

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge

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S.C. Supreme Court

THE STATE,

Petitioner,

vs.

WILLIAM COAXUM, SR.,

Respondent.

APPENDIX

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R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM COAXUM, SR.,

APPELLANT

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APP'X 1

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1 THE COURT: Do you understand the
2 charges against you?

3 DEFENDANT: Yes, sir, I understand
4 the charges.

5 THE COURT: Okay. That's fine.
6 Thank you. Are you ready to go to trial?

7 DEFENDANT: Yes, sir.

8 THE COURT: Thank you, sir.
9 Let's bring up our jury panel.

10 (JURY PANEL ENTERS COURTROOM)

11 THE COURT: Thank you very much,
12 Ladies and Gentlemen. Thank you for your
13 patience. There were some preliminary matters
14 that I had to take up before I could bring you
15 upstairs. I am well aware that it is past 12:00
16 and we're not going to -- I will try not to keep
17 you much longer. The panel we select then will
18 be adjourning for lunch once we have done. I
19 appreciate your being considerate of the process
20 and I am sorry for the imposition to you.

21 The first dispute that we have with
22 which we need your assistance is a dispute that
23 is captioned the State of South Carolina, who is
24 the party making the claim, and that will be
25 true of any criminal disputes that we have this

1 week. The State is the party that makes a claim
2 against a person. In this case the State has
3 made a claim against, two claims really, Mr.
4 William Coaxum.

5 Mr. Coaxum is seated at the table to my
6 left. Mr. Coaxum, good afternoon. I would ask
7 you to please stand and face the jury panel.
8 This is Mr. William Coaxum, Sr. He is standing
9 with his lawyer, Mr. Butler. Thank you, you may
10 take your seat, sir.

11 Are there any members of the jury panel
12 related blood or marriage, socially or casually
13 connected with Mr. Coaxum, or that have any
14 business dealings, any connection whatsoever?
15 If so, please stand. (No response). There are
16 none.

17 Mr. Coaxum is, as I mentioned,
18 represented by Mr. Butler. Mr. Butler, if you
19 would, identify yourself, please, and your law
20 firm.

21 MR. BUTLER: Beattie Butler with the
22 Public Defender's Office.

23 THE COURT: Thank you, sir. Are
24 there any members of the jury panel related by
25 blood or marriage, have any business dealings

1 with, socially or casually acquainted with, ever
2 been represented by Mr. Butler? If so, please
3 stand. (No response). There are none.

4 Are there any members of the jury panel
5 who are related blood or marriage, socially or
6 casually connected with the -- or ever been
7 represented by Mr. Ashley Pennington, who is the
8 Circuit Public Defender for the Ninth Circuit?
9 (No response). Thank you. There are none.

10 Are there any members of the jury panel
11 related by blood or marriage, have any business
12 dealings with, socially or casually acquainted
13 with anyone employed with the Public Defender's
14 Office. They have offices -- the circuit has
15 offices in Charleston and in Moncks Corner in
16 Berkeley County. If so, please stand. (No
17 response). Thank you, there appear to be none.

18 The State is represented by Mr. Voight.
19 If you will, introduce yourself and anyone who
20 will be assisting you, please.

21 MR. VOIGHT: Thank you, Your Honor.
22 My name is Greg Voight, I am an assistant
23 solicitor here in the Ninth Circuit, Charleston
24 County. Assisting me today is Rutledge Durant,
25 who is also an assistant solicitor. You may see

1 my investigator, Jim NeSmith, in and out of the
2 courtroom as well.

3 THE COURT: Thank you, sir. Are
4 there any members of the jury panel who are
5 related by blood or marriage, have any business
6 dealings with, socially or casually acquainted
7 with Mr. Voight, Mr. Durant or Mr. NeSmith; ever
8 been represented by Mr. Voight or Mr. Durant; if
9 so, please stand. (No response). Thank you.
10 There are none.

11 Are there any members of the jury panel
12 who are related by blood or marriage, have any
13 business dealings with, socially or casually
14 acquainted with, ever been represented by the
15 Solicitor for the Ninth Circuit, Scarlett
16 Wilson? If so, please stand. (No response).
17 There are none.

18 Are there any members of the jury panel
19 related by blood or marriage, have any business
20 dealings with, socially or casually acquainted
21 with anyone employed with the Solicitor's
22 offices in -- she has offices in Charleston
23 County and Berkeley County, Moncks Corner. If
24 so, please stand.

25 JUROR NUMBER 135: Juror Number

1 135. I am a former employee of the Charleston
2 County Sheriff's Office, 2000 to 2006.

3 THE COURT: You have since retired
4 from that position?

5 JUROR NUMBER 135: Yes, sir.

6 THE COURT: Would that affect or
7 influence you in this dispute, sir?

8 JUROR NUMBER 135: No, sir.

9 THE COURT: Will you base your
10 decision on the evidence and the law and will
11 that decision be fair to the State and to Mr.
12 Coaxum?

13 JUROR NUMBER 135: Yes, sir, it
14 would.

15 THE COURT: And your number, again?

16 JUROR NUMBER 135: One-three-five.

17 THE COURT: Thank you so much, sir.
18 Yes?

19 JUROR NUMBER 133: My sister works
20 for the Solicitor's office here in Charleston.

21 THE COURT: She works in this office
22 here?

23 JUROR NUMBER 133: Yes.

24 THE COURT: How frequently do you see
25 your sister?

1 JUROR NUMBER 133: Pretty

2 regularly.

3 THE COURT: Pretty regularly?

4 JUROR NUMBER 133: Yes.

5 THE COURT: Your number?

6 JUROR NUMBER 133: One-thirty-three.

7 THE COURT: 133?

8 JUROR NUMBER 133: (Affirmative
9 nod).

10 THE COURT: I am going to excuse 133
11 out of an abundance of caution. You are free to
12 leave. Call the number after 6:00 tonight,
13 please.

14 (JUROR NUMBER 133 EXCUSED)

15 THE COURT: Are there others? (No
16 response). Thank you, there appear to be none.

17 I am going to identify a number of
18 individuals, Ladies and Gentlemen. If you are
19 related by blood or marriage to any of these
20 persons, have any business dealings with them or
21 if you're socially or casually acquainted with
22 any of them, we need for you to please stand and
23 share that information:

24 Tamera Brown,

25 Keith Jennings,

1 Essile Smith,
2 Shawn Patrick with the North
3 Charleston Police Department
4 Scott Wyant with the North
5 Charleston Police Department;
6 Sean Bauer, and
7 Sergeant Al Hallman, and
8 Angie Bunkar, and
9 Jason Gamba, and
10 Sergeant David Singletary, and
11 Officer Andy Glover, and
12 Officer Schmidt, and
13 Sergeant Keys; and
14 Officer Steinburner and
15 Officer Daniel Pritchard, and
16 Officer Amon, and
17 Officer Javon Vasquez, and
18 Officer Thomas Wallace and
19 Officer Forsythe -- all of the
20 North Charleston Police Department; and
21 Marquine Benbow,
22 Brian Davis,
23 Charles Jones.

24 Any of those persons?

25 JUROR NUMBER 135: I did when I was

1 employed with the Charleston County Sheriff's
2 Office.

3 THE COURT: But not ---

4 JUROR NUMBER 135: Sergeant Richard
5 Keys.

6 THE COURT: The fact that you had
7 that acquaintance with Sergeant Keys, would that
8 influence or affect you in this matter?

9 JUROR NUMBER 135: Sir, that
10 possibly could.

11 THE COURT: Very well, your number
12 again?

13 JUROR NUMBER 135: One-three-five.

14 THE COURT: Number 135 will be
15 excused from participating in this dispute.
16 Thank you, sir. If you will, call the number
17 after 6:00 tonight.

18 JUROR NUMBER 135: Sure.

19 THE COURT: Thank you.. Have a good
20 day.

21 (JUROR NUMBER 135 EXCUSED)

22 THE COURT: Are there others? (No
23 response). Thank you. There appear to be none.

24 The dispute, Ladies and Gentlemen, is
25 basically framed or identified by these

1 documents that I hold in my hand. They are what
2 they appear to be, appear to you to be. They
3 are pieces of papers. They are called
4 indictments. "Indictment" is a term that merely
5 is used to describe how the parties come to
6 court. In other words, it is the instrument
7 that brings the parties here. In other words,
8 it contains the allegations or accusations by
9 the State against Mr. Coaxum.

10 I am going to share with you what has
11 been alleged, a synopsis of what has been
12 alleged. Please understand that what I am
13 sharing with you is not evidence. These
14 documents will not accompany you to the jury
15 room. They are not evidence. They are merely
16 allegations, but I need to ask you some
17 questions.

18 It is alleged in these documents that
19 Mr. Coaxum did, on November 27th, 2007, possess a
20 firearm, displayed what appeared to be a firearm
21 or displayed a knife during the commission of a
22 violent crime; the crime alleged is armed
23 robbery. It's alleged that he -- it is armed
24 robbery and that he allegedly robbed, while
25 armed with a deadly weapon, Tamera Brown.

1 It is also alleged that on November 28th
2 that he allegedly committed the offense of armed
3 robbery by robbing, taking monies or goods of
4 Essile Smith while he was armed with a deadly
5 weapon and that in committing that crimes he did
6 have in his possession a firearm or knife, which
7 would be a violation of the possession charges,
8 the charge of possession a firearm during the
9 commission of a violent crime.

10 He is charged with two occasions of
11 that; that is the alleged incident on the 27th
12 and the alleged incident on the 28th.

13 I share that with you, first of all,
14 to find out if any member of the panel has read
15 anything, heard anything, if you had any prior
16 knowledge of these allegations or these
17 accusations. If so, please stand. (No
18 response). Thank you, there appear to be none.

19 Is there anything about the nature of
20 this offense, that is someone being accused of
21 armed robbery, being armed with a firearm during
22 the commission of an armed robbery, that because
23 of some philosophy that you have, some past
24 experience that you have, some strong philosophy
25 that you have, something that may have happened

1 to you or to a close personal friend or family
2 member that would affect, or in any way
3 influence, your ability to fairly and
4 impartially consider the evidence, decide what
5 you believe to be the truth and then once
6 deciding that to take the law as I give it to
7 you and apply the law fairly and impartially
8 such that your decision would be fair to the
9 State and would be fair to Mr. Coaxum?

10 If you feel that there is anything that has
11 occurred or you have any feelings that you have
12 that would affect that, please stand. (No
13 response). Thank you, there appear to be none.

14 Are there any members of the jury
15 panel, members of your immediate family, that
16 are now or formerly employed in the occupation
17 of law enforcement? If so, please stand. Yes,
18 sir?

19 JUROR NUMBER 330: My wife in
20 '94, partially, and '96 was a Summerville police
21 officer.

22 THE COURT: Would that affect or
23 influence you in this matter, sir?

24 JUROR NUMBER 330: No.

25 THE COURT: So you would decide the

1 case based on the evidence and the law, and
2 would that decision be fair to both sides?

3 JUROR NUMBER 330: Yes.

4 THE COURT: Your name and number,
5 please?

6 JUROR NUMBER 330: John Thompson,
7 330.

8 THE COURT: Thank you, Mr. Thompson.
9 Yes, sir?

10 JUROR NUMBER 325: I am a retired
11 police officer from New Jersey.

12 THE COURT: Would that affect or
13 influence you in any way in this dispute, sir?

14 JUROR NUMBER 325: No, sir.

15 THE COURT: Would you decide the
16 evidence based on the evidence and the law and
17 would that decision be fair to both the State
18 and to Mr. Coaxum?

19 JUROR NUMBER 325: I would.

20 THE COURT: Thank you, sir, you may
21 be seated.

22 COURT REPORTER: Name and number?

23 THE COURT: Your name and number?

24 JUROR NUMBER 325: I'm sorry, 325, Tom
25 Rogers.

1 THE COURT: Yes, ma'am?

2 JUROR NUMBER 198: Patricia Nelson,
3 Number 198. I have a cousin who is a police
4 officer.

5 THE COURT: Where is he?

6 JUROR NUMBER 198: Pardon?

7 THE COURT: What agency does he work
8 for?

9 JUROR NUMBER 198: North
10 Charleston.

11 THE COURT: North Charleston?

12 JUROR NUMBER 198: (Affirmative
13 nod), it's a she.

14 THE COURT: That is a lady?

15 JUROR NUMBER 198: (Affirmative
16 nod).

17 THE COURT: Would that affect or
18 influence you in this matter?

19 JUROR NUMBER 198: No, sir.

20 THE COURT: And I've not named her as
21 any of the persons working for North Charleston,
22 is that correct?

23 JUROR NUMBER 198: No, sir.

24 THE COURT: Would you decide the case
25 based on the evidence and the law and would that

1 decision be fair to both Mr. Coaxum and to the
2 State?

3 JUROR NUMBER 198: Yes.

4 THE COURT: Your number, again?

5 JUROR NUMBER 198: One-ninety-
6 eight.

7 THE COURT: Thank you, ma'am. Are
8 there any others? (No response). There appear
9 to be none.

10 Are there any members of the jury panel
11 who are members of or contribute to any civic
12 organizations or groups dealing with matters
13 concerning criminal actions or criminal acts;
14 such as:

15 Mothers Against Drunk Driving, known
16 as MADD,

17 People Against Rape, known as PAR,

18 Citizens Advocating Decency and Return
19 to Ethics, known as CADRE,

20 Citizens Against Violent Crimes, known
21 as CAVC, or any similar organizations.

22 If so, please stand. (No response).

23 Thank you, there appear to be none.

24 Are there any members of the jury panel
25 who have either been accused of committing a

1 crime or been a victim of a crime or have
2 testified for anyone or been involved in cases
3 against anyone, either a family member or a
4 close personal friend, who was accused of
5 committing a criminal offense or who has been
6 the victim of an alleged criminal offense? If
7 so, please stand. (Number of jurors stand).
8 I will ask you'all to come forward, the
9 attorneys may approach as well.

10 SIDEBAR:

11 THE COURT: I will let you stand
12 here.

13 COURT REPORTER: Please tell me
14 your name and number.

15 JUROR NUMBER 39: I am 49, Rita
16 Carroll.

17 THE COURT: Ms. Carroll, what is
18 your situation?

19 JUROR NUMBER 39: I was a material
20 witness in a case against a defendant in 2007.

21 THE COURT: Was that here?

22 JUROR NUMBER 39: It was in
23 magistrate's court in North Charleston.

24 THE COURT: Magistrate's court.
25 Okay.

1 JUROR NUMBER 39: It was pretty --
2 a lot of perjury and it involved -- it was a
3 pretty nasty situation and I was called by the
4 plaintiff as a witness; blatant perjury, the
5 whole thing was so awful. I wouldn't feel good
6 about ---

7 THE COURT: So you feel you'd be
8 tainted by that trial?

9 JUROR NUMBER 49: Yeah, I do.

10 THE COURT: Okay. Your number
11 again?

12 JUROR NUMBER 49: Forty-nine.

13 (SIDEBAR CONCLUDED)

14 THE COURT: Number 49 will be excused
15 from participation in this dispute. Please call
16 the number after 6:00 tonight.

17 (JUROR NUMBER 49 EXCUSED)

18 THE COURT: Yes, ma'am?

19 SIDEBAR:

20 THE COURT: Your name and
21 number, please?

22 JUROR NUMBER 14: Illa Barnes,
23 Number 14.

24 THE COURT: Okay, Ms. Barnes.

25 JUROR NUMBER 14: My son has/was

1 charged and indicated for felony child abuse
2 when he was a teenager.

3 THE COURT: Where was that
4 indictment?

5 JUROR NUMBER 14: That was in
6 Randolph County, North Carolina.

7 THE COURT: Has the matter been
8 concluded?

9 JUROR NUMBER 14: Oh, yeah, that
10 was years ago. He's thirty years old now.

11 THE COURT: Would that affect or
12 influence you in any way ---

13 JUROR NUMBER 14: I don't think
14 so.

15 THE COURT: Would you be able to
16 make a commitment to both sides that you'd base
17 your decision on the evidence and the law and
18 that it would be fair to both sides?

19 JUROR NUMBER 14: Absolutely.

20 THE COURT: Thank you, ma'am.
21 Your number, again?

22 JUROR NUMBER 14: Fourteen.

23 (SIDEBAR CONCLUDED)

24 THE COURT: Number 14 will remain.
25 Yes, ma'am, your name and number, please.

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SIDEBAR:

JUROR NUMBER 198: Patricia
Nelson, Number 198.

THE COURT: What happened?

JUROR NUMBER 198: I had
someone break into my home, twice.

THE COURT: You filed a
complaint against them?

JUROR NUMBER 198: I made a
police report.

THE COURT: Have those persons
been apprehended and prosecuted?

JUROR NUMBER 198: Yes, sir.

THE COURT: Would that affect
you in any way in this dispute?

JUROR NUMBER 198: It could.
Probably.

THE COURT: Your number again?

JUROR NUMBER 198: One-ninety-
eight, Patricia Nelson.

(SIDEBAR CONCLUDED)

THE COURT: Number 198 will be
excused from participation in this dispute. If
you will, call the number after 6:00 tonight.

(JUROR NUMBER 198 EXCUSED)

1 THE COURT: Any others?

2 SIDEBAR:

3 THE COURT: Your name and
4 number?

5 JUROR NUMBER 328: Julie
6 Smith, 328.

7 THE COURT: Yes, ma'am?

8 JUROR NUMBER 328: I was a
9 character witness for someone in a situation.

10 THE COURT: Was that handled
11 here in Charleston?

12 JUROR NUMBER 328: (Affirma-
13 tive nod), I was for the defense.

14 THE COURT: They were
15 prosecuted?

16 JUROR NUMBER 328: (Affirmative
17 nod).

18 THE COURT: Were you testifying
19 for the prosecution?

20 JUROR NUMBER: (No verbal
21 response).

22 THE COURT: Was it a prosecutor
23 from this office?

24 JUROR NUMBER 328: Yes, I worked
25 with them.

1 THE COURT: Would that affect
2 you in any way in this dispute?

3 JUROR NUMBER 328: I don't believe
4 so.

5 THE COURT: Can you make a
6 promise that you would not be influenced by that
7 in analyzing the evidence and in applying the
8 law as I ---

9 JUROR NUMBER 328: Yes, I can.

10 THE COURT: And your decision
11 would then be based on the evidence and the law
12 and be fair to both sides?

13 JUROR NUMBER 328: Right.

14 THE COURT: Thank you. Your
15 name and number again?

16 JUROR NUMBER 328: Three-
17 twenty-eight.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Juror Number 328 will
20 remain. Thank you.

21 SIDEBAR:

22 THE COURT: Your name and
23 number?

24 JUROR NUMBER 157: Jekera
25 Kornickey, Number 157. I don't think that I

1 should sit here because my boyfriend was robbed
2 and they never found out ---

3 THE COURT: And that would
4 affect you?

5 JUROR NUMBER 157: I think so,
6 (affirmative nod).

7 THE COURT: Your name and
8 number, again?

9 JUROR NUMBER 157: One-fifty-
10 seven, Jekera Kornickey.

11 (SIDEBAR CONCLUDED)

12 THE COURT: Number 157 will be
13 excused from participating in this dispute.
14 Thank you. Call the number after 6:00.

15 (JUROR NUMBER 157 EXCUSED)

16 THE COURT: Are there others?

17 SIDEBAR:

18 THE COURT: Yes, ma'am, your
19 name and number?

20 JUROR NUMBER 247: I've been
21 accused. I'm in PTI.

22 THE COURT: You've been accused?

23 JUROR NUMBER 247: Yeah.

24 (Affirmative nod).

25 THE COURT: That matter is

1 pending right now?

2 JUROR NUMBER 247: I'm in

3 PTI.

4 THE COURT: Is that being
5 handled by this Solicitor's office?

6 JUROR NUMBER 247: Yeah.

7 THE COURT: I think out of an
8 abundance of caution I am going to excuse him
9 because of the PTI situation. I will keep you
10 out of that.

11 JUROR NUMBER 247: Okay.

12 THE COURT: Your number, please.

13 JUROR NUMBER 247: Two-forty-
14 seven.

15 (SIDEBAR CONCLUDED)

16 THE COURT: Number 247 will be
17 excused from participation in this dispute.

18 (JUROR NUMBER 247 EXCUSED)

19 THE COURT: Please call the number
20 after 6:00 tonight.

21 SIDEBAR:

22 COURT REPORTER: Your name and
23 number?

24 JUROR NUMBER 112: Allison
25 Gregory, 112.

1 THE COURT: Yes, ma'am?

2 JUROR NUMBER 112: About ten

3 years ago my sister was robbed and ---

4 THE COURT: Would you be
5 influenced by that in this case?

6 JUROR NUMBER 112: No, sir.

7 THE COURT: Would you base your
8 decision on the evidence and the law and would
9 it be fair to both the State and Mr. Coaxum?

10 JUROR NUMBER 112: Yes, sir.

11 THE COURT: Thank you, ma'am.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Number 112 will remain.

14 SIDEBAR:

15 THE COURT: Yes, sir?

16 JUROR NUMBER 173: Robert

17 Marion, Number 173. I was represented by Debi
18 Herring-Lash in a case six or seven years.

19 THE COURT: That matter has been
20 completed?

21 JUROR NUMBER 173: Yes, sir.

22 THE COURT: Would that affect
23 you or influence you in any way in this dispute?

24 JUROR NUMBER 173: No, sir.

25 THE COURT: Would you base your

1 decision on the evidence and the law and would
2 it be fair to both sides?

3 JUROR NUMBER 173: Yes, sir.

4 THE COURT: Ms. Herring-Lash has
5 nothing to do with this case, does she?

6 MR. VOIGHT: No, sir.

7 THE COURT: Thank you so much.

8 (SIDEBAR CONCLUDED)

9 THE COURT: Juror (No. 173) will
10 remain.

11 SIDEBAR:

12 JUROR NUMBER 276: How, how
13 you doing?

14 THE COURT: Your name and
15 number, please?

16 JUROR NUMBER 276: Louis
17 Wachsmuth, Number 276.

18 THE COURT: Yes, sir?

19 JUROR NUMBER 276: We were
20 robbed, in North Carolina, a number of years
21 ago.

22 THE COURT: Would that affect or
23 influence you in this dispute?

24 JUROR NUMBER 276: No, it
25 would not.

1 THE COURT: You will decide the
2 case based on the evidence and the law and your
3 decision would be fair to both sides?

4 JUROR NUMBER 276: Yes, sir.

5 THE COURT: Thank you, sir. You
6 may be seated.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Juror will remain. Are
9 there others? Thank you -- okay. I didn't
10 specify the others but I think we've gone
11 through most of them, but is there any member of
12 the jury panel who, who you or a close personal
13 friend or family members, been victim(s) of a
14 crime of violence? If so, please stand.

15 If you have already come forward, you
16 don't need to respond any further. Thank you,
17 there appear to be no additional ---

18 COURT REPORTER: Lady on the left,
19 Your Honor.

20 THE COURT: Come forward, and the
21 attorneys may approach as well.

22 SIDEBAR:

23 THE COURT: Yes, ma'am, your
24 name and number?

25 JUROR NUMBER 312: 312, Judy Hunt.

1 THE COURT: Yes, ma'am?

2 JUROR NUMBER 312: My father-
3 in-law was robbed and murdered about fifteen
4 years ago.

5 THE COURT: Were you involved in
6 any way?

7 JUROR NUMBER 312: Well, --
8 (negative gesture), I was not -- (pause).

9 THE COURT: Would that affect
10 you in any way in this case?

11 JUROR NUMBER 312: I do not
12 think so.

13 THE COURT: Could you make a
14 commitment that it would not influence you?

15 JUROR NUMBER 312: Yes.

16 THE COURT: And would you base
17 your decision on the evidence and the law?

18 JUROR NUMBER 312: I would.

19 THE COURT: Your number again?

20 JUROR NUMBER 312: Three-
21 twelve.

22 (SIDEBAR CONCLUDED)

23 THE COURT: Number 312 will remain.
24 Any others? (No verbal response).

25 Is there any member of the jury panel

1 or member(s) of your immediate family who have
2 ever been involved with any dispute with any law
3 enforcement agency? If so, please stand. (No
4 response). Thank you, there appear to be none.

5 There are a number of principles of law
6 that I will give you at the conclusion of this
7 case, one of which is that persons like Mr.
8 Coaxum here today who have been accused of
9 committing criminal offenses are never required
10 to prove or disprove anything at all.

11 The law says that the agency that makes
12 the allegation, in this case the State of South
13 Carolina, that is the party that has the sole
14 burden of proving.

15 Trials are very similar, the number of
16 jurors, who goes first, sometimes the -- the
17 defendant in a case doesn't have to disprove the
18 allegation. In a civil trial, there may be a
19 claim but one distinction in a criminal dispute
20 is that the defendant -- there are two major.
21 One is that never in a criminal dispute is a
22 defendant required prove anything at all. A
23 trial in a criminal dispute is simply that, and
24 that's what a guilty verdict means -- Guilty
25 means that that jury heard that case and they

1 saw the evidence and they were convinced beyond
2 a reasonable doubt -- and that term will be
3 defined for you, which is more than what a civil
4 trial -- in civil trials it is generally a
5 probability standard, called the preponderance
6 of the evidence or the greater weight of the
7 evidence. Beyond a reasonable doubt is more
8 than that, more than "probably".

