ankle monitor?

6 A: No, sir.

7 Q: Okay. Let me ask you -- give me just one moment. So had
8 you spoken with Mr. Gardner about what might happen -- I know
9 that you said he didn't speak with you the week before trial,
10 but at any point in time did you speak with Mr. Gardner about
11 what happened if you didn't show up for your trial?

12 A: No, sir.

13 Q: And how many times -- how often did you speak with him
14 prior to trial? Was it just the week before or were there
15 multiple meetings?

16 A: I spoke with him the week before, but that was the only
17 time we spoke about a trial. I was meeting him at roll call
18 dates and that was it.

19 Q: Okay. And roll call is where you got that plea offer; is
20 that correct, for the 10 to 15 years?

21 A: Yes, sir.

22 Q: And that it was provided to you by Mr. Gardner?

23 A: The solicitor had presented it.

24 Q: Okay. And Mr. Gardner was present with you at that time?

25 A: If it wasn't Mr. Gardner, it was his partner, Mr.

1 Bouchette.

2 Q: Okay. I understand. And you rejected it, correct?

3 A: Yes, sir.

4 Q: Okay. And your reason for rejecting it was that you just
5 wanted less time than 10 to 15 years?

6 A: Yes, sir.

7 Q: Okay. Now as far as you are aware, did any other plea
8 offer at any time occur?

9 A: Can you repeat that question?

10 Q: Did you ever get another plea offer from the solicitor?

11 A: No, sir.

12 Q: And had you requested that Mr. Gardner negotiate the plea
13 or enter into further negotiations for a plea?

14 A: Yes, sir.

15 Q: Okay. So, when you spoke with him the week before your
16 trial was set to begin, you were aware that your trial was set
17 for the next week; is that correct?

18 A: Yes, sir.

19 Q: Okay. And you were aware that generally when you're
20 tried in criminal court, you're expected to appear?

21 A: Yes, sir.

22 Q: Okay. But you stated that your reason for not doing so
23 was that you were scared?

24 A: Yes, sir.

25 Q: All right. Just one moment, please. Now before trial, I

1 mean when you didn't show up, I'm assuming that you had not
2 told Mr. Gardner that you weren't going to show up and it was
3 a surprise; is that correct?

4 A: Yes, sir.

5 Q: And you -- you would have liked for it to be continued to
6 a later point in time when you could have appeared?

7 A: Yes, sir.

8 Q: Now let me ask you, if you would have appeared what do
9 you think would have changed; you said that you didn't appear
10 because you were scared, why would you have appeared at a
11 later date?

12 A: Can you repeat that question?

13 A: When you didn't appear on the date that trial was
14 originally scheduled and it would have been continued to some
15 future point in time, what would have changed in your mind
16 that would have made you more likely to appear at a later
17 date?

18 A: I was thinking that if I didn't appear it wouldn't be a
19 trial because I didn't want to go to trial.

20 Q: Okay. Now you just stated that you were aware of the
21 date of your trial and that you understood that you were
22 generally expected to appear for a criminal trial where you're
23 the defendant; is that correct?

24 A: Yes, sir.

25 Q: Okay. But you for whatever reason thought that there

1 would have been no trial if you didn't appear?

2 A: Yes, sir.

3 Q: I'm sorry, is that a yes?

4 A: Yes, sir.

5 Q: Okay. Now let me ask you about your codefendants. You

6 had four codefendants; is that correct?

7 A: Yes, sir.

8 Q: Now, two of them testified at your trial, Ms. Collier and

9 Mr. Ellerbe?

10 A: Yes, sir.

11 Q: All right. Now let me ask you about Ms. Collier. She --

12 what was your relationship to her at the time?

13 A: We was -- we used to date. At the time we just wasn't.

14 Q: Okay. She was your ex-girlfriend?

15 A: Yes.

16 Q: And she testified, if you recall, on page 145 of the

17 transcript. She testified that she involved herself in the

18 crime because you were very manipulative and convinced her to

19 do it. Would you agree with that or disagree?

20 A: I disagree.

21 Q: You would disagree; you would say that you did not

22 convince her to do it?

23 A: Yes, I would say that I did not convince her to do it.

24 Q: Okay. Now let me ask you this. She also testified that

25 she threw away some evidence; specifically some pieces of

1 clothing and that she did it because you told her to do that;
2 would you agree with that or disagree?

3 A: I disagree.

4 Q: You didn't tell her to throw away any evidence?

5 A: No, sir.

6 Q: Okay. And then going on, she stated that she eventually
7 turned herself in and gave a statement to the police. Are you
8 aware of any statements that she made to the police?

9 A: Yes, sir.

10 Q: You are. Now she states on page 149, let me see if I can
11 find the exact line where she states that she gave a
12 misleading statement to the police essentially at your
13 direction; are you aware of that?

14 A: Can you repeat that?

15 Q: She essentially said at your trial that you told her to
16 give a misleading statement to the police; did you know that?

17 A: No, I did not know that.

18 Q: You did not? And you said that you have reviewed those
19 transcripts; is that correct?

20 A: Yes, sir, I've reviewed them.

21 Q: Okay. One last question on Ms. Collier. I believe that
22 on 155, let me see if I can find it. Yeah, 156, line 10, she
23 states Rasheed got me to make the statement; and you would
24 disagree with that?

25 A: Yes, I disagree with that.

1 Q: Okay. And she has testified that you were the master
2 mind of the robbery; would you agree or disagree with that?

3 A: I disagree with that.

4 Q: Okay. So you say that as far as your role and Ms.
5 Collier's role in the robbery, y'all had the same role?
6 Together?

7 **MS. BLANCHETTE:** Your Honor, I would object at this point,
8 because I understand this is cross examination, but this
9 doesn't go into the allegations raised or to the testimony
10 offered on direct.

11 **MR. RAY:** Your Honor, I would assert that she is claiming
12 that Mr. Gardner failed to cover trial tactics but the purpose
13 of the questioning is to show that he was not similarly
14 situated to the codefendants and therefore the cases that she
15 provided and as far as I'm aware, any other case, (inaudible -
16 break in audio) ringleader at the crime scene would not get
17 the same sentence as the codefendant who is not -- who is just
18 a mere participant.

19 **THE COURT:** With that explanation, I'll overrule the
20 objection.

21 **MR. RAY:** Thank you, Your Honor.

22 **THE COURT:** Move on.

23 **MS. BLANCHETTE:** Your Honor, may I ask, I'm having
24 trouble, Mr. Ray's connection is going out on my end. I don't
25 know if anybody else is experiencing that. I just want to

1 make sure we have a full record if anybody else is
2 experiencing that.

3 **THE COURT:** Let me defer to my Court Reporter because it
4 was getting a little bumpy there. Did you get everything?

5 **COURT REPORTER:** I did, but he is going in and out.

6 **THE COURT:** She got everything, but there is a problem
7 there, Mr. Ray. I don't know what we can do. Maybe it will
8 get better as we go on.

9 **MR. RAY:** Yeah, I've got it going through a hot spot
10 right now. We usually do that in order to insure that this
11 doesn't happen. I can transfer over to the office.

12 **THE COURT:** Okay. It's circling again and we did hear
13 everything you said, but there's a problem.

14 **MR. RAY:** Okay. Would you like to me proceed or see if I
15 can figure something else out?

16 **THE COURT:** Did you have any additional questions?

17 **MR. RAY:** I do have a couple. Yes, Your Honor.

18 **THE COURT:** All right. Go ahead and if it starts
19 circling again, I'll stop you.

20 **MS. BLANCHETTE:** Thank you, Your Honor.

21 **MR. RAY:** Thank you.

22 **BY MR. RAY:**

23 Q: Just a couple of questions, Mr. Glover, about your
24 codefendant, Mr. Ellerbe. You stated at trial that you --
25 both you and him went into the store with weapons; is that

1 correct?

2 A: That's what he said. Yes, sir.

3 Q: And the other two individuals involved in this crime did
4 not enter the store, correct?

5 A: That's not correct.

6 Q: Okay. Now when you heard, after it ended, after your
7 trial had occurred -- do you remember what day that was on?

8 A: No, I'm not sure of the exact day.

9 Q: Okay. Had you been held in detention for a long time
10 before you were brought before the Court for sentencing?

11 A: No, I wasn't held.

12 Q: Was it just a day, an hour, a week?

13 A: It was somewhere around a week.

14 Q: Okay. So it was a couple of days.

15 A: (Affirmative response.)

16 Q: Okay. Now, let me just give -- when you were brought
17 before Judge John for sentencing, you said that you spoke with
18 Mr. Gardner as you were walking into the courtroom?

19 A: Yes. When Judge John brought us back, yes.

20 Q: Okay. Just very briefly, am I correct?

21 A: I didn't hear what you said.

22 Q: Just for a minute or two?

23 A: Yes, sir.

24 Q: Okay. And did you ask him to say anything about your
25 character or your ability, or did you think that you might be

1 able to do that on your own?

2 A: I wasn't sure that I could do it on my own. I didn't
3 have the time to ask him even if I did.

4 Q: Okay. Did you ask to speak to the Court personally at
5 the sentencing?

6 A: No.

7 Q: No, why did you not do that?

8 A: I didn't know I could.

9 Q: Okay. You didn't know you could. Okay. Well, let me
10 ask you this, Judge Cothran (inaudible - break in audio) ---

11 **COURT REPORTER:** He's going in and out.

12 **THE COURT:** Mr. Ray, you got a serious cut out on that
13 one.

14 **MR. RAY:** Okay. I can switch my wi-fi connection. I may
15 disappear for just a little bit.

16 **THE COURT:** Okay. Go ahead and give it a try.

17 **MS. BLANCHETTE:** Thank you, Your Honor.

18 **MR. RAY:** All right. Your Honor, are you able to hear
19 me?

20 **THE COURT:** Yes.

21 **MR. RAY:** Okay. I just have a couple more questions for
22 Mr. Glover, so hopefully we can get through this.

23 **BY MR. RAY:**

24 Q: Mr. Glover ---

25 **MR. RAY:** Court's indulgence for just one moment, please?

1 Actually, Your Honor, I have no further questions for Mr.
2 Glover.

3 **THE COURT:** Ms. Blanchette, anything further? Ms.
4 Blanchette, anything further?

5 **MS. BLANCHETTE:** Your Honor, if you're speaking, I can't
6 hear you.

7 **THE COURT:** Thank you, we were on mute for some reason.
8 I don't remember doing that. Did you do that, William?

9 Anything further, sorry, Ms. Blanchette?

10 **MS. BLANCHETTE:** Your Honor, I have no cross examination.
11 I just was unsure if that's what you were asking. I have no
12 redirect, I just didn't know if that's what you were asking.

13 **THE COURT:** You can't read lips like my wife can?

14 **MS. BLANCHETTE:** I cannot, no.

15 **THE COURT:** All right.

16 **MS. BLANCHETTE:** Your Honor, the next witness that I would
17 call is Samantha Daley just to essentially introduce herself
18 and then read her letter to the Court that she would have read
19 at the reconsideration.

20 **THE COURT:** All right.

21 **MS. BLANCHETTE:** Ms. Daley, are you there?

22 **MS. DALEY:** I am.

23 **MS. BLANCHETTE:** Your Honor, how would she be sworn in or
24 do we ---

25 **THE COURT:** I can handle it.

1 MS. BLANCHETTE: All right. Thank you.

2 THE COURT: Ms. Daley, if you'll raise your right hand?

3 | SAMANTHA DALEY, HAVING BEEN DULY

4 SWORN TESTIFIES AS FOLLOWS:

5 **THE COURT:** Thank you.

6 DIRECT EXAMINATION OF SAMANTHA DALEY BY MS. BLANCHETTE:

7 Q: Can you state your name for Madam Court Reporter?

8 A: Samantha Daley.

9 Q: And, Ms. Daley, how are do you know Mr. Rasheed Glover?

10 A: We met in our freshmen year of high school in 2010.

11 Q: Okay. And were you all friends at that time?

12 | A: Yes.

13 Q: Okay. And how was it that you're connected to him now?

14 A: He is my boyfriend now.

15 Q: Okay. And in preparation for the hearing last March and
16 for today, did you assist me in getting together letters of
17 individuals that would have wanted to provide information to
18 the Court on his behalf in a reconsideration hearing?

19 A: Yes, ma'am.

20 Q: Okay. And I have provided those letters to all the
21 parties and the Court previously in an email and there are 1,
22 2, 3, 4, 5 of those letters; you are familiar with those
23 letters; is that correct?

24 A: Yes, ma'am.

25 Q: And one of those letters is actually written by yourself?

1 A: Yes, ma'am.

2 Q: Your Honor, at this time I would move these letters in as
3 applicant's number 2?

4 **THE COURT:** Any objection?

5 **MR. RAY:** No, Your Honor, no objection.

6 **THE COURT:** Madam Court Reporter, do you have that
7 letter? Madam Court Reporter has it; it's in without
8 objection.

9 **DEFENDANT'S EXHIBIT NUMBER 2**

10 **ADMITTED INTO EVIDENCE**

11 **MS. BLANCHETTE:** And, Your Honor, I would actually move to
12 admit the entire packet of letters through Ms. Daley, since
13 she was the one that prepared them and this is a little odd,
14 you know, because this is what we would typically happen in a
15 reconsideration hearing, but I figured this was the best way
16 to do it.

17 **THE COURT:** Any objection?

18 **MR. RAY:** No, Your Honor.

19 **THE COURT:** Madam Court Reporter, do you have the rest of
20 the packet?

21 **COURT REPORTER:** Yes, sir, I have them all marked as
22 exhibit 2.

23 **THE COURT:** All right. They're in without objection.
24 Madam Court Reporter has them marked.

25 **MS. BLANCHETTE:** Thank you, Your Honor.

1 **BY MS. BLANCHETTE:**

2 Q: Ms. Daley, what I'd ask now is would -- I'm sorry, let me
3 rephrase that. Were you in communication with Mr. Glover back
4 in March of 2016 at the time of his reconsideration hearing?

5 A: Just through when he could call me from the jail some.

6 Q: Okay. And if he would have asked you to get together
7 letters and/or be present at this hearing, would you have done
8 that?

9 A: Yes, ma'am.

10 Q: Okay. And you would have worked on getting these letters
11 that we just admitted as an exhibit?

12 A: Yes.

13 Q: Okay. And you also would have been willing to be present
14 at the reconsideration hearing or hearings in front of Judge
15 John?

16 A: Yes.

17 Q: Okay. And if you could, please read for the record the
18 letter and information you would have wanted to provide to the
19 Court at that time on Mr. Glover's behalf?

20 **REPORTER'S NOTE:** (Witness reads her affidavit from
21 plaintiff's exhibit 2).

22 Q: Ms. Daley, if you can hear me, your feed has ---

23 A: I'm sorry. My computer ---

24 Q: That's fine. You were at -- do you know where you were
25 at?

1 A: I'm not sure when it cut off.

2 Q: Okay. And the Court has already admitted your letter as
3 an exhibit, so I would recommend that if you pick where it
4 says I pray that you can see Rasheed?

5 A: Okay.

6 **REPORTER'S NOTE:** (Witness continues reading her
7 affidavit from plaintiff's exhibit 2).

8 **BY MS. BLANCHETTE:**

9 Q: Thank you, Ms. Daley, I have no further questions.

10 **THE COURT:** All right.

11 **MR. RAY:** The state has no questions for this witness,
12 Your Honor.

13 **THE COURT:** Thank you, Mr. Ray.

14 **MS. BLANCHETTE:** Your Honor, I call Roslyn Glover to the
15 stand.

16 **THE COURT:** All right. Ms. Glover, can you hear us?

17 **MS. GLOVER:** I can.

18 **THE COURT:** Would you raise your right hand?

19 **ROSLYN GLOVER, HAVING BEEN DULY**

20 **SWORN TESTIFIES AS FOLLOWS:**

21 **THE COURT:** All right. Ms. Blanchette?

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

23 **DIRECT EXAMINATION OF ROSLYN GLOVER BY MS. BLANCHETTE:**

24 Q: Can you please state your name, your full name for the
25 record?

1 A: My name is Roslyn Glover.

2 Q: And how is it that you know Rasheed Glover?

3 A: He is my son.

4 Q: Okay. And I want to take you to the time when he was
5 brought before Judge John for the unsealing of his sentence
6 and for his reconsideration. Was it brought to your attention
7 that he was going to have that hearing in front of Judge John
8 on March 17th of 2016?

9 A: Yes, it was.

10 Q: And were you present?

11 A: Yes, I was.

12 Q: Did you have the opportunity to speak with Mr. Gardner
13 before that hearing?

14 A: No, we did not.

15 Q: Okay. And if you had been given the opportunity or if it
16 was communicated to you by anyone that you could speak on your
17 son's behalf, would you have wanted to do that?

18 A: Absolutely.

19 Q: And you've put together a letter that has been admitted
20 as applicant's number 2 or at least part of applicant's number
21 2, that contains the information that you would have wanted to
22 share with the Court asking to reconsider your sentence.

23 Would you like to read that for us now?

24 A: Yes.

25 Q: Go ahead, Ms. Glover.

1 **REPORTER'S NOTE:** (Witness reads her affidavit from
2 plaintiff's exhibit number 2).

3 BY MS. BLANCHETTE:

4 Q: Thank you, Ms. Glover, I have no further questions.

5 THE COURT: Mr. Ray?

6 **MR. RAY:** Nothing from the state on this witness, Your
7 Honor.

8 **THE COURT:** Thank you, Ms. Glover, the Court appreciates
9 you coming and taking part.

10 MS. GLOVER: Thank you.

11 **MS. BLANCHETTE:** Your Honor, I'm prepared to call my last
12 witness, Johnny Gardner, at this time?

13 **THE COURT:** We've got Mr. Gardner on board. Good
14 afternoon, Mr. Gardner.

15 **MR. GARDNER:** Good afternoon, Judge.

16 **THE COURT:** All right. If you'll raise your right hand?

17 JOHNNY GARDNER, HAVING BEEN DULY

18 SWORN TESTIFIES AS FOLLOWS:

19 THE COURT: Ms. Blanchette?

20 MS. BLANCHETTE: Thank you, Your Honor.

21 DIRECT EXAMINATION OF JOHNNY GARDNER BY MS. BLANCHETTE:

22 Q: Mr. Glover, I'm sorry, Mr. Gardner, that's happened
23 already today. Could you please tell us current occupation?

24 A: I'm a lawyer.

25 Q: And how long have you been a lawyer, Mr. Gardner?

1

2 A: Since '92, so coming up on 30 years.

3 Q: And what is the primary focus of your practice?

4 A: It's criminal defense work.

5 Q: And do you primarily do that in Horry County?

6 A: Yes.

7 Q: And how was it that you came to be involved in Rasheed
8 Glover's case?

9 A: I was appointed by the Court.

10 Q: And Mr. Glover testified that Buddy Long first
11 represented him; were you familiar with that?

12 A: I may have. That happens from time to time that somebody
13 will get appointed and there will be a conflict or an issue.
14 In fact, most of the cases I get have a conflict or an issue,
15 so that doesn't surprise me.

16 Q: Okay. And I've already admitted applicant's number 1,
17 which was a plea offer communicated to Mr. Long, but are you
18 familiar with that plea offer of 10 to 15 years?

19 A: I can't swear that I was familiar with it. I mean, going
20 back, but watching this hearing, I've watched every minute of
21 it, it does -- it does seem consistent with what we would have
22 done.

23 Q: Okay. And do you recall, and I know you said you don't
24 have a specific memory, but -- well let me rephrase that.
25 What do you recall discussing with Mr. Glover as far as plea

1 offers and plea negotiations?

2 A: Well, we would have discussed the plea offer in a
3 negotiation and at some point in time, that would have been
4 it, whatever it was and it sounds like that would -- then the
5 other -- then it's just like any other case, you -- if you
6 can't reach a plea, you can't take the offer and then you go
7 to trial.

8 Q: And did you have ample opportunity to prepare for trial
9 in this case?

10 A: Yes, ma'am.

11 Q: And did you have the opportunity to meet with Mr. Glover?

12 A: Yes, ma'am.

13 Q: And I want to kind of just take a jump forward to your
14 last meeting with him before the trial date of March 12th; do
15 you recall that meeting?

16 A: I do.

17 Q: Okay. Can you take us through that meeting?

18 A: Well, I -- I think it was on a Friday. It makes sense
19 that it would be on Friday; it might have been a Thursday, but
20 it makes sense it was on a Friday, because I remember that we
21 were actually finished on a Friday. Normally, we finish our
22 trial preparation on a Sunday, but we were finished on a
23 Friday. I met with him and one of the last things that we
24 communicated with each other was to be -- to see you at the
25 courthouse on Monday morning. But yeah, we had a good

1 preparation and a good trial.

2 Q: And you said, you know, you told him you'd see him Monday
3 morning, so it was communicated to him that his trial was to
4 start on October 12th?

5 A: Yes, ma'am.

6 Q: Do you recall ever discussing with him the -- the issue
7 of the fact or that he could be tried in his absence if he
8 didn't appear?

9 A: I can't testify that I actually told him that, but I know
10 that that was the vibe of our conversation, because that trial
11 was going to go on Monday whether or not he was there. That's
12 why we spent so much time on Friday getting ready for it.

13 Q: And were you surprised on Monday when he didn't show up?

14 A: Yes, very much so.

15 Q: And at the beginning of the transcript, you say that
16 you've actually never done a trial in absence before, and you
17 had tried to reach out to him. So, I want to kind of unpack
18 that a little bit. Do you recall how you tried to reach out
19 to him and if you did in fact reach him?

20 A: Well, I think this is the first time I've ever had a
21 person not show up for trial, but we've had people not show up
22 for roster calls and hearings and things like that. Usually
23 it's traffic on 501. What I do is call my office and tell my
24 office to call whatever number we have for the client or his
25 family or whatever and find out what the story is. So, that's

1 probably what happened. I probably called my office to reach
2 out to him if you can and find out what's going on.

3 Q: And when you -- at that point you addressed it and then
4 later on page 25 when you asked for a continuance, is there
5 any reason you didn't make a further record as to the efforts
6 that you made to reach him?

7 A: Well, I didn't see that that would have been beneficial
8 for him. I was trying to protect him as best I could. I
9 didn't think a judge was going to continue the case, but I
10 thought that I needed to ask for a continuance, but I didn't
11 think it would have been -- done the client any good if I'd
12 have said I don't know where he is, Judge, or I, whatever.

