No. 21-_____

IN THE

Supreme Court of the United States

STANLEY JOSEPH THOMPSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITIONER'S APPENDIX

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INDEX TO PETITIONER'S APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 14-15179-EE

STANLEY JOSEPH THOMPSON,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JORDAN, GRANT, and SILER,* Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

* Honorable Eugene E. Siler, Jr., United States Circuit Judge for the Sixth Circuit, sitting by designation.

ORD-42

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 14-15179

D.C. Docket Nos. 1:11-cv-02294-TWT; 1:07-cr-00138-TWT-JSA-2

STANLEY JOSEPH THOMPSON,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(August 19, 2020)

ON PETITION FOR REHEARING

Before JORDAN, GRANT, and SILER,* Circuit Judges.

* Honorable Eugene E. Siler, Jr., United States Circuit Judge for the Sixth Circuit, sitting by designation.

SILER, Circuit Judge:

Petitioner Stanley Joseph Thompson has moved for panel rehearing and/or rehearing en banc of our prior decision in this case, *see Thompson v. United States*, 791 F. App'x 20 (11th Cir. 2019). Upon reconsideration, we vacate the prior opinion, grant panel rehearing on two issues: (1) the *Miranda* warning issue arising from questioning during the traffic stop and (2) the severance issue, and file this amended opinion. In all other respects, the petition for panel rehearing is denied.

Stanley Thompson appeals the district court's denial of his § 2255 motion to vacate his sentence and his motion for a new trial. We affirm.

In 2007, the Atlanta area experienced a string of robberies that police believed were connected. Two men held up a Taco Bell, before six separate area banks were robbed. R. 145 at 29-30; R. 11. In one robbery, a witness saw someone get in and out of a red Chevrolet Blazer. The witness recorded the license plate, and police determined the car belonged to Leary Robinson's estranged wife.

Shortly after a robbery at SunTrust Bank, Atlanta Police Detective Capus Long stopped the Blazer along Interstate 20. R. 146 at 281-82. Thompson was driving; Edwin Epps was the passenger. Officers ordered Thompson and Epps out of the car and began asking questions. Thompson said the car was "a hot box," and Detective Long understood that to mean that the car was stolen. *Id.* at 283.

Thompson was placed in the police car where Long showed Thompson a photograph of Leary Robinson. *Id.* at 284. Thompson said that Robinson was staying at the Intown Suites, and Long gave that information to the FBI. *Id.* at 284-85.

FBI Agent Chad Fitzgerald then went to Intown Suites, where he learned from the motel clerk that both Robinson and Thompson had been staying there. R. 146 at 382; 147 at 414. When agents moved in to arrest Robinson, a standoff ensued, but ended after extended negotiations. R. 146 at 289-91, 310-315. Meanwhile, police had taken Thompson to the Fulton County Jail and received Thompson's consent to a search of his room at the Intown Suites. R. 147 at 424. During that search, police found a pistol that they believed was used in the robberies. R. 146 at 302-03; 305-06. Police also found a baseball hat, camouflage pants, and a yellow tablet all believed to be connected to the crimes. R. 146 at 300-21. Police later searched the Blazer and found several items of clothing used in the robberies. *Id.* at 296-319.

Robinson admitted to the robberies except for the Taco Bell holdup and one of the bank robberies. R. 146 at 327-31. He also admitted using a gun during the crimes and that he used the Blazer in most of them. A federal grand jury returned a 12-count indictment against Robinson and Thompson, charging them with all eight robberies. R. 11.

After a joint jury trial, Thompson was convicted of one count of aiding and abetting an interference with commerce by robbery under 18 U.S.C. § 1951, four

counts of aiding and abetting bank robbery under 18 U.S.C. § 2113(a), two counts of aiding and abetting bank robbery with a dangerous weapon under 18 U.S.C. § 2113(a), (d), and three counts of aiding and abetting the use or carrying of a firearm during a crime of violence under 18 U.S.C. § 924(c)(1)(A). R. 109. He was found not guilty on two other robbery-related counts. *Id.*

We affirmed on direct appeal. *United States v. Thompson*, 610 F.3d 1335 (11th Cir. 2010). Thompson then filed this motion to vacate, set aside or correct his sentence under § 2255. R. 168; 171.

Thompson argues that trial counsel was ineffective for (1) waiving a suppression hearing regarding whether he had made statements to police without being advised of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), (2) admitting Thompson's guilt to robbery during closing arguments; and (3) failing to move to sever his trial from Robinson's trial. R. 168 at 7-10.

Thompson also sought a new trial. That request stemmed from a Freedom of Information Act request that Thompson filed with the U.S. Department of Justice, which Thompson claimed showed that his fingerprints were not found on demand notes used in the bank robbery.

A magistrate judge issued a report and recommendation to the district court, suggesting that Thompson's motions be denied. R. 189. And without holding an evidentiary hearing, the district court adopted the report and recommendation,

denied Thompson's objections, and entered a final judgment. R. 192, 193. The district court also denied a certificate of appealability (COA). This court granted a COA on three issues:

(1) Whether Thompson received ineffective assistance of counsel with respect to counsel's failure to challenge police officers' questioning of him without reading him the requisite *Miranda* warnings.

(2) Whether Thompson received ineffective assistance of counsel based on counsel's decision to concede guilt to the charges associated with the Taco Bell robbery, due to counsel's erroneous belief that the government had insufficient evidence to prove that the armed robbery affected interstate commerce.

(3) Whether Thompson received ineffective assistance of counsel based on counsel's failure to move for severance from codefendant Robinson's trial.

R. 213; 216

In § 2255 motions, we review counsel's effectiveness de novo, *LeCroy v. United States*, 739 F.3d 1297, 1312 (11th Cir. 2014), and denial of an evidentiary hearing for abuse of discretion, *Castillo v. United States*, 816 F.3d 1300, 1303 (11th Cir. 2016). Courts should grant such hearings "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." *Id.* (quoting 28 U.S.C. § 2255(b)). Abuse of discretion review also applies to a denial

of a new trial motion. *United States v. Campa*, 459 F.3d 1121, 1151 (11th Cir. 2006) (en banc).

To prevail on an ineffective-assistance-of-counsel claim Thompson must show that his counsel's performance (1) was deficient, and (2) resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *Strickland*'s deficiency prong is met only when counsel's performance fell below an objective reasonableness standard. *Id.* at 688. Courts "strongly . . . presume[]" that counsel provides adequate assistance and "made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690. Thompson must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "The prejudice prong requires a petitioner to demonstrate that seriously deficient performance of his attorney prejudiced the defense." *LeCroy*, 739 F.3d at 1312-13 (quoting *Butcher v. United States*, 368 F.3d 1290, 1293 (11th Cir. 2004)). In the ineffective assistance of counsel context involving a constitutional suppression issue, prejudice is shown only when the petitioner demonstrates that "there is a reasonable probability that the verdict would have been different absent the excludable evidence." *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986).

1. Miranda Warnings. Thompson argues his attorney first erred in failing to challenge the police officers' questioning of him without warnings under *Miranda*

v. Arizona, 384 U.S. 436 (1966). Thompson asserts that authorities failed to provide *Miranda* warnings on two separate occasions. First, he argues that police interrogated him without *Miranda* warnings during a traffic stop. Second, Thompson argues that agents failed to provide *Miranda* warnings before seeking his consent to search his hotel room.

a. Questioning During the Traffic Stop

According to Thompson, the police did not read him his *Miranda* rights before questioning him after pulling him over and detaining him. What's more, Thompson says his counsel failed to investigate this *Miranda* problem and never sought suppression of Thompson's statements.

The district court rejected this argument, holding that Thompson's discussion with Detective Long fell under *Miranda*'s "routine booking exception." Under that doctrine, incriminating information can be used against a defendant who was not given his *Miranda* warning when the information came in response to police officers' questions designed to obtain basic information. *United States v. Sweeting*, 933 F.2d 962, 965 (11th Cir. 1991). We agree with the district court that some of the questions asked by the detective, such as where Thompson was living, satisfy that exception.

Thompson challenges his attorney's failure to move to suppress his responses to other questions as well, however, including when the detective showed him a

picture of Robinson and asked him where Robinson was. We concluded that we need not address whether Thompson was entitled to *Miranda* warnings before those questions—because even if he was, he is unable to establish prejudice with regard to his attorney's failure to move to suppress his responses. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). The evidence in this case included a witness testifying that Robinson introduced Thompson as his "partner," a photo and video showing Thompson's and Robinson's unmasked faces as they robbed a Taco Bell, and surveillance photos and videos showing Robinson robbing several banks. Thompson's fingerprints were also found on some of the demand notes used in those bank robberies. For three of the bank robberies, witnesses testified that the robber entered and exited a getaway car from the passenger side—indicating that a getaway driver assisted in the robberies. Several witnesses identified the getaway car as a red Chevrolet Blazer—the same car that officers found Thompson driving when they arrested him. And a later search of the vehicle revealed clothing that matched that worn by the bank robbers. Because Thompson cannot establish prejudice in light of the strength of the evidence in this case, Thompson cannot show that his attorney's decision not to move for suppression of his initial responses amounts to ineffective assistance of counsel.

b. Consent to Search Thompson's Hotel Room

Thompson also contends that his counsel was ineffective for failing to object to admission of statements and physical evidence that arose from a search of Thompson's hotel room at Intown Suites.

During the investigation and search for co-defendant Robinson at Intown Suites, FBI agents learned from hotel staff that Thompson had also been staying at Intown Suites, in room 463. After Robinson's arrest, agents went to the Fulton County jail to seek Thompson's consent to search his hotel room.

At the jail, agents identified themselves and asked Thompson if he had been residing in room 463 at Intown Suites. According to agents, Thompson verified that he had been staying in room 463. Thus, agents presented Thompson with an FBI FD26 consent to search form, which Thompson signed. Subsequently, the agents searched Thompson's hotel room and discovered evidence that was linked to the robberies they were investigating.

Thompson claims that the consent to search was illegally obtained because he was in custody when agents asked for his consent and he was not read *Miranda* warnings before he gave consent. But Thompson has failed to demonstrate that counsel's failure to object to admission of evidence obtained during this search rises to the level of ineffective assistance of counsel.

Initially, Thompson has failed to demonstrate that counsel's failure to object to admission of this evidence constitutes deficient performance because *Miranda*

warnings were not required prior to the agents seeking consent to search at the jail. This court has previously noted that consent to search is not a self-incriminating statement. *See United States v. Hidalgo*, 7 F.3d 1566, 1568 (11th Cir. 1993). As such, when agents asked Thompson to confirm that he had been staying in room 463 and if he would give consent to search, they could not have known or suspected that Thompson's statement would illicit an incriminating response. Of course, it is true that the subsequent search of Thompson's hotel room led to discovery of incriminating physical evidence, but Thompson's response to agents' questions about consent to search could not have been reasonably expected to illicit an incriminating statement. As a result, Thompson's argument that this evidence should have been suppressed has no merit.

And, since Thompson's argument has no merit, his trial counsel cannot be found ineffective for failure to raise a meritless argument. *See, e.g.*, *Chandler v. Moore*, 240 F.3d 907, 917 (11th Cir. 2001) (holding that counsel was not ineffective for failing to raise a meritless argument); *United States v. Winfield*, 960 F.2d 970, 974 (11th Cir. 1992) (same).

Ultimately, agents were not required to provide *Miranda* warnings prior to asking Thompson for his consent to search his hotel room. As such, counsel's failure to object to admission of evidence obtained as a result of that consent did not fall below an objective standard of reasonableness.

Moreover, even if counsel's performance was deficient, Thompson cannot show that he was prejudiced by counsel's failure to object or move to suppress evidence. Under the inevitable discovery doctrine, the evidence that Thompson seeks to suppress would have been discovered by lawful means, even assuming the consent to search was obtained unlawfully.

The inevitable discovery exception to the exclusionary rule allows evidence that was illegally obtained to be admitted if the government can demonstrate by a preponderance of the evidence that such evidence would have been inevitably or ultimately discovered by lawful means that were being actively pursued before the illegal conduct occurred. *See Nix v. Williams*, 467 U.S. 431, 444 (1984).

Here, agents would have inevitably obtained the physical evidence discovered from the search of Thompson's hotel room, even without Thompson's consent to search. When agents asked for Thompson's consent to search, both Thompson and Robinson had been arrested, and Robinson had confessed to some of the robberies. Additionally, while Robinson was barricaded in room 463—the hotel room that belonged to Thompson—agents saw Robinson brandish a pistol. But the pistol was not discovered when Robinson was taken into custody. As a result, officers had probable cause to obtain a search warrant to search Thompson's room, even without Thompson's consent to search. Furthermore, as the district court found, the public safety exception would have justified a warrantless search of Thompson's hotel

room since the weapon that Robinson brandished was not found on his person when he was arrested.

In sum, even if Thompson could demonstrate that agents illegally obtained his consent to search his hotel room, he cannot demonstrate that this evidence should be suppressed based on the inevitable discovery exception. As a result, even if counsel's failure to object and pursue suppression of the physical evidence was deficient performance, Thompson cannot demonstrate that he was prejudiced by counsel's performance. As a result, Thompson has failed to demonstrate that counsel's failure to object to admission of evidence obtained during a search of his hotel room rises to the level of ineffective assistance of counsel.

2. Admitted Guilt in Taco Bell Robbery. In *McCoy v. Louisiana*, 138 S. Ct 1500 (2018), the Supreme Court held that criminal defendants "must be allowed to make [their] own choices about the proper way to protect [their] liberty," which includes the right to "insist on maintaining innocence at the guilt phase." *Id*. at 1508. When counsel does not allow a defendant to maintain his innocence, defendant's Sixth Amendment rights are violated. *Id*. Thompson argues that counsel made a unilateral decision to admit guilt, which was against Thompson's wishes.

The government argues that this argument is outside the COA, but even if we considered it, Thompson fails because his counsel did not admit guilt. Instead, counsel took a trial strategy, arguing that the government could not prove the

interstate commerce element of Hobbs Act robbery. That does not rise to the level of admitting guilt since counsel denied an essential element of the crime.

Turns out, of course, that Thompson's counsel was wrong—so wrong, in fact, that Thompson thinks he received constitutionally deficient assistance. Under the Hobbs Act, it is a crime to affect commerce by robbery. 18 U.S.C. § 1951. Only a small or minimal effect on commerce is needed to prove that element of the crime, *see United States v. Gray*, 260 F.3d 1267, 1272 (11th Cir. 2001), which occurs when, for example, the robbery reduces the assets of a company involved in interstate commerce, *see United States v. Ransfer*, 749 F.3d 914, 936 (11th Cir. 2014).

So, as Thompson argues, his counsel was incorrect regarding the interstate commerce element of Hobbs Act robbery—the Taco Bell incident certainly could meet the minimal threshold required. But Thompson still fails to establish prejudice, a necessary component of his ineffective assistance claim. *See Strickland*, 466 U.S. at 687. As the district court determined, a mound of evidence supported Thompson's involvement in the Taco Bell robbery—including pictures and videotape. Indeed, nothing suggests that the jury would have reached a different outcome on the Taco Bell count or any other charge. Thus, Thompson has not demonstrated prejudice and his claim fails.

3. Failure to Move for Severance. Finally, Thompson argues that his counsel was ineffective because he failed to move to have the trial severed from his

codefendant, Robinson. Thompson says that he suffered prejudice because the jury heard overwhelming evidence against Robinson, so the jury must have thought Thompson was also involved.

But again, Thompson fails to demonstrate ineffective assistance. *See id.* First, he cannot show deficient performance, because the severance likely would not have been granted. The government may try codefendants together "if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses." Fed. R. Crim. P. 8(a). No doubt, that is this case. True, defendants can move for severance, but a court will grant such a motion only when joinder will result in prejudice. Fed. R. Crim. P. 14(a). And usually "people who are charged together are tried together." *United States v. Novaton*, 271 F.3d 968, 989 (11th Cir. 2001) (citation omitted).

Nor can Thompson establish that had the severance been granted the result of trial would have been different. Thus, he cannot meet *Strickland*'s prejudice prong. 466 U.S. at 687. Even if Thompson would have had slightly better odds at trial had he been tried alone, that does not mean the outcome would have been different—a burden that Thompson must carry in his § 2255 motion. *See Zafiro v. United States*, 506 U.S. 534, 540 (1993).

Moreover, counsel's performance was not deficient for not moving to sever after Robinson testified because Robinson neither identified nor implicated

Thompson. The Supreme Court has told us that "where a codefendant takes the stand in his own defense, denies making an alleged out-of-court statement implicating the defendant, and proceeds to testify favorably to the defendant concerning the underlying facts, the defendant has been denied no rights protected by the Sixth and Fourteenth Amendments." *Nelson v. O'Neil*, 402 U.S. 622, 629–30 (1971). The same principle, we believe, applies with equal force here.

During his testimony, Robinson refused to implicate Thompson while on the witness stand. Robinson denied that Thompson participated in the Taco Bell robbery; refused to identify Thompson in a photo; declined to name Thompson as his get-away driver; and rejected assertions that Thompson was the person he had previously identified as "J.T." This testimony was bolstered during cross-examination by Thompson's counsel, as Robinson again testified that he never provided Thompson's name to a government agency and never told anyone what "J.T." stood for.

Therefore, Robinson's testimony did not impair any of Thompson's rights. *See Nelson*, 402 U.S. at 626 ("the absence of the defendant at the time the codefendant allegedly made the out-of-court statement is immaterial, so long as the declarant can be cross-examined on the witness stand at trial"); *Smith v. Kelso*, 863 F.2d 1564, 1569 (11th Cir. 1989) ("Severance is compelled only when a co-defendant has refuted those portions of a co-defendant's case that are necessary to

find the defendant not guilty of the particular charged offense."). Even if there was some other prejudice from Robinson's testimony, we need not grant a separate trial "unless the trial judge could not cure the prejudice." *Smith*, 863 F.2d at 1572. As there was no such risk in this case, counsel was not deficient for not moving for severance at that point. *See United States v. Bradley*, 905 F.2d 1482, 1488–89 (11th Cir. 1990) (explaining that a mid-trial severance under Rule 14 requires a "manifest necessity").

4. *Motion for a New Trial*. Finally, Thompson argues he is entitled to a new trial because he has newly discovered evidence contradicting the government's contention that his fingerprints were on demand notes used in two of the robberies. The district court can grant a new trial based on newly discovered evidence if that motion is filed within three years of the verdict, *see* Fed R. Crim. P. 33(a)(1), and the defendant shows: (1) the evidence was discovered after the trial; (2) the defendant exercised due diligence to discover the evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material to issues before the court; and (5) the evidence is of such a nature that a new trial would probably produce a new result, *United States v. Taohim*, 817 F.3d 1215, 1223 (11th Cir. 2013). Such motions are highly disfavored and rarely granted. *See Campa*, 459 F.3d at 1151.

Thompson received information from a FOIA request that the FBI was not in possession of so-called "lift images" of Thompson's fingerprints that the government contended were on the demand notes. This information, Thompson argues, shows that his fingerprints were not on the demand notes, and thus the government's evidence at trial is undermined.

But the document that Thompson relies on—an FBI declaration—says only that the lift prints Thompson requested "were taken and processed by the Cobb County Police Department (CCPD) rendering any processing by the FBI unnecessary." R. 187, Ex. A at 8-9. And lift prints are just one type of print. The FBI declaration further explains that it had latent prints on a demand note used during the robbery, and those prints were linked to Thompson. *Id.* at 10. The only information the declaration presents is that the only "lift prints" in the case were kept by CCPD, while the FBI had other prints on the demand notes.

This is hardly newly discovered evidence that would have affected the trial. *Taohim*, 817 F.3d at 1223. And the district court's denial of the new trial motion does not amount to an abuse of discretion. After all, the information shows that *both* the FBI and CCPD had fingerprint information. This does not undermine the jury's verdict and is not a basis for granting a new trial.

Upon reconsideration, we GRANT the motion for panel rehearing on the Miranda warning issue concerning questioning during the traffic stop and the

severance issue, VACATE the prior panel opinion, *Thompson v. United States*, 791 F. App'x 20 (11th Cir. 2019), and issue this amended opinion. In all other respects, the petition for panel rehearing is DENIED. We AFFIRM the judgment of the district court.

JORDAN, Circuit Judge, concurring in part and dissenting in part:

With one exception, I agree with the court's opinion denying rehearing. I would grant rehearing on Mr. Thompson's claim under *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), because I think we made a mistake in our original panel opinion. Let me explain why.

In our opinion, we rejected Mr. Thompson's *McCoy* claim and concluded that "counsel did not admit guilt" because, although he conceded a number of factual elements, he "denied an essential element of the crime [i.e., the interstate commerce element]." *Thompson v. United States*, 791 F. App'x 20, 27 (11th Cir. 2019). I believe Mr. Thompson is correct in asserting in his petition for rehearing that our *McCoy* analysis was flawed.

In *McCoy*, a capital case, the defendant "vociferously insisted that he did not engage in the charged acts and adamantly objected to any admission of guilt." 138 S. Ct. at 1505. Nevertheless, his counsel—having concluded that the evidence against the defendant was "overwhelming" and that "absent a concession at the guilt stage," it would be "impossible to avoid" a death sentence at the penalty phase—told the jury that the defendant had caused the victims' deaths and that he had "committed these crimes." *Id.* at 1506–07. The Supreme Court held that a defendant has the right, under the autonomy guaranteed by the Sixth Amendment, to refuse to admit or concede guilt. So when a defendant "expressly asserts" that he wants "to

maintain innocence of the charged criminal acts, his lawyer must abide by that [decision] and may not override it by conceding guilt." *Id.* at 1509. *See also id.* at 1510 ("[W]e agree with the majority of state courts of last resort that counsel may not admit her client's guilt of a charged crime over the client's intransigent objection to that admission.").

The Court also held that counsel's concession of guilt, in the face of the defendant's objection, constituted structural error that necessitated a new trial without a showing of prejudice. *See id.* at 1511–12. As Justice Alito's dissent pointed out, the Court reached this conclusion even though counsel had not conceded guilt as to all of the elements necessary for murder—counsel admitted that the defendant committed one element of the offense, i.e., that he "shot and killed the three victims," but "strenuously argued that [the defendant] was not guilty of first-degree murder because he lacked the intent (the *mens rea*) required for the offense." *Id.* at 1512 (Alito, J., dissenting).

Here, trial counsel conceded in his opening statement and closing argument that Mr. Thompson robbed the Taco Bell. But he argued (based on his apparently mistaken legal judgment) that the government had not proven the interstate commerce element of Hobbs Act robbery. In other words, like the lawyer in *McCoy*, Mr. Thompson's counsel admitted several elements of the offense while challenging another element. So the factual and procedural context here is just like *McCoy*, and

I do not believe we can reject Mr. Thompson's argument by saying that trial counsel only admitted guilt on some elements of the crime.

In his verified 28 U.S.C. § 2255 motion—which functioned like an affidavit, *see, e.g. Sears v. Roberts*, 922 F.3d 1199, 1206 (11th Cir. 2019)—Mr. Thompson alleged that trial counsel conceded guilt as to the Taco Bell robbery "against [his] wishes." Trial counsel allegedly advised Mr. Thompson that the best strategy was to admit guilt on the Taco Bell robbery while challenging the interstate commerce element of the robbery.

Given the verified motion to vacate, Mr. Thompson is entitled to an evidentiary hearing. *See* 28 U.S.C. § 2255(b) (providing for a hearing "[u]nless the motion and the files and records of the case *conclusively* show that the prisoner is entitled to no relief") (emphasis added). First, although the district court characterized trial counsel's concession strategy as reasonable, that strategy was likely based on a misunderstanding of the law regarding the interstate commerce element, and "[d]ecisions that are based on mistaken beliefs certainly are neither strategic nor tactical." *Green v. Nelson*, 595 F.3d 1245, 1251 (11th Cir. 2010) (citation omitted). Second, although Mr. Thompson stated in his verified § 2255 motion that conceding guilt was against his wishes, the record is not clear as to what Mr. Thompson said (or how he reacted) when trial counsel purportedly told him that admitting guilt on the Taco Bell robbery was the best trial strategy. If Mr. Thompson

rejected counsel's advice and continued to insist that there be no concessions as to the Taco Bell robbery, then counsel's unilateral choice was likely structural error that violated Mr. Thompson's autonomy as guaranteed by the Sixth Amendment. *See McCoy*, 138 S. Ct. at 1511–12. On the other hand, if Mr. Thompson said nothing about counsel's proposed strategy, then counsel's performance might need to be evaluated under *Strickland v. Washington*, 466 U.S. 669 (1984), and its progeny. *See Florida v. Nixon*, 543 U.S. 175, 178, 181, 192 (2004).

In my view, we should remand for an evidentiary hearing so that the district court can sort out the facts and evaluate the applicability of *McCoy*. I therefore respectfully dissent as to the denial of rehearing on Mr. Thompson's *McCoy* claim.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 14-15179

D.C. Docket Nos. 1:11-cv-02294-TWT,
1:07-cr-00138-TWT-JSA-2

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(October 17, 2019)

Before JORDAN, GRANT, and SILER,[*] Circuit Judges.

[*] Honorable Eugene E. Siler, Jr., United States Circuit Judge for the Sixth Circuit, sitting by designation.

SILER, Circuit Judge:

Stanley Thompson appeals the district court's denial of his § 2255 motion to vacate his sentence and his motion for a new trial. We affirm.

In 2007, the Atlanta area experienced a string of robberies that police believed were connected. Two men held up a Taco Bell, before six separate area banks were robbed. R. 145 at 29-30; R. 11. In one robbery, a witness saw someone get in and out of a red Chevrolet Blazer. The witness recorded the license plate, and police determined the car belonged to Leary Robinson's estranged wife.

Shortly after a robbery at SunTrust Bank, Atlanta Police Detective Capus Long stopped the Blazer along Interstate 20. R. 146 at 281-82. Thompson was driving; Edwin Epps was the passenger. Officers ordered Thompson and Epps out of the car and began asking questions. Thompson said the car was "a hot box," and Detective Long understood that to mean that the car was stolen. *Id.* at 283. Thompson was placed in the police car where Long showed Thompson a photograph of Leary Robinson. *Id.* at 284. Thompson said that Robinson was staying at the Intown Suites, and Long gave that information to the FBI. *Id.* at 284-85.

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Thompson argues that trial counsel was ineffective for (1) waiving a suppression hearing regarding whether he had made statements to police without being advised of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), (2) admitting Thompson's guilt to robbery during closing arguments; and (3) failing to move to sever his trial from Robinson's trial. R. 168 at 7-10.

Thompson also sought a new trial. That request stemmed from a Freedom of Information Act request that Thompson filed with the U.S. Department of Justice, which Thompson claimed showed that his fingerprints were not found on demand notes used in the bank robbery.

A magistrate judge issued a report and recommendation to the district court, suggesting that Thompson's motions be denied. R. 189. And without holding an evidentiary hearing, the district court adopted the report and recommendation, denied Thompson's objections, and entered a final judgment. R. 192, 193. The district court also denied a certificate of appealability (COA). This court granted a COA on three issues:

(1) Whether Thompson received ineffective assistance of counsel with respect to counsel's failure to challenge police officers' questioning of him without reading him the requisite *Miranda* warnings.

(2) Whether Thompson received ineffective assistance of counsel based on counsel's decision to concede guilt to the charges associated with the Taco Bell robbery, due to counsel's erroneous belief that the government had insufficient evidence to prove that the armed robbery affected interstate commerce.

(3) Whether Thompson received ineffective assistance of counsel based on counsel's failure to move for severance from codefendant Robinson's trial.

R. 213; 216

In § 2255 motions, we review counsel's effectiveness de novo, *LeCroy v. United States*, 739 F.3d 1297, 1312 (11th Cir. 2014), and denial of an evidentiary hearing for abuse of discretion, *Castillo v. United States*, 816 F.3d 1300, 1303 (11th Cir. 2016). Courts should grant such hearings "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." *Id.* (quoting 28 U.S.C. § 2255(b)). Abuse of discretion review also applies to a denial of a new trial motion. *United States v. Campa*, 459 F.3d 1121, 1151 (11th Cir. 2006) (en banc).

To prevail on an ineffective-assistance-of-counsel claim Thompson must show that his counsel's performance (1) was deficient, and (2) resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *Strickland*'s deficiency prong is met only when counsel's performance fell below an objective reasonableness standard. *Id.* at 688. Courts "strongly . . . presume[]" that counsel provides adequate assistance and "made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690. Thompson must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "The prejudice prong requires a petitioner to demonstrate that seriously deficient performance of his attorney prejudiced the defense." *LeCroy*, 739 F.3d at 1312-13 (quoting *Butcher v. United States*, 368 F.3d 1290, 1293 (11th Cir. 2004)). In the ineffective assistance of counsel context involving a constitutional suppression issue, prejudice is shown only when the petitioner demonstrates that "there is a reasonable probability that the verdict would have been different absent the excludable evidence." *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986).

1. Miranda Warnings. Thompson argues his attorney first erred in failing to challenge the police officers' questioning of him without warnings under *Miranda v. Arizona*, 384 U.S. 436 (1966). Thompson asserts that authorities failed to provide *Miranda* warnings on two separate occasions. First, he argues that police

interrogated him without *Miranda* warnings during a traffic stop. Second, Thompson argues that agents failed to provide *Miranda* warnings before seeking his consent to search his hotel room.

a. Questioning During the Traffic Stop

According to Thompson, police never read him his rights when he sat in the back of the police car, so Thompson claims that subsequent events—including the search of his hotel room—were tainted. What's more, Thompson says his counsel failed to investigate this *Miranda* problem and never sought suppression of Thompson's statements.

The district court rejected this argument, holding that Thompson's discussion with Detective Long—which included telling police his address and that Robinson was at the Intown Suites—fell under *Miranda*'s "routine booking exception." R. 189 at 32-33. Under that doctrine, incriminating information can be used against a defendant who was not given his *Miranda* warning when the information came in response to police officer's questions designed to obtain basic information. *United States v. Sweeting*, 933 F.2d 962, 965 (11th Cir. 1991).

After all, *Miranda* applies only when police conduct an "interrogation" while the suspect is in "custody." *United States v. Lall*, 607 F.3d 1277, 1284 (11th Cir. 2010). And when police are merely asking basic questions for routine information, they are not "interrogating" the suspect. *United States v. Doe*, 661 F.3d 550, 567

(11th Cir. 2011). Thus, when police questions are "reasonably related to the police's administrative concerns," the answers to those questions need not be excluded. *Pennsylvania v. Muniz*, 496 U.S. 582, 601-02 (1990). In addition, a suspect is usually not in custody during "the temporary and relatively nonthreatening detention involved in a traffic stop or *Terry* stop." *Howes v. Fields*, 565 U.S. 499, 510 (2012) (citation omitted).

The record does not support Thompson's *Miranda* claims. Officers merely asked Thompson routine questions regarding where he had been living, which is far from the coercive interrogation context in which *Miranda* applies. Officers would not have known that Long's question was likely to elicit an incriminating response even if the information ultimately did so. *See Rhode Island v. Innis*, 446 U.S. 291, 302 (1980). Moreover, Thompson was not in custody for *Miranda* purposes. Police had stopped the Blazer based on reasonable suspicion, something permitted under *Terry v. Ohio*, 392 U.S. 1 (1968). And in that context, *Miranda* warnings are typically not required. *United States v. Acosta*, 363 F.3d 1141, 1148 (11th Cir. 2004) (ruling that *Miranda* does not apply to *Terry* traffic stops because "the result would be that *Miranda* warnings are required before any questioning could occur during any *Terry* stop.").

To determine if a defendant is in custody during a *Terry* stop, we ask whether the stop "exerts upon a detained person pressures that sufficiently impair his free

exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights." *Acosta*, 363 F.3d at 1149 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984)). Given the totality of the circumstances, we cannot say Thompson was at the mercy of the police at the time he spoke with Long. The questions posed to Thompson were minimal, short, and relevant to the reasonable suspicion they had about the Blazer (the stolen vehicle). After all, police were investigating whether *this* was the Blazer involved and whether Thompson knew anything about it. *Acosta*, 363 F.3d at 1146. In such investigatory stops, officers do not have to read *Miranda* rights from the get-go. *Id.* at 1148. Here, police had reasonable suspicion and asked a few short investigatory questions in a public place, with no weapons drawn and no force applied, so Thompson was not in custody and *Miranda* was not violated.

b. Consent to Search Thompson's Hotel Room

Thompson also contends that his counsel was ineffective for failing to object to admission of statements and physical evidence that arose from a search of Thompson's hotel room at Intown Suites.

During the investigation and search for co-defendant Robinson at Intown Suites, FBI agents learned from hotel staff that Thompson had also been staying at Intown Suites, in room 463. After Robinson's arrest, agents went to the Fulton County jail to seek Thompson's consent to search his hotel room.

At the jail, agents identified themselves and asked Thompson if he had been residing in room 463 at Intown Suites. According to agents, Thompson verified that he had been staying in room 463. Thus, agents presented Thompson with an FBI FD26 consent to search form, which Thompson signed. Subsequently, the agents searched Thompson's hotel room and discovered evidence that was linked to the robberies they were investigating.

Thompson claims that the consent to search was illegally obtained because he was in custody when agents asked for his consent and he was not read *Miranda* warnings before he gave consent. But Thompson has failed to demonstrate that counsel's failure to object to admission of evidence obtained during this search rises to the level of ineffective assistance of counsel.

Initially, Thompson has failed to demonstrate that counsel's failure to object to admission of this evidence constitutes deficient performance because *Miranda* warnings were not required prior to the agents seeking consent to search at the jail. This court has previously noted that consent to search is not a self-incriminating statement. *See United States v. Hidalgo*, 7 F.3d 1566, 1568 (11th Cir. 1993). As such, when agents asked Thompson to confirm that he had been staying in room 463 and if he would give consent to search, they could not have known or suspected that Thompson's statement would illicit an incriminating response. Of course, it is true that the subsequent search of Thompson's hotel room led to discovery of

incriminating physical evidence, but Thompson's response to agents' questions about consent to search could not have been reasonably expected to illicit an incriminating statement. As a result, Thompson's argument that this evidence should have been suppressed has no merit.

And, since Thompson's argument has no merit, his trial counsel cannot be found ineffective for failure to raise a meritless argument. *See, e.g.*, *Chandler v. Moore*, 240 F.3d 907, 917 (11th Cir. 2001) (holding that counsel was not ineffective for failing to raise a meritless argument); *United States v. Winfield*, 960 F.2d 970, 974 (11th Cir. 1992) (same).

Ultimately, agents were not required to provide *Miranda* warnings prior to asking Thompson for his consent to search his hotel room. As such, counsel's failure to object to admission of evidence obtained as a result of that consent did not fall below an objective standard of reasonableness.

Moreover, even if counsel's performance was deficient, Thompson cannot show that he was prejudiced by counsel's failure to object or move to suppress evidence. Under the inevitable discovery doctrine, the evidence that Thompson seeks to suppress would have been discovered by lawful means, even assuming the consent to search was obtained unlawfully.

The inevitable discovery exception to the exclusionary rule allows evidence that was illegally obtained to be admitted if the government can demonstrate by a

preponderance of the evidence that such evidence would have been inevitably or ultimately discovered by lawful means that were being actively pursued before the illegal conduct occurred. *See Nix v. Williams*, 467 U.S. 431, 444 (1984).

Here, agents would have inevitably obtained the physical evidence discovered from the search of Thompson's hotel room, even without Thompson's consent to search. When agents asked for Thompson's consent to search, both Thompson and Robinson had been arrested, and Robinson had confessed to some of the robberies. Additionally, while Robinson was barricaded in room 463—the hotel room that belonged to Thompson—agents saw Robinson brandish a pistol. But the pistol was not discovered when Robinson was taken into custody. As a result, officers had probable cause to obtain a search warrant to search Thompson's room, even without Thompson's consent to search. Furthermore, as the district court found, the public safety exception would have justified a warrantless search of Thompson's hotel room since the weapon that Robinson brandished was not found on his person when he was arrested.

In sum, even if Thompson could demonstrate that agents illegally obtained his consent to search his hotel room, he cannot demonstrate that this evidence should be suppressed based on the inevitable discovery exception. As a result, even if counsel's failure to object and pursue suppression of the physical evidence was deficient performance, Thompson cannot demonstrate that he was prejudiced by

counsel's performance. As a result, Thompson has failed to demonstrate that counsel's failure to object to admission of evidence obtained during a search of his hotel room rises to the level of ineffective assistance of counsel.

2. Admitted Guilt in Taco Bell Robbery. In *McCoy v. Louisiana*, 138 S. Ct 1500 (2018), the Supreme Court held that criminal defendants "must be allowed to make [their] own choices about the proper way to protect [their] liberty," which includes the right to "insist on maintaining innocence at the guilt phase." *Id*. at 1508. When counsel does not allow a defendant to maintain his innocence, defendant's Sixth Amendment rights are violated. *Id*. Thompson argues that counsel made a unilateral decision to admit guilt, which was against Thompson's wishes.

The government argues that this argument is outside the COA, but even if we considered it, Thompson fails because his counsel did not admit guilt. Instead, counsel took a trial strategy, arguing that the government could not prove the interstate commerce element of Hobbs Act robbery. That does not rise to the level of admitting guilt since counsel denied an essential element of the crime.

Turns out, of course, that Thompson's counsel was wrong—so wrong, in fact, that Thompson thinks he received constitutionally deficient assistance. Under the Hobbs Act, it is a crime to affect commerce by robbery. 18 U.S.C. § 1951. Only a small or minimal effect on commerce is needed to prove that element of the crime, *see United States v. Gray*, 260 F.3d 1267, 1272 (11th Cir. 2001), which occurs when,

for example, the robbery reduces the assets of a company involved in interstate commerce, *see United States v. Ransfer*, 749 F.3d 914, 936 (11th Cir. 2014).

So, as Thompson argues, his counsel was incorrect regarding the interstate commerce element of Hobbs Act robbery—the Taco Bell incident certainly could meet the minimal threshold required. But Thompson still fails to establish prejudice, a necessary component of his ineffective assistance claim. *See Strickland*, 466 U.S. at 687. As the district court determined, a mound of evidence supported Thompson's involvement in the Taco Bell robbery—including pictures and videotape. Indeed, nothing suggests that the jury would have reached a different outcome on the Taco Bell count or any other charge. Thus, Thompson has not demonstrated prejudice and his claim fails.