9 But, basically, that jury has been
10 convinced by the evidence that the State has met
11 its burden by establishing each element of that
12 crime beyond a reasonable doubt, and they
13 therefore return a verdict of Guilty.

14 Not Guilty means that jury collectively
15 was not convinced beyond a reasonable doubt that
16 the State established each element of the crime.

17 If the State fails on one element, you
18 must return a verdict of Not Guilty. That's
19 what the law says.

20 Again, a person accused doesn't have
21 any responsibility whatsoever to explain
22 anything, to justify anything. He has no burden
23 at all.

24 Is there anything about your
25 philosophy, anything about your personal

1 experience that would give you any concern about
2 your ability to take the law, that law and any
3 other law that I give you, and apply that law
4 fairly and impartially to the facts that you
5 ultimately determine when you consider the
6 evidence in this case. If you feel that you
7 would have difficulty complying with my
8 instructions concerning the law, please stand.
9 (No response). Thank you. There appears to be
10 none.

11 You will promise to decide this case
12 based on the evidence and the law. Evidence,
13 I will instruct you once we begin the case,
14 consists of the testimony of witnesses and the
15 exhibits that are introduced through their
16 testimony, and nothing else. There will be
17 other things that you will hear during the trial
18 but it the evidence that you will ultimately
19 consider to decide the true facts. You've heard
20 me ask the question over and over of whether or
21 not that would influence you as a juror, if you
22 would base your decision on the evidence and the
23 law.

24 As I told you this morning, you're the
25 sole judges of the facts. It is my

1 responsibility to be the judge of the law. We
2 combine our efforts and decide the case based on
3 the evidence and the law.

4 Is there anything that you have heard
5 thus far that would give you any concern about
6 your ability to analyze the evidence fairly in
7 this case and decide from that evidence what you
8 believe to be the truth and then apply the law
9 fairly to those facts? If so, please stand.

10 (No response).

11 Any additional specific questions from
12 the State?

13 MR. VOIGHT: None, Your Honor.

14 THE COURT: Any additional specific
15 questions from Mr. Coaxum?

16 MR. BUTLER: No, sir.

17 THE COURT: Each of you will make an
18 oath -- take an oath, make a commitment to both
19 the State and Mr. Coaxum to be fair and
20 impartial. Is there anything that you've heard
21 now that gives you any concern or hesitancy to
22 be able to make that commitment? That is, to be
23 fair and impartial judges and decide the case
24 based on the evidence and the law. If so,
25 please stand. (No response). Thank you, there

1 are none.

2 What is going to happen now is that
3 each side can excuse jurors. The State in this
4 case has the right to excuse five and Mr. Coaxum
5 has the right to excuse ten.

6 What is going to happen is that your
7 names are going to be called by Mr. Callahan.
8 When your name is called, if you will, bring
9 with you your personal effects, come forward and
10 basically stand where I am standing here, facing
11 the parties, the State and Mr. Coaxum.

12 First the State will have an
13 opportunity -- they may say 'seat the juror',
14 'swear the juror' or they may say 'excuse the
15 juror.' If they say to seat or swear the juror,
16 then Mr. Butler will have the same opportunity.
17 He may say to seat the juror, swear the juror or
18 he may excuse the juror.

19 We will go through the process until
20 we've identified our twelve jurors and one
21 alternate. Please bear with us, we'll have that
22 jury selected very shortly. Thank you very
23 much.

24 Mr. Callahan, I will turn it over to
25 you.

1 CLERK: Juror Number 203, Janet
2 Olliff.

3 (JUROR COMES FORWARD)

4 CLERK: What say you for the State?

5 MR. VOIGHT: The State asks that you
6 excuse this juror.

7 CLERK: Ms. Olliff, please have a seat
8 back in the audience. You've been excused from
9 the trial of this case.

10 (JUROR NUMBER 230 EXCUSED)

11 CLERK: Juror Number 196, Raeann
12 Nasatka.

13 (JUROR COMES FORWARD)

14 CLERK: What say you for the State?

15 MR. VOIGHT: Please seat the juror.

16 CLERK: What say you for the Defense?

17 MR. BUTLER: Please excuse Ms.

18 Nasatka.

19 CLERK: Ms. Nasatka, please have a
20 seat back in the audience. You've been excused
21 from the trial of this case.

22 (JUROR NUMBER 196 EXCUSED)

23 CLERK: Juror number 233, Adam Rohaly.
24 233.

25 (JUROR COMES FORWARD)

1 CLERK: What say you for the State?

2 MR. VOIGHT: Please present this
3 juror.

4 CLERK: What say you for the
5 Defendant?

6 MR. BUTLER: Please seat Mr. Rohaly.

7 CLERK: Mr. Rohaly, please have a seat
8 in the jury box. You have been selected as a
9 juror in this case.

10 (JUROR NUMBER 233 SEATED)

11 CLERK: Juror Number 89, Lovella
12 Flood.

13 (JUROR COMES FORWARD)

14 CLERK: What say you for the State?

15 MR. VOIGHT: Please excuse this juror.

16 CLERK: Ms. Flood, please have a seat
17 back in the audience. You've been excused from
18 the trial in this case.

19 (JUROR NUMBER 89 EXCUSED)

20 CLERK: Juror Number 150, John Jowers.

21 (JUROR COMES FORWARD)

22 CLERK: What say you for the State?

23 MR. VOIGHT: Please present this juror.

24 CLERK: What say you for the
25 Defendant?

1 MR. BUTLER: Please excuse Mr. Jowers.

2 CLERK: Mr. Jowers, please have a seat
3 back in the audience. You ahve been excused
4 from the trial in this case.

5 (JUROR NUMBER 150 EXCUSED)

6 CLERK: Juror Number 7, Pearl Alston.

7 (JUROR COMES FORWARD)

8 CLERK: What say you for the Sate?

9 MR. VOIGHT: Please seat this juror.

10 CLERK: What say you for the
11 Defendant?

12 MR. BUTLER: Please seat Ms. Alston.

13 CLERK: Ms. Alston, please have a seat
14 in the jury box. You've been selected for the
15 jury in this case.

16 (JUROR NUMBER 7 SEATED)

17 CLERK: Juror Number 110, John
18 Thompson.

19 (JUROR COMES FORWARD)

20 CLERK: What say you for the State?

21 MR. VOIGHT: Please present this
22 juror.

23 CLERK: What say you for the
24 Defendant?

25 MR. BUTLER: Please excuse Mr.

1 Thompson.

2 CLERK: Mr. Thompson, please have a
3 seat back in the audience. You've been excused
4 from the trial in this case.

5 (JUROR NUMBER 330 EXCUSED)

6 CLERK: Juror Number 243, Michael
7 Sharpe.

8 (JUROR COMES FORWARD)

9 CLERK: What say you for the State?

10 MR. VOIGHT: Please present this
11 juror.

12 CLERK: What say you for the
13 Defendant?

14 MR. BUTLER: Please seat Mr. Sharpe.

15 CLERK: Mr. Sharpe, please have a seat
16 in the jury box. You've been selected as a
17 juror in this case.

18 (JUROR NUMBER 243 SEATED)

19 CLERK: Juror Number 78, Jane Dowd.

20 (WITNESS COMES FORWARD)

21 CLERK: What say you for the State?

22 MR. VOIGHT: Please present this
23 juror.

24 CLERK: What say you for the
25 Defendant?

1 MR. BUTLER: Please seat Ms. Dowd.

2 CLERK: Ms. Dowd, please have a seat
3 in the jury box. You've been selected as a
4 juror in this case.

5 (JUROR NUMBER 78 SEATED)

6 CLERK: Juror Number 176, Tonya
7 Matthews.

8 (JUROR COMES FORWARD)

9 CLERK: What say you for the State?

10 MR. VOIGHT: Please seat Ms. Matthews.

11 CLERK: What say you for the
12 Defendant?

13 MR. BUTLER: Please seat Ms. Matthews.

14 CLERK: Ms. Matthews, please have a
15 seat in the jury box. You've been selected as
16 a juror in this case.

17 (JUROR NUMBER 176 SEATED)

18 CLERK: Juror Number 112, Allison
19 Gregroy.

20 (JUROR COMES FORWARD)

21 CLERK: What say you for the State?

22 MR. VOIGHT: Please present this
23 juror.

24 CLERK: What say you for the
25 Defendant?

1 MR. BUTLER: Please excuse Ms.
2 Gregory.

3 CLERK: Ms. Gregory, please have a
4 seat back in the audience. You've been excused
5 from the trial in this case.

6 (JUROR NUMBER 112 EXCUSED)

7 CLERK: That is four strikes for the
8 Defendant. Juror Number 296, Ronnie Wyatt.

9 (JUROR COMES FORWARD)

10 CLERK: What say you for the State?

11 MR. VOIGHT: Please present this
12 juror.

13 CLERK: What say you for the
14 Defendant?

15 MR. BUTLER: Please excuse Mr. Wyatt.

16 CLERK: Mr. Wyatt, please have a seat
17 back in the audience. You've been excused from
18 the trial in this case.

19 (JUROR NUMBER 296 EXCUSED)

20 CLERK: Juror Number 325, Thomas
21 Rogers.

22 (JUROR COMES FORWARD)

23 CLERK: What say you for the State?

24 MR. VOIGHT: Please present this
25 juror.

1 CLERK: What say you for the
2 Defendant?

3 MR. BUTLER: Please excuse Mr. Rogers.

4 CLERK: Mr. Rogers, please have a seat
5 back in the audience. You've been excused from
6 the trial of this case.

7 (JUROR NUMBER 325 EXCUSED)

8 CLERK: That is six strikes for the
9 Defendant. Juror Number 323, Martha Morgan.

10 (JUROR COMES FORWARD)

11 CLERK: What say you for the State?

12 MR. VOIGHT: Please present this
13 juror.

14 CLERK: What say you for the
15 Defendant?

16 MR. BUTLER: Please seat Ms. Morgan.

17 CLERK: Ms. Morgan, please have a seat
18 in the jury box. You've been selected as a
19 juror in this case.

20 (JUROR NUMBER 323 SEATED)

21 CLERK: Juror Number 14, Illa Barnes.

22 (JUROR COMES FORWARD)

23 CLERK: What say you for the State?

24 MR. VOIGHT: Please present this
25 juror.

1 CLERK: What say you for the
2 Defendant?

3 MR. BUTLER: Please seat Ms. Barnes.

4 CLERK: Ms. Barnes, please have a seat
5 in the juror box. You've been selected as a
6 juror in this case.

7 (JUROR NUMBER 14 SEATED)

8 CLERK: Juror Number 322, Memari
9 Kazem.

10 (JUROR COMES FORWARD)

11 CLERK: What say you for the State?

12 MR. VOIGHT: Please present this
13 juror.

14 CLERK: What say you for the
15 Defendant?

16 MR. BUTLER: Please excuse Mr. Kazem.

17 CLERK: Mr. Kazem, please have a seat
18 back in the audience. You've been excused from
19 the trial in this case.

20 (JUROR NUMBER 322 EXCUSED)

21 CLERK: Juror Number 229, Patrice
22 Robertson.

23 (JUROR COMES FORWARD)

24 CLERK: What say you for the State?

25 MR. VOIGHT: Please present this

1 juror.

2 CLERK: What say you for the
3 Defendant?

4 MR. BUTLER: Please seat Ms.
5 Robertson.

6 CLERK: Ms. Robertson, please have a
7 seat in the jury box.

8 (JUROR NUMBER 229 SEATED)

9 CLERK: Juror Number 200, Patricia
10 Norlander.

11 (JUROR COMES FORWARD)

12 CLERK: What says the State?

13 MR. VOIGHT: Please present this
14 juror.

15 CLERK: What say you for the
16 Defendant?

17 MR. BUTLER: Please seat Ms.
18 Norlander.

19 CLERK: Ms. Norlander, please have a
20 seat in the jury box. You've been selected as a
21 juror in this case.

22 (JUROR NUMBER 200 SEATED)

23 CLERK: Juror Number 263, Suzanne
24 Taylor.

25 (JUROR COMES FORWARD)

1 CLERK: What say you for the State?

2 MR. VOIGHT: Please present this

3 juror.

4 CLERK: What say you for the

5 Defendant?

6 MR. BUTLER: Please excuse Ms. Taylor.

7 CLERK: Ms. Taylor, please have a seat

8 back in the audience. You've been excused from

9 the trial in this case.

10 (JUROR NUMBER 263 EXCUSED)

11 CLERK: Juror Number 70, Barbara

12 Davis.

13 (JUROR COMES FORWARD)

14 CLERK: What say you for the State?

15 MR. VOIGHT: Please present this

16 juror.

17 CLERK: What say you for the

18 Defendant?

19 MR. BUTLER: Please seat Ms. Davis.

20 CLERK: Ms. Davis, please have a seat

21 in the juror box, you've been selected as a

22 juror in this case.

23 (JUROR NUMBER 70 SEATED)

24 CLERK: Juror Number 73, Angienita

25 Deveaux.

1 (JUROR COMES FORWARD)

2 CLERK: What say you for the State?

3 MR. VOIGHT: Please present this
4 juror.

5 CLERK: What say you for the
6 Defendant?

7 MR. BUTLER: Please seat Ms. Deveaux.

8 CLERK: Ms. Deveaux please have a seat
9 in the jury box. You have been selected as a
10 juror in this case.

11 (JUROR NUMBER 73 SEATED)

12 CLERK: Juror Number 276, Louis
13 Wachsmuth.

14 (JUROR COMES FORWARD)

15 CLERK: What say you for the State?

16 MR. VOIGHT: Please present this
17 juror.

18 CLERK: What say you for the
19 Defendant?

20 MR. BUTLER: Please seat Mr.
21 Wachsmuth.

22 CLERK: Mr. Wachsmuth, please have a
23 seat in the jury box. You have been selected as
24 a juror in this case.

25 (JUROR NUMBER 276 SEATED)

1 CLERK: Now picking for the Alternate.

2 THE COURT: Yes, sir, strikes will be
3 one and two.

4 CLERK: Juror Number 209, Brooke
5 Pennell.

6 (JUROR COMES FORWARD)

7 CLERK: What say you for the State?

8 MR. VOIGHT: Please present the juror.

9 CLERK: What say you for the
10 Defendant?

11 MR. BUTLER: Please seat Ms. Pennell.

12 CLERK: Ms. Pennell, please have a
13 seat in the jury box. You've been selected as a
14 juror in this case.

15 (JUROR NUMBER 209 SEATED AS ALTERNATE)

16 CLERK: Your Honor, the seat has been
17 selected and are seated.

18 THE COURT: Thank you very much, Mr.
19 Callahan. Are there any Motions from the State
20 regarding the selection?

21 MR. VOIGHT: None from the State, Your
22 Honor.

23 THE COURT: Any Motions from Mr.
24 Coaxum?

25 MR. BUTLER: No, sir.

1 sir.

2 MR. VOIGHT: The State calls Charles
3 Jones.

4 (WITNESS TAKES STAND)

5 CHARLES JONES, being duly sworn to
6 tell the truth, the whole truth and nothing
7 but the truth, testified, as follows:

8 DIRECT EXAMINATION

9 BY MR. VOIGHT:

10 Q. Mr. Jones, how are you?

11 A. All right.

12 Q. If you could, pull your chair up and lean
13 into that microphone.

14 A. (Complies)

15 Q. Everybody in this jury box needs to hear
16 everything that you are going to say. All
17 right?

18 A. All right.

19 Q. Where do you work, Mr. Jones?

20 A. At Pizza Hut.

21 Q. Where is that Pizza Hut located?

22 A. In North Charleston on Dorchester at Leeds
23 Avenue.

24 Q. Is that in Charleston County?

25 A. Yes.

1 Q. How long have you worked at Pizza Hut?

2 A. Seven years now.

3 Q. What do you do there?

4 A. Cook.

5 Q. Were you a cook there on November the
6 27th, 2007?

7 A. Yes, I was.

8 Q. What shift did you work that day?

9 A. Night shift.

10 Q. Is that your normal shift?

11 A. Yes.

12 Q. Can you tell the ladies and gentlemen of
13 the jury what happened around closing time --
14 what time is closing time?

15 A. 11:00 p.m.

16 Q. What happened about closing time on
17 November 27th?

18 A. At closing time, I was washing the dishes
19 and getting the trash ready to go out,
20 whatever, and all of a sudden I heard a knock
21 at the front door. We have the doors locked
22 at night, and we had them locked. So I was
23 telling them, you know, to go through the
24 drive-thru or whatever and that's when they
25 went to the side door. I didn't open the side

1 door, I looked out the window. I was kind of
2 looking through the window to see who it was.

3 We had a driver there at the time and
4 he was leaving, so he and my manger, they were
5 having a conversation -- with him not knowing
6 what was going on, he had, you know, his head
7 turned toward her. He was going out the door
8 as I was looking out. About the time he
9 opened the door that's when he sticked the gun
10 in the door.

11 Q. What kind of gun was it?

12 A. Looked like a shotgun or something.

13 Q. What happened next, what did you do next?

14 A. I put my hands up. I mean, I wasn't
15 trying to do nothing stupid. There was a lot
16 of people in there and so I just put my hands
17 up and went back in the store, or whatever.

18 Q. How many people were at that door when it
19 opened up?

20 A. At the time it was just one with the gun.

21 Q. Could you tell what the person was
22 wearing?

23 A. It looked like he had on a black hoodie.

24 Q. Did that person come in the store?

25 A. Yes.

1 Q. Did anyone else come in the store with
2 him?

3 A. He had another person with him.

4 Q. How tall was the person with the gun, do
5 you recall?

6 A. About my height, something like that. I
7 know he wasn't a short fellow.

8 Q. How tall are you?

9 A. Like 6'3".

10 Q. And what happened next?

11 A. And after that, he demanded the money
12 whatever and I told my manager, you know, to
13 just give him what he wants, you know. They
14 got it and they left.

15 Q. How long -- how many of them were there?

16 A. There were two.

17 Q. Did they get have guns or did only one
18 person have a gun?

19 A. I just saw one.

20 Q. How long do you think it was from the time
21 that they came in until the time that they
22 left, how much time elapsed, do you think?

23 A. It would probably be around, I'd say,
24 close to around ten minutes. I guess.

25 Q. How many employees were in the store with

1 you?

2 A. There was three of us, three of us in
3 there.

4 Q. What were the other person's names?

5 A. Tamera Brown and a guy named Mike.

6 Q. Were you scared?

7 A. Yes, sir, that was the first time that
8 happened to me, sir.

9 Q. What did they take?

10 A. They just took the money in the cash
11 register, that was it.

12 Q. Did they ask you to get into the safe?

13 A. Yes, they did but the -- it was a time-
14 locked safe and it was closed. They kept
15 telling her to get in the safe but I told them
16 that she couldn't get in the safe.

17 Q. Did the man with a gun say anything while
18 he was in there?

19 A. He was saying just "give up the money."
20 Basically that was said, "just give up the
21 money."

22 Q. Was he a white guy or a black guy?

23 A. He was a black guy.

24 Q. The other guy, was he a white guy or a
25 black guy?

1 A. I really couldn't tell you about the other
2 guy because he had like a mask over his face
3 and I really couldn't tell.

4 Q. Did you ever get a good look at the
5 gunman?

6 A. I saw his face. I really can't say that's
7 him, there, whatever.

8 Q. Were you ever asked to make an
9 identification of the gunman by the North
10 Charleston Police Department?

11 A. Yes, sir, they asked me but I told them
12 that I really could not tell you how he
13 looked, I could tell them was that he was a
14 black guy and that he had a gun.

15 Q. And that he was tall?

16 A. Yeah.

17 Q. Mr. Jones, do you see anybody in the
18 courtroom who was involved in that robbery on
19 November 17th, 2007?

20 A. Yes, sir, I think so.

21 Q. Looks like him?

22 A. Yes, sir.

23 MR. VOIGHT: Thank you.

24 THE COURT: Cross examine?

25 MR. BUTLER: May it please the

1 court.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. BUTLER:

5 Q. Good afternoon, Mr. Jones, how are you
6 today?

7 A. Pretty good.

8 Q. Good. I just have a couple of questions
9 for you. This was over a year and two months
10 ago?

11 A. Um-humm.

12 Q. And you told the police that you could not
13 really give any more accurate description than
14 you've given today, right?

15 A. Yes.

16 Q. And they asked you would you like to come
17 to this other location and see if you can
18 identify the person who you saw; right?

19 A. Um-humm.

20 Q. And you said 'no', ---

21 THE COURT: Was that a "yes"?

22 Excuse me, but you need to answer 'yes' or
23 'no' so that we can make sure of your
24 response.

25 THE WITNESS: Okay.

1 CROSS EXAMINATION CONTINUED

2 BY MR. BUTLER:

3 Q. They asked you if you wanted to go see if
4 you could pick out the person and you said
5 'no'; is that right?

6 A. Yes.

7 Q. And that's because you didn't get a good
8 look at the guy?

9 A. (Affirmative nod) -- No, sir.

10 Q. This was a year and two months ago?

11 A. Yes, sir.

12 Q. And in that intervening time no one has
13 shown you any photographs?

14 A. No, sir.

15 Q. Any lineups?

16 A. No, sir.

17 Q. And for the first time in a year and two
18 months someone asked you if anybody in the
19 courtroom looks like that person and you said
20 that this (indicating Defendant) could be the
21 guy?

22 A. Yes, sir.

23 Q. Well, I mean -- he is sitting at the
24 defense table, right?

25 A. Yes, sir.

1 Q. Are you sure that it was not me?

2 A. No, sir, you're not black.

3 Q. All right. I am not black. Are there any
4 other black males in the courtroom that it
5 could be?

6 A. (No verbal response).

7 Q. Besides yourself -- and, excuse me, one
8 deputy?

9 A. (No verbal response).

10 Q. Is there?

11 A. No.

12 MR. BUTLER: Beg the court's
13 indulgence.

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION CONTINUED

16 BY MR. BUTLER:

17 Q. The person that you saw, he wasn't wearing
18 gloves, was he?

19 A. Not that I remember.

20 MR. BUTLER: That's all that I
21 have. Thank you, Mr. Jones.

22 THE COURT: Redirect?

23 MR. VOIGHT: Mr. Jones, I have
24 nothing further.

25 THE COURT: Thank you. Mr. Jones

1 you may step down.

2 (WITNESS STEPS DOWN)

3 THE COURT: A request has been
4 made that the jurors would like to have
5 notepads. If you do, please hold up your
6 hands and we will make sure that you have
7 that.

8 Let me just talk to you briefly about
9 notes. Some judges don't like for you to take
10 notes but I would like you to make that
11 determination. I remind you that these are
12 your notes. If you do take a notepad, I would
13 ask that you open the notebook and write your
14 name on the front sheet so -- then that pad,
15 at the end of the day will be left with the
16 bailiff. In the morning when you return they
17 will be handed back to you.

18 Please remember when you're taking
19 notes that we also have here someone that has
20 been -- as I told you this morning when she
21 was typing that she wasn't searching the net.
22 Ms. Garrison (court reporter) has the duty and
23 responsibility of keeping a verbatim record of
24 what's taking place in this courtroom.

25 At the end of the trial and when you

1 begin your deliberation, should you have a
2 disagreement about what a witness said or
3 didn't say, we have the capability of
4 replaying that testimony for you should that
5 become necessary. So your notes are really
6 for your purpose, to help you, to assist you
7 by jotting down those things that are
8 significant to you. That's fine.

9 The only other thing I would caution
10 you is that some are better note-takers than
11 others. In fact, sometimes in some trials I
12 will type it rather than write it because I
13 can look at and watch the witness at the same
14 time that I am typing it. We all know that
15 sometimes it is not only what someone says but
16 how they said it. And if you happened to be
17 looking down in writing a note you might miss
18 that very important body language that would
19 assist you in analyzing the case.

20 Having said that, please feel free to
21 take notes. I would remind you that please do
22 not take them from this courthouse with you.
23 Make sure that when we recess that you leave
24 them in your jury room and at the close of
25 day I would ask the foreperson to please

1 collect them and get them to the bailiff.

2 Thank you very much, Mr. Callahan.

3 Solicitor, you can call your next
4 witness, sir.

5 MR. VOIGHT: Thank you, Your
6 Honor, the State calls Tamera Brown.

7 (WITNESS TAKES STAND)

8 TAMERA BROWN, being duly sworn
9 to tell the truth, the whole truth and nothing
10 but the truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY MR. VOIGHT:

13 Q. Where do you work, Ms. Brown?

14 A. At the Dorchester-Leeds Avenue Pizza Hut.

15 Q. How long have you worked there?

16 A. I worked there for about a total of six
17 years but I've been a shift manager for a
18 couple.

19 Q. Did you work there on November 27th, 2007?

20 A. Yes.

21 Q. What was your role then?

22 A. I was the shift manager.

23 Q. Were you the shift manager for the night
24 shift on November 27th, 2007?

25 A. Yes.

1 Q. And what time does that shift normally
2 start?

3 A. It starts at 5:00 until we close about
4 11:00.

5 Q. At what point do you close the front door
6 into the facility?

7 A. Between 7:30 and 8:00 o'clock, when it
8 starts getting dark.

9 Q. Why do you do that?

10 A. Because it is not the safest area and it
11 is just that we have a drive-thru, so we just
12 lock the front door and let everybody go
13 through the drive-thru.

