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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

MARK ANTHONY BAYNE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001693

APPENDIX

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THE STATE OF SC	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MARK ANTHONY BAYNE,	)	
DEFENDANT	)	
-----	)	

APRIL 6 - 8, 2016
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D. CRAIG BROWN

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

JUSTIN W. HOLLOWAY, ESQUIRE
ASSISTANT SOLICITOR

JOHN P. ABDALLA, ESQUIRE
ATTORNEY FOR DEFENDANT

VIVIAN CROSS,
CIRCUIT COURT REPORTER

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1 * * * APRIL 6, 2016 * * *

2

3 THE COURT: All right. Where is your client? Is
4 he dressed -- getting dressed?

5 MR. ABDALLA: He's dressed, Your Honor. He was
6 dressed. I just wasn't sure that -- that it was a good
7 fit, and I wanted to go down and make sure what I got
8 him fit him.

9 THE COURT: All right.

10 MR. ABDALLA: They're kind of loose, but you know
11 at least he's clothed.

12 THE COURT: Mr. Bayne?

13 (Whereupon, the defendant entered the
14 courtroom.)

15 THE COURT: All right. What we had discussed
16 previously, I am going to have the jury panel come on
17 up. We're going to pick a jury in this matter and then
18 I'll cut them loose probably for an early lunch and
19 deal with what ever pretrial matters we can deal with.
20 And then I'll start the trial promptly after lunch.
21 All right, Madam Clerk.

22 (Pause.)

23 THE COURT: I've been handed a multitude of
24 indictments here. Let's see. What are you all trying
25 Mr. Bayne for?

1 MR. HOLLOWAY: Two counts of armed robbery; two
2 counts of conspiracy; two counts of possession of a
3 weapon during the commission of a violent crime; one
4 county of carjacking; and one count of kidnapping, Your
5 Honor. It should be a total of -- paperwork, I
6 believe, there is only six because the count one and
7 count two for the armed robbery and the possession of
8 the weapon during the commencement of a violent crime
9 -- but it should be eight total counts.

10 THE COURT: All right.

11 MR. HOLLOWAY: And, Your Honor, the State would
12 quickly -- on count two of the warrant -- the
13 indictment pending in 11897, Mr. Abdalla and I have --
14 I did speak briefly about him -- about this with him.
15 It says "handgun". The State would request to amend
16 that to "firearm" or "shotgun". The other -- the other
17 indictment for armed robbery and possession of a weapon
18 does say explicitly "shotgun". The evidence -- I
19 believe, Your Honor, that the evidence will show that
20 Mr. Bayne did, in fact, have a shotgun, not a handgun.

21 MR. ABDALLA: I'm objecting to the change in the
22 indictment for the record.

23 THE COURT: You are objecting?

24 MR. ABDALLA: Yes, Your Honor.

25 THE COURT: Over defendant's objection, I'm going

1 to allow it.

2 MR. HOLLOWAY: Thanks, Your Honor. And, Your
3 Honor, this might be just for formality purposes, but
4 an indictment that ends in -- number 11900 is a
5 conspiracy charge. And it includes three different
6 names to include Mr. Donald Trammell --

7 THE COURT: Hold on. It's what now?

8 MR. HOLLOWAY: Your Honor, it includes that Mr.
9 Bayne did conspire --

10 THE COURT: Right.

11 MR. HOLLOWAY: -- with -- it says "Nikki Nicole
12 Trammell and/or -- or Gardner -- and/or Vickie Trammell
13 and/or Mr. Donald Trammell", the evidence that the
14 State intends to produce today will just go to
15 demonstrate that Mr. Bayne and Mr. Donald Trammell
16 conspired together. The State would respectfully
17 request that those two names be struck from the
18 indictment, how ever Your Honor -- how ever you see
19 fit.

20 MR. ABDALLA: Judge, I object to that and I
21 reserve the right or I'm asking for the right to be
22 able to discuss that with the jury, the fact that they
23 changed the indictments since it is a matter of record
24 if the court goes along with it in any way.

25 THE COURT: What's the basis of your objection?

1 MR. ABDALLA: The basis of my objection is it just
2 changes who was there, and the fact is these witnesses
3 are all being called to testify, and I think it affects
4 their --

5 THE COURT: You cannot ask them on cross
6 examination whether or not they were initially charged
7 --

8 MR. ABDALLA: Yes.

9 THE COURT: Does that not solve what your issue is
10 --

11 MR. ABDALLA: Yeah, as long as there's no
12 objection to that. I didn't want that --

13 MR. HOLLOWAY: Nothing from the State, Your Honor.
14 I would just prefer to keep it clean and so -- the read
15 on the indictment.

16 THE COURT: I'm going to allow the amendment.

17 MR. HOLLOWAY: Thank you, Your Honor.

18 THE COURT: And we'll just read Mr. Donald
19 Trammell's name here as it relates on 897, possession
20 of a weapon charge. I'm going to amend that to shotgun
21 -- handgun or shotgun.

22 MR. ABDALLA: I understand that's over my
23 objection.

24 THE COURT: All right.

25 MR. ABDALLA: I made a mistake one time of saying

1 "okay" in court, and it wasn't preserved for objection
2 -- for appeal.

3 THE COURT: I understand.

4 MR. ABDALLA: I don't want to make that mistake
5 again.

6 MR. HOLLOWAY: Your Honor, lastly and quickly,
7 this just came to my attention. I believe on the
8 second conspiracy charge, on the indictment that ends
9 in 11901, I believe the name Donald -- there's a
10 scrivener's error. There's a typo. I just wanted to
11 make the court aware so when you read it, that you
12 wasn't caught off guard. It think they just -- if I
13 remember correctly, they put an "l" before an "a"
14 possibly.

15 THE COURT: I obviously want to check that.

16 MR. ABDALLA: The only other thing I ask, Judge,
17 is I guess the -- the Clerk -- whoever reads the jurors
18 -- selects the jurors, if they could give me a little
19 bit of time. I have my client looking at it as well as
20 me, and I would ask that we not be too rushed to where
21 at least he can have a look at the juror's information
22 before -- I mean, I'll try to be quick. I'm not trying
23 to drag it out.

24 THE COURT: I understand.

25 MR. ABDALLA: I don't want to feel too rushed.

1 (Pause.)

2 (Whereupon, the jury panel entered the courtroom
3 at 10:47 a.m.)

4 THE COURT: Good morning, ladies and gentlemen. I
5 hope you all are doing well this morning, and have had
6 a good week thus far. I had a nice drive into
7 Greenville this morning from Florence, a nice little
8 drive this morning to get back up here. I apologize
9 for you all having to wait. I drove up here this
10 morning from Florence, and I'm ready to pick a jury in
11 another case and move forward here today.

12 At this time, I'm going to recognize the
13 Solicitor. If you'll call your case please, sir.

14 MR. HOLLOWAY: Thank you, Your Honor. This is the
15 State of South Carolina vs. Mr. Mark Anthony Bayne. My
16 name is Justin Holloway. I work here at the
17 Solicitor's Office. This is Ms. Sherlen Crawford. She
18 is my investigator. And Laura Kendon (phonetic), my
19 assistant. She's been with me for -- since I've been
20 here, so she looks after me.

21 And this is investigator Matt Owens with the
22 armed robbery -- Armed Robbery Division of the
23 Greenville County Sheriff's Office. It's very nice to
24 meet you.

25 THE COURT: Ladies and Gentlemen, the State is

1 calling the State of South Carolina vs. Mr. Mark
2 Anthony Bayne. Mr. Bayne is being tried -- or will be
3 tried for several offenses. I'm going to read these
4 indictments to you. All right. Let me remind you, I
5 will tell you now, and I will tell you again, the
6 indictments that I read to you are not evidence in this
7 case. They are not evidence at all. Each of these
8 charges, Mark Anthony Bayne has pled not guilty.
9 Therefore, the State of South Carolina bears the burden
10 of proving his guilt beyond a reasonable doubt.

11 The first indictment -- and I will read to you
12 the charges -- that "Mark Anthony Bayne did in
13 Greenville County, on or about the 18th day of October,
14 2014, while armed with a deadly weapon, or while
15 alleging either by action or words, he was armed while
16 using a representation of a deadly weapon or any object
17 which a person present during the commission of the
18 armed -- excuse me -- commission of the robbery would
19 reasonably believe to be a deadly weapon, take by means
20 of force or intimidation goods or monies described as
21 cell phones, and/or cash, and/or a battery jump box
22 from the person or presence of David Ennis. This is in
23 violation of section 16-11-330 of the South Carolina
24 Code of Laws".

25 Count two of this indictment alleges that Mark

1 Anthony -- count two is a possession of a weapon during
2 the commission of a violent crime. It alleges that
3 "Mark Anthony Bayne did in Greenville County on or
4 about the 18th day of October, 2014, possess or visibly
5 display a shotgun during the commission or attempted
6 commission of a violent crime; to wit, armed robbery.
7 This being in violation of section 16-23-490 of the
8 South Carolina Code of Laws".

9 Mr. Mark Anthony Bayne is also charged by
10 another indictment with the -- another offense of armed
11 robbery. This indictment reads -- reads as follows:
12 That "Mark Anthony Bayne did in Greenville County on or
13 about the 18th day of October, 2014, while armed with a
14 deadly weapon, or while alleging either by action or
15 words, he was armed while using a representation of a
16 deadly weapon or any object which a person present
17 during the commission of the robbery would reasonably
18 believe to be a deadly weapon, take by means of force
19 or intimidation, goods or monies described as a 2006
20 Dodge Laramie truck from the person or presence of
21 Aaron Joseph Shunk in violation -- this being in
22 violation of section 16-11-330 of the South Carolina
23 Code of Laws."

24 Count two reads that "Mark Anthony Bayne did in
25 Greenville County on or about the 18th day of October

1 2014, possess or visibly display a handgun or shotgun
2 during the commission or attempted commission of a
3 violent crime; to wit, armed robbery and/or kidnapping
4 in violation of section 16-23-490."

5 Furthermore, indictment 11899 -- excuse me --
6 1198 -- indictment 1198 reads "That Mark Anthony Bayne
7 did in Greenville County on or about the 18th day of
8 October, 2014, take or attempt to take a motor vehicle;
9 to wit, a 2006 Dodge Laramie truck from Aaron Shunk by
10 force and violence, or by intimidation, while Aaron
11 Shunk was operating and/or was in the said vehicle.
12 This in violation of section 16-3-1075 South Carolina
13 Code of Laws".

14 Furthermore, Mr. Mark Anthony Bayne was charged
15 with the offense of kidnapping. That indictment reads
16 as follows: "That Mark Anthony Bayne did in Greenville
17 County on or about the 18th day of October 2014,
18 unlawfully seize, abduct, confine, inveigle, decoy or
19 carry away Aaron Shunk without the authority of law.
20 This in violation of section 16-3-910 of the South
21 Carolina Code of Laws."

22 Mr. Mark Anthony Bayne is also charged with the
23 offense -- two counts of conspiracy. First under
24 indictment 11900, which reads "That Mark Anthony Bayne
25 did in Greenville County on or about the 18th day of

1 October 2014, willfully and unlawfully combined with
2 Donald Trammell for the purpose of accomplishing an
3 unlawful object or a lawful object by unlawful means;
4 to wit, armed robbery and/or carjacking and/or
5 kidnapping. This in violation of section 16-17-410 of
6 the South Carolina Code of laws."

7 The final count of conspiracy under 11901 reads
8 that -- alleges "That Mark Anthony Bayne did in
9 Greenville County on or about the 18th day of October,
10 2014, wilfully and unlawfully, combined with Donald
11 Trammell for the purpose of accomplishing an unlawful
12 object or a lawful object by unlawful means; to wit,
13 armed robbery. This in violation of section 16-17-410
14 of the South Carolina Code of Laws".

15 Now, ladies and gentlemen, as I told you before
16 I read these indictments, these are simply charging
17 documents by which this case is brought into this
18 court, and it is by no means -- no means evidence in
19 this case. Again, the defendant, Mr. Mark Anthony
20 Bayne, has pled not guilty to each of these offenses.
21 And, therefore, the State of South Carolina bears the
22 burden of proving his guilt to you, the jury, beyond a
23 reasonable doubt.

24 Now, before we go any further, there are some
25 questions that I must ask of you to determine whether

1 or not you qualify to serve on this jury.

2 (Pause.)

3 All right. Ladies and gentlemen, are there any
4 members of the jury panel that has ever been related by
5 blood, connected by marriage, had a close personal,
6 business, or social relationship with Mr. Mark Anthony
7 Bayne? If so, please stand.

8 (No response.)

9 THE COURT: All right. The following, ladies and
10 gentlemen, is a list of potential witnesses in this
11 case. They include Aaron Joseph Shunk -- all right --
12 potential witnesses include Aaron Joseph Shunk; David
13 Ennis; Barry Underwood; Timothy Brochin of the
14 Greenville County Sheriff's Office; Jessica Gilbert;
15 Vickie Darlene Trammell; Matthew Hegger of the
16 Greenville County Sheriff's Office; Nikki Nicole
17 Gardner; Patrick Kelly of the Greenville County
18 Sheriff's Office; Alexandra Gossett; Donald Anthony
19 Trammell; Wes Arflin of the Greenville County Sheriff's
20 Office; Blake Kilbreath; Mark Anthony Bayne, Jr.;
21 Johnathan Horne of the Greenville County Sheriff's
22 Office; Matthew Owens, Greenville County Sheriff's
23 Office; and Mariah (sic) Cordelia "Corrie" Morgan.
24 Those are a list of the -- that is a list of
25 potential witnesses in this case. Is there any member

1 of the jury panel that's ever been related by blood,
2 connected by marriage, had a close personal, business,
3 or social relationship with any of those potential
4 witnesses in this case? If so, please stand.

5 All right. Tell me your name and number, sir.

6 POTENTIAL JUROR: Abraham Stratton, number 205.

7 THE COURT: All right. Whom, off of that list, do
8 you know, sir?

9 POTENTIAL JUROR: Johnathan Horne, an officer.

10 THE COURT: Hold on just a minute. All right.
11 Anyone else?

12 POTENTIAL JUROR: No.

13 THE COURT: All right. In what capacity do you
14 know Officer Horne?

15 POTENTIAL JUROR: We attend the same church.

16 THE COURT: All right. And what is the name of
17 that church?

18 POTENTIAL JUROR: Heritage Bible Church, Greer,
19 South Carolina.

20 THE COURT: How many members are in that church?

21 POTENTIAL JUROR: Seven hundred.

22 THE COURT: Do you all -- do you all engage in any
23 social activities together?

24 POTENTIAL JUROR: No, sir. We interact on Sundays
25 periodically, but not outside.

1 THE COURT: If you were selected as a juror in
2 this case, do you believe that you could be fair and
3 impartial to both the State and the defense?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: Thank you. You may be seated. Tell
6 me your name and number, please.

7 POTENTIAL JUROR: Caleb Johnson, 109.

8 THE COURT: Whom, off of that list do you know,
9 sir?

10 POTENTIAL JUROR: Nikki Gardner.

11 THE COURT: All right. Hold on a second here. In
12 what capacity?

13 POTENTIAL JUROR: I used to -- her husband was one
14 of my co-workers.

15 THE COURT: Was? How long ago was that?

16 POTENTIAL JUROR: That's been about five years
17 ago.

18 THE COURT: Do you engage in any social activities
19 with them?

20 POTENTIAL JUROR: Just whenever we used to go to
21 his house, I'd see her there.

22 THE COURT: When is the last time you've been to
23 their house?

24 POTENTIAL JUROR: It's been four years -- four or
25 five years.

1 THE COURT: All right. The fact that you know Ms.
2 Gardner, if you were selected as a juror in this case,
3 do you believe you could be fair and impartial to both
4 the State and the defense?

5 POTENTIAL JUROR: Yes, sir.

6 THE COURT: Thank you, sir. You may be seated.
7 All right. One additional potential witness in this
8 case, ladies and gentlemen, is a Ms. Tina Bayne. Is
9 there any member of the jury panel that's ever been
10 related by blood, connected by marriage, had a close
11 personal, business, or social relationship with Ms.
12 Tina Bayne? If so, please stand.

13 (No response.)

14 THE COURT: All right. The Solicitor has already
15 stood and introduced himself to the jury panel. If you
16 will stand and introduce yourself, please, sir.

17 MR. ABDALLA: I'm John Abdalla. I'm Mr. Bayne's
18 lawyer. Mark Bayne is my client in this case. Thank
19 you.

20 THE COURT: All right. Ladies and gentlemen of
21 the jury, is there any member of the jury panel that's
22 ever been related by blood, connected by marriage, had
23 a close personal, business, or social relationship with
24 Mr. Justin Holloway or Mr. John Abdalla, or ever been
25 represented by either counsel? If so, please stand.

1 (No response.)

2 THE COURT: All right. Has any member of the jury
3 panel formed or expressed an opinion about any issue or
4 matter involved in this case? If so, please stand.

5 (No response.)

6 THE COURT: Is there any member of the jury panel
7 aware of any bias or prejudice toward either the State
8 or the defendant in this case? If so, please stand.

9 (No response.)

10 THE COURT: All right. Is there any member of the
11 jury panel -- is there any member of the jury panel who
12 is a member of or contributor to any group which has,
13 as its primary concern, the promotion of law
14 enforcement or victim's rights? These groups might
15 include, but are certainly not limited to M.A.D.D.,
16 S.A.D., or C.A.V.C, Citizens Against Violent Crime. If
17 so, please stand.

18 (No response.)

19 THE COURT: All right. Does any member of the
20 jury panel know of any reason -- any reason whatsoever
21 why he or she should not serve as a juror in this case,
22 with particular emphasis being placed upon your ability
23 to be fair and impartial to both the State and the
24 defendant? If so, please stand.

25 (No response.)

1 THE COURT: All right. Does the State have any
2 additional voir dire?

3 MR. HOLLOWAY: Nothing from the State, Your Honor.

4 THE COURT: Defense counsel?

5 MR. ABDALLA: Could we approach?

6 THE COURT: Yes, sir.

7 (Whereupon, a bench conference was held.)

8 THE COURT: All right. Anything further from the
9 State at this time?

10 MR. HOLLOWAY: Nothing further, Your Honor.

11 THE COURT: Defense counsel?

12 MR. ABDALLA: No, Your Honor. Thank you.

13 THE COURT: Madam Clerk.

14 THE CLERK: When I call your name, if you'll
15 please stand in place and then wait for further
16 instructions. Juror 233, James Williams.

17 (Juror stood up.)

18 MR. HOLLOWAY: Your Honor, please seat Mr.
19 Williams.

20 THE CLERK: Just one second. What says the
21 defendant?

22 MR. ABDALLA: Please seat the juror.

23 THE CLERK: All right. Sir, please come and have
24 a seat in the jury box.

25 (Juror seated.)

1 THE CLERK: Juror 83, Gary Griffin.

2 (Juror stood up.)

3 MR. HOLLOWAY: Your Honor, please excuse Mr.

4 Griffin.

5 THE CLERK: All right. Please be seated, sir.

6 You've been excused from this case.

7 Juror 72, Donnie Gallamore.

8 (Juror stood up.)

9 THE CLERK: What says the State?

10 MR. HOLLOWAY: Your Honor, please seat Mr.

11 Gallamore.

12 THE CLERK: What says the defendant?

13 MR. ABDALLA: Excuse the juror from service in

14 this case.

15 THE CLERK: All right, sir. Please be seated.

16 You've been excused from this case. Juror Number 2,

17 Andrew Allen.

18 (Juror stood up.)

19 MR. ABDALLA: Which number was that? I'm sorry.

20 THE CLERK: Number 2. What says the State?

21 MR. HOLLOWAY: Your Honor, please seat Mr. Allen.

22 THE CLERK: What says the defendant?

23 MR. ABDALLA: Please seat the juror.

24 THE CLERK: All right. Thank you, sir. Please

25 have a seat in the jury box.

1 (Juror seated.)

2 THE CLERK: Juror 106, Christopher Ivester.

3 (Juror stood up.)

4 THE CLERK: What says the State?

5 MR. HOLLOWAY: Your Honor, please seat Mr.

6 Ivester.

7 THE CLERK: What says the defendant?

8 MR. ABDALLA: Please excuse the juror from service

9 in this case.

10 THE CLERK: All right. Please be seated, sir.

11 Juror 29, Daniel Capparelli.

12 (Juror stood up.)

13 THE CLERK: What says the State?

14 MR. HOLLOWAY: Your Honor, please seat Mr.

15 Capparelli.

16 THE CLERK: What says the defendant?

17 MR. ABDALLA: Please seat the juror.

18 THE CLERK: Sir, please come have a seat in the
19 juror box.

20 (Juror seated.)

21 THE CLERK: Juror 54, Richard Enloe.

22 (Juror stood up.)

23 THE CLERK: What says the State?

24 MR. HOLLOWAY: One second, Your Honor. (Pause.)

25 Your Honor, please seat Mr. Enloe.

1 THE CLERK: What says the --

2 MR. ABDALLA: Seat the juror please.

3 THE CLERK: All right. Mr. Enloe, please come
4 have a seat in the jury box.

5 (Juror seated.)

6 THE CLERK: Juror 109, Caleb Johnson.

7 (Juror stood up.)

8 THE CLERK: What says the State?

9 MR. HOLLOWAY: Your Honor, please seat Mr.
10 Johnson.

11 THE CLERK: What says the defendant?

12 MR. ABDALLA: Please seat the juror.

13 THE CLERK: All right, sir. Please come have a
14 seat in the jury box.

15 (Juror seated.)

16 THE CLERK: Juror 96, Vincent Henderson.

17 (Juror stood up.)

18 MR. HOLLOWAY: Your Honor, please seat Mr.
19 Henderson.

20 THE CLERK: Thank you. What says the defendant?

21 MR. ABDALLA: Please seat the juror.

22 THE CLERK: Sir, please come have a seat in the
23 jury box.

24 (Juror seated.)

25 THE CLERK: Juror 111, Karen Johnson.

1 (Juror stood up.)

2 MR. HOLLOWAY: Please seat Ms. Johnson, Your
3 Honor.

4 THE CLERK: Okay. What says the defendant?

5 MR. ABDALLA: Please seat the juror.

6 THE CLERK: All right, ma'am. Please come have a
7 seat in the jury box.

8 (Juror seated.)

9 THE CLERK: Juror number 10, Teresa Atkinson.

10 (Juror stood up.)

11 THE CLERK: What says the State?

12 MR. HOLLOWAY: Your Honor, please seat Ms.
13 Atkinson.

14 THE CLERK: What says the defendant?

15 MR. ABDALLA: Excuse the juror from service in
16 this case.

17 THE CLERK: All right. Please be seated. Juror
18 58, Jadison Fioramosca.

19 (Juror stood up.)

20 THE CLERK: What says the State?

21 MR. HOLLOWAY: Please seat the juror, Your Honor.

22 THE CLERK: Okay.

23 MR. ABDALLA: Fifty-eight?

24 THE CLERK: Fifty-eight. What says the defendant?

25 MR. ABDALLA: Please excuse the juror from service

1 in this case.

2 THE CLERK: All right. Please be seated, sir.

3 Juror 49, Donna Diaz.

4 (Juror stood up.)

5 MR. HOLLOWAY: Your Honor, please seat Ms. Diaz.

6 THE CLERK: Thank you.

7 MR. ABDALLA: Seat the juror, please.

8 THE CLERK: Thank you. Please have a seat in the
9 jury box.

10 (Juror seated.)

11 THE CLERK: Juror 100, Kay Hill.

12 (Juror stood up.)

13 THE CLERK: What says the State?

14 MR. HOLLOWAY: Please seat Ms. Hill, Your Honor.

15 THE CLERK: What says the defendant?

16 MR. ABDALLA: Please excuse the juror from service
17 in this case.

18 THE CLERK: All right. Please be seated. Juror
19 94, Lisa Harvey.

20 (Juror stood up.)

21 THE CLERK: What says the State?

22 MR. HOLLOWAY: What number?

23 THE CLERK: Ninety-four.

24 MR. HOLLOWAY: Please seat Ms. Harvey, Your Honor.

25 THE CLERK: What says the defendant?

1 MR. ABDALLA: Please seat the juror.

2 (Juror seated.)

3 THE CLERK: All right, ma'am. Please come have a
4 seat in the jury box. Juror 133, George League.

5 (Juror stood up.)

6 MR. ABDALLA: What was the number?

7 THE CLERK: One thirty-three. What says the
8 State?

9 MR. HOLLOWAY: Please seat Mr. League, Your Honor.

10 THE CLERK: Okay.

11 MR. ABDALLA: Please excuse Mr. League.

12 THE CLERK: All right. Have a seat, please.
13 Juror 166, Sylvia Orr.

14 (Juror stood up.)

15 THE CLERK: What says the State?

16 MR. HOLLOWAY: Please seat Ms. Orr, Your Honor.

17 THE CLERK: What says the defendant?

18 MR. ABDALLA: Please seat the juror.

19 THE CLERK: All right, ma'am. Please have a seat
20 in the jury box.

21 (Juror seated.)

22 THE CLERK: Juror 194, Stephen Showalter.

23 (Juror stood up.)

24 MR. HOLLOWAY: Please seat Mr. Showalter, Your
25 Honor.

1 THE CLERK: What says the defendant?

2 MR. ABDALLA: Please seat the juror.

3 THE CLERK: Sir, please come have a seat in the
4 jury box.

5 (Juror seated.)

6 THE COURT: Juror 208, Deborah Tapp.

7 (Juror stood up.)

8 THE CLERK: What says the State?

9 MR. HOLLOWAY: Please seat Ms. Tapp, Your Honor.

10 THE CLERK: What says the defendant?

11 MR. ABDALLA: Please excuse the juror from
12 service.

13 THE CLERK: All right, ma'am. Please be seated.
14 Juror 23, Christian Bonnet.

15 (Juror stood up.)

16 THE CLERK: What says the State?

17 MR. HOLLOWAY: Please seat the juror, Your Honor.

18 THE CLERK: What says the defendant.

19 MR. ABDALLA: Please excuse the juror from service
20 in this case.

21 THE CLERK: All right. Please be seated. Juror
22 63, Elizabeth Fountain.

23 MR. HOLLOWAY: Please seat Ms. Fountain, Your
24 Honor.

25 THE CLERK: Thank you. What says the defendant?

1 MR. ABDALLA: Excuse the juror from service in
2 this case.

3 THE CLERK: All right. Juror 157, Misty Miller.

4 (Juror stood up.)

5 THE CLERK: What says the State?

6 MR. ABDALLA: Is it Kimberly Rodchester?

7 THE CLERK: One fifty-seven.

8 MR. ABDALLA: Sixty-seven?

9 THE CLERK: One fifty-seven.

10 MR. ABDALLA: Fifty-seven. I'll get it
11 eventually. Sorry.

12 THE CLERK: Misty Miller.

13 MR. HOLLOWAY: Please seat Ms. Miller.

14 THE CLERK: Thank you. What says the defendant?

15 MR. ABDALLA: Excuse the juror from service in
16 this case.

17 THE CLERK: Please be seated. Juror 226, William
18 Welch. What says the State?

19 (Juror stood up.)

20 MR. HOLLOWAY: One second please, Your Honor.
21 Please seat Mr. Welch.

22 THE CLERK: And what says the defendant?

23 MR. ABDALLA: Welch?

24 THE CLERK: Yes.

25 MR. ABDALLA: Okay. Yeah. I thought you said

1 Wilson. Seat the juror, please.

2 (Juror seated.)

3 THE COURT: One or two alternates?

4 MR. HOLLOWAY: One is fine with the State, Your
5 Honor. We intend to be pretty brief and streamlined.

6 THE COURT: Defense counsel, is one sufficient?

7 MR. ABDALLA: One...?

8 THE COURT: One alternate.

9 MR. ABDALLA: One.

10 THE COURT: One alternate.

11 THE CLERK: All right. Thank you. Juror 205,
12 Abraham Stratton.

13 (Juror stood up.)

14 MR. HOLLOWAY: Please seat Mr. Stratton, Your
15 Honor.

16 THE CLERK: What says the defendant?

17 MR. ABDALLA: Excuse the juror, please.

18 THE CLERK: All right, sir. Please be seated.
19 Juror 164, Christopher Myers.

20 (Juror stood up.)

21 THE CLERK: What says the State?

22 MR. HOLLOWAY: Please seat Mr. Myers, Your Honor.

23 THE CLERK: What says the defendant?

24 MR. ABDALLA: Please excuse the juror.

25 THE CLERK: All right, sir. Please be seated.

1 Juror 247, Danny Moore.

2 (Juror stood up.)

3 MR. HOLLOWAY: Please excuse Mr. Moore, Your
4 Honor.

5 THE CLERK: All right. Please be seated, sir.
6 Juror 249, Robert Smith.

7 (Juror stood up.)

8 THE CLERK: What says the State?

9 MR. HOLLOWAY: Please seat Mr. Smith, Your Honor.

10 THE CLERK: What says the defendant?

11 MR. ABDALLA: Seat the juror, please.

12 THE CLERK: All right, sir. Please have a seat in
13 the jury box.

14 (Juror seated.)

15 THE COURT: All right. Is there any matter of law
16 we need to take up with regards to jury selection from
17 the State?

18 MR. HOLLOWAY: Nothing from the State, Your Honor.

19 THE COURT: Defense counsel?

20 MR. ABDALLA: Let me check -- nothing from the
21 defense, Your Honor.

22 THE COURT: Can the lawyers approach please?

23 (Whereupon, a bench conference was held.)

24 THE COURT: Ladies and gentlemen, those of you who
25 are seated out in the audience, I've been instructed --

1 you were not selected on this particular jury. It
2 doesn't mean you're not going to get selected.

3 I've been instructed to have you report back
4 downstairs to the jury assembly room. If you all, at
5 this time, will go downstairs to the jury assembly
6 room. Thank you for being here.

7 (Pause.)

8 THE COURT: All right. Ladies and gentlemen,
9 those of you who are seated in the jury box, we are
10 going to -- what I am going to do at this time is I'm
11 going to excuse you for an early lunch. I'm going to
12 excuse you for an early lunch because there's some
13 pretrial matters we need to take up, rather than have
14 you sit back in the jury room.

15 Before we do that, I'm going to let you go to
16 lunch at this time. I'm going to ask that you be back
17 in the jury room at 1:15. Be back in the jury room at
18 1:15 and we'll start the trial as promptly at that time
19 as possible.

20 During your break, you'll hear me -- you'll get
21 tired of me saying this, but I'm going to tell you over
22 and over and over and over until the conclusion of this
23 case -- while you're on your break, do not -- do not
24 discuss this case with anyone. You know very little
25 about this case other than what I've told you, you are

1 not to discuss this case with anyone until you are
2 instructed to do so.

3 Furthermore, you are instructed not -- not to do
4 any independent investigation on your own. You are to
5 decide this case based solely upon the evidence and
6 testimony as presented in this courtroom and no where
7 else. Please, ladies and gentlemen, be back at 1:15.
8 This young man over here by the door, in that burgundy
9 jacket, will show you where you need to be. Be back at
10 1:15 and we will start the trial of this case as
11 promptly at that time as possible. Thank you. You all
12 are free to go.

13 (Whereupon, the jury left the courtroom at 11:26
14 a.m.)

15 THE COURT: All right. The jury is clear. All
16 right. It's my understanding there is some pretrial
17 matters that we need to take up with regards to this
18 case. I'm happy to hear from whomever wants to go
19 first.

20 MR. ABDALLA: All right. You know, the one thing
21 we didn't do, Your Honor, I thought we were going to
22 get together and make sure on what we agreed and
23 disagreed on --

24 THE COURT: As far as exhibits go?

25 MR. ABDALLA: We --

1 THE COURT: I'm sorry?

2 MR. ABDALLA: We haven't discussed independently,
3 but we can just do it in open court if you would like.

4 THE COURT: Okay.

5 MR. HOLLOWAY: Your Honor, the only exhibits the
6 State intends to introduce -- there's some map
7 print-outs here, that basically show the area in which
8 this crime occurred, and the general overall area.

9 As I think the evidence is going to show, Your
10 Honor, the incident occurred on October 18th. Mr.
11 Bayne was not arrested until October 26th. And there
12 was a few -- there were some intervening actions, so
13 that'll sort -- that's what the maps are for, to give
14 the jury a better idea of the area.

15 As to whether Mr. Abdalla will just stipulate to
16 their admission, I'll go ahead and hand them to him
17 right now. Otherwise, we'll certainly lay the proper
18 foundation through the witnesses.

19 (Pause.)

20 MR. HOLLOWAY: Okay.

21 THE COURT: Without objection?

22 MR. ABDALLA: No, Your Honor. No objection to the
23 admission of those items.

24 MR. HOLLOWAY: Okay. Your Honor, the next thing
25 is there was -- there was -- when one of the victims,

1 who will be a witness for the State, Mr. David Ennis,
2 he positively identified Mr. Bayne's son as the
3 co-conspirator in this case. The State -- I haven't
4 decided, Your Honor, -- the State has not decided if we
5 move to introduce that picture, and he's -- he's signed
6 it and dated it. However, that -- that is something we
7 possibly would bring up while the victim testifies to
8 say, hey, you know, this was introduced, is this the
9 individual that you identified, just to clarify to the
10 jury, to give the jury a better understanding of who he
11 did identify and who -- who the State alleges the
12 defendant actually is.

13 MR. ABDALLA: Your Honor, I wouldn't have any
14 objection to that picture coming in.

15 THE COURT: Okay.

16 MR. ABDALLA: I --

17 THE COURT: Very well.

18 MR. ABDALLA: Do you have any more?

19 MR. HOLLOWAY: Your Honor, there is -- I don't
20 have them with me. I might print them out. There are
21 a few photos of the other victim, Aaron Shunk, of his
22 truck located at a residence -- at the address of ■
23 Meadow Fork Road. These pictures were turned over in
24 discovery. We might admit a couple of those
25 photographs at the appropriate time in trial when the

1 truck was seized.

2 MR. ABDALLA: I don't see a problem. I would like
3 to look at them at the time in case there's something I
4 hadn't thought about.

5 THE COURT: Okay.

6 MR. HOLLOWAY: And, Your Honor, lastly, there were
7 -- at the time the truck was seized, and also at the
8 time that the co-defendant, Mr. Donald Trammell, was
9 arrested, there were two BB guns that looked very
10 realistic like handguns that were seized at the time.
11 Again, Your Honor, we'll probably go ahead and get
12 these numbered --

13 THE COURT: When he was arrested?

14 MR. HOLLOWAY: When Mr. Donald Trammell was
15 arrested -- he has been transported to SCDC so I've
16 never had the opportunity to meet Mr. Trammell in
17 person. However, Your Honor, there have been -- there
18 were statements by the victims to law enforcement that
19 they believed Mr. Trammell to have a handgun on him at
20 the time.

21 The State believes that one of these two might
22 be that -- again, they are BB guns, not handguns. I
23 would like the opportunity to discuss this with Mr.
24 Trammell while we're on lunch break --

25 THE COURT: That's fine.

1 MR. HOLLOWAY: These are the only two other things
2 besides the pictures, that the State is considering
3 introducing into evidence.

4 MR. ABDALLA: The only thing I would ask, Your
5 Honor, is that the client -- the witness not be coerced
6 or led into saying it was a BB gun, because the
7 testimony was a handgun --

8 THE COURT: Well, I'm going to let him talk to him
9 over the break. And certainly when he gets on this
10 witness stand, he -- he can't lead him down that road.
11 He's got to --

12 MR. ABDALLA: Okay.

13 THE COURT: -- play by the rules and ask the right
14 questions.

15 MR. ABDALLA: Right.

16 MR. HOLLOWAY: Your Honor, there's nothing further
17 from the State at this time.

18 MR. ABDALLA: Your Honor, I believe we went over
19 these -- oh, I'm sorry.

20 THE COURT: Go ahead.

21 MR. ABDALLA: We went over these briefly with you
22 at the bench. I obviously am moving to sequester
23 witnesses so they can't speak to one another, nor
24 anybody else wants -- well, as soon as possible.

25 THE COURT: Any objection to the sequestration of

1 witnesses?

2 MR. HOLLOWAY: Your Honor --

3 THE COURT: I'll allow the investigating officers
4 to be in here.

5 MR. HOLLOWAY: If you allow the investigating
6 officers and then -- obviously the two victims, David
7 Ennis, and Mr. Aaron Shunk, and we can identify those
8 for the court.

9 THE COURT: Certainly the victims are allowed to
10 be in here.

11 MR. ABDALLA: Yeah, I understand that, Your Honor.

12 THE COURT: Certainly --

13 MR. ABDALLA: The other witnesses, though, because
14 there's credibility issues, I'd --

15 THE COURT: Mr. Holloway, you need to instruct
16 your witnesses not to discuss their testimony once they
17 step off this stand with other potential witnesses in
18 this case.

19 MR. HOLLOWAY: Certainly, Your Honor.

20 MR. ABDALLA: And, Your Honor, also I'd -- I would
21 ask that they be instructed not to speak to one another
22 from now on, because I don't want the coordination of
23 statements coming in. And I'm not suggesting the State
24 would do that, but witnesses have a funny way of --

25 THE COURT: Certainly. I will tell Mr. Holloway

1 not to have them discuss the case -- discuss the case.

2 MR. ABDALLA: And the other item I discussed was I
3 would like the court, in addition to the Solicitor, to
4 tell witnesses ahead of time they're not to, one,
5 identify my client when they've previously not
6 identified him; that being the two victims. And,
7 secondly, not for any witness to blurt out.

8 Well, he's been in trouble before with the
9 court, regarding my client. At this point, my client
10 does not -- is not going to take the stand. I don't
11 know what will happen by the end of the trial. And for
12 so many reasons, that should not be in front of the
13 jury, because his past would influence today's trial.

14 THE COURT: Mr. Holloway?

15 MR. HOLLOWAY: Your Honor, we'll certainly -- I'll
16 certainly discuss that with the witnesses. And that
17 does bring up -- and I understand Mr. Abdalla's point
18 because he'll -- he'll certainly cross examine them,
19 try to impeach them on that. That does bring up one
20 other thing, Your Honor, at this point in time, that is
21 the co-defendant's plea deal, Mr. Donald Trammell.

22 He pled, again, I'm going -- he pled in early
23 March to attempted armed robbery, and he was sentenced
24 to -- he had a -- it was a negotiated plea deal of five
25 years.

1 I certainly have no issues with Mr. Abdalla
2 asking him about that. However, I would request that
3 Mr. Abdalla reframe from discussing the differences in
4 terms of sentencing between attempted armed robbery and
5 armed robbery. Because I feel like we could easily go
6 down a path in which the -- without -- you know,
7 without being on purpose, but the jury finds out that
8 there's -- the sentencing range for armed robbery.

9 MR. ABDALLA: Well, judge, I've never had that
10 instruction before. I'm always -- I've always been
11 allowed to discuss the deal that person got so the jury
12 understands the disparity --

13 THE COURT: I think it goes -- I think it's
14 certainly allowed for him to discuss what he was
15 charged with, the potential penalty he was looking at,
16 versus what he pled to and the --

17 MR. ABDALLA: Thank you.

18 THE COURT: -- the penalty that he received.

19 MR. HOLLOWAY: Your Honor, the only thing I think
20 is what we're going to end up doing there is we're
21 going -- the jury then is going to know what the
22 penalty the defendant is facing. And the jury should
23 not be able to consider the -- the potential --

24 THE COURT: I mean, I can give them an instruction
25 on that.

1 MR. HOLLOWAY: Okay.

2 THE COURT: But, I mean, it goes certainly to his
3 testimony and his truthfulness. He's certainly got an
4 inclination -- not necessarily an inclination, but a
5 motivation to finger this gentlemen if he's gotten such
6 a good deal. And I think that's something that should
7 be in front of a jury. I think there's a case out
8 there that's specifically on point. That's reversible
9 error if I don't allow him to impeach his witness on
10 that issue.

11 MR. HOLLOWAY: Certainly, Your Honor, then the
12 State would just simply request that we -- we have
13 instruction after -- at the end of trial, during jury
14 instructions, that they are not allowed to consider any
15 sentencing arrangement they --

16 THE COURT: I mean, that's up to the court as far
17 as sentencing goes.

18 MR. HOLLOWAY: Certainly. I would just request
19 that the jury understand that, Your Honor.

20 MR. ABDALLA: Well, yeah, my only caveat to that
21 would be that the jury is in sort of -- it suggests
22 then that they can consider the fact that this guy was
23 given a deal, and they shouldn't consider it --

24 THE COURT: Well, I mean, that goes to the --

25 MR. ABDALLA: Sure.

1 THE COURT: -- prejudice of the testimony.

2 MR. ABDALLA: That's --

3 THE COURT: That's exactly what it goes to,
4 period. And I think you can argue that, and Mr.
5 Abdalla 'til the cows come home about why he testified,
6 the manner and fashion in which he's testifying to,
7 because he's getting a reduction and your client is
8 not.

9 MR. ABDALLA: Yes, sir, Your Honor.

10 THE COURT: Okay. It certainly goes to it.

11 MR. HOLLOWAY: While we're breaking, John and I
12 will certainly go over the rap sheets of all -- all the
13 witnesses. And then if -- right when we get back here
14 -- you know, hopefully we'll just stipulate to what can
15 come in and what can't, but we'll -- we can address
16 that quickly with the court if that will please the
17 court.

18 MR. ABDALLA: That works for me.

19 THE COURT: Well, be back at -- Mr. Abdalla asked
20 at the side bar if he could have until 1:15 because I
21 don't know -- how far is your office from here?

22 MR. ABDALLA: It's right down the street. It's
23 not a far walk. It takes me five minutes or so to
24 walk.

25 THE COURT: All right. I would ask that you all

1 be back here at 1:00 so we can discuss that issue on
2 the rap sheets. I've asked the jury to be back here at
3 1:15, I want to start out as promptly as possible.

4 MR. HOLLOWAY: It sounds good, Your Honor.

5 THE COURT: Let me ask this question before we
6 break, and I'm just curious for my benefit -- well,
7 never mind -- 1:00.

8 MR. HOLLOWAY: Okay.

9 MR. ABDALLA: Okay.

10 (After a recess, court reconvened.)

11 (State's Exhibit Nos. 1 - 20 premarked for
12 identification.)

13 (Off-record discussing between attorneys.)

14 MR. ABDALLA: My client was convicted of armed
15 robbery, I believe, in 1998. The Solicitor wants to
16 bring that up because the sentence ended within the
17 last ten years. And, of course, I object for reasons
18 of fairness and the over breadth of that statute.
19 Because he didn't do any -- commit any conduct during
20 the last ten years within that armed robbery.

21 If it was something else, I -- I wouldn't have
22 an objection. The fact that that armed robbery was --
23 I think the prejudicial value is just outstanding.

24 MR. HOLLOWAY: Your Honor, to give you exacts
25 here, the defendant in 1998 was charged and ultimately

1 convicted of three counts of armed robbery. He -- I
2 have information from SCDC right here that he was in --
3 on October 10th of 2000, is when he went to the --
4 first went to the Evans facility. It looks like he was
5 actually incarcerated -- he was returned to court at
6 that point, but he went to Perry originally on June
7 11th of 1998. And this was on three armed robberies.

8 He was released it appears, Your Honor, to
9 probation on August 1st of 2011, so certainly within
10 the last two years. I think --

11 THE COURT: What's the probative value of it?
12 That's what it gets down to -- boils down to.

13 MR. HOLLOWAY: It does, Your Honor. And I -- and
14 I understand Mr. Abdalla's point. As to the -- the
15 prejudicial effect of an armed robbery, I would propose
16 if the State's inclined -- or if the court is inclined
17 to just be able to talk to him about -- or to be able
18 to discuss that he -- that he had three felony
19 convictions in 1998. Because what happened, Your
20 Honor, is he was in jail until 2011 --

21 THE COURT: You still aren't -- you're not
22 answering my question. My question is, what is the --
23 and you may be getting to it -- but my question is,
24 what's the probative value of it, please, sir?

25 MR. HOLLOWAY: The probative value, Your Honor, is

1 that this is impeachable evidence because he did commit
2 three felonies in 1998. And he also -- there's also a
3 felony he committed in 2012 and 2013. So the gap in
4 which, Your Honor, -- the only reason for that gap is
5 that he was in jail at the time. It wasn't because he
6 was being a good, upstanding citizen in our community.

7 MR. ABDALLA: Well --

8 THE COURT: But your -- your -- but what you're
9 proposing is simply that he has prior felony
10 convictions, not the fact that they were armed
11 robberies?

12 MR. HOLLOWAY: Yes, sir, Your Honor.

13 MR. ABDALLA: But, Your Honor, I'm objecting to it
14 being 1998 because I think -- after 2011, -- actually
15 after 2005 or '06, anything comes in as fair game. But
16 I think to talk about a record that goes back that far
17 is so prejudicial regardless of what it's called. He
18 could address the fact that he was arrested on other
19 things in 2011 and every time since that time. He
20 certainly has enough to show my client isn't a modal
21 citizen.

22 MR. HOLLOWAY: Your Honor, I think the State's
23 main position here is if -- these had occurred in 1998,
24 and then the defendant was out and free in society and
25 was not committing crimes, I would see Mr. Abdalla's

1 point. I think there would be a little more underbelly
2 to it and substantiation.

3 However, the State is merely trying to propose
4 that this was not a situation in which this happened so
5 long ago and the defendant has changed, and he had all
6 these years of good conduct. He was only in good
7 conduct because he was in jail. And when he got out of
8 jail, he immediately went back to committing more
9 crimes.

10 THE COURT: All right. I'll take it under
11 advisement, and I'll cross that bridge once the State
12 puts up its case, and I'll make a ruling --

13 MR. HOLLOWAY: Thank you, Your Honor. And just
14 for the record, the State and the defense have reached
15 -- have reached a stipulation as to Mr. Abdalla's
16 questioning and cross examine -- cross examination on
17 the State's witnesses as to per -- per the rules of
18 evidence, Your Honor. And more specifically Rule --
19 Rule 609, that Mr. Abdalla is allowed to and -- within
20 his rights to cross examination any of the State's
21 witnesses on crimes that carry one year or more, or
22 that include -- or an element of the crime of
23 dishonesty that happened within the last ten years.

24 MR. ABDALLA: Yes. We're in agreement with that,
25 yes.

1 THE COURT: Very good. Anything else?

2 MR. HOLLOWAY: Nothing further from the State,
3 Your Honor.

4 THE COURT: Mr. Abdalla?

5 MR. ABDALLA: I wanted to make sure I was finished
6 by 1:15. No, I believe that's it for now, Your Honor.

7 THE COURT: All right.

8 MR. ABDALLA: Hopefully I won't have anything else
9 in short term. But you probably, better than I, know
10 how trials go and things come up that I don't
11 anticipate.

12 MR. HOLLOWAY: Your Honor, additionally, to make
13 the court aware -- and it's more of a -- a stylistic
14 view, I suppose -- but one of the victims, David Ennis,
15 was going to be the State's second witness called.
16 During the break, I realized that Mr. Ennis was no
17 where to be seen. Mr. Ennis related to me -- and this
18 is to no fault of counsel or Mr. Abdalla. However,
19 that he spoke to Mr. Abdalla, and Mr. Abdalla informed
20 him earlier this morning, that we're going to be in
21 courtroom 4 --

22 MR. ABDALLA: Oh--

23 MR. HOLLOWAY: Yeah. As an officer of the court,
24 I'm not implying -- I'm just relaying what I was told.
25 And my witnesses said to me, he went to courtroom 4,

1 waited for a while, and then left. So he is on the way
2 back. I'm not sure -- Investigator Owens has talked to
3 him. This is a -- I might end up calling him to court
4 -- that might seem awkward, but I wanted to let you
5 know that I was tracking him down over lunch.

6 THE COURT: All right. Very well.

7 MR. ABDALLA: Just for the record, I don't deny
8 it. But I have no recollection of having said that to
9 him, but I know I spoke to him briefly outside
10 courtroom 4, but I didn't remember saying the courtroom
11 -- but I can't deny it.

12 MR. HOLLOWAY: Your Honor, if I may have a minute,
13 I'm going to speak to my witnesses and let them know
14 what the whole sequestration process is, and that they
15 are to sit outside, and we'll get them --

16 THE COURT: All right.

17 MR. HOLLOWAY: -- when we're ready.

18 THE COURT: You've got about a minute.

19 MR. HOLLOWAY: Thank you, sir.

20 THE COURT: Tell Mr. Abdalla let's go.

21 (Pause.)

22 THE COURT: All right. Bring me the jury, please,
23 sir.

24 (Whereupon, the jury entered the courtroom at
25 1:18 p.m.)

1 THE COURT: All right. Good afternoon, ladies and
2 gentlemen. I hope you all had a nice lunch and are
3 ready to proceed this afternoon. Before we go any
4 further, Madam Clerk, I'm going to ask you to swear the
5 jury, please.

6 (Whereupon, the jury was sworn.)

7 THE CLERK: Thank you. Please be seated.

8 THE COURT: All right. Ladies and gentlemen, we
9 are about to try the case State of South Carolina vs.
10 Mr. Mark Anthony Bayne.

11 Before we begin the trial of this case, I want
12 to tell you that this trial will probably be different
13 from what you might expect. Many people do not have
14 the chance to attend actual courts of sessions as
15 you're doing now, and may think from watching
16 television or movies or reading books, that trials are
17 always full of high drama, intense action, and
18 rivetting circumstances. And while all of these things
19 may be true at times, this trial, ladies and gentlemen,
20 is not for entertainment. It is a fundamental part of
21 our democracy.

22 A search for the truth in an effort to make sure
23 that justice is done between the parties before the
24 court. Searching for the truth and making sure that
25 justice is done is often slow, deliberate, and

1 repetitive; the opposite of what you have seen on
2 television or in movies, or read in books.

3 This courtroom is a place of honor, dedicated to
4 the protection and preservation of citizen's rights
5 through what many have called the greatest justice
6 system ever created. The attorneys appearing before
7 you are advocates for the parties that they represent.
8 But first and foremost, they are officers of the court,
9 sworn to uphold the integrity and fairness of our
10 judicial system, and to help you in the search for the
11 truth. You should expect them to be professional,
12 confident, and ethical in the representation of their
13 clients' interests.

14 What I will now say, ladies and gentlemen, is
15 intended to serve as an introduction to the trial of
16 this case. These remarks are not a charge on the law
17 in this case. I will instruct you on the law
18 applicable to this case at the end of the trial before
19 you retire to consider your verdict. This is merely an
20 explanation of the procedure that we will follow in the
21 trial of this case so that you may better understand
22 what may be happening.

23 Now, the defendant in this case, ladies and
24 gentlemen, is charged by indictment filed in this court
25 with the crimes of armed robbery; possession of a

1 weapon during the commission of a violent crime;
2 another count of armed robbery; and another count of
3 possession of a weapon during the commission of a
4 violent crime; carjacking; kidnapping; and two counts
5 of conspiracy, the elements of which will be explained
6 to you later.

7 The indictments, ladies and gentlemen, in this
8 case is simply, as I've told you before, the charging
9 documents by which this case is brought into this
10 court. And they are not, in any sense, evidence of any
11 of the allegations that they contain.

12 The defendant, ladies and gentlemen, has pled
13 not guilty to these indictments. Therefore, the State
14 has the burden of proving each of the elements of the
15 indictment beyond a reasonable doubt. And it will be
16 your duty, ladies and gentlemen, to decide whether the
17 State has met that burden. Your purpose, as jurors, is
18 to find and determine the facts. You are the sole
19 judge of the facts.

20 If, at any time, I make any comments regarding
21 the facts, you must disregard them. You are to
22 determine the facts from the testimony that you hear
23 and the other evidence introduced in court. It is up
24 to you to determine the inferences which you feel may
25 properly be drawn from the evidence.

1 It is especially important that you perform your
2 duty of determining the facts diligently and
3 conscientiously because ordinarily there is no way to
4 correct an erroneous determination of the facts by a
5 jury.

6 On the other hand, the same law that makes you
7 the judge of the facts, makes me the judge of the law.
8 The law, as given by the court, is the only law that
9 you may consider. You must accept and follow it even
10 though you may disagree with it.

11 I cannot tell you what the facts are. And you,
12 ladies and gentlemen, cannot disagree with me about
13 what the law is or should be. Your job is to take the
14 law as I give it to you, and apply it to the facts as
15 you find them from the testimony of the witnesses and
16 any other evidence that is introduced during the course
17 of this trial.

18 After doing that, you will render your verdict.
19 A true and just verdict under the solemn oath that
20 you've just took as jurors.

21 Now, until I tell you to begin your
22 deliberations, you must not discuss this case with
23 anyone, including your fellow jurors, friends, family
24 members, or anyone involved in this case. The
25 attorneys and parties in this case have been advised

1 that they are not to talk to you at all.

2 So if you see anyone involved in the case and
3 they do not speak to you, they are not being
4 unfriendly. They are simply following this court's
5 instructions.

6 Now, during your deliberations, you may only
7 discuss the case in the jury room with your fellow
8 jurors, because they have seen and heard the same
9 evidence that you have. You must not discuss the case
10 with anyone other than your fellow jurors until you
11 have returned a verdict and the case is at an end.

12 I remind you that you must decide this case
13 based solely on the evidence presented here in this
14 courtroom. This means that during the trial, you must
15 not conduct any independent research about the case,
16 the facts of the case; the evidence presented in the
17 case, or the people, or the organizations involved in
18 any way in the case. Please do not try to find out
19 information from any source outside of this courtroom.

20 In other words, you must not look in
21 dictionaries or other reference materials; search the
22 internet, websites, or blogs, or use any other
23 electronic tools to get information about this case to
24 help you decide this case. You may not use computers,
25 telephones, cell phones, smart phones, tablets, the

1 internet, or other tools of technology with
2 communication capabilities at any time while you are in
3 the courtroom or during your deliberations.

4 Now, during your breaks for meals or overnight,
5 if necessary, you may use those devices. However, you
6 may not use those devices to communicate with anyone
7 about the case until the case is over. This means you
8 must not use phone calls, emails, text messages,
9 instant messages, twitter, or any blog, chat room, or
10 website including Facebook, Google Plus, My Space,
11 Link, YouTube, or any social media websites to send or
12 receive information about this case.

13 This includes information about a party, a
14 witness, an attorney, or a court officer. News
15 accounts about the research, research on topics raised;
16 any topics that you may think would be helpful in
17 deciding the case, or any testimony presented by any
18 witness.

19 During the trial do not read, listen to, or
20 watch any news reports about the case if there are any.
21 This includes anything that may be in the newspapers or
22 on the internet, radio, or television. You must not,
23 ladies and gentlemen, consider anything that you may
24 have read or heard about the case outside of this
25 courtroom, whether before or during trial.

1 Information on television, radio, the internet,
2 or from other sources, might be wrong or incomplete.
3 In our judicial system, it is important that you are
4 not influenced by anything or anyone outside of this
5 courtroom.

6 If you become aware of another juror's violation
7 of these instructions, please inform the court
8 immediately. It is important, ladies and gentlemen,
9 that you keep an open mind and not decide any issue in
10 this case until all of the evidence has been presented,
11 the parties have made their closing arguments, and I
12 have instructed you on the applicable law in this case.

13 It is your solemn responsibility to determine
14 the guilt or innocence of the defendant, and your
15 verdict must be based solely on the evidence as it is
16 presented to you in this trial, and on the law as I
17 instruct you during and at the close of the trial.

18 Now, in just a moment, the prosecutor or the
19 Solicitor will make what is called an opening
20 statement, in which the Solicitor will explain to you
21 the issues in this case, or at least what the Solicitor
22 thinks the issues are in this case.

23 The attorney for the defendant may also make an
24 opening statement, although he is not required to do
25 so. What the attorneys tell you during their opening

1 statements is not evidence in this case. It is only
2 their contention as to what the issues are.

3 The evidence in this case, ladies and gentlemen,
4 will be presented to you by the testimony of sworn
5 witnesses from this witness stand and/or by exhibits
6 that may be introduced into evidence.

7 Now, ladies and gentlemen, from time to time
8 during the course of the trial, you may hear one of the
9 attorneys say something like, Your Honor, I believe
10 that we have a question of law or a matter of law to
11 discuss with you. Or, Your Honor, may we approach the
12 bench. Or sometimes, I, myself, might find it
13 necessary to excuse you from the courtroom for a short
14 while so the attorneys and I can discuss a matter of
15 law.

16 The reason for this is because you are the judge
17 of the facts in this case. And sometimes when I am
18 discussing matters of law with the attorneys, it may be
19 necessary for me to make some comments as to the facts
20 in connection with ruling whether or not a particular
21 law applies.

22 I am not supposed to tell you what I think the
23 facts are, so I will excuse you from the jury room --
24 from the courtroom -- excuse me -- while these
25 discussions take place so that in no way -- so that in

1 no way will you be influenced by anything that I might
2 say or do in connection with the facts.

3 Now, in determining what the true facts are in
4 this case, ladies and gentlemen, you must decide
5 whether or not the testimony of the witnesses is
6 believable. It will be my responsibility to rule as a
7 matter of law as to whether certain testimony is
8 admissible or not. Once the testimony is admitted,
9 whether or not you believe it is solely for you to
10 determine.

11 Now, when deciding whether to believe a witness,
12 you have the right to consider the interest of any
13 witness; the bias of any witness; the prejudice of any
14 witness; the opportunity for the witness to have seen
15 the matters and things about which the witness may
16 testify, and the way the witness acts on the witness
17 stand.

18 You have the right to consider anything that is
19 in the record that will help you evaluate the testimony
20 of the witnesses. That means that it is your duty,
21 ladies and gentlemen, to pay close attention to these
22 witnesses; to observe the witnesses; to listen to the
23 witnesses; and to pay close attention to the attorneys
24 and to the court. Please do not let your thoughts
25 wonder, but give strict attention -- strict attention

1 to the testimony in this case, so that at the end of
2 all the testimony, after the arguments of counsel and
3 the charge on the law by the court, you will then be in
4 a position to determine what the true facts are, and to
5 apply the law to those facts and thus render a true and
6 just verdict.

7 Now, later in this case, ladies and gentlemen, a
8 foreperson will be selected to preside over
9 deliberations in the jury room. It will be the
10 foreperson's added responsibility to be the
11 spokesperson here in court. It will also be the
12 foreperson's duty to write the verdict, but I will give
13 the foreperson further instructions at the conclusion
14 of the case.

15 Now, in order to preserve everyone's rights, I
16 will give the parties an opportunity to object to
17 anything that I have said to the jury. Any exception
18 or objection to anything that I have said to the jury
19 by the State?

20 MR. HOLLOWAY: Nothing from the State, Your Honor.

21 THE COURT: Defense counsel?

22 MR. ABDALLA: Nothing from defense, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, we
24 are now going to begin the trial of this case. The
25 State is recognized for opening statements.

1 MR. HOLLOWAY: Your Honor, Ms. Cross, Ms. Troup,
2 good afternoon, ladies and gentlemen. As you heard
3 from the judge, there's -- I mean, there's a lot of
4 things that go into this. And there's -- you know, you
5 certainly have your ideas of what trials are like, and
6 then here you are. We're here and the trial is about
7 to begin.

8 I will say that one of the shows that I take an
9 interest in is this latest OJ Simpson show. It's not
10 on FX. I don't know if anyone has watched it, but I
11 think we all remember what that trial was like, and it
12 took months. That is not what this is going to be
13 like.

14 We will be streamlined. We will present -- we
15 will present a full case. Mind you, there -- we will
16 not cut any corners here in the presentation of this
17 case. However, this is not going to be one we need
18 days for -- we will wrap up tomorrow. I certainly hope
19 so, at least from the State. On behalf of the State,
20 we'll do everything we can to do that.

21 I was once told by a lawyer there's a difference
22 between an opening statement and a closing argument.
23 And here, as the judge said, we -- we are just touching
24 on something. We are not going to argue in front of
25 you. So I'm not going to argue in front of you right

1 now. I'm merely going to give you an idea of what I
2 believe the evidence is going to show.

3 And really the key with the opening statement, I
4 think, is just to give you an idea of what this case is
5 about, what it is that I, as the State, have to prove
6 how I intend to prove it.

7 So you've heard that Mr. Bayne here, he has been
8 charged with two counts of armed robbery; two counts of
9 possession of a weapon during the commission of a
10 violent crime; two counts of conspiracy; one count of
11 carjacking; and one count of kidnapping.

12 Now, we will break these down much, much
13 further. And as his Honor instructed you, he is the
14 judge of the law. And he will give you final
15 instruction of the law.

16 During closing arguments, I will be -- and Mr.
17 Abdalla will be able to touch on how we believe the
18 facts relate to the law. But every -- but going
19 forward, I just want to give you a small idea of sort
20 of -- of sort of what that is. And they really,
21 luckily here, they're all pretty self-explanatory.

22 Armed robbery is what we all think of -- is when
23 an individual would put another person at either gun
24 point, or take a knife, or present something that would
25 appear to be a gun or some sort of weapon, and then rob

1 them.

2 Further, possession of a weapon during the
3 commission of a violent crime, I'll tell you that --
4 that armed robbery has been determined by our State to
5 be a violent crime. So in order to be -- if, at the
6 end of the trial, you guys -- ladies and gentlemen of
7 the jury, find that the defendant committed the crimes
8 of armed robbery, and also was in possession of a
9 weapon during that time, then he would be in fact
10 guilty of possession of a weapon during the commission
11 of a violent crime.

12 Next is conspiracy. So conspiracy -- we've all
13 sort of heard of it, and we all know the word. It's
14 sort of like an ire to the word. You know, if we all
15 with our husbands or our wives, or families, or
16 friends, we plan vacations. We plan trips. So a
17 conspiracy is just planning something that's illegal.
18 Essentially, it's when two or more people combine to
19 plan something or to conspire to plan something with
20 the purpose of it being an unlawful object. Or
21 basically, your plan is to do something unlawful, not
22 to go on a vacation. So that's -- conspiracy is
23 another word planning, but meaning that two people plan
24 to do something unlawful.

25 Kidnapping, we all know what kidnapping as --

1 you know, the word says in and of itself, is a kid.
2 However, the statute in South Carolina for kidnapping
3 basically is the unlawful taking or the unlawful -- you
4 could -- whether it is forcing someone to be in a
5 certain area or confining someone in a certain area, no
6 matter what the age, and doing so with violence or
7 intimidation, that's -- that's where kidnapping comes
8 from.

9 And carjacking is different from auto breaking,
10 in that carjacking means that you use some mode of
11 violence or intimidation, again, to actually take
12 someone out of their -- out of their vehicle and then
13 take their car. So that is what I have to prove. And
14 I kind of got ahead of myself.

15 What this case is about, ladies and gentlemen, I
16 believe what the evidence is going to show you, which
17 primarily -- we have a bunch of pictures here, we've
18 got about 20 -- 20 exhibits, but nothing -- nothing
19 major.

20 Essentially, what I think the evidence is going
21 to show is that there were two victims here, one by the
22 name of Aaron Shunk, and one by the name of David
23 Ennis. Okay. I have no issue telling you right now
24 that you guys will likely, absolutely see
25 inconsistencies between what Aaron Shunk says and

1 between what other eye witnesses say. And you're going
2 to see inconsistencies between what Mr. Ennis says and
3 what the other eye witnesses say. Okay.

4 The other eye witnesses are, one, an individual
5 by the name of Donald Trammell. Donald Trammell was
6 the co-defendant in this case with Mr. Mark Bayne.
7 Donald Trammell has already -- he will take the witness
8 stand, and you will find out that he has already pled
9 guilty to a crime called attempted armed robbery in a
10 plea negotiation.

11 He is going to take the stand and tell you
12 exactly what happened on the evening of October 18th.
13 But essentially what the evidence is going to show you
14 is that Aaron Shunk lived down the street at ■■■ Hammond
15 Drive. This is -- he lived over in Taylors. The house
16 where the incident took place was ■■■ Keller Road, which
17 is also in Taylors. And it's only about a mile down
18 the road from one another.

