

**VOLUME I OF III**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Beaufort County

**S.C. SUPREME COURT**

Honorable Robert J. Bonds, Circuit Court Judge  
\_\_\_\_\_

AUSTIN MCQUARTERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000628  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

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## INDEX

|                                                                                               |      |
|-----------------------------------------------------------------------------------------------|------|
| INDEX .....                                                                                   | i    |
| TRIAL TRANSCRIPT DATED JULY 20-22, 2015.....                                                  | 1    |
| TRANSCRIPT OF MOTION FOR A NEW TRIAL AFTER DISCOVERED<br>EVIDENCE DATED AUGUST 12, 2015.....  | 570  |
| COURT’S EXHIBIT #1 (SUPPLEMENTAL REPORT) .....                                                | 611  |
| MOTION TO VACATE CONVICTION AND ORDER NEW TRIAL .....                                         | 616  |
| RESPONSE TO DEFENDANT’S MOTION TO VACATE CONVICTION<br>AND ORDER NEW TRIAL .....              | 618  |
| INDICTMENTS AND SENTENCE SHEETS.....                                                          | 623  |
| TRIAL TRANSCRIPT DATED FEBRUARY 17-19, 2015 ENDING IN HUNG JURY .....                         | 629  |
| FINAL BRIEF OF APPELLANT .....                                                                | 1058 |
| FINAL BRIEF OF RESPONDENT .....                                                               | 1074 |
| <u>STATE V. AUSTIN MCQUARTERS</u> NO. 2017-UP-320 (S.C. CT. APP FILED<br>AUGUST 2, 2017)..... | 1098 |
| APPLICATION FOR POST-CONVICTION RELIEF FILED JANUARY 29, 2018.....                            | 1100 |
| RETURN AND PARTIAL MOTION TO DISMISS FILED MAY 3, 2018 .....                                  | 1107 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MARCH 10, 2022 .....                          | 1113 |
| ORDER OF DISMISSAL FILED APRIL 27, 2022.....                                                  | 1147 |

1 IN THE COURT OF GENERAL SESSIONS IN AND FOR  
2 BEAUFORT COUNTY SOUTH CAROLINA

3

4 STATE OF SOUTH CAROLINA,

5 Plaintiff,

6 vs.

CASE NO. 2013GS0701844; 1845

7 AUSTIN LEWIS McQUARTERS,

8 Defendant.

9 \_\_\_\_\_/

10

11

\* \* \*

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TRIAL TRANSCRIPT

14

VOLUME 1

15

DATE: July 20, 2015

16

17

PLACE: Beaufort County Courthouse  
Beaufort, South Carolina 29901

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REPORTED BY: Mona Manley, Court Reporter

20

BEFORE: Honorable Thomas W. Cooper, Jr.

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**APPEARANCES**

REPRESENTING THE STATE:

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\* \* \*

INDEX PAGE

|    |                            |
|----|----------------------------|
| 1  | INDEX                      |
| 2  | Jury Selection .....Page 4 |
| 3  |                            |
| 4  |                            |
| 5  |                            |
| 6  |                            |
| 7  |                            |
| 8  |                            |
| 9  |                            |
| 10 |                            |
| 11 |                            |
| 12 |                            |
| 13 |                            |
| 14 |                            |
| 15 |                            |
| 16 |                            |
| 17 |                            |
| 18 |                            |
| 19 |                            |
| 20 |                            |
| 21 |                            |
| 22 |                            |
| 23 |                            |
| 24 |                            |
| 25 |                            |

## INDEX PAGE

1

2

## PROCEEDINGS

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4

THE COURT: Ms. Lempesis, is the State ready to proceed to the jury selection?

5

MS. LEMPESIS: We are, Your Honor.

6

7

THE COURT: Mr. Bax, is the State ready to proceed to the jury selection?

8

MR. BAX: Yes, Your Honor.

9

THE COURT: You may call your case.

10

11

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MS. LEMPESIS: We are here in the case of 2013GS0701844, State of South Carolina versus Austin McQuarters, with the charge of armed robbery. 2013GS0701845, the charge of assault and battery in the first degree.

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THE COURT: Ladies and gentlemen, as you have heard, the State has called the State versus Austin Lewis McQuarters. Mr. McQuarters is charged in Indictment 2013GS0701844 with the crime of armed robbery. That indictment says that: Here in Beaufort County, South Carolina, on or about October the 20th of 2013 the Defendant, Austin Lewis McQuarters, by use of force, threats, or intimidation and while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or other object

## JURY SELECTION

1       which a person present during the commission of the  
2       robbery reasonably believed to be a deadly weapon,  
3       did take or carry away goods or monies from the  
4       person or immediate presence of John Snodgrass with  
5       the intent to permanently deprive him of possession  
6       thereof; in violation of the law.

7               In 2013GS0701845 he's charged with the crime  
8       of assault and battery in the first degree. That  
9       indictment says: Here in Beaufort County, South  
10      Carolina, on or about October 20th, 2013, the same  
11      day, the Defendant, Austin McQuarters, did commit  
12      assault and battery by lawfully injuring another  
13      person, John Snodgrass. And the act occurred  
14      during the commission of a robbery, burglary,  
15      kidnapping, or theft; all in violation of the law.

16  
17              Now, ladies and gentlemen, the indictments  
18      that I just read to you are neither evidence or  
19      proof of the charges that they contain. They are  
20      legal papers, charging papers that tell you, me or  
21      anybody else who reads them what the case is all  
22      about. To the charges contained in these  
23      indictments, Mr. McQuarters has pled not guilty and  
24      requested a jury trial at your hand. And  
25      Mr. McQuarters, if you will please stand.

## JURY SELECTION

1 (Defendant complies.)

2 THE COURT: Thank you. You may be seated. I  
3 need to know if you are related by blood or  
4 connected by blood or marriage; that is, kin to,  
5 friend of his, or business associate or casual  
6 acquaintance or a person with direct or indirect  
7 contact with Mr. McQuarters. If so, please stand.

8 Yes, ma'am, your name and number please?

9 JUROR: Kelly Homan, number 144. I worked  
10 with Mr. McQuarters at Bluffton High School while  
11 he was in attendance at the high school.

12 THE COURT: He attended -- number 144, is that  
13 Ms. Homan?

14 JUROR: Yes, sir.

15 THE COURT: He attended Bluffton High School  
16 while you worked there; is that right?

17 JUROR: Yes, sir.

18 THE COURT: He was a student, you were an  
19 employee?

20 JUROR: That's right.

21 THE COURT: How long ago was that?

22 JUROR: Gosh, probably about six years ago,  
23 maybe.

24 THE COURT: Would that association, as you  
25 have just described it to me, Ms. Homan, make it



## JURY SELECTION

1       difficult for you to be fair and impartial as a  
2       juror in the trial of the case wherein  
3       Mr. McQuarters is charged with the crime?

4               JUROR: Yes, sir.

5               THE COURT: I'll stand you aside as a juror in  
6       this case. Thank you, ma'am.

7               JUROR: Pamela Wolske, Juror 345. I had  
8       Mr. McQuarters in a class. I was his teacher.

9               MR. BAX: Your Honor, may I approach?

10              THE COURT: All right.

11              (Off-the-record discussion held.)

12              THE COURT: Yes, ma'am. Would you please come  
13       forward, please, ma'am.

14              MR. BAX: Your Honor, my other attorneys were  
15       witnessing the fact that Juror Number 143 just  
16       turned to the side, was having conversations with  
17       other jurors while we were at sidebar. So I would  
18       ask that we inquire what those conversations were  
19       about. Thank you.

20              THE COURT: All right. Ms. Homan, will you  
21       please come forward as well, please right -- no,  
22       stand in behind Ms. Wolske, please.

23              If you'll come forward, please, ma'am.

24              Ms. Wolske, you were a teacher while he was a  
25       student there; is that right?

## JURY SELECTION

1 JUROR: Yes, I was.

2 THE COURT: Would that fact make it difficult  
3 for you to be fair and impartial as a juror in the  
4 trial of this case?

5 JUROR: It might.

6 THE COURT: We'll excuse you then as a juror,  
7 because we don't want to take a chance on -- please  
8 let me ask you not to share your impressions of him  
9 with anybody else on this panel until we get a  
10 jury, please.

11 JUROR: No.

12 THE COURT: Okay. Thank you, ma'am.

13 JUROR: You bet. Sit down?

14 THE COURT: You can go back and have a seat.

15 JUROR: Okay.

16 THE COURT: Yes, ma'am, Ms. Homan.

17 Ms. Homan, if you'll speak so that she can  
18 hear you.

19 JUROR: Yes.

20 THE COURT: There was a concern that you may  
21 have made some comment to any of the jurors around  
22 you regarding your impressions of Mr. McQuarters.  
23 Would you share with me what you told the folks  
24 around you after you -- after you mentioned that  
25 you could not be fair and impartial?

## JURY SELECTION

1 JUROR: The other juror was asking me what  
2 year he was in attendance at Bluffton High, because  
3 he also believes he taught him at H.E. McCracken.

4 THE COURT: Okay. And that's the gentleman  
5 who's standing back there now?

6 JUROR: Uh-huh. (Indicating affirmatively.)

7 THE COURT: Okay. And you told him that year?

8 JUROR: Uh-huh. Uh-huh. (Indicating  
9 affirmatively.)

10 THE COURT: Okay. Thank you, ma'am.

11 JUROR: Yes.

12 THE COURT: Let me ask you please not to share  
13 your impressions with anybody else on the jury.  
14 Okay?

15 JUROR: Yeah, sure.

16 THE COURT: Thank you, ma'am.

17 JUROR: Uh-huh. (Indicating affirmatively.)

18 THE COURT: Yes, sir. Would you come around,  
19 please, sir.

20 MS. LEMPESIS: What was her number?

21 THE COURT: That was 144.

22 All right. Yeah. Could I get the -- if  
23 anybody else is standing in response to that  
24 question, I'm going to you, please, to come around  
25 and stand in line. I'll talk with you

## JURY SELECTION

1 individually.

2 THE CLERK: I have Juror 178, Your Honor.

3 THE COURT: Yes, sir.

4 JUROR: Yes, Your Honor.

5 THE COURT: Mr. Lara?

6 JUROR: Lara. Yes, Your Honor. I'm a teacher  
7 at McCracken Middle School, which is in Bluffton.  
8 And I've been teaching there for about six, seven  
9 years.

10 THE COURT: I'm sorry. I couldn't -- I can't  
11 understand.

12 JUROR: I'm sorry.

13 I've been teaching at McCracken Middle School  
14 for six or seven years, and he was there, and I had  
15 contact as a teacher with his relatives, family.

16 THE COURT: Okay. Did you have contact with  
17 him directly yourself?

18 JUROR: No.

19 THE COURT: Okay. Did -- would the contact  
20 that you just described to me with whoever it was  
21 regarding him, either him or his relatives, would  
22 that make it difficult for you to be fair and  
23 impartial as a juror in the trial of this case?

24 JUROR: I'm not sure as if I can answer that.

25 THE COURT: Can you tell me the nature of the

## JURY SELECTION

1 contact that you had with his --

2 JUROR: Pretty much, you know, most of it,  
3 these students at my school, they know who I am,  
4 and I could land up in the building, and you know,  
5 as a -- you know, teacher, but I don't think I  
6 would have a problem. But --

7 THE COURT: But you had communication with his  
8 relatives?

9 JUROR: Yes.

10 THE COURT: And what was the context of that?

11 JUROR: Just regular Spanish teacher.

12 THE COURT: What's that?

13 JUROR: Language teacher. Spanish teacher.  
14 Classroom teacher.

15 THE COURT: All right. What -- let me ask you  
16 again: Do you think that whatever you know about  
17 Mr. McQuarters, either good or bad, would make it  
18 difficult for you to be fair and impartial as a  
19 juror in this trial?

20 JUROR: No, I think not.

21 THE COURT: Could you set aside what you know  
22 about him, from whatever source you might know  
23 something, and decide this case based on what you  
24 would hear in court without regard to your prior  
25 association that you've described to me?

## JURY SELECTION

1 JUROR: Yes.

2 THE COURT: And would you do that?

3 JUROR: Yes.

4 THE COURT: All right. Thank you, sir, Mr.  
5 Lara.

6 Please let me -- don't share with any of the  
7 other jurors your impression regarding him. Okay?  
8 Thank you, sir.

9 Yes, sir.

10 THE CLERK: Juror Number 112.

11 THE COURT: Number one what?

12 THE CLERK: 112.

13 THE COURT: Thank you.

14 Mr. Gadson, if you'll speak so that she can  
15 hear you, please.

16 JUROR: Yes, sir.

17 THE COURT: Mr. Gadson, what's your  
18 association with him?

19 JUROR: My work as a Boys and Girls Club  
20 counselor for 13 years. I know him as a young man,  
21 so I had him in some of the programs and things  
22 that I ran.

23 THE COURT: Okay. Would your association,  
24 your knowledge of him, working with him in the  
25 past, make it difficult for you to be fair and

## JURY SELECTION

1 impartial as a juror in this trial?

2 JUROR: Just a little. Just a little.

3 THE COURT: It would, just a little. Okay. I  
4 can understand that. We'll stand you aside as a  
5 juror in this case, Mr. Gadson. Please don't share  
6 with any of the other jurors your impressions about  
7 him. Okay?

8 JUROR: Yes, sir.

9 THE COURT: All right. Thank you, sir.

10 Juror Number 113 will be stood aside as a  
11 juror in this trial.

12 THE CLERK: I thought that it was 112.

13 THE COURT: Oh, was it one -- 112? I'm sorry.  
14 Yeah. That's right. 112. Okay.

15 Ladies and gentlemen, the name of the alleged  
16 victim in these indictments is Mr. John Snodgrass.  
17 I need to know if any of you all are related by  
18 blood or connected by marriage to Mr. Snodgrass, or  
19 you're a friend of his, a casual acquaintance of  
20 his, a business associate of his, or anyone who has  
21 any direct or indirect contact with Mr. Snodgrass.  
22 If so, please stand.

23 Yes, ma'am. Your name and number, please.

24 JUROR: Kimberly Mikouchi, Number 208. I went  
25 to high school and I was pretty good friends with

## JURY SELECTION

1 his son.

2 THE COURT: Okay. You said pretty good  
3 friends with his son?

4 JUROR: Yes, at the school.

5 THE COURT: Is that friendship ongoing or was  
6 it just when you were in school?

7 JUROR: For a little while like after high  
8 school, but not like this past year.

9 THE COURT: Are you currently a good friend of  
10 his?

11 JUROR: Not really.

12 THE COURT: Okay. Would the association that  
13 you have just described for me make it difficult  
14 for you to be fair and impartial in the trial of a  
15 case in which he is named as a victim in the case?

16 JUROR: No.

17 THE COURT: Could you set aside that  
18 association that you have just described for me and  
19 decide this case based on the evidence that you  
20 will hear in court without regard to that  
21 association?

22 JUROR: Yes.

23 THE COURT: Would you do that, please?

24 JUROR: Yes.

25 THE COURT: Thank you, ma'am.



## JURY SELECTION

1 Yes, sir. Your name and number, please, sir?

2 JUROR: John Frazier, 110.

3 THE COURT: All right. Mr. Frazier, just tell  
4 me the nature of your association with  
5 Mr. Snodgrass.

6 JUROR: I'm a driver for UPS, and I deliver to  
7 Mr. Snodgrass on Saturdays. Sometimes he's there,  
8 sometimes he's not.

9 THE COURT: Okay.

10 JUROR: Right. Another gentleman waits,  
11 but --

12 THE COURT: Right. You just deliver things to  
13 the place where he works?

14 JUROR: Yes.

15 THE COURT: Other than that, you don't have  
16 any association?

17 JUROR: Well, I just see him on Saturdays, and  
18 Saturdays on end. I'm not sure if he recognized my  
19 face or nothing, but I do a lot of delivering and  
20 I've worked with UPS about 21 years.

21 THE COURT: Okay.

22 JUROR: I don't know if --

23 THE COURT: Mr. Frazier, would the association  
24 that you have just described to me make it  
25 difficult for you to be fair and impartial as a

## JURY SELECTION

1 juror in the trial of a case in which he is named  
2 as a victim?

3 JUROR: I'm not sure, Your Honor. I'm not  
4 sure if I know him as well. You know, just as --

5 THE COURT: Right. Well, it doesn't matter.  
6 I'm asking you based on your own knowledge and your  
7 association with Mr. Snodgrass, whatever that  
8 happens to be, and nobody needs to know about that  
9 except you, I'm trying to find out, would that make  
10 it hard for you to be fair and impartial as a juror  
11 in this trial?

12 JUROR: I have no direct link, so I don't  
13 think it would be difficult.

14 THE COURT: Would you be able to set aside  
15 your association with him and decide this case  
16 based on the evidence that you would hear in court,  
17 without regard to what you might know from having  
18 worked with him in the past?

19 JUROR: I probably couldn't, Your Honor. I  
20 don't know if I could or not.

21 THE COURT: All right. We'll stand you aside  
22 as a juror in this trial, Mr. Frazier. Thank you.

23 Juror Number 110 will be stood aside.

24 Don't leave us, though, Mr. Frazier. There  
25 might be some other cases we'll get you involved

## JURY SELECTION

1 in. You stay with us. Don't leave.

2 THE BAILIFF: Have a seat, sir.

3 THE COURT: Thank you. Juror Number 110 is  
4 excused as a juror in this case.

5 Ladies and gentlemen, potential witnesses who  
6 may testify in the trial of this case -- I'm going  
7 to go over a list of these witnesses with you --  
8 and then I'm going to ask you the same thing about  
9 these witnesses that I've asked you about the  
10 parties that I've named to you already.

11 I will go -- going to want to know if you're  
12 kin to them, by blood or by marriage, or if you are  
13 friends of theirs or casual acquaintances of theirs  
14 or business associates, or people who have any  
15 direct or indirect contact with any of these  
16 potential witnesses. Okay?

17 Potential witnesses who may testify in the  
18 trial of the case are: Colton Delaplane,  
19 D-E-L-A-P-L-A-N-E, from Bluffton. Sergeant  
20 Rhett Parnell from the Beaufort County Sheriff's  
21 Office. Brian Michael from Bluffton. Corporal  
22 Sally Irvin from the Beaufort County Sheriff's  
23 Office. Wendy Conant from Bluffton. Sergeant Doug  
24 Seifert from the sheriff's office. Jacqueline  
25 Perez from Bluffton. Viola Labrador from Hilton

## JURY SELECTION

1 Head. And Dr. Patrick Snowman from Hilton Head.

2 Are any of you related by blood or connected  
3 by marriage to any of those potential witnesses, or  
4 friends, business associates, casual acquaintances,  
5 or people who have any direct or indirect contact  
6 with any of those witnesses? If so, please stand.

7 We'll start on this side and work back away.  
8 Your name and number, please, ma'am?

9 JUROR: Stacey Bartlow, 16. Stacey Bartlow,  
10 Number 16.

11 THE COURT: All right. Ms. Bartlow, who is  
12 the association with, please?

13 JUROR: Well, most definitely Patrick Snowman.  
14 I work at the hospital, as well as the physicians  
15 there, and I recognize several of the names of the  
16 patients.

17 THE COURT: I heard about Dr. Snowman. Who  
18 else do you have association with?

19 JUROR: I recognize several of the names as  
20 patients.

21 THE COURT: All right. Would they be  
22 sheriff's department people familiar -- or law  
23 enforcement office?

24 JUROR: I recognize the Beaufort County, yes.  
25 I have contact with them frequently.

## JURY SELECTION

1           THE COURT: All right. Would the association  
2 with any of those individuals, or all of them  
3 collectively, make it difficult for you to be fair  
4 and impartial as a juror in the trial in this case?

5           JUROR: Yes, sir, particularly because of  
6 the --

7           THE COURT: No. No. No, ma'am. I don't need  
8 to know why. I just need to know yes or no.

9           JUROR: Yes.

10          THE COURT: All right. Thank you, ma'am.  
11 Ms. Bartlow, we'll stand you aside as a juror in  
12 this trial.

13          Number 16 is stood aside. Thank you.

14          I don't mean to be rude, but you told me all I  
15 needed to know. Okay. Thank you.

16          Yes, sir, at the back. Your name and number,  
17 please.

18          JUROR: Yes, Your Honor. Justin Cunningham,  
19 Juror Number 77. I recognize Dr. Patrick Snowman  
20 and several of the Beaufort County Sheriff's Office  
21 deputies. I'm a captain paramedic, work with fire  
22 and rescue, and I have a working relationship with  
23 several deputies. Dr. Patrick Snowman is one of my  
24 assistant medical patrol physicians.

25          THE COURT: Dr. Snowman is who?

## JURY SELECTION

1 JUROR: Our assistant medical patrol  
2 physician. He receives my medical protocols.

3 THE COURT: All right. Would the associations  
4 that you've just described to me, Mr. Cunningham,  
5 make it difficult for you to be fair and impartial  
6 as a juror in the trial of this case?

7 JUROR: No, Your Honor.

8 THE COURT: Could you set aside those  
9 associations and decide this on the basis of the  
10 evidence without regard to those associations?

11 JUROR: Yes, Your Honor.

12 THE COURT: Will you do that, please?

13 JUROR: Yes, Your Honor.

14 THE COURT: Thank you, Mr. Cunningham.

15 Yes, ma'am, your name and number.

16 JUROR: Nadine Morris, Number 215.

17 THE COURT: I'm sorry. That number, Number  
18 215? Yes, ma'am.

19 JUROR: Uh-huh. (Indicating affirmatively.)

20 THE COURT: Ms. Morris, tell me about the  
21 association, please, ma'am, who it's with?

22 JUROR: Dr. Snowman. I'm an occupational  
23 therapist at Hilton Head Hospital, and have been  
24 for 18 years and just know him through this  
25 relationship.

## JURY SELECTION

1 THE COURT: Okay. And the association is  
2 limited to that professional relationship?

3 JUROR: Yes.

4 THE COURT: Would that association make it  
5 difficult for you to be fair and impartial as a  
6 juror in this trial?

7 JUROR: No.

8 THE COURT: Could you set aside that  
9 association and decide this case based on the  
10 evidence that you hear in court?

11 JUROR: Yes.

12 THE COURT: Would you do that, please, ma'am?

13 JUROR: Yes.

14 THE COURT: Thank you, ma'am, Ms. Morris.

15 Yes, ma'am. On the front, your name and  
16 number, please.

17 JUROR: Constance Sowa, Juror Number 290.

18 THE COURT: Right. Ms. Sowa, tell me who the  
19 association is with, please, ma'am.

20 JUROR: Well, the association is with the  
21 sergeant right here.

22 THE COURT: I'm sorry?

23 JUROR: The sergeant right here.

24 THE COURT: Okay. Who is that, is that  
25 Mr. Seifert? Okay. All right. And what's the

## JURY SELECTION

1 nature of the association with Mr. Seifert?

2 JUROR: Well, I only know him because I work  
3 at Powerhouse Gym, and he's -- he's a member at  
4 Powerhouse. So I see him frequently.

5 THE COURT: Okay. Would that association make  
6 it difficult for you to be fair and impartial as a  
7 juror in the trial of the case in which he is  
8 likely to testify?

9 JUROR: No.

10 THE COURT: Could you set aside that  
11 association and decide this case based on the  
12 evidence that you hear in court without regard to  
13 that?

14 JUROR: Yes, Your Honor.

15 THE COURT: Will you do that, please, ma'am?

16 JUROR: Yes, Your Honor.

17 THE COURT: Thank you, ma'am. You can be  
18 seated.

19 Yes, sir, at the back. Your name and number,  
20 please?

21 JUROR: Juror Number 178, Lester Lara.

22 THE COURT: Mr. Lara, who is the association  
23 with, please?

24 JUROR: Witness Colton Delaplane.

25 THE COURT: I'm sorry, the witness's name



## JURY SELECTION

1 again?

2 JUROR: Colton Delaplane.

3 THE COURT: Okay. And what's the nature of  
4 that association?

5 JUROR: I was his teacher for two years.

6 THE COURT: Okay. Would that association make  
7 it difficult for you to be fair and impartial as a  
8 juror in the trial of this case?

9 JUROR: Yes.

10 THE COURT: Thank you, sir. We'll stand you  
11 aside.

12 Number 178 is set aside.

13 Other potential witnesses who may testify:  
14 Harriet McQuarters and Aaron McQuarters. Are any  
15 of you related by blood or connected by marriage to  
16 any of those potential witnesses, or friends,  
17 casual acquaintances, business associates, or  
18 people who have any direct or indirect contact with  
19 any of those potential witnesses? If so, please  
20 stand.

21 Yes, ma'am. Your name and number, please?

22 JUROR: Ruth Mitchell, 210.

23 THE COURT: Ms. Mitchell, who is the  
24 association with, please, ma'am?

25 JUROR: Harriet.

## JURY SELECTION

1           THE COURT: And what's the nature of that  
2 connection?

3           JUROR: Well, she just lived over where I  
4 deliver mail at to the complex in Bluffton, at 97  
5 Fording Island Road, Plantation Point.

6           THE COURT: Right. Okay. Are you a -- you're  
7 a rural carrier, a mail carrier?

8           JUROR: Highway. Highway contract.

9           THE COURT: Highway contract. Okay.

10          JUROR: Yes.

11          THE COURT: All right. Would that association  
12 that you just described make it difficult for you  
13 to be fair and impartial in the trial of a case in  
14 which she may testify?

15          JUROR: No.

16          THE COURT: Could you set aside that  
17 association and decide this case based on the  
18 evidence that you'll hear in court?

19          JUROR: Yes.

20          THE COURT: Would you do that, please, ma'am?

21          JUROR: Yes.

22          THE COURT: Thank you, ma'am.

23          Ladies and gentlemen, the lawyers who'll be  
24 involved in the trial of this case, on behalf of  
25 the State, the case will be presented by Assistant

## JURY SELECTION

1 Solicitor, Mary Jordan Lempesis, who's right here.

2 Brian, are you going to help?

3 MR. HOLLAND: Yes, sir.

4 THE COURT: Mr. Brian Holland, also, of the  
5 Solicitor's Office will be assisting.

6 Thank you.

7 On behalf of the defendant, Mr. McQuarters is  
8 represented by Mr. R. A. Bax and Mr. Jim Bell of  
9 the Public Defender's Office for Beaufort County.

10 I need to know if any of you all are related  
11 by blood or connected by marriage to any of these  
12 lawyers? Or if you are friends of theirs, or  
13 business associates of theirs, or casual  
14 acquaintances of theirs, or if you've ever been  
15 represented by any of them or sued by any of them  
16 in the past. If you have, would you please stand.

17 MS. LEMPESIS: My last name is Lempesis.

18 THE COURT: I'm sorry?

19 JUROR: I didn't catch her last name. That's  
20 why I asked her that again.

21 THE COURT: Would you give us your name and  
22 number, please, first?

23 JUROR: Number 41, Ms. Brewster.

24 THE COURT: Yes, ma'am, Ms. Brewster. What's  
25 the association?

## JURY SELECTION

1 JUROR: A friendship with the Lempesis family.  
2 I don't know if it's your relation to the family or  
3 not.

4 THE COURT: All right. Okay.

5 Ms. Lempesis is married to Mr. Lempesis, so it  
6 would be through her husband's family, right?

7 MS. LEMPESIS: That's right.

8 JUROR: Well, I understand that, but other  
9 members of the family.

10 THE COURT: I understand. The fact that you  
11 might have some association with Ms. Lempesis's  
12 husband's family, as you've described it, would  
13 that make it difficult for you to be fair and  
14 impartial as a juror in the trial of a case in  
15 which she's representing one of the sides?

16 JUROR: No.

17 THE COURT: Could you set aside that  
18 association and decide this case based on the  
19 evidence that you hear in court?

20 JUROR: Yes.

21 THE COURT: Would you do that, please, ma'am?

22 JUROR: Yes.

23 THE COURT: Thank you, Ms. Brewster.

24 Ladies and gentlemen, a while ago I read to  
25 you the indictments in the case. As I remind you

## JURY SELECTION

1 now, they are not evidence or proof of the charges  
2 that they contain. They simply tell us what this  
3 case is all about so that you or I or anybody who  
4 reads them will know what this case is all about,  
5 what the charges are, who the parties are.

6 Because I need to know if you know anything  
7 about this case. If you have seen or heard or read  
8 anything about this case, or if you have any  
9 knowledge about this case from any source at all,  
10 would you please stand.

11 Thank you.

12 Even though you don't know what this case is  
13 all about, you understand what the charges are in  
14 this case. And the charges are armed robbery, and  
15 assault and battery. And so I need to know if you  
16 or any members of your immediate family have ever  
17 had any connection with a crime of personal  
18 violence, armed robbery, assault and battery,  
19 criminal sexual conduct, murder, manslaughter --  
20 any of those crimes of personal violence that are  
21 crimes against a person.

22 So, let me say at the outset that the question  
23 applies not only to you, it applies to any members  
24 of your immediate family. That is, your household.

25 Secondly, it applies not only to the crimes

## JURY SELECTION

1           that I've outlined in these two indictments, but to  
2           a wide range of crimes of personal violence, crimes  
3           against a person.

4           And, finally, the involvement of you or your  
5           family member could either be as a victim of the  
6           crime -- that is, the person against whom the crime  
7           is committed -- or the defendant of the crime --  
8           that is the person who was charged with committing  
9           the crime -- or as a witness to the crime. So if  
10          you or any members of your immediate family have  
11          ever been involved in crimes of personal violence  
12          in any of those capacities, I want you to please  
13          stand right now and let me get your names and your  
14          numbers.

15          Yes, ma'am. Your name and number again. I'm  
16          sorry.

17          JUROR: Stacey Bartlow, Number 16.

18          THE COURT: All right. Ms. Bartlow, if you'll  
19          come around, I want you to form a line right here  
20          in this center aisle. I'm going to talk with you  
21          privately.

22          Yes. Yes, ma'am.

23          JUROR: Bridget Short, 278.

24          THE COURT: I'm sorry. Your last name?

25          JUROR: Short. S-H-O-R-T. 278.

## JURY SELECTION

1 THE COURT: 278, Ms. Short.

2 JUROR: Yes, sir.

3 THE COURT: All right. Ms. Short, if you'll  
4 get in line next, please, ma'am.

5 Yes, sir. Your name and number, please.

6 JUROR: Joseph Short, 279.

7 THE COURT: Thank you, sir. If you'll get in  
8 line next.

9 Yes, ma'am. Your name and number, please.

10 JUROR: I'm Margo Wehrenberg, 331.

11 THE COURT: Thank you, ma'am. If you'll get  
12 in line next, please, ma'am.

13 Yes, ma'am. Your name and number over here?

14 JUROR: Joanne Taylor, Number 300.

15 THE COURT: Thank you, Ms. Taylor. Get in  
16 line next, please.

17 Yes, ma'am.

18 JUROR: Dyann Buechler, Number 46.

19 THE COURT: Thank you, Ms. Buechler. If  
20 you'll get in line, please.

21 Yes, ma'am, in the center. Your name?

22 JUROR: Cynthia Campbell, 51.

23 THE COURT: Thank you, Ms. Campbell. If  
24 you'll get in line, please.

25 Yes, sir. On the aisle, your name and number,

## JURY SELECTION

1 please.

2 JUROR: Bob Aroneck, Number 9.

3 THE COURT: Thank you, Mr. Aroneck. If you'll  
4 get in line, please.

5 Yes, ma'am?

6 JUROR: I'm Connie Cormier, Number 67.

7 THE COURT: Ms. Cormier, please, ma'am, if  
8 you'll get in line next. Okay.

9 All right. Is that everybody?

10 All right. Ms. Bartlow, if you'll come  
11 forward, please, ma'am. And once again, if you'll  
12 speak so that she can hear you.

13 Was it you or a family member that was  
14 involved?

15 JUROR: My father.

16 THE COURT: Your father. And what was the  
17 situation involved with your father?

18 JUROR: He was killed in an assault and  
19 robbery, age of 46.

20 THE COURT: And where was that?

21 JUROR: New York City.

22 THE COURT: Okay. Was anybody ever caught and  
23 convicted as a result?

24 JUROR: No.

25 THE COURT: How old were you at the time?



## JURY SELECTION

1 JUROR: Nineteen. I lived with him.

2 THE COURT: You were living at home?

3 JUROR: Yeah. And I became homeless as a  
4 result of it.

5 THE COURT: Ms. Bartlow, would that tragic set  
6 of circumstances involving your father and you make  
7 it difficult for you to be fair and impartial in a  
8 trial of this sort, where the charges are similar  
9 somewhat to the charges involving your father?

10 JUROR: Yes. Yes, it would.

11 THE COURT: I can understand why it would.  
12 We'll stand you aside, we don't want to have you --  
13 you to have to relive those moments any more than  
14 you already do. We'll stand you aside as a juror.  
15 Please don't share those reflections with anybody  
16 else.

17 JUROR: No. That's fine.

18 THE COURT: Thank you.

19 Juror Number 16 will be stood aside as a juror  
20 in this trial.

21 THE CLERK: Juror 278.

22 THE COURT: Ms. Short. If you'll speak so  
23 that she can hear you.

24 Was it you or a family member that was  
25 involved?

## JURY SELECTION

1 JUROR: My son.

2 THE COURT: Your son? And what was his  
3 involvement?

4 JUROR: He was robbed and beaten unconscious  
5 in June.

6 THE COURT: When?

7 JUROR: In June.

8 THE COURT: This June?

9 JUROR: Uh-huh. (Indicating affirmatively.)

10 THE COURT: Yes, like last month?

11 JUROR: We were actually in France.

12 THE COURT: You were in France.

13 JUROR: Uh-huh. (Indicating affirmatively.)

14 THE COURT: How is he doing now?

15 JUROR: He's getting better.

16 THE COURT: Okay.

17 JUROR: Uh-huh, he's better. Back to work.  
18 It's been a long month.

19 THE COURT: You were over there on what should  
20 have been a vacation?

21 JUROR: Uh-huh. Uh-huh. Uh-huh. (Indicating  
22 affirmatively.)

23 THE COURT: Okay. Was anybody caught?

24 JUROR: No. Huh-uh. (Indicating negatively.)

25 It was two guys about his age.

## JURY SELECTION

1 THE COURT: I see. How old is your son?

2 JUROR: He's 28.

3 THE COURT: Would that unfortunate and recent  
4 experience in your life, in your son's life, make  
5 it difficult for you to be fair and impartial as a  
6 juror in this trial in which the charge -- one of  
7 the charges is assault and battery?

8 JUROR: I mean, it's very recent. I think  
9 that would be the hardest part about it.

10 THE COURT: I understand.

11 JUROR: So, I would say, yes, for me.

12 THE COURT: I can appreciate that. We'll  
13 stand you aside as a juror in this trial. Don't  
14 share these reflections with anybody else, if you  
15 don't mind, in the jury. Okay? Thank you.

16 JUROR: Okay. Thank you.

17 THE COURT: Juror Number 278 will be stood  
18 aside as a juror in this trial.

19 THE CLERK: Juror 279.

20 MR. BAX: This is her husband?

21 THE COURT: Yes, sir. You're related to her?

22 JUROR: Yes, we're married. And same, it's  
23 our son that was --

24 THE COURT: The same situation?

25 JUROR: Yeah.

## JURY SELECTION

1           THE COURT: She's described it obviously, and  
2 I don't need to have you go back through it. So  
3 I'll just cut right to the chase.

4           Would that experience, recent and similar in  
5 respect to the charges in this case make it  
6 difficult for you to be fair and impartial as a  
7 juror in this trial?

8           JUROR: Unfortunately, I think it would just  
9 because --

10          THE COURT: I can understand why. We'll stand  
11 you aside, Mr. Short. Please don't share your  
12 reflections with anybody else on the jury panel at  
13 this time. Okay?

14          JUROR: Okay. Thank you.

15          THE COURT: Thank you, sir.

16          Juror Number 279 will be stood aside as a  
17 juror in this trial.

18          Ms. Wehrenberg. Just speak so that she can  
19 hear you.

20          Was it you or a family member that was  
21 involved?

22          JUROR: Myself.

23          THE COURT: What was the involvement?

24          JUROR: The ex-spouse was abusive physically,  
25 emotionally, verbally.

## JURY SELECTION

1 THE COURT: How long ago was that?

2 JUROR: Probably 25 years ago.

3 THE COURT: Okay. All right. Was he charged?

4 JUROR: One time, uh-huh. (Indicating  
5 affirmatively.) Yep.

6 THE COURT: Okay. All right. Would that  
7 experience that you had in that regard as you've  
8 described it to me, Ms. Wehrenberg, make it  
9 difficult for you to be fair and impartial as a  
10 juror in this trial?

11 JUROR: Probably.

12 THE COURT: All right.

13 JUROR: Yes.

14 THE COURT: Thank you, ma'am. We'll stand you  
15 aside. I don't want you to have to go back through  
16 that again.

17 JUROR: Okay.

18 THE COURT: Please don't -- Ms. Wehrenberg,  
19 one last thing. Please don't share your own  
20 reflections with anybody else on the jury until we  
21 get a jury panel in place at this time. Okay?

22 JUROR: Absolutely.

23 THE COURT: Thank you, ma'am.

24 THE CLERK: Juror 300.

25 THE COURT: Ms. Taylor, thank you. If you'll

## JURY SELECTION

1 speak so that she can hear you.

2 JUROR: Yes.

3 THE COURT: Was it you or a family member that  
4 was involved?

5 JUROR: Both.

6 THE COURT: Both. Let's start with you first  
7 of all. What was your involvement?

8 JUROR: I was a -- I'm a rape survivor.

9 THE COURT: All right. Was anybody ever  
10 charged with those crimes?

11 JUROR: No, sir.

12 THE COURT: Okay. And how long ago was that?

13 JUROR: That was 30 years ago.

14 THE COURT: Okay. And then you said a family  
15 member has been involved? What's that? Who's your  
16 family member?

17 JUROR: I have a son who is currently under  
18 indictment for indecent exposure.

19 THE COURT: Okay. Is that here in Beaufort  
20 County?

21 JUROR: Yes, sir.

22 THE COURT: Okay. Your son would be  
23 prosecuted by the same Solicitor's Office who's  
24 prosecuting this case, then. You understand that?

25 JUROR: Yes, I do.

## JURY SELECTION

1 THE COURT: Does your son live with you?

2 JUROR: No.

3 THE COURT: And how old is your son?

4 JUROR: Thirty-six.

5 THE COURT: Okay. Would either of those  
6 experiences make it difficult for you to be fair  
7 and impartial as a juror in the trial of this case?  
8 You've been a victim, you're the mother of a  
9 defendant. Would either of those or both of them  
10 make it difficult for you to be fair and impartial?

11 JUROR: I don't think so, sir.

12 THE COURT: If you were asked to serve as a  
13 juror, could you set aside the fact that you've  
14 just described to me with yourself or with your son  
15 and decide this case based on the evidence that you  
16 would hear in court without regard to the  
17 situation?

18 JUROR: I do believe so, yes.

19 THE COURT: Would the fact that the same  
20 Solicitor's Office who is prosecuting Mr.  
21 McQuarters is going to be prosecuting your son,  
22 what impact would that have on your ability to be  
23 fair and impartial?

24 JUROR: It's two separate things, is how I see  
25 them.

## JURY SELECTION

1 THE COURT: They are two separate things.

2 Right.

3 JUROR: Two separate things.

4 THE COURT: Could you keep them separate?

5 JUROR: I believe I can.

6 THE COURT: All right. Thank you, ma'am,

7 Ms. Taylor.

8 JUROR: You're welcome.

9 THE COURT: Okay. Yes.

10 THE CLERK: Juror 46, Your Honor.

11 THE COURT: Thank you. Ms. Buechler.

12 JUROR: Yes. Good morning, Your Honor.

13 THE COURT: Fine. Will you speak so she can  
14 understand you as we talk?

15 JUROR: Uh-huh. (Indicating affirmatively.)

16 THE COURT: Tell me, was it you or a family  
17 member that was involved?

18 JUROR: Well, in my professional capacity, I  
19 worked for five years with victims of domestic  
20 violence. Oftentimes they would end up in court.  
21 In that capacity, what I did was to work with them  
22 in the court system to get restraining orders.

23 THE COURT: Right.

24 JUROR: So I don't know if that --

25 THE COURT: Were you a victim's advocate of



## JURY SELECTION

1           some sort?

2           JUROR: Yes.

3           THE COURT: Okay. And where did you serve in  
4           that capacity?

5           JUROR: Well, that was in Wisconsin.

6           THE COURT: Okay. All right. And how long  
7           ago was that?

8           JUROR: Oh, '85.

9           THE COURT: Okay. Since that time, have you  
10          had any connection with the system as a victim's  
11          advocate or in any other way?

12          JUROR: No.

13          THE COURT: Okay. Would your prior experience  
14          in that regard make it difficult for you to be fair  
15          and impartial as a juror in this case?

16          JUROR: I think it would somewhat, not a lot.

17          THE COURT: That's okay. Somewhat's enough.

18          JUROR: Somewhat's okay?

19          THE COURT: Somewhat -- no, ma'am.

20          JUROR: It's not okay?

21          THE COURT: Not okay. It depends on your  
22          point of view.

23          JUROR: Yes.

24          THE COURT: But I appreciate that. And I'm  
25          certainly -- you qualified that answer because you

## JURY SELECTION

1       really don't know until you start hearing things  
2       and then something might trigger it. And we can't  
3       take a chance on that. And I'm sure you understand  
4       that.

5               JUROR: I understand that.

6               THE COURT: I thank you for your candor and  
7       sharing this with me, but we're going to stand you  
8       aside as a juror in this case.

9               JUROR: Okay.

10              THE COURT: Okay. Juror Number 46 will be  
11       stood aside as a juror in this trial.

12              THE CLERK: Juror 51, Your Honor.

13              THE COURT: Okay. Ms. Campbell, if you'll  
14       speak so that she can hear you, please, ma'am.

15              Was it you or a family member who was  
16       involved?

17              JUROR: Well, it's my son. His name is  
18       Herman Gaskin and he was murdered on May 5th of  
19       this year.

20              THE COURT: I'm sorry.

21              JUROR: I don't know if it is a robbery or  
22       what it is, but the case is still pending.

23              THE COURT: Your son did what?

24              JUROR: My son, he was murdered on May 5th of  
25       this year, and the case is still pending. I don't

## JURY SELECTION

1 know if it was because of a robbery that he got  
2 murdered.

3 THE COURT: Where did -- where did it happen?

4 JUROR: That happened in Okatie.

5 THE COURT: Okay. Has anybody ever been  
6 caught as a result of that?

7 JUROR: Not yet. The case is still pending,  
8 still under investigation.

9 THE COURT: Okay. Ms. Campbell, and how long  
10 ago did that happen?

11 JUROR: That happened May 5th of this year.

12 THE COURT: Ms. Campbell, I'm going to stand  
13 you aside as a juror in this case. You might hear  
14 testimony in this regard that might cause you to  
15 have to relive some of the tragedy of May of this  
16 year. I'm not going to put you in that position.  
17 I'm going to stand you aside as a juror.

18 JUROR: Thank you. Thank you.

19 THE COURT: Thank you. You go have a seat.

20 JUROR: Thank you, Your Honor.

21 THE CLERK: Juror Number 9, Your Honor.

22 THE COURT: All right. Mr. Aroneck, if you'll  
23 stand here and speak so that she can hear you.

24 Was it you or a family member who was  
25 involved?

## JURY SELECTION

1 JUROR: No involvement. My son is Robert  
2 Aroneck, Jr. He's a deputy sheriff with Beaufort  
3 County.

4 THE COURT: Okay. I was going to get to that  
5 question in a few minutes, so you're ahead of me.  
6 But that's good.

7 Do you know if your son has any direct  
8 involvement with this particular case?

9 JUROR: No, he's only been with Beaufort  
10 County since September 1st of last year.

11 THE COURT: Okay. But the fact that your son  
12 is a deputy with Beaufort County Sheriff's  
13 Department, would that make it difficult for you to  
14 be fair and impartial as a juror in the trial of a  
15 case in which other deputies are going to be  
16 testifying?

17 JUROR: No, sir.

18 THE COURT: Could you set aside those  
19 associations and decide this case based on the  
20 evidence that you hear in court?

21 JUROR: Yes, sir.

22 THE COURT: Would you do that, please, sir?

23 JUROR: Yes, sir.

24 THE COURT: Thank you, Mr. Aroneck. You can  
25 have a seat.

## JURY SELECTION

1 THE CLERK: Juror 67, Your Honor.

2 THE COURT: Thank you. Ms. Cormier.

3 JUROR: Yes.

4 THE COURT: If you'll speak so that she can  
5 hear you, please, ma'am.

6 Was it you or a family member who was  
7 involved?

8 JUROR: My youngest brother.

9 THE COURT: Okay. And what was his  
10 involvement?

11 JUROR: He was kidnapped and tortured to  
12 death, right here in Beaufort County, 11 years ago.  
13 Death penalty case.

14 THE COURT: What was the defendant's name?

15 JUROR: John Dikeman and Samantha Morgan  
16 Major.

17 THE COURT: Okay. Okay. And so they were  
18 caught and convicted?

19 JUROR: Yes, they were.

20 THE COURT: And sentenced to death?

21 JUROR: Unfortunately, no.

22 THE COURT: But sentenced to life?

23 JUROR: Yes.

24 THE COURT: Okay. Ms. Cormier, 11 years ago  
25 is still fresh in your mind, I'm sure. Would your

## JURY SELECTION

1       experience, as you explained it to me as a -- as a  
2       victim yourself, make it difficult for you to be  
3       fair and impartial as a juror in the trial of this  
4       case?

5               JUROR: I truly don't think so because it's  
6       not the same thing at all.

7               THE COURT: It's not the same thing. But the  
8       question is whether or not you'd be able to keep  
9       them separate in your mind.

10              JUROR: Yes.

11              THE COURT: In other words, would you be able  
12       to decide this case based on the evidence that  
13       you'd hear in court without regard to the fact that  
14       you were victimized in this regard, having any  
15       bearing on your -- on your decision?

16              JUROR: I think I could, yes.

17              THE COURT: Will you do that?

18              JUROR: Yes, sir.

19              THE COURT: All right. Thank you, ma'am,  
20       Ms. Cormier.

21              JUROR: Okay.

22              MR. BAX: Judge.

23              THE COURT: Okay. Let me hear from you.

24              First of all, let me hear from both of you in  
25       regard to Ms. Taylor, Juror Number 300. She was

## JURY SELECTION

1 the one who was victimized herself and whose son is  
2 charged with indecent exposure.

3 Either one of y'all is on that case?

4 MS. LEMPESIS: Not that I'm aware of, but I  
5 need to look it up in here and see who's  
6 prosecuting it.

7 MR. BAX: I think it's a wash. It's like one  
8 positive, one negative. You know, so I'm not  
9 asking that she be struck.

10 MS. LEMPESIS: I can look quickly and see. I  
11 can't tell you if I'm the one going to prosecute  
12 her son.

13 THE COURT: I understand. Can you -- have you  
14 got time to do that now?

15 MS. LEMPESIS: I do, Judge. What was her  
16 number again?

17 THE COURT: Her number was 300.

18 MS. LEMPESIS: Okay.

19 MR. BAX: Judge, you will find out if he's a  
20 client of our office, we probably should find out.

21 THE COURT: Yeah, that would be good.

22 All right. You got the other two.

23 MR. BAX: Yeah, Judge. I was -- the one that  
24 jumps out in mind is the -- both nine and 67. I'm  
25 probably going to move to strike on nine for cause

## JURY SELECTION

1 just because it's his son is in the sheriff's  
2 department. But 67 is a bigger concern for me. I  
3 mean, a death penalty case where her son was  
4 tortured to death, I'd move to strike for cause.

5 THE COURT: Yeah. I am -- I'm going to --  
6 Juror Number 67 will be stricken for cause.

7 I just struck Number 67, if that's all right.  
8 Okay.

9 MS. LEMPESIS: Yes, sir. This is the last one  
10 that came up?

11 MR. BAX: Yes.

12 MS. LEMPESIS: Did Ms. Taylor give a last name  
13 of her son?

14 THE COURT: I don't believe she did.

15 MS. LEMPESIS: I didn't write it down.

16 THE COURT: Okay.

17 MR. BAX: She just said her son was indicted  
18 for indecent --

19 THE COURT: Indecent exposure.

20 MR. BAX: She said there would be two charges?  
21 Did I make that up?

22 THE COURT: I don't know, all I heard was  
23 indecent exposure. She might have said something  
24 else.

25 MR. BAX: She said he was under indictment for



## JURY SELECTION

1 indecent exposure.

2 THE COURT: What about this?

3 MR. BAX: I have no objection to that.

4 I'm trying to get the name of the son who's  
5 been charged with indecent exposure. She didn't  
6 actually give the name. I didn't hear her give the  
7 name.

8 MS. LEMPESIS: I see one person with the last  
9 name Taylor has a charge pending on failure to  
10 register as a sex offender. So perhaps that's what  
11 she's talking about.

12 THE COURT: All right. There's too much  
13 uncertainty there, I'm going to strike 300 for  
14 cause.

15 Okay. All right. Thank you.

16 MR. BAX: Thank you, Judge.

17 THE COURT: Ladies and gentlemen, are any of  
18 you members of or supporters of, or contributors to  
19 any law enforcement support groups or victims  
20 advocacy support groups, such as the South Carolina  
21 Law Enforcement Officers Association, MADD, SADD,  
22 CODA, CAVE, or the like? If so, please stand.

23 Yes, ma'am. Your name and number, please?

24 JUROR: Marsha Collett, Number 63.

25 THE COURT: Thank you, Ms. Collett. You can

## JURY SELECTION

1 be seated. Thank you. All right.

2 THE BAILIFF: One is standing, Your Honor.

3 THE COURT: Yes, ma'am. Your name and number,  
4 please?

5 JUROR: Amy Cook, Number 66.

6 THE COURT: Thank you, Ms. Cook.

7 Ladies and gentlemen, Mr. Aroneck, we know the  
8 answer to your question.

9 I need to know if any of -- any of you have  
10 ever been employed as a law enforcement officer by  
11 any agency, or if you have any members of your  
12 immediate family -- that is, your household,  
13 spouse, son, daughter -- now or previously employed  
14 as a member of a law enforcement agency. If so,  
15 will you please stand.

16 Okay. Yes, ma'am, your name and number,  
17 please.

18 JUROR: Kelli Corn, Number 68.

19 THE COURT: And what's the relationship,  
20 please, Ms. Corn, and the agency?

21 JUROR: My husband was with the Austin Police  
22 Department ten years ago.

23 THE COURT: All right. Which police  
24 department?

25 JUROR: Austin. City of Austin, Texas.

## JURY SELECTION

1 THE COURT: Okay. Thank you, ma'am.

2 Yes, ma'am, your name and number, please.

3 JUROR: Teri Eaton, 91.

4 THE COURT: Ms. Eaton.

5 JUROR: My ex-husband is a police officer in  
6 Illinois, and my husband's ex-wife and her now  
7 husband used to work for the Beaufort -- used to be  
8 a deputy in Beaufort.

9 THE COURT: Used to be, in the past?

10 JUROR: Yes, sir.

11 THE COURT: Thank you, ma'am, Ms. Eaton.

12 Yes, ma'am.

13 JUROR: Teresa Vortisch, 319. My husband is  
14 retired city police officer and Beaufort Detention  
15 Center.

16 THE COURT: All right. How long ago retired?

17 JUROR: From Detention Center? Or police  
18 department?

19 THE COURT: Either one. The last office.

20 JUROR: 2007, I believe, was the City. And he  
21 just retired from the Detention Center.

22 THE COURT: All right. And you're Juror  
23 Number 319; is that right?

24 JUROR: Yes.

25 THE COURT: Thank you, ma'am.

## JURY SELECTION

1 Yes, ma'am. Your name and number, please.

2 JUROR: Connie Sowa, Juror Number 290.

3 THE COURT: And the agency and the  
4 relationship, please, ma'am.

5 JUROR: My husband is retired from the New  
6 York City Police Department.

7 THE COURT: All right. Thank you, ma'am.  
8 Yes, ma'am, your name and number again.

9 JUROR: Ms. Brewster, Number 41.  
10 Brother-in-law.

11 THE COURT: That's good.

12 JUROR: Okay. Detroit Police Department,  
13 current.

14 THE COURT: All right. Thank you,  
15 Ms. Brewster.

16 Yes, ma'am.

17 JUROR: Number 67. I was a dispatcher for the  
18 South Carolina Highway Patrol.

19 THE COURT: Thank you, ma'am.

20 Folks, those of you who just stood in  
21 connection with a law enforcement for a connection,  
22 I need to know if you're in -- if -- if the  
23 connection which you just described to me as a  
24 connection with law enforcement would make it  
25 difficult for you to be fair and impartial as a

## JURY SELECTION

1 juror in the trial of a case in which law  
2 enforcement officers are going to be testifying?

3 If you think that would have some bearing on  
4 your decision, would you please stand.

5 Thank you.

6 Ladies and gentlemen, I need to know if  
7 there's anything about the nature of these  
8 charges -- that is, armed robbery, and assault and  
9 battery -- and your own personal beliefs, your own  
10 background, your religious convictions, if that  
11 applies, that would make it difficult for you to be  
12 fair and impartial as a juror in the trial of a  
13 case involving those allegations. If so, would you  
14 please stand.

15 Thank you.

16 Have any of you formed in your own mind, or  
17 have you expressed to anyone else any opinion that  
18 you might have as to the guilt or the innocence of  
19 Mr. McQuarters? If you have formed or expressed an  
20 opinion, would you please stand.

21 Do any of you know of any reason why you could  
22 not serve fairly and impartially as a juror on  
23 behalf of the State of South Carolina and the  
24 defendant, Mr. McQuarters? If you know of any such  
25 reason, would you please stand.

## JURY SELECTION

1           Thank you.

2           Ms. Lempesis, further questions from the  
3 State?

4           MS. LEMPESIS: No, sir.

5           THE COURT: Thank you.

6           Mr. Bax, other than previously requested, any  
7 additional questions from the defense?

8           MR. BAX: Your Honor, I may have missed it,  
9 but I don't recall if we asked questions about  
10 whether the involvement with a victims advocacy  
11 group or law enforcement support group would affect  
12 a juror's ability to stay impartial -- that was 63  
13 and 66, who said they contributed.

14          THE COURT: I'll be glad to ask that question.  
15 I really did it for information, but I'll be glad  
16 to go one step further.

17          MR. BAX: Thank you, Judge.

18          THE COURT: Those of you who said that you had  
19 supported law enforcement advocacy groups in the  
20 past, would that involvement make it difficult for  
21 you to be fair and impartial as a juror in the  
22 trial of this case?

23          JUROR: No.

24          THE COURT: Thank you, ma'am.

25          JUROR: No.

## JURY SELECTION

1 THE COURT: Thank you, ma'am.

2 All right. Any further questions?

3 MR. BAX: No, Your Honor. Thank you.

4 THE COURT: Thank you.

5 All right. Madam Clerk, you can give us a  
6 jury. The strikes will be five for the State, ten  
7 for the defense. We will select two alternates.  
8 As to each alternate, the strikes will be one for  
9 the State, two for the defense.

10 Ladies and gentlemen, we now proceed to the  
11 actual jury selection process. The information  
12 that you've been sharing with us during this  
13 qualification process is being fed into this  
14 computer. Some names are taken out, some names are  
15 left in. And it's generating a list.

16 Some of your names will be on that list, and  
17 some of them will not be. Nobody knows right in  
18 this minute who's going to -- in the words of Bob  
19 Seeger, who's going to be left in and who's going  
20 to be left out. But we'll eventually figure that  
21 out.

22 And when the list is prepared, then we'll go  
23 to selection process. It'll take us just a few  
24 minutes. Thank you.

25 THE CLERK: Your Honor, how many alternates?

## JURY SELECTION

1           THE COURT: There will be two alternates.  
2           Strikes will be one for the State, two for the  
3           defense.

4           THE CLERK: Thank you.

5           THE COURT: Ladies and gentlemen, as your  
6           names are called, stand in place right where you  
7           are. Follow the instructions that the clerk will  
8           give you.

9           Madam Clerk.

10          THE CLERK: Juror 304, Sheryl Thompson. What  
11          says the State?

12          MS. LEMPESIS: Please present Ms. Thompson.

13          THE CLERK: What says the defense?

14          MR. BAX: Seat the juror in the trial of this  
15          case. Thank you.

16          THE BAILIFF: Come around, ma'am.

17          THE CLERK: Juror 193, Carol Magruder, what  
18          says the State?

19          MS. LEMPESIS: Please have a seat  
20          Ms. Magruder.

21          THE CLERK: What says the defense?

22          THE BAILIFF: Remain standing, please, ma'am.

23          MR. BAX: Please excuse the juror from the  
24          trial in this case. Thank you.

25          THE CLERK: Juror 143, Betty Holmes-Brown.



## JURY SELECTION

1           What says the State?

2           MS. LEMPESIS: Please present Ms. Holmes.

3           THE CLERK: What says the defense?

4           MR. BAX: Please seat the juror in the trial  
5 for this case. Thank you.

6           THE BAILIFF: All right, ma'am.

7           THE CLERK: Juror 212, Jeffrey Moody. What  
8 says the State?

9           MS. LEMPESIS: Please present Mr. Moody.

10          THE CLERK: What says the defense?

11          MR. BAX: Your Honor, please seat the juror  
12 for the trial in this case.

13          THE CLERK: Juror 321, Stuart Wallace. What  
14 says the State?

15          MS. LEMPESIS: Please present Mr. Wallace.

16          THE CLERK: What says the defense?

17          MR. BAX: Please excuse the juror from the  
18 trial in this case. Thank you.

19          THE BAILIFF: You can sit down, sir.

20          THE CLERK: Juror 339, Charlesetta Wilson.  
21 What says the State?

22          MS. LEMPESIS: Please present Ms. Wilson.

23          THE CLERK: What says the defense?

24          MR. BAX: Please seat the juror in the trial  
25 for this case. Thank you.

## JURY SELECTION

1 THE BAILIFF: Come on forward, please, ma'am.

2 THE CLERK: Juror 208, Kimberly Mikouchi.

3 What says the State?

4 MS. LEMPESIS: Please excuse Ms. Mikouchi.

5 THE CLERK: Juror 294, Paul Spencer. What  
6 says the State?

7 MS. LEMPESIS: Please present Mr. Spencer.

8 THE CLERK: What says the defense?

9 MR. BAX: Please excuse the juror from trial  
10 in this case.

11 THE CLERK: Juror 168, Caroline Kemerling.  
12 What says the State?

13 MS. LEMPESIS: Please present Ms. Kemerling.

14 THE CLERK: What says the defense?

15 MR. BAX: Please seat the juror in the trial  
16 for this case.

17 THE CLERK: Juror 55, Cole Catanzarite. What  
18 says the State?

19 MS. LEMPESIS: Please present this juror.

20 THE CLERK: What says the defense?

21 MR. BAX: Please seat the juror in the trial  
22 for this case. Thank you.

23 THE CLERK: Juror 78, Kenneth Cunningham.  
24 What says the State?

25 MS. LEMPESIS: Please present Mr. Cunningham.

## JURY SELECTION

1 THE COURT: What says the defense?

2 MR. BAX: Number 78?

3 THE CLERK: Yes.

4 MR. BAX: Please seat the juror in the trial  
5 of this case.

6 THE BAILIFF: Come around, sir.

7 THE CLERK: Juror 285, Connie  
8 Singleton-Murphy. What says the State?

9 MS. LEMPESIS: Please present  
10 Ms. Singleton-Murphy.

11 THE CLERK: What says the defense?

12 MR. BAX: Please seat the juror in the trial  
13 of this case. Thank you.

14 THE CLERK: Juror Number 247, Latasha Reeves.  
15 What says the State?

16 MS. LEMPESIS: Please present Ms. Reeves.

17 THE CLERK: What says the defense?

18 MR. BAX: Please seat Ms. Reeves. Thank you.

19 THE CLERK: Juror 290, Constance Sowa. What  
20 says the State?

21 MS. LEMPESIS: Please present Ms. Sowa.

22 THE CLERK: What says the defense?

23 MR. BAX: Please excuse the juror in the trial  
24 of this case.

25 THE CLERK: Juror Number 91 Teri Eaton. What

## JURY SELECTION

1           says the State?

2           MS. LEMPESIS: Please present Ms. Eaton.

3           THE CLERK: What says the defense?

4           MR. BAX: Please excuse the juror in the trial  
5 of this case.

6           THE CLERK: Juror 154, Krista Hanna. What  
7 says the State?

8           MS. LEMPESIS: Please present Ms. Hanna.

9           THE CLERK: What says the defense?

10          MR. BAX: Please seat the juror in the trial  
11 of this case.

12          THE CLERK: Juror 156, Taikila Jenkins. What  
13 says the State?

14          MS. LEMPESIS: Please excuse Ms. Jenkins.

15          THE CLERK: Juror 210, Ruth Mitchell. What  
16 says the State?

17          MS. LEMPESIS: Please excuse Ms. Mitchell.

18          THE CLERK: Juror 66, Amy Cook. What says the  
19 State?

20          MS. LEMPESIS: Please present Ms. Cook.

21          THE CLERK: What says the defense?

22          MR. BAX: I'm sorry, what was Ms. Cook's juror  
23 number again?

24          THE CLERK: Sixty-six.

25          MR. BAX: Please excuse the juror from the

## JURY SELECTION

1 trial in this case.

2 THE CLERK: Juror 214, Jean Morgan. What says  
3 the State?

4 MS. LEMPESIS: Please present Ms. Morgan.

5 THE CLERK: What says the defense?

6 MR. BAX: Please seat the juror in the trial  
7 of this case.

8 THE CLERK: Juror 85, John Decker. What says  
9 the State?

10 MS. LEMPESIS: Please present Mr. Decker.

11 THE CLERK: What says the defense?

12 MR. BAX: Please excuse the juror in the trial  
13 of this case.

14 THE CLERK: Juror 267, Claudia Scott. What  
15 says the State?

16 MS. LEMPESIS: Please present Ms. Scott.

17 THE CLERK: What says the defense?

18 MR. BAX: Please excuse the juror from the  
19 trial of this case.

20 THE CLERK: Juror 121 John Gould. What says  
21 the State?

22 MS. LEMPESIS: Please present Mr. Gould.

23 THE CLERK: What says the defense?

24 MR. BAX: Please seat the juror in the trial  
25 of this case.

## JURY SELECTION

1 THE BAILIFF: Come forward, sir.

2 THE COURT: We will proceed now to alternates,  
3 Madam Clerk. Strikes will be one for the State,  
4 two for the defense for each of the two alternates.

5 THE CLERK: Juror 270, Lakeisha Seabrooks.  
6 What says the State?

7 MS. LEMPESIS: Please present Ms. Seabrooks.

8 THE CLERK: What says the defense?

9 MR. BAX: Please present the juror.

10 THE CLERK: Juror 192, Clarence Mack. What  
11 says the State?

12 MS. LEMPESIS: Please present Mr. Mack.

13 THE CLERK: What says the defense?

14 MR. BAX: Please seat the juror.

15 THE COURT: Are there any matters of law  
16 regarding the jury selection process from the State  
17 or defense?

18 MS. LEMPESIS: None from the State, Your  
19 Honor.

20 THE COURT: Thank you. Mr. Bax, from the  
21 defense?

22 MR. BAX: Yes, sir. We have a motion outside  
23 the presence of the jury.

24 THE COURT: All right. Ladies and gentlemen  
25 of the jury, I'm going to send you into a jury

## JURY SELECTION

1 room, back here. You'll follow the bailiff, he's  
2 going to take you to the jury room while we deal  
3 with some matters outside of your presence.

4 Please do not discuss any issues regarding the  
5 selection process or any matters with respect to  
6 this case. I'll call you back in again. Thank  
7 you. We'll get you out shortly.

8 Ladies and gentlemen, the rest of you, I'm  
9 going to have to send you into the jury assembly  
10 room for a few moments, across the hall, wherever  
11 it is. We'll get you in as quickly as we can after  
12 we've dealt with these matters that we have to take  
13 care of outside of your presence.

14 All the members of -- balance of the members  
15 of the panel have to report to the assembly room.

16 Thank you.

17 (Jury panel and jurors exit the  
18 courtroom.)

