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ORIGINAL

ANDERS

VOLUME 1 OF 2

STATE OF SOUTH CAROLINA

In The Court of Appeals

NO DEFENDANT'S BRIEF
No Respondent's Brief Filed

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARVIN BOWENS GREEN,

APPELLANT

RECORD ON APPEAL

RECEIVED
JUN 05 2012

SC Court of Appeals

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VOLUME 1 OF 2
Pages 1-500

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
INDICTMENT	520
SENTENCING SHEET	522
STATE’S EXHIBIT #2 (STATEMENT OF DEFENDANT).....	523
COURT’S EXHIBIT #1 (STATE’S OFFER FOR PLEA).....	527
CERTIFICATE OF COUNSEL	532

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 09-GS-10-5376
	)	
Marvin Lamar Bowens, a/k/a	)	
Marvin Bowens Green,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within jury trial was held June 22-24, 2011, before The Honorable R. Markley Dennis, Jr. in Courtroom 3B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

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INDEX

Index of Witnesses	3
Index Exhibits for <i>Jackson v Denno</i>	4
Index of State's Exhibits	5
Index of Defense Exhibits	7
Index of Court's Exhibits	7
<i>Batson</i> Motion	49
Motion to sever charges	57
<i>Jackson v Denno</i> Hearing	63
Jury Selection	17
Welcome by The Honorable R. Markley Dennis, Jr.	121
Opening Statement by Solicitor	135
Opening Statement by Defense	140
Defense Motions for Directed Verdict	311
Examination of Defendant	314
Charge Conference	418
Closing Argument by Solicitor	433
Closing Argument by Defense	422
Charge	446
Verdict	503
Defense Motion for New Trial	510
Sentence	517

INDEX OF WITNESSES

(Jackson v Denno Hearing)

Witness	Direct	Cross	Redirect	Recross
Charles Lawrence	64	84	97	
Marvin Bowens	98	107		

INDEX OF WITNESSES

(Trial Testimony)

Witness	Direct	Cross	Redirect	Recross
Jared Murphy	145	157		
Rajendra Kumar Patel	159	169		
Martha Ann Grant	171			
Julie Fraizer	176	195		
Brandon Craven	199	217	223	
Proffer Brandon Craven	206			
Jay Zealberg	224	233		
Robert Colson	234			
Thomas Milz	249	265		
Charles Lawrence	265	296	309	
Marvin Bowens	322	334		
Minor Jr.	378	388	394	
Marvin Garriel Bowens	395	399	402	
Minor Sr.	402	408		

INDEX OF STATE'S EXHIBITS

Jackson v Denno Hearing

Number	Description	Reference
1	Advice of Rights	120
2	Statement of Defendant	76

INDEX OF DEFENDANT'S EXHIBITS

Jackson v Denno Hearing

(None)

INDEX OF COURT'S EXHIBITS

Jackson v Denno Hearing

Number	Description	Reference
1	State's Offer for Plea	120

INDEX OF STATE'S EXHIBITS

Number	Description	Reference
1	Photograph (Roadrunner)	150
2	Photograph	150
3	Photograph	150
4	Photograph	150
5	Photograph (interior)	150
6	Photograph	150
7	Photograph (security camera)	150
8	Photograph	150
9	Photograph (cash register)	150
10	DVD, store security video	168
11	Photograph	180
12	DVD, 911 recording	186
13	Aerial Map	187
14	Photograph	193
15	Photograph	193
16	Photograph	193
17	Photograph	193
18	Photograph	193
19	Photograph	193
20	Evidence Bag of clothing	244

State of South Carolina v. Marvin Lamar Bowens
Case No. 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

6

21	Harrington & Richardson firearm *	262
	Serial No. AU529383, .12 gauge	257
22	Photograph	257
23	Photograph	257
24	Photograph	257
25	Photograph	257
26	Photograph	257
27	Photograph	257
28	Photograph	257
29	Photograph	257
30	Photograph	257
31	Photograph	257
32	Photograph	257
33	Photograph	257
34	Photograph	257
35	Photo ID	257
36	Advice of Rights Forms	278
37	Statement of Marvin Bowens	288
38	Statement of Minor Sr.	413

*Firearm returned to Solicitor Michael Sahn per agreement of parties
and Clerk of Court

INDEX OF DEFENDANT'S EXHIBITS

Number	Description	Reference
1	Statement of Julie Frazier	218
2	Statement of Brandon Craven	219
3	Return on Search Warrant	305

INDEX OF COURT'S EXHIBITS

Number	Description	Reference
1	Jury Note	468

State of South Carolina v Marvin Lamar Bowens
Case Number 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

8

1 June 22, 2011 9:00 A.M.

2

3 (DEFENDANT PRESENT)

4 THE COURT: Thank you very much. I'm
5 sorry, I was reading this case. You are Marvin
6 Lamar Bowens?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Bowens, how old are
9 you?

10 THE DEFENDANT: I'm 19.

11 THE COURT: You're present today with
12 your lawyer, Mr. Davis. Is that right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And I have -- this case
15 is on the schedule for trial following this one
16 which I'm going to do the closing arguments in
17 and charge to the jury this morning. So we'll
18 hear motions in your case as soon as we finish.

19 One of the Motions you've got pending
20 is to sever two charges that arise out of
21 allegations concerning you in Charleston County.
22 And they're two armed robberies, as I understand
23 it. I've read a little bit about the factual
24 situations and read through -- and I've talked
25 with your lawyer about the motion to sever those

1 charges; which if granted, of course, would mean
2 that effectively the State will have two chances
3 to obtain a conviction in those, basically.
4 You'd have to come to trial twice.

5 I also understand that there are some
6 charges -- and I don't know anything about them
7 other than the fact that I know they exist --
8 some charges in Colleton County that are
9 similar.

10 Your lawyer has presented me with some-
11 thing that -- and I do this not to pressure
12 defendants, but because -- I guess because I was
13 a lawyer for twenty-one years, and I -- I never
14 worked in the public defender's office, but I
15 handled criminal cases. And it always bothered
16 me, this is what I'm about to tell you, because
17 there was a young man -- oddly enough, he was
18 about nineteen years old. And it was a PCR
19 proceeding and his complaint was -- he went to
20 trial and he was convicted. His complaint was
21 that his lawyer did not tell him of the deal. I
22 don't know whether he did or he didn't. He said
23 he didn't. But I always worry about that. And
24 I said, 'you know, there's something I can do as
25 a judge to make sure that that kind of thing

1 never happens.'

2 And that's why you're here. Because
3 I'm looking at a deal, a major deal. I don't
4 know what you and your lawyer have talked about
5 -- don't really want to know. All I want you to
6 know is this deal, which is of significant
7 import -- because, as I understand it, it gets
8 -- I've read it quickly, Mr. Davis. As I
9 understand it, it lumps everything into one.

10 MR. DAVIS: Yes, sir, both counties.

11 THE COURT: And runs them all
12 concurrently?

13 MR. DAVIS: Yes, Your Honor.

14 THE COURT: It gives him an option to
15 really have control of his sentence, or at least
16 if we add another factor that is not before me
17 today, and would not be before me if you were
18 convicted and I was to impose a sentence. And
19 that is a potential opportunity to cooperate in
20 another charge that doesn't relate to you.

21 And the only thing that you have to do
22 in that is to tell the truth and be coopera-
23 tive, which -- and that's kind of what we're all
24 supposed to do. So that's not a real great
25 burden on anybody, I wouldn't think. You're

1 called to take the stand and you put your hand
2 up and you're supposed to tell the truth.

3 And the results of that could be very
4 advantageous to you if a sentence is being
5 imposed.

6 This deal, once we hear the Motions, is
7 gone. It exists no more. So what we will be
8 doing is we'll be trying you on the first one.
9 If I accept -- or if I don't, you'll be tried on
10 both of them together this week. The potential
11 for the sentence for that is sixty (60) years,
12 plus the gun charges that I understand are being
13 dismissed.

14 Your lawyer has advised you about the
15 gun charge, hasn't he?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: It's day-for-day. And
18 there's some question about this, but if I were
19 to put that one first and run the burglary
20 second, there's a potential way of getting
21 thirty-five (35) years out of it for you. You
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And -- a total of seventy
25 (70) years. Now, you're innocent, as far as I'm

1 concerned. And I'll just say this to you now,
2 and I'll say it to Mr. Sahn later, I read his
3 memo. And it's a good memo. I commend you on
4 it.

5 SOLICITOR SAHN: Thank you, sir.

6 THE COURT: It's written -- as Mr.
7 Davis is a pure advocate for Mr. Bowens, you're
8 a pure advocate for the State. And that's what
9 our system is.

10 You and I have a difference on one
11 statement in there. You say "he committed two
12 armed robberies"; in the affirmative, absolute.

13 Under the law, that isn't so. You've
14 been accused of committing them, but you didn't
15 commit anything, so far as I'm concerned,
16 technically.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All I know is, as I tell
19 people all the time -- and this is a kind of
20 cruel statement, but it's reality. I used to
21 tell them -- and I do what I'm sure your lawyer
22 has done. You're supposed to recommend, but
23 it's ultimately up to you. But I always add
24 this. You know, the real cruel aspect of this
25 is 'I'm suggesting you're taking this, but I'm

1 not the one that's going to serve the time; you
2 are. But if you turn it down, I'm not the one
3 that's going to serve the time, and I did my
4 job. I got you the best deal I could get for
5 you.'

6 You know, that's your call. But I just
7 want you to understand that this morning at
8 about 11:00 o'clock, or thereabouts, we're going
9 to hear the Motions. And once we do, this
10 document that I hold in my hand exists no more.
11 Okay?

12 THE DEFENDANT: May I ask you
13 something?

14 THE COURT: Yes, sir.

15 THE DEFENDANT: If I was to plead
16 guilty or accept the deal, would you be the
17 judge who sentenced me later?

18 THE COURT: Don't know. Don't have
19 any idea. It could be any judge. I just -- you
20 know, again, that's getting down the road. We
21 -- I kinda believe you have to take these things
22 one step at a time. My concern this morning is
23 I'm looking at something that offers you -- and
24 your lawyer has talked to you about it. I don't
25 know what the State's going to do. It's their

1 call. In fact, I was discussing your memo with
2 my wife this morning and just telling her some
3 things and asking her if she thought -- if she
4 -- just to hear her reaction to something. And
5 we were talking about life without parole and
6 the prosecution and the election and, you know,
7 I don't know what motivates them. I've never
8 been a solicitor either. So there are multiple
9 reasons for doing something. Sometimes they
10 feel a person's a real, real threat. Sometimes
11 it's a pressure play. I understand that. I
12 mean, that's up -- but that's the call. Again,
13 they're advocates for the State.

14 But one thing's for sure, whatever the
15 motivation is, if you turn down this deal and
16 you get convicted on -- and I sever it, you've
17 got one strike. There are three opportunities.
18 All you've got to do is get one of them. And if
19 they try them all three separate, who knows?

20 Because I know I did this long enough
21 -- I'm convinced that you -- and the verdicts
22 that I got on my side, for me, that I won. I'm
23 convinced as I'm sitting here if I pulled
24 another twelve -- because I had people that were
25 in the courtroom said "if I'd been on your jury,

1 I wouldn't have given you a dime." So I
2 understand that. You don't know.

3 But if you've got three opportunities
4 and all you've got to do is get one and you've
5 got life and you're nineteen?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Life is a long time,
8 bubba. So I'm not -- that's your call. I just
9 want you to understand and so that I'm clear for
10 trial purposes, if you're turning down something
11 that you've made a conscious decision.

12 So thank you very much, sir. I'll let
13 you talk with your lawyer. Thank you.

14 (RECESS)

15 (DEFENDANT PRESENT)

16 THE COURT: Thank you very much. Mr.
17 Bowens, I asked your lawyer and he said you're
18 ready to move forward with this trial and you
19 want to reject the offer. Is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. And you've
22 had an opportunity to consider it?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Very well. Now the offer
25 is removed. There is no offer now remaining.

1 Let's bring up the jury panel, please.

2 MR. DAVIS: Judge, we have no
3 objection to any of the State's *voir dire*.

4 THE COURT: Thank you, sir. Just
5 a little bit of discussion -- your client
6 understands about the hand of one is the hand
7 of all?

8 MR. DAVIS: Yes, Your Honor.

9 THE COURT: That's been explained to
10 him?

11 MR. DAVIS: Yes, Your Honor.

12 THE COURT: I don't know which one
13 was alleged -- there are two people and I don't
14 know which was alleged to enter. But he
15 understands about that?

16 MR. DAVIS: Yes, Your Honor. In
17 fact, I believe the undisputed fact is that it
18 would not be my client that was alleged who
19 entered. But he understands the concept.

20 THE COURT: That's fine.

21 MR. DAVIS: Your Honor, one issue
22 that has come up in all of the documents at all
23 is his father's name is Bowens. His actual name
24 on his birth certificate is Green.

25 THE COURT: Green.

State of South Carolina v Marvin Lamar Bowens
Case Number 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

17

1 MR. DAVIS: Was Green. They
2 transposed the middle names. But he's known by
3 both. His birth certificate will say Marvin
4 Bowens Green. His father is actually Mr.
5 Bowens.

6 THE COURT: Which one does he want to
7 be -- how does he want me to address him?

8 MR. DAVIS: Marvin Bowens.

9 (JURY PANEL ENTERS AT 11:20 A.M.)

10 THE COURT: Thank you very much,
11 ladies and gentlemen. I appreciate your
12 patience this morning. And I realize that
13 you've been here since 10:00 o'clock. I was
14 advised not too long ago that the first matter
15 had been resolved, and Judge Jefferson was going
16 to pick a jury in that case. So my case, just
17 about fifteen minutes ago or twenty minutes ago,
18 went to the jury. We were in the process of
19 resolving that. So this is my first opportunity
20 to see you.

21 Good morning to you. I'm pleased to
22 tell you, though, that this will be the last
23 dispute that we'll have this week. The civil
24 docket is resolved, and this now will resolve
25 the remaining cases on our docket. So for all

1 but thirteen of you, this will be the last time
2 you have to come this week.

3 I thank you for your participation. I
4 can't tell you enough how much you bring to this
5 process, how important it is that you make the
6 sacrifice that you make for the system to work.
7 And I think you for helping to make the system
8 work. It's a pleasure and it's a privilege.
9 It's the one thing that I've done that I'll have
10 to say -- and this is fairly consistent over the
11 seventeen years. It truly is the one thing that
12 I can honestly say every week when I have the
13 privilege and the pleasure of working with a
14 jury, I leave with a good feeling, whether I'm
15 in this part of the state, in Spartanburg or
16 anywhere in the state. Because it's just nice
17 to know that people are willing to do what you
18 do. And I thank you for that.

19 The last dispute is a dispute that --
20 many of you were here Monday when we selected
21 the one we just finished. As you know it's a
22 dispute -- a criminal dispute. And the State of
23 South Carolina is the party who makes the claim
24 in these criminal disputes. The State of South
25 Carolina has made a claim against Mr. Marvin

State of South Carolina v Marvin Lamar Bowens
Case Number 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

19

1 Lamar Bowens that accuses Mr. Bowens of
2 committing the offense of armed robbery and
3 committing the offense of possession of a sawed-
4 off shotgun.

5 First, I'd like to introduce to you Mr.
6 Marvin Bowens. He's seated at the table to my
7 left. Mr. Bowens, if you'll stand. He's the
8 gentleman in the middle.

9 THE DEFENDANT: (Stands)

10 THE COURT: Thank you, sir. You may
11 be seated. Are there any members of the jury
12 panel related by blood or marriage, have any
13 business dealings with, socially or casually
14 acquainted with Mr. Bowens? If so, please
15 stand. (No response). Thank you. There appear
16 to be none.

17 Let me do something else to make sure.
18 When I qualify, I'm inclined to say this, and
19 I'm not sure if Judge Harrington -- when you
20 were qualified, you took an oath to respond to
21 those questions. But it really applies to all
22 questions from the Court all week. I would ask
23 you now if each of you will again affirm the
24 oath that you made when you were qualified, that
25 is that you will respond truthfully to all of my

1 questions. If you will do that, please indicate
2 by saying "I will."

3 (JURORS RESPOND AFFIRMATIVELY)

4 THE COURT: Any member of the panel
5 that cannot make that commitment? (No
6 response). Thank you very much.

7 Mr. Bowens is represented in this
8 matter by Mr. Davis. If you would, identify
9 yourself and anyone who will be assisting you,
10 please.

11 MR. DAVIS: Thank you, Your Honor.
12 I'm Rodney Davis. I'm Marvin's attorney. This
13 is Ms. Mary Ford. She'll be assisting in this
14 matter. And Sara Crawford is a law student
15 that's helping us out today.

16 THE COURT: Sara?

17 MR. DAVIS: Crawford.

18 THE COURT: Crawford?

19 MR. DAVIS: Yes, sir.

20 THE COURT: Are there any members of
21 the jury panel related by blood or marriage,
22 have any business dealings with, socially or
23 casually acquainted with Mr. Davis, Ms. Ford or
24 Ms. Crawford or ever been represented by Ms.
25 Ford or Mr. Davis? If so, please stand. (No

1 response). Thank you. There are none.

2 Are there any members of the jury panel
3 related by blood or marriage, have any business
4 dealings with, socially or casually acquainted
5 with, ever been represented by Mr. Ashley
6 Pennington, who is the Circuit Public Defender
7 for the Ninth Judicial Circuit? If so, please
8 stand. (No response). Thank you. There appear
9 to be none.

10 Are there any members of the jury panel
11 related by blood marriage, have any business
12 dealings with, socially or casually acquainted
13 with anyone employed with his offices? He has
14 two -- one in Berkeley County and one in
15 Charleston County. If so, please stand. (No
16 response). Thank you. There are none.

17 As many of you heard on Monday, the
18 State of South Carolina is represented by the
19 chief prosecuting officer for this Circuit who
20 is Scarlett Wilson, our Solicitor. Are there
21 any members of the jury panel related by blood
22 or marriage, have any business dealings with,
23 socially or casually acquainted with, ever been
24 represented by Ms. Wilson? If so, please stand.
25 (No response). Thank you. There appear to be

1 none.

2 Ms. Wilson is assisted in this matter
3 by Mr. Sahn who is an assistant solicitor for
4 the Ninth Circuit. If you will, identify
5 yourself and anyone who will be assisting you,
6 please.

7 SOLICITOR SAHN: Good morning. My
8 name is Michael Sahn. I'm the prosecutor in
9 this case for the State of South Carolina.
10 Assisting me in this case is Rutledge Durant,
11 also an assistant solicitor in our office.
12 Thank you.

13 THE COURT: Thank you, Mr. Sahn. Any
14 member of the jury panel related by blood or
15 marriage, have any business dealings with,
16 socially or casually acquainted with, ever been
17 represented by Mr. Sahn or Mr. Durant? If so,
18 please stand. Yes, ma'am?

19 JUROR NUMBER 227: Judge, I believe
20 that I was defending a case in which Mr. Sahn
21 was the prosecutor. It ended in a plea. It
22 wasn't a trial.

23 THE COURT: Would that affect or
24 influence you in this matter?

25 JUROR NUMBER 227: No.

1 THE COURT: Has that matter already
2 been -- has it been concluded?

3 JUROR NUMBER 227: Yes.

4 THE COURT: Would your decision be
5 fair to both the State and to Mr. Bowens?

6 JUROR NUMBER 227: Yes.

7 THE COURT: And would it be based on
8 the evidence and the law?

9 JUROR NUMBER 227: Yes.

10 THE COURT: Your name and number,
11 please?

12 JUROR NUMBER 227: Phyllis Rico-
13 Flores, 227.

14 THE COURT: Thank you Ms. Flores.
15 Anyone else? (No response). Thank you. There
16 appear to be none.

17 I'm going to identify a number of
18 persons, ladies and gentlemen. If you're
19 related by blood or marriage, have any business
20 dealings with or social or casually acquainted
21 with any of these persons, you need to stand and
22 share that information, please, with the Court:

23 Deputy Jared Murphy with the Charleston
24 County Sheriff's Office.

25 I identify -- all of the following will

1 be with the Charleston County Sheriff's Office:

2 Deputy Ronald Coleman,

3 Deputy Jay Zealberg,

4 Detective Robert Colson,

5 Deputy Agosta,

6 Investigator Milz, Jim Milz,

7 Deputy Mike Middleton,

8 Deputy Charles Lawrence,

9 Allison Burrell,

10 Katherine Kjellman,

11 also Rajendrakumar Patel,

12 Martha Ann Grant,

13 Julie Frazier,

14 Deputy Craven with the Walterboro

15 Police Department,

16 Leroy Drayton,

17 Julie Gabe,

18 Kyle Edwards,

19 Sabrina Woods.

20 Any of those persons? (No response).

21 Thank you. There appear to be none.

22 The incident that bring us here -- as I
23 mentioned, some of you know, as framed in the
24 documents which I hold in my hand -- and these
25 are indictments that accuse Mr. Bowens of the

1 crimes I mentioned. And, basically, he's
2 accused in the indictment that on or about
3 December 20, 2008, in Charleston County at the
4 locations in Charleston County -- the location
5 is the RoadRunner gas station located at 5221
6 Highway 165. That while armed with a deadly
7 weapon, a sawed-off shotgun, he committed the
8 offense. He did take and carry away goods and
9 money from the person or presence of the persons
10 in that store at the time which constitutes the
11 crime of armed robbery. And he's also alleged
12 to, at that time, to have been armed with a
13 sawed-off shotgun.

14 I share that with you to find out if
15 any member of the jury panel has heard anything,
16 read anything or have any prior knowledge of
17 such a dispute. If so, please stand. (No
18 response). Thank you. There appear to be none.

19 As you know the crime involved involves
20 armed robbery and a sawed-off shotgun. Is there
21 anything about your life's experiences, your
22 personal philosophy, your beliefs that would in
23 any way affect your ability in a dispute of this
24 nature involving this crime or these crimes of
25 fairly and impartially applying your common

1 sense, your sense of logic and reason in
2 analyzing the evidence in the case, and once
3 deciding from the evidence what you believe to
4 be the true facts, then taking the law as I give
5 it to you and applying that law fairly and
6 impartially to those facts? If you feel there
7 would be some difficulty because of something
8 that's happened in your life or something that
9 you strongly feel, please stand. (No response).
10 Thank you. There appear to be none.

11 Are there any members of the jury panel
12 or members of your immediate family involved now
13 or formerly in law enforcement in any capacity?
14 If so, please stand. Yes, sir?

15 JUROR NUMBER 10: My son is a police
16 officer for the City of Charleston.

17 THE COURT: Would that affect or
18 influence you in this dispute?

19 JUROR NUMBER 10: Possibly.

20 THE COURT: Your name and number? Or
21 your number and name?

22 JUROR NUMBER 10: Ten, Joyce Bailey.

23 THE COURT: Ms. Bailey, you're
24 excused from participation in this dispute.
25 Have a great day. Thank you. Thank you for

State of South Carolina v Marvin Lamar Bowens
Case Number 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

27

1 your service.

2 (JUROR NUMBER 10 EXCUSED)

3 THE COURT: Yes, ma'am?

4 JUROR NUMBER 113: I'm Juror Number
5 113 and my brother-in-law is an ICE agent.

6 THE COURT: Is an ICE agent?

7 JUROR NUMBER 113: Yes.

8 Immigration.

9 THE COURT: Would that affect or
10 influence you in this dispute?

11 JUROR NUMBER 113: I don't believe so.

12 THE COURT: Could you make a
13 commitment to the parties that it would not
14 influence your decision in any fashion?

15 JUROR NUMBER 113: Yes.

16 THE COURT: You may be seated. Thank
17 you. Yes, ma'am?

18 JUROR NUMBER 3: I'm juror number
19 three and I'm the communications manager for the
20 state Coast Guard Authority.

21 THE COURT: Would that affect or
22 influence you in this dispute?

23 JUROR NUMBER 3: No, sir.

24 THE COURT: Thank you, ma'am. Yes,
25 sir.

1 JUROR NUMBER 161: My name is
2 Herbert Mann. I'm a retired Coast Guard
3 boarding officer, twenty some-odd years. I was
4 also a law enforcement instructor at the
5 Maritime Law Enforcement Academy in North
6 Charleston.

7 THE COURT: Would that affect or
8 influence you, sir?

9 JUROR NUMBER 161: No, sir.

10 THE COURT: Will you apply your
11 life's experience and knowledge that you've
12 gleaned in that profession fairly and
13 impartially in analyzing the evidence?

14 JUROR NUMBER 161: I will.

15 THE COURT: And would your decision
16 be based on the evidence and the law and be fair
17 to both sides?

18 JUROR NUMBER 161: Absolutely.

19 THE COURT: Thank you, sir. Again,
20 your number?

21 JUROR NUMBER 161: 161.

22 THE COURT: Yes.

23 JUROR NUMBER 123: I'm 123, Serena
24 Jenkins. I'm a detention officer for the
25 Sheriff at the detention center.

1 THE COURT: Would that affect or
2 influence you in any manner?

3 JUROR NUMBER 123: No, sir.

4 THE COURT: It would not?

5 JUROR NUMBER 123: No.

6 THE COURT: Would y'all approach,
7 please, for just one second?

8 (BENCH CONFERENCE)

9 THE COURT: Ms. Jenkins, I thank you
10 for what you do, but I don't -- what I would
11 have typically done is to put you only in a
12 civil setting, not because you can't be fair. I
13 just don't believe we need to create a situation
14 for you, where you may be dealing with some of
15 these persons. And I think the better thing to
16 do is just excuse you. So I'll excuse you.
17 Thank you, ma'am.

18 JUROR: Thank you.

19 THE COURT: Thank you for your
20 service. I appreciate it.

21 (JUROR NUMBER 123 EXCUSED)

22 THE COURT: I'm sorry to hold you up,
23 the rest of you who were standing. Yes, ma'am?

24 JUROR NUMBER 227: I'm Phyllis
25 Rico-Flores, 227. My brother is a police office

State of South Carolina v Marvin Lamar Bowens
Case Number 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

30

1 and he is a detective now on the Greenville
2 County Police Department. I'm a former Miami-
3 Dade County prosecutor, and I'm currently a
4 prosecutor for the City of Charleston.

5 THE COURT: Would that affect or
6 influence you in any way?

7 Juror NUMBER 227: No.

8 THE COURT: And will you apply your
9 knowledge and life's experiences fairly and
10 impartially in analyzing the evidence in this
11 case and in applying the law?

12 JUROR NUMBER 227: Yes.

13 THE COURT: And your decision would
14 be based on the evidence and the law and be fair
15 to both sides?

16 JUROR NUMBER 227: Yes.

17 THE COURT: Thank you so much. You
18 may be seated. Yes, ma'am?

19 JUROR NUMBER 44: I'm Melinda Colbert,
20 Number 44. I do have a brother who works at, I
21 believe, the Lee Correctional Institute.

22 THE COURT: Would that affect or
23 influence you in any way?

24 JUROR NUMBER 44: No.

25 THE COURT: Thank you. Are there any

State of South Carolina v Marvin Lamar Bowens
Case Number 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

31

1 others? (No response). Thank you. There
2 appear to be none.

3 Are any members of the jury panel or
4 members of your family ever been involved in any
5 dispute in this county and dealt with the
6 Solicitor's Office or the Public Defender's
7 Office? If so, please stand.

8 I ask you to come forward, please,
9 ma'am.

10 BAILIFF: Number 227.

11 (SIDEBAR)

12 THE COURT: 227 will remain.

13 BAILIFF: Number 94.

14 (SIDEBAR)

15 THE COURT: 94 will be excused from
16 participation in this dispute. Have a great
17 day. Thank you. Thank you for your service.

18 (JUROR NUMBER 94 EXCUSED)

19 BAILIFF: 163.

20 (SIDEBAR)

21 THE COURT: 163 is excused.

22 (JUROR NUMBER 163 EXCUSED)

23 BAILIFF: 107.

24 (SIDEBAR)

25 THE COURT: 107 will remain.

1 BAILIFF: Number 238.

2 (SIDEBAR)

3 THE COURT: Number 238 is excused
4 from participation in this dispute. Thank you,
5 ma'am. I appreciate it.

6 (JUROR NUMBER 238 EXCUSED)

7 THE COURT: Are there any others?
8 (No response). Thank you. There appear to be
9 none.

10 Are there any members of the jury panel
11 that have ever been involved in a crime of
12 violence, armed robbery, firearms, anything of
13 that nature, either you were accused of it, you
14 were testifying for someone that was or you were
15 the person against whom the crime was committed?
16 If that applies to you, please stand.

17 BAILIFF: Number 86.

18 BENCH CONFERENCE:

19 THE COURT: Yes, ma'am?

20 JUROR NUMBER 86: I am a trauma
21 nurse and, as such, I see a lot of trauma
22 victims, gunshot victims and that sort of thing.

23 THE COURT: Would that affect or
24 influence you in this matter?

25 JUROR NUMBER 86: I am not sure.

1 I can't say that it wouldn't. I see a lot.

2 THE COURT: I understand that.

3 That's why we ask if you can fairly and
4 impartially analyze the evidence?

5 JUROR NUMBER 86: I don't know
6 that I can.

7 (BENCH CONFERENCE CONCLUDED)

8 THE COURT: Juror Number 86 is
9 excused. Have a great day. Thank you for your
10 participation.

11 (JUROR NUMBER 86 EXCUSED)

12 THE COURT: Any others? (No
13 response). Thank you. There appear to be none.

14 Are there any members of the jury panel
15 that have custody of a child ages sixteen to
16 eighteen? If so, please stand. Have custody of
17 a child, you have a child living in your home
18 ages sixteen to eighteen years of age?

19 (JURORS STAND)

20 THE CLERK: Could I have your number,
21 please?

22 JUROR: Phyllis Rico-Flores, 227.

23 THE COURT: Ms. Rico-Flores, if you
24 heard testimony in this case about a person
25 being that age, would you apply your experiences

State of South Carolina v Marvin Lamar Bowens
Case Number 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

34

1 in that respect fairly and impartially?

2 JUROR NUMBER 227: Yes.

3 THE COURT: And it would not
4 influence your decision one way or the other?

5 JUROR NUMBER 227: No.

6 THE COURT: Your decision would be
7 fair to both sides?

8 JUROR NUMBER 227: Yes.

9 THE COURT: Thank you. You may be
10 seated. Your number again?

11 JUROR NUMBER 227: 227.

12 THE COURT: Thank you. Yes, ma'am?

13 JUROR NUMBER 229: 229.

14 THE COURT: And you have a child or
15 children in that age group?

16 JUROR NUMBER 229: I have one
17 that's eighteen.

18 THE COURT: The fact that you have
19 that experience and you hear testimony about a
20 person who is involved in this trial, would you
21 apply your knowledge and experience with that
22 child fairly and impartially?

23 JUROR NUMBER 229: Yes, sir.

24 THE COURT: And your decision would
25 be based on the evidence and the law?

1 JUROR NUMBER 229: Yes, sir.

2 THE COURT: And it would be fair to
3 both sides?

4 JUROR NUMBER 229: Yes, sir.

5 THE COURT: Yes, ma'am.

6 JUROR NUMBER 275: Carol Tidwell,
7 275.

8 THE COURT: You have ---

9 JUROR NUMBER 275: An 18-year-old.

10 THE COURT: An 18-year-old?

11 JUROR NUMBER 275: (Affirmative
12 nod).

13 THE COURT: Would that influence you,
14 if you heard testimony of a person involved in
15 this case being that age?

16 JUROR NUMBER 275: No, sir.

17 THE COURT: Would you apply your
18 experience and knowledge and listen fairly and
19 impartially in evaluating the evidence?

20 JUROR NUMBER 275: Yes, sir.

21 THE COURT: And the decision would be
22 based on the evidence and the law and would be
23 fair to both sides.

24 JUROR NUMBER 275: Yes, sir.

25 THE COURT: Thank you. Yes.

State of South Carolina v Marvin Lamar Bowens
Case Number 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

36

1 JUROR NUMBER 299: Serita Young,
2 299.

3 THE COURT: Yes, ma'am.

4 JUROR NUMBER 299: I have custody
5 of my 17-year-old grandson.

6 THE COURT: Would that affect or
7 influence you in this dispute if you heard
8 testimony of a person being involved of that
9 age?

10 JUROR NUMBER 299: No, sir.

11 THE COURT: Would you apply your
12 experience and your knowledge with a person of
13 that age fairly and impartially in analyzing the
14 evidence?

15 JUROR NUMBER 299: Yes, sir.

16 THE COURT: And would your decision
17 be based on the evidence and the law and be fair
18 to both sides?

19 JUROR NUMBER 299: Yes, sir.

20 THE COURT: You may be seated.

21 Any other specific questions from the
22 State, Mr. Sahn?

23 SOLICITOR SAHN: No, Your Honor.

24 THE COURT: Any other specific
25 questions from Mr. Bowens?

1 MR. DAVIS: No, sir. Your Honor, did
2 you have call the defense witnesses?

3 THE COURT: No, I did not. Let me
4 also identify the following individuals:

5 Minor Sr.,
6 Minor Jr.,
7 Marvin Gerriel Bowens and
8 Lee Ginn.

9 Anybody related by blood or marriage,
10 have any business dealings with, socially or
11 casually acquainted with any of those persons?
12 If so, please stand. (No response). Thank you
13 very much, Mr. Davis. Any additional questions?

14 MR. DAVIS: No, Your Honor.

15 THE COURT: The last question, ladies
16 and gentlemen, many of you heard this on Monday,
17 and it really is the essence of what we're all
18 about. One of the first acts that will occur
19 once you're selected is you will be asked to
20 raise your hand and make a commitment to the
21 State and to Mr. Bowens and to the Court that
22 you will, at the appropriate time, apply your
23 common sense, your sense of logic and reason,
24 fairly and impartially in analyzing the
25 evidence, which consists of the testimony of the

1 witnesses, any exhibits that might be introduced
2 through that testimony and nothing else. Then
3 once you decide the true facts, taking the law as
4 the Court gives it to you, notwithstanding your
5 personal feelings about what the law is or
6 should be, but rather taking it as what I state
7 it is and applying that fairly and impartially
8 to those facts and coming to a decision that is
9 fair to the State and Mr. Bowens. If based on
10 what you've heard today if there's anything that
11 would give you any concern about your ability to
12 make that commitment to the State and to Mr.
13 Bowens, if so, please stand. (No response).
14 Thank you very much.

15 Many of you participated in the process
16 and in just a moment your names will be called.
17 And I'm going to ask that when you come up that
18 you bring with you your personal effects and you
19 come and you stand before this podium, just I
20 am, facing the rear of the courtroom. And
21 you'll hear from each side, either "seat the
22 juror, swear the juror" -- some indication that
23 they want to include you on the panel. Some may
24 say "excuse the juror."

25 We'll go through that process until we

1 have seated twelve jurors and one alternate.

2 As I mentioned Monday, if someone's
3 excused that doesn't mean anything. That's just
4 the process, so don't read anything into that
5 and don't infer anything.

6 Thank you very much and Mr. Michele, I
7 turn it over to y'all. You all will have the
8 list. I don't have any problem with y'all
9 having the list. Thank you.

10 THE CLERK: When I call your name,
11 please come forward with your belongings and
12 stand in front of the podium. Juror Number 85,
13 Mary Glover.

14 (JUROR BEFORE COUNSEL)

15 CLERK: What say you for the State?

16 SOLICITOR SAHN: Please seat Ms.
17 Glover.

18 THE CLERK: What say you for the
19 defendant?

20 MR. DAVIS: (Sidebar with Defendant),
21 Please seat Ms. Glover.

22 THE CLERK: Ms. Glover, if you'd go
23 to the jury box.

24 (JUROR NUMBER 85 SEATED)

25 CLERK: Juror Number 161, Herbert

State of South Carolina v Marvin Lamar Bowens
Case Number 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

40

1 Mann.

2 (JUROR BEFORE COUNSEL)

3 CLERK: What say you for the State?

4 SOLICITOR SAHN: Please seat Mr.

5 Mann.

6 THE CLERK: What say you for the
7 defendant?

8 MR. DAVIS: (Sidebar with Defendant),
9 please excuse Mr. Mann from this case.

10 THE CLERK: Mr. Mann, please have a
11 seat back in the audience.

12 (JUROR NUMBER 161 EXCUSED)

13 CLERK: Juror Number 207, Jaquan
14 Palmer.

15 (JUROR BEFORE COUNSEL)

16 CLERK: What say you for the State?

17 SOLICITOR SAHN: Please excuse Mr.

18 Palmer.

19 THE CLERK: Mr. Palmer, please have a
20 seat back in the audience.

21 (JUROR NUMBER 207 EXCUSED)

22 CLERK: Juror Number 8, Richard

23 Austin.

24 (JUROR BEFORE COUNSEL)

25 CLERK: What say you for the State?

State of South Carolina v Marvin Lamar Bowens
Case Number 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

41

1 SOLICITOR SAHN: Please seat Mr.
2 Austin.

3 THE CLERK: What say you for the
4 defendant?

5 MR. DAVIS: (Sidebar with Defendant),
6 Please seat Mr. Austin.

7 THE CLERK: Mr. Austin, please have a
8 seat in the jury box.

9 (JUROR NUMBER 8 SEATED)

10 CLERK: Juror Number 227, Phyllis
11 Rico-Flores.

12 (JUROR BEFORE COUNSEL)

13 CLERK: What say you for the State?

14 SOLICITOR SAHN: Please seat Ms.
15 Rico-Flores.

16 THE CLERK: What say you for the
17 defendant?

18 MR. DAVIS: (Sidebar with Defendant,) please seat Ms. Rico-Flores.

20 (JUROR NUMBER 227 SEATED)

21 THE CLERK: Juror Number 102, Donna
22 Hartin.

23 (JUROR BEFORE COUNSEL)

24 CLERK: What say you for the State?

25 SOLICITOR SAHN: Please seat Ms.

1 Hartin.

2 THE CLERK: What say you for the
3 defendant?

4 MR. DAVIS: (Sidebar with Defendant),
5 Please seat Ms. Hartin.

6 THE CLERK: Ms. Hartin, please have a
7 seat in the jury box.

8 (JUROR NUMBER 102 SEATED)

9 CLERK: Juror Number 2, Kelly Albers.

10 (JUROR BEFORE COUNSEL)

11 CLERK: What say you for the State?

12 SOLICITOR SAHN: Please seat Ms.
13 Albers.

14 THE CLERK: What say you for the
15 defendant?

16 MR. DAVIS: (Sidebar with Defendant),
17 Please seat Ms. Albers.

18 THE CLERK: Ms. Albers, please have a
19 seat in the jury box.

20 (Juror NUMBER 2 SEATED)

21 CLERK: Juror Number 230, Tina
22 Rockwell.

23 (JUROR BEFORE COUNSEL)

24 CLERK: What say you for the State?

25 SOLICITOR SAHN: Please seat Ms.

1 Rockwell.

2 THE CLERK: What say you for the
3 defendant?

4 MR. DAVIS: (Sidebar with Defendant),
5 please excuse Ms. Rockwell in this case.

6 THE CLERK: Ms. Rockwell, please have
7 a seat back in the audience.

8 (JUROR NUMBER 230 EXCUSED)

9 CLERK: Juror Number 233, John Roper.

10 (JUROR BEFORE COUNSEL)

11 CLERK: What say you for the State?

12 SOLICITOR SAHN: Please seat Mr.
13 Roper.

14 THE CLERK: What say you for the
15 defendant?

16 MR. DAVIS: (Sidebar with Defendant),
17 Please seat Mr. Roper.

18 THE CLERK: Mr. Roper, please have a
19 seat in the jury box.

20 (JUROR NUMBER 233 SEATED)

21 CLERK: Juror Number 138, Orlando
22 Kleckley.

23 (JUROR BEFORE COUNSEL)

24 CLERK: What say you for the State?

25 SOLICITOR SAHN: Please excuse Mr.

1 Kleckley.

2 THE CLERK: Mr. Kleckley, please have
3 a seat back in the audience.

4 (JUROR NUMBER 138 EXCUSED)

5 CLERK: Juror Number 167, Larry
6 McCorkle.

7 (JUROR BEFORE COUNSEL)

8 CLERK: What say you for the State?

9 SOLICITOR SAHN: Please seat Mr.
10 McCorkle.

11 THE CLERK: What say you for the
12 defendant?

13 MR. DAVIS: (Sidebar with Defendant),
14 please seat Mr. McCorkle.

15 THE CLERK: Mr. McCorkle, please have
16 a seat in the jury box.

17 (JUROR NUMBER 167 SEATED)

18 THE COURT: Juror Number 114,
19 Kimberly Hoch.

20 (JUROR BEFORE COUNSEL)

21 CLERK: What say you for the State?

22 SOLICITOR SAHN: Please seat Ms.
23 Hoch.

24 THE CLERK: What say you for the
25 defendant?

1 MR. DAVIS: (Sidebar with Defendant),
2 Please seat Ms. Hoch.

3 THE CLERK: Ms. Hoch, please have a
4 seat in the jury box.

5 (JUROR NUMBER 114 SEATED)

6 THE COURT: Juror Number 37, Charles
7 Cheatham.

8 (JUROR BEFORE COUNSEL)

9 CLERK: What say you for the State?

10 SOLICITOR SAHN: Please excuse Mr.
11 Cheatham.

12 THE CLERK: Mr. Cheatham, please have
13 a seat back in the audience.

14 (JUROR NUMBER 37 EXCUSED)

15 CLERK: Three strikes for the State.
16 Juror number 118, Suzanne Huguley.

17 (JUROR BEFORE COUNSEL)

18 CLERK: What say you for the State?

19 SOLICITOR SAHN: Please seat Ms.
20 Huguley.

21 THE CLERK: What say you for the
22 defendant?

23 MR. DAVIS: (Sidebar with Defendant),
24 Please seat Ms. Huguley.

25 THE CLERK: Ms. Huguley, please have

1 a seat in the jury box.

2 (JUROR NUMBER 118 SEATED)

3 CLERK: Juror Number 44, Melinda
4 Colbert.

5 (JUROR BEFORE COUNSEL)

6 CLERK: What say you for the State?

7 SOLICITOR SAHN: Please seat Ms.
8 Colbert.

9 THE CLERK: What say you for the
10 defendant?

11 MR. DAVIS: (Sidebar with Defendant),
12 Please excuse Ms. Colbert in this case.

13 THE CLERK: Ms. Colbert, please have
14 a seat back in the audience.

15 (JUROR NUMBER 44 EXCUSED)

16 CLERK: Juror Number 147, Taylor
17 Liles.

18 (JUROR BEFORE COUNSEL)

19 CLERK: What say you for the State?

20 SOLICITOR SAHN: Please seat Mr.
21 Liles.

22 THE CLERK: What say you for the
23 defendant?

24 MR. DAVIS: (Sidebar with Defendant),
25 Please seat Mr. Liles.

State of South Carolina v Marvin Lamar Bowens
Case Number 10-GS-10-5376
Jury Trial of June 22-24, 2011
Before The Honorable R. Markley Dennis, Jr.

47

1 THE CLERK: Mr. Liles, please have a
2 seat in the jury box.

3 (JUROR NUMBER 147 SEATED)

4 CLERK: Juror Number 284, Sabrina
5 Ward.

6 (JUROR BEFORE COUNSEL)

7 CLERK: What say you for the State?

8 SOLICITOR SAHN: Please seat Ms.
9 Ward.

10 THE CLERK: What say you for the
11 defendant?

12 MR. DAVIS: (Sidebar with Defendant),
13 please seat Ms. Ward.

14 THE CLERK: Ms. Ward, please have a
15 seat in the jury box.

16 (JUROR NUMBER 284 SEATED)

17 CLERK: Juror number 291, Susannah
18 Wiksell.

19 (JUROR BEFORE COUNSEL)

20 CLERK: What say you for the State?

21 SOLICITOR SAHN: Please seat Ms.
22 Wiksell.

23 THE CLERK: What say you for the
24 defendant?

25 MR. DAVIS: (Sidebar with Defendant),

1 Please seat Ms. Wiksell.

2 (JUROR NUMBER 291 SEATED)

3 THE CLERK: Your Honor, the jury's
4 complete.

5 THE COURT: Thank you. Let's select
6 an alternate, please. The strikes will be one
7 and two.

8 THE CLERK: Now selecting for the
9 alternate, Juror Number 299, Serita Young.

10 (JUROR BEFORE COUNSEL)

11 CLERK: What say you for the State?

12 SOLICITOR SAHN: Please seat Ms.
13 Young.

14 THE CLERK: What say you for the
15 defendant?

16 MR. DAVIS: (Sidebar with Defendant),
17 please seat Ms. Young.

18 THE CLERK: Ms. Young, please have a
19 seat in the jury box. We have selected an
20 alternate.

21 (JUROR NUMBER 299 SEATED AS ALTERNATE)

22 THE COURT: Thank you very much. Are
23 there any Motions from the State regarding the
24 jury selection?

25 SOLICITOR SAHN: None, Your

1 Honor.

2 THE COURT: Are there any motions
3 from Mr. Bowens regarding the jury selection?

4 MR. DAVIS: Yes, Your Honor.

5 THE COURT: Okay. Will you approach,
6 please.

7 BENCH CONFERENCE:

8 MR. DAVIS: Thank you, Your
9 Honor. The defense makes a *Batson* Motion as to
10 numbers three and ten, which are Juror Numbers
11 161 and 138.

12 THE COURT: Solicitor, let me
13 hear your reason for striking Number 207, Jaquan
14 Palmer.

15 MR. SAHN: Yes, sir. Your
16 Honor, Number 207 has a record for prior
17 charges. That is the reason he was struck.

18 THE COURT: I find that to meet
19 the challenge for striking him. Is there anyone
20 else on the jury that has a record, -- from the
21 Defense?

22 MR. DAVIS: Was he in fact
23 convicted?

24 MR. SAHN: Yes, sir.

25 THE COURT: What was he

1 convicted of? What was the conviction?

2 MR. SAHN: Controlled substance
3 and ---

4 THE COURT: Would that have been
5 over a year?

6 MR. SAHN: We -- (searching
7 file).

8 THE COURT: And Number 138?

9 MR. SAHN: I find that he is
10 unemployed and he didn't look too happy to be
11 here.

12 THE COURT: Is there anyone else
13 seated on the jury who is unemployed?

14 MR. SAHN: Number 207, the
15 first one, is also unemployed.

16 THE COURT: All right. I find
17 those reasons to be racially and gender neutral
18 reasons. No pretense is shown and therefore the
19 Motion is denied.

20 (BENCH CONFERENCE CONCLUDED)

21 THE COURT: Ladies and gentlemen,
22 thank you for your patience. We're multi-
23 tasking a little bit up here right now, but
24 we'll be with you momentarily. Thank you.

25 Anything else from the State?

1 SOLICITOR SAHN: No, Your Honor.

2 THE COURT: Anything else from
3 Defendant Bowens?

4 MR. DAVIS: No, Your Honor.

5 THE COURT: Thank you. Ladies and
6 gentlemen, again, thank you so much for your
7 patience and your great service to this Court
8 and to this process and to this county. When
9 you get your checks for your services this week
10 please don't equate that with what I'm saying.
11 You'll say, "That's all I'm getting?" Typically
12 you'll talk about the price of something, maybe
13 it's golf balls or golf clubs and they'll say
14 the experience is worth it. I really think that
15 is true in this case.

16 You've earned an exemption for the next
17 three years and if you are called and if I
18 happen to be qualifying the jury and you ask to
19 be excused, I will be privileged to do that. If
20 you choose to work, I will be honored to work
21 with you.

22 Good luck to you. You do not have to
23 call the number after 6:00 tonight. Have a good
24 day.

25 (JURY POOL EXCUSED)

1 THE COURT: Ladies and gentlemen,
2 thank you for your patience as well. As you
3 know, there is a jury deliberating while we were
4 selecting you. And I've received an inquiry
5 from that jury. They are asking for some
6 testimony, and that's exactly what they have a
7 right to do and that's part of the process.
8 That will take a little while to do that. We
9 are going to stay here. I'm going to excuse you
10 now for lunch. The reason I'm talking to you is
11 typically I would tell you to come back -- it's
12 about 12:30. I would say let's be back here
13 generally about an hour and a half for lunch --
14 say, 2:00 o'clock. But I have a settlement in a
15 case that's been going on for about three years
16 and we have to put it on the record at 2:00.
17 And then there are some matters of law that I
18 have to resolve in this case. And we have that
19 other jury, and I have to get all that done now.
20 So I'm going to have to draw my attention back
21 to that jury's question. So you're going to
22 have a longer lunch than normal. I'm sorry. I
23 hope you don't find it an inconvenience. It's
24 so extremely hot out there, I hope you can find
25 somewhere where it's cool where you can sit and

1 enjoy the outside. Maybe you can find some cool
2 place -- maybe you live close enough that you
3 can go home.

4 I'm going to ask you to be back to your
5 jury room -- and they'll show you where you need
6 to report -- at 3:30. And we'll start the trial
7 at that time. For your information, we'll
8 probably work until 5:00ish or thereabouts
9 today, and then we'll recess for the evening and
10 resume tomorrow. This case will be concluded
11 this week. Don't worry about that. I promise
12 you we'll be finished by Friday afternoon for
13 sure.

14 Insofar as what you know about this
15 case, you know nothing about the evidence in
16 this case. You know what I shared as having
17 been alleged. Please remember something -- and
18 you'll hear this and we'll talk more about it
19 when we reconvene, about how this process will
20 work. But you're going to make a commitment to
21 decide this case based on what happens in this
22 Court. And your part will be the evidence and
23 testimony of the witnesses. So it's very, very
24 important, number one, that you're not going to
25 let anyone talk to you about this case or talk

1 to you about serving on this case or talk about
2 this case in your presence.

3 Also, I would ask you not to speculate
4 about the case at any time. We'll talk about
5 how it will be resolved. But please remember
6 that is you start speculating and conducting any
7 independent investigation at any point -- I've
8 had situations over the years and others have
9 too that have prompted our Chief Justice to
10 issue directives about this. And it's nothing
11 wrong with research, if you choose to do that.
12 But for purposes of this proceeding you can't.
13 Because if you do, you will have obtained
14 information that's outside this courtroom. And
15 you can't do that. After it's over, if you want
16 to research any issue, please feel free to do
17 so. But until you complete your duties as a
18 juror do not do research about the trial.

19 So thank you for your attention thus
20 far. I look forward to seeing you at 3:30.
21 Have a great lunch. If you'll go with Mr.
22 Robinson, he'll show you where to go.

23 (JURY OUT AT 12:25 P.M.)

24 THE COURT: Anything from the State
25 in this case before we recess?

1 SOLICITOR SAHN: No, Your Honor.

2 THE COURT: Anything from Mr. Bowens
3 before we recess?

4 MR. DAVIS: No, Your Honor.

5 THE COURT: Thank you very much.
6 We'll be at-ease in this case until about 2:30.

7 (LUNCH RECESS)

8 (DEFENDANT PRESENT)

9 THE COURT: Please let the record
10 reflect that Mr. Bowens is present. For the
11 record, you've submitted a written motion and I
12 have reviewed it. And I assume, Mr. Sahn, you
13 filed the original memorandum with the Court?

14 SOLICITOR SAHN: I did, Your Honor.

15 THE COURT: Very well. The
16 memorandum and motion are certainly all
17 documentation is incorporated fully for purposes
18 of any review. And you certainly are entitled
19 to rely on the positions taken in those various
20 documents.

21 Mr. Davis, I'll be happy to hear from
22 you, sir.

23 MR. DAVIS: Thank you, Your Honor.
24 My motion is very brief, just to give notice.
25 It's our position that there are two alleged

1 armed robberies to occur on the same morning.

2 It's pretty obvious these robberies occurred.

3 There's video evidence of both.

4 However, the evidence of the first one,
5 which occurred approximately 2:00 a.m., shows
6 two persons basically fully covered in
7 camouflage clothing -- you can't identify their
8 true identities or their gender, or really much
9 of anything. What appears to be some type of a
10 rifle/weapon is used and it appears to be some
11 -- probably money taken.

12 THE COURT: Okay.

13 MR. DAVIS: At approximately 7:30 in
14 the morning, another convenience store in the
15 same geographic region is robbed, on video, by
16 an individual, a single individual, who also is
17 wearing dark clothing, face is covered. A
18 similar-looking weapon is used.

19 Approximately a half hour after that,
20 at approximately 8:00 in the morning, a van is
21 stopped based on the description given from that
22 robbery. A witness sees a van leaving the scene
23 and describes the van and the shirt color of the
24 driver. A half hour later a van is stopped
25 matching the description. My client is the

1 driver of that vehicle, is ultimately
2 apprehended, held and then charged in that 7:30
3 robbery.

4 The State is attempting to join these
5 cases for trial at once. I've talked to my
6 client at great length about the risks of
7 severing the charges in the sense that both
8 armed robberies are serious, and arguably they
9 can have two different trials. If they're
10 successful in both, he has set up one strike,
11 two strikes and life.

12 However, Judge, we're not in a position
13 to anticipate the future but to deal with the
14 charges today. It's our opinion that, first of
15 all, it's to his benefit to go for them one at a
16 time, for the purposes of trying to be
17 successful at each individual trial. And that
18 is the biggest reason why we oppose the joinder.
19 Judge, we feel it would be very prejudicial to
20 my client to allow the State to join both of
21 these.

22 One fact I left out -- I apologize,
23 Judge. During the search of the van after the
24 apprehension, clothing similar to both, a weapon
25 similar to both was found. If necessary, and I

1 believe the State's already aware of this, my
2 client is one of three brothers. Obviously, in
3 one incident there's two people, in another
4 there's one that goes in. This van that he's
5 driving when he's apprehended is a relatively
6 nondescript van. It was available to his family
7 during this five-and-a-half hour gap. There's
8 no -- the forensic evidence from the 2:00 a.m.
9 one, other than I was driving the van five and a
10 half hours later, to connect the two in any
11 meaningful way.

12 Certainly, if I've left out anything,
13 I'm sure Mr. Sahn will add to it. That's my
14 understanding of the undisputed facts and
15 allegations. And we would argue it would be
16 prejudicial to try them together.

17 The only argument, I assume, the State
18 would make would be judicial economy. I would
19 certainly understand that issue. However, on
20 each individual case my client is entitled to
21 the full benefit of his protections, and we
22 would argue trying -- the State trying them
23 together would be prejudicial. There are other
24 ways that are not harmful to the State.

25 We would ask you to not allow them to

1 be joined. We would ask you to sever the two
2 different allegations.

3 THE COURT: Thank you. Mr. Sahn in
4 reply?

5 SOLICITOR SAHN: Thank you, Your
6 Honor. The defense's rendition of the facts, we
7 agree with. I would just add, as far as the
8 arrest for the second armed robbery, which was
9 the first in time, the 2:00 o'clock a.m.
10 Kangaroo armed robbery, that was only made after
11 going back, matching up the evidence that was
12 taken from the van after the arrest, matching it
13 up to the video of the first one. So if it
14 wasn't for that evidence, he would never have
15 been apprehended and charged the defendant on
16 that first armed robbery.

17 As far as our argument, Your Honor, to
18 try the two together, we believe it does meet
19 the four requirements that the Supreme Court has
20 laid out. *State v Tucker* for charges to try
21 them together. I can go through that if you
22 like.

23 THE COURT: I have it.

24 MR. SAHN: All right.

25 THE COURT: And I can tell you why

1 I'm going to do what I'm going to do. It's what
2 you just said. The bottom line is -- I agree
3 with you in looking at the four factors arising
4 out of a single chain of circumstances, arguably
5 that's there, although there is a gap. There is
6 a question about three brothers -- two, which
7 one was involved. Clearly, there's a chain of
8 circumstances that would probably meet that
9 test. Of the same general nature, obviously,
10 there's no question that one is there.

11 Proved by the same evidence, that's one
12 problem -- you can't -- it may help you and it
13 may be of assistance but it doesn't come in
14 unless the other one -- and, frankly, you talk
15 about *Lyle*, I can't tell you what every judge
16 would do. But there's no question a conviction
17 is much stronger for *Lyle* purposes than an
18 arrest warrant or an arrest. I'm not saying
19 it's not used. I'm just saying that from a
20 review standpoint conviction is better.

21 There's no question to me the last one
22 is the one that does it -- there is a prejudice
23 of being tried for something for which you can't
24 identify anyone, basically, other than it looks
25 like and appears to be the same.