19 What the evidence is going to show you is that a
20 lady by the name of Vickie Trammell, who is Donald's
21 mother; and Vickie's daughter, Nikki Gardner, who is
22 also Donald's sister, were spending that evening with
23 Aaron Shunk.

24 Mr. Shunk will go back and forth, but there will
25 be testimony that they were drinking that night, that

1 they were smoking marijuana. That there -- also,
2 they'll probably be testimony that they were going out
3 to get Oxycodone.

4 Mr. Shunk's birthday was the next night -- or
5 the next day. So to kind of -- to put it in
6 perspective, he was celebrating.

7 Mr. Shunk, who is going to take the stand and
8 testify when they left the house, Nikki was driving the
9 vehicle. They went back to [REDACTED] Keller Road. And [REDACTED]
10 Keller Road is where Vickie Trammell lived. That's
11 where her father lived. That's what she's going to
12 tell you on the witness stand.

13 And when they got there, they were bombarded
14 immediately by Donald Trammell, by Mr. Mark Bayne, and
15 by another lady named Corrie Morgan, who at the time --
16 there's going to be testimony that shows that was
17 dating Mark Bayne.

18 Mr. Bayne -- there's going to be testimony that
19 he had a shotgun. There's going to be testimony that
20 Donald Trammell had a handgun, and that they forced --
21 and that -- Mr. Shunk is going to testify that Donald
22 forced him out of the vehicle. At that point in time,
23 he was led behind the house and told to stay there.

24 Immediately thereafter, there was man named
25 David Ennis. There is going to be testimony that a man

1 named David Ennis appeared. David Ennis will testify
2 that he works for Pop-a-lock. In his -- in his
3 business, he goes and unlocks vehicles. That he knew
4 who -- he knew who Donald Trammell was. And Mr. Shunk
5 is going to testify he knew who Donald Trammell was.

6 So Donald Trammell was the centerpiece here that
7 unfortunately for him, both victims knew him personally
8 and knew his face. Mr. Bayne was the one that nobody
9 really knew. So when he gets there, Mr. Ennis'
10 testimony will be that he was going to unlock a
11 vehicle. That he had been called to unlock a vehicle.

12 Donald will more than likely testify that Mr.
13 Ennis sells Oxycodone. That he does work for
14 Pop-a-lock, but he also deals on the side. And that
15 they called him knowing that he would (a) have drugs;
16 and (b) have money. And what we're going to tell you
17 at the end of the day, they held him up at gunpoint --
18 the testimony is going to show, they held him at
19 gunpoint and robbed him.

20 So where we got -- there's two armed robberies
21 right there. There's a conspiracy in a nutshell. You
22 sort of see where the kidnapping is coming from, where
23 it goes to Mr. Shunk being led behind the house. And
24 you can also see the carjacking. And the carjacking
25 being -- and there's going to be testimony that the

1 individual who drove off with Mr. Shunk's truck was
2 none other than Mr. Bayne.

3 So that is the story in a nutshell. And we will
4 get in way further detail. I just don't want to talk
5 y'all's ear off because that's not my job. I'm merely
6 the driver of this trial. And the train is actually
7 all the witnesses as the judge says. What I say and
8 what Mr. Abdalla says, right here right now, is -- our
9 comments are not evidence.

10 I just wanted to give you an idea of what to be
11 expecting as we go forward in this trial. But what you
12 hear right here from every witness who takes this
13 stand, who is put under oath, and the exhibits that get
14 entered into evidence, that's the evidence. That's the
15 only things you all can consider.

16 Now, the one thing that I remind you is that you
17 are without a doubt going to hear -- and you're
18 probably already thinking it -- man, these guys kind of
19 brought themselves into this. I'm not going to deny
20 it.

21 And you're also probably thinking, hey, you
22 know, who are these other witnesses? Obviously they
23 probably do drugs. Ah, they do. These witnesses are
24 going -- the State witnesses are going to admit to
25 doing the drugs. They're going to admit to being --

1 they have prior convictions.

2 But what that doesn't take away is that they are
3 still people. They're still good people, and they're
4 still taking this stand and putting their hand on the
5 Bible and going under oath to give their testimony, and
6 that still matters.

7 And what I want you to consider, as we go
8 through this trial, is why would they fabricate
9 anything. What do they have to lose and what do they
10 have to gain. And that goes towards what his Honor
11 says.

12 One of the most important jobs for you guys as
13 we go through this trial, is weigh the credibility of
14 each individual witness. And that honestly is the most
15 fun part, I think, but also the easiest. Because we
16 judge people every day. And not that we're doing --
17 not -- I don't mean judgment in a bad way. But when
18 someone talks to you, you say, you know, is that the
19 truth or is that a lie.

20 So when these people take this stand, I hope
21 that you really pay attention -- you pay attention to
22 the consistencies, the inconsistencies. And at the end
23 of the day, really focus on the bolts -- the nuts and
24 bolts of this case which are -- as I've briefly
25 explained -- the two armed robberies, the two

1 conspiracies, the two possession of a weapon during the
2 commission of a violent crime; the one carjacking and
3 the one kidnapping charge, and the essential elements
4 of those crimes as it relates to Mr. Bayne.

5 Now, the one thing I'm going to close on in this
6 opening statement before I take a seat and let Mr.
7 Abdalla have the floor, is that without a doubt, one of
8 the things you should have in your mind the entire time
9 is the State's burden of proof. You've probably heard
10 it before, but we have to prove that the defendant is
11 guilty beyond a reasonable doubt.

12 Now, there are three ways that's described. And
13 again, I will take a backseat to his Honor when he
14 gives jury instructions at the close of the trial, as
15 to what beyond a reasonable doubt means. But typically
16 it means a doubt that will cause a reasonable person to
17 hesitate to act.

18 So if you said -- if you're being objective and
19 you said, ah, like I don't -- I'm not sure, and you had
20 some reason to it, that would be one. Or a doubt --
21 another way to say it is a doubt that you can assign a
22 reason to. If you can't assign an objective reason to
23 it, then it's probably not reasonable doubt.

24 But the one I like the most is that you -- if
25 you left at the end of this trial firmly convinced of

1 the defendant's guilt, that the defendant has actually
2 done what the State -- what we have alleged that he has
3 done, then you must find him guilty. And at the end of
4 this trial, I'm confident that you will be firmly
5 convinced and I will ask you to find the defendant
6 guilty on all these charges. Thank you.

7 THE COURT: Defense counsel.

8 MR. ABDALLA: Thank you, Your Honor. Good
9 afternoon, I'm John Abdalla. And I was introduced to
10 you earlier before you were selected as jurors, and
11 I've here defending Mark Bayne.

12 The prosecutor went over his theory of the case.
13 I'm not going to say much about the case because I'm
14 going to have it laid out in court. And as the
15 Solicitor said, he's the one -- he's the engineer.
16 He's driving the train.

17 He's going to put up the witnesses he choses to
18 put up. He's going to elicit the testimony he thinks
19 is important. And I'm going to hopefully keep
20 everything in check. And that doesn't imply that the
21 Solicitor would do anything improper; he wouldn't.

22 The biggest challenge for you all is going to be
23 the witnesses because the prosecutor said -- asked an
24 interesting question. What reason do they have to lie?
25 Well, there's an old expression that more lies are told

1 in court than anywhere in the world. It's just an
2 expression. You can chose to believe it or not believe
3 it.

4 Now, I'll tell you, the officers have no reason
5 to lie so the officers are here as investigative agents
6 investigating a crime, and assembling the evidence that
7 they have to present in court. And the Solicitor then
8 assembles and says, okay, this is a good case to try or
9 not to try.

10 But the witnesses that testify might have
11 different reasons for their testimony. I can't stand
12 stand here and tell you emphatically whether people are
13 telling the truth or not. I have my opinions. I'm
14 rather judgmental and I make opinions -- form opinions
15 all the time about people, if they're full of crap or
16 whether they're telling the truth. I'm not always
17 right, of course. Any one of us can be right.

18 Of course, I'm convinced by the end of the
19 trial, you'll say -- conclude that it doesn't pass the
20 sniff test. But I'm not about to minimize the State's
21 case. They have a lot of put up. They have a lot to
22 prove. They have a high burden. And you have to be
23 convinced beyond a reasonable doubt. Reasonable doubt
24 is also defined as a doubt that would cause a
25 reasonable person to hesitate to act. I think you

1 might have hesitation to act after it's all said and
2 done. But that's not my decision. That's your
3 decision after hearing the case.

4 Obviously, you want to make certain you make the
5 right decision because this is obviously Mr. Bayne's
6 most important day of his life. He's in court. And
7 he's at the mercy of the jury system, which is the
8 system we designed. I think it's the best system on
9 the planet.

10 Mr. Holloway also made another point that this
11 isn't like TV. That's true. It is and it isn't like
12 TV. It's like TV in the sense that, yes, we have a
13 trial and we go through the same process. Sometimes on
14 TV they either take short cuts or they go into a
15 thoroughness that is almost impossible to find. He
16 doesn't -- my client doesn't have the benefit of Johnny
17 Cockran as OJ did. So -- we don't have a panel of
18 experts to challenge everything. You're the experts.
19 But he does have legal representation. And I will do
20 my best to show that the State has failed to prove its
21 burden. I thank you for listening.

22 THE COURT: All right.

23 MR. HOLLOWAY: If it please the court. At this
24 time, the State would call its first witness, Mr. Aaron
25 Joseph Shunk, to the witness stand.

A A R O N S H U N K - - D I R E C T

1 AARON J. SHUNK, having been
2 first duly sworn, testified as follows:

3 THE CLERK: Thank you. Please be seated. I'm
4 sorry. Would you please state your name for the
5 record?

6 THE WITNESS: Aaron Shunk.

7 THE CLERK: Thank you.

8 **DIRECT EXAMINATION BY MR. HOLLOWAY:**

9 Q. Good afternoon, Mr. Shunk. Thanks for being
10 here with us today. Can you introduce yourself to the
11 jury, please?

12 A. Yes. My name is Aaron Shunk. I live in South
13 Carolina. I moved up here from Jacksonville to be
14 closer to my son. And I know my voice is shaky. I'm
15 just not good in front of people, so that's what that
16 is.

17 Q. Mr. Shunk, again, just take a deep breath and
18 we appreciate your being here. So you say you're
19 originally from Jacksonville?

20 A. Yes, sir.

21 Q. Okay. And when did you move to South
22 Carolina?

23 A. 2007.

24 Q. And how old is your son?

25 A. Thirteen.

1 Q. And did you move -- were you anywhere between
2 Jacksonville and South Carolina?

3 A. What -- what do you mean?

4 Q. Did you live anywhere other than -- before you
5 moved to South Carolina when you left Jacksonville?

6 A. I left -- I lived in Miami before that. I
7 came up to Jacksonville and then moved to South
8 Carolina. I have family in Atlanta. I used to live in
9 the outskirts of Atlanta.

10 Q. And where in -- where in the outskirts was
11 that?

12 A. Cumming, Georgia.

13 Q. Is that where your mother lives?

14 A. Yes, sir.

15 Q. And where does your son live?

16 A. He is in Washington, Georgia.

17 Q. And how old is he -- how old is he now?

18 A. Thirteen.

19 Q. And where in Greenville County do you live?

20 A. Taylors -- it's Blue Ridge, but it's a Taylors
21 address, ■■■ Hammond Drive, Taylors, South Carolina.

22 Q. And how long have you lived at ■■■ Hammond
23 Drive?

24 A. Since 2007.

25 Q. And is that a house?

AARON SHUNK -- DIRECT

1 A. It's a house, yes, sir.

2 Q. And what do you do for a living?

3 A. I work at the Cliffs. It's a golf course,
4 Glassy Mountain.

5 Q. Is that pretty close to where you live?

6 A. It's about 18 minutes, 20 minutes away.

7 Q. And is that located up Highway 25, going north
8 towards North Carolina?

9 A. Yes, sir.

10 Q. And did the location -- how long have you had
11 that job?

12 A. This is my third year. This is my third year.

13 Q. And are you missing work today?

14 A. Yes, sir.

15 Q. Will you be back at work tomorrow?

16 A. Yes, sir.

17 Q. How is the course looking?

18 A. It's great. It just got aerified, so it's
19 looking good.

20 Q. So do you have a pretty -- a pretty good
21 memory of the events that took place on October 18,
22 2014?

23 A. Yes, sir.

24 Q. Do you understand that you're here today to
25 discuss those events?

1 A. Yes, sir.

2 Q. Was your -- is your birthday on October 19th?

3 A. Yes, sir.

4 Q. Can you tell the jury what you were up to on
5 October 18th, and who you were with to start the
6 evening?

7 A. All right. I was actually by myself. The
8 next day was my birthday. I was by myself at my house,
9 and I was a drinking a little bit, smoking a little bit
10 of marijuana. And Nikki and Vickie knocked on my
11 garage door because I leave my garage up.

12 Q. One second, Mr. Shunk. Let's use full names
13 here.

14 A. Oh.

15 Q. If you don't mind.

16 A. Okay.

17 Q. The -- act as if -- please explain this as if
18 the jury has no idea what you're talking about, because
19 the jury does not know what you're talking about.

20 A. Okay. I don't know their last name.

21 Q. Okay. Is Vickie an older lady?

22 A. Yes. She's -- yes, sir. It's the mother of
23 Donald.

24 Q. Okay. If -- it's Vickie's daughter, Nikki?

25 A. Yes, sir.

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1 Q. Did you know Vickie before this incident?

2 A. I did, but not hanging out. Like I did know
3 of her.

4 Q. Did you know -- did you know Donald?

5 A. Yes, sir.

6 Q. And how long have you known Donald?

7 A. Maybe a couple of years, but it's not like we
8 hung out or anything. It's just -- I knew him -- knew
9 of him, you know, the same thing.

10 Q. And so knowing him for a couple of years,
11 could you readily identify him?

12 A. Absolutely.

13 Q. And I'm going to show you what's been marked
14 as State's Exhibit -- Exhibits -- State's Exhibits 1
15 through 5. Take your time and look over these, one
16 through five, and tell me if you recognize what they
17 depict?

18 A. Yes.

19 Q. Okay. And again, how long had you lived at
20 your residence at ■■■ Hammond Drive?

21 A. '07.

22 Q. So -- and when did this incident occur?

23 A. This happened in '14, October 18, 2014.

24 Q. Okay. So how many years had you lived there
25 -- had you lived there when the incident occurred?

1 A. Seven years.

2 Q. And were you quite familiar with the area?

3 A. Yes, sir.

4 Q. Briefly tell me what State's Exhibit 1 is
5 depicting?

6 A. That's my house right there.

7 Q. And is that located on Hammond Drive?

8 A. That's actually my old red truck and that's my
9 cousin's truck right here. Both red, right there in
10 the driveway.

11 Q. And is the State Road 140 another name for
12 Hammond Drive or does it become Hammond Drive?

13 A. I guess so. I'm not sure. I just know it is
14 Hammond Drive.

15 Q. And will you look at State's Exhibit 2, and
16 describe for me what you see there? Look closely at
17 the top right half, do you see your home on the top
18 right house?

19 A. Where the red is?

20 Q. Uh-huh.

21 A. Yes, sir.

22 Q. Is that a picture just zoomed out?

23 A. Yes, sir.

24 Q. And here, would you take a look at State's
25 Exhibit 3. Can you describe to the jury what you see

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1 there?

2 A. I'm not sure.

3 Q. I mean, does it appear to be a zoomed version
4 of the previous picture?

5 A. Yes. They all do, sir.

6 Q. And do you remember -- now, we're jumping
7 ahead a little bit. Do you remember where Vickie was
8 living at the time?

9 A. Yes, sir.

10 Q. Do you remember the address?

11 A. I don't know the address, but I drive by it
12 everyday because I go to that Sandy Flat Convenience
13 Store.

14 Q. All right. So would you recognize it from the
15 road?

16 A. Yes.

17 Q. Now, do you recognize -- I'm still going -- do
18 you recognize State's Exhibit 5?

19 A. That is -- that's where it is, yes, sir. This
20 is where the house -- the place is.

21 Q. And do you recognize State's Exhibit 4 -- or
22 what kind of view is State's Exhibit 4? Is it a street
23 view? Is it an aerial view?

24 A. It's an aerial view.

25 Q. Okay. And does it -- are you familiar with

1 that area?

2 A. Yes, sir.

3 Q. Okay.

4 A. The defendant's -- I mean Donald and -- it's
5 their -- their house.

6 Q. Okay. Is that where the incident occurred?

7 A. Yes, sir.

8 MR. HOLLOWAY: Your Honor, Mr. Abdalla and I
9 briefly spoke about this earlier, and I'm not sure
10 exactly how we ought to go about it. But for the
11 record, at this point, the State would move to admit
12 State's Exhibits 1 through 5 into evidence and publish
13 them to the jury.

14 THE COURT: Any objection?

15 MR. ABDALLA: Yeah. I've already -- yes.

16 THE COURT: Without objection. So admitted. You
17 may publish them to the jury.

18 MR. HOLLOWAY: Thank you, Your Honor.

19 (State's Exhibits 1 - 5 admitted into evidence.)

20 THE COURT: If you'll identify for the record
21 which exhibit you're putting up there first.

22 MR. HOLLOWAY: Yes, sir, Your Honor.

23 THE COURT: And in what order you do so.

24 MR. HOLLOWAY: This is State's Exhibit 1, Your
25 Honor. And I apologize, I'll try to get this honed in

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1 a little bit.

2 BY MR. HOLLOWAY:

3 Q. Mr. Shunk, can you see that whatsoever?

4 A. Barely.

5 Q. Barely?

6 A. I mean, I can -- it's blurred. I can see it.

7 Q. Were you -- will you step off from the witness
8 stand for me real quick and come over here and view
9 this picture closer up. Using this laser pointer --
10 come on over here -- now, looking at this photograph,
11 you can look right here on the screen. We use this
12 laser pointer to show where your house is. Use the
13 laser on the screen now just to give the jury an idea.

14 A. It's right here --

15 Q. Technology never works when you need it.

16 A. It's --

17 Q. Will you just point to it on there?

18 A. Okay. My house is right here (indicating).

19 Q. And --

20 A. You see that truck, that's my truck parked
21 right -- there is a field right there. It's not my
22 property, but it's a field right off the road. And
23 that's my -- my cousin's truck in the driveway right
24 there. That's my truck in the field. They're both
25 red.

1 Q. Using this pen, will you draw a circle where
2 your house is and the red truck?

3 A. This is my house. This is my red truck, which
4 I no longer have. This is my cousin's.

5 Q. Now, just stay here with me, is that located
6 on [REDACTED] Hammond Drive?

7 A. Yes, sir.

8 Q. Okay. And to get to the incident site, which
9 way would you turn?

10 A. As far as right now?

11 Q. Out of your driveway -- if you're turning out
12 of your driveway, which way would you go to get to the
13 incident site?

14 A. You take a left. And then the stop sign is
15 right there.

16 Q. Okay.

17 A. You cross over, you go down -- I don't know --
18 not too far, and it's around this snake curve. It's
19 right there. It's the place where this event happened.

20 MR. HOLLOWAY: Your Honor, the State is showing
21 what is marked as State's Exhibit 2.

22 BY MR. HOLLOWAY:

23 Q. Okay. Looking at this photograph -- take your
24 time -- can you circle where your residence is now?

25 THE COURT: Is the entire picture on that screen

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1 up there? It doesn't look like it.

2 MR. HOLLOWAY: I'll try to shift this a little
3 bit. There we go.

4 THE COURT: Thank you.

5 BY MR. HOLLOWAY:

6 Q. I'll work on this brightness and maybe we'll
7 make that happen. Technology, sometimes I feel like it
8 dampens testimony more than it benefits it. And can
9 you draw -- if you were to turn out of your house --

10 A. And you go right here. Out of my driveway,
11 back up, go this way. Here's the stop sign. You cross
12 over and go down this road.

13 Q. And keep on going, correct?

14 A. Yes. Keep on going.

15 Q. Let me show you -- here's State's Exhibit 3.
16 It's an even more -- I'm showing it to you as an even
17 more zoomed out version. As you see your house,
18 towards the upper right corner.

19 A. Right here.

20 Q. And will you show us the road that you would
21 take by using that photograph and pen -- can you show
22 us the road you would take to get to where Donald and
23 Vickie and Nikki live?

24 A. Across like this.

25 Q. Okay.

1 A. Go all the way down.

2 Q. Just go ahead and draw it on there.

3 A. Okay. All the way down and it's right -- when
4 you about make that curve, it's right here.

5 Q. And here is State's Exhibit 4. What's this an
6 aerial view of?

7 A. That's their place.

8 Q. Okay. Will you circle -- will you circle
9 where their residence and their land is?

10 A. It's right here. It's all right here.

11 Q. All right. And when you got --

12 THE COURT: What's the exhibit number again?

13 MR. HOLLOWAY: It's Exhibit No. 4, Your Honor.

14 THE COURT: Thank you.

15 BY MR. HOLLOWAY:

16 Q. And before you take a seat, again, now you're
17 looking at State's Exhibit 5; and what do you recognize
18 State's Exhibit 5 as?

19 A. This is where their driveway begins. And
20 right up here, turns the curve.

21 Q. Please speak up for the court reporter.

22 A. This, you take a right right here. And this
23 is the place right here.

24 Q. All right. If you would take a seat, Mr.
25 Shunk. I really appreciate your help.

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1 A. Yes, sir.

2 Q. Now, Mr. Shunk, at about what time did -- did
3 Vickie and Nikki come over to the house on that
4 evening?

5 A. I'd say ten, ten-ish.

6 Q. And --

7 A. Or 9:45, something, I mean.

8 Q. Did they -- did y'all ultimately leave your
9 residence -- your residence?

10 A. As far as what?

11 Q. Did y'all ultimately leave your residence that
12 evening?

13 A. Yes, sir.

14 Q. Did y'all leave together?

15 A. Yes, sir.

16 Q. And in what vehicle did you leave in?

17 A. My truck, my Dodge Ram 1500 Laramie.

18 Q. Okay. Can you describe the vehicle in further
19 detail?

20 A. Okay. It's tan. It's four door. It's got a
21 bed cover on it. And it's an '07.

22 Q. And when you guys left your -- when you left
23 your residence, who was driving? Or can you describe
24 -- please describe the seating arrangement.

25 A. Nikki, the daughter, was driving; me,

1 passenger seat; Vickie, the mother, in the back seat.

2 Q. And when you pulled up to the residence, tell
3 us what happened next?

4 A. Okay. We pulled in. Immediately I was
5 confronted by -- Donald got me out at gun point, and
6 handed me to this other guy, you know. I don't know
7 exactly. It was dark. I don't know -- I've never seen
8 that guy before --

9 Q. What -- and pause -- do you know about what
10 time of the night this was?

11 A. Like 10:15, not long, they live like right --
12 like right there.

13 Q. So, was it dark outside?

14 A. It was -- absolutely.

15 Q. And how far off -- do you remember how far
16 down this driveway the residence is? Off the road, how
17 far off the road give or take?

18 A. Thirty, 35 foot.

19 Q. Is it -- are there any -- are there any lights
20 going back to the residence?

21 A. No.

22 Q. Are there trees surrounding the driveway?

23 A. Yes, sir.

24 Q. Was it extremely dark?

25 A. Yes, sir.

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1 Q. So tell us -- start again, please. I'm sorry
2 I interrupted you. Tell us again what happened when
3 you got there.

4 A. Okay. When I got there, Donald got me out at
5 gun point. And it all happened so quickly. And then
6 after that, he handed me off to this other guy, which
7 had a shot gun, like a sawed off. And like I said, I
8 don't -- I don't -- I can't name his face because I've
9 never seen him and it was dark.

10 I got into a vehicle. I got in -- he put me in
11 the passenger seat. He drove. He got in the driver's
12 seat, he drove just barely a little bit. I don't know,
13 ten foot. I don't even know why that even made sense,
14 but then got out. And he took me around to the back,
15 which it wasn't far, and sat me on the porch.

16 And then after that, there was a girl there, I
17 guess as a look-out. I don't know. I've never seen
18 her. I can't -- I don't know -- I can't describe her.
19 And then as the -- the guy was coming with his sawed
20 off shotgun, Donald was coming and he said, "Don't
21 move. You better not do anything stupid". And I
22 didn't. I just sat there and then everybody left.

23 I got punched in the eye. And then everybody
24 left to the front. And I was scared. I was shaking.
25 I was sitting there by myself. And then I was like,

1 okay.

2 Finally, I don't know how long after that, ten
3 minutes maybe. I don't know, five to ten, I don't
4 know. And I heard a truck, a vehicle, you know, go off
5 into the distance, which I know the sound of my truck.
6 And it sounded like that.

7 And when I didn't hear anything, and it was
8 quiet, I ran straight through the woods to the road,
9 and ran all the way home, and called the police.

10 Q. Okay. Let's rewind it a little bit. So
11 Donald was the first one to rip you out of the car?

12 A. Yes, sir.

13 Q. And did he grab you by the arm or anything?

14 A. Yes, sir.

15 Q. Did anybody -- did anybody grab Vickie or
16 Nikki?

17 A. I didn't even see that. I was -- once I was
18 grabbed, it -- I didn't even pay attention to whatever
19 else was going on.

20 Q. Do you remember all three doors opening up at
21 about the same time?

22 A. Yeah, but I don't know where anybody went. I
23 have no clue where anybody -- I just know where I went.

24 Q. So do you -- was it -- was it almost like a --
25 did it appear as if people kind of ambushed or attacked

1 you --

2 A. Yes. It felt like a set-up. But I -- you
3 know, that's just me.

4 Q. And you said Donald had a handgun?

5 A. Yes, sir.

6 Q. And do you remember what the second male -- do
7 you remember the second male having a gun?

8 A. Yes, sir.

9 Q. Okay. Can you give us about the size of the
10 gun?

11 A. Like a sawed off -- I know what that looks
12 like.

13 Q. And did he point it at you?

14 A. Yes, sir.

15 Q. Okay.

16 A. I was a gun point by both of them.

17 Q. Were there -- were there any -- were they --
18 were there harsh words? Were there intimidating words?
19 I mean --

20 A. Don't do anything stupid, you know. That's --
21 that's about it.

22 Q. And did -- when you got out of the car, were
23 you right in front of the residence, right by the
24 trailer?

25 A. Yes, sir.

1 Q. And you say they took you behind the trailer?

2 A. Behind the trailer, sat me on the porch. And
3 then that's when the guy came this way. And Donald,
4 you know -- and met me and said, "Do not move". I got
5 punched in the eye. Then he said, "You better not
6 move, do anything stupid". And then they left to the
7 front. Then, like I said, after I heard the vehicle
8 fade off and everything was quiet, I ran.

9 Q. So is it your testimony that after the -- the
10 guy -- the unknown guy left, that's when Donald came
11 back -- back to the back of the residence?

12 A. Say it again.

13 Q. When the unknown individual left, is that when
14 Donald came back there to the residence?

15 A. Yes, sir. As one was coming, one was going,
16 yes, sir.

17 Q. And did you say there was a girl with you at
18 the time?

19 A. Yes. I don't have a clue who it was. I can't
20 even -- I don't even know what she looks like, but
21 there was a female, yes.

22 Q. Can -- can you describe, you know, what she
23 did or what her mannerisms were?

24 A. She looked like she was a look-out.

25 Q. Did she stay with you the entire time, or did

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1 she go back out front?

2 A. She went back out front when Donald went back
3 out front.

4 Q. So were you left --

5 A. Left totally by myself.

6 Q. Did you feel like you had an opportunity to
7 leave that area at that point?

8 A. When they left?

9 Q. Before you heard your vehicle?

10 A. No, I did not.

11 Q. Do you remember what was going through your
12 head?

13 A. Man, I could get killed. I could, you know, I
14 could get shot. I just did what they said. I didn't
15 move. They said sit here and don't do anything. And I
16 -- that's exactly what I did until I heard my -- a
17 vehicle fade off into the distance, which I believe is
18 my truck because I know the sound of it. But, you
19 know, and that's when everything was silenced. That's
20 when I had my chance. And I felt that that's when I
21 should, and I just ran through the woods, hit the road.
22 Ran all the way home and called the police department.

23 Q. Do you recognize what's been marked as State's
24 Exhibit 21?

25 A. Yes, that's me. That's me. Yes, sir.

1 MR. HOLLOWAY: And I'm showing the defense counsel
2 what's been marked as State's Exhibit 21.

3 MR. ABDALLA: Without objection.

4 MR. HOLLOWAY: Your Honor, the State would now
5 move to admit this into evidence and publish it to the
6 jury.

7 THE COURT: So admitted into evidence without
8 objection. Permission to publish.

9 (State's Exhibit No. 21 admitted into evidence.)

10 MR. HOLLOWAY: Thank you, Your Honor.

11 BY MR. HOLLOWAY:

12 Q. What is -- what is -- what are the pictures
13 displaying here on State's Exhibit 21?

14 A. Where I got punched in the eye.

15 Q. And can you describe where you got punched?

16 A. The right eye, right here.

17 Q. And the red marks, do you see the red marks on
18 that photograph?

19 A. Yes, sir.

20 Q. Where they there on your face before you got
21 punched?

22 A. I don't think so, no.

23 Q. Okay. And --

24 A. I know the -- the sweating under the eye was
25 not there.

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1 Q. Okay. So it is your testimony that the red
2 marks and the sweating underneath the eye in State's
3 Exhibit 21, were caused by Mr. Donald Trammell?

4 A. Yes, sir.

5 Q. And did he -- did he punch you there
6 immediately after or along contemporaneously with when
7 he told you that -- to stay right there?

8 A. He told me to stay right here. Don't do
9 anything stupid. And I was like, "Donald, what's going
10 -- "shut up", boom. That's it. And then they left.
11 That's it.

12 MR. HOLLOWAY: Your Honor, I'm showing defense
13 counsel what's been marked as State's Exhibits 13
14 through 18.

15 MR. ABDALLA: Without objection, Your Honor.

16 THE COURT: Without objection, so admitted.

17 (State's Exhibits Nos. 13 - 18 admitted.)

18 MR. HOLLOWAY: Thanks, Your Honor.

19 BY MR. HOLLOWAY:

20 Q. Mr. Shunk, will you look through Exhibits 13
21 through 18 for me real closely.

22 A. That's my truck. That's my truck. That's my
23 truck. This is my truck.

24 Q. All right. And what identifying marks or
25 identifying features show you -- and please be specific

1 as you go through the exhibits -- demonstrate to you
2 that this is, in fact, your truck?

3 A. It's absolutely my truck.

4 Q. All right. Go through the exhibit please, and
5 I'll open the floor to you, and just tell the jury how
6 you identify your truck?

7 A. How do I know it's my truck?

8 Q. Yes, sir.

9 A. Okay. It's got the bed cover on it. It's got
10 the same wheels. It's got the guards around the -- you
11 know, where you roll down the window. It's got the
12 t-top. I have that sunroof. The inside of my truck,
13 those are my keys right there. I have them on me right
14 now if you want to see them. They are the same ones
15 sitting right in the seat. The same exact ones. And
16 you can see the floorboard says "Laramie". I told you
17 my truck is a Dodge Laramie.

18 Those are my keys, so that's just -- that's --
19 those are my keys. And I just -- I know that's my
20 truck.

21 Q. Okay. So are you positive, after looking at
22 State's Exhibit 13 --

23 A. Absolutely positive that's my truck.

24 Q. And --

25 A. I got my keys with me if you want to see them.

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1 Q. And that's fine. And was your truck -- was
2 your truck returned to you?

3 A. No. By the police?

4 Q. By the police, but ultimately --

5 A. No.

6 Q. At the end of the investigation, was your
7 truck finally returned to you?

8 A. Yes, sir.

9 Q. Okay. So do you still have your trunk now?

10 A. I still have it. It's out in the parking lot.

11 Q. And did you give a statement to law
12 enforcement?

13 A. Yes, sir.

14 Q. Okay. Do you recognize this individual right
15 here?

16 A. Now, I -- yes, I do. I was -- I didn't when
17 he was walking out back and forth. And I finally
18 realized who -- that's the guy I talked to, that gave
19 my -- that I gave my statement to when it's -- you
20 know, 18 or how ever many months ago.

21 Q. Okay. And did you give your statement to him
22 a couple of days after the incident?

23 A. Yes, sir.

24 Q. If I said you gave a statement on October 22,
25 2014, would you say that sounds about right?

1 A. That sounds about right. I can't say 100
2 percent. But, yes, it was right after -- within three
3 to five days after I got -- that this incident
4 happened.

5 Q. And we're going to kind of reiterate
6 something, but briefly -- did you only see -- did you
7 only come in contact with three individuals at the
8 incident location?

9 A. The incident location, yes.

10 Q. And that was two males?

11 A. Two males and one female.

12 Q. And one male you positively identified as
13 Donald Trammell?

14 A. Absolutely, 100 percent guaranteed.

15 Q. And Donald, to your knowledge, is that Vickie
16 Trammell's daughter -- or Vickie Trammell's son?

17 A. Yes, absolutely.

18 Q. And is he the brother of Nikki Trammell?

19 A. Yes, sir.

20 MR. HOLLOWAY: Your Honor, at this time, nothing
21 further from the State. Please answer any questions,
22 Mr. Shunk, that Mr. Abdalla may have for you.

23 MR. ABDALLA: May I have one moment, Your Honor?

24 THE COURT: Yes, sir.

25 (Pause.)

1 **CROSS EXAMINATION BY MR. ABDALLA:**

2 Q. Mr. Shunk, now you said that Mr. Trammell
3 punched you, right -- or hit you with a gun -- which
4 one --

5 A. Yes, sir.

6 Q. -- I believe in the report that you maybe say
7 you thought you were hit with a gun or not?

8 A. Ah, --

9 Q. I don't want to put words in your mouth.

10 A. I mean, I -- it could have been a fist. It
11 could have been a gun. I'm not -- I'm not sure. I
12 just got hit. I know I got hit.

13 Q. And that was when you were on the porch?

14 A. On the porch, yes, sir.

15 Q. And at that time, the porch light was on?

16 A. Ah --

17 Q. You said something about --

18 A. No.

19 Q. Oh, I thought you said the porch light was on?

20 A. No.

21 Q. Okay.

22 A. I mean, I don't -- it was dark.

23 Q. -- on the porch?

24 A. Yes, sir.

25 Q. And you also said Mr. Trammell was the one who

1 pulled you out of the car -- jerked you out of the
2 truck?

3 A. Yes -- yes, sir.

4 Q. And you had known him and you thought you were
5 fairly -- not that you were best friends, but you
6 thought --

7 A. No, we weren't -- I mean, we weren't even like
8 friends.

9 Q. Oh --

10 A. It's like I know -- knew of him. We didn't
11 hang out or anything, I just know who Donald is.

12 Q. Okay. Let me back up a little bit.

13 A. Okay.

14 Q. Did you say you knew his sister, Nikki?

15 A. Yes.

16 Q. All right. Where I'm going with this is, I
17 would imagine you were surprised, thinking I knew these
18 people and they're not going to do anything to me -- or
19 am I wrong?

20 A. Absolutely, yes.

21 Q. Okay.

22 A. That's why I felt it was a set-up.

23 Q. Right. And did you hear other voices at all?
24 Were there other people around? Do you know anything
25 about that?

1 A. I just know that it's -- no. The two males
2 and the one female, and that's it. Just whatever
3 happened, that's -- that's what happened. And that was
4 -- that's what my focus was on.

5 Q. Okay. And you had a black eye from Donald,
6 correct?

7 A. Yes, sir.

8 Q. Have you seen Donald since this incident?

9 A. No, sir.

10 MR. ABDALLA: One moment, Your Honor.

11 (Pause.)

12 MR. ABDALLA: I have no further questions. Thank
13 you, sir.

14 THE COURT: Any redirect?

15 MR. HOLLOWAY: No redirect from the State, Your
16 Honor.

17 THE COURT: Sir, you may step down. Thank you.

18 THE WITNESS: Thank you.

19 THE COURT: Your Honor, may Mr. Shunk be relieved
20 of his subpoena?

21 MR. ABDALLA: No. No objection.

22 THE COURT: Without objection, sir. You are free
23 to go. You have no further responsibilities under your
24 subpoena. Have a nice day.

25 THE WITNESS: Thank you.

1 THE COURT: Call your next witness.

2 MR. HOLLOWAY: Yes, sir, Your Honor. The State
3 would next call Detective Timothy Brochin of the
4 Greenville County Sheriff's Office to the witness
5 stand.

6 TIMOTHY BROCHIN, having been
7 first duly sworn, testified as follows:

8 THE CLERK: Would you please state your name,
9 please.

10 THE WITNESS: Tim Brochin.

11 **DIRECT EXAMINATION BY MR. HOLLOWAY:**

12 Q. Good afternoon, Detective. Thanks for coming
13 here today. I understand you might have had some child
14 care problems. Do you work at the Sheriff's Office?

15 A. I do, yes, sir.

16 Q. How long have you worked at the Sheriff's
17 Office for?

18 A. I've been at this agency for two and a half
19 years.

20 Q. And in what units -- in what divisions have
21 you worked in the Sheriff's Office?

22 A. I've got six years prior experience at
23 Spartanburg City. During my time there, I was a senior
24 patrol officer, a field training officer, and a K-9
25 handler. At this agency, during the date of this

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1 incident, I was on uniform patrol, assigned to the Blue
2 Ridge area. I'm currently assigned as a detective in
3 the Property Crime Division.

4 Q. And, again, you went through really quick.
5 Let's be specific. On the date of -- or the timeframe
6 around October the 18th, 2014, where were you assigned
7 and what was your division?

8 A. I was on uniform patrol, so just a typical
9 road deputy I guess you would call it.

10 Q. And what area?

11 A. The Blue Ridge area. What we call it in -- in
12 the Sheriff's Office is Beat 1, Area 1, but it's the
13 Greers, Taylors, Landrum, all the way up to the state
14 line type area.

15 Q. Okay. And does that cover the incident site?

16 A. It does.

17 Q. And through your investigation, were you able
18 to uncover where the incident site was?

19 A. I was, yes.

20 Q. And what -- are you familiar with that?

21 A. Very much so, yes, sir.

22 Q. And what's the address there?

23 A. It's [REDACTED] Keller Road in Taylors, which is
24 within Greenville County.

25 Q. And so can you describe to the jury in a

1 little more depth, what your typical -- now, you said
2 you do property crimes now?

3 A. Correct.

4 Q. Okay. So can you tell us a little bit about
5 property crimes, a little bit about uniform patrol; how
6 they differ, and what your main responsibilities and
7 tasks were with uniform patrol?

8 A. Absolutely. As a road deputy, our shifts here
9 at the Sheriff's Office are 12 hours. During that
10 particular time, I was on our night rotation. So our
11 function as patrol officers, we ride around in the
12 marked patrol cars, the blue cars with the yellow badge
13 on the side, and we respond to calls for service as
14 dispatch gives them out within our assigned beat area.
15 That can be everything from alarm calls to disturbances
16 between neighbors; narcotics complaints; armed robbery
17 type cases; domestic violence; anything and everything
18 we respond to.

19 Q. So -- is it a fair assessment or a fair
20 conclusion to say that you come into contact with quite
21 a few people in your area while on uniform patrol?

22 A. Yes, sir.

23 Q. Go into this evening on October 18th, did you
24 know who Donald Trammell was?

25 A. I do -- or I did, yes, sir.

TIMOTHY BROCHIN -- DIRECT

1 Q. Were you familiar with his mother, Vickie
2 Trammell?

3 A. Yes, sir.

4 Q. Were you familiar with who -- who lived at
5 that house?

6 A. Yes, sir.

7 Q. And to your knowledge, who did live in that
8 house at the time?

9 A. Vickie Trammell; her daughter, Nikki; Donald
10 Trammell; and then Vickie's father, a gentleman by the
11 name of Fred Edmonds (ph).

12 Q. And have you had any opportunity to come
13 across, in your investigations, an individual by the
14 name of Mark Bayne?

15 A. I had heard his name briefly. I did not know
16 him from that residence. I knew him to be associated
17 with a different residence. He didn't too often enter
18 into my area, but I am familiar with him, yes, sir.

19 Q. So is it safe to say you knew the name, but
20 you didn't -- you couldn't really connect a face to the
21 name?

22 A. Correct.

23 Q. Will you tell the jury, instruct the jury, you
24 know, what role you played in this investigation
25 starting on the night of October 18th and how -- how

1 you got involved with it?

2 A. Absolutely. This was Saturday evening,
3 October 18, 2014. I was in my assigned beat area.
4 Dispatch gave me a call to respond to an armed robbery
5 with the incident location being [REDACTED] Keller Road. The
6 victim that had called 911 was a gentleman by the name
7 of David Ennis. Mr. Ennis, for his safety, had left
8 that incident location and proceeded further up Locust
9 Hill to an address at [REDACTED] Locust Hill Road, which is
10 right at the intersection of Locust Hill Road and
11 Milford Church Road.

12 I met Mr. Ennis there on scene. He was pulled
13 off the side of the road there. He had Pop-A-Lock
14 stickers on the side of his car. I believe he even had
15 a Pop-A-Lock shirt. I asked him why he had called 911.
16 I said, "Are you the guy I'm here to meet?" And he
17 said, "Yes, sir". And I could tell he was very
18 frantic.

19 Q. And Locust Hill Road, is that also -- is that
20 also the same thing as SC 290?

21 A. Correct. That's the same road, yes, sir.

22 Q. And do you take the road that the incident
23 site is off of, that Mr. Edmonds, Vickie's house at
24 Keller Road, if you take that -- if you take a right
25 out of their residence, straight down, will you come to

TIMOTHY BROCHIN -- DIRECT

1 an intersection with SC 290, Locust Hill Road?

2 A. Yes, sir.

3 Q. So how far, would you estimate, is the
4 distance from the incident cite to 3830 Locust Hill
5 Road?

6 A. Two and a half miles, three miles.

7 Q. And do you know when you were -- do you know
8 when you were called out there?

9 A. It was just after 11:00 p.m, I believe, that
10 evening.

11 Q. And when you got out there, what -- was there
12 anybody with Mr. Ennis?

13 A. He was by himself.

14 Q. Okay. Can you describe Mr. Ennis for us?

15 A. Yep. Like I said, he -- the first thing I
16 noticed about his vehicle, was it had the Pop-A-Lock
17 sticker on the side of it. Like I said, I believe he
18 was wearing a Pop-A-Lock shirt. He was kind of parked
19 off the side of -- of 290. I was actually -- thought
20 he may have been in the middle of the road, but he just
21 pulled off the side of 290, right there at Milford
22 Church and 290.

23 So I pulled in behind him and got out, and asked
24 what was going on. And he advised me that he worked
25 for Pop-A-Lock. And he was talking very fast. He

1 seemed to be very upset, so I had to actually take a
2 minute to calm him down before I could get his story.

3 Q. And during the time of your investigation, did
4 you learn of another armed robbery at the exact same
5 incident location?

6 A. Yes, sir. Deputy Hegger responded to an armed
7 robbery that occurred at that same location within the
8 same timeframe on this same evening.

9 Q. And did you learn that the victim of that was
10 an individual by the name of Aaron Shunk?

11 A. Yes, sir.

12 Q. Okay. And did you ever have the opportunity
13 to meet Mr. Shunk?

14 A. I did not, not -- not right then because I was
15 dealing with Mr. Ennis. I did at a later date, yes,
16 sir.

17 Q. So you did meet Mr. Shunk eventually?

18 A. Yes, sir.

19 Q. Can you confirm, for the jury, that Mr. Shunk
20 and Mr. Ennis are, in fact, two separate people?

21 A. Those are two separate people under two
22 separate incidents, yes, sir.

23 Q. So after the 18th, did you do any follow-up on
24 this investigation?

25 A. I did. Our job with uniform patrol is to take

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1 this initial report. And if need be, if we can act on
2 it at that point such as make an arrest or sign a
3 warrant, we do. But in this particular case, there is
4 some further investigation needed, so it went to the
5 appropriate division after I completed the report.

6 Q. Do you know -- do you know who spearheaded
7 that investigation?

8 A. It would be Investigator Owens, yes, sir.

9 Q. And was there a particular vehicle that you
10 were looking for during your -- your subsequent
11 investigation?

12 A. Yes, sir. We knew that Mr. Shunk had reported
13 that his gold or tan Dodge Ram Pick-up had been stolen.

14 Q. So was that -- that was a vehicle of interest?

15 A. Correct.

16 Q. Can you -- so what were the next steps you
17 took in the following days?

18 A. In the days after this particular incident was
19 reported, I -- I spent my time in my area looking for
20 this truck. I had a feeling it would probably be in
21 the same area due to the fact that I know these people,
22 and I know, kind of, where they hang around.

23 In particular on October 23rd, I was dispatched
24 to a call at a residence on Fuse Bridge Road, also in
25 Taylors, within Greenville County. At that point in

1 time, I made contact with an individual who -- who
2 provided me some information as to the whereabouts of
3 where this gold Dodge Ram Pick-up truck might be, the
4 one we were looking for specifically related to this
5 case.

6 Q. And did another person of interest come
7 about -- a female specifically?

8 A. Yeah. The name that was given to me was --
9 her name is Marie Morgan. She goes by Corrie Morgan.

10 Q. And through your investigation, did you gain
11 an understanding that Ms. Morgan may be romantically
12 involved with Mr. Bayne?

13 A. That's my understanding. That's what I was
14 told, yes, sir.

15 Q. And have you ever gone to the property that
16 Ms. -- that Ms. Morgan lives?

17 A. I have, yes, sir.

18 Q. Have you done that through prior
19 investigations or your work as an uniform patrol
20 officer?

21 A. Yes, sir.

22 Q. And what is the address there?

23 A. It's 1 --

24 MR. ABDALLA: Your Honor, I -- we have a matter I
25 would like to bring up with you --

TIMOTHY BROCHIN -- DIRECT

1 THE COURT: Would you approach, please?

2 (Whereupon, a bench conference was held.)

3 BY MR. HOLLOWAY:

4 Q. All right. Det. Brochin, you're doing a great
5 job. If you would -- if you would follow me
6 specifically here with where I'm going with questions.
7 All right. Okay. Where do you know Ms. Morgan to
8 live?

9 A. [REDACTED] Old Watson Mountain Road.

10 Q. Did you go down Old Watson Mountain Road one
11 evening to see if you could find Mr. Shunk's gold --
12 gold Dodge Ram?

13 A. Yes, sir, I did.

14 Q. Do you remember exactly what evening that was?

15 A. That was October 23rd of 2014.

16 Q. Did you ultimately get in a vehicle pursuit
17 that evening?

18 A. I did, yes, sir.

19 Q. It was -- was -- it was dark out, yes?

20 A. Yes, sir. Late in the evening or early --
21 past midnight at some point, yes, sir.

22 Q. And at any point during that -- during this
23 chase, were you able to -- were you able to confirm or
24 have a -- have a -- to draw to a conclusion that you
25 were -- you were chasing a Dodge Ram?

1 A. Correct, that was gold in color.

2 Q. But you didn't -- you weren't able to stop the
3 Dodge Ram at that time?

4 A. That's correct. We had to call off the
5 pursuit for safety reasons.

6 Q. And after -- after this pursuit, did you ever
7 have any more contact with the Dodge Ram?

8 A. I did not, no, sir.

9 Q. Did you ever have any more contact with Mr.
10 Trammell before he was arrested?

11 A. I did not, no, sir.

12 Q. And am I correct in saying that you never had
13 any contact with Mr. Bayne, the defendant himself, as
14 it relates to this incident?

15 A. That is correct.

16 MR. HOLLOWAY: No further questions at this time.
17 Detective. Would you answer any questions that Mr.
18 Abdalla may have for you.

19 MR. ABDALLA: One moment, Your Honor.

20 THE COURT: Cross examination.

21 **CROSS EXAMINATION BY MR. ABDALLA:**

22 Q. Detective or deputy?

23 A. Detective, yes, sir.

24 Q. Okay. Detective, during the course of your
25 investigation, did you deal with Mr. Ennis?

1 A. Yes, sir.

2 Q. And did you show photographs to him for
3 identification?

4 A. I -- yes, sir, I did.

5 Q. Now, he knew Mr. Trammell; correct?

6 A. Yes, sir. That's my understanding.

7 Q. And he knew Vickie Trammell and Nikki
8 Trammell, as far as I -- I say Nikki Trammell, her name
9 might be Gardner?

10 A. Gardner, yes, sir.

11 Q. The daughter of Vickie Trammell, correct?

12 A. Yes, sir.

13 Q. And he was able to identify those people
14 positively, correct?

15 A. Yes, sir.

16 Q. And to my knowledge, you never identified
17 anyone else, correct?

18 A. Not with me positively, no, sir.

19 Q. So there was no other identification made by
20 him?

21 A. Through me positively, no, sir.

22 Q. The only thing you knew for sure at this time
23 is the Trammells -- and I'm including Nikki in there --
24 had essentially highjacked that truck, set up this buy;
25 apparently were looking for drugs, and ended up hitting

1 Mr. Ennis and took his truck, correct?

2 A. Well, I -- I learned all that after I spoke to
3 Mr. Ennis --

4 Q. Oh, you did? I'm sorry.

5 A. Correct, yeah. I wasn't made aware of the
6 other incident until after I had spoken with Mr. Ennis.

7 Q. Okay. I apologize for getting ahead of
8 myself. One moment.

9 A. Sure.

10 MR. ABDALLA: I have no further questions at this
11 time.

12 THE COURT: Redirect?

13 MR. HOLLOWAY: Just very briefly, Your Honor.

14 **REDIRECT EXAMINATION BY MR. HOLLOWAY:**

15 Q. Mr. Abdalla asked you about when you had
16 contact with Mr. Ennis, did you show him a photograph
17 of somebody?

18 A. I did, yes, sir.

19 Q. Okay. And do you remember who you showed him
20 a photograph of?

21 A. It would have been a photograph of Mark Bayne
22 Jr.

23 Q. Of Mark Bayne Jr.?

24 A. Yes, sir.

25 Q. And at that time, was he able to conform --

1 confirm or deny that Mr. Bayne Jr. was involved?

2 A. When I showed him the photograph, he had
3 informed me that this other suspect had a scuffy beard.
4 The photograph that I had showed him, we're -- we're
5 limited by our technology, by the photographs that are
6 on our computer. This individual did not have a scuffy
7 beard. His words were to me -- if you give me just a
8 moment -- his words to me were "that looks similar"
9 when I showed him the photograph of Mark Bayne Jr.,
10 trying to identify this other suspect, but that he
11 could not say with absolute certainty.

12 Q. So when you left there that evening, you were
13 not able to determine, as a law enforcement officer and
14 your duties in the investigation, that Mr. Bayne Jr.
15 was -- was or was not involved?

16 A. That's correct. It needed further
17 investigation.

18 MR. HOLLOWAY: No further questions.

19 MR. ABDALLA: I have to --

20 THE COURT: Okay.

21 **RECROSS EXAMINATION BY MR. ABDALLA:**

22 Q. But he, in fact, did identify a subsequent
23 picture of Mark Bayne Jr. as being the person, and he
24 said he was certain of that?

25 A. I cannot testify to that. I wasn't involved

1 in that, no, sir.

2 MR. ABDALLA: All right.

3 THE COURT: Sir, you may step down.

4 THE WITNESS: Thank you, Your Honor.

5 MR. HOLLOWAY: Your Honor, before the detective
6 leaves, may he be relieved of his subpoena please?

7 THE COURT: Any objection?

8 MR. ABDALLA: I would rather him stay under
9 subpoena in case we need to contact him, but he doesn't
10 need to be here right now --

11 THE COURT: Make sure he can be contacted if
12 needed.

13 MR. HOLLOWAY: Yes, sir, Your Honor. No problem
14 at all.

15 THE COURT: You're free to go today.

16 MR. HOLLOWAY: Your Honor, the State would call as
17 its next witness, Ms. Vickie Darlene Trammell.

18 VICKIE DARLENE TRAMMELL, having
19 been first duly sworn, testified as follows:

20 THE CLERK: Thank you. Have a seat, please.

21 Ma'am, would you please state your name for the record?

22 THE WITNESS: Vickie Darlene Trammell.

23 THE CLERK: Thank you.

24 **DIRECT EXAMINATION BY MR. HOLLOWAY:**

25 Q. Good afternoon, Ms. Trammell. How are you

VICKIE TRAMMELL -- DIRECT

1 doing today?

2 A. I'm blessed to be here. Thank you, sir.

3 COURT REPORTER: Speak up, please.

4 THE WITNESS: Excuse me?

5 COURT REPORTER: Speak up, please.

6 THE WITNESS: I'm blessed to be here. Thank you.

7 THE COURT: Ma'am, can you pull that microphone

8 down to your -- there you go. You need some water?

9 THE WITNESS: I'm nervous. This is not okay.

10 BY MR. HOLLOWAY:

11 Q. Ms. Vickie, let me get you a glass of water.

12 Ms. Trammell, how old are you, darling?

13 A. Fifty-one.

14 Q. And how long have you lived here in

15 Greenville?

16 A. All my life.

17 Q. And this isn't the first time you've ever been
18 in a courthouse, is it?

19 A. No, sir.

20 Q. Is this the first time you have ever sat in
21 that seat?

22 A. And doing what I'm doing, yes, sir, testifying
23 against somebody. I have never -- I've been here for
24 my stuff.

25 COURT REPORTER: I'm sorry, Your Honor, I can't

1 understand her.

2 THE COURT: Speak up, please, ma'am.

3 THE WITNESS: I've been here before for my
4 charges, never to have to do nothing like this, testify
5 against somebody?

6 A. Or whatever I'm doing, whatever.

7 BY MR. HOLLOWAY:

8 Q. So this is the first time that you've been
9 called by the State as a witness?

10 A. Yes, sir.

11 Q. And, however, you have been charged with
12 crimes in the past?

13 A. Yes, sir, I have.

14 Q. Do you remember many of them?

15 A. DUI and DUS.

16 Q. Any -- are there any drug related crimes?

17 A. Controlled substances.

18 Q. Okay. What's -- what's your controlled
19 substance of choice?

20 A. Xanax.

21 Q. Do you have -- do you have a prescription for
22 Xanax?

23 A. I did then, yes, sir.

24 Q. Have you ever been found with Xanax on you
25 without a prescription?

VICKIE TRAMMELL -- DIRECT

1 A. Just -- I have previous charges now pending,
2 that there wasn't none -- I got caught with two, I did.

3 Q. Have you ever been charged with shoplifting
4 before?

5 A. I have.

6 Q. So you've been -- you know your way around a
7 court system a little bit here and there?

8 A. I do.

9 Q. But you're still pretty nervous today?

10 A. I'm a nervous wreck. I'm not -- I'm a very
11 nervous person anyway.

12 Q. Yes, ma'am. And is your daughter, Ms. Nikki,
13 Nicole Trammell Gardner?

14 A. She is.

15 Q. How old is Nikki now?

16 A. Twenty-eight.

17 Q. And is your son, Mr. Donald Anthony Trammell?

18 A. Yes, sir, he is.

19 Q. And how old is Donald?

20 A. Twenty-nine.

21 Q. And is he in prison right now?

22 A. He is.

23 Q. And do you under -- do you know why he's in
24 prison?

25 A. I do.

1 Q. And can you explain to the jury what he did to
2 be in prison?

3 A. Armed robbery to a -- for trucks.

4 Q. And was there -- was there an armed robbery
5 involved?

6 A. Actually there were two that happened at my
7 house in one night.

8 Q. Okay. Let's -- let's piece things together.
9 Were you able to see -- were you able to see your son
10 earlier today?

11 A. I was.

12 Q. And as any mother, your kids mean a lot to
13 you, right?

14 A. My life.

15 Q. And have you and I met before?

16 A. Yes, sir, we have.

17 Q. A couple of times, right?

18 A. Yes, sir.

19 Q. And about a month ago, when I came out to your
20 house, that was the first time we had ever met, wasn't
21 it?

22 A. Yes, sir.

23 Q. Was Donald already in prison by that time?

24 A. He was -- if he wasn't, he was in the
25 Greenville County Detention Center. He had been locked

VICKIE TRAMMELL -- DIRECT

1 up about -- right at two years now, going on two years.

2 Q. Okay. What was the residence that I came to
3 visit you at?

4 A. [REDACTED] Keller Road, Taylors, South Carolina,
5 29667.

6 Q. And is that where your father lives?

7 A. Correct, it is.

8 Q. And what is his name?

9 A. Fred Edmonds.

10 Q. And how do you get the last name Trammell?

11 A. I married Larry Trammell. He's Don and
12 Nikki's father.

13 Q. I got you. And how long have you Mr.
14 Trammell -- how long have you and your husband, Larry,
15 been separated?

16 A. Going on eight years now.

17 Q. Have you lived at more or less at -- with your
18 father at [REDACTED] Keller Road for the last eight years?

19 A. Yes, sir. Ever since we separated.

20 Q. And during that time, did you get to know an
21 individual by the name of Arron Shunk?

22 A. Yes.

23 Q. Is there -- is there a guy that you refer to
24 as Rich Boy?

25 A. That lives at the end of my road, yes, sir.

1 Q. And why do you call him Rich Boy?

2 A. He just lives in a rich neighborhood. And
3 that's -- I just call him Rich Boy. I can't remember
4 peoples' names very well.

5 Q. And the first time we ever met, that's what
6 you referred to him as?

7 A. Right.

8 Q. And this -- getting down to it, have you known
9 Rich Boy for a little while?

10 A. About two or three years now.

11 Q. And how did you -- do you remember how you met
12 him?

13 A. Through my son, Donald.

14 Q. So he knew Donald?

15 A. Correct.

16 Q. And how -- how far would you guess, if you had
17 to, that he lived down the road?

18 A. Goodness. I really don't know, but I would
19 say that I know of four or five years.

20 Q. Well, how long -- how far distance-wise?
21 Could you walk to his house?

22 A. Within -- less than 10 minutes.

23 Q. Did you walk -- not regularly, but did you
24 walk there on a couple of different occasions or
25 multiple occasions?

VICKIE TRAMMELL -- DIRECT

1 A. Maybe four total in my life. I didn't really
2 know him like that, not personally.

3 Q. And did -- did you go over to his house on the
4 evening of October 18, 2014?

5 A. If that's when this accident happened, I did.

6 Q. Well, let's phrase it this way: Do you
7 remember two armed robberies that happened at [REDACTED]
8 Keller Road, at your daddy's house?

9 A. I am very aware of it.

10 Q. That -- that -- earlier that evening, had you
11 walked over to Rich Boy -- had you walked over there to
12 Aaron Shunk's house?

13 A. I sure did, me and my daughter.

14 Q. Had your daughter, Nikki, met him before that
15 evening?

16 A. One time, her and her husband.

17 Q. And who is her husband?

18 A. Jeremy Gardner.

19 Q. And that evening, why did y'all head over
20 there? What were y'all doing?

21 A. Actually I -- to go get a pain pill.

22 Q. What kind of pain pill; do you remember?

23 A. A Roxy.

24 Q. And do you understand that to be sort of like
25 a -- a derivation of an Oxycodone or something along

1 those lines?

2 A. It is.

3 Q. Have you taken Roxys a lot before?

4 A. I used to be prescribed to them, yes, sir.

5 Q. And after you got prescribed, and after you
6 ran out of prescription, did you get almost an
7 addiction to them, or did you really like them?

8 A. I was very addicted.

9 Q. And when was the last time you took a Roxy; do
10 you remember?

11 A. Goodness, probably a year or longer.

12 Q. And has your daughter, Nikki, ever taken them
13 before?

14 A. She was prescribed to them also.

15 Q. And after her prescription, did she get
16 addicted to them?

17 A. Actually Dr. Cadell had us -- the whole family
18 on them, yeah. It was a very bad addiction, and he got
19 caught for funneling (ph), and so we all got cut off,
20 everybody.

21 Q. So that evening, you and Nikki walked down to
22 Aaron's house?

23 A. Correct.

24 Q. And, Vickie, I'm going to call -- I'm going to
25 call him Arron or Mr. Shunk for the record; okay?

VICKIE TRAMMELL -- DIRECT

1 A. Okay.

2 Q. But to confirm, can you describe what -- can
3 you describe, in your own words, what Rich Boy looks
4 like?

5 A. A nice looking young guy, clean cut, very nice
6 guy.

7 Q. Was he here earlier today?

8 A. He sure was.

9 Q. Blond hair?

10 A. Correct.

11 Q. And how long were you guys over at Mr. Shunk's
12 house?

13 A. Maybe 30 minutes. We left to go to
14 Greenville. He didn't have no Roxys, but he was going
15 to go buy us one.

16 Q. And was he pretty -- was he pretty drunk?

17 A. Very intoxicated.

18 Q. And did you guys -- did you guys smoke some
19 weed over at his house?

20 A. We did -- or I did, Nikki didn't. She don't
21 smoke weed.

22 Q. But did you and Arron -- or did Arron?

23 A. Me and Arron did.

24 Q. And did y'all have a few beers?

25 A. We did.

1 Q. And did Vickie drive y'all?

2 A. She did.

3 Q. Okay. So how did this all come about, how did
4 y'all decide to go get some Roxys?

5 A. I asked him if he had a pain pill. "No, but I
6 can get some. I don't -- I don't have no money". He
7 said, "I'll buy y'all some, but you're going to have to
8 drive". I told him, "I don't drive, because I don't
9 have a license". Nikki said she could drive. Okay.
10 We left at that present -- we made it to the Lil
11 Cricket on White Horse Road. He was very disrespectful
12 all the way down the road to my daughter; talking very
13 vulgar things to her. I told him "don't disrespect
14 her". And he tells me the best thing I could do was
15 get the F out of his vehicle. I told him to "Put me
16 out. He got me there, he could get me back home". I
17 told him --

18 Q. Was this at the convenience store, or was this
19 before the convenience store?

20 A. All the way down the road. I told him at Lil
21 Cricket, I said, "Stop". That's when we stopped. He
22 told me to "get the F out of his truck". And I told
23 him, "Put me out".

24 Q. And where -- how -- where did y'all go to get
25 down to Greenville? Did y'all shoot down to 25 or

VICKIE TRAMMELL -- DIRECT

1 something?

2 A. Straight down -- 25 to bear off to -- there at
3 the ramp on 25, as you come off the bypass, out of
4 Travelers Rest.

5 Q. So how did y'all -- how did y'all -- were
6 y'all able to get to 25 from your --

7 A. Okay. We were -- Tigerville Road.

8 Q. Tigerville Road?

9 A. Correct. Pine Log to Tigerville, to 25.

10 Q. Had you guys taken -- had you taken that route
11 personally before? I mean, is that -- is this a road
12 that you guys traveled quite a bit?

13 A. That's how you go -- we go to Greenville from
14 my house.

15 Q. So you said Mr. Shunk was -- was drunk. He
16 was kind of getting -- did you say he was getting a
17 little inappropriate with your daughter?

18 A. He was wanting to grab her breasts and talking
19 very vulgar things.

20 Q. And while you're at -- was it before Lil
21 Cricket or after Lil Cricket that he mentioned that you
22 guys needed to get out of the car?

23 A. He never told her to get out. He told me --
24 because I told him to quit disrespecting her. And she
25 said, "Momma, you need to hush. We need to get back

1 home". I said, "You drove us here and you're going to
2 drive us back".

3 Q. And did you ever call Donald, your son, during
4 this time?

5 A. I did.

6 Q. And did you mention to him -- what -- did you
7 mention anything to --

8 A. I didn't have to. He heard Rich Boy in the
9 background.

10 Q. Was he being yelled -- loud and hollering?

11 A. Rich Boy?

12 Q. Mr. Shunk, yes.

13 A. He was.

14 Q. So was Donald aware that that -- let me save
15 that. After Lil Cricket, did you guys go back to your
16 residence?

17 A. We did.

18 Q. Okay. And, again, is that at [REDACTED] Keller Road?

19 A. Correct.

20 Q. Can you give us some pretty specific detail
21 now of what happened when you pulled into [REDACTED] Keller
22 Road?

