

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Petition for Writ of Certiorari to Edgefield County

S.C. SUPREME COURT

The Honorable William P. Keesley, Trial Judge
The Honorable J. Cordell Maddox, Jr., PCR Judge

Appellate Case No. 2020-000568

BRYAN J. PHILLIPS,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

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1 to lie. You know who would have a reason to try to
2 get him to sign statements like this.

3 And you can tell from this young man he doesn't
4 want to testify against them. He did not want to be
5 here, but he told the truth to Roosevelt Young after
6 being advised of his rights. He doesn't want to
7 testify against them, he never did. He told on
8 himself. He got up here under oath and he told you,
9 that's the most I can tell you in this case, this
10 statement is false. It's wrong. It didn't happen.
11 He told you that.

12 The young man got up here on the stand and I
13 asked him, Did anybody ask you to say anything other
14 than the truth up here? No. That wasn't the same
15 for everybody. Whoever got him to sign this
16 statement that didn't have the nerve to sign their
17 name as a witness in this case, they didn't want him
18 to tell the truth. They wanted him to lie for their
19 benefit and to his detriment. That's what that's
20 about. It's no mystery. You don't leave your
21 common sense, just exactly as I told you, you don't
22 leave your common sense at home. You know who's got
23 a motive to try to get him to say that.

24 He didn't want to testify against them. Sure
25 he hesitated about it because he didn't want to. He

1 didn't want to be up here today, but he did.

2 Oh, that deal he got enticed him. Like I said,
3 feed them out of the same spoon. If he got a
4 Christmas present there with that plea to armed
5 robbery, feed them out of the same spoon, find them
6 all guilty of the same thing, because what this is
7 about is truth and justice not mercy.

8 Mercy comes from the bench. Justice is what
9 we're talking about. Isn't that what they wrote in
10 this statement right here? To bring about the end
11 of justice.

12 They don't want justice. They want mercy, want
13 you to let them walk out here if they let this
14 17-year-old young man carry the burden for the
15 unlawful acts of all of them alone and by hisself,
16 that's what they're asking you to do.

17 And like I said, they put Roosevelt Young on
18 trial. They've put Alvin on trial. They've put the
19 prosecution on trial all to shift the focus and to
20 stir up, kick up a cloud of dust and obscure the
21 simple fact of this young man implicating himself
22 and told on himself. There's no more inherently
23 truthful statement at all. He told on himself.

24 Look at the handwriting, see what you think
25 about these statements, think about all of the seeds

1 of doubt that they've tried to sew in this case and
2 think about who's got a motivation. And like I
3 said, they don't have to put up any evidence in this
4 case. We've got the burden of proof and we welcome
5 it.

6 Alvin Phillips got up here under oath. He did
7 do the right thing. He told you what he did and he
8 implicated himself. And we're going to put it in
9 your hands and you're going to decide whether these
10 two young men over here are going to let this 17
11 year old bear all the responsibility for this and
12 take this ride by himself or not, that's ultimately
13 what it comes down to.

14 We're going to put it in your hands as other
15 people, these Chinese folks that live down here and
16 run this restaurant that live here and are citizens
17 here in Edgefield County, live here as well and work
18 and try to make a living and raise their family as
19 to whether or not it's fair for them to be subjected
20 to this kind of behavior.

21 The police did what they could do. You know
22 good and well that they wish that they could have
23 gotten more and they could have done more in this
24 case, but it just wasn't there. On some crimes,
25 there's no magic bullet like there is on crime scene

1 CSI. There's no DNA. There are no hair fibers
2 they're going to vacuum up out of the yard. They've
3 got to rely on what happens sometimes through as
4 unlikely a source as somebody that had a family
5 court bench warrant that's a family member of
6 theirs.

7 But you know one thing about it, no matter how
8 you try to cover something up or hide it or walk
9 away from something, be sure your sins will always
10 find you out sometimes through the most unlikely
11 ways. One of their family members gets in trouble
12 with a bench warrant, tells what he knows.

13 They bring in this 17 year old. He does the
14 right thing and they're going to villainize him for
15 what he's doing. He did it. He accepted
16 responsibility. He pleaded guilty to it.

17 If you've got any problems about him getting
18 anything different than they get, feed them out of
19 the same spoon, not guilty on anything else and
20 guilty on armed robbery that's as easy as you can
21 be, but I hope you'll fulfill your obligations as
22 jurors in this case, use your common sense, come
23 back with guilty verdicts.

24 They robbed this man in the yard, then they
25 kidnapped him, these Chinese people. If they went

1 in that house, it's a burglary. If they got
2 together and they planned it together, it's criminal
3 conspiracy. This is about justice here. This is
4 about you sitting as judges of the facts in the
5 case. Mercy comes from some other place.

6 The Judge is going to charge you with what the
7 law is in this case and you apply it to the facts.
8 And you've got the facts up here. You saw what
9 Alvin Phillips said. You saw what he told Roosevelt
10 Young. The statements match. The timeline's there.
11 He was with Bryan ahead of time. He was with K.C.
12 Langford right afterwards. There wasn't anybody
13 else. He told the truth up here. He didn't want
14 to. He didn't want to tell on them. You know he's
15 got genuine affection for them. And he didn't want
16 to testify against them, but he did do the right
17 thing.

18 This comment about don't snitch on anybody,
19 don't tell anybody, this system breaks down when
20 people get up here under oath and they don't tell
21 the truth. The only way this system works is when
22 people get up here and take that oath and tell the
23 truth. And you can see how upset the defense got in
24 this case when the Chinese lady, he didn't think she
25 took the oath or didn't get it out of her mouth.

1 It's important because it's arrogant to think,
2 I'm smart enough that from the periphery of this or
3 from around the edges from down in jail, falsifying
4 statements or whatever else I'm going to do, that I
5 can outsmart the collective wisdom of 12 jurors up
6 here, because if there's one thing about this
7 courtroom, just like with all these windows, it puts
8 the light of day on things.

9 Y'all don't leave your common sense at home
10 when you come up here and I know you won't. Come
11 back with a verdict that speaks the truth, serve the
12 ends of justice, speak the truth in this case, let
13 mercy come from where it needs to come from.
14 Appreciate your close attention.

15 **THE COURT:** All right. Thank you, Solicitor.

16 Ladies and gentlemen, as I told you, I always
17 take a brief recess between the closing arguments
18 and the charge. Usually this is very brief. It's
19 just time for me to get set up and bring you back
20 out here and let you stretch your legs a little bit
21 in the meantime. So in about five minutes or so, I
22 plan to send for you if everybody's ready. And as I
23 told you, the charge should take me 38 minutes to
24 give it.

25 All right. Follow the bailiff, please

1 (The jury retires to the jury room.)

2 **THE COURT:** All right. We're at ease.

3 (Brief recess.)

4 **MR. CALHOUN:** Your Honor, I would like to make
5 a motion -- put something on the record.

6 **THE COURT:** Sure.

7 **MR. CALHOUN:** At this time, I would want to
8 move for a mistrial. The Solicitor may -- made an
9 improper comment on my client's decision not to
10 testify. At the end of his closing argument about
11 two minutes ago, he said, quote, The only way this
12 system works is if people get up here on the stand
13 and tell the truth. And I don't think that that was
14 a vail message. That was a distinct, pointed
15 comment on the fact that my client and Bryan
16 Phillips didn't take the stand, Your Honor.

17 **THE COURT:** Do you have something,
18 Mr. Williams?

19 **MR. WILLIAMS:** Your Honor, I have to join
20 Mr. Calhoun in his assertion for the record on
21 behalf of my client.

22 **MR. MAYE:** Your Honor, I didn't name their
23 clients. I was talking about Alvin Phillips in this
24 case. And I didn't comment on their right. In
25 fact, I specifically told the jury in this case that

1 they had an absolute right not to put up any
2 evidence, not to testify in this case and I told
3 them that directly in my closing argument. I didn't
4 make any comment on these two individuals' right,
5 that they should not have relied on their right to
6 remain silent. I was talking about witnesses that
7 take the stand in this case. That's the only way
8 this works is the witnesses come up here and they
9 tell the truth.

10 **MR. CALHOUN:** The problem with that argument is
11 my client didn't take the stand and the jury knows
12 it, so.

13 **THE COURT:** I can tell you when I was listening
14 to it, it didn't strike me as an improper argument,
15 but I'm trying to find it so I can make absolutely
16 certain I didn't miss something.

17 (Pause.)

18 **THE COURT:** One of the things that really makes
19 my ears stand up is when I hear people commenting on
20 the defendant's exercise of a right not to testify
21 or a right to remain silent and my radar did not get
22 tuned into anything the Solicitor said. I looked
23 back through the rough notes. And in context, I
24 just -- it didn't strike me then as being a comment
25 on the right -- exercise of the right to remain

1 silent and it doesn't strike me now as being a
2 comment. So your objection is noted. Your request
3 for a mistrial is noted and respectfully denied.

4 All right. Be back in place in five minutes.

5 **MR. MAYE:** Thank you, Your Honor.

6 **MR. CALHOUN:** Judge, I -- we're renewing our
7 motions, of course, for the record for a directed
8 verdict and any previous motions made.

9 **MR. WILLIAMS:** And so am I, Your Honor. I
10 think we forgot to do it toward the end of closing.

11 **THE COURT:** Well, that would have been my
12 fault. We got all wrapped up in that witness.

13 **MR. MAYE:** And I would certainly stipulate they
14 can make any motions now that they should have made
15 at that time.

16 **THE COURT:** All right. Do you have any
17 additional things you want to put on the record
18 considering these motions to have been made at the
19 close of all the evidence? Anything else, Mr.
20 Calhoun, other than renewing the motions you made at
21 the close of the State's case?

22 **MR. CALHOUN:** No, Your Honor.

23 **THE COURT:** And do you have anything else?

24 **MR. WILLIAMS:** No, sir, Your Honor.

25 **THE COURT:** All right. Once again, these are

1 all jury issues and the motions respectfully denied.

2 Now, make sure these folks know that when I
3 start talking to the jury, we lock the doors.

4 **MR. WILLIAMS:** Yes, sir, Your Honor.

5 **THE COURT:** So they need to be in here if they
6 want to hear the charge.

7 **MR. CALHOUN:** Yes, sir.

8 **THE COURT:** I can certainly understand if they
9 would not want to hear it, but they have to be in
10 here if they want to hear it.

11 All right. We're at ease.

12 (Brief recess.)

13 **THE COURT:** All right. During the charge,
14 please stay still and stay quiet. Don't do anything
15 to distract the jury absent an emergency and if
16 there is an emergency, act accordingly. If anybody
17 needs to be in, let them come on in. If anybody
18 needs to go out, you need to leave.

19 Okay. Bring in the jury.

20 (The jury returns to the courtroom.)

21 CHARGE OF THE COURT

22 **THE COURT:** Members of the jury, all of the
23 evidence has been presented. You've heard the
24 arguments of counsel. Now, it's time for me to
25 instruct you on the law that applies to the cases.

1 Please continue to pay close attention during this
2 next stage.

3 Now, first, you need to understand some basic
4 ground rules. You, the jury members, are the sole
5 judges of the facts. You decide all of the issues
6 of fact. You alone determine the truth of the
7 evidence, its effect, its value and its weight. You
8 alone judge the credibility of witnesses, in other
9 words, whether or not a witness' testimony is
10 believable.

11 In this regard, you may believe all that a
12 witness said or none of it. You may believe part of
13 what a witness said and not believe the balance.
14 You may believe one witness against many or many
15 against one. You may consider the -- any interest,
16 bias or prejudice that you feel that a witness has
17 in the case. You may consider the demeanor and the
18 appearance of the witness and the opportunity for
19 knowledge that the witness had. You may consider
20 the lack of evidence presented by the State. But
21 you're not to exercise these considerations
22 arbitrarily. What I want you to do is to use your
23 common sense, use your sense of logic and reason and
24 your good judgment.

25 It's not proper for me to give you a charge on

1 the facts of the case. I can't discuss the facts
2 with you. I'm not even permitted to convey to you
3 an impression as to what, if any, personal opinions
4 I may develop about the facts of a case as it goes
5 along. So if during any stage of this trial, you
6 develop an impression that I've got a personal
7 opinion about the facts, you have to remove that
8 totally from your mind. You're the sole judges of
9 the facts.

10 I am the judge of the law that applies to this
11 case and under your oath, you have to accept and
12 apply the law as I give it to you. If you've got
13 conflicting ideas about what the law is or what it
14 should be, you have to remove those. I give you the
15 law, you apply that law to the facts as you
16 determine them to be and in that way you reach your
17 verdicts.

18 It's also my job to decide what evidence is
19 admissible. If I've ruled something inadmissible or
20 told you to disregard something, you're not to
21 consider those things in arriving at your verdicts.
22 Base your verdicts on the competent evidence before
23 you, consider the testimony of the witnesses and the
24 exhibits admitted in the trial.

25 Now, you heard testimony of some witnesses

1 through an interpreter. And as odd as this may
2 sound, I'm supposed to tell you that if you have
3 some knowledge of Chinese or Mandarin Chinese, you
4 cannot rely on your own knowledge of that language.
5 So even if you disagree with the interpreter's
6 translation, you have to accept the translation of
7 the witnesses' testimony that was given by the
8 interpreter.

9 I need to explain to you that there are two
10 types of evidence generally presented during a
11 trial. There's direct evidence and there's
12 circumstantial evidence.

13 Direct evidence is evidence of direct
14 perception including the testimony of a person who
15 asserts or claims to have actual knowledge of a fact
16 such as an eyewitness.

17 Circumstantial evidence is proof of a chain.
18 It's proof of a chain of facts and circumstances
19 indicating the existence of a fact.

20 The law makes absolutely no distinction between
21 the weight or value to be given to either direct or
22 circumstantial evidence nor is a greater degree of
23 certainty required of circumstantial evidence than
24 of direct evidence. What you need to do is to weigh
25 all of the evidence in these cases. And after

1 weighing all of the evidence, if you're not
2 convinced of the guilt of the defendant beyond a
3 reasonable doubt, then you must find him not guilty.

4 The defendants in these cases are presumed to
5 be innocent. This is no mere legal theory. It is a
6 fundamental and substantial right to which every one
7 is entitled.

8 It's been described as being like a robe of
9 righteousness that's placed around an accused and it
10 remains with him through every stage of the trial.
11 It continues to exist after you go back to your jury
12 room to deliberate so that the defendant, the
13 accused, is presumed to be innocent unless and until
14 you, the jury, determine that the State has proven
15 him guilty beyond a reasonable doubt.

16 A defendant is not required to prove his
17 innocence. He is not required to prove anything at
18 all. The burden is entirely on the State to prove
19 the guilt of the defendant beyond a reasonable doubt
20 and it's required that every essential element of an
21 offense charged be proven by the State beyond a
22 reasonable doubt.

23 Now, that does not mean that the State has to
24 prove the guilt of the defendant beyond all doubt or
25 beyond every doubt. The appropriate standard is

1 proof beyond a reasonable doubt.

2 Some of you may have served as jurors in civil
3 court. And if you've ever served as a juror in
4 civil court or been in civil court, you understand
5 that the burden of proof there is to establish that
6 something is probable, that it's more likely than
7 not and we call that the greater weight or
8 preponderance of the evidence. But in this setting,
9 a criminal court setting, the standard is much
10 higher and the proof required is much stronger than
11 what is required in civil court. As I've told you
12 repeatedly, the burden of proof in these cases is
13 proof beyond a reasonable doubt.

14 So what do I mean by that term? Proof beyond a
15 reasonable doubt is proof that leaves you firmly
16 convinced of the defendant's guilt. There are few
17 things in the world that we know with absolute
18 certainty and in criminal cases, the law does not
19 require proof that overcomes every possible doubt.

20 If, based on your consideration of the
21 evidence, you are firmly convinced that a defendant
22 is guilty of a crime charged, then you are to find
23 him guilty of that crime. If, on the other hand,
24 you think there is a real possibility that he is not
25 guilty, you must give him the benefit of the doubt

1 and find him not guilty on that charge.

2 Now, there is no obligation on the part of a
3 defendant to raise any doubt or any other
4 possibility. A defendant is presumed to be
5 innocent. And the State has the entire burden of
6 proof and the State has to prove to you that that
7 defendant is guilty to the exclusion of any other
8 real possibility.

9 I remind you, ladies and gentlemen, and
10 emphasize once again that the fact that the
11 defendants in this case elected not to testify is
12 not a factor to be considered by you in any manner
13 in your deliberations, in your consideration on the
14 question of whether a defendant is guilty or not
15 guilty. The decision not to testify must not be
16 considered by you in any manner whatsoever against a
17 defendant. An accused has a constitutional right to
18 remain silent and the assertion of that right cannot
19 and must not be considered by you in your
20 deliberations.

21 Under your oath, you are to reach no inference
22 and you are to draw no conclusion whatsoever from
23 the fact that a defendant elected not to testify.
24 His decision not to testify should not be discussed
25 by you in your deliberations. It should not even

1 enter your minds in making your decision on these
2 cases. The burden of proof is entirely on the State
3 to prove the guilt of the defendant beyond a
4 reasonable doubt and the State has to prove every
5 essential element of each offense charged beyond a
6 reasonable doubt.

7 Now, I need to explain to you that a person can
8 be guilty of a crime either by directly perpetrating
9 that crime himself or by being present at the scene
10 of the crime and aiding, abetting and assisting in
11 the commission of the crime. This is known as
12 accomplice liability, being an accomplice. And it's
13 sometimes referred to with the phrase, The hand of
14 one is the hand of all. A person who was present at
15 the scene of a crime and intentionally or through a
16 common plan aided, abetted and assisted in the
17 commission of that crime through some overt act is
18 guilty as an accomplice.

19 Now, to be liable as an accomplice, the
20 defendant must have knowledge of the principal's
21 criminal conduct. Mere presence at the scene of a
22 crime is not sufficient to establish guilt as an
23 accomplice to that crime.

24 Now, intentionally means willful, intending the
25 result that actually occurs, not something done

1 accidentally or involuntarily.

2 During the rest of this charge when I refer to
3 the term accomplice, you should consider that I mean
4 that term to include all the conditions of
5 accomplice liability that I just instructed you
6 about and incorporate those into that term.

7 Now, let's turn to the specific charges that
8 are alleged in this trial. As you know, there are
9 two separate defendants and the charges against each
10 defendant have to be evaluated separately. Further,
11 each defendant is charged with four separate
12 charges, each of which has to be evaluated
13 separately on its own merit or lack of merit.

14 I read these indictments to you at the
15 beginning of the trial. All of the indictments
16 allege that the incident occurred in Edgefield
17 County on or about August 14, 2008. The defendants
18 are charged with armed robbery. It is alleged that
19 each defendant while armed with a deadly weapon and
20 by means of force or intimidation, feloniously took
21 from the person or presence of Ji Quing Chen
22 approximately \$3,000 in United States currency with
23 the intent to deprive Mr. Chen permanently of that
24 property.

25 Each defendant is also charged with burglary in

1 the first degree. It is alleged that each defendant
2 willfully and unlawfully entered during the
3 nighttime without consent and with the intent to
4 commit a crime therein the residence of Ji Quing
5 Chen.

6 Each defendant is charged with kidnapping.
7 It's alleged that each defendant unlawfully seized,
8 confined, inveigled, decoyed, kidnapped, abducted or
9 carried away Ji Quing Chen and/or Guan Xin Li
10 without authority of law and without consent by the
11 following means: It's alleged that each defendant
12 with the use of a firearm and/or physical force,
13 held those persons, either one or both, against
14 their will and would not let them leave the
15 residence.

16 And, finally, each defendant is charged with
17 criminal conspiracy. It's alleged that each
18 defendant unlawfully and willfully united, combined,
19 conspired, confederated, agreed and/or had a tacit
20 understanding with the other defendant and with
21 Alvin Phillips for the purposes of accomplishing the
22 crime of armed robbery.

23 I caution you, ladies and gentlemen, that an
24 indictment is not evidence. It has no evidentiary
25 value. An indictment is nothing more than a

1 charging paper, the formal means by which someone is
2 charged and brought to trial. It's not evidence and
3 you may not consider an indictment as having any
4 evidentiary value.

5 Now, first, I'm going to explain to you the law
6 about armed robbery. Armed robbery is using force,
7 threats or intimidation while armed with a deadly
8 weapon to unlawfully take and carry away personal
9 property of another person with the intent to
10 deprive the owner of possession.

11 So in order to prove this offense, the State
12 must first prove beyond a reasonable doubt that the
13 defendant or an accomplice of his took personal
14 property from the person or presence of the person
15 or persons named in the indictment. It has to be
16 taken from the person or presence of another person.
17 Personal property is anything other than real estate
18 basically.

19 In order for property to be in the presence of
20 a person, it must be within the person's reach,
21 inspection, observation or control so that the
22 person could keep possession of that property if not
23 overcome with violence or prevented by fear.

24 The State also has to prove beyond a reasonable
25 doubt that the defendant or an accomplice of the

1 defendant carried the property away intending to
2 permanently deprive the owner of the property and
3 keep the property for the defendant's own use. The
4 taking or the carrying away of the property must
5 have been done with violence or by putting the owner
6 of the property or possessor of the property in fear
7 of violence.

8 And, finally, the State has to prove to you
9 beyond a reasonable doubt that the defendant or his
10 accomplice was present and aiding, abetting and
11 assisting in the commission of the robbery while
12 armed with a deadly weapon during the robbery. A
13 deadly weapon is any article, instrument or
14 substance that is likely to cause death or great
15 bodily harm.

16 Next, I'm going to explain to you burglary in
17 the first degree. Burglary in the first degree is
18 willfully and unlawfully entering a residence
19 without consent and with the intent to commit a
20 crime therein where the entering or remaining
21 occurred in the nighttime. It is willfully and
22 unlawfully entering a residence without consent and
23 with the intent to commit a crime therein where the
24 entering or remaining occurred in the nighttime.

25 So to prove the defendant or a defendant guilty

1 of burglary, the State has to prove to you that the
2 defendant in question either as the principal or as
3 an accomplice who was present and aiding, abetting
4 and assisting another defendant in the crime of
5 burglary did the following things:

6 First, that he entered a dwelling without
7 consent. A dwelling is any building in which a
8 person ordinarily sleeps.

9 Next, the State has to prove to you that the
10 entry was done with the intent to commit a crime,
11 either a felony or a misdemeanor, at the time of the
12 entry. Merely entering into a dwelling without
13 consent is not burglary. The entry has to be made
14 with the intent to commit a crime once inside a
15 dwelling. Intent may be shown by acts and conduct
16 of the defendant and other circumstances from which
17 you may naturally and reasonably infer intent.

18 And, finally, the State has to prove beyond a
19 reasonable doubt that an entering or remaining
20 occurred in the nighttime.

21 Next, I'm going to explain to you kidnapping.
22 Kidnapping is knowingly and unlawfully seizing,
23 confining, inveigling, decoying, kidnapping,
24 abducting or carrying away another person without
25 lawful authority.

1 Now, to do an act unlawfully requires willfully
2 doing something that's against the law. Willfully,
3 as I told you, means intentionally. Knowingly means
4 with knowledge and consciously not something done by
5 accident. To seize means to take hold of suddenly
6 or forcibly. To confine means to limit, to
7 restrict, to enclose within bounds, to imprison or
8 to shut in or keep in another person. Kidnap is to
9 remove a person against his will by unlawful force
10 or by fraud. Abduct means to carry off secretly or
11 by force for an illegal purpose. And carry away
12 means to remove.

13 The State does not have to prove that the
14 defendant or someone with whom he was acting as an
15 accomplice did all of these things. If you find
16 beyond a reasonable doubt that the defendant or an
17 accomplice knowingly and willfully seized, confined,
18 kidnapped or abducted either or both of the two
19 purported victims against the will of the purported
20 victim or victims, as I have defined those terms to
21 you and as alleged in this -- in the particular
22 indictments, then you may find that defendant guilty
23 of kidnapping.

24 Now, something done without the authority of
25 law is something that the law does not sanction,

1 permit, allow, condone or provide justification for.
2 The kidnapping does not have to be for ransom or for
3 any personal or monetary gain.

4 And, finally, I need to explain to you the
5 crime of conspiracy. The State has to prove beyond
6 a reasonable doubt that the defendant in question
7 combined with one or more persons named in the
8 indictment for the purpose of committing an unlawful
9 act or of committing a lawful act by unlawful means.
10 Now, here it's alleged that the unlawful act was
11 armed robbery, that there was conspiracy to commit
12 armed robbery.

13 There has to be a mutual understanding for
14 there to be a criminal conspiracy, a mutual
15 understanding, an agreement or a common intention
16 and plan. Mere passive knowledge of or consent to
17 the criminal conduct of another is not enough to
18 make a person a conspirator. There has to be guilty
19 knowledge and participation.

20 And, similarly, the mere fact that the
21 defendant may have associated with another person or
22 met with another person and discussed common aims
23 and interests does not necessarily establish proof
24 of the existence of a conspiracy or that the
25 defendant was involved in a conspiracy.

1 The essence of conspiracy is an agreement to
2 commit an unlawful act. The agreement does not have
3 to be formal. It does not have to be in writing.
4 The agreement of a criminal conspiracy may come into
5 being through implied mutual understandings. A
6 conspiracy requires the willful, intentional and
7 knowing adoption by two or more persons of a common
8 plan to do an illegal act.

9 The State has to prove to you beyond a
10 reasonable doubt not only that the defendant knew of
11 the unlawful conduct, but that the defendant agreed
12 in advance to combine with the other persons for the
13 purpose of accomplishing armed robbery.

14 All right. The last thing I have to go over
15 with you about the law is that a defendant is
16 entitled to every reasonable doubt arising in an
17 entire case.

18 If, upon any issue of fact essential to a
19 conviction, you have a reasonable doubt as to how
20 that issue should be resolved, then you have to
21 resolve that doubt in favor of the defendant. If,
22 upon reviewing an entire case, you have a reasonable
23 doubt as to whether the defendant has been proven by
24 the State to be guilty of a crime charged, then the
25 defendant is entitled to that reasonable doubt and a

1 verdict of not guilty on that charge.

2 On the other hand, if you, upon reviewing the
3 entire case, find that the State has proven every
4 essential element of a crime charged against a
5 particular defendant beyond a reasonable doubt, it's
6 equally your duty to find the defendant guilty of
7 that charge. And that's the law.

8 Folks, when you go back to your jury room to
9 decide these cases, you're going to have with you
10 all of the exhibits that were admitted in the trial
11 and you're going to have these verdict forms. On
12 these forms, you're going to tell us your decisions.

13 Now, there are eight separate pieces of paper
14 because you have two defendants each charged with
15 four offenses. And what you will see when you get
16 back there is that the caption on four of these
17 reads, The State versus K.C. Langford, III. And the
18 caption at the top of the page on the four others
19 reads, The State versus Bryan Jordan Phillips.

20 Now, what I have done is I have listed the
21 possible forms of verdict on each. And to make sure
22 that there's no confusion, I've been a little bit
23 repetitive, so even though I've got the caption up
24 here with the name, I have put the charge that
25 you're considering and the name of that particular

1 defendant again.

2 So this one reads, As to the charge of burglary
3 in the first degree against K.C. Langford, III, we,
4 the jury, unanimously find the defendant, and then
5 you have two options, you may find the defendant not
6 guilty or you may find the defendant guilty of
7 burglary in the first degree.

8 Now, the verdict form for Mr. Phillips on the
9 indictment for burglary in the first degree will be
10 exactly the same except the names will be changed.

11 Then you have another set of verdict forms for
12 armed robbery. And, again, I'll just stick with the
13 one I have in my hand. It reads, As to the charge
14 of armed robbery against K.C. Langford, III, we, the
15 jury, unanimously find the defendant, and you have
16 two options, you may find him not guilty or you may
17 find him guilty of armed robbery.

18 The verdict form for Mr. Phillips will be
19 identical except the names were changed. You have
20 the option of finding Mr. Phillips not guilty or
21 guilty of armed robbery.

22 Then there are two separate and distinct
23 verdict forms for kidnapping, one against
24 Mr. Langford and one against Mr. Phillips. And they
25 would read, As to the charge of kidnapping against,

1 whichever defendant you're considering, we, the
2 jury, unanimously find that defendant, you have two
3 options, you may find him not guilty or guilty of
4 kidnapping.

5 And then criminal conspiracy, same thing, two
6 options, you may find the defendant not guilty, you
7 may find that particular defendant guilty of
8 criminal conspiracy.

9 Now, Mr. Foreman, part of your job is to record
10 the verdicts of the jury. I think you'll find these
11 forms to be self-explanatory. They're pretty
12 simple. Just make sure that you're looking at the
13 name and the charge that's all right up here
14 underlined for you and you check the response the
15 jury chooses on each form and you sign your name on
16 each form.

17 Now, ladies and gentlemen, how you go about
18 your deliberations and how you go about taking your
19 votes, all of that is in your discretion subject to
20 this requirement: Your verdicts must be unanimous.
21 All 12 of you have to agree before the Foreman can
22 record your verdict.

23 You cannot do anything to change the
24 requirement of a unanimous verdict. When you come
25 back out with your verdicts, you can be asked

1 individually if that is your verdict and if it is
2 still your verdict. So please understand, folks,
3 the verdicts have to be unanimous and you cannot do
4 anything to change the requirement of a unanimous
5 verdict.

6 When you've reached your verdicts, knock on the
7 door, the bailiff will respond to your knock.

8 Now, over the course of the last three days,
9 I've probably told you all dozens of times not to
10 discuss the case until I tell you. And I told you
11 you wouldn't have any doubt about when that would
12 be. Well, it isn't time yet. The law says that I
13 have to let the attorneys discuss with me what I
14 just told you and that's just common sense, we don't
15 want you back there deciding these cases using the
16 wrong law. They don't get to stand up and object
17 when I'm talking. They have to wait till I turn to
18 them and ask them if they have any input.

19 So what will happen is this. I'm going to send
20 you back to the jury room. I will get input from
21 the attorneys. If I agree with them that I need to
22 clarify something or I misstated something, I'll
23 bring you back out and do that.

24 But if I'm satisfied with what I told you,
25 here's the signal you need to look for. The bailiff

1 is going to bring these verdict forms and those
2 exhibits back there in that jury room. When you
3 have those exhibits and verdict forms in the jury
4 room and the door is shut and it's just the 12 of
5 you in there, you start talking about the case. You
6 don't have to wait another second, but don't talk
7 about it until then.

8 Thank you very much for your attention. You
9 may retire to your jury room.

10 (The jury retires to the jury room.)

11 **THE COURT:** Please state for the record
12 exceptions, additions or objections to the
13 instructions from the State.

14 **MR. MAYE:** None from the State, Your Honor.

15 **THE COURT:** On behalf of Mr. Langford.

16 **MR. CALHOUN:** None for Mr. Langford, Your
17 Honor.

18 **THE COURT:** And on behalf of Mr. Phillips.

19 **MR. WILLIAMS:** None from Mr. Phillips, Your
20 Honor.

21 **THE COURT:** Gentlemen, I want to thank you all
22 very much, everybody involved, the attorneys, the
23 witnesses, defendants, family members, everybody for
24 the respect you've shown the Court. I appreciate
25 that very much. Everybody obviously has worked very

1 hard on these cases.

2 The jury has a very difficult choice to make.

3 They've got the toughest job in the courthouse.

4 We'll put it in their hands and see what happens.

5 Check the verdict forms, check the exhibits.

6 When you're satisfied, give those to the bailiff and

7 he or she will take them back.

8 MR. CALHOUN: Thank you, Judge.

9 MR. WILLIAMS: Thank you, Your Honor.

10 (Pause.)

11 THE COURT: Everybody's square?

12 MR. CALHOUN: Yes, sir.

13 MR. WILLIAMS: Yes, sir, Your Honor.

14 MR. MAYE: Nothing from the State.

15 THE COURT: All right. Mr. Bailiff, if you
16 will give those to the jury and tell them they may
17 begin their deliberations and knock on the door when
18 they've completed them, when they've got their
19 verdicts.

20 We're at ease on these cases pending a verdict.

21 I guess I need to put this on the record.

22 After I told the jury about taking notes, none of
23 them took any notes. The bailiff watched them. I
24 watched them and they didn't take any notes. So I
25 didn't give any further instructions about that.

1 All right. We're at ease pending a verdict.

2 (The jury commenced its deliberations at
3 5:48 p.m.)

4 (A recess transpired.)

5 (Court's Exhibit Number 4, jury note, marked
6 for identification purposes.)

7 (The following occurred at the bench during
8 jury deliberations at 7:54 p.m.)

9 **THE COURT:** The attorneys have agreed to submit
10 another blank form and shred the original without
11 looking at it as it relates to Court's Exhibit 4.

12 (A recess transpired.)

13 (Court's Exhibit Number 5, jury note, marked
14 for identification purposes.)

15 (The following occurred during jury
16 deliberations at 8:48 p.m.)

17 **THE COURT:** All right. The jury's asked to
18 hear -- the jury's asked to hear definitions of all
19 four offenses, so I just intend to charge the jury
20 those sections that I gave them earlier where I
21 define the offenses. Do y'all have any input before
22 I bring them in?

23 **MR. MAYE:** None from the State, Your Honor.
24 Thank you.

25 **MR. CALHOUN:** No, Your Honor.

1 **MR. WILLIAMS:** No, sir.

2 **THE COURT:** Bring them in, please.

3 (The jury returns to the courtroom at 8:49
4 p.m.)

5 **THE COURT:** Mr. Foreman, I received a note from
6 the jury basically asking that I recharge you on the
7 definitions of the four separate offenses; is that
8 right?

9 **FOREMAN:** Yes, sir.

10 **THE COURT:** Okay. First, I'll explain to you
11 the law of armed robbery. Armed robbery is using
12 force, threats or intimidation while armed with a
13 deadly weapon to unlawfully take and carry away
14 personal property of another person with the intent
15 to deprive the owner of possession.

16 In order to prove this offense, the State must
17 prove beyond a reasonable doubt that the defendant
18 or an accomplice of his took personal property from
19 the person or presence of the person or persons
20 named in the indictment. In order for property to
21 be in the presence of a person, it has to be within
22 the person's reach, inspection, observation or
23 control so that the person could, if not overcome
24 with violence or prevented by fear, keep possession
25 of the property.

1 The State must also prove beyond a reasonable
2 doubt that the defendant or an accomplice carried
3 the property away intending to permanently deprive
4 the owner of the property and keep the property for
5 the defendant's own use. The taking and carrying
6 away of the property must have been done with
7 violence or by putting the owner of the property in
8 fear of violence.

9 And, finally, the State must prove beyond a
10 reasonable doubt that the defendant or his
11 accomplice was present and aiding, abetting and
12 assisting in the commission of the robbery and was
13 armed with a deadly weapon during the robbery. A
14 deadly weapon is any article, instrument or
15 substance which is likely to cause death or great
16 bodily harm.

17 So armed robbery is, to recap, using force,
18 threats or intimidation while armed with a deadly
19 weapon to unlawfully take and carry away personal
20 property of another person with the intent to
21 deprive the owner of possession. It's robbery with
22 the use of a deadly weapon and force, threats or
23 intimidation and all those elements I went through
24 with you earlier.

25 With regard to first degree burglary, burglary

1 in the first degree is willfully and unlawfully
2 entering a residence without consent and with the
3 intent to commit a crime therein where the entering
4 or the remaining occurred in the nighttime.

5 So to prove a defendant guilty of burglary, the
6 State must first prove that the defendant in
7 question either as the principal or as an accomplice
8 who was present and aiding, abetting and assisting
9 another defendant in the crime of burglary did the
10 following things:

11 First, that he entered a dwelling without
12 consent. A dwelling is any building in which a
13 person ordinarily sleeps.

14 Next, the State must prove that the entry was
15 done with the intent to commit a crime, either a
16 felony or a misdemeanor, at the time of the entry.
17 Merely entering a dwelling without consent is not
18 burglary. The entry has to be made with the intent
19 to commit a crime once inside the dwelling. Intent
20 may be shown by acts and conduct of the defendant
21 and other circumstances from which you may naturally
22 and reasonably infer intent.

23 And, finally, the State has to prove beyond a
24 reasonable doubt that the entering or remaining
25 occurred in the nighttime.

1 Kidnapping is knowingly and unlawfully seizing,
2 confining, inveigling, decoying, kidnapping,
3 abducting or carrying away another person without
4 authority of law.

5 Now, to do a thing unlawfully requires
6 willfully doing something that is against the law.
7 Knowingly means that it's done with knowledge. It's
8 consciously done. It's not something done by
9 accident. To seize means to hold or take hold of
10 suddenly or forcibly. Confine means to limit,
11 restrict or enclose within bounds or to imprison or
12 shut in a person or keep in a person. Kidnap is to
13 remove a person against his will by unlawful force
14 or by fraud. And abduct means to carry off secretly
15 or by force for an illegal purpose. Carry away
16 means to remove.

17 Now, the State does not have to prove that the
18 defendant or someone with whom he was acting as an
19 accomplice did all of these things. If you find
20 beyond a reasonable doubt that the defendant or an
21 accomplice knowingly and willfully seized, confined,
22 kidnapped or abducted either or both of the two
23 purported victims against the will of the purported
24 victim or victims, as I have defined all these terms
25 for you and as alleged in the particular indictment,

1 then you may find that defendant guilty of
2 kidnapping.

3 Something done without authority of law is
4 something which the law does not sanction or permit
5 or allow or condone or provide a justification for.

6 Now, kidnapping does not have to be for ransom
7 or for any personal or monetary gain.

8 And, finally, I'll talk to you about
9 conspiracy. To prove criminal conspiracy, the State
10 has to prove beyond a reasonable doubt that the
11 defendant combined with one or more persons named in
12 the indictment for the purpose of committing an
13 unlawful act or of committing a lawful act by
14 unlawful means.

15 Now, here the indictment alleges that the
16 conspiracy was to commit an unlawful act, which is
17 alleged to be armed robbery.

18 There has to be a mutual understanding,
19 agreement or common intention and plan. Mere
20 passive knowledge of or consent to the criminal
21 conduct of another is not enough to make a person a
22 conspirator. There has to be guilty knowledge and
23 participation.

24 And, similarly, the mere fact that a defendant
25 may have associated with another person or met with

1 another person and discussed common aims and
2 interests does not necessarily establish proof of
3 the existence of a conspiracy or that the defendant
4 was involved in a conspiracy.

5 The agreement does not have to be formal. It
6 does not have to be in writing. The agreement of a
7 criminal conspiracy may come into being through an
8 implied mutual understanding, but a conspiracy
9 requires willful, intentional and knowing adoption
10 by two or more persons of a common plan to do an
11 illegal act.

12 The State has to prove beyond a reasonable
13 doubt not only that the defendant knew of the
14 unlawful conduct, but the defendant agreed to
15 combine with the other persons named in the
16 indictment for the purpose of accomplishing armed
17 robbery.

18 Those are the four definitions. If you need
19 anything else, let me know. Thank you.

20 (The jury retires to the jury room to
21 continue its deliberations at 8:58 p.m.)

22 **THE COURT:** Are there any exceptions, additions
23 or objections to the instructions from the State?

24 **MR. MAYE:** Nothing from the State, Your Honor.

25 **MR. CALHOUN:** None from Mr. Langford, Your

1 Honor.

2 MR. WILLIAMS: None from Defendant Phillips,
3 Your Honor.

4 THE COURT: Thank you. We're at ease pending a
5 verdict.

6 (A recess transpired.)

7 THE COURT: All right. Please stay still, stay
8 quiet as the verdict's announced and thereafter.
9 Don't show signs of approval or disapproval.

10 (The jury returns to open court to report
11 its verdict at 9:54 p.m.)

12 THE COURT: Madame Clerk.

13 THE CLERK: Mr. Foreman, have you reached a
14 verdict?

15 FOREMAN: Yes, we have.

16 THE CLERK: Please pass it to the bailiff.

17 (The bailiff hands the verdicts to the
18 Judge.)

19 VERDICT OF THE JURY

20 THE COURT: All right. The State of South
21 Carolina, County of Edgefield, the State versus K.C.
22 Langford, III, case number 2010-GS-19-00278, as to
23 the charge of kidnapping against K.C. Langford, III,
24 we, the jury, unanimously find the defendant guilty
25 of kidnapping, signed by the Foreman.

1 Case number 2010-GS-19-272 as to the charge of
2 burglary in the first degree against K.C. Langford,
3 III, we, the jury, unanimously find the defendant
4 guilty of burglary in the first degree, signed by
5 the Foreman.

6 Indictment 2010-GS-19-273 as to the charge of
7 armed robbery against K.C. Langford, III, we, the
8 jury, unanimously find the defendant guilty of armed
9 robbery, signed by the Foreman.

10 Case number 2008-GS-19-673 as to the charge of
11 criminal conspiracy against K.C. Langford, III, we,
12 the jury, unanimously find the defendant guilty of
13 criminal conspiracy, signed by the Foreman.

14 State of South Carolina versus Bryan Jordan
15 Phillips, case number 2010-GS-19-277, as to the
16 charge of kidnapping against Bryan Jordan Phillips,
17 we, the jury, unanimously find the defendant guilty
18 of kidnapping, signed by the Foreman.

19 Case 2010-GS-19-274 as to the charge of
20 burglary in the first degree against Bryan Jordan
21 Phillips, we, the jury, unanimously find the
22 defendant guilty of burglary in the first degree,
23 signed by the Foreman.

24 Case number 2008-GS-19-723 as to the charge of
25 armed robbery against Bryan Jordan Phillips, we, the

1 jury, unanimously find the defendant guilty of armed
2 robbery,, signed by the Foreman.

3 As to the charge of criminal conspiracy against
4 Bryan Jordan Phillips, we, the jury, unanimously
5 find the defendant guilty of criminal conspiracy,
6 signed by the Foreman.

7 Mr. Foreman, ladies and gentlemen of the jury,
8 if I have accurately stated your verdicts, that is
9 guilty on -- guilty as charged on each count against
10 both defendants, please signify by raising your
11 right hand.

12 All 12 hands are raised. Thank you.

13 Are there any matters to take up prior to the
14 jury being discharged from the State?

15 **MR. MAYE:** Nothing from the State, Your Honor.

16 **THE COURT:** On behalf of Mr. Langford?

17 **MR. CALHOUN:** No, Your Honor.

18 **THE COURT:** On behalf of Mr. Phillips.

19 **MR. WILLIAMS:** Your Honor, on behalf of
20 Mr. Phillips, we would request that the jurors be
21 polled.

22 **THE COURT:** Do you want each charge done
23 individually or do you want them done collectively?

24 **MR. WILLIAMS:** Collectively, Your Honor.

25 **THE COURT:** All right. Ladies and gentlemen of

1 the jury, what's going to happen is that the Clerk
2 is going to call the role. As your name is called,
3 I need for you to raise your hand so she knows where
4 to look. You can put your hand back down then. And
5 then she's going to ask you questions along these
6 lines, were -- these are the charges against Bryan
7 Jordan Phillips, the four charges against him.
8 She's going to ask you, were these your verdicts and
9 are they still your verdicts. Just answer her
10 truthfully.

11 Madame Clerk.

12 **THE CLERK:** Mr. Foreman, Mr. Hillary.

13 **FOREMAN:** Do I need to stand?

14 **THE COURT:** No. You can stay seated, just let
15 her know where you are.

16 **THE CLERK:** The verdict of the jury reported of
17 the Court to Mr. K.C. Langford --

18 **THE COURT:** No. Mr. Langford didn't ask for
19 it.

20 **THE CLERK:** I mean, Mr. Bryan Jordan Phillips,
21 was this your verdict in the jury room and is it
22 still your verdict? Please answer yes or no.

23 **FOREMAN:** Yes.

24 **THE CLERK:** Kevin L. Chinn, the verdict of the
25 jury reported to the Court of Mr. Phillips was

1 guilty. Was this your verdict in the jury room and
2 is it still your verdict?

3 JUROR: It wasn't at first, but, yes.

4 THE CLERK: Sir?

5 JUROR: I said it wasn't at first, but, yes.

6 THE COURT: Was it your verdict?

7 JUROR: Yes.

8 THE COURT: Is it still your verdict?

9 JUROR: Yes.

10 THE COURT: As to each charge?

11 JUROR: Yes.

12 THE CLERK: Mr. Gustave Frazer, the verdict of
13 the jury reported to the Court was guilty. Was this
14 your verdict in the jury room and is it still your
15 verdict to Mr. Phillips?

16 JUROR: Yes.

17 THE CLERK: Regina Harrell, the verdict of the
18 jury reported to the Court with Mr. Bryan Phillips
19 was guilty. Was this your verdict in the jury room
20 and is it your verdict -- still your verdict?

21 JUROR: Yes, ma'am.

22 THE CLERK: Doresa A. Hartley, the verdict of
23 the jury reported to the Court on Mr. Bryan Phillips
24 was guilty. Was this your verdict in the jury room
25 and is it still your verdict?

1 **JUROR:** Yes.

2 **THE CLERK:** Richard J. Koenig, the verdict of
3 the jury reported to the Court on Mr. Bryan Phillips
4 was guilty. Was this your verdict in the jury room
5 and is it still your verdict?

6 **JUROR:** Yes.

7 **THE CLERK:** Jerry A. Richardson, the verdict of
8 the jury reported to the Court for Mr. Bryan
9 Phillips was guilty. Was this your verdict in the
10 jury room and is it still your verdict?

11 **JUROR:** Yes, ma'am.

12 **THE CLERK:** Beatrice Ryan, the verdict of the
13 jury reported to the Court on Mr. Bryan Phillips was
14 guilty. Was this your verdict in the jury room and
15 is it still your verdict?

16 **JUROR:** Yes.

17 **THE CLERK:** M.L. Ryan, the verdict of the jury
18 reported to the Court on Mr. Bryan Phillips was
19 guilty. Was this your verdict in the jury room and
20 is it still your verdict?

21 **JUROR:** Yes.

22 **THE CLERK:** James H. Satcher, III, the verdict
23 of the jury reported on Mr. Bryan Phillips was
24 guilty. Was this your verdict in the jury room and
25 is it still your verdict?

1 **JUROR:** Yes, ma'am.

2 **THE CLERK:** Ervin M. Talbert, the verdict of
3 the jury reported to the Court on Mr. Bryan Phillips
4 was guilty. Was this your verdict in the jury room
5 and is it still your verdict?

6 **JUROR:** Yes, ma'am.

7 **THE CLERK:** Deborah A. Weaver, the verdict of
8 the jury reported to the Court on Mr. Bryan Phillips
9 was guilty. Was this your verdict in the jury room
10 and is it still your verdict?

11 **JUROR:** Yes.

12 **THE COURT:** Is that everybody?

13 All right. Any further matters to take up
14 prior to the jury being discharged on behalf of
15 Mr. Phillips?

16 **MR. WILLIAMS:** No, Your Honor.

17 **THE COURT:** Thank you very much.

18 All right. Ladies and gentlemen of the jury, I
19 realize the hour. There are some matters that I
20 have to take up outside your presence and then I've
21 got a little bit of information I need to give to
22 you before I let you go. You'll be through with
23 jury duty once I finish that.

24 Once I deal with these issues with the
25 attorneys, depending upon how they come out, at that

1 point, I may be sentencing the defendants. If you
2 want to come in for the sentencing, if that takes
3 place tonight, I'll let you do that, but right now I
4 need for you to step in the jury room.

5 (The jury retires to the jury room.)

6 **THE COURT:** Any motions?

7 **MR. CALHOUN:** No, Your Honor.

8 **THE COURT:** All right. If you don't make
9 motions, you're going to lose your right to appeal.

10 **MR. CALHOUN:** I mean, Your Honor, we just renew
11 our previously made motions. Right now we'd move
12 for a motion for a judgment notwithstanding the
13 verdict based on the arguments previously made and
14 our motion for a directed verdict.

15 **THE COURT:** All right. So you move for a
16 judgment not withstanding the verdict and for a new
17 trial on the same grounds, on the grounds that
18 there's insufficient evidence to support each of
19 these convictions; is that basically your argument?

20 **MR. CALHOUN:** Yes, Your Honor.

21 **THE COURT:** All right. What about you,
22 Mr. Williams?

23 **MR. WILLIAMS:** Your Honor, I move to renew my
24 motions for a directed verdict. Further, Judge, I
25 would move for a new trial on the basis that we

1 believe that there wasn't sufficient evidence in
2 this matter in which the jury could find guilt of my
3 client and any decision that they made we believe
4 that it was made out of passion or prejudice. We
5 would ask the Court to grant a new trial. If not,
6 direct a verdict of not guilty.

7 **THE COURT:** Do you adopt the same arguments as
8 well, Mr. Calhoun?

9 **MR. CALHOUN:** Yes, Your Honor.

10 **THE COURT:** The jury acted within its province.
11 There's no indication that the jury's verdicts are
12 the product of any passion, prejudice, caprice or
13 any improper or undue influence. The motions are
14 respectfully denied.

15 **MR. WILLIAMS:** Thank you, Your Honor.

16 **THE COURT:** I don't see a sentence sheet on --

17 **MR. MAYE:** They would have been taken off the
18 indictments at the time that they were passed up,
19 Your Honor, I would imagine.

20 **THE COURT:** I've got sentence sheets on
21 everything except this kidnapping charge on K.C.
22 Langford.

23 **MR. MAYE:** I'll retrieve them, Your Honor. You
24 have one on everything but kidnapping on K.C.
25 Langford?

1 **THE COURT:** Yes.

2 We're at ease.

3 (Brief Recess.)

4 **THE COURT:** Do you have anything on sentencing,
5 Mr. Calhoun?

6 **MR. CALHOUN:** Your Honor, you're aware of what
7 he has on his record and the age that he was when
8 this occurred and I just please ask you to take that
9 into consideration.

10 **THE COURT:** Does the State have anything on
11 sentencing on Mr. Langford?

12 **MR. MAYE:** No, sir, Your Honor. You've heard
13 all of the facts. You're very familiar with this
14 case over a long period of time. I leave it to the
15 wise discretion of the Court.

16 **THE COURT:** Mr. Langford, do you want to say
17 anything?

18 **DEFENDANT LANGFORD:** Yes, sir. As of now, I
19 understand that I'm under your leniency. I just
20 like to direct it to you about me being found guilty
21 in the eyes of the jurors by one statement that was
22 made on the behalf of a co-defendant who wavered
23 back and forth, I don't think was reliable.

24 I don't understand how I got put in this crime.
25 I don't know why he placed me there. I do know he

1 tried to remove me. I do know that he didn't want
2 to testify. I do know that the last court term, he
3 pled the Fifth and didn't want to testify. And it's
4 just, I feel that it's some type of prejudice
5 because of my charges didn't get dropped last court
6 term.

7 I came to court term -- I came to court last
8 May facing the same thing that I was facing today,
9 these same charges. I came taking the same chances
10 today of being found guilty and not guilty.

11 The last court term I don't feel that I got the
12 proper justice because Alvin Phillips came to court
13 that morning to testify for the State the way he did
14 on yesterday, but he also that morning informed them
15 that he was not going to testify that morning. And
16 I just -- I filed at the time for a motion of fast
17 and speedy, in the alternative to dismiss. And my
18 trial was not granted that day because of unduly,
19 dilatory, laziness of the State and I was ready to
20 go forth at that time.

21 If Mr. Phillips wanted to testify at that time,
22 he had the right to do so, but he did not. So it
23 just doesn't amaze me. And I wrote my lawyer and
24 asked him at the time why didn't my trial get
25 dismissed when I filed for an alternative to

1 dismissal along with a fast and speedy trial.

2 And I knew in my mind the same tactic that the
3 Solicitors was going to use this court term by
4 allowing him to be applied pressure by his lawyer
5 and the Solicitors, I knew that they were going to
6 threaten him if you don't testify to -- with a
7 larger sentence over his head. I understand that
8 it's -- and I don't know the deal that he has
9 gotten, but I do know, Your Honor, as you've heard
10 for yourself, that it's charges that's being held
11 over his head that relied on what happened in this
12 trial this court term.

13 I feel some type of prejudice because my trial
14 didn't go forth the last court term. I feel that my
15 trial should have got heard, that if Mr. Phillips
16 didn't come to testify last court term, what enabled
17 him to come to court term -- this court term to
18 testify? What was the difference from last court
19 term to this court term? Was it last court term
20 that they did not apply enough pressure to him to
21 get him to testify? I mean, I just want you to take
22 that into consideration, Your Honor.

23 I talked to my lawyer. He told me what I was
24 facing. He obviously at one time thought that my
25 co-defendant was going to testify.

1 Your Honor, as you see, I came out on faith
2 with unexperience (sic) in the law accepting my
3 lawyer on my behalf to be my defense, but I walked
4 out on faith last court term trusting in my God to
5 touch Alvin heart and not to testify. And God
6 touched him last court term to not allow him to
7 testify. I feel last court term that I was supposed
8 to walk free.

9 I know that my other co-defendant, Mr. Bryan
10 Phillips, he filed for bias, a motion to relief
11 (sic) you off this case. I also felt that it was in
12 your hands last court term to dismiss these charges.

13 At that time, I was in the county for
14 approximately 20 months. And I was there them 20
15 months without the investigator of my case,
16 Mr. Lamaz Robinson, never coming to investigate or
17 talk to me period to get my side of the story or to
18 see what happened on the night of the crime. I know
19 that it was in your hands, Your Honor, last court
20 term to bring about justice to just do your job the
21 way that you see fit and that you saw fit.

22 It's no doubt in my mind that the Solicitors
23 has coerced Mr. Alvin Phillips. They have pressured
24 Mr. Alvin Phillips. They have been working back and
25 forth with his lawyer to negotiate a plea bargain

1 with him if he testified or he didn't testify.

2 And I just want you to think about it, Your
3 Honor, and everyone else, it's Alvin trying to save
4 his hide himself. I don't doubt in my mind that if
5 it was his sister, if it was his mother up here that
6 he had to testify against to keep from getting 60
7 years, 50 years, 30 years what my charges carry,
8 possibly life, I don't doubt in my mind that he
9 would have testified against them.

10 But I just want you to take into consideration,
11 Your Honor, that last court term I was prepared to
12 go to court and get tried and I did not get that. I
13 don't know what type of justice that is in your
14 eyes.

15 I have been -- I filed a motion of -- for a
16 fast and speedy trial, in the alternative to dismiss
17 in June or July 2009 and my case didn't come to
18 court until May 2010, 20 months later. I don't know
19 the limitations on how long or fast a speedy trial
20 is to be granted in the State of South Carolina, but
21 I have done everything that I can on my behalf to
22 come to court to get this issue before a court and
23 get it out of the way.

24 And I don't feel that it's justice on the
25 circumstances of evidence and the direct evidence

1 for me to be found guilty. I understand that it was
2 no follicle hair, no DNA, no blood, of course, Your
3 Honor, but it's just on the statement of one
4 co-defendant who's been wavering back and forth,
5 who's been, I don't think, reliable.

6 Last court term I discussed it with my lawyer
7 about going to trial. And it was -- like I said at
8 the time, he was informed that Alvin was going to
9 testify. And he asked me did I want to get a deal
10 and I didn't because I didn't feel like I was
11 guilty. I didn't feel like that I should take a
12 plea bargain for something that I did not do. I
13 wasn't at the crime. I wasn't caught at the crime.
14 I wasn't investigated about the crime. I wasn't
15 questioned by any investigators about the crime. I
16 was only placed there by a co-defendant.

17 This co-defendant also removed me away from
18 this crime on two different occasions, not only did
19 he write one statement, he wrote two statements.
20 Two statements in my eyes, it always is more than
21 one with the one statement that he gave to law
22 officials. He also indicated that he wanted to
23 testify last court term, but he also indicated that
24 he did not want to testify last court term. Why did
25 the State get a continuance in that case, I don't

1 know.

2 I just pray and just like I say just fall upon
3 your mercy right now of the Court. And like I say,
4 my lawyer talked to me about getting me a deal last
5 court term and it was ten years and I didn't want it
6 because I didn't feel that I should go to prison for
7 ten years for something I didn't do. I was already
8 here in Edgefield County at that time 20 months,
9 going on 21 months. I felt that that was enough
10 time for me being placed in captivity. I feel, in
11 my eyes, kidnapped, being held someone against my
12 own free will, so I did -- I declined those ten
13 years.

14 And he also let me know by me declining the ten
15 years, that he was able to discuss with the
16 Solicitors that if I didn't take the ten years, I
17 was going to trial and by trial, I would be facing
18 more. And they didn't go to trial last court term.
19 So that was justice, it should have been on my
20 behalf. I just want you to consider that, Your
21 Honor.

22 I fall upon the mercy of your court and I pray
23 that God just touches your heart and pray that you
24 just have leniency upon me.

25 **THE COURT:** Anything else?

1 **DEFENDANT LANGFORD:** That's all, Your Honor.

2 **THE COURT:** Thank you. Have a seat.

3 Anything else?

4 **MR. CALHOUN:** No, Your Honor.

5 **MR. WILLIAMS:** Your Honor, on behalf of my
6 client, he's 21 years old. He's the son of Janie
7 Robinson. He's her only son. He's got four
8 sisters. He's supported by, I believe, three of his
9 sisters who are here present in the courtroom. And
10 I would also ask you to consider the fact that my
11 client is now 21 years old. At the time of this
12 incident, he was 19 years old.

13 Judge, we understand the jury's verdict. We
14 certainly cannot dispute it at this point. They
15 have spoken. And we all understand in this line of
16 work and in this profession, that once the jury
17 speaks, they have rendered a verdict which speaks
18 the truth. It's at this point, Your Honor, we ask
19 that your great wisdom, your great consideration of
20 the sometimes recklessness of youth, we ask that you
21 would consider that in your sentencing.

22 Judge, these are some of the most serious
23 offenses that individuals can be convicted of. And
24 I recognize the Court has very limited discretion as
25 it relates to the burglary charge in particular. I

1 just pray, Judge, that you will allow your sentence
2 to stop right where the mandatory minimums will
3 require you to go, that's the only thing I can ask
4 of you, Judge.

5 **THE COURT:** Thank you.

6 Do you want to say anything, Mr. Phillips?

7 **DEFENDANT PHILLIPS:** Yes, sir. Mr. Keesley, I
8 want to follow what Mr. Langford said, you know,
9 about the charges not being dismissed, us coming to
10 court last term. I seen not too long Mr. Calhoun
11 filed a motion for a mistrial, denied. A few
12 seconds ago another motion from Mr. Calhoun and
13 Mr. Williams for trial, denied. I'm under your
14 jurisdiction right now, Mr. Keesley.

15 **THE COURT:** What about when I didn't let them
16 put that witness up to testify that they wanted to
17 put up to testify against you?

18 **DEFENDANT PHILLIPS:** Gustav Sawvell?

19 **THE COURT:** If y'all want to get up there --
20 never mind. Go ahead, say whatever you want to say.

21 **DEFENDANT PHILLIPS:** No, go ahead, Mr. Keesley.

22 **THE COURT:** Say whatever you want to say.

23 **DEFENDANT PHILLIPS:** They go up there under
24 oath on the Bible, so whatever they feel free to do
25 or say under oath, lie or not, I have no problem

1 with it. Every motion is rhetoric to my freedom,
2 not to no witness is he credible or not, to my
3 freedom is denied. I understand I had filed a
4 motion to relieve you.

5 **THE COURT:** That's fine. I told you I had
6 nothing against you personally then, I don't now.

7 **DEFENDANT PHILLIPS:** Yes, sir, I understand
8 that. I want to apologize for that.

9 **THE COURT:** You don't need to apologize to me.
10 Go ahead.

11 **DEFENDANT PHILLIPS:** I just ask you to have
12 mercy upon me, Mr. Keesley. We have charges that,
13 you know, I don't see no evidence on, you know,
14 armed burglary, no different charges. We relied on
15 three law enforcement officers to take the stand to
16 testify under oath, Alvin Phillips, a waiver, who
17 recanted statement several times that everyone knew
18 about. Ms. Newby seen our copies.

19 **THE COURT:** The jury saw it. Go ahead.

20 **DEFENDANT PHILLIPS:** The jurors didn't deny the
21 motion. I'm sorry, Your Honor. I'm frustrated,
22 aggravated a little bit.

23 **THE COURT:** I understand. And I think the best
24 thing is I just tell y'all I'll be back in about
25 five minutes and I'll allow y'all to say whatever

1 you'd like to say. I understand it's very
2 emotional. I understand that you all don't agree
3 with the jury's decision. You don't agree with my
4 rulings, that's fine. I'm not going to make any
5 decisions based on emotion. It's not going to
6 happen. We're at ease.

7 (Brief Recess.)

8 **THE COURT:** All right. Mr. Phillips, you may
9 continue.

10 **DEFENDANT PHILLIPS:** Your Honor, sorry for the
11 tension. You know, I have mixed emotions. I'm
12 under your justice right now, Your Honor. I just
13 ask you to have mercy upon me right now. Thank you.

14 **THE COURT:** All right. Thank you.

15 I'm going to give y'all the same sentence that
16 I had thought that I would give before either of you
17 spoke. I will say that you speaking certainly did
18 not help in the sentencing, but I'm going to resist
19 the temptation. You're not going to be happy with
20 the sentence I give, but I'm going to resist the
21 temptation to have any sort of emotional reaction to
22 being accused of bias and prejudice and constantly
23 ruling against you and not giving you a fair trial
24 basically, because that's what you told me. Y'all
25 have a seat.

1 (Pause.)

2 THE COURT: Does the State have anything else
3 on Mr. Phillips? I didn't ask that question.

4 MR. MAYE: No, sir, Your Honor, I don't have
5 anything else. I think the Court's well aware of
6 his previous criminal history and all the facts of
7 this.

8 THE COURT: Either one of these gentlemen on
9 probation?

10 MR. MAYE: No, sir, Your Honor. I note that
11 Mr. Phillips got a YOA in 2006. I'm not sure how
12 old he is. I don't know if he's on YOA parole or
13 not, that I -- I do not know if he's out on YOA
14 parole, I'm not sure.

15 THE COURT: Do you know if he's on YOA parole?

16 PROBATION AGENT: No, sir, he's not.

17 THE COURT: So neither one of them are on
18 probation or parole?

19 PROBATION AGENT: Mr. Langford is on probation.

20 THE COURT: Are you going to charge him with
21 that now?

22 PROBATION AGENT: Yes, sir, Your Honor, I can.

23 THE COURT: I'm not telling you to do it or
24 don't do it, I'm just asking you.

25 PROBATION AGENT: Yes, sir.

1 **THE COURT:** Mr. Calhoun, are y'all -- which one
2 did you say -- Mr. Langford was on probation?

