

VOLUME II OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

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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CLOSING REMARKS BY THE COURT

1 caught up in the system, you can get caught up in
2 it whether you want to or not. Circumstances and
3 the actions of other people can drag you into this
4 courtroom against your control, and sometimes
5 that's what happens. And I hope that that never
6 happens to you. But if it ever does, if it ever
7 does happen to you and you find yourself seated
8 here inside this rail, or on the front, where the
9 victims and the defendant's family sit, when the
10 jurors on that Monday morning walk in to try your
11 case and you turn around and look into the faces
12 of those 75 or 80, or 100 people who are coming in
13 to make up the jury for that week, you're going to
14 hope that you're looking into the faces of people
15 just like you.

16 The last thing in the world that you want us
17 to do, to get jurors to try your case, a case that
18 you have an interest in, a case that impacts on
19 you personally, the last thing that you want us to
20 do to get a jury to try your case is to wander
21 around the streets of Beaufort and see if we can't
22 scrape up 12 people who don't have a better thing
23 in the world to do than to come into this
24 courtroom and try your case. You don't want that
25 type of juror. You want people who have better

CLOSING REMARKS BY THE COURT

1 things to do, who would rather be doing other
2 things, but who are willing to set aside those
3 things and come into this court and help us
4 dispose of the cases that we have to dispose of.

5 That's the type of juror that you've given us
6 this week, and we appreciate that. And I'm going
7 to let you go now and get back to your life and
8 away from the sometimes difficult world of the
9 courtroom.

10 I hope by your service as jurors this week,
11 however, that you will take away from you -- or
12 with you -- from your service this week, a better
13 appreciation of the importance of jury service and
14 why we have to involve folks like you as we have
15 this week in the trial of these cases.

16 Thank you, folks. You're free to go.

17 (Jury dismissed at 3:10 p.m.

18 The indictment is signed.)

19 THE COURT: All right. Mr. Bax, I'll be glad
20 to hear any additional motions from the defense.

21 MR. BAX: Your Honor, the defense would make
22 standard motions. I would hearby move to a
23 verdict notwithstanding -- a judgment
24 notwithstanding verdict, and ask for a new trial.
25 I would cite all the objections and concerns that

MOTIONS

1 have been expressed by the defense throughout the
2 course of the case.

3 THE COURT: Thank you, ma'am -- thank you,
4 sir. I'm sorry.

5 I note those motions and any other motions
6 would be appropriate at this time to preserve the
7 record. I simply renew my earlier rulings at the
8 directed verdict stage and the conclusion of the
9 trial stage, and that I made throughout the course
10 of this trial.

11 I think this was quintessentially a jury
12 issue for a jury to decide, was presented to them,
13 and they have reached a verdict. So, the motions
14 for DV and the motions for the new trial are
15 respectfully denied. Thank you.

16 Is the State ready to proceed to sentencing?

17 MS. LEMPESIS: We are, Your Honor. I have
18 the sentencing sheets to pass up.

19 THE COURT: Please.

20 MS. LEMPESIS: Let me make one correction,
21 Your Honor.

22 Your Honor, I apologize. I'm just checking
23 to make sure I've got the assault and battery
24 sentencing sheet correct. I have it -- I'm now
25 checking to confirm whether it's violent or not

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1 violent. I beg the Court's indulgence.

2 THE COURT: Okay. It's not violent.

3 MS. LEMPESIS: Not violent. Okay.

4 Thank you, Your Honor.

5 THE COURT: Okay.

6 All right. Ms. Lempesis, I'll be glad to
7 hear from the State on the issue of sentencing.

8 MS. LEMPESIS: Thank you, Your Honor.

9 Mr. Snodgrass, as you know, is present and he
10 has indicated he'd like to address the Court, if
11 Your Honor will permit.

12 THE COURT: I'll be glad to hear from him,
13 ma'am.

14 MS. LEMPESIS: Thank you, Your Honor.

15 THE COURT: Mr. Snodgrass.

16 MR. SNODGRASS: If it please Your Honor, I
17 appreciate the fact that you'll listen to the
18 statements I can I make now, off the record, yet,
19 somewhat on the record.

20 At the time I was asked to identify
21 Mr. McQuarters, I could not single him out. The
22 type of photo identification I was provided
23 certainly does not follow anything you'd ever see
24 on a TV program. It was a facial photograph, the
25 last part of the individual I was concentrating

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1 on.

2 If I had seen a line up of six individuals
3 and could inspect their physical build and their
4 overall appearance at the time, chances are I
5 could have identified him.

6 That having been said, I still treated the
7 individual with respect based upon our
8 interaction. There was no provocation or cause
9 for the assault. If he'd asked me, by saying hand
10 me that bag, I would have handed the bag and
11 turned around and walked away. Money was not
12 worth the pain and suffering that I went through
13 and am still going through. My doctors tell me I
14 have permanent injuries that will never heal.
15 They involve facial paralysis and pain, headaches,
16 as well as a changing in my vision that required
17 prism glasses.

18 So, although there may be some light at the
19 end of the tunnel for Mr. McQuarters, mine will
20 never cease. Thank you.

21 THE COURT: Thank you, Mr. Snodgrass.

22 MS. LEMPESIS: Your Honor, I'm going to hand
23 up to Your Honor certified copies of
24 Mr. McQuarters' prior convictions.

25 Mr. McQuarters pled guilty on September 16th

SENTENCING

1 of 2013, so just about a month before this
2 incident occurred. So, the charges of unlawful
3 carrying and possession of a stolen firearm, he
4 received a probationary sentence in that case,
5 Your Honor. I just would make that a part of the
6 record.

7 THE COURT: All right. Thank you.

8 MS. LEMPESIS: That is the extent of
9 Mr. McQuarters' prior record. I think it's
10 telling, though, that those offenses occurred just
11 a month before this offense.

12 Your Honor, if you'd like to hear from me now
13 on sentencing, or --

14 THE COURT: Yes, ma'am. This is the time.

15 MS. LEMPESIS: Thank you, Your Honor.

16 Of course, you've heard all the facts. You
17 know the -- you know everything about the case.
18 And now you've heard from Mr. Snodgrass. I'm glad
19 he touched on the fact that he is going to suffer
20 permanently from his injuries. We all know he was
21 injured greatly, and he will suffer for the rest
22 of his life from those injuries.

23 Mr. McQuarters did this while on probation,
24 having just pled guilty a month before.

25 Your Honor, I would ask that you impose the

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1 maximum sentence of 30 years. I think it's
2 fitting in this -- in this instance. Thank you,
3 Your Honor.

4 THE COURT: Thank you, Ms. Lempesis.

5 All right. Mr. Bax, now I'll be glad to hear
6 from you and from Mr. McQuarters, anybody on his
7 behalf.

8 MR. BAX: Thank you, Your Honor. Obviously,
9 you have had the benefit, if it can be called
10 that, of hearing the facts in a lot of detail
11 versus what happens in a plea, as Your Honor is
12 aware. You've been present for all the testimony.

13 I think that it is clear to those of us who
14 are professionals and have been through many
15 trials before, as Your Honor is, this was not the
16 strongest case in the world. There were obviously
17 problems.

18 Obviously, the jury has come back with the
19 verdict that they have, and so we have to live
20 with that.

21 My client, Your Honor, his mother is here, as
22 well as his brother Aaron. His mother has been
23 here throughout the trial. They love their son
24 and their brother, and they have been involved
25 with this case from the first minute. I know that

SENTENCING

1 it's a sensitive point for my client, and I don't
2 want to offend him. But he has recently lost his
3 father -- that family recently lost their father.
4 I don't know what role that plays, but I do know
5 that there was pain involved in the family in
6 losing a father who had been with them as a father
7 for, my understanding, their whole lives.

8 My client still maintains his innocence, and
9 as is his right for someone who has come forward
10 and pled not guilty and undertaken not one but two
11 trials, where he has had to sit and -- and face a
12 jury and wait for them to render their judgment,
13 he's done so in a respectful manner. He has been
14 respectful, cooperative, and helpful to me as his
15 attorney, as well as Mr. Bell.

16 I think that Mr. McQuarters is intelligent,
17 and I think there's good in him. I think there's
18 a lot of good in him. I would hope that
19 Your Honor would temper your sentence based on
20 those factors.

21 I also hope that Your Honor would take into
22 consideration that there are other individuals in
23 this case, and one of which I believe to this day
24 should have been charged and is not going to
25 suffer or come before Your Honor or any other

SENTENCING

1 judge, and is just as complicit, if you were to
2 even believe -- obviously, the jury has come back
3 and said they believe the State's theory of the
4 case. I disagree. But that's the rule of case at
5 this point in time.

6 Even if you agree with that, they're not
7 rendering a judgment as to whether or not they
8 believe Mr. Delaplane was responsible, and I think
9 we've seen that -- that it really couldn't have
10 happened without him. And he's not going to get
11 punished at all. And just under the concept of
12 equal justice under the law across the board, I
13 would hope that Your Honor would take that into
14 consideration, as well.

15 Obviously, we don't know what's going to
16 happen with Ms. Perez. I don't know.

17 THE COURT: I understand.

18 MR. BAX: Your Honor, if you would allow me,
19 I'd like to ask my client whether or not he or his
20 family wishes to speak.

21 THE COURT: I'll be glad to hear from him or
22 from his family.

23 MR. BAX: Thank you.

24 Your Honor, I believe that Ms. McQuarters, as
25 well as my client, wish to speak. I'd asked that

SENTENCING

1 Ms. McQuarters be heard first.

2 THE COURT: All right. Yes, ma'am.

3 MS. McQUARTERS: I'd just like to say, I am
4 very, very sorry for the injuries and what
5 Mr. Snodgrass had to go through. I'd also like to
6 say that I know in my heart Austin is not the
7 person that did this. And I -- I just hope that
8 you understand that he was not the person that did
9 this. Thank you.

10 THE COURT: Thank you, Ms. McQuarters.

11 MR. BAX: Aaron, would you like to say
12 anything?

13 MR. McQUARTERS: Yes.

14 MR. BAX: Your Honor, this is my client's, I
15 believe, older brother, Aaron.

16 THE COURT: Mr. McQuarters.

17 MR. McQUARTERS: I just -- I just want to
18 know -- I just want to say that I feel like it's
19 an ongoing cycle, the right, the wrong, the
20 understanding, and the knowledge to know what's
21 really going on.

22 My brother is on trial, the second trial,
23 going through the same thing. I don't know, I
24 just -- I just feel like it's -- it's not playing
25 a fair role of what's going on out here everyday.

SENTENCING

1 THE COURT: Thank you, sir.

2 MR. BAX: Thank you, Your Honor.

3 At this time, I'd ask my client if he wishes
4 to address the Court.

5 THE COURT: Mr. McQuarters.

6 THE DEFENDANT: I would like to say to
7 Mr. Snodgrass and his family, truly I'm sorry for
8 what happened to you. I'm not the man that did
9 this to you. And all I'll say to Your Honor is,
10 Please let me go home today. That's all I can ask
11 for.

12 MR. BAX: Thank you, Your Honor. That's all
13 from the defense.

14 THE COURT: Thank you.

15 I can understand the questions that might
16 arise in the minds of the McQuarters family, and
17 the defense counsel as to why Mr. Delaplane has
18 not been required in some way to face in whatever
19 involvement his was in this -- in this case. I
20 assume that there's good reason for that action,
21 or that it may well yet be taken. I don't know
22 that, and I don't have an answer to that.

23 But that doesn't impact the actions that the
24 jury has found that Mr. McQuarters himself
25 committed. I can appreciate, Ms. McQuarters, your

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1 belief that your son would not do something like
2 this. And, Aaron, I appreciate your concern that
3 the things aren't quite right.

4 However, this trial was conducted in a fair
5 manner, before an impartial jury. And the jury
6 was asked to focus, quite frankly, on what
7 Mr. McQuarters did or did not do. And they have
8 done that. And they have rendered a unanimous
9 verdict. They're all in agreement as to his guilt
10 on these particular charges.

11 I accept that verdict, I have no reason not
12 to. I have no reason to question the jury's
13 verdict in that regard. And so I deal with what
14 is before me, the conviction for armed robbery,
15 and the conviction for assault and battery in the
16 first degree.

17 I can take into account, and I do,
18 Mr. McQuarters' relative age, 20. The prior
19 record is not all that extensive, as prior records
20 go. The timeliness of it, unfortunately, as
21 Ms. Lempesis has pointed out is problematic. But
22 a time before this crime was committed, a guilty
23 plea to another crime involving possession of a
24 weapon. Those are the sorts of things that the
25 trial judges have to take into account when they

SENTENCING

1 are deciding what's an appropriate sentence under
2 the circumstances.

3 It is Mr. McQuarters' age, quite frankly, and
4 limited record that keeps me from passing a
5 minimum sentence -- I mean, maximum sentence.
6 However, the sentence has to be a substantial
7 sentence, in any event.

8 I am cognizant of the fact that this is an 85
9 percent sentence on the armed robbery charge. 85
10 percent of it has to be served. That it is a most
11 serious offense in the eyes of the law, of course,
12 a violent offense. So, any time that is imposed
13 in that regard is significant, and he's going to
14 have to spend a great deal of it in jail.

15 I'm cognizant of the fact that Mr. Snodgrass,
16 in certain respects, has received a life sentence,
17 at least insofar as injuries are concerned in many
18 respects, and I -- I do not disregard that or take
19 it into account lightly. It is a combination of
20 all of those things that every trial judge is
21 required to take into account and try to balance
22 somehow or another the background of a -- of
23 Mr. Snodgrass -- excuse me, the injuries of
24 Mr. Snodgrass and the injuries that were inflicted
25 upon him.

SENTENCING

1 It is the brutality of those things and the
2 senseless nature of those things which are
3 confounding. That -- to be beaten in that fashion
4 for no good reason, and as he said he would
5 have -- he would have handed the money off without
6 having to undergo that had he been given that
7 chance, but he was not. I take that into account.

8 I also take the -- the other factors which
9 I've outlined here in this courtroom.

10 Mr. McQuarters, on the charge of assault and
11 battery in the first degree, you are to be
12 committed to the State Department of Corrections
13 for a period of ten years. On the charge of armed
14 robbery, you will be committed to the Department
15 of Corrections for a period of 25 years. These
16 sentences will run concurrent to each other. You
17 will get credit for any time you served.

18 We'll be in recess for about ten minutes.

19 Thank you.

20 (Trial concluded. Recess
21 taken.)

22

23

24

25

SENTENCING

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8 DATED this 10th day of February, 2016.

9

10

/s/ Mona L. Manley

11

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COLLOQUY

1 PROCEEDINGS

2 (The following proceedings were held on July 21, 2016
3 following a morning recess and before the lunch recess was
4 taken, which would have taken place between volume 3 and
5 volume 4)

6 THE COURT: Madam reporter, before we get the
7 jury in, let's memorialize a side bar conference
8 that we had during direct examination of
9 Mr. Snodgrass. At the point that the State
10 offered the video diagram of whatever it was, of
11 the parking lot and the various -- I think it is a
12 map of it. At the time there was an objection
13 made to that at sidebar, by Mr. Bax, that he had
14 not received notice of that. And it was a map --
15 I think that it was in the general public domain.
16 I overruled the objection and allowed it to go
17 forward over that objection.

18 Rule 5(c) requires that the Defendant be permitted
19 by the prosecution to inspect and copy books, papers,
20 documents, photographs, tangible objects, buildings or
21 places or copies of portions thereof that are in the
22 possession and custody or control of prosecution, and
23 material to the preparation of the defense, et cetera,
24 or intended by the prosecution for use at trial.

25 This was a map which was in the public domain, not

COLLOQUY

1 in the exclusive possession, custody or control of the
2 prosecution. And for that reason I overruled the
3 objection. Mr. Bax, I'll be glad for you to
4 memorialize that any further if you would like to on
5 the record.

6 MR. BAX: I would. And I appreciate Your
7 Honor's indulgence. I think that there needs to
8 be some clarification. And, Your Honor, I
9 apologize for not being clear earlier, because I
10 wasn't really clear on it. I believe that the
11 video itself -- it was not a map, it was a video
12 of the parking lot. And I believe that it
13 actually isn't in the public arena, it was
14 actually a video taken specifically for the
15 preparation of this trial. If I'm incorrect I can
16 certainly, you know, ask them to correct me.

17 But it appears that I think I heard Ms. Lempesis
18 say that it was taken by a drone, literally a video
19 camera attached to a quad helicopter device or
20 something like this that actually films this. So, I
21 want to make sure that I'm clear on the record with my
22 objection, and I hope that Your Honor appreciates that
23 clarification. You don't want to rule on the issue
24 incorrectly.

25 THE COURT: I do, right.

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1 MR. BAX: But, Your Honor, my grounds for
2 that, obviously as we talked about, it was
3 presented for demonstrative purposes only. I
4 certainly understand that. However, Your Honor, I
5 would like to go on the record and say that it's
6 still prejudicial to the Defendant's right to a
7 fair trial to have something that was specifically
8 prepared by the prosecution to be presented before
9 a jury not disclosed to them in advance of the
10 trial in any way.

11 Even though it's demonstrative, it is a video.
12 It's been shown to the jury. And that equates in many
13 ways to testimony that is presented to a jury or -- and
14 it may not be something that they can ask to come back,
15 but they have just watched a video and that's entered
16 into their perception of this case.

17 THE COURT: I thought that it was something
18 on Google Earth, quite frankly. I'm not sure that
19 it makes a whole lot of difference. What is the
20 origin of it, Ms. Lempesis, so I can at least have
21 that.

22 MS. LEMPESIS: Investigator Seifert knows
23 someone with a drone and that person took a drone
24 video of the parking lot. It showed the theater,
25 the parking lot and an aerial view. I tried to go

COLLOQUY

1 on Google Earth and intended to use a Google Earth
2 map but the tree cover is such that you can't see
3 it. It's very similar to when we have maps or
4 diagrams prepared that we use to routinely go to
5 the law enforcement.

6 The Beaufort County Sheriff's Office had a guy in
7 the MIS department who would prepare big board maps
8 showing the area and we would routinely go to the
9 Sheriff's Office to get those maps prepared for trial.
10 And those are always admitted, they are just presented
11 as demonstrative aids, again, in my opinion of the very
12 same nature. And, again, it was just a demonstrative
13 aid.

14 THE COURT: Again, I think -- I don't
15 disagree with that. I thought that it, as I said,
16 was the Google Earth thing. The fact that it was
17 a drone and it was prepared for this, of course is
18 different from what I assumed, but that doesn't
19 change my view of the fact that it -- as the head
20 ball coach says, it is what it is, it shows what
21 is there. And it -- it is not like it can be
22 changed or modified to benefit one person or
23 another as long as it was -- fairly depicted the
24 scene where this occurred.

25 Juries have traditionally been able to -- you

COLLOQUY

1 know, entitled to see the scene of the crime, even in
2 the most gory of pictures in the past, evidence has
3 gotten before juries on that pretense that probably
4 would not have otherwise come in except for the fact
5 that it was the scene of a crime.

6 In this particular case, that is in fact what it
7 was. And the jury had -- had Ms. Lempesis said, Judge,
8 we would like to put the scene in evidence, we would
9 like the folks to ride over to Hilton Head, they would
10 be entitled to see it frankly. But thank goodness the
11 best use of time was to do what was done here. I see
12 no prejudice, quite frankly. There was no surprise.
13 Nothing was put there that was not there at the time.
14 Nothing was changed, as I understand it, that was
15 different from what it was at the time. So the jury
16 saw what was there at the time and they are entitled to
17 see it.

18 I note the objection, but renew my ruling.

19 MR. BAX: All right. Your Honor, for
20 housekeeping purposes, I just wanted to check with
21 Your Honor, my understanding from prosecution is
22 that the next witness is going to be Ms. Perez. I
23 anticipate that she would last close to an hour,
24 maybe a little over. I would just ask for
25 planning purposes whether or not Your Honor would

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1 be inclined to go to lunch break after that
2 testimony. I think that there's some things that
3 I need to put on the record and I just want to
4 make sure that I do them before witnesses come up.

5 THE COURT: Okay.

6 MR. BAX: The only other thing that I wanted
7 to put on the record, Your Honor, is that in
8 anticipation of today's trial and everything the
9 prosecution has shown me the rap sheets for
10 Ms. Perez and Mr. Delaplane, Ms. Perez, the only
11 thing that we have looked at together was
12 something from Florida. It does indicate on the
13 sheet that it is juvenile in nature. It doesn't
14 show anything where I can see that says a
15 conviction. And according to Ms. Lempesis, the
16 individual, Ms. Perez, said that it was dismissed.
17 I just want to make sure that I covered that on
18 the record.

19 I don't see under our rules any argument to say
20 that I can get into that. And I just wanted to make
21 sure that it's on the record and make sure that I'm not
22 missing anything from that standpoint because I would
23 certainly want to get into anything that I'm allowed
24 to.

25 THE COURT: Certainly. Mr. Lempesis, you are

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1 not aware I take it of any record that she has
2 other than a juvenile record from Florida?

3 MS. LEMPESIS: No, Your Honor, I'm not. The
4 juvenile charge was possession of a weapon on
5 school property. And what Ms. Perez informed me
6 is that it was a broken BB gun that she had taken
7 to school in Florida where she was living, and
8 that that charge was ultimately dismissed against
9 her.

10 THE COURT: All right, thank you. And that
11 is right, as far as the timing and things are
12 concerned, if Ms. Perez's testimony lasts anything
13 close to an hour we will stop after her testimony
14 and take a break for lunch.

15 MS. LEMPESIS: Thank you, Your Honor.

16 THE COURT: All right. Bring in the jury,
17 please, sir. You can bring Ms. Perez on in if you
18 would like to.

19 MS. LEMPESIS: Thank you, Your Honor.

20 (The jury enters the courtroom at 11:54 a.m.)

21 THE BAILIFF: The jury is entering the
22 courtroom, Your Honor.

23 MS. LEMPESIS: The State calls Jacklyn Perez.

24 THE COURT: Please come forward and be sworn.

25 Thereupon,

TESTIMONY OF JACKLYN PEREZ

1 JACKLYN PEREZ

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows.

4 THE CLERK: You may be seated. Please state
5 and spell your name for the Court's record.

6 THE WITNESS: Jacklyn Perez, J-A-C-K-L-Y-N
7 P-E-R-E-Z.

8 DIRECT EXAMINATION

9 BY MS. LEMPESIS:

10 Q Ms. Perez, how old are you?

11 A Nineteen -- I am 20, sorry.

12 Q And where are you from?

13 A Originally New York.

14 Q New York?

15 A Yes, ma'am.

16 Q How long have you lived in Beaufort County?

17 A About four years now.

18 Q About four years, is that what you said?

19 A Yes, ma'am.

20 Q Do you remember when you first moved to
21 Bluffton?

22 A Yes, ma'am, when I was in 11th grade.

23 Q Where did you go to high school?

24 A Bluffton High.

25 Q Did you graduate from Bluffton High?

TESTIMONY OF JACKLYN PEREZ

1 A Yes, ma'am.

2 Q What do you do now?

3 A I work at Parker's, and I am a chef at the
4 Black Marlin on the south end of Hilton Head.

5 Q Who do you live with here or in Bluffton?

6 A My mother and my little sister.

7 Q Do you do anything besides work at Parker's
8 or Black Marlin, you said?

9 A Yes, ma'am. No, ma'am. I don't have time.

10 THE COURT: Ms. Perez, pull that microphone a
11 little closer to you, please, ma'am.

12 MS. LEMPESIS: Make sure that you speak loud
13 enough so that the court reporter can hear you.

14 THE WITNESS: Yes, ma'am.

15 Q Where did you used to work, Jacklyn?

16 A McDonald's.

17 Q Were you working at McDonald's in 2013?

18 A Yes, ma'am.

19 Q Do you know Austin McQuarters?

20 A Yes, ma'am.

21 Q How do you know Austin McQuarters?

22 A We went to school together.

23 Q Went to Bluffton High School together?

24 A Yes, ma'am.

25 Q When did you meet him?

TESTIMONY OF JACKLYN PEREZ

1 A Beginning of the 11th grade.

2 Q So when you first moved here?

3 A Yes, ma'am.

4 Q How well would you say that you know Austin
5 McQuarters?

6 A Pretty well.

7 Q In October of 2013, how would you describe
8 your friendship?

9 A We were good friends. We hung out a lot. We
10 were friends.

11 Q Had he ever -- you said y'all had hung out
12 before?

13 A Uh-huh. (Indicating affirmatively.)

14 Q Okay. Do you have a nickname, Jacklyn?

15 A Brooklyn.

16 Q Brooklyn is your nickname?

17 A Yes, ma'am.

18 Q You said that you worked at McDonald's. I
19 want to go back to the night of October 20th, 2013;
20 were you working that night?

21 A Yes, ma'am.

22 Q Where were you working?

23 A McDonald's.

24 Q And what time did you get off of work?

25 A Nine o'clock.

TESTIMONY OF JACKLYN PEREZ

1 Q And were you done for the night then at that
2 point?

3 A No, ma'am, I had to go back at midnight to do
4 the truck.

5 Q To do the truck?

6 A Yes, ma'am.

7 Q What does that entail?

8 A Basically, we get all of the like the chicken
9 nuggets and everything that we make, we get the truck
10 and we have to load it into the freezers and coolers
11 ourselves.

12 Q So you got off at 9 and you had to go back at
13 12?

14 A Yes, ma'am.

15 Q Did you see Austin McQuarters that night?

16 A Yes, ma'am, he came to my job.

17 Q Where is that McDonald's located?

18 A On Buckwalter Parkway. I am not really sure
19 of the address. It is on Buckwalter right by Station
20 300 and Publix.

21 Q Is that in Bluffton?

22 A Yes, ma'am.

23 Q Where did you first see Austin that night?

24 A At McDonald's when I got off. When I got off
25 I walked outside and him and another friend were

TESTIMONY OF JACKLYN PEREZ

1 walking up.

2 Q Okay. Did you speak to him?

3 A Yes, ma'am, said hi.

4 Q Okay. And did he speak to you?

5 A Yes, ma'am. I was standing out front with
6 another -- a friend's mom and her brother and we all
7 got into a conversation.

8 Q Okay. Did Austin ask you for anything that
9 night?

10 A Yes, ma'am. Towards the end of the
11 conversation he asked me if I would give him a ride to
12 Hilton Head, to the movie theater.

13 Q To Hilton Head to the movie theater?

14 A Yes, ma'am.

15 Q Which movie theater?

16 A Cinema 10.

17 Q Okay. Where is that, do you know?

18 A I know it's by Matthews Drive. I'm not sure
19 what the address is.

20 Q Okay. And so about what time was it then
21 that you met with Austin?

22 A A little after 9, he was at my job.

23 Q Okay. Was it -- had Austin ever asked you
24 for a ride before?

25 A I had given him rides before. I give all of

TESTIMONY OF JACKLYN PEREZ

1 my friends rides.

2 Q Did he tell you -- when he asked you for a
3 ride to the movie theater, did he tell you for what
4 purpose?

5 A I was under the impression it was to meet a
6 girl.

7 Q Okay. And did he offer you anything to give
8 you a ride -- or for you to give him a ride?

9 A No, I asked him. I was like, Do you have gas
10 money? And he was like, Yeah. I said, Oh, okay.

11 Q Okay. I'm going to show you Jackie --
12 permission to approach the witness, Your Honor?

13 THE COURT: Yes, ma'am.

14 BY MS. LEMPESIS:

15 Q Jackie, I'm going to show you what I have
16 marked as State's Exhibit 1. Do you recognize that?

17 A Yes, ma'am.

18 Q How are you able to recognize that?

19 A That is my car.

20 Q Okay. Is it a fair and accurate depiction of
21 your car?

22 A Yes, ma'am, in my driveway.

23 Q In your driveway?

24 A Yes, ma'am.

25 Q And was that around the time of this

TESTIMONY OF JACKLYN PEREZ

1 incident, October 2013?

2 A Yes, ma'am.

3 Q Okay.

4 MS. LEMPESIS: Your Honor, at this time I
5 move to admit State's Exhibit 1 into evidence.

6 MR. BAX: Without objection.

7 THE COURT: Without objection, State's 1 is
8 in evidence.

9 MS. LEMPESIS: Thank you, Your Honor. And
10 permission to publish to the jury?

11 THE COURT: Yes, ma'am. Sure.

12 *(Whereupon, State's Exhibit No(s). 1 marked for*
13 *identification and received in evidence.)*

14 BY MS. LEMPESIS:

15 Q Jacklyn, that is your car that you drove in
16 October 2013?

17 A Yes, ma'am.

18 Q What kind of car was it?

19 A A '91 Toyota Celica coupe.

20 Q Okay. We can see, but how many doors?

21 A Two.

22 Q All right. Thank you, Jackie.

23 A Yes, ma'am.

24 Q Okay. So, Austin McQuarters asked you for a
25 ride to Hilton Head?

TESTIMONY OF JACKLYN PEREZ

1 A Yes, ma'am.

2 Q And you said yes?

3 A Yes, ma'am.

4 Q All right. So, tell me what happened next.

5 A We got in my car. We were on the way to
6 Hilton Head. And nothing was different. We were just
7 talking, listening to music the whole way.

8 Q What was the attitude in the car? What was
9 Mr. McQuarters like?

10 A Good. We were both happy. Nothing seemed
11 wrong.

12 Q Okay. So, you drove to Hilton Head?

13 A Yes, ma'am.

14 Q And you went to the movie theater off of
15 Matthews -- what road did you say?

16 A It is right by Matthews Drive. I am not sure
17 it's off Matthews Drive, but it's right by there.

18 Q Okay. What did you do when you got to the
19 movie theater?

20 A I turned in, parked my car, and Austin got
21 out and went to -- he's like, I'm going to go to talk
22 to Colton. And I was like, Okay.

23 Q Tell me how you parked your car; where did
24 you park at?

25 A A little farther away from the door and I

TESTIMONY OF JACKLYN PEREZ

1 backed in.

2 Q Okay. And you said that Austin got out and
3 went and talked to Colton?

4 A Yes, ma'am.

5 Q Who is Colton?

6 A Another friend from school that we knew.

7 Q That you knew?

8 A He was an underclassman, yes, ma'am.

9 Q And how long had you known Colton?

10 A A brief period. Not very long.

11 Q Okay. What happened after Austin went to
12 talk to Colton?

13 A After he came back I went to talk to Colton
14 because a couple of days prior I had given him a ride
15 so I went to go talk to him about giving me gas money
16 that he told me that he would give me.

17 Q Okay. And so you asked him about gas money
18 that he owed you?

19 A Yes, ma'am.

20 Q And what did he tell you?

21 A That he was at work and he didn't have any.
22 He didn't get paid yet. So we just had a conversation.

23 Q Okay. So, what happened after that?

24 A I walked back to my car and Austin was
25 sitting in my driver's seat.

TESTIMONY OF JACKLYN PEREZ

1 Q Okay. Did he stay in your driver's seat or
2 get out and you got in your driver's seat?

3 A He stayed there for a little while. And we
4 switched seats, I got in the driver's seat and he got,
5 not in the car, he sat on the front fender on the
6 driver's side, like the front part, leaning on it.

7 Q Outside of your car?

8 A Yes, ma'am.

9 Q Okay. Then did you just stay there in the
10 parking lot?

11 A We got to talking and a couple of minutes
12 later Colton, I guess he got off of work and he came
13 out with his girlfriend and his sister.

14 Q All right. Did you speak to Colton again?

15 A No, ma'am, I spoke with his sister and his
16 girlfriend while him and Austin went and had a
17 conversation.

18 Q Okay. So, he, Colton, and Austin went and
19 had a conversation; where were they standing when they
20 had the conversation?

21 A Just Austin and Colton, they walked off. And
22 I was just there talking to Colton's sister and his
23 girlfriend.

24 Q Okay. And what happened after you saw Colton
25 and Austin go and have the conversation?

TESTIMONY OF JACKLYN PEREZ

1 A Me and the girls spoke for a little bit. And
2 then Austin and Colton came back and then the three of
3 them left.

4 Q The three of them, so who left?

5 A Colton and his girlfriend and his sister
6 left.

7 Q Okay. And then you said that Austin was
8 standing on the outside of your car?

9 A Like on the front part.

10 Q The front part of your car so --

11 A Not the front, front but you know where the
12 driver door is and then there is a fender part right
13 there. By my wheel.

14 Q Okay. And you said that he was leaning
15 against it?

16 A Yes, ma'am.

17 Q So, what happens now, Austin is standing
18 there and you are in your car in your driver's seat;
19 what happens now?

20 A We were just talking and then I realized what
21 time it was, I am going to have to get back to work
22 soon, what is going on.

23 Q What -- do you remember about what time that
24 was?

25 A Um.

TESTIMONY OF JACKLYN PEREZ

1 Q It is okay if you don't.

2 A I really don't, to be honest, no, ma'am.

3 Q But you had said before that you had to be
4 back to work by 12?

5 A Yes, ma'am, and my phone -- I know by this
6 time my phone was dead because I was playing with it
7 before and I know that my phone was completely dead.
8 And I said, I have got to go, what is going on, I have
9 got to go to work.

10 Q Okay. So did you say anything to Austin?

11 A I did, I asked him what was going on, if he
12 knew where she was and what was happening. And he was
13 like, I don't know, I'm going to see what time the
14 movies let out.

15 Q And you said, I don't know where she was?

16 MR. BAX: Objection, Your Honor, she has to
17 let the witness finish.

18 THE COURT: I think that she had finished. I
19 think that you were trying to repeat what she
20 said. Is that right?

21 MS. LEMPESIS: That is correct, Your Honor.

22 THE COURT: All right. I'll let you do that
23 and let you repeat your answer. Go ahead.

24 MS. LEMPESIS: Thank you, Your Honor.

25 Q Not to interrupt, but you said she and I just

TESTIMONY OF JACKLYN PEREZ

1 wanted to clarify.

2 A I was under the impression he was meeting a
3 girl.

4 Q And that is what you were asking him?

5 A Yes, ma'am, where was she, what was going on.
6 And then he was like, I am going to go see what time
7 the movies let out. And I was like, Okay, yeah, you do
8 that.

9 And then a man was coming out. He said, I'm
10 going to ask him for the time and see if he knows what time
11 the movies let out. I said, Okay, yeah, go ahead. So he
12 walks up to him and I hear him ask, Do you know what time
13 the movie gets out. And then he said, What movie? There is
14 a couple. And he looks down at his watch, and then as he is
15 looking I just see Austin swing.

16 Q Swing?

17 A Like swing at him.

18 Q Okay.

19 A And I even say, What are you doing? And then
20 nobody answers me and he just keeps going.

21 Q He just keeps going doing what?

22 A He hit the man a few times.

23 Q Okay. Did -- about how far from where you
24 are sitting in your driver's seat and where the man is
25 standing and Austin, about how -- what is that

TESTIMONY OF JACKLYN PEREZ

1 distance, approximately?

2 A About from me to you.

3 Q About me to you?

4 A Yes, ma'am.

5 Q Okay. Did you recognize the man that Austin
6 was talking to?

7 A No, ma'am.

8 Q Did you notice that that man had anything in
9 his hands that he was holding?

10 A He walked out with a white folder and a bag.

11 Q Okay. So you said that you saw Austin hit
12 the man?

13 A Yes, ma'am.

14 Q Do you know how many times?

15 A A few. I didn't count.

16 Q Okay. What did you do as you see this
17 happen?

18 A I'm kind of shocked. And then I kind of just
19 get in my car and start like trying to like put it
20 together kind of. And as I'm trying to put together
21 what just happened Austin runs over and throws stuff in
22 my car and was just like, Start the car. And he gets
23 in.

24 Q Okay. Did you see what -- where the man was
25 that he had hit when he gets in your car, when Austin

TESTIMONY OF JACKLYN PEREZ

1 was getting in your car?

2 A On the ground.

3 Q Did you stop to help the man at all?

4 A No, ma'am.

5 Q What did do you?

6 A I got in my car and left.

7 Q Okay. And you were driving?

8 A Yes, I was driving, yeah, I was already in my
9 car.

10 Q Okay. Once you are in your car and now you
11 are driving, where did you exit out of the parking lot?

12 A By the gas station.

13 Q Okay. Where did you drive to?

14 A Out to Bluffton.

15 Q Did Austin tell you where to go?

16 A I just drove back to Bluffton -- I was
17 driving back to Bluffton and when we got halfway there,
18 he was like, Just drop me off at Woodridge.

19 Q Okay. I want to go back, Jackie. We talked
20 about Austin. Can you -- you said that you know
21 Austin, right?

22 A Yes, ma'am.

23 Q Do you see Austin in the courtroom today?

24 A Yes, ma'am.

25 Q Can you point him out to the jury?

TESTIMONY OF JACKLYN PEREZ

1 A (Witness pointing.)

2 Q Can you describe what he is wearing just for
3 the record?

4 A White collared shirt, glasses.

5 Q Okay.

6 MS. LEMPESIS: May the record reflect that
7 she's identified the Defendant?

8 THE COURT: Yes, ma'am.

9 MS. LEMPESIS: Thank you.

10 BY MS. LEMPESIS:

11 Q Jackie, when you are driving off of Hilton
12 Head, did Austin say anything to you in the car?

13 A He started out, Jackie, you know, we have
14 known each other a while, whatever, whatever and then,
15 you know, I know your mom, I know your sister.

16 MR. BAX: Objection, Your Honor.

17 THE COURT: Overrule the objection.

18 BY MS. LEMPESIS:

19 Q That he knows your mom and your sister?

20 A Yes, ma'am.

21 Q What did you -- did he say anything else?

22 A Not really, no.

23 Q Did he do anything in that car ride back to
24 Bluffton?

25 A Threw stuff out my window.

TESTIMONY OF JACKLYN PEREZ

1 Q He threw stuff out of your window?

2 A Yes, ma'am.

3 Q Where were you when he threw the things out
4 of your window?

5 A At the base of the first bridge to get off of
6 the island.

7 Q Off of Hilton Head?

8 A Yes, ma'am.

9 Q Into Bluffton?

10 A Yes, ma'am.

11 Q What did he throw out of the window?

12 A The envelope and the bag.

13 Q The envelope and the bag?

14 A Yes, ma'am.

15 Q What happened once you got to Bluffton; where
16 did you drop him?

17 A Woodbridge Apartments.

18 Q Say again?

19 A Woodbridge Apartments.

20 Q And where is that?

21 A On Buckwalter in Bluffton.

22 Q Do you know why you dropped him there?

23 A No, ma'am.

24 Q What did you do after you dropped him off?

25 A I dropped him off and went back to work.

TESTIMONY OF JACKLYN PEREZ

1 Q Did you tell anyone when you got back to work
2 about this?

3 A No, ma'am.

4 Q Did you tell anyone at any point in the next
5 several days about this?

6 A No, ma'am.

7 Q Who did you -- or at any point did you speak
8 with an investigator about this?

9 A Yes, ma'am.

10 Q And do you remember that investigator's name
11 that you spoke to?

12 A Officer Seifert.

13 Q Was that the first time that you talked to
14 somebody about it?

15 A Yes, ma'am.

16 Q So, before that you had not told anybody
17 about what happened?

18 A No, ma'am.

19 Q When you were -- you were interviewed by
20 Investigator Seifert?

21 A Yes, ma'am.

22 Q Where were you when you were interviewed?

23 A At the Sheriff's Station in Hilton Head.

24 Q And during that interview, Jackie, did
25 Investigator Seifert show you a photo lineup?

TESTIMONY OF JACKLYN PEREZ

1 A Yes, ma'am.

2 Q Did you pick anyone out of that photo lineup?

3 A Yes, ma'am.

4 Q And who did you pick out?

5 A Austin McQuarters.

6 Q And who did -- what did you identify him as?

7 A I was asked if I knew him.

8 Q Okay.

9 A And I said, Yes.

10 Q Okay. And you picked him out?

11 A Yes, ma'am.

12 Q Did you tell Investigator Seifert during that
13 interview -- did you originally, when you started
14 talking to him, tell him exactly what happened?

15 A No, ma'am, not in the beginning.

16 Q Why didn't you tell him the truth?

17 A I was afraid.

18 Q What were you afraid of?

19 A Not only getting in trouble, but I didn't
20 know if they had Austin or what was going on.

21 Q Did you in that interview end up telling
22 Mr. Seifert what happened?

23 A Yes, ma'am.

24 Q Did you tell him basically what you told us
25 here today?

TESTIMONY OF JACKLYN PEREZ

1 A Yes, ma'am.

2 Q Jackie, were you charged in relation to the
3 incident?

4 A Yes, ma'am.

5 Q Is that charge still pending?

6 A Yes, ma'am.

7 Q As far as that charge, have you ever been
8 made any promises by my office as relating to that
9 charge?

10 A No, ma'am.

11 MS. LEMPESIS: Beg the Court's indulgence?

12 THE COURT: Yes, ma'am.

13 (Pause.)

14 MS. LEMPESIS: Jacklyn, I don't have any
15 further questions for you at this time. Please
16 answer any questions that Mr. Bax has.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Mr. Bax, you can cross examine.

19 MR. BAX: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. BAX:

22 Q Ms. Perez, you have testified under oath in a
23 prior proceeding on this case, correct?

24 A Yes, sir.

25 Q Okay. And you talked about what happened

TESTIMONY OF JACKLYN PEREZ

1 during that prior proceeding under oath, correct?

2 A Yes, sir.

3 Q Okay. Ms. Perez, you said that your nickname
4 is Brooklyn, correct?

5 A Yes, sir.

6 Q And you have said before that the reason that
7 they call you Brooklyn is because of the street slang
8 that you use when you talk; is that right?

9 A Yes, sir and where I'm from.

10 Q And where you are from, which is New York,
11 right?

12 A Yes, sir.

13 Q Are you from Brooklyn in New York?

14 A I'm from Long Island.

15 Q Long Island, okay. I want to go over a
16 couple of things with you. You have testified in front
17 of the jury that you knew Colton Delaplane as well,
18 correct?

19 A Yes, sir.

20 Q Okay. And you knew him from high school?

21 A Yes, sir.

22 Q He was in a grade below you, I believe?

23 A Underclassman, yes, sir.

24 Q And you have testified that you went to ask
25 him about gas money, correct?

TESTIMONY OF JACKLYN PEREZ

1 A Yes, sir.

2 Q That is what you testified to?

3 A Yes, sir.

4 Q But Ms. Perez, isn't it correct that when you
5 talked to Investigator Seifert you told him that you
6 went and asked Colton, quote, Where is the bread?

7 A Yes, sir.

8 Q That is correct?

9 A Yes, sir.

10 Q So, that is what you actually said to Colton?

11 A Yes, sir.

12 Q And Colton was -- so, that is what Colton
13 heard is, Where is the bread?

14 A Yes, sir.

15 Q What did you explain -- didn't you explain to
16 Investigator Seifert that bread is the slang for money;
17 isn't that correct?

18 A Yes, sir.

19 Q So what you actually asked Colton based on
20 your slang is, Where is the money; correct?

21 A Yes.

22 Q Now, you have also testified that after this
23 happened you went home and went on about your life and
24 didn't tell anybody about this until Investigator
25 Seifert talked to you, correct?

TESTIMONY OF JACKLYN PEREZ

1 A I went to work, but yes.

2 Q Well, Investigator Seifert didn't talk to you
3 at work, did he?

4 A No.

5 Q He didn't talk to you the next day, did he?

6 A No.

7 Q It was, in fact, a couple of weeks after this
8 incident that he came and talked to you; correct?

9 A Yes, sir.

10 Q So you had a couple of weeks to come up with
11 what you were going to say to Investigator Seifert or
12 whatever cop came around, correct?

13 A If you want to take it that way, I mean, yes.

14 Q Well, I mean, you are here to testify. You
15 tell us if that's the case. Yes or no?

16 A I didn't fabricate a story but yes, I guess I
17 had time to.

18 Q So your testimony here today is that when you
19 said to Colton, Where is the bread, that you were
20 asking him about gas money; is that right?

21 A Yes, sir.

22 Q Rather than asking him, Where is the money
23 that we are going to rob; correct?

24 A Yes.

25 Q And he, Colton, was supposed to know the

TESTIMONY OF JACKLYN PEREZ

1 difference between those two questions; correct?

2 A Yes.

3 Q Now, Ms. Perez, have you ever worked at
4 Northridge Cinemas?

5 A No.

6 Q Now, I want to also talk to you about what
7 you testified to that evening. You testified that
8 Mr. McQuarters and you were friends and in fact, not
9 only friends, you testified here today that you were
10 good friends; correct?

11 A Yes.

12 Q Okay. And that you hung out with him outside
13 of school setting plenty of times before, correct?

14 A Yes.

15 Q And that you had given him rides in the past,
16 correct?

17 A Yes.

18 Q Okay. You also testified that you -- your
19 understanding was, and I wrote that down because you
20 said it several times, My understanding was
21 Mr. McQuarters was there to meet a girl?

22 A Yes.

23 Q But you have never testified that he told you
24 he was there to meet a girl. Did he ever tell you
25 specifically that he was there to meet a girl?

TESTIMONY OF JACKLYN PEREZ

1 A No.

2 Q Where did you get this understanding that you
3 were there because he wanted to meet a girl?

4 A At 18, I don't know what 18 or 19 guy is
5 going to go to the movies at 9:30 to meet another boy
6 but . . .

7 Q But you have testified that Mr. McQuarters
8 knows Colton Delaplane, right?

9 A Yes, sir.

10 Q And you have testified that he's friends with
11 you, correct?

12 A Yes, sir.

13 Q And you have testified that he went to talk
14 to Colton, correct?

15 A Yes, sir.

16 Q And that you talked to Colton?

17 A Yes, sir.

18 Q Okay. So you just come up with this idea
19 that he was there to meet a girl?

20 A I didn't know that Colton was working.

21 Q But even after you knew that Colton was
22 working, your testimony has been that you still thought
23 that there was a girl involved even though there's been
24 no mention of anybody saying that to you, correct?

25 A Yes.

TESTIMONY OF JACKLYN PEREZ

1 Q And this is something that you have talked
2 about after you had two weeks before you got in trouble
3 for this, correct?

4 A I don't understand your question.

5 Q So you didn't talk to anybody about this
6 until Officer Seifert came and took you to the police
7 station and talked to you in an interview room two
8 weeks later?

9 A Yes, sir.

10 Q Now, you have also testified that you knew
11 what time it was, it was getting toward late and that
12 you wanted to get back to work; correct?

13 A Yes, sir.

14 Q But you also testified that your phone was
15 dead?

16 A Yes, sir.

17 Q Or it became dead, correct?

18 A Yes, sir.

19 Q So, you were playing with it but then it
20 dies?

21 A Yes, sir.

22 Q But your phone dies right before this alleged
23 attack that you say that you witnessed, correct?

24 A A little while before, yes.

25 Q Okay. So, your phone was dead and you

TESTIMONY OF JACKLYN PEREZ

1 couldn't call 911; is that correct?

2 A Yes, sir.

3 Q Okay. Now, you also testified that after
4 this happened you were in shock, and that you were
5 trying to get yourself together. But you have
6 testified that you were sitting in the driver's seat of
7 your car, correct?

8 A Yes, sir.

9 Q And your phone was dead?

10 A Yes, sir.

11 Q So, what all did you have to get together?

12 A I said I got out of my car and said, What is
13 going on.

14 Q So you got out of your car?

15 A To say, What is going on. I said that,
16 right.

17 Q And why did you do that?

18 A Because I didn't understand what was going on
19 from where I was seated, and so I stood up.

20 Q So you got out of the car so --

21 A Not out, I stood up.

22 Q You stood up. Well, you were in the driver's
23 seat you would have had to put your feet on the ground
24 and get out of the car to stand up, right?

25 A One foot out on the ground to stand up.

TESTIMONY OF JACKLYN PEREZ

1 Q Right, because you can't stand up in a Toyota
2 Celica; right?

3 A No.

4 Q No. Now, you have also testified that after
5 you left Mr. McQuarters throws some things in your car,
6 according to you, and he says, Start the car, and y'all
7 leave; correct?

8 A Yes, sir.

9 Q Okay. So, you didn't make any attempt to
10 leave without Mr. McQuarters, correct?

11 A I couldn't find my keys.

12 Q Couldn't find your keys. So you had been
13 sitting there all of this time in the driver's seat but
14 you didn't know where your keys were?

15 A I assumed they were in the ignition, where I
16 left them.

17 Q Is that where they were?

18 A No.

19 Q So, if they weren't in the ignition, then the
20 car wasn't on, right?

21 A No.

22 Q So, if the car wasn't on and the phone was
23 dead, how did you know what time it was?

24 A I never said what time it was.

25 Q Well you specifically testified earlier and

TESTIMONY OF JACKLYN PEREZ

1 we went over this again, that you knew that it was
2 time -- that it was getting late and you needed to be
3 back at work?

4 A Yes, sir.

5 Q So, you had to have some idea what time it
6 was?

7 A By the time -- I left work at 9 o'clock. By
8 the time we got to the island it was 9:45, and we had
9 been sitting there for a while.

10 Q So, it took you 45 minutes to get from
11 Buckwalter Parkway out to the movie theaters?

12 A Around, somewhere around there.

13 Q Why did it take y'all so long; did you guys
14 take the scenic route?

15 A No, we came from 278 up.

16 Q And that took you 45 minutes?

17 A I said "about." I don't know exactly how
18 long it took to get there.

19 Q Okay. Well, you said that you didn't have to
20 be back until midnight, until 12, for the truck, to
21 unload it; correct?

22 A Yes, sir.

23 Q Okay. You said that your car wasn't on. How
24 did you know how long you had been at Northridge
25 Cinemas?

TESTIMONY OF JACKLYN PEREZ

1 A I had my phone for a little while before it
2 died.

3 Q Okay. And what time was it when the phone
4 died?

5 A Ten something.

6 Q Ten something. Now, you have also testified
7 that once Mr. McQuarters got in the car and y'all drove
8 off, that he said something about knowing your mom and
9 dad; correct?

10 A Mother and sister.

11 Q Oh, mother and sister, excuse me. Now, you
12 have already established that you testified in a prior
13 proceeding about this incident, correct?

14 A Yes, sir.

15 Q And isn't it true that you never testified to
16 this comment that you alleged to my client in that
17 prior proceeding, correct?

18 A Yes.

19 Q And that was under oath, correct?

20 A Yes.

21 I wasn't asked.

22 Q Well, you were asked if you -- well, I'll
23 have to go back to the transcript, but I believe that
24 you were asked if you had any conversations with
25 Mr. McQuarters after the event and you said, We didn't

TESTIMONY OF JACKLYN PEREZ

1 talk; correct?

2 A Yes.

3 Q All right. Now you also testified that after
4 you leave the theaters Mr. McQuarters throws an
5 envelope and a bag out the window, correct?

6 A Yes.

7 Q But you never testified to that before, did
8 you?

9 A Yes, I did.

10 MR. BAX: Excuse me a moment, Your Honor.

11 I'll have to get the transcript.

12 THE COURT: Okay.

13 (Pause.)

14 BY MR. BAX:

15 Q Ms. Perez, I have the transcript of your
16 testimony from the prior proceeding and I have examined
17 it nine ways from Sunday, let me tell you, and there is
18 absolutely nowhere in here that I can find where you
19 said anything about Mr. McQuarters throwing anything
20 out the window.

21 A I specifically remember being asked.

22 MR. BAX: Your Honor, sidebar?

23 THE COURT: Show her the transcript and let
24 her point out what she's talking about.

25 MR. BAX: I will be happy to, Your Honor. It

TESTIMONY OF JACKLYN PEREZ

1 is a little lengthy so we might have to have some
2 time.

3 THE COURT: Okay.

4 MR. BAX: Thank you, Your Honor.

5 Ms. Perez, your testimony starts on Page 220 and
6 goes through until approximately -- let me make sure
7 that I give you -- because you are going to have to
8 look through the whole thing.

9 Moments indulgence, Your Honor. I apologize.

10 THE COURT: That is fine.

11 (Pause.)

12 BY MR. BAX:

13 Q So, 220 to 254. Please read that and find
14 for me where you say that Mr. McQuarters threw
15 something out of your window on your drive away from
16 Northridge Cinemas, please.

17 (Witness reviewing document.)

18 A It is not in here.

19 Q Excuse me? That is not what I asked. I
20 said, Is it in there that you testified to that.

21 A I said it is not in here, that I was never
22 asked that.

23 Q Excuse me, Ms. Perez, actually what you
24 testified to earlier is that you did testify to it
25 before; is that correct?

TESTIMONY OF JACKLYN PEREZ

1 A Yes.

2 Q You testified in the prior proceeding that he
3 threw it out, but you can't find it in the transcript?

4 A Yes.

5 Q So, this transcript is incorrect?

6 A I don't see it in there.

7 Q But you are testifying before this jury,
8 under oath, again, that that's what you said in the
9 prior proceeding? Yes or no?

10 A Yes.

11 Q Now, Ms. Perez, let me go into another area.
12 You have testified in response to questions from the
13 prosecution that you have been charged in this case
14 with armed robbery, correct?

15 A Yes, sir.

16 Q And that you are still facing those charges,
17 correct?

18 A Yes, sir.

19 Q Are you represented by an attorney?

20 A Yes, I am.

21 Q Who is that?

22 A Jared Newman.

23 Q Okay. And it's your testimony here today
24 that, after having consulted with your attorney, after
25 having spoken to the State and agreeing to come

TESTIMONY OF JACKLYN PEREZ

1 testify, that you are not expecting anything from the
2 State?

3 A No, I'm not.

4 Q So, your testimony under oath is that your
5 testimony here today comes with no expectation by you
6 that your testimony will aid in you getting a better
7 recommendation by the State?

8 MS. LEMPESIS: Objection, Your Honor. Asked
9 and answered.

10 THE COURT: Well, I think that it was asked
11 in a slightly different way. But I'll allow that
12 question. It was a nuance difference in it.

13 MS. LEMPESIS: Thank you, Your Honor.

14 THE COURT: Can you repeat the question?

15 BY MR. BAX:

16 Q My question was, that after consulting with
17 an attorney, as well as the State in agreeing to come
18 testify, you have no expectation that your testimony
19 will aid in you getting some recommendation by the
20 State to a lower sentence or even probation?

21 THE WITNESS: Your Honor, does that fall
22 under attorney/client privilege?

23 THE COURT: Do you understand the question?

24 THE WITNESS: No, I don't.

25 THE COURT: The question is whether or not

TESTIMONY OF JACKLYN PEREZ

1 you have any expectation of receiving any leniency
2 from the State or from the Court as a result of
3 your testimony here today. Is that your question?

4 MR. BAX: That's correct, Your Honor. Thank
5 you.

6 THE WITNESS: Does he mean, Was I promised if
7 I said anything?

8 THE COURT: That is it exactly.

9 THE WITNESS: Okay. No.

10 THE COURT: Then he asked, Do you have any
11 expectations of leniency or shorter sentence or
12 probation as a result of your testimony.

13 THE WITNESS: No.

14 BY MR. BAX:

15 Q So you don't have any expectation?

16 A No.

17 Q Now, you testified that you are currently
18 holding down two jobs, correct?

19 A Yes.

20 Q And that you are -- you are working at
21 Parker's, I think in Bluffton?

22 A Yes.

23 Q And that you are working as a chef at a
24 restaurant?

25 A Yes.

TESTIMONY OF JACKLYN PEREZ

1 Q So, your testimony is that -- well, let me
2 ask you this: Do you hope that your testimony will
3 help you get a more lenient sentence?

4 MS. LEMPESIS: Objection, Your Honor.
5 Relevance.

6 THE COURT: I'll sustain that objection.
7 She's answered that same question.

8 MR. BAX: Well, Your Honor, I think she's
9 dodging the issue. I'm trying to get to why is
10 she testifying because it goes directly to
11 credibility and bias.

12 THE COURT: Well, maybe you can ask her that,
13 why is she testifying.

14 BY MR. BAX:

15 Q Why are you testifying, Ms. Brooklyn? Why
16 are you testifying?

17 A It is the right thing to do.

18 Q Because it is the right thing to do. But in
19 the two weeks prior to Investigator Seifert coming to
20 talk to you you didn't call the police?

21 A No.

22 Q Was that the right thing to do?

23 A No.

24 Q In fact, you did go back to McDonald's that
25 evening, correct?

TESTIMONY OF JACKLYN PEREZ

1 A Yes.

2 Q And do they have a working phone at
3 McDonald's?

4 A Yes.

5 Q Why didn't you call the police that night
6 when you got back to McDonald's? I mean, we know that
7 your cell phone was dead, but when you got to
8 McDonald's you would have had the ability to make a
9 phone call; right?

10 A Yes.

11 Q Why didn't you call them then?

12 A I was scared.

13 Q You were scared of getting charged with armed
14 robbery and having to go to jail?

15 A No.

16 Q No. Why were you scared?

17 A I was scared of Austin.

18 Q You were scared of Austin. Now, you
19 testified that you were good friends with Austin?

20 A Yes.

21 Q You testified that you gave him rides in the
22 past?

23 A Yes.

24 Q That you hung out with him after school,
25 correct?

TESTIMONY OF JACKLYN PEREZ

1 A Yes.

2 Q You also testified that after you saw this
3 alleged attack, that you got out of the car to ask him
4 what was going on; correct?

5 A Not to ask him.

6 Q Well, who were you asking?

7 A I was making a statement.

8 Q You just got out of the car to make a
9 statement.

10 A I asked what was going. I was confused.

11 Q Okay. So, you got out to make a statement to
12 the random air because you were confused instead of
13 finding your keys, starting the car and driving away
14 from what you had just witnessed; is that correct?

15 A Yes.

16 Q Thank you. Now, you have testified that you
17 are just doing this because it is the right thing to
18 do, correct?

19 A Yes.

20 Q But you have also testified that you have got
21 these jobs. Do you want to lose those jobs? Do you --
22 is that something that you want to happen?

23 A No.

24 Q And if you go to jail are you going to lose
25 those jobs?

TESTIMONY OF JACKLYN PEREZ

1 A Yes.

2 Q So, that is not something that you want to
3 have happen, is it?

4 A No.

5 Q So, you have just come in to snitch on your
6 friend, your good friend?

7 MS. LEMPESIS: Objection, Your Honor, he is
8 belaboring the point.

9 THE COURT: That is correct. I'll sustain
10 the objection.

11 MR. BAX: Well, Your Honor, approach?

12 THE COURT: Well, it is the word "snitch"
13 that carries all sorts of implications depending
14 upon who you are talking to at the time.
15 Certainly you have every right to ask her, as you
16 have on several occasions, why she's doing what
17 she's doing.

18 MR. BAX: Your Honor, I would like to ask her
19 if she covered this in her prior testimony because
20 she did.

21 THE COURT: You can do that.

22 MR. BAX: Thank you.

23 BY MR. BAX:

24 Q Did you agree in questioning from me during
25 the prior proceeding that, in fact, you were doing what

TESTIMONY OF JACKLYN PEREZ

1 is defined as snitching?

2 A Yes.

3 MR. BAX: Thank you. No further questions at
4 this time, Your Honor.

5 THE COURT: All right. Redirect?

6 MS. LEMPESIS: Briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. LEMPESIS:

9 Q Jackie, talking about the prior proceeding,
10 that was several months ago, wasn't it?

11 A Yes, ma'am.

12 Q And this incident occurred almost two years
13 ago, correct?

14 A Yes, ma'am.

15 Q Okay. So, when we are talking about exactly
16 what you said in the prior proceeding, is it fair that
17 you don't remember exactly?

18 A Yes, ma'am.

19 MR. BAX: Objection, Your Honor.

20 THE COURT: Sustain the objection. Leading.

21 MS. LEMPESIS: Thank you. I withdraw the
22 question.

23 BY MS. LEMPESIS:

24 Q Were you asked at the time about the
25 statements made by Austin to you about knowing your

TESTIMONY OF JACKLYN PEREZ

1 mother and sister?

2 A No.

3 Q And, Jackie, you said just a minute ago that
4 you were scared of Austin?

5 A Yes, ma'am.

6 Q And you weren't scared of him before, right?

7 A No, ma'am.

8 MR. BAX: Objection to the leading, Your
9 Honor. This is redirect.

10 THE COURT: Well, it is, but that is all
11 right, just rephrase that. Ask her what she is
12 afraid of.

13 MS. LEMPESIS: I'll rephrase the question.

14 BY MS. LEMPESIS:

15 Q Were you afraid of Austin before this night?

16 A No, ma'am.

17 Q And why did you become afraid of him after
18 this night?

19 A I had never seen him snap out like that
20 before.

21 Q All right.

22 MS. LEMPESIS: Jackie, I have no further
23 questions for you.

24 THE COURT: Any follow-up on those?

25 MR. BAX: Moments indulgence, Your Honor.

TESTIMONY OF JACKLYN PEREZ

1 (Pause.)

