

230 35

STATE OF SOUTH CAROLINA

VOLUME I OF II

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AUSTIN MCQUARTERS,

APPELLANT

APPELLATE CASE NO 2015-001814

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

WILLIAM F. SCHUMACHER
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

P.O. BOX 1880
Bluffton, SC 29910
(843) 255-5893

PAGES 1-500

INDEX

INDEX.....	i
INDICTMENTS AND SENTENCE SHEETS	1
TRIAL TRANSCRIPT DATED JULY 20-22, 2015	7
JURY SELECTION	10
MOTION TO SUPPRESS STATEMENTS OF JACKLYN PEREZ	23
MOTION TO SUPPRESS STATEMENT OF INVESTIGATOR SEIFERT.....	35
RULING BY THE COURT.....	64
OPENING STATEMENT BY MS. LEMPESIS.....	72
OPENING STATEMENT BY MR. BAX.....	77
TESTIMONY	
RHETT PARNELL	
Direct Examination by Ms. Lempesis	86
Cross Examination by Mr. Bax.....	91
JOHN SNODGRASS	
Direct Examination by Ms. Lempesis	95
Cross Examination by Mr. Bax.....	121
Redirect Examination by Ms. Lempesis.....	127
JACKLYN PEREZ	
Direct Examination by Ms. Lempesis	140
Cross Examination by Mr. Bax.....	159
Redirect Examination by Ms. Lempesis.....	179
INQUIRY OF THE JURORS.....	188
TESTIMONY	
COLTON DELAPLANE (In Camera)	
Examination by the Court	209
Cross Examination by Mr. Bax.....	212

MOTION FOR MISTRIAL	220
RULING BY THE COURT.....	222
TESTIMONY	
DR. PATRICK SNOWMAN (In Camera)	
Direct Examination by Ms. Lempesis	227
Cross Examination by Mr. Bax.....	237
Redirect Examination by Ms. Lempesis.....	244
Examination by the Court	246
TESTIMONY	
DR. PATRICK SNOWMAN	
Direct Examination by Ms. Lempesis	269
Cross Examination by Mr. Bax.....	284
COLTON DELAPLANE	
Direct Examination by Ms. Lempesis	290
Cross Examination by Mr. Bax.....	304
Redirect Examination by Ms. Lempesis.....	316
Recross Examination by Mr. Bax	317
DOUG SEIFERT	
Direct Examination by Ms. Lempesis	334
Cross Examination by Mr. Bax.....	361
PAOLA LABRADOR	
Direct Examination by Ms. Lempesis	377
Cross Examination by Mr. Bax.....	380
STATE RESTS.....	381
MOTION FOR DIRECTED VERDICT AND RENEWED MOTION FOR MISTRIAL.....	382
RULING BY THE COURT.....	384
COLLOQUY WITH DEFENDANT ON HIS RIGHT TO TESTIFY	386
DEFENSE RESTS	401
CLOSING ARGUMENT BY MS. LEMPESIS.....	404
CLOSING ARGUMENT BY MR. BAX.....	423

CHARGE ON THE LAW.....	436
JURY QUESTION.....	470
VERDICT.....	478
POLLING OF THE JURY.....	479
MOTION FOR A NEW TRIAL.....	485
RULING BY THE COURT.....	486
SENTENCING.....	487
MOTION HEARING TRANSCRIPT DATED AUGUST 12, 2015	499
COURT'S EXHIBIT # 1 (SUPPLEMENTAL REPORT).....	540
NOTICE OF MOTION AND MOTION TO VACATE CONVICTION AND ORDER NEW TRIAL FILED JULY 26, 2015	545
RESPONSE TO DEFENDANT'S MOTION TO VACATE CONVICTION AND ORDER NEW TRIAL FILED AUGUST 12, 2015	547
CERTIFICATE OF COUNSEL	552

WITNESSES

Seifert-BCSO

ARREST WARRANT NUMBER

2013A0710300463

ACTION OF GRAND JURY

Jennifer Smider
Foreperson of Grand Jury
Date: **JAN 23 2014**

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2013GS0701844

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

January Term 2014

THE STATE

vs.

Austin Lewis McQuarters

Indictment for

Robbery / Armed Robbery

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

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

INDICTMENT
 2013GS0701844

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

Robbery / Armed Robbery

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

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

Joanne M. Sturges

Solicitor

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

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

WITNESSES

Seifert-BCSO

DOCKET NO. 2013GS0701845

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

January Term 2014

ARREST WARRANT NUMBER

2013A0710300464

ACTION OF GRAND JURY

True Bill

Jennifer Snider

Foreperson of Grand Jury

Date:

JAN 23 2014

VERDICT

Caroline Kemmerly 7/22/2015

Foreperson of Petit Jury

Date:

INDICT

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

Defendant

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

THE STATE

VS.

Austin Mcquarters

Indictment for

Assault & Battery 1st Degree

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

CDR Code:3412

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

INDICTMENT
 2013GS0701845

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

Assault & Battery 1st Degree

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

* 10-3-600 mee
 AS

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

James M. Stovall

Solicitor

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

William P. Keesley

WM. P. KEESLEY
 PRESIDING JUDGE

FEB. 17, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.

Aus In Mcquarte rs

INDICTMENT/CASE#: 2013GS0701844

AN# 2013/0710300463

AKA:

Date of Offense: 10/20/2013

Race: AFRICAN AME Sex: M Age: 20

S.C. Code §: 16-11-0330(A)

DOB: SS#:

CDR Code #: 0139

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation; ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lempesis, Mary Jordan

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4-1845
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Sct by SCDPPPS

Recipient:

*Fine:

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

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Certified - A True Copy

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
1254
7/22/15

[Signature]
Jeri Ann Roseaneau - Clerk of Court
Beaufort County, SC - Karen Boone

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.
Austin Mcquartters

AKA:

Race: AFRICAN AME Sex: M Age: 20DOB: SS#:

Address:

City, State, Zip:

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

SENTENCE SHEET

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

ATTEST:

Lempesis, Mary Jordan

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforc. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(7) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCJA Surcharge)	\$5
3% to County (if paid in installments)	\$ 290
TOTAL	\$3390

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 054Sentence Date: 7/22/15

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Certified - A True Copy

Jeri Ann Roseaneau - Clerk of Court
Beaufort County, SC - Karen Boone

1 IN THE COURT OF GENERAL SESSIONS IN AND FOR
2 BEAUFORT COUNTY SOUTH CAROLINA
3
4 STATE OF SOUTH CAROLINA,
5 Plaintiff,
6 vs. CASE NO. 2013GS0701844; 1845
7 AUSTIN LEWIS McQUARTERS,
8 Defendant.
9 _____/

10
11 * * *
12
13 TRIAL TRANSCRIPT
14 VOLUME 1
15
16 DATE: July 20, 2015
17 PLACE: Beaufort County Courthouse
 Beaufort, South Carolina 29901
18 REPORTED BY: Mona Manley, Court Reporter
19
20 BEFORE: Honorable Thomas W. Cooper, Jr.
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING THE STATE:

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

REPRESENTING THE DEFENDANT:

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

* * *

INDEX PAGE

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

INDEX PAGE

1

2

PROCEEDINGS

3

4

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

5

MS. LEMPESIS: We are, Your Honor.

6

7

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

8

MR. BAX: Yes, Your Honor.

9

THE COURT: You may call your case.

10

11

12

13

14

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

15

16

17

18

19

20

21

22

23

24

25

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

JURY SELECTION

1 p.m.)

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

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

8 THE COURT: Right.

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

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

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

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

21 MR. LIGHT: Yes, sir.

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

25 MS. LEMPESIS: Brian Michael.

JURY SELECTION

1 THE COURT: Mr. Brian Michael.

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

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

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

11 MR. LIGHT: Understood, sir.

12 THE COURT: Anything further?

13 MR. BAX: No, sir.

14 THE COURT: Thank you.

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

16 (Lunch recess taken.)

17

18

19

20

21

22

23

24

25

JURY SELECTION

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

10 DATED this 1st day of February, 2016.

9

10

11

/s/ Mona L. Manley

12

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

13

14

15

16

17

18

19

20

21

22

23

24

25

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING THE STATE:

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

REPRESENTING THE DEFENDANT:

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

* * *

INDEX PAGE

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

INDEX PAGE

1 PROCEEDINGS

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

4 Madam Clerk, here is this.

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

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

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

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

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

PRE-TRIAL MOTIONS

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

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

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

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

25 THE COURT: Right.

PRE-TRIAL MOTIONS

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

4 THE COURT: All right.

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

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

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

18 THE COURT: All right. Thank you.

19 MS. LEMPESIS: Thank Your Honor.

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

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

PRE-TRIAL MOTIONS

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

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

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

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

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

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

24 Ms. Lempesis.

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

PRE-TRIAL MOTIONS

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

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

11 THE COURT: Okay. Thanks.

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

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

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

PRE-TRIAL MOTIONS

1 judge.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir, I understand.