23 A. We turned in, my daughter hit the lights. All
24 four door on the vehicle opened. My son opened mine.
25 Courtney Morgan or whoever -- whatever her name is --

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1 opened Nikki's; Mark Bayne opened Rich Boy's; Larry
2 Trammell opened the passenger.

3 Q. Is Larry -- and Larry is your husband?

4 A. Correct.

5 Q. Watch -- watch your language.

6 A. I said, "correct" -- I'm sorry.

7 Q. I know, no, no. We're good going forward,
8 just make sure that you think about -- watch your
9 language. Was there anything -- do you remember
10 anything being said by Donald or Mark during this
11 time -- or was there a big commotion?

12 A. When the doors opened, "get the F in the
13 house". And all I could see was, you know, just Rich
14 Boy -- actually Mark hit Rich Boy. Donald told me to
15 "get the F in the house". There was a car coming up
16 the driveway. Who it was, I didn't know until later
17 that night.

18 Q. So did you and Nikki go right into the house?

19 A. Correct. And my father is my witness. I
20 don't -- I have no reason to lie about anything I'm
21 saying, sir.

22 Q. So y'all went in the house after Donald said
23 to get in the house?

24 A. Correct.

25 Q. So, let's take it back -- sort of aback just

1 for a second. How do you know Mr. Mark Bayne?

2 A. I'm actually married to his cousin, Larry.

3 His -- my -- his father and my husband's mother are
4 brother and sister. And I've been married 30 years to
5 Larry.

6 Q. So Larry is Mr. Bayne's first cousin?

7 A. Correct.

8 Q. And you know Mr. Bayne for the entire time --
9 or almost the entire time that you were married, and
10 you have been married to Larry?

11 A. Except what time -- yeah, all -- all my life.
12 He's -- and he's good people. And I don't like doing
13 what I'm doing. But it is what it is. My son
14 robbed -- I'm going to say Dough Boy (ph) like he hit
15 and stole Rich Boy's vehicle.

16 Q. Okay. When you ran inside, did you --

17 THE COURT: Hold on a minute. Hold on a minute.
18 Ms. Trammell, do you have gum in your mouth?

19 THE WITNESS: I do. I apologize. I'm sorry, sir.

20 THE COURT: That's okay. I want to make sure that
21 my court reporter can fully understand so we got -- we
22 have a good record here. Okay?

23 THE WITNESS: I apologize.

24 THE COURT: Take your time, answer his questions.
25 Speak loud like you're speaking to that gentleman on

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1 the back row over there.

2 THE WITNESS: Okay.

3 THE COURT: If you'll do that for me; okay? Thank
4 you, ma'am. Mr. Holloway, I'm sorry. You may
5 continue.

6 MR. HOLLOWAY: Thank you, Your Honor.

7 BY MR. HOLLOWAY:

8 Q. After you -- after you ran inside, can you
9 describe the house for us?

10 A. My home?

11 Q. Yes, ma'am. Your home at [REDACTED] Keller Road?

12 A. It's a mobile home. And like when you pull
13 in -- okay. You go up my driveway, and then you turn
14 right and you're facing my home, and the trailer is
15 like sideways -- the trailer is setting like this long
16 ways, and then the car pulls right here. So, you're
17 really at the right hand corner of the -- my mobile
18 home.

19 Q. And here's -- I want to show you what's been
20 admitted as State's Exhibit 4. It's already into
21 evidence. Do you recognize this array of buildings --
22 do you recognize the array of buildings in the center
23 of that picture?

24 A. (No response.)

25 Q. If you don't, that's totally okay.

1 A. I don't, sir. I can't really tell. I really
2 don't even know --

3 Q. It's -- it's quite zoomed out, isn't it?

4 A. It is.

5 Q. Okay. And -- but can you describe -- can you
6 describe the layout for the jury of your father's
7 residence, your residence at [REDACTED] -- how the driveway
8 comes in, and what other buildings are there?

9 A. Okay. When you go up my driveway, you go turn
10 in, you go up -- like from here to maybe the red
11 lights. And it's kind of wooded. And then you are
12 facing the barn, and then the mobile home is on the
13 left-hand side of you. And then there is like a wood
14 shed. It used to be at my grandma and grandpa's old
15 home place. A two story house was there until it burnt
16 down. And no street lights -- I mean, we're out in the
17 middle of nowhere. And it's just a mobile home, a
18 living room, two bedroom.

19 Q. And when you ran into -- when you ran inside,
20 you ran into the trailer?

21 A. Correct.

22 Q. So there's walls -- they are not very thick,
23 they're not brick or anything?

24 A. No, sir.

25 Q. When you got -- you got inside, and you left,

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1 and you guys were pulled out of Shunk's truck, were you
2 aware of a second incident that occurred that evening?

3 A. Actually -- not until it was said and done.

4 Q. Okay.

5 A. And --

6 Q. Well, if you didn't witness it, you can't --
7 you can't talk about.

8 A. Okay.

9 Q. When everything was said and done, did you
10 call Donald?

11 A. I didn't, my daughter did.

12 Q. Why did -- why did you call him?

13 A. Because I knew the police was coming. I mean,
14 there was -- there was struggling before we went in. I
15 was told to get the F in the house. I knew something
16 was going on. And then those two cars went out of the
17 driveway. Nikki said, "Momma, we about to go to jail".
18 I said -- she called her brother.

19 Q. Did y'all -- did y'all -- let me -- stay with
20 me. Just let me ask you. Okay. Did y'all leave that
21 evening soon thereafter the events?

22 A. We did.

23 Q. And did you leave with Donald?

24 A. No. Well, I thought that we did, and it
25 wasn't.

1 Q. And who did you leave with?

2 A. Mark Bayne driving Rich Boy's truck.

3 Q. So do you remember vividly jumping in a car --
4 did you jump in the truck with Nikki?

5 A. With Nikki?

6 Q. Did -- did you and Nikki get into the truck?

7 A. Yes, sir.

8 Q. Did y'all get in the back seats of the truck?

9 A. We did.

10 Q. And who was driving the truck?

11 A. Mark Bayne.

12 Q. Is that Mark Bayne, that's the individual
13 sitting right there at counsel's table?

14 A. Yes -- yes, sir, it is.

15 Q. Is that the same individual you have known for
16 25 or 30 years?

17 A. Yes, sir, it is.

18 Q. Okay. And do you remember what his -- what
19 his appearance was like at the time?

20 A. Actually I never seen his face, not
21 face-to-face. We was going fast on Highway 290. I
22 said, "Son, slow down".

23 Q. Son? When you said, "Son", did you refer to
24 --

25 A. I thought that was my son driving.

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1 Q. Okay.

2 A. You know, I'm blind in my right eye. And I'm
3 a nervous wreck anyway. And he was going -- I don't
4 like to go fast. And he was going pretty fast. And I
5 said, "Son, slow down". He said -- Mark said, "When
6 did I become your son?" I said, "Where in the H is my
7 son?" And he said, "We going to Ray Atwood's (ph)".
8 We went to the Gosnells (ph). That's when I got out of
9 Rich Boy's truck into some -- into a car with my son.

10 Q. And one more time, where did -- it wasn't
11 clear, where did you go to?

12 A. At the -- at the end of Highway 290, the
13 Gosnells live there. All their -- it's a bunch of
14 different -- actually there's two or three different
15 places there on one corner.

16 Q. Is that a family?

17 A. No.

18 Q. How -- spell that for us?

19 A. I don't know how to spell it.

20 Q. So who lived there?

21 A. Gosnells.

22 Q. Gosnells?

23 A. Uh-huh.

24 Q. But it was a residence that you're familiar
25 with?

1 A. Yes, sir.

2 Q. But you got out -- was there anyone else in
3 the car with you in addition to Mark and Nikki?

4 A. Courtney, a girl.

5 Q. And do you know -- you call her Courtney?

6 A. Courtney, Morgan is all I know her as.

7 Q. Do you know her last name to be Morgan?

8 A. I do.

9 Q. Was she younger? Was she older?

10 A. She's younger than me. But I think she's more
11 or less my daughter's age, I would guess -- I would say
12 -- I would think so.

13 Q. And did you know her to be associating with
14 Mr. Bayne at the time?

15 A. I think that was his girlfriend at the
16 present.

17 Q. And when you got to your location, you got
18 out -- did you get out of the vehicle and get in with
19 your son, Donald?

20 A. That's correct.

21 Q. Mr. Vickie, thanks so much. I don't have any
22 more questions for you at this time.

23 THE WITNESS: Thank you Jesus.

24 MR. HOLLOWAY: Would you please answer any
25 questions that Mr. Abdalla may have? Okay?

1 THE WITNESS: Thank you, sir.

2 THE COURT: Cross examination.

3 MR. ABDALLA: Thank you.

4 **CROSS EXAMINATION BY MR. ABDALLA:**

5 Q. Ms. Trammell, we've met before, correct?

6 A. That's right.

7 Q. Now, today you testified that -- the guy was
8 talking junk about your daughter?

9 A. Who was?

10 Q. Huh?

11 A. Who was?

12 Q. Mr. Ennis, I guess, or Shunk?

13 A. Rich Boy.

14 Q. Pardon?

15 A. I call him Rich Boy.

16 Q. Yeah.

17 A. Yes, sir.

18 Q. Was talking junk about your daughter, right?

19 A. No, not about her, talk -- sexualize.

20 Q. He was talking to her?

21 A. Yes.

22 Q. And the other day, if I'm not mistaken, you
23 said in a statement that he talking junk about Donald,
24 your son?

25 A. No, he knew I was on the phone with Donald.

1 He said, you tell him that "I will whip his..."

2 Q. And where -- what are your charges? What have
3 have you been charged with?

4 A. I have been charged with shoplifting,
5 controlled substances, and conspiracy.

6 Q. Huh?

7 A. Conspiracy to this junk here.

8 Q. You have a lot of drug charges; don't you?

9 A. Do I have a lot of drug charges?

10 Q. Uh-huh.

11 A. In the past, I have had a few.

12 Q. Okay. Hold on a minute.

13 MR. ABDALLA: One moment, Your Honor.

14 (Pause.)

15 BY MR. ABDALLA:

16 Q. I see a bunch of prior drug charges. Have you
17 pled guilty to drug charges recently?

18 A. I pled -- recently?

19 Q. Uh-huh.

20 A. I have been in charges for two -- like, I
21 said, two Xanaxes.

22 Q. I know in 2008, you had a crack charge,
23 correct, you pled guilty to?

24 A. I did.

25 Q. And you had some others, but then more

1 recently in 2012, I see, one, two, three -- at least
2 three -- three charges of possession of controlled
3 substance, but I don't see whatever happened to that?
4 Are they all still pending?

5 A. No.

6 Q. And then another one in 2013?

7 A. No. Nothing pending but the two Xanaxes,
8 along with a conspiracy.

9 Q. I'm sorry?

10 A. Nothing is pending but the two Xanaxes, along
11 with the conspiracy.

12 Q. So did you plead to all those other drug
13 charges? Is that what you're saying?

14 A. I have.

15 Q. You have. Okay. And you have the conspiracy
16 pending, and that counters -- that carries five years,
17 correct?

18 A. That's right.

19 Q. And -- well, let me ask you another thing:
20 What happened to the shoplifting you just recently had?

21 A. I still got to go to court for that, too.

22 Q. You still have to go to court for that?

23 A. Uh-huh.

24 Q. All right. And that carries 10 years?

25 A. Actually, Mr. Farnes -- yeah, it does. Mr.

1 Farnesworth is my attorney on the --

2 Q. Okay. Well, that carries up to 10 years
3 because it's an enhanced for multiple shopliftings,
4 correct?

5 A. That's correct.

6 Q. Have you worked out a deal with that one yet?

7 A. With the shoplifting?

8 Q. Yes, ma'am.

9 A. I'm going to get probation for it all.

10 Q. You're going to get probation for it all?

11 A. That's correct.

12 Q. And is this conspiracy, too?

13 A. It's supposed to be dropped.

14 Q. It is going to be dropped?

15 A. Yes, sir.

16 Q. And you and your daughter and Donald are the
17 reason that Rich Boy came there to buy drugs, correct?

18 A. Excuse me?

19 Q. Okay. Didn't Rich Boy come up there to sell
20 drugs?

21 A. No.

22 Q. No?

23 A. Me and my daughter went to his house to get us
24 -- to get a pain pill.

25 Q. To get a pain pill?

1 A. That's right.

2 Q. Oh, okay. Was it a Roxicodone (ph) or
3 something like that?

4 A. That's right.

5 Q. Roxys?

6 A. Yes, sir.

7 Q. And as a result of him coming to your place --
8 he's in the truck at your place, correct?

9 A. That's right.

10 Q. And as a result of that, he ended up having
11 his truck stolen, his -- apparently some drugs, stolen
12 money stolen; are you aware of that?

13 A. I don't know if he had money. I don't know --
14 yes --

15 Q. Okay.

16 A. I guess -- whatever he -- I didn't know he had
17 money. I don't know, really.

18 Q. You're not aware that Donald admitted that he
19 had money from that -- that he took money?

20 A. He took money from David.

21 Q. Yeah.

22 A. He -- David is not Rich Boy.

23 Q. Okay. From the other guy, from Rich Boy. I'm
24 sorry. I'm getting my people mixed up. Are you aware
25 that -- you had also made a statement earlier that

1 Donald had nothing to do with it, that he didn't steal
2 the truck or anything?

3 A. He didn't.

4 Q. He didn't?

5 A. I'm for sure he didn't.

6 Q. Now, this five year conspiracy charge, plus
7 the drug charges, plus the shoplifting, you are going
8 to get probation, correct?

9 A. That's right.

10 Q. And they're dismissing the conspiracy?

11 A. They're supposed to.

12 Q. And you're not being given anything to testify
13 in court today, right?

14 A. No, sir.

15 Q. Who pulled Rich Boy out of the truck?

16 A. I -- I don't know.

17 Q. Who told him to stay on the porch? Were you
18 there when Ennis was there -- Mr. Ennis was there?

19 A. Who?

20 Q. Mr. Ennis. David.

21 A. I don't know he was there until after it was
22 all said and done, sir. Like I said --

23 Q. How many people -- I'm sorry to interrupt.
24 How many people were at the house? You're staying at
25 your father's house, correct?

1 A. Yes, sir.

2 Q. Are there several people there that evening?

3 A. There was nobody on the inside but my father.

4 I was aware there was nobody there.

5 Q. You would swear there was nobody there?

6 A. I wouldn't think that -- there was not

7 supposed to be nobody there.

8 Q. Okay. So the only people you knew were the

9 people you talked about?

10 A. Excuse me?

11 Q. The only thing that you're aware of are those

12 you've already referred to?

13 A. That's correct.

14 MR. ABDALLA: I have no further questions. Thank

15 you.

16 THE COURT: Any redirect?

17 MR. HOLLOWAY: Yes, sir, Your Honor.

18 **REDIRECT EXAMINATION BY MR. HOLLOWAY:**

19 Q. Ms. Trammell, do you know who your actual

20 prosecutor is on the pending charges?

21 A. I don't.

22 Q. Do you know that it is not me?

23 A. I -- I -- no, I know it's not you.

24 Q. And did you have any idea this conspiracy was

25 even going on?

1 A. No, sir.

2 Q. Did -- did you not just say that you had no
3 idea until after the fact that Mr. Ennis even got
4 there?

5 A. To what?

6 Q. Didn't you -- did you not just testify that
7 you had no idea that Mr. Ennis was even robbed until
8 after the fact?

9 A. That's right.

10 Q. So you had nothing to do with Mr. Ennis coming
11 to this residence; did you?

12 A. He took us home -- or, Nikki, my daughter was
13 driving.

14 Q. Mr. Shunk and Mr. Ennis?

15 A. Ennis -- oh -- no. I did not have no idea he
16 was coming there. David?

17 Q. David, yeah -- yes, ma'am.

18 A. Okay. No, sir. I did not know until after
19 all -- until actually the next -- later that night, I
20 had asked Donald when he -- when I got finally -- when
21 Mark had took me and my daughter, when we got with my
22 son -- "Son, who was in that other car?"

23 Q. So you had -- so it's your testimony you had
24 actually no idea that David Ennis --

25 A. No, sir.

1 Q. -- was coming by the house?

2 A. No clue. I haven't seen him in years.

3 Q. And other than a phone call to Donald
4 during -- while you're at the convenience store, had
5 you two spoke at -- whatsoever about the potential of
6 robbing Rich Boy, Mr. Shunk?

7 A. No, sir. I wouldn't -- no.

8 Q. When you got back to your residence -- in
9 fact, when you left [REDACTED] Keller Road, you left your
10 Pop's residence, was anybody at the house other than
11 your father?

12 A. That's all.

13 Q. Did you even know that Donald and Mark and Ms.
14 Morgan were at the residence?

15 A. No. There was nobody there but my father.

16 Q. And was it completely dark when you guys
17 pulled in?

18 A. Pitch dark.

19 Q. So is it safe to say that you were absolutely
20 surprised that Mr. Bayne popped out? And your son,
21 Donald Trammell, popped out, and Ms. Morgan popped out
22 when you got there?

23 A. It scared me to death.

24 MR. HOLLOWAY: No further questions.

25 MR. ABDALLA: One.

1 **RECROSS EXAMINATION BY MR. ABDALLA:**

2 Q. What about Larry, where was Larry?

3 A. I seen him as he opened the door -- I seen him
4 no more until I got to the Gosnells.

5 Q. He opened the door what?

6 A. When he opened the truck on -- the door on the
7 truck.

8 Q. Okay. And you're just an innocent person in
9 all this?

10 A. I sure am -- other than --

11 Q. The fact that you were going down for the
12 drugs, and the fact that -- that had nothing to do with
13 anything? You didn't anticipate any of this going on?

14 A. I would say me going and getting a pain pill.

15 Q. And you talked to Donald on the phone, right?
16 Right before this?

17 A. No.

18 Q. No? When did you talk to Donald?

19 A. After Rich Boy had disrespected my daughter.

20 Q. Right. Right. And was it --

21 A. This was several hours -- excuse me?

22 Q. Wasn't he going to meet you?

23 A. Who?

24 Q. Donald.

25 A. No. For what?

1 Q. You tell me. I'm asking -- I wasn't there.

2 I'll -- I'll admit I wasn't there.

3 A. No, he wasn't.

4 MR. ABDALLA: Okay. Thank you.

5 THE COURT: Ma'am, you may step down. Thank you.

6 All right, ladies and gentlemen of the jury, we've been
7 going about an hour and 50 minutes. I told you when I
8 qualified you -- or at least I think I did -- we
9 typically go about an hour and a half to two hours
10 between breaks. What we want to do is take a mid
11 afternoon break.

12 At this point, I'm going allow you to step to
13 the jury room. Do not discuss the case. Do not
14 discuss the case. I'll get you back out here as
15 promptly as possible. Okay. Everybody else remain
16 seated.

17 (Whereupon, the jury left the courtroom at 3:05
18 p.m.)

19 THE COURT: Anything from the State before we
20 stand down for a minute?

21 MR. HOLLOWAY: Nothing from the State, Your Honor.

22 THE COURT: Defense counsel?

23 MR. ABDALLA: No, Your Honor.

24 THE COURT: All right. We'll stand down just a
25 few minutes.

1 (After a recess, Court reconvened.)

2 THE COURT: Anything from the State?

3 MR. HOLLOWAY: None from the State, Your Honor.

4 THE COURT: Defense counsel?

5 MR. ABDALLA: Let me consult with the Solicitor
6 before I say anything.

7 (Pause. Discussion between attorneys.)

8 MR. HOLLOWAY: Your Honor, we'll put this on the
9 record. Mr. Abdalla and I -- we have known each other
10 for a while. This is -- I don't think this is anything
11 more than what it is. I just want to clear the air.

12 Mr. Abdalla expressed to me -- I spoke to Vickie
13 outside, and Nikki was within five or six feet.

14 MR. ABDALLA: Oh, I thought you were in the room
15 together.

16 MR. HOLLOWAY: Oh, I mean, we were in the room
17 together, yes.

18 MR. ABDALLA: Yeah, Yeah.

19 MR. HOLLOWAY: We were in the room together.
20 Vickie and Nikki are mother and daughter. I mean, I've
21 been getting to know them well for a month. And there
22 was no -- there was no strategic planning or any
23 sharing of testimony or matching testimony. In fact,
24 there will be some differing testimony coming out of
25 Nikki I'm quite sure. It's -- I just want to make sure

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1 there's no looming -- you know, anything here that they
2 were trying to match testimony up.

3 MR. ABDALLA: And that's all I wanted to make sure
4 of. That's why I wanted to ask him first. I mean, I
5 trust Justin.

6 THE COURT: Anything further?

7 MR. ABDALLA: No, Your Honor.

8 THE COURT: Mr. Holloway?

9 MR. HOLLOWAY: Nothing from the State, Your Honor.

10 THE COURT: Bring me the jury, please, sir.

11 (Whereupon, the jury entered the courtroom at
12 3:30 p.m.)

13 THE COURT: All right. All the jurors are
14 present. Mr. Holloway, call your next witness, please.

15 MR. HOLLOWAY: Thank you, Your Honor. The State
16 would next call Ms. Nikki Gardner to the witness stand.

17 NIKKI GARDNER, having been
18 first duly, testified as follows:

19 THE CLERK: Thank you. Please be seated. And
20 would you please state your name for the record?

21 THE WITNESS: Nikki Gardner.

22 **DIRECT EXAMINATION BY MR. HOLLOWAY:**

23 Q. Good afternoon, Ms. Gardner. Thanks for being
24 here with us today. Do you mind telling us how you got
25 the last name Gardner?

1 A. I married my husband, Jeremy Gardner.

2 Q. Okay. So are you originally Nikki Trammell?

3 A. Uh-huh.

4 Q. Are you the daughter of Vickie and Larry
5 Trammell?

6 A. Yes, sir.

7 Q. And how old -- how old are you?

8 A. I'm 28.

9 Q. And are you currently with child?

10 A. Yes.

11 Q. And how long have you been pregnant?

12 A. About six and a half months.

13 Q. Okay. And have you been arrested in the past?

14 A. Absolutely.

15 Q. Have you had some drug problems in the past?

16 A. Yes, sir.

17 Q. Do you have any pending charges with this
18 office?

19 A. No, sir.

20 Q. And the last time you had pending -- have you
21 and I ever met before today?

22 A. Yes, sir.

23 Q. Have we ever met in person?

24 A. Oh, no, sir. Over the phone. I talked with
25 you over the phone.

NIKKI GARDNER -- DIRECT

1 Q. Have -- have I ever been your Solicitor on
2 your charges as a prosecutor?

3 A. Not that I know of.

4 Q. Have you -- have you had any charges pending
5 in our office since you and I spoke on the phone?

6 A. No, sir.

7 Q. Okay. Is the only thing that you've got going
8 on right now is a violation of the Home Incarceration
9 Program?

10 A. Yes, sir.

11 Q. And are you currently on -- are you currently
12 on the waiting list for Serenity Place?

13 A. Yes, sir. I -- to my knowledge, I think I'm
14 the first or second one, you know, at the top of the
15 list.

16 Q. And can you explain to the jury, in case they
17 don't know what Serenity Place is?

18 A. It is an in-patient drug treatment for women
19 with small kids or pregnant women, that is a long term
20 facility to help them with their drug problem, and to
21 help them get on their feet and be able to financially
22 support their children and themselves.

23 Q. So it's -- it's a live-in facility that
24 helps -- that helps drug addicts overcome their
25 addiction and -- and provide a stable environment for

1 their children?

2 A. Yes, ma'am -- yes, sir, a female facility.

3 Q. Okay. Can you take us back to October the
4 18th of 2014, when all of this happened?

5 A. Yes, sir. Do you want me to start from the
6 beginning?

7 Q. Well, when -- when did you marry Jeremy?

8 A. I married Jeremy on April 4th, 2010.

9 Q. So you and Jeremy were married on October 18th
10 of 2014?

11 A. Yes, sir.

12 Q. And do you and Jeremy -- do you and Jeremy
13 typically live together?

14 A. Yes, typically, yes.

15 Q. In October of 2014, did you have some DSS
16 stuff going on?

17 A. Yes, sir. He had actually been granted
18 custody, because he had completed his requirement
19 through DSS. So he was granted, you know, custody with
20 the exception of me being in the home at night, because
21 I wasn't through with my drug treatment.

22 Q. So at that time, you weren't allowed to be at
23 home at night with your children?

24 A. Yes, sir. That's correct.

25 Q. And during this time, did you live somewhere

1 else out of your house?

2 A. Yes, sir. I lived with my grandfather at [REDACTED]
3 Keller Road until me and my mom were having problems.
4 And then I resided with Tina Bayne on -- I don't even
5 know the name of the road, Grace Meadow, I think or...

6 Q. Yeah. Does [REDACTED] Meadow Fork Road sound about
7 right?

8 A. Yes, that sounds about right.

9 Q. Is that the residence of Tina Bayne and Mark
10 Bayne?

11 A. Uh-huh.

12 Q. Is Tina Bayne Mark's wife?

13 A. Wife.

14 Q. And are they still married to your knowledge?

15 A. To my knowledge, they are.

16 Q. Okay. Was there something going on between
17 Mark and another individual at that time?

18 A. Yes. A girl named -- well, she goes by
19 Corrie, but her real name is Maria.

20 Q. What is her full name? Do you know?

21 A. Maria Cordelia Morgan.

22 Q. Does your momma have -- have a tendency to
23 call her Courtney?

24 A. Yes. That's all she calls her. I have tried
25 to correct her and everything, but she -- she is not --

1 she didn't get it.

2 Q. And your momma told us a little bit about you
3 all's relationship with Mr. Bayne. Can you tell us how
4 you know this individual sitting here at counsel table
5 next to his attorney, Mr. John Abdalla?

6 A. He's actually a cousin of my father's, so he's
7 like my third cousin.

8 Q. And have you known him your whole life?

9 A. Yes, sir.

10 Q. Have you known his wife, Tina, your whole
11 life?

12 A. No, sir.

13 Q. Okay. When did you meet Tina?

14 A. When I was younger, as a child. But from when
15 I can remember her was back in -- when I can actually
16 remember her is when he had -- he hadn't been released
17 from prison long.

18 Q. Okay --

19 MR. ABDALLA: Your Honor, can we approach?

20 THE COURT: Yes.

21 (Whereupon, a bench conference was held.)

22 THE COURT: Ladies and gentlemen, I'm going to
23 have to ask you to step to the jury room for just a
24 minute. Do not discuss the case. I'll get you back
25 out here as quickly as possible.

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1 (Whereupon, the jury left the courtroom at 3:37
2 p.m.)

3 THE COURT: All right, Mr. Abdalla. Let me hear
4 from you. I just want it on the record. I don't know
5 if --

6 MR. ABDALLA: I'm sorry?

7 THE COURT: I just want it on the record. I don't
8 know -- there is a recorder up here, but I want the
9 record protected for your client.

10 MR. ABDALLA: Okay. Your Honor, my objection is
11 that Ms. Gardner just testified words to the effect
12 that my client had been away at prison, just got back
13 from prison, something like that -- hadn't been back
14 long. And I had specifically asked for a limiting
15 instruction earlier to make sure none of that came out.
16 I don't think she was saying it maliciously. But my
17 opinion is, it doesn't matter. And I think it is
18 grounds for a mistrial. The jury now has an idea that
19 my client has been away before, and I don't think
20 that's appropriate.

21 THE COURT: Mr. Holloway?

22 MR. HOLLOWAY: Your Honor, I'll simply say, I
23 agree with Mr. Abdalla 100 percent. Ms. Gardner is
24 certainly -- as you can tell -- I mean, as it came out
25 of her mouth, "I only knew her since about the time he

1 got out of prison" -- I mean, it was so brief. She
2 didn't go into any detail about -- anything in regard
3 to the nature of the crime or the length of time he
4 served in prison.

5 I know Ms. Gardner will certainly take her --
6 measures to really think about her responses
7 beforehand. I certainly think that we can move on from
8 this and a curative instruction is probably all that is
9 necessary.

10 Your Honor, I just don't think it's at the point
11 where it is too overly prejudicial to Mr. Bayne. We
12 don't even know if Mr. Bayne was going to take the
13 witness stand yet or not. Obviously, that's neither
14 here nor there. We can't imagine. But I think that we
15 can go forward and the jury can be objective.

16 MR. ABDALLA: Obviously I disagree with that.

17 THE COURT: All right. You've made that clear.

18 MR. ABDALLA: Okay. I'm sorry.

19 THE COURT: Let me ask you this -- and Mr. Abdalla
20 is right, the fact that he had asked concerning this
21 very issue before we started the trial of this case,
22 did you have this discussion with Ms. Gardner and other
23 witnesses before we started this trial?

24 MR. HOLLOWAY: Yes, ma'am (sic) -- I think Ms.
25 Gardner will testify under oath that I told her and

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1 Vickie both before the trial --

2 THE WITNESS: Absolutely, just moments before we
3 walked in. I -- it -- it -- and that's how -- I mean
4 I -- I didn't even think twice, because I mean --
5 because I meant nothing by it as far as relating to his
6 past from --

7 THE COURT: What is his record -- and certainly
8 the prior armed robbery --

9 MR. HOLLOWAY: Your Honor --

10 THE COURT: -- from 1998?

11 MR. HOLLOWAY: -- he's got the three armed
12 robberies from 1998. In addition, he's got a receiving
13 stolen goods between \$2,000 and \$10,000 in 2012. And
14 then -- which was a probation violation. He went back
15 to SCDC. And then he picked up a possession of a
16 stolen vehicle charge in -- later in 2013, to which he
17 was given probation.

18 And then in October of 2014, he picked up these
19 two armed robberies, along with a corresponding six
20 other charges.

21 (Pause.)

22 MR. HOLLOWAY: Your Honor, he also has a false
23 information charge in April of 2014.

24 MR. ABDALLA: Your Honor, if I may, I would think
25 it's evident from the context of this, it related to

1 the lengthy prison term. I mean, I don't see any
2 way around -- my client loses any possibility of --
3 the void of innocence.

4 MR. HOLLOWAY: Well, they don't know there was a
5 lengthy prison term.

6 MR. ABDALLA: No, they don't.

7 THE COURT: All right. Listen, I'm going to
8 respectfully deny your motion for a mistrial. Pursuant
9 to State v. Crim, 327 SC 254, "an instruction to
10 disregard objectionable evidence usually is deemed to
11 cure the error in its admission, unless on the facts of
12 the particular case, it is probable, but
13 notwithstanding, such instructions the accused was
14 prejudiced".

15 The fact that -- in this particular situation, I
16 believe that the curative instruction certainly cures
17 any misstatement by this witness. The curative
18 instruction would be to the fact that her mentioning a
19 prior prison sentence is not to be considered as any
20 evidence of the defendant's guilt of the charges for
21 which he is facing here today, period.

22 MR. HOLLOWAY: Thank you, Your Honor.

23 MR. ABDALLA: Can I put something on the record,
24 Your Honor?

25 THE COURT: Yes, sir.

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1 MR. ABDALLA: Obviously, I disagree with the
2 ruling. And I just wanted to say for the record that
3 it doesn't matter whether it has anything to do with
4 this charge. What it has to do with is my client loses
5 his veil of innocence if he doesn't take the stand.

6 The jury now knows, or should know, that he has
7 been in prison. And I believe that it's almost
8 impossible for a juror not to consider that, whether
9 he's been in jail before, or he's one of those kind of
10 people with that burden. And I realize that's simply
11 my opinion, but I want that on the record for any
12 review in court that you consider changing it.

13 THE COURT: Well, I mean, I respectfully deny it.

14 MR. ABDALLA: I understand.

15 THE COURT: If you want to give me --

16 MR. ABDALLA: I just wanted to build a record.

17 THE COURT: And I want you to build a record.
18 But, please, when I'm talking, she can't take down when
19 both of us are talking. Okay, the court reporter.

20 I'm going to respectfully deny your motion at
21 this time. If you want to look for some case law
22 tonight, then I'll let you reargue it tomorrow if you
23 have something new. Based upon what I've heard here
24 today, I do not believe at this point that your client
25 has been unduly prejudiced so much so that a curative

1 instruction won't cure that.

2 MR. ABDALLA: Thank you, Your Honor.

3 THE COURT: Now, the question -- I guess the
4 question is, do you want me to give him a curative
5 instruction?

6 MR. ABDALLA: Can I -- can I think about that,
7 because I -- I can't give an answer to that so quickly
8 because it almost draws more attention to it.

9 THE COURT: It's kind of a double edged sword,
10 isn't it?

11 MR. ABDALLA: It is.

12 THE COURT: I understand.

13 MR. ABDALLA: Damn if I do, damn if I don't. And
14 I mean -- again, I apologize for my apparent lack of
15 respect, it wasn't intentional obviously. I got too
16 excited and talked over you.

17 THE COURT: That's okay. All right. Anything
18 else before I bring the jury back out now?

19 MR. HOLLOWAY: Nothing further, Your Honor.

20 THE COURT: Mr. Abdalla, anything else before I
21 bring the jury back out?

22 MR. ABDALLA: No, Your Honor. My objection is on
23 the record. As long as that stands, I'm --

24 THE COURT: Very good. Bring me the jury back
25 please. Ms. Gardner, don't mention it again. Okay?

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1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you.

3 THE WITNESS: I apologize.

4 MR. ABDALLA: Your Honor, could I add one thing --
5 I'm sorry. My client just told me, he's only been in
6 prison one time, just for the sense of record, just so
7 -- so that was the only time, just --

8 THE COURT: On the prior armed robberies -- on the
9 prior armed robbery?

10 THE DEFENDANT: Yes.

11 THE COURT: Thank you.

12 THE DEFENDANT: He said I went back to the
13 Department of Corrections. I've never went -- I've
14 only been to the Department of --

15 THE COURT: Talk to your lawyer. Okay. Let him
16 be your spokesperson.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Bring me the jury.

19 (Whereupon, the jury entered the courtroom at
20 3:48 p.m.)

21 THE COURT: You may continue, sir. All jurors are
22 present. Thank you.

23 MR. HOLLOWAY: Thank you, Your Honor.

24 BY MR. HOLLOWAY:

25 Q. Ms. Nikki, let's back up -- so in the time --

1 in October of 2014, there was a pending DSS
2 investigation; you had a case with DSS?

3 A. Yes, sir.

4 Q. And you say that you were no longer living
5 with your husband, Jeremy Gardner?

6 A. Correct.

7 Q. And did Jeremy Gardner have custody of the
8 children?

9 A. Yes, sir.

10 Q. So, did you move in with your grandfather and
11 your mother at [REDACTED] Keller Road?

12 A. Yes, sir.

13 Q. And did you say that when you -- you and your
14 mother got into a little fight, that you moved over to
15 [REDACTED] Meadow Fork Road?

16 A. Yes, sir.

17 Q. And is that where Ms. Tina Bayne lived?

18 A. Yes, sir.

19 Q. Okay. Who else lived there?

20 A. Jessica Bayne, which is Tina's daughter, her
21 three kids. My brother was staying there. My dad was
22 staying there. Mark was staying there if -- in and
23 out. That's about it.

24 Q. A -- a lot of people?

25 A. Yeah.

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1 Q. And the two victims in this case, Arron
2 Shunk -- who, your mother has -- has commonly referred
3 to as Rich Boy?

4 A. Right.

5 Q. And David Ennis?

6 A. Right.

7 Q. Do you know both of those two?

8 A. Yes, sir. David Ennis very well. The night
9 this accident happened was the first time I had met
10 with the guy Arron, Rich Boy, or whoever.

11 Q. And how long have you known David Ennis for?

12 A. Actually since 2004.

13 Q. And was David a friend of your father's?

14 A. Yes, sir.

15 Q. Had he become a close family friend?

16 A. Yes, sir.

17 Q. Did he help y'all out in times of need?

18 A. In good and bad ways, yes.

19 Q. How -- this a little bit of an intrusive
20 question, so I apologize for asking.

21 A. Okay.

22 Q. How long have you been doing drugs for?

23 A. Um, 2003.

24 Q. And during that time, have you known David to
25 deal drugs?

1 A. He was actually the first guy -- the first
2 person that I was buying my drugs from.

3 Q. And has -- has he dealt you drugs since -- you
4 and your brother and family drugs since 2003?

5 A. Yes, sir.

6 Q. Otherwise, this may be a moot point -- but
7 otherwise he's a nice guy?

8 A. Yes, sir. I mean, he's actually brought me
9 and my -- or -- for my dad, brought us food, you know,
10 to eat for supper or -- because we didn't have nothing
11 else in the house. When we didn't have it, he has done
12 things like that as well.

13 Q. So, he had -- it was -- it was sort of a
14 double edged sword?

15 A. Right, yeah.

16 Q. And the evening of October 18th, did -- you
17 and your mother had gone over to Mr. Shunk's residence?

18 A. Uh-huh.

19 Q. And that -- and that is just down the road
20 from you guys?

21 A. Yes, sir. It's actually just -- at the stop
22 sign.

23 Q. Okay. If you leave your grandpa's house,
24 would you make a left or a right to go there?

25 A. Left.

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1 Q. Okay. And he's got -- he's got a pretty nice
2 house?

3 A. A very nice house.

4 Q. And your -- your grandpa and your momma, they
5 lived -- the house at Keller Road was a -- the
6 residence was --

7 A. Single.

8 Q. -- a trailer?

9 A. Uh-huh.

10 Q. A single wide?

11 A. Uh-huh.

12 THE COURT: Is that a yes? I need a "yes" or a
13 "no" please.

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you.

16 THE WITNESS: Sorry.

17 BY MR. HOLLOWAY:

18 Q. So were you -- that night when you and your
19 momma got over to Aaron's house, were you drinking at
20 all?

21 A. No, I wasn't. I was actually, at the time, I
22 was addicted to opiates. And that's -- that was the
23 purpose of going there was to get a pain pill. But
24 when we got there, he -- the guy was very intoxicated,
25 very.

1 Q. Okay.

2 A. And he was the only one there at the time, so
3 me and my mom -- and he invited us in. And I think my
4 mom actually did accept the beer, but I don't -- I
5 don't drink at all, so.

6 Q. When y'all left -- when y'all left Mr. Shunk's
7 residence, did you guys go in search of opiates?

8 A. Yes, sir. To Greenville with -- with him
9 asking me if I was capable of driving the truck,
10 because he was clearly not. So, yes, sir.

11 Q. Did he offer you -- to buy you guys opiates?

12 A. Yes, sir.

13 Q. Is there a street term that you usually use
14 for opiates?

15 A. Roxys.

16 Q. So you all were in search of Roxys?

17 A. Yes, sir.

18 Q. And where did you guys go that evening after
19 you left his house?

20 A. We were headed to Greenville down towards
21 Dixie Circle on White Horse. And the -- we got into
22 the altercation right there in front of Diane Cagle's
23 office on White Horse Road. That's at the point to
24 where I turned around and was going back home.

25 Q. A lot of things uncoiled there?

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1 A. Okay.

2 Q. For folks who may not know where Dixie Circle
3 is, is Dixie Circle -- is that a trailer park home?

4 A. Uh-huh, yes, sir.

5 Q. And is that a place that you -- you would
6 typically go to buy Roxys?

7 A. That is -- yes, sir. That is actually a place
8 I had called and arranged to buy Roxys.

9 Q. Did you call that night?

10 A. Yes.

11 Q. So were you all not able to get any though?

12 A. We never made it that far before the
13 altercation happened.

14 Q. Okay. And Judge Diane Cagle, you're referring
15 to the Magistrate Judge Diane Cagle?

16 A. Yes, sir.

17 Q. Have you ever been to her courthouse down
18 there on White Horse?

19 A. Yes, sir.

20 Q. And so you all were passing that, and what
21 kind of altercation occurred?

22 A. He actually had disrespected me like two or
23 three times. He he was very intoxicated as far as, you
24 know, trying to talk, you know, dirty to me. And he
25 actually reached over and grabbed my breast at one

1 point, and he was asked to stop.

2 And my mom kind of took it in her place to cuss
3 him out and call him all kind of things, and started
4 flipping. And so I turned into the gas station that is
5 across from Diane Cagle's office. And when I turned in
6 there, I just pulled into the parking lot, and they
7 kept on.

8 Well, the guy called my momma a b-i-t-c-h. And
9 at that point, she smacked him. And that's when, you
10 know, I was like, "Momma, you're going to have to
11 stop". You -- we're in Greenville. I don't want to be
12 stuck in Greenville with no way back home.

13 So at that point, I asked the guy if it was okay
14 if I just drove the truck back home. He said, yeah.
15 He said, but -- they argued all the way up the road,
16 while I'm driving. Well, that's -- that's what got us
17 turned around from going to get what was -- we were
18 clearly going to do to begin with.

19 Q. And when you stopped at [REDACTED], were you going to
20 go back to his residence at [REDACTED] Hammond Drive?

21 A. I was -- yes, sir. Actually I was so very
22 close to going back to his house for the reason of him
23 being so intoxicated, I didn't feel safe with him
24 driving that short three minute distance from my house
25 to his house. But at the same point, it's like almost

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1 midnight at this point. So I'm like, you know, I don't
2 want to walk back in the dark. Plus with him and my
3 mom arguing, I -- you know, I didn't know what might
4 happen at his residence as well.

5 So, that's when I decided -- I decided to pull
6 into my grandfather's house and let him -- I thought
7 that would be my -- my safest way, so that's what I
8 done.

9 Q. And at this time, did you say that Donald was
10 living over at ■ Meadow Fork Road?

11 A. Correct.

12 Q. Has Donald, to your knowledge, ever lived at
13 ■ --

14 A. No, sir, not permanently. He has stayed down
15 there like a day or two, and he has resided down there
16 for maybe a week. But he is -- no, he has never
17 permanently lived at ■ that I know of.

18 Q. And -- and the night in question, was
19 Donald -- was he living a ■ Keller Road?

20 A. No. That's actually at the point -- actually
21 my mom had called the law on him, him and my dad, that
22 was staying down there as well -- I was still living
23 down there at this point. But this was right before I
24 moved in with Tina. But my mom had called the law.
25 And the law had asked my brother and my father to, you

1 know, leave the premise and not come back. Because
2 my -- my grandfather, he is 87 years old, and he's the
3 one that owns the house. I mean, he's the one that has
4 to deal with this stuff.

5 Q. And when you guys left [REDACTED], when you left the
6 grandpa's house and you went to Arron Shunk's
7 residence, were Donald or your father there --

8 A. No, they were not.

9 Q. And when you pulled in, were there any
10 vehicles in the driveway?

11 A. No, sir.

12 Q. So when you pulled in, did you think that --
13 that the police -- the only people that were there was
14 your grandpa, Fred?

15 A. Exactly.

16 Q. Okay. Was that the case?

17 A. No.

18 Q. Tell us what happened right when you pulled
19 in.

20 A. I actually did drive right -- it pulls --
21 there is a driveway that goes up the hill, towards the
22 main, like, place you park. And then there is a field
23 right there that goes up right beside the driveway. I
24 pulled -- through the field, that way he could circle
25 back down and go back down the driveway. Well, when I

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1 circled around and I pulled down into the parking
2 space, I seen my brother and my daddy --

3 Q. And what -- use their names, too.

4 A. Oh, okay. I'm sorry. My brother, Donald
5 Trammell. My dad, Larry Trammell. Mark Bayne and a
6 girl -- that girl, Corrie -- that they called Corrie,
7 Maria Morgan. And -- walk out from behind the trailer
8 which was coming at me in front. And I thought in my
9 mind oh -- I got the truck off. I got -- I went to get
10 out of the truck.

11 Q. And who -- who opened your door?

12 A. Mark Bayne was at the driver's side door,
13 which was my door. I seen my brother. He looked at
14 me. And he said, "Get in the F-ing house." He went to
15 the passenger side door, which was where the man that
16 owned the truck was.

17 Q. Mr. Shunk?

18 A. Uh-huh.

19 Q. So let's confirm here. Your momma had said
20 something different -- so are you positive -- you were
21 sober that night?

22 A. Yes, that night I was. I was actually --
23 because I didn't have opiates, so -- and I was
24 completely sober.

25 Q. So you had not had any opiates or any alcohol?

1 A. Exactly.

2 Q. And you're -- and you're positive that night
3 that Mr. Bayne, the defendant, right here sitting at
4 counsel table was the one that opened your door, and
5 that your brother, Donald Trump -- or Donald Trammell
6 was the one that opened --

7 A. The passenger --

8 Q. -- Mr. Shunk's?

9 A. Yes, sir. Because I mean, I seen my brother,
10 Donald Trammell. Once I got out of the truck and they
11 were in truck -- or he was in -- Mark Bayne was in the
12 truck, and my brother was standing outside of the
13 passenger side of the truck -- because Rich Boy -- or
14 what's his name? Shawn?

15 Q. Shunk. Arron Shunk.

16 A. Shunk. Okay. He was in the passenger seat,
17 so my brother was standing out on the outside of the
18 door. And once I got to the front porch step, I turned
19 around and looked again, and that's when I seen my
20 brother hit the guy in the face.

21 Q. And did you guys go right inside immediately?

22 A. Yes.

23 Q. And did you see another vehicle pull up at
24 some point after you got inside?

25 A. Yes, sir. There was actually inside my

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1 momma's bedroom, the window where the computer chair
2 is, seats right towards the road in the driveway. So
3 that's -- that's where I was at when I went into the
4 house. I went there and sat to watch to see what was
5 happening. And that's when I seen another car pull
6 into the driveway.

7 Q. Okay. Did you see another armed robbery type
8 incident occur, or did you just see the car pull in?

9 A. Just the car pull in, that's all I knew.

10 Q. Okay. But at that point, you were -- you were
11 aware that your brother and Mr. Bayne had taken Arron
12 out of the car; your brother had hit him; and they had
13 put -- they had forced him back around the house or
14 taken him out of the car?

15 A. I don't know that -- I knew that they were --
16 he had been gotten out of the car, but I didn't know he
17 was taken behind the house, no, sir.

18 Q. Okay. But you -- but you remember him getting
19 -- taking him out of the car?

20 A. Uh-huh.

21 Q. And do you remember any of them having any
22 weapons?

23 A. I think my brother might have had one. But
24 afterward, yes, sir, to my knowledge I thought they
25 did, yes, sir.

1 Q. Okay. And then at what point did you realize
2 that you guys needed to get out of there?

3 A. While I'm sitting there, I'm like, Oh, my God,
4 momma, the law has got to be here, like -- and I just
5 seen both cars leave at that point. So I'm like,
6 they're all gone. And the people that are guilty for
7 having, you know, all involved to begin with is gone
8 and we're sitting here and the police is about to come.

9 Q. Okay. So how -- so let me stop you there.
10 How did you guys leave?

11 A. I called my brother and I said, "You know the
12 police has got to be here". He says, "All right". He
13 said, "Well, I'm in the Exterior (sic)", which belonged
14 to a guy named Blake. He said, but --

15 Q. When you say that -- do you mean a Nissan
16 Extera?

17 A. Yes, sir.

18 Q. It's a SU -- four door SUV?

19 A. A black one, yes, sir.

20 Q. So your brother is driving a four door SUV?

21 A. Uh-huh, with my dad in the passenger seat.

22 Q. All right.

23 A. He says, "We'll be there to get you in a
24 minute". And when they pulled up, it was the truck
25 that belonged the guy that lived at the end of the

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1 road. And we got in and Mark Bayne was driving, and
2 Corrie Morgan was in the passenger seat. Me and my mom
3 got into the truck in the back seat. And we went and
4 met my brother at -- David -- at a residence that --
5 with the last name Gosnell on Highway 25 near the Handy
6 Mart.

7 Q. So the Gosnell's house?

8 A. Yes.

9 Q. Your momma mentioned that. And is that -- is
10 there a reason that y'all went there?

11 A. Um, we went there because the purpose of -- I
12 found out on the way was the reason they -- that my
13 brother and Mark and all them was there to begin with
14 is because there was a robbery planned to go down
15 before we even got there. And so it just happened to
16 be we pulled in right before that was about to happen.

17 Q. So it was completely by coincidence that you
18 guys pulled in right before this happened?

19 A. Correct.

20 Q. And do you think that's why your brother
21 rushed y'all inside?

22 A. Yes, sir. Well, yes, sir. He -- I don't
23 think he would have wanted us to be a part of the first
24 one either, but that's -- that's one reason I think
25 that he wanted us inside. Because maybe David Ennis,

1 which was the second robbery, what they were -- the
2 purpose of them being there, if he were to pull up and
3 seen all of us outside in an altercation, then you know
4 he would have suspected something.

5 Q. So how long did it -- how long does it take to
6 get to the Gosnell's house off of 25? What -- I mean,
7 how do you have to go?

8 A. You go out of my driveway, and you take a
9 right, and you go maybe a minute and a half to the
10 Sandy Flat and take a right on Highway 290. And then
11 it's maybe six to eight minutes down to 90.

12 Q. Okay. So, you're in the car for at least six
13 to eight -- maybe nine or ten minutes with Mark Bayne
14 and Corrie Morgan?

15 A. Correct.

16 Q. And when you got to the house, did you hear
17 Mark say anything in relation to that burglary -- or
18 anything in relation to that armed robbery?

19 A. When I got to what house?

20 Q. When you got to the Gosnell's?

21 A. Actually that's how I found out about it is on
22 the way to the Gosnells. That's how I found out about
23 the reason that they were there to start with.

24 Q. Well, how -- what -- what -- what triggered --
25 was there anything that he said that triggered it?

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1 A. It was because everybody was wanting to know
2 where the dope was, because that was the purpose of
3 them robbing this guy that --

4 Q. So David Ennis, a long time family friend of
5 the Trammells, is that correct?

6 A. Yes, sir.

7 Q. And -- but everyone knew that he -- he dealt
8 drugs, opiates?

9 A. Right.

10 Q. And --

11 A. No. No. No. No. He didn't deal opiates, he
12 dealt meth.

13 Q. He dealt meth?

14 A. Yes.

15 Q. Oh.

16 A. Yeah.

17 Q. So, have you ever -- okay. And do you
18 remember while you're on the way to the Gosnells, when
19 you got to the Gosnells Mr. Bayne asking where is the
20 dope?

21 A. Yeah.

22 Q. So at that point, is that -- is that when you
23 realized, oh, snap, they were trying to rob --

24 A. Well, no, he told me. Mark told me.

25 Q. So he told you that they were trying to rob

1 Mr. Ennis?

2 A. For -- yes, for the meth.

3 Q. Huh. So -- and do you know Mark Bayne Jr.?

4 A. I do.

5 Q. And is -- is Mark Bayne Jr. at -- is that Mr.
6 Mark Bayne Sr.'s son?

7 A. Yes, sir.

8 Q. And how long have you known Mark Bayne Jr.

9 A. Since -- real little, I mean.

10 Q. Is he -- is he about your age?

11 A. Yes, sir.

12 Q. So does he look -- I mean, you would -- you
13 would definitely know the difference between Mark Bayne
14 Jr. and Mark Bayne Sr.?

15 A. I would -- I would, correct.

16 Q. Okay. And Mark Bayne Jr. was not the man in
17 that truck that night, was he?

18 A. Absolutely not.

19 Q. Okay. And Mark Bayne Jr. is Tina Bayne is --
20 is Mark Bayne Jr. Tina Bayne's son?

21 A. Yes, sir.

22 Q. And do you know, during that time period, what
23 Mark Bayne Jr. was doing -- everything with his life?

24 A. He actually worked out of town all week, and
25 come home on the weekends.

NIKKI GARDNER -- DIRECT

1 Q. So was he -- what -- what kind of job did he
2 have, do you know?

3 A. The type of job? No, sir. I just knew that
4 he was gone all week long, out of town, and he would
5 come in on the weekend.

6 Q. And had -- had he been in previous trouble
7 with the law as a kid?

8 A. Not that I know of.

9 Q. Okay. And was he clean at the time -- was he
10 one of the -- was -- do you know him to be clean and
11 not associated with --

12 A. To -- to my knowledge, he didn't do any
13 criminal, nor drug activity at -- at that point. I
14 didn't know him to be known as any drug or criminal
15 activity.

16 Q. And did -- was -- did he ever run around with
17 your brother?

18 A. No.

19 Q. And was your brother doing a bunch of drugs at
20 that time?

21 A. Yes.

22 Q. And did you know Mark Bayne Sr. to run around
23 with your brother, Donald Trammell, at that time?

24 A. Yes. They were running together, hanging out
25 at that time. I was hanging with them some most of the

1 time.

2 Q. And do you ever remember seeing Mark Bayne Sr.
3 at ■ Meadow Fork Road where Tina Bayne lived?

4 A. Yes.

5 Q. Okay. And do you remember seeing him there
6 around that time?

7 A. Not --

8 Q. Or around the -- you know, within the -- the
9 time of the incident date on October 18th or, you know,
10 within a week thereafter?

11 A. After the 18th?

12 Q. Yes.

13 A. No.

14 Q. Okay. Well, do you remember pulling up -- did
15 you ever -- did you and Jeremy ever go to that house --

16 A. Yes.

17 Q. Did -- did you guys go to that house?

18 A. Yes, sir. It was -- actually, I know it was
19 on the 7th day after the 17th, because me and my
20 husband had pulled into the -- my husband had come to
21 see me, because we wasn't living together. He had
22 picked me up at my grandfather's and we went -- he was
23 dropping me off over at the Bayne's.

24 When we pulled in, the truck was backed into the
25 driveway. And a guy named Blake -- my brother was

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1 driving his -- the Extera, the black SUV, my brother
2 was driving it. And he was actually backed into the
3 driveway as well, but side-by-side. And my brother was
4 sitting in the driver's seat. My daddy was sitting in
5 the passenger's seat, and Mark was on the outside of
6 the truck wiping it down.

7 Q. What was he wiping -- what was he wiping down?

8 A. The truck.

9 Q. Okay. Why do you wipe anything down?

10 A. I guess to get the fingerprints off, I guess.

11 MR. HOLLOWAY: And, Your Honor, the State is
12 showing the defense what is marked as exhibits --
13 State's Exhibits 12, 13, and 14.

14 MR. ABDALLA: Without objection, Your Honor.

15 THE COURT: Without objection, so admitted.

16 (State's Exhibits 12, 13, and 14 admitted into
17 evidence.)

18 MR. HOLLOWAY: Permission to publish to the jury?

19 THE COURT: Yes, sir.

20 BY MR. HOLLOWAY:

21 Q. Okay. Ms. Nikki, will you look, what do you
22 see here -- do you -- do you recognize State's Exhibit
23 12?

24 A. Yes, sir.

25 Q. Okay. And please describe to the jury what

1 is -- what do you recognize in State's Exhibit 12?

2 A. Um, that's the house that Tina lives in there,
3 and that we were all staying at. That's the truck.
4 That's Blake's Extera.

5 Q. And where is -- where -- in relation to the
6 truck I'm about to show the jury -- in relation to the
7 rest of the cars, where is the truck located?

8 A. The furthest one to your left.

9 Q. And is it backed in?

10 A. It is.

11 Q. And where is the Extera located?

12 A. Right -- on the right side of it.

13 Q. And is it backed in?

14 A. Uh-huh.

15 Q. And is this how -- more or less how you saw it
16 that day when you and Jeremy went there?

17 A. Exactly.

18 Q. And can you tell us where you saw Mark at
19 wiping down the truck?

20 A. On the back side of the driver's side.

21 Q. Please speak into the --

22 A. On the back side of the -- on the driver's
23 side of the truck, he was right there at the back door.

24 Q. So State's Exhibit 12 shows the house that --
25 that you know to -- Tina Bayne to reside in?

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1 A. Uh-huh.

2 Q. And it also includes the truck and the Extera;
3 is that correct?

4 A. Yes, sir.

5 Q. And please look at State's Exhibit 13 for me.
6 Now, is this the same house?

7 A. Yes, sir.

8 Q. And is this the same truck?

9 A. Yes, sir.

10 Q. And is this the truck that you drove the night
11 of October 18th that you know to belong to Arron Shunk?

12 A. Yes, sir.

13 Q. And is it backed in?

14 A. Yes, sir.

15 Q. And here's a closer -- please look at State's
16 Exhibit 14 for me. Now, what's this?

17 A. That is the -- a close-up of the truck.

18 Q. And, again, is this the same truck that you
19 drove on the night of October 18th --

20 A. Yes.

21 Q. -- you drove all the way down to White Horse
22 Road and back?

23 A. Yes, sir.

24 Q. And tell me when -- when you -- when you and
25 Jeremy pulled up that evening, did you end up -- what

1 happened later on? Did you end up having a
2 conversation with Mark or going anywhere with Mark?

3 A. Well, my brother had asked me to drive the
4 black Extera and give Mark a ride to -- up off of old
5 Highway 25, which was Corrie Morgan's house. So I --
6 me and a girl named Tessa Bryson, she rode with me
7 while I took Mr. Bayne to drop him off at her house,
8 Corrie Morgan's.

9 Q. And was your brother -- was your brother
10 friends with Blake Kilberth?

11 A. Yes, sir.

12 Q. Did your brother have a car at the time?

13 A. At the time -- no. His -- his own car, no,
14 sir.

15 Q. Did you know him to drive the black Extera?

16 A. Yes, sir.

17 Q. Did he always and ordinarily drive the black
18 Extera?

19 A. Yes, sir.

20 Q. Is this the same black Extera that you
21 remember him driving the night of October 18th?

22 A. Yes, sir.

23 Q. And did your brother stay at the house when
24 you took Mr. Bayne to Corrie Morgan's?

25 A. Yes, sir.

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1 Q. And did that -- did that truck stay at that
2 house?

3 A. Yes, sir.

4 Q. Do you know your brother to be arrested that
5 next morning?

6 A. Yes, sir.

7 Q. At that location?

8 A. Yes, sir.

9 Q. And the truck was still at that location?

10 A. Yes, sir.

11 Q. But is it your testimony that your brother
12 didn't drive that truck -- is it your testimony that
13 Mr. Bayne drove that truck to that residence?

14 A. Yes, he drove the truck to that residence --
15 to my knowledge. When I got there, he was already
16 there, so I can't say for sure. But that's what was
17 talked about.

18 Q. Okay. Was your brother -- when he got -- when
19 you got there, was your brother inside the Extera?

20 A. Inside the Extera in the driver's seat.

21 Q. And did you know at that time your brother to
22 more or less always drive the Extera?

23 A. Oh, yeah, absolutely.

24 MR. HOLLOWAY: Okay. One second, Ms. Nikki.

25

1 BY MR. HOLLOWAY:

2 Q. Ms. Nikki, have you -- have you talked to Mr.
3 Ennis at all lately?

4 A. No, sir, I haven't even talked to him since
5 the accident.

6 Q. Before that accident, did you -- did you all
7 see each other pretty routinely?

8 A. Not -- no, not prior to the -- the robbery,
9 no, sir. Not for a couple of years. We hadn't -- I
10 had actually stopped using in the late of '05. And
11 since '05, I hadn't -- I had seen him around, you know,
12 a few times, but I hadn't, you know, bought from him or
13 come in contact with him on a regular basis since 2005.

14 Q. Thanks so much, Ms. Nikki. I really
15 appreciate all your help.

16 THE COURT: Cross examination.

17 MR. ABDALLA: Thank you, Your Honor.

18 **CROSS EXAMINATION BY MR. ABDALLA:**

19 Q. Nikki.

20 A. Yes, sir.

21 Q. You said you stopped using in 2005, and that's
22 why you stopped seeing Mr. Ennis -- or did I
23 misunderstand you?

24 A. No, you -- you heard me correct.

25 Q. All right. But then it appears that you have

1 drug charges after that?

2 A. Right. I relapsed. I did start back using
3 in -- let's see -- my daughter was born in '09 --
4 somewhere in the year 2000.

5 Q. I'm sorry?

6 A. In the year 2000, I started -- I relapsed, and
7 I started back using the meth.

8 Q. And but then you relapsed again after 2005,
9 correct?

10 A. That was -- I -- I started using in 2003.

11 Q. Right.

12 A. Stopped in late of 2005. And relapsed in the
13 middle of maybe 2010.

14 Q. 2010? I thought you said 2- --

15 A. No.

16 Q. I was totally confused. I apologize. As a
17 matter of fact, you had a conviction from 2015 for --
18 December, for cocaine, correct?

19 A. In 2015?

20 Q. December -- is that not you?

21 A. It may have been more when I went to court for
22 it, but the charge was from --

23 Q. 2013?

24 A. Yes.

25 Q. And you have the, as you discussed earlier I

1 believe, the charges of child neglect, which I imagine
2 stem from the drug use; is that correct?

3 A. Yes, sir.

4 Q. And that's why you're in the program -- DSS
5 program or whatever to try and get --

6 A. Right.

7 Q. -- your children back. And this incident
8 happened in 2014?

9 A. Yes, sir.

10 Q. Now, help me a bit if you would, because I --
11 I got -- I've been totally confused with Ennis and
12 Shunk.

13 A. Okay.

14 Q. Ennis is the one -- is it Ennis or Ennis?

15 A. Ennis.

16 Q. Ennis. Ennis is the man you know, correct?

17 A. Yes, sir.

18 Q. And he's also the one who sells drugs?

19 A. Yes, sir.

20 Q. And was it your mom that wanted the drugs?

21 A. The -- the opiates or the meth?

22 Q. Anything.

23 A. Um, it was actually the both of us that was
24 wanting the opiates that caused us -- or was our
25 reasoning for going out to the end of the road to

1 Shawn's (ph) house --

2 Q. So -- so that night you were seeing Mr. Ennis
3 so you can get some drugs?

4 A. No. No. No. I didn't have intentions on
5 seeing Mr. Ennis. I never saw Mr. Ennis.

6 Q. Okay. Well, I'm confused. I thought you just
7 said that's what you were doing?

8 A. To Shawn's house, the other guy.

9 Q. Oh, Shunk's house.

10 A. Yeah --

11 Q. That's where you got the drugs?

12 A. That's -- that's where we went to get the
13 opiates.

14 Q. I got you.

15 A. My brother's reasoning for the robbery, which
16 brought him to [REDACTED] Keller Road, was the fact that they
17 was trying to rob him for meth. I had nothing to do
18 with that. I didn't know nothing about it. I didn't
19 know --

20 Q. And where is your brother now?

21 A. He's incarcerated at SCDC.

22 Q. And do you know what kind of sentence he got?

23 A. Yes, sir. He got a -- a five year sentence.

24 Q. But he was charged with a lot more, wasn't he?

25 A. He was charged with a lot more what?

1 Q. Charges. And he's only doing five years,
2 correct?

3 A. Um --

4 Q. Was he charged with armed robbery?

5 A. I don't know if he pled guilty to an armed
6 robbery or a lesser charge. I'm not -- he was
7 initially charged with armed robbery.

8 Q. Okay. And he was the one you said that had
9 the gun?

10 A. Correct.

11 Q. And did you see him hit the fellow with the
12 gun?

13 A. Yes, sir.

14 Q. Where was Larry at this time?

15 A. At the time I seen him, but as far as seeing
16 him at the truck, I -- I can't place where he was or
17 nothing, but I know he was present.

18 Q. Okay.

19 A. I mean, I was going in the house and it was
20 also just a blur and --

21 Q. And where was Donald at this time?

22 A. At the -- at the time of the truck incident?
23 He was on the passenger side.

24 Q. No. No. Before that. When did -- when was
25 the call made to Donald from your mother or to your

1 mother?

2 A. Going -- well, to my knowledge -- to my
3 understanding, when I was driving the truck, I was
4 trying to get it to the house. The only call that I
5 know -- and I didn't think that it was for sure,
6 because I thought her and the guy was going back and
7 forth so badly and strongly verbally, that I thought
8 she was just actually trying to scare the guy. Because
9 my brother, I mean, he's -- he's not -- nobody -- I
10 mean, if you -- if -- you can ask anybody on the
11 streets -- I mean, he might be a drug user and he might
12 rob people, but he's not no person to fight nobody.