13 Q: Now at trial two of his codefendants testified. Were you
14 -- did you have notice that they were going to testify against
15 him?

16 A: Well we knew at least one of them was going to testify.
17 If I remember right, the one that caught me -- none of it
18 caught me off guard, it kind of -- one had already pled guilty
19 and got a high sentence. If I remember right, they brought
20 him in; they really didn't need him, but they brought him in
21 and he testified and they cut his sentence down substantially
22 as a result of his testimony, is my memory.

23 Q: Now, after a very short jury deliberation, about 30
24 minutes, sentencing begins. That's on page 203 of the record
25 that we have. Judge Cothran, the only question that's asked

1 is does he have a prior record and then you don't speak or
2 offer anything before the sentence. Can you kind of take us
3 through sentencing and what happened and what your thought
4 process was, if you remember?

5 A: Well, I probably was not -- I probably was trying to not
6 make the Judge mad or any madder because it -- if I was the
7 Judge, and I just sat through a however long many days trial
8 this was, I would -- and the client wasn't there, I wouldn't
9 want a whole bunch of reasons why you know I would just do my
10 sentence and be done with it.

11 Q: At the end of that on line 18 on page 203, Judge Cothran
12 says when he gets arrested bring him in front of some judge
13 and see what happens. So I want to ask you about what happens
14 once he got arrested. Did you get notice that Mr. Glover had
15 been arrested and was in the detention center?

16 A: Probably not. You know to be honest with you, I probably
17 didn't hear the Judge say whatever it was, that last line he
18 said, because that wouldn't have made any sense to me but --
19 but I don't think it really has anything to do with it. The
20 first time that I remember hearing about the client being in
21 the jail was I was at the courthouse in a trial.

22 Q: And so I'm going to kind of jump forward to March 15th of
23 2016. The sentence -- the hearing to unseal his sentence and
24 typically it would have been for reconsideration, unless you
25 asked for that to be heard at a different time, begins with

1 the state saying that you're in trial, but somebody from your
2 office is there. So it is true that you were in the middle of
3 a trial at that point?

4 A: Yeah, that makes sense. And it looks like the state
5 treated it like administerial type perfunctory function. You
6 know let's just get somebody to stand in and unseal this
7 sentence and we'll move on to the next case, and that's sad,
8 but it sounds like that's what happened. But then I heard
9 that Judge John continued the case, presumably continued it,
10 so I could finish the trial and then come be present for the -
11 - for whatever hearing that we were going to have.

12 Q: Okay. So, I'm going to March 17th of 2016 when Judge
13 John did what you said, he continued it. What -- did you have
14 an opportunity to meet with Mr. Glover before you guys were in
15 the courtroom?

16 A: No. I don't remember what trial it was, but I don't --
17 the trials that I've had have been substantial. I think Mr.
18 Glover's case was probably the only second trial that I've
19 ever had that was not a murder case. The only other one I had
20 prior to that was a trafficking, substantial trafficking case,
21 and since Mr. Glover's case, I've tried two home invasion
22 cases that were not murders. One of them might have been
23 around that time frame. So it was -- if I would have been in
24 the middle of a trial for him, I would not have had any time
25 to meet with him to get ready for a resentencing or sentencing

1 hearing.

2 Q: And was -- oh, I'm sorry, go ahead.

3 A: I was just going to say, that's just the nature of it
4 because if I would have taken time from a trial to go -- say
5 go to the jail and talk to him and then I would be in a PCR.
6 Why would you go talk to a client about another hearing that's
7 not even you know -- so I had that. I had to balance those
8 options and I think I did what I thought was the right thing
9 to do. Plus, I didn't really, to be completely candid, I
10 didn't really think that this -- that we were going to have
11 the motions in finality on that, whatever day that was,
12 Thursday or Friday.

13 Q: What did you think was going to happen then?

14 A: Well, I've tried some -- usually it depends on the case
15 and it depends on the judge, but you know in the old days,
16 they told you you had to have everything done by Friday or
17 jurisdiction would lapse. Well, that's not really true, you
18 can -- you can do it within so many days and what we normally
19 do is at the end of the trial we try to do our motions; or we
20 say, Judge, can we reschedule or can we schedule the motions,
21 I have some motions I'd like to make and that sequels to the
22 Judge that you really have something and he may know already
23 that you have something and just give you a chance to show
24 your client or somebody else that you have something or why
25 you're doing it. So what I anticipated, why would they bring

1 the guy from the jail that I didn't even know was at the jail
2 to schedule him for a hearing when I'm in the middle of trial
3 and then say well we'll just wait until your trial is over and
4 then we'll bring him back again. I, you know, I was thinking
5 that number one, I really did not think that a non-sentencing
6 judge would have -- would be doing the consideration to amend
7 or whatever sentence, but I did read the transcript one of
8 y'all sent me and I think I agree with him at the time that
9 they could do that. That's just trial tactics. If a judge
10 says he's got the authority to do something and you think he's
11 going to do it in your favor, you're going to agree with him
12 no matter what, right? Yes, sir, Your Honor, I think you can
13 reduce the sentence if you want to. Okay. So by then I
14 thought for sure he was going to reduce it.

15 Q: So let me just kind of unpack some of the things that
16 were said and some of the things that you just -- or some of
17 the things that are in the transcript and some of the things
18 you just said. Did you have time to get a transcript or have
19 knowledge that the non-trial judge was going to be hearing
20 this motion and the transcript would be needed?

21 A: We did not have time to get the transcript. We -- I
22 probably would have. I cannot imagine any scenario that I
23 wouldn't have ordered the transcript. If Judge John would
24 have said I'm scheduling this for you know a certain date to
25 give you a chance to order a transcript, you know we would

1 have, but I didn't even know that the client was in the jail.
2 I didn't know he had been picked up until that week. So no,
3 even if I wanted a transcript, if I remember right, that might
4 have been the timeframe where transcripts were hard to get,
5 because it -- court reporters were a commodity and it was a
6 lot of things going on, or maybe that was the next year. I
7 don't know. But to try to answer your question, we did not
8 request a transcript.

9 Q: Okay. Did you have time to reach out to his mother,
10 friends or family and ask them to either prepare letters or be
11 prepared to speak on his behalf to ask for a reduction in
12 sentence?

13 A: No, ma'am. If -- if -- if my memory serves me, and I
14 think the transcript backs this up. I was in the middle of a
15 trial. I would not have had the time to contact family and
16 friends and things that you would prepare for a sentencing
17 type hearing. So, no, ma'am, I did not have time and I did
18 not do that.

19 Q: And in this scenario that you described to us that you
20 walked in and you kind of questioned Judge John, can you do
21 this and he says he can. Did you ever anticipate that both
22 Judge John and the state would consider the fact that he
23 wasn't the sentencing judge so therefore he wouldn't change
24 the sentence; did you see that coming at all?

25 A: Not at all that day. Not at all. I never saw that

1 coming.

2 Q: And is that a concern to you that you think you should
3 have more thoroughly addressed or even addressed, I guess?

4 A: It needs to be addressed, and I've been thinking about it
5 while I've been sitting here for the last hour and a half and
6 if I was the Circuit Court or the Supreme Court, I would look
7 at this very carefully, because I cannot envision a flat line
8 rule where you say we don't ever want a non-trial judge to do
9 the sentence or consider the post-trial motions. because there
10 can be a time when the trial judge is not available. But if
11 that's the case, we want it to be done properly. You can't,
12 just because you consider something, if it's not considered
13 properly then it's not -- it's not essentially being
14 considered. So if by your own admission you say I don't have
15 a transcript; I don't know anything about this case, but I'm
16 ready to decide post-trial motions or I'm ready to decide
17 whether or not I should reduce the sentence then I don't think
18 it's an effective hearing. And now I'll take responsibility
19 for that. I can't blame the judge for that, he was just
20 trying to -- to move the case along and that's his job.

21 Q: And so Judge John refers to a Supreme Court case. The
22 Supreme Court case that it's my understanding it's kind of a
23 precedent in this matter is the Smith case back from 1981 that
24 I provided to the Court and to everyone before today. In
25 addressing jurisdiction, these issues that you're talking

1 about, but it also addresses discretion. And there, they
2 reversed the Judge because they said he didn't exercise any
3 discretion when he chose to deny. Would you agree that in
4 this scenario that it appeared that Judge John didn't exercise
5 discretion either?

6 A: I think he was saying that. I think that's what --
7 reading at the time I probably didn't pick up that. I was
8 probably still a deer in the headlights kind of thing, but
9 reading the transcript I think that's what the judge is
10 saying. He's saying listen, I can -- I'm doing this and I'm
11 doing it blind. That's my interpretation. I'm not
12 disparaging him, certainly he's a great judge and I respect
13 him. I'm just trying to get the feel for what happened that
14 day at that hearing.

15 Q: And did you at any point think to say well then, Your
16 Honor, I'd ask that this matter be continued for Judge John to
17 hear our post-trial motions?

18 A: No, I didn't. And you know Monday morning everybody is a
19 good quarterback, but I probably should have said -- I
20 probably should have said look judge, we can't do anything
21 until we get some transcripts or something. If you're
22 convinced that you've got to have this hearing done this week,
23 we can't wait 10 days, then we need to at least get the
24 transcript done. I think that's probably what I should have
25 done.

1 Q: But did you think the reconsideration hearing that was
2 held was a fair opportunity for Mr. Glover to have his
3 sentence reconsidered?

4 A: Based on the outcome I'd have to say no, because what you
5 got is he had a really good trial. And I know y'all weren't
6 there, but I was very surprised that the jury only deliberated
7 for 30 minutes. Now on Monday morning everybody is perfect
8 and maybe I'm trying to be perfect on Monday morning, but I
9 thought if he would have been there, one of two things would
10 have happened; number one, he would have probably have gotten
11 10 years and would not have had a trial because that's what
12 was happening. Everybody was getting a 10-year sentence.
13 They even brought a guy from the prison who had already been
14 sentenced, I think, to 18 years. I might be mistaken. But
15 they -- he testified and -- he testified and his sentence was
16 reduced, I'm almost positive, to 10 years. So if Mr. Glover
17 would have showed up; one, we would probably have a 10-year
18 sentence and there probably would have been no trial or if
19 there would have been a trial, I don't believe -- you can't
20 take this for a fact, but in my heart I believe the jury
21 verdict might have been different.

22 Q: And now on appeal the issue raised essentially
23 summarizing it was the disparity in the sentences and I think
24 you just spoke to that a little bit. You know since Mr.
25 Glover received a 25-year sentence. And the appeal went

1 forward on that issue that was dismissed on an Anders basis,
2 but you ever able to raise the issue of whether or not a trial
3 tax or whether or Mr. Glover was just simply given more time
4 because he went to trial with Judge Cothran?

5 A: I don't think I -- I didn't see that in the transcript,
6 so I don't think I raised it, but that's what happens. I mean
7 every -- every time I remember somebody getting sentenced at
8 trial, with the exception of one case it's always been more
9 than they would have got on a guilty plea.

10 Q: And on appeal the state tried to argue that a trial tax
11 was imposed and trial tax is improper. But you weren't ever
12 able to address that with Judge Cothran since Judge John
13 presided over the reconsider issue hearing; is that correct?

14 A: That's correct.

15 **MS. BLANCHETTE:** Your Honor, if I could beg the Court's
16 indulgence one moment?

17 **THE COURT:** Sure.

18 **MS. BLANCHETTE:** And during this time, can I also ask if
19 Mr. Glover needs to speak with me before I conclude my
20 questioning of Mr. Gardner?

21 **THE COURT:** All right.

22 **MR. GLOVER:** Yes, ma'am.

23 **MS. BLANCHETTE:** Mr. Glover, do you need to speak with me?

24 **MR. GLOVER:** Yes, ma'am.

25 **MS. BLANCHETTE:** Your Honor, may we step away for a

1 moment?

2 **THE COURT:** Yes.

3 **MS. BLANCHETTE:** And can they tell me before we step away,
4 the number I'm supposed to call or if he's going to be calling
5 me just because he's in a different location?

6 **THE COURT:** Mr. Glover, can you give her a call or do you
7 want to give her ---

8 **MR. GLOVER:** Yes, sir, I can.

9 **THE COURT:** All right. Go ahead and get your call set up
10 and then step aside. Yeah.

11 Court stand at ease.

12 **(COURT IS IN RECESS)**

13 **MS. BLANCHETTE:** Your Honor, it appears Ms. Glover's not
14 muted at this time, nor is the prison. I didn't know if that
15 needed to be done.

16 **THE COURT:** If somebody at the correctional facility will
17 mute the computer until we get this phone call complete,
18 please. If somebody at the Lee Correctional can hear me, we
19 need you to mute the computer until they complete this phone
20 call.

21 **MS. BLANCHETTE:** Your Honor, if you'll just let me know
22 when we begin talking if you hear us for any reason?

23 **THE COURT:** I will.

24 **MS. BLANCHETTE:** I'll make sure I mute my end once the
25 phone call comes through.

1 **THE COURT:** Is he -- he's calling you, correct?

2 **MS. BLANCHETTE:** That's what they said. Your Honor, I'm
3 going to go ahead and call the institution.

4 **THE COURT:** Okay.

5 **(COURT IS IN RECESS)**

6 **MS. BLANCHETTE:** We have concluded our call and I'm just
7 waiting for them to bring him back in.

8 Your Honor, may I please begin at this time?

9 **THE COURT:** Yes, we've got Mr. Glover back. Yes, please.

10 **MS. BLANCHETTE:** Your Honor, no further questions of Mr.
11 Gardner.

12 **THE COURT:** All right. Mr. Ray?

13 **MR. RAY:** Thank you, Your Honor.

14 **CROSS EXAMINATION OF JOHNNY GARDNER BY MR. RAY:**

15 Q: Mr. Gardner, how are you doing today?

16 A: Good afternoon, sir.

17 Q: I appreciate you being here. I want to ask you, this
18 allegation about the plea and the opportunity that Mr. Glover
19 had to accept or reject the plea. He received an offer of 10
20 to 15 years, correct?

21 A: Yes.

22 Q: And did you engage in any more discussions or
23 negotiations after that offer was rejected about a plea deal?

24 A: Probably, that's what we normally do. I mean we try to
25 get as good a deal as we can get and at some point in time it

1 stops you know.

2 Q: Right. So what sort of discussions did you have with Mr.
3 Glover about what he might be willing to accept from a plea?

4 A: I don't recall.

5 Q: You don't recall. Okay. But something, not 10 years,
6 correct?

7 A: Right.

8 Q: Okay. Now when you were discussing with him, either when
9 you were discussing the plea negotiations or generally
10 preparing for trial, did you inform him of the potential
11 sentence that he could be facing?

12 A: Yes, absolutely. That's one of the first things that I
13 do with everybody. I don't remember with him in particular
14 but I know I did, because I done it with everybody; what
15 they're charged with, the elements, and the sentence.

16 Q: Okay. And so, you stated in response to one of Ms.
17 Blanchette's questions that the general vibe of the
18 discussion, maybe you don't remember specifically informing
19 him that the trial would proceed if he doesn't show up, but at
20 the very least he was aware of the date; would you say that's
21 correct?

22 A: Yeah, no doubt about it. He knew he was going to trial
23 that Monday.

24 Q: Okay. And do you know -- you stated you didn't know why
25 he wasn't present?

1 A: Yeah, I have no idea other than today he said he was
2 afraid.

3 Q: Okay. Now let me ask you, the -- the next allegation is
4 that you -- you failed to move for a continuance. Of course
5 on page 25 you did move for a continuance before the trial,
6 correct?

7 A: Right, I'm not -- I want dispute the -- whatever the
8 transcript says.

9 Q: Right. And you actually stated on line 23 of page 25
10 that you were renewing your motion for a transcript or for a
11 continuance?

12 A: Okay.

13 Q: Did you -- do you recall moving for a continuance prior
14 to that once you realized Mr. Glover wasn't there?

15 A: Well, if he wasn't there I would have -- I would
16 absolutely would have been doing that because nobody wants to
17 try a water pitcher trial. Nobody wants a case without their
18 client present.

19 Q: Right. So, then you cross examined actually two
20 witnesses about the notice he had been provided from, I
21 believe, the solicitor's office and the clerk's office; is
22 that correct?

23 A: I don't have a recollection of that, but if that's what
24 the transcript says that makes sense.

25 Q: Okay. All right. So the next questions I have are about

1 the sentencing, the sentencing phase. You stated that you're
2 making your standard post-trial motions and I'm assuming you
3 make these motions at pretty much every trial you've done,
4 correct?

5 A: Well, I win some on occasion.

6 Q: Correct.

7 A: But yes, to answer your question, when a -- when a jury
8 finds a client guilty we do those standard -- and I always get
9 them -- the wording wrong because I do civil stuff too, but
10 the wording is different. It's the same thing, but the
11 wording is different.

12 Q: Okay. And what sort of preparation, I mean typically,
13 when you're going to make a motion for reconsideration how
14 much preparation do you do in that instance?

15 A: Well it just depends on the case. You know if the
16 defendant testifies then normally the Judge will have a good
17 idea of redeeming qualities of the fellow and you know you
18 don't have to do a lot in front of him. If the Judge has some
19 discretion, then you absolutely want to spend some time in it.
20 I tried a case one time where the judge's discretion was 25
21 minimum, 30 maximum; I didn't spend much time on that at all,
22 because the Judge, the best he could do if he wanted to was
23 25. Something like this I would have liked to have,
24 especially with no criminal record, family here, connections
25 here, I would have liked to have been able to present that to

1 the Judge, especially with these other defendants that got 10
2 years. I know there's a trial tax, but 15 years I think is a
3 little bit too much, I think.

4 Q: Okay. Well let me ask you about that trial tax. Do you
5 recall the Judge ever saying that he was considering either
6 Judge Cothran or Judge John ever saying that they were
7 considering his failure to attend his regular trial?

8 A: I don't think, I may be wrong, but I don't think Judge
9 Cothran said anything about the sentence. I think he just did
10 the sentence and didn't tell us what it was and sealed it
11 somehow.

12 Q: Okay. Do you recall during the jury instructions if
13 Judge Cothran specifically instructed the jury not to consider
14 the fact that Mr. Glover was not present?

15 A: I don't recall that, but if hadn't of said that I would
16 have made an objection or made a oral -- made a request that
17 he instruct them that especially with the client not there.

18 Q: Okay.

19 A: So it makes sense that he would have done it.

20 Q: Okay. So what you think, giving the way the sentencing
21 hearing came about, I know you stated that you agreed with the
22 Judge that he could open the sentence; do you think an
23 objection would have been beneficial to your client due to the
24 fact that it was a different judge at the time?

25 A: Let me make sure I understood you, objecting to unsealing

1 the sentence.

2 Q: I'll rephrase it. I guess any objection that you could
3 have made either to the different judge unsealing the sentence
4 or just the fact that it wasn't the trial judge.

5 A: I didn't think an objection would make any headway as to
6 unsealing the sentence. We had a fellow many, many years ago
7 that was -- it was when the drug cases were big and bad and
8 everybody got 25 years. This fellow absconded, was tried in
9 his absence, he got the minimum, but it was 25 and they
10 brought him in there, and the judge that had tried the case, I
11 don't think was around anymore; I think he had retired. But
12 anyway he wasn't available. So the Admin Judge or whoever was
13 there, this was at the old courthouse, opened up the sentence
14 and -- and read the sentence to him. But I don't think they
15 did any post-trial motions at that time. I think they just
16 did the sentence. So going into Mr. Glover's hearing, I --
17 you know, it was very obvious that the Judge was going to open
18 that. I wasn't even there on Monday and I'm guessing that he
19 opened it on Monday, but yeah there was no stopping him; an
20 objection wouldn't have done that, and I think he was well
21 within his rights to unseal the sentence.

22 Q: Okay. So let me ask you then going back Monday of that
23 week, I believe his name was Mr. Bouchette appeared on your
24 behalf?

25 A: Yes.

1 Q: Did you have any conversation with him about what he
2 should do to be prepared; I know it was short notice?

3 A: Probably none. I may have said go on over there and you
4 know -- probably wasn't thinking anything was going to happen
5 so there was nothing to be done except for have somebody there
6 with him.

7 Q: Okay. But of course, I mean would you say it was
8 beneficial that you did request that it be held in abeyance
9 until you could be present?

10 A: Well at the time it sounded like the right thing to do,
11 but based on the outcome it really didn't change anything.

12 Q: Okay. Now let me see if I can find these allegations, I
13 apologize. Well now let me ask you, you did make an argument
14 at the very least at the sentencing hearing. You cited Mr.
15 Glover's prior record or lack thereof, his biographical
16 information, and the sentence of the codefendants; do you
17 recall that?

18 A: Yes.

19 Q: Okay. And do you recall Judge John stating that he was
20 considering the arguments made before him when he -- he
21 announced the sentence and read it?

22 A: Well I read the transcript. I read it the other day and
23 I think you sent it to me and thank you for that. I recall
24 bits and pieces of what the Judge said and that's normally
25 what he would say when he's making any kind of pronouncement,

1 he's considered the evidence in front of him or considered the
2 argument in front of him. So yeah, that doesn't surprise me a
3 bit. What surprised me was the outcome.

4 Q: Okay. Now I think this might should be my last question.
5 Let me -- let me just ask you, or my last two questions. The
6 sentence potentially that Mr. Glover could have been facing
7 for this crime was 30 years; is that -- would you say that's
8 correct?

9 A: That's my understanding. Yes, sir.

10 Q: Okay. And he received 25?

11 A: Right.

12 Q: Now Judge John did not have the transcript and was not
13 the judge who presided over the trial, so he didn't see the
14 evidence that came out at trial?

15 A: Right.

16 Q: He did not hear the evidence that Mr. Glover was the
17 ringleader of the robbery, or the evidence that he had
18 instructed other codefendants to dispose of evidence or
19 anything like that; he was completely blind, right?

20 A: You know I'm not going to agree that -- I understand
21 that there was evidence in the record supporting what your --
22 your -- your question, but certainly that's not the position I
23 took. So all the more reason, I wish the judge could have
24 been there. He could have looked at these witnesses and he
25 could have decided who was -- Judges are a little bit better

1 at reading witnesses than jurors are and just because they
2 are. But those witnesses were there. The typical arguments
3 and hopefully I made them at the trial you know that they're
4 getting something in exchange. So it would have been terrible
5 for one of those witnesses to say that that witness was the
6 ring leader. So you expect that; you expect them to blame it
7 on the guy that's not there. But that's the trial. I'm not
8 disputing the trial. The jury spoke. I agree with the
9 applicant's lawyer that I think the sole issue on this is the
10 resentencing or -- or the hearing for the resentencing.