3. Failure to Move for Severance. Finally, Thompson argues that his counsel was ineffective because he failed to move to have the trial severed from his codefendant, Robinson. Thompson says that he suffered prejudice because the jury heard overwhelming evidence against Robinson, so the jury must have thought Thompson was also involved.

But again, Thompson fails to demonstrate ineffective assistance. *See id.* First, he cannot show deficient performance, because the severance likely would not have been granted. The government may try codefendants together "if they are alleged to have participated in the same act or transaction, or in the same series of acts or

transactions, constituting an offense or offenses." Fed. R. Crim. P. 8(a). No doubt, that is this case. True, defendants can move for severance, but a court will grant such a motion only when joinder will result in prejudice. Fed. R. Crim. P. 14(a). And usually "people who are charged together are tried together." *United States v. Novaton*, 271 F.3d 968, 989 (11th Cir. 2001) (citation omitted).

Nor can Thompson establish that had the severance been granted the result of trial would have been different. Thus, he cannot meet *Strickland*'s prejudice prong. 466 U.S. at 687. Even if Thompson would have had slightly better odds at trial had he been tried alone, that does not mean the outcome would have been different—a burden that Thompson must carry in his § 2255 motion. *See Zafiro v. United States*, 506 U.S. 534, 540 (1993).

4. *Motion for a New Trial*. Finally, Thompson argues he is entitled to a new trial because he has newly discovered evidence contradicting the government's contention that his fingerprints were on demand notes used in two of the robberies. The district court can grant a new trial based on newly discovered evidence if that motion is filed within three years of the verdict, *see* Fed R. Crim. P. 33(a)(1), and the defendant shows: (1) the evidence was discovered after the trial; (2) the defendant exercised due diligence to discover the evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material to issues before the court; and (5) the evidence is of such a nature that a new trial would probably

produce a new result, *United States v. Taohim*, 817 F.3d 1215, 1223 (11th Cir. 2013). Such motions are highly disfavored and rarely granted. *See Campa*, 459 F.3d at 1151.

Thompson received information from a FOIA request that the FBI was not in possession of so-called "lift images" of Thompson's fingerprints that the government contended were on the demand notes. This information, Thompson argues, shows that his fingerprints were not on the demand notes, and thus the government's evidence at trial is undermined.

But the document that Thompson relies on—an FBI declaration—says only that the lift prints Thompson requested "were taken and processed by the Cobb County Police Department (CCPD) rendering any processing by the FBI unnecessary." R. 187, Ex. A at 8-9. And lift prints are just one type of print. The FBI declaration further explains that it had latent prints on a demand note used during the robbery, and those prints were linked to Thompson. *Id.* at 10. The only information the declaration presents is that the only "lift prints" in the case were kept by CCPD, while the FBI had other prints on the demand notes.

This is hardly newly discovered evidence that would have affected the trial. *Taohim*, 817 F.3d at 1223. And the district court's denial of the new trial motion does not amount to an abuse of discretion. After all, the information shows that *both*

the FBI and CCPD had fingerprint information. This does not undermine the jury's verdict and is not a basis for granting a new trial.

We AFFIRM.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, v. STANLEY JOSEPH THOMPSON, Defendant.	CRIMINAL FILE NO. 1:07-CR-138-2-TWT

ORDER

This is a criminal case. It is before the Court on the Report and Recommendation [Doc. 189] of the Magistrate Judge recommending denying the Defendant's Motion to Vacate Sentence [Doc. 168]. The Defendant was convicted by a jury of participating in a crime spree involving the armed robbery of a Taco Bell and numerous armed and unarmed bank robberies. His conviction and sentence were affirmed on direct appeal. In his 74 pages of objections to the Report and Recommendation, the Defendant largely repeats the arguments that were addressed and rejected by the Magistrate Judge in the thorough and well-reasoned Report and Recommendation. No useful purpose would be served in simply repeating what the Magistrate Judge has already said. The Magistrate Judge was not required to address the many claims of non-constitutional errors allegedly committed by the prosecutor

and the trial judge. All of those errors could have been raised on direct appeal. The Defendant has not met his burden of showing deficient performance by trial counsel and has not shown prejudice. The Court approves and adopts the Report and Recommendation as the judgment of the Court. The Defendant's Motion to Vacate Sentence [Doc. 168] is DENIED. The Defendant's Motion for New Trial [Doc. 171] is DENIED. The request for a Certificate of Appealability is DENIED.

SO ORDERED, this 30 day of September, 2014.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

STANLEY JOSEPH THOMPSON,	:	CIVIL ACTION NO.
BOP Reg. # 59212-019,	:	1:11-CV-2294-TWT-JSA
Movant,	:	
	:	CRIMINAL ACTION NO.
v.	:	1:07-CR-138-TWT-JSA-2
	:	
UNITED STATES OF AMERICA,	:	MOTION TO VACATE
Respondent.	:	28 U.S.C. § 2255

MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION

Movant has filed the following pleadings: (1) a motion to vacate his sentence under the authority of 28 U.S.C. § 2255 (Doc. 168); (2) a supplement to his motion to vacate combined with a motion for new trial (Doc. 171); (3) a supporting brief (Docs. 171-1, 171-2); (4) a motion to waive strict compliance and for liberal construction of his pleadings, with attached exhibits (Doc. 172); (5) two motions for extensions of time and two motions requesting the Court's attention (Docs. 175, 178-80); and (6) two replies (Docs. 181, 188) to the government's responses (Docs. 177, 187) to his § 2255 motion.

For the reasons set forth below, **IT IS RECOMMENDED** that the § 2255 motion be **DENIED** and that the other procedural motions that are pending be denied

as moot or otherwise resolved as explained further below.[1]

I. Procedural History

In a thirteen-count indictment, the government alleged that Movant and his co-defendant Leary Robinson "aided and abetted . . . each other" in committing the following twelve crimes:

1. the February 8, 2007 armed robbery of a Taco Bell Restaurant, in violation of 18 U.S.C. § 1951 (the Hobbs Act) and 18 U.S.C. § 2;

2. the knowing use and carry of a firearm, a handgun, "during and in relation to a

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[1] Prior to serving as a U.S. Magistrate Judge, the undersigned served as an Assistant U.S. Attorney in the same United States Attorney's Office ("USAO") that prosecuted Movant, from February 25, 2004 through June 1, 2012. The undersigned served as deputy chief of the economic crime section of the USAO for some of that period. The undersigned recalls no personal or supervisory involvement over defendant's case and this case was not one that would have come under the undersigned's supervisory responsibilities.

Although no request for recusal has been made, the undersigned will briefly explain why he has not recused *sua sponte*. Title 18 U.S.C. § 455(b)(3) requires a judge who previously served in government to recuse only if the judge actually participated in the case. *Mangum v. Hargett*, 67 F.3d 80, 83 (5th Cir. 1995). In other words, "a judge is not subject to mandatory disqualification based on the mere fact that another lawyer in his prior government office served as an attorney on the matter." *United States v. Champlin*, 388 F. Supp. 2d 1177, 1180 (D. Haw. 2005). Several courts have held that "an Assistant United States Attorney is only disqualified from cases on which he or she actually participated." *Id.* at 1181 (citing *United States v. Ruzzano*, 247 F.3d 688, 695 (7th Cir. 2001) ("As applied to judges who were formerly AUSAs, § 455(b)(3) requires some level of actual participation in a case to trigger disqualification."); *Mangum*, 67 F.3d at 83 (same); *Kendrick v. Carlson*, 995 F.2d 1440, 1444 (8th Cir. 1993) (same). "[T]he same rule applies to former supervisors in the United States Attorney's office; § 455(b)(3) requires recusal only when the supervisor actually participated in a case." *Champlin*, 388 F. Supp. 2d at 1181; *see also United States v. Scholl*, 166 F.3d 964, 977 (9th Cir. 1999); *United States v. Di Pasquale*, 864 F.2d 271, 279 (3d Cir. 1988). As the undersigned was uninvolved in this case and otherwise perceives no ground for recusal, the Court does not *sua sponte* find that recusal is warranted.

crime of violence," i.e., the count 1 armed robbery, in violation of 18 U.S.C. §§ 924(c)(1)(A) & 2;

3. the February 12, 2007 robbery of a Suntrust Bank, in violation of 18 U.S.C. §§ 2113(a) & 2;

4.-5. the February 12, 2007 armed robbery of a Bank of America, in violation of 18 U.S.C. §§ 2113(a), (d) & 2, and a second firearm count;

6.-7. the February 21, 2007 armed robbery of a Wachovia Bank, and a third firearm count;

8.-9. the February 21, 2007 armed robbery of a Bank of America, and a fourth firearm count;

10. the March 14, 2007 robbery of a Bank of America;

11. the March 19, 2007 robbery of a Bank of America;

12. the March 26, 2007 robbery of a Suntrust Bank.

(Doc. 11).

The government has summarized the factual and procedural history of this case as follows:

> During the month of February, 2007, [Movant] and his co-defendant Leary Robinson went on a robbing spree, robbing a Taco Bell and seven banks. Robinson was the one who usually went into the banks, four times with a gun, while [Movant] acted as getaway driver and demand note writer among other roles. In the Taco Bell robbery, Counts 1 and 2, both defendants were armed and both went into the store to commit the robbery. The robbery was videotaped and shown to the jury. This [was the] first robbery [and] occurred on February 8, 2007 . . . . The

rest of the armed and unarmed robberies were of federally insured banks.

> On April 24, 2007 [Movant] and his co-defendant . . . were indicted by a federal grand jury for four counts of armed robbery, four counts of using a firearm during a crime of violence, and four counts of unarmed robbery . . . . Attorney Robert Lee Mack was appointed by the Magistrate Judge to represent [Movant]. The case against both defendants on all counts went to trial before a jury on February 26, 2008. The jury verdict was read on February 29, 2008, and [Movant] was found guilty on [all] Counts . . . . [except] 6 and 7. . . .
>
> [Movant] was sentenced on June 23, 2008 as follows: on Counts 1, 3, 4, 8, 10, 11, and 12 [the robberies] to 135 months imprisonment . . ., all concurrent; on the 924(c) [firearm] charges: Count 2: 84 months consecutive to all counts, Count 5: 300 months consecutive to all counts, [and] Count 9: 300 months consecutive to all counts, for a total of 819 months [68 years and 3 months] . . . .

(Doc. 177 at 4-5 (citations omitted)).

The Eleventh Circuit stated the following with respect to the joint appeal filed by Movant and Robinson:[2]

> After review of the record, we find that, at the time the Government rested its case-in-chief, there was sufficient evidence to support [Movant's] convictions on the firearms violations charged in counts five and nine. With respect to count five, a Bank of America teller testified during the Government's case-in-chief that she was robbed by Robinson on February 12, 2007, and that Robinson had a black gun

[2]The Eleventh Circuit noted that the defendants had moved for a judgment of acquittal only on firearm counts 2, 5, 7 and 9 and robbery counts 1 and 6, and not on robbery counts 3, 4, 8, 10, 11 and 12; that they had argued insufficiency of the evidence only on the firearm counts and robbery count 6; and that they had been acquitted of counts 6 and 7. (Doc. 167 at 5-7).

during the robbery. With respect to count nine, a different Bank of America teller testified that he was robbed on February 21, 2007. That teller identified Robinson as the robber and said that, during the robbery, Robinson had pulled a black gun that "looked like a Glock" out of a folder and pointed it at the teller. Photos introduced during the teller's testimony depict Robinson, pointing a gun at the teller. Robinson gave a statement to law enforcement that he used a .380 semi-automatic pistol in seven of the robberies with which he was charged; and he said that was the gun shown in one of the photos of the robbery associated with count nine. Evidence of these statements was introduced in the Government's case-in-chief.

This was sufficient evidence for a reasonable jury to conclude, beyond a reasonable doubt, that Robinson used a firearm during these robberies. And, we find meritless [Movant's] argument that no evidence presented in the Government's case-in-chief suggested that [Movant] knew Robinson would use a firearm during these robberies. During the Government's case-in-chief, the jury heard witness testimony and saw video evidence that [Movant] had participated in the previous Taco Bell robbery with Robinson and that firearms were used in that robbery. Indeed, [Movant] does not challenge his convictions for those crimes, charged in counts one and two. Because [Movant] had previously committed an armed robbery with Robinson, a reasonable jury could conclude that [Movant] knew that Robinson would use a firearm in subsequent robberies.

And, we find no manifest miscarriage of justice in upholding [Movant's] convictions on the bank robbery convictions that [Movant] now challenges (counts three, four, eight, ten, eleven, and twelve). Witnesses to several of the robberies testified that, in arriving at or leaving the robberies, Robinson entered or exited from the passenger side of the vehicle used in the crime. Several witnesses testified that the getaway vehicle was a red SUV, possibly a Chevrolet Blazer. When [Movant] was arrested, he was driving a red Chevrolet Blazer that belonged to Robinson or Robinson's wife. [Movant's] fingerprints were

on the demand notes used in the count four and twelve robberies.

Robinson testified that he committed each of these robberies, that he was driven to each of the robberies by another person, and that he split the proceeds of each of the robberies with that same person. Robinson also testified that the same person who drove him to the robberies wrote the demand notes used in the robberies. And, while Robinson denied that [Movant] was his accomplice in these crimes, he admitted that his accomplice went by the nickname J.T. and that [Movant] "probably" went by that nickname.

Witness Kevin Dunbar testified that he overheard a telephone conversation between Robinson and someone called J.T. in which Robinson discussed that Robinson and J.T. had used a third party's car to do something wrong and that the third party did not want anything to do with that. And, Dunbar testified that, on one occasion, he dropped [Movant] off at a hotel, and [Movant] introduced Robinson as his partner.

The record evidence supports the conclusion that [Movant] was Robinson's partner in the crimes—planning the robberies, driving the getaway cars, penning the demand notes, and splitting the proceeds. Therefore, we find no manifest miscarriage of justice in upholding [Movant's] convictions.

(Doc. 167 at 8-10 (citations omitted)).

II. Movant's Claims

Movant alleges that trial counsel provided ineffective assistance by

1. failing to protect Movant's Sixth Amendment Confrontation Clause rights by allowing Det. Allen, a fingerprint analyst with the Cobb County Police Department ("CCPD"), to testify that Officer Bishop (formerly also of the CCPD), who did not testify, found two latent prints (belonging to Robinson) on the front of the February 12 demand note "and then he [Allen] came along and

found the '3rd' p[r]int," which testimony Movant argues was false because the record "clearly shows" that Allen found the first two prints himself;

2. allowing Allen to testify that Eric Rich verified the third print, even though Rich was not at Movant's trial and his qualifications are unknown, in violation of (a) Movant's Confrontation Clause rights because Allen "testified to the 'finding' of another analyst" and (b) *Daubert*[3] and Fed. R. Evid. 702[4] "because [Allen's] finding was not verified" by a second qualified examiner;

3. allowing Melissa Gische of the Federal Bureau of Investigation ("FBI") to testify "to the 'processing' aspect of the demand note for the 3-26-07 Suntrust robbery" despite there being "no evidence of who processed this note," in violation of *Daubert* and Fed. R. Evid. 702 "because she negated the analysis aspect of ACE-V [analysis, comparison, evaluation and verification] which requires a qualitative and quanti[ta]tive assessment of the processing technique applied," impossible here because "it is not established who[] processed the note";

4. allowing into evidence "without proper authentication" a "tablet" "said to contain divided numbers similar to bank robbery proceeds";

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[3] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), requires trial courts to screen out speculative, unreliable expert testimony.

[4] Federal Rule of Evidence 702 (Testimony of Expert Witnesses) provides as follows:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
>
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
> (b) the testimony is based on sufficient facts or data;
> (c) the testimony is the product of reliable principles and methods; and
> (d) the expert has reliably applied the principles and methods to the facts of the case.

5. not putting to the test whether Movant's consent to search was valid and not ensuring that Movant had been given the proper *Miranda*[5] warnings before being interrogated;

6. allowing Det. Allen to testify that he found a third print on the February 12 demand note one year after the note was first processed, despite there being no latent prints or lifts to compare to Movant's fingerprints and despite Allen's failure to "give an assessment of the processing techniques," in violation of *Daubert* and Fed. R. Evid. 702;

7. not objecting or moving for a mistrial or moving to strike the testimony of a "government witness who offered 'evaluation' without 'surrogate proof' ";

8. not objecting to Det. Allen's testimony that deviated from the verification requirement of the ACE-V methodology used to identify fingerprints;

9.-10. not objecting to Gische's testimony that deviated from ACE-V methodology, in particular by failing to present testimony as to who verified her work;[6]

11. admitting Movant's guilt to the count 1 armed robbery;

12. not moving for acquittal on all counts and not offering argument or evidence in support of Movant's motion for acquittal except as to count 1;

13. not objecting properly to the delay in Movant's receipt of, and to the contents of, his Presentence Investigation Report ("PSR");

14. not moving to sever his trial from Robinson's;

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[5] *Miranda v. Arizona*, 384 U.S. 436 (1966), prohibits the questioning of a person in custody about his suspected crimes without first advising him of his right to remain silent and his right to an attorney.

[6] In his supporting brief, Movant adds a claim 9a regarding the chain of custody for the March 26 demand note that Gische allegedly analyzed for fingerprints. (Doc. 171-2 at 39 *et seq.*).

15. not objecting to misleading jury instructions; and

16. not requesting funds for the services of an expert and not preparing an adequate defense.

(Doc. 168 at 4-5, 7-11; Doc. 172 at 2-4; *see* Doc. 177 at 2-3). Movant has also raised *Brady* and *Giglio* claims and moved for a new trial based on newly discovered evidence (Doc. 171 at 1-19), as discussed below.

III. Standard of Review: Ineffective Assistance of Counsel

A federal prisoner may file a motion to vacate his sentence "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). It is well-settled that "to obtain collateral relief, a prisoner must clear a significantly higher hurdle than would exist on direct appeal." *United States v. Frady*, 456 U.S. 152, 166 (1982). "[N]onconstitutional claims can be raised on collateral review only when the alleged error constitutes a 'fundamental defect which inherently results in a complete miscarriage of justice [or] an omission inconsistent with the rudimentary demands of fair procedure.' *Reed v. Farley*, 512 U.S. 339, 348 (1994)." *Burke v. United States*, 152 F.3d 1329, 1331 (11th Cir. 1998)

(citation altered and internal quotations omitted).

The Supreme Court set forth the standard for evaluating claims of ineffective assistance of counsel in *Strickland v. Washington*, 466 U.S. 668 (1984); *see Dell v. United States*, 710 F.3d 1267, 1272 (11th Cir. 2013) (applying *Strickland* standard of review to ineffective-assistance-of-counsel claim raised in § 2255 motion). "An ineffectiveness claim . . . is an attack on the fundamental fairness of the proceeding whose result is challenged." *Strickland*, 466 U.S. at 697. The analysis involves two components, but a court need not address both if the movant "makes an insufficient showing on one." *Id.*

First, the court determines "whether, in light of all the circumstances, the identified acts or omissions [of counsel] were outside the wide range of professionally competent assistance." *Id.* at 690. The court "must be highly deferential" in scrutinizing counsel's performance and "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. In other words, the movant "must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.* (Internal quotations omitted). "Given the strong presumption in favor of competence, the [movant's] burden of persuasion—though the presumption is not

insurmountable—is a heavy one." *Chandler v. United States*, 218 F.3d 1305, 1314 (11th Cir. 2000) (*en banc*). Second, the court determines whether counsel's challenged acts or omissions prejudiced the movant, i.e., whether "there is a reasonable probability"—one "sufficient to undermine confidence in the outcome"—that "but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

> Surmounting *Strickland*'s high bar is never an easy task. An ineffective-assistance claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest intrusive post-trial inquiry threaten the integrity of the very adversary process the right to counsel is meant to serve. Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge. It is all too tempting to second-guess counsel's assistance after conviction or adverse sentence. The question is whether an attorney's representation amounted to incompetence under prevailing professional norms, not whether it deviated from best practices or most common custom.

Harrington v. Richter, 131 S. Ct. 770, 788 (2011) (citations and internal quotations omitted).

"In reviewing whether counsel's performance was deficient, [courts in this circuit are to] give particular deference to counsel's decisions on matters of trial

strategy." *Perez v. United States*, 435 Fed. Appx. 820, 823 (11th Cir. 2011) (citing *Rogers v. Zant*, 13 F.3d 384, 386 (11th Cir. 1994); *Strickland*, 466 U.S. at 690 ("[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengable.")). " '[C]ounsel cannot be adjudged incompetent for acting in a particular way in a case, as long as the approach taken might be considered sound trial strategy.' " *Zakrzewski v. McDonough*, 455 F.3d 1254, 1258 (11th Cir. 2006) (quoting *Chandler*, 218 F.3d at 1314) (internal quotations omitted).

The burden of establishing prejudice under the *Strickland* test is "heavy where the [movant] alleges ineffective assistance in failing to call a witness because often allegations of what a witness would have testified to are largely speculative." *Sullivan v. Deloach*, 459 F.3d 1097, 1109 (11th Cir. 2006) (internal quotations omitted); *see also Conklin v. Schofield*, 366 F.3d 1191, 1204 (11th Cir. 2004) (" 'Which witnesses, if any, to call, and when to call them, is the epitome of a strategic decision, and it is one that *we will seldom, if ever, second guess*.' " (emphasis added) (quoting *Waters v. Thomas*, 46 F.3d 1506, 1512 (11th Cir. 1995) (*en banc*)); *see Thomas*, 46 F.3d at 1514 ("The mere fact that other witnesses might have been available or that other testimony might have been elicited from those who testified is not a sufficient ground to prove

ineffectiveness of counsel." (internal quotations omitted)).

Likewise, a claim based on counsel's failure to properly cross-examine a prosecution witness is a difficult one to establish.

> Absent a showing of a single specific instance where cross-examination arguably could have affected the outcome of either the guilt or sentencing phase of the trial, a [movant] is unable to show prejudice necessary to satisfy the second prong of *Strickland*. Ineffective assistance . . . will not be found merely because other testimony might have been elicited from those who testified, though [the Eleventh Circuit has] found ineffective assistance where counsel failed to impeach the key prosecution witness with prior inconsistent testimony where the earlier testimony was *much more favorable to the defendant*. Though counsel may have performed deficiently in failing to impeach a witness, the defendant must still demonstrate that prejudice resulted from the deficient cross-examination.

Broadwater v. United States, 347 Fed. Appx. 516, 519-20 (11th Cir. 2009) (citation and internal quotations omitted); *see also Fugate v. Head*, 261 F.3d 1206, 1219 (11th Cir. 2001).

IV. Discussion

A. Grounds 1-3, 6-10, 16: The Expert Fingerprint Testimony

Movant has presented lengthy arguments regarding the alleged discovery of his fingerprints on the February 12 and March 26 bank robbery demand notes. (Doc. 171-1 at 34-66; Doc. 171-2 at 2-59). He argues that the testimony of Allen and Gische about the prints does not qualify as expert fingerprint testimony for a number of

reasons, including (1) the questionable qualifications of each witness; (2) the mysterious circumstances surrounding Allen's eleventh-hour discovery of Movant's fingerprint on the back of the February 12 note, a year after the use of a developing agent that causes prints to fade over time; (3) the failure of the method used in identifying his fingerprints on each note to conform to the ACE-V methodology for fingerprint identification; (4) the failure of Gische to identify who processed the prints on the March 26 note and the processing method used; and (5) the absence of proof of the chain of custody for the March 26 note presented at trial to authenticate it as the same note recovered from the March 26 bank robbery.

Movant also claims that his Sixth Amendment Confrontation Clause rights were violated because neither Eric Rich, who allegedly verified Allen's identification of Movant's print on the February 12 note, nor the unknown person who processed the prints on the March 26 note nor the agent who verified Gische's fingerprint identification was called to testify. Movant asserts that allowing Allen's and Gische's testimony into the trial regarding the identification of Movant's fingerprints on the two demand notes without a serious challenge from trial counsel constituted ineffective assistance. (*See generally* Doc. 171-1 at 34-66; Doc. 171-2 at 2-59).

Movant states further that the two demand notes that allegedly contained his

fingerprints were critical pieces of evidence at his trial. Nevertheless, trial counsel did not hire a defense fingerprint expert as a counter weight to the testimony of the fingerprint experts who testified for the government and to help counsel prepare a more vigorous and probing cross-examination of the government experts on a range of topics relevant to the proper methodology for fingerprint identification. (Doc. 171-2 at 129-36). According to Movant:

> An independent examiner would have been able to determine if [his] fingerprints were indeed on the demand note, also the independent examiner would have helped counsel to understand the process of fingerprint identification. This·understanding would have given counsel 'interknowledge' [sic] of the science of fingerprinting which would have resulted in an adequate defense. Counsel would have known the probability of a[] print retaining clarity after one year's time, or if it is even possible. The independent examiner would have relayed to counsel how processing is done, so the theory that no one looked on the back of the note would have prompted counsel to cross-examine not only vigorously, but with precise or 'scientific' questioning. Movant's counsel basically sat in trial and listened to a field of evidence in which he had no familiarity; a reasonable attorney/counsel would have moved for an ex parte hearing, so the court could determine if an independent examiner's services were applicable or needed for an adequate defense for the case at hand pursuant to U.S.C. § 3006A(e). It is below professional norms for counsel to take a case in which fingerprint evidence is relied on heavily by the government and not take one step to learn about the evidence himself or to get his own tests done by an examiner.

(*Id.* at 131-32).

Another judge in this Court has recently explained the use of fingerprint

identification evidence as follows:

> In *Daubert*, the Supreme Court "emphasized the district court's 'gatekeeping' role to ensure that scientific testimony is relevant and reliable before it is admitted as evidence." *Sciele Pharma, Inc. v. Brookstone Pharm., LLC*, No. 1:09-CV-3283-JEC, 2011 U.S. Dist. LEXIS 97216, at *6 (N.D. Ga. Aug. 30, 2011) (citation omitted) (quoting *Daubert*, 509 U.S. at 589-90). "In determining the admissibility of expert testimony under Rule 702, district courts must consider whether the expert can testify competently on the areas he intends to discuss, whether the expert's methodology is sufficiently reliable, and whether the expert's testimony, through the application of his scientific, technical, or specialized expertise, will assist the trier of fact to understand the evidence." *United States v. Jayyousi*, 657 F.3d 1085, 1106 (11th Cir. 2011) (citation omitted). In addition, the *Daubert* opinion identifies several factors that may be relevant in determining the admissibility of expert testimony under Rule 702:
>
> > (1) whether the expert's technique or theory can be or has been tested—that is, whether the expert's theory can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability; (2) whether the technique or theory has been subject to peer review and publication; (3) the known or potential rate of error of the technique or theory when applied; (4) the existence and maintenance of standards and controls; and (5) whether the technique or theory has been generally accepted in the scientific community.
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> *Adams v. Lab. Corp. of Am.*, No. 1:10-cv-3309-WSD, 2012 U.S. Dist. LEXIS 13582, at *9 (N.D. Ga. Feb. 3, 2012) (citing *Daubert*, 509 U.S. at 593-94).
>
> "The *Daubert* inquiry is a flexible one, giving district courts great latitude

in determining which of the *Daubert* factors, if any, are appropriate in assessing the admissibility of expert testimony in a particular case." *Diaz*, 2008 U.S. Dist. LEXIS 27477, at *2 (citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999) ("noting that '*Daubert*'s list of specific factors neither necessarily nor exclusively applies to all experts or in every case.'")); *see also Adams*, 2012 U.S. Dist. LEXIS 13582, at *9. "[W]hether the *Daubert* factors are even pertinent to assessing reliability in a given case will 'depend[ ] on the nature of the issue, the expert's particular expertise, and the subject of his testimony.'" *United States v. Reddy*, No. 1:09-CR-0483-ODE/AJB, 2011 U.S. Dist. LEXIS 68978, at *11 (N.D. Ga. Feb. 24, 2011), *adopted by* 2011 U.S. Dist. LEXIS 67187, at *9 (N.D. Ga. June 23, 2011) (second alteration in original) (quoting *Kumho Tire Co.*, 526 U.S. at 153 (internal marks omitted)); *see also United States v. Brown*, 415 F.3d 1257, 1268 (11th Cir. 2005). Therefore, the court has "considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable." *Kumho Tire Co.*, 526 U.S. at 152.

Additionally, "Daubert hearings are not required." Cook ex rel. Estate of Tessier v. Sheriff of Monroe Cnty., Fla., 402 F.3d 1092, 1113 (11th Cir. 2005) (citation and internal marks omitted); *see also United States v. Kyler*, 429 F. App'x 828, 830 (11th Cir. 2011) (per curiam) (unpublished) (citation omitted) ("[A] formal *Daubert* hearing is not required in every case."). Rather, "[t]he decision of whether to conduct a Daubert hearing in a particular case is discretionary." *Abrams v. Ciba Specialty Chems. Corp.*, No. 08-0068-WS-B, 2010 U.S. Dist. LEXIS 19165, at *1 n.1 (S.D. Ala. Mar. 2, 2010) (collecting cases); *see also United States v. Hansen*, 262 F.3d 1217, 1234 (11th Cir. 2001) (per curiam). Thus, "[a]lthough the Court must ensure that expert testimony is reliable and admissible, there is nothing in *Kumho Tire* or *Daubert* that requires the Court to conduct a pre-trial evidentiary hearing if the expert testimony is based on well-established principles." *United States v. Cooper*, 91 F. Supp. 2d 79, 82 (D.D.C. 2000) (citing *United States v. Nichols*, 169 F.3d 1255, 1263 (10th Cir. 1999) ("pre-trial hearing not required because 'the challenged evidence does not involve any new

> scientific theory and the testing methodologies are neither new nor novel'")). "'Accordingly, where expert testimony is based on well-established science, the courts generally have concluded that reliability problems go to weight, not admissibility.'" *Id.* (quoting 29 Charles A. Wright & Victor James Gold, Federal Practice and Procedure § 6266 (1st ed. 1982)).

United States v. Campbell, No. 1:11-cr-00460-AT-RGV, 2012 U.S. Dist. LEXIS 86799, at *10-14 & n.5 (N.D. Ga. April 19) (footnote omitted) (emphasis added) (citations altered or omitted) (noting "that 'there are instances in which a district court may determine the reliability prong under *Daubert* based primarily upon an expert's experience and general knowledge in the field.'" *Reddy*, 2011 U.S. Dist. LEXIS 68978, at *11 n.16 (citing *Kilpatrick v. Breg, Inc.*, 613 F.3d 1329, 1336 (11th Cir. 2010) (citation omitted))), *adopted by* 2012 U.S. Dist. LEXIS 86798 (N.D. Ga. June 22, 2012).

In *Campbell*, a government fingerprint expert prepared a report that described in detail the ACE-V methodology he used to identify the defendant's latent prints: (1) the analysis phase, in which he found "a sufficient quality and quantity of friction ridge detail in the fingerprints to individualize them"; (2) the comparison phase, in which he compared the lift prints with the rolled prints of the defendant on "three separate levels"; (3) the evaluation phase, "at which time he reached his conclusion as

to the identity of the fingerprints"; and (4) the verification phase, during which a "second examiner proceeded through the three phases of the identification process listed above and came to his/her own conclusion as to the identification of the fingerprints." *Id.* at *6-8, 19 (recommending that no *Daubert* hearing was necessary in that case).

Campbell made no mention of a report or proffered testimony of the second examiner who verified the analyst's results or of any agent who might have prepared the latent prints for analysis. *See Galiana v. McNeil*, No. 08-20705-CIV, 2010 U.S. Dist. LEXIS 82333, at *57 (S.D. Fla. July 5) ("Persuasive authority exists that the Confrontation Clause does not require an expert to have performed the actual laboratory work to permissibly testify with regard to conclusions he or she has drawn from the results of that laboratory work."),[7] *adopted by* 2010 U.S. Dist. LEXIS 82325

[7] *See McNeil*, 2010 U.S. Dist. LEXIS 82333, at *61-62, citing *United States v. Turner*, 591 F.3d 928, 930 (7th Cir. 2010), where a supervising chemist testified about the substances purchased from a defendant even though he had not performed the actual test on the substances. The supervisor, a senior chemist who headed the drug identification unit in a state crime laboratory, testified about the procedures employed in his laboratory for processing and testing substances, including the calibration of machines each day they were used and the use of blank samples to avoid contamination or carryover from previous testing. *Id.* He also described how substances were tested, and explained that each chemist's analysis was required to undergo a peer review. *Id.* at 930-31. Based on his peer review of the work of the chemist who had tested the sample connected with the defendant, including that other chemist's report, her handwritten notes, and the machine-generated data, the supervisor was able to reach an opinion about the nature of the substance connected to the defendant. *Id.* at 931. . . . [T]he court found no Confrontation Clause problem with allowing the government's expert witness to rely on information gathered and produced by a laboratory

(S.D. Fla. Aug. 12, 2010).

Detective McEntyre of the CCPD testified that his investigators discovered the two demand notes at issue here at bank robberies on February 12 and March 26 (Gov't Exs. 16-A and 14-A, respectively), and he identified them at trial by his name on the outside of the bag containing Exhibit 16-A and by his recollection of a photograph taken of Exhibit 14-A at the crime scene. (Doc. 146 (Trial Tr. II) at 30-36). McEntyre testified that he processed the February 12 note at the CCPD with Ninhydrin, a fixing agent that turns fingerprints purple, and a steam iron, to accelerate the chemical process by which prints become visible, and then hung the note up to dry. (*Id.* at 30-31 (noting that "Ninhydrin can possibly take days to actually react and sometimes weeks, in my experience, to show prints"), at 33-34). McEntyre testified that the March 26 note also had been processed, although he had not processed it. (*Id.* at 36).

Gische's experience and credentials as a fingerprint expert appeared to be more than sufficient and there was no winning objection to be made, and none was offered, to her being declared an expert in the field of fingerprint identification. (*Id.* at 59-63). Gische testified that she recognized the March 26 demand note (Gov't Ex. 14-A) by her initials on the back of the note. (*Id.* at 66). After explaining how she applied the

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employee who did not testify. *Id.* at 932-33.

ACE-V methodology to the note, she testified that she had identified four of Movant's prints on the note. (*Id.* at 63-68; *see id.* at 70-71).

Movant's many claims on the fingerprint issue involve the failure of trial counsel to object to the testimony of the government experts due to the alleged inadequacy of their credentials or findings, his failure to cross-examine them vigorously enough, or his failure to object to their testimony about the findings or work of other agents or fingerprint experts who did not testify at Movant's trial.[8] In short, these were all matters of trial strategy, and as the caselaw set forth above indicates, such matters are not to be second-guessed except in the most extreme circumstances. Such circumstances do not exist here.

For instance, Movant objects to the failure of his attorney to object to Det. Allen's testimony referring to a verification by Eric Rich of the fingerprint on the February 12 note. Movant cites no cases, and the Court can find none *sua sponte*,

[8]In his reply brief, Movant emphasizes that he does not object to fingerprint identification in general, but only to the way it was conducted by the two fingerprint experts who claimed to have identified his prints on two separate demand notes because their testimony was insufficient regarding the analysis and verification phases of the ACE-V methodology, in large part because there was no testimony from the expert who verified the findings of either testifying expert or from the unknown agent who prepared the lift prints for Gische to analyze. He also objects to the faulty chain of custody regarding the note that Gische analyzed, arguing that there is no proof that she actually analyzed a note taken from the March 26 bank robbery scene. (Doc. 181 at 8-24; 54-61; 63-71).

finding that a fingerprint examiner's mere reference that his examination was verified pursuant to the ACE-V procedure violates the Confrontation Clause. Nevertheless, the Court assumes for purposes of this discussion that Rich's fingerprint verification was a testimonial statement pursuant to *Crawford v. Washington*, 541 U.S. 36, 61 (2004).[9]

The question remains whether it could have been a plausible trial strategy for counsel not to object. The Court finds that this could have been the result of a rational, tactical decision. At the outset, the lack of clear precedent on the applicability of the Sixth Amendment on this question at the time of trial is relevant and may have rationally contributed to a decision that the chance of success for an objection was unclear. And counsel could have rationally considered that an objection on this ground – successful or not – might only have caused the prosecution to actually call Eric Rich as a witness, in which case he might have explained his verification and his own credentials in far more detail than the brief reference at trial. In that circumstance,

[9] Not all forensic work by law enforcement experts constitutes testimonial hearsay, notwithstanding that it is necessarily conducted under the shadow of potential future court action. The Supreme Court, in cases decided mostly after Movant's trial, has distinguished between forensic reports prepared for the purpose of attempting to prove the guilt of a particular defendant at trial, which are generally testimonial in nature, and work conducted for the purposes of investigating and attempting to identify the perpetrators of a crime, which is generally not. *See Williams v. Illinois*, 132 S. Ct. 2221, 2242 (2012). Moreover, "[f]or violations of the Confrontation Clause, harmless error occurs where it is clear beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *United States v. Caraballo*, 595 F.3d 1214, 1229 (11th Cir. 2010) (internal quotations omitted).

Movant would be faced with the live testimony of not just one examiner but two examiners who the jury might find qualified. Counsel could have rationally considered that Movant was better off dealing with the testimony of only one live expert on this issue, who was subject to substantial impeachment.

Indeed, trial counsel extensively cross-examined Allen about the confusion regarding how many fingerprints had been discovered on the February 12 note, when they were discovered, and by whom. (*See* Doc. 146 at 116-21). A focus of this cross-examination was on what Movant clearly believes to be suspicious circumstances, in which the investigators somehow only found Movant's print on the note shortly before trial notwithstanding that it had been analyzed originally many months before. (*Id.*) It appears that counsel sought to impeach Allen specifically and the investigation generally with this line of questioning. By not objecting to Allen's brief reference to Rich, counsel may have helped ensure that the only witness on the issue of Movant's fingerprints on the February 12 note was one subject to this line of impeachment. Moreover, even if an objection had succeeded in excluding this testimony, that would have denied counsel the opportunity to highlight the supposedly late-discovered fingerprint to the jury as a suggestion of investigative incompetence (or worse). Counsel may have decided as a matter of trial tactics that the admission of this

evidence, on balance, helped Movant in this regard, especially if it was limited to the testimony of just Allen.