19 THE COURT: All right. Mr. Bax, I'll be glad  
20 to hear your motion.

21 MR. BAX: Thank you, Your Honor.

22 THE BAILIFF: Doors are closed, Your Honor.

23 THE COURT: Thank you. Okay.

24 MR. BAX: I apologize. I should have waited  
25 for Norm.

## JURY SELECTION

1           THE COURT: Well, I apologize, I threw you  
2           into that trap.

3           MR. BAX: Your Honor, under the Baskin case, I  
4           would just ask -- I would move to require that the  
5           State give the appropriate reasons for -- or give,  
6           if they have appropriate reasons for the strikes  
7           that they exercised on Juror Number 156, and Juror  
8           Number 210. Those were the last two strikes that  
9           the State used approximately, you know, about six  
10          juror selections before we were finished with the  
11          main jury selection before we started with the  
12          alternates.

13          Obviously there were African-American females,  
14          or African-Americans that the Solicitor had  
15          presented and were seated on the jury before that.  
16          But my reading of Baskin is it doesn't require, or  
17          there's not a situation where having sat a  
18          particular kind of person before is not an excuse  
19          for having to require that a race and gender  
20          neutral reason be presented to the Court for the  
21          strikes. And I don't see anything in what we heard  
22          that would give rise to a strike on the State.

23          Number 156 didn't respond to any, wasn't  
24          somebody who had any kind of brushes with the law,  
25          that I recall, and neither was 210. In fact, 210,



## JURY SELECTION

1 Your Honor, frankly, had something that was kind  
2 of -- could have been considered negative to us,  
3 and that was the fact that 210 was a mail carrier  
4 that carried mail to the McQuarters household. And  
5 Your Honor asked if she could stay neutral, she  
6 said she could.

7 So -- in that contact, who know how you'd  
8 interpret it, but, you know, I don't necessarily  
9 think, considering the responses that we got from  
10 teachers and things like that, that that would be a  
11 negative for the State. I would think that that  
12 would potentially be more of a negative for the  
13 defense. So that's why I would ask that that be  
14 done.

15 THE COURT: All right. The State exercised  
16 two of its strikes against African-Americans, one  
17 against an Asian. It also, as Mr. Bax has pointed  
18 out, seated three African-American females in the  
19 principal jury, and two African-Americans, male and  
20 female, as the two alternates.

21 But the first prong having been met, a  
22 cognizable racial group was stricken.

23 Ms. Lempesis, I turn to you now for a racially  
24 neutral reason for those strikes.

25 MS. LEMPESIS: Thank you, Your Honor. As to

## JURY SELECTION

1 Juror Number 156, she does have a prior record for,  
2 you know, breach of trust. She's had negative  
3 contact with law enforcement in the past. It was a  
4 relatively recent charge, I believe. And that's  
5 information we had. Do have the jurors wrap sheet  
6 run. It was not something that would disqualify  
7 her, but that was the reason for the strike of  
8 Juror Number 156.

9 As for Juror Number 210, she did tell the  
10 Court during questioning, she said she knew the  
11 mother of Defendant McQuarters.

12 Your Honor, I guess for the same reason that  
13 Mr. Bax said, that that could have been -- he  
14 thought it could have been helpful for the State, I  
15 thought instead it -- there's no way to tell what  
16 her impression might have been of Ms. McQuarters,  
17 and for that reason I struck her.

18 THE COURT: All right. Thank you.

19 All right. Mr. Bax?

20 MR. BAX: Your Honor, as I was not aware of  
21 the prior criminal record on 156, I understand.  
22 Basically would not disqualify her, she certainly  
23 didn't have an obligation to respond to that  
24 question. It would have been nice, but obviously  
25 she knows enough about the law to know it didn't

## JURY SELECTION

1           qualify under what you had described to the jury.

2                   Number 210, I guess that's a matter for  
3           interpretation. So I stand on what I've stated  
4           before, but I understand what the State is saying.

5                   THE COURT: All right. I find that the  
6           reasons given were racially neutral reasons, in any  
7           event. Certainly, the Juror 156, in the absence of  
8           showing that a person of another race with a  
9           similar record was seated, which now this comes  
10          more or less as only standard that we have in the  
11          perfect course of the Elen -- U-R-K-E-T-T versus  
12          Elen, E-L-E-N, United States Supreme Court case.

13                  Certainly that is a racially neutral reason.  
14          And the fact that the Juror Number 210 knew the  
15          Defendant's mother, obviously, is an unknown  
16          quantity. It depends on what capacity, whether  
17          it's in a pleasant way or an unpleasant way, nobody  
18          knows how that might fall.

19                  In any event, it is a racially neutral reason  
20          for having exercised the strike. I think the State  
21          has met its burden providing racially neutral  
22          reasons for the two strikes that are in question.  
23          And any bias in challenge is therefore overruled.

24                  All right. Are they across the hall in the  
25          assembly room?

## JURY SELECTION

1 THE BAILIFF: Yes, sir.

2 THE COURT: Okay. I'm just going to walk  
3 across there. It's easier for me to go there than  
4 them to come back in here. And tell them they're  
5 excused until 2:45.

6 And while we're doing that, when I get back  
7 in, we can get this jury back in, let me give them  
8 some parting instructions. Okay? Or at least  
9 before they go to lunch.

10 (The Judge leaves the room  
11 temporarily.)

12 THE COURT: You can bring the jury back in,  
13 please.

14 Let's see, folks, what do you think on the  
15 motions for me to put Jackson v. Denno and Biggers  
16 things on the record, and then you can deal with  
17 the motion regarding the witnesses. How long you  
18 think it might take to -- I'm trying to figure out  
19 the parting instructions at least before they go to  
20 lunch.

21 MR. BAX: Your Honor, in order to put that on  
22 the record, I mean none of those things, based on  
23 what we've discussed would necessarily require  
24 testimony.

25 THE COURT: Right.

## JURY SELECTION

1           MR. BAX: I do have some legal argument and I  
2           need to make sure that I'm able to get that all on  
3           the record, and some areas where I would need to  
4           reference the transcript of the prior trial, some  
5           of that stuff.

6           So, from that standpoint, I think it would  
7           probably conservatively be at least an hour for  
8           everything, maybe a little bit more.

9           THE COURT: If we take an hour for lunch, that  
10          gets us back at 2:45. Another hour for the  
11          arguments is 3:45.

12          What do you say if I just start in the  
13          morning?

14          MS. LEMPESIS: That's fine, Your Honor.

15          THE COURT: With the jury. Is that okay?

16          MR. BAX: I have no objection. That will be  
17          fine.

18          THE COURT: We don't have any time concerns.  
19          I'm afraid -- I don't want you all to have to rush  
20          through, and I don't want to keep them waiting on  
21          the first day. Is that okay?

22          MS. LEMPESIS: That's fine with me, Your  
23          Honor.

24          MR. BAX: That's fine with me, Judge.

25          THE COURT: All right. Thank you.

## JURY SELECTION

1 THE BAILIFF: Are you ready, Your Honor?

2 THE COURT: Yes, sir.

3 THE BAILIFF: The jury is entering the  
4 courtroom, Your Honor.

5 (Time is now 1:43 p.m.)

6 THE COURT: Folks, you all have been selected  
7 as the trial jury for this particular case. And  
8 first of all, we are mindful of the fact that you  
9 haven't had lunch, because we haven't had lunch  
10 either. And, so, we're going to take care of that  
11 right now.

12 But beyond that, even after lunch, we have  
13 some matters that we need to take care of here in  
14 the courtroom, outside of your presence, to get  
15 this case ready to be presented to y'all in a  
16 cohesive fashion without any unnecessary  
17 interruptions.

18 It's going to take us an hour, perhaps, or  
19 even more, to deal with those matters. The upshot  
20 of it all is, I don't want to get you all back late  
21 this afternoon and we are still tied up arguing  
22 with those things. And we'd be able to only do a  
23 limited amount on the case this afternoon, in any  
24 event.

25 So I'm going to give you the rest of the

## JURY SELECTION

1       afternoon off. And so you've got a lunch hour and  
2       then the afternoon off. I need for you to be back  
3       in the jury room, where you just left, at 9:30  
4       tomorrow morning. And when you get here at 9:30  
5       tomorrow morning, I'm going to give you some  
6       instructions about things that you may do and may  
7       not do as jurors during the trial of this case.

8               But to keep you from innocently and mistakenly  
9       doing some of those things that you're not supposed  
10      to between now and tomorrow, let me take just a  
11      moment or two to let you know that during the trial  
12      of this case you're not allowed to discuss this  
13      case with anybody, not even among yourselves during  
14      the trial. I'll tell you why tomorrow morning when  
15      I start to give you some introductory instructions.

16             But you're not allowed to talk with anybody  
17      else about the case either. Or try to find out  
18      anything on your own about the case.

19             You may recall that during the questions  
20      earlier today I was asking you if you knew anything  
21      about the case, if you'd heard anything about it  
22      from any other source. Because we wanted to  
23      explore those things with you.

24             Everything that we've been doing since you got  
25      here this morning has been designed to assure that

## JURY SELECTION

1       once we got 14 of you folks sitting up there in  
2       that jury box, that we would have folks just like  
3       you who don't know anything about this case,  
4       haven't heard anything about it, or read anything  
5       about it, or talked with anybody about it, who  
6       don't know the people that are involved, and who  
7       don't have anything in your own personal history,  
8       your own background or that of your family, that  
9       would impact on your ability to be fair and  
10      impartial as a juror in this trial.

11           Everything we've been doing, every question  
12      that we've asked has been designed to assure that  
13      we have folks just like you.

14           If you try to find out something on your own  
15      about this case, so if you let somebody else talk  
16      with you about this case outside the courtroom you  
17      will undo all of that stuff that we've done. And  
18      I'm sure you don't want to do that. We certainly  
19      don't want it to be done either.

20           So just abide by those instructions, please,  
21      and enjoy the rest of the afternoon, and please be  
22      back in the jury room tomorrow morning at 9:30.  
23      Thank you, folks.

24                   (Jury excused for the day and  
25                   exits the courtroom at 1:47



## JURY SELECTION

1 p.m.)

2 THE COURT: And, folks, we'll stand in recess  
3 until 2:45. That's an hour. Okay?

4 MR. BAX: Your Honor, if I could.  
5 Ms. Lempesis has reminded me about the issue of  
6 officer -- or former Officer Michael's reason for  
7 termination.

8 THE COURT: Right.

9 MR. BAX: And I thought since we're going to  
10 break, if you want, we can address that right now,  
11 if you'd like.

12 THE COURT: That's right. You're exactly  
13 right, and I apologize. You mentioned at sidebar  
14 that somebody needs direct instructions from me.

15 MS. LEMPESIS: Yes, Your Honor.  
16 Sergeant Jeff White, from the sheriff's office, has  
17 just told me that he needs a direct order from Your  
18 Honor in order to get his command to give him that  
19 record.

20 THE COURT: All right. This is Mr. White?

21 MR. LIGHT: Yes, sir.

22 THE COURT: Mr. White, I need to see the  
23 record for -- the employment record and the reason  
24 for discharge of -- who is it?

25 MS. LEMPESIS: Brian Michael.

## JURY SELECTION

1 THE COURT: Mr. Brian Michael.

2 MR. LIGHT: You will have it, sir.

3 THE COURT: You can bring that to me in  
4 chambers or have it sent to me in chambers, and  
5 I'll look at it in chambers, first of all. And if  
6 I need to disclose it to the others, I will. But I  
7 need to have that.

8 It's an issue that -- that -- we just need to  
9 get it off the board and make sure it's not an  
10 issue in the trial of this case.

11 MR. LIGHT: Understood, sir.

12 THE COURT: Anything further?

13 MR. BAX: No, sir.

14 THE COURT: Thank you.

15 All right. Thank you all. 2:45.

16 (Lunch recess taken.)

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## JURY SELECTION

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 1st day of February, 2016.

*/S/ Mona L. Manley*

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MONA L. MANLEY  
Official 14th Circuit Court Reporter  
(850) 893-6662  
mmanley@sccourts.org

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**APPEARANCES**

REPRESENTING THE STATE:

Mary Jordan Lempesis, Assistant Solicitor  
Brian Holland, Assistant Solicitor  
14th Circuit Solicitor's Office  
Bluffton, South Carolina

REPRESENTING THE DEFENDANT:

Arie Bax, Esquire  
James Bell, Esquire  
14th Circuit Public Defender's Office  
Beaufort, South Carolina

\* \* \*

## INDEX PAGE

|    |                               |
|----|-------------------------------|
| 1  | INDEX                         |
| 2  | Pre-trial Motions.....Page 77 |
| 3  |                               |
| 4  |                               |
| 5  |                               |
| 6  |                               |
| 7  |                               |
| 8  |                               |
| 9  |                               |
| 10 |                               |
| 11 |                               |
| 12 |                               |
| 13 |                               |
| 14 |                               |
| 15 |                               |
| 16 |                               |
| 17 |                               |
| 18 |                               |
| 19 |                               |
| 20 |                               |
| 21 |                               |
| 22 |                               |
| 23 |                               |
| 24 |                               |
| 25 |                               |

## INDEX PAGE

## 1 PROCEEDINGS

2 THE COURT: All right. Thank you folks for  
3 your patience.

4 Madam Clerk, here is this.

5 All right, folks, back to the case of  
6 Mr. McQuarters.

7 Folks, can we go ahead and put on the record  
8 those matters which are not in contention regarding  
9 the Jackson v Denno and Neal versus Biggers  
10 hearings? And then we'll move from there onto the  
11 matters which are in dispute. And I'll allow --  
12 Mr. Bax, I think you wanted to put information on  
13 the record in regard to the Jackson V Denno and  
14 Neal versus Biggers --

15 MR. BAX: Yes, Your Honor. May it please the  
16 Court, Your Honor. I'll take them in that order.

17 Jackson V Denno, as we discussed in chambers,  
18 Your Honor, the ruling at the end of the pretrial  
19 Jackson V Denno hearing that was held in front of  
20 Judge Keesley prior to the first trial was that  
21 there was some redactions that were settled on  
22 after argument in front of the Court.

23 My understanding from our discussions in  
24 chambers is that the Solicitor's Office agrees to  
25 those same redactions now. I just want to make

## PRE-TRIAL MOTIONS

1       sure I put on the record that specifically an area  
2       in contention before was an area in which my client  
3       has posed a hypothetical question and responded  
4       with kind of a hypothetical response.

5               There was some argument about the relevance of  
6       that. Ultimately the Judge ruled -- Judge Keesley  
7       ruled that that portion of it was not admissible,  
8       and that was what we went forward with, with the  
9       statement. If the State does not wish to rehash  
10      that, then I have no substances of issues with the  
11      statement as it came in last time.

12             I will note for the record that the only  
13      change, it looks like, is that last time, if I'm  
14      recalling correctly, and it's here in the  
15      transcript, because of the issue that Judge Keesley  
16      raised about having a redacted version to go to the  
17      jury, I think what ended up happening was that  
18      Officer Seifert just testified to what he said.  
19      And what I understand now, they have a redacted  
20      version of the video.

21             I don't think substantively I have an  
22      objection to it. Because under the best evidence  
23      rule, typically, you know, the actual  
24      representation of the video is preferable.

25             THE COURT: Right.



## PRE-TRIAL MOTIONS

1           MR. BAX: Either way. So, I don't really  
2           have an objection to that. I just note that that  
3           will be a different factor than there was before.

4           THE COURT: All right.

5           Ms. Lempesis, let's deal with the Jackson V  
6           Denno issue. Are you in accord with that  
7           recitation?

8           MS. LEMPESIS: Yes, Your Honor. And there  
9           was the one statement that we -- that  
10          Ms. Concannon was trying to get in. I'm not going  
11          to attempt to get that statement in.

12          I do have -- I'll go back and check the copy  
13          that I have and confirm that there's no  
14          objectionable statement on the copy. I do intend  
15          to play the recorded interview. I'll confirm,  
16          though, tonight -- just go back and confirm that  
17          there is nothing objectionable on that disc.

18          THE COURT: All right. Thank you.

19          MS. LEMPESIS: Thank Your Honor.

20          THE COURT: And then to the Neal V Biggers  
21          issue.

22          MR. BAX: Yes, Your Honor. I do not believe  
23          that I have any new substantive issue to raise  
24          about that. There wasn't really much of one  
25          before. I've asked the Court, with agreement of

## PRE-TRIAL MOTIONS

1 the State in this case, to take judicial notice of  
2 the Neal V Biggers hearing as well.

3 The only thing I want to make sure that we're  
4 on the same page about is in the last trial, the  
5 introduction of testimony about the photo lineup  
6 was the only thing we did.

7 Due to the fact the photo lineup was actually  
8 comprised of mugshots with clear, like, jail  
9 clothing and things behind. And there was no issue  
10 of it last time. I don't -- but I don't want to  
11 assume that there won't be this time.

12 But other than that, testifying that there was  
13 a lineup shown to Ms. Perez and that she identified  
14 my client was really the result of that. And there  
15 really wasn't much of an issue of any impropriety  
16 on the part of the officer in showing it, having  
17 her fill out and sign the back of it.

18 The only thing I want to make sure of is that  
19 we're still on the same page about not introducing  
20 the actual lineup before the jury due to the fact  
21 that it's made up of mugshots.

22 THE COURT: I understand. No problem with  
23 that.

24 Ms. Lempesis.

25 MS. LEMPESIS: Your Honor, I don't intend to

## PRE-TRIAL MOTIONS

1 introduce the photo lineup, and I really don't --  
2 I'm of the opinion that a Neal V Biggers hearing  
3 was really never required.

4 Jackie Perez, the woman who was shown the  
5 photo lineup, knew Austin McQuarters, had known him  
6 for some time. So we are fine to go forward, and I  
7 will not be introducing the photo lineup during the  
8 trial. I will be questioning Ms. Perez, just that  
9 she was shown the lineup and take out Mr.  
10 McQuarters.

11 THE COURT: Okay. Thanks.

12 Mr. McQuarters, do you understand what we've  
13 been talking about? At the earlier trial, the  
14 matter of the voluntariness of your statement and  
15 the admissibility of the identification were argued  
16 before Judge Keesley and he ruled as it's been  
17 indicated here today.

18 We could go through that same process again  
19 today in this trial, and I have little doubt that  
20 the -- my ruling would be the same as Judge  
21 Keesley.

22 Do you understand what we're doing is trying  
23 to eliminate the need to waste anybody's time by  
24 going back over those things that have already been  
25 thoroughly argued before a very capable trial

## PRE-TRIAL MOTIONS

1 judge.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir, I understand.

4 THE COURT: Do you have any problem with  
5 that?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. Thank you.

8 All right, then. Based on that, the consent  
9 of both sides in this regard and the obvious best  
10 use of the Court's time, I will simply adopt, and  
11 the transcript will simply reflect, the earlier  
12 hearings on these two issues. And I'll adopt as my  
13 rulings the rulings of Judge Keesley in the earlier  
14 trial.

15 All right. Then there is a ruling regarding  
16 the treating physician as an expert in the  
17 photograph which will go in the court with that. I  
18 think that will be deferred until tomorrow, when  
19 the witness himself is here to testify.

20 We still have the matter of the statements by  
21 Ms. Jacqueline Perez and the matter of Sergeant  
22 Doug Seifert that we need to put on the record  
23 today. All right.

24 MR. BAX: That's correct, Your Honor. And in  
25 an effort to be as organized as I can, though I

## PRE-TRIAL MOTIONS

1       certainly don't promise not to ramble, I've broken  
2       it down, Your Honor, and I'd like to start with  
3       what was discussed in detail in chambers about  
4       Ms. Perez that Your Honor just mentioned.

5               As we stated before, my understanding is  
6       there's two statements in particular, and I'm not  
7       aware of any others that would be new to this  
8       situation, as far as being testified to from  
9       Ms. Perez.

10              The first statement I would like to address is  
11       the statement about testimony from Ms. Perez that  
12       she claims the -- her and the defendant stop or at  
13       least drove slowly. It's a little unclear. It's  
14       in the actual recordings, and I assume that the  
15       State is going to kind of set the foundation for  
16       this when they direct examine Ms. Perez.

17              But the substance of it is that she alleges  
18       the defendant threw something, an unidentified --  
19       something she could not identify, either out the  
20       window of the car or got out of the car and threw  
21       it away somewhere. Possibly -- obviously, as Your  
22       Honor is well aware, we have a lot of bridges in  
23       South Carolina -- or, excuse me, in Beaufort.

24              THE COURT: All right.

25              MR. BAX: Specifically. Something like that.

## PRE-TRIAL MOTIONS

1           My objections to that, Your Honor, first of  
2           all, and this -- some of these really kind of go  
3           across the lines of these other statements. But  
4           first of all, I would object under the doctrine of  
5           judicial estoppel, the State did not elicit that  
6           testimony, even though they knew about it.

7           This first statement, Your Honor, I was aware  
8           of because I had been provided the jail call, where  
9           she makes it. She doesn't make this statement to  
10          law enforcement and in the interview that I'm aware  
11          of. It's only a statement that she makes during a  
12          recorded jail call. Ms. Perez was only at the  
13          jail, I believe, for about 72 hours, somewhere in  
14          that neighborhood. And, of course, especially for  
15          someone who is young and in the jail, they  
16          immediately get on the phone and start talking to  
17          everybody that will take their call, much to the  
18          woe of pretty much of any defense attorney.

19          But in that, there was a conversation with her  
20          family, and I was aware that just one time she said  
21          something, I think it was to her father, that they  
22          threw it out the window.

23          So I don't have an issue with that from  
24          discovery standpoint, but I do have an issue with  
25          that under judicial estoppel.

## PRE-TRIAL MOTIONS

1           As Your Honor is well aware, South Carolina  
2           officially recognized the doctrine of judicial  
3           estoppel in a case of Haines, or Hayne Federal  
4           Credit Unit versus Bailey. That's found at 489  
5           SE2d 472. It was a 1997 case. I believe that was  
6           a Supreme Court case.

7           The position in this case is that they chose  
8           not to elicit this testimony from Ms. Perez.  
9           Whether or not it was a mistake on the part of the  
10          prior prosecutor is really immaterial because  
11          either way, it's a choice.

12          And that case was closed, testimony was closed  
13          without that statement coming into evidence. The  
14          Solicitor was given a chance to direct examine  
15          Ms. Perez and also a chance to cross-examine -- or  
16          excuse me, redirect Ms. Perez, which I believe she  
17          exercised. So, there was more than one opportunity  
18          to elicit that testimony, and it was not done.

19          Further, Your Honor, and this kind of goes  
20          across the lines, as I said before. I would  
21          further argue that under Burkes versus United  
22          States, the United States Supreme Court case, and I  
23          quote -- sorry, I have it on my phone, I did some  
24          research electronically.

25          That case, can be found at 437 United States

## PRE-TRIAL MOTIONS

1        1. It's from 1978. There is a direct ruling from  
2        the Supreme Court we found at the 11th page of  
3        that, Page 11, at 437 US 11.

4            It says: The double jeopardy clause forbids a  
5        second trial for the purposes of affording the  
6        prosecution another opportunity to supply evidence,  
7        which it failed to muster in the first proceeding.

8            I would argue that this -- that's directly on  
9        point. That they failed to elicit that testimony.  
10       And a second trial as a result of a mistrial is not  
11       an opportunity for the State to take a different  
12       road and elicit testimony that they had the ability  
13       to elicit in the first trial.

14           So, those would be my objections as to that  
15       statement, Your Honor.

16           The second statement that is alleged or  
17       credited to Ms. Perez that was not testified to in  
18       the first trial, and I believe is going to be  
19       elicited here in this trial, was a statement to the  
20       effect of -- and I'm not real specific on this  
21       because I've never seen this in writing. I've only  
22       had -- just kind of been notified by the  
23       Solicitor's Office after the first trial about it  
24       in email. Something to the effect that the  
25       defendant -- or Ms. Perez says that my client says



## PRE-TRIAL MOTIONS

1 something to the effect, to her, I know where your  
2 family lives, or something to that effect.

3 My understanding is there wasn't anything  
4 specific was said about what relevance that has,  
5 but that Ms. Perez took that as a threat. That's  
6 my understanding. If it's different from that, I  
7 certainly would need to know that.

8 My arguments would be the same as before, as  
9 to judicial estoppel, as well as to the Burkes  
10 case. However, I would add to that statement,  
11 Your Honor, the argument that that is a Rule 5  
12 violation. That is evidence that under the  
13 argument of the State directly goes, and the  
14 testimony that -- whatever her interpretation of  
15 that was directly goes to inculcate my client. It  
16 is evidence that tends to show culpability on the  
17 part of my client. So it's not even a Brady issue.  
18 It's directly a Rule 5 discovery issue, as I  
19 interpret it, Your Honor.

20 And as a result, disclosure after the first  
21 trial, I would argue, is too late. Not only did  
22 they not attempt to elicit that in the first trial,  
23 I was never given that information prior to the  
24 swearing of the first jury. And I think we have  
25 to -- we have to draw a line at some point. And

## PRE-TRIAL MOTIONS

1 the swearing of a jury, even if that trial didn't  
2 result in a verdict, is a very good line. I think  
3 it's a very distinct line. And I think that  
4 disclosure of something of that nature that  
5 inculcates my client directly after a trial of my  
6 client, is past the time that anyone can consider  
7 as effective under Rule 5.

8 As Your Honor is aware, when it comes to  
9 considering Rule 5 or Brady violations, either one,  
10 the Court has ruled that Your Honor has kind of  
11 broad discretion as to what remedy to apply to the  
12 situation, if Your Honor finds it. That's found at  
13 Odom versus United States, and the only cite that I  
14 have is an A2D cite, District of Columbia. So,  
15 it's what I have here. And this was kind of  
16 hastily done, my apologies, is 930 A2d at 157 DC  
17 2007.

18 In that case, the Court ruled that where there  
19 is a violation of Rule 5 found by the Court, that  
20 Your Honor has discretion to fashion a remedy, but  
21 that such remedies include and are certainly kind  
22 of -- the minimal thing that the courts have done  
23 in the past and is approved is to suppress that  
24 evidence, to not allow that evidence in the court,  
25 at least.

## PRE-TRIAL MOTIONS

1           And there's certainly other remedies that have  
2       been asked for and granted, including remedies of  
3       dismissal and things like that.

4           At this point, Your Honor, all I ask is that  
5       the evidence not be admitted. I'm not even asking  
6       for anything more than that. But I think that's  
7       kind of the minimal remedy available under the Odom  
8       case, under any other cases that we have when  
9       there's been a Rule 5 violation is to -- is to rule  
10      that evidence inadmissible as a result.

11          And so I would add that to the arguments about  
12      that statement in addition to the judicial estoppel  
13      and the ruling in Burkes case.

14          And I can pause here before we go into the  
15      issue of investigator -- or excuse me, Sergeant  
16      Seifert's testimony, or I can continue.

17          THE COURT: No. Let's stop right now, and  
18      let me hear the response from Ms. Lempesis with  
19      regard to this. And then we'll try to take these  
20      one at a time. Okay?

21          MR. BAX: Thank Your Honor.

22          THE COURT: All right. Ms. Lempesis.

23          MS. LEMPESIS: Thank you, Your Honor.

24          Before I start, I'm going to hand up two cases  
25      that talk about the result of a mistrial. In this

## PRE-TRIAL MOTIONS

1 case, a hung jury for Your Honor's review.

2 THE COURT: Okay.

3 MS. LEMPESIS: I just think it's important,  
4 Your Honor, to go back and talk about those cases  
5 first. State V Wood, the 382 SV 153 is the 2009  
6 South Carolina Supreme Court case where they  
7 remind us that the Supreme Court says: A mistrial  
8 is the equivalent of no trial and leaves the cause  
9 pending in the Circuit Court. It leaves the  
10 parties as if no trial had taken place.

11 Your Honor, as to the testimony of  
12 Ms. Jackie Perez, there are the two separate  
13 things. The statement first, I think the easiest  
14 one to address is the statement that Ms. Perez  
15 threw everything out -- says that the Defendant  
16 threw things out of the window after the robbery,  
17 out of her car window. That is on one of the jail  
18 calls which were recorded and was handed over to  
19 Mr. Bax, as he had stated.

20 He had that information in advance. It simply  
21 was not elicited during the trial. The Solicitor  
22 during the original trial did not elicit that  
23 testimony. However, it's information that Mr. Bax  
24 knew about and had put in notice that that  
25 information was there. It just simply was not

## PRE-TRIAL MOTIONS

1 elicited.

2 Your Honor, we think that there's no question  
3 that that statement -- that the State should be  
4 able to elicit that information from Ms. Perez this  
5 time around. There's no question that it was  
6 turned over to the defense. There is no question  
7 that they either knew about it or should have known  
8 about it because it's right there in the jail call  
9 that Mr. Bax has acknowledged.

10 Your Honor, as to the cases that Mr. Bax has  
11 cited, the Hayne case, in discussing judicial  
12 estoppel we're talking about judicial estoppel of  
13 a -- they preclude the party of adopting a position  
14 in conflict with one earlier taken in the same  
15 earlier litigation. This is not a position that is  
16 in conflict with anything from the previous trial.

17 And, again, we're not talking -- we're talking  
18 about it as no first trial had taken place, which  
19 the case law is clear as to that point.

20 We are not -- the State is not bound by the  
21 rulings in the previous trial, and we can re-try  
22 the case in whatever way the State desires, which  
23 is what those two cases I've handed up stand for.

24 We're not talking about double jeopardy  
25 either. The case that Mr. Bax just cited, the

## PRE-TRIAL MOTIONS

1       Burkes case, just from my brief looking into it, it  
2       was an appeal, where the Court of Appeals reversed  
3       and remanded for trial. It was not a retrial based  
4       on a hung jury, so I think that case is not  
5       directly on point. We're not talking about double  
6       jeopardy here, we're talking about a hung jury that  
7       couldn't reach a verdict and we are back at square  
8       one.

9               The information that the State intends to  
10       elicit from Jackie Perez about the threat from  
11       Mr. McQuarters, that is a statement that  
12       Ms. Concannon made aware -- or made -- informed  
13       Mr. Bax of the Monday after the trial, the first  
14       trial. She sent Mr. Bax an email and said these  
15       were the two things that I did not -- didn't get  
16       out during Jackie Perez's testimony. I'm pretty  
17       sure you already knew about them, but these are the  
18       two things, and I just want to make you aware.

19              Mr. Bax described that -- that email was sent  
20       that Monday after the first trial. Again, it's not  
21       applicable to the -- the statement regarding the  
22       things being thrown out the window because Mr. Bax  
23       already knew about that.

24              But as to the threat, that was that Monday  
25       after trial, but, again, it wasn't elicited during

## PRE-TRIAL MOTIONS

1 the trial. So -- and we stand here today as if no  
2 trial had taken place before.

3 And my position that we should be able to  
4 elicit that information has been made known to  
5 Mr. Bax since February 23rd of this year. So he's  
6 had months to investigate it and has been made  
7 aware of that.

8 So respectfully, Your Honor, we request that  
9 we be able to elicit that testimony during  
10 Ms. Perez's testimony during this trial.

11 Thank you.

12 THE COURT: All right. Thank you.

13 Mr. Bax, any response?

14 MR. BAX: Your Honor, yes, briefly.

15 In reference to the position that the State is  
16 taking in citing these cases, I would argue -- and  
17 I think it's supported by these cases -- that when  
18 the Court says the mistrial constitutes, you know,  
19 as if there were no trial, I think they're talking  
20 about, specifically, about procedurally.

21 In other words for docketing purpose, or for  
22 those kind of purposes.

23 As I said before in chambers, and I stand by  
24 it again, you're saying, okay, this puts the Court  
25 instead of the -- in a status of the charge still

## PRE-TRIAL MOTIONS

1 pending, does not erase the fact that these  
2 witnesses testified under oath. And they testified  
3 with certain statements and without certain  
4 statements, and that those things, if it were a  
5 witness from the State, that those were statements  
6 made after questions from the State by witnesses  
7 put up by the State.

8 THE COURT: All right.

9 MR. BAX: Taking a position, as Your Honor  
10 has already ruled in a prior proceeding. That's  
11 the only thing we can reference in front of a  
12 jury.

13 THE COURT: Right.

14 MR. BAX: But it's still a prior proceeding  
15 under oath. The court reporter, you know, having  
16 put your hand on the Bible, and swear to tell the  
17 truth.

18 And all the case law I've ever looked at  
19 considers that to be something to be taken into  
20 account, that there is a dignity to it that we must  
21 keep. Because, otherwise, we lose the integrity of  
22 the proceeding in the first place, that there's not  
23 an implication to witnesses who take the stand,  
24 that there is a consequence for not telling the  
25 truth, and that there's a consequence even to



## PRE-TRIAL MOTIONS

1 attorneys for choosing not to elicit testimony.

2 THE COURT: Okay. All right. Thank you.

3 I think I've got a pretty good handle on that.

4 I need to look at these -- the cases you all  
5 citing, which I'll do this afternoon after we break  
6 here and deal with these. I'm obviously familiar  
7 with the Woods case. That was a Clarendon County  
8 case that everybody in Manning knew about.

9 But some of the other cases I need to look up  
10 and to read sometime for the first time.

11 All right. Let's move on to the issues  
12 involving Investigator Seifert's testimony. Okay?

13 MR. BAX: May it please the Court,  
14 Your Honor. Moving to the issues that I raised in  
15 chambers concerning what I understand would be the  
16 testimony from Officer Seifert here in this trial  
17 versus what he testified to in February. As I  
18 said to Your Honor, my understanding is that their  
19 intent is to elicit testimony from Officer  
20 Seifert, that while he put in his report, and I  
21 quote: Delaplane confessed to me that the entire  
22 robbery was set up by him and he was sorry.

23 And, Your Honor, that in the trial, under  
24 oath, on the stand -- and I actually use that  
25 specific report in making my question, Your

## PRE-TRIAL MOTIONS

1 Honor -- and this can be found in the transcript,  
2 which I'll be happy to provide whatever portions  
3 that Your Honor would like, to both the Solicitor  
4 and yourself.

5 But at Page 297 of Volume 2 of the transcript  
6 of the prior trial, at line starting at Line 4, my  
7 question: Okay. And in your report, you indicate  
8 that Mr. Delaplane told you at that time, after  
9 these multiple interviews and his father standing  
10 there, that the entire robbery was set up by him  
11 and that he was sorry.

12 And I was quoting that last bit.

13 That's the language in your report; is that  
14 accurate? That's what he relayed to you at that  
15 time?

16 Answer, from Investigator Seifert: Yes, sir.

17 Question: Do you know where I'm referencing?

18 Answer: Yes, I believe on November 6th, yes,  
19 sir.

20 Question: That's correct. So, he relayed  
21 that to you at that time, correct?

22 Answer: Yes, sir.

23 And that finishes up there at Line 15.

24 My argument obviously would be that there  
25 is -- I think that the State intends to argue and

## PRE-TRIAL MOTIONS

1 has stated in chambers that they believe this to be  
2 a matter of interpretation and not one of direct  
3 contradiction. I cannot be in more opposition to  
4 that position. I think that it is clear,  
5 especially when you take into account that -- and I  
6 do apologize if I get ranks incorrect -- but that  
7 Sergeant Seifert, in his testimony before, and I  
8 would assume in his testimony today, testified: I  
9 am a major crimes investigator. That's what I do,  
10 and I've been doing it for a number of years.

11 His role at the sheriff's department is to  
12 investigate major crimes such as what we have here  
13 before us, an armed robbery and an assault charge.

14 And I know for a fact that Sergeant Seifert  
15 has been involved with the investigation and  
16 prosecutions of murder cases, as well. So, serious  
17 crimes dealing with people that could be  
18 potentially facing a lot of time, as well as  
19 victims who have suffered a great deal.

20 Sometimes even the loss of life, the loss of  
21 safety, the loss of, you know, situations where  
22 bodily injury has been suffered.

23 This is someone who I would argue clearly  
24 knows the difference between a confession saying:  
25 Yes, I was the one who set up the robbery, and I am

## PRE-TRIAL MOTIONS

1           sorry.

2                   That is a clear statement in his report, and  
3           one that he confirmed repeatedly in his testimony  
4           under oath before a court. That's not just a mere  
5           interpretation issue. That's a direct  
6           contradiction.

7                   Additionally, we go back over it on Page 300.  
8           And I kind of go right through the same questions.

9                   I questioned him, starting at Line 12: Now,  
10          moving on after you had these conversations with  
11          Mr. Delaplane, who admitted he had set it up, and  
12          Ms. Perez, who ultimately says Mr. McQuarters did  
13          it -- I was there, but he did it -- you go and you  
14          arrest Mr. McQuarters and bring him to the Hilton  
15          Head branch office to talk to him, correct?

16                   Yes, sir.

17                   So it was covered multiple times. There was  
18          an opportunity for the solicitor at that time on  
19          redirect to recover that issue and clarify. That  
20          was specifically not taken.

21                   And I -- I would submit to Your Honor that  
22          Ms. Concannon, just like Ms. Lempesis, is more than  
23          capable enough to know that I was scoring points  
24          for the defense right there. And I would submit  
25          that if there was any way that Ms. Concannon saw a

## PRE-TRIAL MOTIONS

1 way to rehabilitate that testimony, I feel that she  
2 would have done it. I don't see any reason why  
3 not.

4 So, Your Honor, I want to make sure that I  
5 establish the argument for the defense, that this  
6 is not merely a reinterpretation from -- this is  
7 what I believe to be complete contradiction, which  
8 unfortunately implies that it -- one of them is  
9 truth, and one of them's not. Because they can't  
10 both be.

11 THE COURT: All right.

12 MR. BAX: As I stated in chambers, Your  
13 Honor, I think that it brings up some ethical  
14 issues. I would cite for the record, that Rule 3,  
15 colon, 3 of our ethics rules talk about when an  
16 officer of the court, an attorney, becomes aware  
17 that a witness may have all offered false  
18 testimony.

19 You know, at this point, I can't -- my belief,  
20 I'm certainly not arguing that they knew of  
21 something before the last trial. But what I'm  
22 saying is that their position that they're taking  
23 now implicates that they became aware afterwards  
24 that this testimony could be false.

25 Because they're saying that the testimony they

## PRE-TRIAL MOTIONS

1 intend to present today is the truth, because they  
2 can't knowingly present testimony that they know to  
3 be false now. That implies that there's a duty to  
4 disclose, and it's not a duty that is a  
5 discretionary duty. It's a must.

6 It is clear, as I cited to Your Honor, it  
7 talks about the fact that the attorneys -- whether  
8 or not they can get a client to agree. And in this  
9 case, there's no client to discuss it with.

10 THE COURT: Right.

11 MR. BAX: They must disclose it to the  
12 tribunal. In this case, the tribunal, Your Honor,  
13 I would argue would be Judge Keesley, as the one  
14 who sat where you're sitting now and heard that  
15 testimony in front of a jury before.

16 And, of course, in disclosing that to the  
17 tribunal, they obviously would have to disclose it  
18 to myself, as attorney for Mr. McQuarters, allowing  
19 us to have that issue adjudicated by that tribunal  
20 as to whether or not the case would stand or not,  
21 and what remedy that judge thought was applicable.

22 Because, of course, it doesn't come to light  
23 until after a jury is unable to reach a decision.  
24 I certainly don't contest the idea that the  
25 mistrial that occurred before had nothing to do

## PRE-TRIAL MOTIONS

1 with what we're talking about now. It was purely  
2 the fact that the jury could not reach a decision.

3 However, I don't think that the fact that  
4 this -- the jury in February deadlocked gives the  
5 Solicitor's Office in this case the pass to get by  
6 all of these problems. I think the way that the  
7 position is being held is that the fact that the  
8 mistrial was due to a deadlock and not due to some  
9 improper statement, where a motion was made by the  
10 defense relieves them of any obligation to stick to  
11 anything. No, I don't think that's the case.

12 THE COURT: All right.

13 MR. BAX: Your Honor, in this situation, and  
14 I certainly quote the Burkes case, but I quote,  
15 and I have it here. There's a number of cases  
16 actually, and the problem is they're not directly  
17 on point because they all talk about -- they all  
18 talk about where a defendant has been forced in  
19 some way to request a mistrial based on testimony  
20 elicited by the other side.

21 And those cases talk about the fact that if  
22 the Court finds after argument and presentation of  
23 facts that there's a likelihood, or that the court  
24 feels assured enough that it's been shown that the  
25 State caused the defense to have to ask for a

## PRE-TRIAL MOTIONS

1       mistrial, that that misconduct does invoke the  
2       double jeopardy clause.

3               In this particular situation, it's a little  
4       different because we don't have a situation where I  
5       moved for a mistrial. But the reason I didn't move  
6       for a mistrial is because I wasn't aware of what  
7       they're purporting was the falsity. If I was made  
8       aware before the jury got the case, that in fact  
9       what Officer Seifert had testified to was false and  
10      that, in fact, Mr. Delaplane did not say and  
11      confess, I was the one who set up the robbery, and  
12      I'm sorry, and that's what the jury had already  
13      heard, then I would have moved for a mistrial. And  
14      I don't hesitate to say I believe the Court would  
15      have granted it in that situation.

16             So, but for that lack of knowledge, it would  
17      have been exactly the situation in those cases.

18             I think that regardless of the fact that the  
19      State -- one of the arguments that has been made,  
20      even against me when I worked at the Attorney  
21      General's Office, Your Honor, is that the State is  
22      the State is the State. Even if you are the  
23      attorney representing the State, as an assistant  
24      attorney general, as an assistant solicitor, even  
25      if it is a law enforcement agency that's done



## PRE-TRIAL MOTIONS

1 something, you, Mr. State Attorney, you are  
2 responsible for it.

3 And that argument has been made and sustained.  
4 It was sustained by Judge Keesley, you know, ten  
5 years ago, when I had that in front of him on an AG  
6 case.

7 The idea is, the State misconduct in this case  
8 that there is some kind of falsity in testimony  
9 came from an officer who worked for the State. The  
10 State is the State is the State.

11 So, State misconduct equals double jeopardy.  
12 The problem is that there is knowing misconduct by  
13 somebody who's on that side, who works for the  
14 State, whether it be local law enforcement, the  
15 attorney's office, so on and so forth. And that  
16 was done during the trial.

17 That so prejudices my client and exposes him  
18 to liability again, that it constitutes double  
19 jeopardy, and double jeopardy should attach.

20 So, as I stated before, the argument  
21 concerning the testimony of Sergeant Seifert is  
22 different from just the argument on Ms. Perez  
23 because, in this situation, I think it goes beyond  
24 just asking that the evidence be suppressed. I  
25 think it goes to the point where in order to

## PRE-TRIAL MOTIONS

1 protect my client I have to ask that these charges  
2 against my client be dismissed because double  
3 jeopardy has attached due to that misconduct.

4 And, of course, I would certainly also cite my  
5 arguments that I've already made as to estoppel,  
6 and I would certainly reference the Burkes case  
7 once again.

8 In this particular case, as I've said in  
9 chambers, I believe that it is tantamount to the  
10 State taking an opportunity to change their case to  
11 better suit a verdict of guilty in this matter  
12 since they've been given the opportunity to try  
13 again.

14 Thank you.

15 THE COURT: Thank you, Mr. Bax.

16 Ms. Lempesis.

17 MS. LEMPESIS: Thank you, Your Honor.

18 I guess I'm going to start with Rule 3.3,  
19 which is the rule that Mr. Bax has cited, the  
20 candored torch, the tribunal, the Rule of Ethics  
21 that he's accusing the State of violating.

22 That rule, 3.3A1, make: A lawyer shall not  
23 knowingly make a false statement of fact for law to  
24 a tribunal or fail to correct a false statement of  
25 fact of material fact or law previously made to the

## PRE-TRIAL MOTIONS

1        tribunal by the lawyer.

2                First and foremost, we are not talking about a  
3        false statement. There was no false statement  
4        made, Your Honor. And I think that Mr. Bax is a  
5        bit disingenuous in standing up and going into all  
6        this.

7                Mr. Bax has the recording of Colton Delaplane  
8        in his interview by Doug Seifert. That was  
9        recorded on audio recording, and this is the third  
10       interview of Colton Delaplane. And it is in that  
11       interview where he tells Doug Seifert that  
12       everything -- that at this point, everything he  
13       knows about the incident. And he admits that he  
14       wasn't truthful before, and now he tells him  
15       everything.

16               He admits that he told Austin McQuarters that  
17        if somebody was going to have the money, it was  
18        going to be the victim, John Snodgrass.

19               He tells him this. He tells him about --  
20        Austin McQuarters told him about the brass  
21        knuckles.

22               Your Honor, this whole interview is recorded  
23        and at -- at no point does Colton Delaplane say,  
24        quote: I set the whole thing up.

25               He does say he's sorry, but in Doug Seifert,

## PRE-TRIAL MOTIONS

1 Investigator Seifert's report, he paraphrases,  
2 which is what they do in reports. And his -- this  
3 part that Mr. Bax is referring to, where he says  
4 Delaplane confessed to me that the entire robbery  
5 was set up by him and he was sorry, that's not even  
6 in quotation marks, Your Honor. That's not a  
7 direct quote from the recording. And Mr. Bax knows  
8 that. It's not a recording from Colton Delaplane's  
9 interview. It's not a direct quote.

10 Going to the transcript from that day, from  
11 the prior trial, Mr. Bax has read it to you, and I  
12 think it might be easier, Your Honor, to have it in  
13 front of you to refer to.

14 But it's a long question. And it starts by:  
15 And in your report you indicate that Mr. Delaplane  
16 told you at the time, after these multiple  
17 interviews and his father is standing there, that  
18 the entire robbery was set up by him and that he  
19 was sorry.

20 That's the language in your report. Mr. Bax  
21 says that. That's the language in your report.

22 Is that accurate? That's what he related to  
23 you at the time.

24 Yes, sir.

25 That's not a false statement. That, in

## PRE-TRIAL MOTIONS

1 Investigator Seifert's opinion, was what  
2 Colton Delaplane had relayed to him. He  
3 essentially set this thing up. He was -- he gave  
4 Austin McQuarters all the information he needed to  
5 rob John Snodgrass.

6 Doug Seifert made no false statement. And,  
7 therefore, there's no false statement that needed  
8 to be reported -- or made -- caused the attention  
9 of the tribunal.

10 As Mr. Bax said that Ms. Concannon, when she  
11 tried this case, she had the opportunity to stand  
12 up and clarify Investigator Seifert's responses to  
13 Mr. Bax.

14 She did have that opportunity. Mr. Bax just  
15 reminded us that she had that opportunity, and she  
16 could have stood up and said Investigator Seifert,  
17 that is -- do you always quote exactly in your  
18 report what a person tells you?

19 We could have cleared it up. That's all I  
20 want to do is clear this one point up.

21 We're not talking about a false statement. We  
22 are standing before the Court in a new proceeding  
23 and it's not new information, and all I want to do  
24 is clarify it for the jury. There's no false  
25 statement made, and I think that it's clear that

## PRE-TRIAL MOTIONS

1           there's been no false statement.

2                   I think it is a matter of interpretation, and  
3           again, it's just my intent to try to clarify it.  
4           Because we do stand here, as if no trial had taken  
5           place before. I'm not introducing new evidence.  
6           It's everything that Mr. Bax has known about, and  
7           there's nothing, there's no rule that says I can't  
8           try to present the case in the best way that I know  
9           how to. And that is allow -- the law allows me to  
10          fill in the blanks here, and I'm not bound. The  
11          State is not bound by all -- by the prior  
12          proceedings.

13                  Now, what Mr. Bax can do is certainly use the  
14          testimony, the prior testimony, to impeach the  
15          witnesses, and certainly he has -- he has plenty to  
16          go on.

17                  But the idea that there is some sort of false  
18          statement made here, that I am trying to elicit a  
19          false statement on the record is just not true.

20                  And we have all of the information clearly  
21          before us, and it makes it clear. It's not --  
22          there's no false statement and no attempt by the  
23          State to introduce any sort of false statement.

24                  Thank you, Your Honor.

25                  THE COURT: Thank you, ma'am.

## PRE-TRIAL MOTIONS

1           Mr. Bax, you have the last word.

2           MR. BAX: Yes, Your Honor.

3           A couple of things. Number one, I'd like to  
4           make sure, as I stated before in chambers, the  
5           recordings of the discussions -- of some of the  
6           discussions between Sergeant Seifert and  
7           Colton Delaplane, that seems to be something that  
8           the Solicitor's attaching to. I want to make sure  
9           that it's clear that at no point, either in his  
10          incident report or in the questions and answers at  
11          trial, did Investigator Seifert ever say this was  
12          recorded, and there was no eliciting of testimony  
13          from the State. And there was no contradiction of  
14          this during cross that Investigator Seifert had  
15          more than just the conversations that were audio  
16          recorded, he had contact with Mr. Delaplane before  
17          and after these recordings were made.

18          There's many, many times, Your Honor, where  
19          I've had cases, where there's a recorded interview,  
20          where they don't get anywhere or they don't get  
21          what they want. It's turned off, and they have  
22          more conversations with the witness or defendant,  
23          and those turn out to be something that the officer  
24          says, he then said X, or he then confessed to me.

25          So, I stand by with that, that when he puts in

## PRE-TRIAL MOTIONS

1 his incident report that Delaplane confessed to me  
2 that the entire robbery was set up by him, that's  
3 very specific language. That is not, he told me he  
4 gave him all of the information he needed to  
5 conduct the robbery. That was -- there's a clear  
6 intent element there in that language, that  
7 Delaplane confessed to me that he sat this robbery  
8 up.

9 In order to give Your Honor the kind of  
10 context that's going to become relevant to a jury,  
11 if we get there, there is testimony from  
12 Mr. Delaplane, and from others, that Mr. Delaplane  
13 received \$250 allegedly from my client that --  
14 later on, after this alleged robbery.

15 Additionally, there is testimony that  
16 Mr. Delaplane and Mr. Snodgrass might not have  
17 gotten along too well, because Mr. Delaplane worked  
18 at this theater on Hilton Head Island when this  
19 happened.

20 There's testimony that Mr. Delaplane, after  
21 all the actors there to be presented is the only  
22 one that could have known the information that  
23 would have led to this.

24 Additionally, and this is the bigger -- the  
25 big fact that I think we want to make sure -- I



## PRE-TRIAL MOTIONS

1 think the Court needs to understand and be aware of  
2 is, Mr. Delaplane was never charged with a crime.

3 So, the problem is this is an attempt to fix  
4 the fact that the officer has testified in prior  
5 trial that he confessed, and yet he was not  
6 charged. So it bears directly on the issue. This  
7 is not a clarification, this is a reversal and a  
8 fixing.

9 THE COURT: All right. Thank you, folks.

10 I would like, if it's not too much trouble for  
11 you all to copy some of those portions of the  
12 testimony that you refer to, from Officer Seifert  
13 especially. And let me sort of compare those  
14 things.

15 I take it that Delaplane's statement has not  
16 been reduced to writing anywhere, it's just on a  
17 tape; is that right?

18 MS. LEMPESIS: That's correct, Your Honor. I  
19 have not reduced it to writing.

20 MR. BAX: Your Honor, there is a written  
21 statement from Mr. Delaplane, but it was given --  
22 it was given on November -- it was actually kind  
23 of earlier on. Like I said, there was multiple  
24 interviews, and at first he denied involvement.

25 MS. LEMPESIS: The first written statement

## PRE-TRIAL MOTIONS

1       you speak of is written. The one that we're  
2       referring to that is referenced in Investigator  
3       Seifert's report was just recorded. It's not been  
4       -- I have not reduced it to writing. But I can  
5       provide it to Your Honor.

6               MR. BAX: And, Your Honor, that's why I just  
7       wanted to make sure it was clear. If  
8       Mr. Delaplane gives a statement in writing on  
9       November 4, but in that one he does not give all  
10      the details that he later gave.

11             THE COURT: The statement that gave rise to  
12      this -- this statement or an interpretation or  
13      whatever it happens to be, is that on a CD  
14      somewhere?

15             MS. LEMPESIS: It is, Your Honor.

16             THE COURT: Okay. How long does this take?

17             MS. LEMPESIS: It's not very long, Your  
18      Honor. It's a recording that Investigator  
19      Mr. Seifert made at the Bluffton High School. He  
20      went there, got permission to speak to  
21      Colton Delaplane. The interview actually took  
22      place, I think, in Investigator Seifert's patrol  
23      car, with audio recording. And then  
24      Colton Delaplane leaves and goes back to class.

25             The entire thing is recorded, and happy to

## PRE-TRIAL MOTIONS

1 give it to Your Honor, deliver it to.

2 THE COURT: If you all could have that in my  
3 chambers by, say, quarter to nine tomorrow  
4 morning? Along with the transcript, and I'll have  
5 a chance to look at all this stuff then.

6 MR. BAX: And, Your Honor, just to make sure  
7 I do the correct copying, I'm happy to copy  
8 however much you want, however little you want.

9 THE COURT: Right. The things that you  
10 referred to in your argument would be -- I think  
11 would be sufficient.

12 If there's something else that bears on that  
13 issue, then I'll take that, too. And if  
14 Ms. Lempesis thinks that I need more, she can  
15 provide more from her perspective.

16 MR. BAX: Certainly, Your Honor.

17 THE COURT: I just want to get the full  
18 content as well as the context of what these  
19 questions and answers were. Because, if it -- if  
20 it is interpretation, then I need to know the  
21 whole range of what the discussions were to know  
22 what the interpretation could have been based on.

23 And if it's not, then I suppose it won't be  
24 anything there to suggest a misinterpretation.

25 Nonetheless, as long as I've got the relevant

## PRE-TRIAL MOTIONS

1 parts of Investigator Seifert's testimony on either  
2 side of the issue.

3 And the -- and Delaplane, because that's what  
4 we're talking about, what Delaplane really said.  
5 Then that's -- then that will give me enough.

6 MS. LEMPESIS: Yes, Your Honor. We'll  
7 provide it to you.

8 MR. BAX: And, Your Honor, just to make sure  
9 I put this on the record, I got to make sure that  
10 I cover all the details, I did mention this in  
11 chambers. Officer Seifert's testimony followed --  
12 there's actually, I think, a witness in between --  
13 but followed the information of Mr. Delaplane in  
14 front of the jury, where he specifically denied  
15 that very same language to me in  
16 cross-examination.

17 So, I mean, it's -- you know, this is part of  
18 the story, and there was a set up and a finish to  
19 it. So it's not just, I guess that's -- your using  
20 the language context reminded me of that. That the  
21 importance of this is in the context of what the  
22 jury is hearing from Mr. Delaplane and then from  
23 Officer Seifert.

24 And as I said before, Officer Seifert, as the  
25 lead investigator on the case, was present

## PRE-TRIAL MOTIONS

1 throughout all this testimony.

2 THE COURT: I take it that Mr. Delaplane was  
3 cross-examined on the basis of the CD statement  
4 that he made, when he said: I didn't say I set it  
5 up.

6 And then you had a tape recording that said he  
7 did?

8 MR. BAX: I had -- well, I had cross-examined  
9 him on the fact that -- I actually, specifically,  
10 cross-examined him on the investigator's incident  
11 report.

12 THE COURT: Right.

13 MR. BAX: Because the thing was, is that  
14 there's nothing in here to indicate that that was  
15 necessarily in the report. And I've listened to  
16 the recording myself, which is why I wanted to  
17 make sure that I covered it.

18 THE COURT: All right.

19 MS. LEMPESIS: Your Honor, would you also  
20 like to see -- I can make a copy of that piece of  
21 Doug Seifert's -- Investigator Seifert's report  
22 where it says that Mr. Bax keeps referring to.

23 THE COURT: That would be fine. Thank you.  
24 That's -- I think that's the part of the res  
25 gestae of all this. I will review that as well.

## PRE-TRIAL MOTIONS

1 I'll be here around 8:30 in the morning, if  
2 you -- or thereabouts, if you all could have it on  
3 my desk by a quarter to nine.

4 MS. LEMPESIS: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. BAX: Thank you, Your Honor.

7 THE COURT: All right. The jury is supposed  
8 to be back at 9:30 tomorrow. I'll be prepared to  
9 make these rulings sometime about 9:15, or  
10 thereabouts. The jury will come in and be sworn,  
11 and I'll make introductory comments and allow you  
12 opening statements, and then we'll start the trial  
13 immediately thereafter.

14 Ms. Lempesis, is there anything further from  
15 the State before we break for the day?

16 MS. LEMPESIS: Your Honor, I'm just going to  
17 hand up, if I may, just one other case that  
18 Mr. Holland handed to me that goes to this issue.  
19 Mr. Bax's issue about double jeopardy. It's State  
20 v Parker, and 391 SC 66.

21 THE COURT: Okay. I've got -- well, you can  
22 give him a copy of it. I'll be happy to, if you  
23 don't.

24 MS. LEMPESIS: Yes. Thank you, Your Honor.

25 THE COURT: All right. Mr. Bax, anything

## PRE-TRIAL MOTIONS

1 further from the defense before we break for the  
2 day?

3 MR. BAX: No, Your Honor.

4 THE COURT: All right. Thank you.

5 9:30 tomorrow morning for the jury, folks.

6 I'll be here before then. Thank you.

7 Mr. Newman, yes, sir.

8 MR. NEWMAN: Sir, if Ms. Lempesis and I could  
9 approach. It's on a scheduling matter, I don't --

10 MS. LEMPESIS: It's a totally separate issue.

11 MR. BAX: If Mr. Bax wants to stand with us,  
12 too, that's fine.

13 THE COURT: You don't need the record, do  
14 you?

15 MR. NEWMAN: No, sir.

16 MS. LEMPESIS: Your Honor, there is one other  
17 thing. We have the -- I'm sorry.

18 Back on Austin McQuarters, I have the file  
19 from the sheriff's office regarding Brian Michael.

20 THE COURT: All right. Fine. Can I keep  
21 that in my safe custody overnight, Officer?

22 MR. LIGHT: Yes, sir.

23 THE COURT: Okay. I'll look at it, and we  
24 can deal with this tomorrow.

25 Is this pertaining to the information

## PRE-TRIAL MOTIONS

1           regarding his separation?

2                   MR. LIGHT:  Yes, sir.

3                   THE COURT:  If you want to show me where that  
4           is.

5                   (Trial adjourned for the day.)

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## PRE-TRIAL MOTIONS

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 1st day of February, 2016.

*/s/ Mona L. Manley*

---

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1                   IN THE COURT OF GENERAL SESSIONS IN AND FOR  
2                   BEAUFORT COUNTY SOUTH CAROLINA

3

4       STATE OF SOUTH CAROLINA,

5               Plaintiff,

6       vs.

CASE NO. 2013GS0701844; 1845

7       AUSTIN LEWIS McQUARTERS,

8               Defendant.

9       \_\_\_\_\_ /

10

11                               \*     \*     \*

12

13                               TRIAL TRANSCRIPT

14                               VOLUME 3

15

16       DATE:                               July 21, 2015

17       PLACE:                             Beaufort County Courthouse  
18                                           Beaufort, South Carolina

19       REPORTED BY:                      Mona Manley, Court Reporter

20       BEFORE:                           Honorable Thomas W. Cooper, Jr.

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**APPEARANCES**

REPRESENTING THE STATE:

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James Bell, ESquire  
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\* \* \*

## INDEX PAGE

|    |                                      |       |
|----|--------------------------------------|-------|
| 1  | INDEX                                |       |
| 2  |                                      |       |
| 3  | WITNESS:                             | PAGE: |
| 4  | RHETT PARNELL                        |       |
| 5  | Direct Examination By Ms. Lempesis   | 38    |
| 6  | Cross Examination By Mr. Bax         | 43    |
| 7  |                                      |       |
| 8  | JOHN SNODGRASS                       |       |
| 9  | Direct Examination By Ms. Lempesis   | 47    |
| 10 | Cross Examination By Mr. Bax         | 73    |
| 11 | Redirect Examination By Ms. Lempesis | 79    |
| 12 |                                      |       |
| 13 |                                      |       |
| 14 |                                      |       |
| 15 |                                      |       |
| 16 |                                      |       |
| 17 |                                      |       |
| 18 |                                      |       |
| 19 |                                      |       |
| 20 |                                      |       |
| 21 |                                      |       |
| 22 |                                      |       |
| 23 |                                      |       |
| 24 |                                      |       |
| 25 |                                      |       |

## MOTION RULINGS

1 PROCEEDINGS

2 THE COURT: Good morning, folks. Let me  
3 start with some of the easier and more clear cut  
4 matters, which I was asked to deliberate  
5 overnight. And that has to do with the reason for  
6 the discharge of Officer Brian Michael, who  
7 testified at an earlier -- at the earlier trial  
8 and is no longer with the sheriff's department.  
9 The question was whether or not the reason for his  
10 discharge had anything to do with this case, I  
11 suppose, directly or even indirectly. And I've  
12 read his entire file since he joined the  
13 department, I think, back in 2007, and I can tell  
14 you that the reason for his discharge had  
15 absolutely nothing to do with his performance in  
16 this case, anything that he had to do with this  
17 case.

18 He had had several write-ups for driving  
19 problems, accidents, several of them in March of  
20 this year in close proximity to each other. And  
21 for that reason, he was -- he was terminated.

22 The accidents themselves were indicative of  
23 his approach to the work that he was doing and to  
24 his overall performance, but those are the exact  
25 reasons why he was terminated according to the

## MOTION RULINGS

1 file.

2 As a matter of fact, the remarks indicate,  
3 taking all the infractions documented in the last  
4 couple of weeks into consideration, et cetera,  
5 those things in the last couple of weeks had to do  
6 with his use of the vehicle and accidents that he  
7 was involved in.

8 So, Officer Light (phonetic), I can give this  
9 back to you and thank you very much.

10 Thank you.

11 OFFICER LIGHT: Thank you, sir.

12 THE COURT: And now for the testimony of  
13 Mr. Seifert given in an earlier trial, and the  
14 language that was testified to at that time was  
15 that Mr. Delaplane had actually set up the robbery  
16 in this particular case.

17 Those words were used in the report itself,  
18 Doug Seifert's report, supplemental report, on  
19 Page 19: Delaplane confessed to me that the  
20 entire robbery was set up by him, and that he was  
21 sorry. Delaplane stated that's why McQuarters  
22 gave him \$250 cash after the robbery was solved.

23 I think that's the focal point of the  
24 controversy in this regard.

25 When Mr. Bax cross-examined Investigator

## MOTION RULINGS

1       Seifert at the earlier trial, he used that  
2       language and Investigator Seifert joined him and  
3       concurred that that's what he said and that's what  
4       Delaplane told him.

5               I've read Mr. Delaplane's testimony in the  
6       trial. I've also listened to the tape of his  
7       interview with Investigator Seifert. It's obvious  
8       that Mr. Delaplane never used the words that he  
9       had set up a robbery. As a matter of fact, he, on  
10      several occasions said, I didn't set it up.

11              But he did explain what he had done. And  
12      officer -- Investigator, I'm sorry, Seifert in  
13      writing his report fell into a common error that a  
14      lot of folks make when they are trying to  
15      summarize someone's statements from an interview.  
16      He wrote down his conclusion of what Mr. Delaplane  
17      said.

18              In other words, he put down his impression of  
19      what he had said and not what he had actually  
20      said. As I say, it's a common mistake. All of us  
21      who take notes do that from time to time, although  
22      it's when you're interviewing a suspect or a  
23      witness in a criminal case it's more problematic.

24              It is one of the reasons, as a matter of  
25      fact, that when we are instructing jurors who want

## MOTION RULINGS

1 to take notes that we impress upon them the  
2 absolute need not to write down what they hear,  
3 but what the witness says.

4 Now, if Investigator Seifert had written down  
5 what Mr. Delaplane said instead of what he heard,  
6 that is to say, he set it up, he would have  
7 written down that Mr. Delaplane told him that he  
8 was working, that his friend, Mr. McQuarters, came  
9 up to him and asked him for money from -- to give  
10 him some money from the till. And he said, I  
11 couldn't give him money from the till, the only  
12 person who has money is Mr. Snodgrass. And that  
13 he then told Mr. McQuarters where Mr. Snodgrass  
14 would be coming and leaving, essentially with the  
15 money at the end of the day.

16 Investigator Seifert processed all that  
17 information and shorthanded it into his report.  
18 And frankly, in the eyes and the mind of an  
19 investigator, someone who says, I don't have the  
20 money but he does, and here's where he's going to  
21 be, that's tantamount to setting up a robbery, and  
22 that's what he wrote down.