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

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. Thank you.

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

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

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

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

PRE-TRIAL MOTIONS

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

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

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

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

24 THE COURT: All right.

25 MR. BAX: Specifically. Something like that.

PRE-TRIAL MOTIONS

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

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

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

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

PRE-TRIAL MOTIONS

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

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

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

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

25 That case, can be found at 437 United States

PRE-TRIAL MOTIONS

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

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

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

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

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

PRE-TRIAL MOTIONS

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

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

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

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

PRE-TRIAL MOTIONS

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

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

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

PRE-TRIAL MOTIONS

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

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

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

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

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

21 MR. BAX: Thank Your Honor.

22 THE COURT: All right. Ms. Lempesis:

23 MS. LEMPESIS: Thank you, Your Honor.

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

PRE-TRIAL MOTIONS

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

2 THE COURT: Okay.

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

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

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

PRE-TRIAL MOTIONS

1 elicited.

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

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

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

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

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

PRE-TRIAL MOTIONS

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

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

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

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

PRE-TRIAL MOTIONS

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

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

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

11 Thank you.

12 THE COURT: All right. Thank you.

13 Mr. Bax, any response?

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

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

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

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

PRE-TRIAL MOTIONS

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

8 THE COURT: All right.

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

13 THE COURT: Right.

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

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

PRE-TRIAL MOTIONS

1 attorneys for choosing not to elicit testimony.

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

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

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

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

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

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

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

PRE-TRIAL MOTIONS

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

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

12 And I was quoting that last bit.

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

16 Answer, from Investigator Seifert: Yes, sir.

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

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

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

22 Answer: Yes, sir.

23 And that finishes up there at Line 15.

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

PRE-TRIAL MOTIONS

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

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

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

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

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

PRE-TRIAL MOTIONS

1 sorry.

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

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

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

16 Yes, sir.

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

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

PRE-TRIAL MOTIONS

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

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

11 THE COURT: All right.

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

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

25 Because they're saying that the testimony they

PRE-TRIAL MOTIONS

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

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

10 THE COURT: Right.

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

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

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

PRE-TRIAL MOTIONS

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

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

12 THE COURT: All right.

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

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

PRE-TRIAL MOTIONS

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

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

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

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

PRE-TRIAL MOTIONS

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

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

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

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

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

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

PRE-TRIAL MOTIONS

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

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

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

14 Thank you.

15 THE COURT: Thank you, Mr. Bax.

16 Ms. Lempesis.

17 MS. LEMPESIS: Thank you, Your Honor.

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

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

PRE-TRIAL MOTIONS

1 tribunal by the lawyer.

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

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

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

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

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

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

PRE-TRIAL MOTIONS

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

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

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

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

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

24 Yes, sir.

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

PRE-TRIAL MOTIONS

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

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

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

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

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

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

PRE-TRIAL MOTIONS

1 there's been no false statement.

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

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

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

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

24 Thank you, Your Honor.

25 THE COURT: Thank you, ma'am.

PRE-TRIAL MOTIONS

1 Mr. Bax, you have the last word.

2 MR. BAX: Yes, Your Honor.

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

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

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

PRE-TRIAL MOTIONS

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

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

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

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

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

PRE-TRIAL MOTIONS

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

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

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

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

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

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

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

25 MS. LEMPESIS: The first written statement

PRE-TRIAL MOTIONS

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

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

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

15 MS. LEMPESIS: It is, Your Honor.

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

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

25 The entire thing is recorded, and happy to

PRE-TRIAL MOTIONS

1 give it to Your Honor, deliver it to.

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

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

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

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

16 MR. BAX: Certainly, Your Honor.

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

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

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

PRE-TRIAL MOTIONS

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

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

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

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

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

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

PRE-TRIAL MOTIONS

1 throughout all this testimony.

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

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

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

12 THE COURT: Right.

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

18 THE COURT: All right.

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

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

PRE-TRIAL MOTIONS

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

4 MS. LEMPESIS: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. BAX: Thank you, Your Honor.

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

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

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

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

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

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

PRE-TRIAL MOTIONS

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

3 MR. BAX: No, Your Honor.

4 THE COURT: All right. Thank you.

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

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

7 Mr. Newman, yes, sir.

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

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

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

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

15 MR. NEWMAN: No, sir.

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

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

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

22 MR. LIGHT: Yes, sir.

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

25 Is this pertaining to the information

PRE-TRIAL MOTIONS

1 regarding his separation?

2 MR. LIGHT: Yes, sir.

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

5 (Trial adjourned for the day.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PRE-TRIAL MOTIONS

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8

DATED this 1st day of February, 2016.

9

10

11

/s/ *Mona L. Manley*

12

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

13

14

15

16

17

18

19

20

21

22

23

24

25

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

3

4 STATE OF SOUTH CAROLINA,

5 Plaintiff,

6 vs.

CASE NO. 2013GS0701844; 1845

7 AUSTIN LEWIS McQUARTERS,

8 Defendant.

9 _____ /

10

11 * * *

12

13 TRIAL TRANSCRIPT

14 VOLUME 3

15

DATE: July 21, 2015

16

17 PLACE: Beaufort County Courthouse
 Beaufort, South Carolina

18

REPORTED BY: Mona Manley, Court Reporter

19

20 BEFORE: Honorable Thomas W. Cooper, Jr.

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING THE STATE:

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

REPRESENTING THE DEFENDANT:

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

* * *

INDEX PAGE

1 INDEX

2

3 WITNESS:

PAGE:

4 RHETT PARNELL

5 Direct Examination By Ms. Lempesis 38

6 Cross Examination By Mr. Bax 43

7

8 JOHN SNODGRASS

9 Direct Examination By Ms. Lempesis 47

10 Cross Examination By Mr. Bax 73

11 Redirect Examination By Ms. Lempesis 79

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MOTION RULINGS

1 PROCEEDINGS

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

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

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

MOTION RULINGS

1 file.

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

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

10 Thank you.

11 OFFICER LIGHT: Thank you, sir.

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

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

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

25 When Mr. Bax cross-examined Investigator

MOTION RULINGS

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

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

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

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

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

MOTION RULINGS

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

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

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

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

MOTION RULINGS

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

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

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

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

MOTION RULINGS

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

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

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

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

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

MOTION RULINGS

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

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

17 Does everybody understand all that?

18 MR. BAX: Yes, Your Honor.

19 MS. LEMPESIS: Yes, Your Honor.

20 THE COURT: All right. Thank you.

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

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

MOTION RULINGS

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

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

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

17 MS. LEMPESIS: Thank you, Your Honor.

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

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

MOTION RULINGS

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

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

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

13 THE COURT: Certainly.

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

18 THE COURT: Okay.

19 MS. LEMPESIS: Thank you, Your Honor.

20 (Pause.)

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

23 THE COURT: Great. Okay.

24 Who will open for the State?

25 MS. LEMPESIS: I will, Your Honor.

OPENING INSTRUCTIONS BY THE COURT

1 make their opening statements.

2 Ms. Lempesis?

3 OPENING STATEMENT BY THE STATE

4 MS. LEMPESIS: Thank you, Your Honor. May it
5 please the Court.

6 On October 20th of 2013, Austin McQuarters,
7 the defendant in this case, robbed and beat
8 John Snodgrass, the victim. Mr. Snodgrass is the
9 manager of the Northridge Cinemas movie theater on
10 Hilton Head Island, here in Beaufort County.

11 Mr. Snodgrass was working that night,
12 October 20th -- it was a Sunday night -- he was
13 working that night. He was the manager on duty,
14 and he did as he had done many nights, he left the
15 building around 11 o'clock. He was one of the
16 last employees to leave. He left the building
17 carrying his bank bag with all the money from the
18 night in it, about \$4,000.

19 He left the building carrying that bank bag
20 and some other papers and other items. He walked
21 to his car, which was parked in the front parking
22 lot of the movie theater, in the place where he
23 usually parks. All of that was typical.