2 MR. BAX: Nothing further, Your Honor. Thank
3 you.

4 THE COURT: Ms. Perez, thank you. You can
5 step down.

6 THE WITNESS: Thank you.

7 MS. LEMPESIS: Your Honor, may Ms. Perez be
8 excused at this time?

9 THE COURT: Without objection, Mr. Bax?

10 MR. BAX: Sorry, Your Honor?

11 THE COURT: She can be excused without
12 objection?

13 MR. BAX: No, objection. Yes, Your Honor.

14 THE COURT: Ms. Perez, you may be excused.
15 Do you have a short witness?

16 MS. LEMPESIS: No, Your Honor. This may be a
17 good time for a break.

18 THE COURT: That is what I thought. All
19 right. Ladies and gentlemen, this is a good time
20 for a lunch break. And I'll send you out and ask
21 you to be back in the jury room at 2:00, that is
22 an hour and 25 minutes. I remind you as always
23 not to discuss this case with anybody else while
24 you are out of the jury room, or when you get back
25 to the jury room. See you at 2:00. Thank you.

TESTIMONY OF JACKLYN PEREZ

1 (The jury exits the courtroom.)

2 THE COURT: Anything further from the State
3 before we break?

4 MS. LEMPESIS: No, Your Honor.

5 THE COURT: Mr. Bax?

6 MR. BAX: No, Your Honor.

7 THE COURT: How are we doing on scheduling,
8 Ms. Lempesis?

9 MS. LEMPESIS: Your Honor, I have four
10 witnesses left. I'll start back with Colton
11 Delaplane, and then we have Investigator Seifert,
12 and then one other witness, Dr. Snowman, who we
13 will need to proffer his testimony beforehand.

14 THE COURT: Okay. Seifert, Colton Delaplane,
15 the doctor. Who is the other one?

16 MS. LEMPESIS: Your Honor, Ms. Payola
17 Labrador. She would be a shorter witness.

18 THE COURT: Thank you. I'm not trying to
19 rush. I want to make sure that we are still on
20 some sort of schedule.

21 MS. LEMPESIS: Yes, Your Honor.

22 THE COURT: All right folks, 2:00 then.

23 MS. LEMPESIS: Thank you.

24 MR. BAX: Thank you, Your Honor.

25 (Lunch recess. Proceedings continue in Volume 4.)

CERTIFICATE PAGE

1 CERTIFICATE

2

3 STATE OF SOUTH CAROLINA:

4 COUNTY OF BEAUFORT:

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

9

DATED this 29th day of July, 2016.

10

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12

Mona L. Manley /s/

13

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 MOTION HEARING

14

DATE: August 12, 2015

15

16 PLACE: Beaufort County Courthouse
 Beaufort, South Carolina

17

REPORTED BY: Mona Manley, Court Reporter

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19 BEFORE: Honorable Thomas W. Cooper, Jr.

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APPEARANCES

REPRESENTING THE STATE:

Mary Jordan Lempesis, 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

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MOTION HEARING

1 PROCEEDINGS

2 MR. BAX: Good afternoon, Your Honor.

3 THE COURT: Good afternoon. How are you
4 doing?

5 MR. BAX: I'm good.

6 THE COURT: I have got everything up here in
7 connection with your motion. I have looked at the
8 motion and I have had a chance to review the
9 State's response and the authority cited in it.
10 Mr. Bax, I'll be glad to hear from you.

11 MR. BAX: Your Honor, if I may.
12 Mr. McQuarters is here, so I would like to have
13 him brought out.

14 THE COURT: Sorry, I didn't realize that he
15 wasn't here.

16 MR. BAX: No, that's all right, Your Honor.
17 I left him back because I didn't know how you
18 wanted to handle things. I did want to let you
19 know as well, Mr. Bell is back there with
20 Mr. Ogletree. That is something that you can
21 handle as well.

22 THE COURT: Either way. Whoever is ready
23 first we can do.

24 MR. BAX: It is up to you. I'll let Mr. Bell
25 know to bring him out.

MOTION HEARING

1 MS. LEMPESIS: We can go ahead with
2 Mr. McQuarters' case. And, Your Honor, I have
3 talked to Mr. Bax too, and can I go ahead and make
4 this a Court's exhibit of the supplemental report
5 that is referenced and the facts are referenced in
6 my motion.

7 THE COURT: Okay. That will be fine.

8 *(Whereupon, Court's Exhibit No(s). 1 marked*
9 *for identification and received in evidence.)*

10 MR. BAX: Your Honor, they are bringing MR.
11 McQuarters out at this time.

12 (Pause.)

13 MR. BAX: Thank you, Your Honor. May it
14 please the Court.

15 THE COURT: Mr. Bax, yes.

16 MR. BAX: Thank you. And, Your Honor, I
17 believe that Ms. Lempesis has passed up the
18 supplemental incident report and witness statement
19 that gave rise to my motion that was filed on
20 July 28th. I certainly agree with that being made
21 a Court's exhibit and would have requested it
22 myself. So, the State and I are in agreement on
23 that being made a Court's exhibit.

24 And if you need any time to review that. I
25 wasn't sure if that was provided to you ahead of

MOTION HEARING

1 time or not. I know that we both discussed it in
2 our writings, but if you would like to have some
3 time to actually read the specific words of
4 Investigator Seifert and the witness, I'm more
5 than happy to.

6 THE COURT: Okay. If you will all give --
7 there is a handwritten page and two portions of
8 two typed pages. Are they different?

9 MR. BAX: One is -- the typewritten page,
10 Your Honor, is the incident report -- supplemental
11 incident report of Doug Seifert, so it is in his
12 view who he talked to. And the handwritten page
13 is written by Ms. Ross in the form of a witness
14 statement.

15 THE COURT: Okay. All right. Let me take
16 just a moment then to look at those.

17 MR. BAX: Certainly, Your Honor.

18 (Pause.)

19 THE COURT: All right. Thank you. I have
20 had a chance to read them.

21 MR. BAX: Thank you, Your Honor. First and
22 foremost, to make sure that I cover some of the
23 procedural elements that I think I need to in
24 order to protect my client's rights, I would first
25 ask that in the event that Your Honor denies in

MOTION HEARING

1 part or whole my motions in this case, that the
2 transcript from today's hearing be incorporated
3 into the trial transcript of the trial that was
4 held before Your Honor on the July 20th through
5 22nd.

6 THE COURT: Right. It would be incorporated
7 as part of it, yes, sir.

8 MR. BAX: Thank you very much, Your Honor.
9 Your Honor, moving to the arguments for the basis
10 for our motion. I would like to address --
11 obviously Your Honor has seen the argument that I
12 have proposed in my Motson (phonetic) motion and
13 motion to vacate the conviction. And the State's
14 response I have reviewed today. I was provided
15 that today and I have reviewed it. And I would
16 like to kind of address the case law cited by the
17 State, which I am familiar with.

18 I know that Your Honor is familiar with. It
19 is the Defendant's position, and it is my position
20 as counsel, that in fact we can meet all five of
21 the elements as it were of newly-discovered
22 evidence, and I would like to address those in
23 order.

24 First of all, number one, I understand in the
25 other cases it talks about this evidence having to

MOTION HEARING

1 meet the test of probability of changing the
2 result if a new trial were granted.

3 THE COURT: Right.

4 MR. BAX: And of course I would emphasize
5 "probability." This is not something that the
6 Defendant is required to show at 100 percent
7 surety, obviously. The probability that it would
8 change the result I think is evident and primarily
9 from a couple of different things.

10 Number one, Your Honor, as you are aware,
11 this was not the first time we tried the case. I
12 believe based on the arguments made at the first
13 trial, the questions asked by the jury in that
14 trial, that was a pivotal issue in the first trial
15 that resulted in a jury that hung and actually
16 sent out a note where they wrote that there was
17 seven for not guilty and five for guilty and they
18 never were not able to resolve those numbers, that
19 a pivotal issue in that dispute in those groups of
20 jurors was the culpability of Mr. Delaplane, his
21 credibility, and the fact that he wasn't charged.

22 So, it obviously is something that has
23 already affected the ability of one jury to reach
24 a decision.

25 Secondly, Your Honor, it was of such

MOTION HEARING

1 importance that it is the Defense's position, and
2 we argued this at trial, that Officer Seifert's
3 testimony changed. And that was an issue of
4 debate. We have all been through it, I don't need
5 to hash it out again. But it was one that was
6 argued both pretrial, in chambers, and in front of
7 the jury as an issue. And it was specifically
8 cited by Defense in our argument as well as our
9 questions that this went to addressing the
10 problem of Delaplane's testimony and credibility.

11 So it was an issue that was, obviously,
12 important enough in our position to have a change
13 in testimony from Officer Seifert. Additionally,
14 it was important enough for both parties to
15 address in openings and closings. It was
16 important enough additionally, Your Honor, for the
17 State to argue against to the point of, you know,
18 saying that I was desperately trying to distract.
19 So, this was an important issue. And in fact, I
20 would argue is the main issue.

21 The problem is, Your Honor, as you are well
22 aware from having heard the case, what we had at
23 the time was a dispute about whether or not he
24 confessed. We also had his testimony, which was I
25 gave this information to these other parties but I

MOTION HEARING

1 didn't have anything to do with the robbery. What
2 you see in the statements that have since been
3 found and -- Your Honor, I would go also to point
4 out that according to what I'm reading from that
5 discovery, the same as you have, it was actually
6 Mr. Snodgrass who took the time to go out after
7 the trial and speak with this individual and gain
8 this new information and then relayed that to
9 Officer Seifert and ask that he follow-up.

10 I, of course, made my motion as quickly as I
11 could. I was provided that information, actually,
12 the email said 4:59 on Friday. And it was always
13 a pleasure to have to write another motion while
14 on vacation, as I did. But, you know, this
15 information was important enough to relay -- for
16 Mr. Snodgrass to go seek it out and relay it to
17 Officer Seifert. I think that it goes directly to
18 the idea of whether or not Colton is actually --
19 has criminal intent and liability for what
20 happened.

21 And so I think that that first element is
22 met, Your Honor. It has been discovered since the
23 trial. That one is kind of, I think, easy to say.
24 Even the State says that element has been met.
25 Number three I would like to address specifically

MOTION HEARING

1 because the State argues that we could have
2 discovered this through due diligence.

3 Your Honor, I have gone back and reviewed the
4 incident report that was initially filed in this
5 case by Officer Seifert. There is a number of
6 both witnesses and suspects listed, including my
7 client, and pretty much everybody that testified.
8 There are also other people listed that did not
9 testify. At least three listed that did not
10 testify.

11 Out of all of those, Ms. Ross is listed in
12 there. She is the only one out of all of those
13 people listed that is not referenced by
14 Investigator Seifert at all. Doesn't say that he
15 ever spoke to her, doesn't say anything about her
16 whatsoever, other than the fact that it is in the
17 boxes filled in at the front of the incident
18 report as in the party -- in the same listing as
19 the Defendants, the suspects, the employees and
20 all of the rest of them.

21 Everyone else in there, with the exception of
22 maybe one I think, there's a reference by
23 Investigator Seifert as to whether he tried to
24 talk to them, whether they were relevant or not.
25 All of that. Ms. Ross is not mentioned at all.

MOTION HEARING

1 Your Honor, I would argue that while there's
2 an element of due diligence that's been put in by
3 the Supreme Court, I think that there's a limit to
4 it that doesn't cross the burden shifting. In
5 other words, we still don't have the burden of
6 proving a case. We don't have the burden. We are
7 not required to put up a defense. We don't have
8 the burden to prove him innocent. The State bears
9 the burden to prove him guilty.

10 Your Honor, I think to basically follow the
11 idea that is proposed by the State in their
12 response would be to improperly shift the burden
13 to Defendants that they would have to, in the
14 future, go through every piece of discovery, find
15 any name that is mentioned, and if it's not
16 specifically addressed go out and investigate that
17 name or suffer the consequences of being -- you
18 know, being held to a standard that they did not
19 exercise due diligence.

20 Additionally, Your Honor, I think that I need
21 to put this on the record. Mr. McQuarters
22 qualified for a public defender, he did not have
23 the money to hire an attorney of his own. As Your
24 Honor is well aware, we in our office do our
25 absolute best to represent our clients as well as

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1 we possibly can under the circumstances, but I
2 have a current caseload that ranges from 185 to
3 205 from one week to the next. I haven't had it
4 drop below 180 since being at the Beaufort County
5 Public Defender's Office, and that has been over
6 two years, or it is somewhere around two years. I
7 forget now.

8 To put that on us, on an already overworked,
9 understaffed and underfunded department I think is
10 an unfair burden to us as attorneys, and certainly
11 an unfair burden to Defendants. So I would argue
12 that we did the due diligence that we could as
13 defense attorneys in this case, of reviewing all
14 of that discovery.

15 As Your Honor knows, I reviewed the discovery
16 in this case. I don't think that there's any
17 question. I wouldn't think that it would be
18 credible to say that I wasn't prepared as an
19 attorney in this case. So, I would argue that
20 that element is fulfilled because the due
21 diligence that would be required of the defense
22 attorney was met in this case.

23 I would argue, number four, and I kind of
24 already argued it. I think that it is material to
25 the issue of guilt or innocence, because that was

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1 the turning point of argument in this case. I
2 think it really goes to the idea that this could
3 be a third party guilt issue, and it was a third
4 party guilt issue. There was issues of
5 identification, issues of conspiracy, and
6 necessarily who all was involved. But it was the
7 Defense's contention from start to finish that
8 whoever was involved it wasn't Mr. McQuarters.

9 And that kind of leads us to number five.
10 Number five says that it's not merely cumulative
11 or impeaching. I would argue that while it would
12 be something that would most likely come up, maybe
13 they would address it in direct to kind of take
14 the sting out of it, but it would come up in
15 cross. I think that it's narrow to define it
16 impeaching. I think that it goes specifically to
17 the impeachment motive for a third party to
18 orchestrate it and motive for them to lay that
19 blame on another party other than themselves and
20 other than the guilty party.

21 Your Honor in this case, as I argued in my
22 written motion, this directly impacts the motive
23 of Mr. Delaplane to have orchestrated and/or
24 committed this offense. It also gives him a
25 specific intent when it comes to the injuries. I

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1 think a jury hearing this would have found
2 differently, I certainly know that if this
3 evidence had been available even to the first jury
4 I don't even know if it would have ever crossed
5 your desk, to be honest with you. Unfortunately
6 it was not. I would also cite the fact that in
7 this discovery, the reason that Ms. Ross is now
8 coming forward with this information is because of
9 her concern that Mr. Delaplane would get away with
10 it.

11 I would also like to point to the last bit of
12 what she relays. She doesn't actually put this in
13 her written statement, but she relays it to
14 Investigator Seifert. There was also an event two
15 weeks prior to the assault where Mr. Snodgrass,
16 according to what she relayed, had had a either
17 verbal yelling at, discussion, argument, whatever
18 you want to call it, to Mr. Delaplane about his
19 work responsibilities, and his response to that
20 was, I want to hit him in his face. I think that
21 is extremely relevant because that is exactly what
22 happened in this case, he was injured in his face.

23 I would also like to note, Your Honor, while
24 I didn't put it in my title, I did address it in
25 the writing of my motion, that it also impacts the

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1 sentencing in this case. I spoke, in my motion,
2 about the fact that the Court cited in addressing
3 the Defendant on the issue of sentencing, that the
4 brutality of the attack on the victim was part of
5 the consideration, as it should be, for the
6 sentence in this case. I would ask that this
7 motion also be considered that if Your Honor is
8 inclined to deny, you know, the motion for new
9 trial, that Your Honor would consider this a
10 motion for reconsideration of the sentence in the
11 alternative.

12 And I would argue on that issue that even if
13 we are to -- you know, if we are to argue that
14 Mr. McQuarters is involved, we have direct
15 evidence that the nature and severity of the
16 attack on Mr. Delaplane was the specific or --
17 excuse me, I am sorry, the attack on
18 Mr. Snodgrass, I apologize, was the specific
19 request of Mr. Delaplane.

20 And I think that goes to the idea that, from
21 a sentencing standpoint, there is a culpable party
22 who may have specifically wanted this and had
23 specific involvement in it. And I believe that
24 that affects the consideration by the Court of the
25 sentencing. And I would ask the Court, in the

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1 alternative, after consideration of the motion
2 for -- vacation of the conviction and new trial,
3 consider that as a reason to lower Mr. McQuarters'
4 sentence. Thank you.

5 THE COURT: All right. Thank you. Mr. Bax,
6 before I turn to Ms. Lempesis in this case, you
7 are not suggesting by your argument that
8 Mr. Delaplane is the one that attacked
9 Mr. Snodgrass in the parking lot, are you?

10 MR. BAX: Well, Your Honor, I know what the
11 evidence has shown is that Mr. Snodgrass has
12 testified that he saw an African-American male,
13 height -- African-American male that was, you
14 know, of a height, was bulky.

15 THE COURT: 6 feet, broad shoulders and
16 stocky were the words that he used in his
17 description.

18 MR. BAX: That's correct, Your Honor, and I
19 am aware of that. However, this evidence being in
20 the case, I am not -- I cannot say that if we were
21 to try this again that I would not argue that it
22 is possible that Mr. Delaplane wore a bunch of
23 clothes and went out there and committed the
24 offense. I mean, to some degree I know that I
25 have a tight rope to walk a lot of the times. And

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1 that is arguing the best that I can for my client
2 but at the same time not losing credibility. So,
3 that is a judgment call that I would have to make.
4 I can't say that I would actually go that road or
5 not, but it is kind of an awfully fishy question
6 to say that this individual has expressed a
7 specific desire to punch Mr. Snodgrass in the face
8 and that he didn't do it himself.

9 THE COURT: I think, as I read the
10 information, that threat or that desire, whatever
11 it happens to be -- it was not a threat because it
12 was not communicated to him -- was given when
13 Mr. Snodgrass apparently berated Mr. Delaplane for
14 not doing something he was supposed to, or doing
15 something he was not supposed to. And I was here.

16 I observed the relative sizes of
17 Mr. Delaplane and Mr. Snodgrass. Suffice it to
18 say that Mr. Delaplane is relatively a
19 slightly-built fellow, nice looking guy. He
20 doesn't appear that he spends a whole lot of time
21 in the gymnasium. I can say that as a person who
22 has not seen the inside of a gymnasium since I was
23 in high school. But, in addition to that, of
24 course, Mr. Snodgrass is somewhat larger. And so
25 I have to factor that statement into the calculus.

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1 This is something that he would like to have
2 happened, or is this something that he intended to
3 do himself. And just comparing the sizes of the
4 two, unless Mr. Delaplane just enjoys a fight,
5 from the looks of his face he has never been in
6 one in his life. It is not the sort of combat
7 that he would want to enter into with someone
8 stronger, larger, older than he.

9 And because Mr. Snodgrass in his testimony
10 was pretty specific about some things up to the
11 point that he got hit. He talked about what he
12 had done, he had looked out in the parking lot, he
13 left through the door, he had his bank bag, and
14 keys, and papers, and some gifts. He said exactly
15 where he was parked, second aisle, four spaces
16 back, 50 yards from the entrance. He saw a small
17 sedan backed into a space in the lot on his left.
18 There was a female in the driver's seat, somebody
19 else crouched by the car stood up. He was a black
20 male, 6 feet plus or minus, broad shoulders,
21 stocky, asked me what time the movies ended,
22 borrowed my cell phone, battery dead.

23 And when I looked at my watch he reached
24 behind him with his right arm and I drew my arm
25 out and at that time I was hit. That is pretty

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1 unequivocal as to the definition of the person who
2 actually struck him.

3 Now, I will say this, I was concerned during
4 the last trial as to how and why some action was
5 not taken in regard to Mr. Delaplane, based on his
6 own testimony. And based on the fact that the
7 incident report said that he had set up this
8 trial -- set up this robbery. However,
9 Investigator Seifert meant that it was clear that
10 Delaplane had had some part. And then after the
11 fact he got \$250 because Mr. McQuarters said, I
12 have come into some money. I mean, that is not
13 the sort of stuff that passes the smell test.
14 They lock up people and charge them for stuff, I
15 don't need to tell you, that by comparison is a
16 Willow in the wind to that. And I wondered that.

17 And I don't, you know, in my mind I could
18 conjecture, if I wanted to, a thousand different
19 reasons. I would hope that the reason that they
20 did not is for a well-founded reason, a fair
21 reason, but I don't know what it is. I notice on
22 this particular supplemental report they listed as
23 a suspect Mr. Delaplane. I don't know what that
24 means. I don't know if new charges are going to
25 come out of this in lieu of Ms. Ross' testimony.

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1 But if it doesn't, somebody needs to
2 investigated. I mean, somebody needs to answer as
3 to why, in the course of all of this,
4 Mr. Delaplane has not been called upon to at least
5 answer to some of these questions, has not been
6 put through the ringer and made to explain these
7 things about -- I don't recall a whole lot of
8 grilling in his statement that he made before.

9 It quite frankly would satisfy the scrutiny
10 that he should have been subjected to in my mind.
11 All I know is what I read. I don't know what was
12 going on, what was said behind the scenes. But I
13 offer that because I do question, as you do, why
14 he's not been called to task on some of these
15 things, or why he will not be now in the face of
16 this fact now. Certainly, this is supportive of
17 the fact that he was more than just a friend,
18 telling Mr. McQuarters, Yeah, that is the guy, he
19 has the money, this is where he's going to come
20 out. I know that you are not going to do anything
21 to hurt him.

22 Now, on the third party guilt issue, my
23 position on the third party guilt is that the
24 third party guilt evidence, first of all, cannot
25 merely raise a mere suspicion in somebody else.

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1 And secondly it has to be inconsistent with the
2 guilt of Defendant himself. I believe those are
3 the two. There might be other criteria, and I
4 should have looked it up. But I think those are
5 the two criteria. If that is a standard for third
6 party guilt, then how does this information
7 satisfy those two prongs? Does it do more than
8 just raise a mere suspicion of Mr. Delaplane's
9 guilt insofar as for the attack on
10 Mr. Snodgrass -- that is what we are talking
11 about, the attack on Mr. Snodgrass and the armed
12 robbery or -- and is that inconsistent with
13 Mr. McQuarters' own view? Can you help me with
14 that?

15 MR. BAX: Just a moment, Your Honor.

16 (Pause.)

17 MR. BAX: Your Honor, the argument that we
18 would have is that the motive here is not only --
19 what we think this evidence shows is that the
20 motive is not only to conceal that Mr. Delaplane,
21 his motive, was not only to conceal his role in
22 this, but also to lay blame on Mr. McQuarters.

23 Going to the two things that you have talked
24 about. This is not a mere suspicion. And I think
25 that the reason that I would argue that it's not a

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1 mere suspicion, Your Honor, is because the
2 confluence between the statement of the injury to
3 Mr. Snodgrass' face, saying that I want to punch
4 him in the face and the fact that that's
5 absolutely what happened. That is -- I would
6 argue, Your Honor, that rises above the level of
7 mere suspicion.

8 So, to meet that element I would argue that
9 you have a statement in one hand that occurred,
10 according to the evidence, two weeks prior to the
11 attack. Then you have the attack happening where
12 it is undisputed that the injuries suffered by the
13 victim were directly to his face.

14 THE COURT: Right.

15 MR. BAX: So, I think that rises above the
16 level of mere suspicion.

17 THE COURT: Well, it might if Mr. Delaplane
18 is accused of being in a conspiracy, and even if
19 he told Mr. McQuarters, I want you to bust him
20 good because he embarrassed me some time ago. And
21 that might have some logical nexus there.

22 But I don't see how that statement in itself
23 is going to make Mr. Delaplane a 6-foot tall black
24 man.

25 MR. BAX: I understand that, Your Honor. And

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1 I think that the second element that you talked
2 about is kind of what you are going to, the idea
3 of whether or not that's inconsistent with the
4 culpability of my client. And frankly, as an
5 officer of the Court, that is a difficult argument
6 for me to overcome. I think that it would be
7 without credibility for me to say otherwise.

8 However, Your Honor, I don't give up that
9 argument. The reason being is purely this: My
10 client's contention from day one, and there's
11 absolutely no evidence, no statement from my
12 client and no evidence to the contrary is, I
13 wasn't that guy. And that is -- the thing is that
14 is one of the reasons why, Your Honor, we don't
15 require Defendants to prove their innocence.

16 I have actually argued this in trials before.
17 You know, it is funny, I first started arguing it
18 and I called it the three-nuns defense. None of
19 us walk around with three nuns all day long hoping
20 that if someone ever accuses us of doing something
21 we would have three nuns to testify for us that we
22 didn't do it.

23 Now, of course, we have got video cameras, so
24 I changed it to the video camera defense. And
25 these days maybe it is more feasible to walk

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1 around with a video camera on you all day. I know
2 that we are putting body cameras on the officers,
3 so in a way we are getting to that point. But
4 it's still not feasible to ask the common citizen
5 to walk around with a video camera on them at all
6 times. The reason for that is sometimes we run
7 into a situation where we are accused of a crime,
8 we don't have direct evidence that we weren't
9 involved other than to say that we didn't do it.
10 And I think at this point in time that is what I
11 can rest on. And I wish that I had something else
12 to give you. As an attorney, I always wish that I
13 had a better smoking gun to point to.

14 But on the issue of inconsistency with the
15 guilt of my client, I can only point to the fact
16 that Mr. McQuarters contends, then and now, that
17 whatever other individual Mr. Delaplane might have
18 been in conspiracy with, it wasn't him.

19 THE COURT: All right. Thank you.
20 Ms. Lempesis.

21 MS. LEMPESIS: Thank you, Your Honor, may it
22 please the Court. Your Honor, I did provide to
23 the Court several different cases. There is State
24 versus Spann, Sterling Spann, and that is a 1999
25 South Carolina Supreme Court Case. And State

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1 versus Harris, which is a Court of Appeals case
2 from 2011. State versus Irvin, which is a 1978
3 case from the South Carolina Supreme Court. And
4 State versus Mercer, which is a 2009 Supreme Court
5 case.

6 Your Honor, I will go through the five
7 requirements that Mr. Bax has just touched on as
8 well that are required in order for a new trial to
9 be ordered. Your Honor, as you know, the moving
10 party must show five things. First, that the
11 evidence would probably change the result if a new
12 trial were granted.

13 Your Honor, as to this issue, we have talked
14 again, today, a lot about Colton Delaplane. It's
15 something that we talked a lot about in the first
16 trial. But again, we are talking about the case.
17 Mr. McQuarters was the one on trial. This new
18 information doesn't pertain at all to Austin
19 McQuarters. As Your Honor pointed out, perhaps it
20 makes the case against Colton Delaplane stronger
21 as to conspiracy or his involvement in this
22 matter. But it doesn't pertain to Mr. McQuarters.

23 Mr. Delaplane did testify during the first
24 trial, and Your Honor will recall that his
25 testimony was -- he was vigorously impeached by

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1 Mr. Bax during his cross-examination. This
2 information, perhaps a jury would further discount
3 Colton Delaplane's testimony. But they already
4 had plenty of reasons that Mr. Bax gave them to
5 discount his testimony.

6 As such, I don't think -- I think this would
7 be further information for Mr. Bax to use against
8 Colton Delaplane to attack him on the stand but
9 wouldn't change the result if a new trial were
10 granted. Again, we are not talking about Colton
11 Delaplane's role in this case.

12 Your Honor, as to the second element, we have
13 no dispute against that. Obviously, this is
14 information that was discovered after the trial.
15 Investigator Seifert contacted me that Friday. I
16 think that his report even has the time,
17 12:20 p.m. And I provided the information to
18 Mr. Bax that same afternoon, as soon as I had the
19 formal report from the Sheriff's Office, the
20 supplemental report, so that is not in dispute.

21 As to the third element, that the evidence
22 could not have been discovered before the trial by
23 the exercise of due diligence. I did note in my
24 memo to Your Honor that Ms. Ross, this witness
25 that Mr. Snodgrass spoke to and then Investigator

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1 Seifert spoke to after the trial, her information
2 is in the original report.

3 Corporal Sally Irvin interviewed her after
4 the attack on Mr. Snodgrass and her information is
5 listed, her name is listed, her contact
6 information I believe is also listed in the
7 original report. I think, by Mr. Bax suggesting
8 that I'm attempting to shift the burden suggesting
9 that they could have interviewed this witness is
10 hardly the case.

11 Her information is there. She was not called
12 as a witness because, frankly, we didn't see that
13 she had anything to add. And until this
14 information arose after the trial, we didn't think
15 that she did. So, to suggest that we are trying
16 to shift the burden is hardly fair. I'm just
17 mentioning that her information was included so it
18 wasn't a totally random person never approached by
19 law enforcement originally.

20 Your Honor, as to number four, as to whether
21 or not the evidence is material to the issue of
22 guilt or innocence, I think that it is absolutely
23 clear that it is not material to the issue of
24 guilt or innocence. Perhaps it is material to
25 Colton Delaplane's guilt or innocence but not

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1 Austin McQuarters'. You have already discussed,
2 Your Honor, but Mr. Snodgrass identified his
3 attacker as a larger built, African-American male.
4 That man was not wearing a mask. Mr. Snodgrass
5 was never able to identify him, but he certainly
6 gave a physical description of him.

7 And as you have also noted, Colton Delaplane
8 is a smaller in stature white male. It is
9 important to note I think also that Colton
10 Delaplane worked for Mr. Snodgrass. If it was
11 Colton Delaplane attacking Mr. Snodgrass that day
12 we certainly would presume that Mr. Snodgrass
13 would have been able to identify him.

14 Your Honor, Mr. Bax mentioned that his client
15 never made a statement. His client did make a
16 statement. He made a statement saying that he
17 didn't know the girl that he got in the car with
18 at Kroger and rode to the movie theater with. He
19 put himself at the movie theater with Jacquelyn
20 Perez. We know Jacquelyn Perez and she testified
21 and she was an eye witness to the attack.

22 Your Honor, furthermore, as to the fifth
23 requirement, which is also not met, the evidence
24 has to be not merely cumulative or impeaching.
25 The State contends that this is further

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1 impeachment evidence that could have been used
2 against Colton Delaplane. It is nothing more than
3 impeachment evidence. It does not pertain to the
4 guilt or innocence of Mr. McQuarters and it
5 simply -- if it were known before, during the
6 trial, it could have been used to further impeach
7 Mr. Delaplane.

8 THE COURT: All right.

9 MS. LEMPESIS: Your Honor, just one last
10 thing. The new evidence and this statement that
11 has been turned over is Mr. Delaplane apparently
12 saying to Ms. Ross after the incident that he knew
13 about the money, but he didn't know that
14 Mr. Snodgrass was going to be beaten so badly.
15 Again, I don't know how that would have been
16 interpreted at trial. But it's not, again, a very
17 clear statement.

18 I think that it certainly could have been
19 used against Colton when he testified, but it's
20 not as if Mr. Delaplane is saying that he
21 committed this robbery. Thank you, Your Honor.

22 THE COURT: Thank you. All right. Mr. Bax,
23 you have the last word. It is your motion.

24 MR. BAX: Thank you very much, Your Honor.
25 Very quickly, I would just like to respond on the

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1 issue of Ms. Ross. As I have said before, we
2 don't have the burden. And additionally, in her
3 argument the assistant solicitor mentioned that an
4 Officer Erwin, if I remember that correctly,
5 interviewed Ms. Ross. I'm looking kind of
6 desperately looking through my information to see
7 their words from closing. I have got absolutely
8 no information about Investigator Erwin.

9 MS. LEMPESIS: Irvin.

10 MR. BAX: I am sorry, Investigator Irvin.

11 THE COURT: While your mind rests on that,
12 Mr. Bax, if you are talking about the third
13 element, due diligence element.

14 MR. BAX: Yes, sir.

15 THE COURT: I don't find that there was any
16 lack of due diligence in this case. So I agree
17 that it is not your responsibility to go through
18 there and fetter all of those witnesses, it is the
19 State's responsibility to reveal to you any
20 impeachable evidence of any of the witnesses or
21 their case, any exculpatory information as it
22 bears on your client. That is pure Brady stuff,
23 they are supposed to do it. And -- if they know
24 about it. And, of course, the law says that they
25 are held accountable. And I have no doubt, if

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1 Ms. Lempesis knew about it you would have gotten
2 it. Unfortunately, she is vicariously responsible
3 for whatever the agencies down the road will give
4 to her. But I agree, I think given what you knew
5 there was a list of witnesses there that you had
6 no reason to believe that this witness was going
7 to help your case because it wasn't revealed to
8 you in that fashion. So, that is not an adverse
9 finding as far as I'm concerned.

10 MR. BAX: Thank you, Your Honor. Well, then,
11 in light of Your Honor's comments, I will move to
12 just my final comment and I am going to sit down
13 and be quiet. Which I think that everyone will be
14 glad about.

15 I think, as to the issue of whether this is
16 mere impeachment or rises above that level, the
17 Defense would once again contend as we did in both
18 trials in this case, that there were only two
19 witnesses that actually put responsibility on
20 Mr. McQuarters. And one of those witnesses was
21 Mr. Delaplane. Both of which had obviously
22 credibility issues, both of which knew each other.

23 Additionally, during the course of the trial
24 Your Honor unfortunately had to deal with the fact
25 that these witnesses were talking to each other in

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1 contradiction to the sequestration order. I think
2 because of that, the issue of Mr. Delaplane's role
3 and what it bears on his credibility rises above
4 mere impeachability. It goes to the idea that the
5 less -- the more that Mr. Delaplane is shown to
6 have bias and reason to lie to cover his own role
7 in a crime that could result in his lack of
8 freedom the more that my client is entitled to a
9 not guilty verdict in the eyes of the jury. And
10 that would be the position of the Defense.

11 THE COURT: All right. Thank you.

12 (Pause.)

13 THE COURT: I was checking my notes. You
14 refreshed my memory, it was true all three of
15 these folks, as I understand it, knew each other
16 from school. That Delaplane was the younger of
17 them, as I recall. But they all knew each other.
18 Am I incorrect in that regard?

19 MS. LEMPESIS: That is correct, Your Honor.

20 MR. BAX: That is correct, Your Honor.

21 THE COURT: And I offer that for this reason,
22 if Mr. Delaplane were making this up you would
23 think that he would choose somebody other than a
24 schoolmate, get a stranger or just create a straw
25 person out there somewhere rather than point to

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1 somebody that he knows and get involved in that
2 regard.

3 The fact that Ms. Perez testified that she
4 knew him, she knew Mr. McQuarters and that they
5 had gone over there, ostensibly to the movie, for
6 whatever reason. Of course that's inconsistent
7 with what Mr. McQuarters told in his statement.
8 He said that he didn't know the name of that girl
9 that he picked up at the supermarket who said she
10 wanted to go see a movie. The fact that those
11 stories are consistent; that is, Ms. Perez's story
12 is consistent with Mr. Snodgrass' recollection as
13 to what happened. She testified as to the size of
14 her car, where it was parked, and that is
15 consistent with what Mr. Snodgrass is saying.

16 And of course, Mr. McQuarters' description,
17 as we have already said, is consistent with what
18 Mr. Snodgrass mentioned. Mr. Delaplane, as far as
19 that's concerned I think is oddly, is somewhat
20 cumulative. And what Mr. Delaplane does bring
21 that seems to incriminate Mr. McQuarters even more
22 is that he got \$250. Of course, when he said that
23 he incriminated himself as well, I'm yet not sure
24 why something hasn't been done about that. I may
25 never know. But all of those things in my mind

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1 deals with the first and fourth elements that are
2 required to grant a new trial on the basis of that
3 discovered evidence.

4 It would probably change the result if a new
5 trial were granted. And probably, of course, you
6 are right, is not the highest standard in the
7 world and it shouldn't be. If it were to do that
8 then the jury would have to disregard
9 Mr. Delaplane's testimony in its entirety, which
10 they have a right to do. They would also have to
11 discount Mr. Snodgrass' testimony that is
12 consistent with Ms. Perez and others, and that
13 would be in my mind pure conjecture.

14 Now, if a jury were to do what you suggested
15 they may have done in the first place, hang up
16 because they were wondering why Mr. Delaplane had
17 not been charged with something. And another jury
18 may get hung up for that same reason. And it is a
19 hang up. It was a hang up for me. Still is. But
20 now if they were to disregard the proof against
21 Mr. McQuarters because Mr. Delaplane was not
22 charged, then I'm not sure that that would be
23 justice either.

24 So, I don't think that the new evidence in
25 that regard rises to the level of third party

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1 guilt as being inconsistent with the guilt of
2 Mr. McQuarters insofar as the armed robbery and
3 the assault and battery charges are concerned. As
4 between Mr. Delaplane and Mr. McQuarters,
5 Mr. McQuarters is the only one who meets the
6 description and is consistent with the story Mr.
7 Snodgrass and Perez said about him. So, finding
8 that those two elements have not been met I must
9 respectfully deny your motion to vacate the
10 conviction and order a new trial.

11 Thank you ladies and gentlemen.

12 MS. LEMPESIS: Thank you.

13 MR. BAX: I am sorry, Your Honor. One thing
14 that I would just like to ask, because I know that
15 I need to make sure I cover it. I would just ask
16 Your Honor if you would be willing to -- if you
17 would put something on the record as to whether or
18 not you would consider the alternative argument
19 for any reduction in the sentence for my client.

20 THE COURT: All right. Tell me, and I am
21 sorry, I don't have the sentence sheet in front of
22 me, what was it?

23 MR. BAX: It was 25 years, Your Honor.
24 Twetny-five is on the armed robbery, and then five
25 on the weapons charge to run concurrent I believe.

MOTION HEARING

1 MS. LEMPESIS: It was assault and battery.

2 MR. BAX: Oh, assault and battery. I
3 apologize, it was the assault and battery, which
4 was a 10-year concurrent sentence, if I'm not
5 mistaken.

6 MS. LEMPESIS: That is right.

7 MR. BAX: So, 10 years concurrent with 25,
8 Your Honor, I am sorry.

9 MS. LEMPESIS: That is correct.

10 THE COURT: Well, Ms. Lempesis, what do you
11 say to that? The ten-year sentence is an
12 appropriate sentence given the nature of the
13 damages to Mr. Snodgrass. What about the sentence
14 on the armed robbery? I don't have his record
15 here in front of me. You will have to refresh my
16 memory.

17 MS. LEMPESIS: I'm happy to, Your Honor.
18 I'll have to refresh my own memory as well. I
19 handed up his prior convictions, certified prior
20 convictions. I know that it was a charge of
21 unlawful. I believe that it was unlawful carrying
22 of a weapon that he had been sentenced to just a
23 month prior to this incident.

24 THE COURT: I think that was a significant
25 point in my decision as well.

MOTION HEARING

1 MS. LEMPESIS: Yes, Your Honor. Yes, it was
2 unlawful carrying or unlawful possession of a
3 weapon that he had plead guilty to. Also a
4 possession of a stolen firearm. I believe there
5 were two separate convictions from the same
6 incident.

7 And Your Honor, as far as the reduction, the
8 State's position is that your original sentence of
9 25 years was more than appropriate given the
10 violent nature of this attack on Mr. Snodgrass.
11 Whether or not -- this new information from Ms.
12 Ross, the witness, has no bearing on what
13 Mr. McQuarters' role in this crime was. And he
14 was the only one who was there and violently
15 attacked Mr. Snodgrass with brass knuckles causing
16 permanent damage to his vision and to his face
17 that he will suffer for the rest of his life.

18 THE COURT: Right.

19 MS. LEMPESIS: We ask that the Court not
20 alter Mr. McQuarters' sentence. Thank you.

21 THE COURT: I'm looking at the notes now on
22 that, Mr. Bax. Mr. Snodgrass is here, of course,
23 right?

24 MS. LEMPESIS: He is present, Your Honor. I
25 am sorry, I failed to mention that.

MOTION HEARING

1 THE COURT: That is all right. I noticed him
2 back there.

3 MS. LEMPESIS: Thank you.

4 THE COURT: And I recall Mr. Snodgrass
5 testifying about the extent of his injuries and
6 damages of course. I would be willing, quite
7 frankly, in view of the fact that this is a no
8 parole 85 percent sentence to provide some minimal
9 relief. It may seem like minimal today, but it'll
10 be significant at the end of the sentence. I'll
11 be willing to reduce the sentence on the armed
12 robbery to 20 years rather than 25 years taking
13 into account solely Mr. McQuarters' age as the
14 sole factor in that regard. And I don't think
15 that Mr. -- frankly, I don't think that
16 Mr. McQuarters was responding to Mr. Delaplane's
17 request that Mr. Snodgrass be beat up.

18 I think that he was doing what he thought he
19 needed to do to steal the money. I recognize that
20 this is an 85 percent, no parole offense, and it
21 is not like it is 25 years parolable. 25 years
22 means almost all 25 years. I'll amend the
23 sentence to reflect ten years for the assault and
24 battery first and 20 years for the armed robbery
25 to run concurrent with each other. Thank you all.

MOTION HEARING

1 MR. BAX: Thank you, Your Honor.

2 MS. LEMPESIS: Thank you.

3 MR. BAX: Thank you for giving us this
4 opportunity, Your Honor.

5 THE COURT: I'm glad that it worked out and
6 that I was here and could hear it.

7 (Whereupon, the hearing concluded.)

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MOTION HEARING

1

2 CERTIFICATE

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4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8 DATED this 10th day of March, 2016.

9

10

/s/ Mona L. Manley

11

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

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Is this report a General Sessions Case which needs to go to the G/S Court Coordinator? ☒ YES ☐ NO

Supplemental Report

Agency ID: SC 0070000

Case Number 201310200508

Available for Records Section ☐

07/24/2015

Section

Juvenile: ☐

☐ Modifies Original	☐ Add'l Victims	☐ Add'l Stolen Property	NCIC Inq.	DJS	
☐ Case Status Change	☐ Add'l Offenders	☐ Add'l Recovered Property	NCIC Ent'd		
Incident Type					
Incident Type					
Incident Location	435 William Hilton Parkway (Northridge Cinema 10), Hilton Head Island, SC, 29926.				
Reporting Officer					
Complainant	Same as Victim				
Victim	Snodgrass, John / Northridge Cinemas				
Suspect	McQuarters, Austin / Perez, Jacklyn / Delaplane, Colton				
Assigned Officer					
Reporting Officer	Date	Unit #	Shift Supervisor	Date	Unit #
	07/24/2015			07/24/2015	
Division Supervisor	Date	Unit #	Reviewed By Investigator	Date	Unit #
	07/24/2015			7/24/2015	
Case Dispo.	Reason for Ex-Clear	Follow Up Inv. Officer Assigned		Unit #	
		☐ Yes ☐ No			



ADDITIONAL VICTIM/SUSPECT/WITNESS/ETC:

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race
	Ross	Christi	Maria				
Age	Eth	Ht	Wt	Hair	Eyes	J.S./O.U.	Relationship to Suspect
50		509	135				

Facial Hair/Scars/Tattoos/Etc

* J: This Jurisdiction S: State O: Out of State U: Unknown

St #	Street Name	Unit	Subdivision/Complex	City	St	Zip
	Road			Hilton Head		29926
Home Phone		Work Phone		Cell Phone		
				843-422-6336		

FOR VICTIMS	Visible Injury	Explain	Complaint Non-Visible Injury
	☐ Yes ☐ No		☐ Yes ☐ No
	Victim Using	Alcohol: ☐ Yes ☐ No ☐ Unknown	Drugs: ☐ Yes ☐ No ☐ Unknown
	Subst. Type		

FOR SUSPECTS	Type	☐ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Jail ☐ Summons
Identified	Arrested Near Scene	#Arrested
☐ Yes ☐ No	☐ Yes ☐ No	
Located	Suspect Using	Alcohol: ☐ Yes ☐ No ☐ Unknown
☐ Yes ☐ No	Subst. Type	Drugs: ☐ Yes ☐ No ☐ Unknown

Investigator's Actions:

On 07-24-2015 at approximately 0858 hours, John Snodgrass contacted me via telephone and advised me that his current manager (Christi "Randi" Ross) for the Northridge Cinema 10 told him yesterday that she had information regarding Colton Delaplane possibly setting up the robbery on the evening of 10-20-2013. Snodgrass advised me that Ross didn't come forward about this information when she was first approached by BCSO after this reported incident because she was afraid of any possible retaliation. Snodgrass stated Ross was a victim regarding a brutal domestic violence incident between her and her ex-husband before this reported incident and she is really scared for her safety. Snodgrass advised me Ross doesn't want anything to happen to her but feels that Delaplane shouldn't get away with his involvement of the armed robbery. I thanked Snodgrass for contacting me and our interview ended.

On 07-24-2015 at approximately 0930 hours, I met with Christi "Randi" Ross at the Northridge Cinema 10 and conducted an interview. Ross advised me that on November 3rd of 2013 she and Colton Delaplane were cleaning up the parking lot in front of the movie theater. Ross advised Delaplane about Snodgrass' serious injuries because of the brutal attack. Ross advised me that Delaplane stated, "I knew about the money, but I didn't know John was going to be hurt like that". Ross stated when Delaplane said this comment to her that he had a blank stare and was in shock. I asked Ross why she didn't come forward when we first approached her about this at the end of October of 2013. Ross stated she was a victim in an unrelated domestic violence incident and was badly beaten. Ross stated she didn't want anyone else after her and was afraid of her safety. I asked Ross if she would come to the BCSO Hilton Head Office for a taped interview and she agreed. I drove Ross straight to my office and conducted a taped interview.

I advised Ross that I would be audio/video taping our interview. I asked Ross about the conversation between her and her boss, John Snodgrass. Ross stated that she advised Snodgrass yesterday morning between 0730 and 0800 hours about Colton Delaplane's statement. Ross stated Delaplane worked a few days after the robbery incident with her in the parking lot in front of the movie theater. Ross advised me the owners of Northridge Cinema 10 wanted numerous tree limbs cut down because of the limited lighting in the parking lot due to the robbery. Ross then admitted to me Delaplane was a good worker and she really did like him while he worked at the movie theater. Ross stated on November 3rd of 2013 sometime after 1330 hours, she and Delaplane were taking down tree limbs and hauling them into the wooded area near the movie theater. Ross advised Delaplane about the injuries that Snodgrass acquired when he was brutally attacked. Ross advised me that Delaplane stated, "I knew about the money, but didn't know John was going to be hurt like that". Ross advised me when Delaplane advised her about this he looked stunned. Ross advised me she didn't work on the night when Snodgrass was assaulted. Ross stated she talked with Paola Labrador (current Northridge Cinema 10 employee) right after the robbery and Labrador advised her that she observed Delaplane talking to a black male in the movie theater parking lot after they left work on the evening of October 20th of 2013. Ross stated Delaplane never came back to work after that day on November 3rd.

I asked Ross if she benefits for telling me this new information and she advised me that she doesn't. Ross did advise me 2 weeks before Snodgrass was assaulted that Snodgrass yelled at Delaplane for breaking down empty boxes and some of the boxes he needed to save for repackaging. Ross stated Delaplane advised her that when Snodgrass yelled at him for breaking down the boxes he wanted to punch him in the face. Ross advised me Delaplane stated, "If John ever screams at me in my face again, I'm going to punch him". Ross then advised me again when Delaplane stated to her while they were cleaning up the parking lot on the afternoon of November 3rd of 2013 he was very apologetic and appeared to be stunned. Ross voluntarily completed a written statement which will be attached to this report.

On 07-24-2015 at approximately 1220 hours, I contacted Solicitor Mary Jordan Lempesis via telephone and advised her my updated information. After issuing her my information, I completed a video request form regarding my interview of Christi "Randi" Ross.

Attachments:

01-Written Statement Form

Case Status: Arrested Over 17.

20131020-508

Date July 24, 2015 Page No. 1

STATEMENT OF:

Name: Christi M. Ross DOB: [REDACTED] H: [REDACTED]Add: [REDACTED] Rd HHI, SC 29926 SSN: [REDACTED] C: 843-422-6336W: 843-342-3801

On Sunday, November 3, 2013 and sometime after 1:30 and before 4:00pm Colton and I were outside the movie theater parking lot cleaning debris raking and hauling away pine straw leaves and limbs. I spoke to Colton while outside. I had heard that another employee Paula had said that the night John was Robbed and injured she had seen Colton speaking with a large black man, so while I was outside with Colton and we were doing the cleaning of the parking lot I asked him about it. I basically said "John is really bad off" he ^{born} had returned to work by this time but very limited and I said to Colton "John is really bad off do you or are you everyone says you know about it" and Colton said to me "I knew about the money but I didn't know John was going to get hurt like that." he said that and looked stunned sort of staring down at the ground then he walked off to the woods to dump the back can full of pine straw and debris and I got called inside, we never spoke about it again and after that night Colton never came back to work.

This is a voluntary statement I have no gain by the omission

Christi M. Ross

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

STATE OF SOUTH CAROLINA,)

V.)

AUSTIN MCQUARTERS,)

DEFENDANT.)

IN THE GENERAL SESSIONS COURT

INDICTMENT NUMBERS:

2013GS0701844, 2013GS0701845

2013GS0710300464
464

NOTICE OF MOTION AND
MOTION TO VACATE CONVICTION
AND ORDER NEW TRIAL

2015 JUL 28 PM 3:36

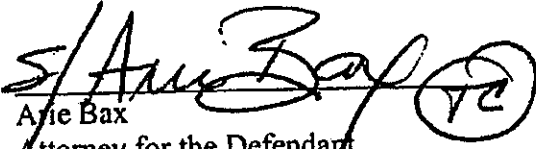
The Defendant, Austin McQuarters, by and through his undersigned attorney, Arie Bax, moves before this Honorable Court to reopen and vacate any sentence, fine or conviction associated with his Robbery/ Armed Robbery, robbery while armed or allegedly armed with a deadly weapon, indictment number 2013GS070184 and Assault and Battery, 1st Degree, indictment number 2013GS0710300464, which Mr. McQuarters was sentenced on July 22, 2015.

This request is based on newly discovered evidence that directly impacts the Defendants case which has come to light since the jury returned its verdict in Mr. McQuarters' case on July 22, 2015. As the record clearly reflects, the main thrust of Mr. McQuarters' defense was pointing out the State's inability to prove their case based primarily on the testimony of proven liars who were clearly part of the crime and who had a clear motive to lie about the defendants criminal liability in the incident in question. The new information, provided by the State to the defense via email on the Friday afternoon after the trial at approximately 5:00 pm, not only substantially furthers the Defense theory, it provides specific motive and intent evidence that State's witness Colton Delaplane was clearly the true culprit in this case and not the Defendant. Additionally, the newly discovered evidence also directly impacts the sentencing following the verdict in the Defendant's case. The Court directly cited the "brutality" of

the attack on the victim as a reason for the sentence imposed. The newly discovered evidence reveals a previously unknown witness who reveals that Mr. Delaplane had expressed a specific desire to "punch" the victim "in the face" PRIOR to the attack on and robbery of the victim. This clearly shows that, even if one were to believe Mr. Delaplane and Ms. Perez that the Defendant was their chosen muscle in this plot, the injuries inflicted on the victim were inflicted at the specific order of Mr. Delaplane. All of the above factors revealed by the newly discovered evidence mandate that the verdict and subsequent conviction of the Defendant that occurred on July 22, 2015 be vacated in its entirety and a new trial in this matter be ordered.

The Defendant request this Honorable Court schedule a hearing on this matter at its earliest convenience at which time the Defendant will present arguments addressing the reason for reopening this matter and ask this Honorable Court for an order granting the requested relief.

Respectfully submitted,


 Arie Bax
 Attorney for the Defendant
 Assistant Public Defender
 Beaufort County Public Defender's Office
 Post Office Box 525
 Beaufort, South Carolina 29901

Beaufort, South Carolina
7/28, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	Indictments No(s): 2013-GS-07-1844
	)	2013-GS-07-1845
STATE OF SOUTH CAROLINA	)	2013A0710300463
	)	464
vs.	)	
	)	RESPONSE TO DEFENDANT'S MOTION
Austin McQuarters	)	TO VACATE CONVICTION AND ORDER
	)	NEW TRIAL
Defendant.	)	

COMES NOW Assistant Solicitor Mary Jordan Lempesis in response to the Defendant's Motion to Vacate Conviction and Order New Trial in the above-captioned case. In response to the Defendant's Motion, the State submits the following to the Court:

STATEMENT OF FACTS

Defendant, Austin McQuarters, was convicted on July 22, 2015, of the offenses of Armed Robbery and Assault and Battery 1st Degree. He was sentenced by the Honorable Tommy Cooper to twenty-five (25) years in prison. This was the second trial of the Defendant. The first trial resulted in a hung jury.

The facts that the State presented showed that Defendant robbed the victim, John Snodgrass, of approximately \$4,000, and beat him with brass knuckles on October 20, 2013, outside of the victim's work place (Northridge Cinemas on Hilton Head Island). A co-defendant, Jacklyn Perez, witnessed the crime and testified during the trial about her involvement and the Defendant's actions that night. Colton Delaplane, the Defendant's friend, testified during the trial that he provided the Defendant with the information he needed to commit the robbery, but denied knowing that the robbery was going to happen. Delaplane was employed by the victim at the movie theater and was working on the night of the incident. Delaplane testified that after the incident the Defendant gave him \$250 and told him that he ran into some money at his work.

Delaplane also testified that the Defendant told him that he used brass knuckles when he beat and robbed the victim.

Dr. Patrick Snowman testified at the trial as an expert in emergency medicine and explained to the jury that the injuries suffered by the victim were caused by a blunt object and something other than a fist.

On Thursday, July 23, 2015, John Snodgrass contacted Investigator Doug Seifert with the Beaufort County Sheriff's Office ("BCSO") and informed him that one of the other managers at the theater provided him with additional information regarding Delaplane's role in the robbery. On July 24, 2015, Investigator Seifert interviewed that manager, Christ Ross, and obtained a statement from her in which she described a conversation she had with Delaplane after the robbery. She told the investigator that Delaplane said he knew about the money, but he did not know he (John Snodgrass) was going to get beaten so badly. Ross said that she did not previously tell the police about this statement because she did not want to become involved in the investigation. She was interviewed by Cpl. Sally Irvin with BCSO on October 22, 2013, and she did not disclose this information to law enforcement. Ross was not called as a witness at trial, however, her identifying information was in the BCSO incident report, which was provided to the Defense by the State through discovery.

LAW AND ANALYSIS

The requirements for obtaining a new trial based on after-discovered evidence were set out by the South Carolina Supreme Court in *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999). The Court held that in order to obtain a new trial on the basis of after-discovered evidence, the moving party must show that the evidence:

1. would probably change the result if a new trial were granted,

2. has been discovered since the trial,
3. could not have been discovered before the trial by the exercise of due diligence,
4. is material to the issue of guilt or innocence, and
5. is not merely cumulative or impeaching.

State v. Spann, 334 S.C. 618, 619, 6513 S.E.2d 98, 99 (1999). “A motion for a new trial based on after-discovered evidence is addressed to the sound discretion of the trial judge.” *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); citing *State v. Irvin*, 270 S.C. 539, 545, 243 S.E.2d 195, 197 (1978). “The granting of a new trial because of after-discovered evidence is not favored and this Court will sustain the lower court’s denial of such a motion unless there appears an abuse of discretion.” *State v. Irvin*, 270 S.C. at 545, 243 S.E.2d at 198. Furthermore, in *State v. Harris*, the South Carolina Court of Appeals held that “[t]he credibility of newly-discovered evidence is for the trial court to determine.” *Harris*, 391 S.C. at 545.

In *State v. Mercer*, the Defendant, Kevin Mercer, was convicted of murder, armed robbery, and possession of a firearm during the commission of a violent crime. Mr. Mercer was sentenced to death. *State v. Mercer*, 381 S.C. 149, 672 S.E.2d 556 (2009). Mr. Mercer filed a motion for a new trial based, in part, on after-discovered evidence. *Id.* The newly discovered evidence was a letter the Solicitor received from a cell mate (Fuller) of Mr. Mercer’s co-defendant, Thompson, who said that Thompson admitted to him that he shot the victim. *Id.* Notably, the State’s theory was that Mr. Mercer was the triggerman. *Id.* at 165, 672 S.E. 2d at 564. Based on this information, the trial court conducted a hearing, and the Defendant’s motion for a new trial on the basis of after-discovered evidence was denied. *Id.* The South Carolina Supreme Court upheld the trial court’s decision and found no abuse of discretion by the trial judge. *Id.* The Supreme Court recognized, and the State conceded, that all but one of the

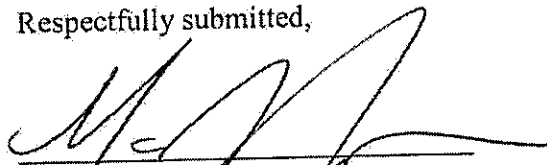
elements for a new trial set was met. *Id.*, 672 S.E.2d at 565. The only element that was not met was the fact that the newly discovered evidence would probably change the result if a new trial were granted. *Id.* The Court found that “[t]he after-discovered evidence is limited to Fuller’s testimony that Thompson admitted to being the triggerman,” and, “Thompson’s participation in, and first-hand knowledge of, the crime, was clearly known to Mercer and the State from the beginning.” The Court went on to find that the trial court’s determination was based, in part, on the credibility of Fuller, and acknowledged again the gatekeeping role in post-trial after-discovered evidence motions. *Id.* at 168.

In the case at hand, only one of the five requirements for a new trial has been met. The second requirement, that the evidence has been discovered since the trial of the case, is the only element that has been met. The information received from Ms. Ross would not change the result if a new trial were granted, it is not material to the guilt or innocence of Mr. McQuarters, and is merely impeachment evidence. Furthermore, the evidence could have been discovered by the defense before the trial as Ms. Ross’ information was listed in the incident report. As such, the defense could have attempted to speak with Ms. Ross and presumably could have discovered this information prior to the trials of Mr. McQuarters by exercising due diligence.

In contrast with the *Mercer* case, where all of the requirements for a new trial were met except for one, and where the new evidence actually pointed to a different triggerman in a death penalty case, the new evidence of Colton Delaplane’s statement to Ms. Ross wherein he admits to knowing about the money, satisfies only one of the five requirements for a new trial. This information goes only towards impeachment of the witness, Colton Delaplane, and does not negate Mr. McQuarters’ role in the robbery and assault of the victim. Mr. McQuarters acted alone when he assaulted Mr. Snodgrass with brass knuckles and robbed him of \$4,000.

Therefore, because only one of the five requirements for a new trial has been established, the Defendant's Motion to Vacate Conviction and Order a New Trial should be denied.

Respectfully submitted,



Mary Jordan Lempesis
Assistant Solicitor
Fourteenth Judicial Circuit

Beaufort, South Carolina
August 12, 2015

WITNESSES

Seifert--BCSO

DOCKET NO. 2013GS0701844

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

January Term 2014

ARREST WARRANT NUMBER

2013A0710300463

ACTION OF GRAND JURY

True Bill

Jennifer Snider
Foreperson of Grand Jury
Date: **JAN 28 2014**

VERDICT

Foreperson of Petit Jury
Date:
INDICT

THE STATE

vs.

Austin Lewis McQuarters

Indictment for

Robbery / Armed Robbery

SC Code: 16-11-0330(A)
CDR Code:0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

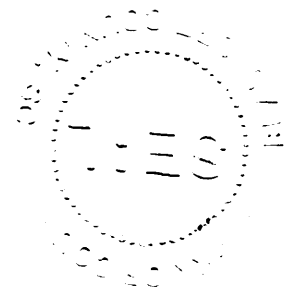
STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

INDICTMENT
 2013GS0701844

At a Court of General Sessions, convened on January 23, 2014, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Armed Robbery

That in Beaufort County, South Carolina, on or about October 20, 2013, the Defendant, Austin Lewis McQuarters, ^{* he man} by use of force, threats, or intimidation and while alleging, either by action or words, ~~she~~ was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods or monies from the person or immediate presence of John Snodgrass with the intent to permanently deprive him of possession thereof; in violation of Section 16-11-330(A) of South Carolina Code of Laws, 1976, as amended. AB



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

James M. Spencer

Solicitor

* AMENDED AT THE CALLING OF THE CASE FOR TRIAL TO CORRECT SCRIVENER'S ERROR, WITHOUT OBJECTION. THIS WAS DONE ON THE RECORD.

William P. Keesley FEB. 17, 2015
 Wm. P. Keesley, PRESIDING JUDGE

WITNESSES

Seifert--BCSO

DOCKET NO. 2013GS0701845

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

January Term 2014

ARREST WARRANT NUMBER

2013A0710300464

ACTION OF GRAND JURY

True Bill

Jennifer Snider

Foreperson of Grand Jury

Date:

JAN 23 2014

VERDICT

Caroline Kemerling

Foreperson of Petit Jury

Date:

INDICT

7/22/2015

THE STATE

vs.

Austin Mcquarters

Indictment for

Assault & Battery 1st Degree

SC Code: 16-03-0600(C)(1)

CDR Code:3412

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2013GS0701845

At a Court of General Sessions, convened on January 23, 2014, the Grand Jurors of Beaufort County present upon their oath:

Assault & Battery 1st Degree

That in Beaufort County, South Carolina, on or about October 20, 2013, the Defendant, Austin Mcquarters, did commit an assault and battery, by unlawfully: injuring another person, John Snodgrass, and the act: occurred during the commission of a robbery, burglary, kidnapping, or theft; all in violation of the Common Law of South Carolina and Section 17-25-30 (C/L) of the Code of Laws of South Carolina (1976, as amended).