23 It was an interpretation. It was an  
24 incorrect interpretation, but it was an  
25 interpretation nonetheless. And he was



## MOTION RULINGS

1 cross-examined on it before, he'll be  
2 cross-examined on it again.

3 To the extent that that is a critical issue,  
4 it can be developed fully by cross-examination  
5 from the earlier trial, and I'm certain that it  
6 will be, as it should be. It was an  
7 inconsistency, and it needs to be explored. And I  
8 have reached the conclusion that I have had, and  
9 I've shared that with you.

10 The jury is not bound by my conclusion. They  
11 can reach an entirely different conclusion. They  
12 can decide that Investigator Seifert was lying on  
13 one occasion or another, if they choose to do  
14 that, and they have a right to do that. That's  
15 within their purview. I'm not going to prevent  
16 them from hearing that and reaching their  
17 conclusion in that regard.

18 As to whether or not the change in testimony  
19 is so egregious as to have created a double  
20 jeopardy issue, most of the cases that deal with  
21 double jeopardy that we find that make their way  
22 all the way to the Supreme Court and that prevent  
23 a trial -- a retrial of a case have to do with  
24 conduct by the State that either intentionally  
25 provokes or invokes a mistrial or that

## MOTION RULINGS

1 intentionally places a defendant in a position of  
2 taking action or conduct that leads to a mistrial.  
3 That did not occur here, and it will not occur on  
4 the occasion of the testimony given again.

5 The Lupert (phonetic) case, the case which  
6 has been cited actually, was a case like this  
7 case. It was a hung jury. It was not a mistrial  
8 due to misconduct, it was a hung jury.

9 And interestingly enough in that case, the  
10 jury advised the Court that they had reached a  
11 decision on two charges, but couldn't reach a  
12 decision on the other two, and the Judge declared  
13 a mistrial. The Supreme Court said that the  
14 defendant could be retried on all four of the  
15 charges, including the two that they said they  
16 reached a decision on because they actually had  
17 been convicted formally of those -- nor acquitted  
18 of those as well.

19 We don't have a double jeopardy issue here in  
20 this case for those reasons. And so Officer  
21 Seifert will be allowed to testify as to whatever  
22 he's going to testify to. And Mr. Bax, you'll be  
23 able to cross-examine him fully, of course, as you  
24 will.

25 As to Ms. Perez's testimony, I believe that

## MOTION RULINGS

1           that was the testimony about -- the main part was  
2           whether she had seen something thrown out of a  
3           window or whether she felt threatened as a result  
4           of that. Some of that was known at the time of  
5           the earlier trial, some of it was not. It was  
6           revealed shortly after the trial, and certainly is  
7           now within the public purview as far as we're  
8           concerned.

9           I'm not going to rule that testimony out  
10          because it was not used at the earlier trial or  
11          because it was not disclosed at an earlier trial.  
12          I'll deal with that when it comes up, under the  
13          regular Rules of Evidence. If there's a Rules of  
14          Evidence to keep it out, I'll deal with that then.  
15          Otherwise, she'll be allowed to testify fully in  
16          that regard.

17                 Does everybody understand all that?

18                 MR. BAX: Yes, Your Honor.

19                 MS. LEMPESIS: Yes, Your Honor.

20                 THE COURT: All right. Thank you.

21                 Okay. Let me right now, to keep from  
22          burdening the desk up here with this stuff, let me  
23          give this stuff back to you all.

24                 Madam Reporter, the record should reflect  
25          that I was given -- the State furnished the entire

## MOTION RULINGS

1 testimony of Mr. Delaplane and Investigator  
2 Seifert, and that -- as well as the disc of the  
3 interview with Mr. Delaplane. And that Mr. Bax  
4 had also furnished me the additional case citers  
5 that he'd given at the trial -- at the hearing  
6 yesterday, furnished me the portions of the  
7 transcript of Mr. Seifert that he provided.

8 I was also given pages of the report. I made  
9 notes on those so I'm just going to keep those.

10 All right. Folks, if you're now ready for  
11 the jury, the jury will come and I'll appoint  
12 those persons to be sworn. I'll make my usual  
13 introductory comments, and by now most of you have  
14 heard them enough, I might just step outside and  
15 let you all make them for me. And then you will  
16 be allowed to open and we'll start the trial.

17 MS. LEMPESIS: Thank you, Your Honor.

18 MR. BAX: And Your Honor, a brief  
19 housekeeping matter. I discussed this with  
20 counsel. I move to sequester witnesses, and I  
21 think they've already done that. But I just want  
22 to make sure I put it on the record and I've  
23 discussed it with Ms. Lempesis.

24 Additionally, Your Honor, as I've discussed  
25 with her, just like in the last trial, despite our

## MOTION RULINGS

1 witness list, it is not the defense's plan, and we  
2 state here for the record that's not going to  
3 change, that I'm not going to call Ms. McQuarters.  
4 Harriett is actually here in the courtroom, and so  
5 with that understanding, we're in agreement that  
6 she's going to remain in the courtroom. I'm not  
7 going to call her.

8 THE COURT: All right. That's fine.

9 MS. LEMPESIS: Your Honor, we would just ask  
10 that our -- the victim, Mr. Snodgrass, be allowed  
11 to stay in the courtroom, and then, of course,  
12 Investigator Seifert.

13 THE COURT: Certainly.

14 MS. LEMPESIS: I do have one message --  
15 Mr. Delaplane's actually back there, if I can get  
16 him to -- I'm going to go speak to him really  
17 quickly and just go in across the hall.

18 THE COURT: Okay.

19 MS. LEMPESIS: Thank you, Your Honor.

20 (Pause.)

21 MS. LEMPESIS: Your Honor, I've had the  
22 witness step out and so the State's ready.

23 THE COURT: Great. Okay.

24 Who will open for the State?

25 MS. LEMPESIS: I will, Your Honor.

## MOTION RULINGS

1           THE BAILIFF: The jury is in.

2           THE COURT: Thank you.

3           Ms. Kemerling, may I ask you to sit in that  
4 first chair over there? I'll tell you why in a  
5 minute.

6           Good morning, ladies and gentlemen. Thank  
7 you for your prompt return this morning. We're  
8 now ready to begin the trial of this case.

9           Ms. Kemerling, I've asked you to occupy that  
10 chair, as you probably have figured out by now,  
11 because I want you to serve as the foreperson of  
12 this jury. And all that means is that you'll be  
13 the jury spokesperson here forward, and when the  
14 trial is over, you'll be responsible for writing  
15 the verdict of the jury. But I'll tell you more  
16 about that before you have to do it. All you need  
17 to know right now is you've got a reserved chair.  
18 You will occupy that chair throughout the trial of  
19 this case.

20          Ms. Seabooks, Mr. Mack, as alternate jurors,  
21 you will occupy those two chairs throughout this  
22 trial unless sometime during the trial I ask you  
23 to sit somewhere else. Okay?

24          Folks, the rest of you don't have reserved  
25 seats, you've just got general admission tickets.

## MOTION RULINGS

1       You just got to do the best you can. It's always  
2       a good idea to do what you did just a minute ago,  
3       always walk all the way down and not leave an  
4       empty chair beyond you. You might have a favorite  
5       chair like that in the middle, leave two chairs  
6       beyond you, somebody's going to step on your feet  
7       to get to those empty chairs, and that can get  
8       kind of painful. It slows the process down, as  
9       well.

10               Folks, you're going to be sworn in now as  
11       jurors. I want you to pay particular attention to  
12       the oath that you're about to take. I tell jurors  
13       that it is time honored, but an artfully worded  
14       oath that tells you concisely, but at the same  
15       time completely, what your responsibilities as  
16       jurors are going to be in this case.

17               I'm going to be reminding you during this  
18       trial, and even after the trial, as to what your  
19       responsibilities are as jurors. So please now  
20       listen to the clerk as she administers the oath.

21                       (Jury sworn.)

22               THE COURT: Ladies and gentlemen, let me take  
23       just a few moments to tell you the process that we  
24       will be following during the course of this trial,  
25       for those of you who are not familiar with the

## OPENING INSTRUCTIONS BY THE COURT

1 process, and to tell you what your role as jurors  
2 will be in the case before you.

3 In just a moment, when I finish talking to  
4 you, Ms. Lempesis on behalf of the State is going  
5 to stand before you and make an opening statement.  
6 And in that opening statement she is going to  
7 outline for you in something of a preview fashion  
8 what this case is all about from the State's point  
9 of view.

10 And she may also indicate to you some of what  
11 the State intends to offer by way of proof in  
12 support of the charges that it has brought in  
13 these indictments.

14 After she is finished making the opening  
15 statement on behalf of the State, Mr. Bax, on  
16 behalf of Mr. McQuarters, the defendant in this  
17 case, has a right to make an opening statement,  
18 but he does not have to do that. And I'll tell  
19 you why in just a moment.

20 After the opening statements have been made,  
21 then you will actually begin to see and hear the  
22 presentation of evidence in this case. Evidence,  
23 for the most part, will take the form of  
24 testimony. Witnesses will take an oath and sit  
25 right here in this chair, and will be asked



## OPENING INSTRUCTIONS BY THE COURT

1 questions by the lawyers for both sides.

2 Evidence may also take the form of  
3 photographs or diagrams or documents. I haven't  
4 seen the evidence in this case yet, so I don't  
5 know what it's going to be, but that's the sort of  
6 thing that would normally come into evidence.

7 The State will offer its evidence and  
8 testimony first, and after the State has put in  
9 its evidence and testimony, the defendant has the  
10 right to offer evidence and testimony, but he is  
11 under no obligation to do so. And I'll tell you  
12 why in just a moment.

13 Now, after all the evidence and testimony has  
14 been presented to you, then the lawyers will come  
15 back before you and present their closing  
16 statements, or final arguments they're sometimes  
17 called. And in those arguments, they're allowed  
18 to summarize the evidence that you have heard and  
19 to submit to you conclusions that they claim you  
20 should draw from the evidence that you've heard.

21 And after the lawyers have presented their  
22 final arguments, then I will instruct you on the  
23 law. And once I instruct you on the law, then  
24 you'll be free to go to the jury room and finally  
25 begin to talk about this case among yourselves and

## OPENING INSTRUCTIONS BY THE COURT

1 to discuss it and to reach a verdict.

2 I told you yesterday, and I remind you again  
3 today, that you're not allowed to talk about this  
4 case among yourselves at any time during the trial  
5 of this case, and it might seem somewhat  
6 counterproductive -- why can't we talk about it  
7 while it's still fresh in our minds? And quite  
8 frankly, that's a point that has some criticism by  
9 folks who look at our system.

10 But the reason that you can't talk about it  
11 as soon as you've heard it, and before you've  
12 heard it all, is because once you start to talk  
13 about it you're going to start to draw conclusions  
14 based on your discussions. It might well be that  
15 later in the trial you hear somebody tell you  
16 something that's decidedly different, just the  
17 opposite of what you've already heard. But you're  
18 not likely to receive that later testimony with an  
19 open mind if you already started to make up your  
20 mind based on what you've talked about earlier.  
21 And so that's the reason you can't talk among  
22 yourselves about this case until you've heard it  
23 all.

24 And for the same reason you can't talk with  
25 anybody else about it or let anybody talk with you

## OPENING INSTRUCTIONS BY THE COURT

1       about it or read anything that might be published  
2       or watch anything on the news about this. I doubt  
3       that there will be, but if there is, put that  
4       aside and look at it after your role as jurors in  
5       the trial of this case is over.

6               Now, ladies and gentlemen, I told you what  
7       the evidence would be -- testimony, as well as  
8       documents and items. What is not evidence, or  
9       what are not evidence, the opening statements are  
10      not evidence. And the closing statements are not  
11      evidence. And the questions that the lawyers ask  
12      are not evidence either.

13             The evidence, ladies and gentlemen, is the  
14      answers to those questions, because the answers  
15      come from somebody who's under oath, and whose  
16      testimony is being put to the test of strict proof  
17      by questions by lawyers from both sides. Somebody  
18      who purports to know something about what they're  
19      talking about. That's the evidence.

20             And the reason it's important that you  
21      understand the difference between what is and what  
22      is not evidence is this: When it comes to  
23      evidence, ladies and gentlemen, you are actually  
24      the judges. That's right. You judge the  
25      evidence.

## OPENING INSTRUCTIONS BY THE COURT

1           In other words, you're the judge of the  
2 facts. I'm the judge of the law, and I have the  
3 easy job. All I've got to do is to decide as a  
4 matter of law whether somebody can tell you  
5 something from this witness chair, or whether you  
6 can look at that item or that document or whatever  
7 it happens to be.

8           But once I tell you that you can hear it or  
9 look at it, from that point on, what you do with  
10 it is entirely up to you. You've got the right to  
11 believe it or not to believe it. You've got the  
12 obligation to assign weight to it if you think  
13 it's entitled to weight.

14          And you're entitled to do that, and you're  
15 equipped to do that. Because what we ask you to  
16 do as jurors, ladies and gentlemen, in that jury  
17 box is to use the same abilities that you have  
18 used everyday of your lives since you've been able  
19 to think on your own outside of that jury box.  
20 And raising a family and performing your job and  
21 getting about in life from day to day.

22          You're going to have to decide where the  
23 truth of the matter lies and what decision you  
24 should make based on that. And that's what we ask  
25 you to do in this trial as well. And you're

## OPENING INSTRUCTIONS BY THE COURT

1 equipped to do that by the abilities that each of  
2 you uniquely brings to your service as jurors in  
3 this case.

4 Now, ladies and gentlemen, a few moments ago,  
5 I told you that the defendant in this case didn't  
6 have to offer an opening statement or present  
7 evidence if he chose not to do so. Because you  
8 may remember yesterday, I told you that he's pled  
9 not guilty to the charges contained in these  
10 indictments and has asked for a jury trial at your  
11 hands. And, of course, that's what going to  
12 happen in just a few moments.

13 When someone pleads not guilty to charges in  
14 a criminal case, under the law that person is  
15 presumed to be not guilty. He is presumed to be  
16 innocent.

17 When someone is presumed to be innocent, that  
18 means that he does not have to prove his  
19 innocence. He doesn't have to take the stand and  
20 try to convince you that he did not do what he's  
21 charged with doing. He doesn't have to bring any  
22 other witness to sit in this chair and make you  
23 believe that he is not guilty of these charges.  
24 He is presumed in law to be not guilty of the  
25 charges.

## OPENING INSTRUCTIONS BY THE COURT

1           And so the burden of proof, not just in this  
2 case but in every case of this sort, rests upon  
3 the State of South Carolina, to prove to the  
4 satisfaction of every one of you that he is guilty  
5 of these charges beyond a reasonable doubt.

6           And when the trial of this case is over, and  
7 when I instruct you on the law, I will give you a  
8 more complete description and definition of what  
9 we mean by proof beyond a reasonable doubt.

10          But for our purposes right now, proof beyond  
11 a reasonable doubt is proof that leaves you firmly  
12 convinced of the defendant's guilt. And so after  
13 you've heard all of the evidence and testimony, if  
14 you're firmly convinced the defendant is guilty of  
15 the charges, the State will have met its burden  
16 and would be entitled to a verdict of guilty.

17          But after you've heard all of the evidence  
18 and testimony, if you think there's a real  
19 possibility that he is not guilty, the State has  
20 not met its burden, and in that case the defendant  
21 would be entitled to a verdict of not guilty.

22          So you're going to be listening. You're  
23 going to be listening to the witnesses, to the  
24 lawyers, and to me, and then you're going to go  
25 back into that jury room after all is said and

## OPENING INSTRUCTIONS BY THE COURT

1       done and start talking about this case among  
2       yourselves. And in those discussions you're going  
3       to reach a conclusion as to whether or not the  
4       State has met its burden of proof. And you will  
5       express that conclusion by writing a verdict that  
6       says we find the defendant guilty, or we find the  
7       defendant not guilty, according to your view of  
8       the evidence.

9               One final note, some of you asked if you can  
10       take notes. And the answer to that is yes, you  
11       can take notes. But it's real important that you  
12       know what you're doing when you do. We had an  
13       evidentiary matter of law this morning outside of  
14       your presence that dealt with note taking and  
15       things of that nature. And one of the problems  
16       with taking notes is this: It's important when  
17       you take notes that you write down what the  
18       witness says, not what you hear. And that's not  
19       always the same thing. Because we have a tendency  
20       when somebody tells us something to put our  
21       impression on what they say, to reach our  
22       conclusions and write down our summary of what  
23       they say.

24              Unless you're a court reporter, like  
25       Ms. Manley, who writes down every word, you want

## OPENING INSTRUCTIONS BY THE COURT

1       to take a shorthand. You've been doing it all  
2       your life, learned to do it in school, do it on  
3       your job -- I do it up here on the bench. I write  
4       down those things.

5               You know, for example, you could have a case  
6       where somebody says -- the defendant says, I was  
7       driving 65 miles an hour. And so you write down,  
8       the defendant says he was speeding. He didn't say  
9       that. But that's a conclusion that you drew. And  
10      that's a simplistic example of a trap that I don't  
11      want you to fall into. Take notes, therefore, as  
12      an aid to your memory. They do not supplant your  
13      memory. They're an aid to your memory.

14             You'll leave them in the jury room every  
15      night, and you won't take them home with you. And  
16      in your final discussions, when you're  
17      deliberating this, if -- if the collective memory  
18      of this jury says one thing and your notes say  
19      something else, it's the collective memory of the  
20      jury that controls, not those notes. Okay?

21             So with that admonition in mind, you're  
22      allowed to take notes. Thank you.

23             All right. I appreciate your attention to  
24      these remarks, ladies and gentlemen. Please, now,  
25      give that same attention to the lawyers as they



## OPENING INSTRUCTIONS BY THE COURT

1 make their opening statements.

2 Ms. Lempesis?

3 OPENING STATEMENT BY THE STATE

4 MS. LEMPESIS: Thank you, Your Honor. May it  
5 please the Court.

6 On October 20th of 2013, Austin McQuarters,  
7 the defendant in this case, robbed and beat  
8 John Snodgrass, the victim. Mr. Snodgrass is the  
9 manager of the Northridge Cinemas movie theater on  
10 Hilton Head Island, here in Beaufort County.

11 Mr. Snodgrass was working that night,  
12 October 20th -- it was a Sunday night -- he was  
13 working that night. He was the manager on duty,  
14 and he did as he had done many nights, he left the  
15 building around 11 o'clock. He was one of the  
16 last employees to leave. He left the building  
17 carrying his bank bag with all the money from the  
18 night in it, about \$4,000.

19 He left the building carrying that bank bag  
20 and some other papers and other items. He walked  
21 to his car, which was parked in the front parking  
22 lot of the movie theater, in the place where he  
23 usually parks. All of that was typical.

24 What was not typical on this night was that  
25 on this night Austin McQuarters was waiting for

## OPENING STATEMENT OF THE STATE

1       him. Austin McQuarters was waiting to rob him.  
2       He knew that John Snodgrass was going to be the  
3       person who had the money. He knew because he had  
4       a friend named Colton who worked in the movie  
5       theater who told him as much. So he was looking  
6       for John Snodgrass.

7               Austin was standing in the parking lot with a  
8       friend named Jacklyn Perez, this friend who had  
9       drove him to the movie theater that night. He was  
10      standing by her car, and when John walked past  
11      them he sees Austin McQuarters pop up from out of  
12      nowhere. He didn't -- he didn't see him before  
13      that.

14             Mr. Snodgrass sees this man. He's a very  
15      tall, large, African American man pop up from out  
16      of nowhere. And Mr. Snodgrass immediately thinks  
17      -- thinks about his surroundings. There's really  
18      no one else around. He's a little bit worried.

19             The man asked him first about the movie  
20      times, whether or not there was still a movie  
21      playing, something along those lines. He asked  
22      him also if he could borrow his cell phone, and  
23      then finally asked him what time it was.

24             And John answers. And he looks to his watch  
25      to tell him what time it is. And it's at that

## OPENING STATEMENT OF THE STATE

1 point that John sees Mr. McQuarters, the  
2 defendant, swing his arm back and come to hit him.  
3 And he knows he's about to be hit.

4 So John turns his head and -- and tries to  
5 block it. And the first blow comes to the back of  
6 his head, and it knocks him to the ground. And  
7 then the next blow comes from up under, and he  
8 gets hit in the side of his face. And John is  
9 going to tell you about those hits. He's going to  
10 tell you how they felt.

11 He'll tell you about the feel of something  
12 hard, something -- something other than a fist  
13 hitting his skin. He's going to tell you that.  
14 He's going to describe that attack for you.

15 John was knocked out. He fell forward and  
16 landed on the ground and he stayed there until he  
17 came to. When he came to he realized that his  
18 attacker was gone and his moneybag was gone, too.  
19 All that money from the night was gone.

20 He stood up and collected the items that he  
21 had dropped, some papers, and he put those papers  
22 in his truck, and then he went and called the  
23 police. The police respond, they look for the  
24 suspect that night. Unfortunately no one is -- no  
25 one is caught that night.

## OPENING STATEMENT OF THE STATE

1           It's not until about two and a half weeks  
2           later that Austin McQuarters is arrested. And  
3           he's arrested, he's taken to the Beaufort County  
4           Sheriff's Office to be interviewed by Investigator  
5           Doug Seifert. And Austin doesn't deny being at  
6           the movie theater, he says, I was there. I went  
7           with this lady friend I met, and I was there at  
8           the movie theater. He just denies beating and  
9           robbing John Snodgrass.

10           But what you're going to hear in this trial,  
11           and what the State will prove to you is that  
12           Mr. McQuarters is, in fact, the man who did this.  
13           He's the only person who did this.

14           I mentioned Jacklyn Perez and Colton, the  
15           friend, who worked at the theater. You're going  
16           to hear from both of them today. You're going to  
17           hear from Jacklyn Perez, whose nickname is  
18           Brooklyn, and she was there. She saw  
19           Austin McQuarters rob and beat John Snodgrass.

20           She's going to testify today, and you're  
21           going to hear exactly in her words how it  
22           happened.

23           You're also going to hear from  
24           Colton Delaplane. He'll tell you all the  
25           information he gave to Austin, which aided in him

## OPENING STATEMENT OF THE STATE

1       robbing Mr. Snodgrass.

2               You're also going to hear about -- Colton's  
3       going to tell you about how Austin himself told  
4       Colton that he used brass knuckles when he robbed  
5       John Snodgrass and beat him. You're going to hear  
6       about those brass knuckles.

7               You're also going to hear from the officers,  
8       the initial officers who responded to the scene.  
9       You're also going to hear from Investigator  
10      Seifert to investigate a case for the sheriff's  
11      office.

12              You're finally going to hear from the doctor,  
13      Dr. Patrick Snowman, who is an emergency medicine  
14      physician at Hilton Head Hospital, and he's going  
15      to tell you about the extent of Mr. Snodgrass's  
16      injuries.

17              There are many players in this case. You're  
18      going to hear from a lot of people. The only  
19      person that we are going to hear today about is  
20      Austin McQuarters. This is his day in court, and  
21      I just want you to remember that.

22              Now, the Judge has talked to you some already  
23      about the burden that the State bears. And I  
24      imagine that Mr. Bax, when he addresses you, he  
25      might mention this burden because it is a great

## OPENING STATEMENT OF THE STATE

1       one. It is a great burden that the State bears.  
2       The burden to prove to you all beyond a reasonable  
3       doubt that Austin McQuarters is guilty of this  
4       crime. And I want you to know that it's not a  
5       burden that I take lightly.

6               You are going to hear evidence and see  
7       evidence in this case today, and at the end of the  
8       trial, I'm confident that you will find that I  
9       have met my burden, and you will find  
10      Mr. McQuarters guilty. Thank you.

11             THE COURT: Thank you, Ms. Lempesis.

12             Mr. Bax?

## 13             OPENING STATEMENT BY THE DEFENSE

14             MR. BAX: Thank you, Your Honor.

15             Good morning, ladies and gentlemen. I was  
16       introduced by His Honor earlier. Let me do it  
17       again. My name is Arie Bax. I'm an attorney here  
18       in Beaufort. I work with the Public Defender's  
19       Office now. I've been in private practice here in  
20       Beaufort. I've been doing this a while.

21             I've spoken to many, many juries just like  
22       yourself, but every time I stand up in front of a  
23       new jury, it impresses upon me the same importance  
24       that I'm going to try to impress upon you now and  
25       throughout the trial. And I hope that -- and I

## OPENING STATEMENT BY THE DEFENSE

1       feel that -- you will see this importance and be  
2       impressed by it.

3               As you saw, we went through somewhat of an  
4       elaborate jury selection process to get the 12 of  
5       you and the two alternates who may end up becoming  
6       part of the 12, depending on the circumstances.

7               There's obviously a reason for that. Through  
8       that process both sides have decided that you are  
9       the 12 that can best decide this case, that you  
10      have the tools that are needed to decide the case.

11              Now, I want to talk to you a little bit about  
12      a couple of points before we get started with this  
13      trial. First of all, you heard from the  
14      prosecution, that's the first thing outside of  
15      what the Judge instructed you that you've heard in  
16      this trial. And what you heard from the  
17      prosecutor was a story. They told you a story  
18      about what they allege happened that night.

19              I want you all to realize and hope that you  
20      realize, and I think you'll see during the course  
21      of this trial -- and especially at the end, when  
22      you hear the Judge's charge fully fleshed out --  
23      that you're not here for story time. This is not  
24      supposed to be story time.

25              The reason is, stories are for entertainment.

## OPENING STATEMENT BY THE DEFENSE

1       And what entertains us? Things that have some  
2       kind of emotional response. Not all stories are  
3       happy, are they? There are scary stories, there  
4       are sad stories. It's the same thing. We do it  
5       all the time, whether it's someone telling a story  
6       on a front porch, whether it's a film that's taken  
7       a billion dollars to make that they put on the  
8       screen for you that you paid, God knows, \$20 these  
9       days to go see. It's still a story, told in  
10      different ways.

11             But what we're here for today is not for  
12      entertainment. It is not a movie, a story. And  
13      it is not there for emotional response.

14             When you apply emotional response to justice,  
15      you get mob justice. When someone goes to the  
16      town center and says, I have just been wronged,  
17      and the crowd reacts, they grab their pitchforks  
18      and they run off and they take out whoever it is  
19      that they feel needs to be revenged because of  
20      that first story. Why don't we use that system of  
21      justice? Why did the Constitution get written by  
22      our founders to specifically prohibit that kind of  
23      justice?

24             Because an emotional reaction to one side of  
25      the story doesn't equal justice. There are always



## OPENING STATEMENT BY THE DEFENSE

1 two sides to every story. We, unfortunately,  
2 cannot go back in time. We can't take the Judge  
3 or the lawyers or law enforcement, or even  
4 yourselves, and put them in a bubble and take you  
5 back to October of that year, in that parking lot,  
6 and watch what happened. If we could, we wouldn't  
7 need a jury system. We'd just go videotape it and  
8 then it would be what it would be, wouldn't it?

9 We can't do that. So what is the best  
10 alternative? To take 12 people from the  
11 community, who have lived in the same community,  
12 had the same experiences, shopped at the same  
13 stores, bought the same cars from the same lots,  
14 gone to the same restaurants, paid the same taxes,  
15 gone to the same schools, to come in and use the  
16 common sense that you use every day to make a  
17 determination about what is the truth.

18 It is important. The reason why it's  
19 important, and I want to talk to you about this,  
20 the jury trial system was put in place as a buffer  
21 against the government. Why do you think that we  
22 fought wars about this? We fought wars because  
23 when this country was founded, what was the most  
24 dangerous thing that those people had dealt with?  
25 It wasn't a single person, it was a government.

## OPENING STATEMENT BY THE DEFENSE

1           They feared the power of the government  
2           getting too large, and it is ever so important,  
3           even with the single person.

4           Ms. Lempesis said it is Mr. McQuarters's day  
5           in court. And, yes, it is. But you're here to  
6           protect not only Mr. McQuarters's right to have  
7           his day in court, but everybody's right to have  
8           their day in court and to make sure that the  
9           government has to prove beyond a reasonable doubt  
10          to all 12 of you every element of the charge.  
11          Because without that, this country stands for the  
12          proposition that you cannot take away someone's  
13          freedom, or worse, without it, because it's that  
14          important. And that's exactly what any of us  
15          would want if we ever were in that situation, as  
16          well.

17          Now, you've heard from Ms. Lempesis about  
18          what you're going to hear in this case. Well,  
19          that's the best case scenario from their  
20          standpoint of what you're going to hear. But when  
21          you look at it with a critical eye, when you look  
22          at these witnesses, just like the Judge said,  
23          you're going to be the Judge of the facts. That  
24          means you're the Judge of the credibility of the  
25          witnesses.

## OPENING STATEMENT BY THE DEFENSE

1           And that takes that common sense that I  
2           talked about -- it's not just what they say, it's  
3           what they don't say. It's not just what they say,  
4           it's how they say it. All of you do this every  
5           time in your life everyday. Every time that you  
6           go to the store and you talk to a clerk about what  
7           you want to buy, you judge whether that person is  
8           giving you the full story or not.

9           Every time you talk to somebody and you ask a  
10          question and they dodge that question, you make a  
11          judgment -- sometimes conscious, sometimes  
12          unconscious, but you'll take a note in your head,  
13          and you'll be like, you know what, they didn't  
14          answer my question. Maybe they don't want to.

15          I liken it a lot of times to my kids. I'm a  
16          father, I've got two young children, five-year-old  
17          boy and a nine-year-old girl. She's about to be  
18          ten, acts like she's 17. But I -- you know, I  
19          love my kids with all my heart, and I don't know  
20          -- I know some of you probably have kids. We  
21          don't necessarily always get that much information  
22          and that's fine. And I'm sure some of you have  
23          siblings. Everybody grew up somehow, right?

24          But you all know that even though you love  
25          somebody, especially a young child, you don't

## OPENING STATEMENT BY THE DEFENSE

1 believe them necessarily. You hear a crash from  
2 your son or your daughter's room, and you holler  
3 out, What happened? And you hear that little  
4 voice coming from the room, Nothing. Now, do you  
5 believe nothing happened? No. You go and you  
6 talk to them.

7 And if they're wiggling around and they don't  
8 want to look you in the eye, and they want to try  
9 to dodge your question, you know that they're  
10 trying to avoid telling you something. It's the  
11 same thing here. You're going to use those same  
12 skills with the witnesses on the stand.

13 You are going to find, as you listen to the  
14 testimony in this case that, yes, they went and  
15 arrested my client, and, yes, he has denied it.  
16 But you're also going to hear that the only direct  
17 evidence that they have to present to you that it  
18 was my client that did this comes from the only  
19 two people who have admitted being involved with  
20 the robbery. That's it.

21 You are not going to get any physical  
22 evidence. You are not going to get any  
23 eyewitnesses other than the people who have  
24 already confessed to having done this. Those are  
25 the only people that you are going to hear direct

## OPENING STATEMENT BY THE DEFENSE

1 evidence of my client's involvement with this.

2 So you are going to have to ask yourself  
3 under your oath, what is their motive for getting  
4 up here on the stand and trying to put all this on  
5 the man sitting at the table over there?

6 I liken this case in my mind, I was thinking  
7 about it last night and today, it's really kind of  
8 like a house of cards. You know nowadays we've  
9 got wonderful things like Internet and YouTube and  
10 so you can go on and you can see these fantastic  
11 things where people have built giant houses of  
12 cards, right? It's crazy.

13 But we all know that a house of cards is  
14 weak. It's flimsy. A puff of breath, a high  
15 wind, an accidental nudge, what happens? The  
16 whole thing comes down.

17 Now, think about this: When you put together  
18 a house of cards, and after you've kind of put it  
19 up, what happens when you decide to go in and take  
20 one of those cards and flip its face? When a card  
21 you go and put in there needs to be flipped around  
22 while it's in the house, the house comes tumbling  
23 down.

24 Once you've put the card in one way, you  
25 can't go in and flip it around. The house comes

## OPENING STATEMENT BY THE DEFENSE

1           apart.

2           What you're going to see here today in this  
3           trial is the fact that there's a prior proceeding  
4           in this case, and it didn't work out. And now  
5           they're going to put the cards back in the house,  
6           but they're going to flip them, and they're going  
7           to expect you not to see that the house comes  
8           down.

9           Thank you.

10          THE COURT: Thank you, Mr. Bax.

11          Ms. Lempesis, call your first witness.

12          MS. LEMPESIS: Your Honor, may I approach  
13          Mr. Bax for a moment?

14          THE COURT: Okay.

15                       (Discussion off the record.)

16          THE COURT: Folks, sometimes we step over  
17          there and rudely whisper behind your back. And I  
18          apologize. We do that to keep from having to send  
19          you out of the courtroom and take a lot of time.

20               And if you're curious about what we whisper  
21          about, I always tell jurors when the trial is  
22          over, if y'all come back to me and ask what were  
23          y'all whispering about over there, and if I can  
24          remember what we were whispering about, I'll be  
25          glad to tell you. Thank you.

## OPENING STATEMENT BY THE DEFENSE

1 MS. LEMPESIS: Your Honor, the State calls  
2 Sergeant Rhett Parnell.

3 THE COURT: Sergeant Parnell. Come forward,  
4 please, and be sworn.

5 Thereupon,

6 RHETT PARNELL  
7 was called as a witness, having been first duly sworn,  
8 was examined and testified as follows:

9 THE CLERK: You may be seated. Please state  
10 and spell your name for the Court's record.

11 WITNESS: My name is Sergeant Rhett Parnell.  
12 It's R-H-E-T-T, P-A-R-N-E-L-L.

13 DIRECT EXAMINATION

14 BY MS. LEMPESIS:

15 Q Good morning, Sergeant Parnell. Who do you  
16 work for?

17 A I work for the Beaufort County Sheriff's  
18 Office.

19 Q And how many years have you worked for the  
20 Beaufort County Sheriff's Office?

21 A I've been here for 14 years.

22 Q And what is your current position?

23 A Right now, I'm a sergeant on the road patrol,  
24 like a supervisor.

25 Q Okay. And were you working in October of

## TESTIMONY OF RHETT PARNELL

1 2013, specifically, October 20th of 2013?

2 A Yes, ma'am, I was.

3 Q And were you a -- were you a sergeant at that  
4 point?

5 A No, ma'am. I was a corporal at that point.

6 Q Okay. What did your duties include as a  
7 corporal?

8 A Just general law enforcement, road patrol. I  
9 was a first responder, responded to both calls for  
10 service and then, you know, traffic enforcement and  
11 things like that.

12 Q Okay. And I asked you already if you were  
13 working on October 20th, 2013. Were you working --  
14 what shift were you working?

15 A It was the night shift, which is 7:00 p.m. to  
16 7:00 a.m.

17 Q And do you recall receiving a call out that  
18 night to Northridge Cinemas?

19 A Yes, ma'am, I do.

20 Q Can you tell me where Northridge Cinemas is?

21 A Yes, ma'am. The physical address is 435  
22 William Hilton Parkway, but it's the movie theater on  
23 Hilton Head Island, in South Carolina.

24 Q Okay. And is that -- what county is that in?

25 A That's in Beaufort County.



## TESTIMONY OF RHETT PARNELL

1           Q     Thank you.  When you received that call, did  
2     you report out to that location?

3           A     Yes, ma'am, I did.

4           Q     Who else reported with you, if anyone?

5           A     Another deputy, a Corporal Brian Michael  
6     responded, as well.

7           Q     And do you recall about what time you  
8     arrived?

9           A     It was probably 10:30, 10:45, something like  
10    that, p.m.

11          Q     Okay.  When you arrived on scene, Sergeant,  
12    do you recall what the scene was like?  Can you  
13    describe it for the jury?

14          A     Sure.  It was a -- it's a parking lot for a  
15    movie theater, and it was pretty empty.  The -- when we  
16    got there, the victim, Mr. Snodgrass, was sitting on  
17    a -- like a planter box, like right in front of the  
18    entrance to the movie theater.  And there was nobody  
19    else around.  The parking lot was empty and there was  
20    probably maybe two or three cars there.

21          Q     Okay.  Can you describe the lighting in that  
22    parking lot?

23          A     It's very -- it's very dark.  There's some  
24    ambient lighting coming from the building itself, but  
25    the actual parking lot only has maybe two or three

## TESTIMONY OF RHETT PARNELL

1 light poles and, you know, spaced sporadically  
2 throughout the parking lot.

3 Q You got there, you saw the victim. What was  
4 Mr. Snodgrass's demeanor?

5 A Well, it -- I mean, his demeanor was in  
6 shock. He was -- he had, you know, obviously been  
7 beaten up pretty bad. I mean, his face was swelling  
8 and there was blood, and he had been punched about his  
9 face. He was conscious and alert when we got there, so  
10 he was able to tell us, you know, somewhat of what  
11 happened.

12 Q Okay. And did you at that time get any sort  
13 of description of the suspect you might be looking for?

14 A We did. We got a vague description of the  
15 suspect, so we were able to broadcast it on the radio.

16 Q Okay. And did you make any other calls out  
17 that evening?

18 A We notified the supervisor at the time of the  
19 situation we had. And then we notified EMS as well.

20 Q Did EMS come to the scene?

21 A They did, yes, ma'am.

22 Q Okay. Did you search the area that night,  
23 Sergeant Parnell, for a suspect?

24 A We did. We searched the area for both  
25 suspect and evidence, anything that we could find.

## TESTIMONY OF RHETT PARNELL

1 Q And did you find anything?

2 A No. The only thing that we found were the  
3 victim's glasses. We didn't find anything else.

4 Q Okay. You mentioned that the victim was  
5 bleeding, did you find any -- any blood evidence  
6 anywhere on that -- at that scene?

7 A We did, yeah. There was -- there was blood,  
8 like gravitational drops, which is just drops that drop  
9 straight down on the ground, on the pave -- on the  
10 parking lot, on the pavement, and then we found blood  
11 on Mr. Snodgrass's pickup truck as well.

12 Q Did you take pictures of any of this, do you  
13 know?

14 A No, I don't believe that pictures of the  
15 parking lot were taken. We took pictures of the  
16 victim.

17 Q And you didn't collect any physical evidence  
18 that night?

19 A No, ma'am. There was no evidence to collect.

20 Q Do you recall if there were -- if y'all  
21 checked for any sort of video recordings?

22 A We did. The building was not equipped with  
23 outside video surveillance at the time.

24 Q Okay. Did you -- were you able to ascertain  
25 from the victim how the suspect left, whether --

## TESTIMONY OF RHETT PARNELL

1           A     You know, we -- he was able to describe some  
2     sort of vehicle that he left in.  It wasn't a very good  
3     description of the vehicle, but it was a small sedan, I  
4     believe.

5           Q     Did you do anything else that night,  
6     Sergeant Parnell, either yourself or with the other  
7     deputies there?  Any other actions taken that evening?

8           A     No, ma'am, not really.  I mean, a report was  
9     obviously completed, and then once Mr. Snodgrass was  
10    taken to the ambulance we kind of looked around the  
11    parking lot, trying to find maybe the bank bag or  
12    something like that, but never found anything.

13          Q     Okay.  All right.  Thank you.

14                     And Sergeant Parnell, have you had any  
15    further involvement with this case at all?

16          A     No, ma'am.

17                     MS. LEMPESIS:  No further questions for you  
18    at this time.

19                     THE COURT:  Thank you.  Mr. Bax, cross  
20    examine?

21                     MR. BAX:  Thank you, Your Honor.

22                                 CROSS EXAMINATION

23    BY MR. BAX:

24          Q     Good morning, Sergeant.

25          A     Good morning, sir.

## TESTIMONY OF RHETT PARNELL

1           Q     A couple of questions for you. You indicated  
2     that Officer Brian Michael was present during this  
3     response, as well, correct?

4           A     Yes, sir.

5           Q     Okay. Do you recall which one of you arrived  
6     first?

7           A     I believe we arrived at the same time. We  
8     were coming from the same spot. He may have beat me by  
9     a second to the parking lot, but we both got out at the  
10    same time.

11          Q     All right. So, score one to Brian, he got  
12    there a second before you, huh?

13          A     Yes, sir.

14          Q     Now, you testified that Mr. Snodgrass was  
15    sitting outside of the theater on a planter.

16          A     Best of my recollection, yes, sir.

17          Q     Do you recall if Mr. Michael, or Officer  
18    Michael, got up there to talk to him first, or did you?  
19    Do you recall how that worked, or did you guys walk up  
20    there together?

21          A     We walked up together.

22          Q     Okay. So, you don't recall Mr. Snodgrass  
23    being inside the theater and unlocking the door and  
24    coming out to talk to y'all?

25          A     No, sir, I don't recall that.

## TESTIMONY OF RHETT PARNELL

1           Q     Okay. And you've indicated also that you  
2 guys looked around. You did find Mr. Snodgrass's  
3 glasses, correct?

4           A     I did, yes, sir.

5           Q     And were those in the parking lot?

6           A     They were, yes, sir. Next to a curb.

7           Q     Okay. Did you find any blood in the area  
8 where the glasses were?

9           A     I did. There were drops, you know, right  
10 where the glasses were, yeah. Not a large pool, but a  
11 few drops.

12          Q     Okay. All right. And you testified that  
13 y'all didn't take any pictures of those droplets; is  
14 that correct?

15          A     That's correct.

16          Q     And did you -- either you or Officer Michael  
17 or anyone else, take swabs of those bloods to be  
18 submitted for testing?

19          A     No, sir.

20          Q     And you indicated that you found blood around  
21 Mr. Snodgrass's truck; is that right?

22          A     Yes, sir.

23          Q     Did you take any picture of that?

24          A     No, I didn't take pictures of it.

25          Q     Now, you've never testified in any kind of

## TESTIMONY OF RHETT PARNELL

1 anything, you know, related to this case, have you?

2 A No, sir. Not in this case, no.

3 Q Okay. So, today would be the first time you  
4 talked to anybody about it in this setting?

5 A Yes, sir.

6 Q Okay. So, if I were to tell that you  
7 Officer Michaels testified and said that he didn't ever  
8 see any blood or collect anything, would you disagree  
9 with that?

10 A I don't know. I wasn't here for his  
11 testimony. I can testify to what I saw.

12 Q So you don't have any knowledge or any -- you  
13 can't tell us why Officer Michael would have testified  
14 that there was no blood found?

15 A No, sir.

16 MR. BAX: A moment's indulgence, Your Honor?

17 THE COURT: All right.

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

19 Thank you.

20 THE COURT: Thanks.

21 Redirect, Ms. Lempesis?

22 MS. LEMPESIS: No redirect, Your Honor.

23 THE COURT: Thank you, Sergeant Parnell. You  
24 may step down. Thank you.

25 THE WITNESS: All right.

## TESTIMONY OF RHETT PARNELL

1 MS. LEMPESIS: Your Honor, may  
2 Sergeant Parnell be excused?

3 THE COURT: Without objection?

4 MR. BAX: No objection.

5 THE COURT: Sergeant Parnell, you may be  
6 excused to go back to work. Thank you.

7 THE WITNESS: All right. Thank you, sir.

8 MS. LEMPESIS: Your Honor, the State calls  
9 John Snodgrass.

10 THE COURT: Mr. Snodgrass, come forward,  
11 please, be sworn.

12 Thereupon,

13 JOHN SNODGRASS  
14 was called as a witness, having been first duly sworn,  
15 was examined and testified as follows:

16 THE CLERK: You may be seated. Please state  
17 and spell your name for the Court's record.

18 WITNESS: John, J-O-H-N. David, D-A-V-I-D.  
19 Snodgrass, S-N-O-D-G-R-A-S-S.

20 DIRECT EXAMINATION

21 BY MS. LEMPESIS:

22 Q Good morning, Mr. Snodgrass.

23 A Good morning.

24 Q Mr. Snodgrass, let's start with just some  
25 background information. Where do you live?



## TESTIMONY OF JOHN SNODGRASS

1           A     Indigo Run, Hilton Head Plantation.

2           Q     And where do you work?

3           A     Northridge Cinemas on Hilton Head Island.

4           Q     And how long have you worked at Northridge  
5 Cinemas?

6           A     Nine, ten years.

7           Q     What is your position there?

8           A     General manager.

9           Q     And can you tell the jury about some of your  
10 duties that you're involved with as being the general  
11 manager?

12          A     I'm responsible for day-to-day operations,  
13 employees, hiring, firing, exhibition of films,  
14 programming -- literally anything and everything to do  
15 with running the facility.

16          Q     And do you make the deposits from -- with  
17 money?

18          A     On the nights that I work, yes.

19          Q     Okay. And we're going to go back to  
20 October of 2013. Were you working, Mr. Snodgrass, on  
21 the night of October 20th?

22          A     Yes, I was.

23          Q     And what shift were you working?

24          A     I was working the night shift.

25          Q     What time does the night shift start and end?

## TESTIMONY OF JOHN SNODGRASS

1           A     It varies. That particular night, I arrived  
2 around 4:00 and left between 10:30 and 11:00.

3           Q     What -- when you were going to leave work,  
4 how many employees were still at the theater?

5           A     There's one employee left when I leave.

6           Q     Okay. And what does that employee do?

7           A     That employee ensures that all the films that  
8 are running are running correctly, assists any  
9 customers who have any questions or issues. At the end  
10 of the night they make sure that the facility is empty,  
11 doors are locked, fire exits are barred, the alarm is  
12 set. And then they leave.

13          Q     And so on this night, when you go to leave  
14 the theater, then there's just that one employee still  
15 there?

16          A     Somewhere in the building, yes.

17          Q     Had you let all of your other employees leave  
18 before that?

19          A     Yes. The staff that works at night performs  
20 some clean up and restocking duties, and once that's  
21 completed and checked by the manager they're allowed to  
22 leave.

23          Q     Okay. So, tell me about when you go to leave  
24 the theater, how do you exit the theater?

25          A     Well, at that time I would make a trip to the

## TESTIMONY OF JOHN SNODGRASS

1 box office, which has the best view of the parking lot,  
2 and see if anything looks out of place -- cars with  
3 lights on, people milling around, something that  
4 shouldn't be occurring since all of the movies are  
5 running. We're not exiting people out of the building,  
6 we're bringing in new customers.

7           If everything looks okay, I would then  
8 walk through the lobby to one of the self-closing exit  
9 doors and exit the building and walk around.

10       Q     And when you exited the building, what were  
11 you carrying with you?

12       A     That particular night I had a gray plastic  
13 deposit bank bag, a padded mail envelope with some  
14 Christmas decorations that was going to be dropped off  
15 at the post office, my car keys in one hand, and some  
16 loose papers.

17       Q     Okay. When you go to exit and then you're  
18 walking into the -- walking in the parking lot, were  
19 you parked far away from the entrance? Where were you  
20 parked?

21       A     I was parked in the -- as you're facing the  
22 parking lot from the theater, it would be the second  
23 drive aisle. And if I remember right, four spaces on  
24 the right-hand side. Far is relative, it's probably  
25 50 yards from the entry.

## TESTIMONY OF JOHN SNODGRASS

1           Q     Okay. As you are walking to your parking  
2 spot to get to your car, what did you see?

3           A     Initially, when I walked out, all I saw were  
4 some vehicles. The same thing I had seen from my look  
5 in the box office. As I got closer to my vehicle, I  
6 noticed a small older Toyota parked -- backed into a  
7 space on the left-hand side, which is normally where  
8 the managers park when we're the first to arrive in the  
9 day. But when we arrive later, we have to take  
10 whatever space is available.

11          Q     How many cars were there in the parking lot,  
12 if you remember?

13          A     Honestly do not remember. It would have been  
14 commensurate with the number of people in the theater  
15 at that time, but not a great number.

16          Q     Okay. It was a Sunday night so --

17          A     Sunday night, last show, maybe ten or 15,  
18 total, spread throughout the lot.

19          Q     Okay. So, go back to the car that you saw  
20 then backed into a spot. Tell me what happened after  
21 that.

22          A     Well, as I approached the vehicle, which  
23 would have been on my left as I walked toward my truck,  
24 I noticed that there was a female in the driver's seat.  
25 And just as I noticed that, someone who was outside the

## TESTIMONY OF JOHN SNODGRASS

1 vehicle crouched down next to the driver's door stood  
2 up.

3 Q Okay. And do you recall what that person  
4 looked like?

5 A It was an African American male, maybe 6 feet  
6 tall, very broad shouldered, stocky.

7 Q Okay. And what did that man do?

8 A He walked toward me, as if he had some sort  
9 of question.

10 Q Okay. And did he speak to you?

11 A He did. He initially asked me what time the  
12 movies got out.

13 Q Did you answer him?

14 A I tried to answer as best I could. Movies  
15 start and end at different times, so without knowing  
16 what movie he was interested in, it was hard to give an  
17 answer.

18 He then asked if he could borrow my cell  
19 phone to call someone inside the building, and I  
20 advised him that my cell phone battery life had sucked  
21 dead out of the building and the phone was no good.

22 Q What were you thinking as he was speaking to  
23 you?

24 A Well, my initial reaction when he popped up  
25 out from beside the car is, this is not good. There's

## TESTIMONY OF JOHN SNODGRASS

1 no reason for anybody to be hiding or out of sight in  
2 the parking lot unless there's some ulterior motive.

3 I thought about setting off my car  
4 alarm, but realizing that I had no place to retreat to,  
5 my thought was quickly, well, that's just going to  
6 anger somebody. And I didn't want to do that, so I  
7 assumed that everything would be okay, and he was just  
8 going to be asking some questions.

9 Q After he asked about your cell phone, what  
10 was the next -- did he ask you anything else?

11 A He did not ask to borrow or see anything, he  
12 did ask me what time it was.

13 Q Okay. And did you answer him?

14 A I started to look down at my watch, and as I  
15 raised my hand, which had the bags in it, in my left  
16 hand, and turned my arm to look at the watch, my gaze  
17 is down at the watch, I see him step back with his  
18 right foot and reach behind him like he's trying to  
19 retrieve something from either a pocket or waistband,  
20 then reaches behind him with his right arm.

21 Q What happens next, Mr. Snodgrass?

22 A At that point, my instincts kicked in, I  
23 thought, I'm going to get hit with something. And I  
24 immediately, threw my right hand up and turned to my  
25 left. And as I was fearing, I was struck behind the

## TESTIMONY OF JOHN SNODGRASS

1 right ear.

2 Q What happened after you were hit that first  
3 time?

4 A I was stunned. I spun around at least  
5 180 degrees, facing a different direction. I was  
6 knocked to the ground and literally dazed. I couldn't  
7 really see, my head is down looking at the ground.

8 Q And once you're down on the ground, what  
9 happened next?

10 A As I'm kind of trying to shake the cobwebs  
11 out of my head, out of the corner of my left eye, I see  
12 this individual that I'd been speaking with almost  
13 stomp the ground. And then I see a big upper cut with  
14 his right-hand, and it catches me on the left side of  
15 my face.

16 Q Okay. Do you remember anything after that?

17 A The next thing I remember is waking up on the  
18 ground.

19 MS. LEMPESIS: Your Honor, permission for the  
20 witness to step down from the witness stand?

21 THE COURT: That's fine.

22 MS. LEMPESIS: Mr. Snodgrass --

23 THE COURT: Mr. Snodgrass, you can step down.

24 If you're going to be giving any testimony down  
25 there, I want you to face the direction of the

## TESTIMONY OF JOHN SNODGRASS

1 court reporter, please. Don't turn your back to  
2 the court reporter.

3 THE WITNESS: Okay.

4 THE COURT: Thank you.

5 BY MS. LEMPESIS:

6 Q We need to make sure that the court reporter  
7 can still hear you.

8 Mr. Snodgrass, I want you to -- you can  
9 come closer over here -- you've described for us the  
10 attack. I want you to now show me, to the best that  
11 you can, I would like for you to show exactly how this  
12 happened. It's hard to picture it as you're just  
13 talking about it up in the stand.

14 So you testified first that when you  
15 went to look at your watch. Start back from there.

16 A Okay. At this point, we're facing about this  
17 distance.

18 Q Am I about the distance?

19 A You're farther away. You need to get a  
20 little bit closer. There we go. That's about right.

21 Q Okay.

22 A I've got car keys in my right hand, the bags  
23 and papers in my left. I reach up and look at this.

24 Now --

25 Q Now, was the suspect standing right in front



## TESTIMONY OF JOHN SNODGRASS

1 of you, or was he off to the side or --

2 A He was right in front of me at this point.

3 At this point, when I turned my wrist to look at the

4 watch, take a step back with your right foot, reach

5 behind you with your right hand. Okay?

6 As I see that movement, I then drop my

7 hand and turn like this.

8 Q Okay. So, you were preparing for what you

9 thought --

10 A I thought I was going to be struck, so I was

11 instinctively trying to protect my head. And as I

12 turned and lost site of the individual, is when I felt

13 the first blow.

14 Q Okay. So, you're in that downward position

15 when you felt the first blow?

16 A Well, at this point, okay, hard to turn left

17 and talk right.

18 Q That's fine. Just talk as loudly as you can.

19 A Well, that's not a problem.

20 I get hit and I go down on my right

21 knee. And I'm like this on the ground.

22 Q Okay.

23 A Right knee on the ground, left knee up,

24 looking down. At this point I'm dazed and confused,

25 but still conscious. And now the individual is coming

## TESTIMONY OF JOHN SNODGRASS

1     into my peripheral vision and I see now a stump -- no,  
2     a little bit farther -- no, too far. Right about  
3     there. A stomping of the right foot, and a big  
4     swinging uppercut.

5                     And at this point, I don't even have the  
6     strength or reaction to move. I think I tried to raise  
7     my left hand, and I might have gotten it up near my  
8     face to try and block the blow, but at this point I'm  
9     hit and fall down, which is how I awakened on the  
10    concrete -- well, asphalt, face down, facing away from  
11    the theater.

12                    The theater is now behind me, my  
13    vehicle's in front of me. The vehicle that I had  
14    observed him coming from is to the left.

15            Q     Okay. Okay. Thank you, Mr. Snodgrass. You  
16    can go back to the stand.

17                             (Witness complies.)

18    BY MS. LEMPESIS:

19            Q     When you were hit, Mr. Snodgrass, what did  
20    that hit feel like?

21            A     It felt like a hard object, metal. Having,  
22    you know, had playground fights in the past, I've been  
23    hit with a fist. It was not skin on skin.

24            Q     Okay. Do you know exactly how many times you  
25    were hit?

## TESTIMONY OF JOHN SNODGRASS

1           A     I do not know. I only recall the two times  
2 when I was conscious.

3           Q     Okay. Mr. Snodgrass, when you came to, and  
4 you may have already said this, I apologize if I'm  
5 asking you to repeat yourself, but was there anything  
6 missing from your belongings that you had?

7           A     Yes. The bank bag and the padded envelope  
8 for the post office were not present. My car keys were  
9 on the ground, as well as the loose papers that I had.

10          Q     Okay. And how much money do you know or  
11 recall how much money was in that bank bag?

12          A     I don't recall the exact amount. It was  
13 about \$4,000 for deposit and 4- or \$500 for a change  
14 order.

15          Q     Okay. What did you do when you came -- when  
16 you came to?

17          A     For whatever reason, my instinct was to  
18 gather up my belongings, which at that point were my  
19 car keys and papers. I walked over to my truck and  
20 initially tossed the papers in the bed of the truck.  
21 And then I thought, no, that's not safe, I'm going to  
22 be going to the hospital, let me put them inside my  
23 vehicle. So I unlocked it, tossed them on the seat,  
24 closed the door, then walked back to the theater.

25          Q     Okay. What did do you once you got back to

## TESTIMONY OF JOHN SNODGRASS

1 the theater?

2 A I retrieved my keys to unlock the door. I  
3 went inside and locked it behind me and stayed right at  
4 the door. I called the dispatch number and advised  
5 that I'd been robbed and assaulted. They asked if I  
6 needed medical attention, I said yes. They said they  
7 would dispatch deputies.

8 Q Let's go back a little bit to the description  
9 of the person who attacked you. Were you able to give  
10 the officers any sort of description that night of what  
11 he looked like or was wearing?

12 A All I remembered was dark clothing. Again,  
13 about 6 feet tall, very broad shouldered, at least  
14 200 pounds, African American male. And I think one  
15 distinguishing feature were little -- I don't want to  
16 say ringlets, they weren't dreadlocks, but they were  
17 like inch to 2-inch curls in his hair.

18 Q Okay. When the police arrived, what happened  
19 after the police arrived?

20 A I was inside waiting. I believe Officer  
21 Michael approached the door and asked me to come  
22 outside. I came outside and sat down on the planter,  
23 and he started asking me questions about what had  
24 happened, who did it, things of that nature.

25 Q And were you treated that night by EMS?

## TESTIMONY OF JOHN SNODGRASS

1           A     Yes.  Officer Michael asked if I had  
2     contacted them, and I said I believed I told dispatch I  
3     needed them.  He got on the radio and confirmed they  
4     were on their way.

5                     They arrived, I was ambulatory, so I was  
6     able to walk to the ambulance, and they asked me to lay  
7     down on a stretcher.  That's what I did.

8           Q     Did you ever -- did you notice that you were  
9     bleeding, or were you bleeding?

10          A     Oh, yes.  Immediately, because blood was  
11     dripping off my face.  My shirt and pants were soaked  
12     in blood.

13          Q     Okay.  You -- you mentioned you went to the  
14     ambulance.  Did you go to the hospital that night?

15          A     Yes.  The ambulance took me initially to the  
16     emergency room at Hilton Head Hospital.  I spent maybe,  
17     two, two and a half hours there, to the best of my  
18     recollection.  And based upon what they advised me was  
19     showing up in the test results, they were going to  
20     transfer me to Memorial in Savannah.

21          Q     Okay.  I'm going to go back to the -- go back  
22     to give the jury a better idea of where this happened,  
23     I'm going to show you a video of the parking lot.  And  
24     this is for demonstrative purposes only, Mr. Snodgrass.

25                     Parking lot -- just one moment,

## TESTIMONY OF JOHN SNODGRASS

1 Mr. Snodgrass.

2 MR. BAX: Your Honor, approach the bench?

3 THE COURT: Uh-huh.

4 (At the bench.)

5 (Off-the-record discussion held.)

6 THE COURT: We'll put that on the record, out  
7 of the presence of the jury. Thank you.

8 MS. LEMPESIS: Your Honor, permission for the  
9 witness to step down again from the stand.

10 THE COURT: That's fine.

11 Mr. Snodgrass, you can step down. This time,  
12 you can stand on the other side of the TV and face  
13 this direction. We'll be able to hear you, and  
14 the jury will be able to see what you're doing.  
15 Thank you.

16 (Video playing on TV monitor in  
17 front of jury.)

18 Q Mr. Snodgrass, what is this showing the jury?

19 A This is the front parking lot of the theater.

20 Q And so if --

21 A This is the drive aisle, where I was parked.

22 A car was backed into this space here.

23 Q Can you point to the space again?

24 A This space right here.

25 Q The car where Mr. McQuarters came up from?

## TESTIMONY OF JOHN SNODGRASS

1           A     Right. He was standing right along that  
2     backside of it.

3           Q     Okay. Make sure the jury can hear you, too,  
4     Mr. Snodgrass.

5                     Where were you parked?

6           A     I was parked, I believe, in that space there.  
7     It was the fourth space over from the end, down the  
8     same aisle.

9           Q     Can you point to it again?

10          A     This space here.

11          Q     That was where your truck was parked?

12          A     Yes. I was parked -- and I was backed in  
13     also.

14          Q     Okay. Mr. Snodgrass, I think this is going  
15     to show us sort of an overview of the parking lot.

16                     Are there a lot of trees in the parking  
17     lot?

18          A     Yes. It's Hilton Head, there are trees  
19     everywhere.

20          Q     What, again, were the lighting conditions?

21          A     Well, this is a light pole right here, which  
22     I don't even recall whether it was working at that  
23     time. Most of the lighting is from the building, which  
24     is back here. So, where I was standing having my  
25     conversation with the individual, I was in the

## TESTIMONY OF JOHN SNODGRASS

1 darkness, the lighting was behind me. It was  
2 approximately right there in front of that parking  
3 space.

4 Q Okay. And so now, we're zooming in and  
5 looking at -- where is the theater?

6 A This is the theater. The entry is over here.

7 Q So you walked out of that entrance? Can  
8 you --

9 A Well, I walked out of the exit. Because the  
10 entrance doors are locked at night after the last show  
11 starts. The exit doors are self-locking. So you can  
12 exit the building, but you can't re-enter.

13 The exit door I came out of is to the  
14 right of that planter.

15 Q Okay. Can you point to where the exit is out  
16 of the parking lot?

17 A This road here exits out to Northridge Drive.  
18 There's another main drive aisle exit that will exit  
19 out onto William Hilton Parkway.

20 Q What is this parking lot -- is it shared with  
21 any other businesses?

22 A Basically, no. The way the center is  
23 developed, this parking lot is directly in front of the  
24 theater, and there's no other business that associates  
25 with it. Although it's a shopping center, all the



## TESTIMONY OF JOHN SNODGRASS

1 other businesses are on the side, and they have parking  
2 closer to those businesses.

3 Q Mr. Snodgrass, this is zooming in on the  
4 front of the theater. If you can sort of point to --  
5 it shows you where the exit is that you used, or the --  
6 it goes that direction.

7 Now, we're zooming up. What is that?

8 A That's the roof of the theater.

9 Q Let's see if can we see some of the trees  
10 there.

11 A This is the way I would walk out and then  
12 through the roadway.

13 Q Okay. Mr. Snodgrass, can you see any of the  
14 exits on this from this vantage point?

15 A No. They're covered by the trees. The main  
16 drive aisle exit's over here. It runs out to  
17 William Hilton Parkway, which is way up here.

18 Q Mr. Snodgrass, I think in a moment it's going  
19 to show us the front of the theater again. I just  
20 wanted to make clear where you can now -- what is this  
21 showing, Mr. Snodgrass?

22 A It's the front of the theater, starting at  
23 the left side and panning to the right. That planter  
24 is approximately in the middle of the building.

25 Q Can you see the parking spot where you were

## TESTIMONY OF JOHN SNODGRASS

1     when you were attacked?

2           A     Right -- oop, just went off screen to the  
3     left, yes.

4           Q     And so you testified before that you thought  
5     it was approximately maybe 50 feet or so?

6           A     I think I said 50 yards, but --

7           Q     Oh, 50 yards.   Okay.

8           A     About 150 feet from where I first exited the  
9     building, which is over here, these double exit doors.

10          Q     All right.   Mr. Snodgrass, I'm going to stop  
11     this now and you can return to the stand.

12                                 (Witness complies.)

13     BY MS. LEMPESIS:

14          Q     Mr. Snodgrass, I'm going to hand you now some  
15     pictures, again, of the parking lot.

16                     MS. LEMPESIS:   Permission to approach the  
17     witness, Your Honor?

18                     THE COURT:   Yes, ma'am.

19     BY MS. LEMPESIS:

20          Q     Mr. Snodgrass I'm going to hand you these.  
21     They've been marked for identification purposes only at  
22     this point as State's Exhibits 1 through 8.   Can you  
23     look at those for me?

24          A     Yes.

25          Q     Thank you.   And do you recognize those

## TESTIMONY OF JOHN SNODGRASS

1 pictures, Mr. Snodgrass?

2 A Yes.

3 Q And how are you able to recognize them?

4 A The parking lot's recognizable after nine  
5 years. I'm very familiar with what each drive aisle  
6 looks like in relationship to the building, as well as  
7 the building and exits.

8 Q Okay. And have those pictures -- are they a  
9 fair and accurate depiction of the parking lot?

10 A Yes.

11 MS. LEMPESIS: Your Honor, I move to admit  
12 the pictures, State's Exhibits 1 through 8 at this  
13 time.

14 THE COURT: Mr. Bax?

15 MR. BAX: Objection, foundation.

16 THE COURT: You object to the foundation?

17 MR. BAX: Yes, Your Honor. Would you like --

18 THE COURT: What's missing from the  
19 foundation?

20 MR. BAX: We don't know -- he didn't take the  
21 pictures. We don't know what time of year they  
22 were taken, what time they were taken, and by  
23 whom. And since the lighting seems to be an issue  
24 here, we don't know what the relationship is to  
25 October of 2013.