11 Q: Okay.

12 MR. RAY: No further questions, Your Honor.

13 THE COURT: All right.

14 MS. BLANCHETTE: If I could briefly redirect, Your Honor?

15 THE COURT: Sure.

16 **REDIRECT EXAMINATION OF JOHNNY GARDNER BY MS. BLANCHETTE:**

17 Q: Mr. Gardner, the state just asked about Judge John not
18 having the transcript so he didn't see what the codefendants
19 testified to, but would you agree as it's reflected on page
20 215 through 216 on 7 to 8, that the state was able to
21 summarize their position or their view of the evidence to
22 Judge John?

23 A: Well I don't -- I don't remember that exactly, but I'm
24 not going to dispute it. I did read the transcript the other
25 day in preparation for this and that makes sense. They

1 normally, I mean I would have expected them to do that. I
2 think the point that I was -- wanted to make if I may, is that
3 this was a hearing unlike any other. I think Judge Burch got
4 this right at the very beginning of this hearing. This is
5 something new you know. We're not expecting this. They're
6 going to be cases where a non-trial judge opens up a sentence
7 and the trial judge is no longer there, and he can do whatever
8 he wants to do. You know I did a case one time in a different
9 courtroom where the presiding judge was deceased and we had a
10 new judge come in and issue a nunc pro tunc order. I'm not
11 saying that's what we need to be doing here, but in the future
12 we need to have a mechanism for if the trial judge is not
13 there what can we do and then what we do we need to be
14 prepared for it, because having a hearing that nobody is
15 prepared for is not having a hearing.

16 Q: And I just want to ask you about the state's kind of last
17 thing they said to the judge; this is on page 8 of the motion
18 hearing transcript beginning on line 7. The state says the
19 state would oppose any reduction in sentence just based upon
20 the fact that Judge Cothran was the sentencing judge. If you
21 would have known that was the state's position, would you have
22 wanted Judge John to hear this motion?

23 A: If I would have known that was their position, I would
24 have said they're agreeing with me that we should have it
25 continued; we should have the trial judge here. What they're

1 saying is let's have the hearing, but don't change it because
2 you weren't the judge that heard it. We don't want it any
3 less than 20 or less or whatever they said, and the reason is
4 because you're not the trial judge. So you may -- and that
5 fits with what I was saying. You may have the authority as a
6 Circuit Court Judge to open up the sentence and hear motions,
7 but if you're not prepared and at the same time the other side
8 is arguing you can't change it because you weren't the trial
9 judge, then you really have no discretion. So it puts that
10 judge in a bad -- in a bad place. That's what I'm trying to
11 say. I'm looking at this case and absolutely I'm looking at
12 this case, but I this for a living and I'll have another case
13 and hopefully they want be TIA cases, but if they are we want
14 to know how to do it. Okay? if a judge has no discretion
15 then he can't exercise discretion. If the state says, Judge,
16 you can't go less than 20 because you weren't the trial judge,
17 then he has no discretion. So you know if you can't do it
18 because the state says you don't have the discretion, then we
19 can't have the hearing; it wasn't proper. If you can't be
20 prepared because you weren't there and you don't have a
21 transcript and your defense lawyer didn't provide you one and
22 the state didn't provide you one then really I'll take the hit
23 for it, but everybody, I mean it's -- nobody was prepared.

24 Q: And just one question to make sure we have a clear
25 record. We keep talking about Judge Cothran and you've talked

1 about judges that are no longer on the bench and I know that
2 you and I were both practicing at this time Judge Burch was on
3 the bench, but at this time Judge Cothran was on the bench; is
4 that correct?

5 A: That is my understanding. I don't know anything about
6 that. I just, you know I've tried so many cases over the
7 years in different types of courts you know you run into this
8 kind -- this is the first time I've done this in Circuit
9 Court, but I had one a long time ago where -- where it was a
10 mess, but there's a remedy for it if we do it the right way,
11 the smart way.

12 **MS. BLANCHETTE:** Your Honor, I have no further
13 questions.

14 **THE COURT:** Anything further? Anything further?

15 **MS. BLANCHETTE:** No, Your Honor, we have no further
16 witnesses. I would just ask for the opportunity to further
17 clarify the cases that I submitted based upon the testimony
18 that has been offered and evidence presented.

19 **THE COURT:** Fire away.

20 **MS. BLANCHETTE:** Your Honor, I think it's been -- it was
21 brought up by the state originally when Your Honor asked about
22 the appropriate relief and if you know, if an agreement could
23 be rendered before we even went forward with this hearing.
24 And I just wanted to point out, in two of the cases that you
25 should have copies of and that I provided and I'm sorry, Your

1 Honor, I just set them aside. If I could beg the Court's
2 indulgence for just one second here?

3 **THE COURT:** Sure.

4 **MS. BLANCHETTE:** I shuffled my paperwork one too many
5 times.

6 Okay. Your Honor, that would be the Castro case and the
7 Davis case. Those are both PCR cases as well as the Kennedy
8 case that I provided you the order from. In the Castro case,
9 even though it is addressing the issue of essentially the
10 trial tax, the remedy that's given there is it's remanded for
11 resentencing. So I don't think this is as novel, I know the
12 facts don't line up perfectly, but I think remanding this
13 matter for a reconsideration hearing and/or for resentencing
14 in front of Judge Cothran I don't think that's as novel as I
15 was originally concerned it was in finding these two cases.
16 And also, the Davis case is also a PCR case. Unfortunately,
17 they're in my study of the case, they just used the word
18 relief. So, I'm unsure if that was remanded for a complete
19 new trial or if that was just remanded for resentencing or
20 reconsideration. I did want to note that.

21 Your Honor, I know that this is -- we are resting at this
22 point. I didn't know if you wanted a final argument or if you
23 wanted the state to present their case and then I'd present a
24 final argument?

25 **THE COURT:** A lot of times I don't accept final arguments

1 in PCR's, but y'all have been so cooperative with the Court
2 and done such an excellent job. I believe I'm going to give
3 you a few minutes to close her out.

4 **MS. BLANCHETTE:** Thank you, Your Honor, and I will be
5 extremely brief. I try to be succinct and get to the point.
6 I think Mr. Gardner's testimony really says it all. I would
7 beseech this Court to grant a new either sentencing hearing or
8 reconsideration hearing. Mr. Gardner has been very candid and
9 honest about the opportunity that Mr. Glover had to have his
10 sentence reconsidered. I think that we have shown here today
11 through the presentation of Mr. Glover's testimony and the
12 additional witnesses and letters that there is more that could
13 have been done, but even with that considered Mr. Gardner has
14 admitted there's more that should have been done. And I think
15 he has very explicitly laid that out to the Court. I think
16 what he has said and what we have tried to present is
17 something that I'd hope the Court can wrap his mind around
18 this being the right solution in this matter. We would submit
19 that Mr. Gardner, even though we appreciate his honesty, he
20 wasn't ineffective in how he represented Mr. Glover in these
21 post-trial hearings. I believe he has admitted as much. And
22 so I would truly ask Your Honor to grant Mr. Glover the
23 opportunity to have a full, fair, and meaningful opportunity
24 to have his sentence reconsidered.

25 I know that Mr. Gardner spoke about the fact that he has

1 handled a lot of substantial charges like murder cases, but
2 this too is a substantial charge and Mr. Glover is a very
3 young man that is serving a 25-year sentence. And I would
4 just ask the Court to give him the opportunity to have that
5 sentence properly reconsidered.

6 In saying that I am not abandoning our other issues,
7 because there are issues that Mr. Glover has asked me to
8 present on his behalf that I think we did address in the
9 testimony. But I think the primary issue here, as I conceded
10 at the beginning, is this matter of reconsideration. If the
11 Court is inclined or would like to hear me address the other
12 issues, I'm happy to, but I don't want to waste the Court's
13 time. I just wanted to get to the heart of the matter.

14 **THE COURT:** All right. Mr. Ray?

15 **MR. RAY:** Thank you, Your Honor, I will try to be as
16 brief as I can as well. I'll go just down through the list of
17 allegations and I thought I would just touch on each one and
18 then a couple of matters at the end I will add.

19 The first allegation, failure to actively negotiate a
20 plea offer and make sure that Mr. Glover could accept or
21 reject. I think that's totally without merit. I think it's
22 refuted even by the defense's or the applicant's exhibit and
23 Mr. Gardner's testimony that he -- he was actively negotiating
24 a plea offer, that Mr. Glover actually rejected the plea
25 offer. I don't think there's anything to that one.

1 The next allegation is failure to properly advise
2 applicant about being tried in his absence. Again, I think
3 Mr. Gardner's testimony pretty clearly refutes that. He
4 states that he was aware of the date of the trial. The trial
5 judge saw two witnesses, who provided testimony to that
6 affect, and there's no evidence that he misadvised him on any
7 of this. So, I don't think there's any deficiency or any
8 prejudice resulting from that allegation.

9 The third one is failure to move for a continuance. That
10 one is clearly refuted by the record on page 25. I don't
11 think there's any reason to discuss that one more.

12 The fourth allegation of course, failure to offer, and
13 really the in the fourth and the fifth allegation can kind of
14 go together. I think this was a peculiar case procedurally I
15 mean just the issues with the judge. But I think that if
16 you're looking at prejudice under Strickland that the evidence
17 that applicant's counsel has presented today, I think is dealt
18 with by the case of Strickland v. Washington itself. That
19 case stated that applicant had not suffered prejudice when its
20 counsel failed to introduce mitigating evidence at a
21 sentencing hearing that at most would show that numerous
22 people knew the defendant and thought he was a good person. I
23 don't think there's any reason to believe that had the judge
24 who imposed the sentence been present there would have been a
25 reduction in the sentence in light of the evidence presented

1 at trial that Mr. Glover was the ringleader.

2 And then finally, Mr. Glover didn't receive the maximum;
3 he received 25 years. So I don't think there's any prejudice
4 that's been demonstrated. But additionally, I don't think
5 that Mr. Gardner was -- was deficient. He had a guy show up
6 on his behalf and request a continuance. He presented an
7 argument before the Court. The Court stated that it was
8 considering his argument and rejecting it. I don't think
9 that's an abuse of discretion. I don't think there's anything
10 to that.

11 And finally, just one last note on these cases that are
12 provided. All of these deal with instances regarding the
13 trial tax where a judge imposes an improper sentence at the
14 outset for explicitly stating he was considering the
15 defendant's exercise of their constitutional right to a trial
16 by jury. That's not the case here. The judge explicitly
17 instructed the jury not to -- not to consider Mr. Glover's
18 absence at trial and there's no evidence, there's no
19 indication, from anything in the transcript or elsewhere in
20 the record that he considered the fact that Mr. Glover was not
21 present. So with that, I think that concludes my argument and
22 nothing further from me.

23 **THE COURT:** Okay. I want to thank both counsel for the
24 petitioner and for the Attorney General's Office for the
25 excellent presentation you've done on what I consider to be a

1 novel post-conviction relief issue. So what I want both of
2 you to do, I want proposed orders and it's going to take a
3 little time for you to pull all this together because I'm
4 going to have a little special request here in a minute. I'm
5 going to give you 20 days and if you need more time just get
6 back with us; you can get ahold of William. And I think both
7 of you realize that whatever you do in a proposed order, most
8 of the emphasis as I see it will need to be put on the issue
9 of that reconsideration.

10 Ms. Blanchette -- well no, I want both of you to do this.
11 Having served in the legislature I know when state's come up
12 with statutory plans for such things as they did with the
13 post-conviction relief, which if I remember correctly the
14 United States Supreme Court is probably the one that sprung
15 all this on the states. But when -- when the legislative
16 researchers over there at the state house look at things like
17 this, quite often they will go and look at the other states to
18 see what they did. And I feel sure that probably may have
19 been the case with what South Carolina did. So there may be
20 other states out there that have that same type of formula for
21 PCR hearings that we do. So I want y'all to give a look at
22 these other states to see if there's any precedent out there
23 that might help us with this, and that's a two-edge sword; it
24 can cut either way as I see it. That's why I'm going to ask
25 you to spend a little extra time and take a look and see if

1 there are any states out there that have the same legislation
2 that we have concerning these hearings. Okay? Any questions?

3 **MS. BLANCHETTE:** Your Honor, if I may make two requests;
4 one, since I have made a big deal today about Mr. Gardner not
5 having the transcript, would the Court allow me time if I
6 order it tomorrow to get the transcript so in the Order I'm
7 citing to the testimony as it was elicited? So if I can order
8 the evidentiary transcript before submitting an order?

9 **THE COURT:** Yes. If you need an Order from me expediting
10 that you get back with William.

11 **MS. BLANCHETTE:** Your Honor, I think I just have to pay
12 more money so they will expedite it.

13 **THE COURT:** Okay.

14 **MS. BLANCHETTE:** But it would take more than 20 days
15 typically. So I just wanted to make sure it would be okay if
16 I ordered the transcript.

17 **THE COURT:** Yes. Just get back with us if you don't get
18 -- does anybody remember who the court reporter was?

19 **MS. BLANCHETTE:** No, Your Honor, to order the transcript
20 of our proceeding today.

21 **THE COURT:** Oh, today, I'm sorry. Well we know who she
22 is. Okay. All right.

23 **MS. BLANCHETTE:** I will send her a request in the morning
24 if that's agreeable with Your Honor.

25 **THE COURT:** Well since we've still got a little slow down

1 on jury trials, I think it's going to probably go away in the
2 next week or two. Get it to her as soon as you can.

3 **MS. BLANCHETTE:** Okay. I will definitely do that. And
4 then, Your Honor, I -- I know that you asked us to research
5 the legislature in other states, the Kennedy case that I
6 handed up, if I may just explain that a little bit more
7 because that may be helpful in this case.

8 After Mr. Kennedy was granted that resentencing hearing,
9 the case actually went back down for that resentencing hearing
10 that was handled by Tara Dawn Shurling and then I handled a
11 subsequent post-conviction relief in front of Judge Mark Hayes
12 alleging that that resentencing hearing was -- there was
13 ineffective assistance and he deserved another resentencing
14 hearing. Judge Mark Hayes granted that and found that he
15 should have another hearing in front of any other Circuit
16 Court Judge and that's currently up on appeal and his grant of
17 relief in that case, I didn't know if providing the records
18 from that case would be helpful. I know that it's not
19 published precedent, so I just wanted to be careful in how I
20 navigated that.

21 **THE COURT:** Okay. Well anything y'all -- either one of
22 you want to get to give me, get it to me and if you need more
23 time get ahold of William.

24 **MS. BLANCHETTE:** Okay.

25 **THE COURT:** Let's try you know to do it as quickly as

1 possible. I'm sure the petitioner, Mr. Glover, would want us
2 to work with all due haste, but we don't want to be too hasty
3 about it. Okay?

4 **MS. BLANCHETTE:** I understand, Your Honor. Thank you.

5 **THE COURT:** Good seeing y'all. I appreciate your
6 presentation.

7 **MR. RAY:** Thank you, Judge.

8 **MS. BLANCHETTE:** Thank you.

9 **THE COURT:** Good seeing you, Mr. Gardner. Take care.

10 **MR. GARDNER:** Yes, sir. Thank you, Your Honor. I
11 appreciate it.

12 **(COURT IS IN RECESS)**

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of Rasheed Glover versus State of South Carolina in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on March 31, 2021 via remote hearing.

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



Sallie Beth Todd, CVR

Official Reporter

April 11, 2021.

State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit



Scott R. Hixson
Chief Deputy Solicitor

REPLY TO ☒

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Alicia A. Richardson
Deputy Solicitor

REPLY TO ☐

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JIMMY A. RICHARDSON, II
Solicitor

DATE: March 16, 2015
TO: J. M. "Buddy" Long, III, Esquire
FROM: Lauree Richardson, Assistant Solicitor
RE: State vs. Rasheed Tamir Glover Case # 15H00178

Pending Charge(s) Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon; Kidnapping; Possession of Weapon During Violent Crime Warrant 2015A2610200023

Upon reviewing the above referenced case(s) the State makes the following offer regarding the disposition of the charge(s):

If the Defendant will plead guilty to: Armed Robbery.

The State offers the following: **10 - 15 years.**

The Defendant must accept the offer by **April 10, 2015** or it is considered rejected and the State will not make the offer again. Should the defendant accept the offer, he or she must enter the plea before or during the subsequent term of court. Please review the offer with your client, sign and date as indicated below, and return to me no later than April 10, 2015. Please call me at 915-8653 if I may be of service.

DEFENDANT'S RESPONSE

TRIAL _____ GUILTY PLEA _____

Attorney's Signature _____

Date: _____

Defendant's Signature _____

Date: _____

The mission of the Fifteenth Circuit Solicitor's Office is to uphold the public's trust in the pursuit of justice and enforcement of the law.

February 23, 2021

To whom it may concern,

My name is Sammantha Daley. I am an RN and live and work in the Conway-Myrtle beach area. I am writing in regards to Rasheed Glover. I have been fortunate and blessed to know and have Rasheed as my best friend since our freshman year of high school in 2010.

Rasheed is the type of person and friend that I believe everyone needs in their life. He is the person that is always there to support, help, and give advice in any way he can. He is the person who is there when you need him and even when you didn't know you needed him. Rasheed is a hard working, determined, man of his word. He is continuously focused and committed to self improvement, growth, and success, attending college and working, dedicated to achieving his goals. Rasheed is the person who smiles and laughs through the hard times and his smile and laugh has a contagious effect on others. He is a God loving, honest, and respectful man who doesn't count favors or think twice about what he does to help others because everything he does comes from the heart. He is one of the best people I know. Loving, caring and helping people comes so naturally to him.

Rasheed is a loving, supportive, and reliable son, brother, uncle, nephew, friend, and spouse, who I know will become the best husband and father in the future if he is blessed with the chance to be.

I pray that you can see Rasheed as I and so many others see him. I believe if given the chance Rasheed has many contributions to offer not just to his family and friends, but to the community and society.

Rasheed has the continuous love and support of my family and I, his family, and many others. We are all hoping and praying he gets the chance to live out his true potential and be a beneficial part of the community and this world that we know he will be. Thank you for allowing me to share with you the Rasheed that I've come to know, love, respect and look up to over the years.

Sincerely,
Sammantha Daley

March 1, 2021

To whom it may concern,

My name is Roslyn Glover, I am Rasheed Glover's mother. I am a caregiver and business owner that resides in Conway.

Growing up was not an easy task for Rasheed but I tried to make our lives as normal as I could. We had some hard times along the way but I tried to never lose sight of the fact that I was raising a young black male. I have always tried to teach my sons to be respectful, honest and to be of service to others. I now know that I had the conversations that mattered.

I have seen my son grow into a loving, supportive, and responsible young man. When Rasheed expressed to me that he knew the difference between respect and fear, I breathed a sigh of relief because I knew he finally got it. This has not been an easy time for any of us but he has kept us together, he has taught me humility.

Thank you for allowing me to share some of my insight into our lives. I want my son to know that he is bigger than any mistake that he has or will ever make in this life.

Regards,
Roslyn Glover

February 20, 2021

To Whom It May Concern,

My name is Michelle Daley. I am a registered nurse who lives and works in Conway, SC.

I am writing on behalf of Rasheed Glover. I have had the pleasure of knowing Rasheed since 2012 when he was a sophomore in High School, and a very good friend of my daughter Sammantha.

Throughout the years that I have known Rasheed, he has always demonstrated positive qualities. I know him to be a respectful, honest, supportive, reliable young man. Rasheed has always demonstrated a strong sense of responsibility; attending college and working.

After years of friendship, Rasheed and my daughter started dating, and in the hopefully near future, plan on getting married and starting a family. I have witnessed first hand the loving and supportive nature Rasheed has displayed during the years they have been together.

Rasheed always maintains such a positive attitude and continues to do so even during the difficult situation that he is in. He continues to strive to be a good, God loving person and shares this attitude with those around him.

Despite the transgression, completely out of character for Rasheed, that has led us to this point, I believe without a doubt that Rasheed will be a positive attribute to my family and society. My entire family is dedicated to loving and supporting Rasheed.

Thank you for the opportunity to share with you the Rasheed Glover I have come to know and love.

Respectfully,
Michelle Daley

Elaina L. Whittington

Conway, SC 29527

March 25, 2021

To: The Honorable Judge Burch

I have known Rasheed T. Glover his whole life, as his eldest sister, helping my mother to raise him. From a child, Rasheed has always been a very head strong, smart, intelligent, and loving individual. He loves his family, especially his nieces and nephews who adore him.

Rasheed has always been a solid person and will give you his last at the drop of a dime. While I am the oldest of six children, he has also taught me a couple of life's valuable lessons. Becoming a mother to my own and a nurturer. Rasheed was my baby in my eyes, and I cared for him and my other siblings while my Mother, a single parent, worked two jobs to care for us.

He never ceased to amaze me with his ambition and willingness to conquer any and everything that was put in front of him. Despite his troubles, he still graduated from high school at the top of his class. His athletic talent, especially football, was his strong suit and could have possibly taken him very far.

In my heart I believe that he can and will be an upstanding member of this community. While he has made some bad decisions, Rasheed has accepted responsibility for his actions and moving forward will emerge a better person. He has expressed and has shown his deepest remorse for his actions.

In short, it is my sincerest prayers that the court takes this letter into consideration. I still believe Rasheed to be a very honorable, valuable person to our family and a great human being.

Sincerely,

Elaina L. Whittington



Murrie Beach, SC 29577-3164

March 8, 2021

Dear Parole Board,

My name is Pete Wilkes, III. I am Rasheed Tamir Glover (00367438) former football coach/mentor. I would like the opportunity to express my support for Mr. Glover.

I've known Rasheed Glover since the age of 11. Coached him on the Conway Allstars Football team, Rasheed was the captain. He was very quiet but lead by example. All of his teammates and other coaches love his work ethic.