* 10-3-600 mae
AB

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

James M. Stinebaugh

Solicitor

* AMENDED AT THE CALLING OF THE CASE FOR TRIAL TO CORRECT SERVICER'S NAME. Any issues were placed on the record.

William P. Kershney
WM. P. KERSHNEY
PRESIDING JUDGE

FEB. 17, 2015

10 - 30 years

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.
Austin Mcquartars

INDICTMENT/CASE#: 2013GS0701844
A/W#: 2013A0710300463
Date of Offense: 10/20/2013
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

AKA:
Race: AFRICAN AME Sex: M Age: 20
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST:

Lempesis, Mary Jordan SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on: 4-1845
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP days/hours Public Service Employment

Recipient:

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 3 columns: Description, Amount, Total. Rows include assessments, surcharges, and fees totaling \$133.90.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge
Judge Code:
Sentence Date: 7/22/15

Vertical stamp: Certified - A True Copy, Pam Burries, Jerri Ann Roseaneau - Clerk of Court, Beaufort County, SC - Pam Burries

COUNTY OF Beaufort
STATE VS.Austin Mcquartters

AKA:

Race: AFRICAN AME Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery 1st DegreeINDICTMENT/CASE#: 2013GS0701845A/W#: 2013A0710300464Date of Offense: 10/20/2013S.C. Code §: 16-03-0600(C)(1)CDR Code #: 3412

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lempesis, Mary Jordan

SC Bar# _____

Defendant

Attorney for Defendant

SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 ~~days~~ months years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: H 18 49☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforc. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

Certified - A True Copy
 Jerri Ann Roseaneau - Clerk of Court
 Beaufort County, SC - Pam Burries

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	DOCKET NO. 2013-GS-07-1844
	)	2013-GS-07-1845
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
AUSTIN MCQUARTERS	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

February 17, 2015
Beaufort, South Carolina

VOLUME 1 (OF 3)

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE

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

MARY CONCANNON, ESQ.
Attorney for the State

ARIE BAX, ESQ.
T. JAMES BELL, ESQ.
Attorneys for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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STATE

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1	Photo	126 - I.D. only
2	Photo	126 - I.D. only

COURT

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1 PROCEEDINGS

2 THE COURT: Before we draw a jury can we take up
3 any matters we need to take up?

4 MS. CONCANNON: Your Honor, very briefly before we
5 pick a jury I have two amendments to the indictments.
6 They are very minor Scribner's errors. One is changing
7 she to he and another the code section for the assault
8 and battery indictment everything is correct; the title,
9 the code, the C-D-R on the front is correct but for some
10 reason on the back it has 17-25-30 when it needs to be
11 16-3-600.

12 THE COURT: Mr. Bax?

13 MR. BAX: Thank you, Your Honor. The prosecutor
14 made me aware of these things. I'm conversed with State
15 v Gentry and the law about it. I think I don't -- in my
16 opinion as an officer of the court I don't really have an
17 objection I can offer because I am well aware what the
18 facts are alleged and what the crimes are. They do list
19 them as the correct things in the title.

20 It says armed robbery and it says assault and
21 battery first degree. Where it says she versus he I
22 clearly understood what they were referencing. I did
23 look at that as a typo and didn't even notice the statute
24 change on the back side of it. If my client has any
25 objections I give him the opportunity but I don't see any

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1 legal reason why I can object to the amendments Your
2 Honor because I am on notice of what I am defending
3 against.

4 THE COURT: Anything else?

5 MS. CONCANNON: No, Your Honor.

6 THE COURT: Motion to amend is granted.

7 MS. CONCANNON: My apologies, Your Honor. The
8 State is ready...

9 THE COURT: You ready for the jury Mr. Bax?

10 MR. BAX: I am, Your Honor. As you're aware from
11 our brief in chambers meeting there is a motion my client
12 has but I don't think there is any reason why we can't do
13 it after the jury is picked.

14 THE COURT: All right. Would you bring the jurors
15 in please?

16 [Whereupon, the jury panel enters the courtroom]

17 THE COURT: Ladies and gentlemen as I told you
18 before the break we're going to turn our attention now to
19 a specific case. I'll be asking you questions. The
20 purpose of these questions is to find out from you any
21 possible connection you may have with anybody in the case
22 or the case itself, whether you or anyone close to you
23 has ever been through anything similar to this what is
24 alleged here. Basically if you keep in mind that the
25 goal of these questions is for us to have a jury serving

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1 that is fair and impartial hopefully the questions will
2 make more sense to you. If a question applies to you or
3 if you have a doubt about whether it applies to you
4 please stand. When I call on you I need you to identify
5 who is speaking and then listen carefully to the question
6 I ask of you and answer that question. All right
7 Solicitor, call your case.

8 MS. CONCANNON: Thank you, Your Honor. The State
9 calls Austin McQuarters indictment 2013-GS-07-1844 armed
10 robbery as well as 2013-GS-07-1845 assault and battery in
11 the first degree.

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VOIR DIRE

THE COURT: Ladies and gentlemen of the jury panel please give me your attention. We're about to qualify a jury to hear two separate and distinct indictments. They are being tried together for purposes of convenience. Both are captioned the State v Austin Lewis McQuarters.

One indictment alleges that in Beaufort County on or about October the 20th, 2013 Austin Lewis McQuarters by use of force, threats, or intimidation and while alleging either by action or words that he was armed while using the representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon did take and carry away goods or monies from the person or immediate presence of John Snodgrass with the intent to deprive the owner permanently of that property, which is alleged to be in violation of code section for armed robbery.

The other indictment charges that in Beaufort County on or about October the 20th, 2013 Austin McQuarters did commit an assault and battery by unlawfully injuring another person, John Snodgrass, and the act occurred during the commission of a robbery, burglary, kidnapping, or theft, which is alleged to be in violation of the code section cited in the indictment for assault and battery

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1 in the first degree. Upon his arraignment on these
2 charges Mr. McQuarters has entered pleas of not guilty.
3 He is presumed to be innocent. It is incumbent upon the
4 state of South Carolina having brought these charges to
5 prove every essential element of each offense beyond a
6 reasonable doubt.

7 Mr. McQuarters has no obligation to prove anything
8 at all; he is presumed innocent. An indictment is a
9 charging paper. It is not evidence of anything; it's
10 merely the formal means by which someone is charged and
11 brought to trial. Now is Austin Lewis McQuarters in the
12 courtroom?

13 MR. BAX: Yes, Your Honor. He's sitting right here
14 next ---

15 THE COURT: --- Mr. McQuarters I need for you to
16 stand please, sir.

17 [Whereupon, the defendant stands]

18 THE COURT: Thank you. You may be seated.

19 [Whereupon, the defendant complies]

20 THE COURT: Is there any member of the jury panel
21 who is related by blood or marriage or connected by
22 employment with Mr. Austin Lewis McQuarters? If so
23 please stand.

24 [Whereupon, no one stands]

25 THE COURT: Mr. McQuarters is being represented by

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1 Mr. Arie Bax.

2 [Whereupon, Mr. Bax stands]

3 THE COURT: The following persons have been
4 identified as potential witnesses in the case. If any of
5 these people are present I need for that person to stand
6 as his or her name is called and face the jury.

7 Chris Rosetti of Hilton Head Island, South Carolina,
8 Minor 1 of Bluffton, South Carolina, Deputy
9 Brian Michael of the Beaufort County Sheriff's Office,
10 Investigator Laurel Albertin of the Beaufort County
11 Sheriff's Office, Investigator Sally Irvin of the
12 Beaufort County Sheriff's Office, Investigator Wendy
13 Conant, C-O-N-A-N-T of the Beaufort County Sheriff's
14 Office, Investigator Doug Seifert of the Beaufort County
15 Sheriff's Office, Jacklyn Perez, Bluffton, South
16 Carolina, John Snodgrass of Hilton Head Island, Paola
17 P-A-O-L-A Labrador of Hilton Head Island, Randi Moss;
18 that's Randi with an I -- I'm sorry, Randi Ross of Hilton
19 Head Island, Victoria Leddy of Hilton Head, Doctor
20 Patrick Snowman of Hilton Head, Harriet McQuarters; she
21 is over here at my right folks.

22 [Whereupon, Ms. McQuarters stands]

23 THE COURT: And Aaron McQuarters; he's also over
24 here to my right.

25 [Whereupon, Mr. Aaron McQuarters stands]

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1 THE COURT: Thank you. Ladies and gentlemen to
2 the best of your knowledge are any of you related by
3 blood or marriage or connected by employment with any of
4 the potential witnesses in the case? If so please stand.

5 [Whereupon, individuals stand]

6 THE COURT: What's your name?

7 MS. GASIOROWSKI: Beth Gasiorowski, 103. I work
8 with Doctor Snowman at the hospital.

9 THE COURT: Do you know anything at all about this
10 matter?

11 MS. GASIOROWSKI: No, I do not.

12 THE COURT: Is there anything at all about your
13 relationship or your experience with the doctor that
14 would affect your ability to be a fair and impartial
15 juror in the case?

16 MS. GASIOROWSKI: No, sir.

17 THE COURT: I need you to answer these questions
18 yes or no. If you need to go beyond that come down front
19 and give me a full explanation all right?

20 MS. GASIOROWSKI: Yes, sir.

21 THE COURT: Do you understand that if you are a
22 juror in this case you have to evaluate the creditability
23 and believability of every witness who testifies?

24 MS. GASIOROWSKI: Yes.

25 THE COURT: This doctor has been listed as a

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1 potential witness. Have you ever formed or expressed in
2 your own mind -- I'm sorry; have you ever formed in your
3 own mind or have you ever expressed to anyone else an
4 opinion as to whether he is believable or not?

5 MS. GASIOROWSKI: Yes.

6 THE COURT: I have to set you aside. 103 is set
7 aside for the first trial. And your name?

8 MR. RARDON: Greg Rardon.

9 THE COURT: Say again please?

10 MR. RARDON: Greg Rardon.

11 THE COURT: Mr. Rardon is juror number 240. What's
12 your situation?

13 MR. RARDON: I know **Minor 1** Jacklyn Perez
14 or Brooklyn Perez and Austin McQuarters from high school.

15 THE COURT: You know Mr. McQuarters, Mr. **Minor 1**
16 and who else?

17 MR. RARDON: Jacklyn Perez.

18 THE COURT: Anything about that experience or
19 relationship with any of those individuals that affects
20 your ability to be a fair and impartial juror in this
21 case?

22 MR. RARDON: I was friends with them for a while.

23 THE COURT: You think that might have some affect
24 on your ability to be fair and impartial?

25 MR. RARDON: I wouldn't want to see them go to jail

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1 so.

2 THE COURT: All right. 240 is set aside on this
3 case. I don't know what's going to happen in the case
4 Mr. Rardon but I'll have to set you aside. What's your
5 name ma'am?

6 MS. ROLLINS: Ina Rollins, 255. I'm a data ---

7 THE COURT: --- hold on a second. Ms. Rollins is
8 255, go ahead please.

9 MS. ROLLINS: I'm the data specialist at McCracken
10 Middle School and two of those names you mentioned I've
11 been there for about 11 years now have come through my
12 school so I know the children.

13 THE COURT: Okay. To the best of your knowledge
14 is there anything at all about your situation that
15 affects your ability to be a fair and impartial juror in
16 this case?

17 MS. ROLLINS: I do not believe so.

18 THE COURT: Do you have any doubt in your mind?

19 MS. ROLLINS: No, sir.

20 THE COURT: Do you have any kind of personal
21 relationship with any of these potential witnesses?

22 MS. ROLLINS: No sir, not that I know of. I mean if
23 they have brothers or sisters in my building I don't...

24 THE COURT: Thank you. 255 Ms. Rollins is
25 eligible to serve. The State will be represented by

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1 Assistant Solicitor Mary Concannon who is with the 14th
2 Judicial Circuit Solicitor's Office.

3 [Whereupon, Ms. Concannon stands]

4 THE COURT: Thank you. Do any of you know
5 anything about this matter? Do you have any knowledge
6 whatsoever about the underlying factual allegations? To
7 the best of your recollection have you heard, seen or
8 read anything in any news accounts about this matter?
9 Have you overheard anything discussed about it? Do you
10 know anything whatsoever about the underlying factual
11 matter? If so please stand.

12 [Whereupon, an individual stands]

13 THE COURT: You don't have to answer any more
14 questions on this case. Anybody else?

15 [Whereupon, no one stands]

16 THE COURT: Now I've asked you if you are related
17 by blood or marriage or connected by employment with any
18 of the potential witnesses in the case or with Mr.
19 McQuarters, the defendant. I need to expand that now and
20 ask you if you have any connection of any kind with
21 anybody involved in the case; the attorneys, the law
22 enforcement officials, the agencies involved. If you are
23 friends, neighbors, attend the same church or civic club
24 if you have any connection of any kind with anybody in
25 this case or any entity in this case, including Beaufort

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1 County Sheriff's Office, the Solicitor's office in this
2 circuit, Doctor Snowman and his office you need to let us
3 know about it.

4 [Whereupon, no one stands]

5 THE COURT: Are any of you yourselves currently or
6 formerly employed at any law enforcement agency or do you
7 have anyone who is very close to you either relation or a
8 very close personal friend who is employed in any
9 capacity of law enforcement civilian or military,
10 federal, state, local, military; that would include
11 prosecutors offices, law enforcement officials.

12 If you have ever been so employed or anyone close to
13 you has ever been so employed please let us know about
14 it.

15 [Whereupon, an individual stands]

16 THE COURT: Your name over here [indicates]?

17 MS. SIMMONS: Tammi Simmons, 275.

18 THE COURT: 275 Ms. Simmons what's your situation
19 ma'am?

20 MS. SIMMONS: Sheriff Tanner is my first cousin.

21 THE COURT: Ms. Simmons, I'm going to set you aside
22 on this case because you're related to the sheriff of the
23 primary law enforcement agency. Just stay with us for
24 other cases.

25 [Whereupon, an individual stands]

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1 THE COURT: Your name please?

2 MS. FIELDS: Dominique Fields, juror number 91.

3 THE COURT: Hold on just a second. I missed it --
4 say again what your name is?

5 MS. FIELDS: Dominique Fields.

6 THE COURT: Fields 91; what's your situation ma'am?

7 MS. FIELDS: My husband was in the United States
8 Navy air traffic control for about 12 years. He is in
9 active reserve at this time. About a year ago he was
10 employed with Jasper County as a dispatcher.

11 THE COURT: Is there anything at all about that
12 situation and your relationship with him or his
13 experiences that affects your ability to be a fair and
14 impartial juror in this case?

15 MS. FIELDS: No.

16 THE COURT: Any doubt in your mind?

17 MS. FIELDS: No doubt.

18 THE COURT: Thank you. Juror number 91 is
19 eligible to serve.

20 [Whereupon, an individual stands]

21 THE COURT: Yes, ma'am?

22 MS. RITTMAN: Brenda Rittman, 252. My husband is
23 retired from the United States Navy and I have two
24 cousins that are law enforcement officers and I have an
25 aunt that is a correctional officer.

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1 THE COURT: Where are your cousins employed?

2 MS. RITTMAN: They are in Florida; everybody is in
3 Florida but my husband.

4 THE COURT: Okay. Is there anything at all about
5 your relationship with them or any experiences you've had
6 that would affect your ability to be a fair and impartial
7 juror in this case?

8 MS. RITTMAN: No, sir.

9 THE COURT: Any doubt in your mind?

10 MS. RITTMAN: No, sir.

11 THE COURT: Thank you very much. Ms. Rittman 252
12 is eligible to serve.

13 [Whereupon, an individual stands]

14 THE COURT: Yes, sir?

15 MR. HARRIS: Joseph Harris, 122. My mother who is
16 deceased now for two years she was a probate judge
17 retired from Marlboro County in South Carolina.

18 THE COURT REPORTER: What county sir?

19 MR. HARRIS: Marlboro.

20 THE COURT: Anything about that would affect your
21 ability to be a fair and impartial juror in the case?

22 MR. HARRIS: No, sir.

23 THE COURT: Any doubt in your mind?

24 MR. HARRIS: No, sir.

25 THE COURT: Mr. Harris is 122 and eligible to

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1 serve.

2 [Whereupon, an individual stands]

3 THE COURT: Your name please?

4 MS. SIMONSEN: Tonya Simonsen, I'm juror 276. I am
5 really good friends with James Hoyt who works for the
6 Beaufort County Sheriff's Office.

7 THE COURT: Anything about that situation that
8 affects your ability to be a fair and impartial juror in
9 the case?

10 MS. SIMONSEN: No, sir.

11 THE COURT: You can decide the case without regard
12 to what he might think of your decision?

13 MS. SIMONSEN: Yes, sir.

14 THE COURT: You have any doubt at all about that?

15 MS. SIMONSEN: No, sir.

16 THE COURT: Thank you. 276 Ms. Simonsen is
17 eligible to serve.

18 [Whereupon, an individual stands]

19 THE COURT: Yes, ma'am?

20 MS. MCNEELY: Sabrena McNeely, number 193.

21 THE COURT: 193? Go ahead please.

22 MS. MCNEELY: My husband was a police officer for --
23 in Wynette County in Georgia 20 years ago. I didn't even
24 know him at the time.

25 THE COURT: Anything at all about your situation

1 that affects your ability to be a fair and impartial
2 juror in this case?

3 MS. MCNEELY: No, sir.

4 THE COURT: Any doubt in your mind?

5 MS. MCNEELY: No, sir.

6 THE COURT: Thank you. Ms. McNeely 193 eligible
7 to serve. Yes, sir?

8 MR. VANCE: Wayne Vance, number 318.

9 THE COURT: Yes, sir?

10 MR. VANCE: I have served as a trial attorney at the
11 Department of Justice and as an appointed official with
12 the department.

13 THE COURT: Anything about your experience that
14 affects your ability to be a fair and impartial juror in
15 this case?

16 MR. VANCE: None at all.

17 THE COURT: Any doubt in your mind?

18 MR. VANCE: None.

19 THE COURT: Thank you. 318 Mr. Vance is eligible.

20 [Whereupon, an individual stands]

21 THE COURT: Yes, sir?

22 MR. DEAN: Paul Dean, number 70.

23 THE COURT: Mr. Dean is number 70. What's your
24 situation?

25 MR. DEAN: I have a relative who is currently an

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1 investigator with the Beaufort County Sheriff's Office
2 and I have several friends and neighbors who also work
3 for the department.

4 THE COURT: What relationship is the investigator
5 to you?

6 MR. DEAN: Second cousin.

7 THE COURT: I'm going to set you aside Mr. Dean.

8 MR. DEAN: Thank you, sir.

9 THE COURT: 70 is set aside on this trial. Stay
10 with us for other trials.

11 MR. DEAN: Yes, sir.

12 [Whereupon, an individual stands]

13 THE COURT: Yes, sir?

14 MR. LONGORIA: Aaron Longoria, number 172, Army
15 active duty. I know a few military police; none of them
16 that I know of are connected to anything with this case.

17 THE COURT: All right Mr. Longoria is there
18 anything about that situation that affects your ability
19 to be a fair and impartial juror in this case?

20 MR. LONGORIA: No, sir.

21 THE COURT: Any doubt in your mind?

22 MR. LONGORIA: No, sir.

23 THE COURT: Thank you. 172 is eligible.

24 [Whereupon, an individual stands]

25 THE COURT: Yes, ma'am?

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1 MS. MCCADEN: Jill McCaden 187.

2 THE COURT: Yes, ma'am?

3 MS. MCCADEN: I'm not related to but I know
4 Detective Seifert as his children either have or are
5 attending my school where I am the principal.

6 THE COURT: Is there anything at all about that
7 situation that affects your ability to be a fair and
8 impartial juror in the case?

9 MS. MCCADEN: No, sir.

10 THE COURT: Have you had any interaction with him
11 that you recall?

12 MS. MCCADEN: No, sir.

13 THE COURT: Can you decide the case without regard
14 to what he may think of your decision?

15 MS. MCCADEN: Certainly, yes.

16 THE COURT: So do you have any doubt whatsoever
17 about your ability to be fair and impartial in this case?

18 MS. MCCADEN: No.

19 THE COURT: Thank you. Juror number 187 is
20 eligible to serve.

21 [Whereupon, an individual stands]

22 THE COURT: Yes, ma'am?

23 MS. NORMAN: Earnestine Norman, 213.

24 THE COURT: Yes, ma'am?

25 MS. NORMAN: I have a brother that I think is a

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1 supervisor at the Detention Center, Kenneth Thompson.

2 THE COURT: The Beaufort County Detention Center?

3 MS. NORMAN: Yes.

4 THE COURT: All right Ms. Norman, I'll have to set
5 you aside on this trial. Stay with us for other trials
6 all right? 213 is set aside.

7 [Whereupon, an individual stands]

8 THE COURT: Yes, sir?

9 MR. YOUNG: William Young, 348.

10 THE COURT: Yes, sir?

11 MR. YOUNG: Relevant or not I did go to high school
12 with Sheriff Tanner and I do have several friends on the
13 Highway Patrol force.

14 THE COURT: Is there anything at all about that
15 relationship or your experiences with them that affects
16 your ability to be a fair and impartial juror in the
17 case?

18 MR. YOUNG: No, sir.

19 THE COURT: Any doubt in your mind?

20 MR. YOUNG: No, sir.

21 THE COURT: Thank you. 348 is eligible.

22 [Whereupon, an individual stands]

23 THE COURT: Yes, ma'am?

24 MS. BLINKHORN: Ann Blinkhorn, number 24. I have a
25 nephew who is a policeman in Massachusetts.

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1 THE COURT: Is there anything at all about that
2 that affects your ability to be a fair and impartial
3 juror in the case?

4 MS. BLINKHORN: No.

5 THE COURT: Any doubt in your mind?

6 MS. BLINKHORN: No.

7 THE COURT: Thank you. Juror number 24 is
8 eligible to serve.

9 [Whereupon, an individual stands]

10 THE COURT: Yes, ma'am?

11 SHINALL: Marce Shinall, 270. My ex-husband was a
12 Michigan State undercover sergeant.

13 THE COURT: Is there anything at all about that
14 experience or your relationship with him that affects
15 your ability to be a fair and impartial juror in this
16 case?

17 MS. SHINALL: No, sir.

18 THE COURT: Any doubt in your mind?

19 MS. SHINALL: No, sir.

20 THE COURT: Thank you. Ms. Shinall 270 is
21 eligible to serve.

22 [Whereupon, an individual stands]

23 THE COURT: Yes, ma'am?

24 MS. ROLLINS: Ina Rollins, 255.

25 THE COURT: Okay Ms. Rollins?

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1 MS. ROLLINS: My brother is a police officer. He
2 left Jasper County and went to Colleton County and my
3 other brother is a security on Hilton Head Island.

4 THE COURT: Is there anything at all about those
5 relationships or experience that affects your ability to
6 be a fair and impartial juror in this case?

7 MS. ROLLINS: No, sir.

8 THE COURT: Any doubt in your mind?

9 MS. ROLLINS: No doubt, no sir.

10 THE COURT: Thank you. Ms. Rollins is eligible to
11 serve, 255.

12 [Whereupon, an individual stands]

13 THE COURT: On the aisle; your name please?

14 MS. WATSON: Theresa Watson, 334.

15 THE COURT: Yes, ma'am?

16 MS. WATSON: My brother is a retired deputy sheriff
17 for Lee County Bishopville.

18 THE COURT: Is there anything about that
19 relationship or his experiences that affects your ability
20 to be a fair and impartial juror in the case?

21 MS. WATSON: No, sir.

22 THE COURT: Any doubt in your mind?

23 MS. WATSON: Yes, sir.

24 THE COURT: You have doubt?

25 MS. WATSON: Oh no; I'm sorry.

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1 THE COURT: 334 is eligible to serve.

2 [Whereupon, an individual stands]

3 THE COURT: Your name sir?

4 MR. HUMPHRIES: Greg Humphries, number 134.

5 THE COURT: All right Mr. Humphries.

6 MR. HUMPHRIES: I'm former law enforcement in
7 Virginia.

8 THE COURT: How long ago was that?

9 MR. HUMPHRIES: 25 years.

10 THE COURT: Is there anything about your experience
11 that affects your ability to be a fair and impartial
12 juror in the case?

13 MR. HUMPHRIES: No, sir.

14 THE COURT: Any doubt in your mind?

15 MR. HUMPHRIES: No doubt.

16 THE COURT: Thank you. Mr. Humphries is eligible
17 to serve. Are any of you members of or financial
18 contributors to any organization which has as one of its
19 primary purposes the support of law enforcement or
20 victim's rights?

21 That would include organizations such as Citizens
22 Against Violent Crime, Mothers Against Drunk Driving,
23 Take Back the Night, the South Carolina Law Enforcement
24 Association, SAVE, S-A-V-E, Citizens Against Domestic
25 Violence or if you volunteer at any type of shelter or

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1 you are a reserve deputy or anything like that you need
2 to let us know about it. Are you any of you members of,
3 financial contributors to, volunteers or serve as reserve
4 deputies?

5 MS. BEDNARSH: Eleanore Bednarsh, juror 15 and the
6 organization is CAPPA.

7 THE COURT REPORTER: I'm sorry ma'am, repeat that?

8 MS. BEDNARSH: Eleanore Bednarsh, juror 15, CAPPA
9 Child Abuse Prevention Association here in Beaufort
10 County.

11 THE COURT: Okay. Is there anything at all about
12 your relationship with that organization that would
13 affect your ability to be a fair and impartial juror in
14 the case?

15 MS. BEDNARSH: Not that I am aware of.

16 THE COURT: Based on what you know at this point do
17 you have any doubt in your mind?

18 MS. DEDNARSH: No.

19 THE COURT: Thank you. Juror number 15 is
20 eligible to serve.

21 [Whereupon, an individual stands]

22 THE COURT: What's your name?

23 MS. SNYDER: Kathryn Snyder, 285. I'm not sure if
24 this applies. I am affiliated with an organization that
25 does work against human trafficking. I'm on their Board

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1 and that may not be in the group that you were listing.

2 THE COURT: That's fine. 285, Ms. Snyder. Is
3 there anything at all about your relationship with that
4 organization that affects your ability to be a fair and
5 impartial juror in the case?

6 MS. SNYDER: No.

7 THE COURT: Do you have any doubt in your mind?

8 MS. SNYDER: No.

9 THE COURT: Thank you. 285 is eligible.

10 [Whereupon, an individual stands]

11 THE COURT: Yes, sir?

12 MR. VANCE: Wayne Vance number 318. I should let
13 you know that I am currently attending the Beaufort
14 County Sheriff's Office Citizens Academy, which is an
15 informative citizen's exercise.

16 THE COURT: Is there anything about that that
17 affects your ability to be a fair and impartial juror in
18 the case?

19 MR. VANCE: No, none at all.

20 THE COURT: Do you have any doubt about that?

21 MR. VANCE: No.

22 THE COURT: Thank you. Mr. Vance, 318 is eligible
23 to serve. Ladies and gentlemen, have any of you ever
24 been a victim of a crime involving robbery, theft, or a
25 weapon or have any of you ever been, any of you or anyone

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1 close to you ever been accused of committing such a crime
2 or any crime of violence for that matter? If so please
3 stand.

4 [Whereupon, individuals stand]

5 THE COURT: Let's talk about this over here on the
6 side. The attorneys may join me and Mr. McQuarters may
7 if you would like.

8 THE BAILIFF: Juror number 214, Your Honor.

9 [Whereupon, the juror comes forward]

10 THE COURT: Mr. Northcutt?

11 MR. NORTHCUTT: Yes, sir.

12 THE COURT: What's your situation?

13 MR. NORTHCUTT: A few years about ten years ago I
14 was armed robbed by four men and I was tied up and a hood
15 and they were arguing about who was going to shoot me and
16 who was going to stick me.

17 THE COURT: Anybody arrested?

18 MR. NORTHCUTT: Yes. Some people got traded out.
19 Four people got arrested. Some other people got arrested
20 but some of them got traded out for other information.

21 THE COURT: Was that here in Beaufort County?

22 MR. NORTHCUTT: It's Ridgeland County.

23 THE COURT: Is there anything at all about that
24 experience that affects your ability to be a fair and
25 impartial juror in the case?

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1 MR. NORTHCUTT: It kind of makes it hard to be
2 honest.

3 THE COURT: I understand. I would expect that from
4 anybody. 214 Mr. Northcutt is set aside on this trial.
5 I need you to stay with us. 214 is set aside on this
6 trial.

7 [Whereupon, the juror returns to the audience]

8 THE BAILIFF: Juror 252, Your Honor.

9 [Whereupon, the juror comes forward]

10 THE COURT: Ms. Rittman is 252. What is your
11 situation?

12 MS. RITTMAN: Domestic violence.

13 THE COURT: Were you the victim of it?

14 MS. RITTMAN: Yes, sir.

15 THE COURT: Was anybody charged?

16 MS. RITTMAN: Yes, but I guess they went to training
17 and it got dropped whatever you call that.

18 THE COURT: You think it was dropped?

19 MS. RITTMAN: Well you go through all the classes;
20 what you call that? I don't know.

21 THE COURT: Batterers counseling?

22 MS. RITTMAN: Yes.

23 THE COURT: Is there anything at all about that
24 experience that affects your ability to be fair and
25 impartial juror in the case?

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1 MS. RITTMAN: No.

2 THE COURT: Any doubt in your mind?

3 MS. RITTMAN: No doubt.

4 THE COURT: Can y'all hear what she said?

5 MR. BAX: I think we got it.

6 MS. CONCANNON: I think CDV?

7 MR. BAX: CDV?

8 THE COURT: Yes. And she said he went through
9 batterers counseling. Thank you, ma'am. Just have a
10 seat back.

11 [Whereupon, the juror returns to the audience]

12 THE COURT: Ms. Rittman is 252. She is eligible to
13 serve.

14 THE BAILIFF: Juror number 15, Your Honor.

15 [Whereupon, the juror comes forward]

16 THE COURT: Ms. Bednarsh?

17 MS. BEDNARSH: Yes.

18 THE COURT: What's your situation?

19 MS. BEDNARSH: I was accosted by three young men in
20 an elevator in New York City and knocked unconscious.

21 THE COURT: Okay. How long ago was that?

22 MS. BEDNARSH: It was 20 years ago.

23 THE COURT: Anybody get arrested?

24 MS. BEDNARSH: No, I chose not to press charges

25 because of extenuating circumstances for one of the young

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1 men.

2 THE COURT: Okay. Is there anything at all about
3 that experience that affects your ability to be a fair
4 and impartial juror in the case?

5 MS. BEDNARSH: I'm honestly not sure.

6 THE COURT: Okay. Well, if you have doubt I'll
7 set you aside okay?

8 MS. BEDNARSH: Okay.

9 THE COURT: Just stay with us for other cases.

10 MS. BEDNARSH: Sure. Thank you.

11 [Whereupon, the juror returns to the audience]

12 THE COURT: Juror number 15 is set aside on the
13 trial of this case.

14 THE BAILIFF: Juror number 134.

15 [Whereupon, the juror comes forward]

16 THE COURT: Mr. Humphries?

17 MR. HUMPHRIES: Yes, sir.

18 THE COURT: What's your situation?

19 MR. HUMPHRIES: I'm a recent victim of two car
20 break-ins. One involved a gun being stolen and the other
21 one involved some cash. Mr. Bax I believe is one of his
22 attorneys.

23 THE COURT: Okay. Do you have any doubt about
24 your ability to be fair and impartial in the case?

25 MR. HUMPHRIES: No, sir.

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1 THE COURT: Beaufort County prosecuted it?

2 MR. HUMPHRIES: Yes, sir.

3 THE COURT: So I've got the same Solicitor's office
4 and the Beaufort County Sheriff's Office? I'm going to
5 have to set you aside. I believe what you tell me but I
6 think I need to set you aside. Just stay with us please
7 for other cases.

8 [Whereupon, the juror returns to the audience]

9 THE COURT: Mr. Humphries is 134. He's set aside
10 on the trial of this case. I do not find him to be
11 indifferent to the cause.

12 THE BAILIFF: Juror 280.

13 [Whereupon, the juror comes forward]

14 THE COURT: Ms. Smalls?

15 MS. SMALLS: It's Scriven. I tried to tell them to
16 change my name but ---

17 THE COURT: --- what's your last name?

18 MS. SMALLS: Scriven.

19 THE COURT: S-C...

20 MS. SMALLS: R-I-V-E-N. My son not too long ago
21 maybe about two months, not even two months, he just got
22 convicted in this courtroom for a gun charge. And he's
23 right now serving at the Ridgeland Correctional Center.

24 THE COURT: Okay. So your son was convicted here
25 of a gun charge?

1 MS. SMALLS: Uh Huh.

2 THE COURT: How old is your son?

3 MS. SMALLS: He's 26.

4 THE COURT: 26? Did the county charge him or was
5 it the city or do you remember?

6 MS. SMALLS: No, I don't remember.

7 THE COURT: Is there anything at all about that
8 experience that affects your ability to be a fair and
9 impartial juror in the case?

10 MS. SMALLS: No, sir.

11 THE COURT: The fact that the same prosecutor's
12 office would be involved that would be involved with your
13 son would that affect your ability to be fair and
14 impartial?

15 MS. SMALLS: No because I think it was good.

16 THE COURT: And the same law enforcement officers
17 if they were involved would that affect your ability to
18 be fair and impartial?

19 MS. SMALLS: I don't know.

20 THE COURT: Do you think the Beaufort County
21 Sheriff's Office is the one that arrested your son?

22 MS. SMALLS: I think it was but I'm not sure.

23 MS. CONCANNON: I can look it up. Is it Calvin
24 Scriven?

25 MS. SMALLS: No, Kenya [phonetic] Smalls.

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1 MS. CONCANNON: It was the Sheriff's office?

2 MS. SMALLS: Uh Huh.

3 MR. BAX: It was the Sheriff's Office.

4 MS. CONCANNON: I prosecuted that case. She
5 recognizes me.

6 MS. SMALLS: I knew who she was. I would probably
7 want to be excused.

8 THE COURT: You probably want to be excused?

9 MS. SMALLS: Uh Huh.

10 THE COURT: Okay. Just stay with us for the other
11 cases.

12 MS. SMALLS: Okay.

13 [Whereupon, the juror returns to the audience]

14 THE COURT: 280 Ms. Scriven who is listed as Smalls
15 she is set aside in this case.

16 THE BAILIFF: Juror 153.

17 [Whereupon, the juror comes forward]

18 MR. KILPATRICK: I'm 153 Kilpatrick.

19 THE COURT: Mr. Kilpatrick, 153 go ahead please.

20 MR. KILPATRICK: Your Honor about 14 years ago we
21 relocated to the area and was living with my mother and
22 her house was broken into. Several of our personal
23 effects were stolen at the time.

24 THE COURT: Was anybody in the house when they
25 broke into it?

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1 MR. KILPATRICK: No, sir.

2 THE COURT: Did they arrest anybody?

3 MR. KILPATRICK: No, they did not.

4 THE COURT: Is there anything at all about that
5 experience that affects your ability to be a fair and
6 impartial juror in the case?

7 MR. KILPATRICK: No, sir.

8 THE COURT: Any doubt in your mind?

9 MR. KILPATRICK: No, sir.

10 THE COURT: Thank you.

11 [Whereupon, the juror returns to the audience]

12 THE COURT: Mr. Kilpatrick 153 is eligible to
13 serve.

14 THE BAILIFF: Juror 221.

15 [Whereupon, the juror comes forward]

16 THE COURT: Mr. Palmerlee?

17 MR. PALMERLEE: Yes, sir.

18 THE COURT: 221, yes sir?

19 MR. PALMERLEE: A robbery at the house with stuff
20 stolen when I was younger. And both my mother and my
21 sister's vehicles have been broken into.

22 THE COURT: Was anybody present during the
23 burglary?

24 MR. PALMERLEE: No.

25 THE COURT: Did they arrest anybody on either one?

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1 MR. PALMERLEE: No, unfortunately no.

2 THE COURT: Anything about those experiences that
3 affect your ability to be fair and impartial in this
4 case?

5 MR. PALMERLEE: I believe not.

6 THE COURT: You believe it would or would not?

7 MR. PALMERLEE: No, sir.

8 THE COURT: Okay. I may have confused you and I
9 want to make sure I got it right. Is there anything at
10 all about your experiences that affects your ability to
11 be a fair and impartial in the case?

12 MR. PALMERLEE: No, sir.

13 THE COURT: Do you have any doubt in your mind?

14 MR. PALMERLEE: No, sir.

15 THE COURT: Thank you. Mr. Palmerlee is 221, he is
16 eligible to serve.

17 MR. PALMERLEE: One other thing, sir.

18 THE COURT: Yes, sir?

19 MR. PALMERLEE: I did go to school with a cop but I
20 don't really talk to him I'm not sure if I need to tell
21 you that or not. So I don't think it should affect my
22 judgment.

23 THE COURT: Who does he work for?

24 MR. PALMERLEE: Beaufort County.

25 THE COURT: You just went to school with him?

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1 MR. PALMERLEE: Yes, sir. We were in R-O-T-C in
2 high school together.

3 THE COURT: Did I read his name out?

4 MR. PALMERLEE: No.

5 THE COURT: Is there anything at all about your
6 experiences that affects your ability to be a fair and
7 impartial juror in the case?

8 MR. PALMERLEE: No.

9 THE COURT: Thank you, sir. 221 is eligible to
10 serve.

11 [Whereupon, the juror returns to the audience]

12 THE BAILIFF: Juror 348.

13 [Whereupon, the juror comes forward]

14 THE COURT: Mr. Young? Yes, sir.

15 MR. YOUNG: The victim twice of home robbery; once
16 in Savannah, Georgia and a second in Charleston County in
17 Hollywood, South Carolina. I also had an incident in
18 Charleston County of a bullet coming through the window
19 that pretty much made me leave Charleston County.

20 And to be honest with you I'm going through an
21 incident right now. I have a 14 year old daughter that
22 may have been violated by two or three young black males.
23 Whether that would affect me I can't tell you.

24 THE COURT: You have some doubt?

25 MR. YOUNG: Yes, sir.

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1 THE COURT: Okay. That's all I want you to do is
2 be honest. Just stay with us for the other cases.

3 [Whereupon, the juror returns to the audience]

4 THE COURT: 348 Mr. Young is set aside on this
5 trial.

6 THE BAILIFF: Juror 255.

7 [Whereupon, the juror comes forward]

8 THE COURT: Ms. Rollins?

9 MS. ROLLINS: Yes, sir.

10 THE COURT: What's your situation?

11 MS. ROLLINS: At 16, 17 years old my son was
12 accused of making a chlorine bomb and blowing up a mail
13 box. And it was done to a lesser charge and he got off
14 of it.

15 THE COURT: Okay.

16 MS. ROLLINS: I didn't know if that is anything that
17 you were asking or not.

18 THE COURT: Was that in Beaufort County?

19 MS. ROLLINS: It was; it was in Bluffton.

20 THE COURT: Bluffton?

21 MS. ROLLINS: Uh Huh.

22 THE COURT: Did the sheriff's department arrest him
23 or was it Bluffton police?

24 MS. ROLLINS: Sheriff's department investigated it
25 and they came and investigated him and they had me turn

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1 him in. They had me bring him to the court.

2 THE COURT: Okay. Is there anything at all about
3 that experience that affects your ability to be a fair
4 and impartial juror in the case?

5 MS. ROLLINS: No.

6 THE COURT: Anything about the fact that the
7 Beaufort County Sheriff's Office is involved could affect
8 your ability to be fair and impartial?

9 MS. ROLLINS: No, because I think they did what they
10 were supposed to do.

11 THE COURT: You said your son was about 16 or 17?

12 MS. ROLLINS: 16, 17.

13 THE COURT: How long ago would that have been?

14 MS. ROLLINS: Seven -- he's 26 now.

15 THE COURT: So 10 years ago roughly. Okay. Any
16 doubt in your mind about your ability to be fair and
17 impartial?

18 MS. ROLLINS: No.

19 [Whereupon, the juror returns to the audience]

20 THE COURT: 255 is eligible to serve.

21 THE BAILIFF: Juror number 239.

22 [Whereupon, the juror comes forward]

23 THE COURT: Mr. Quade what's your situation?

24 MR. QUADE: Last summer I had an employee that stole
25 a couple of thousand dollars from us. We have a family

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1 run business and he had arranged to try to pay back some
2 of the funds from time to time. There were some things
3 that came up throughout this process where we didn't
4 trust him or feel comfortable so Beaufort County
5 Sheriff's Office did have to respond a couple of times to
6 our property although he never did show up. We just felt
7 that there was a threat there.

8 THE COURT: Okay. Did they ever arrest him for
9 anything?

10 MR. QUADE: Unfortunately not.

11 THE COURT: Not even stealing the money?

12 MR. QUADE: No.

13 THE COURT: Is there anything about that experience
14 that affects your ability to be a fair and impartial
15 juror in the case?

16 MR. QUADE: I don't think so.

17 THE COURT: Do you have any doubt?

18 MR. QUADE: Possibly.

19 THE COURT: Okay. I'll set you aside on this one.
20 Stay with us for the other case okay.

21 [Whereupon, the juror returns to the audience]

22 THE COURT: 239 Mr. Quade is set aside on this
23 trial.

24 THE BAILIFF: Juror number 250.

25 [Whereupon, the juror comes forward]

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1 THE COURT: Mr. Ricks?

2 MR. RICKS: Yes, sir.

3 THE COURT: What's your situation?

4 MR. RICKS: My brother was arrested twice for
5 shoplifting.

6 THE COURT: In Beaufort?

7 MR. RICKS: Yes sir, well in Bluffton.

8 THE COURT: Did he have to go to jail?

9 MR. RICKS: Not to my understanding no, sir.

10 THE COURT: Is there anything about that experience
11 that affects your ability to be a fair and impartial
12 juror in the case?

13 MR. RICKS: Not at all.

14 THE COURT: Any doubt in your mind?

15 MR. RICKS: No, sir.

16 THE COURT: Any problem with Beaufort County
17 Sheriff's Office?

18 MR. RICKS: No, sir.

19 THE COURT: Thank you, sir.

20 [Whereupon, the juror returns to the audience]

21 THE COURT: Mr. Ricks is 250 and is eligible to
22 serve.

23 THE BAILIFF: Juror number 270.

24 [Whereupon, the juror comes forward]

25 THE COURT: Ms. Shinall? What's your situation?

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1 MS. SHINALL: A year ago Christmas I was in Seattle
2 with my mother and she got broke into while we were gone
3 for the day. They took my computer and her jewelry and a
4 gun and several other items. And about 46, 47 years ago
5 I was fourteen and my brother was 19 and he got charged
6 with breaking into a J.C. Penney's store.

7 THE COURT: Okay. Anything about either of those
8 experiences that affect your ability to be a fair and
9 impartial juror in the case?

10 MS. SHINALL: No, sir.

11 THE COURT: Any doubt in your mind?

12 MS. SHINALL: No, sir.

13 THE COURT: Thank you, ma'am.

14 [Whereupon, the juror returns to the audience]

15 THE COURT: Ms. Shinall, number 270 is eligible to
16 serve.

17 THE BAILIFF: Juror number 276.

18 [Whereupon, the juror comes forward]

19 THE COURT: Ms. Simonsen, what's your situation?

20 MS. SIMONSEN: I grew up in a household with
21 domestic violence. My step-father was arrested several
22 times. And also one of my really good friends passed
23 away in 2006 and her husband was a suspect for a while
24 but he was cleared of all charges.

25 THE COURT: Okay. Were you ever the victim

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1 yourself of any physical domestic violence?

2 MS. SIMONSEN: [Nods negatively]

3 THE COURT: Was your step-father ever -- you said
4 he was arrested?

5 MS. SIMONSEN: Yes, he was arrested several times.
6 He would beat my mom.

7 THE COURT: And your friend died you believe as a
8 result of domestic violence?

9 MS. SIMONSEN: No.

10 THE COURT: You don't believe it?

11 MS. SIMONSEN: No.

12 THE COURT: Is there anything about either of those
13 experiences that affects your ability to be a fair and
14 impartial juror in the case?

15 MS. SIMONSEN: No, sir.

16 THE COURT: Any doubt in your mind?

17 MS. SIMONSEN: No, sir.

18 THE COURT: Thank you.

19 [Whereupon, the juror returns to the audience]

20 THE COURT: Ms. Simonsen, juror number 276 is
21 eligible to serve.

22 THE BAILIFF: Juror number 150.

23 [Whereupon, the juror comes forward]

24 THE COURT: Mr. Kelly?

25 MR. KELLY: Yes, sir.

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1 THE COURT: What's your situation?

2 MR. KELLY: My wife has a case pending with CVS
3 Pharmacy for being stuck with a dirty needle. I don't
4 know if that pertains to this case.

5 THE COURT: That's a civil lawsuit?

6 MR. KELLY: Yes.

7 THE COURT: Is there anything about that experience
8 that affects your ability to be a fair and impartial
9 juror in the case?

10 MR. KELLY: I don't believe so.

11 THE COURT: Any doubt in your mind?

12 MR. KELLY: No.

13 THE COURT: Thank you. Now if you go in on the
14 next case make sure you tell the judge about that.

15 MR. KELLY: Okay.

16 [Whereupon, the juror returns to the audience]

17 THE COURT: Mr. Kelly is 150; he's eligible to
18 serve.

19 THE BAILIFF: Juror number 60.

20 [Whereupon, the juror comes forward]

21 THE COURT: Mr. Cooler?

22 MR. COOLER: 18 years ago on a date with my wife I
23 mugged and attacked.

24 THE COURT: Okay. You were mugged and attacked?

25 MR. COOLER: Uh Huh. The victim was -- and she --

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1 THE COURT: Was that here in Beaufort County?

2 MR. COOLER: -- Folly Beach.

3 THE COURT: Did they arrest anybody?

4 MR. COOLER: Uh Uh.

5 THE COURT: Did they steal anything from you?

6 MR. COOLER: My wallet.

7 THE COURT: Is there anything at all about that
8 experience that affects your ability to be a fair and
9 impartial juror in the case?

10 MR. COOLER: I haven't forgotten it.

11 THE COURT: Do you have a doubt?

12 MR. COOLER: I guess I could be fair.

13 THE COURT: Okay. Do you understand what he is
14 charged with? He's charged with robbing somebody and
15 using force.

16 MR. COOLER: Maybe you better cancel me out for that
17 one.

18 THE COURT: Well, I would certainly understand why
19 that would be a problem. We've got another case and
20 maybe you can sit on that one.

21 [Whereupon, the juror returns to the audience]

22 THE COURT: Mr. Cooler is juror number 60. He's
23 set aside on this trial.

24 THE BAILIFF: Juror number 285.

25 [Whereupon, the juror comes forward]

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1 THE COURT: Ms. Snyder is 285. Yes ma'am, what's
2 your situation?

3 MS. SNYDER: We had some people working at our house
4 that took some prescription drugs that my husband had.
5 And we did call the Sheriff's Office over it.

6 THE COURT: Did they arrest anybody?

7 MS. SNYDER: No, I don't think so. I never heard
8 that they did.

9 THE COURT: Is there anything at all about that
10 experience that affects your ability to be a fair and
11 impartial juror in the case?

12 MS. SNYDER: No.

13 THE COURT: Any doubt in your mind?

14 MS. SNYDER: No.

15 THE COURT: Thank you very much.

16 [Whereupon, the juror returns to the audience]

17 THE COURT: Ms. Snyder is 285 and eligible to
18 serve.

19 THE BAILIFF: Juror number 40.

20 [Whereupon, the juror comes forward]

21 THE COURT: Mr. Buescher?

22 MR. BUESCHER: Yes, sir.

23 THE COURT: What's your situation?

24 MR. BUESCHER: When I was a teenager in Washington,
25 D.C. I was attacked on several occasions by young black

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1 males because of my skin color.

2 THE COURT: Is there anything about that experience
3 that affects your ability to be a fair and impartial
4 juror in the case?

5 MR. BUESCHER: Yes, it does.

6 THE COURT: Thank you. I'm going to set you aside
7 on this case. Stay with us for the other case. Thank
8 you.

9 [Whereupon, the juror returns to the audience]

10 THE COURT: Juror number 40 is set aside on this
11 trial. Have any of you ever been a witness in a criminal
12 trial for the defense or the prosecution? Is so, please
13 stand.

14 [Whereupon, no one stands]

15 THE COURT: Have any of you formed or expressed any
16 opinions about these cases? If so, please stand.

17 [Whereupon, no one stands]

18 THE COURT: Are any of you aware of any interest,
19 bias, or prejudice that you might have for or against the
20 State or for or against the defendant Mr. McQuarters for
21 or against anyone or any entity in the case? If so,
22 please stand.

23 [Whereupon, no one stands]

24 THE COURT: Can each of you give both the State of
25 South Carolina and the defendant Mr. Austin McQuarters a

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1 fair and impartial trial? If you know of any reason why
2 you cannot, please stand now.

3 [Whereupon, no one stands]

4 THE COURT: Further questions from the State?

5 MS. CONCANNON: No, Your Honor.

6 THE COURT: Further questions from the defense?

7 MR. BAX: No, Your Honor.

8 THE COURT: Thank you. The jury panel is
9 qualified. Ladies and gentlemen, I know what time it is
10 and I understand we're running long and I apologize. I
11 try to do what I would want the judge to do if I were
12 sitting in the juror's place and what I would want the
13 judge to do is go ahead and get this jury picked. Then
14 Judge Goldsmith asked that after we break that the rest
15 of the jury pool come back in an hour and meet him in his
16 courtroom.

17 Ladies and gentlemen the way we draw juries in civil
18 court and criminal court is different so when you go in
19 there with Judge Goldsmith you're going to see something
20 different. What happens here in criminal court is the
21 computer has randomly chosen a list of the people who are
22 still eligible to serve on this case. And the Clerk is
23 going to start at the top of that list and she's going to
24 go down the list -- are the strikes five and ten? I
25 didn't bring my book with me.

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1 MS. CONCANNON: Five and ten, Your Honor.

2 MR. BAX: Yes, Your Honor.

3 THE COURT: And she's going to call out a name and
4 if it's your name I need you to stand where you are.
5 Most places you have to come down front but stand where
6 you are and it will go a little quicker. And then the
7 Clerk is going to ask questions of the State's attorney
8 and the defense attorney and based on their responses you
9 will be told whether to come up and have a seat in the
10 jury box over here [indicates]; and bring your personal
11 belongings if you get that call. If not, you will be
12 told to just have a seat. The strikes are five for the
13 State and ten for the defense. Madame Clerk, give us a
14 jury.

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1 STRIKING OF THE JURY

2 CLERK OF COURT: Juror number 32 Linda Braymiller.

3 [Whereupon, the juror stands]

4 CLERK OF COURT: What say you for the State?

5 MS. CONCANNON: Please present the juror.

6 CLERK OF COURT: What say you for the defendant?

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

8 this case.

9 THE COURT: Come around please ma'am.

10 [Whereupon, the juror is seated in the jury box as a

11 juror]

12 CLERK OF COURT: Juror number 318 Bernard Vance.

13 [Whereupon, the juror stands]

14 CLERK OF COURT: What say you for the State?

15 MS. CONCANNON: Please present the juror.

16 CLERK OF COURT: What says the defense?

17 MR. BAX: Your Honor, approach the bench if I may?

18 THE COURT: Yes, sir.

19 [Whereupon, an off the record bench conference is

20 held]

21 THE COURT: The motion to strike for cause is

22 denied.

23 MR. BAX: Your Honor, please excuse the juror.

24 THE COURT: Mr. Vance, have a seat where you are.

25 [Whereupon, the juror is seated]

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1 CLERK OF COURT: Juror number 52 Laura Casey?
2 [Whereupon, the juror stands]
3 CLERK OF COURT: What say you for the State?
4 MS. CONCANNON: Please present the juror.
5 CLERK OF COURT: What says the defense?
6 MR. BAX: Please seat the juror in the trial of
7 this case.
8 THE COURT: Come around please.
9 [Whereupon, the juror is seated in the jury box as a
10 juror]
11 CLERK OF COURT: Juror number 266 Robert Schwartz.
12 [Whereupon, the juror stands]
13 CLERK OF COURT: What say you for the State?
14 MS. CONCANNON: Please present the juror.
15 CLERK OF COURT: What says the defense?
16 MR. BAX: Please seat the juror in the trial of
17 this case.
18 THE COURT: Come around please.
19 [Whereupon, the juror is seated in the jury box as a
20 juror]
21 CLERK OF COURT: Juror number 166 Donna Lefebvre.
22 [Whereupon, the juror stands]
23 CLERK OF COURT: What say you for the State?
24 MS. CONCANNON: Please present the juror.
25 CLERK OF COURT: What says the defense?

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1 MR. BAX: Please seat the juror in the trial of
2 this case.

3 THE COURT: Come around please ma'am.

4 [Whereupon, the juror is seated in the jury box as a
5 juror]

6 CLERK OF COURT: Juror number 1 Elizabeth
7 Abdullah.

8 [Whereupon, the juror stands]

9 CLERK OF COURT: What say you for the State?

10 MS. CONCANNON: Please present the juror.

11 THE COURT: What says the defense?

12 MR. BAX: Please excuse the juror.

13 THE COURT: Have a seat please ma'am.

14 CLERK OF COURT: Juror number 320 Raymond Ventura.

15 [Whereupon, the juror stands]

16 CLERK OF COURT: What say you for the State?

17 MS. CONCANNON: Please present the juror.

18 CLERK OF COURT: What says the defense?

19 MR. BAX: Please seat the juror for the trial of
20 this case.

21 THE COURT: Come around.

22 [Whereupon, the juror is seated in the jury box as a
23 juror]

24 CLERK OF COURT: Juror number 66 Robert Davidson.

25 [Whereupon, the juror stands]

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1 CLERK OF COURT: What say you for the State?
2 MS. CONCANNON: Please present the juror.
3 CLERK OF COURT: What says the defense?
4 MR. BAX: Please seat the juror in the trial of
5 this case.
6 THE COURT: Come around please.
7 [Whereupon, the juror is seated in the jury box as a
8 juror]
9 CLERK OF COURT: Juror number 91 Dominique Fields.
10 [Whereupon, the juror stands]
11 CLERK OF COURT: What say you for the State?
12 MS. CONCANNON: Please present the juror.
13 CLERK OF COURT: What says the defense?
14 MR. BAX: Please seat the juror in the trial of
15 this case.
16 THE COURT: Come around please.
17 [Whereupon, the juror is seated in the jury box as a
18 juror]
19 CLERK OF COURT: Juror number 139 Alesia Johnson.
20 [Whereupon, the juror stands]
21 CLERK OF COURT: What say you for the State?
22 MS. CONCANNON: Please present the juror.
23 CLERK OF COURT: What says the defense?
24 MR. BAX: Please seat the juror in the trial of
25 this case.

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1 THE COURT: Come around please.

2 [Whereupon, the juror is seated in the jury box as a
3 juror]

4 CLERK OF COURT: Juror number 179 Ruby Machi.

5 [Whereupon, the juror stands]

6 CLERK OF COURT: What say you for the State?

7 MS. CONCANNON: Please present the juror.

8 CLERK OF COURT: What says the defense?

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

11 THE COURT: Have a seat please.

12 [Whereupon, the juror is seated]

13 CLERK OF COURT: Juror number 12 Pamela Hand. I'm
14 sorry; juror number 137 Pamela Hand.

15 [Whereupon, the juror stands]

16 CLERK OF COURT: What say you for the State?

17 MS. CONCANNON: Please present the juror.

18 CLERK OF COURT: What says the defense?

19 MR. BAX: Please seat the juror in the trial of
20 this case.

21 THE COURT: Come around please.

22 [Whereupon, the juror is seated in the jury box as a
23 juror]

24 CLERK OF COURT: Juror number 135 Jennifer Hunter.

25 [Whereupon, the juror stands]

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1 CLERK OF COURT: What say you for the State?
2 MS. CONCANNON: Please present the juror.
3 CLERK OF COURT: What says the defense?
4 MR. BAX: Please excuse the juror from the trial in
5 this case.
6 THE COURT: Have a seat please.
7 [Whereupon, the juror is seated]
8 CLERK OF COURT: Juror number 161 Jakob Lauffer.
9 [Whereupon, the juror stands]
10 CLERK OF COURT: What say you for the State?
11 MS. CONCANNON: Please present the juror.
12 CLERK OF COURT: What says the defense?
13 MR. BAX: Please excuse the juror from the trial in
14 this case.
15 THE COURT: Have a seat please.
16 [Whereupon, the juror is seated]
17 CLERK OF COURT: Juror number 334 Theresa Watson.
18 [Whereupon, the juror stands]
19 CLERK OF COURT: What say you for the State?
20 MS. CONCANNON: Please present the juror.
21 CLERK OF COURT: What says the defense?
22 MR. BAX: Please excuse the juror from the trial in
23 this case.
24 THE COURT: Have a seat please.
25 [Whereupon, the juror is seated]

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1 CLERK OF COURT: Juror number 285 Kathryn Snyder.
2 [Whereupon, the juror stands]
3 CLERK OF COURT: What say you for the State?
4 MS. CONCANNON: Please excuse the juror.
5 THE COURT: Have a seat please.
6 [Whereupon, the juror is seated]
7 CLERK OF COURT: Juror number 193 Sebrena McNeely.
8 [Whereupon, the juror stands]
9 CLERK OF COURT: What say you for the State?
10 MS. CONCANNON: Please present the juror.
11 CLERK OF COURT: What says the defense?
12 MR. BAX: Please excuse the juror from the trial in
13 this case.
14 THE COURT: Have a seat please.
15 [Whereupon, the juror is seated]
16 CLERK OF COURT: Juror number 274 Rudolph Simmons.
17 [Whereupon, the juror stands]
18 CLERK OF COURT: What say you for the State?
19 MS. CONCANNON: Please present the juror.
20 CLERK OF COURT: What says the defense?
21 MR. BAX: Please seat the juror in the trial of
22 this case.
23 THE COURT: Come around please.
24 [Whereupon, the juror is seated in the jury box as a
25 juror]

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1 CLERK OF COURT: Juror number 250 Stephen Ricks.
2 [Whereupon, the juror stands]
3 CLERK OF COURT: What say you for the State?
4 MS. CONCANNON: Please present the juror.
5 CLERK OF COURT: What says the defense?
6 MR. BAX: Please seat the juror in the trial of
7 this case.
8 THE COURT: Come around please.
9 [Whereupon, the juror is seated in the jury box as a
10 juror]
11 CLERK OF COURT: Juror number 308 Patrick Tharin.
12 [Whereupon, the juror stands]
13 CLERK OF COURT: What say you for the State?
14 MS. CONCANNON: Please present the juror.
15 CLERK OF COURT: What says the defense?
16 MR. BAX: Please excuse the juror from the trial in
17 this case.
18 THE COURT: Have a seat please.
19 [Whereupon, the juror is seated]
20 CLERK OF COURT: Juror number 187, Jill McCaden.
21 [Whereupon, the juror stands]
22 CLERK OF COURT: What say you for the State?
23 MS. CONCANNON: Please present the juror.
24 CLERK OF COURT: What says the defense?
25 MR. BAX: Please excuse the juror from the trial in

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1 this case.

2 THE COURT: Have a seat please.

3 [Whereupon, the juror is seated]

4 CLERK OF COURT: Juror number 245 James Reid.

5 [Whereupon, the juror stands]

6 CLERK OF COURT: What say you for the State?

7 MR. BAX: What number is that please?

8 CLERK OF COURT: 245.

9 MS. CONCANNON: Please present the juror.

10 CLERK OF COURT: What says the defense?

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

12 this case.

13 THE COURT: Come around please.

14 [Whereupon, the juror is seated in the jury box as a

15 juror]

16 THE COURT: That's 12, right? We're drawing

17 alternates. The strikes are one for the State and two

18 for the defense.

19 CLERK OF COURT: Juror number 216 Dennis O'Connor.

20 [Whereupon, the juror stands]

21 CLERK OF COURT: What say you for the State?

22 MS. CONCANNON: Please present the juror.

23 CLERK OF COURT: What says the defense?

24 MR. BAX: Please excuse the juror from the trial in

25 this case.

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1 [Whereupon, the juror is seated]

2 CLERK OF COURT: Juror number 38 Stanley Brown.

3 [Whereupon, the juror stands]

4 CLERK OF COURT: What say you for the State?

5 MS. CONCANNON: Please present the juror.

6 CLERK OF COURT: What says the defense?

7 MR. BAX: Please seat the juror for the trial of
8 this case.

9 THE COURT: Come around please.

10 [Whereupon, the juror is seated in the jury box as
11 an alternate juror]

12 THE COURT: Do y'all want to draw another
13 alternate?

14 MS. CONCANNON: Your Honor, one is probably fine.

15 MR. BAX: No objection, Your Honor.

16 THE COURT: Madame Clerk I guess we will stick with
17 one.

18 CLERK OF COURT: Yes, sir.

19 THE COURT: Thank you. Are there any matters to
20 take up including composition of the panel prior to the
21 jury being sworn from the State?