As for Gische's testimony, she did not even refer to the findings of another fingerprint expert. Instead, she described how she matched the fingerprints she was given on the February 26 note to Movant. (*See id.* at 66-71). She also testified that the February 26 note that was introduced into evidence as Exhibit 14-A had her initials on the back of the note, so she knew that it was the same note that she had examined to find Movant's prints. (*Id.* at 66). Movant provides no basis for this Court to find that counsel had a winning objection to make with regard to this testimony.

As for the failure of trial counsel to obtain a defense expert on fingerprint analysis, Movant offers nothing more than speculation as to what that hypothetical expert may have testified to. It may simply have been impossible to find one who would testify that the methodology used by Allen and Gische was anything less than the proper method to match lift prints to known fingerprints or that the matched prints did not belong to Movant. Movant has offered no real evidence to indicate otherwise except for his own beliefs as to what procedures should have been employed.[10] That

[10]It appears that Movant misunderstands the analysis phase of the ACE-V methodology. Analysis requires a determination of whether a lift print has sufficient qualitative and quantitative clarity to be used for identification, which determination may require consideration of any "noise" introduced

is not enough to establish that counsel was unconstitutionally incompetent for failing to procure and call a fingerprint expert.

Finally, even if counsel could be said to have acted deficiently with regard to his opposition to the prosecution's fingerprint evidence, Movant fails to surmount his burden to show actual prejudice. With the lack of clear precedent at the time of trial, it is not clear whether a Confrontation Clause objection would have been sustained. More generally, it is not evident that Allen's mere reference to Rich's out-of-court "verification" would have added any weight to the government's case above and beyond the jury's assessment of Allen's independent work and his credibility at trial. If the jury believed Allen, then it likely would have credited his own independent analysis, and Rich's "verification" would have been immaterial. If the jury disbelieved Allen or found him to be incompetent, then it would seem unlikely that the jury would nevertheless have credited his fingerprint examination merely because he conclusorily testified that another officer with unknown credentials "verified" it. And this fingerprint evidence was only part of the evidence introduced against Movant. As the Eleventh Circuit found in sustaining Movant's convictions, the jury saw and heard

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into the print by the processing of it. Nothing Movant cites establishes that the testifying expert must personally process the print.

witness testimony and other evidence that Movant committed other armed robberies with Robinson; Robinson and other witnesses testified that his accomplice in this robbery was "J.T." and that Movant went by that nickname; Movant was found driving Robinson's car that was used in the robbery; and Robinson was found in a hotel room rented in Movant's name. Movant cannot sustain his heavy burden to establish trial prejudice relating specifically to the introduction of the fingerprint testimony.

All of Movant's ineffective assistance claims regarding the fingerprint expert witness testimony therefore fail on both the performance and prejudice prongs of such claims.[11]

B. Ground 4: Admission of the Tablet

Movant next challenges trial counsel's failure "to object to the admission or authentication of the tablet," a notepad which allegedly contained calculations regarding the division between Movant and Robinson of the proceeds from one of the indicted bank robberies, and counsel's failure to "attempt[] to interview the agent

[11]Although Movant couches at least two of his claims in terms of alleged violations of the Sixth Amendment Confrontation Clause, he was required to raise these substantive claims on direct appeal and he may not raise them in a § 2255 absent a showing that entitles him to do so, which he has not made. *See McCoy v. United States*, 266 F.3d 1245, 1258 (11th Cir. 2001) ("A claim not raised on direct appeal is procedurally defaulted unless the petitioner can establish cause and prejudice for his failure to assert his claims on direct appeal.") Thus, the undersigned considers these claims on the merits only insofar as they relate to Movant's ineffectiveness of counsel claims.

who[] recovered the tablet." (Doc. 171-1 at 67-68). Movant asserts that the agent who discovered the tablet did not testify at trial (noting that Agent Myers, who testified about the tablet, was not present during the search of his hotel room) and that there is no evidence that the two pages of calculations entered into evidence came from a tablet that could be tied to the defendants. (*Id.* at 69-71). He argues that because the "ledgers" are not business records they "are prohibited as testimonial evidence." He also denies that they are admissible as the statements of a co-conspirator. (*Id.* at 72-73). Movant argues that because the prosecutor mentioned the ledgers twice in closing argument, trial counsel's failure to properly challenge the admission of the tablet was not harmless error. (*Id.* at 78-81).

Movant fails to show any constitutional deficiency by counsel with respect to the admission of the "tablet" because there was no clear, winning objection to be made. The prosecution introduced the evidence through the testimony of FBI agent Myers, who testified that the tablet and two pages of writing within were recovered from the hotel room that Movant had rented and where Robinson had been found. (Doc. 146 at 201-202). This testimony provided at least arguable foundation for the authenticity

of the document.[12] Contrary to Movant's argument, this tablet cannot be considered "testimonial" hearsay subject to exclusion under the Confrontation Clause. It was a worksheet containing numbers, created as an apparent record of some activity, clearly not created for purposes of litigation or testimony. At least Movant shows no facts suggesting that a valid Confrontation Clause objection could be made.

Moreover, the inculpatory force of the tablet evidence was so slight as compared to the other evidence against Movant that he cannot persuasively argue that the outcome of his trial would have been different had the tablet evidence been excluded. The tablet contained no direct statements referring to any robbery or to Movant personally. The apparent significance to the prosecution's case was summarized by Agent Myers as follows: "There are several numbers written on the sheets. In particular, on 48-C there is the number 2304, and it's divided by two. And that is done

[12] As Agent Myers was not present for the search itself (Doc. 146 at 197), she presumably had no personal eyewitness knowledge of what was obtained during the search. Nevertheless, she may have had some other arguably admissible basis for testifying that the materials were found in the hotel room. Moreover, even if an objection could have been made as to lack of foundation or authenticity, it was not constitutionally defective for counsel to refrain from making such an objection here. On this record, the prosecution appeared to have other alternative means of authenticating the exhibit, including by calling one of the three searching agents and/or by using contemporaneous records or notes of the evidence seized. Whether to lodge a technical objection to the admission of an exhibit on foundational grounds, given the likelihood that a foundation could ultimately be established, is a quintessential tactical decision left to counsel's discretion, especially given the minor significance of this particular document.

several times on the sheet, dividing the [2304] . . . by two, which on this sheet comes up to 1152. . . . On . . . the last bank robbery the loss was $2,311." (Doc. 146 at 201-02). In other words, the government suggested that the fact that the 2,304 number was close to, although did not actually equal, the loss amount of the last robbery, and was divided in two, suggests that it reflected a record of what each Defendant was due to receive from that crime. Movant's trial counsel cross-examined Agent Myers got her to admit that she did not really know when the numbers were written there or what they meant, other than her speculation that 2,304 was a miscount of the $2,311 loss amount from the last bank robbery on March 26. (Id. at 215-19). This evidence was plainly not what the jury's verdict turned on. And counsel could have rationally calculated that – even if a winning objection could be made to the document's admission – Movant's defense could have been better off with the ability to highlight this weak and speculative aspect of the prosecution's case. This ground fails.

C. Ground 5: Motion to Suppress

Movant challenges trial counsel's failure to move to suppress the consent Movant gave for a search of his hotel room without first being advised of his *Miranda* rights. (Doc. 171-1 at 82-84).

As background, on March 26, 2007, an Atlanta police officer spotted the red

Chevrolet blazer that belonged to Robinson or his ex-wife and that had been used as the getaway vehicle in at least two of the bank robberies. With the help of other officers, he stopped the vehicle and detained Movant, who was driving the vehicle, after Movant told him that the vehicle was stolen. (Doc. 146 at 176-82). He asked Movant where he was living, and Movant replied at the Intown Suites on Piedmont Circle, at which point the officer contacted the FBI. Several FBI agents then went to that location. (*Id.* at 182-83).

An FBI agent testified that after Robinson was arrested in Movant's Intown Suites room the next day, he and another agent obtained from Movant a consent to search the room. (Doc. 147 (Trial Tr. III) at 17-18 ("We met with [Movant,] identified ourselves, informed him of why we were there, asked him if he had rented room 463. He verified that he had rented 463. We asked him if he would voluntar[il]y consent to a search of the room. He accepted and he signed a form that we have called an FD26, consent-to-search form.")).

Movant states that he was in jail on a suspended license charge, after having been stopped because he was driving a vehicle suspected of being used in a recent string of armed robberies, when he was approached to sign a consent to search his hotel room and told that doing so would give him "a chance to present himself in [a]

good light, [whereas] a refusal [would] only make [him] look suspicious." (Doc. 171-1 at 87). Noting that the search led to the discovery of a .380 caliber firearm allegedly used, and a baseball cap allegedly worn, in the bank robberies, as well as the aforementioned tablet containing numeric calculations (*id.* at 88), and that the prosecutor was able to tie Movant to the robberies by noting that his room was where the firearm was found and where Robinson was hiding out when the police came to arrest him (*id.* at 90), Movant argues that his trial counsel was ineffective for failing to test the circumstances under which the consent was obtained (*id.*).

The government argues that because Movant was not interrogated, his *Miranda* rights were not implicated, and the consent to search form that he signed after his arrest, even if invalid, would not have prevented the admission of the evidence seized from his hotel room because, under the theory of inevitable discovery, the evidence would have ultimately been recovered by lawful means. As Movant was in custody, the agents could have obtained a search warrant if he had refused consent. Further, as they were arresting Robinson with probable cause in that very room, and Robinson was armed with a handgun, the agents could have lawfully entered the room as a search incident to arrest. (Doc. 177 at 15 (citations omitted)); *see United States v. Timmann*, 741 F.3d 1170, 1182-83 & n.7 (11th Cir. 2013) (noting that "evidence may be

admissible if the government inevitably would have discovered it without the aid of the unlawful police conduct, pursuant to [this circuit's] limited version of the 'inevitable discovery' rule[,]" and noting that this circuit does "not require absolute inevitability of discovery but simply a reasonable probability that the evidence in question would have been discovered other than by the tainted source" (internal quotations omitted)); *United States v. Dixon*, 491 Fed. Appx. 120, 122 (11th Cir. 2012) ("The inevitable discovery exception to the exclusionary rule permits admission of evidence that in fact resulted from an illegal search but would have been discovered without that illegal police action.").

Movant replies to this inevitable discovery argument that when he was arrested he was not a suspect in the bank robberies and the authorities had no information about where he was living, so that without the information about his hotel and room number coerced from him illegally, the authorities would not have discovered that information and would not have located Robinson in Movant's hotel room. He also notes that Robinson was arrested outside of the room, so there was no basis for a search of the room in a protective sweep. (Doc. 181 at 29-53).

"[T]here are exceptions [to the *Miranda* requirement, and a]mong those is the 'well-established routine booking exception,' under which a defendant's answers to

questions designed to elicit the information necessary to complete booking may be used against him, even if those answers turn out to be incriminating." *United States v. Brotemarkle*, 449 Fed. Appx. 893, 896 (11th Cir. 2011) (quoting *United States v. Doe*, 661 F.3d 550, 567 (11th Cir. 2011) (internal quotations omitted)). The Eleventh Circuit has "held that a suspect's pre-*Miranda* warning responses to an officer's request for his address was admissible when there was no evidence that the question was intended to elicit an incriminating response." *Id.* at 896-97 (citing *United States v. Sweeting*, 933 F.2d 965 (11th Cir. 1991)).

Given that Movant told a law enforcement officer upon his initial arrest that he was living at the Intown Suites and that, apparently, a subsequent investigation revealed his room number there, Movant cannot show prejudice from the failure of trial counsel to challenge the consent to search form that Movant signed allowing the search of his hotel room. First, the officers' entry into the room was inevitable. Plainly, the police had probable cause to obtain a warrant to search the room where Robinson, a robbery suspect whom they had just arrested and who they believed had used a handgun, was residing. Even if Robinson was arrested outside the room itself, the fact that the gun was not recovered during the arrest might also have justified a warrantless search on public safety grounds to find the gun, especially where the police

knew that the room was rented in someone else's name. *See, e.g., United States v. McConnell*, 903 F.2d 566, 569 (8th Cir. 1990) (probable cause that an arrestee kept a loaded firearm in hotel room justified warrantless search on public safety grounds). Moreover, Movant presents no facts to suggest that any challenge to his consent-to-search would have been successful, given the testimony that he executed a written FBI consent-to-search form, by which he acknowledged the voluntariness of his consent in writing. (*See* Gov't Ex. 41). Movant also cannot show deficient performance on these facts, where he fails to show that his counsel was aware of any specific evidence that would have rebutted the voluntariness of his written consent to search. Movant can show neither deficient performance nor prejudice on this claim.

D. Ground 11: Trial Counsel's Admission of Guilt

Movant alleges that the only evidence against him with respect to the Taco Bell armed robbery was his counsel's admission that he committed it. (Doc. 171-2 at 60). Movant argues that trial counsel's strategy—acknowledging that Movant committed the Taco Bell robbery because there was no evidence that the robbery affected interstate commerce, so that a conviction on the Taco Bell counts in federal court would not "stick" anyway, in order to disassociate Movant from the bank robberies—was so great an error that it deprived Movant of the effective assistance of

counsel, especially after Movant told counsel "repeatedly that he had nothing to do with any of the robberies." (*Id.* at 60-61). Movant argues that trial counsel's theory, that the government could not meet its burden of demonstrating an effect on interstate commerce to sustain a conviction in the Taco Bell robbery, was completely misguided and any competent counsel would have known this. This mistake was compounded by the fact that the government used Movant's and Robinson's participation and use of firearms in the Taco Bell robbery to argue that Movant knew that Robinson would use a firearm in the bank robberies as well, even though Movant never entered any of the banks that were robbed. (*Id.* at 62-68).

The evidence of Movant's commission of the Taco Bell robbery was overwhelming, including a clear photo of Movant and Robinson in the restaurant shortly before the robbery took place (Gov't Ex. 2B) and a videotape of the robbery itself (Gov't Ex. 1). As trial counsel indicated in his opening statement:

> [T]he evidence that we expect to come before you today during the trial of this case will show you this: that [Movant] was at the Taco Bell on February the 8th of 2007. You will see a video and it's going to show that [Movant] did in fact take the money from the Taco Bell on February the 8th of 2007. There's no dispute in that. But where the dispute comes is that the government wants you to believe that [Movant] participated in seven other bank robberies. [Movant] did not participate in any bank robbery. The evidence will show you this.

(Doc. 145 (Trial Tr. I) at 16).

Trial counsel's insistence that Movant was innocent of the Taco Bell robbery may well have backfired and tainted Movant's entire defense. It is a natural subject of trial tactics for counsel to pick battles, that is, pick the issues that stand the most chance of success and attempt to gain credibility with the court or jury by not contesting those points that lack a chance of success. The court will not second guess trial counsel's reasonable strategy to deflect guilt away from Movant with respect to the bank robberies by admitting it with respect to the Taco Bell robbery. *See, e.g.*, *Zakrzewski*, 455 F.3d at 1258. This claim also fails.

E. Ground 12: Motion for Judgment of Acquittal

Next, Movant argues that trial counsel was ineffective for failing to present any argument as to the insufficiency of the evidence to convict Movant on counts 2, 5 and 8-12, and he presents the arguments that he claims counsel should have made to this Court in support of a motion for judgment of acquittal. Movant notes that other than presenting the useless argument regarding the effect on interstate commerce that trial counsel made on count 1, counsel merely adopted the arguments that counsel for Robinson presented on counts 2, 5, 6, 7 and 9. (Doc. 171-2 at 69-92).

As noted above, Movant and Robinson moved for a judgment of acquittal only

on firearm counts 2, 5, 7 and 9 and robbery counts 1 and 6 (and not on robbery counts 3, 4, 8, 10, 11 and 12), and they argued insufficiency of the evidence only on the four firearm counts and robbery count 6 (and not on robbery count 1—the Taco Bell robbery—for which they argued an insufficient nexus with interstate commerce to support the charge). Movant and Robinson were acquitted on counts 6 and 7. On appeal, Movant did not challenge his convictions on counts 1 and 2. The Eleventh Circuit therefore reviewed *de novo* only his convictions on counts 5 and 9, applying a sufficiency of the evidence standard. Because Movant had not moved in this Court for a judgment of acquittal on counts 3, 4, 8, 10, 11 and 12, the Eleventh Circuit reviewed those robbery convictions using a less demanding "manifest miscarriage of justice" standard. (*See* Doc. 167 at 5-7, 11 n.2).

"[I]t is not professionally unreasonable for a lawyer to fail to pursue issues which have little or no chance of success, and a criminal defendant is not prejudiced by counsel's failure to pursue non-meritorious claims or those on which they likely would not have prevailed." *Nix v. United States*, 12-81106-CIV, 09-80015-CR, 2013 U.S. Dist. LEXIS 168018, at *10-11 n.3 (S.D. Fla. July 19),[13] *adopted by* 2013 U.S.

[13]For support, the Magistrate Judge in *Nix* cited *Strickland*, 466 U.S. at 690 ("counsel is strongly presumed to have rendered

Dist. LEXIS 168021 (S.D. Fla. Aug. 23, 2013). The Eleventh Circuit has ruled, after *de novo* review of Movant's count 5 and 9 firearm convictions, that this Court did not err in denying his motion for judgment of acquittal on those counts. Other than rehashing the trial evidence that the jury, this Court and the Eleventh Circuit found sufficient to support his convictions, Movant has offered no argument to throw these conclusions into doubt. It is also clear from the tenor of the Eleventh Circuit's review of those robbery convictions that Movant did not challenge via a motion for judgment of acquittal, as well as its discussion of the evidence supporting Movant's convictions on counts 1 and 2, that a motion for judgment of acquittal on the remaining robbery counts, based on the alleged insufficiency of the evidence, more likely than not would have failed. As a defense attorney is not required to waste the Court's time with

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> adequate assistance and made all significant decisions in the exercise of reasonable professional judgment"); *Knowles v. Mirzayance*, 556 U.S. 111 (2009) (the law does not require counsel to raise every available non-frivolous defense); *Chandler v. Moore*, 240 F.3d 907, 917 (11th Cir. 2001) (counsel is not ineffective for failing to raise a non-meritorious objection); *United States v. Winfield*, 960 F.2d 970, 974 (11th Cir. 1992) (failure to raise meritless issues cannot prejudice a client); *Card v. Dugger*, 911 F.2d 1494, 1520 (11th Cir. 1990) (counsel is not required to raise meritless issues); *Iron Wing v. United States*, 34 F.3d 662, 665 (8th Cir. 1994) (movant not prejudiced by counsel's failure to file motion to suppress that would have been denied); *James v. Borg*, 24 F.3d 20, 27 (9th Cir. 1994)(counsel's failure to make futile motions does not constitute ineffective assistance); *United States v. Hart*, 933 F.2d 80, 83 (1st Cir. 1991) (counsel is not required to waste the court's time with futile or frivolous motions).

Nix, 2013 U.S. Dist. LEXIS 168018, at *11-12 n.3.

frivolous motions in order to provide effective assistance, trial counsel here was not ineffective for failing to file a motion challenging the sufficiency of the evidence on the bank robbery charges of which Movant was convicted. This claim also fails.

F. Ground 13: Sentencing

Movant "is steadfast in his assertion that he did not have the opportunity to read and consult with counsel concerning the pre-sentence memorandum." (Doc. 171-2 at 94). He argues that because he was afforded insufficient time to read his PSR and consult with his trial counsel, his sentence was based on "false information and false assumptions." (*Id.* at 95). Movant asserts that there is no evidence to support the two-level sentencing enhancement he received for making one of the Taco Bell robbery victims get on the ground and then get back up to unlock the cash register. (*Id.* at 96-98). Movant states that this Court did not consider his objections, as required by Fed. R. Crim. P. 32(c)(1), but instead "either summarily adopted the findings of the [PSR] or simply declared that the enhancement in question was supported by a preponderance of the evidence." (*Id.* at 98). Movant attributes his failure to present many of his objections to the Court "to counsel not discussing the [PSR] with him." (*Id.* at 99). He also faults the Court for failing to allow both his counsel and himself 10 days to review the PSR for factual errors, as required by U.S.C. § 3552(d), which failure

Movant asserts should have prompted counsel to move for a mistrial based on a due process violation. (*Id.* at 99-100). Movant asserts that he was prejudiced at sentencing by counsel's deficient performance in failing to hold the Court to the standard of Fed. R. Crim. P. 32(c)(1) and thereby allowing Movant to be "sentenced upon unresolved and uncontested factual issues" and for failing to consult with Movant regarding the factual inaccuracies in the PSR. (*Id.* at 99, 101-02).

Although Movant claims that he was prejudiced at sentencing because of factual inaccuracies in the PSR, as noted above, he mentions only one – whether there was evidence in the record to support an enhancement for ordering a Taco Bell robbery victim to get on the ground and then to get up and unlock the cash registers and safe. He acknowledges, however, that trial counsel did object to this enhancement. (*Id.* at 96-97, 99; *see* Doc. 151 (Sent. Hr'g Tr.) at 5-9).[14] As Movant cannot show deficient

[14]Trial counsel also objected that although he had received the PSR in April, well ahead of the June 19, 2008 sentencing hearing, Movant himself had received it 8 days before the hearing, not 10 days as required by statute. (Doc. 151 at 1-4). Noting the numerous postponements of the hearing, the Court proceeded with sentencing anyway (*id.* at 2-4) and overruled as follows Movant's objections to the sentencing enhancements related to his use of a firearm at the Taco Bell robbery and his physical restraint of a Taco Bell employee:

> You know, to say that we're enhancing [Movant] for brandishing really doesn't reflect what we're doing, because under that provision of the sentencing guidelines he could be enhanced for up to five levels if a firearm was brandished. And really the probation officer only enhanced him three points for using it or possessing a dangerous weapon. And, frankly, you know, under this he could be increased five points if Mr. Robinson possessed the firearm.

performance for trial counsel's failure to object to the sentencing enhancements he received – when counsel did in fact object to the specific enhancement Movant complains about – and he has offered no other basis for finding trial counsel ineffective with respect to his sentencing on the robbery charges, this claim also fails.

G. Ground 14: Severance

Movant next argues that counsel was ineffective for "not filing a motion to

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> . . . .
> Well, I appreciate your argument, Mr. Mack [Movant's trial counsel]. But if it wasn't . . . Mr. Robinson, that pretty much leaves [Movant as the one who physically restrained a Taco Bell employee], and [that Taco Bell employee's co-worker who testified] didn't know [Movant's] name to call him by name. So I think the enhancement is appropriate.

(Doc. 151 at 6, 9). One of the prosecutors summarized the trial evidence regarding the restraint enhancement as follows:

> If you will recall, [the Taco Bell witness] testified that when she was down on the ground and Mr. Robinson had the gun to her, she heard [her Taco Bell co-worker] say, here, take the keys, and [Movant] said, no, you get up, you unlock the register. And as they come around, [the other prosecutor] showed the jury in the video where you see [Movant] place the firearm, I believe, into his pocket as he's going to empty one of the registers while [the Taco Bell employee] is . . . unlocking the registers for him.

(*Id.* at 8; *see* Doc. 145 at 29-33 (Taco Bell employee's description of events, including the fact that each robber had a firearm and one of them brandished his firearm in her presence)). Because Movant claimed that trial counsel had not conferred with him in any meaningful way about the two dozen or so objections he had to the PSR, The Court allowed Movant to present some of those objections himself, but when it became apparent that he was objecting to the facts underlying his convictions and not to those relevant to his sentencing calculations, the Court declined to allow him to enumerate each objection. (Doc. 151 at 9-17).

severe [sic.] [his] trial . . . [from the trial of his] co-defendant (Robinson), because the evidence against Robinson prejudiced him, the evidence against [Movant] was weak and circumstantial, [and] the evidence against Robinson cause[d] a 'spill-over effect' which deprived [him] of a fair trial." (Doc. 171-2 at 103).

> Robinson's defense theory was that he did all of the robberies except for one (Wachovia Bank, Count 6), and that he did not use a real gun. [Movant's] defense theory was that he committed an armed robbery (Count 1, see argument in brief) but he did not do any of the bank robberies and had no participation or knowledge at all [as] to counts 2-12. It is obvious that the jury did not believe Robinson's fake gun theory, he changed his story many times prior to trial and the prosecutor high-lighted this point to the jury in closing argument.

(*Id.* at 105-06 (citations omitted) (noting that Robinson flip-flopped on the witness stand as to whether he knew a J. T. and whether Movant was the J. T. who participated in the bank robberies and also noting that Robinson was arrested in Movant's hotel room with a real firearm in his possession)). Movant argues that it was not a reasonable trial strategy for counsel to allow Movant to be tainted with the inflammatory testimony and evidence against Robinson. (*Id.* at 107).

In his reply brief, Movant notes that Robinson's prior identification of Movant as his accomplice, J. T., came out during the cross-examination of Robinson, even though Robinson denied that Movant was the accomplice at trial. Movant argues that

a severance most likely would have meant that Robinson would not have testified at Movant's trial, eliminating crucial evidence against him, leaving only circumstantial and weak evidence for the jury to consider. He also attacks the admissibility of the results of Robinson's post-arrest interview because Robinson's *Miranda* rights allegedly were violated. (Doc. 181 at 87-130).

The controlling caselaw provides as follows:

> Generally, . . . persons indicted together should be tried together. *United States v. Cobb*, 185 F.3d 1193, 1196 (11th Cir. 1999) (citation omitted); *United States v. Cassano*, 132 F.3d 646, 650-651 (11th Cir. 1998). This is particularly true in conspiracy cases. *United States v. Baker*, 432 F.3d 1189, 1236 (11th Cir. 2005). Severance of co-defendants' trial may be granted if a single trial would prejudice a defendant. Fed. R. Crim. P. 14(a). However, mutually antagonistic defenses are not per se prejudicial such that severance is required. *Zafiro v. United States*, 506 U.S. 534, 537 (1993).
>
> In order to be entitled to severance pursuant to Rule 14(a), a defendant must meet the heavy burden of showing that a joint trial will result in "specific and compelling prejudice." *United States v. Liss*, 265 F.3d 1220, 1228 (11th Cir. 2001). "Compelling prejudice occurs when the jury is unable to separately appraise the evidence as to each defendant and render a fair and impartial verdict." *Id.* (citation omitted.)

Houston v. United States, No. 8:12-CV-561-T-24TBM, 8:09-CR-379-T-24TBM, 2014 U.S. Dist. LEXIS 17989, at *21-23 (M.D. Fla. Feb. 12, 2014) (holding that counsel was not ineffective for failing to seek a severance because the "defenses were not so

antagonistic to one another as to create undue, compelling prejudice").

Movant argues that he was prejudiced by the inflammatory testimony and evidence against Robinson, but the same evidence to establish the commission of the indicted crimes would likely have been introduced at a trial of Movant alone. Movant's suggestion that Robinson would not have testified at Movant's trial is speculative, as the prosecution may simply have tried Robinson first and then compelled him to testify in a subsequent trial against Movant. Moreover, both Robinson and the agent to whom Robinson gave his initial statement about his accomplice were subject to cross-examination at trial by Movant's attorney. Also, whatever Robinson initially stated to officers about his accomplice's identity, Robinson denied on the stand that it was Movant. Most basically, counsel may have rationally calculated that Movant's trial chances were improved in a joint trial because there was clearly more evidence in the record about Robinson. The jury may have contrasted the relative strength of the evidence against Robinson against the lesser evidence against Movant, and any need for compromise within the jury room may have resulted in a decision to treat Movant more favorably. Or at least counsel could have reasoned these things. For all of these reasons, Movant has not established "compelling prejudice" or deficient performance arising from his joint trial, and this

claim fails.

H. Ground 15: Jury Instructions

Movant states that when the jury during its deliberations inquired of the Court about the elements of an 18 U.S.C. § 924(c) firearm conviction, the Court referred the jury to the pattern instruction on aiding and abetting, allowing the jury to convict Movant on three firearm counts without proof of all the elements of those counts, and Movant's trial counsel had "nothing further" to say on the matter when the Court asked for input on the Court's response to the jury's note of inquiry. (Doc. 171-2 at 109-111 (noting that the jury asked whether, if it believed that Robinson had a real gun and also believed that Movant knew that Robinson had a real gun, those two conclusions made Movant "guilty of those [firearm] charges (2, 5 & 9) (Aiding & Abetting)")).

Movant argues that counsel did not make sure that the jury understood that it could not convict Movant of aiding and abetting a § 924(c) crime merely because it believed that Movant had aided and abetted the underlying violent felony unless it also found that Movant possessed the "specific intent to aid the firearms crime." (*Id.* at 114-15). Movant notes that the jury was obviously confused about what was required to convict him of aiding and abetting on the § 924(c) charges and argues:

It is obvious from the record that counsel's performance fell below an

> objective standard of reasonableness. (1) during the most critical time of trial (deliberations) counsel did not even bother to view the note the jury sent to the judge, even when the judge openly stated that she can't remember exactly what it said. (2) Counsel never moved for an instruction on 924(c)(l) aiding and abetting and conspiracy liability, although by law defendant is supposed to have one . . . .

(*Id.* at 127).

The Supreme Court of the United States recently "clarified the proof necessary for the intent element of aiding and abetting a section 924(c) violation—i.e., the defendant's knowledge that a co-conspirator will carry a gun."[15] *United States v. Mack*, No. 12-16602, 2014 U.S. App. LEXIS 14087, at *37 (11th Cir. July 24, 2014) (quoting *Rosemond v. United States*, 134 S. Ct. 1240, 1249 (2014)).

> "[The d]efendant's knowledge of a firearm must be advance knowledge"—that is, knowledge at a time when the accomplice "can attempt to alter [the] plan, . . . withdraw from the enterprise[, or] go ahead with his role in the venture." An accomplice's knowledge of "a

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[15]Section 924(c)(1)(A) defines Movant's firearm crimes of conviction as follows:

> [A]ny person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime– . . .
>
> (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; . . . .

Section 924(c)(1)(C) requires a 25-year sentence for any subsequent conviction.

> confederate's design to carry a gun" is not "advance" if it does not afford him "a realistic opportunity to quit the crime."

Id. (citation omitted) (noting that the Supreme Court "concluded that the district court's jury instructions were erroneous because they did not direct the jury to determine when [the defendant] obtained the requisite knowledge and to decide whether [he] knew about the gun in sufficient time to withdraw from the crime").

The Court here instructed the jury as follows regarding aiding and abetting:

> The guilt of a Defendant in a criminal case may be proved without evidence that the Defendant personally did every act involved in the commission of the crime charged. The law recognizes that, ordinarily, anything a person can do for one's self may also be accomplished through direction of another person as an agent, or by acting together with, or under the direction of, another person or persons in a joint effort.
>
> So, if the acts or conduct of an agent, employee or other associate of a Defendant are willfully directed or authorized by that Defendant, or if a Defendant aids and abets another person by willfully joining together with that person in the commission of a crime, then the law holds that Defendant responsible for the conduct of that other person just as though the Defendant had personally engaged in such conduct.
>
> However, before any Defendant can be held criminally responsible for the conduct of others it is necessary that the Defendant willfully associate in some way with the crime, and willfully participate in it. Mere presence at the scene of a crime and even knowledge that a crime is being committed are not sufficient to establish that a Defendant either directed or aided and abetted the crime. *You must find beyond a reasonable doubt that any Defendant was a willful participant and not merely a knowing spectator.*

> The word "willfully" as that term has been used in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids; that is with bad purpose either to disobey or disregard the law.

(Doc. 101 at 14-15 (emphasis added); *see* Doc. 148 (Trial Tr. IV) at 84-85).

During jury deliberations, the jury sent the Court the following note:

> If we believe that Robinson used a real gun in Counts 2, 5 & 9 —
> And we believe that [Movant] knew Robinson had a gun —
> Does that make [Movant] guilty of those charges? (2, 5 & 9)
> (Aiding and Abetting)

(Doc. 172-1 at 20). The Court responded:

> I would refer you to the aiding and abetting charge . . . specifically the portion that knowledge alone is not sufficient. You must find a defendant was a willful participant and not merely a knowing spectator.

(*Id.* at 60). By the time trial counsel arrived in the court room, the Court had "sent the note back in," which the Court described as "generally asking whether the fact that [the jurors] believed [Movant] had knowledge of Robinson's possession of a gun, and they specifically referred to counts . . . two, five, and nine, if that made him guilty." (Doc. 148 at 104). The Court informed trial counsel that it had directed the jury to the aiding and abetting charge, which the jurors had with them in the jury room, "and specifically that portion of the charge that dealt with knowledge." (*Id.* at 104-05). The Court asked counsel if there was anything he would like to add, and he responded, "Nothing

further." (*Id.* at 105).

In his reply brief, Petitioner argues that his conviction for aiding and abetting a § 924(c) charge required that the jury find that he "took some affirmative action to facilitate or encourage the use or carrying of a firearm." (Doc. 181 at 132). As stated below, this argument is misplaced.

Here, the evidence, the jury instruction on aiding and abetting, and the exchange of notes between the jury and the Court during deliberations all suggest with little room for doubt that the jury (1) understood that to convict Movant of the firearm counts it must find that he *willfully* participated in crimes of violence that involved the use of a firearm and (2) concluded that Movant knew about the intended use of a firearm in the robberies "in sufficient time to withdraw from the crime." *See Mack*, 2014 U.S. App. LEXIS 14087, at *37. And " '[j]ury instructions are subject to harmless error review.' " *United States v. Dickerson*, No. 13-11873, 2014 U.S. App. LEXIS 9705, at *4-5 (11th Cir. May 27, 2014) (quoting *United States v. Webb*, 655 F.3d 1238, 1249 n.8 (11th Cir. 2011), and concluding that jury instruction, which may have misstated the elements of defendant's crime of conviction, was at most harmless

error because there was sufficient evidence to satisfy all of the elements of the crime).[16]

Even if counsel should have demanded to see the actual notes rather than rely on the Court's rendition of them from memory, there is no reasonable likelihood that the outcome of Movant's trial on the firearm counts would have been different had counsel done so. It was reasonable for the jury to conclude that Movant knew, far enough ahead of time to withdraw from his criminal enterprise with Robinson, that Robinson had used and might well again use a firearm in the robberies charged against him, robberies in which Movant willfully participated at least by serving as a getaway driver, if not by also preparing the demand notes. This ground also fails.

I. ***Brady* and *Giglio* Claims**

Movant also asks the Court to vacate his judgment of conviction because, he alleges, the government withheld exculpatory evidence from the defense and solicited perjured testimony or failed to correct that testimony after learning it was false. (Doc. 171 at 1-2). Movant argues that although Allen and Gische testified that his fingerprints were on the demand notes for the February 12 and March 26 bank

[16]Movant's citation to *United States v. Bancalari*, 110 F.3d 1425, 1429-30 (9th Cir. 1997), holding that "to be guilty of aiding and abetting under § 924(c), the defendant must have 'directly facilitated or encouraged the use' of the firearm and not simply be aware of its use" (Doc. 171-2 at 114), is unavailing because there is no evidence that that test was employed in this Circuit before the Supreme Court in *Rosemond* stated the test differently.

robberies, the government withheld evidence that "there were **no lift prints** of [Movant] in this case." (*Id.* at 4).

Movant notes that the government's theory of the case was that because his fingerprints were found on the notes used in the first and last bank robberies in the alleged spree, he was guilty of participating in all of the bank robberies in that spree. Movant contends that he attempted to obtain copies of his lift prints both from the CCPD and the FBI but was told in each case that none could be found. (*Id.* at 5-6). Movant contends that during his trial the government never provided copies of the prints themselves but only the expert reports regarding the alleged prints. (*Id.* at 6-7). He claims a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), which requires the government to reveal arguably exculpatory evidence to the defense in a criminal trial if the defense could not, via reasonably diligent effort, obtain that evidence on its own, and of *Giglio v. United States*, 405 U.S. 150 (1972), which extends the *Brady* rule to testimony that the government knows or learns is false. Movant contends that Det. Allen's testimony that he found Movant's finger print on the February 12 demand note one year after the fact is false and the prosecution knew it to be false. (Doc. 171 at 7-9). Movant claims likewise for Gische's testimony that she found his thumb prints on the March 26 demand note. (*Id.* at 12-13).

Movant relies on a response to his Freedom of Information Act ("FOIA") request to the FBI indicating that "[n]o lift prints were located" in researching his request. (Doc. 187-1 (Decl. of David M. Hardy) at 10). The declaration also indicates, however, that "[t]he lift images in [Movant's] case were taken and processed by the [CCPD] rendering any processing by the FBI unnecessary. Additionally, it is the standard operating procedure of the Latent Print Operations Unit ('LPOU') not to conduct any further processing on images that have already been processed by another agency." (*Id.* at 8-9). The declaration further notes that the LPOU "did find friction ridge impressions pertaining to [Movant's] case. The LPOU forwarded two photographs of friction ridge impressions that were located on a demand note used during one of the robberies[,]" which photographs were released to Movant on July 7, 2011. (*Id.* at 10).

Movant claims in his second reply brief that the responses to the FOIA requests that he sent to the CCPD and the FBI reveal that neither agency retained a copy of the February 12 and March 26 demand notes or his lift prints allegedly discovered on those notes. He argues therefore that the government knew that the testimony of Allen and Gische was false because the fingerprint matches about which they testified did not exist. (Doc. 188 at 23-37).

Movant's *Brady* and *Giglio* claims are without merit. Movant fails to show that the government withheld evidence during his trial, or elicited or accepted perjured testimony. As the trial evidence recounted above amply demonstrates, the government's fingerprint experts testified about lift prints taken from evidence gathered by the CCPD during its investigation of two of the bank robberies. Nothing about the FOIA responses or other correspondence cited by Movant suggests that these CCPD prints never existed. To the contrary, the FBI responses indicated that CCPD took and lifted prints. Movant obtained copies of certain prints. To the extent copies of other prints were not maintained, Movant does not establish that this itself was a *Brady* or other violation. To the extent Movant suggests that CCPD or others are lying in their responses, that is nothing more than speculation and does not warrant relief.