1 But, quite frankly -- I mentioned to
2 you I bounced this off my wife this morning as
3 to whether I was just missing something, just to
4 see if she'd give me sort of her opinion. Her
5 first response was, 'How many black hoodies do
6 you think are in the Charleston area?' And I
7 had to laugh. Because I can't tell you how many
8 trials I've had in this county and in other
9 counties where a person was in a black hoodie.
10 I'm not saying that's the attire for committing
11 armed robberies. But it just so happens I've
12 seen a number.

13 I think certainly -- probably the
14 strongest distinction to me is what, for this
15 defendant, is the orange shirt. Because clearly
16 that -- as I understand it from your reading
17 your brief, there's a person that's going to
18 testify that he was driving the car that left.
19 And when they arrested him there he was in an
20 orange shirt. And I think there's no question
21 -- I think the other just flows by virtue of the
22 similarity. Therefore, I think there's a
23 prejudice, and I must respect it and I must
24 grant the motion and deny your request to allow
25 it to be tried together. Thank you, sir.

1 All right, do you need ---

2 SOLICITOR SAHN: Touching off that,
3 in that case, we are prepared to not go forward
4 on the unlawful possession indictment. We'll
5 just go forward on the armed robbery as
6 submitted.

7 THE COURT: That's fine. That's
8 great.

9 MR. DAVIS: Judge, there was just a
10 brief reference at the very beginning to the
11 panel. I made no request that any mention be
12 made.

13 THE COURT: About the shotgun?

14 MR. DAVIS: Yes, sir.

15 THE COURT: I think I read the right
16 one where -- I read the one that looks like --
17 it was 1541. Is that not the ---

18 MR. DAVIS: We have not -- I have not
19 reviewed the language of that indictment. But I
20 believe it's vague enough as to go with either
21 one.

22 THE COURT: Well, it did. But I read
23 a location of 5521 Highway 165. Is that not
24 where the second one occurred?

25 SOLICITOR SAHN: 5221.

1 THE COURT: Yeah, that's the one I
2 read.

3 SOLICITOR SAHN: That's the correct
4 one.

5 THE COURT: Okay. The other one
6 doesn't have any address.

7 MR. DAVIS: We are not going to be
8 involved with the separate indictment.

9 THE COURT: Okay, that's great.
10 That's fine.

11 All right, we have a *Jackson v. Denno*
12 hearing?

13 MR. DAVIS: (Affirmative nod), that
14 would be our next motion.

15 THE COURT: I'll be happy to hear
16 from you. Do you want to call your witnesses
17 for that?

18 SOLICITOR SAHN: Yes, Your Honor.
19 The State calls Detective Charles Lawrence.

20 (WITNESS TAKES STAND)

21 CHARLES LAWRENCE, being duly sworn to
22 tell the truth, the whole truth and nothing but
23 the truth, testified, as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR SAHN:

1 Q. Good afternoon, Detective Lawrence.

2 A. Good afternoon.

3 Q. Please tell us where you're employed.

4 A. Charleston County Sheriff's Office.

5 Q. What's your role there?

6 A. Detective, persons detective.

7 Q. What kind of cases do you work?

8 A. Anything dealing with persons, crimes
9 against persons.

10 Q. How long have you worked at the Charleston
11 County Sheriff's Office?

12 A. A little over eight years now.

13 Q. Briefly tell us about your training and
14 experience for that job.

15 A. Okay. Ten years military service prior to
16 attending the South Carolina Criminal Justice
17 Academy as a military police officer.

18 In 1998 I got out of service. From March
19 of 1998 to the present I've been employed at --
20 I went to the South Carolina Criminal Justice
21 Academy and I've been employed as a certified
22 law enforcement officer since then.

23 Q. Thank you, Detective. Did you have
24 occasion to take a written statement from the
25 defendant, Marvin Bowens, in this case?

1 A. Yes.

2 Q. What was the date of that statement?

3 A. It was December the 20th, 2008.

4 Q. And what was the place that that statement
5 was taken?

6 A. It was at 3505 Pinehaven Drive, North
7 Charleston, at the Criminal Investigation
8 Division Office.

9 Q. The field office there?

10 A. Yes, sir.

11 Q. Who all was present during that interview?

12 A. Myself, the defendant and Detective Colson.

13 Q. To the best of your knowledge, was the
14 defendant under the influence of any alcohol or
15 drugs at that time?

16 A. No, not to my knowledge. No.

17 Q. To the best of your knowledge, did the
18 defendant appear to have any physical or mental
19 disabilities to the extent that he couldn't
20 understand what was going on?

21 A. No, sir.

22 Q. Please tell the judge about the physical
23 surroundings of the actual room that the
24 interview took place in.

25 A. It's actually a room that we use for

1 interviewing. It's about five-by-eight, one
2 desk, two, three chairs, A.C. unit and a door.

3 Q. How long would you say the total interview
4 took, start to finish, approximately?

5 A. Approximately an hour or an hour and a
6 half.

7 Q. And were any breaks taken during that hour
8 and a half?

9 A. Not as I can remember.

10 Q. Any breaks requested?

11 A. No, sir.

12 Q. Was the defendant denied access to any food
13 or drinks during that time?

14 A. No, sir. We always ask if they need
15 anything.

16 Q. What about a bathroom break?

17 A. If they need one, they can use it. We
18 allow it.

19 Q. Were any threats made to the defendant
20 during this interview?

21 A. No, sir.

22 Q. Any promises made if he cooperated?

23 A. No, sir.

24 Q. Was the defendant under arrest at this
25 time?

1 A. Yes.

2 Q. So did he come speak to you voluntarily, or
3 was his presence there at the station compelled?

4 A. Voluntarily.

5 Q. He wasn't free to leave, though, right?

6 A. No, he definitely wasn't free to leave.

7 No, sir.

8 Q. And was the defendant responding to
9 interrogating questions?

10 A. Yes, sir.

11 Q. Was the defendant advised what the nature
12 of the investigation was, why he was there?

13 A. Yes, sir.

14 Q. Was he also advised of his Constitutional
15 rights pursuant to *Miranda*?

16 A. Yes, sir.

17 Q. And that happened before any questions were
18 asked?

19 A. That's correct.

20 Q. These rights, were they given to him orally
21 or were they in written fashion?

22 A. They were in writing.

23 Q. Did you use a form for that?

24 A. Yes, sir.

25 Q. Did you bring it with you today?

1 A. Yes, sir.

2 SOLICITOR SAHN: May I approach?

3 THE COURT: You may.

4 SOLICITOR SAHN: May I get this
5 marked as State's one for purposes of this
6 hearing only?

7 COURT REPORTER: State's Exhibit 1
8 for identification, *Jackson v. Denno*.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR SAHN:

11 Q. Take a look at that for a moment,
12 Detective.

13 A. (Complies)

14 Q. What's that form, Detective?

15 A. It's a *Miranda* form, advisement of rights.

16 Q. Okay. At this time I'd like to go through
17 that form with you and have you read it aloud.

18 A. Yes, sir. (Reading): *"I have the absolute*
19 *right to remain silent and not to have to answer*
20 *any questions or give a statement, and this fact*
21 *cannot be used against me. That if I do answer*
22 *questions or give a statement, anything I say*
23 *can and will be used against me in a court of*
24 *law. That I have the right to consult with a*
25 *lawyer of my choice before I answer any*

1 *questions or give a statement, also to have him*
2 *or her present while I am being questioned.*
3 *That if I wish to talk to a lawyer and have him*
4 *or her present but I am unable to afford to hire*
5 *a lawyer, one will be appointed to represent me*
6 *free of charge. And if I decide to answer*
7 *questions before giving a statement without*
8 *having a lawyer present to represent me, I have*
9 *the absolute right during this interview to stop*
10 *answering questions and remain silent."*

11 Q. Did he acknowledge each of those rights?

12 A. Yes, sir, he did.

13 Q. The defendant did?

14 A. That's correct.

15 Q. Can you tell that by looking at this form?

16 A. Yes.

17 Q. How is that?

18 A. Initials. I had him to initial by each
19 one. I read the first one and upon completion I
20 ask him did he understand it. And they verbally
21 say 'yes' or 'no.' And at that point in time
22 they initial it.

23 Q. So those are the defendant's initials by
24 each of those rights?

25 A. That's correct.

1 Q. Let's back up just a little bit. At the
2 top of the form, would you tell us what that
3 says?

4 A. At the top of the form is the -- all the
5 way to the top?

6 Q. Yes, sir.

7 A. On the right-hand side we always go with
8 the highest grade of education completed. And
9 we circle that. We put a circle-S for "start"
10 and a circle-F for "finish."

11 Q. Tell us what that is.

12 A. At the time that we started, actually
13 before we even ask the first question, we advise
14 them of *Miranda*. And at that point in time
15 that's when we circle -- that's when we put the
16 time in that we start.

17 Q. What time was it on there?

18 A. 11:58.

19 Q. As far as educational level, what grade?

20 A. Last highest grade completed would be
21 seventh grade for him.

22 Q. Now, let's talk about the information about
23 the defendant on the form, the biographical
24 information. Please tell us what that is.

25 A. Okay. The name, the race.

1 Q. Just tell us what the name is.

2 A. Marvin Bowens.

3 Race is "B" for black.

4 Sex is "M" for male.

5 Date of birth, I've got

6 Address is 50 Prements (phonetic) Lane.

7 That's in Jacksonboro, South Carolina, 29452.

8 I've got phone numbers for him, 4

9 and the area code would be 843 on both of them.

10 The second number is

11 Employment, at the time he wasn't employed,

12 so we put nonapplicable.

13 Social security number provided was

14

15 And driver's license number, South Carolina

16 driver's license number we didn't have at that

17 time or it was unknown by him at the time.

18 Q. Detective, who filled out this biographical

19 information?

20 A. I did, sir.

21 Q. What were you basing that on?

22 A. Information provided from the defendant.

23 Q. Right below that, please tell us what it

24 says between that and the actual rights you've

25 already mentioned.

1 A. (Reading): *"I fully understand each of*
2 *these rights which have been explained to me,*
3 *and that the person below read the rights."*

4 Q. Right below you are asked to state ---

5 A. I'm sorry. (Reading): *"Detective Lawrence*
6 *has advised me that he's a member of the*
7 *Charleston County Sheriff's Office and further*
8 *advised me..."* ---

9 Q. And then you went onto the rights section?

10 A. Yes, sir.

11 Q. Now, moving below those rights, what does
12 the form say after the last right and the
13 initial by it?

14 A. The waiver of rights? Okay. (Reading):
15 *"I fully understand each of these rights which*
16 *have been explained to me."*

17 Q. And is there a space for the defendant to
18 sign?

19 A. Yes, sir.

20 Q. And he, in fact, signed this form?

21 A. That's correct.

22 Q. Did anyone witness his signature?

23 A. I did.

24 Q. Is your name on the form?

25 A. That's correct, mine is.

1 Q. And the very last part of the form, the
2 waiver of rights, could you tell us about that?

3 A. Okay. (Reading): *"I fully understand each*
4 *of these rights which have been explained to me.*
5 *And having these in mind, I wish to waive these*
6 *rights and answer any questions concerning the*
7 *charge which I have been accused of committing.*
8 *No threats, force or promises of any kind have*
9 *been made by anyone to induce or cause me to*
10 *waive these rights and answer questions."*

11 Q. Okay, and is there a space for the
12 defendant to sign there?

13 A. That's correct, to the right-hand side.

14 Q. Did someone sign there?

15 A. Yes, sir, Mr. Bowens did.

16 Q. What name?

17 A. Marvin Bowens, yes.

18 Q. Is there also a place for a witness to a
19 sign?

20 A. To the left-hand side. That's my signature
21 there.

22 Q. Okay. Now, did the defendant appear to
23 have any trouble understanding these rights when
24 you read them to him?

25 A. Not at all.

1 Q. Did his responses to those questions appear
2 rational ---

3 A. Yes.

4 Q. --- to the rights after you read them?

5 A. Yes, sir.

6 Q. Did you or anyone else in your presence
7 coerce or threaten the defendant in any way?

8 A. No, sir.

9 Q. Promise, hope or reward?

10 A. No.

11 Q. How did the defendant respond when asked
12 whether he wanted an attorney before he spoke to
13 you?

14 A. During the course of the interview he never
15 asked for an attorney.

16 Q. And is this specific waiver -- is that
17 specific right waived specifically on this form?

18 A. Yes, sir. Once I explained to him -- I
19 read the waiver of rights out and it was
20 explained to him. And I explained to him --
21 break it down in laymen's terms, telling him
22 basically 'What this means is that I'm not
23 forcing you to do anything. I'm not promising
24 you anything. You're doing this of your own
25 free will. You want to talk to me about this,

1 and I want to hear what you have to say about
2 it. If you want to talk to me about it, before
3 you start talking, sign.'

4 Q. At any point during the interview did he
5 ever stop you and change his mind and say he
6 wanted to speak to an attorney during the
7 interview?

8 A. Not to my knowledge, no, sir.

9 Q. To the best of your knowledge, was the
10 defendant's statement given freely and
11 voluntarily?

12 A. That's correct.

13 Q. Again, was the statement reduced to
14 writing?

15 A. I'm sorry?

16 Q. Was the statement reduced to writing?

17 A. Yes, sir, he did write it.

18 Q. Who wrote the statement?

19 A. The defendant, Marvin Bowens.

20 Q. Did the defendant sign the statement that
21 he wrote?

22 A. Yes, sir.

23 SOLICITOR SAHN: May I approach?

24 THE COURT: You may.

25 COURT REPORTER: State's Exhibit 2,

1 *Jackson v. Denno.*

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR SAHN:

4 Q. I'm handing you what's marked State's
5 Exhibit 2. Take a look at that and see if you
6 recognize it.

7 A. (Upon review), I do.

8 Q. What is that?

9 A. That's a statement from Marvin Bowens,
10 Marvin Lamar Bowens, Lamar Bowens.

11 SOLICITOR SAHN: Your Honor, at this
12 time we'd ask that the defendant be able to
13 publish that.

14 THE COURT: Any objection to the
15 statement being admitted for purposes of this
16 proceeding?

17 MR. DAVIS: For purposes of this
18 proceeding, no objection.

19 THE COURT: Very well. It is as
20 admitted as State's 2 for purposes of this
21 proceeding, and you may publish it.

22 (SO ENTERED AS STATE'S EXHIBIT 2)

23 SOLICITOR SAHN: Thank you, Your
24 Honor.

25 DIRECT EXAMINATION CONTINUED

1 BY SOLICITOR SAHN:

2 Q. Detective Lawrence, starting at the top of
3 that statement, including the biographical
4 information, would you publish it to the judge
5 by reading it aloud?

6 A. Okay, from "statement of..." or ---

7 Q. Yes.

8 THE COURT: Just read the content.
9 You don't have to publish the rest of it.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR SAHN:

12 Q. Start there.

13 A. Yes, sir. (Reading): *"My friend, Charles*
14 *Green, from Adams Run, South Carolina, for about*
15 *two weeks came to my window the morning of*
16 *December 20th about -- around 6:30 a.m. and asked*
17 *me to help him do something. I told him I*
18 *would. He asked me to take him to the Road*
19 *Runner Store in Hollywood so he can rob it. I*
20 *agreed because he told me that he made lots of*
21 *money and he would give me around five hundred*
22 *dollars just to drop him off and pick him back*
23 *up. I got up there and I dropped him off by the*
24 *car wash. When he got out he went to rob it and*
25 *I waited. He robbed ..."* -- then something he

1 blotted out, -- (continues reading): "ran back
2 to the van and we left. It wasn't as much as he
3 thought so he just gave me about a hundred
4 dollars. When we made it back to Adams Run, I
5 dropped him off on Jupiter Hill Road. I went
6 home and put my money up and told Melvin I need
7 him to go back to Jacksonboro with me so he
8 could go and get me a phone card. But when we
9 got there the police came."

10 And that's the end of his writing at that point
11 in time. Any questions that I asked -- I asked
12 him questions in depth about the ---

13 Q. And who wrote those questions out?

14 A. Everywhere where it says "Q" and the
15 question beside it, that's my writing there.

16 Q. And the "A"?

17 A. And the "A" is the answer.

18 Q. And the "A."

19 A. Is his correspondence, yes.

20 Q. And who wrote that answer?

21 A. Bowens, Minor (sic) Bowens.

22 Q. He wrote that himself?

23 A. Yes, sir. Marvin Bowens.

24 Q. Marvin Bowens. Would you please read that
25 for the judge?

1 A. Sure. The first one I lined out, when I
2 asked where do you live at. Those are my
3 initials to the right of it. It's one line
4 through, and my initials "C.L." for Charles
5 Lawrence.

6 The next one would be (reading):

7 Q. Where were you at when Charles
8 Green came by?"

9 A. My father's house in Adams Run,
10 near Jupiter Hill.

11 The next question is (reading):

12 Q. How do you know Charles Green?"

13 A. From being outside with all the
14 other children and smoking and drinking.

15 At the top of the next page (reading):

16 Q. Describe Charles Green.

17 A. About five-nine, 140 pounds, brown
18 skin, slim, dreadlocks, medium frames, long.

19 Q. Describe the gun that Charles had.

20 A. I'm thinking it's rusty shotgun,
21 but I didn't really see it all the way.

22 Q. What was Charles ... "

23 -- and then that's my error for

24 Q. ...driving?

25 I put my initials beside it and one line,

1 Q. So you're talking that it ended then at
2 approximately 1:00 or 1:30 in the afternoon.

3 A. Approximately, yes, sir.

4 Q. My client indicated to you that he had
5 completed the seventh grade. Is that your
6 testimony?

7 A. Yes, sir.

8 Q. Did you personally ask him whether he could
9 read or write?

10 A. If I asked him if he could read or write?

11 Q. Yes, sir.

12 A. Yes, sir, I did.

13 Q. And what was his response?

14 A. He could.

15 Q. Help me on this. You identified State's
16 Exhibit 1 as the *Miranda* warning sheet.

17 A. Yes, sir.

18 Q. That was given to him and he read those as
19 they were written, or you read them to him?

20 A. I read it and I show it to them. I read
21 it, like such, and they can see. And upon
22 completion of reading it I ask them "do you
23 understand it," and I don't take a head nod for
24 yes. I need a verbal yes or no.

25 Q. Okay. Would you have read all five of them

1 and then going back individually have him sign
2 them? Or would you have read each one and then
3 asked him to sign or not then -- initial or not
4 then?

5 A. I ask them upon completion do they
6 understand it. Then I would go through it.
7 Once I've read all five of them, then I have
8 them to initial it, after I get the five
9 acknowledgments of understanding from him, or
10 her.

11 Q. You earlier described for us the room at
12 the Sheriff's Office as being approximately
13 five-by-eight. Is that correct -- five feet by
14 eight feet?

15 A. Yes, sir.

16 Q. Two chairs and one table in the room. Is
17 that correct?

18 A. For the most part, yes, sir.

19 Q. On this occasion do you remember whether
20 there was more furniture than that, on this
21 occasion?

22 A. A desk, an A.C. unit, two or three chairs
23 and a monitor, T.V., and that's all we have in
24 there. And one door.

25 Q. Do you recall that you -- well, first of

1 all, it's your testimony that you and Detective
2 Colson were present for this interview?

3 A. Yes, sir.

4 Q. Was Detective Colson in the room the whole
5 time?

6 A. Not the whole time, no, sir.

7 Q. While you were in the room yourself would
8 you have sat between my client and the one door
9 to the room?

10 A. Say that one more time, sir.

11 Q. While you were in the room without
12 Detective Colson, would you have sat between
13 my client and the door to the room?

14 A. I'm not quite understanding that.

15 Q. Would he have had to walk past you if he
16 wanted to walk out of that room?

17 A. No, sir.

18 Q. He was closer to the door than you were?

19 A. Right.

20 Q. I'm assuming -- was the door closed?

21 A. Yes, sir.

22 Q. For the record, can you tell the Court how
23 tall you are and how much you weigh?

24 A. About 6'1", maybe about 245.

25 Q. And I assume back in December of 2008, you

1 weren't much different then?

2 A. That's correct.

3 Q. Was my client handcuffed during this
4 interview?

5 A. That's correct.

6 Q. That he was?

7 A. Yes, sir.

8 Q. I believe you've already answered this
9 question, but at any time did he request to talk
10 to a lawyer?

11 A. No, sir.

12 Q. At any time did he request to speak with
13 his parents?

14 A. Not to my knowledge.

15 Q. If he didn't ask you, whom would he have
16 asked?

17 A. If he didn't ask me to speak to his
18 parents?

19 Q. Um-humm.

20 A. No one.

21 Q. Is it simply that you don't recall from two
22 and a half years ago whether he asked or not?

23 A. Yeah, I don't recall if -- being that --
24 what I do sometimes or what I do is I will, you
25 know, let them call the parents prior to being

1 transported, but not during the interview.

2 Q. And if that had happened, that would be
3 indicated in your report somewhere?

4 A. Probably not. Because we were ready to go.
5 But I just try to give a courtesy call to the
6 parents to let them know where their child is
7 going.

8 Q. I understand your answer to the last
9 question. So then you don't know whether he
10 spoke to his parents or not prior to this
11 statement?

12 A. Prior to giving us the statement?

13 Q. Yes, sir.

14 A. Maybe at the scene.

15 Q. When he was apprehended?

16 A. Yes, sir. That was the address, yes, sir,
17 at the scene.

18 Q. And for the Court's purposes, that was down
19 in Jacksonboro, down in Colleton County. Is
20 that correct?

21 A. Yes, sir, that's correct.

22 Q. And he would have been transported in your
23 vehicle from that location back to here at
24 Pinehaven and the Charleston Sheriff's Office?
25 Do you recall?

1 A. I don't recall. I know he was transported,
2 and whether it was my unit or another unit, that
3 I don't recall.

4 Q. But so the Court will know, there was a
5 drive time of however long it took to get from
6 Jacksonboro, up 17, up to North Charleston to
7 the Pinehaven Sheriff's Office. Correct?

8 A. Yes, sir.

9 MR. DAVIS: Judge, I know I'm off
10 just slightly. I'll try to get back on point.

11 CROSS EXAMINATION CONTINUED

12 BY MR. DAVIS:

13 Q. Was there any statement made during that
14 drive that you are aware of?

15 A. Not that I'm aware of, sir.

16 Q. I believe this has already been published,
17 but you asked my client his date of birth early
18 on in the interview, correct?

19 A. Yes, sir.

20 Q. And do you recall what date that was, or do
21 you have that information there available to
22 you?

23 A. Six -- I don't know if it was 19 or 29. I
24 don't have the page one. Thank you. I'm
25 showing 6/29/91.

1 Q. And the statement date was December 20th of
2 '08?

3 A. Yes, sir.

4 Q. My client did have an opportunity at the
5 scene to speak with his younger brother who was
6 also arrested, correct?

7 A. That, I don't know.

8 Q. Do you recall them being placed in the same
9 patrol unit? Were you aware of that as the lead
10 detective?

11 A. I don't think that they were placed in the
12 same vehicle, no, sir.

13 Q. Did that come up at any time during your
14 interview with him, him talking to his little
15 brother who was also arrested?

16 A. No, because one of them ran. One of them
17 fled the scene when they were stopped by
18 Colleton County.

19 Q. Didn't you, early on in the conversation
20 with my client, talk to him about the
21 seriousness of these allegations?

22 A. You say early on?

23 Q. At any time?

24 A. I'm sure I did. Armed robbery, yes, sir.
25 That's a serious crime, yes, sir.

1 Q. Do you recall whether you referenced a
2 potential range of punishment if convicted?

3 A. If I am asked at the time, I normally
4 elaborate on it.

5 Q. So you would have told him something to the
6 effect that this potentially carries ten to
7 thirty years if convicted?

8 A. Yes, sir.

9 Q. Do you call talking to him about how long
10 he might be held in jail on bond before
11 resolving his case?

12 A. No, sir.

13 Q. While it's not going to trial today, you
14 were aware or participated in charging my client
15 on this date, December 20, 2008, for three
16 distinct offenses. Is that correct?

17 A. One more time.

18 Q. On December 20, 2008, you participated in
19 charging my client with three offenses: two
20 armed robberies and a weapons charge. Correct?

21 A. At the time one armed robbery.

22 Q. Is it not accurate that later this same
23 date, December 20th, after reviewing the
24 videotape of the other incident, you charged him
25 with all three?

1 A. They were subsequently added, yes. But I
2 don't think on the same date. I think about the
3 22nd of December.

4 Q. When the other one was added?

5 A. Yes, sir.

6 Q. Did you discuss at any point during this
7 questioning about other charges being added --
8 potentially being added?

9 A. I don't recall, because we hadn't seen any
10 video surveillance then.

11 Q. Isn't it true that you talked to him about
12 potentially reduction in charges if he
13 cooperated?

14 A. Reduction in charges?

15 Q. Or charge, I should say, not to be plural.

16 A. No, it's always better, in my opinion. But
17 I don't know if I ---

18 Q. Isn't it true you talked about helping him
19 with his bond if he cooperated?

20 A. No, sir.

21 Q. But it is fair that you would have, as you
22 said a moment ago, let him know that it might be
23 in his best interests to cooperate? Did you say
24 that or some version of that to him?

25 A. Well, I like to get their side of the

1 allegations, and I always want to get their side
2 -- of the accused.

3 Q. And in doing so and in trying to accomplish
4 that, you would let them know that it's
5 generally better to cooperate.

6 A. Yes, sir, that's correct.

7 Q. And in letting him know that it would be
8 better to cooperate, if you did not promise to
9 help out on the bond or reduce charges, what was
10 the benefit to cooperating and telling his side
11 of the store?

12 A. Well, it's always -- it's a general study,
13 well, not study -- it's always good practice to
14 know why a crime was committed, you know, what
15 was the accused -- what were they thinking at
16 the time and why they committed the crime.

17 Q. Well, it's certainly better for you. What
18 was the benefit to him that you let him know
19 that it would help him if he cooperated?

20 A. There's no benefit, really.

21 Q. Do you recall that during the times that
22 Detective Colson was not in the room that he
23 would have been going to talk to my client's
24 younger brother who was also arrested?

25 A. I'm unsure.

1 Q. Do you recall any conversation with my
2 client about any information being obtained from
3 his younger brother?

4 A. No, sir.

5 Q. So the Court will understand, Minor
6 Bowens, my client's younger brother, was in fact
7 arrested on the same date; correct?

8 A. Yes, sir.

9 Q. He is a younger brother by a year or so.

10 A. Yes, sir, a few years, I think.

11 Q. But, again, it's your recollection that
12 nothing about any questioning to him was told to
13 my client?

14 A. Not to my recollection, no, sir.

15 Q. It's your testimony at no time did you
16 physically touch my client other than maybe to
17 adjust handcuffs or to get him out of the car?

18 A. That's correct.

19 Q. There were no threats made by you towards
20 him?

21 A. No, sir.

22 MR. DAVIS: Your Honor, if I could
23 have just a moment.

24 THE COURT: Certainly.

25 MR. DAVIS: (Sidebar with Defendant)

1 -- just briefly further, Your Honor.

2 THE COURT: Sure.

3 CROSS EXAMINATION CONTINUED

4 BY MR. DAVIS:

5 Q. Detective Lawrence, do you recall
6 discussing with my client that your son, back in
7 December of '08, was seventeen years old?

8 A. Yes, sir.

9 Q. And so isn't it true that in bringing your
10 son up, you compared to my client that, as much
11 as you wouldn't want your son in jail, that it
12 would be bad if a 17-year-old like Marvin was in
13 jail? Didn't you make that comparison?

14 A. Say that one more time so I can understand
15 it.

16 Q. Didn't you make the comparison about not
17 wanting -- you wouldn't want your 17-year-old
18 son to be in jail, in talking to Marvin about
19 being in jail at the same age?

20 A. Not in those words.

21 Q. Did you not indicate to Marvin, in
22 discussing having a son of your own of that same
23 age, that it would be preferential for them to
24 be home during the holidays?

25 A. No, sir.

1 Q. And so you didn't promise that if Marvin
2 talked to you about this case, you would help
3 him on the bond to try to get him home for
4 Christmas, which was coming up in a few days?

5 A. No, sir.

6 Q. You did -- you do have a son?

7 A. Yes, sir, but not that age. He just turned
8 eighteen.

9 Q. He just turned eighteen?

10 A. Yes, sir, my son just turned eighteen.

11 Q. Now?

12 A. Yes, sir. He just graduated.

13 Q. So in December of '08 ---

14 A. He would have been what? Fifteen.

15 Q. All right, Detective, thank you.

16 MR. DAVIS: Your Honor, I have no
17 further questions.

18 THE COURT: Redirect?

19 SOLICITOR SAHN: Thank you, Your
20 Honor.

21 REDIRECT EXAMINATION

22 BY SOLICITOR SAHN:

23 Q. Detective, just to be clear, did you
24 promise any reward or hope of reward to the
25 defendant in return for his statement?

1 A. No, sir.

2 Q. Thank you.

3 THE COURT: Recross, Mr. Davis?

4 MR. DAVIS: No, Your Honor. Thank
5 you.

6 THE COURT: You may come down,
7 Detective. Thank you.

8 (WITNESS STEPS DOWN)

9 THE COURT: Any additional witnesses,
10 Mr. Sahn?

11 SOLICITOR SAHN: No, Your Honor.

12 THE COURT: Very well.

13 MR. DAVIS: Could we have just a
14 moment, Your Honor?

15 THE COURT: Sure.

16 MR. DAVIS: (Sidebar with Defendant).
17 Your Honor, for purposes of this hearing, I
18 would like to call my client.

19 THE COURT: Certainly.

20 (WITNESS TAKES STAND)

21 MARVIN LAMAR BOWENS, being duly sworn
22 to tell the truth, the whole truth and nothing
23 but the truth, testified, as follows:

24 DIRECT EXAMINATION

25 BY MR. DAVIS:

1 Q. Marvin, we're just going to talk about the
2 conversation you had with Detective Lawrence
3 back in December of '08, okay?

4 A. Yes.

5 Q. I need you to answer out loud, yes or no,
6 so the judge and this lady (court reporter) can
7 take it down.

8 A. Yes, sir.

9 Q. We're going to start with when you and your
10 brother were arrested, okay? Can you tell the
11 judge where that was? Where were you put in
12 custody?

13 A. Jacksonboro, South Carolina, at the Exxon
14 gas station.

15 Q. When you were initially taken into custody
16 were you with or separated from your brother?

17 A. Initially?

18 Q. Right.

19 A. Without.

20 Q. Why was that?

21 A. Because he fled.

22 Q. At some point after that were y'all
23 together for awhile?

24 A. Yes.

25 Q. Where was that?

1 A. At the Exxon gas station parking lot,
2 inside one of the Charleston County officers'
3 patrol car.

4 Q. So you had a chance to talk to your little
5 brother?

6 A. Yes.

7 Q. Did you at any time speak with any other
8 family member on the scene?

9 A. Before I spoke with my brother, my father
10 -- I spoke with my father.

11 Q. I'm going to jump ahead now. Do you
12 remember how you got back to Charleston County?

13 A. Yes.

14 Q. How did you get back to Charleston County?

15 A. Detective Lawrence transported me.

16 Q. The gentleman that just testified?

17 A. Yes.

18 Q. Do you remember him?

19 A. Yes.

20 Q. Do you remember anything else about him,
21 about how you got to Charleston?

22 A. I remember he had a silver police car.

23 Q. Okay. Marked? Unmarked?

24 A. Unmarked.

25 Q. Was there any conversation in the car

1 between you and Detective Lawrence on the way to
2 the Sheriff's station?

3 A. Yes.

4 Q. Had he gone over the piece of paper with
5 the warnings on it with you prior to that?

6 A. No.

7 Q. Once he gets to the station, is that when
8 you review the piece of paper with the warnings?

9 A. Yes.

10 Q. Do you recall whether you read them or
11 whether he read them to you?

12 A. Neither one of us. I didn't read them
13 personally. And he didn't read them to me.

14 Q. Tell the judge how that played out then,
15 that you were showed that piece of paper.

16 A. He put that piece of paper in front of my
17 face and once we started the questioning about
18 the robbery or whatever, he was like sign, sign,
19 initial. I ain't read it. I just signed,
20 signed and initialed it.

21 Q. Did you know what he -- did he make it
22 clear to you what he was going to talk to you
23 about?

24 A. The robbery that happened. (Affirmative
25 nod), the robbery.

1 Q. Did he talk to you about a son that he has?

2 A. Yes.

3 Q. Tell the judge what conversation he had
4 with you about his son.

5 A. He told me that me and his son were the
6 same age, because he had a son -- not in jail.
7 And the holidays was coming up. It was the 20th.
8 You know, Christmas is the 25th. He said, you
9 know, 'you cooperate with me and let me know
10 what happened and whatever and I'll make sure
11 you get a low bond and when it's time to deal
12 with the charges, I'll help you deal with them.
13 I might even see if they can't disappear, so you
14 can be out before the holidays and be with your
15 family again. I know you want to be with your
16 family.' I was, like, 'yeah.' And that's how
17 we got to signing the paper.

18 Q. Which paper? The first paper with all the
19 list on them, or your actual statement?

20 A. The paper with the list on them.

21 Q. Did you believe he could help with bond?

22 A. Yes.

23 Q. Did you believe he could help with your
24 charges?

25 A. Yes.

1 Q. While you were talking to Detective
2 Lawrence do you know where your brother was?

3 A. He told me he was across the hall.

4 Q. Who told you?

5 A. Detective Lawrence.

6 Q. Did you hear any information about anything
7 -- did you hear any information about the
8 conversation they were having with your brother?

9 A. You mean, hear as in could I hear through
10 the door? Or did he told (sic) me something
11 about the conversation?

12 Q. Either way.

13 A. You mean, as in could I hear through door
14 or that he told me anything about the other
15 conversation?

16 Q. Either way.

17 A. He told me my brother wasn't talking.

18 Q. Did he give you specifics?

19 A. No, not really. He's just like, "Minor
20 ain't saying nothing."

21 Q. And that's Detective Lawrence that was
22 telling you this?

23 A. Yes.

24 Q. At any point did you ask to speak to your
25 parents while you were at the Sheriff's station?

1 A. Yes, and I asked to speak to my brother.

2 Q. Were you given an opportunity to speak to
3 talk to your parents?

4 A. No, sir.

5 Q. Were you given an opportunity to talk to
6 your brother?

7 A. No, sir.

8 Q. At any point did you ask for a lawyer?

9 A. Not really ask. But I made a suggestion.
10 I said, when he was telling me about the bond
11 and everything, 'What about the lawyer?' 'Well,
12 they just make things complicated and cost money
13 and a waste of time.'

14 Q. That was the conversation you had?

15 A. (Affirmative nod), with Detective Lawrence.

16 Q. With Detective Lawrence. Was there anyone
17 else in the room when you made that comment
18 besides Detective Lawrence?

19 A. No, sir.

20 Q. Is it accurate that you were in handcuffs
21 the entire time?

22 A. Yes.

23 Q. Cuffed in front or behind you?

24 A. Front.

25 Q. Were you asked if you needed something to

1 eat?

2 A. Not eat but drink.

3 Q. Did you need something to drink?

4 A. No, sir.

5 Q. Did you ever need to go to the restroom or
6 were you offered to go to the restroom?

7 A. He offered, but I didn't need to go.

8 Q. So the Court will understand, was he ever
9 physical with you in any way?

10 A. No.

11 Q. Did he ever threaten you in any way
12 verbally?

13 A. No.

14 Q. Do you recall that it lasted about an hour
15 or an hour and a half while you were talking
16 with him?

17 A. I ain't timed it, but it was lengthy.

18 Q. And so it's recorded in writing, can you
19 tell the judge, if you know, approximately how
20 tall you are?

21 A. The last time I checked I was 5'7".

22 Q. Do you recall or do you have any idea how
23 much you weighed back in December of '08?

24 A. No, sir.

25 Q. Do you know how much you weigh now?

1 A. 140.

2 Q. Is it about the same as you were then?

3 A. I've probably gained a little bit of
4 weight.

5 Q. So you were a little under 140 back then,
6 right?

7 A. Yes, sir.

8 Q. You said it was after the conversation
9 about his son that you signed the list of items
10 or initial those items. Is that right?

11 A. Yes.

12 Q. Is there anything happening between that
13 and when you wrote your statement? Was there
14 any more conversation between you and Detective
15 Lawrence?

16 A. He asked me about the other robbery. He
17 told me, he said another robbery occurred
18 earlier that day. He asked "did you do that
19 one?" I said "no, I don't know what you're
20 talking about."

21 Q. It was during that same conversation when
22 he was talking about helping with the bond. Is
23 that right?

24 A. Yes.

25 Q. And about that time was when you inquired

1 about a lawyer?

2 A. Yeah.

3 Q. What, if anything, did he do when you
4 mentioned that? Detective Lawrence? Did he
5 do anything when you mentioned a lawyer's
6 involvement?

7 A. No. Shrugged it off, really. He said a
8 lawyer "can't really do much more for you than
9 I can do for you. They're a waste of time and
10 cost money."

11 MR. DAVIS: If I could have just a
12 moment.

13 DIRECT EXAMINATION CONTINUED.

14 BY MR. DAVIS:

15 Q. Did you want to be home with your family
16 for the holidays?

17 A. Yes.

18 Q. How did you think that could happen?

19 A. By telling him what he wanted to know.

20 MR. DAVIS: Judge, that's all I have.

21 The State can ask you questions now.

22 THE COURT: You may cross examine.

23 SOLICITOR SAHN: Thank you, Your
24 Honor.

25 CROSS EXAMINATION

1 BY SOLICITOR SAHN:

2 Q. Good afternoon, Mr. Bowens.

3 A. Good afternoon.

4 Q. You were seventeen at the time of this
5 arrest?

6 A. Yes, sir.

7 Q. Were you in school at that time?

8 A. No, sir.

9 Q. How long had you been out of school?

10 A. Before the arrest?

11 Q. Yes.

12 A. I think I got expelled a year before, I
13 think.

14 Q. What school were you expelled from?

15 A. Colleton Middle.

16 Q. Colleton Middle?

17 A. Yes.

18 Q. What were you expelled for?

19 MR. DAVIS: Objection, Your Honor.
20 Relevance.

21 THE COURT: I'll allow it.

22 THE WITNESS: Fighting.

23 CROSS EXAMINATION CONTINUED

24 BY SOLICITOR SAHN:

25 Q. Fighting?

1 A. Yes.

2 Q. Were you arrested for that?

3 A. No, sir.

4 Q. Just got in trouble with the school?

5 A. Yes, sir.

6 Q. Did you apply to get into another school at
7 that point?

8 A. No, sir.

9 Q. Were you planning to get your GED at any
10 point?

11 A. My father wanted me to take the online
12 classes, but I never got around to it.

13 Q. So how far did you get in school, Mr.
14 Bowens?

15 A. Seventh.

16 Q. Were you in eighth grade when you got
17 expelled?

18 A. No, seventh.

19 Q. You were in seventh grade?

20 A. When I got expelled, yes.

21 Q. Did you not indicate to Detective Barnes
22 that you completed the seventh grade?

23 A. No, I said seventh grade was the last grade
24 I'd been in.

25 Q. At the time of this arrest were you

1 working, Mr. Bowens?

2 A. No, sir.

3 Q. Had you ever held a job?

4 A. Yes, sir.

5 Q. Where was that?

6 A. Church's Chicken.

7 Q. How long had you worked at Church's?

8 A. A year.

9 Q. And about when did you stop working there?

10 A. I can't remember. But I stopped when I was
11 sixteen. It might have been summertime. I did
12 like a year. I worked like a year.

13 Q. Summer of 2008?

14 A. Yes.

15 Q. About six months before this arrest?

16 A. Yes.

17 Q. Why did you stop working at Church's?

18 A. Everybody got their raises and mine went up
19 a nickel, but I had been working there longer
20 than most people who'd just come.

21 Q. Before this arrest had you had any prior
22 contact with law enforcement?

23 A. Yes.

24 Q. What was that?

25 A. I've been like -- I think I was thirteen or

1 twelve and we had got taken away from our mom by
2 DSS. The police came and the escort people with
3 them.

4 Q. Were you put in custody at all back then?

5 A. No, they took us away from our mother, so I
6 guess we was in their custody. He handcuffed me
7 and put me in the front seat with him because I
8 didn't want to go.

9 Q. You were handcuffed? And why did the
10 officer handcuff you?

11 A. Because I didn't want to leave.

12 Q. Did you put up a fight?

13 A. No, not like physical fight. But I tried
14 not to go.

15 Q. Let's move on to the day you were arrested.
16 You testified you were transported by Detective
17 Lawrence to the Charleston County Sheriff's
18 Office.

19 A. Correct.

20 Q. And the purpose of that was to give a
21 statement or give the opportunity for you to
22 give a statement if you wanted.

23 A. I don't know what his purpose for taking me
24 was, but he took me.

25 Q. When you got there were you given the

1 option to give a statement?

2 A. Yes.

3 Q. You, in fact, gave a statement.

4 A. Yes.

5 Q. You gave that statement to Detective

6 Charles Lawrence.

7 A. Yes.

8 Q. And before you gave that statement you

9 provided you with an advisement of rights form,

10 right?

11 A. If I remember right I think I signed the

12 form first, then the statement.

13 Q. You signed the form?

14 A. Signed.

15 SOLICITOR SAHN: May I approach?

16 THE COURT: You may.

17 CROSS EXAMINATION CONTINUED

18 BY SOLICITOR SAHN:

19 Q. I hand you State's Exhibit 1. Just take a

20 look at it if you would. You've seen that

21 before, correct?

22 A. Yes.

23 Q. And that's the form that Detective Lawrence

24 went over with you on December 20th, 2008, is it

25 not?

1 A. He didn't went over the form with me. He
2 said he'd let me read it. I ain't read it. I
3 just initialed it. He said "initial, initial,
4 sign."

5 Q. You said you did read it?

6 A. No, I didn't read it.

7 Q. Did not read it?

8 A. Correct.

9 Q. I want to call your attention to the middle
10 of the page.

11 A. Tell me which line.

12 Q. Excuse me?

13 A. Which line?

14 Q. The line that says number one by it. It
15 starts with "that I had the opportunity" ---

16 A. I have the right to remain silent.

17 Q. Isn't it right that Detective Lawrence read
18 that to you?

19 A. No.

20 Q. He never read that to you?

21 A. He said out of his own mouth that he ain't
22 read it. You say was it verbally -- in verbal
23 form? Did he give it to me verbally, or was it
24 in writing. He said written. I ain't -- he
25 ain't read this to me.

1 Q. So you had this form in your hand?

2 A. Yes.

3 Q. And he went over those rights with you
4 while you had it in your hand.

5 A. I initialed, initialed and signed.

6 THE COURT: He's already answered
7 that, Mr. Sahn. Let's move on.

8 CROSS EXAMINATION CONTINUED

9 BY SOLICITOR SAHN:

10 Q. I'll just ask you a couple of questions,
11 Mr. Bowens. Were you threatened in any way in
12 there by Detective Lawrence?

13 A. No.

14 Q. Were you promised anything?

15 A. Yes.

16 Q. What was that?

17 A. Low bond and he'd help me deal with the
18 charges when the time came.

19 Q. After going over those rights with you, you
20 went on to give a written statement in this
21 case, did you not?

22 A. Yes.

23 Q. And you signed that written statement?

24 A. Yes.

25 Q. Thank you.

1 THE COURT: Redirect?

2 MR. DAVIS: No, Your Honor.

3 THE COURT: You may come down, sir.

4 THE WITNESS: Thank you.

5 (WITNESS STEPS DOWN)

6 THE COURT: Any additional witnesses?

7 MR. DAVIS: No, Your Honor.

8 THE COURT: Any reply or rebuttal

9 witnesses?

10 SOLICITOR SAHN: No, Your Honor.

11 THE COURT: I'll be happy to hear
12 from you, Mr. Davis. May I see the statement?

13 COURT REPORTER: (Tenders State's
14 Exhibit 2 to Judge).

15 MR. DAVIS: Thank you, Your Honor.
16 Judge, we know that the police have broad
17 discretion in what tactics they use to get
18 statements. Oftentimes it might be a call of
19 conscious where it does impair someone's will.

20 I would ask you to consider that the
21 location, the differences in size of the parties
22 and the promises made. But, Judge, what I most
23 want to hone in on and I would ask you to
24 consider most importantly is it may have been
25 tangential, it may have been almost an after-

1 thought, but my client did request the
2 assistance of a lawyer. When the issue of bond
3 was brought up he referenced that and he was
4 told he was dismissed as to that request.
5 You've heard the testimony. I will not recount
6 it. I'd ask you to consider on that ground
7 alone that this would be stricken from
8 admissibility.

9 THE COURT: Very well. Thank you,
10 sir. I don't believe him. That's the problem.
11 I don't think that's true. I don't think it
12 happened.

13 I really -- it's one of the first
14 times, next to videotaping, this probably is the
15 best way I can imagine having a statement by a
16 person who is seventeen or eighteen years old.

17 In fact, it's probably one of the most
18 persuasive aspects of it. Because, quite
19 frankly, Mr. Davis, if I had what we typically
20 from time to time see, where the officer is
21 writing out and he signs it, I'm probably more
22 inclined to be a little more concerned about it.

23 I've read this statement. It's
24 extremely articulate. It is very responsive.
25 It's very concise. It's very consistent with

1 the witness's testimony, which shows that he
2 certainly is very -- he comprehends very much
3 what's going on. He understood. He even
4 understood enough about -- I'm sure that the
5 officer didn't ask, when he talks about 'let me
6 help -- what can I do to make it better for
7 you?' He probably injected that. My guess is
8 the officer said 'nothing.' It's probably
9 beneficial for you to cooperate, which it's not
10 a coercive statement. It's a statement of fact.
11 It goes along with that. That doesn't coerce
12 anybody.

13 So he made a conscious decision for
14 himself. It's very much described in allowing
15 him to write his answers to each of the
16 question. It's extremely effective. I find
17 it's clearly freely and voluntarily his
18 statement based on the documents themselves and
19 the testimony that I've heard, by the
20 preponderance of the evidence.

21 And I also find that clearly I'm not
22 impressed with his statement that he just handed
23 it to him and he signed everything. He's
24 demonstrated he's a lot more savvy than that.
25 So I'm not inclined to believe that testimony

1 either. Therefore I find that it was given
2 consistent with the *Miranda* warnings.

3 MR. DAVIS: Your Honor, as to our
4 argument that they denied him the right to
5 counsel.

6 THE COURT: I told you I don't
7 believe that. I think that's not true. I don't
8 believe it for a second. I just don't think
9 that happened. So he can testify to it all day
10 long. I don't believe him.

11 But that's my call right now. The jury
12 may believe otherwise. I'll submit it to the
13 jury, obviously. They have to find it beyond a
14 reasonable doubt. But by the preponderance of
15 the evidence there is no question in my mind
16 that it's his statement. He certainly hasn't
17 denied anything in it either. Which clearly the
18 statement itself is a matter of law. Although I
19 have never directed a verdict in a criminal
20 case. It's a matter of law. It sets out --
21 it's clearly and concisely the hand of one is
22 the hand of all. It couldn't be said any more
23 clearly that he is guilty of this, if the jury
24 believes it. If they don't, that's up to them.
25 That's their call.

1 Thank you very much. I have a verdict,
2 so we need to adjourn this for a moment. Thank
3 you.

4 (BRIEF RECESS)

5 (DEFENDANT PRESENT)

6 THE COURT: Let the record reflect
7 the Defendant, Mr. Bowens, is present.

8 I mentioned before you came in,
9 Solicitor, that Mr. Davis is referencing and I
10 am examining Mr. Bowens concerning the offer
11 before it was withdrawn. I have reviewed a
12 document which I think I asked Mr. Davis -- he's
13 going to make a copy of it and bring it in at
14 some point. He doesn't have to do it right now
15 -- the agreement, the offer, the plea agreement
16 that was submitted for his consideration. I
17 want that to be a Court's Exhibit because I
18 think, assuming the accuracy of the testimony
19 that he said "I'll do all I can for you," that's
20 exactly what that document represents. That
21 doesn't happen to everybody. That happens to
22 people who cooperate and who try to do what's
23 right.

24 So insofar as if the officer made that
25 statement, I considered that. It's manifested

1 through you in submitting that very generous
2 offer which was declined. So I don't find that
3 there's any coercion.

4 But that commitment, if there was a
5 commitment, the officer lived up to what he
6 said, 'it's better for you if you cooperate.'
7 And I think that's referenced and reflected in
8 that settlement offer.

9 (SO ENTERED AS COURT'S EXHIBIT 1)

10 SOLICITOR SAHN: I need to *null pross*
11 the other indictment for Mr. Green.

12 THE COURT: So the only indictment
13 we're going forward on here -- let's be on the
14 same page, ladies and gentlemen, is 2009-5376.

15 SOLICITOR SAHN: That's correct,
16 Judge, 5376.

17 THE COURT: Is the State ready?

18 SOLICITOR SAHN: Yes, Your Honor.

19 THE COURT: Is the Defendant ready?

20 MR. DAVIS: Yes, Your Honor.

21 THE COURT: What I'm going to plan to
22 do is get the jury sworn and then do opening
23 statements and probably that will be it for the
24 day.

25 SOLICITOR SAHN: So it's okay to

1 release my witnesses?

2 THE COURT: Yes. Tell them to be
3 back in the morning at 9:30.

4 SOLICITOR SAHN: Thank you.

5 THE COURT: Bring in our jury,
6 please, sir.

7 (JURY IN AT 4:05 P.M.)

8 THE COURT: Thank you, ladies and
9 gentlemen. Thank you for your patience. I'm
10 sure you got to see the inside of your jury room
11 for awhile. And I apologize for the delay. But
12 we were taking care of some matters of law, and
13 we have probably been finished about ten minutes
14 over. But I received notice that the jury had
15 reached a verdict in that case, so we needed to
16 get that jury and receive that verdict. So
17 that's been done.

18 And now, as I just told the attorneys,
19 there will be no more. You have my undivided
20 attention, and our undivided attention. So
21 thank you for your patience with us.

22 Before I ask our clerk to administer
23 your oath, let me talk about the seating for
24 just a moment. Ms. Young, you have two seats.
25 Those two seats on that back row are yours.

1 You're the alternate juror, but that term means
2 nothing as we sit here right now. At the
3 conclusion of this case if the first twelve
4 jurors selected are able to continue, then you
5 would not participate in the final
6 deliberations. But since neither you nor I know
7 the status of those jurors, please know you are
8 very much a part of the jury. But while you are
9 the alternate juror, I would ask that you occupy
10 either of those seats.

11 And I'd ask the other jurors to please
12 take any other seats in the jury box until you
13 select your presiding juror. The presiding
14 juror -- I believe, Mr. Liles, is sitting in
15 that chair on the first row. He's eligible to
16 serve as is any of the first twelve jurors as a
17 presiding juror. That's also called the
18 foreperson, forelady, foreman. I call them
19 presiding jurors. That's what, in essence, you
20 do. Someone has to be responsible for signing
21 the verdict form to report your decision. That
22 is the duty of the presiding juror. The
23 presiding juror also has the responsibility of
24 receiving any exhibits that might be introduced
25 during the trial and when the jury has completed

1 its deliberations, returning those exhibits to
2 the Court.

3 And from time to time there may be --
4 it may become necessary to have some
5 communication from the jury to the Court. It
6 would be your responsibility basically to serve
7 as the clerk of the jury and prepare that
8 document for the record. But that's really the
9 essence of the duties of the presiding juror.
10 Anyone is capable of serving. The statute
11 allows me to appoint the presiding juror or for
12 you to select your presiding juror. And I let
13 the jury pick their presiding juror. It doesn't
14 have to be done right away. I would simply ask
15 that at some point that you do that.

16 Over the years it's occurred to me,
17 just observing, I think the role of the
18 presiding juror is some persons are better
19 facilitators than others. You talk among
20 yourselves and you decide which person you want
21 to select. Once you've designated that person I
22 would simply ask that that individual occupy
23 that seat. Until then, any of you are free to
24 occupy the seat except Ms. Young. And she's in
25 her seats, and she is also not also not eligible

1 to serve in that capacity.

2 Thank you very much. If you will give
3 your attention now to our clerk who will
4 administer the oath.

5 (WHEREUPON JURY SWORN)

6 THE COURT: Before you came in and
7 the lawyers asked me my preference about whether
8 they should stand when you enter. And I
9 understand. I was a lawyer for twenty-one years
10 before I became a judge and I understand the
11 reasons for it. It's not great protocol, but
12 some judges require the lawyers and the parties
13 to stand when the jury comes in for the same
14 reason they stand when I come in. You're now a
15 judge, just as I am. It's respect for that
16 position.

17 I'm one of these people, and I've been
18 this way for seventeen years. I'm okay with
19 that when we start Court in the morning and
20 maybe after lunch. But when we take breaks and
21 moving in and out of the courtroom, we're
22 working. There's no need for everybody to jump
23 up. That's just the way I feel about it.

24 So not being disrespectful to you,
25 we're here to do a job. And that's just the way

1 I look at it. So I've asked that they can
2 remain seated, but it's no respect. And I hope
3 that doesn't offend any of you. But I wanted to
4 explain why. And if I say you may sit down,
5 that's what it's all about.

6 You now have become a judge with me.
7 And you and I will resolve this dispute. It's
8 an honor to serve as a judge with each one of
9 you, and I appreciate your acceptance of this
10 role. You are now acknowledging that you are
11 prepared to do and perform the task that you
12 just undertook. And I want to allay any
13 concerns that you may have about whether or not
14 you are qualified to perform that task.

15 I'll assure you, without any
16 hesitation, there's no one in the world more
17 qualified than you are to do what you just
18 promised to do. And you've brought everything
19 you're going to need -- nothing else. Because
20 all you're going to be asked to do is apply your
21 common sense, your sense of logic and reason in
22 analyzing the evidence which consists of the
23 testimony of witnesses and exhibits that might
24 be introduced through their testimony, and
25 decide what you believe to be the truth.

1 How many times a day do we do that? We
2 listen to somebody repeat something, and we say
3 we believe that or we don't believe it. That's
4 exactly what you're going to do.

5 The other part of that is -- the good
6 thing about two judges, when you hear -- and
7 sometimes I have that responsibility when they
8 have what they call a bench trial. In a bench
9 trial I'm not only the judge of the law, but I
10 become the judge of the facts. And occasionally
11 that occurs.

12 But when you're here, I don't have
13 anything to do with the facts. And thank you
14 very much. I appreciate that.

15 But you don't have anything to do with
16 the law. You promised that your verdict will be
17 consistent with the law, will be the truth based
18 on the law and the facts. You'll determine the
19 facts and I'll give you the law. And what you
20 will do is apply that law to those facts at the
21 end and report your decision.

22 Now, the real catch -- and this is why
23 I say I commend you for your acceptance of this.
24 You know, when I qualify jurors and after I
25 finish the qualifications then I don't know

1 whether any jurors will be excused. But from
2 time to time I excuse jurors who state, for
3 various reasons -- some of them are statutory.
4 They don't meet the requirement. A typical one
5 is sometimes you see people move and they move
6 to Berkeley County, and they don't live in
7 Charleston any more. And I excuse those persons
8 based on that statement. And I always try to
9 remember to say that the jurors that remain have
10 already spoken volumes about themselves.

11 I say, you know, you've already said
12 something. What stopped you from standing up
13 and saying, "I don't live in Charleston County
14 any more." So you had an opportunity, but you
15 didn't. Why? Because it wasn't true. I'll bet
16 if I asked you how many of you really, really
17 wanted to do what you're doing right now,
18 probably -- maybe some of you would, but
19 probably most of you would say it wouldn't be in
20 the top ten of things that I want to do this
21 week. But you are here, which says something
22 about you. Thank you for that.

23 You bring that fundamental basis that
24 you have of being fair and just an honest person
25 -- you bring that to this process. And that's

1 what will carry the day. Because what you'll be
2 asked to do -- and this is the part that really
3 we depend upon each other to do this. And say
4 "we do" and "they do." The State does. Mr.
5 Bowens does. Their attorneys do. They depend
6 on us to apply our knowledge, our sense of logic
7 and reason fairly and impartially.

8 So we have made that commitment to them
9 as well. And so together we'll work to do that.
10 The one thing about this process that's very
11 important -- you brought something else with you
12 that probably we don't talk about very much.
13 But when we qualified you we talked about the
14 case, and remember the last question I asked
15 you, was there anything about what you've heard
16 that would give you any concern about taking the
17 oath that you just took. And none of you
18 responded. Which says no, not a thing. You
19 know what you said in so many words? You said,
20 "I have an open mind. I haven't predetermined
21 anything, so, yes, I can do that. I can honor
22 that commitment."