24 What was not typical on this night was that
25 on this night Austin McQuarters was waiting for

OPENING STATEMENT OF THE STATE

1 him. Austin McQuarters was waiting to rob him.
2 He knew that John Snodgrass was going to be the
3 person who had the money. He knew because he had
4 a friend named Colton who worked in the movie
5 theater who told him as much. So he was looking
6 for John Snodgrass.

7 Austin was standing in the parking lot with a
8 friend named Jacklyn Perez, this friend who had
9 drove him to the movie theater that night. He was
10 standing by her car, and when John walked past
11 them he sees Austin McQuarters pop up from out of
12 nowhere. He didn't -- he didn't see him before
13 that.

14 Mr. Snodgrass sees this man. He's a very
15 tall, large, African American man pop up from out
16 of nowhere. And Mr. Snodgrass immediately thinks
17 -- thinks about his surroundings. There's really
18 no one else around. He's a little bit worried.

19 The man asked him first about the movie
20 times, whether or not there was still a movie
21 playing, something along those lines. He asked
22 him also if he could borrow his cell phone, and
23 then finally asked him what time it was.

24 And John answers. And he looks to his watch
25 to tell him what time it is. And it's at that

OPENING STATEMENT OF THE STATE

1 point that John sees Mr. McQuarters, the
2 defendant, swing his arm back and come to hit him.
3 And he knows he's about to be hit.

4 So John turns his head and -- and tries to
5 block it. And the first blow comes to the back of
6 his head, and it knocks him to the ground. And
7 then the next blow comes from up under, and he
8 gets hit in the side of his face. And John is
9 going to tell you about those hits. He's going to
10 tell you how they felt.

11 He'll tell you about the feel of something
12 hard, something -- something other than a fist
13 hitting his skin. He's going to tell you that.
14 He's going to describe that attack for you.

15 John was knocked out. He fell forward and
16 landed on the ground and he stayed there until he
17 came to. When he came to he realized that his
18 attacker was gone and his moneybag was gone, too.
19 All that money from the night was gone.

20 He stood up and collected the items that he
21 had dropped, some papers, and he put those papers
22 in his truck, and then he went and called the
23 police. The police respond, they look for the
24 suspect that night. Unfortunately no one is -- no
25 one is caught that night.

OPENING STATEMENT OF THE STATE

1 It's not until about two and a half weeks
2 later that Austin McQuarters is arrested. And
3 he's arrested, he's taken to the Beaufort County
4 Sheriff's Office to be interviewed by Investigator
5 Doug Seifert. And Austin doesn't deny being at
6 the movie theater, he says, I was there. I went
7 with this lady friend I met, and I was there at
8 the movie theater. He just denies beating and
9 robbing John Snodgrass.

10 But what you're going to hear in this trial,
11 and what the State will prove to you is that
12 Mr. McQuarters is, in fact, the man who did this.
13 He's the only person who did this.

14 I mentioned Jacklyn Perez and Colton, the
15 friend, who worked at the theater. You're going
16 to hear from both of them today. You're going to
17 hear from Jacklyn Perez, whose nickname is
18 Brooklyn, and she was there. She saw
19 Austin McQuarters rob and beat John Snodgrass.

20 She's going to testify today, and you're
21 going to hear exactly in her words how it
22 happened.

23 You're also going to hear from
24 Colton Delaplane. He'll tell you all the
25 information he gave to Austin, which aided in him

OPENING STATEMENT OF THE STATE

1 robbing Mr. Snodgrass.

2 You're also going to hear about -- Colton's
3 going to tell you about how Austin himself told
4 Colton that he used brass knuckles when he robbed
5 John Snodgrass and beat him. You're going to hear
6 about those brass knuckles.

7 You're also going to hear from the officers,
8 the initial officers who responded to the scene.
9 You're also going to hear from Investigator
10 Seifert to investigate a case for the sheriff's
11 office.

12 You're finally going to hear from the doctor,
13 Dr. Patrick Snowman, who is an emergency medicine
14 physician at Hilton Head Hospital, and he's going
15 to tell you about the extent of Mr. Snodgrass's
16 injuries.

17 There are many players in this case. You're
18 going to hear from a lot of people. The only
19 person that we are going to hear today about is
20 Austin McQuarters. This is his day in court, and
21 I just want you to remember that.

22 Now, the Judge has talked to you some already
23 about the burden that the State bears. And I
24 imagine that Mr. Bax, when he addresses you, he
25 might mention this burden because it is a great

OPENING STATEMENT OF THE STATE

1 one. It is a great burden that the State bears.
2 The burden to prove to you all beyond a reasonable
3 doubt that Austin McQuarters is guilty of this
4 crime. And I want you to know that it's not a
5 burden that I take lightly.

6 You are going to hear evidence and see
7 evidence in this case today, and at the end of the
8 trial, I'm confident that you will find that I
9 have met my burden, and you will find
10 Mr. McQuarters guilty. Thank you.

11 THE COURT: Thank you, Ms. Lempesis.

12 Mr. Bax?

13 OPENING STATEMENT BY THE DEFENSE

14 MR. BAX: Thank you, Your Honor.

15 Good morning, ladies and gentlemen. I was
16 introduced by His Honor earlier. Let me do it
17 again. My name is Arie Bax. I'm an attorney here
18 in Beaufort. I work with the Public Defender's
19 Office now. I've been in private practice here in
20 Beaufort. I've been doing this a while.

21 I've spoken to many, many juries just like
22 yourself, but every time I stand up in front of a
23 new jury, it impresses upon me the same importance
24 that I'm going to try to impress upon you now and
25 throughout the trial. And I hope that -- and I

OPENING STATEMENT BY THE DEFENSE

1 feel that -- you will see this importance and be
2 impressed by it.

3 As you saw, we went through somewhat of an
4 elaborate jury selection process to get the 12 of
5 you and the two alternates who may end up becoming
6 part of the 12, depending on the circumstances.

7 There's obviously a reason for that. Through
8 that process both sides have decided that you are
9 the 12 that can best decide this case, that you
10 have the tools that are needed to decide the case.

11 Now, I want to talk to you a little bit about
12 a couple of points before we get started with this
13 trial. First of all, you heard from the
14 prosecution, that's the first thing outside of
15 what the Judge instructed you that you've heard in
16 this trial. And what you heard from the
17 prosecutor was a story. They told you a story
18 about what they allege happened that night.

19 I want you all to realize and hope that you
20 realize, and I think you'll see during the course
21 of this trial -- and especially at the end, when
22 you hear the Judge's charge fully fleshed out --
23 that you're not here for story time. This is not
24 supposed to be story time.

25 The reason is, stories are for entertainment.

OPENING STATEMENT BY THE DEFENSE

1 And what entertains us? Things that have some
2 kind of emotional response. Not all stories are
3 happy, are they? There are scary stories, there
4 are sad stories. It's the same thing. We do it
5 all the time, whether it's someone telling a story
6 on a front porch, whether it's a film that's taken
7 a billion dollars to make that they put on the
8 screen for you that you paid, God knows, \$20 these
9 days to go see. It's still a story, told in
10 different ways.

11 But what we're here for today is not for
12 entertainment. It is not a movie, a story. And
13 it is not there for emotional response.

14 When you apply emotional response to justice,
15 you get mob justice. When someone goes to the
16 town center and says, I have just been wronged,
17 and the crowd reacts, they grab their pitchforks
18 and they run off and they take out whoever it is
19 that they feel needs to be revenged because of
20 that first story. Why don't we use that system of
21 justice? Why did the Constitution get written by
22 our founders to specifically prohibit that kind of
23 justice?

24 Because an emotional reaction to one side of
25 the story doesn't equal justice. There are always

OPENING STATEMENT BY THE DEFENSE

1 two sides to every story. We, unfortunately,
2 cannot go back in time. We can't take the Judge
3 or the lawyers or law enforcement, or even
4 yourselves, and put them in a bubble and take you
5 back to October of that year, in that parking lot,
6 and watch what happened. If we could, we wouldn't
7 need a jury system. We'd just go videotape it and
8 then it would be what it would be, wouldn't it?

9 We can't do that. So what is the best
10 alternative? To take 12 people from the
11 community, who have lived in the same community,
12 had the same experiences, shopped at the same
13 stores, bought the same cars from the same lots,
14 gone to the same restaurants, paid the same taxes,
15 gone to the same schools, to come in and use the
16 common sense that you use every day to make a
17 determination about what is the truth.