22 MS. CONCANNON: No, Your Honor.

23 THE COURT: From the defense?

24 MR. BAX: None other than previously noted at
25 sidebar, Your Honor.

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1 THE COURT: Ladies and gentlemen, again I know what
2 time it is and I'm sorry. I have to give you some
3 instructions before I let you go to lunch and I have to
4 talk to the attorneys briefly before I do that. So I'm
5 going to have the bailiff take you back to the jury room.
6 You shouldn't be back there long.

7 While you're back there without discussing the case
8 in any way don't talk about the case, don't talk about
9 the people in it, don't talk about the type of case it's
10 alleged to be. But I want you to choose your foreperson.
11 It can be anybody except the alternate. The alternate is
12 not eligible but the other twelve of you.

13 So if y'all will pick your foreperson, write it on a
14 little piece of paper for me the name and the juror
15 number and give that to the bailiff I would appreciate
16 it. Don't discuss the case. I don't know what they do
17 about cell phones here but if you've got a cell phone
18 turn it off. Follow the bailiff.

19 [Whereupon, the jury exits at 1:42 p.m.]

20 THE COURT: Ladies and gentlemen if you were not
21 picked on this jury I am told that they want you back
22 here in an hour so let's say 2:45. They want you in the
23 jury assembly room at 2:45. Thank you very much.

24 [Whereupon, the jury panel is excused at 1:43 p.m.]

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1 THE COURT: What matters do you all have that I
2 need to address? I don't want to take them up right now
3 I just want to know what they are.

4 MR. BAX: Well, Your Honor, I know that there is
5 the issue of the motion to be relieved and then of course
6 I would defer to the State but I believe that we were
7 going to go ahead and do a Jackson v Denno as well as a
8 Neil v Biggers hearing. I don't anticipate they are
9 going to be very long.

10 THE COURT: Yes, ma'am?

11 MS. CONCANNON: Your Honor, we also have the matter
12 of some pictures the State wants to admit. We could
13 argue that pretrial as well.

14 MR. BAX: That's correct, Your Honor.

15 THE COURT: So Mr. McQuarters you're asking that
16 your lawyer be relieved?

17 MR. MCQUARTERS: Yes, sir.

18 THE COURT: Why?

19 MR. MCQUARTERS: Just a conflict of interest. Me
20 and him have had some minor problems with no
21 communication. I'm just not well informed and nothing I
22 really asked to be done was done.

23 THE COURT: Like what?

24 MR. MCQUARTERS: It was a person -- asking him to
25 contact my family which never was contacted. I had to

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1 contact them personally which he told me they wouldn't be
2 able to use as witnesses in the trial, which was my
3 witnesses, my only witnesses. And there was just verbal
4 stuff that me and him wasn't able to get along. There
5 was no communications, no -- I wasn't informed of this
6 trial until the day before so no time really to prepare
7 for it. And not informed about really what was intended
8 to be brought up in trial. So I just feel as though as
9 my counsel he wasn't doing properly his job.

10 THE COURT: Mr. Bax, you want to argue this after
11 lunch or now?

12 MR. BAX: Your Honor, it doesn't matter to me I
13 suppose. I mean I know we've got that jury sitting back
14 there and I don't want to delay. But there are some
15 things I want to put on the record and I'd rather let
16 them get their lunch first.

17 THE COURT: So, if the trial goes forward how long
18 do y'all think it will take?

19 MS. CONCANNON: Your Honor, I plan on calling six
20 of those witnesses that are on that witness list. I
21 don't anticipate my case being a morning and maybe one
22 witness in an afternoon session. I don't imagine my
23 witnesses taking an entire day; maybe three quarters of
24 the day if that.

25 THE COURT: So why don't I bring the jury back in

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1 the morning or have them call before they come because if
2 I let them go to lunch for an hour it's going to be close
3 to 3 o'clock. If your motions only take an hour then
4 we're looking at 4:00. Does that suit everybody?

5 MS. CONCANNON: To start in the morning, Your
6 Honor? Yes, Your Honor.

7 THE COURT: Do y'all have a call in?

8 CLERK OF COURT: We do have a call in number, yes
9 sir.

10 THE COURT: How would they be identified if I tell
11 them to call tonight and find out?

12 CLERK OF COURT: We will put them as jury panel
13 one.

14 THE COURT: Okay. Whenever they've got their
15 foreman chosen let me know all right?

16 THE BAILIFF: Yes, sir.

17 [Off the record momentarily]

18 THE COURT: The jury has designated juror number 91
19 Dominique Fields as the foreperson of the jury.

20 [Whereupon, court's exhibit number 1 is marked by
21 the court reporter]

22 [Whereupon, the jury enters at 1:54 p.m.]

23 THE COURT: After conferring with the attorneys
24 ladies and gentlemen it appears that there are some
25 pretrial issues that I have to address that do not

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1 require you to be here. That's the case in every trial.
2 And in view of the hour it looks like the wisest thing to
3 do with you folks is to let you go home for the day.
4 We'll come back after lunch and I'll deal with those
5 pretrial issues.

6 My plan right now would be to bring you in around
7 10:00 tomorrow. But I'm going to have you call that
8 number, the call in number, and you will be identified as
9 jury number one. Just follow the instructions that are
10 on there. It may tell you to come at 10:00 it may tell
11 you to come at some other time; I don't know what it's
12 going to tell you until I deal with the pretrial matters.

13 Now I have to give you some instructions before I
14 let you go and I'm going to give you the very abbreviated
15 version of it. Do not discuss this case in any way with
16 anybody else. Don't discuss it among yourselves, don't
17 discuss it with family members, friends; anybody at all.
18 Now it's okay to tell your employer or friend or spouse
19 that you're on a jury because you have to be able to do
20 that.

21 But you cannot tell them the case, who is in it,
22 what it is alleged to be about. Don't discuss the case
23 at all. Do not do any independent investigation of the
24 case. Don't go out and look around, don't try to do any
25 searches on the Internet, don't try to look up any law.

1 You are perfectly equipped to do the job you're going to
2 be asked to do and I'll explain all that to you in more
3 detail when you come back. I don't know if there will be
4 any media coverage of the trial. I can't ever figure out
5 what the media is going to cover. If there is any get
6 away from it. Report to me at the first opportunity what
7 you may have seen, heard, or read through the media. If
8 anybody does attempt to contact you and discuss the case
9 with you report that to me so that I can deal with that
10 also.

11 If you have some true emergency that arises that
12 prevents you from being here at the designated time
13 please have somebody call the Clerk's office and let us
14 know because I have to account for all of you. As you've
15 seen we go through a pretty rigorous exercise to draw a
16 jury. Both sides are entitled to have you serve and I
17 need to maintain that. So if you're not here after a
18 short period of time I send somebody to find you. So
19 please let us know if something is going on.

20 Now use your common sense. If you get a 24 hour bug
21 overnight we don't want that. But let us know what's
22 going on all right? Just keep all those things in mind
23 and call the Clerk's office. I hope you have a pleasant
24 evening and I look forward to seeing you tomorrow
25 hopefully. Any questions before I let you go?

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1 UNIDENTIFIED JUROR: What time should we call in?

2 THE COURT: I'm sorry. Usually it's after 6:00.

3 Is that okay here?

4 CLERK OF COURT: That's correct, Your Honor, after
5 6:00.

6 THE COURT: Okay. Call after 6:00. You're jury
7 number one. Thanks so much.

8 [Whereupon, the jury exits at 1:58 p.m.]

9 THE COURT: All right. Court is in recess until 3
10 o'clock. Y'all be careful as you leave that you don't
11 have any contact with the jurors.

12 [Whereupon, court is in recess from 2:00 p.m. until
13 2:55 p.m.]

14 THE COURT: I was notified by the bailiff when I
15 came back from lunch that one of the jurors needed to
16 talk to me. She's here, juror number 139, Alesia L.
17 Johnson. What is it you need to tell me, ma'am?

18 MS. JOHNSON: There is no one to pick up my son for
19 the rest of the trial.

20 THE COURT: Why didn't you tell me this before?

21 MS. JOHNSON: I didn't know that it was going to go
22 on for three more days. I thought today was it.

23 THE COURT: You didn't hear what I said when I told
24 you it was going to be at least a couple of days?

25 MS. JOHNSON: I thought --

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1 THE COURT REPORTER: Ma'am, I can't hear you.

2 THE COURT: I'm sorry; what did you say?

3 MS. JOHNSON: I thought it was only just one day
4 that this was going on. I never did this before.

5 THE COURT: That's why I told all of y'all that it
6 lasts the whole week and -- let me talk to them Ms.
7 Johnson and see what I've got to do. It causes me a lot
8 of problems I don't mind telling you that; but I'll try
9 to be accommodating. How old is your child?

10 MS. JOHNSON: Two.

11 THE COURT: You don't have anybody to pick the
12 child up?

13 MS. JOHNSON: Today I do, but Wednesday, Thursday,
14 and Friday I don't.

15 THE COURT: All right. Step back in the jury room
16 please ma'am.

17 [Whereupon, the juror exits the courtroom]

18 MR. BAX: What was the juror number?

19 THE COURT: 139 Alesia L. Johnson. Do y'all want
20 to be heard?

21 MS. CONCANNON: Your Honor, it concerns the State
22 that she didn't disclose this earlier. You asked that
23 question multiple times. It's as if she wasn't paying
24 attention. That concerns me greatly that perhaps we
25 won't receive her undivided attention through the

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1 duration of this case. But we only have one alternate
2 that also concerns me.

3 THE COURT: Yes, I almost always draw two
4 alternates but I was trying to keep the jury pool enough
5 for both courts. Mr. Bax?

6 MR. BAX: Thank you, Your Honor. While I agree
7 that this is something that she certainly should have
8 brought up it kind of concerns us. My other concern and
9 I'm sure Your Honor is familiar with this is my concern
10 is about jurors trying to get out of jury service and
11 trying to play it out until they figure out whether they
12 are going to get called and when they do get called
13 suddenly comes forward.

14 I hate to lose a juror that we specifically picked;
15 and we went through the process of picking. And
16 certainly we still have the jurors and we haven't started
17 pulling. I understand your concern about an alternate
18 and I thought we'd be fine with one because I haven't had
19 to call an alternate in I don't know how long; it's been
20 years.

21 THE COURT: Well, that's not my luck.

22 MR. BAX: I apologize about that.

23 THE COURT: I use them in about half the cases.

24 MR. BAX: That was the only reason I said that Your
25 Honor. We haven't had to call one since I've been

1 practicing in Beaufort, only in my cases which has been a
2 good number. I guess my biggest concern is I know Your
3 Honor asked her on the record but I'm hoping this is not
4 an attempt to get out of jury duty now that she has been
5 picked and that's my concern.

6 THE COURT: Well, I said that very thing. When I
7 went through the exemptions I said don't try to claim
8 your exemption after you wait to see if you get picked on
9 a jury. I don't think she's doing that; I don't know
10 what caused her to do that. I don't know how she sat
11 there and listened to me go back and forth with that lady
12 with her grandchild and wouldn't have thought about this.

13 MR. BAX: Exactly.

14 THE COURT: But she's got an exemption and I have
15 to honor it. And I would never have expected it. I
16 think she's a supervisor at Parris Island; that's what
17 she said. I would have certainly have thought she would
18 have been an excellent juror. Bring her back out. Do
19 y'all -- she's going to have to sign an affidavit. She's
20 going to have to sign an affidavit about nobody to care
21 for her child. Do you have the child care affidavit?

22 [Whereupon, the court confers with the clerk]

23 THE BAILIFF: The juror is entering, Your Honor.

24 [Whereupon, juror number 139 enters the courtroom]

25 THE COURT: All right Ms. Johnson. A childcare

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1 situation requires you to sign an affidavit. They're
2 going to get an affidavit for you. Once you sign it
3 you're through with jury duty. Just wait back there and
4 they'll bring the affidavit to you.

5 [Whereupon, the juror exits the courtroom]

6 THE COURT: We'll substitute the alternate Mr.
7 O'Connor for number 139 Ms. Johnson. Mr. Bax, you want
8 to respond to what your client said about not
9 communicating with him and not talking to witnesses?

10 MR. BAX: Yes, Your Honor. May it please the
11 court, Your Honor? Going back to that issue I've been
12 assigned to represent Mr. McQuarters as part of my duties
13 with the 14th Circuit Public Defender's office. That was
14 an early assignment. I've met with my client based on my
15 memory, and I've got my notes on it but at least four
16 times since representation on his case started. I believe
17 I was present for his prelim and another attorney might
18 have done it but we usually alternate attorneys at our
19 Public Defenders office to handle prelims for the whole
20 office.

21 But I was aware of the details of this case early
22 on. I met with him early on. Like I said I recall at
23 least four meetings and those were the meetings that
24 occurred at the detention center Your Honor.
25 Additionally I filed a motion for bond reconsideration I

1 believe in his case and had that hearing a number of
2 months ago. Additionally we've been on the record in
3 court another time concerning the offer of strong arm
4 robbery for a recommended seven years. That was also
5 handled on the record.

6 I put that before Your Honor to let you know that I
7 would have spoken and I remember specifically speaking to
8 my client before and after those hearings as well. So if
9 you take into account the fact that I met with him at
10 least four times at the detention center in addition to
11 the times that we've met at these at least two prior
12 times that he has been in court there have been a number
13 of times.

14 I also recall that we actually brought him up to
15 plea a couple of times and didn't go on the record. But
16 that's the best of what I can tell you without combing
17 through my notes more than I already have. I feel like
18 I've communicated with Mr. McQuarters. I've been over
19 his trial rights, I've been over the discovery, and I've
20 provided him a copy of the discovery.

21 We've reviewed it together. We discussed the
22 statements that we expect to see testified to here today
23 from Ms. Perez and Mr. Minor 1 We've discussed the
24 investigation that Investigator Seifert conducted and
25 what I would expect from him as well as the other law

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1 enforcement officers to testify to. I've discussed with
2 him his rights to put up a defense and what I would need
3 for that.

4 I do want to put on the record that I've met with
5 him multiple times but it wasn't until about a week and a
6 half ago or two weeks ago when I met with him to let him
7 know that this was looking like a very strong possibility
8 for trial; that we were second up for this term that he
9 mentioned his mother Harriet and his brother Aaron as
10 potential witnesses. I asked him at that time what he
11 expected them to be able to testify to. He indicated to
12 me that he expected them to be able to testify that he
13 was at home on the night in question.

14 Now as Your Honor is going to see from what I would
15 expect as the Jackson v Denno hearing and then in the
16 testimony in the trial my client makes a statement to law
17 enforcement after Miranda that he did go to the theatre
18 that night with Ms. Perez but that he didn't do anything.

19 So to some degree I was confused about what exactly
20 he's looking to have alibied since he's already stated to
21 law enforcement that he was at the scene of the alleged
22 attack at least sometime around in the period where it's
23 alleged to have happened. But I still sought out his
24 mother and brother and they are here in the courtroom and
25 I've spoken with them today. But my investigators the

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1 numbers and address that I had for them were apparently
2 no good anymore. We called multiple times. My
3 investigators are Rick Chapman and Robert Harris and both
4 of them worked on this case.

5 In fact I've got a printed out email in my file from
6 Mr. Robert Harris where he went to the last known address
7 that we had, which was 897 Fording Island Road, it's an
8 apartment complex where he met with the property manager
9 and was informed that Ms. McQuarters was no longer living
10 in that apartment anymore as of I believe it was December
11 of 2014 is what he was informed.

12 At that point after that investigation it was
13 already late in last week and I only had a couple more
14 days before the weekend. I basically at that point felt
15 like I've done as much due diligence as I possibly could
16 to follow up on that.

17 Now Your Honor I have spoken with both Ms.
18 McQuarters and Mr. Aaron McQuarters. My client's father,
19 Harriett's late husband has passed away since I think the
20 time of this alleged incident unfortunately. We're all
21 sad about that because there's quite a few McQuarters
22 boys and I know they're all very upset about losing their
23 father. I've spoken with Aaron as well here today and
24 they're not exactly able to tell me specific times based
25 on my discussions with them that would necessarily

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1 specific cover Mr. McQuarters for time after or before
2 that wouldn't completely contradict what he has already
3 told law enforcement.

4 At this time as a practicing attorney and Your Honor
5 is familiar with my work as a trial attorney I don't
6 think what they can testify to wouldn't end up hurting
7 his case more than helping because it sounds like they're
8 almost going to contradict what he has already told law
9 enforcement, which is what the jury is going to hear.
10 And I don't at this point honestly Your Honor don't feel
11 comfortable calling them as witnesses.

12 Now Mr. McQuarters, Aaron McQuarters has stated that
13 he remembers that day and remembers that his brother came
14 home at some point and he doesn't remember when. Ms.
15 McQuarters has informed me that she remembers that Austin
16 was there at both 10 a.m. and 10 p.m. because that's when
17 she was administering medication to her late husband and
18 that she recalls Austin being present.

19 The alleged attack in this case occurred at
20 approximately 10:45 p.m. and she hasn't been able to tell
21 me if she knows whether or not Austin left the house
22 again after 10 p.m. or not. That's what I've been able
23 to determine as far as that goes. As far as not getting
24 along with Mr. McQuarters we don't think we've had any
25 problems. The problem is that he just doesn't like what

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1 I have to say. He hasn't -- we haven't had any arguments
2 or anything like that. He's been very polite and nice.
3 He hasn't been very forthcoming. He usually doesn't have
4 a lot to add to our conversations but I've had no
5 problems.

6 THE COURT: All right Mr. McQuarters what do you
7 say about that?

8 MR. MCQUARTERS: Your Honor, he said that he spoke
9 to me four times. In those four times, which we have
10 spoken, we have not gone over any details. When he did
11 bring me my motion and discovery we did not go over it.
12 It was simply him giving me my motion for discovery.
13 When he took me up for a bond that was six months within
14 my time of being incarcerated and he just took me up and
15 that was all with that. But I have not discussed with
16 him anything dealing with my case.

17 He has brought me my motion but it was nothing
18 discussed about it. He was just giving me my motion and
19 I went through it by myself. And I did send it to my
20 family. But from me and him having any type of
21 communication we had none. Yes, he has come to see me I
22 believe it is four times. The first time he came to
23 inform me that he is my counsel and let me know what I
24 was charged with and that was basically that. But to go
25 over anything dealing with my case we have not gone over

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1 anything.

2 THE COURT: Well, what did you talk about?

3 MR. MCQUARTERS: Nothing.

4 THE COURT: Nothing?

5 MR. MCQUARTERS: No, sir. The first time he came
6 to see me he told me about my case, the second time I had
7 to appear with him I came to court for a bond. The third
8 time I came with him he gave me my motion and the fourth
9 time appearing with him he came to see me this past last
10 week to tell me I was going to trial.

11 THE COURT: And y'all didn't discuss anything about
12 the case?

13 MR. MCQUARTERS: Nothing. The only thing dealing
14 with my case was him giving me my motion of discovery.

15 THE COURT: Well then how did he know ---

16 MR. MCQUARTERS: --- and that wasn't more than ten
17 minutes.

18 THE COURT: How did he know about your mother and
19 brother?

20 MR. MCQUARTERS: I informed him of it when he came
21 to see me this last past week.

22 THE COURT: Why did you wait until then to tell him
23 about an alibi?

24 MR. MCQUARTERS: I told him about it in the
25 beginning that my parents could identify that I was home

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1 around a certain amount of time and there was nothing
2 else looked into it at that time.

3 THE COURT: Did you give him an address and a phone
4 number?

5 MR. MCQUARTERS: It's in the file.

6 THE COURT: Well he said he sent two investigators
7 out and they weren't there anymore.

8 MR. MCQUARTERS: Yes, he said they were gone I
9 believe it was December 2014 I was incarcerated 2013 of
10 November. So he waited from 2013 November to 2014
11 December to try to get in contact with my family in which
12 they do have a forwarding address to my sister's address
13 where my mother was residing at where she could have been
14 reached at any time.

15 THE COURT: Did you hear what he told me about what
16 they told him?

17 MR. MCQUARTERS: Yes, Your Honor.

18 THE COURT: You still want them called as
19 witnesses?

20 MR. MCQUARTERS: It's the only witnesses I have;
21 the only people who can say where I was around that time.

22 THE COURT: Did he discuss the plea agreement with
23 you?

24 MR. MCQUARTERS: He told me I had a plea coming up
25 for seven years and that was it. And he told me that

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1 when I went to court for the plea agreement.

2 THE COURT: The only thing he said was you've got a
3 plea agreement for seven years?

4 MR. MCQUARTERS: He told me I had a plea agreement
5 for strong arm robbery that carries seven years; it would
6 be a non-violent time. He asked me if I wanted to take
7 it and I declined it. I went in front of the Judge and I
8 told him I declined the plea agreement and I was escorted
9 back to my cell.

10 THE COURT: Y'all have anything else to put on the
11 record?

12 MR. BAX: No, Your Honor. The only thing I can say
13 is I obviously discussed it.

14 THE COURT: Did y'all need to put anything on the
15 record about this?

16 MS. CONCANNON: No Your Honor. The State just
17 feels this is a stall tactic by Mr. McQuarters and we ask
18 that Mr. Bax remain on the case.

19 THE COURT: The statements being made are just not
20 credible. The statements being made by the defendant are
21 just not credible. The motion to relieve counsel is
22 denied.

23 MR. BAX: Thank you, Your Honor. Moving on to the
24 next hearing and I believe this is to the prosecution but
25 I do want to let you know that I have had a chance to

1 look at the redacted video of Mr. McQuarters statement to
2 law enforcement. I informed Ms. Concannon there are a
3 couple of areas that I did want to put on the record. I
4 think we kind of disagree about it so we're going to
5 unfortunately have to ask Your Honor to rule on it. But
6 I can go into that whenever Your Honor is ready.

7 Additionally we've discussed the photo lineup in
8 this case that would be subject of a Neil v Biggers
9 hearing. There is no dispute from my standpoint the
10 facts indicate that Ms. Perez has says she knows my
11 client. I don't necessarily know that I require her
12 testimony because that is what she stated to law
13 enforcement. However, I think we need to put it on the
14 record that she is the one that circles that I.D. She is
15 the only one that did a photo I.D. that I'm aware of just
16 to cover that basis for Mr. McQuarters.

17 And the other reason that I'm a little hesitant to
18 just bypass that is that in Mr. McQuarters statement he
19 claims that Ms. Perez is not someone he knew prior to
20 that night. So the admission about that and I anticipate
21 that that portion of his statement is going to be
22 admitted before the jury as a statement of the defendant.
23 And so there is kind of a contention as to the factual
24 basis for whether or not she knew him and that's why I
25 feel like we at least need to cover something on the

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1 record when it comes to the photo I.D.

2 THE COURT: Let's do a Denno hearing and let's do a
3 Biggers hearing; Neil v Biggers and Jackson v Denno.
4 Which one you want to do first?

5 MS. CONCANNON: Your Honor, we can do the Neil v
6 Biggers hearing. Ms. Perez is here.

7 THE COURT: All right. Call whatever witness you
8 need to call.

9 MS. CONCANNON: We also have Investigator Seifert
10 with the Sheriff's Office who was the officer involved in
11 the photo lineup.

12 THE COURT: Who you want to put up first?

13 MS. CONCANNON: Investigator Seifert.

14 THE COURT: Come around please.

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1 NEIL V BIGGERS HEARING

2 [Whereupon, Investigator Seifert comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: State your full name please.

6 THE WITNESS: My first name is Douglas, middle name
7 is Joseph and my last name is Seifert, it's S-E-I-F-E-R-
8 T.

9 MS. CONCANNON: Thank you, Your Honor.

10 - - - - -

11 DOUGLAS SEIFERT,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. CONCANNON:

16 Q. Investigator Seifert, where are you currently
17 employed?

18 A. I'm with the Beaufort County Sheriff's Office.

19 Q. And in what capacity do you work with the Sheriff's
20 Office?

21 A. I'm in investigations. We're divided into northern
22 and southern division and I'm in the southern division.

23 Q. And what are some of your duties working in the
24 southern division investigations?

25 A. Most typically I do all different criminal cases but

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1 my forte is I do violent crime and things like that.

2 Q. And were you involved in the investigation of the
3 case we're here for today the State v Austin McQuarters?

4 A. Yes, ma'am.

5 Q. Okay. During your investigation did you have a
6 chance to question a Jacklyn Perez?

7 A. I did.

8 Q. Okay. Do you know when and where and what time
9 that questioning occurred?

10 A. Can I refer to my notes?

11 [Whereupon, the witness reviews documents]

12 A. It was November 6th, 2013 and it was approximately
13 8:57 a.m.

14 Q. Okay. Who was present -- where did this occur?

15 A. It was at the Beaufort County Sheriff's Office,
16 which is now 70 Shelter Cove Lane.

17 Q. Okay. Who was present during this identification?

18 A. Myself -- as far as with her and myself in the
19 actual interview room.

20 Q. And herself meaning Jacklyn Perez?

21 A. Yes, ma'am.

22 Q. Okay. Did you say anything to Ms. Perez
23 immediately prior to showing her the photo lineup?

24 A. I read her rights and everything like that. After I
25 did that I asked her about certain things of what

1 occurred on the incident date and time. That's when she
2 explained what she did.

3 Q. Explained what she did regarding this incident?

4 A. That's correct.

5 Q. Did she explain who she was with the night of the
6 incident?

7 A. Yes, ma'am. It was Mr. Austin McQuarters.

8 Q. Okay. And at what point during the questioning of
9 Ms. Perez did you show her a photo lineup?

10 A. It was during our interview so it wasn't -- as far
11 as once it was involved explained what was going on it
12 was later showed with the photo lineup with Mr.
13 McQuarters.

14 Q. After she had already acknowledged that she had
15 personal knowledge and a personal relationship with Mr.
16 McQuarters?

17 A. That's correct.

18 Q. Okay. In this photo lineup that we are speaking of
19 how many photos are depicted in the lineup?

20 A. Six.

21 Q. Six? Okay. Were these single photographs or were
22 they all on one page?

23 A. They are all on one page.

24 Q. Do you remember if these were D-M-V photos, mug shot
25 photos; what sort of photos were they?

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1 A. I believe it was through inmate pictures.

2 Q. So it would be mug shots?

3 A. Correct, yes ma'am.

4 Q. Before showing Ms. Perez the photo lineup did you or
5 anybody else suggest anybody in this photo lineup to her
6 or was there any sort of disclaimer read to her prior to
7 the showing of the photo lineup?

8 A. No, ma'am.

9 Q. You didn't suggest ---

10 A. --- as far as like telling her anything? No, I just
11 read the directions and showed her the photo lineup.

12 Q. Okay. You mentioned reading directions. What
13 directions are you speaking of?

14 A. We have a photo lineup directions that are on the
15 back that we actually have that on the back of that and
16 we read that first and then what we do is we show the
17 photo lineup to the individual.

18 Q. After you read her these directions did she in your
19 opinion understand what you were saying?

20 A. Yes, ma'am.

21 Q. Okay. Did she in fact select anybody out of this
22 photo lineup?

23 A. Yes, ma'am.

24 Q. And who did she in fact select?

25 A. Austin McQuarters.

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1 Q. How quickly did she identify him?
2 A. Right away.
3 Q. Almost immediately?
4 A. Yes, ma'am.
5 Q. How did she identify him?
6 A. She selected suspect number four and pointed her
7 finger on it stating that it was him.
8 Q. Okay. And is suspect number four Austin
9 McQuarters?
10 A. Yes, ma'am.
11 Q. How certain was she of this identification?
12 A. A hundred percent positive.
13 Q. Was anybody else in this investigation shown a six
14 pack photo lineup or any other sort of out of court
15 identification?
16 A. No, ma'am.
17 Q. Was this pretrial identification was this in writing
18 or recorded in anyway?
19 A. It was recorded, yes ma'am.
20 Q. On audio video?
21 A. Audio video, yes ma'am ---
22 Q. --- and that was admitted into evidence ---
23 A. --- yes, ma'am.
24 Q. Thank you. I have no further questions for you at
25 this time.

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1 THE COURT: Cross?

2 MR. BAX: Thank you, Your Honor. Briefly.

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CROSS-EXAMINATION

BY MR. BAX:

Q. Investigator Seifert the -- so your testimony is that you read the instructions which includes that language about it's important to -- it's just as important to let innocent people go as to identify guilty people correct?

A. That's correct.

Q. And that was read prior to her looking at the lineup?

A. Yes, sir.

Q. Okay. Is that -- does those instructions have on there a place for the person looking at it to sign or date or anything like that?

A. Yes, sir.

Q. Now typically Investigator Seifert is your practice to have them sign that before looking at the line up or after?

A. After, sir.

Q. After?

A. Under that part if that's what you're asking sir.

Q. Okay. To your recollection is that the way it was done this time with Ms. Perez?

A. She did the front and then she did the back, which is where the directions are.

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1 Q. Okay. So your testimony is you read it to her and
2 then you show her the photos and then if she picks
3 somebody out you flip it over and she signs it is that
4 correct?

5 A. She actually -- I don't flip it over first. I
6 actually have her circle the actual individual if they
7 are 100 percent positive and then what they do is put
8 their initials and the date and time and that's when it's
9 flipped over and that's when they do it.

10 Q. Okay. And have you recently seen a copy of that
11 photo lineup and had a chance to review it?

12 A. Yes, sir.

13 Q. Okay. And on there, there is a time correct? Do
14 you recall looking at that?

15 A. I believe so, sir.

16 Q. What was the time that is indicated on the lineup
17 when she made the identification?

18 [Whereupon, the witness reviews document]

19 MR. BAX: Approach the witness, Your Honor?

20 THE COURT: Yes, sir.

21 MR. BAX: Thank you.

22 Q. [Mr. Bax] This will make it easier on us.

23 [Whereupon, the witness is shown photograph]

24 A. Thank you.

25 Q. There is the front and back.

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1 A. It was on November 6th, 2013 and it was at 9:51.

2 Q. Okay. And is that time reflected on the back as
3 well where the signature on the instructions is?

4 A. Yes sir, it is.

5 Q. Thank you Investigator Seifert. And I believe your
6 testimony on direct was that according to your notes the
7 interview with Ms. Perez began approximately 8:57 a.m. is
8 that right?

9 A. I believe so, sir.

10 Q. So if she had been there in some form or capacity
11 for about an hour at that point correct?

12 A. Yes, sir.

13 Q. Okay. The testimony that you gave on direct also
14 in response to the questions from Assistant Solicitor
15 Concannon was that Ms. Perez indicated that she knew Mr.
16 McQuarters previously is that correct?

17 A. Yes, sir.

18 Q. Can you tell us how she said she knew Mr.
19 McQuarters?

20 A. Just an example is she stated that she drove her
21 friend, which was Austin McQuarters to the Northridge
22 Cinemas to meet their friend, which was named **Minor 1**

23 **Minor 1**

24 Q. So that just simply implies that she knew Mr.

25 McQuarters and Mr. **Minor 1** before but doesn't really

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1 give us how long or why she knew them is that right?

2 A. Not the length of how long they knew each other.

3 Q. Now Investigator Seifert were you also present or
4 part of an interview with my client Mr. McQuarters?

5 A. That's correct, sir.

6 Q. Okay. And do you recall whether or not Mr.
7 McQuarters stated that he knew Ms. Perez prior to that
8 night during his interview?

9 A. He stated that he just met her up at the Kroger's
10 Parking lot.

11 Q. That evening is that correct?

12 A. That's correct, sir.

13 MR. BAX: Moment's indulgence, Your Honor.

14 THE COURT: Yes, sir.

15 [Whereupon, Mr. Bax confers with Mr. Bell]

16 MR. BAX: No further questions. Thank you, Your
17 Honor.

18 THE COURT: Redirect?
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REDIRECT EXAMINATION

BY MS. CONCANNON:

Q. Investigator Seifert Mr. Bax brought up that Ms. Perez had been questioned for about an hour prior to this identification. Did she appear tired, delirious, out of sorts in any way?

A. No, ma'am.

Q. She appeared to know what she was doing when she made this identification?

A. Yes, ma'am.

MS. CONCANNON: No further questions, Your Honor.

THE COURT: Recross?

MR. BAX: No, Your Honor.

THE COURT: Thank you, sir. You may step down.

[Whereupon, the witness is excused and exits the witness stand]

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1 MS. CONCANNON: The State calls Jacklyn Perez.
2 [Whereupon, Ms. Perez comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: Please state your full name.
6 THE WITNESS: Jacklyn Marie Perez.
7 - - - - -
8 JACKLYN PEREZ,
9 Having been first duly sworn,
10 Was examined and testified as follows:
11 DIRECT EXAMINATION
12 BY MS. CONCANNON:
13 Q. Good afternoon Ms. Perez. I just have a couple of
14 questions for you this afternoon. Have you ever
15 testified in court before?
16 A. No, ma'am.
17 Q. Have you ever been a victim or witness to any sort
18 of crime?
19 A. No, ma'am.
20 Q. So this is your first time in this vicinity?
21 A. Yes, ma'am.
22 Q. Do you remember October 20th of 2013?
23 A. Yes, ma'am.
24 Q. Do you know Austin McQuarters?
25 A. Yes, ma'am.

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1 Q. How do you know him?
2 A. From school.
3 Q. What school?
4 A. Bluffton High School.
5 Q. And how long have you known Mr. McQuarters?
6 A. Since 11th grade.
7 Q. Okay. And in 2013 what grade were you in?
8 A. I would have been a senior.
9 Q. So you would have known him for approximately a year
10 or so?
11 A. Yes, ma'am.
12 Q. Okay. How did you know him? Were y'all friends or
13 just acquaintances or in class together?
14 A. In the beginning acquaintances and then we got more
15 to be friends.
16 Q. Would you hang out after hours after school?
17 A. Sometimes.
18 Q. So you knew him by name?
19 A. Yes, ma'am.
20 Q. Okay. Do you remember speaking with Investigator
21 Seifert about the investigation of the case why we are
22 here today?
23 A. Yes, ma'am.
24 Q. Do you know what day or around what time you spoke
25 with Investigator Seifert?

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1 A. 11/6/13 I believe at 9:50 in the morning.

2 Q. Okay. During that when you were speaking with
3 Investigator Seifert did he show you any photographs?

4 A. Yes ma'am, a few.

5 Q. Okay. Did he show you a photograph and ask you to
6 identify somebody or not identify somebody if you didn't
7 see them there?

8 A. Yes, ma'am.

9 Q. Okay. Do you remember what that photograph looked
10 like?

11 A. Six pictures.

12 Q. Did they all look fairly similar?

13 A. Yes.

14 Q. Similar characteristics?

15 A. Yes, ma'am.

16 Q. Did you in fact pick somebody out that day?

17 A. Yes, ma'am.

18 Q. Okay. How quickly were you able to identify
19 somebody in those pictures?

20 A. As soon as he put the paper on the table.

21 THE COURT: Can you move behind that microphone?

22 [Whereupon, the witness complies]

23 A. As soon as he put the paper on the table.

24 Q. [Ms. Concannon] Okay. And just speak clearly
25 because the court reporter has to take down everything

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1 you're saying. As soon as he put the paper on the table
2 how confident were you in your identification that day?

3 A. I mean I've known him since high school; very
4 confident.

5 Q. Very confident 100 percent?

6 A. Yes, ma'am.

7 Q. And you did in fact pick somebody out that day?

8 A. Yes, ma'am.

9 Q. And who did you pick out that day?

10 A. Austin McQuarters [indicates].

11 MS. CONCANNON: May the record reflect Ms. Perez
12 has pointed to the defendant.

13 THE COURT: I didn't see her do it.

14 [Whereupon, the court confers with the court
15 reporter]

16 THE COURT: Okay. Thank you. It's so noted.
17 She just pointed again. Go ahead.

18 MS. CONCANNON: Thank you, Your Honor.

19 Q. [Ms. Concannon] The night of the incident the reason
20 that you were brought in for questioning with
21 Investigator Seifert can you tell us a little bit about
22 that night? What were you doing that night?

23 A. I had just got off work.

24 Q. Okay. And who were you with? When you got off
25 work who were you with?

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1 A. I was standing outside with Austin and a couple of
2 other people.
3 Q. Okay. And where was this?
4 A. Outside my job.
5 Q. And where was that?
6 A. The McDonalds.
7 Q. Okay. And you were standing with Austin?
8 A. Yes, ma'am.
9 Q. Austin McQuarters?
10 A. Yes, ma'am.
11 Q. Okay. What did y'all do? What time did you get
12 off work?
13 A. It was about 9 or 9:30.
14 Q. At night?
15 A. Yes, ma'am.
16 Q. What did y'all do after you got off work?
17 A. We were standing outside discussing and then I was
18 asked for a ride.
19 Q. Who asked you for a ride?
20 A. Austin.
21 Q. Okay. Where did he want a ride to?
22 A. Cinema 10 on Hilton Head Island.
23 Q. Did you give him a ride there?
24 A. Yes, ma'am.
25 Q. Was anybody else in the car with you beside Austin?

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1 A. No, ma'am.

2 Q. Just you and Austin?

3 A. Yes.

4 Q. Where did y'all go?

5 A. Cinema 10.

6 Q. Does that have another name?

7 A. I have no idea. It's just what it says on the sign.

8 Q. It's a movie theatre?

9 A. Yes, ma'am.

10 Q. When you got to the movie theatre what happened?

11 A. We were just sitting outside talking for a few

12 minutes. Then he went up to speak with someone and then

13 he came back.

14 Q. How confident are you that it was Austin McQuarters

15 in the car with you that night?

16 A. Very confident.

17 Q. Very confident, okay. How confident are you that

18 the man you circled in the six pack photo lineup is the

19 same man that you were with that night?

20 A. Very confident.

21 Q. I don't have any more questions for you Ms. Perez.

22 THE COURT: Any cross-examination?

23 MR. BAX: Briefly, Your Honor.

24

25

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1 CROSS-EXAMINATION

2 BY MR. BAX:

3 Q. Ms. Perez you are also known as Brooklyn is that

4 right?

5 A. Yes, sir.

6 Q. Okay. You've testified that at that point -- and

7 this was back in what October of 2013?

8 A. Yes, sir.

9 Q. So you were still in high school at that time?

10 A. Yes, sir.

11 Q. Have you since graduated from high school?

12 A. Yes, sir.

13 Q. And you've known Austin for approximately a year or

14 a little bit over a year is that right?

15 A. Yes, sir.

16 Q. Okay. And you said that y'all were friends. Did

17 y'all ever date?

18 A. No.

19 Q. No? So non-romantic relationship is that right?

20 A. Yes, sir.

21 Q. So you had given Austin McQuarters rides before is

22 that right?

23 A. Yes.

24 Q. And you testified that you that evening when you

25 first got together with Mr. McQuarters it was right after

1 you'd gotten off work, right. You said you just got off
2 work right?

3 A. Yes, sir.

4 Q. And that you were working at the McDonalds in what
5 is that Bluffton?

6 A. Yes, sir.

7 Q. What's that address there at the McDonalds in
8 Bluffton?

9 A. I'm not really sure of the address. It's the one on
10 Buck Walter Parkway.

11 Q. Buck Walter Parkway so not far from the cinema, from
12 the Northridge Cinema is that right?

13 A. It's not in Bluffton. It's on the other side of
14 Bluffton; it's about 20 minutes.

15 Q. About 20 minutes?

16 A. Yeah.

17 Q. So if Mr. McQuarters told the police that he didn't
18 know you before that night he'd be lying is that correct?

19 A. Yes.

20 Q. And you said there were other people that were
21 outside the McDonalds. Are those people that you know?

22 A. Yes.

23 Q. Okay. Do those people also know Mr. McQuarters?

24 A. Yes.

25 Q. How do they know Mr. McQuarters?

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1 A. One of them is a friend of mine's mother. She's
2 known him longer than I've known anybody.

3 Q. And she also works at McDonalds or she was just
4 there?

5 A. No, she was there.

6 Q. So the others you were hanging out with were not
7 necessarily co-workers?

8 A. No.

9 Q. Now you've testified that at some point on November
10 6th when you were meeting with Investigator Seifert you
11 were at the Sheriff's Office at their little branch
12 office right?

13 A. Yes, sir.

14 Q. But you weren't there voluntarily were you?

15 A. I was asked to come.

16 Q. Were you not in fact told that either you come the
17 hard way or the easy way and they intimated that you were
18 going to be arrested and put in cuffs if you didn't come
19 voluntarily?

20 A. I was told I could come the easy way or the hard
21 way. I was not told I would be put in handcuffs.

22 Q. Okay. But you actually in a phone conversation
23 with your family told them that you understood that to
24 mean that if you didn't go with them voluntarily you were
25 going to get clinked up and put in the back of the car

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1 with handcuffs on isn't that right?

2 A. That's what I assumed, yes.

3 Q. Okay. And you've been charged with armed robbery
4 as well correct?

5 A. From my understanding I was. I'm not sure if I
6 still am.

7 Q. You're not sure if you still are. And you're
8 represented by an attorney on that charge?

9 A. Yes, sir.

10 Q. Who is that?

11 A. Jared Newman.

12 Q. Are you charged with anything else at that time
13 besides armed robbery?

14 A. No, ma'am -- no sir.

15 Q. And after your interview with Investigator Seifert
16 you were placed in the Beaufort County Detention Center
17 for a couple of days correct?

18 A. Yes, sir.

19 Q. How long were you there before you got out?

20 A. Three days.

21 Q. Now this photo identification that was given to you
22 by Investigator Seifert that wasn't just to identify who
23 was with you in the car was it?

24 A. No.

25 Q. It was to identify someone they were accusing of

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1 that crime is that right?

2 A. I believe so, yes.

3 Q. So when you identified Mr. McQuarters you identified
4 him as the person that robbed Mr. Snodgrass is that
5 right?

6 A. Yes.

7 Q. But you had told Investigator Seifert that you
8 didn't actually see him take anything or do anything to
9 Mr. Snodgrass at that point is that right?

10 A. Yes.

11 Q. So did you see him do anything?

12 A. Yes.

13 MR. BAX: Moment's indulgence, Your Honor.

14 THE COURT: Yes, sir.

15 [Whereupon, Mr. Bax confers with Mr. Bell]

16 MR. BAX: No further questions. Thank you, Your
17 Honor.

18 THE COURT: Anything further of the witness?

19 MS. CONCANNON: No, Your Honor.

20 THE COURT: Thank you, ma'am. You may step down.

21 [Whereupon, the witness is excused and exits the
22 witness stand]

23

24

25

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1 THE COURT: Any other witnesses?

2 MS. CONCANNON: No Your Honor, not for this
3 hearing.

4 THE COURT: Do you have any evidence in this
5 hearing Mr. Bax?

6 MR. BAX: Your Honor, if you would give me about 60
7 seconds to confer with my client. It's my position I
8 wouldn't but I want to make sure I give him a chance to
9 be heard by me.

10 THE COURT: Sure.

11 [Whereupon, Mr. Bax confers with his client]

12 MR. BAX: We don't have any witnesses to present,
13 Your Honor. Thank you.

14 THE COURT: Did y'all mark the lineup or anything?
15 I mean I don't...

16 MR. BAX: We didn't but I think that probably
17 wouldn't be a bad idea to premark the I.D.

18 MS. CONCANNON: I didn't, Your Honor. I don't plan
19 on using it for trial; it is mug shots if there is a way
20 around that.

21 MR. BAX: Your Honor, we could just mark them ---

22 MS. CONCANNON: --- we could mark it ---

23 MR. BAX: --- for court's I.D. ---

24 MS. CONCANNON: --- as a court's exhibit.

25 [Whereupon, court's exhibit number 2 is marked by

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1 the court reporter]

2 THE COURT: May I see that please?

3 [Whereupon, the court reviews photo]

4 THE COURT: If there is nothing further the
5 document that has now been marked as court's exhibit
6 number 2 is a two-page document. The first page is a
7 photo array. It does appear to use mug shots from the
8 Beaufort County Sheriff's Office. It depicts six
9 individuals who have facial hair of some type; all black
10 males. I don't see anything that would call attention to
11 photograph number four as opposed to any of the other
12 photographs. They seem to be similar. The
13 characteristics of the individuals depicted seem to be
14 similar.

15 The second page is a statement that appears to be
16 signed. It was indicated in the testimony that this was
17 read to Ms. Perez. And it reads: You will be asked to
18 look at a group of photographs. The fact that the
19 photographs are shown to you should not influence your
20 judgment. You should not conclude or guess that the
21 photographs contain the picture of the person who
22 committed the crime. You are not obligated to identify
23 anyone. It is just as important to free innocent persons
24 from suspicion as to identify guilty parties. Please do
25 not discuss the case with other witnesses or indicate in

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1 any way that you have identified someone.

2 The purpose of the Neil v Biggers hearing is to deal
3 with apparently in this instance an in court
4 identification where there has previously been an out of
5 court identification. The due process clause protects
6 individuals so that the court has to do a preliminary
7 inquiry and the identification has to be excluded if the
8 process used to obtain the identification was so
9 unnecessarily suggestive as to give rise to a substantial
10 likelihood of misidentification.

11 The court conducts a two step procedure where there
12 is an out of court identification. The first part of
13 that procedure is to determine was the out of court
14 identification unduly suggestive and if so the second
15 part is was the identification never the less so reliable
16 that no substantial likelihood of misidentification
17 existed.

18 The factors to be considered regarding reliability
19 are the witness's opportunity to view the alleged
20 offender at the time of the crime, the witness's degree
21 of attention, the accuracy of the witness's prior
22 description of the accused, the witness's level of
23 certainty at confrontation, and the time between the
24 crime and the confrontation. The court weighs against
25 those factors the corrupting effect of any unnecessarily

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1 suggestive procedure. When the source of the
2 suggestiveness is not governmental; in other words it's
3 not in this instance coming from a law enforcement
4 officer, the typical two-step procedure is inapplicable
5 because the purpose of the rule barring the evidence is
6 to deter the police from using a less reliable procedure
7 where a more reliable one is available. And in this
8 instance as in Singleton, State v Singleton the victim --
9 not the victim; excuse me, the witness Ms. Perez
10 indicated prior knowledge of the accused.

11 Now having reviewed the evidence the court finds
12 that the State has met the requisite proof and has
13 established that if a proper foundation is laid that
14 there was -- that the witness, Ms. Perez, may make an in
15 court identification of the defendant. Are you wanting
16 the officer to testify too about the identification that
17 took place?

18 MS. CONCANNON: Just to the extent that she did
19 make an identification. I do not plan on showing any
20 pictures or photo lineup. There is other pictures of Mr.
21 McQuarters in evidence. Just that there was a photo I.D.
22 and she did pick out a picture who was in fact Mr.
23 McQuarters.

24 THE COURT: Let me get to that in a minute. The
25 evidence presented to the court indicates no impropriety

1 on the part of law enforcement officers, no
2 suggestiveness of any kind much less any undue influence
3 or inappropriate suggestiveness. There is no evidence of
4 any type of suggestiveness of any kind. It was a six
5 person photo array given to an individual Ms. Perez who
6 claimed to know this person prior to the time of the
7 identification.

8 I don't know anything about the alleged crime so I
9 don't know much about those different factors that I just
10 went through as part of the evaluation process. But what
11 I do know is that the witness said that she knew this man
12 from high school, they were friends and that she rode
13 with him out to the cinemas. So under any scenario the
14 evidence from Ms. Perez would be admissible if she
15 establishes a proper foundation on the record in front of
16 the jury.

17 Now since there is no evidence of suggestiveness by
18 the police I don't know that Neil v Biggers even applies
19 but to the extent that it does I've evaluated the factors
20 and I find that it would be admissible, this evidence
21 would be admissible from Ms. Perez in any event. Now
22 what do you say Mr. Bax about the officer testifying?

23 MR. BAX: Your Honor, I don't have an objection to
24 the officer testifying. I think what I would probably
25 put on the record is that the fact that she was shown a

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1 photo I.D. and identified the defendant would be the
2 extent to which I would think he could testify until Ms.
3 Perez takes the stand and says who it was she identified,
4 but I leave that up to the court.

5 My biggest concern which the State has already said
6 they are not going to do is introducing the actual photo
7 lineups since those are all clearly mug shots. But as
8 Your Honor ruled we're talking about an in court I.D. not
9 necessarily introducing the photos themselves, which is
10 my biggest concern.

11 THE COURT: All right. I'll have to hear exactly
12 what he is going to say. He can't get into improper
13 bolstering of the witnesses. If he testifies before she
14 testifies which normally they do because normally you're
15 introducing the photo array; normally its driver's
16 license photos, it's not mug shots.

17 And there is a great deal of testimony about how the
18 array was prepared and SLED usually does them and things
19 like that; at least that's the way it's done where I
20 normally hold court. I guess I'm going to have to hear
21 exactly what he says. He can't into much though because
22 it may or may not be hearsay under the definition. It
23 depends on what happens in the trial and it may be just
24 improper bolstering. We'll just have to see what you
25 intend to offer. What about Denno?

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1 MS. CONCANNON: Your Honor, we have Investigator
2 Seifert here for the Jackson v Denno hearing.

3 THE COURT: You're still under oath. Please have a
4 seat up here.

5 [Whereupon, Investigator Seifert comes forward]

6 MS. CONCANNON: And I do have the actual statement,
7 the redacted statement. I have a disk so I will need to
8 hook up to a T.V.

9 [Whereupon, Ms. Concannon and Mr. Bax confer]

10 MS. CONCANNON: Your Honor, we're trying to get
11 technically savvy over here.

12 THE COURT: Do you need to take a break so you can
13 get set up?

14 MS. CONCANNON: I don't think it should take very
15 long. We could do the picture motion in the time being.

16 THE COURT: I'm sorry?

17 MS. CONCANNON: The motion regarding the
18 admissibility of photographs if you'd like to do that
19 while we're getting...

20 THE COURT: You can hand me the photographs and I
21 can look at them if you want to.

22 MS. CONCANNON: I can certainly do that, Your
23 Honor. They have not been marked yet. There are two for
24 this motion.

25 [Whereupon, the court reviews the photographs]

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1 MS. CONCANNON: Your Honor, I also have a case
2 regarding those photographs that I'll be arguing if you
3 would like a copy of that as well.

4 [Whereupon, Ms. Concannon provides documents to the
5 court]

6 THE COURT: I've read this.

7 MS. CONCANNON: Okay.

8 THE COURT: It's a rather famous case from last
9 year. This is State v Collins.

10 MS. CONCANNON: My apologies, Your Honor.

11 THE COURT: That's fine. I'll be happy to give you
12 a few minutes if you want to take a break.

13 MS. CONCANNON: That might be best. This is new
14 technology and we're still trying to figure it out.

15 THE COURT: We're at ease for a few minutes.

16 [Whereupon, court is in recess from 3:50 p.m. until
17 4:05 p.m.]

18 THE COURT: Okay. Are you ready to proceed?

19 MS. CONCANNON: Thank you, Your Honor, and my
20 apologies for those technical difficulties. We have it
21 keyed up.

22 [Whereupon, court's exhibit number 3 is marked by
23 the court reporter]

24

25

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1 JACKSON V DENNO HEARING
2 - - - - -
3 DOUGLAS SEIFERT,
4 Having been previously duly sworn,
5 Was examined and testified as follows:
6 DIRECT EXAMINATION
7 BY MS. CONCANNON:
8 Q. Investigator Seifert you mentioned earlier that you
9 were involved in this investigation of the State v Austin
10 McQuarters.
11 A. Yes, ma'am.
12 Q. At any point in that investigation did you have an
13 opportunity to speak with Mr. McQuarters himself?
14 A. Yes, ma'am.
15 Q. And when and where did that statement occur?
16 A. It was actually at the Hilton Head office.
17 Q. Did you speak with him anywhere prior to the Hilton
18 Head office?
19 A. Not in to the tunes of what he is charged with this
20 -- when I placed him under arrest for the active warrants
21 I read his rights there as well.
22 Q. Okay. You mentioned you read you read his rights.
23 What did you read them from?
24 A. We have a card that we have through law enforcement
25 and then actually at the Hilton Head office we actually

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1 have a form that we actually have.

2 Q. Do you have the card on your today?

3 A. I do.

4 Q. Could you read that for the court please?

5 A. On the top it says Miranda Warning. It says: You
6 have the right to remain silent. Anything you say can
7 and will be used against you in a court of law. You have
8 the right to an attorney. If you can't afford an
9 attorney, one will be provided for you. Do you
10 understand the rights that I have just read to you?

11 Q. And did he acknowledge he understood?

12 A. Yes, ma'am.

13 Q. Did he state whether or not he did wish to speak
14 with you?

15 A. Yes, ma'am.

16 Q. Without an attorney present?

17 A. That's correct.

18 Q. Did he appear to be under the influence of any sort
19 of alcohol or drugs while you were speaking with him in
20 his initial meeting at his house?

21 A. No, ma'am.

22 Q. Did you observe any physical or mental defect
23 impairing his ability to understand?

24 A. No, ma'am.

25 Q. After you read him his Miranda at his home where did

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1 you go next?

2 A. He was transported over to the Hilton Head office,
3 which is the 70 Shelter Cove Lane.

4 Q. Okay. And was he taken inside that building?

5 A. Yes ma'am, in the interview room.

6 Q. Can you describe what y'all's interview rooms looks
7 like?

8 A. Typically the one we're talking about with Mr.
9 McQuarters when you enter the room there is actually a
10 chair to your immediate left. There is a chair straight
11 ahead on your left hand side. There is a table that
12 separates, which is another chair as well to the right.

13 Q. Who was present with you during your questioning of
14 Mr. McQuarters?

15 A. At the time it was Staff Sergeant Chapman but now
16 he's a master sergeant.

17 Q. And he's with the Sheriff's Office?

18 A. Yes, ma'am.

19 Q. As well as yourself and Mr. McQuarters was in the
20 room as well?

21 A. That's correct.

22 Q. Did you again advise Mr. McQuarters of his rights at
23 that moment?

24 A. Yes, ma'am.

25 Q. And in what form did you do that?

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1 A. We have the piece of paper form which is the
2 Beaufort County Sheriff's Office Miranda form.

3 MS. CONCANNON: Permission to approach, Your Honor?

4 THE COURT: Yes, ma'am.

5 Q. [Ms. Concannon] Investigator Seifert I'm showing you
6 what has been previously marked as court's exhibit 3.

7 Can you identify that?

8 [Whereupon, the witness is shown document]

9 A. Yes, ma'am.

10 Q. And what is that?

11 A. This is the thing what I just told you about our
12 Miranda warning from the Beaufort County Sheriff's Office
13 that we have. We have the actual individual actually
14 sign their name and put their date of birth and then you
15 go through their rights.

16 Q. Okay. Do you go through each right individually?

17 A. That's correct.

18 Q. And how does the suspect indicate that they
19 understand or they wish to speak with you?

20 A. They initial it.

21 Q. They initial once, twice, by every right?

22 A. Every time as far as what they are read they initial
23 each one, which was four, and then after that it's the
24 waiver of rights which is do you understand what your
25 rights are. Then after that they initial that and then

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1 having these rights do you wish to talk to me now.
2 Q. And did Mr. McQuarters initial these rights?
3 A. He did.
4 Q. And did he initial or sign indicating that he did
5 wish to speak with you without his attorney present?
6 A. Yes, ma'am.
7 Q. Thank you. Was he under arrest at this time?
8 A. Yes, ma'am.
9 Q. What was he under arrest for?
10 A. For the armed robbery and the assault and battery
11 first.
12 Q. He was advised of the investigation right?
13 A. Yes, ma'am.
14 Q. So he knew what you were questioning him about?
15 A. Yes, ma'am.
16 Q. Did he at any time during your talks with him have
17 any trouble understanding you or understanding the
18 surrounding circumstances of why he was there?
19 A. No, ma'am.
20 Q. Did he appear to be rational and responsive in all
21 of his answers to you?
22 A. Yes, ma'am.
23 Q. Did he ever ask for an attorney during your
24 questioning?
25 A. No, ma'am.

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1 Q. Did you or I believe you mentioned Master Sergeant
2 Chapman was there as well. Did you or anybody else in
3 the Sheriff's Office promise or threaten or coerce Mr.
4 McQuarters in any way to elicit statements from him?

5 A. No, ma'am.

6 Q. Were any promises ever made to him?

7 A. No, ma'am.

8 Q. In your opinion did he give these statements freely
9 and voluntarily?

10 A. Yes, ma'am.

11 Q. And did he in fact give you a statement?

12 A. Yes, ma'am.

13 Q. And was that statement in writing or how was it
14 memorialized?

15 A. Verbal, which was audiotaped and videotaped.

16 Q. Your interview room is equipped with the
17 capabilities to record?

18 A. Yes, ma'am.

19 MS. CONCANNON: Permission to approach, Your Honor?

20 THE COURT: Yes, ma'am.

21 [Whereupon, court's exhibit number 4 is marked by
22 the court reporter]

23 Q. [Ms. Concannon] Investigator Seifert I'm going to
24 show you court's exhibit 4. Can you identify that?

25 [Whereupon, the witness is shown exhibit]

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1 A. Yes, ma'am.

2 Q. And what is that?

3 A. This is the interview for Austin McQuarters and
4 myself.

5 Q. And how do you know that is the interview?

6 A. I viewed it myself.

7 Q. Today you reviewed it?

8 A. Yes, ma'am.

9 Q. Was that at my request?

10 A. Yes, ma'am.

11 Q. And absent any redactions agreed upon by Mr. Bax or
12 myself is it the full and entire interview as you
13 remember?

14 A. Yes, ma'am.

15 MS. CONCANNON: At this time Your Honor the State
16 would publish the interview.

17 THE COURT: Yes, ma'am.

18 MS. CONCANNON: And again, this is a redacted copy.

19 [Whereupon, the C.D. plays - Not taken down]

20 [Whereupon, the C.D. pauses]

21 MS. CONCANNON: And my apologies Your Honor. Every
22 time we redacted it pauses for a second so I'm having to
23 manually go in and...

24 [Whereupon, the C.D. plays - Not taken down]

25 [Whereupon, the C.D. stops]

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1 MS. CONCANNON: Your Honor, that's the extent of
2 the interview with some after reviewing it again, and I
3 guess this is argument we can take up later but I do
4 agree with Mr. Bax that around the 15:44 mark Mr.
5 McQuarters ends with. Something to the extent of man I
6 told you what happened and that's what happened and then
7 Investigator Seifert continues with attempting to get him
8 to tell more of what Investigator Seifert is saying the
9 truth. I know Mr. Bax is going to object to having that
10 put into evidence and the State just agrees with that.

11 MR. BAX: That's correct, Your Honor. We had a
12 discussion after I viewed the video during the lunch hour
13 and before we got into the issue with the juror. The
14 play time was about 15:44 by my count. On the big clock
15 that you see up in the corner of the video it was about
16 19:00 and 35 seconds so about 13 or 14 minutes with some
17 redactions in the middle from where we are now.

18 The reason for that, Your Honor is that basically he
19 stops with his story saying -- my client stops and says
20 you know that's when I went home. And from that point on
21 Investigator Seifert and Investigator Chapman I know
22 doing their jobs but they're trying to crack him to get
23 him to change his story and basically he never does.
24 That's my understanding. I've watched the whole video
25 and he never does. And my objection would be a lot of

1 that is statements being made by law enforcement in an
2 attempt to get him to change his story. Those aren't
3 relevant and a lot of them involve discussions of
4 evidence that the jury may not see in this case.

5 Obviously if the witnesses don't change their story
6 there wouldn't be any need to introduce videos of their
7 interviews with Investigator Seifert because there
8 wouldn't be any need for prior inconsistent statement.
9 And I don't anticipate that's going to happen. Obviously
10 we can revisit it if they do but I certainly don't
11 anticipate that happening.

12 Additionally talking about photo lineups and some
13 other stuff I think at one point, I don't think it's in
14 this one, they talk about whether there was any video
15 surveillance, which there ultimately doesn't end up being
16 any that we're going to go into in this trial would
17 confuse the jury and is really not relevant and is not a
18 statement of my client. And that would be the basis for
19 cutting that out. There is one other thing that I'd
20 like to put on the record about the video that you've
21 heard Your Honor --

22 [Whereupon, Mr. Bell confers with Mr. Bax]

23 MR. BAX: I'm sorry. Doug is still on the witness
24 stand. I guess we should stop and let poor Doug get off
25 the stand if Your Honor wants him to. Is there anything

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1 else?

2 THE COURT: Do you have any more questions?

3 MS. CONCANNON: No, I have no further questions.

4 MR. BAX: I don't have any questions for

5 Investigator Seifert.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Thank you, Your Honor.

8 [Whereupon, the witness is excused and exits the

9 witness stand]

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1 MR. BAX: Your Honor, the second thing I was going
2 to go into was at approximately eight minutes and 23
3 seconds of the play time and approximately about 18:52:10
4 on the top time in response to some hypotheticals posed
5 by Investigator Seifert my client makes a statement that
6 he wasn't involved with this armed robbery. If he was he
7 would go rob a dope boy; something about that. I think
8 it's an attempt to deny but the problem is it's
9 completely irrelevant. It doesn't go -- it's not him
10 admitting. He's saying I wouldn't do it because I would
11 do this.