3 **PROBATION AGENT:** Yes, sir, Mr. Langford.

4 **THE COURT:** Mr. Calhoun, are you prepared to go
5 forward on that?

6 **MR. CALHOUN:** Yes, sir.

7 **THE COURT:** Do you have to serve him?

8 **PROBATION AGENT:** No, sir, Your Honor. He's
9 already been served.

10 **THE COURT:** All right. What's his situation on
11 probation?

12 The papers indicate that I sentenced you in
13 June of 2006 for receiving stolen goods greater than
14 \$5,000. I gave you a sentence of five years
15 suspended on the service of one year with five years
16 probation, ordered you to pay \$2,120 in restitution
17 plus a 20 percent handling charge.

18 It's indicated that you reported as directed.
19 You have two prior violations for failing to pay
20 your money. The second one you're charged with
21 failing to make a truthful report, tested positive
22 for marijuana on September the 4th, 2007, failed to
23 maintain lawful employment and failed to pay your
24 money as directed.

25 At that time, I continued you on supervision.

1 I ordered that you complete the restitution center
2 not to exceed six months if your money had not been
3 brought current by November 15th, 2008 and directed
4 that you were to attend substance abuse counseling.

5 The allegation now is that you have violated
6 your probation by having been convicted of these
7 offenses today.

8 Do you have anything else on probation matter,
9 Mr. Calhoun?

10 **MR. CALHOUN:** No, Your Honor, I don't.

11 **THE COURT:** Do you have anything you want to
12 say about that, Mr. Langford?

13 **DEFENDANT LANGFORD:** No, Your Honor.

14 **THE COURT:** Gentlemen, everybody in the
15 courtroom, sentencing is a very difficult thing.
16 I'm the same guy sentencing now who sentenced to
17 probation before. I'm the same guy sentencing now
18 who continued probation before. I haven't changed.

19 I recognize and fully appreciate and respect
20 that others in a different position would feel very
21 strongly that some injustice has been done and some
22 wrong has been done, but the assertion in my mind
23 and in my defense that I have in some way not
24 rendered a fair trial is something I am not willing
25 to accept.

1 Now, I told you all I had in my head a number
2 before anybody ever spoke and that's the number I
3 put on this piece of paper, but the reasons for the
4 continuance at the prior term of court had been
5 stated is the same Bruton analysis that I used when
6 I denied the State the opportunity to present a
7 witness that the State was tendering. I'm the same
8 judge who denied the State's request to set aside
9 the jury because it appeared, I suppose, to them to
10 be a favorable jury for the defense. I have called
11 it straight down the middle. If people don't agree
12 with that, I respect their right to disagree. I
13 don't see the basis for it, but if I were in jail, I
14 would be trying to get out, too. If I was
15 wrongfully accused, I would be furious about it. So
16 I understand those positions.

17 But the jury was given the information about
18 the conflicting statements. The jury was given all
19 the information that you all are talking about. The
20 legal conclusions that I made are subject to appeal
21 and if I was wrong, I apologize profusely.

22 Now, both of you gentlemen need to understand
23 that you have a right to appeal from these
24 proceedings. If you want an appeal filed, which I
25 strongly suggest that you file, that you tell your

1 attorneys right now file a written notice of appeal.
2 If they are -- if you are unable to afford an
3 attorney to pursue the appeal, there are procedures
4 whereby the State will appoint appellate counsel for
5 you to pursue the appeal.

6 So, Mr. Langford, do you understand that if you
7 want to file an appeal, you have to tell your
8 lawyer? There's a deadline and it needs to be done
9 in writing and done quickly. Do you understand?

10 **DEFENDANT LANGFORD:** Yes, sir.

11 **THE COURT:** Mr. Phillips, do you understand
12 that as well?

13 **DEFENDANT PHILLIPS:** Yes, sir.

14 **THE COURT:** All right. I'm not going to sit up
15 here and be repetitive except to say I do not have
16 any personal animosity toward either of you and I
17 don't have any personal favoritism for the State.
18 Your attorneys did an excellent job in presenting
19 your case. I didn't know which way the case would
20 go. The jury's made its decision. And most of what
21 you all are talking to me about about the
22 inconsistencies, those are jury issues. Those are
23 not issues the Court can decide. They're not for me
24 to review.

25 *****

1 SENTENCE OF THE COURT

2 THE COURT: The sentence of the Court on both
3 defendants as to kidnapping, armed robbery, burglary
4 in the first degree is 20 years.

5 The sentence of the Court on criminal
6 conspiracy on each defendant is five years. The
7 sentences are to run concurrently.

8 They're given credit for jail time under
9 section 24-13-40, that'll be calculated and applied
10 by the department of corrections. Restitution is
11 deferred.

12 On the kidnapping charge, I am required to make
13 a finding as to whether or not the defendants are
14 required to be registered as sex offenders. There
15 is no allegation or assertion of any sexual offense
16 related to the kidnapping and I have written on both
17 sets of sentence sheets that the defendants are not
18 required to register as sex offenders.

19 The court costs are not permitted to be waived.
20 If I could waive them, I would, but they don't allow
21 me to. So the court costs have to be paid to the
22 Clerk of Court within one year of being released
23 from maximum incarceration in prison.

24 Do you understand your sentence, Mr. Langford?

25 DEFENDANT LANGFORD: Yes.

1 **THE COURT:** Do you understand your sentence,
2 Mr. Phillips?

3 **DEFENDANT PHILLIPS:** Yes, sir.

4 **THE COURT:** Good luck to both of you.

5 On the probation matter, terminate from
6 supervision, roll the supervision fees.

7 **PROBATION AGENT:** Thank you.

8 (The jury was excused by the Court.)
9

10 END OF PROCEEDINGS
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Edgefield County, South Carolina, on the 7th of September, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 23, 2011



Stacy L. Sheppard, RPR
Circuit Court Reporter

1 in that house, it's a burglary. If they got
2 together and they planned it together, it's criminal
3 conspiracy. This is about justice here. This is
4 about you sitting as judges of the facts in the
5 case. Mercy comes from some other place.

6 The Judge is going to charge you with what the
7 law is in this case and you apply it to the facts.
8 And you've got the facts up here. You saw what
9 Alvin Phillips said. You saw what he told Roosevelt
10 Young. The statements match. The timeline's there.
11 He was with Bryan ahead of time. He was with K.C.
12 Langford right afterwards. There wasn't anybody
13 else. He told the truth up here. He didn't want
14 to. He didn't want to tell on them. You know he's
15 got genuine affection for them. And he didn't want
16 to testify against them, but he did do the right
17 thing.

18 This comment about don't snitch on anybody,
19 don't tell anybody, this system breaks down when
20 people get up here under oath and they don't tell
21 the truth. The only way this system works is when
22 people get up here and take that oath and tell the
23 truth. And you can see how upset the defense got in
24 this case when the Chinese lady, he didn't think she
25 took the oath or didn't get it out of her mouth.

1 It's important because it's arrogant to think,
2 I'm smart enough that from the periphery of this or
3 from around the edges from down in jail, falsifying
4 statements or whatever else I'm going to do, that I
5 can outsmart the collective wisdom of 12 jurors up
6 here, because if there's one thing about this
7 courtroom, just like with all these windows, it puts
8 the light of day on things.

9 Y'all don't leave your common sense at home
10 when you come up here and I know you won't. Come
11 back with a verdict that speaks the truth, serve the
12 ends of justice, speak the truth in this case, let
13 mercy come from where it needs to come from.
14 Appreciate your close attention.

15 **THE COURT:** All right. Thank you, Solicitor.

16 Ladies and gentlemen, as I told you, I always
17 take a brief recess between the closing arguments
18 and the charge. Usually this is very brief. It's
19 just time for me to get set up and bring you back
20 out here and let you stretch your legs a little bit
21 in the meantime. So in about five minutes or so, I
22 plan to send for you if everybody's ready. And as I
23 told you, the charge should take me 38 minutes to
24 give it.

25 All right. Follow the bailiff, please

1 (The jury retires to the jury room.)

2 **THE COURT:** All right. We're at ease.

3 (Brief recess.)

4 **MR. CALHOUN:** Your Honor, I would like to make
5 a motion -- put something on the record.

6 **THE COURT:** Sure.

7 **MR. CALHOUN:** At this time, I would want to
8 move for a mistrial. The Solicitor may -- made an
9 improper comment on my client's decision not to
10 testify. At the end of his closing argument about
11 two minutes ago, he said, quote, The only way this
12 system works is if people get up here on the stand
13 and tell the truth. And I don't think that that was
14 a vail message. That was a distinct, pointed
15 comment on the fact that my client and Bryan
16 Phillips didn't take the stand, Your Honor.

17 **THE COURT:** Do you have something,
18 Mr. Williams?

19 **MR. WILLIAMS:** Your Honor, I have to join
20 Mr. Calhoun in his assertion for the record on
21 behalf of my client.

22 **MR. MAYE:** Your Honor, I didn't name their
23 clients. I was talking about Alvin Phillips in this
24 case. And I didn't comment on their right. In
25 fact, I specifically told the jury in this case that

1 they had an absolute right not to put up any
2 evidence, not to testify in this case and I told
3 them that directly in my closing argument. I didn't
4 make any comment on these two individuals' right,
5 that they should not have relied on their right to
6 remain silent. I was talking about witnesses that
7 take the stand in this case. That's the only way
8 this works is the witnesses come up here and they
9 tell the truth.

10 **MR. CALHOUN:** The problem with that argument is
11 my client didn't take the stand and the jury knows
12 it, so.

13 **THE COURT:** I can tell you when I was listening
14 to it, it didn't strike me as an improper argument,
15 but I'm trying to find it so I can make absolutely
16 certain I didn't miss something.

17 (Pause.)

18 **THE COURT:** One of the things that really makes
19 my ears stand up is when I hear people commenting on
20 the defendant's exercise of a right not to testify
21 or a right to remain silent and my radar did not get
22 tuned into anything the Solicitor said. I looked
23 back through the rough notes. And in context, I
24 just -- it didn't strike me then as being a comment
25 on the right -- exercise of the right to remain

1 silent and it doesn't strike me now as being a
2 comment. So your objection is noted. Your request
3 for a mistrial is noted and respectfully denied.

4 All right. Be back in place in five minutes.

5 **MR. MAYE:** Thank you, Your Honor.

6 **MR. CALHOUN:** Judge, I -- we're renewing our
7 motions, of course, for the record for a directed
8 verdict and any previous motions made.

9 **MR. WILLIAMS:** And so am I, Your Honor. I
10 think we forgot to do it toward the end of closing.

11 **THE COURT:** Well, that would have been my
12 fault. We got all wrapped up in that witness.

13 **MR. MAYE:** And I would certainly stipulate they
14 can make any motions now that they should have made
15 at that time.

16 **THE COURT:** All right. Do you have any
17 additional things you want to put on the record
18 considering these motions to have been made at the
19 close of all the evidence? Anything else, Mr.
20 Calhoun, other than renewing the motions you made at
21 the close of the State's case?

22 **MR. CALHOUN:** No, Your Honor.

23 **THE COURT:** And do you have anything else?

24 **MR. WILLIAMS:** No, sir, Your Honor.

25 **THE COURT:** All right. Once again, these are

1 all jury issues and the motions respectfully denied.

2 Now, make sure these folks know that when I
3 start talking to the jury, we lock the doors.

4 **MR. WILLIAMS:** Yes, sir, Your Honor.

5 **THE COURT:** So they need to be in here if they
6 want to hear the charge.

7 **MR. CALHOUN:** Yes, sir.

8 **THE COURT:** I can certainly understand if they
9 would not want to hear it, but they have to be in
10 here if they want to hear it.

11 All right. We're at ease.

12 (Brief recess.)

13 **THE COURT:** All right. During the charge,
14 please stay still and stay quiet. Don't do anything
15 to distract the jury absent an emergency and if
16 there is an emergency, act accordingly. If anybody
17 needs to be in, let them come on in. If anybody
18 needs to go out, you need to leave.

19 Okay. Bring in the jury.

20 (The jury returns to the courtroom.)

21 CHARGE OF THE COURT

22 **THE COURT:** Members of the jury, all of the
23 evidence has been presented. You've heard the
24 arguments of counsel. Now, it's time for me to
25 instruct you on the law that applies to the cases.

1 Please continue to pay close attention during this
2 next stage.

3 Now, first, you need to understand some basic
4 ground rules. You, the jury members, are the sole
5 judges of the facts. You decide all of the issues
6 of fact. You alone determine the truth of the
7 evidence, its effect, its value and its weight. You
8 alone judge the credibility of witnesses, in other
9 words, whether or not a witness' testimony is
10 believable.

11 In this regard, you may believe all that a
12 witness said or none of it. You may believe part of
13 what a witness said and not believe the balance.
14 You may believe one witness against many or many
15 against one. You may consider the -- any interest,
16 bias or prejudice that you feel that a witness has
17 in the case. You may consider the demeanor and the
18 appearance of the witness and the opportunity for
19 knowledge that the witness had. You may consider
20 the lack of evidence presented by the State. But
21 you're not to exercise these considerations
22 arbitrarily. What I want you to do is to use your
23 common sense, use your sense of logic and reason and
24 your good judgment.

25 It's not proper for me to give you a charge on

1 the facts of the case. I can't discuss the facts
2 with you. I'm not even permitted to convey to you
3 an impression as to what, if any, personal opinions
4 I may develop about the facts of a case as it goes
5 along. So if during any stage of this trial, you
6 develop an impression that I've got a personal
7 opinion about the facts, you have to remove that
8 totally from your mind. You're the sole judges of
9 the facts.

10 I am the judge of the law that applies to this
11 case and under your oath, you have to accept and
12 apply the law as I give it to you. If you've got
13 conflicting ideas about what the law is or what it
14 should be, you have to remove those. I give you the
15 law, you apply that law to the facts as you
16 determine them to be and in that way you reach your
17 verdicts.

18 It's also my job to decide what evidence is
19 admissible. If I've ruled something inadmissible or
20 told you to disregard something, you're not to
21 consider those things in arriving at your verdicts.
22 Base your verdicts on the competent evidence before
23 you, consider the testimony of the witnesses and the
24 exhibits admitted in the trial.

25 Now, you heard testimony of some witnesses

1 through an interpreter. And as odd as this may
2 sound, I'm supposed to tell you that if you have
3 some knowledge of Chinese or Mandarin Chinese, you
4 cannot rely on your own knowledge of that language.
5 So even if you disagree with the interpreter's
6 translation, you have to accept the translation of
7 the witnesses' testimony that was given by the
8 interpreter.

9 I need to explain to you that there are two
10 types of evidence generally presented during a
11 trial. There's direct evidence and there's
12 circumstantial evidence.

13 Direct evidence is evidence of direct
14 perception including the testimony of a person who
15 asserts or claims to have actual knowledge of a fact
16 such as an eyewitness.

17 Circumstantial evidence is proof of a chain.
18 It's proof of a chain of facts and circumstances
19 indicating the existence of a fact.

20 The law makes absolutely no distinction between
21 the weight or value to be given to either direct or
22 circumstantial evidence nor is a greater degree of
23 certainty required of circumstantial evidence than
24 of direct evidence. What you need to do is to weigh
25 all of the evidence in these cases. And after

1 weighing all of the evidence, if you're not
2 convinced of the guilt of the defendant beyond a
3 reasonable doubt, then you must find him not guilty.

4 The defendants in these cases are presumed to
5 be innocent. This is no mere legal theory. It is a
6 fundamental and substantial right to which every one
7 is entitled.

8 It's been described as being like a robe of
9 righteousness that's placed around an accused and it
10 remains with him through every stage of the trial.
11 It continues to exist after you go back to your jury
12 room to deliberate so that the defendant, the
13 accused, is presumed to be innocent unless and until
14 you, the jury, determine that the State has proven
15 him guilty beyond a reasonable doubt.

16 A defendant is not required to prove his
17 innocence. He is not required to prove anything at
18 all. The burden is entirely on the State to prove
19 the guilt of the defendant beyond a reasonable doubt
20 and it's required that every essential element of an
21 offense charged be proven by the State beyond a
22 reasonable doubt.

23 Now, that does not mean that the State has to
24 prove the guilt of the defendant beyond all doubt or
25 beyond every doubt. The appropriate standard is

1 proof beyond a reasonable doubt.

2 Some of you may have served as jurors in civil
3 court. And if you've ever served as a juror in
4 civil court or been in civil court, you understand
5 that the burden of proof there is to establish that
6 something is probable, that it's more likely than
7 not and we call that the greater weight or
8 preponderance of the evidence. But in this setting,
9 a criminal court setting, the standard is much
10 higher and the proof required is much stronger than
11 what is required in civil court. As I've told you
12 repeatedly, the burden of proof in these cases is
13 proof beyond a reasonable doubt.

14 So what do I mean by that term? Proof beyond a
15 reasonable doubt is proof that leaves you firmly
16 convinced of the defendant's guilt. There are few
17 things in the world that we know with absolute
18 certainty and in criminal cases, the law does not
19 require proof that overcomes every possible doubt.

20 If, based on your consideration of the
21 evidence, you are firmly convinced that a defendant
22 is guilty of a crime charged, then you are to find
23 him guilty of that crime. If, on the other hand,
24 you think there is a real possibility that he is not
25 guilty, you must give him the benefit of the doubt

1 and find him not guilty on that charge.

2 Now, there is no obligation on the part of a
3 defendant to raise any doubt or any other
4 possibility. A defendant is presumed to be
5 innocent. And the State has the entire burden of
6 proof and the State has to prove to you that that
7 defendant is guilty to the exclusion of any other
8 real possibility.

9 I remind you, ladies and gentlemen, and
10 emphasize once again that the fact that the
11 defendants in this case elected not to testify is
12 not a factor to be considered by you in any manner
13 in your deliberations, in your consideration on the
14 question of whether a defendant is guilty or not
15 guilty. The decision not to testify must not be
16 considered by you in any manner whatsoever against a
17 defendant. An accused has a constitutional right to
18 remain silent and the assertion of that right cannot
19 and must not be considered by you in your
20 deliberations.

21 Under your oath, you are to reach no inference
22 and you are to draw no conclusion whatsoever from
23 the fact that a defendant elected not to testify.
24 His decision not to testify should not be discussed
25 by you in your deliberations. It should not even

1 enter your minds in making your decision on these
2 cases. The burden of proof is entirely on the State
3 to prove the guilt of the defendant beyond a
4 reasonable doubt and the State has to prove every
5 essential element of each offense charged beyond a
6 reasonable doubt.

7 Now, I need to explain to you that a person can
8 be guilty of a crime either by directly perpetrating
9 that crime himself or by being present at the scene
10 of the crime and aiding, abetting and assisting in
11 the commission of the crime. This is known as
12 accomplice liability, being an accomplice. And it's
13 sometimes referred to with the phrase, The hand of
14 one is the hand of all. A person who was present at
15 the scene of a crime and intentionally or through a
16 common plan aided, abetted and assisted in the
17 commission of that crime through some overt act is
18 guilty as an accomplice.

19 Now, to be liable as an accomplice, the
20 defendant must have knowledge of the principal's
21 criminal conduct. Mere presence at the scene of a
22 crime is not sufficient to establish guilt as an
23 accomplice to that crime.

24 Now, intentionally means willful, intending the
25 result that actually occurs, not something done

1 accidentally or involuntarily.

2 During the rest of this charge when I refer to
3 the term accomplice, you should consider that I mean
4 that term to include all the conditions of
5 accomplice liability that I just instructed you
6 about and incorporate those into that term.

7 Now, let's turn to the specific charges that
8 are alleged in this trial. As you know, there are
9 two separate defendants and the charges against each
10 defendant have to be evaluated separately. Further,
11 each defendant is charged with four separate
12 charges, each of which has to be evaluated
13 separately on its own merit or lack of merit.

14 I read these indictments to you at the
15 beginning of the trial. All of the indictments
16 allege that the incident occurred in Edgefield
17 County on or about August 14, 2008. The defendants
18 are charged with armed robbery. It is alleged that
19 each defendant while armed with a deadly weapon and
20 by means of force or intimidation, feloniously took
21 from the person or presence of Ji Quing Chen
22 approximately \$3,000 in United States currency with
23 the intent to deprive Mr. Chen permanently of that
24 property.

25 Each defendant is also charged with burglary in

1 the first degree. It is alleged that each defendant
2 willfully and unlawfully entered during the
3 nighttime without consent and with the intent to
4 commit a crime therein the residence of Ji Quing
5 Chen.

6 Each defendant is charged with kidnapping.
7 It's alleged that each defendant unlawfully seized,
8 confined, inveigled, decoyed, kidnapped, abducted or
9 carried away Ji Quing Chen and/or Guan Xin Li
10 without authority of law and without consent by the
11 following means: It's alleged that each defendant
12 with the use of a firearm and/or physical force,
13 held those persons, either one or both, against
14 their will and would not let them leave the
15 residence.

16 And, finally, each defendant is charged with
17 criminal conspiracy. It's alleged that each
18 defendant unlawfully and willfully united, combined,
19 conspired, confederated, agreed and/or had a tacit
20 understanding with the other defendant and with
21 Alvin Phillips for the purposes of accomplishing the
22 crime of armed robbery.

23 I caution you, ladies and gentlemen, that an
24 indictment is not evidence. It has no evidentiary
25 value. An indictment is nothing more than a

1 charging paper, the formal means by which someone is
2 charged and brought to trial. It's not evidence and
3 you may not consider an indictment as having any
4 evidentiary value.

5 Now, first, I'm going to explain to you the law
6 about armed robbery. Armed robbery is using force,
7 threats or intimidation while armed with a deadly
8 weapon to unlawfully take and carry away personal
9 property of another person with the intent to
10 deprive the owner of possession.

11 So in order to prove this offense, the State
12 must first prove beyond a reasonable doubt that the
13 defendant or an accomplice of his took personal
14 property from the person or presence of the person
15 or persons named in the indictment. It has to be
16 taken from the person or presence of another person.
17 Personal property is anything other than real estate
18 basically.

19 In order for property to be in the presence of
20 a person, it must be within the person's reach,
21 inspection, observation or control so that the
22 person could keep possession of that property if not
23 overcome with violence or prevented by fear.

24 The State also has to prove beyond a reasonable
25 doubt that the defendant or an accomplice of the

1 defendant carried the property away intending to
2 permanently deprive the owner of the property and
3 keep the property for the defendant's own use. The
4 taking or the carrying away of the property must
5 have been done with violence or by putting the owner
6 of the property or possessor of the property in fear
7 of violence.

8 And, finally, the State has to prove to you
9 beyond a reasonable doubt that the defendant or his
10 accomplice was present and aiding, abetting and
11 assisting in the commission of the robbery while
12 armed with a deadly weapon during the robbery. A
13 deadly weapon is any article, instrument or
14 substance that is likely to cause death or great
15 bodily harm.

16 Next, I'm going to explain to you burglary in
17 the first degree. Burglary in the first degree is
18 willfully and unlawfully entering a residence
19 without consent and with the intent to commit a
20 crime therein where the entering or remaining
21 occurred in the nighttime. It is willfully and
22 unlawfully entering a residence without consent and
23 with the intent to commit a crime therein where the
24 entering or remaining occurred in the nighttime.

25 So to prove the defendant or a defendant guilty

1 of burglary, the State has to prove to you that the
2 defendant in question either as the principal or as
3 an accomplice who was present and aiding, abetting
4 and assisting another defendant in the crime of
5 burglary did the following things:

6 First, that he entered a dwelling without
7 consent. A dwelling is any building in which a
8 person ordinarily sleeps.

9 Next, the State has to prove to you that the
10 entry was done with the intent to commit a crime,
11 either a felony or a misdemeanor, at the time of the
12 entry. Merely entering into a dwelling without
13 consent is not burglary. The entry has to be made
14 with the intent to commit a crime once inside a
15 dwelling. Intent may be shown by acts and conduct
16 of the defendant and other circumstances from which
17 you may naturally and reasonably infer intent.

18 And, finally, the State has to prove beyond a
19 reasonable doubt that an entering or remaining
20 occurred in the nighttime.

21 Next, I'm going to explain to you kidnapping.
22 Kidnapping is knowingly and unlawfully seizing,
23 confining, inveigling, decoying, kidnapping,
24 abducting or carrying away another person without
25 lawful authority.

1 Now, to do an act unlawfully requires willfully
2 doing something that's against the law. Willfully,
3 as I told you, means intentionally. Knowingly means
4 with knowledge and consciously not something done by
5 accident. To seize means to take hold of suddenly
6 or forcibly. To confine means to limit, to
7 restrict, to enclose within bounds, to imprison or
8 to shut in or keep in another person. Kidnap is to
9 remove a person against his will by unlawful force
10 or by fraud. Abduct means to carry off secretly or
11 by force for an illegal purpose. And carry away
12 means to remove.

13 The State does not have to prove that the
14 defendant or someone with whom he was acting as an
15 accomplice did all of these things. If you find
16 beyond a reasonable doubt that the defendant or an
17 accomplice knowingly and willfully seized, confined,
18 kidnapped or abducted either or both of the two
19 purported victims against the will of the purported
20 victim or victims, as I have defined those terms to
21 you and as alleged in this -- in the particular
22 indictments, then you may find that defendant guilty
23 of kidnapping.

24 Now, something done without the authority of
25 law is something that the law does not sanction,

1 permit, allow, condone or provide justification for.
2 The kidnapping does not have to be for ransom or for
3 any personal or monetary gain.

4 And, finally, I need to explain to you the
5 crime of conspiracy. The State has to prove beyond
6 a reasonable doubt that the defendant in question
7 combined with one or more persons named in the
8 indictment for the purpose of committing an unlawful
9 act or of committing a lawful act by unlawful means.
10 Now, here it's alleged that the unlawful act was
11 armed robbery, that there was conspiracy to commit
12 armed robbery.

13 There has to be a mutual understanding for
14 there to be a criminal conspiracy, a mutual
15 understanding, an agreement or a common intention
16 and plan. Mere passive knowledge of or consent to
17 the criminal conduct of another is not enough to
18 make a person a conspirator. There has to be guilty
19 knowledge and participation.

20 And, similarly, the mere fact that the
21 defendant may have associated with another person or
22 met with another person and discussed common aims
23 and interests does not necessarily establish proof
24 of the existence of a conspiracy or that the
25 defendant was involved in a conspiracy.

1 The essence of conspiracy is an agreement to
2 commit an unlawful act. The agreement does not have
3 to be formal. It does not have to be in writing.
4 The agreement of a criminal conspiracy may come into
5 being through implied mutual understandings. A
6 conspiracy requires the willful, intentional and
7 knowing adoption by two or more persons of a common
8 plan to do an illegal act.

9 The State has to prove to you beyond a
10 reasonable doubt not only that the defendant knew of
11 the unlawful conduct, but that the defendant agreed
12 in advance to combine with the other persons for the
13 purpose of accomplishing armed robbery.

14 All right. The last thing I have to go over
15 with you about the law is that a defendant is
16 entitled to every reasonable doubt arising in an
17 entire case.

18 If, upon any issue of fact essential to a
19 conviction, you have a reasonable doubt as to how
20 that issue should be resolved, then you have to
21 resolve that doubt in favor of the defendant. If,
22 upon reviewing an entire case, you have a reasonable
23 doubt as to whether the defendant has been proven by
24 the State to be guilty of a crime charged, then the
25 defendant is entitled to that reasonable doubt and a

1 verdict of not guilty on that charge.

2 On the other hand, if you, upon reviewing the
3 entire case, find that the State has proven every
4 essential element of a crime charged against a
5 particular defendant beyond a reasonable doubt, it's
6 equally your duty to find the defendant guilty of
7 that charge. And that's the law.

8 Folks, when you go back to your jury room to
9 decide these cases, you're going to have with you
10 all of the exhibits that were admitted in the trial
11 and you're going to have these verdict forms. On
12 these forms, you're going to tell us your decisions.

13 Now, there are eight separate pieces of paper
14 because you have two defendants each charged with
15 four offenses. And what you will see when you get
16 back there is that the caption on four of these
17 reads, The State versus K.C. Langford, III. And the
18 caption at the top of the page on the four others
19 reads, The State versus Bryan Jordan Phillips.

20 Now, what I have done is I have listed the
21 possible forms of verdict on each. And to make sure
22 that there's no confusion, I've been a little bit
23 repetitive, so even though I've got the caption up
24 here with the name, I have put the charge that
25 you're considering and the name of that particular

1 defendant again.

2 So this one reads, As to the charge of burglary
3 in the first degree against K.C. Langford, III, we,
4 the jury, unanimously find the defendant, and then
5 you have two options, you may find the defendant not
6 guilty or you may find the defendant guilty of
7 burglary in the first degree.

8 Now, the verdict form for Mr. Phillips on the
9 indictment for burglary in the first degree will be
10 exactly the same except the names will be changed.

11 Then you have another set of verdict forms for
12 armed robbery. And, again, I'll just stick with the
13 one I have in my hand. It reads, As to the charge
14 of armed robbery against K.C. Langford, III, we, the
15 jury, unanimously find the defendant, and you have
16 two options, you may find him not guilty or you may
17 find him guilty of armed robbery.

18 The verdict form for Mr. Phillips will be
19 identical except the names were changed. You have
20 the option of finding Mr. Phillips not guilty or
21 guilty of armed robbery.

22 Then there are two separate and distinct
23 verdict forms for kidnapping, one against
24 Mr. Langford and one against Mr. Phillips. And they
25 would read, As to the charge of kidnapping against,

1 whichever defendant you're considering, we, the
2 jury, unanimously find that defendant, you have two
3 options, you may find him not guilty or guilty of
4 kidnapping.

5 And then criminal conspiracy, same thing, two
6 options, you may find the defendant not guilty, you
7 may find that particular defendant guilty of
8 criminal conspiracy.

9 Now, Mr. Foreman, part of your job is to record
10 the verdicts of the jury. I think you'll find these
11 forms to be self-explanatory. They're pretty
12 simple. Just make sure that you're looking at the
13 name and the charge that's all right up here
14 underlined for you and you check the response the
15 jury chooses on each form and you sign your name on
16 each form.

17 Now, ladies and gentlemen, how you go about
18 your deliberations and how you go about taking your
19 votes, all of that is in your discretion subject to
20 this requirement: Your verdicts must be unanimous.
21 All 12 of you have to agree before the Foreman can
22 record your verdict.

23 You cannot do anything to change the
24 requirement of a unanimous verdict. When you come
25 back out with your verdicts, you can be asked

1 individually if that is your verdict and if it is
2 still your verdict. So please understand, folks,
3 the verdicts have to be unanimous and you cannot do
4 anything to change the requirement of a unanimous
5 verdict.

6 When you've reached your verdicts, knock on the
7 door, the bailiff will respond to your knock.

8 Now, over the course of the last three days,
9 I've probably told you all dozens of times not to
10 discuss the case until I tell you. And I told you
11 you wouldn't have any doubt about when that would
12 be. Well, it isn't time yet. The law says that I
13 have to let the attorneys discuss with me what I
14 just told you and that's just common sense, we don't
15 want you back there deciding these cases using the
16 wrong law. They don't get to stand up and object
17 when I'm talking. They have to wait till I turn to
18 them and ask them if they have any input.

19 So what will happen is this. I'm going to send
20 you back to the jury room. I will get input from
21 the attorneys. If I agree with them that I need to
22 clarify something or I misstated something, I'll
23 bring you back out and do that.

24 But if I'm satisfied with what I told you,
25 here's the signal you need to look for. The bailiff

1 is going to bring these verdict forms and those
2 exhibits back there in that jury room. When you
3 have those exhibits and verdict forms in the jury
4 room and the door is shut and it's just the 12 of
5 you in there, you start talking about the case. You
6 don't have to wait another second, but don't talk
7 about it until then.

8 Thank you very much for your attention. You
9 may retire to your jury room.

10 (The jury retires to the jury room.)

11 **THE COURT:** Please state for the record
12 exceptions, additions or objections to the
13 instructions from the State.

14 **MR. MAYE:** None from the State, Your Honor.

15 **THE COURT:** On behalf of Mr. Langford.

16 **MR. CALHOUN:** None for Mr. Langford, Your
17 Honor.

18 **THE COURT:** And on behalf of Mr. Phillips.

19 **MR. WILLIAMS:** None from Mr. Phillips, Your
20 Honor.

21 **THE COURT:** Gentlemen, I want to thank you all
22 very much, everybody involved, the attorneys, the
23 witnesses, defendants, family members, everybody for
24 the respect you've shown the Court. I appreciate
25 that very much. Everybody obviously has worked very

1 hard on these cases.

2 The jury has a very difficult choice to make.

3 They've got the toughest job in the courthouse.

4 We'll put it in their hands and see what happens.

5 Check the verdict forms, check the exhibits.

6 When you're satisfied, give those to the bailiff and

7 he or she will take them back.

8 MR. CALHOUN: Thank you, Judge.

9 MR. WILLIAMS: Thank you, Your Honor.

10 (Pause.)

11 THE COURT: Everybody's square?

12 MR. CALHOUN: Yes, sir.

13 MR. WILLIAMS: Yes, sir, Your Honor.

14 MR. MAYE: Nothing from the State.

15 THE COURT: All right. Mr. Bailiff, if you
16 will give those to the jury and tell them they may
17 begin their deliberations and knock on the door when
18 they've completed them, when they've got their
19 verdicts.

20 We're at ease on these cases pending a verdict.

21 I guess I need to put this on the record.

22 After I told the jury about taking notes, none of
23 them took any notes. The bailiff watched them. I
24 watched them and they didn't take any notes. So I
25 didn't give any further instructions about that.

1 All right. We're at ease pending a verdict.

2 (The jury commenced its deliberations at
3 5:48 p.m.)

4 (A recess transpired.)

5 (Court's Exhibit Number 4, jury note, marked
6 for identification purposes.)

7 (The following occurred at the bench during
8 jury deliberations at 7:54 p.m.)

9 **THE COURT:** The attorneys have agreed to submit
10 another blank form and shred the original without
11 looking at it as it relates to Court's Exhibit 4.

12 (A recess transpired.)

13 (Court's Exhibit Number 5, jury note, marked
14 for identification purposes.)

15 (The following occurred during jury
16 deliberations at 8:48 p.m.)

17 **THE COURT:** All right. The jury's asked to
18 hear -- the jury's asked to hear definitions of all
19 four offenses, so I just intend to charge the jury
20 those sections that I gave them earlier where I
21 define the offenses. Do y'all have any input before
22 I bring them in?

23 **MR. MAYE:** None from the State, Your Honor.
24 Thank you.

25 **MR. CALHOUN:** No, Your Honor.

1 **MR. WILLIAMS:** No, sir.

2 **THE COURT:** Bring them in, please.

3 (The jury returns to the courtroom at 8:49
4 p.m.)

5 **THE COURT:** Mr. Foreman, I received a note from
6 the jury basically asking that I recharge you on the
7 definitions of the four separate offenses; is that
8 right?

9 **FOREMAN:** Yes, sir.

10 **THE COURT:** Okay. First, I'll explain to you
11 the law of armed robbery. Armed robbery is using
12 force, threats or intimidation while armed with a
13 deadly weapon to unlawfully take and carry away
14 personal property of another person with the intent
15 to deprive the owner of possession.

16 In order to prove this offense, the State must
17 prove beyond a reasonable doubt that the defendant
18 or an accomplice of his took personal property from
19 the person or presence of the person or persons
20 named in the indictment. In order for property to
21 be in the presence of a person, it has to be within
22 the person's reach, inspection, observation or
23 control so that the person could, if not overcome
24 with violence or prevented by fear, keep possession
25 of the property.

1 The State must also prove beyond a reasonable
2 doubt that the defendant or an accomplice carried
3 the property away intending to permanently deprive
4 the owner of the property and keep the property for
5 the defendant's own use. The taking and carrying
6 away of the property must have been done with
7 violence or by putting the owner of the property in
8 fear of violence.

9 And, finally, the State must prove beyond a
10 reasonable doubt that the defendant or his
11 accomplice was present and aiding, abetting and
12 assisting in the commission of the robbery and was
13 armed with a deadly weapon during the robbery. A
14 deadly weapon is any article, instrument or
15 substance which is likely to cause death or great
16 bodily harm.

17 So armed robbery is, to recap, using force,
18 threats or intimidation while armed with a deadly
19 weapon to unlawfully take and carry away personal
20 property of another person with the intent to
21 deprive the owner of possession. It's robbery with
22 the use of a deadly weapon and force, threats or
23 intimidation and all those elements I went through
24 with you earlier.

25 With regard to first degree burglary, burglary

1 in the first degree is willfully and unlawfully
2 entering a residence without consent and with the
3 intent to commit a crime therein where the entering
4 or the remaining occurred in the nighttime.

5 So to prove a defendant guilty of burglary, the
6 State must first prove that the defendant in
7 question either as the principal or as an accomplice
8 who was present and aiding, abetting and assisting
9 another defendant in the crime of burglary did the
10 following things:

11 First, that he entered a dwelling without
12 consent. A dwelling is any building in which a
13 person ordinarily sleeps.

14 Next, the State must prove that the entry was
15 done with the intent to commit a crime, either a
16 felony or a misdemeanor, at the time of the entry.
17 Merely entering a dwelling without consent is not
18 burglary. The entry has to be made with the intent
19 to commit a crime once inside the dwelling. Intent
20 may be shown by acts and conduct of the defendant
21 and other circumstances from which you may naturally
22 and reasonably infer intent.

23 And, finally, the State has to prove beyond a
24 reasonable doubt that the entering or remaining
25 occurred in the nighttime.

1 Kidnapping is knowingly and unlawfully seizing,
2 confining, inveigling, decoying, kidnapping,
3 abducting or carrying away another person without
4 authority of law.

5 Now, to do a thing unlawfully requires
6 willfully doing something that is against the law.
7 Knowingly means that it's done with knowledge. It's
8 consciously done. It's not something done by
9 accident. To seize means to hold or take hold of
10 suddenly or forcibly. Confine means to limit,
11 restrict or enclose within bounds or to imprison or
12 shut in a person or keep in a person. Kidnap is to
13 remove a person against his will by unlawful force
14 or by fraud. And abduct means to carry off secretly
15 or by force for an illegal purpose. Carry away
16 means to remove.

17 Now, the State does not have to prove that the
18 defendant or someone with whom he was acting as an
19 accomplice did all of these things. If you find
20 beyond a reasonable doubt that the defendant or an
21 accomplice knowingly and willfully seized, confined,
22 kidnapped or abducted either or both of the two
23 purported victims against the will of the purported
24 victim or victims, as I have defined all these terms
25 for you and as alleged in the particular indictment,

1 then you may find that defendant guilty of
2 kidnapping.

3 Something done without authority of law is
4 something which the law does not sanction or permit
5 or allow or condone or provide a justification for.

6 Now, kidnapping does not have to be for ransom
7 or for any personal or monetary gain.

8 And, finally, I'll talk to you about
9 conspiracy. To prove criminal conspiracy, the State
10 has to prove beyond a reasonable doubt that the
11 defendant combined with one or more persons named in
12 the indictment for the purpose of committing an
13 unlawful act or of committing a lawful act by
14 unlawful means.

15 Now, here the indictment alleges that the
16 conspiracy was to commit an unlawful act, which is
17 alleged to be armed robbery.

18 There has to be a mutual understanding,
19 agreement or common intention and plan. Mere
20 passive knowledge of or consent to the criminal
21 conduct of another is not enough to make a person a
22 conspirator. There has to be guilty knowledge and
23 participation.

24 And, similarly, the mere fact that a defendant
25 may have associated with another person or met with

1 another person and discussed common aims and
2 interests does not necessarily establish proof of
3 the existence of a conspiracy or that the defendant
4 was involved in a conspiracy.

5 The agreement does not have to be formal. It
6 does not have to be in writing. The agreement of a
7 criminal conspiracy may come into being through an
8 implied mutual understanding, but a conspiracy
9 requires willful, intentional and knowing adoption
10 by two or more persons of a common plan to do an
11 illegal act.

12 The State has to prove beyond a reasonable
13 doubt not only that the defendant knew of the
14 unlawful conduct, but the defendant agreed to
15 combine with the other persons named in the
16 indictment for the purpose of accomplishing armed
17 robbery.

18 Those are the four definitions. If you need
19 anything else, let me know. Thank you.

20 (The jury retires to the jury room to
21 continue its deliberations at 8:58 p.m.)

22 **THE COURT:** Are there any exceptions, additions
23 or objections to the instructions from the State?

24 **MR. MAYE:** Nothing from the State, Your Honor.

25 **MR. CALHOUN:** None from Mr. Langford, Your

1 Honor.

2 MR. WILLIAMS: None from Defendant Phillips,
3 Your Honor.

4 THE COURT: Thank you. We're at ease pending a
5 verdict.

6 (A recess transpired.)

7 THE COURT: All right. Please stay still, stay
8 quiet as the verdict's announced and thereafter.
9 Don't show signs of approval or disapproval.

10 (The jury returns to open court to report
11 its verdict at 9:54 p.m.)

12 THE COURT: Madame Clerk.

13 THE CLERK: Mr. Foreman, have you reached a
14 verdict?

15 FOREMAN: Yes, we have.

16 THE CLERK: Please pass it to the bailiff.

17 (The bailiff hands the verdicts to the
18 Judge.)

19 VERDICT OF THE JURY

20 THE COURT: All right. The State of South
21 Carolina, County of Edgefield, the State versus K.C.
22 Langford, III, case number 2010-GS-19-00278, as to
23 the charge of kidnapping against K.C. Langford, III,
24 we, the jury, unanimously find the defendant guilty
25 of kidnapping, signed by the Foreman.

1 Case number 2010-GS-19-272 as to the charge of
2 burglary in the first degree against K.C. Langford,
3 III, we, the jury, unanimously find the defendant
4 guilty of burglary in the first degree, signed by
5 the Foreman.

6 Indictment 2010-GS-19-273 as to the charge of
7 armed robbery against K.C. Langford, III, we, the
8 jury, unanimously find the defendant guilty of armed
9 robbery, signed by the Foreman.

10 Case number 2008-GS-19-673 as to the charge of
11 criminal conspiracy against K.C. Langford, III, we,
12 the jury, unanimously find the defendant guilty of
13 criminal conspiracy, signed by the Foreman.

14 State of South Carolina versus Bryan Jordan
15 Phillips, case number 2010-GS-19-277, as to the
16 charge of kidnapping against Bryan Jordan Phillips,
17 we, the jury, unanimously find the defendant guilty
18 of kidnapping, signed by the Foreman.

19 Case 2010-GS-19-274 as to the charge of
20 burglary in the first degree against Bryan Jordan
21 Phillips, we, the jury, unanimously find the
22 defendant guilty of burglary in the first degree,
23 signed by the Foreman.

24 Case number 2008-GS-19-723 as to the charge of
25 armed robbery against Bryan Jordan Phillips, we, the

1 jury, unanimously find the defendant guilty of armed
2 robbery,, signed by the Foreman.

3 As to the charge of criminal conspiracy against
4 Bryan Jordan Phillips, we, the jury, unanimously
5 find the defendant guilty of criminal conspiracy,
6 signed by the Foreman.

7 Mr. Foreman, ladies and gentlemen of the jury,
8 if I have accurately stated your verdicts, that is
9 guilty on -- guilty as charged on each count against
10 both defendants, please signify by raising your
11 right hand.

12 All 12 hands are raised. Thank you.

13 Are there any matters to take up prior to the
14 jury being discharged from the State?

15 **MR. MAYE:** Nothing from the State, Your Honor.

16 **THE COURT:** On behalf of Mr. Langford?

17 **MR. CALHOUN:** No, Your Honor.

18 **THE COURT:** On behalf of Mr. Phillips.

19 **MR. WILLIAMS:** Your Honor, on behalf of
20 Mr. Phillips, we would request that the jurors be
21 polled.

22 **THE COURT:** Do you want each charge done
23 individually or do you want them done collectively?

24 **MR. WILLIAMS:** Collectively, Your Honor.

25 **THE COURT:** All right. Ladies and gentlemen of

1 the jury, what's going to happen is that the Clerk
2 is going to call the role. As your name is called,
3 I need for you to raise your hand so she knows where
4 to look. You can put your hand back down then. And
5 then she's going to ask you questions along these
6 lines, were -- these are the charges against Bryan
7 Jordan Phillips, the four charges against him.
8 She's going to ask you, were these your verdicts and
9 are they still your verdicts. Just answer her
10 truthfully.

11 Madame Clerk.

12 **THE CLERK:** Mr. Foreman, Mr. Hillary.

13 **FOREMAN:** Do I need to stand?

14 **THE COURT:** No. You can stay seated, just let
15 her know where you are.

16 **THE CLERK:** The verdict of the jury reported of
17 the Court to Mr. K.C. Langford --

18 **THE COURT:** No. Mr. Langford didn't ask for
19 it.

20 **THE CLERK:** I mean, Mr. Bryan Jordan Phillips,
21 was this your verdict in the jury room and is it
22 still your verdict? Please answer yes or no.

23 **FOREMAN:** Yes.

24 **THE CLERK:** Kevin L. Chinn, the verdict of the
25 jury reported to the Court of Mr. Phillips was

1 guilty. Was this your verdict in the jury room and
2 is it still your verdict?

3 JUROR: It wasn't at first, but, yes.

4 THE CLERK: Sir?

5 JUROR: I said it wasn't at first, but, yes.

6 THE COURT: Was it your verdict?

7 JUROR: Yes.

8 THE COURT: Is it still your verdict?

9 JUROR: Yes.

10 THE COURT: As to each charge?

11 JUROR: Yes.

12 THE CLERK: Mr. Gustave Frazer, the verdict of
13 the jury reported to the Court was guilty. Was this
14 your verdict in the jury room and is it still your
15 verdict to Mr. Phillips?

16 JUROR: Yes.

17 THE CLERK: Regina Harrell, the verdict of the
18 jury reported to the Court with Mr. Bryan Phillips
19 was guilty. Was this your verdict in the jury room
20 and is it your verdict -- still your verdict?

21 JUROR: Yes, ma'am.

22 THE CLERK: Doresa A. Hartley, the verdict of
23 the jury reported to the Court on Mr. Bryan Phillips
24 was guilty. Was this your verdict in the jury room
25 and is it still your verdict?

1 **JUROR:** Yes.

2 **THE CLERK:** Richard J. Koenig, the verdict of
3 the jury reported to the Court on Mr. Bryan Phillips
4 was guilty. Was this your verdict in the jury room
5 and is it still your verdict?

6 **JUROR:** Yes.

7 **THE CLERK:** Jerry A. Richardson, the verdict of
8 the jury reported to the Court for Mr. Bryan
9 Phillips was guilty. Was this your verdict in the
10 jury room and is it still your verdict?

11 **JUROR:** Yes, ma'am.

12 **THE CLERK:** Beatrice Ryan, the verdict of the
13 jury reported to the Court on Mr. Bryan Phillips was
14 guilty. Was this your verdict in the jury room and
15 is it still your verdict?

16 **JUROR:** Yes.

17 **THE CLERK:** M.L. Ryan, the verdict of the jury
18 reported to the Court on Mr. Bryan Phillips was
19 guilty. Was this your verdict in the jury room and
20 is it still your verdict?

21 **JUROR:** Yes.

22 **THE CLERK:** James H. Satcher, III, the verdict
23 of the jury reported on Mr. Bryan Phillips was
24 guilty. Was this your verdict in the jury room and
25 is it still your verdict?

1 **JUROR:** Yes, ma'am.

2 **THE CLERK:** Ervin M. Talbert, the verdict of
3 the jury reported to the Court on Mr. Bryan Phillips
4 was guilty. Was this your verdict in the jury room
5 and is it still your verdict?

6 **JUROR:** Yes, ma'am.

7 **THE CLERK:** Deborah A. Weaver, the verdict of
8 the jury reported to the Court on Mr. Bryan Phillips
9 was guilty. Was this your verdict in the jury room
10 and is it still your verdict?

11 **JUROR:** Yes.

12 **THE COURT:** Is that everybody?

13 All right. Any further matters to take up
14 prior to the jury being discharged on behalf of
15 Mr. Phillips?

16 **MR. WILLIAMS:** No, Your Honor.

17 **THE COURT:** Thank you very much.

18 All right. Ladies and gentlemen of the jury, I
19 realize the hour. There are some matters that I
20 have to take up outside your presence and then I've
21 got a little bit of information I need to give to
22 you before I let you go. You'll be through with
23 jury duty once I finish that.

24 Once I deal with these issues with the
25 attorneys, depending upon how they come out, at that

1 point, I may be sentencing the defendants. If you
2 want to come in for the sentencing, if that takes
3 place tonight, I'll let you do that, but right now I
4 need for you to step in the jury room.

5 (The jury retires to the jury room.)

6 **THE COURT:** Any motions?

7 **MR. CALHOUN:** No, Your Honor.

8 **THE COURT:** All right. If you don't make
9 motions, you're going to lose your right to appeal.

10 **MR. CALHOUN:** I mean, Your Honor, we just renew
11 our previously made motions. Right now we'd move
12 for a motion for a judgment notwithstanding the
13 verdict based on the arguments previously made and
14 our motion for a directed verdict.

15 **THE COURT:** All right. So you move for a
16 judgment not withstanding the verdict and for a new
17 trial on the same grounds, on the grounds that
18 there's insufficient evidence to support each of
19 these convictions; is that basically your argument?

20 **MR. CALHOUN:** Yes, Your Honor.

21 **THE COURT:** All right. What about you,
22 Mr. Williams?

23 **MR. WILLIAMS:** Your Honor, I move to renew my
24 motions for a directed verdict. Further, Judge, I
25 would move for a new trial on the basis that we

1 believe that there wasn't sufficient evidence in
2 this matter in which the jury could find guilt of my
3 client and any decision that they made we believe
4 that it was made out of passion or prejudice. We
5 would ask the Court to grant a new trial. If not,
6 direct a verdict of not guilty.

7 **THE COURT:** Do you adopt the same arguments as
8 well, Mr. Calhoun?

9 **MR. CALHOUN:** Yes, Your Honor.

10 **THE COURT:** The jury acted within its province.
11 There's no indication that the jury's verdicts are
12 the product of any passion, prejudice, caprice or
13 any improper or undue influence. The motions are
14 respectfully denied.

15 **MR. WILLIAMS:** Thank you, Your Honor.

16 **THE COURT:** I don't see a sentence sheet on --

17 **MR. MAYE:** They would have been taken off the
18 indictments at the time that they were passed up,
19 Your Honor, I would imagine.

20 **THE COURT:** I've got sentence sheets on
21 everything except this kidnapping charge on K.C.
22 Langford.

23 **MR. MAYE:** I'll retrieve them, Your Honor. You
24 have one on everything but kidnapping on K.C.
25 Langford?

1 **THE COURT:** Yes.

2 We're at ease.

3 (Brief Recess.)

4 **THE COURT:** Do you have anything on sentencing,
5 Mr. Calhoun?

6 **MR. CALHOUN:** Your Honor, you're aware of what
7 he has on his record and the age that he was when
8 this occurred and I just please ask you to take that
9 into consideration.

10 **THE COURT:** Does the State have anything on
11 sentencing on Mr. Langford?

12 **MR. MAYE:** No, sir, Your Honor. You've heard
13 all of the facts. You're very familiar with this
14 case over a long period of time. I leave it to the
15 wise discretion of the Court.

16 **THE COURT:** Mr. Langford, do you want to say
17 anything?

18 **DEFENDANT LANGFORD:** Yes, sir. As of now, I
19 understand that I'm under your leniency. I just
20 like to direct it to you about me being found guilty
21 in the eyes of the jurors by one statement that was
22 made on the behalf of a co-defendant who wavered
23 back and forth, I don't think was reliable.

24 I don't understand how I got put in this crime.
25 I don't know why he placed me there. I do know he

1 tried to remove me. I do know that he didn't want
2 to testify. I do know that the last court term, he
3 pled the Fifth and didn't want to testify. And it's
4 just, I feel that it's some type of prejudice
5 because of my charges didn't get dropped last court
6 term.

7 I came to court term -- I came to court last
8 May facing the same thing that I was facing today,
9 these same charges. I came taking the same chances
10 today of being found guilty and not guilty.

11 The last court term I don't feel that I got the
12 proper justice because Alvin Phillips came to court
13 that morning to testify for the State the way he did
14 on yesterday, but he also that morning informed them
15 that he was not going to testify that morning. And
16 I just -- I filed at the time for a motion of fast
17 and speedy, in the alternative to dismiss. And my
18 trial was not granted that day because of unduly,
19 dilatory, laziness of the State and I was ready to
20 go forth at that time.

21 If Mr. Phillips wanted to testify at that time,
22 he had the right to do so, but he did not. So it
23 just doesn't amaze me. And I wrote my lawyer and
24 asked him at the time why didn't my trial get
25 dismissed when I filed for an alternative to

1 dismissal along with a fast and speedy trial.

2 And I knew in my mind the same tactic that the
3 Solicitors was going to use this court term by
4 allowing him to be applied pressure by his lawyer
5 and the Solicitors, I knew that they were going to
6 threaten him if you don't testify to -- with a
7 larger sentence over his head. I understand that
8 it's -- and I don't know the deal that he has
9 gotten, but I do know, Your Honor, as you've heard
10 for yourself, that it's charges that's being held
11 over his head that relied on what happened in this
12 trial this court term.

13 I feel some type of prejudice because my trial
14 didn't go forth the last court term. I feel that my
15 trial should have got heard, that if Mr. Phillips
16 didn't come to testify last court term, what enabled
17 him to come to court term -- this court term to
18 testify? What was the difference from last court
19 term to this court term? Was it last court term
20 that they did not apply enough pressure to him to
21 get him to testify? I mean, I just want you to take
22 that into consideration, Your Honor.

23 I talked to my lawyer. He told me what I was
24 facing. He obviously at one time thought that my
25 co-defendant was going to testify.

1 Your Honor, as you see, I came out on faith
2 with unexperience (sic) in the law accepting my
3 lawyer on my behalf to be my defense, but I walked
4 out on faith last court term trusting in my God to
5 touch Alvin heart and not to testify. And God
6 touched him last court term to not allow him to
7 testify. I feel last court term that I was supposed
8 to walk free.

9 I know that my other co-defendant, Mr. Bryan
10 Phillips, he filed for bias, a motion to relief
11 (sic) you off this case. I also felt that it was in
12 your hands last court term to dismiss these charges.

13 At that time, I was in the county for
14 approximately 20 months. And I was there them 20
15 months without the investigator of my case,
16 Mr. Lamaz Robinson, never coming to investigate or
17 talk to me period to get my side of the story or to
18 see what happened on the night of the crime. I know
19 that it was in your hands, Your Honor, last court
20 term to bring about justice to just do your job the
21 way that you see fit and that you saw fit.

22 It's no doubt in my mind that the Solicitors
23 has coerced Mr. Alvin Phillips. They have pressured
24 Mr. Alvin Phillips. They have been working back and
25 forth with his lawyer to negotiate a plea bargain

1 with him if he testified or he didn't testify.

2 And I just want you to think about it, Your
3 Honor, and everyone else, it's Alvin trying to save
4 his hide himself. I don't doubt in my mind that if
5 it was his sister, if it was his mother up here that
6 he had to testify against to keep from getting 60
7 years, 50 years, 30 years what my charges carry,
8 possibly life, I don't doubt in my mind that he
9 would have testified against them.

10 But I just want you to take into consideration,
11 Your Honor, that last court term I was prepared to
12 go to court and get tried and I did not get that. I
13 don't know what type of justice that is in your
14 eyes.

15 I have been -- I filed a motion of -- for a
16 fast and speedy trial, in the alternative to dismiss
17 in June or July 2009 and my case didn't come to
18 court until May 2010, 20 months later. I don't know
19 the limitations on how long or fast a speedy trial
20 is to be granted in the State of South Carolina, but
21 I have done everything that I can on my behalf to
22 come to court to get this issue before a court and
23 get it out of the way.

24 And I don't feel that it's justice on the
25 circumstances of evidence and the direct evidence

1 for me to be found guilty. I understand that it was
2 no follicle hair, no DNA, no blood, of course, Your
3 Honor, but it's just on the statement of one
4 co-defendant who's been wavering back and forth,
5 who's been, I don't think, reliable.

6 Last court term I discussed it with my lawyer
7 about going to trial. And it was -- like I said at
8 the time, he was informed that Alvin was going to
9 testify. And he asked me did I want to get a deal
10 and I didn't because I didn't feel like I was
11 guilty. I didn't feel like that I should take a
12 plea bargain for something that I did not do. I
13 wasn't at the crime. I wasn't caught at the crime.
14 I wasn't investigated about the crime. I wasn't
15 questioned by any investigators about the crime. I
16 was only placed there by a co-defendant.

17 This co-defendant also removed me away from
18 this crime on two different occasions, not only did
19 he write one statement, he wrote two statements.
20 Two statements in my eyes, it always is more than
21 one with the one statement that he gave to law
22 officials. He also indicated that he wanted to
23 testify last court term, but he also indicated that
24 he did not want to testify last court term. Why did
25 the State get a continuance in that case, I don't

1 know.

2 I just pray and just like I say just fall upon
3 your mercy right now of the Court. And like I say,
4 my lawyer talked to me about getting me a deal last
5 court term and it was ten years and I didn't want it
6 because I didn't feel that I should go to prison for
7 ten years for something I didn't do. I was already
8 here in Edgefield County at that time 20 months,
9 going on 21 months. I felt that that was enough
10 time for me being placed in captivity. I feel, in
11 my eyes, kidnapped, being held someone against my
12 own free will, so I did -- I declined those ten
13 years.

14 And he also let me know by me declining the ten
15 years, that he was able to discuss with the
16 Solicitors that if I didn't take the ten years, I
17 was going to trial and by trial, I would be facing
18 more. And they didn't go to trial last court term.
19 So that was justice, it should have been on my
20 behalf. I just want you to consider that, Your
21 Honor.

22 I fall upon the mercy of your court and I pray
23 that God just touches your heart and pray that you
24 just have leniency upon me.

25 **THE COURT:** Anything else?

1 **DEFENDANT LANGFORD:** That's all, Your Honor.

2 **THE COURT:** Thank you. Have a seat.

3 Anything else?

4 **MR. CALHOUN:** No, Your Honor.

5 **MR. WILLIAMS:** Your Honor, on behalf of my
6 client, he's 21 years old. He's the son of Janie
7 Robinson. He's her only son. He's got four
8 sisters. He's supported by, I believe, three of his
9 sisters who are here present in the courtroom. And
10 I would also ask you to consider the fact that my
11 client is now 21 years old. At the time of this
12 incident, he was 19 years old.

13 Judge, we understand the jury's verdict. We
14 certainly cannot dispute it at this point. They
15 have spoken. And we all understand in this line of
16 work and in this profession, that once the jury
17 speaks, they have rendered a verdict which speaks
18 the truth. It's at this point, Your Honor, we ask
19 that your great wisdom, your great consideration of
20 the sometimes recklessness of youth, we ask that you
21 would consider that in your sentencing.

22 Judge, these are some of the most serious
23 offenses that individuals can be convicted of. And
24 I recognize the Court has very limited discretion as
25 it relates to the burglary charge in particular. I

1 just pray, Judge, that you will allow your sentence
2 to stop right where the mandatory minimums will
3 require you to go, that's the only thing I can ask
4 of you, Judge.

5 **THE COURT:** Thank you.

6 Do you want to say anything, Mr. Phillips?

7 **DEFENDANT PHILLIPS:** Yes, sir. Mr. Keesley, I
8 want to follow what Mr. Langford said, you know,
9 about the charges not being dismissed, us coming to
10 court last term. I seen not too long Mr. Calhoun
11 filed a motion for a mistrial, denied. A few
12 seconds ago another motion from Mr. Calhoun and
13 Mr. Williams for trial, denied. I'm under your
14 jurisdiction right now, Mr. Keesley.

15 **THE COURT:** What about when I didn't let them
16 put that witness up to testify that they wanted to
17 put up to testify against you?

18 **DEFENDANT PHILLIPS:** Gustav Sawvell?

19 **THE COURT:** If y'all want to get up there --
20 never mind. Go ahead, say whatever you want to say.

21 **DEFENDANT PHILLIPS:** No, go ahead, Mr. Keesley.

22 **THE COURT:** Say whatever you want to say.

23 **DEFENDANT PHILLIPS:** They go up there under
24 oath on the Bible, so whatever they feel free to do
25 or say under oath, lie or not, I have no problem

1 with it. Every motion is rhetoric to my freedom,
2 not to no witness is he credible or not, to my
3 freedom is denied. I understand I had filed a
4 motion to relieve you.

5 **THE COURT:** That's fine. I told you I had
6 nothing against you personally then, I don't now.

7 **DEFENDANT PHILLIPS:** Yes, sir, I understand
8 that. I want to apologize for that.

9 **THE COURT:** You don't need to apologize to me.
10 Go ahead.

11 **DEFENDANT PHILLIPS:** I just ask you to have
12 mercy upon me, Mr. Keesley. We have charges that,
13 you know, I don't see no evidence on, you know,
14 armed burglary, no different charges. We relied on
15 three law enforcement officers to take the stand to
16 testify under oath, Alvin Phillips, a waiver, who
17 recanted statement several times that everyone knew
18 about. Ms. Newby seen our copies.

19 **THE COURT:** The jury saw it. Go ahead.

20 **DEFENDANT PHILLIPS:** The jurors didn't deny the
21 motion. I'm sorry, Your Honor. I'm frustrated,
22 aggravated a little bit.

23 **THE COURT:** I understand. And I think the best
24 thing is I just tell y'all I'll be back in about
25 five minutes and I'll allow y'all to say whatever

1 you'd like to say. I understand it's very
2 emotional. I understand that you all don't agree
3 with the jury's decision. You don't agree with my
4 rulings, that's fine. I'm not going to make any
5 decisions based on emotion. It's not going to
6 happen. We're at ease.

7 (Brief Recess.)

8 **THE COURT:** All right. Mr. Phillips, you may
9 continue.

10 **DEFENDANT PHILLIPS:** Your Honor, sorry for the
11 tension. You know, I have mixed emotions. I'm
12 under your justice right now, Your Honor. I just
13 ask you to have mercy upon me right now. Thank you.

14 **THE COURT:** All right. Thank you.