## TESTIMONY OF JOHN SNODGRASS

1 THE COURT: All right. Okay.

2 The question is whether or not these are a  
3 fair and accurate representation of the parking  
4 lot at the time the event occurred.

5 MS. LEMPESIS: In the evening hours,  
6 Your Honor.

7 THE COURT: That's right.

8 MS. LEMPESIS: The pictures are in the  
9 evening hours, yes.

10 THE COURT: That's the question?

11 MS. LEMPESIS: Yes, Your Honor.

12 THE COURT: I don't have any answer yet.

13 BY MS. LEMPESIS:

14 Q And, Mr. Snodgrass, are these a fair and  
15 accurate depiction of the parking lot at the time -- of  
16 course, not specifically on October 20th, but at the  
17 time that the attack occurred, at nighttime?

18 A Yes. These are accurate for what the parking  
19 lot looks like at night.

20 Q And did it look that way in October of 2013?

21 A No.

22 Q It did not?

23 A No. In 2013, there were fewer lights.

24 Q There were fewer lights.

25 A Yes.

## TESTIMONY OF JOHN SNODGRASS

1           Q     So -- we got all the lights repaired after  
2     this incident, so there -- in these photographs, there  
3     are -- there's more lighting than was present at that  
4     time.

5           MS. LEMPESIS:   Thank you.   And, Your Honor,  
6     again, I move to admit the pictures.

7           THE COURT:   If it were worse, then I would  
8     look at this somewhat differently.   The jury  
9     understands that those photographs show more  
10    lights than Mr. Snodgrass has described at the  
11    time.

12          As I said, if -- Mr. Bax, if the reverse were  
13    true and -- that would seem to me to be  
14    prejudicial to your client.   If the jury  
15    understands that this photograph, or these  
16    photographs, are lighted more brightly because of  
17    the fact the lights have been added.   And, of  
18    course, it's impossible to go back and take the  
19    lights out, I suppose, to show this jury what it  
20    looks like.

21          Let me look at those photographs, myself,  
22    Mr. Snodgrass, to see if I could see what the --

23          The evidentiary cones that are there, what do  
24    they represent?

25          MS. LEMPESIS:   Your Honor, those represent

## TESTIMONY OF JOHN SNODGRASS

1           where the cars were parked.

2           THE COURT:   Okay.

3           MR. BAX:   Your Honor, if we may approach.

4           THE COURT:   Okay.

5           MR. BAX:   Thank you.

6           THE COURT:   Just come right up front here and  
7           talk across the table.

8                       (Discussion at the bench.)

9           THE COURT:   I sustained the objection.

10           Ladies and gentlemen, the objection was  
11           sustained.  And normally these things are done off  
12           the record, simply because of the issue that was  
13           raised.

14           The lights in that -- in those photographs,  
15           it's the same -- it's the same place.  Same things  
16           you've seen on the screen.  But the lights in  
17           those photographs, for two reasons.  Because,  
18           first of all, it was taken with a flash camera and  
19           it shows a well-lighted area.

20           And secondly, the lights themselves that  
21           Mr. Snodgrass has mentioned have been improved.  
22           And it's impossible for the State to go back  
23           and -- and turn the clock back.

24           But you're entitled to see the scene as  
25           accurately as it can be depicted at the time, not

## TESTIMONY OF JOHN SNODGRASS

1           today. That's the reason I sustained the  
2           objection and disallowed those photographs.

3           That's all there is to it. Thank you.

4                   MS. LEMPESIS: Thank you, Judge.

5   BY MS. LEMPESIS:

6           Q     Mr. Snodgrass, moving on then from the  
7           pictures. You testified that you were taken to Hilton  
8           Head Hospital. What happened after you went to Hilton  
9           Head Hospital?

10          A     They performed an MRI, some x-rays, sutured  
11          my face, and eventually transferred me to Memorial in  
12          Savannah.

13          Q     How long did you stay at Savannah Memorial  
14          Hospital?

15          A     I arrived there about 5:00 a.m. Monday  
16          morning, and was discharged late Wednesday evening.

17          Q     Okay. Did you ever have occasion to meet  
18          with anybody from the sheriff's office?

19          A     Yes. Investigator Seifert came and spoke  
20          with me on Tuesday, I believe.

21          Q     Okay. And did you give him a description of  
22          what happened that night?

23          A     Yes. He asked me the same questions that the  
24          responding officers did, and I gave him what  
25          information I could recall.

## TESTIMONY OF JOHN SNODGRASS

1           Q     Okay.  And at any point did you -- did you  
2     contact Investigator Seifert again?

3           A     Yes.  I had found those initial papers that I  
4     had tossed in my truck.  They had gotten buried on the  
5     bottom of the floorboard, and I was cleaning out my  
6     truck finally and came cross them and didn't know if  
7     they would be of any value to the investigation.

8           Q     Okay.  Did you -- what did you do with those  
9     papers?

10          A     I contacted Investigator Seifert.  He said he  
11     didn't know, but for me to bring them to him.  I did,  
12     and he had me drop them in a plastic evidence bag.

13          Q     Okay.  Did you provide law enforcement with  
14     any other information about -- about the night of the  
15     incident?  Any other information from the theater at  
16     all?

17          A     Yes.  They asked me the specific dollar  
18     amounts, which I could go back in the computer records  
19     and determine, and they also wanted to know who was  
20     working that night.  And instead of trying to rely on  
21     memory, I went back to the computer records and time  
22     clock and saw who was actually clocked in and clocked  
23     out that day.

24          Q     And did you give him the names of everyone  
25     who was working?



## TESTIMONY OF JOHN SNODGRASS

1           A     Yes.

2           Q     Did you -- go back for a minute to when you  
3 walked out into the parking lot. You said you saw a  
4 female in the car that was backed in?

5           A     Yes.

6           Q     Did you see, besides that female and the  
7 African American man who attacked you, did you see  
8 anyone else?

9           A     No.

10          Q     Did anyone besides the man who you've already  
11 testified to, did anyone besides him hit you at any  
12 point?

13          A     No. There was no one else in the parking lot  
14 that I could see except for the female in the car. And  
15 she never exited the car during our conversation or  
16 during the attack.

17          Q     Okay. Mr. Snodgrass, you heard  
18 Sergeant Parnell talk about video surveillance. Did  
19 y'all have any sort of video surveillance at the  
20 theater?

21          A     No.

22          Q     None outside?

23          A     None. There's an old system that was  
24 non-functional that would have recorded anybody at box  
25 office who had walked up there, but it would not have

## TESTIMONY OF JOHN SNODGRASS

1 recorded anything in the parking lot.

2 Q But it wasn't functioning?

3 A It was not functioning.

4 MS. LEMPESIS: Beg the court's indulgence?

5 THE COURT: Yes, ma'am.

6 MS. LEMPESIS: Mr. Snodgrass, I don't have  
7 any further questions for you at this time. If  
8 you can please answer any questions that Mr. Bax  
9 has.

10 THE COURT: Mr. Bax, you can cross-examine.

11 MR. BAX: Thank your Honor.

12 CROSS EXAMINATION

13 BY MR. BAX:

14 Q Good morning, Mr. Snodgrass.

15 A Good morning.

16 Q A couple questions for you. You've testified  
17 to what happened on October 20th of 2013. And as  
18 you've said, you were only able to give kind of a  
19 limited description of the individual that attacked  
20 you; is that correct?

21 A Yes.

22 Q And you've been through that with the jury,  
23 dark clothing, taller, 6-foot, broad shouldered,  
24 correct?

25 A Correct.

## TESTIMONY OF JOHN SNODGRASS

1           Q     African American male, correct?

2           A     Yes.

3           Q     At some point do you recall whether or not  
4     Investigator Seifert ever showed you an array of  
5     photographs to see if you could pick out who had  
6     attacked you?

7           A     Yes, he did.

8           Q     Were you able to pick anybody out of that  
9     line up?

10          A     I was not able to identify one person.

11          Q     Okay.  You've also indicated, and you've told  
12     us here today what happened, you said that the  
13     individual reached behind them and then that you were  
14     struck.

15                     Did you ever actually see anything in  
16     the attacker's hands?

17          A     No.  My face and head were turned away during  
18     the initial strike.  I never saw anything except for  
19     the movements that preceded the strike.  And on the  
20     second strike, I could not see clearly.  I could only  
21     see movement.

22          Q     Okay.  And you've testified that it felt like  
23     something other than a fist hitting you, correct?

24          A     Correct.

25          Q     But you have no visual confirmation of that

## TESTIMONY OF JOHN SNODGRASS

1     that you can testify to here today?

2           A     Correct.

3           Q     Okay.  Now, Mr. Snodgrass, a couple of  
4     things.  You testified that later on you provided a  
5     list of who was working at the theater that night to  
6     Investigator Seifert; is that correct?

7           A     Yes.

8           Q     Okay.  Was that as a result of Mr. Seifert  
9     asking for that information or asking some information  
10    about who was working there?

11          A     Yes.

12          Q     And as a result of providing him that  
13    information, on that list of employees for that night,  
14    do you recall if Mr. Colton Delaplane was on there?

15          A     Yes, he was.

16          Q     Okay.  Do you recall what Mr. Delaplane was  
17    doing that evening?  Do you remember seeing him or  
18    assigning him duties, and knowing what he was doing?

19          A     He worked in box office that evening.

20          Q     Okay.  And let me ask you a little bit about  
21    the money.  You've testified that as the night manager,  
22    the closing manager, it's your responsibility to take  
23    and make the bank deposits, correct?

24          A     Correct.

25          Q     Okay.  And that was what was in this gray

## TESTIMONY OF JOHN SNODGRASS

1 plastic bank bag, correct?

2 A Correct.

3 Q Okay. Let's talk about that a little bit.

4 How do you go about figuring out what  
5 your deposit is and taking that in the evening?

6 A Our point of sale system records cash and  
7 credit transactions. The cash drawers start out with a  
8 uniform amount of bills and coins. At the end of the  
9 night, it is signed off. The manager then counts  
10 everything in the drawer and enters it in the point of  
11 sale system.

12 It then determines what the drawer  
13 started with, the difference, whether or not it's over  
14 or short. That amount then is recorded, all the  
15 drawers are counted out, and it then tells us how much  
16 cash to deposit for the night.

17 Q Okay. And so you then take that amount cash  
18 and put it in the bank bag. But some of the cash  
19 remains there at the theater, correct?

20 A Yes.

21 Q Okay. Now, any of the employees that work at  
22 the front in the box office, as you called it, they  
23 would, if someone comes to pay cash for their movie  
24 tickets, they would have to take that cash, correct?

25 A Correct.

## TESTIMONY OF JOHN SNODGRASS

1           Q     And would they make change out of their  
2     drawer, or till?

3           A     Yes.

4           Q     Okay. And that's where you retrieved the  
5     cash from in the evenings is those point of sale tills,  
6     or registers?

7           A     Correct.

8           Q     Okay. And Mr. Delaplane was working one of  
9     those that evening, correct?

10          A     Yes.

11          Q     Now, how long had you been working at  
12     Northridge Cinemas back in October of 2013?

13          A     Seven years.

14          Q     And for most of that time, had you been a  
15     supervisor, or a manager?

16          A     I've been general manager since I started.

17          Q     Okay. Is part of your responsibilities as  
18     general manager to oversee and assign duties for the  
19     other employees?

20          A     Yes.

21          Q     Okay. If there are problems with employees,  
22     do you have responsibility of dealing with that, if  
23     they're showing up late or not doing their duties  
24     correctly?

25          A     Among the other managers, yes.

TESTIMONY OF JOHN SNODGRASS

1 Q And throughout that seven years leading up to  
2 October, you had had that -- have you ever had to talk  
3 to an employee or discipline an employee or say, you  
4 know, do better or I'm not going to have you working  
5 here anymore, anything like that?

6           A       Yeah. I have to talk to employees on  
7 occasion based upon their performance or tardiness in  
8 arriving to work.

9 Q Okay. And I would assume, correct me if I'm  
10 wrong, that employees aren't always happy when you have  
11 to have that talk with them, correct?

12           A     No.  Most of the people we employ are -- this  
13     is their first job and they're still learning the ropes  
14     of being employed.

15 Q Okay. Did you ever have -- can you recall  
16 whether or not you ever had to have any talks with  
17 Mr. Delaplane?

18           A     I believe I did.

19 Q Do you recall what it was about?

20           A     Not specifically. The best recollection I  
21     have would be either not showing up or showing up late  
22     for work.

23 MR. BAX: Moment's indulgence.

24 Thank you, Mr. Snodgrass.

25 I have no further questions, Your Honor.

## TESTIMONY OF JOHN SNODGRASS

1 Thank you.

2 THE COURT: Thank you. Redirect.

3 MS. LEMPESIS: Just briefly on redirect,

4 Your Honor.

5 THE COURT: Okay.

6 REDIRECT EXAMINATION

7 BY MS. LEMPESIS:

8 Q Mr. Snodgrass, you were talking about  
9 Colton Delaplane. You testified before that Colton was  
10 working that night?

11 A Yes.

12 Q What time did he leave?

13 A He would have left with the rest of the  
14 employees except for the ones who remain. They would  
15 have left 15 or 20 minutes before I did.

16 Q So, was Colton Delaplane there or was he --  
17 was Colton Delaplane -- excuse me.

18 Was he gone at the time you left the  
19 building?

20 A He was not in the building nor did I see any  
21 of the employees in the parking lot. So, as far as I  
22 know, they had all left.

23 Q Okay.

24 MS. LEMPESIS: Thank you, Mr. Snodgrass. I  
25 have nothing further.



## TESTIMONY OF JOHN SNODGRASS

1           THE COURT: Mr. Snodgrass, you can step down.

2           Thank you.

3           Ladies and gentlemen, we're going to take the  
4 morning recess at this time, and I'm going to send  
5 you to jury room. We'll get you out in about 15,  
6 maybe 20 minutes at the most, and continue the  
7 story.

8           Please do not discuss this case among  
9 yourselves while you're in the jury room.

10                           (Recess.)

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## TESTIMONY OF JOHN SNODGRASS

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was  
7 authorized to and did stenographically report the foregoing  
8 proceedings and that the transcript is a true and complete  
9 record of my stenographic notes.

8

DATED this 16th day of September, 2015.

9

10

11 */s/ Mona L. Manley*

12 \_\_\_\_\_  
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14 Official 14th Circuit Court Reporter  
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1           IN THE COURT OF GENERAL SESSIONS IN AND FOR  
2                   BEAUFORT COUNTY SOUTH CAROLINA

3

4   STATE OF SOUTH CAROLINA,

5           Plaintiff,

6   vs.

CASE NO. 2013GS0701844; 1845

7   AUSTIN LEWIS McQUARTERS,

8           Defendant.

9   \_\_\_\_\_ /

10

11                           \*   \*   \*

12

13                           TRIAL TRANSCRIPT

14                           VOLUME 4

15

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17

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19                                   Beaufort, South Carolina

20

21   REPORTED BY:                   Mona Manley, Court Reporter

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23   BEFORE:                           Honorable Thomas W. Cooper, Jr.

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**APPEARANCES**

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## INDEX PAGE

|    |                                                       |              |         |           |
|----|-------------------------------------------------------|--------------|---------|-----------|
| 1  | INDEX                                                 |              |         |           |
| 2  |                                                       |              |         |           |
| 3  | WITNESS:                                              | PAGE:        |         |           |
| 4  | COLTON DELAPLANE (out of the presence of the jury)    |              |         |           |
| 5  | Cross Examination By Mr. Bax                          |              | 229     |           |
| 6  | DR. PATRICK SNOWMAN (out of the presence of the jury) |              |         |           |
| 7  | Direct Examination By Ms. Lempesis                    |              | 245     |           |
| 8  | DR. PATRICK SNOWMAN                                   |              |         |           |
| 9  | Direct Examination By Ms. Lempesis                    |              | 286     |           |
| 10 | Voir Dire Examination By Mr. Bax                      |              | 290     |           |
| 11 | Contd Direct Examination By Ms. Lempesis              |              | 291     |           |
| 12 | Cross Examination By Mr. Bax                          |              | 301     |           |
| 13 | COLTON DELAPLANE                                      |              |         |           |
| 14 | Direct Examination By Ms. Lempesis                    |              | 307     |           |
| 15 | Cross Examination By Mr. Bax                          |              | 321     |           |
| 16 | Redirect Examination By Ms. Lempesis                  |              | 333     |           |
| 17 | Re-Cross Examination By Mr. Bax                       |              | 334     |           |
| 18 | EXHIBITS:                                             |              |         |           |
| 19 | EX NO.:                                               | DESCRIPTION: | MARKED: | RECEIVED: |
| 20 | 9 photo                                               |              | 282     |           |
| 21 | 2-8 photos                                            |              | 295     | 295       |
| 22 |                                                       |              |         |           |
| 23 |                                                       |              |         |           |
| 24 |                                                       |              |         |           |
| 25 |                                                       |              |         |           |

## INQUIRY OF THE JURORS

1 PROCEEDINGS

2 THE COURT: For the benefit of the court  
3 staff, ladies and gentlemen, I'm going to make  
4 certain inquiries of the individual jurors  
5 regarding some occurrences during the lunchtime  
6 today.

7 What I'm going to be doing is bringing in  
8 each juror individually. We'll bring them in, in  
9 the order that they were called, the order that  
10 they appear on the jury list. I'll make certain  
11 inquiries of them.

12 After I've completed those inquiries, and you  
13 will take that juror back into a separate jury  
14 room, not the one that we have -- the jury room  
15 right here.

16 THE BAILIFF: Yes, sir. We'll take care of  
17 it.

18 THE COURT: You'll take them into the  
19 separate jury room until I've been able to make  
20 inquiry of all of the jurors. And then at that  
21 time we can bring them back in here and proceed at  
22 pace, as we need to be doing anyway. All right?

23 Do I have -- nope, don't have Mr. Bax here.  
24 As soon as Mr. Bax is back in the courtroom, we'll  
25 start the --

## INQUIRY OF THE JURORS

1           MR. BELL: It should be just a moment, Judge.

2           THE COURT: All right.

3           MR. BAX: Your Honor, my apologies. In all  
4 the chaos, I didn't get a chance to use the  
5 restroom.

6           THE COURT: All right, folks. Here is the  
7 line of inquiry that I'll ask of each juror. I'll  
8 ask them, first of all, did they observe Ms. Perez  
9 after she left the courtroom and after they were  
10 leaving the courtroom, crying in the hallway.  
11 I'll ask them if they heard her make any comments  
12 or statements, and if so, what were they. And  
13 then I will ask them if they -- if anything that  
14 they observed in that capacity has changed their  
15 ability to continue to be fair and impartial as  
16 jurors in the trial of this case. I'll ask those  
17 three questions of each of the 14 jurors.

18           All right. Bring in Ms. Cheryl Thompson,  
19 Juror Number 304, please.

20           THE BAILIFF: Do you want them to just stand  
21 right here, Judge, or you want them to sit down?

22           THE COURT: If they're able, put them over  
23 there in that first chair there. They'll have a  
24 wall between me and them. They won't quite feel  
25 so vulnerable as just standing up there in front

## INQUIRY OF THE JURORS

1 of the Court.

2 Ms. Thompson, at the outset, let me tell you  
3 that you have done nothing wrong. We have brought  
4 you out first, your name is on the list first.  
5 But we are going to bring all 14 of you out. And  
6 I have to ask certain questions regarding some  
7 activity that went on during the lunch hour, and  
8 we just need to find out what impact, if any, that  
9 will have on the trial.

10 It's brought to our attention that as  
11 Ms. Perez, the last witness who testified, was  
12 going -- while we were leaving the courtroom area  
13 and going through the hallway, that their paths  
14 crossed with you all's paths as you were leaving  
15 to go to lunch. That was not intentional. Quite  
16 frankly, the Court staff goes to a lot of trouble  
17 to try to keep those sort of things separate. And  
18 so it was inadvertent in this case.

19 But in any event, we also understand that as  
20 Ms. Perez was leaving, she was somewhat emotional.  
21 She was crying. I'm not sure to what extent, but  
22 she was visibly crying, as we understood it.

23 First of all, I need to know if you observed  
24 Ms. Perez in the hallway crying as she and you all  
25 were leaving the courtroom together?



## INQUIRY OF THE JURORS

1 JUROR: I did not see her crying. I did see  
2 her. I was just kind of looking straight ahead, I  
3 went out -- I was one of the first ones, I think,  
4 probably out. She was coming just before I got to  
5 the steps, but, I mean, I was aware of her  
6 peripherally. But as far as I remember, she was  
7 not crying at that point.

8 THE COURT: Did you hear her make any  
9 statements or comments at the time you came into  
10 contact with her?

11 JUROR: Not at all.

12 THE COURT: Does anything that you observed  
13 or anything that I suggested to you in this  
14 inquiry change your ability to continue to be fair  
15 and impartial as a juror in this trial?

16 JUROR: Not at all.

17 THE COURT: Thank you so much, Ms. Thompson.  
18 You can go back over. We will put you in another  
19 jury room until we've asked all these questions of  
20 everybody. Okay?

21 JUROR: Okay.

22 THE COURT: The next juror is Mrs.  
23 Betty Brown -- Ms. Betty Holmes-Brown, Juror  
24 Number 143.

25 Ms. Holmes-Brown, let me put your mind at

## INQUIRY OF THE JURORS

1 ease at the outset. You have not been brought out  
2 here because anybody thinks you've done anything  
3 improper. We're going to bring all the jurors out  
4 here because I have to ask certain questions of  
5 you, for reasons that will be apparent to you in  
6 just a moment.

7 It was brought to our attention that after  
8 the lunch hour -- during the lunch hour, that when  
9 Ms. Jacquelyn Perez, who was the last witness who  
10 testified before lunch, as they left the courtroom  
11 with her father -- she and her father left the  
12 courtroom and got into the area out there where  
13 the stairs, the elevators, and the restrooms are,  
14 that their paths inadvertently crossed with you  
15 all's, the jurors, as you were leaving.

16 And that she was visibly upset and was crying  
17 at the time. I need to, first of all, know did  
18 you observe that? Did you observe her crying  
19 or -- when you left for lunch?

20 JUROR: Yes.

21 THE COURT: Okay. Did you hear her make any  
22 comments or statements when you all passed at that  
23 time?

24 JUROR: No.

25 THE COURT: Okay. Would the fact that you

## INQUIRY OF THE JURORS

1 saw her emotional and crying at the conclusion of  
2 her testimony, did anything that you observed in  
3 that regard change your ability to continue to be  
4 fair and impartial as a juror in this trial?

5 JUROR: No.

6 THE COURT: Thank you so much, Ms. Holmes.  
7 You can go back -- we will put you in another jury  
8 room until we go through this inquiry with  
9 everybody. Okay?

10 JUROR: Okay.

11 THE COURT: Thank you.

12 Mr. Jeffrey Moody, Number 212.

13 MR. BAX: Real quickly, Your Honor. Just to  
14 make sure I cover my bases, my co-counsel has made  
15 me aware, maybe we should ask that the jurors be  
16 instructed not to discuss this with the other  
17 jurors after we've had the inquiry?

18 THE COURT: We can do it. Of course, I'm --

19 MR. BAX: I see you're separating them.

20 THE COURT: I'm putting them in a separate  
21 room to keep -- right. It's like everyone will  
22 hear the same thing, so -- but I can mention that.  
23 So far both of them said --

24 MR. BAX: I think that's fine, Your Honor.  
25 That you're separating them is probably

## INQUIRY OF THE JURORS

1           sufficient, Your Honor.

2           THE COURT: Now, if one of them said that it  
3           made a big difference, then I'll put them  
4           somewhere else.

5           MR. BAX: Certainly, Your Honor.

6           THE COURT: Mr. Moody.

7           JUROR: Yes, sir.

8           THE COURT: I've been telling the other folks  
9           I've brought out here, you're not being brought  
10          out here to be chastised or criticized or accused  
11          of anything wrong. I'm going to ask the same  
12          questions of all of the other jurors that I'm  
13          going to ask of you, concerning some activity that  
14          occurred during the lunch hour. You didn't have  
15          any control over it, neither did we.

16          It was brought to our attention that as  
17          Ms. Jacquelyn Perez, who was the last juror who  
18          testified, was leaving the courtroom, and leaving  
19          actually the court area and going into the  
20          assembly area, more or less, down there where the  
21          stairs, elevators, and restrooms all are, that she  
22          was visibly upset. She was actually crying, and  
23          that unfortunately her paths crossed you all's  
24          paths as you were leaving for lunch. I need to  
25          know at the outset if you were able to observe

## INQUIRY OF THE JURORS

1           that.

2           JUROR:   Yes, I did.

3           THE COURT:   Okay.   Did you hear her make any  
4           comments or make any statements other than crying?

5           JUROR:   No.   No, I was the second one out,  
6           and I just saw her kind of coming over and I could  
7           tell she was upset.

8           THE COURT:   Right.   Did anything that you  
9           observed during that period of time change your  
10          ability to continue to be fair and impartial as a  
11          juror in the trial?

12          JUROR:   No, sir.   I'll go with the facts.

13          THE COURT:   Thank you so much, Mr. Moody.   I  
14          appreciate that.

15          JUROR:   Sure.

16          THE COURT:   And I'll put you in another jury  
17          room.

18          JUROR:   All right.   Thanks, Your Honor.

19          THE COURT:   Thank you.

20          Charlesetta Wilson, Juror Number 339.

21          Ms. Wilson, as you've probably been able to  
22          observe by now, we're bringing all the jurors out  
23          for me to ask questions, certain questions, in  
24          regard to some things that may have happened  
25          during the lunch hour.   That -- not your fault,

## INQUIRY OF THE JURORS

1 not anybody's fault, but we just need to know if  
2 they're going to have any impact on these  
3 proceedings.

4 It was brought to our attention, during the  
5 lunch hour that as Ms. Jacquelyn Perez, the last  
6 witness who testified before lunch, was leaving  
7 this area of the courthouse and going down to the  
8 steps in the elevator, to the restrooms, that her  
9 path inadvertently crossed you all's path as you  
10 were going for lunch. And we were also made to  
11 understand that she was visibly upset. That she  
12 was actually crying as she left the area.

13 I need to know, first of all, were you able  
14 to observe Ms. Perez as she was crying, as she was  
15 emotionally upset when you all left together?

16 JUROR: Yes.

17 THE COURT: Okay. Did you hear her make any  
18 statements or comments in connection with her  
19 emotional status?

20 JUROR: No, I didn't hear it.

21 THE COURT: Okay. Did anything that you  
22 observed, as you observed her leaving emotionally  
23 upset, did anything that you observed change your  
24 ability to continue to be fair and impartial as a  
25 juror in this trial?

## INQUIRY OF THE JURORS

1 JUROR: No.

2 THE COURT: Okay. Thank you so much,  
3 Ms. Wilson. You can -- we're going to put you in  
4 another place while we continue to go over these  
5 questions. Thank you.

6 Ms. Caroline Kemerling, Juror Number 168.

7 Is she any kin to Tommy Kemerling?

8 MR. BAX: Your Honor, I'm not -- I don't  
9 know. I -- unfortunately once I saw the name,  
10 we'd already selected her, I couldn't go talk to  
11 her about it.

12 THE COURT: I was wondering if she was a  
13 sister or a widow.

14 Ms. Kemerling, by now, you have -- and  
15 everybody else in the jury room has come to  
16 realize that we're calling everybody out of the  
17 jury room to make certain inquiries. Obviously  
18 there's no implication or concern about any  
19 wrongdoing about anybody, we just need to inquire  
20 about certain observations that may have been made  
21 during the lunch hour that will be obvious in just  
22 a moment, and to see if those things will have any  
23 impact on this trial.

24 It's brought to our attention that

25 Ms. Jacquelyn Perez, who was the last witness who

## INQUIRY OF THE JURORS

1 testified, as she was leaving this area of the  
2 courthouse and going into the -- into the assembly  
3 area, I suppose that is where all the halls come  
4 together, the stairs and the elevators and so  
5 forth -- that she was visibly upset. That she was  
6 actually crying.

7 And first of all, I need to know if you  
8 observed that. Were you able to see her crying?

9 JUROR: No.

10 THE COURT: Okay. Well, then, I'll tell you  
11 that she was. And so I can end the inquiry at  
12 that point in time, since you didn't see anything.  
13 But the fact that I told you that she was crying,  
14 would that have any impact on your ability to  
15 continue to be fair and impartial as a juror in  
16 this trial?

17 JUROR: No.

18 THE COURT: All right. Thank you so much,  
19 Ms. Kemerling. We will send you back into another  
20 jury room and we'll get you all out shortly to  
21 resume the trial.

22 Mr. Cole Catanzarite -- Catanzarite? Cole T.  
23 Catanzarite, Juror Number 55.

24 My only concern now as I send these folks  
25 back to the separate jury room, will those folks



## INQUIRY OF THE JURORS

1       who are left in the jury room say he's calling  
2       everybody out here and nobody's coming back. I'm  
3       going to have some trouble with these last two or  
4       three.

5               Mr. Katanzarati -- how close am I?

6               JUROR: That was perfect.

7               THE COURT: Is that right?

8               JUROR: Yeah.

9               THE COURT: Wonderful. I've been working  
10       with it for a while.

11              We have been bringing all the jurors out,  
12       obviously to have a line of inquiry with you  
13       concerning something that happened during the  
14       lunch hour that you didn't have any control over,  
15       and certainly none of you did.

16              It was brought to our attention during the  
17       lunch hour that Ms. Perez, who was the last  
18       witness who testified, as she was leaving this  
19       general area of the courthouse, her path  
20       intersected with you all as you all were leaving  
21       for lunch, and that she was visibly upset and  
22       crying at that time.

23              I need to know, first of all, did you  
24       actually observe her crying as she left?

25              JUROR: Yes, I did.

## INQUIRY OF THE JURORS

1           THE COURT: Did you hear her make any comment  
2 or any statement as you passed or approached?

3           JUROR: No, she was just whimpering.

4           THE COURT: All right. Did anything that you  
5 observed, whatever it was that you observed  
6 concerning her, change your ability to continue to  
7 be fair and impartial as a juror in this trial?

8           JUROR: No, sir.

9           THE COURT: Thank you, sir, Mr. Catanzarite.  
10 I'm going to send you back to another jury room.  
11 Thank you for coming out.

12          JUROR: You're welcome.

13          THE COURT: Mr. Kenneth Cunningham, Juror  
14 Number 78.

15          Mr. Cunningham, we have been bringing out  
16 each juror individually to make certain inquiries  
17 about some activity that happened during the lunch  
18 hour. It did not involve any of you all directly.  
19 Certainly there's no implication of any wrongdoing  
20 at all.

21          We learned that Ms. Perez, Jacquelyn Perez,  
22 the last witness who testified before lunch, as  
23 she was leaving the area of the courthouse, walked  
24 past you all as you all were leaving to go to  
25 lunch in the big hallway down there. And when she

## INQUIRY OF THE JURORS

1        did that, she was visibly upset, that she was  
2        actually crying.

3                Some may have seen it, some may have not. I  
4        needed to, first of all, know if you -- did you  
5        have a chance to observe Ms. Perez as she was  
6        crying when she was leaving the courthouse --  
7        courtroom?

8                JUROR: No, sir. No, sir.

9                THE COURT: Okay. Well, then, good. We can  
10       skip a couple of questions. I told you that she  
11       was crying, but she was visibly upset. And  
12       there's no question about that.

13               Would the fact that I have indicated to you  
14       that she was upset following her testimony change  
15       your ability to continue to be fair and impartial  
16       as a juror of this trial?

17               Do you understand my question?

18               JUROR: Will I be fair, yes.

19               THE COURT: Yes, sir. In other words, the  
20       fact that I told you that she was crying when she  
21       left the courtroom, does that have any impact on  
22       the decision that you'd make in this case?

23               JUROR: No, sir.

24               THE COURT: All right. Thank you,  
25       Ms. Cunningham.

## INQUIRY OF THE JURORS

1           Ms. Connie Singleton-Murphy, Juror  
2           Number 285.

3           Ms. Singleton-Murphy, I've been bringing all  
4           of you out to ask you some questions about  
5           something that happened during the lunch hour.  
6           I'll repeat, as I've told your fellow jurors,  
7           there's no implication of any wrongdoing by  
8           anybody. It's just a line of inquiry that I need  
9           to make for reasons which will be obvious in just  
10          a moment.

11          We learned during the lunch hour that  
12          Ms. Perez, who was the last witness that  
13          testified, as she was leaving this area of the  
14          courthouse and getting into the stairway,  
15          elevator, restroom area, that her path  
16          inadvertently crossed yours as you were going for  
17          lunch, and that she was visibly upset. She was  
18          visibly crying at the time.

19          Some of the jurors observed it, some did not.  
20          I need to know, did you actually see her as she  
21          was crying when she was leaving this area?

22          JUROR: I didn't actually see her crying, but  
23          I did see her talking, I guess, with her father.

24          THE COURT: That's right. That's who it was.  
25          That's right.

## INQUIRY OF THE JURORS

1           When you observed it, she did not appear to  
2           be crying or upset?

3           JUROR: No.

4           THE COURT: Okay. I'll tell you some other  
5           folks said that she was upset and she was crying.  
6           So now I need to know, even though you didn't see  
7           her crying, since I have told you she was crying,  
8           would that -- would that have any impact on your  
9           ability to continue to be fair and impartial as a  
10          juror in this trial?

11          Do you understand my question?

12          Would that -- does that change your ability  
13          to be fair and impartial?

14          JUROR: No, it doesn't.

15          THE COURT: Okay. Thank you so much,  
16          Ms. Singleton-Murphy. I appreciate that.

17          Ms. Latasha Reeves, Juror Number 247.

18          Ms. Reeves, I've been asking, pulling all the  
19          jurors out to make certain inquiry into some  
20          things that happened during the lunch hour that  
21          you all didn't have anything -- any control over,  
22          and certainly not at fault in.

23          But we learned that Ms. Perez, the last  
24          witness who testified here before lunch, as she  
25          was leaving the courthouse, or the courtroom area

## INQUIRY OF THE JURORS

1           and going down the hall with her father, that she  
2           was visibly upset, that she was crying.

3                     Did you observe that?

4                     JUROR: Yes, sir.

5                     THE COURT: Did you hear her make any  
6           statements or comments as you saw her there  
7           crying?

8                     JUROR: No.

9                     THE COURT: Would the fact that you observed  
10          that, would that have any impact on your ability  
11          to continue to be fair and impartial as a juror in  
12          this trial?

13                    JUROR: No, it won't.

14                    THE COURT: All right. Thank you so much,  
15          Ms. Reeves. You can go.

16                    Ms. Krista Hanna, Juror Number 134.

17                    Ms. Hanna, I've been making inquiry of all  
18          the jurors for reasons that will be obvious in a  
19          moment, to determine if you observed some things  
20          that happened during the lunch hour that were  
21          brought to our attention.

22                    We learned that Ms. Perez, the last witness  
23          who testified before lunch, as she was leaving  
24          with her father and going down the hallway to the  
25          elevators and so forth, that she was visibly

## INQUIRY OF THE JURORS

1           upset, that she was crying and emotionally upset.

2           Did you happen to observe that?

3           JUROR: No.

4           THE COURT: Okay. Well, good. I can skip to  
5 the last question then.

6           All right. I'll tell you that she was upset  
7 and she was crying. And now that you know that,  
8 because I told you, would that fact have any  
9 impact on your continued ability to be fair and  
10 impartial as a juror in this trial?

11          JUROR: No.

12          THE COURT: Thank you so much, Ms. Hanna.

13          Ms. Jean Morgan, Juror Number 214.

14          Ms. Morgan, we've been bringing the jurors to  
15 allow me to ask certain questions about an event  
16 that was brought to our attention that happened  
17 during the lunch hour.

18          We learned that during the lunch hour, Ms.  
19 Perez, the last witness who testified before  
20 lunch, as she and her father were leaving this  
21 area of the courthouse and going down to where the  
22 steps and the elevators and the restrooms are,  
23 that she happened to inadvertently pass where you  
24 all were, jurors, as you were going to lunch. And  
25 she was apparently visibly upset, she was actually

## INQUIRY OF THE JURORS

1           crying.

2                   Did you happen to observe that?

3                   JUROR: I never left the jury room. I ate in  
4           there.

5                   THE COURT: You never left. Bless your  
6           heart.

7                   JUROR: I know nothing I can say.

8                   THE COURT: Well, good. Well, if I tell you  
9           that she was crying, is that going to impact your  
10          ability to be fair and impartial?

11                  JUROR: No. Because she could be crying for  
12          a variety of reasons, so --

13                  THE COURT: You're exactly right. Precisely.  
14          And we brought you out here unnecessarily. But  
15          thank you, Ms. Morgan. I'm glad we finally got  
16          you out of the jury room.

17                  Mr. John Gould, Juror Number 121.

18                  Mr. Gould, I'm going to ask you the same  
19          questions I've been asking all of the other jurors  
20          who we've brought out of the room, for reasons  
21          that will be obvious in just a moment.

22                  We learned that during the lunch hour that  
23          Ms. Perez, the last witness who testified before  
24          we broke for lunch, as she and her father were  
25          leaving this area of the courthouse and going down



## INQUIRY OF THE JURORS

1           towards the stairs and the elevator, her path  
2           crossed with you all's paths as you were going to  
3           lunch. And we learned that she was visibly upset,  
4           that she was actually crying at that time.

5           Did you have a chance to observe her in that  
6           capacity?

7           JUROR: I -- I mean, I saw her, but I  
8           didn't -- I just looked away and kept walking. I  
9           didn't realize she was crying.

10          THE COURT: Okay. Well, she was crying, and  
11          our main concern was we wanted to be sure that  
12          whatever you all observed was not going to change  
13          your ability to be fair and impartial.

14          So, can I take it that -- the fact that I  
15          told you that she was crying, even though you did  
16          not see it, is not going to have any impact on  
17          your ability to be fair and impartial?

18          JUROR: Yeah.

19          THE COURT: Okay. Thank you. Thank you,  
20          sir.

21          Ms. Lakesha Seabrook -- Seabrooks,  
22          Number 270.

23          Ms. Seabrooks, I've been asking the other  
24          jurors the same questions that I'm going to ask  
25          you.

## INQUIRY OF THE JURORS

1           During the lunch hour, did you happen to  
2           observe Ms. Perez, the last witness who testified,  
3           as she was going down the hall with her father,  
4           and her path crossed you all's as you were leaving  
5           the courtroom to go to lunch?

6           Did you observe her crying, emotionally upset  
7           when you passed?

8           JUROR: Yes, sir.

9           THE COURT: Okay. Did you hear her say  
10          anything or make any statements or comments when  
11          you all passed?

12          JUROR: No, sir.

13          THE COURT: Okay. Well, did anything that  
14          you observed in that span of time change your  
15          ability to continue to be fair and impartial as a  
16          juror in this trial?

17          JUROR: No, sir.

18          THE COURT: Okay. Thank you so much,  
19          Ms. Seabrooks. You can go back to the jury room.

20          Mr. Clarence Mack, Juror Number 192 -- well,  
21          he's the only one left.

22          THE BAILIFF: Yes, sir. We hope.

23          THE COURT: Mr. Mack, I've been asking all of  
24          the other jurors whether or not they observed  
25          Ms. Jacquelyn Perez, the last witness who

## INQUIRY OF THE JURORS

1 testified, as she was leaving this area of this  
2 courthouse. She and her father were in the same  
3 vicinity where you all were as you were going to  
4 lunch.

5 Did you happen to observe her crying, being  
6 visibly upset, emotionally upset after her  
7 testimony?

8 JUROR: Yes.

9 THE COURT: Did you hear her make any  
10 statements or any comments at the time?

11 JUROR: No.

12 THE COURT: Okay. Would the fact that you  
13 saw her in that way, or whatever you happened to  
14 observe, did any of that change your ability to  
15 continue to be fair and impartial as a juror in  
16 this trial?

17 JUROR: No.

18 THE COURT: Okay. Thank you, Mr. Mack. I'm  
19 going to let you go back to the jury room. Thank  
20 you.

21 All right. Folks, any exceptions or requests  
22 in regard to that inquiry of the jurors from the  
23 State?

24 MS. LEMPESIS: Not from the State, Your  
25 Honor.

## INQUIRY OF THE JURORS

1 THE COURT: Thank you. Mr. Bax, the defense?

2 MR. BAX: No, Your Honor. I think it was the  
3 way to go.

4 THE COURT: All right. Now, I think before  
5 we bring the jury in, we wanted to deal with the  
6 possible sequestration violation by Mr. Colton --

7 MS. LEMPESIS: Delaplane.

8 MR. BAX: Delaplane.

9 THE COURT: Delaplane. Thank you. Okay.  
10 Is Mr. Delaplane back there in sequestration?

11 MS. LEMPESIS: He is, Your Honor.

12 THE COURT: Let's bring him out first.

13 Mr. Delaplane, come forward please, sir, and  
14 be sworn in, please.

15 Thereupon,

16 COLTON DELAPLANE

17 was called as a witness, having been first duly sworn,  
18 was examined and testified out of the presence of the jury as  
19 follows:

20 THE COURT: You may be seated. Please state  
21 and spell your name for the Court's record.

22 THE WITNESS: My name is Colton Delaplane.

23 THE COURT: Mr. Delaplane, you, of course, as  
24 you know, were sequestered before this trial  
25 began, as you were sequestered before the earlier

## TESTIMONY OF COLTON DELAPLANE

1 trial.

2 Did you understand the reason behind that  
3 sequestration?

4 THE WITNESS: Because --

5 THE COURT: Do you understand why all the  
6 witnesses were being kept out of the courtroom as  
7 the other witnesses were testifying?

8 THE WITNESS: Yes, sir.

9 THE COURT: And what did you understand that  
10 reason to be?

11 THE WITNESS: To keep everyone on their own  
12 page, sir.

13 THE COURT: That's right.

14 We also understand that during the lunch  
15 hour, Ms. Perez, the last witness who testified, a  
16 friend of yours, as well as a friend of  
17 Mr. McQuarters, and you were conversing somewhere  
18 out in the parking lot perhaps; is that right?

19 THE WITNESS: Yes, sir.

20 THE COURT: Did she come to you, or did you  
21 come to her?

22 THE WITNESS: Both.

23 THE COURT: You saw her and she saw you, and  
24 y'all got together?

25 THE WITNESS: Yes, sir.

## TESTIMONY OF COLTON DELAPLANE

1 THE COURT: And what did you discuss?

2 THE WITNESS: How it went.

3 THE COURT: What's that?

4 THE WITNESS: How it went for her.

5 THE COURT: How what went?

6 THE WITNESS: The trial.

7 THE COURT: Did she indicate to you some of  
8 what her testimony had been?

9 THE WITNESS: No, she just --

10 THE COURT: Did she indicate to you some of  
11 what the questions had been that were put to her?

12 THE WITNESS: No, sir.

13 THE COURT: She didn't talk with you about  
14 some questions that Mr. Bax may have asked her?

15 THE WITNESS: No.

16 THE COURT: What did she talk about?

17 THE WITNESS: She just said that he was  
18 strict.

19 THE COURT: What?

20 THE WITNESS: Strict.

21 THE COURT: Say that again?

22 THE WITNESS: She said he was strict.

23 THE COURT: He was strict. Okay. Was she  
24 specific in what she said?

25 THE WITNESS: No, sir. I saw her about two

## TESTIMONY OF COLTON DELAPLANE

1           minutes and left.

2           THE COURT: All right.

3           Ms. Lempesis, do you have any questions of  
4           Mr. Delaplane?

5           MS. LEMPESIS: I don't, Your Honor. I think  
6           you've covered it.

7           THE COURT: Mr. Bax.

8           MR. BAX: Thank you, Your Honor.

9                           CROSS EXAMINATION

10          BY MR. BAX:

11           Q     Mr. Delaplane, you said that you both  
12           approached each other at the same time. That she saw  
13           you and you saw her, and you both came together at the  
14           same time; is that correct?

15           A     Yes, sir.

16           Q     Okay. And was -- was Jackie upset?

17           A     Yes, sir.

18           Q     Okay. Was she crying?

19           A     No. She was upset.

20           Q     Okay. How was she upset? Like, how could  
21           you tell that she was upset?

22           A     She had tears in her eyes.

23           Q     Okay. And you said that she talked about how  
24           things -- you wanted -- you -- excuse me, let me  
25           rephrase.

## TESTIMONY OF COLTON DELAPLANE

1                   That y'all talked about how it went for  
2 her in trial today, correct?

3           A     Yes, sir.

4           Q     Okay. And she talked about how the  
5 questioning went from me; is that correct?

6           A     She just said you were really strict.

7           Q     Did she use the word "strict," or did she use  
8 something different from that?

9           A     I don't know.

10          Q     Well, I'm going to ask you please to be as --  
11 try to remember as best you can for us what word she  
12 used when she talked about my questioning of her.

13          A     She just said that you were being hard, I  
14 guess, you know.

15          Q     Okay. So, it's either -- was it -- you said  
16 she didn't use the word "strict," now, you've used the  
17 word "hard". Is that the word she used?

18          A     I don't know what was the word she used.

19          Q     Okay. And this conversation, about how long  
20 has it been since you had that conversation?

21          A     An hour and ten minutes.

22          Q     An hour. Okay. But you can't remember what  
23 words she used?

24          A     No, sir. I saw her for about two minutes.

25          Q     And as you talked about with Judge Cooper,



## TESTIMONY OF COLTON DELAPLANE

1     you were aware that you weren't supposed to be talking  
2     to her?

3           A     Yes, sir.

4           Q     Why did you talk to her anyway?

5           A     Because I didn't know I wasn't allowed to  
6     outside of the courthouse.

7           Q     So you didn't understand that the  
8     sequestration order went beyond the walls of the  
9     courthouse?

10          A     Yes, sir.

11               MR. BAX:  A moment's indulgence, Your Honor.

12               THE COURT:  Okay.

13               MR. BAX:  One brief final question,

14     Your Honor.  Thank you for your indulgence.

15   BY MR. BAX:

16          Q     When Ms. Perez was talking about what had  
17     happened in trial, I know you said you couldn't recall  
18     what words she used.  Did she use any curse words?

19          A     Not that I know of.

20          Q     Not that you know of.

21               MR. BAX:  No further questions, Your Honor.

22               THE COURT:  Thank you.  Mr. Delaplane, you  
23     can step down.  You can return to the  
24     sequestration room.  We'll get you out shortly.

25     You'll be the first witness to testify once we get started.

## COLLOQUY

1     Okay?

2             All right.  Anything further regarding the  
3     Delaplane/Perez conversation from the State?

4             MS. LEMPESIS:  Your Honor, I would just -- I  
5     would cite one case to Your Honor.  It's State  
6     versus Singleton, 395 SC 6 is the citation.  
7     It's a 2011 Court of Appeals case, Your Honor.  
8     And it does state that a party is not entitled to  
9     sequestration as a matter of right.

10            THE COURT:  Right.

11            MS. LEMPESIS:  So I think that's pertinent  
12     and important in this inquiry.  It's not -- it's  
13     not -- not entitled to it.

14            THE COURT:  Well -- and that's true.  It is a  
15     matter of right, it's discretionary.  But then  
16     once it's imposed, then the rules change, of  
17     course.

18            MS. LEMPESIS:  Yes, Your Honor.  I think it's  
19     clear from -- well, in this case particular, we  
20     have Colton's already testified once before.  He's  
21     going to be asked different questions than Jackie  
22     was asked.  Jackie was actually at the scene and  
23     saw the attack.  Colton wasn't at the scene and  
24     saw different things and heard different things  
25     and knows different things, and will be asked

## COLLOQUY

1 different questions by myself and Mr. Bax. And I  
2 think that's relevant, as well.

3 THE COURT: Okay.

4 MS. LEMPESIS: And as you have stated before,  
5 Mr. Bax already has quite a bit of information to  
6 use against Mr. Delaplane, and so this certainly  
7 just adds to it.

8 THE COURT: All right. Thank you.

9 MS. LEMPESIS: Thank you, Your Honor.

10 THE COURT: Mr. Bax.

11 MR. BAX: Thank you, Your Honor.

12 First of all, Your Honor kind of hit the nail  
13 on the head, which it would make it discretionary,  
14 Your Honor granted the motion. So once it's  
15 granted, these witnesses were both instructed  
16 about the rules, and as Your Honor was able to  
17 elicit in your examination of Mr. Delaplane, he  
18 understood what the rule was. He stated it was so  
19 that everybody would stay on their own page, I  
20 believe was his testimony, which clearly intimates  
21 that he knows that he's not to, you know, to try  
22 to figure out what to say to coincide with other  
23 witnesses.

24 THE COURT: Right.

25 MR. BAX: However, despite that, he made a

## COLLOQUY

1       conscious effort to specifically talk to another  
2       witness about what had happened with her  
3       testimony.

4               This is also compounded by the fact that  
5       Ms. Perez and Mr. Delaplane knew each other before  
6       this case happened, there's allegations that they  
7       conspired in some way during this event, and  
8       that's certainly a fact that's going to be in  
9       contention before the jury.

10              So, the fact that they both willingly  
11       disobeyed that order is a problem, I think.

12              THE COURT:   Right.

13              MR. BAX:   And to some degree, there's an  
14       issue here of the fact that, you know, one of  
15       detriment.  If the order is to mean something, now  
16       and in future cases, there has to be a consequence  
17       for willful violation of such.

18              THE COURT:   Right.

19              MR. BAX:   And I don't know that -- I,  
20       unfortunately, have not had the opportunity to  
21       look up any case law on this issue, but I have no  
22       idea whether our appellate courts have ever  
23       defined what those remedies are.

24              THE COURT:   Contempt of court is what they  
25       are.  Failure to abide by an order of the court.

## COLLOQUY

1       They can be punished and cited for contempt, just  
2       as it could for any violation of any other court  
3       ruling.

4             And, of course, it's intentionally procured  
5       by your side. Then another side set of rules  
6       apply. Striking answers, striking defenses,  
7       striking causes of action. Even dismissing cases.  
8       None of those apply in this case because this was  
9       not intentionally procured by -- by the State  
10      certainly, and so there's nothing to indicate  
11      there's any wrongdoing other than two folks who  
12      were to some extent complicit, allegedly, in this  
13      crime.

14            And I suppose, given all things considered,  
15      it -- talking, violating the sequestration order,  
16      when they're facing armed robbery charges, is  
17      probably rather insignificant.

18            But you're right. If there really is going  
19      to have anything that's any significance at all,  
20      the sanction would be contempt of court citation.

21            MR. BAX: Well, Your Honor, as I am here to  
22      represent Colton, I certainly -- I don't -- I  
23      think in this -- in this stature, Your Honor, I  
24      don't really have a dog in what you decide to do  
25      to them. Because it really doesn't bear on my

## COLLOQUY

1           ability to defend my client.

2           THE COURT:   Right.

3           MR. BAX:    So, I'll leave that issue without  
4           any further comment.  And I certainly do think  
5           that something has to be done, at least, in some  
6           way.

7           THE COURT:   Right.

8           MR. BAX:    But I leave that to Your Honor.

9           As my co-counsel has pointed out, the problem  
10          that we have is that the vast majority of the  
11          State's case against my client rests on Ms. Perez  
12          and Mr. Delaplane.

13          THE COURT:   That's right.

14          MR. BAX:    Because, as you have heard from  
15          Mr. Snodgrass, he was unable to have the  
16          opportunity to observe and identify the person  
17          that attacked him, unfortunately.

18          And I know Your Honor can see we would be in  
19          a different stature in this case if that were the  
20          case.  Because Mr. Snodgrass is above reproach  
21          when it comes to why he was attacked.  There's  
22          certainly no allegation he was in any way  
23          involved, so he wouldn't have any of those bias  
24          arguments that could be made against him.

25          It is not true of Ms. Delaplane or Ms. Perez,

## COLLOQUY

1       so the fact that the key portion of the State's  
2       case, we've had this violation, and this further  
3       collusion puts a taint on it.

4             As I told Your Honor in chambers, in order to  
5       protect my client's rights, and I think it would  
6       be kind of a cumulative motion at this time, I  
7       feel that I have to move for a mistrial.

8             And I would cite two things. Number one, I  
9       think that the Court's inquiry as to the jurors  
10      was excellent and thorough and we got everything  
11      we needed. But I think it's a cumulative effect.

12            As I look at this, Your Honor, we got, one,  
13      two, three, four, five, six -- seven people who  
14      said yes to your answer, to your question about  
15      whether they saw her crying. There was an  
16      additional person that said that they saw her  
17      talking to her father. But I think that was  
18      Ms. Singleton-Murphy, and she didn't say anything  
19      about crying, I guess she said that she didn't  
20      think she was crying at that time. Not even  
21      taking into account the alternates, that's almost  
22      half of the jury panel. If you take into account  
23      the alternates, it's more than half of the jury  
24      panel. And we certainly, at this point, don't  
25      know if one of those alternates may become a part

## COLLOQUY

1 of the jury in the future, if we don't have a show  
2 up tomorrow or someone gets sick or something of  
3 that nature.

4 I don't -- I don't think it's proper and I  
5 don't really even believe, myself, that they were  
6 lying to Your Honor, I think they were telling the  
7 truth. The problem is, is that right now they're  
8 isolated and they haven't started deliberations.  
9 Once they are ordered to or allowed to begin their  
10 deliberations, you have those five people who saw  
11 that, and they will be talking with each other as  
12 well as talking to the other jurors. I think  
13 there's too much, when you combine that with what  
14 we're talking about with Mr. Delaplane, and  
15 Ms. Perez, I think the integrity of the case has  
16 been irreparably compromised.

17 And even though, Your Honor, I have  
18 absolutely no desire to try this case again, I  
19 promise you I'm sick of it -- no offense to my  
20 client, I'm not sick of him -- but, you know, the  
21 same facts over and over again do become  
22 monotonous. I just have to protect my client.

23 And I think that when you take into a  
24 totality of the circumstances kind of test for  
25 everything that's happened up to this point in the



## COLLOQUY

1 trial, that its integrity is below the point where  
2 we can constitute a fair trial here.

3 THE COURT: Thank you. Let me take the two  
4 things separately.

5 We'll take the issue of the crime. The only  
6 reason that we engaged in the inquiry at all is  
7 because those things happened outside of the  
8 courtroom. Inside the courtroom we have some  
9 level of control, to control or at least observe  
10 what's going on. And we can analyze those things  
11 pretty well within ourselves to see what impact,  
12 if any, they might have on the jury.

13 All of us who have tried cases before has  
14 observed on numerous occasions witnesses become  
15 upset on the stand, break down into tears.  
16 Sometimes we have to have breaks so that they can  
17 recompose themselves. You have victims or  
18 families of victims who cannot control themselves  
19 in spite of their best efforts. Victims or  
20 defendants, families of defendants, likewise, who  
21 break down in tears, and they can't help it, and  
22 they don't mean to do it. But it does not give  
23 rise to a jury trial unless it's orchestrated or  
24 contrived in some way to gain some unfair  
25 advantage.

## COLLOQUY

1           In this case, we had somebody who managed to  
2           control herself pretty well on the jury -- the  
3           witness stand, but when she got outside with her  
4           father, could not. There's no evidence that that  
5           was contrived. There's no evidence that the  
6           coincidental contact between her and the jury out  
7           there in the hallway was anything other than just  
8           that, coincidental.

9           The inquiry that I made here in this  
10          courtroom was because none of that happened in our  
11          presence, and we had to know the extent of it and  
12          what impact, if any, it had on the jury. We all  
13          heard the same answers. They were unequivocal.

14          And I suppose if they had seen her crying in  
15          the courtroom and I pulled them aside and said,  
16          Does that make any difference on your ability to  
17          be fair and impartial, they would have given the  
18          same answer. But I would have thought that  
19          perhaps they would have a little more trouble  
20          struggling with an in-court breakdown than they  
21          would coincidental, as they saw outside.

22          Now, the contact between Mr. Perez -- or  
23          Ms. Perez and Mr. Delaplane obviously should not  
24          have happened. They both know that it was not  
25          supposed to happen, but it did. That was not

## COLLOQUY

1       orchestrated by the State. They don't want to try  
2       this case anymore than anybody else does again.  
3       But it happened.

4               And as I said earlier, I suppose the folks  
5       who engage in the kind of activity they are  
6       accused of engaging in, back in October of 2013,  
7       the mere violation of a sequestration order would  
8       seem pretty minor by comparison.

9               But more than that, there's no prejudices  
10      been shown. First of all, there's nothing that we  
11      know. Even if they were lying, nothing has been  
12      revealed that would indicate that somehow or  
13      another the playing field has been tilted. And  
14      that's reinforced by the fact that insofar as  
15      Mr. Delaplane is concerned, you have  
16      Officer Seifert -- Investigator Seifert's  
17      investigative notes as to what he said.

18              But even better than that, you have the  
19      typed -- excuse me -- the taped interview of what  
20      he told Investigator Seifert, and you have his  
21      testimony from a prior trial. If he tries to  
22      deviate from any of those things because of what  
23      Ms. Perez may have told him, it's going to be  
24      pretty obvious, and it's going to give you a whole  
25      lot to chew on in the course of your

## COLLOQUY

1 examination -- cross-examination of the witness.

2 So, I can see no prejudice there, at least  
3 right now. You know, I can revisit that if  
4 something comes up during his testimony that  
5 changes that. But right now I can't see any  
6 reason to stop this or grant a mistrial based on  
7 these facts. They are unfortunate, they're time  
8 consuming, and it's necessary that we inquire into  
9 them. We have to do that to protect the integrity  
10 of this process.

11 And I would imagine before we get through  
12 these other three witnesses for the State, we're  
13 going to have some more incidences come up, and  
14 we'll deal with them the same way, just like we  
15 did with these, and work our way through them.

16 But right this minute, I don't think that the  
17 integrity of the process has been harmed, and I  
18 don't think that the rights of Mr. McQuarters --  
19 or of the State -- have been unfairly prejudiced  
20 by those comments.

21 Request for mistrial respectfully denied.

22 MR. BAX: Thank you, Your Honor.

23 THE COURT: Bring in the jury.

24 MS. LEMPESIS: Your Honor, before we bring  
25 the jury out, I did want to note, it's a little

## COLLOQUY

1 after three o'clock, and I have a scheduling issue  
2 with the doctor who's going to testify. And I  
3 hate to do this, but I do think I'm going to go  
4 ahead and call Dr. Snowman to testify because we  
5 have to --

6 THE COURT: Okay. That's right. You  
7 mentioned that to me before. We said we were  
8 going to do that before. And he's going to be  
9 here, and we've got to inquire about his ability  
10 to testify as an expert witness. And I think  
11 there's a photograph that has to be dealt with in  
12 connection --

13 MS. LEMPESIS: Yes, Your Honor.

14 THE COURT: Okay. So we'll bring in  
15 Dr. Snowman.

16 MS. LEMPESIS: Thank you, Your Honor.

17 Your Honor, I think the issues, as you  
18 stated, with Dr. Snowman, is twofold. It's, one,  
19 as to the picture, which might be the -- I don't  
20 know which we'd like to address first.

21 There's two separate issues. One regarding  
22 the picture, and one regarding his qualifications  
23 and what the State intends to present him --

24 THE COURT: Well, frankly, I think that they  
25 could both be folded together because his

## COLLOQUY

1 observation of the injuries itself impacts on the  
2 expert; is that right?

3 MS. LEMPESIS: Yes, Your Honor.

4 THE COURT: And his observation of the  
5 injuries, as they're reflected on the photographs,  
6 sort of limit each other, don't they?

7 MS. LEMPESIS: Yes, Your Honor.

8 THE COURT: Well, why don't we talk about his  
9 expert qualifications, first of all?

10 MS. LEMPESIS: Yes, Your Honor. Thank you.

11 THE COURT: Come forward, Dr. Snowman,  
12 please, and be sworn.

13 Thereupon,

14 DR. PATRICK SNOWMAN

15 was called as a witness, having been first duly sworn,  
16 was examined and testified outside of the presence of the jury  
17 as follows:

18 THE CLERK: You may be seated. Please state  
19 and spell your name for the Court's record.

20 THE WITNESS: My name is Patrick Snowman.

21 S-N-O-W-M-A-N. First name, P-A-T-R-I-C-K.

22 THE COURT: Ms. Lempesis.

23 MS. LEMPESIS: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. LEMPESIS:

## TESTIMONY OF DR. PATRICK SNOWMAN

1           Q     Dr. Snowman, we're going to go through your  
2 background and talk about your prior experience.

3                     Who do you work for currently?

4           A     Hilton -- I work at Hilton Head Hospital.

5           Q     Thank you. And do you work for somebody  
6 else? I guess is the hospital owned by someone else?

7           A     Yeah. The -- the group that I work with is  
8 Team Health Physicians, which is a contract group that  
9 I work with and for.

10                   THE COURT: The name of the group again,  
11 Doctor?

12                   THE WITNESS: Team Health.

13                   THE COURT: Thank you.

14                   THE WITNESS: Uh-huh. (Indicating  
15 affirmatively.)

16 BY MS. LEMPESIS:

17           Q     Dr. Snowman, how long have you been at Hilton  
18 Head Hospital?

19           A     Eleven years.

20           Q     And are you licensed to practice in South  
21 Carolina?

22           A     Yes.

23           Q     Are you licensed anywhere else?

24           A     No.

25           Q     And how long have you been licensed to

## TESTIMONY OF DR. PATRICK SNOWMAN

1 practice in South Carolina?

2 A Eleven years.

3 Q Tell us your background as far as education.

4 A I completed an undergraduate degree in  
5 chemistry, and then went to medical school at the  
6 Medical College of Pennsylvania in Philadelphia. That  
7 was a four-year medical school program.

8 I then completed a residency in  
9 emergency medicine, also in Philadelphia, at the  
10 Medical College of Pennsylvania and several other  
11 hospitals in the Philadelphia surrounding area.

12 Q And once you completed your residency  
13 training, what did you do after that?

14 A When I completed residency training, I was a  
15 Captain in the United States Army and served four years  
16 on active duty, retire -- retiring as a Major, and  
17 after -- and that was at Fort Campbell, Kentucky at  
18 Darnall Community Hospital.

19 I was also the emergency services  
20 director of the 86th Combat Support Hospital, which was  
21 attached to the 101st Airborne Division at Fort  
22 Campbell.

23 Q So, that was full time you were practicing as  
24 an emergency medical physician?

25 A Correct.



## TESTIMONY OF DR. PATRICK SNOWMAN

1           Q     Thank you.  Is that your main area of  
2 practice, Mr. Snowman?

3           A     Yes.

4           Q     And just to make sure that I've got your --  
5 your title right, can you tell me -- tell me what your  
6 title is.

7           A     My title is Emergency Physician.

8           Q     Emergency physician.

9           A     Or Emergency Medicine Physician.  Either one  
10 is correct.

11          Q     Thank you.  And so you've been at Hilton Head  
12 Hospital, you said, for 11 years?

13          A     Yes.

14          Q     So that entire time, was that entire time in  
15 the emergency department?

16          A     Yes.

17          Q     Tell us about what you have to do for  
18 continuing medical education.  Are there any  
19 requirements?

20          A     Yes.  In emergency medicine, it's a board  
21 specialty under the American Board of Emergency  
22 Medicine.  And that is under the larger organization of  
23 the American Board of Medical Specialties, which is the  
24 same certifying organization as the, you know, surgeons  
25 and internal medicine doctors and all medical

## TESTIMONY OF DR. PATRICK SNOWMAN

1 specialties.

2                   As part of board certification there is  
3 an initial process which involves residency training,  
4 several exams during residency, obviously precepted  
5 care, supervised care during residency. And then it  
6 requires an oral and written examination to become  
7 board certified.

8                   Once board certified, every year there's  
9 a requirement to review approximately 15 peer review  
10 medical articles, and then there's an exam every two  
11 years or so. And then every ten years, after  
12 completing those maintenance of certification  
13 requirements throughout the ten-year period, then you  
14 have to take another major recertification exam every  
15 ten years. I've gone through that process one time,  
16 having been an ER -- an emergency medicine physician  
17 for 15 years.

18           Q     Thank you. Do you, as an emergency medicine  
19 physician, receive any special sort of training in  
20 wound care?

21           A     Very much so, yes.

22           Q     Can you tell the Court about that special  
23 training?

24           A     Emergency medicine is a specialty that  
25 results in somebody being trained to manage medical

## TESTIMONY OF DR. PATRICK SNOWMAN

1 emergencies in children and adults across all  
2 specialties. A specialty trauma management, or  
3 certainly trauma management.