18 It is important. The reason why it's
19 important, and I want to talk to you about this,
20 the jury trial system was put in place as a buffer
21 against the government. Why do you think that we
22 fought wars about this? We fought wars because
23 when this country was founded, what was the most
24 dangerous thing that those people had dealt with?
25 It wasn't a single person, it was a government.

OPENING STATEMENT BY THE DEFENSE

1 They feared the power of the government
2 getting too large, and it is ever so important,
3 even with the single person.

4 Ms. Lempesis said it is Mr. McQuarters's day
5 in court. And, yes, it is. But you're here to
6 protect not only Mr. McQuarters's right to have
7 his day in court, but everybody's right to have
8 their day in court and to make sure that the
9 government has to prove beyond a reasonable doubt
10 to all 12 of you every element of the charge.
11 Because without that, this country stands for the
12 proposition that you cannot take away someone's
13 freedom, or worse, without it, because it's that
14 important. And that's exactly what any of us
15 would want if we ever were in that situation, as
16 well.

17 Now, you've heard from Ms. Lempesis about
18 what you're going to hear in this case. Well,
19 that's the best case scenario from their
20 standpoint of what you're going to hear. But when
21 you look at it with a critical eye, when you look
22 at these witnesses, just like the Judge said,
23 you're going to be the Judge of the facts. That
24 means you're the Judge of the credibility of the
25 witnesses.

OPENING STATEMENT BY THE DEFENSE

1 And that takes that common sense that I
2 talked about -- it's not just what they say, it's
3 what they don't say. It's not just what they say,
4 it's how they say it. All of you do this every
5 time in your life everyday. Every time that you
6 go to the store and you talk to a clerk about what
7 you want to buy, you judge whether that person is
8 giving you the full story or not.

9 Every time you talk to somebody and you ask a
10 question and they dodge that question, you make a
11 judgment -- sometimes conscious, sometimes
12 unconscious, but you'll take a note in your head,
13 and you'll be like, you know what, they didn't
14 answer my question. Maybe they don't want to.

15 I liken it a lot of times to my kids. I'm a
16 father, I've got two young children, five-year-old
17 boy and a nine-year-old girl. She's about to be
18 ten, acts like she's 17. But I -- you know, I
19 love my kids with all my heart, and I don't know
20 -- I know some of you probably have kids. We
21 don't necessarily always get that much information
22 and that's fine. And I'm sure some of you have
23 siblings. Everybody grew up somehow, right?

24 But you all know that even though you love
25 somebody, especially a young child, you don't

OPENING STATEMENT BY THE DEFENSE

1 believe them necessarily. You hear a crash from
2 your son or your daughter's room, and you holler
3 out, What happened? And you hear that little
4 voice coming from the room, Nothing. Now, do you
5 believe nothing happened? No. You go and you
6 talk to them.

7 And if they're wiggling around and they don't
8 want to look you in the eye, and they want to try
9 to dodge your question, you know that they're
10 trying to avoid telling you something. It's the
11 same thing here. You're going to use those same
12 skills with the witnesses on the stand.

13 You are going to find, as you listen to the
14 testimony in this case that, yes, they went and
15 arrested my client, and, yes, he has denied it.
16 But you're also going to hear that the only direct
17 evidence that they have to present to you that it
18 was my client that did this comes from the only
19 two people who have admitted being involved with
20 the robbery. That's it.

21 You are not going to get any physical
22 evidence. You are not going to get any
23 eyewitnesses other than the people who have
24 already confessed to having done this. Those are
25 the only people that you are going to hear direct

OPENING STATEMENT BY THE DEFENSE

1 evidence of my client's involvement with this.

2 So you are going to have to ask yourself
3 under your oath, what is their motive for getting
4 up here on the stand and trying to put all this on
5 the man sitting at the table over there?

6 I liken this case in my mind, I was thinking
7 about it last night and today, it's really kind of
8 like a house of cards. You know nowadays we've
9 got wonderful things like Internet and YouTube and
10 so you can go on and you can see these fantastic
11 things where people have built giant houses of
12 cards, right? It's crazy.

13 But we all know that a house of cards is
14 weak. It's flimsy. A puff of breath, a high
15 wind, an accidental nudge, what happens? The
16 whole thing comes down.

17 Now, think about this: When you put together
18 a house of cards, and after you've kind of put it
19 up, what happens when you decide to go in and take
20 one of those cards and flip its face? When a card
21 you go and put in there needs to be flipped around
22 while it's in the house, the house comes tumbling
23 down.

24 Once you've put the card in one way, you
25 can't go in and flip it around. The house comes

OPENING STATEMENT BY THE DEFENSE

1 apart.

2 What you're going to see here today in this
3 trial is the fact that there's a prior proceeding
4 in this case, and it didn't work out. And now
5 they're going to put the cards back in the house,
6 but they're going to flip them, and they're going
7 to expect you not to see that the house comes
8 down.

9 Thank you.

10 THE COURT: Thank you, Mr. Bax.

11 Ms. Lempesis, call your first witness.

12 MS. LEMPESIS: Your Honor, may I approach
13 Mr. Bax for a moment?

14 THE COURT: Okay.

15 (Discussion off the record.)

16 THE COURT: Folks, sometimes we step over
17 there and rudely whisper behind your back. And I
18 apologize. We do that to keep from having to send
19 you out of the courtroom and take a lot of time.

20 And if you're curious about what we whisper
21 about, I always tell jurors when the trial is
22 over, if y'all come back to me and ask what were
23 y'all whispering about over there, and if I can
24 remember what we were whispering about, I'll be
25 glad to tell you. Thank you.

OPENING STATEMENT BY THE DEFENSE

1 MS. LEMPESIS: Your Honor, the State calls
2 Sergeant Rhett Parnell.

3 THE COURT: Sergeant Parnell. Come forward,
4 please, and be sworn.

5 Thereupon,

6 RHETT PARNELL
7 was called as a witness, having been first duly sworn,
8 was examined and testified as follows:

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

11 WITNESS: My name is Sergeant Rhett Parnell.
12 It's R-H-E-T-T, P-A-R-N-E-L-L.

13 DIRECT EXAMINATION

14 BY MS. LEMPESIS:

15 Q Good morning, Sergeant Parnell. Who do you
16 work for?

17 A I work for the Beaufort County Sheriff's
18 Office.

19 Q And how many years have you worked for the
20 Beaufort County Sheriff's Office?

21 A I've been here for 14 years.

22 Q And what is your current position?

23 A Right now, I'm a sergeant on the road patrol,
24 like a supervisor.

25 Q Okay. And were you working in October of

TESTIMONY OF RHETT PARNELL

- 1 2013, specifically, October 20th of 2013?
- 2 A Yes, ma'am, I was.
- 3 Q And were you a -- were you a sergeant at that
- 4 point?
- 5 A No, ma'am. I was a corporal at that point.
- 6 Q Okay. What did your duties include as a
- 7 corporal?
- 8 A Just general law enforcement, road patrol. I
- 9 was a first responder, responded to both calls for
- 10 service and then, you know, traffic enforcement and
- 11 things like that.
- 12 Q Okay. And I asked you already if you were
- 13 working on October 20th, 2013. Were you working --
- 14 what shift were you working?
- 15 A It was the night shift, which is 7:00 p.m. to
- 16 7:00 a.m.
- 17 Q And do you recall receiving a call out that
- 18 night to Northridge Cinemas?
- 19 A Yes, ma'am, I do.
- 20 Q Can you tell me where Northridge Cinemas is?
- 21 A Yes, ma'am. The physical address is 435
- 22 William Hilton Parkway, but it's the movie theater on
- 23 Hilton Head Island, in South Carolina.
- 24 Q Okay. And is that -- what county is that in?
- 25 A That's in Beaufort County.

TESTIMONY OF RHETT PARNELL

1 Q Thank you. When you received that call, did
2 you report out to that location?

3 A Yes, ma'am, I did.

4 Q Who else reported with you, if anyone?

5 A Another deputy, a Corporal Brian Michael
6 responded, as well.

7 Q And do you recall about what time you
8 arrived?

9 A It was probably 10:30, 10:45, something like
10 that, p.m.

11 Q Okay. When you arrived on scene, Sergeant,
12 do you recall what the scene was like? Can you
13 describe it for the jury?

14 A Sure. It was a -- it's a parking lot for a
15 movie theater, and it was pretty empty. The -- when we
16 got there, the victim, Mr. Snodgrass, was sitting on
17 a -- like a planter box, like right in front of the
18 entrance to the movie theater. And there was nobody
19 else around. The parking lot was empty and there was
20 probably maybe two or three cars there.