12 I would object to that portion coming in. I think
13 it's not probative of the issue at hand here. There is
14 certainly no accusation that such a thing happened. Do I
15 think it's a smart way to phrase a denial? No. But at
16 the same time it completely involves things that are not
17 relevant to this case and my client is denying having
18 done anything.

19 And the problem is to some extent Investigator
20 Seifert in his attempt to try to relate to Mr. McQuarters
21 is talking about his other cases. He talks about how he
22 had one burglary case and that gentleman had a crack
23 problem. He talks about another gentleman who had a
24 problem and explained why he did things. So it's not
25 like it's really my client's fault that he goes into some

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1 kind of hypothetical because that's what he's been given
2 by the officer. I just don't think that that is going to
3 keep the integrity of this case where it needs to be
4 because it goes into an area that is not probative to the
5 issue of whether or not my client made a statement
6 inculcating himself and it just puts out things that
7 could be interpreted by the jury to be more prejudicial
8 that probative under 403.

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

10 MS. CONCANNON: Thank you, Your Honor. The State
11 would respectfully disagree with Mr. Bax. We feel that
12 all statements made with the exclusion of the redactions
13 that we made were made after a valid waiver of his
14 rights. Actually he waived his rights twice; once at his
15 house when he himself requested to speak with law
16 enforcement again in a more thorough way at the Sheriff's
17 Office.

18 He signed a waiver of rights acknowledging he knew
19 what his rights were and he still wished to speak with
20 law enforcement and then he did in fact speak with them.
21 His statements were voluntary. He was never offered
22 anything; no promises. He was never threatened or
23 coerced into making these statements. He gave these
24 voluntarily to Investigator Seifert. Law enforcement
25 never misrepresented anything to Mr. McQuarters during

1 these. He was just urged to tell the truth repeatedly,
2 which the State agrees that it did get a little excessive
3 at the end and we'll cut the video with that.

4 Regarding the dope deal comment Mr. McQuarters made
5 about robbing dope dealers. I feel that it is probative.
6 It's absolutely probative in that it shows his state of
7 mind regarding this sort of behavior. He actually denies
8 doing this and we feel that because it's a denial it's
9 not prejudicial. But it does show his state of mind and
10 that he has contemplated these sorts of actions before
11 and he actually had even picked out who the best sort of
12 victims would be for him if he was going to do this sort
13 of behavior.

14 But I would reiterate that it was a statement made
15 after two valid waivers of his rights freely and
16 voluntarily made. He did not request counsel and he made
17 these statements himself. So we would ask that they
18 remain.

19 THE COURT: Is that everything on the Denno
20 hearing?

21 MS. CONCANNON: Yes, Your Honor.

22 MR. BAX: That's correct, Your Honor.

23 THE COURT: So the statement he gave is a denial?

24 MR. BAX: That's correct, Your Honor.

25 THE COURT: And he -- let me back up. You want to

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1 enter the part where he admits that he was with the lady
2 and he went to the cinema?

3 MS. CONCANNON: Correct; on the night and time of
4 the incident.

5 THE COURT: And beyond that what does this
6 statement go to?

7 MS. CONCANNON: The entire statement or just the I
8 would rob dope dealers statement?

9 THE COURT: The entire statement. After that he
10 denies everything right?

11 MS. CONCANNON: I would say yes and no, Your Honor.
12 He reiterates that he was there during the assault. He
13 just says that what he does is for him and his family and
14 he didn't have anything to do with that movie theatre.

15 But then he goes into more facts corroborating what
16 witnesses will testify to but specific facts of the
17 incident itself; the color of Ms. Perez's car, her
18 description of Ms. Perez that he did go to the movie
19 theatre that he does know a boy named Minor 1 is
20 one of the State's key witnesses here. And Mr.
21 McQuarters's statements just corroborate what they will
22 testify to.

23 THE COURT: So I've heard all the Denno?

24 MS. CONCANNON: Yes, Your Honor.

25 THE COURT: Do you have anything you want to put

1 up?

2 MR. BAX: No, I don't have any evidence to put up.
3 My arguments are as I've already stated them. And I -- I
4 mean I disagree with the State. I believe that it is a
5 denial. He says he went there with Ms. Perez and then
6 had her take him home and that was that and there was no
7 robbery that he was part of. So I do interpret it as a
8 denial but obviously to that extent I think it would be
9 an argument to the jury.

10 Just to make sure I'm clear the reason I objected to
11 that one section at approximately eight minutes and 23
12 seconds into the video there was no dope boy that was
13 ever robbed and the problem is that state of mind I don't
14 think is being properly interpreted by the prosecution in
15 this case. Him denying something does not define his
16 state of mind.

17 I think the problem is that the Solicitor is looking
18 at this as something that makes my client look bad as
19 someone who would contemplate a crime and thusly it
20 should go before the jury. However, I don't think that's
21 a correct analysis. It's not an admission and it's not
22 probative to what happened in this case, thusly I don't
23 think it's admissible.

24 THE COURT: Do y'all have anything else?

25 MS. CONCANNON: No, nothing further Your Honor.

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1 THE COURT: All right. With regard to Jackson v
2 Denno the evidence has been presented establishes that
3 the State has met it's requisite burden of proof and has
4 established that the defendant was properly advised of
5 his rights under Miranda v Arizona, his right to counsel,
6 his right to appointed counsel, his right to remain
7 silent. He was advised that he could stop giving his
8 statement at any time and ask for an attorney at any time
9 if he did waive his rights and proceed with the
10 statement.

11 There were no threats, coercion, undue influence.
12 There is no indication -- the evidence has established
13 that the defendant was alert. He was not under the
14 influence of anything. He was not subject to any type of
15 improper coercion, threats, force, violence, promises,
16 hope of reward; anything that would taint his statements.
17 And the State has established by the requisite degree of
18 proof at this stage that the defendant knowingly
19 intelligently voluntarily waived his rights and gave the
20 statement without an attorney.

21 Now having said that just because he waived his
22 rights and made a statement doesn't mean one it's
23 relevant or two it's admissible. The stuff about robbing
24 a dope dealer is in my mind clearly inadmissible. It
25 doesn't go to establish anything in this case. The

1 statements about -- the statements of the officer I don't
2 see how those are admissible. All the statements about I
3 know what happened and those sorts of things in my mind
4 are clearly inadmissible. What is admissible -- I'm
5 going to have to confess to you; I can't understand half
6 of what he's saying. I apologize to you. Maybe it's the
7 volume or maybe it's whatever is going on but I tried to
8 listen attentively and I can't understand a lot of what
9 he says.

10 What is admissible is anything where he admits that
11 he was at the scene that he was with these individuals,
12 that he knows **Minor 1** that he knows the color of the car;
13 all those sorts of things those are admissible. Those
14 are relevant if a foundation is established in front of
15 the jury. But all that other stuff and all his denials
16 that's not admissible. So I agree with Mr. Bax of how
17 y'all are going to parse that out I don't know. But
18 it's not admissible. All right. What else do you have?

19 MS. CONCANNON: Briefly, Your Honor just back on
20 the Jackson v Denno thank you for your ruling. Regarding
21 the redacting based on your ruling the State can either
22 start and stop the video; at this point our technology is
23 in Bluffton and I don't have the capability to redact
24 anymore out of the video or we can offer Investigator
25 Seifert's testimony as to what Mr. McQuarters said

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1 limited to I was there. I was with Jackie Perez and she
2 drives a red car. I know Minor 1 he works at the movie
3 theatre.

4 THE COURT: Well, he can testify as to what the
5 defendant said within the parameters of what I ruled and
6 whether or not you offer a video is up to you. The only
7 thing is I run into this everywhere so please don't take
8 this the wrong way y'all seem to be on top of your game
9 on both sides; I commend you for that.

10 It seems for some reason that a lot of attorneys
11 play these videos now with no thought of them going back
12 to the jury. They put them in evidence and they just
13 stop and start things and they don't even arrange for the
14 jury to have something to play something within the jury
15 room.

16 So if you're going to offer any video, audio that is
17 redacted it's got to be in a form that the jury can take
18 back there in the jury room. A lot of lawyers will stand
19 up and say well Judge they can just come back in the
20 courtroom and listen. Well, they can't deliberate when
21 they're in the courtroom so that to me is not an
22 acceptable way to do it. Y'all may have already planned
23 that; I don't know. But if you do offer any video or
24 audio and I allow it into evidence it's going to have to
25 be in a form that can go to that jury. What else do you

1 have other than these photographs?

2 MS. CONCANNON: The photographs are the last --
3 well the photographs and I have one motion. When Mr. Bax
4 was questioning Ms. Perez on the stand he brought up her
5 prior charges. She was also arrested for armed robbery
6 as well in conjunction with Mr. McQuarters. However, he
7 did misrepresent to Ms. Perez her charge was dismissed at
8 the preliminary hearing. The State later direct indicted
9 for accessory after the fact. We would just ask that he
10 not misrepresent that to the jury.

11 MR. BAX: I was unaware that her charge had been
12 dismissed at a prelim and brought back. I had no idea.

13 THE COURT: Anything that goes to her bias or
14 possible motivation is relevant. Nobody should
15 misrepresent anything to the jury and I'm not accusing
16 anybody of that. I certainly don't think that happened.
17 So just tailor your questions that way. If for some
18 reason that something comes out and it's not exactly
19 accurate the remedy is cross-examination or redirect in
20 your case.

21 MR. BAX: Thank you, Your Honor.

22 MS. CONCANNON: Thank you, Your Honor.

23 MR. BAX: Okay. Other than the photos there is one
24 issue that I just thought of real quickly. The State has
25 already been doing this but I know that if I don't put it

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1 on the record that I may hurt my client's rights. I
2 would move to sequester witnesses. I know they get to
3 have Investigator Seifert and I believe the victim gets
4 to stay in the courtroom. It appears they've already
5 been doing that so I'm just putting it on the record to
6 cover myself.

7 MS. CONCANNON: Thank you. And we just ask that
8 Investigator Seifert and Mr. Snodgrass who is on the back
9 row be able to remain in the courtroom.

10 THE COURT: Mr. Snodgrass can stay in the courtroom
11 under the victim's bill of rights and the chief
12 investigating officer can stay in the courtroom during
13 testimony. I'll leave it to the lawyers to explain about
14 sequestration and what that means. Now Madame Court
15 Reporter would you mark those as State's for I.D.

16 [Whereupon, State's exhibit numbers 1 and 2 are
17 marked for identification only by the court reporter]

18 [Whereupon, the court confers with the clerk]

19 THE COURT: I want her to run me a Xerox photocopy
20 of those so I can see what they look like in black and
21 white. So we'll just be as ease for a few minutes while
22 she's doing that.

23 MR. BAX: Thank you, Your Honor.

24 MS. CONCANNON: Certainly, Your Honor.

25 [Whereupon, court is in recess from 4:55 p.m. until

1 5:04 p.m.]

2 THE COURT: Thank you. The photographs have been
3 marked for identification purposes as State's 1 and
4 State's 2. What is your objection?

5 MR. BAX: Your Honor, my objection is that the
6 photographs are -- obviously as you've seen the color
7 photographs are very gruesome; there is a lot of blood in
8 the pictures, both of those pictures. My objection would
9 be the fact that under 403 they are really unnecessary
10 because the State has several other ways to introduce the
11 essential element of the injuries.

12 One, Your Honor Officer Brian Michael in his report,
13 and I would assume that he could testify to this, can
14 testify that when he encountered Mr. Snodgrass that he
15 was all bloody, he appeared to be very injured, he had a
16 lot of blood on his face so there is testimony from the
17 officer.

18 Secondly, Your Honor Investigator Seifert met with
19 Mr. Snodgrass and at some point I don't know if it was
20 Investigator Seifert or somebody else took photographs of
21 Mr. Snodgrass at the hospital. And while those
22 photographs certainly show Mr. Snodgrass being severely
23 injured in his face or at least the appearance of some
24 very painful looking injuries they can also establish it
25 without the bloody photographs that Your Honor has in

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1 front of you. Those photographs are in the State's
2 possession because I've received them in discovery.
3 Those also could be utilized to establish the element of
4 the injury that they need for the assault and battery and
5 in the elements that they want to use towards going
6 towards proof of the armed robbery.

7 So basically the objection is Your Honor the
8 elements that they are seeking to prove and the
9 assistance to the triers of fact that they are trying to
10 achieve with these photographs can be achieved through
11 other evidence that would not have the kind of overly
12 prejudicial effect that I believe these photographs will.

13 I've looked at the Collins case. I was familiar
14 with the facts of the Collins case but I hadn't read
15 through it. But in reading through it Your Honor I see
16 that there is an internal site and I believe this is
17 coming from the Camargo v State case. And it quotes the
18 fact that even the most gruesome photographs may be
19 admissible but only if -- it talks about if they intend
20 to shed light on any issue to corroborate testimony or if
21 they are essential in proving a necessary element of the
22 case, are useful to establish or enable a witness to
23 testify more effectively or enable the jury to better
24 understand the testimony. My argument would be that they
25 can achieve all those ends without these photographs.

1 And that these photographs due to their gruesome nature,
2 due to the amount of blood in the pictures especially the
3 close up one these are more -- these tend more to inflame
4 the passions of the jury and make the decision of the
5 jury as to the verdict more of an emotional decision
6 unless -- of an intellectual decision based on the facts.
7 I'm afraid that's the effect whether intended or not
8 intended by the offer of the evidence that is the result
9 of such photographs.

10 In the alternative Your Honor I certainly would
11 object to both of them going in because they are
12 cumulative of each other and that is not allowed even
13 under the Collins case. They show the exact same thing;
14 one close up and one further away so they are cumulative
15 in effect. But I don't think either of them are
16 necessary in light of what the State also has to present
17 through their witnesses and the other photographs.

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

19 MS. CONCANNON: Thank you, Your Honor. Mr. Bax is
20 stating that pictures such as this are admissible when
21 they tend to prove an element of the crime charged or
22 corroborate a witness's testimony. Here more
23 specifically the close up picture the State would contend
24 would corroborate testimony from witnesses that Mr.
25 McQuarters did use brass knuckles. If you look closely

1 at those pictures you're able to see what in layman's
2 terms I could only describe as holes in Mr. Snodgrass's
3 face consistent with being hit with what the State would
4 contend are brass knuckles with spikes on each knuckle.
5 Mr. McQuarters is charged with armed robbery because he
6 used a deadly weapon; brass knuckles. Brass knuckles
7 were never located. A witness will testify that, well
8 the State hopes a witness will testify that Mr.
9 McQuarters told tells him he used brass knuckles.

10 However, we feel that picture more specifically the
11 close up one would corroborate that testimony. If you
12 look closely you can see right around the nose and on the
13 cheek and back a little bit holes different with the
14 other sorts of lacerations on Mr. Snodgrass's face. And
15 we feel that because of that we need those pictures to
16 prove the element of armed robbery the use of a deadly
17 weapon.

18 It will corroborate other witnesses' testimony and
19 it's no more prejudicial, it's highly probative in
20 helping prove the State's case and that element. We are
21 cognizant that they are graphic but we're not just using
22 them to pull the emotional heartstrings of the jury.
23 We're using them to prove one of the elements that the
24 State has the burden of proving.

25 MR. BAX: Your Honor, if I may be heard?

1 THE COURT: Hold on a second. Let me see number 1.

2 [Whereupon, the court reviews photographs]

3 THE COURT: Go ahead.

4 MR. BAX: Thank you, Your Honor. I do think I need
5 to address something that the State has just brought up.
6 This is the absolute first time I have ever heard
7 anything about the allegation that there might have been
8 spikes on the brass knuckles and that certainly concerns
9 me as defense counsel.

10 I've been over the discovery in this case multiple
11 times. I've been through the medical records that were
12 provided by the State. Now if I'm incorrect and they can
13 show me where it is I have never seen anything reporting
14 that they believe because my understanding has been that
15 the alleged brass knuckles were never recovered in this
16 case.

17 And I don't recall reading anything where there was
18 an allegation that spikes were on these brass knuckles.
19 If they are there I still have an objection because the
20 problem is the brass knuckles were never recovered. And
21 unless they can provide scientific testimony that passes
22 muster under the Jones case and its progeny I don't think
23 that such an allegation without anything to back it up is
24 even admissible.

25 MS. CONCANNON: And Your Honor if I may; I don't

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1 want to cut Mr. Bax off. That is my interpretation of
2 the photographs. Just working in this job I know that
3 there are different forms of brass knuckles that are used
4 on the streets and those injuries do show that some sort
5 of object was used. Nobody is going to testify that
6 spike brass knuckles are used. That is my interpretation
7 of the photograph.

8 MR. BAX: And that's fine. I'm just concerned
9 about it if there is going to be testimony to that effect
10 I need to make sure ---

11 MS. CONCANNON: --- there is not going to be any
12 testimony regarding the type of brass knuckles used.

13 MR. BAX: All right. Thank you.

14 THE COURT: The in limine ruling of the court is
15 that the photographs are excluded under Rule 403. Now in
16 the trial of the case I may know more about the case. I
17 may be able to understand some things. With regard to
18 this spike issue if there is no evidence that spikes were
19 on the brass knuckles then I don't know how I am going to
20 accept that argument.

21 I can't see these things that you're claiming that
22 indicate that. And also if he was hit in the forehead I
23 don't know what the testimony will be as far as to how
24 many times he was hit. And brass knuckles would have to
25 be about eight inches long to run from the bridge of the

1 nose up to -- not the bridge; the base of the nose up to
2 where this cut appears to be on his forehead. I had the
3 clerk run photocopies and I wanted that done so I could
4 see what they would look like in black and white and they
5 honestly don't look any better. You all can look at them
6 if you'd like. If you want to make them part of the
7 record we can get the court reporter to mark them. Now
8 that's an in limine ruling. That's a preliminary ruling.
9 It can change later. Anything else I need to rule on?

10 MS. CONCANNON: Not from the State, Your Honor.

11 MR. BAX: No, Your Honor.

12 THE COURT: I've instructed the jury to be here at
13 10 o'clock in the morning and that's what time I need
14 y'all; 10 a.m.

15 MS. CONCANNON: Thank you, Your Honor.

16 MR. BAX: Thank you, Your Honor.

17 THE COURT: Court is in recess.

18 [Whereupon, court adjourns at 5:15 p.m.]
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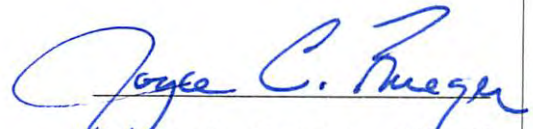
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Certificate of the Court Reporter
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Beaufort County, South
Carolina on the 17th day of February, 2015.

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

April 22, 2015


Joyce C. Rueger, CYR-M
Court Reporter

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COUNTY OF BEAUFORT	)	DOCKET NO. 2013-GS-07-1844
	)	2013-GS-07-1845
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
AUSTIN MCQUARTERS	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

February 18, 2015
Beaufort, South Carolina

VOLUME 2 (OF 3)

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE

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Circuit Court Reporter

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1 PROCEEDINGS

2 THE COURT: Is the State ready for the jury?

3 MS. CONCANNON: We are, Your Honor.

4 THE COURT: Is the defense ready for the jury?

5 MR. BAX: Yes, Your Honor.

6 THE COURT: Bring the jury please.

7 [Whereupon, the jury enters at 10:02 a.m.]

8 THE COURT: Ladies and gentlemen the first order of
9 business is that I need to announce to you is that juror
10 number 139 Ms. Johnson has been excused from the jury.
11 So Mr. Stanley Brown, Sr. where are you?

12 [Whereupon, the juror raises his hand]

13 THE COURT: Mr. Brown, juror number 38 you are
14 substituted in her place so you will be one of the 12
15 jurors. The next order of business is that I have to
16 have you placed under a different oath, the oath of a
17 trial jury. I need for you to please stand and raise
18 your right hand and the clerk will administer your oath.

19 [Whereupon, the jury is sworn by the Clerk of Court]

20 THE COURT: Raise your hand again. The evidence
21 and the law so help you God?

22 [Whereupon, all jurors raise their right hand]

23 THE COURT: There was a case out of Greenville a
24 long time ago that said we were suppose to include that
25 so it doesn't hurt anything to add it.

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1 THE COURT: Thank you. Ladies and gentlemen I'm
2 going to give you some instructions that you have to
3 follow throughout the trial. The first thing I'm going
4 to do before I go into those is I'm going to explain to
5 you how I expect the case to go.

6 The first thing that is going to happen is you're
7 going to hear the opening statements of the attorneys.
8 In the opening statements the attorneys are not permitted
9 to engage in what we refer to as argument. An opening
10 statement can be an introduction, an outline, an overview
11 of how each side perceives their belief what the evidence
12 will produce; what it will show. That's the purpose of
13 the opening statement.

14 When the attorneys are finished with the opening
15 statement then I will call upon the Solicitor to present
16 the State's case. The State brought these charges and
17 the State has the entire burden of proof. The State has
18 to prove every essential element of each charge lodged
19 against Mr. McQuarters beyond a reasonable doubt. And so
20 I'll recognize the State to present evidence in an
21 attempt to meet that burden.

22 When the State finishes presenting its case in chief
23 the Solicitor will tell me that the State rests. At that
24 point regardless of whether you've been in here just a
25 few minutes or whether you've been in here an hour I have

1 to send you out of the courtroom and I have to discuss
2 legal issues with the attorneys. When you come back
3 after that I'll tell you where we go from there. But
4 those are kind of the landmarks you can look for as we go
5 along and get started.

6 Now it's really important that you understand some
7 things. First that oath that you just took was one in
8 which you promised us that you're going to decide the
9 case based on the evidence and the law. So you need to
10 know where those things come from. The evidence comes
11 from the sworn testimony of the witnesses. Evidence can
12 also come in the form of exhibits. An exhibit can be
13 anything tangible that's marked in the record. It can be
14 a photograph, a map, a chart or any kind of document;
15 video or audio. It can be anything tangible that is
16 marked in the record. So the evidence comes from the
17 exhibits and the sworn testimony of the witnesses.

18 What the lawyers say is not evidence. Now I want
19 you to pay close attention to what they say. They
20 facilitate the introduction of the evidence but what
21 comes out of the lawyer's mouths is not evidence. The
22 evidence comes from the witnesses and the exhibits. Now
23 there is one exception to that rule about what the
24 lawyers saying not being evidence and if it happens in
25 this trial I'll tell you about it; otherwise I won't

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1 burden you with it. You know where the evidence comes
2 from now. The law comes from me. It's my job to decide
3 what law applies to a case and to tell it to the jury at
4 the end of the trial.

5 Now it's also very important that you understand
6 that there are two judges in the courtroom. I'm the
7 judge of the law. As I just told you part of my job is
8 to decide what law applies to the case and tell it to the
9 jury at the end of the trial. I preside over the trial,
10 maintain order, and I rule on legal issues as they arise.

11 You must understand that you are the other judge.
12 And you are the only judge of the facts. Only you are
13 going to get to decide such things as whether evidence is
14 believable or not. Only you get to decide what weight,
15 if any, should be placed on evidence. Those things are
16 entirely your prerogative and I'm not going to invade
17 your province.

18 Now to explain to you a typical example of how our
19 roles interact and how there is a separation between the
20 judge of the facts and judge of the law. From time to
21 time throughout a trial one side or the other may feel
22 that the opposite side is trying to present something to
23 the jury that does not fit within the rules for the jury
24 to consider. And if that occurs these attorneys have
25 taken an oath just like you and I took an oath and they

1 have an obligation to stand and raise an objection. And
2 that calls on me to make a ruling. Now if I sustain the
3 objection that means that I agree that that thing is not
4 proper for the jury to consider and you disregard it. If
5 I overrule the objection then I'll let it come before
6 you. You then decide whether it's believable or not and
7 what weight if any to put on it.

8 So I want you to understand when I'm making a ruling
9 on an objection for example I'm looking very narrowly
10 with tunnel vision to decide does that thing fit within
11 the rules for the jury to consider. And if I feel that
12 it does I'll let it go to the jury and if I feel that it
13 doesn't I sustain the objection.

14 But it will not cross my mind to think about whether
15 that thing is believable or not because that's not my
16 job. I will not give one second of thought as to whether
17 the thing ought to be given any weight by the jury; it's
18 not my job. I'll let it come before you if it's
19 admissible and you decide whether it's believable and you
20 decide what weight if any to put on it. So that kind of
21 explains a little bit about how our roles differ.

22 Now while you promised us you're going to decide the
23 case based on the evidence and the law and you must do
24 that I'm not telling you to leave your common sense at
25 home. We want you to use your sense of logic and reason

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1 and your good judgment and your good common sense. It
2 just makes good common sense that you keep an open mind
3 about the case and you don't make up your mind about
4 either of these charges until you know all the evidence
5 and you know what law applies to the case. So there is a
6 rule that I've already mentioned to you before that we
7 insist that you follow. It's very hard to follow and
8 that rule is you're not to discuss this case in any way
9 among yourselves until I tell you to.

10 Now that's hard to follow because you 12 folks may
11 feel you have little in common except you all live in
12 Beaufort County and you all got picked on this trial. So
13 the logical thing you're going to want to talk about
14 during any break or recess, long or short is what you
15 just saw in the courtroom, what you just heard in the
16 courtroom and what your opinions are.

17 Well, don't do that; wait until I tell you to begin
18 your deliberations and then you can talk about all those
19 things. But wait until you've got the whole picture.
20 Wait until you know all the evidence and you know the
21 law. Now akin to that is the rule that you are not to
22 discuss this case with anyone else until the case is over
23 and you've been discharged from the jury. So don't
24 discuss the case with family members, friends, or anybody
25 else. If anybody attempts to contact you and discuss the

1 case with you report that to me so that I can deal with
2 it. If there is any media coverage of the trial get away
3 from it, don't let yourselves be exposed to any further
4 media coverage and report to me at the first opportunity
5 what you might have seen, heard, or read through the
6 media. Bear with me a moment please.

7 I told you ladies and gentlemen about independent
8 investigation. I'm going to have to read something to
9 you that the Supreme Court says we have to read to the
10 jury in every case. Before I read it because it's
11 written in legalese I want to explain to you some
12 background for this. A lot of what you're going to hear
13 is repetitious of what I've already told you.

14 There have been some situations in other states, I
15 don't know of any situation in South Carolina where we've
16 run into -- where they have run into problems with jurors
17 using social media. I've told you you can't discuss the
18 case, you can't comment about the case with anybody until
19 the week is over and you've been discharged from the
20 jury.

21 Well, the same rule applies to Facebook. You can't
22 go post on Facebook what's going on in court or what you
23 think about what's going on in court until you've been
24 discharged from the jury. You can't go on Twitter and do
25 something like that. So the Chief Justice and the

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1 Supreme Court in South Carolina has been proactive and
2 they've come out with definitive rules about this and I'm
3 going to read them to you in a moment.

4 This independent investigation in the old days I
5 used to tell jurors once you find out where this is
6 alleged to have occurred don't go out and look at the
7 scene. That's an example of independent investigation.
8 There are methods by which we can have a jury taken to a
9 scene if it's needed but we have the protections built in
10 that we need so that if there have been changes to the
11 scene the jury would know what's happened; things like
12 that, just common sense stuff.

13 Since I typically work in Lexington I have to tell
14 them not to go to the law library and look up law because
15 that has happened in South Carolina. It's happened to me
16 several times where people have gone and tried to look up
17 the law. Don't do that. That's my job. And you have to
18 understand all the nuances and if I make a mistake there
19 is a procedure for that.

20 But if you make one on the law there is no procedure
21 for that; no protection. So don't go look up the law.
22 Don't go on the Internet and try to do any word searches
23 about anybody in the case or anything about the case.
24 Don't look up any law on the Internet or anything like
25 that. So don't do any independent investigation. Now

1 I'm going to read this to you. Until your jury service
2 has concluded you're not to discuss the case with others
3 including other jurors except as authorized by the court.
4 You're not to read or listen to any new reports about the
5 case. You're not to use a computer, cell phone, or other
6 electronic device with communication capabilities while
7 attending the trial or during deliberations.

8 You may use such devices during lunch breaks or
9 extended breaks but not to obtain or disclose information
10 that is prohibited. You're not to use a computer, a cell
11 phone or any other electronic device with communication
12 capabilities or any other method to obtain or disclose
13 information about the case when you're not in court.

14 Information about the case includes but is not
15 limited to the following types of things: Any
16 information about a party, a witness, an attorney, or a
17 court officer, any news accounts of the case, any
18 information collected through juror research on any
19 topics raised or testimony offered by any witness, any
20 information collected through juror research on any other
21 topic that the juror might think would be helpful in
22 deciding the case. So I've read to you what the Supreme
23 Court said. You're not to do any independent
24 investigation at all so why they're telling you not to
25 discuss it is kind of redundant but I've read to you what

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1 they say I have to read to you. The last few things I
2 want to cover with you are mostly housekeeping matters.

3 I understood from a bailiff there has been a
4 question about whether you may take notes. You're
5 certainly allowed to take notes if you wish. The judges
6 who do not allow juries to take notes typically give as
7 their reason that they feel that a juror who has written
8 notes will have an undue influence on the jury in that
9 the other jurors who did not take notes, written notes
10 would yield to that person's written notes.

11 I don't buy into that. You know what you remember;
12 you know what you strongly believe and its fine with me
13 if you take notes. They tell us if we let you take notes
14 to have three rules. The first one is this; when you
15 leave the courtroom during any of the breaks you have to
16 leave the notes in the courtroom.

17 So just write your name on the pad or whatever or
18 your juror number or whatever to identify you and just
19 turn your notes face down and leave them in the chairs as
20 you leave. They will stay in the chairs during short
21 breaks. Long breaks the bailiffs take them up. But we
22 don't read your notes. The second rule is this; when you
23 go back for your deliberations when you go back to decide
24 the case you may have your notes with you then. But
25 you're not allowed to physically show your notes to

1 another juror. Now you may look at them and you may say
2 whatever you like after that but you cannot physically
3 show a juror and say look here, I've got this written
4 down. And the third rule is that after the trial is over
5 we destroy your notes so you have to give them to us and
6 we shred them or tear them into little pieces. We do not
7 read your notes. So if you want to take notes I'll get
8 the bailiff to get pad and pen and let you have that.

9 I explained to you yesterday how I typically run
10 court so I won't go through that again as far as the
11 hours of operation. There is one thing that I used to
12 say this because I had some people comment about it and I
13 just thought it was kind of ridiculous to have to say it
14 so I stopped saying it. Now I've had some more people
15 comment about it so I'm going to say it; forgive me.

16 Folks, I'm going to be working on a computer up here
17 while the trial is going on. And that does not mean I'm
18 playing video games. I don't play them at home; I don't
19 play any kind of computer games. In the old days when I
20 started working as a judge we had typically two big
21 suitcases we carried around full of books. We don't
22 carry around suitcases full of books anymore. It's all
23 on this laptop and everything we do; all of my
24 instructions to you, which is most of the stuff I'll be
25 doing, is working on the instructions that I'm going to

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1 give to you. Don't think because I'm working on my
2 computer that I'm in any way not paying attention or that
3 I'm disinterested in the case. That's just not true; I'm
4 working. We can't use this computer to access social
5 media; it's prohibited by the Supreme Court. I think
6 they're trying to do that across the State now to all
7 State employees. But anyway we can't do it. I'm not
8 goofing off, all right.

9 Again, I think it's kind of ridiculous to have to
10 tell a jury that but that's the case. Now in the old
11 days I was one of the few judges that had a laptop. I
12 bought my own laptop and I could understand why people
13 might think I was doing something strange. But in 2015 I
14 don't really know why I have to give that instruction but
15 if I say it then I know none of you are thinking it.

16 Last thing is folks I'll do everything in my power
17 not to waste your time. I can tell you that one of my
18 pet peeves is making a jury wait. It just drives me nuts
19 when I've got a jury back there waiting. I said that the
20 last time I held court in Lexington and I had a jury sit
21 out for five hours waiting on us. That was awful. I
22 can't imagine what it was like for them. But it was a
23 pretty bad trial and a lot of things came up that nobody
24 expected. It's a long story; but anyway I try to send
25 back if the breaks get extended and I tell you you're

1 going to be out 15 or 20 minutes and it looks like it's
2 going to be a lot longer than that I try to send word by
3 the bailiff. I try to let you know that I'm mindful of
4 the fact you're back there waiting. If it's possible
5 I'll let you leave the courthouse if we're going to have
6 a long break for some reason. I don't anticipate any but
7 we don't know until we start a case.

8 So the only promise I can make to you is this if
9 you're waiting on us we're working. I promise you we
10 will not be out here goofing off telling jokes or
11 drinking coffee or anything like that. If you're waiting
12 we're working to get you back in here. So I would very
13 much appreciate your patience throughout this process.
14 Court often involves hurry up and wait so.

15 I think that's everything I've got to tell you at
16 this point and to honor my commitment to you not to waste
17 your time I'll be quiet. And I invite your close
18 attention to the opening statements. Solicitor?

19 MS. CONCANNON: Thank you, Your Honor. May it
20 please the court?

21 THE COURT: Yes, ma'am.

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23
24
25

2 | BY MS. CONCANNON:

3 October 20th of 2013 started out like any other
4 night at work for John Snodgrass. He works at Northridge
5 Cinemas; the movie theatre over on Hilton Head Island.
6 He is one of the managers and at all times a manager has
7 to be on duty. The night of October 20th, 2013 belonged
8 to John Snodgrass.

9 He went to work that night, did his duties while the
10 movies were going on and as the last showing started he
11 gathered his belongings he locked up the theatre and he
12 was ready to call it a night. He grabbed his keys, he
13 grabbed some mail, and he also grabbed the money that was
14 collected that day that the theatre collected.

15 He exits the front door of the theatre and it locks
16 behind him because at this point the theatre is
17 technically closed. There is a movie still going on but
18 nobody from the outside can come in. The door locks
19 behind him and he starts walking into the parking lot.
20 I'm not sure if any of y'all are familiar with Northridge
21 Cinemas but the parking lot there are lots of trees, it's
22 very pretty, but there are lots of trees and its dark.
23 It's not the easiest walk. So as he's walking to his
24 truck he notices a small two door car backed into a spot
25 near his. Well, he doesn't really think anything of it

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1 at first. Then all of a sudden a large black male pops
2 up from the driver's side tire of that small car. Mr.
3 Snodgrass starts to get in his surroundings. He starts
4 to look to see if anybody else is around. The parking
5 lot is empty for the most part with the exception of his
6 truck and this little car.

7 This mysterious man approaches John and starts
8 asking him about movie times, moving showings, how long
9 are these movies going to be going on. John said I need
10 more information; they all started at different times so
11 I can't really tell you right now. Then he asks to use
12 his cell phone.

13 And that's when the uneasy feeling comes over John
14 Snodgrass. Hairs on the back of his neck start to stand
15 up. He starts to gather more of his surroundings. He
16 starts to look at the hands of this man that is talking
17 to him; this stranger that he doesn't know. He notices
18 that the car that he popped up from there is a female in
19 the driver's seat.

20 This man then asks John Snodgrass one last question.
21 He asks him what time it is. It is at this moment that
22 John will tell you he made the biggest mistake of the
23 night. He looks at his watch. And in that brief split
24 second he took to look at his watch he sees out of the
25 corner of his eye this man take his arm behind his back

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1 over his head and strike him. He strikes him first in
2 the side of his face. John will tell you it felt like it
3 was metal hitting his skin that night. John goes into
4 lifesaving mode. He puts his hands up in a defensive
5 manner and another blow comes. This time John is knocked
6 on the floor. He's bloody, he is beaten, he is knocked
7 to his knees on the concrete.

8 He loses grip of everything that is in his hands and
9 he blacks out. He wakes up in a pool of his own blood,
10 gathers what little belongings he still has around him.
11 One piece of mail is missing as well as the money bag
12 with the day's deposit in it. He goes into the inside of
13 the theatre and he locks the door behind him and he has
14 the wherewithal to call 911 and he does.

15 Deputy Brian Michael with the Sheriff's Office is
16 the first to respond that night. He comes to the theatre
17 and at first he can't find the man who called 911. He
18 later finds him locked inside of the movie theatre beaten
19 and bloody. He gets a description of the man and the
20 car.

21 Eventually E-M-S is called and John is taken to
22 Hilton Head hospital. His injuries are so severe that he
23 has to be transported to Savannah. His injuries were so
24 traumatic that Hilton Head didn't have the wherewithal
25 and capabilities to adequately provide medical help for

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1 him. He suffered a broken nose, he had cracked
2 vertebra, he had multiple facial fractures. To this day
3 he still suffers from a vision impairment, he still
4 suffers nerve damage, has long term dental problems; all
5 from this one attack.

6 Now the night of this attack on John the Beaufort
7 County Sheriff's Office they canvassed the area, they
8 went to businesses around and tried to get surveillance.
9 They couldn't find anything; they had nothing. All they
10 had to go on was a large black male and that he came out
11 of a small two door car.

12 But within a couple of days the whole story would
13 come to light. And at the end of the investigation three
14 key players were discovered, **Minor 1** who is a 16
15 year old student of Bluffton High School and an employee
16 of Northridge Cinemas, Jacklyn Perez also known as Jackie
17 or Brooklyn Perez, an 18 year old senior at Bluffton High
18 School and Austin McQuarters; also a student at Bluffton
19 High School and a friend to Jackie and **Minor 1**

20 Now after interviews and doing some further
21 investigation the events of that night become clear. The
22 Sheriff's Office learned that on the night of the attack
23 Austin McQuarters goes with Jackie to the movie theatre.
24 They go, they talk to **Minor 1** they go back to her car and
25 they wait. She sits in her driver's seat and he stoops

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1 down by the driver's side tire on the front of that car.
2 He waits, he sees John walk out alone, vulnerable. He
3 approaches John, he asks some questions to distract him
4 and he strikes. He robs him, he beats him. The State
5 contends that what he beat John with that night was not
6 just his fists. He used a pair of brass knuckles that
7 night.

8 After the attack Jackie has a front row seat to this
9 attack. She saw everything. Austin jumps in her car,
10 they go over the bridges, they go back into Bluffton and
11 she drops him off at the entrance of Woodbridge. A
12 couple of minutes later Minor 1 receives a call from
13 Austin. Austin tells him to come outside so Minor 1 does.
14 Austin hands him 250 dollars and tells him Merry
15 Christmas and leaves.

16 You're going to hear from Minor 1 and he's going to
17 tell you how the day after the incident he talked to
18 Austin again and he's going to tell you how Austin told
19 him that after he learned from Minor 1 that if anyone is
20 going to have money this night from the movie theatre
21 it's going to be that man right there. It's going to be
22 John; he's my manager. If anyone is walking out with
23 money it's going to be him. But Austin used that
24 information and in his opinion he ran into some money at
25 Minor 1 work. He waited and he took his opportunity.

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1 He grabbed the money, he beat John and he left. Austin
2 McQuarters is charged with armed robbery and assault and
3 battery in the first degree. The Judge is going to
4 instruct you on the law but very briefly in South
5 Carolina armed robbery is accomplished by the use of a
6 deadly weapon. Brass knuckles are considered a deadly
7 weapon. On October 20th, 2013 Austin McQuarters he
8 developed his plan, he put the players in place, he
9 waited for the right opportunity and he struck. And he
10 beat John into a bloody pool and robbed him of the money.

11 Now throughout the duration of this trial you're
12 going to hear from a few different witnesses. You're
13 going to hear from different members of the Sheriff's
14 Office that responded that night. You're going to hear
15 from the lead investigator on the case. You're going to
16 hear from the treating physician at Hilton Head hospital
17 who treated Mr. Snodgrass that night in the emergency
18 room.

19 You're going to hear from John himself. You're also
20 going to hear from **Minor 1** and you're also going to hear
21 from Jackie. And I ask that you take every word that
22 comes off that witness stand as a piece to a puzzle
23 because it's not one word by itself that you see the
24 facts. You take every piece of that puzzle and at the
25 end of the testimony and at the end of the evidence I ask

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1 that you put it together. And I'm confident that you'll
2 use your common sense and you'll put every piece together
3 and it'll show one thing; and that will show you that
4 Austin McQuarters is guilty of both armed robbery and
5 assault and battery in the first degree. Thank you.

6 THE COURT: Thank you Solicitor. Mr. Bax you're
7 recognized for your opening statement.

8 MR. BAX: Thank you, Your Honor. May it please the
9 court?

10 THE COURT: Yes, sir.
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2 | BY MR. BAX:

8 I want to talk to you a little bit about what you
9 can expect in this case just like the prosecution has.
10 However, I just want to talk to you a little bit about
11 the process. What you heard from Ms. Concannon was a
12 story. She told it just like a story teller tells. She
13 told it from the viewpoint of Mr. Snodgrass. She told it
14 because stories emit emotional reaction. That's why
15 stories were the first form of entertainment. And we
16 still use them today; they're either written in a book or
17 they're put on a movie and we go watch them because they
18 entertain us and they emit some kind of emotional
19 response.

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1 to the story of someone who has been wronged you don't
2 have justice you have mob justice. You have pitchforks
3 and torches. People run off because they've jumped to a
4 conclusion because they've heard one side of the story
5 only and off they go because that emotional response
6 someone has been wronged we need revenge. That's the
7 thought that comes into mind whether you called it that
8 or not it's revenge because you haven't looked at all the
9 facts, you've jumped to a conclusion and off you go to
10 take out the bad guy.

11 So remember this is not a story to give you an
12 emotional response. It's not a story to entertain you;
13 it's justice. And what you're going to find is there
14 always not just one story. You're going to find that
15 when you hear all the evidence you're going to see that
16 there are multiple stories here. There are multiple
17 facts here.

18 You're going to find that what the State presents
19 its witnesses who had a hand in something bad. And
20 you're going to see from them -- the Judge is going to
21 instruct you at the end of the trial and he talked about
22 this earlier you have a job to evaluate the creditability
23 of witnesses. What does that mean? It means the
24 believability. Do you believe them? Do you believe all
25 of what they've said or part of what they've said? The

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1 reason that we have juries, the reason why our system is
2 something that we're proud of is because it is not a
3 decision made by a computer. It is not a decision made
4 by one person who sits at the bench all day long deciding
5 people's fates. It's a decision made by 12 members of
6 the same community who are not professional jurors who
7 have the tools that are necessary to make the decision.

8 We can't go back in time and look at it. If we
9 could we could save everybody time; we'd just pop in the
10 time machine and we'd go back to Northridge in 2013 and
11 we'd watch it all go down and we'd know. We'd videotape
12 it and video doesn't lie, right okay? But we don't have
13 that technology.

14 So what we do have is 12 members of the community
15 with the same common sense and common experience as
16 everyone else looking at the facts and deciding is this
17 believable? Has the State met its burden of proof?
18 Because let's be clear, the reason that the law is
19 written the way it is, is because the founders were more
20 worried about government taking peoples liberty
21 unnecessarily than they were about a bad person on the
22 streets because they had just gotten done with a
23 government that did what it wanted without any due
24 process. You are that due process. You have a
25 responsibility to yourselves as citizens and to Mr.

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1 McQuarters because this is his day in court. So look at
2 it and not have an emotional response and look and see
3 what is wrong here. What really happened?

4 Now Ms. Concannon is correct. You're going to hear
5 from **Minor 1** but what you're going to hear about
6 is a boy who worked for Mr. Snodgrass who people have
7 said had a problem with Mr. Snodgrass. You're going to
8 hear about someone who is the only one who could possibly
9 have made all this stuff happen.

10 And yet you're going to hear about a 16 year old
11 white boy that has not been charged with a crime; even
12 though the crime could not have happened without him.
13 And if you look at it I think what you're going to see
14 because you're going to use that same common sense that
15 you use in the community every day that the whole truth
16 is certainly not coming out of his mouth.

17 You're also going to hear from Ms. Perez who has
18 been charged that she is testifying and you ask yourself
19 why is she testifying? Why is she putting all this on
20 Mr. McQuarters? Why is she trying to say she didn't have
21 anything to do with it; it just happened. Why did she
22 tell the police she didn't realize what happened? She
23 thought she was just giving somebody a ride. Why try to
24 take yourself out of a bad situation? Well, that's an
25 easy answer; everybody knows that. Some of you may have

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1 children here; I do. My kids are young; five and nine.
2 And I love them with all my heart. But do I believe them
3 every word out of their mouth when they come tell me
4 something? No.

5 When I hear a giant crash from my five year olds
6 room and I say **Minor 2** [phonetic] what's going on and he says
7 nothing. Do I believe nothing happened? No. Does it
8 mean that I don't like my son? No, of course not. But
9 you're thinking about it. You don't want to get in
10 trouble so you say what you need to get out of trouble.

11 It's a response we all have and something that we
12 try to mature past as we become adults but some do and
13 some don't. So think about those things when you're
14 evaluating what you hear from the State's side. There
15 are more than one story here. But what are the facts?
16 What are the facts?

17 You're also going to hear that Mr. Snodgrass cannot
18 identify who attacked him. He never got a look at this
19 person to be able to identify this person in a photo
20 lineup. He was never able to identify this person's
21 picture. He doesn't know who did it. You're also going
22 to not hear certain things and that's just as important
23 as what you do hear because what you're not going to hear
24 is that despite the fact that Mr. Snodgrass was so
25 injured and was bleeding heavily that no D-N-A from that

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1 blood was found on anything of Mr. McQuarters. In fact
2 no D-N-A was found on anything outside of that parking
3 lot. They didn't find it. So think about those things
4 when you listen to this evidence and remember it's not a
5 story for your entertainment. It's a responsibility to
6 make sure that the government does not put away someone
7 that they cannot prove beyond a reasonable doubt is
8 guilty. Thank you.

9 THE COURT: Thank you Mr. Bax. Solicitor, call
10 your first witness, please.

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State v Austin McQuarters
Brian Michael-Direct Examination by Ms. Concannon
February 18, 2015

1 MS. CONCANNON: Thank you, Your Honor. The State
2 calls Deputy Brian Michael.

3 [Whereupon, Deputy Michael comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Please be seated and state your
7 full name.

8 THE WITNESS: Brian Wayne Michael.

9 - - - - -

10 BRIAN MICHAEL,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. CONCANNON:

15 Q. Corporal Michael where are you currently employed?

16 A. The Beaufort County Sheriff's Office.

17 Q. And in what capacity do you work with the Sheriff's
18 Office?

19 A. I work for the enforcement southern division, which
20 is Bluffton and Hilton Head.

21 Q. Okay. And what are some of your duties working in
22 that capacity?

23 A. Patrol, traffic enforcement, respond to calls for
24 service.

25 Q. Did you respond to a call for service on October

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1 20th of 2013?

2 A. I did.

3 Q. And did you respond to the movie theatre on Hilton
4 Head?

5 A. Yes, the Northridge Cinemas.

6 Q. Okay Northridge Cinemas; is that here in Beaufort
7 County?

8 A. It is. It's in Hilton Head, the northern part of
9 Hilton Head.

10 Q. Okay. And that's part of the southern
11 investigation division?

12 A. Correct.

13 Q. Thank you. Why did you respond to the theatre?

14 A. Initially the call was for an assault and battery.
15 From my recollection it was probably still in progress or
16 it just recently happened.

17 I remember responding to the cinemas. I was the
18 first unit on the scene. I attempted to make contact
19 with the victim who was still inside the theatre at the
20 time. I made contact with the victim.

21 He had come out and I noticed immediately that he
22 was bleeding profusely from a head injury. At that time
23 I secured the scene and made sure there were no suspects
24 around. I contacted E-M-S. I notified my supervisor of
25 the situation. He in turn contacted the on duty

1 investigator and the command duty officer as far as the
2 severity of the situation. I conducted my interview with
3 the victim at which time E-M-S had responded and they did
4 their thing and eventually transported him to the
5 hospital.

6 Q. Did you do anything else while the victim was still
7 at the theatre?

8 A. Conducted an interview. He was unable to give a
9 written statement, which we usually like to get as well
10 because it's the victim's own words in their handwriting.
11 I secured some photographs of his injuries and submitted
12 that into evidence. At that point there were no suspects
13 at the scene.

14 We searched the area for tangible evidence; any kind
15 of weapons that may have been used or articles of
16 clothing that may have been dropped, weapons of
17 opportunity; anything like that, suspect vehicle's
18 direction of travel and things like that. So we searched
19 the area for those items after.

20 Q. You say we. So it was you and other members of the
21 Sheriff's Office?

22 A. Correct. Like I said I contacted my supervisor. I
23 believe my area partner that night was Corporal Parnell.
24 So after we secured the scene and the victim was
25 transported we did that.

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February 18, 2015

1 Q. And did you locate anything after y'all secured the
2 scene?

3 A. No, we did not.

4 Q. When you were speaking with Mr. Snodgrass what was
5 his demeanor; his appearance?

6 A. Like I said he had sustained a severe head injury.
7 There was a lot of blood. He seemed in disarray,
8 thoughts weren't very fluent. He would remember things
9 and obviously you're trying to accommodate the injury.
10 You're not trying to pressure anybody into anything
11 so you're going at the victim's speed. He just wasn't --
12 his mind was elsewhere but he gave all the information he
13 could at the time.

14 Q. Okay.

15 MS. CONCANNON: Beg the court's indulgence.

16 THE COURT: Yes, ma'am.

17 [Whereupon, Ms. Concannon confers with Ms. Lempesis]

18 Q. [Ms. Concannon] Deputy Michael, I have no further
19 questions for you. If you could answer any Mr. Bax may
20 have.

21 THE COURT: Cross-Examination.

22 MR. BAX: Thank you, Your Honor.
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State v Austin McQuarters
Brian Michael-Cross- Examination by Mr. Bax
February 18, 2015

1 CROSS-EXAMINATION

2 BY MR. BAX:

3 Q. Briefly Officer Michael, you indicated that you were
4 the first responding officer to this incident is that
5 right?

6 A. That's correct.

7 Q. Were you in a patrol vehicle by yourself or was
8 there another officer with you at that time?

9 A. We travel in single man units.

10 Q. Single man units. So there wasn't any officers that
11 got there before you. You were the first one there at
12 Northridge Cinemas after this incident correct?

13 A. That's correct.

14 Q. Okay. Did any other officers respond after that?
15 Did you -- did they send some more backup or anything
16 like that?

17 A. My supervisor Staff Sergeant Falls [phonetic] and he
18 responded. We were there while E-M-S was there and I
19 believe Corporal Parnell actually arrived at the scene
20 later and that's when we started canvassing the area.

21 Q. Okay. So at some point or another that evening
22 there would have been roughly three officers there at the
23 maximum?

24 A. Right.

25 Q. Okay. During that time was Mr. Snodgrass able to

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February 18, 2015

1 tell you where this alleged attack happened as far as
2 where in the parking lot or on the grounds?

3 A. I believe in the report it said that he was
4 somewhere near his vehicle out in the parking lot
5 basically.

6 Q. Okay. And did y'all go out and look at that area
7 where he said the attack happened?

8 A. That's correct.

9 Q. And did you find anything there?

10 A. As far as like a bank bag or any kind of tangible
11 evidence, not at the time.

12 Q. What about blood on the scene? Like did you find
13 blood on the parking lot or on the concrete there where
14 he said it happened?

15 A. Unless it's in the report not from my recollection.

16 Q. Now typically obviously if there is evidence that
17 you think there is any value to you would collect that
18 evidence, correct?

19 A. Correct.

20 Q. And that's part of what you're supposed to do if
21 you're securing a scene. If there is a weapon there or
22 if there is blood there you want to try to see if that
23 needs to be collected correct?

24 A. Correct.

25 Q. To your knowledge was any evidence collected from

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1 that parking lot, any swabs of any blood or anything like
2 that taken?

3 A. No.

4 Q. Okay. Thank you Officer Michael. I appreciate it.

5 MR. BAX: No further questions at this time, Your
6 Honor.

7 THE COURT: Redirect?

8 MS. CONCANNON: No, Your Honor.

9 THE COURT: Thank you, sir. You may step down.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 THE COURT: Call your next witness.
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State v Austin McQuarters
John Snodgrass-Direct Examination by Ms. Concannon
February 18, 2015

1 MS. CONCANNON: The State calls John Snodgrass.

2 THE COURT: Come around please.

3 [Whereupon, Mr. Snodgrass comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Please be seated and state your
7 full name.

8 THE WITNESS: John David Snodgrass.

9 - - - - -

10 JOHN SNODGRASS,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. CONCANNON:

15 Q. Good morning Mr. Snodgrass. Where do you work?

16 A. Northridge Cinemas on Hilton Head Island.

17 Q. Did you work there in October of 2013?

18 A. Yes.

19 Q. And what is your duty at the Northridge Cinemas?
20 What -- how do you work there?

21 A. I'm the general manager. I'm responsible for the
22 entire facility day to day operations and employees.

23 Q. And were you working as the manager on the night
24 shift on October 20th?

25 A. I was.

1 Q. What were your hours that night?

2 A. Approximately 4 p.m. until the box office closed and
3 the nightly duties were finished approximately 10:30 to
4 11:00; it varies.

5 Q. Okay. Do you typically work the night shift or do
6 you have night and day shifts?

7 A. It varies. I typically work four to five nights a
8 week and others during the day.

9 Q. Okay. Some of your duties as the manager does that
10 include depositing the day's money intake?

11 A. Yes. The closing manager is responsible for taking
12 the daily receipts to the bank.

13 Q. Okay. And that happened every day?

14 A. Pretty much every day.

15 Q. Do you remember October 20th of 2013?

16 A. I do.

17 Q. Were you working that night at the theatre?

18 A. I was.

19 Q. How did your day begin?

20 A. Typical. I work a second job that has me travelling
21 to Savannah or Hinesville on Sunday mornings. And I
22 would return approximately 1:00 or 2:00 in the afternoon
23 get a couple of hours rest and then come into the theatre
24 by 4:00.

25 Q. And that's what you did on October 20th?

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1 A. Yes.

2 Q. So you worked at the theatre starting around 4:00.
3 What time did your I think you called them your nightly
4 duties what time did those end that night?

5 A. Between 10:30, 10:45.

6 Q. And what did you do when all that was done around
7 10:45?

8 A. Well at that point all but one employee had left the
9 facility. The one employee who remained stays to make
10 sure all the patrons leave and that the facility is
11 locked up.

12 So once the employees have been dismissed for the
13 night the manager runs reports, makes the deposit,
14 finishes up the daily paperwork and then they are free to
15 leave.

16 Q. Had all the movies already begun their last showings
17 by that time?

18 A. Yes. All the movies were running and patrons were
19 in auditoriums.

20 Q. Okay. So was the front of the hotel -- my
21 apologies; theatre, were all the doors locked to the
22 outside public?

23 A. Yes. We lock the front entry doors 15 minutes after
24 the last show starts and the exits door are self locking
25 as people leave.

1 Q. Okay. So people can't come in but they can come
2 out.

3 A. Correct.

4 Q. Where did you exit the theatre that night?

5 A. I left by the -- depending on if you're looking
6 inside or outside -- if you're facing the building from
7 the outside it would be the right side exit doors.

8 Q. That's on the front portion of the theatre?

9 A. Yes, the entry and exit doors are pretty much in the
10 center of the building.

11 Q. Okay. So you exit that door and then what do you
12 do?

13 A. At that point I had already been in box office and
14 taken a quick visual glance out in the parking lot and
15 had seen no one. Then I retraced my steps around past
16 the locked entry door to access the exit door.

17 Q. You mentioned you went into the box office to look
18 at the parking lot? Why did you do that?

19 A. Habit. I always check to see if there is anyone or
20 anything suspicious going on in the parking lot.

21 Q. How is the parking lot set up there?

22 A. There are rows that run perpendicular to the
23 building in front of the building and I believe there's
24 five rows and a drive aisle that leads out to William
25 Hilton Parkway.

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1 Q. Okay. Are there trees or bushes or?

2 A. Extensive tree canopy throughout the parking lot and
3 in the shopping center with the exception of home goods
4 area.

5 Q. What about lights? How is the lighting in the
6 parking lot?

7 A. At that time poor. The facility had lights
8 originally when it was built most of which had failed and
9 an add-on lighting system was put in by Palmetto
10 Electric. Those lights were on and working but because
11 of the low hanging tree canopy they're not terribly
12 effective.

13 Q. Okay. So it was dark?

14 A. It was dark, oh no question.

15 Q. When you're walking to your truck do you notice
16 anything that sticks out to you?

17 A. When I leave the building, no. Everything appears
18 normal; cars in the parking lot commensurate with the
19 number of people that were in watching movies at the
20 time.

21 Q. Okay. As you're walking closer to your truck what
22 do you notice?

23 A. As I cross the drive isle that runs in the front of
24 the theatre and start to walk down toward the aisle where
25 my vehicle is parked a large black male pops up from the

1 driver's side of a small vehicle that had been backed
2 into a space.

3 Q. Okay. Were you ever able to provide a description
4 of this black male that popped up?

5 A. I could give a description as to a height, weight,
6 ethnicity. I saw one distinguishing feature which was
7 the hair style.

8 Q. And what was the height, weight, and hair style
9 description you gave?

10 A. At least 6 feet and over 200 pounds. I think I
11 characterized the individual as built like a
12 refrigerator; very big and square.

13 Q. Okay. And how about his hair? What stood out
14 about his hair?

15 A. Kind of like ringlets. And they questioned me
16 saying do you mean dreads and I said no. They were
17 short; they weren't long.

18 Q. Okay. When you see this man pop up does he
19 approach you?

20 A. My first reaction was oh, this is not good.
21 Somebody popping up from beside a car just set my bells
22 off and I immediately tried to think what do I do.

23 There is no way back into the theatre. The building
24 is locked. Although I have a key by the time I got back
25 to the building and tried to find the key and unlock the

State v Austin McQuarters
John Snodgrass-Direct Examination by Ms. Concannon
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1 door to get in if he was after me he would have caught me
2 well before I ever got to the door. I was too far out
3 into the parking lot. I had my car keys in my hand and I
4 thought about setting off the alarm to my vehicle. And I
5 thought no, there is nobody out here who's going to hear
6 it because all the businesses are closed.

7 The only business even open was a bar on the back
8 side of the shopping center probably close to 100 yards
9 away; nobody would hear it. And I felt that would anger
10 someone and make matters worse. So I slowed down and
11 tried to keep my distance as he approached me.

12 Q. Okay. But eventually he did approach you and y'all
13 did have a conversation.

14 A. He did approach me. I was approximately in front of
15 the small vehicle that he had been hiding behind. He
16 came over very unthreatening I guess would be the best
17 way to say it in that he was asking questions that
18 someone might ask at a movie theatre.

19 Q. What sort of questions was he asking you?

20 A. The initial question was what time does the movie
21 get out. Unfortunately we play ten different movies.
22 They all start and end at different times.

23 I wouldn't know specifically but I did indicate that
24 I needed to know which movie because some are going to
25 get out earlier than others.

1 Q. Did he ask you anything after that question?

2 A. He said he didn't know that there was someone inside
3 and could he borrow my cell phone.

4 Q. And what did you say in response to the question?

5 A. I told him that my cell phone was dead, that the
6 building sucks the life out of the battery.

7 Q. Was that true?

8 A. No.

9 Q. Your cell phone still had battery in it?

10 A. Yes.

11 Q. Why didn't you let him use your cell phone?

12 A. I don't give my cell phone up to anybody for any
13 reason.

14 Q. Okay. Did he ask you anything after you told him
15 no, you can't use my cell phone its dead?

16 A. Yes. He asked me what time it was.

17 Q. When he asked you what time it was what are you
18 thinking at this time?

19 A. At that point I was still nervous but the questions
20 were somewhat normal for someone who was looking for
21 someone who had come to the movies.

22 Q. Did you answer him as to what time it was?

23 A. I started to glance at my watch because I honestly
24 didn't know the exact time. And having up to that point
25 tried to keep my eyes on his hands that's when I took ---

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1 Q. --- why were you -- sorry to interrupt you Mr.
2 Snodgrass. Why were you watching his hands?

3 A. Well, as I indicated initially when he popped up
4 from behind the car I was concerned. I didn't have a
5 good feeling about the situation and I felt if any part
6 of him was going to hurt me it was going to be in his
7 hands.

8 Q. Did he have -- did you ever see anything in his
9 hands?

10 A. I never did see anything in his hands.

11 Q. So he asked you what time it was and you look at
12 your watch and then what happens?

13 A. Out of the corner of my eye I see him reach behind
14 him to the right side with his right hand.

15 Q. To the side of his body or to ---

16 A. --- no, behind him. He's reaching behind him as if
17 he's withdrawing something either from a waistband or a
18 pocket.

19 Q. Okay.

20 A. And my immediate reaction is oh no, he's going to
21 hit me with something. And I turned to my left and
22 raised my right hand up to my head and tried to get away
23 from what I perceived at that point because I saw his arm
24 reaching up over his head and coming at me and I was
25 turning away to my left trying to avoid being struck.

1 Q. Did he strike you?

2 A. Yes.

3 Q. What did that feel like?

4 A. It stunned me. I felt something very hard that I
5 equated to a piece of metal of some kind strike me right
6 behind my right ear and on my right wrist.

7 Q. Did he hit you anymore besides the first time?

8 A. Well, that first strike stunned me and drove me to
9 the ground. I wound up going down on my right knee
10 having turned almost 360 degrees after being struck. At
11 this point I'm facing away from the building. I'm dazed.
12 I don't have a clear vision.