15 I'm going to give y'all the same sentence that
16 I had thought that I would give before either of you
17 spoke. I will say that you speaking certainly did
18 not help in the sentencing, but I'm going to resist
19 the temptation. You're not going to be happy with
20 the sentence I give, but I'm going to resist the
21 temptation to have any sort of emotional reaction to
22 being accused of bias and prejudice and constantly
23 ruling against you and not giving you a fair trial
24 basically, because that's what you told me. Y'all
25 have a seat.

1 (Pause.)

2 THE COURT: Does the State have anything else
3 on Mr. Phillips? I didn't ask that question.

4 MR. MAYE: No, sir, Your Honor, I don't have
5 anything else. I think the Court's well aware of
6 his previous criminal history and all the facts of
7 this.

8 THE COURT: Either one of these gentlemen on
9 probation?

10 MR. MAYE: No, sir, Your Honor. I note that
11 Mr. Phillips got a YOA in 2006. I'm not sure how
12 old he is. I don't know if he's on YOA parole or
13 not, that I -- I do not know if he's out on YOA
14 parole, I'm not sure.

15 THE COURT: Do you know if he's on YOA parole?

16 PROBATION AGENT: No, sir, he's not.

17 THE COURT: So neither one of them are on
18 probation or parole?

19 PROBATION AGENT: Mr. Langford is on probation.

20 THE COURT: Are you going to charge him with
21 that now?

22 PROBATION AGENT: Yes, sir, Your Honor, I can.

23 THE COURT: I'm not telling you to do it or
24 don't do it, I'm just asking you.

25 PROBATION AGENT: Yes, sir.

1 **THE COURT:** Mr. Calhoun, are y'all -- which one
2 did you say -- Mr. Langford was on probation?

3 **PROBATION AGENT:** Yes, sir, Mr. Langford.

4 **THE COURT:** Mr. Calhoun, are you prepared to go
5 forward on that?

6 **MR. CALHOUN:** Yes, sir.

7 **THE COURT:** Do you have to serve him?

8 **PROBATION AGENT:** No, sir, Your Honor. He's
9 already been served.

10 **THE COURT:** All right. What's his situation on
11 probation?

12 The papers indicate that I sentenced you in
13 June of 2006 for receiving stolen goods greater than
14 \$5,000. I gave you a sentence of five years
15 suspended on the service of one year with five years
16 probation, ordered you to pay \$2,120 in restitution
17 plus a 20 percent handling charge.

18 It's indicated that you reported as directed.
19 You have two prior violations for failing to pay
20 your money. The second one you're charged with
21 failing to make a truthful report, tested positive
22 for marijuana on September the 4th, 2007, failed to
23 maintain lawful employment and failed to pay your
24 money as directed.

25 At that time, I continued you on supervision.

1 I ordered that you complete the restitution center
2 not to exceed six months if your money had not been
3 brought current by November 15th, 2008 and directed
4 that you were to attend substance abuse counseling.

5 The allegation now is that you have violated
6 your probation by having been convicted of these
7 offenses today.

8 Do you have anything else on probation matter,
9 Mr. Calhoun?

10 **MR. CALHOUN:** No, Your Honor, I don't.

11 **THE COURT:** Do you have anything you want to
12 say about that, Mr. Langford?

13 **DEFENDANT LANGFORD:** No, Your Honor.

14 **THE COURT:** Gentlemen, everybody in the
15 courtroom, sentencing is a very difficult thing.
16 I'm the same guy sentencing now who sentenced to
17 probation before. I'm the same guy sentencing now
18 who continued probation before. I haven't changed.

19 I recognize and fully appreciate and respect
20 that others in a different position would feel very
21 strongly that some injustice has been done and some
22 wrong has been done, but the assertion in my mind
23 and in my defense that I have in some way not
24 rendered a fair trial is something I am not willing
25 to accept.

1 Now, I told you all I had in my head a number
2 before anybody ever spoke and that's the number I
3 put on this piece of paper, but the reasons for the
4 continuance at the prior term of court had been
5 stated is the same Bruton analysis that I used when
6 I denied the State the opportunity to present a
7 witness that the State was tendering. I'm the same
8 judge who denied the State's request to set aside
9 the jury because it appeared, I suppose, to them to
10 be a favorable jury for the defense. I have called
11 it straight down the middle. If people don't agree
12 with that, I respect their right to disagree. I
13 don't see the basis for it, but if I were in jail, I
14 would be trying to get out, too. If I was
15 wrongfully accused, I would be furious about it. So
16 I understand those positions.

17 But the jury was given the information about
18 the conflicting statements. The jury was given all
19 the information that you all are talking about. The
20 legal conclusions that I made are subject to appeal
21 and if I was wrong, I apologize profusely.

22 Now, both of you gentlemen need to understand
23 that you have a right to appeal from these
24 proceedings. If you want an appeal filed, which I
25 strongly suggest that you file, that you tell your

1 attorneys right now file a written notice of appeal.
2 If they are -- if you are unable to afford an
3 attorney to pursue the appeal, there are procedures
4 whereby the State will appoint appellate counsel for
5 you to pursue the appeal.

6 So, Mr. Langford, do you understand that if you
7 want to file an appeal, you have to tell your
8 lawyer? There's a deadline and it needs to be done
9 in writing and done quickly. Do you understand?

10 **DEFENDANT LANGFORD:** Yes, sir.

11 **THE COURT:** Mr. Phillips, do you understand
12 that as well?

13 **DEFENDANT PHILLIPS:** Yes, sir.

14 **THE COURT:** All right. I'm not going to sit up
15 here and be repetitive except to say I do not have
16 any personal animosity toward either of you and I
17 don't have any personal favoritism for the State.
18 Your attorneys did an excellent job in presenting
19 your case. I didn't know which way the case would
20 go. The jury's made its decision. And most of what
21 you all are talking to me about about the
22 inconsistencies, those are jury issues. Those are
23 not issues the Court can decide. They're not for me
24 to review.

25 *****

1 SENTENCE OF THE COURT

2 THE COURT: The sentence of the Court on both
3 defendants as to kidnapping, armed robbery, burglary
4 in the first degree is 20 years.

5 The sentence of the Court on criminal
6 conspiracy on each defendant is five years. The
7 sentences are to run concurrently.

8 They're given credit for jail time under
9 section 24-13-40, that'll be calculated and applied
10 by the department of corrections. Restitution is
11 deferred.

12 On the kidnapping charge, I am required to make
13 a finding as to whether or not the defendants are
14 required to be registered as sex offenders. There
15 is no allegation or assertion of any sexual offense
16 related to the kidnapping and I have written on both
17 sets of sentence sheets that the defendants are not
18 required to register as sex offenders.

19 The court costs are not permitted to be waived.
20 If I could waive them, I would, but they don't allow
21 me to. So the court costs have to be paid to the
22 Clerk of Court within one year of being released
23 from maximum incarceration in prison.

24 Do you understand your sentence, Mr. Langford?

25 DEFENDANT LANGFORD: Yes.

1 **THE COURT:** Do you understand your sentence,
2 Mr. Phillips?

3 **DEFENDANT PHILLIPS:** Yes, sir.

4 **THE COURT:** Good luck to both of you.

5 On the probation matter, terminate from
6 supervision, roll the supervision fees.

7 **PROBATION AGENT:** Thank you.

8 (The jury was excused by the Court.)

9
10 END OF PROCEEDINGS
11
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Edgefield County, South Carolina, on the 7th of September, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 23, 2011



Stacy L. Sheppard, RPR
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

629 9/17/10 PM-9/17/10
EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY
2010 SEP 17 PM 2:17

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

William P. Keesley, Circuit Court Judge

RECEIVED
SEP 20 2010
SC Court of Appeals

CASE NO.(S): 2008-GS-19-718
2008-GS-19-723
2010-GS-19-274
2010-GS-19-277

The State of South Carolina..... Respondent,

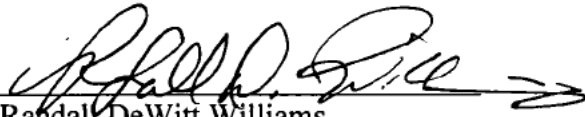
v.

Brian Jordan Phillips, ... Appellant.

NOTICE OF APPEAL

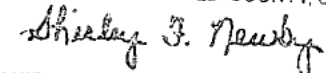
Brian Jordan Phillips appeals the conviction and sentence in this case. The sentence was imposed by the Honorable William P. Keesley on September 9, 2010.

September 17, 2010


Randall DeWitt Williams
201 Buncombe Street
Post Office Box 70
Edgefield, South Carolina 29824
(803) 637-4902
Attorney for Appellant

Other Counsel of Record
Deputy Solicitor, Ervin Maye
187 Saluda Airport Road
Saluda, SC 29138
(803) 275-5609
Attorney for Respondent

THE ABOVE IS A TRUE COPY OF THE ORIGINAL
WHICH IS ON FILE IN THE OFFICE OF THE
CLERK OF COURT OF EDGEFIELD COUNTY, SC


SHIRLEY F. NEWBY, CLERK OF COURT
OF GENERAL SESSIONS AND
COMMON PLEAS, E.C.S.C.
9-17-10
DATED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

2010 SEP 17 PM 2:17

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

William P. Keesley, Circuit Court Judge

RECEIVED

SEP 20 2010

SC Court of Appeals

CASE NO.(S): 2008-GS-19-718
2008-GS-19-723
2010-GS-19-274
2010-GS-19-277

The State of South Carolina..... Respondent,

v.

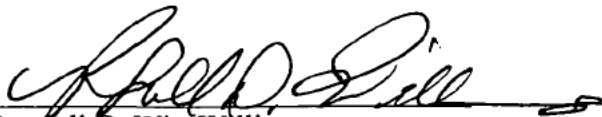
Brian J. Phillips, ... Appellant.

PROOF OF SERVICE

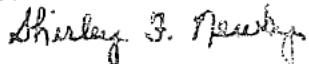
I certify that I have served Notice of Appeal on the State of South Carolina by depositing a copy of the Notice in the United States Mail, postage prepaid, on September 17, 2010, addressed to the Attorney of record:

Office of the Solicitor
Deputy Solicitor, Ervin Maye
187 Saluda Airport Road
Saluda, SC 29138

September 17, 2010


Randall DeWitt Williams
Attorney for Appellant

THE ABOVE IS A TRUE COPY OF THE ORIGINAL
WHICH IS ON FILE IN THE OFFICE OF THE
CLERK OF COURT OF EDGEFIELD COUNTY, SC


Shirley F. Newby

SHIRLEY F. NEWBY, CLERK OF COURT
OF GENERAL SESSIONS AND
COMMON PLEAS, E.C.S.C.

9-17-10
DATED

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Appeal from Edgefield County

Honorable William P. Keesley, Circuit Court Judge

RECEIVED
OCT 13 2011
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRYAN PHILLIPS,

APPELLANT

MOTION TO CERTIFY CASE TO THE SUPREME COURT,
TO CONSOLIDATE CASE WITH CO-DEFENDANT, AND INCORPORATE
AMICUS CURIAE BRIEF

Pursuant to SCACR Rule 204(b), Appellant petitions that his case be certified to the South Carolina Supreme Court. Appellant believes that his case is proper for certification because his case involves a legal principle of major importance – appellant’s right to a speedy trial which was hindered by the solicitor’s control of the docket. Simultaneously, Appellant moves to consolidate his case with that of his co-defendant, K.C. Langford, who has a Petition for Certification currently pending before the Supreme Court as they were tried jointly in the circuit court. As part of this consolidation, Appellant seeks to have the Initial Brief of *Amicus Curiae* submitted by the South

Carolina Public Defender Association in support of K. C. Langford, incorporated into Appellant's case. In support of this motion, Appellant shows this Court:

- (1) Bryan Phillips was arrested September 28, 2008 and his two co-defendants were arrested October 3, 2008 for alleging robbing a local restaurant owner at his home.
- (2) Phillips was indicted by the Edgefield County Grand Jury on December 3, 2008 for criminal conspiracy and armed robbery. On May 5, 2010, he was indicted for burglary first degree and kidnapping.
- (3) On January 14, 2010, Phillips' attorney filed a motion for a speedy trial alleging that Phillips was arrested in September 2008; was denied bond three times; and the third co-defendant, Alvin Phillips, had recanted his statement.
- (4) The state called the case to trial in May 2010, but received a continuance when the third co-defendant, who was testifying for the state, invoked his Fifth Amendment right against self-incrimination and refused to testify. The trial court judge issued an order on May 19, 2010 denying the motion for a speedy trial. The state waited twenty months from September 2008 until May 2010 before attempting to call Phillips' case to trial.
- (5) The state finally called the case to trial on September 9, 2010 trying Phillips and Langford in a joint trial.¹ The state waited twenty four months before calling Phillips to trial.
- (6) Phillips argues that the state denied his right to a speedy trial as Phillips had no control over the trial docket. This was prejudiced because he spent twenty-four months in jail without a trial or bond.

¹ The trial transcript states the trial was held January 23, 2011, but the sentencing sheet was signed September 9, 2010.

- (7) Phillips notes that a speedy trial is a right provided under the Sixth Amendment of the United States Constitution. Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966).
- (8) Pursuant to SCACR Rule 214, Phillips moves to consolidate his case with that of K.C. Langford, his co-defendant, because this was a joint trial; and the same question of a speedy trial is involved in both cases.
- (9) Because the same issue of a speedy trial denial is involved in both cases, Phillips moves the Court to incorporate the *Amicus Curiae Brief* of the South Carolina Public Defenders' Association, which was submitted on behalf of K.C. Langford, into Phillips' case also.

This petition is being filed in the South Carolina Supreme Court and a copy of Phillips' Initial Brief is attached. Phillips' Initial Brief was filed with the Court of Appeals on July 11, 2011. This petition is being filed with the Court of Appeals simultaneously with the filing in the Supreme Court.

WHEREFORE, Bryan Phillips respectfully requests this Court to accept this motion for certification, consolidate his case with that of his co-defendant, K.C. Langford; and incorporate the *Amicus Curiae Brief* of the South Carolina Public Defenders' Association into Phillips case.

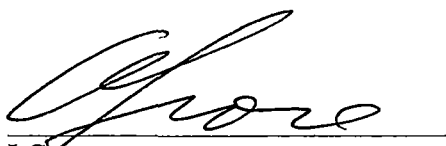
Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

Attorney for Appellant

This 5th day of October, 2011



I Consent:

E. Charles Grose

Attorney for *Amicus Curiae* Brief

South Carolina Public Defenders Association



I Consent:

Elizabeth A. Franklin-Best

Appellate Defender for K.C. Langford

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Edgefield County
Honorable William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

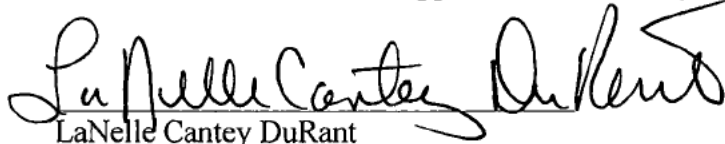
V.

BRYAN PHILLIPS,

RESPONDENT

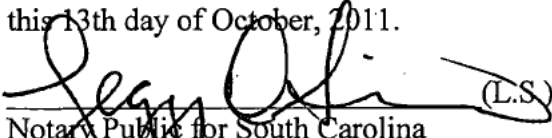
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the motion for certification, consolidate his case with that of his co-defendant, K.C. Langford; and incorporate the *Amicus Curiae Brief* of the South Carolina Public Defenders' Association in the above referenced case has been served upon opposing counsel, William M. Blich, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and the Court of Appeals, this 13th day of October, 2011.


LaNelle Cantey DuRant
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 13th day of October, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Edgefield County
 Hon. William P. Keesley, Circuit Court Judge

The State,

Respondent,

v.

Bryan Phillips,

Appellant.

RECEIVED
 OCT 25 2011
 SC Court of Appeals

**RETURN TO MOTION TO CERTIFY, CONSOLIDATE, AND
 INCORPORATE *AMICUS CURIAE* BRIEF**

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

Appellant has moved to certify this appeal to the Supreme Court pursuant to Rule 204(b), SCACR, consolidate this case with the case of Appellant's co-defendant, and to incorporate the Amicus Curiae brief filed in the co-defendant's appeal. It is the undersigned's understanding that the petition to certify the case of Appellant's co-defendant is still pending. As a result, this motion is premature until such time as the co-defendant's motion is granted and should be held in abeyance pending a ruling on that motion. If the co-defendant's motion is denied, this motion would clearly be rendered moot in the Supreme Court, and any decision to consolidate with the co-defendant's appeal and incorporate the Amicus brief would be made by the Court of Appeals as they would retain jurisdiction.

The undersigned is not aware of the procedural status of the co-defendant's case and whether there are any differences regarding whether motions were properly filed by both appellants. Further, Appellant in this case has raised three issues, and the undersigned's understanding is his co-defendant has only raised the issue regarding the speedy trial motion. As a result, this Court or the Court of Appeals may wish to simply hold this appeal in abeyance pending a resolution of the co-defendant's appeal as it will need to address two additional issues. Additionally, the undersigned has not been served with a copy of the *Amicus Curiae* brief, and as a result, I am unable to determine whether it is relevant, necessary, or beneficial in this appeal. If the co-defendant's motion to certify his case to the Supreme Court is granted, then the undersigned would leave the decision on whether to certify and consolidate this appeal with that of the co-defendant to the discretion of the Court. The State believes Appellant should be required to serve a copy of the *Amicus* brief on the undersigned and the undersigned.

WHEREFORE, Respondent asks this Court to hold this motion in abeyance pending a resolution of whether the appeal in State v. K.C. Langford is certified for consideration by this Court; require Appellant to serve on the undersigned a copy of the *Amicus Curiae* brief he believes should be incorporated into his appeal. Respondent leaves it to the discretion of this Court or the Court of Appeals whether to consolidate the two appeals or to hold this appeal in abeyance pending a resolution of Langford; and asks for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: 
William M. Blitch, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 24, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Edgefield County
Hon. William P. Keesley, Circuit Court Judge

The State,

Respondent,

v.

Bryan Phillips,

Appellant.

PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the Return to Motion to Certify, Consolidate, and Incorporate *Amicus Curiae* Brief on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to:

LaNelle C. DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
P. O. Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 24th day of October, 2011.

RECEIVED
OCT 25 2011
SC Court of Appeals

Ellen DuBois

ELLEN DuBOIS
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

The Supreme Court of South Carolina

The State, Respondent,

v.

K. C. Langford, Appellant.

and

The State, Respondent,

v.

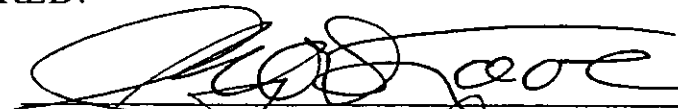
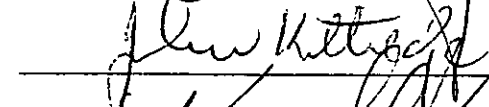
Bryan Phillips, Appellant.

ORDER

Appellant K.C. Langford petitions this Court to certify his appeal from the Court of Appeals pursuant to Rule 204(b), SCACR. Appellant Bryan Phillips, a co-defendant of Mr. Langford, also moves to have his appeal certified to this Court and for the appeal to be consolidated with Mr. Langford's appeal. Mr. Phillips further requests that the amicus curiae brief filed in the Court of Appeals by the South Carolina Public Defender Association in support of Mr. Langford's appeal be incorporated into Mr. Phillips' appeal. All of the requests are granted. The two appeals are hereby certified to this Court from the Court of Appeals and shall be consolidated,

including the amicus curiae brief.

IT IS SO ORDERED.

 C.J.
 J.
 J.
 J.
Pleicones, J., not participating

Columbia, South Carolina

November 3, 2011

VOLUME I OF II

STATE OF SOUTH CAROLINA
In The Supreme CourtAPPEAL FROM EDGEFIELD COUNTY
William P. Keesley, Circuit Court Judge

THE STATE,

V.

RESPONDENT,

K.C. LANGFORD, III,

APPELLANT

AND

THE STATE,

V.

RESPONDENT,

BRYAN PHILLIPS,

APPELLANT

RECORD ON APPEAL

ELIZABETH A. FRANKLIN-BEST
Appellate Defender
Attorney for K.C. Langford, IIILANELLE CANTEY DURANT
Appellate Defender
Attorney for Bryan PhillipsSouth Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330ALAN WILSON
Attorney GeneralJOHN W. MCINTOSH
Chief Deputy Attorney GeneralSALLEY W. ELLIOTT
Senior Assistant Deputy Attorney GeneralWILLIAM M. BLITCH, JR.
Assistant Attorney GeneralDAVID SPENCER
Assistant Attorney GeneralOffice of the Attorney General
PO Box 11549
Columbia, SC 29211DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit
205 East Main Street
Lexington, SC 29072
(803) 785-8352

Attorneys for Respondent

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STATE OF SOUTH CAROLINA
County of EDGEFIELD

STATE OF SC.

VS.

KC LANGFORD III

DEFENDANT

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY A. HENRY

2010 MAY 25 AM 10:02

IN COURT OF GENERAL JUDGE
THE 1TH JUDICIAL CIRCUIT

CASE NUMBER — 95 —

1595149; 1605801; 1605802;
1605807; 1605810

NOTICE OF MOTION AND LIST
FOR DISMISSAL OF CHARGES

PLEASE TAKE NOTICE THAT THE DEFENDANT KC LANGFORD III WILL
MOVE BEFORE THE COURT AT THE NEXT GENERAL SESSION COURT TERM IN
EDGEFIELD COUNTY, STATE OF SOUTH CAROLINA, OR AS SOON THEREFORE IN
ANY 1TH JUDICIAL CIRCUIT IN THIS AREA, SUCH AS MCCORMICK COUNTY,
SALUDA COUNTY, OR LEXINGTON COUNTY TO GET THIS CASE HEARD AS SOON AS
PERMITTED, ASKING THE COURT TO GRANT THE RELIEF REQUESTED HEREIN,
FOR A MOTION OF DISMISSAL OF CHARGES, FOR, (1) I WAS AND DID NO LANGFORD MOVE
BEFORE THE STATE ON MAY 17TH 2010, FOR A FAST AND SPEEDY TRIAL WITH THE ALTERNATIVE
TO DISMISS AND THE STATE WAS GOING TO GIVE ME 25 YEARS TO LIFE IF FOUND GUILTY
BUT THEY "BACKED OUT" AND DID NOT GRANT MY MOTION TO A FAST AND SPEEDY TRIAL
11. FIRST FILED FOR A FAST AND SPEEDY TRIAL BY THE EDGEFIELD COUNTY CLERK
OF COURT OFFICE ON JUNE 22ND, 2009. (3) THE STATE HAS HAD TWENTY (20) MONTHS
TO PREPARE A CASE AGAINST ME, (4) THE STATE'S ONLY KEY WITNESS WHICH IS A
3-DIELED MAN HAS EXERCISED HIS "RIGHTS" BY PLEADING 5TH, WHICH IS A
LEGAL RIGHT. (5) STATE'S ONLY KEY WITNESS HAS PLEADED STATEMENTS ON NUMEROUS
OCCASIONS. (6) VICTIMS OF THIS CASE HAS NEVER SHOWN TO COURT ON THREE OCCASIONS
HIGH APR CHARGE, VICTIMS SAID "THREE MASKED PEOPLE" ROBBED THEM AT NIGHT
ME, VICTIMS NEVER PICKED ME OUT IN ANY ID. LINE-UP. (7) THERE WAS NO DNA,
FINGERPRINTS, BLOOD, OR HAIR OF MINE, NO LANGFORD EVER FOUND AT CRIME SCENE.
I HAVE FILED TWO (2) MOTIONS OF DISMISSAL PREVIOUSLY BEFORE MY TRIAL DATE AND
MY TRIAL DATE. (8) THE STATE IS PREPARING THE SAME STRATEGY AGAIN BY GETTING
A KEY KEY WITNESS WHICH IS A CO-DEFENDANT BACK AT SALUDA COUNTY TO SEE
HE IS GOING TO TRY TO PROVE MY GUILTY FOR THESE "TAKE" CHARGES. (9) I
AS NEVER GIVEN A SPEEDY HEARING OR NEVER READ MY SUPREMACY RIGHTS.
I AM UNWILLING. PLEASE SEE IT WITH YOUR OWN EYES AND EARS.

DATE: 5/24/2010

PLEASE SEND COPIES TO JUDGE, SOLICITORS, AND
MY ATTORNEY. I AM THANKING YOU IN ADVANCE.

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY S. PEWRY

2010 MAY 25 AM 10:02

PLEASE SEND ME BACK A "CLOCKED STAMPED COPY"
FOR MY PERSONAL FILES.

ON MAY 24TH 2010, I, KC LANGFORD FILED FOR
A MOTION OF DISMISSAL THROUGH EDGEFIELD, COUNTY
CLERK OF COURT.

Respectfully,

KC Langford

KC LANGFORD

[illegible]

11/20/2011 10:00 AM

CLERK OF COURT
SHIRLEY E. HEWITT

LETTER FROM THE DIRECTOR OF THE BUREAU OF THE CENSUS TO THE SECRETARY OF THE DEPARTMENT OF COMMERCE, JULY 1900.

372 NUMBER: 1605801, 1595142, 160580.
1605807, 1605810

FC LANGTAP III

THE DEFENDANT COUNTERS THAT HE HAS A RIGHT TO A FAIR AND SPEEDY TRIAL ACCORDING TO THE U.S. CONST. 6TH AMENDMENT.

THEFORE THE CHARGES HAVE BEEN THIS MANNER IS GRANTED
IN SPAREY MANNER.

THE 2ND DAY OF JULY 2009 AT 2:45 AM

THE UNIVERSITY OF CHICAGO LIBRARY

TO: DIRECTOR, OFFICE OF COMPL.

PLEASE SEND COPIES OF MY NOTICE TO PRESIDING
JUDGE AND SANCHEZ. ALSO SEND ME BACK "A
CLOCK STAMPED COPY" FOR MY PERSONAL FILES.
I'M THANKING YOU IN ADVANCE.

RECEIVED
GENERAL
RECEIVED
RECEIVED

Mailed a copy to KC Langford on
June 29, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF GENERAL SESSIONS
THE ELEVENTH JUDICIAL CIRCUIT

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY S. HEWBY
2009 JAN 14 PM 3:02

STATE OF SOUTH CAROLINA)

-VS-

NOTICE OF MOTION AND
MOTION FOR A SPEEDY TRIAL

BRYAN JORDAN PHILLIPS,)

DEFENDANT)

CHARGES:

ARMED ROBBERY, BURGLARY 1ST DEGREE,
KIDNAPPING, ASSAULT & BATTERY WITH INTENT
TO KILL, POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

INDICTMENT NOS.:

2008-GS-19-00541, 2008-GS-19-00542, 2008-GS-19-00719
2008-GS-19-00720, 2008-GS-19-00721, 2008-GS-19-00722
& 2008-GS-19-00723

PLEASE TAKE NOTICE THAT THE DEFENDANT, BRYAN JORDAN PHILLIPS, by and through his undersigned counsel, will move before the Court at the February 1, 2010 term of General Sessions Court, or as soon thereafter as may be permitted, asking the Court to grant the relief requested herein, for a speedy trial as supported by the Sixth Amendment of the United States Constitution, and this said constitutional right has been applied to the states through the Fourteenth Amendment of the United States Constitution. This right to a speedy trial is, also, granted to a Defendant by Article 1 Section 14 of the Constitution of the State of South Carolina. Further, this right has been recognized in the cases of *Klopfer v. North Carolina*, 386 U.S. 21, 87 S. Ct. 988, 18 L. Ed. (2d) 1 (1967). The South Carolina Supreme Court has recognized the right to a speedy trial in its decisions of *Wheeler v. State*, 247 S.C. 393, 147 S.E. (2d) 627 (1966), *State v. Foster*, 260 S.C. 511, 197 S.E. 2d 280 (1973), and *State v. Chapman*, 289 S.C. 42, 344 S.E. 2d 611 (1986).

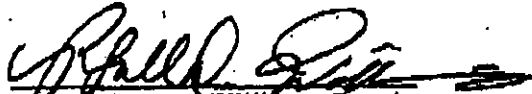
The Defendant was arrested on or about September 28, 2008, and was brought before The Honorable Davis Parkman, Magistrate for Edgefield County on September 30, 2008 for the purpose of a bail proceeding. At that time, the magistrate chose not to set

bail, and denied the release of the Defendant on a bond. Thereafter, the Defendant was brought before the Honorable R. Knox McMahon in the Court of General Sessions on February 11, 2009 on a motion for bond and such bond was denied. Additionally, the Defendant moved before the Honorable William P. Keesley on November 20, 2009, asking the Court to set bond in a manner that would be affordable to the Defendant, and sufficient to secure his return to face the charges lodged against him. The Court found no basis to modify the earlier denial of bond.

The Defendant has remained in detention since his initial arrest, and believes that his right to a fair and speedy trial is being prejudiced by the State's failure to move forward with the prosecution of his case. Additionally, the Defendant asserts that there has been a recantation of certain statements by the only witness that alleges his involvement in the matter. The Defendant asserts that his continued detention, and delay has now, and continuing into the future, resulted in prejudice against him at trial, as witnesses memories tend to fade over time, and the likelihood that the recanting witness could likely be persuaded by agents of the State to again recant his recantation, given the series of events which led the State to arrest the Defendant at the outset. The Defendant would beg the Court to allow this motion to be heard and granted, and to set his case for trial at the next term of General Sessions Court in Edgefield County, South Carolina.

In the alternative, the Defendant begs the Court to issue a scheduling order, in which the State shall be required to try his case during the May 2010 term of General Sessions Court for Edgefield County, and should the State fail to do so that the matters should be dismissed against the Defendant with prejudice.

Respectfully submitted,



Randall DeWitt Williams, Esquire
Counsel for Defendant
201 Buncombe St. - P.O. Box 70
Edgefield, South Carolina 29824

January 14, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF EDGEFIELD) THE ELEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

-VS-)

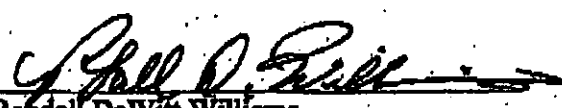
BRYAN JORDAN PHILLIPS,)

DEFENDANT)

CERTIFICATE OF SERVICE

This is to certify that I have this 14TH day of January, 2010, served a copy of the within and foregoing Motion for a Speedy Trial by U.S. Mail to Deputy Solicitor Ervin Maye at the following address:

Deputy Solicitor Ervin Maye
187 Saluda Airport Road
Saluda, South Carolina 29138


Randall DeWitt Williams
Attorney for Defendant

Dated this 14th day of January, 2010
Edgefield, South Carolina

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF EDGEFIELD

3
4
5 STATE)

6)
7 V.)

TRANSCRIPT OF RECORD

08-GS-19-673

10-GS-19-272, 273, 278

8 KC LANGFORD AND)

08-GS-19-718, 723

9 BRYAN JORDAN PHILLIPS)

10-GS-19-274, 277

10 DEFENDANTS.)

11 MAY 17, 2010

12 EDGEFIELD, SOUTH CAROLINA

13
14 B E F O R E:

15 THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

16
17 A P P E A R A N C E S:

18 ERVIN J. MAYE, ASSIST. SOLICITOR

ATTORNEY FOR THE STATE

19 MARK R. CALHOUN, ESQUIRE

ATTORNEY FOR DEFENDANT KC LANGFORD

20 RANDALL D. WILLIAMS, ESQUIRE

21 ATTORNEY FOR DEFENDANT BRYAN JORDAN PHILLIPS

22
23
24 STACY L. SHEPPARD
25 CIRCUIT COURT REPORTER

1

I N D E X

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WITNESSESDIRECTCROSSREDIRECTRECROSS

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(There were no witnesses.)

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1	E X H I B I T S		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EVD.</u>
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6	(There were no exhibits.)		
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1 (The following proceedings were held on May
2 17, 2010.)

3 THE COURT: Did y'all have a motion?

4 MR. WILLIAMS: Yes, sir, Your Honor. As the
5 Court is likely aware, I filed a written motion, I
6 believe, it was January the 14th of 2010. At which
7 time, we requested a speedy trial on behalf of my
8 client, Mr. Bryan Jordan Phillips, as it pertained
9 to several indictments under which he stood accused.

10 Furthermore, Judge, I was appointed to
11 Mr. Phillips July 20th of 2009. And there have been
12 a number of communications between myself, as well
13 as the Solicitor's office, as well as the Court with
14 regard to having his case tried.

15 Based upon my calculation, he's been in jail
16 since September of 2008. I believe it was September
17 20th -- 28th of 2008, and to date, he has no bond.
18 And, essentially, we were prepared to defend his
19 case on this date. And beyond no control of our
20 own, the State has been unable to bring this case
21 before the Court.

22 Judge, we would ask that the Court would
23 consider two things on behalf of my client:
24 Initially, we would ask the Court to consider that
25 even the penalty of dismissal is appropriate when

1 the case is not brought in a timely manner. We
2 certainly believe 20 months is a substantial enough
3 period of time to give the State an opportunity to
4 prepare its case and prosecute it.

5 If the Court sees not fit to dismiss the case,
6 we would ask certainly that a bond that's affordable
7 be given to my client. It's my understanding he is
8 a person of humble means and these are somewhat
9 serious charges. However, he is a lifetime resident
10 of Edgefield County and he's substantially supported
11 by his mother, who is present here today, Ms. Janie
12 Robinson. She has been in touch with my office on a
13 couple of different occasions and I've talked to her
14 as well.

15 Judge, we would ask the Court to consider
16 imposing a bond that would be sufficient to insure
17 his return to court and one that would also be
18 affordable in that he will be able to actually get
19 out on these charges.

20 Additionally, we would like to renew our motion
21 for a speedy trial in the event the Court does not
22 see fit to grant a bond. And that's the substance
23 of our motions, Your Honor.

24 **THE COURT:** Do you have similar motions?

25 **MR. CALHOUN:** Yes, Your Honor. My two motions

1 mirror those of Mr. Williams with the exception that
2 my client had filed his own speedy trial motion, so
3 we would like to renew that motion.

4 In regards to the bond, he also has been in
5 jail since September of 2008. He feels that he
6 might be able to post a 20,000, ten percent bond,
7 but he is asking the Court for a personal
8 recognizance bond until the Solicitor's office is
9 able to move the -- or decide what they're going to
10 do with the Alvin Phillips case.

11 THE COURT: What's the State's position?

12 MR. MAYE: Your Honor, the State was prepared
13 to call these two cases for trial today. Obviously,
14 the codefendant in this case, he's 19 years of age,
15 he's younger than these two individuals, had no
16 prior record, had previously -- had given a
17 statement implicating both himself and these two
18 individuals. He has indicated, law enforcement has
19 provided information to us, that these two
20 individuals had been exhorting him and pressuring
21 him not to testify and telling him if he just keeps
22 his mouth shut, none of them are going to be in
23 trouble.

24 Both of these individuals have records. Mr.
25 Langford has records for use of vehicle without

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1 owner's consent. He got three years. His probation
2 was revoked in 2003. He got a three year sentence.
3 In July of '06, he got a receiving stolen goods
4 \$5,000 or more, five years suspended on a year with
5 five years probation. He has a Richmond County,
6 Georgia record, possession of drugs and criminal
7 interference with government property out of '03.

8 Mr. Bryan Phillips has a record for
9 distribution of cocaine and distribution of
10 proximity that he received a YOA in 2006.

11 Your Honor, we believe that the defendant's
12 decision to reverse his initial decision to
13 cooperate is brought on in large part because of
14 pressure brought to bear because of these two
15 individuals. We are now faced with trying the
16 individual that was going to previously be a
17 testifying witness in this case. We're already
18 setting that for the next term of court, Your Honor,
19 to try him.

20 We still intend to go forward with the cases
21 against Mr. Phillips and Mr. Langford. The victims
22 are very much afraid of these two individuals. We
23 believe that they are at the root of the cooperating
24 witness' decision not to testify against them, to
25 reverse his previous decision to testify and

1 cooperate against them. We believe either through
2 pressure or threats, they have been able to persuade
3 him not to do so and we don't think that they should
4 be rewarded for that. We'll try them at the very
5 first opportunity.

6 MR. WILLIAMS: Your Honor, in the face of what
7 the Solicitor just said, I just have to say this:
8 The codefendant has an inviolate right to remain
9 silent pursuant to the Fifth Amendment as the
10 Solicitor well knows.

11 Furthermore, Judge, he's been in Saluda
12 County's Detention Center and I don't know what
13 pressure my client, who's in Edgefield County, could
14 bring to bear on an inmate in the Saluda Detention
15 Center some 20 miles away. So I would suggest to
16 the Court that there has been no such threats, no
17 such pressures have been brought to bear on his
18 decision, not from my client.

19 MR. CALHOUN: Your Honor, I'd like to add that
20 the victims in this case could not identify any of
21 the three defendants. And they're really of no help
22 in the prosecution of this case as far as
23 determining who the three people were that robbed
24 them, so I don't believe that they're at any risk
25 from our folks by providing their testimony because

1 their testimony is largely unhelpful in regards to
2 prosecuting him and the three defendants. I don't
3 feel that there's a risk to the victims in this case
4 in this regard.

5 **THE COURT:** Is there some interpreter issue in
6 this trial that you all mentioned to me last week --
7 or mentioned to my law clerk last week?

8 **MR. MAYE:** No, sir, Your Honor. We had an
9 interpreter come. We have someone that's assisting
10 us with talking with the victims. And we have a
11 certified court interpreter that does not know any
12 of the facts, is not associated with either us or
13 the defense that the Court -- that the Clerk of
14 Court arranged to come here.

15 And we just -- having someone -- that South
16 Carolina didn't have anybody that was on the court
17 reporter -- I mean, the interpreter's list for
18 Mandarin/Chinese and we had to get someone from out
19 of state, that's been the only issue. But we've
20 arranged to have that individual appear for Alvin
21 Phillips', who's neither one of their clients, trial
22 at the very next term of court, which is our first
23 opportunity.

24 We've attempted obviously to call Alvin's case
25 at this term of court, but the lawyer that had been

1 appointed to him had only had his case for
2 approximately eight days and obviously the posture
3 of that changed at the last minute. He is not
4 prepared to go forward or we would try his case at
5 this term of court.

6 THE COURT: But you had to get an interpreter
7 from some other state was my point.

8 MR. MAYE: Yes, from Georgia.

9 THE COURT: It's not like you've got 25 Spanish
10 interpreters you can call upon.

11 MR. MAYE: No, we had to get someone. But we
12 have made arrangements, he indicates at the very
13 next term of court, he can come and is going to put
14 that on his calendar to be here for us to proceed
15 against Alvin Phillips because this all -- Your
16 Honor, all this changes is the order in which we
17 intend to proceed against these defendants. We're
18 going to try Alvin Phillips first and then these
19 other two defendants.

20 THE COURT: And this codefendant, he's housed
21 in Saluda?

22 MR. MAYE: We moved him, Your Honor, because
23 law enforcement received information from the jail
24 that these two individuals were putting pressure on
25 him not to testify and we moved him to Saluda at the

11

1 request of local law enforcement who moved him to
2 Saluda for that very purpose.

3 THE COURT: When?

4 MR. MAYE: He was moved to Saluda -- I do not
5 know the date, Your Honor, but I can find out when
6 he was moved.

7 MR. WILLIAMS: Your Honor, I can tell you. I
8 believe he was put in Saluda County May 28th of
9 2009, just about a year ago.

10 THE COURT: Has he been housed in Edgefield at
11 all in preparation of the trial, Mr. Williams?

12 MR. WILLIAMS: Your Honor, it's my
13 understanding he was, but according to my client,
14 they were segregated from one another. I believe
15 each of them were segregated one from the other so
16 that there wouldn't be the possibility to bring that
17 kind of pressure.

18 MR. MAYE: Your Honor, it was my understanding
19 they were all housed here in Edgefield. I have no
20 idea how they were segregated.

21 Law enforcement received information that they
22 were pressuring that cooperating codefendant and, as
23 a result, he was moved to Saluda and that's all of
24 the information that I had. But they did receive
25 some active information that that was taking place

1 because we moved him for that very purpose and asked
2 that Edge -- I mean, that Saluda keep Alvin Phillips
3 at that point in time, Your Honor. But we're going
4 to try him as quickly as the Court schedule allows.
5 for us to do so, Your Honor.

6 Your Honor, I was provided with some sort of
7 statement that was purported to be by the
8 cooperating witness, Alvin Phillips, today that was
9 not obtained by either of the attorneys in this
10 case, Your Honor, is my understanding. I don't
11 think it was obtained by any of the attorneys, but
12 was obtained by one of the two defendants in this
13 case, Your Honor, a statement that looks like it was
14 drafted in -- I don't know where it was drafted, but
15 it is a very poorly written statement that indicates
16 that these individuals were not involved that I was
17 provided today. And I don't know who that was
18 obtained by, but I don't think it was obtained by
19 either of the attorneys. I think it was obtained by
20 one of these two individuals.

21 And like I said, I was not aware of that until
22 today the absolute -- the content of it. And I was
23 unaware that they extracted any information, but
24 like I said, that's the only information that I had
25 regarding any contact between them.

13

1 **THE COURT:** You all had told me just before the
2 break that you were notified, the State was notified
3 at the last moment that this codefendant was not
4 going to testify. And you put on the record that
5 the attorney had asked for a continuance and had
6 only had the discovery for eight days.

7 You had something, Mr. Williams?

8 **MR. WILLIAMS:** Your Honor, I just had one
9 thing, it was more of a procedural or administrative
10 kind of issue. If the Court considers bond, I did
11 want to bring it to the Court's attention that there
12 were a number of indictments against my client that
13 I don't think were offered for trial. I think it
14 was only the armed robbery and burglary that were
15 offered for trial or that you were going to call for
16 trial.

17 **MR. MAYE:** And kidnapping and some other
18 charges. It was kidnapping and possession of a
19 weapon during the commission of a violent crime,
20 assault and battery with intent to kill. There were
21 a number of charges that were potentially against
22 all of them.

23 They've been indicted on a multitude of
24 offenses, some of those overlap. And I was going --
25 intended to proceed today for burglary first and

1 armed robbery in this case, Your Honor, mainly
2 because I had some problem with the wording of the
3 indictments. And so if they're tried in a
4 subsequent term of court, I'm not sure exactly what
5 series of indictments we'd try. All of them arise
6 out of the same incident.

7 I think criminal conspiracy was also indicted.
8 There were a number of charges all flowing from this
9 August 14, 2008 incident.

10 **THE COURT:** But the motions relate to all of
11 the charges that's pending against --

12 **MR. WILLIAMS:** All charges, yes, sir.

13 **THE COURT:** And both motions relate to all of
14 the charges that are pending?

15 **MR. CALHOUN:** Yes, Your Honor.

16 **THE COURT:** Well, I need that paperwork because
17 when I do the orders, I have to recite all of the
18 cases that it refers to and I just wrote these down
19 that were handed to me, that's all I knew about.

20 **MR. WILLIAMS:** Your Honor, and if I have an
21 opportunity to make a copy of this, you know, as it
22 relates to the charges and which ones purport to
23 represent each indictment, I'll do that.

24 **THE COURT:** All right. Is KC Langford, is it K
25 and C? Are those abbreviations or is his name just

15

1 KC?

2 DEFENDANT: KC.

3 THE COURT: Like Harry S Truman, there's
4 nothing for the S.

5 DEFENDANT: Yes, sir.

6 THE COURT: I just wanted to make sure because
7 I didn't see anything anywhere except KC, I didn't
8 see a full name. So that is his actual name, those
9 two letters, KC?

10 MR. CALHOUN: Yes, sir.

11 THE COURT: All right. I'll notify you of a
12 decision in writing. Y'all get me those indictment
13 numbers and everything. Thank you.

14 MR. MAYE: Thank you, Your Honor.

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16 END OF PROCEEDINGS

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C E R T I F I C A T E

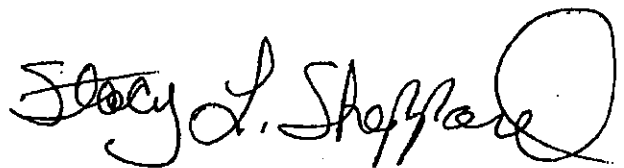
STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Edgefield County, South Carolina, on the 17th of May, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 23, 2011



Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD) IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA,)
- vs -) ORDER ON MOTION FOR SPEEDY
) TRIAL AND REGARDING BOND
BRYAN JORDAN PHILLIPS,) Case Numbers: 2008-GS-19-0541; 0542;
) 0718; 0719; 0720; 0721; 0722; 0723; &
Defendant.) 2010-GS-19-0274

2010 MAY 20 4:11:04

EDGEFIELD COUNTY
CLERK OF COURT
JULIE A. HARRIS
CLERK OF COURT

WJL
#1

The defendant is before the court seeking to have the charges against him dismissed for violation of his right to a speedy trial. That motion is denied. In the alternative, the defendant moves to require the State to set a trial promptly. That motion is granted. The defendant also moves to be released from incarceration on bail pending the trial. That motion is denied; provided, that the defendant may seek to have the issue of bail reviewed again if it appears that the cases against him will not be tried promptly.

Mr. Phillips is being held on charges of Criminal Conspiracy (2008-GS-19-0541); Grand Larceny (2008-GS-19-0542); Criminal Conspiracy (2008-GS-19-0718); Burglary in the 1st Degree (2008-GS-19-0719); Possession of a Firearm During the Commission of a Violent Crime (2008-GS-19-0720); Kidnapping (2008-GS-19-0721); ABWIK (2008-GS-19-0722); Armed Robbery (2008-GS-19-0723); & Burglary in the 1st Degree (2010-GS-19-0274). The cases involve allegations that the defendant and two co-defendants developed a scheme to rob a family that operates a local Chinese restaurant. They allegedly waited until the family arrived home one night after closing the restaurant. When one of the family members came outside to water his garden, he was allegedly

seized, taken inside the home, and the family was held against its will and robbed through the use of force and intimidation, including the use of a deadly weapon.

The perpetrators all wore masks; so, the purported victims have not been able to identify any of the defendants as perpetrators of the crime. The case against this defendant hinges almost exclusively upon a statement given by another co-defendant who was the youngest of the three (being 19 years of age). That young defendant agreed to testify against his co-defendants at a trial that was scheduled to begin on Monday of this week. At the last moment, the cooperating defendant advised his attorney that he was not going to testify and would assert his privilege to remain silent under the 5th Amendment to the United States Constitution. The court was advised of that fact after the general jury qualifications, but before the qualification and selection of a jury for the specific trial.

*Wm
#2*

The State had gone to great effort and expense to prepare the trial. The purported victims required an interpreter who was qualified to translate Mandarin Chinese in a trial setting, and there was no such person in South Carolina. An interpreter from another State was present for the jury selection process.

When advised of the cooperating defendant's change of heart, the State had to evaluate whether it could proceed to try that defendant. Unfortunately, there had been a recent change of attorney for the cooperating defendant, who had only received discovery last week. The State agreed, and it is obvious to the court, that the attorney could not be expected to be prepared for a trial this week.

Since the case hinges on the statements of that one defendant, the State could not proceed as planned. The State will have to try the defendant who gave the statement in order to avoid Bruton problems and 5th Amendment and Confrontation Clause issues.

The delay in this case is very troubling because the defendants have all been in jail for 20 months awaiting trial. The cooperating co-defendant had been moved to another county for safekeeping, but the State claims that threats and improper influence were communicated to that defendant, which caused him to change his position. Mr. Phillips denies any such improper influence or contact of any kind.

Despite these concerns, the court finds that these defendants pose a danger to the community, and the motions related to bond are denied at this stage. The State has not been unduly dilatory under the circumstances, so the motion to dismiss is denied. The case must be tried within 9 months. The court would impose an earlier deadline, but there is a pending death penalty case scheduled in the interim that is much older, and, the other co-defendant will have to be tried first, unless there is some change in agreement to cooperate on behalf of any of the defendants. If the cases against Mr. Phillips are not concluded within 9 months, the defendant may renew his motions for speedy trial.

#3
AND IT IS SO ORDERED.


William P. Keesley
Judge

May 19, 2010

1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF EDGEFIELD
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5 STATE)
6)
7) TRANSCRIPT OF RECORD
8) 08-GS-19-673
9) 10-GS-19-272, 273, 278
10 K.C. LANGFORD AND) 08-GS-19-718, 723
11 BRYAN JORDAN PHILLIPS) 10-GS-19-274, 277
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14) DEFENDANTS.)
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JANUARY 23, 2011
EDGEFIELD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A
JURY.

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

ERVIN J. MAYE, ASSIST. SOLICITOR
ATTORNEY FOR THE STATE

MARK R. CALHOUN, ESQUIRE
ATTORNEY FOR DEFENDANT K.C. LANGFORD

RANDALL D. WILLIAMS, ESQUIRE
ATTORNEY FOR DEFENDANT BRYAN JORDAN PHILLIPS

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

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1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-1	Photograph	222	247
4	S-2	Photograph	222	247
5	S-3	Photograph	222	247
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1 (The following proceedings were held on
2 September 7, 2010.)

3 **THE COURT:** All right. The jury panel is
4 qualified.

5 Ladies and gentlemen, what we're going to do
6 now is we're going to turn from the more general
7 things that we covered this morning to specific
8 cases.

9 Now, what will happen is that the prosecutor
10 will advise me about any case that he may have to
11 call that involves a jury trial and I'll be asking
12 you questions. The purpose of these questions is to
13 find out from you any information that you may be
14 able to share with us about any possible connection
15 you may have to the case or anybody in it, any
16 knowledge you may have about the case, whether
17 anybody's discussed anything with you, whether
18 you've been exposed to any media coverage of the
19 case, if you're connected, related to anybody in the
20 case. If you keep in mind that the goal of all of
21 this is for us to have a jury serving that is fair
22 and impartial, I think the questions will make more
23 sense to you.

24 Remember that you're under oath. Remember that
25 this is a court of record, so everything you say is

1 seeing now is a reining in of where that thing was
2 headed. Now, I've given my little lecture, that's
3 all I've got to say except the motion is denied.

4 All right. You said you had something you need
5 to bring up with me.

6 MR. WILLIAMS: Yes, sir.

7 THE COURT: What is it?

8 MR. WILLIAMS: Your Honor, as it relates to my
9 client's position, he indicates to me that he does
10 have some concerns about your ability to fairly and
11 earnestly try the issues joined in the cases against
12 him.

13 As this Court is well aware, my client has been
14 incarcerated on this charge for just about two
15 years, almost two years, and we have made a number
16 of motions regarding bond. And my client has
17 indicated to me that it's his position that based on
18 the facts, there has been no identification by any
19 of the victims regarding himself, furthermore there
20 has been no prior history of his crimes in his past
21 which indicate any violence and your refusal to
22 allow him to have a bond or to continue to deny his
23 bond he has indicated to me that he believes that
24 somehow perhaps you are biased against him. And he
25 has indicated to me that based upon his right to

1 have a fair and impartial trial, he would ask that
2 this Court would recuse itself.

3 **THE COURT:** Does the State want to be heard?

4 **MR. MAYE:** Yes, sir, Your Honor. Beyond the
5 fact, Your Honor, that some judge has got to hear
6 motions for bond is just a function of who the chief
7 judge is in this case. And like I said, I think
8 that that's something that any criminal defendant
9 could lodge because bail is going to have to be
10 addressed by someone, Your Honor.

11 We certainly would not, based on our experience
12 and -- or mine in being around Your Honor for nearly
13 20 years in the courtroom here, I've never seen any
14 evidence of Your Honor's bias in setting bond or
15 anything that would indicate a lack of fairness by
16 this Court. And I think that that would just open
17 Pandora's box to allow someone that they can assert
18 that I was denied bond and that somehow means that
19 the court is biased. I think that's an invalid
20 argument, especially knowing the history of Your
21 Honor in setting bonds and the Court's reputation
22 for fairness and we would certainly maintain that
23 that's a specious reason to have His Honor recuse
24 himself in this case.

25 **THE COURT:** Anything else, Mr. Williams?

1 **MR. WILLIAMS:** No, sir, Your Honor.

2 **THE COURT:** Do you want your client to say
3 anything?

4 **DEFENDANT:** Yes, sir, Your Honor. Judge
5 Keesley, it have been two years I've been
6 incarcerated, bond denied, pose a danger to my
7 community, no evidence, DNA, no photo lineup. The
8 State have an unreliable witness. I don't
9 understand how I pose a danger to my community. My
10 charge is not dismissed due to unduly dilatory
11 circumstances. I came to court last, the court term
12 in May and they needed an interpreter, which is --
13 he was unuseful. He wouldn't do no good for them.

14 **THE COURT:** That's not what I understood. The
15 interpreter was here at great expense to the county.

16 **DEFENDANT:** Well, my understanding the
17 continuance was for an interpreter. But my
18 co-defendant was not willing to testify, pleading
19 the fifth. The charge was not dismissed. That's
20 all, Your Honor.

21 **THE COURT:** The order that I issued at that
22 time was that issues arose. It was scheduled to be
23 tried. There was an interpreter in Mandarin Chinese
24 who had been brought in from another state, that
25 there was some change in -- what I was being told

1 was there was some change related to a witness and
2 that that witness had to have an attorney and that
3 that attorney had just been appointed and had only
4 had eight days of discovery and that that's why the
5 trial did not go forward and -- well, I mean it's
6 set forth in the order. I'm sure you've got a copy
7 of it.

8 I don't expect there to be agreement, but I
9 mean I haven't got anything against you. There's no
10 bias against you. I just have to make calls. And
11 the fact that there's no DNA and no photo lineup,
12 probably well over 70 percent of the cases I do
13 don't have any DNA or photo lineups.

14 So if I were in your position, I'd probably be
15 extremely upset about sitting in jail for two years
16 and wouldn't understand why the judge wouldn't let
17 me out of jail, but it's not anything directed
18 towards you personally.

19 And if the motion is for me to recuse myself,
20 the motion is denied. It's preserved for the
21 record. If there is some issue, you can take it up
22 with the court above me, but what I understood there
23 was a co-defendant who had given statements that
24 implicated the other two co-defendants.

25 **DEFENDANT:** Yes, sir, Your Honor --

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1 **MR. WILLIAMS:** Thank you, Your Honor.

2 **THE COURT:** Do y'all have pretrial issues other
3 than what we just did?

4 **MR. MAYE:** Nothing that I'm aware of, Your
5 Honor.

6 **THE COURT:** There's no need for a Denno
7 hearing? There's no need for a Neil versus Biggers
8 hearing on identity, there's none of that?

9 **MR. WILLIAMS:** Your Honor, I believe I know my
10 colleague well enough, but I would certainly trust
11 that based on the information of the victims, there
12 will not be an in-court identification which he will
13 solicit from them because we would object to it on
14 the basis that we don't believe there is any
15 evidence of an identification that they will be able
16 to offer. And I believe and I trust that the
17 Solicitor would not seek to have that done in the
18 course of this trial and certainly I would object to
19 it.

20 **THE COURT:** Well, they can't. If there's going
21 to be an in-court identification by anybody other
22 than a co-defendant who knew these two men
23 beforehand, you've got to have a Biggers hearing.

24 **MR. MAYE:** We do not have that issue, Your
25 Honor.

1 **THE COURT:** All right.

2 **MR. WILLIAMS:** I just wanted to clear it up,
3 Judge.

4 **THE COURT:** You're doing your job.

5 Do y'all want to make opening statements? Do
6 you want me to send this jury home after I give them
7 their instructions? What do you want to do? It's
8 25 till 5:00.

9 **MR. MAYE:** Your Honor, I think it would be
10 prudent in this case to begin in the morning. I
11 can't imagine it would be smart to begin at this
12 hour, especially as long as they've waited today.
13 We'd just prefer to start in the morning if that
14 pleases the Court.

15 **THE COURT:** All right. Mr. Calhoun, what do
16 you want to do?

17 **MR. CALHOUN:** Start in the morning is fine,
18 Your Honor.

19 **THE COURT:** Mr. Williams?

20 **MR. WILLIAMS:** Your Honor, that pleases me as
21 well.

22 **THE COURT:** Bring the jury in for me please,
23 sir.

24 (The jury returns to the courtroom.)

25 **THE COURT:** All right. Ladies and gentlemen --

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1 where is Mr. Hillary? Mr. Hillary, I'm going to
2 make you the foreman of the jury. When you all --
3 I'm going to let y'all go home in a little bit,
4 okay. When you come back tomorrow into the
5 courtroom, be the last one in and you'll have to sit
6 on the front row on this end throughout the trial,
7 all right.

8 The rest of you folks will be able to sit
9 anywhere you like in the jury box. The only thing I
10 ask of you is it's much better if people don't walk
11 across each other. We had an incident in Lexington
12 where a lady broke her ankle and I don't want that
13 happening to any of you. So if you have a favorite
14 chair, it's best if you kind of space yourselves out
15 before you go in the jury box and just file all the
16 way down, but leave that seat on the end of the
17 front row vacant for the foreman throughout the
18 trial.

19 Now, I'm very sorry that you've been back there
20 that long. I promise you that we have been working
21 as hard as we could work to get you out here. We
22 came back early. All I did was go out, grab a
23 sandwich and eat it on the way back to the
24 courthouse and I've been working since.

25 I thought we might be able to get the opening

1 statements done this afternoon and we just, we're
2 not going to be able to do that. So we have worked
3 through all of the issues that we had to work
4 through. It was a lot of extra things that I had to
5 do. I can explain it to you at the end of the
6 trial, but I can't explain it now.

7 Now, before I let you go home for the night, I
8 need to explain some things to you. I need you back
9 here in the morning at 9:30. I need you in that
10 jury room at 9:30. If you have some true emergency
11 that arises that prevents you from being here,
12 please make sure that you call the clerk's office
13 and let us know what's going on because we can't do
14 anything unless all 12 of you are here. I have no
15 alternate in this case, I ran out of jurors, so I
16 can't do a thing unless I've got 12.

17 Now, you cannot discuss this case in any way
18 among yourselves. You cannot discuss the case in
19 any way with anybody else. I've told you already
20 and I'll have to tell you again tomorrow, but you
21 cannot let anybody else know what case you're on,
22 what it's alleged to be about, who's involved in it.
23 You can tell somebody you're on a jury, but you
24 can't tell them what it's about. If anybody
25 attempts to contact you and discuss the case with

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1 you, report that to me so I can deal with it.

2 If there's any media coverage of the trial, get
3 away from it, don't let yourselves be exposed to it
4 any further and then report to me at the first
5 opportunity what you may have seen, heard or read
6 through the media.

7 Don't do any independent investigation. Now, I
8 used to give a jury an instruction about independent
9 investigation and then the Supreme Court of our
10 state came out with an expanded one. So I'm going
11 to read theirs to you, but I'm going to give you
12 mine first.

13 When I say don't do any independent
14 investigation, what I mean is things like this:
15 I've told juries before once you find out where this
16 is alleged to have occurred, don't go out there and
17 look around. When you take your oath, you're going
18 to promise us that you'll decide the case based on
19 the evidence and the law and those things are going
20 to come to you in this courtroom. We want you to
21 use your common sense, but the evidence comes to you
22 in this courtroom not from what somebody else
23 somewhere else said or wrote, okay. So don't do any
24 independent investigation.

25 Don't go on the Internet and try to look up any

1 kind of articles that might in any way relate to
2 this matter.

3 I've talked to you about media coverage. It's
4 very important during any trial that you stay away
5 from any media coverage of that trial, so do not go
6 on any Internet web sites or any news reporting
7 services or anything that might be covered in this
8 trial. At the end of the week when the case is
9 over, you can look at anything you want to. You can
10 talk to anybody you want to, but while you're on
11 this jury, don't do any of those things.

12 Now, the situation with the advent of smart
13 phones and cell phones and all those sort of devices
14 has really created a new arena for us in court. I
15 got one right here, but it's been such a problem
16 that the Chief Justice came down with some specific
17 directives and hers are much more finely worded than
18 mine, but some people get mad when the bailiffs
19 start telling them don't use your cell phones and
20 things like that. Well, the bailiffs are doing what
21 the Chief Justice told us all we have to do and
22 there's a good reason for it.

23 So I'm supposed to instruct you about the
24 following things: While you're on the jury and
25 until your service is concluded, you are not to

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1 discuss the case with others including other jurors
2 except as directed by the court. And I'll tell you
3 when you can start talking about the case. You
4 won't have any doubt about that.

5 You're not to read or listen to any news
6 reports about the case. You're not to use a
7 computer, a cell phone or any other electronic
8 device with communication capabilities while
9 attending the trial or during your deliberations.
10 You may use those devices during lunch breaks and
11 extended breaks, but not to obtain or disclose
12 information prohibited about the case.

13 Now, in these great big trials you see and hear
14 about the problems in other states were that jurors
15 are sitting there sending out information about a
16 trial during a trial. We hadn't had that in South
17 Carolina, but you can see how this could really
18 become a problem.

19 You're not to use a computer, a cell phone or
20 another electronic device with communication
21 capabilities or any other method to obtain or
22 disclose information about the case when you're not
23 in court. And information about the case includes
24 the following things, but it's not just limited to
25 these: That's information about a party, a witness,

1 an attorney or a court officer, news accounts of the
2 case, information collected through juror research
3 on other topics or any topics raised or testimony
4 offered by a witness.

5 One time I had a witness go on line and look up
6 a legal term in a legal dictionary. We had to have
7 a whole day's worth of hearings on that to basically
8 find out that what she read was the same thing I
9 told her, but while we're doing that, everybody's
10 sitting around with nothing but time on their hands
11 waiting for that to be done.

12 You're not to disclose any information that you
13 might collect through juror research on any topic
14 that you might think would be helpful in deciding
15 the case and you're not to try to find any. So like
16 I said, don't go try to look up legal terms or legal
17 definitions or anything like that. I'm the judge of
18 the law and I'm going to tell you the law at the end
19 of the trial. The facts are going to come to you
20 from the witnesses and the exhibits admitted in the
21 trial.

22 You are perfectly qualified to do your jobs.
23 You don't need to be doing any independent
24 investigation.

25 Now, later on I'll be able to give you a

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1 shorthand version of that and we won't have to go
2 through it so much and I hate to be doing that this
3 late in the day.

4 Have you got any questions before I send you
5 home?

6 (There was no response.)