23 I urge each one of you to maintain that
24 open mind until I give you an instruction to
25 begin your deliberations. I would submit to you

1 that's one of the most important parts of
2 performing the task that you have just consented
3 to do. And it's very important for numbers of
4 reasons. Number one, since it's part of my
5 instruction, you're going to make your decision
6 consistent with the facts and the law. And
7 obviously, if you decide something prematurely,
8 then you're not making your decision consistent
9 with the law.

10 But it's also fundamentally proper and
11 fair to the process itself. Because there are
12 four distinct parts to this proceeding. In just
13 a moment, after I finish my opening remarks or
14 opening statements, the attorneys will have
15 their opportunity to make their opening
16 statements to you. They will speak to you
17 twice. They're officers of this Court and they
18 have a very important responsibility in this
19 process. They have a duty to represent their
20 clients consistent with the law and to present
21 the evidence and the facts in a fashion that
22 will assist us in making the decisions that
23 we're called upon to make -- you, in making the
24 factual determinations -- me, in making the
25 legal decisions that I'm called upon to make.

1 They will speak to you before you hear
2 the evidence and after you've heard the
3 evidence. Before, we call that opening
4 statements, and basically it's an overview of
5 the dispute. They'll talk to you about some of
6 the evidence they expect you will hear. And
7 then they may discuss also some legal principles
8 with you. I'm confident you'll find the remarks
9 helpful to you as we go through this process.
10 And so give them your attention. But remember
11 -- and I'll remind you of this in the charge as
12 well -- their remarks, just as my remarks,
13 should never be considered evidence at all.

14 The closing argument is after you've
15 heard the evidence. And during the closing
16 argument they'll have their opportunity to
17 discuss with you that evidence and suggest
18 reasonable inferences that you may draw from
19 that evidence. Again, it will be very helpful
20 to you when you begin the process of deciding
21 the case.

22 Following the opening statements, then
23 we will move into the evidentiary portion. Now,
24 this proceeding -- maybe some of you have served
25 on juries, maybe some of you have been involved

1 in litigation. I don't know. But if you've
2 ever served in a civil proceeding, there are two
3 really main differences in a criminal dispute.
4 The format's the same. One of them, in a civil
5 proceeding, for the majority of the time the
6 party that makes the claim has the burden of
7 proof. That's similar. But there are times
8 when the defendant, the person against whom the
9 claim is made, has a burden of proof with
10 respect to some aspect of that case.

11 Not so in this case. Not so at all.
12 Because in a criminal dispute the only party
13 that has any burden of proof of the State of
14 South Carolina. They make the claim. The law
15 says that they have to prove it.

16 That is important because Mr. Bowens,
17 the person who is accused, has absolutely
18 nothing to prove or disprove. At any point
19 during this process your thought is for him to
20 prove that that didn't happen or prove that this
21 is not the case, or prove your innocence, you've
22 violated your oath to this case. He doesn't
23 have that responsibility, not at all. He
24 doesn't have to say a word. He doesn't have to
25 present any evidence. Because he's here because

1 it's his day in court. But this is the party --
2 the State has the only burden of proof. So
3 that's all that you will look to.

4 The second is in the area of the burden
5 of proof. In a civil trial typically the burden
6 of proof is the preponderance or greater weight
7 of the evidence, which, simply stated, is a
8 probability standard. Is it more probable than
9 not? Not so here. The standard here is much
10 greater than that. It's beyond a reasonable
11 doubt. Now, I will define reasonable doubt for
12 you during the charge portion. But I will tell
13 you now that a reasonable doubt is that doubt
14 that would make an honest, conscientious juror,
15 sincere juror searching for the truth in the
16 case to hesitate to act or take some action.
17 That's the standard that you will be applying.

18 And to what will you be applying that
19 standard? Well, the State has to prove every
20 element of the charge of armed robbery. And I
21 will define those for you in the charge. I will
22 list them for you. And basically what you will
23 do at the time that you're instructed to begin
24 your deliberations is you will retire and you
25 will analyze the evidence as to whether or not

1 the State has convinced you to that standard,
2 beyond a reasonable doubt, that each element is
3 present.

4 If they have and your answer is
5 collectively yes, then your duty is to return a
6 verdict of guilty. Why? Because the State has
7 met its burden of proof. On the other hand, if
8 collectively your determination is that they've
9 failed to meet one or more of those elements,
10 then you must return a verdict of not guilty.

11 Because that's what a verdict of not guilty
12 means in a criminal dispute. It means that the
13 State, the party that made the claim, did not
14 meet the burden of proof. That's what it says.

15 So you have that responsibility. And
16 again, the only party that has any duty to prove
17 anything is the State.

18 Because the State has the burden of
19 proof they go first. You will hear from the
20 State's case fully. Now, as I mentioned to you,
21 while Mr. Bowens has absolutely nothing to prove
22 at all, doesn't have any responsibility to
23 present any evidence, to testify -- nothing at
24 all, still he has the right, if he choose to, to
25 call witnesses and present them for your

1 consideration. You won't hear that until you've
2 heard the State's case.

3 Another very important reason, I would
4 submit to you, to withhold making any decisions,
5 because you need to hear all the evidence,
6 obviously, before you make that decision. But
7 most importantly in this case, please remember
8 the one piece of evidence or one of the
9 principles of law that accompanies Mr. Bowens --
10 he walked into this courtroom with it and it
11 stays with him until you, in your deliberations,
12 after reviewing all the evidence, come to a
13 conclusion that the State has met its burden of
14 proof and 'I'm convinced he's guilty of this
15 charge.' Then, and only then, may you set aside
16 the presumption of innocence which must be in
17 your mind. And it stays there until you're
18 convinced otherwise in your deliberations. It's
19 a active presumption. It means that each one of
20 you has to actively presume that until you're
21 convinced by the State otherwise through the
22 evidence which you will hear.

23 Now, at the conclusion of the closing
24 arguments I will give you the instruction on the
25 law. Then we will take about these various

1 principles. And then, following that, you will
2 retire and decide this case. The charge is
3 armed robbery. I will outline the various
4 elements for you. And you will then retire and
5 you will apply that common sense, that sense of
6 logic that has really assisted you throughout
7 your life. And that's why I say that I don't
8 know that there's anybody more qualified -- I
9 don't believe there's anybody in the world that
10 can apply your life's experiences and your
11 knowledge any better than you can.

12 So thank you for the privilege of
13 serving with you. Thank you for your attention
14 to my remarks. I ask you to please give that
15 same attention now to the attorneys as they give
16 their opening statements on behalf of their
17 clients.

18 Mr. Durant?

19 SOLICITOR DURANT: Thank you, Your
20 Honor. May it please the Court?

21 THE COURT: Yes, sir.

22 SOLICITOR DURANT: Ladies and
23 gentlemen, I'm going to start off this case by
24 talking about an important part of the law
25 that's very relevant in this case. And it's

1 called -- in South Carolina we know this law,
2 it's accomplice liability -- it's known as the
3 hand of one is the hand of all. And this is
4 what it says essentially: If a crime was
5 committed by two or more persons who are acting
6 together in committing a crime, the act of one
7 is the act of all. A person who joins with
8 another to accomplish an illegal purpose is
9 criminally responsible for everything done by
10 the other person which occurs as a natural
11 consequence of the acts done in carrying out the
12 common plan and purpose.

13 And then the law goes on to say that a
14 principal in a crime -- a principal -- is one
15 who either actually commits the crime or who is
16 present aiding, abetting or assisting in
17 committing the crime. When a person does an act
18 in the presence of or with the assistance of
19 another, the act is done by both. Where two or
20 more acting with a common plan or intent are
21 present at the commission of a crime, it does
22 not matter who actually commits the crime. All
23 are guilty. The hand of one is the hand of all.
24 And that's the important concept to set the tone
25 for this trial.

1 But the judge will actually have to
2 charge you on the law. So you can't take it
3 from me. But I expect that Judge Dennis will
4 charge you on that at the end of this case.

5 Now, we're talking about December the
6 20th of 2008. And this incident, you know, was
7 an armed robbery. You know that the defendant
8 has been charged with armed robbery.

9 Well, this thing ended at 8:00 in the
10 morning, and that was when a tan Ford van was
11 pulled over just across the county line, in
12 Colleton County. It's the van that a witness
13 from the Kangaroo convenience store in
14 Hollywood, South Carolina described seeing a man
15 with a sawed-off shotgun get into this van, and
16 a man with an orange shirt was driving it. That
17 was fifteen minutes before it was pulled over in
18 Colleton County.

19 So at 7:45 a.m., there's one man who
20 goes into the Roadrunner convenience store with
21 a sawed-off shotgun. And he's wearing dark
22 clothes, dark hoodie, a shotgun. And the
23 witness across the street describes that this
24 man jumps into this tan van and that the driver
25 of the van is wearing an orange shirt. And so

1 she's astute and she sees that obviously
2 something is wrong here. You're going to be
3 hearing from her. Her name's Julie Frazier.
4 She puts that out to the police.

5 Fifteen minutes later the van's pulled
6 over in Colleton County. And this man is in the
7 driver's seat. This man is Marvin Bowens. He's
8 wearing an orange shirt.

9 Well, he's detained at the scene at
10 gunpoint. The officer who pulled him over says,
11 "Where are you going?" And he says, "F you,
12 take me to jail." You're going to hear that
13 from the officer.

14 A short time later his brother is
15 captured. The canine unit is sent out. The
16 brother was -- his name is Minor who was
17 in the passenger's seat. He ran when the
18 vehicle was pulled over. But he's apprehended a
19 short time later. He's the one who actually
20 went into the store with the shotgun.

21 So this man did not go into the store,
22 nor is the State contending that he did. But we
23 are contending that he is guilty under the law
24 in South Carolina. That's how we're going to
25 present this case to you.

1 So another part of this story -- or
2 actually what happened and what the State
3 intends to present to you is that once Mr.
4 Bowens was arrested, he was taken down to the
5 police station in Charleston. And he was
6 advised of his rights, as he is supposed to be
7 -- his *Miranda* rights. I'm sure you're all
8 familiar with them. And he gives a statement to
9 Detective Charles Lawrence of the Charleston
10 County Sheriff's Office. He writes it in his
11 own handwriting. And he tells Detective
12 Lawrence, "I committed..." -- well, he doesn't
13 say "I committed this armed robbery" but he
14 says, "I took this person to commit this robbery
15 and I was going to be the driver, and I was
16 going to drive him away. And I was going to get
17 a cut. I was going to get five hundred
18 dollars."

19 They ended up getting a lot less than
20 that. There was about three hundred dollars
21 total that was taken. And he says in his
22 statement that he got about a hundred dollars.

23 So you will see all that. You will
24 have the opportunity to judge all the evidence
25 and decide for yourself if we have proven this

1 case to you beyond a reasonable doubt.

2 That is essentially the case. That's
3 what the State will be asking you to consider.
4 At the end we'll be asking for a verdict of
5 guilty. We'll be asking you to pay careful
6 attention. I'm sure you will. Thank you.

7 THE COURT: Thank you, Mr. Durant.
8 Mr. Davis?

9 MR. DAVIS: Thank you. Thirty months
10 ago, two and a half years ago, Marvin was
11 arrested. He was seventeen and a half years old
12 at the time. The same day his little brother
13 Minor who goes by Minor was also arrested. He
14 was fifteen.

15 Now's our chance to actually have a
16 trial and have y'all decide what really
17 happened, what can the State prove really
18 happened that day?

19 As the judge has already told you, you
20 don't have to make up your mind until you've
21 heard everything.

22 Marvin was living with his father and
23 his two other brothers down in Adams Run. Now,
24 the undisputed facts -- the undisputed facts are
25 that he is stopped in the family van wearing an

1 orange shirt. The family van is a tan EconLine
2 van. He's stopped. He gets out and he's
3 arrested. Minor runs, but is ultimately
4 arrested later.

5 The State has said and they've given
6 great attention to the hand of one is the hand
7 of all. Pay attention to what other people did
8 here when you're deciding whether he's guilty or
9 not. And do that. Pay attention to what other
10 people did. Because today, and during the
11 course of this trial, they have to prove that
12 Marvin, my client, was present and participated.

13 They've put it up there for you
14 (indicating video screen). The judge is going
15 to tell you -- you don't have to remember that.
16 The judge is going to tell you what it means.

17 They must prove that Marvin was present
18 and participated in an armed robbery. Here's
19 how you'll decided. They'll call witnesses.
20 You're going to hear testimony from this witness
21 stand. You may actually get items to take back
22 to the jury room with you when you deliberate.
23 Look at all of the evidence.

24 It's not about what the lawyers say.
25 It's what the law that the judge gives you and

1 what you hear and see and what you believe.
2 Listen to everything, but don't jump to
3 conclusions. They have told you -- the
4 Solicitor's Office told you 'we can prove that
5 he was there and can prove that he was
6 involved.'

7 I believe what you're going to find that
8 the undisputed fact is the statement's not true,
9 which you'll hear from the State's witnesses.
10 The statement's not true. And you'll see at the
11 end of this trial whether you find that the
12 State has proved its case, and you'll see just
13 how far the State can go in their case. But at
14 the end of the day, just as he sits here today,
15 innocent, you're going to realize at the end of
16 this case, with all the evidence the State
17 provides, he remains innocent at the end of the
18 trial and you will be able to find him not
19 guilty. Thank you.

20 THE COURT: Thank you, Mr. Davis.
21 Ladies and gentlemen, thank you very much. It's
22 now about 4:30 or 4:35. Given everything that
23 happened, rather than start a witness and make
24 you run later or have to break that witness, I
25 think the better thing to do is to stop for the

1 evening.

2 And I know you all have just started
3 and you're just getting comfortable in your
4 seats. But I think for cohesiveness and
5 coherency, it would be better to do it, and
6 we'll start in the morning at 9:30.

7 I ask you to please return to your jury
8 room by 9:30 in the morning. We'll call you out
9 then, and we'll start the evidentiary portion of
10 the proceedings.

11 Now, you'll hear this if we have to go
12 into Friday -- you'll hear this again. In fact,
13 you'll hear it every time you leave the court
14 house. Please remember what I told you earlier
15 about the importance of deciding this case on
16 what happens in this court room and not doing
17 anything outside of this courtroom on your own.
18 You certainly are not at liberty to talk among
19 yourselves, nor are you at liberty to talk with
20 anyone else. And that includes anyone that
21 might be at home, about anything about this
22 case. While you don't have any evidence, you'd
23 have to speculate right now. So talk about
24 anything else. You can talk about how long you
25 had to wait all day for all this to happen.

1 That's fine. And I apologize for that, and I'll
2 accept service on that one. I'm partly the
3 reason, and I apologize to you.

4 But as to the case, we'll finish it
5 this week and then you'll be free to talk about
6 it if you want to. Have a great evening and
7 I'll see you in the morning at 9:30. Thank you.

8 (JURY OUT AT 4:45 P.M.)

9 THE COURT: Anything from the State
10 before we recess, Mr. Sahn?

11 SOLICITOR SAHN: Nothing, Judge.

12 THE COURT: Mr. Davis, anything from
13 the defense?

14 MR. DAVIS: No, Your Honor.

15 THE COURT: Thank you all. I
16 apologize for the disruption, and I appreciate
17 your flexibility this afternoon. I'll see you
18 in the morning.

19 (COURT IN RECESS)

20 (TRANSCRIPT CONTINUED NEXT PAGE)

21

22

23

24

25

1 JUNE 23, 2011

9:30 A.M.

2

3

(DEFENDANT PRESENT)

4

MR. DAVIS: Your Honor, I will

5

approach with the agreement.

6

THE COURT: That has already been

7

referenced in the record as Court's Exhibit 1.

8

COURT REPORTER: In the *Jackson v.*

9

Denno hearing. Yes, sir.

10

THE COURT: Thank you. Let the

11

record reflect that Mr. Bowens is present. Are

12

we ready for our jury? Let's bring in our jury,

13

Mr. Robinson. Thank you so much.

14

(JURY IN AT 9:40 A.M.)

15

THE COURT: Good morning, ladies and

16

gentlemen. I hope you had a good evening.

17

We're ready now to resume the matter that we

18

started yesterday. And as you recall we had the

19

opening statements by the Court and by the

20

attorneys. Now give your attention, please, as

21

we move into the evidentiary portion and they

22

will call their first witnesses.

23

Mr. Sahn, Mr. Durant, good morning.

24

You may call your first witness.

25

SOLICITOR SAHN: Good morning. Thank

1 you, Your Honor. The State calls Deputy Jared
2 Murphy.

3 (WITNESS TAKES STAND)

4 JARED G. MURPHY, being duly sworn to
5 tell the truth, the whole truth and nothing but
6 the truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR SAHN:

9 Q. Good morning, Deputy.

10 A. Good morning.

11 Q. Please tell us where you are currently
12 employed.

13 A. The Charleston County Sheriff's Office.

14 Q. And how long have you been working there?

15 A. Approximately four -- a little over four
16 years.

17 Q. Four years?

18 A. Yes, sir.

19 Q. Do you have any prior law enforcement
20 experience before that job?

21 A. I was a member of the United States Coast
22 Guard. I was a boarding team member.

23 Q. How long were you a member of the Coast
24 Guard?

25 A. Four years.

1 THE COURT: Hold on a second. If you
2 will, pull that mic down so it's nearer to you
3 and positioned so that -- you'll have to be
4 closer to it. Thank you so much.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR SAHN:

7 Q. Deputy Murphy, were you employed as a
8 deputy back on December 20th, 2008?

9 A. Yes, sir.

10 Q. And that was with the Charleston County
11 Sheriff's Office?

12 A. Yes, sir.

13 Q. Tell us about some of your responsibilities
14 and duties at that time.

15 A. As I am now, I was assigned to the Patrol
16 Division. It's my job to patrol my assigned
17 district and respond to calls for service.

18 Q. So Patrol Division?

19 A. Yes, sir.

20 Q. Is that what you do now as well?

21 A. Yes, sir.

22 Q. As part of that job did you have any
23 special training?

24 A. I attended the South Carolina Criminal
25 Justice Academy in 2007.

1 Q. All right, Deputy, let's get to the reason
2 why we're all here today. I'll take you back to
3 December 20th, 2008. It's a Saturday morning.

4 A. Yes, sir.

5 Q. On that date did you respond to a call for
6 service about an armed robbery that had just
7 taken place?

8 A. Yes, sir.

9 Q. At 5221 Highway 165 in Ravenel -- in
10 Hollywood, South Carolina?

11 A. Yes, sir.

12 Q. And what's located at that location?

13 A. It's a RoadRunner convenience store.

14 Q. Is that in Charleston County?

15 A. Yes, sir.

16 Q. Where were you located when you got that
17 call for service?

18 A. We were at the Charleston County substation
19 at 5962 Highway 165.

20 Q. About how far is that from the RoadRunner?

21 A. About three to five miles.

22 Q. So about how long did it take you to arrive
23 at that RoadRunner?

24 A. Approximately five minutes.

25 Q. And do you remember what time you go there

1 about that morning?

2 A. About 7:42.

3 SOLICITOR SAHN: May I approach?

4 THE COURT: You may.

5 COURT REPORTER: State's Exhibit 1

6 through 9 marked for identification, each being
7 a photograph.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR SAHN:

10 Q. Deputy, I'm handing you State's Exhibits 1
11 through 9 for I.D. purposes only at this time.

12 A. Yes, sir.

13 Q. Take a look at those, please.

14 A. State's Exhibit 1 is the ---

15 Q. Just take a look at them for now and tell
16 me if you recognize them.

17 A. (Upon review) -- yes, sir.

18 Q. Are those all photos of the RoadRunner
19 convenience store?

20 A. Yes.

21 SOLICITOR SAHN: Your Honor, at this
22 time we would move State's 1 through 9 into
23 evidence.

24 THE COURT: Any objection? Have you
25 seen them?

1 MR. DAVIS: I have, Your Honor. No
2 objection.

3 THE COURT: Very well. State's 1
4 through 9 are admitted into evidence without
5 objection.

6 (SO ENTERED AS STATE'S EXHIBITS 1 THROUGH 9)

7 SOLICITOR SAHN: Thank you, Your
8 Honor.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR SAHN:

11 Q. Deputy Murphy, if you could just turn your
12 chair around and tell us what that is.

13 A. That's a view of the RoadRunner from the
14 front, from the 62 side.

15 Q. Is this a different angle of the same
16 store?

17 A. Yes, sir.

18 Q. This photo -- tell us what that shows.

19 A. It shows the front of the store and the
20 sign for the Aloha Car Wash that is directly ---

21 Q. Are you referring to this side -- right
22 here (indicating), sir.

23 A. Yes, sir, the yellow sign.

24 Q. And it's hard to read, but what is that
25 sign for?

1 A. It's for the Aloha Car Wash that's directly
2 behind the ---

3 THE COURT: What's the number that
4 we're looking at?

5 SOLICITOR SAHN: That's State's
6 Exhibit 3.

7 THE COURT: Thank you.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR SAHN:

10 Q. And what about this parking lot back here?
11 What is that parking lot for?

12 A. It's for the car wash.

13 THE COURT: "Back here" meaning what
14 appears to be the rear of the store?

15 THE WITNESS: Yes, sir, the yellow
16 sign says "Aloha Car Wash" on it, and there's an
17 empty dirt parking lot directly behind it.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR SAHN:

21 Q. I'm showing you State's Exhibit 4 now. It
22 is obviously the RoadRunner, at a different
23 angle.

24 A. Yes, sir.

25 Q. Is that rear parking lot in that picture as

1 well?

2 A. Yes, sir.

3 Q. Could you point it out?

4 A. (Indicating).

5 Q. Thank you, sir. I'm going to show you
6 State's Exhibit 5. What is that a photo of?

7 A. That's a photo of the interior of the Road
8 Runner convenience store.

9 Q. Okay. State's 6, Deputy? What is that?

10 A. That's near the front of the store.

11 Q. If someone were to walk in the front of the
12 store and turn right, what would they be facing?

13 A. They could see outside the window at the
14 Exxon across the street on 165.

15 Q. So that's an angle you could see if you
16 walk in the store and turn right?

17 A. Yes.

18 Q. I'm showing you State's Exhibit 7. What
19 does that show?

20 A. That's the video camera that's mounted
21 inside the convenience store.

22 Q. State's 8?

23 A. That's an angle of the store, if you were
24 to walk in, turn around at about a 45-degree
25 angle and face towards the front of the store.

1 Q. And, lastly, State's Exhibit 9? Tell us
2 what that shows, please.

3 A. That's the front desk with the cash
4 register.

5 Q. And do you see the cash register in that
6 photo?

7 A. I don't.

8 Q. It might be hard to see, but I think it's
9 there. If you'll just step back a little bit
10 from the picture.

11 A. Say again?

12 Q. Do you recognize this actual picture?
13 There it is.

14 A. Yes, sir. There's the cash register.

15 Q. The cash register?

16 A. Yes, sir.

17 Q. Is that the front desk?

18 A. Yes.

19 Q. What was the first thing you did? You can
20 turn back around, please.

21 A. (Complies).

22 Q. What was the first thing you did when you
23 arrived at that RoadRunner convenience store
24 when you got the call for service?

25 A. Secured the scene. We secured the scene.

1 Set up a perimeter.

2 Q. What does that entail, securing the scene?

3 A. Once we arrive on a scene, we position our
4 vehicles as to we can see all sides of the
5 business. And we request that dispatch make a
6 call inside the business so that we can meet
7 with somebody that's inside the business, so we
8 can clarify whether the suspects or anybody else
9 is inside that's not supposed to be.

10 Q. Again, this is a call for an armed robbery.

11 A. Yes, sir.

12 Q. So are you looking for a suspect when you
13 first arrive?

14 A. Yes.

15 Q. Were any suspects found when you first
16 arrived?

17 A. When I first arrived, no.

18 Q. When you got there did you go inside the
19 store?

20 A. Yes, sir.

21 Q. Did you meet with anybody when you went
22 inside the store?

23 A. Mr. Patel.

24 Q. Who is Mr. Patel?

25 A. I believe he is the owner and he was the

1 clerk at the time.

2 Q. Was it your understanding that he was
3 present during the armed robbery?

4 A. Yes, sir.

5 Q. Was there anybody else inside the store at
6 the time of the armed robbery, as far as your
7 investigation revealed?

8 A. Yes, there was Ms. Martha Grant who is a
9 cook at the RoadRunner and there was ---

10 Q. As part of your investigation what did you
11 learn happened inside that store?

12 MR. DAVIS: I'm going to object here
13 on the basis of foundation of questioning. It
14 calls for some hearsay.

15 SOLICITOR SAHN: I would argue,
16 Judge, and say ---

17 THE COURT: Do not argue at this
18 point unless I invite that, please. The basis
19 of hearsay -- I don't know. He's asked a
20 general question. If you want to elicit
21 information, I can make a determination as to
22 whether or not it's hearsay, based on the
23 question posed. But that question, I'm not
24 going to allow. I sustain the objection as to
25 that question.

1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR SAHN:

3 Q. So you did an investigation when you got to
4 the store?

5 A. Yes, sir.

6 Q. Is that correct? After you investigated,
7 what did you do?

8 A. Once I was given the description and the
9 amount of money that was taken from the cash
10 register I advised my supervisor of the
11 situation and he requested both our forensics
12 unit and our Criminal Investigations Division.

13 Q. Who was your investigator -- who was your
14 supervisor that you advised?

15 A. Senior Sergeant Grady Brown.

16 Q. So as part of your investigation were you
17 aware that the store was equipped with video
18 cameras?

19 A. Yes, sir.

20 Q. As part of your investigation were you
21 aware that the armed robbery was captured on
22 video?

23 A. Yes.

24 Q. You testified a moment ago that you met
25 with Raj Patel and Martha Ann Grant who were two

1 employees inside the store during the armed
2 robbery.

3 A. Yes, sir.

4 Q. How did they appear to you when you spoke
5 to them?

6 A. They appeared pretty shaken up.

7 SOLICITOR SAHN: The Court's
8 indulgence.

9 THE COURT: Certainly.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR SAHN:

12 Q. Deputy, would you please answer any
13 questions from the defense attorney?

14 A. Yes, sir.

15 THE COURT: You may cross examine,
16 Mr. Davis.

17 MR. DAVIS: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. DAVIS:

20 Q. Deputy Murphy, just a couple of questions.

21 Is it accurate that there were multiple units on
22 the scene dispatched that morning?

23 A. Yes, sir.

24 Q. Do you recall how many other deputies
25 arrived besides yourself?

1 A. I want to say three.

2 Q. So including you, probably four?

3 A. Well, two others, other than me at the
4 time.

5 Q. Okay. And would all three of the deputies
6 ridden separately through three different patrol
7 units?

8 A. Yes, sir, there would have been three
9 separate vehicles.

10 Q. And I believe you testified to this on
11 direct, but can you remind the jury, was Crime
12 Scene called out as well?

13 A. Yes, they were.

14 Q. The Sheriff's Department, they refer to it
15 as the Technical Services Unit. Is that right?

16 A. Yes, sir.

17 Q. But commonly crime scene technicians.

18 A. Crime scene or forensics.

19 Q. Were you there when they arrived?

20 A. Yes.

21 Q. Do you remember how many deputies from that
22 unit arrived?

23 A. I can only remember one specifically.

24 Q. Do you remember what deputy that was?

25 A. Deputy Milz, M-I-L-Z.

1 Q. Finally, that's a specialized unit, right?

2 A. Yes, sir.

3 Q. So you would not have been involved in any
4 of their investigation and collecting evidence.

5 A. No, sir.

6 Q. You secured the scene and kept it safe for
7 them to be able to do their job.

8 A. Yes, sir.

9 Q. Thank you, Deputy Murphy.

10 MR. DAVIS: No other questions, Your
11 Honor.

12 THE COURT: Redirect.

13 SOLICITOR SAHN: No, Your Honor.

14 THE COURT: Thank you. You may come
15 down.

16 (WITNESS STEPS DOWN)

17 THE COURT: Call your next witness,
18 please.

19 SOLICITOR SAHN: The State calls Mr.
20 Rajendra Kumar Patel.

21 (WITNESS TAKES STAND)

22 RAJENDRA KUMAR PATEL, being duly sworn
23 to tell the truth, the whole truth and nothing
24 but the truth, testified, as follows:

25 DIRECT EXAMINATION

1 BY SOLICITOR SAHN:

2 Q. Good morning, Mr. Patel.

3 A. Good morning, sir.

4 Q. Before we start, I'm going to ask that you
5 lean up right into that microphone and speak as
6 loudly as possible, okay, so everybody can hear
7 you.

8 A. Yes, sir.

9 Q. Thank you, sir. How old are you?

10 A. I am 51 years.

11 Q. Where do you live, Mr. Patel?

12 A. I live in Charleston.

13 Q. What area of Charleston do you live in?

14 A. In the area of ---

15 THE COURT: Hold on a second. As you
16 saw yesterday, when we replayed -- if we have to
17 replay the testimony, it's very, very important
18 that the witnesses get close to that mic so that
19 their voices are picked up and the sound would
20 be very easy to hear. And it's beneficial to
21 the jury.

22 Mr. Patel, if you pull up closer,
23 you'll need to pull that mic down so it's closer
24 to your mouth, please. And sit forward to the
25 mic.

1 WITNESS: (Complies)

2 THE COURT: Thank you, sir.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR SAHN:

5 Q. Again, you live in the Charleston area?

6 A. Yes.

7 Q. How long have you lived in the Charleston
8 area?

9 A. About five years.

10 Q. Mr. Patel, what do you do for a living?
11 What's your job?

12 A. I am in the gas station business.

13 Q. You own a gas station?

14 A. Yes, sir.

15 Q. What gas station is that?

16 A. In Hollywood, South Carolina.

17 Q. It's in Hollywood?

18 A. Yes, sir.

19 Q. What's the name of that business?

20 A. RoadRunner.

21 Q. And how long have you owned the RoadRunner
22 gas station?

23 A. Four or five years.

24 Q. Four or five years?

25 A. Five years.

- 1 Q. Five years?
- 2 A. Yes, sir.
- 3 Q. Mr. Patel, do you have any family?
- 4 A. Yes.
- 5 Q. Do you have any sons?
- 6 A. Two boys and my wife.
- 7 Q. And your wife?
- 8 A. Yes, sir.
- 9 Q. So four of you. Mr. Patel, I'd like to ask
10 you now about what happened December 20th, 2008
11 at your convenience store. Were you working
12 that morning, sir?
- 13 A. Yes.
- 14 Q. It was a Saturday morning.
- 15 A. Saturday morning.
- 16 Q. About what time did you arrive for work
17 that morning?
- 18 A. I opened my store at 7:00 o'clock on
19 Saturday.
- 20 Q. 7:00 o'clock, just like every day?
- 21 A. Yes, sir.
- 22 Q. And did you personally open the store?
- 23 A. Yes.
- 24 Q. Do you have any employees that were working
25 with you that morning?

- 1 A. At that time there was one cook with me.
- 2 Q. One cook, and what was her name?
- 3 A. Her name is Martha Grant.
- 4 Q. Were you working inside the store that day,
- 5 behind the counter?
- 6 A. Yes.
- 7 Q. So you were in charge of the cash register?
- 8 A. Yes, sir.
- 9 Q. Tell the jury what happened at about 7:45
- 10 in the morning.
- 11 A. One of the young black men entered my
- 12 store, and entered my register area and asking
- 13 for money, gun point to me and asking for money.
- 14 Q. You said a black man entered.
- 15 A. Yes, sir.
- 16 Q. What was he carrying?
- 17 A. Huh?
- 18 Q. What was he carrying?
- 19 A. He had a handgun.
- 20 Q. A gun?
- 21 A. Yes, sir.
- 22 Q. Do you know what kind of gun it was?
- 23 A. Shotgun.
- 24 Q. Shotgun?
- 25 A. Yes, sir.

1 Q. Could you see this man's face?

2 A. No, he wore this bandana on his face.

3 Q. A bandana was covering his face?

4 A. And a hood around his face.

5 Q. Did he take any money from your store that
6 day?

7 A. Yes, he grabbed all the bills.

8 Q. Where did he get that money from?

9 A. From the registers.

10 Q. More than one register?

11 A. I have two registers.

12 Q. You have two registers?

13 A. Yes.

14 Q. Do you remember about how much money he
15 took from your two registers that day?

16 A. I had only three hundred dollars.

17 Q. Do you remember what color the shotgun was?

18 A. It had a black barrel and a brown -- it was
19 a handgun.

20 Q. Again, you couldn't identify the man. You
21 said his face was covered. Is that what you
22 testified?

23 A. (Affirmative nod), no.

24 Q. After the man pointed the shotgun at you
25 and took the money, what did you do?

1 A. He run out. I saw that he go to exit my
2 store.

3 Q. Did he exit the store?

4 A. Yes.

5 Q. Could you see what direction he went in
6 when he exited the store?

7 A. (No verbal response).

8 Q. If you can't, that's fine. So you didn't
9 know what direction he went in. Is there a
10 business located behind your business, the Road
11 Runner?

12 A. Yes.

13 Q. What is that?

14 A. It's a gas station.

15 Q. I'm talking about behind your store.

16 A. It's a car wash.

17 Q. Car wash?

18 A. Yes.

19 Q. What's the name of that car wash?

20 A. I have no idea.

21 SOLICITOR SAHN: May I approach?

22 THE COURT: You may.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR SAHN:

25 Q. Mr. Patel, I'm showing you State's Exhibit

1 4. Would you take a look behind you, sir. Is
2 that your store?

3 A. Yes.

4 Q. And where is this car wash you were talking
5 about? Can you point to it?

6 A. It's in this area.

7 Q. That's the front of your store there.

8 A. Yes.

9 Q. What's back here, sir, where I'm pointing?

10 A. It's somebody's house. I don't know.

11 Q. No, before the house, sir, this parking lot
12 right here? Do you know what that is?

13 A. (No response).

14 Q. Mr. Patel, was your store covered by a
15 video camera?

16 A. Yes.

17 Q. You have video cameras. And was there a
18 video camera active on December 20th, 2008?

19 A. Yes, sir.

20 Q. Did that camera record the armed robbery
21 that morning?

22 A. Yes.

23 SOLICITOR SAHN: Your Honor, may I
24 approach the witness?

25 THE COURT: Yes.

1 COURT REPORTER: State's Exhibit 10
2 for identification.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR SAHN:

5 Q. Mr. Patel, I'm showing you State's 10.

6 Have you seen that before?

7 A. Yes.

8 Q. What is that?

9 A. It's a video camera of that day.

10 Q. And you've watched this video before?

11 A. Yes, sir.

12 SOLICITOR SAHN: Your Honor, at this
13 time we'd ask to move State's 10 into evidence.

14 THE COURT: Any objection?

15 MR. DAVIS: Judge, I'm not positive a
16 full foundation has been laid, so we object at
17 this point.

18 THE COURT: The only thing I know is
19 that he's seen it and watched it before. Lay
20 the foundation.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR SAHN:

23 Q. Mr. Patel, when you watched this video was
24 it a fair and accurate representation of what
25 happened in your store that day?

1 A. Yes, it was the same.

2 THE COURT: I'm sorry. What was the
3 answer?

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR SAHN:

6 Q. Repeat the answer, sir. Yes?

7 A. I said the robbery was the video's robbery.

8 SOLICITOR SAHN: At this time we'd
9 move State's 10 into evidence.

10 MR. DAVIS: No objection.

11 THE COURT: Without objection.

12 (SO ENTERED AS STATE'S EXHIBIT 10)

13 SOLICITOR SAHN: I ask that we may
14 publish this to the jury.

15 THE COURT: You may do so.

16 SOLICITOR SAHN: Thank you, sir.

17 (STATE'S EXHIBIT 10, VIDEOTAPE PLAYED)

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR SAHN:

20 Q. Mr. Patel, were you scared during this
21 armed robbery?

22 A. Yes. Yes, sir.

23 Q. Were you scared that you might get shot
24 during that armed robbery?

25 A. Yes, it's a question of my life.

1 Q. Thank you, Mr. Patel.

2 THE COURT: You may cross examine,
3 Mr. Davis.

4 MR. DAVIS: Just very briefly, Your
5 Honor.

6 CROSS EXAMINATION

7 BY MR. DAVIS:

8 Q. Mr. Patel, it appears on that video -- let
9 me back up. The camera is mounted up high in
10 the ceiling. Is that right?

11 A. Yes, on the ceiling, yes.

12 Q. I don't want to assume, but was the person
13 in all black taller than you?

14 A. I don't know. I guess so.

15 Q. You don't know?

16 A. I don't know his height.

17 Q. Bigger than you?

18 A. I don't know, sir.

19 Q. Let me ask it this way. Was it tough to
20 tell with all the clothing that was on him?

21 A. I don't know.

22 Q. Do we need to play that again for you?

23 A. (No response)

24 Q. Is that a "yes?"

25 A. Yes.

1 THE COURT: What is your question,
2 Mr. Davis? He said he doesn't know. He's
3 already said "I can't identify him."

4 MR. DAVIS: Your Honor, it's not
5 about identification. It is the size.

6 THE COURT: He doesn't know. That's
7 what he's saying to you.

8 CROSS EXAMINATION CONTINUED

9 BY MR. DAVIS:

10 Q. I believe the last was if you remember or
11 you don't remember.

12 A. I don't remember.

13 MR. DAVIS: I was trying to refresh
14 his memory.

15 THE COURT: You said you don't
16 remember?

17 THE WITNESS: I don't remember, sir.

18 MR. DAVIS: I'm trying to refresh his
19 memory.

20 THE COURT: That's fine. Approach,
21 please

22 (BENCH CONFERENCE)

23 THE COURT: Under 611(a) I'm not
24 going to allow this. Move on to the next
25 question. I'll put it on the record at the

1 first break.

2 CROSS EXAMINATION CONTINUED

3 BY MR. DAVIS:

4 Q. Finally, Mr. Patel, there's no way possible
5 for you to identify this person based on
6 anything in the record. Is that correct? Their
7 face was covered.

8 A. Yes, sir.

9 Q. Thank you, Mr. Patel. No other questions.

10 MR. DAVIS: Thank you, Your Honor.

11 THE COURT: Redirect.

12 SOLICITOR SAHN: No, Your Honor.

13 THE COURT: Mr. Patel, you may step
14 down. Thank you, sir.

15 (WITNESS STEPS DOWN)

16 THE COURT: Call your next witness.

17 SOLICITOR SAHN: The State calls Ms.
18 Martha Ann Grant.

19 (WITNESS TAKES STAND)

20 MARTHA ANN GRANT, being duly sworn to
21 tell the truth, the whole truth and nothing but
22 the truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR SAHN:

25 Q. Good morning, Ms. Grant.

1 A. Good morning.

2 Q. I want to thank you for being here. Your
3 testimony is not going to take too long, but
4 it's important. And I appreciate that. Ms.
5 Grant, do you live in Charleston?

6 A. North Charleston.

7 Q. How long have you lived in North
8 Charleston?

9 A. Almost two years.

10 Q. Did you go to high school there?

11 A. In Hollywood.

12 Q. Where do you currently work?

13 A. RoadRunner in Hollywood.

14 Q. How long have you worked there?

15 A. Almost six years.

16 Q. Who's your boss there?

17 A. Raj Patel.

18 Q. Ms. Grant, do you have any family?

19 A. Yes.

20 Q. Who do you have in your family?

21 A. Well, I have four kids.

22 Q. What are their ages?

23 A. Thirty-two (32), 26, 20 and 10.

24 Q. Do you have any grandchildren?

25 A. Five grands.

1 Q. And how old are they?

2 A. Twelve, and then I've got two two and two
3 that are four.

4 Q. Were you working at the RoadRunner on
5 December 20th, 2008?

6 A. Yes, I was..

7 Q. Were you working there with Mr. Patel?

8 A. Yes, I was.

9 Q. And what was your job there?

10 A. A cook.

11 Q. So were you cooking breakfast that morning?

12 A. Yes, I was.

13 Q. When you were working that morning who was
14 in the store with you when you got there?

15 A. Just me and Mr. Patel.

16 Q. You and Mr. Patel. Were there a lot of
17 customers coming in early in the morning?

18 A. It was slow that morning.

19 Q. So slow that morning.

20 A. Um-humm.

21 Q. Where were you in the store at about 7:30
22 or 7:45 in the morning?

23 A. Well, I was in the back preparing for
24 lunch.

25 Q. So you weren't out in the open area?

1 A. Well, during the time of the robbery I was
2 just coming out of the cooler.

3 Q. So before the robbery you were in the
4 cooler?

5 A. Yes.

6 Q. As you were coming out of the cooler did
7 you hear anything?

8 A. No. I saw the person as they were coming
9 in the store.

10 Q. Tell us what you saw exactly.

11 A. Okay, as I was coming out of the cooler
12 door, the person was coming in the front door,
13 going around the counter.

14 Q. Did you get a good look at the what the
15 person looked like who came in?

16 A. No, I couldn't tell what he looked like.
17 His face was covered.

18 Q. Right. Was there anything you could tell
19 about him?

20 A. All I know, he had on a hoodie.

21 Q. What color was that hoodie?

22 A. It was a dark color. I don't know if it
23 was black, but it was dark.

24 Q. Did you see this person talking to Mr.
25 Patel?

1 A. I heard him say "give me the money."

2 Q. You heard him say "give me the money."

3 A. I heard him when he said it.

4 Q. When you heard that where were you?

5 A. When I heard that I backed up and started
6 to go by the back door.

7 Q. Okay, and why did you do that, ma'am?

8 A. Because seeing that gun, I was in fear for
9 my life.

10 Q. So you went to hide.

11 A. Yeah, I hid there for awhile.

12 Q. When you went to hide, you didn't get a
13 good look at the defendant. Is that right?

14 A. No.

15 Q. You couldn't I.D. him.

16 A. No, his face was covered.

17 Q. When that robbery occurred in the store
18 that morning what were you feeling?

19 A. Excuse me.

20 Q. What were you feeling when that robber came
21 in that morning with a shotgun?

22 A. Well, I was afraid. Because, you know, I
23 was saying, 'oh, Lord, my kids just lost their
24 daddy in February and now look at this.'

25 Q. Did you think you may get shot?

1 A. There was a possibility.

2 Q. Thank you, ma'am. Please answer any
3 questions of the defense attorney.

4 THE COURT: Any questions?

5 MR. DAVIS: No questions, Your Honor.

6 THE COURT: Thank you. You may step
7 down, Ms. Grant.

8 (WITNESS STEPS DOWN)

9 THE COURT: Call your next witness.

10 SOLICITOR SAHN: The State calls
11 Julie Frazier.

12 (WITNESS TAKES STAND)

13 JULIE FRAZIER, being duly sworn to tell
14 the truth, the whole truth and nothing but the
15 truth, testified, as follows:

16 DIRECT EXAMINATION

17 BY SOLICITOR SAHN:

18 Q. How are you doing this morning?

19 A. Good.

20 Q. I want to thank you as well for being here
21 today. We appreciate that. Ms. Frazier, how
22 old are you?

23 A. Twenty-nine.

24 Q. Where do you live?

25 A. West Ashley.

1 Q. How long have you lived in West Ashley?

2 A. Two years.

3 Q. Where did you live before West Ashley?

4 A. Hollywood.

5 Q. Did you go to school here in Charleston?

6 A. Hollywood.

7 Q. Hollywood? Did you graduate from high
8 school?

9 A. Yes.

10 Q. What high school did you graduate from?

11 A. Baptist Hill.

12 Q. Baptist Hill?

13 A. (Affirmative nod).

14 Q. Where are you currently working, Ms.
15 Frazier?

16 A. K-Mart.

17 Q. How long have you worked at K-Mart?

18 A. A year.

19 Q. Excuse me?

20 A. A year.

21 Q. And what's your position at K-Mart?

22 A. Supervisor.

23 Q. Do you have family, Ms. Frazier?

24 A. I have a son.

25 Q. What's his name?

1 A. Minor

2 Q. How old is Minor

3 A. Eight.

4 Q. Where does he go to school?

5 A. E. B. Ellington.

6 COURT REPORTER: Again.

7 THE WITNESS: E.B. Ellington.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. SAHN:

10 Q. Ms. Frazier, like I've asked a couple of
11 witnesses, if you could just speak up and lean
12 in a little bit more to that microphone.

13 THE COURT: If you'll pull the chair
14 up and pull that mic down. It's one of those
15 mics that you really have to get like almost
16 like this (demonstrating).

17 THE WITNESS: Okay.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR SAHN:

21 Q. All right, Ms. Frazier. Where were you
22 working back on December 20, 2008?

23 A. Exxon.

24 Q. That's an Exxon gas station?

25 A. Um-humm.

1 Q. Where is this Exxon located?

2 A. On 162 in Hollywood.

3 Q. Is it located at an intersection?

4 A. Yes.

5 Q. What's that intersection? Which two roads?

6 Do you know?

7 A. No.

8 Q. Is there a RoadRunner located nearby?

9 A. Next door.

10 Q. Right next door?

11 A. Um-humm.

12 THE COURT: Was that a "yes?"

13 WITNESS: Yes.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR SAHN:

16 Q. And what was your position at the Exxon
17 back then in 2008?

18 A. Manager, assistant manager.

19 Q. Assistant manager. Thank you. Now, is
20 there a car wash located nearby as well?

21 A. Behind RoadRunner.

22 Q. Behind the RoadRunner.

23 MR. SAHN: (Tenders document to be
24 marked as exhibit).

25 COURT REPORTER: State's Exhibit 11

1 for identification.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR SAHN:

4 Q. Ms. Frazier, I'm showing you a photograph
5 marked as State's 11. Do you recognize that?

6 A. Yes, I do.

7 Q. What is that?

8 A. That's the RoadRunner and the car wash.

9 SOLICITOR SAHN: Your Honor, move
10 State's 11 into evidence.

11 THE COURT: Any objection?

12 MR. DAVIS: If I may see that?

13 THE COURT: Certainly.

14 MR. DAVIS: No objection, Your Honor.

15 THE COURT: Very well. Without
16 objection, State's 11 is admitted.

17 (SO ENTERED AS STATE'S EXHIBIT 11)

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR SAHN:

20 Q. Ms. Frazier, I've put up a photograph
21 behind you. Is that the RoadRunner we're
22 talking about right here?

23 A. Yes, it is.

24 Q. State's 11. And is this the car wash we
25 were just talking about?

1 A. Yes.

2 Q. Where is your Exxon? You can't see it in
3 the picture, but where is it located in
4 comparison to these two things?

5 A. Right next door to the RoadRunner.

6 Q. There's a street here. Is it across the
7 street?

8 A. Um-humm. Yes.

9 Q. So you were working on the morning of
10 December 20th, 2008?

11 A. Yes.

12 Q. At the Exxon?

13 A. Yes.

14 Q. Do you remember what time you got to work
15 that morning?

16 A. Around 6:00 o'clock.

17 Q. That morning did you witness anything that
18 stood out to you while you were working at the
19 Exxon?

20 A. A guy that ran into the Road Runner with a
21 gun, and the shirt.

22 THE COURT: Ms. Frazier, you backed
23 away from that mic. You're going to have to
24 pull up again, please. Or pull the mic down to
25 you.

1 THE WITNESS: (Complies).

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR SAHN:

4 Q. So when you were working that morning did
5 you see anything that stood out to you?

6 A. The van and two guys.

7 Q. Let's slow down a little bit. Where were
8 you when you saw this?

9 A. At the door.

10 Q. The door of what, ma'am?

11 A. Exxon.

12 Q. And if I were to show you State's Exhibit
13 11 again, and you said you were standing at the
14 door of the Exxon ---

15 A. Yes.

16 Q. Is this picture a view of how you would be
17 looking at the RoadRunner?

18 A. Yes.

19 Q. So you're outside. And what's the first
20 thing you remember seeing?

21 A. The guy that ran into the RoadRunner with a
22 gun.

23 Q. The man that ran into the RoadRunner?

24 A. Yes.

25 Q. Now, if you wouldn't mind turning around

1 and if you could just show us where he ran from
2 and where he ran to?

3 A. Point at it?

4 Q. Yes, please.

5 A. From there and then into the door

6 (indicating).

7 Q. By "the door" you mean this door right here

8 (indicating)?

9 A. Yes.

10 Q. By the sign?

11 A. Yes.

12 Q. What did that man look like?

13 A. Dark skin with a black shirt on.

14 Q. Black shirt. Was he carrying anything?

15 A. A gun.

16 Q. Could you tell from that far away what kind
17 of gun it was?

18 A. No.

19 Q. But you're sure it was a gun?

20 A. Yes.

21 Q. And why were you outside at that time?

22 A. Getting newspapers in.

23 Q. Was that part of your job?

24 A. Yes.

25 Q. After you saw the man with the gun run into

1 the store what's the next thing you saw? Let me
2 rephrase it. Did you see him run out of the
3 store?

4 A. Yes.

5 Q. What were you doing while you were seeing
6 all this happen?

7 A. I think I closed my door. I think I closed
8 the door of the store.

9 Q. Did you know what was happening?

10 A. I thought it was a robbery, yeah, robbery.

11 Q. Knowing it was a robbery, did you do
12 anything?

13 A. I called the cops.

14 Q. You did? Called 9-1-1?

15 A. Yes.

16 Q. And while you were talking to 9-1-1 did you
17 tell them what was happening and what you saw?

18 A. Yes.

19 Q. And as a result of that call did the police
20 end up coming to this location?

21 A. Yes.

22 SOLICITOR SAHN: May I approach, Your
23 Honor?

24 THE COURT: You may.

25 COURT REPORTER: State's Exhibit 12

1 marked for identification.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR SAHN:

4 Q. Ms. Frazier, I'm showing you State's
5 Exhibit 12. Do you recognize this CD?

6 A. Yes.

7 Q. Do you recognize those initials?

8 A. Yes.

9 Q. Whose initials are those?

10 A. Mine.

11 Q. And what's that date?

12 A. The date that it was initialed, I listened
13 to it.

14 Q. What actually is the date on there?

15 A. 5/16/11.

16 Q. Is that the date that you listened to the
17 CD?

18 A. Yes.

19 Q. And does this CD contain an accurate
20 representation of your 9-1-1 call that morning?

21 A. Yes.

22 Q. Thank you, ma'am.

23 SOLICITOR SAHN: At this time the
24 State moves Exhibit 12 into evidence.

25 THE COURT: Any objection?

1 MR. DAVIS: No, Your Honor.

2 THE COURT: Without objection, it is
3 admitted.

4 (SO ENTERED AS STATE'S EXHIBIT 12)

5 SOLICITOR SAHN: We ask to publish it
6 for the jury, Your Honor.

7 THE COURT: You may do so.

8 (CD PUBLISHED FOR JURY)

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR SAHN:

11 Q. Ms. Frazier, we just heard you say that the
12 brown van was parked in the car wash parking
13 lot?

14 A. Yes.

15 Q. Would you just point one more time where
16 that was parked exactly?

17 A. Right there, (indicating).

18 SOLICITOR SAHN: May I approach?

19 THE COURT: Yes.

20 COURT REPORTER: Court's Exhibit 13
21 for identification.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR SAHN:

24 Q. Ms. Frazier, I'm going to show you State's
25 13 for I.D. Do you recognize this map?

1 A. Yes.

2 Q. Can you see on this map where your Road
3 Runner is located or where the Road Runner is
4 located?

5 A. In Hollywood.

6 Q. Okay. There is Highway 17, Savannah
7 Highway, as it's called?

8 A. Yes.

9 Q. And you see that on the map?

10 A. Yes.

11 Q. So you see the RoadRunner and Savannah
12 Highway located on this map?

13 A. Yes.

14 SOLICITOR SAHN: Your Honor, at this
15 time we move State's 13 into evidence.

16 THE COURT: Any objection, Mr. Davis?

17 MR. DAVIS: No, Your Honor.

18 THE COURT: Without objection State's
19 13 is admitted.

20 (SO ENTERED AS STATE'S EXHIBIT 13)

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR SAHN:

23 Q. Ms. Frazier, if I can have you step down
24 just briefly.

25 A. (Complies)

1 Q. I want the jury to be able to see this, so
2 if you'll just stand on that side.

3 THE COURT: Hold on just one minute.
4 Ms. Frazier, you're going to have to talk very
5 loudly now because you're away from the
6 microphone, okay, and your back is to us. So
7 please -- for purposes -- it's very helpful if
8 the witness is talking back this way so y'all
9 switch sides so she can do it. There you go.
10 Thank you so much.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR SAHN:

13 Q. Let's try to get oriented, Ms. Frazier. Do
14 you see Savannah Highway on this map?

15 A. Yes.

16 Q. Would you please trace with your finger
17 where that road is.

18 A. (Complies).

19 Q. Does it go all the way?

20 A. Yes.

21 Q. Where does it end on this map?

22 A. There -- (indicating).

23 Q. And show us on that map where Hollywood is.

24 A. Right there -- (indicating).

25 Q. At that intersection?

1 A. Yes.

2 Q. You said on the 9-1-1 tape that the van was
3 leaving the armed robbery headed which direction
4 on this map?

5 A. (Indicating).

6 Q. You said that was towards Adams Run?

7 A. Yes.

8 Q. Where is Adams Run on this map?

9 A. Right there -- (indicating).

10 Q. Thank you, ma'am. That's all at this time.

11 Take your seat on the witness stand, please.

12 A. (Complies)

13 Q. Were you able to see the face of the man
14 with the shotgun as he ran out of the store?

15 A. No.

16 Q. Why was that?

17 A. It was too far away.

18 Q. Was his face covered with anything?

19 A. No.

20 Q. You could tell?

21 A. He was dark skinned.

22 Q. The man with the shotgun?

23 A. Yes.

24 Q. Did you see the driver of the van?

25 A. His complexion.

1 Q. Did you see what the driver of the van was
2 wearing?

3 A. Yes, a shirt.

4 Q. A shirt. What color shirt?

5 A. Orange.

6 Q. Did you give that description, a dark-
7 complexioned man wearing an orange shirt, to the
8 police?

9 A. Yes.

10 Q. When did you give that description to the
11 police, approximately?

12 A. A few minutes afterwards.

13 Q. Again, what time of day was it?

14 A. Morning.

15 Q. What was the weather like that day? Was it
16 bright out? Was it rainy?

17 A. No, it was clear.

18 Q. Clear? Fully light?

19 A. Yes.

20 Q. At some point later did you learn that the
21 police located the suspect or suspects in this
22 case?

23 A. Yes.

24 Q. Were you transported to the location where
25 the suspects were being detained?

1 A. Yes.

2 Q. Who transported you there?

3 A. An officer.

4 Q. Police officer?

5 A. Yes.

6 Q. And about how long after you saw the armed
7 robbery did you arrive at the location where the
8 suspects were being detained?

9 A. A few minutes afterwards.

10 Q. A few minutes. Okay. And what was the
11 location that you were transported to?

12 A. Jacksonboro.

13 Q. Jacksonboro. Okay. I think you can stay
14 there, ma'am. Everyone can see this map from
15 here. You were transported from here to where,
16 ma'am, on the map?

17 A. Jacksonboro.

18 Q. Okay. And what's located there?

19 A. The Exxon.

20 Q. Another Exxon?

21 A. Yes.

22 Q. Who was there when you arrived at that
23 Exxon? The officer that transported you?

24 A. Yes.

25 Q. Any other officers?

1 A. Yes.

2 Q. When you arrived at the Exxon what did you
3 see?

4 A. The guy that was wearing the orange shirt.

5 Q. Did you see an orange shirt?

6 A. Yes.

7 Q. Did you see any vehicles?

8 A. Yes.

9 Q. What was that?

10 A. The van.

11 Q. Please describe the van that you saw at the
12 Exxon that day?

13 A. It a brown and beige van.

14 MR. SAHN: (Tenders photographs to
15 be marked as exhibits).

16 COURT REPORTER: State's Exhibits 14
17 through 19 marked for identification, each being
18 a photograph.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR SAHN:

21 Q. Ms. Frazier, these are State's 14 through
22 19. Take a look at those photos, please.

23 A. (Complies).

24 Q. Can you recognize what those are photos of?

25 A. Yes.

1 Q. What are those photos of?

2 A. The van that they were driving.

3 SOLICITOR SAHN: Your Honor, the
4 State moves 14 through 19 into evidence, State's
5 14 through 19.

6 THE COURT: Any objection?

7 MR. DAVIS: Yes, Your Honor.
8 Foundation at this point.

9 THE COURT: She's identified the
10 photographs. Subject to the objection, they are
11 admitted.

12 (SO ENTERED AS STATE'S EXHIBITS 14 THROUGH 19)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR SAHN:

15 Q. Ms. Frazier, I'm showing you State's 14.
16 Please tell the jury what that is.

17 A. The van that they were driving.

18 Q. Is that the van you saw outside the Road
19 Runner that day?

20 A. Yes.

21 Q. This is a different angle. What is that?

22 A. The van.

23 Q. The back of the van?

24 A. Yes.

25 THE COURT: What number was that?

1 SOLICITOR SAHN: That was State's 15.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR SAHN:

4 Q. I'm now showing you State's Exhibit 16, Ms.
5 Frazier, and that is ---

6 A. The van.

7 Q. This is a different angle of the van?

8 A. Yes.

9 Q. This is State's 17. State's 18, Ms.
10 Frazier, front, left side of the van?

11 A. Yes.

12 Q. And, lastly, State's 19, left side of the
13 van?

14 A. Yes.

15 Q. You originally described that van as brown
16 and beige.

17 A. Yes.

18 Q. Ms. Frazier, I do thank you. If you'll
19 please just answer any question the defense
20 attorney may have.

21 THE COURT: You may cross examine,
22 Mr. Davis.

23 MR. DAVIS: Thank you, Your Honor.
24 If I could have just one moment.

25 CROSS EXAMINATION

1 BY MR. DAVIS:

2 Q. There are just a few places I want to
3 understand about when you called 9-1-1, okay?
4 I think you just testified that you were getting
5 the newspapers from out front?