J. Motion for a New Trial

In the alternative, Movant asks for a new trial based on the newly discovered evidence revealing that there are no latent prints belonging to him on the February 12 and March 26 demand notes, no established chain of custody for the March 26 note and no evidence of processing for the February 12 note. (Doc. 171 at 16).

To succeed on a motion for a new trial based on newly discovered

> evidence, the movant must establish that (1) the evidence was discovered after trial, (2) the failure of the defendant to discover the evidence was not due to a lack of due diligence, (3) the evidence is not merely cumulative or impeaching, (4) the evidence is material to issues before the court, and (5) the evidence is such that a new trial would probably produce a different result. *United States v. Gates*, 10 F.3d 765, 767 (11th Cir. 1993), *modified on reh'g in part*, 20 F.3d 1550 (11th Cir. 1994) (citation omitted). "The failure to satisfy any one of these elements is fatal to a motion for a new trial." *United States v. Lee*, 68 F.3d 1267, 1274 (11th Cir. 1995) (citation omitted).

Mack, No. 12-16602, 2014 U.S. App. LEXIS 14087, at *63-64. Movant fails to meet the most basic of these requirements—he has not discovered any new evidence. For that reason and for the reasons stated elsewhere in this Report, Movant is not entitled to a new trial.

V. Certificate of Appealability

A federal prisoner must obtain a certificate of appealability (COA) before appealing the denial of a motion to vacate. 28 U.S.C. § 2255(d); 28 U.S.C. § 2253(c)(1)(B). A COA may issue only when the movant makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard is met when "reasonable jurists could debate whether (or, for that matter, agree that) the [motion to vacate] should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack*

v. McDaniel, 529 U.S. 473, 484 (2000) (internal quotations omitted). A movant need not "show he will ultimately succeed on appeal" because "[t]he question is the debatability of the underlying constitutional claim, not the resolution of that debate." *Lamarca v. Sec'y, Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir.) (citing *Miller-El v. Cockrell*, 537 U.S. 322, 337, 342 (2003)).

> When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, . . . a certificate of appealability should issue only when the prisoner shows both that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Jimenez v. Quarterman, 555 U.S. 113, 118 n.3 (2009) (internal quotations omitted) (citing *Slack*, 529 U.S. at 484). Although *Slack* involved an appeal from the denial of a 28 U.S.C. § 2254 petition, the same standard applies here. *See Jones v. United States*, 224 F.3d 1251, 1254 (11th Cir. 2000) (applying *Slack* standard in § 2255 case).

Because Movant has not raised a claim of arguable merit regarding the effectiveness of his trial counsel's representation or his *Brady* and *Giglio* claims, a COA is not warranted here.

VI. Conclusion

For the foregoing reasons, **IT IS RECOMMENDED** that the Court **DENY**

Movant's 28 U.S.C. § 2255 motion (Doc. 168); **DENY** his motion for a new trial (Doc. 171); **GRANT** *nunc pro tunc* his motion to waive strict compliance and for liberal construction of his pleadings (Doc. 172) and his motions for an extension of time to file his reply briefs (Docs. 178, 179); **DENY as moot** his motions for the Court's attention (Docs. 175, 180); **DISMISS** this action; and **DENY** Movant a certificate of appealability.

The Clerk is **DIRECTED** to terminate the referral to the Magistrate Judge.

SO RECOMMENDED this 19th day of August, 2014.

JUSTIN S. ANAND
UNITED STATES MAGISTRATE JUDGE

IN THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 08-13658-AA

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

STANLEY JOSEPH THOMPSON,
Defendant-Appellant.

NO. 08-13659-AA

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LEARY ROBINSON,
Defendant-Appellant.

On Appeal From The United States District Court
For The Northern District of Georgia

BRIEF FOR APPELLEE

DAVID E. NAHMIAS
UNITED STATES ATTORNEY

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The court was in the best position to evaluate the potential prejudicial effect of McGuire's emotional breakdown and correctly determined that Defendants suffered no prejudice. Defendants have not, and cannot, show that but for McGuire's emotional breakdown, the outcome of the trial would have been different. There was overwhelming, independent evidence of Defendants' guilt beyond a reasonable doubt. In their opening statements, counsel for both Defendants admitted that they committed the Taco Bell robbery, and counsel for Robinson admitted that Robinson committed six of the seven bank robberies charged in the Indictment. (Doc. 145-15-16). The government presented video surveillance footage, photographs, and fingerprint evidence connecting both Defendants to the Taco Bell and bank robberies. (Ex. 1, 2B, 10B, 11, 13C, 17, 18C, 24, 25B, 28B, 27, 29, 30C; Doc. 145-170, 212). In addition, Thompson was arrested after being found in the red Chevrolet Blazer that was used in several of the robberies. (Doc. 146-280-83). Inside the vehicle was clothing worn by Thompson in the Taco Bell robbery and by Robinson in the bank robberies. (*Id*. at 146-295-97, 299). A search warrant executed on Defendants' rooms at the motel yielded a firearm used in the robberies, clothing worn in the robberies, money, and a notebook with calculations appearing to be dividing the proceeds of one of the robberies. (Doc. 146-300-03; Doc. 147-440; Ex. 48A, 48B, 48C). Robinson testified and admitted to committing the robberies and was impeached regarding the use of the

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, PLAINTIFF, VS. LEARY ROBINSON, ET AL., DEFENDANTS.	DOCKET NUMBER 1:07-CR-138-BBM-1,2 ATLANTA, GEORGIA FEBRUARY 29, 2008

VOLUME FOUR OF FOUR
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BEVERLY B. MARTIN,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	KATHERINE HOFFER & JAMILA HALL UNITED STATES ATTORNEY'S OFFICE ATLANTA, GEORGIA 30303
FOR DEFENDANT ROBINSON:	TIMOTHY SAVIELLO FEDERAL DEFENDER PROGRAM ATLANTA, GEORGIA 30303
FOR DEFENDANT THOMPSON:	ROBERT MACK MACK & HARRIS STOCKBRIDGE, GEORGIA 30281
OFFICIAL COURT REPORTER:	MONTRELL VANN, CCR,RPR,RMR,CRR 2394 UNITED STATES COURTHOUSE 75 SPRING STREET, SW ATLANTA, GEORGIA 30303 (404)215-1549

MS. HOFFER, CAN I JUST SEE YOU AND MR. SAVIELLO?

(BENCH CONFERENCE OUT OF THE HEARING OF THE COURT REPORTER.)

MS. HOFFER: YOUR HONOR, THIS WOULD BE MY ADDITION AFTER THIS PARAGRAPH, .380 HIGH POINT HANDGUN IS A FIREARM, AND HERE IS MR. SAVIELLO'S.

THE COURT: DO YOU KNOW WHERE HE WANTS THIS?

MS. HOFFER: I THINK RIGHT AFTER THE .380 IS A FIREARM.

MR. SAVIELLO: JUST THE HIGHLIGHTED PORTION, THERE, JUDGE.

THE COURT: CAN YOU ALL COME UP HERE AND JUST MAKE SURE I TELL MS. CARVER RIGHT?

LET'S BRING THE JURY IN.

(JURY PRESENT.)

THE COURT: GOOD MORNING. WELCOME BACK.

MS. HOFFER.

MS. HOFFER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. COUNSEL, LADIES AND GENTLEMEN OF THE JURY, GOOD MORNING. I'D LIKE TO THANK YOU FOR YOUR ATTENTION AND PATIENCE IN THIS TRIAL ON BEHALF OF THE UNITED STATES. WE CERTAINLY APPRECIATE YOUR PRESENCE HERE. THIS TRIAL HAS BEEN A LITTLE BIT CONVOLUTED BECAUSE WE'VE HAD SO MANY WITNESSES. WE'VE HAD TO PRESENT SOME OUT OF ORDER DUE TO SCHEDULING CONFLICTS AND ILLNESS AND LIFE, SO I HOPE THAT WE HAVEN'T CONFUSED YOU TOO MUCH. BUT I THINK

THAT MY ARGUMENT WILL BE ABLE TO PUT THINGS IN ORDER FOR YOU.

WE HAD SO MANY ROBBERIES IN THIS CASE AND THE DATES MAY HAVE BEEN CONFUSING, AND WE'VE DEVELOPED THIS TIME LINE CHART. I DON'T KNOW IF YOU CAN SEE IT OR NOT. WE MAY END UP MOVING IT. BUT THE DATES ARE CONFUSING BECAUSE HERE YOU HAVE TWO ROBBERIES ON 2/12, TWO ROBBERIES ON 2/21. YOU HAVE TWO ROBBERIES OF THE SAME BANK. BUT, LADIES AND GENTLEMEN, WE ALSO HAVE THE ROBBERIES BEING COMMITTED BY THE SAME TWO PEOPLE, LEARY ROBINSON AND STANLEY JOSEPH THOMPSON. THESE ROBBERIES OCCURRED ALL OVER METRO ATLANTA, DIFFERENT COUNTIES, DIFFERENT POLICE JURISDICTIONS. WE HAD COBB COUNTY A.P.D., F.B.I., A LOT OF LAW ENFORCEMENT OFFICERS, MORE THAN APPEARED HERE DURING THE TRIAL WERE INVOLVED IN THIS CASE. IT TOOK A LOT OF EFFORT TO PUT IT TOGETHER. ONCE YOU GO BACK IN THE JURY ROOM AND YOU HAVE ALL THE EVIDENCE, THOUGH, I AM SURE THAT YOU WILL COME TO THE CONCLUSION THAT THE DEFENDANTS ARE GUILTY ON ALL COUNTS.

THIS IS THE TIME LINE OF THE ROBBERIES BEGINNING ON FEBRUARY THE 8TH OF 2007 AT THE TACO BELL. IT GOES ALL THE WAY THROUGH THE SUNTRUST ON 3/26. YOU KNOW HE USED A GUN -- WELL, LET ME JUST SAY THIS: YOU KNOW THE GUN WAS USED IN COUNT ONE, COUNT FOUR AND FIVE, COUNT EIGHT AND NINE, COUNT SIX AND SEVEN. THE DEFENSE ANNOUNCED IN THE OPENING STATEMENTS THAT THEY WERE GUILTY OF CERTAIN COUNTS. THE GOVERNMENT IS STILL REQUIRED TO PROVE THEM GUILTY, BUT AFTER ALL IS SAID AND DONE MR. ROBINSON HAS ADMITTED IT AND YOU CAN GO AHEAD AND FIND HIM GUILTY ON THE

ONES THAT HE'S ADMITTED AND THE ONES THAT WE HAVE PROVEN, WHICH IS ALL OF THEM. BUT HE CONFESSED ON THE STAND TO YOU.

DEFENDANT THOMPSON'S COUNSEL IN HIS OPENING STATEMENT SAID HE WAS GUILTY OF TAKING MONEY FROM THE TACO BELL, BUT HE DIDN'T ROB IT WITH A GUN AND HE DIDN'T COMMIT ANY OF THE ROBBERIES. THESE ARE THE ELEMENTS OF BANK ROBBERY: BY FORCE, VIOLENCE AND INTIMIDATION DID TAKE MONEY FROM A FEDERALLY INSURED BANK. VERY SIMPLE. ALL OF THE BANKS IN THIS CASE ARE FEDERALLY INSURED. THAT ISSUE WAS STIPULATED TO BY ALL PARTIES, SO IT'S BEEN PROVEN AS MATTER OF -- BEYOND A REASONABLE DOUBT. THE ARMED BANK ROBBERIES HAVE THE ADDITIONAL COUNT OF USING THE WEAPON, AND THE LAW IS DID ASSAULT AND PUT IN JEOPARDY THE LIVES OF ANOTHER PERSON OR PERSONS BY USE OF A DANGEROUS WEAPON. SOME WE'VE ALLEGED FIREARMS IN, SOME WE HAVEN'T.

COUNTS FOUR, SIX AND EIGHT ARE THE ARMED ROBBERIES IN THIS CASE. COUNT ONE IS SLIGHTLY DIFFERENT, THE TACO BELL. IT'S CHARGED UNDER A DIFFERENT STATUTE. IT'S INTERFERENCE WITH INTERSTATE COMMERCE BY ROBBERY, BY MEANS OF ACTUAL AND THREATENED FORCE, VIOLENCE AND FEAR OF INJURY, WHICH WE CLEARLY HAD AT THE TACO BELL. IT'S A VERY LOW THRESHOLD TO PROVE INTERSTATE COMMERCE AND THE INTERRUPTION OF INTERSTATE COMMERCE. ALL WE HAVE TO DO IS SHOW THAT THE BUSINESS, THE TACO BELL, WAS ENGAGED IN A BUSINESS OR INDUSTRY WHICH IS IN INTERSTATE COMMERCE, THE BUSINESS IS ENGAGED IN INTERSTATE COMMERCE. WE HAVE THE CONTROLLER OF T.M.E. ENTERPRISES UP HERE TO TELL YOU

THAT TACO BELL IS A FRANCHISE OF A NATIONAL CORPORATION. WE HAVE THE FRANCHISE AGREEMENT HERE THAT PROVES THAT IT IS A -- EXCUSE ME, A NATIONAL CORPORATION ENGAGED IN INTERSTATE COMMERCE. THEY PAY ROYALTIES AND FEES WHICH GO OUT OF STATE TO CALIFORNIA TO THE HEADQUARTERS OF TACO BELL. YOU ALSO HAVE THIS INVOICE, THE GOVERNMENT'S EXHIBIT 57, WHICH CAME FROM MCCLAIN FOOD SERVICE INDUSTRIES WHICH INDICATES THAT THEY DISTRIBUTE FROM SMYRNA, GEORGIA, BUT THEIR ADDRESS AND WHERE YOU WOULD REMIT PAYMENT TO AND WHERE TACO BELL REMITS PAYMENT TO IS LISTED AS MCCLAIN FOOD SERVICES IN DALLAS, TEXAS. SO WE HAVE LOTS OF INTERSTATE COMMERCE HERE. WE ALSO HAVE A LOSS -- IF YOU JUST TAKE A LOOK AT EXHIBIT 60-A, B AND C, YOU'LL SEE THE LOSS. YOU'LL SEE THAT THE TACO BELL WAS FORCED TO CLOSE EARLY. AND YOU HEARD THE TESTIMONY FROM MR. GIBSON. THE TACO BELL ROBBERY HAS BEEN PROVEN BEYOND A REASONABLE DOUBT. THERE WAS INTERFERENCE WITH INTERSTATE COMMERCE. THERE WAS USE OF VIOLENCE, FEAR OF INJURY AND FORCE BECAUSE THEY USED THE TWO GUNS.

NOW, YOU HEARD SHRONDA HALL'S TESTIMONY. SHE LOOKS UP AND THERE'S A GUN IN HER FACE. THAT IS VIOLENCE, FORCE AND FEAR OF INJURY. SHE WAS VERY SCARED. CURTIS MCGUIRE WAS OBVIOUSLY VERY SCARED. TWO MEN COME IN AND HOLD GUNS TO THEIR FACES AND ORDER THEM TO DO THINGS. SHRONDA HALL SAID SHE JUST HIT THE FLOOR, INDICATION THAT SHE WAS VERY SCARED. CURTIS MCGUIRE WAS FORCED TO OPEN THE SAFE AND THE REGISTERS WITH HIS OWN KEY, AND THE

ROBBERS STOOD THERE AND HELD THEM AT GUNPOINT, THE ROBBERS, STANLEY JOSEPH THOMPSON AND LEARY ROBINSON.

NOW, I WANT TO SHOW YOU BRIEFLY -- I'M NOT GOING TO SHOW YOU ALL THE VIDEOS IN THIS CLOSING ARGUMENT. YOU'VE ALREADY SEEN THEM. I WANT TO SHOW YOU THE TACO BELL ROBBERY, BECAUSE IF YOU LOOK YOU CAN SEE THE MEN, THE DEFENDANTS, ENTER THE TACO BELL. THEY'VE GOT THEIR RIGHT HANDS IN THEIR POCKETS. THEY ARE HIDING THEIR GUNS. THEY COME IN LIKE THIS, BOTH OF THEM. THEY GO TO THE BACK WHERE YOU CAN'T SEE THEM ANYMORE IN THE VIDEO. THAT'S WHAT SHRONDA HALL SAID, GUN TO HER HEAD, SHE'S ON THE FLOOR. THAT'S WHERE SHE TESTIFIED SHE COULD HEAR THE OTHER MAN YELLING AT CURTIS MCGUIRE TO OPEN THE SAFE. WHEN THEY COME BACK OUT, YOU COULD SEE THE DEFENDANT STANDING WITH HIS RIGHT HAND DOWN AND YOU CAN SEE THE GUN. YOU CAN ALSO SEE HIM USING HIS LEFT HAND ONLY TO GET THE MONEY OUT OF THE CASH REGISTER THAT IS AT THE DRIVE-THRU. THEN WHEN HE TURNS AROUND YOU CAN SEE HIM PUTTING THE GUN BACK IN HIS POCKET SO HE CAN THEN GRAB THE REGISTER WITH BOTH HIS HANDS. SO LET'S WATCH THIS VIDEO. IT WILL JUST TAKE A SECOND TO SWITCH TO IT. YOU CAN PROBABLY SEE IT BETTER ON YOUR SCREEN.

HERE THEY COME. YOU SEE THEIR RIGHT HANDS ARE IN THEIR POCKETS. THAT'S LEARY ROBINSON IN THE FRONT, THOMPSON IN THE BACK. THEY ARE IN THE BACK NOW WITH SHRONDA HALL AND CURTIS MCGUIRE. WHEN THEY COME BACK, WATCH HIM AT THE REGISTER. HE IS HOLDING THE GUN DOWN. YOU CAN SEE THE LENGTH OF IT DOWN TO

ABOUT MID THIGH. AND HE COMES BACK OVER. HE'S STILL GOT THE GUN IN HIS HAND. HE'S ONLY USING HIS LEFT HAND TO GET THE MONEY OUT OF THE CASH REGISTER. NOW HE PUT THE GUN BACK IN HIS POCKET SO HE COULD USE TWO HANDS.

LADIES AND GENTLEMEN, YOU COULD CLEARLY SEE THAT THE DEFENDANTS WERE CARRYING WEAPONS. THE DEFENDANT ROBINSON ADMITTED TO THE F.B.I. AFTER HIS ARREST ON MARCH 29TH THAT HE DID HAVE A GUN. IN FACT, HE USED IT IN ALL THE ROBBERIES THAT HE COMMITTED, HIS .380 HIGH POINT THAT HE BOUGHT FROM A PAWN SHOP. ALL OF THAT HAS BEEN PROVEN. HE DID CHANGE HIS STORY DURING THE SEPTEMBER 18TH PROFFER THAT HE GAVE. THAT'S WHEN THE B.B. GUN CAME IN. HE CHANGED HIS STORY ON THE STAND TOO IF YOU'LL RECALL. FIRST OF ALL, HIS STATEMENT WAS THAT HE NEVER USED A REAL GUN. THE TESTIMONY AT THE WACHOVIA BANK WAS FROM -- I'M SORRY, AT THE BANK OF AMERICA ON 2/12, KELLIE ANDERSON SAID HE FLASHED A GUN LIKE THIS, A BLACK FLAT GUN. IT'S NOT ON THE VIDEOTAPE, BUT THAT WAS HER TESTIMONY, AND IT'S UP TO YOU TO DECIDE IF THERE WAS A REAL GUN. HOWEVER, SHE DID -- SHE DID RECOGNIZE THE GUN THAT WE SHOWED HER, THE .380 HIGH POINT, AND SAID THAT COULD HAVE BEEN THE GUN, IT LOOKED LIKE THE GUN.

NOW, ON THE STAND, THOUGH, HE SAYS HE DIDN'T SHOW THE GUN AND HE SAYS HE USED A B.B. GUN. SO WHICH IS IT? YOU'VE GOT TO DECIDE THE CREDIBILITY OF THE WITNESSES IN THIS CASE AS WELL AS THAT OF THE DEFENDANT ROBINSON. THINK OF IT THIS WAY AND USE YOUR COMMON SENSE: ON 3/29 HE WAS MORE LIKELY TO COME CLEAN AND

TELL THE TRUTH. HE HADN'T HAD TIME TO MAKE UP A STORY, CHANGE HIS STORY, THINK THROUGH WHAT DETAIL DO I NEED TO CHANGE SO I WON'T BE IN TROUBLE. THAT WAS MARCH 29TH OF '07. BY SEPTEMBER THE STORY HAD CHANGED TO THE B.B. GUN. ON THE STAND THE STORY CHANGED FROM USING THE B.B. GUN TO USING NO GUN. CLEARLY YOU CAN SEE THE GUNS IN COUNT TWO AT THE TACO BELL. LADIES AND GENTLEMEN, THESE WERE REAL GUNS. THEY DIDN'T USE B.B. GUNS. THESE ARE NOT THE ACTIONS OF MEN WHO HAVE A TOY IN THEIR POCKET OR AN AIR PISTOL IN THEIR POCKET. THESE ARE THE ACTIONS OF MEN USING REAL GUNS.

COUNT THREE, THE SUNTRUST BANK, WE HAVE NOT ALLEGED A GUN. THERE WAS NO TESTIMONY ABOUT THE USE OF A GUN. DEFENDANT ROBINSON HAS ADMITTED HE ROBBED THIS BANK -- HE ROBBED THIS BANK WITH A NOTE. CLEARLY YOU CAN FIND HIM GUILTY ON THAT. HE'S ALSO CONFESSED ON THE STAND AND TO THE F.B.I. HIS FINGERPRINTS WERE ON THAT DEMAND NOTE. WE'VE GOT A GET-AWAY DRIVER. ROBINSON GOT INTO THE PASSENGER SIDE OF THE RED CHEVY BLAZER. PHYLLIS JAMES VICTIMIZED TWICE. LAYTON WHITMAN VICTIMIZED TWICE. THESE ARE THE VICTIMS THAT WERE ROBBED AT THE SUNTRUST BANK ON FEBRUARY 12TH OF '07 AND AGAIN ON 3/26 OF '07. THE DEFENDANTS WENT BACK TO THE SAME BANK. LAYTON WHITMAN WAS THE ONE THAT HAD TO GIVE HIM THE MONEY. HE WENT RIGHT BACK TO LAYTON WHITMAN WHEN HE CAME IN THE SECOND TIME. THAT WAS MR. ROBINSON.

MS. JAMES, WHO WAS OBVIOUSLY UPSET AT THE MEMORY OF THE

ROBBERIES, SAW HIM GETTING INTO THE PASSENGER SIDE OF THE RED BLAZER. OBVIOUSLY TWO PEOPLE. OBVIOUSLY THE GET-AWAY DRIVER IS STANLEY JOSEPH THOMPSON. WE HAD A LOT OF IDENTIFICATIONS OF MR. ROBINSON AND I'M NOT GOING TO GO THROUGH THOSE BECAUSE OBVIOUSLY HE'S CONFESSED. YOU CAN FIND HIM GUILTY. THESE ARE THE PHOTOS FROM THAT ROBBERY AND THE BLACK COAT WHICH WE FOUND.

NOW THIS -- COUNTS FOUR AND FIVE, THE BANK OF AMERICA AT WADE GREEN IS THE ONE I JUST MENTIONED, KELLIE ANDERSON WHO SAYS HE FLASHED A FLAT BLACK GUN. WELL, THAT'S EXACTLY WHAT THE HIGH POINT .380 IS, A FLAT BLACK GUN. IT DIDN'T LOOK LIKE A B.B. GUN TO HER. SHE WAS SCARED. THIS IS THE ONE HE CHANGED HIS STATEMENT ON. FIRST HE USED A REAL GUN, THEN HE CHANGED HIS STATEMENT TO THE B.B. GUN, THEN HIS TESTIMONY, WHICH I SUBMIT TO YOU IS NOT CREDIBLE, IS THAT HE DIDN'T USE A GUN AT ALL. THERE WAS A TWO-SECOND DELAY IN THE PHOTOGRAPH. THERE'S NO REASON NOT TO BELIEVE KELLIE ANDERSON. THE DEFENDANT USED A REAL GUN.

WE'VE ALSO GOT MR. THOMPSON'S FINGERPRINTS ON THIS DEMAND NOTE. WE'VE ALSO GOT -- I'M SORRY. STRIKE THAT. THESE FINGERPRINTS WERE NOT EVEN CONTESTED BY MR. ROBINSON. MR. THOMPSON OBVIOUSLY EITHER WROTE THE NOTE OR GAVE HIM THE PIECE OF PAPER TO USE TO WRITE THE NOTE. HE WAS THE GET-AWAY DRIVER. I'M GETTING A LITTLE AHEAD OF MYSELF. WHY WERE STANLEY JOSEPH THOMPSON'S FINGERPRINTS ON THE NOTE? LADIES AND GENTLEMEN, USE YOUR COMMON SENSE. HE WAS IN THE CAR. HE EITHER WROTE THE NOTE OR GAVE THE NOTE. AND THESE ARE THE PHOTOGRAPHS

FROM THE BANK OF AMERICA, IF YOU'LL RECALL THE TWO-SECOND DELAY. YOU CAN TELL THAT HE IS DOING SOMETHING BETWEEN PHOTOGRAPHS BECAUSE IT JUMPS. IT DOESN'T GET EVERY MOVE. AND MS. ANDERSON WAS COMPLETELY CREDIBLE.

COUNT SIX AND SEVEN, THE WACHOVIA BANK ON POWERS FERRY ROAD, ANOTHER ARMED ROBBERY WITH A GUN AND A NOTE. DONALD RUDE, A CITIZEN, HE SAW THEM GETTING INTO THE TOYOTA THAT BELONGED TO VIRNA ROBINSON. THE ROBBER, AGAIN, GOT IN THE PASSENGER SIDE. WE HAVE A GET-AWAY DRIVER HERE, STANLEY JOSEPH ROBINSON. NOW, THIS ROBBERY, THE ROBBER, THE FACE CANNOT BE SEEN IN THE PHOTOGRAPHS. NOBODY HAS BEEN ABLE TO IDENTIFY WHO ACTUALLY WAS THE ROBBER EXCEPT FOR THE FACT THAT THE ROBBER HAD ON ROBINSON'S CLOTHING, AND MR. ROBINSON TESTIFIED YESTERDAY THAT THE SAME PERSON WAS WITH HIM IN ALL THE ROBBERIES EVEN THOUGH HE REFUSED TO POINT THE FINGER AT HIS CO-DEFENDANT. THE TESTIMONY WAS SUCH THAT YOU COULD DETERMINE THAT, DEDUCT THAT, AND KNOW THAT FROM THE EVIDENCE THAT THOMPSON WAS THE GET-AWAY DRIVER. HE EVEN TOLD THE F.B.I. AT ONE POINT THAT HE HAD GIVEN HIS CLOTHING, HIS GUN AND HIS CAR TO THOMPSON. HE KNEW HE WAS GOING TO ROB THE BANK. THAT'S AIDING AND ABETTING.

AIDING AND ABETTING, LADIES AND GENTLEMEN -- I THINK I SKIPPED MY SLIDE ON THAT -- IS TITLE 18, UNITED STATES CODE, SECTION TWO, AND IT'S CHARGED IN ALL THE COUNTS. IT SIMPLY MEANS THEY AIDED AND ASSISTED EACH OTHER IN COMMITTING THE CRIME. AND IF YOU FOUND -- IF YOU FIND THAT MR. THOMPSON WAS

THE GET-AWAY DRIVER, HE CAN THEN BE FOUND GUILTY OF THE ROBBERY AND THE GUN COUNT, AIDING AND ABETTING, AIDING AND ASSISTING EACH OTHER IN COMPLETING THE CRIMINAL ACT. IF YOU FIND THAT EITHER ONE OF THEM HAD ANY PART IN ANY OF THE ROBBERIES, YOU CAN FIND THEM GUILTY ON THE ROBBERY AND THE GUN COUNT EVEN IF THEY DIDN'T HAVE THE GUN IN THEIR HAND. YOU CAN SEE THE GUN IN THIS PHOTOGRAPH.

KRISTINA PARKER, SHE WAS THE ONE THAT WAS SCARED FOR HERSELF AND HER UNBORN CHILD. LOOK AT 22-C. YOU CAN SEE THE GUN ON TOP OF THE PORTFOLIO. IT IS AS SHE TESTIFIED. IT IS ALSO IDENTICAL TO THE GUN THAT WE HAVE. IF YOU LOOK CLOSELY YOU CAN SEE THE SHAPE AND YOU CAN SEE THE SILVER STRIP. THAT IS THE GUN THAT WE HAVE. IT'S A REAL GUN. IT'S THE ONLY GUN THAT WAS FOUND AT THE HOTEL ROOM WHEN ROBINSON WAS ARRESTED. HERE IS THE NISSAN THAT BELONGED TO VIRNA ROBINSON. SHE IDENTIFIED IT. WITNESSES SAW IT. IT WAS USED IN BOTH OF THE ROBBERIES ON FEBRUARY 21ST, COUNTS EIGHT AND NINE, BANK OF AMERICA, ROSWELL ROAD. COREY WEBB SAW A GUN. HE IDENTIFIED LEARY ROBINSON IN THE COURTROOM. HE SAID HE TOLD HIM, GIVE ME YOUR MONEY OR I WILL SHOOT YOU. FORCE, VIOLENCE, FEAR OF INJURY. PLEASE DON'T SHOOT ME, HE SAID. HE WAS SCARED. DON'T SHOOT ME.

THE GUN IN THIS CASE WAS THE SAME GUN THAT WAS USED IN ALL THE ROBBERIES. IT LOOKED LIKE A REAL GUN. SPECIAL AGENT MIKE GREEN HAS COMPARED IT TO PHOTOGRAPHS. IN HIS OPINION, HIS EXPERIENCE, THEY MATCH. THERE'S THE GUN. THERE'S COREY WEBB.

HE'S POINTING IT RIGHT AT HIM. AGAIN, YOU CAN SEE THE SILVER STRIPE. THAT IS THE .380 AUTOMATIC HANDGUN REGISTERED AND PURCHASED AND ADMITTED TO BY LEARY ROBINSON. IT'S A SCARY THING TO HAVE A GUN POINTED IN YOUR FACE. AGAIN, PASSENGER SIDE OF THE CAR. IT TOOK TWO PEOPLE TO COMMIT THESE ROBBERIES, LADIES AND GENTLEMEN. YOU CAN LOGICALLY CONCLUDE THAT THE TWO DEFENDANTS ARE THE PEOPLE THAT COMMITTED THESE ROBBERIES. THERE'S MORE THAN OVERWHELMING EVIDENCE TO PROVE THAT IN THIS CASE.

THE LAST THREE ROBBERIES ARE NOT ARMED ROBBERIES. ROBINSON HAS CONFESSED TO THEM. HE'S BEEN IDENTIFIED BY THE PHOTOGRAPHS BY HIS EX-WIFE. WHAT ABOUT THE GET-AWAY DRIVER IN THOSE COUNTS? YOU CAN SEE THE PORTFOLIO THAT HE USED, THAT A LOT OF PEOPLE TESTIFIED HE USED, HIS PLAID L.A. HAT WHICH WE HAVE. THERE IS REALLY NO ISSUE AS TO THE ROBBERY IN THAT CASE. COUNT ELEVEN, BANK ROBBERY ON WEST PACES FERRY. THE RED BLAZER WAS USED. AND ONCE AGAIN, THE DEMAND NOTE WAS SIMILAR TO PREVIOUSLY USED DEMAND NOTES BY THE TWO ROBBERS. THIS IS A ROBBERY, NO INK PACKS, EMPTY YOUR DRAWERS. AGAIN, HERE'S THE PORTFOLIO. NO ISSUE.

COUNT 12, BACK TO THE SUNTRUST BANK, SAME BANK AS COUNT THREE, SAME VICTIMS, SAME CAR. DEFENDANT GOT IN THE PASSENGER SIDE OF THE CHEVY BLAZER AND TOLD THE F.B.I. THAT THOMPSON WAS THE GET-AWAY DRIVER. SO THE ONLY LOGICAL CONCLUSION IN THIS CASE IS THAT THOMPSON IS THE GET-AWAY DRIVER. WE'VE GOT HIS

FINGERPRINTS. WE'VE GOT HIM DRIVING THE RED CHEVY BLAZER. WE'VE GOT HIM IN THE FIRST ROBBERY, THE TACO BELL. AND INTERESTINGLY ENOUGH, HIS FINGERPRINTS WERE FOUND HERE ON 2/12, HERE ON 3/26. LADIES AND GENTLEMEN, HE DIDN'T TAKE A BREAK. WHAT ARE THE ODDS THAT HIS FINGERPRINTS WOULD BE ON THOSE TWO NOTES AND THAT HE WOULD HAVE BEEN IN THE TACO BELL?

THIS IS THE NOTEPAD THAT WAS FOUND WHERE -- YOU CAN CONCLUDE FOR YOURSELVES WHAT THIS MEANS. HOWEVER, IT WAS FOUND IN THE HOTEL ROOM AND IT CERTAINLY LOOKED LIKE THEY WERE DIVIDING UP MONEY. THE 2304 DIVIDED BY TWO SEVERAL PLACES, SIMILAR TO THE AMOUNT TAKEN IN ONE OF THE ROBBERIES, IN THE LAST ROBBERY. AND, OF COURSE, MR. THOMPSON WAS ARRESTED DRIVING THE GET-AWAY CAR. HE WAS DRIVING THE RED CHEVY BLAZER. THIS LED LAW ENFORCEMENT TO THE INTOWN SUITES WHERE THEY ARRESTED MR. ROBINSON WHO WAS BARRICADED IN HIS ROOM WITH HIS HANDGUN, WITH HIS .380 HIGH POINT HANDGUN WHICH CHAD FITZGERALD, SPECIAL AGENT FITZGERALD CLAIMED HE HEARD A SHOT FIRED. HE REFUSED TO COME OUT. AGENT MYERS HAD TO COAX HIM OUT. THE GUN, THE BULLETS, AND THE HOLSTER WERE FOUND IN THE ROOM. 463 WHERE MR. ROBINSON WAS BARRICADED WAS REGISTERED TO STANLEY JOSEPH THOMPSON. THE GUN WAS LOADED. LADIES AND GENTLEMEN, WE ARE TALKING ABOUT A REAL GUN HERE. YOU SAW THE GUN. WE ARE TALKING ABOUT A REAL GUN WITH REAL BULLETS, REAL DANGER. WE ARE NOT TALKING ABOUT B.B. GUNS. THERE WERE NO B.B. GUNS USED IN THIS CASE.

I'VE TALKED A LITTLE BIT ABOUT HIS CONFESSION. HE CONFESSED TO AGENTS CARMAN AND MYERS WHEN HE WAS FIRST ARRESTED. THEY READ HIM HIS MIRANDA RIGHTS. THERE WAS NO PRESSURE PUT ON HIM. HE CONSENTED TO THE SEARCH OF THE ROOM. HE PROCEEDED TO CONFESS TO SIX OUT OF THE SEVEN ROBBERIES. HE ADMITTED TO USING THE GUN IN ALL OF THE ROBBERIES. IT WAS HIS OWN GUN PURCHASED PRIOR TO THE ROBBERIES.

SPECIAL AGENT GREEN, HE OBTAINED THE CONSENT TO SEARCH FROM STANLEY JOSEPH THOMPSON, ALL OF THAT FOUND IN THE ROOM, GUN, BULLETS, CLOTHING, HAT. INTERESTING ENOUGH, THERE WERE NO B.B. GUNS FOUND AND THERE WAS $2,800 IN THE SAFE. FOUND IN THE RED BLAZER, CLOTHES WORN IN THE ROBBERIES, THE GREEN HOODED SWEATSHIRT. THOMPSON WORE IT IN THE TACO BELL ROBBERY. THEY WERE IN THIS TOGETHER. THE ONLY GUN FOUND, REAL GUN, REAL BULLETS.

AND WHAT LINKS STANLEY JOSEPH THOMPSON? I THINK I'VE ALREADY BEEN THROUGH ALL OF THIS. HE'S CLEARLY IN THE TACO BELL. THEY CLEARLY HAVE REAL GUNS IN THE TACO BELL. COUNT THREE, ROBINSON GOT IN THE PASSENGER SIDE OF THE RED CHEVY BLAZER. HE CLAIMED THAT THOMPSON WAS THE GET-AWAY DRIVER. COUNTS FOUR AND FIVE, BOTH OF THEIR FINGERPRINTS ARE ON THE DEMAND NOTE. COUNT SIX AND SEVEN, THE WACHOVIA BANK. IT'S GOING TO BE UP TO YOU TO DECIDE IF IT WAS LEARY ROBINSON, STANLEY JOSEPH THOMPSON, OR SOMEONE ELSE BECAUSE OF THE FACT THAT THE FACE WAS NOT CLEAR IN THE PHOTOS. HOWEVER, LOOK AT

THIS, ROBINSON CLOTHING, ROBINSON'S NAME TAG, THE CAMOUFLAGE CLOTHES THAT WERE RECOVERED. THE ROBBER LEFT AND GOT IN THE PASSENGER DOOR ON ROBINSON'S TOYOTA AND THERE WAS ANOTHER DRIVER. NOW, MR. ROBINSON HAS NEVER ADMITTED TO DOING THAT ROBBERY. HOWEVER, HE DID ADMIT THAT HE KNEW WHO DID IT AND HE HAD GIVEN THE CLOTHING AND THE GUN TO THE ROBBER. THAT MAKES HIM AN AIDER AND ABETTOR. THESE ARE ALL THE THINGS THAT WERE FOUND IN THE ROOM. YOU'VE HEARD THAT EVIDENCE. I THINK I MAY HAVE DUPLICATED SOME OF MY SLIDES. HERE IS MY AIDING AND ABETTING. IF THEY WERE IN ON IT TOGETHER, IT DOESN'T MATTER WHO GOES IN. IF THE OTHER PERSON IS WAITING IN THE CAR, THEY ARE GUILTY. THEY WERE PARTNERS IN CRIME. THEY SPLIT THE MONEY. THEY BORROWED CLOTHING. THEY BOTH HAD A HAND IN WRITING THE DEMAND NOTES. ONE WAS ALWAYS WAITING IN THE CAR. THEY ASSISTED EACH OTHER IN OBTAINING CARS AND SWITCHING CARS. THEY HAD TWO HOTEL ROOMS AT THE INTOWN SUITES, BUT ROBINSON WAS ARRESTED IN THOMPSON'S ROOM WITH THE GUN.