13 Out of my left eye I see him almost stomp the ground
14 and swing with a big upper cut with his right hand toward
15 my head. I brought my left hand up and that's the last
16 thing I remember.

17 Q. Okay. So you black out at that point?

18 A. At that point I'm knocked out.

19 Q. You eventually come to and wake up?

20 A. Yes.

21 Q. What do you see? What is around you when you wake
22 up?

23 A. It's quiet. I'm laying in the parking lot. There
24 is no one around, nothing out of the ordinary. I'm
25 dazed. I can see -- I didn't even realize I didn't have

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1 my glasses at that point. I looked down. I saw some
2 papers that I had been carrying. I picked those up and
3 went to toss them in the bed of my truck and I thought no
4 if it rains or I'll forget they're there. I opened the
5 truck and I tossed the papers inside and I locked my
6 truck and I make a bee line back to the theatre.

7 Q. Now you mentioned some papers. These are papers you
8 were carrying with you?

9 A. Yes.

10 Q. When you walked out of the theatre earlier?

11 A. Yes.

12 Q. Were you carrying anything else with you that night?

13 A. I was carrying a padded postal mailing bag that had
14 some Christmas decorations that I was going to drop off
15 at the post office the next morning and a grey plastic
16 bank bag that contained the day's receipts.

17 Q. Do you know approximately how much money was in that
18 bag?

19 A. There was a little over 2,000 dollars for the
20 deposit and then there was about four or five hundred
21 dollars for a change order.

22 Q. So after you put some stuff in the truck what do you
23 do next?

24 A. After I lock the truck I didn't know if anybody was
25 still around so I wanted to find someplace safe and the

1 only thing I could think of was get inside the theatre
2 and lock the door behind me. So I did. I went inside.
3 I used my key and opened the door and immediately locked
4 it behind me and at that point I took my phone and dialed
5 the police dispatch number.

6 Q. Okay. What information did you relay to dispatch?

7 A. I believe I told them that I had just been attacked
8 and robbed. They asked for a description of the
9 individual. I gave them the same description I talked
10 about earlier.

11 Q. Were you able to describe the clothing this
12 individual was wearing?

13 A. All I could say it was dark.

14 Q. Dark clothes?

15 A. Dark clothing.

16 Q. Did he have a hat on?

17 A. No.

18 Q. So after you called dispatch did somebody arrive at
19 the movie theatre?

20 A. Well immediately after I hung up from dispatch, and
21 they did ask me if I needed medical attention and I said
22 yes I think so. And that was simply based on the blood I
23 saw on my shirt. I didn't have any way to look at my
24 head and face. I knew it hurt. I called the owner of
25 the theatre to let them know of the incident.

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1 Q. Are they local?

2 A. No, they're located in Charlotte.

3 Q. Okay. Did they eventually come down?

4 A. They came down on Tuesday. Immediately all I got
5 was a voice mail so I left a description of what had
6 happened and that I was waiting for the Sheriff's Office
7 and E-M-S.

8 They called Monday evening my cell phone and I had
9 it with me in the hospital and relayed to them what had
10 happened. Then the vice president, one of the owners
11 came down to the hospital in Savannah on Tuesday and saw
12 me.

13 Q. From -- I want to backtrack just a little bit. You
14 mentioned Savannah but before you get to Savannah did the
15 E-M-S come to the movie theatre?

16 A. Well, the responding officer saw me standing inside
17 the door because I was right inside the door and he asked
18 me to come outside. And I did and locked the door behind
19 me. He asked me about what had happened and what kind of
20 descriptions I could give him.

21 He asked if I needed E-M-S or had I called E-M-S and
22 I said I believe I told the dispatch operator that I
23 spoke with that I needed medical attention. And at that
24 point he radioed to confirm that an ambulance had been
25 sent.

1 Q. So an ambulance does eventually arrive?

2 A. Yes, probably two or three minutes later an
3 ambulance came up.

4 Q. Okay. Where does it take you?

5 A. They initially put me in the ambulance and put an
6 I-V in. Another officer or two more officers come and
7 speak to me about the events and what had happened. And
8 after that I know I asked one officer if he could find my
9 glasses and he did and brought them to me.

10 There was a question by the EMT's as to whether I
11 had been knocked out. My initial response was no and
12 then as I thought about it wait a second. There were two
13 people there in a car when this all started and now
14 there's nothing yes, I probably had to get knocked out
15 because I didn't remember seeing the car leave.

16 They tried to bandage some of the wounds to stop the
17 blood flow and then they took me to Hilton Head hospital
18 emergency room.

19 Q. How long were you at Hilton Head hospital?

20 A. I honestly don't know. My best recollection is a
21 couple of hours.

22 Q. Okay. From Hilton Head hospital did you go
23 somewhere else?

24 A. Yes. I was transported from there by ambulance to
25 Memorial in Savannah.

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John Snodgrass-Direct Examination by Ms. Concannon
February 18, 2015

1 Q. How many days were you at the Savannah Memorial
2 hospital?

3 A. I arrived there about 5:00 in the morning that now
4 would have been Monday morning but to me it's still
5 Sunday night and I was discharged I believe Wednesday
6 night.

7 Q. Do you remember what sort of injuries you sustained
8 that night?

9 A. Based upon what the emergency room doctor in Hilton
10 Head told me from x-rays and MRI he said I had a cracked
11 vertebra in my neck, broken nose, broken facial bones;
12 cheek bones and bleeding on the brain. That's what they
13 could identify.

14 Q. Do you still suffer damage from that night?

15 A. Yes. I am plagued with headaches, nerve damage on
16 the left side of my face that affects how it feels almost
17 like there is a constant pulling or tightening.

18 My left eye socket was I would say permanently
19 altered so that my eyes no longer see at a level. There
20 is an offset. Vision is trying to be corrected with
21 glasses. I grind my teeth and people tell me that I am
22 an angry person.

23 Q. So they didn't tell you that before?

24 A. No. Not everybody liked me but I'm the boss
25 sometimes and that's part of the job is to make people do

1 the work that they are paid to do.

2 Q. Absolutely. During and after this incident, more
3 importantly after this incident did you have an
4 opportunity to speak with Investigator Doug Seifert?

5 A. Yes.

6 Q. Okay. Did you relay some information to him?

7 A. Yes.

8 Q. What were you able to tell Investigator Seifert?

9 A. Well at his request I provided information to the
10 Sheriff's Office as to the employees who were working
11 that night and approximately what time each of those
12 employees had left.

13 Q. Was one of the names Minor 1

14 A. Yes.

15 Q. Was he working that night?

16 A. Yes, he was.

17 Q. Do you happen to remember what time he got off work
18 that night?

19 A. He would have left approximately the same time all
20 the other employees did and my best guess is probably 20
21 minutes, 15 to 20 minutes before I left.

22 Q. Okay. So maybe 10:25 ---

23 A. --- 10:25, 10:30.

24 Q. Thank you. Did Investigator Seifert ever ask you
25 to identify the man that did this to you?

State v Austin McQuarters
John Snodgrass-Direct Examination by Ms. Concannon
February 18, 2015

1 A. Yes.

2 Q. Were you able to do that?

3 A. No.

4 Q. Do you know who hit you that night?

5 A. No.

6 Q. You can't identify him can you?

7 A. No.

8 Q. Why can't you identify him?

9 A. It's not an individual that I recall having ever
10 seen before. That night the area where the attack took
11 place was dark. I was more concerned about what part of
12 his body could hurt me and it wasn't going to be his
13 face.

14 Q. But you did provide a description that you remember?

15 A. Yes. What I could remember as far as the general
16 characteristics, how tall he was because we were standing
17 next to each other I had a reference point, the fact that
18 he was very stocky broad shouldered African American, his
19 hair stood out to me, that's how I know to describe it
20 the way I did.

21 His clothing was dark and where he had come from but
22 once I saw him I was more concerned with whether or not I
23 was going to be robbed or attacked than trying to ingrain
24 a facial recognition.

25 Q. So you don't know what his face looks like?

State v Austin McQuarters
John Snodgrass-Direct Examination by Ms. Concannon
February 18, 2015

1 A. No.

2 Q. Mr. Snodgrass, I have no further questions for you
3 at this time.

4 THE COURT: Cross-Examination.

5 MR. BAX: Thank you, Your Honor.

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State v Austin McQuarters
John Snodgrass-Cross-Examination by Mr. Bax
February 18, 2015

1 CROSS-EXAMINATION

2 BY MR. BAX:

3 Q. Good morning Mr. Snodgrass.

4 A. Good morning.

5 Q. A couple of questions for you. You testified that
6 you approximately left about you said about 20 minutes
7 after what you said that Mr. Minor 1 left and you said
8 he left about 10:25 to 10:30 correct?

9 A. To the best of my recollection, yes.

10 Q. Okay. So would it be accurate to say you were be
11 leaving the theatre when this happened approximately
12 about 10:45 to 10:50 somewhere in there?

13 A. Somewhere between 10:45 and 11 o'clock, yes.

14 Q. And is that a pretty typical time when you're
15 running the night shift or the night manager for you to
16 leave the theatre?

17 A. Depending on when the last movie starts that would
18 be a typical time.

19 Q. Okay. Now I want to ask you Mr. Snodgrass do other
20 employees know that the manager is the one that has to
21 take the night deposits at the end of the day correct?

22 A. I could assume that any employee who had not left
23 the theatre when the manager leaves might see the manager
24 carrying out a deposit or something that looked like one.
25 It's not information that is specifically told to the

1 employees.

2 Q. Now some of the employees have to man the front
3 ticket booth correct, where patrons come and purchase a
4 ticket to watch a movie correct?

5 A. Yes.

6 Q. And some of those patrons will pay in cash correct?

7 A. Yes.

8 Q. And obviously in this day and age there are probably
9 a lot of people who use cards as well and they use the
10 machine for that correct?

11 A. Correct or they go to the person manning the ticket
12 booth.

13 Q. Okay. But the employees that work in that front
14 ticket booth when they receive cash for the purchase of a
15 movie ticket they've got to place it in a register or
16 what do they do with it at that time?

17 A. They ring up the ticket. The point of sale systems
18 tells them how much to give back if they've entered the
19 amount tendered and then there is a cash drawer assigned
20 to each point of sale terminal. They put the cash in the
21 drawer and make change out of that drawer.

22 Q. And when the night manager for example when you did
23 it when you -- do you take the money that you put in the
24 bank bag from those registers or do they get put in a
25 safe or how does that work?

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1 A. At the close of operation for an employee who is
2 running a register the manager signs the register off,
3 which produces a computer report of what the till took
4 in.

5 The physical cash drawer is then taken by the
6 manager back to the office and counted and compared to
7 what the computer says should be there. Any
8 discrepancies over one percent are brought to the
9 attention of the operator and then the money is collected
10 from all the registers.

11 The amount that the computer system says was
12 generated in cash for the day is pulled out of the gross
13 cash that is available and a deposit is made. The
14 balance goes into a safe, which becomes the starting cash
15 for the next day.

16 Q. So some cash gets left behind and some gets put in
17 this bag that has to go to the bank is that correct?

18 A. Correct.

19 Q. Okay. Now Mr. Minor 1 to your knowledge has he
20 ever worked the front ticket booth?

21 A. Yes.

22 Q. Okay. So he's been a part of that process at least
23 as far as taking money for people who purchased tickets?

24 A. Every employee has worked a register.

25 Q. Okay. Every employee has worked a register, okay.

1 Now you've testified Mr. Minor 1 was present that night
2 or worked that night correct?

3 A. Yes.

4 Q. Had you ever had any issues that you can recall with
5 Mr. Minor 1 Have you ever had to speak to him about
6 his work? You mentioned earlier that you're the boss and
7 sometimes you've got to do what you have to do to make
8 people do their job correct?

9 A. Yes. Actually from my perspective I didn't have any
10 problems with Minor 1 He was one of the more quiet
11 employees.

12 Q. Okay. Were there other employees that you had to
13 do that with, different employees that you've had to
14 discipline?

15 You don't have to give their names but have you ever
16 had to like talk to them and say you're showing up late
17 or you're not coming in; things like that?

18 A. Certainly.

19 Q. Any of them -- well let me ask you this. Did you
20 really know as far as your employees are concerned who
21 was friends with who? Did you ever watch to see who
22 talks to who and that kind of thing?

23 A. Occasionally I would see friendly relationships
24 developing between employees. Would I know who all is
25 always friends with somebody else? No, but I could

State v Austin McQuarters
John Snodgrass-Cross-Examination by Mr. Bax
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1 pretty much tell if they were having social activities
2 outside the theatre.

3 Q. Now do you have any recollection of Mr. Minor 1 or
4 Minor 1 having any friendly relationships with any of the
5 other employees?

6 A. Not specifically. Having come from Bluffton and
7 most of the employees coming from Hilton Head they just
8 didn't seem to be in the same social click.

9 Q. Okay. Now there were other people that were
10 working at the theatre that night as well, correct? It
11 wasn't just you and Minor 1

12 A. No, there were other people.

13 Q. Okay. How many typically work a regular night
14 shift?

15 A. Well, it varies. On a Sunday night we would have
16 had one person in box office, one person at ticket taker,
17 two people in concessions, one person usher, and one
18 person as a projectionist.

19 Q. So roughly close to a half dozen or a little bit
20 more?

21 A. Five or six plus the manager.

22 Q. Plus the manager, okay. And you've already
23 testified that some of the movies were still playing and
24 patrons were in the auditoriums where the movies were
25 when you exited the theatre is that right?

1 A. Yes.

2 Q. Okay. So is there any employees that are still
3 there at that point in time? I mean obviously those
4 patrons ---

5 A. --- yes ---

6 Q. --- when it's done they're going to exit correct?

7 A. Yes, we do not leave the theatre without an employee
8 present. There is one employee who we refer to as the
9 closing usher or closing projectionist. They remain
10 until the last patron is out of the building.

11 They check the facility, they lock all the fire
12 exits, they turn the lights off, they shut down all the
13 computer equipment that runs the projectors and then they
14 set the alarm and leave the building.

15 Q. Okay. And do all the employees rotate through that
16 role? Do they fill that role at some point or another?

17 A. No. We are restricted to male employees typically
18 over the age of 18 who have been trained specifically in
19 the shut down procedures.

20 MR. BAX: Moment's indulgence, Your Honor.

21 THE COURT: Yes, sir.

22 Q. [Mr. Bax] Thank you Mr. Snodgrass.

23 [Whereupon, Mr. Bax confers with Mr. Bell]

24 MR. BAX: No further questions, Your Honor. Thank
25 you.

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1 THE COURT: Redirect?

2 MS. CONCANNON: No, Your Honor.

3 THE COURT: Thank you, sir. You may step down.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 THE COURT: Ladies and gentlemen we'll take a ten
7 minute break. Don't discuss the case and leave your
8 notes in the courtroom please. Thank you.

9 [Whereupon, the jury exits at 11:18 a.m.]

10 THE COURT: Court is in recess for ten minutes.

11 [Whereupon, court is in recess from 11:18 until
12 11:43]

13 THE COURT: Have a seat please. Is the State ready
14 for the jury?

15 MS. CONCANNON: Yes, Your Honor.

16 THE COURT: Defense?

17 MR. BAX: Yes, Your Honor.

18 THE COURT: Bring the jury please.

19 [Whereupon, the jury enters at 11:45 a.m.]

20 THE COURT: Call your next witness.

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State v Austin McQuarters

Minor 1 Direct Examination by Ms. Concannon

February 18, 2015

1 MS. CONCANNON: Thank you, Your Honor. The State
2 calls Minor 1

3 THE COURT: Come up front please.

4 [Whereupon, Mr. Minor 1 comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]

7 CLERK OF COURT: Have a seat and please state your
8 full name.

9 THE WITNESS: Minor 1

10 - - - - -

11 Minor 1

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. CONCANNON:

16 Q. Minor 1 how old are you?

17 A. Seventeen years old.

18 Q. When is your birthday?

19 A.

20 Q. Of?

21 A. '97.

22 Q. In October of 2013 how old were you?

23 A. Sixteen.

24 Q. Did you have a job back then?

25 A. Yes, ma'am.

State v Austin McQuarters

Minor 1 [REDACTED] Direct Examination by Ms. Concannon

February 18, 2015

1 Q. Where were you working?

2 A. At Northridge Cinemas.

3 Q. What did you do at Northridge Cinemas?

4 A. I did all positions. I worked the concession
5 counters, the ticket booth, I ushered the theatres.

6 Q. Were you also in school at that time?

7 A. Yes, ma'am.

8 Q. Where did you go to school?

9 A. Bluffton High School.

10 Q. What year were you back in 2013?

11 A. I was a sophomore.

12 Q. Were you working the night of October 20th, 2013?

13 A. Yes, ma'am.

14 Q. What were you doing that night at work?

15 A. I was working the ticket booth.

16 Q. Prior to October 20th how long had you been working
17 at the movie theatre?

18 A. I'd say about seven months.

19 Q. So a good amount of time?

20 A. Yes, ma'am.

21 Q. That night at the theatre October 20th you were
22 working that night or that day?

23 A. That night; I had school at day.

24 Q. You had school at day -- what time did you get off
25 work?

- 1 A. About 10:30 or 10:20.
- 2 Q. Is that typical for a night shift working at the
3 theatre?
- 4 A. Yes, ma'am.
- 5 Q. When you were working that night did any of your
6 friends come and visit you?
- 7 A. Yes, ma'am.
- 8 Q. Who came and visited you that night?
- 9 A. Austin and Jackie.
- 10 Q. Who are Austin and Jackie? How do you know them?
- 11 A. They were friends from high school.
- 12 Q. They went to Bluffton High School with you?
- 13 A. Yes, ma'am.
- 14 Q. Do you see Austin in the courtroom tonight -- today?
- 15 A. Yes, ma'am.
- 16 Q. Can you please point him out?
- 17 [Whereupon, the witness indicates]
- 18 MS. CONCANNON: Let the record reflect the witness
19 pointed to the defendant.
- 20 THE COURT: So noted.
- 21 Q. [Ms. Concannon] And is that the man that came to
22 talk to you that night at the movie theatre?
- 23 A. Yes, ma'am.
- 24 Q. Something happened that night didn't it?
- 25 A. Yes, ma'am.

State v Austin McQuarters

Minor 1 [REDACTED] Direct Examination by Ms. Concannon

February 18, 2015

1 Q. And after that night you spoke to this man

2 [indicates] Investigator Seifert didn't you?

3 A. Yes, ma'am.

4 Q. Did you talk to him just one time or how many times
5 do you think you talked to him?

6 A. Three or four.

7 Q. So more than once?

8 A. Yes, ma'am.

9 Q. You weren't really all that honest with him from the
10 get go though were you?

11 MR. BAX: Objection; leading.

12 MS. CONCANNON: I'll rephrase, Your Honor ---

13 THE COURT: --- rephrase.

14 Q. [Ms. Concannon] Did you tell -- what did you tell
15 Investigator Seifert when you initially spoke to him
16 about this incident?

17 A. That I didn't know anything about it.

18 Q. Okay. Did he talk to you again after that?

19 A. Yes, ma'am.

20 Q. Okay. Why did you tell him that you didn't know
21 anything about it?

22 A. I was scared.

23 Q. What were you scared of?

24 A. Austin.

25 Q. Austin McQuarters?

- 1 A. Yes, ma'am.
- 2 Q. So the second time you talked to Investigator
- 3 Seifert do you remember what you told him then?
- 4 A. The truth.
- 5 Q. And what was the truth?
- 6 A. That that night that I worked Austin had come to the
- 7 ticket booth. He had asked me who my manager was. I
- 8 told him who my manager was and pointed him out.
- 9 Q. You pointed your manager out to Austin?
- 10 A. Yes, ma'am. He asked me who it was and I pointed.
- 11 Q. Who was your manager that night?
- 12 A. John Snodgrass.
- 13 Q. What else did he ask you about your manager?
- 14 A. He didn't ask me anything. He just asked who he was
- 15 and I pointed him out.
- 16 Q. Did he ever ask you anything -- when you pointed to
- 17 John Snodgrass what else did he ask you about John
- 18 Snodgrass?
- 19 A. I'm not sure.
- 20 Q. Did he ever ask you anything about money?
- 21 A. Yes, ma'am.
- 22 Q. What did he ask you about money?
- 23 A. He wanted me to give him money from the ticket booth
- 24 but I told him I wasn't doing that.
- 25 Q. You told him you weren't going to give him money

State v Austin McQuarters

Minor 1 [REDACTED] Direct Examination by Ms. Concannon
February 18, 2015

1 from the ticket booth?

2 A. Yes, ma'am.

3 Q. Did he ever bring up money again?

4 A. Not at the ticket booth, no.

5 Q. Okay. Not at the ticket booth but did you talk to
6 him a separate time that night?

7 A. No, but obviously he got money that night.

8 MR. BAX: Objection.

9 THE COURT: Hold on. Yes, sir?

10 MR. BAX: He sounds like he's testifying to
11 something that is not within his knowledge. He said
12 obviously something happened. That's not something he
13 can testify to.

14 THE COURT: He's not testifying of his own personal
15 knowledge?

16 THE WITNESS: Yes.

17 THE COURT: No, hold on a second. You don't get to
18 participate in this.

19 MS. CONCANNON: Perhaps if I rephrase the question.

20 THE COURT: Disregard the last response of the
21 witness, ladies and gentlemen. Ask your question.

22 MS. CONCANNON: Thank you, Your Honor.

23 Q. [Ms. Concannon] After Austin asked you about giving
24 him money from the cash register did he ever ask you
25 about any other money on the premises?

1 A. He said where would I get money? I said I don't
2 know; John would have the money.

3 Q. Okay. You told him John would have the money?

4 A. I said if anyone has the money it would be John;
5 he's the manager.

6 Q. And is that when you pointed him out?

7 A. No, I pointed him out before that before I said
8 that.

9 Q. Okay, thank you. So after you talked to Austin that
10 night you've already told him that if anyone had the
11 money it would be John what do you do next?

12 A. Austin left and I finished my shift. I went out to
13 the parking lot at about 10:20ish and saw Austin again.
14 We talked for about five minutes ---

15 Q. --- was ---

16 A. --- I went ---

17 Q. --- sorry to interrupt you Minor 1 [REDACTED] Was Austin with
18 anybody?

19 A. Yes, he was with Jackie.

20 Q. Okay. And who is Jackie? Do you know her full
21 name?

22 A. Jacklyn Perez.

23 Q. How do you know her?

24 A. She was a friend from high school.

25 Q. So you had known her more than just this one night?

State v Austin McQuarters

Minor 1 [REDACTED] Direct Examination by Ms. Concannon
February 18, 2015

1 A. Yes, ma'am.

2 Q. Okay. Sorry to interrupt you. So Austin and
3 Jackie are back there at the theatre again and then what
4 happens?

5 A. I left. I talked to them for about five minutes
6 just about work and everything and just how it was this
7 time. I left and went to my girlfriend's house.

8 Q. Okay. Was that the last time you talked to Austin
9 that night?

10 A. Yes, ma'am. As far as at work, yes ma'am.

11 Q. Okay. As far as at work explain what that means.

12 A. He called me back later that night when I was at my
13 girlfriend's house.

14 Q. Approximately how much time had passed since you
15 just saw him when he called you?

16 A. I'd say three hours; three or four hours.

17 Q. Okay. What did he say to you when he called you?

18 A. He asked where I was at.

19 Q. And what did you tell him?

20 A. I told him I was at my girlfriend's house.

21 Q. Okay. Did he ask you to do anything else?

22 A. He told me to come outside in ten minutes.

23 Q. Okay. Did you go outside?

24 A. So I went outside and I met him.

25 Q. Okay. When you met him what happened?

1 A. He gave me 250 dollars and said Merry Christmas.

2 Q. Okay. Why did he give you this money [REDACTED] Minor 1

3 A. I don't know. I mean he had given me money before;
4 we were good friends so I took it as he was helping me
5 out.

6 Q. He has given you 250 dollars before?

7 A. Not before but he had given me money before.

8 Q. So he gave you this 250 dollars and you had no idea
9 why?

10 A. I didn't ask why.

11 Q. You just took it?

12 A. Yes, ma'am.

13 Q. Did you talk to Austin anymore that night?

14 A. Not that night.

15 Q. Not that night. Did you talk to him again after
16 that night?

17 A. Yes, ma'am.

18 Q. When did you talk to him after that night?

19 A. The day after. I had read in the newspaper, the
20 Island Packet about my manager being robbed so I called
21 Austin after school and asked him what happened.

22 Q. Okay. What did Austin tell you?

23 A. He told me that he had robbed my manager --

24 THE COURT REPORTER: I'm sorry; could you repeat
25 your answer and speak a little louder.

State v Austin McQuarters

Minor 1 [REDACTED] Direct Examination by Ms. Concannon
February 18, 2015

1 A. He told me he had robbed my manager with brass
2 knuckles that night.

3 Q. [Ms. Concannon] Did he say anything else to you?

4 A. [Nods negatively]

5 Q. Did he bring up the 250 dollars again?

6 A. No.

7 Q. Did he say why he robbed your manager?

8 A. He had money --

9 THE COURT: Say that again I can't understand you;
10 I'm sorry. Speak a little louder if you would please.

11 A. He needed money.

12 Q. [Ms. Concannon] Okay. It never dawned on you even
13 after talking to him again the next day why he gave you
14 that 250 dollars?

15 A. No, ma'am. I figured he got a lot of money and then
16 gave it to a friend -- gave some to a friend.

17 Q. So you that night didn't know where he got the money
18 or did he tell you where he got this money from?

19 A. He said he ran into money at my work. I asked him
20 what happened and he said don't worry about it.

21 Q. That was the night of the incident he told you he
22 ran into money at your work but don't worry about it.

23 A. Yes, ma'am.

24 Q. And the next day is when he told you the rest of the
25 story?

1 A. When I asked him, yes ma'am.

2 Q. Okay. Why didn't you tell Investigator Seifert all
3 of that from the beginning?

4 A. I was afraid. I didn't know what to do.

5 Q. Okay. Are you still scared?

6 A. Yes.

7 MR. BAX: Objection.

8 THE COURT: Yes?

9 MR. BAX: I don't see how his fear right now is
10 relevant to the case from 2013.

11 THE COURT: Do you wish to be heard?

12 MS. CONCANNON: Your Honor, I'll withdraw that
13 question.

14 THE COURT: All right.

15 Q. [Ms. Concannon] But Minor 1 [REDACTED] are you telling us the
16 truth here today?

17 A. Yes, ma'am.

18 Q. Why are you telling us the truth today if you didn't
19 back in 2013?

20 A. Because I need to tell the truth.

21 MS. CONCANNON: Beg the court's indulgence.

22 THE COURT: Yes, ma'am.

23 [Whereupon, Ms. Concannon confers with Ms. Lempesis]

24 Q. [Ms. Concannon] Minor 1 [REDACTED] I don't have any further
25 questions for you at this time. If you could answer any

State v Austin McQuarters

Minor 1 [REDACTED] Direct Examination by Ms. Concannon
February 18, 2015

1 Mr. Bax has for you.

2 THE COURT: Cross?

3 MR. BAX: Thank you, Your Honor.

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1 CROSS-EXAMINATION

2 BY MR. BAX:

3 Q. Mr. Minor 1 a couple of questions for you all
4 right?

5 A. [No response]

6 Q. Okay?

7 A. Yes, sir.

8 Q. All right. Now I remind you you've been put under
9 oath. Do you understand what being put under oath is
10 where they had you put your hand on the Bible and swear
11 to tell the truth?

12 A. Yes, sir.

13 Q. Okay. And you've been advised about the
14 consequences of giving false testimony correct?

15 A. Yes, sir.

16 Q. Okay. You testified that you didn't tell
17 Investigator Seifert everything at first correct?

18 A. Yes, sir.

19 Q. Okay. Now however you haven't testified that in
20 fact you told Investigator Seifert that you set this
21 robbery up and that you were sorry?

22 A. No, sir.

23 Q. You haven't testified to that today correct?

24 A. No, sir.

25 Q. Okay. Now the reason you haven't testified to that

State v Austin McQuarters

Minor 1 ██████████ Cross-Examination by Mr. Bax

February 18, 2015

1 is because you -- why haven't you testified that you were
2 actually the one that set up this robbery and that's what
3 you told Investigator Seifert?

4 A. Because that's not the truth.

5 Q. That's not the truth? Let me get this clear. When
6 you told Investigator Seifert that you set up the robbery
7 you were lying about that?

8 A. I don't believe I ever told him I set up the
9 robbery.

10 Q. Okay. So where Investigator Seifert reports that
11 that's what you said he's lying is that correct?

12 A. No, sir. I wouldn't say he's lying.

13 Q. I'm confused, let's go back through it. You worked
14 at the Northridge Cinemas correct?

15 A. Yes, sir.

16 Q. You said that you were friends prior to this with
17 Mr. McQuarters and Jackie who is Jacklyn Perez correct?

18 A. Yes, sir.

19 Q. From high school right?

20 A. Yes, sir.

21 Q. Okay. And let me ask you this. Did Austin ever
22 work at the theatre that you're aware of?

23 A. No, sir.

24 Q. Okay. Did Jackie ever work at the theatre?

25 A. No, sir.

1 Q. Okay. So your testimony is that even though you
2 didn't want any of this to happen and had nothing to do
3 with it that they came to the theatre and did this
4 without your involvement at all is that correct?

5 A. They got information from me. I didn't give them
6 information knowing they were going rob my manager.

7 Q. Okay. So they just wheedled information ---

8 A. --- I gave ---

9 Q. --- out of you?

10 A. Yes, sir. I gave them information they could have
11 used not knowing they were going to rob my manager
12 though.

13 Q. Well let me ask you this. If they wheedled this
14 information out of you unknowingly why are you alleging
15 that Mr. McQuarters came and gave you some of the money?

16 A. Because he did.

17 Q. Because he did, okay. Now you've testified that the
18 reason that you didn't tell this is because you're scared
19 of Mr. McQuarters correct?

20 A. Yes, sir.

21 Q. So you're saying that the guy that you're scared of
22 would just come and give you money you didn't ask for for
23 something you didn't do is that right?

24 A. Yes, sir.

25 Q. Okay. And you're under oath and you're telling the

State v Austin McQuarters

Minor 1 Cross-Examination by Mr. Bax

February 18, 2015

1 jury this correct?

2 A. Yes, sir.

3 Q. Okay. Now Mr. Minor 1 have you been charged with
4 armed robbery?

5 A. No, sir.

6 Q. Have you been charged with assault and battery?

7 A. No, sir.

8 Q. Have you been charged with conspiracy?

9 A. No, sir.

10 Q. Have you been arrested at all in relationship to
11 this incident?

12 A. No, sir.

13 Q. Okay. But you admit that you lied to the officer
14 and didn't tell him about giving them this information
15 correct?

16 A. Yes, sir.

17 Q. And in fact Mr. Minor 1 do you recall doing a
18 written statement in this case?

19 A. Writing a statement?

20 Q. Yes. Do you recall writing down on paper a
21 statement about what you say happened in this case?

22 A. Yes, sir.

23 Q. Okay. You do? And do you recall writing that down
24 in the presence of Investigator Seifert correct?

25 A. Yes, sir.

1 Q. All right. And do you recall having several
2 conversations with Investigator Seifert?

3 A. Yes, sir.

4 Q. Okay. Now do you recall that in your written
5 statement to the officer that you never told him about
6 the information that you gave him in his subsequent
7 interviews that you set this up correct?

8 A. I didn't understand.

9 THE COURT: Say that again.

10 MR. BAX: I'm sorry, let me rephrase.

11 THE COURT: No, no I can't hear him.

12 MR. BAX: Oh, I'm sorry, Your Honor.

13 A. I didn't understand what the question was.

14 THE COURT: I'm sorry, go ahead.

15 MR. BAX: Thank you.

16 Q. [Mr. Bax] And just to make sure it's not me doing
17 this we need to make sure we hear everything that you say
18 clearly not just for the court reporter but for the jury
19 and for the Judge understand?

20 A. Yes, sir.

21 Q. Okay. You wrote a statement saying that this
22 happened but you didn't know it was going to happen and
23 you didn't have anything to do with it and then later on
24 you changed that statement. That's what the Solicitor
25 asked you about correct?

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Minor 1 [REDACTED] Cross-Examination by Mr. Bax

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1 A. About how I changed it?

2 Q. Yes?

3 A. Yes, sir.

4 Q. Okay. Now it's your testimony that you changed it
5 that you gave that false statement originally because you
6 say you're scared of Mr. McQuarters correct?

7 A. Yes, sir.

8 Q. But you've testified that Mr. McQuarters is your
9 friend right?

10 A. He was my friend.

11 Q. He was your friend at this time right?

12 A. Yes, sir.

13 Q. So it's your testimony that you didn't lie about
14 this because you were afraid of getting charged with
15 setting up a robbery is that correct?

16 A. I was afraid of Austin; not of being charged with
17 anything.

18 Q. Okay.

19 A. I was afraid of what would happen to me.

20 Q. But your testimony is that he was your friend at
21 that time and that he gave you money after the fact
22 without being asked correct?

23 A. He gave me money before I knew what happened.

24 Q. Before you knew what happened. Now you've testified
25 that he asked you if you could get money out of the till.

1 That was your testimony correct?

2 A. Yes, sir.

3 Q. Okay. And that when you said no you told him that
4 John would have the money correct?

5 A. I said if anyone has money here it would be John.

6 Q. Okay. But yet you're testifying you had no idea
7 that there was going to be any kind of robbery of any
8 kind is that correct?

9 A. Yes, sir.

10 Q. Okay. Now investigator -- well, let me ask you
11 this. You said you met with Investigator Seifert on a
12 number of occasions correct?

13 A. Yes, sir.

14 Q. The first time you met with him was at the high
15 school at the resource officer's office isn't that right?

16 A. Yes, sir.

17 Q. And at one point during that discussion did you ask
18 for the resource officer to leave the room so you could
19 talk outside the presence of the resource officer?

20 A. Yes, sir. They asked me if he wanted him in there
21 and I asked him if he could leave.

22 Q. You asked him if he could leave correct?

23 A. Yes, sir.

24 Q. Why did you do that?

25 A. I didn't feel the need that he needed to listen.

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1 Q. Why didn't he need to listen?

2 A. Because I wasn't talking to him, I was talking to
3 Mr. Seifert.

4 Q. So you didn't ask him to leave because you didn't
5 want people at your school to know what you'd been up to?

6 A. I'm sorry? I don't understand ---

7 Q. --- well you've testified that you asked for the
8 resource officer to leave. I'm trying to determine why
9 you would do that. There had to have been a reason
10 right?

11 A. Because I was talking to Mr. Seifert. I didn't see
12 the need to have two people with just one person
13 listening to our conversation.

14 Q. Is it true or is it not true that you asked the
15 resource officer to leave because you didn't want people
16 at the school to know what you had been up to? Yes or
17 no?

18 A. What had I been up to? I don't understand that.

19 Q. Moving on. You later met with Investigator Seifert
20 again. Do you recall Investigator Seifert recording
21 these interviews with you?

22 A. No, sir.

23 Q. You don't recall whether he had some kind of audio
24 device like a mini cassette recorder or cell phone
25 running to tape it?

1 A. No, sir.

2 Q. Okay. Do you recall meeting with Investigator
3 Seifert the next morning about seven something in the
4 morning in the parking lot of the Beaufort High School --
5 excuse me Hilton Head High School?

6 A. Bluffton High School.

7 Q. Bluffton; excuse me, Bluffton High School. And your
8 father was with you that time correct?

9 A. He dropped me off yes, sir.

10 Q. So if Investigator Seifert indicated that your
11 father was there not with you in the car with Doug
12 Seifert but in the parking lot that wouldn't be correct?

13 A. My father dropped me off at school that morning and
14 I met with Mr. Seifert.

15 Q. Did your father know that you were talking to a
16 police officer about an alleged robbery?

17 A. Yes, sir.

18 Q. He did?

19 A. Yes, sir.

20 Q. And it was after your father dropped you off to talk
21 to Doug Seifert that you gave him more information and
22 told him you knew more about what was going on than what
23 you said in your initial statement right?

24 A. Yes, sir.

25 Q. But you're saying where he indicates that you

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Minor 1 [REDACTED] Cross-Examination by Mr. Bax

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1 confessed after his questioning that you had actually set
2 this up that's incorrect, correct?

3 A. I didn't set this up knowingly that I would set up a
4 robbery and have my manager robbed.

5 Q. Okay. So you also didn't tell him that you didn't
6 think it was going to go this far and that John was going
7 to get injured correct?

8 A. Yes, sir. I didn't know that.

9 Q. And that you were sorry that it went this far and
10 you wouldn't have set it up if you had known. You didn't
11 tell him that?

12 A. No, sir.

13 Q. Now at one point do you recall Investigator Seifert
14 telling you that if you were going to go with your first
15 story that he was going to go get an arrest warrant and
16 have you arrested? Do you recall that conversation?

17 A. No, sir.

18 Q. You don't recall that?

19 A. No, sir.

20 Q. And that has nothing to do with you deciding to
21 change your story?

22 A. I don't recall that. I don't remember him saying
23 that.

24 Q. Okay. Well, I'm going to sit down but I just want
25 to ask you one final question. Is that the story you

1 want to go with under oath in front of this jury?

2 A. Yes, sir.

3 Q. All right.

4 MR. BAX: No further questions, Your Honor.

5 THE COURT: Yes, sir. Redirect?

6 MS. CONCANNON: No, Your Honor.

7 THE COURT: Thank you, sir. You may step down.

8 [Whereupon, the witness is excused and exits the
9 witness stand]

10 MS. CONCANNON: Your Honor, we ask that Mr.

11 Minor 1 [REDACTED] be excused.

12 MR. BAX: Your Honor, I would just say we may want
13 to recall Mr. Minor 1 [REDACTED] so we'd ask that he remain
14 subject to a recall.

15 THE COURT: Mr. Minor 1 [REDACTED] don't leave the
16 courthouse. Don't leave the courthouse. All right. Do
17 you have another witness?

18 MS. CONCANNON: I do, Your Honor. She may be
19 somewhat lengthy; it's Jacklyn Perez.

20 THE COURT: It's okay; we've got 50 minutes.

21

22

23

24

25

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1 MS. CONCANNON: The State calls Jacklyn Perez.

2 [Whereupon, Ms. Perez comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: You may be seated. State your
6 full name and make sure you talk in the microphone.

7 THE WITNESS: Jacklyn Marie Perez.

8 - - - - -

9 JACKLYN PEREZ,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. CONCANNON:

14 Q. Ms. Perez what do you go by?

15 A. Brooklyn.

16 Q. Brooklyn? Do you sometimes go by Jackie?

17 A. Yes, ma'am.

18 Q. Okay. It is okay if I call you Jackie here today?

19 A. Yes, ma'am.

20 Q. How old are you?

21 A. Nineteen.

22 Q. When's your birthday?

23 A. [REDACTED]

24 Q. How old were you in October of 2013?

25 A. Eighteen.

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1 Q. Were you in school? Did you have a job? What were
2 you doing back then?

3 A. I was in high school. I would have been a senior at
4 Bluffton High School and I was working at McDonalds on --

5 Q. On; I'm sorry?

6 A. Buck Walter Parkway.

7 Q. That's over in Bluffton?

8 A. Yes, ma'am.

9 Q. Do you still work at McDonalds?

10 A. No, ma'am.

11 Q. Do you have a job now?

12 A. I have two.

13 Q. Where do you work now?

14 A. I work at Parkers on Buck Walter Parkway in Bluffton
15 and I work at the Marriott in Palmetto Dunes Hilton Head.

16 Q. Okay. Do you remember the night of October 20th,
17 2013?

18 A. Yes, ma'am.

19 Q. Does something stick out to you about that night?

20 A. Yes, ma'am.

21 Q. Were you working that night?

22 A. Yes, ma'am. I got off at about 9 o'clock.

23 Q. Was that the end of your shift, 9 o'clock?

24 A. I had to go back in to do the truck at midnight.

25 Q. Okay. So you had a break from 9:00 to midnight?

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- 1 A. Yes, ma'am.
- 2 Q. Did somebody come to your work between 9:00 and
3 midnight to visit with you?
- 4 A. Yes, ma'am.
- 5 Q. Who was that?
- 6 A. Mr. McQuarters.
- 7 Q. Mr. McQuarters; do you know his first name?
- 8 A. Austin.
- 9 Q. How do you know Austin McQuarters?
- 10 A. From high school.
- 11 Q. Are y'all friends, acquaintances?
- 12 A. Yeah, we were friends. We met in the 11th grade.
- 13 Q. Okay. Would you hang out with him after school or
14 just during school?
- 15 A. Sometimes yes ma'am after school.
- 16 Q. Okay. When Austin came to McDonalds that night did
17 y'all talk about anything?
- 18 A. We were just having a normal conversation. It was
19 normal. It was me, him and a couple of other people in
20 front of my job we were all talking.
- 21 Q. Okay. Did y'all eventually go somewhere?
- 22 A. Yes, ma'am. Eventually he asked me for a ride.
- 23 Q. He as in?
- 24 A. Austin asked me for a ride to the movie theatres on
25 the island.

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- 1 Q. On the island? What island are we talking about?
- 2 A. Hilton Head Island.
- 3 Q. Okay. To your knowledge is there just one movie
- 4 theatre over there?
- 5 A. Yes ma'am, as far as I know.
- 6 Q. Okay. Did you give Austin a ride to the movie
- 7 theatre?
- 8 A. Yes, ma'am.
- 9 Q. Why were you giving Austin a ride to the movie
- 10 theatre? What was your impression of why you were taking
- 11 him there?
- 12 A. Under my impression I thought he was going to meet a
- 13 girl there. That's what I was told.
- 14 Q. Okay. That's not what happened though is it?
- 15 A. No, ma'am.
- 16 Q. Something else happened that night didn't it?
- 17 A. Yes, ma'am.
- 18 Q. And as a result of something happening that night
- 19 you were charged with armed robbery weren't you?
- 20 A. Yes, ma'am.
- 21 Q. And in fact you still have cases pending right now
- 22 don't you?
- 23 A. Yes, ma'am.
- 24 Q. Has the State promised you anything?
- 25 A. No.

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1 Q. Told you we would do anything in exchange for your
2 testimony today?

3 A. No.

4 Q. Why are you testifying today?

5 A. Because it's the right thing to do.

6 Q. Are you going to tell us the truth today?

7 A. Yes, ma'am.

8 Q. So the night of the incident something happens. I'm
9 going to fast forward a little bit. After that happens
10 you have the opportunity to speak with Investigator Doug
11 Seifert is that correct?

12 A. Yes, ma'am.

13 Q. Okay. Do you remember where you spoke to him at?

14 A. In the Sheriff's Office on Hilton Head Island.

15 Q. Were you already under arrest when you were speaking
16 with him?

17 A. No.

18 Q. Were you subsequently placed under arrest?

19 A. No.

20 Q. Were you ever -- you were arrested after that
21 incident?

22 A. Yes, ma'am.

23 Q. And you were charged with armed robbery?

24 A. Yes, ma'am.

25 Q. For this incident?

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- 1 A. Yes, ma'am.
- 2 Q. When you met with Investigator Seifert what did you
3 initially tell him?
- 4 A. That I didn't know what he was speaking about.
- 5 Q. You played dumb?
- 6 A. Yes.
- 7 Q. Was that the truth?
- 8 A. No.
- 9 Q. Why didn't you tell him the truth from the start?
- 10 A. In the beginning I was afraid.
- 11 Q. And what were you scared of?
- 12 A. Just kid stuff; getting into trouble and I wasn't
13 sure what was going to happen.
- 14 Q. You said kid stuff. This isn't kid stuff.
- 15 A. No.
- 16 Q. During that same interview did you eventually tell
17 Investigator Seifert what happened?
- 18 A. Yes, ma'am.
- 19 Q. Why did you decide to come clean with what happened?
- 20 A. I was shown photographs of what happened and then I
21 felt really bad.
- 22 Q. You felt really bad. Emotionally did something
23 happen to you?
- 24 A. I broke down.
- 25 Q. Did you cry?

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1 A. A lot. Actually it took me about 10 to 15 minutes
2 to compose myself before I could even talk.

3 Q. Okay. And it was seeing these photographs that
4 induced you to tell the whole truth?

5 A. Yes, ma'am.

6 Q. How were -- if you weren't in fact honest with
7 Investigator Seifert from the get go how do we know
8 you're being truthful with us today?

9 A. Because I have no reason to lie anymore.

10 Q. So after you saw those photographs what did you tell
11 Investigator Seifert?

12 A. Exactly what happened the night in question.

13 Q. Okay. Can you tell us what happened that night?

14 A. I got off work and we're outside talking and Austin
15 asked for a ride. We went to the island. We were
16 sitting in the parking lot.

17 Q. What parking lot?

18 A. The movie theatre parking lot.

19 Q. What car were you driving?

20 A. My car. I had a 1991 red Toyota Celica.

21 MS. CONCANNON: Permission to approach, Your Honor?

22 THE COURT: Yes.

23 Q. [Ms. Concannon] Jackie I want to show you what has
24 been marked for identification purposes as State's
25 exhibit 10. Can you identify that?

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1 [Whereupon, the witness is shown photograph]

2 A. That's my car.

3 Q. Okay. How do you know it's your car?

4 A. It's my car.

5 Q. That's your car? Okay. And is this a fair and
6 accurate depiction of your car?

7 A. Yes, ma'am.

8 MS. CONCANNON: At this point the State moves
9 exhibit 10 into ---

10 A. --- that's actually my driveway.

11 Q. [Ms. Concannon] This is your car in your driveway,
12 okay.

13 MS. CONCANNON: At this time the State moves
14 State's 10 into evidence.

15 MR. BAX: No objection, Your Honor.

16 THE COURT: Mark 10 into evidence without
17 objection.

18 [Whereupon, State's exhibit number 10 is entered
19 into evidence by the court]

20 MS. CONCANNON: Permission to publish?

21 THE COURT: Yes, ma'am.

22 [Whereupon, State's exhibit 10 is shown]

23 Q. [Ms. Concannon] So this is the car that was parked
24 in the movie theatre that night?

25 A. Yes.

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- 1 Q. How would you describe this car? Large? Small?
- 2 A. Two door coupe.
- 3 Q. Coupe. Small, coupe means small?
- 4 A. Kind of, yes.
- 5 Q. How did you park in the parking lot that night do
- 6 you remember?
- 7 A. I backed in.
- 8 Q. Backed in? Why did you back in?
- 9 A. That's just how I park my car.
- 10 Q. Okay. So that's typical?
- 11 A. Yeah.
- 12 Q. After you backed in what happened?
- 13 A. We were speaking -- me and Austin were speaking for
- 14 a moment and then he got out of my car and went and spoke
- 15 with **Minor 1**
- 16 Q. Where were you when he was talking to **Minor 1**
- 17 A. In my car.
- 18 Q. Did Austin ever come back to your car?
- 19 A. Yes.
- 20 Q. Where were you seated in your car when Austin came
- 21 back?
- 22 A. In the beginning I was in the front seat. Then when
- 23 he came back I got out and went and spoke with **Minor 1**
- 24 myself.
- 25 Q. Okay. And then did you eventually come back to

1 your car?
2 A. Yes.
3 Q. And where did you sit when you came back that time?
4 A. I was standing on the outside driver's side.
5 Q. Did you ever get back in the driver's seat?
6 A. A little while after. Austin was in my driver's
7 seat when I came back.
8 Q. Okay. What was he doing in the driver's seat?
9 A. Just sitting there listening to music.
10 Q. When he got out of the driver's seat is that when
11 you got in?
12 A. Yeah.
13 Q. And where did Austin go?
14 A. He was on the outside fender of my driver's side.
15 Q. Okay ---
16 A. --- leaned up against the car.
17 Q. I'm going to show you this picture one more time
18 Jackie. Where was he -- in relation to this picture
19 where was Austin? Right there [indicates]? Was he
20 standing ---
21 A. --- leaned against my car.
22 Q. I'm sorry?
23 A. Leaned up against my car.
24 Q. Leaned up against your car? Was he kind of
25 sloughed, was he standing all the way up ---

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- 1 A. --- sloughed over.
- 2 Q. Sloughed, okay. What are you doing at this point?
- 3 A. Playing with my phone.
- 4 Q. Okay. Is there anybody else in the parking lot?
- 5 A. After a little while **Minor 1** comes out with his
- 6 sister and his girlfriend.
- 7 Q. Okay. Do you talk to **Minor 1**
- 8 A. I talked to his sister and his girlfriend.
- 9 Q. Do they eventually leave?
- 10 A. Yes.
- 11 Q. And were you and Austin still there?
- 12 A. Yes.
- 13 Q. What happens next?
- 14 A. We were just sitting there conversating. I look at
- 15 the time and I realized it's late and I have to go back
- 16 to work soon. So I asked him what's going on and --
- 17 what's going on. And he -- we see ---
- 18 Q. --- you're pointing. Who are you pointing to?
- 19 A. Him [indicates].
- 20 Q. This gentleman [indicates] in the blue shirt?
- 21 A. Yes. I can't remember his name; I'm sorry.
- 22 Q. But you're pointing to this man right here
- 23 [indicates]?
- 24 A. Yes.
- 25 Q. Okay.

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1 A. He comes out and Austin says he's going to ask him
2 what time the movies get out. I'm like okay just do
3 that.

4 Q. What are you thinking when he's going to ask this
5 man about the movie times? Why is Austin asking that?

6 A. Because he said he was waiting. I didn't know what
7 he was waiting for. He was waiting for somebody -- after
8 he said he was waiting I assumed he was waiting for
9 someone to come out of the movies.

10 Q. Okay. So you see Austin approach this man and then
11 what do you see?

12 A. He asks him what time the movie gets out and the man
13 says what movie; there's a couple. He looks at the time
14 and then the next thing I know Austin swings.

15 Q. Who looks at the time?

16 A. The gentleman.

17 Q. Okay. Do you see the direction Austin swings? How
18 he swings?

19 A. I wasn't sure which hand.

20 Q. But did you see him hit this man?

21 A. Yes, and then I saw him fall.

22 Q. You saw who fall?

23 A. The gentleman.

24 Q. How many times did you see Austin hit this man?

25 A. A few.

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1 Q. A few? How close were you to where this attack is
2 happening?

3 A. From here [indicates] to there [indicates].

4 Q. From here to -- from you to me?

5 A. About.

6 Q. Okay.

7 A. Approximately about this.

8 Q. Do you wear glasses or anything?

9 A. No.

10 Q. Do you have good vision?

11 A. Yes.

12 Q. The man who attacked this man right here [indicates]
13 John Snodgrass do you see him in the courtroom today?

14 A. Yes.

15 Q. Can you please point him out?

16 [Whereupon, the witness indicates]

17 MS. CONCANNON: May the record reflect the witness
18 has pointed to the defendant.

19 THE COURT: Can you say what he's wearing or
20 something?

21 THE WITNESS: A red shirt.

22 THE COURT: So noted.

23 MS. CONCANNON: Thank you.

24 Q. [Ms. Concannon] After Austin hits this man how many
25 times do you think he hit him?

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- 1 A. Three or four.
- 2 Q. After how many strikes does Mr. Snodgrass fall down?
- 3 A. Maybe the third one.
- 4 Q. So after he falls what do you see Austin doing?
- 5 A. Grabbing something.
- 6 Q. Okay.
- 7 THE COURT: I didn't hear what you said; I'm sorry.
- 8 THE WITNESS: Grabbing stuff.
- 9 THE COURT: Grabbing, okay.
- 10 THE WITNESS: The things that fell out of hands.
- 11 Q. [Ms. Concannon] The things that fell out of this
- 12 gentleman's [indicates] hands?
- 13 A. Yes.
- 14 Q. What did Austin do after he grabbed the stuff?
- 15 A. Ran over and threw it in my car.
- 16 Q. Okay. Did you get a good look at what these items
- 17 were?
- 18 A. Yes.
- 19 Q. What were they?
- 20 A. An envelope and bag.
- 21 Q. What color was the envelope?
- 22 A. It was like a postal envelope white, blue and red.
- 23 Q. Okay. But standard issued post office envelope?
- 24 A. Yes.
- 25 Q. How big was it?

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- 1 A. A little bigger than a standard size printer paper.
- 2 Q. Okay. So a little bigger than this [indicates]?
- 3 A. Yes.
- 4 Q. So you said he threw something else in the back of
- 5 your car. What else did he throw in the back of your
- 6 car?
- 7 A. A grey bag.
- 8 Q. What did this grey bag look like?
- 9 A. Just like a pouch bag with a zipper.
- 10 Q. And it was grey?
- 11 A. Yes, ma'am.
- 12 Q. After he throws that into your car what do y'all do
- 13 next?
- 14 A. He proceeds to get in my car and I turn on the car
- 15 and leave.
- 16 Q. Okay. What's going through your mind right now?
- 17 A. What just happened? What's going on? I didn't know
- 18 what was going on.
- 19 Q. Because you saw everything happen?
- 20 A. Yes.
- 21 Q. Did Austin ever give you any money?
- 22 A. Just 20 dollars previous.
- 23 Q. Previous?
- 24 A. So when we got to the movie theatres.
- 25 Q. Okay. He gave you 20 dollars?

- 1 A. For gas for taking him to the island.
- 2 Q. Okay. Thank you. Did you know before all this
- 3 that Austin was going to take money from somebody that
- 4 night?
- 5 A. No.
- 6 Q. Are you sure about that?
- 7 A. Yes, ma'am.
- 8 Q. When you were speaking -- well, let me backtrack a
- 9 little bit. Where did you drop Austin off at?
- 10 A. The apartments in Woodbridge in Bluffton.
- 11 Q. And then where did you go?
- 12 A. Work.
- 13 Q. Okay. And was it immediately that the police came
- 14 and talked to you or how long after?
- 15 A. No, maybe two weeks later.
- 16 Q. And then is when you met with Investigator Seifert?
- 17 A. Yes.
- 18 Q. And you told him -- eventually you told him
- 19 everything you just told us?
- 20 A. Yes.
- 21 Q. Did he -- you mentioned he showed you pictures that
- 22 made you break down I think are the words you used. Did
- 23 he show you any other sort of pictures?
- 24 A. Yes.
- 25 Q. What else did he show you?

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- 1 A. I think y'all call it a six pack.
- 2 Q. What is that?
- 3 A. It's three pictures on top and three on the bottom
- 4 of people that they suspect did the crime.
- 5 Q. Okay. Did he give you some sort of disclaimer
- 6 before he showed you these pictures?
- 7 A. He just asked me if you know -- if the man -- is the
- 8 man that assaulted that gentleman in these pictures. He
- 9 may or he may not be.
- 10 Q. Okay. He said he could or he may or he may not be.
- 11 A. Yes, ma'am.
- 12 Q. Did you identify somebody from that lineup?
- 13 A. Yes.
- 14 Q. Who did you identify?
- 15 A. Austin McQuarters.
- 16 Q. The same gentleman you identified for the court
- 17 earlier?
- 18 A. Yes.
- 19 Q. When you saw that piece of paper hit the table how
- 20 quickly did you identify him?
- 21 A. As soon as the paper touched the table.
- 22 Q. Okay. And what did you mark on that paper to
- 23 identify it?
- 24 A. My initials.
- 25 Q. Did you circle, square?

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1 A. Circle.

2 MS. CONCANNON: Beg the court's indulgence, Your
3 Honor.

4 [Whereupon, Ms. Concannon confers with Ms. Lempesis]

5 Q. [Ms. Concannon] Jackie, I have no further questions
6 for you at this time. If you'd answer any Mr. Bax may
7 have.

8 THE COURT: Cross-Examination.

9 MR. BAX: Thank you, Your Honor. Moment's
10 indulgence.

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1 CROSS-EXAMINATION

2 BY MR. BAX:

3 Q. Ms. Perez, you testified that you had gotten off
4 work at McDonalds and you met Mr. McQuarters outside of
5 the McDonalds where you worked is that right?

6 A. Yes.

7 Q. Now you've also testified that he asked you for a
8 ride and was going to go to the cinemas right?

9 A. Yes.

10 Q. Okay. And your testimony is you didn't know why he
11 was going other than that he was going to meet with a
12 girl is that right?

13 A. Yes.

14 Q. Okay. But it turned out that he wasn't there to
15 meet with a girl that's your testimony right?

16 A. Yes.

17 Q. Okay. So when you asked him why we're here since
18 you're not meeting with a girl what did he tell you?

19 A. I never asked him that.

20 Q. You never asked him ---

21 A. --- I asked him why are we here and he told me it
22 was to meet a girl.

23 Q. Okay. And when that turned out not to be the case
24 you never asked him about why he would tell you that if
25 it wasn't the case?

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1 A. We didn't speak after ---

2 Q. --- you didn't speak about it. Okay. You were
3 together but you didn't speak about it, okay. Now you
4 also testified that Mr. McQuarters got out of the car and
5 went and talked to Minor 1 right?

6 A. Yes.

7 Q. Where was Mr. Minor 1 Where was Minor 1

8 A. At his job. He worked at the movie theatres.

9 Q. Okay. Well, let me be more specific. Where at his
10 job was he when Austin went to go talk to him?

11 A. In the ticket booth.

12 Q. In the ticket booth, okay. You've also testified
13 that he came back and then you went and spoke with Mr.
14 Minor 1 with Minor 1 is that right?

15 A. Yes.

16 Q. Was he still in the ticket booth?

17 A. Yes.

18 Q. What did you say to Minor 1

19 A. I asked him questions. We spoke briefly. I asked
20 him because I had given him -- I didn't know he worked
21 there until the previous day and gave him a ride to work.

22 And I went up there and asked him -- how we talk I
23 speak slang when I speak to my friends, where's the
24 bread, where's the money? And I asked for gas money that
25 he owed me for bringing him to work.

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1 Q. But you didn't say where's the gas money for
2 bringing you to work you said where's the bread correct?

3 A. Yes.

4 Q. And that's what you told Investigator Seifert when
5 you talked to him correct?

6 A. Yes.

7 Q. And you told him that it means where's the money.

8 A. Yes.

9 Q. So in fact you did know that you and Austin were
10 there to get money correct? That was the point.

11 A. No.

12 Q. No? But you asked him where's the bread correct?

13 A. Yes.

14 Q. Now you go by a nickname correct, Brooklyn I believe
15 it is?

16 A. Yes.

17 Q. Why do you go by Brooklyn Jackie?

18 A. I'm from New York. I got the nickname when I moved
19 down here -- well, when I moved to Florida and I got the
20 nickname for my speech my talk whatever you want to call
21 it.

22 Q. Your street slang is that right?

23 A. Just the way I speak in general.

24 Q. Okay. And bread in reference to money that's part
25 of that way you talk is that right?

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1 A. Yes, sometimes.

2 Q. Now you also testified that you -- when Austin got
3 out of the car and was on the outside of the car you said
4 you were playing with your phone right?

5 A. Yes.

6 Q. But you told Investigator Seifert that your phone
7 was dead is that right?

8 A. It died later on, yes.

9 Q. It died later on, okay ---

10 A. --- which is exactly what I told him.

11 Q. When exactly did it die?

12 A. I'm not sure what time it was.

13 Q. Okay. Did it die before you allege Mr. McQuarters
14 talked to the gentleman that you don't remember his name
15 that you robbed, Mr. Snodgrass, was it before then or
16 after that?

17 A. Before.

18 Q. It was before then? How do you know? Is it because
19 you didn't call 911 when something like this happened?
20 Is that why you know it was dead at that point?

21 A. No. It's just that I remember it was dead.

22 Q. Okay. So your phone was conveniently dead. When
23 you got back -- now you testified that you dropped off
24 Mr. McQuarters at an apartment and that you went to work
25 right?

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1 A. Yes.

2 Q. Well, I'm a little confused. You straighten this
3 out for me. You said that you had just gotten off work
4 when you met with Mr. McQuarters.

5 A. Yes.

6 Q. Okay. And you went back to work?

7 A. Yes.

8 Q. Why?

9 A. Because I had to do the truck.

10 Q. You had to do the truck?

11 A. Yes, which is we get an order of all the stuff we
12 make like chicken nuggets and all that stuff and we have
13 to load it ourselves into the freezers and the coolers.

14 Q. Okay. That makes sense. But when you got back to
15 work McDonalds has a working phone there correct?

16 A. Yes.

17 Q. Why didn't you call 911 at that point Jackie?

18 A. I was afraid.

19 Q. Afraid you'd get charged with robbing Mr. Snodgrass?

20 A. No.

21 Q. Okay. What were you afraid of then?

22 A. Many things at one moment. I was ---

23 Q. --- well tell us about them.

24 A. I was afraid of yes, getting in trouble but I was
25 also afraid of your client.

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1 Q. My client?

2 A. Mr. McQuarters.

3 Q. Okay. Now it's funny you testified that you were
4 friends with Mr. McQuarters. That you hung out with him
5 after school. That you gave him rides like this evening
6 correct?