6 A. Yes.

7 Q. Is that right? And you saw someone go into
8 the RoadRunner. Is that right?

9 A. Yes.

10 Q. They were wearing dark clothing?

11 A. Yes.

12 Q. So you couldn't identify who it was,
13 correct?

14 A. No.

15 Q. All covered, right, head-to-toe covered,
16 right?

17 A. Yes.

18 Q. And it's your testimony that you saw that
19 person go in with what looked like a gun?

20 A. Yes.

21 Q. And that's while you were picking up the
22 newspapers, right?

23 A. Yes.

24 Q. And then you saw what appeared to be that
25 same person run back out of the RoadRunner?

1 A. Yes.

2 Q. And you went back inside and shut the door?

3 A. Yes.

4 Q. But now, you say when they ran out of the
5 store their face was not covered, but it was
6 just too far to see?

7 A. Yes.

8 Q. Was that person closer to you than the van?

9 A. No.

10 Q. The van was closer to you than that person?

11 A. They were by the van.

12 Q. I'm talking about when they ran out of the
13 store.

14 A. Yeah, they were closer.

15 Q. When they ran out of the store, that
16 individual was closer to you than the van was?

17 A. Yes.

18 Q. And it was when -- if I've got this
19 sequence right, is when you see that person get
20 in the van, that then you called the 9-1-1
21 operator?

22 A. I called them -- well, I was on the phone
23 with them when they ran inside the store.

24 Q. So you called early on?

25 A. Yes, when they were inside the store.

1 Q. Do you remember giving a statement to the
2 police about this incident?

3 A. Yes.

4 Q. And do you remember who you spoke to about
5 that? Do you remember the officer?

6 A. No.

7 Q. Okay. This was back in December 2008, when
8 this happened, that you gave the statement?

9 A. Yes.

10 MR. DAVIS: Your Honor, may I
11 approach to have this marked?

12 THE COURT: Yes, you may, sir.

13 COURT REPORTER: Defendant's Exhibit
14 1 for identification.

15 CROSS EXAMINATION CONTINUED

16 BY MR. DAVIS:

17 Q. When you talked to the officer, they were
18 asking you about what had happened that morning,
19 right?

20 A. Yes.

21 Q. And you wrote down this statement for them?

22 A. Yes.

23 MR. DAVIS: May I approach the
24 witness, Your Honor?

25 THE COURT: You may.

1 CROSS EXAMINATION CONTINUED

2 BY MR. DAVIS:

3 Q. I'm going to show you what's been marked as
4 Defendant's Exhibit Number 1 for identification
5 purposes. Take as much time as you need to look
6 at this. I may have some questions for you. So
7 just let me know when you're done looking at it,
8 okay?

9 A. (Upon review), okay.

10 Q. Have you had enough time?

11 A. Yes.

12 Q. Is that the statement you gave to the
13 police when they questioned you about this
14 incident?

15 A. Yes.

16 Q. And isn't it accurate that you told the
17 police that the reason you called 9-1-1 is
18 because a customer came into your business
19 screaming about the armed robbery.

20 A. Out in my parking lot.

21 Q. Isn't it true that you told the police that
22 the reason you called 9-1-1 is because a
23 customer came in screaming about the armed
24 robbery?

25 A. Yes.

1 MR. DAVIS: Your Honor, if I could
2 have just a moment.

3 THE COURT: Certainly. Take your
4 time.

5 CROSS EXAMINATION CONTINUED

6 BY MR. DAVIS:

7 Q. Ms. Frazier, thank you.

8 MR. DAVIS: Your Honor, that's all
9 the questions I have.

10 THE COURT: Very well. Redirect.

11 SOLICITOR SAHN: Nothing, Your Honor.

12 THE COURT: Thank you. You may come
13 down, Ms. Frazier.

14 (WITNESS STEPS DOWN)

15 THE COURT: You may call your next
16 witness, please.

17 MR. DURANT: The State calls Deputy
18 Craven.

19 (WITNESS TAKES STAND)

20 BRANDON CRAVEN, being duly sworn to
21 tell the truth, the whole truth and nothing but
22 the truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR DURANT:

25 Q. Good morning, Deputy Craven.

1 A. Morning.

2 Q. Would you please tell the jury where you're
3 employed?

4 A. Walterboro City Police Department.

5 Q. How long have you been employed there?

6 A. Four and a half months.

7 Q. Previous law enforcement experience?

8 A. Colleton County Sheriff's Office.

9 Q. How long were you with the Colleton County
10 Sheriff's Office?

11 A. Three and a half years.

12 Q. So you were with the Colleton County
13 Sheriff's Office in December of 2008?

14 A. Yes, sir.

15 Q. What was your position in December of 2008?

16 A. Road patrol.

17 Q. What were your primary responsibilities and
18 duties in that position?

19 A. Enforce local and state law, patrol the
20 county and respond to calls.

21 Q. And did you have a particular area of
22 Colleton County that you were responsible for,
23 or for everything?

24 A. Everything.

25 Q. In that capacity, did you have the occasion

1 to become involved in the investigation of an
2 armed robbery that occurred at the RoadRunner
3 gas station in Charleston County, Hollywood, on
4 December the 20th of 2008?

5 A. Yes, sir.

6 Q. How were you brought into this case?

7 A. Our dispatch received a BOLO from
8 Charleston County saying that an armed robbery
9 had just occurred, gave out the vehicle
10 description and possible description of the
11 driver and last known direction of travel,
12 towards Colleton County off of Highway 17.

13 Q. Do you recall approximately what time you
14 were notified of this?

15 A. 7:30 in the morning.

16 Q. After being alerted to that situation,
17 what's the next thing you recall happening?

18 A. I drove down to Jacksonboro. I was already
19 on Charleston Highway heading that way. And I
20 was approaching the county line when I observed
21 a gold in color, brown, like tan van approaching
22 me that matched the description, with a black
23 male driver that had an orange tee shirt.

24 Q. I'm showing you what's already in evidence
25 as State's 17. It's going to come up behind

1 you. Do you recognize that van?

2 A. Yes, sir.

3 Q. How?

4 A. The BOLO made it specific that it was a
5 golden tan van and had a hump on top of the van
6 as well.

7 Q. Did you see this van?

8 A. Yes, sir.

9 Q. Where did you see it?

10 A. It was traveling from Charleston County,
11 traveling south on 17 and pulled into the Sunoco
12 gas station.

13 Q. Was it in Colleton County when you saw it,
14 or was it in Charleston?

15 A. It was in Colleton.

16 Q. And this is a map. I think we can probably
17 use it right here as well. This is State's 13.
18 I can put it right in front of you so you can
19 orient yourself to it first. Let me know ---

20 A. Okay.

21 Q. Using this map, if you could show the jury
22 -- if you need to stand up to get a better view
23 -- just show the jury where that was.

24 A. It was right here -- (indicating).

25 Q. And that's when you first saw the van?

1 A. Yes, sir.

2 Q. What did you do when you saw the van?

3 A. I notified my dispatch that I was out with
4 a possible suspect vehicle for the Charleston
5 County armed robbery. I activated my blue
6 lights and initiated a traffic stop on the
7 vehicle as it was pulling into the gas station.

8 SOLICITOR DURANT: Your Honor, may we
9 approach?

10 THE COURT: Yes.

11 (OFF RECORD BENCH CONFERENCE)

12 THE COURT: Ladies and gentlemen,
13 there's a matter of law -- and that's going to
14 work just perfectly, Mr. Robinson. I understand
15 maybe that some one or more need to take a
16 break. We're going to take a break at this
17 point. Please go to your jury room. Do not
18 begin your deliberations. We have a matter of
19 law to take up. And after we finish that, then
20 we'll take our break too. So it'll be a little
21 bit longer than I customarily give you. We'll
22 be with you as quickly as we can, but do not
23 discuss the case among yourselves. Thank you.

24 (JURY OUT AT 10:50 A.M.)

25 THE COURT: We've had a sidebar

1 concerning this witness's testimony. I believe
2 the testimony which is proffered concerns
3 alleged statements that they attributed to the
4 defendant, Mr. Bowens. And the purpose of this
5 is to determine whether or not it's possible or
6 possibly governed by interrogation, therefore
7 requiring the *Miranda* warning and all the proper
8 formalities.

9 Before we go into that, though, we had
10 a sidebar on Mr. Patel's testimony where Mr.
11 Davis had asked him a question. And at first
12 blush I didn't have a problem with it, and I
13 appreciate Mr. Davis's candor at the Bench. The
14 purpose, as I understood it, was to ask Mr.
15 Patel, who was an Indian, by birth, I assume --
16 he's living in this country -- his English was
17 obviously a lot better than my Indian. But he
18 was not -- that wasn't his native tongue.
19 Having already seen some basic not comprehending
20 of the vernacular and some of our inferences
21 about the English language -- but I didn't have
22 a problem with it until Mr. Davis was kind
23 enough to point out that the camera angle
24 probably would distort the persons. And I
25 understand that. And he wanted to ascertain the

1 height as best he could of that individual.
2 That's a fair and legitimate question. The
3 concern the Court had under 611(a) -- that seems
4 to be my rule for the week, because I've used it
5 twice. And I've quoted and I'll quote it again.
6 611(a), which we don't customarily see -- in
7 fact, I've never seen it cited. Because,
8 typically, we have it being 611(b) and (c) and
9 (d) which deal with scope of cross examination,
10 leading questions and re-examination and recall.
11 611(a) talks about -- it's titled "Control by
12 the Court." And the quote, "The Court shall
13 exercise reasonable control over the mode and
14 order of interrogating witnesses and presenting
15 evidence so as to make the interrogation and
16 presentation effective for the ascertainment of
17 the truth." And subitem (iii), "Protect the
18 witness from harassment," and I don't consider
19 it harassment, but undue embarrassment. That's
20 probably it..

21 It really wouldn't have helped benefit,
22 and it could have led him to making an
23 observation that really wasn't supported by a
24 distorted picture.

25 That was my rationale for it, Mr.

1 Davis. And thank you very much, sir, for
2 allowing the Court to inquire. Anything that
3 you wish to add or supplement, sir?

4 MR. DAVIS: No, Your Honor.

5 THE COURT: And again, I appreciate
6 your candor concerning what the ruling was.
7 Anything else from the State on that issue?

8 SOLICITOR SAHN: No, Your Honor.

9 THE COURT: Thank you. Now, I'll be
10 happy to hear you -- let's just go directly to
11 -- I'll know you'll lay a foundation. You want
12 to go ahead and lay the foundation now? Can you
13 just ask him what happened? I assume that's
14 what you want.

15 MR. DAVIS: I'm not sure what the
16 testimony would involve.

17 THE COURT: I understand.

18 MR. DAVIS: And as Mr. Durant came
19 back I got his attention.

20 THE COURT: I think that's a very
21 good idea, Mr. Davis, so thank you.

22 Mr. Durant, you may proceed.

23 SOLICITOR DURANT: Thank you, Your
24 Honor. May it please the Court.

25 THE COURT: Yes, sir.

1 BY SOLICITOR DURANT: You pulled over
2 this van, right?

3 WITNESS CRAVEN: Yes, sir.

4 SOLICITOR DURANT: The passenger
5 ran. Is that correct?

6 WITNESS CRAVEN: Yes, sir.

7 SOLICITOR DURANT: And did you
8 approach the driver?

9 WITNESS CRAVEN: No, I conducted a
10 felony traffic stop on the vehicle.

11 SOLICITOR DURANT: What is that?

12 WITNESS CRAVEN: Stay at your
13 vehicle. Call the driver out or call the
14 occupants of the vehicle out at gunpoint. If
15 there's reason or concern that there's -- reason
16 to believe that there's a weapon in the vehicle,
17 and that's primarily for our safety.

18 SOLICITOR DURANT: And you've had
19 that before?

20 WITNESS CRAVEN: Yes.

21 SOLICITOR DURANT: And did the
22 person come out -- the driver come out under --
23 when you conducted a felony traffic stop?

24 WITNESS CARVEN: I did -- or he did.

25 SOLICITOR DURANT: And what's the

1 first thing you did with him?

2 WITNESS CRAVEN: I ordered him down
3 on the ground. I handcuffed him, made sure that
4 I kept eyes on the passenger. When he fled and
5 I lost eyesight of him I went ahead and
6 handcuffed him, secured my -- well, secured my
7 shotgun, handcuffed him, then I *Mirandized* him.

8 SOLICITOR DURANT: How did you
9 *Mirandize* him?

10 WITNESS CRAVEN: By a card that we
11 have from the Criminal Justice Academy.

12 SOLICITOR DURANT: You immediately did
13 that?

14 WITNESS CRAVEN: Right, handcuffing
15 him.

16 SOLICITOR DURANT: Before saying
17 anything else to him or asking him any
18 questions?

19 WITNESS CRAVEN: Yes, I believe so.

20 SOLICITOR DURANT: Did he indicate
21 that he understood those rights?

22 WITNESS CRAVEN: Yes.

23 SOLICITOR DURANT: How did he do
24 that?

25 WITNESS CRAVEN: I asked him if he

1 understood those rights. He said he did. I
2 then asked him where he was coming from.

3 SOLICITOR DURANT: What did he say?

4 WITNESS CRAVEN: He said, "Fuck you.
5 Take me to jail."

6 SOLICITOR DURANT: How quickly did
7 all that happen?

8 WITNESS CRAVEN: Pretty quick. It
9 should have be on the in-car camera.

10 SOLICITOR DURANT: You have an in-
11 car camera?

12 WITNESS CRAVEN: Yes.

13 SOLICITOR DURANT: Do you know what
14 happened to that in-car camera?

15 WITNESS CRAVEN: I do not. Once we
16 create a case file it goes over to evidence.
17 And then after that they deal with it as they
18 see fit.

19 SOLICITOR DURANT: Thank you. Please
20 answer any questions the defense may have.

21 THE COURT: Do you wish to ask any
22 questions, Mr. Davis, at this point?

23 MR. DAVIS: Just briefly, Judge.

24 As to the statement, first of all, your
25 testimony is you read the *Miranda* off of the

1 card or from memory?

2 WITNESS CRAVEN: Card.

3 MR. DAVIS: Where is my client when
4 you're reading him his rights?

5 WITNESS CRAVEN: On the ground.

6 MR. DAVIS: Laying on his belly,
7 cuffed in behind?

8 WITNESS CRAVEN: Yes, I believe so.

9 MR. DAVIS: And did you read all them
10 and ask him if he understood all of them, or did
11 you read each one and ask him if he understood
12 each one?

13 WITNESS CRAVEN: I read all of them
14 and then ---

15 THE COURT: Given that setting, the
16 way I anticipated he was going to walk up and
17 say where are you coming from, just a normal
18 traffic stop. This is much more than that. I
19 don't think it's anything voluntary. I'm not
20 going to allow it, Solicitor. You can frown and
21 grimace all you want. I'm not going ---

22 SOLICITOR DURANT: I'm not ---

23 THE COURT: No, no, your assistant
24 is. You didn't have any facial expression.
25 Thank you very much. Thank you, sir. So I'm

1 not going to permit that line of questioning.
2 You can move on to something else. Thank you
3 very much.

4 I don't think it's that probative
5 anyway, to be candid with you. It's more --
6 to be really honest with you, it's more of an
7 inflammatory statement than it is probative
8 statement. Frankly, he had a right to say just
9 that, to be honest with you. I don't care to
10 talk to you. I mean, if he had said that, you
11 wouldn't have even be saying anything. So he
12 had the right to do that. Thank you very much.

13 We'll be at-ease. If you wish to step
14 down, you may. And I'm not being critical of
15 anything you did by that ruling. Don't take
16 that as an affront or anything else. I have to
17 make a call.

18 (BRIEF RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Is the State ready?

21 SOLICITOR DURANT: Yes, Your Honor.

22 THE COURT: Is the Defendant ready to
23 continue, Mr. Davis?

24 MR. DAVIS: We are.

25 THE COURT: Very well. Let's bring

1 in our jury. Thank you, sir.

2 (JURY IN AT 11:20 A.M.)

3 THE COURT: Please know that if at
4 any point if any juror needs to take a break, if
5 you'll just raise your hand or do just as the
6 juror did and ask Mr. Robinson -- we have the
7 pleasure of working with Mr. Robinson and Mr.
8 Williams. They do a good job, and I thank them
9 for what they do. I tell people when I qualify
10 jurors, that's the greatest group -- it's one of
11 the best groups they have here in the court
12 house, and Ms. Armstrong -- are the bailiffs
13 that work here. I think you'll agree with me
14 after this week. Thank you so much. We are
15 ready to continue.

16 Mr. Durant, thank you for allowing the
17 interruption, and we're ready -- you may resume
18 your examination, sir.

19 SOLICITOR DURANT: Thank you, Your
20 Honor. May it please the Court.

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR DURANT:

24 Q. You mentioned that there was a BOLO, right?
25 You used the word "BOLO."

1 A. Yes, sir.

2 Q. And, if you would -- I think that's -- what
3 does "BOLO" mean?

4 A. Be on the lookout.

5 Q. Just to clear that up. So you see this van
6 coming into Colleton County.

7 A. Yes, sir.

8 Q. What do you do?

9 A. I notified dispatch that I possibly have
10 the van involved in the armed robbery in
11 Charleston County and was going to make a
12 traffic stop on the vehicle.

13 Q. Did you make a traffic stop?

14 A. I did.

15 Q. And how did you begin to do that?

16 A. As it was turning into the shop I activated
17 my blue lights.

18 Q. So the vehicle was already pulling into the
19 gas station?

20 A. Yes, sir.

21 Q. And, if you would, tell the jury how this
22 proceeds.

23 A. He pulled into -- the van pulled into the
24 gas station and pulled up to one of the pumps.

25 I had my blue lights on and parked my vehicle

1 about ten to fifteen yards behind the vehicle.

2 I positioned it where my engine block was
3 between me and the vehicle and pulled my shotgun
4 out and began to conduct a felony traffic stop
5 on the vehicle, ordered the driver out of the
6 vehicle.

7 Q. What is a felony traffic stop?

8 A. That's where if an officer believes that
9 there is a weapon present or legitimate risk to
10 his life is present during the traffic stop,
11 instead of approaching the vehicle and making
12 contact one-on-one with the driver or the
13 occupants of the vehicle, he calls each occupant
14 of the vehicle out one-by-one back to his
15 cruiser to make sure that no one has a gun or
16 anything like that and the officer doesn't get
17 harmed.

18 Q. Did you have that belief that someone may
19 have been armed in this situation?

20 A. I did.

21 Q. Was anyone else with you or had anyone else
22 responded at this time?

23 A. No, sir. My closest backup, I think, was
24 fifteen or twenty minutes away.

25 Q. Fifteen to twenty minutes away?

1 A. Yes, sir.

2 Q. It was just you?

3 A. Yes, sir.

4 Q. So what happens? How do you begin to
5 conduct this felony traffic stop?

6 A. I positioned my car, exited my vehicle,
7 pulled my gun, leveled at the vehicle, began to
8 call the driver out of the vehicle. Once he
9 exited the vehicle I had him lift up his shirt,
10 turn around, make sure there were no guns in his
11 waistband, then walk backwards to my patrol
12 vehicle.

13 Q. Who did you order out first?

14 A. The driver.

15 Q. What was the driver wearing?

16 A. An orange tee shirt and I think blue jeans.

17 Q. And what happens?

18 A. He walks back to my vehicle. I order him
19 down on the ground. Once he got onto the ground
20 the passenger then exited the vehicle and
21 started to run and went across Highway 17. And
22 I last saw him going down
23 Once I lost eyesight of him I handcuffed the
24 driver of the vehicle.

25 Q. So you stayed with the person who you had

1 already ordered out?

2 A. Yes, sir.

3 Q. The man in the orange shirt?

4 A. Yes, sir.

5 Q. And the other person appeared to get away
6 at that time?

7 A. Yes, sir.

8 Q. And there was no other officer on the
9 scene?

10 A. Yes, sir, -- there was nobody else.

11 Q. Did you detain the driver?

12 A. I did.

13 Q. Where did you place him?

14 A. I placed him in the rear of my vehicle
15 after backup arrived.

16 Q. How long did it take for backup to arrive?

17 A. About fifteen minutes.

18 Q. So it was just you and the person that you
19 detained in the orange shirt?

20 A. Yes, sir.

21 Q. Do you see the person you detained in the
22 orange shirt here today?

23 A. I do.

24 Q. If you would point him out?

25 A. Sitting right there (indicating Defendant).

1 SOLICITOR DURANT: Let the record
2 reflect the officer identified the Defendant.

3 THE COURT: It so reflects.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR DURANT:

6 Q. Did you remain at the scene?

7 A. I did.

8 Q. Did other officers respond?

9 A. Yes. My sergeant responded out there as
10 well as Charleston County deputies.

11 Q. How long did you stay at the scene that
12 day?

13 A. Probably a little bit over two hours.

14 Q. Did you write a report in this case?

15 A. I did.

16 Q. I believe for our purposes that's all you
17 did to investigate this case. Is that correct?

18 A. Yes, sir.

19 Q. Thank you. Please answer any questions the
20 defense may have.

21 THE COURT: You may cross examine.

22 CROSS EXAMINATION

23 BY MR. DAVIS:

24 Q. Officer, do you recall the time of day you
25 pulled in behind the van at the gas station?

1 A. It was early morning. I want to say it was
2 around 7:30. It could have been a little bit
3 before or a little bit after.

4 Q. This is two and a half years ago. It's
5 hard to remember the exact time, right?

6 A. Yes, sir.

7 Q. But you would have put that in your report,
8 the exact time?

9 A. Whenever we request a case number it
10 generates the time that we request a case
11 number.

12 Q. And during this stop what time did you
13 request a case number? At the beginning of the
14 stop or sometime during?

15 A. I'm sure sometime during. So I don't know
16 what time they would have generated it for. The
17 reason why I know it was early morning was
18 because usually we grab breakfast at the
19 beginning of the shift. And instead of grabbing
20 breakfast I went to Jacksonboro. And that's
21 usually right around that time.

22 MR. DAVIS: Your Honor, may I
23 approach and have this marked?

24 THE COURT: You may.

25 COURT REPORTER: Defendant's Exhibit

1 1 for identification.

2 MR. DAVIS: May I approach the
3 witness, Your Honor?

4 THE COURT: Yes, you may.

5 CROSS EXAMINATION CONTINUED

6 BY MR. DAVIS:

7 Q. Officer Craven, I'm going to show you
8 several pages here that's marked as Defendant's
9 Exhibit Number 2 for identification purposes.
10 Take as long as you need to look at all of it.

11 I'm only going to have questions about the first
12 page, but take as much time as you need and let
13 me know when you're ready to answer questions.

14 A. (Upon review), okay. I'm done.

15 Q. Do you recognize what that document is?

16 A. Yes.

17 Q. Is that, in fact, the police report that's
18 generated that you just talked about?

19 A. Yes, sir.

20 Q. And does it, at approximately the top left
21 of that form, indicate a date and time?

22 A. Yes, sir.

23 Q. And is that as you just testified, that
24 that would be generated when you called it in?

25 A. Either when I called it in or when I

1 requested an OCA.

2 Q. OCA would be a case number?

3 A. Case number.

4 Q. Does that indicate that it was three
5 minutes before 8:00 a.m.?

6 A. Yes, sir.

7 Q. Now, to be clear, do you recall exactly
8 during this stop when you would have asked that
9 that be generated?

10 A. No, I don't.

11 Q. So it could be a few minutes before or
12 after that you're behind the van, because you're
13 not sure exactly when that was generated, right?

14 A. Yeah, I'm not sure.

15 Q. Only two occupants of the van, correct?

16 A. Yes, sir.

17 Q. My client was the driver and you ordered
18 him out during that felony traffic stop,
19 correct?

20 A. Yes, sir.

21 Q. When you ordered him out of the van, he got
22 out of the van.

23 A. Yes, sir.

24 Q. When you ordered him to raise his shirt, he
25 raised his shirt?

1 A. Yes.

2 Q. When you ordered him back to your position,
3 he came back to your position?

4 A. Yes, sir.

5 Q. You put him on the ground and ultimately
6 put him in handcuffs?

7 A. Yes, sir.

8 Q. Could you tell whether -- could you tell
9 from what seat the passenger ran?

10 A. I couldn't. At that point my attention was
11 on the driver of the vehicle.

12 Q. Is it fair to say it was from the
13 passenger's side, however, that another person
14 ran?

15 A. It wasn't the driver's seat.

16 Q. Do you recall my client's father being on
17 the scene at the gas station?

18 A. I don't recall.

19 Q. You certainly don't have a recollection of
20 talking to him yourself?

21 A. No, sir.

22 Q. There were multiple other officers from
23 both counties on the scene, right?

24 A. Yes, sir.

25 Q. Colleton and Charleston Counties?

1 A. Yes, sir.

2 Q. My client was placed in your patrol unit
3 for a period of time until all the officers
4 arrived, correct?

5 A. Yes, sir.

6 Q. Do you recall him then being placed in a
7 Charleston County cruiser back seat?

8 A. Yes, sir, I placed him in -- I think it was
9 a guy name of Augusto or August. I'm not sure
10 how to pronounce it.

11 Q. Do you recall another person being placed
12 in that same back seat along with my client at
13 some point?

14 A. No, sir. I think we were parked a good
15 ways away from each other.

16 Q. Finally, this is a bright orange shirt my
17 client is wearing when you get him out of the
18 van, right?

19 A. Yes, sir.

20 Q. Officer Craven, thank you. No other
21 questions.

22 THE COURT: Redirect.

23 SOLICITOR DURANT: Your Honor, may we
24 approach for a minute?

25 THE COURT: Yes, sir, you sure may.

1 (OFF RECORD BENCH CONFERENCE)

2 REDIRECT EXAMINATION

3 BY SOLICITOR DURANT:

4 Q. With regard to the guy who got away, did
5 you give any other information about that to
6 other people who arrived at the scene?

7 A. Yes, sir, I gave his direction of travel
8 and that he was wearing a black shirt and blue
9 jeans.

10 Q. And you provided all that to the other
11 people who arrived at the scene?

12 A. Yes, sir.

13 Q. Thank you very much.

14 THE COURT: Y'all approach, please.

15 (OFF RECORD BENCH CONFERENCE)

16 SOLICITOR DURANT: No further
17 questions.

18 THE COURT: Very well. Recross, Mr.
19 Davis?

20 MR. DAVIS: No, Your Honor.

21 THE COURT: Thank you. You may come
22 down.

23 (WITNESS STEPS DOWN)

24 THE COURT: Call your next witness,
25 please.

1 SOLICITOR DURANT: Thank you, Your
2 Honor. The State calls Deputy Zealberg.

3 (WITNESS TAKES STAND)

4 MR. SAHN: Your Honor, may we
5 approach?

6 THE COURT: Sure, I enjoy talking to
7 you.

8 (OFF RECORD BENCH CONFERENCE)

9 THE COURT: Ladies and gentlemen,
10 just for your information, we aren't talking
11 about where they're going to lunch.

12 There are two ways of having my dealing
13 with matters of law. One is, as you've noticed,
14 we excused you and we've dealt with a matter of
15 law. Another is to do what we have and are
16 technically called bench conferences. That's
17 their purpose, that is to avoid your having to
18 leave the courtroom. So forgive us when we have
19 those, but it makes it a little more convenient
20 for you for us to do it that way. Thank you.

21

22 JAY ZEALBERG, being duly sworn to tell
23 the truth, the whole truth and nothing but the
24 truth, testified, as follows:

25 DIRECT EXAMINATION

1 BY SOLICITOR DURANT:

2 Q. Please tell the jury where you're employed?

3 A. Charleston County Sheriff's Office.

4 Q. How long have you been with the Charleston
5 County Sheriff's Office?

6 A. Approximately fifteen years.

7 Q. And what is your current position?

8 A. I'm a Deputy Sheriff assigned to the Patrol
9 Division.

10 Q. Was that your position back in December of
11 2008?

12 A. No, sir, I was assigned to the Canine Unit
13 and was the canine handler.

14 Q. The Canine Unit. If you would -- well,
15 tell the jury how long you'd been with the
16 canine unit at that time?

17 A. Approximately five to six years.

18 Q. And how big is the Canine Unit with the
19 Charleston County Sheriff's Office?

20 A. I believe currently there's probably seven
21 or eight patrol dogs. I believe in 2008 we had
22 four to five patrol dogs that were used for a
23 variety of different things: narcotics
24 detection, tracking and things of that nature.

25 Q. So how many other officers, besides dogs,

1 worked in the Canine Unit with you at that time?

2 A. In 2008 I believe there were five other
3 deputies.

4 Q. And in that capacity did you have the
5 occasion to investigate an armed robbery from
6 the Road Runner gas station in the Hollywood
7 area of Charleston on December the 20th, 2008?

8 A. Yes, I did.

9 Q. Did you respond to the scene?

10 A. I responded not to the original scene of
11 the armed robbery, but to the scene of where the
12 car chase had occurred with the potential
13 suspect.

14 Q. And can you tell the jury where that was?

15 A. Yes, that was just inside of Colleton
16 County, near and Savannah
17 Highway.

18 Q. Do you recall about what time you arrived
19 at the scene?

20 A. I don't off the top of my head. It was
21 daylight, so sometime during the day.

22 Q. If I showed you a copy of your police
23 report would that refresh your recollection?

24 A. It would.

25 Q. (Tenders report).

1 A. Thank you. It says here "dispatched at"

2 ---

3 Q. I'm just going to ask you to take a look at
4 it and I'm going to take it away from you, if
5 your recollection is refreshed?

6 A. It is.

7 Q. Thank you. What time did you arrive at
8 that scene?

9 A. 7:30 a.m.

10 Q. Well ---

11 A. I'm sorry. Dispatch was 7:30 a.m. I
12 arrived at 8:15 a.m.

13 A. Thank you.

14 Q. What did you learn upon your arrival at
15 that scene?

16 A. I learned that some officers had been in
17 pursuit with a vehicle that was involved in an
18 armed robbery and that the chase had stopped
19 just inside of Colleton County, at Hope
20 Plantation Road and 17.

21 Q. Now, were you with anybody when you
22 responded?

23 A. I responded by myself. When I arrived on
24 the scene I met with my canine supervisor,
25 Sergeant Williams.

1 Q. And being that you're in the Canine Unit,
2 did you have a canine dog with you?

3 A. I did.

4 Q. Does that dog have a name?

5 A. Yes.

6 Q. What's that dog's name?

7 A. Terry.

8 Q. Is Terry still in operation now?

9 A. No, sir, he's retired.

10 Q. He's retired?

11 A. Um-humm.

12 Q. How long had you and Terry worked together
13 at that time?

14 A. Approximately three or three and a half
15 years.

16 Q. Are you aware of training that Canine Terry
17 had undergone?

18 A. Yes.

19 Q. What kind of training does a canine dog
20 undergo?

21 A. At least -- we trained at least sixteen
22 hours a month mandatory, and there was a year at
23 least certification that we had to go through
24 and pass to be certified to work the streets,
25 and that was through the North American Police

1 Working Dog Association.

2 Q. Was Canine Terry licensed at that time?

3 A. He was certified at that time.

4 Q. He was certified at that time?

5 A. Yes.

6 Q. What's he certified to do?

7 A. There were six certification phases:

8 Narcotics,

9 Articles, such as weapons or evidence
10 from a crime,

11 Tracking -- he was tracking --

12 Aggression Control, which is apprehension work
13 or night work,

14 Area Searches and

15 Obedience.

16 Q. And, if you could, could you tell the jury
17 how Canine Terry tracks a human?

18 A. Sure. It's basically when an individual
19 moves skin cells fall off the human body. And a
20 dog is trained to track the odor of the bacteria
21 that's in the skin cells. That's how a dog
22 performs tracking.

23 Q. How does a dog, or Canine Terry, how do
24 they get onto a track?

25 A. It depends on the scenario. Normally,

1 we'll go according to information that we gather
2 from responding units to a particular scene,
3 we'll go to the last known area that the suspect
4 was seen, and we'll attempt to cast the dog and
5 see if he picks that odor of the human.

6 Q. Did you use Canine Terry to track a person
7 from the place that you responded, out there in
8 Jacksonboro, on the 20th of December that day?

9 A. Yes.

10 Q. And how did you begin to do that?

11 A. We started Canine Terry at the vehicle that
12 was occupied by the people that had been
13 involved in the armed robbery. We attempted to
14 use the dog to scent the driver's seat, to see
15 if we could pick up some bacteria and follow the
16 path. However, there were a large number of
17 people around the vehicle. The area was
18 somewhat contaminated, what we call. When
19 there's multiple odors sometimes it's very hard
20 to get a good starting place. Anyway, we casted
21 the dog in a broader area. And the dog began to
22 pick up the scent of a human odor on Hope
23 Plantation Road, which was about twenty-five
24 yards away from the initial vehicle stop area.

25 Q. Now, were you provided with a description

1 of where this person that you were sent to track
2 had gone?

3 A. Yes.

4 Q. And did that mean something to you?

5 A. It did.

6 Q. And how did you use that information?

7 A. Basically, the information that we received
8 was that one of the occupants of the vehicle had
9 fled from the vehicle down

10 Q. And your testimony is that Canine Terry got
11 ahold of a track or a scent.

12 A. Correct.

13 Q. How quickly did that occur?

14 A. Probably three to five minutes after my
15 initial arrival.

16 Q. And what happened at this point?

17 A. We began to track with Terry down Hope
18 Plantation Road. The track was maybe fifty to a
19 hundred yards. We came up to a mobile home on
20 the left side of Canine
21 Terry made a diagonal movement towards the back
22 door of the mobile home. He went up to the
23 stairs to the back door of the mobile home and
24 stopped. Normally, when a canine stops moving
25 like that and stares at a particular area, he's

1 concluded the track. The track is over.

2 Q. Did you inform anyone of what was going on?

3 A. I did.

4 Q. And what was done after Canine Terry
5 stopped at the door to that mobile home?

6 A. We stayed at the mobile home to ensure that
7 there wasn't a suspect there. And I believe
8 Colleton County and Charleston County deputies
9 were notified of our situation, and they
10 responded to that mobile home.

11 Q. Now, are you aware of whether anyone was
12 taken into custody at that mobile home?

13 A. I am not.

14 Q. If you looked at your police report would
15 that refresh your recollection?

16 A. It would.

17 Q. (Tenders)

18 A. (Review)

19 Q. Is your memory refreshed?

20 A. Yes.

21 Q. What is your understanding of whether
22 someone was taken into custody at that mobile
23 home?

24 A. A suspect was taken into custody at that
25 address, at the mobile home, 85 Hope Plantation

1 Road, without incident.

2 Q. Did you or Canine Terry have anything else
3 to do to investigate this case?

4 A. Yes, sir, we did. After we were informed
5 that a suspect was in custody, we conducted an
6 article search for a weapon. Because we were
7 advised that a weapon was used in the robbery.

8 Q. And where did you do that?

9 A. In the immediate vicinity of Hope
10 Plantation and Highway 17. We probably
11 encompassed maybe one to two square miles of a
12 general area searching for a weapon. None was
13 located.

14 Q. Thank you. I'll ask if you'd answer any
15 question the defense attorney has.

16 A. Okay.

17 THE COURT: You may cross examine.

18 MR. DAVIS: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. DAVIS:

21 Q. He came out of hiding when his family told
22 him to come out?

23 A. That's my understanding.

24 Q. Thank you.

25 MR. DAVIS: No other questions, Your

1 Honor.

2 THE COURT: Redirect, Mr. Durant?

3 SOLICITOR DURANT: No, Your Honor.

4 THE COURT: Thank you, sir. You may
5 come down.

6 (WITNESS STEPS DOWN)

7 THE COURT: Call your next witness,
8 please.

9 SOLICITOR DURANT: The State calls
10 Detective Rob Colson.

11 (WITNESS TAKES STAND)

12 ROBERT COLSON, being duly sworn to tell
13 the truth, the whole truth and nothing but the
14 truth, testified, as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR DURANT:

17 Q. Good morning, Detective. Will you please
18 tell the jury where you're employed?

19 A. Charleston County Sheriff's Office.

20 Q. And what is your current position?

21 A. Current position is the detective for white
22 collar crimes.

23 Q. And what does that mean, "white collar
24 crimes?"

25 A. I do your basically financial crimes,

1 checks, counterfeits, stuff like that.

2 Q. How long have you been doing that?

3 A. Four years.

4 Q. Was that your position back in December of
5 2008?

6 A. No.

7 Q. What was your position then?

8 A. General investigation.

9 Q. If you would, tell the jury what that
10 means, what position of general investigation
11 means.

12 A. Basically, just properties, white collar
13 stuff mostly, properties. But on the day in
14 question we were part of the call out team. We
15 were on the call out rotation at the time. We
16 all do one week of call outs per month.

17 Q. What were your responsibilities and duties
18 in general investigation at that time?

19 A. Burglaries, putting them together, tracking
20 them down, collecting properties, arresting
21 burglars. Any case assigned to general filters
22 down to us.

23 Q. How long have you been in law enforcement?

24 A. Eighteen years.

25 Q. What kind of things in law enforcement have

1 you done before this time, in December of '08?

2 A. I worked patrol for about four years. I
3 was in Goose Creek for three. Investigations
4 for two there. And nine years with North
5 Charleston, narcotics for about three of those.

6 Q. And have you had training and education in
7 law enforcement?

8 A. Yes, sir.

9 Q. What kind of training have you had?

10 A. Basic academy stuff, detective, narcotics
11 training. How to handle informants, just the
12 gamut. A lot of week classes, a week here, off
13 to the academy, some private classes down in
14 Florida.

15 Q. In your capacity as a general investigator
16 for the Charleston County Sheriff's Office did
17 you become involved in the investigation of the
18 RoadRunner gas station on December the 20th of
19 2008?

20 A. Yes, sir, I did.

21 Q. How were you brought into this case?

22 A. I was on a call out. Me and Detective
23 Lawrence were teamed up that weekend. And we
24 got called out by our supervisor that night or
25 that morning to go respond.

1 Q. Where did you respond?

2 A. I went to RoadRunner.

3 Q. What did you observe when you got there?

4 A. When I got there pretty much patrol was
5 there doing good job. They were cleaning up
6 just about everything. I pretty much collected
7 the statements from the witnesses and all that
8 were there. Me and Detective Lawrence were
9 shooting calls back and forth on a cell phone.
10 He was off somewhere else, and I was kind of
11 collecting everything at the scene, putting it
12 together.

13 Q. You said you took statements.

14 A. I was collecting the statements. That's
15 right.

16 Q. Took written statements?

17 A. Yes.

18 Q. From witnesses?

19 A. Yes.

20 Q. If you would, just briefly describe for the
21 jury how you do that.

22 A. The patrol guys got there. They're real
23 good about handing statement forms out to all
24 the people who had seen something, the store
25 owner and all, the clerk, some other witnesses.

1 And they handed them to them, and most everybody
2 had wrote them out. Then they pretty much got
3 them to me. I collected them. And pretty much
4 stand by for Crime Scene to get down there and
5 do what they need to do. We were going to get
6 video, but we couldn't pull it at the time. So
7 Crime Scene was going to come back later and get
8 it.

9 Q. And the reason why you get these statements
10 is because you want to know as much as you can?

11 A. Exactly. I want to collect everything I
12 know, from that I can help figure out what
13 happened.

14 Q. And did you read those statements?

15 A. I read most of them through the case, yes.

16 Q. And as a detective, you might those
17 statements and maybe you might want to know
18 more. Is that right?

19 A. That's correct.

20 Q. And so you get the information from these
21 witnesses as well, where they live, where they
22 can be located.

23 A. That's correct.

24 Q. Is that right? And you collect that stuff
25 and then that stuff is sent to us, the

1 Solicitor's Office?

2 A. (Affirmative nod).

3 THE COURT: Is that a "yes?"

4 THE WITNESS: Yes, sir. I'm sorry.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR DURANT:

7 Q. Did you do anything else at the scene of
8 the RoadRunner that day?

9 A. Not much. It was a pretty simple scene.
10 It wasn't a whole lot to do except just collect
11 stuff up.

12 Q. Did you actually collect the video?

13 A. Negative. No, I did not.

14 Q. Did you try?

15 A. No.

16 Q. But you were aware that there was one?

17 A. That's correct.

18 Q. What's the next thing you did in regard to
19 this case?

20 A. After I left the scene I met and pick up a
21 co-defendant and took him back to the station.

22 Q. Who did you meet and pick up?

23 A. The co-defendant in this case.

24 Q. And who is that?

25 A. His cousin.

1 Q. Do you know who you picked up?

2 A. The juvenile involved, yes.

3 Q. Do you know his name?

4 A. Not off the top of my head right now.

5 Q. Tell us where this took place.

6 A. I picked him up at the Food Lion on 17.

7 Patrol had brought him to me from the scene in

8 Jacksonboro. A patrol deputy dropped him off to

9 me. I took him in to our station at Pinehaven.

10 I had control of him.

11 Q. What did you do with him?

12 A. Pretty much put him in the back room. My

13 office -- my interrogation room is kind of right

14 in front of my desk. And I pretty much took a

15 statement from him. Read him his *Miranda*

16 rights. Nothing happened there. Took his

17 information and took and pretty much made

18 charges and took him to juvenile. By this time

19 he was coming.

20 Q. Who was coming?

21 A. Detective Lawrence was bringing in Mr.

22 Bowens to the station now. So he was in the

23 other side of the office. I was on this side

24 of the office.

25 Q. Tell the jury where this office is.

1 A. 3505 Pinehaven upstairs. We were kind of
2 split between the two. We have a breezeway
3 between my office and Detective Lawrence's
4 office.

5 Q. Is this the main location for the
6 Charleston County Sheriff's Office?

7 A. Yes, it is.

8 Q. Why did you bring him here?

9 A. That's where we go. That's our office.
10 That's where we do it all. We brought them
11 there basically to get information from them, to
12 see if they wanted to give us any statements.

13 Q. That's not the jail, right?

14 A. No, that's not the jail.

15 Q. So what's the purpose of bringing him to
16 your office?

17 A. Pretty much to interview and do paperwork.

18 Q. And that was with the co-defendant, you
19 said?

20 A. Yes.

21 Q. What did you end up doing with the co-
22 defendant after he's at your office?

23 A. I basically charged him and we took him
24 over to juvenile and placed him in juvenile
25 custody.

1 Q. Did you do anything else in the
2 investigation?

3 A. I helped Detective Lawrence out. We
4 collected evidence from Mr. Bowens. And we
5 also -- I did the paperwork, pretty much
6 administrative stuff.

7 Q. Take it step-by-step. You said you helped
8 Detective Lawrence out.

9 A. He was doing the main interview with Mr.
10 Bowens. And pretty much I was sitting there as
11 he was interviewing him and just doing the
12 affidavits, paperwork.

13 Q. This is back at Pinehaven.

14 A. Back at Pinehaven. Just backing him up
15 basically as he's doing his work.

16 Q. Let's just slow it down a little bit and
17 take it step-by-step. You said that Detective
18 Lawrence was doing the main interview with Mr.
19 Bowens.

20 A. Um-humm.

21 MR. DAVIS: Your Honor, note my prior
22 objection.

23 THE COURT: By your prior objection,
24 you mean today?

25 MR. DAVIS: Pretrial, Your Honor.

1 THE COURT: Okay. Approach, please.

2 (OFF RECORD BENCH CONFERENCE)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR DURANT:

5 Q. Let me speed you up a little bit. After
6 the interview with Mr. Bowens, did he come with
7 you? Did Mr. Bowens come with you?

8 A. To the jail?

9 Q. Yes.

10 A. Yes. We did all that. That's correct.

11 Q. You did all that. All right. Did you
12 collect his clothing at the jail?

13 A. That's correct, I collected the clothing.

14 Q. Do you recall what he was wearing?

15 A. The orange shirt, jeans.

16 Q. I'm going to first give you two of these.

17 COURT REPORTER: State's Exhibit 20
18 for identification.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR DURANT:

21 Q. Detective, I'm showing you what's labeled
22 State's 20 for identification. I ask you to
23 take a look at it, open it up.

24 THE COURT: Don't pull anything out
25 of it.

1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR DURANT:

3 Q. Do you recognize that?

4 A. It's the clothing I collected.

5 Q. And how do you know that?

6 A. It's got my name on it. It's what I did.

7 It's how I entered it into evidence. It's the
8 bag with the staples and everything.

9 Q. Did you place his clothing in that bag?

10 A. That's correct.

11 Q. And are those clothes in substantially the
12 same condition now as they were when you
13 collected them from Mr. Green or Mr. Bowens?

14 A. Yes, they are.

15 SOLICITOR DURANT: Your Honor, at
16 this time the State moves for the admission of
17 the contents of State's 20 into evidence.

18 THE COURT: Any objection?

19 MR. DAVIS: No, Your Honor.

20 THE COURT: Without objection,
21 State's 20 is admitted. It's a bag containing
22 articles of clothing.

23 SOLICITOR DURANT: Thank you, Judge.

24 (SO ENTERED AS STATE'S EXHIBIT 20)

25 DIRECT EXAMINATION CONTINUED

1 BY SOLICITOR DURANT:

2 Q. Detective, if you would, would you pull the
3 items out of this bag for the jury?

4 SOLICITOR DURANT: Your Honor, would
5 you like us to mark these as subitems?

6 THE COURT: You don't have to unless
7 you're going to refer to them. You can just
8 refer to them as to what they are. I don't
9 think it's necessary to mark them separately,
10 but that's up to you.

11 SOLICITOR DURANT: Thank you, Judge.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR DURANT:

14 Q. Was this shirt on the Defendant?

15 A. Yes, one long-sleeve undershirt type
16 material.

17 Q. Is there anything else that you collected?

18 A. One black belt. One orange shirt, short-
19 sleeve, Polo style.

20 Q. Now, we just saw, I believe, thermal
21 shirt. Was this shirt over the thermal shirt?

22 A. Underneath.

23 Q. What was underneath?

24 A. I'm sorry. Thermal shirt, then orange
25 shirt.

1 Q. The thermal shirt was underneath the orange
2 shirt?

3 A. That's correct.

4 Q. What else?

5 A. And one paid of jeans, off brand. And
6 pretty much that's it.

7 Q. Okay. Thank you, sir. Please answer any
8 questions the defense may have.

9 THE COURT: You may cross examine.

10 SOLICITOR DURANT: If he could put
11 it back in the bag.

12 THE WITNESS: (Complies)

13 THE COURT: Before we do that, Mr.
14 Davis, are you going to go through those items?
15 Do you need to see those?

16 MR. DAVIS: I have no questions, Your
17 Honor.

18 THE COURT: You may step down. Thank
19 you.

20 (WITNESS STEPS DOWN)

21 THE COURT: Who's your next witness?

22 SOLICITOR DURANT: Investigator Jim
23 Milz.

24 THE COURT: Short testimony?

25 SOLICITOR DURANT: Crime Scene, Your

1 Honor.

2 THE COURT: All right. At this
3 point, ladies and gentlemen, we'll take our
4 break for lunch. Please, of course, while you
5 are out, do not discuss this case among
6 yourselves or permit anyone to talk with you
7 about it or talk about it in your presence.
8 Have a good lunch, and if you will return to
9 your jury room, please, by 1:30, we'll resume
10 the trial at that time. Thank you very much.

11 (JURY OUT AT 11:59 A.M.)

12 THE COURT: Anything from the State
13 before we recess?

14 SOLICITOR DURANT: No, Your Honor.

15 THE COURT: Anything from the
16 defendant?

17 MR. DAVIS: No, Your Honor.

18 THE COURT: See you back at 1:30.

19 (LUNCH RECESS)

20 (DEFENDANT PRESENT)

21 MR. DAVIS: The defense that I have
22 been presenting through the course of this
23 trial, my client has just indicated he desires
24 to go a different route.

25 THE COURT: That's fine. That's not

1 a problem. I'll give you a few moments. That's
2 not a problem, Mr. Davis.

3 MR. DAVIS: Thank you.

4 THE COURT: And I don't need to know
5 any particulars. I understand and that's fine.

6 (SIDEBAR, COUNSEL DAVIS WITH DEFENDANT)

7 THE COURT: Let's bring in our jury,
8 please, Mr. Williams. Thank you so much.

9 (JURY IN AT 1:42 P.M.)

10 THE COURT: Thank you very much. And
11 I notice, Ms. Rico-Flores, that you have sat
12 there now twice. Have you been selected as the
13 presiding juror?

14 JUROR NUMBER 227: Yes, Judge.

15 THE COURT: I thought that was the
16 case. If you would just, for the record, state
17 your full name for the record and your juror
18 number, please.

19 JUROR NUMBER 227: Phyllis Rico-
20 Flores, Juror Number 227.

21 THE COURT: Thank you so much. And
22 that will be your seat for the balance of the
23 trial. And thank you, ladies and gentlemen, for
24 taking care of that as well.

25 I hope you had a good lunch. We're

1 ready now to resume and give your attention to
2 the next witness.

3 Solicitor, you may call your next
4 witness.

5 SOLICITOR DURANT: Thank you, Your
6 Honor. May it please the Court. The State
7 calls Investigator Jim Milz.

8 (WITNESS TAKES STAND)

9 JAMES THOMAS MILZ, being duly sworn to
10 tell the truth, the whole truth and nothing but
11 the truth, testified, as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR DURANT:

14 Q. Investigator Milz, good afternoon.

15 A. Good afternoon, sir.

16 Q. Would you please tell the jury where you're
17 employed?

18 A. I'm a crime scene investigator with the
19 Charleston County Sheriff's Office.

20 Q. How long have you been doing that?

21 A. Four years, sir.

22 Q. And what are your responsibilities and
23 duties in that capacity?

24 A. When I'm called to a scene, sir, varied
25 scenes, to record, be it photography or video,

1 collect evidence and write reports of that
2 evidence, process the evidence in regards to
3 the incident that I'm called out to.

4 Q. So you're a crime scene technician?

5 A. Yes, sir.

6 Q. With the Sheriff's Office?

7 A. I am, sir.

8 Q. And if you would, just describe for the
9 jury how many people work with you in that
10 office there at the Sheriff's Office, the Crime
11 Scene Unit?

12 A. There are six of us, sir.

13 Q. And who runs that unit?

14 A. Sergeant McManville is our supervisor, sir.

15 Q. And then there are five other crime scene
16 technicians that work with you?

17 A. Yes, sir.

18 Q. Including yourself?

19 A. Yes.

20 Q. Being a crime scene investigator have you
21 had any education as it relates to collective
22 evidence?

23 A. Yes, sir.

24 Q. What's that?

25 A. We have various classes brought in through

1 SLED, the South Carolina Law Enforcement
2 Division. OJT and we have classes through other
3 organizations, be it City or other law
4 enforcement agencies putting on courses.

5 Q. What about as it relates to fingerprints?

6 A. Yes, sir. I've also attended classes at
7 SLED for fingerprint recognition, collection,
8 those kinds of things, sir.

9 Q. And have you also had the opportunity to
10 collect latent fingerprints?

11 A. Numerous times, sir.

12 Q. Approximately how many?

13 A. Sir, probably every day I'm collecting some
14 kind of a latent evidence, be it from a scene or
15 items that are turned in by deputies trying to
16 obtain latents from them.

17 Q. Is it fair to say hundreds of times?

18 A. Yes, sir.

19 Q. If you would, tell the jury what a latent
20 fingerprint is.

21 A. A latent fingerprint is a print that you
22 cannot see, be it, for instance, this pitcher,
23 if this was handled and I cannot see a print on
24 it. But it may be that it was touched, through
25 processes, chemical processes, I will try to

1 retrieve these fingerprints for identification.

2 Q. Are some surfaces more conducive to
3 obtaining latent fingerprints than others?

4 A. Absolutely, sir.

5 Q. What's an example of a good surface?

6 A. Glass, sir.

7 Q. And what is that?

8 A. It is a smooth surface.

9 Q. What's an example of a surface that's not so
10 conducive?

11 A. Probably maybe like wood, something with a
12 very rough texture. A piece of wood with bark,
13 something to that effect.

14 Q. Now, is it possible for a person to touch a
15 surface that you would consider pretty good for
16 leaving a fingerprint on and not actually leave
17 a latent fingerprint on it?

18 A. Yes, sir.

19 Q. And why would that be?

20 A. Variable, sir. Maybe they were wearing
21 gloves. Some things -- weather is one condition
22 of not leaving any latents. Some people just do
23 not have the chemistry, I would say, to leave
24 latents. And when I say that, it is when their
25 body sweats. They have dry hands.

1 Q. And certainly smudging a finger across a
2 surface?

3 A. Yes, sir.

4 Q. In your capacity as a crime scene
5 technician, did you respond to the RoadRunner
6 convenience store in the Hollywood area of
7 Charleston County of December the 20th of 2008?

8 A. I did, sir.

9 Q. In reference to what?

10 A. To a -- I was told to an armed robbery to
11 the establishment.

12 Q. What did you do at that scene?

13 A. Well, the first thing, when I came on the
14 scene, sir, was photographed the interior and
15 exterior of the scene. Then I walked the scene
16 looking for any kind of evidence that I could
17 gather.

18 Q. I'm going to move you kind of through that
19 testimony. But you eventually left that scene
20 that day, after doing that?

21 A. I did.

22 Q. And I want to bring you back to -- you came
23 back to the crime scene headquarters.

24 A. Yes, sir.

25 Q. At Charleston County.

1 A. Yes, sir.

2 Q. And there was a vehicle brought back there.

3 A. There was.

4 Q. And I believe you executed a search warrant
5 on that vehicle.

6 A. I did.

7 Q. And as a crime scene technician, if you
8 would, just tell the jury what you did with that
9 vehicle.

10 A. The first thing I did on the vehicle --
11 well, the very first thing I do is I read the
12 search warrant from the detective, what they
13 want me to look for, certain articles.

14 Once I did that, I started my photography.
15 I do a 360-degree photography exterior and
16 interior of the vehicle before I even start
17 touching the vehicle -- photography first.
18 After that, after reading what I'm looking for
19 during the search warrant, then I will actually
20 start looking for said articles. And if they
21 want me to gather anything else, be it latents,
22 blood, anything that they want in the search
23 warrant, I carry out.

24 Q. What were you told to look for here, sir?

25 A. I was told to look for any instrumentali-

1 ties of an armed robbery. I believe it was
2 clothing, weapons, shotguns, monies, things of
3 that effect.

4 Q. Were you also asked to look for finger-
5 prints?

6 A. I was, sir.

7 Q. And did you try to look for fingerprints?

8 A. I did, sir.

9 Q. Were you able to find any?

10 A. Yes, sir.

11 Q. Are you aware of whether -- how many did
12 you find?

13 A. Sir, I found one usable print.

14 Q. One usable latent print?

15 A. Yes, sir.

16 Q. Are you aware of whether that came back to
17 anybody?

18 A. It did not, sir.

19 SOLICITOR DURANT: May we approach?

20 THE COURT: Yes, sir.

21 COURT REPORTER: State's Exhibits 22
22 through 35 for identification,

23 THE COURT: State's 35, objection is
24 noted.

25 DIRECT EXAMINATION CONTINUED

1 BY SOLICITOR DURANT:

2 Q. Investigator Milz, I'm showing you what the
3 State has labeled State's 22 through 35. I want
4 you to take a look at all of these and let me
5 know if you recognize those.