13 And um --

14 Q. He -- he might do drugs and might rob people,
15 but he's not going to fight anybody?

16 A. Well, not -- not a man no way.

17 Q. Well, I mean he -- did -- didn't you say you
18 saw him hit the man with a gun?

19 A. I did.

20 Q. Okay.

21 A. And in return to him probably -- or I know for
22 fact having other stand-bys that -- that could protect
23 him if possible. I know my brother.

24 Q. Yeah.

25 A. My brother hits females.

1 Q. He what?

2 A. He -- he has been known to hit females.

3 Q. Your brother has hit females?

4 A. Absolutely. Me as one of them.

5 Q. Who is?

6 A. My brother.

7 Q. Your brother hit your mother?

8 A. No, me.

9 Q. Oh, I'm sorry. I misunderstood.

10 A. Yeah, yeah.

11 Q. When did he hit you?

12 A. I'm saying, it's just -- well, we were
13 younger, and we was fighting.

14 Q. Okay.

15 A. I've never known him to be a real big man
16 fighter. I have never known him to fight a man
17 actually.

18 Q. All right. Now, I understand. So he will hit
19 a woman?

20 A. I -- yes, I have witnessed it.

21 Q. He will use a weapon?

22 A. Yeah. All -- and not in his right state of
23 mind.

24 Q. So you didn't talk to your brother before
25 that?

1 A. Before?

2 Q. When they were in the car?

3 A. No, sir. Absolutely.

4 Q. It was just your mother talking to you?

5 A. Absolutely. And I honestly didn't think she
6 was talking to him. My personal opinion, I thought she
7 was trying to scare the guy honestly --

8 Q. Oh, I got you.

9 A. Because I honestly would not have pulled in
10 there and put myself nor my brother in a situation to
11 do that. Because at that point in time, he was on
12 drugs and he was a little bit hey style (ph) so he
13 was...

14 Q. Are you talking about your brother?

15 A. Correct.

16 Q. And you said you knew Mr. Ennis quite well at
17 one time, is that -- did I understand that?

18 A. Yes, sir. He -- he was very close to me and
19 my family during the 2003 and 2006.

20 Q. And your mom knew him, too, or no?

21 A. Uh-huh.

22 Q. Did she know him pretty well?

23 A. Oh, yeah.

24 MR. ABDALLA: And -- begging the court's
25 indulgence for one moment, Your Honor.

1 BY MR. ABDALLA:

2 Q. Now, what do you know about Shunk?

3 A. Nothing.

4 Q. Okay. Did you meet him?

5 A. That night, yes.

6 Q. And what did -- and did you talk to him?

7 A. Yeah.

8 Q. And what did he say?

9 A. He told us to -- because normally, I was on
10 the -- I had been told that he sold Oxycodone by my
11 brother and my mother. And that was the point of us
12 going out there. So when we went out there --

13 Q. So it's a family affair?

14 A. What do you mean? I don't --

15 Q. You know, your brother, your mother, you,
16 getting together with Mr. Shunk? It sounds like a
17 family --

18 A. No. No. No. That was the first time I had
19 got together. My brother had dealt with him
20 previously. My -- my mother had knew -- knew him. And
21 my brother had dealt with him as well.

22 Q. You say your mother and brother had met with
23 him previously?

24 A. Correct.

25 Q. And you're just being brought into the fold

1 so-to-speak?

2 A. At that point, yes, sir.

3 Q. I got you.

4 A. And when we got there, he you -- you know, my
5 mom asked him if he had any of the pain pills. And he
6 said, actually, no -- which like I said, he was
7 intoxicated. But he did offer to buy some. And like I
8 said, he was making passes at me the whole night that
9 we were with him.

10 I offered to buy them, but he said that we would
11 have to find somebody that had some. So at that point,
12 he let me use his phone to make a call to see if I knew
13 someone that had some.

14 Q. You -- earlier you were talking about the
15 truck being recovered from Tina's house I believe?

16 A. To my understanding, I wasn't there.

17 Q. Oh, you weren't there.

18 A. No, not when the police got the truck.

19 Q. But Donald was with -- was there?

20 A. My brother was in -- inside the residence
21 asleep, correct.

22 Q. And how do you know that?

23 A. Because that's when the police got there.

24 Q. All right.

25 A. Right.

1 Q. And he had the keys for the truck as far as
2 you know?

3 A. Not that -- not that -- I don't know where the
4 keys to the truck was. I -- I didn't stay there that
5 night.

6 Q. Okay.

7 A. Yeah, me and my husband actually went and
8 stayed the night somewhere -- at a friend's house that
9 night.

10 Q. It's kind of a tangled web?

11 A. Yeah, very complex.

12 MR. ABDALLA: One more moment, please.

13 BY MR. ABDALLA:

14 Q. Did you see Donald interact with Mr. Ennis?

15 A. No, sir, not at all.

16 Q. Okay. You just saw him interact with Mr.
17 Shunk?

18 A. Yes. Very briefly, while I'm away inside the
19 home.

20 Q. That's who you saw pull a gun out?

21 A. That's who I saw with a gun in their hand.

22 Q. Against -- okay. Thank you. No further
23 questions.

24 THE COURT: Any redirect?

25 MR. HOLLOWAY: Very briefly, Your Honor.

1 **REDIRECT EXAMINATION BY MR. HOLLOWAY:**

2 Q. Hey.

3 A. Hey.

4 Q. Do you recognize State's Exhibit 21 -- do you
5 recognize who's in this picture?

6 A. Yes, sir.

7 Q. Okay. Who is in State's Exhibit 21?

8 A. Rich Boy.

9 Q. So is -- so is Rich Boy a/k/a Mr. Arron Shunk?

10 A. Yes, sir.

11 Q. Okay. And does Mr. Arron Shunk look anything
12 like Mr. Ennis?

13 A. Um, kind of -- I mean they had -- probably
14 some of the same features. But, no, I think Mr. Ennis
15 is probably a pretty good big taller than Mr. Shunk.

16 Q. So they are, in fact, two different people?

17 A. Oh, absolutely.

18 Q. And you're sure that there were, in fact, two
19 different robberies that evening?

20 A. Oh, yes.

21 MR. HOLLOWAY: No further questions.

22 THE COURT: Ma'am, you may step down. Thank you.
23 Can the lawyers approach a minute, please?

24 MR. HOLLOWAY: Yes, sir, Your Honor.

25 (Whereupon, a bench conference was held.)

1 THE COURT: All right. Ladies and gentlemen, at
2 this juncture, we are going to stop for today. I told
3 you when I qualified you that if I learned that the
4 next witness may be somewhat lengthy at this time of
5 the afternoon, rather than start a potential witness
6 that could take us to or beyond 6:00, that I might --
7 that I would let you go for this evening. That's
8 exactly what I'm going to do.

9 At this time, I am going to let you go this
10 evening. I'm going to ask that you be back here at
11 9:30 in the morning. Be back at here at 9:30 in the
12 morning. We will resume the trial of this case at that
13 time.

14 Do not -- do not discuss the case. Do not do
15 any independent investigation on your own. You are to
16 decide this case based solely upon the testimony and
17 evidence as presented in this courtroom, and nowhere
18 else. I hope you all have a wonderful evening. We
19 will see you all tomorrow morning. Thank you.

20 (Whereupon, the jury left the courtroom at 4:27
21 p.m.)

22 THE COURT: All right. Anything further from the
23 State at this time?

24 MR. HOLLOWAY: Nothing, Your Honor, as it -- as it
25 deals with -- with today's trial. However, Mr.

1 Trammell, Donald Trammell is up from SCDC. I'm going
2 to have to type up an order essentially to keep him
3 here this evening, and if you don't mind signing it --
4 we'll get -- I'll get it done as soon as I can. I'll
5 shoot on back to the office and run it over to chambers
6 if you don't mind.

7 THE COURT: All right. Anything further at this
8 time, Mr. Abdalla?

9 MR. ABDALLA: No, Your Honor, nothing with regard
10 to the case. What time did you say tomorrow?

11 THE COURT: I told the jury to be back at 9:30.
12 Hold on just a minute.

13 MR. HOLLOWAY: Your Honor, additionally and I --
14 if I might for a second, I guess Ms. -- Sherlen
15 Crawford here is my investigator. And she was present
16 when I served David Ennis. As you can tell, he is not
17 here. I do have a bench warrant ready. I don't know
18 if we need -- if we would like to take Ms. Crawford's
19 testimony under oath while we're here on the record as
20 to -- about serving her (sic). I do to have the
21 subpoenas -- the subpoena present.

22 THE COURT: Was he the one that was here earlier
23 today?

24 MR. HOLLOWAY: He was here and then left. And
25 Detective Owens talked to him that -- you can speak on

1 it.

2 MR. OWENS: Yeah, I called him during lunch --

3 THE COURT: Tell me your name for the record,
4 please.

5 MR. OWENS: Matt Owens.

6 THE COURT: Yes, sir.

7 MR. OWENS: And I spoke with him over lunch. And
8 he said that he was -- he was told to be in courtroom
9 four. He stayed there for about an hour and a half.
10 He didn't see anybody, so he left.

11 I said, well, we need you back at courtroom
12 seven ASAP. And he responded and said, okay, it's
13 going to take me a minute. He never showed up. I went
14 outside during one of the breaks and called him -- I
15 don't know, five or six times. He never answered the
16 phone again.

17 THE COURT: All right. Have you got the subpoena
18 there?

19 MR. HOLLOWAY: Yes, sir.

20 THE COURT: Is the certificate of service with it?
21 (Pause.) I'll issue a bench warrant on him if...

22 MR. HOLLOWAY: Here you go, Your Honor. Yes, sir,
23 Your Honor, the certificate of service was executed on
24 Wednesday, March 23rd, as shown here.

25 THE COURT: Who served him?

1 MR. HOLLOWAY: Ms. Sherlen Crawford did, my
2 investigator. She was -- I was interviewing him, and
3 she came -- she was present at the time and served him
4 with a subpoena.

5 THE COURT: If you would have the bailiff sound
6 his name.

7 MR. HOLLOWAY: Do you mind sounding his name? His
8 name is David Ennis.

9 (Pause.)

10 THE BAILIFF: No response, Your Honor.

11 MR. HOLLOWAY: Judge, if we do not pick up Mr.
12 Ennis tomorrow, I mean, I'm perfectly fine with going
13 forward without him -- his presence. I'm not going to
14 ask the court for a delay to make sure we get him here.
15 I think -- hopefully we can -- the State can put forth
16 ample evidence. He is -- he was, in fact, there that
17 night.

18 THE COURT: Make that subpoena an exhibit --
19 Court's Exhibit, please.

20 (Court's Exhibit No. 1 marked.)

21 MR. HOLLOWAY: Okay. Should we keep it locked up
22 with the rest of the evidence, Your Honor?

23 THE COURT: Mr. Abdalla, with regards -- no, I
24 know your client is gone now, but this mistrial issue
25 --

1 MR. ABDALLA: Yes, sir.

2 THE COURT: Certainly look at that -- if you find
3 me a case you want me to look at.

4 MR. ABDALLA: I'll -- I'll try.

5 THE COURT: There's a couple of cases I'm looking
6 at, and I'll tell you what they are if you want to
7 write them down.

8 COURT REPORTER: Do you want this on the record,
9 Your Honor?

10 THE COURT: How about, has the defendant already
11 gone? I mean, I don't want to do anything on the
12 record without him in here. If y'all want to get him
13 back in here real quickly, he is entitled to be in
14 here. I know y'all thought we were finished.

15 MR. ABDALLA: Would you tell me the cases while
16 we're waiting?

17 THE COURT: No, I want to wait until he gets here.

18 MR. ABDALLA: Okay.

19 THE COURT: I want him to hear it all.

20 (Pause.)

21 THE COURT: All right. The defendant is back in
22 the courtroom now. I just -- Mr. Bayne, I had to bring
23 you back up here because I wanted to address a couple
24 of things, and I wanted to make sure that you were in
25 here when I did so.

1 With regards to the mistrial motion that was
2 previously made when Ms. Gardner mentioned the fact
3 that the defendant had been in prison, Mr. Abdalla --
4 and I hope I'm not -- I'm pronouncing your name
5 correctly --

6 MR. ABDALLA: Yes. Abdalla, that's correct.

7 THE COURT: -- promptly objected and made a motion
8 for a mistrial, which the court denied -- respectfully
9 denied.

10 The court has since looked at a couple -- has
11 been looking at a couple of cases up here, and I'm
12 having the defendant brought back up here. I was going
13 to tell defense counsel is -- one is State vs. Haskell,
14 Livingston Haskell. It's just a 2009 West Law cite,
15 2009 WL 9528824.

16 MR. ABDALLA: I'm sorry. Did you say 9528824?

17 THE COURT: Yes, sir.

18 MR. ABDALLA: Thank you.

19 THE COURT: And then State v. Heller, which is 399
20 SC 157. And I will also say that the court -- and I
21 think should be -- should be on the record -- the court
22 certainly offered to give a curative instruction with
23 regards to this matter.

24 The law is clear on a request for a mistrial.
25 The law is clear under State vs. Prins and others,

1 State vs. Prins being 279 SC 30, the grant or refusal
2 of a mistrial motion is within the trial judge's
3 discretion. This power ought to be used with the
4 greatest -- the greatest caution under urgent
5 circumstances, and for very plain and obvious causes.
6 A mistrial should not be granted unless absolutely
7 necessary. The trial judge should exhaust other
8 methods to cure the possible prejudice before aborting
9 a trial.

10 The court has offered to give a curative
11 instruction here, and is giving defense counsel some
12 time to think about that at his request. He -- I told
13 him I'd give -- I told Mr. Abdalla I would give a
14 curative instruction, and he was not sure whether he
15 wanted such.

16 So I'm going to give him overnight to consider
17 that. But I will say in State v. -- I think it is the
18 Haskell case, it is well established that a curative
19 instruction to the jury to disregard incompetent
20 evidence, and not to consider it during deliberation,
21 is deemed to cure any alleged error in its admission
22 even in criminal cases. So I wanted to put that on the
23 record in the presence of Mr. Bayne, with his lawyer,
24 before we broke for this evening.

25 MR. ABDALLA: I appreciate the courtesy.

1 THE COURT: All right. Well, listen, I want -- I
2 want the record as clean and clear as possible. If he
3 gets convicted and I'm wrong, I want him protected.
4 All right.

5 MR. ABDALLA: Yes, Judge.

6 THE COURT: We'll stand down. Thank you. If the
7 lawyers -- I want the lawyers and court personnel back
8 here at 9:00. I told the jury 9:30, but I want the
9 lawyers at 9:30 (sic) in case there are any matters we
10 need to deal with.

11 (Whereupon, the hearing adjourned.)

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* * * APRIL 7, 2016 * * *

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3 THE COURT: All right. Anything from the State
4 before we bring the jury out?

5 MR. HOLLOWAY: Nothing from the State, Your Honor.

6 THE COURT: Defense counsel?

7 MR. ABDALLA: Yes, Your Honor. I'd just like to
8 -- I believe the court said it was okay for me to renew
9 my motion.

10 THE COURT: Yeah. Go ahead.

11 MR. HOLLOWAY: And go into that. What I wanted to
12 discuss, Your Honor, is -- and I know we've gone over
13 this before, but I wanted to put on the record the fact
14 that I requested a mistrial after a witness was -- the
15 witnesses were cautioned not to talk about my client's
16 record. In spite of that one of the witnesses, that
17 being Nikki Gardner, made an allusion to the fact that
18 he had been away in prison because she hadn't seen him
19 for a while.

20 THE COURT: Well, my recollection was is that she
21 knew -- hadn't -- had seen him -- let's see. That he
22 had just been released from prison.

23 MR. ABDALLA: Yeah.

24 THE COURT: The context of the questioning was
25 how, in fact, she knew him and how long she had known

1 him.

2 MR. ABDALLA: Right.

3 THE COURT: But go ahead.

4 MR. ABDALLA: And my recollection was she hadn't
5 seen him in a while, and alluded to the fact that he
6 came back from prison. I don't remember the exact
7 words.

8 THE COURT: Right.

9 MR. ABDALLA: But the reference was made that she
10 mentioned he had been in prison in front of the jury,
11 which was in direct violation of the limine motion that
12 I requested at the beginning. And apparently, from
13 what the Solicitor said, he did tell his witnesses they
14 couldn't mention anything.

15 THE COURT: Correct. All right.

16 MR. ABDALLA: If you want to respond before I
17 finish?

18 MR. HOLLOWAY: No, Your Honor. I just want to
19 clarify for the record. I actually believe where she
20 interjected that comment was I -- I had moved on to how
21 long she had known Ms. Tina Bayne. Because she -- she
22 had testified earlier that she knew Mr. Mark Bayne, the
23 defendant, for several years since she was born
24 essentially, as Mr. Bayne is her father's, Larry
25 Trammell, cousin. And then I got on -- because she was

1 living at ■ Meadow Fork Road, which is where Ms. Tina
2 Bayne was living at the time.

3 And I asked her how long she had known Ms. Tina
4 Bayne. And she goes, I don't know, not as long -- you
5 know, I think we -- I met her about the time that Mark
6 got out of prison.

7 MR. ABDALLA: Yeah. I'm -- I'm -- I'm --

8 MR. HOLLOWAY: I'm saying, just for the record, I
9 want to clarify.

10 THE COURT: Go ahead, Mr. Abdalla.

11 MR. ABDALLA: Oh, I'm sorry. And -- and that --
12 that reference was made in spite of the agreement that
13 that not be brought up. And I realize the Solicitor
14 didn't do anything malicious, but I just wanted to put
15 on the record that it's kind of like somebody shooting
16 me accidentally vs. intentionally. I'm just as dead.

17 The fact that the -- to me, it rises to an
18 accidental shooting vs. an intentional killing.
19 Sometimes the behavior is so reckless that it rises to
20 a criminal matter. And that's my analogy for the
21 purposes of this argument. It goes to the fundamental
22 fairness. I think it was egregious in the sense that
23 it brought the one thing in front of the jury that I
24 didn't want brought in, that he had been in prison the
25 one time, and that was the time that she referenced.

1 And the only way to -- that absolutely cures
2 that is to declare a mistrial on that. I'm not even
3 asking that it be with prejudice. If they want to
4 bring it back, I'm -- I certainly would be willing to
5 compromise at that -- the position I'm in, it doesn't
6 appear that I'm going to get any of the relief. But I
7 don't know how else one can protect the rights of his
8 client other than ask for the requests that I -- that I
9 asked for. And then when they're violated, then say
10 okay, that was a violation however minor or major. It
11 was major in our opinion. And it -- it takes away my
12 client's right to a fair trial.

13 THE COURT: The objection is so noted for the
14 record. As previously ruled upon, this court
15 respectfully denies a request for a mistrial. I pose
16 the option yesterday, and will do so again here this
17 morning, and that is a propose -- giving the jury an
18 instruction -- a curative instruction as to that issue.
19 I'm giving you an option as to whether or not you want
20 or would like for me to do such. There is certainly a
21 presumption under the law that such -- that such
22 curative instruction, the jury will abide by such.
23 And, therefore, that proposal is still there if you so
24 desire in light of this court's respectfully denying
25 said motion.

1 MR. ABDALLA: And could we review that before the
2 jury is charged at that time? About what the curative
3 instruction --

4 THE COURT: I'll do it whenever you'd like me to
5 do it. I mean, I can do it when I charge them on the
6 law --

7 MR. ABDALLA: Right. I'd rather wait until then
8 to make that decision if that's okay, Your Honor.

9 THE COURT: Okay. All right. Anything else
10 before we bring the jury out?

11 MR. ABDALLA: Yeah. The other matter is I did
12 mention in chambers that I have spoken to Donald
13 Trammell, who is the witness against my client. And I
14 had spoken to his lawyer previously, both of his
15 lawyers, Dorothy Manigault and Brian Johnson, and I was
16 told that he did not want to testify against my client.

17 I went down and visited him. And he, in fact,
18 said he doesn't want to testify. Then he told me that
19 he was being forced to testify. And I said, well, I'm
20 not your lawyer. I can't give you guidance on that.
21 But I wanted the court to consider giving him
22 representation on that. Because I do believe there's a
23 possibility of a fifth amendment violation, and his
24 rights would be violated if he, in fact, said anything
25 that's contrary to that which he had said earlier.

1 There was no sworn testimony, so it's not a perjury
2 matter. And so I raised it for that issue. I think he
3 should be given some counsel.

4 THE COURT: Mr. Holloway.

5 MR. HOLLOWAY: Your Honor, to clarify, there
6 actually is -- there actually is some sworn testimony
7 during the -- his guilty plea that took place on March
8 3rd of 2016.

9 And further, Your Honor, this is a situation in
10 which another Solicitor in our office handled the --
11 the plea negotiations with Mr. Trammell. I was not
12 privy to them. I did not handle the case.

13 But it is my understanding that Mr. Trammell
14 pled guilty. We have the transcript here that he did
15 on the record, about his involvement and the
16 involvement of Mr. Bayne.

17 Mr. Trammell has been sentenced by the court and
18 is currently in the South Carolina Department of
19 Corrections. And regardless of the matter, again, he
20 has been sentenced. These charges are behind him.

21 THE COURT: What Mr. Abdalla is getting at, the
22 possibility of him being prosecuted for perjury if he
23 were to take the stand and testify differently than
24 what he has already testified to under oath at the time
25 of his guilty plea.

1 MR. HOLLOWAY: Your Honor, as an officer of the
2 court, I will tell you that the only means of
3 correcting testimony that I believe to be untruthful,
4 that I have the intention of doing is, one, is to cross
5 examine him on his testimony at the -- at the guilty
6 plea. And also if the situation were to arise,
7 pursuant to Rule 613, with prior statements of
8 witnesses, to then question him on the statements he
9 made to Investigator Owens during his -- during his
10 interview. So that -- that that would be it, Your
11 Honor.

12 THE COURT: All right. Mr. Abdalla.

13 MR. ABDALLA: Well, I mean I stand by my concern
14 that he could be prosecuted, but that's for the court
15 to determine. But he doesn't want to testify. But I
16 didn't know about the sworn testimony until just now,
17 because I didn't know anyone who knew that.

18 THE COURT: He mentioned that back in chambers a
19 minute ago, about him telling -- saying that on the
20 record.

21 MR. ABDALLA: Oh, I thought you said you weren't
22 sure. I apologize. That's okay. I'm not raising it
23 as a matter. I just -- for some reason --

24 THE COURT: I just want to clarify for the record
25 that that's not what was discussed in chambers. What

1 was discussed in chambers, I mean, he brought up the
2 fact that he testified under oath at his plea that your
3 client was involved. At least that's the way I
4 understood it.

5 MR. ABDALLA: Okay.

6 THE COURT: Did I misunderstand, Mr. Holloway?

7 MR. HOLLOWAY: No, sir, Your Honor. You
8 understood what I tried to convey correctly.

9 MR. ABDALLA: Then I misunderstood it. I'm sorry.

10 THE COURT: Well, I -- well, misunderstood or
11 not --

12 MR. ABDALLA: I --

13 THE COURT: I want it clear on the record what was
14 said back in chambers on that issue.

15 MR. ABDALLA: Correct.

16 THE COURT: All right. All right. Anything else?

17 MR. HOLLOWAY: Nothing from the State, Your Honor.

18 MR. ABDALLA: Nothing from defense, Your Honor.

19 THE COURT: Bring me the jury, please, sir.

20 (Whereupon, the jury entered the courtroom at
21 9:47 a.m.)

22 THE COURT: Good morning, ladies and gentlemen.
23 I'm sorry to keep you all waiting back there this
24 morning. Before we begin, would the lawyers approach
25 please?

1 MR. HOLLOWAY: Yes, sir, Your Honor.

2 (Whereupon, a bench conference was held.)

3 THE COURT: Ladies and gentlemen, I'm going to
4 apologize to you, but I have to send you back out for
5 just a minute. I'm sorry. I've got to send you back
6 out for just a minute. I'll get you back out here as
7 quickly as possible and we'll resume the trial of this
8 case.

9 (Whereupon, the jury left the courtroom at 9:49
10 a.m.)

11 THE COURT: All right. It was brought to my --
12 what I discussed with the lawyers up here at side bar,
13 it was brought to my attention yesterday afternoon at
14 some point -- I'm not exactly sure when -- but it was
15 conveyed to one of the bailiffs or the clerk that
16 Robert Smith, juror number 249, who was the alternate
17 in this case, recognized the first witness in the trial
18 of this case. The first witness being Arron Joseph
19 Shunk.

20 I'm not exactly sure in what capacity Mr. Smith
21 may know Mr. Shunk. So, therefore, I have conveyed
22 this issue to the lawyers here at the side bar. What I
23 am going to ask to be done at this point, is to pull
24 Mr. Smith out of the jury room and ask him on the
25 record about this issue.

1 Any -- any objection to that by the State?

2 MR. HOLLOWAY: Nothing from the state, Your Honor.

3 THE COURT: Defense counsel?

4 MR. ABDALLA: Nothing from defense.

5 THE COURT: All right. Can you get Mr. Robert
6 Smith out of the jury room and have him brought in
7 here. And I would ask the lawyers to come up here and
8 let's talk in a side bar on this issue.

9 (Whereupon, the juror was brought into
10 courtroom.)

11 THE COURT: Mr. Smith, can you come up here
12 please. I apologize. How are you doing this morning?

13 MR. SMITH: I'm well. How are you?

14 THE COURT: I'm doing good. It was brought to my
15 attention late yesterday afternoon that you had
16 conveyed to someone that you knew or recognized the
17 first witness in this trial, I guess, Mr. Shunk; is
18 that correct?

19 MR. SMITH: I've seen him in passing before -- no,
20 no, no, not Mr. Shunk, no.

21 THE COURT: Who was it?

22 MR. SMITH: The first detective.

23 THE COURT: Timothy Brochin.

24 MR. SMITH: Shaved head --

25 MR. HOLLOWAY: Yeah, Timothy Brochin.

1 MR. SMITH: Yeah. My brother is a county
2 sheriff's deputy, and I did a ride-along with him. And
3 I just -- we may have in passing. I didn't speak with
4 the individual at the time. I just recognized his
5 face.

6 THE COURT: Okay. You don't know him? You don't
7 engage in any social activities together?

8 MR. SMITH: No, sir, not at all.

9 THE COURT: Did you have that discussion with any
10 of the other jurors?

11 MR. SMITH: No, sir.

12 THE COURT: Do you believe you can be fair and
13 impartial if you're put on this jury?

14 MR. SMITH: Absolutely.

15 THE COURT: To both the State and the defense?

16 MR. SMITH: Yes, sir, absolutely.

17 THE COURT: Okay. All right. I just wanted to
18 address that issue.

19 MR. SMITH: Sure.

20 MR. ABDALLA: Can I ask a further question?

21 THE COURT: Yeah.

22 MR. ABDALLA: Would you ask him about -- I don't
23 remember the exact questions in voir dire, whether it
24 was addressed about being involved with law enforcement
25 for -- about the ride-along, I don't know the

1 involvement of that, what that entails, him having done
2 a ride-along.

3 THE COURT: You don't know what a ride-along is?

4 MR. ABDALLA: Oh, I do know what a ride-along is.

5 THE COURT: What is the question?

6 MR. ABDALLA: I'm trying to find out what his
7 involvement, connection with law enforcement is since
8 he did a ride-along.

9 THE COURT: Just said that his brother is a county
10 --

11 MR. SMITH: County sheriff's deputy.

12 MR. ABDALLA: But did we know that during the voir
13 dire because I don't remember.

14 THE COURT: I mean, I didn't ask that specific
15 question. No, sir, I did not. I asked you and the
16 State whether or not you wanted any--

17 MR. ABDALLA: You're right. I just couldn't --

18 THE COURT: I didn't specifically ask --

19 MR. ABDALLA: You know, it's generally a standard
20 question. I didn't realize that I didn't hear that.
21 But that wasn't asked. Okay.

22 THE COURT: Okay.

23 MR. ABDALLA: No, as long as he can be fair, I
24 don't care.

25 MR. SMITH: Absolutely.

1 MR. ABDALLA: Okay. Thank you.

2 THE COURT: Thank you very much.

3 MR. SMITH: Yes, sir.

4 THE COURT: All right.

5 MR. ABDALLA: I'll be on my toes next time --

6 THE COURT: Do what?

7 MR. ABDALLA: I'll be on my toes next time, that
8 there wasn't the general question. That's my fault
9 that I missed that.

10 THE COURT: The important thing is his brother is
11 not involved in any way in this case.

12 MR. ABDALLA: All right. Thanks, judge.

13 THE COURT: Let's bring them back, please, sir.
14 I'm sorry.

15 (Whereupon, the jury entered the courtroom at
16 9:54 a.m.)

17 THE COURT: All right. Ladies and gentlemen, we
18 are now ready to resume the trial of this case. All
19 right. All right. I'm going to recognize the
20 Solicitor, Mr. Holloway. Call your next witness,
21 please.

22 MR. HOLLOWAY: Thank you, Your Honor. The State
23 would next call Mr. Donald Anthony Trammell to the
24 witness stand.

25 DONALD ANTHONY TRAMMELL,

D O N A L D T R A M M E L L - - D I R E C T

1 having been first duly sworn, testified as follows:

2 THE CLERK: Thank you. Please be seated. And,
3 sir, would you please tell us your name for the record?

4 THE WITNESS: Do what now?

5 THE CLERK: Please tell us your name for the
6 record.

7 THE WITNESS: Donald Trammell.

8 THE CLERK: Thank you.

9 **DIRECT EXAMINATION BY MR. HOLLOWAY:**

10 Q. Good morning, Mr. Trammell. Are you doing all
11 right?

12 A. Yes, sir.

13 Q. Let's get a few particulars out of the way;
14 okay?

15 A. Okay.

16 Q. Have we ever met before?

17 A. Yes.

18 Q. When was the first time we met?

19 A. Yesterday.

20 Q. Was I ever involved -- were you charged along
21 side Mr. Bayne, the defendant sitting at counsel table,
22 for armed robbery, conspiracy; possession of a weapon
23 during the commission of a violent crime; carjacking,
24 kidnapping; were you charged along side him?

25 A. Yes, sir.

1 Q. Was I, at all, involved in the prosecution of
2 those charges?

3 A. No, sir.

4 Q. Did I ever talk to you about any kind of a
5 deal or anything regarding your plea to those charges?

6 A. No, sir.

7 Q. Have you pled guilty to -- did you -- did
8 you -- did you and your attorney agree to a plea deal?
9 And by that I mean did you and your attorney have
10 discussions with the Solicitor's Office and you
11 ultimately pled to some of those charges?

12 A. Yes, sir.

13 Q. And what was the result?

14 A. I got five years.

15 Q. And are you currently in the South Carolina
16 Department of Corrections?

17 A. Yes, sir.

18 Q. Did you go in front of a judge on the day you
19 pled and admit your guilt?

20 A. Yes, sir.

21 Q. And did you testify to the events in your
22 involvement as they occurred on October the 18th, 2014?

23 A. Yes, sir.

24 Q. And are the events that you testified and you
25 pled guilty to, did they occur at [REDACTED] Keller Road?

D O N A L D T R A M M E L L - - D I R E C T

1 A. Yes, sir.

2 Q. Now, let's take a deep breath, and let's --

3 let the jury get to know you a little bit. How old are
4 you, Donald?

5 A. I'm 29.

6 Q. And have you lived here in the Greenville,
7 Taylors area your whole life?

8 A. Yes, sir.

9 Q. And who's your mom?

10 A. Vickie Trammell.

11 Q. Who is your dad?

12 A. Larry Trammell.

13 Q. And have they been separated for a while?

14 A. Yeah. They have been separated for five or
15 six years, I think, something like that.

16 Q. And since they have been separated, where --
17 do you know where your momma's primary residence has
18 been?

19 A. ████████████████████.

20 Q. Okay. And does your Grandpa live at ██████████
21 Keller Road?

22 A. Yes. That's his house.

23 Q. And is his name Mr. Fred Edmonds?

24 A. Yes, sir.

25 Q. And what's your -- before October the 18th of

1 2014, what was your living situation like?

2 A. I had a family. I had kids. I had five kids,
3 and a residence with the kids and everything, and did
4 the whole family thing. And I -- I had an accident and
5 shot myself in the hand. And the police come out and
6 investigated it. And they involved it as a -- as an
7 accident or whatever. And then after they left, five
8 DSS case workers come out and they took my kids on an
9 instant. And instead of me -- I didn't see no right in
10 them taking them. So instead of me actually still
11 doing what I was supposed to do to get my kids back, I
12 turned to drugs and went crazy, you know.

13 Q. And how long ago was this?

14 A. It's been probably three years ago, two or
15 three, yeah.

16 Q. Did you -- did you do drugs growing up?

17 A. No, sir.

18 Q. Did you ever -- did you and your sister,
19 Nikki, did y'all ever get involved with anything or --
20 before you had children or any of that, did you ever do
21 any kind of drugs?

22 A. Yeah, I smoked pot, you know, a little growing
23 up, you know. But no hard drugs or nothing like that.

24 Q. When you were growing up, when you got a
25 little -- when you got old enough to be street wise,

D O N A L D T R A M M E L L - - D I R E C T

1 did you -- were you at least familiar or know that you
2 had access to or know who to -- who to contact to have
3 access to them?

4 A. Yes, sir.

5 Q. And did this -- I hate to use the word help or
6 assist -- did this afford you the opportunity when you
7 did have that the -- the tragic incident with your
8 children to -- to get into drugs?

9 A. Yes, sir.

10 Q. And what was your drug of choice?

11 A. Well, at first I started -- I was working with
12 Mexicans, and they -- I started selling cocaine to
13 them. So I started doing that. And then it faded off
14 to methamphetamines. And then on to heroin the last
15 couple of months before I got locked up.

16 Q. And when you say the last couple of months,
17 are you talking about August, September, the end of
18 October of 2014?

19 A. I'm not sure of the days, but I know it was
20 about two or three months before -- yeah, because I got
21 locked up on October 25th. And it was about three --
22 three or four months prior to that, that I started
23 doing it.

24 Q. And when DSS came and took your children away,
25 did -- where were you living at the time?

1 A. I had my own -- I had bought my own place and
2 everything and -- off of Dexter (phonetic) Highway in
3 Dexter (phonetic).

4 Q. And after DSS came, where did you end up
5 going?

6 A. Well, at the time, I -- I stayed there. So
7 people that -- I owned the place, but I was renting the
8 property. And they -- the dude that owned the property
9 died or whatever, was deceased, and it went into
10 probate court, so they made me move my trailer to -- I
11 didn't have nowhere to move it at the time. So, my
12 fiance -- or my baby's mother at the time, her dad owns
13 some land out in Pickens. And he told me that, you
14 know, I could move the trailer up there.

15 Well, I moved the trailer up there and it just
16 went all downhill from then. I set it up and it
17 just -- before I got the porches on it and everything,
18 the windows are getting tore out of it. And just -- it
19 just went, you know, all downhill from then, you know.

20 Q. And when -- when your house got ransacked, and
21 windows got broken, where did you move to?

22 A. The streets.

23 Q. The street. Did you ever spend time at your
24 Grandpa's house at [REDACTED] Keller Road?

25 A. Oh, yes. Yes, sir.

DONALD TRAMMELL -- DIRECT

1 Q. Were you -- at the time, were you with your
2 father at all, Mr. Larry Trammell?

3 A. Yes, sir.

4 Q. Was there an instance in which your mother,
5 Ms. Vickie, that she actually -- for lack of better
6 words -- for lack of a better term -- kicked you and
7 your daddy out and said, you know, don't come back?

8 A. Yes, sir.

9 Q. And that was don't come back to [REDACTED] Keller
10 Road?

11 A. Yes, sir.

12 Q. And was -- was the reason for that because Mr.
13 Edmonds was getting old?

14 A. No, well -- just that and -- well, that's what
15 my mom used it as, but it's just -- my mom was talking
16 to another dude at the time. And she was just -- it
17 just all -- it just -- you know, he wasn't working, you
18 know. The same for as my mom while I was in, you know
19 -- which my dad always stepped up to the plate and took
20 care of her all of his life and everything.

21 But then he got down a little bit, and she
22 actually -- you know, we just said we would stay with
23 her. And it just -- it didn't work that way. So we
24 went back to stay with his mother, my dad's mother.

25 Q. And you said your dad -- when your dad got

1 down a little bit, how long have you known Mr. David
2 Ennis?

3 A. I've knowed him since I was -- I'm going to
4 say probably 18 or 19.

5 Q. And you you're 29 now or 28?

6 A. Uh-huh.

7 Q. Twenty nine?

8 A. Uh-huh.

9 THE COURT: Is that yes or a no -- I need a yes or
10 a --

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you -- for the record.

13 BY MR. HOLLOWAY:

14 Q. Yes, sir, Mr. Trammell. Thank you so much.
15 We just need to keep the record straight.

16 A. Yes, sir.

17 Q. And Mr. Ennis, was he a friend of the family
18 or was he a friend of your father's?

19 A. No. Actually, um -- I met him -- I don't -- I
20 don't know exactly, but I know my sister got to know
21 him somehow or other. And I met him through him,
22 selling drugs or whatever at the time. And he was --
23 my sister was getting drugs from him. He was coming
24 around when I was younger and everything, you know,
25 some -- so that's how I actually got to know him.

DONALD TRAMMELL -- DIRECT

1 Q. And so you knew him to deal drugs?

2 A. Yeah, my whole life, yeah -- or ever since --
3 that's how -- that's how I met him.

4 Q. And would it surprise you to know that it --
5 would it surprise you to learn that your sister
6 testified that Mr. Ennis helped the family out
7 financially sometimes when -- when --

8 A. Yeah, he did. He did.

9 Q. Did -- would he bring food?

10 A. Well, just -- off and on -- not -- well, just
11 food and money, whatever he could do, you know what I'm
12 saying. If -- if he could help, you know, and my
13 sister needed it or whatever -- not necessarily the
14 family, but my sister. I guess -- he was in love with
15 my sister at the time or whatever. You know, he liked
16 her. So he was -- which I mean, he was always good to
17 us, too, you know. And -- besides as far as -- you
18 know, the drug situation. But, yeah, he did -- he did
19 help the family.

20 Q. And when everything happened with your mom,
21 when she was dating a new guy and trying to do -- do
22 something different with her life, moving in a
23 different direction, did you ever take residence or at
24 least find a couch to sleep on over at [REDACTED] Meadow Fork
25 Road?

1 A. Yes, sir.

2 Q. And whose residence is at ■ Meadow Fork Road?

3 A. It's Mark Bayne's.

4 Q. I'm going to show you some pictures that have
5 been admitted into evidence. This is State's Exhibit
6 12 and State's Exhibit 13; will you take a look at
7 these for me. Do you recognize these -- this
8 residence?

9 A. Yes, sir.

10 Q. Is this residence at ■ Meadow Fork Road?

11 A. Yes, sir.

12 Q. Okay. And more specifically, in State's
13 Exhibit 13, is there a Dodge -- is there like a beige
14 or a tan Dodge truck located in the -- in that
15 driveway?

16 A. Yes, sir.

17 Q. Okay. Did you know either Ms. Tina Bayne or
18 Mr. -- Mr. Mark Bayne to own a tan Dodge truck?

19 A. No, sir.

20 Q. And when you refer to Mr. Mark Bayne -- and
21 this is repetitive -- and just for the record, are --
22 are you referring to the gentleman sitting right at
23 counsel table, next to Mr. Abdalla?

24 A. Yes, sir.

25 Q. And did you say that you were arrested on

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1 October 25th?

2 A. Yes, sir.

3 Q. Were you arrested at ■ Meadow Fork Road?

4 A. Yes, sir.

5 Q. And was the truck at the residence when you
6 were arrested?

7 A. Yes, sir.

8 Q. And were the keys found in your shoes at the
9 residence?

10 A. Yes, sir.

11 Q. And were there two -- were there -- let me
12 show you what has been marked as State's Exhibit 19.
13 Do you recognize these two?

14 A. Yes, sir.

15 Q. And are they, in fact, BB guns?

16 A. Yes, sir.

17 Q. But they do look pretty realistic?

18 A. Yes, sir.

19 Q. And were these found in your bedroom or
20 wherever you were -- in a room at ■ Meadow Fork Road as
21 well?

22 A. Yes, sir.

23 Q. So back on October 18, 2015, that was when you
24 had moved on to heroin; is that true?

25 A. Yes, sir.

1 Q. And did you have a car of your own at that
2 time?

3 A. No. I was actually -- I'm on a -- I was with
4 a buddy of mine, ridding around with him, Blake.

5 Q. Is his name Blake Kilbreath?

6 A. Yes, sir.

7 Q. Did he drive a black Extera?

8 A. Yes, sir.

9 Q. Did you drive that black Extera quite
10 frequently?

11 A. Yes, sir.

12 Q. I'm going to show you what's been marked as --
13 as State's Exhibit 12. In this picture, do you -- do
14 you spot a black Extera?

15 A. Yes, sir.

16 Q. Is it parked to the right of -- of a beige or
17 tan Dodge truck?

18 A. Yes, sir.

19 Q. Is that -- to the best of your knowledge, is
20 that Blake Kilbreath's black Extera?

21 A. Yes, sir.

22 Q. And you had -- you had been driving it during
23 that time?

24 A. Yes, sir.

25 Q. Around that time, around October the 18th, had

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1 you ever -- had you been associating with Mr. Bayne?

2 A. Yes, sir.

3 Q. Had you been associating with his girlfriend,
4 Morgan Cordelia, or a/k/a Corrie Morgan?

5 A. Yes, sir.

6 MR. HOLLOWAY: Your Honor, let the record reflect
7 that the State is showing the defense counsel what has
8 been marked as State's Exhibit 22.

9 MR. ABDALLA: Your Honor, I'm going to object to
10 the picture coming in. I don't understand the
11 relevance here. We haven't talked about this at all.

12 THE COURT: Go ahead, Mr. Holloway. You can lay a
13 foundation. Go ahead.

14 BY MR. HOLLOWAY:

15 Q. Mr. Trammell, do you recognize the female
16 pictured in State's 22?

17 A. Yes, sir.

18 Q. Okay. And how long have you been hanging out
19 with Mark and Ms. Morgan prior to October -- prior to
20 the incident date?

21 A. Um, three or four months I guess.

22 Q. So you had hung out with Ms. Corrie Morgan
23 quite a few times?

24 A. Yes, sir.

25 Q. So you would absolutely recognize what she

1 looked like?

2 A. Oh, yes, sir.

3 Q. Okay. And does -- State's 22 is a picture of
4 that female, is that a picture of Ms. Corrie Morgan?

5 A. Yes, sir.

6 MR. HOLLOWAY: Your Honor, at this point in time,
7 the State would move to State's 22 into evidence and
8 publish it to the jury.

9 THE COURT: Any objection at this point?

10 MR. ABDALLA: No objection.

11 THE COURT: Without objection, so admitted State's
12 22.

13 (State's Exhibit No. 22 admitted into evidence.)

14 BY MR. HOLLOWAY:

15 Q. And do you know about how old Ms. Morgan was?

16 A. I'm not sure. Probably right around 32, 35, I
17 think. Somewhere right in there, I'm just guessing.
18 I'm not sure exactly.

19 Q. But was this picture, State's 22, does that
20 accurately convey what she looks like in the present
21 day?

22 A. Yes, sir.

23 Q. And do you know where Mr. Morgan -- do you
24 know where Ms. Morgan lives?

25 A. Yes, sir.

D O N A L D T R A M M E L L - - D I R E C T

1 Q. What is the address?

2 A. Oh, I'm not -- yes, I do know, [REDACTED] Old Watson
3 Mountain Road.

4 Q. Old Watson Mountain Road?

5 A. Yeah.

6 Q. And on the night of October 18, 2014, had your
7 momma by that time already asked that you and Larry no
8 longer stay at [REDACTED] Keller Road?

9 A. Yes, sir.

10 Q. And at that point in time, were you staying at
11 [REDACTED] Meadow Fork Road with Ms. Tina Bayne?

12 A. Yes, sir.

13 Q. And was a lady by the name of Jessica Gilbert
14 living there, too?

15 A. Yes, sir.

16 Q. And is Jessica, is that Mr. Bayne's daughter?

17 A. Yes, sir.

18 Q. And does Mr. Bayne have a son?

19 A. Yes, sir.

20 Q. And what's his name?

21 A. Mark Bayne.

22 Q. And is that Mark Bayne Jr.?

23 A. Junior, yeah.

24 Q. Do y'all refer to him sometimes as little
25 Bayne?

1 A. Yes.

2 Q. Or Little Mark?

3 A. Little Mark, that's what we call him, yes.

4 Q. And did Little Mark ever run around with you
5 guys?

6 A. No.

7 Q. Did he -- did you ever know him at that time
8 to do any drugs?

9 A. No, sir.

10 Q. Do you know what he did for a living back
11 then?

12 A. Construction work, I think.

13 Q. Was he out of town for that most of the time?

14 A. Yes, sir.

15 Q. And did he ever stay over at -- very often
16 over at ■ Meadow Fork Road, or did he have another
17 address?

18 A. He had another address.

19 Q. And where was that at?

20 A. Lyman or something -- I'm not sure, oh --

21 Q. Possibly Landrum?

22 A. Landrum, yeah, that's it.

23 Q. But he never corralled with you guys back then
24 when it comes -- came to hanging and running around and
25 doing that thing?

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1 A. No, sir.

2 Q. And what's -- what's the word you use -- is it
3 wide open?

4 A. Yes, sir.

5 Q. That term. And what does wide open mean?

6 A. Just don't care, just -- just doing anything
7 in life to -- to get by, just not caring.

8 Q. And is part of that apathy, part of that not
9 caring, is that -- is that due to drug use?

10 A. Absolutely.

11 Q. So if you were to say you were wide open,
12 would it be safe to assume or imply that you are -- you
13 are -- you are on something?

14 A. Yes, sir.

15 Q. Okay. All right. During the night of October
16 18, 2015, did you ever -- were you ever with Mark Bayne
17 and Corrie Morgan at Corrie's house?

18 A. Yes.

19 Q. And were you driving Blake Kilbreath's black
20 Extera at that time?

21 A. Yes.

22 Q. Did you ever go to your Grandpa's house at REDACTED
23 Keller Road?

24 A. Yes.

25 Q. Did you park the black Extera behind the

1 house?

2 A. Yes.

3 Q. Let's see if I can get this technology to work
4 for once in my life. Here is State's Exhibit -- let me
5 show you what has been premarked as State's 6. It has
6 been admitted into evidence yet. Do you recognize this
7 area of town?

8 A. Yes, sir.

9 Q. Okay. And what are -- what are the roads that
10 you recognize?

11 A. Keller Road, Hobbs Road, all of them.

12 Q. And is Hobbs Road real close to Keller Road?

13 A. Yes, sir.

14 Q. Is there a rock quarry on Hobbs Road?

15 A. Yes, sir.

16 Q. And, again, is Keller Road the location that
17 your Grandpa, Mr. Edmonds's house, is located off of?

18 A. Yes, sir.

19 MR. HOLLOWAY: Your Honor, for the record, the
20 State is showing defense counsel what's marked as
21 State's Exhibit 6?

22 MR. ABDALLA: No objection to it.

23 MR. HOLLOWAY: Your Honor, without objection, the
24 State would now move to publish this into evidence.

25 THE COURT: So -- so allowed, without objection.

D O N A L D T R A M M E L L - - D I R E C T

1 (State's Exhibit No. 6 admitted into evidence.)

2 BY MR. HOLLOWAY:

3 Q. Don, if you could come take a step down from
4 there for me. And come here with me if you don't mind.
5 Can you take this laser pointer -- all you have to do
6 is push down -- and sort of -- sort of show the jury
7 where your Grandpa's residence is, and kind of give us
8 the layout -- can you walk us through this?

9 A. Yes. Right here is the driveway and --

10 Q. So what is this -- what's that main road
11 that's swerving -- that's curving?

12 A. That's Keller Road.

13 Q. Okay. And can you show us the driveway?

14 A. I'm pretty sure that's it right there.

15 Q. Okay. And does your grandpa's front yard, Mr.
16 Edmonds, does it have a bunch of trees?

17 A. Yes, sir.

18 Q. Okay. Is there almost a loop that you can
19 tell the driveway or -- almost made a loop for a
20 turn-around?

21 A. Yes, sir.

22 Q. Can you kind of mark that for the jury?

23 A. I see it here, right here.

24 Q. All right. That loops around. And then where
25 does the main driveway go into?

1 A. To the -- where the main driveway goes into?

2 It goes to the trailer over here, I think, yeah.

3 Q. And is that, where you just pointed, can
4 you -- can you point again to where the trailer is?

5 A. Right there, I think. I think that's it.

6 Q. And so if you -- if you pull in the main
7 driveway -- can I see that laser pointer -- so if -- so
8 right here is Keller Road; is this correct?

9 A. Yes, sir.

10 Q. All right. And is this the driveway?

11 A. Yes, sir.

12 Q. So does this driveway bend left to right here?

13 A. Yes, sir.

14 Q. And is this -- to the best of your knowledge,
15 this is the trailer?

16 A. Yes, sir.

17 Q. And then is there a loop around right here?

18 A. Yes, sir.

19 Q. And is this a big patch of trees right here?

20 A. Yes, sir.

21 Q. So that evening on October 18, 2014, where did
22 you guys -- did you park the black Extera somewhere
23 back here?

24 A. It's actually down -- down another road. You
25 can't really tell -- it's right before you get to the

1 driveway.

2 Q. Use the laser pointer.

3 A. It's like right there, like somewhere right
4 here.

5 Q. Uh-huh.

6 A. It's like a -- just a -- it's not a road or
7 nothing, it's just like it's -- where there used to be
8 a road that comes up and comes up behind the house up
9 behind here. It goes down like that.

10 Q. And where did you have the Extera parked?

11 A. On that little road back there behind the
12 barn.

13 Q. And so -- is this the barn right here or all
14 of this area?

15 A. Yeah, yeah, yeah.

16 Q. And on that evening when you got -- when you
17 and Mark and Corrie arrived at your grandpa's house,
18 was your mother, Ms. Vickie, or your sister, Ms. Nikki,
19 present?

20 A. When we got there?

21 Q. Uh-huh.

22 A. No, sir.

23 THE COURT: Hold on a minute, Mr. Holloway and Mr.
24 Abdalla. Do y'all want to approach a minute?

25 MR. HOLLOWAY: Yes, sir, Your Honor.

1 (Whereupon, a bench conference was held.)

2 THE COURT: Mr. Holloway, you may continue.

3 MR. HOLLOWAY: Thanks, Your Honor.

4 BY MR. HOLLOWAY:

5 Q. Mr. Trammell, is this light bothering you?

6 A. No, it's fine.

7 Q. If you -- if you want to back up, feel free,
8 okay.

9 A. That's fine.

10 Q. Let's me regain my train of thought. So did
11 you just say -- did you just tell the jury that when
12 you and Mr. Bayne, and Ms. Morgan arrived at -- on
13 October 18, 2014, at [REDACTED] Keller Road, then your mother
14 nor your sister -- neither your mother or your sister
15 were at the residence?

16 A. No, sir.

17 Q. And when you guys arrived -- to use your
18 words -- were you wide open?

19 A. Yes, sir.

20 Q. And what -- do you remember what kind of drugs
21 you were on?

22 A. At the time -- Meth at the time.

23 Q. And do you remember -- were -- do you remember
24 Mr. -- Ms. Morgan and Mr. Bayne were under the same
25 influence?

D O N A L D T R A M M E L L - - D I R E C T

1 A. Yes, sir.

2 Q. And did you make -- did you place a phone call
3 to Mr. Ennis?

4 A. Yes, sir.

5 Q. And did -- are you familiar with where Mr.
6 Ennis works?

7 A. Pop-A-Lock.

8 Q. And did he -- did you know of Mr. Ennis or
9 did -- have you ever called him before while he was
10 working to make -- to make a drug purchase?

11 A. Yes.

12 Q. And did you call him that night -- when you
13 called him that night, did you believe that he would
14 have drugs on him?

15 A. Absolutely.

16 Q. And when he arrived -- when he arrived on the
17 night of October 18th, had somebody -- had your mother
18 and sister already gotten back to the place?

19 A. When he arrived?

20 Q. When Mr. Ennis arrived.

21 A. Yes, sir.

22 Q. Were you expecting your mother and sister to
23 come back to the place?

24 A. No, sir.

25 Q. So when they arrived, did they catch you off

1 guard?

2 A. Yes, sir.

3 Q. Was -- when you had called Mr. Ennis to come
4 out -- all the way out to [REDACTED] Keller Road, did you have
5 the intentions at that time to take drugs from him and
6 take money from him?

7 A. No, sir.

8 Q. Did you ultimately take money from him?

9 A. Yes, sir.

10 Q. Do you remember if you actually -- I'm going
11 to use the word "remember" twice -- but do you remember
12 today that if you actually remembered that -- at that
13 night to take any dope off of him?

14 A. Yes, sir.

15 Q. Okay. Did you take any dope off of him or did
16 you not?

17 A. Yes, sir.

18 Q. So you did take dope. But you also took
19 money?

20 A. Yes, sir.

21 Q. And let's take it back a little bit. So,
22 again, was it a surprise when -- when your mother and
23 your sister showed up in that -- in the beige truck?

24 A. Yes, sir.

25 Q. And do you know the beige truck to belong to

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1 Mr. Arron Shunk?

2 A. I didn't at the time, but when he got there
3 and I seen him, yes.

4 Q. And you -- had you known Mr. Shunk before?

5 A. Yes, sir.

6 Q. For about how long had you known Mr. Shunk?

7 A. Around a year.

8 Q. And did Mr. Shunk live right -- right around
9 the road from you guys?

10 A. At the very end of Keller Road.

11 Q. So if you went down Keller Road through the
12 stop sign, was his house there on the right?

13 A. Straight through, the first house on the
14 right.

15 Q. And when he got there, did you come -- were
16 you with Mark Bayne and Corrie Morgan?

17 A. Yes, sir.

18 Q. Did all y'all rush the truck?

19 A. Yes -- oh no, no, no. I'm sorry. I -- I -- I
20 went to the truck first. My -- my sister and then --
21 my sister was driving. She opened the passenger door.
22 My -- and the interior light come on. Well, my mom
23 opened the back door, and I seen Arron sitting in the
24 truck. So before they had got there, I had got a phone
25 call from mom, and Arron was supposedly talking shit

1 about me, but I was expecting David at the time. So I
2 told her that I didn't have time to mess with it.
3 Well -- and that's when they surprised me and pulled in
4 the driveway. And when I -- so I walked up to the
5 truck.

6 Q. Okay. And let me -- let's clarify. You just
7 said that your sister opened the passenger door; did
8 you mean that your sister opened the driver's door?

9 A. Driver's side door, I'm sorry. Yes, sir.

10 Q. Because -- am I correct in saying that Mr.
11 Shunk was actually on the passenger door --

12 A. In the passenger side, yes, sir.

13 Q. And did you get Mr. Shunk out of the passenger
14 side?

15 MR. ABDALLA: Objection to leading the witness.

16 THE COURT: Objection sustained.

17 BY MR. HOLLOWAY:

18 Q. Can you tell the jury, you know, what
19 procedure occurred when you came -- when you approached
20 the truck?

21 A. Do what now?

22 Q. Can you tell the jury what proceeded to occur,
23 what happened when you approached the truck?

24 A. When I approached the truck, my sister and my
25 mom got out of the truck, and went into -- well, I told

D O N A L D T R A M M E L L - - D I R E C T

1 him -- I walked up to the passenger side and opened the
2 door, Aaron's door, on the passenger side. And -- to
3 confront him why he was talking shit about me. Well,
4 at that time, I told mom and Sis just to go in the
5 house. And so they went in the house. And that's --
6 you know what I'm saying? So that's how I approached
7 the truck.

8 Q. And at the time, again, were you anticipating
9 Mr. Ennis to arrive at any time?

10 A. Yes.

11 Q. Were you -- were you in a hurry to get Mr.
12 Shunk away from the main area?

13 A. Yes.

14 Q. At some point in time was Mr. Shunk taken
15 behind your house?

16 A. Yes, sir.

17 Q. Would you describe the situation as -- as
18 tense at the moment?

19 A. Yes, sir.

20 MR. ABDALLA: Again, Your Honor, let me object to
21 leading the witness.

22 THE COURT: Sustained.

23 MR. ABDALLA: I wish he would ask the witness to
24 explain.

25 THE COURT: Objection sustained.

1 BY MR. HOLLOWAY:

2 Q. Let me show you what's been marked as State's
3 Exhibit 21. It's already into evidence and published
4 to the jury. Do you recognize this individual?

5 A. Yes, sir.

6 Q. Who is this individual?

7 A. Arron.

8 Q. And do you recognize anything that looks out
9 of the ordinary underneath his right eye?

10 A. Yes, sir.

11 Q. Okay. What -- what do you see in this picture
12 that looks out of the ordinary underneath his right
13 eye?

14 A. It's bruised. It's red.

15 Q. Do you remember punching Mr. Shunk?

16 MR. ABDALLA: Objection, again, Your Honor. He's
17 leading the witness.

18 THE COURT: Ask the question, again.

19 BY MR. HOLLOWAY:

20 Q. Did you punch Mr. Shunk that evening?

21 A. No, sir.

22 Q. But do you think something -- do you think
23 that there appears to be a black eye underneath his
24 eye?

25 A. Yes, sir.

D O N A L D T R A M M E L L - - D I R E C T

1 Q. How long would you say was the time interval
2 between Mr. Shunk arriving and Mr. Ennis arriving?

3 A. Five to eight minutes.

4 Q. Did you ever go to the back of the house --
5 the back of the -- strike that. Where did -- where did
6 you take Mr. Shunk -- or where was Mr. Shunk taken?

7 A. I took him to the back of the house -- back
8 beside -- back behind the trailer, the porch.

9 Q. And behind the trailer -- the -- if someone is
10 behind the trailer, can they see out to the driveway?

11 A. No, sir.

12 Q. And did you have a conversation with him
13 behind the trailer?

14 A. Yes, sir.

15 Q. Did you ultimately return back to the front of
16 the house?

17 A. Yes, sir.

18 Q. And where were you at -- where were you when
19 Mr. Ennis arrived?

20 A. In the -- in the front of the trailer.

21 Q. Were you -- were you on the porch or were you
22 in the driveway, where were you?

23 A. I was near the house, near the trailer.

24 Q. Okay. And can you tell us what happened when
25 Mr. Ennis arrived?

1 A. Yes, sir. When he arrived, I walked to the --
2 he pulled in the driveway to the left, in front of the
3 trailer. And I walked up to the car and he rolled his
4 window down. And he left the car running, but it was
5 late that night. And so I told him that -- because my
6 grandpa was there, I told him to turn the car off. And
7 so I leaned on the window seal. And when I did, he
8 reached in the -- the little glove compartment beside
9 him and got his scales and stuff out, and reached --
10 then he reached under the -- under his seat and pulled
11 a big bag of dope out to start -- because I had called
12 him to bring some dope down to -- or I had called him
13 to bring some dope, and he told me to meet him at my
14 mom's house at [REDACTED].

15 Q. And not -- not to interrupt, but can you
16 clarify for the jury exactly what drug you mean by
17 dope?

18 A. Methamphetamines.

19 Q. And is this Meth -- methamphetamines the
20 drug -- or what drug again, can you reconfirm for the
21 jury, what drug had you and Mr. Bayne and Ms. Morgan
22 been on earlier in the evening?

23 A. Methamphetamines.

24 Q. And did you know Mr. Ennis or did you -- did
25 you suspect that Mr. Ennis would have methamphetamines

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1 on him, that would be the drug he had?

2 A. Yes. That's what I asked him to bring.

3 Q. Okay. So please continue after he talked
4 about how he brought the scales out and reached for the
5 dope?

6 A. Yeah. He pulled -- he pulled the dope out.
7 And I had called him and told him, you know, how much
8 to bring me or whatever. And -- but when he did --
9 when he pulled the dope out, it -- it -- he had a large
10 amount of it and it surprised me. It put me in shock.
11 And so at that time, I just reached in and snatched the
12 bag of dope from him.

13 I had a big hoodie on and I put it in my hoodie.
14 And he looked at me like I was crazy, and wanted to
15 know if I was really -- he thought I was kidding with
16 him, you know, or playing with him at the time. And,
17 you know, I let him know that I wasn't.

18 So, um, at that time, I told him -- he -- I told
19 him that I wasn't playing or whatever. So I told him,
20 I said, well, give me -- I said, well, I want your
21 money too. And he said, no, he wasn't giving it to me.

22 So I actually reached inside the car and
23 struck -- he didn't force me or nothing, you know, --
24 or to try to stop me or nothing. And I struck my hand
25 in this -- in this side of his pocket, closest to the

1 door, and pulled out a wad of money.

2 And then I took his -- right before I got ready
3 to leave, he had his cell phone in his hand. And I
4 snatched it and took it before I left to go back to
5 return to my vehicle.

6 Q. And how much money do you believe you took?

7 A. Approximately around \$1,200.

8 Q. And do you remember telling Investigator Owens
9 that you only took about \$90?

10 A. No, sir.

11 Q. And do you remember telling Investigator Owens
12 that you took \$90 and a cell phone, and you did not
13 mention anything about the dope?

14 A. Yeah. I don't think -- I don't know if I
15 mentioned anything about dope or not, to be honest with
16 you, no. I don't think I did.

17 Q. So did you just take this dope from Mr. Ennis
18 or was there -- was there some threat and intimidation
19 involved?

20 A. No. Actually I just reached in and snatched
21 it -- because I just snatched it from him. He just --
22 I don't know why I was just -- it did surprise me when
23 he pulled out -- you know, how much he did. I just
24 reached in and snatched it from him. I wasn't even --
25 I wasn't even planning on doing it or anything, you

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1 know, because I had the money to buy what I told him to
2 bring. And -- but when I seen it, I just snatched it
3 from him, you know, so...

4 Q. And when you were -- you were at the car, was
5 Ms. Morgan, Corrie, and Mr. Bayne, the defendant, were
6 they still at your property?

7 A. Yes, sir.

8 Q. Did they ever approach the vehicle?

9 A. Mr. Bayne did.

10 Q. And did Mr. Bayne approach the vehicle with a
11 weapon?

12 MR. ABDALLA: Objection, Your Honor, again, he's
13 leading.

14 THE COURT: Objection sustained. Rephrase your
15 question.

16 BY MR. HOLLOWAY:

17 Q. Did Mr. Bayne have anything in his hand when
18 he approached the vehicle?

19 A. Yes, sir, he had a gun.

20 Q. Did he -- what kind of gun was it?

21 A. It was a shotgun.

22 Q. Was -- do you think that a shotgun is a form
23 of intimidation?

24 A. Yes, sir.

25 Q. Do you think that that was likely a reason

1 that Mr. Ennis just allowed you to take the -- either
2 the dope or the money or both?

3 A. Well, I had took the dope, you know, at first
4 before, you know, I ever seen Mark or anything. And
5 then -- but like I say, when I first took it, he was
6 like -- he was shocked, you know, what I'm saying
7 because he -- of course, he wasn't expecting it.
8 That's when his -- he thought I was just kidding with
9 him, you know what I'm saying. And then that's when,
10 you know, Mark -- I seen Mark come up on the passenger
11 side of the thing with a -- you know, with a shotgun in
12 his hand.

13 So I got the dope and everything and got the
14 money. And then when I turned around to leave the car,
15 after I got the phone, Mark was actually in the
16 backseat of the car going through some, you know -- you
17 know, David, was -- he's a dope dealer. You know, as
18 far as I knowed him all my life, that's what he was.
19 And I guess he had a bunch of stuff -- or he did have a
20 bunch of stuff in the backseat I guess he traded for
21 dope or bought or whatever, you know.