7 A. Yes.

8 Q. So now he's my client not your friend?

9 A. No.

10 Q. Okay. Let me ask you some things here because that
11 leads me to something. You testified that when you first
12 met with Investigator Seifert you said you didn't know
13 anything about this correct?

14 A. Yes.

15 Q. And you're aware of the fact that interview was
16 taped right?

17 A. Yes.

18 Q. And you denied knowing that there was any robbery
19 and you had anything to do with it right?

20 A. Yes.

21 Q. Okay. And when the Solicitor asked you why you are
22 testifying here today you said it's the right thing to do
23 is that right?

24 A. Yes.

25 Q. Now you also testified that by the time Investigator

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1 Seifert talked to you it had been a couple of weeks since
2 this incident at the Northridge cinemas right?

3 A. Yes.

4 Q. So you had two weeks to come up with something to
5 say right?

6 A. Yes.

7 Q. Okay. And you knew they were coming at some point
8 because you'd seen this story in the paper about Mr.
9 Snodgrass getting robbed right?

10 A. I've seen it in the paper, yes.

11 Q. You'd seen it in the paper, okay. Now you indicated
12 -- the prosecution asked you if you had been promised
13 anything in order to get your testimony here today
14 correct?

15 A. Yes.

16 Q. Okay. And you said you hadn't been promised
17 anything right?

18 A. Yes.

19 Q. But you are represented on that charge by an
20 attorney correct?

21 A. Yes.

22 Q. Who is that?

23 A. Jared Newman.

24 Q. Okay. And Mr. Newman and you have discussed this
25 charge correct?

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1 A. Yes.

2 Q. Has Mr. Newman told you that your chances of getting
3 a good deal from the prosecution ---

4 MS. CONCANNON: --- objection.

5 THE COURT: Hold on just a moment. Yes?

6 MS. CONCANNON: That's hearsay.

7 MR. BAX: Your Honor, it goes to motive and bias.
8 I think I can ask her about it when they asked -- they
9 opened the door by saying have you been promised
10 anything.

11 MS. CONCANNON: It also goes into attorney client
12 privilege conversation that she had with her attorney.

13 THE COURT: You can't assert her attorney client
14 privilege. Ladies and gentlemen I need you to step in
15 the jury room while I deal with this. Don't discuss the
16 case.

17 [Whereupon, the jury exits at 12:31 p.m.]

18 THE COURT: Is Mr. Newman here?

19 MR. BAX: He is, Your Honor.

20 THE COURT: I'm sorry; I didn't see you back there.
21 Bear with me a moment.

22 [Whereupon, the court reviews documents]

23 THE COURT: All right. The objection is hearsay
24 and your response is what?

25 MR. BAX: Your Honor, my response is that I think

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1 I'm entitled to go into her motivation for testifying.
2 Obviously they've asked her whether or not there were any
3 promises, however and this is something I've run into
4 commonly, I have absolutely no doubt whatsoever that at
5 one point or another she's been advised that testifying
6 is going to give her a better chance of some kind of deal
7 after the trial is over.

8 And my client doesn't get a fair trial if I can't
9 get into that because it goes to her motive for why she's
10 testifying. And without that I don't think my client
11 gets a fair trial. It's a common tactic and I think my
12 argument is that while it involves discussions between
13 Ms. Perez the witness and her attorney what she's been
14 advised about the potential benefits of testimony is
15 relevant and should be admissible.

16 I'm not going to ask for specific words said but I
17 do want to be able to ask her if she's been advised by
18 her counsel and had discussions about whether testimony
19 would look good for her and potentially help her get a
20 better deal from the prosecution after the fact. I think
21 without being able to go into that, which as I said
22 before is a common tactic it really curtails the
23 defendant's ability to cross-examine the accusers; in
24 this case the co-defendants.

25 THE COURT: Well your question was have you been

1 told by your attorney and that's when the objection came
2 up. I've looked at the definition of hearsay and under
3 Rule 801 it appears to be hearsay. And I don't see an
4 exception under Rule 803. The attorney client privilege
5 is something she would have to assert and if she needs to
6 talk to her lawyer about that I can let her. But I don't
7 know if you want her to come off the stand or not.

8 I'm not saying you cannot go into the subject. I'm
9 not saying you cannot ask her about her understanding.
10 But what you asked her was if her attorney told her
11 certain things and that seems to be hearsay. Now let me
12 look one more place.

13 MR. BAX: Well then Your Honor I would ask the
14 court if my rephrasing the question to say does she have
15 any reason to believe that her testimony may aid in her
16 getting a better deal from the prosecution after the fact
17 is a better way to phrase the question that doesn't ask
18 for a specific statement out of court.

19 THE COURT: I don't know if I can give you an
20 advisory ruling but I think what I was trying to say to
21 you was you can ask her things about her understanding or
22 her anticipation or things of that nature. You can ask
23 her what the State's attorney may have told her or an
24 investigator may have told her perhaps. I'll have to
25 hear the question. So do y'all need to put anything else

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1 on the record?

2 MS. CONCANNON: No, Your Honor.

3 THE COURT: You ready for the jury?

4 MR. BAX: Yes, Your Honor.

5 THE COURT: Bring them in.

6 [Whereupon, the jury enters at 12:39 p.m.]

7 THE COURT: The objection is sustained. Rephrase
8 your question please.

9 MR. BAX: Thank you, Your Honor.

10 Q. [Mr. Bax] Ms. Perez let me ask you this. Based on
11 anything that you are aware of at this time do you have
12 any expectation or do you have reason to believe that
13 your testimony here today on behalf of the State against
14 Mr. McQuarters could aid in you getting a better deal on
15 your pending armed robbery charge?

16 A. No.

17 Q. You have no reason to believe that whatsoever?

18 A. The State has not told me anything.

19 Q. The State has not told you anything and you have no
20 other reason to believe that testifying against Mr.
21 McQuarters may help you?

22 A. No.

23 Q. So you're just snitching to snitch is that right?

24 A. If that's what ---

25 Q. --- and that's Brooklyn right ---

1 A. --- you want to call it.
2 Q. Excuse me?
3 A. If that's what you want to call it.
4 Q. Well, what do they call it in Brooklyn?
5 A. Yes.
6 Q. Snitching right?
7 A. Yes.
8 Q. And so you don't really need a promise or any reason
9 to believe that it's going to help you to snitch? Is
10 that what your testimony is today?
11 A. Yes.
12 Q. And you expect the jury to believe that?
13 A. It's the truth.
14 Q. So your testimony is you had no idea what was going
15 to happen. You didn't know anything about it despite the
16 fact that you asked **Minor 1** where's the bread. You result
17 in you getting charged -- now you know **Minor 1** hasn't been
18 charged right?
19 A. I wasn't sure.
20 Q. Okay. If I told you **Minor 1** hasn't been charged
21 with any crimes how does that make you feel?
22 MS. CONCANNON: Objection. That's irrelevant.
23 MR. BAX: I think it is relevant.
24 THE COURT: Hold on a second. Your objection is
25 based on what?

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1 MS. CONCANNON: Relevance.

2 THE COURT: And your response is?

3 MR. BAX: It goes to bias as to her reason to
4 testify, Your Honor.

5 THE COURT: Bear with me. I'm trying to think this
6 through.

7 MR. BAX: Yes, Your Honor.

8 THE COURT: I can't state the reason. If I need to
9 do it later I will. The objection is overruled.

10 MR. BAX: I'll repeat the question. Thank you,
11 Your Honor.

12 Q. [Mr. Bax] Knowing that Mr. Minor 1 hasn't been
13 charged with any crimes related to this incident how does
14 that make you feel Jackie?

15 A. Crappy.

16 Q. Thank you for that response. I think that was a
17 very honest response. Jackie, let me ask you this. You
18 also testified that you saw Mr. McQuarters hit Mr.
19 Snodgrass and that you saw him pick stuff up correct?

20 A. Yes.

21 Q. And you testified that after you were -- you're
22 speaking with Investigator Seifert and that he showed you
23 some pictures and you got very emotional and then you
24 told him the truth at that point correct?

25 A. Yes.

1 Q. But Jackie you never told him that you saw a grey
2 bag. You never told him that you saw these hits. You
3 never told him that you saw this envelope in those
4 interviews correct?

5 A. Yes, I did.

6 Q. Okay. So if we were to play the video and it never
7 shows you saying that that would be inaccurate? That
8 video would be wrong?

9 A. I told him about the bag and the envelope. I even
10 drew a picture because he asked me to.

11 Q. In your initial interview. Now I recall you saying
12 that you drew a picture is that right?

13 A. Yes.

14 Q. What did you draw a picture of again?

15 A. He asked me to draw a picture of what was going in
16 my car and I did.

17 Q. You drew a picture I believe -- let me ask you this.
18 You drew a picture of the envelope correct?

19 A. Yes.

20 Q. The one you described the blue and white envelope?

21 A. Yes.

22 Q. But when you were asked about anything else you
23 never said anything about a grey bank bag did you?

24 A. Yes, I did.

25 Q. You did? Today you're saying that correct?

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- 1 A. No.
- 2 Q. You're not saying that today?
- 3 A. Well I am saying that today but I said it that day
- 4 as well.
- 5 Q. Okay. Now Mr. McQuarters was riding with you
- 6 correct?
- 7 A. Yes.
- 8 Q. Okay. And your testimony is after this happened
- 9 that you took him to an apartment complex and then you
- 10 went back to work correct?
- 11 A. Yes.
- 12 Q. Back to McDonalds where you didn't call 911 correct?
- 13 A. Yes.
- 14 Q. And you didn't tell anybody about this until you
- 15 talked with Investigator Seifert some two weeks later
- 16 correct?
- 17 A. Yes.
- 18 Q. So you didn't drive Mr. McQuarters over to meet with
- 19 **Minor 1** afterwards?
- 20 A. No. I never saw **Minor 1** again that night.
- 21 Q. And you never drove him anywhere where he got out
- 22 and got back into your car?
- 23 A. Just to the apartment complex.
- 24 Q. Just to the apartment complex?
- 25 A. Yes.

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1 Q. Now what time was that?

2 A. It was late. I'm not sure.

3 MR. BAX: Moment's indulgence, Your Honor.

4 THE COURT: Yes, sir.

5 [Whereupon, Mr. Bax confers with Mr. Bell]

6 MR. BAX: One final brief question, Your Honor.

7 Q. [Mr. Bax] I just want to ask you a couple of final
8 things.

9 You testified that the reason that we can believe
10 you here today versus when you were lying to Investigator
11 Seifert back in November of 2013 is because you have no
12 reason to lie is that right?

13 A. Yes.

14 Q. And that's your testimony correct?

15 A. Yes.

16 Q. So you wouldn't have any reason such as you know Mr.
17 McQuarters wasn't involved and you robbed him and you
18 don't want to get in any more trouble? That wouldn't be
19 a reason correct?

20 A. No.

21 Q. And you don't have anyone to explain that Mr.

22 **Minor 1** and yourself are all very positive that Mr.

23 McQuarters did it but you're the only ones that have

24 admitted being involved? You don't have any explanation

25 for that?

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1 A. No.

2 Q. Okay.

3 MR. BAX: No further questions, Your Honor.

4 THE COURT: Redirect.

5 MS. CONCANNON: Very briefly, Your Honor. Thank
6 you.

7 THE COURT: Yes, ma'am.

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1 REDIRECT EXAMINATION

2 BY MS. CONCANNON:

3 Q. Jackie Mr. Bax asked you about some stuff that you
4 saw Austin pick up off the ground. What did you describe
5 that stuff as?

6 A. A bank bag and an envelope.

7 Q. And then when you were talking to Investigator
8 Seifert about this bank bag and envelope you said you
9 drew it.

10 A. Yes.

11 Q. And this was during your interview?

12 A. Yes.

13 Q. Okay. The one interview you had?

14 A. Yes, ma'am.

15 MS. CONCANNON: Permission to approach, Your Honor?

16 THE COURT: Yes.

17 MR. BAX: Your Honor, sidebar.

18 THE COURT: That's fine. But if you need anything
19 on the record it's not going to be on the record in a
20 sidebar.

21 MR. BAX: I may need to put it on the record if you
22 want to go ahead and ask -- I mean I guess I could ask
23 for a moment outside the presence of the jury then, Your
24 Honor.

25 THE COURT: Folks, I'm not big on talking on the

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1 sidebar. I'd rather do it one time on the record but I
2 need to do it outside your presence. Please step to the
3 jury room and don't discuss the case.

4 [Whereupon, the jury exits at 12:48 p.m.]

5 THE COURT: All right. The jury is out of the
6 room now y'all can talk if you'd like.

7 MR. BAX: Well, Your Honor I'd just like to put it
8 on the record. I was aware that she had written
9 something on a piece of paper because it shows it in the
10 interview. However, I was never provided a copy of it.
11 So the fact that they're bringing it out now I would
12 object. The defense has never been provided a copy of
13 it.

14 I've got everything that I've been provided in this
15 case with me here today. I can let them take a look at
16 it. The packet that I got was always the same packet and
17 it does not have a copy of the drawing in it. So based
18 on that I would object.

19 THE COURT: Yes, ma'am?

20 MS. CONCANNON: Your Honor, it was submitted along
21 with her interview. You can see her drawing this
22 drawing. It's been in evidence since day one. I
23 actually had a phone conversation with Mr. Bax where we
24 went over the disk and what missing discovery there may
25 be. I thought maybe he didn't have all of the pictures

1 but I wanted to make sure he did. He actually referenced
2 the notebook paper when we were discussing this. It's
3 been in evidence since November 6th of 2013. Any day he
4 could have gone and requested to look at all the
5 evidence. And a copy is in my printed report so I have
6 no reason to believe aside from what he's saying here
7 today that he had never seen it. You can see it on the
8 video when she draws it as well.

9 THE COURT: May I see what you're talking about?

10 [Whereupon, Ms. Concannon provides document to the
11 court]

12 THE COURT: You got the documents on an electronic
13 format?

14 MR. BAX: I believe that I did because I made
15 copies of it from my email and did it double-sided. As
16 an officer of the court I can tell you that was not in
17 there. Now as an officer of the court I was aware she
18 did that because I saw it on the video.

19 Perhaps I've made a mistake as an representing
20 attorney in assuming that the reason I didn't get it is
21 that they didn't keep it. I mean what does a square on a
22 piece of paper mean? I saw Doug wasn't exactly happy
23 with that drawing because it didn't really help him a
24 whole lot and I guess I just assumed in my mind they
25 never kept it. But I don't have a copy.

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1 THE COURT: All right. The objection is based on
2 discovery violation. Assuming that there is one and I
3 don't really have any way of knowing without looking
4 through the disk myself. I've got two fine attorneys who
5 are telling me conflicting stories to some degree. It is
6 something that was brought up by the defense. The remedy
7 I will give you is an opportunity to review it if you
8 need further opportunity to review it if you need some
9 more time. The objection as far as keeping it out
10 because of a discovery violation is overruled.

11 MR. BAX: Thank you, Your Honor.

12 THE COURT: Do you want any more time?

13 MR. BAX: If I could just have a minute, not even a
14 minute to take a look at it. I appreciate it. Thank
15 you.

16 THE COURT: Sure.

17 [Whereupon, Mr. Bax reviews document]

18 MR. BAX: I'm done, Your Honor.

19 [Whereupon, State's exhibit number 12 is marked by
20 the court reporter]

21 THE COURT: I didn't look at all the stuff that is
22 on that cellophane container. I didn't know you were
23 going to offer the...

24 MS. CONCANNON: I can take it out of the bag and
25 just offer the piece of paper.

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1 MR. BAX: It's fine either way, Your Honor.

2 MS. CONCANNON: The bag is irrelevant.

3 THE COURT: I just didn't know if there was
4 anything on there that I needed to look at.

5 MS. CONCANNON: It's just the date and time and
6 what it is.

7 THE COURT: Okay. You ready for the jury?

8 MS. CONCANNON: Yes, Your Honor.

9 THE COURT: You ready?

10 MR. BAX: Yes, Your Honor.

11 THE COURT: If they're ready bring them in.

12 [Whereupon, the jury enters at 12:54 p.m.]

13 THE COURT: The objection is overruled. You may
14 continue.

15 MS. CONCANNON: Thank you, Your Honor. Permission
16 to approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 REDIRECT EXAMINATION (RESUMES)

19 Q. [Ms. Concannon] Jackie, I'm going to hand you for
20 identification what has been marked State's 12. Can you
21 tell me what that is?

22 [Whereupon, the witness is shown document]

23 A. The picture I drew for Officer Seifert.

24 Q. And when did you draw that picture for Officer
25 Seifert?

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- 1 A. 11/6/13 at 9:49 a.m.
- 2 Q. And how do you know that's when you drew it?
- 3 A. That's my signature and my initials.
- 4 Q. Did you only speak with Investigator Seifert that
- 5 one time about this?
- 6 A. Yes.
- 7 Q. And it was during that interview that you drew this?
- 8 A. Yes.
- 9 Q. And what does this picture depict?
- 10 A. A picture of the white bag -- the envelope that was
- 11 thrown in my car and the bank bag.
- 12 Q. The two items that Austin had?
- 13 A. Yes, the white envelope and the grey bag.
- 14 Q. And that's what the colors are depicting one or two?
- 15 A. Yes, ma'am.
- 16 Q. Was the size correct? Well, the white bag was
- 17 bigger than the grey bag?
- 18 A. Give or take --
- 19 Q. And this is the exact drawing you made?
- 20 A. Yes.
- 21 Q. And how do you know so?
- 22 A. My initials and my signature. That's my handwriting
- 23 and that's my drawing.
- 24 Q. Okay.
- 25 MS. CONCANNON: At this point the State moves

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1 State's 12 into evidence.

2 THE COURT: Subject to previous objection?

3 MR. BAX: Subject to my objection, Your Honor.

4 THE COURT: Mark it into evidence please Madame
5 Court Reporter.

6 [Whereupon, State's exhibit number 12 is entered
7 into evidence by the court]

8 [Whereupon, the court confers with the court
9 reporter]

10 THE COURT: You may publish it to the jury.

11 MS. CONCANNON: Thank you, Your Honor.

12 THE COURT: I was just checking with her. Some
13 court reporters want to mark on the exhibit that it's in
14 evidence as opposed to identification and some don't.
15 We're square.

16 MS. CONCANNON: Thank you, Your Honor. A moment of
17 court's indulgence, Your Honor.

18 THE COURT: Yes, ma'am.

19 [Whereupon, Ms. Concannon confers with Ms. Lempesis]

20 Q. [Ms. Concannon] Jackie, I have no further questions
21 for you.

22 THE COURT: Recross?

23 MR. BAX: No, Your Honor.

24 THE COURT: Thank you, ma'am. You may step down.

25 [Whereupon, the witness is excused and exits the

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1 witness stand]

2 THE COURT: Okay. We're going to break for lunch
3 for now. Do you have another witness?

4 MS. CONCANNON: I have two more witnesses, Your
5 Honor.

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1 THE COURT: Ladies and gentlemen, you're on your
2 own for lunch today. I need you back in the jury room
3 please at 2:15. I hope you have a pleasant lunch.
4 Remember all those admonitions. Leave your notes in the
5 courtroom as you exit. Thank you so much.

6 [Whereupon, the jury exits at 12:58 p.m.]

7 THE COURT: Please be careful as you leave that you
8 don't have any contact with the jurors or have any
9 conversations that may be overheard by a juror. Do the
10 same when you're at lunch. They may choose the same
11 restaurant. I know where we went to eat yesterday two of
12 the jurors were there.

13 MR. BAX: There are not a lot of options here in
14 Beaufort. I'll be honest with you.

15 THE COURT: We're in recess until 2:15.

16 MR. BAX: Thank you, Your Honor.

17 MS. CONCANNON: Thank you.

18 [Whereupon, court is in recess from 12:58 p.m. until
19 2:20 p.m.]

20 THE COURT: Have a seat please. Is the State
21 ready?

22 MS. CONCANNON: The State's ready, Your Honor.

23 THE COURT: The defense ready?

24 MR. BAX: The defense is ready, Your Honor. But in
25 an effort to try not to waste the time of the jury there

1 is one matter that I thought of. Ms. Concannon did let
2 me know that Doctor Snowman would be testifying and I
3 have a copy of his C.V., his curriculum vitae. And I
4 don't know if he's going to be the next witness. It may
5 be Doug that is going to be called next because I didn't
6 see anybody out in the hall.

7 But as I don't know if we're going to have a break
8 beforehand my understanding from Ms. Concannon is that
9 she proposes to present testimony from the doctor that
10 the wounds that he treated on Mr. Snodgrass are
11 consistent with a hard object and not just a fist
12 unaided. And if I'm misstating that please let me know.

13 MS. CONCANNON: No, Your Honor, that's correct. He
14 explained to me that the wounds would have been different
15 had it been just blunt force trauma of a fist alone as
16 opposed to the linear nature of these wounds. He said
17 they were consistent with being hit with a foreign object
18 and not a fist. He can't say, of course, what that
19 object is and I wouldn't ask him that.

20 MR. BAX: My concern, Your Honor is that I have the
21 medical records in this case. They don't really go into
22 an opinion if the object was a fist or not. And so kind
23 of my issue is under the Jones case that I worked on and
24 a number of other cases that talk about the modified
25 Daubert standard that we have in South Carolina. My

1 understanding is when it comes to medical testimony of
2 that nature there has to be -- and if I'm misstating it I
3 apologize the expert witness has to say to a degree of
4 medical certainty I think is the phrase that expert has
5 to use when he testifies to a fact that he is assuming
6 from the evidence that he has examined as an expert.

7 There has not been a report done in this case other
8 than the medical records. And like I said the medical
9 records don't go into that. So my concern was if I don't
10 object now outside the presence of the jury I may end up
11 in a situation where I have to later on and I felt like
12 for housekeeping it would be best to go ahead and put
13 that on the record.

14 I am not at this point aware of exactly how
15 confident the doctor is in his opinion. Consistent with
16 to me in my mind is different from to a degree of medical
17 certainty. Consistent with is a kind of term that I know
18 that certain members of our appellate courts have taken
19 issue with in the past.

20 Justice Beatty in fact has mentioned the fact that
21 consistent with outside of other corroborating factors
22 may not be sufficient to pass that gate keeping function
23 under the modified Daubert approach for admissibility in
24 court before a jury as testimony of an expert witness as
25 to their opinion. And prior to us bringing the jury in

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1 and going from Investigator Seifert to Doctor Snowman I
2 wanted to go ahead and put that on the record as a prior
3 issue. And I know Your Honor might not be able to rule
4 on it until you hear more but I wanted to go ahead and
5 get it out there.

6 THE COURT: I think I'm going to have to hear the
7 witness in camera. Is he the next witness?

8 MS. CONCANNON: No, Your Honor. We were going to
9 have Doug Seifert testify and then the doctor.

10 THE COURT: All right.

11 MR. BAX: And it's completely fine with me Your
12 Honor if we want to -- and I don't know how late -- I
13 know Investigator Seifert I would anticipate is going to
14 take a little bit of a while. If it's an in camera
15 situation I have no objection to taking the in camera
16 testimony this afternoon and starting with his testimony
17 in the morning but that's just a suggestion. I'll leave
18 it to the better wisdom of others.

19 MS. CONCANNON: And Your Honor Doctor Snowman is
20 present right now. He's in the hallway if you'd like to
21 do that before we get started.

22 THE COURT: Say again what you just told me just a
23 minute ago. I'm sorry I got an email from the Chief
24 Justice and I got distracted.

25 MR. BAX: I apologize Your Honor, I ---

1 THE COURT: --- no, I apologize to you.

2 MR. BAX: I was merely suggesting from a scheduling
3 standpoint knowing that we don't want to have the jury
4 sitting back there waiting on us while we do stuff like
5 take in camera testimony I have no objection -- and of
6 course I know the doctor has a schedule so that might
7 impact his schedule.

8 But we could always take his in camera testimony
9 this afternoon after we're done with Investigator Seifert
10 and let the jury go home and then whatever he is allowed
11 to testify to by Your Honor's ruling we do in the morning
12 before argue and charge. That way we don't have the jury
13 waiting.

14 THE COURT: I don't think it will take that long.

15 MS. CONCANNON: I don't think it will take very
16 long, Your Honor.

17 THE COURT: If we see different we'll just hear
18 from the investigator and then we'll do the in camera
19 thing. Are you ready for the jury?

20 MS. CONCANNON: Yes, Your Honor.

21 THE COURT: You ready?

22 MR. BAX: Yes, sir.

23 THE COURT: Bring them in.

24 [Whereupon, the jury enters at 2:27 p.m.]

25 THE COURT: Call your next witness.

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1 MS. CONCANNON: Thank you, Your Honor. The State
2 calls Investigator Seifert.

3 [Whereupon, Investigator Seifert comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Please be seated and state your
7 full name.

8 THE WITNESS: Investigator Doug Seifert, last name
9 S-E-I-F-E-R-T.

10 - - - - -

11 DOUG SEIFERT,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. CONCANNON:

16 Q. Good afternoon Investigator Seifert. Where are you
17 currently employed?

18 A. I work at the Beaufort County Sheriff's Office in
19 the southern division.

20 Q. Okay. And in what capacity do you work in the
21 southern division?

22 A. Investigations. We're divided into two; one is up
23 north from the Broad River on up here to Broad River
24 down, which is the southern division.

25 Q. And that's where you work?

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- 1 A. Yes, ma'am.
- 2 Q. And you're an investigator?
- 3 A. Yes, ma'am.
- 4 Q. So what are some of your duties as an investigator?
- 5 A. As investigator we investigate obviously all
- 6 different types of crime. Specifically most of what I
- 7 center in is usually violent crime.
- 8 Q. How are you assigned cases?
- 9 A. It depends on how many people were actually working
- 10 on duty and things like that, what takes precedence and
- 11 things like that, and how sever different instances are.
- 12 Q. You mentioned on duty. Y'all have an on duty
- 13 system?
- 14 A. Yes, ma'am.
- 15 Q. Is there typically one or more investigators on duty
- 16 at all times?
- 17 A. Typically one, yes ma'am.
- 18 Q. Do you know if you were on duty the night of October
- 19 20th of 2013?
- 20 A. I was just on my regular day of work but other than
- 21 that I was not the duty investigator.
- 22 Q. Okay. But at some point the case you're here today
- 23 came across your desk?
- 24 A. That's correct.
- 25 Q. Do you know when that happened?

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1 A. It was the afternoon of the 20th so it would be the
2 21st.

3 Q. The 21st?

4 A. Yes, ma'am.

5 Q. So the next day?

6 A. Yes, ma'am.

7 Q. Okay. When you were first assigned this case what
8 do you do?

9 A. Obviously I want to talk to the actual victim if the
10 victim is able to talk depending on what the situation
11 is, witnesses; things like that. I tried to get a hold
12 of the actual victim per the phone call and also the
13 hospital and did not get a hold of the victim at the
14 time.

15 Q. Okay. What day was that?

16 A. That was the 21st of October, 2013.

17 Q. Okay. The day you were assigned to this
18 investigation?

19 A. Yes, ma'am.

20 Q. Okay. When you were trying to contact this victim
21 it was about an attack at Northridge Cinemas?

22 A. Yes, ma'am.

23 Q. Do you know the address of Northridge Cinemas?

24 A. I believe its -- am I allowed to refer to my notes
25 please?

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1 [Whereupon, the witness reviews documents]

2 A. 435 William Hilton Parkway.

3 Q. And is that here in Beaufort County?

4 A. Yes, ma'am.

5 Q. Part of your southern division?

6 A. Yes, ma'am.

7 Q. So on the 21st you were unable to get in touch with
8 the victim?

9 A. That's correct.

10 Q. What did you do next?

11 A. I actually made contact with the actual victim on
12 the phone two days after the actual incident and it was
13 Mr. John Snodgrass the victim today. I made a phone call
14 and found out that he was actually at the Savannah
15 Memorial Hospital.

16 Q. Okay. When you learned he was at Savannah Memorial
17 Hospital what did you do?

18 A. I drove to Savannah hospital to actually not only
19 interview Mr. Snodgrass but also to see the injuries that
20 he obtained of what happened with the incident.

21 Q. When you get to the hospital and you go into Mr.
22 Snodgrass's room what do you observe?

23 A. Mr. Snodgrass was in a hospital bed. There was
24 another gentleman there. His name was Brian Smith who I
25 later found out that he was actually the owner of

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1 Northridge Cinemas Corporation. He was sitting in a
2 chair right next to Mr. Snodgrass.

3 Q. Okay. Did Mr. Snodgrass have visible injuries?

4 A. Yes, ma'am.

5 Q. Okay. Did you photograph these injuries?

6 A. I did.

7 MS. CONCANNON: Permission to approach, Your Honor?

8 THE COURT: Yes, ma'am.

9 Q. [Ms. Concannon] Investigator Seifert I'm going to
10 show you for identification purposes only what has been
11 marked State's 3 through 9. Can you please take a look
12 at these photos?

13 A. Yes, ma'am.

14 [Whereupon, the witness reviews photographs]

15 Q. Do those photos fairly and accurately depict the
16 condition you saw Mr. Snodgrass in that day?

17 A. Yes, ma'am.

18 Q. And are these in fact the photos that you took that
19 day?

20 A. Yes.

21 Q. Have they been altered in any way?

22 A. No, ma'am.

23 MS. CONCANNON: At this point the State moves
24 State's 3, 4, 5, 6, 7, 8, and 9 into evidence.

25 MR. BAX: Without objection.

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1 THE COURT: Mark those in evidence.

2 [Whereupon, State's exhibit numbers 3, 4, 5, 6, 7,
3 8, and 9 are entered into evidence by the court]

4 MS. CONCANNON: Permission to publish?

5 THE COURT: Yes, ma'am.

6 MS. CONCANNON: Thank you, Your Honor.

7 Q. [Ms. Concannon] Investigator Seifert I'm going to go
8 picture by picture with you.

9 [Whereupon, photographs are shown on screen]

10 Q. What does this picture show?

11 A. Just like what I just told you that's when I came in
12 the room and that's where I saw the victim Mr. John
13 Snodgrass where he was during my interview with him.

14 Q. Okay. Now I'm going to show you State's 4. How
15 about that picture?

16 A. It's a picture of Mr. Snodgrass. It's a close-up of
17 the front of his face.

18 Q. Okay. State's 5?

19 A. It's also a picture of the victim Mr. Snodgrass as
20 he turned his head to the right and I took a picture of
21 his left side of his head.

22 Q. And again these are taken two days after the
23 incident?

24 A. Yes, ma'am.

25 Q. State's 6?

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1 A. That is to his right side of his face where he had
2 his head turned.

3 Q. State's 7?

4 A. That is his hand that had the marks of what he told
5 me what his injuries were as well.

6 Q. State's 8?

7 A. This is showing his knee cap was bruised and also
8 had swelling.

9 Q. And finally State's 9?

10 A. This was his -- actually right arm area. It's
11 actually upside down. His elbow is tilted and that's
12 where his injuries are as well.

13 Q. And those are the photographs that you took at
14 Savannah?

15 A. Yes, ma'am.

16 Q. Were you able to speak with Mr. Snodgrass that day?

17 A. Yes, ma'am.

18 Q. After you were at the Savannah Hospital and you
19 spoke to Mr. Snodgrass and took the pictures then what
20 did you do?

21 A. Once I did that Mr. Snodgrass eventually gave me the
22 different employees that worked there. There was no
23 video surveillance cameras at his place in the area where
24 the assault took place.

25 Q. You mentioned video surveillance. Did you or

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1 members of the Sheriff's Office attempt to gather video
2 surveillance from nearby locations?
3 A. Yes, ma'am.
4 Q. Was any obtained?
5 A. No, ma'am.
6 Q. And why wasn't any obtained?
7 A. Well if you're not familiar with the Northridge
8 Plaza area there are many places where individuals can
9 exit out of that particular plaza. It's just not one,
10 it's not two, it's several to leave that area.
11 Q. So the Sheriff's Office attempted to get
12 surveillance but was unable to?
13 A. Yes, ma'am.
14 Q. So after that then you gathered names of employees
15 and then what did you do?
16 A. I actually went to talk to one of the employees,
17 which is **Minor 1** and I met him at the actual
18 Bluffton High School where he attended.
19 Q. Did you only meet with **Minor 1** one time?
20 A. No, several times.
21 Q. Several times?
22 A. Yes, ma'am.
23 Q. And did he provide a statement to you?
24 A. He did.
25 Q. Did he provide one or more statements?

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1 A. More.

2 Q. More than one?

3 A. Yes, ma'am.

4 Q. After you spoke with Minor 1 what did you do next?

5 A. After I spoke to Minor 1 -- can I refer to my notes?

6 [Whereupon, the witness reviews documents]

7 A. Mr. Minor 1 actually went to the Hilton
8 Head office. I don't know if you're referring to the
9 other interviews but there was another interview that was
10 actually at the Hilton Head office and that was conducted
11 with myself and Minor 1

12 Q. Okay. Was that the final interview with Mr.

13 Minor 1

14 A. No, there was another one.

15 Q. Where was that final interview?

16 A. That was actually at the Bluffton High School.

17 Q. Okay. That ended your communications with Mr.

18 Minor 1

19 A. Yes, ma'am.

20 Q. After speaking with Minor 1 the second time what did
21 you do that same day?

22 A. I met with Mr. Snodgrass, the victim, after he was
23 released from the hospital and I showed him a photo line-
24 up.

25 Q. Okay. Did Mr. Snodgrass identify anybody in this

1 photo lineup?

2 A. No, ma'am.

3 Q. He couldn't identify anybody?

4 A. No.

5 Q. After you showed Mr. Snodgrass the photo lineup the

6 next day what happens the next day?

7 A. I ended up Mr. **Minor 1** explained as far as

8 what has happened he explained who one of the individuals

9 were who was with the actual defendant here today.

10 Q. Okay. What name were you provided?

11 A. At the time it was Brooklyn and she was later

12 identified as Jacklyn Perez.

13 Q. And did you have an opportunity to speak with Ms.

14 Perez?

15 A. I did.

16 Q. And where was that interview conducted?

17 A. That was done at the Hilton Head office as well at

18 our branch office.

19 Q. During that interview what was Ms. Perez's demeanor?

20 A. At first it was -- she was not understanding as far

21 as I guess the severity of what actually took place. She

22 was shown some photos to her and that's when Ms. Perez

23 then broke down and then stated what had happened, what

24 had occurred.

25 Q. After she told you what happened what happened with

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1 Ms. Perez?

2 A. Warrants were obtained. She was actually charged
3 and then she was sent to the Beaufort County Detention
4 Center.

5 Q. After you had spoken with **Minor 1** and you'd spoken
6 with Ms. Perez do you talk to anybody else?

7 A. The defendant, yes ma'am.

8 Q. What is his name?

9 A. Austin McQuarters.

10 Q. Where did you speak to him the first -- did you
11 speak to him just one occasion or more than one occasion?

12 A. Actually just one as far as this incident and that
13 was actually at his house.

14 Q. When you met him at his house what did you say to
15 him?

16 A. I stated why I was there and he was placed under
17 arrest for two active arrest warrants and then I read his
18 rights and then he was transported to the Hilton Head
19 office.

20 Q. Okay. You said you read him his rights. What
21 rights are these?

22 A. The Miranda Warning.

23 Q. How did you read him those? Do you have a card or
24 did you do it from memory?

25 A. I have a card.

1 Q. Do you have that card on you today?

2 A. Yes, ma'am.

3 Q. Would you please read to the jury those Miranda
4 Warnings?

5 A. On the top of the Miranda -- it says Miranda
6 Warning. It says: You have the right to remain silent.
7 Anything you say can and will be used against you in a
8 court of law. You have the right to an attorney. If you
9 can't afford an attorney, one will be provided for you.
10 Do you understand these rights I have just read to you?

11 Q. And did he acknowledge he understood those rights?

12 A. Yes, ma'am.

13 Q. And did he say whether or not he wanted to speak
14 with you?

15 A. He did want to speak with me, yes ma'am.

16 Q. Okay. Did you speak to him at his house?

17 A. No, ma'am.

18 Q. Where did you speak to him?

19 A. Over at the Hilton Head office.

20 Q. When you're reading him these Miranda rights does he
21 in any way seem to not understand what you were saying?

22 A. No, he understood.

23 Q. Did he appear to be under the influence of any
24 alcohol, anything to impair his ability to understand
25 these rights?

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1 A. No, ma'am.

2 Q. And he freely and voluntarily waived them?

3 A. Yes, ma'am.

4 Q. And he did in fact speak with you later?

5 A. Yes, ma'am.

6 Q. Okay. Once you get to the Hilton Head office with
7 Mr. McQuarters what do you say to him there?

8 A. I explained to him about the specifics of what the
9 charges are of his active warrants that he had and then
10 he gave me his -- he openly voluntarily told me his side
11 of the story.

12 Q. Prior to him telling you what happened did you
13 advise him of his Miranda Warnings again?

14 A. I did.

15 Q. In what manner did you advise him of these warnings?

16 A. We have at our Hilton Head office or actually
17 Beaufort County we actually have a Miranda Warning form
18 that we actually have that we put in front of the actual
19 individual that we actually talk to.

20 Then what they do once you read each -- you explain
21 to him that it's a Miranda Warning form they actually put
22 their name, they print their name and then they put their
23 date of birth. After they do that you read each
24 individual right to them and they initial that and then
25 there's two questions after that.

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1 Q. Okay.

2 MS. CONCANNON: Permission to approach, Your Honor?

3 THE COURT: Yes, ma'am.

4 Q. [Ms. Concannon] Investigator Seifert I'm handing you
5 what has been marked for identification purposes on as
6 State's exhibit 11. Can you please identify that for the
7 court?

8 [Whereupon, the witness is shown exhibit]

9 A. Yes, ma'am.

10 Q. What is that?

11 A. This is our Beaufort County Sheriff's Office Miranda
12 Warning.

13 Q. Okay. Is that the Miranda Warning you used for Mr.
14 McQuarters?

15 A. Yes, ma'am.

16 Q. How do you know?

17 A. Because Mr. McQuarters put his name in and date of
18 birth. He initialed it after he signed it and he dated
19 it and he put the time then what I do as a witness I put
20 my name right after that and put the date and the time as
21 well.

22 Q. What is the date and the time on this?

23 A. It's November 6, 2013. In military time its 17:30
24 but really 5:30 p.m.

25 Q. Y'all use military time?

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1 A. Yes, ma'am.

2 MS. CONCANNON: At this point the State moves

3 State's 11 into evidence.

4 MR. BAX: No objection, Your Honor.

5 MS. CONCANNON: Permission to publish?

6 THE COURT: Mark it into evidence. Yes, ma'am.

7 [Whereupon, State's exhibit number 11 is entered

8 into evidence by the court]

9 [Whereupon, State's exhibit 11 is shown]

10 Q. [Ms. Concannon] Investigator Seifert if we could go

11 through this? Whose initials are these?

12 A. That is Austin McQuarters.

13 Q. Okay. And down here [indicates] whose signature is

14 this?

15 A. That's Austin McQuarters.

16 Q. And how about right here [indicates]?

17 A. That's mine.

18 Q. And this is dated 11/6/13?

19 A. Yes, ma'am.

20 Q. Okay. When he is initialing each of these are you

21 reading these to him?

22 A. Yes, ma'am.

23 Q. And does he initial after each one?

24 A. Yes, ma'am.

25 Q. What are the final two questions at the end?

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1 A. On the form it says: Do you understand each of
2 these rights I explained to you yes or no. And then the
3 next one is: Having these rights in mind do you wish to
4 talk to us now.

5 Q. And what did Mr. McQuarters indicate to you?

6 A. Yes and yes.

7 Q. After he signed this waiver of rights form -- again
8 at this time did he appear to have any difficulties
9 understanding what you are saying to him?

10 A. No, ma'am.

11 Q. And he freely and voluntarily signed that form and
12 agreed to speak with you?

13 A. Yes, ma'am.

14 Q. When he's speaking with you what is his appearance?

15 A. He's a very large man compared to me; I would say
16 over six foot tall. If I had to guess I would say mid
17 200 pound range. He had like twists in his hair and his
18 demeanor he was laid back is what I would call it.

19 Q. Okay. So he did agree to speak with you?

20 A. Yes, ma'am.

21 Q. Who was present during this interview with Mr.
22 McQuarters?

23 A. At the time it was my boss which was Staff Sergeant
24 Chapman.

25 Q. At any time during this questioning did you or Staff

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1 Sergeant Chapman make any promises or threats to Mr.
2 McQuarters?

3 A. No, ma'am.

4 Q. Was he ever denied any bathroom breaks, water
5 breaks, any sort of break?

6 A. No, ma'am. He actually had some water as a matter
7 of fact that we got him.

8 Q. How long was the interview in its entirety?

9 A. No more than an hour but I believe it was around 30
10 minutes if I could guess.

11 Q. Okay. And during this 30 minute interview what did
12 Austin McQuarters tell you about the night of October
13 20th?

14 A. When I explained to him what occurred on the evening
15 of October 20th of 2013 he explained that he was in the
16 evening on that night up at the Kroger's store parking
17 lot, which is in Bluffton not the one in Hilton Head and
18 he was in the parking lot.

19 And he stated that he saw a white female with long
20 brown hair who was in a red coupe that she was walking in
21 the parking lot. And he approached her and stated that
22 he had a friend, which his name was **Minor 1** which he
23 explained that **Minor 1** was his home boy that he could get
24 free movies over at the Northridge Cinemas and asked if
25 she could give him a ride.

1 Q. And did he say whether she agreed to take him?

2 A. She did agree, yes ma'am.

3 Q. What did he say after that?

4 A. He explained that he never met this woman ever in
5 his life. He stated that they drove over to the actual
6 cinemas and backed into a parking spot and then went up
7 to the actual ticket counter him and the unknown female
8 and went up and saw **Minor 1** his friend and he was standing
9 there at the ticket counter.

10 Q. So he says he's friends with **Minor 1** but he doesn't
11 know this unknown female with long brown hair?

12 A. That's correct.

13 Q. So he speaks with **Minor 1** and then what does he say
14 he does?

15 A. Asks you know what time I guess as far as when he's
16 getting off work and a very small short talk and they
17 actually him and the unknown female go back to the actual
18 vehicle.

19 And then several minutes elapse and that's when
20 **Minor 1** comes out to the actual vehicle and Mr. McQuarters
21 stated that him and **Minor 1** walked away for a little bit
22 and then they came back and that's when him and the
23 unknown female left and went back towards Bluffton.

24 Q. Did Mr. McQuarters ever tell you what time of night
25 this was on the 20th?

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1 A. Right where it's closing time for the actual
2 theatre.

3 Q. Through your investigation were you able to identify
4 this unknown female?

5 A. Yes, ma'am.

6 Q. And who is she?

7 A. Jacklyn Perez.

8 Q. Did Mr. McQuarters tell you what he was wearing that
9 night?

10 A. He believed that he was wearing dark clothing.

11 Q. Did he say whether or not he was wearing a hat?

12 A. He didn't state that.

13 MS. CONCANNON: Beg the court's indulgence.

14 THE COURT: Yes, ma'am.

15 [Whereupon, Ms. Concannon confers with Ms. Lempesis]

16 Q. [Ms. Concannon] Investigator Seifert after you're
17 done speaking with Mr. McQuarters a couple of days pass
18 and what do you do as follow-up investigation?

19 A. I actually interviewed several other employees at
20 the actual Northridge Cinemas.

21 Q. Did you ever go anywhere else to try to get leads in
22 this case?

23 A. As far as?

24 Q. Mr. McQuarters home?

25 A. We ended up doing a search warrant at Mr. McQuarters

1 residence and also on Jacklyn Perez's vehicle, yes ma'am.

2 Q. What did you find during the search of both of those
3 places?

4 A. Nothing as far as the evidence that we were looking
5 for; nothing.

6 Q. What were you looking for?

7 A. Maybe like as far as like clothing, shoes, any --
8 there was stuff that was left behind like blood and
9 things like that, a weapon; things like that.

10 Q. But nothing was located?

11 A. No, ma'am.

12 Q. Investigator Seifert I have no further questions for
13 you at this time. Please answer any Mr. Bax may have.

14 THE COURT: Cross?

15 MR. BAX: Thank you, Your Honor. I hate to ask but
16 can I approach the bench please?

17 THE COURT: Sure.

18 [Whereupon, an off the record bench conference is
19 held]

20 THE COURT: Ladies and gentlemen please step in the
21 jury room. Don't discuss the case. I'll get you back
22 out here as quickly as I can.

23 [Whereupon, the jury exits at 2:50 p.m.]

24 THE COURT: We're at ease for a few minutes.

25 MR. BAX: Thank you, Your Honor.

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1 [Whereupon, court is in recess from 2:52 p.m. until
2 3:02 p.m.]

3 THE COURT: Are you ready?

4 MR. BAX: Yes, Your Honor. And just to let the
5 court know I just have a still from the interview. The
6 Solicitor's is looking at what I'm looking at. I'm just
7 going to show it to him and ask a question. My plan is
8 not to ask to introduce anything but as part of my cross
9 and I talked to them about that.

10 THE COURT: Anything else need to be on the record?

11 MS. CONCANNON: Not from the State, Your Honor.

12 THE COURT: Bring the jury please.

13 MR. BAX: Thank you, Your Honor.

14 [Whereupon, the jury enters at 3:04 p.m.]

15 THE COURT: All right ladies and gentlemen after
16 this witness is finished I'm going to have to send you
17 back out of the courtroom and discuss some issues. But
18 we're going to go ahead and finish this witness. All
19 right cross-examination.

20 MR. BAX: Thank you, Your Honor.

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1 CROSS-EXAMINATION

2 BY MR. BAX:

3 Q. Investigator Seifert I want to try to cover
4 something first here fairly quickly. During your direct
5 testimony you testified that you interviewed my client
6 over at the Hilton Head office correct?

7 A. Yes, sir.

8 Q. And in that office you have the ability to video
9 record what is going on in the interview rooms is that
10 correct?

11 A. That's correct.

12 Q. And those interviews are typically placed in
13 evidence is that correct as far as your evidence
14 custodian is with the Beaufort County Sheriff's Office?

15 A. Yes, sir.

16 MR. BAX: Approach the witness, Your Honor?

17 THE COURT: Yes, sir.

18 Q. [Mr. Bax] Investigator Seifert in your direct
19 testimony you said that my client had his hair in twists.
20 I just want to show you a picture still from that. Is
21 that the haircut that he had at that time? I've enlarged
22 it as much as I can.

23 [Whereupon, the witness is shown photograph]

24 A. Yes, sir.

25 Q. And so it's your testimony -- to me that looks like

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1 what he looks like right now as far as haircut but you're
2 saying that's twists?

3 A. It's a little bit longer but it's not like cornrows
4 if that makes any sense; that's not the style. But if
5 you see how the pattern is right here [indicates] those
6 are the small twists.

7 Q. And that's -- would you agree that's hard to make
8 out on this video, that it looks very short cut hair on
9 this video is that fair to say?

10 A. Correct. With his head like that you can see
11 actually the curvature of the different definitions of
12 his hair, yes.

13 Q. Okay. But you wouldn't call that ringlets would
14 you?

15 A. I don't know what the description or definition of
16 ringlets is I'm sorry, sir.

17 Q. Thank you investigator. I have some other questions
18 for you. I'm going to move on to some other subjects. I
19 appreciate it.

20 You've testified on your direct that this was a case
21 that was assigned to you on the following day basically
22 the afternoon of the 21st correct?

23 A. That's correct.

24 Q. Okay. And the incident that was alleged to have
25 happened, happened around 11 p.m. on the night of October

1 20th is that right?

2 A. That's correct.

3 Q. So by the time you talked to Mr. Snodgrass he had
4 been treated at least to some extent by medical staff
5 correct?

6 A. That's correct.

7 Q. And it had been I guess looked like maybe a little
8 over 24 hours but not quite 48 hours by that point?

9 A. That's correct.

10 Q. Now you also testified that as part of your
11 investigation you asked him for a list of who was working
12 at the theatre that night right?

13 A. Yes, sir.

14 Q. And he provided that to you at a later time.

15 A. That's correct.

16 Q. You also testified -- well, let me ask you this.
17 Mr. Snodgrass testified that he was out by Wednesday of
18 that week. Do you have any information that contradicts
19 that he was out by Wednesday evening? Does that sound
20 right to you?

21 A. I'm guessing yes, sir. What he said is what he
22 said.

23 Q. Okay. Now there were obviously more than just Mr.
24 **Minor 1** working at the theatre that night correct? The
25 list was not just one person right?

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1 A. That's correct.

2 Q. Okay. So at some point during your investigation
3 you decided to talk to Mr. Minor 1 correct?

4 A. That's correct.

5 Q. Out of all these other people that you had as
6 employees that were there that night correct?

7 A. He was my first, yes sir.

8 Q. Okay. And he was -- and this was as a result of
9 some investigation on your part into those names on that
10 list correct?

11 A. I didn't have all the names at the time, sir.

12 Q. Let me ask you this. Did you try to look into which
13 of these employees might have some kind of motive to set
14 up a robbery of Mr. Snodgrass and that's what led you to
15 Mr. Minor 1

16 A. No, sir.

17 Q. So in your report where you ask about who might have
18 problems with Mr. Snodgrass why is that in your report
19 then if that's what you put in your report?

20 A. I found out later through the interview of Mr.
21 Snodgrass that Mr. Minor 1 and him I guess there was an
22 issue between Mr. Minor 1 and Mr. Snodgrass.

23 Q. Okay. So when you had talked to Mr. Snodgrass
24 about these people and these names that's when you
25 learned that Mr. Minor 1 had had some issues with Mr.

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1 Snodgrass correct?

2 A. Yes, sir.

3 Q. Okay. And had you already talked to Minor 1 one
4 time by then or was it after that that you talked to
5 Minor 1

6 A. I believe it was after.

7 Q. So after that conversation with Mr. Snodgrass you
8 had a conversation with Minor 1 is that right?

9 A. I believe so.

10 Q. Now you testified that you had several interviews
11 with Mr. Minor 1 and they happened at different
12 locations is that right?

13 A. That's correct.

14 Q. Okay. Was the first location at Bluffton High
15 School?

16 A. Yes, it was.

17 Q. Where did that interview take place do you recall?

18 A. I do believe it's actually the -- it's right next to
19 the actual we call them S-R-O's, school resource officers
20 offices and it was like a little kind of a cafeteria
21 atmosphere right there.

22 Q. Okay. But it was near the S-R-O's office?

23 A. Yes, sir.

24 Q. Okay. And initially was the school resource
25 officer was he present for that initially?

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1 A. He was.

2 Q. Okay. At some point or another did [Minor 1] ask that
3 he step away and just talk to you privately?

4 A. He did. As a matter of fact Mr. [Minor 1] -- our
5 procedure is I like to have someone who is present when I
6 actually interview someone when they're actually a
7 juvenile.

8 I actually talk to a mother or father or legal
9 guardian just to have someone there. Once that was
10 established Mr. [Minor 1] did not wish to Officer Farelli
11 [phonetic] be present.

12 Q. Now did either you or Officer Farelli [phonetic] try
13 to contact Mr. [Minor 1] parents; mother or father, or
14 guardian?

15 A. I did before that.

16 Q. You did?

17 A. Yes, sir.

18 Q. And who was it his father or his mother?

19 A. I believe his mother. Can I check my notes?

20 Q. Yes, go right ahead.

21 [Whereupon, the witness reviews documents]

22 A. It was Ms. [Minor 1] which is Celeste Delaplane.

23 Q. Okay. And so his mother at that point knew that
24 you were going to talk to him. Did she know the subject
25 matter that you were going to talk to him about?

1 A. I told her it was in reference to an armed robbery.

2 Q. Okay. Now in your -- obviously -- let me ask you
3 this just so we can establish the background. As part of
4 your duties as a police officer and investigator do you
5 typically try to write up the things that you do in a
6 report form?

7 A. Yes, sir.

8 Q. Okay. And I know you and I we talk a lot. We
9 typically call them incident reports or supplemental
10 reports is that about right?

11 A. Yes, sir.

12 Q. Okay. And you did a number of those in this case
13 correct?

14 A. Yes, sir.

15 Q. Now the time that you spoke with Mr. Minor 1 at
16 the school that wasn't the only time you talked to him
17 right?

18 A. That's correct.

19 Q. You testified that you spoke with him also at the
20 Hilton Head office of the Sheriff's Department?

21 A. Yes, sir.

22 Q. And then later you spoke with him I think back at
23 the Bluffton High School but it was in the parking lot in
24 a vehicle is that right?

25 A. That's correct.

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1 Q. Which one was the last time you talked to him at the
2 Hilton Head office or in your vehicle?

3 A. Refresh ---

4 Q. --- go right ahead.

5 A. It was several times.

6 [Whereupon, the witness reviews documents]

7 A. The second time -- the first one was actually at the
8 high school when I talked to his mother. The second one
9 was actually at the Hilton Head office and then the third
10 one was at the high school again in the parking lot.

11 Q. Okay. And what was the date of that last
12 interview? Do you recall when that was, what day that
13 was?

14 A. November 6th, 2013 sir.

15 Q. Okay, right. And that's the one that indicates that
16 you met with Minor 1 in front of the Bluffton High School
17 and his father -- it says that you met with Minor 1
18 Minor 1 and his father in front of the Bluffton High
19 School is that accurate?

20 A. Yes, sir.

21 Q. Okay. Now when you say that was his father
22 standing there with y'all or was he in his car and Minor 1
23 got in your car? How did that happen?

24 A. He was actually outside of the vehicle. And so --
25 due that I had already talked to his son already prior

1 before that at the Hilton Head office with him being
2 present at the Hilton Head office he was outside of his
3 vehicle.

4 Q. Okay. And in your report you indicate that Mr.
5 **Minor 1** told you at that time after these multiple
6 interviews and his father standing there that the entire
7 robbery was set up by him and that he was sorry. That's
8 the language in your report. Is that accurate? That's
9 what he relayed to you at that time?

10 A. Yes, sir.

11 Q. Do you know where I'm referencing?

12 A. Yes, I believe on 11/6, yes sir.

13 Q. That's correct. So he relayed that to you at that
14 time correct?

15 A. Yes, sir.

16 Q. Okay. And Mr. **Minor 1** has not been charged with
17 anything to your knowledge is that correct?

18 A. No, sir.

19 Q. Now some of these interviews, I think all of these
20 interviews were recorded in some form or fashion correct?

21 A. Yes, sir.

22 Q. And the ones that weren't at the Hilton Head office
23 they were recorded with an audio only kind of device like
24 a tape recorder is that right?

25 A. At the Hilton Head office it would be video and

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1 audio.

2 Q. And then were you were at the high school it was
3 just audio right?

4 A. That's correct.

5 Q. Was it with your phone or was it with a micro
6 cassette recorder or something like that?

7 A. We have a mini recorder that we use ---

8 Q. --- a mini digital recorder?

9 A. Yes, sir.

10 Q. Okay. Investigator Seifert isn't it true when you
11 were interviewing at certain points when you were
12 interviewing Mr. **Minor 1** and he initially told you that
13 he didn't know what was going to happen and that he
14 didn't have anything to do with this you expressed to him
15 that you didn't believe those portions of his story
16 correct?

17 A. That's correct.

18 Q. And at one point when you were interviewing him at
19 the high school in the morning I think it was on the 5th
20 very early in the morning you advised him that if that's
21 what he was going to stick with you may have to go get
22 warrants or do what you had to do to do your job correct?

23 A. If I said that, yes sir.

24 Q. Okay. But ultimately there were never any warrants
25 to your knowledge issued for Mr. **Minor 1**

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1 A. No, sir.

2 Q. Despite the fact that he admitted that he set this
3 whole thing up?

4 A. That's correct.

5 Q. Additionally you know we've heard the testimony from
6 Mr. **Minor 1** as well as the other witnesses and yourself
7 he says it was Austin McQuarters, his friend Austin
8 McQuarters correct?

9 A. That's correct.

10 Q. Did you ever show him a photo lineup with Mr.
11 McQuarters in it?

12 A. No, sir.

13 Q. And was that based on the fact that Mr. **Minor 1**
14 said he knew Mr. McQuarters, he was friends with him?

15 A. That's correct.

16 Q. Okay. Additionally you also and in large part
17 because of what Mr. **Minor 1** told you developed Ms.
18 Jacklyn Perez as a suspect and somebody you wanted to
19 talk to correct?

20 A. Yes, sir.

21 Q. And you met with Ms. Perez at the Hilton Head branch
22 office of the Sheriff's Department as well correct?

23 A. I did sir.

24 Q. Okay. And I believe you've testified that
25 initially Ms. Perez denied knowing what was going on or

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1 having anything to do with this correct?

2 A. In the beginning yes, sir.

3 Q. Okay. And initially she also denied that she ever
4 saw Mr. McQuarters do anything or have him put anything
5 in her car correct?

6 A. That's correct.

7 Q. In fact Investigator Seifert she started denying
8 everything but then starting saying well yes, she knows
9 Mr. McQuarters and rode around with him that night but
10 nothing happened is that right?

11 A. That's correct.

12 Q. Now moving on after you had these conversations with
13 Mr. **Minor 1** who admitted he had set it up and Ms. Perez
14 who ultimately says Mr. McQuarters did it. I was there
15 but he did it. You go and you arrest Mr. McQuarters and
16 then bring him to the Hilton Head branch office to talk
17 to him correct?

18 A. Yes, sir.

19 Q. Okay. And you testified you read him his Miranda
20 rights and you went through the form and he signed the
21 form right?

22 A. Yes, sir.

23 Q. But his statement after the fact was that he didn't
24 have anything to do with any robbery correct?

25 A. That's correct.

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1 Q. And he never changed that part of his story? He
2 never changed that story at all in fact. He never said
3 he never changed and said yes I did. He said I did not
4 have anything to do with it correct?

5 A. My one and only interview yes, sir.

6 Q. Okay.

7 MR. BAX: Moment's indulgence, Your Honor.

8 THE COURT: Yes, sir.

9 MR. BAX: Thank you.

10 [Whereupon, Mr. Bax confers with Mr. Bell]

11 MR. BAX: Thank you very much, Your Honor.

12 Q. [Mr. Bax] No further questions at this time
13 Investigator Seifert. Thank you.

14 THE COURT: Redirect?

15 MS. CONCANNON: None, Your Honor.

16 THE COURT: All right. Thank you, sir. You may
17 step down.

18 THE WITNESS: Thank you, Your Honor.

19 [Whereupon, the witness is excused and exits the
20 witness stand]

21 THE COURT: Ladies and gentlemen as I told you I
22 need to cover a legal issue before you hear the next
23 witness. It will probably take close to 20 minutes. If
24 it's going to be substantially longer than that I'll send
25 word to you. Don't discuss the case. Follow the bailiff

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1 please.

2 [Whereupon, the jury exits at 3:20 p.m.]

3 THE COURT: Bring your witness in.

4 [Whereupon, Doctor Snowman comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]

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1 CLERK OF COURT: Be seated and state your full
2 name.

3 THE WITNESS: My name is Patrick Snowman.

4 THE COURT: Doctor, they're going to ask you some
5 questions outside the presence of the jury.

6 THE WITNESS: Okay.

7 THE COURT: Then depending on how things go we'll
8 have to bring you back in and have you sworn in front of
9 the jury okay.

10 THE WITNESS: That's fine.

11 THE COURT: All right, Solicitor?

12 MS. CONCANNON: Thank you.

13 - - - - -

14 PATRICK SNOWMAN,

15 Having been first duly sworn,

16 Was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. CONCANNON:

19 Q. Doctor Snowman at this I'm going to forego going
20 over your background and qualifications. At the
21 appropriate time we will do that. I wanted to speak more
22 specifically about this case. You were the treating
23 physician of John Snodgrass?

24 A. Yes.

25 Q. And where did that happen?

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1 A. It happened at Hilton Head Hospital in the emergency
2 department.

3 Q. Okay. When Mr. Snodgrass came to you what do you
4 remember?

5 A. I remember that he had sustained injuries from an
6 apparent assault and had several lacerations and obvious
7 injuries to his head and face.

8 Q. Okay. Do you remember if he had injuries anywhere
9 else on his body?

10 A. I believe he had some abrasions on his extremities;
11 his hand and knee.

12 Q. Could you describe these injuries to the court?

13 A. The injuries to his face and head were contusions
14 and lacerations. He also had some redness of the eye and
15 had scrapes and abrasions on the extremities.

16 Q. Okay. Doctor Snowman I'm going to show you some
17 pictures. Can you recognize those?

18 [Whereupon, the witness is shown photographs]

19 A. Yes.

20 Q. What do those depict?

21 A. These pictures depict the injuries to his -- the
22 first to the head and face. And these were the injuries
23 -- I believe these photographs were after I had attended
24 to the patient and repaired them. The injuries
25 demonstrate both a contusion component with blunt force

1 trauma and also the type of lacerations suggests that
2 there was an object other than a simple fist that caused
3 these injuries.

4 As far as the injuries on the hand that appears to
5 be a scrape from an object that has an edge to it rather
6 than an abrasion from asphalt or something of that
7 nature.

8 Q. Okay. I'm going to ask you to dumb it down a
9 little bit for us. You mentioned blunt force trauma.
10 When you see injuries caused by blunt force trauma what
11 do you typically see?