7 **THE COURT:** When you come in in the morning,
8 we'll put you under a different oath. We'll put you
9 under an oath as a trial jury. Then I'll give you
10 instructions that'll take about ten minutes and then
11 you'll hear the opening statements from the
12 attorneys and we'll get started into the case.

13 I'll try to keep you abreast of how we proceed
14 periodically, how we're going and what it looks like
15 as far as when you might get the case. But I, like
16 you, am going to be hearing this case for the first
17 time. So thank you very much. I'm terribly sorry
18 about your wait and I look to see you in the morning
19 at 9:30, please be in that jury room. Follow the
20 bailiff.

21 (The jury was excused for the day.)

22 **THE COURT:** Do they have all the clothes they
23 need to be dressed out in the morning, your clients?

24 **MR. CALHOUN:** The clothes he has on his back
25 right now are the clothes he has.

1 **THE COURT:** Has he got family here?

2 **MR. CALHOUN:** I think his mother.

3 **THE COURT:** Sheriff, do y'all take care of it
4 -- are they both staying in Edgefield or is one in
5 Saluda?

6 **MR. WILLIAMS:** These two are in Edgefield, Your
7 Honor.

8 **THE COURT:** Sheriff Dobey, make sure you get
9 with them so they'll be dressed out like they want
10 to be dressed out in the morning and up here so that
11 the jury won't be running into them, okay.

12 All right. 9:30.

13 **MR. MAYE:** May it please the Court, Your Honor.
14 I know we do have the interpreter here. Would it
15 save time to have him sworn or put under oath now or
16 do you want to do that in the morning? He is here.
17 I don't know if you have to do that or they have to
18 take an oath for interpreters. It's been a while
19 since I've done it with an interpreter. I don't
20 know what the Court has them do.

21 **THE COURT:** Is there going to be any issue
22 about the qualification of the interpreter?

23 **MR. WILLIAMS:** I mean, I just want to know
24 generally if he fits the statute. I don't --

25 **MR. CALHOUN:** If he's court certified, I don't

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1 have any issue with him.

2 THE COURT: I prefer to swear the interpreter
3 in front of the jury.

4 MR. MAYE: Okay.

5 THE COURT: If there's a hearing that we need
6 to do beforehand, y'all can be here at 9:15.

7 MR. MAYE: I'm unaware of it, Your Honor. I
8 just -- it's been so long since I've done anything
9 with an interpreter, I didn't remember what --

10 THE COURT: I have to put something on the
11 record and it'll take maybe five minutes if there's
12 no issue. If there's an issue, then, you know, it
13 may take longer.

14 MR. WILLIAMS: Again, you know, I hadn't seen
15 his résumé or anything of that nature and --

16 THE COURT: Is it a man or a woman?

17 MR. MAYE: It's a man and he's here.

18 THE COURT: Can they go talk to him?

19 MR. MAYE: Certainly.

20 THE COURT: Well, why don't y'all just talk to
21 him and meet me here at, let's just say, about 9:20
22 in the morning and if there's an issue, you can let
23 me know then, okay.

24 MR. WILLIAMS: Yes, sir. Thank you, Your
25 Honor.

1 **THE COURT:** All right. Thank you.

2 **MR. MAYE:** Thank you, Your Honor.

3 (Whereupon, the proceedings were concluded
4 for September 7, 2010.)

5 (The following proceedings were held on
6 September 8, 2010.)

7 **THE COURT:** All right. Yesterday when I made
8 those rulings related to the Denno -- excuse me --
9 to the Batson issue, I just want to make it clear, I
10 did evaluate those both collectively and
11 individually as far as the defendants. I think I
12 put all of that on the record, but I want to make
13 sure that I stated that I did both evaluations.

14 Now, what's the situation with the interpreter?
15 Did y'all have a chance to talk to him?

16 **MR. WILLIAMS:** Yes, Your Honor.

17 **THE COURT:** And is there any question about his
18 qualifications?

19 **MR. WILLIAMS:** Your Honor, there does continue
20 to be a question about his qualification.

21 **MR. CALHOUN:** If I may, Your Honor, this is my
22 experience and knowledge on the use of interpreters
23 in circuit court and other courts in the State of
24 South Carolina. If an interpreter is certified in
25 the State of South Carolina, he, of course, is

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1 certified from court administration. However, the
2 other states including all of the southeastern
3 states are in a pact whereas if an interpreter is
4 certified in one state court, then he's also allowed
5 to testify in another state court, but he does --
6 and the information that I received from the
7 interpreter yesterday was he felt that he was
8 certified -- he thought he was certified, but he
9 wasn't sure whether it was North Carolina or
10 Maryland.

11 I know that each of those states do -- of
12 course, they do have certification, but the
13 certification has to be renewed on an annual basis.
14 I think they use the fiscal year. And proof of
15 certification is simply a letter from court
16 administration of that state on state letterhead
17 stating that the person is certified and gives the
18 dates of certification when it expires and when the
19 certification has to be renewed. So if he does have
20 proof for certification, which I'm assuming he does
21 in either North Carolina or Maryland, then he would
22 be certified to testify in South Carolina in circuit
23 court.

24 (Pause.)

25 MR. CALHOUN: And I was able to locate the

MING LOUIE (IN CAMERA) - VOIR DIRE BY MR. CALHOUN

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1 telephone number for court administration in
2 Maryland late last evening. I was informed that you
3 could call and determine if someone is certified in
4 that state. And I do have that phone number for the
5 Court's information in case you'd like it.

6 (Pause.)

7 THE COURT: What's the interpreter's name?

8 MR. CALHOUN: It's Ming Louie. L-o-u-i-e is
9 the last name.

10 THE COURT: M-i-n-g?

11 MR. CALHOUN: Yes, sir.

12 THE COURT: Bring him out here.

13 (The interpreter enters the courtroom.)

14 THE COURT: What is your name, sir?

15 INTERPRETER: Ming Louie, M-i-n-g, L-o-u-i-e.

16 THE COURT: Swear him in please, Madame Clerk.

17 MING LOUIE,

18 having been duly sworn, testified as follows:

19 THE COURT: Can you all voir dire him about his
20 qualifications? Do you want to do that?

21 MR. CALHOUN: Yes, sir.

22 THE COURT: Go ahead.

23 VOIR DIRE

24 BY MR. CALHOUN:

25 Q Mr. Louie, where do you live?

MING LOUIE (IN CAMERA) - VOIR DIRE BY MR. CALHOUN

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1 **A** Right now I'm living in Charlotte, North
2 Carolina.

3 **Q** Okay. Have you ever received certification for
4 Mandarin or Cantonese Chinese language in the State
5 of North Carolina?

6 **A** No.

7 **Q** Okay. Have you obtained that in another state,
8 that certification?

9 **A** No.

10 **Q** Okay. So you don't -- you're not certified in
11 Mandarin or Cantonese Chinese language in the State
12 of North Carolina or Maryland; is that correct?

13 **A** That's correct, yes.

14 **THE COURT:** I didn't hear his answer.

15 Would you say that again, please?

16 **INTERPRETER:** No, I did not receive any
17 certification.

18 **BY MR. CALHOUN:**

19 **Q** So have you ever applied for certification
20 through any court administrations in any states of
21 the United States?

22 **A** No.

23 **Q** Okay. And you're not certified in the State of
24 South Carolina in any foreign language?

25 **A** No, because no such program available for

MING LOUIE (IN CAMERA) - VOIR DIRE BY MR. WILLIAMS

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1 certification.

2 Q Where? In which state?

3 A In Maryland and North Carolina for Chinese.

4 Q So you're saying that you weren't allowed to be
5 certified --

6 A There's no such a program --

7 Q -- in the State of North Carolina?

8 A There's no such a program, no.

9 Q Did you ever apply for certification in any
10 state of the United States --

11 A No.

12 Q -- to be an interpreter of Mandarin or
13 Cantonese language?

14 A No.

15 Q So, in fact, you don't know whether or not the
16 court administrations would allow you to be
17 certified; is that correct?

18 A Yeah, that's correct, yes.

19 MR. CALHOUN: That's all I have, Judge.

20 THE COURT: Do you have any questions of the
21 witness?

22 MR. WILLIAMS: Just one.

23 VOIR DIRE

24 BY MR. WILLIAMS:

25 Q You have not been certified in any of the

MING LOUIE (IN CAMERA) - VOIR DIRE BY MR. MAYE

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1 district courts or federal courts of the United
2 States, have you?

3 A No.

4 Q And you've never applied?

5 A No.

6 MR. WILLIAMS: Thank you, sir.

7 THE COURT: Does the State have any voir dire?

8 MR. MAYE: Just a little bit.

9 VOIR DIRE

10 BY MR. MAYE:

11 Q Have you previously served as an interpreter in
12 court situations before?

13 A Yes.

14 Q Approximately how many times have you served as
15 an interpreter in court systems?

16 A Over 50 times.

17 Q Over 50 times?

18 A Yes.

19 Q Each of those times were you given some -- in
20 the past, have you previously been given an oath
21 that you were to interpret correctly from Chinese to
22 English and from English to Chinese and back and
23 forth?

24 A Yes.

25 Q Have you taken that oath before?

MING LOUIE (IN CAMERA) - VOIR DIRE BY MR. MAYE

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1 A Yes.

2 Q Okay. And you've done that approximately 50
3 times?

4 A Yeah, more than.

5 Q Okay. Have you spoken with the victims in this
6 case to introduce yourself to them in this case?

7 A Yes.

8 Q Okay. But you haven't talked to them about any
9 of the facts underlying this case, have you?

10 A No.

11 Q Okay. Were you able to communicate with them
12 effectively and were you able to understand them and
13 what dialect of Chinese do they speak?

14 A Mandarin.

15 Q They speak Mandarin?

16 A Yes.

17 Q Okay. Did you have any problem communicating
18 with them?

19 A No.

20 Q Okay. Would you have any problem interpreting
21 what they say and interpreting back and forth from
22 Chinese to English and English to Chinese in this
23 court setting here?

24 A No.

25 Q And you could do so truthfully and take an oath

MING LOUIE (IN CAMERA) - VOIR DIRE BY THE COURT

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1 that you would accurately do that here today?

2 **A** Yes.

3 **MR. MAYE:** Thank you.

4 VOIR DIRE

5 BY THE COURT:

6 **Q** Mr. Louie, how much education do you have?

7 **A** I have a master degree in chemistry at Penn

8 State University.

9 **Q** And how old are you?

10 **A** (No response.)

11 **Q** How old are you?

12 **A** I'm sorry. 61.

13 **Q** And where were you born?

14 **A** Canton, China.

15 **Q** What is your native tongue?

16 **A** Chinese.

17 **Q** And what's the difference between Chinese and
18 Mandarin Chinese?

19 **A** Just different dialect. Mandarin is the
20 national language dialect.

21 **Q** I'm sorry. I can't hear you.

22 **A** Mandarin is the national dialect.

23 **Q** Mandarin is the national dialect?

24 **A** Yes.

25 **Q** So is that what you learned growing up?

MING LOUIE (IN CAMERA) - VOIR DIRE BY THE COURT

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1 A We learned both, the local dialect and also the
2 national dialect.

3 Q How long did you live in China?

4 A Twenty years roughly.

5 Q Where did you go from there?

6 A United States.

7 Q So you lived in the United States around 40
8 years?

9 A Yes.

10 Q How did you come to start doing interpreting
11 services?

12 A I was in Maryland at that time and there was
13 need for a Chinese interpreter in the local court,
14 so I just got into it at that time. There's not
15 many Chinese available at that time.

16 Q Roughly how long ago was that?

17 A Probably 1996, around 1996.

18 Q And how often have you interpreted or
19 translated in court settings since 1996?

20 A It's on-call basis, probably ten times a year.

21 Q About ten times a year or about ten times
22 total?

23 A Ten times a year.

24 Q Other than Maryland where have you interpreted
25 in courts?

MING LOUIE (IN CAMERA) - VOIR DIRE BY THE COURT

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1 A Delaware, the State of Delaware, and also State
2 of North Carolina.

3 Q What level of court; do you know?

4 A Mostly circuit court and some law office and a
5 police office.

6 Q So of the roughly 50 plus times that you've
7 done this, those have not always been in court or
8 they have been?

9 A Most of them in court.

10 Q Have you ever not been qualified by a judge?

11 A No.

12 Q So every time that you were offered as an
13 interpreter or translator, the judge qualified you?

14 A Yes.

15 Q Who did you talk to in this case in Chinese,
16 Mandarin Chinese?

17 A I don't know the name.

18 Q How many people?

19 A Three.

20 Q And what setting were you in when you were
21 talking with them?

22 A Just -- I just introduced myself, my name, and
23 what do I come here for.

24 Q Who else was there?

25 A I don't know the name.

MING LOUIE (IN CAMERA) - VOIR DIRE BY THE COURT

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1 Q Do you know what their jobs were, why they were
2 there?

3 A I think it's the prosecutor.

4 Q The prosecutor?

5 A Yeah, prosecutor.

6 Q Now, these three people with whom you talked,
7 you indicated to the prosecutor when he questioned
8 you a moment ago that you had no difficulty
9 communicating with them; is that correct?

10 A That's correct.

11 Q Did they appear to have any difficulty
12 communicating with you?

13 A No.

14 Q Was there anything about their particular
15 dialect that was different than what you were
16 accustomed to?

17 A No.

18 Q Are you related to them in any way?

19 A No.

20 Q Are you in any way financially dependent upon
21 them?

22 A No.

23 Q Had you ever met them before you were brought
24 here to translate?

25 A No.

MING LOUIE (IN CAMERA) - VOIR DIRE BY THE COURT

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1 Q Did you try to give them any type of legal
2 advice or any other advice?

3 A No.

4 Q Do you have any interest in this litigation, in
5 this case?

6 A No.

7 Q Do you know either of the defendants over
8 there?

9 A No.

10 Q Have you ever talked with either of those
11 gentlemen?

12 A No.

13 Q Other than yesterday had you ever talked to
14 their attorneys?

15 A Yes.

16 Q In person or by phone?

17 A In person.

18 Q Do you recall what you talked about?

19 A Just about getting my information from me about
20 my background.

21 Q Okay. What did you give them?

22 A My résumé.

23 Q Your résumé?

24 A Yes.

25 Q Do you have it with you?

MING LOUIE (IN CAMERA) - VOIR DIRE BY THE COURT

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- 1 A No. The defense attorney has it.
- 2 Q Which attorney is it?
- 3 MR. CALHOUN: May I approach?
- 4 THE COURT: Yes, sir.
- 5 BY THE COURT:
- 6 Q What is Cantonese?
- 7 A Just one of the dialect in China.
- 8 Q So there's a dialect related to the Canton
- 9 area?
- 10 A Yes.
- 11 Q And there's a Mandarin dialect?
- 12 A National.
- 13 Q That's the national. And you went to secondary
- 14 and presecondary schools in Hong Kong?
- 15 A Yeah. I graduated from high school there.
- 16 Q What language do they speak in Hong Kong?
- 17 A Mostly Cantonese.
- 18 THE COURT: Make me a copy of this.
- 19 (Pause.)
- 20 Q These three individuals that you talked to, can
- 21 they speak any English.
- 22 A I'm sorry?
- 23 Q Can they speak any English?
- 24 A Very minimal.
- 25 Q Very limited?

MING LOUIE (IN CAMERA) - VOIR DIRE BY THE COURT

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1 A Yeah. I didn't talk to them that long, so I
2 don't know the capability.

3 Q Do you feel that you're fluent in Chinese and
4 Mandarin Chinese?

5 A Yes.

6 Q And do you feel that you're fluent in English?

7 A Yes.

8 Q All right. Just to make certain that I have it
9 straight, you are not on the list of certified
10 interpreters at South Carolina Court Administration
11 or any other states?

12 A That's correct.

13 Q Do you have any friends to reward or any
14 enemies to punish in this matter?

15 A No.

16 Q Do you have any interest whatsoever in the
17 outcome of this matter?

18 A No.

19 Q Have you ever read the ethical rules related to
20 interpreters in South Carolina?

21 A No.

22 THE COURT: Do any of you have any questions in
23 light of the Court's questions before I print this
24 out and show it to him?

25 MR. CALHOUN: I have a few more, Your Honor.

MING LOUIE (IN CAMERA) - RE-VOIR DIRE BY MR. CALHOUN

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1 RE-VOIR DIRE

2 BY MR. CALHOUN:

3 Q Mr. Louie, I understand that you've never been
4 certified in the state courts of South Carolina, but
5 you have testified in the state courts of North
6 Carolina and Maryland; is that correct?

7 A Yeah.

8 Q Were all of those issues or instances where you
9 were certified was it always in circuit court?

10 A Mostly district and circuit, mostly district
11 and circuit.

12 Q I'm sorry?

13 A District court and circuit court.

14 Q Okay. So you're saying you testified in the
15 federal district court?

16 A No, state.

17 Q Did you ever testify in a magistrate's court?

18 A No.

19 Q You never testified in magistrate's court?

20 A No.

21 Q Only in district court?

22 A District and circuit court at state level.

23 Q And some of the 50 instances you discussed
24 earlier was sometimes in the law offices of an
25 attorney; is that correct?

MING LOUIE (IN CAMERA) - RE-VOIR DIRE BY MR. CALHOUN

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1 **A** Yes, sometimes, yes.

2 **Q** Or sometimes in a police department?

3 **A** Yes.

4 **Q** For law enforcement?

5 **A** Yes.

6 **Q** Are you able to cite, translate English into
7 Mandarin or Cantonese?

8 **A** Yes.

9 **Q** Are you able to cite, translate a document that
10 is in Mandarin or Cantonese into English?

11 **A** Yes.

12 **MR. CALHOUN:** That's all I have, Judge.

13 **THE COURT:** Anyone else, any questions of the
14 witness in light of the Court's questions or Mr.
15 Calhoun's questions?

16 **MR. MAYE:** None from the State, Your Honor.
17 Thank you.

18 **MR. WILLIAMS:** Nothing from Defendant Phillips,
19 Your Honor.

20 **THE COURT:** Mr. Louie, I'm going to have the
21 Clerk of Court print out some rules that were put
22 forth by the South Carolina Supreme Court for
23 professional conduct for court interpreters.
24 They're a little bit lengthy. They're not terribly
25 lengthy. They go through explaining all of the

1 things that they expect you to do ethically if you
2 perform this function.

3 And there is one section that I'll go ahead and
4 mention here so the attorneys can be prepared to
5 argue it to me, but there is a section in there that
6 if an interpreter is utilized as part of the
7 investigation, that can create a conflict of
8 interest. So I've looked at the statute, and the
9 statute is 15-27-155, if an interpreter is not on a
10 list, the court can still qualify that person to
11 serve if the interpreter meets the requirements of
12 subsection (B).

13 Subsection (B) is that the person has to be 18
14 years of age or older. He's not a family member of
15 the party or a witness. He is an instructor of a
16 foreign language at an institution of education; or
17 that he has educational training or experience that
18 enables him to fluently speak a foreign language and
19 interpret the language of another person. He cannot
20 be confined to an institution.

21 You're not in jail anywhere, are you?

22 **INTERPRETER:** No.

23 **MR. MAYE:** Your Honor, may I question the Clerk
24 of Court briefly?

25 Madame Clerk, where were you able to obtain his

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1 information from in seeking an interpreter?

2 THE CLERK: I'm really not sure. I can't
3 remember if I called Greenville, South Carolina, the
4 clerk's office, because we searched diligently for a
5 Chinese interpreter.

6 MR. MAYE: I just could not remember if you got
7 it from court administration or where you
8 obtained --

9 THE CLERK: No. Court administration did not
10 have any Chinese interpreters. South Carolina does
11 not have any that are certified.

12 MR. MAYE: Thank you.

13 THE COURT: All right. We're at ease.

14 During the break, Mr. Louie, during this break,
15 I'm going to give you this piece of paper, but I
16 don't want you talking to anybody about your
17 testimony, okay?

18 INTERPRETER: Okay.

19 THE COURT: We have to get it printed out
20 before I can give it to you.

21 (Brief Recess.)

22 (Court's Exhibit Number 1, résumé of Ming
23 Louie, marked for identification purposes.)

24 THE COURT: All right. Mr. Louie, have you had
25 a chance to read through those ethical rules?

1 **INTERPRETER:** Yes, I did.

2 **THE COURT:** And are you willing to abide by all
3 of those?

4 **INTERPRETER:** Yes, I do.

5 **THE COURT:** And you understand, I'm not going
6 to try to go through all of them, but you understand
7 that it makes a very strong point in there that your
8 job is to translate. It's not to give legal advice.
9 It's not to go off on some tangent, but it's to be
10 verbatim.

11 **INTERPRETER:** Yes.

12 **THE COURT:** All right. Does the State have
13 anything else related to qualifications?

14 **MR. MAYE:** Nothing from the State, thank you.

15 **THE COURT:** Does the defense have anything
16 related to qualifications, any objections that you
17 want to put on the record?

18 **MR. CALHOUN:** Just for the record, we'll have
19 to state our objection to his certification for
20 Mr. Langford.

21 **MR. WILLIAMS:** Your Honor, I did have a couple
22 of matters that I thought the rules raised or the
23 ethical rules raised that I might be able to inquire
24 of the witness.

25 **THE COURT:** Certainly.

MING LOUIE (IN CAMERA) - RE-VOIR DIRE BY MR. WILLIAMS

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1 RE-VOIR DIRE

2 BY MR. WILLIAMS:

3 Q Mr. -- I believe it's Louie?

4 A Yes.

5 Q Now, had you previously met with the Solicitor
6 and the witnesses in this case?

7 A No.

8 Q You had not previously met with them before?

9 A No, except yesterday.

10 Q Except for yesterday?

11 A Yeah.

12 Q Did you previously meet with them in May of
13 this year?

14 A No.

15 Q Did not. Did you speak with them regarding
16 this case?

17 A No.

18 Q On yesterday when you met with them, were there
19 any matters that you all discussed regarding the
20 prospective testimony that the witnesses would give
21 in this proceeding?

22 A No.

23 Q Did you offer to them any opinions with regard
24 to the nature of this proceeding?

25 A No.

MING LOUIE (IN CAMERA) - RE-VOIR DIRE BY MR. WILLIAMS

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1 Q Might I ask you what, if anything, did you all
2 discuss on yesterday?

3 A Nothing related to the case except introduce me
4 to the -- introduce me to the three people, Chinese
5 people.

6 Q All right. And the Solicitor, did he in any
7 way let you know what this case involved?

8 A Just briefly about this robbery.

9 Q Okay.

10 A Yeah. That's it.

11 Q And you in no way discussed that with the three
12 witnesses in this matter?

13 A No.

14 MR. WILLIAMS: All right. Thank you, Your
15 Honor. Those are the only questions. For the
16 record, I do object to his qualification.

17 THE COURT: All right. Mr. Louie, since
18 Mr. Williams brought that part up, I'm glad he did,
19 I want to make sure I cover that with you. As you
20 read in those ethical rules, it can be a conflict of
21 interest if you are involved in the investigation of
22 the case, if you become involved in that process, if
23 you're part of interpreting during the investigatory
24 process. Do you feel that you have any sort of
25 interest whatsoever in the outcome of this case?

1 INTERPRETER: No.

2 THE COURT: Do you feel that you're affiliated
3 in any way with the State in this case?

4 INTERPRETER: No.

5 THE COURT: Do you feel that you're affiliated
6 in any way with the defense in this case?

7 INTERPRETER: No.

8 THE COURT: You can be neutral and interpret
9 and translate these words verbatim without regard to
10 what either side may think if you've got an option
11 of choosing one word or another -- let me start
12 over. I'm sorry, that's a terrible question.

13 In translation, I understand you may be able to
14 pick one word, there might be another word that
15 might be suitable and you have to quickly decide
16 which word to use in translation. Is that a fair
17 statement?

18 INTERPRETER: Yes.

19 THE COURT: Do you feel that anything that has
20 happened thus far, either your involvement with the
21 State or your involvement with the defense, would
22 affect you in choosing which word to use?

23 INTERPRETER: Can you repeat that again?

24 THE COURT: Would you choose a word more
25 favorable to the State or more favorable to the

1 defense?

2 INTERPRETER: No.

3 THE COURT: All right. The way I read those
4 ethical rules, it listed certain things that could
5 disqualify a person, would be a conflict of
6 interest, but at the end, it had an explanation, I
7 don't have it in front of me, but it had an
8 explanation that the mere fact that one of those
9 things might exist is not in and of itself proof of
10 a conflict of interest.

11 I find beyond a reasonable doubt that Mr. Ming
12 Louie is qualified as an interpreter and translator
13 from Chinese and Mandarin Chinese to English and
14 vice versa, that he has the requisite requirements
15 even though he's not listed on the list of qualified
16 interpreters. He's over 18 years of age. He's not
17 related as a family member or otherwise to any party
18 or witness. And he has educational training and
19 experience that enables him to fluently speak both
20 languages or all languages that are an issue here
21 and interpret the language for the persons involved
22 including the Court. He's been qualified previously
23 in other courts. He's never been denied
24 qualification.

25 My conversations with the Clerk before this

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1 trial were very brief, but basically I understood
2 there was difficulty in even locating someone. She
3 has provided me a list of interpreters that she
4 obtained from court administration. It's a 2009
5 list, which is when this would have been -- the
6 effort to obtain an interpreter would have been
7 going on.

8 And it's a situation where there's nobody
9 listed in there in Chinese. They're almost all
10 Spanish. There's a few French and Haitian dialect,
11 but there are no people on the list that we have for
12 Chinese. I think the Clerk's office did a diligent
13 search and only came up with a grand total of about
14 two names.

15 And this gentleman when he was checked out,
16 came out to be highly qualified. He has advanced
17 degrees which would require him to be able to be
18 fluent in both languages in order to practice his
19 profession in the United States and to get his
20 education. These languages are his -- of Chinese,
21 Mandarin Chinese are his native tongue.

22 I used some different words during my
23 questioning of him that were not routine sort of
24 easy words and he never in any way hesitated. The
25 only time he hesitated was when I asked stupid

1 questions or multiple part questions. So I'm
2 satisfied beyond a reasonable doubt that he's
3 qualified as an interpreter and translator and he
4 understands his role.

5 I want the ethical things that I gave him to
6 review made a court's exhibit. I want his résumé
7 made a court's exhibit and I have signed a written
8 order as required by our rules which will be made
9 part of the record.

10 (Court's Exhibit Number 2, ethical rules for
11 interpreters, marked for identification purposes.)

12 **THE COURT:** Mr. Louie, if you'd just -- where
13 are they going to be? Are you going to have them in
14 here during the court session?

15 **MR. MAYE:** Your Honor, I'm not going to have
16 them in for opening statement or proceedings, that
17 would be meaningless to them as they sit there. So
18 I'm just going to leave them in the family court
19 chambers until we need them was my plan.

20 **THE COURT:** All right. You all may need to
21 tell me logistically during one of the breaks how
22 you plan -- where you plan to have him sitting, how
23 you all plan to deal with it. I mean, I know we've
24 done a trial before translating to Spanish where a
25 gentleman actually had headsets and they sat over

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1 there in the jury box, but those were defendants.

2 **MR. MAYE:** Your Honor, I guess we'll propose
3 that we'll let him sit close enough by to be able to
4 make the translation. They're soft spoken people
5 and he's going to have to sit close enough to be
6 able to hear them and for them to hear him.

7 **THE COURT:** All right. Mr. Louie, I want you
8 to stay in the courtroom initially while I'm talking
9 to the jury because I want to tell them who you are.
10 Fine with me if you stay there. If, after I finish
11 talking to the jury, you prefer to go back here
12 until we need you, that's fine too, all right.

13 **INTERPRETER:** All right. Thank you.

14 **THE COURT:** But if you'd just sit on the front
15 row over there for me.

16 All right. Is the State ready for the jury?

17 **MR. MAYE:** The State's ready, Your Honor.
18 Thank you.

19 **THE COURT:** Defense?

20 **MR. CALHOUN:** Ready, Your Honor.

21 **MR. WILLIAMS:** As to Defendant Phillips, ready,
22 Your Honor.

23 **THE COURT:** Bring the jury in, please.

24 (The jury enters the courtroom at 11:05
25 a.m.)

1 **THE COURT:** All right. Ladies and gentlemen,
2 the first order of business is I have to have you
3 placed under the oath of a trial jury. I need for
4 you to stand please and raise your right hand, the
5 Clerk will administer your oath.

6 (The jury was duly sworn by the Clerk of
7 Court at 11:06 a.m.)

8 **THE COURT:** All right. Ladies and gentlemen, I
9 had you come in today at 9:30. I had the attorneys
10 come in a little bit earlier than that. When we
11 left last night, there was a possibility of an
12 issue, but we really didn't know if there was going
13 to be an issue that I would have to address. As you
14 can guess, there was, so that's why you've been
15 sitting back there for an hour and a half.

16 And what I want to do at this point before I go
17 into my general explanation is explain to you
18 something that will become obvious to you during the
19 trial of the case and that is some of the witnesses
20 in this case do not speak English. I'm informed
21 that they speak Chinese or a dialect of Chinese.
22 And so I'm going to introduce to you Mr. Ming Louie,
23 this gentleman here.

24 Thank you, sir. You may be seated.

25 He has been qualified by the Court as a

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1 translator and interpreter. When those particular
2 witnesses are on the stand or if they desire to be
3 in the courtroom, my understanding is that they're
4 going to opt to remain out, but if they want to be
5 in the courtroom, they have a right to be. If they
6 are, he has to translate everything that's said. So
7 if that becomes a distraction to you, you let me
8 know and we'll try to make adjustments, but you're
9 going to hear somebody else talking in different
10 dialects. Also -- or different languages.

11 Also, I'm going to ask the attorneys in
12 phrasing their questions to be mindful of the fact
13 that somebody's having to translate, so the
14 questions may come out a little slower than what
15 they normally would.

16 All right. Now, we're about to start into the
17 trial of these cases. And as I told you, you've got
18 two separate defendants. Their cases are separate
19 and distinct. They're evaluated separately on their
20 own merit or lack of merit as far as the cases go.
21 The cases are evaluated on their own merit or lack
22 of merit.

23 Each defendant has separate indictments. Each
24 indictment is separate and distinct, remains that
25 way throughout. Each is evaluated on its own merit

1 or lack of merit.

2 So if I use the phrase "case" in the singular,
3 please understand that I'm referring to all of the
4 cases. Sometimes I might just use a singular
5 phrase, but never mistake the fact that all of these
6 cases are separate and distinct and the two
7 defendants are separate and distinct.

8 Now, what I'm going to do is I'm going to start
9 out by explaining to you how we normally operate
10 court. I mentioned this to you briefly yesterday.
11 Then I'm going to tell you how the case will begin.
12 I'm not going to go through the whole process, the
13 whole procedure, but I'm going to tell you how we'll
14 get started.

15 As I told you, we normally bring the jury in
16 about 9:30 each morning. We normally go until one
17 o'clock to break for lunch. Usually I give the jury
18 at least an hour, sometimes up to an hour and a half
19 for lunch. And we usually break for the day between
20 5:00 and 5:30 with the jury. Once I give you the
21 case to decide, we typically wait on you to decide.
22 But you know as much as I know about how your day is
23 likely to go right now.

24 The way the case is going to begin is that I
25 will first recognize the attorneys to make their

1 opening statements to you. In these opening
2 statements, the attorneys are not permitted to
3 engage in argument. Opening statements are
4 introductions, outlines, overviews, but they cannot
5 extend to what we call argument.

6 When the opening statements are finished, then
7 I'm going to call upon the Solicitor representing
8 the State to present his cases. The State brought
9 these charges against these defendants and the State
10 has the entire burden of proof.

11 The defendants are presumed to be innocent.
12 The State has got to prove every essential element
13 of each offense charged beyond a reasonable doubt,
14 so I'm going to call upon the State to present
15 evidence in an attempt to meet that burden.

16 When the State finishes putting up its case in
17 chief, the Solicitor will advise me that the State
18 rests. At that point, I'm going to have to send you
19 out of the courtroom and I'm going to have to
20 discuss some legal matters with the attorneys. When
21 you come back in, I'll tell you where we go from
22 there, but that's how we're going to get started
23 with this trial.

24 Now, folks, it's really important that you
25 understand some things. First, that oath that you

1 just took was one in which you've promised us that
2 you're going to decide these cases based on the
3 evidence and the law. So you need to know where
4 those things come from.

5 The law comes from me. It's my job to decide
6 what law applies to these cases and tell it to you
7 at the end of the trial.

8 The evidence comes from the sworn testimony of
9 witnesses. Evidence can also come in the form of
10 exhibits. An exhibit can be anything tangible
11 that's marked in the record. It can be a
12 photograph, a map, a chart, anything tangible.

13 If something is an exhibit, you will have it
14 with you in the jury room when you decide the cases.
15 The reason I'm telling you that is because it's not
16 unusual for an attorney to have something like a
17 small photograph, show it to you from a distance or
18 hand it into the jury box and ask you to circulate
19 it around so that you're trying to look at what
20 they've handed you and also pay attention to what's
21 going on up here on the jury box -- in the witness
22 stand, excuse me. So please understand that all of
23 the exhibits are back in the jury room when you
24 decide the case so you can look at it as much as you
25 like.

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1 You need to understand that what the lawyers
2 say is not evidence. I want you to pay close
3 attention to what the attorneys say, but understand
4 what comes out of their mouths is not evidence. The
5 evidence comes from the witnesses and the exhibits.
6 There is one exception to the rule about what the
7 lawyers saying not being evidence and if we come
8 upon it, I'll tell you about it, otherwise I won't
9 burden you with it.

10 Now, it's also very important that you
11 understand that there are two judges in the
12 courtroom. I'm the judge of the law. I've already
13 told you at the end of the trial, I'm going to tell
14 you the law that applies to the cases. It's also my
15 job to rule on legal issues as they arise in the
16 trial. It's my job to maintain order and preside
17 over the trial.

18 You're the other judge. You have to understand
19 that you are the only judge of the facts. Only you
20 are going to get to decide what evidence is
21 believable. Only you are going to get to decide
22 what weight, if any, should be put on any evidence.
23 That's entirely your prerogative and I am not going
24 to invade your province.

25 Now, I want to give you by way of example and

1 explanation a scenario so that you may understand a
2 little bit more about our differing roles. From
3 time to time during the trial, one side or the
4 other, one attorney or the other may feel that
5 something is trying to be put before the jury that
6 does not fit within the rules for the jury to
7 consider. And if an attorney feels that way, the
8 attorneys have taken oaths just like you have taken
9 an oath and I've taken an oath and the attorney has
10 an obligation to stand up and object.

11 Now, if the attorney does that, then I have to
12 decide whether that thing fits within the rules for
13 the jury to consider. I may send you out of the
14 courtroom to do that. It goes quicker if I do it
15 that way.

16 Now, we never know going into a trial if we're
17 going to have one objection or 101 objections, so
18 there's no way for us to know. If I have to send
19 you out of the courtroom a lot, just chalk it up to
20 good exercise and don't worry about what we're doing
21 out here just let me do my job.

22 Now, if I sustain the objection, what that
23 means is that I have agreed with the attorney who
24 raised the objection that that is not something
25 that's proper for the jury to consider and you

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1 should disregard it totally, put it out of your mind
2 because it's not proper for you to consider.

3 But if I overrule the objection and I let it
4 come before you, I want to make sure you understand
5 that I have not given one second of thought as to
6 whether or not that thing is believable because
7 that's not my job. It will not have crossed my mind
8 to think about whether that thing should be given
9 any weight and if so, how much because that's not my
10 job, that's your job. All I've done is looked very
11 narrowly with tunnel vision to decide does that
12 thing fit within the rules for the jury to consider
13 and if I believe that it does, I let it come before
14 you and then you decide whether it's believable or
15 not and you decide what weight, if any, to put on it
16 if it is believable.

17 So I'm not going to invade your province, but
18 don't ever misunderstand a ruling I make as passing
19 on the facts of the case because that won't be
20 crossing my mind. You're the sole judges of the
21 facts.

22 All right. Now, while you've promised us that
23 you are to decide these cases based on the evidence
24 and the law and you have to do that, as I mentioned
25 to you yesterday, we're not asking you to leave your

1 common sense at home. We want you to use your
2 common sense, use your sense of logic and reason and
3 your good judgment. It just makes good common sense
4 that you keep an open mind about these cases and you
5 don't make up your mind until you've heard all of
6 the evidence and you know what law applies to the
7 cases.

8 So there's a rule that I've mentioned to you
9 that I have to repeat now and it is very hard to
10 follow. That rule is that you are not to discuss
11 these cases in any way among yourselves until I tell
12 you to, don't talk about the people involved, what
13 the case is about, don't talk about anything related
14 to the cases until I tell you to. And when I tell
15 you to begin your deliberations, we wait on you.

16 Now, that's hard to follow because you 12 folks
17 may feel you've got little in common except you all
18 live in Edgefield County and you all got picked to
19 hear these cases, so the logical thing you're going
20 to want to talk about during any break you may have
21 is what just happened in the courtroom. You've got
22 to resist that temptation and not talk about the
23 case until I tell you to.

24 Now, very quickly, you're not to discuss the
25 case with anybody else until the week is completely

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1 over and you've been discharged from this jury. If
2 anybody attempts to contact you and discuss the case
3 with you, report that to me so I can deal with it.
4 Do not allow yourselves to be exposed to any media
5 coverage of the trial. If you are, get away from
6 it, don't let yourselves be exposed to it further
7 and report to me what you may have seen, heard or
8 read through the media. Do not go on any Internet
9 sites that cover local news events in Edgefield
10 County throughout the trial, just avoid those
11 completely. And the last thing is to thank you.

12 Folks, I usually tell juries at this point that
13 I'll do everything in my power not to waste your
14 time. You folks might not believe me because you
15 sat around all afternoon and sat around an hour and
16 a half this morning. I promise you that I can tell
17 time. And I promise you that it drives me crazy
18 when a jury is sitting back there waiting on us.

19 But I also can tell you this. I've been around
20 this for a long time. I've been a judge 19 years.
21 I've been out of law school now for 32. Some weeks
22 everything just goes smooth and no issues come up
23 and other weeks it just kind of -- we kind of have
24 things constantly arising and you just have to deal
25 with them and move on.

1 But I can make you this promise, if you're
2 waiting on us, we're working. There will never be a
3 time when we're out here telling jokes and drinking
4 coffee while you're back there waiting on us. If
5 you're waiting, we're working. That's all I can
6 promise you is we'll work as hard as we can to get
7 you out here so you can finish your duties and go on
8 with your life. So I thank you.

9 All right. To honor my commitment to you all
10 not to waste your time, I'm going to be quiet now.
11 I'm going to invite your close attention and ask you
12 please to listen to the opening statements of the
13 State's counsel and both defense counsel.

14 Mr. Maye.

15 MR. MAYE: May it please the Court, Your Honor.

16 (Pause.)

17 THE COURT: Mr. Maye, you're recognized.

18 OPENING STATEMENT

19 MR. MAYE: I was going to say good morning,
20 ladies and gentlemen, but I looked over there, it's
21 almost good afternoon. I guess we're still in that
22 time.

23 You can already tell that this process is not
24 going quickly. And I know that each of the 12 of
25 you that are going to go back in that jury room and

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1 deliberate, several weeks ago or however long ago it
2 was that you got your jury summons, I doubt anybody
3 leapt for joy when they opened that letter and saw
4 they'd been summoned up here for jury duty because
5 it's a big responsibility because you're taken away
6 from what you normally would have been doing this
7 week. Whether it was being with your families,
8 going to work, doing whatever your normal activities
9 are, you're taken away from what you would have been
10 doing to come up here and sit, just as the Judge
11 told you, as the facts of this case -- judges of the
12 facts of this case, completely removed from what you
13 would have been doing.

14 It's the last compulsory public service that
15 we've got, no more draft. They said people used to
16 have to go out and work on the roads or pay a tax to
17 get somebody else to do it, this is it. And this is
18 serious business that we're about up here.

19 My name is Ervin Maye and I'm an assistant
20 solicitor. And I work for your elected Solicitor,
21 Mr. Donny Myers, who's out of Lexington. He's got
22 Lexington, McCormick, Edgefield and Saluda Counties.
23 And for about the past 16 years, I've been helping
24 him take care of McCormick, Edgefield and Saluda
25 Counties. It's always nice to be here.

1 We're going to get straight to it. The State's
2 got the burden of proof in this case and we welcome
3 it.

4 Seated over here at the State's table with me
5 are law enforcement officers that were involved in
6 this, Lamaz Robinson, who's an investigator with the
7 Johnston Town Police Department, and Mr. Zac Strom
8 over here that was formerly a sheriff's deputy for
9 Sheriff Dobey here in Edgefield County. He's not
10 employed in that capacity now.

11 Over there at the defense table, two young men,
12 Bryan Phillips and K.C. Langford. Mr. Langford's
13 closest to you. They're seated over here between
14 their attorneys in this case.

15 You've already heard the indictments get
16 published in this case before we selected the jury.
17 They're charged with armed robbery, which is exactly
18 -- the Judge is going to tell you at the conclusion
19 of all the evidence that you'll hear, he's going to
20 go through in great detail and tell you what the law
21 is in this case. It's no secret as to armed
22 robbery, somebody took up a weapon and took money or
23 goods away from somebody else and that's what these
24 two are charged with, armed robbery, burglary in the
25 first degree.

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1 The Judge is going to go through and talk with
2 you about burglary, but there's certain aggravating
3 circumstances that in this, they're charged with
4 burglary first degree which means the burglary
5 occurred during the nighttime, also charged with
6 kidnapping.

7 The Judge is going to go through and charge you
8 with what kidnapping is. Most of you know what that
9 is, the general connotation be, get somebody, hold
10 them for ransom. But the Judge is going to charge
11 you with the law in this case, basically kidnapping,
12 if you restrain anybody or hold them against their
13 will for any length of time, they're charged with
14 kidnapping.

15 They're also charged with criminal conspiracy.
16 I submit to you you're going to learn in this case
17 that conspiracy is basically just agreeing. For
18 whatever length of time before, they're going that
19 we're going to go do some unlawful or criminal act,
20 that for some brief period of time or any period of
21 time, they agreed ahead of time they're going to go
22 and carry out some criminal act.

23 The Judge has already told you that some of the
24 witnesses in this case don't speak English.
25 Specifically, there's an interpreter brought up here

1 that's going to interpret several of the witnesses
2 what they've got to say in this case back and forth
3 from Chinese to English.

4 But if you go back down here in the town in
5 Johnston on the left-hand side of the road, there's
6 a little Chinese restaurant. If you go back and
7 forth there, I'm sure most of you have seen it.
8 It's called the Hong Kong Restaurant, Chinese
9 restaurant. Two couples basically run that. It's a
10 father, a mother, their son and his wife.

11 And their names are tough, I'm going to tell
12 you up front in this case. The Judge had some
13 trouble pronouncing it and I would too. The father
14 there his name is Ji Quing Chen. And his wife, and
15 to tell you the truth, I'm just going to have to
16 refer to them as Mr. and Ms. Chen, that's about the
17 best I can do in this case because it's tough to
18 pronounce these names. His son's name is Li Guan,
19 and I am going to guess is, Xi, X-i is his last
20 name. And I'm going to refer to him as Mr. Li and
21 his wife as Ms. Li.

22 But seven days a week from about 10 o'clock in
23 the morning until on over about 11 o'clock at night,
24 they run this Chinese restaurant. They go back and
25 forth there. And they live just around the corner.

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1 If you go by leaving from the courthouse here with
2 the Chinese restaurant on your left on Main Street
3 there in Johnston, you turn back to the left on
4 [REDACTED] Street and you go back just a street or two
5 and they live there at the corner of [REDACTED] Street
6 and another street.

7 And just over beyond them are the housing
8 authority apartments just within walking distance
9 there. You go back there to those housing authority
10 apartments, you're going right by their house there
11 on the corner. It's a little gray framed house and
12 you're going to see photographs of it.

13 And you're going to learn on the date that this
14 took place on August the 14th of 2008, they were
15 closing up their restaurant and that night they were
16 closing about 10:30 and that at that time, the son,
17 Mr. Li, he's got two children and his mother and his
18 wife kind of alternate, there's usually three of
19 them at the time up there at the restaurant you're
20 going to learn, and on this particular day, the
21 mother, the father and their son were running the
22 restaurant. And Mr. Li, his wife, the mother of his
23 two children, was there at the house on [REDACTED]
24 Street.

25 But they left out about 10:30 that night and

1 they had about \$3,000 in a bag that was proceeds
2 from the restaurant. And they're going to tell you
3 that one of the reasons that they brought home money
4 in this case, this is a Thursday night going into a
5 Friday, was they were going to pay for some supplies
6 and so they brought home more money than they
7 usually would have. But they had about \$3,000 in a
8 bag and the three of them left the restaurant. And
9 it didn't take but just a minute or two to come
10 around the corner there and go back to their house.

11 Just a few minutes after 10:30 as they got
12 home, they pulled up in the yard and started to get
13 out. Now, Mr. Chen, the older gentleman there, the
14 father of the clan, he's got a little vegetable
15 garden over on the side of his house where he grows
16 some of the vegetables you're going to hear in this
17 case that they use there in the Chinese restaurant
18 right there in the corner of his yard.

19 Now, it's dark. They get home, they go in with
20 the bag and take it inside. And Mr. Chen, he cuts
21 across the front porch and walks around the corner
22 of the house over to where his vegetable garden is
23 because he's going to water the vegetables in this
24 case. And as he gets around the corner there, he's
25 jumped by three men who's got masks on. They put a

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1 gun on him. They pound on him and hit him. One of
2 them hits him in the back of the head. They hold
3 him down and they start screaming for money.

4 You're going to learn that his son, Mr. Li,
5 after a little bit wonders what's going on with him
6 and comes out to check on him. Now, just a few
7 moments have passed at this point, but his son comes
8 out looking for his daddy to see what's going on
9 because he knows something's up because he's been
10 delayed out there. He calls for him. He doesn't
11 hear anything and he walks on around the corner and
12 these same three men get a hold of him with the same
13 demand. They make him lie down on the ground at
14 gunpoint and they're screaming wanting money,
15 Where's the money, where's the money.

16 To back up a little bit, you're going to learn
17 that as they came home that night as they did many
18 nights when they walked back and forth, they're
19 being watched for some period of time, because
20 you're going to hear the testimony in this case of
21 Mr. Alvin Phillips who's one of the three
22 individuals that's charged in this armed robbery,
23 burglary, the whole incident there on the 14th.

24 Alvin Phillips has already pleaded guilty at
25 this point in time to armed robbery. He hadn't been

1 sentenced yet. He was charged with all of these
2 things, armed robbery, he was charged with burglary,
3 he was charged with assault and battery with intent
4 to kill for hitting the man out in the yard,
5 criminal conspiracy, possession of a weapon during
6 the commission of a violent crime. All of those
7 things he was charged with for his part in what went
8 on there on the 14th.

9 He's already pleaded guilty to armed robbery
10 and he hadn't been sentenced in this case. And
11 these other charges you're going to learn from his
12 testimony up here, they haven't been disposed of.
13 They're still hanging out there over his head.
14 You're going to hear -- he's going to testify as the
15 State's witness in this case.

16 He's going to tell you that in the weeks prior
17 to the 14th of August in 2008, he and his cousin,
18 Bryan Phillips, who lived right there in that
19 housing authority that was there within walking
20 distance, he lived in that housing authority
21 apartment complex there as did Veronica Phillips,
22 his sister. And Alvin Phillips was then 17 years
23 old. You're going to hear he was a student at
24 Thurmond. Just before school started back, he would
25 have been starting his senior year shortly

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1 thereafter. Alvin's sister, Veronica, had a child
2 and her boyfriend, K.C. Langford, the fellow that's
3 sitting over here closest to you, he hung out there.

4 Alvin Phillips is going to tell you in this
5 case that his mother lived out in the country, that
6 she had a job that she worked and they had a house
7 that was outside of the city limits here in
8 Johnston, but he had a room and he stayed with his
9 sister very frequently and that Bryan Phillips and
10 K.C. Langford and Alvin all hung out together
11 frequently. And, in fact, later on that night, K.C.
12 Langford he stayed on over at Veronica Phillips'
13 house as he sometimes did.

14 But he's going to tell you in the weeks
15 preceding this taking place, that he and Bryan had
16 been watching and had seen that these Chinese people
17 were coming home at the same time and they were
18 carrying in a bag and they began to suspect that
19 what they were doing was bringing in money. He's
20 going to tell you, Alvin is, that Bryan said, I
21 think they're bringing in money. I don't think
22 they're putting it in the bank. I think in this bag
23 that they're bringing in when they come home and
24 they carry in is cash. And they began to talk about
25 how they needed money and what they were going to

1 do.

2 This culminated on the 14th, they got together.
3 And on over some time before 10:30, they had some
4 discussion that they were going to carry out a
5 robbery. And Alvin Phillips is going to get up and
6 tell you that he had a .40 caliber handgun that he
7 had taken out of an automobile and that he'd been
8 hiding it out in the woods and alternately keeping
9 it at home, that his sister had children and he
10 wasn't keeping it there at the house. At 17 years
11 old, he wasn't going to get seen by either his mom
12 or his sister with this gun, but that he was hiding
13 it and he had a .40 caliber handgun.

14 He's going to tell you that that night they got
15 together and talked about tonight's the night we're
16 going to do it, because they knew the Chinese people
17 would be coming home shortly. And they began
18 discussing doing this robbery and they decided that
19 they would wear masks. And Alvin Phillips is going
20 to tell you how he went and he got a ski mask that
21 he put on. He's going to tell you how Bryan
22 Phillips got a ski mask and he put it on.

23 He's going to tell you that shortly before the
24 time that they got ready to go and carry out and
25 conduct this armed robbery and robbing the Chinese

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1 people over at their residence, that K.C. Langford
2 was there as well and they talked to him about what
3 they were getting ready to do. He asked them, What
4 are y'all going to do? They said, We're going over,
5 we're going to rob these Chinese people. He said,
6 I'm going, too.

7 He knew what they were going to do. He got
8 ready with them and he went back in the house and he
9 got him a black T-shirt that he tied up around his
10 face where it would conceal his features and that
11 the three of them left from over there at the area
12 around the apartments where Bryan lived and Veronica
13 lived and they walked right there behind the house.

14 And you'll see on the map there's no distance
15 to walk over there, but they walked down to that
16 house at the corner. And they eased around behind
17 there in the dark and they sat and they waited there
18 in the back of the yard for the Chinese people to
19 come home from work because they knew they'd be
20 coming home shortly. And that's where we pick back
21 up with Mr. Chen getting home, going around to get
22 the vegetables, to water them and these three
23 individuals get them.

24 But as they've got Mr. Chen and his son,
25 Mr. Li, there laying on the ground, they're

1 screaming at them, Where's the money, where's the
2 money? What you're going to learn is they can't
3 speak English and so they babble away to them and
4 they can't really understand what they're saying,
5 but they decide that the money's in the house.

6 And K.C. Langford runs around while they're
7 holding Mr. Li and Mr. Chen down there at gunpoint
8 after they've already hit Mr. Chen and they run up
9 in the house, K.C. Langford does, where the two
10 women are and the two children are all up inside the
11 house. K.C. Langford goes and he grabs up this bag
12 that suspected had the money in it and he runs back
13 outside and they all run off down the street.

14 Alvin's going to tell you that they ran down
15 the street a little bit and made a circle and kind
16 of came back. He's going to tell you the route that
17 they ran and they end up back over there around the
18 apartment complex. He's going to tell you that
19 shortly thereafter they split the money up. He got
20 rid of the mask, he got rid of the gun and that not
21 long after then, his mother had to go on and she
22 needed to be at work at 11 o'clock and that Bryan
23 left from where they were, but K.C. Langford and
24 Alvin went back over to Veronica's house.

25 Now, Veronica was getting ready to drive her

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1 mother back out in the country to get something that
2 she needed before she went to work. The robbery
3 took place shortly after 10:30, got called in about
4 10:42. They end up back at Veronica's house. They
5 need to take her mother, Alvin and Veronica's
6 mother, on to work. So K.C. and Alvin get in the
7 car with her and their mother and they leave.

8 But by this time, the Johnston Police
9 Department, the Edgefield Sheriff's Department, Zac
10 Strom is working that night, they know that they've
11 got a robbery that took place there, [REDACTED]
12 Street, at the Chinese people's house so they begin
13 to make a perimeter around there. They start
14 looking and checking because they're looking for
15 three people.

16 At this point in time, the only description
17 they have, the individuals have masks on their face.
18 And the Chinese people are not going to be able to
19 give you any identification other than they were
20 three black males and that's all they can tell given
21 the fact that they were wearing masks in this case
22 and that's all they're going to tell you is they got
23 robbed and it was by three black males, that's who
24 they were looking for.

25 So just a few minutes, just about 11 o'clock,

1 Zac Strom stops the car that's got Alvin Phillips in
2 it, K.C. Langford still with him just a few moments
3 after this robbery took place, got reported about
4 10:42 and he stops them just a little bit before 11
5 o'clock. He stops the vehicle and starts talking to
6 them.

7 Now, Veronica's in the car, mom's in the car.
8 K.C. Langford is still with Alvin Phillips just a
9 few minutes later in that automobile. And he stops
10 them, two reasons, he's looking, making sure there's
11 nobody in that automobile because he's made a
12 perimeter around there. He stops them over there
13 near the bus garage, which is not far away, but he
14 talks to them at that point in time. And the only
15 thing he can do is just basically check their
16 identification and to ask them if they've seen
17 anything and he does and he lets them go.

18 Some days go by beyond that evening and
19 Investigator Roosevelt Young, who's a narcotics
20 officer in this case, gets a tip from an informant
21 that he needs to talk to Alvin Phillips. And he
22 brings Alvin Phillips in and he talks to him and he
23 interviews him.

24 Alvin tells him the whole story, tells him how
25 they got together that night, how he and Bryan,

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1 that's his cousin, planned it, talked about it, how
2 they got together, what they did, talks about K.C.
3 Langford getting involved in it and goes through all
4 the details with Investigator Young in this case.
5 And you're going to hear the facts from the stand in
6 this case.

7 As I told you, Alvin Phillips has already pled
8 guilty in this case and he's going to get up and
9 tell you about his role in it. He's going to tell
10 you about Bryan Phillips, his cousin's, role in it.
11 And he's going to tell you about his sister's
12 boyfriend, K.C. Langford, and his role in it.

13 At the conclusion of all the evidence in this
14 case, we'll come back and we're going to ask for
15 guilty verdicts in this case for armed robbery, for
16 burglary, for kidnapping, for criminal conspiracy.

17 I appreciate your close attention in this case
18 and we're mindful that you've been taken away from
19 what you normally would have been doing this week.
20 All that we ask that you do is come back with a
21 verdict that speaks the truth at the conclusion of
22 all this evidence.

23 **THE COURT:** Thank you, Mr. Maye.

24 Mr. Calhoun, you're recognized for your opening
25 statement.

1 MR. CALHOUN: May it please the Court, Your
2 Honor.

3 THE COURT: Yes, sir.

4 MR. CALHOUN: This is my first opportunity to
5 introduce myself to you. My name is Mark Calhoun
6 and I represent Mr. Langford. He goes by K.C.
7 Langford. I'm his attorney in this case.

8 And, first, let me say that myself and
9 Mr. Williams and Mr. Maye, we're attorneys here.
10 We're advocates. We're not witnesses. We don't
11 give you evidence. The only evidence that comes out
12 of this case comes from the folks that take this
13 stand right here. We're advocates for our clients.
14 We argue the law to you on our client's behalf.

15 The Judge is the ruler of the law. If anything
16 I say conflicts with what the Judge says, then by
17 all means go with what he says. I promise you it
18 will not be intentional.

19 But the course of this trial, if you've never
20 sat in on one, and most folks haven't, is that
21 witnesses will be called to testify and that's where
22 the evidence comes from. And at the end of the
23 case, all the lawyers will have a chance to come
24 back up here and argue those facts to you in
25 conjunction with the law that the Judge gives you

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1 and then it's your job and your duty as jurors to
2 apply the facts to the law and make your decision.

3 Now, Mr. Maye just told you a great story about
4 all of this stuff that happened, but there is a
5 problem with that story and that's why we're here
6 today. The problem with that story is that all of
7 this information you were just given a broad
8 overview of comes from one person, Alvin Phillips,
9 the person who admits that he robbed these folks
10 that night. All of the information you're going to
11 here comes from his mouth and there's nothing to
12 corroborate it or support it.

13 You're going to have to make a decision as to
14 whether or not you believe this guy. You're going
15 to have to ask yourself, what does this person have
16 to gain or lose by giving this testimony? It's
17 called credibility. You're going to have to decide
18 how credible you think Alvin is.

19 And another big thing is burden of proof.
20 Burden of proof is nothing -- I think too many
21 people in our criminal justice system overlook that.
22 It's the huge, defining thing that makes the United
23 States' criminal justice system the best in the
24 world.

25 And this is why, this is a great -- what I

1 think, is a good example. My favorite author is
2 Charles Dickens. He was, you know, back in England.
3 He wrote his books back in the 1800s. And he did a
4 great job in telling a story, but, you know, back in
5 the 1800s not many people could read anywhere. Even
6 though England was the richest country in the world,
7 not many people could read. So he was writing these
8 books for the upper class, the people who were
9 educated, but what he did in his stories is he told
10 them about all the social wrongs that went on in
11 England, the way the poor were taken advantage of
12 and victimized by the wealthy and by the powerful.

13 When Charles Dickens was a young man, his
14 father was thrown in a debtor's prison for not,
15 allegedly, not paying a debt he owed. Well, back
16 then, you know, women couldn't work and if a man was
17 put in a debtor's prison, well the whole family went
18 with him, his wife and his children all lived in
19 that jail cell for months or years until someone
20 paid his debt. That happened to Mr. Dickens.

21 Now, the problem with this system that, their
22 criminal justice system, is that to get a person
23 thrown in debtor's prison, all the person had to do
24 is make an accusation. All they had to do is go to
25 the local constable and say, Mr. So and so owes me

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1 \$50. And the constable would go to this person and
2 go, okay, well, give me the \$50 or we're going to
3 put you in jail until we do get the \$50.

4 There was no requirements that it be true. All
5 you had to do was make an accusation. And if the
6 person was from a segment of society where he didn't
7 have money, he didn't have -- he couldn't afford to
8 hire a lawyer or he couldn't protect himself if he
9 couldn't prove that the accusation was wrong, he
10 went to jail, that's how their criminal justice
11 system worked.

12 Well, the folks who -- the founders of our
13 country said that's not right. You can't do that.
14 The burden of proof to prove that someone did
15 something wrong and committed a crime is on the
16 police. It's not on the individual. The individual
17 doesn't have to do anything to prove that he's not
18 guilty of what he's accused of. My client,
19 Mr. Langford, doesn't even have to be here today,
20 okay.

21 The burden is on law enforcement to prove that
22 the person did whatever they accused them of doing
23 wrong and that burden of proof is something that
24 attaches to a person the moment they're accused of a
25 crime. It's been described as a veil that covers

1 them, the veil of innocence. They're presumed
2 innocent until and unless they are proven guilty,
3 okay..

4 As my client, Mr. Langford, sits there today,
5 he's an innocent person under the law, okay. And
6 that veil of innocence cannot be removed unless the
7 police convince you beyond any reasonable doubt that
8 he's guilty of each and every element of all the
9 crimes he's accused of.

10 It's a heavy burden and it should be that way
11 because it protects folks who can't protect
12 themselves. That's how our criminal justice system
13 is designed. And it's your duty as jurors to make
14 sure that that's how people are treated who are
15 accused of crimes, okay.

16 And Mr. Dickens lived the rest of his life, you
17 know, he was a workaholic. He was one of these guys
18 that from the time he was a young man to literally
19 the day he died, he was constantly working on a
20 novel. His last novel was unfinished because he
21 died before he finished it because he remembers what
22 it was like to be a young man and have to live under
23 those conditions. He was scared to death for the
24 rest of his life of not having any money and it made
25 him a successful author.

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1 So please remember that it's the State's burden
2 to put evidence before you, credible, solid evidence
3 that you can hang your hat on that you have no
4 reasonable doubt to that Mr. Langford is guilty of
5 what he's accused of because this case is, it is --
6 it's really very simple and I think you're going to
7 see that through the testimony. It really just
8 comes down to whether or not you feel that you can
9 unequivocally believe Alvin Phillips and what he
10 says, okay.

11 Mr. Maye says, well, Mr. Phillips, he's pled
12 guilty. Well, guess what, he hasn't been sentenced.
13 He hasn't gone in front of a judge and been
14 sentenced. That's where the bad stuff comes, okay.
15 That's not going to be done until some other day.
16 And what happens in that sentencing is going to be
17 contingent on what Mr. Phillips does today, okay.
18 He's got a huge, huge dog in this fight and you need
19 to remember that when you're listening to him
20 testify, okay, please do.

21 And all I can ask you to do as the jury is what
22 everybody asks juries to do is just please pay close
23 attention, which I know you will. And I'm convinced
24 that after you listen to Alvin Phillips tell you his
25 side of the story and do what he has to do to

1 protect himself, that you'll be convinced that
2 Mr. Langford is not one of the gentlemen that was
3 there with him that night. Thank you.

4 THE COURT: Thank you very much, Mr. Calhoun.

5 Mr. Williams, you're recognized for your
6 opening statement.

7 MR. WILLIAMS: If it pleases the Court, Your
8 Honor.

9 THE COURT: Yes.

10 MR. WILLIAMS: Mr. Foreman, ladies and
11 gentlemen of the jury, I have the opportunity to
12 address you now. My name is Randall Williams and I
13 practice law right here in Edgefield. It's a
14 strange thing to come behind Mr. Calhoun and both
15 Mr. Maye who are very well-spoken guys, but I'm just
16 an 'ol boy from Saluda, so I use certain phrases and
17 terms that may not be quite as eloquent as those of
18 my colleagues.

19 But I will say this, that my preacher, he has
20 always used this particular term or this particular
21 phrase, it says, There's so much good in the worst
22 of us, there's so much bad in the best of us that it
23 leaves little room for any of us to stand in
24 judgment of the rest of us. But that's exactly what
25 we're doing here today asking you all to stand in

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1 judgment and that's a heavy duty, burden and quite
2 attached I submit to you.

3 I'm going to ask you to take very seriously the
4 oath that you have taken and I'm going to ask you to
5 consider certain things that have already been
6 touched upon and that is the credibility of the
7 witnesses who take this stand, the motivations that
8 they have to say one thing or another.