21 Q Okay. Can you describe the lighting in that
22 parking lot?

23 A It's very -- it's very dark. There's some
24 ambient lighting coming from the building itself, but
25 the actual parking lot only has maybe two or three

TESTIMONY OF RHETT PARNELL

1 light poles and, you know, spaced sporadically
2 throughout the parking lot.

3 Q You got there, you saw the victim. What was
4 Mr. Snodgrass's demeanor?

5 A Well, it -- I mean, his demeanor was in
6 shock. He was -- he had, you know, obviously been
7 beaten up pretty bad. I mean, his face was swelling
8 and there was blood, and he had been punched about his
9 face. He was conscious and alert when we got there, so
10 he was able to tell us, you know, somewhat of what
11 happened.

12 Q Okay. And did you at that time get any sort
13 of description of the suspect you might be looking for?

14 A We did. We got a vague description of the
15 suspect, so we were able to broadcast it on the radio.

16 Q Okay. And did you make any other calls out
17 that evening?

18 A We notified the supervisor at the time of the
19 situation we had. And then we notified EMS as well.

20 Q Did EMS come to the scene?

21 A They did, yes, ma'am.

22 Q Okay. Did you search the area that night,
23 Sergeant Parnell, for a suspect?

24 A We did. We searched the area for both
25 suspect and evidence, anything that we could find.

TESTIMONY OF RHETT PARNELL

1 Q And did you find anything?

2 A No. The only thing that we found were the
3 victim's glasses. We didn't find anything else.

4 Q Okay. You mentioned that the victim was
5 bleeding, did you find any -- any blood evidence
6 anywhere on that -- at that scene?

7 A We did, yeah. There was -- there was blood,
8 like gravitational drops, which is just drops that drop
9 straight down on the ground, on the pave -- on the
10 parking lot, on the pavement, and then we found blood
11 on Mr. Snodgrass's pickup truck as well.

12 Q Did you take pictures of any of this, do you
13 know?

14 A No, I don't believe that pictures of the
15 parking lot were taken. We took pictures of the
16 victim.

17 Q And you didn't collect any physical evidence
18 that night?

19 A No, ma'am. There was no evidence to collect.

20 Q Do you recall if there were -- if y'all
21 checked for any sort of video recordings?

22 A We did. The building was not equipped with
23 outside video surveillance at the time.

24 Q Okay. Did you -- were you able to ascertain
25 from the victim how the suspect left, whether --

TESTIMONY OF RHETT PARNELL

1 A You know, we -- he was able to describe some
2 sort of vehicle that he left in. It wasn't a very good
3 description of the vehicle, but it was a small sedan, I
4 believe.

5 Q Did you do anything else that night,
6 Sergeant Parnell, either yourself or with the other
7 deputies there? Any other actions taken that evening?

8 A No, ma'am, not really. I mean, a report was
9 obviously completed, and then once Mr. Snodgrass was
10 taken to the ambulance we kind of looked around the
11 parking lot, trying to find maybe the bank bag or
12 something like that, but never found anything.

13 Q Okay. All right. Thank you.

14 And Sergeant Parnell, have you had any
15 further involvement with this case at all?

16 A No, ma'am.

17 MS. LEMPESIS: No further questions for you
18 at this time.

19 THE COURT: Thank you. Mr. Bax, cross
20 examine?

21 MR. BAX: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. BAX:

24 Q Good morning, Sergeant.

25 A Good morning, sir.

TESTIMONY OF RHETT PARNELL

1 Q A couple of questions for you. You indicated
2 that Officer Brian Michael was present during this
3 response, as well, correct?

4 A Yes, sir.

5 Q Okay. Do you recall which one of you arrived
6 first?

7 A I believe we arrived at the same time. We
8 were coming from the same spot. He may have beat me by
9 a second to the parking lot, but we both got out at the
10 same time.

11 Q All right. So, score one to Brian, he got
12 there a second before you, huh?

13 A Yes, sir.

14 Q Now, you testified that Mr. Snodgrass was
15 sitting outside of the theater on a planter.

16 A Best of my recollection, yes, sir.

17 Q Do you recall if Mr. Michael, or Officer
18 Michael, got up there to talk to him first, or did you?
19 Do you recall how that worked, or did you guys walk up
20 there together?

21 A We walked up together.

22 Q Okay. So, you don't recall Mr. Snodgrass
23 being inside the theater and unlocking the door and
24 coming out to talk to y'all?

25 A No, sir, I don't recall that.

TESTIMONY OF RHETT PARNELL

1 Q Okay. And you've indicated also that you
2 guys looked around. You did find Mr. Snodgrass's
3 glasses, correct?

4 A I did, yes, sir.

5 Q And were those in the parking lot?

6 A They were, yes, sir. Next to a curb.

7 Q Okay. Did you find any blood in the area
8 where the glasses were?

9 A I did. There were drops, you know, right
10 where the glasses were, yeah. Not a large pool, but a
11 few drops.

12 Q Okay. All right. And you testified that
13 y'all didn't take any pictures of those droplets; is
14 that correct?

15 A That's correct.

16 Q And did you -- either you or Officer Michael
17 or anyone else, take swabs of those bloods to be
18 submitted for testing?

19 A No, sir.

20 Q And you indicated that you found blood around
21 Mr. Snodgrass's truck; is that right?

22 A Yes, sir.

23 Q Did you take any picture of that?

24 A No, I didn't take pictures of it.

25 Q Now, you've never testified in any kind of

TESTIMONY OF RHETT PARNELL

1 anything, you know, related to this case, have you?

2 A No, sir. Not in this case, no.

3 Q Okay. So, today would be the first time you
4 talked to anybody about it in this setting?

5 A Yes, sir.

6 Q Okay. So, if I were to tell that you
7 Officer Michaels testified and said that he didn't ever
8 see any blood or collect anything, would you disagree
9 with that?

10 A I don't know. I wasn't here for his
11 testimony. I can testify to what I saw.

12 Q So you don't have any knowledge or any -- you
13 can't tell us why Officer Michael would have testified
14 that there was no blood found?

15 A No, sir.

16 MR. BAX: A moment's indulgence, Your Honor?

17 THE COURT: All right.

18 MR. BAX: No further questions, Your Honor.

19 Thank you.

20 THE COURT: Thanks.

21 Redirect, Ms. Lempesis?

22 MS. LEMPESIS: No redirect, Your Honor.

23 THE COURT: Thank you, Sergeant Parnell. You
24 may step down. Thank you.

25 THE WITNESS: All right.

TESTIMONY OF RHETT PARNELL

1 MS. LEMPESIS: Your Honor, may

2 Sergeant Parnell be excused?

3 THE COURT: Without objection?

4 MR. BAX: No objection.

5 THE COURT: Sergeant Parnell, you may be
6 excused to go back to work. Thank you.

7 THE WITNESS: All right. Thank you, sir.

8 MS. LEMPESIS: Your Honor, the State calls
9 John Snodgrass.

10 THE COURT: Mr. Snodgrass, come forward,
11 please, be sworn.

12 Thereupon,

13 JOHN SNODGRASS

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

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

18 WITNESS: John, J-O-H-N. David, D-A-V-I-D.
19 Snodgrass, S-N-O-D-G-R-A-S-S.

20 DIRECT EXAMINATION

21 BY MS. LEMPESIS:

22 Q Good morning, Mr. Snodgrass.

23 A Good morning.

24 Q Mr. Snodgrass, let's start with just some
25 background information. Where do you live?

TESTIMONY OF JOHN SNODGRASS

1 A Indigo Run, Hilton Head Plantation.

2 Q And where do you work?

3 A Northridge Cinemas on Hilton Head Island.

4 Q And how long have you worked at Northridge
5 Cinemas?

6 A Nine, ten years.

7 Q What is your position there?

8 A General manager.

9 Q And can you tell the jury about some of your
10 duties that you're involved with as being the general
11 manager?

12 A I'm responsible for day-to-day operations,
13 employees, hiring, firing, exhibition of films,
14 programming -- literally anything and everything to do
15 with running the facility.

16 Q And do you make the deposits from -- with
17 money?

18 A On the nights that I work, yes.

19 Q Okay. And we're going to go back to
20 October of 2013. Were you working, Mr. Snodgrass, on
21 the night of October 20th?