THE ONLY EVIDENCE YOU HAVE IN THIS CASE OF A B.B. GUN IS LEARY ROBINSON'S TESTIMONY, WHICH WAS CHANGED FROM HIS INITIAL STATEMENT THAT HE USED A REAL GUN. YOU SAW THEIR HANDS IN THE POCKETS AT THE TACO BELL. THOSE ARE NOT THE ACTIONS OF MEN CARRYING B.B. GUNS. LEARY ROBINSON WAS OBVIOUSLY LYING AT SOME POINT, AND I SUBMIT TO YOU IT WAS WHILE HE WAS ON THE STAND IN THIS COURTROOM YESTERDAY. THE STORY CHANGED THREE TIMES. THE LAST STORY EXCULPATES HIMSELF OF ANY REAL GUN, BUT THAT CAME OUT

OF HIS MOUTH AFTER HE CHANGED HIS STORY TWICE. AND I SUBMIT TO YOU, YOU DO NOT HAVE TO GIVE HIM ANY CREDIBILITY IF YOU FIND THAT HE IS NOT CREDIBLE. I SUBMIT TO YOU THAT HE HAS LIED TO YOU.

THE DEFENDANT'S TESTIMONY WAS FAIRLY CHILLING. I DON'T KNOW IF YOU RECALL -- I'M SURE YOU DO -- HE WENT AWOL FROM THE ARMY BECAUSE IT JUST WASN'T HIS THING. HE JUST LEFT. HE BOUGHT A FIREARM FOR PROTECTION. THEN PEOPLE STARTED TALKING TO HIM ABOUT ROBBING BANKS. HE SEEMED PROUD. YEAH, THAT'S ME IN THE TACO BELL. I'M THE GOOD-LOOKING ONE. ANY REMORSE THERE? HE TALKED ABOUT USING A B.B. GUN. YOU POINT ANYTHING AT THEM, THEY'LL LAY DOWN. VERY SURE, VERY CONFIDENT OF HIMSELF AS A ROBBER. HE PREPARED FOR THE SECOND ROBBERY. HE GOT NEW TIRES. HE WENT TO WAL-MART, STOLE A LICENSE PLATE, BOUGHT A B.B. GUN HOLSTER AND GOT A HAIRCUT, VERY MATTER OF FACT, VERY COLD. HE SAID HE FLASHED THE GUN IN THE SUNTRUST BECAUSE ALL YOU'VE GOT TO DO IS GIVE THEM A NOTE, BUT IF YOU FLASH, THEN YOU SHOW THEM YOU'VE GOT SOMETHING. THAT IS MEANT TO SCARE PEOPLE.

LADIES AND GENTLEMEN, I'M NOT GOING TO BELABOR THE POINT ABOUT MR. ROBINSON'S GUILT. CLEARLY HE'S GUILTY OF ALL THE ROBBERIES. YOU HAVE TO DECIDE IF HE'S GUILTY OF THE ROBBERY IN THE WACHOVIA. YOU CAN FIND HE WAS AN AIDER AND ABETTOR IF YOU FIND THAT HE WAS INVOLVED IN THAT ROBBERY. CLEARLY REAL GUNS WERE USED IN THIS CASE. THERE HAVE BEEN NO B.B. GUNS FOUND. THE ONLY TESTIMONY WAS FROM MR. ROBINSON. THE REAL GUN MATCHES

OUR SURVEILLANCE PHOTOGRAPHS. YOU CAN FIND THEM GUILTY OF ARMED ROBBERY EVEN IF THEY DID USE A B.B. GUN, BUT THE SEPARATE GUN COUNT YOU MUST FIND THEY USED A REAL GUN. IF THEY AIDED AND ABETTED EACH OTHER THEY ARE BOTH GUILTY OF EVERY SINGLE COUNT.

LADIES AND GENTLEMEN, THANK YOU FOR YOUR TIME AND ATTENTION IN THIS CASE. I WILL SPEAK TO YOU AGAIN AT THE CLOSE OF THE DEFENSE COUNSEL'S ARGUMENTS, BUT I ASK YOU TO USE YOUR COMMON SENSE IN THIS CASE. YOU CAN MAKE DEDUCTIONS. CIRCUMSTANTIAL EVIDENCE CAN BE GIVEN JUST AS MUCH WEIGHT AS DIRECT EVIDENCE. WE HAVE A LOT OF CIRCUMSTANTIAL EVIDENCE IN THIS CASE. YOU CAN CERTAINLY CONSIDER THAT, BUT IT'S UP TO YOU TO DECIDE. IT'S UP TO YOU TO CONSIDER THE EVIDENCE AND GIVE IT THE WEIGHT THAT YOU THINK IT DESERVES, BUT I'M SURE THAT AT THE END WHEN YOU HAVE LOOKED AT ALL THE EVIDENCE YOU WILL CONCLUDE THAT THE GOVERNMENT HAS PROVEN ITS CASE BEYOND A REASONABLE DOUBT. AND I ASK YOU TO FIND THEM GUILTY OF ALL COUNTS IN THE INDICTMENT. THANK YOU.

THE COURT: THANK YOU, MS. HOFFER.

MR. SAVIELLO: NOW, LADIES AND GENTLEMEN, I TOLD YOU AT THE BEGINNING OF THIS CASE THAT MR. ROBINSON WAS GUILTY OF ALL THE ROBBERIES EXCEPT FOR THE WACHOVIA ROBBERY ON FEBRUARY 21ST. I TOLD YOU THAT HE DIDN'T USE A GUN IN ANY OF THOSE ROBBERIES. THE EVIDENCE THAT YOU HAVE BEFORE YOU, THE DOCUMENTS THAT WERE ADMITTED, THE TESTIMONY THAT CAME, THE VIDEOS THAT YOU SAW, ALL OF THAT TAKEN IN TOTAL SUPPORTS WHAT I TOLD YOU AT THE BEGINNING OF THE CASE. AND NOW IS THE TIME WHEN

YOU JUDGE FOR YOURSELVES WHAT THE EVIDENCE SAYS AND WHAT CONCLUSIONS CAN BE REACHED. WHAT THE GOVERNMENT SAYS AND WHAT I SAY ARE MERELY SUMMARIES OF THIS. YOU MUST BE THE ONES TO JUDGE FOR YOURSELVES, AND I ASK YOU TO USE YOUR COMMON SENSE WHEN YOU DO THIS. TAKE YOUR TIME. LOOK AT THE EVIDENCE. AND WHEN YOU DO THAT YOU'LL SEE THAT THE GOVERNMENT HAS FAILED TO MEET ITS BURDEN IN PROVING THAT LEARY ROBINSON IS THE ONE THAT ROBBED THE WACHOVIA ON THE 21ST OR THAT HE CARRIED A REAL GUN INTO ANY OF THE PLACES THAT WERE ROBBED AT ANY POINT IN THIS CASE.

MR. ROBINSON CAME IN HERE AND ADMITTED THAT HE DID THOSE ROBBERIES. HE CAME IN HERE TO TAKE RESPONSIBILITY FOR HIS ACTIONS. HE IS NOT A PROFESSIONAL WITNESS. HE IS HERE KNOWING THAT HE'S GOING TO PRISON FOR THESE ROBBERIES EXCEPT FOR THE WACHOVIA BANK. AND SO IF YOU CONSIDER HIS DEMEANOR ON THE STAND, YOU CONSIDER THAT HE'S NOT A PROFESSIONAL WITNESS, HE'S NOT TESTIFIED IN COURT BEFORE, IF YOU CONSIDER THAT AND YOU CONSIDER HIS CREDIBILITY AND HIS DEMEANOR ON THE STAND, AND WHEN YOU DO THAT, LADIES AND GENTLEMEN, AT THE END OF THIS YOU WILL FIND THAT THE GOVERNMENT HAS NOT SHOWN BEYOND A REASONABLE DOUBT, THEY HAVE NOT PROVEN THEIR CASE THAT FAR.

THE JUDGE WILL INSTRUCT YOU AFTER ARGUMENTS ARE OVER ON WHAT THE DEFINITION OF "REASONABLE DOUBT" IS. AND WHAT SHE WILL SAY IS THAT REASONABLE DOUBT -- I'M PARAPHRASING, SO TAKE THE JUDGE'S WORDS VERBATIM, BUT TAKE MINE NOW AS ARGUMENT. THAT REASONABLE DOUBT, A DOUBT SUCH THAT WHEN YOU ARE MAKING

DECISIONS IN THE MOST IMPORTANT OF YOUR PERSONAL AFFAIRS, YOU NEED TO BE THAT CERTAIN OF GUILT BEFORE YOU CAN VOTE GUILTY, THE MOST IMPORTANT OF YOUR PERSONAL AFFAIRS. THINK ABOUT THE THINGS IN YOUR LIVES THAT ARE IMPORTANT TO YOU, THE DECISION ABOUT HOW TO TREAT A SICK CHILD, IF THE DOCTOR HAS GIVEN YOU ENOUGH INFORMATION. YOU NEED TO BE THAT CERTAIN BEFORE YOU SAY TO THE DOCTOR, YES, TREAT MY CHILD THIS WAY. THAT'S THE LEVEL OF CERTAINTY THAT IS BEYOND A REASONABLE DOUBT AND THE JUDGE WILL TELL YOU THAT IN CLOSING.

NOW, THE GOVERNMENT'S THEORY THAT THEY HAVE PRESENTED TO YOU THROUGHOUT THIS CASE, OPENING STATEMENT UNTIL CLOSING STATEMENT, IS THAT LEARY ROBINSON COMMITTED ALL OF THESE ROBBERIES AND THAT IN EACH AND EVERY ONE OF THEM HE USED THAT .380 HANDGUN THAT WAS FOUND IN THE HOTEL ROOM, NOT SOME OTHER HANDGUN, THAT PARTICULAR .380 HANDGUN. AND THE EVIDENCE TELLS US THAT THAT SIMPLY CANNOT BE. OKAY. THERE'S TWO PRINCIPAL THINGS THAT TELL US THAT. NUMBER ONE, COREY WEBB'S TESTIMONY. COREY WEBB WAS THE TELLER AT BANK OF AMERICA ON FEBRUARY 21ST. RIGHT. INTELLIGENT, DYNAMIC YOUNG MAN, GOOD AT HIS JOB. HE TOLD YOU, LIKE ALL THE TELLERS DID, THAT THEY ARE TRAINED TO OBSERVE THINGS. THEY ARE TRAINED TO BE A TELLER, IS THAT WHEN SOMEONE COMES IN AND ROBS YOU, STAY CALM, DO WHAT YOU ARE TOLD, BUT DO YOUR BEST TO OBSERVE EVERYTHING YOU CAN ABOUT THE ROBBER AND THE ROBBERY, SO MUCH SO THAT AS SOON AS THE ROBBERY IS FINISHED, THE ROBBER IS OUT THE DOOR, THE FIRST THING THEY DO IS

LOCK THE DOORS.

THE SECOND THING THEY DO IS CALL LAW ENFORCEMENT. THE THIRD THING YOU DO IS CALL THE BANK'S SECURITY DIRECTOR. AND THE FOURTH THING THAT THAT TELLER DOES IS SIT DOWN WITH A SUSPECT DESCRIPTION FORM THAT THEY KEEP IN THE BANK AND WRITE DOWN THE THINGS THAT HE OR SHE REMEMBERS ABOUT THE ROBBER AND WRITES DOWN THOSE DETAILS. THIS IS NOT SOMETHING THAT HAPPENS LATER. BANKS GET ROBBED OFTEN AND THEY HAVE A PROCEDURE FOR HOW THEY DO THIS THAT MAXIMIZES THEIR ABILITY TO GET CRITICAL INFORMATION AS QUICK AS POSSIBLE. WHAT DID COREY WEBB SAY? HE SAID A MAN CAME IN AND ROBBED HIM. IS IT LEARY ROBINSON? YEP, THAT'S HIM RIGHT THERE. DID HE USE A GUN? MR. WEBB, ARE YOU FAMILIAR WITH GUNS? I AM AND I GREW UP IN THE PROJECTS AND I'M FAMILIAR WITH GUNS FROM THAT. I'VE HANDLED THEM, HELD THEM, SHOT THEM, I EVEN LOOKED INTO BUYING ONE FOR MYSELF. I AM FAMILIAR WITH GUNS. TELL US ABOUT THE GUN THAT WAS USED IN THE ROBBERY AGAINST YOU. BLACK SEMI-AUTOMATIC HANDGUN. IT LOOKED LIKE A GLOCK, KIND OF BOXY.

THE GOVERNMENT SHOWED HIM THE .380 THAT THEY SAY IS THE GUN USED IN THAT ROBBERY. AND WHAT DID HE SAY? IT'S NOT THE GUN. THAT IS NOT THE GUN THAT WAS USED TO ROB ME. THIS MAN IS FAMILIAR WITH GUNS, NO IMPEDIMENT. HE HAS THE ABILITY TO SEE THAT GUN. THEY SHOWED HIM. HE POINTED OUT. AND WHAT DID HE SAY? HE SAID THE GUN THAT WAS USED TO ROB ME DID NOT HAVE A SILVER STRIPE. THEY SHOWED HIM THE PHOTO. YOU SEE THE

GOVERNMENT PHOTO? I SURE DO. IS THAT THE BACK OF YOUR HEAD? IS THAT YOU GETTING ROBBED? IT SURE IS. DO YOU SEE THE SILVER STRIPE IN THE PHOTO? WHAT HE SAID WAS, I SEE THE PHOTOGRAPH AND I SEE THE SILVER STRIPE. WHAT I'M TELLING YOU IS THE GUN USED TO ROB ME WAS ALL BLACK AND DID NOT HAVE A SILVER STRIPE. IF THAT'S NOT THE BEST EVIDENCE, I DON'T KNOW WHAT IS. THIS MAN IS STANDING TWO OR THREE FEET FROM THE GUN, IS FAMILIAR WITH GUNS, IS TRAINED HOW TO HANDLE HIMSELF IN A ROBBERY TO OBSERVE DETAILS. COREY WEBB IS THE BEST EVIDENCE.

THE SECOND THING THAT TELLS YOU THAT THE GOVERNMENT'S THEORY HAS PROBLEMS IS THAT THE .380 -- THEY SAY THE .380 USED TO ROB COREY WEBB WAS A .380 FOUND IN THE HOTEL ROOM WHEN LEARY ROBINSON WAS ARRESTED. REMEMBER COREY WEBB AND WHAT ALL THE WITNESSES SAID ABOUT -- AND THE VIDEO SHOWED ABOUT GETTING -- THE STEPS HE WENT THROUGH THE ROBBERY. MR. ROBINSON APPROACHES, OPENS THE FOLDER, SLIDES THE GUN OUT AND SHOWS HIM, PUTS THE GUN BACK IN THE FOLDER. MR. WEBB PREPARES THE MONEY IN THE DYE PACK. MR. ROBINSON TAKES THE MONEY, PUTS IT IN THE FOLDER WITH THE GUN, CLOSES THE FOLDER AND THEN LEAVES. I ASKED ABOUT EVERYBODY WHO KNEW ABOUT IT, SO YOU'VE HEARD IT ENOUGH -- OR THE BASICS. THOSE DYE PACKS ARE DESIGNED -- THIS WAS -- WHEN THEY GO OUT THE DOOR THEY ARE DESIGNED TO STAIN PERMANENTLY ANYTHING THAT THEY COME IN CONTACT WITH. THE DYE PACK WAS IN THE FOLDER WITH THE THING -- ITEM THAT WAS USED TO ROB MR. WEBB, AND THAT ITEM, THAT GUN, WEAPON, WOULD BE STAINED WITH DYE. THERE'S JUST

NO OTHER EXPLANATION FOR IT. THE DYE PACK EXPLODED.

YOU HEARD FROM DETECTIVE ROMERO THE DYE PACK WAS FOUND IN THE PARKING LOT AT THAT BANK OF AMERICA ON FEBRUARY 21ST. THE GUN THAT WAS USED TO ROB COREY WEBB WOULD BE COVERED WITH DYE. IT'S JUST THAT SIMPLE. AND THE GUN THAT WAS FOUND WITH MR. ROBINSON, THE .380, HAS NO DYE ON IT, NONE WHATSOEVER. AGENT CARMAN DID NOT SEEK TO TEST THAT GUN AT ANY POINT. THEY BROUGHT AN AGENT IN HERE TO TELL YOU, OH, WELL, AFTER YOU GET A CONFESSION WE OFTEN STOP TESTING FORENSIC EVIDENCE. WE SEE NO NEED ONCE WE HAVE A CONFESSION. NONSENSE.

THEY GOT HIS CONFESSION ON MARCH 29TH. UP TO A WEEK LATER AGENT CARMAN WAS STILL SEEKING I.D.'S OF MR. ROBINSON AS THE ROBBER IN THESE ROBBERIES. HE WAS STILL OUT THERE GATHERING THE INFORMATION TRYING TO CONFIRM THE CASE. SO WHEN THEY SAY THE CONFESSION IS THE END OF IT, WE DON'T NEED TO DO ANYTHING ELSE, DON'T BELIEVE THAT. THEY DIDN'T TEST THAT GUN BECAUSE THERE'S OBVIOUSLY NO DYE ON IT. YOU WILL HAVE IT TO LOOK AT AND USE YOUR OWN EYES AND TELL ME IF THERE IS ANY DYE ON THAT GUN. THE F.B.I. HAS A LAB THAT'S SPECIFICALLY SET UP TO TRACE AND DETECT ANY TRACE OF THAT DYE. AND IT KNOWS THERE IS NO DYE ON IT BECAUSE IT WAS NOT THE GUN USED IN THAT ROBBERY. AND IN FACT, THE FUNDAMENTAL PIECE OF THE GOVERNMENT'S THEORY FALLS APART. ASK YOURSELF -- ADD UP TO THE QUESTIONS ABOUT THE ENTIRE GOVERNMENT'S THEORY. BECAUSE THEIR THEORY IS AND ALWAYS HAS BEEN THAT THE SAME GUN WAS USED ACROSS THE BOARD, ALL THE

EVIDENCE.

COREY WEBB, GREAT WITNESS. AND THE SCIENTIFIC EVIDENCE TELLS YOU THAT THE GUN FOUND ON MR. ROBINSON ON THE 29TH WAS NOT THE GUN USED IN THE BANK OF AMERICA ROBBERY ON FEBRUARY 21ST. COREY WEBB WAS WRONG. AND IF THAT .380 WAS NOT USED IN THAT BANK OF AMERICA ROBBERY, YOU HAVE TO ASK YOURSELF WHAT EVIDENCE DO YOU HAVE THAT A REAL GUN WAS USED IN ANY OF THESE ROBBERIES. MR. ROBINSON ADMITTED HIS PARTICIPATION IN THESE ROBBERIES. AND THERE'S ABSOLUTELY NO QUESTION HE'S GUILTY OF THE ROBBERIES BUT FOR THE WACHOVIA ROBBERY, AND I'LL TALK ABOUT THAT IN A MINUTE. BUT THE QUESTION OF WHETHER A REAL GUN WAS USED IN THESE ROBBERIES IS VERY MUCH AT ISSUE AND THAT'S FOR YOU TO DECIDE. LEARY TOLD YOU THAT IT WAS A B.B. GUN. HE TOLD YOU WHY HE USED A B.B. GUN, BECAUSE WHEN YOU WALK INTO A PLACE TO ROB SOMEBODY YOU HAVE TO SHOW SOMETHING. YOU SHOW THEM THIS, THEY ARE NOT GOING TO QUESTION YOU. NO ONE IS GOING TO STOP AND LOOK AND SAY, HEY, BEFORE YOU ROB ME CAN I LOOK JUST TO MAKE SURE THAT'S A GUN? NONSENSE.

SHRONDA HALL WORKS FOR THE TACO BELL -- TOLD YOU SHE LOOKED UP FROM HER DESK, SAW MR. ROBINSON STANDING THERE POINTING WHAT LOOKED LIKE A GUN AT HER. WHAT DID SHE DO? AS MS. HOFFER SAYS, SHE HIT THE FLOOR. SHE DOESN'T NEED TO ASK. SHE DOESN'T NEED TO BE TOLD TWICE. SHE DOESN'T NEED TO CHECK. WHEN ASKED SPECIFICALLY ON DIRECT EXAMINATION, DID IT LOOK LIKE A REAL GUN? SHE SAID, I DON'T KNOW. I'M NOT GOING TO CHECK. HE POINTED THE

GUN AT ME AND I GOT ON THE FLOOR. WHEN MS. HOFFER SAYS THE ACTIONS OF THE MEN AT THE TACO BELL ARE NOT THE ACTIONS OF MEN USING A B.B. GUN, DON'T BELIEVE IT. B.B. GUNS ARE MADE AND DESIGNED -- JUDGE FOR YOURSELF BECAUSE YOU'LL HAVE THEM TO LOOK AT -- ARE DESIGNED TO LOOK EXACTLY LIKE HANDGUNS. AND ASK -- WHEN YOU JUDGE THOSE, LOOK FOR YOURSELVES BECAUSE YOU'LL HAVE THEM TO LOOK AT. THEY LOOK -- WHEN YOU CONSIDER THEM, CONSIDER THEM FROM A PERSPECTIVE OF A ROBBERY VICTIM, A GUN BEING POINTED AT YOU HELD BY SOMEBODY ELSE IN WHAT'S OBVIOUSLY A ROBBERY SITUATION. OKAY. SO NO WITNESS IDENTIFIED THE GOVERNMENT'S GUN. NO WITNESS IDENTIFIED THAT GUN ON THE STAND. SEVERAL SAID IT COULD BE THAT GUN.

IN ALL THE TESTIMONY YOU NEVER HEARD A SINGLE WITNESS, WHEN ASKED TO DESCRIBE THE GUN THAT WAS USED IN THE ROBBERY, DESCRIBED IT AS OTHER THAN A BLACK SEMI-AUTOMATIC-TYPE PISTOL. NOT A SINGLE WITNESS, NOT A SINGLE ONE EVER SAID THE GUN WITH A SILVER STRIPE. THE TELLERS ARE TRAINED TO KNOW THESE THINGS, TRAINED TO OBSERVE THESE THINGS. AND THAT GUN, WHEN YOU LOOK AT IT, YOU WILL SEE THE ONE DISTINGUISHING FEATURE ON GOVERNMENT'S EXHIBIT 42, WHICH IS A .380 FOUND WITH LEARY ROBINSON WITH A SILVER STRIPE ON THE SIDE OF IT. NOT A SINGLE WITNESS IDENTIFIED THAT SILVER STRIPE. AND WE KNOW THAT THE .380 THEY FOUND CANNOT BE THE ONE USED IN THE BANK OF AMERICA. AND IF THAT'S THE CASE AND WE ASK WHAT GUN THEN, WHAT ITEM WAS USED IN EACH ONE OF THESE ROBBERIES, ASK YOURSELF IF IT'S POSSIBLE, IF

IT'S REASONABLE THAT A B.B. GUN THAT LOOKS JUST LIKE A REGULAR GUN WAS USED. MR. ROBINSON TOLD YOU THAT THE B.B. GUN HE HAD WAS USED UP UNTIL HE ROBBED COREY WEBB GOT COVERED IN DYE AND HE THREW IT AWAY BECAUSE IT'S NO GOOD ANYMORE, WHICH IS WHAT THE DYE PACK IS DESIGNED TO DO.

AS FOR MS. ANDERSON'S TESTIMONY ABOUT THE BANK OF AMERICA ROBBERY ON FEBRUARY 12TH, MS. ANDERSON IS THE TELLER WHO CAME IN AND SAID THAT SHE WAS ROBBED AND MR. ROBINSON FLASHED A GUN UP IN THE AIR. I WOULD ASK YOU TO LOOK AT THE VIDEO FOR YOURSELVES AND JUDGE WHETHER OR NOT THAT HAPPENED. FIRST OF ALL, MR. ROBINSON ADMITTED THE ROBBERY TO YOU. HE ADMITTED THAT HE CARRIED A B.B. GUN IN THAT ROBBERY. HE SAYS HE DIDN'T FLASH IT. BUT ASK IN MS. ANDERSON'S TESTIMONY IF A GUN WAS FLASHED. LOOK AT THE VIDEO FOR YOURSELVES AND YOU DECIDE WHETHER THAT'S EVEN POSSIBLE. BUT EVEN IF IT WAS, IT DOES NOT SUPPORT ANY INFERENCE THAT IT WAS A REAL GUN. SHE COULD GIVE NO DESCRIPTION OTHER THAN IT WAS BLACK-TYPE GUN THAT WAS FLASHED. NO WITNESS CAN SAY IT'S THAT -- NO WITNESS GETS UP AND TESTIFIES AND SAYS, YES, IT LOOKS TO ME LIKE THAT PARTICULAR -- LOOK FOR YOURSELVES AND ASK IF THAT EVEN HAPPENED. YOU SEE MR. ROBINSON APPROACH THE TELLER LINE HOLDING A NOTE WITH TWO HANDS. YOU SEE HIM PLACE THE NOTE ON THE COUNTER WITH HIS LEFT HAND. THE COUNTER WAS 54 INCHES HIGH. YOU SAW ME MEASURE THAT FROM THE STAND YOURSELF. HANDS GO BELOW THE COUNTER AGAIN. NEXT TIME YOU SEE MR. ROBINSON'S HAND, IT'S HIS RIGHT HAND THAT COMES UP, TAKES THE MONEY, COMES

BACK DOWN, AND HIS RIGHT HAND RESTS EMPTY ON THE COUNTER WHILE HE WAITS TO MAKE SURE -- WHERE IS THE GUN IN ALL THIS TIME? SO ASK YOURSELVES -- WHEN YOU LOOK AT THAT VIDEO, NUMBER ONE, YOU JUST DON'T SEE A GUN. AND NUMBER TWO, THE ACTIONS AND THINGS YOU CAN INFER ABOUT HAND MOTIONS MAKES SENSE. AND THEN REMEMBER THIS: THE REASON THAT NOTE ROBBERIES ARE SO PREVALENT THESE DAYS IS BECAUSE A TRANSACTION AT A BANK BETWEEN A CUSTOMER AND A TELLER IS AN INHERENTLY PRIVATE THING.

THINK ABOUT WHEN YOU GO INTO A BANK. TONE DROPS, EVERYONE IS GENERALLY QUIET AT A BANK BECAUSE EVERYONE UNDERSTANDS THAT A FINANCIAL TRANSACTION BETWEEN AN INDIVIDUAL AND A TELLER AT A BANK IS A PRIVATE THING. YOU DON'T LOOK OVER SOMEBODY'S SHOULDER. YOU DON'T LISTEN IN. EVERYONE RESPECTS THAT YOU JUST DON'T GET IN PEOPLE'S BUSINESS WHEN YOU ARE IN A BANK. THAT'S WHY NOTE ROBBERIES WORK BECAUSE IT LOOKS LIKE YOU'RE EVERYONE ELSE IN A REGULAR BANK TRANSACTION. SO SOMEBODY CONDUCTING A ROBBERY -- THE CUSTOMER AND EMPLOYEES ALL WALKING AROUND, THE LAST THING THAT THEY WANT TO DO IS MAKE ANY SUDDEN MOTIONS IN FRONT OF A TELLER. THEY WANT TO CONTINUE JUST LIKE ALL THE WITNESSES SAID. MR. ROBINSON WAS CALM. HE WAS COOL. HE WAS COLLECTED. NOBODY ELSE NOTICED ANYTHING UNTOWARDS (SIC).

THE TELLERS KNEW THEY WERE BEING ROBBED BECAUSE THEY WERE -- MR. ROBINSON -- POINTING SOMETHING AT THEM. NOBODY SAID HE RAN IN THERE SCREAMING -- NONE OF THAT TRADITIONAL STUFF BECAUSE BANKS INHERENTLY ARE A PLACE WHERE PEOPLE RESPECT THE

PRIVACY OF A TRANSACTION. THE WAY TO TAKE ADVANTAGE OF THAT IN A NOTE ROBBERY IS TO MAKE YOUR TRANSACTION WHICH IS A ROBBERY LOOK LIKE EVERYBODY ELSE'S TRANSACTION SO NOBODY NOTICES ANYTHING. SO ASK YOURSELF UNDER THOSE CIRCUMSTANCES IF MS. ANDERSON SAW A GUN IN THAT CASE. EVEN IF YOU THINK MAYBE SHE DID SEE A GUN, THERE IS ABSOLUTELY NO EVIDENCE THAT IT WAS A REAL GUN. THE JUDGE WILL CHARGE YOU THAT FOR THE 924(C) COUNT A REAL GUN MEANS A FIREARM.

THE DEFINITION IS A WEAPON THAT IS CAPABLE OF DISCHARGING A PROJECTILE BY MEANS OF AN EXPLOSIVE, AND THAT A B.B. GUN WHICH IS USED TO COMPRESS AIR TO DISCHARGE A PELLET IS NOT A FIREARM UNDER 924(C). SO YOU HAVE TO FIND IT WAS A REAL GUN, A REAL FIREARM TO CONVICT ON THE 924(C) COUNTS. WHAT THAT LEAVES FOR US IN TERMS OF WHETHER OR NOT A REAL GUN WAS USED IN THESE ROBBERIES IS THE F.B.I.'S TESTIMONY TO YOU THAT MR. ROBINSON TOLD THEM IN HIS INTERVIEWS THAT HE USED A REAL GUN. THAT'S REALLY WHAT'S LEFT. WE KNOW IT CAN'T BE THE .380 BECAUSE THE FORENSIC EVIDENCE TELLS US THAT. COREY WEBB SAID IT WASN'T THAT. THAT LEAVES THE AGENTS. MS. HOFFER REFERRED -- MR. ROBINSON SAID TO WHICH AGENT. MR. ROBINSON SAID, HE SAID, SAID. THAT EVIDENCE CAME FROM THE F.B.I. FROM THEIR TESTIMONY AT TRIAL. AND WHAT THEY DO WHEN THEY INTERROGATE PEOPLE, AS A POLICY MATTER THEY CHOOSE NOT TO RECORD THOSE INTERVIEWS. IT'S A CHOICE THEY MAKE AND WHEN THEY MAKE THAT CHOICE THEY ARE ASKING YOU TO TRUST THEM TO TELL YOU NOT ONLY THE TRUTH, BUT TO

BE COMPLETELY ACCURATE IN ALL THE IMPORTANT DETAILS. THEY CHOOSE TO DO THAT AND THEY HAVE TO SUFFER THE CONSEQUENCES FOR THAT CHOICE IN CASES LIKE THIS. THEY GAVE YOU NO GOOD REASON FOR WHY THEY WOULDN'T RECORD THAT STATEMENT OTHER THAN F.B.I. POLICY. YOU HAVE THE EQUIPMENT? YES. F.B.I. POLICY NOT TO. YOU COULD DO IT? YES. F.B.I. POLICY NOT TO. THERE CAN BE NO BETTER -- NO MORE ACCURATE RECORDING OF WHAT HAPPENED THAN TO DO AN AUDIO OR VIDEO RECORDING OF THE INTERVIEW.

AT SOME POINT IN YOUR DELIBERATIONS YOU MAY HAVE QUESTIONS ABOUT EXACTLY WHAT THE TESTIMONY WAS FROM A WITNESS ON THE STAND. THERE MAY BE DISAGREEMENTS BETWEEN THE TWO OF YOU OR BETWEEN SEVERAL OF YOU ABOUT EXACTLY WHAT WAS SAID. ONE WAY THAT YOU MIGHT TRY TO RESOLVE THE LAPSE -- OR THE DIFFERENCES IN MEMORY IS TO ASK THE JUDGE IF WE CAN HAVE A TRANSCRIPT OF THAT WITNESS'S TESTIMONY. THAT'S WHY THINGS ARE RECORDED SO THAT THERE'S NO POSSIBILITY. IT ELIMINATES ANY POSSIBILITY OF MISUNDERSTANDING OF FAULTY MEMORY, FAULTY DETAILS. THERE'S A RECORDING OF WHAT LEARY ROBINSON SAID IN THOSE INTERVIEWS AND IF THEY HAVE MADE IT, THEY WOULD HAVE PLAYED IT AND THERE WOULD BE NO ISSUE.

IN CROSS-EXAMINATION AGENT MYERS SAID THAT THEY TAKE CONTEMPORANEOUS NOTES, THEY DO THEIR BEST TO TYPE UP THEIR NOTES AS SOON AS THEY CAN AFTER THE INTERVIEW TO REDUCE THE RISK OF FAULTY MEMORY, REDUCE THE RISK OF MISREPRESENTATIONS. THEY BOTH REVIEW IT BEFORE THEY SIGN IT TO MAKE SURE IT'S ACCURATE. THEY

MAKE CHANGES IF NEEDED. IT IS NOT A RECORDING, AND IN A CASE LIKE THIS IT OUGHT TO BE BECAUSE THEY ARE ASKING YOU TO TAKE AWAY SOMEONE'S LIBERTY AND PUT THEM IN JAIL, YET THEY CHOOSE NOT TO RECORD THOSE STATEMENTS. AND THEY COME IN HERE AND ASK YOU -- PUTTING THEIR OWN CREDIBILITY ON THE LINE AND SAY BELIEVE ME WHEN I TELL YOU THIS. YES, SOMETIMES THINGS GO WRONG. IT'S NOT A MISTAKE. I'M TELLING YOU THIS IS WHAT'S SAID WHEN THE SCIENTIFIC EVIDENCE IN THIS CASE INDICATES -- DOESN'T SUPPORT THAT. SCIENTIFIC EVIDENCE TELLS US THAT.380 WAS NOT USED TO ROB COREY WEBB BECAUSE IT WOULD HAVE DYE ON IT, YET THEIR THEORY IS LEARY ROBINSON TOLD US NOT ACROSS THE BOARD, SO WE HAVE NOT ACROSS THE BOARD. IT'S HIS GUN. THINK ALSO ABOUT THIS. YOU HAVE THE INDICTMENT BEFORE YOU. IF LEARY ROBINSON SAID, I USED THE GUN ACROSS THE BOARD, AND THAT WAS SUFFICIENT FOR THEM TO BRING A CASE, WHY ARE THERE NOT 924(C) COUNTS ASSOCIATED WITH EVERY SINGLE ONE OF THE ROBBERIES?

MS. HOFFER: YOUR HONOR, I'M OBJECT TO THAT.

MR. SAVIELLO: THAT IS IN EVIDENCE, YOUR HONOR.

MS. HOFFER: IT'S IMPROPER.

THE COURT: IT'S ARGUMENT. I'LL LET HIM.

MR. SAVIELLO: THEY CHOSE WHAT TO DO. AND IF LEARY ROBINSON'S STATEMENT WAS SUFFICIENT TO THEM AS THEY TESTIFIED ABOUT, WHY DIDN'T THEY BRING 924(C) COUNTS ON THOSE OTHER BANK ROBBERIES? BECAUSE IT'S NOT SUFFICIENT AND YOU OUGHT TO NEED SOMETHING MORE AND YOU OUGHT TO WANT SOMETHING MORE. AGAIN, YOU

JUDGE FOR YOURSELVES. THAT'S WHY YOU'RE HERE. WE TRUST YOU, SELECTED YOU AS JURORS. YOU TOLD US YOU WILL DO YOUR JOB AND WE COUNT ON THAT. AND THAT LEAVES US, THEN, WITH THE WACHOVIA ROBBERY ON FEBRUARY 21ST. MS. HOFFER TALKED TO YOU A LITTLE BIT ABOUT AIDING AND ABETTING AND WHAT THAT MEANS, AND THE JUDGE WILL CHARGE YOU ON THE LAW OF WHAT AIDING AND ABETTING MEANS. BUT ESSENTIALLY THAT MEANS IF SOMEBODY KNEW ABOUT AND PARTICIPATED IN THE ROBBERIES IN ANY WAY, THEY CAN BE GUILTY -- JUST AS GUILTY OF THE CHARGES AS IF THEY WENT IN AND DID THE ROBBERIES.

WHAT DO WE KNOW ABOUT THIS STRING OF ROBBERIES? LEARY ROBINSON IS IN THE BUILDING EVERY SINGLE TIME. ALL RIGHT. THERE'S NOT SOME OTHER PERSON GOING IN AND SAYING I WAS IN THE CAR OR WHATEVER. IT'S ALWAYS LEARY ROBINSON AT THE COUNTER, LEARY ROBINSON GOING BEHIND THE COUNTER AT THE BANK EXCEPT ON FEBRUARY 21ST, THE WACHOVIA. LEARY ROBINSON FROM THE MOMENT HE GOT ARRESTED UNTIL HE GOT ON THAT STAND SAID, I DID ALL OF THESE ROBBERIES EXCEPT THE WACHOVIA ON FEBRUARY 21ST. ASK YOURSELF IF THERE IS ANY LOGICAL REASON WHY HE WOULD EXCLUDE THAT IF IT WASN'T HIM. IT'S THE ONLY EXPLANATION FOR IT AND THE EVIDENCE SHOWS THAT.