Rasheed didn't have a 2 parent structure like most kids. No transportation and often walked or rode a bike at least 3 miles to come to practice. By the time Rasheed got into Middle School (Whittemore Park), I moved from coaching recreation football to school B-Team. There again, Rasheed was one of my youngest players but also voted Captain because of his leadership skills, both in the classroom where he was an honor student, and on the field where he was tough as nails but very unselfish. The true example of a student athlete.

While attending high school Rasheed swayed away from his humble behavior. I believed Rasheed just wanted to fit in and not be bullied, unfortunately those choices led him to become a different young man at times with consequences for them. Whenever I would see him he always had the utmost respect for me.

Finally, I pray that you would set it in your hearts to grant Rasheed an opportunity at a second beginning. I think he could really help change some upcoming youths by his testimony. I do believe Rasheed is a good person that took the wrong path but has taken the time to mature a lot.

Thank you in Advance

A handwritten signature in black ink that reads "Pete Wilkes, III". The signature is written in a cursive, slightly slanted style.

Pete Wilkes, III

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Rasheed Glover, SCDC No. 367438

Applicant,

v.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2018-CP-26-02738

ORDER OF DISMISSAL

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

2021 MAY 11 P 4:15

FILED
HORRY COUNTY

This matter comes before this Court by way of Applicant Rasheed Glover's May 2, 2018, application for post-conviction relief. Respondent, the State of South Carolina, made its return on August 2, 2018, and moved to dismiss the allegations. Applicant subsequently amended the application on February 20, 2020, to include five specific allegations of ineffective assistance of counsel. An evidentiary hearing into this matter was held before the undersigned on Wednesday, March 31, 2021, with the parties appearing by WebEx due to the ongoing COVID-19 pandemic. Applicant appeared virtually from Lee Correctional Institution and was represented by Attorney Tricia Blanchette. Assistant Attorney General William H. Ray represented Respondent. Applicant testified, along with his mother, his girlfriend, and his trial counsel, Attorney Johnny Gardner. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief and denies the application with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. He was indicted for armed robbery (2018-GS-26-01237) by the Horry County Grand Jury at its March 2015 term. Applicant was represented by Attorney Johnny Gardner and Assistant Solicitors Lauree

Richardson and Thomas G. Terrell, III, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On October 12, 2015, a jury trial proceeded against Applicant *in absentia* before the Honorable R. Ferrell Cothran. The jury found Applicant guilty, as indicted, on October 13, 2015. Judge Cothran issued a bench warrant for Applicant's arrest, prepared a sentence, and sealed it, pending Applicant's arrest and subsequent appearance.

On March 15, 2016, Applicant appeared before the Honorable Steven H. John, who unsealed, read, and imposed a sentence of twenty-five years' imprisonment. Applicant, through counsel, moved for a new trial and a motion for reconsideration of his sentence. Judge John denied both motions on March 17, 2016.

Applicant filed a timely notice of appeal and the appeal was perfected by Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who filed an *Anders* brief and petition to be relieved as counsel. In his *Anders* brief, Applicant raised the following issue:¹

1. Did the judge who unsealed and pronounced sentence following a trial in the Appellant's absence abuse his discretion in refusing to reconsider the twenty five year sentence imposed by the trial judge when a co-defendant received a lesser sentence and the record fails to reflect an appropriate basis for the disparate sentence?

Applicant then filed his own *pro se* brief. The South Carolina Court of Appeals affirmed Applicant's conviction. *State v. Glover*, Op. No 2017-UP-210 (S.C. Ct. App., Filed May 17, 2017). The remittitur was sent on June 2, 2017.

II. FACTUAL HISTORY

On January 1, 2015, the Scotchman convenience store in Conway, South Carolina was robbed at gunpoint. (ROA 44, 9-18). It had been a slow night and the clerk was making doughnuts

¹ *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967).

when two men ran in, pointed a gun in her face, and took twenty eight dollars out of the register (ROA 45, 1 – ROA 46, 18). Fearing for her life, she kept her eyes on the floor and noticed one of the robbers had on a muddy pair of Nikes and the other had on red sneakers. (ROA 45, 11-25). She described the one in the red shoes as having on a red sweatshirt, and the other wore fake diamond earrings, skinny blue jeans, and black gloves. (ROA 45, 4-23). The robbers fled after unsuccessfully attempting to access the safe. (ROA 46, 13 – ROA 47, 5). On the way out they grabbed a box of cigarillos and the clerk's cellphone before heading towards Four Mile Road. (ROA 47, 11-22; ROA 48, 7-11). The clerk then hit the panic button and hid behind the counter, waiting for police to arrive. (ROA 47, 5; ROA 49, 13-16).

About this time a customer in a white pickup truck pulled up to a gas pump. (ROA 49, 16-18). The clerk, fearing for his safety, yelled for him to call 911 and not come inside the store. (ROA 49, 18 – ROA 50, 7). He testified that he pulled up to the gas pump and saw two men run out of the store. (ROA 76, 20-24). They were wearing blue jeans, either black or red jackets and appeared to be carrying something in their hands. (ROA 77, 5-22; ROA 79, 12-20). He then saw the clerk calling for help and called 911. (ROA 77, 13 – ROA 78, 2). The police arrived very quickly. (ROA 78, 12-16).

Police responded to the scene, established a perimeter, and began saturating the area with officers and dogs. (ROA 56, 10-19; ROA 94, 23 – ROA 95, 6). The police were searching for two young black males, one wearing a red shirt and another wearing a dark blue or black hoodie. (ROA 59, 6-13; ROA 82, 23 – ROA 83, 2; ROA 96, 24 – ROA 97, 1). An officer spotted a black knit hat laying on the ground near the scene. (ROA 84, 2-13; ROA 123, 1-8).

A van was spotted leaving the parking lot of the nearby Horry County Schools Education building, which was unusual because it was around 2:00 AM. (ROA 60, 6-16). As it passed,

officers realized it was a taxi and a young black male in a red shirt was sitting in the passenger seat. (ROA 60, 17-24; ROA 96, 14-21). The vehicle was stopped, a lot of movement was noticed among the passengers, and everyone was asked to place their hands on the ceiling. (ROA 61, 14 – ROA 62, 6). By a stroke of luck, the taxi driver pulled over in the parking lot of the Scotchman that had just been robbed. (ROA 86, 19-24).

The passengers were asked to step out of the vehicle and the officer noticed that some of them had muddy shoes. (ROA 64, 11-15). The clerk was able to identify one of the passengers, Tyreke Phillips, as being involved in the robbery. (ROA 65, 3-20; ROA 68, 7-23). A cell phone matching the description of the one stolen was seen in plain view on the floorboard of the vehicle. (ROA 98, 1-6; ROA 122, 2-14). A search of the vehicle revealed a black handgun under the front passenger seat, a red hoodie behind the front seat, a black hoodie between the center seats, and a plastic bag in the rear of the vehicle containing cigarillos and another handgun. (ROA 99, 25 – ROA 100, 14; ROA 106, 8-12; ROA 121, 6-18). Applicant was in the back of the van wearing a white shirt. (ROA 88, 18-21).

Asia Collier testified that she had been charged with armed robbery because she drove Applicant, Amontre Ellerbe, Tyreke Phillips, and Aikeem Coles to the Scotchman that night. (ROA 132, 7-20). She was dating Applicant at the time and knew Ellerbe, Phillips, and Coles through him. (ROA 134, 9-19). The group had planned the robbery earlier that day at Applicant's mother's house. (ROA 133, 7 – ROA 134, 2; ROA 136, 12-16). The plan was for her to drive Applicant's brother's truck, while Applicant and Ellerbe went into the store and the other two remained outside. (ROA 137, 5-24). She first drove everyone to Walmart where they purchased black gloves, then dropped them off near the Scotchman. (ROA 138, 4-17). All four men got out, and about five minutes later they returned, appearing panicked, and told her to drive. (ROA 140,

17 – ROA 141, 8). She drove them to a nearby apartment complex, stopped, and told them to get out and call a cab because she did not want to be involved any longer. (ROA 143, 15 – ROA 144, 11).

She noted that Ellerbe and Phillips had weapons, and that Ellerbe was wearing a black jacket and a hat. (ROA 141, 11-20; ROA 142, 15-21). They were all attempting to brush the sand off their shoes and Ellerbe took off his hat when he got back in the truck. (ROA 142, 16-21). Collier stated that Applicant had carried an extra pair of shoes with him and changed into them after the robbery. (ROA 143, 1-10). Applicant told her to throw away the discarded shoes and gloves, which she did after they exited the vehicle. (ROA 147, 1-19). She stated that she became involved in the robbery because Applicant was very manipulative and she wanted his acceptance. (ROA 145, 6-13). She turned herself into police several weeks later and gave a written statement inconsistent with her testimony provided in court. (ROA. 149, 2 – ROA 150, 2). She explained that Applicant told her what to tell the police and she made the misleading statement because she was afraid. (ROA 150, 3-8; ROA 160, 9-20). Applicant was said to be the mastermind of the robbery, and him and Ellerbe were the ringleaders. (ROA 155, 7-16).

Amontre Ellerbe testified that he was incarcerated for armed robbery for robbing the Scotchman with Applicant, Phillips, Coles, and Collier. (ROA 163, 3-13). He had entered a guilty plea prior to Applicant's trial. (ROA 163, 14-15). He and Applicant were the two men who went into the store with guns and committed the crime. (ROA 164, 1-5). The original plan was for everyone to go into the store, but Coles and Phillips backed out, and chose to stand behind the building. (ROA 166, 1-10). He stated that Applicant began changing his clothes after the robbery, losing his red hoodie and putting on a pair of black Vans, before leaving the shoes in the getaway vehicle. (ROA 166, 19 – ROA 167, 15; ROA 168, 24 – ROA 169, 6). Ellerbe testified that he was

wearing a black hoodie at the time. (ROA 168, 6-20). He stated that it was Applicant's plan to rob the store and that he was testifying against him because Applicant had tried to blame him for everything. (ROA 169, 7-8; ROA 170, 10-23; ROA 172, 20-21).

Applicant did not testify at his trial. In fact, Applicant did not show up at all and was tried *in absentia* by a jury and the Honorable R. Ferrell Cothran. (ROA 23, 5 – ROA 29, 13). At the close of his trial, the judge stated that “when he's arrested, I don't know if I'll still be here or not but you can bring him before some judge and he'll open this sentence and read it to him and see what happens.” (ROA 207, 18-21) His sentence was sealed and a bench warrant was issued for his failure to appear. Two arrest warrants were also issued, one for escape and another for removing an electronic monitoring device, after his GPS monitor that he was required to wear as a condition of his bond was found in the parking lot of a Conway apartment complex. (ROA 207, 11-17; warrant no.'s 2015A2610202429; –2430). The two arrest warrants were later dismissed in February, 2016.

Applicant was apprehend the following March, and was brought before the Honorable Steven H. John for his sentencing hearing. (ROA 209 – ROA 218). Applicant's trial counsel was involved in another trial at the time, so an attorney, Jarrett Bouchette, was sent to the hearing in his place. (ROA. 211, 12-14). Attorney Bouchette stated that he had no post-trial motions to make, but requested that the matter be held in abeyance until trial counsel could appear. (ROA 212, 1-17).

Trial counsel appeared two days later, after his conflicting professional obligations had concluded. (ROA 213, 10 – ROA 218). He moved for a new trial and for reconsideration of the sentence. (ROA 213, 22 – ROA 214, 4). He stated that he had done a little research and believed that the court had the power to reconsider the sentence. (ROA 214, 1-4). The court agreed with

him, stating that "whoever opens the sealed sentence by that Supreme Court decision does have the authority to change the prior sentence issued in this matter." (ROA 214, 5-11). In support of the motion, trial counsel argued that the Applicant had no prior record, his codefendants had received ten years, and he was a twenty-year old resident of Horry County with no children. (ROA 214, 12-22).

The Assistant Solicitor responded by arguing that the codefendants had entered guilty pleas prior to Applicant's trial, and the two who received ten year sentences were Phillips and Coles, who had not entered the store. (ROA 215, 5-11). Ellerbe had also entered a plea, but received a fifteen year sentence, which was reduced to ten after he cooperated with the State by testifying against Applicant. (ROA 215, 13-21). Judge Cothran was the judge who resentenced Ellerbe, and reduced the sentence to ten years after hearing the trial and determining that the testimony was essential to the conviction. (ROA 215, 17-21). She also pointed out that evidence was presented at trial showing that both Applicant and Ellerbe were armed, and the robbery was planned during a time when "a lot of clerks were getting killed" in Horry County. (ROA 216, 1-5). The State opposed resentencing because Judge Cothran was the one who heard these facts. (ROA 216, 7-12). After consulting with Applicant, trial counsel requested a ten or fifteen year sentence. (ROA 216, 15-24).

Judge John refused to alter the sentence, stating that there was no trial transcript at that time and Judge Cothran was the one who had heard the testimony. (ROA 217, 2-7) He stated that his decision was based on the sentencing range for armed robbery, its classification as a violent and most serious offense, as well as the information conveyed by the solicitor that Applicant was an active participant in the crime. (ROA 217, 7-18). Judge John also refused to grant a new trial because no sufficient showing to grant such a request had been made. (ROA 218, 19-25).

III. CURRENT APPLICATION

In his current application for post-conviction relief, as amended, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel for failure to actively negotiate a plea offer and/or ensure that Applicant had the opportunity to properly reject the opportunity to enter a guilty plea.
2. Ineffective assistance of counsel for failure to properly advise Applicant about being tried in his absence if he did not appear for trial.
3. Ineffective assistance of counsel for failure to move for a continuance prior to jury selection and/or object to the trial in Applicant's absence.
4. Ineffective assistance of counsel for failure to offer meaningful representation during the sentencing phase of Applicant's trial.
5. Ineffective assistance of counsel related to the hearing to open Applicant's sentence and for post trial motions, specifically, but not limited to:
 - a. Failure to have knowledge of, prepare for and be present at the hearing opening Applicant's sentence. Additionally, failure to ensure that the representative that appeared on his behalf was properly prepared and advocating for Applicant.
 - b. Ineffective assistance of counsel for failure to make an oral or written request and/or objection for additional time and/or for the trial court to hear Applicant's post trial motions.
 - c. Ineffective assistance of counsel for failure to be properly prepared to provide information beneficial to Applicant or make arguments at the final motion hearing.

Testimony Presented at the PCR Hearing

The PCR Hearing saw testimony from Applicant, his girlfriend Samantha Daley, his mother Roslyn Glover, and his trial counsel Johnny Gardner. Applicant testified that he was not present at his 2015 trial for armed robbery of a Scotchman convenience store in Horry County. (PCR Tr. 13, 24 – PCR Tr. 14, 11). He stated that he had four codefendants, two of whom testified against him at his trial. (PCR Tr. 14, 16-25). One of those codefendants, Asia Collier, had her charges dismissed, and the other, Amontre Ellerbe, entered a guilty plea and received ten years' imprisonment for his involvement in the crime. (PCR Tr. 15, 1-4).

Applicant testified that Attorney Buddy Long was initially appointed to represent him, but he was subsequently replaced by Attorney Johnny Gardner ("trial counsel"), because of a conflict of interest with one of Applicant's codefendants. (PCR Tr. 16, 1-11). Applicant was provided with a plea offer, requesting his guilty plea in exchange for a ten to fifteen year recommended sentence. (PCR Tr. 16, 12-18; Applicant's exhibit no. 1). Applicant stated that he rejected the offer because he wanted no more than ten years' imprisonment and to be sentenced under the Youthful Offenders Act. (PCR Tr. 16, 19 – PCR Tr. 17, 13; PCR Tr. 33, 4-6). No more plea deals were forthcoming despite trial counsel's efforts to obtain a more lenient offer. (PCR Tr. 8-11; PCR Tr. 33, 10-14).

Applicant stated that he met with trial counsel the week before his trial was set to begin and discussed his charge and the possible outcomes of the trial. (PCR Tr. 18, 18 – PCR Tr. 19, 1). He had been released on bond at the time. (PCR Tr. 31, 18-23). Applicant testified that at that point he did not want to proceed to trial and told his trial counsel that he wished to accept a plea offer. (PCR Tr. 19, 2-11). Applicant claimed he was not given advice on what would happen if he did not attend the trial, but was aware of the date and knew that his attendance was expected. (PCR Tr. 33, 15-21). Nevertheless, he skipped his trial because he was afraid and "felt like [he] was being forced to go. . . ." (PCR Tr. 19, 12-23). In the process he removed his GPS ankle monitor. (PCR Tr. 31, 24 – PCR Tr. 32, 6). He stated that he thought he could avoid the trial entirely by not showing up, but did not explain why having his trial continued would have alleviated his fears. (PCR Tr. 34, 5 – PCR Tr. 35, 2).

Applicant acknowledged that his trial counsel moved for a continuance prior to the trial's commencement, and said that he would have liked for the matter to have been continued so that he could have either been present or enter a guilty plea. (PCR Tr. 20, 23 – PCR Tr. 21, 4).

Applicant stated that he was aware that his codefendant Asia Collier was going to testify against him, but was not aware that the State was going to call Amontre Ellerbe. (PCR Tr. 21, 5-9). He indicated that he understood Ellerbe's testimony was that he was the ringleader of the crime and that his sentence had been reduced after he testified. (PCR. Tr. 21, 10-16). He stated that he disagreed with Asia Collier's testimony that he manipulated her into becoming involved in the crime, instructed her to throw away evidence, and directed her statements to the police. (PCR Tr. 35, 16 -- PCR Tr. 35, 17).

He stated that he wanted his attorney to speak on his behalf before the sentence was imposed. (PCR Tr. 21, 17-23). He was at an apartment complex in Conway, South Carolina when he was arrested, held for a short period of time, and brought in for his sentencing hearing. (PCR Tr. 22, 1-8; PCR Tr. 39, 9-15). He stated that he did not know what was going on at the time, but figured it was related to his charges. (PCR Tr. 22, 13-16). Trial counsel's partner, Attorney Jarrett Bouchette, was at the courtroom to represent Applicant, but the two did not have discussions prior to the sentencing hearing's commencement. (PCR Tr. 22, 18 -- PCR Tr. 23, 17). Attorney Bouchette requested the matter be held in abeyance and Applicant was held in the county jail for two days before he was able to speak with Mr. Gardner just prior to the sentencing hearing reconvening. (PCR Tr. 23, 18 -- PCR Tr. 24, 4). Applicant stated that the conversation was rushed because the hearing was about to begin, and he did not remember anything being discussed. (PCR Tr. 24, 5-8; PCR Tr. 39, 24 -- PCR Tr. 40, 3).

Applicant testified that he had concerns about how much time his trial counsel had to prepare for the sentencing hearing. (PCR Tr. 25, 2-9). Specifically, he said he did not have an opportunity to discuss the motion for reconsideration of the sentence, nor was he told why Judge Cothran was not the one unsealing the sentence. (PCR Tr. 25, 13-21). Applicant acknowledged his

trial counsel made arguments in support of his motion to reconsider, but stated that he would have liked for him to have gotten letters or people to appear and speak on his behalf. (PCR Tr. 25, 22 -- PCR Tr. 26, 7). He added that he would have also liked to speak for himself at the reconsideration hearing, to tell the Court he had finished high school, attended college, was loved in his community, and would "give a hand to anybody that needed it." (PCR Tr. 27, 2-17). He stated he did not speak on his own behalf because he did not know he could. (PCR Tr. 39, 24 -- PCR 40, 8).

Applicant acknowledged that he spoke with trial counsel during a break in the sentencing hearing and told him he would like to receive the same sentence as his codefendants. (PCR Tr. 28, 3-9). Applicant stated that he would have liked for his trial counsel to obtain the trial transcript for the Court to review. (PCR Tr. 28, 15-18). He stated that he would have also liked the opportunity to explain to Judge Cothran why he did not appear for his trial. (PCR Tr. 29, 2-10).

Samantha Daley testified that Applicant is her boyfriend and they met during their freshman year of high school. (PCR Tr. 42, 7-14). She stated that she had prepared a letter in anticipation of the PCR hearing to present to the Court. (PCR Tr. 42, 15 -- 19). She explained that had she been asked by trial counsel to provide the letter for the reconsideration hearing, she would have done so before reading the letter aloud at the hearing. (PCR Tr. 44, 6-21).

Roslyn Glover testified that she is Applicant's mother and was present at the sentencing hearing before Judge John. (PCR Tr. 46, 1-11). She did not speak with trial counsel at the time, but stated that she would have wanted to speak to the Court had she been given an opportunity. (PCR Tr. 46, 12-18). She also read a letter she prepared that could have been presented at the sentencing hearing. (PCR Tr. 46, 19-25).

Trial counsel testified that he had been practicing criminal law in Horry County for almost thirty years and was appointed to represent Applicant after previously appointed counsel, Attorney

Buddy Long, had been conflicted out. (PCR Tr. 48, 1-15). He stated that he did not specifically recall the plea offer that was provided to Applicant, but explained that he had discussed plea negotiations with Applicant and told him that if he could not reach a plea agreement then he would have to go to trial. (PCR Tr. 48, 19 – PCR Tr. 49, 7). He believed that he continued to negotiate a plea offer after Applicant rejected the first offer, but was unsuccessful. (PCR Tr. 62, 17 – PCR Tr. 63, 7). He said that he had ample opportunity to meet with Applicant and prepare for trial. (PCR Tr. 49, 8-12). During these pretrial discussions he spoke with Applicant about the potential range of sentences he was facing. (PCR Tr. 63, 8-15).

He testified that he met with Applicant on the Friday before trial and the last thing he told Applicant was that he would see him at the courthouse on the following Monday. (PCR Tr. 49, 13-25). He did not recall specifically discussing a *trial in absentia*, but said that he did tell Applicant that the trial was going forward regardless of whether Applicant appeared. (PCR Tr. 50, 6-12). He said he made efforts to reach Applicant after he surprisingly did not show up, but was unsuccessful. (PCR Tr. 50, 13 – PCR Tr. 51, 2). He explained that he moved for a continuance and did not believe it would be beneficial to explain on the record all of the efforts he made to contact Applicant. (PCR Tr. 51, 3-7).

Trial counsel testified that the State's case was not dependent upon Amontre Ellerbe's testimony, but that Ellerbe's sentence was reduced as a result of his testimony. (PCR Tr. 13-22). After Applicant was convicted, trial counsel stated that he remained quiet before the sentence was sealed because he did not want to make the judge mad, after he had just sat through a long trial where the defendant did not appear. (PCR Tr. 52, 2-10).