6 A. (Upon review), -- yes, sir.

7 Q. If you would, please, tell the jury what
8 those pictures are.

9 A. These are all pictures of the search
10 warrant that I performed on the van that was
11 brought into the evidence compound for me to
12 process.

13 Q. Do those pictures fairly and accurately
14 depict the van and items that you pulled from
15 that van as evidence?

16 A. Yes, sir, it does.

17 SOLICITOR DURANT: Your Honor, at
18 this time the State moves for admission of
19 State's 22 through 35.

20 THE COURT: Very well. And as I
21 understand there's an objection to State's 35.
22 As we move into the first break we'll allow you
23 an opportunity to state that full on the record,
24 Mr. Davis. But there are no objections to 22
25 through 34. Is that correct?

1 MR. DAVIS: That's correct, Your
2 Honor.

3 THE COURT: Very well. State's 22
4 through 34 are admitted without objection.
5 State's 35 is admitted subject to the objection
6 of Mr. Bowens which we will place on the record
7 at the first recess. It is protected.

8 (SO ENTERED AS STATE'S EXHIBIT 22 THROUGH 34)

9 (SO ENTERED AS STATE'S EXHIBIT 35)

10 SOLICITOR DURANT: Your Honor,
11 permission for the witness to step down.

12 THE COURT: Certainly.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR DURANT:

15 Q. Investigator, if you would come down and
16 just kind of step right here.

17 THE COURT: Solicitor, if you would,
18 -- while you're down, if you'll just keep your
19 voice elevated, please, sir, that would help us
20 tremendously.

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR DURANT:

25 Q. Investigator Milz, I'm putting up what's

1 already in evidence as State's 17. It you could
2 just tell the jury what we're looking at there.

3 A. That is the vehicle that was brought into
4 my evidence compound to perform the search
5 warrant on.

6 Q. This is State's 22.

7 A. Interior shot of the vehicle, sir.

8 Q. And what's down there to the left?

9 A. It is a tennis shoe, sir.

10 Q. Did you collect that tennis shoe?

11 A. It was collected.

12 Q. State's 23.

13 A. Money, sir. That was the passenger's side,
14 side door, right when you opened it up.

15 Q. Just kind of laying there?

16 A. Yes, sir.

17 Q. State's 24?

18 A. Also money, sir, on the driver's side
19 passenger seat, just lying there, just like
20 that, sir.

21 Q. State's 25?

22 A. Same shot maybe a different angle, showing
23 the floor and some money is on the floor.

24 Q. State's 26?

25 A. Same shot again, sir, side door with the

1 monies and the shoe in the view.

2 Q. State's 27?

3 A. A little broader shot of the side door
4 opened.

5 Q. State's 28?

6 A. The monies, also the plastic bag behind the
7 seat.

8 Q. State's 29?

9 A. Inside the vehicle, shooting straight back
10 toward the rear of the vehicle.

11 Q. I'm going to show this one out of order.

12 This is State's 31.

13 A. That is a view from the rear of the van,
14 looking underneath the very last row of seats.

15 Q. Is this picture significant? Did you find
16 anything or collect anything?

17 A. In the very center of the picture, that
18 dark brown object to the left of the Burger King
19 bag and the yellow object was a shotgun, a
20 sawed-off shotgun.

21 Q. Did you collect that shotgun?

22 A. It was collected, sir.

23 Q. State's 30?

24 A. A little closer shot of the shotgun, sir.

25 Q. State's 32?

1 A. That is a shotgun. I got a little bit of
2 sandpaper and sanded the rust off so I could
3 reveal the make, model and serial number of the
4 shotgun, sir.

5 Q. Now, where you able to determine what the
6 serial number was on that shotgun?

7 A. Yes, sir.

8 Q. And do you know what that was?

9 A. Not off the bat, sir. I believe it was AU
10 at the first. It was an Harrington & Richardson
11 single-shot shotgun, sir.

12 Q. If you saw your report, would it refresh
13 your recollection?

14 A. It would, sir.

15 Q. Would this tell us what the serial number
16 on that shotgun was?

17 A. Alvin Uniform -- 529383, yes, sir.

18 Q. Thank you, sir.

19 Q. Did you try to obtain fingerprints on the
20 shotgun?

21 A. No, sir, I did not.

22 Q. Why is that?

23 A. The condition, sir. That was a pretty
24 rusted -- that would be very inconducive to
25 trying to obtain prints, sir, due to the surface

1 rust, the overall condition would be very
2 difficult to get a latent off of that.

3 Q. So it was very rusty and that made it, in
4 your opinion, tough to obtain a latent
5 fingerprint from.

6 A. It would have been, sir. Yes, sir.

7 Q. That's why you did not do that on the
8 shotgun.

9 A. Yes, sir.

10 Q. State's 33.

11 A. The black gloves that I took out of the
12 vehicle, sir.

13 Q. State's 34.

14 A. The bandana, sir, that I found also in the
15 vehicle.

16 Q. State's 35.

17 A. The two black hoodies that were also taken
18 from the vehicle, sir.

19 Q. Let me ask you to resume your seat.

20 A. (Complies)

21 Q. Investigator, I'm showing you what the
22 State has labeled State's 21 for identification
23 and ask that you keep this pointed down.

24 A. Yes, sir.

25 Q. Do you recognize that item?

1 A. I do, sir.

2 Q. How do you recognize that?

3 A. Sir, this is the shotgun, the sawed-off
4 shotgun that I took from the vehicle.

5 Q. Does it have the same serial number as the
6 one you recall collecting?

7 A. Yes, sir, it does.

8 Q. Where is that serial number located on that
9 shotgun?

10 A. Sir, it's on the lower receiver, underneath
11 the barrel, sir.

12 SOLICITOR DURANT: Your Honor, at
13 this time State moves for admission of State's
14 21.

15 THE COURT: Any objection?

16 MR. DAVIS: No, Your Honor.

17 THE COURT: State's 21 is admitted
18 without objection.

19 (SO ENTERED AS STATE'S EXHIBIT 21)

20 SOLICITOR DURANT: Thank you, Your
21 Honor. And just so the jury's aware, it has
22 been secured.

23 THE COURT: That's fine. I observed
24 that. It is properly secured. Thank you.

25 SOLICITOR DURANT: Thank you, sir.

1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR DURANT:

3 Q. Investigator Milz, if you could, are you
4 familiar with shotguns in your line of work?

5 A. Yes, sir.

6 Q. Could you tell the jury what kind of
7 shotgun that is?

8 A. Sir, this is a single-shot break-open style
9 shotgun, hammer-activated.

10 Q. Does it appear to be altered in any way?

11 A. Yes, sir.

12 Q. And why would you say that?

13 A. Sir, on this end should be a wooden stock.
14 The barrel, sir, has been, in my opinion, sir,
15 cut down, sir. It should be probably at least
16 six more inches longer, at the minimum.

17 Q. And how can you tell that that barrel is
18 shortened?

19 A. Sir, this is not the standard size barrel
20 that would come on a shotgun like this model.

21 Q. What effect does a shorter barrel on a
22 shotgun have?

23 A. Primarily, sir, this makes it into a --
24 pretty much a pipe, sir. There is going to be
25 no choke restriction on this weapon. Once

1 fired, you are going to have an incredibly quick
2 opening spread at close range.

3 Q. What do you mean by "spread?"

4 A. When you fire a shotgun, sir, if it's like
5 a full-choke shotgun, as it leaves -- as the
6 projectiles, the multiple projectiles leave the
7 barrel, they will stay together, slowly
8 spreading over a distance. The choke
9 restriction does that to the projectiles. On a
10 sawed-off shotgun, there is no choke
11 restriction. You're primarily -- right when you
12 pull the trigger -- right when it leaves the end
13 of this barrel, it's starting to spread.

14 Q. Does a short barrel make it easier to
15 conceal?

16 A. Oh, yes, sir.

17 Q. Did you do anything else to investigate
18 this case?

19 A. The videotape, sir.

20 Q. You collected the videotape?

21 A. I did collect the videotape, sir, of the
22 scene at the RoadRunner.

23 SOLICITOR DURANT: Thank you, sir.
24 Please answer any questions the defense may
25 have.

1 THE COURT: You may cross examine.

2 CROSS EXAMINATION

3 BY MR. DAVIS:

4 Q. I think one question. Is there anything
5 that you collected that forensically you can
6 connect to my client, Marvin Bowens?

7 A. No, sir.

8 Q. Thank you, Deputy Milz.

9 MR. DAVIS: No other questions, Your
10 Honor.

11 THE COURT: Redirect?

12 SOLICITOR DURANT: No, Your Honor.

13 THE COURT: Thank you, sir. You may
14 step down.

15 (WITNESS STEPS DOWN)

16 THE COURT: Call your next witness.

17 SOLICITOR SAHN: The State calls
18 Detective Charles Lawrence.

19 (WITNESS TAKES STAND)

20 CHARLES LAWRENCE, being duly sworn to
21 tell the truth, the whole truth and nothing but
22 the truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR SAHN:

25 Q. Good morning, Detective. Good afternoon,

1 Detective.

2 A. Good afternoon.

3 Q. Please tell us where you're currently
4 working.

5 A. Charleston County Sheriff's Office.

6 Q. And how long have you worked there, sir?

7 A. Since July of 2003, a little over eight
8 years.

9 Q. Do you have any prior law enforcement or
10 military experience before that?

11 A. Yes, sir, Orangeburg County Sheriff's
12 Office, South Carolina State University Police
13 Office. Between the two, I was there for
14 approximately five years. And prior to that I
15 was a ten-year military veteran and which I was
16 a law enforcement office there.

17 Q. And what part of the military were you in?

18 A. I was in the United States Navy.

19 Q. Were you employed as a detective with the
20 Sheriff's Office on December 20th of '08?

21 A. That's correct.

22 Q. Tell us about some of your responsibilities
23 at that time in your job.

24 A. At that time I was a persons detective,
25 investigate any crimes -- anything that could

1 happen to a person; i.e., shooting, stabbing,
2 homicide.

3 Q. Did you have any special training that
4 would help you in carrying out those duties?

5 A. Yes. I attended several classes on
6 interviewing, interrogation, crime scene
7 classes. Quite a few classes over the past
8 five years. I've attended quite a few, yes.

9 Q. Approximately how many classes would you
10 say in training and interrogation and interview
11 techniques?

12 A. At least three different classes.

13 Q. And you've had on-the-job training as well?

14 A. Yes, sir.

15 Q. Tell us a little bit about your educational
16 background.

17 A. I have a master's degree, currently working
18 on another master's degree from Webster
19 University.

20 Q. Where did you go to undergrad?

21 A. Undergrad at Claflin University in
22 Orangeburg, South Carolina.

23 Q. Detective, on December 20th, 2008, were you
24 on duty back then?

25 A. I was on call, yes, sir.

1 Q. On call?

2 A. Yes, sir.

3 Q. Did you respond to a call for service?

4 A. I did.

5 Q. And where was that call for service?

6 A. At the RoadRunner on Highway 162 and 165.

7 Q. That's Charleston County?

8 A. Yes, sir, that's correct, Hollywood, South
9 Carolina.

10 Q. When you arrived there who was already
11 there?

12 A. I went to the scene in Jacksonboro.

13 Q. You went straight to Jacksonboro.

14 A. Yes, sir, went straight to Jacksonboro.

15 Q. And when you got to the scene, that's the
16 Exxon gas station?

17 A. Yes, sir, that's correct.

18 Q. Was there a witness Julie Frazier?

19 A. I don't recall seeing Ms. Frazier there.

20 Q. When you got there were you in charge of
21 that scene?

22 A. Yes, sir.

23 Q. Were you the lead detective in this case?

24 A. Yes, sir, that's correct.

25 Q. What does that mean?

1 A. That means that, in a nutshell, I'm
2 responsible for any and everything in reference
3 to this case.

4 Q. Is it fair to say you supervised the entire
5 investigation?

6 A. Yes, sir.

7 Q. So you arrived and took over the
8 investigation from the officers that were
9 already there.

10 A. Yes, sir, that's correct.

11 Q. And when you got to that scene were you
12 advised as to the nature of the investigation
13 at that point?

14 A. Yes, sir.

15 Q. Filled in on details?

16 A. Yes, I was.

17 Q. And after receiving that information what
18 did you do?

19 A. Once we received the information, we ---

20 Q. Once you were brought up to speed about
21 what had transpired so far, what was the next
22 thing you did?

23 A. Okay, at that point in time we made efforts
24 to locate the co-defendant.

25 Q. What's the name of the co-defendant in this

1 case?

2 A. Minor

3 Q. Is he related to this defendant, Marvin
4 Bowens?

5 A. Yes, sir, he's a younger sibling.

6 Q. They're brothers?

7 A. Yes, sir, brothers.

8 Q. And as part of your investigation are you
9 aware of where the co-defendant, Minor
10 was arrested?

11 A. Yes, sir.

12 Q. And where was that, sir?

13 A. A white in color trailer on Hope
14 Plantation, on the left-hand side.

15 Q. Did you actually go over to the trailer, or
16 were you just advised of that?

17 A. We were on the scene when he was
18 apprehended.

19 Q. Now, when you arrived at the Exxon in
20 Jacksonboro ---

21 A. Yes, sir.

22 Q. --- did you see the defendant, Marvin
23 Bowens?

24 A. I was advised of his location, yes, sir.

25 Q. Were you advised that he was under arrest?

1 A. Yes, sir.

2 Q. And did you have occasion to transport him
3 away from that scene?

4 A. I did.

5 Q. And where did you take him?

6 A. Upon leaving there, we went to the Criminal
7 Investigation Division, which is located at 3505
8 Pinehaven Drive, North Charleston, South
9 Carolina.

10 Q. Is that a Charleston County Sheriff's
11 Office building?

12 A. Yes, sir. That's our building where we go
13 in to investigate/interrogate.

14 Q. Is that where you go to interview suspects?

15 A. Yes, sir.

16 Q. So when you transported this defendant,
17 Marvin Bowens, to the Charleston County office
18 to interview, did you have a conversation at all
19 with him, or was there any conversation?

20 A. Yes, sir.

21 Q. Would you describe it as talking about this
22 case, or would you describe it as small talk?

23 A. Basically, small talk, nothing to do with
24 this case.

25 Q. Do you remember at all what it was about,

1 just using small talk?

2 A. Yes, sir. Basically, I think I maybe asked
3 him how old he was and advised him that I had a
4 son close to his age and, you know, just
5 conversation such as that, but nothing to do ---

6 Q. You told him you have a son?

7 A. Yes, sir, I did.

8 Q. Got you. When you arrived at the
9 Charleston County -- was it a field office that
10 we call it?

11 A. Yes, sir. It's our office where we work on
12 a daily basis. But we have interview rooms on
13 both sides, one side where the persons
14 detectives work and the other side, we have
15 another interview room. So one interview room
16 per side.

17 Q. So when you arrived at that office with
18 this defendant ---

19 A. Yes, sir.

20 Q. --- where did you guys go when you exited
21 the car?

22 A. Okay, we went straight upstairs. It
23 actually located on the second floor. I went
24 upstairs and we went to the interview room
25 that's located on the side that I work on.

1 Q. Okay. And just to be clear, what was the
2 date that y'all went to that interview room?

3 A. December 20th, 2008.

4 Q. Do you remember about what time you arrived
5 there?

6 A. No, sir.

7 Q. It was the same morning as the armed
8 robbery?

9 A. Yes, sir. It was before noon, I'm pretty
10 sure.

11 Q. That's fine. Who was present -- did you go
12 into that room for the purpose of interviewing
13 the defendant?

14 MR. DAVIS: Your Honor, I want to
15 renew my prior objections at this point?

16 THE COURT: Your objection is noted
17 and the rulings previously made would be my
18 response, and they are contained as well.

19 MR. DAVIS: Thank you, Your Honor.

20 SOLICITOR SAHN: Thank you, Your
21 Honor.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR SAHN:

24 Q. Did you and the defendant proceed into an
25 interview room when you arrived at the office?

1 A. That's correct.

2 Q. Who was present in that interview room?

3 A. Myself and Mr. Bowens.

4 Q. Marvin Bowens?

5 A. Yes, sir.

6 Q. This defendant?

7 A. Yes, sir. Marvin Bowens, yes.

8 Q. And to the best of your knowledge, at that
9 time was the defendant -- did he appear to be
10 under the influence of alcohol or any drugs?

11 A. No, sir.

12 Q. And to the best of your knowledge did the
13 defendant appear to suffer from any mental or
14 physical disabilities?

15 A. No, sir.

16 Q. So as far as you know he did understand
17 everything that you were saying to him?

18 A. That's correct.

19 Q. Let's talk a little bit about the room that
20 you guys were in. Just describe for the jury
21 the physical surroundings of that room.

22 A. Okay, the room is approximately five-by-
23 eight in size, had one door to it. Once you
24 come in -- once you walk through the door, to
25 the left is a chair. There's a table, an A.C.

1 unit and another chair. And sometimes we bring
2 two chairs when we have two detectives in. So
3 at the max, we'd have three chairs inside and
4 above on the right-hand side, once you come in
5 through there, there's a monitor there. That's
6 pretty much the size of the room.

7 Q. You said there was a window unit or an A.C.
8 unit?

9 A. Yes, sir. Wall unit A.C. unit, yes.

10 Q. Was it a comfortable temperature in that
11 room?

12 A. Yes, sir, that's correct.

13 Q. How long would you approximate the entire
14 interview took, start to finish?

15 A. Maybe an hour and a half.

16 Q. During that time did you deny the defendant
17 any food or water?

18 A. No, sir.

19 Q. Did he ever ask for any of those things?

20 A. No, sir.

21 Q. What about a bathroom break?

22 A. No, sir, I never denied him one.

23 Q. Did he ever ask for one?

24 A. Not to my recollection.

25 Q. Did you ever threaten him in any way in

1 there?

2 A. No, sir, never.

3 Q. Did you promise him anything in that room?

4 A. No, sir, not at all.

5 Q. The defendant, he was under arrest at this
6 time, right? He wasn't free to walk out?

7 A. That's correct.

8 Q. And did you advise him what he was under
9 arrest for?

10 A. I did, yes.

11 Q. What did you tell him he was under arrest
12 for?

13 A. For armed robbery investigation.

14 Q. And did the defendant tell you his story
15 about his role in that armed robbery?

16 A. That's correct.

17 Q. In his words, as to what happened?

18 A. Yes, sir.

19 Q. Before he did that, though, was he advised
20 of his Constitutional rights pursuant to
21 *Miranda*?

22 A. Yes, sir, he was.

23 Q. Was he advised of those rights in writing?
24 Was he give a copy of those rights written out?

25 A. Yes, sir. I showed him what I was reading

1 to him at the time while I was reading it, yes,
2 sir.

3 Q. You read it to him?

4 A. I did read it.

5 Q. And you also gave him a written copy?

6 A. Yes, sir.

7 SOLICITOR SAHN: May I approach, Your
8 Honor?

9 THE COURT: Yes, sir.

10 COURT REPORTER: State's Exhibit 36
11 for identification.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR SAHN:

14 Q. Detective, I'm handing you State's Exhibit
15 36. Take a moment to look at that and see if
16 you recognize it.

17 A. Yes, sir, I do.

18 Q. What is that?

19 A. This is an advisement of rights *Miranda*
20 warning.

21 Q. Is that the form that you used with the
22 defendant in this case before his interview?

23 A. Yes, sir, that's correct.

24 Q. I want to go through that form with you at
25 this time. If you would, tell the jury what's

1 on that form, starting at the very top.

2 THE COURT: Do you want to introduce
3 this form?

4 SOLICITOR SAHN: Yes, sir. At this
5 time the State would move Exhibit 36 into
6 evidence.

7 THE COURT: Any objection to the
8 form?

9 MR. DAVIS: No new objection, Your
10 Honor.

11 THE COURT: Subject to the objections
12 previously argued prior to the commencement of
13 the trial and the rulings made therein would be
14 my rulings, it is admitted as State's Exhibit
15 36.

16 (SO ENTERED AS STATE'S EXHIBIT 36)

17 SOLICITOR SAHN: Thank you, Your
18 Honor.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR SAHN:

21 Q. Detective Lawrence, starting at the right
22 upperhand corner of the page, tell us what is
23 written on that form.

24 A. Okay, when we interview someone we always
25 start -- you always put their -- I always ask

1 their highest grade of education completed.

2 That's the first thing we ask. And at that
3 point in time I put it down and I circled it,
4 okay? I also wrote ---

5 Q. And what did you put down?

6 A. Seventh grade.

7 Q. Okay.

8 A. And at that point in time we put the start
9 time before I even ask him any questions. I put
10 a circle-S. I put an "S" and I circle it and I
11 put the time that we started. And upon
12 completion, we put an "F" and I circle that so
13 that we'll know how long we were in there.

14 Q. Looking at this form, what time did this
15 interview start?

16 A. 11:58.

17 Q. Is that A.M.?

18 A. Yes, sir, that would be A.M. I always use
19 military time. Always.

20 Q. I got you. Okay. And below that, what's
21 the heading of this form called?

22 A. "Charleston County Sheriff's Office
23 Advisement of Rights."

24 Q. Is there a place for the case number?

25 A. Yes, sir.

1 Q. And the date?

2 A. That's correct.

3 Q. And what is the date on this form?

4 A. 12/20/08, 2008.

5 Q. Next, is there a place for the suspect's name?

6 A. That's correct.

7 Q. And what's written in there?

8 A. "Marvin, M-A-R-V-I-N, Bowens, B-O-W-E-N-S."

9 Q. And then there's some information about his
10 biographical information?

11 A. Yes, sir.

12 Q. And who filled that out?

13 A. All this information was filled out by
14 myself.

15 Q. And how were you getting this information?

16 A. I asked the defendant.

17 Q. The defendant told you his name and you
18 wrote it down.

19 A. Yes, sir.

20 Q. And told you the information?

21 A. Yes, sir.

22 Q. Let's move on to below that. Did you
23 advise him who you were?

24 A. Yes, sir.

25 Q. Is that indicated on this form?

1 A. Yes, sir, my name is above. Do you want me
2 to read that?

3 Q. Yes, please read that.

4 A. "Detective Lawrence has advised me that he
5 is a member of the Charleston County Sheriff's
6 Office and further advised me that" -- and
7 that's when I went into *Miranda* warnings. Do
8 you want me to read them all?

9 Q. Yeah, please read those rights.

10 A. Okay. Number one, (reading): *"I have the*
11 *absolute right to remain silent and I do not*
12 *have to answer any questions or give a statement*
13 *and this fact cannot be used against me."*

14 Q. Is there a place by that right for the
15 defendant to initial?

16 A. Yes, sir.

17 Q. And did he, in fact, initial?

18 A. Yes, sir, he did. I asked them one at a
19 time. And upon completion of asking them, I ask
20 "do you understand, and I need a verbal yes or
21 no." And at that point in time he verbally
22 stated that he understood. And we went to the
23 next one.

24 Q. I've got a copy of the exact same thing
25 you're looking at behind you. You can just

1 continue with that and the jury can follow
2 along.

3 A. Number two, (reading): *"If I so answer*
4 *questions or give a statement anything I say can*
5 *and will be used against me in a court of law."*
6 Again, I asked him if he understood, and he
7 verbally acknowledged that he did.

8 Number three, (reading): *"I have the right*
9 *to consult with a lawyer of my choice before I*
10 *answer questions or give a statement and also to*
11 *have him or her present while I'm being*
12 *questioned."* I asked him did he verbally
13 understand, and he again, he verbally said yes.

14 (Reading): *"That if I wish to talk to*
15 *a lawyer or to have him or her present but am*
16 *unable to afford to hire one, one will be*
17 *appointed to represent me free of charge."* And
18 asked the defendant again if he understood, and
19 he verbally said yes.

20 (Reading): *"That if I decide to*
21 *answer questions or give a statement without*
22 *having a lawyer present to represent me, I have*
23 *the absolute right during this interview to stop*
24 *questions, answer question and remain silent."*
25 And again I asked him for the last time if he

1 understood, and he verbally said yes. And at
2 that point in time I had him to initial to the
3 left, over here, where it's one through five, he
4 put his initials, which are "M.B."

5 Q. That's Marvin Bowens?

6 A. Yes, sir.

7 Q. And then what does it say underneath those
8 rights?

9 A. Okay, "I fully understand each of these
10 rights which have been explained to me." And I
11 put an "X" there, saying that you're not --
12 you're advising him that he understands and at
13 that point in time I need him to sign name
14 there, write his name there, which he did.

15 Q. Is there a place for someone to witness his
16 signature and all his initials?

17 A. Yes, sir. That's mine to the left right
18 there, and that would be mine, "Charles
19 Lawrence."

20 Q. That's you?

21 A. Yes, sir.

22 Q. The rest of this form, sir, is the waiver
23 of rights?

24 A. Yes, sir.

25 Q. Just explain those.

1 A. Waiver of rights, which I read to Mr.
2 Bowens, again, (reading): *"I fully understand*
3 *each of these rights which have been explained*
4 *to me and, having these in mind, I wish to waive*
5 *the rights and answer questions concerning the*
6 *charge of armed robbery which I have been*
7 *accused of committing. No threats, force or*
8 *promises of any kind have been made to me by*
9 *anyone to induce or cause me to waive these*
10 *rights or answer questions."* And I summarized
11 that for him. I asked him if he understood
12 that, and he said yes. And I said basically
13 what that means is I'm not here to get you --
14 I'm not holding you against your will. I'm not
15 -- basically what I'm saying is I'm not forcing
16 you, promising you, making any threats to you,
17 and if you want to talk to me, because I do want
18 to hear what you have to say -- and if you
19 choose to talk to me about that, before you
20 start talking, I need you to sign that, which he
21 did. And he signed it, and I confirmed my
22 signature as a witness. At that point in time
23 we went into the statement portion.
24 Q. Okay. Just to be clear, this form was gone
25 over, filled out completely, explained to him

1 one hundred percent before you asked him any
2 questions about this case?

3 A. That's correct.

4 Q. And before he gave you a statement about
5 this case?

6 A. Yes, sir, that's correct.

7 Q. During that time you wrote on that form,
8 did the defendant appear to have any trouble
9 understanding what you were saying?

10 A. No, sir.

11 Q. Or not comprehending what you were saying?

12 A. None at all.

13 Q. And did his answers to your questions if he
14 understood, did they appear rational?

15 A. Yes.

16 Q. And make sense to the questions you were
17 asking?

18 A. Yes, sir, they did.

19 Q. Again, did you or anyone else, anybody come
20 into the room -- threaten or coerce him in any
21 way?

22 A. No, sir, not at all.

23 Q. And how did he respond when you asked him
24 if he wanted an attorney before he made a
25 statement?

1 A. He never made that statement, sir.

2 Q. That was one of the rights. Right, he
3 never asked for one?

4 A. He never asked for an attorney.

5 Q. And that's evidenced on that form?

6 A. Yes, sir.

7 Q. On the rights that he waived?

8 A. That's correct.

9 Q. At any point during the interview did he
10 ever change his mind and say, "Okay, now I do
11 want an attorney. Please stop?"

12 A. No, sir, never, not once.

13 Q. To the best of your knowledge, was his
14 statement given absolutely freely and
15 voluntarily?

16 A. Yes, sir.

17 Q. Of his own free will?

18 A. That's correct.

19 Q. And this statement that he gave you, was it
20 reduced to writing or put in writing?

21 A. Yes, sir.

22 Q. And who actually wrote that statement out?

23 A. Mr. Bowens.

24 Q. Mr. Bowens himself?

25 A. Yes, he did.

1 Q. And you witnessed it?

2 A. I did.

3 SOLICITOR SAHN: May I approach?

4 THE COURT: You may.

5 COURT REPORTER: State's Exhibit 37
6 marked for identification.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR SAHN:

9 Q. Detective, here's State's 37. Take a look
10 at it. Are you familiar with it?

11 A. Yes, sir.

12 Q. What is it?

13 A. This is a Charleston County Sheriff's
14 Office Statement, Voluntary Statement, written
15 by -- the statement portion is written by Marvin
16 Bowens.

17 SOLICITOR SAHN: Your Honor, at this
18 time the State moves Exhibit 37 into evidence.

19 THE COURT: Any additional objections
20 other than those previously argued in this
21 matter?

22 MR. DAVIS: No, Your Honor.

23 THE COURT: Very well. The
24 objections previously argued and contained in
25 the record of this matter are again overruled.

1 The content of the objections are included for
2 purposes of this objection, and my ruling are
3 exactly the same responses to those objections.
4 The Exhibit, State's 37, is admitted subject to
5 all of those objections.

6 (SO ENTERED AS STATE'S EXHIBIT 37)

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR SAHN:

9 Q. Detective, is this the statement that
10 Marvin Bowens gave you?

11 A. Yes, sir.

12 Q. Let's do the same thing. Let's start with
13 this statement -- I'm starting at the time, and
14 tell us what's on that form.

15 A. At the top of the page it's "LCA" which
16 would be the case number. And to the right --
17 yeah, y'all's right as well, would be the date,
18 which is 12/20 of 2008. And "statement of," --
19 all this information was written by me,
20 handwritten by myself.

21 Q. This information here behind you?

22 A. Yes, sir.

23 Q. That's written by you?

24 A. Yes, sir, that's my handwriting there.

25 Q. Okay. And then what about this portion?

1 A. Okay, once we get to the meat of it, the
2 body of it?

3 Q. Yeah, who wrote this?

4 A. That was written by the defendant Bowens,
5 Mr. Bowens.

6 Q. Please read that to the jury.

7 A. Okay, (reading): *"My friend Charles Green*
8 *from Adams Run, South Carolina, for about two*
9 *weeks came to my room window the morning of*
10 *December 20th, around 6:30 a.m. and asked me to*
11 *help him do something. I told him I would. He*
12 *asked me to take him to the Road Runner store in*
13 *Hollywood so he could rob it. I agreed because*
14 *he told me they made lots of money and he would*
15 *give me around five hundred dollars just to drop*
16 *him off and pick him back up. I got up there*
17 *and I dropped him off by the car wash. When he*
18 *got out he went to rob it and I waited. He*
19 *robbed it, ran back to the van and we left. It*
20 *wasn't as much as he thought, so he just gave me*
21 *about a hundred dollars. When we made it back*
22 *to Adams Run I dropped off on Jupiter Hill Road.*
23 *I went home, put my money up and told Minor I*
24 *need him to go to Jacksonboro with me so we*
25 *could get me a phone card. But when we got*

1 *there the police came.*" And that concluded his
2 handwriting portion of his statement, okay, by
3 the defendant.

4 Q. In some of that there's some words that
5 look like they're crossed out?

6 A. Yes.

7 Q. There's initials by them. What is that?

8 A. Yes, sir. Anyplace, whether it's myself or
9 the defendant writing the statement, if they
10 mess up during their writing portion, they put a
11 line through it and put their initial in that
12 they were the one who actually wrote and they
13 messed it up. As you can see, on the first Q,
14 that's me asking a question to him. I messed
15 that up, and I put a single line through it and
16 my initials of "C.L." for Charles Lawrence.

17 Q. I understand. So after his portion that he
18 wrote out of his version of what happened ---

19 A. Okay.

20 Q. --- did you ask him any follow-up
21 questions?

22 A. Yes, sir. Upon completion of statements,
23 to get to specific details of it, we always ask
24 questions to the accused. We ask specific
25 questions. And everywhere where it has the "Q,"

1 that's my handwriting. And the "A" stands for
2 "answer." And that was handwritten by the
3 defendant.

4 Q. Please read us the question and answer
5 portion of the statement.

6 A. Okay. The first question was "Where were
7 you at when Charles Green came by?"

8 The answer by the defendant is "My father's
9 house in Adams Run, near Jupiter Hill."

10 My next question was "How do you know
11 Charles Green?"

12 The defendant's answer was "From being
13 outside with all the other children and smoking
14 and drinking."

15 Q. Is that the end of page one of the
16 statement?

17 A. That's correct.

18 Q. Let's go on to page two of the statement.

19 A. Okay. "Describe Charles Green."

20 The answer was "About 5'9", 140, brown
21 skin, slim, dreadlocks, medium range, long."

22 Next question was "Describe the gun that
23 Charles had."

24 The answer was "Rusty shotgun, but I didn't
25 really see it all the way."

1 Next question was "What was Charles
2 wearing?"

3 "Black, long, slipped-on shirt, black, long
4 pants, white and some color shoes, black gloves,
5 black bag on his face."

6 Question, "What did you drive to the Road
7 Runner?"

8 Answer, "Family van, tan colored."

9 Question, "Where did you drop Charles off?"

10 Answer, "In a tunnel under the car wash
11 behind Road Runner."

12 Question, "Where did you pick him up at?"

13 Answer, "In a tunnel under the car wash
14 behind Road Runner."

15 Question, "What happened when you left the
16 Road Runner?"

17 Answer, "Charles jumped back in. That way
18 nobody would see him. Rode off back towards
19 Adams Run, then I dropped him off by the Jupiter
20 Hill Road and I went home and asked my brother
21 to come to Jacksonboro with me. That way I
22 would be able to get a phone card, but the
23 police came."

24 Q. All right. And moving on to the last page
25 of the statement.

1 A. Okay. Question "Who was home with you when
2 Charles came by?"

3 Answer "My mother and my father, sister and
4 three brothers."

5 Question "Who was home when you returned?"

6 "Mother, father, sister, three brothers."

7 Question "Did you agree to drive Charles to
8 the Road Runner so that he could rob it?"

9 Answer "Yes."

10 Question "How much money did Charles give
11 you for helping him?"

12 Answer "Ninety-five dollars."

13 Question "Where is the money?"

14 Answer "Red Monkey jeans in my room."

15 Question "Where did the money in the van come
16 from?"

17 "It was for gas and a ten-dollar phone
18 card."

19 And that concluded the question-and-
20 answering portion of the statement.

21 Q. Okay, Detective, when you were done with
22 that portion did you give the defendant an
23 opportunity to review his statement he just gave
24 you?

25 A. Yes, sir.

1 Q. And did he actually review it?

2 A. Yes, sir.

3 Q. And at that point did he make any changes?

4 A. Only where he scratched through and I had
5 him put his initials.

6 Q. And those were the places where you went
7 back and changed it?

8 A. Yes, sir, that's correct.

9 Q. And he initialed by each change?

10 A. Yes, sir.

11 Q. So after he had a chance to review it did
12 you get him to sign the statement?

13 A. Yes, sir.

14 Q. And is that on every single page?

15 A. On every single page, yes, sir. The bottom
16 right-hand side, two signatures.

17 Q. Is there a place for him to sign
18 acknowledging that he got a copy of the
19 statement?

20 A. Yes, sir. The last signature on the bottom
21 of the right-hand side, which clearly states
22 that he would receive a copy of the statement.

23 Q. After you finished the interview with the
24 defendant, where did you take him?

25 A. I took him to the Charleston County

1 Detention Center.

2 Q. And what you just testified to, was that
3 the extent of your interview?

4 A. Yes, sir.

5 SOLICITOR SAHN: The Court's
6 indulgence.

7 THE COURT: Certainly.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR SAHN:

10 Q. In that statement the defendant told you
11 that his accomplice was a man named Charles
12 Green.

13 A. Yes, sir, that's correct.

14 Q. Was Charles Green ever a suspect or was a
15 Charles Green ever a suspect in this case?

16 A. No, sir. I looked in RMS, which is Records
17 Management System, under Jupiter Hill and found
18 no such name as Charles Green. I also looked
19 for a Charles Green in RMS again by name, and
20 nothing matched.

21 Q. Did they have a suspect in custody already
22 who was the co-defendant?

23 A. Yes, sir.

24 Q. Or the accomplice?

25 A. Yes, sir.

1 Q. Thank you, Detective. Please answer any
2 questions from the defense attorney.

3 THE COURT: You may cross examine,
4 Mr. Davis.

5 MR. DAVIS: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. DAVIS:

8 Q. Detective Lawrence, let's go straight to
9 the statement that you've testified about. This
10 occurred in a five-by-eight room in the
11 Sheriff's Office here in Charleston, right?

12 A. Yes, sir.

13 Q. There's only one door in or out of that
14 room. Is that correct?

15 A. Yes, sir, that's correct.

16 Q. And during -- the length of this interview,
17 your recollection was, was an hour to an hour
18 and a half interview. Is that right?

19 A. Yes, sir.

20 Q. However, while you do indicate a start time
21 on the advisement of rights form, there is no
22 end time listed on the form, is there?

23 A. That's correct, sir.

24 Q. And at the time of this interview, on
25 December 20, 2008, did you note the age of my

1 client at that time?

2 A. Yes, sir.

3 Q. He was seventeen and a half years old,
4 right?

5 A. That's correct.

6 Q. I know the jury can see him, for the
7 record. You've testified previously about your
8 height and weight and his height and weight. Is
9 that accurate?

10 A. Yes, sir, that's correct.

11 Q. For the record, you're about 6'1", 245. Is
12 that correct?

13 A. Yes, sir.

14 Q. During the entirety of this interrogation
15 my client remained in handcuffs the whole time?

16 A. Yes, sir. The non-writing hand was in
17 handcuff.

18 Q. Chained to his waist then?

19 A. No, sir. If he's right-handed, the left
20 hand would be chained to the chair. Yes, sir.

21 Q. To the chair. Okay.

22 A. That's correct.

23 Q. You had had some conversation with him on
24 the drive from Jacksonboro, correct?

25 A. Yes, sir.

1 Q. That's across the county line in Colleton
2 County, right?

3 A. Yes, sir.

4 Q. And the Sheriff's Office station is
5 Pinehaven. Is that correct?

6 A. Yes, sir, that's correct.

7 Q. North Charleston, near Rivers Avenue?

8 A. Yes, sir.

9 Q. And we do know that you started talking to
10 him just before noon. Is that correct?

11 A. Yes, sir.

12 Q. During this ride, you've already indicated
13 that you talked to him a little bit about your
14 son which would have been approximately his age.
15 Your son's a little younger than Marvin, right?

16 A. Yes, sir. My son is eighteen.

17 Q. Eighteen now?

18 A. Yes, sir.

19 Q. So sixteen or so back then?

20 A. That's three years ago and his birthday's
21 in January, so he was about fifteen. Yes, sir.

22 Q. You recall chatting with Marvin about your
23 son?

24 A. Yes, sir.

25 Q. And, of course, this is only five days

1 before Christmas, correct?

2 A. Yes, sir, that's correct.

3 Q. And during that conversation you talked to
4 Marvin -- you introduced yourself. It wasn't
5 Detective Lawrence. It was Detective Charles
6 Lawrence, right?

7 A. Yes, sir.

8 Q. And then when we get to the station you
9 start talking to him about this incident.
10 Didn't you promise to help him about getting out
11 on bond and getting home for the holidays?

12 A. No, sir, I never promised that, sir.

13 Q. You didn't discuss about how you could
14 understand since you have a son about the same
15 age, you'd want him home with you during the
16 holidays?

17 A. No, sir.

18 Q. Didn't you at some point before the
19 statement was given let Marvin know that it
20 would probably be better if he cooperated?

21 A. Yes, sir.

22 Q. And during the timeframe when you're
23 questioning him for an hour or an hour and a
24 half, his brother is also in custody, correct?

25 A. Yes, sir, that's correct.

1 Q. I believe, primarily, Detective Colson was
2 dealing with him. Do you recall?

3 A. Yes, sir.

4 Q. Now, however, they were separated, correct?

5 A. Yes, sir.

6 Q. And so -- it's his younger brother --
7 Marvin's younger brother, right?

8 A. Yes, sir, that's correct.

9 Q. And no information about what, if anything,
10 was going on with Minor his younger brother, was
11 disclosed to Marvin. You guys kept them
12 separate and didn't share information, did you?

13 A. That's correct.

14 Q. Isn't it accurate ---

15 MR. DAVIS: And, Your Honor, may I
16 approach the witness to get an Exhibit?

17 THE COURT: Certainly, you may.

18 CROSS EXAMINATION CONTINUED

19 BY MR. DAVIS:

20 Q. Number 36, State's Number 36, this is the
21 Advisement of Rights form, correct?

22 A. Yes, sir, that's correct.

23 Q. And isn't it accurate that you simply
24 pointed out on that where he needed to initial
25 down the side?

1 A. Say that one more time.

2 Q. Isn't it accurate that you simply pointed
3 where he needed to initial? You didn't read
4 those rights to him?

5 A. I carefully read each one, individually.
6 Yes, sir, I did.

7 Q. Isn't it accurate that you had him initial
8 and then told him where he needed to sign and
9 did not read this document to him?

10 A. That's not accurate, sir.

11 Q. You did, however, warn him that what he was
12 being charged with or might be charged with was
13 a very serious allegation, right?

14 A. Yes, sir.

15 Q. You warned him about potential punishment,
16 correct?

17 A. Basically. If he asked the nature of the
18 crime, according to the South Carolina laws, I
19 would answer according to that.

20 SOLICITOR SAHN: Can we approach
21 briefly?

22 THE COURT: Yes, sir.

23 (OFF RECORD BENCH CONFERENCE)

24 CROSS EXAMINATION CONTINUED

25 BY MR. DAVIS:

1 Q. I'm going to backtrack slightly. The way
2 he got to the Sheriff's Office is you drove him
3 from Jacksonboro, correct?

4 A. Yes, sir.

5 Q. And you saw family members of him on the
6 scene in Jacksonboro, correct?

7 A. That's correct, yes, sir.

8 Q. I believe you spoke with his father, did
9 you not?

10 A. I did.

11 Q. You're aware that while he is Marvin
12 Bowens, there is a family name of Green.

13 A. Yes, sir.

14 Q. His only opportunity to speak with his
15 father would have been in Jacksonboro, because
16 he didn't get -- his father was not given access
17 to him in Charleston at the Sheriff's Office,
18 was he?

19 A. That's correct, sir.

20 Q. Do you recall when he spoke with his father
21 down in Jacksonboro?

22 A. I can't recall. I was the one to speak
23 with his father. I did.

24 Q. Did Marvin ask to speak with his dad while
25 he was at the Sheriff's Office?

1 A. Not to my recollection. Not to my
2 recollection.

3 Q. Whether he did or not, his father was not
4 given access to him at the Sheriff's Office.

5 A. I'm not sure of that. I think I gave his
6 father a call to let him know that he was being
7 transported to the Detention Center.

8 Q. Okay, so you may have talked to him. But
9 what I want the jury to understand is whether
10 Marvin was allowed to talk to his father while
11 he was in the Sheriff's Office?

12 A. No, sir.

13 Q. There was a conversation about what bond
14 might be set and how long he might remain in
15 jail, wasn't there?

16 A. No, sir.

17 Q. Didn't he ask about the benefits of a
18 lawyer when the issue of bond was discussed?

19 A. No, sir. That never came up during our
20 discussion.

21 Q. You didn't tell him that having a lawyer
22 was a waste of time?

23 A. No, sir. I'd never say that to no one.

24 No, sir.

25 Q. You did not tell him that lawyers would

1 just cost money to have?

2 A. No, sir.

3 Q. It is true that no lawyer saw him while at
4 the Sheriff's Office, correct?

5 A. That is true. Yes, sir.

6 Q. The Solicitor, at the very end of their
7 questioning, talked about the name Charles
8 Green. I'd like to talk about that for just a
9 little bit. That was information provided to
10 you by Marvin at the Sheriff's Office on
11 December 20th, right?

12 A. Yes, sir.

13 Q. And you did some investigation to track
14 down about that individual, right?

15 A. That's correct.

16 Q. And through your investigation did you
17 determine whether a Charles Green existed or did
18 not exist?

19 A. I determined that a Charles Green did not
20 exist.

21 Q. You were also told that Marvin got ninety-
22 five dollars from this Charles Green after the
23 robbery. Isn't that true?

24 A. That's correct.

25 Q. You're the lead detective on this

1 investigation.

2 A. Yes, sir.

3 Q. There have been some photographs shown
4 previously which does show some currency. Do
5 you have knowledge of the total currency
6 collected as evidence in this case?

7 A. I'd have to see the return to have the
8 exact amount.

9 Q. I'll ask you this, though, do you recall
10 that it far -- it's far less than ninety-five
11 dollars?

12 A. Yeah, but according to the defendant's
13 statement the money was in some Monkey jeans or
14 something.

15 Q. Okay, I'll get to that in just one second.
16 But the money that was collected by the
17 investigation was significantly less than
18 ninety-five dollars. Is that accurate?

19 A. Once I get the return, I can answer that
20 for you, sir.

21 MR. DAVIS: Your Honor, may I
22 approach?

23 THE COURT: Yes, you may.

24 COURT REPORTER: Defendant's Exhibit
25 3 for identification.

1 MR. DAVIS: May I approach the
2 witness, Your Honor?

3 THE COURT: Yes, you may.

4 CROSS EXAMINATION CONTINUED

5 BY MR. DAVIS:

6 Q. Detective, I'm going to show you what's
7 been marked Defendant's Exhibit Number 3 for
8 identification purposes. Take your time to look
9 at it. I may have some questions for you. Let
10 me know when you've had enough time to look at
11 it.

12 A. All right. (Upon review), okay.

13 Q. Defendant's Number 3, is that, in fact,
14 what you just referenced, the return from the
15 search warrant? Is that the form?

16 A. Yes, sir.

17 Q. And on the bottom of the items collected is
18 the last item "currency?"

19 A. Yes, sir.

20 Q. And is the amount \$26.10?

21 A. That's correct.

22 Q. Just a moment ago when we were dealing with
23 this you mentioned that Marvin said ninety-five
24 dollars. And then what else did he say about
25 where it would be?

1 A. According to the statement -- the Court's
2 indulgence.

3 THE COURT: Okay.

4 CROSS EXAMINATION CONTINUED

5 BY MR. DAVIS:

6 Q. Detective, I'll direct you to the last page
7 of the statement.

8 A. The last page?

9 Q. Yes, sir.

10 A. Okay. I'm ready.

11 Q. Where was it indicated the ninety-five
12 dollars would be found?

13 A. "The red Monkey jeans in my room."

14 Q. Let's back up just one step. The search
15 warrant we talked about a second ago that had
16 the currency total, that's the return for a
17 search warrant that was executed, correct?

18 A. That is correct.

19 Q. And that search warrant was for the van
20 that was seized, correct?

21 A. That's correct.

22 Q. So that does not -- that \$26.10 does not
23 relate to any residence being searched.

24 A. That's correct.

25 Q. Finally, a couple of things about this room

1 you were in. When you were first describing it
2 to the jury you gave the dimensions of the room.

3 You mentioned a monitor. Is that right?

4 A. Yes, sir.

5 Q. There's a T.V. monitor in this room?

6 A. Yes, sir. There's a camera in the room,
7 monitor on the outside.

8 Q. You had the capability to videotape the
9 statement, didn't you?

10 A. Yes, sir.

11 Q. You did not.

12 A. That's correct.

13 Q. Is it accurate to say that the Solicitor's
14 Office for Charleston County has advised the
15 Charleston County Sheriff's Office not to
16 videotape statements?

17 A. Well, it's not a policy of ours to record
18 video statements.

19 Q. That's the Charleston County Sheriff's
20 Office policy.

21 A. Yes, sir.

22 Q. My question is has the Solicitor's Office
23 for the Ninth Circuit and Charleston County
24 advised the Charleston County Sheriff's Office
25 not to videotape statements?

1 A. Well, I've never been told by the Solicitor
2 myself.

3 THE COURT: Then you don't answer the
4 question because that's speculation.

5 THE WITNESS: Okay.

6 MR. DAVIS: Your Honor, may I have
7 just a moment? That may be all the questions I
8 have. Give me just a moment, (sidebar with
9 Defendant).

10 CROSS EXAMINATION CONTINUED

11 BY MR. DAVIS:

12 Q. Detective, thank you. That's all the
13 questions I have.

14 MR. DAVIS: Thank you, Your Honor.

15 THE COURT: Redirect.

16 SOLICITOR SAHN: Very briefly, Judge.

17 REDIRECT EXAMINATION

18 BY SOLICITOR SAHN:

19 Q. Detective Lawrence, again, the defendant's
20 statement was in his own handwriting, correct?

21 A. Yes, sir, that's correct.

22 Q. Just to be clear, did you promise him
23 anything about a bond reduction, reduction in
24 charge -- anything of that nature in return for
25 his statement?

1 A. No, sir, I made no promises to the
2 defendant.

3 Q. And he gave his statement freely and
4 voluntarily?

5 A. Yes, sir.

6 Q. With no problems?

7 A. No problems. Never had a problem with him.

8 Q. Thank you, sir.

9 A. Yes, sir.

10 THE COURT: Recross?

11 MR. DAVIS: No, Your Honor. Thank
12 you.

13 THE COURT: You may come down.

14 THE WITNESS: Thank you, sir.

15 (WITNESS STEPS DOWN)

16 THE COURT: Call your next witness.

17 SOLICITOR SAHN: Your Honor, at this
18 time the State rests.

19 THE COURT: Very well. Ladies and
20 gentlemen, there are some matters of law now
21 that I must take up out of your presence. I'm
22 going to need for you to go to your jury room
23 for a little while. I'm not sure how long, but
24 we'll be with you as quickly as we can. Please
25 do not begin your deliberations and do not

1 discuss this case amongst yourselves. Thank
2 you.

3 (JURY OUT AT 2:48 P.M.)

4 THE COURT: Anything from the State
5 at this point?

6 SOLICITOR SAHN: No, Your Honor.

7 THE COURT: Anything from the
8 defendant?

9 MR. DAVIS: Yes, Your Honor. And I
10 appreciate, during the objections, all those
11 have been covered. I don't see any reason to
12 renew any of those. Of course, now is the time
13 with the State resting their case, I want to
14 make a motion for a directed verdict on behalf
15 of my client.

16 Judge, I would simply state that
17 clearly this is a circumstantial case. There
18 are no witnesses that can identify my client
19 other than by a nondescript shirt with collar
20 and orange color. There is no way he can be
21 identified by face and it's certainly a
22 circumstantial case. We would argue that the
23 circumstantial case that the State has presented
24 may raise mere suspicion. It does not rise to
25 the level to create an issue of fact that the

1 jury must entertain. And we ask you to direct a
2 verdict of not guilty as to this charge of armed
3 robbery. Thank you.

4 THE COURT: I agree that there's no
5 direct evidence establishing or indicating the
6 guilt other than the statement. There's the
7 testimony of a witness, if a jury believes, that
8 identifies the van and the orange shirt.

9 Clearly, that's seen as a link to the person who
10 committed the robbery. Therefore, that alone
11 would raise the issue sufficient to carry the
12 day without the statement. The statement even
13 further supports the State's case. So your
14 motion is respectfully denied.

15 The one objection that we did -- you
16 made an objection concerning State's 35, and you
17 relied on severance. We severed the multiple
18 charges. There's never been an issue about
19 multiple people, and we're only trying one. So
20 that was my reason. I appreciate you -- but I
21 wanted to be sure that that was the sole basis
22 of your objection as I understood it.

23 MR. DAVIS: Yes, it was simply we had
24 severed that previous armed robbery where he was
25 dressed in black. In this case only one was,

1 but there were two back hoodies.

2 THE COURT: I understand. And
3 there's no indication that there was any more
4 than one. But it is what it is. It was just an
5 inventory of the car. There was no attempt to
6 argue anything related to it. Therefore, I did
7 not feel that that was sufficient. So I note
8 your objection and it is fully contained in the
9 record as being timely made. So thank you very
10 much.

11 Anything else? And you needed a moment
12 to talk with your client. Have you talked with
13 him about his right to testify and not to
14 testify?

15 MR. DAVIS: We have, Your Honor, and
16 it's during that conversation that this came up.

17 THE COURT: Very well. You have a
18 conversation and let me know when you're ready,
19 because I'd disclose to them whether or not he
20 wishes to testify.

21 MR. DAVIS: Yes, sir. One last
22 thing, Your Honor. Forgive me, another argument
23 for directed verdict is the -- under the State's
24 theory, my client is the driver and he never got
25 out of the van. I would argue it's also

1 insufficient to a plan or knowledge ahead of
2 time.

3 THE COURT: His statement does create
4 that clearly, so I would deny it on that basis.
5 Thank you.

6 MR. DAVIS: Thank you.

7 THE COURT: Thank you very much.
8 We'll be at ease for awhile. How long do you
9 need?

10 MR. DAVIS: Maybe ten after.

11 THE COURT: That'll be fine.

12 MR. DAVIS: Thank you, Judge.

13 (BRIEF RECESS)

14 (DEFENDANT PRESENT)

15 THE COURT: Mr. Davis, have you
16 discussed with your client his right to testify
17 or not to testify?

18 MR. DAVIS: I have, Your Honor.

19 THE COURT: Has he made a decision?

20 MR. DAVIS: I believe he has, Your
21 Honor.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Bowens, you may be
24 seated or you may stand, whatever your pleasure
25 is. You have discussed with your lawyers your

1 right to testify and not to testify. Is that
2 correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have they explained or
5 answered -- explained any concerns or answered
6 any questions that you may have about that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And have you had
9 sufficient time to think about it?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: After thinking about it,
12 after talking with your lawyers, what is your
13 decision?

14 THE DEFENDANT: To testify.

15 THE COURT: You're going to testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that you
18 have the absolute right not to testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you understand, as
21 I've already indicated to the jury -- you've
22 heard me, and I will reiterate that in the
23 charge, that you absolutely have nothing to
24 prove or disprove in this case. You understand
25 that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And I would further
3 instruct them in the charge portion that they
4 could not even discuss whether or not you
5 testified in their deliberations. You
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Your lawyers have
9 explained all that to you as well?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: But it is your right to
12 testify, and you understand that if you do then
13 you'll be subject to cross examination just as
14 any witness that's taken the stand in this
15 trial?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you comfortable with
18 your decision?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Has anybody threatened
21 you in any way or promised you anything to get
22 you to make that statement -- I mean make that
23 decision?

24 THE DEFENDANT: No, sir.

25 THE COURT: And you're making this

1 decision on your own but after talking with your
2 lawyers. Have you had a chance to talk with any
3 family members you wanted to talk with?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you want to talk with
6 a family member?

7 THE DEFENDANT: I'd like to talk
8 with my father.

9 THE COURT: Is he here?

10 THE DEFENDANT: He's in the front
11 row, Your Honor.

12 THE COURT: All right. You can talk
13 to him for a minute before, just for a second.

14 THE DEFENDANT: Yes, sir.

15 (BRIEF RECESS)

16 (DEFENDANT PRESENT)

17 THE DEFENDANT: I want to go back to
18 my original trial strategy.

19 THE COURT: I'm sorry. You don't
20 need to tell me that.. That's a matter between
21 you and your lawyer. I don't need to hear that.
22 So I don't know anything about that. That's not
23 something I participate in. I need to ask you a
24 simple question. You told me you understood
25 that. Do you plan to testify or not to testify?

1 THE DEFENDANT: I will.

2 THE COURT: And that's a decision you
3 made after talking with your lawyers and talking
4 with your father?

5 THE DEFENDANT: Yes.

6 THE COURT: That's the decision that
7 you want -- that you made for yourself?

8 THE DEFENDANT: Yes.

9 THE COURT: Your lawyers have not
10 told you that's what you should say?

11 THE DEFENDANT: No, sir.

12 THE COURT: Your father's not told
13 you that's what you should say?

14 THE DEFENDANT: No, sir.

15 THE COURT: That's what you choose on
16 your own?

17 THE DEFENDANT: Free will. Yes,
18 sir.

19 THE COURT: Nobody's promised you
20 anything?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you under the
23 influence of any alcohol or medication?

24 THE DEFENDANT: No, sir.

25 THE COURT: Very well. And how old

1 are you today?

2 THE DEFENDANT: Nineteen.

3 THE COURT: Do you understand what
4 you're doing?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Any question in your mind
7 about it?

8 THE DEFENDANT: No, sir.

9 THE COURT: I find that Mr. Bowens
10 has had the benefit of competent counsel. He
11 has had an opportunity to discuss the matter
12 fully with counsel I'm sure prior to today, but
13 certainly in the last thirty-five, thirty
14 minutes of so for sure, thirty-five minutes,
15 he's had an opportunity at his request to talk
16 with his father. His father's present in the
17 courtroom now.

18 It appears from his responses and his
19 body language that he had made a decision for
20 himself, notwithstanding that he's nineteen,
21 that he wants to take the stand and testify in
22 this case. It is his right to do so. I find
23 that decision to be one that he makes freely,
24 voluntarily, knowingly and intelligently.