9 And there's one other very important thing that
10 I'm going to ask you to also consider is
11 Investigator Roosevelt Young, who was mentioned by
12 the Solicitor, and the informant tip that he
13 received, okay. Well, an informant, in my
14 experience, is usually someone who's trying to save
15 his hide and he will give up anybody, anything that
16 he thinks will save his hide. The truth of it
17 doesn't have to even register in his mind and will
18 not register in his mind, but how can I save my
19 hide.

20 I suggest to you that what you will see is that
21 Alvin Phillips, 17 years old at the time, was
22 approached by law enforcement to include a SLED
23 agent by the name of Mike Perry, okay, Investigator
24 Chris Wash of the sheriff's office, a 17-year-old
25 boy. There's already information plant -- and I

1 want you to pay particular attention to the dates in
2 which these things occur.

3 There was an old lawyer from Horry County by
4 the name of J. Reuben Long. The detention center is
5 named after him out in Horry County. I certainly
6 hope no one's ever had the pleasure of knowing that.
7 But in any event, J. Reuben Long said, In order to
8 know which way the wind is blowing, you have to look
9 at the little things. You don't look at the trunks
10 of the trees, but rather you look at the leaves, the
11 little twigs and then you can tell the way the wind
12 is blowing. You can see the direction of the wind
13 by looking at the little things.

14 Now, I'm going to ask y'all to consider the
15 little things because there are going to be some
16 dates that are going to create certain patterns of
17 behavior in the State's witnesses, okay.

18 August the 14th is when this allegedly
19 occurred, August the 14th, but there was not an
20 arrest until September, I believe, 29th of 2008,
21 some -- more than a month later, okay. And, also,
22 you're going to see that that so-called informant,
23 it was his information that pushed this
24 investigation toward my client, Mr. Bryan Jordan
25 Phillips.

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1 Ladies and gentlemen, I ask that you take your
2 oath seriously, that you presume my client innocent.
3 Just as Mr. Calhoun asked you, presume my client
4 innocent.

5 And why do we do that? Of course, he's already
6 told you that we live in, I believe, the greatest
7 nation on this earth. And our founders had a
8 substantial belief in fairness, fundamental
9 fairness.

10 And as I look around the walls of this
11 courtroom and I look at these great men, these great
12 thinkers, they all believed in the notions of
13 justice. And in this system of justice that we
14 have, we're to presume citizens accused innocent as
15 though I had brought my client into this courtroom,
16 it's described as a robe of righteousness, as though
17 I brought him into this courtroom veiled in which
18 you could not see and you would not know whom was
19 behind the veil or who it was behind the veil. I
20 think that that is the best way you can truly
21 presume one innocent.

22 Just take it out of your mind who you see, what
23 you see. Pretend as though you cannot see anyone
24 and that you're not sure if it's a preacher behind
25 that veil. You're not sure if it's a doctor behind

1 that veil. You're not sure if it's someone you know
2 well behind that veil. That's how you presume
3 someone innocent. You give him that benefit of the
4 doubt. You give him that robe of righteousness and
5 that's what I'm asking you to do on behalf of my
6 client Bryan Phillips.

7 It's already been discussed, I'm not going to
8 belabor the point, but I believe once this case gets
9 underway, you will see that it's going to be very
10 difficult, very difficult for a young man to be
11 absolutely believable who has a number of charges
12 pending against him, okay. Mr. Calhoun described it
13 as a huge dog in this fight. I describe it as a
14 sledge hammer sitting over his head. You do what I
15 say or what we want you to do or else we're going to
16 lower the boom on you. I believe that we'll be able
17 to show that to you.

18 I thank you for your time. I thank you for
19 this opportunity to address you. Thank you.

20 **THE COURT:** Thank you, Mr. Williams.
21 Solicitor, who's your first witness?

22 **MR. MAYE:** Mr. Ji Quing Chen.

23 **THE COURT:** Does he have difficulty with
24 English?

25 **MR. MAYE:** We definitely need the interpreter.

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1 He doesn't speak a word of English.

2 **THE COURT:** Folks, we've got to get set up out
3 here. I promise you you won't be back there more
4 than ten minutes. If you are, I'll bring you out
5 and send you to lunch, all right, but let us get set
6 up. And then we've got to give the interpreter an
7 oath in your presence and we'll do the first witness
8 and then at some point around one o'clock, break for
9 lunch. Don't discuss the case. Just step back
10 there briefly while we get set up, all right.

11 (The jury retires to the jury room.)

12 **THE COURT:** Court's at ease for ten minutes.

13 (Brief recess.)

14 **THE COURT:** If y'all need time to talk, that's
15 fine, but I'm going to send the jury to lunch, okay.

16 **MR. WILLIAMS:** Yes, sir.

17 You don't have any problem with that, do you?

18 **MR. MAYE:** No, I don't have any problem,
19 whatever y'all want to do, doesn't make a difference
20 to me.

21 **MR. CALHOUN:** Judge, we wanted to bring this to
22 your attention before you do send them to lunch. We
23 would like to do a proffer of Alvin Phillips'
24 testimony, so maybe you can take that into
25 consideration when you tell them what time to get

1 back. I don't know what order they're going to be
2 calling their witnesses, but before Mr. Phillips
3 testifies, we would like to do that.

4 MR. WILLIAMS: On the basis of statements that
5 he had made, that we believe he made prior to
6 actually offering testimony against our clients at
7 his plea.

8 MR. MAYE: I've got three Chinese witnesses
9 before he testifies. We can go on and do our
10 Chinese witnesses and we're done with our
11 interpreter at that point in time as far as I know.

12 THE COURT: Let's do that after that. I can
13 send the jury home early if I need to or something.
14 I really don't understand what it is you all are
15 going to ask me to do. If he gave inconsistent
16 statements, that's a jury issue. It's not really
17 anything for me.

18 MR. WILLIAMS: I guess the issue is is I just
19 want to make sure that he doesn't allege that he
20 didn't write it is what I'm concerned about.

21 THE COURT: He did not write a written
22 statement that you have?

23 MR. WILLIAMS: Yes, Your Honor.

24 MR. MAYE: Your Honor, I think the issue is the
25 defendants -- the allegation is the defendants got

1 him to sign a statement and I think they're wanting
2 to get involved into some hearsay from that, but I
3 think we can do that. It will be a while before
4 they testify. By the time we got direct and through
5 cross, we're going to be into this afternoon before
6 we ever get to that point.

7 (The jury returns to the courtroom.)

8 **THE COURT:** During the break, some initial
9 delays came up, so I'm going to send you to lunch.
10 I need you back at 1:45. Don't discuss the case.
11 Please be back in the jury room at 1:45. I think
12 I've allowed plenty of time. Any questions?

13 (There was no response.)

14 **THE COURT:** All right. Please be in the jury
15 room at 1:45. Remember all of those admonitions
16 about not discussing the case and not allowing
17 yourselves to be exposed to any media coverage.
18 Thank you.

19 (The jury was excused for lunch.)

20 **THE COURT:** Do you need them to talk to your
21 clients up here? Are they transporting them --

22 **MR. WILLIAMS:** Right here is fine.

23 **THE COURT:** Y'all just work it out with
24 security, okay.

25 Court's in recess until 1:45.

1 (Whereupon, there was a luncheon recess.)

2 THE COURT: Is the State ready for the jury?

3 MR. MAYE: The State's ready, Your Honor.

4 THE COURT: Are you ready, Mr. Calhoun?

5 MR. CALHOUN: Yes, sir.

6 THE COURT: Mr. Williams?

7 MR. WILLIAMS: Yes, sir, Your Honor.

8 THE COURT: All right. Now, the interpreter is
9 just going to be interpreting for the witnesses,
10 correct?

11 MR. MAYE: That's correct.

12 THE COURT: So the purported victims, they
13 understand they won't have the benefit of
14 interpreting during the trial?

15 MR. MAYE: Yes, they do. I have an interpreter
16 that is with them, but she's not going to be
17 interpreting live. The State will call Mr. Ji Quing
18 Chen first, I think, is the one we're calling first.

19 THE COURT: Bring the jury in, please.

20 MR. WILLIAMS: Before the jury is brought, Your
21 Honor, on behalf of my client, I'm going to move to
22 sequester the witnesses from the courtroom.

23 THE COURT: Who are they?

24 MR. MAYE: The victims. I think they've got a
25 right to be present if they want to and

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1 sequestration wouldn't extend to them. The only one
2 I have, I guess it would extend to, would be Zac
3 Strom and I'll ask him to leave.

4 THE COURT: Mr. Strom, I need you to step in
5 the back. You can't discuss your testimony with
6 anybody or you can't discuss anything with anybody
7 else that happened in the courtroom.

8 MR. WILLIAMS: Thank you, Your Honor.

9 THE COURT: The other ones, if they're victims,
10 purported victims, the Victim Bill of Rights gives
11 them the right to stay in the courtroom.

12 MR. WILLIAMS: Yes, sir.

13 THE COURT: Plus, they said they don't speak
14 English or at least some of them don't.

15 MR. MAYE: Very limited.

16 MR. WILLIAMS: The only concern I have is that
17 the testimony might become somewhat influenced even
18 though it's being translated. I was concerned that
19 it might become influenced one by the other, but
20 given that they are all victims, I understand the
21 Court's ruling.

22 THE COURT: Well, we amended the constitution
23 in South Carolina to give them the right to stay in
24 the courtroom. I think I can still exclude them,
25 but I never do. It's a constitutional -- bring the

JI QUING CHEN - DIRECT BY MR. MAYE

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1 jury in.

2 (The jury returns to the courtroom.)

3 THE COURT: All right. Ladies and gentlemen,
4 I've been informed the first juror -- excuse me --
5 the first witness is someone who will require
6 translation. And I've already introduced you to
7 Mr. Ming Louie. He's going to be placed under the
8 oath of a translator first and then the State will
9 call its first witness.

10 Madame Clerk.

11 (Whereupon, the interpreter was duly sworn
12 by the Clerk of Court.)

13 THE COURT: All right. Ji Quing Chen.

14 JI QUING CHEN,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MAYE:

18 (Through the interpreter)

19 Q Sir, would you tell the ladies and gentlemen of
20 the jury where you're originally from?

21 A China.

22 Q How long have you been in the United States?

23 A Over 20 years.

24 Q What is your place of business? What do you do
25 as a business?

JI QUING CHEN - DIRECT BY MR. MAYE

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- 1 A In restaurant.
- 2 Q Where? What city is this restaurant in?
- 3 A Hong Kong Restaurant.
- 4 Q Hong Kong Restaurant, okay. On August 14,
- 5 2008, the day of this incident --
- 6 A I'm sorry, repeat that please.
- 7 Q On August the 14th of 2008, the day this
- 8 incident took place, who all was working with him at
- 9 the restaurant?
- 10 A Myself, my son and my wife.
- 11 Q What are their names?
- 12 A Li Ai Ming, Li Guan Xin.
- 13 Q About what time did they leave the restaurant
- 14 that day?
- 15 A Roughly around ten o'clock, 10:30.
- 16 Q Where did they go when they left the
- 17 restaurant?
- 18 A Go home.
- 19 Q Where was his residence? Where did he live in
- 20 Johnston?
- 21 A Near the restaurant.
- 22 Q Near the restaurant, okay. What happened when
- 23 they got home?
- 24 A Both of them had went into the house.
- 25 Q Who went into the house?

JI QUING CHEN - DIRECT BY MR. MAYE

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1 **A** Two of them went into the house.

2 **Q** Tell me the name, which two?

3 **A** Li Ai Ming and Li Guan Xin.

4 **THE COURT:** Say that again. Which two in the
5 house?

6 **INTERPRETER:** Li Ai Ming and Li Guan Xin.

7 **THE COURT:** That's number one and number five
8 on the list.

9 **BY MR. MAYE:**

10 **Q** What did he do when he got home?

11 **A** I'm sorry?

12 **MR. MAYE:** It's kind of hard to do this through
13 the interpreter.

14 **Q** What did you do when you first got home at your
15 residence?

16 **INTERPRETER:** Excuse me, I have to understand
17 what he's saying.

18 (A conversation was held between the
19 interpreter and the witness.)

20 **THE COURT:** Hold on a minute. You have to do
21 this verbatim, you understand?

22 **INTERPRETER:** All right.

23 **THE COURT:** Pose your question again.

24 **BY MR. MAYE:**

25 **Q** Let me ask a short question. What was the

JI QUING CHEN - DIRECT BY MR. MAYE

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- 1 first thing you did when you arrived home?
- 2 A They poured water, watering.
- 3 Q Watering what?
- 4 A When I see them and I stop watering.
- 5 Q What was he watering?
- 6 A Next to the house.
- 7 Q Okay. Who did he see? What is a description
- 8 of who he saw at the corner of the house?
- 9 A Three black guys.
- 10 Q Okay. What happened when he saw the three
- 11 black men?
- 12 A He forced me down and took my wallet.
- 13 Q What happened next?
- 14 THE COURT: I didn't understand, I'm sorry.
- 15 Say it again.
- 16 INTERPRETER: He pressed me down and took my
- 17 wallet.
- 18 BY MR. MAYE:
- 19 Q What happened next?
- 20 A And he pointed a gun on my head.
- 21 Q Did he receive any injury?
- 22 A He hit my head.
- 23 Q Okay. What happened next?
- 24 A I was stayed there for a while and then my son
- 25 come out.

JI QUING CHEN - DIRECT BY MR. MAYE

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1 Q Was he -- were you able to leave from where the
2 three men were?

3 A No. He pressed me down.

4 Q What happened when your son came outside?

5 A He saw I'm real dangerous -- I mean, danger, he
6 saw me I'm in danger.

7 Q What happened next when his son came outside?

8 A He was pressed down by -- he was down again.

9 Q Who was pressed down again?

10 A The three black guys.

11 Q Who did the three black guys press down other
12 than him?

13 INTERPRETER: I asked him to repeat.

14 THE COURT: Shirley, can you turn that thing up
15 anymore?

16 (Pause.)

17 MR. MAYE: Other than you --

18 THE COURT: Wait a minute. I didn't get his
19 last answer.

20 What was his last question?

21 COURT REPORTER: Who did the three black guys
22 press down other than him?

23 INTERPRETER: The three black guy press me and
24 my son.

25 BY MR. MAYE:

JI QUING CHEN - DIRECT BY MR. MAYE

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1 Q What happened next?

2 A My son said, If you need money, you can go
3 inside the house and get it.

4 Q Okay. Were the three black men speaking to
5 him?

6 A No. I don't understand English.

7 Q After your son told the men that they could go
8 inside, what happened next?

9 A That the two guy go and get the bag. One stay
10 outside and one go inside the house.

11 Q Okay. What was taken from you directly?

12 A My wallet.

13 Q What was in your wallet?

14 A License, credit card, cash, 300 dollar cash.

15 THE COURT: How much cash?

16 INTERPRETER: Three hundred dollar. And, also,
17 cigarettes and lighter.

18 BY MR. MAYE:

19 Q Okay. After the man went inside, what was the
20 next thing that happened?

21 A They took the wallet and then three of them ran
22 away.

23 MR. MAYE: Answer any questions the defense has
24 for you.

25 THE COURT: All right. Cross.

JI QUING CHEN - CROSS BY MR. CALHOUN

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1 MR. CALHOUN: Please the Court.

2 CROSS-EXAMINATION

3 BY MR. CALHOUN:

4 Q Sir, I read the police investigative report.

5 A The police have report.

6 Q The police report. And the only description
7 you gave the police officers --

8 MR. CALHOUN: Your Honor, I'm going to break up
9 my questions so the interpreter can remember all the
10 words to make it easier for the interpreter.

11 INTERPRETER: Okay. Yeah.

12 BY MR. CALHOUN:

13 Q The only description that you gave the police
14 officers was that it was three black men that robbed
15 you that night, correct?

16 A He took my wallet and cigarettes.

17 Q Please answer the question yes or no. Isn't it
18 true that the only description you gave the police
19 officers that night was that three black men robbed
20 you?

21 A Yes.

22 Q Yes. You didn't give the police officers the
23 height of any of these three men; isn't that
24 correct?

25 A No.

JI QUING CHEN - CROSS BY MR. CALHOUN

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- 1 Q And you didn't tell the police officers what
2 types of clothes either of these three men were
3 wearing; isn't that correct?
- 4 A No.
- 5 Q Did you describe to the police officers what
6 types of shoes any of these three men were wearing?
- 7 A No.
- 8 Q Did you describe the type of voices that they
9 spoke in, whether it was a high voice or a low
10 voice?
- 11 A No.
- 12 Q Did you attempt to give the police any type of
13 weight of any of these three gentlemen?
- 14 A No.
- 15 Q Did you describe their builds as being slim or
16 heavy or fat or anything of that nature?
- 17 A No.
- 18 Q Did you tell the police whether or not any of
19 them were wearing jewelry such as a ring or a
20 necklace or a bracelet?
- 21 A No.
- 22 Q Did you describe their accent, whether it was a
23 southern accent or a northern accent or anything of
24 that nature?
- 25 A No.

JI QUING CHEN - CROSS BY MR. CALHOUN

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1 Q You've testified that one of the gentlemen went
2 inside the house to find the bag; is that correct?

3 A Yes.

4 Q So this gentleman went inside the house, then
5 afterwards, I assume, came outside the house with a
6 bag of money?

7 A One bag, took the one bag.

8 Q Okay. And was he inside the house for ten
9 minutes?

10 A No.

11 Q Five minutes?

12 A Very quickly, came out very quickly.

13 Q Okay. How many minutes was he inside the
14 house?

15 A I don't know. I didn't have a watch.

16 Q Okay. Is it possible he was inside the house
17 for as long as five minutes?

18 A Probably not.

19 Q Okay. Thank you. Finally, you told the jury
20 that amongst some other items that were removed,
21 such as your wallet, that a package of cigarettes
22 was taken from you?

23 A Yes.

24 Q And what brand of cigarettes was that?

25 A Marlboro.

JI QUING CHEN - CROSS BY MR. WILLIAMS

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1 Q And can you describe the lighter that was taken
2 from you?

3 A White.

4 Q Excuse me?

5 A White.

6 Q A white lighter?

7 A White lighter.

8 Q Did the lighter have a brand?

9 A No.

10 MR. CALHOUN: All right. Thank you.

11 That's all I have, Your Honor.

12 THE COURT: Thank you.

13 Mr. Williams.

14 MR. WILLIAMS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. WILLIAMS:

17 Q Sir, I just have a few questions. You
18 described the individuals as three black guys to the
19 police officers?

20 A Yes.

21 Q Now, this would have been in the nighttime,
22 would it not?

23 A Yes.

24 Q Were you able to make out any distinguishing
25 details of their faces?

JI QUING CHEN - CROSS BY MR. WILLIAMS

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1 A Face covered.

2 Q Were you able to see if any of the gentlemen
3 might have had dental work that contained gold?

4 A Face covered.

5 Q Were you able to notice the colors of their
6 respective eyes?

7 A No. He only see the hands, black.

8 Q And would their hands look something like -- or
9 would have looked something like my hands?

10 A Darker than that.

11 Q They were darker than my hands?

12 A Yeah.

13 Q Did you see only one gun?

14 A Yeah, only see one gun. I don't see the
15 others.

16 THE COURT: Say that again, please.

17 INTERPRETER: I only see one gun.

18 BY MR. WILLIAMS:

19 Q All right. And the gunman, the one with the
20 gun is the one that stayed with you; is that right?

21 A Yes, he pointed it at me.

22 MR. WILLIAMS: Court's indulgence, Your Honor.

23 THE COURT: Yes.

24 (Pause.)

25 BY MR. WILLIAMS:

JI QUING CHEN - CROSS BY MR. WILLIAMS

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1 Q As it relates to the number of people who
2 entered into your home, how many foreigners or
3 outsiders entered into your home?

4 A Will you --

5 Q Do you need me to repeat that question?

6 A Yeah, please.

7 Q How many of the three black men actually went
8 inside of your home?

9 A One.

10 Q Just one?

11 A Yeah, one rush inside and took the bag.

12 Q And to your recollection, did the one that
13 rushed inside have a gun?

14 A I did not see it.

15 Q And no doubt the respective hands of all of
16 them were darker than mine (indicating)?

17 A Yes. At nighttime, especially at nighttime.

18 Q Did you notice the length of any of the black
19 men's hair?

20 A I cannot see it.

21 Yeah, I was scared and I was pressed down. I
22 was afraid to look at them.

23 THE COURT: What was the last thing you said?

24 INTERPRETER: I was afraid to look at them. I
25 was pressed down.

JI QUING CHEN - REDIRECT BY MR. MAYE

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1 **THE COURT:** Afraid to do what?

2 **MR. WILLIAMS:** Afraid to look at them. He was
3 pressed down.

4 Thank you, Your Honor. I have no further
5 questions.

6 **THE COURT:** Redirect.

7 **MR. MAYE:** Just a couple.

8 REDIRECT EXAMINATION

9 BY MR. MAYE:

10 **Q** Did you have the benefit of an interpreter to
11 talk to the police that night at all?

12 **A** No.

13 **Q** Was it daytime or nighttime?

14 **A** Nighttime.

15 **MR. MAYE:** Nothing else.

16 **THE COURT:** Recross.

17 **MR. CALHOUN:** Briefly, Your Honor.

18 RE CROSS-EXAMINATION

19 BY MR. CALHOUN:

20 **Q** Sir, you're not telling this jury that you were
21 not able to communicate with the police that night,
22 are you?

23 **A** I cannot speak English.

24 **Q** Well, someone told the police that you were
25 robbed, correct?

JI QUING CHEN - RE CROSS BY MR. CALHOUN

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1 A Yes.

2 Q Someone that could speak English, correct?

3 A I don't know how to speak English.

4 He said, well, my son report to the police.

5 Q Your son was interpreting for you?

6 A Yeah, my son interpreted for me.

7 Q So your son had the opportunity to tell the
8 police everything that you saw and experienced that
9 night, correct?

10 A My son report to the police.

11 Q I can't hear you.

12 A My son report to the police.

13 Q Okay. And you told your son what happened that
14 night, correct?

15 A Yes.

16 MR. CALHOUN: Thank you. That's all I have,
17 Judge.

18 THE COURT: Mr. Williams.

19 MR. WILLIAMS: Nothing further.

20 THE COURT: Anything else of the witness?

21 MR. MAYE: No. Thank you.

22 THE COURT: Tell him thank you. He may step
23 down.

24 Call your next witness.

25 MR. MAYE: State call Li Guan Xin.

LI GUAN XIN - DIRECT BY MR. MAYE

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1 LI GUAN XIN,
2 having been duly sworn, testified as follows:

3 **THE COURT:** Ask him what his name is.

4 **INTERPRETER:** Li Guan Xin.

5 DIRECT EXAMINATION

6 BY MR. MAYE:

7 (Through the interpreter)

8 **Q** What do you do for a living?

9 **A** I work in a restaurant.

10 **Q** Where is the restaurant?

11 **A** Johnston, Hong Kong.

12 **Q** Would that be Johnston, South Carolina?

13 **A** Yes.

14 **Q** Okay. What is the name of the restaurant?

15 **A** Hong Kong.

16 **Q** Okay. Do you know what county Johnston is in?

17 **A** What is that?

18 **Q** Where were they living -- where was he living
19 at the time?

20 **A** Johnston, Edgefield.

21 **Q** Okay. Where were you, your wife, your mom,
22 your children and your father all living at that
23 time, what address?

24 **A** We live next to the restaurant, about one
25 minute driving distance.

LI GUAN XIN - DIRECT BY MR. MAYE

201

- 1 Q Okay. Was the place the police responded to
2 the place where they were robbed and living?
3 A Yes.
4 Q Who went to work that day on August the 14th of
5 2008? Who ran the store, the Hong Kong?
6 A Me, my mother and my father.
7 Q Okay. What, if anything, did y'all bring --
8 did you three bring home with you from the
9 restaurant?
10 A A bag.
11 Q What was in the bag?
12 A Money.
13 Q How much money was in the bag?
14 A Three thousand.
15 Q How do you know how much money was in that bag?
16 A Because I know that next day I have to pay the
17 worker money.
18 Q Who put the money in the bag?
19 A I.
20 Q What time did you leave to go home from work
21 that day?
22 A Roughly 10:30.
23 Q What happened when you first got home?
24 A My father tend to the flower and the three guy
25 come. They have a point (inaudible) --

LI GUAN XIN - DIRECT BY MR. MAYE

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1 **COURT REPORTER:** I'm sorry, can you repeat that
2 for me?

3 **INTERPRETER:** The three guy have a gun point at
4 me and ask me to come over.

5 **BY MR. MAYE:**

6 **Q** When you first got home, where did you go to
7 start with?

8 **A** I go in the house.

9 **Q** Why did you go outside?

10 **A** My father's outside and didn't come in and I
11 went out to see him.

12 **Q** What happened when you first got outside, when
13 you went outside?

14 **A** That's when I saw a person point a gun at me
15 and asked me to come over.

16 **Q** Other than your father, how many people were
17 there?

18 **A** Three.

19 **Q** What did they all do after they pointed the
20 gun -- after one pointed the gun at you?

21 **A** He asked me to come over and kneel down.

22 **Q** What did they say?

23 **A** Where's the money.

24 **Q** How many times did they say that, more than
25 once?

LI GUAN XIN - DIRECT BY MR. MAYE

203

- 1 A Yes.
- 2 Q What did you do when they demanded money?
- 3 A I say it's in the house.
- 4 Q Were you and your father free to leave while
- 5 they were pointing the gun at you and holding you on
- 6 the ground?
- 7 A We are scared. We did not move.
- 8 Q What happened next?
- 9 A That's when they rushed into the house.
- 10 Q How many men went in the house?
- 11 A Two. One did not go in, one went inside to get
- 12 the bag.
- 13 Q Only one went inside to get the bag?
- 14 A Yes.
- 15 Q What was the next thing you saw?
- 16 A They take the bag and they make a little noise
- 17 and then they quickly went away.
- 18 Q When the one man ran out of the house, what did
- 19 the two that were holding you and your father down
- 20 do?
- 21 A They ran away together.
- 22 Q How much English can you speak?
- 23 A Little bit.
- 24 Q Was it daytime or nighttime when the men held
- 25 them down at gunpoint?

LI GUAN XIN - CROSS BY MR. CALHOUN

204

1 A Nighttime.

2 Q Were the men black men or white men?

3 A Black guy. I kind of see his hands black.

4 Q After the men left, what did you do?

5 A Report -- call the police.

6 Q Who called the police?

7 A Me.

8 Q What all was taken by the men, three of them
9 collectively, what was everything that was taken?

10 A The bag and then my father's wallet.

11 Q Was anything taken from you?

12 A No.

13 MR. MAYE: Answer any questions the defense has
14 for you.

15 THE COURT: Mr. Calhoun.

16 MR. CALHOUN: May it please the Court.

17 CROSS-EXAMINATION

18 BY MR. CALHOUN:

19 Q Was anything taken from you other than your
20 wallet?

21 A It's a big bag and a small bag.

22 Q A paper and a small pen were taken from you?

23 A There's a paper inside, too.

24 THE COURT: What did you say?

25 INTERPRETER: Paper inside the bag.

LI GUAN XIN - CROSS BY MR. CALHOUN

205

1 BY MR. CALHOUN:

2 Q There's a paper inside the bag is that what
3 he's saying?

4 A Yes.

5 Q Okay. And a pen was taken from him; is that
6 correct?

7 A I don't know.

8 Q You're the one that called the police?

9 A Yes.

10 Q Did you tell the police the height of any of
11 these three gentlemen that you claim robbed you?

12 A No.

13 Q Did you tell the police the color of the shirt
14 of any of the three men that robbed you?

15 A No.

16 Q Did you tell the police the type or color of
17 the pants of any of these three men?

18 A No.

19 Q Did you describe the length of their hair?

20 A No.

21 Q Did you tell them about any jewelry any of them
22 may have been wearing?

23 A No.

24 Q Did you tell them whether any of these guys had
25 a watch on?

LI GUAN XIN - CROSS BY MR. WILLIAMS

206

1 A No.

2 Q Did you describe their voice?

3 A No.

4 Q Did you tell the police anything other than it
5 was three black men?

6 A No.

7 MR. CALHOUN: That's all I have, Judge.

8 THE COURT: Mr. Williams.

9 MR. WILLIAMS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. WILLIAMS:

12 Q Sir, I must confess, it's my understanding you
13 run the restaurant along with your father?

14 A Mostly me.

15 Q Okay. And most of your customers speak
16 English, don't they?

17 A Yes.

18 Q Are you able to communicate effectively?

19 A Not really effective.

20 Q I should have finished the question, but with
21 your customers, are you able to communicate
22 effectively with your customers?

23 A When they make the order, it's good, but other
24 than that, it's not very effective.

25 Q He is able to count money in English I take it.

LI GUAN XIN - CROSS BY MR. WILLIAMS

207

- 1 He knows five dollars, doesn't he?
- 2 A Yes.
- 3 Q Exactly. I want to make sure I'm very clear on
- 4 this. Do you recall if more than one person went
- 5 into your home?
- 6 A Say one more time, please.
- 7 Q Does he recall if more than one black male
- 8 entered his home?
- 9 A What that mean?
- 10 Q I'm sorry?
- 11 A I repeat the question.
- 12 Q Sure.
- 13 A One person went into.
- 14 Q Were you able to tell the individual where the
- 15 bag was kept?
- 16 A One more time?
- 17 Q Were you able to tell the individual that went
- 18 into the home where the bag was kept?
- 19 A No.
- 20 Q Other than the black male that went into the
- 21 home, who was already inside the home while both he
- 22 and his father were outside?
- 23 A My mother and my daughter in the house.
- 24 Q Not his wife?
- 25 A No.

LI GUAN XIN - CROSS BY MR. WILLIAMS

208

- 1 Q Does his mother speak English?
- 2 A No.
- 3 Q How old is his daughter?
- 4 A She's over three years old.
- 5 Q Right now today she's three years old?
- 6 A Over four years, over four years now.
- 7 Q At the time of this incident, how old was his
- 8 daughter?
- 9 A Three, over three years old.
- 10 Q Where was the bag kept?
- 11 A It's on top of the desk and you can see it when
- 12 you go in inside.
- 13 Q Could you see anything other than their hands,
- 14 the black males?
- 15 A No.
- 16 Q Who called the police?
- 17 A Me.
- 18 Q What did you report?
- 19 A I say three black guy rob us.
- 20 Q And tell him I'm not trying to be cute, but he
- 21 didn't speak Mandarin when he called 9-1-1, did he?
- 22 A No.
- 23 Q What was taken from your person?
- 24 A No.
- 25 Q Nothing?

LI GUAN XIN - CROSS BY MR. WILLIAMS

209

1 A No.

2 Q Are you absolutely certain that two individuals
3 remained outside while one individual went inside?

4 A One person inside, one person outside. And
5 then another person press me.

6 Q All right. So there's no doubt that there were
7 three in your mind?

8 (A conversation was held between the
9 interpreter and the witness.)

10 MR. WILLIAMS: Your Honor, I object to a
11 conversation between the two.

12 THE COURT: It's got to be verbatim, whatever
13 he asks, you translate, whatever he says, you --

14 INTERPRETER: Can I repeat it? Okay, yes.

15 THE COURT: Ask your question.

16 MR. WILLIAMS: Thank you, Your Honor.

17 BY MR. WILLIAMS:

18 Q Are you absolutely certain that there were
19 three individuals involved in this incident?

20 A Yes.

21 Q How many guns, if any, did you see?

22 A He only saw one.

23 Q Could you make out the characteristics of the
24 gun?

25 A I don't remember.

LI GUAN XIN - REDIRECT BY MR. MAYE

210

1. Q Was it black or silver?

2 A I don't know.

3 Q Could you tell if it was square or a revolver?

4 A I don't remember.

5 Q Are you absolutely certain you saw a gun?

6 A Yes.

7 MR. WILLIAMS: Court's indulgence, Your Honor.

8 THE COURT: Yes.

9 (Pause.)

10 MR. WILLIAMS: Thank you, sir.

11 THE COURT: Redirect.

12 MR. MAYE: Just very briefly.

13 REDIRECT EXAMINATION

14 BY MR. MAYE:

15 Q Name everyone that was on the property either
16 inside or outside the house other than the three men
17 that robbed you, all family members that were there?

18 A Me and my father outside, my mother and my
19 daughter were inside the house.

20 Q Where was your wife?

21 A He besides me did not see the robbery. She did
22 not see the robbery.

23 Q Was she on the property?

24 A Yes, outside in the garden.

25 Q What were the names of everyone that was there

LI GUAN XIN - REDIRECT BY MR. MAYE

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1 including his wife who walked outside?

2 A Yan Fang Lin.

3 Q Who is that?

4 A My wife.

5 Q What is your daughter's name?

6 A Selina Li.

7 Q What was your father's name?

8 A Ji Quing Chen.

9 Q What is your name?

10 A Li Guan Xin.

11 MR. MAYE: Nothing else. Thank you.

12 THE COURT: Recross.

13 MR. CALHOUN: No, Your Honor.

14 MR. WILLIAMS: No, sir.

15 THE COURT: Tell him thank you. He may step
16 down.

17 Ladies and gentlemen, we're going to take a ten
18 minute break, then we'll get you back out here.
19 Don't discuss the case.

20 (The jury retires to the jury room.)

21 THE COURT: Are there other witnesses that
22 require an interpreter?

23 MR. MAYE: One more.

24 THE COURT: Court's in recess for ten minutes.

25 (Brief recess.)

1 (Court's Exhibit Number 3, jury note, marked
2 for identification purposes.)

3 THE COURT: Is the State ready for the jury?

4 MR. MAYE: The State's ready.

5 THE COURT: Defense?

6 MR. WILLIAMS: Yes, sir.

7 THE COURT: Do y'all have enough legal pads and
8 all for them?

9 THE CLERK: Yes, sir.

10 THE COURT: I got a note during the break from
11 the foreman indicating that the jury wanted note
12 pads and pens so they can take notes. The note from
13 the foreman is right there if anybody wants to look
14 at it, but that's basically what it says. It's a
15 Court's Exhibit.

16 All right. Bring the jury in.

17 (The jury returns to the courtroom.)

18 THE COURT: Mr. Foreman, I received a note from
19 the jury indicating that there's a question about
20 whether you all can take notes and I had the Clerk
21 get legal pads for you or paper and pen. It's fine
22 with me if you take notes. I do have to give you
23 the following instructions, though.

24 Judges who do not allow jurors to take notes,
25 the reason they give most often for not allowing

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1 that is that they're concerned that when you go back
2 to deliberate, that a juror who has something
3 written down will be given an undue amount of
4 deference by the other jurors who don't have things
5 written down, in other words, that you will unduly
6 yield to what's written. I don't buy into that at
7 all. You know what you remember. You know what
8 you're strongly convinced about. It's perfectly
9 fine with me if you take notes.

10 They tell us that if we allow you to take
11 notes, that we have these rules: First, during any
12 break when you leave the courtroom, just leave your
13 notes in your chair upside down. So you'll need to
14 write your name somewhere where it can be seen.

15 During overnight breaks, extended breaks, the
16 bailiff will take up your notes. We do not read
17 them. We don't ever read your notes, but we'll take
18 them up and then give them back to you after that
19 long break. When you do go back to the jury room to
20 deliberate on these cases, you are allowed to take
21 your notes with you then.

22 During the deliberations, however, you cannot
23 physically show your notes to anyone else. You may
24 look at your notes and then you may say whatever you
25 like, but you cannot turn the notes to somebody and

1 say, see, I wrote it down right here. You can't
2 physically show your notes to somebody else.

3 And then, thirdly, after the trial is over, you
4 have to give the notes to the bailiff or the Clerk
5 of Court and we destroy them. We shred them or we
6 tear them into little pieces. So if, for any
7 reason, you might have made a note on something that
8 you need to keep, let us know that because we'll
9 take a black magic marker and obliterate whatever
10 you wrote. So the notes are destroyed after the
11 trial.

12 But with those three caveats, you're perfectly
13 welcome to take notes. Everybody who wanted a pad
14 and pencil, did you get it? And if you change your
15 mind later and you want to get something to take
16 notes on, just let us know, we'll be happy to get it
17 for you.

18 All right. Call your next witness.

19 MR. MAYE: The State calls Li Ai Ming.

20 LI AI MING,

21 having been duly sworn, testified as follows:

22 THE COURT: What is your name?

23 INTERPRETER: Li Ai Ming.

24 MR. CALHOUN: Your Honor, I hate to object.

25 here, but I think the interpreter needs to be

LI AI MING - DIRECT BY MR. MAYE

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1 instructed that he needs to get a verbal response
2 from her before he answers questions. She did not
3 give a verbal response as to whether or not she took
4 the oath.

5 She needs to open her mouth and say something
6 before you can say yes or no or answer questions for
7 her.

8 **INTERPRETER:** She did say her name.

9 **MR. CALHOUN:** I didn't see her lips moving.

10 I mean, based on what I just saw, she did not
11 take the oath, Your Honor.

12 **THE COURT:** I can't get into the middle of
13 that. All I can do is reiterate what I said before
14 is to give a verbatim translation.

15 Madame Clerk, do the oath again.

16 **LI AI MING,**

17 having been duly sworn, testified as follows:

18 **THE COURT:** Answer the question.

19 **INTERPRETER:** Yes.

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

21 **DIRECT EXAMINATION**

22 **BY MR. MAYE:**

23 (Through the interpreter)

24 **Q** On August the 14th of 2008, the day of this
25 incident, who was working at the store?

LI AI MING - DIRECT BY MR. MAYE

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1 A Me, my husband and my son, three of us.

2 Q Who was keeping your son's children?

3 A My daughter-in-law.

4 Q About what time did you leave and go back to
5 your house at [REDACTED] Street?

6 A Roughly 10:35.

7 Q Who all lived at that house at [REDACTED]
8 Street?

9 A My daughter-in-law, my granddaughter, three of
10 us. My daughter-in-law take care of the children in
11 the house.

12 Q Did her -- did your husband and your son and
13 you all live there at that residence at [REDACTED]
14 Street?

15 A Yes.

16 Q When you came home from work that night shortly
17 after 10:30, what happened, what did you do?

18 A When we get home, I and my son went into the
19 house and then my husband outside take care of the
20 flower.

21 Q Okay. What happened next?

22 A About five minutes, my son find out that my
23 husband is not entered the house and he went out.

24 Q What happened next?

25 A My son went out and I don't know what happened

LI AI MING - DIRECT BY MR. MAYE

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1 and then suddenly somebody come in, enter the house.

2 Q Was it somebody other than your son or your
3 husband?

4 A My son and my husband was outside.

5 Q Who came into the house? What was the -- what
6 did the person look like that came in the house?

7 A Bad guy, he's covered the face.

8 Q Okay. What did he do when he came in the
9 house?

10 A I said, hmm, hmm, I'm scared. He saw the bag
11 by the desk and he took it.

12 Q During the time the man was in the house, was
13 she free to leave? Could they leave the house?

14 During the time the man came into the house, could
15 she leave the house?

16 INTERPRETER: Can I repeat?

17 MR. MAYE: Yes.

18 A I scared and I don't want to move.

19 Q Okay. Did that keep her or anyone else in the
20 house from leaving?

21 A I scared and I don't want to move.

22 Q Was anything else taken other than the bag?

23 A No. He just grab the bag and ran.

24 MR. MAYE: Answer any questions the defense
25 has.

LI AI MING - CROSS BY MR. CALHOUN

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1 THE COURT: Cross.

2 MR. CALHOUN: Please the Court.

3 CROSS-EXAMINATION

4 BY MR. CALHOUN:

5 Q Ma'am, you saw a man come in the house and take
6 a bag off the desk?

7 A Yes.

8 Q Did you give the police a description of that
9 man?

10 A My son talk to the police.

11 Q Did you give the police a description of the
12 man who took the bag off the desk?

13 A My son told the police.

14 Q Did you give a description to your son of the
15 man that took the bag off the desk?

16 A Yeah, I told my son.

17 Q Okay.

18 MR. CALHOUN: That's all I have, Judge.

19 THE COURT: Mr. Williams.

20 CROSS-EXAMINATION

21 BY MR. WILLIAMS:

22 Q Good afternoon, ma'am. Now, you are Li Ai
23 Ming?

24 A Yes.

25 Q And this incident was very scary for you, was

LI AI MING - CROSS BY MR. WILLIAMS

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1 it not?

2 **A** Yes. I scared for 30 days.

3 **Q** Thirty days. I just have a few questions I
4 want to ask you, okay?

5 **A** Yeah.

6 **Q** Is that okay?

7 **INTERPRETER:** I said please face me.

8 **Q** All right. The individual who came into your
9 home, were you able to make any of his facial
10 features out or recognize or discern any of his
11 facial features?

12 **A** I just have the cover on the face. I didn't
13 see much.

14 **Q** As it relates to your home, where is this desk?
15 As it relates to the front door into your home,
16 where is the desk?

17 **A** The bag's on the desk and he come in and took
18 the bag.

19 **Q** All right. As it relates to the position in
20 your home, is the desk right in the front area or is
21 it further in the back of the home?

22 **A** It's close to the door, very close to the door.

23 **Q** All right. And was it your custom or -- was it
24 your custom to bring that kind of cash home and
25 leave it right there on that desk?

LI AI MING - CROSS BY MR. WILLIAMS

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- 1 A Yes. Yes.
- 2 Q Were you able to discern whether or not the
3 individual spoke at all? Did the individual speak
4 to you? That's a question.
- 5 A I'm sorry?
- 6 Q Did the individual who entered your home speak
7 to you at all?
- 8 A No.
- 9 Q Did the individual who entered your home was he
10 as tall or as heavy, I doubt it, as I am?
- 11 A I didn't see it clearly. I was scared.
- 12 Q Are you certain that the individual who entered
13 your home was a black person?
- 14 A Yes.
- 15 Q Okay. Do you believe the person was male or
16 female?
- 17 A Male.
- 18 Q What makes you believe they were male?
- 19 A He didn't have much hair and I believe he's
20 male.
- 21 Q Were the individual's hands lighter or darker
22 than my hands?
- 23 A I didn't see it clearly.
- 24 Q Did the individual who came into your home have
25 a gun?

LI AI MING - CROSS BY MR. WILLIAMS

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1 A No.

2 Q Did the individual who came into your home have
3 any kind of weapon?

4 A I did not see it.

5 MR. WILLIAMS: Court's indulgence.

6 THE COURT: Yes, sir.

7 (Pause.)

8 BY MR. WILLIAMS:

9 Q I have one final question. Does your son speak
10 English?

11 A Speak a little bit, just some little bit in
12 general.

13 Q When he called 9-1-1, he was speaking English,
14 wasn't he?

15 A Yes.

16 MR. WILLIAMS: I have nothing further.

17 THE COURT: Redirect.

18 MR. MAYE: Nothing else, Your Honor. Thank
19 you.

20 MR. CALHOUN: No, Your Honor.

21 THE COURT: Thank you, you may step down.
22 Is there any further need for the interpreter.

23 MR. MAYE: No, sir, Your Honor, not as far as
24 the State's concerned.

25 THE COURT: Any further need for the

ALVIN PHILLIPS - DIRECT BY MR. MAYE

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1 interpreter that you're aware of?

2 MR. CALHOUN: No, Your Honor, not for
3 Mr. Langford.

4 MR. WILLIAMS: Not for Mr. Phillips.

5 THE COURT: Thank you, you're free to go. You
6 need to get with the Solicitor about the proper
7 forms to submit, okay.

8 INTERPRETER: All right.

9 THE COURT: Thank you.
10 Call your next witness.

11 MR. MAYE: The State calls Alvin Phillips.

12 (State's Exhibit Numbers 1 through 4,
13 photographs, marked for identification.)

14 ALVIN PHILLIPS,
15 having been duly sworn, testified as follows:

16 THE COURT: What's your name, sir?

17 THE WITNESS: Alvin Phillips.

18 THE COURT: All right. Mr. Phillips, is your
19 lawyer in the courtroom?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. Answer Solicitor Maye's
22 questions.

23 DIRECT EXAMINATION

24 BY MR. MAYE:

25 Q Mr. Phillips, just introduce yourself to the

ALVIN PHILLIPS -- DIRECT BY MR. MAYE

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1 ladies and gentlemen of the jury. Tell them where
2 you've grown up and gone to school and who your
3 family members are here.

4 A My name is Alvin Alexander Phillips. I grew up
5 in Johnston at [REDACTED] Lane, off Long Cane. I
6 went to school at Strom Thurmond High School.

7 Q Who is your mother?

8 A Vanessa Phillips.

9 Q Okay. What other family members do you have,
10 Alvin?

11 A My sister name is Veronica Phillips. My aunt's
12 Janie Robinson, Brenda Phillips.

13 Q Mr. Phillips, let me ask you this back on
14 August the 14th of 2008, were you in school or were
15 you out of school at that time?

16 A I was in school.

17 Q Okay. You were in school. Was it summer time,
18 were you out for the summer at that point in time?

19 A Yes, sir.

20 Q Okay. What year were you finishing up and what
21 year were you getting ready to start?

22 A I was finishing up the 11th, getting ready to
23 start the 12th.

24 Q Okay. What school were you going to?

25 A Strom Thurmond High School.

ALVIN PHILLIPS - DIRECT BY MR. MAYE

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1 Q Okay. Where were you living, what living
2 arrangements did you have? Where were you typically
3 staying at that point in time back on August the
4 14th of 2008?

5 A At my sister house.

6 Q Okay. Tell the ladies and gentlemen of the
7 jury where your sister was staying.

8 A [REDACTED] Street in Johnston, South Carolina.

9 Q Okay. If you leave the courthouse here and you
10 go down through Main Street in Johnston, get down to
11 the main drag, where do you go to get to where your
12 sister was living? How would you go there?

13 A You go down 121, go through the town of
14 Johnston and turn off on [REDACTED] Street and you
15 turn -- make a left on [REDACTED]

16 Q Okay. So when you stayed over there, where did
17 you usually stay? Did you have a room that you
18 stayed in there?

19 A Yes, sir.

20 Q Okay. Who else was living at that house other
21 than your sister? Did she have children?

22 A Yes, sir, two children.

23 Q She had two children?

24 A Two sons.

25 Q All right. Let me ask you this. How do you

ALVIN PHILLIPS - DIRECT BY MR. MAYE

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- 1 know Bryan Phillips and who is he to you?
- 2 A He's my first cousin.
- 3 Q Okay. Where was he living at that time?
- 4 A With his mother.
- 5 Q Was it in the same housing authority complex
- 6 there?
- 7 A Yes, sir.
- 8 Q He was living right there. He's your first
- 9 cousin. Were y'all regularly seeing each other
- 10 during that time?
- 11 A Yes, sir.
- 12 Q Were y'all friends and did you do things
- 13 together on a regular basis?
- 14 A Yes, sir.
- 15 Q Okay. How do you know K.C. Langford? Who is
- 16 he to you?
- 17 A My sister, my sister baby daddy. He got a baby
- 18 by my sister.
- 19 Q Okay. That had been her boyfriend at one time
- 20 too, hadn't it?
- 21 A Yes, sir.
- 22 Q Okay. Was he somebody that you were regularly
- 23 around and seeing on a regular basis?
- 24 A Yes, sir.
- 25 Q Okay. In fact, the night that this took place

ALVIN PHILLIPS - DIRECT BY MR. MAYE

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1 where did he actually stay that night later on?

2 Where did he spend the remainder of the night?

3 A At my sister house.

4 Q Did he sometimes come over and stay and visit
5 with y'all?

6 A Yes, sir.

7 Q Okay. Let me ask you this. Let me show you
8 four photographs here that have been marked for
9 I.D., State's 1, State's 2, 3 and 4. Do you
10 recognize that residence there?

11 A Yes, sir.

12 Q Look through each of those photographs, 1
13 through 4 there, just thumb through them briefly.

14 A (Witness complies.)

15 Q Is that the gray wooden house at [REDACTED]
16 Street?

17 A Yes, sir.

18 Q Okay. Back in August of 2008, who was living
19 in that house?

20 A Chinese people.

21 Q Okay. How did you know the Chinese people or
22 how had you seen them? Had you ever been to their
23 restaurant?

24 A Yes, sir.

25 Q Had you seen them -- how far is it from where

ALVIN PHILLIPS - DIRECT BY MR. MAYE

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1 Veronica, your sister, and Bryan lived there in the
2 apartment complex, how far is it over to [REDACTED]
3 Street?

4 A Probably about a minute away, a minute or
5 two --

6 Q Is it within walking distance?

7 A Yes, sir.

8 Q Within easy walking distance, isn't it?

9 A Yes, sir.

10 Q If I can get you to come down here if you
11 would. Just come off the stand.

12 A (Witness leaves the witness stand.)

13 Q Let's look here on this map. If this is the
14 main intersection there in Johnston there at the
15 railroad tracks, where is the restaurant that the
16 Chinese people ran?

17 A (Witness indicates.)

18 Q Okay. Is that the Hong Kong place right there?
19 Is that fairly on this --

20 COURT REPORTER: I can't hear what he's --

21 THE COURT: He's not saying anything at this
22 point.

23 She's got her back to y'all and y'all have got
24 that piece of board between her, she can't see.

25 MR. MAYE: I'll try to reposition it.

ALVIN PHILLIPS - DIRECT BY MR. MAYE

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1 BY MR. MAYE:

2 Q If this is [REDACTED] Street here, roughly on
3 this map, where are the apartments where Veronica
4 and you stay and Bryan lived over there, about where
5 is it on the map?

6 A Somewhere in this area right there
7 (indicating).

8 Q Okay. Go back to your seat.

9 A (Witness resumes the witness stand.)

10 Q Had you seen the Chinese people prior to August
11 the 14th of 2008, had you seen them coming and going
12 between the restaurant and their house?

13 A Yes, sir.

14 Q Who else had noticed them coming and going in
15 between their house?

16 A My cousin, Bryan Phillips.

17 Q Okay. Prior to August the 14th of 2008, what
18 conversations did y'all have about the comings and
19 goings of the Chinese people in between their house
20 and the restaurant? What conversations did you
21 have?

22 A We said that we thought that they might have --
23 be bringing their money home.

24 Q Okay. What led y'all to believe and what
25 conversations did y'all have that indicated to you

ALVIN PHILLIPS - DIRECT BY MR. MAYE

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1 and Bryan that they were bringing money? What did
2 y'all notice and what did you see?

3 A We noticed that they didn't go to the bank
4 after work.

5 Q Okay.

6 A And they always brought a black bag home with
7 them after work.

8 Q Okay. Based on y'all's observations and seeing
9 that, what discussions did y'all have about the
10 Chinese people?

11 A He said he -- my cousin said that -- he had
12 told me one time that he had needed some money and
13 he said that he believed that they bring their money
14 home.

15 Q Okay. Did y'all have discussions about
16 potentially robbing the Chinese people?

17 A Yes, sir.

18 Q Did y'all talk about that prior to August the
19 14th, 2008?

20 MR. CALHOUN: Objection as to leading, Your
21 Honor.

22 THE COURT: Sustained.

23 MR. CALHOUN: Request that he not direct the
24 witness' testimony.

25 THE COURT: Sustained. Phrase your question in

ALVIN PHILLIPS - DIRECT BY MR. MAYE

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1 a nonleading fashion.

2 MR. MAYE: I understand.

3 BY MR. MAYE:

4 Q Prior -- when, prior to August the 14th of
5 2008, did y'all begin talking about this?

6 A Probably about a month earlier.

7 Q Okay. When, before this incident took place,
8 was the last time that y'all had any discussions
9 about it?

10 A Repeat the question again.

11 Q Prior to you going to [REDACTED] Street there
12 that night on August the 14th of 2008, what
13 discussions did you and Bryan have about what y'all
14 were going to do that night?

15 A We said we was going to wait -- go to their
16 house before they come home and go rob them.

17 Q Okay. What was happening there just prior to
18 y'all going to the house at [REDACTED] Street to
19 rob them, what were y'all doing?

20 A Getting ready.

21 Q Okay. What did y'all do in order to get ready
22 to go do this?

23 A He called me and I went in the house and went
24 in the closet where I hid my --

25 Q Who called you?

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1 A My cousin, Bryan Phillips.

2 Q Okay. Who all was around the house there where
3 you and your sister, Veronica, were staying at that
4 time, who was around there?

5 A My mother, my two nephews and K.C. Langford.

6 Q Where was your mother working at the time?

7 A Milliken in Johnston.

8 Q Okay. Tell the ladies and gentlemen of the
9 jury everything y'all did to get ready to go do this
10 robbery.

11 A I went in the house. He called me. I don't
12 know exactly what he did. I know when we met up, he
13 had his ski mask. Well, I went in the house, went
14 in the closet, went in the shoe box where I hid my
15 gun at and got my gun and the ski mask out the shoe
16 box and met him on the front porch.

17 Q What kind of gun did you have, Alvin.

18 A .40 caliber.

19 Q Okay. Was Bryan Phillips, your cousin, aware
20 that you had this gun?

21 A Yes, sir.

22 Q Had y'all had discussions about that?

23 A Yes, sir.

24 Q Okay. Who else ended up going with you when
25 y'all went to go do this robbery of the Chinese

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1 people?

2 A K.C. Langford.

3 Q Okay. How did K.C. Langford get involved in
4 y'all going and doing this robbery?

5 A Before we left, we was fixing to get ready to
6 leave, he came outside and asked us where we were
7 going and we told him we was going to rob the
8 Chinese people. He said he was going too, to hold
9 up, to wait on him. So he went in the house and got
10 ready.

11 Q What did K.C. Langford do to get ready once
12 y'all told him that y'all were going to do this
13 robbery, what did he do?

14 A Changed clothes, put on a dark shirt.

15 Q Okay.

16 A And got a dark shirt, I guess, to put around
17 his face.

18 Q He got a dark shirt to put over his face?

19 A Yeah, as in black.

20 Q Okay. About when did y'all leave there, from
21 the area of the apartment complex, to go over to [REDACTED]

22 [REDACTED] Street to do this robbery?

23 A Probably about between ten o'clock and 10:30.

24 Q Okay. Who all was with you when you left over
25 there to go rob them? Name everybody that was along

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1 with you.

2 A Me, Bryan Phillips, K.C. Langford.

3 Q Okay. Where did y'all go once you got to [REDACTED]

4 [REDACTED] Street, where did y'all go?

5 A To the front yard of the Chinese people house.

6 Q Okay. Let me show you State's Exhibit Number
7 3. Is that a fair and accurate view of the front of
8 the house?

9 A Yes, sir.

10 Q Okay. At the time that y'all did this robbery,
11 what was different about this picture here in
12 between now and the time that you did the robbery?

13 A The bushes were higher.

14 Q You said the bushes were higher?

15 A Yes, sir.

16 Q Okay. Come down here if you would. Just stand
17 up here.

18 A (Witness leaves the witness stand.)

19 Q Which bushes are you talking about that were
20 higher? Point them out on here.

21 A (Witness complies.)

22 Q Okay. They were taller then than they are in
23 this photograph; is that correct?

24 A Yes, sir.

25 Q But this is the house at [REDACTED] Street

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1 that y'all went to?

2 **A** Yes, sir.

3 **Q** When y'all arrived, where did y'all go?

4 **A** Through the backyard, came up on the side, went
5 in the bushes right --

6 **THE COURT:** You've got to speak up.

7 BY MR. MAYE:

8 **Q** A little louder, say that again.

9 **A** Came through the backyard of the house, came up
10 the left side of the house, went in the bushes in
11 the front yard.

12 **Q** All three of you?

13 **A** Yes, sir.

14 **Q** Okay. Take the stand.

15 **A** (Witness resumes the witness stand.)

16 **Q** What was happening -- did you see anybody? Was
17 there anybody home when you first got there?

18 **A** I don't know.

19 **Q** Okay. What did the three of you do once you
20 got there and you're in the -- you said that you
21 came there and y'all got in those tall bushes. What
22 happened next? What was the next thing you saw?

23 **A** We waited until they came home. They came
24 home, we seen that it was -- it was more than one or
25 two of them in the car, so we said we wasn't going

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1 to do it.

2 Q Okay.

3 A And then we was waiting on them to go in the
4 house so we could leave when one came around to
5 check on the garden, they had a garden they had on
6 the side we were, so when he came, I jumped out of
7 the woods -- we jumped out of the woods, but I had
8 the gun. I made him get on the ground. We asked
9 him where the money was, but we didn't understand
10 what he was saying because he was talking in --

11 Q What were you saying to him as you were
12 pointing the gun at him?

13 A Ask him where the money was.

14 Q Okay. Could you understand anything he was
15 saying back?

16 A No, sir.

17 Q Okay. What did the three of you continue to do
18 or what happened next with the three of you there?
19 Y'all got the man, what happened next?

20 A I made him get on the ground. We continued to
21 ask him where the money was. We couldn't understand
22 him. And then probably about a minute or two later,
23 another one came around the house. We made him get
24 on the ground beside the one we already had on the
25 ground, asked him where the money was. We couldn't

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1 understand him either. And then --

2 Q Okay. What happened to the men? Did anything
3 happen to them while they were there?

4 A Yeah. One of them got hit in the back of the
5 head.

6 Q Who hit the man in the back of the head?

7 A Bryan Phillips.

8 Q Okay. How did he strike him or how did he hit
9 him?

10 A With his fist.

11 Q Okay. What happened to the man once he was
12 struck or hit by Bryan?

13 A He continued laying on the ground.

14 Q Okay. What was the next thing that any of the
15 three of you that were there did? What was the next
16 thing that you saw?

17 A K.C. Langford ran in the back of the house and
18 I didn't see him no more. I don't know what he did
19 inside.

20 Q Okay. When was the next time you saw K.C.
21 Langford?

22 A A couple seconds later. He was running up, I
23 think, [REDACTED] Street. And we left the people on the
24 ground and ran behind him.

25 Q What did he have with him as he went up [REDACTED]

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1 Street?

2 A The black bag that the Chinese people had.

3 Q Okay. Did he have that with him when he
4 disappeared from your view around the front of the
5 house?

6 A No, sir.

7 Q Okay. So the next time you saw him, what did
8 he have with him?

9 A The black bag.

10 Q Okay. Once y'all saw that he had the bag, what
11 did you do?

12 A Ran behind him.

13 Q Okay. What was the next thing that happened?
14 Where did you go?

15 A We ran up [REDACTED] made a left on, I don't know
16 what street it was.

17 Q Come down here, if you would, and show me or
18 just stand up here and show me on the map once y'all
19 left the house, which end of the house did you have
20 the two Chinese guys laying down, holding them?

21 A The left side.

22 Q Okay. Once y'all saw K.C. running with the
23 bag, which direction did y'all all go?

24 A (Inaudible.)

25 Q Okay.

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1 COURT REPORTER: I didn't hear him.

2 THE COURT: I couldn't hear him. What did he
3 say?

4 MR. MAYE: He said, Up [REDACTED]

5 BY MR. MAYE:

6 Q Once y'all ran up [REDACTED] which direction did
7 you go?

8 A On the left (indicating).

9 Q Okay. Then which direction did you go?

10 THE COURT: I'm sorry, I can't hear him.

11 BY MR. MAYE:

12 Q You're going to have to speak up loud. Once
13 y'all ran up [REDACTED] which direction did y'all go?

14 A Left.

15 Q Okay. Then where did you go?

16 A We made a left right here through the woods.

17 Q Where did you end up at traveling that
18 direction?

19 A Back on [REDACTED]

20 Q Okay. Where did y'all go from there?

21 A To my cousin, Bryan, house.

22 Q Were the three of you all together at that
23 point in time?

24 A Yes, sir.

25 Q Okay. Go back and take the stand.

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- 1 A (Witness resumes the witness stand.)
- 2 Q What was the next thing that happened, Alvin?
- 3 A We went in Bryan house to split the money up.
- 4 And me and K.C. went out the back door and Bryan --
- 5 we split the money up in Bryan room and me and K.C.
- 6 left out the back door, went --
- 7 Q About how much money did you get?
- 8 A About \$800.
- 9 Q About \$800. Did you stop and actually count it
- 10 or is that what you think you got it?
- 11 A It's somewhere in that range. I didn't
- 12 actually just count it.
- 13 Q Okay. Did you see anything else taken off of
- 14 the gentleman that you had down in the yard?
- 15 A No, sir.
- 16 Q Do you know whether or not -- could you see
- 17 everything that was happening there? Was it dark or
- 18 was it light over there?
- 19 A It was dark.
- 20 Q Okay. Who was holding the gun?
- 21 A I was.
- 22 Q Who was holding the man down on the ground, the
- 23 two men down on the ground?
- 24 A I was.
- 25 Q You were holding them on the ground, okay. Did

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1 you take the billfold from the man that was on the
2 ground?

3 A No, sir.

4 Q Okay. When you got back to Bryan's house, did
5 y'all all take a share of the money?

6 A Yes, sir.

7 Q Okay. After y'all split the money up, what
8 happened next, Alvin?

9 A Me and K.C. went out the back door of Bryan
10 house and went to my sister house. Around that
11 time, she was fixing to take my mama to work.

12 Q Where was your mama working again?

13 A Milliken in Johnston.

14 Q Okay. So what did you and K.C. then do when
15 you learned that your sister was getting ready to
16 take your mom on to work?

17 A Went and got in the car and rode with her.

18 Q Okay. What happened when y'all were on that
19 ride?

20 A A police officer stopped us and ran --

21 Q Give a description of the police officer, what
22 did he look like?

23 A Just a average white, average white guy.

24 Q A white officer?

25 A Yes, sir.

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1 Q Okay. What happened when he stopped y'all?

2 Don't go into what he said, but what happened when
3 he stopped y'all?

4 A He asked my sister for I.D. to check -- ran my
5 sister I.D. and K.C. Langford I.D.

6 Q Okay. Did he end up letting y'all go at that
7 point in time?

8 A Yes, sir.

9 Q Okay. What happened next?

10 A We rode to the country where my mama stay at on
11 [REDACTED] Lane. She had to get her I.D., I.D.
12 badge for work. When we got there, me and K.C. told
13 my sister we was going to stay there until she come
14 back and pick us up.

15 Q Okay. Where did y'all end up at? Where did
16 y'all go back to that night?

17 A My sister house.

18 Q Okay. Where did K.C. Langford stay that night?

19 A My sister house.

20 Q Okay. Alvin, when was your first encounter
21 with law enforcement in relation to y'all carrying
22 out the robbery of the Chinese people on August the
23 14th of 2008? When were you first confronted by law
24 enforcement?