Trial counsel stated that he did not receive much notice and was in court on an unrelated trial when he first heard about the sentencing hearing when Applicant was arrested on the bench.

warrant. (PCR Tr. 52, 11-21). He did not expect anything to happen on that date, but nevertheless arranged for an attorney to be present in his place. (PCR Tr. 67, 22 – PCR Tr. 68, 11). The matter was continued because of his trial so that he may be able to appear on Applicant's behalf at the sentencing hearing. (PCR Tr. 53, 4-11). Despite the continuance, he did not have an opportunity to meet with Applicant before the sentencing hearing due to the gravity of his other professional obligations. (PCR Tr. 53, 12 – PCR Tr. 54, 12). He stated that the motions for a new trial and sentence reconsideration are ones he makes every time a client is convicted. (PCR Tr. 64, 25 – PCR Tr. 65, 11). Trial counsel testified that he did not reach out to Applicant's friends and family because he was too busy with the other trial. (PCR Tr. 56, 9-18).

Trial counsel explained that, at the time, he was not sure that a non-sentencing judge could be doing the consideration to amend the sentence, but he agreed that it could be done at the time because he hoped it would benefit his client. (PCR Tr. 54, 14 – PCR Tr. 55, 14). "That's just trial tactics," he explained. (PCR Tr. 55, 9). He felt certain that the judge would reduce the sentence. (PCR Tr. 55, 13-14). Trial counsel did not order the trial transcript to provide to the Court, and stated that it may have been hard to get at that time even if he had. (PCR Tr. 55, 21 – PCR Tr. 56, 8). He did not expect that the judge would consider the fact he had not presided over the trial when denying the motion to reconsider. (PCR Tr. 56, 19 – PCR Tr. 57, 1).

Trial counsel stated that a rule limiting consideration of post-trial motions to the judge who presided over the trial would likely prove unworkable, but stated that if something is not considered properly it is "not essentially being considered." (PCR Tr. 57, 2-20). He interpreted the judge's decision in this matter as a refusal to exercise discretion. (PCR Tr. 57, 21 – PCR Tr. 58, 14). Looking back at it with the benefit of hindsight he wished that he had requested the matter be continued until the transcripts were available. (PCR Tr. 58, 18-25). Based upon the outcome, he

stated that he did not believe Applicant had a fair opportunity to have his sentence reconsidered, despite having a "really good trial." (PCR Tr. 59, 1-5). He stated that he did not believe any objections to the proceedings would have made a difference because the judge was "well within his rights" to unseal the sentence. (PCR Tr. 67, 2-21).

Trial counsel testified that had Applicant been present at the hearing he could have likely entered a guilty plea at that point, avoided trial, and received a ten year sentence. (PCR Tr. 59, 5-21). In his experience, it is almost a certainty that a conviction at trial will carry more time than a guilty plea. (PCR Tr. 60, 5-9). Nevertheless, he testified that he did not recall either judge commenting on Applicant's decision not to appear at trial at any point. (PCR Tr. 66, 4-11).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the evidence and witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly. Set forth below are the findings of fact and conclusions of law made pursuant to §17-27-80 of the South Carolina Code (2014).

Ineffective Assistance of Trial Counsel

Applicant's PCR application raises five claims of ineffective assistance of counsel, all of which concern either trial counsel's representation before the trial began, or after the verdict was reached. The pretrial allegations relate to trial counsel's plea negotiations, and his representation regarding the trial in absentia. The remaining allegations all arise from trial counsel's representation during the sentencing hearing. After a thorough review of the record, this Court finds Applicant has not met his burden of proof and is not entitled to relief on any of these grounds.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend VI;

Strickland v. Washington, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686.

Strickland does not guarantee perfect representation, only a "reasonably competent attorney." 466 U. S. at 687 (quoting *McMann v. Richardson*, 397 U.S. 759, 770 (1970)). Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. *Id.*

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must

have prejudiced Petitioner 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 standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* 466 U.S. at 697. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. at 670.

Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney.” *Id.* at 690.

Although courts may not indulge “post hoc rationalization” for counsel’s decision making that contradicts the available evidence of counsel’s actions, *Wiggins v. Smith*, 539 U.S. 510, 526-527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of

that reflection, to magnify their own responsibility for an unfavorable outcome. *Strickland*, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. *Strickland* at 688; *Harrington v. Richter*, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 687. See *Harrington*, 562 U.S. 86.

"Surmounting *Strickland*'s high bar is never an easy task." *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversarial process the right to counsel is meant to serve. *Strickland*, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." *Id.* at 689; see also *Bell v. Cone*, 535 U. S. 685, 702 (2002); *Lockhart v. Fretwell*, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S. at 690.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. *Wong v. Belmontes*, 558 U.S. 15 (2009); *Strickland*, 466 U.S. at 693. Instead, *Strickland* asks whether it is "reasonably likely" the result would have been different. *Id.* at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." *Id.* at 693, 697. The likelihood of a different result must be substantial, not just conceivable. *Id.* at 693; *Harrington*, 562 U.S. 86.

Based on the testimony and evidence presented at the evidentiary hearing, Applicant has failed to meet his burden of proof as to each allegation of ineffective assistance of counsel. This Court will address each individual allegation against counsel below:

A. Plea Negotiations

Applicant alleges that his trial counsel provided constitutionally ineffective assistance by failing to actively negotiate a plea offer and failing to make sure that he had an adequate opportunity to accept or reject such a plea.

Defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. *Missouri v. Frye*, 566 U.S. 134, 145 (2012); *Collins v. State*, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018). Generally, where defense counsel does not communicate such an offer to the defendant, counsel has rendered ineffective assistance. *Id.* In essence, having to stand trial, not choosing to waive it, is the prejudice alleged. *Lafler v. Cooper*, 566 U.S. 156 (2012).

Testimony and evidence presented at the PCR hearing, including one of Applicant's own exhibits, shows that he was extended an offer of ten to fifteen years' imprisonment in exchange for a guilty plea. Both Applicant and his trial counsel testified that he rejected the offer because he wanted to serve less time and wanted to be sentenced under a different statutory scheme. His trial counsel further testified that he continued with the negotiations, but no further offers were extended. It is clear from this testimony that Applicant was made aware of the offer, given an opportunity to consider it, and chose to reject it because he was not satisfied with its terms. Therefore, Applicant has failed to show that a plea offer would have been accepted but for his counsel's errors, and has not met his burden of proving deficiency or prejudice from his trial counsel's handling of his plea negotiations. Post-conviction must be denied on these grounds and the allegation must be dismissed with prejudice.

B. Trial in Absentia

Applicant alleges that his trial counsel provided constitutionally ineffective assistance for failing to properly advise him about being tried in his absence if he did not appear for trial. Applicant also claims that trial counsel was constitutionally ineffective because he did not move for a continuance after Applicant failed to appear at the start of his trial.

Although the Sixth Amendment of the Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived. *State v. Bell*, 293 S.C. 391, 401, 360 S.E.2d 706, 711 (1987); *Ellis v. State*, 267 S.C. 257, 260, 227 S.E.2d 304, 305 (1976). Rule 16 of the South Carolina Rules of Criminal Procedure states:

[A] person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and a warning was given that the trial would proceed in his absence upon a failure to attend the court.

Rule 16, SCRCrimP.

Nonetheless, a waiver of such an important right is permitted only in limited circumstances. *City of Aiken v. Koontz*, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (2006). Therefore, before a defendant may be tried *in absentia*, the trial court must determine a defendant voluntarily waived his right to be present at trial, making findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned that the trial would proceed in his absence. *Id.* However, if the record does not reveal that the defendant was afforded notice of his trial, the resulting conviction cannot stand. *State v. Jackson*, 290 S.C. 435, 436, 351 S.e.2d 167 (1986). A bond form that provides notice that a defendant can be tried *in absentia* may serve as the requisite notice. *City of Aiken, supra*. Since Applicant's trial, the South Carolina Court of Appeals has ruled that a court may not try a criminal defendant *in absentia* unless it finds that he received notice of the trial and voluntarily chose to be absent. *State v. Wrapp*, 421 S.C. 531, 808 S.E.2d 821 (2017).

The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion. *State v. Tanner*, 299 S.C. 459, 462, 385 S.E.2d 832, 834 (1989). Failure to request a continuance when a criminal defendant fails to appear for trial has been deemed deficient performance. *Morris v. State*, 371 S.C. 278, 639 S.E.2d 53 (2006). This deficiency will rise to the level of ineffective assistance of counsel if the defendant is prejudiced by the failure to make the request, such as when the defendant would have entered a plea to a lesser included offense had they appeared. *Id.* 371 S.C. at 283, 639 S.E.2d at 56.

The trial transcript shows that trial counsel specifically moved for a continuance prior to the first witness being sworn. (ROA 28, 23-24). It also clearly shows that Applicant was provided with notice of the date of his trial, told that his attendance was expected, and that the trial would proceed in his absence if he failed to appear. (ROA 22, 18 – ROA. 29, 7). Trial counsel testified

that he provided Applicant with specifics regarding the date, and was certain that Applicant knew when the trial would occur. He further testified that he informed Applicant that the trial would proceed, even if he did not show up. His trial counsel also stated that Applicant would have likely had an opportunity to enter a plea and avoid the trial entirely had he shown up, and would have likely received less time.

Applicant testified at his PCR hearing that he knew the date of his trial and that he was expected to be present, but was scared and therefore did not appear. He claimed to have thought that there would simply be no trial if he did not appear. He did not explain why his fears about attending his trial would have subsided had a continuance been granted. The record shows that trial counsel properly advised Applicant that his trial would go forward with or without him, and that he moved for a continuance when Applicant failed to appear. As such, Applicant has shown neither deficiency nor prejudice resulting from trial counsel's performance. Therefore, this allegation is without merit, relief is denied, and the allegation is dismissed with prejudice.

C. Representation during Sentencing

The focal point of Applicant's effort to obtain post-conviction relief are his allegations that his trial counsel was ineffective in representing him when his sentence was unsealed, read, and imposed. He asserts that his counsel failed to be present, and failed to have a well-prepared attorney appear on his behalf. He further asserts that his attorney failed to request additional time for the trial court to hear his post-trial motions. Finally, he asserts that his attorney was not properly prepared to provide information beneficial to Applicant or to make arguments at the final motion hearing.

At the evidentiary hearing, Applicant expressed additional concerns that he received a twenty-five year sentence at trial, while his codefendants received ten year sentences in exchange

for their guilty pleas and/or testimony. While the issue of whether trial counsel was ineffective for failing to object to the imposition of a "trial tax" was never formally pleaded in a written allegation, it was addressed at the hearing and therefore shall be addressed herein.

Failure to be Present and Prepared for the Sentencing Hearing

Applicant alleges that his trial counsel was ineffective for failing to be present at his sentencing hearing, and failing to have prepared counsel appear in his place. This allegation is without merit.

Applicant was apprehend in March, 2016, and was brought before the Court on March 15, 2016, to have his sentence unsealed. At that time, Applicant's trial counsel was unavailable because he was involved in an unrelated trial. He arranged for a representative from his office, Attorney Jarrett Bouchette, to appear on his behalf. Attorney Bouchette initially stated that he had no motions to make, but did request that the matter be held in abeyance until Applicant's trial counsel could appear at the end of the week, when his trial was expected to conclude. This request was granted, and Applicant was held at the county detention center until his trial counsel could be present.

The hearing was reconvened later in the week and trial counsel personally appeared. He made "standard post-trial motions" which were a motion for a new trial as well as a motion to reconsider the sentence. He stated that he had done "a little bit [of] research" into whether the court could reconsider the sentence, requested that he be allowed to argue against the sentence imposed by Judge Cothran, and proceeded to do just that. (ROA. 214, 1-22).

The record shows that Applicant's counsel did what could be expected of a competent attorney under prevailing professional norms. He received short notice that Applicant had been apprehended and would be brought into court. His other professional obligations would not permit

him to appear, so he made arrangements for another attorney to be present at the hearing. That attorney requested that the matter be held in abeyance until he could be present, and this motion was granted. The hearing was then delayed for two days, and he testified that he briefly met with Applicant prior to the sentencing hearing. Then, he made two post-trial motions, and argued for a sentencing reduction. Applicant had a brief opportunity to speak with his attorney prior to the sentencing hearing, and then again during a break in the hearing.

Trial counsel's post-trial motions were unsuccessful, but it is not because he was deficient in failing to appear or have a prepared attorney appear in his place. There is little more, if anything, trial counsel could have done given the short notice of the hearing, his competing professional obligations, and the fact that no trial transcript existed at the time. He stated at the PCR hearing that his tactics going into the sentencing hearing were to do what he could to allow the judge an opportunity to reconsider the sentence because he believed it would benefit his client. Unfortunately for Applicant, it was not a winning strategy, but that does not mean it was unsound or amounted to ineffective assistance of counsel. As such, Applicant has failed to meet his burden of proof, the allegation shall be dismissed with prejudice, and post-conviction relief shall be denied.

Failure to Request Additional Time

Applicant alleges that his trial counsel was ineffective for failing to request additional time for post-trial motions to be heard. This allegation is without merit.

Rule 29 of the South Carolina Rules of Criminal Procedure states:

[P]ost-trial motions shall be made within ten (10) days after the imposition of the sentence. . . . The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the circuit judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term. Except by consent of the parties, argument on the motion shall be heard in the circuit where

the trial or hearing was held. The motion may, in the discretion of the court, be determined on briefs filed by the parties without oral argument.

As noted above, the granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion. *Tanner*, 299 S.C. at 462, 385 S.E.2d at 834. Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Counsel's strategy will be reviewed under "an objective standard of reasonableness." *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Every effort must be made to eliminate the distorting effects of hindsight and evaluate counsel's decisions at the time they were made. *Edwards v. State*, 392 S.C. 449, 710 S.E.2d 60 (2011) (citing *Strickland*, 466 U.S. at 689). To achieve this goal, an attorney's retrospective testimony that he would have done something differently may be disregarded if his actions at the time were in furtherance of an objectively reasonable strategy. *Id.* 392 S.C. 458, 710 S.E.2d at 65.

The record clearly shows that Applicant's trial counsel had an attorney from his office appear on his behalf when Applicant's sentence was initially meant to be unsealed. That attorney *did* request additional time. At the time, trial counsel was content going forward with the hearings on Applicant's post-trial motions, despite being bogged down by other work and having reservations about whether the matter was going to be properly heard, because he believed it would be beneficial to his client. Doing so, he explained, was just a matter of trial tactics. This was an objectively reasonable strategy considering the fact that the judge hearing the motion to reconsider did not hear the damaging evidence presented by Applicant's codefendants at trial, which he hoped would yield more benefit than being before the trial judge.

Applicant suggests that trial counsel should have requested more time. Trial counsel expressed regret for not ordering the trial transcript. In hindsight, trial counsel may not have

provided the perfect, flawless representation that Applicant hopes for, but that is not what is required under the Sixth Amendment standard for assistance of counsel. It is clear that trial counsel developed a legitimate, reasonable strategy for the sentencing hearings. That strategy would not have benefitted from extra time. Therefore, trial counsel was not deficient in failing to request extra time for the sentencing hearing.

Furthermore, Applicant has failed to prove he was prejudiced by trial counsel's failure to request an additional continuance. There is no evidence before the Court that a denial of a continuance would have amounted to an abuse of discretion, and therefore his counsel's failure to request one could not have prejudiced Applicant. The judge unsealed the sentence, heard arguments on Applicant's post-trial motions, and stated that he was considering both before denying each. This is a blatant exercise of sound discretion, and Applicant has not presented any evidence that his post-trial motions would have been made more likely to succeed simply by delaying their consideration. All that has been provided by Applicant is speculation with the benefit of hindsight, which is explicitly what *Strickland* and its progeny assert must be avoided. Therefore, Applicant has failed to meet his burden of proof, this allegation shall be dismissed with prejudice, and post-conviction relief shall be denied.

Failure to Provide Beneficial Information or Arguments

Applicant alleges that his trial counsel provided constitutionally ineffective assistance when he failed to provide beneficial information or arguments at the sentencing hearing. At the PCR hearing, Applicant presented letters written and read by his mother and girlfriend. Applicant presented these letters to show what could have been presented at the sentencing hearing in support of his motion to reconsider.

South Carolina's courts have not yet developed robust authorities on ineffective assistance of counsel claims arising from motions to reconsider made at sentencing hearings. However, other courts have applied the *Strickland* test and found that failure to file a motion to reconsider a sentence does not in and of itself constitute ineffective assistance of counsel. *State v. Brooks*, 260 So.3d 713 (La. Ct. App. 2018). Where an applicant alleges that their counsel was ineffective for failing to move for reconsideration of a sentence, they must show that there is a reasonable probability that the motion would have resulted in a different sentence. *State v. Lee*, 636 So.2d 634 (La. Ct. App. 1994). And again, objectively reasonable trial strategies do not constitute ineffective assistance of counsel. *Ingle*, 348 S.C. 467, 560 S.E.2d 401.

Strickland itself addressed questions about the effectiveness of representation provided at sentencing hearings. Evidence showing that "numerous people who knew respondent thought he was a generally good person" is not enough to find a "reasonable probability that the omitted evidence would have changed the conclusion . . . and, hence, the sentence imposed." *Strickland*, 466 U.S. at 700. Instead, it must be shown that counsel failed to present strong evidence of mitigating circumstances, such as a history of mental health issues, drug abuse, childhood trauma, or limited intellectual capacity. *See Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008) (finding that a defendant in a capital case was prejudiced by counsel's failure to investigate and present mitigating evidence beyond the brief testimony of the defendant's mother).

In determining whether trial counsel's performance was deficient, it cannot be understated that there is no *per se* obligation on counsel move for reconsideration of a sentence or to move for a new trial. Applicant's trial counsel did both. He requested reconsideration because Applicant was a young man, without a prior record, who lived in the community, and was now facing a lengthy prison sentence. He also noted that Applicant's codefendants had received significantly

lower sentences, and asked that Applicant be given a similar sentence. The Court, in the exercise of its discretion, considered and rejected this argument. In doing so the judge stated that the sentence would remain unchanged because it was within the statutory range, classified as a violent and most serious offense, and Applicant was one of the participants in the robbery who actually entered the store.

Applicant has failed to show deficiency or prejudice from his counsel's performance at the sentencing hearing because he has not produced evidence that, had it been presented, would have reasonably altered the outcome of the sentencing hearing under an abuse of discretion standard. He does not allege that his sentence exceeded the limits provided for by statute. Instead, at the PCR hearing, all he presented was testimony that shows "that numerous people who knew [him] thought he was generally a good person." Without more, there is no reason to believe his sentence would have been reduced had his counsel provided the additional evidence requested. Therefore, this claim is without merit, and post-conviction relief shall be denied, and the allegation shall be dismissed with prejudice.

Trial Tax

At bottom, Applicant's allegations about his trial counsel's performance at the sentencing hearing seem to be that counsel failed to do *something* to avoid his lengthy sentence. At the PCR hearing, Applicant provided cases on the issue of a "trial tax." While the allegation of ineffective assistance of counsel for failing to object to the length of the sentence relative to those imposed upon the codefendants was never raised in the pleadings, Applicant flirted with the issue at the PCR hearing and therefore it merits attention herein. The Court need not delve into whether trial counsel's performance was prejudicial to Applicant's interests because it is clear that no trial tax

was imposed, the sentence was justified under the facts of the case and the law of the State of South Carolina, and any objection or exception to it would have been fruitless.

A trial judge is allowed broad discretion in sentencing within statutory limits. *Brooks v. State*, 325 S.C. 269, 481 S.E.2d 712 (1997); *Garrett v. State*, 320 S.C. 353, 465 S.E.2d 349 (1995). The trial court has broad discretion in sentencing because it is generally in a better position than reviewing courts to determine the appropriate sentence by weighing the defendant's credibility, demeanor, and moral character, among other factors. *State v. Brouwer*, 346 S.C. 375, 550 S.E.2d 915 (2001) (citing *People v. Hernandez*, 319 Ill.App.3d 520, 745 N.E.2d 673 (2001)). A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against defendant. *Brooks*, 325 S.C. at 272, 481 S.E.2d at 713. South Carolina law provides a broad range of ten to thirty years for first time armed robbery convictions. S.C. Code Ann. §16-11-330 (1976).

A trial judge may not consider a criminal defendant's choice to go to trial during sentencing. *Davis v. State*, 336 S.C. 329, 520 S.E.2d 801 (1999); *Brouwer*, 346 S.C. 375, 550 S.E.2d 915. Such improper considerations may be shown by comments made during the proceeding. *Id.* For example, reversible error occurs where a trial judge expresses his preference for guilty pleas, or their belief that admitting guilt is the first step towards rehabilitation. *Davis*, 336 S.C. at 332, 520 S.E.2d at 802; *Brouwer*, 346 S.C. at 387, 550 S.E.2d at 922. Furthermore, codefendants who receive disparate sentences for the same crime may be evidence of a "trial tax" if they are similarly situated but one admitted guilt and the other went to trial. *Id.* 336 S.C. at 333.

Trial counsel was not deficient in failing to object or otherwise take exception to the sentence itself because the sentence was proper. It is only now, with the benefit of hindsight after receiving a stiff sentence, that Applicant points the finger at his attorney, suggesting that he has

suffered a harsher penalty than his codefendants because he exercised his right to trial while they entered guilty pleas. Unlike every case cited by Applicant, there was no statement by the trial judge to the fact that Applicant had decided to proceed to trial. Instead, the judge instructed the jury, *sua sponte*, that it was not to consider the fact that Applicant was not present at his trial. (ROA 174, 5-14; ROA 195, 2-7). The judge went even further and agreed to instruct the jury on mere presence, even though he did not believe it was warranted by the evidence, because he felt that an appellate court may look down on a *trial in absentia*. (ROA 175, 21 – ROA 176, 15). Applicant has presented no evidence, and there is no reason to believe, that Applicant's sentence was influenced either by his decision to go to trial or his decision to skip it altogether. Furthermore, nothing contradicts trial counsel's testimony that an objection to the sentence would have been fruitless.

Instead, the sentence is assuredly a product of Applicant playing a different role in the crime than his codefendants. Two people involved in the crime testified against Applicant, and both identified him as the mastermind and the ringleader. Asia Collier, the getaway driver, testified that she was manipulated by Applicant into participating in the crime, disposed of evidence at his request, and lied to police at his direction. Amontre Ellerbe testified that he and Applicant were the only two who actually entered the store and stuck a gun in the clerk's face, while the other two stood behind the building and "did nothing." (ROA. 166, 1-11). Applicant simply is not similarly situated to his codefendants such that he is entitled to their sentences.