14 Q. At 11:00 on the 27th, what were you doing?

15 A. I was closing out the register, running my
16 credit cards, dropping the money in the safe,
17 getting ready to leave.

18 Q. Do you have access to the safe?

19 A. It has a time-lock on it at 10:00
20 (phonetic).

21 Q. Can you open it after that time?

22 A. No, we have the little envelope slot that
23 we drop the money in.

24 Q. About how much cash was in the Pizza Hut
25 that night?

1 A. In the drawer there was like a little over
2 \$150.

3 Q. What happened to that drawer?

4 A. What happened to it?

5 Q. Yeah. Did it stay in the Pizza Hut the
6 whole night?

7 A. No. When the guy -- when the guys came
8 in, they -- when the guy come in, he told me
9 to open the safe as he pointed the gun at me
10 and I told him that I couldn't open the safe.
11 He just kept yelling at me, "Open the safe,
12 open the safe, open the safe." Then the cook
13 told him, 'Man, she can't open the safe.'

14 Q. Who was the cook that night?

15 A. Charles.

16 Q. What is Charles' last name?

17 A. Jones.

18 Q. Let me ask you, what were you -- how did
19 the men get into your Pizza Hut?

20 A. Well, I heard a knock at the door but I
21 had my head down counting the, you know, the
22 credit card slips and I was like right there
23 on the side of the front door. I heard a
24 knock on the door and I told the driver to
25 tell them to go around. We didn't have any

1 more orders on the screen, so the driver, he
2 was getting ready to leave.

3 Q. Was he leaving for the night or was he
4 going ---

5 A. Leave for the night. He was done
6 cleaning, he'd had to clean. We have a side
7 door that he went out of. Well, he -- I had
8 my head down and he was like, 'all right, all
9 right' to the -- then I looked up. Something
10 told me to look up and two men had come in
11 behind Charles and Mike, they had their hands
12 like this. First I noticed that they had
13 their hands and then I saw the man with the
14 gun. He came over to me and started yelling
15 at me.

16 Q. Was the guy with the gun behind Charles
17 and Mike or was he to the side, the front?
18 Where was he in relation to them?

19 A. One guy was in front of them, then there
20 was Charles and Mike -- they were kind of
21 walking like that (gesturing) and then there
22 was a guy behind them.

23 Then when they got to where I was, he had
24 the other guy stand by them and he come up
25 close to where I was.

1 Q. What kind of gun was it?

2 A. Huh?

3 Q. What kind of gun was it?

4 A. It was a long shotgun, it was real long --
5 it wasn't real long, more like a sawed-off
6 shotgun.

7 Q. Did it scare you?

8 A. Yes.

9 Q. Why were you scared?

10 A. I had a gun on me and I was terrified.

11 Q. You said that the guy was yelling at you?

12 A. (Affirmative nod).

13 Q. What was he yelling?

14 A. He was just screaming, 'open the safe.' He
15 was just yelling and cursing at me to open the
16 safe. I was like, 'I can't open the safe.'
17 He kept screaming at me to 'open the safe,
18 man', -- I'm not using his words. Then
19 Charles was like, 'Man, she can't open the
20 safe.' Then he was like, 'Well, open the
21 register.' He said it in other words.

22 I was so nervous I -- but I finally got
23 the register to where it popped open and then
24 he put his gun like down to the side. He
25 didn't drop the gun but like he just didn't

1 point it at me any more. So I ran behind
2 Chuckie and Mike and I stood behind them. He
3 like tore out the register and took the money
4 out and put the drawer on the top of the
5 counter.

6 Q. How many guys were there?

7 A. It was two -- it was two, it was three of
8 them.

9 Q. There were three employees ---

10 A. (Affirmative nod).

11 Q. --- of the Pizza Hut in there?

12 A. Yes.

13 Q. How many men came into the store that
14 night?

15 A. Oh, -- two.

16 Q. Do you know if they were black or white?

17 A. They were black.

18 Q. They were both black?

19 A. (Affirmative nod).

20 Q. Were they tall, short or somewhere
21 inbetween?

22 A. The guy with the gun -- the one that stood
23 over in the corner, he was like medium, he
24 wasn't too tall. But the one with the gun, he
25 was a tall man. I was looking up at him, he

1 was tall.

2 Q. Was he -- did you get a -- what was that
3 light like there in the Pizza Hut?

4 A. It was bright in there, all the lights
5 were on.

6 Q. How long do you think that the man with
7 the gun was in the Pizza Hut?

8 A. Probably five or ten minutes. It seemed
9 like a long time but probably only about five
10 minutes or so.

11 Q. What happened after they both left?

12 A. Well, after he got in the drawer and took
13 all the money out then he pointed the gun at
14 me again, told us to go in the back. So we
15 went in the back, and I stayed behind, you
16 know, the guys. Then they went out the side
17 door.

18 You know, we ran to the door -- I think I
19 ran to the door to make sure that it was shut
20 good and then I went to the phone and called
21 9-1-1. We didn't open the door or anything
22 until -- I just waited on the police to come
23 to the front door and then, when I seen them,
24 I went and unlocked the front door.

25 Q. About how long after you called 9-1-1 did

1 the police arrive?

2 A. Only a few minutes. They are right down
3 Dorchester, right on the corner the police
4 station is right there. You know, so, -- not
5 even just the few minutes, just -- (pause).

6 Q. The police came. How long did you talk to
7 the police there?

8 A. Well, I was talking to them -- we was
9 talking to them, giving our statement about
10 everything that had happened and then I guess
11 and probably about five or ten minutes they
12 got a call saying that they had gotten a
13 suspect up the street. The police asked one
14 of us to go and identify them.

15 Q. Did you drive your own vehicle?

16 A. No, I rode in the police car.

17 Q. Did you get in the front or the back seat?

18 A. Back.

19 Q. Where were you driven?

20 A. Up on Rivers Avenue.

21 Q. About how far from the Pizza Hut were you
22 at that point?

23 A. It was just probably about a mile, about
24 a half mile, couple of miles, not too far.

25 Q. And what did you see when you got there?

1 A. There was a lot of police cars, there was
2 a car that had wrecked into like a fire
3 hydrant and there -- something.

4 Q. What color was the car?

5 A. On orangish color. It was a real small
6 car.

7 Q. And it broke the fire hydrant?

8 A. I think, (affirmative nod). I'm not for
9 sure.

10 Q. What did the police ask you to do?

11 A. They asked me if I could identify the
12 suspect or if I could identify anybody. And
13 the guy ---

14 MR. BUTLER: Please note our
15 pretrial objection, *Neil v. Biggers*.

16 THE COURT: Thank you. Your
17 objection is noted and the record supports the
18 position for that objection. Subject to the
19 objection, you may continue the line of
20 question.

21 MR. VOIGHT: Thank you, Your Honor.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. VOIGHT:

24 Q. Did the police have anyone in custody out
25 there?

1 A. Yeah. He had a guy standing by the car
2 and he had handcuffs on him and he was
3 standing by the car.

4 Q. Were you asked to take a look at the guy?

5 A. Yeah. They put a spotlight on him and
6 they asked me did I recognize him.

7 Q. What did you say?

8 A. I recognized him as the man who had the
9 gun on me.

10 Q. Did it take any time for you to make up
11 your mind?

12 A. No, not really. It had just happened and
13 it was like really fresh in my mind and I knew
14 exactly what he was wearing. And I knew -- I
15 knew it was him because it was, like, it had
16 just happened.

17 Q. So the person that the police had on the
18 car, was he wearing the same thing that the
19 gunman was wearing?

20 A. Yes.

21 Q. Was he the same height as the gunman?

22 A. Yes.

23 MR. BUTLER: Objection to leading
24 at this point.

25 THE COURT: Sustained.

1 DIRECT EXAMINATION CONTINUED

2 BY MR. VOIGHT:

3 Q. How would you compare the height of the
4 person with the gun and the height of the
5 person that the police had on the car that
6 night?

7 A. They were the same height.

8 Q. Were you certain that it was the same
9 person?

10 A. Yes, sir. Yes.

11 Q. How long after you called 9-1-1 were you
12 out there with the police cars and the orange
13 car, how long?

14 A. Probably within ten minutes, it did not
15 take long at all.

16 Q. After you told the police what you thought
17 that you saw, what did you do next?

18 A. After I -- they showed me him and we --
19 then we went back to the Pizza Hut. Then all
20 I can remember is going home. I mean, my
21 husband was -- you know, he went with me. I
22 called him as soon as it happened and he came
23 right away and I drove home with him.

24 Q. Did the police ever return any items to
25 you at all?

1 A. They returned the cash drawer to the Pizza
2 Hut a couple of days later -- I'm not positive
3 but probably a couple weeks later.

4 Q. Were you present when that was returned?

5 A. No, but I seen the bag in which it was
6 returned, I seen it laying on the desk.

7 Q. Do you see in the courtroom the person who
8 held the gun to you and robbed you on November
9 27?

10 A. Yes.

11 Q. You see that person?

12 A. Yes.

13 Q. Can you point out to the ladies and
14 gentlemen of the jury where that person is and
15 what he is wearing?

16 A. He is right there in the green suit
17 (indicating William Coaxum at counsel table).

18 MR. VOIGHT: One moment.

19 THE COURT: Certainly.

20 MR. VOIGHT: The State would
21 tender this witness.

22 THE COURT: You may cross-examine.

23 CROSS EXAMINATION

24 BY MR. BUTLER:

25 Q. Good afternoon, Ms. Brown. I just have a

1 few quick questions for you.

2 A. All right.

3 Q. As the shift manager, did you ever learn
4 the specific amount of money that was taken?

5 A. I think that it was like one thirty.

6 Q. And when the police got there, the first
7 officer that arrived, was he a uniformed
8 officer?

9 A. Yes.

10 Q. Any he calmed you down, right?

11 A. Yes.

12 Q. Is this was a startling event?

13 A. Yes.

14 Q. Any you said that you were scared, as
15 anybody would be; right?

16 A. Yes.

17 Q. And you got a really good look at the
18 shotgun, right?

19 A. Yes.

20 Q. Would it be fair to say that your
21 attention was focused on the shotgun?

22 A. Yeah, it was. There at the incident, yes.

23 Q. And for that reason you got somewhat of a
24 look at the person's face but not a great
25 look; is that fair?

1 A. The eyes, the mouth -- because I was
2 looking at the shotgun. But he had a hoodie
3 on, so -- (pause).

4 Q. And a hoodie is a hooded sweatshirt?

5 A. Yeah, under a camouflage jacket but one of
6 those type things.

7 Q. And when the uniformed officer arrived, he
8 calmed you down; right?

9 A. Yes.

10 Q. And he wanted you to tell him what had
11 happened?

12 A. Yes.

13 Q. And he wanted you to give a description
14 of the people who had robbed you?

15 A. Yes.

16 Q. And you described the person as wearing
17 that day a camouflage sweatshirt?

18 A. He was tall, had on camouflage, had the
19 shotgun but I saw his eyes and mouth.

20 Q. I understand. But you specifically told
21 the officer a camouflage hoodie, by that
22 meaning a hoodie sweatshirt?

23 A. Hooded sweatshirt, yes.

24 Q. And you told him that the other person had
25 a gray sweatshirt, right?

1 A. I am not really sure because I really
2 wasn't focused on the other guy because he
3 just -- he just stood over in the corner and
4 he was like really quiet. He was more like
5 focused on Mike and Charles and I was more
6 focused on the one that was on me.

7 Q. Do you remember telling the officer that
8 it was a gray G-Unit sweatshirt?

9 A. I'm not sure.

10 Q. And when you went to where they had
11 stopped the car they told you, when you were
12 going over there, 'we stopped some suspects'.
13 Right?

14 A. Yes.

15 Q. So you knew that they have stopped the car
16 that they thought was involved in the robbery?

17 A. Yes.

18 Q. And when they had William outside of the
19 car he was handcuffed; right?

20 A. (No verbal response).

21 Q. Standing next to the police car?

22 A. Yes.

23 Q. And it's not like you see on TV where you
24 are asked to pick one person out of five or
25 six people. He was the only one there?

1 A. Yes.

2 Q. And they didn't ask you to look at the
3 other person?

4 A. No. No, I don't understand -- (pause).

5 Q. And you said that you knew him primarily
6 by what he was wearing; is that right?

7 A. Yes.

8 MR. BUTLER: Beg the court's
9 indulgence.

10 THE COURT: Certainly.

11 MR. BUTLER: That's all that I have.

12 Thank you, Ms. Brown.

13 THE COURT: Redirect, Mr. Voight?

14 REDIRECT EXAMINATION

15 BY MR. VOIGHT:

16 Q. Ms. Brown, when you went out to where the
17 orange car was ---

18 A. Yes, sir.

19 Q. --- was the person who the police showed
20 you wearing the same clothing as the person
21 who held the gun on you at the Pizza Hut?

22 A. Yes.

23 Q. Does this person sitting right here at
24 this table have the same eyes and mouth as the
25 person that you said ---

1 MR. BUTLER: I'm sorry. I have to
2 object. Objection, not in scope of cross.

3 THE COURT: I think you inquired of her
4 about the identity. I will allow it.
5 Overruled.

6 REDIRECT EXAMINATION CONTINUED

7 BY MR. VOIGHT:

8 Q. Does this person have the same eyes and
9 mouth as the person that you said held the
10 gun?

11 A. Yes.

12 MR. VOIGHT: That's all that I have
13 at this time.

14 THE COURT: Recross?

15 MR. BUTLER: No, sir.

16 THE COURT: All right, you may come
17 down.

18 (WITNESS STEPS DOWN)

19 THE COURT: Ladies and Gentlemen, I
20 know you have only been here a little over a
21 hour but we have been in here a little longer.
22 To give everyone else an opportunity to have a
23 break, I am going to go ahead and take our
24 break at this point and let you go to your
25 jury room. Please do not begin your

1 deliberations, don't discuss the case among
2 yourselves. We will be with you in probably
3 about ten minutes. Thank you.

4 (JURY OUT @ 4:04 P.M.)

5 (OFF RECORD DISCUSSION RE SCHEDULE)

6 (BRIEF RECESS)

7 (DEFENDANT PRESENT)

8 THE COURT: Invite the jury to
9 return. Let the record reflect that Mr.
10 Coaxum is present.

11 (JURY IN @ 4:25 P.M.)

12 THE COURT: Thank you very much,
13 Ladies and Gentlemen. We are ready to
14 continue, call your next witness.

15 MR. VOIGHT: The State calls
16 Marquine Benbow.

17 (WITNESS TAKES STAND)

18 MARQUINE BENBOW, being duly
19 sworn to tell the truth, the whole truth and
20 nothing but the truth, testified, as follows:

21 DIRECT EXAMINATION

22 BY MR. VOIGHT:

23 Q. Marquine Benbow, is that right?

24 A. (No verbal response).

25 Q. Mr. Benbow, I want you to speak loudly

1 enough that the jury can heard you. Okay?

2 A. (No verbal response).

3 Q. Do you know William Coaxum?

4 A. No, sir.

5 Q. You've never seen William Coaxum?

6 A. (No verbal response).

7 Q. Were you arrested on November the 27th by
8 the North Charleston Police Department?

9 A. Yes, sir.

10 Q. Were you charged with the robbery of the
11 Pizza Hut and the North Charleston Inn on that
12 day?

13 A. Yes, sir.

14 Q. Did you also plead guilty to armed robbery
15 of those ---

16 A. Yes, sir.

17 Q. And are you serving time in SCDC for both
18 of those armed robberies?

19 A. Yes, sir.

20 Q. Do you remember being in court when you
21 pled guilty?

22 A. Yes, sir.

23 Q. And the judge asked you what you did that
24 made you guilty?

25 A. (No verbal response).

1 Q. Do you remember that?

2 A. Yes, sir.

3 Q. Do you remember telling the judge?

4 A. Yes, sir.

5 Q. Do you remember giving a statement to the
6 North Charleston Police Department?

7 MR. BUTLER: Judge, I have to
8 object. May we approach?

9 THE COURT: Sure. I will come down
10 there.

11 (OFF RECORD SIDEBAR)

12 DIRECT EXAMINATION CONTINUED

13 BY MR. VOIGHT:

14 Q. You pled guilty. When did you plead
15 guilty, do you recall?

16 A. It was -- when I went to court?

17 Q. Yes?

18 A. I believe that it was November the 18th.

19 Q. Of last year?

20 A. Yes, sir?

21 Q. And when you pled guilty, you waived your
22 rights.

23 A. (No verbal response).

24 Q. One of the rights that you waived was your
25 Fifth Amendment right to remain silent. Did

1 the judge talk to you about that right?

2 A. (No verbal response).

3 Q. Do you recall?

4 A. Um-humm.

5 THE COURT: You need to answer with
6 words, please. Was that a "yes"?

7 THE WITNESS: Yes, sir.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. VOIGHT:

10 Q. And you told the judge what you did at
11 the North Charleston Inn and at the Pizza Hut,
12 right?

13 A. Um-humm.

14 THE COURT: You need to answer with
15 words, please. Was that a "yes" or a "no"?

16 THE WITNESS: Yes, sir.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. VOIGHT:

19 Q. Did you tell the judge that you held a gun
20 to anyone?

21 A. No, sir.

22 Q. Did you hold a gun to anyone?

23 A. No, sir.

24 Q. Somebody else held the gun, didn't they?

25 A. I don't remember.

- 1 Q. You remember what you did, right?
- 2 A. Yes.
- 3 Q. You went into the North Charleston Inn --
- 4 were you by yourself?
- 5 A. No.
- 6 Q. Were you with somebody else?
- 7 A. Uh -- I don't recall.
- 8 Q. Do you suffer from amnesia?
- 9 A. No, sir.
- 10 Q. Do you suffer from any mental defect(s)
- 11 that would cause you not to remember what you
- 12 did when you held up the North Charleston Inn
- 13 or the Pizza Hut?
- 14 A. No, sir.
- 15 Q. You remember very clearly going into the
- 16 North Charleston Inn, don't you?
- 17 A. Yeah. Yes, sir.
- 18 Q. You remember going into the Pizza Hut,
- 19 don't you?
- 20 A. Yes, sir.
- 21 Q. You remember William holding the shotgun,
- 22 don't you?
- 23 A. No, I don't remember that.
- 24 Q. Did you hold the shotgun?
- 25 A. No, sir.

- 1 Q. A shotgun was held, wasn't it?
- 2 A. I don't remember that.
- 3 Q. You don't remember?
- 4 A. (No verbal response).
- 5 Q. You -- just to be clear, you don't know
- 6 this man at all?
- 7 A. (No verbal response).
- 8 Q. This gentleman sitting at this table? But
- 9 you don't know this gentleman, do you?
- 10 A. I don't remember seeing him.
- 11 Q. Are you afraid of him?
- 12 A. No, sir.
- 13 Q. Are you afraid of being a rat?
- 14 A. No, sir.
- 15 Q. Are you afraid of being a snitch?
- 16 A. No, sir.
- 17 Q. Are you afraid of punking out a friend?
- 18 A. No, sir.
- 19 Q. Did you rob the Pizza Hut all by yourself?
- 20 A. No, sir.
- 21 Q. Was somebody with you?
- 22 A. Uh -- yeah.
- 23 Q. Who was that person?
- 24 A. I don't recall his name.
- 25 Q. How did you get to the Pizza Hut?

- 1 A. His car.
- 2 Q. Whose car?
- 3 A. The person's that I was with.
- 4 Q. What color car was it?
- 5 A. I don't recall.
- 6 Q. Was it blue?
- 7 A. I don't think so.
- 8 Q. This other person who you don't remember,
9 did he hold the gun?
- 10 A. I don't recall.
- 11 Q. Did you hold the gun?
- 12 A. No, sir.
- 13 Q. Was a gun held?
- 14 Q. I don't recall.
- 15 Q. The lady at the North Charleston Inn, she
16 didn't give up the money without there being a
17 gun used; did she?
- 18 A. No, sir.
- 19 Q. The lady at the Pizza Hut, she didn't give
20 up her cash drawer without there being a gun
21 used; did she?
- 22 A. I was not inside the Pizza Hut.
- 23 Q. You were not inside the Pizza Hut?
- 24 A. No, sir.
- 25 Q. You never went inside?

- 1 A. No, sir.
- 2 Q. But you pled guilty for robbing the Pizza
3 Hut?
- 4 A. Because I was part of the crime.
- 5 Q. You were a part of the crime?
- 6 A. Yes, sir.
- 7 Q. What part?
- 8 A. Standing outside, sir.
- 9 Q. Standing outside?
- 10 A. (Affirmative nod).
- 11 Q. How many people went in the Pizza Hut?
- 12 A. One.
- 13 Q. Do you remember talking to Detective Shawn
14 Patrick with the North Charleston Police
15 Department?
- 16 A. No, sir.
- 17 Q. Do you remember giving a statement to him?
- 18 A. Yes, sir.
- 19 Q. Do you remember telling him that "William
20 got the shotgun from the back floorboard", did
21 you ever tell him that?
- 22 A. I don't remember telling him no names,
23 sir.
- 24 Q. Do you remember telling him that "William
25 told me to follow him and we went inside,

1 William pointed the gun at the clerk and told
2 her to give him the money"?

3 A. (No verbal response).

4 Q. Do you remember that?

5 A. I remember -- I don't remember saying no
6 names, sir.

7 Q. Do you remember saying "after she emptied
8 the register, William told her to get the
9 money out of the safe." Do you remember that?

10 A. I don't remember saying no names at all,
11 sir.

12 Q. Do you remember saying, "William said
13 'come on' and we ran to the car and went
14 towards Dorchester Road on Montague. William
15 pulled the money out of his left pocket and
16 said 'this ain't enough' -- do you remember
17 saying that?

18 A. No, sir.

19 Q. Do you remember saying, "William drove to
20 Dorchester Road and then made a left onto
21 Dorchester and the Pizza Hut was on the right-
22 hand side and I told William that I thought it
23 was open." Do you recall that, saying that?

24 A. No, sir.

25 Q. You remember going to the Pizza Hut and

1 thinking it was open, right?

2 A. Yes, sir.

3 Q. Do you remember knocking on the front
4 door?

5 A. No, I never knocked on the front door.

6 Q. Do you remember saying, "We parked the car
7 at Checkers and walked over to the Pizza Hut",
8 do you remember saying that?

9 A. No, sir.

10 Q. Do you remember saying, "William was
11 standing along the side of the building and
12 told me to go to the front door, that it was
13 open." Do you remember saying that?

14 A. No, sir.

15 Q. Do you remember saying, "I checked the
16 front door and it was locked."

17 A. (No verbal response).

18 Q. Do you remember telling Detective Patrick
19 that?

20 A. No, sir.

21 Q. Do you remember telling Detective Patrick,
22 "I walked in the back door and William must
23 have already opened it. William pulled the
24 gun out on one black male and another black
25 male was walking away." Do you remember

- 1 saying that?
- 2 A. No, sir.
- 3 Q. Do you remember saying that, "William told
4 me to 'get him', that he might call the
5 police?"
- 6 A. No, sir.
- 7 Q. Do you remember saying, "I told the guy to
8 get inside and he walked back in"?
- 9 A. No, sir.
- 10 Q. So when you were at the Pizza Hut, did you
11 round up people back into the Pizza Hut so
12 they wouldn't get away and tell the police?
13 Is that what you did?
- 14 A. No, sir, I was standing outside.
- 15 Q. And nobody tried to get away?
- 16 A. Not that I saw.
- 17 Q. Do you remember telling the judge all of
18 this when you pled guilty?
- 19 A. No, sir.
- 20 Q. Because you did remember it back then,
21 didn't you?
- 22 A. Yeah. Yes, sir.
- 23 Q. You didn't tell the judge that you didn't
24 remember, did you?
- 25 A. No, sir.

1 Q. You told the judge that you walked inside,
2 didn't you?

3 A. No, sir.

4 Q. Do you remember telling Detective Patrick
5 that "William made the white (sic) female to
6 set the money out on the register and my job
7 was to watch the other two black guys." Do
8 you remember saying that?

9 A. No, sir.

10 Q. Do you remember telling Detective Patrick
11 that, "she gave him the money and (he) told
12 her to get the money out of the safe. She told
13 him that she couldn't open the safe. William
14 told them all to get in the back of the store,
15 then me and William ran out the back and got
16 into the car." Do you remember telling
17 Detective Patrick that?

18 A. No, sir.

19 Q. Do you remember telling Detective Patrick
20 where you had the same shotgun during this
21 robbery?

22 A. (No verbal response).

23 Q. You don't remember any of that?

24 A. No, sir.

25 Q. You don't know who William Coaxum is?

1 A. No, sir.

2 Q. You didn't rob the Pizza Hut on November
3 27th, 2007, with William Coaxum?

4 A. No, sir.

5 Q. You did it by yourself?

6 A. No, sir.

7 Q. Did you rob the North Charleston Inn on
8 the 26th of November, 2007, with William
9 Coaxum?

10 A. No, sir.

11 Q. Did you do it by yourself?

12 A. No, sir.

13 Q. Who did you do it with?

14 A. I don't recall his name.

15 MR. VOIGHT: Thank you. I have no
16 further questions.

17 THE COURT: You may cross-examine.

18 MR. BUTLER: Thank you.

19 CROSS EXAMINATION

20 BY MR. BUTLER:

21 Q. Mr. Benbow, you've never met me, have you?

22 A. (No verbal response).

23 Q. You and I have never talked? Right?

24 A. (No verbal response).

25 THE COURT: You need to answer.

1 Was that a "yes" or a "no"?

2 THE WITNESS: Uh, -- no, sir.

3 THE COURT: Thank you.

4 CROSS EXAMINATION CONTINUED

5 BY MR. BUTLER:

6 Q. And nobody from my office has ever come
7 and talked with you?

8 A. No, sir.

9 Q. This statement that you Mr. Voight was
10 asking you about. You never wrote out a
11 statement, did you? The detective wrote out
12 the statement?