22 And so when I left the car, Mark was still in
23 the car -- or you know not -- he wasn't in the car, but
24 he had the back door opened -- you know what I'm saying
25 or whatever -- when I had left the car to go back to my

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1 car.

2 Q. And when you say you went back to your car,
3 what car did you go back to?

4 A. To the black Extera.

5 Q. And did you leave -- did you leave [REDACTED] Keller
6 Road pretty soon thereafter?

7 A. As soon as I got done. As soon as I got back
8 to the car.

9 Q. And did you leave with yourself or with
10 anybody else?

11 A. Yes, myself.

12 Q. And did you eventually meet back up -- when
13 did you -- did you eventually meet back up with your
14 mother, Vickie, and your sister, Nikki?

15 A. Yes, sir.

16 Q. And what were the circumstances of when you
17 met back up with them and how they got to be meeting up
18 with you?

19 A. I got a call from Corrie on Aaron's phone. I
20 guess when -- I had took Arron behind the house, and
21 then when David called, I told -- I seen -- I seen
22 Corrie walking by. And I told Corrie, I said, well,
23 you sit here with him. You know, because I didn't
24 want -- if David would have seen a lot of people or
25 anything, you know, he wouldn't had nothing -- you

1 know, he wouldn't have did nothing or sold no dope or
2 nothing or -- you know, he would have been acting
3 funny. So I told Corrie to sit there with him.

4 Q. With -- with Arron?

5 A. With Arron. And then, you know so -- but
6 anyways, then later on after I had left, I got a phone
7 call from -- it come up as Arron on my phone and I
8 answered it, and it was Corrie. And she said that she
9 was with Mark, and my sister, and my mom, and she
10 was -- they wanted to meet me -- because my mom and my
11 sister was wanting to ride with me. So I met them on
12 Hobbs Road, up beside my -- up beside the rock quarry,
13 up beside my mom's house.

14 Q. And what -- what car were they driving at the
15 at the time?

16 A. That 2005 Dodge truck, that gold truck.

17 Q. Is that the same truck that you saw in the
18 State's Exhibit that I presented to you?

19 A. Yes, sir.

20 Q. And a few days later of -- or how many days or
21 what was the date that you were arrested?

22 A. The 25th I think.

23 Q. And do you remember where you were at when you
24 got arrested?

25 A. At ■ Meadow Fork.

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1 Q. And at that point, had you still been driving
2 the black Extera around?

3 A. Yes, sir.

4 Q. Had you ever driven the beige or the tan Dodge
5 -- Dodge Ram?

6 A. No, sir.

7 Q. That picture that I -- the picture -- let me
8 be specific. State's Exhibit 12 and State's Exhibit 13
9 that I showed you -- and I'll show them to you again --
10 is the tan Dodge -- Dodge truck in the driveway at ■
11 Meadow Fork Road?

12 A. Yes, sir.

13 Q. Did you drive it there?

14 A. No, sir.

15 Q. Do you know who drove it there?

16 A. Yes, sir.

17 Q. Who did drive it there?

18 A. Or actually -- let me rephrase that. I don't
19 know exactly who drove it there because when -- when I
20 -- I was not present at ■ Meadow Fork. And I was gone,
21 you know, out -- somewhere, I don't remember where.
22 But when I come back to ■ Meadow Fork, and when I
23 pulled up, the gold truck was backed in the driveway at
24 ■ Meadow Fork Road. So that I pulled in and backed my
25 -- backed my buddy's Extera beside it. And Mark was

1 outside cleaning the truck.

2 Q. And were you arrested the next morning?

3 A. Yes, sir.

4 Q. And did you drive the truck at all that night
5 or did the truck stay there?

6 A. It stayed there.

7 Q. One last question: When Mr. Shunk arrived,
8 the owner of the -- of the tan Dodge truck on October
9 18th, were Ms. Morgan, Corrie, and Mr. Bayne in close
10 proximity to you?

11 A. Yes, sir.

12 MR. HOLLOWAY: No further questions at this time.
13 Please answer any questions that Mr. Abdalla may have
14 for you.

15 MR. ABDALLA: Before we do that, may I approach,
16 Your Honor?

17 THE COURT: Yes.

18 (Whereupon, a bench conference was held.)

19 THE COURT: Ladies and gentlemen, I'm going to
20 have to ask you to step to the jury room for just a
21 minute. Do not discuss the case. I'll get you back
22 out here as quickly as possible. All right.

23 (Whereupon, the jury left the courtroom at
24 10:35 a.m.)

25 THE COURT: All right. We'll stand down for just

1 a minute. If you'll take him back, and we'll get you
2 back out here in just a second. Okay. We'll stand
3 down for just a minute.

4 (After a recess, Court reconvened.)

5 THE COURT: All right. Bring me the jury, please,
6 sir. Mr. Trammell, I'll remind you that you're still
7 under oath. Okay.

8 THE WITNESS: Yes, sir.

9 (Whereupon, the jury entered the courtroom at
10 10:46 a.m.)

11 THE COURT: All right. All the jurors are
12 present. Mr. Abdalla, you are recognized for cross
13 examination.

14 MR. ABDALLA: Thank you, Your Honor.

15 **CROSS EXAMINATION BY MR. ABDALLA:**

16 Q. Mr. Trammell, good afternoon -- or good
17 morning actually. I'm sorry. You and I -- have you
18 and I met before?

19 A. Yes, sir.

20 Q. And where did we meet?

21 A. Here.

22 Q. And where was that, downstairs?

23 A. Downstairs, yes, sir.

24 Q. And when we met earlier, you said that you
25 didn't really want to testify?

1 A. Yes, sir.

2 Q. As a matter of fact, you were interviewed
3 before by -- I believe it was Officer Owens; is that
4 correct?

5 A. Officer Owens? An investigator?

6 Q. When you were -- you had an interview when you
7 were first arrested; do you remember talking to an
8 officer?

9 A. The one that I got at the detention center or
10 something, an investigator I guess it was?

11 Q. When you got to the Sheriff's Office?

12 A. Yes, sir.

13 Q. Didn't you go into the Sheriff's Office and
14 have an interview?

15 A. Yes, sir.

16 THE COURT: Hold on. Sir, can you hear back
17 there. Okay. I just want to make sure that all of you
18 can hear.

19 MR. ABDALLA: Yeah. I tend to talk low for a guy
20 with such a big mouth. Okay. I'm trying to keep it
21 up.

22 THE COURT: Well, I don't think she can hear the
23 witness. Sir, I need you to slide up. Can y'all help
24 him with the microphone right here, please. All right.
25 Make sure you speak into that microphone and make sure

1 everybody on that jury can hear you. Okay, sir?

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4 BY MR. ABDALLA:

5 Q. Now, you acknowledge we met before and that
6 you told me that you didn't want to testify in this
7 case?

8 A. Yes, sir.

9 Q. And I was asking about your interview with the
10 Sheriff's Office. And do you remember when you were
11 having the interview denying a lot of things that you
12 later changed your mind on?

13 A. Yes, sir.

14 Q. Do you remember the investigator saying to
15 you, "I don't believe a word you're saying"?

16 A. Yes, sir.

17 Q. And do you remember him saying, I don't
18 believe -- later on -- after more testifying, "I don't
19 believe what you're telling me". And you responded,
20 "you think I'm lying". And he said, "I do". Do you
21 remember that?

22 A. Yes, sir.

23 Q. And he asked you why the Pop-A-Lock guy would
24 say something that was a lie that was inconsistent with
25 what you said; is that correct?

1 A. Do what now?

2 Q. The pop-A-Lock guy, isn't that -- do you know
3 who Pop-A-Lock is?

4 A. Yes, sir.

5 Q. Who is that?

6 A. David Ennis.

7 Q. And David Ennis told a story that's different
8 than you. And the officer asked you why would he lie;
9 do you remember him asking that?

10 A. Um, not quite.

11 Q. Okay. Let me talk a little bit -- you have
12 quite an extensive record; is that correct?

13 A. No, sir, not really.

14 Q. No. Okay. I guess it's all relative. Is --
15 is it you that was convicted of domestic violence in
16 2007?

17 A. No. I thought it got dropped if I'm not
18 mistaken. No, no, no. Yeah, you are right. Yeah, I
19 went and they --

20 Q. You were convicted of --

21 A. Yes.

22 Q. That's all?

23 A. Yes.

24 Q. I'm not asking for details.

25 A. Yes, sir.

1 Q. I'm just asking -- and then in 2013, I see a
2 conviction for burglary?

3 A. '13, yes, sir.

4 Q. And then in 2012, convicted for obtaining
5 property under false pretense -- something to do with
6 property?

7 A. Yeah, that was -- that was with the burglary.

8 Q. Well, there are two difference court dates,
9 but I --

10 A. Yeah. They -- the town -- the town whatever
11 here said it was -- it was to do with it. But it was
12 just a Magistrate's Court. And so I went and did it
13 before I did General Sessions.

14 Q. Okay. That would make sense. You're right.
15 And then in 2013, now, we're up to December. That's
16 after the earlier plea. You were convicted of assault
17 and battery second degree, and received three years,
18 correct?

19 A. No.

20 Q. That was suspended -- but that was your
21 sentence?

22 A. I got -- I did -- the burglary second, and the
23 assault and battery, and the controlled substance, I
24 got all that at the same time.

25 Q. Okay. And you have -- what happened to your

1 kidnapping charge from 2012?

2 A. In Pickens County?

3 Q. Yes.

4 A. It got dropped.

5 Q. It got dropped. Okay. I'm sorry. It doesn't
6 say --

7 MR. HOLLOWAY: Objection, Your Honor. In just
8 moving, Mr. Abdalla is certainly allowed to question
9 the defendant on any conviction --

10 THE COURT: State the grounds for your objection.

11 MR. ABDALLA: Okay.

12 THE COURT: The grounds for your objection?

13 MR. HOLLOWAY: The grounds for the objection, Your
14 Honor, is Mr. Abdalla is not allowed to ask a question
15 about anything -- charges that weren't -- that did not
16 end in convictions. The dismissed charges are
17 inappropriate --

18 THE COURT: Objection sustained.

19 MR. ABDALLA: And can I explain -- can I later
20 explain something, Judge, where I'm -- where I'm going
21 with this is he later --

22 THE COURT: Hold on a minute. Come up -- come up,
23 please. We're not going to have speaking objections in
24 the presence of the jury and explanations in the
25 presence of the jury.

1 (Whereupon, a bench conference was held.)

2 THE COURT: All right. You may continue, sir.

3 MR. ABDALLA: Okay.

4 BY MR. ABDALLA:

5 Q. You were convicted of assault on a police
6 officer in March, is that correct; assault -- or
7 resisting?

8 A. Yes, last month.

9 Q. I'm sorry?

10 A. Last month, yes.

11 Q. Yeah. And then you have a slew of charges
12 related to this offense; is that correct?

13 A. Yes -- or five.

14 Q. I'm sorry?

15 A. Five charges, yes, sir.

16 Q. And those charges include armed robbery,
17 correct?

18 A. No.

19 Q. While armed with a --

20 A. Attempted.

21 Q. You weren't charged with that?

22 A. No, but I was charged with attempted armed
23 robbery, or I was -- I pleaded to attempted armed
24 robbery.

25 Q. I understand that. No, I just want to talk

1 about your charges first. Okay?

2 A. Yes. Yes.

3 Q. All right. You were charged with attempted --
4 with armed robbery, not attempted armed robbery. You
5 were charged with armed robbery with a deadly weapon,
6 correct?

7 A. Yes.

8 Q. You were charged with possession of a weapon
9 during a violent crime, correct?

10 A. Yes, sir.

11 Q. You were charged with criminal conspiracy?

12 A. Yes, sir.

13 Q. You were charged with another armed robbery?

14 A. Yes, sir.

15 Q. And you were charged with carjacking?

16 A. Yes, sir.

17 Q. You were charged with kidnapping?

18 A. Yes, sir.

19 Q. You were charged with possession of another --
20 another charge of possession of a weapon during a
21 violent crime?

22 A. Yes, sir.

23 Q. You were charged with another criminal
24 conspiracy?

25 A. Yes, sir.

1 Q. You were -- then you made the deal to plead,
2 as I understand it -- correct me if I'm wrong -- to
3 attempted armed robbery?

4 A. Yes, sir.

5 Q. For which you received five years; is that
6 correct?

7 A. Yes, sir.

8 Q. And did you plead guilty to any other charge
9 along with that?

10 A. Yes, sir.

11 Q. What was that?

12 A. Oh Lord, attempted armed robbery, grand
13 larceny -- grand larceny -- burglary second and
14 breaking into a motor vehicle, I think.

15 Q. Okay.

16 A. That's what I pleaded to.

17 Q. And a violation of probation, correct?

18 A. Yes.

19 Q. Now, for all that you received five years?

20 A. Yes, sir.

21 Q. Are you aware what armed robbery carries?

22 A. Do what now?

23 Q. Do you know what armed robbery carries?

24 A. Twenty years, I think, or 30, something.

25 Q. Does 10 to 30 with no parole sound correct?

1 A. Yes, sir.

2 Q. A minimum of 10 years, correct?

3 A. Yes, sir.

4 Q. And they reduced your charge to attempted
5 armed robbery?

6 A. Yes, sir.

7 Q. Was there an attempted armed robbery that
8 night?

9 A. I don't know what the -- I don't know what --
10 I don't understand.

11 Q. Did you attempt to take anything from him or
12 did you, in fact, take something from him?

13 A. Yes, sir. I took something.

14 Q. You took something. Okay. Do you know what
15 kidnapping carries?

16 A. Thirty.

17 Q. Thirty years. No parole, correct?

18 A. Yes, I guess, I'm not sure.

19 Q. All right. And the conspiracy charge carries?

20 A. Five, I think.

21 Q. You're exactly right. And the assault on the
22 officer carries five years?

23 A. Five or 10 years, sir.

24 Q. Five or 10. The gun charge carries?

25 A. I'm not sure on that, five, I think.

1 Q. Five years. That's exactly right. You did
2 pretty well for yourself, you and your attorney; is
3 that correct?

4 A. Yes, sir.

5 Q. You got a good deal. Now, a couple of
6 questions that concerned me about -- you said you were
7 running around with Corrie -- let me back up a bit.
8 You were living for a while at Mark Bayne's house where
9 his wife lives, correct?

10 A. Yes, sir.

11 Q. And you said you were living there but Mark
12 wasn't there at that time; isn't that correct?

13 A. Yes, sir.

14 Q. As a matter of fact, you later said something
15 about the fact that you were running -- that something
16 about Mark and Corrie, you were running around together
17 for a couple of months prior to this?

18 A. Yes.

19 Q. And isn't it a fact that Corrie was in jail at
20 the time for a while?

21 A. Yes, she -- she was. Actually she was. And
22 me and Mark was at his house, at ■ Meadow Fork Road,
23 and Tina, his wife, wasn't there and -- at the time and
24 --

25 Q. But the time you said you were always running

1 around together, isn't it a fact that Corrie had been
2 in jail for a part of that time?

3 A. Well, I guess. It may not have been before
4 that, but I know she did -- she was in jail. And then
5 she got out and come to Mark's house, and that's when I
6 started running -- but before she went to jail, I
7 knowed her -- I didn't really run around with her too
8 much, but I had -- I had some conversations with her.
9 She'd come up to my dad's house a few times and stuff
10 like that, him -- you know, her and Mark did.

11 Q. Now, when they found the truck at the house,
12 the keys were there with your shoes, correct?

13 A. Yes, sir.

14 Q. One moment, please. As I said at the onset of
15 this, you had told me you didn't want to testify; is
16 that correct?

17 A. Yes, sir.

18 Q. Are you here against your will?

19 A. I mean, he -- I just -- I had already given a
20 statement. And he said that I would just -- I would
21 have to, you know, repeat what I said in my statement.

22 MR. ABDALLA: All right. Thank you. No further
23 questions.

24 THE COURT: Any redirect?

25 MR. HOLLOWAY: Yes, sir.

1 **REDIRECT EXAMINATION BY MR. HOLLOWAY:**

2 Q. The evening before your arrest, had -- who
3 gave you the keys?

4 A. Mark Bayne. That night, when I pulled up in
5 the truck --

6 MR. ABDALLA: Objection, Your Honor. This is
7 outside the realm of redirect.

8 MR. HOLLOWAY: Your Honor, he specifically asked
9 him about the keys.

10 THE COURT: I'm going to allow it. Go ahead.

11 BY MR. HOLLOWAY:

12 Q. Continue please, sir.

13 A. When I pulled up that night and -- at ■ Meadow
14 Fork, when the truck was backed in, I backed in beside
15 it and whatever. And Mark was outside cleaning the
16 truck up or wiping it off and stuff.

17 And I had to resume to -- you know, going in the
18 house and everything -- or whatever, you know. I was
19 messaging around on the outside, whatever. I ended up in
20 in the house. And later on, Mark come inside and told
21 me to hold the keys, that he would be back.

22 Q. Okay.

23 A. And then the next morning, I -- I had actually
24 passed out that night from being up too long, I guess.
25 And the next morning, when I woke up, they had the

1 house -- the police had the house surrounded. That's
2 when they locked me up.

3 Q. Thank you, sir. Briefly, as to sentences
4 since Mr. Abdalla went through them all with you. He
5 said that kidnapping -- did he mention to you that
6 kidnapping carries 30; was that -- was that his
7 language? Is that how you understood it?

8 A. Yes, sir.

9 Q. Do you understand -- do you know the exact
10 range of what kidnapping carries?

11 A. As in -- I mean, I don't understand.

12 Q. Do you know if there is a mandatory minimum or
13 if there's no mandatory minimum?

14 A. I don't have a clue.

15 Q. So, you don't know if there's a floor or not?

16 A. No, sir.

17 Q. So, you don't know if somebody could just get
18 probation for kidnapping?

19 A. Yes, sir.

20 Q. Okay. And do you know what the maximum
21 penalty is for attempted armed robbery?

22 A. The maximum penalty?

23 Q. Penalty.

24 A. I think 30 -- or 20 something?

25 Q. Twenty is correct. Thank you, sir. That's

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1 all the questions I have for you.

2 THE COURT: Mr. Abdalla, anything further?

3 MR. ABDALLA: Nothing further.

4 THE COURT: Sir, you may step down. Thank you.

5 Call your next witness, please.

6 MR. HOLLOWAY: Your Honor, the State calls Officer
7 Johnathan Horne of the Greenville County Sheriff's
8 Office.

9 JOHNATHAN HORNE, having
10 been first duly sworn, testified as follows:

11 THE CLERK: Thank you, please be seated. Would
12 you please state your name for the record.

13 THE WITNESS: Johnathan Horne.

14 **DIRECT EXAMINATION BY MR. HOLLOWAY:**

15 Q. Officer Horne, where are you employed?

16 A. Greenville County Sheriff's Office.

17 Q. And what capacity are you employed there
18 today?

19 A. I'm currently in School Investigations. At
20 this time, I was in uniform patrol.

21 Q. And where are you in School Investigations
22 now?

23 A. I'm the School Resource Officer at Greer High
24 School.

25 Q. Are you enjoying it?

1 A. Yeah.

2 Q. It is quite different than being in uniform
3 patrol?

4 A. Very different.

5 Q. And so on October 18, 2014, in that week or
6 two after, were you assigned to uniform patrol?

7 A. Yes, I was.

8 Q. And what area of town were you assigned?

9 A. I was assigned the eastern part of the county,
10 around the Taylors area.

11 Q. And on October 26th, did you have the
12 opportunity to come into contact with Mr. Mark Bayne?

13 A. I did.

14 Q. And is Mr. Mark Bayne here in the courtroom
15 today?

16 A. Yes, he is.

17 Q. And can you point him out for the jury?

18 A. Seated right over here in this blue shirt with
19 the longer hair.

20 Q. Sitting at counsel table -- is Mr. Bayne at
21 counsel table next to Mr. Abdalla?

22 A. Yes, he is.

23 Q. And how did you come into contact with Mr.
24 Bayne?

25 A. On October 25, 2014, myself and two other

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1 deputies, Deputy Segars with the Sheriff's Office, and
2 Deputy Ward responded to [REDACTED] Old --

3 Q. Officer, I'll cut you off just for a second --
4 was -- so was it very late in the evening on October
5 25th?

6 A. Yes. Yes.

7 Q. And do you know when exactly Mr. Bayne was
8 booked?

9 A. Let's see if he put it in his report. We
10 responded on the 25th. It was late that evening, so it
11 was probably -- he was probably booked in the early
12 morning hours on the 26th.

13 Q. But just for the record, is it your testimony
14 that you guys came into contact with Mr. Bayne -- so on
15 the 25th --

16 A. Yes.

17 Q. -- and he was arrested --

18 A. Yes. On the 25th.

19 Q. Please continue.

20 A. Like I said, myself and two other deputies
21 went up [REDACTED] Old Watson Road. Deputy Segars had been
22 given information that the defendant was possibly
23 staying with a Marie Morgan that we knew as Corrie
24 Morgan.

25 Q. Let me stop you there. Are you sure that it's

1 old -- please say the road name again?

2 A. [REDACTED] Old Watson Road.

3 Q. Is it possible that it's [REDACTED] Old Watson
4 Mountain Road? Please consult all the incident reports
5 you have up there.

6 A. Okay. Yes, I'm sorry. It is -- I incorrectly
7 read it. It's [REDACTED] Old Watson Mountain Road. That's
8 correct.

9 Q. And what information have you received about
10 that residence?

11 A. Deputy Segers had been given information that
12 the defendant was possibly staying there with a Marie
13 Corrie Morgan. And that --

14 Q. Please continue.

15 A. That was our reason for going up to that
16 residence. So we parked down from the residence. We
17 carefully made our way up to the residence. I had
18 armed myself with my issued patrol rifle, and so did
19 Deputy Segers due to the nature of the warrants of
20 armed robbery and carjacking.

21 Myself and Deputy Ward went to the front door.
22 Deputy Segers went around back to the back door. There
23 are two residences on the property. We went to the
24 smaller residence. I noticed two pairs of shoes at the
25 front door. We knocked at the door for several

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1 minutes, trying to make contact with anyone inside.

2 There were no lights on. Nobody was coming to the
3 door.

4 Deputy Ward stayed at the front door. I went
5 around to the back door, and Deputy Segers went up to
6 the residence behind this one, to speak with the house
7 owners. And he obtained consent and was given a key to
8 go check the smaller house.

9 Deputy Segers came back down. We used the key
10 to open the door. We announced several times that we
11 were with the Greenville County Sheriff's Office to
12 make yourself known, as we were going to be coming in
13 our with our weapons to search the residence.

14 As we stepped into a larger living room, a
15 female, Corrie Morgan, came out of a bedroom and stated
16 that the defendant was hiding --

17 MR. ABDALLA: Objection, Your Honor.

18 THE COURT: Objection sustained.

19 MR. ABDALLA: And I have to make a matter --

20 THE COURT: Sir?

21 MR. ABDALLA: I have a matter I would like to take
22 up, Your Honor.

23 THE COURT: Come up here a minute, please.

24 (Whereupon a bench conference was held.)

25 THE COURT: Ladies and gentlemen, I'm sorry, but

1 I've got to ask you to step to the jury room again.

2 I'll get you back out here as quickly as possible.

3 (Whereupon, the jury left the courtroom at
4 11:07 a.m.)

5 THE COURT: All right. Mr. Abdalla, let me hear
6 from you.

7 MR. ABDALLA: Yes, Your Honor. My objection, Your
8 Honor, is that it's essentially a fruit of the
9 poisonous tree situation, because my argument is -- the
10 defense's argument is that the officer got a key from
11 another party, who is the parent apparently of my
12 client's girlfriend. And they went in the house
13 without a warrant. There was no search warrant. There
14 was no reason to go in there. And, therefore, anything
15 that was said or done in there is not admissible.

16 MR. HOLLOWAY: Your Honor, first and most
17 importantly, Mr. Bayne didn't live there so he doesn't
18 have standing to argue anything about rights of privacy
19 in a residence in which he does not live.

20 Secondly, Your Honor, I would argue that the
21 residence did belong to Ms. Corrie Morgan's parents,
22 which I think the officer would clearly testify to.
23 They gave consent to enter. They gave him a key. If
24 anything, if you would like to find that -- Your Honor,
25 if the court was to find that Ms. Morgan was a

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1 co-resident, I think there is still ample case law in
2 the State of South Carolina that a co-resident can give
3 consent to search a place without the proper authority
4 or consent of the other co-resident. So I think
5 there's three different ways that makes this
6 appropriate.

7 THE COURT: Anything further?

8 MR. ABDALLA: Well, Your Honor, the house belongs
9 to Corrie and they went in there without a warrant
10 based on the key from the parents. And -- and I think
11 my client living there has standing.

12 THE COURT: Objection overruled. Objection so
13 noted for the record though. Anything else at this
14 time?

15 MR. ABDALLA: I'm sorry.

16 THE COURT: Anything further?

17 MR. ABDALLA: Or a caveat to that --

18 THE COURT: Yes.

19 MR. ABDALLA: Is that anything said or done should
20 be -- not in front of the jury, the comments or
21 anything. Just to -- I wish the State would just say
22 to mitigate this.

23 THE COURT: I have no idea -- I mean -- what are
24 -- what are the incident reports about what was said or
25 done? Do you have any specifics you want to point out

1 to me, because I haven't seen any of it.

2 MR. ABDALLA: Well, I was just asking that the --
3 if the court -- I would remove my objection if they
4 just said they went there and made the arrest, and let
5 it go at that.

6 THE COURT: I mean, that's kind of what -- what
7 was alluded to with me here at side bar --

8 MR. HOLLOWAY: Your Honor, in addition --

9 THE COURT: Hold on a minute.

10 MR. HOLLOWAY: I'm sorry.

11 THE COURT: Don't -- again, please talk at the
12 same time I'm talking because my court reporter can't
13 --

14 MR. HOLLOWAY: I'll stop. I apologize.

15 THE COURT: What was alluded to here at side bar a
16 minute ago, was that was exactly what -- what the
17 testimony was going to be. There was no other
18 incriminating evidence taken out of the house, is that
19 correct?

20 MR. HOLLOWAY: Your Honor, there is no other
21 incriminating tangible evidence taken out of the house.
22 There were comments made by Mr. Bayne. These are the
23 exact comments: "This is BS. I don't have anything to
24 do with this. You don't know who you're messing with".
25 I would -- I certainly had intended to ask the officer

OFFICER HORNE -- DIRECT

1 about those comments made.

2 THE COURT: All right. I believe that's
3 admissible. I'm going to allow it over defense
4 counsel's objection.

5 MR. ABDALLA: Thank you, Your Honor.

6 THE COURT: All right. Bring me the jury back in
7 please.

8 (Whereupon, the jury entered the courtroom at
9 11:12 a.m.)

10 THE COURT: All right. You may continue.

11 MR. HOLLOWAY: Thank you, Your Honor.

12 BY MR. HOLLOWAY:

13 Q. Detective Horne, if you'd please continue
14 where you left off. I believe Deputy Segers had just
15 obtained a key and consent to enter the residence, and
16 you all had just entered the residence and announced
17 your presence?

18 A. Yes. Myself and Deputy Segers, as we came
19 into the residence announcing our presence, a female
20 who we identified as Corrie Morgan, came out from a
21 bedroom and stated the defendant was hiding in the
22 bedroom. We --

23 MR. ABDALLA: Objection again, Your Honor. He's
24 admitting hearsay.

25 THE COURT: Objection sustained as to hearsay.

1 BY MR. HOLLOWAY:

2 Q. Pursuant to your conversation with Ms. Morgan,
3 did you go into a bedroom?

4 A. Yes. We made our way to a bedroom. As we
5 came to the open door of the bedroom, there appeared to
6 be someone hiding under the covers. We could see
7 movement under the covers. We announced several times
8 for the subject to show us his hands -- or whoever was
9 hiding under the covers to show us their hands and
10 remove the covers. This individual did not comply.

11 Deputy Ward came and held that position. We
12 checked the rest of the residence so we wouldn't be
13 surprised by anyone else in the residence. We came
14 back to that open bedroom door, and gave more commands
15 for the individual to come out.

16 The individual then removed the covers and
17 showed us his hands, and it was the defendant. He then
18 complied. Got up out of the bed with his hands up and
19 we took him into custody.

20 Q. And while you were taking him into custody or
21 just before, did the defendant make any comments to
22 you?

23 A. He did not make any comments to us at that
24 time.

25 Q. Okay.

1 A. Deputy Ward took him into custody. We then
2 transferred custody over to Deputy Segers. When Deputy
3 Segers transported him down to the detention center,
4 the defendant made --

5 MR. ABDALLA: Objection. I believe -- I wanted to
6 make sure he wasn't going to comment that somebody --

7 MR. HOLLOWAY: Strike that, Your Honor. No
8 further questions for the witness.

9 THE COURT: Okay. Cross examination.

10 **CROSS EXAMINATION BY MR. ABDULLA:**

11 Q. The only thing I wanted to ask you is, did you
12 have a warrant to go in there? Did you have a warrant
13 --

14 MR. HOLLOWAY: Objection, Your Honor.

15 THE COURT: Objection sustained. Can you approach
16 please?

17 MR. ABDALLA: Yeah.

18 (Whereupon, a bench conference was held.)

19 THE COURT: You may continue.

20 MR. ABDALLA: Thank you.

21 BY MR. ABDALLA:

22 Q. You entered that residence, as I understand
23 it, with a key that you received from someone else that
24 wasn't living in that particular place; is that correct
25 or incorrect?

1 A. I did not receive a key. It was another
2 deputy -- is that your question?

3 Q. Okay. Is it safe -- fair to say when you
4 walked in there, it was surprising to them, the
5 residents, or am I wrong?

6 A. I don't know if it surprising to them or not.

7 Q. All right. And about what time was this?

8 A. It was late in the evening hours on October
9 25th. I don't recall the exact hour.

10 Q. Was it around midnight? Does that sound about
11 right?

12 A. It was dark outside. I don't recall the exact
13 time.

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

16 THE COURT: Anything further?

17 MR. HOLLOWAY: Nothing further from the State,
18 Your Honor.

19 THE COURT: All right. Sir, you may step down.
20 Call your next witness.

21 MR. HOLLOWAY: Yes, sir, Your Honor, at this time,
22 the State would call its final witness, Investigator
23 Matthew Owens of the Greenville County Sheriff's
24 Office.

25 MATTHEW OWENS, having

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1 been first duly sworn, testified as follows:

2 THE CLERK: Thank you. Please be seated. Please
3 state your name for the record.

4 THE WITNESS: Matthew Owens.

5 **DIRECT EXAMINATION BY MR. HOLLOWAY:**

6 Q. Deputy Owens, let's wrap this up, what say
7 you?

8 A. All right.

9 Q. Where are you employed?

10 A. Greenville County Sheriff's Office.

11 Q. And how long have you been employed there?

12 A. Eleven years.

13 Q. And in what different capacities have you
14 served in the Sheriff's Office in your 11 years?

15 A. I first started at Uniformed Patrol Division.
16 I worked in K-9 unit for a couple of years. And then
17 the past five or six years, I have worked in the Armed
18 Robbery Division.

19 Q. And you -- were you working in the armed
20 robbery division during the time frame of October 2014?

21 A. Yes.

22 Q. And did you have the opportunity during the
23 month of October 2014, specifically on October 18,
24 2014, and thereafter to investigate two armed robberies
25 that occurred at [REDACTED] Keller Road?

1 A. Yes.

2 Q. All right. Can you tell us about your
3 investigation, sir?

4 A. Well, basically, when -- you want me to tell
5 you -- explain how we get assigned the cases and all
6 that stuff?

7 Q. Absolutely.

8 A. Okay. So, an incident occurs after our
9 working hours, the following day, we are assigned cases
10 by our sergeant in no particular order. He just says,
11 you're assigned this case and so on and so forth.

12 There is four investigators down in our unit.
13 Since this incident occurred over the weekend, we
14 actually -- I didn't get assigned to it until that
15 following Monday. So due to the fact there was two
16 incidents at the same location, basically during the
17 same time frame, I was assigned both cases to work.

18 How my investigation -- I usually have the same
19 procedures. I immediately try to contact my victims,
20 any witnesses to get them down to the Sheriff's Office
21 so I can obtain statements from them to figure out what
22 -- what happened during the incident.

23 Q. And when you opened your file that Monday
24 morning, you have -- there were two victims listed or
25 was -- I mean, what was all included in that file and

1 what did you have?

2 A. Well, there's -- obviously there's two
3 different victims. I should say that every incident we
4 go to is assigned a case number, so we had two
5 different case numbers. Two different case numbers,
6 two different victims. Mr. Ennis was one of the
7 victims and Arron was the other victim.

8 Q. And when you say "Aaron", are you referring to
9 Mr. Arron Shunk?

10 A. Shunk, yes, sir.

11 Q. Is he the individual that testified in here
12 yesterday?

13 A. Yes, sir.

14 Q. And did you get an opportunity to speak with
15 both Mr. Ennis and Mr. Shunk?

16 A. I did.

17 Q. And did Mr. Ennis and Mr. Shunk come to the
18 Law Enforcement Center to -- to speak with you?

19 A. They did.

20 Q. When you spoke with Mr. Ennis -- or after you
21 spoke with Mr. Ennis -- I'm sorry -- with your
22 investigation, who were your initial two suspects?

23 A. After I spoke with Mr. Ennis?

24 Q. Yes, sir.

25 A. It was Donald Trammell and Mark Bayne Jr.

1 Q. And Donald Trammell, is that Donald Anthony
2 Trammell that testified here just a few minutes ago?

3 A. Yes, sir.

4 Q. So when you spoke -- when you spoke to Mr.
5 Ennis, did he identify Mark Bayne Jr. as the
6 co-perpetrator of this crime?

7 A. He did.

8 Q. You were -- have you been sitting in this
9 trial this entire time?

10 A. I have.

11 Q. Do you remember when Deputy Brochin took the
12 witness stand?

13 A. I did -- or I do.

14 Q. Is it your understanding, through your
15 investigation, that Deputy Brochin showed Mr. Ennis
16 originally a picture of Mark Bayne Jr.?

17 A. Yes.

18 Q. And did you -- was it a couple of days after
19 the fact that you ended up meeting with Mr. Ennis at
20 the Law Enforcement Center?

21 A. Correct.

22 Q. And while you were meeting with Mr. Ennis, at
23 that point in time, did you make -- did you make a
24 positive identification on a suspect?

25 A. Yes.

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1 Q. And again, who was that suspect?

2 A. Mark Bayne Jr.

3 Q. And do you know Mark Bayne Jr. to be the son
4 of Mark Bayne Sr.?

5 A. Yes.

6 Q. Can you describe the physical appearances of
7 Mark Bayne Jr.?

8 A. They are -- they're strikingly very similar.
9 Long hair, facial hair, the -- I guess the weight.
10 They -- they look very alike.

11 Q. And when -- at the time you signed arrest
12 warrants -- or arrest warrants were signed for Mr. Mark
13 Bayne Sr., was his hair as long as it is today?

14 A. Yes.

15 Q. And was it ever kept up or was it draped all
16 the way down; do you remember?

17 A. I don't remember -- I don't remember that one.

18 Q. And after your conversation with Mr. Ennis,
19 did you have conversations with any other eye
20 witnesses?

21 A. Yes.

22 Q. And who were the -- who did you have
23 conversations with?

24 A. Well, I spoke with -- again, during the
25 investigation, I spoke with Jessica Gilbert, I believe.

1 Q. Is Jessica Gilbert, to your understanding, is
2 that Mark Bayne Sr.'s daughter?

3 A. Yes. Yes.

4 Q. And given that relationship would -- what
5 would be her relationship with Mark Bayne Jr.?

6 A. The sibling.

7 Q. Please continue.

8 A. So I spoke with her, with, you know, Donald
9 Trammell; Vickie. And then I spoke with Mark Bayne Jr.

10 Q. After your conversations with Donald Trammell,
11 with Vickie Trammell, and with Mark Bayne Jr., were you
12 led to believe that there might have been another
13 perpetrator or someone other than Mark Bayne Jr.?

14 A. I did, yes.

15 Q. And who was that individual?

16 A. Mark Bayne Sr.

17 Q. And when you spoke with Donald Trammell, and
18 Vickie Trammell, and Mark Bayne Jr., were they -- or
19 had they been arrested at the time?

20 A. Yes.

21 Q. Once you had the conversations with those
22 three, were you -- were you confident that Mark Bayne
23 Jr. was not involved in this case?

24 A. Yes, I was.

25 Q. Did you have any involvement in the process of

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1 Mr. Bayne Jr. getting a bond?

2 A. Sure.

3 Q. What did you do?

4 A. So, basically, after everything was piled up,
5 and we really, you know, took everybody's statements,
6 and -- and we had the firm belief that Mark Bayne Sr.
7 was the actual perpetrator, one of the perpetrators in
8 this incident, I immediately went over to the jail,
9 spoke with the judge. And I had Mark Bayne Jr. get a
10 recognizance bond, so he could sign his own -- he can
11 get out of jail without posting money.

12 And then I immediately contacted the Solicitor's
13 Office so they would be aware of the charges that Mark
14 Bayne Jr. had, and that -- that we needed to basically
15 dismiss those charges.

16 Q. And did the judge, to your knowledge, grant
17 Mr. Bayne Jr. a personal recognizance bond?

18 A. I believe so, yes, sir.

19 Q. And do you know whether the Solicitor's Office
20 dismissed those charges in a pretty fast -- on a fast
21 track?

22 A. Yes, sir. I believe it was December 4, 2014
23 is when the Solicitor's Office dismissed those charges
24 on junior.

25 Q. And was -- was Mr. Bayne Jr, to your

1 knowledge, was he already out of jail at that time?

2 A. Yes.

3 Q. And, briefly, let's touch on -- were you
4 present on the day that Mr. Donald Trammell was
5 arrested?

6 A. I was.

7 Q. And where did that occur?

8 A. At ■ Meadow Fork Road.

9 Q. And did you have an opportunity to speak with
10 Mr. Trammell at that time?

11 A. I did.

12 Q. And subsequent to his arrest, did you all
13 search the residence?

14 A. We did.

15 Q. And inside that residence, did you guys find
16 what has been marked as State's Exhibit 19 -- I'm going
17 to point these downward -- but these two BB guns?

18 A. We did.

19 Q. And where did you find those?

20 A. Exactly where Donald told me they would be
21 located in --

22 Q. Well, where -- where was that located?

23 A. In a bedroom -- in a laundry basket in the
24 bedroom, the first bedroom of the residence.

25 Q. And was this a covered laundry basket or --

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1 tell us about it, or was it an empty laundry basket?

2 A. No, there were some clothes.

3 Q. So were they on top of the clothes, were --

4 A. They -- they were in like, underneath them.

5 Q. So do you think if someone was walking into
6 the room, and just passing by, you could see these
7 guns?

8 A. No. I know that for a fact because I didn't
9 see them. I had to dig through the laundry.

10 Q. Sorry, Detective, one second. (Pause.) All
11 right, Detective, so upon searching the residence, you
12 found these two hand guns. And was Mr. Trammell taken
13 back to the L.E.C.

14 A. He was, yes.

15 Q. And at that point in time, were there already
16 arrest warrants out for the multiple charges that --
17 that stem from this incident -- the October 18th
18 incident?

19 A. Yes, sir.

20 Q. Okay. And pursuant to your conversations with
21 him and with Ms. Vickie Trammell, and also with Mr.
22 Mark Bayne Jr., did you then take out arrest warrants
23 for Mr. Mark Bayne Sr.?

24 A. I did, yes, sir.

25 Q. And once those arrest warrants were taken and

1 Mr. Mark Bayne Sr., who is at counsel table, was
2 arrested by Deputy Horne -- among others, did that
3 conclude the investigation of -- did that conclude your
4 investigation into the case?

5 A. Yes, sir.

6 Q. At this point, no further questions,
7 Detective. Please answer any questions that Mr.
8 Abdalla may have for you.

9 THE COURT: Cross examination.

10 MR. ABDALLA: Thank you, Your Honor. Your Honor,
11 I've just shown this to the prosecutor. And I would
12 like this identified as Defendant's Exhibit No. 1 for
13 for identification purposes.

14 THE COURT: All right.

15 MR. HOLLOWAY: No objection to it being entered
16 and published to the jury from the State, Your Honor.

17 MR. ABDALLA: Do you have the original copy?

18 (Pause.)

19 MR. ABDALLA: If I could have this marked for now
20 and make another copy later.

21 MR. HOLLOWAY: May I review the document again,
22 Your Honor, to make sure that Mr. Abdalla's marks
23 aren't affecting the evidence.

24 (Pause.)

25 MR. HOLLOWAY: Your Honor, at this point the State

1 would absolutely object to this being admitting into
2 evidence. There's notes on here from defense counsel
3 to --

4 THE COURT: All right.

5 MR. ABDALLA: May I make a copy and delete this?

6 THE COURT: Are you entering it into evidence?

7 MR. ABDALLA: I don't know if I'm going to enter
8 it for -- let me just mark it for identification
9 purposes now. And if we want to move it into evidence,
10 we can get a new copy.

11 THE COURT: Yes, sir.

12 MR. ABDALLA: Please mark this defense exhibit for
13 identification.

14 (Defendant's Exhibit No. 1 marked for
15 identification.)

16 MR. ABDALLA: All right.

17 THE COURT: All right. I'll instruct the witness
18 not to make any comments regarding --

19 MR. ABDALLA: The notes.

20 THE COURT: The comments and notes.

21 MR. ABDALLA: Thank you, Your Honor.

22 **CROSS EXAMINATION BY MR. ABDALLA:**

23 Q. Investigator Owens, right?

24 A. Yes, sir.

25 Q. I'm sorry. I'm showing you Defense Exhibit

1 No. 1 marked for identification purposes.

2 A. Yes, sir.

3 Q. Would you please identify this?

4 A. It is a photo of Mark Anthony Bayne.

5 Q. And that photo of Mark Anthony Bayne has some
6 comment underneath it -- avoid the highlights -- but
7 what is the comment underneath that?

8 A. What do you want me to do?

9 Q. Oh, I would --

10 A. Do you want me to read it?

11 Q. Yes, please. The comment says --

12 MR. ABDALLA: Well, wait a minute, wait. Let me
13 have the judge review it to make sure there's not an
14 objection. That's not my writing. That the victim's
15 writing.

16 THE COURT: Are you talking about this?

17 MR. ABDALLA: Yeah.

18 THE COURT: Go ahead.

19 BY MR. ABDALLA:

20 Q. Okay.

21 A. So you want me to read the whole thing?

22 Q. Please, please, yeah.

23 A. Okay. It says "to confirm that was the Mark
24 Bayne that put a shotgun in my face, I looked him up to
25 see if he had a Facebook page, and this is definitely

1 the guy, David Ennis, 10/21/2014".

2 Q. And just for the record, this is the person
3 that the defendant -- the victim identified as Mark
4 Bayne, who was involved with Mr. Trammell, correct?

5 A. Yes.

6 Q. And do you know approximately how old he was,
7 Mark Bayne Jr.? Was he in his 20s?

8 A. Yes. Definitely in his 20s, mid 20s I
9 believe.

10 Q. Is it safe to say the picture that the witness
11 identified -- I'm sorry -- the victim identified is not
12 my client?

13 A. Correct.

14 Q. And it doesn't really look like him; is that
15 fair to say?

16 A. Well, besides the hair.

17 Q. Okay.

18 A. If you look at -- if you look at his face, it
19 looks like him. I mean, the hair is -- obviously he
20 has longer hair in that photo.

21 Q. And this one is short hair, correct?

22 A. Uh-huh.

23 Q. Thank you.

24 THE COURT: Is that a yes?

25 THE WITNESS: Yes, sir. I'm sorry. I --

1 THE COURT: That's all right. Thank you.

2 MR. ABDALLA: I have no further questions.

3 THE COURT: Any redirect?

4 MR. HOLLOWAY: Thank you, Your Honor.

5 **REDIRECT EXAMINATION BY MR. HOLLOWAY:**

6 Q. Investigator Owens, in that photograph that
7 you -- that was admitted only for the purposes of
8 identification, does Mr. Bayne Jr. have a beard?

9 A. Yes, he does.

10 Q. In that photograph?

11 A. Oh, in that photograph? No, he does not.

12 Q. When you interviewed -- do you remember when
13 you interviewed Mr. Bayne Jr.?

14 A. I don't remember the exact date. It was a
15 couple of days, maybe a week after this incident had
16 happened.

17 Q. Was Mr. Bayne Jr. arrested before Mr. Bayne
18 Sr.?

19 A. He was.

20 Q. And when was Mr. Bayne Sr. arrested?

21 A. Mr. Bayne Sr. was arrested the 27th, I
22 believe. I -- I don't--

23 Q. Investigator, please think before you speak a
24 little bit -- were you here listening to the -- to the
25 officer's testimony of when they went to the house on

1 ■■■■ Old Watson Mountain Road?

2 A. Yeah, the 25th. So the 25th, going on the
3 26th.

4 Q. So is it safe to assume that you spoke with
5 Mr. Bayne Jr. before the 25th or 26th?

6 A. Yes.

7 Q. And did he have a beard when you spoke with
8 him?

9 A. Yes.

10 Q. And was it a pretty fully grown out beard?

11 A. Mr. Bayne Jr. -- no, no, sir.

12 Q. In your experience as a man, do you grow
13 facial hair?

14 A. I try.

15 Q. Okay. Did he have facial hair that you think
16 in your -- in your life experience, as a grown adult,
17 could be grown to the length he had it within seven
18 days to a week?

19 A. No, sir.

20 Q. Okay. And from your conversations and your
21 investigation, was it your understanding that the --
22 that co-perpetrator, along side Donald Bayne -- or
23 along side Donald Trammell had a beard?

24 A. Yes.

25 Q. A scuffy beard at that?

1 A. Yes, sir.

2 Q. And there is -- there is no contest or there's
3 no argument that Mr. Ennis originally identified Mr.
4 Bayne Jr., correct?

5 A. Correct.

6 Q. And, again, how long have you been
7 investigating armed robberies?

8 A. Five or six years.

9 Q. And through all your experiences, using all
10 that together, after you interviewed all of the
11 witnesses and you completed your entire investigation,
12 were you, in fact, 100 percent positive that Mr. Bayne
13 Jr. had nothing to do with this?

14 A. Absolutely.

15 Q. And were you positive that Mr. Bayne Sr.,
16 sitting at counsel table, absolutely had something to
17 do with this?

18 A. Absolutely.

19 MR. ABDALLA: It calls for a speculation, opinion,
20 Judge.

21 THE COURT: Overruled.

22 BY MR. HOLLOWAY:

23 Q. Please answer the question.

24 A. Yes.

25 MR. HOLLOWAY: Thank you. No further questions.

1 MR. ABDALLA: Just one matter on redirect, Your
2 Honor -- or recross.

3 THE COURT: Recross, yes, sir.

4 **RECROSS EXAMINATION BY MR. ABDALLA:**

5 Q. I guess it's safe to say you were not present
6 at all for any of the alleged criminal activity; is
7 that correct?

8 A. Correct.

9 MR. ABDALLA: Thank you.

10 THE COURT: Sir, you may step down. Thank you.

11 THE WITNESS: Yes, sir.

12 MR. HOLLOWAY: Your Honor, at this point, the
13 State rests.

14 THE COURT: Can the lawyers approach a minute
15 please?

16 MR. HOLLOWAY: Yes, sir, Your Honor.

17 (Whereupon, a bench conference was held.)

18 THE COURT: All right. Ladies and gentlemen, the
19 State has rested its case. There are some matters of
20 law I need to take up with the -- outside of your
21 presence. Rather than send you back there and then
22 bring you back out here in a few minutes, I'm going to
23 let you go to lunch right now. I'm going to ask that
24 you be back in the jury room at 1:15. Be back in the
25 jury room at 1:15, and we'll resume the trial of this

1 case as promptly at that time as possible.

2 There's -- it has been my instruction
3 throughout, do not discuss the case. Do not discuss
4 the case. Do not do any independent investigation on
5 your own. You are to decide this case based solely
6 upon evidence and testimony presented in this courtroom
7 and nowhere else. Thank you all. I'll see you back at
8 1:15.

9 (Whereupon, the jury left the courtroom at
10 11:37 a.m.)

11 THE COURT: All right. Mr. Abdalla, any motions?

12 MR. ABDALLA: Yes, Your Honor. At this time, I'd
13 like to make a motion for a directed verdict, that the
14 State did not meet its burden on several issues.

15 One of them is -- one of the victims is missing.
16 The victim didn't even testify, so I don't see how the
17 other round of crimes should even go forward. That, in
18 my opinion, should not go -- half of the crimes. We
19 have an armed robbery, a conspiracy, a carjacking, and
20 a possession of a weapon with -- a deadly weapon during
21 the commission of a violent crime, and they are all
22 related to Mr. Ennis. And Mr. Ennis chose, for
23 whatever reason, to not appear.

24 THE COURT: Did y'all ever find Mr. Ennis? Was a
25 bench warrant served on him?

1 MR. HOLLOWAY: Not yet, Your Honor.

2 MR. ABDALLA: So, clearly, I think the defendant
3 has a right to cross examine any victim he's accused of
4 having harmed. And we didn't have that opportunity, so
5 I definitely believe the court should grant that.

6 THE COURT: All right. Anything further?

7 MR. ABDALLA: Yeah. I have to make a motion for
8 directed verdict just on behalf of the entirety of the
9 case, saying they didn't establish enough evidence to
10 move forward.

11 And lastly, I better renew my objection and
12 request to make sure I'm covering the record -- and I
13 apologize if it's getting laborious -- but for the
14 directed verdict based on the statement --

15 THE COURT: You mean mistrial?

16 MR. ABDALLA: The mistrial, I'm sorry.

17 THE COURT: Thank you.

18 MR. ABDALLA: Thanks for correcting me. Yes, the
19 mistrial.

20 THE COURT: That's all right. Anything in
21 response, Mr. Holloway?

22 MR. HOLLOWAY: Only if you'd like to hear it, Your
23 Honor.

24 THE COURT: Yeah, I want to hear from you.

25 MR. HOLLOWAY: Your Honor, as it pertains to Mr.

1 Ennis, a defendant certainly has a right to cross
2 examine any witness who alleges anything against him.
3 Mr. Ennis has not taken the witness stand and alleged
4 one single thing against -- against Mr. Bayne. It's
5 other eye witnesses that have alleged that he committed
6 the crime. So there's no wrong doing or constitutional
7 violation against Mr. Bayne at this time. This is not
8 about a witness. This is about a crime that Mr. Bayne
9 committed.

10 As it relates to all the charges in their
11 entirety, Your Honor, I think there is certainly a
12 sufficiency of evidence, especially when viewed in the
13 light most favorable to the state, that all the
14 elements of all eight crimes have been met. We have
15 had testimony that, in fact, two different armed
16 robberies have occurred; that Mr. Bayne had a shotgun
17 while they occurred; that Mr. Bayne drove off with one
18 of the victim's truck, which would -- which would fit
19 the carjacking; that Mr. Shunk was placed at gunpoint
20 and held by Ms. Corrie Morgan behind the residence,
21 certainly with the use of -- not only weapon, but
22 intimidation to stay there against his will, which
23 would fit the kidnapping.

24 And the possession of a weapon during a violent
25 crime, Your Honor, again we said -- there's been

1 testimony that Mr. Bayne did have a shotgun. And as it
2 relates to the conspiracy, we have evidence on the
3 record that Mr. Bayne and Mr. Trammell conspired,
4 therefore, planned to commit some sort of unlawful
5 object (ph), so the -- the State would request you deny
6 -- Your Honor, that you deny defense's counsel -- or
7 the defendant's motion for a directed verdict.

8 THE COURT: All right. The case law is certainly
9 clear as it relates to the direct verdict motion. The
10 law is clear that the court is not concerned -- well,
11 the court is concerned with the existence or
12 nonexistence of evidence, the court will look at very
13 substantial direct evidence, as well as circumstantial
14 evidence in this case. In viewing the evidence in
15 light most favorable to the State, the court believes
16 it is necessary to require under the law to submit
17 these charges to the jury, and for them to make a
18 determination as to whether or not he is guilty or not
19 guilty. The court therefore respectfully denies the
20 motions.

21 MR. ABDALLA: Yes, Your Honor.

22 THE COURT: All right. At this time, I am going
23 to advise the defendant of his rights. Mr. Bayne, if
24 you would stand, please, and be sworn. Madam Clerk,
25 would you swear him, please.

1 MARK A. BAYNE SR., having been
2 first duly sworn, testified as follows:

3 THE COURT: Sir, you are Mark Anthony Bayne Sr.?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I need you to speak up, okay?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. At this time, I'm going to
8 explain to you certain of your rights. If you do not
9 understand anything that I say, please let me know. If
10 you want me to explain anything in more detail, please
11 let me know as well; do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. We have now reached the
14 stage of the trial where you may present your defense.
15 You have the right -- you have the right to claim the
16 protections given to you by the fifth amendment of the
17 Constitution of the United States, which states in part
18 that no person -- no person shall be compelled in any
19 criminal case to be a witness against himself.

20 This means that you cannot be required to
21 testify in this case. You have the right to testify on
22 your own behalf. However, no one can make you testify.
23 This is a personal right and no one can waive this
24 right except you.

25 If you decide to testify, you will be subject to

1 the same rules that govern other witnesses, and you can
2 be examined and cross examined on any relevant issue in
3 this case.

4 In addition, if you have any convictions
5 involving dishonesty, or false statements, or for
6 crimes punishable by imprisonment for more than one
7 year, and this court determines that the probative
8 value of admitting the evidence outweighs its
9 prejudicial effect to you, the Solicitor will be able
10 to introduce your record to attack your credibility.

11 If you decide to testify, this decision on your
12 part must be freely, voluntarily, and intelligently
13 made with knowledge of the protections given to you by
14 the fifth amendment and the consequences of your
15 decision to testify.

16 If you decide not to testify, I will instruct
17 the jurors that they cannot give the fact that you did
18 not testify any consideration whatsoever, and that
19 there is to be absolutely no prejudice to you because
20 you did not testify. It is left entirely up to you
21 whether or not you testify.

22 You may talk with your attorney, your family and
23 friends, or anyone else, but a final decision will be
24 left entirely up to you. Do you understand what I have
25 explained to you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions about what I
3 have explained to you?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you discussed with your attorney
6 whether you should or should not testify?

7 THE DEFENDANT: Partial.

8 THE COURT: All right. Do you wish to talk to
9 your lawyer any more concerning this issue?

10 THE DEFENDANT: Please.

11 THE COURT: All right. What I will do is we will
12 stand down at this time. You have approximately an
13 hour and a half. We will resume at 1:15. I'll give
14 you time to talk to your lawyer. And when we resume
15 court, I expect an answer.

16 THE DEFENDANT: Thank you, sir.

17 THE COURT: All right.

18 MR. ABDALLA: Thank you, Your Honor.

19 THE COURT: All right, 1:15.

20 MR. HOLLOWAY: Thank you.

21 (After a lunch recess, court reconvened.)

22 THE COURT: Mr. Bayne, if you'll stand up, please,
23 sir. I remind you, you're still under oath. Okay?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Before we broke for lunch, I explained

1 to you your rights as it relates to testifying. We
2 stood down because you indicated that you needed some
3 additional time to talk to your attorney.

4 Have you had additional time to talk to your
5 attorney?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you need any more time to talk to
8 him?

9 THE DEFENDANT: No, sir. Thank you.

10 THE COURT: Do you wish to testify in the trial of
11 your case?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. Very well. All right.
14 You may be seated, sir. Mr. Abdalla, how many
15 witnesses, if any, do you intend to put up?

16 MR. ABDALLA: We're not going to put up a case,
17 Your Honor.

18 THE COURT: All right. Are you all prepared to go
19 forward into closing arguments and charge?

20 MR. HOLLOWAY: Yes, sir, Your Honor.

21 MR. ABDALLA: Yes, Your Honor.

22 THE COURT: All right. We need to go through --
23 this is what I was working on, the charge. Do you all
24 want to kind of write down as I go through what I have
25 in this charges thus far?

1 MR. HOLLOWAY: Yes, sir.

2 THE COURT: Charge arrest and indictment, not
3 evidence. And multiple charges, which the State has to
4 prove guilty beyond reasonable a doubt as to each,
5 separate and distinct charges. And I'm -- as I'm
6 hitting on the heading, I'm kind of -- highlight the
7 charge, if you want me to read in its entirety --

8 MR. ABDALLA: What was the second thing you said
9 after the --

10 THE COURT: Multiple charges.

11 MR. ABDALLA: Oh, yeah. I'm sorry. What did you
12 say about that, just that you're going to --

13 THE COURT: Just they are separate and distinct
14 charges, and the State has got to prove each one of
15 them beyond a reasonable doubt. All right. The
16 presumption of innocence; reasonable doubt; duties of a
17 judge and jury; direct and circumstantial evidence;
18 hand of one, which includes -- which is the hand of one
19 a portion -- it talks about mere presence.

20 MR. ABDALLA: That is -- that is what I was going
21 ask you, if that included mere presence. Thank you.

22 THE COURT: Prior record of witnesses, because
23 they have a prior record, and they're not competent to
24 testify. It goes to their credibility. What I have
25 put in here, as it relates to what Ms. Gardner

1 testified about your client being released from
2 prison -- I put in there, "You heard evidence that the
3 defendant was previously incarcerated for something
4 other than what the defendant is now on trial for. You
5 must not consider this as any evidence of the
6 defendant's guilt of the charges for which he is
7 currently on trial. In fact, it should not even be
8 discussed or considered by you during your
9 deliberations in determining the guilt or innocence of
10 the defendant for the charges that the defendant is now
11 on trial for".

12 MR. ABDALLA: And for the record, I do object to
13 that, to maintain my objection.

14 THE COURT: I mean, what I'm asking you -- what
15 are -- what are you -- are you objecting to the charge,
16 or are you objecting to -- or renewing your motion --

17 MR. ABDALLA: For a mistrial, Your Honor.

18 THE COURT: No. I mean, I'm offering a curative
19 instruction here. And you had asked previously was I
20 going to do that within my charge or what. I'm not
21 saying I'm going to do -- I'm asking you, do you want
22 me to put that in my charge?

23 MR. ABDALLA: I think if I fail to have it
24 included, I lose my right to appeal of the mistrial
25 which seems to cover --

1 THE COURT: Are you objecting to me charging that,
2 is my question?

3 MR. ABDALLA: I have -- okay. There is no way I
4 can win this dilemma. If I object to you charging --
5 if you don't charge it, then I might lose my right to
6 the --

7 THE COURT: It might be a PCR issue.

8 MR. ABDALLA: Yeah. No offense, but good luck
9 with that PCR issue.

10 THE COURT: I understand.

11 MR. ABDALLA: The appeal issue is the stronger of
12 the two if it's possible. I'm not even relying on that
13 heavily, but I at least want to preserve it.

14 THE COURT: All right. I don't think you have
15 forgone your objection on the mistrial issue. My
16 proposal --

17 MR. ABDALLA: Okay.

18 THE COURT: -- and what has been my proposal
19 throughout is a curative charge. Whether you want a
20 curative charge, that is your ultimate decision here.

21 MR. ABDALLA: Can I just pitch that to my client
22 one more time?

23 THE COURT: Yes, sir.

24 (Pause.)

25 MR. ABDALLA: Since I'm not giving up my right to

1 the objection, we don't want the charge.

2 THE COURT: That will not be included. All right.
3 The defendant's decision not to testify, that is within
4 the charge. It can't be used against him. It can't be
5 considered. It can't be discussed, the fact that he
6 didn't testify. Intent, criminal intent.

7 Then we get into the offenses, armed robbery.
8 The defendant is charged with two counts for armed
9 robbery. In order to prove this offense, the State
10 must prove beyond a reasonable doubt the defendant was
11 in possession of a firearm, physically displayed what
12 appeared to be a firearm during the commission of a
13 violent crime.

14 Armed robbery -- excuse me. The defendant --
15 two counts of armed robbery. To prove this, the State
16 must prove beyond a reasonable doubt the defendant took
17 personal property from the person or the presence of
18 Arron Joseph Shunk, and go through the remaining part
19 of that charge. As to the second count of armed
20 robbery of David Ennis, the State must prove the same
21 elements as previously explained beyond a reasonable
22 doubt. Are you understanding that, Mr. Holloway?

23 MR. HOLLOWAY: Yes, sir, Your Honor.

24 THE COURT: And I'm not going to read armed
25 robbery twice.

1 MR. ABDALLA: Right.

2 THE COURT: Because I don't -- you got to prove it
3 as it relates to Mr. Shunk, and they've got to turn
4 around and prove the same elements as it relates to the
5 armed robbery of Mr. Ennis.

6 MR. ABDALLA: I agree, yes.

7 THE COURT: Okay. The same as on the possession
8 of a weapon during the commission of a violent crime.
9 You got to prove your possession of a weapon as to
10 each, and then charge them with armed robbery is a
11 violent crime.

12 Then in addition to armed robbery being a
13 violent crime, so is kidnapping and carjacking. Those
14 are violent offenses as well. And then go into
15 kidnapping. The defendant is charged with kidnapping,
16 the State must prove beyond a reasonable doubt, the
17 defendant knowingly and unlawfully seized, confined,
18 inveigled -- the kidnapping -- abducted and carry away
19 another person without the authority of law to do a
20 thing -- unlawfully to do it willfully against the law.
21 Knowingly means with knowledge, consciously, not
22 accidental. Seize means to take hold -- hold of
23 suddenly or forcibly. Confine means to limit,
24 restrict, or enclose with bounds. Inveigle means to
25 lure, entice, or lead astray. False representation,

1 promises or other deceitful means. Carry away means to
2 remove.

3 The State does not have to prove that the
4 defendant did all of these things -- instead if you
5 find beyond a reasonable doubt that the defendant did
6 any of these, you may find the defendant guilty of
7 kidnapping. Something done without authority of law,
8 is something which the law does -- provide
9 justification -- kidnapping does not have to be for any
10 personal or monetary gain, or any illegal purpose, but
11 may be for any reason whatsoever.

12 The carjacking -- the defendant took or
13 attempted to take a motor vehicle from another person
14 by force and violence, or by intimidation, while the
15 person was operating a vehicle, or while a person was
16 in the vehicle.

17 Conspiracy, the standard conspiracy charge.
18 Mutual understanding, agreement, common intention,
19 plan -- mere passive knowledge of or consent to
20 criminal conduct with another is not enough to make a
21 person a conspirator. Must be guilty knowledge and
22 participation similarly -- a mere fact the defendant
23 may have associated with another person, or met with
24 another and discussed common things and interests, does
25 not necessarily establish proof of the existence of a

1 conspiracy, or that the defendant was involved in a
2 conspiracy. On the other hand, it is not necessary
3 that the agreement be a formal one.

4 Do you want me to further read or is that...?

5 MR. ABDALLA: That sounds sufficient to me.

6 THE COURT: In conclusion -- let me ask this -- I
7 typically send a copy of the charge back to the jury
8 room; any objections by the State as to that?

9 MR. HOLLOWAY: Nothing from the State, Your Honor.

10 THE COURT: Defense counsel?

11 MR. ABDALLA: I, actually, for the time being, I'm
12 going to put that on the record to object, because I
13 had a case that was overturned that involved that
14 issue. I'm not saying it was just on that issue, but
15 that was one of many things that created problems in
16 the case. So I'd rather at this point -- if they asked
17 to be recharged, I'd be more likely to consent.

18 MR. HOLLOWAY: And, Your Honor, I don't know if it
19 is necessary, but for what it's worth -- especially
20 with this many charges on the table, the State would
21 believe that it certainly would assist the jury in
22 understanding the nature and the underlying elements of
23 the offenses if they are able to review them in
24 writing, as opposed to just hear them once.

25 (Pause.)