22 A Yes, I was.

23 Q And what shift were you working?

24 A I was working the night shift.

25 Q What time does the night shift start and end?

TESTIMONY OF JOHN SNODGRASS

1 A It varies. That particular night, I arrived
2 around 4:00 and left between 10:30 and 11:00.

3 Q What -- when you were going to leave work,
4 how many employees were still at the theater?

5 A There's one employee left when I leave.

6 Q Okay. And what does that employee do?

7 A That employee ensures that all the films that
8 are running are running correctly, assists any
9 customers who have any questions or issues. At the end
10 of the night they make sure that the facility is empty,
11 doors are locked, fire exits are barred, the alarm is
12 set. And then they leave.

13 Q And so on this night, when you go to leave
14 the theater, then there's just that one employee still
15 there?

16 A Somewhere in the building, yes.

17 Q Had you let all of your other employees leave
18 before that?

19 A Yes. The staff that works at night performs
20 some clean up and restocking duties, and once that's
21 completed and checked by the manager they're allowed to
22 leave.

23 Q Okay. So, tell me about when you go to leave
24 the theater, how do you exit the theater?

25 A Well, at that time I would make a trip to the

TESTIMONY OF JOHN SNODGRASS

1 box office, which has the best view of the parking lot,
2 and see if anything looks out of place -- cars with
3 lights on, people milling around, something that
4 shouldn't be occurring since all of the movies are
5 running. We're not exiting people out of the building,
6 we're bringing in new customers.

7 If everything looks okay, I would then
8 walk through the lobby to one of the self-closing exit
9 doors and exit the building and walk around.

10 Q And when you exited the building, what were
11 you carrying with you?

12 A That particular night I had a gray plastic
13 deposit bank bag, a padded mail envelope with some
14 Christmas decorations that was going to be dropped off
15 at the post office, my car keys in one hand, and some
16 loose papers.

17 Q Okay. When you go to exit and then you're
18 walking into the -- walking in the parking lot, were
19 you parked far away from the entrance? Where were you
20 parked?

21 A I was parked in the -- as you're facing the
22 parking lot from the theater, it would be the second
23 drive aisle. And if I remember right, four spaces on
24 the right-hand side. Far is relative, it's probably
25 50 yards from the entry.

TESTIMONY OF JOHN SNODGRASS

1 Q Okay. As you are walking to your parking
2 spot to get to your car, what did you see?

3 A Initially, when I walked out, all I saw were
4 some vehicles. The same thing I had seen from my look
5 in the box office. As I got closer to my vehicle, I
6 noticed a small older Toyota parked -- backed into a
7 space on the left-hand side, which is normally where
8 the managers park when we're the first to arrive in the
9 day. But when we arrive later, we have to take
10 whatever space is available.

11 Q How many cars were there in the parking lot,
12 if you remember?

13 A Honestly do not remember. It would have been
14 commensurate with the number of people in the theater
15 at that time, but not a great number.

16 Q Okay. It was a Sunday night so --

17 A Sunday night, last show, maybe ten or 15,
18 total, spread throughout the lot.

19 Q Okay. So, go back to the car that you saw
20 then backed into a spot. Tell me what happened after
21 that.

22 A Well, as I approached the vehicle, which
23 would have been on my left as I walked toward my truck,
24 I noticed that there was a female in the driver's seat.
25 And just as I noticed that, someone who was outside the

TESTIMONY OF JOHN SNODGRASS

1 vehicle crouched down next to the driver's door stood
2 up.

3 Q Okay. And do you recall what that person
4 looked like?

5 A It was an African American male, maybe 6 feet
6 tall, very broad shouldered, stocky.

7 Q Okay. And what did that man do?

8 A He walked toward me, as if he had some sort
9 of question.

10 Q Okay. And did he speak to you?

11 A He did. He initially asked me what time the
12 movies got out.

13 Q Did you answer him?

14 A I tried to answer as best I could. Movies
15 start and end at different times, so without knowing
16 what movie he was interested in, it was hard to give an
17 answer.

18 He then asked if he could borrow my cell
19 phone to call someone inside the building, and I
20 advised him that my cell phone battery life had sucked
21 dead out of the building and the phone was no good.

22 Q What were you thinking as he was speaking to
23 you?

24 A Well, my initial reaction when he popped up
25 out from beside the car is, this is not good. There's

TESTIMONY OF JOHN SNODGRASS

1 no reason for anybody to be hiding or out of sight in
2 the parking lot unless there's some ulterior motive.

3 I thought about setting off my car
4 alarm, but realizing that I had no place to retreat to,
5 my thought was quickly, well, that's just going to
6 anger somebody. And I didn't want to do that, so I
7 assumed that everything would be okay, and he was just
8 going to be asking some questions.

9 Q After he asked about your cell phone, what
10 was the next -- did he ask you anything else?

11 A He did not ask to borrow or see anything, he
12 did ask me what time it was.

13 Q Okay. And did you answer him?

14 A I started to look down at my watch, and as I
15 raised my hand, which had the bags in it, in my left
16 hand, and turned my arm to look at the watch, my gaze
17 is down at the watch, I see him step back with his
18 right foot and reach behind him like he's trying to
19 retrieve something from either a pocket or waistband,
20 then reaches behind him with his right arm.

21 Q What happens next, Mr. Snodgrass?

22 A At that point, my instincts kicked in, I
23 thought, I'm going to get hit with something. And I
24 immediately, threw my right hand up and turned to my
25 left. And as I was fearing, I was struck behind the

TESTIMONY OF JOHN SNODGRASS

1 right ear.

2 Q What happened after you were hit that first
3 time?

4 A I was stunned. I spun around at least
5 180 degrees, facing a different direction. I was
6 knocked to the ground and literally dazed. I couldn't
7 really see, my head is down looking at the ground.

8 Q And once you're down on the ground, what
9 happened next?

10 A As I'm kind of trying to shake the cobwebs
11 out of my head, out of the corner of my left eye, I see
12 this individual that I'd been speaking with almost
13 stomp the ground. And then I see a big upper cut with
14 his right-hand, and it catches me on the left side of
15 my face.

16 Q Okay. Do you remember anything after that?

17 A The next thing I remember is waking up on the
18 ground.

19 MS. LEMPESIS: Your Honor, permission for the
20 witness to step down from the witness stand?

21 THE COURT: That's fine.

22 MS. LEMPESIS: Mr. Snodgrass --

23 THE COURT: Mr. Snodgrass, you can step down.
24 If you're going to be giving any testimony down
25 there, I want you to face the direction of the

TESTIMONY OF JOHN SNODGRASS

1 court reporter, please. Don't turn your back to
2 the court reporter.

3 THE WITNESS: Okay.

4 THE COURT: Thank you.

5 BY MS. LEMPESIS:

6 Q We need to make sure that the court reporter
7 can still hear you.

8 Mr. Snodgrass, I want you to -- you can
9 come closer over here -- you've described for us the
10 attack. I want you to now show me, to the best that
11 you can, I would like for you to show exactly how this
12 happened. It's hard to picture it as you're just
13 talking about it up in the stand.

14 So you testified first that when you
15 went to look at your watch. Start back from there.

16 A Okay. At this point, we're facing about this
17 distance.

18 Q Am I about the distance?

19 A You're farther away. You need to get a
20 little bit closer. There we go. That's about right.

21 Q Okay.

22 A I've got car keys in my right hand, the bags
23 and papers in my left. I reach up and look at this.

24 Now --

25 Q Now, was the suspect standing right in front

TESTIMONY OF JOHN SNODGRASS

1 of you, or was he off to the side or --

2 A He was right in front of me at this point.

3 At this point, when I turned my wrist to look at the

4 watch, take a step back with your right foot, reach

5 behind you with your right hand. Okay?

6 As I see that movement, I then drop my

7 hand and turn like this.

8 Q Okay. So, you were preparing for what you

9 thought --

10 A I thought I was going to be struck, so I was

11 instinctively trying to protect my head. And as I

12 turned and lost site of the individual, is when I felt

13 the first blow.

14 Q Okay. So, you're in that downward position

15 when you felt the first blow?

16 A Well, at this point, okay, hard to turn left

17 and talk right.

18 Q That's fine. Just talk as loudly as you can.

19 A Well, that's not a problem.

20 I get hit and I go down on my right

21 knee. And I'm like this on the ground.

22 Q Okay.

23 A Right knee on the ground, left knee up,

24 looking down. At this point I'm dazed and confused,

25 but still conscious. And now the individual is coming

TESTIMONY OF JOHN SNODGRASS

1 into my peripheral vision and I see now a stump -- no,
2 a little bit farther -- no, too far. Right about
3 there. A stomping of the right foot, and a big
4 swinging uppercut.