13 A. Yes, sir.

14 MR. BUTLER: That's all that I have.

15 THE COURT: Redirect, Mr. Voight?

16 MR. VOIGHT: No redirect, Your
17 Honor.

18 THE COURT: Thank you. You may
19 come down, sir.

20 (WITNESS STEPS DOWN)

21 THE COURT: Call you next witness.

22 MR. VOIGHT: The State calls
23 Detective Shawn Patrick.

24 (WITNESS TAKES STAND)

25 SHAWN PATRICK, being duly

1 sworn to tell the truth, the whole truth and
2 nothing but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY MR. VOIGHT:

5 Q. Detective, how are you currently assigned.

6 A. I am a person's crime detective on the
7 Charleston Police Department.

8 Q. What is person's crimes?

9 A. We work anything from homicide to armed
10 robberies, anything involving a person being
11 armed.

12 Q. What was your assignment on November 27th,
13 2007?

14 A. I was called and asked to come to the
15 station and speak with a codefendant, Marquine
16 Benbow, with reference to a recent armed
17 robbery.

18 Q. Did you have a conversation with Mr.
19 Benbow?

20 A. Yes, I did.

21 Q. Did that conversation with Mr. Benbow
22 reference any other suspects to this armed
23 robbery?

24 A. Yes, it did.

25 Q. Who was that?

1 A. Mr. Coaxum.

2 Q. Was Mr. Benbow cooperative with you?

3 A. Yes, he was.

4 Q. Did he -- did you write the statement in
5 your own hand or did you allow him to write it
6 in his hand?

7 A. I wrote his statement.

8 Q. Why did you write his statement?

9 A. Clarification. Some people can't write
10 very well and I like to ask questions as I go
11 along.

12 Q. About how long did you spend with Mr.
13 Benbow?

14 A. To be honest, I don't recall. I'd say no
15 more than an hour-and-a-half or two.

16 Q. Did you read him his rights before you
17 questioned him?

18 A. Yes, I did.

19 Q. Did he appear to understand his rights?

20 A. Yes, he did. He initialed next to each
21 line as I read it to him. As I finished each
22 line I read it to him and asked him, "Do you
23 understand this right?" He answered, "Yes, I
24 do." He initialed as each right was read to
25 him.

1 Q. Did Mr. Benbow appear to be of at least
2 ordinary intelligence to you?

3 A. Yes.

4 Q. Had good comprehension?

5 A. Yes.

6 Q. Did he appear to be under the influence of
7 any drugs, alcohol or be suffering any mental
8 defects?

9 A. No, he did not.

10 Q. Did you have a pleasant conversation with
11 him?

12 A. Yes.

13 Q. Did you threaten him in any way?

14 A. No.

15 Q. Did you promise him anything to make the
16 statement?

17 A. No.

18 Q. Did you question him about William
19 Coaxum's involvement in the robberies of the
20 North Charleston Inn and of the Pizza Hut?

21 A. Yes, I did.

22 Q. Did he answer those questions?

23 A. Yes.

24 Q. What did he tell you that William had
25 done?

1 A. He said that he'd picked him up from his
2 house in an orange hatchback-type car, they
3 were -- he told him that he was looking for a
4 place to rob, they drove down the street,
5 observed the first business, went into -- he
6 took the gun out of the back of his car and
7 they both went inside. Mr. Benbow was more or
8 less the lookout, at Mr. Coaxum's direction.
9 They go in, get the money from the register at
10 the North Charleston Inn. The clerk sees an
11 opportunity to run and he tells her to go get
12 the money out of the register. So they both
13 -- when she turns to run, they both flee the
14 business, get in the car and begin to drive
15 away from the business.

16 Q. Did he tell you what happened at the Pizza
17 Inn?

18 A. Yes. Mr. Benbow observed the Pizza Hut,
19 thought it was open. Mr. Coaxum, they both go
20 back -- they parked at Checkers, I believe,
21 and walked to the Pizza Hut. Mr. Coaxum had
22 the shotgun again and he tells Mr. Benbow to
23 go to the front door, but it's locked. So Mr.
24 Benbow goes to the back door of the business
25 and he sees Mr. Coaxum with the gun out and he

1 is walking the employees, one employee, back
2 into the business. Mr. Coaxum tells Mr.
3 Benbow 'get that guy, he might call the
4 police.' Mr. Benbow tells the guy to go back
5 into the business. Then they all go in and he
6 demands the clerk to open the safe. The clerk
7 says that she can't open the safe and they
8 take off and leave the business. They get
9 back in their car parked at Checkers and get
10 back out on Dorchester Road, I believe
11 Dorchester and Rivers Avenue is where a police
12 officer apprehended -- got behind the vehicle.

13 Q. How long after his apprehension did you
14 talk to Mr. Benbow? Was it days?

15 A. No, it was that same night. I'd say
16 within thirty minutes, thirty to forty-five
17 minutes.

18 Q. And what was your role as the detective
19 assigned to this case?

20 A. My role was to ascertain the facts from
21 Mr. Benbow, take a statement from him. That
22 was pretty much it.

23 Q. Were you the primary detective in this
24 armed robberies investigation?

25 A. Yes.

1 Q. So -- was there anybody else responsible
2 for the general supervision of this
3 investigation besides you?

4 A. Uh, general supervision? The street
5 sergeants would have been.

6 Q. When you first got to the scene where did
7 you report?

8 A. I went straight to the station, the police
9 station, where Mr. Benbow was waiting.

10 Q. Did you ever go out to where the car was
11 on Rivers Avenue?

12 A. I did not.

13 Q. If you know, Detective, in your role as
14 chief detective in this investigation, were
15 fingerprints ever attempted to be lifted from
16 either the North Charleston Inn or the Pizza
17 Hut location?

18 A. Both places were processed.

19 Q. Is that standard procedure in an
20 investigation of this sort?

21 A. Yes.

22 Q. And, if you know, Detective, were any
23 prints able to be identified?

24 A. No.

25 Q. Is that unusual?

1 A. No.

2 Q. Did you ever attempt to talk to Mr.
3 Coaxum?

4 A. No, I didn't.

5 Q. Did you ever obtain search warrants for
6 the residences of Mr. Coaxum or Mr. Benbow?

7 A. I did.

8 Q. Was any evidence ever located as a result
9 of search warrants?

10 A. No.

11 Q. When were those search warrants served, if
12 you recall? Would that have been after you
13 talked to Mr. Benbow?

14 A. Yes, within a day or two.

15 MR. VOIGHT: Thank you, no further
16 questions at this time.

17 THE COURT: Thank you. You may
18 cross examine.

19 MR. BUTLER: May it please the
20 court.

21 CROSS EXAMINATION

22 BY MR. BUTLER:

23 Q. Good afternoon, Detective, how are you?

24 A. Good. How are you?

25 Q. Fine. Thank you. I want to talk to you

1 just a little bit about what it means to be a
2 detective, first. Detective is the same thing
3 as an investigator?

4 A. Yes, sir.

5 Q. An investigation is going out into the
6 field, going out to crime scenes; right?

7 A. (Affirmative nod).

8 Q. Talking to witnesses?

9 A. (Affirmative nod).

10 Q. Talking to suspects?

11 A. (Affirmative nod).

12 COURT REPORTER: Please answer
13 verbally.

14 THE WITNESS: Right.

15 CROSS EXAMINATION CONTINUED

16 BY MR. BUTLER:

17 Q. And you could say collecting information?

18 A. Yes.

19 Q. That's what a detective does, collects
20 information?

21 A. Right.

22 Q. And then you document the information that
23 you collect?

24 A. Right.

25 Q. Oftentimes in a report?

- 1 A. (No verbal response).
- 2 Q. You get witnesses to write statements?
- 3 A. (No verbal response).
- 4 Q. In this case you got the suspect to write
5 a statement.
- 6 A. (No verbal response).
- 7 Q. Well, you wrote the statement for him but
8 that was more docketing of information?
- 9 A. (No verbal response).
- 10 Q. Right?
- 11 A. Right.
- 12 Q. Photographs are often taken ---
- 13 A. (No verbal response).
- 14 Q. --- to document, for example this is the
15 way that the crime scene looked on the night
16 of the crime?
- 17 A. It's part of what a crime scene does when
18 they process the scene.
- 19 Q. And we know 'this' because that's what the
20 picture shows?
- 21 A. (No verbal response).
- 22 Q. That, too, is just a part of being an
23 investigator, documenting the information
24 that you've collected?
- 25 A. Right, but I don't take photographs.

1 That would be done by the crime scene
2 investigators.

3 Q. Right. But you would have all of that in
4 your file and as the lead investigation, if
5 something wasn't documented as you thought it
6 was, you could direct that take place?

7 A. Sure.

8 Q. And all of this is because you've got to
9 come back into court some time, sometimes
10 years, later and say 'here is all the
11 information that I collected.'

12 A. Right.

13 Q. And 'I know that because I documented it.'

14 A. Right.

15 Q. With respect to interviewing a suspect in
16 a crime, that's not the same as interviewing a
17 witness, is it?

18 A. Pretty much, yeah. There's the advice of
19 rights and ---

20 Q. That is what I am getting at. When you
21 interview just a witness you don't read them
22 their rights and tell them that they don't
23 have to talk.

24 A. Right.

25 Q. And there are classes that teach you how

1 to interview a suspect that is different than
2 how you do a witness; right?

3 A. Yes.

4 Q. You are familiar with the Rea technique?

5 A. Yeah, that's one.

6 Q. And that's because it is just a fact of
7 life that suspects don't always want to talk
8 in the same way witnesses do?

9 A. Right.

10 Q. Suspects are sometime reluctant to talk?

11 A. (No verbal response).

12 Q. But you want them to talk because you are
13 an information collector?

14 A. (No verbal response).

15 Q. Right?

16 A. Um-humm.

17 COURT REPORTER: Please answer
18 verbally.

19 CROSS EXAMINATION CONTINUED

20 BY MR. BUTLER:

21 Q. And if they don't talk you can't collect
22 information?

23 A. Right.

24 Q. Also when you take a statement from a
25 suspect -- and in this case I am talking about

1 Mr. Benbow.

2 A. Um-humm.

3 Q. If his case were to have gone to trial,
4 just like with any suspect you have to first
5 satisfy the court that certain things were
6 done properly, right?

7 A. (No verbal response).

8 Q. That you read him his rights?

9 A. Yes.

10 Q. That he understood those rights and he
11 waived them?

12 A. Yes.

13 Q. That in fact the statement was in fact
14 made?

15 A. Right.

16 Q. And if you don't satisfy the court that in
17 fact all those steps were properly taken, then
18 you might not get to talk about the statement?

19 A. Right.

20 Q. All right. So you make sure that you
21 document the fact that he says these things?

22 A. (No verbal response).

23 Q. You have to show that 'I didn't promise
24 him anything'.

25 A. (No verbal response).

1 Q. Right?

2 A. Right.

3 Q. 'I didn't threaten him in any way'?

4 A. Right.

5 Q. 'I didn't keep him from food, water, going
6 to the restroom', right?

7 A. Right.

8 Q. All of these things are things that you
9 have to prove before you can talk about the
10 statement in court?

11 A. Right.

12 Q. And you know that sometimes subjects will
13 then say, 'I didn't say that at all'; right?

14 A. Right.

15 Q. Talking about this case in general,
16 another reason that you document is -- you are
17 familiar with the concept of "he said/she
18 said"; right?

19 A. Yes.

20 Q. That's where one person says one thing and
21 another person says the exact opposite?

22 A. (No verbal response).

23 Q. You are also familiar with the concept of
24 corroboration?

25 A. Right.

1 Q. Corroboration is when there is some other
2 fact that proves what he said or she said and
3 it's not just a he said/she said; right?

4 A. Right.

5 Q. And as an investigator you would rather
6 have corroboration other than he said/she
7 said?

8 A. Right.

9 Q. For example if a person says, 'I couldn't
10 have done that, I was at work.' You go talk
11 to his boss and there would be some
12 corroboration or a failure to corroborate and
13 that, too, would be significant?

14 A. Right.

15 Q. There is no audio of this conversation
16 with this conversation of Mr. Benbow?
17 Audiotape?

18 A. No.

19 Q. And if there was audio, we could hear you
20 read him his rights?

21 A. Right.

22 Q. We could hear him say, 'yes, I understand
23 all of that.' We could hear him make a
24 statement. Right?

25 A. Yes.

1 Q. And that would be corroboration?

2 A. Yes.

3 Q. We don't have it?

4 A. No.

5 Q. Also a video would allow us to hear and
6 see all of those things, right?

7 A. That's correct.

8 Q. And if a lawyer were to say, 'Well, he
9 said that he didn't say it' and you said that
10 he did, you could say, 'I've got the video,
11 watch it for yourself.' Right?

12 A. Right.

13 Q. We don't have that?

14 A. No.

15 Q. Then you write the statement out for him?

16 A. Um-humm.

17 Q. It is not in his handwriting?

18 A. But he signs off on the bottom of the
19 statement after it is read back to him.

20 Q. But the content of the statement, you
21 write it?

22 A. Right.

23 Q. That would be one more way to corroborate
24 it?

25 A. He signs off on the statement.

1 Q. And at the time that he gives you this
2 statement you are interviewing him about two
3 armed robberies, right?

4 A. Yes.

5 Q. Okay. And he knew that he was looking at
6 serious time; right?

7 A. Yes.

8 Q. He knew that he was looking at a minimum
9 of ten years and a maximum of thirty years?

10 A. (No verbal response).

11 Q. Right?

12 A. (No verbal response).

13 Q. And he knew that if you tried him on one
14 and got a conviction and then you tried him on
15 the second it would be Life without the
16 possibility of parole; right?

17 A. I don't know if he knew that or not.

18 Q. But he knew that he was looking at serious
19 time?

20 A. Yes.

21 Q. If I understand you correctly he basically
22 said, 'yeah, I did it but it was really the
23 other guy, he was really the main person, I
24 was just -- kinda got wrapped up in it.'

25 Right?

- 1 A. Yes.
- 2 Q. That doesn't surprise you, does it?
- 3 A. No.
- 4 Q. It happens all the time, doesn't it?
- 5 A. Yes.
- 6 Q. A person who is looking at a lot of prison
7 time, you come to him and you say, 'hey, look,
8 this doesn't look good for you.' You said
9 something like that to him, likely; didn't
10 you?
- 11 A. No.
- 12 Q. You did not?
- 13 A. I don't really recall what I said to him
14 but I don't know that I said that.
- 15 Q. But it is not at all uncommon for someone
16 who is in the hot seat to say, 'Okay, I might
17 have done a little something but the other guy
18 is much, much, much more guilty than I am.'
- 19 A. Yes, sometimes it works that way.
- 20 Q. 'It was all his idea and he was the person
21 who had the gun, he was the person who had the
22 money and I just was in the wrong place at the
23 wrong place.' That happens, doesn't it?
- 24 A. It has happened, yes.
- 25 Q. You met with him for two hours?

1 A. Roughly.

2 Q. And in the two hours -- the two hours
3 generated the three-page statement that you've
4 summarized?

5 A. Right.

6 Q. Was there anything else that was going on
7 in those two hours?

8 A. No.

9 Q. So ---

10 MR. VOIGHT: Objection.

11 THE COURT: What is your objection?

12 MR. VOIGHT: Perhaps ---

13 THE COURT: Approach.

14 BENCH CONFERENCE:

15 MR. VOIGHT: He is talking about
16 another armed robbery during that statement.
17 I've stayed away from it.

18 MR. BUTLER: I think I could ask
19 him about it but I won't.

20 THE COURT: I think you can,
21 too.

22 MR. BUTLER: I'm not going to.

23 (BENCH CONFERENCE CONCLUDED)

24 CROSS EXAMINATION RESUMED

25 BY MR. BUTLER:

1 Q. Why wouldn't the North Charleston Police
2 Department have audio or video so that when --
3 so that when lawyers question you that you can
4 say, 'here is the corroboration.'

5 A. I don't know.

6 Q. I mean, I am just curious why ---

7 MR. VOIGHT: Objection, calls for
8 speculation.

9 THE COURT: I will allow it.
10 Overruled.

11 CROSS EXAMINATION CONTINUED

12 BY MR. BUTLER:

13 Q. Do you know why they do not do that?

14 A. I don't know.

15 Q. You talk about the attempt to process the
16 scene for fingerprints. The shotgun was also
17 processed, was it not?

18 A. If I am not mistaken, it should have been.
19 Crime scene usually handles that part of it.

20 Q. Okay. If there are any fingerprints that
21 belonged to William Coaxum on the shotgun, you
22 would know about it?

23 A. Yes.

24 Q. And there were none.

25 A. No.

1 MR. BUTLER: Beg the court's
2 indulgence.

3 THE COURT: Certainly.

4 MR. BUTLER: That's all that I have,
5 Detective.. Thank you.

6 THE COURT: Redirect, Mr. Voight?

7 MR. VOIGHT: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. VOIGHT:

10 Q. Detective, I am just going to ask you a
11 couple of questions about the things that he
12 asked you. Was Marquine Benbow reluctant to
13 talk to you?

14 A. No.

15 Q. And you've had people in your experience
16 be reluctant to talk to you, haven't you?

17 A. Yes.

18 Q. And you've actually had people refuse to
19 talk to you?

20 A. Yes.

21 MR. BUTLER: I have to object to
22 leading at this point.

23 THE COURT: Sustained.

24 MR. VOIGHT: Thank you.

25 REDIRECT EXAMINATION CONTINUED

1 BY MR. VOIGHT:

2 Q. Did you read back Mr. Benbow's statement
3 to him?

4 A. Yes.

5 Q. Was he given the opportunity to correct
6 any errors that you may have made in
7 transcription or in writing down what ---

8 A. Yes.

9 Q. Did he in fact make any corrections?

10 A. Yes, he did.

11 Q. Do you recall what he corrected?

12 A. Grammatical errors. Generally I ask them
13 to read through it and if they find something
14 to initial next to the error, as will I.

15 Q. Did you do that on that document?

16 A. Yes.

17 Q. Did anywhere in there did Mr. Benbow say
18 that he was in the wrong place at the wrong
19 time?

20 A. No.

21 Q. Did Mr. Benbow admit to going into both
22 the North Charleston Inn and the Pizza Hut?

23 A. Yes.

24 Q. Did he admit to assisting Mr. Coaxum with
25 these robberies?

1 A. Yes.

2 MR. BUTLER: Judge, I have to
3 object. Asked and answered on direct.

4 THE COURT: Sustained.

5 MR. VOIGHT: Thank you, Your Honor.

6 REDIRECT EXAMINATION CONTINUED

7 BY MR. VOIGHT:

8 Q. Mr. Butler asked you if William Coaxum's
9 fingerprints were on the shotgun, if as the
10 lead investigator would you know that?

11 A. Yes.

12 Q. If Marquine Benbow's fingerprints were on
13 the shotgun, again as the lead detective would
14 you know that?

15 A. Yes.

16 Q. Were his fingerprints on that shotgun?

17 A. No.

18 MR. VOIGHT: Thank you. At this
19 time, Your Honor ---

20 THE COURT: Hold on just a second.
21 Recross?

22 MR. BUTLER: No, sir.

23 THE COURT: You may come down.

24 (WITNESS STEPS DOWN)

25 THE COURT: At this point, Ladies

1 younger. You've got them wearing similar
2 clothing.

3 Probably the most -- the most
4 reliable aspect of it is the vehicle. They
5 are in an orange vehicle. Whether it is was a
6 Neon or whether it was a whatever, it was an
7 orange vehicle.

8 Then you've got a man who by his own
9 job, his own responsibility is a security
10 person. He has called the police, the guy
11 walks out and he is looking at him face-to-
12 face and he says -- drives up, 'That's the
13 man.' There is no question that it is
14 reliable. Thank you, sir. Your Motion is
15 noted and denied.

16 MR. BUTLER: Thank you.

17 THE COURT: All right. We have a
18 note from our foreperson that Juror Number 7,
19 who is Pearl Alston, has indicated that she
20 knows the family of the Defendant but not the
21 Defendant himself. This is will be Court's
22 Exhibit 1. She states that the juror would
23 like to speak to me.

24 Do you'all want me to speak to her
25 here first or speak to her first to find out

1 what she wants to say and then bring her in
2 for an examination. What is your pleasure?
3 Typically what I do is I talk to them -- I
4 don't know what she is going to say, whether
5 it is affecting her or not. If she says that
6 it is, then I will bring her out immediately
7 and we will inquire as to whether she has had
8 any discussion with anyone. If she says that
9 she is not, then I will bring her out and let
10 -- however you want to proceed.

11 MR. VOIGHT: I would like to proceed
12 in the manner that the court has indicated.

13 THE COURT: I've found -- at least
14 -- the first one -- if I bring her out first
15 -- I'm not trying to control anything but she
16 may be more likely to disclose that to the
17 court.

18 MR. BUTLER: That's fine. Thank you,
19 Judge.

20 THE COURT: Mr. Coaxum has no
21 objection to my doing it that way?

22 MR. BUTLER: No.

23 THE COURT: If anyone would like to
24 read this, it is Court's Exhibit 1.

25 (SO ENTERED AS COURT'S EXHIBIT 1)

1 (OFF RECORD DISCUSSION WITH JUROR)

2 (JUROR NUMBER 7 ENTERS COURTROOM)

3 THE COURT: Let me report that --
4 Ms. Alston, you can stand here. I've just
5 told Ms. Alston, thanked her for doing that.
6 That's one of the reasons is that I have such
7 faith in the jury system.

8 The statement was, as I understand,
9 Ms. Alston, when you came in that you still do
10 not know the Defendant but you recognize
11 family members; one of them, you worked with.

12 JUROR NUMBER 7: Um-humm.

13 THE COURT: And one of -- and that
14 person, you say, that -- she claims that
15 you'all are distant cousins but you are not
16 sure of that?

17 JUROR NUMBER 7: Right.

18 THE COURT: And I believe that you
19 indicated to me that you wanted that to be
20 known and didn't want that to be something
21 that somebody found out later, but that it
22 would not influence you is what you indicated?

23 JUROR NUMBER 7: Yes.

24 THE COURT: Any additional
25 questions that the State would have of Ms.

1 Alston?

2 MR. VOIGHT: Just briefly.

3 THE COURT: Sure.

4 MR. VOIGHT: Ms. Alston, ---

5 JUROR NUMBER 7: Yes?

6 MR. VOIGHT: --- are you able when
7 you're considering the evidence from the
8 witness stand and the other evidence that
9 you're presented, are you able to put out of
10 your mind those relationships, whether they be
11 working relationships, family relationships,
12 and consider just the evidence that comes from
13 the witness stand?

14 JUROR NUMBER 7: Yes, sir.

15 MR. VOIGHT: Do you believe that
16 your knowing anybody from the Defendant's
17 family would have, in any way, any influence
18 on your decision? Make you deliberate longer?
19 Make you view evidence in any different light
20 than you would have had you not been -- not at
21 all?

22 JUROR NUMBER 7: No, it wouldn't.

23 THE COURT: Mr. Butler, any
24 questions?

25 MR. BUTLER: No, sir.

1 THE COURT: Ms. Alston also
2 indicated to me that the only person that she
3 has disclosed this to was the foreperson. Do
4 you wish for me to talk with her as well to
5 find out if that would influence her at all?

6 MR. VOIGHT: I don't know that that
7 is necessary.

8 MR. BUTLER: No, sir.

9 THE COURT: Ms. Alston, I am going
10 to ask that you step out -- not to return to
11 the jury room just yet. We will be with you
12 in just a moment. If you would let her just
13 stand right outside, Mr. Williams. Thank you
14 so much.

15 (JUROR NUMBER 7 EXITS COURTROOM)

16 THE COURT: What is the State's
17 request?

18 MR. VOIGHT: Out of an abundance of
19 caution, Your Honor, we would request that she
20 be excused. These types of relationships,
21 despite the fact that it appears she answered
22 my questions honestly, these types of
23 relationships actually -- I believe that it
24 would be most difficult and ultimately she may
25 not be able to put it out of her mind, and out

1 of an abundance of caution I would ask that
2 she be excused.

3 MR. BUTLER: Your Honor, I would
4 have to oppose his Motion.

5 THE COURT: I understand. Had you
6 known this information, would you have
7 exercised a peremptory challenge?

8 MR. VOIGHT: Yes, Your Honor.

9 THE COURT: I think that's the key.
10 Had the information been disclosed, then a
11 challenge would have been exercised. While
12 she has expressed that, uh, -- well, pull up
13 *State v. Stone*. Just one second, I think
14 that's one of the issues that I was reversed
15 on -- let me look at that.