4                   One of the major aspects of managing  
5 trauma is the evaluation, assessment, and management of  
6 wounds. And that starts with the residency training  
7 program involving specialized courses in wound  
8 management and evaluation, and really continues through  
9 maintenance of certification and continuing medical  
10 education activities.

11           Q     So you said assessment and management of  
12 wounds?

13           A     Right.

14           Q     So tell me what exactly that means.

15           A     Well, in order to manage wounds effectively  
16 and appropriately you have to assess them first. And  
17 the assessment of wounds involves understanding the  
18 mechanisms that cause wounds. And there's two broad  
19 categories of wounds. There are blunt force wounds and  
20 there are penetrating or wounds caused from a sharp  
21 object, also called penetrating wounds.

22                   Within the category of blunt wounds  
23 there are bruises, abrasions, and lacerations. And  
24 within the category of penetrating wounds there are  
25 stab wounds and what -- and slice wounds from sharp

TESTIMONY OF DR. PATRICK SNOWMAN

1 objects.

2                   There's also the category of wounds  
3   caused from gunshots. So it's important to know the  
4   details about assessing what type of wounds were caused  
5   by what type of mechanisms, because that directly  
6   relates to how those wounds are managed.

7 Q Thank you. And so during your time in the  
8 emergency department at Hilton Head Hospital, how much  
9 -- how many -- if you can estimate, how many wounds you  
10 have treated in your time as an emergency management  
11 physician there?

12           A     If I may, to -- since I've been an emergency  
13     medicine physician, board certified for 15 years, my  
14     wound experience goes back to then.

15 Q Thank you. Please.

16           A       And actually before that in residency. But  
17       since being board certified in the military, in a war  
18       zone situation, and as a civilian emergency physician,  
19       I estimate that I've seen approximately 45,000  
20       patients, total.

21                   Of those 45,000 patients, I estimate 20  
22   to 30 percent of those cases have been trauma related.  
23   And perhaps 30 to 50 percent of those have involved  
24   injuries to the skin, or wounds to the skin.

25 So, that number is probably 3- to 5,000

## TESTIMONY OF DR. PATRICK SNOWMAN

1 patients over my 15-year career.

2 Q And of those 3- to 5,000 patients that you've  
3 treated, can you tell us the number of times that  
4 you're generally able to determine what caused the  
5 injury?

6 A The vast majority of times when somebody  
7 presents with a wound to the skin there's a history  
8 that goes along with that. So, I would estimate  
9 80 percent of the time or more the patient is able to  
10 describe what happened that caused the wound. Whether  
11 it was a fall or being hit with something, or stabbed  
12 with something, or shot with something, most people  
13 know what caused their wounds.

14 Q Okay. And so you collect this information, I  
15 guess, from the patient?

16 A Correct. So, as part of the history and  
17 evaluation of that patient, I obtain information about  
18 what caused the wound. And so in thousands of cases I  
19 have a direct correlation between what the patient  
20 states a wound is caused by and what the wound looks  
21 like and, therefore, how I'm going to manage it.

22 Q Going back, you said that you have to get --  
23 you have to do something every year for your  
24 certification, correct? You said something about  
25 reviewing peer review articles?

## TESTIMONY OF DR. PATRICK SNOWMAN

1           A     Right.  There -- that's called maintenance of  
2     certification, and it's an ongoing requirement in most  
3     specialties that involves reviewing peer review  
4     literature and then taking examinations.

5           Q     Okay.  And do you -- so do you do this in  
6     your daily practice?

7           A     I do this as part of my -- as part of my  
8     daily, you know, standard practice.  I also review  
9     literature well beyond what's required for those  
10    maintenance and certification requirements.

11          Q     Okay.  And do you review any certain  
12    publications regarding wound care?

13          A     Well, I review the journal of emergency  
14    medicine, which is the journal within the professional  
15    organization that I have been a Fellow for the past 15  
16    years.  That's the American Academy of Emergency  
17    Medicine.

18                   I also review Annals of Emergency  
19    Medicine, which is the journal of another professional  
20    organization called The American College of Emergency  
21    Physicians.

22                   I also, you know, regularly review  
23    journals outside of emergency medicine, such as the  
24    Journal of the American Medical Association, the  
25    Journal of Pediatric and Adolescent Medicine.  There's

## TESTIMONY OF DR. PATRICK SNOWMAN

1 many journals that I review and, you know, read  
2 articles from time to time.

3 Q And all of this is to aid you in your  
4 assessment and management of victims at the emergency  
5 department?

6 A Victims and medical patients, as well. Many  
7 of those journals, you know, in the emergency medicine  
8 journals, as part of their sections within the journals  
9 involve trauma. And, therefore, there's routinely  
10 articles on wound care and things of that nature.

11 Q Thank you. Dr. Snowman, how many times have  
12 you testified in court?

13 A This is the fourth time that I have testified  
14 in a criminal trial.

15 Q Okay. And have you testified in any other  
16 sort of proceeding? Civil?

17 A No.

18 Q Okay. How many times have you been qualified  
19 as an expert?

20 A Four times.

21 Q Four times?

22 A Uh-huh. (Indicating affirmatively.)

23 MS. LEMPESIS: Your Honor, the State, based  
24 on this testimony, would offer Dr. Snowman as an  
25 expert in the field of emergency medicine.

## TESTIMONY OF DR. PATRICK SNOWMAN

1 THE COURT: Okay. Thank you. Voir dire?

2 MR. BAX: Yes. Thank you, Your Honor.

3 VOIR DIRE EXAMINATION

4 BY MR. BAX:

5 Q Dr. Snowman, good afternoon.

6 A Good afternoon.

7 Q I want to ask you a few questions. And  
8 briefly, I'm sure that His Honor has drawn this  
9 conclusion, but one of those prior times that you've  
10 testified was in the first time we tried this case,  
11 correct?

12 A Yes, uh-huh. (Indicating affirmatively.)

13 Q Okay. And you were qualified as an expert in  
14 emergency medicine in that prior trial, correct?

15 A Yes.

16 Q You were not qualified as an expert in  
17 identification of objects that create wounds or  
18 anything of that nature, correct?

19 A There's no such thing as being an expert  
20 in -- except in forensic pathology. And, no, I'm  
21 definitely not an expert in forensic pathology.

22 Q Okay. But -- and so you weren't -- you  
23 weren't qualified in anything other than emergency  
24 medicine, correct?

25 A Correct.



## TESTIMONY OF DR. PATRICK SNOWMAN

1           Q     Okay. Now, you've talked about, you know,  
2     wound care and assessment of wounds. You said there's  
3     a couple different categories. You've also talked  
4     about your reviewing of emergency medicine journals and  
5     some other journals.

6                     Dr. Snowman, how many times have you  
7     published an article in any of these journals?

8           A     Well, if I may clarify, there's three types  
9     of injuries. There's blunt force, penetrating, and  
10    gunshot wounds. So just to clarify that.

11          Q     Excuse me. Gunshot wounds.

12          A     I have not published in any of those -- I've  
13    not published in any of those areas.

14          Q     Okay. And you talked about the requirement  
15    of peer review of articles and review of the journals.  
16    You obviously have reviewed other doctors' articles  
17    about things in these journals, correct?

18          A     Yes.

19          Q     But if you've not published, then you have  
20    not had any other doctors review your article; is that  
21    correct?

22          A     I have not published articles in a peer  
23    review journal.

24          Q     Okay. And as a result, you haven't received  
25    any critique of any kind of any of your own theories,

## TESTIMONY OF DR. PATRICK SNOWMAN

1 correct?

2 A That's not correct, no.

3 Q Well, let me ask you this: Published, you  
4 haven't received any critique of anything that you've  
5 published?

6 A Right. I will answer no to that question  
7 every time because I've not published anything. So --

8 Q Well, I just wanted to make sure I was clear.

9 All right. Now, Dr. Snowman, also I  
10 think there's a little bit of an issue here. I want to  
11 make sure we clarify.

12 You've testified that you have testified  
13 in four trials, correct?

14 A Yes, including today.

15 Q Including today. Okay. So, you've also  
16 testified that these were all criminal in nature,  
17 correct?

18 A Yes.

19 Q Okay.

20 MR. BAX: A moment's indulgence, Your Honor.

21 All right. I'm a little -- I need to get some  
22 clarification.

23 (Pause.)

24 BY MR. BAX:

25 Q You recall testifying in the prior trial,

## TESTIMONY OF DR. PATRICK SNOWMAN

1 correct?

2 A Yes.

3 Q Okay. And we conducted the same kind of  
4 examination outside the presence of the jury before?

5 A That's correct.

6 Q And do you recall when I was questioning you  
7 before that I asked you at that time how many times  
8 that you had testified, and that you replied three  
9 times?

10 A Yes.

11 Q Okay. So, obviously, that didn't include  
12 today?

13 A Correct.

14 Q Okay. Do you recall me asking of those three  
15 times, I actually said, Excuse me, let's exclude today.  
16 Of those two other times, how many were in criminal  
17 cases?

18 And you replied, One.

19 Do you recall that?

20 A I may have misspoke because the trials that I  
21 have been participants in were criminal trials.

22 Q Okay. Well --

23 A And part of the confusion may be that one of  
24 them was in Tennessee. So -- and actually it may have  
25 been actually Kentucky was the actual location. So in

## TESTIMONY OF DR. PATRICK SNOWMAN

1 South Carolina, it has been three, including today.

2 But total, four. So, I may have misspoken because of  
3 that.

4 Q Okay. So -- But you don't contest that if  
5 the transcript reflects that when I asked you about the  
6 cases that you'd testified to other than this one, you  
7 had said only one was criminal at that time?

8 A I don't contest that, no.

9 Q Okay. And for clarification, outside of this  
10 case involving Mr. McQuarters, you've only testified  
11 twice before, correct?

12 A Correct.

13 Q Okay. And additionally, as I asked you last  
14 time, were you qualified as a forensic expert in either  
15 or any of those trials?

16 A No.

17 Q Okay. You were only court -- excuse me,  
18 qualified as a medical expert; is that right?

19 A I was qualified as an expert in emergency  
20 medicine.

21 Q The reason I asked, and I think it goes to  
22 the heart of the issue here, Doctor, is my  
23 understanding, based on last time that we had this  
24 colloquy, your intention is to testify to a reasonable  
25 degree of medical certainty that the object used to

## TESTIMONY OF DR. PATRICK SNOWMAN

1     inflict the wounds on Mr. Snodgrass was not a fist, but  
2     an object, correct?

3           A     That's correct.

4           Q     Okay. And that is still your intention here  
5     today; is that correct? That's still your opinion?

6           A     Yes.

7           Q     Okay.

8           MR. BAX: Moment's indulgence, Your Honor.

9           THE COURT: Okay.

10          (Pause.)

11          MR. BAX: Sorry. It just came back to my  
12     mind. I apologize.

13          THE WITNESS: That's okay.

14     BY MR. BAX:

15           Q     I know I asked you last time if you had  
16     any -- taken any courses in forensic pathology, and you  
17     had answered at that time that you didn't.

18                     My question is: Have you had any  
19     further training since last trial that included  
20     anything of the forensic pathology? For example, have  
21     you done any kind of further training since last trial  
22     involving forensic pathology, for example?

23           A     What I didn't mention last time is that part  
24     of what I do is review the medical literature, which  
25     includes a large body of literature including

## TESTIMONY OF DR. PATRICK SNOWMAN

1     assessment and management of wounds. Those are not  
2     courses or specialized training in forensic pathology.

3                     So, the answer to your question is: No,  
4     I have not had any special training in forensic  
5     pathology then or since.

6             Q     So, in other words, your answers to those  
7     questions that I asked before would be the same today  
8     as they were then; is that correct?

9             A     Yes.

10            Q     Thank you, Dr. Snowman. I appreciate it.

11                   MR. BAX: Moment's indulgence, Your Honor.

12                   THE COURT: Okay.

13                                 (Pause.)

14     BY MR. BAX:

15            Q     Out of an abundance of caution, Dr. Snowman,  
16     I'm just going to ask you a couple of brief follow-up  
17     questions. Some of these are the same questions I  
18     asked you before.

19                   Based on your experience and your  
20     knowledge, lacerations can occur from blunt force  
21     trauma, as well, correct?

22            A     Yes.

23            Q     Okay. I think I used the example of when  
24     there's a boxing match and someone gets hit hard enough  
25     or at the right angle their tissue can tear and cause

## TESTIMONY OF DR. PATRICK SNOWMAN

1     bleeding, correct?

2           A     Right.  And it usually causes very simple  
3     lacerations, and you usually see one around the eye.  
4     That's correct.

5           Q     Okay.

6                   MR. BAX:  No further questions at this time,  
7     Your Honor.

8                   THE COURT:  Thank you.

9                   Redirect, Ms. Lempesis?

10                                 REDIRECT EXAMINATION

11     BY MS. LEMPESIS:

12           Q     Dr. Snowman, would it be normal for an  
13     emergency medicine physician to take a course in  
14     forensic pathology?

15           A     There are fellowships offered in forensic  
16     emergency medicine.  It's not common, but there is sort  
17     of a subspecialty.

18                   What's important to note is that  
19     forensic pathology is a specialty, a medical specialty  
20     that's far more detailed in the analysis of wounds than  
21     is an emergency medicine.  It's involved in primary  
22     post mortem analysis.  It requires determination of  
23     whether wounds had anything to do with the cause of  
24     death, the timing of multiple wounds, use of  
25     microscopy, chemical assays, advanced imaging

## TESTIMONY OF DR. PATRICK SNOWMAN

1 techniques. It's things well beyond the relevant  
2 assessment and management of acute wounds in the  
3 emergency department.

4 I make no claim of being an expert in  
5 that level of wound analysis that a forensic  
6 pathologist would have.

7 Q But you can say to the court today that  
8 you've, in your time as an emergency medicine  
9 physician, have treated 3- to 5,000 patients with  
10 wounds that you had to assess and then determine how to  
11 manage?

12 A Absolutely.

13 Q And so when you assess a wound, do you --  
14 does that affect how you manage the wound?

15 A It does.

16 Q So it's a critical part in your day-to-day  
17 practice; is that a fair statement?

18 A It's a fair statement. And, you know, in the  
19 practice of emergency medicine there are several areas  
20 of expertise: Airway management, toxicology,  
21 pediatrics. One of the areas of expertise is wound  
22 assessment and management.

23 Q Thank you.

24 A You're welcome.

25 Q Mr. Bax asked you about whether or not you



TESTIMONY OF DR. PATRICK SNOWMAN

1    yourself have been published, and we had the answer,  
2    no. The articles that you review, just to make this  
3    very clear, are they peer reviewed?

4                    A        Yes.

5 Q And they're published in recognized journals  
6 of medicine?

7                    A        Yes.

8 Q Thank you.

9           A       I'd also like to say that in addition to  
10   reviewing peer review journals, I certainly have  
11   reviewed resource material in forensic pathology and  
12   there are forensic emergency medicine texts that I'm  
13   reviewing. And that's part of my training and  
14   experience in emergency medicine.

15           Q     Thank you.

16 MS. LEMPESIS: Your Honor, I have no further  
17 questions as to the qualifications of Mr. Snowman.

18 THE COURT: Dr. Snowman, you indicated in  
19 response to one of the questions from Mr. Bax,  
20 that you intended to offer, if you're allowed to,  
21 an opinion as to whether a wound -- the wounds in  
22 this case of the victim were caused by a fist or  
23 by some object; is that right?

24 THE WITNESS: Yes.

25 THE COURT: And upon what basis would you

## TESTIMONY OF DR. PATRICK SNOWMAN

1 base your conclusion that it was caused by an  
2 object and not by a fist?

3 THE WITNESS: There are several factors,  
4 Your Honor.

5 THE COURT: Okay.

6 THE WITNESS: One is having seen many, many  
7 cases where victims have been hit, at least by  
8 their history, by fists only.

9 THE COURT: Right.

10 THE WITNESS: And it tends to cause usually  
11 no laceration, but in some cases it does cause a  
12 laceration, and that's usually in the context of a  
13 bruise. And they're simple lacerations, and  
14 they're usually around the eye or the eyebrow.

15 And so in this particular case, where there  
16 are multiple lacerations of varying shapes in  
17 varying locations, including the forehead which  
18 has thicker tissue, I've not ever seen a wound  
19 caused only by a fist that involves that pattern  
20 of trauma and lacerations.

21 THE COURT: I think this is where the  
22 photographs come into play, Ms. Lempesis. I want  
23 you to show the doctor the photograph and ask him  
24 to explain to me how those particular wounds  
25 indicate to him that they were caused by an object

## TESTIMONY OF DR. PATRICK SNOWMAN

1 and not by a fist.

2 MS. LEMPESIS: Thank you, Your Honor.

3 And there's just one photo that I believe  
4 would be at issue. Would you like me to show all  
5 of the photos I intend to --

6 THE COURT: No, no. Whatever allows him to  
7 explain his opinion.

8 MS. LEMPESIS: Thank you, Your Honor.

9 Your Honor, I'm going to first then hand to  
10 Mr. Snowman --

11 Permission to approach the witness?

12 THE COURT: Granted.

13 MS. LEMPESIS: Mr. Snowman, these are the --

14 THE COURT: Dr. Snowman.

15 MS. LEMPESIS: Dr. Snowman. Thank you.

16 Dr. Snowman, these are State's Exhibits  
17 marked 2 through 8.

18 Your Honor, would you like me to lay the  
19 foundation now to admit them, or just go ahead and  
20 have him explain them?

21 THE COURT: No. We'll deal with that before  
22 we deal with the jury. I just need to know that  
23 he saw those things, and that if they are  
24 indicative of what he bases his opinion on.

25 MS. LEMPESIS: Thank you.

## TESTIMONY OF DR. PATRICK SNOWMAN

1           THE WITNESS: Would you like me to stand up,  
2           Your Honor?

3           THE COURT: You can stand or sit, just so the  
4           microphone can pick you up.

5           THE WITNESS: Okay.

6           THE COURT: And certainly tell the number as  
7           you --

8           THE WITNESS: Sure.

9           Okay. So, this is the photograph.

10          MR. BAX: Your Honor, I need to see what he's  
11          showing you.

12          THE COURT: You need to show him.

13          THE WITNESS: This is Exhibit 3.

14          THE COURT: Okay.

15          THE WITNESS: This is a photograph which is  
16          showing the front view of the victim's face, and  
17          you can see that there are multiple lacerations.  
18          They're linear in nature, and they involve tissues  
19          of the lower cheek, upper cheek, the side of the  
20          eye, the temple region, and the upper forehead.

21          And so this pattern of linear lacerations is  
22          consistent with a blunt object other than a fist.

23          This is another photograph. This shows more  
24          clearly these linear patterns and the repair of  
25          the wounds that I did in the emergency department.

## TESTIMONY OF DR. PATRICK SNOWMAN

1 This one in particular is clearly a -- a linear  
2 wound.

3 There's also a linear pattern to this wound,  
4 which has a certain curved linear pattern to it,  
5 which is not consistent with a fist.

6 These wounds are also linear type abrasions,  
7 which, you know, may or may not be relevant to the  
8 facial wounds, but they certainly are in a linear  
9 pattern which is not consistent with the fist.

10 THE COURT: Okay.

11 THE WITNESS: And that's -- and I'm sorry.  
12 The second was -- the profile view was Exhibit 5.

13 THE COURT: Okay. All right. Thank you.

14 MS. LEMPESIS: Your Honor, there is one other  
15 picture. I have not marked it as a State's  
16 exhibit. This is the picture that the State would  
17 also intend to introduce.

18 And I think Dr. Snowman can also explain to  
19 the Court how that picture is helpful in  
20 describing the victim's injuries.

21 THE WITNESS: The only part of this picture  
22 which is helpful in distinguishing --

23 THE COURT: What number? Does it have a  
24 number?

25 MS. LEMPESIS: I have not numbered it,

## TESTIMONY OF DR. PATRICK SNOWMAN

1 Your Honor.

2 THE COURT: Okay. I know what you're talking  
3 about. Go ahead.

4 THE WITNESS: Is that this laceration -- I'm  
5 not sure that that's -- yeah.

6 This photograph demonstrates the fact that  
7 these wounds are acute. There's acute swelling,  
8 there's obviously acute blood, and so it goes to  
9 the timing of the wounds having happened  
10 relatively soon prior to me seeing the patient.

11 In terms of what you can see in this  
12 photograph, it doesn't speak directly to whether  
13 they were caused by fists or some other object, in  
14 my opinion.

15 THE COURT: Thank you, Doctor.

16 THE WITNESS: Thank you.

17 THE COURT: Excuse me. Ms. Lempesis, which  
18 of those photographs do you intend to try to  
19 elicit through Dr. Snowman?

20 MS. LEMPESIS: Your Honor, the ones that I've  
21 already labeled, 2 through 8. And then this  
22 picture, Your Honor, I would also -- well, I beg  
23 the Court's indulgence, if I may, just one moment.

24 THE COURT: Okay.

25 (Pause.)

## TESTIMONY OF DR. PATRICK SNOWMAN

1           MS. LEMPESIS: And, Your Honor, then finally,  
2           this picture, which I have not yet labeled, we  
3           would also intend to admit so that he could talk  
4           about the acute nature of the injuries.

5           THE COURT: Would you pass up 2 through 8,  
6           first of all, for me?

7           MS. LEMPESIS: Yes, Your Honor.

8           THE COURT: Dr. Snowman, of course, he's  
9           qualified imminently as an expert in the field of  
10          emergency medicine. He has admitted that there is  
11          no expertise in the type of objects that cause  
12          various wounds. That is not to say, however, that  
13          the cause of those wounds is not able to be  
14          determined in this case, based on experience.

15          And he has outlined how he's reached the  
16          conclusion that he reached in regard to the wounds  
17          that Mr. Snodgrass experienced in this particular  
18          case.

19          I'm going to allow him to testify as to his  
20          opinion as to the cause of those wounds. Not as a  
21          specialty expert, but simply as an expert in  
22          emergency medicine, who has had the experience  
23          that he has in treating 3- to 5,000 skin injuries  
24          during his 15 years as a practicing physician.  
25          And he can explain to the jury, as he has

## COLLOQUY

1 explained to me, the linear nature of these  
2 wounds, as anyone looks at them. Frankly, you  
3 would think that without -- without demeaning  
4 Dr. Snowman's considerable expertise, that  
5 probably you or I could have figured out that  
6 something other than a fist caused these wounds,  
7 from looking at them.

8           There's one at the top that has a curved  
9 nature to it. There are some along the face which  
10 are linear. There's one above the left eye, which  
11 is clearly linear in nature.

12           There are the wounds on the hands themselves,  
13 which obviously could not have been caused by a  
14 hand or a fist. The nature of the location would  
15 indicate that it's unlikely that somebody could  
16 hit your fist with theirs, or your hand with their  
17 fist, and cause these types of injuries, in any  
18 event.

19           I'll allow him to testify as to his opinion  
20 these were caused by an object other than by a  
21 fist.

22           The unmarked photograph, you might want to  
23 mark it for identification, Ms. Lempesis. It's  
24 not going to go to the jury because the doctor  
25 said it really shows nothing other than the fact



## COLLOQUY

1           that the temporal nature of the wounds to that  
2           photograph, it's of assistance to him deciding how  
3           those things are made. These other photographs  
4           which are cleaned up and don't have the emotional  
5           impact of those -- of that photograph are the ones  
6           that the jury will be able to see.

7           Two through eight will be allowed into  
8           evidence. To the extent that the defense wishes  
9           to object, of course, I'll register those  
10          objections. The unmarked photograph will not go  
11          into evidence. Dr. Snowman will be allowed to  
12          testify regarding the origin of the wounds over  
13          objection of defense counsel.

14          MR. BAX: Your Honor.

15          THE COURT: Yes, sir.

16          MR. BAX: I'd just like to be heard at the  
17          appropriate time.

18          THE COURT: Is there anything you can add?

19          MR. BAX: Well, your Honor, I -- and I'm sure  
20          this -- hopefully, I'm not saying this  
21          incorrectly, but I don't think I was given the  
22          opportunity to argue prior to your ruling about  
23          why we don't think he should be allowed to testify  
24          to it. There was quite a few things that I  
25          intended to argue, specifically quoting the

## COLLOQUY

1 Judge's ruling in the prior trial, that I haven't  
2 had an opportunity to argue, including the Counsel  
3 and Jones factors.

4 THE COURT: He's not being qualified as an  
5 expert to testify about this. That's the  
6 distinction. Counsel and Jones go to expertise  
7 qualifications. He has acknowledged that there is  
8 no expertise when it comes to the instrument that  
9 causes injuries. And, therefore, there's not  
10 going to be any peer review on those sorts of  
11 things.

12 MR. BAX: Well, Your Honor, I would like to  
13 say, though, that his testimony about what  
14 potentially caused the injuries is still an  
15 opinion testimony, and he can't testify to an  
16 opinion unless he is testifying as an expert.

17 THE COURT: He is an expert in emergency  
18 medicine. He is not an expert in an area where no  
19 expertise exists.

20 That's not to say, however, because no  
21 expertise exists as to what causes an injury --  
22 short of forensic pathology, forensic medicine,  
23 that a doctor with his level of expertise in the  
24 field that he does, in his level of experience, is  
25 not going to be allowed to say, I've looked at

## COLLOQUY

1       these things and I can tell that a linear scar is  
2       not caused by a fist. That the marks on the hands  
3       cannot be caused by a fist. That they are  
4       obviously some sort of puncture wound caused by a  
5       sharp object or a blunt object, at the very least.

6             You know, that's the thing about this. There  
7       are certain -- there is testimony that can be  
8       offered without -- lay people even are allowed  
9       under the rules, opinion testimony by a lay  
10      witness. The witness is not testifying as an  
11      expert, the witness's testimony in the form of  
12      opinions or inferences is limited to those  
13      opinions which are rationally based upon the  
14      perception of the witness and are helpful to a  
15      clear understanding of the witness's testimony,  
16      and do not require special knowledge, skill,  
17      experience, or training in that regard.

18            So, even lay people can offer opinion  
19      evidence. He has the ability because of his  
20      training to offer the opinion that I'm going to  
21      allow him to offer.

22            I'll be glad for you to note the fact that  
23      there has been no counsel analysis of this, no  
24      evaluation along those regards, and there's not  
25      going to be. There can be no peer review where

## COLLOQUY

1 the expertise in and of itself does not  
2 necessarily exist.

3 So, I'll -- you can -- I'll be glad to  
4 further elucidate or to adopt your ruling -- your  
5 argument from the prior hearing in its totality  
6 and make that a part of the record rather than for  
7 us to have to rehash all of that again, if that  
8 will help you.

9 MR. BAX: And I appreciate that, Your Honor,  
10 and I do ask that the prior ruling of  
11 Judge Keesley be incorporated --

12 THE COURT: No, sir.

13 MR. BAX: -- at least by reference into --

14 THE COURT: No, sir.

15 MR. BAX: -- into the transcript of record.

16 THE COURT: No, sir. The prior ruling is  
17 different from prior testimony. The ruling is an  
18 opinion. The testimony is what it is.

19 The prior rulings have no weight on this  
20 Court. That's the difference between as if there  
21 were no prior proceeding. The testimony under  
22 oath is there to be examined, and your arguments  
23 can be examined again, but the ruling itself is of  
24 no moment in this particular case.

25 MR. BAX: Well, then, Your Honor, I would

## COLLOQUY

1       like to put on the record, in full, my argument.  
2       And I would add to the Counsel and Jones factors,  
3       that I believe that they need to be applied in  
4       this situation, as they were applied before.

5               I would add also, State versus Kroma.  
6       Specifically, Justice Beatty talked about, in his  
7       opinion in State versus Kroma, that it's an  
8       escapable fact that while my understanding of  
9       Your Honor's ruling is that his testimony  
10      concerning what caused the injuries is going to  
11      not be expert testimony but lay opinion. He is,  
12      from my understanding, to be qualified as an  
13      expert in emergency medicine.

14             As far as the jury is going to see, he is an  
15      expert.

16             THE COURT: Right.

17             MR. BAX: Whether we even qualify him as an  
18      expert, he's going to testify he's a doctor, so  
19      he's going to be seen as an expert, period.

20             THE COURT: And he should be. And frankly,  
21      it is his expert -- it is his experience as a  
22      doctor that gives him the basis to do this.

23             The point that I was making here, that that  
24      rule is allowed, opinion testimony to be offered  
25      by somebody even other than an expert. Now, he is

## COLLOQUY

1       an expert, and so he's going to be allowed to  
2       offer his opinion.

3               The point that I was making, that there are  
4       certain areas within the realm of human knowledge  
5       that can be concluded without an expert specialty  
6       saying, I am an expert in looking at a wound or  
7       deciding whether it was -- what it was caused by.

8               It's significant in this particular case that  
9       Dr. Snowman is not going to testify so much as to  
10      what this injury was caused by, as to what it was  
11      not caused by. It was not caused by a fist. He  
12      says an object.

13              The whole world of objects is out there.  
14      Anything -- baseball bats, brass knuckles,  
15      knives -- the whole world of that. The type of  
16      testimony in that regard is somewhat general in  
17      its nature. He has not identified an object, he's  
18      simply excluded an object or a force, and that is  
19      the force of a fist. The type of force that would  
20      be created by a fist, because of the nature of it,  
21      the physiology of it.

22              That's the point of my ruling in this regard  
23      as to what he has done by applying what he has  
24      known and what he has seen, is that this was not  
25      caused by a fist.

## COLLOQUY

1           MR. BAX: And, Your Honor, I would just point  
2 out that the very nature of what Your Honor just  
3 said goes right to the point here, because as you  
4 yourself just stated, the world full of objects,  
5 every one that you just named qualifies as a  
6 weapon in order to establish the element of armed,  
7 for the purposes of establishing what the State  
8 has the burden of proof beyond a reasonable doubt  
9 of armed robbery.

10           THE COURT: Correct.

11           MR. BAX: The problem is, is that the defense  
12 highly contests the fact that he's going to be  
13 able to offer opinion testimony in an area where  
14 there is no expertise without the Counsel and  
15 Jones factors being applied to specifically  
16 establish a direct element of the offense that the  
17 State needs to prove.

18           We have no peer review, we have no quality  
19 control procedures, and the science and quality --  
20 you know, when an expert testifies, those are in  
21 place in order to keep things from going to the  
22 jury that haven't gone through that quality  
23 control.

24           And Dr. Snowman himself has testified there  
25 is no such. He's kind of venturing away into his

## COLLOQUY

1           own territory.

2           THE COURT: Right.

3           MR. BAX: And as an attorney who has  
4 specifically participated in the second  
5 Jeffrey Jones case, where the Supreme Court kept  
6 out the science -- it was a barefoot shoe  
7 impression in that particular case, as Your Honor  
8 is aware -- there were only two experts left in  
9 the entire world that were willing to go anywhere  
10 to testify to this.

11          THE COURT: Right.

12          MR. BAX: One worked for myself and my  
13 lawyers, I was not the lead counsel, it was  
14 Ms. Fulwood and Mr. McCully; the other, which is a  
15 Canadian Mountie, worked for Donnie Myers.

16          THE COURT: Right.

17          MR. BAX: And they were the only ones left.  
18 And they weren't allowed to work for the FBI  
19 because they even said, We're not doing this  
20 anymore.

21               They weren't allowed to work for the Canadian  
22 government because they said, We're not doing this  
23 anymore. And that was let in, even though counsel  
24 had looked at it. And it was still kicked at the  
25 end and reversed because that is something that



## COLLOQUY

1       had -- even though there had been peer review,  
2       most of which in the last ten years prior to the  
3       last trial, was each of them reviewing each other.  
4       Each of them had written books, but there were the  
5       only two. It was still kicked.

6             And the problem is, here we have a doctor  
7       who's venturing out. There is no review, there is  
8       no other doctors doing it. There is nothing that  
9       he said, I've read a specific article about  
10      identifying what objects cause blunt or non-blunt  
11      force trauma.

12            Clearly, we all know there's a common sense  
13      element. If someone has a hole that's about nine  
14      millimeters in diameter going from one side of  
15      your body to another, well, you ain't -- like you  
16      said, Your Honor, you don't have to be a scientist  
17      to know that's a gunshot wound, most likely.

18            But in this particular case, as the doctor  
19      has already testified to, it is not completely  
20      outside the realm of possibility that blunt force  
21      trauma can cause lacerations.

22            Now, he's talked about the linear nature of  
23      these, but as far as any quality controls for  
24      being able to say when and where linear is linear,  
25      when and where linear qualifies, whether or not

## COLLOQUY

1           there's any other factors to consider, none of  
2           that is science at this point.

3           THE COURT: He's not going to be allowed to  
4           testify as to what type of instrument caused the  
5           injuries because he doesn't know. He's not going  
6           to be allowed to testify that it was a deadly  
7           weapon because he doesn't know. He's not going to  
8           be allowed to testify as to the fact that it might  
9           have been brass knuckles or whatever it might have  
10          been.

11          Frankly, we -- the jury has already heard  
12          from the fellow who got hit, that in his view he  
13          was hit by something metal, a metal object. Now,  
14          he's not an expert obviously, he just happened to  
15          be the one that got hit.

16          But he testified about that without  
17          objection. The jury might very well conclude that  
18          this was not a deadly weapon, that whatever he was  
19          hit with has not been proven beyond a reasonable  
20          doubt to be a deadly weapon. And, of course, that  
21          is going to be an element, as you said. It's an  
22          element of the offense.

23          They are going to be allowed to conclude, if  
24          they choose to, based on the doctor's testimony,  
25          that it's something other than a fist that caused

## COLLOQUY

1           this -- not necessarily making the loop to a  
2           dead -- the leap to a deadly weapon, or whatever  
3           else it might have been.

4                   I've heard something about brass knuckles  
5           introduced into this somewhere in the vicinity of  
6           all this stuff that came in pre-trial.  Nobody's  
7           mentioned that in this particular case that I know  
8           of, and I doubt that nobody is.  I'm here to see.  
9           I don't know what else may materialize in this  
10          case.

11                   But the fact that he's going to be able to  
12          testify that something other than a fist caused  
13          this does not preclude the fact that it may not  
14          have been a deadly weapon at all.  And he's not  
15          meeting the State's burden of proof in that  
16          regard.  He's eliminating a fist, and that's all  
17          he's eliminating.  Okay?

18                   All right.  Doctor, I'm going to ask you to  
19          step down while the jury comes in.  You'll be  
20          introduced again and sworn to and in the presence  
21          of the jury.  So, if you'll just take a seat back  
22          out there, we'll get you out shortly.

23                   THE WITNESS:  Yes, sir.

24                   MS. LEMPESIS:  Your Honor, I'm going to mark  
25          this picture as a Court's exhibit, if that suits.

## COLLOQUY

1 THE COURT: Okay.

2 Mark the State's Exhibit for Identification,  
3 please.

4 *(Whereupon, State's Exhibit No(s). 9 marked*  
5 *for identification.)*

6 THE REPORTER: Yes, Your Honor. Actually,  
7 it's already marked.

8 THE COURT: Madam reporter, please note that  
9 this record will embody all of Mr. Bax's arguments  
10 against the testimony offered by the doctor that  
11 were included in the original trial. They are  
12 adopted as part of the record for preservation of  
13 appellate review.

14 (Jury enters.)

15 THE COURT: Ladies and gentlemen of the jury,  
16 I spent part of my 22 years on the bench on my  
17 knees before jurors begging their forgiveness for  
18 having wasted their time and kept them back there  
19 in the jury room while we do what we did this  
20 afternoon. And this is no exception. And I  
21 apologize for that.

22 First of all, we had no way to anticipate  
23 what was going to happen during lunch that I  
24 inquired of each of you.

25 We think that we have some measure of control

## COLLOQUY

1       over what happens in this courtroom, and we try to  
2       keep those things under control. But when things  
3       happen outside this courtroom that we do not  
4       observe and do not control, we have to assure  
5       ourselves that those things are not going to have  
6       some impact on the outcome of this case, and some  
7       impact upon your ability to be fair and impartial.  
8       And that's the reason that I had you out here and  
9       inquired about that situation that had been  
10      relayed to me.

11             Quite frankly, I got a little concerned as I  
12      was going down the list and I was asking you all  
13      to come, and then I sent you to another jury room.  
14      And by the time we got to the last two or three  
15      folks, I thought they're back in that jury room,  
16      and they're hearing me call all these people and  
17      none of them coming back in there. I thought we  
18      might have to drag some of you out here to get you  
19      into the courtroom, after all that. Quite  
20      frankly, I thought you might be afraid to come out  
21      here.

22             But I thank you for your cooperation and your  
23      patience as we worked through that.

24             And then sometimes we have to deal with  
25      matters outside of your presence that help us

## COLLOQUY

1       prepare the testimony of a witness for  
2       presentation before you.

3               I told you earlier, before we started this  
4       trial today, that you are the judge of the facts  
5       and I'm the judge of the law. And that my job is  
6       to decide whether you can hear somebody tell you  
7       something or not. And then once I decide that you  
8       can hear it, then what you do with it is entirely  
9       up to you. You can believe it or not believe it,  
10      or give it the weight you think it should receive.

11              But the first part of that is on what I have  
12      to do, not on what you have to do. And that is to  
13      determine whether or not you can hear the  
14      testimony in the first place.

15              And, sometimes, in order for me to do that, I  
16      have to hear that testimony outside of your  
17      presence and decide whether you can hear it. I  
18      don't know what it is until I hear it.

19              And sometimes it can be summarized and  
20      presented to me, and sometimes I have to hear it  
21      in detail and then decide whether you can hear it  
22      or not.

23              I tell you again that once I decide you can  
24      hear it, then it's up to you from that point on.  
25      You're not to gather anything from the fact that I

## COLLOQUY

1 allow you to hear something, that you're required  
2 to believe it or to give it weight. That is  
3 always a matter that's for you to determine.

4 And so that's what I've had to do with some  
5 witnesses that are over here to testify in the  
6 trial of this case. And I've sort of tried to  
7 lump them all together so we could deal with that  
8 at one time and not have to interrupt this at any  
9 future.

10 I apologize to you again for those  
11 interruptions, and I'm not going to waste any more  
12 of your time. We're going to get right back to  
13 the trial of the case.

14 If it's any consolation, I guess, at least,  
15 you're dry. If you were outside, you wouldn't  
16 have the same luxury.

17 I appreciate your patience, folks. We do, we  
18 do what we can not to waste your time. I consider  
19 myself a right patient judge. The only thing I  
20 lose my patience over is when we waste your time,  
21 and I apologize for that. Sometimes it's  
22 necessary.

23 Ms. Lempesis, you can call your next witness.

24 MS. LEMPESIS: Thank you, Your Honor. State  
25 calls Dr. Patrick Snowman.

## COLLOQUY

1                   THE COURT: Dr. Snowman, come forward,  
2                   please, and be sworn.

3    Thereupon,

4                   DR. PATRICK SNOWMAN  
5    was called as a witness, having been first duly sworn,  
6    was examined and testified as follows:

7                   THE CLERK: You may be seated. Please state  
8                   and spell your name for the Court's record.

9                   THE COURT: I don't believe it. I do not  
10                  believe the lights go out.

11                  Well, folks, you've been in the dark all day,  
12                  so there's nothing different.

13                  MS. LEMPESIS: Shall we go ahead?

14                  THE COURT: Why don't we give it another  
15                  shot.

16                  THE WITNESS: My name is Patrick Snowman,  
17                  P-A-T-R-I-C-K, Snowman, S-N-O-W-M-A-N.

18                                 DIRECT EXAMINATION

19    BY MS. LEMPESIS:

20                  Q     Dr. Snowman, who do you work for?

21                  THE COURT: Wait a minute. Folks, I'm sorry.  
22                  They say the third blink is when it goes out for  
23                  good. Is that right? Let's wait just a second,  
24                  see if it comes back on.

25                  We'll give it one more shot. The third time



## TESTIMONY OF DR. PATRICK SNOWMAN

1 means the transformer's gone. At least that's  
2 what they tell me back home. Cross our fingers.  
3 Okay?

4 Dr. Snowman, you may introduce yourself now.  
5 Go ahead.

6 BY MS. LEMPESIS:

7 Q Who do you work for, Dr. Snowman?

8 A I work at Hilton Head Hospital. And the  
9 company I work for is Team Health.

10 Q Thank you. And how long have you worked at  
11 Hilton Head Hospital?

12 A Eleven years.

13 Q And your position at Hilton Head Hospital?

14 A I'm an emergency medicine physician.

15 Q Thank you. And are you -- where are you  
16 licensed?

17 A I'm licensed in South Carolina.

18 Q And how long have you been licensed in South  
19 Carolina?

20 A Eleven years.

21 Q Dr. Snowman, tell us about your educational  
22 experience.

23 A I have an undergraduate degree in chemistry,  
24 following which I went to medical school at the Medical  
25 College of Pennsylvania in Philadelphia. That was a

## TESTIMONY OF DR. PATRICK SNOWMAN

1 four-year medical school program.

2                   Following that, I completed a three-year  
3 residency program in emergency medicine, and then  
4 completed and passed board certification in emergency  
5 medicine.

6           Q     And where -- how long have you practiced in  
7 Hilton Head? Did you practice anywhere before Hilton  
8 Head?

9           A     I've practiced in Hilton Head 11 years and I  
10 have been board certified for 15 years. So, I've been  
11 practicing as an attending emergency physician for 15  
12 years.

13          Q     And your area of practice, Dr. Snowman, what  
14 is that -- what has it been?

15          A     It has always been emergency medicine.

16          Q     And tell us about what sort of education or  
17 certification you have to go through as you practice?

18          A     Of course you have to complete a residency  
19 and then take an oral and written examination to become  
20 board certified. After becoming board certified, there  
21 are maintenance certification requirements that take  
22 place throughout your career on a continuing basis that  
23 involves reviewing peer review medical literature,  
24 taking exams, and then every ten years the requirement  
25 to take a recertification exam. I've done that one

## TESTIMONY OF DR. PATRICK SNOWMAN

1 time as -- at my ten-year mark.

2 Q Dr. Snowman, do you have any special training  
3 in wound care?

4 A As part of standard training and residency in  
5 emergency medicine, wound care and trauma evaluation is  
6 a large part of what we do. So, yes.

7 Q And during your time as an emergency  
8 physician, can you estimate for us about how many --  
9 about how many times you've been asked to manage  
10 wounds?

11 A Based upon the total number of cases that  
12 I've seen over my career, I estimate somewhere between  
13 3- and 5,000 cases have involved direct injuries to the  
14 skin, wounds as such.

15 Q And, Dr. Snowman, do you in your practice  
16 make it a point to review -- do you review articles  
17 regarding treatment of patients in the emergency  
18 department?

19 A Yes. We have both a requirement as part of  
20 our maintenance certification to review peer review  
21 literature. I also review several other journals just  
22 independently in emergency medicine, and many of those  
23 involve sections on trauma and wound assessment and  
24 management.

25 Q Thank you. And, Dr. Snowman, have you

## TESTIMONY OF DR. PATRICK SNOWMAN

1 testified in court before in South Carolina?

2 A Yes.

3 Q How many times have you testified?

4 A Three times including today.

5 Q And have you been qualified before as an  
6 expert in emergency medicine?

7 A Yes.

8 MS. LEMPESIS: Your Honor, at this time the  
9 State offers Dr. Snowman as an expert in emergency  
10 medicine.

11 THE COURT: Mr. Bax, you can voir dire.

12 MR. BAX: Subject to all prior objections,  
13 Your Honor.

14 THE COURT: Do you want to explore the  
15 qualifications in the presence of the jury?

16 MR. BAX: Your Honor, briefly on voir dire.

17 THE COURT: Sure.

18 VOIR DIRE EXAMINATION

19 BY MR. BAX:

20 Q Dr. Snowman, just briefly, since we've  
21 covered this a couple of times, you have testified that  
22 you've only testified in three other trials here in  
23 South Carolina, correct? Including today?

24 A Yes, uh-huh.

25 Q Thank you. And in those cases you were

## TESTIMONY OF DR. PATRICK SNOWMAN

1 qualified as an expert in emergency medicine, correct?

2 A Correct.

3 Q Were you qualified in any other areas?

4 A No.

5 Q Okay. And your job is an emergency room  
6 physician at the Hilton Head Hospital, correct?

7 A If I may? Correct.

8 Q Certainly.

9 A I'm -- operating room physicians are called  
10 surgeons, emergency medical physicians are called  
11 emergency medicine physicians, not emergency room  
12 physicians. So, just to correct that point. But, yes.

13 MR. BAX: Okay. No further questions  
14 Your Honor.

15 THE COURT: Thank you.

16 Dr. Snowman is qualified as an expert in  
17 emergency medicine.

18 MS. LEMPESIS: Thank you, Your Honor.

19 CONTINUED DIRECT EXAMINATION

20 BY MS. LEMPESIS:

21 Q Dr. Snowman, when you are treating a patient  
22 in the emergency room, what sort of information do you  
23 gather from the patient?

24 A The first thing you do is once you've  
25 established that the person isn't dying, you have a

## TESTIMONY OF DR. PATRICK SNOWMAN

1 conversation with them and take a medical history. The  
2 medical history includes things such as what happened,  
3 when it happened, and how it happened.

4 Q And based on that information, what does that  
5 information do for you in your deciding how to treat?

6 A It gives you the basis -- the most important  
7 part, really, of the process is finding out from the  
8 patient or other sources what happened. That's really  
9 the most important part of it because that gives you  
10 the information that you need in order to determine  
11 what diagnostic studies are going to be necessary, and  
12 then what treatment approaches, and you know procedures  
13 you may have to perform.

14 Q Were you working at the Hilton Head Hospital  
15 on October 20th of 2013?

16 A Yes.

17 Q And were you in your current position there,  
18 emergency medicine physician?

19 A Yes.

20 Q Tell us about what, when you're working in  
21 the emergency department, what your duties entail?

22 A In the emergency department I'm the attending  
23 physician and that requires me to see every patient  
24 that presents to the emergency department and do a  
25 medical screening evaluation to determine whether they

## TESTIMONY OF DR. PATRICK SNOWMAN

1 have medical emergencies, and then to diagnose and  
2 treat those conditions.

3 Q Thank you. And when you were working on  
4 October 20th of 2013, did you have occasion to treat a  
5 Mr. John Snodgrass?

6 A Yes.

7 Q And what information did you gather when  
8 Mr. Snodgrass came in for treatment?

9 A The information I gathered was that he had,  
10 just before getting to the hospital, had been assaulted  
11 and hit in the face and head. And he also told me that  
12 he had fallen.

13 Q What was Mr. Snodgrass's state when he  
14 arrived at the hospital? What was his appearance?

15 A He -- well, he looked like he had been  
16 significantly injured. He had lots of swelling and  
17 bleeding around his face and head. But he was awake,  
18 he was alert, he was conversant. He seemed to be  
19 oriented to the situation and was able to provide a  
20 history as to what happened.

21 Q Dr. Snowman, can you tell us about the  
22 victim's injuries as you examined him that night?

23 A He had several injuries. The most obvious  
24 were injuries to the face and head involving  
25 significant bruising. There was still some bleeding

## TESTIMONY OF DR. PATRICK SNOWMAN

1 from several wounds that he had sustained on the face  
2 and head. He also had some abrasions on the hand and  
3 the knees.

4 Q What was the severity of these injuries as  
5 you determined?

6 A The injuries were severe and potentially life  
7 threatening.

8 Q Dr. Snowman, I'm going to hand you --

9 MS. LEMPESIS: Permission to approach the  
10 witness, Your Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. LEMPESIS:

13 Q Dr. Snowman, I'm going to hand you what's  
14 been marked, marked for identification purposes as  
15 State's Exhibits 2 through 8.

16 Dr. Snowman, if you can look at those  
17 and tell me if you recognize those pictures.

18 A I do.

19 Q And are those pictures a fair and accurate  
20 depiction of the victim and his injuries?

21 A I would say that they are. What they don't  
22 capture is the way he looked on initial presentation.  
23 These images really are after he's been attended to and  
24 after I had repaired the several lacerations.

25 Q Thank you. And have these pictures been



## TESTIMONY OF DR. PATRICK SNOWMAN

1 altered in any way?

2 A It does not appear to have been altered.

3 Q Thank you.

4 MS. LEMPESIS: Your Honor, at this point the  
5 State would move to admit Exhibits 2 through 8.

6 THE COURT: Any objection to any of those?

7 MR. BAX: Other than any prior objections,  
8 no.

9 THE COURT: Okay. Two through eight subject  
10 to only prior objections.

11 *(Whereupon, State's Exhibit No(s). 2-8 marked*  
12 *for identification and received in evidence.)*

13 MS. LEMPESIS: Thank you, Your Honor.

14 Permission to publish these pictures to the jury?

15 THE COURT: Yes, ma'am.

16 MS. LEMPESIS: Thank you, Your Honor.

17 BY MS. LEMPESIS:

18 Q Mr. Snowman, I'm going to put these up on the  
19 screen, up on the wall. And if you can, please, tell  
20 us -- just go through and tell us what we're looking  
21 at.

22 A That's a whole body photograph of  
23 Mr. Snodgrass in a hospital bed, and I believe that  
24 would -- that is after he had been transferred to  
25 Savannah Memorial Trauma Center.

## TESTIMONY OF DR. PATRICK SNOWMAN

1           Q     Thank you.

2           A     That's a frontal view of Mr. Snodgrass, which  
3 shows the injuries after they had been attended to and  
4 repaired. It shows bruising on the left side of his  
5 face, the upper face, the temple area, and the  
6 forehead. It also shows some redness of the eye. And  
7 those lacerations have already been cleaned and  
8 sutured.

9           Q     Dr. Snowman, I'm going to ask permission.

10           MS. LEMPESIS: Your Honor, may Dr. Snowman  
11 step down and come over so he can actually point  
12 to the picture?

13           THE COURT: Sure, he can.

14           Doctor, you can step in front of the  
15 instrument. You'll be facing the jury and the  
16 court reporter. Just keep your voice up and speak  
17 in the microphone please. Thank you.

18           THE WITNESS: And I'm pointing this with my  
19 finger, Your Honor?

20           THE COURT: Unless she gives you a pencil or  
21 a pointer, something like that, whichever one.  
22 You'll be right up here, Doctor. You come over  
23 here, and then just point with your finger or a  
24 pointer. It will come up on the screen in front  
25 of the jury.

## TESTIMONY OF DR. PATRICK SNOWMAN

1 THE WITNESS: Okay.

2 So, there are several lacerations that are  
3 visible here. This is a laceration on the lower  
4 cheek, on the middle cheek, and one slightly  
5 higher up. There's also a laceration here on the  
6 temporal area, here, on the lower forehead, and  
7 then up here is an abrasion. And then you can see  
8 in general, there's bruising around here. You can  
9 see some yellowish discoloration, and then on the  
10 corner of the eye, which is a little difficult to  
11 see in that image, there is redness under the eye  
12 which is called a subconjunctival hemorrhage.

13 BY MS. LEMPESIS:

14 Q Dr. Snowman, is there a certain way that you  
15 would describe the lacerations, or would you just  
16 describe them as lacerations?

17 A I would describe these lacerations as being  
18 mostly linear, and that's how I described it in my  
19 medical record. That's a linear laceration. These two  
20 appear to be linear. That is linear, and then there's  
21 what was a V-shape type laceration here. And linear  
22 meaning they are straight and have fairly clean  
23 margins.

24 Q Thank you. And move on to State's Exhibit 4.  
25 Can you --

## TESTIMONY OF DR. PATRICK SNOWMAN

1           A     This is a profile view of Mr. Snodgrass,  
2     showing the right side of his face, and that appears to  
3     be an abrasion to the earlobe. This also appears to be  
4     a contusion, and those are the main findings on that  
5     photograph.

6           Q     State's Exhibit 5.

7           A     This is a left profile view of Mr. Snodgrass.  
8     This, again, shows the same lacerations as before --  
9     linear laceration, linear laceration. This is a --  
10    almost an upside down V. This was a V. This shows a  
11    very straight laceration here. There's also a curved  
12    linear abrasion and superficial laceration up here.

13                    You can see also bruising with yellowish  
14    discoloration around the cheek. And there appears to  
15    be some superficial abrasions down lower on the neck  
16    area.

17          Q     Dr. Snowman, this is State's Exhibit 6.

18          A     This is Mr. Snodgrass. I believe it's his  
19    left hand, and it shows these two linear type abrasions  
20    on the dorsum or on the back of his left hand.

21          Q     Thank you. State's Exhibit 7?

22          A     This is Mr. Snodgrass's knee, and shows an  
23    abrasion and also contusions, where there are  
24    discolorations.

25          Q     Thank you. And then, finally, Dr. Snowman,

## TESTIMONY OF DR. PATRICK SNOWMAN

1 State's Exhibit 8.

2 A Okay. I believe that this is a picture of  
3 Mr. Snodgrass's arm and shows that there are abrasions  
4 here, here, and here, and there's some surrounding  
5 redness and what appear to be contusions.

6 Q Thank you. Thank you, Dr. Snowman. You can  
7 go back to your seat.

8 (Witness complies.)

9 Q Dr. Snowman, now that we've seen the pictures  
10 of Mr. Snodgrass's injuries, you've told us about your  
11 years of being a physician in the -- an emergency  
12 medicine physician and treating various wounds and  
13 injuries.

14 Can you tell the jury, in your opinion  
15 what the cause of these injuries were to Mr. Snodgrass?

16 THE COURT: This is subject to objection of  
17 defense counsel.

18 MR. BAX: Thank you, Your Honor.

19 A The injuries that are seen on those  
20 photographs are indicative of blunt force trauma or  
21 being struck with an object. The -- the pattern of the  
22 injury showing lacerations that are particularly linear  
23 lacerations, and then the one on the forehead that  
24 shows the curved pattern are indicative of being struck  
25 by an object.

TESTIMONY OF DR. PATRICK SNOWMAN

1 Q And so by object, is that -- in your opinion  
2 could these injuries have been caused by a fist alone?

3           A       A fist may have been involved in the  
4   injuries.  There are contusions to the face.  But the  
5   nature of having multiple lacerations, many of which  
6   are linear, is not consistent with being struck by a  
7   fist alone.

8 Q Thank you.

9                                   And so, Doctor, not to belabor the  
10   point, but just to make it clear, are you able to say  
11   to a reasonable degree of medical certainty what  
12   Mr. Snodgrass's injuries are consent with?

13           A     I can say with a reasonable degree of medical  
14   certainty that Mr. Snodgrass's injuries were caused by  
15   being struck by a blunt force object.

16 Q Thank you. After your treatment of  
17 Mr. Snodgrass in the emergency department, what, after  
18 your initial treatment, what was the final result of --  
19 your final treatment of Mr. Snodgrass?

20           A     As part of his diagnostic assessment in the  
21     emergency department he underwent imaging studies,  
22     specifically a CT scan of the face and brain.  He had a  
23     complex fracture of the side of the face, and he also  
24     had bleeding within the brain cavity.

25 Because of the severity of the injuries

## TESTIMONY OF DR. PATRICK SNOWMAN

1 and the fact that there was bleeding in the brain  
2 cavity, that required transfer to a Level One center  
3 where they have neurosurgical services.

4 So, after I initially assessed and  
5 treated Mr. Snodgrass, I arranged for him to be  
6 transported by an ambulance to Savannah Memorial Trauma  
7 Center.

8 Q Going back to that bleeding on the brain, I  
9 think is what you said, is that the sort of injury that  
10 you usually see as a result of being hit with just a  
11 fist?

12 A I do not recall ever seeing --

13 MR. BAX: Objection, Your Honor.

14 THE COURT: I'll sustain that objection.

15 That is a different matter earlier -- than what we  
16 talked about earlier. Thank you. I'll sustain  
17 that objection.

18 MS. LEMPESIS: Dr. Snowman, I have no further  
19 questions for you at this time.

20 THE COURT: Mr. Bax, you can cross-examine.

21 MR. BAX: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. BAX:

24 Q Dr. Snowman, first of all, I want to cover a  
25 couple of things with you. You've testified about your

## TESTIMONY OF DR. PATRICK SNOWMAN

1 education and background and your specialization in  
2 emergency medicine, and that you're board certified in  
3 emergency medicine, correct?

4 A Correct.

5 Q Okay. But you've also testified, but I don't  
6 necessarily think in front of the jury, that there is  
7 no specialization that's recognized by the boards for  
8 object identification based on a wound; is that  
9 correct?

10 A There's no specialization in that area.

11 Q Okay. So, you can't go to an American board  
12 of object identifiers in medicine and get a  
13 certification from them. Is that correct? There is no  
14 such body at this time?

15 A There is no such body at this time.

16 If I may, there are fellowships  
17 available in forensic pathology and other specialties,  
18 but nothing, to answer your question, no, there is not.

19 Q Well, and we're -- some of us may be familiar  
20 with this. There is something called forensic  
21 pathology, and that's something where doctors examine,  
22 a lot of times, as you said, post mortem bodies,  
23 specifically to elucidate in a criminal case about what  
24 happened to somebody, correct?

25 A Yes.



## TESTIMONY OF DR. PATRICK SNOWMAN

1           Q     But you've testified and -- and let me ask  
2     you for the edification of the jury -- you don't hold  
3     any board certifications in forensic pathology; is that  
4     correct?

5           A     That's correct.

6           Q     Okay. And you haven't done any residencies  
7     or internships or training programs in forensic  
8     pathology, correct?

9           A     Correct.

10          Q     Okay. Thank you.

11                     Also, wanted to ask you, you've  
12     testified about these wounds and your opinion as to the  
13     fact that they could not have all been caused by a  
14     fist.

15                     But let me ask you this: Based on your  
16     training and experience and what you observed and  
17     treated in the case, can you identify when each one of  
18     these injuries was received in relation to each other?  
19     Can you tell which one got received first versus which  
20     one last?

21          A     I can only say that they were caused at the  
22     same basic time based on the fact that they all have  
23     the same acute appearance when I evaluated the patient.

24          Q     And so when you say at the same basic time,  
25     you're talking about within a span of some minutes; is

## TESTIMONY OF DR. PATRICK SNOWMAN

1     that correct?

2           A     Seconds to minutes, yes.

3           Q     Seconds to minutes. And when you've  
4     testified that the cause of these injuries, in your  
5     opinion, was not made all by itself a fist, there's  
6     other objects involved, can you say to any degree of  
7     reasonable certainty that the other objects involved  
8     weren't things that Mr. Snodgrass fell on, if he fell  
9     on the ground, for example?

10          A     I can say with a reasonable degree of medical  
11     certainty that the pattern of injuries he had was not  
12     caused from a fall to the ground. I have evaluated  
13     many, many patients who, when they fall to the ground  
14     and hit objects, they do not appear to be in the  
15     pattern of Mr. Snodgrass's injuries.

16          Q     Well, Dr. Snowman, how many pictures of the  
17     crime scene, or in other words, where this occurred and  
18     where Mr. Snodgrass woke up did you examine prior to  
19     this opinion?

20          A     None.

21          Q     Okay. And how many did you -- how many  
22     discussions did you have with law enforcement about the  
23     objects that they found at the scene of the crime in  
24     this case?

25          A     None.

## TESTIMONY OF DR. PATRICK SNOWMAN

1 MR. BAX: Thank you, Doctor.

2 No further, Your Honor.

3 THE COURT: Thank you. Redirect,

4 Ms. Lempesis?

5 MS. LEMPESIS: No further questions,

6 Your Honor.

7 THE COURT: Thank you.

8 Doctor, you can step down. Thank you so much  
9 for coming. Have a safe ride back across the  
10 island.

11 How long will your next witness take,

12 Ms. Lempesis?

13 MS. LEMPESIS: Your Honor, it probably would  
14 take an hour.

15 THE COURT: Folks, the next witness they say  
16 will take an hour. That means you'll be here  
17 until 5:30.

18 We have three more witnesses left to testify.  
19 You've been on my clock all day today, I'm going  
20 to get on your clock.

21 Do you all want to go home now and come back  
22 tomorrow and get those three witnesses in, or do  
23 you want to work past 5:30 this afternoon and get  
24 one of them out of the way?

25 We still have to come back tomorrow anyway

TESTIMONY OF DR. PATRICK SNOWMAN

1           because we've got two more witnesses after this

2           one.

3                   How many of you want to stay here and work  
4           past 5:30 today?

5 (Most raise hands.)

6 THE COURT: Way to go. Good job. Okay.

7           First of all, let me ask if these folks --  
8           some of these folks may need a break. We haven't  
9           had a break all afternoon since we got here, and  
10          the most important person in the courtroom when it  
11          comes to this is the court reporter.

12 Ma'am, you need a break?

13 THE REPORTER: I'm fine.

14 THE COURT: She's been here since forever.  
15 So, we'll take a brief break, like ten minutes.  
16 Step in the jury room and give you a chance to  
17 refresh yourselves as well. We'll start back at  
18 25 till the hour. Thank you.

19 (Recess.)

20 THE COURT: Okay. Bring us the jury, please.

21           You can ask Mr. Delaplane to come on in. Is  
22           he the next witness?

23 THE BAILIFF: The jury is entering the  
24 courtroom, Your Honor.

25 (The jury enters the courtroom

## TESTIMONY OF DR. PATRICK SNOWMAN

1 at 4:45 p.m.)

2 THE COURT: Folks, thank you so much for your  
3 willingness to continue to work today, and work  
4 with this next witness. We appreciate your  
5 patience today.

6 Madam Solicitor, you can call your next  
7 witness.

8 MS. LEMPESIS: Thank you, Your Honor. The  
9 State calls Colton Delaplane.

10 THE COURT: Mr. Delaplane, come forward,  
11 please, and be sworn.

12 Thereupon,

13 COLTON DELAPLANE  
14 was called as a witness, having been first duly sworn,  
15 was examined and testified as follows:

16 THE CLERK: Come on over here and have a  
17 seat. State your full name and spell it, please.

18 THE WITNESS: My name is Colton Delaplane,  
19 C-O-L-T-O-N, D-E-L-A-P-L-A-N-E.

20 DIRECT EXAMINATION

21 BY MS. LEMPESIS:

22 Q Colton, before we start I just want to remind  
23 you to speak loud enough so that the jury can hear you.  
24 Even though you have the microphone on, it's still hard  
25 to hear sometimes. Okay?

## TESTIMONY OF COLTON DELAPLANE

1 A Yes, ma'am.

2 Q Thank you. Colton, how old are you?

3 A Eighteen years old.

4 Q And where do you live?

5 A In Bluffton.

6 Q Where do you work?

7 A Papa John's in Bluffton.

8 Q And who do you live with in Bluffton?

9 A My father.

10 Q Do you go to school?

11 A Yes, ma'am.

12 Q Where do you go to school?

13 A Bluffton High School.

14 MR. BAX: Your Honor, if I may. I think he  
15 needs to speak up. I can't hear him.

16 THE COURT: All right. Thank you.

17 Mr. Delaplane, please pull that microphone to  
18 you as close as you can. Almost -- probably not  
19 quite like Rod Stewart, but get as close to it as  
20 you can. And then -- nobody in here knows who  
21 Rod Stewart is but me. I just dated myself.  
22 Thank you.

23 So pull it a little bit closer to you, don't  
24 be afraid of it.

25 THE WITNESS: Yes, sir.

## TESTIMONY OF COLTON DELAPLANE

1 THE COURT: Okay. Thank you.

2 BY MS. LEMPESIS:

3 Q So, again, louder, Colton.

4 You said you live in Bluffton with your  
5 dad?

6 A Yes, ma'am.

7 Q And you go to Bluffton High School?

8 A Yes, ma'am.

9 Q What grade are you in?

10 A I'm a senior.

11 Q And where did you work in October of 2013?  
12 Where were you working?

13 A At Northridge Cinema on Hilton Head Island.

14 Q And were you working on October 20th of 2013?

15 A Yes, ma'am.

16 Q What shift did you work that night?

17 A The night shift, 5:00.

18 Q Okay. And where did you work in the theater?

19 A Well, I did everything, kind of. I ran  
20 concessions, the ticket booth, I ushered theaters. All  
21 of it.

22 THE COURT: Colton, try to project your  
23 voice, if you can, a little bit stronger. Some of  
24 the jurors are having difficulty hearing you. And  
25 so they really need to hear what you're saying.