YOU CAN LOOK AT THE PHOTOS FOR YOURSELVES. YOU LOOK AT THE PHOTOS OF THE ROBBERIES -- SO YOU ARE GOING TO HAVE THESE PHOTOS TO LOOK AT AND YOU ARE GOING TO HAVE TO DECIDE FOR YOURSELVES IF IT WAS LEARY ROBINSON IN THE BANK ON FEBRUARY 21ST. SO I WANT

TO PUT A COUPLE OF THESE UP AND TALK TO YOU ABOUT THEM. I HOPE YOU CAN SEE THIS BETTER ON YOUR MONITOR. AND, AGAIN, THE REPRODUCTION ONTO YOUR SCREEN IS NOT AS GOOD AS THE ACTUAL PHOTOS, BUT I THINK YOU CAN SEE IT FAIRLY WELL ON THERE. THE GOVERNMENT'S THEORY IS THAT THAT IS THE SAME PERSON 30 MINUTES APART DOING THE SAME THING IN TWO DIFFERENT BANKS. THEY'VE ADMITTED THAT YOU CAN'T REALLY SEE THE FACE IN THE WACHOVIA PHOTOS, WHICH IS THE PHOTO ON THE RIGHT HERE WHICH IS OF A SIGNIFICANTLY LESSER QUALITY. I WANT YOU TO LOOK AT THESE PHOTOS, BUT BEFORE YOU DO THAT I WANT YOU TO THINK ABOUT WHAT THE GOVERNMENT DID TO TRY TO SUPPORT THEIR THEORY IN TERMS OF INVESTIGATION. OKAY. THEIR THEORY IS THAT LEARY ROBINSON ROBBED ALL OF THESE BANKS. LEARY ROBINSON SAID, I DIDN'T ROB THE WACHOVIA ON MARCH 29TH (SIC) WHEN HE GAVE HIS INITIAL STATEMENT. HE SAID THAT ALL THE WAY ALONG. I DIDN'T ROB THE WACHOVIA. ON THE STAND HE TOLD YOU I DIDN'T ROB THE WACHOVIA. THEY'VE KNOWN ABOUT THAT FOR A LONG TIME.

WHAT DID THEY DO INVESTIGATION-WISE TO SUPPORT THEIR THEORY THAT IT WAS HIM? THEY HAD PHOTOGRAPHS OF THE ROBBERY, CORRECT. WHAT ELSE DID THEY HAVE? TWO EYEWITNESSES, THE TELLER, KATRINA (SIC) PARKER WHO STOOD TWO FEET FROM THE ROBBER WHILE SHE WAS BEING ROBBED. AND DONALD RUDE, WHO WAS THE OLDER GENTLEMAN WHO WAS IN THE PARKING LOT AND SAID HE CAME OUT AND WAS WALKING INTO THE BANK AND SAW THE ROBBER -- TOWARDS HIM, TURNED AND GOT IN THE VEHICLE -- TWO EYEWITNESSES TO THE

ROBBERY. ON MARCH 21ST THEY KNEW -- CERTAINLY BY THE END OF THE DAY MATT KARMAN KNEW THAT LEARY ROBINSON HAD ROBBED THE BANK OF AMERICA, WHICH WAS THE SECOND ROBBERY ON THE 21ST, AND SUSPECTED THAT FROM LOOKING AT THE CAMOUFLAGE CLOTHING THE EARLIER ROBBERY THAT DAY WAS ALSO LEARY ROBINSON. HE KNEW. HE HAD PHOTOGRAPHS BY THEN OF LEARY ROBINSON. WHAT DID HE DO ABOUT IT? NOTHING. NOT ONLY DID HE DO NOTHING, HE DID MORE THAN NOTHING. HE SPECIFICALLY AVOIDED DOING CERTAIN THINGS. BUT ONE THING HE AVOIDED DOING WAS TAKING A PHOTO LINE-UP TO MS. PARKER, THE TELLER. HE SAID, MA'AM, I'D LIKE YOU LOOK AT THE PICTURES AND TELL ME IF YOU RECOGNIZE -- THEY HAD A SUSPECT. MAKE NO MISTAKE. THEY CHOSE NOT TO SHOW A PHOTO LINE-UP TO EITHER MS. PARKER, THE TELLER WHO STOOD FACE TO FACE WITH THE ROBBER, OR MR. RUDE WHO WAS IN THE PARKING LOT AND SAW HIM COME OUT. NEVER. IT WAS A YEAR AGO. THEY NEVER SHOWED ANYBODY A PHOTO LINE-UP. TWO PERFECTLY GOOD EYEWITNESSES. YOU HAVE WITNESSES CAPABLE OF TESTIFYING NO IMPEDIMENT IN SEEING THE PERSON. THEY CHOSE NOT TO GO OUT THERE AND SHOW THEM A PHOTO LINE-UP.

WHAT ELSE DID THEY NOT DO REGARDING THE WACHOVIA ROBBERY? THEY HAVE THIS PHOTOGRAPH, THE THREE PHOTOGRAPHS OF THE ROBBERY IN PROGRESS. LIKE MANY OF THE SURVEILLANCE PHOTOGRAPHS THAT YOU'VE SEEN, THEY HAVE SURVEILLANCE PHOTOGRAPHS. ONE OF THEIR INVESTIGATIVE TECHNIQUES IS IF THEY FIND SOMEONE THAT KNOWS THE SUSPECT WELL, A FRIEND, A FAMILY MEMBER, EX-WIFE, THEY TAKE PHOTOGRAPHS FROM THE SURVEILLANCE VIDEOS, THEY GO TO THAT PERSON

AND SAY, DO YOU KNOW LEARY ROBINSON? YES, I DO? HOW WELL DO YOU KNOW HIM? I'M HIS WIFE. I KNOW HIM WELL. I'M HIS FRIEND. SO ON AND SO FORTH. LET ME SHOW YOU A SERIES OF PHOTOGRAPHS. TELL ME, IS THE PERSON YOU RECOGNIZE THE PERSON IN THESE PHOTOS ROBBING BANKS? WELL, YES, I DO. THAT'S LEARY ROBINSON. YOU HEARD THE TESTIMONY. MATT KARMAN WENT OUT TO MULTIPLE PEOPLE, SHOWED THEM SURVEILLANCE PHOTOGRAPHS OF THE ROBBERIES, OF THE ROBBERS ROBBING THE BANKS, SAID, DO YOU KNOW LEARY ROBINSON? IS THIS HIM? YES. SIGN THE PHOTOGRAPHS, THIS IS LEARY ROBINSON, THIS IS LEARY ROBINSON, THIS IS LEARY ROBINSON. NEVER DID HE SHOW A SINGLE PERSON THE WACHOVIA PHOTOGRAPHS, NOT ONCE. HE PREPARES HIS FILE TO INTERVIEW THE WITNESSES. HE GETS THE THINGS THAT HE'S GOING TO NEED TO GO TALK TO THAT PERSON. HE SPECIFICALLY EXCLUDED THE WACHOVIA PHOTOS FROM GOING OUT THERE AND TALKING TO THEM BECAUSE IT'S NOT A VERY GOOD PICTURE, BECAUSE IT'S OTHER EVIDENCE TO SUGGEST THAT THAT'S NOT LEARY ROBINSON. HE SPECIFICALLY EXCLUDED THOSE PHOTOS TO AVOID THE POSSIBILITY OF SOMEONE SAYING, NO, NO, NO, THAT'S NOT LEARY ROBINSON. I KNOW LEARY ROBINSON AND THAT'S NOT HIM.

VIRNA ROBINSON WHO KNOWS LEARY ROBINSON TESTIFIED ON THE STAND, AND WHEN SHE GOT UP THERE THE FIRST TIME ANYONE WHO KNOWS HER (SIC) HAD BEEN SHOWN THAT PHOTOGRAPH FROM THE WACHOVIA AND ASKED, IS THAT HIM. WHAT DID SHE SAY? I CAN'T SAY. ALL RIGHT. SHE SAID I CAN'T SAY. THEY KNEW THAT WAS GOING TO HAPPEN AND THEY AVOIDED DOING IT UNTIL WE GOT TO TRIAL AND PUT IT ON THE

STAND. SO ASK YOURSELVES IF THEY WERE SO SURE WHY THEY DIDN'T DO THOSE THINGS. AND THEN YOU CAN LOOK FOR YOURSELVES.

CAN WE DIM THE LIGHTS A LITTLE BIT? THANKS.

LOOK AT THESE PHOTOGRAPHS. YOU WILL BE ABLE TO DO THIS A LITTLE BETTER WHEN YOU'RE IN THE BACK WITHOUT THE VIDEO REPRODUCTION. LOOK AT THOSE AND LOOK -- A COUPLE OF THINGS THAT I NOTICED -- AND YOU NOTICE WHATEVER YOU FEEL LIKE. YOU ARE THE JUDGES. JUDGE FOR YOURSELVES. LOOK AT THE SHAPE AND SIZE OF THE HEAD IN RELATION TO THE HAT IN THE TWO PHOTOGRAPHS. TO ME IT LOOKS LIKE IN THE WACHOVIA PHOTOGRAPH ON THE RIGHT THE HEAD IS SMALLER. THE HAT SEEMS TO LOOM A LITTLE LARGER OVER THE HEAD.

SECONDLY -- YOU'LL SEE THIS BETTER IN THE ACTUAL PHOTOGRAPHS -- THE SHAPE OF THE FACE. TO ME IT LOOKS LIKE ON THE WACHOVIA, THE PHOTOGRAPH ON THE RIGHT, THE FACE IS ROUNDER, MORE FULL THAN THE PHOTOGRAPH ON THE LEFT, THE BANK OF AMERICA, THE FACE IS ANGULAR, THE CHIN MORE PRONOUNCED. OKAY. THREE, LOOK AT THE SHOULDERS. AND, AGAIN, YOU'LL HAVE THE SERIES OF PHOTOGRAPHS. IT LOOKS TO ME LIKE THE SHOULDERS OF THE PERSON WHO ROBBED THE WACHOVIA IN THAT CAMOUFLAGE JACKET AREN'T QUITE AS FULL, SEEM A LITTLE NARROWER. LOOK AT THE PHOTOS OF THE BANK OF AMERICA AND IF THE JACKET IS MORE FILLED OUT.

AND, FOURTHLY, AND MOST IMPORTANT LOOK AT THE UNDERSHIRT THAT THE ROBBER IS WEARING IN THESE PHOTOGRAPHS. THE WACHOVIA ON THE RIGHT, AS KATRINA (SIC) PARKER TESTIFIED, WEARING THE

DARK SHIRT UNDER THE CAMOUFLAGE STUFF. BANK OF AMERICA, 30 MINUTES LATER, SAME JACKET, WHITE T-SHIRT UNDERNEATH. CLEAR AS DAY IN ALL THOSE PHOTOGRAPHS. SO ASK YOURSELF IF THE GOVERNMENT'S THEORY MAKES SENSE. WHAT THEY'RE SAYING, THEN, IS LEARY ROBINSON WEARING A BLACK OR DARK UNDERSHIRT ROBBED THE WACHOVIA, GOT IN THE CAR WITH HIS PARTNER, THE GET-AWAY DRIVER, DROVE TO ROSWELL ROAD, STOPPED SOMEWHERE ALONG THE WAY, TOOK OFF ALL THE CLOTHES, TOOK OFF THE DARK T-SHIRT, PUT ON A WHITE T-SHIRT, PUT ALL THE CLOTHES BACK ON, WENT IN AND ROBBED THE BANK OF AMERICA. AND ASK YOURSELVES IF THAT'S POSSIBLE. AGAIN, YOU JUDGE FOR YOURSELVES IF THAT'S LEARY ROBINSON ROBBING THE WACHOVIA ON FEBRUARY 21ST, AND I SUBMIT TO YOU THAT IT'S NOT. THE GOVERNMENT HAS FAILED IN THEIR BURDEN AGAIN, ANOTHER CRITICAL LEG, FOUNDATION TO SUPPORT THEIR THEORY THAT IT WAS LEARY ROBINSON ACROSS THE BOARD, USING THE .380 ACROSS THE BOARD. THAT AGAIN FALLS. AND HOW MANY PEGS SUPPORTING THEIR THEORY CAN CRUMBLE BEFORE YOU ASK YOURSELVES ABOUT THAT?

THIS IS THE LAST CHANCE YOU WILL HEAR FROM ME. THE GOVERNMENT WILL HAVE AN OPPORTUNITY TO REBUT OUR CLOSING BECAUSE THEY WILL COME BACK AND HAVE THE LAST WORD. SO I WOULD JUST LIKE TO SUM UP A LITTLE BIT. THERE IS A LOT TO TALK ABOUT IN THIS CASE, A NUMBER OF ROBBERIES, A LOT OF EVIDENCE HAS COME IN IN A FAIRLY SHORT TIME. EVERYONE HAS HEARD A LOT OF TESTIMONY, SEEN A LOT OF DOCUMENTS, A LOT OF PICTURES AND THINGS OF THAT SORT. SO THIS IS WHAT I WOULD ASK YOU TO REMEMBER. THE

GOVERNMENT PROMISED YOU IN OPENING STATEMENT THAT THEY WOULD PROVE TO YOU CERTAIN THINGS, AND THEY HAVE FAILED IN THOSE PROMISES. AND THEY FAILED IN THE PROMISE TO BRING YOU THINGS TO SUPPORT THEIR BURDEN AND THEY FAILED IN THE THINGS THEY PROMISED YOU BECAUSE THEY SAID IN OPENING STATEMENT, FOR EXAMPLE, THAT VIRNA ROBINSON NOT ONLY HAD BEEN SHOWN A PHOTOGRAPH OF LEARY -- PHOTOGRAPHS OF THE WACHOVIA BANK ROBBERY AND IDENTIFIED LEARY, WHICH WE KNOW SHE DIDN'T BECAUSE SHE TESTIFIED TO THAT. AGENT CARMAN TESTIFIED HE DIDN'T SHOW HER THOSE PHOTOGRAPHS, SO THAT'S NOT TRUE AS REPRESENTED IN THEIR OPENING STATEMENT, NUMBER ONE. AND NUMBER TWO, THAT THEY FAILED TO FULFILL THEIR PROMISES. THEY TOLD YOU THE .380 WAS USED ACROSS THE BOARD -- THERE IS JUST OVERWHELMING EVIDENCE THAT IT'S NOT AND COULD NOT HAVE BEEN THE SAME GUN. COREY WEBB TOLD US IT WASN'T THE GUN. IF HE'S NOT A GOOD ENOUGH WITNESS, I DON'T KNOW WHAT IT IS. THE FORENSICS TELL US IT'S NOT THE SAME GUN. THE GOVERNMENT IS STILL STICKING TO THEIR STORY.

WACHOVIA, WE JUST SPOKE ABOUT THAT. -- THAT'S NOT LEARY ROBINSON, SO MUCH SO THAT IF YOU COULD -- YOU KNOW, IF YOU HAD TO FIND NOT GUILTY BEYOND A REASONABLE DOUBT, I WOULD ARGUE THAT YOU COULD -- YOU HAVE TO FIND NOT GUILTY BEYOND A REASONABLE DOUBT. ANYTHING ELSE THAT HE -- THEY FAILED IN THEIR BURDEN AS WELL. WHEN YOU DO ALL THAT, WHEN YOU USE YOUR COMMON SENSE, WHEN YOU JUDGE FOR YOURSELF, YOU DON'T TAKE THE GOVERNMENT AT ITS WORD. YOU DON'T TAKE THE F.B.I. AT ITS WORD AND THEIR

REPRESENTATIONS TO YOU ABOUT WHAT THEY REMEMBER.

REMEMBER WHEN THEY CHOOSE NOT TO RECORD INTERROGATIONS. THEY DON'T HAVE A POLICY ACROSS THE BOARD OF NOT RECORDING INVESTIGATIONS, DO THEY? WHAT DO THEY DO WHEN THEY SEARCH A HOTEL ROOM AND THEY GO AND FIND IF THERE'S ANYTHING IMPORTANT FOR THEIR CASE IN THE HOTEL ROOM? THEY TAKE PICTURES. AND WHEN THEY COME TO COURT WHAT DO THEY BRING? THEIR TESTIMONY AND THEY REFER TO THE PICTURES EVERY SINGLE TIME. WHY? A PICTURE SPEAKS A THOUSAND WORDS. IF YOU HAVE ANY QUESTION, ANY REASON TO HESITATE, THE AGENT MAY REMEMBER THINGS CORRECTLY, YOU LOOK AT THE PHOTOGRAPH. I FOUND THAT GUN ON THE BED IN ROOM 463. WHAT ARE YOU GOING TO GET? YOU ARE GOING TO GET A PHOTOGRAPH OF THE DOOR OF 463. YOU ARE GOING TO GET A PHOTOGRAPH OF THE ROOM WHERE YOU CAN SEE THE GUN OVER ON THE BED AND YOU ARE GOING TO GET A PHOTOGRAPH OF THE GUN ON THE BED. THAT, LADIES AND GENTLEMEN, IS RECORDING CRITICAL PIECES OF EVIDENCE AT THE TIME THEY HAPPENED SO THAT THERE CAN BE NO MISUNDERSTANDING LATER.

THEY DON'T HAVE A POLICY IN THE F.B.I. AGAINST RECORDING PERIOD. THE ONLY TIME THEY DON'T RECORD IS WHEN THEY DO AN INTERVIEW. I ASK YOU TO RELY -- AND THEY SAID WE'RE NOT STENOGRAPHERS. WE DON'T TAKE VERBATIM NOTES. WE SUMMARIZE. WE ARE PUTTING OUR CREDIBILITY OUT THERE. ASK YOURSELF IS THAT'S SUFFICIENT FOR YOU. YOU INDIVIDUALLY HAVE TO DECIDE WHETHER TO SEND THIS MAN TO PRISON FOR THINGS THAT THEY SAY HE DID. YOU HAVE TO DECIDE WHETHER HE'S GUILTY AND WHETHER THE GOVERNMENT

HAS MET ITS BURDEN. YOU HAVE TO BE SATISFIED INTERNALLY THAT THEY HAVE PROVEN THEIR CASE. IF THEY CHOOSE TO NOT BRING YOU A RECORDING OF AN INTERVIEW THAT THEY HAD EVERY OPPORTUNITY TO RECORD WHEN THEY INVESTIGATIVELY (SIC) -- THEY RECORD ALL OTHER KINDS OF THINGS, IT'S THE ONLY THING THEY DON'T RECORD. AND WHEN YOU LOOK AT THE GOVERNMENT'S CASE, LADIES AND GENTLEMEN, WITH YOUR EYES WIDE OPEN USING YOUR COMMON SENSE, JUDGING FOR YOURSELVES AND NOT TAKING IT AT FACE VALUE, YOU WILL SEE THE PROBLEMS WITH THEIR THEORY. THERE ARE FUNDAMENTAL PROBLEMS WITH THE WAY THEY PRESENT THEIR CASE AND THE EVIDENCE AS IT IS. AND WHEN YOU DO THAT YOU WILL FIND LEARY ROBINSON GUILTY OF ROBBING THE TACO BELL, ROBBING ALL THE BANKS EXCEPT THE BANK ON FEBRUARY 21ST, THE WACHOVIA.

THERE'S NO EVIDENCE THAT IT WAS HIM IN THE BANK, NOT SUFFICIENT EVIDENCE FOR AIDING AND ABETTING. HIS TESTIMONY WAS THE OTHER GUY WAS USING THE CAR, HE CAME BACK THAT MORNING AND SAID, HEY, I JUST DID THE WACHOVIA. DIDN'T KNOW ANYTHING ABOUT IT BEFOREHAND, NO EVIDENCE FROM THE GOVERNMENT TO SUGGEST HE DID KNOW ABOUT IT BEFOREHAND. IF YOU DO ALL THAT, IF YOU FIND HIM GUILTY OF THOSE CHARGES AND FIND HIM NOT GUILTY OF THE WACHOVIA ROBBERY, AND YOU WILL FIND THAT THE GOVERNMENT HAS FAILED TO PROVE TO YOU BEYOND A REASONABLE DOUBT -- SO THAT THE CERTAINTY WOULD BE THE MOST IMPORTANT OF YOUR PERSONAL AFFAIRS -- THAT LEARY ROBINSON USED A REAL FIREARM IN ANY OF THOSE ROBBERIES. THANK YOU VERY MUCH.

THE COURT: THANK YOU. I'D LIKE TO TAKE ABOUT A TEN-MINUTE BREAK, SO IF YOU'LL COME BACK AT 25 'TIL 11.

(RECESS TAKEN.)

THE COURT: MS. HALL, DO YOU HAVE A CLEAN COPY OF THE INDICTMENT? WE NEED TO SEND THEM BACK WITH ONE. WE CAN GET ONE. WE CAN PRINT ONE OUT.

MR. SAVIELLO: I MIGHT HAVE ONE, YOUR HONOR, IF YOU WANT ME TO LOOK.

THE COURT: MR. MACK, YOU READY?

WE'VE GOT ONE. MS. WRIGHT WILL PRINT ONE OUT.

(JURY PRESENT.)

THE COURT: MR. MACK.

MR. MACK: THANK YOU, YOUR HONOR. WATER WENT DOWN THE WRONG PIPE.

THE COURT: YOU WANT SOME MORE?

MR. MACK: THAT'S WHAT DID IT. GOOD MORNING.

GOOD MORNING, MEMBERS OF THE JURY. IN A FEW MINUTES YOU WILL GET THIS CASE INTO YOUR HANDS TO DECIDE THE FATE OF MR. STANLEY JOSEPH THOMPSON. NOW, THE GOVERNMENT HAS THE BURDEN OF PROOF, AS MR. SAVIELLO HAS TOLD YOU BEFORE. WE HAVE NOTHING TO PROVE IN THIS CASE. MR. THOMPSON DIDN'T HAVE TO TESTIFY TO PROVE ANYTHING, AND JUDGE MARTIN WILL LET YOU KNOW THAT YOU'RE NOT TO HOLD THAT AGAINST HIM THAT HE CHOSE NOT TO TESTIFY, WHICH IS HIS RIGHT. THE GOVERNMENT HAS THE BURDEN TO PROVE -- BEYOND A REASONABLE DOUBT TO PROVE EACH AND EVERY ELEMENT OF THE

INDICTMENT THAT THEY HAVE ACCUSED MR. STANLEY JOSEPH THOMPSON OF. NOW, WHEN I MET YOU EARLIER I TOLD YOU THAT MR. THOMPSON WAS INVOLVED IN A TACO BELL ROBBERY. BUT THE THING THAT I NOTICE AND YOU WILL ALSO NOTICE IS THAT HE'S NOT JUST SIMPLY CHARGED WITH ROBBING THE TACO BELL. HE'S CHARGED IN DOING IT IN A PARTICULAR WAY AND IT INTERRUPTED INTERFERENCE WITH COMMERCE. AND SO JUDGE MARTIN WILL LET YOU KNOW -- IS THAT THERE IS AN ELEMENT TO THIS PARTICULAR CHARGE. THERE ARE THREE ELEMENTS.

ONE, KNOWING THAT THE DEFENDANT OBTAINED OR TOOK MONEY FROM TACO BELL. TWO, THAT HE TOOK PROPERTY OR MONEY AGAINST THE VICTIM'S WILL THAT THEY DIDN'T CONSENT TO. BUT THE THIRD ELEMENT OF THIS PARTICULAR CRIME IS THAT AS A RESULT OF THE DEFENDANT'S ACTION, COMMERCE, OR AN ITEM MOVING IN COMMERCE, WAS DELAYED, OBSTRUCTED, OR AFFECTED IN ANY WAY OR DEGREE. ASK YOURSELF WHAT ITEM OF COMMERCE WAS DELAYED, INTERFERED WITH, OR OBSTRUCTED IN ANY MANNER AS A RESULT OF THAT ROBBERY. THE GOVERNMENT PRESENTED ABSOLUTELY NO EVIDENCE. THEY SAID, WELL, IT HAPPENED, SO FIND HIM GUILTY.

WE ALSO SAID IT HAPPENED, BUT THEY CHARGED HIM WITH THE WRONG THING. AN ARMED ROBBERY, POSSIBLY A ROBBERY OF SOME SORT, POSSIBLY, BUT NOT A ROBBERY THAT'S INTERFERING WITH COMMERCE. THERE WAS NOTHING PERTAINING TO COMMERCE. YOU REMEMBER THEIR WITNESS TRIED TO SAY, WELL -- HE WAS ASKED, "WELL, WHAT ABOUT INTERSTATE TRAVELERS?" AND WE OBJECTED. IT DIDN'T COME IN. THERE WAS NO EVIDENCE OF INTERSTATE TRAVELERS GOING TO THAT

PARTICULAR STORE. WELL, WHAT ABOUT THIS, WHAT ABOUT THAT? THERE WAS NOTHING INVOLVING INTERSTATE COMMERCE THAT WAS DELAYED OR OBSTRUCTED FOR ANY WAY (SIC). WELL, YEAH, THE STORE WAS CLOSED FOUR HOURS. YES, BUT THERE WAS NOTHING IN COMMERCE. WE HAD A ROBBERY THAT TOOK PLACE. WE HAD A ROBBERY THAT WAS DONE WITH A B.B. GUN. WE ADMITTED -- BUT THAT'S NOT WHAT HE'S CHARGED WITH. AND AS A JUROR IN THIS CASE YOU ARE OBLIGATED TO FOLLOW THE LAW THAT THE JUDGE GIVES YOU. YOU ARE OBLIGATED TO TAKE THE FACTS OF THIS CASE AND APPLY THE LAW TO THOSE FACTS AND THAT EVIDENCE AND COME TO A DECISION WHICH FOLLOWS THE LAW. IT'S NOT YOUR FAULT THAT THE GOVERNMENT CHARGED HIM WITH THE WRONG THING, SO DON'T FEEL OBLIGATED. DON'T LET YOUR EMOTION GET IN THE WAY. BUT YOU FOLLOW THE LETTER OF THE LAW. THEY DID NOT MEET THAT THIRD ELEMENT. THERE IS NOTHING TO SHOW INTERFERENCE WITH COMMERCE, AND AS A RESULT OF THAT, AS A RESULT OF THE WRONG CHARGE, YOU HAVE TO FIND HIM NOT GUILTY OF ROBBERY BY INTERFERING WITH COMMERCE.

THE JUDGE WILL ALSO TELL YOU WHAT COMMERCE IS AND SHE WILL LET YOU KNOW WHAT INTERSTATE COMMERCE -- WHICH IS, MEANS OF THE FLOW OF COMMERCE OR BUSINESS ACTIVITIES BETWEEN A STATE, BEING THE STATE OF GEORGIA, AND A POINT OUTSIDE OF GEORGIA. ANY EVIDENCE OF THAT? ABSOLUTELY NOT. WRONG CHARGE. BUT YOU FIND HIM NOT GUILTY BECAUSE HE'S CHARGED WRONGFULLY, AND THAT'S NOT YOUR FAULT. NOW, LET'S LOOK AT THESE ROBBERIES THAT WE'RE TALKING ABOUT. I TOLD YOU FROM THE OUTSET -- I WAS WRONG. I

SAID THE GOVERNMENT WILL PRESENT 38 WITNESSES AND NOT ONE OF THEM WILL TELL YOU THAT THEY SAW MR. STANLEY JOSEPH THOMPSON AS THE GET-AWAY DRIVER. I WAS WRONG IN THAT THE GOVERNMENT DIDN'T PRESENT 38 WITNESSES. THEY PRESENTED ABOUT 24. BUT I WAS RIGHT IN TELLING YOU THAT NOT ONE OF THE GOVERNMENT WITNESSES WOULD COME IN HERE AND TELL YOU THAT MR. STANLEY THOMPSON WAS A GET-AWAY DRIVER. YOU CAN LOOK AT EVERY WITNESS THAT CAME IN HERE FOR THE GOVERNMENT. NOT ONE SAID HE WAS THE DRIVER, NOT ONE. AND IF YOU LOOK AT EVERY ONE OF THE ONES THAT SAW A GET-AWAY DRIVER, THE S.U.V., THE WINDOWS ARE NOT TINTED, NOT TINTED AT ALL. THE LITTLE -- WHAT THEY CALL THE PINK CAR, THE REDDISH-TAN CAR, LOOK AT THE WINDOWS. THE WINDOWS AREN'T TINTED AT ALL.

THE GOVERNMENT SAID NOBODY WAS WEARING A MASK, THE GET-AWAY DRIVER WASN'T WEARING A MASK. THE GET-AWAY DRIVER WAS SUPPOSEDLY SITTING IN THE CAR. AND YOU HAVE WITNESS AFTER WITNESS SEEING THIS CAR, SEEING THIS S.U.V., AND NOT ONE WITNESS CAME IN AND SAID THE GET-AWAY DRIVER RESEMBLED MR. THOMPSON. NOW, IF YOU LOOK AT MR. THOMPSON, HE HAS SOME VERY DISTINGUISHABLE FEATURES THAT YOU WOULD NEVER FORGET. HE HAS THESE DARK CIRCLES UNDER HIS EYES. IF YOU SAW HIM ONCE, YOU WOULD NEVER FORGET HIM. IF YOU SEE HIM DOWN THE ROAD 20 YEARS LATER, I SAW THAT GUY BECAUSE HE HAS THE DISTINGUISHING FEATURES OF THOSE DARK CIRCLES ABOUT HIS EYES, UNDERNEATH. YOU WOULD NEVER FORGET IT. GUESS WHAT. NOT A SINGLE PERSON WHO WAS

ROBBED IN THIS CASE AT THESE BANKS EVER SAID THAT THE ROBBER WAS A TALL, SIX FOOT TWO, SIX FOOT THREE, LIGHT SKINNED ROBBER WHO HAD DARK CIRCLES UNDER HIS EYES. AND YOU KNOW WHY THEY DIDN'T SAY THAT? BECAUSE IT WAS NEVER MR. STANLEY THOMPSON.

NOW, LET'S LOOK AT THE FIRST ROBBERY. IT WAS THE ONE AT WACHOVIA, THE ONE THAT HAPPENED ON THE 21ST OF FEBRUARY. NOW, THE THING THAT YOU KNOW ABOUT THAT ROBBERY IS THAT, ONE, NOBODY KNOWS WHO ROBBED THAT BANK THAT DAY. NOBODY. WE HAVE A PHOTOGRAPH. NOBODY KNOWS WHO'S IN THE PHOTOGRAPH. THE GOVERNMENT DOESN'T KNOW, SO THEY SAID, WELL, YOU FIGURE IT OUT. WE GOT TWO PEOPLE. FIGURE OUT WHICH ONE DID IT. THAT'S NOT YOUR JOB. YOUR JOB IS TO LOOK AT THE EVIDENCE. NOW, WHO DOES THE EVIDENCE SAY DID IT? YOU DON'T KNOW. THEY DON'T KNOW. THEY BRING IN MR. ROBINSON'S WIFE. MR. ROBINSON'S WIFE SAID, I CAN'T SAY THAT'S HIM. BUT YOU KNOW IT'S NOT MR. THOMPSON BECAUSE THEY SAID IT WAS A DARK SKINNED FELLOW. HE'S OBVIOUSLY NOT DARK SKINNED. THEY SAID IT WAS -- DIDN'T SAY ABOUT THE EYES BEING -- CIRCLES UNDER THE EYES.

THE GOVERNMENT SAYS, WELL, WE'VE GOT FINGERPRINTS. GUESS WHAT. -- FINGERPRINTS OFF THE DOOR BECAUSE THE ROBBER DIDN'T HAVE GLOVES ON. NOT ONE OF THOSE FINGERPRINTS MATCHED MR. THOMPSON. GUESS WHAT ELSE. THERE WAS NOT A SINGLE WITNESS WHO CAME AND TOLD YOU THAT THERE WAS A GET-AWAY DRIVER IN THIS PARTICULAR ROBBERY, NOT A SINGLE ONE. SO IF THERE'S NO TESTIMONY FROM A WITNESS TELLING YOU THERE WAS A GET-AWAY

DRIVER, THE GOVERNMENT SAID, WELL, YOU'VE GOT TO ASSUME THERE WAS ONE BECAUSE THAT'S THE THEORY OF OUR CASE. NOT ONE WITNESS SAID THERE WAS A GET-AWAY DRIVER IN THIS PARTICULAR CASE -- FIRST CASE. AND YOU KNEW IT WASN'T MR. ROBINSON -- IT WASN'T MR. ROBINSON. IT WASN'T EVEN MR. THOMPSON BECAUSE THE DESCRIPTION NEVER FIT MR. THOMPSON. AND IF IT HAD BEEN MR. ROBINSON, HIS WIFE WOULD HAVE CERTAINLY SAID BECAUSE SHE SAID WITH EVERY PICTURE, THAT'S HIM, THAT'S HIM, THAT'S HIM. HOW DO YOU KNOW? I JUST KNOW. SHE DIDN'T SAY THAT SHE JUST KNEW, BECAUSE SHE DIDN'T KNOW BECAUSE IT WASN'T HIM AND IT WASN'T MR. THOMPSON. AND SO WHAT DOES THAT TELL YOU? THE FINGERPRINTS DON'T MATCH. THE I.D.'S DON'T MATCH THESE FOLKS, SO THERE IS A THIRD ROBBER OUT THERE SOMEWHERE THAT THE GOVERNMENT JUST SAYS, WE DON'T CARE WHO HE WAS. THEY WERE WEARING ROBINSON CLOTHES, SO ROBINSON MUST HAVE BEEN INVOLVED IN SOME KIND OF WAY. BUT WHAT ABOUT MR. THOMPSON? NOTHING CONNECTS MR. THOMPSON -- NOTHING AT ALL -- TO THE WACHOVIA BANK ON FEBRUARY 21ST OF 2007. ALSO, YOU'VE GOT TO REMEMBER TOO MR. DONALD RUDE. HE DROVE UP. HE SAW THE DRIVER OF THE CAR BECAUSE THEY WERE PARKED -- YOU KNOW, FUNNY PARKED, BACKED INTO A HANDICAP PLACE. HE ACTUALLY WALKS PAST THE CAR AND SEES THE PERSON COMING OUT OF THE BANK ONE TIME, BUT HE DOESN'T SEE ANYTHING ABOUT THE DRIVER TO SAY IT WAS MR. THOMPSON OR ANYBODY ELSE.

NOW, WE LOOK AT THE BANK OF AMERICA ON FEBRUARY 21ST. YOU

KNOW THAT MR. THOMPSON WAS NOT THE ROBBER OF THIS BANK BECAUSE YOU HAVE A VIDEO, VIDEO, PHOTOGRAPHS, AND NONE OF THOSE MATCH MR. THOMPSON. AND SO WHEN THE GOVERNMENT SAYS, BUT IT'S GOT TO BE MR. THOMPSON BECAUSE WE JUST KNOW IT WAS. NOT ONE WITNESS, AGAIN, ALL 24 WITNESSES THAT THEY PRESENTED, NOT ONE WITNESS SAID THAT'S THE GET-AWAY DRIVER, I SAW HIM WITH MY OWN EYES, I RECOGNIZE HIM BECAUSE OF THOSE CIRCLES UNDER HIS EYES. I WILL NEVER FORGET THAT FACE. NOT ONE. BUT THEY SAID IT HAD TO BE, EVEN THOUGH THE EVIDENCE DOESN'T SHOW IT, IT HAD TO BE HIM. WE DON'T KNOW, BUT TRUST US.

YOU MIGHT REMEMBER MS. AIMEE RANK. SHE SAID -- SHE TESTIFIED SHE SAW THE DRIVER IN THE GET AWAY CAR AGAIN PARKED WHERE? IN THE HANDICAP PARKING. THERE WAS NOTHING BLOCKING HER VIEW. THERE WAS NO TINTED WINDOW. THERE WAS NOTHING TO OBSTRUCT HER FROM SEEING THE PERSON IN THAT PARTICULAR CAR. SHE CAME IN AND SHE LOOKED AT THESE GUYS AND SHE COULDN'T SAY, THAT LOOKS LIKE HIM RIGHT THERE, I THINK THAT'S HIM. THERE WAS NOTHING PERTAINING TO MR. THOMPSON BECAUSE HE WAS NOT A GET-AWAY DRIVER AT ANY BANK ROBBERY AT ANY TIME.

NOW, LOOK AT THE -- AND AS TO THE COUNT ONE WHICH IS THE -- AND COUNT TWO, THE ROBBERY OF THE TACO BELL, BECAUSE THERE IS NO INTERSTATE COMMERCE THAT'S BEING SLOWED UP, INTERRUPTED, ANYTHING LIKE THAT, YOU HAVE TO FIND HIM NOT GUILTY. ON THIS PARTICULAR ONE INVOLVING THE WACHOVIA BANK, YOU WOULD ALSO HAVE TO FIND HIM NOT GUILTY OF COUNT SIX AND SEVEN BECAUSE THERE'S

ABSOLUTELY NOTHING THAT SAYS IT WAS HIM ROBBING, HIM DRIVING AWAY OR HIM DOING ANYTHING. SO COUNT SIX AND SEVEN, WACHOVIA BANK, AGAIN, NOT GUILTY. ON THE BANK OF AMERICA ON FEBRUARY 21ST THAT'S ALLEGED IN COUNTS EIGHT AND NINE, AGAIN, NO EVIDENCE WHATSOEVER, NOTHING, NO FINGERPRINTS, NO I.D. THEY KNOW NOTHING. AND SO, AGAIN, BECAUSE THERE IS NO EVIDENCE, ABSOLUTELY NO EVIDENCE AT ALL, YOU MUST FIND HIM NOT GUILTY.

NOW, I WANT TO TURN YOUR ATTENTION TO THE BANK ROBBERY OF THE BANK OF AMERICA ON MARCH THE 14TH OF 2007. NOW, IN THIS PARTICULAR ONE YOU KNOW, AGAIN, WHO THE ROBBER WAS. YOU KNOW WHO THE ROBBER WAS. YOU KNOW WHO THE ROBBER WAS. MR. ROBINSON TOLD YOU WHAT HE DID. NOW, WHAT YOU HAVE TO DECIDE IS WAS THERE A GET-AWAY DRIVER. AND IF YOU LOOK AT YOUR NOTES -- AND YOU'LL HAVE YOUR NOTES, BUT IT'S NOT EVIDENCE, BUT I'M GOING TO TELL YOU -- REMIND YOU WHAT THE EVIDENCE SHOWED. THEY PUT UP MS. PATRICIA MANNING. SHE WAS THE ONLY WITNESS FROM THE GOVERNMENT WHO TESTIFIED ABOUT THAT PARTICULAR ROBBERY. THEY NEVER ASKED HER WAS THERE A GET-AWAY DRIVER. THEY NEVER ASKED HER IF ANYBODY SAW THE CAR, THE S.U.V. OR ANYTHING. THEY ASKED HER WHAT THE ROBBER LOOKED LIKE. SHE TOLD YOU WHAT THE ROBBER LOOKED LIKE. THOSE DESCRIPTIONS DID NOT FIT MR. THOMPSON. NO EVIDENCE WHATSOEVER THAT THERE WAS EVEN A GET-AWAY CAR INVOLVED. BUT THE GOVERNMENT SAID, WELL, THERE WAS A GET-AWAY CAR INVOLVED IN SOME OF THE OTHERS, SO WE HAVE TO ASSUME THERE WAS A GET-AWAY DRIVER ON EVERY ROBBERY BECAUSE THAT WOULD HAVE TO FIT OUR M.O.