16 COURT REPORTER: 350 SC 442.

17 THE COURT: Thanks. (Upon review),
18 that's it. All right. In *Stone* the Court
19 reversed on some other issues in the
20 sentencing phase because I discharged a juror
21 who basically announced to the court when a
22 person testified in the sentencing phase that
23 she was acquainted with the person. The State
24 made the same argument that you did. The
25 record is not clear whether we delved into the

1 compelling reasons and I think that I can't
2 argue with the State's position that they
3 would have used that as a peremptory
4 challenge. If you want to do that. I am
5 citing that for you, Solicitor, so that you
6 can make the call as to whether you want to
7 have this go up on that issue.

8 MR. VOIGHT: I understand, Your
9 Honor, the trap -- the facts as you have laid
10 them out for me. For the record, I think I am
11 going to step right into it. I used my, to my
12 recollection two peremptory challenges.

13 THE COURT: Two, (affirmative nod).

14 MR. VOIGHT: When ---

15 THE COURT: Ms. Alston would have
16 actually been -- you used one just preceding
17 Ms. Alston. She was followed by John Jowers,
18 who you excused -- no, excuse me. The
19 Defendant excused -- you had previously the
20 juror before -- Ms. Flood, you had excused,
21 and then the Defendant excused Mr. Jowers,
22 Juror Number 150. The next person that was
23 drawn was Ms. Alston and -- you would have had
24 ---

25 MR. VOIGHT: I ---

1 THE COURT: At that point you had
2 used two peremptory challenges.

3 MR. VOIGHT: I believe two of the
4 four.

5 THE COURT: You did.

6 MR. VOIGHT: When I -- every case is
7 different but I do tend to have general types
8 of people that I exclude, and I normally don't
9 go into my reasoning for doing so but in this
10 case I feel that it is necessary. I look for
11 ties to the community and longstanding
12 employment history when I am on this side, as
13 a prosecutor. That was the reason for my
14 striking Ms. Flood, because she was not
15 employed and did not appear to have been
16 employed for some time previously. The very
17 first juror that I struck, I struck because
18 of her socialwork background.

19 A third factor that I always look to
20 when I am striking jurors and those reasons
21 don't rise to the level of a challenge for
22 cause is ties to the defendant or a key
23 defense witness.

24 I believe that those are the kinds of
25 connections, as this juror has disclosed, that

1 are exactly the kinds of things that I am
2 looking for to exclude by peremptory
3 challenge.

4 THE COURT: Okay. Thank you, sir.
5 Anything that you wish to add, Mr. Butler?

6 MR. BUTLER: Judge, just to try to
7 make sense out of the *Stone* case and why that
8 holding would be that way, I am not sure that
9 it is completely appropriate to try to put
10 ourselves back in the shoes -- our own shoes,
11 to figure out what we would have done before
12 the trial. Here's -- the reason is because
13 there is a strong policy reason not to want to
14 have to replace jurors in the middle of trial.

15 THE COURT: Right.

16 MR. BUTLER: No matter what we tell
17 the alternate, we can't help but be worried
18 that the alternate does to pay attention in
19 the same way that the other twelve jurors who
20 are likely to have to decide the case. They
21 told us that this was not going to be a long
22 case and I think we're at least halfway
23 through it. You don't have that concern
24 before you start a trial but you do now, so I
25 can see why there would be a more compelling

1 standard -- that the standard would be higher
2 when ---

3 THE COURT: Right.

4 MR. BUTLER: --- you are replacing a
5 juror with an alternate mid-trial than you
6 would before you start a trial. I think that
7 is probably the reason part of that rule says
8 "intentionally conceals". I don't think
9 anybody thinks that the information that has
10 come forward was intentionally concealed by
11 Ms. Alston. If I understood Your Honor
12 correctly, that was ---

13 THE COURT: Well, that is certainly
14 -- intentionally concealed, then the person
15 would have violated the court's instruction
16 and that would support a basis for removal.

17 The *Wood* case, I am just looking at
18 it quickly. The cite -- in that case it is
19 interesting because a juror did intentionally
20 conceal the information.

21 I think the key here to me, and it is
22 a key, I believe that it is, and notwithstand-
23 ing the Court's statement, that is why we ask
24 the question -- for instance, -- just to draw
25 an analogy, that's why you ask about law

1 enforcement connection.

2 MR. BUTLER: Sure.

3 THE COURT: Not that it is a
4 challenge for cause but it is a basis to say,
5 'I don't know if I want that philosophy or
6 that mindset on my jury.' It just changes
7 everything, how we view it.

8 I think that is why the court has
9 recognized those as being legitimate
10 peremptory challenges that meet the *Batson*
11 standard. Clearly this would meet the *Batson*
12 standard. I think that there is a rational
13 reason -- I think that there is a basis for
14 it, even notwithstanding some -- even an
15 acquaintance, but clearly where you have
16 someone that is a close friend, I think that's
17 a legitimate basis?

18 MR. BUTLER: Certainly, but ---

19 THE COURT: And I understand your
20 concern about being midstream.

21 MR. BUTLER: Yes, sir.

22 THE COURT: I am not concerned
23 about that because that would always been the
24 case any time we put an alternate juror on.
25 That's one of the reasons that I make the

1 little statement that I make, hopefully to
2 trigger that 'you're very much a part of the
3 jury.'

4 I understand your concern and that is
5 certainly a basis for me to deny it but I
6 would not -- that would not persuade to me do
7 that. I am going to grant the State's Motion
8 notwithstanding Stone. I think that there is
9 -- I think this one is distinguishable by
10 what's on the record.

11 MR. BUTLER: Note my objection.

12 THE COURT: You absolutely are
13 protected.

14 MR. BUTLER: Thank you.

15 THE COURT: Excuse me one moment.
16 Well, I am going to do this in your presence,
17 discharging Ms. Alston.

18 (JUROR NUMBER 7 ENTERS COURTROOM)

19 THE COURT: Ms. Alston, first of
20 all, thank you and I applaud you for what you
21 did in bringing this to the court's attention.
22 We have heard what you said. I don't know if
23 you heard when we dismissed some jurors
24 previously.

25 JUROR NUMBER 7: Yes.

1 attention to the next witness.

2 Please call your next witness,
3 Solicitor.

4 MR. VOIGHT: Thank you, Your Honor.
5 The State calls Keith Jennings.

6 (WITNESS TAKES STAND)

7 KEITH JENNINGS, being duly
8 sworn to tell the truth, the whole truth and
9 nothing but the truth, testified, as follows:

10 DIRECT EXAMINATION

11 BY MR. VOIGHT:

12 Q. Mr. Jennings, where do you work?

13 A. I work for Trident Security.

14 Q. How long have you worked security?

15 A. I have been doing it for right at eight
16 years.

17 Q. Were you working for Trident Security on
18 November the 27th, 2007?

19 A. Yes, I was.

20 Q. Where were you assigned that night?

21 A. North Charleston Inn.

22 Q. What shift were you working that night?

23 A. I was working the 10:00 to 6:00.

24 Q. If you know, who was working as the night
25 clerk at the North Charleston Inn that night?

1 A. All I know is her last name is "Smith". I
2 didn't know her first name.

3 Q. Did you have a chance to talk with her at
4 all when you checked in?

5 A. Well, that's what we do when we come in.
6 We've got to check in with them first.

7 Q. What are your duties as a security guard
8 when you are assigned to the Charleston Inn?

9 A. Mainly just walk around the parking lot to
10 make sure that none of the cars are broken
11 into, and walk around on the inside over by
12 where the bar is and everything's at to make
13 sure that everything is going all right inside
14 the bar; watching out for -- (pause).

15 Q. Did you have occasion on the night of the
16 27th to call 9-1-1?

17 A. Yes, sir.

18 Q. Why did you call 9-1-1?

19 A. Well, I was making my rounds and when I
20 came around to the front of the building where
21 the lobby is at I noticed two black gentlemen,
22 one with a gun and another standing off to his
23 left. That's when I called. I was standing
24 behind one of the three pillars that were
25 standing there, I stood behind them and called

1 9-1-1.

2 Q. What did the gentlemen do next?

3 A. Well, he had the gun to the young lady's
4 head. The guy to his left was kinda of, I
5 reckon, looking like a lookout or whatever.
6 When she -- after they did what they did, she
7 ran in the back door (sic), which it
8 automatically locks for certain reasons just
9 for that.

10 He come -- they come running out and
11 I was standing behind the pillar. The young
12 guy kind of had his head down and the older
13 gentleman looked right at me. I don't think
14 he realized that I was standing there.

15 Q. Did they leave on foot, did they catch a
16 bus, what did they do ---

17 A. No, sir. They got into an orange -- I
18 thought it was a Suzuki. I'm not much for
19 cars, so I don't know ---

20 Q. But you know the color was orange?

21 A. Yeah, it was orange.

22 Q. Do you know which one of them got in the
23 driver's seat?

24 A. I didn't really see who got in the -- it
25 happened so fast and all I was thinking about,

1 was worrying about her in the motel.

2 Q. Was that the first time that you had seen
3 the orange car?

4 A. No; I had seen it earlier when I was just
5 starting my rounds. I seen it pull up to the
6 motel. That late at night it's not unusual
7 for people to check in.

8 Q. Did you see anybody in the car when it was
9 pulling ---

10 A. There was two gentlemen in the car.

11 Q. What did you do after you first saw the
12 car?

13 A. I didn't think too much about it. I just
14 kinda looked at them and then just walked/
15 continued my rounds. You know, the ---

16 Q. About how long did your round take?

17 A. A little less than ten minutes.

18 Q. And how far away from the gentlemen were --
19 you the next time that you saw them?

20 A. I was from about here to where you are
21 standing at, probably, in that area.

22 A. Was there anything obstructing your view,
23 anything between you and the gentlemen?

24 A. No, there wasn't.

25 Q. Did you see Ms. Smith?

1 A. Yes, she was standing behind the counter
2 when the guy was holding the gun to her and
3 then after -- apparently he -- I don't know if
4 he got anything, I didn't see him get
5 anything, but she ran into the back room where
6 the back door automatically locks for security
7 reasons.

8 Q. Is that front desk area well lit?

9 A. Yes, very well lit.

10 Q. About how long did you look at them from
11 that distance?

12 A. Probably two or three minutes, maybe.
13 Because once they did that, they we went --
14 they went pretty quick and I noticed that when
15 they came out that the older gentleman -- I
16 don't know if he was just looking around to
17 see if anybody was around or anything but I
18 looked right at him.

19 Q. Did you get a good look at his face?

20 A. Yes, I did.

21 Q. You describe him as the older gentleman?

22 A. Yes.

23 Q. Was there a discrepancy in the ages of the
24 two men?

25 A. Yeah, the other guy looked like he was in

1 his teens, he was a younger fellow.

2 Q. Did you see the younger fellow with a gun?

3 A. No.

4 Q. When you got a good look at the older
5 gentleman, what was the lighting like?

6 A. It's pretty lit up. It -- where they
7 were, they pull up to the motel where they
8 check in, so they -- we've got to keep it
9 pretty well lit up so that they can -- so we
10 can see in or out. That way we can see
11 anybody who comes in or out.

12 Q. Was the older gentleman clean-shaven or
13 did he have facial hair?

14 A. He had like a little goatee-like thing,
15 but it -- it wasn't really bad looking, it was
16 just a little goatee-like type thing.

17 Q. What was the older gentleman wearing?

18 A. I thought that it was a gray-and-white
19 jacket, I thought it was camouflage. All I
20 know is that it looked camouflage to me.

21 Q. Did you called 9-1-1 before the gentlemen
22 left or after the gentlemen left?

23 A. Before he (sic) left. I was standing
24 behind that pillar calling them when he came
25 out. That is when I told the police that they

- 1 were coming out and that they'd gotten into
2 that orange car and took a right on Montague.
- 3 Q. You told the police about the orange car?
- 4 A. Yes, sir.
- 5 Q. What did you do after the gentlemen left?
- 6 A. I went in and checked on the young lady.
- 7 Q. How did she appear to you?
- 8 A. She was scared, crying and upset.
- 9 Q. How long after the gentlemen left did it
10 take for the police to get there?
- 11 A. Not very long, three to five minutes.
- 12 Q. Did there come a time when the police
13 asked you to go with them?
- 14 A. Yes, they did.
- 15 Q. Did you go with the young lady or did you
16 go separately?
- 17 A. We went separately.
- 18 Q. Did you take your car or did they drive
19 you?
- 20 A. No, I rode with the policeman.
- 21 Q. Were you in the front seat or the back
22 seat?
- 23 A. Front seat.
- 24 Q. Where did they take you?
- 25 A. Took me to Rivers Avenue.

1 Q. What did you see when you got to Rivers
2 Avenue?

3 A. I noticed a lot of police cars and an
4 orange car that had hit a fire hydrant off to
5 the right.

6 Q. Was it the same orange car that you had
7 seen at the North Charleston Inn?

8 A. Yes, it was.

9 Q. Did they show you anybody out there, did
10 the police show you anybody?

11 A. Yes, they showed me the older gentleman.

12 Q. The gentleman that they showed you, did
13 you tell them what if any role in the armed
14 robbery that he had?

15 A. Yes. He had asked me was he one of them
16 and I just -- I thought for a few minutes
17 because I wanted to make sure that I got it
18 right and I -- after I looked at him, I said
19 'yeah', that that was him, that he was the one
20 that was holding the gun.

21 Q. Do you see the man who was holding the
22 gun, in the courtroom today?

23 A. Yes, I do.

24 MR. BUTLER: Please note my previous
25 objection.

1 THE COURT: Objection is noted and
2 protected. The rulings are on the record and
3 those rulings remain. You may answer the
4 question.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. VOIGHT:

7 Q. Would you point -- would you describe
8 where he is and what he is wearing?

9 A. He is wearing a gray suit over to the
10 left.

11 Q. Are you certain that that was the man with
12 the gun?

13 A. Yes, I am.

14 MR. VOIGHT: Thank you, I have no
15 further questions.

16 THE COURT: You may cross examine.

17 MR. BUTLER: May it please the
18 Court.

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. BUTLER:

22 Q. Good morning, Mr. Jennings.

23 A. How you doing?

24 Q. I'm fine. Thank you for asking. I just
25 have a few questions. When you first see the

1 two men -- you recall the area that they were
2 in was in the lobby?

3 A. Yes, sir, they were in the lobby ---

4 Q. And you were outside?

5 A. Yes, I am outside by the pillars where the
6 driveway is, where they come to check in at.

7 Q. And you are seeing what is going on inside
8 through a window?

9 A. Yes, sir.

10 Q. And -- because you talked about seeing
11 them two separate times, I want to make sure
12 that we get the distances right. When you see
13 them and you are outside, how far away are
14 you?

15 A. When I am outside and he's inside, he is
16 probably to the double doors.

17 Q. Back here (indicating doors into
18 courtroom)?

19 A. Yeah.

20 Q. Then when the two men exit, that's when
21 you are about this far away?

22 A. Yeah. Yes, sir.

23 Q. From where you are to the prosecutor's
24 table?

25 A. Yes, sir.

1 Q. And you described the car as a Suzuki.
2 Did you tell the police that it was a Dodge
3 Neon?

4 A. No, I really don't know exactly what it
5 was. It was just an orange car. I just kinda
6 guessed at what it was, I didn't see exactly.
7 All I know is that it was orange.

8 Q. Yes, sir.

9 MR. BUTLER: Beg the court's
10 indulgence.

11 THE COURT: Yes, sir, take your
12 time.

13 MR. BUTLER: Thank you, Mr.
14 Jennings, that is all that I have.

15 THE COURT: Redirect?

16 MR. VOIGHT: No redirect at this
17 time.

18 THE COURT: Thank you, Mr.
19 Jennings, you may step down.

20 (WITNESS STEPS DOWN)

21 THE COURT: Call your next witness
22 please.

23 MR. VOIGHT: Officer Jason Gamba.

24 (WITNESS TAKES STAND)

25 JASON GAMBA, being duly sworn

1 to tell the truth, the whole truth and nothing
2 but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY MR. VOIGHT:

5 Q. Officer Gamba, where are you employed?

6 A. City of North Charleston Police
7 Department.

8 Q. How are you assigned?

9 A. I am a police officer.

10 Q. Is there any specific assignment that you
11 have?

12 A. I work for the canine unit.

13 Q. How were you assigned on November 27th,
14 2007?

15 A. I was working that night.

16 Q. Did you have occasion on that day to
17 respond to a call?

18 A. Yes, sir.

19 Q. Do you recall what time that was?

20 A. I believe it was around 10:45 that night.

21 Q. And what in response to that call, what
22 did you do -- what type of the call was it?

23 A. It was an armed robbery that occurred at
24 Dorchester and Leeds. I was on the way there
25 and I heard officers get behind a vehicle

1 matching the description of the vehicle used
2 in the robbery. A vehicle pursuit ensued and
3 I responded to assist with the pursuit.

4 Q. Where did you ultimately respond, what
5 location?

6 A. Ultimately the pursuit ended at Rivers
7 Avenue near Bolton Street after the vehicle
8 that we were pursuing crashed.

9 Q. Were you part of the pursuit?

10 A. I was at the time attempting to take over
11 as primary unit. As canine officers, anytime
12 that there is a pursuit in the city we take
13 over as primary. I did not have the
14 opportunity to make it to the primary
15 position, the vehicle actually wrecked out
16 before I was able to.

17 Q. Did you see the vehicle while it was
18 traveling?

19 A. Yes, sir.

20 Q. What did it look like?

21 A. It was kind of orange in color.

22 Q. Were you able then to get behind it and
23 pursue it along with the other police
24 vehicles?

25 A. I was about three or four cruisers back.

1 I was about the third or fourth cruiser in the
2 pursuit at the time it ended.

3 Q. Did you see the vehicle crash?

4 A. No, sir, I saw the aftermath when I came
5 around the corner.

6 Q. What was the aftermath that you saw?

7 A. It struck a fire hydrant and water was
8 spewing everywhere.

9 Q. When you got to the scene, what was your
10 job? What did you do?

11 A. I assisted a couple of officers that were
12 pursuing -- two people had jumped out of the
13 vehicle to flee on foot. When I came around
14 the corner I saw a couple of officers
15 attempting to detain Mr. Coaxum. I assisted
16 them with that.

17 Q. Were you -- how did you assist the
18 officers in the detention of Mr. Coaxum?

19 A. I assisted -- they got the handcuffs on
20 him. I assisted in getting him to his feet
21 and by walking him back to the police cruiser.

22 Q. Could you tell when you got to the scene
23 which side of the vehicle that he was on?

24 A. No, sir, I could not.

25 Q. You could not tell if he was the driver or

1 the passenger?

2 A. No, sir.

3 Q. Did you -- were you able at any time to
4 search Mr. Coaxum's person?

5 A. Yes, sir. I conducted a search incident
6 to arrest, of his person.

7 Q. What did you find?

8 A. In his left front pants pocket he had an
9 amount of loose currency. I believe that it
10 was \$396, to be exact.

11 In his right front pocket he had a black
12 in color wallet with another \$622 and also his
13 driver's license, Social Security card and his
14 birth certificate.

15 Q. And what did you do with the money that
16 you took out of his pocket and wallet?

17 A. It was placed into evidence.

18 Q. Did you search the car at all?

19 A. No, sir. I did not.

20 Q. Did you take any statements from anyone?

21 A. No, sir.

22 MR. VOIGHT: That's all that I
23 have.

24 THE COURT: Cross-examine?

25 CROSS EXAMINATION

1 BY MR. BUTLER:

2 Q. Officer Gamba, just briefly, when you --
3 when you get there the only suspect near the
4 car is Mr. Coaxum?

5 A. That's correct.

6 Q. And the other suspect had fled?

7 A. Yes, sir.

8 Q. When you were there he was not in sight?

9 A. No, sir.

10 Q. And Mr. Coaxum was still at the car?

11 A. He was near the vehicles. I believe that
12 he had been struck by a police cruiser that
13 hydroplaned.

14 MR. BUTLER: Thank you very much.

15 THE COURT: Redirect?

16 MR. VOIGHT: No redirect.

17 THE COURT: You may come down,

18 Officer Gamba.

19 (WITNESS STEPS DOWN)

20 THE COURT: Call your next witness.

21 MR. VOIGHT: The State calls Thomas
22 Wallace -- (not present).

23 Mr. Wallace is not available, so we
24 will call Officer Pritchard -- (not present).

25 All right, we will call Officer

1 Singletary.

2 (WITNESS TAKES STAND)

3 DAVID SINGLETARY, being duly
4 sworn to tell the truth, the whole truth and
5 nothing but the truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY MR. VOIGHT:

8 Q. You are Sergeant Singletary, right?

9 A. Yes, sir.

10 Q. How are you employed, sir?

11 A. With the North Charleston Police
12 Department as a sergeant of the Saturation
13 Patrol Unit.

14 Q. And how long have you been with North
15 Charleston?

16 A. Since September of 1993?

17 Q. And on November 27th, 2007, did you have
18 occasion to respond to an armed robbery call?

19 A. Yes, sir, I did.

20 Q. What was your assignment on that day?

21 A. I was the Uniform Patrol sergeant working
22 that evening.

23 Q. As the Uniform Patrol sergeant, what were
24 your duties?

25 A. To supervise the unit that I was assigned

1 to.

2 Q. Describe so that the jury will know, how
3 is the North Charleston Police Department
4 divided? Is there a distinction between
5 patrol and detectives, the crime scene unit
6 and other ---

7 A. Yes, sir. There is -- it is separated
8 into different units, detective units, crime
9 scene, patrol units.

10 Q. What do patrol units typically do?

11 A. We respond to calls for service that come
12 in through our dispatch center.

13 Q. And you were the supervisor that evening
14 over the patrol unit?

15 A. Right.

16 Q. And did you respond to -- where did you
17 respond when you responded to the armed
18 robbery call?

19 A. That evening we got a call to an armed
20 robbery that had just occurred at the Pizza
21 Hut located at 4397 Dorchester Road. While I
22 was *en route* to the call I heard dispatch
23 communicate to us that the vehicle involved in
24 the armed robbery was an orange Dodge Neon. I
25 turned onto Dorchester from Rivers, crossed

1 over Meeting Street, crossed over the tracks,
2 got to just about -- I believe that it was
3 almost to I-26 at Dorchester Road when I
4 observed a small orange vehicle traveling in
5 the opposite direction. I turned around on
6 it, verified -- or asked dispatch if the car
7 could have been a Suzuki Reno, which they are
8 similar in style, size and that type of thing.
9 She said that the people at the robbery said
10 it was a Neon. I then tried to traffic stop
11 it to field -- for a field interview. Based
12 on the ---

13 Q. What was your purpose for the stop on the
14 orange car?

15 A. It closely matched the description of the
16 armed robbers vehicle.

17 Q. What happened when you attempted to pull
18 the vehicle over?

19 A. They ran.

20 Q. And what did you observe next?

21 A. We got into a vehicle pursuit. Went up
22 Rivers Avenue and he tried to -- I believe the
23 vehicle tried to turn onto Olsen Avenue, which
24 is right in the Ferndale subdivision. As they
25 were making the turn they had a little bit too

1 much speed and crashed into a fire hydrant.

2 After they crashed the driver got out and
3 due to all the water that was coming onto the
4 road from the fire hydrant, one of the patrol
5 cars that was coming in hydroplaned in the
6 water and collided with the driver of the
7 vehicle who had tried to run on foot. I
8 then -- after he was knocked down by the
9 police car, I apprehended him and handcuffed
10 him.

11 Q. Do you see the person that you
12 apprehended, in the courtroom today?

13 A. Yes, sir.

14 Q. Would you point him out and describe what
15 he ---

16 A. That's him (indicating Defendant).

17 Q. --- is wearing?

18 A. That's him, (indicating Defendant).
19 William Coaxum.

20 Q. What other role did you play in the
21 investigation of these armed robberies. What
22 did you do next?

23 A. I secured the driver in the patrol
24 vehicle. I believe that Patrolman Pritchard
25 has responded to -- I can't remember if it was

1 the Pizza Hut or the North Charleston Inn, I
2 can't remember which one -- to get the -- I
3 can't remember which one that he responded to
4 to pick up the victims and brought them to the
5 scene; they positively identified the driver,
6 Mr. Coaxum.

7 Q. Were you present when Tamera Brown, the
8 manager of the Pizza Hut, was brought to view
9 Mr. ---

10 A. I don't recall.

11 Q. Were you present when anybody from the
12 North Charleston Inn was brought to view Mr.
13 Coaxum?

14 A. I was present when someone was brought
15 there. I was standing at the patrol vehicle.
16 I don't know who was inside the other patrol
17 vehicle, doing the observation.

18 Q. Did you have any occasion to go inside and
19 look at the contents of the orange vehicle?

20 A. I looked in it and I noticed a shotgun
21 laying in the front seat of the car.

22 Q. Who ultimately collected that shotgun?

23 A. I assume one of our crime scene units.
24 I don't recall.

25 Q. Is that a function of the patrol, to take

1 that into evidence at that time?

2 A. On a case like that -- on a big, what we
3 call a big case like that we would normally
4 call in crime scene to collect all the
5 evidence.