25 A I don't know exactly what day I was confronted.

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1 Q Was it the next day, was it weeks later,
2 approximation?

3 A About a week, a week or so later, I don't know,
4 a week.

5 Q Okay. Some time after then, you went and
6 talked to law enforcement; is that fair?

7 A Yes, sir.

8 Q You don't know the -- do you know the exact
9 day?

10 A No, sir.

11 Q Okay. Which law enforcement officer do you
12 remember talking to there that you related this
13 incident to?

14 A Mr. Young, Roosevelt Young.

15 Q Did they give you your rights prior to talking
16 to you?

17 A Yes, sir.

18 Q Okay. And what did you tell Investigator Young
19 about the events of August the 14th of 2008?

20 A Told him what happened about the burglary.

21 Q Did you identify who all was involved in going
22 and doing this?

23 A Yes, sir.

24 Q Okay. I'm going to ask you to do this. Is
25 your cousin, Bryan Phillips, is he present here in

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1 the courtroom?

2 A Yes, sir.

3 Q Could you point him out?

4 A Right there with the black tie on (indicating).

5 Q In relation to the four people sitting there,
6 the two gentlemen with the suits on the end, which
7 one is he?

8 A The one with the white shirt on with the black
9 tie.

10 Q That's your cousin, Bryan Phillips?

11 A Yes, sir.

12 MR. MAYE: Your Honor, I'd just like the record
13 to reflect that he's identified the defendant, Mr.
14 Phillips.

15 THE COURT: It's so noted.

16 BY MR. MAYE:

17 Q How about K.C. Langford? Is K.C. Langford
18 present here in the courtroom?

19 A Yes, sir.

20 Q How is he dressed and where is he seated?

21 A White shirt with black stripes with pink, sky
22 blue and white tie.

23 MR. MAYE: Your Honor, I'd like for the record
24 to reflect he's identified the defendant, K.C.
25 Langford, as well.

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1 **THE COURT:** It's so noted.

2 BY MR. MAYE:

3 **Q** Are these two individuals, Bryan Phillips and
4 K.C. Langford, the two that prepared and went with
5 you there to rob the Chinese people on [REDACTED]
6 Street that night, August 14th, 2008?

7 **A** Yes, sir.

8 **Q** After you told Investigator Young about the
9 events of this, were you actually charged in
10 relation to going and doing this robbery and all?

11 **A** Yes, sir.

12 **Q** Okay. What all were you charged with?

13 **A** Armed robbery, first degree burglary, assault
14 and battery with intent to kill, kidnapping,
15 possession of a weapon during the commission of a
16 violent crime and I think criminal conspiracy.

17 **Q** Okay. You got charged with all of this?

18 **A** Yes, sir.

19 **Q** Okay. Some time prior to this date, several
20 weeks ago, did you go and enter a guilty plea to a
21 charge in relation to doing this robbery?

22 **A** Yes, sir.

23 **Q** What did you plead guilty to?

24 **A** Armed robbery.

25 **Q** Okay. At the time that you pleaded guilty to

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1 armed robbery, you have all of these other charges,
2 to your knowledge, are those all still outstanding?

3 A Yes, sir.

4 Q Okay. Was anything promised to you in relation
5 to what your sentence would be when you pleaded to
6 armed robbery?

7 A No, sir.

8 Q Was anything promised to you in relation to
9 what would happen to all of the other outstanding
10 charges that you have?

11 A No, sir.

12 Q Okay. Did you agree to testify at that point
13 in time against your co-defendants, Mr. Phillips and
14 Mr. Langford?

15 A Yes, sir.

16 Q Is the information that you've given this jury
17 up here, is it the truth about what happened on the
18 14th of 2008?

19 A Yes, sir.

20 Q This is a silly question, but I've got to cover
21 this. The spot that -- [REDACTED] Street in
22 Johnston where y'all did this robbery, what county
23 is that in?

24 A Edgefield.

25 MR. MAYE: Beg the Court's indulgence.

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

2 (Pause.)

3 **MR. MAYE:** Answer any questions the defense has
4 for you.

5 **MR. WILLIAMS:** Your Honor, may we approach?

6 **THE COURT:** Sure.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury, but out of
9 the hearing of the jury.)

10 **THE COURT:** All right. Ladies and gentlemen,
11 we're going to take a recess. I need you to step in
12 the jury room. Don't discuss the case.

13 (The jury retires to the jury room.)

14 **THE COURT:** Mr. Phillips, during this break,
15 you're not permitted to talk to anybody about your
16 testimony, okay.

17 **THE WITNESS:** Yes, sir.

18 **THE COURT:** Are you in custody?

19 **THE WITNESS:** Yes, sir.

20 **MR. MAYE:** Your Honor, I realize there's one
21 thing. I don't know if they would do this by
22 stipulation or not and they don't have to if they
23 don't want to, I marked those for I.D., I'd
24 officially move to admit those into evidence. I'm
25 going to attempt to do so.

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1 I'd ask the Court to allow me to ask him that
2 additional question just to verify those unless
3 there's no objection to the photographs and I'll
4 leave that to the defense. They certainly don't
5 have to agree to that. The Court doesn't have to
6 let me do that. It's not the end of the world one
7 way or another, but I was going to attempt to do
8 that.

9 **THE COURT:** Is there any objection to the
10 photographs coming into evidence?

11 **MR. CALHOUN:** No objection from Mr. Langford.

12 **MR. WILLIAMS:** Your Honor, I don't object to
13 them.

14 **THE COURT:** Make sure we know which ones we're
15 talking about now.

16 **MR. MAYE:** 1 through 4. There are only four I
17 have for I.D.

18 **THE COURT:** But not that big board?

19 **MR. MAYE:** No. I just -- demonstrative
20 purposes.

21 **THE COURT:** Mark 1 through 4 in evidence
22 please, ma'am.

23 We're in recess. Y'all let me know when you're
24 ready, okay.

25 (State's Exhibit Numbers 1 through 4,

1 photographs, admitted into evidence.)

2 (Brief recess.)

3 **THE COURT:** Mr. Calhoun, are you ready for the
4 jury?

5 **MR. CALHOUN:** Yes, Your Honor.

6 **MR. MAYE:** May it please the Court, Your Honor.
7 I'm informed, I just wanted to take up prior to us
8 getting this, that they have a statement that was
9 purported, I don't know that it was authored by him
10 or they're purporting that it was signed by him or
11 authored by him. I wanted to take up any
12 impeachment or admissibility based on that
13 statement.

14 **THE COURT:** Do you know what he's talking
15 about?

16 **MR. CALHOUN:** Yes, Your Honor.

17 **MR. MAYE:** I have copies that I'll hand up.

18 **THE COURT:** All right. What's this about?

19 **MR. CALHOUN:** Your Honor, that's the statement
20 that Mr. Phillips provided to my client while they
21 were in jail.

22 And actually, Judge, I object to a proffer
23 being done now because I think Mr. Maye is doing it
24 now so he can coach his client as to what to say
25 about this statement. Mr. Maye has known about this

1 statement for a long period of time and if he wanted
2 to do a proffer, which we suggested to the Court
3 that we do before Mr. Phillips testify, then we
4 should have done so.

5 I think any testimony given now is going to be
6 done in preparation of Mr. Phillips, so I would
7 request that -- I object to us doing this proffer
8 now in the presence of Mr. Phillips right before he
9 testifies about something he's going to be crossed
10 on.

11 **THE COURT:** Well, do you know if he admits or
12 denies making the statement?

13 **MR. CALHOUN:** Well, I was told that he admits
14 that he signed it.

15 **MR. MAYE:** Your Honor, and I'm not -- we need
16 to ask him. I don't know -- it'd be hearsay and if
17 he didn't sign it, I can't unring the bell in front
18 of the jury. And it would certainly be improper to
19 put up a statement and plant the seed to the jury
20 that he made a statement that -- I don't know if he
21 wrote it, I don't know if he signed it, but they're
22 apparently going to attempt to -- these -- their
23 clients, I don't know how, they either extracted it
24 or they got this statement, they purport that it is,
25 I don't know if he made it or not or what the

1 circumstances were and I want to take that up
2 outside the presence of the jury because if it's not
3 admissible --

4 **MR. CALHOUN:** Your Honor --

5 **MR. MAYE:** -- I can't unring the bell.

6 **MR. CALHOUN:** -- this isn't a surprise
7 document. He's already talked to his client about
8 this. He knows exactly what his client is going to
9 say. And the fact that Mr. Maye knows that we're
10 going to possibly have it entered into evidence or
11 cross him on it, now he wants to do a proffer in the
12 presence of his client to prepare his testimony.
13 There's no other explanation for this being done
14 right now.

15 **MR. WILLIAMS:** Your Honor, I join Mr. Calhoun
16 in his assertion. And I would further suggest to
17 the Court that if we simply limit it to, is this
18 your signature, if that is significant, then I think
19 we can limit -- limit it to that. And if Mr. Maye
20 needs to expound upon it in recross, then he can do
21 that.

22 **MR. MAYE:** Your Honor, prior to today, I did
23 not know if they were going to attempt to use this
24 statement.

25 We were informed, law enforcement was informed

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1 that these two individuals down in the jail were
2 pressuring him to sign a statement. He was moved to
3 Saluda at that time.

4 I didn't know whether they were actually going
5 to attempt to utilize it or not because this was not
6 the two lawyers that were involved in this. The two
7 defendants in this case were involved in either
8 obtaining or extracting this statement. I don't
9 know whether or not it's admissible or not, but I
10 wanted to take it up outside the presence of the
11 jury. And like I said, because this was certainly
12 done outside the attorneys -- I didn't know if they
13 were going to attempt to use it or not.

14 **THE COURT:** Why is this piece of paper --
15 what's cut off of this?

16 **MR. WILLIAMS:** Your Honor, this was how it was
17 given to me quite honestly.

18 **THE COURT:** Look and see if the copy I have has
19 everything on it that you have.

20 (Pause.)

21 **MR. WILLIAMS:** It doesn't seem to have the
22 signature portion, which was this corner.

23 **THE COURT:** Somebody make me a copy that has
24 everything on it, that piece of paper.

25 (Pause.)

1 (Defendant Phillips Exhibit Numbers 1 and 2,
2 statements, marked for identification.)

3 **THE COURT:** I'm looking at Rule 613 and I'm
4 struggling to find any reason to have an in camera
5 hearing on this. Motion is denied.

6 Bring in the jury.

7 **MR. MAYE:** Your Honor, the only thing I wanted
8 to make sure is I know these statements will elicit
9 responses that they were all incarcerated together
10 and they -- and statements that they made while they
11 were all incarcerated together and I would
12 anticipate that that's the way he's going to answer
13 those. And so I just wanted to make sure we didn't
14 step on any land mines in regard to that, but where
15 they were made, what was said, all of that is going
16 to be fair game, I would say, if they ask him about
17 those or the authorship of them. And I just wanted
18 to make sure that we brought that out prior to the
19 jury coming out.

20 **THE COURT:** I don't know how I can rule. I
21 mean, it depends on exactly how things develop as to
22 whether you get into any extrinsic evidence at all.

23 **MR. CALHOUN:** Mr. Maye doesn't know what I'm
24 going to ask him, Judge. I just think he's being
25 prepped right now. I mean, he doesn't even know if

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1 I'm going to ask him any questions about this
2 statement. I mean, if this was done, it should have
3 been done before he testified on direct.

4 THE COURT: Well, he was saying that it may be
5 elicited that these two defendants are incarcerated.
6 I've got no way of knowing that. And I don't think
7 that would come as any shock to the jury with the
8 charges that are lodged against them, but I'll deal
9 with what comes up as it comes up. If I've got to
10 do what ifs, you know, we'll be here next December
11 going through this.

12 MR. CALHOUN: Yes, sir.

13 MR. MAYE: Thank you, Your Honor.

14 THE COURT: All right. Bring the jury in.

15 (The jury returns to the courtroom.)

16 THE COURT: All right. Cross-examination.

17 MR. CALHOUN: If it please the Court.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. CALHOUN:

21 Q Mr. Phillips, my name is Mark Calhoun and I'm
22 representing K.C. Langford on this case. You've
23 already testified to the jury that you've already
24 gone in front of a judge and pled guilty to armed
25 robbery, correct?

ALVIN PHILLIPS - CROSS BY MR. CALHOUN

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- 1 A Yes, sir.
- 2 Q But, in fact, you have some other charges,
- 3 right?
- 4 A Yes, sir.
- 5 Q You got a burglary first degree charge?
- 6 A Yes, sir.
- 7 Q You got a kidnapping charge?
- 8 A Yes, sir.
- 9 Q You have a criminal conspiracy charge?
- 10 A Yes, sir.
- 11 Q You've got a use of firearm during the
- 12 commission of a crime charge, correct?
- 13 A Yes, sir.
- 14 Q And last is you have an assault and battery
- 15 with intent to kill charge; isn't that correct?
- 16 A Yes, sir.
- 17 Q But the only charge that you've pled guilty to
- 18 is the armed robbery charge?
- 19 A Yes, sir.
- 20 Q That's right. And after today, you're
- 21 expecting those other charges to be dismissed,
- 22 correct?
- 23 A Yes, sir, I hope so.
- 24 Q Please look at me and not the prosecutor.
- 25 THE COURT: What's your answer?

ALVIN PHILLIPS - CROSS BY MR. CALHOUN

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1 What did he say?

2 BY MR. CALHOUN:

3 Q What was your answer? You're expecting the
4 other charges to be dismissed, correct?

5 A Yeah, I hope so.

6 Q All right. Thank you. Now, you're not any
7 stranger to the criminal justice system, correct?
8 You've been arrested before other than this offense?

9 A Yes, sir.

10 Q That's correct. Okay, and you turned 17 in the
11 year 2008; is that right?

12 A Yes, sir.

13 Q What month did you turn 17?

14 A December.

15 Q December?

16 A Yes, sir.

17 Q Okay. So in the year 2008, you were also
18 convicted of shoplifting, correct?

19 A Yes, sir.

20 Q And you were also convicted of larceny that
21 year; isn't that correct?

22 A Yes, sir.

23 Q And on at least one of those charges, you went
24 in front of a judge and you pled guilty too, right?

25 A Yes, sir.

ALVIN PHILLIPS - CROSS BY MR. CALHOUN

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1 Q And when you went in front of that judge and
2 you pled guilty to that charge, that judge sentenced
3 you that same time, right?

4 A Yes, sir.

5 Q He told you what your punishment was going to
6 be so to speak?

7 A Yes, sir.

8 Q Okay. But on this case, you haven't been
9 sentenced, have you?

10 A No, sir.

11 Q Okay. They're waiting until after today before
12 we find out what your punishment is going to be,
13 right?

14 A Yes, sir.

15 Q Some time after today, you're going to go back
16 in front of the Judge with Mr. Maye and your
17 punishment is going to be decided then; isn't that
18 correct?

19 A Yes, sir.

20 Q And all that depends on what you say today,
21 right?

22 A (No response.)

23 Q Yes or no?

24 A Repeat the question.

25 Q And what your punishment is at sentencing

ALVIN PHILLIPS - CROSS BY MR. CALHOUN

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1 depends on what you say today when you testify, yes
2 or no?

3 A I guess so. I don't really know.

4 Q Okay.

5 MR. MAYE: Your Honor, I'm going to object to
6 that. He ought to be allowed to explain his answer
7 in this case and not ask a yes or no question,
8 something that might necessarily elicit a yes or no
9 question. That was not a yes or no question. And I
10 object to that form of it, him not being allowed to
11 explain and being insistent that he answer the
12 question either yes or no.

13 THE COURT: The objection is overruled. He
14 said he did not know.

15 MR. CALHOUN: Thank you, Your Honor.

16 BY MR. CALHOUN:

17 Q Mr. Phillips, there's one thing that I found
18 interesting about your testimony is the use of a
19 gun.

20 A Yes, sir.

21 Q Now, you told the jury that when these folks
22 are being rob, that you were pointing the gun at
23 them, right?

24 A Yes, sir.

25 Q And you were threatening them when you were

ALVIN PHILLIPS - CROSS BY MR. CALHOUN

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1 pointing that gun at them, weren't you?

2 A Yes, sir.

3 Q And I assume you were threatening to kill them;
4 is that right?

5 A No, sir.

6 Q No. You were pointing a gun at them and you
7 weren't threatening to kill them. Were you
8 threatening to hurt their feelings?

9 A No, sir.

10 Q What were you threatening to do?

11 A I just asked for the money.

12 Q Okay. And in the written statement that you
13 gave to the police later on, you told the police
14 that it was your gun, didn't you?

15 A Yes, sir.

16 Q In fact, in your statement, you wrote, Then I
17 threw my gun in a trash can along with my mask,
18 didn't you say that?

19 A Yes, sir.

20 Q But when you testified to this jury a moment
21 ago, you told the jury that it was somebody else who
22 cracked that gun over that poor Chinese man's head;
23 isn't that right?

24 A Yes, sir.

25 Q So when the really violent, vicious action took

ALVIN PHILLIPS - CROSS BY MR. CALHOUN

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1 place, it wasn't you, was it, it was somebody else?

2 A Sir? Repeat the question, what you said again.

3 Q I'll be glad to. So even though you obviously
4 had the gun at the beginning and the end of the
5 robbery when the most violent act occurred, cracking
6 someone over the head with a pistol, that wasn't
7 you, was it?

8 A No, sir.

9 Q Okay. Now, remember, Mr. Phillips, you're
10 under oath today and you're sworn to tell the truth;
11 do you understand that?

12 A Yes, sir.

13 Q Okay. The last time or should I say the first
14 and only time this case was called to trial, you
15 were here back in May of this year, weren't you? Do
16 you remember being brought over here for a trial in
17 May of this year for this trial?

18 MR. MAYE: Your Honor, objection. I've got a
19 matter to take up at side bar.

20 THE COURT: No. I want whatever y'all want to
21 tell me on the record.

22 MR. MAYE: That's fine, Your Honor.

23 THE COURT: Ladies and gentlemen, I have to
24 send you to the jury room. Don't discuss the case.

25 (The jury retires to the jury room.)

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

2 **MR. MAYE:** Your Honor, I would object to any
3 reference to a case being called previously or
4 events or trials involving the scheduling trials
5 that are outside the facts of this case, Your Honor.
6 I don't think that they have any relevance and I
7 can't imagine it's anything -- for any other purpose
8 than to put something forward that would be
9 inadmissible. Whether or not another trial took
10 place or whether or not something was continued or
11 postponed wouldn't have any relevance to the facts
12 of this case.

13 **THE COURT:** Do you want to be heard?

14 **MR. CALHOUN:** Yes, Your Honor. I believe that
15 Mr. Phillips' voracity to tell the truth is
16 extremely relevant. It's what the whole case is
17 riding on.

18 He refused to testify in May and then the case
19 was continued as you remember. He's given
20 conflicting statements since that time as to whether
21 or not my client was or was not involved in the
22 crime. His credibility is the single most important
23 issue of the case and that's what it is relevant to.

24 **MR. WILLIAMS:** I join Mr. Calhoun in that
25 assertion. I think it's purely an issue of

ALVIN PHILLIPS - CROSS BY MR. CALHOUN

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1 credibility. And I think any time you have a
2 witness who has vacillated, Your Honor, in his
3 statements whether they be affirmatively or
4 negatively, I think that goes absolutely to the
5 heart of that witness' credibility.

6 THE COURT: Anything else, Mr. Maye?

7 MR. MAYE: Nothing else, Your Honor.

8 THE COURT: The objection's overruled.
9 Bring the jury back.

10 (The jury returns to the courtroom.)

11 THE COURT: Objection's overruled. You may
12 continue, Mr. Calhoun.

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

15 THE COURT: Yes, sir.

16 BY MR. CALHOUN:

17 Q Mr. Phillips, as I was previously asking you a
18 few minutes ago, do you remember when this case was
19 called for trial back in May of this year?

20 A Yes, sir.

21 Q Okay. And you remember being brought up here?

22 A Yes, sir.

23 Q Right. And you came up with your lawyer,
24 right?

25 A Yes, sir.

ALVIN PHILLIPS - CROSS BY MR. CALHOUN

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1 Q All right. And on that day, Mr. Maye was
2 expecting you to testify against Mr. Langford,
3 correct?

4 A Yes, sir.

5 Q And you decided you weren't going to testify
6 against Mr. Langford that day, correct?

7 A Yes, sir.

8 Q All right. You refused to testify that day,
9 correct?

10 A Yes, sir.

11 Q All right. And back in March of 2009, do you
12 remember signing your name to a statement that said
13 that Mr. Langford and Bryan Phillips were not guilty
14 of what they're charged with?

15 A Yes, sir.

16 Q You remember that. Do you remember saying that
17 you gave a false statement saying that they were; do
18 you remember that?

19 A Yes, sir.

20 Q Okay. But now you're telling the jury today
21 that they were the gentlemen that were with you that
22 night?

23 A Yes, sir.

24 Q And have you told the jury that your sister
25 used to date Mr. Langford?

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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1 A No, sir.

2 Q And that they have a child together?

3 A Yes, sir, I told them they had a child
4 together.

5 Q But their relationship has since ended,
6 correct?

7 A Yes, sir.

8 Q Okay. Do you think you've earned the deal that
9 you got today?

10 A Sir?

11 Q Look at me not Mr. Maye. Do you think you
12 earned the deal that you've gotten today?

13 A I don't know what the deal is.

14 Q Do you think you've earned it?

15 A Sir?

16 Q Do you think you've earned it, yes or no?

17 A I don't know.

18 Q You don't know?

19 A No, sir.

20 MR. CALHOUN: Okay. That's all I have, Judge.

21 THE COURT: Mr. Williams.

22 MR. WILLIAMS: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. WILLIAMS:

25 Q Mr. Phillips, how old are you today?

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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- 1 A Nineteen.
- 2 Q You're 19. And you say Veronica Phillips is
- 3 your sister?
- 4 A Yes, sir.
- 5 Q And your mother is -- is her name Brenda
- 6 Phillips?
- 7 A Vanessa Phillips.
- 8 Q Vanessa Phillips. Are you familiar with a
- 9 Joseph Patrick Stevens?
- 10 A No, sir.
- 11 Q Do you know a Patrick Stevens, Pat Stevens?
- 12 A Yes, sir.
- 13 Q Okay. Who is pat Stevens?
- 14 A My cousin.
- 15 Q He's your cousin?
- 16 A That's my cousin baby daddy.
- 17 Q He's your cousin's baby's father?
- 18 A Yes, sir.
- 19 Q Okay. Now, Mr. Calhoun asked you if you recall
- 20 signing a statement in which you indicated that both
- 21 his client, as well as my client had no involvement
- 22 in this situation; do you recall that?
- 23 A Yes, sir.
- 24 Q Okay. If I show you what's been marked as
- 25 Defendant's 1-P and 2-P, would you take a moment to

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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1 look at those?

2 A (Witness complies.)

3 Q Do you recognize those?

4 A Yes, sir.

5 Q And did you sign these items?

6 A Yes, sir.

7 Q Okay. And do these statements in sum or in
8 total say --

9 MR. MAYE: Your Honor, I'm going to object. If
10 he wants to move them into evidence, but to publish
11 them at this point in time, if they want to move
12 them and admit them into evidence, they're not in
13 evidence.

14 MR. WILLIAMS: I offer them.

15 MR. MAYE: If you're offering them into
16 evidence, that's fine.

17 THE COURT: Do y'all want to do something or do
18 you want me to rule?

19 MR. WILLIAMS: Your Honor, I'm going to offer
20 them into evidence at this time.

21 THE COURT: And you have no objection, Mr.
22 Maye?

23 MR. MAYE: No, I don't have any objection.

24 THE COURT: Do you have any objection, Mr.
25 Calhoun?

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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1 MR. CALHOUN: No objection.

2 THE COURT: All right. Mark those two in
3 evidence, Madame Court Reporter.

4 (Defendant Phillips Exhibit Numbers 1 and 2,
5 statements, admitted into evidence.)

6 BY MR. WILLIAMS:

7 Q You are able to read and write, aren't you?

8 A Yes, sir.

9 Q Okay. If you don't mind, the item that's on
10 top, can you tell me what that's marked as?

11 A Defendant, it has 2.

12 Q All right. Defendant's 2-P; is that right?

13 A Yes, sir.

14 Q Would you read -- would you publish that into
15 the record or would you simply read it?

16 A Yes, sir. I, Alvin Phillips --

17 THE COURT: Speak up. I can't hear you.

18 THE WITNESS: I, Alvin Phillips, do state that
19 neither K.C. Langford or Bryan Phillips were
20 involved in any armed robbery, kidnapping, assault
21 and battery or burglary in August 14, '08. And I,
22 Alvin Phillips, do so with my own free will. The
23 date, I can't really see it. The signature.

24 BY MR. WILLIAMS:

25 Q You don't see the date? Does that look like

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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1 January 29th, 2009?

2 A Yes, sir, it could be January 2009.

3 Q You don't deny that you signed that, do you?

4 A No, sir.

5 Q Now, I'm going to hand you what has been marked
6 and offered into evidence as Defendant's Exhibit
7 1-P. You recognize that document as well, don't
8 you?

9 A Yes, sir.

10 Q Read that into this court's record as well.

11 A Sworn affidavit of Alvin Phillips. I, Alvin
12 Phillips, do hereby solemnly swear that -- solemnly
13 swear this testimony is made upon my own free will.
14 I, Alvin Phillips, on 9/28 of '08, made a false
15 statement against K.C. Langford and Bryan Phillips.

16 Further, I, Alvin Phillips, state that I was
17 not -- I was not in my right state of mind when I
18 made the statement against Bryan Phillips and K.C.
19 Langford. The statement that I, Alvin Phillips,
20 made is all untrue. Therefore, I pray that all
21 charges against K.C. Langford and Bryan Phillips be
22 dismissed to bring about the end of justice. Date
23 3/31/09, respectfully submitted, Alvin Phillips.

24 Q That was made of your own free will and accord,
25 wasn't it?

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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1 A Sir?

2 Q That was made of your own free will and accord,
3 was it not?

4 A (No response.)

5 Q You freely did that, did you not?

6 A Signed it?

7 Q Yes, sir.

8 A Yes, sir.

9 Q Now, let me ask you, you were, in fact,
10 interviewed on September the 29th of 2008; is that
11 right?

12 A Yes, sir.

13 Q Now, is there -- is this the same statement you
14 were speaking of when you said September 28th of
15 2008, the same statement which was given to
16 Investigator Young?

17 A Are you saying is this the same statement?

18 Q No, no. I'm asking that you were speaking of
19 the same statement that was given to Investigator
20 Young on September 29th of 2008?

21 A I don't understand the question.

22 Q Do you understand my question?

23 A No, sir.

24 Q Okay. If you don't understand my question,
25 just simply tell me you don't understand my

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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1 question, okay?

2 A Yes, sir.

3 Q Don't look at the prosecutor, look at me.

4 A Yes, sir.

5 Q Are we clear?

6 A Yes, sir.

7 Q Okay. The question I'm asking you, sir, and
8 I'm going to let you take an opportunity to look at
9 that, you, in fact, gave a statement to Investigator
10 Roosevelt Young, Investigator Lamaz Robinson and
11 Investigator Perry of SLED, did you not?

12 A Yes, sir.

13 Q All right. And the statement that you were
14 speaking of in that statement is that same
15 statement?

16 A No, sir.

17 Q It's not. Well, what were you speaking of?

18 A I was speaking of, in that statement, of the
19 armed robbery. This is --

20 THE COURT: I can't hear him. I'm sorry.

21 THE WITNESS: In the statement I gave
22 Mr. Robinson, I was speaking of the armed robbery.
23 In this statement, I'm speaking of the armed robbery
24 too, but --

25 BY MR. WILLIAMS:

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS.

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1 Q The statement that was previously given, right?

2 A Sir?

3 Q The statement that was previously given to
4 Investigator Young and Investigator Robinson, that's
5 what you're talking about in that statement, isn't
6 it?

7 A Yes, sir, armed robbery, the armed robbery.

8 Q Right. One was actually dated September the
9 29th of 2008, was it not?

10 A I think so. I don't really know for sure.

11 MR. WILLIAMS: Court's indulgence.

12 THE COURT: Yes, sir.

13 (Pause.)

14 MR. WILLIAMS: I'm going to ask the court
15 reporter to mark these items.

16 THE COURT: For identification?

17 MR. WILLIAMS: I intend to offer them, Your
18 Honor.

19 THE COURT: Show them to opposing counsel.

20 (Pause.)

21 THE COURT: Any objection?

22 MR. MAYE: No objection if they want to put
23 them in evidence.

24 THE COURT: Without objection, mark those into
25 evidence, please, ma'am.

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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1 (Defendant Phillips Exhibit Number 3, waiver
2 of rights, and Defendant Phillips Exhibit Number 4,
3 statement dated 9/29/08, admitted into evidence.)

4 BY MR. WILLIAMS:

5 Q Do you recognize these documents?

6 A Yes, sir.

7 Q Okay. Now, I want you to tell this jury how
8 many people were present when you gave that
9 statement?

10 A One.

11 Q Other than yourself?

12 A Two.

13 Q Was there a SLED investigator there as well,
14 Investigator Perry?

15 A Yes, sir.

16 Q So how many people were there other than
17 yourself?

18 A When I gave the statement?

19 Q Yes, sir.

20 A One other than myself.

21 Q All right. Help me out. Was Investigator
22 Roosevelt Young there?

23 A Yes, sir.

24 Q Was Investigator Lamaz Robinson there?

25 A Yes, sir. He wasn't there when I gave the

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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1 statement.

2 Q Okay. But he did, in fact, witness your
3 statement, did he not?

4 A Yes, sir.

5 Q So he came in later?

6 A Yes, sir.

7 Q All right. Investigator Perry, did he, at some
8 point, come there?

9 A Yes, sir.

10 Q Was he there when you gave the statement?

11 A No, sir.

12 Q Just Investigator Young?

13 A Yes, sir.

14 Q Just yourself and Investigator Young?

15 A Yes, sir.

16 Q And Investigator Young, he's a narcotics agent
17 in this county, isn't he?

18 A Yes, sir.

19 Q He's from Johnston too, isn't he?

20 A Yes, sir.

21 Q All right. Do you know if Pat Stevens has ever
22 worked with Investigator Young?

23 A No, sir.

24 Q You don't know it?

25 A No, sir.

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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- 1 Q How old were you at the time of this incident?
- 2 A Seventeen.
- 3 Q I want to go through your indictments. You've
- 4 been indicted for armed robbery; isn't that right?
- 5 A Yes, sir.
- 6 Q You talked to your lawyer about this charge?
- 7 A Yes, sir.
- 8 Q Okay. Do you know this charge could carry up
- 9 to 30 years in the penitentiary?
- 10 A Yes, sir.
- 11 Q This is the one you actually have entered a
- 12 plea to, isn't it?
- 13 A Yes, sir.
- 14 Q You know it carries a mandatory minimum of ten
- 15 years?
- 16 A Yes, sir.
- 17 Q There's a charge of kidnapping. You hadn't
- 18 pled to this charge, have you?
- 19 A No, sir.
- 20 Q You realize that could carry up to 30 years in
- 21 the penitentiary?
- 22 A Yes, sir.
- 23 Q You do know that?
- 24 A No, sir, not for sure.
- 25 Q You're not for sure?

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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- 1 A No, sir.
- 2 Q Would it surprise you to know that it could
- 3 carry up to 30 years?
- 4 A Yes, sir.
- 5 Q That would surprise you. All right. Assault
- 6 and battery with intent to kill, do you know what
- 7 that could carry?
- 8 A No, sir.
- 9 Q If I told you that could carry up to 20 years
- 10 in the penitentiary, would that shock you?
- 11 A Yes, sir.
- 12 Q That would shock you? Your lawyer hadn't
- 13 talked to you about that, what those penalties could
- 14 be?
- 15 A No, sir.
- 16 Q Did he talk to you about the penalty for
- 17 burglary, burglary first degree?
- 18 A No, sir.
- 19 Q Suffice it to say, you know it could carry a
- 20 lot of time, don't you?
- 21 A Yes, sir.
- 22 Q Up to 15 years to 30 years or even life in
- 23 prison; do you realize that?
- 24 A (No response.)
- 25 Q You've also been indicted for the offense of

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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1 possession of a firearm during a violent crime.

2 Now, you freely admit you possessed a firearm,
3 didn't you?

4 A Yes, sir.

5 Q You hadn't pled guilty to that crime though,
6 have you?

7 A No, sir.

8 Q That carries a mandatory of five years, did you
9 realize that?

10 A No, sir.

11 Q I'm just going to count these indictments if
12 you don't mind.

13 You have seven charges that you are facing here
14 in Edgefield County, don't you? These are all your
15 charges, aren't they?

16 A Yes, sir.

17 Q All right. You admit that you had the gun, you
18 admit that you actually held Mr. Chen down.

19 A Yes, sir.

20 Q But, yet, you've only entered a guilty plea to
21 one of these charges; isn't that right?

22 A Yes, sir.

23 Q All right. Now, are you holding out the hope
24 that you will only get a minimal amount of time?

25 A Repeat the question again, sir.

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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1 Q Are you hopeful, sir, that you will only get a
2 small amount of time?

3 A Yes, sir.

4 Q All right. Why are you hopeful or what makes
5 you so hopeful?

6 A I guess because I'm telling the truth I guess.

7 Q Because you're telling the truth or because
8 you're telling the story that the Solicitor wants
9 you to tell?

10 A Because I'm telling the truth.

11 Q Okay. Now, have you rehearsed your testimony?

12 A (No response.)

13 Q Look at me. Have you rehearsed your testimony?

14 A Yes, sir.

15 Q All right. Who did you rehearse it with?

16 A (Witness indicating.)

17 Q The Solicitor?

18 A Yes, sir.

19 Q All right. That's what I thought.

20 THE COURT: Hold on just a second, please.

21 Ladies and gentlemen of the jury, I need to ask
22 you to step in the jury room. Don't discuss the
23 case.

24 (The jury retires to the jury room.)

25 THE COURT: All right. Ladies and gentlemen, I

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1 realize there's a lot of emotion that can surround a
2 case such as this. There's a lot of room for strong
3 feelings and sometimes those things get displayed.
4 But in a courtroom, you have to maintain decorum.

5 You know, the folks over here to my left were
6 showing far too much animation during that last
7 testimony. One lady was literally bobbing up and
8 down nodding her head. You cannot do that, that
9 would be the same as if I let y'all walk in here
10 with signs, holding them up saying he's telling the
11 truth or he's a liar.

12 If you can't stay still and stay quiet and not
13 show signs of approval or disapproval, I'll have to
14 remove you from the courtroom. And if it gets to be
15 a bigger issue than that, I can put you in prison
16 for six months without a jury trial. So just try to
17 maintain, please, a proper courtroom decorum.

18 We're going to take a short break while the
19 jury is out.

20 During the break, Mr. Phillips, you cannot
21 discuss your testimony with anyone.

22 Five minutes or so.

23 (Brief Recess.)

24 **THE COURT:** Mr. Williams, I'll let you repeat
25 yourself a little bit if you need to since I

ALVIN PHILLIPS - CROSS BY MR. WILLIAMS

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1 interrupted you.

2 MR. WILLIAMS: Yes, sir. Thank you.

3 THE COURT: All right. Bring the jury in,
4 please.

5 (The jury returns to the courtroom.)

6 THE COURT: You may continue, Mr. Williams.

7 MR. WILLIAMS: Thank you, Your Honor.

8 BY MR. WILLIAMS:

9 Q Mr. Phillips, you have, in fact, prepared for
10 your testimony in this case prior to today?

11 A Yes, sir.

12 Q In fact, when you entered your plea of guilty,
13 you entered your plea not here in Edgefield County,
14 did you?

15 A No, sir, McCormick.

16 Q You had the privilege of entering your plea of
17 guilty over in McCormick County?

18 A Yes, sir.

19 Q Okay. Now, Mr. Calhoun had earlier asked you
20 also that previously when we were here on May the
21 17th, you refused to testify, didn't you?

22 A Yes, sir.

23 Q Now, you indicated that you're telling the
24 truth; is that right?

25 A Yes, sir.

ALVIN PHILLIPS - REDIRECT BY MR. MAYE

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1 Q In these statements, you said you hereby
2 solemnly swear; is that right? In this statement,
3 I, Alvin Phillips, do hereby solemnly swear. Isn't
4 that what you said?

5 A (No response.)

6 Q In this statement, you just admitted to me that
7 you signed this freely.

8 A Yes, sir.

9 Q Okay. Now, when you swear, you swear to tell
10 the truth, don't you?

11 A Yes, sir.

12 Q Okay. How many truths are there?

13 A One.

14 Q There's only one truth, isn't it?

15 A Yes, sir.

16 Q Okay.

17 MR. WILLIAMS: Court's indulgence.

18 THE COURT: Yes, sir.

19 (Pause.)

20 MR. WILLIAMS: Thank you, Your Honor.

21 THE COURT: Redirect.

22 MR. MAYE: Just a couple.

23 REDIRECT EXAMINATION

24 BY MR. MAYE:

25 Q Who wrote out that statement that -- these two

ALVIN PHILLIPS - REDIRECT BY MR. MAYE

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1 right here that the defense gave you saying they
2 didn't do this, who wrote these out?

3 A I don't know.

4 Q Where did you get them from? What were the
5 circumstances of those statements being generated?
6 Did you write them?

7 A No, sir.

8 Q These are not your words at all, are they?

9 A No, sir.

10 Q Someone else wrote this. Where were you and
11 what were the circumstances about that?

12 A I was in Edgefield County.

13 Q Okay.

14 A In my room.

15 Q And how did those get presented to you?

16 A K.C. Langford.

17 Q K.C. Langford brought those to you?

18 A Yes, sir.

19 Q Why did he want you to sign those?

20 A Keep him and Bryan Phillips from getting in
21 trouble.

22 Q Keep them from getting in trouble?

23 A Yes, sir.

24 Q Okay. What did he tell you would happen if you
25 signed those statements?

ALVIN PHILLIPS - REDIRECT BY MR. MAYE

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- 1 A That nobody will be in trouble.
- 2 Q That no one would be in trouble?
- 3 A Yes, sir.
- 4 Q Alvin, at the time that this happened in
5 August, were these two men your friends?
- 6 A Yes, sir.
- 7 Q You never wanted anybody to get in trouble with
8 this, did you, especially not your friends, did you?
- 9 A No, sir.
- 10 Q And it's not been easy having to testify
11 against them, has it?
- 12 A No, sir.
- 13 Q So they asked you to sign those statements
14 there telling you no one would get in trouble?
- 15 A Yes, sir.
- 16 Q Are those true, the ones that you signed here?
17 Who was with you when you did the robbery?
- 18 A Bryan Phillips and K.C. Langford.
- 19 Q Is what you've told the jury up here under oath
20 today testifying live before them is that true? Are
21 these the two gentlemen that were with you when you
22 did the robbery?
- 23 A Yes, sir.
- 24 Q Then those statements they asked you to sign
25 they're false, aren't they?

ALVIN PHILLIPS - REDIRECT BY MR. MAYE

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- 1 A Yes, sir.
- 2 Q Did you sign them to please them? Were they
- 3 pressuring you to sign those?
- 4 A No, sir.
- 5 Q They told you if you sign them, nobody would be
- 6 in trouble?
- 7 A Yes, sir.
- 8 Q Didn't end up being good advice, did it?
- 9 A No, sir.
- 10 Q But you've had the advice of a lawyer, haven't
- 11 you? And you've entered a guilty plea, haven't you?
- 12 A Yes, sir.
- 13 Q At this point in time, all you can do is hope
- 14 for the best. Are you telling the truth?
- 15 A Yes, sir.
- 16 Q Were you ever asked by anybody from the
- 17 prosecution's side or the police to tell any lies?
- 18 A No, sir.
- 19 Q Is this statement that K.C. Langford gave to
- 20 you is that a lie?
- 21 A Yes, sir.
- 22 Q It's a lie because who was with you when you
- 23 did the robbery?
- 24 A Bryan Phillips and K.C. Langford.
- 25 Q You've never wanted to tell on them at all,

ALVIN PHILLIPS - REDIRECT BY MR. MAYE

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1 have you?

2 A No, sir.

3 Q In fact, you wish this whole thing would go
4 away for all of you, don't you?

5 A Yes, sir.

6 Q When you were preparing for your testimony or
7 when you were interviewed by Roosevelt Young or when
8 you were interviewed by SLED or anybody else, did
9 anybody ever ask you to say anything other than the
10 truth?

11 A No, sir.

12 Q Were you informed to tell the truth no matter
13 what it was when you were preparing for your
14 testimony?

15 A Yes, sir.

16 Q Have you told the truth up here in front of
17 this jury?

18 A Yes, sir.

19 Q You were previously asked in this case kind of
20 a two part question. Who hit the man when y'all
21 were out there at the scene there in the dark, who
22 hit him?

23 A Bryan Phillips.

24 Q Okay. Did you ever hit him with a gun?

25 A No, sir.

ALVIN PHILLIPS - RECROSS BY MR. CALHOUN

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1 Q Was he ever hit with a gun?

2 A No, sir.

3 Q Okay. So when you were asked about who hit him
4 with a gun, no one ever hit him with a gun, did
5 they?

6 A No, sir.

7 Q The only blow that was struck on either one of
8 the Chinese people were struck by who?

9 A Bryan Phillips.

10 Q Okay.

11 MR. MAYE: That's all I have. Thank you.

12 THE COURT: Mr. Calhoun, do you have any other
13 questions of the witness?

14 MR. CALHOUN: I do, Your Honor.

15 RECROSS-EXAMINATION

16 BY MR. CALHOUN:

17 Q Mr. Phillips, I noticed when you were just
18 testifying with Mr. Maye, you weren't looking over
19 at us, were you?

20 A No, sir.

21 Q Because you knew what to say when Mr. Maye was
22 asking the questions, right?

23 A Sir?

24 Q You knew what to say when Mr. Maye was
25 suggesting the answers to the questions to you,

ALVIN PHILLIPS - RECROSS BY MR. CALHOUN

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1 right?

2 A (No response.)

3 Q Now, you're looking back at Mr. Maye again.

4 Why are you doing that?

5 A (No response.)

6 Q You don't know?

7 A No, sir.

8 Q There's lots of things that you can call
9 someone that robbed someone -- robs people with a
10 pistol, threatens their lives and hits them with it,
11 but you know what one of the things that you call
12 them is? You call them the leader. You call them
13 the leader of the enterprise, that's who the gunman
14 is. Do you agree with that?

15 A Yes, sir.

16 Q And you were the gunman, weren't you?

17 A Yes, sir.

18 Q Okay. And the leader, you're telling this jury
19 all of a sudden is the guy who in prison is being
20 forced to sign statements that he didn't want to
21 sign. Is that what you're telling these folks?

22 A Yes, sir.

23 Q That's what you telling them, okay. But you
24 admit that you signed that statement, didn't you?

25 A Yes, sir.

ALVIN PHILLIPS - RECROSS BY MR. WILLIAMS

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1 Q And you admit in that statement that
2 Mr. Langford didn't do anything wrong; isn't that
3 correct?

4 A No, sir.

5 Q That's not what your statement says?

6 A I admitted I signed the statement.

7 Q Okay. Well, you can read, right?

8 A Yes, sir.

9 Q And you read it before you signed it at a
10 minimum --

11 A Yes, sir.

12 Q -- if you didn't write it?

13 A Yes, sir.

14 Q So you know what you were signing your name to,
15 right?

16 A Yes, sir.

17 MR.. CALHOUN: That's all I have.

18 THE COURT: Mr. Williams, do you have anything
19 else from this witness?

20 MR. WILLIAMS: Just briefly.

21 RECROSS-EXAMINATION

22 BY MR. WILLIAMS:

23 Q At the Edgefield County Jail, is there
24 something known as segregation where folks are
25 segregated one from another?

ALVIN PHILLIPS - RECROSS BY MR. WILLIAMS

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- 1 A In certain spots, yes, sir.
- 2 Q Speak up for me, I couldn't hear you.
- 3 A In certain spots, yes, sir.
- 4 Q Okay. Were you not segregated from these two
- 5 gentlemen?
- 6 A No, sir.
- 7 Q You were not?
- 8 A No, sir, from one of them.
- 9 Q I'm sorry?
- 10 A From only one.
- 11 Q You were only segregated from one of them?
- 12 A Yes, sir.
- 13 Q Okay. I'm going to ask you to turn your
- 14 attention back to an earlier point in time in which
- 15 you had another attorney. You had Attorney Seigler,
- 16 did you not?
- 17 A Yes, sir.
- 18 Q Okay. Some point in the year 2009, Mr. Seigler
- 19 no longer represented you; isn't that right?
- 20 A Yes, sir.
- 21 Q And that was because you wouldn't cooperate and
- 22 testify against these two gentlemen. Isn't that
- 23 part of the reason why he didn't want to continue to
- 24 represent you or you didn't want him to continue to
- 25 represent you?

ALVIN PHILLIPS - RECROSS BY MR. WILLIAMS

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1 A No, sir.

2 Q What was the reason?

3 A Because at the time he just -- at the time, Mr.
4 Seigler just wanted me to plead guilty.

5 Q Okay. He just wanted you to plead guilty and
6 you did. You pled guilty with Mr. Johnson as your
7 attorney, did you not?

8 A Yes, sir.

9 Q Okay. Wasn't nothing else Mr. Seigler wanted
10 you to do?

11 A Sir?

12 Q There wasn't something else that Mr. Seigler
13 wanted you to do?

14 A No, sir.

15 Q He didn't expect your cooperation against our
16 clients like you're doing today. He didn't talk to
17 you about that at all?

18 A Yes, sir.

19 Q He did, didn't he?

20 A Yes, sir.

21 Q All right.

22 MR. WILLIAMS: I don't have any other
23 questions.

24 THE COURT: Any other questions of the witness?

25 MR. MAYE: None. Thank you.

ALVIN PHILLIPS - RE-RECROSS BY MR. CALHOUN

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1 **THE COURT:** Any other questions of the witness,
2 counsel?

3 **MR. CALHOUN:** One more question, Judge. I
4 promise, I'll finish.

5 **RE-RECROSS-EXAMINATION**

6 **BY MR. CALHOUN:**

7 **Q** Mr. Phillips, when you prepared and signed
8 these statements back in March of last year, that
9 was before you'd cut the deal with the prosecutor;
10 isn't that correct?

11 **A** (No response.)

12 **Q** You signed that statement before you cut your
13 deal with the prosecutor; isn't that correct?

14 **A** Yes, sir.

15 **MR. CALHOUN:** Okay. Thank you.

16 **THE COURT:** Anything else?

17 **MR. WILLIAMS:** No, sir, Your Honor.

18 **THE COURT:** Anything else?

19 **MR. MAYE:** One thing.

20 **RE-REDIRECT EXAMINATION**

21 **BY MR. MAYE:**

22 **Q** You don't have any deal with the prosecution in
23 this case, do you? Have you ever been promised
24 anything?

25 **A** No, sir.

ALVIN PHILLIPS - RE-RE CROSS BY MR. WILLIAMS

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1 MR. MAYE: Nothing else.

2 THE COURT: Anything else?

3 MR. CALHOUN: No, Your Honor.

4 MR. WILLIAMS: Judge, I'm sorry.

5 THE COURT: That's all right. Go ahead.

6 RE-RE CROSS-EXAMINATION

7 BY MR. WILLIAMS:

8 Q You don't have a deal with the, Solicitor?

9 A No, sir.

10 Q You've got seven indictments and you've only
11 pled guilty to one and you're telling us you don't
12 have a deal with the Solicitor?

13 A No, sir. I still got the other ones pending, I
14 think.

15 Q Why didn't you just enter a plea to all of
16 them?

17 A I don't know.

18 Q You don't know, is that your answer?

19 A Yes, sir.

20 MR. WILLIAMS: Thank you, sir.

21 THE COURT: If y'all have original indictments,
22 don't take them.

23 MR. WILLIAMS: I don't, Judge, that was my
24 doing.

25 THE COURT: If they're copies, that's fine.

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1 Anything else of the witness?

2 MR. MAYE: Nothing.

3 THE COURT: Anything else of the witness?

4 MR. CALHOUN: No, Your Honor.

5 THE COURT: All right. Any other witnesses for
6 the State?

7 MR. MAYE: Your Honor, probably so.

8 THE COURT: I mean, we're going to have to
9 break for the day. I just need to know if --

10 MR. MAYE: I'm not resting now, Your Honor. I
11 would decline doing that. Thank you.

12 THE COURT: All right. Ladies and gentlemen, I
13 need you in the jury room, please, in the morning at
14 9:30. I don't know of any reason for any delays,
15 but I'll look for you at 9:30 in the morning. Thank
16 you. Have a pleasant evening. Don't discuss the
17 case in any way. If you took notes, leave them
18 here.

19 (The jury was excused for the day.)

20 THE COURT: You can step down. Thank you.

21 Court's in recess until 9:30 in the morning.

22 (Whereupon, the proceedings were concluded
23 for September 8, 2010.)

24 *****

25 *****

JUSTIN ZACHARY STROM - DIRECT BY MR. MAYE

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1 (The following proceedings were held on
2 September 9, 2010.)

3 **THE COURT:** Is the State ready for the jury?

4 **MR. MAYE:** State's ready for the jury.

5 **MR. CALHOUN:** Ready for Mr. Langford, Judge.

6 **MR. WILLIAMS:** Ready for Defendant Phillips.

7 (The jury enters the courtroom at 9:37 a.m.)

8 **THE COURT:** All right. Call your next witness,
9 Solicitor.

10 **MR. MAYE:** The State calls Zac Strom.

11 JUSTIN ZACHARY STROM,

12 having been duly sworn, testified as follows:

13 **THE CLERK:** Have a seat. State your full name
14 and spell your last name, please.

15 **THE WITNESS:** Justin Zachary Strom, S-t-r-o-m.

16 DIRECT EXAMINATION

17 BY MR. MAYE:

18 **Q** Mr. Strom, if you would, tell the ladies and
19 gentlemen of the jury about your background in law
20 enforcement and how you became involved in this case
21 on August the 14th of 2008.

22 **A** I worked for the Edgefield County Sheriff's
23 Office for approximately four years. And the date
24 in question, we were on routine patrol when we get a
25 call out of Johnston of an armed robbery. As

JUSTIN ZACHARY STROM - DIRECT BY MR. MAYE

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1 Edgefield County Sheriff's Office, we do assist
2 Johnston with perimeters and things of that nature.

3 We, you know, I believe Mr. Robinson here
4 advised us that there was three black males that had
5 just robbed the Chinese people at their residence on
6 [REDACTED] Street -- or [REDACTED] Street I think it is.
7 And we were in the area doing our routine patrol,
8 setting up perimeters, waiting on the dog team to
9 come out when I seen a vehicle coming up Roland
10 Avenue.

11 Q Let me stop you here.. Were you -- what type of
12 vehicle were you in? How were you dressed? What
13 was the circumstances about -- were you on routine
14 patrol? What were you doing?

15 A Yes. I was in a marked Crown Vic. I was
16 wearing a marked sheriff's office uniform plainly
17 marked as Edgefield County Sheriff's Deputy.

18 Q When you say, We were in the area, who else was
19 in the area? Did you have more than one deputy
20 working the road that night?

21 A Yes, sir, myself, Sergeant Blasco and Deputy
22 Chad Shealey.

23 Q Once y'all got that call, what steps did y'all
24 take to assist the Town of Johnston?

25 A At that time, we immediately set up a perimeter

JUSTIN ZACHARY STROM - DIRECT BY MR. MAYE

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1 approximately four or five mile radius.

2 Q About what time did the call come in, the
3 initial call, the 9-1-1 call? Did you have that
4 information?

5 A Yes, sir. It was approximately around 10:40,
6 10:45. I mean, it was right in that window.

7 Q Okay. So what steps did you take based on your
8 experience and training in order to assist? What
9 did you do?

10 A At that particular time, like I say, I got
11 approximately two or three miles from the actual
12 scene of the crime, set up perimeter, riding roads,
13 you know, shining spotlights in the woods looking
14 for, you know, three black males on foot possibly
15 running. Several other deputies were actually
16 stopping people out walking in town, running I.D.s,
17 getting names, questioning. I --

18 Q Why do y'all do that? What's the purpose in
19 that?

20 A Mainly, you know, if you happen to run across a
21 suspect, you know, you can apprehend him, just
22 someone walking down the street may have seen
23 something. And, you know, there's been countless
24 times that people have, you know, I've seen so and
25 so, or, you know, seen someone laying in the bushes

JUSTIN ZACHARY STROM - DIRECT BY MR. MAYE

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1 over there or, you know, that's actually helped us
2 out in other cases.

3 Q Were some of the stops merely to ask people if
4 they'd seen anything?

5 A Sure. Yes.

6 Q Okay. What stop was of significance now, on
7 looking back at it, what stop was of significance to
8 you that night?

9 A Significantly later learning that Mr. K.C.
10 Langford and Mr. Alvin Phillips were in the vehicle
11 that I stopped, you know.

12 Q Okay. Tell the ladies and gentlemen of the
13 jury about the circumstances of you stopping the
14 vehicle, when you stopped it, who was in that
15 vehicle and where you were.

16 A Okay. The initial call that we received came
17 in around 10:45. We immediately set up a perimeter.
18 It was around 11 o'clock when I stopped the vehicle
19 on Roland Avenue right in front of the school bus
20 shop. I approached the vehicle. There was two
21 black males sitting in the back seat, two black
22 females in the front seat.

23 You know, in that situation, when I saw the
24 vehicle, immediately I said I need to check this
25 vehicle out. You know, 15 minutes ago we just had

JUSTIN ZACHARY STROM - DIRECT BY MR. MAYE

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1 an armed robbery, you know, this is a back road
2 leading into Saluda County. I said this is a
3 vehicle I need to check out and possibly ask if they
4 had seen anything.

5 I stopped the vehicle, get I.D.s from the
6 driver, Ms. Veronica Phillips, and I get an I.D.
7 from Mr. K.C. Langford, run the I.D.s, they come
8 back clear. At that point, I asked them if they
9 have anything -- I mean, if they had seen anything,
10 you know, anyone running in the area, seen anybody
11 looked suspicious, I specifically said three black
12 males dressed in black. They stated, no, they did
13 not. There was -- Mr. Alvin Stevens was in the back
14 seat --

15 Q Who?

16 A I'm sorry. Alvin Phillips was in the back seat
17 with Mr. K.C. Langford. And Veronica Phillips was
18 in the driver's seat and I believe her mother was in
19 the passenger seat. I asked them where they were
20 headed. They said they were going to [REDACTED]
21 Drive, to a residence on [REDACTED] Drive. At that
22 time, I had no reason to question them any further.
23 I had no reason to get them out of the car at that
24 time. I told them they were free to leave and I
25 continued patrolling the area.

JUSTIN ZACHARY STROM - CROSS BY MR. CALHOUN

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1 Q Approximately 15 minutes -- of the people that
2 are involved in this case, approximately 15 minutes
3 later, who was together there?

4 A It was Alvin Phillips and K.C. Langford and
5 Veronica Phillips and her mother.

6 MR. MAYE: Okay. Answer any questions the
7 defense has for you.

8 THE COURT: Mr. Calhoun.

9 MR. CALHOUN: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 (Pause.)

12 CROSS-EXAMINATION

13 BY MR. CALHOUN:

14 Q Mr. Strom, you were looking for robbers from a
15 robbery that had occurred about 15 minutes earlier;
16 is that correct?

17 A Yes, sir.

18 Q Would you agree with me that in 15 minutes
19 those robbers could be almost all the way to
20 Batesburg-Leesville by then?

21 A If they were in a vehicle, I suppose so.

22 Q Instead the people that you stopped were only a
23 minute away from where the robbery occurred, is that
24 right, after 15 minutes?

25 A Yes, sir, I suppose so.

JUSTIN ZACHARY STROM - CROSS BY MR. CALHOUN

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1 Q And what was the description? Who were you
2 looking for when you were looking for these robbers?

3 A Three black males dressed in black.

4 Q You were looking for three black males, that's
5 your description?

6 A That's the description we were given.

7 Q Okay. Well, did you ask the victims or did
8 anybody from the sheriff's department ask the
9 victims if they had any better description than
10 three black males?

11 A I did not ask the victims, but I never went to
12 the actual scene. I set up a perimeter.

13 Q Did y'all think to ask what color or what
14 length their hair was?

15 A Like I say, I set up a perimeter. I was given
16 instructions through my sergeant to set up a
17 perimeter and start combing the area.

18 Q Did you think to ask what the robbers took,
19 what they might have in their possession that came
20 from the victims; did you know that?

21 A No, sir.

22 Q You did not, okay. You had all the folks get
23 out of the car, though, didn't you?

24 A No, sir, no one exited the vehicle.

25 Q You didn't have anybody exit the vehicle?

JUSTIN ZACHARY STROM - CROSS BY MR. CALHOUN

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- 1 A No, sir.
- 2 Q You're positive about that?
- 3 A Yes, sir.
- 4 Q Okay. Did you see anybody in the car with a
5 pack of Marlboro cigarettes?
- 6 A No, sir.
- 7 Q Did you see anybody in the car that may have
8 had a white lighter in their possession?
- 9 A No, sir.
- 10 Q You did not. Did you even know that a pack of
11 Marlboro cigarettes and a white lighter was taken
12 off one of the victims?
- 13 A No, sir.
- 14 Q Did you know that wallets were taken off the
15 victims?
- 16 A No, sir.
- 17 Q Did you know anything at all about what was
18 stolen?
- 19 A No, sir -- uh, money. I do know they said they
20 stole money.
- 21 Q Well, your testimony was that the reason you
22 did these stops after the robbery was, quote, If you
23 find the suspect, you can apprehend them.
- 24 A Yes, sir.
- 25 Q Is that correct?

JUSTIN ZACHARY STROM - CROSS BY MR. CALHOUN

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1 A Yes, sir.

2 Q But you can't really find the suspect if you
3 don't know what they look like or what they stole
4 from the victim; isn't that correct?

5 A That's correct.

6 Q In addition to Alvin Phillips, Bryan Phillips,
7 Mr. Langford, Veronica Phillips -- is that right?
8 She was in the car?

9 A Yes, sir.

10 Q And there were two other women?

11 A No, sir. No, sir.

12 Q Who were the other women in the car?

13 A It was Veronica Phillips, another female in the
14 passenger seat I believed to be her mother. There
15 was Alvin Phillips and K.C. Langford in the back
16 seat.

17 Q So there were two women in the car, right?

18 A Two women in the front seat, two men in the
19 back seat.

20 Q And the other woman you don't know her name?

21 A No, sir.

22 MR. CALHOUN: Okay. That's all I have.

23 THE COURT: Mr. Williams.

24 ****

25 ****

JUSTIN ZACHARY STROM - CROSS BY MR. WILLIAMS

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1 CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q Mr. Strom, now at the time you say you were a
4 deputy sheriff in this county, right?

5 A Yes, sir.

6 Q All right. Now, could you tell me [REDACTED] [REDACTED]
7 Drive, where is that?

8 A That is at the end of Roland Avenue directly
9 across Monument -- Monument Run is parallel to [REDACTED]
10 [REDACTED]

11 Q All right. Does [REDACTED] [REDACTED] intersect Monument?

12 A Yes, that's correct, come off Roland pass the
13 school bus shop, go across Monument and straight on
14 to [REDACTED] [REDACTED] It's a gravel road going into Saluda
15 County.

16 Q So once you cross over Monument, it's not long
17 if you drive down [REDACTED] [REDACTED] what, an eighth of a
18 mile, you're in Saluda [REDACTED]

19 A I'm not sure exactly where the county line
20 comes, but it's not far, no, sir.

21 Q It's very near, isn't it?

22 A Yes, sir.

23 Q Let me ask you this. Do you know where
24 Milliken is?

25 A Yes, sir.

1 Q Where is Milliken in Johnston?

2 A Milliken in Johnston is on the four lane on
3 Highway 23 headed back towards Edgefield.

4 Q All right, sir. To the best of your knowledge,
5 a vehicle leaving Johnston in the direction they
6 were headed would they be going further away from
7 Milliken or getting near or toward it based upon the
8 manner and the direction in which they were
9 traveling?

10 A The vehicle that I stopped?

11 Q That's right.

12 A That was going away from Milliken.

13 MR. WILLIAMS: All right. Thank you, sir. I
14 don't have any other questions.

15 THE COURT: Redirect.

16 MR. MAYE: Nothing else, Your Honor. Thank
17 you.

18 THE COURT: Thank you, sir. You may step down.
19 Call your next witness.

20 MR. MAYE: Beg the Court's indulgence.

21 (Pause.)

22 MR. MAYE: State calls Investigator Lamaz
23 Robinson.

24 THE COURT: Come around, please.

25 *****

LAMAZ ROBINSON - DIRECT BY MR. MAYE

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1 LAMAZ ROBINSON,

2 having been duly sworn, testified as follows:

3 THE CLERK: State your full name and spell your
4 last name, please.

5 THE WITNESS: It's Lamaz Robinson,
6 R-o-b-i-n-s-o-n.

7 DIRECT EXAMINATION

8 BY MR. MAYE:

9 Q Investigator Robinson, tell the ladies and
10 gentlemen of the jury about your background in law
11 enforcement, where all you've worked, where you were
12 employed back in August, where you're currently
13 employed.

14 A I've been in law enforcement for approximately
15 seven years now. I worked in Johnston for the last
16 past six years. I worked in Saluda County for a
17 year. I was employed at Johnston Police Department
18 in the capacity of investigator back in August the
19 14th of 2008.

20 Q Okay. Let me ask you this. August the 14th of
21 2008, did you respond out to [REDACTED] Street
22 where the Chinese people live?

23 A I did.

24 Q Okay. Were you able to meaningfully
25 communicate with the people beyond getting a bare

LAMAZ ROBINSON - DIRECT BY MR. MAYE

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1 framework of what was going on?

2 A No. There was a great language barrier that
3 was there.

4 Q Okay. What were you able to do once you got
5 out to the scene? What were you able to do other
6 than to find out they got robbed basically?

7 A Yeah. I found out they got robbed and they
8 were able to just tell me that it was three black
9 men and they had a gun and that they ran. At that
10 point in time, I notified Chief Aston and went
11 through all the protocols of notifying the sheriff
12 and his command staff through dispatch and asked for
13 a dog team.