THAT WE HAVE IN THIS CRIME.

MEMBERS OF THE JURY, YOU DON'T GO BY M.O. YOU GO BY EVIDENCE. YOU DON'T GO BY WHAT IT FEELS LIKE. YOU GO BY EVIDENCE. IT'S NOT ABOUT SPECULATION. IT'S NOT ABOUT INNUENDOES. IT'S NOT ABOUT FEELINGS. IT'S ABOUT THE EVIDENCE. WHEN YOU LOOK AT THE EVIDENCE OF THAT ROBBERY ON MARCH THE 14TH IN THAT BANK OF AMERICA, IT IS CLEAR IT WAS NOT MR. THOMPSON AND IT WAS ALSO CLEAR THERE WAS NO EVIDENCE THAT THERE WAS A GET-AWAY DRIVER AND IT'S ALSO CLEAR THERE IS NOTHING CONNECTING MR. THOMPSON TO THAT ROBBERY. AND AS A RESULT OF THAT, BECAUSE THEY FAILED TO MEET THEIR BURDEN OF PROOF, YOU MUST FIND HIM NOT GUILTY. AND THAT WOULD BE ON COUNT TEN OF THE INDICTMENT YOU WILL HAVE BEFORE YOU.

NOW, LET'S LOOK AT MARCH 19TH, 2007. AGAIN, IT'S A BANK OF AMERICA. AND, AGAIN, YOU KNOW THAT MR. THOMPSON WAS NOT THE ROBBER. YOU KNOW THAT THERE'S ABSOLUTELY NOTHING TYING MR. THOMPSON TO THIS PARTICULAR CRIME OTHER THAN THE GOVERNMENT SAYING, WELL, THERE HAD TO BE A GET-AWAY DRIVER AND WE BELIEVE IT WAS MR. THOMPSON. WHAT THEY BELIEVE IS NOT EVIDENCE. WHAT YOU HEARD FROM THIS WITNESS STAND IS EVIDENCE. WHAT YOU SEE IN PHOTOGRAPHS IS EVIDENCE. THAT'S WHAT YOU GO BY. THE DOCUMENTS THAT YOU SEE, THAT'S EVIDENCE. WHAT YOU BELIEVE IS NOT IMPORTANT. WHAT DOES THE EVIDENCE SHOW? DO YOU BELIEVE THE EVIDENCE? THAT'S WHAT'S IMPORTANT. THERE'S NOTHING TYING MR. THOMPSON TO THE MARCH 19TH ROBBERY AT ALL.

NOW, ALSO, AGAIN, THE GOVERNMENT ONLY PRESENTED ONE WITNESS FROM THIS ROBBERY WHO WAS MS. VIVIANA GOMEZ. THEY NEVER ASKED HER, DID YOU SEE HIM GO GET INTO A CAR, THE ROBBER? DID YOU SEE THE DRIVER GET INTO THE PASSENGER SIDE? DID YOU SEE A GET-AWAY CAR? THEY NEVER ASKED HER ABOUT ANY OF THAT. ALL SHE TESTIFIED TO WAS THE ROBBER WHO ROBBED HER, NOTHING ABOUT A GET-AWAY CAR, NOTHING ABOUT A GET-AWAY DRIVER. BUT THE GOVERNMENT SAID, WELL, WE KNOW WE PUT UP THAT EVIDENCE, BUT YOU ALL HAVE TO MAKE THE LEAP TO SAY THERE HAD TO BE A GET-AWAY DRIVER BECAUSE, OTHERWISE, IT LETS MR. THOMPSON OUT OF THE CASE COMPLETELY. BUT, MEMBERS OF THE JURY, THERE WAS NO GET-AWAY DRIVER. THERE WAS NO EVIDENCE OF THAT, NO TESTIMONY FROM ANY WITNESS OF THAT. AND WHEN THERE WAS A GET-AWAY DRIVER, GUESS WHAT, NOT ONE SAID IT WAS MR. THOMPSON. SO AS A RESULT OF THAT, MEMBERS OF THE JURY, AGAIN, NO EVIDENCE WHATSOEVER, AND ON COUNT 11 YOU MUST FIND MR. THOMPSON NOT GUILTY.

NOW, MEMBERS OF THE JURY, IN SPITE OF THE GOVERNMENT HAVING ABSOLUTELY NO EVIDENCE ON THOSE COUNTS TO TIE MR. THOMPSON TO THIS CRIME, THEY JUST SAY, WELL, JUST TRUST US AND BELIEVE US AND GO ALONG WITH US. BUT WE HAVE STANDARDS IN OUR JUDICIAL SYSTEM, STANDARDS THAT YOU'VE TAKEN AN OATH TO UPHOLD, STANDARDS THAT SAID THAT EVERYONE THAT IS ACCUSED IS PRESUMED TO BE INNOCENT UNTIL IT'S OVERCOME WITH SOME SOLID EVIDENCE, SOME SUFFICIENT EVIDENCE, SOME EVIDENCE THAT SAYS OTHERWISE. JUST BELIEVING IT DOESN'T MAKE IT SO. IF YOU'VE GOT SOLID EVIDENCE,

DOES THE SOLID EVIDENCE MAKE IT SO? IS THE EVIDENCE PRESENTED TO YOU SUFFICIENT ENOUGH? THAT'S THE STANDARD YOU HAVE TO HOLD THE GOVERNMENT TO. THAT'S THE STANDARD THAT YOU TOOK AN OATH TO HOLD TODAY. BUT WE ASK THAT YOU CARRY OUT THAT STANDARD AND MAKE THEM PROVE A CASE BEYOND A REASONABLE DOUBT, NOT BECAUSE OF WHAT THEY BELIEVE, BUT BECAUSE OF WHAT THE EVIDENCE SAYS. AND YOU HAVE TO FIND HIM NOT GUILTY ON THOSE COUNTS WE WENT OVER.

NOW, LET'S LOOK, MEMBERS OF THE JURY, AT THE OTHER COUNTS. WHEN YOU LOOK AT THE ROBBERY OF THE SUNTRUST BANK ON FEBRUARY 12TH, 2007, AGAIN, YOU KNOW MR. THOMPSON WAS NOT THE ROBBER. AGAIN, THERE'S NOT A SINGLE WITNESS OUT OF 24 WITNESSES THAT THE GOVERNMENT PUT UP THAT SAID MR. THOMPSON WAS THE GET-AWAY DRIVER. NO DESCRIPTION FROM ANYBODY MATCHES MR. THOMPSON WITH ALL THESE DISTINGUISHABLE FEATURES THAT HE HAS. THE GOVERNMENT SAYS, WELL, WAIT ONE MINUTE. WE GOT FINGERPRINTS ON A NOTE FROM THE SCENE OF THAT ROBBERY.

NOW, IF HE'S THE GET-AWAY DRIVER AND HE'S THE PERSON THAT WROTE THE NOTE, ASK YOURSELF WHY THERE IS NOT A SINGLE FINGERPRINT ON THAT NOTE THAT BELONGS TO MR. THOMPSON, NOT ONE, NOT A SINGLE FINGERPRINT FROM THAT ROBBERY THAT BELONGS TO HIM. THIS IS THE FEBRUARY 12TH AT THE SUNTRUST BANK. AND SO NOW IF HE'S THE ONE WHO'S WRITING ALL THE NOTES AND THEY SAID THAT'S HOW WE GOT HIM, THAT'S WHAT YOU HAVE TO BELIEVE, THEN, THAT KNOCKS THEIR THEORY COMPLETELY OUT OF THE WATER. THERE WOULD HAVE BEEN AT LEAST A FINGERPRINT WHEN HE'S WRITING, I MEAN,

SOMETHING ON THAT NOTE ACCORDING TO THEIR THEORY. THAT COMPLETELY TELLS YOU AND IT BLOWS THEIR THEORY OUT OF THE WATER THAT MR. THOMPSON IS NOT A GET-AWAY DRIVER. MR. THOMPSON IS NOT WRITING NOTES. MR. THOMPSON IS NOT HANDING A NOTE TO ANYBODY. AND THEIR OWN EVIDENCE SHOWS THAT AND PROVES THAT HE DID NOT PARTICIPATE ONE WAY OR ANOTHER. THAT'S THEIR EVIDENCE. AND AS A RESULT, MEMBERS OF THE JURY, OF THAT PARTICULAR ROBBERY ON FEBRUARY THE 12TH OF THE WACHOVIA BANK, YOU HAVE TO FIND HIM NOT GUILTY.

NOW, LOOK AT THE ROBBERY THAT HAPPENED ALSO ON FEBRUARY THE 12TH THAT WAS AT THE BANK OF AMERICA. AGAIN, WE KNOW HE WASN'T THE ROBBER. AGAIN, NOT ONE OUT OF 24 WITNESSES SAID HE WAS THE GET-AWAY DRIVER. AGAIN, NO DESCRIPTION MATCHING HIM, NOTHING TYING HIM TO IT. BUT THE GOVERNMENT SAYS WAIT A MINUTE, WAIT A MINUTE, WAIT A MINUTE. OUR THEORY IS STARTING TO COME INTO PLAY NOW. HIS FINGERPRINTS WERE FOUND ON -- ALLEGEDLY FOUND ON THE BACK OF A NOTE. AND YOU REMEMBER OFFICER ALLEN, OKAY -- FINGERPRINTS A YEAR LATER. BUT REMEMBER INSPECTOR MCENTYRE, TO MAKE SURE ALL THE FINGERPRINTS SHOWED UP, HE DID THE FINGERPRINT ANALYSIS WITH THE AFIS SYSTEM, THE AUTOMATIC FINGERPRINT IDENTIFICATION SYSTEM, WITH THAT TECHNICIAN ON FEBRUARY 13TH, THE DAY AFTER THE ROBBERY. AND I SAID, MR. MCENTYRE, DETECTIVE MCENTYRE, DID YOU FIND ANY FINGERPRINT WHATSOEVER ON THAT NOTE THAT BELONGED TO MR. STANLEY THOMPSON? HE SAID, NO, WE DIDN'T. WELL, DID YOU SCAN IT IN? DID YOU CHECK IT? YES, WE DID. DID

YOU FIND ANYTHING? NO, WE DID NOT. ARE YOU SURE? WE DIDN'T FIND IT. WE FOUND TWO THAT MATCHED MR. ROBINSON, BUT WE DIDN'T FIND ANY FINGERPRINTS THAT MATCHED MR. THOMPSON. THEN ALMOST A YEAR LATER, I'M GETTING READY FOR TRIAL AND NOW, OH, I JUST HAPPEN TO SEE A PARTIAL FINGERPRINT, A THIRD FINGERPRINT NOW ON THE BACK THAT DETECTIVE MCENTYRE, WHO HAS OVER 20 YEARS OF EXPERIENCE IN INVESTIGATING HOMICIDES AND BANK ROBBERIES, WHO DEVELOPED THE FINGERPRINTS, AND THE AGENT'S TECHNICIAN, SOMEHOW IN ALL OF THEIR EXPERIENCE THEY COULD NOT SEE A FINGERPRINT THAT WAS DEVELOPED BY DETECTIVE MCENTYRE ALLEGEDLY ON THE BACK OF THIS PAPER. AND THEN I WANT YOU TO KNOW -- I SAID, WELL, HOW WAS THE FINGERPRINT? HE SAID, WELL, IT WAS A LEFT INDEX FINGER AND SOME KIND OF WAY IT HAD TO BE PRESSED DOWN SO THAT ONLY THE RIGHT PORTION OF THE FINGERPRINT SHOWED UP. THAT'S A ODD WAY TO HOLD A PIECE OF PAPER. THAT'S AN ODD WAY TO TRY TO WRITE SOMETHING. THAT'S AN ODD WAY TO HAND SOMEBODY A NOTE. BECAUSE IT WASN'T SO.

THE GOVERNMENT SAID, WELL, HE WROTE THE NOTE. HE HAD TO WRITE THE NOTE WITH HIS INDEX FINGER LIKE THIS. HE HAD TO WRITE IT EVEN THOUGH HIS FINGERPRINTS ARE NO WHERE ELSE ON THE NOTE. IT'S ON THE BACK SIDE OF A SHEET OF PAPER. THEY SAID, WELL, BECAUSE IT'S ON THE BACK SIDE, THEN OBVIOUSLY HE HAD TO BE THE GET-AWAY DRIVER AND HE ALSO HAD TO WRITE THE NOTE EVEN THOUGH IT JUST WAS HIS LEFT INDEX FINGER. HE CAN'T HOLD A PENCIL, HE CAN'T HOLD A PIECE OF PAPER, BUT YET HE STILL HAD TO WRITE IT.

IMPOSSIBLE. IMPOSSIBLE. SEE, THEY CAN'T PICK AND CHOOSE THE THEORY THEY ARE GOING TO USE. EITHER HE WROTE ALL OF THE NOTES OR NONE OF THE NOTES. THE EVIDENCE SHOWED SO FAR THAT HE HASN'T WRITTEN ANY OF THE NOTES, BUT THEY KEEP ARGUING THAT IT'S BECAUSE HIS FINGERPRINT IS LIKE THIS ON THE BACK.

I ALSO TOLD YOU THAT OFFICER RICH WAS ANOTHER TECHNICIAN WHO WAS SUPPOSED TO DO A VERIFICATION OF THIS THIRD FINGERPRINT. HE SAID HE DID IT. I ASKED HIM, NOW, OFFICER, DIDN'T YOU DO A REPORT IN THIS CASE? YES, I DID. DID YOU DO A SUMMARY OF EVERYTHING? YES, I DID. LOOK AT YOUR SUMMARY, SIR. DIDN'T YOU PUT IN YOUR SUMMARY THAT OFFICER RICH WAS NOT ABLE TO IDENTIFY THE THIRD FINGERPRINT? HE LOOKED AT IT AND SAID, YEAH, YOU RIGHT. AND THEN HE SAYS, OH, BUT I KNOW WHY THAT HAPPENED. I FOUND THE THIRD FINGERPRINT BEFORE I DID THE REPORT. I SAID, WAIT A MINUTE, OFFICER ALLEN. ISN'T IT TRUE THAT YOU FAXED THE THIRD FINGERPRINT ALONG WITH YOUR REPORT AT THE SAME TIME TO THE GOVERNMENT ON THE SAME DAY? HE SAID, WELL, YEAH, I DID. I SAID, YOU KNEW ABOUT THE THIRD FINGERPRINT WHEN YOU PREPARED YOUR REPORT. HE SAID, WELL, YEAH, I GUESS I MUST HAVE MADE A MISTAKE.

HE WASN'T MAKING A MISTAKE. HE KNEW THAT OFFICER RICH DID NOT VERIFY THAT THIRD FINGERPRINT. THE GOVERNMENT KNEW ABOUT OFFICER ERIC RICH, BUT THEY FORGOT -- THEY JUST CHOSE NOT TO BRING HIM IN TO CORROBORATE THIS THIRD FINGERPRINT THAT ALLEGEDLY SHOWS UP A YEAR LATER. WHY? DO YOU THINK OFFICER

ALLEN WOULD FALSIFY A REPORT THAT HE GIVES TO THE GOVERNMENT THAT SAYS IT WASN'T SO, THAT THE THIRD FINGERPRINT WASN'T VERIFIED? I DON'T THINK SO. AND BECAUSE THAT THIRD FINGERPRINT IS SUSPICIOUS, THAT THIRD FINGERPRINT, MEMBERS OF THE JURY -- EVEN IF HE SAID, WELL, IT BELONGS TO MR. THOMPSON, YOU CAN'T WRITE WITH IT, YOU CAN'T HOLD A PIECE OF PAPER WITH IT, YOU CAN'T DO ANYTHING. WHY AREN'T THERE MORE FINGERPRINTS? WHY -- STUFF THAT WHEN HE'S WRITING, WHY ISN'T THERE A THUMB PRINT? WHY ISN'T THERE SOMETHING ELSE PERTAINING TO HIM ON THAT NOTE?

THE GOVERNMENT SAID HE WROTE THE NOTE. HOW DO YOU WRITE A NOTE, MEMBERS OF THE JURY, AND NOT HAVE ANY FINGERPRINTS ON THE FRONT? HOW DO YOU WRITE A NOTE -- HAND SOMEBODY A NOTE AND NOT HAVE A FINGERPRINT ON THE FRONT AND THE BACK? YOU CAN'T DO IT, YOU KNOW, UNLESS YOU ARE HOUDINI, AND EVEN HOUDINI CAN'T DO THAT. AND SO THEIR THEORY ABOUT A GET-AWAY DRIVER, THAT -- IT BEING MR. THOMPSON IS FALLING APART AND THEY KNOW IT. THEN THEY SAY, WELL, MAYBE WE DON'T QUITE HAVE HIM ON THAT. AND SO -- BUT AS A RESULT OF THAT LACK OF EVIDENCE YOU HAVE TO FIND HIM NOT GUILTY OF THAT BANK ROBBERY, OF BEING ASSOCIATED WITH THE BANK ROBBERY AS A GET-AWAY DRIVER ON FEBRUARY 12TH (SIC) OF 2007, WHICH LEADS US TO THE LAST ONE.

THE LAST ROBBERY YOU RECALL, MEMBERS OF THE JURY, WAS THE ROBBERY THAT TOOK PLACE AT THE SUNTRUST BANK ON MARCH THE 26TH OF 2007. AGAIN, YOU KNOW THAT HE WAS NOT THE ROBBER, NO DESCRIPTION MATCHED HIM, PEOPLE LOOKED AT THE GET-AWAY DRIVER.

THEY SEE THE GET-AWAY DRIVER. BUT GUESS WHAT? NOT ONE COMES IN HERE AND SAYS THE GET-AWAY DRIVER WAS MR. THOMPSON. THE GOVERNMENT SAID, WELL, OKAY, THEN. YOU CAN'T WRITE WITH YOUR INDEX FINGER, SO -- BUT WE'VE GOT A THUMB PRINT, TWO THUMB PRINTS ON THE SHEET NOW, SO THAT MEANS THAT HE WAS THE GET-AWAY DRIVER BECAUSE THERE'S TWO THUMB PRINTS.

I ASKED THEIR EXPERT, I SAID, WELL, THE THUMB PRINTS, WERE THEY LIKE THIS? WAS IT SOMEBODY HOLDING A TABLET LIKE THIS? SHE SAID, YES, THAT'S QUITE POSSIBLE. SHE SAID IT HAD TO BE SOMETHING LIKE THAT BECAUSE THERE ARE NO FINGERPRINTS ANYWHERE ELSE ON THE NOTE, ON THE BACK SIDE, ANY ON THE FRONT SIDE THAT BELONGS TO MR. THOMPSON. THE GOVERNMENT SAID, WELL, HE WROTE THE NOTE. HOW DID HE WRITE A NOTE LIKE THIS, WITH TWO THUMBS? YOU ARE HOLDING A TABLET. EVEN IF HE TOOK HIS HAND OFF THE TABLET, WOULDN'T YOU HAVE TO PUT YOUR FINGERPRINT ON IT TO START WRITING ANOTHER NOTE OR YOU WRITE IT LIKE THIS? SOMETHING IS GOING TO HAPPEN. THERE WOULD BE SOMETHING THERE. THEN THEY SAID HE TORE IT OUT AND GAVE IT TO MR. ROBINSON. WELL, WHERE ARE THE FINGERPRINTS OR A THUMB PRINT OR AN INDEX FINGER WHERE HE TORE IT OUT AND GAVE IT TO ANYBODY?

HEAVEN FORBID SOMEBODY TAKE YOUR NOTEPAD TODAY, TEAR OFF A SHEET OF PAPER, GO USE IT IN A BANK ROBBERY AND YOUR THUMB PRINT SHOW UP. YOU KNOW YOU DIDN'T DO IT, BUT YOU DON'T KNOW THAT SOMEBODY ELSE TORE THE PAPER OFF AND TOOK IT TO THE BANK AND WROTE A NOTE, AND GIVE ME THE MONEY, I GOT A GUN, I'M GOING TO

ROB YOU, GET ALL THE BANK MONEY. BUT YET YOU CAN BE ARRESTED. YOUR THUMB PRINT IS ON IT. HOW DO YOU EXPLAIN? WELL, I CAN'T EXPLAIN, BUT I NEVER WENT TO THE BANK. THEN, BUT HOW DID YOUR FINGERPRINTS GET THERE? WELL, I DON'T KNOW. YOU KNOW, MAYBE I HAD -- WAS HOLDING A TABLET. MAYBE THEY TOOK MY TABLET. MAYBE THEY TORE A PAGE OUT OF MY TABLET. I DON'T KNOW. BUT MY THUMB PRINT IS ONLY ON, LIKE, A TABLET LIKE SO. IF I HAD TORN IT OUT, THERE WOULD BE ANOTHER FINGERPRINT. IF I HAD WROTE ON IT, THERE WOULD BE ANOTHER FINGERPRINT. AND, MEMBERS OF THE JURY, YOU KNEW THAT WHEN YOU HAD -- DOING THE ROBBERY, YOU KNEW YOU PARTICIPATED IN THE ROBBERY, IT HAPPENED BECAUSE A TABLET SOMEBODY -- A SHEET OF PAPER SOMEBODY TORE OUT YOUR TABLET. THAT'S THE SAME THING MR. THOMPSON IS SAYING. IT'S BECAUSE SOMEBODY TORE OUT A PIECE OF PAPER OUT OF A TABLET THAT HE THEN HAS DOES NOT MEAN HE'S A GET-AWAY DRIVER, DOES NOT MEAN THAT HE PARTICIPATED IN ANY MANNER, DOES NOT MEAN THAT HE EVEN HAD KNOWLEDGE SOMEBODY TORE A TABLET -- A PIECE OF PAPER OUT OF A TABLET. AND BECAUSE OF THAT THE GOVERNMENT SAYS, WELL, BUT THE THUMB PRINT MEANS YOU WERE THERE. THE THUMB PRINT DOESN'T MEAN ANYTHING. THE THUMB PRINT MEANS THAT I HAD A TABLET, I PUT IT DOWN, SOMEBODY TOOK THE SHEET OF PAPER, WROTE ON IT, TORE IT OUT AND TOOK IT SOMEWHERE. I DON'T KNOW WHO IT IS. I DON'T CARE WHO IT IS. AND IT DOESN'T MATTER TO ME WHO IT IS BECAUSE I'M NOT PARTICIPATING.

THERE IS NOTHING TO SAY HE PARTICIPATED, NOTHING TO SAY HE

WAS THE GET-AWAY DRIVER AT ALL EVEN IN THIS ROBBERY THAT THEY COME THE CLOSEST TO HAVING ANY FINGERPRINT ON. AND, MEMBERS OF THE JURY, THEY WANT YOU TO MAKE THAT BOLD LEAP TO SAY FINGERPRINTS EQUAL GET-AWAY DRIVER. YOU CAN'T MAKE IT BECAUSE THERE'S NO EVIDENCE TO SUPPORT IT, AND AS A RESULT WE ASK THAT YOU FIND HIM NOT GUILTY ON THAT AS WELL.

WELL, THEN THEY SAY -- THE GOVERNMENT SAYS, WELL, OKAY. WE KNOW HE HAD TO BE THERE BECAUSE WE FOUND A TABLET THAT HAD NUMBERS BEING DIVIDED BY -- ONE NUMBER BEING DIVIDED BY TWO. THEY SAID, OH, WELL, THAT'S IT, 2308. WE KNOW IT'S NOT THE EXACT NUMBER FROM THE BANK, BUT IT'S CLOSE ENOUGH FOR HORSE SHOES. WELL, WE ARE NOT PLAYING HORSE SHOES. WE ARE PLAYING WITH SOMEBODY'S LIFE. IT'S NOT A GAME. 2308 IS NOT WHAT WAS TAKEN IN ANY ROBBERY. 2311 IS WHAT THEY SAY -- OR 2304 IS NOT TAKEN FROM ANY ROBBERY. 2311 IS WHAT THEY SAID. THEY SAID, OH, WELL, MAYBE THEY GOT SHORTED. AND THEN I SAY, AGENT MYERS, TELL THE JURY, YOU DON'T EVEN KNOW WHAT THE NUMBER MEANS. WELL, I REALLY DON'T. WHAT'S THE 400 SUBTRACTED? I DON'T KNOW. I DON'T KNOW WHAT ANY OF THOSE NUMBERS ARE. BUT YET THE GOVERNMENT SAYS WE DON'T KNOW WHAT THOSE NUMBERS ARE, WE DON'T KNOW WHAT THEY REPRESENT, BUT Y'ALL NEED TO GO AND TELL US WHAT THEY REPRESENT.

HOW CAN YOU TELL WHAT THEY REPRESENT WHEN THEY DON'T EVEN KNOW WHAT THEY REPRESENT? YOUR JOB IS NOT TO SPECULATE ON THE EVIDENCE, BECAUSE THERE WAS NOBODY WHO SAID WHAT THOSE NUMBERS

MEANT. THERE WAS NOBODY THAT SAID THESE ARE THE NUMBERS THAT WERE USED BY THESE GUYS TO DIVIDE UP THE MONEY. WELL, WE THINK THEY COULD HAVE BEEN EVEN THOUGH IT'S NOT THE RIGHT NUMBER. THINKING IT COULD HAVE BEEN, THAT'S NOT WHY WE'RE HERE. WHAT DOES THE EVIDENCE SHOW? THAT NOBODY KNOWS WHAT THOSE NUMBERS ARE FOR WHATSOEVER AND THEY CAN'T TELL YOU OTHERWISE BECAUSE THEY DON'T KNOW EITHER. AND THEN THE GOVERNMENT SAYS THIS TO YOU: ALTHOUGH WE HAVE NOT IDENTIFIED THE GET-AWAY DRIVER, ALTHOUGH WE REALLY DON'T KNOW WHO IT IS, Y'ALL GOT TO HELP US OUT. THEY SAY IT WAS MR. THOMPSON BECAUSE EVEN IF WE HAD PROVEN OTHER STUFF, WE PROVED IT BY PUTTING MR. ROBINSON UP, WHICH I THOUGHT WAS QUITE INTERESTING.

MR. ROBINSON GOT UP AND TOLD YOU WHAT HAPPENED. HE NEVER TOLD YOU THAT MR. THOMPSON WAS INVOLVED AS THE GET-AWAY DRIVER. HE NEVER TOLD YOU THAT HE WROTE A NOTE. HE NEVER TOLD YOU THAT HE WAS INVOLVED AS A GET-AWAY DRIVER. AND THE GOVERNMENT SAID, WELL, HE TOLD US THAT. HE LOOKS AT WHAT THEY WROTE DOWN. HE REFUSED -- HE SAID, I DIDN'T WRITE THIS. THIS IS NOT WHAT I TOLD THEM. THEY ARE MAKING UP STUFF. I NEVER TOLD THEM ANYTHING ABOUT THOMPSON BEING THE ROBBER, BEING INVOLVED. I NEVER TOLD THEM THAT J.T. WAS STANLEY THOMPSON. I NEVER TOLD THEM ANY OF THAT, SO I'M NOT GOING TO READ THIS. THAT'S WHAT THEY WROTE, SO LET THEM READ IT. HE WAS ADAMANT ABOUT IT.

NOW, YOU THINK ABOUT THAT. WHY IS IT IN A WORLD THAT WE HAVE ALL THESE TECHNOLOGICAL ADVANCES -- AND YOU KNOW A TAPE

RECORDER DOESN'T COST MUCH, A VIDEO CAMERA DOESN'T COST MUCH. WHY IS IT THE GOVERNMENT WON'T ALLOW YOU TO WRITE YOUR OWN STATEMENT? THEY SAY HE CONFESSED. WHERE IS IT? DID HE WRITE ANY CONFESSION? NO? DID HE SIGN ONE? NO. IS THERE A TAPE RECORDING OF ONE? NO. IS THERE A VIDEO RECORDING OF ONE? NO. WHY NOT? WHY NOT MAKE IT EASY FOR YOU? WHY NOT PERFECT THE RECORD SO THERE IS NO DOUBT ABOUT WHAT IS SAID? WHY DOESN'T THE GOVERNMENT WANT TO DO THAT? WHY IS IT THEY WANT TO JUST WRITE THEIR OWN NOTES, TYPE THEIR OWN REPORT AND THEY NEVER LET MR. ROBINSON REVIEW IT TO SEE IF IT WAS CORRECT, IF HE AGREED WITH IT. THEY NEVER LET HIM REVIEW IT TO SIGN IT OR ANYTHING OF THAT MATTER ON ANYTHING. THEY JUST DID WHAT THEY WANTED AND SAID, WELL, TRUST US, WE'RE THE GOVERNMENT.

NOW, AGENT MYERS SAID, I WASN'T IN THE ROOM ALL THE TIME, BUT I HEARD WHAT WAS GOING ON. IF SHE HEARD WHAT WAS GOING ON, SHE WOULD TELL -- IF SHE WAS OUTSIDE THE ROOM SHE WAS DOING SOMETHING. SHE WAS DISTRACTED FROM WHAT WAS GOING ON INSIDE THE ROOM. FINALLY SHE DIDN'T EVEN PREPARE THE REPORT. IT WAS PREPARED BY ANOTHER AGENT, AGENT CARMAN. AND THEN SHE TESTIFIED WITH SUCH AUTHORITY, HE TOLD US THAT THEY WERE BOTH ARMED AT THE TACO BELL AND THEY BOTH USED GUNS AND IT'S RIGHT THERE IN HIS 302. REMEMBER I GAVE HER THE 302? I SAID, WHERE IN THE WORLD DID YOU GET THIS FROM? LOOK AT THE FIRST PARAGRAPH. DOES HE SAY ANYTHING ABOUT GUNS BEING INVOLVED WHEN THEY ARE BOTH ARMED AT THE TACO BELL, THAT HE AND STANLEY THOMPSON ROBBED THAT TACO

BELL? SHE SAID, WELL, NO, IT DOESN'T SAY THAT.

WHAT ELSE DID THEY MAKE A MISTAKE ON? WHAT OTHER STATEMENT WAS MADE THAT WAS NOT RECORDED? WHAT STATEMENT WAS RECORDED THAT WAS NOT MADE? YOU SHOULD NOT BE PUT IN THE POSITION LIKE THAT WHEN IT'S SO EASY TO GIVE YOU A PERFECT RECORDING, SO EASY TO GIVE IT TO YOU SO THEY WOULDN'T HAVE TO GO THROUGH ALL THE HE SAID, SHE SAID. SHE SAID, WELL, DON'T BELIEVE HIM, EVEN THOUGH HE GOT UP THERE AND ADMITTED TO WHAT HE DID, BUT DON'T BELIEVE HIM. WELL, IF YOU ARE NOT GOING TO BELIEVE HIM, YOU CAN'T -- BUT THE GOVERNMENT SAYS, WELL, FIND HIM GUILTY BECAUSE HE ADMITTED TO IT. SO THEY SAY BELIEVE SOME OF WHAT HE SAYS BUT NOT ALL OF WHAT HE SAID, BELIEVE THIS OR DON'T BELIEVE THAT.

LET'S LOOK AT THAT. THEY SAID BELIEVE THAT MR. STANLEY THOMPSON WAS THE ONE WHO WAS WRITING THE NOTES. WHERE ARE THE FINGERPRINTS? WHERE ARE THE FINGERPRINTS TO INDICATE THAT? THREE NOTES. ONE NOTE, ZERO FINGERPRINTS ALL TOGETHER. ONE NOTE, A THUMB -- A INDEX FINGER SUPPOSEDLY ON THE BACK, ANOTHER ONE JUST A THUMB PRINT. WHERE IS THE EVIDENCE THAT HE WROTE THE NOTE? NO WHERE. THEY SAID, WELL, MAYBE IT WAS MR. THOMPSON WHO ROBBED THE BANK ON (SIC) WACHOVIA THE 21ST. DISTINGUISHING PICTURE. NOT ONE PERSON TOLD YOU THAT THEY WERE ROBBED BY A LIGHT SKIN, TALL BLACK MAN. NOT ONE SAID HE HAD THESE CIRCLES UNDER -- THESE DARK FEATURES UNDER HIS EYES. NOT ONE CAME UP HERE AND SAID THAT'S HIM BACK THERE. BUT THEY SAW HIM RIGHT HERE, THEY SAW HIM RIGHT HERE, THEY SAW HIM RIGHT, THEY

SAW HIM RIGHT HERE. HE TOLD YOU THAT. AND SO WHAT I'M SAYING TO YOU TODAY, WHAT THE GOVERNMENT WROTE IS WHAT THEY WANTED TO WRITE. IT WAS THEIR THEORY OF THE CASE. IT WAS NOT WHAT HE TOLD THEM. WHAT HE TOLD YOU, WHAT HE TOLD YOU ON THIS WITNESS STAND AND WHAT HE TOLD YOU WAS CORROBORATED BY THE EVIDENCE. BUT THE THINGS THAT THE GOVERNMENT SAYS HE TOLD THEM IS NOT CORROBORATED BY ANY EVIDENCE WHATSOEVER.

THE GOVERNMENT TOLD YOU IN THEIR CLOSING THAT IN -- THAT MR. THOMPSON WAS SEEN DRIVING THE GET-AWAY CAR, HE WAS CAUGHT DRIVING THE S.U.V. I THOUGHT THAT WAS VERY INTERESTING. THEN BECAUSE IF HE'S THE ONE WHO'S INVOLVED IN THESE ROBBERIES, BANK ROBBERIES, WHY DIDN'T THEY JUST HALL BUGGY? WHY HE DIDN'T FLOOR IT WHEN THE POLICE GOT BEHIND HIM? WHY DIDN'T HE FLEE AND TRY TO GET AWAY? NO, OH, MAN, THEY GOT ME. I BEEN (SIC) ROBBED A BANK OR THEY GOT ME. WHY WOULD HE JUST SIMPLY PULL OVER AND ASK THE POLICE OFFICER A QUESTION?

MEMBERS OF THE JURY, SOMEBODY WHO HAS BEEN INVOLVED IN A ROBBERY IS NOT GOING TO PULL OVER. SOMEBODY THAT'S JUST ROBBED A BANK IS NOT GOING TO PULL OVER. SOMEBODY WHO DID SOMETHING CRIMINAL, THEY SHOT SOMEBODY, IS NOT GOING TO PULL OVER. THEY ARE GOING TO FLEE AND THEY ARE GOING TO LUDE AND THERE WILL BE A HIGH-SPEED CHASE ALL OVER METRO ATLANTA. WE DIDN'T HAVE THAT. WHY NOT? BECAUSE HE WASN'T GUILTY OF ANYTHING. THAT'S WHY HE PULLED OVER, NOT INVOLVED IN A ROBBERY, NOT INVOLVED IN ANYTHING, SO HE PULLS OVER. THE GOVERNMENT SAID, OH, BUT WE

FOUND A GUN, THE GUN, THE .380 IN A ROOM THAT WAS REGISTERED TO MR. THOMPSON. BUT NOW REMEMBER STEPHANIE TOLD YOU THAT SHE ONLY SAW MR. THOMPSON IN THAT ROOM ONE TIME, ROOM 463 ONE TIME. THE GOVERNMENT SAID, WELL, MA'AM, HOW MANY TIMES YOU SAW HIM AROUND THE PLACE? WELL, I SAW HIM ABOUT TEN TIMES, IT WAS ALMOST A MONTH, SEE HIM ABOUT TEN TIMES. SHE ONLY SAW HIM IN THE ROOM ONE TIME. WHY IS THAT? SHE GOES AROUND -- TIME TO GET THE ROOM CLEANED, HE'S NOT THERE BUT ONE TIME. WHY IS THAT?

WELL, YOU REMEMBER THE DETECTIVE THAT TOLD US THAT WHEN THEY DID A SEARCH OF THE CAR, AGENT CARMAN, WHEN THEY SEARCHED THAT S.U.V. THEY FOUND A RECEIPT BELONGING TO MR. THOMPSON. IT WAS A COMCAST CABLE T.V. BILL. I ASKED, DID THAT COMCAST BILL HAVE THE INTOWN SUITES AS THE ADDRESS? HE SAID NO. I SAID, BUT -- I DON'T REMEMBER. I SAID, BUT IF IT HAD INTOWN SUITES, SHE WOULD REMEMBER THAT, YOU WOULD HAVE RECORDED IT, YOU WOULD HAVE GATHERED THAT AS A PIECE OF EVIDENCE. YEAH. HE DIDN'T HOLD IT AS A PIECE OF EVIDENCE, HE DIDN'T RECORD IT BECAUSE THAT COMCAST BILL BELONGING TO MR. THOMPSON WAS NOT FOR INTOWN SUITES. THEY SAID, BUT THE ROOM WAS REGISTERED IN HIS NAME. WELL, 373 WAS REGISTERED IN SOMEBODY ELSE'S NAME, WASN'T IT, MR. LLOYD CARTER? OH, MR. CARTER DIDN'T LIVE THERE. BUT HOW DO YOU KNOW HE LIVED THERE?

ONE THING YOU KNOW FOR SURE, JUST BECAUSE A ROOM IS REGISTERED IN YOUR NAME DOESN'T MEAN YOU LIVE THERE. MR. CARTER SAID, WELL, HE DOESN'T LIVE THERE. THEY DON'T KNOW WHO LIVED IN

THAT ROOM. AND JUST BECAUSE SOMEBODY ALLOWED YOU TO USE THEIR CREDIT, GO DOWN THERE AND SIGN UP FOR THE ROOM FOR YOU, DOESN'T MEAN ANYTHING OTHER THAN YOU SIGNED UP FOR THE ROOM FOR THEM AND YOU ARE RESPONSIBLE FOR GETTING MONEY FROM THEM TO PAY FOR IT. THEY SAID, WELL, BUT WE FOUND THE GUN IN ROOM 463. BUT YOU KNOW HOW THE GUN GOT THERE, MEMBERS OF THE JURY. MR. ROBINSON WAS IN THE ROOM WITH THE GUN. HE HAD A STAND-OFF WITH THE F.B.I. HE TOLD US. THEY SAID, WELL, BUT WE FOUND THE SAFE WITH MONEY IN IT IN ROOM 473. THEY DID NOT FIND ANYTHING IN THAT ROOM PERTAINING TO THE SAFE. THE SAFE WAS ACTUALLY IN ROOM 367, NOT 463. AND IF YOU LOOK BACK AT THE EVIDENCE IT WILL SHOW THAT. THEY MISSTATED THE FACT AGAIN. NO SAFE WAS FOUND IN THAT ROOM.