6 Q. Was crime scene called in?

7 A. Yes, sir.

8 MR. VOIGHT: One moment.

9 THE COURT: Certainly.

10 MR. VOIGHT: The State would tender
11 this witness.

12 THE COURT: You may cross examine.

13 MR. BUTLER: May it please the
14 Court.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. BUTLER:

18 Q. Good morning, Sergeant?

19 A. Good morning.

20 Q. The patrol cars, are they equipped with
21 video cameras?

22 A. They are, some of them are.

23 Q. The ones involved in this pursuit?

24 A. I don't recall. I don't recall, sir.

25 Q. In any case it was not a long high-speed

1 chase?

2 A. Maybe two miles, if it was that long. I
3 am not exactly sure.

4 Q. And the ---

5 A. Something like from Rivers and Cosgrove to
6 Ferndale, if I -- maybe two-and-a-half miles.

7 Q. Do you recall if the shotgun, when you
8 looked inside the vehicle, was on the
9 passenger side?

10 A. I believe that it was tucked -- it was
11 like leaning on the passenger side, if I
12 recall correctly.

13 Q. And do you recall loose cash on the
14 floorboard, passenger side?

15 A. I don't really remember. I don't
16 remember.

17 Q. Thank you very much.

18 A. You're welcome. Thank you.

19 THE COURT: Redirect?

20 MR. VOIGHT: No redirect, Your
21 Honor.

22 THE COURT: You may come down.

23 (WITNESS STEPS DOWN)

24 THE COURT: Call your next witness,
25 please.

1 MR. VOIGHT: The State calls Angie
2 Bunkar.

3 (WITNESS TAKES STAND)

4 ANGELA BUNKAR, being duly sworn
5 to tell the truth, the whole truth and nothing
6 but the truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY MR. VOIGHT:

9 Q. Ms. Bunkar, how are you employed?

10 A. (No verbal response).

11 Q. How are you employed?

12 A. Uh, -- with the Forensics Unit of the City
13 of North Charleston.

14 Q. Forensics Unit, is that what we sometimes
15 call a crime scene unit?

16 A. Yes, sir.

17 Q. Were you so employed on the 27th of
18 November, 2007?

19 A. Yes, sir.

20 Q. On that day did you have an occasion to
21 respond to an armed robbery call?

22 A. Yes, sir.

23 Q. And -- where did you go?

24 A. I responded to the accident that occurred
25 at Rivers near Montague in reference to the

1 accident that occurred with the suspect
2 vehicle.

3 Q. Do you recall what color vehicle that was?

4 A. Orange.

5 Q. What was your job when you got to the
6 crime scene, what was your role?

7 A. I was acting as the secondary forensics
8 unit and my role was pretty much to assist
9 Corporal Wyant.

10 Q. Did you have occasion to collect any bits
11 of evidence on that day?

12 A. Yes, sir. I collected a wood handled
13 sawed-off shotgun from the passenger seat.

14 Q. I am going to show you ---

15 MR. VOIGHT: Your Honor, if I may
16 approach.

17 THE COURT: You may.

18 MR. VOIGHT: (Tenders shotgun to be
19 marked as exhibit).

20 COURT REPORTER: State's Exhibit 1
21 for identification.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. VOIGHT:

24 Q. If you could -- I know the packaging is
25 somewhat cumbersome. If you could, take a

1 look -- break that seal; and I don't have
2 anything to break the seal with, -- can you
3 look at that, are there any identifying
4 markers on that exhibit, the exhibit that I
5 have just handed you?

6 A. (Review).

7 Q. Do you recognize that item?

8 A. Yes, sir.

9 Q. How is that item?

10 A. It is the item that I located inside the
11 vehicle on the passenger side. The barrel was
12 pointing towards the floorboard it was leaned
13 up against the passenger seat.

14 Q. That is a shotgun?

15 A. Yes, sir.

16 MR. VOIGHT: At this time the State
17 would this ---

18 MR. BUTLER: No objection.

19 THE COURT: Without objection, it
20 is admitted. State's Exhibit 1, a firearm.

21 (SO ENTERED AS STATE'S EXHIBIT 1)

22 DIRECT EXAMINATION CONTINUED

23 BY MR. VOIGHT:

24 Q. Did you ---

25 THE COURT: Does it have the

1 protective ---

2 MR. VOIGHT: Your Honor, it has been
3 disassembled slightly to accommodate ---

4 THE COURT: Let me see it.

5 MR. VOIGHT: (Tenders).

6 THE COURT: (Upon review), it has
7 the protective devices, on it. Thank you.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. VOIGHT:

10 Q. This is the shotgun that you took out of
11 the car?

12 A. Yes, sir.

13 Q. Did you collect any evidence other than
14 the shotgun?

15 A. No, sir. That's the only thing that I
16 collected while on scene. The gun was jammed,
17 so I had to take it back to the station to
18 meet with an armor -- (pause).

19 MR. VOIGHT: I tender the witness.

20 THE COURT: You may cross examine.

21 CROSS EXAMINATION

22 BY MR. BUTLER:

23 Q. Good morning. Ms. Bunkar, you have the
24 title of agent or ---

25 A. Investigator.

1 Q. Thank you. The gun was on the passenger
2 side of the vehicle?

3 A. Yes, sir.

4 Q. In the passenger seat?

5 A. It was partially in the passenger seat and
6 partially on the floorboard near the center
7 console. The barrel was facing the floorboard
8 and the butt of the gun was leaning up against
9 the passenger seat.

10 Q. Okay. Do you know if there was any
11 inspection of the gun to determine whether it
12 was loaded?

13 A. I believe that it was loaded, sir; for the
14 strict reason, I had to take it to get it un-
15 jammed.

16 Q. Unjammed meaning what exactly?

17 A. I was unable to secure the weapon to
18 ensure that it was safe, so I had to get a
19 trained agent to do so for me.

20 Q. Tell me why that -- I don't know anything
21 about guns. I'm not playing stupid here. Why
22 is that -- why does jammed mean the same thing
23 as that it was loaded? Jammed meaning there
24 was a shell inside?

25 A. Sir, you will have to ask Sergeant Dean

1 that.

2 Q. So you don't know whether it was loaded or
3 not?

4 A. I can't answer, no, sir. You'd have ---

5 Q. But it at least was not functioning when
6 you retrieved it?

7 A. I was unable to guarantee that it was safe
8 to be placed into evidence. I cannot testify
9 whether it was functionable or not, I am not
10 trained in that.

11 Q. Just from observing it, the general
12 condition of the gun -- it is rusted, right?

13 A. Yes, sir.

14 Q. It appears to be an old gun, right?

15 A. Yes, sir.

16 MR. BUTLER: Beg the court's indul-
17 gence

18 THE COURT: Yes, sir.

19 MR. BUTLER: Nothing further.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. VOIGHT:

23 Q. You told Mr. Butler that this was an old
24 gun?

25 A. I stated that it appears to be.

1 Q. Does that barrel appear to be the original
2 length?

3 A. No, sir.

4 Q. Does it appear to have been sawed off?

5 A. Yes, sir.

6 MR. VOIGHT: Nothing further of this
7 witness.

8 THE COURT: Recross?

9 MR. BUTLER: No, sir.

10 THE COURT: You may come down.

11 (WITNESS STEPS DOWN)

12 THE COURT: Ladies and Gentlemen,
13 at this point we will take a recess. Do not
14 begin your deliberations, do not discuss the
15 case, we will be with you in about ten or
16 fifteen minutes. You may retire to your jury
17 room.

18 (JURY OUT @ 11:13 A.M.)

19 (BRIEF RECESS)

20 (DEFENDANT PRESENT)

21 THE COURT: Are you'all ready?

22 MR. VOIGHT: Yes, Your Honor. There
23 is one brief matter.

24 THE COURT: Sure.

25 MR. VOIGHT: Mr. Butler and I have

1 agreed to handle -- we would like to recall
2 Ms. Bunkar for one brief bit of clarification.
3 I have -- that she caught and that she caught
4 after she had walked out of the ---

5 THE COURT: Do you have any
6 objection?

7 MR. BUTLER: No, I ---

8 MR. VOIGHT: It is his idea and I
9 agree with it.

10 THE COURT: All right. Let the
11 record reflect that Mr. Coaxum is present.
12 The defendant is ready to proceed, Mr. Butler?

13 MR. BUTLER: Yes, sir.

14 THE COURT: Invite the jury to
15 return, Mr. Williams (bailiff), please, sir.

16 (JURY IN @ 11:25 A.M.)

17 THE COURT: Thank you, Ladies and
18 Gentlemen. As I understand before the jury
19 came in that -- that there is a matter that --
20 you wish to recall a witness. Is that
21 correct, Mr. Voight?

22 MR. VOIGHT: That's correct, Your
23 Honor. Mr. Butler and I have agreed to recall
24 Ms. Bunkar.

25 THE COURT: Ms. Bunkar, if you

1 would come back -- and I would remind you that
2 you are still under oath in this matter.

3 (WITNESS TAKES STAND)

4 ANGELA BUNKAR, having been
5 previously sworn testified, as follows:

6 EXAMINATION

7 BY MR. VOIGHT:

8 Q. Ms. Bunkar, you are the author of the
9 crime scene report in this matter?

10 A. Yes, sir.

11 THE COURT: I didn't hear. Was
12 that a "yes"?

13 THE WITNESS: Yes, sir.

14 THE COURT: Thank you. I'm sorry.

15 EXAMINATION CONTINUED

16 BY MR. VOIGHT:

17 Q. In your investigation of that particular
18 firearm, did you find it to empty?

19 A. Yes, sir. I apologize for that earlier.

20 Q. So there wasn't a shotgun shell in that?

21 A. No, the gun was jammed and I was unable to
22 confirm that I could secure it in evidence, I
23 was unable to prove that it was or was not;
24 but further on in my report it does mention
25 that the gun was confirmed empty at the time.

1 MR. VOIGHT: Thank you.

2 THE COURT: Any questions?

3 MR. BUTLER: Briefly.

4 EXAMINATION

5 BY MR. BUTLER:

6 Q. And by "jammed", that means that it did
7 function?

8 A. No, sir, that does not mean that it is not
9 functionable. It just means that I was unable
10 -- that I personally was unable to open it and
11 secure it.

12 Q. Okay. But when it was opened and secured,
13 there was no shell inside?

14 A. Correct.

15 Q. Got it. Thank you.

16 THE COURT: Redirect?

17 MR. VOIGHT: No, Your Honor.

18 THE COURT: You may come down.

19 (WITNESS STEPS DOWN)

20 THE COURT: Call your next witness,
21 please.

22 MR. VOIGHT: The State rests, Your
23 Honor.

24 THE COURT: Very well. Ladies and
25 Gentlemen, at this point there are some

1 Defendant.

2 (DEFENDANT PRESENT)

3 THE COURT: Let the record reflect
4 that the Defendant is present. Bring in the
5 jury, please. I will inquire and tell them
6 what the options are. What is the State's
7 position concerning recessing?

8 MR. VOIGHT: I have no objection.

9 THE COURT: Thank you, and you (Mr.
10 Butler) still have none?

11 MR. BUTLER: I have no objection.

12 THE COURT: Which was this?

13 COURT REPORTER: Court's Exhibit 5.

14 BAILLIFF: Judge, -- (sidebar).

15 THE COURT: That's no problem.

16 They say that they may be close, so we --
17 that's good.

18 (JURY IN DELIBERATIONS)

19 (ADVISED OF PIZZA HUT VERDICT @ 6:25 P.M.)

20 THE COURT: We have a note that
21 says, "We have reached a decision on the Pizza
22 Hut." They are still struggling on the
23 Charleston Inn charges. I don't know what the
24 decision is? Do you want to take the Pizza
25 Hut and see where we are or do you ---

1 MR. VOIGHT: I'd say we take the
2 Pizza Hut and see where we are.

3 THE COURT: Mr. Butler?

4 MR. BUTLER: (No verbal response).

5 THE COURT: All right, let's go
6 ahead and receive that verdict. Tell the jury
7 to stop deliberating. Tell the foreperson to
8 bring in just the verdict in the case which
9 they have decided. Stop deliberating and come
10 in, that we want to take the verdict in --
11 this is Court's Exhibit 7?

12 COURT REPORTER: Six.

13 (SO ENTERED AS COURT'S EXHIBIT 6)

14 THE COURT: Exhibit 6 indicates
15 that they have decided one case. Tell her to
16 leave everything in the jury room but bring
17 the verdict form and bring the jury back in.

18 (JURY IN @ 6:30 P.M.)

19 THE COURT: Thank you very much,
20 Ladies and Gentlemen. Madame Foreman, I
21 understand that the jury, according to the
22 last message, which is Court's Exhibit 6, you
23 indicated that the jury has decided the Pizza
24 Hut but is still continuing deliberations on
25 the North Charleston Inn issue.

1 FORELADY: Correct.

2 THE COURT: You have brought with
3 you the verdict forms on the Pizza Hut case?

4 FORELADY: Yes.

5 THE COURT: If you would, pass
6 those to the court.

7 FORELADY: (Complies).

8 THE COURT: (Upon review), those
9 verdict forms have been properly completed. I
10 am going to ask you, Mr. Callahan (Clerk), to
11 publish those verdicts. Mr. Coaxum, you may
12 remain seated.

13 CLERK: The verdict in the State of
14 South Carolina versus William Coaxum, Jr.,
15 Defendant, as to Indictment 08-GS-10-2629,
16 "We the jury by unanimous consent find the
17 Defendant guilty of armed robbery occurring at
18 the Pizza Hut located at 4391 Dorchester Road
19 in Charleston County, South Carolina."
20 Signed, Patricia Norlander as foreperson of
21 the jury, January 13th, 2009.

22 Ladies and Gentlemen, if this was
23 your verdict, please raise your right hand --
24 (unanimous response).

25 Please let the record reflect that

1 all twelve jurors raised their right hand.

2 The other verdict form, in the matter
3 of William Coaxum, Jr., Defendant, Indictment
4 08-GS-10-2630, "We the jury by unanimous
5 consent find the Defendant guilty of the
6 possession of a firearm during the commission
7 of a violent crime occurring at the Pizza Hut
8 located at 4391 Dorchester Road in Charleston
9 County, South Carolina." Signed Patricia
10 Norlander as foreperson on the jury on January
11 13th, 2009.

12 Ladies and Gentlemen of the jury, if
13 this was your verdict, please raise your right
14 hand -- (unanimous response).

15 Please let the record reflect that
16 all twelve jurors raised their right hand.

17 THE COURT: Very well. Anything
18 further from the State for the jury concerning
19 this verdict?

20 MR. VOIGHT: Not concerning this
21 verdict.

22 THE COURT: Very well. Anything
23 from Mr. Coaxum concerning this verdict?

24 MR. BUTLER: Yes, we would request
25 a polling of the jury.

1 THE COURT: Certainly. Ladies and
2 Gentlemen, what is going to happen now is that
3 Mr. Callahan (Clerk) is going to call your
4 name and he is going to ask you two questions:

5 One, was that your verdict?

6 Two, is that still your verdict?

7 If you will just follow his questions
8 we will get through that very quickly. Thank
9 you, Mr. Callahan.

10 CLERK: Juror Number 200, Patricia
11 Norlander, were those your verdicts?

12 JUROR NUMBER 200: Yes.

13 CLERK: Are they still your
14 verdicts?

15 JUROR NUMBER 200: Yes.

16 CLERK: Juror Number 14, Illa
17 Barnes, were those your verdicts?

18 JUROR NUMBER 14: Yes.

19 CLERK: Are they still your
20 verdicts?

21 JUROR NUMBER 14: Yes.

22 CLERK: Juror 73, Angientia Deveaux,
23 were those your verdicts?

24 JUROR NUMBER 73: Yes, sir, they
25 were.

1 CLERK: Are they still your
2 verdicts?
3 JUROR NUMBER 73: Yes, sir.
4 CLERK: Thank you. Juror Number 78,
5 Jane Dowd.
6 JUROR NUMBER 78: Yes, sir.
7 CLERK: Were those your verdicts?
8 JUROR NUMBER 78: Yes, sir.
9 CLERK: Are they still your
10 verdicts?
11 JUROR NUMBER 78: Yes, sir.
12 CLERK: Juror 176, Tonya Matthews,
13 were those your verdicts?
14 JUROR NUMBER 176: Yes.
15 CLERK: Are they still your
16 verdicts?
17 JUROR NUMBER 176: Yes, sir.
18 CLERK: Juror 229, Patrice
19 Robertson, were those your verdicts?
20 JUROR NUMBER 229: Yes.
21 CLERK: Are they still your
22 verdicts?
23 JUROR NUMBER 229: Yes.
24 CLERK: Juror 233, Adam Rohas, were
25 those your verdicts?

1 JUROR NUMBER 233: Yes.

2 CLERK: Are they still your
3 verdicts?

4 JUROR NUMBER 233: Yes.

5 CLERK: Are they still your
6 verdicts?

7 JUROR NUMBER 233: Yes.

8 CLERK: Juror 243, Michael Sharpe?

9 JUROR NUMBER 243: Yes, sir?

10 CLERK: Were those your verdicts?

11 JUROR NUMBER 243: Yes, sir.

12 CLERK: Are they still your
13 verdicts?

14 JUROR NUMBER 243: Yes, sir.

15 CLERK: Juror 276, Louis Wachsmuth.

16 JUROR NUMBER 276: Yes, sir.

17 CLERK: Were those your verdicts?

18 JUROR NUMBER 276: Yes, sir.

19 CLERK: Are they still your
20 verdicts?

21 JUROR NUMBER 276: They are, yes.

22 CLERK: Juror Number 323, Martha
23 Morgan. Were those your verdicts?

24 JUROR NUMBER 276: Yes.

25 CLERK: Are they still your

1 verdicts?

2 JUROR NUMBER 276: Yes, sir.

3 CLERK: 209, Brooke Pennell, were
4 those your verdicts?

5 JUROR NUMBER 209: Yes, sir.

6 THE COURT: Are they still your
7 verdicts?

8 JUROR NUMBER 209: Yes, sir.

9 CLERK: Is there any juror whose
10 name I did not call? If so, please raise your
11 hand. (No response).

12 Your Honor, the jury has been polled
13 and the verdict stands.

14 THE COURT: Thank you, Mr.
15 Callahan. The jury has been polled and thank
16 you very much, the verdict does stand.
17 Anything further from the jury panel as to
18 this verdict in this case?

19 MR. VOIGHT: (Negative gesture).

20 MR. BUTLER: No, sir.

21 THE COURT: Ladies and Gentlemen, I
22 am going to ask that you retire to your jury
23 room for just a few moments. I will be with
24 you in just a couple of moments. There are a
25 couple of matters that I need to take up out

1 of your presence. Do not begin your
2 deliberations until I give you further
3 instructions.

4 (JURY OUT @ 6:34 P.M.)

5 THE COURT: All right, does the
6 State wish for the jury to continue to try to
7 decide the other armed robbery case?

8 MR. VOIGHT: No, Your Honor.

9 THE COURT: Any objection to
10 withdrawing that?

11 MR. BUTLER: We have no objection.

12 THE COURT: Thank you very much,
13 sir. I am going to excuse this jury then and
14 advise them that they have completed their
15 service. I will be back in just a moment.

16 (BRIEF RECESS, DEFENDANT AND
17 COUNSEL REMAIN PRESENT)

18 THE COURT: Thank you. Are you
19 ready?

20 MR. BUTLER: Your Honor, at this
21 time I would like to renew all of the ---

22 THE COURT: All your -- okay, let
23 me go through -- no Motions from the State
24 concerning the verdict that was received?

25 MR. VOIGHT: None from the State. ()

1 THE COURT: Now, I will hear from
2 you, Mr. Butler, but before we get into any
3 other Motions from the Defense, are there any
4 other Motions that you have concerning the
5 verdict?

6 MR. BUTLER: Yes, sir, I would
7 make a Motion for a new trial based on all
8 previously made Motions, specifically my
9 Motion for a directed verdict on the charge
10 that has now been withdrawn from the jury. I
11 think, according to -- I think I am entitled
12 to a directed verdict. I know that Your Honor
13 disagrees but I have to do this -- had I been
14 granted a directed verdict I think we may have
15 had a mistrial, so I have to ask for a new
16 trial based on those grounds.

17 THE COURT: Thank you. I believe
18 -- I believe insofar as the ruling, and I
19 think that I stated, and I reiterated -- the
20 fact that there was testimony and in listening
21 to the testimony being reread to the jury, it
22 really confirms that there -- there were a lot
23 of circumstances that tied-into it, basically
24 the same method, same M.O., in both crimes,
25 number one; number two, didn't "get enough"

1 money; and, number three, again the money
2 being in the pocket, I think, gives rise to
3 an inference.

4 MR. BUTLER: Yes, sir, ---

5 THE COURT: So thank you very much,
6 your Motion -- but it is protected and the
7 court would deny your Motion for a new trial
8 based on that.

9 MR. BUTLER: Thank you.

10 MR. VOIGHT: At this time, Your
11 Honor, I would like -- if I might approach, I
12 am handing to the court sentencing sheets in
13 this case. I am also giving the court a
14 packet indicating the filing of the life-
15 without-parole notice.

16 THE COURT: Okay.

17 MR. VOIGHT: I have also given the
18 court a certified copy of the previous
19 conviction for armed robbery, as well as the
20 original packet that indicated service on
21 December 17th, which Mr. Coaxum refused to
22 sign. The affidavit of that service is not
23 notarized but the very same server that
24 attempted to serve executed a notarized
25 affidavit.

1 THE COURT: Okay. Am I reading
2 this correctly, that he was convicted and
3 sentenced in April of 2008? He hadn't even
4 started serving that sentence?

5 MR. BUTLER: He had started serving
6 the sentence, he was brought from the
7 Department of Corrections where he is serving
8 that sentence.

9 THE COURT: I see. Okay. All
10 right, thank you.

11 All right. Mr. Butler, be happy to
12 hear from you, sir.

13 MR. BUTLER: Thank you, Judge. With
14 respect to the life without parole, I would
15 take issue with whether or not this is a
16 proper life-without-parole case in light of
17 the fact that Mr. Coaxum had no prior
18 conviction at the time that this incident
19 occurred. Unlike a situation where a person
20 had been convicted of a Most Serious offense,
21 served that sentence -- well, wouldn't have
22 even had to have served that sentence, could
23 have gotten into the Department of Correction.

24 THE COURT: Correct.

25 MR. BUTLER: Is convicted of a Most

1 Serious offense, then after the conviction
2 committed another Most Serious offense; which
3 I think is a proper life-without-parole
4 situation. He had no convictions for any Most
5 Serious offense at the time that he committed
6 the offense that the jury has found him guilty
7 of today.

8 The life-without-parole statute is
9 aimed to punish people more severely -- who
10 have already been convicted of a crime,
11 somehow gone through the system -- whether it
12 be through prison or probation or parol -- and
13 not learned their lesson. That is not the
14 situation that we have. He had no convictions
15 at the time of his -- at the time of this
16 offense that he has been found guilty of
17 occurred.

18 THE COURT: Okay. Does the State
19 wish to respond?

20 MR. VOIGHT: Your Honor, I don't
21 have the case in front of me but I know that
22 I've seen this very same situation that's
23 happened before. This gentleman was out on
24 bond for the initial underlying armed robbery,
25 that he ultimately pled guilty for. While he

1 was out on bond he committed the two armed
2 robberies that we have before us today, one of
3 which has led to a conviction, as well as a
4 third armed robbery which I will be *null*
5 *prossing*. I believe that the statute leads to
6 -- I think that we can agree that on upon
7 second convictions, and this is a second
8 conviction, the language indicates mandatory
9 ---

10 THE COURT: We talked about that
11 recently. In fact, I -- I have the statute
12 before me right now. It says the provisions
13 of 17-25-45(a) "shall be mandatory", that is
14 pretty -- it is discretionary as to whether
15 or not to seek it, but it is mandatory as to
16 sentencing. That's been my interpretation of
17 the statute, if the records of a prior
18 conviction are present.

19 MR. BUTLER: And I am not
20 disagreeing that is what ---

21 THE COURT: Precisely.

22 MR. VOIGHT: I believe, Your Honor,
23 that this case does meet the statute and
24 requires ---

25 THE COURT: All right. There is no

1 question -- I don't have the date but
2 obviously if he was convicted and tried, this
3 armed robbery didn't occur anywhere near, at
4 any time near this offense, the one that he's
5 been convicted of?

6 MR. VOIGHT: He was arrested on the
7 9th of April, 2007, for that offense.

8 THE COURT: That offense occurred
9 when?

10 MR. VOIGHT: He was arrested on the
11 9th, the night of the -- so he was ---

12 THE COURT: So this offense
13 occurred after the ---

14 MR. VOIGHT: The initial -- the
15 armed robbery for which he pled guilty
16 occurred in April 2007.

17 THE COURT: Right.

18 MR. VOIGHT: The armed robbery for
19 which he was convicted today occurred in
20 November of 2007.

21 THE COURT: Right. So he was on
22 bond for the ---

23 MR. VOIGHT: He was out on bond for
24 the first ---

25 THE COURT: --- April armed

1 robbery?