In fact, Applicant rejected a plea offer that would have given him a similar sentence to his codefendants, despite proof that he played a much greater role in planning, organizing, and committing the crime. He cannot now claim the benefit of their bargain by alleging a trial tax after already unsuccessfully raising the issue on direct appeal. He certainly cannot do it by pointing the blame at his trial counsel by alleging that he failed to somehow protect him from the imposition

of a lawful sentence. Applicant rejected the plea offer and the sentence that he now desires because he wanted even less time. He chose to proceed to trial, fully aware of its risks and benefits. More correctly, he did not *proceed* to trial. He chose to abscond, removing his GPS monitor in the process, only to be apprehended months later and brought before a judge wholly unfamiliar with him, his character and demeanor, and the facts of his crimes. It is quite possible, as his trial counsel suggested at the PCR hearing, that the new judge's unfamiliarity with the case would have made him more inclined to reconsider the sentence. But ultimately, Applicant could have, and should have, avoided this issue entirely by being present at his trial. Whatever issue he may have with his sentence is not the product of ineffective assistance of counsel, it is wholly a product of Applicant's own choices. Therefore his counsel was not deficient and Applicant was not prejudiced by his performance. Post-conviction relief must be denied and the application shall be dismissed with prejudice.

V. CONCLUSION

Based on the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

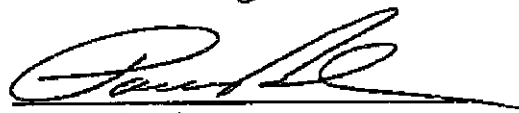
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 7th day of May, 2021

 South Carolina


Paul M. Burch
Presiding Judge
Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
)
Rasheed Glover, 367438,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2018-CP-26-02728

MOTION PURSUANT TO RULE
59(a) & (e), SCRPC

FILED
Horry County
2021 JUL -2 P 1:30
CLERK OF COURT
JENNIFER N. EVANS
Horry County

Pursuant to Rule 59(a) and (e) of the South Carolina Rules of Civil Procedure,

Applicant would move before this Court for relief as follows.

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on May 2, 2018. The State submitted a Return and Motion to Dismiss on August 2, 2018. On February 24, 2020, Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief, which stated the following:

Based upon the record and discovery received, Applicant, through counsel, would move to amend his Application, as addressed below. Additionally, Applicant would ask the Court for the relief in the form of having his conviction and sentences vacated to allow for a new trial and/or whatever relief the Court deems proper, which may be in the form of a reconsideration hearing. Pursuant to Rule 15(b), SCRPC, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

1. Ineffective assistance of counsel for failure to actively negotiate a plea offer and/or ensure that Applicant had the opportunity to properly reject the opportunity to enter a guilty plea.
2. Ineffective assistance of counsel for failure to properly advise Applicant about being tried in his absence if he did not appear for trial.

3. Ineffective assistance of counsel for failure to move for a continuance prior to jury selection and/or object to the trial in Applicant's absence.
4. Ineffective assistance of counsel for failure to offer meaningful representation during the sentencing phase of Applicant's trial.
5. Ineffective assistance of counsel related to the hearing to open Applicant's sentence and for post trial motions, specifically, but not limited to:
 - a. Failure to have knowledge of, prepare for and be present at the hearing opening Applicant's sentence. Additionally, failure to ensure that the representative that appeared on his behalf was properly prepared and advocating for Applicant.
 - b. Ineffective assistance of counsel for failure to make an oral or written request and/or objection for additional time and/or for the trial court to hear Applicant's post trial motions.
 - c. Ineffective assistance of counsel for failure to be properly prepared to provide information beneficial to Applicant or make arguments at the final motion hearing.

On March 31, 2021, an evidentiary hearing was convened on the South Carolina Supreme Court's virtual platform in front of the Honorable Paul M. Burch. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by William Ray, Esquire. Applicant testified and called the following witnesses: Johnny Gardner, Esquire, Sammantha Daley and Roslyn Glover. Applicant introduced two exhibits. Respondent did not call a witness or mark an exhibit. The Court also had before him a copy of the records stemming from Applicant's underlying trial and appeal.

At the close of the evidentiary hearing, the Court requested proposed orders from both parties and allowed Applicant's counsel time to obtain the evidentiary hearing transcript. Upon receipt of the requested orders and evidentiary hearing transcript, the Court issued an Order of Dismissal on May 7, 2021. The Order of Dismissal was filed on May 11, 2021. On June 21, 2021, Applicant's counsel discovered that an entry had been

made for an Order on the Horry County Clerk of Court's online records, but the Order was not uploaded or viewable. After reaching out to the Court, Applicant, through counsel, received a copy of the signed and filed Order via email on June 23, 2021, from which this Motion timely follows.

GENERAL SESSIONS PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. During the March 2015 term of the Horry County Grand Jury, Applicant was indicted for armed robbery (2015-GS-26-01237).

On October 12, 2015, trial proceeded against Applicant *in absentia* before the Honorable R. Ferrell Cothran and a jury. Applicant was represented by Johnny Gardner, Esquire. The State was represented by Lauree Richardson, Assistant Solicitor, and Thomas G. Terrell, III, Assistant Solicitor. On October 13, 2015, the jury found Applicant guilty as indicted. The Honorable R. Ferrell Cothran issued and sealed Applicant's sentence. R. p 203.

On March 15, 2016, Applicant appeared in front of the Honorable Steven H. John at the Horry County Courthouse. Applicant was represented by Jarrett Bouchette, Esquire. The State was represented by Lauree Richardson, Esquire. After unsealing and pronouncing Applicant's twenty-five year sentence, Mr. Bouchette stated that the defense had no motions. R. p. 212, ln. 1. Thereafter, the court indicated that he appreciated Mr. Bouchette's response, but he determined that the matter should be held in abeyance until Mr. Gardner could complete the trial he was in and be present. R. p. 212.

On March 17, 2016, the matter was resumed in front of the Honorable Steven H. John at the Horry County Courthouse. Applicant was presented by Johnny Gardner, Esquire. Respondent was represented by Lauree Richardson, Esquire. After addressing the abeyance due to Mr. Gardner's absence while in trial, the court heard from both sides. The court noted that he did not have a transcript and was not the trial judge before declining to reduce the sentence imposed by Judge Cothran or grant a new trial. R. pp. 217-218.

A timely notice of appeal was filed on Applicant's behalf and Katherine H. Hudgins, Esquire, perfected the appeal. An *Anders* Brief was submitted and addressed the following issue:

Did the judge who unsealed and pronounced sentence following a trial in the Appellant's absence abuse his discretion in refusing to reconsider the twenty five year sentence imposed by the trial judge when a co-defendant received a lesser sentence and the record fails to reflect on appropriate basis for the disparate sentence?

On May 17, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal. *State v. Glover*, 2017-UP-210 (S.C. Ct. App. filed May 17, 2017). The Remittitur was issued on June 2, 2017.

ARGUMENT

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). This guarantee of effective assistance carries through to sentencing proceedings. *See Lafler v. Cooper*, 566 U.S. 156, 164–65, 132 S. Ct. 1376, 1385–86, *Glover v. United States*, 531 U.S. 198, 203–204, 121 S.Ct. 696, 604 (2001); *Mempa v.*

Rhay, 389 U.S. 128, 88 S.Ct. 254 (1967), *Wiggins v. Smith*, 539 U.S. 510, 538, 123 S.Ct. 2527 (2003), *Locklear v. Harvey*, 254 S.E.2d 293, 273 S.C. 58 (1979).

Where an application for post conviction relief alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* 466 U.S. at 686; see *Butler v. State*, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 691. The applicant must overcome this presumption to receive relief. *Bell v. State*, 321 S.C. 238 (1996); see also *Cherry v. State*, 300 S.C. 238 (1989); Rule 71.1(e), SCRPC.

The reviewing court applies 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, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117 (citing *Strickland*, 466 U.S. at 688). 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. Even though sentencing does not concern the defendant's guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in *Strickland* prejudice because "any amount of [additional] jail time has Sixth Amendment significance." *Glover*, 531 U.S. at 203, 121 S.Ct. 696.

In *Marlar v. State*, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. *See also* S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that the Court ensure that specific findings of fact and conclusions of law are entered on each issue raised and that the record before the Court and testimony of each witness is properly addressed in the standing Order of Dismissal ("Order"). Applicant would respectfully ask that the Court reconsider the Order and find that relief should be granted.

In support of this motion, Applicant has attached and incorporates hereby reference the proposed Order Granting Application for Post Conviction Relief, which was submitted to the Court.¹ Applicant would respectfully ask the Court to reconsider this Order. Applicant submits that the testimony and law addressed in the proposed Order demonstrates why the Court should reconsider the standing Order and clearly demonstrates that the standing Order ignores the accurate testimony of counsel quoted in the proposed Order that amounts to an admission of deficiency and prejudice.

Additionally, Applicant would ask the Court to review the evidentiary hearing transcript that was previously provided to the Court. Applicant submits that the summary of the testimony presented, as well as the discussion of the testimony in the findings, fails to address the testimony offered that was favorable to Applicant and that established relief should be granted. Specifically, the discount of hindsight is errantly added to counsel's testimony throughout the standing Order and counsel's admissions and concerns are not addressed in the brief findings regarding "representation during sentencing."

¹ This Order was drafted in consideration of the issues on which the Court expressed interest and should not be construed as Applicant waiving the issues on which the proposed Order denies relief.

It appears that Applicant's allegation that counsel was ineffective during his sentencing hearing with the trial court is not addressed in the standing Order. By way of his allegations, at the evidentiary hearing and in the proposed Order, Applicant addressed counsel's deficient performance at the sentencing and post trial hearings in front of Judge Cothran and Judge John, but it appears the standing Order does not address counsel's failure to speak before the sentence was determined by Judge Cothran. R. p. 203.

Under the heading "Failure to Request Additional Time," the standing Order briefly addresses counsel's failure to obtain a transcript, but it does not address the comments made by Judge John about the absence of a transcript, as addressed in the proposed Order. R. p. 217. Specifically, the Order does not acknowledge trial counsel's admission that he should have requested additional time to get the transcript since Judge John was "doing it blind." PCR pp. 55-58. The Order also fails to address the testimony of trial counsel that he was in the middle of a trial and unable to do any preparations for the hearings and that the hearing was not proper since "nobody was prepared."² PCR pp. 52-55, 71-72. Unfortunately, the standing Order ignores the clear testimony of Applicant regarding the post trial hearings and trial counsel's testimony that the proceedings were not done properly in finding that "all that has been provided by Applicant is speculation with the benefit of hindsight." Order p. 25.

Contrary to *Marlar* and its progeny, the standing Order under the heading "Failure to Provide Beneficial Information and Arguments" fails to address the lay witnesses called and letters provided as well as the lengthy testimony offered by counsel and Applicant on this issue. Additionally, the Order fails to properly address the record to include the State's

² Also absent from the Order is counsel's testimony that Judge John was not in position to properly exercise discretion and/or no discretion was exercised as is addressed in the proposed Order. PCR pp. 57-58, 71-72.

opposition to a reduction in sentencing simply because the trial judge was not present for reconsideration and Judge John's comments regarding the same. R. pp. 216, lns. 7-10, 217. The standing Order completely ignores the testimony of trial counsel that Applicant did not have a fair opportunity to have his sentence reconsidered and his acceptance of blame for Applicant not being afforded an effective hearing. PCR p. 56, ln. 19-p. 57, ln. 20, p. 59, lns. 1-4, p. 71-72. Applicant would urge this Court to reconsider and properly address his claims in detail as set forth in the Amendment, brought forward at the evidentiary hearing and addressed in the proposed Order.

Furthermore, Applicant takes issue with the finding that the matter of a "trial tax" was not specifically pled when it clearly falls under the allegation that counsel failed "to make arguments at the final motion hearing," it was addressed in the direct appeal, it was the subject of case law provided to the Court and opposing counsel prior to the evidentiary hearing, and it was addressed as an allegation throughout the evidentiary hearing. Additionally, counsel's testimony that he could not properly raise the issue of a trial tax since the trial court was not presiding over the post trial hearings appears to be ignored in the standing Order. PCR p. 60.

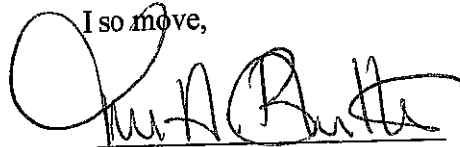
Finally, Applicant would ask the Court to reconsider the finding that he suffered prejudice solely due to his failure to appear for trial and that he did not suffer prejudice due to counsel's admitted deficient performance. Applicant submits that the record, most notably counsel's testimony, establishes otherwise. As was set forth in the proposed Order, Applicant would ask the Court to reconsider the following factors before making a final determination that relief should be denied: 1) Mr. Gardner did not speak during the sentencing hearing with Judge Cothran; 2) Mr. Gardner lacked prior notice and was in the

middle of trial during the March 15, 2016 hearing; 3) Mr. Gardner did not meet with Applicant to prepare or discuss what was going to occur prior to the sentence being unsealed or post trial motion hearing; 4) Mr. Gardner sent a representative that was not prepared to advocate properly for Applicant; 5) Mr. Gardner appeared at the March 17, 2016 hearing without preparing Applicant to speak, without a transcript, and without character witnesses or letters, and he failed to ask for more time to be properly prepared; 6) Mr. Gardner did not raise a concern with the trial judge not presiding over the hearing or the limits being placed on the court's ability to exercise discretion; 8) Mr. Gardner did not respond to the State's argument that the sentence should not be reduced simply because Judge John was not the trial judge; 9) Mr. Gardner did not respond to the State's summary of the evidence with evidence favorable to Applicant; and 7) Mr. Gardner did not properly preserve the issue of a disparate sentence due to a trial tax nor did he raise the issue to the trial judge.

As stated, Applicant hereby incorporates the testimony and arguments set forth in the proposed Order and preserves all matters set forth therein not contained in the standing Order for appellate review. Applicant also requests that if this Court finds that a new sentencing hearing is not the proper remedy that a new trial be granted.

CONCLUSION

In conclusion, Applicant would request that the Court review the full record, including the evidentiary hearing transcript, alter, amend or reconsider the standing Order of Dismissal and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRPC.

I so move,


Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

July 1, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
)
Rasheed Glover, 367438,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2018-CP-26-02728

ORDER GRANTING APPLICATION
FOR POST CONVICTION RELIEF

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on May 2, 2018. The State submitted a Return and Motion to Dismiss on August 2, 2018. On February 24, 2020, Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief, which stated the following:

Based upon the record and discovery received, Applicant, through counsel, would move to amend his Application, as addressed below. Additionally, Applicant would ask the Court for the relief in the form of having his conviction and sentences vacated to allow for a new trial and/or whatever relief the Court deems proper, which may be in the form of a reconsideration hearing. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

1. Ineffective assistance of counsel for failure to actively negotiate a plea offer and/or ensure that Applicant had the opportunity to properly reject the opportunity to enter a guilty plea.
2. Ineffective assistance of counsel for failure to properly advise Applicant about being tried in his absence if he did not appear for trial.
3. Ineffective assistance of counsel for failure to move for a continuance prior to jury selection and/or object to the trial in Applicant's absence.
4. Ineffective assistance of counsel for failure to offer meaningful representation during the sentencing phase of Applicant's trial.

5. Ineffective assistance of counsel related to the hearing to open Applicant's sentence and for post trial motions, specifically, but not limited to:
 - a. Failure to have knowledge of, prepare for and be present at the hearing opening Applicant's sentence. Additionally, failure to ensure that the representative that appeared on his behalf was properly prepared and advocating for Applicant.
 - b. Ineffective assistance of counsel for failure to make an oral or written request and/or objection for additional time and/or for the trial court to hear Applicant's post trial motions.
 - c. Ineffective assistance of counsel for failure to be properly prepared to provide information beneficial to Applicant or make arguments at the final motion hearing.

On March 31, 2021, an evidentiary hearing was convened on the South Carolina Supreme Court's virtual platform in front of the Honorable Paul M. Burch. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by William Ray, Esquire. Applicant testified and called the following witnesses: Johnny Gardner, Esquire, Sammantha Daley and Roslyn Glover. Applicant introduced two exhibits. Respondent did not call a witness or mark an exhibit. This Court also had before him a copy of the records stemming from Applicant's underlying trial and appeal.

At the close of the evidentiary hearing, this Court requested proposed orders from both parties and allowed Applicant's counsel time to obtain the evidentiary hearing transcript. Upon receipt of the requested orders, the issuance of this Order follows.

GENERAL SESSIONS PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. During the March 2015 term of the Horry County Grand Jury, Applicant was indicted for armed robbery (2015-GS-26-01237).

On October 12, 2015, trial proceeded against Applicant *in absentia* before the Honorable R. Ferrell Cothran and a jury. Applicant was represented by Johnny Gardner, Esquire. The State was represented by Lauree Richardson, Assistant Solicitor, and Thomas G. Terrell, III, Assistant Solicitor. On October 13, 2015, the jury found Applicant guilty as indicted. The Honorable R. Ferrell Cothran issued and sealed Applicant's sentence.

On March 15, 2016, Applicant appeared in front of the Honorable Steven H. John at the Horry County Courthouse. Applicant was represented by Jarrett Bouchette, Esquire. The State was represented by Lauree Richardson, Esquire. After unsealing and pronouncing Applicant's twenty-five year sentence, Mr. Bouchette stated that the defense had no motions. R. p. 212, ln. 1. Thereafter, the court indicated that he appreciated Mr. Bouchette's response, but he determined that the matter should be held in abeyance until Mr. Gardner could complete the trial he was in and be present. R. p. 212.

On March 17, 2016, the matter was resumed in front of the Honorable Steven H. John at the Horry County Courthouse. Applicant was presented by Johnny Gardner, Esquire. Respondent was represented by Lauree Richardson, Esquire. After addressing the abeyance due to Mr. Gardner's absence while in trial, the court heard from both sides. The court noted that he did not have a transcript and was not the trial judge before declining to reduce the sentence imposed by Judge Cothran or grant a new trial. R. pp. 217-218.

A timely notice of appeal was filed on Applicant's behalf and Katherine H. Hudgins, Esquire, perfected the appeal. An *Anders* Brief was submitted and addressed the following issue:

Did the judge who unsealed and pronounced sentence following a trial in the Appellant's absence abuse his discretion in refusing to reconsider the twenty five year sentence imposed by the trial judge when a co-defendant received a lesser sentence and the record fails to reflect on appropriate basis for the disparate sentence?

On May 17, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal. *State v. Glover*, 2017-UP-210 (S.C. Ct. App. filed May 17, 2017). The Remittitur was issued on June 2, 2017.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). This guarantee of effective assistance carries through to sentencing proceedings. *See Lafler v. Cooper*, 566 U.S. 156, 164–65, 132 S. Ct. 1376, 1385–86, *Glover v. United States*, 531 U.S. 198, 203–204, 121 S.Ct. 696, 604 (2001); *Mempa v. Rhay*, 389 U.S. 128, 88 S.Ct. 254 (1967), *Wiggins v. Smith*, 539 U.S. 510, 538, 123 S.Ct. 2527 (2003), *Locklear v. Harvey*, 254 S.E.2d 293, 273 S.C. 58 (1979).

Where an application for post conviction relief alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* 466 U.S. at 686; *see Butler v. State*, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 691. The

applicant must overcome this presumption to receive relief. *Bell v. State*, 321 S.C. 238 (1996); *see also Cherry v. State*, 300 S.C. 238 (1989); Rule 71.1(e), SCRPC.

The reviewing court applies 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, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117 (citing *Strickland*, 466 U.S. at 688). 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. Even though sentencing does not concern the defendant's guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in *Strickland* prejudice because "any amount of [additional] jail time has Sixth Amendment significance." *Glover*, 531 U.S. at 203, 121 S.Ct. 696.

This Court has had the opportunity to hear the testimony of the witnesses at the evidentiary hearing and has reviewed the transcript of the evidentiary hearing. This Court finds the testimony of Johnny Gardner, Esquire, Applicant, Sammantha Daley, and Roslyn Glover credible and reliable as is discussed pertaining to each issue as is addressed below.

1. Ineffective assistance of counsel for failure to actively negotiate a plea offer and/or ensure that Applicant had the opportunity to properly reject the opportunity to enter a guilty plea.

By way of his Amendment and at the evidentiary hearing, Applicant alleged trial counsel was ineffective for failing to actively negotiate a plea offer and/or ensure that Applicant had the opportunity to properly reject the opportunity to enter a guilty plea.

While on the stand at the evidentiary hearing, Applicant identified and counsel entered a copy of the plea offer dated March 16, 2015, which reflected an offer to plead guilty to armed robbery for a sentence of ten to fifteen years. Applicant's Exhibit 1. PCR p. 17. Applicant testified that this offer was communicated to him during a roll call, and he discussed the offer with trial counsel. He recalled asking counsel to try to obtain a plea offer with a cap of ten years and/or a youthful offender sentence. PCR pp. 16, 33. Applicant did not recall counsel discussing any additional plea offers with him. He also recalled meeting with counsel the week before trial even though he did not want to proceed with trial. He testified that it was his understanding from this last meeting with counsel that trial was only option, he would be detained once it started, and he could be convicted on a lesser charge. PCR pp. 18-19.

When trial counsel took the stand, he recalled receiving and discussing a plea offer with Applicant. PCR pp. 48-49. He explained that it was just "like any other case" – "if you can't reach a plea, you can't take the offer and then you go to trial." PCR p. 49, lns. 5-7.

This Court finds that Applicant has failed to establish deficient performance or resulting prejudice. It is clear from the record before this Court that a plea offer was made by the State, and Applicant had the opportunity to discuss the plea offer with counsel. It is also clear that Applicant wanted to enter a plea, but counsel was unable to negotiate a plea, prior to trial, to the terms Applicant was willing to accept. Furthermore, this Court is persuaded by counsel's testimony that a plea may have been able to be entered on the day of trial, but Applicant's absence precluded the entry of a plea on the day of trial. PCR p. 59.