25 Thank you, sir. You may be seated.

1 Do you anticipate calling additional
2 witnesses other than the Defendant?

3 MR. DAVIS: Judge ---

4 THE COURT: At this point?

5 MR. DAVIS: Here is -- it's the first
6 time for it, Judge, and I've had discussions
7 with him. Judge, there's a significant --
8 there's a disagreement on the tactics and
9 strategies. I respectfully ask the courtroom to
10 be cleared so I can put that on the record. I
11 am not prepared fully to do what he wants me to
12 do at this present time with the witnesses,
13 Judge.

14 THE COURT: No, I'm not going to
15 clear the courtroom. That's a matter -- so you
16 and your client have a disagreement on what's
17 being done?

18 MR. DAVIS: Yes, sir. And, Judge,
19 bluntly, as I came back after lunch, it was
20 unexpected to me.

21 THE COURT: I understand.

22 MR. DAVIS: I'm not sure of my
23 ethical duties at this time.

24 THE COURT: The decision is clear.
25 If it's that type of situation, if that's what

1 you're talking about, then you believe that your
2 client is about to -- let's have a conference in
3 chambers, please.

4 MR. DAVIS: Yes, sir.

5 THE COURT: The lawyers can come to
6 my chambers. The State has a right to be
7 present as well.

8 (CONFERENCE IN CHAMBERS)

9 (DEFENDANT PRESENT)

10 THE COURT: If you're going to place
11 witnesses, I want to start today. Do you have
12 another witness? Call him. I just want to get
13 started. We have the jury sitting and waiting.
14 I'll entertain a motion to recess until
15 tomorrow.

16 MR. DAVIS: Judge, he's ready.

17 THE COURT: And if you change your
18 mind, Mr. Bowens, before he calls you, just let
19 me know or let your lawyer know and I'll send
20 the jury back out and we'll have further
21 conversations. If I don't hear from you, I'm
22 going to assume that everything that you've told
23 me is still the truth, and I'm going to rely on
24 that as being the truth. Is that fair?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Very well. Bring in our
2 jury, please.

3 (JURY IN AT 3:55 P.M.)

4 THE COURT: Ladies and gentlemen,
5 we're ready now to continue. Mr. Davis, as I
6 understand it, the defense wishes to present
7 some witnesses for the jury's consideration?

8 MR. DAVIS: Yes, Your Honor.

9 THE COURT: You may call your first
10 witness.

11 MR. DAVIS: Marvin will testify.

12 THE COURT: Very well. If you'll
13 come forward, please.

14 (WITNESS TAKES STAND)

15 MARVIN LAMAR BOWENS, being duly sworn
16 to tell the truth, the whole truth and nothing
17 but the truth, testified, as follows:

18 DIRECT EXAMINATION

19 BY MR. DAVIS:

20 Q. Keep your voice up so all the jurors can
21 hear you, and I need you to answer out loud so
22 the court reporter can take it down, okay?

23 A. Yes, sir.

24 Q. First of all, can you tell the jury how old
25 you are?

1 A. Nineteen.

2 Q. And where did you grow up?

3 A. Jacksonboro, South Carolina.

4 Q. Back in December of 2008, where did you
5 live?

6 A. Adams Run, South Carolina.

7 Q. And who did you live with?

8 A. My father.

9 Q. What's his name?

10 A. Minor Sr.

11 Q. How far did you go in school?

12 A. Seventh grade.

13 Q. I'm going to go straight to the day that
14 we're all here talking about. I'm going to go
15 to the early morning hours of December 20th,
16 2008. I'd like you to tell the jury what
17 happened that day..

18 A. On the morning of December 20th, I was
19 asleep and my brother Minor woke me and told me
20 to come drive him to Jacksonboro so he could get
21 some cigars. I woke, went to the bathroom.
22 Upon going to the bathroom, the light was on and
23 my other brother, Gerriel, he was in the
24 bathroom. Minor told me to hurry up and leave
25 before our parents got home -- excuse me, before

1 they woke up. I put my shoes on, but I didn't
2 put my foot all in. I put them on like
3 slippers, went to the van. The van was still
4 crank. Back up out of the yard and left and
5 headed towards Jacksonboro. We get in the van.
6 Minor he's got some marijuana rolled up in his
7 ears, so we're riding and we're smoking the
8 marijuana or whatever. We're riding down
9 Highway -- I guess 162, but we don't go the main
10 road, Highway 17. We go the Old Jacksonboro
11 Road, the shortcut. We smoking the marijuana
12 and sitting there talking. We ain't really
13 talking because we've got the marijuana rolled
14 up just like a cigarette. If you light a
15 cigarette and you don't hit it, they're going to
16 go out. So the conversation don't start
17 probably until we're just about at the county
18 line. He tells me, he said 'I want to get some
19 cigars at the store' or whatever and a phone
20 card. So he pulled out money and I said, "Where
21 did you get all this money from?" "Down in
22 Hollywood handling my business." "With who?"
23 "My cousin, Tamasha." We call him Smoke. So we
24 get out there to Jacksonboro and I pull up to
25 the gas station. The gas station has two entry

1 points, one right there as soon as you cross the
2 bridge, and there's one coming from the
3 Walterboro side. Both of them is right there on
4 the right side of the road when you're going
5 towards Walterboro. So I turned in. And when I
6 turned in, I pulled up the pump. Officer Craven
7 -- I seen the Colleton patrol car. He pulled up
8 and circled to the corner of the store and
9 stopped. So when he did that and looked in the
10 rearview mirror. So I'm thinking 'what he
11 want?' You know, it's Colleton County and
12 whatever and they're known for harassing us or
13 whatever. 'What does he want to do?' So I jump
14 out. When I jumped out, he jumped out of his
15 car. He got his shotgun out and he pointed his
16 shotgun at me, instruct me to walk backwards,
17 kneel on the ground, cuffed me up or whatever,
18 put me in the patrol car. By the time he's
19 doing this, Minor jumped out of the van and he
20 ran or whatever, across Highway 17 into Hope
21 Plantation. I'd say ten minutes later -- ten to
22 fifteen minutes later my father and my mother
23 came out there on the scene or whatever.
24 Officer Craven allowed them to talk to me for a
25 brief minute. Me and my father -- the

1 conversation was like a statement. He said,
2 "Was you at the Road Runner and rob that gas
3 station?" --or whatever? Before I could reply,
4 he said, "If I find out you've got in an robbery
5 B.S., I'm going to F you up and it will be a
6 real blood bath between us." He told me to
7 apologize to Officer Craven for some other
8 matters that happened, closed the door. They
9 found -- in the car -- my father called Minor
10 and Minor surrendered, probably like -- I'd say
11 ten minutes after that. And they put me and
12 Minor in the same patrol car. So we're in the
13 patrol car probably for about an hour and a half
14 if not two hours while they're searching the
15 area or whatever, looking around, or whatever.

16 In the patrol car, me and him, you know,
17 got into the details a little bit about what
18 happened. He let me know he had -- him and my
19 cousin, Tamasha parked in the tunnel or
20 whatever, thinking nobody could see them, or
21 whatever, dropped Tasasha off. And Adam and
22 Tamasha are from Adams Run too. He's from Adams
23 Run. He thought nobody could see him. My
24 father told me, "Tell him don't worry about it.
25 I've got you," or whatever. He said, "All

1 right."

2 So Detective Lawrence, he comes to the
3 scene, separate us. I get in the car with him
4 and I'm not sure but Minor left with one of
5 them. Me and him are riding off from
6 Jacksonboro. He said is was small talk, you
7 know, 'how old you is, you in school. I've got
8 a son seventeen too. I'd hate to see him in
9 jail for the holidays or whatever. You know, if
10 you cooperate and let me know what happened, I
11 can talk to the judge and make sure you get a
12 low bond so you'll be out before the holidays
13 and spend the holidays with your family.
14 Today's the 20th. Christmas is the 25th.
15 Christmas is coming up.'

16 So I'm taking this into consideration.
17 We're riding up there to the -- I don't know
18 what you call it, but wherever they keep talking
19 about Pinehaven or whatever. We get up there.
20 He's got me cuffed to the table, one arm like
21 this. I've got the pen in this hand or
22 whatever. And he go, like, "Are you going to
23 tell me what happened," or whatever? So I'm
24 considering it. He's like, "We've been in here
25 for an hour and a half," am I going to walk

1 straight in there and tell them -- just write
2 out a statement of what happened? That wasn't
3 going to take no hour and a half. That would
4 take like ten or twenty minutes. Something to
5 consider, you know, thinking about it. Still
6 handcuffed to the chair for an hour and a half
7 or two hours.

8 So, finally, I'm like, "all right, I'll
9 tell you what happened," or whatever. I make up
10 a story in my head. Minor tell me about the
11 car wash. Because I'm like, when you read in
12 the statement, you've seen the statement. I say
13 I was parked -- that I dropped them off by the
14 car wash. Then answering the question I said in
15 the tunnel, and I pick them up in the tunnel.
16 That's two different places.

17 Q. Let me pause you right there. Tell the
18 jury what you mean by "tunnel."

19 A. All right, you know the car wash? You
20 remember the picture of it -- I don't know if
21 you'all could tell or whatever, but there was
22 sections, like, you know, one car, two car,
23 three car, four cars or whatever. And they call
24 them bands (sic), bands inside the tunnel or
25 whatever. That way he say he thought nobody

1 could see them or whatever. So that's what I
2 said I dropped them off by the car wash. Then
3 when he asked me questions I changed it up to
4 inside the tunnel or whatever.

5 All right. I tell him I got \$95 from him
6 and I hid the money in my pants, at home in the
7 red Monkey pants. Some of the designers, you
8 know name brands. You know the brands of jeans.
9 If you know the brand of the jeans, it's going
10 to stand out when you go in the house. If you
11 don't believe it to start with, you can go and
12 get the search warrant and look for the pants in
13 the house. The money's in the pants. The
14 money's in the house. I ain't even sure if
15 there's \$95. I'm know that I had money in the
16 pants in the house but I didn't know what money
17 it was or whatever.

18 I tell him -- the Charles Green part. His
19 first name's Charles. My other last name, like,
20 you know, we call me Marvin Lamar Bowens. But
21 I've another last name is Green. So that's
22 where the Green part come from, Charles Green,
23 or whatever, just to make up a character real
24 quick.

25 I said I hid the money or whatever, and I

1 took Minor to get me to buy a phone card. How
2 I'm going to buy a phone card if I hide the
3 money. And when they get me I didn't have no
4 money in my pockets. They find the money in the
5 rear of the van. Minor was sitting in the rear
6 in the van. The money -- the seat -- in the
7 picture the seat is reclined back all the way.
8 So you could tell somebody was occupying the
9 seat just a few minutes, you know, before
10 everything happened.

11 So, I mean, besides the inconsistencies of
12 the story and for you knowing it's not true,
13 when he went and searched for the Charles Green
14 character or whatever, he come back and he say,
15 "Well, I can't find Charles Green. He don't
16 exist. And the other problem is the story don't
17 make sense." I said, "Well, that's how it
18 happened." And he goes, "Well, all right,
19 that's how you say it. That's how I'm going to
20 do it." So he tells me he didn't believe the
21 story.

22 Later on, my father testified, I guess, on
23 his own behalf -- he tells my father he didn't
24 believe my father -- he tells my father he
25 didn't believe the story either I told him or

1 whatever.

2 You know, we're in a room or whatever.

3 Before all this happened -- I forgot -- I've got
4 to go back. Before all this happened, like, you
5 know, "I'm can make sure you get a low bond,
6 help you with the charges or whatever and
7 probably make the charges go away since I'm
8 young or whatever."

9 I remember the 90-day shock program. So
10 that's -- you're talking about 90-day shock or
11 whatever. Yeah, I could do ninety days for my
12 little brother. I love my little brother. I'll
13 do ninety days for my little brother or
14 whatever. I'll do that. So that's why I went
15 ahead and just signed or whatever.

16 So we get to the jail. I think it's two
17 days, I think, before you get to the unit or
18 whatever. I called my father after I found out
19 he told my father he didn't believe my story. I
20 called my father and my father told me Detective
21 Lawrence told him he didn't believe my story.
22 But they was coming to get me Friday or
23 whatever. If I'm not mistaken it should have
24 been Friday they were coming to get me. But
25 then I get another warrant or whatever on some

1 other matters or whatever.

2 I mean, it was a case of -- he knew it was
3 a lie. I knew it was lie. I told a lie. I
4 mean, my witnesses will come in tomorrow and
5 tell you too what really happened. I mean,
6 everything is inconsistent. The money, I said
7 twenty -- seventeen, -- ten for a phone card and
8 eight for gas. It was for gas and a phone card.
9 I made an educated guess about how much money I
10 see my brother holding in the back seat. I know
11 I see a ten dollar bill in his hand. I said
12 eight was for gas and ten was phone card or
13 whatever. They said they found twenty-six
14 dollars and ten cents or whatever. I said I got
15 ninety-five dollars. They said three hundred
16 dollars was taken out of the store or whatever.
17 You didn't recover none of this off me or
18 whatever. They're saying -- what do they say?
19 Q. I'm going to pause you there, okay, because
20 now we're getting off what you did or didn't do.

21 A. All right.

22 Q. Let me kind of go back and just ask two
23 questions.

24 A. All right.

25 Q. The statement you gave to Detective

1 Lawrence, tell this jury, is that a valid
2 statement or not?

3 A. No, sir.

4 Q. Were you involved in this robbery?

5 A. No, sir.

6 MR. DAVIS: Judge, if I can have just
7 a moment.

8 THE COURT: Certainly, take your
9 time.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. DAVIS:

12 Q. One final thing, Marvin.

13 A. Yes, sir.

14 Q. Why, then, did you tell Detective Lawrence
15 that statement?

16 A. Like he said, me and my father had a brief
17 conversation at the car or whatever, you know.
18 And he told me the statement about there's going
19 to be a real blood bath and I'd better get Minor
20 out or whatever. Me and my father, we'd done
21 had another altercation. We fought, shot at me
22 on one occasion and I got -- I turned my back
23 and he took a two-by-four out on us. So when my
24 father say something, I know he means business.
25 Like I say, Minor s my little brother, and I love

1 my little brother. And I'm handcuffed to the
2 chair or whatever. I figure I must not be going
3 anywhere until I tell him what he wants to hear.
4 So why not tell him what he wants to hear? He
5 ain't asked me to swear and tell the truth. He
6 said, "What happened?" I gave him the
7 statement.

8 Q. Just one second. Marvin, thank you so
9 much. I don't have any other questions right
10 now. The State may have some questions for you.

11 A. Yes, sir.

12 THE COURT: You may cross examine.

13 SOLICITOR SAHN: Thank you, Your
14 Honor. May be approach briefly?

15 THE COURT: Sure.

16 (OFF RECORD BENCH CONFERENCE)

17 CROSS EXAMINATION

18 BY SOLICITOR SAHN:

19 Q. Mr. Bowens?

20 A. Yes, sir.

21 Q. Before I begin my cross examination I just
22 want to see if you agree with me about some-
23 thing, okay?

24 A. Yes, sir.

25 Q. About how we're going to do this, okay? My

1 job is to ask you a question or a series of
2 questions, and I'm going to try to be as clear
3 as I can.

4 A. Yes, sir.

5 Q. I just ask you to answer that question that
6 I ask you, Okay?

7 A. Yes, sir.

8 Q. If I don't ask a question as clearly as I
9 can or if you don't understand it, just tell me
10 that and ask if I can rephrase it and I'll be
11 glad to try to do that for you.

12 A. Okay.

13 Q. Can we agree on that?

14 A. Okay.

15 Q. Thank you, sir. All right. You just
16 testified you're nineteen, right?

17 A. Yes, sir.

18 Q. You were seventeen and a half back during
19 this armed robbery?

20 A. Yes, sir.

21 Q. And you weren't in school at that time?

22 A. No, sir.

23 Q. And why was that?

24 A. I got expelled for fighting.

25 Q. Okay. And how long had you been out of

1 school?

2 A. I think I got expelled a year prior.

3 Q. So were you working at this time?

4 A. Not at the time of the robbery, but I had a
5 job a couple of months before then.

6 Q. You just "the other robbery?"

7 A. Excuse me?

8 THE COURT: He said "the other
9 robbery."

10 THE WITNESS: I said "at the time
11 of the robbery."

12 CROSS EXAMINATION CONTINUED

13 BY SOLICITOR SAHN:

14 Q. So where were you working before?

15 A. Church's Chicken.

16 Q. Church's Chicken. Okay. And what happened
17 with that job?

18 A. I quit.

19 Q. So you weren't in school and you weren't
20 working, correct?

21 A. No, sir.

22 Q. Where did you go to school previously?

23 A. Colleton Middle.

24 Q. And you knew how to -- you learned to read
25 in school?

1 A. Yes, sir.

2 Q. And you learned to write?

3 A. Yes, sir.

4 Q. And I've spoken with you yesterday, and
5 I've heard you testify today. And you seem like
6 a pretty smart guy. Is that right?

7 A. Yes, sir.

8 Q. You're pretty savvy, I can tell.

9 A. Savvy? As in ---

10 Q. As in you know what's going on.

11 A. Yes, sir.

12 Q. You're know what's going on today in this
13 courtroom.

14 A. Yes, sir.

15 Q. You know why you're here.

16 A. Yes, sir.

17 Q. You know who I am and what my job is.

18 A. Yes, sir.

19 Q. You know what your attorney's job is?

20 A. Yes, sir.

21 Q. You know what this jury's job is.

22 A. Yes, sir.

23 Q. You know you're on trial for armed robbery.

24 A. Yes, sir.

25 Q. For the event of 12/20/08 at the Road

1 Runner.

2 A. Yes, sir.

3 Q. And you did write a statement about what
4 happened on that day and your involvement in
5 that robbery. Is that correct?

6 A. No, sir.

7 Q. You did write a statement about ---

8 A. I wrote a statement about a robbery, but
9 not my involvement. Because it wasn't my
10 involvement.

11 Q. You didn't write a statement about your
12 involvement?

13 A. I wrote a statement about a robbery and
14 some involvements, but not my involvement.

15 SOLICITOR SAHN: May I approach,
16 Judge?

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION CONTINUED

19 BY SOLICITOR SAHN:

20 Q. Mr. Bowens, I'm handing you State's Exhibit
21 37. Take a look at that.

22 A. (Review).

23 Q. You've seen that before?

24 A. Yes, sir.

25 Q. Is that the statement you wrote out about

1 an armed robbery that happened in the Road
2 Runner?

3 A. Yes, sir.

4 Q. And is that your handwriting where it
5 starts, "My friend, Charles Green?"

6 A. Yes, sir.

7 Q. So you wrote that?

8 A. Yes, sir.

9 Q. But now you're saying that it's not true.
10 Is that what you're trying to say today?

11 A. Yes, sir.

12 Q. And in this statement you tell Detective
13 Lawrence that you drove a Charles Green to the
14 RoadRunner convenience store. Is that right?

15 A. Yes, sir.

16 Q. Okay. And you told him that you pulled
17 behind the car wash that's located behind that
18 RoadRunner.

19 A. No, sir.

20 Q. You did not?

21 A. Nowhere in my statement does it say that I
22 pulled up behind the car wash.

23 Q. Can I get you to -- well, it says you
24 dropped him off by the car wash. I apologize.

25 A. Yes, sir.

1 Q. By the car wash. And then you go on to say
2 that he got out. Is that correct? It's right
3 after the car wash part.

4 A. Yes, sir.

5 Q. And he went to rob it?

6 A. Yes, sir.

7 Q. And "I waited", is that right?

8 A. Yes, sir.

9 Q. He robbed it.

10 A. He ran back.

11 Q. Yes, he robbed. He ran back.

12 A. Yes, sir.

13 Q. To the van, and we left.

14 A. Yes, sir.

15 Q. You then say we went back to Adams Run.

16 A. Yes, sir.

17 Q. And dropped him off?

18 A. Yes, sir.

19 Q. Now, if you'll please turn to the second
20 page.

21 A. (Complies)

22 Q. Question there is describe the gun that
23 Charles had. It's the second question on that
24 page.

25 A. I see it.

1 Q. And what was your answer to that question?

2 A. I see a shotgun, but I didn't really see it
3 all.

4 SOLICITOR SAHN: May I approach?

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION CONTINUED

7 BY SOLICITOR SAHN:

8 Q. This is State's 21. Have you seen this
9 before?

10 A. I've seen it before.

11 Q. Okay. This was found in the van that you
12 were driving on December 20th. Is that right?

13 A. Yes, sir.

14 Q. I'm going to try to go back a little bit
15 and try to understand what you were telling Mr.
16 Davis earlier about what happened that day.

17 A. All right.

18 Q. So on December 20th, you were at your
19 father's house?

20 A. Yes, sir.

21 Q. What time was it?

22 A. I can't be sure.

23 Q. Approximately?

24 A. What time I woke or what time I was at the
25 house? I lived there.

1 Q. Right. What time did you wake up that
2 morning?

3 A. I didn't see a clock.

4 Q. Was it still dark out?

5 A. No, the sun was up.

6 Q. And where did you go?

7 A. Took my brother, Minor to Jacksonboro.

8 Q. Is that Minor

9 A. Yes, sir. Minor yeah, Junior.

10 Q. Junior. And you went to the RoadRunner?

11 A. No, sir.

12 Q. Where did you go?

13 A. It's Sunoco now, but back then it was
14 Exxon.

15 Q. Okay, and y'all were smoking weed,
16 marijuana?

17 A. Yes, sir.

18 Q. Marijuana cigarettes?

19 A. Marijuana/Blunts.

20 Q. Blunts, cigars?

21 A. Yes, sir.

22 Q. Who was driving?

23 A. Me.

24 Q. Okay.

25 SOLICITOR SAHN: May I approach?

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION CONTINUED

3 BY SOLICITOR SAHN:

4 Q. This is an orange shirt that's State's
5 Exhibit 20. Have you seen that before?

6 A. Yes, sir.

7 Q. What is that?

8 A. An orange shirt.

9 Q. Whose is it?

10 A. Mine.

11 Q. It's yours? You were wearing this that day
12 that you were driving, December 20th, right?

13 A. Yes, sir.

14 Q. You were wearing that shirt when you left
15 your dad's house?

16 A. Yes, sir.

17 Q. And you were wearing that shirt when you
18 got pulled over by Officer Craven?

19 A. Yes, sir.

20 Q. You had it on the whole time, right?

21 A. The whole time as in ---

22 Q. Between when you left your house with the
23 shirt, driving around, smoking marijuana and
24 then getting pulled over by Deputy Craven?

25 A. Yes, sir.

1 Q. Let's talk about when Deputy Craven pulled
2 you over that morning. Who was in there? You
3 were driving?

4 A. Yes, sir.

5 Q. Who was in the passenger's seat?

6 A. Minor wasn't in the passenger. He was in
7 the rear cabin.

8 Q. Was anybody in the passenger's seat?

9 A. No, sir.

10 Q. Who was in the car?

11 A. In the police car?

12 Q. No, in your van.

13 A. Me and Minor

14 Q. And that was that brown and beige van?

15 A. The one in the photos.

16 Q. Right. And when you got pulled over what
17 did Minor do?

18 A. He was in the van until I got detained.

19 Q. Then what did he do?

20 A. Ran.

21 Q. You didn't run.

22 A. No, sir.

23 Q. Is that because the deputy had a shotgun
24 pointed at you?

25 A. I mean, Minor ran with the shotgun right

1 there. I mean, I didn't run because I didn't
2 have no reason to run.

3 Q. Okay. Did Deputy Craven ask you where you
4 were driving from?

5 A. Deputy Craven asked me -- asked me -- the
6 first thing he asked me was who was that that
7 ran out of the van.

8 Q. After that he asked you where you were
9 coming from, didn't he?

10 A. I ain't sure. I mean, why would he ask me
11 where I'm coming from if he had a be-on-the-
12 lookout.

13 THE COURT: No, sir. You don't ask
14 questions. You answer the question if you know
15 the answer to it.

16 THE WITNESS: I'm sorry, Your Honor.
17 No, sir.

18 CROSS EXAMINATION CONTINUED

19 BY SOLICITOR SAHN:

20 Q. Just to make sure, Deputy Craven did not
21 say to you, is that what you're saying, 'Where
22 are you coming from?'

23 A. He might have, but I can't recall.

24 Q. And did you not respond, "Fuck you. Take
25 me to jail?"

1 A. Yes, that was my response.

2 Q. It was your response? You said on direct
3 that you apologized to Deputy Craven.

4 A. Yes, sir.

5 Q. What did you apologize to him about?

6 A. My father made me apologize to him for
7 telling him the "F you" part.

8 Q. So you testified that Deputy Lawrence drove
9 you to the Sheriff's Office?

10 A. Yes, sir.

11 Q. And that's when you wrote out this
12 statement?

13 A. Yes, sir.

14 Q. And you want the jury to believe that this
15 statement you wrote is not true?

16 A. Do I want them to believe it ain't true?

17 Q. Yes.

18 A. I mean, it ain't true. Whether they
19 believe it ain't true, that's up to them.

20 Q. You want the jury to believe that you wrote
21 a statement detailing your role in the robbery
22 and what you did that is not true?

23 A. Exactly.

24 Q. Just so we're clear on that. On December
25 20th, you were driving a brown and beige van,

1 correct?

2 A. Yes, sir.

3 Q. And you were driving in the Ravenel area as
4 well as Jacksonboro?

5 A. Excuse me?

6 Q. Were you driving in the Ravenel area?

7 A. I was driving in the Adams Run area to
8 Jacksonboro.

9 SOLICITOR SAHN: The Court's
10 indulgence.

11 THE COURT: Certainly.

12 CROSS EXAMINATION CONTINUED

13 BY SOLICITOR SAHN:

14 Q. Just a couple more questions, Mr. Bowens.

15 A. Yes, sir.

16 Q. When you were with Detective Lawrence, he
17 was nice to you the whole time, wasn't he?

18 A. Yes.

19 Q. He never threatened you, did he?

20 A. No.

21 Q. And he never promised you anything, hope or
22 reward, in return for your statement.

23 A. Yes, he did.

24 Q. Mr. Bowens, you want us to believe that you
25 thought by telling Detective Lawrence a false

1 story about your involvement in an armed robbery
2 that that would help you?

3 A. Yes.

4 Q. That's what you want this jury to believe?

5 A. I mean that I thought it would help me?

6 How do you mean "help me"?

7 Q. I don't answer questions. I'm asking you
8 the question.

9 THE COURT: No, sir. You're asking a
10 question.

11 THE WITNESS: I mean, Your Honor, can I
12 ask him to rephrase the question?

13 THE COURT: Ask him to rephrase the
14 question.

15 THE WITNESS: Rephrase the question,
16 please.

17 CROSS EXAMINATION CONTINUED

18 BY SOLICITOR SAHN:

19 Q. You want this jury to believe that as smart
20 a guy as you are, you thought it was a good idea
21 to tell the detective investigating you for
22 armed robbery that you did it in the hopes that
23 that would help you?

24 A. Not really me, per se. But help me with my
25 bond and getting my little brother out.

1 Q. Thank you, Mr. Bowens.

2 THE COURT: Redirect, Mr. Davis?

3 MR. DAVIS: Just a moment, Your
4 Honor. No other questions of this witness, Your
5 Honor.

6 THE COURT: Thank you very much. You
7 may come down.

8 THE WITNESS: Thank you, Your Honor.

9 (WITNESS STEPS DOWN)

10 THE COURT: At this point -- you can
11 just leave that right there. Thank you very
12 much.

13 At this point, ladies and gentlemen,
14 we're going to recess for the evening. There
15 are some matters that I need to take care of,
16 and we would not finish this case today anyway.

17 So I'm going to ask that in the course
18 of while you're away that you not discuss this
19 case with anyone. And now the night, you have
20 heard some testimony, it's very important that
21 you not discuss it with anyone outside,
22 including anyone that may be at home tonight.

23 Have a good evening. We'll finish this
24 case tomorrow, as I indicated to you. We'll
25 finish on Friday, and you'll get the case

1 probably sometime about midday or maybe earlier.

2 So please don't speculate, don't do any

3 independent investigation. Have a great

4 evening, and I'll see you -- if you'll return to

5 your jury room at 9:30 in the morning. Thank

6 you very much.

7 (JURY OUT AT 4:25 P.M.)

8 THE COURT: Anything from the State

9 before we recess?

10 SOLICITOR SAHN: No, Your Honor.

11 THE COURT: Anything from the

12 defendant?

13 MR. DAVIS: No, sir.

14 THE COURT: I will see you in the

15 morning. Let's be here about 9:15.

16 (COURT IN RECESS)

17 (TRANSCRIPT CONTINUED NEXT PAGE)

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25

1 JUNE 24, 2011

9:30 A.M.

2

3

(DEFENDANT PRESENT)

4

5

DEFENDANT: Can I put something on
the record?

6

7

8

9

10

THE COURT: Let the record reflect
that Mr. Bowens is present. He's indicated to
me he wants to place something on the record.
Before I hear from him, Mr. Davis, you're his
attorney, what ---

11

12

13

MR. DAVIS: I'm unaware, Judge. He
just raised his hand and got your attention. If
I could have a moment with him.

14

15

16

THE COURT: Yeah. I'd be happy, but
he can only put it on -- as I say, I don't know
what he's putting on the record.

17

(COUNSEL DAVIS SIDEBAR WITH DEFENDANT)

18

19

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25

MR. DAVIS: Thank you, Your Honor.

THE COURT: Yes, sir, Mr. Davis.

MR. DAVIS: Yes, sir. I'm looking at
a note here and I can tell you it does begin
with an issue about continued representation.

Judge, -- (pause) -- this will deal
with confidentiality issues.

THE COURT: You've explained to him,

1 meaning that he's about to disclose something
2 that he shared with you in confidence or that
3 you shared with him in confidence?

4 MR. DAVIS: Well, to address an
5 accusation he makes in here, I would have to.

6 THE COURT: All right. That's fine.
7 You understand, Mr. Bowens, before you make your
8 statement ---

9 DEFENDANT: (Stands up at counsel
10 table)

11 THE COURT: You don't have to stand
12 up. I appreciate your standing up. Your lawyer
13 has to stand up, because he's an officer of the
14 Court. I don't think you're a lawyer, are you?

15 THE DEFENDANT: No, sir.

16 THE COURT: You can stand if you
17 want, but you don't have to stand if you don't
18 want to. That's fine with me. What your
19 lawyer's said -- your lawyer has rules that
20 affect, him and everybody else that's a lawyer
21 in this court room. And one of the things it
22 talks about is that we have a duty, of course --
23 and I know your lawyer has shared that with you
24 -- to have and observe strict confidentiality in
25 any representation made by a client to a lawyer.

1 And there are only limited circumstances where
2 the Rules allow or permit a lawyer -- in fact,
3 not only permit, but say they have to do that.
4 And one of the things would be if there's a
5 crime that they know is about to be committed.
6 The other would be if there's a fraud that's
7 about to be committed. "Fraud" meaning that
8 there's some misrepresentation. Then they are
9 compelled to make a statement which may be
10 contrary and may require disclosure of
11 confidentiality.

12 As long as you understand that your
13 lawyer now will have to -- if any of those
14 things apply -- and there may be some others. I
15 haven't looked at the rules *in toto*. Nor have I
16 been a lawyer for the last seventeen years.

17 But I want you to be aware of that
18 potentiality when you make your statement.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you fully appreciate
23 that? You're nineteen?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. You still want to

1 make your statement?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Very well.

4 THE DEFENDANT: The only thing is I
5 ask you to hear me all the way out before, and
6 that you can understand before you cut me off.
7 And then you give me your opinion on it or
8 whatever.

9 THE COURT: I'll control this, Mr.
10 Bowens. With all due respect, sir, I'm going to
11 give you an opportunity to speak. But if at
12 some point I find that speaking to be contrary
13 to the rules of this Court, I'll cut you off in
14 a second.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: That's my responsibility
19 to be in control of this courtroom, not yours.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Thank you,
22 sir.

23 THE DEFENDANT: I wrote it down.

24 THE COURT: Just go ahead and make
25 your statement.

1 THE DEFENDANT: I no longer feel
2 that my lawyer has my best interests at heart.
3 From day one of this trial, and the court
4 officers will agree, we were cursing each other
5 back and forth under the -- over the table.
6 This started a couple of months ago at the jail.

7 He was going to come up here and
8 basically lie -- remember yesterday, Your Honor,
9 I said I wanted to go back to my original
10 strategy? My strategy was, Your Honor, I was
11 not there. My witnesses -- my alibi witnesses
12 will confirm I wasn't there during the robbery.
13 My co-defendant will tell you all I wasn't there
14 during the robbery.

15 Julie Frazier said it was a dark-
16 skinned male. I wanted him to ask her does she
17 consider me dark-skinned? He wouldn't ask her.

18 Yesterday, when you asked me if I
19 wanted to testify, my witnesses wasn't even
20 here, Your Honor. That's why he said he wasn't
21 prepared. I wanted my witnesses to testify
22 before me, and he said if I didn't go he would
23 have to testify on my behalf. But he wasn't
24 convinced of what I'm trying to convince him to
25 do.

1 He wanted me to come change my story to
2 say I was the driver of the van, that I didn't
3 know what was going on. I drove up there and
4 afterwards, when the robbery happened, then I
5 knew what was going on. So I'm an accessory
6 after-the-fact.

7 He kind of helped me, gave me ideas of what
8 to say. Then when we went to -- I guess on the
9 recess break, when you went in there and you
10 gave me an opportunity to speak to my father,
11 before we had come back in here, he told me, he
12 said my father agreed with him on what I should
13 do. And he walked out, and everyone was present
14 -- he walked out and came back with his
15 investigator. His investigator came in there
16 and confirmed that's what my father said. But
17 then you gave me -- we came back in and you gave
18 me an opportunity to speak with my father. And
19 when I went back to speak with my father, I
20 asked my father what he thinks I should do. My
21 father told me, say, "Tell the truth. Ain't
22 nothing wrong with telling the truth." And I
23 told him, I said, my lawyer says you agree with
24 him. My father said he didn't say nothing like
25 that. They tricked him into coming down here,

1 whatever, he wasn't even called to come forward
2 as a witness, and neither my two brothers, Your
3 Honor.

4 THE COURT: Okay. Anything else?

5 THE DEFENDANT: I just want to --
6 before you even -- before you say anything or
7 whatever, I just want you to know personally
8 you've treated me with the most respect in here.
9 You never said I was guilty of anything. You
10 treat me fair and equally, and thank you for
11 giving me this opportunity.

12 THE COURT: All right. Yes, sir.
13 You made your statement. What is you want me to
14 do?

15 THE DEFENDANT: I would like to --
16 I mean, I don't know if it is possible or not to
17 like reschedule the trial date.

18 THE COURT: No, sir, that's not
19 possible.

20 THE DEFENDANT: Well, I just wanted
21 it to be on the record in case I have to come
22 back on appeal.

23 THE COURT: Okay.

24 THE DEFENDANT: Thank you.

25 THE COURT: Thank you, sir. Mr.

1 Davis, I've heard a statement. Now do you wish
2 to respond? There were certain assertions
3 attributed to you about attempts to perpetrate a
4 fraud, which obviously requires you to respond.

5 MR. DAVIS: Judge, I haven't, in my
6 fifteen years of practicing law -- Judge, could
7 I have a moment?

8 THE COURT: Yes, sir. Let me go
9 ahead and make a statement for Mr. Bowens.

10 Mr. Bowens, you know what? You are --
11 I appreciate your remarks. The statement I made
12 when I was ruling on your statements in the
13 *Jackson v. Denno* hearing have been further
14 confirmed by what's taken place in this trial.
15 The one thing that I've learned in my life, and
16 certainly learned as a lawyer, is -- and this is
17 not new. I hear this line and heard this line
18 for the last almost thirty-eight years. The
19 problem when you start telling stories, which
20 one is the truth?

21 DEFENDANT: I ---

22 THE COURT: You and I are not going
23 to have a little exchange. No, sir. My turn.

24 You have made some strong assertions
25 here that Mr. Davis has asked you to do

1 something which is a lie, but yet -- and your
2 explanation for it was "I was not under oath
3 when I told" or "he didn't put me under oath and
4 therefore I was free to do whatever I wanted to
5 say to him." You lied to the police officer,
6 right?

7 THE DEFENDANT: Uh, --

8 THE COURT: Based on your testimony,
9 you lied to the police officer.

10 DEFENDANT: Yes, sir.

11 THE COURT: And you want me to
12 believe you?

13 THE DEFENDANT: You're talking about
14 my statement?

15 THE COURT: Yes.

16 THE DEFENDANT: Yes, the statement
17 was a lie.

18 THE COURT: That's right. So you
19 want me to believe you now?

20 THE DEFENDANT: Yes, sir. That's
21 all I'm saying, Your Honor, is the *Jackson v.*
22 *Denno*, all that, was my -- that was me or
23 whatever. The next day, the next morning,
24 that's when he came and he said he would see if
25 he could get Mr. Sahn and Mr. Rutledge to agree

1 to accessory after-the-fact. And I told him, I
2 say, I don't want to agree to accessory after
3 the fact. I want all the time or no time.
4 They're going to believe my story, which he'll
5 confirm, that they believed my story.

6 THE COURT: We're going to find that
7 out today.

8 THE DEFENDANT: They'll believe my
9 story.

10 THE COURT: You'll get your wish --
11 one or the other.

12 THE DEFENDANT: Okay. Thank you.

13 THE COURT: Okay. One or the other.
14 Mr. Davis?

15 MR. DAVIS: Thank you, Judge. Judge,
16 we discussed three different strategies during
17 the course of me handling this case. It's a
18 case from December 2008.

19 Certainly, I've always told my client
20 he has the right to say nothing. To sit in the
21 chair and not say anything, and we just fight
22 the State's case.

23 He had his theory of the case which he
24 returned to consistently, although we discussed
25 others, which is basically what he testified to

1 yesterday.

2 In advocating for him in our
3 discussions, I have warned him all along that we
4 should not go to trial. I was concerned about
5 the outcome of this trial. As you well know, he
6 has two other pending armed robberies in this
7 county and one in Colleton as well. I know very
8 little about the Colleton County case. We're
9 only dealing with this case.

10 THE COURT: Correct.

11 MR. DAVIS: I was not confident about
12 success in this case on its own. We got it
13 severed, which was our best chance, I thought.
14 But I still had serious concerns about this case
15 knowing what his testimony was going to be.

16 We pursued other defenses as well.
17 Yes, we discussed thoroughly accessory after the
18 fact, because I thought the weakest part of the
19 State's case was the knowledge between parties.

20 The State did not intend to call his
21 brother, therefore only circumstantially could
22 they prove any premeditation on behalf of my
23 client, even if they could prove he was present
24 in the van. We discussed that.

25 I have not and I will not tell someone

1 to lie. I will not feed a story to a client. I
2 will question them about what they've said.
3 I'll question them about other theories of the
4 case. That's my job. I don't know what
5 happened. I will question them about that.

6 THE COURT: I understand.

7 MR. DAVIS: Yesterday, Judge, or at
8 the beginning of the trial, Your Honor, I
9 understood and Ms. Ford, who has assisted us,
10 understood that the theory of the case would be
11 for accessory after, unlikely to get the lesser-
12 included, although we'll get some case law at
13 the appropriate time. But we knew it was, I
14 believe, the entire chain of *Gooding Marcus*
15 decision, that we would pursue that angle of
16 defense.

17 He questioned about the hearing on the
18 statement. I said, "It's fine." We can have
19 that hearing and then decide. We don't have to
20 decide until the State's done, but I'd like to
21 know going into opening, and how to explain this
22 is what we're going to do.

23 After the ruling on his statement, the
24 in-camera ruling, we discussed again. It was my
25 clear understanding we were going with the

1 accessory after-the-fact defense, not guilty of
2 an armed robbery.

3 I'll ask the State to help me -- the
4 witness before Detective Lawrence was ---

5 SOLICITOR SAHN: Jim Milz, crime
6 scene.

7 MR. DAVIS: When Detective Milz, the
8 next-to-the-last witness was testifying, my
9 client indicated to me, it was just right after
10 lunch, that he -- I'm sorry, I think it was his
11 testimony. During that testimony, almost the
12 end of the trial, he wanted to return to his
13 most consistent defense, the one I was least in
14 favor of, and testify. I had not prepared for
15 that, didn't have his brother here, who is here
16 now. He was brought down from Greenville and
17 had been here all week, but he's not in the
18 building.

19 THE COURT: I understand.

20 MR. DAVIS: His father was here, but
21 his other brother was not because that was the
22 defense I was presenting.

23 THE COURT: I understand.

24 MR. DAVIS: So I did tell him before
25 he testified, "They're not here." But during

1 Detective Lawrence's testimony, he pounds the
2 table where he's written down -- and we can find
3 it in his notes -- "let's go back with the
4 accessory defense."

5 I'm being bounced back and forth here,
6 Judge. Ultimately we took a break, and I
7 appreciate the time to talk to him. We came
8 back in and he answered your colloquy on whether
9 he wanted to testify or not. During that whole
10 process it was accessory after-the-fact defense.
11 Only after we were starting -- about five
12 minutes before starting that he even tells me,
13 'nope, back to what I did testify to.'

14 And, Judge, that's where I was put in
15 the position. We had a brief conversation in
16 chambers. He came back -- we came back out and
17 he testified.

18 Before he spoke to his father -- I was
19 in there -- I told him, "I don't know what
20 you're going to testify to, but if we don't win,
21 you need to have told the truth. Because if
22 they don't believe you, that is certainly a
23 factor that any sentencing court can factor in."
24 Then I stepped out and left them alone. I don't
25 know what their discussion was. If his father

1 told him to tell the truth, that'd be great. I
2 don't know what that discussion was. But the
3 last thing I told him was simply that. "Don't
4 lie. I don't know if we're going to win or
5 loose. But if the jury believes you lied, and
6 if the Court does, that's a factor they can
7 consider."

8 I researched my obligations to my
9 client and to the Court last night. It was late
10 last night, after hours, that I e-mailed Captain
11 McKinney who is the Solicitor's scheduler, for
12 lack of a better term. Thankfully, and I want
13 to commend him as at some point, either last
14 night or this morning, he got the e-mails about
15 bringing Minor the younger brother --
16 he is present. I have seen him this morning.
17 He is here. I know his proposed testimony. My
18 client's father and other brother are in the
19 hallway. We have got them here today.

20 I did tell him before he testified
21 yesterday, "I don't know what my obligations
22 are. I don't know that I can call them. If I
23 can, I will."

24 I will take this opportunity to put on
25 the record that I am presenting his defense in

1 full. And it's not that I disbelieve it. I
2 don't know. I don't believe it's the best
3 defense. But in discussing with Ashley
4 Pennington, my boss, and doing research on my
5 obligations, I am not presenting something that
6 I know to be false. But I'm presenting the
7 defense that I've always suggested was not a
8 successful one.

9 THE COURT: All right.

10 MR. DAVIS: But to give my client his
11 full defense, I will put those witnesses on. I
12 know what they'll testify to, I believe, and am
13 prepared to go forward today with that.

14 THE COURT: Very well. Thank you,
15 sir.

16 All right. Mr. Bowens, based on your
17 statement to me earlier -- and that's what,
18 unfortunately, not being a lawyer, -- sir,
19 you're obviously an intelligent young man. And
20 with that intelligence, you're capable of
21 discerning certain things about this process.

22 DEFENDANT: Yes, sir.

23 THE COURT: And, obviously, I
24 commend you for your attention to that.

25 But just -- and not just this

1 profession, but every profession -- I always --
2 when I explain it, I have a dear friend of mine
3 that was an electrician and became involved with
4 a power company and basically was over that
5 department. But he primarily started as an
6 electrician. Years ago, I remodeled an old
7 house, and we were trying to save money. And so
8 I asked my friend if he thought he and I could
9 wire the house. I don't know a thing in the
10 world about electricity. He said, "Sure, if
11 you're willing to work a little bit." And I
12 said, "Well, I'm willing to work." So every day
13 after work for about four hours at night, that's
14 what we did. And he taught me a lot. But you
15 know something? I can wire it. I can connect
16 just about every fixture that you've got in your
17 house. I can pull the wires to it. I can even
18 -- I can even wire where you have three-way
19 switches. You've got to run some leads. You've
20 got to have -- one switch becomes the hot one
21 and it's not always the black. But you know
22 something? I'd never do it. You know why?
23 Because I don't understand all about it. And I
24 don't understand what you -- how much you can
25 put in one little area. And that's why I have

1 an electrician.

2 It's the subtleties that get you. And
3 that's true of this profession too. I practiced
4 law for twenty-one years. When you tell me you
5 and your lawyer had some heated discussions, I
6 couldn't help but think -- great day, I couldn't
7 count on both hands and feet how many times I
8 had heated discussions with my clients. And my
9 explanation for that was always -- and most of
10 the time it seemed to resolve the problem. You
11 don't want a "yes" person as a lawyer. That's
12 the last thing in the world you want, is
13 somebody that says "yeah" -- basically a
14 cheerleader. "You go, man. I'm behind you a
15 hundred percent."

16 You want somebody to do just like this
17 man is doing, to tell you what he honestly
18 feels.

19 Mr. Davis, I know you and I have tried
20 cases for a number of years. How long have you
21 been a lawyer?

22 MR. DAVIS: Sixteen years -- it'll be
23 sixteen this fall.

24 THE COURT: You know, when you've
25 done it that long, you learn a lot. And you

1 learn a lot, just like you've learned more than
2 you -- you've probably learned more in the last
3 six years than you learned in the first six
4 years of your life. Do you agree with me?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Just by living life. I'm
7 not talking about school. I'm just talking
8 about living.

9 THE DEFENDANT: Life in general.

10 THE COURT: Life in general, exactly.

11 And that's true about the practice of law. You
12 learn so much about it that you -- you have gut
13 -- I call it "gut feelings." There's probably a
14 better word for it. But you really -- you
15 develop those through your experiences. Are you
16 always right? Heavens, no. Of course not.

17 But I had a client tell me one time,
18 early in my practice -- I think I'd been a
19 lawyer about sixteen months maybe. And I was
20 representing this lady in a domestic case. She
21 had a brother from Georgia who was a lawyer.
22 And this was the beginning of Family Court, and
23 the Family Court judge was a local guy, old guy,
24 kind of old school practice and attitudes. The
25 first question he'd always ask everybody, "Who

1 are your mama and daddy?" I used to think,
2 "What in the world has that got to do with
3 anything?" I learned very quickly what it had
4 to do with something.

5 But there was a lawyer in Charleston,
6 Henry Jarrard, who used to do nothing but
7 domestic cases before anybody specialized. And
8 he cleaned our clocks. You know what I mean by
9 that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And I was walking back --
12 because she wanted her brother to take the lead
13 role. And I said, "Boy, I knew that was coming.
14 Because he's from Georgia and the judge is local
15 and so is Mr. Jarrard. So I knew what was going
16 to happen with that." She said, "You did?" I
17 said, "Sure did." She said, "Why didn't you
18 tell me?" Good question, don't you think.

19 THE DEFENDANT: Um-humm.

20 THE COURT: She said, "You're my
21 lawyer." I said -- I thought to myself, "You
22 wouldn't want to hurt her." You can rest
23 assured of one thing. I learned something then
24 too. There was never a time in my practice -- I
25 don't care if my client got up and called me an

1 S.O.B. That was my obligation. That's his
2 obligation, too. And it never once, ever,
3 deterred me from passion representing my client.

4 And I can tell you -- I don't know how
5 many times you've had dealings with Mr. Davis.
6 I've had a bunch of them. I don't know a more
7 passionate advocate in this county or in this
8 state.

9 So I appreciate your position. It
10 doesn't surprise me. I assume you want him to
11 go ahead and call the witnesses.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: That's fine. Okay.
14 We're prepared to do that, sir.

15 THE DEFENDANT: Thank you.

16 THE COURT: Thank you, sir. Anything
17 else, Mr. Davis? Are we ready?

18 MR. DAVIS: Judge, we do have two
19 things.

20 THE COURT: All right. I'll be happy
21 to hear from you.

22 MR. DAVIS: In advocating, one of our
23 -- obviously, given everything that was just
24 said, during his testimony yesterday, you have
25 had a lot of trials with me. I asked a few

1 questions. That wasn't because I was allowing
2 narrative. I wasn't really sure what testimony
3 was going to come out. But it may have come
4 across as a narrative. In an abundance of
5 caution, I know Marvin wandered. But there is
6 an attorney on the jury. In fact, she's the
7 forelady.

8 THE COURT: Yes, she is.

9 MR. DAVIS: She handles criminal
10 cases.

11 THE COURT: Yes, sir.

12 MR. DAVIS: If that came across as me
13 allowing him to testify in narrative, I wouldn't
14 want her to then discuss that with the jury
15 panel and influence them. I'm not sure if
16 there's an instruction.

17 THE COURT: I'm not going to instruct
18 anything. He made a choice. I went through
19 that in depth, because I had a feeling, too, of
20 what he should done. And that's why I took the
21 lengths that I do. Normally, I don't do that.
22 But this one I did. But he assured me that's
23 what he wanted to do. So I'm not going to say
24 anything. She's a lawyer. She's going to do
25 what -- one thing's for sure. She's going to

1 respect everything. And she's going to make an
2 assessment, just as everybody's going to make.
3 That's why I said it. Once you take that stand,
4 you're basically fair game. Now, whether you
5 asked a number of questions, quite honestly --
6 and, Mr. Bowens, what I'm about to say is
7 exactly what I was talking to you about, about
8 the subtleties of the practice. We've all known
9 pretty intelligent lawyers in our career. There
10 was one that spoke to my law school, and I had
11 several dealings with him when I was a lawyer,
12 Mr. Kermit King, from Columbia. He was probably
13 one of the most -- I don't want to say vicious,
14 but probing cross examiners I think I ever saw -
15 -- pretty harsh. He told our class -- and I
16 heard lots of people in there and lots of books
17 that say this -- never ask a question on cross
18 examine that you don't know the answer -- never,
19 ever.

20 Now, are there times when you have to
21 do that? Sure, there are. But that's that gut
22 instinct that you develop through the practice
23 of law. But one of the things that, frankly, I
24 think lawyers make the mistake is they ask too
25 many questions. The worst thing you can do is

1 ask too many questions. The best thing is ask
2 exactly what you want. You got the answers, and
3 everything's fine. That's the proper approach
4 to it.

5 So I appreciate the fact that you
6 thought he should have asked something else.
7 But, frankly, I commented to both of my clerks
8 that that was a good example on cross examina-
9 tion in a case of this nature.

10 THE DEFENDANT: Thank you.

11 THE COURT: Thank you.

12 MR. DAVIS: Judge, the last issue on
13 that point, we understand you're not giving an
14 instruction. I have to ask you to consider
15 removing her or replacing her on the panel.

16 THE COURT: Based on what?

17 MR. DAVIS: Based on the potential
18 view that there's a narrative.

19 THE COURT: Thank you, sir. You had
20 to weigh that one long before, sir. Y'all made
21 a call on that.

22 MR. DAVIS: Thank you.

23 THE COURT: Thank you. That's a call
24 you made. Because, as you stated, you may have
25 an idea. But we know that things change,

1 strategies have to change as the trial proceeds
2 sometimes. And sometimes it becomes necessary
3 for a person to testify. So I understand.

4 MR. DAVIS: Thank you, Your Honor.
5 Judge, the first witness we would intend to call
6 would be his youngest brother who was arrested
7 in this.

8 THE COURT: Okay.

9 MR. DAVIS: The Court records will
10 show that his charge was dismissed, not that --
11 with prejudice.

12 THE COURT: With prejudice.

13 MR. DAVIS: Given that, when I
14 discussed with him, I told him it's not on the
15 books of the Court, but I don't know if it would
16 be appropriate for the jury.

17 THE COURT: Let me ask what the
18 State's intention is concerning that.

19 SOLICITOR SAHN: Concerning ---

20 THE COURT: Asking him about his
21 charges. That's not convictions. If he has
22 convictions, that's fine.

23 MR. DAVIS: Judge, it would be this.
24 That he could be re-arrested on this case.

25 THE COURT: I understand that. He

1 might can. I don't know. I don't know whether
2 he has a lawyer or not, but that's something
3 he'd better have thought about beforehand
4 insofar as what he should say about this.

5 MR. DAVIS: Yes, sir. It's my
6 understanding he does not. He was transferred
7 down from a facility in Greenville, a juvenile
8 facility. He is serving for a separate armed
9 robbery adjudication.

10 THE COURT: So on that one there is a
11 conviction?

12 SOLICITOR SAHN: Yes, sir.

13 THE COURT: And that's fair game,
14 obviously.

15 MR. DAVIS: That's correct, Your
16 Honor.

17 THE COURT: I would suggest, given
18 the nature of this and the severance, it's
19 probably protected. The best thing and the most
20 cautious thing is not to ask him any questions
21 about being charged with this one.

22 SOLICITOR SAHN: Can we get into the
23 fact about being charged?

24 THE COURT: I would have to hear
25 that. I can't -- I'm not going to limit you in

1 a vacuum. I'm not going to do that to you. I
2 just think insofar as "were you ever charged"
3 certainly should never be asked.

4 SOLICITOR SAHN: Thank you, Judge.

5 THE COURT: Thank you.

6 MR. DAVIS: Judge, before he
7 testifies I certainly -- talking about his
8 record, I'm not his lawyer.

9 THE COURT: I understand.

10 MR. DAVIS: Should we ---

11 THE COURT: I'm not -- if I did that
12 -- I'd love to. But that puts me as a lawyer.
13 And I'm not going to do that.

14 MR. DAVIS: All right, sir.

15 THE COURT: Thank you.

16 MR. DAVIS: Thank you, Your Honor.
17 He is present and would be our first witness.

18 THE COURT: All right. Is the State
19 ready?

20 SOLICITOR SAHN: Yes, we are, Your
21 Honor.

22 THE COURT: Is the defense ready?

23 MR. DAVIS: Yes, sir.

24 THE COURT: Let's go to trial. Bring
25 in the jury.

1 (JURY IN AT 9:58 A.M.)

2 THE COURT: Good morning, ladies and
3 gentlemen. Thank you very much. I appreciate
4 your patience this morning. There were some
5 matters of law that I had to deal with this
6 morning, and that's what we've been doing.
7 Those arise from time to time in a trial, but
8 that's just the nature of this process. And I
9 appreciate your patience. We're ready now to
10 continue with the matter.

11 Mr. Davis, does Mr. Bowens wish to
12 present any additional witnesses for the jury's
13 consideration?

14 MR. DAVIS: Yes, Your Honor. We
15 would call Minor Lamar Bowens, Jr.

16 (WITNESS TAKES STAND)

17 Minor LAMAR BOWENS, JR., being duly
18 sworn to tell the truth, the whole truth and
19 nothing but the truth, testified, as follows:

20 DIRECT EXAMINATION

21 BY MR. DAVIS:

22 Q. Minor let's get to one thing right at
23 first. You're wearing a gray jumpsuit. Are you
24 currently in custody?

25 A. Yes, sir.

1 Q. You're serving time up in Greenville?

2 A. Yes, sir.

3 Q. You've been adjudicated for a robbery from
4 2009?

5 A. Yes, sir.

6 Q. And you were transported down here to
7 Charleston to testify today. Is that right?

8 A. Yes, sir.

9 Q. Who's seated at the table over here in the
10 white shirt?

11 A. Marvin Bowens, my brother.

12 Q. I'm sorry. That's your brother?

13 A. Yes, sir.

14 Q. Older or younger brother?

15 A. Older brother.

16 Q. By how many years?

17 A. Two.

18 Q. Let's go directly to December 20th, 2008,
19 the early morning hours of December 20th, 2008.

20 What type of vehicle did you and your brothers
21 have access to then?

22 A. My dad's van. Sometimes my mom's car.

23 Q. What other brother besides Marvin lived
24 with y'all back in December 2008?

25 A. Gerriel, my smaller brother.

1 Q. Gerriel -- that's not his given name, is
2 it? That's what he goes by, right?

3 A. That's his given name.

4 Q. What's his full name?

5 A. Gerriel Lamar Bowens.

6 Q. I need to ask you specifically about the
7 early morning hours of December 20th, 2008.

8 Let's start at about 6:30. Can you tell --
9 where were you at about 6:30 in the morning on
10 December 20th, 2008?

11 A. About 6:30 on December 20th, 2008, I was
12 waiting for my cousin, Tamasha, up front at my
13 grandma's house.

14 Q. Then what happened?

15 A. As he arrived there, I'd say about thirty
16 or forty-five minutes later, we engaged in a
17 conversation. We took my dad's van and headed
18 out to Hollywood.