1 THE COURT: There's a possession of a weapon
2 during the commission of a violent crime, I added this
3 language in there, "The defendant is also charged with
4 two counts of possession of a weapon during the
5 commission of or attempt to commit a violent crime.
6 The defendant is charged with possession of a weapon
7 during the commission of the violent crime as it
8 relates to Arron Joseph Shunk; separately as it relates
9 to David Ennis. The State must prove beyond a
10 reasonable doubt that the defendant was in possession
11 of a firearm, visibly displayed or appeared to be
12 during the commission of a violent crime". Define what
13 a firearm is. "You must first find him guilty of
14 either committing a violent crime or attempting to
15 commit a violent crime". Instruct them on armed
16 robbery, kidnapping, all violent crimes -- any
17 exceptions or objection to that from the State?

18 MR. HOLLOWAY: No, sir, Your Honor.

19 THE COURT: Defense counsel?

20 MR. ABDALLA: No, Your Honor.

21 THE COURT: All right. Is there anything that --
22 any additional charges that the State believes
23 necessary?

24 MR. HOLLOWAY: No, sir, Your Honor.

25 THE COURT: Defense counsel?

1 MR. ABDALLA: No, Your Honor. did -- well, you
2 didn't review, I don't think -- or maybe you don't
3 review them your --

4 THE COURT: Verdict form?

5 MR. ABDALLA: Pardon?

6 THE COURT: Go ahead. I'm sorry.

7 MR. ABDALLA: I'm trying -- all of a sudden I'm --
8 reasonable doubt.

9 THE COURT: It's in there. Do you want to hear
10 it?

11 MR. ABDALLA: Please.

12 THE COURT: "What is a reasonable doubt in the
13 law? A reasonable doubt is the kind of doubt that
14 would cause a reasonable person to hesitate to act.
15 Proof beyond a reasonable doubt is proof that leaves
16 you firmly convinced of the defendant's guilt. There
17 are very few things in this world that we know with
18 absolute certainty. So even in a criminal case, the
19 law does not require proof that that overcomes every
20 possible doubt."

21 "However, if based on your consideration of the
22 evidence, you are firmly convinced that the defendant
23 is guilty of the crimes charge, you must find him
24 guilty. If, on the other hand, you think there is a
25 real possibility that he is not guilty, you must give

1 him the benefit of the doubt and find him not guilty."

2 "Jurors, please understand, that reasonable

3 doubt may arise from evidence which has been presented

4 in the case or from the lack of evidence in the case.

5 It is your responsibility to determine whether or not

6 reasonable doubt exists as to the guilt of this

7 defendant."

8 "I charge you that the defendant is entitled to

9 every reasonable doubt arising out of the whole case.

10 If, upon any issues of fact essential to conviction,

11 and a verdict of guilty, you have a reasonable doubt as

12 to how that issue should be resolved, it would be your

13 duty to resolve that reasonable doubt in favor of the

14 defendant." All right. Anything else?

15 MR. HOLLOWAY: Nothing from the State.

16 MR. ABDALLA: Nothing from the defense.

17 THE COURT: All right. If you'll bring me the

18 jury please, sir. The State going is to open, followed

19 by defense counsel. The defendant gets to close.

20 MR. ABDALLA: Pardon?

21 THE COURT: You get to close.

22 MR. ABDALLA: Oh, that's what I was hoping. I

23 thought --

24 THE COURT: You didn't introduce any evidence.

25 You had something marked as an exhibit for

1 identification, but it was not admitted into evidence.

2 MR. ABDALLA: Right.

3 THE COURT: You get final argument -- at least you
4 do right now until the rule changes. It's in the
5 process.

6 As the jury is coming in, can the lawyers
7 approach a minute, please.

8 MR. HOLLOWAY: Yes, sir, Your Honor.

9 (Whereupon, a bench conference was held.)

10 (Whereupon, the jury entered the courtroom at
11 1:33 p.m.)

12 THE COURT: All right, ladies and gentlemen. I
13 hope you all had a nice lunch. I apologize for you all
14 having to sit back there for a little while. I
15 appreciate you all being back here when I asked you to
16 be back here.

17 Prior to lunch, the State rested its case.
18 Therefore, at this time, I am going to recognize
19 defense counsel, Mr. Abdalla.

20 MR. ABDALLA: Thank you, Your Honor. Your Honor,
21 at this time, the defense rests. And I would just like
22 to renew all my previously made motions before the
23 court.

24 THE COURT: Very well. Such noted -- previously
25 made motions are noted for the record. And this

1 court's rulings as to such motions remain the same.

2 MR. ABDALLA: Thank you, Your Honor.

3 THE COURT: All right. Ladies and gentlemen, at
4 this time you have heard all of the evidence that
5 you're going to hear in this case, that which remains
6 now is closing arguments by counsel and then my charge
7 on the law to you.

8 I will remind you, ladies and gentlemen, that
9 arguments of counsel -- arguments of counsel is not
10 evidence in this case. It is not evidence in this
11 case. The State will go first in closing arguments
12 followed by defense counsel. And then I will give you
13 a charge of the law.

14 All right. The State is recognized for closing
15 arguments.

16 MR. HOLLOWAY: Thank you, Your Honor. Ladies and
17 gentlemen, thanks for y'all's patience these last
18 couple of days. These -- there are always interesting
19 trials like this and -- in most circumstances because
20 we -- I believe, as citizens, we live in our own
21 worlds. We live in the worlds that we have acclimated
22 ourselves to. And a lot of -- a big part of that is
23 work. Another part of that could be church. It could
24 be school. It's a lot of different things.

25 And what we typically do and we have a tendency

1 to do is -- and it's just because our day-to-day lives
2 are so consuming as they are. If you think about it,
3 when you sit back and you get done with the day and you
4 get home, you know, probably the one thing you want to
5 do is maybe flip on the TV, or read a book, go for a
6 run or walk, talk to your spouse, your children. The
7 last thing you want -- the last thing you have time to
8 do is really delve -- dive in, delve in and recognize
9 what else is going on.

10 And with this case, what it did is presented an
11 opportunity for this entire court, and especially you,
12 all as jurors, to see the -- the dispirit, sort of
13 world in which a lot of these families that are ridden
14 by drugs and addictions live. And it's tough. And we
15 when -- we went through all of this evidence and all of
16 this testimony, and you know -- over the past month,
17 I've really, really gotten to know Vickie Trammell
18 and -- and Nikki Gardner.

19 And, you know, you see the conditions they live
20 and -- and how they go about their lives, and just
21 their every day struggles. And it truly -- I think it
22 is substantiates the thought and the notion that drug
23 addiction truly is a disease, like alcohol addiction.
24 This is not something that they willingly chose to do
25 and -- and be involved with.

1 And I'll touch on it a little bit more, but you
2 saw Nikki, how she got up there and, you know, she's
3 waiting in line, she's -- she's third up, as she said,
4 at Serenity Place. She's pregnant. She has nowhere to
5 live. I mean, she's -- she's sitting -- I mean, she's
6 at her grandparents on the couch for the most part at
7 ████ Keller Road waiting for -- she needs -- you know,
8 she is just doing anything she can to straighten things
9 out and seek the appropriate help and the support and
10 support system she -- she can to take care of her kids
11 and have a family. So I think one thing -- I hope if
12 there is anything that has been interesting about this,
13 is it has opened your eyes to the world that these
14 folks have lived in, and so many people live.

15 And with that, I know it's time for us to shift
16 to our jobs here today. And I told you during opening
17 statements, that it was just a statement and I was
18 going to give you guys sort of a walk-through or a road
19 map as to what we were going to expect. And now it's
20 time for closing arguments because all the evidence has
21 been -- all of the evidence has been admitted. It's
22 been testified to on the stand. So everything has --
23 everything for you to consider -- for you all to
24 consider as a jury has already been presented. So now
25 it is time to wrap that up.

1 And I guess my lead off was with -- with -- sort
2 of the community in which they live in and how they
3 associated themselves, as I understand that was
4 somewhat confusing at times. And I tried to do the
5 best I could to navigate in the right direction, but
6 that's exactly what we're going to do here today.

7 So here we are, and the judge -- as he told you
8 on the front end -- he is the judge of the law. His
9 honor is the judge of the law. And after Mr. Abdalla
10 and I get done with our closing arguments, he -- Mr. --
11 or his honor will instruct you as to the law.

12 And, you know, one of the biggest things before
13 we get into the actual findings, is there's certain
14 notions and there's -- securities that are in place in
15 our system. And that's -- and that's why our system
16 has been so successful in -- you know, whether it's --
17 it is not saying it's so successful in prosecuting
18 people or in liberating people, what has been so
19 successfully adopted and recognized throughout the
20 world, through other countries, as the best legal
21 system in the world, even though it's not perfect.
22 Because there are certain protections for this man
23 right here, Mr. Bayne.

24 And he -- the biggest one is his presumption of
25 innocence. And he was presumed innocent when he walked

1 into this door, and he is still presumed innocent right
2 now. And it is not until you all go back there and
3 deliberate, after closing arguments, after you have
4 been instructed by his honor, that you can take that
5 cloak of innocence off of him.

6 And to do so, I encourage you it is not
7 something that is insurmountable. The only thing is --
8 what we have to do -- what I have to do as the State, I
9 have to prove all of the elements beyond a reasonable
10 doubt. So his presumption of innocence can be ripped
11 off of him if you guys believe beyond a reasonable
12 doubt that the State has proven each and every element
13 of the crime.

14 As we said from the forefront, beyond a
15 reasonable doubt -- there is a couple of different ways
16 to look at it. One of the main definitions is it a
17 doubt that causes a reasonable person to hesitate to
18 act. And those are just words, but you can -- you can
19 sort of materialize them and memorialize how -- how you
20 feel so in your own individual capacities.

21 Another way to think about it is if you were
22 left firmly convinced -- in other words, if there is --
23 if you guys legitimately have -- if there's something
24 that is holding you back from finding him guilty, then
25 there is a reasonable doubt. But if you are firmly

1 convinced that this defendant, Mark Bayne, is guilty of
2 all of the crimes as he has been charged, then it is
3 your duty to find him -- you must find him guilty if
4 you do find that the State has proven beyond a
5 reasonable doubt all of those elements.

6 So let's break it down a little bit. And I'm
7 not going to go through each element, I just want to
8 list the crimes for you first, just so we can get a
9 good understanding of them. And I hope this is a
10 position where everybody can see more or less.

11 But, first, we have -- and I'm just going to
12 abbreviate it -- we have armed robbery. So I said
13 "AR", and I'm going to do times two for two charges.
14 Okay. And what we said that was, that was when an
15 individual is robbed at either gunpoint, knife point,
16 some sort of weapon, and in doing -- or they are robbed
17 with -- and the defendant uses the presentation or acts
18 as if they have that sort of weapon.

19 Well here, you know, there -- there is no doubt
20 about it, we have heard eye witness testimony
21 throughout that Mr. Bayne did, in fact, have a shotgun
22 on him. And we also heard eye witness testimony that
23 Mr. Trammell had a handgun on him, a handgun that
24 looked probably oddly similar to these two.

25 However, we're going to continue to go through

1 the charges. And then I will sit here and we will
2 really wrap up all the facts and pretty much give you a
3 pretty good summary to get your head around.

4 So we do have armed robbery, essentially that
5 the State is alleging that Mr. Shunk, who took the
6 witness stand; Mr. Ennis, who did not take the witness
7 stand, were robbed at gun point. Taken from them, mind
8 you, was -- for Mr. Shunk was his truck. And then from
9 Mr. Ennis was -- it's been reported at different
10 values, but certainly money and a jump box was taken
11 out of his back seat. There has been differing
12 testimony as to drugs. Regardless you cannot be
13 charged -- you cannot be robbed of something illegal.
14 So the State is not alleging any kind of drugs taken
15 makes this defendant guilty of armed robbery. It's
16 the -- it's the legal things that someone is allowed to
17 have, like money and a jumper cable box in the back
18 seat that was robbed from Mr. Ennis. Okay -- just to
19 clarify that.

20 Two, we had -- I want -- I want to put that
21 "POW" -- possession of a weapon during the commission
22 of a violent crime. So I just abbreviated that.
23 Possession of a weapon during the commission of a
24 violent crime.

25 A violent crime -- and we opened up on -- just

1 on the premise of being armed robbery, but kidnapping
2 is also a violent crime. And carjacking is also a
3 violent crime. So, essentially, if you all, the
4 jurors, determine that Mr. Bayne did, in fact, have a
5 weapon on him at the time he committed these crimes,
6 whether you find on armed robbery, carjacking, or
7 kidnapping, or all of the above, then he -- will be
8 found guilty of possession of a weapon during the
9 commission of a violent crime.

10 And I jumped ahead of myself very briefly, and
11 while -- I just need to circle back right now, so we
12 can touch on it so it doesn't get too out of line. The
13 third principle I meant to bring up, beyond his
14 presumption of innocence, and beyond the State's burden
15 of proving something -- proving all of the elements
16 beyond a reasonable doubt, is there is a legal -- the
17 law in this State holds -- it is called -- the short
18 form is the hand of one is the hand of all, or
19 essentially accomplice liability. Meaning that if an
20 individual involved in this case -- so using specific
21 names, if you find that Donald Trammell had a gun, or
22 Donald Trammell committed an armed robbery, or Donald
23 Trammell was the culprit of the kidnapping, or Donald
24 Trammell was the culprit of the carjacking -- and I'm
25 not arguing that right now -- I'm just giving you for

1 example, then -- and you find that Mr. Bayne was, in
2 fact, with him, then that would be an accomplice
3 liability. And that would mean, the hand of one is the
4 hand of all. And Mr. Bayne would be guilty under the
5 hand of one is hand of all. All right.

6 And let's circle back now. All of this will be
7 charged to you by the judge. I'll let him better
8 explain the law. Okay. I just want to give you guys
9 some ideas. So you have presumption of innocence,
10 beyond a reasonable doubt, and the hand of one is the
11 hand of all as we go through -- and we go through and
12 weigh all of these crimes. Again, there's two charges
13 of possession of a weapon during the commission of a
14 violent crime as it relates to Mr. Shunk and Mr. Ennis.

15 Three, you have conspiracy, two charges again.
16 And what we did say about conspiracy -- essentially
17 conspiracy is when you plan with another person to do
18 something unlawful. So it's two people combining
19 together to do something unlawful.

20 Here, obviously, there is -- there is a lot of
21 testimony -- and we'll get into that, but the basis --
22 the underlying basis of the charge is that Mr. Bayne
23 and Mr. Trammell both conspired, they planned to do
24 something unlawful and they completed that unlawful
25 act.

1 Fourth is carjacking and that is removing
2 someone from their vehicle, taking the vehicle with the
3 threat of intimidation or the use of some sort of a
4 weapon. So here, clearly, we have her testimony that
5 Mr. Shunk was removed from his truck by -- we've heard
6 testimony that -- from Mr. Trammel and Vickie Trammel
7 -- and we'll go over this -- said that it was Mr.
8 Bayne, but we've heard testimony that Mr. Shunk was
9 removed from his vehicle with threat of force,
10 intimidation, or a weapon. So that's the basis of the
11 carjacking.

12 Five is kidnapping. And, again, the judge will
13 explain this in greater detail, but kidnapping --
14 remember, the basis of this. It has nothing to do with
15 being young or being a child. It really, solely, has
16 to do with confining someone unlawfully and it's by any
17 means. It doesn't have to be by use of force or
18 anything else. It's by any unlawful means. If you
19 unlawfully confine an individual.

20 There's -- there's a whole lot of definitions
21 that the judge will go into. You can seize the person.
22 You can take them away. But if you confine someone,
23 like Mr. Shunk was confined on that back porch and
24 looked over by Corrie Morgan, there he was confined
25 against his will and done so unlawfully by -- you know,

1 the evidence shows by use of force, but it can be by
2 any means. There's our charges. If you don't mind me,
3 I'm going to grab a little bit of water.

4 Now, this is where we tie everything together,
5 to go with each charges. So to spearhead it, let's
6 focus on the top person and -- and I believe -- the way
7 I look at the case, I think that's Nikki. Okay. And
8 there's a lot of reasons I think this is Nikki.

9 The main reason being, Nikki was the only person
10 that was sober that night. Nikki told you -- Nikki sat
11 up here and gave you in-depth details about her fight
12 with drug addiction, and how she was coming down off of
13 opiates, about how she doesn't drink. That's why she
14 was driving and that she was trying to find opiates.
15 And that they, in fact, did not get opiates and that's
16 when everything started going. So Nikki is the one
17 person that evening that was actually sober. Okay.

18 Then let's go down to our other eye witnesses --
19 our other eye witnesses include Vickie, Aaron, and I'll
20 put in quotations "Rich Boy". And the third eye
21 witness was none other than Donald Trammell himself.
22 And then down here, if it's not too low, I'm going to
23 draw a line right here. And then we're going to -- we
24 got -- now, detective -- he was in uniform patrol,
25 Detective Tim Brochin, who testified yesterday. And we

1 have officer Johnathan Horne, who was also in uniform
2 patrol at the time, and now is a school resource
3 officer at Berea Middle. Okay.

4 So this is really where we're getting the bulk
5 share of our information from. So this is how we
6 really got to think about it. And I think when you
7 think about it, when you think about it right from the
8 top. Okay. So let's go over how all of this mess
9 happened.

10 All right. Nikki was married to -- Jeremy
11 Gardner was her husband. Okay. So I'll draw -- I'll
12 just right here -- I'll put married Jeremy Gardner,
13 which is how she gets her last name, Gardner.

14 All right. So she has got the pending DSS case.
15 She is no longer allowed to be with her children at
16 night. She has since then moved over to [REDACTED] Keller
17 Road. Okay. Are y'all following me here?

18 [REDACTED] Keller Road is where Vickie lived. And what
19 we'll do is we'll go up here and write -- I'm just
20 going to write [REDACTED]. And I'm going to put in
21 parenthesis -- I'm going to put Mr. Edmonds for
22 Vickie's father. Okay.

23 And I apologize if I'm writing too small or I'm
24 writing too sloppy. I just want to give -- for those
25 of you who can see it -- a little -- just a little bit

1 of a road map here. And I'll pull this thing closer.

2 So Vickie has been living at Mr. -- at Mr.

3 Edmonds house at [REDACTED] for -- off-and-on really -- about
4 eight years. That's how long she's been separated from
5 her husband, Larry Trammel. And I know it sounds
6 crazy, but you know, this is not the world that a lot
7 of us live in, like getting a divorce. They haven't
8 gotten a divorce. So she's sitting there. They've
9 been estranged for a long time, but she is living at
10 [REDACTED].

11 So when Nikki had her pending DSS case, she
12 didn't have anywhere else to go. So she moves in, for
13 the most part, at [REDACTED]. But we also heard how Nikki
14 said that her and her mom would argue. And we can see
15 that, how anybody could argue. And we can probably see
16 it a little more so given that they both have
17 addictions. At this point, they both have opiate
18 addictions. So if you can't get opiates, you can see
19 how that would string you out, and you can see how
20 arguments become, and you would bicker back and forth.

21 So she's -- so Nikki would go over from time to
22 time to -- over at [REDACTED] Meadow Fork Road. And there's no
23 great way to do this. But what I'm going to do is I'm
24 going to do [REDACTED] Meadow -- I'm just going to go [REDACTED] Meadow
25 -- and then M F R right here. I'm going to circle it.

1 Because you have Nikki and you have Donald. And both
2 Nikki and Donald have spent time at ■ Meadow Fork Road.
3 And who's place was ■ Meadow Fork Road, that was Ms.
4 Tina Bayne's. That was the house that Mark Bayne was
5 supposed to be living in. That was where his wife
6 lived.

7 So in this evening, we know that they leave --
8 that Vickie and Nikki, they leave ■ and they go right
9 down the road. They leave ■ Keller Road and they go
10 right down the road to ■ Hammond Drive. And I realize
11 that we did not do the best job yesterday with that
12 technology. However, all those maps that were
13 introduced and all those things introduced into
14 evidence, you all will get to review back in the jury
15 room. And you can see -- and we had testimony to it.
16 All you did was make a left out of the driveway, went
17 to the stop sign, and it was right there. In fact,
18 Vickie and Nikki walked there. It wasn't that far.

19 So they go down to Rich Boy's house. They go to
20 Aaron Shunk's house. And it's Aaron's birthday the
21 next day. We know that. He testified to it. So what
22 was he doing, he was drinking too much. He was smoking
23 too much weed. I mean, the last thing I'm going to do
24 is sit here in front of you and ask you to feel bad for
25 Aaron Shunk or -- or David Ennis. I'm not going to say

1 screw them, but they -- they understand that they put
2 themselves in this situation as much as anybody else.

3 But what I'm asking you to do is look at this
4 objectively because regardless of how they put
5 themselves in that situation, it doesn't make anything
6 this individual did right. Two wrongs do not make a
7 right, especially when guns are involved.

8 So here we go. They go down to ■■■ Hammond
9 Drive. And they're smoking weed and they're drinking
10 beer except for Nikki. Nikki is the one person who's
11 not doing anything. She's staying sober. So they go
12 get Roxis as Nikki told us and Vickie told us. They
13 take 290 down to Highway 25 and come into Whitehorse
14 Road, trying to go to a place called Dixie Circle.
15 Nikki made the call.

16 Dixie Circle, if you do not know, as Vickie
17 testified -- or as Nikki testified to, is drug
18 infested. It's a trailer park -- I mean, it's just a
19 -- it's a constant problem and a black eye in
20 Greenville County. So they're trying to go there.

21 But on the way there, this idiot is so drunk,
22 and he's so high, and he's so disrespectful, that keeps
23 groping Nikki. And Vickie stands up for her. Because
24 if there's anything I hope you noticed about Ms. Vickie
25 Trammell, is that she would do about anything for her

1 children. And she is certainly a feisty one. So she
2 gets in his ear, and they pull over at the gas station.

3 They get back in the car. Obviously Mr. Shunk
4 didn't testify to that. I wasn't going to take him
5 down that road because he's going to be embarrassed to
6 testified to it. But I had no problem bringing all
7 these witnesses out and letting y'all know exactly what
8 happened that night. Because what really happened that
9 night beforehand isn't at issue. What's relevant is
10 what happened when they got back to [REDACTED].

11 So they drive back and Nikki herself said, you
12 know, I considered taking him all the way home because
13 he was that drunk, but at the same time, she was like
14 it was -- it was -- she said it was close to midnight.
15 All the records say it was closer to 11. Either way,
16 it was dark.

17 As you guys will see on some of these maps when
18 you look back, this is not -- Keller Road, which is
19 Highway 140 out to Highway 290 is not this -- this high
20 traveled road. There's not street lights. It's
21 certainly understandable that -- I don't -- I don't
22 want to walk home at 11:00 at night by myself.

23 So they pull in -- the other thing that's
24 interesting about when they pull in, is -- one, Donald,
25 Mark, Corrie, possibly Larry -- no one really knows

1 about Larry. And I'm not going to just not address
2 Larry, but when it comes to this, we're here for the
3 trial of Mark Bayne. We're not here for the trial of
4 Larry Trammell. So for our purposes, Larry is
5 completely ancillary and irrelevant. It's a red
6 herring to the trial of Mark Bayne.

7 But we know for a fact that Mark Bayne, Donald
8 Trammel, and Corrie are at the house. And we know for
9 a fact that they weren't there when Vickie and Nikki
10 left. And we know for a fact that Vickie had
11 previously asked them to leave because (a) Mr. Edmonds
12 was in his 80s, and she knows that -- they run trouble,
13 and his heart just can't take it anymore. And (b), she
14 was dating a new guy and trying to move on with her
15 life, and it just was not going to happen when her son,
16 who is doing drugs, and her husband, who was doing
17 drugs, are constantly around the house. So neither of
18 them were there when they left.

19 The other things that makes them seem far less
20 -- that makes them seem far less dubious and -- and
21 more -- way more coincidental than -- than planned, is
22 that they told you, they're addicted to opiates. What
23 was the first thing that I said, well, does David Ennis
24 -- and I had no idea -- I said, does David Ennis deal
25 Roxis? And she goes, no, he deals Meth.

1 And then what did Donald say when he got up
2 here? Yeah, he's a Meth dealer. We were high on Meth.
3 Donald was high on Meth. Mark was high on Meth.
4 Corrie was high on Meth. They -- Vickie and Nikki
5 didn't do Meth. They did opiates. They had zero idea
6 that Donald, Mark, and Corrie were there.

7 And Mr. Abdalla wants to bring up, oh, Vickie,
8 you have a conspiracy charge. You know what -- as it
9 came out, I didn't -- I'm not prosecuting her charges,
10 but I do not believe whatsoever that she had anything
11 to do with any of this. I don't think she had any idea
12 that they were there and they were trying to rob --
13 eventually rob David Ennis. Because (a) she had
14 already told them to leave the property; (b) she didn't
15 do Meth; and (c), as it came out, we realized that
16 although David Ennis is a drug dealer, no doubt about
17 it, he actually supported their family in a time of
18 need when they needed food because he was the one
19 person that had money.

20 So, anyhow, when they get there, what does Nikki
21 tell us? She says -- she sees Mark, Donald, and Corrie
22 immediately coming from the back. She says that Donald
23 comes and gets Aaron, Rich Boy, out of the front seat.
24 Okay. Who else said Donald got him out of the front
25 seat? Aaron. I think Aaron is the one that would

1 remember -- both the person that got ripped out of the
2 front seat and the sober person would correctly
3 identify the person who did get them out of the front
4 seat. And that's what we have here.

5 And that's what I'm saying. We have to use
6 Nikki as the basis because she's the only sober one in
7 this whole mix. So the fact that Vickie testified that
8 Donald was there or Donald actually did that is
9 certainly an inconsistency. I'm not going to hide from
10 it. I'm just saying, Vickie already admitted that she
11 had smoked and she had drank that night. Nikki is the
12 guiding light here.

13 So we have -- so they come out. Donald ripped
14 Aaron out of the car. Plus Donald knows who Aaron is.
15 Donald testified that he had known Aaron for a year or
16 two. Aaron testified that he's known Donald for a year
17 or two. And we certainly have the idea there -- there
18 was 100 percent a phone call placed from Vickie to
19 Donald at -- at the gas station. They both had
20 mentioned that. And Donald had caught wind to the
21 disrespect that Aaron was doing to his sister, Nikki.
22 And he had heard over the phone Aaron, a/k/a, Rich Boy
23 running his mouth. So there's really -- it just makes
24 way more sense for Donald to be the one to pull him
25 out.

1 And then we know from Nikki's testimony that
2 Mark was the one that indeed pulled her out, and then
3 they said "get the F in the house", because why did
4 they want them to get the F in the house? Because
5 nobody was planning on them coming back. They knew
6 that David was coming any time and they had already
7 called David because this was a double -- I mean, this
8 was a double edged plan.

9 They were, one, going to try to take the dope
10 off of him. And two, they were going to try to take
11 his money. So immediately -- and if you think about it
12 -- if you put yourself in that mind set, here are these
13 three people that are high on methamphetamine that are
14 trying to rob the guy who is coming down the road at
15 any point in time, and they hadn't told him they were
16 going to rob him. They -- they called him and
17 expressed that they just want to buy some -- they want
18 to buy some Meth. So they need to make this look as
19 natural as possible.

20 So what happens, Mark drives the truck around
21 back to keep it hidden, because the Extera was already
22 in the back. So they were keeping the cars behind the
23 -- behind the trailer so nothing would look abnormal
24 and David wouldn't get -- wouldn't get stressed out.

25 So the next thing you know, they walk on back

1 there. Donald has a handgun. Nikki testified herself
2 that she saw Donald hit Aaron. We know that Aaron got
3 hit by somebody, so there was force involved with him
4 leaving the car. There were guns involved.

5 He testified that Donald had a handgun, and he
6 testified that Mark Bayne had a shotgun to which
7 Donald, himself, -- Donald, himself, substantiated that
8 Aaron had a shotgun. So there were guns involved.

9 And we know that Corrie Morgan was on that back
10 porch because Donald told us and Aaron told us that
11 some girl stayed and played watch-out. So she was back
12 there essentially holding him, confining him unlawfully
13 while Donald and -- and Mark went back out front to
14 commit the next robbery.

15 So in comes David Ennis. We hear from Donald
16 himself. At this point Vickie -- or Nikki -- I'm so
17 sorry. At this point, Nikki's testimony, we've got --
18 we can't stray from it, what we've got -- we got --
19 because Nikki's inside, and all she sees is a car.
20 Okay.

21 But what do we know? That we pick up Donald.
22 We know for a fact that David Ennis came to that house.
23 We know for a fact that Donald called David to come and
24 that they were coming to bring drugs.

25 So Nikki can confirm that a second robbery did

1 occur, but she can't confirm who not at that moment --
2 but -- if we stay in -- chronologically in a timeline.
3 So Donald tells us, he walks from the front door down
4 there, and starts making conversation. This seems
5 pretty normal. I mean, if you're going to rob a guy
6 that you know has been a family friend for several
7 years, you're probably going to just keep things casual
8 and ingratiate yourself a little bit. Say, hey, you
9 know, how much for the dope.

10 Out of nowhere, then comes Mark Bayne with a
11 shotgun. And at that point, we even know that -- that
12 David Ennis says is this -- like, are you guys messing
13 with me. And when that shotgun stays in that window,
14 he goes, oh, yeah, I think so.

15 So at that point we know that, one, he's getting
16 robbed. And that this is -- they have conspired
17 together. Because it wasn't like they just randomly
18 came about. I mean, Donald walks down, starts to
19 loosen him up, and then Mark comes up a shotgun. It is
20 as simple as that. I mean, that's a one-two punch if
21 you've ever seen one.

22 So then this is how we can go back to our
23 guiding light, Nikki. Once they hear the cars leave,
24 we know that Nikki and them -- we know that there's a
25 phone call, what the heck are you guys doing. Like,

1 you've got to get us out of here.

2 And then from Donald's testimony, we know that
3 he gets a call from -- from David Ennis's cell phone,
4 who Corrie has at that time. And she says, hey, we've
5 got Vickie and we've got Nikki. And you know who's in
6 that car? Mark Bayne.

7 And here's the only other thing, not only did
8 they know Mark Bayne, because Larry Trammell and Mark
9 Bayne are first cousins -- and as you guys can tell
10 from all the testimony, they knew each other from
11 more -- more or less their whole lives. Vickie has
12 known him since she's -- since she's ever been involved
13 and friends with Larry into the marriage. And here's
14 Donald and Nikki, who are 28 years old. So they have
15 known this family for a while. And they are living
16 with the family -- I mean with the mother -- or his
17 wife.

18 The other thing to really put you over the top,
19 there's no doubt -- everyone says Corrie was in that
20 car. Right? We will get to the misidentification in a
21 second. But who dated Corrie? Mark Bayne dated
22 Corrie. Not Mark Bayne Jr., Mark Bayne Sr. Mark Bayne
23 Jr. had nothing to do with Corrie. Why would Mark
24 Bayne Jr. be in that car? It was Mark Bayne Sr. who
25 was in that car with Corrie. So they take off in the

1 truck. Vickie and Nikki are in the truck.

2 Now, Nikki testified that the whole thing she
3 found out is because they had a conversation about
4 where to go. Donald asked him, you didn't tell
5 anything to the investigating officers about dope, did
6 you? No, I didn't. Well, so he's admitted to an armed
7 robbery. He's admitted to conspiracy. He's admitting
8 to possession of a weapon during the commission of a
9 violent crime. He's admitting to kidnapping, but he's
10 concerned about a little bit of dope. He's already
11 said he took the money. I don't think he ever took the
12 dope. I think he took the money.

13 They took the jump box, and then that's how
14 Nikki found out because they -- all of a sudden, Mark
15 says, well, where in the heck is the dope. So they did
16 all this. They had this whole conspiracy, and they
17 wound up empty. They couldn't even get high. That was
18 the whole point, other than money.

19 So now let's sort of trace it back. So we
20 know -- one thing that we know for sure is that
21 Arron -- Arron can give us Donald Trammell. They have
22 known each other. Donald is there without a doubt.
23 Vickie and Nikki cannot only give us Donald, they can
24 give us Donald Trammell, they admit to it. But we
25 don't need that.

1 Donald testified himself -- and he has already
2 pled -- so Donald is out of the question. So at this
3 point, what Arron does is he confirms that there was a
4 second male, and that that male had a shotgun. We know
5 that Donald confirms that there was a second male, that
6 male had a shotgun, and that male was Mark Bayne Jr.

7 And what Donald did, as you guys heard, Donald
8 has pled to this. Donald has been sentenced. You
9 can't go back -- I can't -- you can't go back and
10 sentence him all over. The Judge says -- another judge
11 has sentenced him. It's -- there's no more punishment
12 he can have for these charges, so that decreases even
13 further his reason to lie.

14 And if you notice, I didn't try to -- I didn't
15 try to get too deep. I just wanted to get the
16 necessity out of him. Because he was completely
17 uncomfortable on that stand. This is a guy that he was
18 friends with. This was a guy that he was related to by
19 blood, but Donald has already pled. Donald had no
20 reason to say anything that wasn't true. Nikki has no
21 reason to say anything that isn't true. She has no
22 pending charges. There is nothing pending in that
23 office against Nikki Trammell.

24 Nikki came here. She opened her soul. She
25 opened you -- she opened your eyes to what her life is

1 like, which cannot be -- it's not easy for anybody,
2 especially someone who admits to having drug issues
3 since '03; who's pregnant; who is going through all of
4 this; who has suffered a DSS investigation. But no --
5 that the last thing you want to admit, is going through
6 a DSS investigation as a parent. She's had no reason
7 to lie.

8 And what did they tell you about Mark Bayne Jr.?
9 That Mark Bayne Jr., he didn't get himself involved
10 with this. That he was working. He would work all
11 week out of town on a construction job. That he didn't
12 get -- that he didn't want to be involved with this
13 lifestyle. And he wasn't. And exactly right, you know
14 who knew what Mark Bayne Jr. looked like? Donald,
15 Nikki, Vickie, because they saw it. They were family.
16 They saw him in the daylight. You know who didn't
17 know -- what -- what he looked like? David Ennis.
18 David has never met him.

19 It was dark. There were no -- there were no
20 lights. David was shown the wrong picture to begin
21 with, probably got it in his head. And we know that at
22 the time, Mark Bayne Jr. had a scuffy beard just like
23 his dad. Think about that. If you get some idea in
24 your head, it marinates. It manifests itself. But
25 that's what I'm saying, it's -- it's irrelevant.

1 It was as -- the detective here told y'all when
2 he went through his entire investigation, he was
3 confident that Mark Bayne Jr. was not involved, was
4 nowhere to be seen. And he was confident because all
5 these eye witnesses, Nikki, who is sober. Vickie,
6 Donald, who has no -- neither of them having really any
7 reason to lie -- told them, no, it wasn't junior. My
8 God, it wasn't junior, no. It was senior who you're
9 looking for.

10 So we go from there. And a couple of other
11 things need to come about. One is detective Tim
12 Brochin. And it might have seemed short while he was
13 on the stand. And it might have seemed, you know,
14 exactly what is he -- you know, what he's doing?
15 Obviously he responded to -- obviously he responded to
16 David Ennis' initial call.

17 But what really develops here is on October the
18 23rd, so he goes, reports -- responds to another call.
19 Because that's what uniform patrol officers do, when a
20 call comes in, you respond. He responds to another
21 call. Blake Kilbreath is there. Blake Kilbreath is
22 named -- got robbed a couple of times. Blake
23 Kilbreath, remember, owned the Extera that Donald
24 always drove.

25 And from there, Detective Brochin starts putting

1 together pieces. He is like, all right, he finds --
2 all right. You do this, you do this, let's -- let's
3 look at something. Where does he go after he talks to
4 Blake Kilbreath? He goes to [REDACTED] Old Watson Mountain
5 Road to Corrie Morgan's house. He tries to. But you
6 know what he sees when he gets on [REDACTED] -- when he gets
7 on Old Watson Mountain Road? He sees that truck. He
8 sees a pickup truck and he starts following after it.

9 And eventually, the driver of that pickup truck,
10 he -- he can't identify the driver. It was night time.
11 But the driver of that pickup truck -- of that beige,
12 tan pickup truck, takes off. And that beige tan pickup
13 truck started on Old Watson Mountain Road, right where
14 Corrie lived.

15 And the longer I do this, the more I realize is
16 there is really no such thing as a coincidence.
17 Because coincidences all come together and form the
18 truth. And what's even more coincidental is that that
19 happened on what day -- October the 23rd. When was
20 Donald arrested -- October 24th. When did Mark Bayne
21 drive that car to [REDACTED] Meadow Fork Road? The night before
22 Donald was arrested, October 23rd.

23 When did -- when was Mark Bayne seen wiping off
24 fingerprints on that vehicle -- the night of October
25 the 23rd. Does it not make sense that Mark Bayne was

1 in a high speed chase in that tan Dodge Ram when he
2 escaped? He went right to ■ Meadow Fork Road because
3 they knew the car was made, wiped off his prints, got
4 the heck out of Dodge. Because who drove them from
5 there -- the sober one, Nikki. Nikki took him back to
6 Corrie's. He was driving to Corrie's. He saw the
7 police, took off, evaded the police, dropped the car
8 off at his old lady's house, and then got a ride back
9 to his girlfriend's. There is no such thing as a
10 coincidence. They all come together.

11 The next day, the police spot the vehicle. They
12 go there. They seize the vehicle. They arrest Donald.
13 Donald doesn't admit to having anything. Donald is not
14 on trial. But I will say, these were found in a
15 laundry basket underneath a lot of laundry next to his
16 shoes. So, what does that do? It substantiates
17 Aaron's story that Donald had a handgun. And why else
18 were they in his room, in his laundry basket,
19 underneath his clothes, next to his shoes?

20 As this whole thing winds down and wraps up,
21 Mark Bayne Jr. gets a PR bond. Detective Owens calls
22 the Solicitor Office and says, hey, you charged the
23 wrong guy. You guys look over this case. We need -- I
24 think we need to dismiss the charge. I think we got
25 the wrong guy. The right guy is his dad.

1 Horne responds to [REDACTED] Old Watson Mountain Road.
2 He gets consent to enter the second residence. They
3 walk in. They call out their name, because they've
4 already -- they've already banged on the door. I don't
5 care if it was close to midnight. When police officers
6 bang on a door, they bang on a door, especially for
7 someone that is wanted for armed robbery, possession of
8 a weapon, kidnapping, carjacking, conspiracy. They are
9 all on high alert. They bang on that door, nobody
10 answers. So they're here.

11 They go get consent. They walk in. Who walks
12 out, Corrie Morgan? Where do the detectives go next
13 based on their conversation? To the bedroom. Who is
14 underneath the sheets, trying to hide? This guy. He
15 can't even turn himself in. He is still trying to hide
16 from the truth. He knows exactly why those police
17 officers are there.

18 I hope that -- that sort of clears this up.
19 That -- now that we've gone through it, you see why
20 there's no -- there's no reason that Nikki, Vickie,
21 Donald, for them to tell lies. There is no reason that
22 they would not identify Mr. Bayne.

23 Now, the one thing that -- that still breaks my
24 brain -- at least it broke my brain at first, it
25 doesn't any more -- is why, especially Donald, would

1 you ever do something like this knowing that these
2 people know you. The answer is simple. They are high
3 on Meth. They were not thinking straight. They did
4 not have any rationale thoughts or cares in the world
5 as to what the repercussions were, they -- they were
6 incapable at that point in time to coherently realize,
7 digest, and understand and comprehend that there are
8 repercussions to robbing people at gun point, to taking
9 their car, to holding them hostage more or less, all of
10 this, because they were high.

11 Now, I know this hasn't been the most usual
12 trial. I know the State has not had the cleanest of
13 witnesses. But I really do implore to you guys, I mean
14 -- when Vickie and Nikki got up there, they just poured
15 it out. You know how -- I'm getting to that point in
16 my life where -- and it's such a frustrating point --
17 where I'm -- I know just enough to realize I really
18 don't know anything at all.

19 When you understand that the world is so big
20 that there is no -- you're like, oh, man, like what --
21 you used to think the world is small, you're like all
22 right. Like -- but now it's just -- now I understand
23 that there are so many other things going on. And one
24 of the things I do, is I started reading a lot. I
25 started -- I try to listen to people who have been

1 successful.

2 And one of the things I stumbled on last night,
3 when I was getting for this case, was an old
4 Michelangelo quote, in a video with Oprah from 1998.
5 And it's kind of crazy what Oprah looks like in 1998.
6 But she says, when someone tells you who they are,
7 believe them. When someone tells you who they are,
8 believe them.

9 When Vickie and Nikki got up here and told you
10 who they were, what's not to believe. Vickie is forty
11 -- 53 years old. She's been separated from her
12 husband. She's been addicted to drugs. She's
13 committed a bunch of property crimes. She's been
14 through this whole rigmarole a bunch. You know what
15 she's never done? She never got up on that stand and
16 testified for the State. That's the first time she has
17 ever done it.

18 Vickie is an old lady. As Mr. Abdalla pointed
19 out, she's got a conspiracy charge pending against her.
20 I tell you, I think -- I'll be the first one to tell
21 you, I think that's completely bogus. It's just not --
22 it's just not -- it didn't happen. She wasn't
23 involved.

24 The shoplifting, the Xanax, she did it. She
25 told you she did it. But a 53 year old lady is not

1 going to go to -- not going to go to the State
2 Penitentiary because of shoplifting and Xanax.

3 What did she say that she was getting? I
4 haven't even prosecuted her -- but she said she was
5 getting probation. That's -- that's what she would get
6 anyways.

7 I mean, you shoplift \$5 worth of stuff from
8 Wal-Mart, and you two Xanaxs in your pocket, do you
9 think we're going to try to sentence you -- the jail is
10 already over populated. It cost \$40,000 a year to put
11 someone in jail. Vickie Trammell, she is not going to
12 go to jail for some Xanax.

13 Nikki came up here. She's pregnant. She's
14 trying to get into Serenity Place. She's trying to
15 better herself. She told you about her marriage is on
16 and off the rocks. She told that Jeremy -- she told
17 you about her DSS issues. She told you everything
18 about her life. When someone tells you who they are,
19 believe them.

20 And she told you who did that crime that night,
21 the last thing she wanted to do was ride -- they are
22 not trying to sit here -- they are not getting a deal
23 for their brother. The brother is already down the
24 road. There's -- they're not getting a deal for
25 anybody. There is no deal to be had. All they did was

1 they were subpoenaed to be here, and they came in, and
2 they told you the truth.

3 And you know how much courage and heart it took
4 to sit up here and lay it all out to you. Well, that's
5 what they did. And all the while, this man right here,
6 all he's doing is trying to sell his own son, his own
7 blood down the river so that he can walk, knowing good
8 and darn well that he was the man there that night on
9 October 18th with a shotgun that robbed two people at
10 gun point and took Mr. Shunk's truck.

11 Now, again I thank you guys for your time. I
12 thank you for your patience and your attention. And I
13 ask you -- I ask you to find this man guilty of all
14 eight charges because he is, in fact, guilty of all
15 eight charges.

16 MR. ABDALLA: May we approach, Judge?

17 THE COURT: Yes.

18 (Whereupon, a bench conference was held.)

19 THE COURT: All right. Mr. Abdalla.

20 MR. ABDALLA: Thank you, Judge. A couple of
21 things, I appreciate your time and patience.

22 I want to disagree with something my colleague
23 just said. He put on the record something that there
24 was no indication, no record, no motive that this ever
25 happened -- he said, through implication, my client

1 tried to sell his son down the road. Nothing could be
2 could be further from the truth. His son was
3 identified by the victim, not by my client. So you can
4 think anything you want about -- well, you're free to
5 think anything you want any way, but there was nothing
6 my client ever said that implicated his own son.

7 My cross examination of the officer was to the
8 point where that picture was a picture of his son. I'm
9 now pointing out that the victim did not identify my
10 client. That's a very important issue for you to
11 consider. Who identified -- who identified my client?
12 The co-defendants, the people who were arrested. Not
13 the two victims. As a matter of fact, you only heard
14 from one victim because the other victim never came
15 back to testify.

16 I would ask you to just forget about the other
17 charges, the other entire charges, because he didn't
18 care enough to come here to testify. If he's not
19 testifying that he was robbed, that he had anything
20 stolen from him, that he was intimidated, that anybody
21 conspired against him, that anybody had a gun, why
22 would you care? If he didn't care, he was subpoenaed
23 to be here. His name is on the jury list.

24 The officers testified about him, but he decided
25 not to hang around. Why do you think that is? And he

1 didn't identify my client.

2 Who identified my client? Vickie. I will give
3 the Solicitor credit for being compassionated about the
4 family, the Trammell family. I think I'm pretty
5 compassionate with people because I work with a lot of
6 people that have a lot less than I do. And there is no
7 doubt that it gets to you.

8 But there was something key he said. Vickie
9 would do anything for her family. And I'm with her. I
10 have a daughter I would do anything for. It's just as
11 likely considered a fact that she is trying to help
12 herself and her family.

13 He alluded to Larry, who is the only other named
14 individual that we know was around there at that time.
15 Where is Larry? He said it's not for you to consider.
16 It isn't for you to consider, as a defendant in the
17 case, because he's not charged right now. Can't the
18 family just as easily be protected by Larry Trammell,
19 than putting it off on Mark? Who's closer to you?
20 I'd do anything for my family, for my life -- whatever
21 her words were. You recall the accuracy of the
22 statement. I don't want to put words in your mouth,
23 but I am putting a suggestion there to say please
24 consider that.

25 Vickie Trammell was charged in the conspiracy.

1 They talked about the hand of one was the hand of all.
2 Who was it that called the victim to come there in the
3 first place? And Vickie and Nikki, I believe also
4 testified -- if I'm incorrect, you go with your own
5 recollection -- Nikki did say she was trying to stay
6 away from drugs, but I thought when she was testifying,
7 that she alluded to the fact that she was going to do
8 something. I could be wrong. If I'm wrong, I'll let
9 you go with your memory, not my memory.

10 When the Solicitor said, "we know for a fact" --
11 after this trial I don't know how anybody knows
12 anything for a fact. The only thing I know is I'm more
13 confused than what I came in with. You may know a lot
14 more than I do. Okay.

15 After listening to the testimony, I don't want
16 to make light of it, because my client is facing a lot
17 of jeopardy. Why did I get to talk about those charges
18 and the punishment? He pled guilty. He has nothing to
19 lose. Are you kidding? He already saved his butt.
20 What's left to gain? And as a matter of fact, didn't
21 he say he didn't want to testify? But he had to,
22 because he put something on the record. I don't know
23 the absolute truth any more than Mr. Holloway does,
24 because we weren't there. The only ones that know the
25 truth are the people that were there.

1 The two most essential people did not identify
2 Mark Bayne. One of them identified Mark Bayne's son.
3 For some reason, a 25 year old looks like that. And
4 they get into this allusion of the fact that, oh, it's
5 possible to grow this, that, and the other. You don't
6 know. You don't have an identification. You don't
7 have him here. You have only the testimony of that
8 which was presented to you. What was presented to you
9 was the only victim who made an identification, said
10 this is certainly who it is. I'm 100 percent sure --
11 if I'm not mistaken -- that this is the fellow who
12 robbed me -- or put a gun -- or whatever he said. This
13 is the person who was there, and that was not my
14 client.

15 So, what did Donald plea to, attempted armed
16 robbery. I believe I asked him on cross examination if
17 he attempted to or if he, in fact, robbed. Didn't he
18 say he took the money out of his pocket. That's not an
19 attempt. That's robbery. So he pled to a legal
20 fiction. It's not attempted, he completed the robbery.

21 And they want to go, oh, that carries up to 20
22 years. Yes, but he was given a deal for five years. I
23 don't care if it carries life, he was given a deal of
24 five years. Kidnapping carries up to 30 years. That
25 was thrown out.

1 The conspiracy charge was up to five years. And
2 as I said, the two armed robberies -- I believe I
3 said -- carry 10 to 30 years. This is serious stuff.
4 Each gun charge carries an additional five years, and
5 they can both be consecutive to the other charges.

6 I say this because I can't sit here and tell you
7 people are telling the truth or lying, because I don't
8 know the absolute truth. I don't pretend to. But I
9 know people have different reasons for saying what they
10 say. And you can weigh that in and consider it. Is he
11 trying to protect Larry Trammell? I don't know. Who
12 is he trying to protect? Why did the victim not
13 identify my client? Why did the other victim fail to
14 hang around, and left the court before he even
15 testified? You do not find that to be an oddity?

16 And it seems as far as driving the truck, my
17 recollection is Nikki wasn't sure who was driving the
18 truck. Other people said various different people were
19 driving the truck. So as far as the servitude, you go
20 with your recollection, but I do not recall that being
21 the -- the same matter.

22 The truck was recovered where my client
23 supposedly had dinner one time. It definitely was he
24 who was fleeing the police, yet there is no
25 identification. I'm not blaming the officer for not

1 knowing, but I'm merely illustrating the fact that the
2 convenience of trying to connect all those dots. So to
3 me, it seems like an allusion. How do you connect all
4 these dots and say we know it was him? The officer
5 wasn't -- wasn't about to make an identification.

6 The things we know are that Nikki, Vickie, and
7 Donald Trammell were there when this incident took
8 place. We know that for a fact. That's unrefuted by
9 everybody. What's refuted is whether it was my client,
10 my client's son, or some other person. And they want
11 you to convict my client of these charges that include
12 two mandatory 10 year sentences, plus a maximum of up
13 to 30 years on the testimony solely of co-defendants
14 who are all close family members.

15 Yes, my family -- my client is related to them.
16 But there is a difference between testifying against
17 your brother and testifying against your cousin or your
18 father, or whomever -- or your husband. You want to
19 save your own before you worry about anybody else.
20 It's human nature. It's understandable. And the hand
21 of one theory does apply to Vickie because she was
22 there.

23 Now, I can't say it can be proven, but the idea
24 that, well, she is guilty of nothing. That is
25 absolutely true. But they are the ones that called for

1 the set-up, aren't they? They are the ones who set up
2 the whole purchasing the drugs, or whatever, so are
3 they really completely innocent?

4 Donald will admit that he was running wide open.
5 He was so wide open he didn't have a care for what he
6 did to anybody. And he was so honest, he still to this
7 day denies that he's the one that put the gun to -- I
8 think it was David Ennis, and hit him in the eye.
9 Everybody testified that he did that, but he denies it.
10 And yet, we have to believe him when he says that Mark
11 Bayne was the guy with the gun.

12 So what did they recover? They recovered these
13 phones. And who is there when they recovered it? Oh,
14 what a coincidence, Donald was there. Another
15 coincidence, Donald was there when the truck was
16 recovered. He says Mark was the one who brought it
17 there, and Mark was wiping it down. And they want you
18 to believe that Donald -- that Mark was the one who did
19 all of this.

20 Let me just say this: There have been
21 inconsistent statements, even among the witnesses,
22 saying things at different times. Donald was told by
23 the officer, as I mentioned in cross examination, that
24 the officer told him on a couple of occasions -- I
25 don't believe what you're saying. Do you think I'm

1 lying? Yes.

2 Vickie's testimony wasn't exactly the same. But
3 you know who's -- the one thing that's constant is the
4 truth, it doesn't change. My client has always denied
5 he did this. And to this day, there's never been a
6 change. Because the truth is constant. It doesn't
7 vary day to day.

8 The different witnesses have different
9 recollections of how things went down. The different
10 witnesses have different recollections of who exactly
11 was there. But the one thing we do know is that
12 Vickie, Nikki, and Donald were there. The other thing
13 we know is that one witness -- the -- the victim didn't
14 care to testify in his own trial.

15 Donald started off denying everything. He had
16 nothing to do with anything, and -- and he gradually
17 came along to admitting some of it. And yet he pled to
18 something he wasn't exactly guilty of because it was an
19 attempted armed robbery. He was given a sweetheart
20 deal.

21 The other thing the Solicitor said that I, of
22 course, disagree with -- no one is going to give
23 anybody time -- significant time for a third offense
24 shoplifting that carries up to ten years. I've
25 represented a lot of criminal cases in my life, and I

1 have a lot of people on third offense shoplifting get
2 fairly significant time. I can say that 10 years --
3 because they do get time. To say it's going to be
4 probation, maybe so. But you can't say with any
5 certainty, especially somebody who has a record. And
6 as I recall, when I cross examined Nikki, she admitted
7 to having prior -- I don't want to speculate on the
8 record, but she had a record. Excuse me. I'm just
9 going to get some water.

10 You know, there's that old expression show me
11 the money. I keep hearing, no, this is easy. This is
12 factual. Show it to me. I don't see it as being an
13 easy decision for you. I think it is a quite difficult
14 decision. I can't be presumptuous and have any idea
15 what you're going to do with this. I know what I
16 believe. And I know what the prosecutor seems to
17 believe, but I don't know what you, the jury, believes
18 and you're the ultimate fact finder.

19 You've been very patient and you've sat here
20 through all of the witnesses, and you seem to have
21 listened to everything and paid attention, and I
22 appreciate that on behalf of my client.

23 You know, he is appreciative of the job that I'm
24 doing, but that's what we do. Mr. Holloway and I do
25 this. This is our living. This is our life. We fight

1 for the causes in which we believe.

2 I believe people are entitled to a trial by jury
3 of their peers, and the State has to prove -- to show
4 beyond a reasonable doubt that -- every element of
5 every crime.

6 In this case, I don't think they've come close
7 to meeting their burden unless you want to believe the
8 witnesses, the way they testified to the exclusion of
9 everything else.

10 Like the Solicitor and myself, the officers have
11 nothing to do with the -- they weren't there. I mean,
12 they had nothing to do with it. They brought the case.
13 So they can't testify that this one did it or that one
14 did it. They did a great job with what they had to
15 work with. But they weren't there, and they don't know
16 the absolute truth like I don't know the absolute
17 truth.

18 Have you thought about the fact, too, there are
19 guns here -- who had the gun that matched this
20 slightly? I think Donald did. Where was the gun
21 found? In the same place with Donald.

22 There have been allusions to my client having a
23 shotgun. There's not a shotgun. There was never one
24 in evidence. There was never one found or told about
25 it.

1 It's not exactly going NCIS or CSI, or whatever.
2 You expect to see some fingerprint evidence, some kind
3 of objective evidence that ties my client definitely to
4 something. Where was the money found? With Donald.
5 Who admitted after first denying they took the phones?
6 Donald. But yet my client is the one they want to send
7 down the road without any identification by an
8 objective person, an objective person being somebody
9 who had nothing to do with it.

10 So, you see my concern. The guns are with
11 Donald. The phones are with Donald. The money is with
12 Donald. And the opinions are with Donald and this
13 family. And obviously you're entitled to say, well, I
14 think the Trammells were telling the truth. I'm asking
15 you to really question that. And I'm also asking you
16 that if some of you aren't sure about it, if you have a
17 moment of hesitation about this, I ask you to throw the
18 whole thing out and not be influenced by the fact that
19 maybe four or five think he did it, or six or eight or
20 ten, stick to what you believe.

21 If you are in trial, and we don't want somebody
22 to stand up for us, and to make sure the State proves
23 their case. They believe they did. We don't believe
24 they did. You will be the final author of that.

25 Finally, they didn't produce any other witnesses

1 that could corroborate anything. Y'all know the
2 witnesses they had were the people that were there.
3 And the people that were there, apparently were drugged
4 out, including one of the victims, so reliability of
5 the evidence is somewhat questionable.

6 As I said, Nikki was the straightest of the
7 three Trammells who testified, but I'm pretty sure she
8 said something about that night, doing -- going to do
9 drugs again. But, again, if I'm incorrect as to
10 that... Give me one moment, please.

11 I just want to -- I guess I'll just wrap it up
12 by saying -- repeating what I said earlier. The keys
13 were found next to Donald's shoes. The truck was found
14 where Donald was. The guns were found where Donald
15 was. Nothing was found with my client other than the
16 fact that he was under the covers at midnight, which is
17 where you'll find me at midnight. I have nothing
18 further, and thank you for your time.

19 THE COURT: All right. Ladies and gentlemen, it
20 is now my duty, as the trial judge, under the
21 Constitution of this state to charge and instruct you
22 on the law applicable to this case. It is your duty,
23 as jurors, to accept and apply the law as I will now
24 state it to you.

25 Furthermore, it is your exclusive duty to decide

1 all the issues of fact in this case, and to determine
2 the effect, value, weight, and truth of the evidence.
3 Both the State and the defendant have a right to expect
4 that you will carefully consider and evaluate the
5 evidence and apply the law of this case to it. So that
6 in the end, both the State of South Carolina and the
7 defendant will receive a fair and impartial trial.

8 I want you to understand that when I use the
9 word "defendant", I am referring to Mr. Mark Anthony
10 Bayne Sr. The charges alleged in the indictments are
11 two counts of armed robbery; two counts of possession
12 of a weapon during the commission of a violent crime;
13 two counts of conspiracy; one count of kidnapping; and
14 one count of carjacking.

15 Now, to these charges, the defendant has entered
16 a plea of not guilty. This plea of not guilty places
17 the burden of proof on the State to prove the guilt of
18 the defendant to you, the jury, beyond a reasonable
19 doubt. I remind you, the fact that the defendant was
20 arrested, charged, and indicted in this case is not
21 evidence in this case, and cannot be considered by you
22 as evidence of guilt in this case; nor does it create
23 any presumption or inference of guilt. The
24 indictments, ladies and gentlemen, are simply the
25 formal written instruments which contain the charges

1 made against the defendant. These are the formal
2 documents by which this case is brought into this
3 court.

4 As I mentioned above, the indictments in this
5 case allege eight separate and distinct offenses
6 against the defendant. You must decide each charge
7 separately on the evidence and the law applicable to
8 it, uninfluenced by your decision as to any other
9 charge.

10 The defendant may be convicted or acquitted on
11 any or all of the offenses charged. As stated
12 previously, you will be asked to write a separate
13 verdict of guilty or not guilty for each charge.

14 Now, ladies and gentlemen, it is vital to
15 understand that the defendant is presumed under the law
16 to be innocent of these charges. The defendant has no
17 obligation to prove his innocence. It is a fundamental
18 rule of our law that a defendant, irrespective of the
19 seriousness of the charges against him, is always
20 presumed innocent of the crimes for which he is charged
21 unless and until his guilt has been proven by evidence
22 that satisfies you, the jury, beyond a reasonable
23 doubt.

24 The presumption of innocence is not a mere legal
25 theory, or a legal phrase. The presumption of

1 innocence is very important, and you need to understand
2 that this presumption accompanies the defendant from
3 the time of his arrest and appearance in this court,
4 and continues with the defendant even after you retire
5 to the jury room to deliberate.

6 In other words, the defendant receives the
7 benefit of the -- of the presumption of innocence until
8 the very end of this trial when you, the jury, will
9 deliberate upon the evidence and decide whether the
10 State has proven his guilt beyond a reasonable doubt.

11 Now, what is a reasonable doubt in the law? A
12 reasonable doubt is the kind of doubt that would cause
13 a reasonable person to hesitate to act. Proof beyond a
14 reasonable doubt is proof that leaves you firmly
15 convinced of the defendant's guilt.

16 Now, there are very few things in this world
17 that we know with absolute certainty. So even in
18 criminal cases, the law does not require proof that
19 overcomes every possible doubt.

20 However, if based on your consideration of the
21 evidence, you are firmly convinced that the defendant
22 is guilty of the crimes charged, you must find him
23 guilty.

24 If, on the other hand, you think there is a real
25 possibility that he is not guilty, you must give him

1 the benefit of the doubt and find him not guilty.

2 Jurors, please understand that reasonable doubt
3 may arise from evidence which has been presented in the
4 case, or from the lack of evidence in the case. And it
5 is your responsibility to determine whether or not
6 reasonable doubt exists as to the guilt of this
7 defendant.

8 I charge you that the defendant is entitled to
9 every reasonable doubt arising in the whole case. If,
10 upon any issues of fact essential to conviction and a
11 verdict of guilty, you have a reasonable doubt as to
12 how that issue should be resolved, it would be your
13 duty to resolve that reasonable doubt in favor of the
14 defendant.

15 Now, during the trial, ladies and gentlemen, you
16 and I have had separate duties to perform. As the
17 trial judge, it is my responsibility to preside over
18 this trial. And I also have the duty to rule upon the
19 admissibility of the evidence offered during the
20 process of this trial.

21 In that regard, you are to consider only the
22 competent evidence before you. And you are to
23 disregard from your mind any testimony ordered stricken
24 from the record of this case during the progress of the
25 trial, if there was any. And you are to consider only

1 the testimony which has been presented from this
2 witness stand, together with any exhibits admitted into
3 the record of this case, and any stipulations of
4 counsel made into record if there were any.

5 Furthermore, I have the additional duty to
6 charge you on the applicable law of this case. And in
7 that regard, I am the sole judge of the law of this
8 case. It is your duty to accept and apply the law as I
9 state it to you. If you have preconceived ideas as to
10 what the law is, or what the law ought to be, and it
11 does not agree with what I tell you the law is, you are
12 obligated under your oath to abandon these
13 preconceptions because you are sworn to accept the law
14 precisely as I state it to you.

15 Now, in this trial, you are the sole and
16 exclusive judge of the facts and I am the judge of the
17 law. Do not infer that I have any opinion about the
18 facts of this case from anything I have said during the
19 course of this trial in ruling upon the admissibility
20 of evidence or otherwise, or from anything that I say
21 during the course of this charge to you.

22 In this regard, the law simply does not permit
23 me to have an opinion about the facts. As jurors, it
24 is your duty alone to determine the effect, the value,
25 the weight, and the truth of the evidence presented

1 during the course of this trial.

2 Now, in determining what the facts in this case
3 are, you must judge the credibility which simply means
4 the believability of the witnesses and the value of the
5 weight to be given to their testimony. You, alone,
6 must decide the force, the effect, and truth of the
7 testimony in making this decision.

8 There are many things you may and should take
9 into consideration, such as the appearance and manner
10 of the witness on the stand, a characteristic often
11 referred to as the demeanor of the witness. Was the
12 witness forthright or hesitant? Was the witness'
13 testimony consistent or did it contain discrepancies?
14 What was the ability of the witness to know the facts
15 about which he or she testified? Did the witness have
16 any cause or reason to be bias and prejudice in favor
17 of the testimony he or she gave? Was the testimony of
18 the witness corroborated or made stronger by other
19 testimony and evidence, or was it made weaker, or
20 impeached by other such testimony and evidence?

21 As jurors, please understand you have the right
22 to believe a small portion of a witness' testimony and
23 discard the larger portion or vice versa. You may
24 believe all of a witness' testimony or none. You may
25 believe the testimony of a single witness against that

1 of many witnesses, or the other way around.

2 In exercising your mental processes in
3 attempting to decide the truth, the law simply requires
4 that you exercise your good judgment, your common
5 sense, your sense of logic and reason, and your
6 experiences in life. You then apply these attributes
7 to the evidence and apply the law as I state it to you,
8 and thus arrive at a verdict.

9 Now, there are two types of evidence which are
10 generally presented during a trial, direct evidence and
11 circumstantial evidence. Direct evidence directly
12 proves the existence of a fact and does not require
13 deduction. Circumstantial evidence is proof of a chain
14 of facts and circumstances indicating the existence of
15 a fact.

16 Crimes may be proven by circumstantial evidence.
17 The law makes no distinction between the weight or
18 value to be given to either direct or circumstantial
19 evidence.

20 However, to the extent the State relies on
21 circumstantial evidence, all of the circumstances must
22 be consistent with each other. And, when taken
23 together, point conclusively to the guilt of the
24 accused beyond a reasonable doubt.

25 If these circumstances merely portray the

1 defendant's behavior as suspicious, the proof has
2 failed. The State has the burden of proving the
3 defendant guilty beyond a reasonable doubt. This
4 burden rest with the State regardless of whether the
5 State relies on direct evidence, circumstantial
6 evidence, or some combination of the two.

7 Now, ladies and gentlemen, if a crime is
8 committed by two or more people who are acting together
9 in committing a crime, the act of one is the act of
10 all. A person who joins with another to commit an
11 unlawful act is criminally responsible for everything
12 done by the other person, which happens as a probable
13 or natural consequences of the acts done in carrying
14 out the common plan and purpose.