Based upon the record before this Court, it is evident that counsel attempted to negotiate a plea offer for Applicant and that Applicant's absence precluded the possibility of the entry of plea on the day of trial. As a result, this Court finds that counsel's performance was not deficient and that Applicant's inability to plead guilty was a direct result of his failure to appear on the day of his trial. Therefore, this claim must fail under both prongs of the *Strickland* analysis.

2. Ineffective assistance of counsel for failure to properly advise Applicant about being tried in his absence if he did not appear for trial. Ineffective assistance for failure to move for a continuance prior to jury selection and/or object to the trial in Applicant's absence.

By way of his Application and at the evidentiary hearing, Applicant alleged that trial counsel was ineffective for failing to properly advise Applicant about being tried in his absence if he did not appear for trial. Before proceeding with a trial *in absentia*, the trial court found that the State had made the requisite showing that Applicant had received proper notice and that trial would proceed in his absence. R. pp. 19-26. As was addressed at trial, this Court finds that it was not counsel's responsibility to ensure that Applicant attended his trial, and Applicant testified that he chose to not appear with full knowledge of his trial date. Even though Applicant could not recall a specific conversation with counsel about what would happen if he did not appear, the trial court found that Applicant had notice that he would be tried in his absence if he failed to appear. R. pp. 19, 26. The trial court did not impose a duty on trial counsel to ensure that Applicant was present, so this Court cannot find trial counsel deficient in his advice to Applicant. Therefore, Applicant's claim regarding counsel failing to advise him regarding a trial *in absentia* must fail under the first prong of the *Strickland* analysis.

Similarly, Applicant has alleged ineffective assistance for failure to move for a continuance prior to jury selection and/or object to the trial in Applicant's absence. This Court has considered the record of Applicant's trial in conjunction with the testimony offered at the evidentiary hearing. Even though counsel candidly admitted that he had not handled a trial *in absentia* prior and he was shocked when Applicant did not appear, the record reflects that counsel did move for a continuance and objected to the trial *in absentia*. R. pp. 17, 25-26, PCR p. 50. Therefore, this Court finds that Applicant has failed to establish deficiency and this claim must also fail under the first prong of the *Strickland* analysis.

3. Ineffective assistance of counsel for failure to offer meaningful representation during the sentencing phase of Applicant's trial. Ineffective assistance of counsel related to the hearing to open Applicant's sentence and for the handling of post trial motions.

By way of his Amendment, Applicant made the following allegations regarding trial counsel's performance at sentencing, the opening of his sentence and post-trial motions:

Ineffective assistance of counsel for failure to offer meaningful representation during the sentencing phase of Applicant's trial.

Ineffective assistance of counsel related to the hearing to open Applicant's sentence and for post trial motions, specifically, but not limited to:

- a. Failure to have knowledge of, prepare for and be present at the hearing opening Applicant's sentence. Additionally, failure to ensure that the representative that appeared on his behalf was properly prepared and advocating for Applicant.
- b. Ineffective assistance of counsel for failure to make an oral or written request and/or objection for additional time and/or for the trial court to hear Applicant's post trial motions.

- c. Ineffective assistance of counsel for failure to be properly prepared to provide information beneficial to Applicant or make arguments at the final motion hearing.

Upon review of the record, this Court finds that Applicant did not receive effective assistance during sentencing and the post-trial motion hearings and that but for counsel's ineffective assistance there is a reasonable probability the outcome of the proceeding would have been different. Additionally, this Court finds that Applicant has further demonstrated prejudice since even though sentencing does not concern the defendant's guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in *Strickland* prejudice because "any amount of [additional] jail time has Sixth Amendment significance." *Glover*, 531 U.S. at 203, 121 S.Ct. 696. Here, the length of Applicant's sentence speaks directly to the prejudice that resulted from counsel's ineffective assistance, along with a number of other factors addressed below.

On October 12, 2015, trial proceeded against Applicant *in absentia* before the Honorable R. Ferrell Cothran and a jury. Applicant was represented by Johnny Gardner, Esquire. The State was represented by Lauree Richardson, Assistant Solicitor, and Thomas G. Terrell, III, Assistant Solicitor. On October 13, 2015, the jury found Applicant guilty as indicted. The Honorable R. Ferrell Cothran issued and sealed Applicant's sentence.

On March 15, 2016, Applicant appeared in front of the Honorable Steven H. John at the Horry County Courthouse. Applicant was represented by Jarrett Bouchette, Esquire. The State was represented by Lauree Richardson, Esquire. At the beginning of the hearing, Ms. Richardson stated that Applicant was tried in his absence and his sentence was sealed by Judge Cothran. R. p. 211, lns. 2-9. She further stated: "We are

before you today to reveal that sealed sentence.” R. p. 211, lns. 8-9. Thereafter, Judge John asked if trial counsel was Mr. Gardner and the State responded that Mr. Gardner was in trial but a representative from his office was present. R. p. 211.

After Judge John unsealed and pronounced Applicant’s twenty-five year sentence, Mr. Bouchette spoke for the first time and stated that the defense had no motions. R. p. 212, ln. 1. In response, Judge John stated:

All right, sir. Well, I appreciate it but and that’s probably one of the reasons I was asking if Mr. Gardner was to be present. If you want to – want me to hold this in abeyance for a – until Mr. Gardner is available this particular week, you understand should have any objections to the sentence, you want the sentence modified in any way, if you want to ask the Court to change it in any way, you need to do that while this matter is now open. You have the ability to do so. The Supreme Court has said so in more than one case. But now is the time to do that.

R. p. 212, lns. 1-11. Mr. Bouchette responded that they had just been informed about the hearing that afternoon, and he requested that the matter be held in abeyance until Mr. Gardner could complete the current trial since he was not present at Applicant’s trial. R. p. 212, lns. 12-17. After the State informed the court that Mr. Gardner’s trial should conclude on Wednesday, Judge John determined that the matter would reconvene on Thursday morning. R. p. 212.

On March 17, 2016, the matter was reconvened in front of the Honorable Steven H. John at the Horry County Courthouse. R. p. 213. Applicant was presented by Johnny Gardner, Esquire. Respondent was represented by Lauree Richardson, Esquire.

At the beginning of the hearing, Judge John stated that he had opened the sealed sentence and had continued the matter since Mr. Gardner was “unavailable to make any motions.” R. p. 213, lns. 10-17. He also stated: “You understand that once the Court opens the sealed sentence, that is the time for the Defense if they have any issues as to the

prior matter to bring those to the Court's attention." R. p. 213, lns. 17-20. Mr. Gardner responded that he "would make our standard post trial motions" and he believed the court had the power to reconsider the sentence. R. pp. 23-24. He qualified his position by stating that he had been in the middle of another trial and had done a little research regarding the "power" of the court. R. p. 214, lns. 1-4. Judge John responded that despite some "logical inconsistencies with it" the Supreme Court had found that "whoever opens the sealed sentence has the authority to change the prior sentence." R. p. 214, lns. 5-9. Then, he invited Mr. Gardner to argue against the prior sentence. R. p. 214, lns. 9-11.

In response, Mr. Gardner argued that to the "best of his information" Applicant did not have a prior record, but he acknowledged that the current conviction was a "big one." R. p. 214, lns. 12-15. He also stated that he believed that the co-defendant's all got ten and "the ten-year mark is probably fair." R. p. 214, lns. 15-19. He added that Applicant was twenty, not married, no children and lives in Horry County. R. p. 214, lns. 21-22.

After being asked to make her arguments, Ms. Richardson stated that Mr. Gardner was correct about the co-defendant's sentences, and she took the opportunity to address the roles of each and summarize the facts presented at trial. R. p. 215-216. She argued that it was a "very, very serious crime" at a time when "a lot of clerks were getting killed" and the victim clerk was "very fearful" to testify at trial. R. p. 216, lns. 4-7. She concluded by arguing: **"The State would oppose any reduction in sentence just based upon the fact that Judge Cothran was the sentencing judge. He's the trial judge, he's the one that heard the facts in the case."** R. p. 216, lns. 7-10 (emphasis added).

Mr. Gardner asked for moment to confer with Applicant. He did not address the arguments made by the State but argued that Applicant's sentence was much higher because "he wasn't there." R. p. 216, lns. 15-22. He asked for the court to again consider a ten to fifteen year sentence. R. p. 216, lns. 22-24.

In his ruling declining to change the sentence or grant a new trial, Judge John first noted that he did not have the transcript to review and he was not the judge who listened to the testimony in the matter. R. p. 217. He stated that he was basing his ruling on the sentence for armed robbery and that it is classified as a violent and most serious offense. He also noted that he was taking into consideration the facts and circumstances relayed by the State. He concluded his ruling regarding Applicant's sentence by stating: "I respectfully decline to grant the request of the Defense to change the sentence of Judge Cothran." R. p. 217, lns. 17-18. He also ruled that he had not been presented with any matters sufficient to grant a request for a new trial. R. p. 217, lns. 19-25.

At the evidentiary hearing, Applicant acknowledged that he made a decision to not attend trial because he was afraid. PCR pp. 19, 33. He explained that he was subsequently arrested in Horry County, and he was taken to the county detention center. PCR p. 22. When asked to describe what happened on the morning of March 15, 2016, he responded:

March 15th, transportation came and arrived at the jail and transported me to the courthouse. I didn't know exactly what was going on because I wasn't told. I just figured it had something to do with the charges. Once I arrived here I was told a lawyer would meet with you in the back if they didn't make it to the jail. I went inside the courtroom and Johnny Gardner's partner, Mr. Bouchette, was present and I was given the 25 year sentence.

PCR p. 22, lns. 13-20. He also responded that he was unaware that Mr. Gardner was in trial, that he did not speak with Mr. Bouchette before the hearing, that he was not aware that Mr. Bouchette was going to be at the hearing on Mr. Gardner's behalf, and he had not discussed the making of motions or arguments with counsel prior to the hearing. PCR pp. 22-23. He testified that he did not get to speak with Mr. Gardner after the hearing and that they only spoke briefly as they were "in a rush" to get into the courtroom for the March 17th hearing. PCR pp. 23-24, 39.

Regarding the hearing on March 17, 2016, he explained that he would have wanted time with his attorney to discuss arguments to be made, people that could speak on his behalf and to be prepared to address the court himself. PCR pp. 24-26, 40. He indicated that letters had been obtained and witnesses were present to provide this Court with information that could have been presented in 2016. PCR p. 26. He also testified regarding the further information he would have wanted to share about himself. PCR p. 26-27. When asked about the break taken by counsel to confer with him, he recalled asking counsel about getting a sentence in line with his co-defendants. PCR p. 28.

Applicant also testified that it was never discussed with him why Judge Cothran was not presiding over the hearings, and he testified that he would have wanted Judge Cothran to be the judge to reconsider his sentence.¹ PCR p. 25. When he was asked about the State's argument that Judge John should not reduce his sentence simply because he was not Judge Cothran, he responded that he would have wanted Judge Cothran to be the one presiding over the hearing. PCR pp. 27-28.

¹ The Honorable R. Ferrell Cothran, Jr. was elected as a Circuit Judge in 2006 and is currently serving in that capacity.

Regarding the ruling of Judge John that acknowledged that he did not have a transcript nor was he the trial judge, he affirmed that he would have wanted a transcript to be obtained, and he again stated he would have wanted the trial judge to be the one to reconsider his sentence. PCR p. 28-29. He explained that he would have wanted to have the opportunity to explain to Judge Cothran why he did not show up for trial and taken ownership for that decision. PCR p. 29. He testified that he would have wanted the issue raised on appeal regarding the disparate sentences and/or a trial tax addressed with Judge Cothran, but it was never done. PCR pp. 29-31.

Following the testimony of Applicant, Sammantha Daley was called to the stand. PCR p. 42. Ms. Daley explained that she had been friends with Applicant since their freshman year in high school (2010), and he was currently her boyfriend. PCR p. 42. She also explained that she assisted PCR counsel in obtaining letters from individuals that would have been willing to speak and/or provide letters on Applicant's behalf in 2016. Applicant's Exhibit 2, PCR p. 42-43. She explained that she was in contact with Applicant from the detention center in 2016, and she would have been willing to come to his hearing, speak on his behalf, and/or gather letters if given notice such was needed. PCR p. 44. To conclude her testimony, she read her letter for the court. PCR pp. 44-45.

After Ms. Daley, Roslyn Glover, Applicant's mother, testified. PCR p. 45. She recalled attending the hearing held by Judge John on March 17, 2016. PCR p. 46. She testified that she did not have the opportunity to speak with Mr. Gardner prior to the hearing. PCR p. 46. She also testified that she was not asked to speak on her son's behalf, and she "absolutely" would have wanted to speak on his behalf. PCR p. 46. She identified

the letter that she wrote that was admitted as part of Applicant's Exhibit 2, and she read the letter for the court. PCR pp. 46-47.

As his final witness, Applicant called Johnny Gardner, Esquire, to the stand. PCR p. 47. Mr. Gardner testified that he had practiced law for nearly thirty years, with a focus on criminal defense work. PCR pp. 47-48. He recalled being appointed to represent Applicant. He addressed his preparation and last meeting with Applicant prior to his trial date. PCR p. 48-50. As discussed above, he addressed his shock when Applicant did not appear for trial, and how the trial proceeded in Applicant's absence. PCR pp. 50-51.

When asked to address sentencing, Mr. Gardner explained that he likely did not say anything during sentencing because he was probably "trying to not make the Judge mad or any madder." PCR p. 52, lns. 2-10. He recalled first hearing that Applicant was being held in the jail when he was at the courthouse in the middle of a trial. PCR p. 52, ln. 19-21. When asked about the comments made at the March 15th hearing regarding him being in trial, he responded:

Yeah, that makes sense. And it looks like the State treated it like administerial type perfunctory function. You know let's just get somebody to stand in and unseal this sentence and we'll move on to the next case, and that's sad, but it sounds like that's what happened. But then I hear that Judge John continued the case, presumably continued it, so I could finish the trial and then come be present for the – for whatever hearing that we were going to have.

PCR p. 53, lns. 4-11.

After being asked about having an opportunity to meet with Applicant prior to the March 17th hearing, Mr. Gardner explained that he was in the middle of a trial that was most likely substantial. PCR p. 53. He explained that if he would have taken time from the trial to meet with Applicant, his client from that trial could PCR him. PCR pp. 53-54. Also,

in balancing competing interests, he thought they would not have finality on the motions on March 17th when he made the decision to not meet with Applicant. PCR p. 54, lns. 3-

12. When asked what he thought was going to happen, he responded:

Well, I've tried some – usually it depends on the case and it depends on the judge, but you know in the old days, they told you you had to have everything done by Friday or jurisdiction would lapse. Well, that's not really true, you can – you can do it within so many days and we normally do is at the end of the trial we try to do our motions; or we say, Judge, can we reschedule or can we schedule the motions, I have some motions I'd like to make and that sequels [signals] to the Judge that you really have something and he may know already that you have something and just give you a chance to show your client or somebody else that you have something or why you're doing it. So what I anticipated, why would they bring the guy from the jail that I didn't even know was at the jail to schedule him for a hearing when I'm in the middle of trial and then say well we'll just wait until your trial is over and then we'll bring him back again. I, you know, was thinking that number one, I really did not think that a non-sentencing judge would have – would be doing the consideration to amend or whatever sentence, but I did read the transcript one of ya'll sent me and I think I agree with him at the time that they could do that. That's just trial tactics. If a judge says he's got the authority to do something and you think he's going to do it in your favor, you're going to agree with him no matter what, right? Yes, sir, Your Honor, I think you can reduce the sentence if you want to. Okay. So by then I thought for sure he was going to reduce it.

PCR p. 54, ln. 14 – p. 55, ln. 14.

Mr. Gardner testified that he could not imagine “any scenario that I wouldn't have ordered the transcript,” and he did not have notice or time to order the transcript. PCR pp. 55-56. He explained that without the transcript Judge John was “doing it blind,” and he should have said “look judge, we can't do anything until we get some transcripts or something.” PCR p. 58, lns. He also testified that he did not have sufficient notice or time to contact Applicant's friends or family to speak or get letters on his behalf since he was in the middle of another trial. PCR p. 56. When asked if he thought the hearing was a fair

opportunity for Applicant to have his sentence reconsidered, he responded: "Based upon the outcome, I'd have to say no." PCR p. 59, ln. 1-4.

As his direct examination continued, the following testimony was elicited:

Question: And in this scenario you described to us that you walked in and you kind of questioned Judge John, can you do this and he says he can. Did you ever anticipate that both Judge John and the state would consider the fact that wasn't the sentencing judge so therefore he wouldn't change the sentence; did you see that coming at all?

Answer: Not at all that day. Not at all. I never saw that coming.

Question: And is that a concern to you that you think you should have more thoroughly addressed or even addressed, I guess?

Answer: It needs to be addressed, and I've been thinking about it while I've been sitting here for the last hour and a half and if I was the Circuit Court or the Supreme Court, I would look at this very carefully, because I cannot envision a flat line rule where you say we don't ever want a non-trial judge to do the sentence or consider the post-trial motions because there can be a time when a trial judge is not available. **But if that's the case, we want it to be done properly. You can't just because you consider something, if it's not considered properly then it's not - it's not essentially being considered.** So if by your own admission you say I don't have a transcript; I don't know anything about this case, but I am ready to decide post-trial motions or I am ready to decide whether or not I should reduce the sentence then I don't think it's an effective hearing. And now I'll take responsibility for that. I can't blame the judge for that, he was just trying to - to move the case along and that's his job.

PCR p. 56, ln. 19- p. 57, ln. 20 (emphasis added).

Regarding the issue raised on appeal and the matter of a "trial tax," he acknowledged that he did not raise the issue in the record, and he agreed that he was not able to raise the issue to Judge Cothran since Judge John presided over the post trial motions. PCR P. 60. Specifically, as to a "trial tax" he explained: "...that's what happens. I mean every - every time I remember somebody getting sentenced at trial, with the

exception of one case it's always been more than they would have got on a guilty plea."

PCR p. 60, lns. 6-9.

On cross-examination, he explained that he was not present to object to Judge John unsealing the sentence, and he thought "he was well within his rights to unseal the sentence." PCR p. 67. But, he also explained a prior instance where a sentence had been unsealed, and then the post-trial motions were heard at a later time. PCR p. 67. When asked if he had a conversation with Mr. Bouchette about what preparation was needed for the first hearing, he responded: "Probably none. I may have said go on over there and you know – probably wasn't thinking anything was going to happen so there was nothing to be done except have somebody there for him." PCR p. 68, lns. 1-6. When asked about if it was beneficial that the matter was held in abeyance for him to appear, he responded: "Well, at the time it sounded like the right thing to do, but based on the outcome it really didn't change anything." PCR p. 68, lns. 7-11.

To conclude cross-examination of Mr. Gardner, the State asked a series of questions about what Judge John had to consider, and the following testimony was elicited:

Question: Now Judge John did not have the transcript and was not the judge who presided over the trial, so he didn't see the evidence that came out at trial?

Answer: Right.

Question: He did not hear the evidence that Mr. Glover was the ringleader of the robbery, or the evidence that he had instructed other codefendants to dispose of evidence or anything like that; he was completely blind, right?

Answer: You know I'm not going to agree to that – I understand that there was evidence in the record supporting what your – your question, but certainly that's not the position I took. So all the more reason, I wish the judge could have been there. He could have looked at these witnesses and he could have

decided who was – Judges are a little bit better at reading witnesses than jurors are and just because they are. But those witnesses were there. The typical arguments and hopefully I made them at the trial you know that they're getting something in exchange. So it would have been terrible for one of those witnesses to say that that witness was the ringleader. So you expect that; you expect them to blame it on the guy's that not there. But that's the trial. The jury spoke. I agree with the applicant's lawyer that I think the sole issue on this is the resentencing or – or the hearing for the resentencing.

Question: Okay.

PCR p. 69, ln. 12 – p. 70, ln. 10. On redirect, when asked about the State giving Judge John

a summary of their position or view of the evidence, he responded:

Well, I don't -- I don't remember that exactly, but I'm not going to dispute it. I did read the transcript the other day in preparation for this and that makes sense. They normally, I mean I would have expected them to do that. I think the point that I was – wanted to make if I may, is that this was a hearing unlike any other. I think Judge Burch got this right at the very beginning of this hearing. This is something new you know. We're not expecting this. They're going to be cases where a non-trial judge opens up a sentence and the trial judge is no longer there, and he do whatever he wants to do. You know I did a case one time in a different courtroom where the presiding judge was deceased and we had a new judge come in and issue a *nunc pro tunc* order. I'm not saying that's what we need to be doing here, but in the future we need to have a mechanism for if the trial judge is not there what can we do and then what we do we need to be prepared to do it, because having a hearing that nobody is prepared for is not having a hearing.

PCR p. 70, ln. 23 – p. 71, ln. 15. When asked about the State opposing a reduction in

sentence simply because Judge John was not the trial judge, he responded:

If I would have known that was there position, I would have said they're agreeing with me that we should have it continued; we should have the trial judge here. What they're saying is let's have the hearing, but don't change it because you weren't the trial judge that heard it. We don't want it any less than 20 or less or whatever they said, and the reason is because you're not the trial judge. So you may – and that fits with what I was saying. You may have the authority as a Circuit Court Judge to open up the sentence and hear motions, but if you're not prepared and at the same time if the other side is

arguing you can't change it because you weren't the trial judge, then you really have no discretion. So it puts that judge in a bad – in a bad place.

PCR p. 71, ln. 16 – p. 72, ln. 10. He further responded: “If a judge has no discretion then he can't exercise discretion. If the State says, Judge, you can't go less than 20 because you weren't the trial judge, then he has no discretion. **So you know if you can't do it because the State says you don't have the discretion, then we can't have the hearing, it wasn't proper.**” PCR p. 72, lns. 14-17 (emphasis added). He concluded by stating that the absence of a transcript also made it impossible for the hearing to be proper and that “nobody was prepared” and he would “take the hit for it.” PCR p. 72, lns. 19-23.

As a threshold matter, this Court agrees with Judge John's position that he had jurisdiction to open Applicant's sealed sentence and preside over post trial motions. *See State v. Smith*, 276 S.C. 494, 280 S.E.2d 200 (1981). Trial counsel also agreed with this position during his evidentiary hearing testimony. The primary issue here is not jurisdiction, but the inability of Judge John to be able to exercise discretion due to the admitted failure of counsel to be properly prepared and effectively advocate on behalf of Applicant.