19 Q. Where did you go?

20 A. Just around the area.

21 Q. What were you going to do?

22 A. Handle some business.

23 Q. What does that mean?

24 A. Just, you know, do a couple of things, come
25 straight back.

1 Q. Straight back to where?

2 A. Adams Run.

3 Q. What was at Adams Run?

4 A. Adams Run was a trailer that we recently
5 moved in.

6 Q. Who is "we?"

7 A. Me and my family, mom, brothers, sister and
8 father.

9 Q. When did you return to the house in Adams
10 Run, your house?

11 A. Yes, sir.

12 Q. When?

13 A. Oh, I'd say about 7:30'ish, something
14 around the area.

15 Q. You were in the brown van?

16 A. Yes, sir.

17 Q. Who was with you?

18 A. No one.

19 Q. What about the cousin you spoke about a
20 moment ago?

21 A. As I was heading back home I dropped him
22 back off at my grandma's house up front. We
23 went our separate ways.

24 Q. So when you arrived at home, who was at
25 home?

1 A. Mother, father, all three brothers and my
2 sister.

3 Q. Who did you speak to when you arrived at
4 home?

5 A. When I got home I really just made sure
6 that my father wasn't woke up. I woke up my
7 brother, Marvin. I got him and we just headed
8 out.

9 Q. I'm sorry. You made sure what now?

10 A. Our father wasn't woke.

11 Q. Was not?

12 A. Yes, sir, was not woke.

13 Q. And then what?

14 A. I got Marvin -- I woke Marvin up. We
15 headed out to Jacksonboro.

16 Q. What happened when you got to Jacksonboro?

17 A. As we got to Jacksonboro, Marvin asked me
18 for some gas money or whatnot, some money to buy
19 cigars with. And after he saw the money, he
20 noticed it, like looked suspicious about where
21 did I get it from. But he didn't really make no
22 statements about it or nothing, or comment on
23 it. We just pulled up around the gas station
24 pump. I saw a police pulling him out of the
25 vehicle, so I just took off and ran.

1 Q. What were you wearing when you ran?

2 A. Honestly, I don't remember.

3 Q. What was Marvin wearing?

4 A. I don't remember.

5 Q. Ultimately, did you turn yourself in to the
6 police in Jacksonboro?

7 A. Yes, sir.

8 Q. Had you spoken with your father prior to
9 that?

10 A. Yes, sir.

11 Q. How?

12 A. After I ran I took off towards Hope
13 Plantation Road, which one of my homeboys lives
14 like right there, as soon as you got on the road
15 of Hope Plantation. So at first I was running
16 through the woods. I doubled back and I went to
17 his house and woke him up and asked him could I
18 use his phone. He let me use his phone and got
19 in contact with my sister. She told my father
20 and he told me just to come and turn myself in.

21 Q. How old were you at the time? Do you
22 remember?

23 A. Fifteen.

24 Q. Between 6:30 and 7:30 you were in the
25 family van, brown van?

1 A. Yes, sir.

2 Q. You went by the RoadRunner convenience
3 store, didn't you?

4 A. No, sir, I'm not going to incriminate
5 myself on that.

6 Q. You're the one that ran in with the gun and
7 robbed the place.

8 A. I'm not going to incriminate myself.

9 Q. You ran back out to the van. You got in
10 the van that was waiting on you?

11 A. I'm not going to incriminate myself.

12 MR. DAVIS: Your Honor, he's non-
13 responsive.

14 THE COURT: He's non-responsive.
15 That's not a responsive answer. Are you telling
16 me -- let me just ask you, are you a lawyer?

17 THE WITNESS: No, sir.

18 THE COURT: Are you telling me that
19 you're asserting your Fifth Amendment rights and
20 the corresponding rights afforded under the
21 South Carolina Constitution of not to
22 incriminate yourself?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. That
25 clarifies that it is responsive.

1 MR. DAVIS: Thank you, Your Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. DAVIS:

4 Q. Prior to 7:30 the morning of December 20th,
5 2008 -- prior to 7:30 that morning, was Marvin
6 in that van?

7 A. No, sir.

8 Q. You were, though?

9 A. Yes, sir.

10 Q. Who else was?

11 A. My cousin, Tamasha.

12 Q. What was Tamasha wearing?

13 A. Honestly I can't remember, sir.

14 Q. Growing up, did you participate in some
15 sports in the Jacksonboro area?

16 A. Yes, sir.

17 Q. Rec league?

18 A. Yes, sir.

19 Q. Basketball?

20 A. Yes, sir.

21 Q. Was there -- did they assign team colors to
22 the different teams?

23 A. One team ---

24 Q. Did they assign team colors to different
25 teams?

1 A. You're talking about to the Jacksonboro
2 team?

3 Q. To any teams in the area. Did they assign
4 different colors to the teams?

5 A. Oh, yes, sir.

6 Q. You played on the Jacksonboro rec league,
7 correct?

8 A. Yes, sir.

9 Q. Played basketball, right?

10 A. Yes, sir.

11 Q. Guard and forward, right?

12 A. Yes, sir.

13 Q. You played on other teams in the area?

14 A. Yes, sir.

15 Q. Can you tell the jurors how many other
16 teams in the area you played?

17 A. I played against Follies Ferry, which is
18 like a couple of miles down the road, and Adams
19 Run and Sugar Hill, like those local areas
20 that's down the road from it.

21 Q. Was there a team in the league that was
22 assigned orange as their team color?

23 A. Yes, sir.

24 Q. Approximately how many players on each
25 team?

1 A. About eight or nine.

2 Q. And these would have been other boys in
3 their middle teens?

4 A. Yes, sir.

5 Q. Finally, have you been present and observed
6 physical altercations between your father and
7 Marvin?

8 A. Yes, sir.

9 Q. Have you seen your father strike Marvin?

10 A. Yes, sir.

11 Q. Have you seen him strike him with a board?

12 A. Yes, sir.

13 Q. Has he fought him, fist fight, on more than
14 one occasion?

15 A. Yes, sir.

16 Q. Would some or all of those incidents
17 occurred before December 20th, 2008, those
18 fights?

19 A. Yes, sir, definitely.

20 MR. DAVIS: Please give me one
21 second. That may be all the questions I have.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. DAVIS:

24 Q. I may not have made it clear. When is the
25 first time in the morning hours that you saw

1 Marvin on the morning of the 20th?

2 A. After I came back with my cousin, Tamasha,
3 and after I dropped him off. I came back to the
4 house in Adams Run.

5 Q. Do you know what time that was?

6 A. It had to have been around 7:30'ish,
7 something like that.

8 Q. Where was Marvin when you saw him?

9 A. He was asleep when I saw him. I shook him
10 awoke.

11 Q. Thank you. Nothing further.

12 THE COURT: Cross examine.

13 SOLICITOR DURANT: Thank you, Your
14 Honor. May it please the Court.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 BY SOLICITOR DURANT:

18 Q. Mr. Bowens, how old are you?

19 A. Seventeen years old, sir.

20 Q. So you would have been fourteen years old
21 back in December of 2008?

22 A. Fifteen.

23 Q. Fifteen?

24 A. Yes, sir.

25 Q. And this man is your older brother?

1 A. Yes, sir.

2 Q. And he's how much older than you?

3 A. Two years.

4 Q. Do you have any other siblings?

5 A. Yes, sir.

6 Q. How many?

7 A. I have a younger brother named Minor an
8 older brother named Gerriel and my older sister,
9 Minor

10 Q. Are y'all kind of close?

11 A. Yes, sir..

12 Q. And you love this guy, right?

13 A. Yes, sir.

14 Q. I just want to see if I've got your
15 testimony essentially correct. You said that
16 you had the family van from 6:30 to 7:30 that
17 morning.

18 A. Yes, sir.

19 Q. And, to be clear, we're talking about this
20 van?

21 THE COURT: Which ---

22 SOLICITOR DURANT: This is State's
23 14, Your Honor.

24 THE COURT: Thank you. I'm sorry.

25 THE WITNESS: Yes, sir.

1 CROSS EXAMINATION CONTINUED

2 BY SOLICITOR DURANT:

3 Q. And so you were up pretty early that
4 morning, correct?

5 A. Yes, sir.

6 Q. And you say your brother was not with you
7 between 6:30 and 7:30.

8 A. Yes, sir.

9 Q. And yet you refuse to answer any questions
10 concerning the RoadRunner that morning. Is that
11 correct?

12 A. Yes, sir.

13 Q. Because, as you say, you're not going to
14 incriminate yourself.

15 A. Yes, sir.

16 Q. So you don't want to talk about everything
17 to this jury.

18 A. I feel like those things are not necessary.

19 Q. You feel that way.

20 A. Yes, sir.

21 Q. So you're here to tell the jury only what
22 you want to tell them, but not necessarily what
23 you'll be asked. Is that correct?

24 A. I came to tell the truth.

25 Q. Excuse me?

1 A. I came to tell them the truth about the
2 matter that's at-hand.

3 Q. All right. Well, the matter at-hand is the
4 RoadRunner. And I want to ask you were at the
5 RoadRunner that morning?

6 A. I plead the Fifth, sir.

7 Q. I'll take that as you're refusing to answer
8 questions about the Road Runner.

9 A. I plead the Fifth, sir. I'm not going to
10 incriminate myself.

11 Q. And you're not going to incriminate him
12 either, are you?

13 A. I basically can't even answer that
14 question. Because, really, it don't -- I don't,
15 it's like -- it don't ---

16 Q. Well, you've already refused to incriminate
17 yourself, haven't you?

18 A. Yes, sir.

19 Q. And you're not going to incriminate him
20 either, are you?

21 A. I can't even answer that question, sir, to
22 be honest.

23 Q. And there's no question that you ran from
24 this van when it was pulled over in Jacksonboro.
25 Is that correct?

1 A. Yes, sir.

2 Q. Why did you run?

3 A. For one, just being from being, I'd say the
4 streets or the hood or what-not, when you see
5 the police, you would run regardless. I had a
6 curfew, you know. Basically, I was just scared.

7 Q. Just scared. It had nothing to do with the
8 Road Runner, right?

9 A. I'm not going to answer that question. I
10 plead the Fifth.

11 Q. Okay. You said that Minor got in the car
12 and he was suspicious of the money.

13 A. Marvin?

14 Q. Marvin. He got in the car and he was
15 suspicious of the money that was in the vehicle.

16 A. Well, he saw me pull out the money, like,
17 and he was looking at me, like -- gave me a
18 look.

19 Q. Do you have any idea why he would do that?

20 A. He probably wanted to know where I got it
21 from.

22 Q. Where did you get it from?

23 A. Out handling some business.

24 Q. Handling some business.

25 A. Yes, sir.

1 Q. And you were adjudicated through the
2 juvenile system of a separate armed robbery. Is
3 that correct?

4 A. Yes, sir.

5 Q. And that's why you're dressed the way you
6 are today. Is that correct?

7 A. Not really. But they had to traffic me
8 down here, and house me inside the juvenile
9 detention center. So, yes.

10 Q. Why are you dressed the way you're dressed?

11 THE COURT: I'm not going to allow
12 that question.

13 MR. DAVIS: Thank you, Judge.

14 CROSS EXAMINATION CONTINUED

15 BY SOLICITOR DURANT:

16 Q. So, essentially, you just want this jury to
17 believe that Marvin wasn't with you between 6:30
18 and 7:30 on the morning of December 20th. And
19 that you're not going to answer any questions
20 concerning the RoadRunner. But that you ran
21 when the police pulled the van over. And you
22 say, according to you, that your brother was
23 just suspicious of you. Is that correct?

24 A. I want them to believe the truth. I
25 actually picked Marvin up from the house in

1 Adams Run.

2 Q. Do you believe them to believe the truth of
3 what happened at the RoadRunner?

4 A. I plead the Fifth. I'm not going to answer
5 that question.

6 Q. Thank you.

7 SOLICITOR DURANT: No further
8 questions.

9 THE COURT: Redirect, Mr. Davis?

10 MR. DAVIS: Just briefly.

11 THE COURT: Sure.

12 REDIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q. You were arrested for this case, right?

15 A. Yes, sir.

16 Q. What happened to that charge?

17 A. It got dropped.

18 THE COURT: No, sir. No, sir. You
19 were asked -- the jury will disregard that in
20 its entirety. You may not consider that
21 whatsoever. Thank you. Approach, please.

22 (OFF RECORD BENCH CONFERENCE)

23 MR. DAVIS: No other questions, Your
24 Honor.

25 THE COURT: Very well. You may come

1 down.

2 (WITNESS STEPS DOWN)

3 MR. DAVIS: Your Honor, I'm going to
4 step in the hall for the next witness.

5 THE COURT: Yes, sir. Take your
6 time.

7 MR. DAVIS: Your Honor, the next
8 witness will be Marvin Lamar Bowens, also known
9 as Gerriel.

10 THE COURT: Very well.

11 (WITNESS TAKES STAND)

12 Minor being duly
13 sworn to tell the truth, the whole truth and
14 nothing but the truth, testified, as follows:

15 DIRECT EXAMINATION

16 BY MR. DAVIS:

17 Q. Sir, do you know the guy sitting here in
18 the white shirt at the table?

19 A. Yes, sir.

20 Q. Who is that?

21 A. That's my brother.

22 Q. What's his name?

23 A. Marvin Bowens.

24 Q. Is he your older brother or younger
25 brother?

1 A. Older.

2 Q. I want to go back to December 20th, 2008. I
3 know that's awhile ago. I'm going to ask you a
4 few questions about that, okay?

5 A. Um-humm.

6 Q. I need you to say "yes" or "no."

7 A. Yes, sir.

8 Q. Where were you living back on December 20th,
9 2008?

10 A. In Adams Run.

11 Q. Who else was living there with you?

12 A. My brothers -- my three brothers, my
13 sister, my mama and my daddy.

14 Q. We'll go out of order just a little bit.
15 On December 20th, 2008 do you recall that's the
16 date your brothers were arrested?

17 A. Yes, sir.

18 Q. I want to talk about before that. All
19 right? Was there a time when, that morning, you
20 saw both Marvin and Minor -- he's your younger
21 brother, right?

22 A. Yes, sir.

23 Q. Was there a time that morning you saw both
24 of them?

25 A. Yes, sir.

1 Q. Do you remember when that was?

2 A. You're talking about the time?

3 Q. Yes.

4 A. No, I don't remember the time.

5 Q. What were you doing when you saw them?

6 Where were you? Let me strike that. Where were
7 you when you saw them?

8 A. I was in the house.

9 Q. What were you doing when you saw them?

10 A. I was going to the bathroom and they come
11 over to the bathroom.

12 Q. What had you been doing just prior to
13 seeing them?

14 A. Sleeping.

15 Q. So it was in the morning?

16 A. Um-humm.

17 Q. I need a "yes" or "no."

18 A. Yes, sir.

19 Q. So it was in the morning on that December
20 20th, 2008, correct?

21 A. Yes, sir.

22 Q. Tell the jury what you saw and what you did
23 that morning when you saw your brothers.

24 A. Well, when I saw them the only thing I did
25 was look at them and went back to sleep.

1 Q. You mentioned something about the bathroom.

2 Who went to the bathroom?

3 A. Me.

4 Q. Did Marvin -- what did Marvin do that
5 morning when you saw him?

6 A. Oh, he was knocking on the bathroom door,
7 waiting on me to come out.

8 Q. Did they hang around the house, or did they
9 leave?

10 A. All I know is I came out of the bathroom
11 and went back in the room. And I didn't see
12 them no more after that.

13 Q. Who woke you up?

14 A. My little brother, Minor

15 Q. Do you know whether Marvin was awake or
16 asleep when you woke up?

17 A. Say that one more time.

18 Q. Do you know if Marvin was awake or asleep
19 when you woke up?

20 A. Oh, he was asleep. When I woke up he was
21 asleep. Like, you know, he was asleep. Both of
22 us sleep back there.

23 Q. You and Marvin shared the same bedroom?

24 A. Yes, sir.

25 Q. Did Minor share it with you?

1 A. Yes, sir.

2 Q. Thank you, Gerriel. That's all the
3 questions I have. The State may have some
4 questions for you.

5 THE COURT: Cross examine.

6 SOLICITOR SAHN: Thank you, Judge.

7 CROSS EXAMINATION

8 BY SOLICITOR SAHN:

9 Q. Mr. Bowens, Marvin Bowens is your older
10 brother, right?

11 A. That's right.

12 Q. And you were living with him back on
13 December 20th, 2008, the day of the armed robbery
14 that we're here about today? Is that right?

15 A. Yes, sir.

16 Q. Okay. And back then you saw him pretty
17 much every day, right?

18 A. Yes, sir.

19 Q. Is it fair to say you talked with him
20 pretty much every day?

21 A. Yes, sir.

22 Q. And if he had a problem, he'd talk to you,
23 wouldn't he?

24 A. Sir?

25 Q. If he had a problem, he'd talk to you. You

1 guys talked about each other's problems?

2 A. Yes, sir.

3 Q. Now, I didn't subpoena you to come to Court
4 today, did I?

5 A. No, sir.

6 Q. And you came to Court today because your
7 brother and/or his attorney asked you to come to
8 Court. Is that correct?

9 A. Yes, sir.

10 Q. And you've talked with your brother about
11 this case before today, haven't you?

12 A. Yes, sir.

13 Q. Okay. And you've talked with his brother's
14 attorney about this case before today.

15 A. Yes, sir.

16 Q. Several times, right?

17 A. Yes, sir.

18 Q. And you discussed what your testimony would
19 be?

20 A. Yes, sir.

21 Q. With his attorney. And you talked about
22 what you were going to say, right?

23 A. Yes, sir.

24 Q. Now, the day of the incident, that was two
25 and a half years ago, but you remember that

1 pretty well, apparently; right?

2 A. Yes, sir.

3 Q. But you don't remember the times of what
4 happened that morning.

5 A. No, I ain't got the time.

6 Q. No idea about times.

7 A. Yes, sir, no ideas.

8 Q. So you have no idea where Marvin Bowens was
9 at about 7:30 that morning, do you?

10 A. No, sir. I ain't got no times, but that's
11 pretty early. So he'd probably have been home.

12 Q. Was that a "yes" or a "no?" Let me ask it
13 one more time. Do you know where Marvin Bowens
14 was at 7:30 a.m.?

15 A. Yes, sir.

16 Q. Oh, you do now?

17 A. He'd probably been home. I mean, that's
18 pretty early.

19 Q. Do you know that? You can only answer what
20 you know, sir. You just testified you didn't
21 remember any times that morning.

22 A. Yes, sir.

23 Q. Okay. So one more time. You didn't know
24 where Marvin Bowens was exactly at 7:30 that
25 morning. Is that correct?

1 A. Well, I ain't seen no time, so, yeah, I
2 ain't know.

3 Q. Thank you, Mr. Bowens.

4 THE COURT: Redirect?

5 MR. DAVIS: Just one.

6 THE COURT: Sure.

7 REDIRECT EXAMINATION

8 BY MR. DAVIS:

9 Q. And how old are you now, sir?

10 A. Eighteen.

11 Q. Thank you. No other questions.

12 THE COURT: Any recross?

13 SOLICITOR SAHN: No, Your Honor.

14 THE COURT: Thank you. You may step
15 down, Mr. Bowens. Thank you, sir.

16 (WITNESS STEPS DOWN)

17 MR. DAVIS: I'll step in the hall for
18 our next witness.

19 THE COURT: Very well. Thank you.

20 MR. DAVIS: Your Honor, the next
21 witness is Minor Sr.

22 (WITNESS TAKES STAND)

23 Minor SR., being duly sworn to
24 tell the truth, the whole truth and nothing but
25 the truth, testified, as follows:

1 DIRECT EXAMINATION

2 BY MR. DAVIS:

3 Q. Mr. Bowens, how old are you, sir?

4 A. I'm 40.

5 Q. Who's the gentleman sitting in the white
6 shirt and tie at the table here?

7 A. That's my son.

8 Q. What's his name?

9 A. I call him Chuckie, but his name is Marvin.
10 I've got two Marvin's and two Minor So it's
11 Marvin Lamar Bowens. He also has a surname of
12 Green.

13 Q. That's his mother's last name?

14 A. Yes.

15 Q. Sir, I want us to turn our attention
16 straight to December 20th, 2008. Did you arrive
17 to an Exxon station in Jacksonboro that morning?

18 A. Yes, I did.

19 Q. Why is it that you were at the Exxon
20 station in Jacksonboro?

21 A. During that time I was co-owner of a night-
22 club. So I normally get home about 4:30 in the
23 morning. And when I got home that morning --
24 every time -- I made it a habit of every time
25 when I get home I would check my kids' bedroom.

1 Because there was a period of time they had a
2 habit of trying to sneak out the room. They'd
3 come in the house and then they'd sneak out of
4 the window. So I made it a habit to check their
5 bedroom to make sure they were home. I came
6 home, checked the bedroom, because they had my
7 vehicle that morning. I gave them permission --
8 I mean, not that morning. The prior evening
9 they had my vehicle. I gave them permission to
10 use it to go to Jacksonboro to play basketball,
11 which they always did. When I came in they were
12 in their room, so I go on to bed.

13 I got a call about -- it was about 8:10
14 that morning from my brother, Robert. He told
15 me that he had received a call that two of my
16 sons were at the gas station in Jacksonboro.
17 And one of them -- he knew it was at gunpoint.
18 He wasn't sure about the other one.

19 Q. So, sir, you go up to the Exxon and what
20 did you see when you got there?

21 A. When I got there the police already had
22 Marvin in custody. He was in the police car.
23 And Minor had ran across the street.

24 Q. Did you talk to Minor at some point that
25 morning?

1 A. Yes, after I spoke to Marvin in the police
2 car, I -- my daughter had got a call from
3 Minor

4 Q. My question is this, sir. Did you speak to
5 Minor sometime that morning?

6 A. Yes, I did.

7 Q. How did you speak to him? How were you
8 able to speak to him?

9 A. My daughter -- he had called my daughter on
10 a cell phone after he had ran across the road
11 and he was in the house hiding or whatever. And
12 I told my daughter to call him back and let me
13 speak to him. And I spoke to him. I told him,
14 I said, "They're accusing you of a robbery. And
15 whether you did it or not get your behind out of
16 the house where you're at -- now." And he came
17 out.

18 Q. And turned himself in to the police.

19 A. Yes, he did.

20 Q. Now, you referenced just a second ago that
21 you also talked to Marvin. Is that right?

22 A. Yes, I did.

23 Q. And where was Marvin when you spoke to him?

24 A. He was in the back of the police car.

25 Q. I'd like you to tell the jury what you told

1 Marvin when you spoke to him in the police car.

2 A. When I initially got on the scene, like I
3 say ---

4 SOLICITOR SAHN: Objection to
5 hearsay.

6 THE COURT: What he told him? I
7 overrule that.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. DAVIS:

10 Q. Again, let me be specific. I'm asking you
11 what did you say to your son? That's what I'd
12 like you to testify about. What did you say to
13 your son?

14 A. Okay, well, after the officer agreed to let
15 me speak to him, I told Marvin, I said, "I heard
16 that y'all was out there robbing a store in
17 Hollywood." And I said, basically, "I don't
18 care if y'all did or not, because y'all are
19 always getting into stuff. And if you got Minor
20 -- I call Minor Junior "Minor I said, "If you
21 got Minor into some stuff, you've got to get him
22 out of it. And I don't care how you get him out
23 of it. Otherwise, I'm going to F you up. And
24 you know the incidents that we've had," --and
25 the last time it was me beating him with a two-

1 by-four and bloodying him, and then the time
2 after that, shooting at him. And I told him, I
3 said, "You know I mean what I say. So try me if
4 you want to, but whatever you have to do -- and
5 I don't care what you have to do to get it done.
6 You'd just better ^{Minor} out of trouble." I made
7 him apologize to the officer for cursing him
8 out. And I just walked away at that point.

9 Q. Sir, we need to now talk about some of the
10 prior altercations between you and Marvin. You
11 have had physical fights with Marvin prior to
12 December 20th, 2008, haven't you?

13 A. Yes, I have.

14 Q. You have punched him?

15 A. Yeah, we had physical fights on two
16 occasions.

17 Q. And those occurred before December 20th,
18 2008?

19 A. Yes, between the timeframe of '07 and '08,
20 about a two-year time period.

21 Q. At one point you struck him with a board?

22 A. Actually, I was beating all three of them.
23 I was beating him, Minor Junior and Marvin
24 Gerriel. But he just got more than the rest,
25 because I always held him more responsible than

1 the rest because he was seventeen. They were
2 fifteen and sixteen. So I felt as though if he
3 wasn't getting them into things, that he should
4 have been at least making sure they didn't get
5 into things or don't let them hang with him. So
6 whether or not it was fair or not, I sort of
7 held him responsible for them as well. So he
8 got the brunt of my anger every time.

9 MR. DAVIS: If you could give me just
10 a moment.

11 THE COURT: Take your time.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. DAVIS:

14 Q. Thank you, sir. That's all the questions I
15 have. The State may have some questions for
16 you.

17 A. I did forget to mention one thing, though.

18 Q. Sir, that's all the questions I have. The
19 State may have some questions.

20 THE COURT: They ask the questions.
21 You only answer questions. You may cross
22 examine.

23 SOLICITOR SAHN: Thank you, Your
24 Honor.

25 CROSS EXAMINATION

1 BY SOLICITOR SAHN:

2 Q. Mr. Bowens, you said that your children,
3 Marvin and Minor had a habit of sneaking out
4 of the house at night. Is that right?

5 A. Yes, sir.

6 Q. When they sneaked out at night, on those
7 occasions, you don't know where they went, do
8 you?

9 A. It wasn't a lot of occasions, but I know at
10 least a couple of times they did it.

11 Q. The question was you don't know where they
12 went, did you, when they snuck out of the house?

13 A. No, sir.

14 Q. Just so we're clear, you were not at the
15 RoadRunner convenience store at 7:30 in the
16 morning of December 20th, 2008, correct?

17 A. No, sir, I wasn't.

18 Q. You also said that your children are always
19 getting into stuff, I believe is what you said.

20 A. Okay.

21 Q. What do you mean by that?

22 MR. DAVIS: Objection, Your Honor.

23 WITNESS: I'd like to answer.

24 THE COURT: I'm overruling.

25 WITNESS: I'd like to answer.

1 CROSS EXAMINATION CONTINUED

2 BY SOLICITOR SAHN:

3 Q. Please do.

4 A. The stuff that they got into -- and I'm
5 glad you asked, because I need to tell y'all the
6 whole truth, because that's what I'm here for.
7 The stuff that they got into involved those
8 orange shirts. From a period of '07 to '08, it
9 started out where my sons, my three sons, were
10 given orange shirts in addition to a couple of
11 other guys that was on the basketball team. We
12 thought it was a great idea, because we wanted
13 to start a midnight basketball league in the
14 area. But we didn't have the facility to do it.
15 We only had a community center where they would
16 play basketball, but it didn't have any outside
17 lights. So it started out with just them having
18 the orange shirts, the basketball team, seven or
19 eight of them or whatever. Then they started
20 wearing the orange shirts down the street. And
21 then they were taking on Clint Road. Clint Road
22 is known for drugs, okay? Then people started
23 telling me -- confronting me saying my kids must
24 be in a gang. So I was like, "No, they're
25 playing basketball." I said, "They're playing

1 basketball." And I'm going to give y'all a
2 history. To give y'all all the trouble that
3 they've got into, I couldn't give it to you over
4 a two-year period span.

5 MR. DAVIS: Your Honor, I'm going to
6 object to the relevance.

7 THE COURT: Sustained. It's not
8 relevant.

9 THE WITNESS: So ---

10 THE COURT: No, sir, you're not going
11 to ask a question. Thank you, sir. Ask him the
12 next question.

13 CROSS EXAMINATION CONTINUED

14 BY SOLICITOR SAHN:

15 Q. Mr. Bowens, you gave a statement to
16 Detective Lawrence about this case, did you not?

17 A. Yes, I did.

18 Q. And that was on December 20th, 2008.

19 A. Yes.

20 Q. The day of the armed robbery at the Road
21 Runner.

22 A. If that's the day it was signed, that's the
23 day. I'm not quite sure what day it was.

24 Q. Does that sound about right? That day or
25 the day after?

1 A. It sounds about right.

2 Q. Now, in that statement you told Detective
3 Lawrence about the money that was supposedly
4 taken in that armed robbery.

5 MR. DAVIS: Objection, Your Honor,
6 hearsay.

7 THE COURT: He told him?

8 SOLICITOR SAHN: Your Honor, may we
9 approach?

10 THE COURT: Yes.

11 (OFF RECORD BENCH CONFERENCE)

12 THE COURT: I overrule the objection
13 and will place the rationale on the record as
14 soon as the jury takes its first break.

15 CROSS EXAMINATION CONTINUED

16 BY SOLICITOR SAHN:

17 Q. Mr. Bowens, let me ask you again. When you
18 were talking to Detective Lawrence, you told him
19 -- you talked to him about where the money
20 involved in the armed robbery at the Road Runner
21 -- where that was, correct?

22 A. No. I told him where -- I think probably
23 is where my daughter told me that the money was
24 supposed to -- said that Marvin or Minor told
25 her where the money was. It's not what I said.

1 It was, like -- what the statement said, it said
2 something like my daughter said ---

3 Q. If I show you the statement, would that
4 refresh your recollection?

5 A. Yes, show me the statement.

6 THE COURT: Answer the question. The
7 question is what did you tell the officer?
8 That's all he's asking you.

9 THE WITNESS: Okay. I told him -- can
10 I -- I still need to see the statement.

11 THE COURT: Yes, you can --
12 certainly, at least show him the statement.

13 MR. SAHN: (Tenders document to be
14 marked as exhibit)

15 COURT REPORTER: State's Exhibit 38
16 for identification.

17 CROSS EXAMINATION CONTINUED

18 BY SOLICITOR SAHN:

19 Q. Mr. Bowens, this is State's Exhibit 38.
20 Second page, sir.

21 A. (Upon review), that's fine. I said,
22 "Marvin Lamar somehow stated to my daughter,
23 Minor that the money from the robbery is
24 supposed to be in my house on Jacksonboro where
25 he was living." So that's what Minor told me

1 that he had said. But then she told me that
2 that wasn't what she -- well, she said she
3 didn't meant (sic) that.

4 Q. Okay. But, again, you told Detective
5 Lawrence you thought the money was in the house.

6 THE COURT: He's answered your
7 question, Mr. Sahn, and he's explained it. Move
8 on. I'm not going to allow you to do any more
9 than ask what you've just done. Thank you.

10 SOLICITOR SAHN: Thank you, Judge.

11 CROSS EXAMINATION CONTINUED

12 BY SOLICITOR SAHN:

13 Q. Mr. Bowens, on direct examination you told
14 us that you basically told your son, Marvin, to
15 do whatever it took to get his younger brother,
16 Minor out of trouble, correct?

17 A. Whatever. If he had to lie, pray to God,
18 whatever, as long as he got him out of trouble.

19 Q. So you told him to lie to get him ---

20 A. I did not tell him to lie. I told him, I
21 said, "You know what I mean." I said, "If you
22 don't get him out of trouble, I don't care how
23 you do it, I'm going to F you up. And you know
24 we've already been down that road before with
25 the blood, with beating you with the two-by-four

1 and shooting at you and stuff. So you know I
2 mean what I say." And I walked away. I made
3 him apologize to the cops and I walked away.

4 Q. Thank you, sir.

5 THE COURT: Redirect, Mr. Davis?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: Thank you very much. You
8 may come down, Mr. Bowens.

9 (WITNESS STEPS DOWN)

10 MR. DAVIS: Your Honor, the defense
11 would rest.

12 THE COURT: Any reply testimony, Mr.
13 Sahn?

14 SOLICITOR SAHN: No, Your Honor.

15 THE COURT: Ladies and gentlemen,
16 that would conclude the evidentiary portion of
17 this proceeding. There still remains two very
18 important parts of this process. One would be
19 the closing arguments and, of course, the charge
20 on the law following that.

21 Since you haven't heard any law, it
22 would be very inappropriate for you to being
23 your deliberations. And while you will not hear
24 any evidence during these two remaining
25 portions, they're still very important in this

1 process.

2 There are some matters of law now that
3 I must take up out of your presence. And I'm
4 going to ask you to go into the jury room.
5 We'll be with you as quickly as we can. Thank
6 you.

7 (JURY OUT AT 10:42 A.M.)

8 THE COURT: Anything from the State?

9 SOLICITOR SAHN: No, Judge.

10 THE COURT: Mr. Davis?

11 MR. DAVIS: Thank you, Your Honor.

12 Judge, I would renew our directed verdict
13 motion. And out of an abundance of caution, I
14 would renew all my prior objections and motions.
15 Bluntly, Judge, I have no new argument.
16 Obviously, you've heard my argument for directed
17 verdict at the end of the State's case. You've
18 now heard our witnesses from the opposite
19 viewpoint. And I would ask you again to move
20 from the jury's deliberations and direct a
21 verdict in our favor.

22 THE COURT: Clearly, it's a jury
23 issue now, because we have two different
24 versions. The jury could infer from the
25 testimony that the defendant was not involved,

1 rather his brother and someone else were. That
2 would be one conclusion they could reach.
3 However, given the evidence which we have, is
4 now we have the brother, and the inference could
5 be drawn that the brother was, in fact, the one
6 that went in and committed the armed robbery,
7 which verifies and corroborates the statement
8 given by the defendant. And the fact that he
9 was driving the car with an orange shirt and the
10 person that's been identified as driving in an
11 orange shirt -- all of that would certainly
12 indicate that the State has met its burden of
13 proof and established that he is guilty of the
14 crime. So I would respectfully deny your
15 motions.

16 With respect to the objection
17 concerning the question by Mr. Sahn, I indicated
18 to you that the question was "what did you say
19 to the person." I agree that there may have
20 been some what could have been hearsay evidence
21 in itself. But it's all been for the truth of
22 the matter asserted. And the only truth was,
23 "What did you say?" He later explained his
24 answer and said she changed her mind, and then,
25 of course, I stopped Mr. Sahn from further

1 exploring that because I agree with you. I
2 think that becomes now where we're looking at
3 whether or not that was true. And so that was
4 the reason I overruled the objection. I didn't
5 fault you for it. I didn't think it was
6 hearsay, what he said to the officer.

7 Is there anything else you want to add
8 to that? I think I stated everything you
9 stated.

10 MR. DAVIS: That's correct, Your
11 Honor.

12 THE COURT: Very well. All right.
13 Any specific requests to charge from the State?
14 I'm going to charge the hand of one is the hand
15 of all. I will define armed robbery. I'm going
16 to charge about the confession, that the jury
17 has to find that beyond a reasonable doubt
18 before they can rely on it, that it was freely
19 and voluntarily made and that the *Miranda*
20 warnings were given.

21 Anything that you want me to
22 specifically charge, Mr. Davis?

23 MR. DAVIS: Your Honor, we would ask
24 for mere presence to counter against the hand-
25 of-one charge. We think the evidence could show

1 that, even if the jury believes he was there,
2 that he ---

3 THE COURT: I understand. But are
4 you sure you want me to -- I'll be happy to
5 charge that. But that puts him there.

6 MR. DAVIS: I understand. We would
7 like that charge.

8 THE COURT: Very well. I'll be happy
9 to do that. I'll include that as well. Thank
10 you, sir.

11 MR. DAVIS: Judge, we would also
12 request the accessory after. And the only case
13 that I could find that was helpful to us is
14 *State v. Gates*, 269 at 557.

15 THE COURT: Do you have a copy of it?

16 MR. DAVIS: I can bring it up, Judge.
17 But here's the part. "While we are of the
18 opinion that the additional charge requested
19 might have been appropriate, we do not think
20 under the facts of this case that the same was
21 required." It's a getaway driver case in armed
22 robbery. Factually, it's identical. The Court
23 did not overturn it, and that's the "while it
24 may be appropriate, it's not required." My
25 argument is going to be that that language it

1 would be in your discretion, and we would ask
2 you to give it. But it has not been announced.

3 THE COURT: Thank you, sir. The case
4 doesn't say that it should be given.

5 MR. DAVIS: Correct.

6 THE COURT: I just don't think it's
7 appropriate in this case, given what I -- what
8 we have. There may have been maybe a version of
9 it. And I don't know about -- I haven't read
10 that case. But, obviously, somebody -- where
11 the person -- in fact, I tried one. I think we
12 ended up dismissing it. But the person -- they
13 were all out and about, and they stopped to go
14 in and get something to drink at the convenience
15 store. And while he was in there, he decided to
16 rob it, jumped back in the car and took off. I
17 think we ended up changing it to an accessory
18 after-the-fact. Because I think that meets it.

19 But in this case, I don't have anything
20 -- I guess, because the version, as I see it, I
21 have, I have either he was there, consistent
22 with this statement, which implicates him, and
23 all the other things that would -- circumstances
24 that would point to him. The other side of that
25 is he wasn't there, and therefore he didn't have

1 anything to do with it. Therefore, he's either
2 guilty of that or not guilty at all. So I don't
3 think it's a comparable situation. Thank you.
4 So I would deny that.

5 At the conclusion of my charge, when I
6 send the jury out, you can raise that again as
7 an exception to my charge.

8 MR. DAVIS: Yes, sir. Thank you,
9 sir.

10 THE COURT: Anything else?

11 SOLICITOR SAHN: No, Judge. We're
12 fine with all those charges.

13 THE COURT: Very well. Thank you
14 very much. Mr. Davis?

15 MR. DAVIS: We've presented evidence,
16 so I don't know if the State wants to open on
17 the law. But the very next thing would be that
18 I would ask just for a few additional minutes to
19 prepare.

20 THE COURT: How long do you want?

21 MR. DAVIS: Ten minutes will be
22 sufficient, Your Honor.

23 THE COURT: State?

24 SOLICITOR SAHN: That'll be fine,
25 Judge.

1 THE COURT: All right. Let's plan to
2 come back at 11:00 -- just say five after.

3 (BRIEF RECESS)

4 (DEFENDANT PRESENT)

5 THE COURT: Thank you, Ladies and
6 Gentlemen. You will now hear from the attorneys
7 in their closing arguments. I believe that
8 their remarks will be very helpful when you
9 begin analyzing this case very shortly. So
10 please give them your attention, but please
11 remember that their remarks, while extremely
12 helpful should never be considered evidence.
13 Mr. Davis.

14 MR. DAVIS: Thank you, Your Honor.

15 As the Judge told you in the beginning,
16 as you well know now, the State has to prove to
17 you beyond a reasonable doubt that Marvin Bowens
18 committed armed robbery -- beyond a reasonable
19 doubt.

20 We throw those words around, hear them
21 on TV, but they mean something. They mean that
22 burden, that requirement that they prove their
23 case beyond a doubt that is reasonable. One of
24 the ways that it has been described is that after
25 hearing the testimony, after considering all the

1 evidence, if you have a feeling that would cause
2 you to hesitate to act that is a reasonable
3 doubt. That is a doubt based on reason. Any
4 feelings or thoughts like that are to be given
5 in favor to my client, Marvin. He is as
6 innocent today as he was when he was arrested,
7 he is innocent until and unless the State has
8 provided you prove that he is guilty beyond that
9 reasonable doubt.

10 If you have no hesitation to act on
11 that, then the judge will tell you and y'all
12 know you will find him guilty.

13 But if you have a reason, a real
14 reason, a legitimate reason, based on your
15 common sense, your life's experiences, and most
16 importantly, the evidence in the light thereof,
17 then the verdict is not guilty.

18 The State must prove to you, as the
19 Judge will give you the elements of armed
20 robbery later, that Marvin was there and that he
21 participated. They have to convince you of the
22 entire, that he was there and that he
23 participated.

24 If he was there and participated, I
25 would ask you to consider in your deliberations,

1 if so, then what?

2 Then where's the money? The State
3 suggests that this armed robbery occurred about
4 7:30 in the morning at the RoadRunner with the
5 van. One individual running inside was fully
6 clothed, came back out, jumped in the van driven
7 by a fellow wearing an orange shirt. And they
8 drove down the road and were arrested in
9 Jacksonboro.

10 Okay. Where's the money? Three
11 hundred dollars is what Mr. Patel told you was
12 taken that day. It's not in his hand. It's not
13 on Marvin when he's arrested. It's not at his
14 house. It's not at the
15 testimony right at the end of Marvin's statement
16 is the address. They had the canine out there
17 looking for weapons and money and individuals.
18 You heard that testimony. It wasn't found
19 there. The reason it wasn't found is because he
20 wasn't involved, and there's a gap. There's a
21 gap there.

22 We're not here for Minor or
23 Minor's trial. That's not today's topic. But you
24 heard him testify. And when he was put on the
25 spot about whether he committed this crime or

1 not, we got no further testimony from him.

2 But as far as where the van was and as
3 far as where Marvin was, that is clear. There
4 was a stop at the house. And then and only then
5 does Marvin enter that van. Then and only then.

6 Of the three hundred dollars all that's
7 recovered from the entire investigation of this
8 case is \$26.10. Minor didn't have it. Marvin
9 didn't have it. So is there someone else with
10 the \$274.90? There is no -- no forensic
11 evidence, no forensic evidence, connecting
12 Marvin to this case.

13 They arrested him. They had him. They
14 knew where he lived. They had the van. They
15 talked to his father. They even brought the
16 canine out. They searched the area. They
17 lifted a print from the van. There's nothing
18 connecting him to the crime.

19 Was he in that van? Was he arrested
20 wearing an orange shirt? Absolutely. But that
21 is not enough.

22 I told you at the beginning -- I told
23 you at the beginning that there were -- I think
24 I mentioned three undisputed facts in this case.
25 I didn't ask a lot of questions of the State's

1 witnesses. It's quite obvious. We saw the
2 video. An armed robbery occurred. That doesn't
3 convict Marvin of anything. The fact that an
4 armed robbery occurred doesn't even convict him
5 of anything if it was his brother. It doesn't
6 even convict him of anything if he's in the van.
7 He has to be there and participate -- be there
8 and participate.

9 We told you it is undisputed it was the
10 family van. It is. That does not prove that
11 Marvin did it.

12 Ms. Frazier, if I could talk about just
13 a little bit -- she talks about identifying the
14 van. She's the one that did that. She's also
15 the one that talks about the orange shirt. And
16 she's also the one that was taken down to
17 Jacksonboro to make the identification.

18 It's undisputed that Marvin was
19 arrested in the van some thirty or more minutes
20 later. You heard all the testimony. But some
21 thirty minutes later she was emphatic about that
22 was the van she saw. She had every opportunity
23 to say "and that was the man driving the van."
24 She didn't. She can't. All she mentioned was
25 an orange sweatshirt.

1 I would suggest that she was a bit
2 confusing in her description of the way things
3 happened. She talked about she picked the
4 newspapers up, looked across the street and saw
5 someone committing an armed robbery. Came in
6 and closed the doors. Called 9-1-1. She's
7 upset. That's what she did. And yet when I
8 questioned her about what she told the police it
9 was that someone came running into her business,
10 "Hey, there's an armed robbery going on. Call
11 9-1-1." It can't be both ways.

12 She talks about looking across the
13 street and seeing a man exit the RoadRunner. He
14 didn't have anything on his face, but she
15 couldn't -- it was too far away. But the van
16 was further away. She could identify the orange
17 shirt, but she can't identify either person.

18 Tinted windows in the van. Quite a
19 distance away. She also references -- the State
20 asked this -- it may be a touchy subject, but I
21 need to address this. The State had asked her
22 if she talked about that it was an orange
23 sweatshirt and someone with a dark complexion.
24 That can mean many things. That's what she
25 testified to. Certainly, there's no dispute,

1 that Marvin is an African American man.
2 Therefore, his skin is darker than mine.
3 However, he is not a dark-complected African
4 American man. You'll remember Ms. Frazier was
5 an African American female. All she is can
6 surely identify is the van and a color of the
7 shirt.

8 You heard testimony about that at least
9 eight or nine boys of the same age played in a
10 rec league down in the Jacksonboro area, played
11 in other areas nearby. And other boys had
12 shirts that color. It's also not a stretch at
13 all, even in the Lowcountry, to have some
14 Clemson fans.

15 She gives no more description of him
16 than simply seeing that color. It has to be
17 Marvin. It has to be Marvin or they have not
18 proven their case. It has to be Marvin in that
19 van or they haven't proven their case. It can't
20 be another one of the basketball players. It
21 can't be a Clemson fan. It can't be Tamasha
22 that we heard Minor testify about.

23 It can't be Gerriel who you saw
24 testify, his brother. They're about the same
25 stature. They both had access to the van.

1 Their father said they both would sneak out
2 sometimes. It can't be his little brother.
3 They have to prove it wasn't. They have to
4 prove it was Marvin, not Gerriel. And they have
5 to prove it wasn't anyone else, anyone else.

6 You have to be firmly convinced. You
7 can't hesitate on the proof that it was him.
8 And there's just not that sufficient proof. It
9 could have been anyone else, and, in fact, it
10 was someone else. In fact, it was someone else.

11 Marvin doesn't know. He was in the van
12 and got picked up later. He doesn't know. Does
13 Minor know? He gave you the name. Minor gave
14 you a name, the cousin. Gerriel, the middle
15 brother, is about the same size as Marvin. You
16 saw him testify.

17 The other major issue that we have to
18 address is Marvin's statement. Detective
19 Lawrence, an experienced detective, testified.
20 And don't forget the very beginning. The State
21 asked him some questions about his training and
22 background. He's gone to several schools in
23 different states. He's educated, he's specially
24 trained in interrogation. And Marvin was
25 seventeen and a half years old. You've seen him

1 here today. Detective Lawrence is a large man.
2 Marvin is not.

3 While they were talking, Marvin had
4 heard previously his father give him an
5 ultimatum. He could not believe him. His
6 father's not going to back that up. His
7 father's not going to -- "if you don't get Minor
8 out of this, you're in" -- he's not going to
9 back that up. Yes, he is. He's done it
10 previously. He took the stand and talked about
11 the harsh physicality that he's committed on
12 Marvin previously.

13 So 17-year-old Marvin is in the
14 interview room with Detective Lawrence.
15 Detective Lawrence is doing his job. But he's
16 trying to get a statement. That's the purpose
17 of the interview. He's trying to get a
18 statement. So Marvin, at seventeen and a half,
19 has to decide what to do. He knows it's
20 serious. He's scared. He's worried. He's
21 scared about the consequences of being arrested.
22 You heard the way he mouthed off when he was
23 arrested. He's scared. You know what he said
24 to Officer Craven. He apologized for it, but he
25 said it.

1 He's in that room trying to decide what
2 to do. He's got Detective Lawrence there trying
3 to get information from him. He's got the
4 memory of his father's words in his head. And
5 he knows his little brother, Minor is somewhere
6 nearby, but they don't tell him what's going on.
7 Is ^{Minor} talking? Is he not talking? Is he
8 okay? What's he being charged with? Where is
9 he? What's going on? The little brother's next
10 door.

11 It's undisputed, as I told you in the
12 opening statement, that the statement's a lie.
13 How do we know that? Because there is no
14 Charles Green. There's no Charles Green.
15 Detective Lawrence investigated that. He didn't
16 just take Marvin's word for it. He looked into
17 that. "Yeah, I did it. I knew what was going
18 on. I was there. It was me. It was me and
19 Charles Green and I got \$95." You know the
20 statement. You've heard the statement. There
21 is no Charles Green. How did Marvin get those
22 two names?

23 You've also heard testimony that this
24 is Detective Charles Lawrence. His mother's
25 last name is Green. Charles Green.

1 Ultimately, he did hope for some help
2 from Detective Lawrence, and he hoped to avoid
3 repercussions from his father. And he hoped to
4 save his younger brother. And he wrote the
5 statement. And you've heard about it. And you
6 have to assess the truthfulness and the
7 believability of that statement just like any
8 other witness that came in here and testified.

9 The undisputed fact is that statement
10 is untrue. There is no Charles Green. That's
11 not true. And the rest of it's not true. He
12 wasn't there. He didn't know what was going to
13 happen. He did not participate in this robbery.
14 He didn't participate in what ^{Minor} did, Minor
15 He didn't. As he told you himself, he made up a
16 story to try to help him.

17 The Solicitor asked him, you're very
18 smart, you're clever, you're savvy. You're not
19 savvy if you don't know the definition of
20 "savvy." And he didn't.

21 Do not hold his youthful inexperience
22 in trying to be a man and protect his younger
23 brother against him. I want sympathy for my
24 client. I want justice for my client. The
25 State has not met the proof. They have not.

1 provided you testify or evidence that Marvin is
2 the one in that van as opposed to someone else.
3 They have not presented you evidence that he
4 participated in any way by what he did.

5 Taking the evidence and in weighing the
6 evidence, use your common sense and your life's
7 experience. But at the end of your
8 deliberations we'd ask for a verdict of not
9 guilty.

10 THE COURT: Thank you, Mr. Davis.
11 Mr. Sahn?

12 SOLICITOR SAHN: Thank you, Judge.
13 May it please the Court?

14 THE COURT: Yes, sir.

15 SOLICITOR SAHN: Ladies and
16 gentlemen, Marvin Bowens made a choice on
17 December 20th, 2008. He chose to go out and take
18 what he wanted rather than work for it or earn
19 it. And what he wanted was quick, easy money.
20 And he chose to do that with no regard
21 whatsoever for the consequences for the victims.

22 He chose to take someone else's hard-
23 earned money by actively participating in an
24 armed robbery at that Road Runner convenience
25 store. And he and his accomplice succeeded in

1 robbing that store with a sawed-off shotgun. He
2 and his accomplice did not care how -- about the
3 effect it would have on Raj Patel, the owner of
4 the store, or Martha Ann Grant, the cook inside
5 the store. And anybody else for that matter
6 that may have gotten in the way.

7 You noticed on the video that a man was
8 walking in. He had no idea what was going on,
9 as the robber walked by him with a shotgun.
10 They didn't care how scared Raj Patel would be
11 when a man came into his store with his face
12 covered by a bandana, a hood over his head,
13 gloves on, dressed in all dark clothing and
14 carrying a sawed-off shotgun. This sawed-off
15 shotgun (indicating State's Exhibit 21).

16 This is a dangerous, deadly weapon.
17 It's capable of inflicting extreme damage and
18 death upon people. The defendant was
19 thoughtless. He didn't care what would happen
20 if that gun off during that robbery. Well, I'll
21 tell you what would happen. We'd be here today
22 trying a murder case rather than an armed
23 robbery case.

24 Luckily for all of us, that didn't
25 happen. But the bottom line remains the same.

1 That was a dangerous crime committed by
2 dangerous individuals.

3 Now, I want to talk briefly about the
4 burden of proof in this case. Judge Dennis will
5 instruct you further, after we're done here.
6 But the law says and the judge will tell you
7 that it means you're firmly convinced. In
8 criminal cases, the law does not require proof
9 that overcomes every possible doubt. In fact,
10 there's very few things in this world that any
11 of us can know without absolute certainty. And
12 if you did know with absolute certainty, you get
13 on that witness stand and testify and tell about
14 what you knew.

15 Remember, after you go back and look at
16 the evidence -- and don't confuse meditating the
17 act with careful deliberation and looking at the
18 evidence. I encourage you to do that. But if
19 after you're doing that you're firmly convinced,
20 you find him guilty.

21 Now, the defendant is charged with
22 armed robbery. And I'll just go over those
23 elements with you very quickly. It's the
24 unlawful taking from a person without consent of
25 the owner -- in this case, Raj Patel -- by

1 violence, intimidation or putting a person in
2 fear, and with the use of a deadly weapon.

3 Now, one more thing about that sawed-
4 off shotgun. If you remember Deputy Jim Milz,
5 the Crime Scene technician. He talked to you
6 about just how dangerous that deadly weapon is.
7 And he told you about the reason for that is
8 because of its size. It's sawed off, so it
9 makes it much smaller, easier to carry, conceal,
10 maneuver when you're going in and out of stores.
11 And yet more dangerous in the fact that the
12 spray of the shots spreads very quickly and will
13 hit a wide range of target, as opposed to a
14 single projectile fired from a handgun.

15 Now, I want to talk to you about what I
16 consider to be the most important law in this
17 case. You've heard about it already, but let's
18 go over it again. It's the hand of one is the
19 hand of all. What that means is if a crime's
20 committed by two or more people acting together
21 in the commission of that offense, the act of
22 one is the act of all. They're both guilty.

23 The law says under these circumstances,
24 the act of one is the act of all. Let me be
25 crystal clear. This is the law in South

1 Carolina. It's not my interpretation of the
2 law. It's not Mr. Davis's interpretation of the
3 law. It's not what you think it should or
4 should not be. It is the law.

5 You all swore an oath at the beginning
6 of this trial to uphold the law as the judge
7 gives it to you. I have no doubt you'll do
8 that.

9 To put this law a different way,
10 though, if you're involved in criminal activity,
11 if you're in for a penny, you're in for a pound.

12 So keeping that law in mind, let's talk
13 about exactly how this crime went down that
14 morning. You saw the video showing Minor
15 part. He went in the store. You saw him on
16 video. But both individuals had active roles in
17 this robbery. And I submit to you they couldn't
18 have done it like they did without both of their
19 roles. The two of them worked together as a
20 team, a criminal team. And they were very good
21 at what they did. They had it down to a
22 science.

23 About 7:30 in the morning Marvin drives
24 both of them to the target, this morning the
25 Road Runner, drops off Minor Marvin goes

1 around back to the Aloha car wash to act as a
2 lookout. Once inside, you saw it -- Minor gets
3 the shotgun, puts it in Raj Patel's face,
4 demands money, takes money out of the register,
5 runs out right into the waiting getaway car
6 driven by Marvin, who's running right on cue.
7 They were in and out in about a minute. Very
8 smooth. Very efficient.

9 And they would have been home free.
10 They would have gotten away with it except for
11 Julie Frazier, the clerk across the street at
12 the Exxon. She just happened to be outside
13 picking up the newspaper. And she saw the van
14 pull up. She saw Minor jump out, and she saw
15 the driver wearing an orange shirt, an orange
16 polo shirt. She did say sweater at one point,
17 but she later clarified -- an orange, short-
18 sleeved shirt.

19 She also reported it to the police as
20 she was seeing it. And you heard the 9-1-1
21 call. Feel free to listen to it again back
22 there, if you'd like. You'll have it with you.
23 And she told the police and she told you on the
24 stand she saw a young black male wearing an
25 orange shirt in the driver's seat.

1 Now, what did Marvin get for his role
2 in the robbery? He got paid. He got a portion
3 of the loot taken from that store. It was about
4 a hundred dollars. It was supposed to be more,
5 you heard. They were hoping for more. But poor
6 Raj Patel only had about three hundred dollars
7 in his registers that day.

8 Now, because of what they did together,
9 both the brothers, they're both guilty of armed
10 robbery, I submit to you. But today, it's just
11 Marvin's angle. You don't have to worry about
12 Minor today. That's not your job. Your job is
13 to determine whether Marvin is guilty or
14 innocent in this case.

15 The defense attorney made a big deal
16 about where is the money in this case? Where is
17 the cash? Well, it's not rocket science.
18 There's an easy explanation for that. Minor
19 jumps out of the van when they're pulled over
20 and takes off. No one knows his whereabouts.
21 It's about twenty minutes before he's
22 apprehended. He hid it. Easy as that. And
23 look at those photos of the van when you're back
24 there. You see money. It's almost like a trail
25 as he's quickly exiting the van. You can see

1 how it falls out. Twenty-six dollars, to be
2 exact, fell out on the way out. I submit to you
3 he hid the rest. I don't know where. Wish we'd
4 found it? Sure. There's a lot of woods around
5 there. Plenty of places to hide it. He went
6 inside the mobile home. It could have been
7 there.

8 All right. I want to talk to you now
9 about the defendant's statement in this case.
10 It's obviously very important. The four main
11 things I want you to remember about it -- it was
12 given freely and voluntarily by the defendant
13 himself. He wasn't threatened or promised
14 anything in return for that statement. It lays
15 out his role in the robbery. And probably most
16 importantly, it is corroborated by other
17 evidence. And I'll talk more about that in a
18 second.

19 But I do want to tell you guys it is
20 rare in these criminal trials when we have a
21 playbook of what happened during that trial, so
22 to speak, an outline of what happened so we can
23 all follow along. In this case, we have a
24 script written by one of the actors himself,
25 telling us what he did. It was in his own

1 handwriting, no less.

2 But Marvin, he wants you to believe
3 something else. He wants you to believe that he
4 wrote that statement and it's false. He wants
5 you to believe that he would write a false
6 statement implicating himself in a serious armed
7 robbery that he now says he didn't commit -- two
8 and a half years later. He also wants you to
9 believe Detective Lawrence, an experienced
10 detective with the Charleston County Sheriff's
11 Office, promised him some great reward in return
12 for writing that statement.