## TESTIMONY OF COLTON DELAPLANE

1           It's important.   Okay?

2           THE WITNESS:   Yes, sir.

3           THE COURT:    Thank you.

4   BY MS. LEMPESIS:

5           Q     Colton, how long have you been working at  
6   that movie theater?

7           A     About six months.

8           Q     And do you know Austin McQuarters?

9           A     Yes, ma'am.

10          Q     How do you know Austin McQuarters?

11          A     From school.

12          Q     From Bluffton High School?

13          A     Yes, ma'am.

14          Q     And how long had you known Austin McQuarters  
15   in October of 2013, about how long had you known him?

16          A     Maybe a couple months, half a year.

17          Q     Okay.   Colton, do you see Austin McQuarters  
18   in the courtroom today?

19          A     Yes, ma'am.

20          Q     Okay.   Can you point him out?

21          A     (Pointing.)

22          Q     Okay.   And can you describe for the record  
23   what he's wearing?

24          A     A white T-shirt, polo.

25               MS. LEMPESIS:   And let the record reflect,



## TESTIMONY OF COLTON DELAPLANE

1           Your Honor, that Mr. Delaplane has identified  
2           Austin McQuarters.

3           THE COURT:   Yes, ma'am.

4   BY MS. LEMPESIS:

5           Q     Colton, you said you'd known him for about a  
6           half a year or so?

7           A     Yes, ma'am.

8           Q     Would you say that you were -- what was your  
9           relationship really?

10          A     Friends.

11          Q     Okay.  Were you just casual friends or pretty  
12          good friends, hung out a lot, what?

13          A     We hung out about every other day, I guess.

14          Q     Okay.  And, Colton, do you know a man named  
15          John Snodgrass?

16          A     Yes, ma'am.

17          Q     And how do you know John Snodgrass?

18          A     He was my manager at Northridge Cinema.

19          Q     And was Mr. Snodgrass working that night of  
20          October 20th of 2013?

21          A     Yes, ma'am.

22          Q     On that night, October 20th, what -- about  
23          what time did you get off of work that night?

24          A     About 10:30-ish.

25          Q     Okay.  Did you see Austin that night?

## TESTIMONY OF COLTON DELAPLANE

1           A     Yes, ma'am.

2           Q     When did you see him?

3           A     He came up to the ticket booth during my  
4 shift. Probably about an hour and a half before I got  
5 off.

6           Q     Okay. And did he tell you what he was coming  
7 up there for?

8           A     He came up there because he wanted money from  
9 the ticket booth, from the drawer.

10          Q     Okay. Did you give him money from the ticket  
11 booth?

12          A     No, ma'am.

13          Q     Was it normal for Austin to come by your  
14 work?

15          A     Yes, ma'am.

16          Q     Do you remember seeing a girl named  
17 Jackie Perez that night?

18          A     Yes, ma'am.

19          Q     Okay. And how do you know Jackie Perez?

20          A     From Bluffton High School also.

21          Q     Okay. All right. Colton, you said you left  
22 work that night around 10:30 or so?

23          A     Yes, ma'am.

24          Q     Who -- who did you leave work with?

25          A     My sister picked me up and my girlfriend at

## TESTIMONY OF COLTON DELAPLANE

1 the time.

2 Q Okay. Did you see Austin again at any other  
3 point?

4 A Yes, ma'am. I saw him in the parking lot  
5 right before I left.

6 Q All right. Did you see -- was he with  
7 anybody?

8 A He was with Jackie at the time.

9 Q Okay. Do you recall what car they were in,  
10 or if they were in a car?

11 A I don't know. They were at my car in the  
12 parking lot. They came up to our car.

13 Q Okay. And so -- okay. So, they came over to  
14 your car. What -- did you talk to him again at that  
15 point?

16 A Yeah. He asked how work was and everything,  
17 and I told him I was going home.

18 MR. BAX: Your Honor.

19 THE COURT: I'm like you, Mr. Bax. I  
20 couldn't hear, and I'm closer than you are. Of  
21 course, I'm deafer than you are, but --

22 Mr. Delaplane, I can't emphasize enough. I  
23 realize that you're soft spoken, but what you say  
24 here is important, and it needs to be heard by  
25 everybody here, the jury as well as the lawyers.

## TESTIMONY OF COLTON DELAPLANE

1           And so, please, try to keep your voice up, and  
2           just assert yourself. Instead of giving your  
3           inside voice, as we tell our grandchildren, use  
4           the playground voice. It will be fine here in the  
5           courtroom.

6       BY MS. LEMPESIS:

7           Q     Okay. All right. You said you talked to  
8           Austin again. What did you talk to Austin about in the  
9           parking lot?

10          A     Just about how work was. I told him I was  
11          going home, to my girlfriend's house.

12          Q     Okay. Did you tell him anything else?

13          A     He asked who the manager was, and I told him  
14          who John was.

15          Q     Okay. Did you point who the manager was out  
16          to him?

17          A     Not in the parking lot, but I had earlier  
18          that night.

19          Q     Okay. Earlier. So, earlier when he came to  
20          the box office?

21          A     Yeah.

22          Q     Or when he came up to the theater, you  
23          pointed your manager out to him?

24                 MR. BAX: Objection. Leading, Your Honor.

25                 THE COURT: No, he said earlier. He said, I

## TESTIMONY OF COLTON DELAPLANE

1           pointed him out earlier. I think she was  
2           summarizing this time.

3                   MS. LEMPESIS: Yes, Your Honor. I'll  
4           rephrase anyway.

5 BY MS. LEMPESIS:

6           Q     But when did you point him out?

7           A     When he came up to the ticket booth.

8           Q     Okay. Did Austin ask anything specific about  
9     your manager?

10          A     No. He just asked who he was.

11          Q     What happened after you talked to Austin in  
12     the parking lot when you were getting off work?

13          A     I went home.

14          Q     All right. Talk louder.

15          A     I went home.

16          Q     Who did you go home with?

17          A     My sister and my girlfriend.

18          Q     What -- whose home did you go to?

19          A     My girlfriend's house.

20          Q     And did you see or talk to Austin again at  
21     any point that night?

22          A     Yes, ma'am.

23          Q     Okay. Where did you see or talk to Austin  
24     again?

25          A     About three hours later, four hours later, he

## TESTIMONY OF COLTON DELAPLANE

1     came.    Called me and told me to meet him down the  
2     street from my girlfriend's house.

3           Q     Did he tell you why to come meet him?

4           A     He just told me to come meet him.

5           Q     Okay.   And did you go out to meet him?

6           A     Yes, ma'am.

7           Q     And do you remember about what time this was?

8           A     It was late.   It was probably, you know, four  
9     hours after I got off work.

10          Q     Okay.   When you met Austin McQuarters out by  
11     your girlfriend's house, what -- what did y'all talk  
12     about?

13          A     He handed me money and said, Merry Christmas.  
14     And I asked what it was from, and he said I ran into  
15     money at your work.   Don't worry about it.

16          Q     How much money did he give you?

17          A     \$250.

18          Q     Okay.   And after he gave you money and said  
19     Merry Christmas, what did you do after that?

20          A     I left it at that and went back in.

21          Q     Went back in where?

22          A     To my girlfriend's house.

23          Q     What did you do -- at any point, did you find  
24     out that your manager had been robbed?

25          A     The next day.

## TESTIMONY OF COLTON DELAPLANE

1 Q Okay. The next day you found out?

2 A Yes, ma'am.

3 Q How did you find out?

4 A In the newspaper.

5 Q And at any point after October 20th, did you  
6 talk to Austin again about that night?

7 A Yes, ma'am, the next day.

8 Q Okay. And what did Austin tell you the next  
9 day?

10 A He had told me that he had robbed my manager  
11 for money that he came out of the store with.

12 Q Okay. Did he tell you about anything else  
13 regarding what he'd done?

14 A He said he used brass knuckles and --

15 THE COURT: He said what? I'm sorry.

16 A He used brass knuckles and beat him up pretty  
17 much.

18 Q Okay. Colton, did you tell anyone ever that  
19 he told you this?

20 A No, ma'am.

21 Q Did you call the police right away?

22 A No, ma'am.

23 Q Why didn't you call the police?

24 A I was just afraid. I didn't know what to do.

25 Q Do you remember being interviewed by

## TESTIMONY OF COLTON DELAPLANE

1 Investigator Seifert at the sheriff's office?

2 A Yes, ma'am. Yes, ma'am.

3 Q How many times did you talk to

4 Investigator Seifert?

5 A Four.

6 Q Okay. When you first met with him, do you

7 remember where you were?

8 A I was at the high school.

9 Q And do you remember what you told him then?

10 Or let me rephrase that, Colton.

11 Did you tell Investigator Seifert about  
12 what Austin had told you on that first time you met him  
13 at Bluffton High School?

14 A No, ma'am.

15 MR. BAX: Objection.

16 THE COURT: I'll allow it. It doesn't  
17 necessarily suggest the answer.

18 BY MS. LEMPESIS:

19 Q So you didn't tell him the first time you met  
20 with him?

21 A No, ma'am.

22 Q Did you meet with him again after that?

23 A Yes, ma'am.

24 Q Do you remember where you met with him?

25 A I was taken to the sheriff's office on Hilton



## TESTIMONY OF COLTON DELAPLANE

1 Head Island after that, that same day.

2 Q Okay. And at that point, did you tell  
3 Investigator Seifert about everything Austin had told  
4 you?

5 A Yes, ma'am.

6 Q Do you remember Austin meeting with  
7 Investigator Seifert at Bluffton High School on a  
8 different day?

9 A What was the question?

10 Q Do you remember, did you meet with  
11 Investigator Seifert at your high school aside from  
12 that first time you said that you met with him?

13 A Yes, ma'am.

14 Q Okay. Was -- who was there with you when you  
15 met with him?

16 A Nobody. My dad had dropped me off at school  
17 and I met with him.

18 Q Did your dad know that you were meeting with  
19 the officer?

20 A Probably. He just dropped me off at school.

21 Q Okay. And what did you eventually -- now, at  
22 this point you said you met with Investigator Seifert a  
23 couple times.

24 At what point did you tell  
25 Investigator Seifert what Austin had told you, what had

## TESTIMONY OF COLTON DELAPLANE

1     happened?

2           A     That morning in the car.

3           Q     Say that again?

4           A     That morning.  I had met with him before  
5     school.

6           Q     Okay.  And you think it was in his car, is  
7     that what you said?

8           A     Yes, ma'am.

9           Q     Okay.  In his patrol car?

10          A     Yes, ma'am.

11          Q     And was it at that point that you told the  
12     truth?

13          A     Yes, ma'am.

14          Q     Colton, why did you not come on out and tell  
15     the truth right when Investigator Seifert met with you?

16          A     I just felt like I was stuck in the middle of  
17     it.  I didn't know what to do because --

18          Q     On that night when Austin came to the  
19     theater, did you tell him -- you said -- backtracking a  
20     little bit.

21                     You said that he asked you for money  
22     from the box office?

23          A     Yes, ma'am.

24          Q     Was it then that you told him about  
25     Mr. Snodgrass?

## TESTIMONY OF COLTON DELAPLANE

1           A     That was when I pointed out who John was,  
2     yes, ma'am.

3           Q     Okay.  What did you say when you pointed him  
4     out?

5           A     I said, if you want money, that's the  
6     manager.  He's the one who's going to have money.

7           Q     Okay.

8                 MS. LEMPESIS:  I beg the Court's indulgence.

9                 THE COURT:  Okay.

10                MS. LEMPESIS:  Colton, I don't have any other  
11     questions for you right now.  Please answer any  
12     other questions that Mr. Bax has.

13                THE WITNESS:  Yes, ma'am.

14                THE COURT:  Mr. Bax, you can cross-examine.

15                MR. BAX:  Thank you, Your Honor.

16                               CROSS EXAMINATION

17     BY MR. BAX:

18           Q     Mr. Delaplane, you testified that you met  
19     with Investigator Seifert on approximately three  
20     occasions; is that right?

21           A     Yes, sir.

22           Q     For the first time that you met with  
23     Investigator Seifert, that wasn't until at least a  
24     couple weeks after that night; isn't that correct?

25           A     I believe it was about a week.

## TESTIMONY OF COLTON DELAPLANE

1           Q     Okay. Well, when did this -- what night are  
2 we talking about where -- where you had these  
3 conversations with Mr. McQuarters allegedly? What  
4 night was that? What was the date?

5           A     I'm not sure.

6           Q     Well, you just testified to it on direct.  
7 What was the date that you had these conversations -- I  
8 mean, that's very important. That's what we're here  
9 for. What was the date that you had these  
10 conversations with Mr. McQuarters?

11          A     October something.

12          Q     October something.

13          A     I don't remember the date.

14          Q     What year was it?

15          A     2013.

16          Q     Okay. You got that, right?

17          A     Got that.

18          Q     Okay. So, if you don't know exactly what  
19 date this alleged conversation with my client happened,  
20 how can you know that your conversation with  
21 Investigator Seifert was only a week later?

22          A     Because that seemed right to me. Sounds  
23 right.

24          Q     It seems right to you? Okay.

25          A     I don't know for sure.

## TESTIMONY OF COLTON DELAPLANE

1           Q     If I were to tell you that this is alleged to  
2     have happened on October 20th, and you didn't speak  
3     with Investigator Seifert, I think, until the fourth or  
4     fifth of November, would that sound right to you?

5           A     Yes, sir.

6           Q     Okay. How much time is that?

7           A     About two weeks.

8           Q     Okay. Now, I'm glad we straightened that  
9     out.

10                         So, there was approximately two weeks  
11     between when this was alleged to have happened and when  
12     you talked to Investigator Seifert the first time,  
13     correct?

14          A     Yes, sir.

15          Q     Okay. In that time, when did you call the  
16     police?

17          A     I didn't.

18          Q     Didn't. Okay.

19                         You've also testified that you know  
20     Jacquelyn Perez, correct?

21          A     Yes, sir.

22          Q     About how many times did you talk with  
23     Ms. Perez in that two weeks before Investigator Seifert  
24     talked to you?

25          A     I didn't.

## TESTIMONY OF COLTON DELAPLANE

1 Q You didn't at all?

2 A No, sir.

3 Q Okay. Now, this is October, correct?

4 A Yes, sir.

5 Q And you were still going to Bluffton High  
6 School at the time?

7 A Yes, sir.

8 Q And Ms. Perez attended that high school as  
9 well at that time, correct?

10 A I believe so.

11 Q Now, you've also testified on direct that  
12 Mr. McQuarters, you allege he came up to you in the  
13 ticket booth and talked to you, correct?

14 A Yes, sir.

15 Q Isn't it true that Ms. Perez came up to you  
16 in the ticket booth and talked to you as well?

17 A Yes, sir. She was with Austin.

18 Q So, she came up at the same time as Austin?

19 A Yes, sir. She was with him.

20 Q Okay. So, they didn't come up at separate  
21 times?

22 A No.

23 Q So, it wasn't Mr. McQuarters coming up, then  
24 leaving, and then Ms. Perez coming up?

25 A No, sir.

## TESTIMONY OF COLTON DELAPLANE

1 Q So, she would be incorrect about that?

2 A I don't know.

3 Q Okay. And when the two of them came up to  
4 the booth, according to your testimony, at what point  
5 did Ms. Perez ask you, Where's the bread?

6 A She said I owed her gas money at the time  
7 because she gave me a ride to work like the week  
8 before. So, she asked for gas money. Austin asked for  
9 money out of the drawer.

10 Q So your testimony is she didn't ask you  
11 where's the bread?

12 A She may have said that.

13 Q Okay. Well, that's my question. At what  
14 point did she ask you, Where's the bread?

15 A At the ticket booth.

16 Q Okay. And what did you understand that to  
17 mean?

18 A I'm sorry?

19 Q What did you understand that to mean,  
20 Mr. Delaplane?

21 A What's your question? I don't understand.

22 Q When she asked you, Where's the bread, what  
23 did you understand that to mean?

24 A Oh, her gas money.

25 Q Her gas money?

## TESTIMONY OF COLTON DELAPLANE

1           A     Yes, sir.

2           Q     No other thing she could be asking about.

3           A     Not that I was aware of.

4           Q     Okay. Now -- now, that kind of goes to the  
5 issue here.

6                     You've testified that you did not have  
7 any contact with Ms. Perez between the time of this  
8 alleged incident and the time that Officer Seifert came  
9 and started talking to you, correct?

10          A     Yes, sir.

11          Q     Okay. But you've testified in a prior  
12 proceeding about this matter under oath, correct?

13          A     Yes, sir.

14          Q     Okay. And you've been requested to be here  
15 by the prosecution to come testify here today, correct?

16          A     Yes, sir.

17          Q     And you were instructed that you were under  
18 sequestration, you weren't to talk to any other  
19 witnesses; is that correct?

20          A     Yes, sir.

21          Q     Isn't it true, Mr. Delaplane, that despite  
22 that order, you talked to Ms. Perez in the parking lot  
23 about an hour ago today, correct?

24          A     Yes, sir.

25          Q     And you talked about her testimony that she



## TESTIMONY OF COLTON DELAPLANE

1 gave in this trial today, correct?

2 A Not specifically about her testimony, but I  
3 asked how it went.

4 Q Okay. You asked how it went. And you said  
5 she had some comments about me to make; is that  
6 correct?

7 A Yes, sir. She said you were tough.

8 Q I'm sure tough was the word that was used.

9 So, you've had contact with Ms. Perez  
10 before you come in and testify here today, correct?

11 A Yes, sir.

12 Q Okay. Now, I want to move on to these  
13 conversation that you've had -- or that you did have  
14 with Investigator Seifert.

15 Obviously, you've testified that you did  
16 not give him the truth the first time you talked to  
17 him; is that right?

18 A Yes, sir.

19 Q And you've testified that you were scared; is  
20 that right?

21 A Yes, sir.

22 Q Eventually, on, I believe it was, November  
23 6th in the morning, around seven something in the  
24 morning, before school, you talked to Investigator  
25 Seifert in his patrol car, whatever car is issued by

## TESTIMONY OF COLTON DELAPLANE

1 law enforcement, correct?

2 A Yes, sir.

3 Q Okay. And at that time, you finally revealed  
4 to him that you were giving this information, according  
5 to you, to Mr. McQuarters and Ms. Perez; is that right?

6 A What information?

7 Q About who would have the money, being  
8 Mr. Snodgrass?

9 A Yes, sir.

10 Q But let me ask you this: Have you been  
11 charged with anything as a result of this matter?

12 A No, sir.

13 Q Have you been charged with armed robbery?

14 A No, sir.

15 Q Assault?

16 A No, sir.

17 Q Conspiracy?

18 A No, sir.

19 Q But yet you told Officer Seifert that you  
20 were the one that gave the information to allegedly  
21 Mr. McQuarters that Mr. Snodgrass would have any money  
22 if he wanted it; is that correct?

23 A I said, he's the manager, he'd have the money  
24 if someone would have it.

25 Q Well, you testified earlier on direct, if you

## TESTIMONY OF COLTON DELAPLANE

1 want money, Mr. Snodgrass is the one that would have  
2 it; is that correct? That is what you said. Those are  
3 your words here today.

4 A I don't -- I'm not sure.

5 Q You're not sure.

6 Now, additionally, as I said, you  
7 haven't been charged with anything in relationship to  
8 this event, correct?

9 A Yes, sir.

10 Q But you've testified that you told  
11 Investigator Seifert, and you've testified here today,  
12 that approximately three to four hours later you got a  
13 call from my client to meet him outside of your  
14 girlfriend's house?

15 A Yes, sir.

16 Q And that you did that, and you went outside  
17 your girlfriend's house?

18 A Yes, sir.

19 Q Okay. Approximately how long did you wait  
20 outside the house before you say that you saw  
21 Mr. McQuarters?

22 A I walked down the road and met him.

23 Q You walked down the road and met him?

24 A Yes, sir.

25 Q Now, you testified earlier that you got off

## TESTIMONY OF COLTON DELAPLANE

1 of work around 10:30; is that correct?

2 A Yes, sir.

3 Q Okay. So -- and I believe October 20th, that  
4 was a school night, right?

5 A Yes, sir.

6 Q It was. Okay.

7 So, if you got off work at 10:30,  
8 approximately three to four hours later would have been  
9 in the a.m. hours of the morning, correct?

10 A Yes, sir.

11 Q So, approximately 2:30, 1:30 or 2:30; is that  
12 right?

13 A Yes, sir.

14 Q So, at 1:30 or 2:30 you were still awake at  
15 your girlfriend's house?

16 A Yes, sir.

17 Q And when you talked with Mr. McQuarters, you  
18 were willing to go outside at 1:30, 2:30 in the morning  
19 on October 21st and walk down the road?

20 A Yes, sir.

21 Q And your testimony is, without you asking or  
22 knowing anything about it, that he gave you \$250?

23 A Yes, sir.

24 Q And said, Merry Christmas?

25 A Yes, sir.

## TESTIMONY OF COLTON DELAPLANE

1           Q     And you're asking this jury to believe that  
2     you didn't have anything to do with any robbery, yet  
3     you received money, you gave information that led to  
4     it, and you're the only one out of any of these people  
5     who worked at the theater; is that correct?

6           A     Yes, sir.

7           Q     Additionally, as I said before, you met with  
8     Investigator Seifert. Investigator Seifert indicates  
9     in his report that you confessed to him that you set up  
10    the entire robbery and that you were sorry; is that  
11    correct?

12          A     No, sir.

13          Q     Okay. Why not?

14          A     I don't believe I set up the robbery at all.

15          Q     You don't believe that you set up the robbery  
16    at all. So, where Investigator Seifert indicates that  
17    you confessed to that, that is incorrect?

18          A     I would say so.

19          Q     Okay. And that where he indicates that  
20    Delaplane stated, that is why McQuarters gave him \$250  
21    cash after the robbery assault; is that correct?

22          A     What was the question?

23          Q     Well, Investigator Seifert indicates that you  
24    told him that you confessed to setting this up, and  
25    that you said, that's why he gave me \$250 after the

## TESTIMONY OF COLTON DELAPLANE

1 fact, as payment for setting up the robbery; is that  
2 correct?

3 A No, sir.

4 Q That's not correct?

5 A No, sir.

6 MR. BAX: Moment's indulgence, Your Honor.

7 THE COURT: Yes, sir.

8 MR. BAX: Thank you.

9 BY MR. BAX:

10 Q One final follow-up, Mr. Delaplane. I just  
11 want to make sure I'm clear.

12 It's your testimony here today that  
13 Investigator Seifert is saying that you set up this  
14 robbery and that's why you got the \$250, that is wrong?

15 A Yes, sir. I did not set up the robbery.

16 Q And you didn't receive the \$250 for your role  
17 in the robbery?

18 A No, sir.

19 Q And you haven't been charged with anything in  
20 relationship to this case?

21 A No, sir.

22 Q One final question for you, Mr. Delaplane:  
23 You understand that you're under oath?

24 A Yes, sir.

25 Q And everything you've testified in front of

## TESTIMONY OF COLTON DELAPLANE

1 this jury is the truth; is that correct?

2 A Yes, sir.

3 MR. BAX: No further questions, Your Honor.

4 THE COURT: Thank you.

5 Redirect, Ms. Lempesis?

6 REDIRECT EXAMINATION

7 BY MS. LEMPESIS:

8 Q Just briefly, Your Honor.

9 Colton, do you remember when you met  
10 with Investigator Seifert that final time in the car at  
11 school. Do you remember if he recorded that interview?

12 A Yes, ma'am, he did.

13 Q And do you remember telling him that you had  
14 told Austin McQuarters who was going to have the money  
15 that night?

16 A Yes, ma'am.

17 Q So, basically, Colton, did the information  
18 you gave Austin McQuarters that night, did that  
19 information that you gave him help him that night?

20 A Yes, ma'am. But it wasn't intended to set up  
21 a robbery.

22 Q All right. And you got \$250 from  
23 Austin McQuarters?

24 A Yes, ma'am.

25 Q And to date you have not been charged with

## TESTIMONY OF COLTON DELAPLANE

1 anything in relation to this?

2 A No, ma'am.

3 MS. LEMPESIS: I have nothing further.

4 THE COURT: Any follow-up, Mr. Bax?

5 MR. BAX: Your Honor, brief follow-up.

6 THE COURT: Yes, sir.

7 RE-CROSS EXAMINATION

8 BY MR. BAX:

9 Q Two questions. Number one: Mr. Delaplane,  
10 what's today's date?

11 A I'm not even sure right now.

12 Q Okay. Well, let's go with the year. What is  
13 the year?

14 A 2015.

15 Q Okay. And is that two more years than 2013?

16 A Yes, sir.

17 Q Okay. So, to date, it's been two years since  
18 the incident; is that correct? Or close to it?

19 A Yes, sir.

20 Q And finally, do you recall, as I said before,  
21 you testified in a prior proceeding under oath about  
22 this incident, correct?

23 A Yes, sir.

24 Q Do you recall being asked if  
25 Investigator Seifert recorded that interview in his



## TESTIMONY OF COLTON DELAPLANE

1 patrol car during that proceeding?

2 A I'm not sure.

3 Q And do you recall responding, No, you didn't  
4 know he recorded anything?

5 A I'm not sure.

6 Q Not sure. No further questions, Your Honor.

7 THE COURT: Thank you.

8 Ms. Lempesis, you get the last word.

9 MS. LEMPESIS: Nothing further, Your Honor.

10 THE COURT: Thank you. Mr. Delaplane, you  
11 can step down. Thank you.

12 MS. LEMPESIS: Your Honor, we ask  
13 Mr. Delaplane be excused.

14 THE COURT: Without objection, Mr. Bax, can  
15 he be excused?

16 MR. BAX: No. No objection, Your Honor.

17 THE COURT: Thank you.

18 Mr. Delaplane, you're free to go. Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: Ladies and gentlemen, thank you  
21 for, as I say, working overtime today. I'm  
22 certain that your check will reflect the overtime  
23 pay.

24 The State still has two witnesses left to  
25 testify, and then the defense has the opportunity

## TESTIMONY OF COLTON DELAPLANE

1 to put in evidence and testimony. None of us know  
2 how long those witnesses are going to take. But I  
3 can tell you that we made significant progress  
4 today in spite of the delays that we have  
5 necessarily had to have. And we could finish --  
6 certainly we should finish the testimony tomorrow.  
7 Perhaps we'll finish the trial itself. That's --  
8 at least we'll get it in your hands by then, then  
9 you can take as long as you want to.

10 I just want to let you know what it looks  
11 like from our perspective unless we have some  
12 unforeseen delays and the lights go out again  
13 tomorrow. We should be able to finish.

14 Have a safe trip home, ladies and gentlemen.  
15 Enjoy your evening and I'll see you tomorrow at  
16 9:30. Be back in the jury room at 9:30.

17 (Jury exits the courtroom at  
18 5:18 p.m.)

19 THE BAILIFF: The jury is clear, Your Honor.

20 THE COURT: Thank you.

21 Ms. Lempesis, anything further from the State  
22 before we break for the day?

23 MS. LEMPESIS: No, Your Honor.

24 THE COURT: All right. Mr. Bax, it occurred  
25 to me in reflection that I may have cut you off

## TESTIMONY OF COLTON DELAPLANE

1 too short on your argument against Dr. Snowman's  
2 testimony. It embodied what you argued before,  
3 before Judge Keesley. Of course, it's part of the  
4 record and that's still there.

5 I realize, however, that I think there's some  
6 additional facts were brought to bear, perhaps  
7 before Dr. Snowman this time that were not in last  
8 time's transcript. You'll be the better judge of  
9 that than I am.

10 I don't want to preclude you from arguing any  
11 additional grounds that you might wish to, or any  
12 different argument that you might wish to before  
13 this regular jury. I'll give you some time  
14 tomorrow morning or before the record is closed,  
15 if you wish to do that.

16 MR. BAX: Thank you, Your Honor.

17 THE COURT: Anything further on defense  
18 before we break then?

19 MR. BAX: No, sir.

20 THE COURT: 9:30 tomorrow. Thank you.

21 (Recess for the day.)

22

23

24

25

## TESTIMONY OF COLTON DELAPLANE

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was  
7 authorized to and did stenographically report the foregoing  
8 proceedings and that the transcript is a true and complete  
9 record of my stenographic notes.

8

DATED this 10th day of February, 2016.

9

10

11 /s/ Mona L. Manley

12 \_\_\_\_\_  
MONA L. MANLEY  
Official 14th Circuit Court Reporter  
13 (850) 893-6662  
mmanley@sccourts.org

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1                   IN THE COURT OF GENERAL SESSIONS IN AND FOR  
2                   BEAUFORT COUNTY SOUTH CAROLINA

3

4       STATE OF SOUTH CAROLINA,

5               Plaintiff,

6       vs.

CASE NO. 2013GS0701844; 1845

7       AUSTIN LEWIS McQUARTERS,

8               Defendant.

9       \_\_\_\_\_ /

10

11                               \*    \*    \*

12

13                               TRIAL TRANSCRIPT

14                               VOLUME 5

15

16       DATE:                               July 22, 2015

17       PLACE:                            Beaufort County Courthouse  
18                                           Beaufort, South Carolina

19       REPORTED BY:                    Mona Manley, Court Reporter

20       BEFORE:                           Honorable Thomas W. Cooper, Jr.

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**APPEARANCES**

REPRESENTING THE STATE:

Mary Jordan Lempesis, Assistant Solicitor  
Brian Holland, Assistant Solicitor  
14th Circuit Solicitor's Office  
Bluffton, South Carolina

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14th Circuit Public Defender's Office  
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## INDEX PAGE

|    |                                    |             |
|----|------------------------------------|-------------|
| 1  | INDEX                              |             |
| 2  |                                    |             |
| 3  | WITNESS:                           | PAGE:       |
| 4  |                                    |             |
| 5  |                                    |             |
| 6  | DOUG SEIFERT                       |             |
| 7  | Direct Examination The Clerk       | 351         |
| 8  | Cross Examination By Mr. Bax       | 378 EUFPL I |
| 9  |                                    |             |
| 10 | PAOLA LABRADOR                     |             |
| 11 | Direct Examination By Ms. Lempesis | 394         |
| 12 | Cross Examination By Mr. Bax       | 397         |
| 13 |                                    |             |
| 14 | AUSTIN MCQUARTERS                  |             |
| 15 | 10 Miranda                         | 369 369     |
| 16 |                                    |             |
| 17 |                                    |             |
| 18 |                                    |             |
| 19 |                                    |             |
| 20 |                                    |             |
| 21 |                                    |             |
| 22 |                                    |             |
| 23 |                                    |             |
| 24 |                                    |             |
| 25 |                                    |             |

## MOTION RULINGS

1 PROCEEDINGS

2

3 \*\*\*\*\*Audio/Yvonne started here. 23 02 29

4 THE COURT: Thank you, folks. Please be  
5 seated. Good morning.

6 Is the State ready for the jury,  
7 Ms. Lempesis?

8 MS. LEMPESIS: We are, Your Honor.

9 THE COURT: Mr. Bax, is the defense ready for  
10 the jury?

11 MR. BAX: The defense is ready to proceed,  
12 Your Honor. There's a matter of just some kind of  
13 housekeeping while we don't have the jury in here.  
14 There's an issue that's arisen about the statement  
15 of my client.

16 In the last trial, Your Honor, the statement  
17 of my client came in through the testimony of  
18 Investigator Seifert. There is an audio/video  
19 recording of the interview at the Sheriff's  
20 Department, but there were portions that couldn't  
21 be properly redacted and so they went with that.

22 My understanding from Ms. Lempesis is that  
23 they kind of have somewhat of the same issue.  
24 It's not where they can pull it out and create a  
25 version that can go back to the jury.



7-22-2015YP

1           And, in fact, my understanding is, is that  
2           during the portion that we've agreed to redact  
3           that's kind of in the middle, they would -- or  
4           they're proposing to mute that during that portion  
5           of time.

6           I think the defense is going to take the  
7           position that in this situation it would be better  
8           to have Officer Seifert just testify, as he did  
9           last time, to what my client stated and avoid  
10          those subjects.

11          The reason being is that the jury is watching  
12          a video, A, that they're not going to be able to  
13          take back with them. They would have to come back  
14          to the courtroom and watch again. And, B, they're  
15          going to see a point where it gets muted, and so  
16          they're going to see mouths moving, they're going  
17          to see interaction but no words, and obviously,  
18          Your Honor, we're not really going to be able to  
19          give them an explanation for that.

20          THE COURT: Right.

21          MR. BAX: Of any satisfaction. I think that  
22          raises new issues, creates in the minds of the  
23          jury an area to discuss that they really shouldn't  
24          have.

25          And even if they don't talk about it out

7-22-2015YP

1 loud, there's going to be -- they're going to be  
2 thinking what are we -- what are we not hearing?  
3 What are we missing? What are we not getting?

4 And we, as the attorneys, and Your Honor, we  
5 really can't fill that blank for them, but we're  
6 going to create that blank by letting them watch  
7 it like that.

8 THE COURT: How did you handle it in the last  
9 trial, Mr. Bax?

10 MR. BAX: In the last trial, Your Honor,  
11 because of the fact that it couldn't be redacted  
12 in a way that -- Judge Keesley wanted it to be in  
13 a way that it could go back to the jury, so they  
14 wouldn't have to come back out in the courtroom.

15 That couldn't be done, and so we agreed to  
16 just have the Solicitor ask Investigator Seifert  
17 about what statements my client made on the stand,  
18 which he did.

19 THE COURT: Right.

20 MR. BAX: And that's how we did it.

21 I -- that is still an option for us here  
22 today, and I don't have an objection to that. We  
23 didn't have an issue with that with Doug's  
24 testimony last time. That wasn't an area of  
25 contention.

7-22-2015YP

1           Officer Seifert knows not to talk about the  
2           dope boy statement and just give the substance of  
3           his statement that -- really that they wanted in.

4           THE COURT: Thank you.

5           Ms. Lempesis.

6           MS. LEMPESIS: Thank Your Honor.

7           The video that we have, that we would enter  
8           as evidence is already redacted. There are  
9           portions of the interview with the defendant where  
10          he talks about -- where he talks about smoking  
11          marijuana with Colton. So, those parts have been  
12          taken out. Those were taken out prior to the  
13          previous trial.

14          The only portion that's left in here that  
15          would be objectable, and that we've agreed to keep  
16          out is the defendant's statement that, If I was  
17          going to rob someone, I would rob a dope dealer,  
18          not a -- I would rob a dope dealer, basically.

19          We have it marked exactly where that  
20          statement occurs, and my plan is to stop and --  
21          either stop and start or just mute the video.  
22          It's about 15 seconds of muting that would be  
23          required. And then to put the volume back on so  
24          that the jury can hear the rest of the defendant's  
25          statement.

7-22-2015YP

1           The reason that it wasn't done this way last  
2           time is because Judge Keesley made it very clear  
3           that he never allows discs to go back to the jury  
4           unless they can be -- the jury can listen to them  
5           back in the jury room.

6           I've also, of course, appeared in front of  
7           judges that have allowed me to stop and start  
8           videos. One example is Hope Haven of the Low  
9           Country is a local -- our local place where they  
10          do forensic interviews. That software, you can't  
11          even -- you cannot redact that software. You  
12          cannot make any redactions. So, the only option  
13          is to stop and start.

14          I've done that multiple times in trial. I  
15          think that's a perfectly acceptable way. In fact,  
16          if the jury were to listen -- wanted to listen to  
17          the defendant's interview, we can bring them out  
18          and we can do it again in the courtroom. And  
19          that's what we would suggest to be done if, in  
20          fact, it came up during deliberations that they  
21          wanted to hear it again.

22          THE COURT: Can you just fast forward and do  
23          it?

24          MS. LEMPESIS: I can, Your Honor. Because  
25          it's a short segment and it's just -- it might be

7-22-2015YP

1 easier just to mute over it, but we can also fast  
2 forward.

3 THE COURT: All right. I take it there are  
4 other redactions that have been made already.

5 MS. LEMPESIS: There are, Your Honor. And  
6 that is something I did want to bring up. It's  
7 clear that it skips over a portion.

8 You know, you'll see Investigator Seifert  
9 asking him one thing, and then it's clipped to the  
10 next part, where they're moved on to a different  
11 topic. So, I think an instruction to the jury  
12 would be necessary anyway to tell them there are  
13 portions of the interview that have been cut out  
14 that are not, you know, important for y'all to  
15 hear, and so they've been redacted.

16 I think that's a perfectly acceptable way to  
17 address the issue.

18 THE COURT: All right. And certainly, if  
19 there have been redactions, I can explain those, I  
20 think.

21 But Mr. Bax has a good point. If they're  
22 sitting there watching something, it's a different  
23 thing when you say there have been redactions.  
24 It's slightly different when they're looking  
25 there, and all of a sudden it's like the sound

7-22-2015YP

1 goes out on your TV, and you say, What in the  
2 world are they talking about?

3 MS. LEMPESIS: Well, I can stop it and start  
4 it again, fast forward and start over.

5 THE COURT: Fast forward it.

6 MS. LEMPESIS: Yes, sir.

7 THE COURT: Fast forward it, let it in like  
8 it is.

9 MS. LEMPESIS: Yes, sir.

10 THE COURT: Okay. If you can't then we'll  
11 have to do something else.

12 MS. LEMPESIS: Yes, sir.

13 THE COURT: All right.

14 MR. BAX: Your Honor, it would be my  
15 position -- I would request that we not do a  
16 curative instruction.

17 THE COURT: Okay.

18 MR. BAX: I think my position would be on  
19 that, that a curative instruction on it would kind  
20 of bring more highlight to it than is necessary.

21 THE COURT: If you don't want it, I won't  
22 give it.

23 MR. BAX: I don't think it's going to be  
24 necessary to do it. If they're going to fast  
25 forward past it, and we understand Your Honor's

7-22-2015YP

1 ruling and my position is clear on the record, I'd  
2 rather not have the jury instruction.

3 THE COURT: All right.

4 MS. LEMPESIS: Your Honor, may I have just  
5 one minute to confer that we can, in fact, do it  
6 clean that way? I apologize, and we practiced  
7 both ways, but I don't want it to become an issue.

8 THE COURT: Okay. I understand.

9 (Pause.)

10 MS. LEMPESIS: Your Honor, we can do that.  
11 What we're going to do is pause it, fast forward  
12 it, and then start it again.

13 THE COURT: That's fine.

14 MS. LEMPESIS: Thank you, Your Honor.

15 (Pause.)

16 THE COURT: I understand he had  
17 some technical -- there were some technical  
18 difficulties with the sound system yesterday. I  
19 was delighted to hear that this morning, when Rick  
20 told me about, because I thought for the life of  
21 me I was going completely deaf when Mr. Delaplane  
22 was talking yesterday. I couldn't hear when I was  
23 six feet from him.

24 MS. LEMPESIS: We're ready.

25 THE BAILIFF: The jury's entering the

7-22-2015YP

1 courtroom, Your Honor.

2 THE COURT: Thank you.

3 Good morning, ladies and gentlemen. Thank  
4 you for your prompt return this morning. We were  
5 ready at 9:30, but we had to make some technical  
6 adjustments.

7 We learned last night, or yesterday  
8 afternoon, that the microphone systems in here are  
9 not working. I was frankly glad to hear it. I  
10 thought that I was going even deafer than I  
11 already was, when the young man was testifying  
12 yesterday was so hard to hear. The microphone was  
13 not working.

14 And I also learned that my microphone was not  
15 working either, which means I have been dutifully  
16 turning this button on and off, thinking I was  
17 helping with audio system, but it was -- it's like  
18 a Fisher Price toy. It's not hooked up to  
19 anything. So, we had to make some adjustments to  
20 deal with that this morning, and that work is  
21 still in progress. And that accounted for  
22 something rather lengthy.

23 But now we're ready to go.

24 As the State is continuing evidence and  
25 testimony in support of the charges.



7-22-2015YP

1 Ms. Lempesis.

2 MS. LEMPESIS: Thank you, Your Honor. The  
3 State calls Doug Seifert, Investigator Doug  
4 Seifert.

5 THE COURT: Investigator Seifert, come  
6 forward, please, be sworn.

7 Thereupon,

8 DOUG SEIFERT  
9 was called as a witness, having been first duly sworn,  
10 was examined and testified as follows:

11 WITNESS: Yes, sir.

12 DIRECT EXAMINATION

13 THE CLERK: You may be seated. Please state  
14 and spell your name for the Court's record.

15 THE WITNESS: First name Doug, D-O-U-G. Last  
16 name Seifert. It's S-E-I-F-E-R-T.

17 BY MS. LEMPESIS:

18 Q Good morning, Investigator Seifert.

19 A Good morning.

20 Q Investigator Seifert, who do you work for?

21 A I work for Beaufort County Sheriff's Office.

22 Q And how long have you worked for the  
23 sheriff's office?

24 A Approximately nine years.

25 Q And what is your current rank and position?

## TESTIMONY OF DOUG SEIFERT

1           A     I'm a sergeant, and my position is  
2     investigations.

3           Q     And what do your duties include as a sergeant  
4     in investigations?

5           A     We take care of all different kinds of crime,  
6     from all the way to stolen credit cards, all the way up  
7     to murder. And it depends on what case. It's case by  
8     case. If you're on duty, and you happen to actually  
9     acquire different cases of when you're actually on duty  
10    is what determines sometimes when you get cases.

11          Q     And were you working in investigation in  
12    October of 2013?

13          A     Yes, ma'am.

14          Q     And were you assigned to investigate a  
15    robbery that occurred on October 20th of 2013?

16          A     Yes, ma'am.

17          Q     So, how did you get that assignment?

18          A     The -- actually, the next day I actually read  
19    the reports and actually read the actual robbery that  
20    took place at Northridge Cinemas. Due that I actually  
21    knew the actual victim through work, I actually saw  
22    that he was assaulted and then actually I did a  
23    follow-up call.

24          Q     So, were you called out that night of the  
25    robbery?

## TESTIMONY OF DOUG SEIFERT

1           A     No, ma'am.

2           Q     Do you know if any investigators were called  
3 out that night?

4           A     No, ma'am.

5           Q     Tell me, where did the -- where did the  
6 incident occur?

7           A     It's at Northridge Cinemas, which is 435  
8 William Hilton Parkway, which is on the north of Hilton  
9 Head Island.

10          Q     What county is that in?

11          A     Beaufort County.

12          Q     And you mentioned that you knew the victim.  
13 Did you -- who did you identify as the victim in the  
14 case?

15          A     John Snodgrass.

16          Q     And do you know what Mr. Snodgrass's -- why  
17 he was at the theater?

18          A     Due to used to being on the actual road, I  
19 was a road deputy, Mr. Snodgrass and I -- I did many  
20 escorts, things like that. Also, working Friday or  
21 Saturday night details long before all this all  
22 occurred.

23          Q     Do you know his position at the theater?

24          A     Yes, he's a manager.

25          Q     And so you said you got the -- you were

## TESTIMONY OF DOUG SEIFERT

1 assigned the case the next day. What date would that  
2 have been that you actually got the case?

3 A That would be the 21st of October of 2013.

4 Q What did you do first once you got the case?

5 A I made courtesy calls to actual hospital and  
6 also Mr. Snodgrass. And due to not knowing where he  
7 was, I didn't have any idea where he was actually at  
8 the time.

9 Q Okay. Did you figure out where he was?

10 A I did.

11 Q Where was he?

12 A He was actually at Savannah Memorial  
13 Hospital.

14 Q Did you -- did you ever meet with him?

15 A I did.

16 Q Where did you meet with him?

17 A I met him at Savannah Memorial Hospital, I  
18 believe on October 22nd, 2013.

19 Q What did you do when you met with him at the  
20 hospital?

21 A I met with Mr. Snodgrass and also the owner  
22 of Northridge Cinemas. I believe his name was  
23 Brian Smith, I believe. I interviewed Mr. Snodgrass,  
24 not only interviewing his -- what actually occurred,  
25 that he stated on the 20th, but also I took photos.

## TESTIMONY OF DOUG SEIFERT

1 Q Okay. You took photos of Mr. Snodgrass?

2 A Of his injuries, yes. Yes, ma'am.

3 Q Investigator Seifert, those are the photos we  
4 saw yesterday?

5 A Yes, ma'am.

6 Q So you said you interviewed Mr. Snodgrass at  
7 the hospital?

8 A Yes, ma'am.

9 Q Did you get -- were you able to develop a  
10 suspect based on your interview of Mr. Snodgrass?

11 A At the time, no, ma'am.

12 Q Did you get -- what sort of information did  
13 you get from Mr. Snodgrass?

14 A He stated that the person who assaulted him  
15 was a large, black male. He recognized the female that  
16 actually was in the vehicle, and he explained that it  
17 was a two-door red coupe.

18 Q So, after you got this information from  
19 Mr. Snodgrass, what did you do after that, after that  
20 being at the hospital?

21 A I actually -- I asked him for a list of  
22 employees, and that was later after, because I knew he  
23 was -- due to his injuries, he was -- had a lot going  
24 on in his hospital room.

25 So, he ended up eventually giving me a

## TESTIMONY OF DOUG SEIFERT

1 set of names of employees that were working that  
2 evening.

3 Q Okay. Investigator Seifert, did you ever  
4 look into whether or not there was -- well, did you  
5 ever go to the movie theater?

6 A Many times, ma'am.

7 Q Did you determine that there was any sort of  
8 surveillance footage?

9 A There was none that even -- not only with the  
10 interview of Mr. Snodgrass, but there's an old system  
11 that's actually inside the building that does not work.

12 Q Okay. And did you do anything else to search  
13 for any kind of footage from the area?

14 A Yes, ma'am. Several gas stations that  
15 surround that area, viewed video footage of that -- the  
16 time -- timing of when the assault occurred, and we had  
17 negative contact.

18 Q Negative contact of?

19 A Of anything that was suspicious or anybody  
20 running, walking, cars, anything like that.

21 Q Okay. So, you said that Mr. Snodgrass  
22 contacted you and gave you names of the employees  
23 working that night?

24 A Yes, ma'am.

25 Q Did you follow-up with any of those

## TESTIMONY OF DOUG SEIFERT

1 employees?

2 A I did.

3 Q And who did you follow-up with?

4 A The first individual I actually interviewed  
5 was Colton Delaplane, and then I actually followed up  
6 with another young lady.

7 Q Okay. What was her name?

8 A Paola Labrador.

9 Q You mentioned Mr. Delaplane. Did you -- how  
10 did you follow-up with him?

11 A I met him at the Bluffton High School.

12 Q Did you meet with him just one time or more  
13 or --

14 A It was several times.

15 Q You met with him at Bluffton High School, you  
16 said?

17 A Yes, ma'am.

18 Q About how long after the incident on  
19 October 20th did you meet with Colton for the first  
20 time?

21 A Approximately a couple weeks, if I had to  
22 guess.

23 Q Okay. And was anybody else present when you  
24 met with Mr. Delaplane?

25 A At first there was. It was actually

## TESTIMONY OF DOUG SEIFERT

1     Officer Farelli (phonetic) who actually works for  
2     Bluffton Police Department.

3           Q     And did you get, I guess -- did you get  
4     permission to speak to Colton?

5           A     I did. Due to that Colton Delaplane was  
6     actually a juvenile, I got permission by his mother on  
7     the phone.

8           Q     How old was Colton at that time; do you know?

9           A     He was 16.

10          Q     Based on your conversation with  
11     Mr. Delaplane, did you develop a suspect in this case?

12          A     I did.

13          Q     And who was that?

14          A     Austin McQuarters.

15          Q     And what did you do after speaking with  
16     Mr. Delaplane and developing Mr. McQuarters as a  
17     suspect?

18          A     Actually, we actually had another interview  
19     over at the Hilton Head office. That was actually the  
20     second interview, and that was accompanied by  
21     Mr. Delaplane's father as well. He actually met over  
22     at the Hilton Head office.

23          Q     Based on your conversations with  
24     Mr. Delaplane, did you develop anybody else as a  
25     suspect?



## TESTIMONY OF DOUG SEIFERT

1           A     I did.

2           Q     Who was that?

3           A     That was Jacklyn Perez, known as Brooklyn.

4           Q     Did you ever meet with -- well, let me  
5 backtrack.

6                     So, you developed Austin McQuarters as a  
7 suspect, you said?

8           A     Yes, ma'am.

9           Q     Did you ever meet with Mr. Snodgrass and show  
10 him a photo line up?

11          A     I did, ma'am.

12          Q     And was Mr. Snodgrass able to pick anyone out  
13 of that line up?

14          A     He wasn't.

15          Q     Did you ever meet with Jacklyn Perez?

16          A     I did, ma'am.

17          Q     Do you recall when and where you met with  
18 her?

19          A     Approximately -- can I refer to my notes?

20          Q     You may.

21          A     That would be November 6, 2013.

22          Q     And where did you meet with her?

23          A     I met with her at her house, at her residence  
24 first, and then we were -- we actually went over to the  
25 Hilton Head office, and she met me there.

## TESTIMONY OF DOUG SEIFERT

1           Q     Okay.  And did you conduct an interview of  
2     her?

3           A     I did, ma'am.

4           Q     And during that interview, did you show  
5     Ms. Perez a photo line up with the defendant in it?

6           A     Yes, ma'am.

7           Q     And did she pick anyone out of the photo line  
8     up?

9           A     She did.

10          Q     And did you determine during your interview  
11     whether or not Ms. Perez knew Mr. McQuarters?

12          A     She did.

13          Q     What happened after your interview of  
14     Ms. Perez?

15          A     Once Ms. Perez, our interview ended, she -- I  
16     actually obtained warrants and -- for Mr. McQuarters  
17     and also Ms. Perez.

18          Q     Was she arrested then?

19          A     She was.

20          Q     Did you meet with Colton Delaplane at any  
21     other point?

22          A     I did.  I actually interviewed Mr. Delaplane  
23     on a third occasion, yes, ma'am.

24          Q     And where was that interview?

25          A     That was at the front of Hilton Head -- I'm

## TESTIMONY OF DOUG SEIFERT

1     sorry.   In front of Bluffton High School.

2           Q     Okay.  Did you have permission again to meet  
3     with him?

4           A     I did, by his father.

5           Q     And where did that interview take place?

6           A     It was actually in my vehicle.  My  
7     County-issued vehicle.

8           Q     And based on that third meeting with Colton,  
9     did you get any more information about this incident?

10          A     I did, ma'am.

11          Q     And Investigator Seifert, I want to ask you a  
12     little bit about your -- about how you -- how you draft  
13     your reports.  At what point do you generally sit down  
14     and write a report?

15          A     I can't give you a specific answer on that,  
16     but I can advise everybody that it depends on your flow  
17     of your work.  It could be the next day, it could be  
18     right after the person is incarcerated.  It could take  
19     a week, it could take two weeks.  It depends on being  
20     called out, vacation time, there's all -- all different  
21     varieties.  But as far as on the norm, it usually takes  
22     about a week.

23          Q     Do you recall -- and it's fine if you don't,  
24     but do you recall when you wrote your report regarding  
25     your meetings with Colton Delaplane?

## TESTIMONY OF DOUG SEIFERT

1           A     Thinking back to 2013, I would say about  
2     approximately a week, if I had to guess, or a couple  
3     days.

4           Q     Okay. When you wrote your report,  
5     specifically, the part about meeting with  
6     Colton Delaplane, do you recall exactly the words you  
7     used in your report?

8           A     Yes, ma'am.

9           Q     What did you write in your report?

10          A     Stated that on the third interview, with the  
11     accumulation of all of the other interviews,  
12     Mr. Delaplane confessed that he set the armed robbery  
13     up, and that he was sorry.

14          Q     Investigator Seifert, are those Colton's, as  
15     best as you can recall, are those his exact --

16               MR. BAX: Objection, Your Honor. Based on  
17     prior.

18               THE COURT: No, I think she can ask that.  
19     The question does not necessarily suggest an  
20     answer.

21               Go ahead.

22               MR. BAX: Well, I'm sorry, Your Honor. I'm  
23     objecting based on things that we've gone to  
24     pre-trial about. I think it's the testimony that  
25     I've made issue of before. Thank you.

## TESTIMONY OF DOUG SEIFERT

1           THE COURT: I appreciate that. But I think  
2           she's entitled to inquire whether those were his  
3           exact words or not. I'll let it.

4           MS. LEMPESIS: Thank you, Your Honor.

5 BY MS. LEMPESIS:

6           Q     Were those the exact words that Colton  
7           used -- the words that you put in your report, were  
8           those the exact words that Colton said to you?

9           A     No, ma'am.

10          Q     How would you describe what you put in your  
11          report? If it's not his exact words, how do you  
12          describe them?

13          A     It's paraphrasing. Just conclusion of --  
14          with the other interviews and also the third interview.  
15          That is what I came up with as far as my conclusion.

16          Q     But it's true that you never got a warrant  
17          for Colton Delaplane?

18          A     That is correct.

19          Q     After -- so you said you got a warrant for  
20          Jackie Perez and a warrant -- and warrants for  
21          Austin McQuarters. At what point did you -- what did  
22          you do after you had those warrants?

23          A     They were executed on both individuals.  
24          Ms. Perez first, and Mr. McQuarters after.

25          Q     When did you come in contact with

## TESTIMONY OF DOUG SEIFERT

1 Mr. McQuarters?

2 A Can I refer to my notes again?

3 Q Yes, you may.

4 A Thank you. That would be November 6th, 2013.

5 Q And where was that, that you came in contact  
6 with him?

7 A It was at his residence.

8 Q And were you accompanied by any other  
9 investigators or deputies?

10 A Yes, ma'am. Several on the drug task force  
11 were there. Also a staff sergeant and a sergeant for  
12 the road, and several other road -- road patrols as  
13 well.

14 Q Were they just there to assist you in --  
15 in -- was there another warrant that you had?

16 A The actual -- we actually had a search  
17 warrant, which was conducted at Mr. McQuarters's  
18 residence.

19 Q Is it common to call out extra people to help  
20 you serve a search warrant?

21 A Absolutely. Yes, ma'am.

22 Q And so when you arrived at Mr. McQuarters's  
23 house then, did you -- sorry.

24 You came in contact with Mr. McQuarters?

25 A I did, ma'am.

## TESTIMONY OF DOUG SEIFERT

1 Q And did you place him under arrest?

2 A I did, ma'am.

3 Q And did you advise him of his rights at any  
4 time?

5 A Yes, ma'am.

6 Q How did you advise him of his rights?

7 A I read his Miranda warnings from my card that  
8 I have.

9 Q Your card that you have. Can you state that  
10 for us?

11 A Can I get it out first?

12 Q Sure, yeah.

13 A I read him, You have the right to remain  
14 silent. Anything you say can and will be used against  
15 you in a court of law. You have the right to have an  
16 attorney. If you can't afford an attorney, one will be  
17 provided for you. Do you understand each -- these  
18 rights I've just explained to you -- I read to you.

19 Q And did Mr. McQuarters indicate that he  
20 understood?

21 A Yes, ma'am.

22 Q Did he agree to talk to you?

23 A Yes, ma'am.

24 Q Did y'all speak there or somewhere else?

25 A We actually went to the Hilton Head office.

## TESTIMONY OF DOUG SEIFERT

1           Q     Do you know what resulted as a -- as a result  
2 of that search of Mr. McQuarters's house with the  
3 warrant?

4           A     Yes, I know what was collected.

5           Q     Was there anything of evidentiary value  
6 collected while you were there?

7           A     No, ma'am.

8           Q     Okay. So, you -- did you then transport  
9 Mr. McQuarters to Hilton Head, the Hilton Head office?

10          A     I didn't specifically myself. It was  
11 actually a road deputy that actually transported Mr.  
12 McQuarters.

13          Q     Who was present for the -- well, did you  
14 interview Mr. McQuarters at the Hilton Head office?

15          A     I did, ma'am.

16          Q     And who else was present for that interview?

17          A     During my interview, Staff Sergeant Chapman,  
18 who at the time was my boss; he came in during my  
19 interview.

20          Q     Okay. And could you tell whether or not the  
21 defendant seemed to understand what he was doing? Was  
22 there anything affecting his ability to understand what  
23 he was doing?

24          A     No, ma'am.

25          Q     And did he have any sort of physical or



## TESTIMONY OF DOUG SEIFERT

1     mental impairment that would affect his ability to  
2     understand?

3           A     No, ma'am.

4           Q     The interview itself, where did it take place  
5     inside of the Hilton Head office?

6           A     We actually have an interview room.  We  
7     actually have two.  It was in one -- we call it  
8     Interview Room One, which is audio/video taped.

9           Q     Okay.  And do you remember about how long the  
10    questioning of Mr. McQuarters took?

11          A     From the time that he was in there till the  
12    time he was done, I'm going to guess 45 minutes.  As  
13    far as questioning, 20, 30 minutes, if I had to guess.

14          Q     Okay.  And during that interview, was he  
15    denied access to the bathroom or water or anything like  
16    that?

17          A     No, ma'am.

18          Q     And you've told us that you advised  
19    Mr. McQuarters of his rights at his house.  Did you  
20    also advise him of his rights under Miranda at the  
21    Hilton Head investigations office?

22          A     Yes, ma'am.

23          Q     Okay.  And how did you advise him of his  
24    rights?

25          A     Beaufort County Sheriff's Office has a

## TESTIMONY OF DOUG SEIFERT

1 Miranda form, not only that when I read it at his  
2 residence, but actually one in the interview room. I  
3 read it right in front of the individual who I'm  
4 talking to. They have to initial where I read the  
5 actual each Miranda warning line, which is, I believe,  
6 four, four lines. And at the end there's two questions  
7 stating if they understand what their rights are and  
8 also if they want to talk to me.

9 Q And did you use such a form in this case?

10 A I did, ma'am.

11 MS. LEMPESIS: Permission to approach the  
12 witness, Your Honor?

13 THE COURT: Yes, ma'am.

14 BY MS. LEMPESIS:

15 Q Investigator Seifert, I'm going to hand you  
16 what's been marked as State's Exhibit 10. Do you  
17 recognize that?

18 A Yes, ma'am.

19 Q And how are you able to recognize it?

20 A This is -- my -- not only that this is in  
21 front of me, but I also have my signature and the date  
22 and actually the time of when it was -- where I  
23 witnessed Mr. McQuarters when I read this.

24 Q Okay. And what is that, I'm sorry?

25 A This is the Beaufort County sheriff's Miranda

## TESTIMONY OF DOUG SEIFERT

1 warning form.

2 Q Okay. And is it -- has it been altered in  
3 any way?

4 A No, ma'am.

5 MS. LEMPESIS: Your Honor, I move to admit  
6 State's Exhibit 10 into evidence.

7 MR. BAX: No objection.

8 THE COURT: Without objection, State's 10 is  
9 in evidence.

10 *(Whereupon, State's Exhibit No(s). 10 marked*  
11 *for identification and received in evidence.)*

12 MS. LEMPESIS: Thank you, Your Honor. I move  
13 to publish it to the jury.

14 THE COURT: Yes, ma'am.

15 BY MS. LEMPESIS:

16 Q Investigator Seifert, if you would just  
17 actually go through and read that form for us.

18 THE WITNESS: On the top of the form, if I  
19 may, Your Honor?

20 THE COURT: Yes, sir.

21 A On the top of the form, it has, Beaufort  
22 County Sheriff's Office, and underneath our logo it  
23 actually has the Miranda warning form.

24 The next line is the case number of --  
25 which is the incident that Mr. Snodgrass reported.

## TESTIMONY OF DOUG SEIFERT

1                   Next location is where the Miranda form  
2 was actually read, which I put on here 70 Shelter Cove  
3 Lane, Hilton Head, South Carolina 29928.

4                   Next line is the individual, which is  
5 Austin McQuarters. The next one is the date of birth,  
6 and that was written in by Mr. Austin McQuarters.

7                   The -- in bold print it says, Statement  
8 of rights. And Number 1, it has, You have the right to  
9 remain silent.

10                  Line 2 is, Anything you say can and will  
11 be used against you in a court of law.

12                  Number 3 is, You have the right to have  
13 an attorney present for and during questioning.

14                  And Number 4 is, If you can't afford an  
15 attorney, one will be appointed for you before any  
16 questioning, if you wish.

17                  Those were all initialed by  
18 Mr. McQuarters.

19                  Underneath the actual statement of  
20 rights, there's a waiver of rights. Those are the two  
21 questions and the line states, Do you understand each  
22 of these rights have explained to you? Yes or no. And  
23 he initialed, Yes.

24                  And having these rights in mind, do you  
25 wish to talk to us now? And he initialed, Yes, as

## TESTIMONY OF DOUG SEIFERT

1 well.

2                   Underneath those two questions of the  
3 waiver rights, is the signature of each individual that  
4 we interview, and then we have witnesses that sign  
5 underneath there.

6           Q     Thank you. And just, you've already gone  
7 through this, but Mr. McQuarters, did he waive his  
8 rights?

9           A     He did.

10          Q     And he agreed to speak with you?

11          A     Yes, ma'am.

12          Q     And did he, at any point, ever change his  
13 mind and say he wanted a lawyer?

14          A     No, ma'am.

15          Q     And that person that you interviewed,  
16 Mr. McQuarters, is he in the courtroom today?

17          A     He is, ma'am.

18          Q     And can you just identify him for the record?

19          A     Yes, ma'am. He's in the blue golf shirt,  
20 with the glasses.

21          Q     Thank you.

22                   MS. LEMPESIS: And just let the record  
23 reflect that he's identified Mr. McQuarters.

24                   THE COURT: Yes, ma'am.

25 BY MS. LEMPESIS:

TESTIMONY OF DOUG SEIFERT

1 Q Investigator Seifert, I'm going to -- did you  
2 record this interview?

3           A     Yes, ma'am.

4 Q Do you typically record interviews that are  
5 done in investigation?

6           A     Yes, ma'am.

7 MS. LEMPESIS: Permission to approach the  
8 witness, Your Honor?

9 THE COURT: Yes, ma'am.

10 BY MS. LEMPESIS:

11 Q Investigator Seifert, I'm going to hand you  
12 what's been marked as State's Exhibit 11. Do you  
13 recognize that?

14           A       I do, ma'am.

15 Q And how are you able to recognize that?

16           A     Well, my initials and the date is there.

17 Q Did you, at my request, review that disc?

18                    A        I did.

19 Q And is it a true and accurate copy of the  
20 interview of Austin McQuarters?

21           A     Yes, ma'am.

22 Q And --

23 MS. LEMPESIS: And, Your Honor, at this point  
24 the State would move to admit State's Exhibit 11.

25 MR. BAX: Subject to prior objections.

## TESTIMONY OF DOUG SEIFERT

1           THE COURT: Thank you. Subject to prior  
2           issues that were raised that's in evidence. Thank  
3           you.

4           MS. LEMPESIS: Your Honor, we would move to  
5           publish it to the jury.

6           THE COURT: Yes, ma'am.

7           (Audio and visual CD of the interview being  
8           played.)

9           MS. LEMPESIS: Investigator Seifert, we're  
10          going to stop the interview there.

11          THE COURT: I'm sorry?

12          MS. LEMPESIS: I'm sorry. We're are going to  
13          stop the interview there.

14          THE COURT: Okay. All right.

15   BY MS. LEMPESIS:

16          Q     Investigator Seifert, we've just seen a  
17          portion of the interview of Mr. McQuarters. Can you  
18          recap for us what Mr. McQuarters told you during that  
19          interview?

20          A     Yes, ma'am. Mr. McQuarters was stating that  
21          he was actually at the Bluffton Kroger's and he was  
22          standing in the parking lot.

23          MR. BAX: Objection, cumulative, Your Honor.  
24          They've just seen all this.

25          THE COURT: Well, they -- they have heard it,

## TESTIMONY OF DOUG SEIFERT

1 but if they're like me, they might not have heard  
2 it clearly. And that's a concern. Of course, if  
3 he gets -- but you know what was said, and if he  
4 gets off script, you let us know, we'll get him  
5 back on. Thank you.

6 BY MS. LEMPESIS:

7 Q Just want you to recap for us what we just  
8 heard on that video.

9 A Okay. Mr. McQuarters was stating on  
10 October 20th, 2013, the evening, he was stating that he  
11 was in the parking lot of the Bluffton Kroger's. He  
12 ended up coming in contact with a white female, and he  
13 assisted her on putting groceries into her vehicle.