5 And at this point, I don't even have the
6 strength or reaction to move. I think I tried to raise
7 my left hand, and I might have gotten it up near my
8 face to try and block the blow, but at this point I'm
9 hit and fall down, which is how I awakened on the
10 concrete -- well, asphalt, face down, facing away from
11 the theater.

12 The theater is now behind me, my
13 vehicle's in front of me. The vehicle that I had
14 observed him coming from is to the left.

15 Q Okay. Okay. Thank you, Mr. Snodgrass. You
16 can go back to the stand.

17 (Witness complies.)

18 BY MS. LEMPESIS:

19 Q When you were hit, Mr. Snodgrass, what did
20 that hit feel like?

21 A It felt like a hard object, metal. Having,
22 you know, had playground fights in the past, I've been
23 hit with a fist. It was not skin on skin.

24 Q Okay. Do you know exactly how many times you
25 were hit?

TESTIMONY OF JOHN SNODGRASS

1 A I do not know. I only recall the two times
2 when I was conscious.

3 Q Okay. Mr. Snodgrass, when you came to, and
4 you may have already said this, I apologize if I'm
5 asking you to repeat yourself, but was there anything
6 missing from your belongings that you had?

7 A Yes. The bank bag and the padded envelope
8 for the post office were not present. My car keys were
9 on the ground, as well as the loose papers that I had.

10 Q Okay. And how much money do you know or
11 recall how much money was in that bank bag?

12 A I don't recall the exact amount. It was
13 about \$4,000 for deposit and 4- or \$500 for a change
14 order.

15 Q Okay. What did you do when you came -- when
16 you came to?

17 A For whatever reason, my instinct was to
18 gather up my belongings, which at that point were my
19 car keys and papers. I walked over to my truck and
20 initially tossed the papers in the bed of the truck.
21 And then I thought, no, that's not safe, I'm going to
22 be going to the hospital, let me put them inside my
23 vehicle. So I unlocked it, tossed them on the seat,
24 closed the door, then walked back to the theater.

25 Q Okay. What did do you once you got back to

TESTIMONY OF JOHN SNODGRASS

1 the theater?

2 A I retrieved my keys to unlock the door. I
3 went inside and locked it behind me and stayed right at
4 the door. I called the dispatch number and advised
5 that I'd been robbed and assaulted. They asked if I
6 needed medical attention, I said yes. They said they
7 would dispatch deputies.

8 Q Let's go back a little bit to the description
9 of the person who attacked you. Were you able to give
10 the officers any sort of description that night of what
11 he looked like or was wearing?

12 A All I remembered was dark clothing. Again,
13 about 6 feet tall, very broad shouldered, at least
14 200 pounds, African American male. And I think one
15 distinguishing feature were little -- I don't want to
16 say ringlets, they weren't dreadlocks, but they were
17 like inch to 2-inch curls in his hair.

18 Q Okay. When the police arrived, what happened
19 after the police arrived?

20 A I was inside waiting. I believe Officer
21 Michael approached the door and asked me to come
22 outside. I came outside and sat down on the planter,
23 and he started asking me questions about what had
24 happened, who did it, things of that nature.

25 Q And were you treated that night by EMS?

TESTIMONY OF JOHN SNODGRASS

1 A Yes. Officer Michael asked if I had
2 contacted them, and I said I believed I told dispatch I
3 needed them. He got on the radio and confirmed they
4 were on their way.

5 They arrived, I was ambulatory, so I was
6 able to walk to the ambulance, and they asked me to lay
7 down on a stretcher. That's what I did.

8 Q Did you ever -- did you notice that you were
9 bleeding, or were you bleeding?

10 A Oh, yes. Immediately, because blood was
11 dripping off my face. My shirt and pants were soaked
12 in blood.

13 Q Okay. You -- you mentioned you went to the
14 ambulance. Did you go to the hospital that night?

15 A Yes. The ambulance took me initially to the
16 emergency room at Hilton Head Hospital. I spent maybe,
17 two, two and a half hours there, to the best of my
18 recollection. And based upon what they advised me was
19 showing up in the test results, they were going to
20 transfer me to Memorial in Savannah.

21 Q Okay. I'm going to go back to the -- go back
22 to give the jury a better idea of where this happened,
23 I'm going to show you a video of the parking lot. And
24 this is for demonstrative purposes only, Mr. Snodgrass.

25 Parking lot -- just one moment,

TESTIMONY OF JOHN SNODGRASS

1 Mr. Snodgrass.

2 MR. BAX: Your Honor, approach the bench?

3 THE COURT: Uh-huh.

4 (At the bench.)

5 (Off-the-record discussion held.)

6 THE COURT: We'll put that on the record, out
7 of the presence of the jury. Thank you.

8 MS. LEMPESIS: Your Honor, permission for the
9 witness to step down again from the stand.

10 THE COURT: That's fine.

11 Mr. Snodgrass, you can step down. This time,
12 you can stand on the other side of the TV and face
13 this direction. We'll be able to hear you, and
14 the jury will be able to see what you're doing.
15 Thank you.

16 (Video playing on TV monitor in
17 front of jury.)

18 Q Mr. Snodgrass, what is this showing the jury?

19 A This is the front parking lot of the theater.

20 Q And so if --

21 A This is the drive aisle, where I was parked.

22 A car was backed into this space here.

23 Q Can you point to the space again?

24 A This space right here.

25 Q The car where Mr. McQuarters came up from?

TESTIMONY OF JOHN SNODGRASS

1 A Right. He was standing right along that
2 backside of it.

3 Q Okay. Make sure the jury can hear you, too,
4 Mr. Snodgrass.

5 Where were you parked?

6 A I was parked, I believe, in that space there.
7 It was the fourth space over from the end, down the
8 same aisle.

9 Q Can you point to it again?

10 A This space here.

11 Q That was where your truck was parked?

12 A Yes. I was parked -- and I was backed in
13 also.

14 Q Okay. Mr. Snodgrass, I think this is going
15 to show us sort of an overview of the parking lot.

16 Are there a lot of trees in the parking
17 lot?

18 A Yes. It's Hilton Head, there are trees
19 everywhere.

20 Q What, again, were the lighting conditions?

21 A Well, this is a light pole right here, which
22 I don't even recall whether it was working at that
23 time. Most of the lighting is from the building, which
24 is back here. So, where I was standing having my
25 conversation with the individual, I was in the

TESTIMONY OF JOHN SNODGRASS

1 darkness, the lighting was behind me. It was
2 approximately right there in front of that parking
3 space.

4 Q Okay. And so now, we're zooming in and
5 looking at -- where is the theater?

6 A This is the theater. The entry is over here.

7 Q So you walked out of that entrance? Can
8 you --

9 A Well, I walked out of the exit. Because the
10 entrance doors are locked at night after the last show
11 starts. The exit doors are self-locking. So you can
12 exit the building, but you can't re-enter.

13 The exit door I came out of is to the
14 right of that planter.

15 Q Okay. Can you point to where the exit is out
16 of the parking lot?

17 A This road here exits out to Northridge Drive.
18 There's another main drive aisle exit that will exit
19 out onto William Hilton Parkway.

20 Q What is this parking lot -- is it shared with
21 any other businesses?

22 A Basically, no. The way the center is
23 developed, this parking lot is directly in front of the
24 theater, and there's no other business that associates
25 with it. Although it's a shopping center, all the

TESTIMONY OF JOHN SNODGRASS

1 other businesses are on the side, and they have parking
2 closer to those businesses.

3 Q Mr. Snodgrass, this is zooming in on the
4 front of the theater. If you can sort of point to --
5 it shows you where the exit is that you used, or the --
6 it goes that direction.

7 Now, we're zooming up. What is that?

8 A That's the roof of the theater.

9 Q Let's see if can we see some of the trees
10 there.

11 A This is the way I would walk out and then
12 through the roadway.

13 Q Okay. Mr. Snodgrass, can you see any of the
14 exits on this from this vantage point?

15 A No. They're covered by the trees. The main
16 drive aisle exit's over here. It runs out to
17 William Hilton Parkway, which is way up here.

18 Q Mr. Snodgrass, I think in a moment it's going
19 to show us the front of the theater again. I just
20 wanted to make clear where you can now -- what is this
21 showing, Mr. Snodgrass?

22 A It's the front of the theater, starting at
23 the left side and panning to the right. That planter
24 is approximately in the middle of the building.

25 Q Can you see the parking spot where you were

TESTIMONY OF JOHN SNODGRASS

1 when you were attacked?