13 Part of your job here today, sure, is
14 to judge people's credibility or believability -
15 - same thing. First, you can judge Marvin's
16 credibility. He was on the stand. You got the
17 opportunity to evaluate him.

18 You also get to judge Detective
19 Lawrence's credibility. And he told you on the
20 stand under oath, a high-ranking detective, in
21 very clear terms, he asked what why we did not
22 promise Marvin anything. And why would he? Do
23 you think he would risk his whole career over
24 this case, to try to lie to him, promise him
25 something he couldn't give him in return for a

1 simple statement, and then come into Court and
2 lie about it again under oath? Why would he do
3 it? I submit to you guys that he would not do
4 that. He was just doing his job. He gave the
5 defendant an opportunity to lay out his version,
6 and that's what happened.

7 The defendant was free to remain
8 silent, and he chose not to. Now, I want you to
9 go back there and review this statement as well
10 as the form that comes with it. Both of these
11 documents are covered in the defendant's
12 initials and his signature, on every page at
13 least once, sometimes twice -- his own
14 signature, swearing that this is his statement
15 as it happened.

16 Now, the relevant portions of that
17 statement -- I'm not going to say every word in
18 that statement is true. We know it's not. The
19 part about Charles Green -- he was trying to
20 cover for his brother. But the relevant
21 portions for this trial, the part that lays out
22 his role in the armed robbery, that can all be
23 corroborated.

24 Now, you might be wondering why did he
25 give this confession. Well, there are various

1 reasons people admit what they did after they're
2 caught. Some feel guilty. Some want to get it
3 off their chest. Some want to cover for
4 somebody else, thinking that will help. Who
5 knows? We don't have to decide why.

6 In this statement it sounds like
7 somebody who knows they're caught. Remember
8 when he gets pulled over by Deputy Craven -- it
9 was about twenty minutes after the robbery,
10 about fifteen miles away. That matched up.
11 They drove away, took them about twenty minutes,
12 fifteen miles, makes perfect sense.

13 Deputy Craven pulls him over, asks him
14 where he's coming from and he says, quote, "Fuck
15 you. Take me to jail." Now, does that sound
16 like somebody who's innocent and didn't do a
17 crime? If I pulled over and asked where I was
18 coming from and I didn't do anything, I'd
19 probably just say where I came from so I could
20 go home. I wouldn't say "take me to jail."

21 But the fact that Marvin may have been
22 trying to cover for his brother, for whatever
23 reason, whether he was threatened by a two-by-
24 four or not -- whatever reason, that doesn't
25 make the part about his role in the armed

1 robbery untrue. And how do we know the parts
2 about his role are true? I've talked about this
3 a little before. They're corroborated by Raj
4 Patel, about how the robbery happened, Martha
5 Ann Grant, but most importantly, Julie Frazier,
6 the clerk across the street. She's a completely
7 independent, unbiased witness. In fact, she did
8 the part. She came in and she told what she saw.
9 No reason to help anybody or hurt anybody. Saw
10 a young black man in an orange shirt -- orange
11 short-sleeved shirt driving that brown van away.

12 And when he's arrested twenty minutes
13 later, Marvin's wearing an orange short-sleeved
14 shirt. And he told us on the stand, Marvin did,
15 that he was wearing that exact shirt. It was
16 taken off him. He told you that.

17 Now, Julie Frazier tells us that Marvin
18 waited back at the car wash as a lookout, then
19 drove away after. That's exactly what Marvin
20 said in his statement. It's all corroborated.
21 And remember, Julie Frazier -- she didn't know
22 what Marvin was going to say in his statement,
23 and vice-versa. Surely, Marvin doesn't even
24 know he's been seen by anybody. But, guess
25 what, it matches up perfectly.

1 Now, ladies and gentlemen, at the
2 beginning of this trial, you took an oath and
3 you agreed about what your job would be in this
4 case. That would be to apply the facts as you
5 determine them to them to be to the law as the
6 judge gives it to you. But we all know, and it
7 may be natural sometimes, for you to think about
8 other things, like comparing culpability between
9 the two robbers in this case. You heard Mr.
10 Davis talk about sympathy for the defendant,
11 because of his age, maybe.

12 We may all find ourselves thinking
13 about these things at times. These things
14 happen to anyone. They're called mitigating
15 factors. But they should have no bearing on
16 whether the defendant is guilty or innocent of
17 the crime. These factors would be considered by
18 the judge at sentencing, if it came to that. I
19 submit to you that's the proper time for those
20 factors.

21 Now, ladies and gentlemen, what we're
22 asking you to do in this case is to give the
23 victims, both Raj Patel and Martha Ann Grant,
24 the justice that they have patiently waited for,
25 for the last two and a half years. And at the

1 same time we'd ask that you hold the defendant
2 accountable for his role in that armed robbery.
3 And you can do both of those things by finding
4 him guilty. Thank you.

5 THE COURT: Thank you very much, Mr.
6 Sahn and Mr. Davis.

7 Ladies and gentlemen, that concludes,
8 of course, the closing arguments. Now it's my
9 responsibility as the trial judge to give you
10 the law. And it's your responsibility to take
11 this law and apply it fairly and impartially to
12 the facts that you will determine. Because you
13 must evaluate the credibility and believability
14 of each witness in this case and decide and give
15 what you find to be credible and believable and
16 give it the weight that you believe it to be
17 entitled.

18 When you've done that, that is, applied
19 your common sense, your sense of logic and
20 reason, and made that decision and then applied
21 the law, you will have honored the commitment
22 that you made when we started this process. And
23 I'm confident that you will do that very shortly
24 when you are instructed to begin your
25 deliberations.

1 Now, during this instruction, if, at
2 any time, you hear me use the word "defendant,"
3 as I mentioned to you, that's a term that we use
4 to identify the person against whom the claim is
5 being made. That's the sole significance of
6 that term. It means nothing else. And in this
7 case, of course, Mr. Bowens is that individual.
8 So when I use that term, I will be referring to
9 Mr. Bowens.

10 He's been accused in this document that
11 I'm holding in my hand. As I mentioned to you,
12 it is called an indictment. It's a formal
13 charging document. It is not evidence. It will
14 not accompany you to your jury room. It merely
15 accuses him of the crime of armed robbery. And
16 to this indictment he has entered a plea of not
17 guilty, which places then upon the State the
18 burden of proving his guilt beyond a reasonable
19 doubt.

20 But, as you recall, as I stated when we
21 started, persons who are accused of criminal
22 offenses in this state and this country have no
23 responsibility to prove or disprove anything.
24 They certainly do not have to prove their
25 innocence. And they are cloaked, if you will,

1 with the presumption of innocence, which I
2 discussed. And that means that each of you, by
3 your oath, must actively presume that Mr. Bowens
4 is not guilty. And the presumption of innocence
5 remains and is maintained at all times
6 throughout the trial of this case and may only
7 be removed when you, after carefully
8 deliberating in this case, evaluating the
9 evidence -- you're convinced, beyond a
10 reasonable doubt that he is guilty.

11 What is a reasonable doubt? A
12 reasonable doubt is a doubt that would make an
13 honest, conscientious, sincere juror, who is
14 searching for the truth in a case to hesitate to
15 act or take some action. Proof beyond a
16 reasonable doubt would be proof that leaves you
17 firmly convinced of his guilt.

18 Now, there are very few things in this
19 life that we know with absolute certainty. And
20 in criminal disputes such as this our law does
21 not require proof that overcomes every possible
22 doubt. If, based on your evaluation and
23 consideration of the evidence, you are firmly
24 convinced that the defendant is guilty of the
25 crime charged, then, under your oath, you must

1 return a verdict of guilty.

2 If, on the other hand, you think there
3 is a real possibility that he's not guilty, then
4 you must give him the benefit of that doubt and
5 return a verdict of not guilty. Now, a
6 reasonable doubt may arise from the evidence
7 which is in the case or the lack or absence of
8 evidence in the case. And it's up to you to
9 determine whether or not a reasonable doubt
10 exists as Mr. Bowen's guilt.

11 I charge you in that regard that he's
12 entitled to every reasonable doubt arising in
13 the whole case. And by that I mean simply this.
14 If, upon any issue of fact which would be
15 essential to your finding him guilty or
16 convicting him of this crime, you should have a
17 reasonable doubt as to how that issue should be
18 resolved, I would instruct you that it would be
19 your duty to resolve that doubt in his favor.

20 Now, the evidence which you are to
21 consider consists of the testimony of the
22 witnesses and exhibits offered and introduced
23 through their testimony. During the trial
24 you've heard also from time to time objections.
25 And sometimes we would excuse you, but sometimes

1 I would rule on those objections in your
2 presence. Quite frankly, that's a part of our
3 trial where we're working together. If I
4 overruled the objection, it meant that you were
5 going to hear the question and answer. If I
6 sustained it, obviously, you remember that you
7 did not.

8 Now, the fact that -- if I sustained an
9 objection, that should never be considered by
10 you in any fashion, because that was a matter
11 for me. And, typically, the objections deal
12 with or dealt with matters of evidence
13 concerning -- and our Rules of Evidence
14 typically apply and control these things. But
15 if I overruled it, I allowed you to hear it.
16 But don't put any greater weight on that because
17 I overruled it. Because if you, then you've let
18 me step into your arena, so to speak, and into
19 your area of responsibility.

20 Quite honestly, in thinking about it
21 over the years, I think that moment demonstrates
22 really how we work together. I've made a ruling
23 as a matter of law. I'm going to permit the
24 question and answer. But then it shifts to you,
25 and you have to decide whether or not you

1 believe, and, if so, how strongly you believe
2 it. And that's how we would resolve this
3 matter.

4 Of course, you remember that my remarks
5 at any point during the trial or during this
6 instruction should never be considered by you as
7 evidence. Likewise, the remarks of the
8 attorneys, either in opening statements or
9 closing arguments, are not, as I've stated
10 throughout, to be considered evidence. I will
11 instruct you that if, in your deliberations, you
12 collectively determine or disagree with a
13 statement made by the attorney about what a
14 witness said or didn't say, you're to go from
15 your recollection, because you're the sole
16 judges of the facts of this dispute.

17 Likewise, if any statement of the
18 attorneys differs with any remark or any
19 statement that I made during the charge, you
20 must disregard their remarks and take the law as
21 I give to you. Because, for purposes of this
22 proceeding today, I'm the sole judge of the law
23 in this case.

24 Evidence, ladies and gentlemen,
25 generally, in disputes of this nature and really

1 in disputes for civil or criminal -- matters are
2 proven or established by two types of evidence.
3 One we call direct evidence and the other is
4 circumstantial evidence. And direct evidence,
5 as the name would imply, generally deals with
6 one's sensory perceptions -- I saw something, I
7 heard something or the like.

8 If you are satisfied and convinced that
9 you believe that, then, of course, that would
10 establish that particular fact. Circumstantial
11 evidence is proof of a chain of fact and
12 circumstances indicating the existence of
13 another fact. It is evidence which immediately
14 establishes collateral facts from which the main
15 fact may be inferred. Circumstantial evidence
16 is based on inference and not on personal
17 knowledge or observation.

18 Now, the law makes absolutely no
19 distinction between the weight or the value to
20 be given to either direct or circumstantial
21 evidence. Nor is there a greater degree of
22 certainty required of circumstantial evidence
23 than direct evidence. You should weigh all of
24 the evidence in the case. And, quite honestly,
25 you can have both. That's no uncommon. If you

1 have one and not the other, that doesn't mean
2 anything. You just simply consider the evidence
3 that is presented and decide what you find to be
4 credible and believable.

5 I would instruct you, however, in this
6 regard, that the mere fact that circumstances
7 brought out in a case are strongly suspicious of
8 guilty or that the circumstances are such that
9 the defendant's guilty is probable, then that
10 would not be enough to sustain a conviction.
11 Why? Because the proof often in the case has to
12 be more than mere suspicion. It has to be more
13 than someone being probably guilty. It has to
14 be proof that convinces you and satisfies you
15 beyond a reasonable doubt.

16 Now, how do you decide the facts in the
17 case? As I mentioned when you first started in
18 my opening statements, I said to you that you've
19 brought with you everything that you're going to
20 need to perform this task. Now I would re-
21 emphasize that. You decide that just as you
22 have every day of your life. That's how we
23 live. That's how we exist in this world. We
24 read something or we hear something, and we
25 apply our common sense, our sense of logic and

1 reason, our knowledge, and we make a decision.
2 And that's precisely what you will do when you
3 analyze the evidence in this case. You will
4 apply that common sense and decide what you find
5 to be credible and believable.

6 There are many factors that we use in
7 our lives to assist us, and there are many
8 methods that we employ. I will discuss some of
9 the factors with you now that you may want to
10 consider. But if I don't mention a method or
11 factor that you've found reliable in your life,
12 please use it when you begin your deliberations.

13 But you may wish to consider the
14 appearance of the witness -- how did they appear
15 to you? Hesitant or straightforward in
16 answering questions? Was the testimony of a
17 witness consistent or was it inconsistent? Was
18 it strengthened or weakened by other evidence in
19 the case? How did the witness come to know the
20 facts that he or she testified to, and what was
21 the ability of that witness to know those
22 particular facts or circumstances? Is there a
23 reason for a witness to give testimony which may
24 be helpful or detrimental to one side or the
25 other? In other words, was the witness biased

1 or prejudiced in any fashion?

2 Also, you've heard testimony during
3 this trial of convictions of a witness, prior
4 convictions. And I would instruct you that that
5 is simply a matter that may be considered by you
6 only for the purposes of evaluating the
7 credibility and believability of that witness.
8 It does not, in and of itself, discredit that
9 witness. It's just simply a factor that you may
10 consider in determining the credibility of that
11 particular witness.

12 In determining the questions of
13 credibility and believability of witnesses you
14 have very broad discretions. You can believe
15 one witness against several witnesses. You can
16 believe several witnesses against one. You may
17 believe all of a witness's testimony, parts of a
18 witness's testimony or none of a witness's
19 testimony. Now, you don't make these decisions
20 arbitrarily. But if there's a reason in the
21 record, that is the evidence of this case, for
22 taking that position, you have that prerogative.
23 Because your objective and your mission, so to
24 speak, is to find and establish the truth,
25 regardless of the source of the evidence.

1 Now, during this trial a statement
2 alleged to have been made by the defendant has
3 been admitted into evidence in this case. While
4 the Court has determined that the statement was
5 admissible, I now instruct you that you make the
6 ultimate decision of whether or not the
7 defendant made the statement. If the defendant
8 did make the statement, you must determine
9 whether the statement was made by the defendant
10 voluntarily and of his own free will. This
11 means that the statement was not caused by
12 pressure, force, fear, threats, coercion or
13 intimidation or by hope or promise of leniency
14 or a reward of any kind.

15 In determining whether the statement
16 was voluntary you should consider both the
17 character of the defendant, the details of the
18 questioning. Some of the facts that you must
19 consider are the age of the defendant, the
20 defendant's education or lack of education, the
21 defendant's mental ability or capacity, the
22 defendant's I.Q. or intelligence, the
23 defendant's background and environment, the
24 place and length of detention, the nature of the
25 questioning and the advice or lack thereof to

1 the defendant of his Constitutional rights,
2 included but not limited to the right to remain
3 silent, that any statement could be used against
4 him in a court of law, the right to have a
5 lawyer present and that if he could not afford a
6 lawyer, a lawyer would be appointed to represent
7 him without any cost, and that he could stop
8 making a statement at any time.

9 You must carefully consider all of the
10 surrounding circumstances before you give any
11 weight to the alleged statement. The State has
12 the burden of proving beyond a reasonable doubt
13 that the alleged statement was voluntary. If
14 you determine it was, you may give the statement
15 any further considerations that you deem proper.
16 You must decide what weight, if any, should be
17 given to the alleged statement.

18 If you determine the alleged statement
19 was not free and voluntary, you should not
20 consider the statement at all.

21 Now, while you're given wide latitude
22 in determining the facts of the case and
23 evaluating the evidence, please remember that
24 you do not enjoy the same with the law. As we
25 talked when we first started, it's my

1 responsibility to serve with you as a judge and
2 to be the judge of the law. And that means it's
3 my duty to give you the law. And you have
4 promised that you will accept that law and apply
5 that law fairly and impartially to the facts.

6 Now, the fact that you may have a
7 different understanding of the law or you
8 believe the law should be changed, I respect
9 your right to feel that way. But please
10 remember that you must set aside those feelings
11 and apply this law fairly and impartially.

12 Now, the fact that I give you an
13 instruction on a particular issue should not be
14 considered by you as an indication of how you
15 are to resolve that factual issue. Also the
16 order of my instruction means nothing. I had to
17 put it in some order. And you're expected to
18 apply the charge as a whole.

19 Now, let's talk about the charge. As I
20 mentioned, he's accused in the indictment of a
21 crime of armed robbery. In order to prove that
22 offense, the State must first prove beyond a
23 reasonable doubt that this defendant took
24 personal property from the person or presence of
25 another person. Property is in the presence of

1 another person if it is within the person's
2 reach, inspection, observation or control so
3 that the person could if not overcome with
4 violence or prevented by fear, keep possession
5 of that property.

6 The State must also prove beyond a
7 reasonable doubt that the defendant carried the
8 property away intending to permanently deprive
9 the owner of that property, and to keep the
10 property for the defendant's own use. The
11 slightest removal of the property or the
12 complete possession of the property, even for an
13 instant by the defendant, is sufficient to show
14 a taking and a carrying away of the property.

15 The taking and the carrying away of the
16 property must have been done with violence or
17 putting the owner of the property in fear of
18 violence. Finally, the State must prove beyond
19 a reasonable doubt that the defendant was armed
20 with a deadly weapon during the robbery.

21 And a deadly weapon is any article,
22 instrument or substance which is likely to cause
23 death or great bodily harm. Whether an
24 instrument has been used as a deadly weapon
25 depends on the facts and circumstances of each.

1 I would instruct you in that regard that a
2 sawed-off shotgun may be a deadly weapon.

3 I would further instruct you in that
4 regard that if a crime is committed by two or
5 more people who are acting together in
6 committing a crime, the act of one is the act of
7 all. A person who joins with another to
8 accomplish an illegal purpose is criminally
9 responsible for everything done by the other
10 person which occurs as a natural consequence of
11 the acts done in carrying out the common plan
12 and purpose.

13 For example, two people can be guilty
14 of killing another person who only one of the
15 two had the gun and there was only one bullet,
16 and only one of the persons actually fired the
17 shot. If two or more people are acting together
18 and assisting each other in committing the
19 offense, the act of one is the act of all. As
20 it is said, the hand of one is the hand of all.

21 Now, prior to knowledge that a crime is
22 going to be committed without more is not
23 sufficient to make a person guilty of that
24 crime. Mere knowledge that another person is
25 going to commit a crime, even if the defendant

1 is present when the crime is committed, is not
2 sufficient to convict the defendant as a
3 principle. Guilt as a principle is shown by
4 actual or constructive presence at the scene as
5 the result of a prior arrangement. Therefore, a
6 finding of a prior arranged plan or scheme,
7 common scheme, is necessary for a finding of
8 guilt as a principle.

9 The State must prove beyond a
10 reasonable doubt by competent evidence this
11 theory of the hand of one is the hand of all. A
12 principle in a crime is one who either actually
13 commits the crime or who is present, aiding,
14 abetting or assisting in committing a crime.
15 When a person does an act in the presence of
16 another with the assistance of another, the act
17 is done by both.

18 Where two or more are acting with a
19 common plan or intent are present in the
20 commission of a crime, it does not matter who
21 actually commits the crime.

22 Present at the commission of crime
23 means to be sufficiently near to aid and abet
24 and to assist in the commission of that crime.

25 I would instruct you and remind you again, as I

1 just mentioned however, that mere presence at
2 the scene of a crime is not sufficient to prove
3 someone guilty of that crime.

4 A defendant's presence where a crime is
5 being committed or mere association with a
6 person who commits a crime does not make the
7 person an accomplice, an aid or an abettor of
8 the person committing that crime.

9 Now, intent is also a necessary element
10 that the State has to prove beyond a reasonable
11 doubt. Because while there must have been a
12 common design or intent to commit the crime and
13 a crime must have been committed pursuant
14 thereto, with a person aiding and abetting by
15 some overt act. "Intent" means intending the
16 result which actually occurs, not accidentally
17 or involuntarily. Intent may be shown by the
18 acts and conduct of others and other
19 circumstances from which you may naturally and
20 reasonably infer intent.

21 As I stated, the State must prove
22 intent beyond a reasonable doubt. And you just
23 simply -- a jury makes that determination,
24 ladies and gentlemen, by simply considering all
25 the facts and circumstances to have been shown

1 as what occurred. And you evaluate that and
2 decide what you find to be credible and
3 believable and decide whether or not the State
4 has met its burden and convinced you of that
5 intent.

6 Throughout this entire process, ladies
7 and gentlemen, you and I both are not advocates
8 for either side. We're not partisans. We don't
9 have any friends to reward in this process, nor
10 do we have any enemies to punish. We've
11 accepted a role as human beings to be a judge.
12 And in so doing we have to be conscious of
13 something. One thing about being human, we all
14 experience human emotion. And sometimes human
15 emotion affects what we do or not. This time
16 for this purpose you have to be conscious of
17 that, as I do. We have to make sure that we set
18 aside all human emotion in our task as being a
19 judge of the facts and a judge of the law. So
20 you have to do the same thing.

21 When you retire in just a moment to
22 begin your deliberations you will simply set
23 aside those human emotions, methodically analyze
24 the evidence and decide what you believe to be
25 the truth. And then once you decide that, if

1 you take the law and apply it fairly and report
2 your decision. When you've done that everybody
3 may not be pleased. But one thing's for
4 certain, no one can complain. Because that's
5 exactly what the system contemplates. Both
6 sides will then obtain a fair and impartial
7 determination in this proceeding.

8 Now, ladies and gentlemen, and Madam
9 Presiding Juror, I've prepared a verdict form
10 which I will be sending back with the exhibits.
11 I'd like to discuss that verdict form with you
12 now. There are two choices that you will have
13 to consider. The order in which they appear on
14 this document means absolutely nothing. I had
15 to put them in some order. But I'd like to
16 discuss them with you now.

17 You'll notice that the form is
18 captioned. The captioning is simply to
19 facilitate the filing of the document. It
20 should mean nothing to you. It's just a
21 formality. It reads "as to the indictment," and
22 it cites the indictment number which I have and
23 it will not accompany you, "We, the jury, by
24 unanimous consent" -- what does that mean? That
25 means 12 to zero. Eleven to one, ten to two,

1 that's not sufficient. All of you must agree.

2 "Consent" -- "By unanimous consent find
3 the defendant" -- one choice is "guilt of armed
4 robbery." The second choice is "not guilty."
5 What will you be saying if you find -- if you
6 return a verdict of guilty? You'll be saying
7 that you've analyzed the evidence and based on
8 your assessment and evaluation of the evidence
9 and application of the law, you're convinced
10 beyond a reasonable doubt as to each element.
11 And, as instructed, you're returning a verdict
12 of guilty.

13 If you say "not guilty," you'll be
14 simply stating after analyzing the evidence,
15 you're not firmly convinced as to each element.
16 Because if the State fails on one element, you
17 must return a verdict of not guilty.

18 Whichever your choice, Madam Presiding
19 Juror, if you will simply place a check mark or
20 an X in the blank that precedes it. And I would
21 ask you also circle that choice. That way we're
22 assured. Sign it where it says "presiding
23 juror." Once you've done that if you will knock
24 on the door, we will return you to the court
25 room and receive your verdict.

1 Ladies and gentlemen, I know you're
2 anxious to get started. And as I mentioned to
3 you when we started, I said the last thing that
4 I would tell you is when you may start your
5 deliberations. In just a moment I'm going to
6 excuse you from the court room, and I need to
7 discuss with the attorneys my instruction. And
8 it might be necessary, as you've already
9 experienced, to have to talk about matters of
10 law outside of your presence. And if there are
11 any additions or corrections that I need to make
12 to the charge, we will return you to the court
13 room to accomplish that.

14 But if there aren't any, then we will
15 gather the exhibits and the verdict form and
16 deliver them to you. Now, when you receive
17 those exhibits, then and only then may you begin
18 your deliberations.

19 Now, once the deliberations start the
20 only restriction that I place on those
21 deliberations is this. If any jury has to leave
22 the table for any reason during your
23 deliberations, you must stop deliberating until
24 all twelve of you are together.

25 Now, at this moment, let me ask you a

1 question. Does any of the first 12 feel that
2 they will not be able to continue? If so,
3 please raise your hand.

4 Ms. Young, at this point it appears
5 that the first twelve will be able to continue.
6 So in just a moment when we excuse the jury, I'm
7 going to ask that you not rejoin them in the
8 jury room. They will take you to another room
9 and I will be in shortly to explain how much
10 longer I need for you to remain.

11 Ladies and gentlemen, thank you for
12 your attention throughout this proceeding.
13 Thank you for your attention to my remarks.
14 Please return to your jury room and await the
15 exhibits before commencing your deliberations.

16 (JURY OUT AT 12:10 P.M.)

17 THE COURT: Exceptions or additions
18 from the State?

19 SOLICITOR SAHN: Judge, I have no
20 exceptions to the charge.

21 THE COURT: Exceptions or additions
22 from the defendant, other than accessory?

23 MR. DAVIS: Nothing new, Your Honor.

24 THE COURT: Very well. The previous
25 rulings on the accessory, I would make the same

1 response. And it is noted for the record. Do
2 you have a proposed charge that you've made up,
3 or you just wanted me to charge my normal
4 accessory?

5 MR. DAVIS: It would be the normal
6 accessory.

7 THE COURT: Very well. Thank you
8 very much. We will note that for the record,
9 and the Court declines to give that. Thank you
10 very much, and thank you all. We'll be at-ease
11 now. If you leave, if you will make sure you
12 leave your number that I can call so we can get
13 in touch with you.

14 (DELIBERATIONS BEGIN AT 12:25 P.M.)

15 (NOTIFIED OF QUESTION @ 12:50 P.M.)

16 (DEFENDANT PRESENT)

17 (SO ENTERED AS COURT'S EXHIBIT 1)

18 THE COURT: Thank you all. Let the
19 record reflect that Mr. Bowens is present. I
20 have received what's now Court's Exhibit 1, a
21 note from Ms. Rico-Flores, our Presiding Juror,
22 "May we please review the 9-1-1 call, the
23 testimony of Ms. Frazier, video of the robbery,
24 testimony of Mr. Craven and the testimony of
25 Minor " I made an inquiry as to whether or not

1 or not it was senior or junior. They would like
2 to hear junior's testimony. So we will bring
3 them whenever Ms. Garrison is ready to
4 accomplish that.

5 COURT REPORTER: Ready, Your Honor.

6 THE COURT: Is the State ready for
7 the jury to return?

8 SOLICITOR SAHN: We are, Your Honor.

9 THE COURT: Is the defendant ready
10 for the jury to return?

11 MR. DAVIS: Yes, Your Honor.

12 (JURY IN AT 1:03 P.M.)

13 THE COURT: Thank you, ladies and
14 gentlemen. Ms. Rico-Flores, I have what's now
15 Court's Exhibit Number 1. It's a request from
16 the jury and it reads as follows: "May we
17 please review the 911 call, the testimony of Ms.
18 Frazier, video of the robbery, testimony of Mr.
19 Craven and testimony of Minor And with your
20 understanding and consent, I went back and
21 inquired and I believe you indicated to me it
22 was Minor Junior. Is that correct?

23 JUROR NUMBER 227: That's correct.

24 THE COURT: We will play them.

25 Probably we will do both of the videos for you

1 first, and then we will play the testimonies.
2 Are we going to do it in the order in which they
3 requested? Is that the way you have it?

4 COURT REPORTER: Yes, sir.

5 THE COURT: The order in which you
6 have placed them on Court's Exhibit 1 -- when we
7 play the testimony -- and I'm sure you've all
8 perceived this by now -- but remember -- and not
9 always, but sometimes the testimony of the
10 witness -- and this is typically, in an ordinary
11 fashion: direct, cross, redirect and recross.
12 That comprises the testimony of the witness.
13 Sometimes there are things said in one that you
14 may be looking for.

15 And what I have done over the years is
16 I'm going to play that, starting with the
17 beginning of the direct testimony. If at any
18 point during that testimony the juror or jurors
19 who are needing that testimony hear or has their
20 concern or question answered or addressed, and
21 they do not need any further, if they will make
22 that known to you, Ms. Rico-Flores, at the point
23 where all questions have been addressed and no
24 further is necessary, if you will raise your
25 hand, we will stop that testimony.

1 Unless I see your hand raise, I will
2 continue with it until the end of that
3 testimony. Again, I don't know what it is.
4 That's the way that we'll proceed in dealing
5 with that. With the videos, we'll play the
6 videos in their entirety.

7 All right, approach, please. There was
8 a question or a concern.

9 (OFF RECORD BENCH CONFERENCE)

10 THE COURT: We're ready. If you will
11 assist. I think you have the videos.

12 SOLICITOR SAHN: We do.

13 THE COURT: If you will go ahead and
14 play them. We'll play, first, the 9-1-1 call.

15 MR. DAVIS: Judge, it's one audio and
16 one video.

17 THE COURT: Yes, excuse me. I said
18 "videos." It's an audio and video. I misspoke.
19 Thank you very much, Mr. Davis. You are
20 absolutely correct.

21 (STATE'S EXHIBIT 12 PUBLISHED)

22 THE COURT: Now, if you will play the
23 video of the robbery.

24 (STATE'S EXHIBIT 10 PUBLISHED)

25 SOLICITOR SAHN: I believe that's all

1 the video.

2 THE COURT: Very well. Thank you
3 very much. Ms. Garrison, thank you very much.
4 We'll now hear the testimony of Ms. Frazier.

5 (TESTIMONY OF JULIE FRAZIER REPLAYED
6 IN ITS ENTIRETY)

7 (TESTIMONY OF BRANDON CRAVEN REPLAYED, AS
8 FOLLOWS:

9 BRANDON CRAVEN, being duly sworn to
10 tell the truth, the whole truth and nothing but
11 the truth, testified, as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR DURANT:

14 Q. Good morning, Deputy Craven.

15 A. Morning.

16 Q. Would you please tell the jury where you're
17 employed?

18 A. Walterboro City Police Department.

19 Q. How long have you been employed there?

20 A. Four and a half months.

21 Q. Previous law enforcement experience?

22 A. Colleton County Sheriff's Office.

23 Q. How long were you with the Colleton County
24 Sheriff's Office?

25 A. Three and a half years.

1 Q. So you were with the Colleton County
2 Sheriff's Office in December of 2008?

3 A. Yes, sir.

4 Q. What was your position in December of 2008?

5 A. Road patrol.

6 Q. What were your primary responsibilities and
7 duties in that position?

8 A. Enforce local and state law, patrol the
9 county and respond to calls.

10 Q. And did you have a particular area of
11 Colleton County that you were responsible for,
12 or for everything?

13 A. Everything.

14 Q. In that capacity, did you have the occasion
15 to become involved in the investigation of an
16 armed robbery that occurred at the RoadRunner
17 gas station in Charleston County, Hollywood, on
18 December the 20th of 2008?

19 A. Yes, sir.

20 Q. How were you brought into this case?

21 A. Our dispatch received a BOLO from
22 Charleston County saying that an armed robbery
23 had just occurred, gave out the vehicle
24 description and possible description of the
25 driver and last known direction of travel,

1 *towards Colleton County off of Highway 17.*

2 *Q. Do you recall approximately what time you*
3 *were notified of this?*

4 *A. 7:30 in the morning.*

5 *Q. After being alerted to that situation,*
6 *what's the next thing you recall happening?*

7 *A. I drove down to Jacksonboro. I was already*
8 *on Charleston Highway heading that way. And I*
9 *was approaching the county line when I observed*
10 *a gold in color, brown, like tan van approaching*
11 *me that matched the description, with a black*
12 *male driver that had an orange tee shirt.*

13 *Q. I'm showing you what's already in evidence*
14 *as State's 17. It's going to come up behind*
15 *you. Do you recognize that van?*

16 *A. Yes, sir.*

17 *Q. How?*

18 *A. The BOLO made it specific that it was a*
19 *golden tan van and had a hump on top of the van*
20 *as well.*

21 *Q. Did you see this van?*

22 *A. Yes, sir.*

23 *Q. Where did you see it?*

24 *A. It was traveling from Charleston County,*
25 *traveling south on 17 and pulled into the Sunoco*

1 gas station.

2 Q. Was it in Colleton County when you saw it,
3 or was it in Charleston?

4 A. It was in Colleton.

5 Q. And this is a map. I think we can probably
6 use it right here as well. This is State's 13.

7 I can put it right in front of you so you can
8 orient yourself to it first. Let me know ---

9 A. Okay.

10 Q. Using this map, if you could show the jury
11 -- if you need to stand up to get a better view
12 -- just show the jury where that was.

13 A. It was right here -- (indicating).

14 Q. And that's when you first saw the van?

15 A. Yes, sir.

16 Q. What did you do when you saw the van?

17 A. I notified my dispatch that I was out with
18 a possible suspect vehicle for the Charleston
19 County armed robbery. I activated my blue
20 lights and initiated a traffic stop on the
21 vehicle as it was pulling into the gas station.

22 SOLICITOR DURANT: Your Honor, may we
23 approach?

24 THE COURT: Yes.

25 (OFF RECORD BENCH CONFERENCE)

1 (JURY IN AT 11:20 A.M.)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR DURANT:

4 Q. You mentioned that there was a BOLO, right?
5 You used the word "BOLO."

6 A. Yes, sir.

7 Q. And, if you would -- I think that's -- what
8 does "BOLO" mean?

9 A. Be on the lookout.

10 Q. Just to clear that up. So you see this van
11 coming into Colleton County.

12 A. Yes, sir.

13 Q. What do you do?

14 A. I notified dispatch that I possibly have
15 the van involved in the armed robbery in
16 Charleston County and was going to make a
17 traffic stop on the vehicle.

18 Q. Did you make a traffic stop?

19 A. I did.

20 Q. And how did you begin to do that?

21 A. As it was turning into the shop I activated
22 my blue lights.

23 Q. So the vehicle was already pulling into the
24 gas station?

25 A. Yes, sir.

1 Q. And, if you would, tell the jury how this
2 proceeds.

3 A. He pulled into -- the van pulled into the
4 gas station and pulled up to one of the pumps.
5 I had my blue lights on and parked my vehicle
6 about ten to fifteen yards behind the vehicle.
7 I positioned it where my engine block was
8 between me and the vehicle and pulled my shotgun
9 out and began to conduct a felony traffic stop
10 on the vehicle, ordered the driver out of the
11 vehicle.

12 Q. What is a felony traffic stop?

13 A. That's where if an officer believes that
14 there is a weapon present or legitimate risk to
15 his life is present during the traffic stop,
16 instead of approaching the vehicle and making
17 contact one-on-one with the driver or the
18 occupants of the vehicle, he calls each occupant
19 of the vehicle out one-by-one back to his
20 cruiser to make sure that no one has a gun or
21 anything like that and the officer doesn't get
22 harmed.

23 Q. Did you have that belief that someone may
24 have been armed in this situation?

25 A. I did.

1 Q. Was anyone else with you or had anyone else
2 responded at this time?

3 A. No, sir. My closest backup, I think, was
4 fifteen or twenty minutes away.

5 Q. Fifteen to twenty minutes away?

6 A. Yes, sir.

7 Q. It was just you?

8 A. Yes, sir.

9 Q. So what happens? How do you begin to
10 conduct this felony traffic stop?

11 A. I positioned my car, exited my vehicle,
12 pulled my gun, leveled at the vehicle, began to
13 call the driver out of the vehicle. Once he
14 exited the vehicle I had him lift up his shirt,
15 turn around, make sure there were no guns in his
16 waistband, then walk backwards to my patrol
17 vehicle.

18 Q. Who did you order out first?

19 A. The driver.

20 Q. What was the driver wearing?

21 A. An orange tee shirt and I think blue jeans.

22 Q. And what happens?

23 A. He walks back to my vehicle. I order him
24 down on the ground. Once he got onto the ground
25 the passenger then exited the vehicle and

1 *started to run and went across Highway 17. And*

2 *I last saw him going down*

3 *Once I lost eyesight of him I handcuffed the*

4 *driver of the vehicle.*

5 *Q. So you stayed with the person who you had*

6 *already ordered out?*

7 *A. Yes, sir.*

8 *Q. The man in the orange shirt?*

9 *A. Yes, sir.*

10 *Q. And the other person appeared to get away*

11 *at that time?*

12 *A. Yes, sir.*

13 *Q. And there was no other officer on the*

14 *scene?*

15 *A. Yes, sir, -- there was nobody else.*

16 *Q. Did you detain the driver?*

17 *A. I did.*

18 *Q. Where did you place him?*

19 *A. I placed him in the rear of my vehicle*

20 *after backup arrived.*

21 *Q. How long did it take for backup to arrive?*

22 *A. About fifteen minutes.*

23 *Q. So it was just you and the person that you*

24 *detained in the orange shirt?*

25 *A. Yes, sir.*

1 Q. Do you see the person you detained in the
2 orange shirt here today?

3 A. I do.

4 Q. If you would point him out?

5 A. Sitting right there (indicating Defendant).

6 SOLICITOR DURANT: Let the record
7 reflect the officer identified the Defendant.

8 THE COURT: It so reflects.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR DURANT:

11 Q. Did you remain at the scene?

12 A. I did.

13 Q. Did other officers respond?

14 A. Yes. My sergeant responded out there as
15 well as Charleston County deputies.

16 Q. How long did you stay at the scene that
17 day?

18 A. Probably a little bit over two hours.

19 Q. Did you write a report in this case?

20 A. I did.

21 Q. I believe for our purposes that's all you
22 did to investigate this case. Is that correct?

23 A. Yes, sir.

24 Q. Thank you. Please answer any questions the
25 defense may have.

1 THE COURT: You may cross examine.

2 CROSS EXAMINATION

3 BY MR. DAVIS:

4 Q. Officer, do you recall the time of day you
5 pulled in behind the van at the gas station?

6 A. It was early morning. I want to say it was
7 around 7:30. It could have been a little bit
8 before or a little bit after.

9 Q. This is two and a half years ago. It's
10 hard to remember the exact time, right?

11 A. Yes, sir.

12 Q. But you would have put that in your report,
13 the exact time?

14 A. Whenever we request a case number it
15 generates the time that we request a case
16 number.

17 Q. And during this stop what time did you
18 request a case number? At the beginning of the
19 stop or sometime during?

20 A. I'm sure sometime during. So I don't know
21 what time they would have generated it for. The
22 reason why I know it was early morning was
23 because usually we grab breakfast at the
24 beginning of the shift. And instead of grabbing
25 breakfast I went to Jacksonboro. And that's

1 usually right around that time.

2 MR. DAVIS: Your Honor, may I
3 approach and have this marked?

4 THE COURT: You may.

5 COURT REPORTER: Defendant's Exhibit
6 1 for identification.

7 MR. DAVIS: May I approach the
8 witness, Your Honor?

9 THE COURT: Yes, you may.

10 CROSS EXAMINATION CONTINUED

11 BY MR. DAVIS:

12 Q. Officer Craven, I'm going to show you
13 several pages here that's marked as Defendant's
14 Exhibit Number 2 for identification purposes.
15 Take as long as you need to look at all of it.
16 I'm only going to have questions about the first
17 page, but take as much time as you need and let
18 me know when you're ready to answer questions.

19 A. (Upon review), okay. I'm done.

20 Q. Do you recognize what that document is?

21 A. Yes.

22 Q. Is that, in fact, the police report that's
23 generated that you just talked about?

24 A. Yes, sir.

25 Q. And does it, at approximately the top left

1 of that form, indicate a date and time?

2 A. Yes, sir.

3 Q. And is that as you just testified, that
4 that would be generated when you called it in?

5 A. Either when I called it in or when I
6 requested an OCA.

7 Q. OCA would be a case number?

8 A. Case number.

9 Q. Does that indicate that it was three
10 minutes before 8:00 a.m.?

11 A. Yes, sir.

12 Q. Now, to be clear, do you recall exactly
13 during this stop when you would have asked that
14 that be generated?

15 A. No, I don't.

16 Q. So it could be a few minutes before or
17 after that you're behind the van, because you're
18 not sure exactly when that was generated, right?

19 A. Yeah, I'm not sure.

20 Q. Only two occupants of the van, correct?

21 A. Yes, sir.

22 JUROR NUMBER 227: (Raises hand).

23 (REPLAYING OF TESTIMONY CONCLUDED)

24 THE COURT: Ms. Rico-Flores has
25 indicated the jury has heard all that testimony

1 they need. Is that correct, Ms. Rico-Flores?

2 MS. RICOFLORES: That's correct.

3 THE COURT: Very well. We'll move
4 on, then, to the testimony of Minor Jr.

5 (TESTIMONY OF Minor JR. REPLAYED,

6 AS FOLLOWS:

7 Minor *LAMAR BOWENS, JR.*, being duly
8 sworn to tell the truth, the whole truth and
9 nothing but the truth, testified, as follows:

10 DIRECT EXAMINATION

11 BY MR. DAVIS:

12 Q. Minor let's get to one thing right at
13 first. You're wearing a gray jumpsuit. Are you
14 currently in custody?

15 A. Yes, sir.

16 Q. You're serving time up in Greenville?

17 A. Yes, sir.

18 Q. You've been adjudicated for a robbery from
19 2009?

20 A. Yes, sir.

21 Q. And you were transported down here to
22 Charleston to testify today. Is that right?

23 A. Yes, sir.

24 Q. Who's seated at the table over here in the
25 white shirt?

1 A. Marvin Bowens, my brother.

2 Q. I'm sorry. That's your brother?

3 A. Yes, sir.

4 Q. Older or younger brother?

5 A. Older brother.

6 Q. By how many years?

7 A. Two.

8 Q. Let's go directly to December 20th, 2008,
9 the early morning hours of December 20th, 2008.

10 What type of vehicle did you and your brothers
11 have access to then?

12 A. My dad's van. Sometimes my mom's car.

13 Q. What other brother besides Marvin lived
14 with y'all back in December 2008?

15 A. Gerriel, my smaller brother.

16 Q. Gerriel -- that's not his given name, is
17 it? That's what he goes by, right?

18 A. That's his given name.

19 Q. What's his full name?

20 A. Gerriel Lamar Bowens.

21 Q. I need to ask you specifically about the
22 early morning hours of December 20th, 2008.

23 Let's start at about 6:30. Can you tell --
24 where were you at about 6:30 in the morning on
25 December 20th, 2008?

1 A. About 6:30 on December 20th, 2008, I was
2 waiting for my cousin, Tamasha, up front at my
3 grandma's house.

4 Q. Then what happened?

5 A. As he arrived there, I'd say about thirty
6 or forty-five minutes later, we engaged in a
7 conversation. We took my dad's van and headed
8 out to Hollywood.

9 Q. Where did you go?

10 A. Just around the area.

11 Q. What were you going to do?

12 A. Handle some business.

13 Q. What does that mean?

14 A. Just, you know, do a couple of things, come
15 straight back.

16 Q. Straight back to where?

17 A. Adams Run.

18 Q. What was at Adams Run?

19 A. Adams Run was a trailer that we recently
20 moved in.

21 Q. Who is "we?"

22 A. Me and my family, mom, brothers, sister and
23 father.

24 Q. When did you return to the house in Adams
25 Run, your house?

1 A. Yes, sir.

2 Q. When?

3 A. Oh, I'd say about 7:30'ish, something
4 around the area.

5 Q. You were in the brown van?

6 A. Yes, sir.

7 Q. Who was with you?

8 A. No one.

9 Q. What about the cousin you spoke about a
10 moment ago?

11 A. As I was heading back home I dropped him
12 back off at my grandma's house up front. We
13 went our separate ways.

14 Q. So when you arrived at home, who was at
15 home?

16 A. Mother, father, all three brothers and my
17 sister.

18 Q. Who did you speak to when you arrived at
19 home?

20 A. When I got home I really just made sure
21 that my father wasn't woke up. I woke up my
22 brother, Marvin. I got him and we just headed
23 out.

24 Q. I'm sorry. You made sure what now?

25 A. Our father wasn't woke.

1 Q. Was not?

2 A. Yes, sir, was not woke.

3 Q. And then what?

4 A. I got Marvin -- I woke Marvin up. We
5 headed out to Jacksonboro.

6 Q. What happened when you got to Jacksonboro?

7 A. As we got to Jacksonboro, Marvin asked me
8 for some gas money or whatnot, some money to buy
9 cigars with. And after he saw the money, he
10 noticed it, like looked suspicious about where
11 did I get it from. But he didn't really make no
12 statements about it or nothing, or comment on
13 it. We just pulled up around the gas station
14 pump. I saw a police pulling him out of the
15 vehicle, so I just took off and ran.

16 Q. What were you wearing when you ran?

17 A. Honestly, I don't remember.

18 Q. What was Marvin wearing?

19 A. I don't remember.

20 Q. Ultimately, did you turn yourself in to the
21 police in Jacksonboro?

22 A. Yes, sir.

23 Q. Had you spoken with your father prior to
24 that?

25 A. Yes, sir.

1 Q. How?

2 A. After I ran I took off towards Hope
3 Plantation Road, which one of my homeboys lives
4 like right there, as soon as you got on the road
5 of Hope Plantation. So at first I was running
6 through the woods. I doubled back and I went to
7 his house and woke him up and asked him could I
8 use his phone. He let me use his phone and got
9 in contact with my sister. She told my father
10 and he told me just to come and turn myself in.

11 Q. How old were you at the time? Do you
12 remember?

13 A. Fifteen.

14 Q. Between 6:30 and 7:30 you were in the
15 family van, brown van?

16 A. Yes, sir.

17 Q. You went by the RoadRunner convenience
18 store, didn't you?

19 A. No, sir, I'm not going to incriminate
20 myself on that.

21 Q. You're the one that ran in with the gun and
22 robbed the place.

23 A. I'm not going to incriminate myself.

24 Q. You ran back out to the van. You got in
25 the van that was waiting on you?

1 A. I'm not going to incriminate myself.

2 MR. DAVIS: Your Honor, he's non-
3 responsive.

4 THE COURT: He's non-responsive.
5 That's not a responsive answer. Are you telling
6 me -- let me just ask you, are you a lawyer?

7 THE WITNESS: No, sir.

8 THE COURT: Are you telling me that
9 you're asserting your Fifth Amendment rights and
10 the corresponding rights afforded under the
11 South Carolina Constitution of not to
12 incriminate yourself?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. That
15 clarifies that it is responsive.

16 MR. DAVIS: Thank you, Your Honor.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. DAVIS:

19 Q. Prior to 7:30 the morning of December 20th,
20 2008 -- prior to 7:30 that morning, was Marvin
21 in that van?

22 A. No, sir.

23 Q. You were, though?

24 A. Yes, sir.

25 Q. Who else was?

1 A. My cousin, Tamasha.

2 Q. What was Tamasha wearing?

3 A. Honestly I can't remember, sir.

4 Q. Growing up, did you participate in some
5 sports in the Jacksonboro area?

6 A. Yes, sir.

7 Q. Rec league?

8 A. Yes, sir.

9 Q. Basketball?

10 A. Yes, sir.

11 Q. Was there -- did they assign team colors to
12 the different teams?

13 A. One team ---

14 Q. Did they assign team colors to different
15 teams?

16 A. You're talking about to the Jacksonboro
17 team?

18 Q. To any teams in the area. Did they assign
19 different colors to the teams?

20 A. Oh, yes, sir.

21 Q. You played on the Jacksonboro rec league,
22 correct?

23 A. Yes, sir.

24 Q. Played basketball, right?

25 A. Yes, sir.

1 Q. Guard and forward, right?

2 A. Yes, sir.

3 Q. You played on other teams in the area?

4 A. Yes, sir.

5 Q. Can you tell the jurors how many other
6 teams in the area you played?

7 A. I played against Follies Ferry, which is
8 like a couple of miles down the road, and Adams
9 Run and Sugar Hill, like those local areas
10 that's down the road from it.

11 Q. Was there a team in the league that was
12 assigned orange as their team color?

13 A. Yes, sir.

14 Q. Approximately how many players on each
15 team?

16 A. About eight or nine.

17 Q. And these would have been other boys in
18 their middle teens?

19 A. Yes, sir.

20 Q. Finally, have you been present and observed
21 physical altercations between your father and
22 Marvin?

23 A. Yes, sir.

24 Q. Have you seen your father strike Marvin?

25 A. Yes, sir.

1 Q. Have you seen him strike him with a board?

2 A. Yes, sir.

3 Q. Has he fought him, fist fight, on more than
4 one occasion?

5 A. Yes, sir.

6 Q. Would some or all of those incidents
7 occurred before December 20th, 2008, those
8 fights?

9 A. Yes, sir, definitely.

10 MR. DAVIS: Please give me one
11 second. That may be all the questions I have.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. DAVIS:

14 Q. I may not have made it clear. When is the
15 first time in the morning hours that you saw
16 Marvin on the morning of the 20th?

17 A. After I came back with my cousin, Tamasha,
18 and after I dropped him off. I came back to the
19 house in Adams Run.

20 Q. Do you know what time that was?

21 A. It had to have been around 7:30'ish,
22 something like that.

23 Q. Where was Marvin when you saw him?

24 A. He was asleep when I saw him. I shook him
25 awake.

1 Q. Thank you. Nothing further.

2 THE COURT: Cross examine.

3 SOLICITOR DURANT: Thank you, Your

4 Honor. May it please the Court.

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION

7 BY SOLICITOR DURANT:

8 Q. Mr. Bowens, how old are you?

9 A. Seventeen years old, sir.

10 Q. So you would have been fourteen years old
11 back in December of 2008?

12 A. Fifteen.

13 Q. Fifteen?

14 A. Yes, sir.

15 Q. And this man is your older brother?

16 A. Yes, sir.

17 Q. And he's how much older than you?

18 A. Two years.

19 Q. Do you have any other siblings?

20 A. Yes, sir.

21 Q. How many?

22 A. I have a younger brother named Minor an
23 older brother named Gerriel and my older sister,
24 Minor

25 Q. Are y'all kind of close?

1 A. Yes, sir.

2 Q. And you love this guy, right?

3 A. Yes, sir.

4 Q. I just want to see if I've got your
5 testimony essentially correct. You said that
6 you had the family van from 6:30 to 7:30 that
7 morning.

8 A. Yes, sir.

9 Q. And, to be clear, we're talking about this
10 van?

11 THE COURT: Which ---

12 SOLICITOR DURANT: This is State's
13 14, Your Honor.

14 THE COURT: Thank you. I'm sorry.

15 THE WITNESS: Yes, sir.

16 CROSS EXAMINATION CONTINUED

17 BY SOLICITOR DURANT:

18 Q. And so you were up pretty early that
19 morning, correct?

20 A. Yes, sir.

21 Q. And you say your brother was not with you
22 between 6:30 and 7:30.

23 A. Yes, sir.

24 Q. And yet you refuse to answer any questions
25 concerning the RoadRunner that morning. Is that

1 correct?

2 A. Yes, sir.

3 Q. Because, as you say, you're not going to
4 incriminate yourself.

5 A. Yes, sir.

6 Q. So you don't want to talk about everything
7 to this jury.

8 A. I feel like those things are not necessary.

9 Q. You feel that way.

10 A. Yes, sir.

11 Q. So you're here to tell the jury only what
12 you want to tell them, but not necessarily what
13 you'll be asked. Is that correct?

14 A. I came to tell the truth.

15 Q. Excuse me?

16 A. I came to tell them the truth about the
17 matter that's at-hand.

18 Q. All right. Well, the matter at-hand is the
19 RoadRunner. And I want to ask you were at the
20 RoadRunner that morning?

21 A. I plead the Fifth, sir.

22 Q. I'll take that as you're refusing to answer
23 questions about the Road Runner.

24 A. I plead the Fifth, sir. I'm not going to
25 incriminate myself.

1 Q. And you're not going to incriminate him
2 either, are you?

3 A. I basically can't even answer that
4 question. Because, really, it don't -- I don't,
5 it's like -- it don't ---

6 Q. Well, you've already refused to incriminate
7 yourself, haven't you?

8 A. Yes, sir.

9 Q. And you're not going to incriminate him
10 either, are you?

11 A. I can't even answer that question, sir, to
12 be honest.

13 Q. And there's no question that you ran from
14 this van when it was pulled over in Jacksonboro.
15 Is that correct?

16 A. Yes, sir.

17 Q. Why did you run?

18 A. For one, just being from being, I'd say the
19 streets or the hood or what-not, when you see
20 the police, you would run regardless. I had a
21 curfew, you know. Basically, I was just scared.

22 Q. Just scared. It had nothing to do with the
23 Road Runner, right?

24 A. I'm not going to answer that question. I
25 plead the Fifth.

1 Q. Okay. You said that Minor got in the car
2 and he was suspicious of the money.

3 A. Marvin?

4 Q. Marvin. He got in the car and he was
5 suspicious of the money that was in the vehicle.

6 A. Well, he saw me pull out the money, like,
7 and he was looking at me, like -- gave me a
8 look.

9 Q. Do you have any idea why he would do that?

10 A. He probably wanted to know where I got it
11 from.

12 Q. Where did you get it from?

13 A. Out handling some business.

14 Q. Handling some business.

15 A. Yes, sir.

16 Q. And you were adjudicated through the
17 juvenile system of a separate armed robbery. Is
18 that correct?

19 A. Yes, sir.

20 Q. And that's why you're dressed the way you
21 are today. Is that correct?

22 A. Not really. But they had to traffic me
23 down here, and house me inside the juvenile
24 detention center. So, yes.

25 Q. Why are you dressed the way you're dressed?

1 THE COURT: I'm not going to allow
2 that question.

3 MR. DAVIS: Thank you, Judge.

4 CROSS EXAMINATION CONTINUED

5 BY SOLICITOR DURANT:

6 Q. So, essentially, you just want this jury to
7 believe that Marvin wasn't with you between 6:30
8 and 7:30 on the morning of December 20th. And
9 that you're not going to answer any questions
10 concerning the RoadRunner. But that you ran
11 when the police pulled the van over. And you
12 say, according to you, that your brother was
13 just suspicious of you. Is that correct?

14 A. I want them to believe the truth. I
15 actually picked Marvin up from the house in
16 Adams Run.

17 Q. Do you believe them to believe the truth of
18 what happened at the RoadRunner?

19 A. I plead the Fifth. I'm not going to answer
20 that question.

21 Q. Thank you.

22 SOLICITOR DURANT: No further
23 questions.

24 THE COURT: Redirect, Mr. Davis?

25 MR. DAVIS: Just briefly.

1 THE COURT: Sure.

2 REDIRECT EXAMINATION

3 BY MR. DAVIS:

4 Q. You were arrested for this case, right?

5 MR. DAVIS: Your Honor, I believe
6 that there was an objection there and the answer
7 was stricken.

8 THE COURT: That's right. I
9 sustained the objection. Stop there. That
10 concludes the testimony, then. The last
11 question, I instruction you not to consider the
12 question or the answer.

13 (REPLAYING OF TESTIMONY STOPPED)

14 THE COURT: You may retire to your
15 jury room and conclude your deliberations. If
16 need further testimony or further information,
17 just let me know.

18 (JURY OUT AT 2:17 P.M.)

19 THE COURT: That is the question
20 where you were asking him about the charges?

21 MR. DAVIS: Yes, sir.

22 MR. SAHN: I do believe that there
23 was one other question that was allowed.

24 MR. DAVIS: There were two questions.
25 'Were you arrested?' He answered yes -- for

1 this, and this I asked the question ---

2 THE COURT: I am not going to allow
3 that.

4 MR. DAVIS: Yes, sir, and I
5 apologize.

6 THE COURT: All right. Any
7 exceptions or additions from the State?

8 SOLICITOR SAHN: Not from the State,
9 Judge.

10 THE COURT: Any exceptions or
11 additions from the defendant?

12 MR. DAVIS: No, Your Honor.

13 THE COURT: Thank you. We'll be at-
14 ease.

15 (JURY IN DELIBERATION)

16 (NOTIFIED OF VERDICT AT 2:45 P.M.)

17 (DEFENDANT PRESENT)

18 THE COURT: Let the record reflect
19 that Mr. Bowens is present. Is the defendant
20 ready to receive the verdict?

21 MR. DAVIS: We are, Your Honor.

22 THE COURT: Is the State ready to
23 receive the verdict?

24 SOLICITOR SAHN: We are, Your Honor.

25 THE COURT: And I think we said this