2 MR. VOIGHT: Yeah.

3 THE COURT: Anything else?

4 MR. BUTLER: No, sir.

5 THE COURT: It is an interesting
6 question and I wanted to look at the statute
7 again because it clearly talks about some of
8 those things about priors and I -- I am not
9 familiar with any case. If there was one, I'm
10 sure that I would have it before me ---

11 MR. BUTLER: I don't believe ---

12 THE COURT: I'm dealing with first
13 impressions here.

14 MR. BUTLER: Yes, sir.

15 THE COURT: The language that gives
16 me concern about what you discuss -- and I
17 don't quarrel with your argument or statement,
18 the purpose of the statute in the first place,
19 but this language seems to be contrary to that
20 philosophy in this respect: Subparagraph (e)
21 -- no, (f). I beg your pardon, it looks like
22 whoever drafted this -- yeah, (f), and it
23 reads, as follows, (reading):

24 "For the purpose of determining
25 a prior previous conviction under this

1 section..." -- and I am reading parts of it,
2 "a prior or previous conviction shall mean
3 that the defendant has been convicted of a
4 Most Serious of Serious offense, as may be
5 applicable, on a separate occasion prior to
6 the instant adjudication."

7 Next sentence, I quote, (reading):
8 "There is no requirement that the sentence for
9 the prior previous conviction must have been
10 served or completed before a sentence of life
11 without parole can be imposed."

12 You don't even have to serve it, then
13 it would seem to me that it doesn't relate to
14 anything concerning the punishment aspect.

15 MR. BUTLER: You wouldn't have to
16 serve it. For example, somebody could get
17 sentenced ten years and be in the Department
18 of Correction and ---

19 THE COURT: I know, but they could
20 have clearly then said what they needed to but
21 they chose to say something, and I think what
22 they mean, what the intent of the legislature
23 was that ---

24 MR. BUTLER: Yes, sir.

25 THE COURT: So I respect your

1 position and I certainly understand the
2 argument. So ---

3 MR. BUTLER: Well, in light of that,
4 then, usually at this point I would be pre-
5 senting mitigation biographical information,
6 but I've explained to Mr. Coaxum and his
7 mother that there really is nothing that I can
8 say, that your hands are tied.

9 THE COURT: They are. I will say
10 this, uh, it is one of those sections that has
11 given me concern as a judge, and still does.
12 I am not so sure -- I don't like -- and I
13 don't fault, and I am not saying anything
14 improper about the solicitor but it just
15 places a tremendous amount of flexibility and
16 power, for lack of a better word, in the hands
17 of the solicitor to say, 'I am doing it here
18 but I am not going to do it here.' But that
19 is not an issue that needs to be addressed.
20 There is no question that -- I understand the
21 reason for it. The reason for it is that
22 people committing multiple offenses, the State
23 wants to protect society and that's what we're
24 doing. They are not leaving it to judges to
25 fashion sentences.

1 I would -- Mr. Coaxum, according to
2 what I have is 27. I could fashion a sentence
3 that would keep him in jail for -- he would be
4 close to 60. You know, that would be, uh,
5 maybe one way of looking it, sufficient
6 punishment; but, that is not my call.

7 MR. BUTLER: Yes, sir.

8 THE COURT: I thank for you that, I
9 understand that. Mr. Coaxum is there anything
10 else that you would like to say, sir?

11 DEFENDANT: No, sir.

12 THE COURT: The sentence of the
13 court on Indictment 08-GS-10-2629, which is
14 the indictment for armed robbery, the sentence
15 is that I sentence you in accordance with
16 Section 17-25-45, in that I find the requisite
17 prior conviction has been established by the
18 filings that have been submitted to me, -- as
19 I understand that statute, I sentence you to
20 life in prison.

21 08-2630, the sentence is five years
22 and that is concurrent.

23 Good luck to you, sir.

24 (TRIAL CONCLUDED)

25

GKV20071212020

WITNESSES

SHAWN PATRICK
North Charleston Police Department

AGENCY CASE NUMBER

2007050185

ARREST WARRANT NUMBER

K260764

DATE OF ARREST

2007-11-27

ACTION OF GRAND JURY

TRUE BILL

Eddie Cochran

Foreperson of Grand Jury

Date:

APR 08 2008

VERDICT

Guilty

Patricia J. Penland Jan 13 09

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1002630

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2008

THE STATE

vs.

WILLIAM COAXUM SR

DOB: 1981-09-21

B/M

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime

BY
CLERK OF COURT
MAY 11 2008

2008 APR 11 PM 4:09

07-7655-3

APP'X 176

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

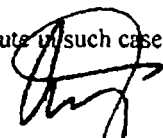
INDICTMENT

At a Court of General Sessions, convened on April 7, 2008 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about November 27, 2007, the Defendant, WILLIAM COAXUM SR, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Armed Robbery; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



GREGORY VOIGT
ASSISTANT SOLICITOR

GKV20071212020

DOCKET NO. 2008GS1002629

WITNESSES

SHAWN PATRICK

North Charleston Police Department

AGENCY CASE NUMBER

2007050185

ARREST WARRANT NUMBER

K260762

DATE OF ARREST

2007-11-27

ACTION OF GRAND JURY

TRUE BILL

William Coaxum
Foreperson of Grand Jury

APR 08 2008

Date:

VERDICT

Guilty

Patricia J. Palander Jan '13 '09
Foreperson of Petit Jury

Date:

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2008

THE STATE

vs.

07-7655-1

WILLIAM COAXUM SR

DOB: 1981-09-21

B/M

Indictment for

Armed Robbery

2007 APR 11 PM 4:05
CLERK OF COURT

APP'X 178

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

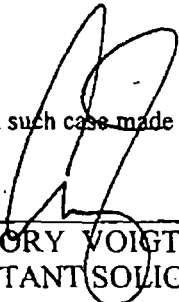
INDICTMENT

At a Court of General Sessions, convened on April 7, 2008 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about November 27, 2007, in Charleston County, South Carolina, the Defendant, WILLIAM COAXUM SR, while at 4391 Dorchester Road, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon; did take and carry away goods and/or monies from the person or immediate presence of Tamara Brown with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



GREGORY VOIGT
ASSISTANT SOLICITOR

COUNTY OF Charleston
STATE _____

INDICTMENT/CASE#: 2008GS1002629

VS.
WILLIAM COAXUM SR

A/W#: K260762

AKA: _____

Date of Offense: 11/27/2007

Race: B Sex: M Age: 27

S.C. Code § : 16-11-0330(A)

DOB: 09-21-1981 SS#: _____

CDR Code #: 0139

Address: _____

DL#: _____ SID#: _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Armed Robbery

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 §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Voigt, Gregory

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 Life Imprisonment days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ pursuant to 17-25-45; 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.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 133.75

Callahan
Clerk of Court/ Deputy Clerk

Court Reporter: D. Garrison

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Life sentence per § 17-25-45

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE R. M. [Signature]

Judge Code: 210 [Signature]

Sentence Date: 1/13/09

APPX 180 (SCCA/27/872/008)

COUNTY OF Charleston

STATE VS.

WILLIAM COAXUM SR

AKA:

Race: B Sex: M Age: 27

DOB: 09-21-1981 SS#

Address:

DL#: v SID#:

INDICTMENT/CASE#: 2008GS1002630

A/W#: K260764

Date of Offense: 11/27/2007

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Possession of a Firearm During Commission of a Violent Crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Voigt, Gregory

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 5 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.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 133.75

Called
Clerk of Court/ Deputy Clerk

Court Reporter: D. Garrison

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE P. Muller

Judge Code: 2 10 16 10

Sentence Date: 11/30/07

APR 18 11
SCOA 217 007008

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 2nd, 2009



Elizabeth A. Franklin-Best
Appellate Defender

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

ATTORNEY FOR APPELLANT

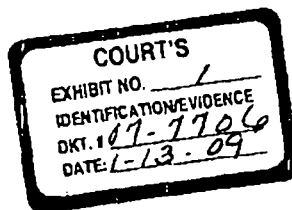
Judge Dennis,

Jan 13

This morning juror #7 informed me that she recognized the family sitting in the courtroom. She knows the family of the defendant, but not the defendant himself. She would like to speak to you about this.

Sincerely,

Jury #200
Patricia Zalander



STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

v.

WILLIAM COAXUM, SR.,

APPELLANT

FINAL BRIEF OF APPELLANT

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

Did the judge abuse his discretion by removing a juror who informed the Court, during the trial, that she knew one of the defendant's family members, and when all parties agreed that the non-disclosure was unintentional, and the witness informed the Court, upon questioning by the assistant solicitor, that her relationship with the family member would not influence or otherwise affect her view of the evidence?

STATEMENT OF THE CASE

William Coaxum Sr. was indicted by the Charleston County grand jury for armed robbery (2008-GS-100-2629) and possession of a firearm during the commission of a violent crime (2008-GS-100-2630). He was also indicted for another armed robbery that the State withdrew prior to the case's submission to the jury. He was tried before the Honorable R. Markley Dennis, Jr. on January 12-13, 2009. He was represented by Beattie Butler, Esquire. He was convicted, and received a life sentence pursuant to *S.C. Code Ann.* 17-25-45.

This appeal timely follows.

ARGUMENT

The judge abused his discretion by removing a juror who informed the Court, during the trial, that she knew one of the defendant's family members. All parties agreed that the non-disclosure was unintentional, and the witness informed the Court, upon questioning by the assistant solicitor, that her relationship with the family member would not influence or otherwise affect her view of the evidence.

Pearl Alston, one of the jurors in Coaxum's trial, informed the Court, through a note sent by the foreperson, that she "knows the family of the Defendant but not the Defendant himself." ROA p. 108, ll. 17-21. None of Coaxum's family members were called to testify. Upon questioning by the judge, it became clear that Alston worked with one of Coaxum's family members. According to this family member, they are distant cousins. Alston did not necessarily agree with this claim. ROA p. 110, ll. 8-17. The juror disclosed this information because she wanted the information known and not something that someone would find out later. ROA p. 110, ll. 18-22. The judge asked if the parties had any additional questions. The State asked Ms. Alston additional questions:

MR. VOIGHT:-- [A]re you able when you're considering the evidence from the witness stand and the other evidence that you're presented, are you able to put out of your mind those relationships, whether they be working relationships, family relationships, and consider just the evidence that comes from the witness stand?

JUROR NUMBER 7: Yes, sir.

MR. VOIGHT: Do you believe that your knowing anybody from the Defendant's family would have, in any way, any influence your decision? (sic) Make you deliberate longer? Make your view of the evidence in any different light than you would have had you not been—not at all?

JUROR NUMBER 7: No, it wouldn't.

ROA p. 111, ll. 6-21.

The judge remarked that the only other person who knew of the relationship was the foreperson, but the State did not believe it “necessary” to speak to her as well. ROA p. 112, ll. 1-7.

After all this, the State asked that Alston be excused “out of an abundance of caution.” The assistant solicitor thought that “ultimately she [would not] be able to put it out of her mind . . .” ROA p. 112, ll. 18- 113, l. 2.

Defense counsel objected to the juror’s removal. ROA p. 113, ll. 3-4. Upon questioning by the trial judge, the assistant solicitor said that he would have exercised a peremptory challenge to remove Ms. Alston had he been aware of the information. ROA p. 113, ll. 5-8. The judge noted that the State had peremptory challenges available and could have used one to remove her. ROA p. 115, ll. 17-20. No one ever accused Ms. Alston of actively concealing the information that she disclosed. The trial court judge stated that he would grant the State’s motion “notwithstanding *Stone*.” ROA p. 121, ll. 7-8. This ruling was erroneous because the South Carolina Supreme Court’s decision in State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002) controls this case.

Stone was a capital case. There, a juror disclosed a previously unknown “casual relationship” with an actual testifying defense witness. Upon questioning, this juror, too, indicated that she could be fair and impartial. *Id.* at 247. The judge nevertheless removed this juror upon motion by the State. The Court held this to be error. As in *Stone*, this case involves a relationship best characterized as “scant.” And the nature of the relationship was not such as to have supported a challenge for cause, nor was it a “material factor” in the state’s exercise of its peremptory challenges.

The lack of materiality of this relationship is best revealed by the assistant solicitor's actions once he found out about the relationship. The assistant solicitor was granted the opportunity to conduct his own *voir dire* on the juror. He did so. The results of that questioning should have further convinced him that the nature of the relationship would not have affected the juror's decision making. Indeed, had the assistant solicitor initially thought to use a peremptory challenge to remove Alston, this additional questioning would have removed that doubt! The assistant solicitor then turned down the opportunity to speak to the foreperson, the other person aware of the relationship. He could have probed that witness in an attempt to discover evidence of bias. And then, when asked whether he wanted to have her removed, the assistant solicitor said he did "out of an abundance of caution." The assistant solicitor simply did not have any reason to remove this juror. This case is firmly within the ambit of *Stone*:

When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges . . . Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn.

Stone, supra, at 247 (quoting *State v. Woods*, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001) (internal citations omitted)).

The improper exclusion of Alston from the jury warrants a reversal of Coaxum's case. The trial court judge stated that since the State would have used a peremptory challenge to the remove Alston had the information been disclosed that it was then

appropriate to remove the juror. This “unexercised peremptory” argument was expressly rejected by the United States Supreme Court in Gray v. Mississippi, 481 U.S. 648 (1987):

“The unexercised peremptory argument assumes that the crucial question in the harmless-error analysis is whether a particular prospective juror is excluded from the jury due to the trial court’s erroneous ruling. Rather, the relevant inquiry is “whether the composition of the jury panel as *a whole* could possibly have been affected by the trial court’s error (internal citations omitted, emphasis in original) . . . Due to the nature of trial counsel’s on-the-spot decision-making during jury selection, the number of peremptory challenges remaining for counsel’s use clearly affects his exercise of those challenges. A prosecutor with fewer peremptory challenges in hand may be willing to accept certain jurors whom he would not accept given a larger reserve of peremptories. Even if one is to believe the prosecutor’s statement that if his motion to remove Bounds for cause had been denied and he had had a peremptory remaining, he would have used it to remove her, we cannot know whether in fact he would have had this peremptory challenge left to use. That is, if the court had granted one or more of his earlier motions to remove for cause, the prosecutor may have used his peremptory challenges on other jurors whom he did not strike when he had fewer peremptory challenges to exercise. The nature of the jury selection process defies any attempt to establish that an erroneous *Witherspoon-Witt* exclusion of a juror is harmless.”

Id. at 2055. And see footnote 15 (providing list of opinions expressly rejecting the unexercised peremptory argument). And see also Powell’s concurrence (“In my view, our decision in *Davis*¹ is sufficient to resolve the case, given that we cannot know what effect the excluded juror would have had on the panel as a whole.”).

Though both *Gray* and *Davis* are capital cases, the same considerations are present here. The removal of a qualified juror after jury selection has occurred is improper as it effects the entire constitution of the panel. Had the information been disclosed, it is not at all clear that the State would have used a peremptory challenge to remove Alston, even though, in retrospect, the State asserts it would have. And had Alston been removed, it is

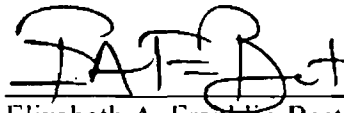
¹ Davis v. Georgia, 429 U.S. 122 (1976).

unknowable, in retrospect, how that would have affected Coaxum's use of peremptories as well. It is these uncertainties that taint the integrity of the jury selection process. The State should not be allowed to exercise meaningless challenges to jurors after jury selection has been concluded on the basis that some ineffable factor may inure to the benefit of the defendant. The court system has an interest in maintaining the integrity and consistency of jury selection, and it should not be disrupted on so casual a basis. Respectfully, Coaxum asks this Court to reverse his convictions and remand his case for trial.

CONCLUSION

For the preceding reason, Coaxum respectfully asks this Court to reverse his convictions and remand his case for trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E.A. Franklin-Best', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

This 22nd day of December, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 22nd, 2009



ELIZABETH A. FRANKLIN-BEST
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

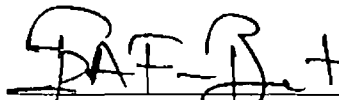
v.

WILLIAM COAXUM, SR.,

APPELLANT

CERTIFICATE OF SERVICE

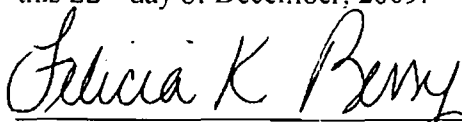
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Norman Mark Rapoport, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of December, 2009.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 22nd day of December, 2009.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: August 15, 2010

APP'X 196

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

WILLIAM COAXUM, SR.,

Appellant.

FINAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
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ATTORNEYS FOR RESPONDENT

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State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) 6, 8, 9

Washington v. Whitaker, 317 S.C. 108, 451 S.E.2d 894 (1994) 7

Other Authority:

S.C. Code Ann. §17-25-45 (2003 & Supp. 2008) 2

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by dismissing a juror who revealed during the trial that she knew one of the defendant's family members?

STATEMENT OF THE CASE

Appellant William Coaxum, Sr., was indicted in Charleston County for armed robbery (2 counts) and possession of a firearm during the commission of a violent crime. (R. 174-177). He was tried on January 12-13, 2009, before the Honorable R. Markley Dennis, Jr., and a jury. Coaxum was convicted on one count of armed robbery and the firearm charge, but the jury did not reach a verdict on the second armed robbery charge. (R. 155-56). The State withdrew that armed robbery charge before sentencing. (R. 163). Coaxum then received a life sentence pursuant to S.C. Code Ann. §17-25-45 (2003 & Supp. 2008) for armed robbery. (R. 173). He received a five-year concurrent sentence on the firearm charge. (R. 173). A Notice of Appeal was filed and served.

STATEMENT OF FACTS

This case arose from an armed robbery at a Pizza Hut in North Charleston on November 27, 2007. At closing time around eleven o'clock that night, there was a knock at the front door. The employees announced that the restaurant was closed. (R. 44-46, 55-57).

When an employee then opened a side door to leave the restaurant, Coaxum and another man suddenly entered. Coaxum was armed with a shotgun. He yelled at the manager to "give up the money" and ordered her to "open the safe." When the manager was unable to open the safe, Coaxum robbed the cash register. Coaxum told the employees to go to the back of the restaurant. Coaxum and the other robber fled. The employees then called the police. (R. 46-49, 57-61).

The police responded and almost immediately, they spotted the car matching the description of the car used in the robbery. They then pursued the car until it crashed. (R. 133-35, 139-41). Coaxum and another passenger tried to run away, but Coaxum was apprehended. (R. 135-37, 141). The police seized \$396 from Coaxum's pocket incident to his arrest. (R. 136). A sawed-off shotgun was discovered on the front seat of the car. (R. 142, 144, 146-47).

The manager of the Pizza Hut was then taken to the scene of the accident, where she positively identified Coaxum as the robber armed with the shotgun.¹ (R. 62-66).

Coaxum's accomplice was called as a State's witness at trial. Marquine Benbow pled guilty to the armed robbery. (R. 72-75). Benbow, however, refused to implicate Coaxum in the crime. Benbow also refused to acknowledge the details of his earlier statement he gave

¹Another employee identified Coaxum in court as the robber with the shotgun. (R. 49).

to the police. Benbow admitted that he was the lookout for the robbery, but claimed he could not remember the details of the robbery and was unable to recall the name of his accomplice. (R. 75-31).

Benbow's statement to the police was admitted into evidence at trial. Benbow implicated Coaxum in the armed robbery. Benbow admitted they first tried to rob a motel,² and then robbed the Pizza Hut. Coaxum was armed with a shotgun. (R. 88-90).

²As previously noted, the State withdrew the charge for the armed robbery at the motel after the jury convicted Coaxum of the Pizza Hut armed robbery.

ARGUMENT

The trial judge did not err by dismissing a juror who revealed during the trial that she knew one of the defendant's family members. (Coaxum's Issue).

During the trial, Pearl Alston, one of the jurors in Coaxum's trial, informed the trial judge through a note sent by the Foreperson, that she "knows the family of the Defendant but not the Defendant himself." (R. 108).

Upon questioning by the trial judge, it became clear that Alston worked with one of Coaxum's family members. According to the family member, they were distant cousins. Alston stated she was not sure of that claim. (R. 110). Alston disclosed this information because she wanted the information known and not something that someone would discover later. (R. 110).

The trial judge asked if the parties had any additional questions. (R. 110-11). Alston told the assistant solicitor that she could dissociate herself from any relationship and she would not be influenced by it. Alston asserted she would consider only the evidence introduced at trial. (R. 111).

"Out of an abundance of caution" the assistant solicitor asked the trial judge to excuse Alston, because "these types of relationships actually - - I believe that it would be most difficult and ultimately she [would not] be able to put it out of her mind . . ." (R. 112-13). Defense counsel objected to the motion to excuse the juror. (R. 113).

Upon questioning by the trial judge, the assistant solicitor said that he would have used a peremptory strike to remove Alston had he been aware of the information. (R. 113). He explained as follows: "[a] third factor that I always look to when I'm striking jurors and

those reasons don't rise to a level of a challenge for cause is ties to the defendant or a key defense witness. I believe that those are the kinds of connections, as this juror has disclosed, that are exactly the kinds of things that I am looking for to exclude by peremptory challenge." (R. 117-118). The State only exercised two strikes during the jury selection. (R. 32-43).

The trial judge noted that the State had peremptory challenges available and could have used one of them to remove Alston. (R. 115-116). The trial judge decided to grant the State's motion to excuse Alston, notwithstanding State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002). (R. 102-121).

"[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506, 511 S.E.2d 62, 68 (1999). " '[I]n order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature.' " State v. Bryant, 354 S.C. 390, 581 S.E.2d 157, 160 (2003)[quoting State v. Cameron, 311 S.C. 204, 428 S.E.2d 10, 12 (Ct. App. 1993)].

"To protect both parties' right to an impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party." State v. Woods, 345 S.C. 583, 550 S.E.2d 282, 284 (2001). "When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." Id. "Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other

hand, where the failure to disclose is innocent, no such inference may be drawn.” Id.

“Determining whether a juror’s failure to respond to a *voir dire* question amounts to intentional concealment is a ‘fact intensive determination that must be made on a case-by-case basis.’ ” State v. Guillebeaux, 362 S.C. 270, 607 S.E.2d 99, 101-02 (Ct. App. 2004)[quoting State v. Sparkman, 358 S.C. 491, 596 S.E.2d 375, 377 (2004)]. “Intentional concealment occurs ‘when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror’s failure to respond is unreasonable.’ ” Id. “Concealment is considered unintentional where the *voir dire* question posed is ambiguous or incomprehensible to the average juror or where ‘the subject of the inquiry is insignificant or so far removed in time that the juror’s failure to respond is reasonable under the circumstances.’ ” Id.

A decision on whether to dismiss a juror and replace her with an alternate is within the sound discretion of the trial judge, and such decision will not be reversed on appeal absent an abuse of discretion. State v. Smith, 338 S.C. 66, 525 S.E.2d 263, 265 (Ct. App. 1999). More specifically, “[I]t is within the discretion of the trial court to determine whether bias results from a juror’s reception of outside information concerning the case being tried.” Washington v. Whitaker, 317 S.C. 108, 451 S.E.2d 894, 900 (1994); see State v. Ivey, 331 S.C. 118, 502 S.E.2d 92, 94 (1998)[noting a juror’s competence is within the trial judge’s discretion and is not reversible on appeal unless wholly unsupported by the evidence]; see also State v. Loftis, 232 S.C. 35, 100 S.E.2d 671, 675 (1957)[declining to interfere with trial judge’s discretion in matter concerning jury, because trial judge has the opportunity to consider credibility of jurors].

Coaxum argues the trial judge abused his discretion by removing Alston from the jury, because her non-disclosure was unintentional, and she informed the trial judge upon questioning that her relationship with the family member would not influence or otherwise affect her view of the evidence. His argument is without merit.

Coaxum relies on Stone to argue the trial judge abused his discretion in removing Alston. In Stone, the defendant's aunt was called as a witness during the sentencing phase of the trial. When the aunt took the stand, one of the jurors informed the trial judge that she knew the aunt. Although the aunt's name had been announced at the start of *voir dire*, the juror did not know her name. The juror had lived down the street from the aunt some five or six years earlier, and they were casual acquaintances only. The State objected to the continued participation of the juror, arguing it would be difficult for the juror to impose a death sentence on a former acquaintance's nephew. The trial judge removed the juror, replacing her with an alternate. The Supreme Court reversed, finding the trial judge abused his discretion in removing the juror. Id., 567 S.E.2d at 247-48.

Unlike the finding of the Supreme Court in Stone, Alston's failure to disclose that she knew Coaxum's family was a material factor in the exercise of a peremptory challenge, as asserted by the assistant solicitor; thus, Alston would have been removed by the exercise of a peremptory challenge by the State. See Woods, 550 S.E.2d at 284. Contrary to Coaxum's argument on appeal, it was irrelevant whether or not any family members testified at trial. There was clearly concealment, intentional or otherwise, of information by the juror. Because the disposition of this issue essentially involved a credibility determination as to whether Alston intentionally concealed this material information from the State, and also whether she

could then set aside any perceived bias, this Court must defer to the trial judge's findings. The trial judge, therefore, did not abuse his discretion by removing the Alston under the particular circumstances presented and then replacing her with an alternate. Id.; see Guillebeaux, 607 S.E.2d at 101-02.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted the judgment and convictions of the lower court should be affirmed.