In *State v. Smith*, Smith was similarly tried *in absentia*. In contrast, Smith's sentence was published by the **trial judge** and his post trial motions were heard on a later date. 276 S.C. at 496, 280 S.E.2d at 201. At that hearing, the trial judge determined that he no longer had jurisdiction to change the sentence. The South Carolina Supreme Court reversed and remanded for reconsideration of the motion to alter, amend or change the sentence. 276 S.C. at 498, 280 S.E.2d at 202. In so holding, the Court reasoned:

A sealed sentence does not become the judgment of the court until it is opened and read to the defendant. *Lytle v. Miller*, 157 S.C. 332, 154 S.E. 225 (1930).

Here the sentence was published to the appellant on April 29, 1980 and although the motions were not heard until much later, they were marked heard by the trial judge on that date. The motion was made within the term of court at which the Page 202 sentence became the judgment of the court, to the sentencing judge, and he had jurisdiction to alter, amend or modify. *State v. Best, supra*, 257 S.C. at 369, 186 S.E.2d 272; 24 C.J.S. Criminal Law 1587b; *State v. Cagle*, 241 N.C. 134, 84 S.E.2d 649, 653 (1954).

We hold the authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion. *State v. Cagle, supra*.

It is apparent here the sentencing judge did not exercise any discretion but based his ruling on an erroneous view of the law. It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly. We call to the attention of the bench and bar that the mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised. It should be stated on what basis the discretion was exercised. *Calloway v. Ford Motor Co.*, 281 N.C. 496, 189 S.E.2d 484 (1972); *State Highway Commission v. Hemphill*, 269 N.C. 535, 153 S.E.2d 22 (1967).

Smith, 276 S.C. at 498, 280 S.E.2d at 201-202.

When asked about Judge John's ruling in light of *Smith*, Mr. Gardner agreed that it appeared to him now that Judge John was not exercising discretion, but he did not pick up on it at the time. PCR pp. 57-58. Similarly to *Smith*, here, the State's argument to the court, along with counsel's failure to be properly prepared and advocate as discussed below, put Judge John in the "bad" situation described by trial counsel whereby he could not properly exercise discretion. PCR p. 71, ln. 16, - p. 72, ln. 10. This Court also agrees with the following summation made by trial counsel: "If a judge has no discretion then he can't exercise discretion. If the State says, Judge, you can't go less than 20 because you weren't the trial judge, then he has no discretion. So you know if you can't do it because the State says you don't have the discretion, then we can't have the hearing, **it wasn't proper.**" PCR p. 72, lns. 14-17 (emphasis added).

Despite having jurisdiction, Judge John was limited by counsel's ineffective assistance and Applicant was prejudiced as a result. This Court finds that it is well established that Applicant is entitled to effective assistance during his sentencing and post trial motion hearings. In *Lafler v. Cooper*, 566 U.S. 156, 164–65, 132 S. Ct. 1376, 1385–86, the Supreme Court of the United States held:

The Sixth Amendment requires effective assistance of counsel at critical stages of a criminal proceeding. Its protections are not designed simply to protect the trial, even though "counsel's absence [in these stages] may derogate from the accused's right to a fair trial." *United States v. Wade*, 388 U.S. 218, 226, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967). The constitutional guarantee applies to pretrial critical stages that are part of the whole course of a criminal proceeding, a proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice. This is consistent, too, with the rule that defendants have a right to effective assistance of counsel on appeal, even though that cannot in any way be characterized as part of the trial. See, e.g., *Halbert v. Michigan*, 545 U.S. 605, 125 S.Ct. 2582, 162 L.Ed.2d 552 (2005); *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). The precedents also establish that there exists a right to counsel during sentencing in both noncapital, see *Glover v. United States*, 531 U.S. 198, 203–204, 121 S.Ct. 696, 148 L.Ed.2d 604 (2001); *Mempa v. Rhay*, 389 U.S. 128, 88 S.Ct. 254, 19 L.Ed.2d 336 (1967), and capital cases, see *Wiggins v. Smith*, 539 U.S. 510, 538, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003). Even though sentencing does not concern the defendant's guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in *Strickland* prejudice because "any amount of [additional] jail time has Sixth Amendment significance." *Glover, supra*, at 203, 121 S.Ct. 696.

In the 1970's, the Supreme Court of South Carolina recognized the Sixth Amendment right to effective counsel at sentencing in *State v. McGuinn*, 268 S.C. 112, 232 S.E.2d 229 (1977) and in *Locklear v. State*, 273 S.C. 58, 254 S.E.2d 293 (1979). In *McGuinn*, the Court found that the exclusion of defendant's counsel during a conversation regarding sentencing amounted to the denial of his right to counsel at sentencing and remanded for a new sentencing hearing. 268 S.C. 112, 232 S.E.2d 229.

In *Locklear*, the Court addressed an off the record meeting that occurred while the jury was deliberating and reversed the PCR court's finding that the meeting did not disadvantage Locklear; therefore, no prejudice was demonstrated. 273 S.C. 58, 254 S.E.2d

293. In remanding for a resentencing hearing, the Court reasoned:

Because defense counsel was excluded from the meeting, and because the discussion was off the record, this Court has no way of knowing whether the rights of appellant were prejudiced. While it is unlikely that anything improper was said, it is the possibility of prejudice that we are concerned with.

Under the principles of *State v. McGuinn*, 268 S.C. 112, 232 S.E.2d 229 (1977), it is clear that appellant's sixth amendment right to counsel at sentencing was effectively denied him. Accordingly, we remand to the lower court for the purpose of resentencing. Any other circuit judge having jurisdiction in the trial circuits is authorized to impose the sentence.

Locklear, 273 S.C. 58, 59-60, 254 S.E.2d 292.

Again, this Court finds that it is well established that Applicant was entitled to effective assistance through sentencing and post-trial motion hearings, and this Court finds that Mr. Gardner's representation was not effective and Applicant was prejudiced as a result. As was held in *Glover*, even though sentencing does not concern the defendant's guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in *Strickland* prejudice because "any amount of [additional] jail time has Sixth Amendment significance." *Glover*, 531 U.S. at 203, 121 S.Ct. 696.

In *Strickland*, the Supreme Court of the United States fashioned the two-prong standard addressed above while considering if counsel had provided ineffective assistance during the sentencing phase of a capital murder trial. 466 U.S. 668. After addressing both the performance and prejudice components of the ineffectiveness inquiry, the Court concluded: "Respondent has made no showing that the justice of his sentence was rendered

unreliable by a breakdown in the adversary process cause by deficiencies in counsel's assistance. Respondent's sentencing proceeding was not fundamentally unfair." 466 U.S. at 700. Here, Mr. Gardner explained, "...having a hearing that nobody is prepared for is not having a hearing." PCR p. 71, lns. 14-15. Based upon the record and testimony before this Court, a finding must be made contrary to the finding in *Strickland* since here the sentencing proceedings and post trial motion hearings were fundamentally unfair.

As the record reflects and Mr. Gardner addressed, he did not speak at the sentencing hearing held in front of Judge Cothran. He explained that he planned to argue at post trial proceedings, when Applicant was present, for a lesser sentence. But, when those post trial proceedings commenced on March 15, 2016 hearing, Mr. Gardner was not present and did not prepare his associate to properly represent Applicant. It appeared that Judge John recognized the problematic situation when Mr. Bouchette stated that the defense had no motions, thus, he continued the matter. Unfortunately, the brief continuance did not cure the problem nor allow for meaningful consideration of Applicant's sentence and post trial motions.

As Mr. Gardner candidly admitted to this Court during his testimony, he was in the middle of another trial and did not have time to meet with Applicant, conduct research, prepare an argument, obtain the transcript, or contact friends or family members to speak on Applicant's behalf. As Mr. Gardner also admitted, he chose to go along with the hearing and not ask for more time because of Judge John's opening remarks at the hearing. He also explained his unfounded belief that if Judge John and the State wanted to go forward with the hearing in such an expeditious manner, there would be a benefit to Applicant, such as a reduction in sentence. Mr. Gardner honestly admitted that he did not provide effective

assistance, and this Court must agree with this conclusion. Mr. Gardner should have told the court he was not prepared and ask for sufficient time to obtain the transcript and properly represent Applicant on his post-trial motions. If this request was denied, the court's failure to exercise discretion could have been fully reviewed on appeal.

Additionally, Mr. Gardner was adamant that he never imagined that the State would argue against a reduction in sentence on the basis that Judge John was not the trial judge. Mr. Gardner addressed Judge John's ruling and concluded that discretion was not exercised. This Court finds that the record supports Mr. Gardner's testimony and a finding that Mr. Gardner's deficient performance created a "bad" situation whereby Judge John was not equipped to exercise proper discretion and Applicant was denied a fair hearing. As Mr. Gardner said – a hearing where no one is prepared is no hearing at all.

Via *Anders* Brief, appellate counsel argued that Judge John "abused his discretion in refusing to reconsider the twenty-five year sentence imposed by the trial judge when a co-defendant received a lesser sentence and the record fails to reflect an appropriate basis for the disparate sentence." In making this argument, the brief addresses that Applicant's co-defendants received ten-year sentences. Brief p. 4. In reliance upon *State v. Folin*, 353 S.C. 235, 257-258, 573 S.E.2d 812, 824 (Ct. App. 2002) (Holding that a sentencing judge commits an abuse of discretion in sentencing when the judge considers that a defendant exercised his right a jury trial.), *Castro v. State*, 417 S.C. 77, 789 S.E.2d 44, 47 (2016), *Davis v. State*, 336 S.C. 329, 520 S.E.2d 801 (1999) (Holding counsel was ineffective in failing to object when the trial judge indicated the reason he sentenced Davis more harshly than two similarly-situated offenders who, unlike Davis, had pled guilty because unlike Davis those offenders had admitted their guilt.), *State v. Hazel*, 317 S.C. 368, 453 S.E.2d

879 (1995) (Holding the trial judge abused his discretion when the judge considered the fact that Hazel did not plead guilty in declining to grant Hazel's request for sentencing under the Youthful Offender Act.), and *State v. Brouwer*, 346 S.C. 375, 388, 550 S.E.2d 915, 922 (Ct. App. 2001) (Remanding for a new sentencing hearing stating "Although the [trial judge] herein also stated it had never, and never would, 'punish someone for exercising their right to a jury trial,' we believe the mere disavowal of a wrongful intent cannot remove the taint inherent in the [trial judge's] commentary, especially since the record fails to reflect an otherwise appropriate basis for Appellant's disparate sentence."), the argument was made that the record "fails to reflect an otherwise appropriate basis for Appellant's disparate sentence." Brief pp. 5-6.

This Court has reviewed the record to include the *Anders* Brief in its entirety, along with the cases argued therein and submitted to this Court by Applicant's counsel. This Court is struck by the acknowledgement in the brief regarding Judge John's remarks that he was not trial judge nor did he have a transcript to review. This court finds that the appellate argument regarding a disparate sentence was raised via *Anders* Brief, which speaks directly to the strength of the issue on appeal. Relief was not granted on this issue, and this Court is concerned that it is a result of the record made by trial counsel. Counsel admitted that he did not raise the issue of the disparate sentences or a "trial tax" to the trial judge, and the trial judge (Judge Cothran) was the person who needed to hear and address the argument. He also admitted, as the brief notes, that Judge John did not have the opportunity to review the transcript to inform him of what occurred at trial regarding the testifying co-defendants nor did he properly address the issue with Judge John. It is no wonder that that issue failed on appeal based upon the record before the appellate court.

Here, Applicant's sentence exceeded his codefendant's sentence by fifteen years and the record is absent from this issue of disparate sentences due to a trial tax being properly raised before Judge Cothran or Judge John. Counsel conceded there is typically always a trial tax, but he did not properly raise the issue. PCR p. 60. Therefore, this Court finds similarly to *Davis* that counsel was ineffective for failing to properly raise this issue and ensure there was a record on which the appellate court could properly review whether an abuse of discretion occurred in sentencing Applicant to fifteen years more than his codefendants.

This Court has addressed the deficient performance provided by counsel in sentencing and the post-trial motions heard by Judge John. This Court has also addressed the prejudice that resulted but wants to be clear that Applicant has satisfied both prongs of the *Strickland* analysis. Applicant has shown through the record, witnesses, to include Ms. Daley and Ms. Glover, and the letters introduced as exhibits, that Mr. Gardner provided ineffective assistance when he failed to be properly prepared and object to the proceeding and/or ask for more time to be properly prepared. As is addressed above deficiency and prejudice are evident from the following list of factors, which is not all inclusive but a summary of the matters apparent to this Court: 1) Mr. Gardner did not speak during the sentencing hearing with Judge Cothran; 2) Mr. Gardner lacked prior notice and was in the middle of trial during the March 15, 2016 hearing; 3) Mr. Gardner did not meet with Applicant to prepare or discuss what was going to occur prior to the sentence being unsealed or post trial motion hearing; 4) Mr. Gardner sent a representative that was not prepared to advocate properly for Applicant; 5) Mr. Gardner appeared at the March 17, 2016 hearing without preparing Applicant to speak, without a transcript, and without

character witnesses or letters, and he failed to ask for more time to be properly prepared; 6) Mr. Gardner did not raise a concern with the trial judge not presiding over the hearing or the limits being placed on the court's ability to exercise discretion; 8) Mr. Gardner did not respond to the State's argument that the sentence should not be reduced simply because Judge John was not the trial judge; 9) Mr. Gardner did not respond to the State's summary of the evidence with evidence favorable to Applicant; and 7) Mr. Gardner did not properly preserve the issue of a disparate sentence due to a trial tax nor did he raise the issue to the trial judge. This Court respects the candid testimony and admissions made by Mr. Gardner and has to agree with him that Applicant was denied his right to effective assistance during the sentencing and post-trial phases of Applicant's criminal case.

South Carolina Code Section 17-27-80 provides: "If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to re-arraignment, retrial, custody, bail, discharge, correction of sentence or other matters that may be necessary and proper." Here, this Court finds that the proper relief is a new sentencing hearing, which will cure the errors committed by counsel in regards to Applicant's sentence and post trial motions. In fashioning this specific relief, this Court takes guidance from this being the form of relief granted by South Carolina appellate courts when matters related to sentencing have been raised on direct appeal and when issues of ineffective assistance in sentencing have been addressed on appeal. *See State v. Smith*, 276 S.C. 494, 280 S.E.2d 200 (1981), *State v. Hazel*, 317 S.C. 368, 453 S.E.2d 879 (1995), *State v. Brouwer*, 550 S.C. 375, 550 S.E.2d 915 (Ct. App. 2001), *Castro v. State*, 417 S.C. 77, 789 S.E.2d 44

(2016), *Locklear v. Harvey*, 273 S.C. 58, 254 S.E.2d 293 (1979), *State v. McGuinn*, 268 S.C. 112, 232 S.E.2d 229 (1977).

CONCLUSION

As detailed above, this Court find that Applicant has met his burden of proof as to his specific allegation of ineffective assistance of counsel, but Applicant has failed to meet his burden of proof as to all other allegations of ineffective assistance of counsel. This Court also finds that no further issues were raised that have not been ruled upon above.

Therefore, this Court finds that the Application for Post Conviction Relief is hereby granted, as detailed above, that Applicant's conviction is not vacated, but he is granted a new sentencing hearing. If possible, this Court finds that this hearing shall be conducted by the trial judge. If the trial judge cannot preside, the hearing should be heard by any other circuit court judge with proper jurisdiction. This Court further orders that Applicant shall be given proper notice and time to prepare with counsel of his choosing or be appointed counsel if qualifications are met prior to this hearing.

IT IS THEREFORE ORDERED:

1. That Applicant has met his burden of proof as to his specific allegation of ineffective assistance of counsel as detailed above, but has failed to meet his burden of proof as to all other allegations of ineffective assistance of counsel as detailed above;
2. That the Application for Post Conviction Relief be granted, Applicant's conviction is not vacated but he is granted a new sentencing hearing as detailed above.

AND IT IS SO ORDRED this ____ day of _____, 2021.

Honorable Paul M. Burch
Presiding Judge, Fifteenth Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Rasheed Glover, 367438,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2018-CP-26-02728

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the U.S. mail this 1st day of July 2021, a copy of a Motion Pursuant to Rule 59 (a) & (e), SCRCF, with postage prepaid and the return address clearly shown on said envelope to the Office of the Attorney General at:

Office of the Attorney General
ATT: William Ray, Assistant AG
PO Box 11549
Columbia, SC 29211


Tricia A. Blanchette
Attorney at Law
PO Box 2147
Leesville, SC 29070

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CLERK OF COURT
HORR COUNTY, SC

FILED
HORR COUNTY

July 1, 2021

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Rasheed Glover, SCDC No. 367438

Applicant,

v.

State of South Carolina

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

) Case No. 2018-CP-26-02728

) **ORDER DENYING APPLICANT'S**
) **MOTION PURSUANT TO RULE 59(a)**
) **and (e), SCRCP**

This matter comes before this Court by way of Applicant's "Motion Pursuant to Rule 59(a) & (e), SCRCP," asking this Court to alter or amend its final order of dismissal denying Applicant's application for post-conviction relief.

Applicant is presently confined in the South Carolina Department of Corrections. He was indicted for armed robbery (2018-GS-26-01237) by the Horry County Grand Jury at its March 2015 term. Applicant was represented by Attorney Johnny Gardner and Assistant Solicitors Lauree Richardson and Thomas G. Terrell, III, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On October 12, 2015, a jury trial proceeded against Applicant *in absentia* before the Honorable R. Ferrell Cothran. The jury found Applicant guilty, as indicted, on October 13, 2015. Judge Cothran issued a bench warrant for Applicant's arrest, prepared a sentence, and sealed it, pending Applicant's arrest and subsequent appearance.

On March 15, 2016, Applicant appeared before the Honorable Steven H. John, who unsealed, read, and imposed a sentence of twenty-five years' imprisonment. Applicant, through counsel, moved for a new trial and a motion for reconsideration of his sentence. Judge John denied both motions on March 17, 2016.

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HORRY COUNTY, SC

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Applicant filed a timely notice of appeal and the appeal was perfected by Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who filed an *Anders* brief and petition to be relieved as counsel. In his *Anders* brief, Applicant raised the following issue:¹

1. Did the judge who unsealed and pronounced sentence following a trial in the Appellant's absence abuse his discretion in refusing to reconsider the twenty five year sentence imposed by the trial judge when a co-defendant received a lesser sentence and the record fails to reflect an appropriate basis for the disparate sentence?

Applicant then filed his own *pro se* brief. The South Carolina Court of Appeals affirmed Applicant's conviction. *State v. Glover*, Op. No 2017-UP-210 (S.C. Ct. App., Filed May 17, 2017). The remittitur was sent on June 2, 2017.

Applicant then submitted an application for post-conviction relief filed May 2, 2018. Respondent, the State of South Carolina, made its return on August 2, 2018, and moved to dismiss the allegations. Applicant subsequently amended the application on February 24, 2020, to include the following five specific allegations of ineffective assistance of counsel:

1. Ineffective assistance of counsel for failure to actively negotiate a plea offer and/or ensure that Applicant had the opportunity to properly reject the opportunity to enter a guilty plea.
2. Ineffective assistance of counsel for failure to properly advise Applicant about being tried in his absence if he did not appear for trial.
3. Ineffective assistance of counsel for failure to move for a continuance prior to jury selection and/or object to the trial in Applicant's absence.
4. Ineffective assistance of counsel for failure to offer meaningful representation during the sentencing phase of Applicant's trial.
5. Ineffective assistance of counsel related to the hearing to open Applicant's sentence and for post trial motions, specifically, but not limited to:
 - a. Failure to have knowledge of, prepare for and be present at the hearing opening Applicant's sentence. Additionally, failure to ensure that the representative that appeared on his behalf was properly prepared and advocating for Applicant.

¹ *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967).

- b. Ineffective assistance of counsel for failure to make an oral or written request and/or objection for additional time and/or for the trial court to hear Applicant's post trial motions.
- c. Ineffective assistance of counsel for failure to be properly prepared to provide information beneficial to Applicant or make arguments at the final motion hearing.

An evidentiary hearing into this matter was held on Wednesday, March 31, 2021, with the parties appearing by WebEx due to the COVID-19 pandemic. Applicant appeared virtually from Lee Correctional Institution and was represented by Attorney Tricia Blanchette. Assistant Attorney General William H. Ray represented Respondent. Applicant testified, along with his mother, his girlfriend, and his trial counsel, Attorney Johnny Gardner.

Following the evidentiary hearing, the Court issued an Order of Dismissal signed May 7, 2021 and filed May 11, 2021, provisionally denying and dismissing this action with prejudice. Applicant received notice of this order on June 23, 2021 and filed his motion to alter or amend pursuant to Rule 59(a) and (e), SCRPC on July 1, 2021. Respondent made its return to the motion on August 19, 2021.

Applicant's motion takes issue with the Court's finding that Applicant was not prejudiced by counsel's performance. Applicant also takes issue with the weight and significance the Court afforded to certain pieces of testimony, including the evidence presented in mitigation to show what could have been presented by counsel, the admissions of counsel that he should have handled the case differently, and Applicant's own testimony that things should have been done differently. Finally, Applicant's motion requests that the Court reconsider its original denial of relief and instead adopt his own proposed order granting him a new trial. Respondent's responsive pleading argues that the Court properly considered the matters before it, weighed the evidence appropriately, and made the necessary findings in response to the allegations. Respondent also asserts that Applicant's disagreement with the finding that Applicant was not prejudiced by

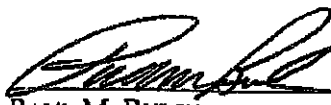
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counsel's performance would be better addressed on appeal, rather than a Rule 59(e), SCRCP, motion.

This Court finds its final order of dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. §17-27-80 (1976) and Rule 52(a), SCRCP. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds there is no basis for altering or amending its prior ruling.² Therefore, this Court hereby denies Applicant's motion in its entirety, and affirms the previous final order of dismissal.

This Court notes if Applicant desires to secure appellate review of this order and the final order of dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Applicant is directed to Rules 203, 206, 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND IT IS SO ORDERED this 30th day of August, 2021.



PAUL M. BURCH -
Presiding Judge
Fifteenth Judicial Circuit

 , South Carolina

² The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. *See* Rule 59(f), SCRCP.