14 In the midst of putting the groceries in  
15 the vehicle, Mr. McQuarters asked as far as going to  
16 the movie theaters and for a ride. The white female,  
17 who he did not know, agreed to this. They ended up  
18 driving to the actual Northridge Cinemas, both together  
19 in her vehicle. Did not see a movie and she then ended  
20 up driving him back over to the actually Crescent. If  
21 you don't know where that is, that's actually right by  
22 46 and 278 is where Crescent Plantation is.

23 Q Is that a -- where is that?

24 A That's in Bluffton. It's real close to  
25 Mr. McQuarters's residence, which is Plantation Point



## TESTIMONY OF DOUG SEIFERT

1 Park.

2 And then, once he was dropped off there,  
3 he never heard from her again.

4 Q Thank you. After this interview of  
5 Mr. McQuarters, what happened right after that?

6 A He was transported to the Beaufort County  
7 Detention Center.

8 Q And did you conduct any other investigation  
9 after Mr. McQuarters was arrested?

10 A Yes, ma'am.

11 Q Did you interview anyone else?

12 A I did. I actually interviewed  
13 Paola Labrador, who actually worked that evening, who  
14 actually exited around the same time frame as  
15 Colton Delaplane as well.

16 Q Okay. So, you interviewed Paola Labrador?

17 A Yes, ma'am.

18 Q And did you do any other kind of -- did you  
19 do any other kind of investigation, look into anything  
20 else regarding this case?

21 A As far as forensic and things like that,  
22 those are all submitted, as well. Also did a search  
23 warrant actually on Ms. Jacklyn Perez's vehicle. And  
24 that was conducted, and what was collected on that was  
25 actually a doormat and actually some swabs from the

## TESTIMONY OF DOUG SEIFERT

1 actual passenger door handle inside.

2 Q Okay. And did you submit that to -- did you  
3 submit that for testing, those items?

4 A I did, ma'am.

5 Q Did you get any sort of evident -- anything  
6 of evidentiary value back from those swabs?

7 A No, ma'am.

8 Q Approximately how long -- well, do you  
9 remember when you executed that search warrant on  
10 Ms. Perez's car?

11 A Can I relate to my notes again?

12 Q Yes, you may.

13 A That would be on November 20th, ma'am.

14 Q Okay. So, a month later -- a month after the  
15 incident?

16 A Correct, ma'am.

17 Q Any other investigation or any other  
18 involvement in this case after that?

19 A Yeah, I was contacted by the victim, John  
20 Snodgrass, in reference to that he happened to find  
21 bloody papers that he actually put in his truck and  
22 ended up finding them after he was cleaning his  
23 vehicle.

24 Q Okay. Did you get those from him?

25 A I did, ma'am.

## TESTIMONY OF DOUG SEIFERT

1           Q     Did you put those into evidence?

2           A     Yes, ma'am.

3           Q     Did you do anything else in relation to this  
4 case?

5           A     I took photos, more photos of the evening,  
6 what the actual parking lot looks like in the evening.  
7 Also during the day, as well.

8           Q     Okay. And is that the extent of your  
9 investigation into this matter?

10          A     Yes, ma'am.

11               MS. LEMPESIS: Beg the court's indulgence.

12               THE COURT: Yes, ma'am.

13                               (Pause.)

14 BY MS. LEMPESIS:

15          Q     One last thing, Investigator Seifert. How  
16 long have you worked for the Sheriff's Office?

17          A     Approximately nine years.

18          Q     In all of those nine years, have you ever  
19 seen what is referred to --

20               MR. BAX: Objection, Your Honor.

21               THE COURT: Yes. What -- where are we going  
22 with this, Ms. Lempesis?

23               MS. LEMPESIS: Should we -- may we approach,  
24 Your Honor?

25               THE COURT: Yes, ma'am.

## TESTIMONY OF DOUG SEIFERT

1 (Discussion at the bench.)

2 BY MS. LEMPESIS:

3 Q Investigator Seifert, those are all the  
4 questions I have for you.

5 A Thank you, ma'am.

6 Q Please answer any questions that Mr. Bax has  
7 for you.

8 THE COURT: Mr. Bax, you may cross-examine.

9 MR. BAX: Thank you, Your Honor. May it  
10 please the Court.

11 CROSS EXAMINATION

12 BY MR. BAX:

13 Q Investigator Seifert, you -- you've testified  
14 on direct in response to questions from the Solicitor  
15 that you wrote up reports in this case, correct?

16 A That's correct, sir.

17 Q Let's talk about that a little bit. Is it  
18 typical policy for you to do some kind of incident  
19 report or supplemental report whenever you're involved  
20 with a case?

21 A Yes, sir.

22 Q Okay. You've testified that you have been an  
23 officer or been employed with the Beaufort County  
24 Sheriff's Office for approximately nine years; is that  
25 right?

## TESTIMONY OF DOUG SEIFERT

1           A     Yes, sir.

2           Q     Okay. Now, in order to be a law enforcement  
3 officer, do you have to get training at a place called  
4 The Academy in Columbia?

5           A     Yes, sir.

6           Q     Did you attend The Academy in Columbia at  
7 some point, Mr. Seifert?

8           A     Yes, sir.

9           Q     Okay. About when was that?

10          A     2006, 2007. I don't really know.

11          Q     Okay. In fact, you even referenced that in  
12 the video when you were talking to my client, that you  
13 had been to The Academy and that they made you put on  
14 cuffs for a little while; is that right?

15          A     Yes, sir.

16          Q     Okay. And when you were at The Academy, they  
17 also had classes on things like doing incident reports;  
18 is that correct?

19          A     I don't recall that.

20          Q     You don't recall?

21                     Do you recall anything at The Academy,  
22 training on making sure that you document what you do  
23 at a time at which you can remember it best?

24          A     I never had a class like that, sir.

25          Q     Okay. All right. Have you ever received any

## TESTIMONY OF DOUG SEIFERT

1 training that involved making sure that you had filled  
2 out the proper paperwork, such as incident reports?

3 Have you had any training on the incident reports at  
4 the sheriff's department?

5 A Through several supervisors that you go  
6 through on the road, and then whatever department you  
7 go to, yes.

8 Q And have those instructors ever told you not  
9 to be accurate with those?

10 A No, sir.

11 Q Have they encouraged you to be accurate with  
12 those?

13 A Yes, sir.

14 Q Make sure you get the information correct?

15 A That's correct.

16 Q And Investigator Seifert, how many times, if  
17 you can, have you testified in a criminal courtroom  
18 like we are today?

19 A I would say two handfuls, if I had to guess.

20 Q Say again?

21 A Like, ten times, eight to ten times, if I had  
22 to guess.

23 Q Okay. And you've testified before this jury  
24 that your current duties is an investigator in major  
25 crimes, correct?

## TESTIMONY OF DOUG SEIFERT

1           A     Yes, sir.

2           Q     Things like what we have here today, which is  
3 an armed robbery, correct?

4           A     That's correct, sir.

5           Q     And that's considered fairly severe, correct?

6           A     Yes, sir.

7           Q     Okay. So, despite all that, your testimony  
8 here today is when you put in your incident report, and  
9 I quote, Delaplane confessed to me that the entire  
10 robbery was set up by him and he was sorry, that that's  
11 incorrect.

12          A     I'm saying it's not incorrect. That is --

13          Q     You're saying that's not incorrect. You're  
14 saying that that is correct?

15          A     That is, that's my conclusion, yes, sir.

16          Q     Well, let's be clear. This does not say, It  
17 is my conclusion that Delaplane confessed to me, does  
18 it? It doesn't say, This is my conclusion?

19          A     No, sir.

20          Q     And in fact, the next line of that report  
21 says, and I quote, Delaplane stated that is why  
22 McQuarters gave him \$250 cash after the robbery  
23 assault?

24          A     That is correct, sir.

25          Q     Thank you. So, is that a conclusory

## TESTIMONY OF DOUG SEIFERT

1 statement?

2 A That was the actual previous other interviews  
3 that I had and also the third interview, sir.

4 Q Well, this statement, you would agree, says,  
5 Delaplane stated that; correct?

6 A Correct, sir.

7 Q Isn't it true that that's not open for  
8 interpretation, that's you saying in your report that  
9 Mr. Delaplane said he received the cash for setting up  
10 the robbery, correct?

11 A Correct, through the actual other interviews,  
12 yes, sir.

13 Q So, it is in your report that he said he got  
14 the money for setting up the robbery, correct?

15 A That was my conclusion, yes, sir.

16 Q Well, see, now we're -- this is the problem.  
17 Okay. Let me ask you this: Have you ever testified in  
18 a prior proceeding under oath about this case?

19 A Yes, sir.

20 Q Okay. And in that prior testimony, I  
21 questioned you about this same matter; is that correct?

22 A That is correct, sir.

23 Q And in that time, I asked you, and I quote,  
24 In your report you indicate that Mr. Delaplane told you  
25 at that time, after these multiple interviews and his



## TESTIMONY OF DOUG SEIFERT

1 father standing there the -- that the entire robbery  
2 was set up by him and that he was sorry.

3 That's the language in your report. Is  
4 that accurate? That's what he relayed to you at that  
5 time.

6 And you responded, Yes, sir.

7 Is that correct?

8 A That is correct, sir.

9 Q In that prior testimony, isn't it correct  
10 that you never say that this is conclusory or an  
11 interpretation; is that correct?

12 A I didn't explain my answer, I just gave you a  
13 yes, sir. Yes, sir.

14 Q And you are aware, because you've testified  
15 upwards of ten times that you're allowed to explain  
16 your answers when you're on the stand, correct?

17 A Yes, sir.

18 Q And so you chose not to give any further  
19 explanation. You just said, Yes, sir. Correct?

20 A That is correct, sir.

21 Q Okay. And, in fact, I asked you about that  
22 another three times during that testimony, and you gave  
23 me the same answer, Yes, sir. Correct?

24 A That's correct, sir.

25 Q But here today, in front of this jury, your

## TESTIMONY OF DOUG SEIFERT

1 testimony is that that is not a direct statement from  
2 Mr. Delaplane, it's your conclusion about what he said?

3 A That is correct, sir.

4 Q So, you have changed your story between then  
5 and now, correct?

6 A No, sir.

7 Q It's your testimony that choosing not to  
8 explain that and leave it as a definitive statement  
9 about what Mr. Delaplane told you, and now you're  
10 explaining it, that that's not a flop, that's not a  
11 flip, that's not a twist?

12 A No, sir.

13 Q Okay. And that's what you want this jury to  
14 believe?

15 A Yes, sir.

16 Q Okay. Let's go back.

17 You've testified that in your  
18 investigation you determined there's no video  
19 surveillance that was active at the time that this  
20 supposedly happened, October 20th, correct?

21 A That is correct, sir.

22 Q And that after speaking with Mr. Snodgrass  
23 and him providing you a list of employees that were on  
24 duty that night, that the very first person you went to  
25 was Colton Delaplane, correct?

## TESTIMONY OF DOUG SEIFERT

1           A     That is correct, sir.

2           Q     And isn't it true that you -- when you talked  
3     to Mr. Snodgrass, he indicated some of the people that  
4     he might have had problems with as a boss, correct?

5           A     Yes.

6           Q     And as a result of that, you went to Colton  
7     Delaplane first, correct?

8           A     That is negative.  If I may.

9           Q     You know you can explain your answers.

10          A     In the transcripts that was previous before  
11     that, it was later found out that that was -- there is  
12     an issue between Mr. Snodgrass and Mr. Delaplane, yes,  
13     sir.

14          Q     But after your discussions with Mr. Snodgrass  
15     in getting that list, you don't dispute that the very  
16     first person that you went to was Colton Delaplane,  
17     correct?

18          A     I don't dispute it, no, sir.

19          Q     And that's the person that you wrote in your  
20     report confessed to me that the entire robbery was set  
21     up by him and he was sorry.  Delaplane stated that  
22     McQuarters gave him \$250 cash after the robbery  
23     assault, correct?

24          A     That is correct sir.

25          Q     So, you didn't just get lucky, you went right

## TESTIMONY OF DOUG SEIFERT

1 to the person that you were able to determine had  
2 something to do with this, correct?

3 A Sometimes that happens, yes, sir.

4 Q Now, when you went to talk with  
5 Mr. Delaplane, he starts out by lying to you, correct?

6 A Yes, sir.

7 Q He starts out saying he knows nothing about  
8 this robbery, correct?

9 A That is correct, sir.

10 Q After interviewing him a couple of times,  
11 you're able to develop that he gives you  
12 Austin McQuarters's name and Brooklyn's name, correct?

13 A That is correct sir.

14 Q But even when he gives you Mr. McQuarters's  
15 name and Brooklyn's name, he's still saying that he had  
16 nothing to do with the robbery in that second  
17 interview, correct?

18 A In a round about way, yes, sir.

19 Q And then finally you interview him a third  
20 time, and he tells you that he gave all this  
21 information to them and assisted them, and that's when  
22 you put in your report that he confessed to you; is  
23 that correct?

24 A He stated that Mr. McQuarters asked him about  
25 money, and then he stated that he pointed where his

## TESTIMONY OF DOUG SEIFERT

1 manager, Mr. Snodgrass, and that's the gentleman who  
2 would have the money, yes, sir.

3 Q Okay. And he also stated, that was why  
4 Mr. McQuarters gave him the \$250, correct?

5 A No. That was actually the prior other  
6 interviews, as well.

7 Q Okay. So, in the other interviews he stated  
8 that was why Mr. McQuarters gave him the \$250?

9 A He met him at the -- yes. He met him at his  
10 girlfriend's residence.

11 Q Let's go to that.

12 I believe during these interviews, I  
13 think in the second and the third interview, he told  
14 you that he received a call from Mr. McQuarters some  
15 three to four hours after this robbery occurred; is  
16 that correct?

17 A On the interview, yes, sir.

18 Q Okay. And that that phone call was one  
19 between Mr. McQuarters and him, and Mr. McQuarters told  
20 him to meet him outside; is that right?

21 A That's correct, sir.

22 Q Okay. At what point during your  
23 investigation did you subpoena the cell phone records  
24 from Mr. Delaplane?

25 A I didn't, sir.

## TESTIMONY OF DOUG SEIFERT

1           Q     Okay. Now, in prior cases, you have  
2 subpoenaed cell phone records before, correct?

3           A     That is correct, sir.

4           Q     And you know how to do that, right?

5           A     Yes, sir.

6           Q     But you didn't make the attempt in this case  
7 to confirm whether or not that phone call actually  
8 happened?

9           A     No, sir.

10          Q     Did you ask Mr. Delaplane for his cell phone,  
11 take that into evidence and have it examined?

12          A     No, sir.

13          Q     Additionally, he stated to you, and I believe  
14 Ms. Perez stated to you, that Mr. Delaplane was with  
15 his sister and girlfriend after he got out of work that  
16 night, correct?

17          A     That's correct, sir.

18          Q     And when during your investigation did you  
19 talk to Mr. Delaplane's sister, or Mr. Delaplane's  
20 girlfriend?

21          A     I did not, sir.

22          Q     And in fact, in this case, you did show a  
23 photo line-up with my client to Ms. Perez, because  
24 Ms. Perez had told you she already -- that she knew  
25 Mr. McQuarters, correct?

## TESTIMONY OF DOUG SEIFERT

1           A     That is correct, sir.

2           Q     But you didn't show a line up to

3     Mr. Delaplane, did you?

4           A     I did not, sir.

5           Q     And once again, you did not charge or have

6     anything to do with warrants being issued for

7     Mr. Colton Delaplane for anything related to this

8     incident; is that correct?

9           A     That is correct, sir.

10          Q     So, despite the fact that he's the only one

11     that works at this theater where it happened, correct?

12          A     That is correct, sir.

13          Q     And you were able to determine that neither

14     Ms. Perez nor Mr. McQuarters worked at that theater

15     ever?

16          A     That is correct.

17          Q     Despite the fact that he's informed you that

18     he gave this information to these people, correct?

19          A     That is correct, sir.

20          Q     And that you testified earlier that he

21     confessed, and now you're saying that's your

22     conclusion.

23          A     Yes, sir.

24          Q     And that he stated repeatedly that that's why

25     he received the money was because he set it up,

## TESTIMONY OF DOUG SEIFERT

1 correct?

2 A That is correct, sir.

3 Q Despite all that, you arrest my client, who's  
4 an African American male, correct?

5 MS. LEMPESIS: Objection, Your Honor.

6 THE COURT: I'll sustain that objection.

7 It's obvious the race of the defendant.

8 MR. BAX: Okay. So, I'm sorry, Your Honor.

9 It's obvious.

10 BY MR. BAX:

11 Q You arrested Mr. McQuarters, correct?

12 A Yes, sir.

13 Q And you charged Ms. Perez, correct?

14 A That is correct, sir.

15 Q But you didn't charge Mr. Delaplane, the one  
16 that we saw on the stand yesterday evening?

17 A That is correct, sir.

18 Q And we all saw who that was and what he looks  
19 like, correct?

20 MS. LEMPESIS: Objection, Your Honor.

21 THE COURT: I sustained the objection, folks.

22 That really is not an element to be injected into  
23 this trial. Thank you.

24 BY MR. BAX:

25 Q Other than Mr. Delaplane's statements to you



## TESTIMONY OF DOUG SEIFERT

1 and Ms. Perez's statements to you, you have testified  
2 here today that there is no physical evidence that was  
3 recovered that ties my client to this scene at all,  
4 correct?

5 A That is correct, sir.

6 Q So, there was no fibers or hairs or DNA  
7 evidence at the scene of the crime that was connected  
8 to my client, correct?

9 A That is correct, sir.

10 Q Additionally, you executed a search warrant  
11 at my client's residence, correct?

12 A Yes, sir.

13 Q And, in fact, you seized a pair of shoes; is  
14 that right?

15 A I did, sir.

16 Q And there was no DNA on those shoes  
17 connecting him to this incident at all, correct?

18 A We don't even know if that were the shoes  
19 that were worn that night.

20 Q But there was nothing that came back from  
21 those shoes?

22 A That's correct.

23 Q So, there was no blood of Mr. Snodgrass's on  
24 those shoes?

25 A No, sir.

## TESTIMONY OF DOUG SEIFERT

1           Q     There was no fibers or anything that  
2     connected him to the scene, no gravel or anything that  
3     could identify as being from Northridge Cinemas parking  
4     lot?

5           A     No, sir.

6           Q     And once again, you testified in a prior  
7     proceeding that he had confessed, and that he had said  
8     that he had gotten money from Mr. McQuarters, correct?

9           MS. LEMPESIS: Your Honor, I object. This  
10     question has been asked and answered several times  
11     now.

12           THE COURT: He's laying the premise, I think,  
13     for another question to follow that one.

14           MR. BAX: That is correct, Your Honor.

15           THE COURT: Go ahead.

16     BY MR. BAX:

17           Q     In addition to those questions, I also asked  
18     you about your knowledge of whether or not there was  
19     any warrants for Mr. Delaplane at that time, as well,  
20     correct?

21           A     Yes, sir.

22           Q     Okay. And you answered the same, that there  
23     hadn't been any warrants, correct?

24           A     That is correct, sir.

25           Q     And as of now, that still remains the same?

## TESTIMONY OF DOUG SEIFERT

1           A     That is correct.

2                     MR. BAX:  Moment's indulgence, Your Honor.

3                     THE COURT:  All right, sir.

4                     MR. BAX:  Thank you.

5                                 (Pause.)

6

7  BY MR. BAX:

8           Q     Final question.  Based on your investigation,  
9  it's your testimony that the only thing of substance  
10 that puts my client involved in this case, we get from  
11 Jacklyn Perez and Colton Delaplane, correct?

12          A     Yes, sir.

13                     MR. BAX:  No further questions.  Thank you.

14                     THE COURT:  Redirect, Ms. Lempesis?

15                     MS. LEMPESIS:  No redirect, Your Honor.

16                     THE COURT:  Thank you.

17                     Investigator, you may step down.

18                     THE WITNESS:  Thank you, sir.

19                     THE COURT:  Ms. Lempesis.

20                     MS. LEMPESIS:  Thank you, Your Honor.  The  
21 State calls Paola Labrador.

22                     THE COURT:  Thank you.

23                     Come forward please, to be sworn.

24  Thereupon,

25                                 PAOLA LABRADOR

## TESTIMONY OF PAOLA LABRADOR

1 was called as a witness, having been first duly sworn,  
2 was examined and testified as follows:

3 THE CLERK: You may be seated. Please state  
4 and spell your name for the court's record.

5 WITNESS: Hello. My name is Paola Labrador,  
6 P-A-O-L-A. Labrador, L-A-B-R-A-D-O-R.

7 THE COURT: Ms. Labrador, unfortunately, our  
8 microphones are not working. I wish they were.  
9 And so we're going to have to ask you to project  
10 your voice loudly enough so that all those folks  
11 in the jury can hear you. What you say is  
12 important. They need to hear it. Okay?

13 THE WITNESS: Okay.

14 MR. BAX: Your Honor, before we begin the  
15 testimony from this witness can I approach the  
16 bench please?

17 THE COURT: Okay.

18 MR. BAX: Thank you.

19 (Off-the-record discussion  
20 held.)

21 DIRECT EXAMINATION

22 BY MS. LEMPESIS:

23 Q Hey, Ms. Labrador. Can I call you Paola?

24 A Yes.

25 Q Paola, how old are you?

## TESTIMONY OF PAOLA LABRADOR

1           A     Twenty-two.

2           Q     And where do you work?

3           A     Northridge Cinema Ten.

4           Q     Where is that?

5           A     Hilton Head Island, South Carolina.

6           Q     Thank you. And how long have you worked at  
7 Northridge Cinemas?

8           A     Overall, I'm going to say almost ten years.

9           Q     And who is your manager?

10          A     John Snodgrass.

11          Q     Were you working, Paola, on the night of  
12 October 20th of 2013?

13          A     A Sunday, probably, yeah.

14          Q     And what shift were you working?

15          A     The night shift. Usually, like five to 10:30  
16 or 11:00 or so.

17          Q     Do you remember about what time you got off  
18 that night?

19          A     I'm going to say around 10:30.

20          Q     Do you recall, or did you work with a person  
21 named Colton Delaplane?

22          A     Yes, ma'am.

23          Q     Was he working that night, as well?

24          A     Yes, ma'am.

25          Q     And so you said you got off probably around

## TESTIMONY OF PAOLA LABRADOR

1 10:30?

2 A Around.

3 Q Did you leave -- who did you leave with at  
4 that time? Who did you leave the theater with?

5 A That night, with one of my friends, who's  
6 also a co-worker, Victoria Letty.

7 Q Did you see Colton that night as you were  
8 leaving?

9 A Yes, ma'am.

10 Q What was Colton doing?

11 A Well, the last thing I saw of him, he was, I  
12 believe, talking to a friend or just some other male  
13 person in the parking lot.

14 Q And can you describe what that friend or that  
15 male person looked like?

16 A Definitely bigger than Colton. I mean, he's  
17 pretty small, so bigger than Colton, male, African  
18 American male. That's really all I saw of him.

19 Q Did you -- do you remember seeing anybody  
20 else with Colton that night when you were leaving?

21 A Yes. His sister and girlfriend were awaiting  
22 his exit, so --

23 Q Did you -- what did you do, I guess, as  
24 you're leaving work? Did you leave?

25 A Yes. I was in my car and I just went about

## TESTIMONY OF PAOLA LABRADOR

1 my night.

2 Q Okay. Did you ever have the opportunity to  
3 speak with Investigator Seifert at some point?

4 A Yes. If I recall, yes.

5 Q Thank you. And do you remember just telling  
6 him what you told us today?

7 A Yes, ma'am.

8 MS. LEMPESIS: Beg the court's indulgence.

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 BY MS. LEMPESIS:

12 Q Paola, those are all the questions I have for  
13 you. Please answer any questions that Mr. Bax may have  
14 for you. Okay?

15 A Okay.

16 THE COURT: Mr. Bax, any cross-examine?

17 MR. BAX: Thank you, Your Honor. May it  
18 please the Court.

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. BAX:

22 Q Briefly, Ms. Labrador, you also -- when you  
23 talked with Investigator Seifert, do you remember  
24 giving a written statement, writing down what you had  
25 told --

## TESTIMONY OF PAOLA LABRADOR

1           A     Yes, uh-huh. (Indicating affirmatively.)

2           Q     Okay. And do you recall in that written  
3 statement that you put that Mr. Delaplane, you saw that  
4 he was with his sister and girlfriend; is that correct?

5           A     Yes.

6           Q     So you saw them there?

7           A     Yes.

8           Q     And you know who they are; is that correct?  
9 You've seen them before?

10          A     I've seen them before at the theater, yes.

11          Q     Okay. All right.

12               MR. BAX: No further questions. Thank you.

13               THE COURT: Okay. Redirect, Ms. Lempesis?

14               MS. LEMPESIS: None, Your Honor.

15               THE COURT: Ms. Labrador, you may step down.

16               Thank you, ma'am, for coming.

17               THE WITNESS: Thank you.

18               MS. LEMPESIS: And we'd ask Ms. Labrador be  
19 excused?

20               THE COURT: And without objection, you may be  
21 excused. Thank you.

22               THE WITNESS: Thank you.

23               THE COURT: Ms. Lempesis.

24               MS. LEMPESIS: Thank you, Your Honor.

25               Your Honor, at this point, the State rests.



## TESTIMONY OF PAOLA LABRADOR

1 THE COURT: Thank you.

2 Ladies and gentlemen, the State has rested  
3 its case-in-chief. That means that you have now  
4 heard all of the evidence and testimony that you  
5 will hear from the State in the presentation of  
6 this case.

7 Always at this juncture of any proceeding of  
8 this nature, we have to send you out to the jury  
9 room to deal with certain matters of the law.  
10 After I have dealt with those matters of the law,  
11 I'll bring you back out to the courtroom to  
12 continue with your work.

13 This is a good time for a morning break, in  
14 any event. Please remember, as always, not to  
15 discuss this case among yourselves in the jury  
16 room. Thank you.

17 (Jury exits the courtroom at  
18 1:13.)

19 THE BAILIFF: The jury is clear, Your Honor.

20 THE COURT: Thank you.

21 Mr. Bax, I'll be glad now to hear motions  
22 from the defense.

23 MR. BAX: Thank you, Your Honor.

24 The defense would now move for directed  
25 verdict. First of all, based on all objections,

## TESTIMONY OF PAOLA LABRADOR

1 exceptions, and concerns expressed by the defense  
2 up to this point in this trial.

3 THE COURT: Right.

4 MR. BAX: Secondly, Your Honor, I would move  
5 for a directed verdict specifically on armed  
6 robbery. I would move for that because the State  
7 has once again failed to present any evidence that  
8 there was a weapon used. I would argue that what  
9 they have so far is merely the statement, a  
10 hearsay statement, despite the fact that it's  
11 alleged to my client, from Colton Delaplane saying  
12 that brass knuckles were used.

13 However, Mr. Delaplane has already proven  
14 himself to be a liar on the stand repeatedly.  
15 There's no corroboration about whether the phone  
16 call even happened.

17 Additionally, you've heard the testimony from  
18 Dr. Snowman, who was very happy to offer his  
19 opinion in an area that there is no specialty or  
20 expertise in. And we lodge our objection to his  
21 ability to testify to that as inadmissible.

22 But even he can't say what it was. And  
23 despite his attempt to rehabilitate himself, he  
24 cannot for certain say that it was something that  
25 was struck as he hit the ground. Because as he

## TESTIMONY OF PAOLA LABRADOR

1 admitted on the stand, he has not seen any  
2 photographs of the scene where Mr. Snodgrass fell  
3 to the ground. Did not talk to any officers about  
4 what was found at that scene. He doesn't know if  
5 there were any linear objects on the ground. I  
6 really believe that that testimony was just  
7 another desperate attempt to become the doctor  
8 prosecutor in the room.

9 Based on those grounds, I would move for  
10 directed verdict of the armed robbery charge,  
11 specifically that the element of armed hasn't been  
12 established as a matter of law.

13 Furthermore, Your Honor, I would go on to  
14 reiterate my motion for mistrial based on not just  
15 what I covered yesterday, but in addition what's  
16 been put on the record today.

17 I think that the evidence presented by  
18 Officer Seifert further destroys the integrity of  
19 this case. It's just -- I can't say that I'm not  
20 upset about it, honestly.

21 THE COURT: Thank you, Mr. Bax.

22 As to the directed verdict motion on the  
23 armed robbery charge, I'll acknowledge that  
24 Dr. Snowman, according to my view of what he says,  
25 has ruled out the fist. Other than that, he has

## TESTIMONY OF PAOLA LABRADOR

1       been no more specific.

2               He said some blunt object, I think were his  
3       words, to some effect, which does not necessarily  
4       connote a deadly weapon.  Although,  
5       circumstantially, it could be interpreted at that.

6               But the more direct evidence in that regard,  
7       comes from the victim himself who said, Having  
8       been involved in playground brawls before, he  
9       understands the feel of a fist against his face,  
10      but this was something harder, something metal.

11              And, of course, Colton's testimony cannot be  
12      discounted in spite of the fact that he was  
13      complicit in this in some degree.

14              Nonetheless, I take that evidence as I'm  
15      required to do, in the light most favorable to the  
16      State.  And taking the evidence in that light,  
17      there is sufficient evidence a weapon was used, I  
18      think, to survive the motion for directed verdict.

19              As to the renewal of the mistrial motion for  
20      reasons that you stated today, and that you stated  
21      eloquently yesterday, I simply adopt my earlier  
22      rulings in that regard.  We need not re-negotiate  
23      those things, from this perspective.  They've been  
24      ruled on by the Court previously.

25              For that reason, the motion for directed

## TESTIMONY OF PAOLA LABRADOR

1 verdict is respectfully denied.

2 Now, Mr. Bax, do you wish for me to inquire  
3 of Mr. McQuarters, his understanding of his right  
4 to testify or not testify at this time?

5 MR. BAX: I do, Your Honor. Thank you.

6 THE COURT: Mr. McQuarters, if you'll stand,  
7 please, and raise your right hand. I'm going to  
8 put you under oath.

9 Thereupon,

10 AUSTIN MCQUARTERS

11 was called as a witness, having been first duly sworn,  
12 was examined and testified as follows:

13 THE COURT: You can be seated.

14 Mr. McQuarters, we are now entering the phase  
15 of the trial where you have a right, but not the  
16 obligation, to present evidence, if you choose to  
17 do it. You heard me tell the jury the day before  
18 yesterday that you don't have to testify and you  
19 don't have to present evidence in this case. You  
20 are presumed to be innocent of these charges. But  
21 you do have the right to testify, if you choose to  
22 testify.

23 Under our law, the Fifth Amendment of our  
24 United States Constitution and a similar  
25 counterpart of our State Constitution says that,

## TESTIMONY OF AUSTIN MCQUARTERS

1       No person in a criminal trial can be forced or  
2       compelled to testify against himself.

3               That means just what it says. You cannot be  
4       compelled to take the stand and testify on your  
5       own behalf.

6               If you choose to exercise that right, the  
7       jury will be instructed that they cannot take that  
8       into account in their deliberations. They'll be  
9       told that they can't even talk about that in the  
10      course of their deliberations. They'll be told  
11      that you have a Constitutional right to remain  
12      silent. And if you exercise that Constitutional  
13      right, that fact cannot and must not be held  
14      against you in their deliberations, and in their  
15      consideration of your guilt or innocence.

16              On the other hand, you have the right to  
17      testify. If you choose to testify, you will be  
18      asked questions not only by Mr. Bax, but by also  
19      Ms. Lempesis. And you can be cross-examined and  
20      impeached on any issue that is relevant to this  
21      case.

22              Do you understand that?

23              THE DEFENDANT: Yes, sir.

24              THE COURT: Do you understand what your  
25      rights are relative to testifying and not

## TESTIMONY OF AUSTIN MCQUARTERS

1           testifying in this case?

2           THE DEFENDANT: Yes, sir.

3           THE COURT: I don't need right this minute to  
4           know what your decision is going to be. If you've  
5           reached it, then Mr. Bax will tell me. But can I  
6           assume that whatever that decision is, that  
7           decision is based on a full understanding of what  
8           your rights are?

9           THE DEFENDANT: Yes, sir.

10          THE COURT: Mr. Bax, how long do you think it  
11          might take to present the defense?

12          MR. BAX: Your Honor, I would like a few more  
13          minutes to confer with my client. But my  
14          understanding throughout the trial, in discussions  
15          with Austin, has been, as last time, that we  
16          intend to rest when the jury is brought back in  
17          and proceed to closings and charge, Your Honor.

18          THE COURT: Okay. Good.

19          MR. BAX: Just to be on the safe side, I'd  
20          like to go ahead and ask that question one more  
21          time.

22          THE COURT: Sure.

23          MR. BAX: And I can certainly just do that  
24          over a break, if Your Honor would like.

25          THE COURT: That will be fine. We're still

## TESTIMONY OF AUSTIN MCQUARTERS

1       in the break, and you can take whatever time you  
2       need to deliberate that issue with Mr. McQuarters.

3             Assuming that the outcome is going to be the  
4       same as it was before, let me at least  
5       preliminarily go over what I deem to be charges to  
6       give in this case, and verdict forms, as well.

7             My standard felony charge that all of you  
8       have heard before -- although I don't expect you  
9       to remember it -- but it involves the reasonable  
10      doubt definition from Victor versus Nebraska or  
11      State versus Darby. And that is the definition  
12      that I alluded to in my opening remarks to the  
13      jury. Firmly convinced definition.

14            You're free, of course, under our law, to  
15      argue any reasonable doubt definition that has  
16      been adopted by our Supreme Court before a jury,  
17      if you choose to do that. You have that  
18      prerogative as long as it's a correct statement of  
19      the law, and there are many of them. I simply  
20      didn't want you to go out on a limb and say that  
21      when the judge is instructing you he's going to  
22      tell you that a reasonable doubt is a doubt that  
23      causes a reasonable person to hesitate to act.  
24      Because that's not what I'm going to tell them.  
25      So, that's the only thing about that.



## TESTIMONY OF AUSTIN MCQUARTERS

1           I will instruct on the fact the defendant did  
2 not testify, of course. The credibility of the  
3 witnesses in this particular case. The statement  
4 by defendant. Circumstantial evidence.

5           The only -- frankly, the only circumstantial  
6 evidence that was introduced in this case was the  
7 evidence that was just offered by Ms. Labrador.  
8 Everything else was direct evidence. So, I'll  
9 instruct on circumstantial evidence.

10           Obviously, I'm not going to comment to the  
11 jury what I believe the circumstantial evidence is  
12 in this case.

13           The elements of armed robbery, the verdict  
14 form as to that is guilty or not guilty. The  
15 elements of assault and battery in the first  
16 degree, the verdict form as to that would be  
17 guilty or assault and battery in the first degree.

18           And if you request it, Mr. Bax, guilty of  
19 assault and battery in the second degree. And not  
20 guilty.

21           Those appear to be the appropriate verdicts  
22 based on my view of the evidence, but I'll be glad  
23 to hear any exceptions to those matters or any  
24 requests for additional matters as you had a  
25 chance to reflect on them. Okay.

## TESTIMONY OF AUSTIN MCQUARTERS

1           MR. BAX: Thank you, Your Honor.

2           THE COURT: All right. Folks, we'll continue  
3 to be in recess for a few more moments, and try to  
4 start back in about 15 more minutes. Okay? Thank  
5 you.

6           (Whereupon, a brief recess was taken.)

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## TESTIMONY OF AUSTIN MCQUARTERS

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 10th day of February, 2016.

/s/ Mona L. Manley

---

MONA L. MANLEY  
Official 14th Circuit Court Reporter  
(850) 893-6662  
mmanley@sccourts.org

1 IN THE COURT OF GENERAL SESSIONS IN AND FOR  
2 BEAUFORT COUNTY SOUTH CAROLINA

4 STATE OF SOUTH CAROLINA,  
5 Plaintiff,

6 vs. CASE NO. 2013GS0701844; 1845

7 AUSTIN LEWIS McQUARTERS,  
8 Defendant.

9 \_\_\_\_\_/

10

11 \* \* \*

12

13 TRIAL TRANSCRIPT

14 VOLUME 6

15                      DATE:                      July 22, 2015

17 PLACE: Beaufort County Courthouse  
Beaufort, South Carolina

REPORTED BY: Mona Manley, Court Reporter

20      BEFORE:                          Honorable Thomas W. Cooper, Jr.

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**APPEARANCES**

REPRESENTING THE STATE:

Mary Jordan Lempesis, Assistant Solicitor  
Brian Holland, Assistant Solicitor  
14th Circuit Solicitor's Office  
Bluffton, South Carolina

REPRESENTING THE DEFENDANT:

Arie Bax, Esquire  
James Bell, Esquire  
14th Circuit Public Defender's Office  
Beaufort, South Carolina

\* \* \*

## INDEX PAGE

|    |                                               |
|----|-----------------------------------------------|
| 1  | INDEX                                         |
| 2  | Closing Argument by the State ..... Page 421  |
| 3  | Closing Argument by the Defense..... Page 440 |
| 4  | Jury Charge .....Page 453                     |
| 5  |                                               |
| 6  |                                               |
| 7  |                                               |
| 8  |                                               |
| 9  |                                               |
| 10 |                                               |
| 11 |                                               |
| 12 |                                               |
| 13 |                                               |
| 14 |                                               |
| 15 |                                               |
| 16 |                                               |
| 17 |                                               |
| 18 |                                               |
| 19 |                                               |
| 20 |                                               |
| 21 |                                               |
| 22 |                                               |
| 23 |                                               |
| 24 |                                               |
| 25 |                                               |

## INDEX PAGE

1

2

## PROCEEDINGS

3

THE COURT: Mr. Bax, what is the decision?

4

MR. BAX: Your Honor, my client's decision is

5

that he will not testify. We will rest upon the

6

re-entry of the jury into the courtroom, Your

7

Honor.

8

THE COURT: Okay. The jury will be brought

9

in and you will be allowed to rest in the presence

10

of the jury. We will then go to closing

11

arguments. Ms. Lempesis, you will open first, of

12

course, and then I have the verdict form. And

13

there's one change, under two, that should be

14

1845. I missed that. I apologize. I can change

15

that. The indictment number is 1845; is that

16

okay?

17

MS. LEMPESIS: That's fine. But I had wanted

18

to address the charges, Your Honor.

19

THE COURT: Okay.

20

MS. LEMPESIS: I would ask that the lesser

21

included strong armed robbery be charged anything.

22

I think that it's appropriate. Certainly, the

23

burden, and all of the elements of armed robbery,

24

included in the strong armed robbery. And we do

25

think that there was only a -- and if they choose

## COLLOQUY

1 not to believe his statement that he told him that  
2 he used brass knuckles, then the other testimony  
3 is, of course, the testimony of the doctor, but we  
4 have no weapon recovered. I think that I -- you  
5 know, I would think that Mr. Bax would probably  
6 argue that he hasn't recovered a weapon and I  
7 think that it's appropriate in this case.

8 It was charged last time by Judge Keesley.  
9 I'm going to actually -- I look back at the  
10 transcript and Mr. Bax had said he was going to  
11 ask for it as a charge in that case. I asked for  
12 it today, Your Honor, I do think it's appropriate.

13 THE COURT: Okay.

14 MS. LEMPESIS: And then as to the second  
15 charge of assault and battery in the first degree,  
16 the indictment was based -- and the charge is  
17 based on the elements of assault and battery first  
18 degree, in that Mr. Snodgrass was injured during  
19 the commission of a robbery. And that is the  
20 element that we are focusing on and premise on  
21 battery in the first degree, not the degree of  
22 injury.

23 THE COURT: You're right. You're right. And  
24 so, if he was not guilty of --

25 MS. LEMPESIS: Of robbery, then he wouldn't



## COLLOQUY

1 be guilty of the assault and battery.

2 THE COURT: Right.

3 Mr. Bax, what do you say, first of all, as  
4 the strong-armed robbery verdict?

5 MR. BAX: Your Honor, we oppose it. Yes, we  
6 did request it last time, and the jury hung. And  
7 as has been ruled -- as the rule is, as you stated  
8 it, as the prosecution has stated it, the mistrial  
9 means that there was no trial before.

10 THE COURT: True.

11 MR. BAX: And that has been, you know, what's  
12 good for the goose is good for the gander, I  
13 suppose. You know, at this point we have the  
14 right, as Your Honor has said, just as the State  
15 has, to change our strategy.

16 THE COURT: Right.

17 MR. BAX: I think that in this case, the  
18 State has worked very hard to keep the armed  
19 robbery alive and now they want to hedge their  
20 bets. We don't want to do that.

21 We oppose the charge of strong-armed robbery.  
22 They think that they've proved an armed robbery,  
23 let them -- let them try to see if they can sink  
24 that putt. We don't request it. We would oppose  
25 it. We don't want the jurors to look at it. They

## COLLOQUY

1 are going to argue for it.

2 THE COURT: Right.

3 MR. BAX: I do agree with the assault and  
4 battery issue, Your Honor. And, in fact,  
5 Ms. Lempesis asked me why I hadn't argued specific  
6 directed verdict on the assault and battery. It  
7 took me a minute to remember that issue had come  
8 up before, but because it was the aggravating  
9 factor of happening during a robbery, there wasn't  
10 really an argument to be made about the severity  
11 of the injury. And thus, I didn't make that  
12 argument last time, and I didn't make that  
13 argument this time.

14 THE COURT: Right. Okay.

15 All right. The question, of course, is  
16 candidly, not so much what you all want, but what  
17 the evidence supports. And you're right, the  
18 aggravated circumstance is the commission of a  
19 robbery. So, without a doubt, this should be  
20 reduced to assault and battery, guilty of assault  
21 and battery first degree or not guilty as to that.

22 The only -- the only thing that remains then,  
23 is whether there is evidence of -- before this  
24 jury for which it can conclude that he is guilty  
25 of strong-armed robbery. The direct evidence, of

## COLLOQUY

1 course, that was offered by Mr. Snodgrass was that  
2 he -- that he thought that he had been struck by  
3 something that -- by a metal object. Whether that  
4 rises to a weapon, of course, is another matter  
5 entirely.

6 I will, over objection of defense counsel,  
7 charge on guilty of strong-armed robbery.  
8 Clearly, the jury could believe or disbelieve  
9 Mr. Delaplane. It could believe -- it could  
10 believe Dr. Snowman and still believe that there  
11 was not a weapon used.

12 And so the totality of the evidence suggests  
13 that there is evidence from which the jury could  
14 conclude that a weapon was not used in this  
15 particular case.

16 I will change the verdict form. I will. I'm  
17 using the royal "I". I'm going to impose on  
18 Mr. Martin, who happens to be Judge Nettle's law  
19 clerk to make that change for me.

20 The verdict form as to that charge,  
21 Indictment 1844, will be guilty of armed robbery,  
22 or guilty of strong-armed robbery, or not guilty.

23 As to Indictment 1845, it will just be guilty  
24 of assault and battery first degree.

25 Thank you. All right.

## COLLOQUY

1           Okay. Thank you, folks.

2           All right. That being done, now are both  
3 sides ready for the jury?

4           MR. BAX: Your Honor, I'm just going to pass  
5 this back up.

6           THE COURT: Okay. This is the verdict form?

7           MR. BAX: Yeah.

8           THE COURT: You can throw it away. We'll  
9 just get another one with those changes on it.  
10 Those are your copies.

11          MS. LEMPESIS: Okay. The State's ready,  
12 Your Honor.

13          THE COURT: The State's ready for the jury?  
14 Mr. Bax?

15          MR. BAX: Yes.

16          THE COURT: Then bring in the jury.

17                       (Jury enters the courtroom at  
18 11:45 a.m.)

19          THE COURT: Ladies and gentlemen, as you  
20 recall, the State has rested its case-in-chief.  
21 Now, the defense has the opportunity to offer  
22 evidence and testimony, but is under no obligation  
23 to do so, for reasons that I've told you earlier.

24          Mr. Bax.

25          MR. BAX: Your Honor, at this time the

## COLLOQUY

1 defense rests.

2 THE COURT: Thank you.

3 Ladies and gentlemen, the defense has now  
4 rested its case-in-chief. That means that you  
5 have heard all of the evidence that you will hear  
6 in the presentation of this case.

7 You have yet to hear the arguments, which  
8 will be presented momentarily, and the charge on  
9 the law which I will give you after that has been  
10 done.

11 I was told beforehand that the -- that we --  
12 the defense might choose to rest at this juncture,  
13 so we went ahead preliminarily and dealt with some  
14 matters that we normally have to deal with outside  
15 of your presence. That's the reason that your  
16 break was somewhat prolonged, so that we could get  
17 those things out rather than have to send you back  
18 and take care of them outside of your presence.

19 But now you're back here, and we're ready to  
20 conclude the trial portion before you all and put  
21 it in your hands so you can take whatever time you  
22 need with it.

23 The State will present the first of the final  
24 arguments in its regard, and after the State has  
25 presented its final argument, then Mr. Bax will

## COLLOQUY

1       have the right to present the final argument on  
2       behalf of Mr. McQuarters. And then I'll instruct  
3       you as to what the law is in this case. And then  
4       you'll be able to go back to your jury room and  
5       deliberate and reach a verdict in this case.

6               Just as a matter of housekeeping, lunch will  
7       be provided for you in the jury room. You won't  
8       have to leave. It'll be brought in to you.  
9       That's the best use of everybody's time rather  
10      than have you have to leave and come back. It  
11      works smoother that way.

12             You have been attentive throughout the trial  
13      of this case. We appreciate that attention. And  
14      it hasn't taken a long time to try. The lawyers  
15      have made efficient use of your time, and we  
16      appreciate that as well.

17             I'm sure that you all understand that the  
18      importance of a trial of a case is never  
19      determined by the length of time that it takes to  
20      try it. The importance of a trial is determined  
21      by the issues that are involved. And you all  
22      appreciate the importance of this case, and you've  
23      given it the attention that it deserves.

24             It's now equally important that you continue  
25      to give that same attention to the lawyers now, as

## COLLOQUY

1       they present their final arguments to you. Thank  
2       you.

3               Ms. Lempesis.

4                       CLOSING ARGUMENT BY STATE

5               MS. LEMPESIS: Thank you, Your Honor. May it  
6       please the Court. Mr. Bax.

7               THE COURT: Yes, ma'am.

8               MS. LEMPESIS: Good morning. I want to start  
9       also by thanking you for your time and patience  
10      during this trial. This is a very important job  
11      that y'all have, and we couldn't do our job  
12      without you. So, thank you.

13              This case, when I came before you yesterday  
14      morning, I told you that this case is about  
15      Austin McQuarters. This is Austin McQuarters' day  
16      in court. Mr. Bax mentioned the same thing.

17              This is the case of the State versus  
18      Austin McQuarters. It is not the case of the  
19      State versus Jacklyn Perez, and we're not here  
20      about Colton Delaplane. This is about  
21      Austin McQuarters and what he did to  
22      John Snodgrass, an innocent man leaving his work  
23      at night, beaten, robbed, and left laying on the  
24      ground.

25              Mr. Bax also mentioned in opening that I was

## Closing Argument by the State

1 going to tell you a story -- and I told you a  
2 story -- that this is all just a story, and I'm  
3 going to appeal to your emotions, that I want you  
4 to make an emotion -- an emotional decision. That  
5 couldn't be further from what I want you to do.

6 In fact, I'd like you to set your emotions  
7 aside when you're back in that deliberation room.  
8 What I want you to do is to consider thoughtfully  
9 and thoroughly all of the evidence that's been  
10 presented to you, and I want you to take that  
11 information, along with what Judge Cooper is going  
12 to tell you about the law, and I want you to  
13 decide this case based on that alone.

14 I'm not telling you a story. I'm not  
15 appealing to your emotions. What we've presented  
16 are facts that we have. Some of them are not  
17 pretty, we've heard them all.

18 I'm asking you to decide based on those facts  
19 alone. That's it.

20 So what I want to do now is go over some of  
21 those facts. I want to go over what we know from  
22 the testimony in this trial. We know that on  
23 October 20th of 2013, John Snodgrass, manager of  
24 the Northridge Cinemas on Hilton Head Island, in  
25 Beaufort County, was leaving work that night. He



## Closing Argument by the State

1        was holding a bank bag with about \$4,000 in cash,  
2        and he was walking in the parking lot when he was  
3        approached by a larger built African American  
4        male, and then was attacked.

5            We know from Sergeant Rhett Parnell, who was  
6        one of the original responders, that  
7        Mr. Snodgrass, when they arrived, was conscious  
8        but obviously beaten badly. He was bleeding. We  
9        know that Sergeant Parnell described some of the  
10       blood droplets he saw near Mr. Snodgrass' car.

11           We also know that they searched for physical  
12       evidence that night. And unfortunately found  
13       none, and none was collected.

14           They also searched that night for the suspect  
15       and unfortunately didn't find anyone that night.

16           We know that there was blood, like I said, on  
17       the ground near the victim's truck and on his  
18       door, where he told us that he had opened his door  
19       and put in papers inside of his truck, and then he  
20       had gone to call the police.

21           We also heard from John Snodgrass. And from  
22       Mr. Snodgrass, you learned exactly how this attack  
23       occurred. And we -- we heard about that in great  
24       description. He stood before you and he -- he  
25       showed you how close Mr. McQuarters was standing

## Closing Argument by the State

1 to him, how the first blow came to the back of his  
2 head, how he then fell to the ground, and the next  
3 blow came to his face. All the while, he was  
4 trying to protect himself with his hands, and how  
5 he fell to the ground. He was unconscious at that  
6 point, came to, and realized that his stuff was  
7 missing. The money was gone.

8 We got a general description from  
9 Mr. Snodgrass about the man who attacked him.  
10 Said he was wearing dark clothing, he weighed  
11 approximately, in Mr. Snodgrass's opinion, maybe  
12 200 pounds or so. He was probably about 6 feet  
13 tall, and that he had shorter hair.

14 Mr. Snodgrass never identified  
15 Austin McQuarters. He didn't identify him here in  
16 trial, and didn't identify him before. And I  
17 didn't ask him to. He couldn't identify  
18 Austin McQuarters, something that he can do now.  
19 We got a general description.

20 He also told you, Mr. Snodgrass told you that  
21 as he walked out in the parking lot that night, he  
22 saw a small, older Toyota car backed into a  
23 parking lot -- a parking spot on his left. And  
24 that the car was backed in, and his truck was up  
25 ahead. You saw that on the video I showed you

## Closing Argument by the State

1 with the map of the parking lot. That car was  
2 backed in.

3 He noticed that there was a female in the  
4 driver's seat of that car. He remembered that, as  
5 well. He saw his attacker pop up out of nowhere  
6 and walk towards him. He told you about how the  
7 man asked him about the movie times, about whether  
8 or not he could borrow his cell phone, and about  
9 finally what time it was.

10 He told you, as I mentioned already, about  
11 the beating that occurred next. He also told  
12 you -- he told you what it felt like when he was  
13 hit. He described that for you. He remembers it  
14 vividly. He said it felt like metal. He said  
15 he's been in school yard fights before, he's been  
16 hit with a fist before, he knows what that feels  
17 like, and this was different.

18 He said that it felt like metal hitting his  
19 skin. And that makes sense based on what we know  
20 from Dr. Snowman's testimony, which I'll get to in  
21 a minute.

22 So, Mr. Snodgrass is knocked out, wakes up,  
23 the \$4,000 from the night receipts is gone. He's  
24 laying bloody and beaten on the ground, calls the  
25 police. Those are the facts. That's what he told

## Closing Argument by the State

1       you, that's not a story.

2               We heard from Jacklyn Perez. We saw Jackie,  
3       or Brooklyn. She told you everything that she  
4       knows about that night. She told you how she  
5       knows Austin. She's known him for a little while.  
6       They were friends from school. They all went to  
7       Bluffton High School.

8               She was at work that night at McDonald's when  
9       she saw Austin around nine o'clock, when she got  
10      off at first.

11              She saw Austin, he asked her for a ride to  
12      Hilton Head. She testified that she was -- that  
13      he was going to meet a girl or something, and that  
14      she's given him rides before. And he asked her --  
15      that Austin gave her some gas money in exchange  
16      for giving him a ride.

17              So, she told you that she drove him to Hilton  
18      Head, and that he was acting normal, that Austin  
19      was -- she didn't think anything was amiss. She  
20      told you that when she arrived at the theater, she  
21      backed into that parking spot, just like  
22      Mr. Snodgrass told you he saw that car backed in.  
23      And you saw a picture of that car, that red,  
24      smaller, two-door Toyota that we forgot. And she  
25      identified that as the car that she was driving

## Closing Argument by the State

1       that night.

2               And since she told that you she backed into  
3       the spot, and that she and Austin both, they both  
4       know Colton Delaplane, and they went and at some  
5       point, they both talked to Colton, and he was  
6       working at the box office. She said that she had  
7       gone to talk to Colton about some money that he  
8       owed her from gas -- for gas. Mr. Bax talked a  
9       lot about what language she used when she asked  
10      about that money. Apparently, she said, Where's  
11      the bread? And she was talking about money. She  
12      testified that she was asking him about money that  
13      he owed her for gas.

14             So, she said she talked to Colton, and Austin  
15      talked to Colton, as well. She told y'all that  
16      she and Austin stayed there until Colton got off  
17      work, sometime around 10:30 or so. And that when  
18      Colton got off work, his sister, Colton's sister  
19      and girlfriend were there, as well, and that she  
20      talked to Colton's sister and girlfriend, and  
21      Austin and Colton went off and talked, as well.

22             We just heard from Paola -- Paola, who was  
23      working that night, and she said that she saw  
24      Colton talking to a larger African American male,  
25      and she also saw Colton -- saw Colton's sister and

## Closing Argument by the State

1 girlfriend, as well. So, we all -- we know that.  
2 It's true.

3 Jackie told you that at some point in all of  
4 this hanging around, her phone died and she wasn't  
5 sure what time it was. She asked Austin about  
6 needing to go back to work. She told y'all that  
7 she was going back to work at McDonald's to help  
8 unload the truck.

9 It was then that she told you about what she  
10 witnessed that happened between Austin and Mr. --  
11 and, excuse me, Austin and Mr. Snodgrass.

12 Jackie told you that she saw and heard Austin  
13 ask the man about movie times. And Mr. Snodgrass  
14 told you that, too, that the man first asked him  
15 about the movie times. And then she told you that  
16 she saw Austin hit the man a few times, that she  
17 was panicked, is maybe the word she used. She was  
18 standing, I think she said, that she was probably  
19 the distance between that stand and where I was  
20 standing over here at the \*\*\* stool.

21 She said she saw the whole thing. She saw  
22 the beating, she saw the man fall. That Austin  
23 then came back to her car, threw the bank bag and  
24 a white folder into her passenger seat, and then  
25 she drove away.

## Closing Argument by the State

1           She told you that on that drive to Bluffton,  
2           Austin threw some stuff out of her car window,  
3           that he threw some items out of her car window  
4           when they were on the foot of the bridge.

5           Jackie told you that Austin, also in that car  
6           ride back, said to her that he knew her mom and he  
7           knew her sister. Jackie told you she panicked,  
8           she didn't know what to do.

9           She testified at this point she was scared of  
10          Austin. Minutes before, when they were hanging  
11          out, she had not been scared of him. Her  
12          testimony was that she became scared of him after  
13          because she'd never seen him flip out like that.

14          So, she didn't say a word. She drove him to  
15          Bluffton, she dropped him off, and she didn't say  
16          a word. She didn't tell the police, she didn't  
17          report it. She knew this man had been beaten and  
18          robbed. She didn't say anything.

19          She didn't say anything until Investigator  
20          Seifert came knocking on her door. And we  
21          acknowledge, and you have heard, that  
22          Jacklyn Perez was maybe charged with something.

23          And you've heard from myself and from Mr. Bax  
24          that she's been made no promises in exchange for  
25          her testimony. Mr. Bax, focused on that quite a

## Closing Argument by the State

1 bit and asked that question many ways. No  
2 promises have been made. And that's true.

3 But again, we're not here about  
4 Jacklyn Perez. This is not the case of the State  
5 versus Jacklyn Perez, this is the case of the  
6 State versus Austin McQuarters. And this is not a  
7 story, these are the facts that are in evidence.

8 Even if you don't believe Jacklyn completely,  
9 think about where the information that she told  
10 you matches up with the other information that you  
11 know. Again, she said she backed her car into  
12 that parking spot. Seems small, but we know from  
13 Mr. Snodgrass that that car was backed in, and  
14 that there was a female in the driver's seat,  
15 Jacklyn Perez.

16 She said she spoke to Colton at the theater  
17 that night. And I think she said she talked to  
18 him at the box office. She said that Austin took  
19 the bank bag and threw it in her car,  
20 and Sergeant Parnell told you that they searched  
21 the parking lot looking for that bank bag and  
22 couldn't find it, because he took it with him.

23 Moving on to Dr. Snowman, you heard from  
24 Dr. Snowman -- he's an emergency medicine  
25 physician at Hilton Head Hospital -- you heard a



## Closing Argument by the State

1        pretty good amount of detail about his experience  
2        and his qualifications. He's been at Hilton Head  
3        for 11 years, he's board certified as an emergency  
4        medicine physician, and he's in the emergency room  
5        all that time. He's treated various types of  
6        injuries, various types of wounds. That's one of  
7        the things that he does on a daily basis is  
8        assesses and treats wounds.

9            You saw, with Dr. Snowman, the pictures of  
10       the victim in the hospital. These are after his  
11       injuries have been cleaned and sutured and -- and  
12       he had been cleaned up. And you heard Dr. Snowman  
13       take you through those picture and describe to you  
14       the type of injuries that Mr. Snodgrass had  
15       suffered.

16            Give me a moment.

17            You saw this picture, and you recall that  
18       Dr. Snowman -- or Dr. Snowman walked you through  
19       the injuries on the victim's face and the linear  
20       lacerations, the bruising, the contusions --  
21       that's the medical word. The linear lacerations.

22            You heard Dr. Snowman testify specifically  
23       that in his opinion to a reasonable degree of  
24       medical certainty that these injuries were not  
25       caused by being hit with a fist alone. Not caused

## Closing Argument by the State

1 by being hit with a fist alone.

2 You heard from Colton Delaplane, and I feel  
3 like we've heard his name more than we've heard  
4 Mr. McQuarters' name, Colton Delaplane is 18 years  
5 old today, or when he testified he was 18 years  
6 old. He was, I think, 16 years old when this  
7 incident occurred. He was a lower classman, you  
8 heard, at Bluffton High School. He knew  
9 Jacklyn Perez and Austin McQuarters.

10 You saw Mr. Delaplane. Hopefully, you heard  
11 him. He's soft spoken, difficult to hear. Let's  
12 recap what Colton told you. He told you that he  
13 was working at Northridge Cinemas that night at  
14 the box office, when Austin and Jackie Perez,  
15 Jackie, who he knows, when they arrived together.  
16 They both asked him for money that night.

17 She asked him for gas money he owed her. He  
18 asked him -- Austin asked him for some money from  
19 the cash register. He said he didn't give either  
20 one of them money.

21 But what did he do? He told Austin that --  
22 he told Austin who was going to have it, that  
23 John Snodgrass was the manager and he would have  
24 the money. He gave Austin the information he  
25 needed to know who to rob that night.

## Closing Argument by the State

1           And I suppose Austin paid him back for that  
2 information, gave him \$250 later that night. He  
3 said, Merry Christmas. He said he's come into  
4 some money at his work and not to worry about it.

5           And so Colton, whatever reason, didn't worry  
6 about it. And he didn't tell anybody, and he  
7 didn't tell the police. He didn't tell his  
8 parents, he didn't tell a teacher, he didn't tell  
9 anybody. He didn't. We're not ignoring that, the  
10 fact he didn't tell anyone.

11           When Investigator Seifert came to talk to  
12 him, he started to tell a little about -- a little  
13 bit about what he knew. You saw, it's hard to get  
14 information out of him. Austin was interviewed by  
15 Investigator Seifert three times, and each time  
16 with the permission of his parents and -- excuse  
17 me, Colton was interviewed three times with  
18 permission from his parents, and Colton told you  
19 in that third interview with Investigator Seifert  
20 is when he told Investigator Seifert that Colton  
21 had -- or excuse me, that Austin had -- he had  
22 talked to Austin the next day and that Austin had  
23 told him that he had used brass knuckles when he  
24 robbed his manager, John Snodgrass, and that  
25 Austin said he had beat him up, he had used brass

## Closing Argument by the State

1           knuckles. We know that from Colton.

2           And remember back to what Dr. Snowman said.  
3           We know Colton said that Austin told him he used  
4           brass knuckles. We have to take that information  
5           and remember what Dr. Snowman said, which is that  
6           it was the injuries were consistent with the --  
7           hit with something other than a fist, not a fist  
8           to skin. And Mr. Snodgrass had told you that it  
9           felt like metal on his skin.

10           Mr. Bax has spent a lot of time talking about  
11           Colton Delaplane, and you've heard this a lot.  
12           Colton, Mr. Bax has pointed out, is the only one  
13           in this mess that hasn't been charged, and he's  
14           tried desperately to distract you with that.

15           MR. BAX: Objection, Your Honor. That's an  
16           improper argument.

17           THE COURT: Frankly, I couldn't hear the  
18           statement because your back was to me.

19           Ladies and gentlemen, the argument should be  
20           confined to the facts which have been produced, if  
21           they decide to go beyond the facts that are  
22           alleged -- and that have been introduced in proof,  
23           in their argument. So I ask you to disregard any  
24           statement that was made that is not supported by  
25           the evidence in this case. Thank you.

## Closing Argument by the State

1           MS. LEMPESIS: We talked a lot about  
2 Colton Delaplane. And whatever you want to think  
3 about Colton, I want you to remember that we're  
4 not here about him. I want you to set your  
5 emotions aside and settle this case based on the  
6 facts. It's not about Colton and it's not about  
7 Jacklyn, it's about Austin McQuarters.

8           Now, today, you've heard from Investigator  
9 Seifert, and I want to go back briefly over what  
10 you heard from him.

11           Investigator Seifert was assigned to  
12 investigate this case. He was assigned the day  
13 after the incident occurred. He did not report  
14 out that night. Unfortunately, no investigator  
15 was called out that night.

16           So, Investigator Seifert first made contact  
17 with Mr. Snodgrass at the hospital. He took those  
18 pictures of Mr. Snodgrass at the hospital. He  
19 gathered what information he could about the  
20 suspect and also gathered information about who  
21 else was working that night, and who might know  
22 about the -- who might, from the theater, know  
23 about the incident.

24           So, he got names of other employees. He met  
25 with Colton Delaplane, he met with Jacklyn Perez,

## Closing Argument by the State

1 he took all these interviews. He also testified  
2 about the search warrant they got for  
3 Austin McQuarters' house, and that nothing of  
4 evidentiary value was found. He told you about  
5 the search warrant they got for Jacklyn Perez's  
6 car, which was about a month later, and nothing  
7 again of evidentiary value was found in that car.

8 And we also heard during Investigator  
9 Seifert's testimony, we heard Austin's statement.  
10 You saw the interview of Austin McQuarters at that  
11 Hilton Head sheriff's office.

12 And here's the story Austin McQuarters told  
13 you. Austin said he met a girl he didn't know at  
14 the Kroger shopping center, the Kroger parking  
15 lot. That he helped her with her groceries, that  
16 he didn't know her. He asked her if she wanted to  
17 go see a movie, and she was inclined to, and they  
18 rode to Hilton Head together to the movie theater  
19 on Hilton Head, to Northridge Cinemas, where his  
20 boy, Colton, worked.

21 Okay. So, we know from Austin himself that  
22 he was at Northridge Cinemas where  
23 Colton Delaplane was working that night. He said  
24 so himself. He was there.

25 Which makes sense, because Colton told us he

## Closing Argument by the State

1 was there, and Jackie said that he was there, and  
2 Paola saw Colton talking to a guy, an African  
3 American male in the parking lot.

4 So, Austin had told you that he was at the  
5 movie theater. That he saw Colton. They didn't  
6 end up seeing a movie, so like they that -- they  
7 didn't see a movie that night, and then that they  
8 left and the girl drove on, dropped him off in  
9 Bluffton, and he never saw or heard from her  
10 again. I think he said he didn't even get her  
11 number.

12 So, that's Austin. That's his story.

13 The last witness you heard from was  
14 Paola Labrador. And I've already mentioned her.  
15 She just told you that she was working that night,  
16 as well. She worked with Colton, she left that  
17 night about the same time as he did, and that she  
18 saw him talking in the parking lot to a larger  
19 African American male that she didn't know.