Respectfully submitted,

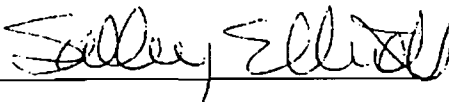
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ATTORNEYS FOR RESPONDENT

December 9, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

WILLIAM COAXUM, SR.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

HENRY DARGAN McMASTER
Attorney General

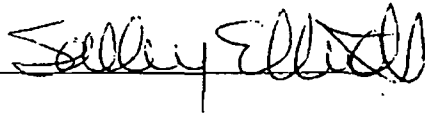
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APP'X 210

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December 9, 2009

APP'X 211

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

WILLIAM COAXUM, SR.,


Appellant.

PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney or record, Elizabeth A. Franklin-Best, Appellate Defender, S.C. Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 9th day of December, 2009.


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ATTORNEY FOR RESPONDENT

APP'X 212

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.

William Coaxum, Sr., Appellant.

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-496
Heard September 12, 2011 – Filed November 7, 2011

REVERSED AND REMANDED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

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Deputy Attorney General Salley W. Elliott, Senior
Assistant Attorney General Norman Mark Rapoport,
and Assistant Attorney General Mark R. Farthing, all

APP'X 213
REVISED 11/8/11

of Columbia; Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

PER CURIAM: William Coaxum, Sr., appeals his convictions for armed robbery and possession of a firearm during the commission of a violent felony, arguing the trial court erred in dismissing a juror who revealed she was acquainted with a member of Coaxum's family. We reverse and remand for a new trial.

When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn.

State v. Woods, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001) (internal citation omitted); see State v. Stone, 350 S.C. 442, 448, 567 S.E.2d 244, 247 (2002) (providing the factors to consider before removing a juror for failure to disclose information during voir dire are (1) whether the concealment was intentional, and (2) whether the information would have been a material factor in the use of a peremptory challenge or would have supported a challenge for cause).

When a party contends a juror should be removed for failure to disclose information during voir dire, Stone requires the trial judge to consider the two criteria from Woods. If the judge finds both of the Woods criteria exist, the judge must remove the juror. However, if either of the criteria is absent, the judge may not remove the juror on that basis.

State v. Burgess, 391 S.C. 15, 19, 703 S.E.2d 512, 514 (Ct. App. 2010); see generally State v. Bell, 374 S.C. 136, 148, 646 S.E.2d 888, 895 (Ct. App. 2007) (stating where there is no concealment, "the language from Stone regarding whether the information would have been a material factor in the use of a peremptory challenge" does not apply); id. (reviewing the trial court's decision to allow a juror to remain on the jury under the abuse of discretion standard).

Here, there was no evidence the juror's failure to disclose her relationship was intentional. Under Woods and its progeny, the unintentional failure to disclose does not provide an automatic ground for the trial court to remove the juror. Thus, we hold the trial court abused its discretion in removing the juror. Accordingly, we reverse and remand for a new trial.

REVERSED AND REMANDED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

WILLIAM COAXUM, SR.,

Appellant.

RESPONDENT'S PETITION FOR REHEARING

On November 7, 2011, this Court issued an unpublished opinion in which it reversed Appellant William Coaxum, Sr.'s conviction for armed robbery and possession of a firearm during the commission of a violent felony. State v. Coaxum, Op. No. 2011-UP-496 (S.C. Ct. App. filed Nov. 7, 2011). Pursuant to Rule 221(a), SCACR, Respondent ("the State") respectfully petitions for rehearing on the following points the State believes were possibly misapprehended or overlooked by this Court.

A. Proper Exercise of Discretion in Removing a Juror

Initially, the State respectfully submits this Court overlooked or misapplied the Supreme Court's holding in State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002), when this Court considered whether the trial judge abused his discretion in removing a juror after information affecting the juror's qualifications was discovered while the trial was still in progress. The State submits the trial judge properly exercised his sound discretion in removing the juror in this case

after discovering the additional information relevant to the qualifications of the juror. Because the additional information regarding the juror's qualifications was discovered before a verdict was rendered and before deliberations had begun, the trial judge was capable of exercising his discretion to remove the juror to ensure each of the parties received a proper verdict reached by a fair and impartial jury, and his decision to do so did not amount to an abuse of discretion. Accordingly, the State asks this Court to reconsider its decision, rehear the matter, and affirm Appellant's conviction.

The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bryant, 322 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). A judge presiding over a criminal trial is primarily tasked with exercising his discretion to ensure that each side receives a fair trial decided by a fair and impartial jury. See State v. Heath, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958) ("Necessarily the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had."). Decisions regarding whether to dismiss a particular juror and replace the juror with an alternate fall within the sound discretion of a trial judge and will not be reversed on appeal absent a prejudicial abuse of discretion. State v. Smith, 338 S.C. 66, 71, 525 S.E.2d 263, 265-266 (Ct. App. 1999).

In State v. Stone, our Supreme Court considered whether the trial judge erred in removing a juror during trial after the juror recognized one of witnesses testifying during the sentencing phase of Stone's capital trial. Id., 350 S.C. at 448, 567 S.E.2d at 247. After the witness, who was Stone's aunt, took the stand, the juror revealed she was a casual acquaintance with the witness, was unfamiliar with the witness' name, and had previously lived down the street from the witness five to six years earlier. Id. The solicitor challenged the juror based on

the potential impact the discovered relationship potentially could have had on the juror's ability to sentence an acquaintance's nephew, and the trial judge removed the juror and replaced her with an alternate juror. Id. On appeal, the Supreme Court looked to the test enunciated in State v. Woods, 345 S.C. 583, 587-588, 550 S.E.2d 282, 284 (2001), and indicated the test was "instructive" to the situation in Stone's case. Id. The Supreme Court then considered both factors articulated in Woods and determined that the trial judge abused his discretion in removing the juror based on the fact the juror's non-disclosure was unintentional and the unrevealed information would not have been a material factor in the exercise of a peremptory strike. Id. at 448-449, 567 S.E.2d at 247-248.

Notably, the Supreme Court in Stone looked to both factors when determining whether the trial judge abused his discretion in removing the juror instead of ending the analysis after finding the juror's non-disclosure was unintentional. Instead of finding the Woods analysis must be rigidly applied when a juror's non-disclosure was discovered during trial, the Court specifically found the analysis was merely instructive under those circumstances. The State submits the Supreme Court in Stone made this distinction because the discovery of a juror's non-disclosure of relevant information during the course of trial can be remedied through the replacement of a juror with an alternate whereas the discovery of a juror's non-disclosure of relevant information after the verdict can only be remedied by overturning the verdict where the non-disclosure was material. Therefore, when the non-disclosure is discovered during trial, it necessarily allows for greater discretion on the part of the trial judge in weighing the materiality of the non-disclosure with the trial judge's duty to ensure each party receives a fair and impartial trial. Accordingly, even where a non-disclosure is unintentional, a trial judge who discovers such a non-disclosure during the course of trial can consider the materiality of the non-disclosure

when determining whether the non-disclosure could impact the fairness of the trial for any of the parties. Compare Stone, 350 S.C. at 448-449, 567 S.E.2d at 247-248 (considering both the intentional or non-intentional nature of the non-disclosure and the materiality of the non-disclosure when determining whether the trial judge abused his discretion in removing a juror during the course of trial); with Woods, 345 S.C. at 585-586, 550 S.E.2d at 283 (considering whether a defendant was entitled to a new trial based on the non-disclosure of a juror discovered after the jury returned a verdict in the case).

In Appellant's case, the trial judge properly considered both factors identified in the Woods analysis before finding the juror's non-disclosure would have been a material basis for a peremptory strike. (R. p. 114; pp. 120-121). Since the non-disclosure was discovered during trial, the trial judge properly exercised his discretion in removing the juror to ensure each side received a fair trial by a competent and impartial jury, and his decision was reasonable and logical under the circumstances. Furthermore, unlike in Stone, the challenged juror's relationship with Appellant was much stronger in that the challenged juror had previously worked with one of Appellant's family members and may have been related to that family member and, in turn, Appellant. Therefore, based on the juror's relationship with one of Appellant's family members coupled with the fact the juror was potentially related to Appellant, the trial judge properly found the non-disclosed information would have served as a legitimate basis for a peremptory challenge.¹ For this reason, the trial judge did not abuse his discretion in

¹ In fact, based on the fact the juror was potentially related to Appellant due to the fact she may have been related to one of Appellant's family members, the trial judge could have properly exercised his discretion to strike the juror for cause. See State v. Brock, 61 S.C. 141, 147, 49 S.E. 359, 361 (1901) ("While the circuit judge committed error in stating that jurors related by blood or connected by marriage within the sixth degree to either of the parties were disqualified from sitting as such, that both consanguinity and affinity within the sixth degree were grounds for legal exceptions under the statutes, still he stated a very salutary rule. Certainly, the legislature has interdicted judges from sitting in cases of such relationship, and it is a good guide to the exercise of a sound discretion by a circuit judge to observe the same degree of relationship. No doubt, he meant to give this as a reason for his not regarding the jurors presented as indifferent, because related to the defendant or prosecutor. The fact of relationship was in his

removing the challenged juror and replacing her with an alternate. Accordingly, the State asks this Court to reconsider its decision, rehear the matter, and affirm Appellant's conviction.

B. Appellant's Receipt of a Fair Trial Despite the Removal of a Juror

Additionally, the State respectfully submits this Court overlooked the State's argument regarding the lack of prejudice to Appellant even if the trial judge abused his discretion in removing the challenged juror and replacing her with an alternate. The State submits the trial judge replaced the challenged juror in Appellant's case with a qualified alternate, resulting in no meaningful or articulable prejudice to Appellant. Accordingly, since Appellant's case was decided by a fair and impartial jury, which was all Appellant was entitled to under the law, Appellant was not entitled to reversal of his conviction. For this reason, the State asks this Court to reconsider its decision, rehear the matter, and affirm Appellant's conviction.

"Error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005); see also State v. Smith, 230 S.C. 164, 168, 94 S.E.2d 886, 887 (1956) ("The burden of establishing a prejudicial error occurred during trial falls to the appellant."). This requirement that an error must be prejudicial before the reversal of a conviction is warranted applies to rulings on the excusal of a juror. State v. Rogers, 263 S.C. 373, 382, 210 S.E.2d 604, 609 (1974). Therefore, unless an appellant demonstrates prejudice from the excusal of a juror, the appellant is not entitled to a new trial on this basis. Cf. State v. McDaniel, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980) ("[T]he procedure employed by the trial court, however irregular, was not sufficient to deprive appellant of his right to a jury trial. There is no right to be tried by a jury composed of particular individuals. The alternate juror had been approved by both sides at the inception of the trial, and there is no showing that the

mind. The degree of such relationship he mistakenly thought was governed by statute. This being so, his error was not serious or harmful.").

appellant withdrew that approval at the time of substitution. Moreover, appellant has failed to establish in what manner this procedure prejudiced him.” (citations omitted)).

Furthermore and critically, while a criminal defendant has a constitutional right to a fair trial by an impartial jury, a defendant in South Carolina does not have a right to a trial by a jury composed of any particular jurors. See Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) (“[T]his Court has held that a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury.”); see also U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury**[.]” (emphasis added)); S.C. Const. art. I, § 14 (“The right to trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial **by an impartial jury**[.]” (emphasis added)). Thus, the removal of a particular juror from an otherwise competent and impartial jury is insufficient to constitute a denial of a defendant’s right to a jury trial. See McDaniel, 275 S.C. at 224, 268 S.E.2d at 586 (finding the trial judge’s removal of a juror who was observed making improper remarks and gestures and replacement of the juror with an alternate did not deprive McDaniel of his right to a jury trial because “[t]here is no right to be tried by a jury composed of particular individuals”).

Notably, in State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 52 (1996), a juror walked over and shook hands with a reverend he knew who was sitting next to Williams at the counsel table at the conclusion of the second day of the trial. After finding a problem “**may have arisen**” based on the fact the reverend was sitting next to Williams, the trial judge removed the juror and replaced him with an alternate. Id. (emphasis added). On appeal, Williams challenged the removal of the juror, and the Supreme Court initially found the issue was not preserved for

further review. Id. However, the Court further noted Williams suffered no discernible prejudice from the removal of the juror based on the fact the juror was replaced with a qualified alternate.

Just as in Williams, the challenged juror removed in Appellant's case was replaced by a qualified alternate juror, and Appellant received a fair trial decided by twelve competent, impartial jurors. Appellant does not suggest that the jury who ultimately decided the case was composed of anything other than fair and impartial jurors. Furthermore, Appellant does not suggest that the alternate juror who was seated in the removed juror's place was unqualified in any meaningful way. In fact, although Appellant had a peremptory strike available during the selection of the alternate jurors, Appellant elected not to exercise that strike on the alternate juror who was seated in the place of the excused juror. (R. p. 43).

Therefore, as the dismissed juror was replaced with a qualified alternate and Appellant received everything he was entitled to pursuant to his constitutional right to trial by a fair and impartial jury, Appellant suffered no prejudice from the removal of the challenged juror that warranted the reversal of the verdict returned in his case by a fair and impartial jury. See Rogers, 263 S.C. at 382, 210 S.E.2d at 609 (“[T]he law is well settled that the defendant has no right to a trial by any particular jury or jurors and has the right only to a trial by a competent and impartial jury.”); see also United States v. Gonzales-Balderas, 11 F.3d 1218, 1222 (5th Cir. 1994) (“In any event, Gonzales-Balderas does not contest the impartiality of the panel that actually judged his case. This is fatal to his objection. We held in Prati that improper removal of a member of the venire is not grounds for reversal in a non-capital case unless the jurors who actually sat were not impartial within the meaning of the sixth amendment.”); Lowry v. State, 963 So. 2d 321, 327 (Fla. Dist. Ct. App. 2007) (“Even if there was error [from the removal of a juror], it was harmless because the juror was replaced by a duly selected alternate who was present for the entire

proceedings, and we could conclude beyond a reasonable doubt that using the alternate did not affect the verdict.”); Ortiz v. State, 835 So. 2d 1250, 1251 (Fla. Dist. Ct. App. 2003) (“[A]ny error in removing a sleeping juror was harmless because the juror ‘was replaced by a duly selected alternate who had been present during the entire proceedings and appellant has not shown that he was prejudiced by the substitution.’ ” (citations omitted)); State v. Stafford, 255 Kan. 807, 823, 878 P.2d 820, 831 (Kan. 1994) (“A defendant has no right to any particular juror or to the original 12 jurors who are impaneled to hear a case.”). For these reasons and in the absence a showing of prejudice resulting from the removal of the juror, the State respectfully submits this Court erred in finding reversible error in the trial judge’s decision to excuse the challenged juror during the course of trial.² Accordingly, the State asks this Court to reconsider its decision, rehear the matter, and affirm Appellant’s conviction.

C. Harmlessness of Any Error in Light of the Overwhelming Evidence of Guilt

Furthermore, notwithstanding the lack of prejudice to Appellant from the removal of the challenged juror, the State respectfully submits this Court may have overlooked its argument regarding the harmless of any error resulting from the removal of the juror in light of the

² The State further notes that although the Supreme Court in Stone found the trial judge’s removal of the juror during the capital sentencing proceedings to be an abuse of discretion, the Court did not specifically state this error was alone sufficient to constitute grounds for reversal. See Stone, 350 S.C. at 449, 567 S.E.2d at 248 (“Accordingly, we hold the trial court abused its discretion in removing her.”). Instead, the Court in Stone specifically found reversible error in the trial judge’s failure to instruct the jury on statutory mitigating factors and Stone’s ineligibility for parole. See Id. at 450, 567 S.E.2d at 248 (“Accordingly, the trial court’s refusal to instruct on the statutory mitigating circumstances of S.C. Code Ann. § 16-3-20(C)(b)(6) & (7) and its instruction concerning voluntary intoxication require reversal.”); Id. at 452, 567 S.E.2d at 249 (“Accordingly, the trial court’s failure to instruct that Stone would be ineligible for parole if sentenced to life imprisonment requires reversal.”). The State submits that the Supreme Court’s holding in Stone, therefore, does not stand for the proposition that the improper removal of a juror standing alone constitutes automatic reversible error; and this position is consistent with Court’s holdings in Williams and McDaniel. Cf. Williams, 321 S.C. at 459, 469 S.E.2d at 52 (finding no reversible prejudice resulted from the removal and replacement of a juror at the end of the second day of trial); McDaniel, 275 S.C. at 224, 268 S.E.2d at 586 (finding the removal of a juror during the middle of trial was not sufficient to deprive McDaniel of his right to a jury trial because the juror was replaced with a qualified alternate, which resulted in no prejudice to McDaniel). In fact, other than the decision in Appellant’s case, the State had been unable to find any other South Carolina cases where the trial judge’s improper removal and replacement of a juror during trial solely constituted a sufficient ground to reverse a conviction. Therefore, based on this critical fact, the State asks this Court to reconsider its decision, rehear the matter, and affirm Appellant’s conviction.

absolutely overwhelming evidence of Appellant's guilt. The State submits the evidence presented in Appellant's case overwhelmingly established his guilt for armed robbery such that no other verdict could have been reached by a jury comprised of any fair and impartial jurors. Therefore, based on the overwhelming nature of the evidence in Appellant's case and the fact the removal of the challenged juror could have had no impact on the verdict, there is no reason to reverse Appellant's conviction and grant Appellant a new trial where the same overwhelming evidence can be introduced to an entirely new jury, which would be comprised of twelve new jurors and not contain the challenged juror removed by the trial judge during Appellant's last trial, in the event of a new trial. Accordingly, the State asks this Court to reconsider its decision, rehear the matter, and affirm Appellant's conviction.

Once a trial error has been discovered, an appellate court must next determine whether the error was harmless before reversing a conviction on appeal. See State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. **Next we must determine whether the error was harmless.**" (emphasis added)). Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). When overwhelming evidence of guilt has been established, any trial error may be harmless. State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988).

In Appellant's case, the evidence of his guilt was absolutely overwhelming, rendering any error in the removal of the challenged juror harmless. Appellant was identified as the gunman in the robbery of the Pizza Hut by the victims working in the restaurant at the time. (R. p. 49; p. 66; p. 71). Importantly, the manager of the restaurant, Tamera Brown, conclusively identified Appellant as one of the armed robbers both in court and out of court without any hesitation. (R. p. 64; p. 66). Additionally, a security guard working at the North Charleston Inn at the time of the robbery identified Appellant as one of the robbers of that establishment, and he linked Appellant to the car involved in the police chase after the robberies. (R. p. 124; pp. 129-130). Furthermore, Detective Shawn Patrick testified that Appellant's accomplice identified Appellant as the gunman and robber shortly after the crimes were committed. (R. pp. 86-87; pp. 89-90). Additionally, Appellant was arrested after he fled from officers, engaged in a high speed chase, crashed his car into a fire hydrant, and was struck by a police vehicle as he attempted to flee from the wreck on foot. (R. pp. 133-135; p. 137; pp. 140-141). Finally, following his flight and arrest, officers discovered the sawed-off shotgun used in the robbery of the Pizza Hut in the front seat of Appellant's vehicle and nearly \$1,000.00 in cash in the pockets of Appellant's pants. (R. p. 46; p. 59; p. 123; p. 136; p. 142; p. 146).

Based on the absolutely overwhelming evidence of guilt including eyewitness identifications, Appellant's unsuccessful attempts to flee from officers both in a vehicle and on foot, the discovery of the weapon used during the robbery in the car Appellant fled in, and discovery of the money taken during the robbery in Appellant's pockets, Appellant's guilt was conclusively proven beyond a reasonable doubt. Therefore, based on the fact no jury could reach a different verdict in light of the overwhelming evidence of Appellant's guilt, there is no practical or compelling reason to reverse Appellant's conviction due to an error that had and

could have had no actual impact on the verdict. Accordingly, due to the harmless nature of any error in the removal of the juror in Appellant's case coupled with its insignificance to verdict rendered, the State asks this Court to reconsider its decision, rehear the matter, and affirm Appellant's conviction.

Conclusion

Based on the foregoing along with the arguments raised in the Final Brief of Respondent, Respondent respectfully requests that the panel reconsider and rehear this matter, and affirm Appellant's conviction and sentence.

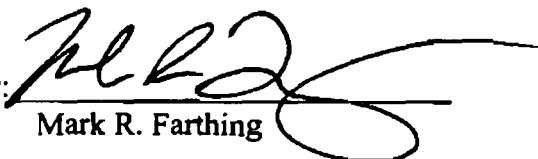
Respectfully submitted,

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November 22, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

WILLIAM COAXUM, SR.,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Respondent's Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 22nd day of November, 2011.



ELLEN R. DuBOIS
Legal Assistant

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APP'X 227

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM COAXUM, SR.,

APPELLANT.

RETURN TO RESPONDENT'S PETITION FOR REHEARING

On November 7, 2011, this Court issued an unpublished opinion in this matter. State v. Coaxum, Op. No. 2011-UP-496 (S.C.Ct. App.). The opinion is an accurate statement of law, and this Court should deny the state's petition for rehearing.

The State, in its petition for rehearing, as it argued in oral argument, continues to make an argument that is without legal support. In the State's view, a trial court judge can exercise his discretion to remove a seated and sworn juror when there is an unintentional concealment of an immaterial fact. That is not the law in South Carolina.

The South Carolina Supreme Court cites State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) in its Stone¹ opinion:

When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). When a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary herein, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, **no such inference may be drawn.** State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct. App. 1991) (emphasis added).

Id. at 448, 247.

The South Carolina Supreme Court has made it clear that when a juror innocently fails to disclose a nonmaterial fact, it is improper to remove that juror.

The Attorney General's Office suggests this Court adopt a new law: "Therefore, when the nondisclosure is discovered during the trial, it necessarily allows for greater discretion on the part of the trial judge in weighing the materiality of the nondisclosure with the trial judge's duty to ensure each party receives a fair and impartial trial." State's petition for rehearing, p. 3.

This statement does not reflect the law in this state.

The test pronounced in *Thompson v. O'Rourke, supra*, makes clear that where a juror's response to *voir dire* amounts to an intentional concealment, the movant need only show that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Where the juror's failure to disclose information is "without justification," i.e., intentional, the juror's bias will be inferred. Conversely, where the failure to disclose is innocent, no inference of bias can be drawn.

¹ State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002).

Woods 589, 285.

In this case, the parties agreed that the concealment was unintentional. And, the juror's information would not "have supported a challenge for cause or [be] a material factor in the use of" peremptory challenges." For these reasons, removal of this juror was improper because no inference of bias could be drawn from the failure to disclose, and the relationship—that the juror knew some of the non-testifying defendant's family members—would not have supported a challenge for cause, nor would have been a "material factor" in the use of peremptory challenges.

The error here was not harmless. This juror had the right not to be casually excluded from this jury. The United States Supreme Court has recognized that jurors have the right not to be improperly excluded from participating in this important civic duty. Batson v. Kentucky, 476 U.S. 79 (2010). Additionally, other courts have recognized that this violation results in reversal. People v. McClary, 85 A.D.3d 1622, 925 N.Y.S.2d 307 (June 10, 2011); State v. Tennors, 923 So.2d 823 (Louisiana 2006); And see Vermont Rule of Criminal Procedure 24(d): If sanctioned as acceptable practice, removing jurors without examination on the record would erode confidence in the jury system as fair and impartial because it allows the appearance or possibility of manipulating the jury panel membership based on an individual juror's demeanor or behavior during trial. The only way to guarantee a defendant's right to an impartial panel is to choose that panel under rules calculated to promote fairness and then to bar removal, except for demonstrated cause with findings on the record.

The state's petition for rehearing invites this Court to misapply the law of this state and adopt its own new rule. This Court should decline to do so.

Respectfully submitted,



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(803) 331-3421

December 8, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

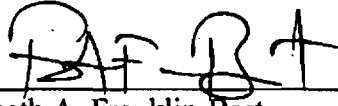
V.

WILLIAM COAXUM, SR.,

APPELLANT.

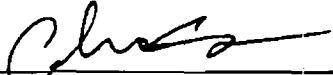
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the return to respondent's petition for rehearing in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 8th day of December, 2011.


Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 8th day of December, 2011.


(L.S.)
Notary Public for South Carolina
My Commission Expires: May 16, 2021

The South Carolina Court of Appeals

The State,

Respondent,

v.

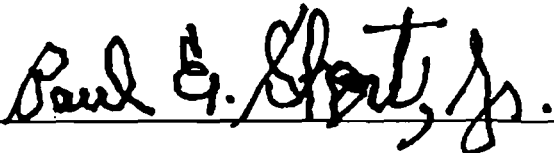
William Coaxum, Sr.,

Appellant.

The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No.
2008-GS-10-02629
2008-GS-10-02630

ORDER DENYING PETITION FOR REHEARING

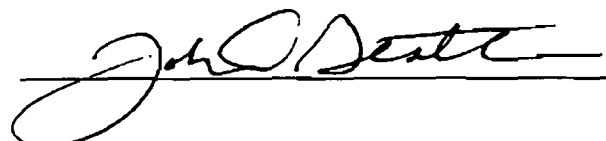
PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.



J. Short



J. Williams



J. Geathers

Columbia, South Carolina

Date: Dec. 20, 2011

cc: Appellate Defender Elizabeth A. Franklin-Best
Attorney General Alan Wilson
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Mark Farthing
Scarlett Anne Wilson, Esquire

FILED

Dec. 20, 2011