15 For example, two people can be guilty of killing
16 another person when only one of the two had a gun.
17 There was only one bullet and only one of the two fired
18 the shot that caused the death. If two or more people
19 are together, acting together, assisting each other in
20 committing the offense, the act of one is the act of
21 all; or, as it is sometimes said, the hand of one is
22 the hand of all.

23 Prior knowledge that a crime is going to be
24 committed without more is not sufficient to make a
25 person guilty of that crime. Mere knowledge that

1 another person is going to commit a crime, even if the
2 defendant is present when the crime is committed, is
3 not sufficient to convict the defendant as a principal.
4 Guilt, as a principal, is shown by actual or
5 constructive presence at the scene, as a result of
6 prior arrangement. Therefore, a finding of a prior
7 arranged plan or common scheme is necessary for a
8 finding of guilt as a principal. The State must prove
9 beyond a reasonable doubt, by competent evidence, the
10 theory of the hand of one is the hand of all.

11 A principal in a crime is one who either
12 actually commits the crime or who was present aiding,
13 abetting, or assisting in committing the crime. When a
14 person does an act in the presence of and with the
15 assistance of another, the act is done by both. Where
16 two or more acting with a common plan or attempt are
17 present at the commission of a crime, it does not
18 matter who actually commits the crime. All are guilty.
19 The hand of one is the hand of all.

20 Present at the commission of a crime means to be
21 sufficiently near to, aid and abet, and assist in the
22 commission of the crime. However, mere presence at the
23 scene of a crime is not sufficient to convict one as a
24 principal on the theory of aiding and abetting. Intent
25 is also a necessary element, for there must have been a

1 common design or intent to commit the crime, and the
2 crime must have been committed pursuant thereto with
3 the person aiding and abetting by some overt act.

4 Intent means intending the result which actually
5 occurs, not accidentally or voluntarily -- or excuse me
6 -- involuntarily. Intent may be shown by acts and
7 conduct of the defendant and other circumstances from
8 which you may naturally and reasonably infer intent.
9 The State must prove these elements beyond a reasonable
10 doubt.

11 Now, you heard the testimony during the course
12 of this trial of witnesses or individuals who have
13 prior criminal records. A person who has a past
14 criminal record is competent to testify during a trial.
15 A past record does not affect the ability of that
16 witness to testify. The past record may only be
17 considered by you, if at all, in determining the
18 witness' believability. Remember, you are the sole
19 judges of the facts in the case and of the
20 believability of any and all of the witnesses.

21 Now, ladies and gentlemen, I instruct you and I
22 emphasis to you, the fact that the defendant did not
23 testify in this case is not a factor to be considered
24 by you in any way in your deliberations, and in your
25 consideration on the question of the guilt or the

1 innocence of the defendant.

2 It must not be considered by you in any manner
3 whatsoever. A defendant has the Constitutional right
4 to remain silent. And the assertion of this right must
5 not be considered by you in your deliberations. I
6 repeat, under your oath, you are to draw no conclusions
7 whatsoever from the fact that the defendant in this
8 case did not testify. The fact that this defendant did
9 not testify should not even be discussed in the jury
10 room.

11 The burden of proof, as I have stated to you, is
12 on the State. The defendant is not required to prove
13 his innocence. The burden of proof remains on the
14 State to prove guilt beyond a reasonable doubt.

15 Now, ladies and gentlemen, in order to establish
16 criminal liability, criminal intent is required. For
17 example, the mental state required to be proven by the
18 State for a particular crime might be purpose, intent,
19 knowledge, recklessness or criminal negligence.

20 Criminal intent must be proven by the State
21 beyond a reasonable doubt. Criminal intent is always a
22 matter that must be determined by the jury from the
23 circumstances surrounding the situation.

24 There's no way to prove intent to a mathematical
25 certainty. There is no way that medical science can

1 dissect a person's brain and determine what the person
2 had in mind. So the law says that criminal intent may
3 be inferred from the circumstances shown to have
4 existed. This is how you make a determination of
5 whether or not the element requiring intent was
6 present. It is not necessary to establish intent by
7 direct and positive evidence, but intent may be
8 established by inference in the same way as any other
9 fact, by taking into consideration the acts of the
10 parties and all the facts and circumstances of the
11 case.

12 Criminal intent is a mental state, a conscious
13 wrong doing. It is up to you to determine what the
14 defendant intended to do based on the circumstances
15 shown to have existed.

16 Criminal intent can arise from action or a
17 failure to act. It may arise from negligence,
18 recklessness or an indifference to duty or to
19 consequences, that is considered by the law to be the
20 equivalent of criminal intent.

21 Now, the defendant, ladies and gentlemen, as I
22 have previously said, is charged with the offense of
23 armed robbery. In fact, he's charged in two -- with
24 two counts of armed robbery. In order to prove this
25 offense, the State must first prove beyond a reasonable

1 doubt that the defendant took personal property from
2 the person or presence of Mr. Arron Joseph Shunk.

3 Property is in the presence of the person if it
4 is within the persons's reach, inspection, observation,
5 or control so that the person could, if not overcome
6 with violence and prevented by fear, keep possession of
7 the property.

8 The State must also prove beyond a reasonable
9 doubt that the defendant carried the property away,
10 intending to permanently deprive the owner of the
11 property, and to keep the property for the defendant's
12 own use. The slightest removal of the property or the
13 complete possession of the property, even for an
14 instant by the defendant is sufficient to show a taking
15 and carrying away of the property. The taking and
16 carrying away of the property must have been done with
17 violence or by putting the owner of the property in
18 fear of violence.

19 Finally, the State must prove beyond a
20 reasonable doubt the defendant was armed with a deadly
21 weapon during the robbery. A deadly weapon is --
22 (pause) -- bear with me just a minute, ladies and
23 gentlemen. (Pause). Bear with me, ladies and
24 gentlemen.

25 All right. A deadly weapon, ladies and

1 gentlemen, is any article, instrument, or substance
2 which is likely to cause death or great bodily harm,
3 whether an instrument has been used as a deadly weapon
4 depends on the facts and circumstances of each case.
5 The following are examples of instruments which may be
6 deadly weapons: A pistol, a shotgun, a rifle, a dirk,
7 a dagger, a knife, a sling shot, metal knuckles, a
8 razor, gasoline, a fire bomb or molotov cocktail, and
9 lighter fluid. A gun may be a deadly weapon even if it
10 is not operating.

11 As to the second count, ladies and gentlemen, of
12 armed robbery of David Ennis, the State must prove
13 these same elements as previously explained to you
14 beyond a reasonable doubt as well. Now, possession of
15 a weapon during the commission of a violent crime, the
16 defendant is also charged with this particular -- with
17 two counts of this particular offense as well.

18 The defendant is charged with possession of a
19 weapon in the commission of a violent crime as it
20 relates to Arron Joseph Shunk, and separately as it
21 relates to David Ennis. The state must prove beyond a
22 reasonable doubt that the defendant was in possession
23 of a firearm, or visibly displayed what appeared to be
24 a firearm during the commission of a violent crime.

25 A firearm means any machine gun, automatic

1 rifle, revolver, pistol, or any weapon which will, is
2 designed to, or may be readily converted to expel a
3 projectile. In order to find the defendant guilty --
4 excuse me -- of possession of a weapon during the
5 commission of a violent crime, you must first find the
6 defendant guilty of either committing a violent crime
7 or attempting to commit a violent crime. Armed robbery
8 and kidnapping and carjacking are violent crimes.

9 The State must prove beyond a reasonable doubt
10 that the weapon further advanced or helped in the
11 commission of the crime. Now, the defendant is also
12 charged with the offense of kidnapping.

13 The State must prove beyond a reasonable doubt
14 that the defendant knowingly and unlawfully seized,
15 confined, inveigled, decoyed, kidnapped, abducted or
16 carried away another person without authority of law.

17 To do -- to do a thing unlawfully is to do it
18 willfully against the law. Knowingly means with
19 knowledge, consciously, not accidentally. Seize means
20 to take hold of suddenly or forcibly. Confine means to
21 limit, restrict or enclose within bounds, imprison, or
22 or shut up -- or shut, keep in.

23 Inveigle means to lure, entice, or lead astray
24 by false reputations, promises, or other deceitful
25 means. Decoy means to lure by, or as if by decoy. A

1 decoy is something to entice a person into a trap.

2 Kidnap is to remove a person against his will by
3 unlawful force or by fraud. Abduct means to carry off
4 secretly or by force for an illegal purpose. Carry
5 away means to remove. The State does not have to prove
6 that the defendant did all of these things. Instead,
7 if you find beyond a reasonable doubt the defendant did
8 any of these things, you may find the defendant guilty
9 of kidnapping.

10 Something done without authority of law is
11 something which the law does not sanction, permit,
12 allow, condone, or provide justification for. The
13 kidnapping does not have to be for any personal or
14 monetary gain or for any illegal purpose, but may be
15 for any reason whatsoever.

16 Carjacking, the defendant is also charged with
17 the offense of carjacking. In order to prove
18 carjacking, the State must prove beyond a reasonable
19 doubt that the defendant took or attempted to take a
20 motor vehicle from another person by force and
21 violence, or by intimidation while the person was
22 operating the vehicle or while the person was in the
23 vehicle.

24 The defendant is also charged with two counts of
25 conspiracy. The State must prove beyond a reasonable

1 doubt that the defendant, combined with one or more
2 persons with the purpose of committing an unlawful act,
3 or of committing a lawful act by unlawful means. There
4 must be a mutual understanding, agreement, or common
5 intention and plan. Mere passive knowledge of or
6 consent to the criminal conduct of another is not
7 enough to make a person a conspirator. There must be
8 guilty knowledge and participation.

9 Similarly, the mere fact that the defendant may
10 have associated with another person or met with another
11 person and discussed common aims and interests, does
12 not necessarily establish proof of the existence of a
13 conspiracy, or that the defendant was involved in the
14 conspiracy.

15 On the other hand, it is not necessary that the
16 agreement be a formal one, that it be in writing, that
17 the person hold a meeting and expressly state the terms
18 of the common plan, or that the agreement be stated in
19 words between them. The agreement of a criminal
20 conspiracy may come into being through an implied
21 mutual understanding. The willful, intentional and
22 knowing adoption by two or more persons of a common
23 plan is sufficient. No overt acts need to be shown to
24 establish a conspiracy. A conspiracy may be shown by
25 circumstantial evidence and the conduct of the parties.

1 In order to convict the defendant of a
2 conspiracy, the State must prove beyond a reasonable
3 doubt, not only that the defendants knew of the
4 unlawful conduct, but that the defendant agreed to
5 combine with the other persons for the purpose of
6 accomplishing the unlawful conduct.

7 All right. Ladies and gentlemen, I am drawing
8 near the end of my charge, and I want you to clearly
9 understand that you are not partisans or advocates for
10 the State of South Carolina or for the defendant. It
11 is your duty, by your joint deliberations, to determine
12 the truth in this case, giving to the defendant the
13 benefit of every reasonable doubt on each and every
14 issue, then to the facts which you determine to be
15 true, you should take and apply the law which has been
16 given to you by this court, and thus arrive at a
17 verdict which speaks the truth in this case.

18 In fact, the word "verdict", which has a Latin
19 derivative means a true saying. Thus when you have
20 accomplished these responsibilities, you will have
21 satisfied your oath as jurors, and you will have
22 discharged your duty to this court.

23 Once you retire to the jury room, the bailiff
24 will give the verdict form to the foreman. When you,
25 the jury, arrive at a verdict as to the offense charged

1 in this case, the foreman will select the verdict as to
2 the charge on the verdict form -- as to each of these
3 charges.

4 If the State has failed to prove the guilt of
5 the defendant beyond a reasonable doubt, your verdict
6 will be not guilty. Likewise, if the State has proved
7 the guilt of the defendant beyond a reasonable doubt,
8 your verdict will be guilty.

9 Once a decision has been made, the foreman will
10 check whichever choice of the verdict of the jury as to
11 the charge. The verdict that you render in this case,
12 ladies and gentlemen, must be the verdict of each and
13 every juror. It must be your unanimous verdict. All
14 12 of you must agree on the verdict which you authorize
15 the foreman to write for the jury.

16 I want you to further understand, ladies and
17 gentlemen, that the order in which the choices of the
18 verdict appear on the verdict form are not suggestive
19 of any verdict on the part of this court. The verdict
20 in this case is to be determined by you, the jury, not
21 the court.

22 Furthermore, please understand that even though
23 the verdict form will be given to the foreman, it is
24 not his verdict alone. It is the verdict of all 12 of
25 you. And I emphasis again that it must be unanimous.

1 Now, before I ask you to retire to the jury
2 room, I'm going to appoint this gentleman in the yellow
3 shirt as your foreman, ladies and gentlemen. Tell me
4 your name, please, sir.

5 JUROR: James Williams.

6 THE COURT: All right. Let me get your juror
7 number --

8 JUROR: Two thirty-three.

9 THE COURT: Juror number 233 will be foreman of
10 this jury. All right. I'm going to ask you, ladies
11 and gentlemen, Mr. Foreman, if you all will retire to
12 the jury room, but do not -- do not begin your
13 deliberations until you're instructed to do so. The
14 law requires that I consult with the attorneys to make
15 sure that I have not left anything out of these
16 instructions.

17 After I check with the attorneys, the bailiff
18 will bring in the verdict form, along with the items of
19 evidence and instruct you to begin your deliberations.
20 During your deliberations should you have any
21 questions, it will be your responsibility, Mr. Foreman,
22 to reduce such questions to writing, and knock on the
23 door. Let the bailiff know that you have a question.
24 Give it to him. And I will make a decision as to how
25 it needs -- how I need to respond to it. Okay.

1 Once you all have reached a verdict, and you
2 have completely filled out the verdict form, signed,
3 and dated such, if you will knock on the door. Let the
4 bailiff know that you have reached a verdict, we will
5 get you back into the courtroom as quickly as possible.

6 You all now may retire to the jury room. But
7 again, do not -- do not begin your deliberations until
8 you are instructed to do so.

9 (Whereupon, the jury left the courtroom at 3:07
10 p.m.)

11 THE COURT: All right. The lawyers -- well,
12 before the lawyers come up, I know that Mr. Abdalla
13 wanted to put something on the record.

14 MR. ABDALLA: Oh, yes, Your Honor. I wanted to
15 just raise that objection about the Solicitor
16 indicating -- I thought he was bringing something in
17 evidence that wasn't in evidence, saying that my client
18 was throwing his son under the bus or words to that
19 effect by saying that he wanted -- I can't remember the
20 words, one was throwing him under the bus. I don't
21 remember the words, but putting his son there.

22 And there was nothing ever in the record -- my
23 client never said that to my knowledge, that was --
24 those were all the words of witnesses -- well, the one
25 witness.

1 THE COURT: All right.

2 MR. ABDALLA: And he was just maintaining his
3 innocence, not actively trying to get his son
4 convicted.

5 THE COURT: Mr. Holloway.

6 MR. HOLLOWAY: Your Honor, I simply stated --

7 MR. ABDALLA: Oh, I'm sorry. I apologize. And I
8 would ask for a mistrial for the record.

9 MR. HOLLOWAY: Your Honor, I simply stated with
10 all due respect to Mr. Abdalla, his client, Mr. Bayne,
11 I think it was a reasonable implication drawn from the
12 evidence at hand. There's -- during Mr. Abdalla's
13 cross examination, he brought up the possibility of Mr.
14 Bayne's son as being the co-perpetrator of this crime,
15 he was the only other person mentioned throughout the
16 entire trial that may have -- that was -- that any
17 point of -- a suspect of interest or a person of
18 interest, as it related to law enforcement, as it
19 relates to these two incidents for which we're here
20 today. So I thought it was just a natural -- I thought
21 it was a natural inference to -- to extend that during
22 closing argument.

23 THE COURT: All right. The objections are so
24 noted for the record. However, I'm going to deny the
25 Defendant's motion for a mistrial.

1 MR. ABDALLA: May I add?

2 THE COURT: Sir?

3 MR. ABDALLA: May I just add something to the
4 record? I'm not looking to change the court's mind,
5 but just add to the record that -- I don't remember the
6 exact words I used, but when he said with logical
7 inference, of course, we don't see it that way. We
8 think it was quite a stretch to go from questioning a
9 witness about who had been identified by a victim, and
10 saying my client -- to me it sounded like my client was
11 actively trying to convict his son, when he is not the
12 one that raised that issue ever.

13 THE COURT: So noted for the record.

14 MR. ABDALLA: Thank you.

15 THE COURT: Would you all come up here and make
16 items of evidence, and make sure they have all of the
17 items of evidence. I'm not -- I'm going to send a copy
18 of my charge back.

19 (Pause. Attorneys reviewing evidence.)

20 THE COURT: Any other exception or objection to
21 the charge by the State?

22 MR. HOLLOWAY: Nothing from the State, Your Honor.

23 THE COURT: Defense counsel?

24 MR. ABDALLA: No, Your Honor.

25 THE COURT: All right.

1 (Whereupon, the jury began deliberations at 3:19
2 p.m.)

3 (After a recess, court reconvened at 4:18 p.m.)

4 (Whereupon, court reconvened.)

5 THE COURT: All right. I've got the note out from
6 the foreman, Mr. Williams. The note reads as follows:
7 "Explain the law of hand of one, hand of all". It is
8 signed and dated by Mr. Williams. I'll have this
9 marked as Court's Exhibit No. 2.

10 (Court's Exhibit No 2 marked.)

11 THE COURT: Bring the jury back out and I'll
12 charge them on that particular premise. Any objection
13 by the State?

14 MR. HOLLOWAY: No objection, Your Honor.

15 THE COURT: Defense counsel?

16 MR. ABDALLA: No objection, Your Honor.

17 THE COURT: All right. If you'll bring the jury
18 please.

19 (Whereupon, the jury entered the courtroom at
20 4:20 p.m.)

21 THE COURT: All the jurors are present. Mr.
22 Foreman, ladies and gentlemen of the jury, I received
23 your note inquiring -- or stating, "Explain the law the
24 hand of one, the hand of all". So what I'm going to do
25 is I'm going to recharge you on that premise of the

1 law.

2 Under the hand of one, hand of all, if a crime
3 is committed by two or more people who were acting
4 together in committing a crime, the act of one is the
5 act of all. A person who joins with another to commit
6 an unlawful act is criminally responsible for
7 everything done by the other person, which happens as a
8 probably or natural consequence of the acts done in
9 carrying out the common plan and purpose.

10 For example, two people can be guilty of killing
11 another person when only one of the two had a gun.
12 There was only one bullet and only one of the two fired
13 the shot that caused the death. If two or more people
14 are together, acting together, assisting each other in
15 committing the offense, the act of one is the act of
16 all; or as it is sometimes said, the hand of one is the
17 hand of all.

18 Prior knowledge that a crime is going to be
19 committed without more is not sufficient to make a
20 person guilty of that crime. Mere knowledge that
21 another person is going to commit a crime, even if the
22 defendant is present when the crime is committed, is
23 not sufficient to convict the defendant as a principal.

24 Guilt as a principal is shown by actual or
25 constructive presence at the scene as a result of prior

1 arrangement. Therefore, a finding of a prior arranged
2 plan or common scheme is necessary for a finding of
3 guilt as a principal. The State must prove beyond a
4 reasonable doubt by competent evidence, the theory of
5 the hand of one is the hand of all.

6 A principal in a crime is one who either
7 actually commits the crime or who was present, aiding,
8 abetting, or assisting in committing the crime. When a
9 person does an act in the presence of and with the
10 assistance of another, the act is done by both.

11 Where two or more acting with a common plan or
12 intent are present at the commission of a crime, it
13 does not matter who actually commits the crime. All
14 are guilty. The hand of one is the hand of all.

15 Present at the commission of a crime means to be
16 sufficiently near to aid and abet and assist in the
17 commission of a crime. However, mere presence at the
18 scene of a crime is not sufficient to convict one as a
19 principal on the theory of aiding and abetting. Intent
20 is also a necessary element, but there must have been a
21 common design or intent to commit the crime, and the
22 crime must have been committed pursuant thereto with a
23 person aiding and abetting by some overact.

24 Intent means intending to result which actually
25 occurs, not accidentally or involuntary. Intent may be

1 shown by acts and conduct of a defendant, and other
2 circumstances from which you may naturally and
3 reasonably infer intent. The State must prove these
4 elements beyond a reasonable doubt.

5 All right. Mr. Foreman, ladies and gentlemen of
6 the jury, I'm going to ask you to return to the jury
7 room after having charged you on the hand of one, hand
8 of all, and ask that you continue your deliberations.

9 (Whereupon, the jury left the courtroom at 4:23
10 p.m.)

11 THE COURT: All right. Anything from the State,
12 Your Honor?

13 MR. HOLLOWAY: Nothing, Your Honor.

14 THE COURT: Defense counsel?

15 MR. ABDALLA: No, Your Honor.

16 THE COURT: All right. We'll stand down.

17 (Whereupon, the court was in recess.)

18 (Whereupon, court reconvened.)

19 THE COURT: All right. We've got another note out
20 from the jury that I'll mark as Court's Exhibit No. 3.
21 The question is, "If we can't come to a verdict on a
22 charge, what do we do?" That's it. I'm not sure if --
23 I guess the option on that is to give them an Allen
24 charge on that particular charge.

25 MR. ABDALLA: I would prefer leaving that one

1 alone and just hearing the verdict on the other,
2 because it may be a moot point there are so many
3 charges.

4 THE COURT: I mean, I still think that they're
5 entitled to an answer. I don't -- the law requires --
6 I think the law requires and --

7 MR. ABDALLA: Okay, well, then -- I'm sorry.

8 THE COURT: What?

9 MR. ABDALLA: I always object to an Allen charge.
10 And I know there's a lot of case law both ways on that,
11 but I'd -- there just -- either do a mistrial on that
12 charge -- do we know if it's just one charge?

13 THE COURT: See, it -- it doesn't specify. And, I
14 mean, I can certainly bring them out here and say --
15 the question is not clear as to whether or not it is
16 one charge or more than one charge. Without telling
17 me, one, what charges you're having difficulty coming
18 to an unanimous verdict on. And, two, without telling
19 me what the count is on what, you know, whether it is
20 six or seven or five --

21 MR. ABDALLA: Well, actually, with the pertinent
22 information minimal just be -- how many charges are
23 there that you have -- is it one charge or more than
24 one?

25 THE COURT: I mean, that's kind of -- I mean, the

1 way you read the note is -- is it's one charge.

2 MR. ABDALLA: Okay.

3 THE COURT: I mean, that's the way the note is
4 read. Because it says "if we can't come to a verdict
5 on a charge, what do we do"?

6 MR. HOLLOWAY: Your Honor, the State will
7 certainly defer to the wise discretion of the court. I
8 don't see any reason to why we would declare a mistrial
9 as to one charge. I think we -- if you would like to
10 give an Allen charge, I'm completely fine with that.
11 I'll defer to the court.

12 But, I mean, I don't see why we wouldn't -- if
13 it -- if it is truly one charge, give them an Allen
14 charge on the charge as to that charge, and say you
15 have to reach a verdict. And if you absolutely can't,
16 then...

17 MR. ABDALLA: I want to make sure the court
18 understood I didn't expect a directed verdict on the
19 entirety, just that one charge.

20 (Pause).

21 THE COURT: Well, if they can't -- you know, if
22 they can't reach a verdict on a charge, the court's
23 responsibility -- not necessarily now, but it could be
24 later, and that is to declare a mistrial as to that
25 charge. Okay.

1 What I am going to do is, I'm going to bring
2 them out, and do an Allen charge. And it tells them in
3 there, if you can't reach a verdict, then I'm going to
4 just say whether it is as to one charge, the way I read
5 your note, or more than one charge -- and then the
6 court will have to declare a mistrial as to that charge
7 or as to those charges.

8 MR. ABDALLA: Okay.

9 THE COURT: And go from there. Okay. If you'll
10 bring me the jury, please, sir. And I don't think it's
11 important for us to know really whether it's one or a
12 multitude.

13 MR. ABDALLA: I agree.

14 THE COURT: If you can't --

15 MR. ABDALLA: No, I agree. I wasn't intending to
16 sound unreasonable, Judge. I figured with all of the
17 time that's there on the other charges, I thought
18 what's the difference if it's one charge.

19 THE COURT: Listen. You're just doing your job.
20 I understand. That's what you're supposed to do.

21 (Whereupon, the jury entered the courtroom at
22 5:34 p.m.)

23 (Court's Exhibit No. 3 marked.)

24 THE COURT: All the jurors are present. Mr.
25 Forman, I have received and reviewed the note, and the

1 question that you sent out. It's been marked as a
2 Court's Exhibit. It reads as follows: "If we can't
3 come to a verdict on a charge, what do we do?" I am
4 going to read a charge to you. And the way I read your
5 note, is -- inquiring as to one charge -- don't respond
6 by virtue of -- in any way, shape, or form. Listen to
7 me. Okay? Whether you are able to reach a verdict as
8 to -- whether you are unable to reach a verdict as to
9 one or many, I want you to listen to this charge.

10 Okay?

11 You've indicated that you have been unable to
12 agree on a verdict in this case. And as it pertains to
13 this note, it says as to a -- "a" charge. As I
14 instructed you earlier, ladies and gentlemen, the
15 verdict of the jury -- the verdict of the jury must be
16 unanimous.

17 And in this particular case, there are eight
18 different counts. Your verdict must be unanimous as to
19 each count. When a manner -- when a matter -- any
20 matter is in dispute, it isn't always easy for even two
21 people to agree. So when 12 people must agree, it
22 becomes even more difficult. In most cases, absolute
23 certainly cannot be reached or expected.

24 However, you have a duty to make every
25 reasonable effort to reach a unanimous verdict as to

1 each count. In doing this, you should consult with one
2 another, express your own views, and listen to the
3 opinions of your fellow jurors. Tell each other how
4 you feel and why you feel that way.

5 Discuss your differences with open minds.
6 Although the verdict of the jury as to each of these
7 charges must be unanimous, every one of you has the
8 right to your own opinion.

9 The verdict that you agree on must be your own
10 verdict, the result of your own convictions, and you
11 should not give up your firmly held beliefs merely to
12 be in agreement with your fellow jurors.

13 The majority should consider the minority's
14 position. And the minority should consider the
15 majority's position. You should carefully consider and
16 respect the opinions of each other, and reevaluate --
17 reevaluate your position for reasonableness.

18 If you do not agree on a verdict in this case,
19 as to a charge, or as to more than one charge, the
20 court would have to declare a mistrial as to those
21 charges -- as to that charge or those charges.

22 In that case, it does not mean that anyone wins.
23 It means that at some future time, that me or some
24 other judge will try this case with some jury -- some
25 other jury sitting where you now sit. The same

1 participants will come and the same lawyers will ask
2 basically the same questions and get basically the same
3 answers, and we will go through the whole process
4 again.

5 You were selected, ladies and gentlemen, in the
6 same manner and from the same source as any future jury
7 will be. And there is no reason for me to suppose the
8 case will ever be submitted to 12 more intelligent,
9 impartial, conscientious, and competent jurors than
10 you, or that more or clearer evidence will be produced
11 on one side or the other.

12 I, therefore, ask that you return to your
13 deliberations at this time.

14 (Whereupon, the jury left the courtroom at 5:39
15 p.m.)

16 THE COURT: All right. Any exception or objection
17 to anything that I have said to the jury by the State?

18 MR. HOLLOWAY: Nothing from the State, Your Honor.

19 THE COURT: Defense counsel?

20 MR. ABDALLA: Other than the fact that I object to
21 an Allen charge, no.

22 THE COURT: It's so noted for the record over your
23 objection. Stand down.

24 (Whereupon, the court was in recess.)

25 (Whereupon, the court reconvened.)

1 THE COURT: This will be Court's Exhibit No. 4.
2 We're on the record. I've got another note from the
3 jury, it will be Court's Exhibit No. 4. It says "We're
4 still having issues with hand over hand", which I'm
5 assuming -- it may be an incorrect assumption -- hand
6 of one, hand of all.

7 MR. ABDALLA: Right.

8 THE COURT: All right.

9 MR. HOLLOWAY: Your Honor, at this point, would
10 the court consider possibly them giving the -- you
11 know, in writing the -- the instruction on hand of one,
12 hand of all?

13 MR. ABDALLA: I reached the opposite conclusion.
14 I was going to ask you to declare a mistrial. You've
15 already given them an Allen charge.

16 THE COURT: Well, they didn't say they couldn't
17 reach a verdict. That's not what they've said. That's
18 not what that note said.

19 MR. ABDALLA: Oh.

20 THE COURT: They're having difficulty with that
21 law.

22 MR. ABDALLA: Oh, it's the law. I just thought
23 they meant they are having difficulty with --

24 THE COURT: This is what I'm going to do. I'm not
25 going to give them a copy of this -- just that portion

1 of the charge, what I'm going to do is what I proposed
2 to begin with. This is one of the reasons that I
3 started -- in the federal system, I don't know how much
4 federal law you've done.

5 MR. ABDALLA: I've done some, yes.

6 THE COURT: Sir?

7 MR. ABDALLA: I have done some, yes.

8 THE COURT: They give the entire jury charge to
9 the jury in the federal system. When I first got on
10 the bench when I didn't send it, every time it was a
11 situation just like we have here. I would have to
12 bring them back out and recharge them on the portion of
13 the law, so I started sending the charge back in its
14 entirety.

15 And I tell them -- and I will tell the jury that
16 you may refer to the instructions to guide your
17 decision making. However, you must not consider some
18 -- you must not -- you must consider the instructions
19 as a whole -- as a whole, and not follow some and
20 ignore others. Period. My law clerk has given me a
21 clean copy of this jury charge without that -- that
22 portion was in my initial jury charge, and I struck it.
23 Any exception or objection to what I have proposed by
24 the State?

25 MR. HOLLOWAY: Nothing from the State, Your Honor.

1 THE COURT: Defense counsel?

2 MR. ABDALLA: I have nothing.

3 THE COURT: Okay.

4 (Pause.)

5 THE COURT: I'm going to tell the attorneys, I'm
6 considering sending the jury home for the night.

7 MR. ABDALLA: That sounds good to me.

8 THE COURT: And coming back in the morning. And
9 at that point, give them a copy of the charge.

10 MR. ABDALLA: Thank you.

11 THE COURT: What does the State say on that?

12 MR. HOLLOWAY: Your Honor, the State will defer to
13 you. We don't take any position.

14 THE COURT: Is that fine with you?

15 MR. ABDALLA: It's totally good with me.

16 THE COURT: The Clerk's office, Madam Court
17 Reporter -- all right -- bring me the jury.

18 (Whereupon, the jury entered the courtroom at
19 6:31 p.m.)

20 THE COURT: All right. All my jurors are present.
21 Mr. Foreman, ladies and gentlemen of the jury, I
22 received your note -- the most recent note concerning
23 the issues you wrote on here, with the hand over hand.
24 What I am going to do, after consulting with the
25 attorneys, I am going to release you all for the

1 balance of this evening. All right. I'm going to
2 release you for the balance of this evening.

3 During your overnight, don't discuss the case
4 with anyone. Don't discuss the case with anyone.
5 Don't do any independent investigation on your own. I
6 ask that you be back here tomorrow morning at 9:30.

7 At 9:30, be back here, and I'm going to respond
8 to the question that you all asked. And I'm going to
9 instruct you at that time to continue your
10 deliberations.

11 As you come in the morning -- okay -- as you
12 come in in the morning, do not deliberate until I've
13 instructed you to do so. Okay. Do not deliberate
14 until I have instructed you to do so. All right.

15 You all have a good evening, and I will see you
16 tomorrow morning at 9:30.

17 (Court's Exhibit No. 4 marked.)

18 THE COURT: All right. Anything further from the
19 State at this time?

20 MR. HOLLOWAY: Nothing further, Your Honor.

21 THE COURT: Defense counsel?

22 MR. ABDALLA: No, Your Honor.

23 THE COURT: All right. If you all will be here at
24 9:15. The court will be here at 9:15.

25 (Whereupon, the jury left the courtroom at 6:33

1 p.m.)

2 (Whereupon, the hearing adjourned.)

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1 * * * APRIL 8, 2016 * * *

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3 THE COURT: I've already gotten a note out from
4 the jury asking for what I'm going to do, is give them
5 a copy of this. They didn't ask for the entire charge,
6 they just asked for hand of hand law. They want a copy
7 of the hand of one law.

8 MR. HOLLOWAY: Not the hand over hand.

9 THE COURT: Court's Exhibit 5 I believe.

10 (Court's Exhibit No. 5 marked.)

11 (Whereupon, the jury entered the courtroom at
12 9:26 a.m.)

13 THE COURT: Good morning, Mr. Foreman, ladies and
14 gentlemen of the jury. I hope you all had a nice
15 evening last night. Bear with me just a minute, I'm
16 sorry.

17 All right. What I am going to do this morning,
18 Mr. Foreman, ladies and gentlemen of the jury, I am
19 going to give you all a copy of my jury charge in its
20 entirety -- in its entirety. And I am going to tell
21 you this, okay.

22 During your deliberations, you may refer to
23 these instructions to guide your decision making.
24 However, you must consider the instructions as a whole
25 and not follow some and ignore others. Please, Mr.

1 Foreman, at the conclusion of your deliberations,
2 return this copy of this jury charge to the bailiff so
3 he can give it back to me at the conclusion of your
4 deliberations.

5 At this time, I'm going to give this to my
6 bailiff to give to you all, and instruct you all to
7 continue your deliberations.

8 (Whereupon, the jury left the courtroom at 9:28
9 a.m.)

10 THE COURT: Any exception or objection to anything
11 I said to the jury by the State?

12 MR. HOLLOWAY: Nothing from the State, Your Honor.

13 THE COURT: The defense counsel?

14 MR. ABDALLA: No, Your Honor.

15 (Whereupon, the court was in recess.)

16 (Whereupon, the court reconvened.)

17 THE COURT: I've received another note from the
18 jury. They want a -- it says, "Can we get a new copy
19 of the verdict form? We need to change our verdict on
20 some of the charges." I'm going to give them a clean
21 copy of the verdict form. Any objection?

22 MR. HOLLOWAY: No objection, Your Honor.

23 MR. ABDALLA: None from defense.

24 THE COURT: Mark that as Court's Exhibit 6. We'll
25 stand at recess.

1 (Court's Exhibit No. 6 marked.)

2 (Whereupon, the court was in recess.)

3 (Whereupon, the court reconvened.)

4 THE COURT: All right. It's my understanding that
5 the jury has reached a verdict. I want to remind
6 everyone in the courtroom no matter what the verdict
7 is, to keep your emotions in check. Failure to do so
8 will result in you being held in contempt of court by
9 virtue of a fine and/or incarceration.

10 Anything from the State before I bring the jury
11 back in?

12 MR. HOLLOWAY: Nothing, Your Honor.

13 THE COURT: Defense counsel?

14 MR. ABDALLA: No, Your Honor.

15 THE COURT: Bring me the jury please.

16 (Whereupon, the jury entered the courtroom at
17 10:30 a.m.)

18 THE COURT: All right. All the jurors are in the
19 courtroom. Mr. Foreman, ladies and gentlemen of the
20 jury, have you all reached an unanimous verdict as to
21 each of the charges in this matter?

22 JUROR: Yes, Your Honor.

23 THE COURT: Madam Clerk, if you'll retrieve the
24 verdict for me, please.

25 (Pause.)

1 THE COURT: Okay. Madam Clerk, you may publish
2 the verdict.

3 THE CLERK: Your Honor, in the case of the State
4 of South Carolina vs. Mark Anthony Bayne, indictments
5 2014-GS-23-11897-11898-11899-11990-11901-11902.

6 One. Question one: "As to the charge of armed
7 robbery of Aaron Joseph Shunk, we, the jury unanimously
8 find the defendant, Mark Anthony Bayne, not guilty."

9 Number two: "As to the charge of armed robbery
10 of David Ennis, we, the jury, unanimously find the
11 defendant, Mark Anthony Bayne, guilty."

12 Number three: "As to the charge of possession
13 of a weapon during a violent crime as it pertains to
14 Aaron Joseph Shunk, we, the jury, unanimously find the
15 defendant, Mark Anthony Bayne, not guilty."

16 Number four: "As to the charge of possession of
17 a weapon during a violent as it pertains to David
18 Ennis, we, the jury, unanimously find the defendant,
19 Mark Anthony Bayne, guilty."

20 Number five: "As to the charge of conspiracy to
21 commit armed robbery as to David Ennis, we, the jury
22 unanimously find the defendant, Mark Anthony Bayne, not
23 guilty."

24 Number six: "As to the charge of conspiracy to
25 commit armed robbery and/or carjacking and/or

1 kidnapping as to Aaron Joseph Shunk, we, the jury,
2 unanimously find the defendant, Mark Anthony Bayne, not
3 guilty."

4 Number seven: "As to the charge of kidnapping,
5 we, the jury, unanimously find the defendant, Mark
6 Anthony Bayne, guilty."

7 Number eight: "As to the charge of carjacking,
8 we, the jury, unanimously find the defendant, Mark
9 Anthony Bayne, guilty. This is signed by James
10 Williams, our foreperson."

11 Ladies and gentlemen, if you agree these are the
12 verdicts you reached in your deliberations, would you
13 please your right hand?

14 (Jury complied.)

15 THE CLERK: Thank you.

16 THE COURT: All right. Anything from the defense
17 counsel at this time?

18 MR. ABDALLA: No, Your Honor.

19 THE COURT: Anything from the State at this time?

20 MR. HOLLOWAY: No, Your Honor.

21 THE COURT: All right. Ladies and gentlemen of
22 the jury, you all have fulfilled your obligations and
23 responsibilities as jurors this week. I want to thank
24 you for your service this week. I know that jury
25 service never, ever comes at a convenient time. It is

1 the only real remaining service that we have in this
2 country as citizens.

3 I hope you realize how important your service
4 is, not only to this county, but to this state and to
5 this country.

6 Now, when I -- you leave here today, as I've
7 told you throughout the week -- or throughout the trial
8 of this case, not to discuss the case -- I've told you
9 throughout. When you leave here today, you are free to
10 discuss the case if you so desire -- if you so desire.
11 No one -- and I repeat no one can make you talk about
12 the case unless you so desire. If anyone approaches
13 you or tries to talk to you about the case, and you
14 tell them that you do not want to talk about it, and
15 they will not leave you alone, you let the court know
16 and I promise you it will be handled.

17 Now, it's my understanding when you leave here,
18 a check will be mailed to you for your service this
19 week as well as a -- it will include a work excuse, is
20 that right?

21 THE CLERK: Yes. But they also have another one
22 that they received this morning. The work excuse.

23 THE COURT: All right. The check that you receive
24 in the mail for your service -- I tell jurors this all
25 the time, don't go lay any large ticket items aside

1 thinking you're going to be able to buy anything of any
2 value. The truth of the matter is you can't be
3 compensated for what your service is actually worth.
4 If the states tried to do that, we would be in more
5 financial problems.

6 Again, I want to thank you for your service.
7 You all have fulfilled your obligation. The next step
8 in this process will be sentencing. You are free to
9 stay for sentencing, if you so desire.

10 However, if you are ready to leave, you may
11 leave at this time. Thank you again for your service.
12 Does the State have sentencing sheets?

13 MR. HOLLOWAY: Yes, sir, Your Honor. (Pause.)
14 Judge, can I compare them with the indictments to make
15 sure we have appropriate sentencing sheets?

16 THE COURT: Compare them with the verdict form?

17 MR. HOLLOWAY: Yes, sir.

18 THE COURT: And the indictments?

19 MR. HOLLOWAY: Yes, sir. Because they cover
20 different names. I just want to make sure I get the
21 right ones.

22 (Pause.)

23 THE COURT: While he's doing -- while the State is
24 doing that, I want to -- ladies and gentlemen of the
25 jury, just address a few things with you all that you

1 may have questions about. I don't know if any of you
2 all have previously served on jury duty before, but I
3 just wanted to tell you a couple of things that you may
4 have some questions about.

5 I don't know if any of you have previously
6 served on jury duty before, but I just wanted to tell a
7 couple of things that you may have some questions
8 about. During the course of the trial, you noticed
9 that witnesses would come from outside in, rather than
10 all of the witnesses sitting in the courtroom. We --
11 the witnesses were sequestered prior to the trial,
12 which means they -- they don't sit in the courtroom
13 where they hear other witness' testimony. It's done
14 for the purpose of so -- everyone who comes in, it will
15 be their own testimony.

16 Mr. Smith, who was the alternate juror, who sat
17 with you all in the jury box throughout the trial of
18 this case, until you all were sent back to deliberate,
19 our laws do not allow -- I typically ask this question,
20 but I didn't yesterday -- but I typically ask the
21 question before I send the jury out to deliberate, if
22 everyone feels okay.

23 Our rules do not allow -- once a case goes to
24 the jury, our laws do not allow him to remain in there
25 with the 12 jurors in this case. Ultimately, in

1 selected situations to where an emergency occurs, both
2 -- if you all had any type of emergency during the
3 trial of this case, had an emergency where you could
4 not return, he would have been put in and he would have
5 served and deliberated and made a decision.

6 At one point during the trial, a couple of young
7 girls came into the courtroom, and I think were asked
8 to leave, those were potential witnesses that didn't
9 know at the time when they came in -- I am to guard
10 about that to make sure that witnesses are sequestered,
11 and didn't see any testimony of other witnesses. So I
12 just wanted to hit on those couple of things with you
13 all, if you have any questions about that.

14 (Pause.)

15 THE COURT: All right. The State -- anything from
16 the State at this time?

17 MR. HOLLOWAY: Nothing from the State, Your Honor.

18 THE COURT: I want to hear, on the record, what
19 the defendant's -- his prior record, and then I'm
20 going to turn it over to you, Mr. Abdalla --

21 MR. ABDALLA: Okay. Thank you, sir.

22 THE COURT: And hear from you. All right.

23 MR. HOLLOWAY: Yes, sir. As to the defendant, Mr.
24 Mark Anthony Bayne Sr., in 1994 he was convicted of
25 driving under suspension, and he was guilty -- and he

1 was convicted of driving under the influence.

2 In 1995, he was convicted of simple possession
3 of marijuana. In 1998, he convicted of three counts of
4 armed robbery.

5 In 2012, he was convicted of receiving stolen
6 goods between \$2,000 and \$10,000. In 2013, he was
7 convicted of possession of a stolen vehicle between
8 \$2,000 and \$10,000. And in 2014, Your Honor, he was
9 convicted of giving false information to law
10 enforcement.

11 THE COURT: In the 1998 convictions on three
12 counts of armed robbery, how much was he sentenced to?

13 MR. HOLLOWAY: Your Honor, he was sentenced to 15
14 and a half years. It appears that he was released to
15 probation in August of 2011, and he was originally
16 admitted into Perry Correctional Institution in June of
17 1998 on those charges.

18 THE COURT: All right. Anything further from the
19 State?

20 MR. HOLLOWAY: Nothing further from the State at
21 this time, Your Honor.

22 THE COURT: All right. Mr. Abdalla.

23 MR. ABDALLA: Yes, Your Honor.

24 THE COURT: I'll be happy to hear from you.

25 MR. ABDALLA: Thank you. You know my client

1 record. I can't change that, Your Honor. My client's
2 is going to be 46 years old next month. His wife and
3 daughter are present in the courtroom. His son is out
4 in the lobby with her -- with his daughter's son.

5 The jury has spoken and he has been convicted of
6 numerous charges. The co-defendants were either -- had
7 the charges dismissed or the one was given a deal for
8 five years. What I would ask the court to consider is
9 the minimum sentence on the robbery, and run concurrent
10 after that, Your Honor. That's about all I can hope
11 for. And -- because I realize he's looking at a lot of
12 time.

13 One of the ironies is -- I would hope you would
14 take that into consideration -- is he was convicted of
15 the armed robbery of Mr. Ennis, who didn't care to
16 stay, who left the court and a bench warrant was
17 issued. And I've never had a victim not appear for a
18 trial and I've done a lot of trials before. So my
19 position on that always was, if he didn't care to
20 testify, if he was really harmed -- I mean, I
21 understand why the courts care, and that's my legal
22 position, Judge. And I ask for that consideration on
23 the sentencing.

24 And Mr. Shunk, as you know, didn't identify my
25 client at all. My understanding is he didn't know who

1 he is still, but I can't present that as evidence,
2 Judge. I'm not going to make up something to the court
3 that I don't know for sure.

4 THE COURT: Thank you.

5 MR. ABDALLA: Thanks, Judge.

6 THE COURT: Mr. Bayne, anything you wish to tell
7 me, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Stand please.

10 THE DEFENDANT: I would like to apologize to this
11 court for anything that I had any involvement in, in
12 this crime. I'm not --

13 (Pause.)

14 MR. ABDALLA: I just instructed him not to say too
15 much because of the fact that there's so many issues --
16 I don't want you to hold that against him.

17 THE COURT: Well, I don't want him to say anything
18 to affect his appellate issues.

19 THE DEFENDANT: I would like to apologize to this
20 court.

21 THE COURT: Mr. Abdalla, does anyone from his
22 family wish to say anything?

23 MR. ABDALLA: I don't think they're able to,
24 Judge.

25 MS. GILBERT: I lost my dad when I was little --

1 THE COURT: Tell me your name for the record,
2 please.

3 MS. GILBERT: My name is Jessica Gilbert.

4 THE COURT: Yes, ma'am.

5 MS. GILBERT: I'm his daughter. (pause/crying) I
6 lost my dad when I was little to -- to stuff that he
7 did before, that he admitted. And then now I'm having
8 to put my kids to bed crying for him at night just like
9 I did when I was little. And I don't want to see them
10 have to visit him behind bars their whole childhood.

11 I do want him to be able to come out and spend
12 time with them because they're little. I just had a
13 baby. I pray to God, he was three pounds three ounces
14 at birth. And he's only nine pounds, two point five
15 ounces now. He's out there in the waiting room that he
16 got to see today and got to enjoy for a few minutes.
17 But I just would really like for him to be able to come
18 on home and be with us and... that's it.

19 THE COURT: How long has he been in jail, Mr.
20 Abdalla?

21 MR. ABDALLA: I think it was about 19 or 20
22 months, something like that.

23 THE COURT: Can you --

24 MR. ABDALLA: Since the end of October.

25 MS. GILBERT: Since October.

1 MR. HOLLOWAY: I'm sorry. Since October the 26th
2 of 1998 --

3 MR. ABDALLA: 2000 --

4 MR. HOLLOWAY: Or 2014. I'm sorry. I have '98 in
5 my head.

6 THE COURT: Any idea how much time that is?

7 MR. HOLLOWAY: It's been four months, 120. We'll
8 give the credit for 24 days. Today is the 8th, so
9 we'll say it's 132 days plus 365. That's going to put
10 us at roughly 500 days, Your Honor, just to...

11 (Pause.)

12 THE COURT: All right. Anything further from the
13 State?

14 MR. HOLLOWAY: Nothing further as to sentencing,
15 Your Honor. I believe that's at the wise decision of
16 the court, and that is your providence.

17 THE COURT: Defense counsel, anything further?

18 MR. ABDALLA: No, Your Honor.

19 THE COURT: All right. On indictment
20 2014-GS-23-11902, as it relates to possession of a
21 weapon during the commission of a violent crime, the
22 defendant is hereby sentenced to the Department of
23 Corrections for a period of five years. I'll give him
24 credit for 531 days.

25 On 2014-GS-23-11898, carjacking, the defendant

1 is hereby committed to the Department of Corrections
2 for a period of ten years. I'll give him credit for
3 531 days.

4 On indictment 2014-GS-23-11899, kidnapping, as
5 it relates to kidnapping, the defendant is hereby
6 committed to the State Department of Corrections for a
7 period of 20 years.

8 The defendant -- and I'll put on this sentence
9 sheet -- shall not be required to register as a sex
10 offender upon release from the Department of
11 Corrections.

12 2014-GS-23-11902, as it relates to the armed
13 robbery, the defendant is hereby committed to the State
14 Department of Corrections for a period of 20 years.
15 I'll give him credit for 531 days.

16 As to each, put on here that they are to run
17 concurrent. If you will go ahead and take him.

18 All right. I want to say a few things to you
19 before I release you. The sentencing is the hardest
20 part of my job. It's the hardest part of my job. I
21 practiced law, and I did a lot of criminal defense
22 work. And I used to walk out of courtrooms sometimes
23 and say, what in the world was that judge thinking --
24 to myself.

25 And now that I've been in this position, it's

1 hard to know -- you can't explain it until you've been
2 in these shoes. In the years that I did criminal
3 defense work, it's easy for people to say, well, I'd do
4 so and so and I'd so such and such. Until you're
5 walking in these shoes or some of these lawyers' shoes
6 that are in and out of here day and day -- you don't
7 know what you're going to do. It's kind of like if you
8 sit down and watching a football game, and you're an
9 armchair quarterback so-to-speak, I'd thrown it to so
10 and so. You don't know. That's the reason you just
11 don't know.

12 But what you've heard throughout the trial of
13 this case, and what we, as judges, see day in and day
14 out in the courtrooms throughout this country and
15 throughout this State, the prosecutor see or the
16 defense lawyers see is the results of what drugs and
17 alcohol will do to our society.

18 Ninety-five plus percent of what ends up in
19 criminal court is because of drugs and alcohol. It
20 just is. I've often said this, and especially as it
21 relates to alcohol related offenses, you see all these
22 commercials on TV and about how fun everything looks
23 with alcohol or partying and that kind of stuff. In my
24 humble opinion, for what it's worth, those same makers
25 of those alcohol -- those alcoholic liquors, beer,

1 wine, they ought to put advertisements on TV to show
2 these results because that's the reality of it. That's
3 the reality of it.

4 I hope you learned this week, this isn't TV.
5 This isn't TV at all. The general public, those of you
6 who do not have reason to come in and out of the
7 courtroom day in and day out, really until you serve in
8 a capacity such as you've served this week, you really
9 have no idea what really goes on in our courtrooms.

10 I want to thank you for your service -- well,
11 let me say this: With regards to the defendant's prior
12 record, for instance, had he taken the stand some of --
13 some of what you heard on his prior record would have
14 been admissible. For instance, the false information
15 to the police. Certainly, it would have come in as to
16 truthfulness. Okay.

17 Other matters would have been within my
18 discretion on whether or not to let some of these other
19 prior convictions in. I can tell you, had he taken the
20 stand, the three prior convictions for armed robbery,
21 you wouldn't had heard a thing about that. And the
22 reason is the potential prejudice to him, to the
23 defendant by you all hearing. And the concern of you
24 all making a decision in this case based upon the fact
25 that he had three prior armed robberies.

1 As I told you during this trial, every defendant
2 that walks into this courtroom is presumed innocent.
3 He is presumed innocent. And until you, the jury, or
4 some other jury determines otherwise, based upon your
5 deliberations on the evidence that's been presented at
6 trial. Now, that's -- that's the way our system is set
7 up and that's the way it's supposed to be.

8 I sit back here as a judge, and I'm kind of like
9 a referee or an umpire. In a baseball game, a referee,
10 or a football or basketball game, that's kind of what
11 my job is. There's certain rules that we have to go
12 by. It's my job and responsibility to make sure these
13 lawyers are playing by the rules and to ensure that
14 whoever comes in this courtroom, whether it be on the
15 civil side or the criminal side, to make sure they
16 receive a fair trial.

17 If I made a mistake, we have the South Carolina
18 Court of Appeals and the Supreme Court that can correct
19 me. This young lady that is seated in front of me,
20 takes down everything that is said in here, and during
21 the course of this trial, when you're in here and when
22 you're not in here, she's taking down everything that's
23 being said in here. So if I make a mistake, I want it
24 to be clear. I make decisions that impact people's
25 lives. And if I make a mistake, I want to protect it.

1 Okay.

2 I want to thank you again for your service. I
3 hope you all have a good rest of the day, and nice
4 weekend. I hope that if you're summoned to serve
5 again, that you will willingly serve. As I said, it
6 never comes at a convenient time. But I can promise
7 you, if you were in this courtroom or any other
8 courtroom in this country, you would want people such
9 as yourselves serving as juror.

10 You wouldn't want me, or some other judge
11 walking in the courtroom and looking at one of the
12 deputies and saying, go find me the first 12 people you
13 find out there in the street, and let's bring them in
14 to try this case. That's not a system that you want.
15 Our system is not perfect, but I promise you it's the
16 best in the civilized world. It's the best the
17 civilized world.

18 Thank you again for your service. You all are
19 free to go. Have a nice -- nice evening.

20 (Whereupon, the jury was released at 11:03 a.m.)

21 (Whereupon, hearing adjourned.)

22 **END OF TRANSCRIPT**

23

24

25

CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER,
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 GREENVILLE COUNTY, SOUTH CAROLINA
ON THE 6TH, 7TH AND 8TH DAY OF APRIL, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

8.22.16

Sharon D. Jones

SHARON D. JONES,
CERTIFIED COURT REPORTER

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenville County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARK ANTHONY BAYNE,

APPELLANT

APPELLATE CASE NO 2016-000809

FINAL BRIEF OF APPELLANT

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Appellate Defender

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STATEMENT OF ISSUES ON APPEAL**I.**

The *Allen* charge given by the trial court was unconstitutionally coercive where it was improperly directed to the juror or jurors voting not guilty; it impermissibly commented on the facts of the case; and inaccurately told jurors to consider in their deliberations the burden that a second trial would impose on the parties, the trial court, and future jurors.

II.

The trial court erred by refusing to order a mistrial after key State's witness, Nikiki Gardner, testified that Appellant had been previously incarcerated as any relevance this testimony had was substantially outweighed by its unduly prejudicial effect, since it impermissibly informed the jury that Appellant had a prior criminal record, and thereby diluted the presumption of innocence.

STATEMENT OF THE CASE

On September 22, 2015, the Greenville County Grand Jury indicted Appellant, Mark Anthony Bayne, for two counts of armed robbery, two counts of kidnapping, one count of criminal conspiracy, one count of carjacking, and two counts of possession of a weapon during the commission of a violent crime. R. 383 – 388.

On April 6-8, 2015 Appellant proceeded to trial before the Honorable D. Craig Brown and a jury. John Abdalla represented Appellant, and Assistant Solicitor Justin Holloway represented the State.

The jury found Appellant guilty of one count of armed robbery, one count of possession of a weapon during the commission of a violent crime, one count of kidnapping, and carjacking. R. 357, l. 18 – 359, l. 15. The trial court sentenced Appellant to twenty years imprisonment. R. 368, l. 19 – 369, l. 15.

This appeal follows.

STATEMENT OF THE FACTS

Introduction

On October 18, 2016, Vickie Trammell and her daughter Nikki Gardner knocked on the door of Vickie's neighbor Aaron "Rich Boy" Shunk. The women were hoping that Shunk would sell them pain pills. Shunk was alone at his house celebrating his birthday. He was highly intoxicated. R. 84, l. 20 - 97, l. 2.

Shunk told them that he did not have any pain pills, but would buy some for the women if they drove him to his drug dealer. *Id.* Shunk and Vickie Trammell drank several beers and smoked marijuana for an unknown period of time before all three got into Shunk's 2005 gold colored Dodge pickup with Gardner driving. *Id.*

During their drive to the drug dealer's house, Shunk started propositioning Gardner for sex and groping her. Gardner and Vickie began arguing with Shunk over his treatment of Gardner. The argument between the two women and Shunk escalated. Vickie called her son, Donald Trammell, and told him about Shunk's insulting his sister, Gardner. *Id.*

Gardner, who was driving during the altercation, decided that the group would give up on buying drugs and simply head back to Vickie Trammell's residence (hereinafter "Trammell residence"). She decided to drop Shunk off after she dropped off her mother. R.130, l. 20 - 139, l. 23. Donald Trammell was not allowed to live at the Trammell residence at the time of the incident.

As the group stopped in the driveway of the Trammell residence, Donald Trammell, Appellant, Larry Trammell (Donald's father), and Appellant's girlfriend, Corrie Morgan, approached the truck from behind the trailer. *Id.* Trammell, Appellant, and Morgan were surprised to see Vickie Trammell, Gardner, and Shunk.

As he reached the pickup truck, Trammell pulled out a pistol and forced Shunk out of the truck. He ordered his mother and sister inside the Trammell residence. Shunk was hit in the mouth and escorted to the back porch of the residence. *Id.* Appellant drove Shunk's pickup truck around into the backyard. Shunk was unable to describe or identify any of his assailants other than Trammell. Shunk could not identify any of his attackers with the exception of Trammell. R. 55, ll. 1-24.

Five to ten minutes later, a local drug dealer and family friend of the Trammells, David Ennis arrived at the Trammell residence. R. 180, l. 4 - 196, l. 21. Trammell had earlier arranged to buy methamphetamine from Ennis. *Id.* Trammell would testify at trial that he forced Shunk into the back yard and his sister and mother into the trailer because he did not want to startle Ennis and did not want to fight Shunk until he had purchased methamphetamine from Ennis. R. 197, l. 3 - 211, l. 11

Trammell further averred that he had not initially planned to rob Ennis, a man he had known since he was a child. *Id.* Trammell explained to the solicitor:

When [Ennis] arrived, I walked to the -- he pulled in the driveway to the left, in front of the trailer. And I walked up to the car and he rolled his window down. And he left the car running, but it was late that night. And so I told him that -- because my grandpa was there, I told him to turn the car off. And so I leaned on the window seal. And when I did, he reached in the -- the little glove compartment beside him and got his scales and stuff out, and reached -- then he reached under the -- under his seat and pulled a big bag of dope out to start -- because I had called him to bring some dope down to -- or I had called him to bring some dope, and he told me to meet him at my mom's house. . . .

[W]hen he pulled the dope out, it -- it -- he had a large amount of it and it surprised me. It put me in shock. And so at that time, I just reached in and snatched the bag of dope from him.

I had a big hoodie on and I put it in my hoodie. And he looked at me like I was crazy, and wanted to know if I was really -- he

thought I was kidding with him, you know, or playing with him at the time. And, you know, I let me know that I wasn't.

So, um, at that time, I told him -- he -- I told home that I wasn't playing or whatever. So I told him, I said, well, I want your money too. And he said, no, he wasn't giving it to me.

So I actually reached inside the car and struck -- he didn't force me or nothing. And I struck my hand in this --in this side of his pocket, closest to the door, and pulled out a wad of money.

R. 203, l. 1 - 205, l. 5.

This spur of the moment robbery netted Trammell twelve hundred dollars in cash and a substantial amount of methamphetamine. R. 205, ll. 6-25. In an effort to address Appellant's armed robbery charge, the solicitor asked Trammell, if there "was some threat or intimidation" involved in his theft from Ennis. *Id.*

Trammell responded, **"No. Actually I just reached in and snatched it. . . . I wasn't even planning on doing it or anything, you know, because I had the money to buy what I told him to bring. And -- but, when I seen it, I just snatched it from him. . . ."** R. 205, l. 20 - 206, l. 3 (*emphasis added*). At the State's prompting, Trammell claimed that Appellant was rummaging around Ennis' backseat while holding a shotgun as Trammell started walking away from Ennis' car with the stolen methamphetamine, cash, and Ennis' cell phone. R. 207, l. 3 - 208, l. 15.

According to Trammell, Appellant was otherwise uninvolved in the incident as the theft from Ennis was spontaneous act on Trammell's part. Trammell could not testify as to whether or not Appellant actually stole anything from Trammell. After stealing from Ennis, Appellant drove Gardner and Vickie Trammell away from the Trammell residence in Shunk's gold Dodge pickup. R. 210, l. 7 - 211, l. 11. Trammell followed in a borrowed Extera.

Following the theft, Ennis drove home and called the police. He was able to identify

Trammell as the man who robbed him, but could not identify anyone else involved. Like Shunk, he failed to identify Appellant in a single-photograph show-up and instead identified Appellant's son as one of the robbers. R. 238, l. 22 - 243, l. 16. After staying on the back porch of the Trammell residence for a period of time, Shunk ran to his house and called police. R. 56, l. 6 - 64, l. 9.

On October 23, 2015, law enforcement received "information" that a gold Dodge pickup truck was parked at Corrie Morgan's residence. R.72, l. 9 - 75, l. 4. As police pulled up to the house, the gold pickup fled. A high speed chase briefly ensued. The pickup truck escaped the pursuing officers. *Id.*

On October 25, 2015, police visited Appellant's residence and arrested Trammell. Law enforcement found the keys to Shunk's stolen Dodge pickup in Trammell's shoes. R. 222, l. 14 - 225, l. 2. Police also found to fake pistols in a pile of Trammell's dirty clothes. Appellant was not home when Trammell was arrested, but was arrested the next day at Morgan's house. R. 234, l. 13 - 235, l. 19.

Appellant's Trial

Ennis never testified. He refused to appear after being served. Likewise, Appellant's girlfriend Corrie Morgan did not testify. Larry Trammell, Donald Trammell and Nikki Gardner's father and the estranged husband of Vickie Trammell, also did not testify. Appellant's son did not testify.

The State was forced to rely on testimony Vickie Trammell, Nikki Gardner, Donald Trammell, and Aaron Shunk. Vickie Trammell and Gardner stated that they did not witness the incident between Trammell and Ennis. Trammell had ordered both of them into the Trammell residence before he forced Shunk around the back of the residence at gunpoint. Both received

substantial benefits from the State in exchange for their testimony.

As detailed above, Trammell testified that his theft of methamphetamine and money from Ennis was not preplanned. He simply decided to take Ennis' unexpectedly large amount of methamphetamine and money when the opportunity presented itself. R. 196, l. 2 - 211, l. 3. With respect to Appellant, all Trammell could testify to was that Appellant was looking through the backseat of Ennis' truck while holding a shotgun. *Id.* Despite police searching both his house and Morgan's house, no shotgun was ever recovered, nor was the State able to produce evidence that Appellant actually took any items from Ennis' truck.

Like his mother and sister, Trammell received substantial benefits for his testimony. The State allowed Trammell to plead guilty to a lesser included offense of attempted armed robbery, as well as burglary second, breaking into a motor vehicle, and grand larceny. His remaining charges of possession of a weapon during the commission of a violent crime, kidnapping, two counts armed robbery, two counts of criminal conspiracy, and carjacking were dismissed. R. 218, l. 5 - 225, l. 24. He received a five year sentence that also included the termination of his probation.

Jury Deliberations

Jurors began deliberations at 3:19 p.m. on April 7, 2016. At 4:18 p.m., jurors requested an explanation of the law of hand-of-one, hand-of-all. R. 340, l. 1 - 343, l. 8. After being recharged on the applicable law, the jury resumed deliberations. At around 5:30 p.m., the jury asked, "[i]f we can't come to a verdict on a charge, what do we do?" R. 343, ll. 19-24.

Defense counsel requested that the Court not give any instruction, believing that the jurors' verdicts on the remaining charges may render moot the impasse over the single charge. The Court disagreed and announced its intention to give an *Allen* charge. R. 344, l. 13 - 346, l.

20. The State readily agreed to the *Allen* charge. Defense counsel objected, noting that “I always object to an *Allen* charge and I know there’s a lot of case law both ways on that. *Id.*”

When the jurors re-entered the room, the Court gave its versions of the *Allen* charge:

You’ve indicated that you have been unable to agree on a verdict in this case. And as it pertains to this note, it says as to a -- “a” charge. As I instructed you earlier, ladies and gentlemen, the verdict of the jury must be unanimous.

And in this particular case, there are eight different counts. **Your verdict must be unanimous as to each count.** When a matter -- when a matter -- any matter is in dispute, it isn’t always easy for even two people to agree. **So when 12 people must agree, it becomes even more difficult. In most cases, absolute certainty cannot be reached.**

However, you have a duty to make every reasonable effort to reach a unanimous verdict as to each count. In doing this, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Tell each other how you feel and why you feel that way.