NOW, THINK ABOUT THIS. IF YOU KNOW YOU JUST LET SOMEBODY ELSE USE THE ROOM, YOU KNOW, YOU SIGNED TO PUT THEM UP, AND IF YOU KNEW THAT YOU WERE ROBBING THE PLACE AND YOU GOT STUFF STASHED AWAY IN THAT ROOM, WHY IN THE WORLD WOULD YOU CONSENT TO A SEARCH? WHY WOULD YOU SAY, OH, GO SEARCH IT, YOU KNOW? WHY WOULD YOU DO THAT OTHER THAN THE FACT THAT, YOU KNOW WHAT, I DON'T HAVE ANYTHING TO HIDE? I DON'T HAVE ANYTHING IN THE ROOM. I DON'T KNOW WHAT'S IN THE ROOM, BUT IT DOESN'T BELONG TO ME. AND SO HE CONSIDERS AND SAYS GO SEARCH. I DON'T CARE. WHY WOULD YOU DO THAT IF YOU'VE GOT A SAFE, WHICH WASN'T THERE, IF YOU'VE GOT MONEY, WHICH WASN'T THERE, IF YOU'VE GOT A GUN, WHICH WASN'T THERE, IF YOU'VE GOT CLOTHING THAT WASN'T THERE, WHY WOULD YOU DO IT? BECAUSE YOU KNOW YOU HAVE NOTHING TO HIDE,

BECAUSE YOU KNOW YOU WASN'T INVOLVED IN ANYTHING. HE SAID, GO SEARCH, I DON'T CARE. IT'S NOT MY ROOM ANYWAY. AND SO THEY DID A SEARCH AND THEY DIDN'T FIND A SAFE IN THAT ROOM. THEY FOUND A SAFE IN 367.

MEMBERS OF THE JURY, WHEN YOU TAKE ALL EVIDENT EVIDENCE, THE DIRECT EVIDENCE THAT HAS BEEN PRESENTED BY THE GOVERNMENT, THERE'S NOTHING THAT TIES HIM, MR. THOMPSON, TO THIS CASE. AND SO WHAT YOU'RE LEFT WITH, MEMBERS OF THE JURY, IS WHAT WE CALL CIRCUMSTANTIAL EVIDENCE. OKAY. WELL, YOU SAY THE CIRCUMSTANCES, THE THUMB HERE, THE INDEX FINGER HERE, HE'S DRIVING HERE, ALL OF THESE CIRCUMSTANCES IS NOT A COINCIDENCE. SO THE CIRCUMSTANTIAL EVIDENCE SAYS HE IS THE GET-AWAY DRIVER. I DON'T THINK SO. THE CIRCUMSTANTIAL EVIDENCE SAYS HE IS PART OF THE ROBBERY. I DON'T THINK IT IS. MEMBERS OF THE JURY, ONE OF THE THINGS YOU'VE LEARNED IF NOTHING ELSE IS CIRCUMSTANTIAL EVIDENCE IS THE WEAKEST EVIDENCE OF ALL.

THERE WAS A MAN WHO HAD 12 SONS. THIS MAN HAD TEN YOUNGER SONS AND HE SENT THE 11TH CHILD -- HE SAID, GO AND LOOK AFTER THOSE, GO TELL THEM THAT DADDY WANT THEM TO COME HOME. THIS 11TH CHILD WAS THE FAVORITE CHILD OF THIS MAN. THE MAN BOUGHT HIM A BEAUTIFUL COAT AND EVERYTHING AND THE OTHER BROTHERS WERE JEALOUS, ENVIOUS OF HIM. AND WHEN HE WENT TO GET HIS OTHER TEN BROTHERS TO TELL HIM WHAT DADDY SAID, THEY SAW HIM AND THEY JUST WENT INTO A RAGE. THEY SAID, OH, THERE HE IS, THE ONE THAT DADDY LOVES, THE ONE THAT THINKS HE'S GOING TO BE THIS AND THAT

AND ALL OF THAT. WE ARE GOING TO SHOW HIM HE'S NOTHING. AND SO THEY DECIDED THAT THEY WOULD KILL THIS BOY, THEIR OWN BROTHER. AND THEN THE OLDEST ONE SAID, NO, WE CAN'T KILL HIM. THAT'S DADDY'S FAVORITE. SO DON'T GO TELL DADDY. AND THEN THEY SAID, WELL, LET'S SELL HIM, SELL HIM INTO SLAVERY. THEY SAID, WHAT ARE WE GOING TO TELL DADDY WHEN WE GET HOME? THE TEN BROTHERS SAID, WELL, I TELL YOU WHAT, LET'S TAKE THAT COAT OFF OF HIM, LET'S TEAR IT UP, LET'S BEAT IT UP, LET'S KILL A HOG AND POUR THE BLOOD ON IT. AND THEN WE GOT THE EVIDENCE. WE'LL TAKE IT TO DADDY. THEY COME BACK WITH THAT BEAUTIFUL COAT. DADDY, DADDY, DADDY, YOUR FAVORITE SON IS DEAD.

LOOK AT THE CIRCUMSTANTIAL EVIDENCE. IT'S STRONGER IN THIS STORY THAN IN THIS CASE. THE CIRCUMSTANTIAL EVIDENCE SAYS WE'VE GOT TEN EYEWITNESSES THAT SAYS YOUR SON IS DEAD. WE'VE GOT TEN EYEWITNESSES THAT SAYS THAT YOUR SON WAS KILLED BY A WILD BORE. WE'VE GOT THE GOAT, THE BLOOD ON IT. WE KNOW IT'S ALL CIRCUMSTANTIAL EVIDENCE, DADDY, BUT YOU'VE GOT TO BELIEVE US. YOUR FAVORITE SON IS DEAD. AND THAT FATHER BELIEVED THAT CIRCUMSTANTIAL EVIDENCE AND FOR MANY YEARS HE WINED AND DINED IT AWAY. BUT THEN AS FATE WOULD HAVE IT, YEARS LATER, HE DISCOVERED HIS SON IS ALIVE.

MEMBERS OF THE JURY, DON'T BE WRONGED BY THE CIRCUMSTANTIAL EVIDENCE. DON'T MAKE THE SAME TRAGIC MISTAKE WITH CIRCUMSTANTIAL EVIDENCE. IT'S WEAK AND IT'S OF NO VALUE AT ALL. AND BECAUSE THE GOVERNMENT HAS FAILED TO PRESENT THEIR CASE,

PRESENT ENOUGH EVIDENCE, SUFFICIENT EVIDENCE BEYOND A REASONABLE DOUBT TO SAY THAT MR. STANLEY THOMPSON IS GUILTY OF ANY OF THIS, WE ASK THAT YOU FIND HIM NOT GUILTY ON ALL CHARGES, INCLUDING THE FIRST CHARGE ONLY BECAUSE IT'S CHARGED WRONG. WE DIDN'T SAY HE DIDN'T DO IT, BUT THEY CHARGED HIM WRONG. FOLLOW THE LAW AND FIND HIM NOT GUILTY ON THAT, TOO. THANK YOU.

THE COURT: THANK YOU, MR. MACK.

MS. HOFFER.

MS. HOFFER: THANK YOU, YOUR HONOR.

FIRST OF ALL, MR. MACK HAS MISSTATED SEVERAL THINGS THAT HAPPENED IN THE TRIAL. HE'S MISSTATED THE LAW TO YOU. THE LAW, AS THE JUDGE WILL TELL YOU ON INTERSTATE COMMERCE, IS NOT THAT WE HAVE TO PROVE THAT SOMETHING CAME FROM OUT OF STATE, ALTHOUGH WE HAVE PROVED THAT. ALL YOU HAVE TO PROVE IS THAT THE BUSINESS WAS ENGAGED IN AN INDUSTRY WHICH IS IN INTERSTATE COMMERCE, AND CLEARLY WE HAVE PROVED THAT. TACO BELL, A NATIONAL FRANCHISEE. INTERSTATE COMMERCE, WHAT DOES THAT MEAN? IT MEANS THINGS THAT HAPPEN BETWEEN THE STATES IN THIS COUNTRY. MR. MACK HAS CERTAINLY MISSTATED THE LAW ON THAT, BUT YOU WILL HAVE THE LAW GIVEN TO YOU BY THE JUDGE AND YOU WILL HAVE THE LAW OUT WITH YOU.

MR. MACK HAS ALSO MISSTATED THE EVIDENCE THAT OCCURRED IN THIS TRIAL BEFORE YOU BY SWORN WITNESSES. HE TOLD YOU THAT DETECTIVE MCENTYRE NEVER SAID HE FOUND ANY FINGERPRINTS. WELL, DETECTIVE MCENTYRE PROCESSED THE NOTES FOR FINGERPRINTS. HE

FOUND LATENTS AND THEN HE GAVE THEM TO THE FINGERPRINT ANALYST TO DETERMINE WHETHER OR NOT THEY MATCHED. DETECTIVE MCENTYRE'S JOB WAS NOT TO FIND THE PRINTS OR TO ANALYZE THE PRINTS, AND HE DIDN'T DO THAT. BUT MR. MACK WOULD HAVE YOU BELIEVE THAT BECAUSE HE IS TRYING TO DISTRACT YOU. HE IS TRYING TO TELL YOU TO LEAVE YOUR COMMON SENSE AT THE DOOR. HE IS TRYING TO MISDIRECT YOU FROM THE REAL EVIDENCE. HE SAYS THERE'S NO EVIDENCE ON STANLEY JOSEPH THOMPSON. HE IS WRONG. THERE IS A LOT OF EVIDENCE AGAINST STANLEY JOSEPH THOMPSON.

HE ALSO MISCHARACTERIZED CIRCUMSTANTIAL EVIDENCE AND TOLD YOU THAT IT HAS NO VALUE. HOWEVER, THE JUDGE WILL TELL YOU CIRCUMSTANTIAL EVIDENCE CAN BE GIVEN JUST AS MUCH WEIGHT AS DIRECT EVIDENCE. IT'S UP TO YOU, THE JURY, TO DECIDE THAT. HE TOLD YOU IT HAS NO VALUE. THAT'S A COMPLETE MISSTATEMENT OF THE LAW. HE ALSO TALKED ABOUT THE TESTIMONY OF OFFICER RON ALLEN WHO COMPARED THE LATENT FINGERPRINTS, AND HE'S THE ONE THAT FOUND THE EXTRA PRINT THAT HIS PARTNER DIDN'T FIND THE YEAR BEFORE. HE TOLD YOU ABOUT THAT. HE TOLD YOU THERE WAS HUMAN ERROR. HIS PARTNER, MR. BISHOP, WAS A 30-YEAR VETERAN OF THE POLICE DEPARTMENT AND HE DIDN'T REALLY HAVE THE POLICY OF CHECKING AND RECHECKING. HE WAS SORT OF OLD-FASHIONED. HE DIDN'T TURN THE PAPER OVER TO FIND THE THIRD PRINT, BUT THE THIRD PRINT WAS THERE. MR. MACK IS ASKING YOU TO DISREGARD THE PHYSICAL EVIDENCE IN THIS CASE, BECAUSE THE PHYSICAL EVIDENCE IN THIS CASE SHOWS YOU THAT STANLEY JOSEPH THOMPSON IS GUILTY.

STANLEY JOSEPH THOMPSON -- WE ARE NOT ASKING YOU TO BELIEVE SOMETHING RIDICULOUS LIKE HE WROTE A NOTE WITH HIS INDEX FINGER OR HIS TWO THUMBS. THE LOCATION OF THE FINGERPRINTS HAS NOTHING TO DO WITH HOW THEY WERE WRITTEN. HE COULD HAVE WRITTEN THE NOTES AND TURNED IT OVER AND HANDED IT TO MR. ROBINSON JUST LIKE THAT. HE COULD HAVE HANDLED THE PAPER ON DIFFERENT OCCASIONS. WHEN YOU'RE WRITING A NOTE SOMETIMES YOU MAKE A MISTAKE. YOU MIGHT WANT TO TEAR IT UP. YOU MIGHT WANT TO WRITE A NEW NOTE. WHEN ALL OF THIS IS GOING ON YOUR FINGERPRINTS ARE LIKELY TO BE IN DIFFERENT PLACES, NOT NECESSARILY IN ONE PLACE. THAT DOESN'T PROVE ANYTHING. THE FACT IS THE FINGERPRINTS WERE ON THE NOTES AND HE CANNOT ESCAPE THAT FACT.

THE PHYSICAL EVIDENCE IS AGAINST HIM. WE HAVE HIM IN THE TACO BELL. THAT IS THE PHYSICAL EVIDENCE. THAT IS YOUR DIRECT EVIDENCE THAT HE WAS IN THE TACO BELL. LEARY ROBINSON TOLD THE F.B.I. ON THE DAY THAT HE WAS ARRESTED HE HAD A GET-AWAY DRIVER. HE DID NOT NAME HIM. HE HAS NOT WANTED TO NAME STANLEY JOSEPH THOMPSON. HOWEVER, WHEN HE GOT BACK TO OFFERING A PROFFER TO THE F.B.I. AND THE U.S. ATTORNEY'S OFFICE ON SEPTEMBER 18TH OF 2007, HE SIGNED THIS LETTER, I HAVE READ THIS PROFFER AGREEMENT CAREFULLY. I UNDERSTAND AND VOLUNTARILY AGREE TO IT. HE WAS SUPPOSED TO TELL THE TRUTH. WELL, AT THAT POINT HE TOLD YOU HE TOLD THE F.B.I. HE HAD A PARTNER, IT WAS J.T. HE WAS SHOWN A PHOTO. IT WAS J.T. IT WAS STANLEY JOSEPH THOMPSON.

KEVIN DUNBAR OVERHEARD A TELEPHONE CONVERSATION BETWEEN THE

TWO DEFENDANTS DISCUSSING THE ROBBERY IN WHICH THEY USED SOMEONE ELSE'S CAR, THE WHITE PONTIAC. THE OWNER OF THE WHITE PONTIAC, ACCORDING TO KEVIN DUNBAR, DIDN'T WANT TO BE CAUGHT UP IN THIS ROBBERY BECAUSE THEY USED HIS CAR. THAT WAS THE CONVERSATION OVERHEARD BY KEVIN DUNBAR. THAT'S DIRECT EVIDENCE.

LEARY ROBINSON WAS IN THE BEST POSITION TO KNOW WHO THE GET-AWAY DRIVER WAS. MR. MACK SAYS NOBODY EVER SAW HIS FACE. THAT'S NOT UNUSUAL. IT'S NOT UNUSUAL TO NOT NOTICE SOMEBODY SITTING IN A CAR AND YOU CAN'T ALWAYS SEE THEIR FACE. WHAT IF THEY ARE LOOKING DOWN? WHAT IF THEY HAVE THEIR HAND ON THEIR FACE? THERE ARE A MILLION REASONS WHY NOBODY SAW HIS FACE. THE FIRST REASON IS HE DECIDED NOT TO GO IN THE BANKS. HE DID GO IN THE TACO BELL.

PHYSICAL EVIDENCE IS NOT ALWAYS AVAILABLE TO THE F.B.I. OR TO POLICE OFFICERS. THEY HAVE TO TAKE WHAT THEY CAN GET. THEY TAKE THE EVIDENCE FROM THE CRIME SCENE. THEY ANALYZE IT. THEY SEND WHAT THEY CAN OFF TO THE LAB. IT'S NOT LIKE C.S.I. OR N.C.I.S. N.C.I.S. IS ONE OF MY FAVORITE SHOWS. I WISH THAT WE HAD A LAB LIKE THAT. I WISH THAT WE HAD THE CAPABILITY OF DOING WHAT THEY CAN DO, BUT IT'S HOLLYWOOD. THIS IS REAL LIFE. THESE ARE REAL POLICE OFFICERS, REAL F.B.I. AGENTS. AND THE F.B.I. AGENTS HAVE TO FOLLOW THEIR POLICY. THEIR POLICY IS TO NOT RECORD. THEY DO WHAT THEY'VE BEEN TAUGHT TO DO. THEY WRITE THEIR NOTES. THEY LISTEN TO THE PERSON QUESTIONING, AND THEN THEY WRITE IT UP. DO YOU THINK THE F.B.I. AGENTS MADE UP THIS

STUFF? YOU HAVE EVERY REASON TO BELIEVE THE F.B.I. AGENTS IN THIS CASE. YOU HAVE EVERY REASON NOT TO BELIEVE LEARY ROBINSON. LEARY ROBINSON MADE A CONFESSION ON THE DAY HE WAS ARRESTED. HE SAID HE HAD THE GUN. HE SAID HE USED IT IN ALL OF THE ROBBERIES. BUT OBVIOUSLY THEY HAD TWO GUNS. THERE WERE TWO GUNS AVAILABLE TO THE DEFENDANTS. THEY USED TWO GUNS IN THE TACO BELL. THEY COULD HAVE USED THE GUNS INTERCHANGEABLY. WE ARE NOT SAYING OUR THEORY IS HE USED THE HIGH POINT IN ALL OF THE ROBBERIES. WE DIDN'T SAY HE USED IT ON THE ONES WHERE WE DIDN'T HAVE ANY EVIDENCE OF THE GUN.

LADIES AND GENTLEMEN, WE BASE OUR THEORY ON THE FACTS, ON THE EVIDENCE. THE PHOTOGRAPHS CLEARLY SHOW THAT HIGH POINT GUN. THERE IS NO REASON NOT TO BELIEVE KELLIE ANDERSON. SHE SAW A GUN. THERE IS EVERY REASON NOT TO BELIEVE LEARY ROBINSON WHO CHANGED HIS STORY TO A B.B. GUN SIX MONTHS LATER AND ON THE STAND CHANGED HIS STORY TO, NO, NO GUN. THERE IS EVERY REASON TO DISBELIEVE LEARY ROBINSON, THE COLD BANK ROBBER WHO DOESN'T CARE ABOUT THE VICTIMS. HE TOLD YOU THAT. HE TESTIFIED, NO, I DIDN'T WORRY ABOUT THEM. WELL, WHY WOULD HE GO IN WITH A B.B. GUN? HE WASN'T WORRIED ABOUT THEM. HE TOOK HIS REAL GUN IN. AND HERE IS THE THING ABOUT THE GUN. THE VICTIMS DO NOT HAVE TO RECOGNIZE THE GUN. THEY DON'T EVEN HAVE TO RECOGNIZE THE DEFENDANT. HALF OF THEM DIDN'T. IN A SITUATION LIKE THAT WHEN YOU HAVE A GUN PUT TO YOUR FACE, REMEMBER WHAT KELLIE ANDERSON SAID. SHE SAW THAT GUN, SHE SAW THE NOTE, AND SHE LOOKED DOWN.

SHE DIDN'T WANT TO LOOK AT HIM ANYMORE. THESE PEOPLE ARE IN A SITUATION WHERE THEIR ADRENALINE IS RUSHING. THEY ARE SCARED. THEY ARE NOT SURE WHAT TO DO. THEY ARE TRYING TO REMEMBER THEIR TELLER TRAINING. BUT, LADIES AND GENTLEMEN, THEY ARE NOT IN A POSITION TO HAVE A PHOTOGRAPHIC MEMORY. SOME OF THE VICTIMS DID RECOGNIZE THE DEFENDANT. SOME DIDN'T. THAT'S REAL LIFE. THEY DON'T HAVE TO RECOGNIZE THE GUN. THE TESTIMONY THAT A GUN WAS USED IS SUFFICIENT FOR YOU TO BELIEVE THAT THERE WAS A GUN USED. THE REASON THAT WE SHOWED THE GUN IS THAT THE GUN IN OUR HANDS, THE DEFENDANT'S GUN, ROBINSON'S GUN, IS IN THE PHOTOGRAPHS. IT'S IN THE PHOTOGRAPHS. AND IF YOU DON'T BELIEVE IT WAS THE SAME GUN, YOU CAN CERTAINLY BELIEVE THAT THEY HAD TWO GUNS WHICH THEY TOOK INTO THE TACO BELL. AND SHRONDA HALL SAW BOTH GUNS, SO THERE WERE AT LEAST TWO GUNS.

AS TO MR. SAVIELLO'S ARGUMENT THAT WE SHOULD HAVE SENT -- OR THE F.B.I. SHOULD HAVE SENT THE GUN TO THE LAB, THERE WAS REALLY NO NEED. NOW, HERE IS THE BALANCE THAT THE F.B.I. HAS TO MAKE. FIRST OF ALL, YOU SAW THE GUN. THERE'S NO RED DYE ON IT AND THERE'S ALSO NO EVIDENCE THAT THE GUN WAS ACTUALLY IN THE PORTFOLIO WITH THE DYE PACK WHEN IT WENT OFF. THERE'S BEEN NO TESTIMONY TO SHOW YOU THAT THAT GUN EVER EVEN CAME IN CONTACT WITH THE RED DYE. THE MONEY, THE DYE PACK WAS LEFT IN THE PARKING LOT. THERE IS NO REASON FOR YOU TO ASSUME THAT THAT GUN HAD TO HAVE RED DYE STAIN ON IT. AND IT DOESN'T MATTER ANYWAY. IT DOESN'T MATTER THAT THE GUN DOESN'T HAVE THE RED STAIN ON IT

OR DOES HAVE RED STAIN ON IT. THIS IS THE BALANCE THAT YOU HAVE TO MAKE WHEN YOU ARE AN AGENT CONDUCTING AN INVESTIGATION. YOU HAVE TO DO WHAT YOU THINK IS NECESSARY TO PROVE THE CASE. AGENT CARMAN GOT A CONFESSION. AND, YES, HE DIDN'T STOP THEM THEN. HE'S NOT REQUIRED TO STOP THEN. HE WANTS TO MAKE THE BEST CASE HE CAN. HE WENT TO VIRNA ROBINSON. IS THIS YOUR HUSBAND? HE'S CONFIRMING THE IDENTIFICATION. HE'S CONFIRMING THE FACT THAT THE PHOTOGRAPHS TAKEN FROM THE ROBBERIES MATCH LEARY ROBINSON.

SOME OF THE FINGERPRINTS WERE PROCESSED BY COBB COUNTY BECAUSE COBB COUNTY WAS WORKING THESE ROBBERIES AT THIS TIME. SOMEWHERE IN HERE THE F.B.I. GOT INVOLVED, AND SO ON THE LAST ROBBERY THEY DECIDED TO SEND THE PRINTS TO THE F.B.I. ARE THEY SAYING -- IS THE DEFENSE ASKING YOU TO IGNORE TWO DIFFERENT FINGERPRINT ANALYSTS THAT FOUND THE FINGERPRINTS OF STANLEY JOSEPH THOMPSON ON THESE DEMAND NOTES? THERE ARE TWO OF THEM. HE'S IN THE TACO BELL IN THIS PHOTO. WE'VE GOT HIS FINGERPRINTS ON THE 2/12 BANK OF AMERICA AND THE 3/26.

THE RED CHEVY BLAZER WAS USED IN SEVERAL OF THE ROBBERIES. HE WAS ARRESTED IN THE RED CHEVY BLAZER WITH CLOTHING FROM THE ROBBERY. IT'S HIS HOTEL ROOM WHERE THE GUN WAS FOUND. IT'S HIS HOTEL ROOM WHERE LEARY ROBINSON WAS HANGING OUT. LADIES AND GENTLEMEN, THERE IS EVERY REASON TO BELIEVE THAT STANLEY JOSEPH THOMPSON IS GUILTY IN THIS CASE. AND WE ARE NOT ASKING YOU TO ASSUME -- WE DO NOT ASK YOU TO ASSUME HE WAS INVOLVED. WE ARE ASKING YOU TO RELY ON THE EVIDENCE, TO RELY ON THE

CIRCUMSTANTIAL, YES, AND THE DIRECT EVIDENCE IN THIS CASE BECAUSE THOSE TOGETHER AND ALL OF THE EVIDENCE TOGETHER INDICATES THAT STANLEY JOSEPH THOMPSON IS GUILTY, NOT JUST ONE LITTLE PIECE, NOT JUST ONE FINGERPRINT, NOT JUST ONE TABLET WHERE OBVIOUSLY THEY'RE TRYING TO DIVIDE UP THE MONEY, NOT JUST BEING ARRESTED IN THE GET-AWAY CAR WHICH HE OBVIOUSLY HAD CONTROL OVER. AND THE ARGUMENT THAT WHY DIDN'T HE FLEE? THERE ARE A MILLION REASONS WHY HE DIDN'T FLEE. MAYBE HE DIDN'T WANT TO GET IN A CAR CHASE. MAYBE HE DIDN'T THINK HE WAS GOING TO GET ARRESTED FOR THE BANK ROBBERIES AT THAT TIME OR THE TACO BELL. MAYBE HE THOUGHT HE WOULD JUST WAIT AND SEE. IF HE FLED, WHO KNOWS WHAT COULD HAVE HAPPENED. HE COULD HAVE BEEN SHOT.

NOW, LEARY ROBINSON. UNDERSTAND THAT IT'S HARD TO MAKE THIS BALANCE ON WHAT TO BELIEVE WHEN. YOU HAVE TO TAKE IT ALL TOGETHER AND LOOK AT WHAT MAKES SENSE. WHEN HE WAS ARRESTED HE MADE A STATEMENT WHICH WAS PRETTY COMPLETE. HE IDENTIFIED THE ROBBERIES. HE COULDN'T REMEMBER THE DATES, BUT HE REMEMBERED WHERE THEY WERE AND HE HAD A GET-AWAY DRIVER THAT HE WOULDN'T NAME. THEN IN SEPTEMBER HE'S SUPPOSED TO TELL THE TRUTH, CHANGED TO A B.B. GUN. WE NEVER HEARD ANYTHING ABOUT A B.B. GUN UP UNTIL THAT TIME. BUT HE DID SAY THAT HE THREW THE GUN AWAY, HE THREW THE B.B. GUN AWAY AFTER HE USED IT IN THIS ROBBERY, WENT BACK TO HIS GIRLFRIEND'S HOUSE AND GOT HIS HANDGUN. WHY? BECAUSE HE WANTED TO USE IT IN THE ROBBERIES. SO AT SOME POINT THE STORY CHANGED. THE STORY CHANGED AGAIN ON THE STAND, I

DIDN'T USE THE GUN IN THAT ROBBERY. HE'S DEPENDING ON THE PHOTOGRAPHS WHERE YOU CAN'T SEE THE GUN. THAT'S THE ONE HE SAYS, OH, I DIDN'T USE THE GUN AND IT WASN'T EVEN ME. WELL, IF IT WASN'T HIM, IT WAS STANLEY JOSEPH THOMPSON. LOOK AT THESE ROBBERIES, LADIES AND GENTLEMEN. THEY ARE 45 MINUTES APART, 45 MINUTES APART, SAME CLOTHING, CAMO JACKET WITH THE ROBINSON NAME TAG ON IT. THE ROBBER LEFT, GOT IN THE PASSENGER DOOR OF THE TOYOTA, THE DRIVER WAS A BLACK MALE, 45 MINUTES LATER. THE TOYOTA WAS THERE. THE ROBBER GOT OUT OF THE PASSENGER SIDE, CAMO CAP AND JACKET. IT IS ENTIRELY POSSIBLE AND PROBABLE AND LIKELY AND TRUE THAT STANLEY JOSEPH THOMPSON USED ROBINSON'S CLOTHING, GUN AND CAR IN THIS ROBBERY. AIDING AND ABETTING. ROBINSON GAVE HIM HIS CLOTHES, HIS CAR --

THE COURT: MS. HOFFER.

MS. HOFFER: -- TO DO THE ROBBERY.

THE COURT: MS. HOFFER, YOU ARE OVER YOUR TIME.

MS. HOFFER: OKAY. I'LL WRAP IT UP, YOUR HONOR. LADIES AND GENTLEMEN, WE ARE ASKING YOU TO RELY ON THE EVIDENCE. REASONABLE DOUBT IS NOT A DOUBT BEYOND ANYTHING YOU COULD EVER PROVE, BECAUSE THAT'S NOT REAL LIFE. YOU JUST HAVE TO USE REASON AND COMMON SENSE. IF YOUR VERDICT IS GUILTY AND IT IS BASED ON YOUR ANALYSIS OF THE EVIDENCE, THEN YOU HAVE OVERCOME ANY REASONABLE DOUBT IN THIS CASE AND I ASK YOU TO FIND THE DEFENDANTS GUILTY. THANK YOU.

THE COURT: THANK YOU, MS. HOFFER.

C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, MONTRELL VANN, CCR, CSR, RPR, RMR, CRR, OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF GEORGIA, DO HEREBY CERTIFY THAT THE FOREGOING 707 PAGES CONSTITUTE A TRUE TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE SAID COURT, HELD IN THE CITY OF ATLANTA, GEORGIA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS, THE 18TH DAY OF JUNE 2008.

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MONTRELL VANN, CCR,CSR,RPR,RMR,CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, PLAINTIFF, VS. LEARY ROBINSON, ET AL., DEFENDANTS.	DOCKET NUMBER 1:07-CR-138-BBM-1,2 ATLANTA, GEORGIA FEBRUARY 26, 2008

VOLUME ONE OF FOUR
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BEVERLY B. MARTIN,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	KATHERINE HOFFER & JAMILA HALL UNITED STATES ATTORNEY'S OFFICE ATLANTA, GEORGIA 30303
FOR DEFENDANT ROBINSON:	TIMOTHY SAVIELLO FEDERAL DEFENDER PROGRAM ATLANTA, GEORGIA 30303
FOR DEFENDANT THOMPSON:	ROBERT MACK MACK & HARRIS STOCKBRIDGE, GEORGIA 30281
OFFICIAL COURT REPORTER:	MONTRELL VANN, CCR,RPR,RMR,CRR 2394 UNITED STATES COURTHOUSE 75 SPRING STREET, SW ATLANTA, GEORGIA 30303 (404)215-1549

I N D E X

BANKS. HE DID NOT ROB THE WACHOVIA ON FEBRUARY 21ST, 2007 AND HE DID NOT CARRY A REAL GUN ON ANY OF THOSE ROBBERIES. THANK YOU.

THE COURT: THANK YOU, MR. SAVIELLO.

MR. MACK.

MR. MACK: THANK YOU, YOUR HONOR.

GOOD AFTERNOON, LADIES AND GENTLEMEN OF THE JURY. AS YOU KNOW, I REPRESENT MR. STANLEY JOSEPH THOMPSON IN THIS CASE. AND THE EVIDENCE THAT WE EXPECT TO COME BEFORE YOU TODAY DURING THE TRIAL OF THIS CASE WILL SHOW YOU THIS: THAT MR. THOMPSON WAS AT THE TACO BELL ON FEBRUARY THE 8TH OF 2007. YOU WILL SEE A VIDEO AND IT'S GOING TO SHOW THAT MR. THOMPSON DID IN FACT TAKE THE MONEY FROM THE TACO BELL ON FEBRUARY THE 8TH OF 2007. THERE'S NO DISPUTE IN THAT. BUT WHERE THE DISPUTE COMES IS THAT THE GOVERNMENT WANTS YOU TO BELIEVE THAT MR. THOMPSON PARTICIPATED IN SEVEN OTHER BANK ROBBERIES. MR. THOMPSON DID NOT PARTICIPATE IN ANY BANK ROBBERY. THE EVIDENCE WILL SHOW YOU THIS.

THE GOVERNMENT TOLD YOU IN THEIR OPENING THAT NO ONE EVER WORE A MASK, NOT ONE OF THE 30-SOMETHING WITNESSES THEY WOULD BRING BEFORE YOU WILL SAY THAT MR. THOMPSON WAS A GET-AWAY DRIVER. NOT ONE WITNESS WILL SAY THAT I SAW HIM IN THE CAR, I SAW HIM IN THE S.U.V., I SAW HIM HIDING, I SAW HIM DOING ANYTHING AS IT RELATES TO EACH ONE OF THESE BANK ROBBERIES. NO ONE WILL TELL YOU THAT. AND SO MR. THOMPSON JUST WANTS YOU TO LISTEN TO THE EVIDENCE. MR. THOMPSON WANTS YOU TO UNDERSTAND

THAT HE HAD NO PARTICIPATION IN ANY OF THESE THINGS. AND NOT ONE WITNESS WHO WAS AT THE ROBBERY, NOT ONE WITNESS WHO SAW THE PEOPLE COMING IN, GOING OUT, NOT ONE WHO SAW PEOPLE DRIVING THE GET-AWAY CAR, THE GET-AWAY TRUCK, NOT A SINGLE ONE OF THOSE WITNESSES WILL IDENTIFY MR. STANLEY JOSEPH THOMPSON AS BEING INVOLVED WHATSOEVER. AND AT THE END OF THE EVIDENCE AND AT THE END OF THIS CASE WE ASK THAT YOU COME BACK AND FIND HIM NOT GUILTY ON ALL OF THE GUN CHARGES, NOT GUILTY ON EACH ONE OF THOSE BANK ROBBERIES. THANK YOU.

THE COURT: THANK YOU, MR. MACK.

YOUR FIRST WITNESS, PLEASE, FOR THE GOVERNMENT.

MS. HALL: YES. THANK YOU, YOUR HONOR. THE GOVERNMENT CALLS CURTIS MCGUIRE --

MR. SAVIELLO: YOUR HONOR, MAY WE APPROACH ON AN EVIDENTIARY MATTER?

THE COURT: YOU MAY.

(BENCH CONFERENCE.)

THE COURT: DID YOU ALL KNOW HE WAS GOING TO DO THAT?

MR. SAVIELLO: THE GOVERNMENT IS GOING TO SHOW MR. MCGUIRE A SERIES OF PHOTOS DURING THE BANK ROBBERY, SPECIFICALLY THE GOVERNMENT'S EXHIBIT NUMBER 59 SUB E, F, G, H AND J WERE PHOTOS THAT WERE NOT PROVIDED IN DISCOVERY. THEY WERE SHOWED TO MY CLIENT IN SOME DISCUSSIONS WITH HIM WHEN HE WAS ARRESTED BY F.B.I. AGENT CARMEN. HE ASKED HIM ABOUT THEM SPECIFICALLY, SAID I'VE SEEN OTHER PHOTOS THAN THE ONES WE HAVE.

C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, MONTRELL VANN, CCR, CSR, RPR, RMR, CRR, OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF GEORGIA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES CONSTITUTE A TRUE TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE SAID COURT, HELD IN THE CITY OF ATLANTA, GEORGIA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS, THE 16TH DAY OF MAY 2008.

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MONTRELL VANN, CCR,CSR,RPR,RMR,CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION NO.
v.	:	
	:	1:07-CR-138-BBM
LEARY ROBINSON, and	:	
STANLEY JOSEPH THOMPSON	:	

STIPULATION

Comes now the United States of America, by David E. Nahmias, United States Attorney, and Katherine M. Hoffer, Assistant United States Attorney for the Northern District of Georgia, defendant, Leary Robinson, through defense counsel, Timothy Saviello, and defendant Stanley Joseph Thompson, through defense counsel Robert Mack, files this STIPULATION as follows:

The Government and the defendants stipulate that the following facts in this case are true and undisputed:

FDIC Insured Banks

1. Suntrust Bank, located at 2401 Windy Ridge Parkway, SE, Marietta, Georgia;
2. Bank of America, located at 4400 Wade Green Road, Kennesaw, Georgia;
3. Bank of America, located at 6075 Roswell Road, NE, Atlanta, Georgia;
4. Bank of America, located at 8755 Roswell Road, NE, Atlanta, Georgia;

5. Bank of America, located at 1280 West Paces Ferry Road, NW, Atlanta, Georgia; and

6. Wachovia Bank, located at 1547 Powers Ferry Road, Marietta, Georgia

are insured by the Federal Deposit Insurance Corporation and were so insured on the dates of the robberies as reflected in the certifications contained in Government's Exhibit numbers 15b, 15c, and 15d.

Loss Amounts

1. The amount of United States currency unlawfully taken on February 12, 2007 from the Suntrust Bank, located at 2401 Windy Ridge Parkway, Atlanta, Georgia is $2053.00, as reflected in Government's Exhibit number 15e.

2. The amount of United States currency unlawfully taken on February 12, 2007 from the Bank of America, located at 4400 Wade Green Road, Kennesaw, Georgia is $3909.00, as reflected in Government's Exhibit number 15f.

3. The amount of United States currency unlawfully taken on February 21, 2007 from the Wachovia Bank, located at 1547 Powers Ferry Road, Marietta, Georgia is $1554.00, as reflected in Government's Exhibit number 15g.

4. The amount of United States currency unlawfully taken on February 21, 2007 from the Bank of America, located at 6075 Roswell Road, Atlanta, Georgia is $16,010.00, as reflected in Government's Exhibit number 15f.

5. The amount of United States currency unlawfully taken on March 14, 2007 from the Bank of America, located at 8755 Roswell Road, Atlanta, Georgia is $4166.00, as reflected in Government's Exhibit number 15f.

6. The amount of United States currency unlawfully taken on March 19, 2007 from the Bank of America, located at 1280 West Paces Ferry Road, Atlanta, Georgia is $6100.00, as reflected in Government's Exhibit number 15f.

7. The amount of United States currency unlawfully taken on March 26, 2007 from the Suntrust Bank, located at 2401 Windy Ridge Parkway, Atlanta, Georgia is $2311.00, as reflected in Government's Exhibit number 15e.

Because these facts are undisputed, they may be accepted by the jury as true even though the parties will offer no independent evidence to prove these facts during the trial of this case.

So agreed by the parties, this 25th day of February, 2008.

Katherine M. Hoffer
Assistant U.S. Attorney

Timothy Saviello
Defense Counsel

Leary Robinson
Defendant

Robert Mack
Defense Counsel

Stanley Joseph Thompson
Defendant