14 Q Investigator Robinson, were you familiar with
15 the Chinese people? I mean, did you know their
16 names or anything like that?

17 A I don't know their names. I am familiar with
18 them.

19 Q Had you been eating in the restaurant and been
20 ordering in there and at least had exposure to them
21 through being in Johnston for all that time?

22 A Yes, sir.

23 Q Okay. When you were confronted with trying to
24 communicate with them, what information were you
25 able to glean? I mean, what were you able to get

LAMAZ ROBINSON - DIRECT BY MR. MAYE

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1 given the language barrier?

2 **A** Like I said, I wasn't able to get much other
3 than the fact that they had been robbed, said three
4 black males had a gun and took the money and ran.

5 **Q** Were you able to get anything about whether or
6 not their faces were being able to be seen or
7 anything like that? Were you able to get anything
8 like that?

9 **A** No, sir. Officer Campbell is the one who
10 initially responded. I came out of Edgefield to
11 respond to his request.

12 **Q** As to questions like did they have watches,
13 jewelry, facial hair, all of those details, the
14 normal questions that you would be able to ask a
15 victim that spoke English, were you able to ask them
16 those sorts of questions?

17 **A** No.

18 **Q** Were you -- when was the first time that you
19 were ever able to have any meaningful communication
20 between you and the victims? How long after the
21 fact was that?

22 **A** That was over a year and something after the
23 fact when we found someone from USC.

24 **Q** Was there a difficulty in finding anybody that
25 could translate to talk to them at all?

LAMAZ ROBINSON - DIRECT BY MR. MAYE

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1 **A** Yes.

2 **Q** Okay. Were you finally able to find someone
3 and how were you able to do that to have any
4 communication with them?

5 **A** Yes, we were able to find someone by calling a
6 professor over at the University of South Carolina
7 in Columbia and he directed us to someone who could
8 speak Chinese. We attempted to call someone that
9 night, but the lady that we called, she can only
10 speak Spanish.

11 **Q** Okay. Was that very limiting in what
12 information that you were able to obtain as opposed
13 to what you would have been able to obtain typically
14 based on your experience and training?

15 **A** Yes.

16 **Q** How was that different? What differences would
17 there have been if you had responded to a normal
18 investigation given the fact that your --

19 **MR. CALHOUN:** Objection to leading the witness,
20 Your Honor.

21 **THE COURT:** State your question in a nonleading
22 fashion, please.

23 **BY MR. MAYE:**

24 **Q** What differences were there in between this
25 investigation and a normal investigation?

LAMAZ ROBINSON - DIRECT BY MR. MAYE

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1 **A** This investigation is due to the fact that the
2 language barrier, most people that we come in
3 acquaintance with we can speak English, they can
4 translate back and forth from English with us. We
5 can ask them questions in English, they can give us
6 answers in English. With these particular
7 individuals, they were speaking Chinese. We wasn't
8 able to ask them any questions or receive any
9 answers from them that we would have understood what
10 they were saying.

11 **Q** What were you able to accomplish or do that
12 night then given that barrier?

13 **A** Very little. Like I said, the only thing we
14 did was when they said they was robbed by three
15 black males, had a gun, at that point in time, the
16 only thing we could do is call out the dog team and
17 see if we was able to track and get anything on the
18 tracking.

19 **Q** Were you able to have any success with the dog
20 team?

21 **A** No, sir.

22 **Q** Were you able to have any success with anything
23 that you did there that night?

24 **A** No, sir.

25 **Q** Okay. When was the first time that you got any

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1 movement on this case after the time of the incident
2 on August the 14th of 2008?

3 A The first time that we ever got any type of
4 leeway on this case is I was approached by
5 Investigator Roosevelt Young and SLED Agent Michael
6 Perry on September the 29th of 2008. And they
7 informed me that they had some information and they
8 talked to some people and that's when they spoke
9 with Mr. Alvin Phillips and he confessed to this.

10 Q Who else did he implicate other than himself?

11 A He implicated Mr. K.C. Langford and Bryan
12 Phillips.

13 Q Okay. What about Alvin Phillips implicating
14 himself -- what did you do based on getting his
15 statement? Did you get the statement that's already
16 in evidence here?

17 A Yes. I received that statement from
18 Investigator Young.

19 Q Who did you first talk to that night, what were
20 the circumstances? Who did you first talk to?

21 A On the day of this statement that was given?

22 Q Yes.

23 A I never actually had any talks with anyone.
24 The first person that came to our office to be
25 interviewed was Veronica Phillips.

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1 Q Okay. So Veronica Phillips was there?

2 A Yes.

3 Q When and how much later did Alvin Phillips come
4 up there?

5 A Approximately maybe an hour later if so.

6 Q Okay. Were you provided with a copy of the
7 statement that Alvin Phillips gave?

8 A I was. I actually read Alvin his Miranda
9 rights and then Investigator Young and Agent Perry
10 talked to him, then Investigator Young by himself.

11 Q Did y'all threaten him or coerce him in any way
12 in order to try to get him to talk?

13 A No, sir.

14 Q Were any promises made to him in order to try
15 to induce him to give a statement?

16 A No, sir.

17 Q Okay. But as a result of that, he gave you the
18 statement; is that correct?

19 A Yes.

20 Q Okay. What charges did you cause to be
21 instituted based on your responsibilities as an
22 investigator in this state -- in this case, what
23 charges?

24 A All three subjects was charged with armed
25 robbery, burglary in the first degree, kidnapping,

LAMAZ ROBINSON - DIRECT BY MR. MAYE

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1 assault and battery with intent to kill, possession
2 of a weapon during the commission of a crime and
3 criminal conspiracy.

4 Q Okay. What about that statement --

5 A And kidnapping. I'm sorry.

6 Q What about that statement gave it any special
7 significance to you when Alvin gave that statement?
8 I mean, what about it gave you significant -- did
9 you think was significant?

10 A Well, during my course of the investigation,
11 often times when someone is involved in something,
12 they don't normally implicate themselves. He
13 implicated himself and these other two, Bryan and
14 K.C., in this that happened, that was of
15 significance to me --

16 MR. CALHOUN: Objection, Your Honor. He's ask
17 -- he's giving an expert witness to the jury,
18 "normally what happens on these cases", there's no
19 normal on a criminal case. If he's going to
20 establish himself as some sort of expert, a
21 foundation needs to be laid.

22 MR. MAYE: He's not giving an opinion, Your
23 Honor. He's not issuing any opinion. I asked him
24 what was significant about that investigation in
25 regard to him getting charges.

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1 **THE COURT:** It sounds to me like he's
2 attempting to bolster or offer evidence about the
3 credibility of another witness, which is improper.
4 That witness testified, the jury can evaluate
5 whether that witness was credible or not, whether
6 this man believed him or not is irrelevant. Go
7 ahead.
8 **BY MR. MAYE:**
9 **Q** Was the statement that he gave, Alvin Phillips,
10 did it implicate himself?
11 **A** It did.
12 **Q** Who else did it implicate?
13 **A** K.C. Langford and Bryan Phillips.
14 **Q** What else were you able to do on the case,
15 Investigator Robinson?
16 **A** That's all -- after I charged these
17 individuals, I did nothing else until we got an
18 interpreter that was able to speak and we went back
19 and spoke with the victims in further detail.
20 **Q** Was there ever any attempt on your part to get
21 Alvin Phillips to color his testimony in any
22 direction? Did you ever ask him to do anything?
23 **A** No, sir.
24 **MR. MAYE:** Answer any questions the defense
25 has.

LAMAZ ROBINSON - CROSS BY MR. CALHOUN

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1 THE COURT: Cross, Mr. Calhoun.

2 MR. CALHOUN: Please the Court.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. CALHOUN:

6 Q Mr. Robinson, the victims made a 9-1-1 phone
7 call, correct?

8 A Yes, sir.

9 Q And these 9-1-1 operators are trained to get
10 certain information before they send an officer out
11 to the scene of the crime, correct?

12 A Yes, sir.

13 Q And amongst the information they collect from
14 the caller is the person's full name, right?

15 A Yes, sir, in some cases.

16 Q They also get a complete address, correct?

17 A Not necessarily, sometimes that shows up on the
18 CAD system. I know they do ask sometime, I don't
19 know what all is asked during a 9-1-1 --

20 Q You don't think a 9-1-1 operator is going to
21 ask someone their address when they're calling to
22 report a crime?

23 A I don't know what all they're asked when
24 they're calling to report a crime. I've never been
25 a 9-1-1 --

LAMAZ ROBINSON - CROSS BY MR. CALHOUN

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1 Q To the best of your knowledge, they'd probably
2 want to know --

3 A I know that --

4 Q -- when they call --

5 THE COURT: Y'all are talking over each other,
6 stop it. Put your question to him. Mr. Robinson --

7 MR. CALHOUN: My apologies, Judge, if I was
8 cutting him off --

9 THE COURT: -- don't answer --

10 MR. CALHOUN: Go ahead and finish your answer,
11 please.

12 THE COURT: You're cutting me off. Put your
13 question to him. And you don't answer until he's
14 finished his question. The court reporter can't
15 take down two or three people talking at the same
16 time.

17 All right. Mr. Calhoun, pose your question.

18 THE WITNESS: My answer is I don't know what
19 all the 9-1-1 caller asked during the 9-1-1 call.
20 From my understanding that when someone calls in
21 9-1-1 from a landline phone, that it does show up on
22 the CAD system where they call from.

23 BY MR. CALHOUN:

24 Q But I think it's reasonable to assume that the
25 9-1-1 operator might say, Where are you so we can

LAMAZ ROBINSON - CROSS BY MR. CALHOUN

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1 send a police officer out to your location.

2 A That's reasonable, yes, sir.

3 Q Okay. All right. Thank you. And the 9-1-1
4 operator is also going to want to know what the
5 crime is, correct?

6 A Yes, sir.

7 Q What the person is saying the defendant, the
8 criminal, has done to them, correct?

9 A Right.

10 Q And the 9-1-1 operator would typically ask for
11 a description of the defendant too, correct?

12 A Some cases, yes, sir.

13 Q Yes, sir. But you know what a BOLO is, right?

14 A Yes, sir.

15 Q Okay. BOLO is an abbreviation for Be On The
16 Lookout, correct?

17 A That's correct.

18 Q And a BOLO is something that is typically put
19 out on the radio so other officers in the area can
20 be looking for these people that the victim says
21 just robbed them?

22 A Yes, sir.

23 Q Okay. And you can't do a BOLO unless you have
24 a good description, right?

25 A I disagree with that.

LAMAZ ROBINSON - CROSS BY MR. CALHOUN

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1 Q Okay. Well, was this BOLO three black males?

2 A Yes, sir, it was.

3 Q Okay. Well, if the area has a lot of black
4 folks living in that area, wouldn't that be the same
5 as putting out a BOLO for three people wearing
6 orange at a Clemson game?

7 A It could be.

8 Q That would be kind of hard to find the
9 defendants under those -- with that type of
10 description, wouldn't you agree?

11 A I would agree, but the only thing we can go off
12 of at the time is what we've been given and the BOLO
13 was given that three black males that had on black
14 with a 1059, which is a gun.

15 Q Well, clearly, the person who called in and
16 made the 9-1-1 call, clearly he could speak English
17 pretty well; isn't that correct?

18 A No. He could speak English okay, not well.

19 Q Well, he gave all of this information to the
20 9-1-1 operator over the telephone; isn't that right?

21 A No, sir, that's not right.

22 Q Okay. How did the police department get this
23 information?

24 A The police department did not know that it was
25 an armed robbery until the police department.

LAMAZ ROBINSON - CROSS BY MR. CALHOUN

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1 actually got there. Dispatch gave it out to us as a
2 larceny.

3 Q Okay. So the police department showed up and
4 then they found out it was an armed robbery?

5 A Right.

6 Q And did you speak to the victim about that?

7 A I did after Officer Campbell did. After I got
8 there, I spoke with him.

9 Q And Officer Campbell did first?

10 A Yes.

11 Q And which one of the victims gave you this
12 information, what was his name?

13 A The son.

14 Q The son, okay. And the son is the one that
15 made the 9-1-1 call, correct?

16 A From my understanding, yes.

17 Q You were sitting here when he testified
18 yesterday, right?

19 A Yes.

20 Q Okay. So the son actually called in and made
21 the 9-1-1 call?

22 A Yes.

23 Q And then when you showed up at the scene, y'all
24 spoke to him?

25 A Right.

LAMAZ ROBINSON - CROSS BY MR. CALHOUN

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1 Q Okay. And you got all of the information you
2 just testified to about from that son?

3 A I did.

4 Q Now, were you the chief investigator on this
5 case?

6 A I was the investigator on the case. We worked
7 together on it.

8 Q Well, there's been testimony that one of the
9 defendants went inside the house and looked around
10 for a bag of money and he came out with it; isn't
11 that correct?

12 A Yes, sir. There was testimony that a subject
13 went into the house and took a bag of money.

14 Q Okay. And there's been testimony that there
15 were people hiding in the bushes and possibly trying
16 to get into the house before the victims showed up,
17 correct?

18 A Yes, sir.

19 Q Okay. So we know that the defendants were
20 outside the perimeter of the house, correct?

21 A Yes, sir.

22 Q And we know that there was at least one person
23 that went inside the house, correct?

24 A Yes, sir.

25 Q Did you find any fingerprints inside the house?

LAMAZ ROBINSON - CROSS BY MR. CALHOUN

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1 A No, sir.

2 Q Outside the house?

3 A No, sir.

4 Q Did you find any type of DNA evidence inside or
5 outside the house?

6 A No, sir.

7 Q Okay. Did you look for any hair follicles to
8 do a hair follicle test?

9 A No, sir.

10 Q Was there any forensic evidence done on this
11 case that could corroborate that K.C. Langford or
12 Bryan Phillips were in the vicinity of the house
13 that night?

14 A No, sir. The only thing that was done, like I
15 said, was if you read the report, the photographs of
16 shoe prints and there was nothing to compare a shoe
17 print to.

18 Q Okay. Mr. Robinson, do you have any
19 corroborating evidence whatsoever from your
20 investigation that indicates what Bryan -- I'm sorry
21 -- what Alvin Phillips testified to yesterday is the
22 truth?

23 A Do I have any corroborating evidence?

24 Q Yes.

25 A I've spoke to -- I didn't speak to anybody,

LAMAZ ROBINSON - CROSS BY MR. CALHOUN

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1 someone else spoke to Mr. Bryan Phillips.

2 MR. MAYE: I'm going to ask him not to say
3 anything that anybody -- any witnesses have said,
4 any hearsay. I'd just ask -- direct that he not do
5 that.

6 THE COURT: Do y'all want me to get involved in
7 this?

8 MR. WILLIAMS: Your Honor, I just want him to
9 steer clear of it, that's the only thing.

10 THE COURT: I have no idea what y'all are
11 talking about, but, ladies and gentlemen, disregard
12 completely the last statement of the witness.

13 MR. CALHOUN: Thank you, Judge. I don't
14 either.

15 BY MR. CALHOUN:

16 Q Have you -- has your investigation revealed any
17 evidence, fingerprints, shoe prints, DNA evidence,
18 hair follicle samples, anything that would lead you
19 to believe that K.C. Langford was at that house that
20 night?

21 A Yes.

22 Q Okay. Well, tell me was it fingerprints?

23 A No.

24 Q What forensic evidence do you have?

25 A I don't have any forensic evidence.

LAMAZ ROBINSON - CROSS BY MR. CALHOUN

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1 Q Well, that's my question.

2 A I took your question to be is there any
3 fingerprints, hair follicles or anything that will
4 lead me to believe that K.C. was at the house that
5 night and my answer to that is yes.

6 Q Okay. Well, let me make the question more
7 specific for you again. Do you have any fingerprint
8 evidence?

9 A No.

10 Q Okay. Do you have any DNA evidence?

11 A No.

12 Q Did you look for shoe prints outside the house?

13 A Yes.

14 Q Did you find any that matched K.C. Langford?

15 A No.

16 Q Did you find any hair follicles inside or
17 outside the house that could be matched to K.C.
18 Langford?

19 A No.

20 Q Any other forensic evidence you, as an
21 investigator, could think of that could put
22 Mr. Langford at the house that night?

23 A No.

24 Q You have nothing, do you?

25 A No, not forensic, no.

LAMAZ ROBINSON - CROSS BY MR. WILLIAMS

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1 MR. CALHOUN: Okay. Thank you.

2 THE COURT: Mr. Williams.

3 CROSS-EXAMINATION

4 BY MR. WILLIAMS:

5 Q Investigator Robinson, you don't have any
6 evidence which would indicate, forensic evidence,
7 that would indicate that my client, Bryan Phillips,
8 was there at that home either, do you?

9 A No forensic evidence, no.

10 Q Other than the statement of Alvin Phillips
11 which is in evidence right before you.

12 A Uh-huh.

13 Q Is that yes?

14 A Yes, sir.

15 Q All right. That's the only thing that you have
16 that ties my client to this crime at all, isn't it?

17 A Yes, sir, that ties your client, yes, sir.

18 Q Let me ask you this. Are you familiar with a
19 Joseph Patrick Stevens?

20 A I know Joseph Patrick Stevens, yes.

21 Q All right. And to your knowledge was Joseph
22 Patrick Stevens the source of information that led
23 to Alvin Phillips?

24 A Yes, I later learned that.

25 Q Do you know if Joseph Patrick Stevens has

LAMAZ ROBINSON - CROSS BY MR. WILLIAMS

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1 worked or acted as an informant for a law
2 enforcement agency in this county?

3 A I don't.

4 Q Okay. Are you familiar with Investigator
5 Roosevelt Young?

6 A I am.

7 Q What's his primary job in this county?

8 A He works in the narcotic division.

9 Q And how does he do his job effectively?

10 A Sir, that would be a question that you'd have
11 to pose to him. I don't actually know how he does
12 his job.

13 Q Come on now, you're an investigator, right?

14 A I am. I've never been trained in the field of
15 narcotics.

16 Q Okay. But you're familiar with law enforcement
17 operations, aren't you?

18 A Yes.

19 Q Okay. Is it common, sir, for informants to
20 work in the narcotics side of law enforcement?

21 A I would assume so, yeah. Like I said, I have
22 never worked narcotics, so I've never used any
23 informants.

24 Q Okay. You've come here to this courthouse a
25 number of times, haven't you?

LAMAZ ROBINSON - CROSS BY MR. WILLIAMS

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- 1 A Uh-huh.
- 2 Q Is that yes?
- 3 A Yes, sir.
- 4 Q Okay. And you've watched this prosecutor
- 5 prosecute a number of cases, haven't you?
- 6 A I've seen him prosecute cases, yes.
- 7 Q And you've actually seen Investigator Young
- 8 testify as a witness for the State in a narcotics
- 9 case, haven't you?
- 10 A I have.
- 11 Q And you've seen informants come into this
- 12 courtroom, haven't you?
- 13 A To be honest with you, Mr. Williams, no.
- 14 Q You have not?
- 15 A No, sir.
- 16 Q Okay. Well, have you heard of it or would it
- 17 surprise you to know that it does happen?
- 18 A No, it wouldn't surprise me.
- 19 Q All right. Now, I'm going to question you a
- 20 little bit about your experience. You say you --
- 21 A Yes, sir.
- 22 Q What did you do at Saluda for that first year?
- 23 A I worked in dispatch in the detention center.
- 24 Q Dispatch and detention?
- 25 A Yes.

LAMAZ ROBINSON - CROSS BY MR. WILLIAMS

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1 Q Okay. When you came to Johnston, what did you
2 do?

3 A Road patrol.

4 Q Okay. All -- still you're a certified law
5 enforcement officer in this state, aren't you?

6 A Yes, sir.

7 Q Trained by SLED?

8 A No, sir, trained by the criminal justice
9 academy.

10 Q Well, trained by the South Carolina Criminal
11 Justice Academy, all right.

12 A Yes, sir.

13 Q Under the supervision and guidelines set by
14 SLED, though, aren't they?

15 A Set by the training counsel of -- which is
16 composed of law enforcement that the Governor
17 appoints.

18 Q All right. Is Joseph Patrick Stevens a friend
19 of yours?

20 A A friend of mine?

21 Q Yes.

22 A No.

23 Q Okay. Do you believe he's a friend of
24 Mr. Chris Wash's, Captain Chris Wash's?

25 A I don't know what their friendship is, but you

LAMAZ ROBINSON - CROSS BY MR. WILLIAMS

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1 ask me my believability, no.

2 Q Do you think he's a friend of Investigator, is
3 it, Mike Perry that was involved in this one?

4 A SLED agent, yes. Do I think he's a friend of
5 his?

6 Q SLED Agent Perry's?

7 A No.

8 Q But it was Investigator Young who brought this
9 information to you, right?

10 A Investigator Young and Agent Perry.

11 Q Right. And they had, in fact -- in the
12 statement that you have, they had, in fact, gotten
13 this statement from Alvin Phillips?

14 A Correct.

15 Q All right. Let me ask you this. You heard the
16 testimony on yesterday, didn't you?

17 A Yes, sir.

18 Q Okay. The wife, to your knowledge, she
19 remained in the house the entire time?

20 A To my knowledge, yes.

21 Q All right. Alvin's 17 years old at the time of
22 this incident, right?

23 A Correct.

24 Q And when he got to you or the information had
25 gotten to you, he had already been interviewed by

LAMAZ ROBINSON - CROSS BY MR. WILLIAMS

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1 Investigator Roosevelt Young and SLED Agent Mike
2 Perry?

3 A Right. I was there at my office when they
4 interviewed him. I just was not part of the
5 interview.

6 Q Okay. Were you in the room with them?

7 A No.

8 Q Okay. The two of them were in the room?

9 A No.

10 Q Who was in the room?

11 A Investigator Young.

12 Q And?

13 A That's it. That's the only person --

14 Q No, no, no, it had to be someone other than
15 Investigator Young now. Is that all that was there?

16 A That was all that was in the room when they
17 interviewed Alvin, yes.

18 Q All right. Who was in the room?

19 A Investigator Young interviewed him. I read
20 him --

21 Q No, no, no, listen to my question.

22 THE COURT: Don't cut him off.

23 MR. WILLIAMS: I'm sorry.

24 BY MR. WILLIAMS:

25 Q Who was in the room at the time of the

LAMAZ ROBINSON - CROSS BY MR. WILLIAMS

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1 interview with Alvin Phillips? Name all of the
2 people that were in the room.

3 A Investigator Young was the only one who
4 interviewed Mr. Phillips.

5 Q And Mr. Phillips was there as well?

6 A Yes, and Mr. Phillips.

7 Q So it was just two people?

8 A Yes.

9 Q What was Investigator Perry doing?

10 A He was in my office with me.

11 Q SLED Agent Perry, I'm sorry. All right. Did
12 Alvin know where he was? Where did this interview
13 occur?

14 A At the conference room of the Johnston Town
15 Hall.

16 Q Okay. That's where you all are, right? That's
17 where your office is, isn't it?

18 A Yes. It's in that building.

19 Q Okay. So he was at the police station, wasn't
20 he?

21 A Yes, sir.

22 Q All right. And there was information that
23 Investigator Young had gleaned from, likely, Joseph
24 Patrick Stevens, right?

25 A Yes, sir.

LAMAZ ROBINSON - CROSS BY MR. WILLIAMS

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1 Q All right. And he had Alvin in the room at the
2 police department; is that right?

3 A That's correct in the conference room.

4 Q And you were there? You were there?

5 A Was where?

6 Q You were there at the town hall?

7 A Yeah.

8 Q In Johnston?

9 A I was at work that day, yes.

10 Q Okay. Agent Perry was there?

11 A Right.

12 Q What other law enforcement officers were there?

13 A Chief Aston was working also and maybe one
14 other officer was working, if I'm not mistaken. Who
15 that was, I don't recall.

16 Q All right. And you didn't bring him in with a
17 blindfold on, did you? Alvin I'm speaking of.

18 A We didn't bring him in at all. He came in
19 freely and voluntarily.

20 Q Okay. Well, he didn't come in with a blindfold
21 on, did he?

22 A No.

23 Q All right. So he knew where he was and he knew
24 who all was there?

25 A That's correct.

LAMAZ ROBINSON - CROSS BY MR. WILLIAMS

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1 Q Did you have your pistol on your side?

2 A Probably so.

3 Q Did Agent Perry have his pistol on his side?

4 A Probably so.

5 Q All right. Did those other officers, Chief
6 Aston and the other officers that might have been
7 working, did they have their pistols on their side?

8 A Probably so.

9 Q Y'all are police officers, aren't you?

10 A Yes, sir.

11 Q My friend, Mr. Pox, he's got a pistol on his
12 side sitting right there, doesn't he?

13 A He does.

14 Q All right. You think that young fellow was
15 impressed by you all?

16 A Because we had pistols on, no.

17 Q You don't believe so?

18 A No.

19 Q One other question I want to follow up on. In
20 Saluda, you worked as a jailer and as a dispatch
21 person?

22 A Dispatch and then I went to the jail to work.

23 Q And when Mr. Calhoun was questioning you just a
24 moment ago, you said you knew very little about
25 9-1-1 protocol; is that right?

LAMAZ ROBINSON - CROSS BY MR. WILLIAMS

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1 A I did.

2 Q I'm sorry?

3 A I did.

4 Q You did?

5 A Yeah. I said I knew very little what they
6 asked.

7 Q No, no. The question he asked you was, did you
8 know anything about 9-1-1 protocol. Do you recall
9 the answer you gave him?

10 A The question that I recall him asking me is do
11 they ask certain questions when a 9-1-1 call comes
12 in and I said I don't know what all they ask. But
13 to clarify the answer to that question, I didn't
14 work in dispatch for very long. I was transferred
15 to the detention center by Sheriff Booth because
16 they needed help at the detention center, so I never
17 went to 9-1-1 training or a 9-1-1 school.

18 Q All right. But you did have some working
19 knowledge of 9-1-1 dispatch?

20 A Very little.

21 Q Okay. Do you know anything about drum
22 majoring?

23 A Yes, sir. I can tell you a lot about that.

24 Q Okay. I hear you.

25 MR. WILLIAMS: I have nothing further.

LAMAZ ROBINSON - RECROSS BY MR. CALHOUN

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1 **THE COURT:** All right. Redirect.

2 **MR. MAYE:** Nothing else, Your Honor. Thank
3 you.

4 **THE COURT:** Do you have anything else, Mr.
5 Calhoun?

6 **MR. CALHOUN:** Beg the Court's indulgence.

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

8 (Pause.)

9 **MR. CALHOUN:** A couple questions, Judge.

10 RECROSS-EXAMINATION

11 BY MR. CALHOUN:

12 **Q** Mr. Robinson, other than you, was there a chief
13 investigator on this case?

14 **A** No, sir. I was deemed as the chief
15 investigator.

16 **Q** The home of the victims, was it checked for
17 fingerprints? Did someone even do a fingerprint
18 check?

19 **A** No.

20 **Q** Did someone do a DNA check?

21 **A** No.

22 **Q** Did someone check the house or the grounds for
23 foreign hair follicles?

24 **A** No.

25 **Q** Or any hair follicle that may not have matched

LAMAZ ROBINSON - RE CROSS BY MR. CALHOUN

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1 those of the victims?

2 **MR. MAYE:** Asked and answered, Your Honor, all
3 of these.

4 **THE COURT:** Overruled. You may answer the
5 question.

6 BY MR. CALHOUN:

7 **Q** What about shoe prints?

8 **A** Like I said, we photographed shoe prints.
9 There was nothing to compare a shoe print to.

10 **Q** So you did take photographs of shoe prints,
11 right?

12 **A** Right.

13 **Q** You just couldn't find a print that would match
14 those of Mr. Langford, correct?

15 **A** No.

16 **Q** That means you could not find the match to
17 those of Mr. Langford, correct?

18 **A** No.

19 **MR. CALHOUN:** Court's indulgence.

20 (Pause.)

21 **Q** Why did Alvin Phillips come to the sheriff's
22 department that day?

23 **A** To the police department? I assume
24 Investigator Young, after he spoke with Ms.
25 Phillips, asked to speak to him.

LAMAZ ROBINSON - REDIRECT BY MR. MAYE

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1 Q So someone called him on the phone?

2 A I'm assuming so. I don't know how that
3 actually went down.

4 MR. CALHOUN: Okay. That's all I have, Judge.

5 THE COURT: Anything else of the witness?

6 MR. MAYE: Yes, sir, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. MAYE:

9 Q The shoe prints you took photographs of, do you
10 even know whether or not those have any relevance to
11 this case?

12 A No.

13 Q What kind of foot traffic is in that area in
14 between the apartment complex and downtown?

15 A A lot.

16 Q Who lived in the apartment complex?

17 A Numerous of people lived in the apartment
18 complex.

19 Q Who involved in this case had connection with
20 the apartment complex there or was in and out of the
21 apartment complex based on your knowledge?

22 A Bryan Phillips, K.C. Langford and Alvin
23 Phillips.

24 Q What connection were you aware of between Alvin
25 Phillips and these two individuals or what was his

LAMAZ ROBINSON - REDIRECT BY MR. MAYE

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1 connection with Bryan Phillips?

2 A I knew that him and Bryan was cousins and I
3 knew that he --

4 Q Where did Bryan live?

5 A On [REDACTED] Street with his mother.

6 Q What was his connection to K.C. Langford in
7 this case?

8 A I knew that K.C. dated his sister, Verónica.

9 Q Where do people walk coming back and forth
10 between the apartment complex and downtown in
11 Johnston?

12 A I would assume the walking actually takes place
13 along [REDACTED] Street and along -- [REDACTED] Street and
14 [REDACTED] Street actually runs together.

15 Q Would there be any significance to footprints
16 of people that live in the apartment complex that
17 close within walking distance of where they live?

18 A No.

19 Q Was there any comparison of anything -- nothing
20 you did excluded K.C. Langford in this case
21 involving footprints, did it?

22 A No.

23 Q There was nothing done with the footprints,
24 were there?

25 A No.

LAMAZ ROBINSON - RECROSS BY MR. WILLIAMS

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1 MR. MAYE: Thank you.

2 THE COURT: Anything further from the witness?

3 MR. CALHOUN: None from Mr. Langford.

4 THE COURT: Mr. Williams, do you have anything
5 further of this witness?

6 MR. WILLIAMS: Just one question.

7 RECROSS-EXAMINATION

8 BY MR. WILLIAMS:

9 Q Did you attempt to do a shoe comparison based
10 on any shoes that might have been owned by any of
11 the defendants?

12 A No.

13 MR. WILLIAMS: Thank you, sir.

14 THE COURT: Anything else of the witness?

15 MR. MAYE: Nothing else. Thank you.

16 THE COURT: Thank you, sir. You may step down.
17 Any further evidence from the State?

18 MR. MAYE: Nothing from the State, Your Honor.
19 Thank you.

20 THE COURT: All right. Ladies and gentlemen,
21 when I began explaining to you how the trial would
22 commence, I told you that when we reached this stage
23 where the State rests, that I have to discuss legal
24 matters with the attorneys. So that's where we are
25 now and I have to do that outside your presence.

1 This usually takes about 20 minutes. If it's going
2 to be substantially longer than that, I'll send word
3 to you, but I need you to step in the jury room and
4 not discuss the case. I'll get back to you as
5 quickly as I can. Thank you.

6 (The jury retires to the jury room.)

7 MR. MAYE: Your Honor, there's one housekeeping
8 matter. The court reporter asked me about those
9 four photographs that were in by stipulation. She
10 indicated that she may not have had that in the
11 record. I know I put them in for I.D. and then we
12 had a discussion about whether or not we stipulate
13 that they came in or I needed to -- I was going to
14 attempt to ask another question in order to get them
15 into evidence. She may not have that in the record
16 as she indicated that she did not. I want to be
17 sure that we address that.

18 THE COURT: Which four photographs?

19 MR. MAYE: State's 1 through 4.

20 THE COURT: My understanding was those were in
21 without objection.

22 MR. CALHOUN: No objection.

23 MR. WILLIAMS: That's right, Your Honor.

24 THE COURT: They're in evidence.

25 Motions?

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1 **MR. CALHOUN:** Yes, Your Honor. At this time on
2 behalf of K.C. Langford, I want to move for a
3 directed verdict against the prosecution. Viewing
4 the evidence in the light most favorable to the
5 State, the prosecution's case comes solely off of
6 co-defendant testimony. There's no corroborating
7 evidence on the behalf of law enforcement that
8 supports or bolsters the fact that what Mr. Phillips
9 says is the truth, Your Honor.

10 Since this occurred in August of 2008,
11 Mr. Phillips has clearly waffled, putting it
12 lightly, as to whether or not my client was present
13 and involved in the armed robbery. He's given
14 written statements that his first statement to the
15 police was not true. The last time this case was
16 called to trial in May of this year, he also refused
17 to provide information that would indicate my client
18 was guilty and the case was continued.

19 Mr. Phillips has a criminal record in the short
20 period of time that he was a legal adult. In the
21 State of South Carolina, he'd already been convicted
22 of a couple of crimes of larceny. And I think that
23 his cross-examination indicated yesterday that he
24 wasn't being truthful with the Court.

25 The only other evidence that puts my clients in

1 the vicinity of the crime is the fact that they live
2 in the vicinity of the crime. I would argue to the
3 Court that if a person robbed someone, they wouldn't
4 stay a few minutes, and 15 minutes later, they
5 wouldn't stay essentially in the area of the crime,
6 they would leave at least for some period of time.
7 And if these guys were found 20 minutes from the
8 scene of the crime, that would be more indicative
9 that they were involved in the crime than the fact
10 that they stayed there.

11 There also isn't any evidence from the victims
12 that helps the prosecution's case in any manner
13 whatsoever. There's not even any evidence that the
14 other two co-defendants that were with Alvin
15 Phillips were male much less a description of a
16 black male. The only victim that testified as to
17 why they thought that the defendants were male was
18 because she said their hair was short.

19 For these reasons, we'd move for a directed
20 verdict against the prosecution.

21 **THE COURT:** Mr. Williams.

22 **MR. WILLIAMS:** Your Honor, I would like to echo
23 the arguments of Counsel Calhoun on behalf of my
24 client Bryan Phillips.

25 Your Honor, we believe that even given the

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1 evidence in the light most favorable to the State
2 based upon the substantial lack of credibility of
3 the sole witness against my client, that this Court
4 has an affirmative duty to consider that and to
5 consider the fact that there is nothing, not a
6 scintilla of evidence which is beyond the statement
7 of Alvin Phillips that supports a conviction of my
8 client beyond a reasonable doubt. We don't believe
9 the State would be able to meet its burden and we
10 would ask the Court to direct a verdict of not
11 guilty. Thank you, Your Honor.

12 **THE COURT:** All right. Well, everything that
13 you all have mentioned those are jury issues.

14 The only question I have relates to this
15 kidnapping charge because I'm not sure who was in
16 the house or who wasn't in the house, who was held
17 against their -- I mean, certain people clearly they
18 were saying he held me down, the two who initially
19 testified, the two males, the father and the son. I
20 understand that kidnapping charge, but beyond that,
21 I'm kind of at a loss as to who may have been
22 subject to a kidnapping charge.

23 The indictment alleges -- I apologize to you
24 the charge is 20 pages long. I'm trying to find it.

25 **MR. MAYE:** May it please the Court, Your Honor.

1 **THE COURT:** Yes.

2 **MR. MAYE:** I directly asked the woman that was
3 in the house who all was in the house. She went
4 through, named everybody that was there. I asked
5 her were they free to leave. I mean, I specifically
6 asked her multiple times because I knew that was
7 something that we needed to prove. She indicated
8 that they were afraid, they could not leave with the
9 man there. I asked her directly that.

10 I asked her to name everyone that was in the
11 house. I asked her were she and the other residents
12 free to leave and she said no. There were in fear
13 from the man being in there and they would not have
14 been able to leave.

15 So it's whether or not there's any evidence.
16 And given the fact that she testified as to everyone
17 that was there at the house, that the other two --
18 there's clearly testimony on the record that the two
19 men were outside. She testified and named
20 everybody. I even had her name the children that
21 were involved in this case. She named everybody
22 else at the house. And I specifically asked her for
23 that purpose whether or not she or anyone else in
24 the house could leave and she said, no, they were
25 afraid. And I did so for that purpose, Your Honor,

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1 because I knew that that would be an issue, the way
2 we had it worded in the indictment.

3 But as to kidnapping, it would be for any
4 length of time whether or not their ability to leave
5 or to go anywhere, whether or not that that was
6 impacted by the acts of any of the defendants
7 collectively under the hand of one, the hand of all,
8 they would all be guilty of kidnapping. But she
9 named all the residents of the house and I asked her
10 specifically were she and other residents free to
11 leave.

12 **THE COURT:** Well, y'all need to find that so
13 that I can see it because, you know, there was
14 testimony by one witness that I think he said his
15 sister didn't even know that the robbery was taking
16 place.

17 Now, I concede to you all that I get lost with
18 Chinese names. I apologize for my own ignorance and
19 I don't take any great pride in the fact that I get
20 confused. I don't think I'm the only one in the
21 courtroom who does, but that doesn't make it any
22 better.

23 Again, as to those two men, I understand the
24 charge. I'm not saying that the kidnapping charge
25 gets thrown out completely, but as far as what's

1 alleged in this indictment, you've got, in addition
2 to those two men, you've got somebody whose name is
3 spelled G-u-a-n-y Xing, X-i-n-g, Li and then another
4 person named Lin Yan Fung. There was mention about
5 Celine Li in the testimony, somebody said the name
6 Celine. And I guess I caught that because, though I
7 detest listening to her music, Celine Dion, I'm at
8 least familiar with that name. I think she's very
9 talented, I just can't stand her music. And Winson
10 Li. So y'all find it on there so I can look at it,
11 okay.

12 **MR. WILLIAMS:** Judge, I did want to follow up
13 on what I had -- and I was hoping the Court would
14 give us an opportunity to make an additional motion.

15 **THE COURT:** Y'all have got an opportunity to
16 make any motion you want.

17 **MR. WILLIAMS:** Your Honor, I would move to
18 quash the State's kidnapping indictment. We believe
19 that the evidence as presented does not comport with
20 the indictment as presented to the grand jury of
21 this county and I believe it's appropriate to quash
22 the State's indictment for kidnapping on that basis.

23 **MR. MAYE:** Your Honor, defects in an indictment
24 are waived prior to the swearing of the jury and
25 it's alleged in there, it's and/or any of those

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1 people. And if that's any issue, I'll move to amend
2 it to only include the names of the two men and only
3 submit it as to kidnapping on them and redact the
4 names of the other parties in it. I think it's
5 covered from the record because I specifically asked
6 her to name every person.

7 **THE COURT:** Don't go through that again. I
8 heard that the first three times you told me.

9 **MR. MAYE:** Sorry, Your Honor.

10 **THE COURT:** Just find it in there if you want
11 to pursue it. If you just want to go against the
12 two men, that's fine, too. We can shortcut it. I
13 don't care. I'm just telling you I didn't hear them
14 say -- I heard the lady say she couldn't leave of
15 her own free will, she was scared, the lady who
16 testified. But who else was in that house, I don't
17 know.

18 **MR. MAYE:** And, Your Honor, at this time, I
19 would move to redact it to short circuit that to
20 save the Court time and to only include the two men
21 in this. And I'll redact those names to conform to
22 the evidence because the indictment's worded and/or
23 any of those people.

24 **THE COURT:** I'm not going to send the
25 indictment to the jury. I'm just saying when I do

1 the charge, the names that I would use would just be
2 the two men.

3 MR. MAYE: That's what I would propose.

4 MR. WILLIAMS: And my only objection to
5 allowing the State to do that, Judge, is he had
6 rested and I just want to note that for the record.

7 THE COURT: Well, that's fine, except the
8 indictment does state and/or. And and/or means any
9 or all or some.

10 MR. WILLIAMS: It does.

11 THE COURT: It doesn't just go in there and
12 allege that kidnapped Winson Li and then there's no
13 evidence of kidnapping Winson Li and I throw out the
14 indictment. We'd be on the same footing there. But
15 if he names 16 people and doesn't offer proof except
16 as to six of them, the indictment doesn't get thrown
17 out, but the jury doesn't get instructed about those
18 other folks.

19 MR. WILLIAMS: Thank you, Your Honor.

20 MR. MAYE: And, Your Honor, I apologize. One
21 of the barriers that we had in this, the challenge
22 with the names was at the time that we -- like I
23 said, it was a year later. We indicted this way
24 before we could get an interpreter that was capable
25 of giving us any communication. We did the best we

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1 could and that's why I did it and/or. And I'll just
2 move to redact those other names and only submit it
3 against the two men that were outside, the father
4 and the son.

5 **THE COURT:** I'm not casting fault, believe me.
6 I understand, to a limited extent, what the
7 difficulties would be just from sitting through the
8 trial.

9 All right. Let's take a five minute break and
10 then I'm going to have to question the defendants as
11 to their rights concerning their ability to testify
12 or not testify and we'll go from there, okay.

13 **MR. CALHOUN:** Yes, sir.

14 **THE COURT:** Thank you.

15 Motions are denied in case there's any
16 uncertainty about that. Motions for a directed
17 verdict are denied. The motion to quash is denied.

18 (Brief Recess.)

19 **THE COURT:** All right. Mr. Langford,
20 Mr. Phillips, I have to go over some things with you
21 now. This is something I have to cover with
22 everybody who's on trial whether they're on trial
23 for a traffic offense or for murder. I need your
24 responses under oath, so I need each of you to raise
25 your right hand.

1 K.C. LANGFORD,
2 having been duly sworn, testified as follows:
3 BRYAN JORDAN PHILLIPS,
4 having been duly sworn, testified as follows:

5 THE COURT: Y'all can have a seat. Just speak
6 out loudly so the court reporter can take down what
7 we say, all right.

8 Now, gentlemen, we've reached the stage of the
9 trial where the State has rested. And the next
10 thing that would happen is that we would give you
11 the opportunity to present evidence for the jury to
12 consider. It doesn't change the burden of proof.
13 The burden is going to remain on the State, but you
14 can offer evidence for the jury to consider in
15 deciding whether the State has met its burden of
16 proof or failed to meet its burden of proof.

17 Do you understand where we are in the trial,
18 Mr. Langford?

19 DEFENDANT LANGFORD: Yes, sir.

20 THE COURT: Do you understand, Mr. Phillips?

21 DEFENDANT PHILLIPS: Yes, sir.

22 THE COURT: Now, in that regard, you may choose
23 to testify if you wish to testify or you may choose
24 not to testify. Whether you testify or not, you may
25 call other witnesses on your behalf. Do you

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1 understand all of that, Mr. Langford?

2 DEFENDANT LANGFORD: Yes, sir.

3 THE COURT: Mr. Phillips?

4 DEFENDANT PHILLIPS: Yes, sir.

5 THE COURT: You must understand that no one can
6 force you to testify. You have an absolute right to
7 remain silent. And if you choose not to testify,
8 I'm going to tell that jury that they cannot hold
9 your silence against you in any way at all. They
10 can't discuss it in their deliberations and they're
11 not to let it enter their minds in making their
12 decisions on whether you are guilty or not guilty.
13 Do you understand all of that, Mr. Langford?

14 DEFENDANT LANGFORD: Yes, sir.

15 THE COURT: Mr. Phillips?

16 DEFENDANT PHILLIPS: Yes, sir.

17 THE COURT: Now, this decision about whether
18 you testify or not, it is your decision to make and
19 yours alone. As you very well know, you're the
20 people on trial and it's your call. I expect that
21 you might confer with your attorney, with family
22 members, with friends, with anybody whose opinion
23 you value on important decisions, but ultimately the
24 decision is yours to make and yours alone. You
25 understand, Mr. Langford?

1 **DEFENDANT LANGFORD:** Yes, sir.

2 **THE COURT:** Mr. Phillips?

3 **DEFENDANT PHILLIPS:** Yes, sir.

4 **THE COURT:** All right. Do either of them have
5 a criminal record that would subject them to
6 impeachment?

7 **MR. MAYE:** Both do, Your Honor. As to K.C.
8 Langford, Your Honor, he has a 6/11 of 2002 Aiken
9 County use of vehicle without permission. He got
10 three years suspended on probation for two years,
11 that's 6/11/2002. And on 6/3 of 2002, he got
12 convicted of criminal conspiracy. He got three
13 years suspended on the service of 58 days and three
14 years probation. 7/3 of 2006, he got a receiving
15 stolen goods \$5,000 or more out of Edgefield County.

16 Out of Georgia, Your Honor, he has a 2003
17 conviction of possession of cocaine with intent to
18 distribute and it says criminal interference with
19 government property 2/28/2003. This relates back to
20 that, Your Honor, but his probation was violated,
21 that wouldn't count. His probation was violated on
22 felony possession of cocaine with the intent to
23 distribute and it says possession of a firearm. I
24 know that that wouldn't be a consideration, but he
25 does have drug charges and the other ones that I

1 mentioned.

2 **THE COURT:** And what about Mr. Phillips?

3 **MR. MAYE:** As to Mr. Phillips, he has a -- two
4 counts, he has distribution of cocaine that he got a
5 YOA on on 10/3 of 2006. And then he's got a
6 proximity charge that was accompanying that 10/3 of
7 2006, Your Honor. He got a YOA on both a
8 distribution and a proximity.

9 **THE COURT:** All right. Mr. Calhoun, do you
10 want to be heard on whether your client should be
11 able to be asked about those things?

12 **MR. CALHOUN:** Your Honor, I discussed with my
13 client his decision on whether or not to testify in
14 great length and he's decided that he does not wish
15 to testify, if you'd like to ask him any questions
16 about that.

17 **THE COURT:** All right. Y'all have a seat.

18 All right. Mr. Langford, Mr. Phillips, I want
19 you to listen to this too, the rule about being able
20 to ask someone who testifies about any prior
21 criminal record is included in Rule 609 of the South
22 Carolina Rules of Evidence. And what it basically
23 provides is that if a witness testifies and the
24 witness has been convicted of a crime that was
25 punishable by imprisonment in excess of a year, that

1 person can be asked about that. If the crime
2 involved dishonesty or false statement, the person
3 can be asked about that regardless of whether it
4 carried more than a year.

5 Where the person who is the witness is a
6 defendant in the trial, which is a situation with
7 the two of you, there's an additional standard and
8 that is that the Court has to make a determination
9 that the probative value of admitting that evidence
10 outweighs its prejudicial effect to you.

11 So what would happen is this. I'll review your
12 prior record that's provided to me, if you dispute
13 what they tell me, you need to let us know, and I
14 will tell you whether or not the State can ask you
15 about those convictions if you take the witness
16 stand.

17 Do you understand what I've said so far,
18 Mr.. Langford?

19 **DEFENDANT LANGFORD:** Yes, sir.

20 **THE COURT:** Mr. Phillips?

21 **DEFENDANT PHILLIPS:** Yes, sir.

22 **THE COURT:** And if I do allow them to ask you
23 questions about your prior criminal record, first of
24 all, they can't go into the details of it. They can
25 only ask you, for example, were you convicted in

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1 such and such a year of such and such an offense.

2 And then I would tell the jury, when I instruct
3 the jury, I will tell them both immediately upon the
4 question being asked and answered. And then I would
5 tell them later, when I instruct the jury, I would
6 tell the jury that that evidence was admitted for a
7 limited purpose and it cannot be considered for any
8 other purpose except the limited purpose for which
9 it was admitted and that would be to evaluate the
10 credibility, the believability of your testimony.
11 Each of you, obviously, are separate, but that's the
12 instruction I will give the jury.

13 Do you understand all of that, Mr. Langford?

14 **DEFENDANT LANGFORD:** Yes, sir.

15 **THE COURT:** Mr. Phillips?

16 **DEFENDANT PHILLIPS:** Yes, sir.

17 **THE COURT:** And, Mr. Langford, they tell me
18 that you have -- there's also a ten year limitation
19 on this which I didn't mention, but everything that
20 I've been told about so far was within the last ten
21 years.

22 They tell me you were convicted in June of 2002
23 of use of vehicle without permission. If you were
24 to take the witness stand, I would allow the State
25 to ask you if you had such a conviction. You

1 understand that?

2 **DEFENDANT LANGFORD:** Yes, sir.

3 **THE COURT:** They tell me you were convicted of
4 criminal conspiracy in June of 2002. I would not
5 allow the jury -- I would not allow the State to ask
6 you about that because it's -- you're on trial for
7 conspiracy and I cannot make a determination that
8 the probative value of admitting that evidence would
9 outweigh its prejudicial effect to you. So if you
10 took the witness stand, they cannot ask you about
11 the prior conviction of criminal conspiracy. You
12 understand that?

13 **DEFENDANT LANGFORD:** Yes, sir.

14 **THE COURT:** Receiving stolen goods from July of
15 2006, I would allow the State to ask you about that
16 if you take the witness stand. You understand?

17 **DEFENDANT LANGFORD:** Yes, sir.

18 **THE COURT:** The cocaine charge and the
19 interference with government property and there was
20 some mention of a firearm charge, I would not allow
21 the State to ask you about those things if you take
22 the witness stand because I cannot determine that
23 the probative value of admitting it outweighs its
24 prejudicial effect to you. You understand that?

25 **DEFENDANT LANGFORD:** Yes, sir.

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1 **THE COURT:** So if you take the witness stand, I
2 would let them ask you about use of vehicle without
3 permission and receiving stolen goods, but it would
4 be limited like I explained to you earlier. You
5 understand?

6 **DEFENDANT LANGFORD:** Yes, sir.

7 **THE COURT:** Mr. Phillips, they tell me that you
8 have a distribution of cocaine conviction and a
9 distribution of cocaine within proximity of a school
10 or playground from 2006. If you take the witness
11 stand, I'm not going to let them ask you about that.
12 Do you understand that, sir?

13 **DEFENDANT PHILLIPS:** Yes, sir.

14 **THE COURT:** All right. Now, when I say that
15 I'm not going to let them ask you about that,
16 gentlemen, you need to understand there is one
17 important thing. You cannot be asked about those
18 things that I said they cannot ask you about unless
19 you open the door for them to ask you about it.

20 And to give you an example of what I mean by
21 that, in previous trials, I've had situations where
22 somebody on trial was making their decision about
23 whether they were going to testify or not and I made
24 rulings and said the State could not ask that
25 defendant about those things. And then the

1 defendant gets on the witness stand and makes a
2 statement like I've never been in any trouble with
3 the law or I've never been arrested. Well, you
4 can't do that, that opens the door. It comes in for
5 a different reason then. It comes in on
6 credibility, but it comes in on a different
7 direction.

8 So unless you open the door, the things I've
9 just indicated to you the State will not be able to
10 ask you about. Do you understand all of that,
11 Mr. Langford?

12 **DEFENDANT LANGFORD:** Yes, sir.

13 **THE COURT:** Mr. Phillips?

14 **DEFENDANT PHILLIPS:** Yes, sir.

15 **THE COURT:** All right. There is a defense
16 exhibit, right?

17 **MR. MAYE:** Yes.

18 **THE COURT:** I realize it was only for one, but
19 it doesn't matter. So the State's going to get to
20 make the last closing argument.

21 **MR. WILLIAMS:** Your Honor, may I say, there's
22 two things, one of which is Mr. Phillips was not
23 specifically inquired upon by the Court regarding
24 his right to testify. And the other was -- I'll let
25 Mr. Calhoun make his own argument with regard to --

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1 as I understood your ruling, that the State would
2 get last close because one defendant put evidence in
3 and not the other one?

4 **THE COURT:** Yes, sir. My understanding of the
5 law is that if either defendant, any defendant in a
6 joint trial offers any evidence, the State makes the
7 last argument. I think that's established in the
8 precedent. I mean, I can try to look it up.

9 **MR. MAYE:** State versus Payne, Lee and Kelsey
10 in McCormick in 1994.

11 **THE COURT:** I mean, you know, I was discussing
12 this with my law clerk, as you all know, I have a
13 new law clerk and we've been talking a lot about
14 things. I told him personally I never thought that
15 was that big a deal in almost every case, but that's
16 just a personal opinion. It doesn't amount to a
17 hill of beans except it's my personal opinion.
18 Y'all might feel differently.

19 But I don't make the calls on whether I think
20 it's important or not. I make the call based on the
21 precedent that's been established and that's my
22 understanding of the precedent. So if no testimony
23 is offered and no exhibits are offered by the
24 defense, either defendant, then the defense makes
25 the last closing argument, but otherwise the State

1 does. And since there are exhibits, then the
2 State's going to get to make the last closing
3 argument.

4 MR. WILLIAMS: I understand, Your Honor.

5 THE COURT: You said I didn't ask him
6 specifically about his right to testify?

7 MR. WILLIAMS: You did not.

8 THE COURT: Okay. Let me tell you how I
9 usually do it. Now, Mr. Calhoun has already made
10 his statement, but his client can change his mind
11 because I hadn't told y'all yet how I was going to
12 rule on the prior criminal record. What I usually
13 do now is give you all a chance to talk once I ask a
14 couple more questions and then you can tell me
15 whether you want to testify or not. It doesn't
16 matter and you can change your mind until you
17 actually come up here to testify. So I'm not quite
18 through yet, all right.

19 MR. WILLIAMS: Yes, sir. Thank you.

20 THE COURT: All right. Mr. Langford, as you
21 just heard me say, whatever decision you might have
22 made, you can change your mind. I'm not trying to
23 talk you into or out of testifying. I don't know
24 your case. I don't know your situation as well as
25 you and your attorney do and I don't have any input

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1 into this except to make sure you understand what
2 your rights are. You can testify or you cannot
3 testify, but it has to be your own decision made of
4 your own free will. You understand?

5 **DEFENDANT LANGFORD:** Yes, sir.

6 **THE COURT:** So to this point, has anybody
7 exercised any type of improper influence over you to
8 get you to choose to testify or not testify?

9 **DEFENDANT LANGFORD:** No, sir.

10 **THE COURT:** Mr. Phillips, has anybody exercised
11 any improper influence over you to get you to choose
12 to testify or not testify?

13 **DEFENDANT PHILLIPS:** No, sir.

14 **THE COURT:** And you understand that whatever
15 decision you may have made in your own mind at this
16 point, if any, you can change your mind until you
17 actually come up here and get sworn and take the
18 witness stand. Mr. Phillips, you understand that?

19 **DEFENDANT PHILLIPS:** Yes, sir.

20 **THE COURT:** Well, gentlemen, what I'm going to
21 do at this point is I'm going to make a
22 determination and a finding that you understand that
23 you have a right to testify, you have a right not to
24 testify. You understand that nobody can force you
25 to testify, that if you choose not to testify, I'm

1 going to tell that jury they cannot hold your
2 silence against you in any way at all. And I'm
3 going to go beyond that, like I explained to you
4 before, that the decision about whether you testify
5 or not is your decision to make and yours alone.

6 You understand the rulings I've made about what
7 you could be asked about related to your prior
8 criminal record. You understand that this decision
9 should be yours and made of your own free will.

10 And I'm going to find at this point you don't
11 appear in any way to be under the influence of any
12 substance or to be suffering from any physical or
13 mental infirmities that would affect your ability to
14 think clearly. You seem to be very intelligent men.

15 I'm going to find that whatever decision you've
16 made is your own decision made of your own free will
17 and made freely, knowingly, voluntarily and
18 intelligently. So if anybody tries to improperly
19 influence you, you let me know immediately, all
20 right, Mr. Phillips?

21 DEFENDANT PHILLIPS: Yes, sir.

22 THE COURT: Mr. Langford?

23 DEFENDANT LANGFORD: Yes, sir.

24 THE COURT: Do y'all need some time to talk?

25 MR. CALHOUN: Yes, sir.

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1 **THE COURT:** All right. We'll be at ease for a
2 few minutes.

3 **MR. WILLIAMS:** Your Honor, and there was one
4 issue that I'm having, but we can address it when
5 you come back out.

6 **THE COURT:** Go ahead and tell me.

7 **MR. WILLIAMS:** I'm having a problem gaining
8 access to a witness that I intended to call, which
9 is Joseph Patrick Stevens. He was supposed to --
10 well, his supervisor was spoken to, I believe, by
11 Investigator Duran in Orangeburg and he told him
12 that he needed to be here.

13 I received a note from my office at 9:21 in
14 which Mr. Stevens called my office and indicated
15 that he was in Fresno, California and wouldn't be
16 back until Monday. I have a hard time reconciling
17 Orangeburg and Fresno unless somehow that was -- he
18 was flown from Orangeburg to Fresno, but I believe
19 he's in Orangeburg and should be on his way here.

20 I do have an alternative remedy, Your Honor,
21 which was to call instead Investigator Roosevelt
22 Young whom I concede that I did not place under
23 subpoena because he appeared on the State's witness
24 list and I quite frankly expected that he would be
25 here, but I should have done my own job and not

1 trusted that the State would call him.

2 **MR. MAYE:** Was Mr. Stevens under subpoena
3 because we might be able to --

4 **MR. WILLIAMS:** He is.

5 **MR. MAYE:** He was served?

6 **MR. WILLIAMS:** Yes.

7 **THE COURT:** See what you can find out. And,
8 Sheriff, help him locate this person, please. And
9 if I need to have him picked up, you can make a
10 motion for me to have him picked up and brought
11 here.

12 **MR. WILLIAMS:** Thank you, Your Honor.

13 **THE COURT:** But now if this is going to take a
14 while, y'all let me know because I don't want to
15 leave the jury sitting back there for an hour.

16 **MR. WILLIAMS:** Yes, sir.

17 **THE COURT:** All right. We're at ease.

18 (Brief recess.)

19 **THE COURT:** All right. My understanding is
20 that I'm going to let the jury go to lunch until
21 1:00 and then we'll see where we are at that point.
22 I think Investigator Young is on his way up here and
23 I think that might be sufficient from what
24 Mr. Williams is telling me. They're still tracking
25 down that other man.

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1 **MR. WILLIAMS:** They are, Your Honor.

2 **THE COURT:** I think now there's something about
3 him being in Tennessee. So he must have a private
4 jet.

5 Bring the jury in.

6 (The jury returns to the courtroom.)

7 **THE COURT:** All right. Ladies and gentlemen,
8 we've run into another snag. It's going to be a
9 while before we can work our way through it, so I've
10 told the lawyers I'm just going to let you go on to
11 lunch. I think we've just about got this worked out
12 and that we'll be able to start up around one
13 o'clock. So I need you back in the jury room at one
14 o'clock. I apologize to you.

15 At the end of the trial, hopefully I'll have an
16 opportunity and you can have at me and I can explain
17 all the things that go on, but I've got two options,
18 I can keep you sitting back there in that room for
19 another 30 minutes and maybe we'll be ready to go or
20 I can let you go on till about 1:00 and be much more
21 confident that we'll be ready to go, so that's what
22 we're going to do. One o'clock. Don't discuss the
23 case, don't let anybody discuss it with you and
24 avoid any media coverage. Thank you very much.

25 (The jury was excused for lunch.)

1 **THE COURT:** All right. I was going to tell the
2 jury about the kidnapping indictment, but I need you
3 all to look at this over lunch because I'm still not
4 sure who is who. The names are spelled differently
5 on the witness list.

6 **MR. MAYE:** And, Your Honor, we did have
7 scrivener's problems with the spelling of their
8 names initially before we got the interpreter
9 involved.

10 **THE COURT:** Well, again, I guess I need to
11 learn Chinese because we're so in debt to them that
12 we might all be speaking Chinese before long, but
13 again it's my ignorance. I apologize that I'm not
14 more cultured than I am. You know, even Spanish
15 terms I get it confused because they put what we
16 would consider the last name, they don't put it
17 last. So sometimes I just get confused. I just
18 don't -- I want to make sure I don't say anything
19 wrong. Check the indictments and tell me -- I'm
20 assuming it's the son and the father.

21 **MR. MAYE:** Yes. Mr. Chen and Mr. Li is what we
22 were finally forced to call them because their last
23 names were unpronounceable. The Chinese expert told
24 me that often times the children take part of a
25 mother's name and I don't know how that goes. I

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1 know there's something similar to that with Spanish
2 surnames, but that's what I am informed why their
3 names are no more similar than they are, but they
4 often take part of a mother's name.

5 **THE COURT:** Well, I'm sure people looking at us
6 from outside have as much or more difficulty with
7 the way we do things. There's a guy who used to
8 always talk about in all of his speeches, he would
9 eventually get around to mentioning something about
10 a study done about a tribe called the acirema and
11 all the strange things they would do. Then he would
12 tell you it was Americans. And he was using
13 descriptions from people who might not be familiar
14 with things as simple as brushing our teeth and
15 doing other things.

16 So it's a cultural thing and I'm certainly not
17 saying that our culture is in any way superior. I'm
18 just saying I want to make sure that I don't cause
19 any problems with the names that I use because they
20 don't match up. The indictment doesn't match what's
21 on here.

22 **MR. MAYE:** I understand, Your Honor. And by
23 that time, we had had some corrections as a result
24 of our benefit from the interpreter. We did the
25 best we could with the spellings of their names

1 prior to a year later getting an interpreter to help
2 us.

3 THE COURT: I'm not casting aspersions.

4 MR. MAYE: None taken, Your Honor. I was
5 equally in the dark about how to prepare the
6 indictments. We do have the correct parties
7 identified, but I was equally in the dark. Thank
8 you, Your Honor.

9 THE COURT: One o'clock.

10 (Whereupon, there was a luncheon recess.)

11 THE COURT: All right. Mr. Calhoun, does your
12 client wish to offer any evidence?

13 MR. CALHOUN: No, Your Honor, he does not wish
14 to testify.

15 THE COURT: Mr. Langford, you understand what
16 your attorney just told me?

17 DEFENDANT LANGFORD: Yes, sir.

18 THE COURT: Is that your own decision made of
19 your own free will?

20 DEFENDANT LANGFORD: Yes, sir.

21 THE COURT: All right. Thank you, sir.

22 Mr. Williams, does your side wish to offer any
23 evidence?

24 MR. WILLIAMS: My client does not intend to
25 testify, Your Honor. However, we do intend to offer

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1 a witness.

2 THE COURT: Mr. Phillips, you understand your
3 attorney has told me you elected not to testify?

4 DEFENDANT PHILLIPS: Yes, sir.

5 THE COURT: Is that your own decision made of
6 your own free will?

7 DEFENDANT PHILLIPS: Yes, sir.

8 THE COURT: Thank you, sir.

9 Are you ready for the jury, Mr. Williams?

10 MR. WILLIAMS: Yes, Your Honor.

11 THE COURT: Bring in the jury.

12 (The jury returns to the courtroom.)