Discuss your differences with open minds. Although the verdict of the jury as to each of these charges must be unanimous, everyone of you has the right to your own opinion.

The verdict that you agree on must be your own verdict, the result of your own convictions, and you should not give up your firmly held beliefs merely to be in agreement with your fellow jurors.

The majority should consider the minority’s position. And the minority should consider the majority’s position. You should carefully consider and respect the opinions of each other, and re-evaluate your position for reasonableness.

If you do not agree on a verdict in this case, as to a charge, or as to more than one charge, the court would have to declare a mistrial as to those charges -- as to that charge or those charges.

In that case, it does not mean that anyone wins. It means that at some future time, that me or some other judge will try this case with some other jury -- some other jury sitting where you now sit. The same participants will come and the same lawyers will ask basically the same questions and get basically the same

answers, and we will go through the whole process again.

You were selected, ladies and gentlemen, in the same manner and from the same source as any future jury will be. And there is no reason for me to suppose the case will ever be submitted to 12 more competent jurors than you, or that more or clearer evidence will be produced on one side or the other.

I, therefore, ask that you return to your deliberations at this time.

R. 346, l. 24 - 349, l. 15 (*emphasis added*). Jurors resumed deliberations at 5:39 p.m. At sometime around 6:30 p.m., jurors informed the Court that they were still struggling with apply the concept of hand-of-one, hand-of-all. *Id.* After conferring with the attorneys, the trial court decided to release the jurors for the day.

Deliberations resumed at 9:30 a.m. on April 8, 2016. At the start of their second day of deliberations, the Court sent jurors a written instruction on the hand-of-one, hand-of-all. R. 355, l. 3 - 356, l. 25. At 10:30 a.m., the jury announced that they had reached a verdict in Appellant's case.

The jury found Appellant guilty of the armed robbery and kidnapping of David Ennis. Appellant was also found guilty of possession of a weapon during the commission of a violent crime and carjacking. The jury found Appellant not guilty with respect to the remaining charges. R. 357, l. 15 - 359, l. 20. Appellant was also found not guilty of conspiracy. *Id.*

ARGUMENTS

I.

The *Allen* charge given by the trial court was unconstitutionally coercive where it was improperly directed to the juror or jurors voting not guilty; it impermissibly commented on the facts of the case; and inaccurately told jurors to consider in their deliberations the burden that a second trial would impose on the parties, the trial court, and future jurors.

Discussion

An *Allen* charge is a supplemental instruction that a trial court may give to a purportedly deadlocked jury. *Allen v. United States*, 164, U.S. 492 (1896). Under our current jurisprudence a impartially given *Allen* charge is permissible. Our courts and those of other jurisdictions have long recognized the potential coercive impact of an *Allen* charge on jurors who are either in the minority or in favor of acquittal. *See Dawson v. State*, 352 S.C. 15, 572 S.E.2d 445 (2002) (holding that counsel was ineffective for failing to object to constitutionally coercive *Allen* charge.) *see also Workman v. State*, 412 S.C. 128, 771 S.E.2d 639 (2015) (*Allen* charge was unconstitutionally coercive and counsel was ineffective for failing to object); *State v. Thomas*, 342 P.2d 197 (Az. 1959) (prohibiting the use of *Allen* charges).

As with any jury instruction, an *Allen* charge must correctly state the law and the juror's obligations. *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). Courts have also recognized that there may simply be trials where the facts and circumstances render an *Allen* charge improper. *Fields v. State*, 487 P.2d 831 (AK 1971). Therefore, "[w]hether an *Allen* charge is unconstitutionally coercive must be judged in its context and under all the circumstances." *Tucker v. Catoe*, 346 S.C. 483, 490, 552 S.E.2d 712, 716 (2001) (quoting *Lowenfield v. Phelps*, 484 U.S. 231, 237 (1988)). This State's Supreme Court has explained:

In South Carolina state courts, an *Allen* charge cannot be directed to the minority voters on the jury panel. Instead, an *Allen* charge should be even-handed, directing both the majority and the

minority to consider the other's views. A trial judge has a duty to urge, but not coerce, a jury to reach a verdict. **It is not coercion to charge every juror has a right to his own opinion and need not give up the opinion merely to reach a verdict.**

Green v. State, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002) (internal citations omitted)(*emphasis added*).

In *Tucker*, the South Carolina Supreme Court adopted the standard set by the United States Supreme Court in *Lowenfield* to determine whether an *Allen* charge is unconstitutionally coercive. In *Lowenfield*, the Supreme Court considered the following factors:(1) whether there are indications that the charge was directed to the minority juror(s); (2) whether the judge used mandatory, suggestive or threatening language; (3) the length of deliberations before the charge, after the charge, and in total; (4) whether the jury requested additional instructions; and (5) whether there was an inquiry into the jury's numerical division, which is generally coercive. *Tucker*, 346 S.C. at 492, 552 S.E.2d at 716 (citing *Lowenfield*, 484 U.S. at 237).

Applying the above outlined factors, the Supreme Court found the *Allen* charge given in *Tucker* was unconstitutionally coercive. Specifically, the court concluded (1) when viewed as a whole, the jury charge was directed to the minority juror or jurors; (2) while the trial court did not use mandatory language, the jury was told of the importance of a unanimous verdict; (3) even though the jury informed the trial judge of their numerical split, the judge failed to instruct the jurors not to disclose their division in the future; and (4) *Tucker's* jury returned a verdict approximately an hour and a half after receiving the *Allen* charge. *Tucker*, 346 S.C. at 492-94, 552 S.E.2d at 717-18.

Here, the *Allen* charge in Appellant's trial was unconstitutionally coercive. The charge was given after jurors had already informed the court that they were at an impasse regarding the application of the law of hand-of-one, hand-of-all. R. 340, l. 1 - 343, l. 8. Under the

circumstances, such a question clearly indicated that jurors could not decide whether Appellant had acted in conjunction with Trammell to steal from Ennis. R. 339, l. 3 - 343, l. 10.

Given these facts, the court's admonition that "[i]n most cases, absolute certainty cannot be reached" was obviously directed to the juror or jurors voting in favor of acquittal. R. 347, l. 11 - 349, l. 23. Similarly, the court's instruction that jurors "carefully consider and respect the opinions of each other, and re-evaluate your position for reasonableness" was also directed towards jurors who believed the State had not met its burden of proving Appellant guilty beyond a reasonable doubt. *Id.*

In addition, the court's *Allen* charge impermissibly commented on the facts of the case. *State v. Sosebee*, 284 S.C. 411, 326 S.E.2d 654, n. 1 (1985) (citing *State v. Pruitt*, 187 S.C. 58, 196 S.E. 371 (1938)(holding that trial courts should refrain from making any comment on the facts of the case); see also *State v. Kennedy*, 272 S.C. 231, 250 S.E.2d 338 (1978); *State v. Smith*, 288 S.C. 329, 342 S.E.2d 600 (1986). Specifically, the trial court informed jurors that if they could not reach a verdict "the same participants will come and the same lawyers will ask basically the same questions and get basically the same answers, and we will go through the whole process again." R. 347, l. 11 - 349, l. 23.

A similar instruction was found by the Supreme Court of Indiana to have "dangerously approached commenting on evidence and the conduct of trial." *Lewis v. State*, 424 N.E.2d 107 (1981). In *Lewis*, the trial court instructed jurors that:

There is no reason to believe that the case can be tried again any better or more exhaustively than it has been. There is no reason to believe that more evidence would be produced on behalf of either side.

424 N.E.2d at 110. As in our state, the Court cautioned that a trial court "must refrain from imposing himself and his opinions on the jury." *Id.* Citing to the American Bar Association

Standards for Criminal Justice, the *Lewis* Court held that trial courts should no longer give the *Allen* charge as a stand-alone charge but, rather give a limited *Allen* charge as part of the initial jury instruction. If the jury later indicated that they are deadlocked, courts should re-read the entire jury charge. *Id.* at 111.

In Appellant's case, the trial court was even more explicit; instructing jurors that if they could not reach a verdict, virtually the same trial - with the same witnesses - would be replayed in front of another jury. R. 347, l. 11 - 349, l. 23. Moreover, the trial court admonished jurors that, in the case of a mistrial "it does not mean that anyone wins" and that "[a]nd there is no reason for me to suppose the case will ever be submitted to 12 more competent jurors than you, or that more or clearer evidence will be produced on one side or the other." *Id.*

Most problematically, the *Allen* charge given in Appellant's case interjected irrelevant considerations into jurors' deliberations. As noted, the trial court informed jurors that if they could not reach a verdict, a second trial would impose significant burdens on the parties, the trial court, and future jurors. R. 348, l. 18 - 349, l. 11. By implication a second trial would cost the judicial system - and necessarily the taxpayers - money.

Such considerations have no place in the jury's deliberations. The sole responsibility of the jury is to determine whether the State has proven beyond a reasonable doubt the allegations against a defendant. *See State v. Alesky*, 343 S.C. 20, 538 S.E.2d 248 (2000) (holding that language instructing jurors to seek the truth was improper and risks reducing the state's burden of proof to preponderance of the evidence). Verbiage stressing the cost of a second trial is akin to providing jurors with the sentencing ranges for different offenses. The trial court's language clearly emphasized to jurors that they should consider the material cost to the judicial system that a mistrial would impose and should strive to reach a verdict to avoid those costs.

The language is also legally incorrect and contradicts other portions of the juror's instruction, likely sowing confusion among jurors. *See State v. Salts*, 200 P.3d 464 (Kan. 2009) (*Allen* charge instructing jurors that "another trial would be a burden on both sides" was improper). As an initial matter, a criminal trial is not a burden to Appellant; it is his right. Nor is a trial a burden to the State; it is the prosecutor's obligation. A trial is the court system's *raison d'être*.

Moreover, instructing jurors that they must consider the costs a new trial would impose on the judicial system contradicted earlier portions of the charge that correctly instructs jurors that their sole duty to weigh the evidence adduced at trial. "Both the State and the Defendant have a right to expect that you will carefully consider and evaluate the evidence and apply the law of this case to it. . . . You must decide each charge separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other charge." R. 317, l. 3 - 318, l. 23.

Applying, the factors identified by our Supreme Court in *Tucker* makes clear that the *Allen* charge in Appellant's case was unconstitutionally coercive. *Tucker*, 346 S.C. at 492, 552 S.E.2d at 716 (citing *Lowenfield*, 484 U.S. at 237). When viewed as a whole, the jury charge applied pressure to the juror or jurors voting in favor of acquittal. R. 346, l. 24 - 349, l. 15. While the trial court did not use mandatory language, the jury was told of the importance of a unanimous verdict and, erroneously, of the high cost of a mistrial. *Id.* Following the charge, jury returned a verdict after two hours of additional deliberations. *Id.*

Accordingly, the court reversibly erred in giving an *Allen* charge that was unconstitutionally coercive under the circumstances of Appellant's case.

II.

The trial court erred by refusing to order a mistrial after key State's witness, Nikiki Gardner, testified that Appellant had been previously incarcerated as any relevance this testimony had was substantially outweighed by its unduly prejudicial effect, since it impermissibly informed the jury that Appellant had a prior criminal record, and thereby diluted the presumption of innocence.

Relevant Facts

Pre-trial Appellant moved to exclude any potential testimony that Appellant had been previously incarcerated. "[T]he other item I discussed was I would like the court, in addition to the solicitor, to tell witnesses ahead of time they're not to, one, identify my client when they've not previously identified him; that being the two victims. And, secondly, not for any witness to blurt out. 'Well, he's been in trouble before with the court, regarding my client.'" Tr.p . 37, ll. 2-9.

Nikki Gardner was a vital witness for the State given the limited memories, the character flaws, and the obvious motives to lie of the State's other witnesses. Shunk could not identify Appellant. Ennis failed to appear for trial. Vickie Trammell was highly intoxicated and could not clearly remember the events of the night. Donald Trammell insisted that he acted alone and without any forethought. Gardner was also more credible than Vickie or Donald Trammell because she had not received substantial assistance on pending criminal charges for her testimony. R. 112, l. 23 - 113, l. 22.

Unlike the State's other witnesses, Gardner was sober on the night of incident. By the time of trial she was pregnant, attempting to reconcile with her husband, and to gain custody of her children. She was on the waiting list for a drug rehab facility. R. 114, l. 16 - 116, l. 5. In its closing argument the State repeatedly urged jurors to remember her testimony and to find her credible. R. 281, l. 4 - 302, l. 17.

During direct examination by the State, Gardner testified that she had known Appellnat

her entire life. When the State asked her how she knew Appellant's wife, Gardner responded that she met Appellant's wife "[w]hen I was younger, as a child. But from when I can remember back in -- when I actually remember her is when he had -- **he hadn't been released from prison yet.**

R. 117, ll. 2-17 (*emphasis added*).

Appellant immediately objected and moved for a mistrial on the basis that Gardner had clearly told the jury that Appellant had been previously incarcerated. Moreover, the wording of her response strongly suggested that Appellant had been incarcerated either for a very long time or had been incarcerated on many different occasions. R. 117, l. 19 - 123, l. 20.

The trial court denied the motion for a mistrial and offered to give the jury a curative instruction. The defense declined a curative instruction on the grounds that it would draw more attention to the improper testimony. *Id.* Defense counsel argued that Appellant's presumption of innocence had been fatally undermined.

"The jury now knows, or should know, that he has been in prison. And I believe that it's almost impossible for a jury not to consider that, whether he's been in jail before, or he's one of those kind people with that burden." R. 122, ll. 6-12. The Court again refused to grant a mistrial, but offered to provide a curative instruction. Defense counsel refused the curative instruction and Appellant never testified.

Discussion

Defense counsel properly objected to the state placing testimony before the jury that clearly showed appellant had previously been incarcerated. The United States Supreme Court, this Court, and courts of other jurisdictions have clearly recognized prejudice from the dilution of the presumption of innocence when a jury learns from evidence or other factors that the defendant on trial has a prior criminal record.

The South Carolina Supreme Court has stated that the test for granting a mistrial is whether a “mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment.” *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). “The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law.” *State v. Ferguson*, 376 S.C. 615, 618, 658 S.E.2d 101, 103 (Ct. App 2008) (citing *State v. Edwards*, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007)).

A “determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case.” *State v. Douglas*, 367 S.C. 498, 523, 626 S.E.2d 59, 72 (Ct.App.2006) (citing *State v. Fletcher*, 363 S.C. 221, 609 S.E.2d 572 (Ct.App.2005)).

An accused has the right to rely entirely upon this presumption of innocence and the weakness in the State's case against him. *See State v. Posey*, 269 S.C. 500, 238 S.E.2d 176 (1977). “A necessary corollary to the presumption of innocence is that a defendant must be tried for what he did, not for who he is.” *State v. Nelson*, 331 S.C. 1, 501 S.E.2d 716 (1998) (*quoting State v. Melcher*, 678 A.2d 146, 151 (N.H. 1996)). The State may not attack the character of the defendant unless the defendant first places his character in issue. *Mitchell v. State*, 298 S.C. 186, 379 S.E.2d 123 (1989).

The trial court should have ordered a mistrial when it became clear that Gardner had destroyed Appellant’s presumption of innocence by referencing his earlier incarceration. While it was a single reference, Gardner was a critical witness for the State and the solicitor aggressively peddled her credibility to the jury. R. 281, l. 4 - 302, l. 17. By explicitly stating that Appellant had been incarcerated on a prior occasion, Gardner made it substantially more likely

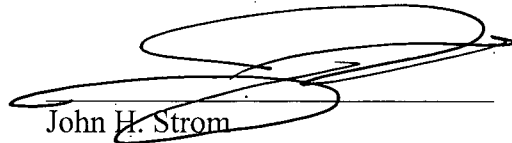
that the jurors simply saw Appellant as the “kind of person” who would steal from a drug dealer. Her testimony fatally diluted the presumption of innocence that Appellant was constitutionally entitled to rely on and resulted in Appellant being tried and convicted for who he was, not what the State proved he did. *See State v. Posey*, 269 S.C. 500, 238 S.E.2d 176.

Accordingly, the trial court erred refusing to grant a mistrial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed and this case remanded to the Greenville County Court of General Sessions for a new trial.

Respectfully submitted,


John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of August, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 11, 2017



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AUG 11 2017

SC Court of Appeals

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable D. Craig Brown, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

vs.

MARK ANOTHONY BAYNE,

Appellant.

Appellate Case No. 2016-000809

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STATEMENT OF ISSUES ON APPEAL**I.**

Appellant's only argument against the Allen instruction was he always objects to Allen instructions, and Appellant never objected to the specific language of the instruction. Therefore, the issue is not preserved for review. Further, the trial court did not abuse its discretion and the language of the Allen instruction was not coercive.

II.

The trial court did not err in declining to grant a mistrial and the issue is not preserved for review since Appellant declined an offer for a curative instruction.

STATEMENT OF THE CASE

The Greenville County grand jury indicted Appellant Bayne for two counts of armed robbery, two counts of possession of a weapon during the commission of a violent crime, two counts of conspiracy, one count of kidnapping, and one count of carjacking in connection with the nearly contemporaneous robberies of two drug dealers. The jury convicted Bayne of one count of armed robbery, one count of the weapons charge, and the single counts of kidnapping, and carjacking, following trial on April 6-8, 2015. The presiding judge, the Honorable D. Craig Brown, sentenced Bayne to concurrent terms of twenty years imprisonment for kidnapping, twenty years imprisonment for armed robbery, ten years imprisonment for carjacking, and five years imprisonment for the weapons charge.

STATEMENT OF FACTS

Appellant Bayne, Donald Trammell, and Bayne's girlfriend, Corrie Morgan, robbed a drug dealer, David Ennis. While they were waiting for Ennis to arrive, another drug dealer, Aaron Shunk, showed up so they accosted him and stole his truck. The jury convicted Bayne for all the charges related to Ennis, except conspiracy. The jury acquitted Bayne for the robbery (and the corresponding conspiracy and weapons charges) for the unplanned victim, Shunk, but the jury convicted Bayne for carjacking and kidnapping Shunk.

Vickie Trammell and Nikki Gardner, Vickie's daughter, drove from their residence to purchase pain pills from Aaron Shunk. Vickie admitted to a history of addiction and noted Xanax was her controlled substance of choice. R. p. 81. At the time of trial, her son, Donald Trammell, was serving a prison term for armed robbery as part of this crime. R. p. 83. She testified she went with her daughter to Shunk's house to get a Roxy, a kind of controlled substance. R. pp. 84-87.

Shunk did not have any pills. However, he knew where he could get some in Greenville. Shunk was drunk and stoned, as was Vickie, so Nikki agreed to drive Shunk's truck. The three left together in Shunk's truck. However, Vickie and Shunk got in an argument after Shunk started saying "vulgar" things to Nikki. R. pp. 86-89. Vickie testified they argued until Vickie demanded they drive back. She was also on her cell phone with her son Donald, who overheard the argument. R. pp. 89-91.

Nikki likewise was addicted to pain medication. She lived at her grandfather's house with Vickie. She also testified she bought drugs from the other victim in this case, David Ennis, in the past. R. p. 126-27.

Nikki explained to the jury what happened on the trip in Shunk's truck. Shunk made sexual comments to Nikki and grabbed her breasts. Vickie got mad and started yelling at Shunk. Shunk, in reply, told them to get out. Rather than end up stranded with her mother far away from home, Nikki managed to be allowed to drive back to her grandfather's residence, believing that would be the safest thing to do. R. pp. 129-32.

Shunk testified that Nikki and Vickie came over to his house. He knew Vickie, but had not met Nikki before. He knew Vickie's son Donald. R. pp. 42-43. The three left the house together. Shunk let Nikki drive his 4-door, gold Dodge Ram truck. Shunk was in the passenger seat and Vickie sat in the back seat. R. pp. 50-51.

Shunk testified that when they arrived at Vickie's house, Donald made him get out of the truck at gunpoint and handed the gun off to another man who he did not know. He testified he could not identify the man because he did not know him and it was too dark. R. p. 52. Shunk was punched in the eye, taken to the back porch, and told not to move or do anything stupid. Donald, the man, and

a woman, who seemed to be acting as a lookout, went back to the front of the house. R. pp. 52-53. Shunk heard the vehicles drive away and then ran through the woods and down the road until he made it home. He called the police. R. pp. 52-54. The truck was later returned to Shunk. R. p. 60.

Vickie confirmed that when they arrived at their house, "all four doors opened" and they were directed out of the truck. R. p. 91-92. She saw Bayne hit Shunk. The men told her and Nikki to go inside the house. Vickie knew Bayne because they are related – she is married to Bayne's first cousin. R. p. 92-93.

Donald explained what happened while Nikki and Vickie were away. After Nikki and Vickie left the grandfather's house and went to Shunk's residence, Donald, Bayne, and Bayne's girlfriend, Corrie Morgan, arrived at the house. Donald admitted he was on methamphetamine at the time of the robberies. He testified he was currently serving a five year sentence for armed robbery, but did not have any deals or promises in this case. R. pp. 175-76. Donald admitted he sold drugs, he started selling cocaine to co-workers, and then later methamphetamine and heroin. R. p. 178. At the time of the robberies, he was staying with Tina Bayne, who is Bayne's wife, and Bayne's adult children.

They called Ennis to arrange a drug transaction at the grandfather's house. He claimed they initially did not plan to steal Ennis's drugs or money. They were waiting for Ennis when they were surprised by Nikki, Vickie, and Shunk. They wanted to get Shunk out of the way, so they took him behind the house. Donald claimed he did not hit Shunk, although he acknowledged the black eye in the photograph of Shunk put into evidence. R. pp. 196-200.

Donald returned to the front of the house. Five to eight minutes after Shunk's truck arrived, Ennis, the next victim, showed up. Donald was surprised by the amount of drugs Ennis showed up

with – it was more than he was supposed to be purchasing. Donald snatched the bag of drugs. Then he told Ennis he wanted the money too. Ennis said no, but Donald grabbed a wad of money out of Ennis' pocket, \$1,200. Bayne approached while pointing a shotgun at Ennis as Donald stole Ennis' money. R. pp. 204-06. Donald later drove to 3 Meadow Ford and saw Bayne washing the stolen gold Dodge truck. R. p. 209. Bayne gave Donald the keys to the truck. R. p. 224.

The State subpoenaed Ennis for trial, but he failed to show. Detective Tim Brochin testified that Ennis called 911. When Detective Brochin responded and spoke to him, Ennis seemed upset and talked fast. He testified that another officer responded to another robbery at the same address. He was advised to be looking for a stolen tan Dodge Ram truck. R. pp. 69-72.

ARGUMENT

I.

Appellant's only argument against the Allen instruction was he always objects to Allen instructions, and Appellant never objected to the specific language of the instruction. Therefore, the issue is not preserved for review. Further, the trial court did not abuse its discretion and the language of the Allen instruction was not coercive.

The trial court did not abuse its discretion by providing an Allen instruction, after the jury deliberated only two hours. Further, the language of the Allen instruction was appropriate and not coercive. The issue is not remotely preserved for review as counsel made no legal arguments and did not object to the specific language of the trial court's instruction.

How the issue arose.

The jury began deliberations at 3:19 p.m. and sent a note asking for an explanation of the hand of one, hand of all instruction at 4:18 p.m. R. p. 339. The trial court reinstructed the jury on accomplice liability and the jury returned to the jury room for further deliberations at 4:23 p.m. R. pp. 340-43. The jury sent a note sometime thereafter asking, "If we can't come to a verdict on a charge, what do we do?" R. p. 343, lines 19-24.

The trial court suggested an Allen instruction. Allen v. United States, 164 U.S. 492 (1896). Bayne's counsel responded he preferred the trial court not give an Allen instruction and to simply find out the verdict on the other charges "because it may be a moot point there are so many charges." R. p. 343, line 19-p. 344, line 3. Bayne's counsel commented he always objects to an Allen charge. R. p. 344. The prosecution told the trial court that the State would defer to the trial court's judgment. R. p. 345, lines 6-16.

The trial court gave an extensive Allen instruction. R. p. 34, line 24 – p. 349, line 13. The jury returned to the jury room for further deliberations at 5:39 p.m. **Afterwards, the trial court asked the parties if there was an exception to the instruction. Bayne’s counsel responded, “Other than the fact that I object to an Allen charge, no.” R. p. 349, lines 16-21.**

The jury sent a third note advising, “We’re still having issues with hand over hand [sic].” R. p. 350, lines 3-4. The trial court noted the jury did not indicate that could not reach a verdict and decided to provide written instructions to the jury. R. p. 350. The trial court brought the jury in at 6:31 p.m. and announced the court would release them for the evening. R. pp. 352-53.

The next morning, the trial court gave the jurors each a written copy of his instructions in their entirety and sent the jury to continue its deliberations at 9:28 a.m. The jury returned with its verdicts at 10:30 a.m. The jury found four guilty verdicts and four not guilty verdicts. R. pp. 357-59.

Because Bayne’s counsel did not make an argument, no issue is preserved for review.

First, the issue is not preserved for review. Bayne’s trial counsel objected to the instruction for no other reason than he always objects to Allen instructions. However, Bayne did not state the grounds for his objection which is too general to preserve any issue. In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004). “The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error.” State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). A “general objection that does not specify the particular ground on which the objection is based is

insufficient to preserve a question for review.” State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997). Because trial counsel failed to provide any argument about why an Allen instruction should not be provided in this instance and failed to provide any legal argument challenging the efficacy of an Allen instruction in general, this Court should refrain from reviewing this issue.

Additionally, because Bayne’s counsel did not object to any portion of the Allen instruction provided by the trial court when given the opportunity, Bayne’s complaint for the first time on appeal about the specific language in the instruction is not preserved for review. State v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding that Brown’s issue with a jury instruction was not preserved for appellate review where Brown explicitly stated to the trial judge that he had no objection to the instruction). “[A] defendant’s failure to object to the charge as made or to request an additional charge, when an opportunity has been afforded to do so, results in a waiver of his right to complain about the charge on appeal.” State v. Stone, 285 S.C. 386, 387, 330 S.E.2d 286, 287 (1985); see I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724-25 (2000) (“Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.”).

The trial court’s supplemental instruction was not coercive.

Further, the trial court’s instruction was not an abuse of discretion. In order for the judicial process to properly function, it is important for cases to reach a final resolution at some point. See Nickles v. Seaboard Air Line Ry., 74 S.C. 102, 142, 54 S.E. 255, 268 (1906) (“It is important that the trial of causes should be ended.”). As a result, trial judges have a duty to urge juries to agree upon a verdict. State v. Kelly, 372 S.C. 167, 171, 641 S.E.2d 468, 470 (Ct. App. 2007). There is no doubt that “[a]ny criminal defendant, and especially any capital defendant, being tried by a jury is entitled

to the uncoerced verdict of that body.” Lowenfield v. Phelps, 484 U.S. 231, 241 (1988). Yet, the Supreme Court in Allen specifically approved the use of supplemental jury instructions. Allen, 164 U.S. at 501-02. A court provides an Allen charge when the jury has reached an impasse in its deliberations and is unable to reach a consensus. Id.; United States v. Burgos, 55 F.3d 933, 935-36 (4th Cir.1995). The decision to give such a charge is within the discretion of the trial or sentencing court. Burgos, 55 F.3d at 935. A supplemental instruction advising every juror has a right to his own opinion and need not give up the opinion merely to reach a verdict strongly reduces any risk of coercion. State v. Singleton, 319 S.C. 312, 316, 460 S.E.2d 573, 575-76 (1995) (“It is not coercion when a trial judge instructs the jury that failure to reach a verdict will require a new trial at additional expense, or states that every juror has a right to his own opinion and need not give it up merely for the purpose of reaching agreement.”).

The most frequent setting in which the risk of juror coercion arises is when a court inquires into the numerical division of a deadlocked jury. See Brasfield v. United States, 272 U.S. 448, 450 (1926) (finding the practice of the trial court to inquire of the jury as to the numerical division was “harmful” and “not to be sanctioned”). However, the trial court did not enquire into the numerical division in this case and was not made aware of what the division might be.

The Supreme Court in Tucker v. Catoe, 346 S.C. 483, 552 S.E.2d 712 (2001) analyzed Lowenfield to determine the constitutionality of an Allen instruction in the penalty phase of a capital trial. This Court noted the United States Supreme Court considered the following factors: (1) whether the instruction spoke specifically to the minority jurors; (2) whether the instruction contained any language to the effect of “You have got to reach a decision in this case”; (3) whether there was an inquiry into the jury’s numerical division; and (4) whether the jury reached a verdict

shortly after the instruction. Catoe, 346 S.C. at 491-92, 552 S.E.2d at 716.

In the instant case: (1) the instructions did not speak specifically to minority jurors; instead, the instruction implored both the majority and minority to consider the other's position; (2) no language suggested a verdict was mandatory; (3) the trial court refrained from investigation into the numerical division or, for that matter, which charges the jury was unable to reach a verdict on; and (4) the jury did not reach a verdict right away – the jury deliberated for roughly an hour after the Allen instruction, then inquired again about the law regarding accomplice liability, then deliberated another hour the following morning. The jury deliberated only a couple of hours before the trial court provided the Allen instruction.

The trial court's instruction was not coercive because the trial court's instruction did not single out the minority jurors and did not contain mandatory language compelling a verdict. Instead, the trial court's instruction advised the jurors that the verdict must be their verdict, that each juror had a right to their own opinion, and that jurors "should not give up [their] firmly held beliefs merely to be in agreement" with the other jurors. R. pp. 346-49. See Green v. State, 351 S.C. 184, 195, 569 S.E.2d 318, 323-324 (2002) ("The entire charge shows the trial judge adequately and correctly told the jurors they should listen to what the other side had to say; to be open to change one's mind; and to not change one's mind if it would do violence to one's conscience. The charge was neutral in its direction, not impermissibly aimed at the minority, instead suggesting members of each side examine their own position in light of the other view's position.").

Further, the trial court refrained from investigation into the numerical division between the jurors, and the jurors likewise never advised the trial court of what the division might be. The jury continued deliberating for an hour before returning with a question, and deliberated another hour the

following morning. Bayne's counsel waived polling the jury. Accordingly, the verdict was not coerced.

Finally, the trial court did not comment on the facts during the instruction. The trial court did not mention any specific evidence or testimony, or even any class of evidence or testimony. The trial court merely recited the obvious that a new trial may be required if a verdict was not reached, which is permissible. In State v. Singleton, 319 S.C. 312, 316, 460 S.E.2d 573, 575-76 (1995), the Supreme Court held, "It is not coercion when a trial judge instructs the jury that failure to reach a verdict will require a new trial at additional expense" The trial court's instruction was in keeping with Singleton.

The trial court did not abuse its discretion because the circumstances and the trial court's instruction was not coercive. Accordingly, the conviction and sentence should be affirmed.

II.

The trial court did not err in declining to grant a mistrial and the issue is not preserved for review since Appellant declined an offer for a curative instruction.

Bayne argues the trial court should have granted a mistrial for an offhand comment by Nikki Gardner during her testimony. However, because Bayne declined a curative instruction, the issue is not preserved for review. Further, the trial court did not abuse its discretion in declining to grant a mistrial.

The issue arose when the prosecutor asked Nikki Gardner when she met Bayne's wife, Tina. Nikki answered, "When I was younger, as a child. But from when I can remember her was back in – I when I can actually remember her is when he had – he hadn't been released from prison long." R. p. 117, lines 14-17.

Bayne's counsel asked to approach the bench and the jury was sent to the jury room. The prosecutor agreed the testimony was improper, but noted the reference was brief and suggested that a curative instruction was all that was necessary. R. pp. 117-19. The prosecutor admonished the witness "to really think about her responses beforehand." R. p. 119, lines 5-7. The prosecutor advised the trial court that he spoke with the witnesses beforehand about mentioning prior crimes and Nikki agreed that he spoke to her about that. R. p. 119, line 19 – p. 120, line 6.

The trial court ruled that "in this particular situation, I believe that the curative instruction certainly cures any misstatement by this witness." R. p. 121, lines 15-17. The trial court offered to provide the jury with a curative instruction. Defense counsel asked to think about it "because it almost draws more attention to it." R. p. 123, lines 6-8. The trial court later supplemented his ruling and noted he would let Bayne's counsel consider overnight whether he wanted a curative instruction.

R. pp. 166-67. The next day, Bayne's counsel renewed the motion for mistrial, the trial court denied the motion, but again gave Bayne's counsel the option of a curative instruction. R. p. 172, lines 13-25. The trial court advised Bayne's counsel "I'll do it whenever you'd like me to do it. I mean, I can do it when I charge them on the law." R. p. 173, lines 4-6. Bayne's counsel wanted to wait until then to make a decision. R. p. 173, lines 7-9. Ultimately, Bayne's counsel declined the instruction. R. pp. 261-62.

"A mistrial should not be granted except in cases of manifest necessity and ought to be granted with the greatest caution for very plain and obvious reasons." State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989) *cited in* State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999) (noting trial judge should exhaust other methods to cure possible prejudice before aborting a trial).

"The granting of a mistrial motion is an extreme measure to be taken only where an incident is so grievous that its prejudicial effect can be removed in no other way." State v. Dempsey, 340 S.C. 565, 570, 532 S.E.2d 306, 309 (Ct. App. 2000). The defendant waives any right to complain about the challenged testimony if he waives the trial judge's offer of a curative instruction. State v. Watts, 321 S.C. 158, 164, 467 S.E.2d 272, 276 (Ct. App. 1996) (finding defense counsel waived the motion for mistrial by declining an offer for a curative instruction, defense counsel opined it would only call attention to the alleged error).

Watts is on point with the present case. In Watts, a law enforcement officer made an offhand remark that she overheard that Watts made prior drug purchases. Defense counsel objected, arguing the State put Watts' character in issue. The trial court did not believe a mistrial was warranted, but offered to strike the testimony from the record or provide a curative instruction. Watt's counsel declined because he did not want to bring the matter to the jury's attention again. This Court found,

“In rejecting the trial court’s offer to strike the testimony or give a curative instruction, Watts waived any complaint he had to the challenged testimony.” Id. at 164, 467 S.E.2d at 276.

Like the judge in Watts, the trial court offered to give a curative instruction immediately after the objection. The trial court again offered to provide a curative instruction during the charge conference, which Bayne also declined. Accordingly, Bayne waived his complaint about the testimony. Further, since the trial court was willing to cure the error, the trial court did not abuse its discretion in declining to grant a mistrial. State v. Dawkins, 297 S.C. 386, 377 S.E.2d 298 (1989). (An appropriate curative instruction is generally considered to cure any error).

Finally, any error was harmless beyond a reasonable doubt. The reference about which Bayne complains was brief and counsel implicitly recognized it was not prejudicial by not wanting to call attention to it with a curative instruction. No defense was presented, and the State’s evidence was uncontroverted. The record indicates the jury carefully considered each charge, finding Bayne guilty of some charges and not guilty on others. “Harmless error rules . . . ‘serve a very useful purpose insofar as they block setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial.’” State v. White, 410 S.C. 56, 59, 762 S.E.2d 726, 728 (Ct. App. 2014) (quoting Chapman v. California, 386 U.S. 18, 22 (1967)). It is simply implausible that the jury based its guilty verdicts on the brief, unsolicited reference to some non-specific incarceration rather than the properly admitted evidence presented to the jury. Accordingly, the conviction and sentence should be affirmed.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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August 30, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable D. Craig Brown, Circuit Court Judge

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Respondent,

vs.

MARK ANOTHONY BAYNE,

Appellant.

Appellate Case No. 2016-000809

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

RECEIVED

AUG 30 2017

SC Court of Appeals

By: 

DAVID SPENCER

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 30, 2017

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Mark Anthony Bayne, Appellant.

Appellate Case No. 2016-000809

Appeal From Greenville County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2018-UP-310
Submitted June 1, 2018 – Filed July 5, 2018

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General David A. Spencer, both of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Mark Anthony Bayne appeals his convictions of armed robbery, possession of a weapon during the commission of a violent crime, kidnapping, and carjacking, for which the trial court sentenced him to an aggregate term of twenty

years' imprisonment. On appeal, Bayne argues the trial court erred in giving an *Allen*¹ charge and denying his motion for a mistrial. We affirm² pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court's *Allen* charge was unconstitutionally coercive or an improper comment on the facts: *State v. Singleton*, 319 S.C. 312, 316, 460 S.E.2d 573, 575 (1995) ("The trial [court] has a duty to urge the jury to reach a verdict but he may not coerce them."); *Tucker v. Catoe*, 346 S.C. 483, 490-95, 52 S.E.2d 712, 716-18 (2001) (providing the following factors to consider in determining whether an *Allen* charge is unconstitutionally coercive: (1) whether the charge spoke specifically to the minority juror(s); (2) whether the trial court included in its charge any language such as "You have got to reach a decision in this case"; (3) whether there was an inquiry into the jury's numerical division; and (4) the timing of the returned verdict after the charge); *Singleton*, 319 S.C. at 316, 460 S.E.2d at 575-76 ("It is not coercion when a trial [court] instructs the jury that failure to reach a verdict will require a new trial at additional expense, or states that every juror has a right to his own opinion and need not give it up merely for the purpose of reaching agreement."); *State v. Smith*, 288 S.C. 329, 331, 342 S.E.2d 600, 601 (1986) ("The trial [court] must refrain from all comment which tends to indicate [its] opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of the accused or as to controverted facts.").

2. As to whether the trial court erred in denying Bayne's motion for a mistrial: *State v. Wasson*, 299 S.C. 508, 510, 386 S.E.2d 255, 256 (1989) ("A mistrial should not be granted except in cases of manifest necessity and ought to be granted with the greatest caution for very plain and obvious reasons."); *State v. Dempsey*, 340 S.C. 565, 570-71, 532 S.E.2d 306, 309 (Ct. App. 2000) ("[T]he granting of a mistrial motion is an extreme measure to be taken only where an incident is so grievous that its prejudicial effect can be removed in no other way."); *State v. Patterson*, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct. App. 1999) ("[T]he trial [court] should exhaust other methods to cure possible prejudice before aborting a trial.").

AFFIRMED.

HUFF, GEATHERS, and MCDONALD, JJ., concur.

¹ *Allen v. United States*, 164 U.S. 492, 501-02 (1896) (approving a jury instruction encouraging jurors to reconsider their votes in order to prevent a hung jury).

² We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 23, 2018

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Mark A. Bayne
Lower Court Case No. 2014GS2311898, 2014GS2311899, 2014GS2311902
Appellate Case No. 2016-000809

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
David A. Spencer, Esquire
William Walter Wilkins, III, Esquire
Robert M. Pachak, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)Mark Bayne)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018-CP-23- 05730APPLICATION FOR
POST-CONVICTION RELIEF

ENTERED COMPUTER

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, 430 Oaklawn Rd, Pelzer, SC, 29669
2. Name and location of Court which imposed sentence Greenville county general sessions
3. Name(s) of co-defendant(s) (if any) Donald Trammell
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) # 2014-GS-23-11898 - car jacking
 - (b) # 2014-GS-23-11899 - kidnapping

(c) # 2014-GS-23-11902 - Armed Robbery and Poss of Weapon

5. The date upon which sentence was imposed and the terms of the sentence:

(a) April 8, 2016

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. June 1, 2018 and Filed July 5, 2018

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No: 2018-UP-310

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachments
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachments
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) See Attachment
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? ✓
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. John Abdalla 522 N. Church St., Greenville, SC 29601
 ii. Robert Pachak, P.O. Box 11589, Columbia, SC 29211
 iii. John Strom, P.O. Box 11589, Columbia, SC 29211
 (b) the proceedings at which each such attorney represented you:
 i. John Abdalla - Trial
 ii. Robert Pachak - Direct Appeal
 iii. John Strom - Direct Appeal

19. State clearly the relief you seek in filing this application:

Vacate and Remand

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, MARK A. Bayne, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Mark Bayne

SWORN to and subscribed before me this 5th day of November, 2018.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires: September 25, 2023

RECEIVED

NOV 05 2018

P.C.I. MAILROOM

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, MARK A. BAINE, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Mark Baine
Applicant

SWORN or affirmed to and subscribed before me this
5th day of November, 2018.

Lamara Conwell
Notary Public

My Commission Expires: September 25, 2023

RECEIVED

NOV 05 2018

P.C.I. MAILROOM

10(A) Ineffective assistance of counsel to discharge his duty of due diligence to investigate, the facts, evidence, and witness(es) in the case.

(B) Ineffective assistance of counsel for failure to provide a proper defense for physical evidence in the case.

(C) Ineffective assistance of counsel for failure to have a valid strategy for trial.

(D) Ineffective assistance of counsel for abandonment of his client during trial.

11(A)(1) Counsel failed to properly and fully investigate the case.

(2) Counsel failed to properly and fully prepare Petitioner for testimony in the case.

(3) Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony through direct and cross-examination of relevant evidence related to the matter.

(4) Counsel failed to interview or call as a witness a number of people who would have relevant information in this matter.

(5) Counsel failed to request a preliminary hearing so Petitioner could more adequately be informed about case.

(6) Counsel failed to spend adequate time with Petitioner reviewing discovery with him.

(7) Counsel failed to provide Petitioner with a copy of discovery in the case so Petitioner could assist with the case.

(8) Counsel failed to challenge the testimony of the State's witness(es) and failed to adequately object and preserve objections to portions of the witness(es) testimony, and failed to effectively cross-examine the witness(es) on their testimony.

(9) Counsel failed to move for a pre trial motion to suppress, the evidence from the case.

(10) Counsel failed to challenge or move to quash the indictment, before the jury is sworn, that indictment is not sufficient.

(11) Counsel failed to move for a pre trial motion for a directed verdict.

(12) Counsel failed to object to hearsay.

(13) Counsel failed to put on the record, after a bench conference, what objection and ruling was made by the State on page 258 of the trial transcript so as to preserve the issue for appellate review.

(14) Counsel failed to put on the record, after a bench conference, what objection and ruling was made by the state on page 276 of trial transcript so as to preserve the issue for appellate review.

(15) Counsel failed to investigate evidence and discovery, to make sure that informant "Donald Trammell" was registered with the South Carolina Law Enforcement

Division, for a major investigation. The investigator "Matt Owens" failed to register "Donald Trammell" with Sled, pursuant to Sled Policy 13.30. The investigator violated Sled Policy 13.30, "Use of informants in investigations." Furthermore, Vickie Trammell and Nichi Gardner were not registered with Sled, for this investigation.

(16) Counsel failed to move for a mistrial when the solicitor, on page 347 of the trial transcript, violated a cardinal rule and expressed his own opinion of the Petitioner's guilt. Furthermore, counsel waited until the jury left the courtroom to deliberate before he made his objection to these remarks.

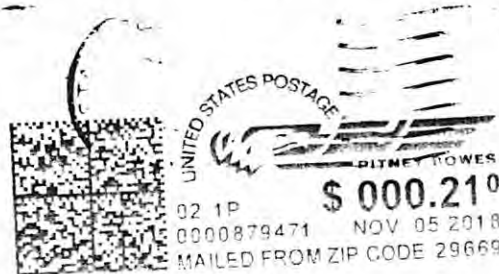
(17) Counsel failed to move for a motion to sever the charges.

(18) Counsel failed to impeach the State's witness David Ennis because the Petitioner had a right to face

his accuser and challenge their testimony at trial.

16 (A)(B)(C); Ineffective assistance of counsel; This is the only venue I am aware of for these type of claims.

MARK BAYNE # 250241
Perry Correctional Institution 01-B-109
430 Oaklawn Rd.
Pelzer, South Carolina 29669



2018-CP-23-05730

RECEIVED

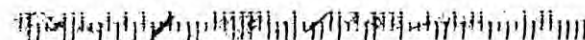
NOV 05 2018

P.C.I. MAILROOM

Clerk of Court
Greenville County Courthouse
305 East North Street
Greenville, South Carolina 29601

SCDC
Christmas
Packet

2960102190,0007



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	IN THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Mark Bayne, #250241,	)	Case No.: 2018-CP-23-05730
	)	
Applicant,	)	
	)	RETURN AND MOTION
v.	)	FOR MORE DEFINITE
	)	STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State of South Carolina (Respondent), making its Return to the Application for Post-Conviction Relief filed on November 9, 2018, would respectfully show this Court:

I. Procedural History

Mark Bayne (Applicant) is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of the Greenville County Clerk of Court. During its September 2015 term, the Greenville County Grand Jury indicted Applicant for carjacking (2014-GS-23-11898), kidnapping (2014-GS-23-11899), armed robbery (2014-GS-23-11902), and possession of a weapon during the commission of a violent crime (2014-GS-23-11902). On April 6-8, 2016, Applicant appeared before the Honorable D. Craig Brown and a jury, and was convicted after a jury trial of all four charges as indicted. Applicant was represented at trial by John P. Abdalla, Esquire, and Assistant Solicitor Justin W. Holloway prosecuted the case on behalf of the Thirteenth Circuit Solicitor's Office. Judge Brown sentenced Applicant to five years for possession of a weapon during the commission of a violent crime, twenty years armed robbery, twenty years for kidnapping, and ten years for carjacking. Applicant was given credit for time served, and all sentences were to run concurrently.

Applicant filed a direct appeal and was represented by Appellate Defender Robert M. Pachak, while Respondent was represented by Assistant Deputy Attorney General David A. Spencer. In that appeal, Applicant argued that the trial court erred “in giving an Allen charge and denying his motion for a mistrial.” State v. Bayne, 2018 WL 3301896, 2018-UP-310 (S.C. Ct. App. 2018) (internal citations omitted). The South Carolina Court of Appeals affirmed, and a Remittitur was issued on July 23, 2018. Id.

II. Factual History

Vickie Trammell and Nikki Gardner, Vickie’s daughter, drove from their residence, which was the home of Nikki’s grandfather, to purchase pain pills from Victim A. Vickie admitted to a history of addiction and noted Xanax was her controlled substance of choice. R. p. 81. She testified she went with her daughter to Victim A’s house to get a Roxy, a kind of controlled substance. R. pp. 84-87. Nikki likewise was addicted to pain medication. She lived at her grandfather’s house with Vickie. She also testified that she had bought drugs from Victim B in the past. R. p. 126-27.

After Nikki and Vickie had left the grandfather’s house and went to Victim A’s residence, Donald, Applicant, and Applicant’s girlfriend, Corrie Morgan, arrived at the grandfather’s house. They called Victim B, a drug dealer, to arrange a drug transaction at the house and were waiting for him to arrive so that they could rob him.

Victim A did not have any pills. However, he knew where he could get some in Greenville. Victim A was drunk and stoned, as was Vickie, so Nikki agreed to drive Victim A’s truck. The three left together in Victim A’s truck. However, Vickie and Victim A got in an argument after Victim A started saying “vulgar” things to Nikki. R. pp. 86-89. Vickie testified they argued until Vickie demanded they drive back. She was also on her cell phone with her son Donald Trammell, who overheard the argument. R. pp. 89-91.

Victim A testified that Nikki and Vickie came over to his house. He knew Vickie, but had not met Nikki before. He also knew Vickie's son Donald. R. pp. 42-43. The three left the house together. Victim A let Nikki drive his 4-door, gold Dodge Ram truck. Victim A was in the passenger seat and Vickie sat in the back seat. R. pp. 50-51. Victim A testified that when they arrived at the grandfather's house, Donald made Victim A get out of the truck at gunpoint and handed the gun off to another man whom Victim A did not know. He testified he could not identify the man because he did not know him and it was too dark. R. p. 52. Victim A was punched in the eye, taken to the back porch, and told not to move or do anything stupid. Donald, the man, and a woman, who seemed to be acting as a lookout, went back to the front of the house. R. pp. 52-53. Victim A heard the vehicles drive away and then ran through the woods and down the road until he made it home. He called the police. R. pp. 52-54.

Nikki explained to the jury what happened on the trip in Victim A's truck. Victim A made sexual comments to Nikki and grabbed her breasts. Vickie got mad and started yelling at him. Victim A, in reply, told Nikki and Vickie to get out of his truck. Rather than end up stranded with her mother far away from home, Nikki drove back to her grandfather's residence, believing that would be the safest thing to do. R. pp. 129-32.

Vickie confirmed that when they arrived at the grandfather's house, "all four doors opened" and they were directed out of the truck. R. p. 91-92. She saw Applicant hit Victim A. The men told her and Nikki to go inside the house. Vickie knew Applicant because they are related – she is married to Applicant's first cousin. R. p. 92-93.

Donald returned to the front of the house. Five to eight minutes after Victim A, Vickie, and Nikki arrived, Victim B showed up. Donald was surprised by the amount of drugs Victim B had – it was more than he was supposed to be purchasing. Donald snatched the bag of drugs. Then he

told Victim B that he wanted the money too. Victim B said no, but Donald grabbed a wad of money out of Victim B's pocket, which totaled \$1,200. Applicant approached while pointing a shotgun at Victim B as Donald stole Victim B's money. R. pp. 204-06. Donald later drove to Meadow Ford and saw Applicant washing the stolen gold Dodge truck. R. p. 209. Applicant gave Donald the keys to the truck. R. p. 224.

Donald claimed that they initially did not plan to steal Victim B's drugs or money. They were waiting for Victim B when they were surprised by the appearance of Nikki, Vickie, and Victim A. They wanted to get Victim A out of the way, so they took him behind the house. Donald claimed he did not hit Victim A, although he acknowledged the black eye in the photograph of Victim A put into evidence. R. pp. 196-200. Donald admitted he was on methamphetamine at the time of the robberies. He testified he was currently serving a five year sentence for armed robbery, but did not have any deals or promises in this case. R. pp. 175-76. Donald admitted he sold drugs, he started selling cocaine to co-workers, and then later methamphetamine and heroin. R. p. 178. At the time of the robberies, he was staying with Applicant's wife and adult children.

The State subpoenaed Victim B for trial, but he failed to show. Detective Tim Brochin testified that Victim B called 911. When Detective Brochin responded and spoke to him, Victim B seemed upset and talked fast. He testified that another officer responded to a different robbery at the same address. He was advised to be looking for a stolen tan Dodge Ram truck. R. pp. 69-72.

III. Application for Post-Conviction Relief

In his Application for Post-Conviction Relief, Applicant alleges that he is being held in custody unlawfully based on:

1. Ineffective Assistance of Counsel.
 - a. Failure to investigate and/or prepare
 - "Ineffective assistance of counsel to discharge his

- duty of due diligence to investigate the facts, evidence, and witnesses in the case.”
- “Counsel failed to investigate evidence and discovery, to make sure that informant ‘Donald Trammell’ was registered with the South Carolina Law Enforcement Division for a major investigation. The investigator ‘Matt Owens’ failed to register ‘Donald Tramell’ with SLED, pursuant to SLED Policy 13.30. The investigator violated SLED Policy 13.30, ‘Use of informants in investigations.’ Furthermore, Vickie Trammell and Nicki Gardner were not registered with SLED for this investigation.
 - “Counsel failed to spend adequate time with Petitioner reviewing discovery with him.”
 - “Ineffective assistance of counsel for failure to provide a proper defense for physical evidence in the case.”
 - “Ineffective assistance of counsel for failure to have a valid strategy for trial.”
 - “Counsel failed to properly and fully investigate the case.”
 - “Counsel failed to properly and fully prepair (sic) Petitioner for testimony in the case.”
 - “Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepaired (sic) to present testimony through direct and cross-examination of relevant evidence related to the matter.”
 - “Counsel failed to provide Petitioner with a copy of discovery in the case so Petitioner could assist with the case.”
- b. Failure to call witnesses and/or cross-examine witnesses
- “Counsel failed to interview or call as a witness a number of people who would have relevant information in this matter.”
 - “Counsel failed to impeach the State’s witness David Ennis because the Petitioner had a right to face his accuser and challenge their (sic) testimony at trial.”
 - “Counsel failed to challenge the testimony of the State’s witnesses and failed to adequately object and preserve objections to portions of the witness’s testimony, and failed to effectively cross-examine the witnesses on their testimony.”
- c. Failure to challenge arrest and/or indictments

- “Counsel failed to challenge or move to quash the indictment before the jury is sworn (sic), that indictment is not sufficient.”
 - “Counsel failed to request a preliminary hearing so Petitioner could more adequately be informed about case.”
- d. Failure to move
- “Counsel failed to move for a pre-trial motion for a directed verdict.”
 - “Counsel failed to move for a motion to sever (sic) the charges.”
 - “Counsel failed to move for a pre-trial motion to suppress the evidence from the case.”
- e. Failure to object and/or preserve objections
- “Counsel failed to object to hearsay.”
 - “Counsel failed to put on the record, after a bench conference, what objection and ruling was made by the State on page 258 of the trial transcript so as to preserve the issue for appellate review.”
 - “Counsel failed to put on the record, after a bench conference, what objection and ruling was made by the state on page 276 of trial transcript so as to preserve the issue for appellate review.
 - “Counsel failed to move for a mistrial when the solicitor, on page 347 of the trial transcript, violated a cardinal rule and expressed his own opinion of the Petitioner’s guilt. Furthermore, counsel waited until the jury left the courtroom to deliberate before he made his objection to these remarks.”
- f. “Ineffective assistance of counsel for abandonment of his client during trial.”

Applicant prays for relief as follows: “vacate and remand.”

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the transcript from Applicant’s trial, the records from Applicant’s direct appeal, Applicant’s records from the South Carolina Department of Corrections, and Applicant’s Post-Conviction Relief Application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Claims of Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” Id. at 691. Therefore, judicial scrutiny of counsel’s

performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

In his Application for Post-Conviction Relief, Applicant presents many claims of ineffective assistance of counsel. Respondent interprets the allegations presented in the Application as facts intended to support claims of ineffective assistance of counsel based upon counsel's failure to investigate and/or prepare for trial, failure to call witnesses and/or cross-examine witnesses, failure to challenge the arrest and/or indictments, failure to make certain motions, and failure to object to certain evidence or testimony and preserve those objections for appeal. Respondent has grouped the allegations as provided above in accordance with this interpretation. Respondent moves later herein for a more definite statement with regards to some of these allegations, as well as Applicant's allegation that counsel abandoned him during trial.

Respondent submits that Applicant likely can satisfy neither requirement of the Strickland test on his various claims of ineffective assistance of counsel. However, the claims of ineffective assistance of counsel probably raise questions of fact that the record may not conclusively refute. When an application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing." Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). Accordingly, Respondent requests an evidentiary hearing to fully resolve these issues.

V. Motion for a More Definite Statement

Applicant alleges that he is being held in custody unlawfully based on allegations of ineffective assistance of counsel, some of which are vague or lack specificity. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle her to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

Applicant has failed to state with any specificity the specific facts giving rise to some of his claims. For example, among other deficiencies, Applicant has failed to identify the witnesses whom counsel did not interview or call as witnesses, failed to identify the testimony at trial to which counsel should have objected, failed to identify the evidence that counsel should have moved to suppress, and failed to specify what is meant by his allegation that he was abandoned by counsel during trial. Respondent therefore moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel and to require Applicant to file an amended application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application or specific claims.

VI. Discovery Issues

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII. General Denial of Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII. Conclusion

WHEREFORE, Respondent requests that this Court require Applicant to amend his Application in order to provide a more definite statement and supporting facts, and then convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

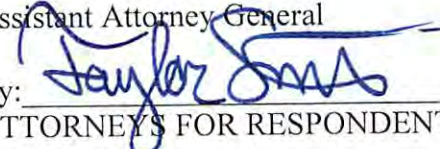
Respectfully submitted,

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By: 
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April 25, 2019

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

MARK BAYNE, 250241

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2018-CP-23-5730

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

R. Mills Ariail, Jr., Esquire
11 North Irvine Street; Suite 11
Greenville SC 29601

DATED this 26th day of April, 2019.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2018-CP-23-5730
)
)
)
MARK BAYNE)
) APPLICANT)
) vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)
) RESPONDENT)

November 8, 2021
Greenville, South Carolina

B E F O R E:

G.D. MORGAN, JR., Judge.

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

MILLS ARIAIL, ESQ.
Attorney for the Applicant

TAYLOR SMITH, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

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There were no exhibits.

1 (WHEREUPON, the following proceedings were held
2 via WebEx.)

3 COURT REPORTER'S NOTE: Due to remote platform
4 interruption and video/audio interference throughout the
5 hearing, those instances are denoted with [audio
6 distortion] in the transcript.

7 THE COURT: All right, Mr. Smith, I'll call on
8 you to kind of call the case and we'll proceed from
9 there.

10 MR. SMITH: May it please the Court, this is the
11 case of Mark Bayne vs. The State. The case number is
12 2018-CP-23-5730. I'll note for the record that we're
13 all participating by WebEx today. Mr. Bayne is
14 serving an aggregate sentence of 20 years in the
15 Department of Corrections. He was indicted by the
16 Greenville County Grand Jury for carjacking,
17 kidnapping, armed robbery, possession of a weapon
18 during the commission of a violent crime back in
19 September of 2015. The charges stem from two armed
20 robberies committed by a group of people back-to-back
21 with The State alleging that Mr. Bayne was a
22 participant in both robberies.

23 In April of 2016 Mr. Bayne was tried before a
24 jury with Judge Greg Brown presiding. Mr. John
25 Abdalla, who is here today, represented Mr. Bayne at

1 trial and Justin Holloway prosecuted him. The jury
2 found Mr. Bayne guilty as indicted to these charges
3 that I mentioned and he was found not guilty as to
4 others that I have not. Judge Brown sentenced
5 Mr. Bayne to a aggregate sentence of 20 years, credit
6 for time served with all the sentences running
7 concurrently. Mr. Bayne's lawyer argued that Judge
8 Brown aired in giving an Allen charge and denying the
9 defense's motion for a mistrial. And the Court of
10 Appeals affirmed and issued a remittitur sending the
11 case back to the circuit court in July of 2018.

12 Since then, Mr. Bayne filed this application,
13 raised a lot of issues in his original application.
14 Then a phone call I had with Mr. Ariail last week, he
15 told me they would present the following issues
16 today. That Mr. Abdalla was Constitutionally
17 ineffective for not calling David Enice [ph] as a
18 witness at trial. That Mr. Abdalla was
19 Constitutionally ineffective for not exploring the
20 possibility of Mr. Bayne's son's involvement in the
21 crimes. That Mr. Abdalla was ineffective for not
22 investigating witnesses with these witnesses being
23 Donald Trammell. That Mr. Abdalla was ineffective
24 for not objecting to the admission of evidence of
25 Mr. Bayne's prior bad acts. And for declining Judge

1 Brown's offer for curative instruction to the jury
2 about Mr. Bayne's criminal record. And that
3 Mr. Abdalla was ineffective for not using fingerprint
4 evidence to impeach Donald Trammell's credibility.

5 Those are the issues that I'm aware of, Your
6 Honor, that we're going to deal with today. And
7 that's my presentation of the issues before The
8 Court. I would ask if Mr. Ariail agrees that that's
9 an accurate statement?

10 MR. ARIAIL: Yes, Your Honor. I've spoken with
11 Mr. Bayne in regards to it and we have tried to
12 provide, as you've seen from the return, there was a
13 motion for more definite statement. So I provided
14 him what Mr. Bayne and I talked about and those are
15 the items that I'm prepared to go forward today. And
16 I have discussed with Mr. Bayne.

17 THE COURT: All right.

18 All right, Mr. Ariail, while I'll turn it over
19 to you and you can proceed.

20 MR. ARIAIL: Thank you very much, Your Honor. I
21 would call Mr. Bayne, I guess, to be sworn in at this
22 time for his testimony.

23 THE COURT: All right, Mr. Bayne, if you would
24 raise your right hand. I know we can't see you but
25 you are there, raise your right hand.

MARK BAYNE-DIRECT BY MR. ARIAIL

1 MARK BAYNE, after being duly sworn{,}testified
2 as follows:{F}.

3 THE COURT: All right, Mr. Ariail.

4 MR. ARIAIL: Thank you.

5 DIRECT EXAMINATION

6 BY MR. ARIAIL:

7 Q Mr. Bayne, just so we can -- I'm having a little
8 bit of difficulty hearing you. I don't know if you --
9 sometimes I know they put you in these rooms and you're
10 far away from the computer. If you can scoot up as close
11 as you can to the microphone, that would help me a ton.

12 A Sure.

13 Q Maybe if you can tell me -- speak a little
14 louder now?

15 A Okay, can you hear me?

16 Q Okay, I think that's getting better. Just for
17 our purposes, just speak as loud as you can. So we all
18 can hear you. I know we've got a court reporter that's
19 trying to take this down so that will help everybody. I
20 want to go through a little background in regards to you.
21 You've heard the presentation of the information by
22 Mr. Smith of the Attorney General's Office with regards to
23 the charges that you were indicted for. Did Mr. Abdalla
24 represent you on all those charges?

25 A Yes, sir.

MARK BAYNE-DIRECT BY MR. ARIAIL

1 Q Okay. And let me go through a little bit of the
2 background about that. You were charged with these, did
3 you get out on bond at any time for these charges?

4 A No, sir.

5 Q Okay. How long after you were arrested did you,
6 I guess, have Mr. Abdalla appointed as your counsel?

7 A He was appointed right away but never saw him
8 until like 10 weeks later.

9 Q Okay. So let's go through that. So you were
10 arrested, I guess, and then charged with these at some
11 point in time. You were incarcerated, I guess, at the law
12 enforcement center; is that correct?

13 A Yes, sir.

14 Q So after you were incarcerated it was about 10
15 weeks before you met with him; is that right?

16 A Yes, sir.

17 Q During your first encounter with him, what did
18 y'all discuss?

19 A Well, he had just gotten out of the hospital, I
20 believe, it was. We talked a little bit about his health.
21 We talked a little bit about my case. About the charges
22 that were being brought against me.

23 Q Okay. Did he bring any evidence with him or any
24 type of discovery that he had received regarding your
25 case?

MARK BAYNE-DIRECT BY MR. ARIAIL

1 A I think right at that moment he really didn't
2 know too much about it, neither did I.

3 Q Okay. So you had -- that was your initial
4 meeting with him; is that correct?

5 A Yes, sir.

6 Q Okay. How long after that initial meeting did
7 you, I guess, meet with him or hear from him again?

8 A I'm not sure. We met several times throughout
9 my incarceration.

10 Q Okay.

11 A But the evidence, like the -- of other peoples
12 testimony stuff like that, I was never given any kind of
13 transcript or nothing about what they were. My
14 co-defendants who testified against me, I never knew what
15 they were going to say until we went to trial.

16 Q Okay. Let's go back through that a little bit
17 because I need to kind of pick that apart. So at some
18 point in time, did you have a discussion with Mr. Abdalla
19 about the evidence that was, I guess, presented to him or
20 provided to him in discovery?

21 A I'm not sure what you're asking.

22 Q Well, I guess, what I'm trying -- I don't mean
23 to cut you off.

24 A I'm sorry. We talking about Mr. Enice?

25 Q Yeah, we'll get to that in a second. What I'm

MARK BAYNE-DIRECT BY MR. ARIAIL

1 trying to do is kind of get a brief understanding of what
2 you discussed. Did he ever bring down the discovery
3 packet and, you know, go through the evidence that had
4 been provided to him?

5 A He did show me documents from Mr. Enice and
6 Mr. [audio distortion].

7 Q Okay.

8 A Pardon?

9 Q Sorry, go ahead. My bad.

10 A He also showed me the supplemental reports here
11 and they're of Mr. Owens, Matthew Owens.

12 Q Okay. So let me --

13 A Uh --

14 Q Go ahead, sorry.

15 A We discussed Donald Trammell's testimony but I
16 never saw his testimony, I've never seen a transcript of
17 it or nothing like that. He told me that the detective
18 was having some issues with Donald Trammell telling lies.
19 And other than that, we discussed who Mr. Edmond was and
20 who Ms. Trammell was, Nicky Trammell and Nicky Gardener.
21 We discussed about my son, about his involvement.

22 Q While we're on that, what did you discuss with
23 him in regards to your son and his involvement?

24 A Well, we discussed the fact that David Enice had
25 positively identified him. That he was the man with the