20 She said she also saw Colton's girlfriend and  
21 sister, which is consistent with what Jackie told  
22 you about seeing Colton's girlfriend and sister,  
23 and what Colton told you as well. She saw them  
24 that night. And she was familiar with them  
25 because she worked with Colton, and had for a

## Closing Argument by the State

1       little while.

2               Those are all the facts that you've heard.  
3       That's the evidence that's been presented to you.  
4       You've seen the pictures, you've heard the --  
5       you've seen the interview, heard interview of  
6       Austin McQuarters. You saw the picture of  
7       Jacklyn's car, you saw the Miranda form that was  
8       used when they read off his rights. Those are all  
9       the facts in evidence. That's the testimony.  
10      That's what you have to consider when you go back  
11      into your jury deliberation room.

12             It's not a big elaborate story that I have  
13      come to present to you. Those are the facts, and  
14      like I said, they're not all pretty.

15             The judge is going to charge you on the  
16      elements of the law. And so I'm not going to get  
17      too much into what the elements of these charges  
18      are, but you've heard that Austin McQuarters is  
19      charged with armed robbery and also charged with  
20      assault and battery in the first degree. It's  
21      armed robbery because he committed a robbery, he  
22      took something from Mr. Snodgrass. He took that  
23      \$4,000, that bank bag. And that when he did it he  
24      was armed with brass knuckles.

25             Brass knuckles, we know he used because



## Closing Argument by the State

1 Colton -- he told Colton Delaplane that he used  
2 them, and Colton testified that -- about that  
3 statement.

4 We know that Dr. Snowman said that he was hit  
5 with something beyond just a fist, and we know  
6 that John Snodgrass -- most importantly,  
7 John Snodgrass said he was hit with something  
8 metal. And those linear lacerations, that was  
9 something metal hitting his face, and that makes  
10 it armed robbery.

11 Assault and battery in the first degree is,  
12 very briefly, that a person commits an offense  
13 when they injure another person during the  
14 commission of a robbery. Mr. Snodgrass was  
15 injured, and he was robbed.

16 In my opening, I talked to you about the  
17 burden that the State bears, and the judge will  
18 again talk to you about that, and he's going to  
19 define that for you, the burden to prove to you  
20 all beyond a reasonable doubt that  
21 Mr. Austin McQuarters is guilty of these crimes.  
22 And I told you that it is not a burden that I bear  
23 lightly, and it's one that I've attempted during  
24 this trial to satisfy.

25 This hasn't been the telling of one great big

## Closing Argument by the State

1 story. I'm not trying to romanticize or dramatize  
2 what you've heard. I don't want you to decide  
3 based on your emotions. Like I said before, I  
4 want you to set those emotions aside and take just  
5 the facts that you have before you.

6 Austin McQuarters said he was there, we have  
7 people who said they watched him do this, that it  
8 was with brass knuckles, and he was robbed, \$4,000  
9 was taken -- and Austin McQuarters said he was  
10 there.

11 I'm confident that after you consider all the  
12 facts and all of this information, that you will  
13 not hesitate to come back and find Mr. McQuarters  
14 guilty of the offenses of armed robbery and  
15 assault and battery in the first degree. Thank  
16 you.

17 THE COURT: Thank you, Ms. Lempesis.  
18 Mr. Bax?

19 CLOSING ARGUMENT BY DEFENSE

20 MR. BAX: Thank Your Honor.

21 A house of cards. I talked to you about that  
22 when we first started this trial. And I think  
23 that you've seen what I was talking about. A good  
24 example is what you just heard from the  
25 prosecution. They've said my client said he was

## Closing Argument by the Defense

1       there, but they don't want to talk about the fact  
2       that he said he didn't commit any kind of robbery.

3             She's argued that people saw the assault.  
4       Well, people didn't see the assault. Only  
5       Jackie Perez. Mr. Snodgrass was the victim of the  
6       assault. The only person that saw the assault was  
7       Jackie Perez, and we know how weak of a card she  
8       is.

9             Let's make sure that when we look at the  
10       facts, that we look at the facts and not just the  
11       facts that help one side or the other. That's  
12       your job, and I know that you know this. That's  
13       why we picked you.

14            I told you at the beginning of this case, as  
15       anyone knows, if you build a house of cards and  
16       then you try to flip those cards, the house is  
17       going to come down. You have seen on the stand  
18       how much flipping their cards they have done. The  
19       house can't stand.

20            Now, I want to make sure I talk to you about  
21       your oath. You took it at the beginning of the  
22       trial. One of the lines in that oath is to make a  
23       true deliverance, to a true deliverance make.  
24       That means you must deliberate and apply the law  
25       to the facts, and I agree with Ms. Solicitor,

## Closing Argument by the Defense

1 without emotion or bias.

2 But you can look at the bias that you have  
3 seen presented to you from the stand, from the  
4 witnesses, from the State. And you take that into  
5 consideration.

6 In thinking about this case, to get up here  
7 and talk to you folks today, I always try and  
8 struggle with how is the best way to communicate?  
9 That's my job. And what came to mind for me, with  
10 the aid of my co-counsel, of course, is that the  
11 burden of proof here is beyond a reasonable doubt.  
12 So, you have to find that the State has produced  
13 evidence that firmly convinces you beyond a  
14 reasonable doubt that my client is guilty.

15 I equate that to building a bridge across a  
16 deep cavern. Think in your mind, you're standing  
17 on the edge of a deep cliff, you can't see the  
18 bottom. You can see the other side, you can't see  
19 the bottom. The State has the requirement, and  
20 you have the job under your oath to hold them to  
21 that job, to build a bridge for you that you can  
22 cross, that you can have confidence that you can  
23 walk out on that bridge and that you can get all  
24 away across that bridge to the other side without  
25 falling.

## Closing Argument by the Defense

1           But let's think about how they've built that  
2 bridge for you. The State is trying to convince  
3 you that they can build a bridge with  
4 Colton Delaplane and Jackie Perez.

5           Now, the State has argued that there's more  
6 to this bridge than just that. But if you look at  
7 the evidence, that's not the case. Yes, there was  
8 a robbery, no one is disputing that. Yes,  
9 Mr. Snodgrass was attacked and beaten, no one is  
10 disputing that. That is uncontroverted evidence  
11 in this case.

12           The question is: Who did it? And can they  
13 prove it's the defendant here?

14           In fact, for you all in this case, the only  
15 question is: Can they prove that it's my client?  
16 Who it may have been is not even a question that  
17 we're asking you to do. That was Investigator  
18 Seifert's job.

19           So, think to yourself, can you walk across  
20 the bridge that's made only by Jackie Perez and  
21 Colton Delaplane? I submit to you, I wouldn't  
22 cross that bridge. And I don't think you will  
23 either. Because a bridge made from lies in a  
24 courtroom is the bridge that you're not supposed  
25 to cross. That's exactly why our justice system

## Closing Argument by the Defense

1 was designed the way it was, so that you could  
2 evaluate the witnesses, decide on their  
3 credibility. Because the Judge is going to charge  
4 you that credibility is a key area for juries to  
5 look at witnesses and their testimony.

6 If the only thing was to believe a witness  
7 once they took the oath, and there is no other  
8 option, then we wouldn't even need a jury, would  
9 we? We'd take the statements, we'd issue a  
10 verdict, we'd forget the whole jury part of it.  
11 And we could feed them to a computer, spit out the  
12 verdict.

13 We don't do that. The reason why is to be  
14 able to evaluate whether someone is telling the  
15 truth is an innate human thing. Machines can't do  
16 it. When you look at someone and you listen and  
17 you talk with someone, you can only make a  
18 judgment on their veracity, on their truth, based  
19 on your common sense and based on your  
20 observations of that person. And we all know it's  
21 not perfect, but there are times when it's clear.

22 I've been doing this for 11 years -- God  
23 knows why -- but I can tell you in my job, and I  
24 am certain in your job, there's never been any  
25 clearer case of liars than what you've seen on the

## Closing Argument by the Defense

1 stand between Colton Delaplane and Jackie Perez.

2 Let's talk about it. Ms. Perez took the  
3 stand yesterday. What did she do? She lied about  
4 the reason that they were at the theater. She  
5 testified it was her understanding that  
6 Mr. McQuarters was there to meet a girl. But when  
7 I challenged her on it, she had absolutely no  
8 basis for that assumption. That was just  
9 something she'd come up with. She couldn't say  
10 that he ever told her that. There was no reason  
11 for it.

12 She lied about where they went. You heard  
13 her testimony, that according to her, they left  
14 the McDonald's and they went straight to the  
15 theater on Hilton Head Island, but that it took 45  
16 minutes to get there.

17 You're all members of our community here in  
18 Beaufort. I hope to assume that all of you have  
19 at least gone to Bluffton and Hilton Head one  
20 time. Some of you may live in that area. I don't  
21 tend to remember the addresses on -- on any of the  
22 information I get, so I apologize. But some of  
23 you do, I'm sure that you know exactly what I'm  
24 talking about. I'm sure everybody does. Because,  
25 frankly, anybody that lives here has had to go to

## Closing Argument by the Defense

1 Bluffton at some point. That's where all the good  
2 shopping is. We don't have a Target down here --  
3 or up here, excuse me, in Beaufort.

4 The difference between Bluffton and Hilton  
5 Head is not 45 minutes. Certainly, not at nine  
6 o'clock at night on Sunday, in the winter, when  
7 there's no tourists from Ohio to slow us down on  
8 the road.

9 So, she's also lied about what she talked  
10 about with Colton. She testified that she said,  
11 Where's the bread?

12 Now, this is just a clear example of using  
13 your common sense. If you're going up to ask  
14 somebody for gas money, you don't -- I don't care  
15 where you're from, you don't go up and say,  
16 Where's the bread, and expect that person to know  
17 what you're talking about. Use your common sense.  
18 You know that's not what she was talking about.

19 She also lied about being scared of my  
20 client. She testified that at that moment she  
21 became scared of my client, according to her  
22 statement, according to her story. Because let's  
23 be clear, that's what it was. It was a story  
24 she'd come up with.

25 But if you're scared of somebody, suddenly



## Closing Argument by the Defense

1       scared of someone you've known this -- all this  
2       time, why would you get out of the car and get  
3       closer to that person instead of far away? Why  
4       would you be sitting in the driver's seat of your  
5       vehicle with the ability to flee right there in  
6       front of you, and instead choose to step out the  
7       car and make further statements to the air, not to  
8       anybody in general. Does that make any sense to  
9       anybody? No.

10           And finally, if you can say finally, she lied  
11       about why she's testified. I think it's clear to  
12       everyone, and she did say when I finally got her  
13       to, She doesn't want to lose her job, she doesn't  
14       want to go to jail.

15           The testimony that she gave that she's not  
16       expecting anything in the way of a lenient deal  
17       from the State for her testimony is simply not  
18       credible. She testified to you that she's  
19       represented by an attorney, Jared Newman.

20           Jared Newman is a fine attorney, handles a  
21       lot of criminal cases in this county. Is it  
22       believable that a fine attorney like Jared Newman  
23       would allow her to come in here and testify if he  
24       hadn't advised her he expects that it's going to  
25       help her get a better deal? Is that credible?

## Closing Argument by the Defense

1       No, it's not.

2               And finally, you have heard that right after  
3       she got done testifying, after she ran by all of  
4       you crying in the hallway, she went straight to  
5       Colton Delaplane in the parking lot, in violation  
6       of the Judge's order, in contempt of this Court.

7               MS. LEMPESIS:  Objection, Your Honor.

8               THE COURT:  I'll sustain the objection as to  
9       contempt of court.  Violation of the order, of  
10      course, is -- is appropriate.

11              MR. BAX:  Thank Your Honor.  My apologies.  
12      In violation of an order of this Court.

13              You've heard testimony from Colton Delaplane  
14      that that's what happened.  You've heard from him  
15      that he knew that they were under that order, and  
16      he still went and talked with her.

17              You've heard from him that they talked about  
18      her testimony in court that day.  You heard she  
19      probably had some pretty choice words for me in  
20      that conversation.  And I would submit to you, it  
21      wasn't that I was tough.  And I'm going to go back  
22      to that in just a minute.

23              Colton then takes the stand.  We had some  
24      people in between, but Colton takes the stand.  
25      Colton testifies that he lied about his

## Closing Argument by the Defense

1 involvement from the beginning with Investigator  
2 Seifert, that he had to be interviewed multiple  
3 times. He lied about his conversation with  
4 Ms. Perez. He even, despite the collusion, gives  
5 a different story than her even today about when,  
6 where they came up to his window.

7 He lied about getting the money from the  
8 robbery. He didn't tell that to Investigator  
9 Seifert at first. It wasn't until the second and  
10 third interview that he even revealed that.

11 He lied about why he got it. He continues to  
12 lie today. He continues to lie on the stand in  
13 this trial. He lied -- this is the approximately  
14 fifth time that he's told his story. This is the  
15 second time under oath, as you heard, and he's  
16 still lying. He's still denying that he had any  
17 knowledge or involvement with this said robbery.

18 As you've heard, he's the only one that could  
19 have been the one to set it up. No one else  
20 worked there that's been involved with this case  
21 that they have found. He's the only one that  
22 would have known the information that was  
23 necessary.

24 Is it credible for him to say, I gave the  
25 information, but I had nothing to do with it? No.

## Closing Argument by the Defense

1 Is it credible for him to say, I got a call at  
2 1:30 or 2:30 in the morning and went out and got  
3 money from someone, but I am not guilty of  
4 anything. I didn't do anything. Is that  
5 credible? That makes no sense.

6 Regardless of what kind of life he's leading,  
7 is he really going to be up at 1:30, 2:30 in the  
8 morning, waiting for a phone call to go outside in  
9 October? Does that make sense? No, it doesn't.

10 Jackie Perez and Colton Delaplane also have  
11 both testified, you've seen from the facts, they  
12 had two weeks, maybe more. If you think about it.  
13 October 20th to November 5th, that's quite a few  
14 days. At least two weeks they had to get their  
15 story straight.

16 They knew each other, they both testified to  
17 that. You know that they did because even here  
18 during this trial, even under order of the court,  
19 they continued to collude. They don't have  
20 respect for the court's order, they don't have  
21 respect for the oath they took, so why, under your  
22 oath, doing your job, should you have respect for  
23 the words that they've given you?

24 You know that they've lied, and it's the only  
25 thing that puts my client there. My client has

## Closing Argument by the Defense

1       said, I left. I didn't do it.

2               Now, you also heard from Investigator  
3       Seifert. You heard that he has changed his  
4       testimony. You have heard that he put in his  
5       report that Colton Delaplane confessed to me that  
6       he set up the robbery and that he was sorry.  
7       Colton Delaplane stated that's why he got \$250 for  
8       the robbery.

9               Are those statements conclusory? Absolutely  
10       not. He's been an investigator for nine years, he  
11       has worked for the sheriff's department for nine  
12       years. He has been writing incident reports for  
13       nine years. Investigator Seifert knows the  
14       difference between a conclusory statement and a  
15       factual statement that he puts in his reports.

16              He put a factual statement in his report. He  
17       chose now to come in and change his story. He  
18       chose to come in here and lie to you.

19              He does not want it to sound as bad that he  
20       never charged Colton. He wants to give it some  
21       wiggle room there because he knows how bad that  
22       is. But he cannot escape the fact that he still  
23       believes Colton to be guilty. He cannot escape  
24       the fact that he specifically avoided doing any  
25       investigation on Mr. Colton Delaplane's story.

## Closing Argument by the Defense

1       When he already thought of him as being involved,  
2       he didn't do any back checking. He didn't go to  
3       talk to the sister, he didn't go talk to the  
4       girlfriend, he didn't get cell phone records, all  
5       commonly done. Because he didn't want the story  
6       to crumble apart, and he knew that was what was  
7       going to happen if he went behind it.

8               He had focused his sights on my client, he  
9       did not want anything to crumble that. The bridge  
10      that they are trying to build can't be crossed.  
11      It's got huge gaps in it.

12             You cannot put your weight on a plank made of  
13      lies, or you will fall. And why should you ignore  
14      the law? Why should you fall for them, for the  
15      State, for the government? Because our law is,  
16      you are not to do their job for them.

17             As I talked about at the beginning of this  
18      case in my opening statements, there's a reason  
19      why we have the system that we do. Our founders  
20      put together the Constitution and many, many, many  
21      of us have fought for it in many ways to keep it  
22      alive. Because we believe in it.

23             And they put that Constitution into place  
24      because they knew that the greatest danger was a  
25      government that oversteps their bounds. They knew

## Closing Argument by the Defense

1       that it doesn't have to be a government that rolls  
2       tanks down the middle of the road that you've got  
3       to be scared of. That's not how it works. It's  
4       one at a time. One at a time.

5             If they can't meet their burden, which they  
6       clearly have not here, you cannot fly across that  
7       bridge in violation of the law just for them. You  
8       cannot compromise your morality to solve their  
9       problem. Thank you.

## 10                                   JURY CHARGE

11             THE COURT: Thank you, Mr. Bax.

12             Now, Madam Forelady and members of the jury,  
13       I ask that you give me your attention for a few  
14       more moments. You have been very patient and  
15       listened very attentively to the arguments  
16       presented by Ms. Lempesis and Mr. Bax. And now, I  
17       ask that you give that same attention to me as I  
18       instruct you or charge you as to what the law is  
19       in this case.

20             It becomes my duty under our Constitution to  
21       instruct you as to what the law is, and it is your  
22       duty as jurors to accept the law and to apply it  
23       to the facts of this case, as you find them to  
24       exist.

25             It is your exclusive duty to decide all

## JURY CHARGE

1 issues and facts in a case, and for reason you  
2 have to determine the effect and the value and the  
3 weight and the truthfulness of the evidence that  
4 you have seen and heard.

5 Both the State and the defendant have a right  
6 to expect that you will conscientiously consider  
7 and evaluate the evidence, and that you will apply  
8 the law of the case to that evidence so that both  
9 the State and the defendant will receive a fair  
10 and impartial trial at your hands.

11 Throughout the course of this charge, ladies  
12 and gentlemen, when I use the word defendant, I'm  
13 referring to Mr. Austin McQuarters.  
14 Mr. McQuarters has been indicted by the Grand Jury  
15 of Beaufort County and charged in one indictment  
16 with the crime of armed robbery. That indictment  
17 alleges that here in Beaufort County, on or about  
18 October the 20th of 2013, the defendant,  
19 Mr. McQuarters, by use of force, threats, or  
20 intimidation, and while alleging either by action  
21 or words that he was armed, using a representation  
22 of a deadly weapon or some other object that a  
23 person present would reasonably believe to be a  
24 deadly weapon, he took and carried away goods or  
25 moneys from the person or immediate presence of



## JURY CHARGE

1 John Snodgrass with the intent to steal those  
2 things in violation of the law.

3 Mr. McQuarters is also charged with assault  
4 and battery in the first degree. That indictment  
5 alleges that at the same time and place,  
6 Mr. McQuarters committed an assault and battery by  
7 unlawfully injuring Mr. Snodgrass during the  
8 commission of a robbery in violation of the law.

9 I remind you again, as I told you before the  
10 trial began, that those indictments are not  
11 evidence or proof of the charges. They are  
12 charging documents, legal documents that tell us  
13 what this case is all about.

14 As you know, Mr. McQuarters has entered pleas  
15 of not guilty and has requested and now has  
16 received a jury trial at your hands. The effect  
17 of the pleas of not guilty to the charges in those  
18 indictments is to place the burden of proof on the  
19 State to prove by evidence the guilt of the  
20 accused beyond a reasonable doubt before you as a  
21 jury can convict him and find him guilty.

22 Mr. McQuarters is presumed in law then to be  
23 innocent of the charges contained in these  
24 indictments. It is a fundamental rule of our law  
25 of evidence that a defendant, regardless of the

## JURY CHARGE

1 nature or the seriousness or the number of charges  
2 against him, will always be presumed innocent of  
3 the charges against him unless and until his guilt  
4 has been proven by evidence that satisfies you of  
5 that guilt beyond a reasonable doubt.

6 The presumption of innocence is not a mere  
7 legal theory. It is not an empty legal phrase.  
8 The presumption of innocence is like a robe of  
9 righteousness that is placed about the shoulders  
10 of a defendant. It remains with him, it assigns  
11 to him that class known as the innocent. And that  
12 presumptive robe of righteousness continues to  
13 exist to his benefit unless and until it has been  
14 stripped from his person by evidence. Evidence  
15 that satisfies you of that guilt, beyond a  
16 reasonable doubt.

17 The presumption of innocence accompanies a  
18 defendant throughout every course of these  
19 proceedings. It follows him as you go into your  
20 jury room to deliberate and to reach a verdict in  
21 this case. It continues to exist to his benefit  
22 until you, the jury, reach the conclusion that the  
23 State has proven his guilt beyond a reasonable  
24 doubt. So, that then is a burden of the State to  
25 prove guilt beyond a reasonable doubt.

## JURY CHARGE

1           Some of you might have served as jurors in  
2 civil cases before. And if you did, the judge  
3 told you in the civil case that it is only  
4 necessary that the party who has the burden of  
5 proof present evidence to you that is more  
6 convincing on that side than the evidence is on  
7 the other side of the issue.

8           But in criminal cases, the State's proof has  
9 to be more powerful than that. Here it has to be  
10 proof beyond a reasonable doubt.

11           So, what do we mean by proof beyond a  
12 reasonable doubt? Proof beyond a reasonable doubt  
13 is proof that leaves you firmly convinced of a  
14 defendant's guilt.

15           Now, there are very few things in this world  
16 that you and I know with absolute certainty. And  
17 in criminal cases, the law does not require proof  
18 that overcomes every possible doubt. And so, if  
19 based on your consideration of the evidence you  
20 are firmly convinced that the defendant is guilty  
21 of the crime charged, you must find him guilty.

22           If, on the other hand, you think there's a  
23 real possibility that he's not guilty, you must  
24 give him the benefit of the doubt and find him not  
25 guilty.

## JURY CHARGE

1           Reasonable doubt could arise from evidence in  
2           the case. It might arise from the lack of  
3           evidence in the case. But you, ladies and  
4           gentlemen, have to decide whether or not  
5           reasonable doubt exists as to the guilt of this  
6           defendant.

7           I tell you that he's entitled to every  
8           reasonable doubt which arises in the case. And so  
9           if on any issue of fact which is necessary to a  
10          conviction and a verdict of guilty, you have a  
11          reasonable doubt as to how that issue should be  
12          resolved, it is your duty to resolve that  
13          reasonable doubt in favor of the defendant.

14          Because the defendant is never required to  
15          prove his innocence. The State is required in law  
16          to prove every essential element of the offense  
17          charged against the defendant by evidence that  
18          satisfies you of that guilt before you as a jury  
19          can convict the defendant and find him guilty.

20          Now, I instruct you furthermore that the fact  
21          that the defendant in this trial did not testify  
22          in his own behalf is not a factor to be considered  
23          by you in any way in your deliberation and in your  
24          determination of his guilt or innocence.

25          It must not be considered by you in any

## JURY CHARGE

1 manner whatsoever. It must not militate against  
2 in any way whatsoever.

3 A defendant has a constitutional right to  
4 remain silent. And if he chooses to exercise that  
5 constitutional right, that fact cannot and must  
6 not be considered by you in your deliberations.

7 And so under your oath then, you are to reach  
8 no inference and draw no conclusion whatsoever  
9 from the fact that this defendant did not himself  
10 testify. That should not even be discussed by you  
11 in the jury room, because the burden of proof, as  
12 I said, is upon the State.

13 The defendant has no obligation to prove his  
14 innocence, and the burden remains upon the State  
15 to prove guilt beyond a reasonable doubt. And the  
16 fact that the defendant did not testify is not a  
17 factor to be considered by you.

18 So then, ladies and gentlemen, if in front of  
19 the whole case you have a reasonable doubt as to  
20 the guilt or the innocence of the defendant, he is  
21 entitled to that reasonable doubt and would be  
22 entitled to an acquittal and verdict of not  
23 guilty.

24 But on the other hand, if upon the whole case  
25 you find that the State has proven the guilt of

## JURY CHARGE

1 the defendant by evidence, it satisfies you as a  
2 jury beyond a reasonable doubt, then in such  
3 circumstances, it is equally your duty to convict  
4 the defendant and to find him guilty.

5 During this trial, folks, you and I have our  
6 certain duties to perform. As a trial judge, it's  
7 my responsibility to preside over the trial of  
8 this case, and I also have the duty to preside  
9 upon the -- rule upon and pass upon the evidence  
10 and the admissibility of the evidence that has  
11 been offered during into the record during the  
12 course of this trial.

13 And you are to consider only the competent  
14 evidence that has been offered before you. That  
15 is, the testimony from this witness stand. And  
16 the items or the documents that have been  
17 introduced into evidence during the course of this  
18 trial.

19 And I have the additional duty to charge you  
20 or instruct you as to what the law is, and that's  
21 what I'm doing right now. As I've told you, and  
22 as you know, I'm the sole judge of the law in this  
23 case. And it is your duty to accept the law as I  
24 tell it to you now, and apply it to the case to be  
25 the correct one.

## JURY CHARGE

1           If you brought with you into your service  
2       this week some ideas about what you think the law  
3       is or what you'd like for it to be, and if your  
4       ideas or your preferences about the law disagree  
5       with what I'm telling you now the law actually is,  
6       under your oath you're obligated to forget what  
7       you think about the law, or what you would like  
8       the law to be, because under your oath, you're  
9       bound to accept the law as I state it to you now  
10      to be the correct law.

11          I'm the judge of the law, you're the judge of  
12      the facts. Our Constitution has said that the  
13      trial judge can't comment upon the facts of the  
14      case. I can't innovate or hint to you, or make  
15      statement to you about the facts of the case  
16      because that's solely a matter for you to  
17      determine.

18          So you're not to gather from anything that I  
19      have said during this trial, or anything that I am  
20      saying to you right now, that I have an opinion  
21      about the facts in the case. Frankly, the law  
22      does not allow me an opinion about the facts of  
23      the case. That's solely for you folks to  
24      determine.

25          And as jurors, then, it becomes your duty, as

## JURY CHARGE

1 I have said, to determine the value and the  
2 effect, and the weight and the truthfulness of the  
3 evidence presented during the course of this  
4 trial.

5 As you determine what the facts are, as you  
6 determine what the truth is, you must necessarily  
7 pass upon the credibility of the witnesses who  
8 have testified.

9 Credibility is just another word that means  
10 believability. You have to decide the force and  
11 the effect and the weight and the truth of the  
12 testimony that you have heard.

13 Now, there are a lot of things that you can  
14 take into account as you decide that matter of  
15 truth and credibility. You have the right to take  
16 into account the appearance, the manner of the  
17 witnesses as he or she testified here from the  
18 witness stand. We call that the demeanor of the  
19 witness. In other words, how did the witness act  
20 on the witness stand?

21 You have a right to ask yourself whether that  
22 witness was forthcoming or was the witness  
23 hesitant? Was the witness's testimony consistent,  
24 or did it contain discrepancy.

25 What was the ability of that witness to know



## JURY CHARGE

1       the things that he or she was telling you about.  
2       Did the witness have a cause or a reason or an  
3       interest to be served by the testimony that he or  
4       she was giving? Was the testimony of a witness  
5       made stronger by other evidence, or was it made  
6       weaker by other evidence in a case?

7             As jurors, ladies and gentlemen, you've got  
8       the right to believe a small portion of the  
9       testimony of a single witness, and to disbelieve  
10      the larger portion of the testimony of that same  
11      witness. Or you can do it the other way around,  
12      believe the larger portion, disbelieve the smaller  
13      one.

14            You can believe all of what a witness tells  
15      you or none of what a witness tells you. And what  
16      we expect you to do to make that determination  
17      about how you evaluate the credibility and weight  
18      of the evidence is to exercise your mental  
19      processes, to use your good sound logic, your  
20      common sense, your sense of logic and reasons,  
21      your experiences in life. That's what makes this  
22      system work as marvelously and as wonderfully as  
23      it does. Folks like you who come into a jury box  
24      like where you're sitting now, without knowing a  
25      thing in the world about a case until you get

## JURY CHARGE

1       there and start to hear it. And you bring your  
2       collective wisdom and your individual attributes  
3       and experiences in life to bear on what you've  
4       heard.

5               If you put all those things together and  
6       determine the truth of the case that exists in  
7       this case. And once you have decided what the  
8       truth is, you apply the law that I'm now giving  
9       you, and those two things will come together to  
10      result in a verdict which will speak the truth of  
11      this case.

12             Now, let me instruct you as to what the  
13      elements of the charges are, because you have to  
14      determine whether or not those elements have been  
15      proven to your satisfaction beyond a reasonable  
16      doubt.

17             We begin with the charge of armed robbery.  
18      The law defines armed robbery in the following  
19      manner: A person who commits robbery while armed  
20      with a pistol, dart, slingshot, metal knuckles,  
21      razor, or other deadly weapon, or by alleging  
22      either by action or words that he was armed while  
23      using a representation of a deadly weapon, or any  
24      object which a person present during the  
25      commission of a robbery reasonably believed to be

## JURY CHARGE

1 a deadly weapon, is guilty of armed robbery.

2 So, I will define for you the offense of  
3 robbery while armed with a deadly weapon, which we  
4 call armed robbery.

5 In order to do that, I'm going to also define  
6 for you lesser offenses which are included in the  
7 greater. I'll start with the lesser. The least  
8 of the offenses is called larceny.

9 Larceny is what you and I commonly refer to  
10 as stealing. That is embraced in a greater  
11 offense of strong-armed robbery, and I'll tell you  
12 about that. And then that offense is also  
13 embraced in the greater offense of armed robbery,  
14 which are the charges contained in this  
15 indictment.

16 So, let's begin with the charge of larceny.  
17 What is larceny? As I've said, larceny is  
18 commonly referred to as stealing. It doesn't  
19 require a great legal mind to figure it out. The  
20 essential elements of larceny are that -- that  
21 somebody takes into possession somebody else's  
22 personal property. I'll tell you that money,  
23 cash, is personal property.

24 And secondly, that person takes that personal  
25 property and carries it away, removes it. And

## JURY CHARGE

1       thirdly, the taking of that personal property and  
2       carrying it away is done with the intent to steal  
3       it, that is to wrongfully deprive the owner of its  
4       use and to convert it to the taker's own use.  
5       That's larceny. Stealing.

6               Now, what is robbery? Robbery is all of  
7       those things that I just told you. It is taking  
8       somebody else's personal property and carrying it  
9       away with the intent to steal it, but robbery is  
10      the taking and carrying away of the property from  
11      the person himself or herself, or from the  
12      presence of that person himself or herself, by  
13      violence or by putting that person in fear of  
14      violence.

15             So, robbery includes larceny, but it adds the  
16      element of taking it away from someone's person or  
17      in the presence of that person by using force or  
18      fear or intimidation or violence.

19             To distinguish those two, and I'm sure it  
20      occurs to you, you could be the victim of larceny  
21      and not even know it when it happens. Somebody  
22      can take your property and you might not even  
23      realize it until much later. You come to find  
24      it's gone, and you don't know where it is, and you  
25      realize somebody has taken it.

## JURY CHARGE

1           But a robbery, you know it when it happens.  
2           Because it's taken from your person or in your  
3           presence, by force or violence or by putting you  
4           in fear of violence. That's robbery. We  
5           sometimes call it strong-armed robbery.

6           So, what is armed robbery? Armed robbery is  
7           a taking of personal property of somebody else and  
8           carrying it away with the intent to steal it. And  
9           taking it from that person or from the persons of  
10          that person, by the use of force, fear, or  
11          intimidation and by the use of a deadly weapon,  
12          while being armed with a deadly weapon.

13          A deadly weapon is any object which can  
14          reasonably be considered to use -- to cause death  
15          or serious bodily harm. So, I tell you, ladies  
16          and gentlemen, the State is required to prove  
17          every element of the offense of armed robbery, or  
18          strong-armed robbery, because that's a lesser  
19          element that I'll tell you can be a possible  
20          verdict in this case. And whatever charge you  
21          find them guilty of -- him guilty of, they have to  
22          prove every element of that offense beyond a  
23          reasonable doubt before he can be convicted and  
24          found guilty.

25          If the State fails to meet its burden of

## JURY CHARGE

1 proof as to any of those elements, or the State  
2 has failed to meet its burden of proof as to the  
3 crime itself, then the defendant is entitled to a  
4 verdict of not guilty as to that charge.

5 The defendant is also charged with the crime  
6 of assault and battery in the first degree. A  
7 person commits the offense of assault and battery  
8 in the first degree if the person unlawfully  
9 injures another person, and if that injury  
10 occurred during the commission of a robbery.

11 The State, in order to meet its burden of  
12 proof as to assault and battery in the first  
13 degree has to prove that the defendant injured  
14 another person, and that that injury occurred  
15 during the commission of the crime of robbery.

16 All of those things have to be proven beyond  
17 a reasonable doubt in order for you to find the  
18 defendant guilty of the crime of assault and  
19 battery in the first degree. If the State meets  
20 its element, its burden as to those elements, its  
21 entitled to a verdict of guilty. If it fails as  
22 to any of those elements, it has failed its burden  
23 of proof as to that charge and the defendant must  
24 be found not guilty of that charge.

25 Now, ladies and gentlemen, you have heard

## JURY CHARGE

1 entered into the record of this case a statement  
2 made by the defendant. I determined that you're  
3 entitled to see that, but you have to decide  
4 whether or not it was a voluntary statement and  
5 you must decide the weight that you will give to  
6 the statement.

7 If you determine that the defendant made the  
8 statement, and then you must determine whether it  
9 was voluntarily made, and then finally you  
10 determine what weight, if any, you choose to give  
11 to it.

12 Because you have to decide whether the  
13 statement was the product of the free and  
14 unconstrained choice of the maker itself. You  
15 have to decide the voluntariness of it, and the  
16 State has to prove that it was a voluntary  
17 statement beyond a reasonable doubt. And if you  
18 find that it was a -- a statement was given freely  
19 and voluntarily beyond a reasonable doubt, then  
20 you can give it whatever consideration you think  
21 it should receive.

22 If you determine that it was not a free and  
23 voluntary statement, then you can't give it any  
24 consideration whatsoever.

25 When you decide whether a statement was

## JURY CHARGE

1 freely and voluntarily made, or whether the will  
2 of the person making it was overcome, the law  
3 requires you to consider all of the facts and  
4 circumstances. We call it the totality of the  
5 circumstances surrounding the questioning.

6 You can take into account the age of a  
7 defendant, the educational background, the mental  
8 ability, and things of that nature, and all of the  
9 other facts which are obvious in surrounding the  
10 statement itself.

11 You also have to determine whether or not the  
12 defendant received his Constitutional rights,  
13 Miranda rights they're called under the law. And  
14 you know those laws -- those rights, they've  
15 become a part of the fabric of our -- of our  
16 criminal justice system over the years.

17 The defendant, who is in custody, before he  
18 can be asked any questions has to be advised that  
19 he has the right to remain silent, that any  
20 statement that he uses could be used against him.  
21 That he has the right to have a lawyer present.  
22 If he can't afford one, one will be appointed to  
23 represent him. That he can stop making the  
24 statement at any time he chooses to do so.

25 And so you carefully scrutinize all of the



## JURY CHARGE

1 facts surrounding the statement, and you have to  
2 be satisfied beyond a reasonable doubt that the  
3 statement was freely and voluntarily made before  
4 you can give it any weight whatsoever.

5 Now, ladies and gentlemen, the State in this  
6 case seeks to meet its burden of proof, as I've  
7 just described that to you, by offering both  
8 direct and circumstantial evidence.

9 Direct evidence is kind of like eyewitness  
10 evidence, where somebody who goes into Court says,  
11 This is what I saw or this is what I heard.  
12 That's direct evidence. That's evidence that  
13 doesn't requires any conclusion or deduction on  
14 your part. It's just whatever they said.

15 Direct evidence proves that the existence of  
16 a fact directly, and it doesn't require any  
17 deduction on your part. But circumstantial  
18 evidence, on the other hand, is a proof of a chain  
19 of facts of circumstance which indicate the  
20 existence of some other fact.

21 Over the years I've tried to think of a  
22 simplistic way to describe that. I've gotten into  
23 a rut using this example. And I just can't get  
24 out of it, and I can't think of a better one, so  
25 I'll burden you with it.

## JURY CHARGE

1           Circumstantial evidence can be described by  
2           using your imagination for a few moments and  
3           trying to think yourself out of a heat index of  
4           114, which I understand it's going to be today  
5           when you walk back out into it, and -- and fast  
6           forward into the winter, when the -- when the  
7           grass is all dead and brown, and it's deep winter,  
8           and you all might not have it down here, but just  
9           a little farther north where I am occasionally we  
10          have snow.

11          If you can imagine yourself standing in your  
12          window and looking out across your lawn before you  
13          go to bed and you see the brown dead grass of  
14          winter, and that's all you see. And you get up  
15          the next morning and you look out and you see that  
16          that grass is covered with snow. And you also see  
17          footprints leading through that snow to your front  
18          door. Well, what do you conclude from that? By  
19          circumstantial evidence, what do you conclude?

20          First of all, you conclude that after you  
21          went to bed last night it snowed. You didn't see  
22          a single flake fall, but you know that it snowed  
23          from what you observed the next day.

24          And you also know that sometime after it  
25          snowed somebody came to your front door. You

## JURY CHARGE

1        didn't see them, you don't know who they are, but  
2        you know that they came because they left tracks  
3        in the snow. That's a very simplistic example of  
4        circumstantial evidence.

5                Now, the law doesn't make any distinction  
6        between direct and circumstantial evidence.  
7        Crimes can be proven by circumstantial evidence.  
8        It doesn't distinguish between the weight or the  
9        value that you give to either direct or  
10       circumstantial evidence.

11               But to the extent that the State relies on  
12       circumstantial evidence, that all of the  
13       circumstances that they rely on have to be  
14       consistent with each other. And when taken  
15       together they have to point conclusively to the  
16       guilt of the accused beyond a reasonable doubt.

17               If circumstances merely portray the  
18       defendant's behavior as suspicious, then the proof  
19       has failed. The State has the burden of proving  
20       the defendant guilty beyond a reasonable doubt, as  
21       you well know by now. And the burden rests with  
22       the State regardless of whether it relies on  
23       direct evidence or circumstantial evidence or some  
24       combination of the two.

25               Now, ladies and gentlemen, finally -- that's

## JURY CHARGE

1 a word you've been hanging on to hear for a while,  
2 right, finally?

3 Finally, let me tell you that you are not  
4 partners nor are you advocates for the State of  
5 South Carolina or for this defendant. You don't  
6 serve as jurors to punish your enemies nor to  
7 reward your friends. You have been chosen both by  
8 the State and this defendant to be fair and  
9 impartial jurors. It is your duty then, by your  
10 joint deliberations, to determine the truth of  
11 this case, giving to the defendant the benefit of  
12 every reasonable doubt on each and every issue.  
13 And to the facts which you determine to be true,  
14 you take and apply the law which I have given you  
15 and thus arrive at a verdict which will speak the  
16 truth of this case. That's how this system works.  
17 Your truth and the law come together to speak the  
18 truth of this case.

19 And once you have done that, you will have  
20 discharged the oath which you took when this case  
21 began to well and truly try this case and to  
22 render a true verdict according to the law and the  
23 evidence, so help you God. We are all confident  
24 that you will do just that, and that you will do  
25 nothing less than that.

## JURY CHARGE

1           Now, ladies and gentlemen, I'm going to  
2       instruct you at this time as to the verdict, and  
3       the forms of verdict which exist in this case. I  
4       have written them down on this sheet of paper. I  
5       tell you that the order in which they're written  
6       down on this sheet of paper, on this verdict form,  
7       doesn't mean anything at all. You're not to reach  
8       any conclusions or inferences from the order that  
9       I have written them down. I simply write them in  
10      the order that I find them easiest to explain.

11           I've given the verdict form to the forelady,  
12      because she's the one who's got to fill it out.  
13      But it will not be her verdict alone, it has to be  
14      unanimous.

15           There are two charges in this case. And so  
16      you will write two verdicts. Your verdict on one  
17      charge does not necessarily determine your verdict  
18      on the other. The defendant could be convicted or  
19      acquitted of either or both of these charges,  
20      depending upon your view of the evidence.

21           We begin with the charge of armed robbery.  
22      There are three possible verdict forms for that  
23      charge.

24           The first possible verdict form is, We, the  
25      jury, by unanimous consent, find the defendant

## JURY CHARGE

1 guilty of armed robbery. That is the verdict form  
2 that you will arrive at if you find that the State  
3 has met its burden of proof of all the elements of  
4 the charge of armed robbery, as I instructed you.

5 And if you find that the State has met its  
6 burden of proof, Madam Forelady, you will indicate  
7 that by putting an X or a checkmark in the space  
8 you see we have provided for you.

9 The second possible verdict form is if you  
10 don't find that the State has met its burden of  
11 proof beyond a reasonable doubt as to guilty of  
12 armed robbery, a possible verdict form is guilty  
13 of strong-armed robbery. That's a verdict form  
14 that you will arrive at if you find that the State  
15 has met all of its burden as to the charge of  
16 strong-armed robbery, as I instructed you earlier.

17 And, likewise, if that's a verdict you arrive  
18 at, you will place a checkmark or an X mark in  
19 that space.

20 The final verdict form that you may arrive at  
21 in this case is, We find that the defendant is not  
22 guilty. That's the verdict form that you will  
23 find -- that you will use if you find that the  
24 State has not met its burden of proof as to any of  
25 the elements of the above two charges, as I have

## JURY CHARGE

1 instructed you.

2 As to the charge of assault and battery in  
3 the first degree, there are only two possible  
4 verdict forms. Guilty if the State has met its  
5 burden of proof as to that charge, and not guilty  
6 if the State has failed in its burden.

7 Likewise, that will be indicated in the same  
8 manner.

9 I remind you again, that the verdict has to  
10 be unanimous. Madam Forelady, you can't write  
11 that verdict form nor sign it until all 12 of your  
12 number have agreed to what the verdict shall be.

13 We're going to send you now to your jury  
14 room. But I'm going to ask you to wait just a few  
15 moments before you begin your deliberations. I  
16 have to talk to the lawyers to see if I've missed  
17 anything or left out anything. And if I have,  
18 we'll have to bring you back out to re-instruct  
19 you or to correct any errors I may have made.

20 If we don't have to bring you back out, we  
21 will send in the items of evidence. And once  
22 those items of evidence are brought into the jury  
23 room, Madam Forelady, that's your signal to begin  
24 your deliberations. And once the items of  
25 evidence have been delivered to you, you will

## JURY CHARGE

1       begin your deliberations. You will deliberate  
2       until you have reached a verdict, at which time,  
3       Madam Forelady, you'll fill out the verdict form  
4       and sign it and knock on the door, advise the  
5       bailiff, and we'll bring you out to receive the  
6       verdict at that time.

7               Your food has been ordered. It might even be  
8       there, I'm not sure. But it will be along  
9       shortly. You can deliberate while you eat or you  
10      can stop deliberating to eat, that's up to you.  
11      You make your own choice. But all 12 of you have  
12      to be in the room during deliberations, however.

13             So I'm going to send you to your jury room.  
14      Ms. Seabrooks and Mr. Mack, if you'll stay right  
15      where you are for the time being. Okay?

16             Ladies and gentlemen, you can retire to your  
17      jury room. Please do not yet begin your  
18      deliberations. Okay?

19                       (Jury exits the room at  
20                       1:05 p.m.)

21             THE COURT: Ms. Lempesis, any exceptions or  
22      requests for additional charge from the State?

23             MS. LEMPESIS: Not from the State, Your  
24      Honor.

25             THE COURT: Thank you.



## JURY CHARGE

1           Mr. Bax, for the defense?

2           MR. BAX: Other than already noted about the  
3 strong-armed robbery, no, Your Honor.

4           THE COURT: Okay.

5           Folks, if you all will check and make sure  
6 all of the evidence is together there, and then we  
7 can send it in.

8           Ms. Seabooks and Mr. Mack, folks, you all  
9 have figured out by now, as alternate jurors, your  
10 job is -- was going to be to move into one of  
11 these chairs up here if one of these folks  
12 couldn't go on, if they got sick or had some  
13 emergency that kept them from coming. Then you  
14 moved later. You paid just as good attention as  
15 these folks did, you're equally capable of  
16 reaching a verdict as they are. We didn't need  
17 you because they all survived the trial.

18           But what you've done for us was to give us  
19 peace of mind to know that you were going to be  
20 here with us once we got started. That you were  
21 going to be here regardless of what might happen  
22 to somebody else. If we had not had alternates  
23 like you, and if something had happened, a family  
24 emergency or an illness or whatever, that kept any  
25 of these other 12 jurors, if you were not here, we

## JURY CHARGE

1           would have had to start that whole trial over.

2                   So every day when I knew that you were here,  
3           I knew that we were going to be able to go  
4           forward. And I appreciate that.

5                   Your food has been ordered, too, but you  
6           can't go back to the jury room. They can put you  
7           in a separate jury room, and you can -- when your  
8           food is delivered you can take it and eat it there  
9           or you can take it with you, either one. But  
10          after you've done that, you don't need to come  
11          back. Your service has been completed, and we  
12          thank you so much.

13                  Thank you. Put them in another jury room,  
14          please. Thank you.

15                  Got it all together?

16                  MS. LEMPESIS: Yes, Your Honor. The only  
17          question is, as to the disc, they have no way to  
18          play it back in the jury room. So, I would  
19          suggest not sending it back.

20                  THE COURT: Well, send it -- they don't have  
21          to -- if there's nothing they can do, they can't  
22          play it back there. Send it back, they'll know if  
23          they need to see it they can come back and raise  
24          their hand and we'll put it out here. Otherwise,  
25          they might forget it exists. Okay?

## JURY CHARGE

1 MS. LEMPESIS: Thank you.

2 MR. BAX: All right.

3 THE COURT: All right, folks. Thank you. I  
4 appreciate you, as always.

5 MR. BAX: Your Honor, just to cover my bases,  
6 can I look at the second verdict form before we  
7 send it back? I know I looked at the first one  
8 and there's been some changes that were made.

9 THE COURT: Okay. I have two extra ones.  
10 They just came in while you all were arguing, I  
11 didn't have a chance to give them to you.

12 MS. LEMPESIS: Sorry, Your Honor.

13 MR. BAX: Sorry, Your Honor.

14 THE BAILIFF: Your Honor, do you have the  
15 verdict sheet?

16 THE COURT: No, she's got it. The forelady's  
17 got it.

18 THE BAILIFF: Oh, she's already got it. All  
19 right.

20 THE COURT: Yeah, that's right.

21 THE BAILIFF: You ready for this to go back?

22 THE COURT: Yes, sir, that can go in.

23 MR. BAX: Thank you, Your Honor.

24 MS. LEMPESIS: Thank you, Your Honor.

25 THE COURT: All right. Thank you all.

## JURY CHARGE

1 All right. Folks, we'll stand at ease until  
2 we hear from the jury. And we'll have a lunch  
3 hour. I understand that you got some pleas signed  
4 up that we may deal with, but we will, at least,  
5 take a lunch hour before we deal with those.

6 MS. LEMPESIS: Your Honor, should I tell the  
7 jail to bring inmates at maybe 2:00; is that okay?

8 THE COURT: That will be enough time for  
9 lunch hour.

10 MS. LEMPESIS: I that enough time? Okay.

11 And, of course, you probably won't start at  
12 two, but maybe two -- we wouldn't start at two  
13 anyway, as I'll have to get the lawyers here as  
14 well.

15 THE COURT: Okay. If you tell them to be  
16 here at two, they'll be here probably later.

17 MS. LEMPESIS: Thank you, Your Honor.

18 THE COURT: All right. Thank you, folks.  
19 We'll stand down until then.

20 MS. LEMPESIS: Thank you, Your Honor.

21 (Jury begins deliberations.)  
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## JURY CHARGE

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 10th day of February, 2016.

/s/ Mona L. Manley

---

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Official 14th Circuit Court Reporter  
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1 IN THE COURT OF GENERAL SESSIONS IN AND FOR  
2 BEAUFORT COUNTY SOUTH CAROLINA

4 STATE OF SOUTH CAROLINA,  
5 Plaintiff,

6 vs. CASE NO. 2013GS0701844; 1845

7     AUSTIN LEWIS McQUARTERS,  
8             Defendant.

9 \_\_\_\_\_/

10

11 \* \* \*

12

13 TRIAL TRANSCRIPT

14 VOLUME 7

15                      DATE:                      July 22, 2015

17 PLACE: Beaufort County Courthouse  
Beaufort, South Carolina

REPORTED BY: Mona Manley, Court Reporter

20      BEFORE:                          Honorable Thomas W. Cooper, Jr.

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**APPEARANCES**

REPRESENTING THE STATE:

Mary Jordan Lempesis, Assistant Solicitor  
Brian Holland, Assistant Solicitor  
14th Circuit Solicitor's Office  
Bluffton, South Carolina

REPRESENTING THE DEFENDANT:

Arie Bax, Esquire  
James Bell, Esquire  
14th Circuit Public Defender's Office  
Beaufort, South Carolina

\* \* \*

## INDEX PAGE

|    |                     |          |
|----|---------------------|----------|
| 1  | INDEX               |          |
| 2  | Jury question.....  | Page 487 |
| 3  | Verdict.....        | Page 494 |
| 4  | Jury dismissed..... | Page 502 |
| 5  | Sentencing.....     | Page 503 |
| 6  |                     |          |
| 7  |                     |          |
| 8  |                     |          |
| 9  |                     |          |
| 10 |                     |          |
| 11 |                     |          |
| 12 |                     |          |
| 13 |                     |          |
| 14 |                     |          |
| 15 |                     |          |
| 16 |                     |          |
| 17 |                     |          |
| 18 |                     |          |
| 19 |                     |          |
| 20 |                     |          |
| 21 |                     |          |
| 22 |                     |          |
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| 24 |                     |          |
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## JURY QUESTION

1 PROCEEDINGS

2 THE COURT: Folks, a note came out from the  
3 jury some time ago. The note said, We would like  
4 to see the video.

5 As we sent in to get the video, Captain Smith  
6 was told that they only wanted to watch the  
7 portion of the video in which a description was  
8 given of the young lady at Kroger's. I'll confirm  
9 with the jury, once they are in the jury room, if  
10 that's the only portion that they want to see, if  
11 that's a fact, then we'll go forward with it.

12 Is the State ready for the jury?

13 MS. LEMPESIS: Yes, Your Honor. And for your  
14 information I have keyed it up to the portion  
15 where he starts to talk about -- to describe her  
16 exactly, and it's not a very lengthy portion. So,  
17 I guess, I'll just stop it after --

18 THE COURT: Okay. That's the part they asked  
19 for. And I'll ask them to raise their hand once  
20 they've heard what they need to hear.

21 MS. LEMPESIS: Okay.

22 MR. BAX: And Your Honor, just as -- for the  
23 record, I've looked at what they've got. And  
24 we've just agreed she -- we're going to start  
25 playing it right before he starts describing the

## JURY QUESTION

1 person at Doug's request, and then at the end of  
2 his description. It's only like 15 or 20 seconds.

3 THE COURT: All right. Good. Thank you.

4 Bring in the jury.

5 THE BAILIFF: Ready, Your Honor? The jury is  
6 entering the courtroom now.

7 (Time is now 2:44 p.m.)

8 THE COURT: Thank you.

9 Folks, we received your request in the note  
10 that you wanted to replay the video. And then we  
11 got an oral request that you only wanted to see  
12 that portion of the video that contained the  
13 description given of the young lady met at Kroger;  
14 is that correct?

15 JUROR: Yes.

16 THE COURT: All right. So, they keyed it up  
17 to that point on the video. It's not a lengthy  
18 portion. And once that has been played, of  
19 course, if you'll just raise your hand once you've  
20 heard everything that you need to hear, that we've  
21 satisfied your request, then we can cut it off at  
22 that time.

23 We will keep it running as long as you all  
24 want to run it, though, until -- is that okay?

25 All right.

## JURY QUESTION

1 (Audio of the interview of the  
2 defendant playing.)

3 MR. BAX: Your Honor, we have gone well past  
4 the description, I'm not sure they understood --

5 THE COURT: What I told them.

6 (Audio resumes play.)

7 THE COURT: Ladies and gentlemen, do you need  
8 to hear any more of it? You can hear -- listen.  
9 We'll play the whole thing if you want to. I'm  
10 not trying shut you off.

11 Does anybody need to listen to any more of  
12 the tape than you've heard? You raise your right  
13 hand. Anybody? Anyone wants to hear any more?

14 JUROR: Is there a written transcript of  
15 that, to where we can -- some of it, I can't quite  
16 hear. Is that down on paper at all?

17 THE COURT: No, sir. I don't think that they  
18 prepared a written transcript. I'm sorry. I'm  
19 like you, there are parts of it I can't hear as  
20 well as I can others.

21 JUROR: Okay.

22 THE COURT: We'll be glad to try to focus on  
23 those parts and replay them so that you can hear  
24 better. But that's the best we have. Again, I'm  
25 sorry.

## JURY QUESTION

1 Does anybody need to hear anything else?

2 Okay. Record should reflect that no hands  
3 were raised. And so we'll send you back to your  
4 jury room. Folks, let us know if there's anything  
5 else.

6 (The jury leaves the courtroom.)

7 THE BAILIFF: The jury is clear, Your Honor.

8 MS. LEMPESIS: Ms. Lempesis, anything further  
9 from the State?

10 MS. LEMPESIS: No, Your Honor.

11 THE COURT: Mr. Bax.

12 MR. BAX: Your Honor, I'd like to note for  
13 the record my objection. What we agreed to was  
14 that one portion, and I was unaware that  
15 Your Honor was going to instruct them to raise  
16 their hands. I'm not sure that they really  
17 understood that because they all just kind of kept  
18 watching. It went well past that point, I didn't  
19 have an opportunity to be heard on the idea that  
20 they would raise their hands when they were done  
21 listening. So, I object to it.

22 THE COURT: They had the right to hear as  
23 much or as little of that as they wanted. We knew  
24 where to start, quite frankly, and I didn't know  
25 whether there was some other description came in

## COLLOQUY

1 later or after that intial description or not.

2 And so I made that plain to them, that we could  
3 play as much of it as they wanted to. And once  
4 they heard all of it, please raise their hands and  
5 get my attention, we could cut it off, that I was  
6 not going to cut it off without some affirmative  
7 statement from them because I didn't want to  
8 presume that they had heard all that they wanted  
9 to hear from our description. I didn't want to  
10 make the error of drawing the conclusion that  
11 might be different from what they said.

12 And so I made that plain to them, raise your  
13 hand and let us know, and the record will reflect  
14 all that. And when it went on past that, well,  
15 you got my attention that it was going past that.  
16 And when we had a pause in the tape, then I took  
17 advantage of that and they told me that they had  
18 heard all that they wanted to hear.

19 But I was not going to cut it off without  
20 some affirmative action for the reasons that I  
21 mentioned. Thank you.

22 I note the objection, in any event.

23 All right. Folks, we can stand at ease now  
24 until we hear further from them. And, you know,  
25 I'll note that the record needs to be burdened

## COLLOQUY

1 with my own reflection of audio and video taped  
2 confessions and statements, audio and video taped  
3 drug buys, audio and video taped conversations  
4 with people -- even in the controlled area like  
5 that, in a room where there's no outside noise.

6 I am sure that there is within the realm of  
7 science somewhere a microphone that doesn't sound  
8 like it's a reject from the McDonald's drive-in  
9 window, somebody could play so that you could  
10 actually hear what's being said and make out the  
11 words. Not everyone speaks and enunciates  
12 clearly. I don't myself.

13 But even in most all circumstances, we can  
14 surely have some technology. And in all candor,  
15 in 22 or 23 years doing this, I don't believe that  
16 I have ever listened to one of those tapes in  
17 which I understood everything that was said. I  
18 have counted on the jury to understand it. And,  
19 thank goodness, this is the first time I've ever  
20 heard a juror tell me, I didn't understand it.

21 Although, I will say that when officer --  
22 when Investigator Seifert was paraphrasing those  
23 things after the fact, and you made a timely  
24 objection, Mr. Bax, because it said it's  
25 cumulative, and frankly it was, and -- because

## COLLOQUY

1       they heard it once. But I made the comment, I'm  
2       afraid that they may not have understood it all.  
3       And when I did that, I got about two or three nods  
4       of heads across the front of the jury to agree,  
5       that they had not been able to understand it all  
6       either.

7               And that's -- nobody ever knows who suffers  
8       when those things happens, that they didn't hear  
9       it.

10              Well, that's the preaching for today, folks,  
11       and I won't be doing this much longer, in any  
12       event, and that will be lost in antiquity. And  
13       judges for the next generation will have to do the  
14       same thing, and listen to garbled folks talk like  
15       the -- either the teacher on Peanuts or drive-in  
16       window at McDonald's.

17              We'll stand aside.

18              I've got a list of folks here. Are these  
19       folks in place now, or do we need to take a few  
20       minutes to get them lined up?

21              MS. LEMPESIS: We've got maybe five minutes,  
22       Judge. I'm sorry. We may not even need that.

23              THE COURT: No, that's all right. I just saw  
24       the list when I came out here, and I was going to  
25       deal with it if we could, while I was here.

## COLLOQUY

1 MS. LEMPESIS: Thank you, Your Honor.

2 THE COURT: Folks, please be seated.

3 (The time is now 3:00 p.m.)

4 THE COURT: Ladies and gentlemen, we're  
5 advised that the jury has reached a verdict in  
6 this case. We will bring in the jury momentarily,  
7 and the jury and the verdict will be announced.

8 I remind all of you in the courtroom, of  
9 course, that none of us knows what the jury is  
10 going to be saying. And I imagine that there will  
11 be relief on one side of the courtroom and  
12 disappointment on the other side. I don't know  
13 how that's going to fall.

14 If you are a spectator here and feel like  
15 that you might not be able to control your  
16 emotions once the verdict is announced, I'll give  
17 you this opportunity to leave the courtroom.  
18 Because if you stay here I'm going to expect you  
19 to abide by the principle of decorum and dignity  
20 that we demand in court. That is, not any outward  
21 display of emotions of any sort when the verdict  
22 is announced.

23 Everybody understand that? Thank you.

24 THE BAILIFF: You ready, Your Honor?

25 THE COURT: Yes, sir.



## VERDICT

1 THE BAILIFF: The jury is entering the  
2 courtroom, Your Honor.

3 THE COURT: Thank you.

4 (The jury enters at 3:00 p.m.)

5 THE COURT: Madam Forelady, we are advised  
6 that the jury has reached a verdict. Is the  
7 verdict unanimous?

8 JUROR: Yes, it is.

9 THE COURT: If you'll hand it to the bailiff,  
10 and he'll hand it up to me. Thank you, ma'am.

11 Madam clerk, you may publish the verdict.

12 THE CLERK: In the State versus  
13 Austin Louis McQuarters, we the jury, unanimously  
14 consent, find the defendant, Austin McQuarters,  
15 guilty of armed robbery, armed robbery. And in  
16 Count II, as indictment 2013GS0701845, guilty of  
17 assault and battery first degree.

18 Ladies and gentlemen, is this your verdict?  
19 Please raise your right hand.

20 THE COURT: Let the record reflect that all  
21 12 have raised their hands.

22 Mr. Bax, does the defense desire polling of  
23 the jury?

24 MR. BAX: Yes, Your Honor.

25 THE COURT: Thank you.

## VERDICT

1           Ladies and gentlemen, you're going to be  
2           polled now individually. As your names are  
3           called, you'll be asked to stand in place. The  
4           clerk will ask you was this your verdict, is it  
5           still your verdict, and you'll give what the  
6           appropriate answer is to those questions. Thank  
7           you.

8           THE CLERK: Juror No. 304, Thompson. Is this  
9           your verdict?

10          JUROR: Yes, it is.

11          THE CLERK: Is this still your verdict?

12          JUROR: Yes, it is.

13          THE CLERK: Juror No. 143, Holmes-Brown, is  
14          this your verdict?

15          JUROR: Yes, it is.

16          THE CLERK: Is this still your verdict?

17          JUROR: Yes.

18          THE CLERK: Juror No. 212, Moody, is this  
19          your verdict?

20          JUROR: It is, yes.

21          THE CLERK: Is this still your verdict?

22          JUROR: Yes.

23          THE CLERK: Juror No. 339, Wilson, is this  
24          your verdict?

25          JUROR: Yes.

## VERDICT

1 THE CLERK: Is this still your verdict?

2 JUROR: Yes.

3 THE CLERK: Juror No. 168, Kemerling, is this  
4 your verdict?

5 JUROR: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR: Yes.

8 THE CLERK: Juror No. 55, Catanzarite, is  
9 this your verdict?

10 JUROR: Yes, ma'am.

11 THE CLERK: Is this still your verdict?

12 JUROR: Yes, ma'am.

13 THE CLERK: Juror No. 78, Cunningham, is this  
14 your verdict?

15 JUROR: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR: Yes.

18 THE CLERK: Juror No. 285, Singleton-Murphy,  
19 is this your verdict?

20 JUROR: Yes.

21 THE CLERK: Is this still your verdict?

22 JUROR: Yes.

23 THE CLERK: Juror No. 247, Reeves, is this  
24 your verdict?

25 JUROR: Yes.

## VERDICT

1 THE CLERK: Is this still your verdict?

2 JUROR: Yes.

3 THE CLERK: Juror No. 134, Hanna, is this  
4 your verdict?

5 JUROR: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR: Yes.

8 THE CLERK: Juror No. 214, Morgan, is this  
9 your verdict?

10 JUROR: Yes.

11 THE CLERK: Is this still your verdict?

12 JUROR: Yes.

13 THE CLERK: Juror No. 121, Gould, is this  
14 your verdict?

15 JUROR: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR: Yes.

18 THE CLERK: Thank you.

19 THE COURT: Thank you. The record will  
20 reflect that all 12 jurors have concurred to the  
21 verdict reached in this regard.

22 Is there anything else before the jury,  
23 Mr. Bax, before the jury is dismissed?

24 MR. BAX: Can we approach?

25 THE COURT: Sure.

## VERDICT

1 (Off-the-record discussion held.)

2 THE COURT: Madam clerk, do you have the  
3 indictment?

4 Ladies and gentlemen -- folks, let's put that  
5 aside for just a second, please, if you will.  
6 I'll give her a chance to do that.

7 I want to thank you now for your service that  
8 you've rendered during the week for us and for the  
9 people of Beaufort County.

10 I never comment upon the verdicts the juries  
11 reach because I'm glad that you have to make those  
12 tough decisions and not me. But I do comment upon  
13 the quality of your service that you've rendered  
14 during the week. That is, your punctuality, your  
15 attention to what's been going on, the fact that  
16 you have deliberated these issues thoroughly and  
17 have asked questions when you had questions before  
18 you reached a verdict in this case, the good humor  
19 that you have borne up under interruptions in the  
20 schedule, and all those things that can set some  
21 people on edge and cause some measure of  
22 disenchantment for the way the system works. If  
23 you've done those things, we haven't seen it. And  
24 certainly nothing in this courtroom has reflected  
25 anything other than the best quality of jury

## CLOSING REMARKS BY THE COURT

1 service that you've given, and we appreciate it.

2 I'm going to be able to let you go now. You  
3 don't have to call back, you don't have to come  
4 back. Your service obviously has been completed  
5 with your service on this trial. You will get a  
6 check in the mail sometime in the next week or so.  
7 It's not going to begin to pay you for the time  
8 that you have spent with us.

9 You will find that you have in large measure  
10 made a contribution of your time. And we  
11 appreciate the contribution that you've made. And  
12 I hope that you will add our sincere gratitude to  
13 the amount of those small checks and hopefully in  
14 some way you'll be compensated for what you've  
15 done this week.

16 I tell folks like you from time to time, who  
17 have served so well like you have, that I hope you  
18 never find yourself caught up in this system. I  
19 hope you never find yourself seated where the  
20 victims are seated on this side of the courtroom,  
21 or where the defendants and defendant's family are  
22 seated on the other side of the courtroom.

23 I hope that you never come to court and find  
24 yourself seated in any of those areas. But I can  
25 tell you that you don't have to volunteer to get