12 A. Injuries from blunt force trauma typically cause
13 swelling and bruising. And in many cases they don't
14 cause a laceration or an abrasion of the skin. They can
15 and when they do that those injuries tend to be
16 irregularly shaped, circular or stellar star shaped
17 sometimes we call it.

18 And they frequently have pieces of tissue under the
19 skin still connecting the tissue together as opposed to
20 non-blunt force trauma where there is more of a linear
21 laceration or a straight laceration.

22 Q. Okay. And what did you observe and treat in Mr.
23 Snodgrass's injuries?

24 A. Mr. Snodgrass on the face and head had injuries that
25 were consistent with having been struck by something

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1 other than just blunt force.

2 Q. So something other than a fist?

3 A. Something other than a fist.

4 Q. So these injuries that you sutured those are the
5 injuries you are speaking of?

6 A. Yes.

7 Q. And to a degree of medical certainty can you testify
8 here today your opinion that these injuries were caused
9 by something other than a fist?

10 A. Yes.

11 Q. I have no further questions for you at this time.
12 If you can answer any Mr. Bax may have.

13 THE COURT: Cross?

14 MR. BAX: Thank you, Your Honor.
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1 CROSS-EXAMINATION

2 BY MR. BAX:

3 Q. Doctor Snowman, am I saying that correctly?

4 A. Yes.

5 Q. Thank you. Doctor Snowman you were the one that or
6 you were the physician that treated Mr. Snodgrass
7 initially when he was brought to the Hilton Head Hospital
8 correct?

9 A. Yes.

10 Q. At some point he was transferred to a hospital in
11 Savannah is that correct?

12 A. Yes.

13 Q. Okay. Now Mr. Snodgrass testified today it was
14 only a couple of hours. Do you know how long he was at
15 Hilton Head?

16 A. It was within that range.

17 Q. It was within a couple of hours?

18 A. It was a few hours, uh huh.

19 Q. And typically during your -- when you treat someone
20 there is ways you document that. We call them medical
21 records is that right?

22 A. Yes.

23 Q. And those records generally indicate what you --
24 maybe a diagnosis of the problem and what was used to
25 treat the problem is that correct?

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1 A. Yes.

2 Q. Now in the medical records in this case there is no
3 mention of blunt force trauma or an opinion as to whether
4 an object is used is that correct?

5 A. I'd have to have the record.

6 Q. I can hand it up to you. I don't know if you can
7 get to it right away or if it will take you some time.

8 A. I mean I'm familiar with the records so I can refer
9 to my physical exam and my medical decision making and
10 tell you pretty quickly.

11 Q. Okay.

12 MR. BAX: Approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 [Whereupon, the witness is shown documents]

15 Q. [Mr. Bax] Can you tell me in here where you
16 specifically if you ever reference an opinion in those
17 medical records that it was trauma caused by an object
18 that was not a fist?

19 A. I did describe under the physical exam lacerations
20 that were described as linear and V-shaped. I also
21 describe complex left -- that's facial fractures; excuse
22 me.

23 So there is no specific mention of blunt force
24 trauma or -- I can't remember exactly what you asked but
25 there is no specific mention using that terminology.

1 Q. Thank you, doctor. I always like it when I realize
2 I have read something correctly. It's not always that
3 that happens.

4 So yes there is a mention of linear lacerations,
5 linear and V-shaped but there is no specific mention that
6 those equal or could equal an object other than a fist
7 correct, in these medical records?

8 A. Not that I could find.

9 Q. Okay. Thank you, doctor. Now additionally you've
10 testified that there was an indication of fractures but
11 that was something that was as a result of x-rays is that
12 correct?

13 A. Yes.

14 Q. Okay. And based on my reading and you correct me
15 if I'm wrong that was in part why Mr. Snodgrass was
16 transported to Savannah is that correct?

17 A. Not particularly. The reason that he was
18 transferred to Savannah was because of the presence of
19 bleeding within the brain cavity.

20 Q. Okay. Now you've also testified that blunt force
21 trauma generally there is not lacerations but there can
22 be lacerations correct?

23 A. Correct.

24 Q. We see this a lot in the sport of boxing for
25 example. People can get cuts in boxing and they bleed

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1 and if they can't stop bleeding they have to stop the
2 match right?

3 A. That's right.

4 Q. And that can be based on the force of the hit
5 actually causing the skin to separate correct?

6 A. Yes.

7 Q. Now you've also testified that and the Solicitor
8 used this language you are here today to say that to a
9 reasonable degree of medical certainty you can testify
10 that these wounds were made by something other than a
11 fist is that correct?

12 A. Yes.

13 Q. Okay. Let's talk about that just for a second.
14 When you say that are you saying that you can exclude --
15 you're saying to a reasonable degree of medical certainty
16 that excludes any other possibility or is that or is
17 there a possibility that that is incorrect?

18 A. To clarify some of the wound pattern the swelling
19 the bruising is consistent with being hit with fists or a
20 blunt force.

21 But with respect to the lacerations themselves I
22 don't believe that those are possibly consistent with
23 being hit just with a fist.

24 Q. So there is no -- what you're saying is there is no
25 way those could be consistent with just a fist being

1 used, the lacerations?

2 A. Not in my opinion, no.

3 Q. Now let me ask you this doctor. And this may be
4 just a misconception that I've had, okay. My
5 understanding has always been that blunt force trauma can
6 be achieved by things other than a fist; that it's just a
7 blunt object that is not bladed or sharp using to strike
8 somebody. Is that an incorrect definition?

9 A. No, I think that's correct.

10 Q. So when a doctor talks about blunt force trauma he's
11 not always just talking about a fist?

12 A. Correct.

13 Q. Okay. So in this situation you're talking about
14 blunt force trauma caused by a fist is not what you think
15 happened?

16 A. No, that's not what I'm saying. I think blunt force
17 trauma with a fist is consistent with some of the
18 injuries; the bruising, the swelling but not all of the
19 injuries in particular the lacerations.

20 Q. Now doctor is it possible that these lacerations
21 could have occurred -- let me ask you this. Based on
22 your examination and based on the science that you know
23 is there any way to determine the time of each of those
24 injuries i.e. the swelling and the lacerations? Is there
25 any way scientifically to say they occurred at the exact

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1 same time?

2 A. I think again with a reasonable degree of certainty
3 they occurred at the same time. They were fresh, they
4 were oozing blood, they had the appearance of being acute
5 injuries as did the bruising and the swelling of the
6 face.

7 Q. Last question Doctor Snowman. Obviously we've
8 looked at the medical records that I have. Have you
9 issued any other written report stating these findings
10 about what you believe the wounds are consistent with?

11 A. No.

12 MR. BAX: Moment's indulgence, Your Honor.

13 THE COURT: Yes, sir.

14 [Whereupon, Mr. Bax and Mr. Bell confer]

15 MR. BAX: No further questions, Your Honor. I do
16 have some matters of law.

17 THE COURT: Do you have any follow-up?

18 MS. CONCANNON: No follow-up questions, Your Honor.

19 THE COURT: Doctor, can I get you to wait back
20 outside?

21 THE WITNESS: Sure.

22 [Whereupon, the witness exits the witness stand]
23
24
25

1 THE COURT: Yes, sir?

2 MR. BAX: Thank you, Your Honor. My objection to
3 this would be two-fold. The first, Your Honor, would be
4 that -- well I guess it's really just wraps into one
5 issue. By way of background, Your Honor, I was notified
6 that Doctor Snowman was going to testify to this opinion
7 late last week. I believe it was either Thursday or
8 Friday.

9 MS. CONCANNON: Friday.

10 MR. BAX: Friday. Ms. Concannon did tell me that
11 he was going to testify that the wounds were consistent
12 with an object being used other than just a fist. I
13 didn't express necessarily what my opinion was at the
14 time. I did ask her if it was the same doctor who
15 treated him and she said yes. I did have the medical
16 records. I went back and looked at the medical records
17 in preparation for trial over the weekend.

18 I asked him about while there is some description of
19 the lacerations as linear and I think one place it says
20 V-shaped there is no opinion in the medical records about
21 it being consistent with or even to a degree of medical
22 certainty that it was an object used and not just a fist.
23 In consultation with co-counsel I realized I have to to
24 protect my client's rights object to this on the basis of
25 discovery. I know that the doctor has said he did not

1 issue any written report. And I understand without a
2 written report it is not necessarily discoverable.
3 However, as Your Honor is well aware the rules do talk
4 about the fact that when an expert witness is going to be
5 used the other side needs to be notified in time to be
6 able to prepare especially if it may involve exploring
7 the idea of getting their own expert to refute.

8 I have known about this since Friday. Because he's
9 offering an opinion that establishes an element of the
10 offense here i.e. that an object was used which goes to
11 the element of armed for armed robbery it is an essential
12 part of the State's case. As you have heard from what
13 has been presented by the State thus far there is no
14 object brass knuckles or otherwise that we expect to see
15 in this trial; none were recovered. There is no weapon.

16 You've also I'm sure heard that no one saw a weapon.
17 At this point the testimony has been what it is and there
18 is no one that's testified to seeing a weapon. So this
19 is the last opportunity the State has to get some
20 testimony in to support the idea that there is a weapon.
21 I have to object to this point that it's not admissible
22 testimony. I think his testimony he was the treating
23 physician and what he treated may be admissible because I
24 was aware of that. But this opinion of his that he is
25 here offering today is the -- the first I heard of that

1 was on Friday and the fact that he's able to testify to a
2 reasonable degree of medical certainty the first time
3 I've heard that is today. I have to object and ask that
4 it be ruled inadmissible by the court. It's too late to
5 come up with an expert to put a weapon in my client's
6 hands on Friday before trial.

7 THE COURT: Anything else on your objection?

8 MR. BAX: No, Your Honor.

9 THE COURT: Yes, ma'am?

10 MS. CONCANNON: Thank you, Your Honor. I'd refer
11 the court to State v Northcutt a South Carolina Supreme
12 Court case 372 S.C. 207. It's a 2007 case. It
13 specifically talks about expert witness and more
14 specifically saying that they do not have to generate a
15 report. The facts here are a little bit different from
16 Northcutt in that Doctor Snowman did generate a report.
17 He was the attending physician of Mr. Snodgrass that
18 night.

19 And the medical report has been in the possession of
20 Mr. Bax since -- for probably six months by now. This is
21 not the first time this case has been called for trial.
22 Doctor Snowman's name is not new to the case. He has
23 been there since the inception of the case. I did not --
24 I was unable to meet with Doctor Snowman personally until
25 last Thursday night. I actually went to Hilton Head

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1 after hours and met with him at the hospital there before
2 he started his night shift. That is where he told me
3 that the wounds were consistent with being hit with some
4 sort of object other than a fist. The next morning first
5 thing I called Mr. Bax and I told him everything that
6 Doctor Snowman had told me. I said he is not generating
7 a report about this. This is me disclosing it to you.

8 I just asked him -- we just asked him today about
9 the degree of medical certainty because that is what Mr.
10 Bax was wondering so his testifying to that just came out
11 today. But Mr. Bax had the same opportunity to speak
12 with Doctor Snowman as I did. His name is not new and I
13 disclosed everything to him that I have learned from
14 Doctor Snowman as soon as I could.

15 THE COURT: Are you still maintaining your
16 objection under Jones?

17 MR. BAX: Well Your Honor, I didn't -- the problem
18 was that based on what I had been told by the Solicitor
19 in this case was that his testimony was merely going to
20 be that it was consistent with and based on my reading of
21 Justice Beatty's discussion of the language consistent
22 with that doesn't necessarily rise to the level of
23 admissibility. But the doctor has come in here and
24 testified on proffer today that he is going a step beyond
25 that. That he is saying to a reasonable degree of

1 medical certainty that it is an object not a fist. He's
2 going even beyond that. The problem I have, Your Honor
3 is this doctor issued medical records months ago and I
4 think he should be held to those medical records because
5 he gives no opinion such as that in those medical
6 records.

7 Now I'm provided this from a treating ER or an
8 emergency doctor with no opinion as to the object used
9 and now the State says that I need to be proactively
10 going out and talking to the doctors to find out if they
11 might have more opinions to offer. I don't think that
12 burden has ever been laid on either the State or the
13 defense as far as going out and finding out if there is
14 more and if I don't then I'm stuck with it.

15 The problem is he's offering opinion testimony, very
16 strong opinion testimony that establishes an element of
17 this case; something that Ms. Concannon says she goes and
18 talks to him seeking that information out. She asked
19 about his opinion about that when it was not in the
20 medical records. If it had been in the medical records
21 she wouldn't have needed to go ask him because she would
22 have already had it in writing; it wasn't in there. And
23 now we're faced with him establishing an element of the
24 case on Friday the week before trial without which they
25 wouldn't have probably been able to get by D-V. And for

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1 me not to have the opportunity to examine whether or not
2 another equally qualified medical expert would agree with
3 that opinion in order to protect my client's rights means
4 I can't be effective in representing him.

5 THE COURT: Anything else need to be on the record?

6 MS. CONCANNON: Your Honor, the State just contends
7 that Mr. Bax has had the name of Doctor Snowman since the
8 get go of this case. If he wanted to offer a dueling
9 expert he's had equal opportunity to get one. I told him
10 what I knew as soon as I knew it. I wasn't going to call
11 him Thursday night. I called him Friday morning instead.
12 And today is the first time I've asked the specific words
13 of degree of medical certainty to Doctor Snowman and it
14 was actually at the request of Mr. Bax. And again I
15 would refer to the Northcutt case that Doctor Snowman is
16 not required to generate a report.

17 THE COURT: Okay. Bear with me a few minutes.

18 [Whereupon, the court reviews documents]

19 THE COURT: I just have to make a ruling in -- as
20 far as the question about the discovery issue I don't see
21 anything in the rules that requires the State to produce
22 the information other than in the method that they
23 provided it. What is more troubling to me though is the
24 issue about whether the witness can testify and give an
25 expert opinion about what caused the wounds. Now nothing

1 I'm about to say should be interpreted as saying that you
2 can't argue common sense to the jury. We've had a line
3 of cases recently dealing with experts in the field of
4 forensic interviewing. And in that field I believe the
5 Supreme Court has announced very clearly a principle that
6 applies to other types of experts. The first of those
7 principles is that if you let an expert testify and give
8 an opinion most likely the jury is going to give that
9 great weight.

10 And what I've got here was that the proffer that was
11 made I'm assuming he is a licensed medical doctor. I'm
12 assuming that he is an emergency room doctor. If I make
13 all those types of assumptions which are nothing but
14 assumptions and I'm not saying I'm permitted to make
15 those assumptions. But even if I assume those things I'm
16 looking at the standards that are required for the
17 admission of expert testimony.

18 Now -- and I'm pinpointing this to the opinions
19 related to the cause of the injuries. I don't have any
20 evidence about publications or peer reviews of any
21 techniques used to determine this. I don't have any
22 quality control procedures in place that I know about. I
23 don't know of any application of the method of the type
24 of evidence involved in the case. I don't know anything
25 about the consistency of the method that would recognize

1 scientific laws and procedures. If I had that I would
2 still have to do a Rule 403 analysis. The prejudicial
3 effect of this in this case is highly -- is high I should
4 say. If the doctor is allowed to testify to the jury
5 that these injuries were caused by something other than a
6 fist that goes, and this is the reason the State is
7 offering it, it goes to the heart of the case; certainly
8 to the heart of certain elements of the case but it's
9 highly prejudicial.

10 And to make this as short as I can because I didn't
11 anticipate this coming up I'm not able to find based on
12 the in camera review that there is any science related to
13 determining the cause of a certain wound. We know if
14 it's a clean cut that goes in the skin and it damages an
15 organ by a clean cut three inches inside the skin that's
16 most likely caused by a knife or something or some sharp
17 object.

18 But in this instance I've got no methodology,
19 nothing about how he studied about how to know what a
20 wound is caused by this or that. I just can't let it in;
21 that part of his opinion. Go ahead.

22 MS. CONCANNON: Your Honor, if I may Doctor Snowman
23 can testify to his experience in treating wounds in the
24 emergency room and how long he's been there ---

25 THE COURT: --- well, you didn't offer it.

1 MS. CONCANNON: Your Honor, can I offer it now?

2 THE COURT: You can but the ruling is probably
3 going to be the same unless he tells me he went through a
4 specific curriculum dealing with this. You're welcome to
5 offer whatever you want to offer.

6 MS. CONCANNON: He's not going to say he's a wound
7 care expert but he's an expert in emergency -- I would
8 attempt to qualify him as an expert in emergency
9 medicine. And being an expert in emergency medicine
10 being in the ER he sees wounds of different sorts. After
11 all these years he's able to identify the different
12 characteristics of these wounds. And it's with his
13 skill, his knowledge of observing all of this day in and
14 day out that he is able to look at a wound and identify
15 whether it's blunt force trauma or not blunt force
16 trauma.

17 And that is what the State would elicit from him is
18 that this -- these wounds are both blunt force trauma and
19 not blunt force trauma. I would not ask him what object
20 caused these abrasions, these cuts, these marks; just
21 describe the type of trauma that you observed and you
22 treated. And I have his C.V. Your Honor as well if you
23 would like to look at it.

24 THE COURT: I rule on what is presented to me. If
25 you want to present anything to me I'll be happy to

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1 consider it. If you want to make your proffer I'd be
2 happy to give you the opportunity to do it.

3 MS. CONCANNON: Well, Your Honor, I'd like to call
4 Doctor Snowman back to the stand.

5 THE COURT: Bring him back in.

6 [Whereupon, Doctor Snowman comes forward]

7 THE COURT: Doctor, you're still under oath. Would
8 you take a seat up here? They're going to ask you some
9 more questions. Mr. Bailiff, would you tell the jury
10 it's going to be another 20 minutes or so?

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1 PATRICK SNOWMAN,

2 Having been previously duly sworn,

3 Was examined and testified as follows:

4 ADDITIONAL DIRECT EXAMINATION

5 BY MS. CONCANNON:

6 Q. Doctor Snowman, where do you work?

7 A. I work at the Hilton Head hospital.

8 Q. And in what capacity do you work there?

9 A. I'm an emergency physician.

10 Q. Do you have to have some sort of specialized
11 education or training to work in a hospital?

12 A. Yes.

13 Q. Could you please tell the court what education and
14 training you received?

15 A. I have an undergraduate degree in Chemistry. I went
16 to medical school at the Medical College of Pennsylvania
17 for four years after which I completed a residency
18 program in emergency medicine also at the Medical College
19 of Pennsylvania and affiliated hospitals. So that was a
20 seven year process of emergency medicine training.

21 Q. Okay. During the seven year process of emergency
22 medicine training were you trained in wound care or how
23 to deal with certain wounds or lacerations that may come
24 through the ER?

25 A. Yes.

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1 Q. Okay. Can you explain that?

2 A. Part of emergency medicine is dealing with wounds on
3 a virtually daily basis that includes the assessment of
4 wounds, the exploration of wounds and the appropriate
5 repair and treatment of wounds.

6 Q. And why are you educated on the appropriate repair
7 and treatment of wounds?

8 A. Because it's a very common presenting complaint in
9 the emergency department and there are a lot of different
10 varieties of wounds and the nature of the wound itself
11 will determine how it is treated and managed acutely as
12 well as how the follow up is recommended.

13 Q. So as an ER doctor you had to first be able to
14 identify the wound you're dealing with in order to treat
15 it?

16 A. Correct.

17 Q. After you did your seven years of schooling what did
18 you do next?

19 A. I was following my residency training and board
20 certification I was on active duty in the United States
21 Army for four years followed by a four year Ready Reserve
22 obligation. I was discharged honorably as a Major and in
23 2004 my family and I moved to Hilton Head where I have
24 been a practicing emergency physician since that time.

25 Q. So you've been in Hilton Head since 2004?

1 A. Correct.

2 Q. Eleven years or so?

3 A. Uh Huh.

4 Q. Have you worked at the Hilton Head hospital since

5 then?

6 A. Yes.

7 Q. In the emergency room department?

8 A. Yes.

9 Q. On an estimate how many wounds do you think you have

10 treated in those eleven years?

11 A. Hundreds if not thousands.

12 Q. And in each of those cases do you first identify the

13 type of wound and then proceed with treatment?

14 A. Yes.

15 Q. Because it depends on the type of wound before you

16 can treat it?

17 A. Correct.

18 Q. Do you hold any licenses?

19 A. I have a South Carolina medical license and I also

20 have a board certification through the American Board of

21 Emergency Medicine.

22 Q. Are you a member of any professional associations or

23 activities?

24 A. I'm a Fellow of the American Academy of Emergency

25 Medicine.

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1 Q. Have you ever published anything?

2 A. No.

3 Q. Do you ever rely on publications in your medical --
4 when you are performing medical duties?

5 A. Yes.

6 Q. Okay. And is it consistent and scientifically
7 recognized publications that you follow?

8 A. Yes.

9 Q. Did you learn or do you follow up with wound care in
10 some of these publications?

11 A. Yes.

12 Q. And is it recognized in the medical field?

13 A. Yes.

14 Q. What are some of these publications?

15 A. The American Journal of Emergency Medicine, The New
16 England Journal of Medicine; there are enumerable
17 journals.

18 Q. So you keep up to date with those journals?

19 A. That's correct.

20 Q. Okay.

21 MS. CONCANNON: Moment's indulgence, Your Honor.

22 THE COURT: Yes, ma'am.

23 [Whereupon, Ms. Concannon confers with Ms. Lempesis]

24 MS. CONCANNON: I have no further questions.

25 MR. BAX: Thank you, Your Honor.

2 BY MR. BAX:

5	A.	None.

8	A.	No.

13 | A. Specific courses in that?

14	Q. Yes?

15	A. None.

19 A. I don't follow any publications that are specific to
20 forensic analysis of wounds.

23	A.	No.

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1 A. No.

2 Q. You have testified that the training and experience
3 that you have has to deal with identifying the wound in
4 order to be able to treat it correct?

5 A. Yes.

6 Q. Your job is to find this wound and treat this wound
7 so that the person can get better, right; I mean to
8 simplify it?

9 A. Right.

10 Q. Doctor, the linear versus circular pattern of a
11 laceration do you treat those specifically differently
12 other than the fact that the stitches have got to make a
13 turn versus going straight?

14 A. Sometimes.

15 Q. The object that made those shapes does that impact
16 how you treat a laceration other than the fact that it
17 made a shape?

18 A. It may, yes.

19 Q. How would it impact it?

20 A. It may impact it in terms of the extent to which the
21 wound is explored or investigated further like through x-
22 rays because of concern for foreign body or underlying
23 fracture. It may depend on the type of suture technique
24 that is used whether sutures are subcutaneous or sutures
25 that are dissolvable sutures are used. It may impact

1 whether for ongoing treatment whether antibiotics are
2 used or not. So there are many different variables that
3 come into play depending on the nature of the wound and
4 where the wound is and how large it is etcetera.

5 Q. And so those things are focused on making sure that
6 you accurately and adequately treat the wound correct?

7 A. Evaluate and treat the wound correct.

8 Q. Okay. Doctor Snowman, can you tell me how many
9 times you've been able to accurately say exactly what
10 object was used to inflict a wound where the object was
11 then found and you could confirm your findings?

12 A. I'm not sure what the question is.

13 Q. Let me ask you this. You are offering an opinion to
14 identify what caused a wound one thing versus another.
15 Can you tell me how many times you've accurately done
16 that in the past and what publications you've put them
17 in?

18 A. First of all I've not published anything so none.
19 In terms of I can tell you that having taken care of
20 hundreds or thousands of wounds that there are patterns
21 that I recognize that I've been able to corroborate with
22 whether those wounds were produced by blunt objects or
23 objects other than blunt objects. I can't give you a
24 number but it's many.

25 Q. Okay. These opinions about the objects who peer

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1 reviewed those opinions?

2 A. There is a peer review process through the hospital
3 for cases that require peer review but other than that
4 there's no mandatory peer review for every single case.

5 Q. Doctor Snowman how many times have you testified in
6 court?

7 A. I believe it's three times.

8 Q. And of those three times does that include today,
9 sir?

10 A. Yes.

11 Q. Of those three times let's exclude today. Of those
12 two other times how many were in criminal cases?

13 A. One.

14 Q. One. Let me ask you this. Were you qualified as a
15 forensic expert in either of those cases versus a medical
16 expert?

17 A. No.

18 Q. Okay.

19 MR. BAX: Moment's indulgence, Your Honor.

20 THE COURT: Yes, sir.

21 MR. BAX: Thank you, Your Honor.

22 [Whereupon, Mr. Bax confers with Mr. Bell]

23 MR. BAX: Your Honor, no further questions at this
24 time.

25 THE COURT: Any other questions of the witness?

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1 MS. CONCANNON: No, Your Honor.

2 THE COURT: Doctor, I need to ask you to step back
3 out.

4 [Whereupon, the witness exits the witness stand]
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1 THE COURT: Anything else need to be put on the
2 record?

3 MS. CONCANNON: Your Honor, the State would just
4 argue that we think the testimony is highly probative.
5 It's more probative than prejudicial. It goes to an
6 element of the offense charged. We went through Doctor
7 Snowman's credentials. He did say that he has treated
8 hundreds if not thousands of wounds in his years of being
9 an ER physician. He stated that he received specialized
10 training in the wound care while he was in school. He
11 stated that he needs to be able to identify the type of
12 wound before he can know how to treat it. And that is
13 what he did in this instance. That is what he does.

14 He stated some of his cases are subjected to peer
15 review but of course not every single one of his patients
16 are. The State would just contend that we would not of
17 course ask him what object was used; he wasn't there, he
18 doesn't know the answer to that. More importantly the
19 injuries are blunt force trauma as well as linear
20 abrasions. We just feel that it is highly probative to
21 the facts of this case.

22 MR. BAX: Thank you, Your Honor. I think -- well I
23 don't think I know the defense submits Your Honor that
24 this doesn't pass muster under the Jones case or any of
25 the requirements that Your Honor has read. The doctor

1 while he has obviously treated a lot of people in
2 emergency medicine and he's an emergency doctor he's not
3 a forensic pathologist. He's not a forensic doctor.

4 The problem is he can't offer testimony that is
5 backed up by any of the requirements in our State for
6 admissibility of scientific opinion testimony to identify
7 that it was a hard linear object. He doesn't have any
8 training in that. He has no peer review. He has no
9 publications. He has not followed any science or
10 participated in any science that's specifically deals
11 with identifying objects that caused the wound.

12 The problem is is that his science is in the wrong
13 place. They are offering him for something that I don't
14 think they can offer him for. He's testified that he's
15 only testified in one other criminal case other than the
16 one here today and that he's not been qualified as any
17 kind of forensic expert. They're not offering his
18 testimony for the purpose of establishing that Mr.
19 Snodgrass had wounds and that they were of a certain
20 nature. They're offering him to show that the object
21 used was a weapon in order to establish an element of
22 armed robbery. And I don't think that that is admissible
23 testimony.

24 THE COURT: Anything else?

25 MS. CONCANNON: Your Honor, I just want to add that

1 if Your Honor is inclined to allow the State to elicit
2 the testimony we would be avoiding the word forensic. He
3 would be qualified as an expert in emergency medicine
4 avoiding the word forensic at all.

5 THE COURT: The use of the word is not what
6 concerns me. I don't want anybody to misunderstand. I
7 haven't heard anything that would disallow him testifying
8 about the description of the wound, whether the surface
9 was smooth, whether it was jagged, whether it was tissue
10 underneath it; those sorts of things.

11 The problem that I see is in reading counsel and the
12 Jones factors and reading the rule of evidence that deals
13 with expert testimony I don't see how I can let him
14 testify about the cause of the wound. Now taken away
15 from this case if you have somebody who is struck by
16 something and then falls and hits something that -- the
17 fall and the hitting of something can cause the wound.
18 It doesn't mean that the person who inflicted the initial
19 blow necessarily used any type of device.

20 That's when you get into forensics. That's why
21 those people have all that extra training and experience.
22 I don't doubt that he is a fine emergency room doctor but
23 I got a real legal issue about letting him testify that
24 these wounds this wound was caused by this when he hasn't
25 told me one thing about what courses he took that would

1 qualify him to make that assessment, what review has been
2 done of any of his assessments, whether there is any
3 books in the field that deal with this. I just can't do
4 it. It is very probative. It is highly prejudicial. It
5 goes to the essence of one of the elements of the case.

6 I've got to apply the law. I don't get to make this
7 stuff up. And in the old days I promise you this stuff
8 would come in every day. But it just -- it came in every
9 day and there were problems with it. Later down the road
10 it was discovered there were problems with it.

11 Just seeing something and making assessments by rote
12 is not the same as scientific research, peer review, and
13 quality control. We don't have it here; I can't let it
14 in. Do y'all want to talk to him before I tell him what
15 he cannot go into?

16 MS. CONCANNON: Your Honor, I would just like to
17 clarify for my purposes of questioning for Doctor Snowman
18 am I going to be allowed to qualify him as an expert in
19 emergency medicine?

20 THE COURT: I would hope so.

21 MS. CONCANNON: And the line of questioning will he
22 be allowed to explain different types of wounds he
23 treats?

24 THE COURT: I don't know. I'm not trying to be coy
25 but...

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1 MS. CONCANNON: I'm just trying to be careful, Your
2 Honor.

3 THE COURT: The doctor is not going to be allowed
4 to testify that this is blunt force trauma and this is
5 caused by some object and not blunt force trauma. I
6 don't know -- I've never met the gentleman. Hopefully I
7 never will have an incident on Hilton Head where I have
8 to come in contact with him professionally.

9 I don't know how to rule in a vacuum; I'm sorry.
10 I'm really not trying to be coy. But I'll be happy to
11 give you some time to talk to him and figure out. He can
12 describe the wound as far as what he sees. When he says
13 that's blunt force trauma, that's not blunt force trauma
14 he cannot do that.

15 MS. CONCANNON: That's where the problem lies?

16 THE COURT: Yes.

17 MS. CONCANNON: So I can show him those pictures
18 and he can describe what he sees excluding the words
19 blunt force trauma, non blunt force trauma?

20 THE COURT: I don't know. I can't give advisory
21 rulings. I'm prohibited from doing that. I have to rule
22 on what is brought before me. I'm really not trying to
23 be difficult. I'll give you -- just tell me when you're
24 ready. And if an issue arises if they raise an
25 objection I'll rule and if it declares a mistrial we'll

1 declare a mistrial.

2 MS. CONCANNON: If I could just have five minutes?

3 THE COURT: Sure. You can have more than that if
4 you need it; just let me know.

5 MR. BAX: Thank you, Your Honor.

6 [Whereupon, court is in recess from 4:10 p.m. until
7 4:27 p.m.]

8 THE COURT: Be seated please. Is the State ready
9 for the jury?

10 MS. CONCANNON: Yes, Your Honor.

11 THE COURT: The defense ready?

12 MR. BAX: Yes, Your Honor.

13 THE COURT: Do I need to say anything to the doctor
14 about the ruling or did y'all cover that with him?

15 MS. CONCANNON: I've clarified what he's allowed to
16 testify to, Your Honor.

17 THE COURT: Thank you very much. Bring the jury
18 please.

19 [Whereupon, the jury enters at 4:28 p.m.]

20 THE COURT: Call your next witness please.

21 MS. CONCANNON: Thank you, Your Honor.

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State v Austin McQuarters
Patrick Snowman-Direct Examination by Ms. Concannon
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1 MS. CONCANNON: The State calls Doctor Patrick
2 Snowman.

3 [Whereupon, Doctor Snowman comes forward]

4 THE COURT: Doctor, please come up and have the
5 clerk swear you.

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: Please be seated and state your
9 full name.

10 THE WITNESS: My name is Patrick Snowman.

11 - - - - -

12 PATRICK SNOWMAN,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. CONCANNON:

17 Q. Doctor Snowman, where are you currently employed?

18 A. At Hilton Head hospital.

19 Q. And in what capacity do you work at Hilton Head
20 hospital?

21 A. I'm an emergency physician.

22 Q. Did you have to have some specialized training or
23 education to become an emergency physician?

24 A. Yes.

25 Q. Can you please explain some of that?

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1 A. I have an undergraduate degree in Chemistry followed
2 by four years of medical school at the Medical College of
3 Pennsylvania in Philadelphia where I also completed a
4 three year residency in emergency medicine at that
5 hospital and affiliated hospitals.

6 Q. When did you start working on Hilton Head?

7 A. I started on Hilton Head in 2004.

8 Q. In the emergency room department?

9 A. Yes.

10 Q. Are you a member of any professional associations?

11 A. I'm a Fellow of the American Academy of Emergency
12 Medicine and I'm board certified through the American
13 Board of Emergency Medicine.

14 Q. How long have you been an emergency room physician?

15 A. I've been board certified since 2000, so 15 years.

16 Q. And you primarily work at Hilton Head hospital?

17 A. Yes.

18 Q. Do you work all hours, different shifts?

19 A. I do work different shifts but I primarily work the
20 night shift, which is 7 p.m. to 7 a.m.

21 Q. Okay.

22 MS. CONCANNON: Your Honor, at this time the State
23 requests that Doctor Snowman be admitted as an expert in
24 emergency medicine.

25 THE COURT: Voir Dire?

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1 MR. BAX: No Voir Dire, Your Honor. No objection.

2 THE COURT: All right. He is so recognized as an
3 expert in the field of emergency medicine.

4 MS. CONCANNON: Thank you, Your Honor.

5 Q. [Ms. Concannon] Doctor Snowman, were you working the
6 night of October 20th, 2013?

7 A. Yes.

8 Q. And did you treat a patient by the name of John
9 Snodgrass?

10 A. Yes.

11 MS. CONCANNON: Your Honor, if I might ask the
12 witness to step down?

13 THE COURT: Sure. Just keep your voice up. This
14 lady has to take down everything we say. You have to
15 talk to the jury but she has to be able to hear you.

16 THE WITNESS: Okay.

17 [Whereupon, the witness steps down from the stand]

18 Q. [Ms. Concannon] Doctor Snowman I'm going to show you
19 a couple of pictures that have already been admitted as
20 State's 4, 5, and 7. Can you please tell the jury what
21 you see in this picture?

22 [Whereupon, the witness is shown photograph]

23 A. This is a profile picture of Mr. Snodgrass that
24 shows several different injuries. It shows contusions or
25 bruising which you can tell by the swelling, redness and

1 discoloration on his cheek and around his eye. It also
2 shows some superficial abrasions on the neck area. It
3 also shows several discrete lacerations which were linear
4 lacerations with sharp well-defined edges.

5 Q. And the next picture what does that picture show?

6 [Whereupon, the witness is shown photograph]

7 A. This is a picture of his hand which shows some
8 scrapes that appear to have a linear pattern to them.

9 Q. Okay. And the next picture?

10 [Whereupon, the witness is shown photograph]

11 A. The next picture is a front-on picture which also
12 shows the pattern of bruising by swelling and
13 discoloration.

14 He also has some bruising around the eye as you can
15 see with redness of the eye and again several discrete
16 lacerations that have been repaired that were repaired by
17 me that were linear and had well-defined sharp edges to
18 them before they were repaired.

19 Q. Thank you so much. You can go back to the witness
20 stand.

21 [Whereupon, the witness returns to the stand]

22 Q. After you treated Mr. Snodgrass did he remain at
23 Hilton Head hospital to your knowledge?

24 A. No.

25 Q. Where did he go?

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1 A. He was transferred to the trauma center at Savannah
2 Memorial because of intracranial bleeding.

3 Q. Okay. What does that mean?

4 A. Intracranial bleeding is bleeding inside of the
5 brain cavity.

6 Q. Okay. And Hilton Head hospital just simply isn't
7 equipped to treat that sort of injury?

8 A. Right. Injuries that have bleeding inside the brain
9 cavity require trauma specialists and neurosurgeons in
10 particular and Hilton Head hospital does not have a
11 neurosurgical service.

12 Q. Okay. Thank you. I have no further questions for
13 you, Doctor Snowman. Thank you.

14 THE COURT: Cross?

15 MR. BAX: Briefly, Your Honor. Thank you.
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State v Austin McQuarters
Patrick Snowman-Cross- Examination by Mr. Bax
February 18, 2015

1 CROSS-EXAMINATION

2 BY MR. BAX:

3 Q. Doctor Snowman, just to make sure I'm clear on this.
4 You testified that you were working night -- your general
5 shift is a night shift if you call it that correct?

6 A. Yes.

7 Q. Okay. And that on the late evening hours of
8 October 20th or the early A.M. hours of the 21st is when
9 you saw Mr. Snodgrass correct?

10 A. Yes.

11 Q. And that you were the treating physician who
12 repaired the lacerations on the face correct?

13 A. Yes.

14 Q. But that Mr. Snodgrass was transferred to a hospital
15 in Savannah correct?

16 A. Right. And that transfer was arranged by me.

17 Q. Okay. And his time at Hilton Head was
18 approximately a couple of hours is that accurate?

19 A. Somewhere in that range, yes.

20 Q. So he was at your institution for a couple of hours
21 before being transported to Savannah?

22 A. Yes.

23 Q. And when -- how quickly after someone has been
24 transported to your ER do you see them? Is there a lapse
25 or period of time between when they're checked in before

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1 you see them necessarily?

2 A. There can be. But in a trauma situation where
3 somebody has active injuries we try to get them in as
4 quickly as possible.

5 Q. Okay. So you would have tried to get to Mr.
6 Snodgrass as quickly as possible?

7 A. Yes.

8 Q. Let me ask you this?

9 A. Did you have other patients that evening?

10 A. I'm sure.

11 MR. BAX: Moment's indulgence, Your Honor. Thank
12 you.

13 [Whereupon, Mr. Bax confers with Mr. Bell]

14 MR. BAX: No further questions, Your Honor. Thank
15 you very much.

16 THE COURT: Redirect?

17 MS. CONCANNON: Nothing further from the State,
18 Your Honor.

19 THE COURT: Thank you very much doctor. You may
20 step down. Is he excused?

21 MS. CONCANNON: Yes, Your Honor.

22 MR. BAX: That's fine, Your Honor.

23 THE COURT: You're free to go. Thank you, sir.

24 [Whereupon, the witness is excused and exits the
25 witness stand]

1 THE COURT: Any other witnesses for the State?

2 MS. CONCANNON: Your Honor, at this point the State
3 rests.

4 THE COURT: Thank you. Ladies and gentlemen, I
5 told you when I began explaining to you how the case
6 would proceed that when we reached this point I had to
7 talk to the attorneys about legal issues. This typically
8 takes about 20 minutes as well. In view of the hour what
9 I think we're going to do is this. I'm going to stay
10 here and work on legal issues.

11 Depending on how those come out we may stay a little
12 longer or we may not be here quite so long but we'll stay
13 as long as needed. And I'll just have you folks come
14 back tomorrow at 10 o'clock. You don't have to call in.
15 I just need you to come at 10:00. You should get the
16 case tomorrow. So I hope you all have a pleasant
17 evening. Please be here at 10 o'clock in the morning.
18 Thank you.

19 [Whereupon, the jury exits at 4:35 p.m.]

20 [Whereupon, the court reviews documents]

21 THE COURT: Are there any motions?

22 MR. BAX: Yes, Your Honor. I'm sorry I was
23 conferring with co-counsel.

24 THE COURT: Do you need some more time? I
25 apologize.

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1 MOTION FOR DIRECTED VERDICT

2 MR. BAX: No, I may ask Your Honor to allow me to
3 bring in some sites in the morning. Sometimes I'm able
4 to remember these cases off the top of my head and
5 sometimes I'm not. And sometimes I'm not able to exactly
6 anticipate where my directed verdict motion will go until
7 I've heard what kind of testimony we've actually had that
8 has come into court.

9 Your Honor, at this time due to the fact that the
10 State has rested the defense would make a motion for a
11 directed verdict. I would make a directed verdict motion
12 as to both charges in general based on all the objections
13 and exceptions that were made by the defense so far.

14 However, I would also like to specifically make a
15 directed verdict motion as to armed robbery in this case.
16 As Your Honor is aware one of the primary elements that
17 is required and that the jury has to find beyond a
18 reasonable doubt in order to even find him guilty of the
19 charge is that he was armed.

20 As of now and I can honestly say I wasn't exactly
21 sure if anyone would testify differently than they did
22 necessarily but as of now what has been presented by the
23 State and they have rested there is no evidence of a
24 weapon being used outside of I believe there was
25 testimony from Mr. Snodgrass that he thought he might

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1 have been hit with something but was not sure and he
2 never saw it. I would point out to Your Honor that that
3 was a supposition and there was no direct testimony that
4 he saw it or was able to identify what it was. He did
5 specifically say in his testimony I never saw anything in
6 his, referring to the person that attacked him, hands. I
7 never saw anything in his hands. That was his direct
8 testimony.

9 Secondly we have the testimony that we've just heard
10 from Doctor Snowman and that testimony based on Your
11 Honor's rulings is that the wounds were linear with
12 defined edges. That's it. There was no testimony from
13 Mr. **Minor 1** concerning any objects being used or
14 any statements being made to him about objects being
15 used.

16 THE COURT: I don't remember it that way. I
17 remember him saying that he had a conversation with the
18 defendant in which the defendant said he used brass
19 knuckles.

20 MS. CONCANNON: That's how the State remembers it,
21 Your Honor.

22 MR. BAX: Moment's indulgence, Your Honor. I might
23 have missed that line.

24 [Whereupon, Mr. Bax confers with Mr. Bell]

25 MR. BAX: My apologies, Your Honor.

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1 THE COURT: That's okay. I'm sure I'm going to
2 forget something that all of you are going to remember.

3 MR. BAX: I'm trying to track a lot of things and
4 I'm unfortunately not perfect and I do miss things. So I
5 don't think it necessarily changes my argument though.
6 You've got testimony from Mr. Minor 1 that there was a
7 phone conversation after the fact.

8 That clearly qualifies as circumstantial evidence.
9 It's not direct evidence because Mr. Minor 1 did not
10 testify that he saw this object. He testified to a
11 statement made by the defendant via phone after the fact.
12 Additionally, and I hope I'm right about this because I
13 did try my best to pay as much attention as I could, that
14 Ms. Perez I don't believe ever testified that she saw
15 brass knuckles or any other object that she said was
16 used.

17 THE COURT: No, I was thinking maybe she might have
18 but I don't recall her saying anything about brass
19 knuckles. I thought maybe she might have seen them or
20 testified that she saw them but she never said anything
21 about them.

22 MR. BAX: So there is no evidence circumstantial or
23 otherwise that came from Ms. Perez about it. Based on
24 that, Your Honor, there is a line of cases and that's
25 what I was trying to remember when I was discussing with

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1 Mr. Bell because I know a lot of them are recent cases.
2 And I had a couple that I remembered their names but I've
3 gone blank on them but I can provide them. But the
4 Supreme Court has said several times in several cases
5 recently that on directed verdict motions that the court
6 is to look at if the State has only produced
7 circumstantial evidence as to a charge or as to an
8 element of a charge that that circumstantial evidence
9 must be substantial in order to survive directed verdict.
10 And like I said I will be happy to grab those cases for
11 you over the evening hours. The names I used to have in
12 my head and I've let them slip out.

13 THE COURT: Well one of them was my case and I
14 can't even remember the name of it. I can tell you what
15 happened. It was -- but they said it was not enough
16 circumstantial evidence to submit to the jury. It was a
17 drug drop case.

18 MR. BAX: What I've gathered from it, Judge and
19 this is just my interpretation especially since it's been
20 commented on in more than just that case but in several
21 other cases in the last year or so of advance sheets is
22 that the Supreme Court does want trial courts to act as a
23 gatekeeper when it comes to circumstantial cases going to
24 the jury. That's been my reading to it. I certainly
25 defer to Your Honor's interpretation of the law. That's

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1 your job. But it would be the argument of the defense
2 that in this particular case in reading those cases I
3 think this is what they're talking about. The element of
4 armed in this case is circumstantial only and I would
5 submit doesn't come anywhere close to what the appellate
6 court is going to consider substantial.

7 You've got two of the people that were at the scene
8 of the alleged incident neither one of which has
9 testified that they saw any object whatsoever alleged to
10 have been a weapon or used as a weapon. You've got
11 someone who has been charged as a co-defendant who was in
12 the vehicle with my client after the fact according to
13 her testimony who did not testify that she saw such an
14 object either during the use or after the use or where it
15 went or anything like that.

16 And the only other testimony as we've talked about
17 is an alleged phone call to Mr. Minor 1 after the fact
18 that's not been corroborated by any phone records or any
19 other testimony. And I would submit that I believe it is
20 a very, very strong case here that the armed robbery
21 cannot stand up on directed verdict based on the fact
22 that that essential element is so weakly supported by
23 circumstantial that does not rise to the level of
24 substantial. Thank you.

25 THE COURT: Well, the victim testified that he felt

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1 what hit him and it didn't feel like a fist. And Mr.
2 **Minor 1** testified if the jury believes the testimony, I
3 have to take all the evidence in the light most favorable
4 to the State at this juncture, Mr. **Minor 1** testified
5 that the defendant himself told Mr. **Minor 1** that he
6 used brass knuckles to commit a robbery.

7 The charge that I've got on the draft states that a
8 deadly weapon is any article, instrument, or substance
9 which is likely to cause death or great bodily harm.
10 Whether an instrument has been used as a deadly weapon
11 depends on the facts and circumstances of each case and
12 it goes through giving examples which I don't usually do
13 because I think those are charges on the facts.

14 But the jury has to evaluate and even fists under
15 the law can be a deadly weapon under the appropriate
16 circumstances unless that's been reversed and I don't
17 know anything about it. So I think there is more than
18 substantial circumstantial evidence. And I'm not so sure
19 that an admission if you believe Mr. **Minor 1**
20 testimony an admission is circumstantial.

21 In my view there is sufficient evidence to go to the
22 jury on all the charges, all the elements of both
23 charges. Do you have any other motions? And if you want
24 to present something in the morning I will be happy to
25 look at it. I just don't think I'm going to change my

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1 ruling but I've thought that before.

2 MR. BAX: I understand Your Honor and I will look.
3 If there is anything I will present it as soon as I can
4 do that.

5 THE COURT: Okay. I mean some of those cases from
6 the Court of Appeals and the Supreme Court they have the
7 benefit of a lot of reflection and they have a hard job
8 to do. I've sat with both of them. They have a
9 tremendous amount of reading to do. Sometimes it looks
10 different with a cold record than it does when you're in
11 a courtroom. Sometimes I read those cases and it doesn't
12 even sound like the case I sat and presided over.

13 But they have a hard job to do. And if they say
14 something is wrong it's wrong; I know that. My case I
15 understand why they ruled like they did. It was a throw
16 down case where a kid was caught with some crack cocaine
17 and took off running and threw it down and they found an
18 empty bag along the way that had cocaine residue in it on
19 the path that he ran. They said it wasn't enough because
20 when they arrested him he didn't. Anyway, it's a long
21 story. All right I have to go over some things with your
22 client.

23 MR. BAX: Yes, Your Honor.
24
25

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1 FIFTH AMENDMENT RIGHTS

2 THE COURT: Mr. McQuarters I need to cover some
3 things with you and I need your responses under oath if
4 you would raise your right hand for me?

5 [Whereupon, the witness is duly sworn by the Court]

6 THE COURT: We've reached the stage of the trial
7 where the State has rested. And the next thing that
8 would happen is your side is given the opportunity to
9 present evidence for the jury to consider. Do you
10 understand where we are in the trial?

11 MR. MCQUARTERS: Yes, sir.

12 THE COURT: Now in that regard you may call
13 witnesses and if you yourself wish to testify you may
14 testify. Do you understand?

15 MR. MCQUARTERS: Yes, sir.

16 THE COURT: Regardless of whether you testify or
17 not you may call witnesses on your behalf. Do you
18 understand that?

19 MR. MCQUARTERS: Yes, sir.

20 THE COURT: You do not have to put up any evidence
21 however. You're presumed to be innocent, you have a
22 right to remain silent and if you choose not to offer any
23 evidence at all your lawyer gets to make the last
24 argument to the jury otherwise the State goes last. You
25 understand?

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1 MR. MCQUARTERS: Yes, sir.

2 THE COURT: Did you have any exhibits or anything
3 in the record?

4 MR. BAX: I specifically looked at this case as not
5 one that I was going to introduce evidence. I don't
6 believe I entered anything.

7 THE COURT: So if there is no evidence presented,
8 there is no exhibits, there is no testimony on your
9 behalf your lawyer gets to make the last argument to the
10 jury. You understand that?

11 MR. MCQUARTERS: Yes, sir.

12 THE COURT: Now no one can force you to testify.
13 You have an absolute right to remain silent and if you
14 choose not to testify I'm going to tell that jury they
15 cannot hold your silence against you in any way at all.
16 They are not to discuss it in their jury room. It is not
17 to enter into their minds in making a decision on whether
18 you're guilty or not guilty. You understand?

19 MR. MCQUARTERS: Yes, sir.

20 THE COURT: Now this decision about whether you
21 testify or not it is your decision and yours alone. You
22 understand?

23 MR. MCQUARTERS: Yes, sir.

24 THE COURT: You may confer with family members or
25 friends or your attorney or anyone whose opinion you

1 value on important decisions but ultimately it's your
2 call to make. You're the person on trial and you have to
3 decide whether you're going to testify or not. You
4 understand?

5 MR. MCQUARTERS: Yes, sir.

6 THE COURT: Does he have a prior criminal record
7 that would subject him to impeachment?

8 MS. CONCANNON: He does, Your Honor.

9 THE COURT: What is it?

10 MS. CONCANNON: He has from 2013 a possession of a
11 handgun with an obliterated serial number. He also has a
12 possession -- or unlawful carrying in that same year but
13 we would only be using the stolen firearm charge.

14 THE COURT: All right. Bear with me a second.

15 MR. BAX: Yes, Your Honor.

16 [Whereupon, the court reviews documents]

17 THE COURT: Rule 609 of the South Carolina Rules of
18 Evidence provides that where a witness has been convicted
19 of a crime if the witness is the accused the witness may
20 be asked about the conviction and the evidence of the
21 conviction may be admitted if the court determines that
22 the probative value of admitting the evidence outweighs
23 its prejudicial effect to the accused. And evidence that
24 a witness has been convicted of a crime, any witness at
25 all, is admitted if it involved dishonesty or false

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1 statement regardless of the punishment. I'm not sure if
2 there has ever been a specific ruling on having a firearm
3 with an obliterated serial number as being a crime of
4 dishonesty or false statement.

5 Let's assume for this purpose that it's not. So
6 the inquiry the court has to make is whether the
7 conviction is admissible because the probative value of
8 admitting it outweighs its prejudicial effect to the
9 accused. I'm not able to find that finding.

10 So Mr. McQuarters if you testify the State is not
11 going to be permitted to ask you about that 2013
12 conviction unless you open the door for them to do that
13 in some way. Now you may talk to the attorneys about
14 what opening the door means but I'll give you an example
15 of what's happened to me in other trials.

16 I've made a similar ruling in other trials where I
17 said if you take the stand Mr. Defendant the State cannot
18 ask you questions about the conviction. And then I've
19 had defendants get on the stand and say well, I've never
20 been in any trouble with the law, which was an outright
21 lie. And they opened the door then to be asked about the
22 conviction. But unless you open the door in some way if
23 you take the stand I'm not going to let the State ask you
24 about your 2013 conviction for possession of a handgun
25 with an obliterated serial number. You understand?

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1 MR. MCQUARTERS: Yes, sir.

2 THE COURT: Today are you under the influence of
3 any medication, alcohol, drug or anything that would
4 adversely affect your thinking?

5 MR. MCQUARTERS: No, sir.

6 THE COURT: Do you suffer from any physical or
7 mental conditions that adversely affect your thinking?

8 MR. MCQUARTERS: No, sir.

9 THE COURT: So you're clear headed and you know
10 what you're doing?

11 MR. MCQUARTERS: Yes, sir.

12 THE COURT: Whatever decision you make about
13 testifying is your decision and yours alone?

14 MR. MCQUARTERS: Yes, sir.

15 THE COURT: Made of your own free will?

16 MR. MCQUARTERS: Yes, sir.

17 THE COURT: I'm going to make a finding right now
18 Mr. McQuarters and I'll give you an opportunity to confer
19 with your attorneys. I'm going to find that you
20 understand you have a right to testify, you have a right
21 not to testify. That if you choose not to testify I'm
22 going to tell the jury they cannot hold your silence
23 against you in any way at all. You understand that if
24 you offer no evidence whatsoever that your attorney gets
25 to make the last argument to the jury. You understand

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1 that the decision is yours to make and yours alone and
2 I'm going to find that whatever decision you make is
3 free, knowing, voluntary, and intelligent and is made of
4 your own free will. You understand your rights and you
5 understand the relative consequences.

6 You also understand the ruling I made under Rule 609
7 that if you do take the stand the State cannot ask you
8 about your conviction in 2013 for possession of a handgun
9 unless you in some way open the door. If anything
10 changes you need to let me know immediately. So if
11 anybody attempts to improperly influence you or anything
12 like that you have to let me know right away. You
13 understand?

14 MR. MCQUARTERS: Yes, sir.

15 THE COURT: It would help me for planning purposes
16 if I knew what your intentions are. If I give you five
17 minutes or so do you think you can give me an answer?

18 MR. BAX: I believe so, Your Honor. In light of
19 Your Honor's ruling I do want an opportunity to speak
20 with him a little bit more.

21 THE COURT: Sure.

22 MR. BAX: And I would think five to eight minutes
23 would be all we need.

24 THE COURT: Just let me know. Thank you. We're
25 at ease.

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1 MR. BAX: Thank you, Your Honor.

2 [Whereupon, court is in recess from 4:55 p.m. until
3 5:06 p.m.]

4 THE COURT: Be seated. Mr. Bax?

5 MR. BAX: Your Honor, we had a chance to discuss
6 it. My client has indicated that he does not wish to
7 testify and he's happy to let Your Honor know that.

8 THE COURT: Is that right Mr. McQuarters?

9 MR. MCQUARTERS: Yes sir, I will not be testifying.

10 THE COURT: That's your own decision made of your
11 own free will?

12 MR. MCQUARTERS: Yes, sir.

13 THE COURT: Thank you.

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1 THE COURT: Let me see where I am with this draft
2 of the charge. What I would like to do ideally is print
3 this out, give it to you and talk to you in the morning
4 about it. I just don't know if I'm quite through with
5 it. So if y'all will just be at ease I'll let you know
6 as soon as I've checked it.

7 MR. BAX: Thank you, Your Honor.

8 THE COURT: All right. We're at ease.

9 [Off the record momentarily]

10 THE COURT: I'm going to print a draft of the
11 charge. I haven't even had a chance to proof read it.
12 I'll try to meet you all maybe ten minutes before 10:00
13 and see you have any input about the proposed charge. If
14 you see other names in there or things like that what I
15 usually do is pull an old charge and work off of that.
16 And sometimes in haste I forget to change names or have
17 the wrong pronouns and things like that. So I'll try to
18 go through it overnight and check it. But if you all
19 will meet me at ten to 10:00 tomorrow I would appreciate
20 it. Court is in recess until then.

21 MR. BAX: Thank you, Your Honor.

22 [Whereupon, court adjourns at 5:20 p.m.]
23
24
25

State v Austin McQuarters
Certificate of the Court Reporter
February 18, 2015

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Beaufort County, South
Carolina on the 18th day of February, 2015.

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

April 22, 2015

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	DOCKET NO. 2013-GS-07-1844
	)	2013-GS-07-1845
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
AUSTIN MCQUARTERS	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

February 19, 2015
 Beaufort, South Carolina

VOLUME 3 (OF 3)

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE

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

MARY CONCANNON, ESQ.
 Attorney for the State

ARIE BAX, ESQ.
 T. JAMES BELL, ESQ.
 Attorneys for the Defendant

JOYCE C. RUEGER, CVR-M
 Circuit Court Reporter

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otherwise indicated in transcript]

COURT

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PROCEEDINGS

THE COURT: I distributed a draft of the charge last night and my law clerk indicated that y'all really didn't have any input about the charge. I did have some grammatical and typographical things I changed. Also at the very end I reiterated the elements of assault and battery in the first degree because I thought it was a little too short and I needed to say it again. Other than that I didn't make any substantive changes. Do y'all have any input about the charge?

MS. CONCANNON: No, Your Honor.

THE COURT: And do you?

MR. BAX: No, I don't Your Honor. I see that strong armed robbery is already in there; common law strong arm robbery that would have been our only request and it's already in there. As I told you law clerk, Your Honor, the only thing I wanted to put on the record and this is just for preservation of my reasoning on the record.

Initially myself and co-counsel along with my client had discussed a request for assault and battery second. However, in looking back at the indictment and the charge the assault and battery first is based on during the commission of another crime such as a robbery. And because it's based on that aggravating factor legally I

1 don't think I can ask for the A and B second because if
2 they were to find that the assault happened I think they
3 would have to find that it happened during some kind of
4 commission of a robbery of some kind.

5 Initially the argument would have been having to do
6 with how they decided the severity of the assault was one
7 way or the other, which is typically one of the ways that
8 you distinguish assault and battery first versus second.
9 But based on that unfortunately I don't think I can make
10 the request and I just wanted to put that on the record.

11 THE COURT: Okay. Had the other aspect of assault
12 in the first degree been an issue then I think you would
13 be entitled to it but it's not and it's not even in the
14 charge so the jury is not going to hear that. Are you
15 all ready to argue?

16 MR. BAX: The only thing I would ask Your Honor and
17 this is just out of trying to help my client as best as I
18 can I talked with his mother Harriett and his brother
19 Aaron who have been here throughout the trial. They've
20 said they are only a few minutes away. They had to drive
21 from a location where they are living with his sister
22 that is a little bit further out of town. They said they
23 should be here shortly. I was merely trying to hope they
24 could get in here before we lock the courtroom because I
25 know typically during argue and charge we lock up the

1 courtroom and they wouldn't be able to get in so.

2 THE COURT: We'll wait. We'll wait a little while.

3 MR. BAX: If you don't mind giving them like five
4 minutes.

5 THE COURT: Sure, that's fine.

6 MR. BAX: I appreciate it. Thank you very much,
7 Your Honor.

8 THE COURT: Okay. I'm assuming you want to go
9 last?

10 MR. BAX: Yes, sir.

11 THE COURT: We'll be at ease for a few minutes.

12 MR. BAX: Thank you, sir.

13 THE COURT: I don't think it's necessary but do you
14 want to preserve your motions at the close of all the
15 evidence since there is no evidence. I know you already
16 did it.

17 MR. BAX: I would like to preserve it. I can
18 certainly do whenever you think it's appropriate for me
19 to put it on the record.

20 THE COURT: You want to do it now?

21 MR. BAX: I can, Your Honor since we've got a few
22 minutes. The defense would reassert all previous motions
23 and objections. We would reassert our motion for
24 directed verdict at this time and we base it on the
25 arguments that have been made thus far in the trial along

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1 with our objections and exceptions to the evidence and
2 the rulings that we've made. At this point I know Your
3 Honor is well aware of the arguments we've made. A lot
4 of -- you know some of those arguments we've been
5 successful on so certainly there is no objection to those
6 rulings. I don't believe at this point in time that I
7 have additional grounds for a reassertion of the directed
8 verdict though. Thank you.

9 THE COURT: All right. There are jury issues
10 presented and the motion is denied.

11 MR. BAX: Thank you, sir.

12 THE COURT: Now we're at ease.

13 [Off the record momentarily]

14 THE COURT: Is everybody ready?

15 MR. BAX: Yes, Your Honor.

16 THE COURT: You ready?

17 MS. CONCANNON: Yes, Your Honor.

18 THE COURT: Go ahead and bring the jury in please.

19 [Whereupon, the jury enters at 10:14 a.m.]

20 THE COURT: Ladies and gentlemen after conferring
21 yesterday afternoon I advise you now that you have all
22 the evidence that you're going to have to decide the
23 case. There are two stages that remain in the trial; the
24 closing arguments and the charge. The charge is what we
25 call the part where I tell you the law. Now I need to

1 give you an instruction which you must follow and I'll
2 ask you please pay close attention. I emphasize to you
3 ladies and gentlemen that the fact that the defendant in
4 this case elected not to testify is not a factor to be
5 considered by you in any way in your deliberations and in
6 your consideration on the question of whether or not he
7 is guilty. It must not be considered by you in any
8 manner whatsoever against Mr. McQuarters. An accused has
9 a constitutional right to remain silent and the assertion
10 of that right cannot and must not be considered by you in
11 your deliberations.

12 Under your oath you are to reach no inference and
13 you are to draw no conclusion whatsoever from the fact
14 that the defendant elected not to testify. His decision
15 not to testify should not be discussed by you in the jury
16 room. It should not enter into your minds in making your
17 decision on the question of whether Mr. McQuarters is
18 guilty or not guilty.

19 The burden of proof is entirely on the State to
20 prove every essential element of each offense charged
21 against this defendant beyond a reasonable doubt. An
22 accused has no obligation and no burden to prove anything
23 at all. Now the way this works is that the State will go
24 first and present State's full closing argument and then
25 the defense will make its closing argument. I told you