13 THE COURT: All right. Ladies and gentlemen of
14 the jury, I told you that when you came back after
15 that last part of the proceeding that I would tell
16 you where we go from here.

17 The State has rested and I need to explain a
18 couple of things to you. The first is that when I
19 read to you the indictments for kidnapping that have
20 been alleged against each defendant, I read to you a
21 series of names of the purported victims of the
22 kidnapping, the alleged kidnapping.

23 Now, as I will explain to you when I instruct
24 you on the law, an indictment is not evidence of
25 anything. An indictment is just a charging paper,

1 it's a notice. It's the formal means by which
2 someone is charged and brought to trial and put on
3 notice of what they should be prepared for related
4 to the trial.

5 Now, I read to you six names of purported
6 victims and they're Chinese names and I probably did
7 not do a very good job of pronouncing them. Those
8 indictments in this last proceeding have been
9 modified so that the kidnapping that is alleged is
10 alleged against two of those people. And it's an
11 and/or situation, either or both, okay, and that's
12 Li Yan Chen, who I'll loosely refer to as the son,
13 and the father, Ji Quing Chen. So those two are the
14 only people who remain as being alleged to be
15 purported victims of the kidnapping charges.

16 Now, folks, don't worry about why that is so.
17 It doesn't make the case any stronger or any weaker.
18 It doesn't make anything related to any of the other
19 charges any stronger or any weaker. It's just that
20 there's that modification related to those
21 indictments so that it's now alleged to be against
22 two purported victims and it's an either or
23 allegation.

24 The next thing I need to instruct you is this.
25 As I told you, ladies and gentlemen, the defendants

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1 are presumed to be innocent. They have no
2 obligation to prove anything at all. And the State
3 has the entire burden of proof and has to prove the
4 guilt of the defendants beyond a reasonable doubt.

5 Now, I have been advised that neither defendant
6 is going to testify. And I need to give you an
7 instruction and it's very important that you pay
8 close attention to this instruction and that you
9 follow it.

10 I instruct you, ladies and gentlemen, and
11 emphasize to you that the fact that a defendant
12 elects not to testify is not a factor to be
13 considered by you in any way in your deliberations
14 and in your consideration on the question of whether
15 that defendant is guilty or not guilty. The
16 decision not to testify must not be considered by
17 you in any manner whatsoever against a defendant.

18 An accused has a constitutional right to remain
19 silent and the assertion of that right cannot and
20 must not be considered by you in any way in your
21 deliberations.

22 Under your oath, you are to reach no inference
23 and you are to draw no conclusion whatsoever from
24 the fact that a defendant elects not to testify.
25 His decision not to testify should not be discussed

1 by you in the jury room. It should not enter your
2 minds in making your decision on these cases. The
3 burden of proof, as I've told you, is entirely on
4 the State to prove every essential element of each
5 offense charged against each defendant beyond a
6 reasonable doubt and an accused has no obligation to
7 prove anything at all.

8 Now, my understanding is that the Defendant
9 Phillips is going to call one witness. This does
10 not change the burden of proof. The burden remains
11 entirely on the State as to every charge against
12 both defendants, but the defendant is permitted to
13 present evidence for you to consider in deciding
14 whether the State has met its burden of proof or has
15 failed to meet its burden of proof.

16 All right. Mr. Williams, you're recognized to
17 call your witness.

18 MR. WILLIAMS: Your Honor, I call to the stand
19 Investigator Roosevelt Young, the Edgefield County
20 Police Department -- Sheriff's Office.

21 ROOSEVELT YOUNG,
22 having been duly sworn, testified as follows:

23 THE CLERK: Have a seat. State your full name
24 and spell your last name, please.

25 THE WITNESS: Roosevelt Young, Y-o-u-n-g.

ROOSEVELT YOUNG - DIRECT BY MR. WILLIAMS

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1 DIRECT EXAMINATION

2 BY MR. WILLIAMS:

3 Q Investigator Young, where are you employed,
4 sir?

5 A The Edgefield Sheriff's Office.

6 Q And how long have you been employed with the
7 Edgefield County Sheriff's Office?

8 A Fifteen years.

9 Q Did you have some law enforcement experience
10 prior to coming to work here at the Edgefield County
11 Sheriff's Office?

12 A Yes, sir, I did.

13 Q Where was that?

14 A I worked at the Johnston Police Department for
15 two years.

16 Q For a few years?

17 A Yes, sir.

18 Q So you have a total of about 18 years?

19 A Well, that was reserve time, but, yes, sir.

20 Q So you've been actively working in law
21 enforcement community for how many years?

22 A Seventeen.

23 Q Seventeen years?

24 A Yes, sir.

25 Q And you are a commissioned law enforcement

ROOSEVELT YOUNG - DIRECT BY MR. WILLIAMS

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1 officer for the great State of South Carolina?

2 A Yes, sir.

3 Q You have the power to arrest?

4 A Yes, sir.

5 Q You have the power to investigate?

6 A Yes, sir.

7 Q All right. Presently do you hold any specific

8 assignments with the Edgefield County Sheriff's

9 Office or do you have any specific job title?

10 A Yes, sir. I work in narcotics. I'm an
11 investigator for narcotics.

12 Q Investigator for the narcotics division?

13 A Yes, sir.

14 Q Are you in any way a supervisor or have a
15 supervisory capacity?

16 A Yes, sir, I do.

17 Q And let me ask you this question. Are you the
18 most experienced narcotics investigator in the
19 sheriff's office?

20 A Yes, sir, I would say so at this point.

21 Q Okay. You just took an oath to testify
22 truthful?

23 A Yes, sir.

24 Q And you understand the gravity of that oath?

25 A Yes, sir, I do.

ROOSEVELT YOUNG - DIRECT BY MR. WILLIAMS

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1 Q Do you know a Joseph Patrick Stevens?

2 A Yes, sir, I do.

3 Q Okay. You know about this case that we're
4 involved in, don't you?

5 A Yes, sir.

6 Q The case that involves my client, Bryan
7 Phillips?

8 A Yes, sir, I do.

9 Q All right. And you know about the case that
10 also involves one K.C. Langford?

11 A Yes, sir.

12 Q Did you in any way assist in the investigation
13 of the case involving my client?

14 A Yes, sir.

15 Q Okay. When this incident occurred back in
16 August of 2008, was any agency in the Edgefield
17 County law enforcement community able to make any
18 headway or basically make an arrest immediately
19 after this incident occurred?

20 A To my knowledge, no, sir.

21 Q Do you know about how long it was before an
22 arrest was made in this case after the August 14th,
23 2008 incident?

24 A No, sir.

25 Q Do you believe it was made within one week?

ROOSEVELT YOUNG - DIRECT BY MR. WILLIAMS

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1 A It might be a little longer than that.

2 Q Okay. If I showed you the warrants that were
3 served upon my client -- you're familiar with
4 warrants and warrant procedures, aren't you?

5 A Yes, sir, I am.

6 Q Okay. And once a warrant is sought, it's
7 served, isn't it?

8 A That's depending on if they can find the
9 individual that they're looking for, yes, sir.

10 Q That's right. There was no indication that my
11 client was hard to find, was there?

12 A To my knowledge, no, sir.

13 MR. WILLIAMS: Court's indulgence.

14 THE COURT: Yes, sir.

15 (Pause.)

16 MR. WILLIAMS: Might I have this marked for
17 I.D. only?

18 MR. MAYE: Can I see what it is?

19 (Pause.)

20 (Defendant Phillips Exhibit Number 5, arrest
21 warrant, marked for identification purposes.)

22 BY MR. WILLIAMS:

23 Q Mr. Young, I'm going to hand to you what's been
24 marked as Defendant's Number 5 for I.D. only. Do
25 you recognize that?

ROOSEVELT YOUNG - DIRECT BY MR. WILLIAMS

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- 1 A Yes, sir.
- 2 Q And it's a warrant, isn't it?
- 3 A Yes, sir.
- 4 Q When does it appear to have been served?
- 5 A September the 30th, 2008.
- 6 Q All right. So that would have been just about
- 7 six weeks after this incident allegedly occurred?
- 8 A Yes, sir.
- 9 Q Okay. Thank you, sir. Now, I'm going to ask
- 10 you, Joseph Patrick Stevens, was he working as an
- 11 informant for you?
- 12 A No, sir. I didn't have no charges on him or
- 13 anything at the time.
- 14 Q Had he previously worked as an informant for
- 15 you?
- 16 A No, sir.
- 17 Q Has he since worked as an informant for you?
- 18 A No, sir.
- 19 Q Is he your great friend?
- 20 A He's an acquaintance. I know him.
- 21 Q All right. Has he worked as an informant for
- 22 Investigator Warren Miller?
- 23 A No, sir.
- 24 Q Has he previously worked as an informant for
- 25 Investigator Warren Miller?

ROOSEVELT YOUNG - DIRECT BY MR. WILLIAMS

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1 A No, sir.

2 Q All right. Did it not come to pass, sir, that
3 you revealed to Investigator Lamaz Robinson that
4 Joseph Patrick Stevens had certain information
5 regarding this crime that allegedly occurred in the
6 Town of Johnston?

7 A That's right.

8 Q All right. And you indicated to him that it
9 was information led to you or given to you by one
10 Joseph Patrick Stevens?

11 A Yes, sir.

12 Q Okay. All right. Would you consider Joseph
13 Patrick Stevens a good citizen?

14 A Yes, sir.

15 Q Okay. Has he ever been in this courthouse?

16 A I think he has, yes, sir.

17 Q Okay. Have you ever arrested him?

18 A No, sir.

19 Q What were the circumstances under which
20 Mr. Stevens revealed that information to you?

21 A At the time he had a family court bench warrant
22 and he just called me one morning and started giving
23 me information about that incident.

24 Q Okay. So he had something in which he believed
25 he might be able to receive some help with?

ROOSEVELT YOUNG - DIRECT BY MR. WILLIAMS

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1 A There's no help for that because he still got
2 arrested for it.

3 Q I understand, but he had a problem, didn't he?
4 He had a problem. He had a legal problem?

5 A Yes, sir, he did. Yes, sir.

6 Q All right. With that legal problem, he sought
7 you out, did he not?

8 A Yes, sir.

9 Q Okay. And to your knowledge, when he sought
10 you out, he gave you the names of three individuals;
11 is that right?

12 A Yes, sir.

13 Q Okay. Mr. Joseph Patrick Stevens now, he gave
14 you the name of three individuals one being Alvin
15 Phillips; is that right?

16 A Yes, sir.

17 Q One being Bryan Phillips; is that right?

18 A Yes, sir.

19 Q And one also being K.C. Langford?

20 A Yes, sir.

21 Q Okay. But that information was not gleaned
22 prior thereto by any law enforcement agency in this
23 county?

24 A No, sir. To my knowledge, no.

25 Q And was Mr. Stevens in the jail?

ROOSEVELT YOUNG - DIRECT BY MR. WILLIAMS

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- 1 A No, sir.
- 2 Q He was not in the jail?
- 3 A No, sir, he was out.
- 4 Q But he knew about the bench warrant that he
- 5 had?
- 6 A Yes, sir.
- 7 Q Okay. Has any of his associates ever worked as
- 8 an informant for you? Are you aware of who he
- 9 associates with?
- 10 A No, sir, I'm not.
- 11 Q Are you certain about that, Mr. Young?
- 12 A I don't know who he associate (sic) with on a
- 13 daily basis.
- 14 Q All right. No one that he's closely associated
- 15 with has ever worked as an informant for you?
- 16 A I don't know who he's associated with,
- 17 Mr. Williams, so I can't answer that.
- 18 Q All right. Suffice it to say, you had three
- 19 names, did you not?
- 20 A Yes, sir.
- 21 Q Okay. And they were given to you by Joseph
- 22 Patrick Stevens?
- 23 A Yes, sir.
- 24 Q And he has some association with one of my
- 25 clients -- with Mr. Langford or my client, does he

ROOSEVELT YOUNG - DIRECT BY MR. WILLIAMS

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1 not?

2 A Yes, sir. I think they're in the family some
3 kind of way.

4 Q Okay. Isn't it true that Mr. Alvin Phillips'
5 sister, Veronica Phillips, is Mr. Stevens -- or had
6 been somehow associated with Mr. Stevens?

7 A Mr. Williams, I don't know who this man is
8 associated with, you know, with females.

9 Q Do you know Jackie Phillips?

10 A Yes, sir.

11 Q Was he not once upon a time married to her?

12 A He may have been, I don't know.

13 Q Did you arrest Mr. Stevens?

14 A When? When he called me?

15 Q After he gave you this information.

16 A No, sir.

17 Q Okay. But he had a bench warrant, didn't he?

18 A That's correct, yes, sir.

19 Q Okay. You are a commissioned law enforcement
20 officer in this county?

21 A Yes, sir.

22 Q Okay.

23 A He was arrested later on, but I didn't arrest
24 him that day that he called me.

25 Q Did you know about the warrant?

ROOSEVELT YOUNG - DIRECT BY MR. WILLIAMS

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1 A No, sir. I don't -- that's a civil process.

2 I'm not in that.

3 Q All right. Could you not have called very
4 easily and found out if he had anything pending?

5 A Well, I didn't have a reason to inquire about
6 that prior to him calling me.

7 Q So out of the goodness of Joseph Patrick
8 Stevens' heart, he just called you and gave you some
9 information?

10 A Yes, sir. I was sitting in my office and my
11 phone rung. I didn't expect anything from him.

12 Q All right. Let me ask this question and I'm
13 going to leave you alone. When you're out doing
14 your job, the most effective way that you can do
15 your job is by enlisting the assistance of people
16 who are on the streets; isn't that true?

17 A Yes, sir.

18 Q Now, let me describe what I'm trying to say
19 just so that I'm very clear. You can most
20 effectively do your job by finding someone who may
21 have or who in fact has a pending charge; isn't that
22 right?

23 A Or they can find me.

24 Q Or they can find you.

25 A Yes, sir.

ROOSEVELT YOUNG - DIRECT BY MR. WILLIAMS

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1 Q Okay. And, essentially, what transpires is is
2 they seek to help you and you say to them, I'll let
3 the Solicitor know that you cooperated. Isn't that
4 frequently the way you gain the assistance of
5 defendants or people who are on the streets who may
6 be involved in illicit drug activity?

7 A Yes, sir, but we don't promise them anything.
8 It's all up to the Solicitor's office.

9 Q I didn't suggest that you promised them
10 anything, did I?

11 A No, sir, you didn't. I just wanted to make
12 sure that we was clear.

13 Q No, sir. I didn't suggest that, did I?

14 A No, sir, you didn't.

15 Q Okay. Thank you. But you will tell them that
16 you'll let the Solicitor know they cooperated?

17 A Yes, sir.

18 Q Okay. All right.

19 MR. WILLIAMS: Court's indulgence, Your Honor.

20 THE COURT: Yes, sir.

21 (Pause.)

22 MR. WILLIAMS: Answer any questions the
23 Solicitor or Mr. Calhoun may have.

24 THE COURT: Cross.

25 *****

ROOSEVELT YOUNG - CROSS BY MR. MAYE

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1 CROSS-EXAMINATION

2 BY MR. MAYE:

3 Q Investigator Young, when Joseph Patrick Stevens
4 called you, he wasn't working as an informant for
5 you at all, was he?

6 A No, sir.

7 Q He wasn't working off any charges at all, was
8 he?

9 A No, sir.

10 Q And you didn't have any influence over whether
11 or not he got arrested on a family court bench
12 warrant or not, do you?

13 A No, sir.

14 Q You don't have any power or control or
15 influence over what a family court judge does, do
16 you?

17 A No, sir.

18 Q And your involvement in working informants
19 doesn't have anything to do with what comes and
20 flows from the family court, does it?

21 A No, sir.

22 Q A family court judge issues a bench warrant for
23 somebody for whatever reason, I mean, they get
24 picked up, right?

25 A Yes, sir.

ROOSEVELT YOUNG - CROSS BY MR. MAYE

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1 Q And he did get picked up, didn't he?

2 A Yes, sir.

3 Q But he called you and he's got some association
4 with the family over there and gave you information
5 that K.C. Langford, Bryan Phillips and Alvin
6 Phillips were the ones that had done this robbery on
7 the Chinese people, didn't he?

8 A Yes, sir, he did.

9 Q Okay. And based on that, you conveyed that to
10 Investigator Robinson who was investigating this
11 case, right?

12 A Yes, sir.

13 Q And y'all went down to the Johnston Town Police
14 Department, didn't you?

15 A Yes, sir.

16 Q You brought in Veronica Phillips because that
17 was one of the names that he mentioned to you,
18 didn't he?

19 A Yes, sir.

20 Q Okay. So you brought her in. You talked to
21 her, right?

22 A Yes, sir.

23 Q And based on your conversations with her, y'all
24 called and wanted Alvin to come in, right?

25 A Yes, sir.

ROOSEVELT YOUNG - CROSS BY MR. MAYE

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- 1 Q And he came in voluntarily, didn't he?
- 2 A Yes, sir.
- 3 Q You were there, Lamaz was there and --
- 4 A SLED Agent Perry was there..
- 5 MR. CALHOUN: I object. I'm not sure who's
- 6 testifying.
- 7 THE COURT: He's on cross now.
- 8 MR. MAYE: I'm asking leading questions.
- 9 MR. CALHOUN: Are you asking him questions?
- 10 BY MR. MAYE:
- 11 Q Is that right?
- 12 A Yes, sir, that's right.
- 13 THE COURT: He can ask leading questions, but
- 14 it does have to be a question.
- 15 BY MR. MAYE:
- 16 Q So now if I'm correct, you were there and the
- 17 SLED agent, Mike Perry, was there and Lamaz Robinson
- 18 was there, right?
- 19 A Yes, sir.
- 20 Q Okay. Y'all had already talked to Veronica
- 21 Phillips at that point in time, correct?
- 22 A Yes, sir.
- 23 Q When Alvin came in, y'all didn't bring him in
- 24 in handcuffs, did you?
- 25 A No, sir.

ROOSEVELT YOUNG - CROSS BY MR. MAYE

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- 1 Q He came in on his own accord, didn't he?
- 2 A Yeah. We had to wait for him to get off the
3 bus.
- 4 Q Okay. But he came on down there at that point
5 in time, didn't he?
- 6 A Yes, sir.
- 7 Q Did you threaten him, did you coerce him, did
8 you try to intimidate him prior to talking to him?
- 9 A No, sir.
- 10 Q In fact, it's true in this case that he didn't
11 want to talk to Agent Perry and he didn't want to
12 talk to Lamaz. He was comfortable talking to you
13 and wanted to talk to you alone, didn't he?
- 14 A Yes, sir.
- 15 Q Because he was comfortable with you. He had --
16 he at least knew you and trusted you; isn't that
17 right?
- 18 A Yes, sir.
- 19 Q So he wanted to talk just to you, didn't he?
- 20 A Yes, sir.
- 21 Q When you talked to him, he confessed and
22 implicated himself completely in this robbery,
23 didn't he?
- 24 A Yes, sir, he did.
- 25 Q And he also implicated his cousin Bryan

1 Phillips, didn't he?

2 A Yes, sir.

3 Q And he also implicated K.C. Langford, didn't
4 he?

5 A Yes, sir.

6 Q And he went through in great detail and told
7 you all of the details about how they conducted and
8 carried out this robbery of the Chinese people;
9 isn't that right?

10 A Yes, sir.

11 Q Coincidentally, information that was spot on
12 with what you got from the confidential informant,
13 they matched up exactly, didn't they?

14 A Yes, sir.

15 Q So here you have Joseph Patrick Stevens that is
16 somehow affiliated with Veronica and his family
17 members because they're related. Bryan and Alvin
18 are related; isn't that correct?

19 A Yes, sir.

20 Q And, in fact, K.C. Langford's got a baby by
21 Veronica; isn't that right?

22 A To my knowledge, yes, sir.

23 Q Okay. And Joseph Patrick Stevens gives you the
24 information that solves this case; isn't that
25 correct?

ROOSEVELT YOUNG - CROSS BY MR. MAYE

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1 A Yes, sir.

2 Q At any point in time when you were talking to
3 Alvin alone, did you try to get him to say anything
4 that was false?

5 A No, sir.

6 Q Did you try to intimidate him into saying
7 anything against any party that wasn't true?

8 A No, sir.

9 Q Did he sit down and tell you what had happened
10 himself or did you try to lead him into it?

11 A He told me step by step himself.

12 Q To ensure that he knew what his rights were and
13 that he knew the gravity of what was going on there,
14 you went through a written waiver of rights with him
15 prior to getting any of this information and him
16 confessing to you, didn't you?

17 A Yes, sir.

18 Q And you went through and you had him initial
19 everything. Did he understand all of his rights?

20 A Yes, sir, he did.

21 Q Did you tell him he had the right to remain
22 silent, that he didn't have to talk to you?

23 A Yes, sir.

24 Q Did you tell him that anything that he told you
25 could and was going to be used against him?

ROOSEVELT YOUNG - CROSS BY MR. MAYE

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- 1 A Yes, sir.
- 2 Q Did you go through all of his Miranda warnings
- 3 there?
- 4 A Yes, sir.
- 5 Q Did you tell him he could stop answering
- 6 questions at any point in time if he wanted to?
- 7 A Yes, sir.
- 8 Q All of those rights?
- 9 A Yes, sir.
- 10 Q And after you did all of that, he confessed and
- 11 implicated himself, didn't he?
- 12 A Yes, sir.
- 13 Q And told you, in fact, he was the gunman,
- 14 didn't he?
- 15 A Yes, sir.
- 16 Q Told you that he had the gun, that he went,
- 17 everything that he did, didn't he?
- 18 A Yes, sir.
- 19 Q He didn't try to minimize his involvement or
- 20 participation in the crime any at all, did he?
- 21 A No, sir.
- 22 Q He did not try to put the gun in one of these
- 23 other fellows' hands at all, did he? He put it in
- 24 his own hands, didn't he?
- 25 A Yes, sir.

ROOSEVELT YOUNG - CROSS BY MR. MAYE

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1 Q And the two people that he implicated was one,
2 Bryan, a cousin of his, and K.C. who was associated
3 with Veronica, his sister, had a baby by her; isn't
4 that correct?

5 A Yes, sir.

6 Q Did you have Alvin Phillips moved from the
7 Edgefield County Detention Center to the Saluda
8 County Detention Center --

9 A Yes, sir.

10 Q -- at some point in time during the pendency of
11 this case?

12 A Yes, sir.

13 Q Did you have concerns that he was being
14 intimidated and influenced into not testifying
15 against his co-defendants?

16 A Yes, sir. He was the only one cooperating at
17 the time and he was the youngest and the
18 vulnerablest (sic) one, so I decided to move him.

19 Q You decided to move him based on tips from an
20 informant and you, in fact, did that. You had him
21 moved over to the Saluda County Detention Center to
22 get him out of the Edgefield Detention Center,
23 didn't you?

24 A Yes, sir.

25 Q And, in fact, just before the trial in Saluda,

ROOSEVELT YOUNG - CROSS BY MR. CALHOUN

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1 he didn't want to testify and we had to continue
2 this case; isn't that right?

3 A Yes, sir.

4 Q Investigator Young, did you do anything on
5 Joseph Patrick Stevens other than listen to what he
6 had to say to you, and he was eventually arrested
7 anyway on the bench warrant, correct?

8 A Yes, sir.

9 Q Okay. And he's never worked as an informant
10 for you and there was nothing that you could do to
11 reward or punish him at the time, was there?

12 A No, sir.

13 Q And, Investigator Young, it doesn't make much
14 difference anyway because the information that he
15 gave you was correct, wasn't it?

16 A Yes, sir.

17 MR. MAYE: That's all I have. Thank you.

18 THE COURT: Mr. Calhoun, do you have any
19 questions of this witness?

20 MR. CALHOUN: Yes, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. CALHOUN:

23 Q Mr. Young, you're not denying that Mr. Stevens
24 has had some trouble with the law before, are you?

25 A No, I'm not.

ROOSEVELT YOUNG - CROSS BY MR. CALHOUN

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1 Q You're not. That's why he knows you, right?

2 That's how Mr. Stevens knows you?

3 A No, sir, I wouldn't say that.

4 Q Really?

5 A I mean, I know his family and I'd been knowing
6 him a while.

7 Q Well, the police serve bench warrants for
8 family court, right?

9 A Yes, sir.

10 Q And he called you about the bench warrant
11 because you're a police officer, right?

12 A He called to give me some information, yes,
13 sir.

14 Q Okay. And you're also aware that Mr. Phillips,
15 Alvin, has waffled many, many times over the last
16 two years about whether or not Mr. Langford and
17 Bryan have been involved in this; isn't that true?

18 A Yes, sir.

19 Q I mean, that's not a big secret?

20 A No, sir, no.

21 Q Okay. And you've already told the jury that
22 Alvin made it very clear to you that during the
23 robbery, he was the gunman, right?

24 A Yes, sir.

25 Q In fact, it was his gun?

ROOSEVELT YOUNG - REDIRECT BY MR. WILLIAMS

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1 A Yes, sir.

2 Q Okay. And you've been in law enforcement long
3 enough I know to know that these gentlemen were
4 segregated at the county jail?

5 A To a certain extent, yes, sir. It's not that
6 big down there.

7 Q They were kept apart?

8 A Yes, sir.

9 MR. CALHOUN: All right. Thank you. That's
10 all I have.

11 THE COURT: All right. Redirect.

12 MR. MAYE: Nothing else, Your Honor. Thank
13 you.

14 MR. WILLIAMS: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. WILLIAMS:

17 Q I just want to be very clear on one issue.
18 When you were waiting on Alvin Phillips to get off
19 the bus, you had in mind that he was involved in
20 this incident, you had in mind that K.C. Langford
21 was involved in this incident and you also had in
22 mind that my client was involved in this incident;
23 did you not?

24 A Yes, sir.

25 Q Okay. Now, I just want to know something

ROOSEVELT YOUNG - REDIRECT BY MR. WILLIAMS

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1 that's very, I guess, very basic and it was, I
2 guess, touched upon by the Solicitor when he was
3 cross-examining you. You said Mr. Alvin Phillips
4 gave you his statement because he felt comfortable
5 with you; is that right?

6 A Yes, sir.

7 Q Did you feel comfortable with him?

8 A Yes, sir. I have a son the same age.

9 Q Okay. Do you believe or did you believe that
10 this investigation could lead to a point in time in
11 which this might come before a jury?

12 A Yes, sir, any case can come before a jury.

13 Q All right, sir. Does the Sheriff issue to you
14 any kind of audio recording device?

15 A Yes, sir.

16 Q Okay. Was Mr. Phillips' statement that was
17 freely given recorded?

18 A No, sir, it wasn't.

19 Q Was Mr. Phillips' statement in which he waived
20 his rights, was it video taped?

21 A No, sir.

22 Q Now, you have some video tape equipment?

23 A I don't think the police department where we
24 was located has the capability of a video system in
25 that room.

ROOSEVELT YOUNG - REDIRECT BY MR. WILLIAMS

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1 Q All right. But don't you have some video
2 equipment that's mobile?

3 A Personally the narcotics unit does, yes, sir.

4 Q Okay. Let me ask this question. You said you
5 had him moved to Saluda?

6 A Yes, sir.

7 Q That was on May 28th of 2009, was it not?

8 A I don't know the exact date.

9 Q Would it surprise you to know that it would
10 have been about May 28th of 2009?

11 A If that's what's on the paperwork,
12 Mr. Williams, that's what it is.

13 Q Was he not in the custody of the Saluda
14 Detention Center when he was here in May of 2010?

15 A I don't know, Mr. Williams.

16 Q You don't recall whether or not he was in the
17 custody of the Saluda Police Department in May of
18 this year when we were here previously for this
19 trial?

20 A Well, if he was -- yes, sir, he should have
21 been, yes, sir.

22 Q All right. But yet even then he was waffling
23 about whether or not he wished to offer testimony
24 against our clients, wasn't he?

25 A I think back and forth a time or two, yes, sir.

1 **MR. WILLIAMS:** Thank you, Investigator Young.

2 **THE COURT:** All right. Mr. Maye, do you have
3 anything else of this witness?

4 **MR. MAYE:** No. Thank you.

5 **THE COURT:** Mr. Calhoun, do you?

6 **MR. CALHOUN:** No, Your Honor.

7 **THE COURT:** Thank you, sir. You can step down.
8 Do you have any further evidence?

9 **MR. WILLIAMS:** No, sir, Your Honor. The
10 defense rests.

11 **THE COURT:** Thank you.

12 Is there any reply testimony?

13 **MR. MAYE:** Yes, sir, Your Honor. I do have a
14 reply witness and I'm going to need a moment to get
15 that witness.

16 **THE COURT:** Ladies and gentlemen, the next
17 stage of the trial is that now that the defense has
18 rested, the State gets an opportunity to put up
19 reply testimony. Reply testimony does not permit
20 the State to go back through everything. They can
21 only address things that were brought up in this
22 last part of the proceeding that you heard.

23 I have to ask you to step in the jury room. As
24 soon as they tell me they're ready, I'll send for
25 you. Don't discuss the case.

1 (The jury retires to the jury room.)

2 THE COURT: How long are you going to need, Mr.
3 Maye?

4 MR. MAYE: Just a few moments, Your Honor. I
5 have a witness that's an inmate. His name is Gustav
6 Sawvell and I'm going to give them a copy of his
7 record.

8 THE COURT: We're at ease.

9 (Brief Recess.)

10 MR. CALHOUN: Your Honor, I have a motion to
11 make before we bring the jury back in.

12 THE COURT: Yes, sir.

13 MR. CALHOUN: Your Honor, my understanding is
14 this witness is going to be called to testify as to
15 the written statement that Alvin Phillips gave when
16 he was in jail saying that my client and the other
17 Mr. Phillips was involved in the robbery. This was
18 the issue that was addressed actually when Alvin
19 Phillips testified. He stated that our clients
20 coerced him or forced him to sign the statement. He
21 didn't write it, but he did say that he put his name
22 on it. And this witness is being called to say that
23 basically that's not true.

24 That's an issue that the prosecution could have
25 and should have brought up or this witness' --

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1 witness they should have called in their case in
2 chief and they chose not to and they closed their
3 case. Now the prosecution has called him as a reply
4 witness to Roosevelt Young where that issue was
5 never discussed. That's my first objection.

6 My second objection is to call this witness for
7 any reason is a violation of my Brady and Rule 5
8 motion. The first three items of my Brady motion
9 are asking for the names, addresses and telephone
10 numbers of any witnesses that are going to be called
11 to testify, the arrest record, the rap sheet of any
12 witnesses that are going to be called, which I was
13 just handed a few minutes ago, and any statements,
14 confessions or notes taken as a result of
15 discussions with these witnesses.

16 And this is all obviously being thrown on
17 myself and my client right now. So I would object
18 to this gentleman being called as a reply witness
19 because he's not replying to any information that
20 was discussed when Mr. Williams called his witness,
21 Roosevelt Young.

22 **THE COURT:** Do you have any input on this?

23 **MR. WILLIAMS:** Yes, Your Honor. I actually
24 join Mr. Calhoun on behalf of my client Phillips. I
25 don't think I even discussed anything other than

1 Joseph Patrick Stevens with regard to Investigator
2 Young.

3 I do know that when he was questioned by
4 Attorney Calhoun, there was some issue about
5 waffling, but that was it, nothing with regard --
6 nothing that should not and could not have been
7 addressed in the State's case in chief.

8 And I think it's -- and, furthermore, in
9 response to my Brady motion and Rule 5 request which
10 was filed and served upon the Solicitor some time
11 ago, this information was not even made known to me
12 and counsel until yesterday that that was a
13 prospect. And I certainly think that's unfair and
14 unduly surprising and we don't have an opportunity
15 to properly evaluate anything that the State might
16 present from this witness.

17 THE COURT: What was not made known until
18 yesterday?

19 MR. WILLIAMS: That this was even a prospective
20 witness in this -- or what his testimony may even
21 contain or relate to regarding him being on the
22 State's witness list when the case was called for
23 trial. I didn't even know who he was.

24 MR. CALHOUN: His name was first part on the
25 witness list on Tuesday. And I think on Tuesday,

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1 Mr. Maye told us that that was going to be the
2 substance of his testimony.

3 MR. WILLIAMS: That was yesterday when he
4 actually told us what that was about.

5 MR. CALHOUN: Okay. Yesterday.

6 THE COURT: All right. Solicitor.

7 MR. MAYE: Yes, sir, Your Honor. The defense
8 put up two exhibits, Defense 1 and Defense 2. It is
9 my understanding, Your Honor, that I can put up
10 reply evidence to any evidence that the defense puts
11 up in this case, Your Honor. This witness is a
12 direct reply witness.

13 I've never talked to this witness nor have law
14 enforcement ever spoke to him prior to today. I was
15 informed he pleaded guilty at the last term of
16 court. I was informed by his attorney at that point
17 in time that he had been incarcerated with them and
18 he had information that could potentially be useful
19 to us regarding Alvin Phillips, K.C. Langford and
20 what went on between them in the jail, but he gave
21 no details of that. I didn't have any information.
22 I've never spoken with him, never talked to him
23 before until today.

24 Reply evidence in this case that was directly
25 made, I asked Investigator Young, who was their

1 witness and not mine, on cross-examination did he
2 have Alvin Phillips moved because he had information
3 from an informant that these individuals were
4 pressuring him to testify in this case. I asked
5 Investigator Young about that on cross-examination
6 and he was their witness and all, Your Honor.

7 They also brought up the fact that Investigator
8 Young in this case, Mr. Phillips' lawyer,
9 Mr. Williams, asked him directly, wasn't it true
10 that he was over there in Saluda during the last
11 term of court?

12 This witness not only has information about
13 them trying to intimidate him and not getting him to
14 testify, information involving these two State's --
15 I mean, these two defense exhibits about these
16 falsified, what we maintain are falsified
17 statements, but he has direct information on --
18 that's reply information that is involved with how
19 they were able to try to get word to him over in
20 Saluda that he needed to be quiet and not testify
21 before the last term of court.

22 I talked to him for the first time in between
23 lunch and right now. We maintain that that's reply
24 evidence in this case, Your Honor. We didn't have
25 anything to give them so far as Rule 5 or Brady

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1 because we've never spoken with him.

2 I didn't know until this term of court -- I
3 thought at the last term of court that they were not
4 going to attempt to use these statements that we
5 maintain are false. I didn't realize until this
6 term of court that they intended to offer these
7 statements, Your Honor.

8 And his testimony is reply. He has information
9 that they were intimidating this kid and trying to
10 get him to lie involving these statements or
11 involving generating these statements that are
12 defense exhibits, which we would have -- the State
13 would respectfully suggest we've got a right to put
14 reply evidence up even if they've not called any
15 witnesses because they did put in evidence and this
16 is in reply to Defense 1 and 2.

17 And, additionally, we did discuss it.
18 Roosevelt Young discussed it with me. He was also
19 -- I don't know if it would be sur -- not sur-reply
20 evidence, but direct, redirect, I can't remember
21 what it would have been with three lawyers, but
22 Randy directly asked him, insinuating, well he
23 wouldn't have had access to try to intimidate him
24 because he was moved to Saluda.

25 He's got direct information on how they were

1 trying to get word to him to keep his mouth shut not
2 to testify and to lie in this case. And like I
3 said, it's not information that I had prior to today
4 nor did I realize it was going to be relevant in
5 this case because in all candor, Your Honor, I
6 thought they weren't going to use these two
7 statements.

8 These were not generated by the attorneys and
9 I'm in no way disparaging them at all. I don't
10 think that they would be involved in this in any
11 regard. These two defendants provided these to
12 their lawyers and they didn't send the investigator
13 to go talk with Alvin Phillips. These were obtained
14 by their clients and not the lawyers and I didn't
15 think they were going to use these. We maintain
16 they're false and I was surprised in fact, Your
17 Honor, that they even proffered them. I didn't
18 think they were going to. And this witness has
19 direct information on that.

20 Be happy to proffer his testimony here, let
21 them cross-examine him, think about it, do whatever
22 they want to do prior to that time, but like I said,
23 I had no idea that it was going to be an issue
24 because I thought they weren't going to use these
25 statements.

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1 **MR. CALHOUN:** If I may, Your Honor, regardless,
2 they were still admitted in the prosecution's case
3 in chief and they closed their case. And if
4 Mr. Young (sic) did ask a question to Roosevelt
5 Young, it was his question. It was his question.
6 We did not raise any issues related to these
7 statements with Roosevelt Young.

8 **THE COURT:** I thought you asked a lot of
9 questions about that waffling and changing his
10 statements. I thought there were questions --

11 **MR. WILLIAMS:** Your Honor -- I'm sorry.

12 **THE COURT:** I thought there were questions that
13 were asked about Alvin Phillips changing his
14 statement and waffling and going back and forth on
15 his statements several times and also questions
16 about the trial previously had been scheduled and
17 then having to be postponed. I mean, I don't know
18 what the man's going to say, I'll have to hear it.

19 Now, as far as his argument about replying to
20 exhibits that were admitted, I don't accept that.
21 The exhibits were admitted during the State's case
22 in chief. If the defense had said they were not
23 going to put up anything, then they wouldn't get to
24 come up and say, okay, now we want to offer reply to
25 those two documents that were entered in the State's

1 case, but they were defense witnesses. So I don't
2 accept that argument.

3 But the argument that it's not responsive to
4 anything that was brought out in the defense's case,
5 now I realize we have two separate and distinct
6 defendants, I understand that, but I'm having a hard
7 time understanding how this would not go to the
8 issue of the waffling that's alleged to have
9 occurred and the changes of statements that are said
10 to have been made that were asked about as far as I
11 can recall by defense counsel.

12 MR. WILLIAMS: Your Honor, I believe the record
13 will speak for itself. I do not believe I opened
14 the door to that line of questioning, but I will say
15 that I believe the Solicitor is attempting to reply
16 to information that he, in fact, cross-examined
17 Mr. Young about. He's essentially trying to reply
18 to his own cross-examination and I believe the
19 record will speak --

20 THE COURT: How so? Because you lost me. I
21 don't recall -- how would the Solicitor benefit from
22 getting up and saying, My key witness --

23 MR. WILLIAMS: The Solicitor -- if I recall the
24 testimony, and, of course, the record will speak for
25 itself, the Solicitor, in fact, asked him about

1 moving the gentleman to Saluda County in his
2 cross-examination. I never raised that when I had
3 Mr. Young on direct -- on direct examination.

4 **MR. MAYE:** Your Honor, I am certain that
5 Investigator Young was directly asked about his
6 waffling. In fact, he was asked more than one time
7 about this witness waffling in this case.

8 **MR. CALHOUN:** He was, Your Honor. He was asked
9 by me. I remember asking the question, but this is
10 not a new issue. This was raised in great detail by
11 myself yesterday with Alvin Phillips. It was a huge
12 subject of cross-examination and it's not a new
13 issue. And Roosevelt Young wasn't asked to shed any
14 new light on that issue. He was just asked to
15 acknowledge that it had existed. His answer was a
16 yes and that's all he said.

17 **THE COURT:** All right. Make your proffer so I
18 can know what this is all about.

19 **MR. MAYE:** Okay.

20 **THE COURT:** Swear him in please, Madame Clerk.

21 GUSTAV PAUL SAWVELL,

22 having been duly sworn, testified as follows:

23 **THE CLERK:** State your full name and spell your
24 last.

25 **THE WITNESS:** Gustav Paul Sawvell. Last name

GUSTAV PAUL SAWVELL (IN CAMERA) - DIRECT BY MR. MAYE

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1 is S-a-w-v-e-l-l.

2 DIRECT EXAMINATION

3 BY MR. MAYE:

4 Q Mr. Sawvell, did you have an occasion during
5 both 2009 and up till this year in May to be
6 incarcerated in the Edgefield County Detention
7 Center with Alvin Phillips, Bryan Phillips and K.C.
8 Langford?

9 A Yes, sir.

10 Q Okay. During the time that you were
11 incarcerated, what did you hear from the, I guess,
12 the co-defendants of Alvin Phillips in this case?
13 What did you hear and which co-defendant did you
14 hear, what did you hear them say in regard to Alvin
15 Phillips testifying as to whether or not they wanted
16 him to testify and what they wanted him to do while
17 you were in the detention center?

18 A That they were going to write some letters to
19 somebody about them not doing the crime that they
20 were going to do, telling Alvin basically to lie.

21 Q They were telling him to lie?

22 A Yes, sir.

23 Q Okay. How often did this behavior occur that
24 they were trying to influence him -- or which one
25 was trying to influence him to lie and not to

GUSTAV PAUL SAWVELL (IN CAMERA) - DIRECT BY MR. MAYE

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1 testify?

2 **A** Mr. Langford.

3 **Q** Okay. What access did you have with
4 Mr. Langford?

5 **A** He'd come down to my room almost every night.

6 **Q** How often did this behavior about him trying to
7 get Alvin Phillips not to testify and to lie, how
8 often did that occur?

9 **A** About the whole time he was there.

10 **Q** Did it occur during a given week? Did it occur
11 multiple times during a given week?

12 **A** Multiple times, yes, sir.

13 **Q** Let me show you what's been marked Defense
14 Exhibit 1 and 2. Let you look at those.

15 **A** (Witness reviewing documents.)

16 **Q** During the time that you were a cellmate with
17 K.C. Langford, did you observe him preparing
18 documents in the name of Alvin Phillips dealing with
19 that same subject matter?

20 **A** Yes, sir.

21 **Q** Describe to the Court in detail what you saw
22 and observed and what he was doing and how you got
23 access to see that.

24 **A** They had some paperwork that they had filled
25 out just statements letting Alvin know what to say

GUSTAV PAUL SAWVELL (IN CAMERA) - DIRECT BY MR. MAYE

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1 when it was time to go to court, kind of like
2 coaching him, putting him on -- but the letters
3 weren't these here.

4 Q Did you see him working on other letters of the
5 same subject matter?

6 A Yes, sir.

7 Q Statements that purported to be from Alvin
8 Phillips that he was preparing?

9 A Yes, sir.

10 Q Okay. Was he trying to convince Alvin Phillips
11 not to testify in this case?

12 A Yes, sir.

13 Q Okay. Was Alvin Phillips moved to Saluda
14 County as a result of that?

15 A Yes, sir.

16 Q Okay. About when was he moved to Saluda
17 County; do you remember?

18 A About July.

19 Q In about July --

20 A Of '09.

21 Q You think it was about that time?

22 A Roughly.

23 Q Okay. Let me ask you this. What efforts did
24 he continue to do in order to influence him over in
25 Saluda County? What was he doing and what did he

GUSTAV PAUL SAWVELL (IN CAMERA) - DIRECT BY MR. MAYE

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1 share with you in regard to his attempts to continue
2 to influence him once he was moved over to Saluda?

3 A Phone calls through other people on the
4 outside, mainly his -- Alvin's sister.

5 Q What was he telling you that he was attempting
6 to do and what advice did he seek from you?

7 A He was -- kept telling his sister to let Alvin
8 know to not show up, tell them that he wasn't going
9 to be a witness to the case.

10 Q Okay. Right at the last term of court in May
11 in between the first week and the second week when
12 this trial was imminent, what steps was he taking
13 specifically to try to reach Alvin and get this
14 information to him and what, if any, statements or
15 documents did you see him preparing in preparation
16 for that?

17 A I didn't see any paperwork at that time. I
18 only heard the phone calls that he was making,
19 calling --

20 Q What was he saying?

21 A I didn't hear the whole conversation, just bits
22 and pieces telling his sister that, let Alvin know
23 that -- to say, hey, write up a piece of paper let
24 your lawyer know that you don't want to be a
25 witness, that you don't want to show up. If you

GUSTAV PAUL SAWVELL (IN CAMERA) - DIRECT BY MR. MAYE

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1 don't show up, we get to go scot-free.

2 Q He was telling him that if he didn't testify or
3 he didn't show up, he got to go scot-free?

4 A Yeah.

5 Q Okay. What advice did he seek from you or what
6 advice did you give him in regard to how he should
7 contact him with him in Saluda, it being at the 11th
8 hour right before trial?

9 A I really didn't give him much what to do.

10 Q You were not able to give him any advice as to
11 that?

12 A Yeah.

13 Q Was he attempting to do it in a written
14 fashion? Did you suggest to him that he do it in an
15 oral fashion or make a phone call rather than try to
16 do it in writing?

17 A He was going to write a letter to him and --

18 Q Who was he going to give that letter to?

19 A That I'm not sure of. I know he was going to
20 make a phone call, though, because I gave him a card
21 to make a call.

22 Q You gave him a card so he could make a call for
23 that purpose?

24 A Yeah. And he called up his -- Alvin's sister.

25 Q So you personally heard K.C. Langford attempt

GUSTAV PAUL SAWVELL (IN CAMERA) - DIRECT BY MR. MAYE

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1 on a repeated basis to get Alvin Phillips not to
2 testify and to lie?

3 A Yes, sir.

4 Q When -- let me ask you this. At the time that
5 you pleaded guilty in May, did you relate any of
6 this information or try to get any of this
7 information to law enforcement prior to pleading
8 guilty?

9 A No, sir.

10 Q After you pleaded guilty, how did you get the
11 information that you had? Had you already been
12 sentenced and pled guilty at that time?

13 A I've already been sentenced and pled guilty.

14 Q How did you get word to the State that you had
15 any information or that you had anything involved in
16 this, who did you contact?

17 A I talked it over with my lawyer on my way out.
18 I said something to my lawyer.

19 Q On your way out of here?

20 A On my way out.

21 Q But you had already been sentenced?

22 A Already sentenced.

23 Q Who was your attorney?

24 A Andy Anderson.

25 Q Okay. When is the first time that you and I

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1 and Investigator Robinson ever spoke about this
2 matter?

3 A Today.

4 Q Have you ever related that to law enforcement
5 here on this case prior to today?

6 A No, sir.

7 MR. MAYE: Your Honor, that's basically the sum
8 and substance. We have more involving his prior
9 record, but as to the sum and substance of things
10 that we would deem that would be directly related to
11 him going over to Saluda, him waffling or
12 vacillating, we think that this directly impacts
13 that and would be reply testimony as to why he was
14 waffling and specifically attempts to continue to
15 contact him once he was moved over to Saluda.

16 THE COURT: Questions of the witness?

17 MR. CALHOUN: Your Honor, as I understand this
18 proffer, it's being done to determine whether or not
19 this witness' testimony is related to us asking
20 Roosevelt Young about the waffling of Alvin
21 Phillips.

22 THE COURT: It's to make a proffer of whatever
23 you all want to make related to the issue that you
24 have raised.

25 MR. CALHOUN: Okay.

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1 CROSS-EXAMINATION

2 BY MR. CALHOUN:

3 Q Mr. Sandhill?

4 A Sawvell.

5 Q Sawvell. You were in jail at the time for
6 criminal sexual conduct on a minor charge?

7 A Yes, sir.

8 Q How old was the victim in that case?

9 A Fifteen.

10 Q Fifteen. Was it a boy or girl?

11 A Female.

12 Q Female. All right. And you've got a history
13 of such criminal behavior, is that correct, in the
14 State of Florida?

15 A No, sir.

16 Q No.

17 A Assault and battery.

18 Q Okay. So you disagree with the information on
19 the NCIC report that the prosecutor has given to me?

20 A I don't know what you got.

21 Q You haven't looked at this rap sheet?

22 A No.

23 Q So your testimony as you just explained it
24 relates to how Mr. Langford and Bryan Phillips came
25 to be in possession of the statements you have in

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1 front of you that were signed by Alvin Phillips,
2 correct?

3 A Yes, sir.

4 Q And other than that information, do you have
5 anything else to offer this Court?

6 A Just the information I've given you, sir.

7 THE COURT: What did he say?

8 THE WITNESS: Just the information I'd given
9 you.

10 MR. CALHOUN: That's all I have, Judge.

11 THE COURT: Mr. Williams, do you wish to ask
12 this witness any questions?

13 MR. WILLIAMS: Your Honor, you know, I know the
14 Court hasn't ruled, but again I would ask the Court
15 to consider the record and the review of it because
16 I truly don't believe I raised anything that dealt
17 with those statements in my calling of Investigator
18 Young. I will ask him a few questions.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. WILLIAMS:

22 Q Do you recall when it was you came to Edgefield
23 County Jail?

24 A May 9th, '09.

25 Q May 9th of 2009?

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- 1 A Yes, sir.
- 2 Q Okay. And you remained incarcerated up through
- 3 what point in time?
- 4 A In Edgefield?
- 5 Q Yes, sir.
- 6 A About May 21st of '010.
- 7 Q Were you even in the Edgefield County Jail on
- 8 March 31st of 2009?
- 9 A No, sir.
- 10 Q Were you at all in the Edgefield County Jail on
- 11 January 29th of 2009?
- 12 A No, sir.
- 13 Q Where were you?
- 14 A On the outside.
- 15 Q On the outside. Where on the outside?
- 16 A At home, Johnston.
- 17 Q Charleston?
- 18 A Johnston.
- 19 Q Johnston. How did you wind up here in South
- 20 Carolina?
- 21 A A house.
- 22 Q A house. Whose house?
- 23 A Me and my wife's.
- 24 Q You and your wife's house?
- 25 A Uh-huh.

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- 1 Q What's your wife's name?
- 2 A Jennifer Sawvell.
- 3 Q Does she still live in Johnston?
- 4 A Yes, sir.
- 5 Q Where in Johnston?
- 6 A [REDACTED] Street.
- 7 Q [REDACTED] Street. The victim, I'm not asking you
- 8 to identify her, but was she a neighbor of yours?
- 9 A No, sir.
- 10 Q Was she a relative?
- 11 A No, sir.
- 12 Q How long were you in jail for?
- 13 A I got sentenced to 15, sir.
- 14 Q Fifteen years?
- 15 A Yes, sir.
- 16 Q For lewd act on a minor?
- 17 A Yes, sir.
- 18 Q That's not classified as a violent crime, is
- 19 it?
- 20 A That's correct.
- 21 Q It is not?
- 22 A It is not a violent crime, that's right.
- 23 Q When do you expect to be paroled?
- 24 A If my memory is right, somewheres (sic) in
- 25 2012.

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1 Q Do you expect that your presentation here today
2 might be something that you'd consider for your
3 parole eligibility?

4 A It could help who knows. Nothing's been
5 promised to me.

6 Q Did anybody teach you that phrase, Nothing's
7 been promised to me?

8 A Yeah.

9 Q Who taught you that?

10 A My grandma.

11 Q Well, that's probably good. You didn't listen
12 to your grandmama when you did this lewd act,
13 though, did you?

14 A No.

15 Q She didn't teach you that, did she?

16 A No.

17 Q You came to the jail May 9th; is that right?

18 A Yes, sir.

19 Q 2009?

20 A Yes, sir.

21 MR. WILLIAMS: Thank you.

22 THE COURT: Anything else to proffer?

23 MR. MAYE: Nothing else to proffer at this
24 time, Your Honor.

25 THE COURT: Any proffer?

1 **MR. CALHOUN:** Not for this witness, Judge.

2 **THE COURT:** Is he in your custody?

3 **OFFICER:** Yes, sir.

4 **THE COURT:** If that room is open right there,
5 open that door for me please and see if that room is
6 vacant, take him in there for me, okay.

7 (Witness leaves the courtroom.)

8 **THE COURT:** Do you have any additional argument
9 to make?

10 **MR. MAYE:** Your Honor, the only thing that we
11 would maintain is that this is directly in reply.
12 When they asked questions about this witness
13 waffling, when they asked questions about whether or
14 not why -- about him being moved over to Saluda with
15 the implication being to Investigator Young that
16 they would have no longer had access to him over in
17 Saluda, this information is directly in reply to
18 that. It is directly in reply to anything about
19 this guy waffling.

20 And the two statements that were admitted
21 earlier, he testified that he had seen them write --
22 him writing similar things with Alvin Phillips' name
23 on them, Your Honor, and heard him on a daily basis
24 ask him to lie and not to testify or on a very
25 frequent basis, at least weekly, not to testify and

1 knew that he was moved. I would think that it's
2 directly in reply to that, Your Honor.

3 **THE COURT:** Any further argument?

4 **MR. CALHOUN:** Yes, Your Honor. The waffling is
5 not a new issue. It's an issue that was raised and
6 addressed in the prosecution's case in chief again,
7 simply is not new evidence.

8 And my objection, as you recall, was twofold.
9 I also have a strong objection to this as being
10 brought in violation of my Brady and my Rule 5
11 motion, Judge. This is a new guy, new information.
12 I've got a rap sheet that has some charges from
13 Florida on it, but it doesn't have what he's been
14 convicted of earlier this year in South Carolina.
15 This is a surprise witness that's being thrown in
16 that could have been attempted to be called in the
17 prosecution's case in chief and they chose not to.
18 They chose not to.

19 The statements that were put in yesterday were
20 put in with a prosecution's witness in their case in
21 chief. It's not a new issue by any means and it
22 wasn't fleshed out or elaborated on by my question,
23 my simple question to Roosevelt Young as to, Are you
24 aware that Alvin Phillips has waffled in the last
25 two years, which he said yes, he agreed to. That's

1 not a new issue.

2 MR. WILLIAMS: Your Honor, I guess my objection
3 is threefold. I renew my original objection in that
4 I truly don't believe I opened the door to that. It
5 was my witness and I think they have to be bound by
6 where I went with it. And I don't think I opened
7 the door to that.

8 Number two, the second issue is essentially we
9 really didn't know anything about this defendant
10 until yesterday -- or this witness until yesterday,
11 even what he might offer.

12 And finally, Judge, we are really not in a
13 position to figure out how this inmate was housed,
14 if he was segregated, if he was on lockdown, how
15 close was he to our clients. I mean, you know, I
16 think we're going to be essentially in a poor
17 position to defend our clients if this witness is
18 allowed to testify. Now, I can't do it now
19 certainly unless the Court sees fit to allow or to
20 force the sheriff's office to tell us how he was
21 situated. You know, I just don't know if that's
22 really fair to my client. Thank you, Your Honor.

23 THE COURT: I need some clarification. Today
24 is Thursday. How did you know to list this man on
25 Tuesday?

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1 **MR. MAYE:** The only indication that I had that
2 he might potentially -- Your Honor, at the outset of
3 this case, I did not think that they were going to
4 offer -- I didn't think these two lawyers were going
5 to put those statements up from our conversations at
6 the last term of court.

7 I know that their clients elicited these and it
8 was not -- and like I said, I'm not disparaging
9 these two lawyers. These are two honorable guys and
10 I didn't think that they would have any party to
11 this and -- nor do I assert that they do now. I
12 know their clients had given them these documents
13 that I maintain that their -- that we believe that
14 their clients elicited. I know that they would not
15 have done so in this fashion.

16 I didn't believe they were going to be offered
17 at the trial last time or this time. I put
18 Mr. Sawvell down merely because Andy Anderson told
19 me at the last term of court that Sawvell might
20 potentially have some information involving these
21 guys and I put him down out of abundance of caution.
22 I had not talked to him. I didn't know the sum and
23 substance of the information beyond the fact that it
24 might somehow -- Andy Anderson indicated to me that
25 it might somehow relate to Alvin Phillips being

1 unwilling to testify in this case, but I had never
2 talked to him.

3 I didn't think it was any information that I
4 was going to be allowed to go into or that would
5 even be an issue in this trial because I didn't
6 think those documents were going in and I put him
7 down on the out chance that they did. At that time,
8 I had not talked to him. I did not know what he
9 said. He did not arrive here until today. But
10 there's wide open cross-examination in South
11 Carolina.

12 They called Investigator Young and they didn't
13 have to call him. They called him. It was an issue
14 during his testimony, this issue about him waffling,
15 the issue about them being in Saluda. I mean, they
16 did that strictly as strategy in order to get that
17 out in front of the jury and it was brought out.
18 They didn't have to ask those questions either on
19 redirect or anything else. They did that in an
20 attempt to score those points or get that
21 information out in front of the jury.

22 This witness has direct information on that. I
23 gave it to them -- I got it at lunchtime and I
24 proffered it ahead of time, Your Honor. I didn't
25 know that it was going to go in this direction and

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1 that's often the nature of reply evidence. Once it
2 comes up -- I know the rules for reply witnesses are
3 not the same as they are for witnesses that you
4 intend to offer in your case in chief.

5 And like I said, I didn't have this information
6 until this afternoon. And I only had an indication
7 from the attorney that he might have some
8 information involving this issue, so I put him down
9 on Tuesday on my witness list. I didn't know if we
10 would get him here in time to talk to him or whether
11 or not that I would use him because I certainly
12 didn't -- at the outset of this case, I didn't
13 believe we were going to have these statements being
14 an issue or this issue about him waffling or
15 vacillating.

16 **THE COURT:** You really need to listen to my
17 question and answer my question and not give me a
18 whole argument every time I ask you a question. The
19 question was, how did you know on Tuesday to put
20 this guy's name down?

21 **MR. MAYE:** Because Andy Anderson mentioned his
22 name to me in May.

23 **THE COURT:** And what did he tell you in May?

24 **MR. MAYE:** He told me that Sawvell potentially
25 had information involving the stuff that was going

1 on in the jail between these guys and that if we
2 wanted to talk to him to let him know.

3 **THE COURT:** And nothing happened between May
4 and the calling of this case this week?

5 **MR. MAYE:** No, it did not because I did not
6 think that they were going to use these statements.
7 I thought that this was stuff that the defendants
8 had done and I didn't dream that it was going to
9 come out in this trial. I just didn't think these
10 lawyers were going to offer it.

11 I mean, I know they are somewhat driven by what
12 their clients want them to do, but I didn't think it
13 was going to be an issue. I didn't think we would
14 be arguing about this, so I didn't talk to him. I
15 didn't go in between then. I didn't explore the
16 issue. I put his name down out of an abundance of
17 caution in case the trial drifted in that direction,
18 which I was, at the outset, was surprised that those
19 statements, that they attempted to put them in. I
20 thought it was a potential land mine for all of us.

21 **THE COURT:** Mr. Maye, I do not want to insult
22 you. I apologize if I come across that way, but,
23 please, I understood your argument the first five
24 times you made it. It's a quarter till 3:00 on
25 Thursday. The jury's been sitting back there I

1 don't know how long.

2 All right. What under Rule 5 are you claiming
3 has been violated? If you need time to look at it,
4 tell me, I'll give you a few minutes.

5 MR. CALHOUN: Your Honor, I filed my Brady and
6 Rule 5 motions back in December of 2008. I'm
7 entitled to know the names of any witnesses that
8 they're going to call long before the case is called
9 about a year and a half later. I'm entitled to know
10 whether or not they've got a rap sheet. I'm
11 entitled to have information about them, the
12 substance of any information they're going to
13 testify as to. This gentleman's name is in
14 absolutely -- it's on absolutely no document I've
15 been provided until today.

16 This case was called in May of this year. It
17 was continued, as you remember, because Alvin
18 Phillips wouldn't testify. His name wasn't brought
19 up then. Obviously, he wasn't going to testify and
20 I haven't heard anything about it until yesterday.

21 MR. WILLIAMS: And, Your Honor, just if I might
22 add one thing. The Solicitor's witness, the State's
23 witness, Alvin Phillips, acknowledged these
24 documents in the State's case in chief. If the
25 Solicitor believed that there was some problem with

1 him acknowledging them, then he should have elicited
2 that testimony from his witness at the time he had
3 him on the stand. I think this is an unfair
4 surprise to my client, as well as to Mr. Langford.

5 **THE COURT:** All right. You all have multiple
6 issues that you're raising and I'm trying to isolate
7 them so I can deal with them instead of just getting
8 the generic argument over and over again.

9 I'm reading Rule 5. I'm going to give you a
10 chance since you're on your feet, all of you, to
11 look at Rule 5. Tell me specifically where the
12 State has violated Rule 5. I don't think this is
13 exculpatory so tell me how it relates to Brady.

14 Now, you know, I know that there are going to
15 be changes in the criminal rules. I don't think
16 they can come soon enough. My personal opinion is
17 that criminal trials should be much more wide open,
18 should be much more like civil discovery. We ought
19 to have this information. It ought to be put out
20 there and everybody will know what's going on and I
21 think you will avoid a whole lot of situations and
22 probably have a whole lot more cases resolved by
23 guilty pleas and dismissals, but what I think
24 doesn't matter. What's in the law and what's in the
25 rules is what matters.

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1 It's not the case in chief of the State. I
2 hear your argument that you all feel that they were
3 required to put this up in their case in chief. I'm
4 struggling to understand why. They don't have to
5 call that guy in their case in chief. And if they
6 did, I may envision some problems with their effort
7 to do that.

8 I still -- there's an old case that I want to
9 try to find and look up where -- it was not on this
10 issue, it was on, I think, a directed verdict or
11 something, but there was an inmate who was in one
12 place and there was a question about whether he
13 could hear the conversations that he actually
14 claimed to have heard. I can't remember enough
15 about the case to make any comment on it. I just
16 remember it was kind of an incredible case as far as
17 whatever the reviewing court was determining when
18 the fact finding court had apparently submitted that
19 issue to a fact finder.

20 But this witness has not said anything about
21 those two documents. He, in fact, the only thing he
22 said that I heard him say in the proffer is it
23 wasn't those documents. He said that he overheard
24 conversations that were made to Alvin's sister. I'm
25 really unclear as to how he or what he witnessed as

1 far as direct interaction between Mr. Langford and
2 Alvin Phillips.

3 Did I say Stevens while ago?

4 **MR. MAYE:** One of the witnesses made that
5 mistake earlier. It planted a seed in my mind as
6 well.

7 **THE COURT:** Alvin Stevens is a well-known
8 gentleman from the Merryweather area. If I said
9 Stevens, it's just habit.

10 I'm going to give y'all a chance to look and
11 then come back out and I'll see if I can find that.
12 I mean, it is still bothersome to me and I still am
13 very uncomfortable with this concept that the
14 witness' name was put on the voir dire on Tuesday.
15 And it's troubling from both perspectives. It's
16 troubling from one perspective as the State's saying
17 they didn't have any idea what the guy might say.
18 And it's troubling from the defense perspective that
19 there's a claim that y'all had no idea what the guy
20 might say. That's hard to believe on both sides.
21 We're at ease.

22 (Brief Recess.)

23 **THE COURT:** Anything else you all want to put
24 on the record before I rule?

25 **MR. MAYE:** Your Honor, the only thing, the