2 A Right -- oop, just went off screen to the
3 left, yes.

4 Q And so you testified before that you thought
5 it was approximately maybe 50 feet or so?

6 A I think I said 50 yards, but --

7 Q Oh, 50 yards. Okay.

8 A About 150 feet from where I first exited the
9 building, which is over here, these double exit doors.

10 Q All right. Mr. Snodgrass, I'm going to stop
11 this now and you can return to the stand.

12 (Witness complies.)

13 BY MS. LEMPESIS:

14 Q Mr. Snodgrass, I'm going to hand you now some
15 pictures, again, of the parking lot.

16 MS. LEMPESIS: Permission to approach the
17 witness, Your Honor?

18 THE COURT: Yes, ma'am.

19 BY MS. LEMPESIS:

20 Q Mr. Snodgrass I'm going to hand you these.
21 They've been marked for identification purposes only at
22 this point as State's Exhibits 1 through 8. Can you
23 look at those for me?

24 A Yes.

25 Q Thank you. And do you recognize those

TESTIMONY OF JOHN SNODGRASS

1 pictures, Mr. Snodgrass?

2 A Yes.

3 Q And how are you able to recognize them?

4 A The parking lot's recognizable after nine
5 years. I'm very familiar with what each drive aisle
6 looks like in relationship to the building, as well as
7 the building and exits.

8 Q Okay. And have those pictures -- are they a
9 fair and accurate depiction of the parking lot?

10 A Yes.

11 MS. LEMPESIS: Your Honor, I move to admit
12 the pictures, State's Exhibits 1 through 8 at this
13 time.

14 THE COURT: Mr. Bax?

15 MR. BAX: Objection, foundation.

16 THE COURT: You object to the foundation?

17 MR. BAX: Yes, Your Honor. Would you like --

18 THE COURT: What's missing from the
19 foundation?

20 MR. BAX: We don't know -- he didn't take the
21 pictures. We don't know what time of year they
22 were taken, what time they were taken, and by
23 whom. And since the lighting seems to be an issue
24 here, we don't know what the relationship is to
25 October of 2013.

TESTIMONY OF JOHN SNODGRASS

1 THE COURT: All right. Okay.

2 The question is whether or not these are a
3 fair and accurate representation of the parking
4 lot at the time the event occurred.

5 MS. LEMPESIS: In the evening hours,
6 Your Honor.

7 THE COURT: That's right.

8 MS. LEMPESIS: The pictures are in the
9 evening hours, yes.

10 THE COURT: That's the question?

11 MS. LEMPESIS: Yes, Your Honor.

12 THE COURT: I don't have any answer yet.

13 BY MS. LEMPESIS:

14 Q And, Mr. Snodgrass, are these a fair and
15 accurate depiction of the parking lot at the time -- of
16 course, not specifically on October 20th, but at the
17 time that the attack occurred, at nighttime?

18 A Yes. These are accurate for what the parking
19 lot looks like at night.

20 Q And did it look that way in October of 2013?

21 A No.

22 Q It did not?

23 A No. In 2013, there were fewer lights.

24 Q There were fewer lights.

25 A Yes.

TESTIMONY OF JOHN SNODGRASS

1 Q So -- we got all the lights repaired after
2 this incident, so there -- in these photographs, there
3 are -- there's more lighting than was present at that
4 time.

5 MS. LEMPESIS: Thank you. And, Your Honor,
6 again, I move to admit the pictures.

7 THE COURT: If it were worse, then I would
8 look at this somewhat differently. The jury
9 understands that those photographs show more
10 lights than Mr. Snodgrass has described at the
11 time.

12 As I said, if -- Mr. Bax, if the reverse were
13 true and -- that would seem to me to be
14 prejudicial to your client. If the jury
15 understands that this photograph, or these
16 photographs, are lighted more brightly because of
17 the fact the lights have been added. And, of
18 course, it's impossible to go back and take the
19 lights out, I suppose, to show this jury what it
20 looks like.

21 Let me look at those photographs, myself,
22 Mr. Snodgrass, to see if I could see what the --

23 The evidentiary cones that are there, what do
24 they represent?

25 MS. LEMPESIS: Your Honor, those represent

TESTIMONY OF JOHN SNODGRASS

1 where the cars were parked.

2 THE COURT: Okay.

3 MR. BAX: Your Honor, if we may approach.

4 THE COURT: Okay.

5 MR. BAX: Thank you.

6 THE COURT: Just come right up front here and
7 talk across the table.

8 (Discussion at the bench.)

9 THE COURT: I sustained the objection.

10 Ladies and gentlemen, the objection was
11 sustained. And normally these things are done off
12 the record, simply because of the issue that was
13 raised.

14 The lights in that -- in those photographs,
15 it's the same -- it's the same place. Same things
16 you've seen on the screen. But the lights in
17 those photographs, for two reasons. Because,
18 first of all, it was taken with a flash camera and
19 it shows a well-lighted area.

20 And secondly, the lights themselves that
21 Mr. Snodgrass has mentioned have been improved.
22 And it's impossible for the State to go back
23 and -- and turn the clock back.

24 But you're entitled to see the scene as
25 accurately as it can be depicted at the time, not

TESTIMONY OF JOHN SNODGRASS

1 today. That's the reason I sustained the
2 objection and disallowed those photographs.
3 That's all there is to it. Thank you.

4 MS. LEMPESIS: Thank you, Judge.

5 BY MS. LEMPESIS:

6 Q Mr. Snodgrass, moving on then from the
7 pictures. You testified that you were taken to Hilton
8 Head Hospital. What happened after you went to Hilton
9 Head Hospital?

10 A They performed an MRI, some x-rays, sutured
11 my face, and eventually transferred me to Memorial in
12 Savannah.

13 Q How long did you stay at Savannah Memorial
14 Hospital?

15 A I arrived there about 5:00 a.m. Monday
16 morning, and was discharged late Wednesday evening.

17 Q Okay. Did you ever have occasion to meet
18 with anybody from the sheriff's office?

19 A Yes. Investigator Seifert came and spoke
20 with me on Tuesday, I believe.

21 Q Okay. And did you give him a description of
22 what happened that night?

23 A Yes. He asked me the same questions that the
24 responding officers did, and I gave him what
25 information I could recall.

TESTIMONY OF JOHN SNODGRASS

1 Q Okay. And at any point did you -- did you
2 contact Investigator Seifert again?

3 A Yes. I had found those initial papers that I
4 had tossed in my truck. They had gotten buried on the
5 bottom of the floorboard, and I was cleaning out my
6 truck finally and came cross them and didn't know if
7 they would be of any value to the investigation.

8 Q Okay. Did you -- what did you do with those
9 papers?

10 A I contacted Investigator Seifert. He said he
11 didn't know, but for me to bring them to him. I did,
12 and he had me drop them in a plastic evidence bag.

13 Q Okay. Did you provide law enforcement with
14 any other information about -- about the night of the
15 incident? Any other information from the theater at
16 all?

17 A Yes. They asked me the specific dollar
18 amounts, which I could go back in the computer records
19 and determine, and they also wanted to know who was
20 working that night. And instead of trying to rely on
21 memory, I went back to the computer records and time
22 clock and saw who was actually clocked in and clocked
23 out that day.

24 Q And did you give him the names of everyone
25 who was working?

TESTIMONY OF JOHN SNODGRASS

1 A Yes.

2 Q Did you -- go back for a minute to when you
3 walked out into the parking lot. You said you saw a
4 female in the car that was backed in?

5 A Yes.

6 Q Did you see, besides that female and the
7 African American man who attacked you, did you see
8 anyone else?

9 A No.

10 Q Did anyone besides the man who you've already
11 testified to, did anyone besides him hit you at any
12 point?

13 A No. There was no one else in the parking lot
14 that I could see except for the female in the car. And
15 she never exited the car during our conversation or
16 during the attack.

17 Q Okay. Mr. Snodgrass, you heard
18 Sergeant Parnell talk about video surveillance. Did
19 y'all have any sort of video surveillance at the
20 theater?

21 A No.

22 Q None outside?

23 A None. There's an old system that was
24 non-functional that would have recorded anybody at box
25 office who had walked up there, but it would not have

TESTIMONY OF JOHN SNODGRASS

1 recorded anything in the parking lot.

2 Q But it wasn't functioning?

3 A It was not functioning.

4 MS. LEMPESIS: Beg the court's indulgence?

5 THE COURT: Yes, ma'am.

6 MS. LEMPESIS: Mr. Snodgrass, I don't have
7 any further questions for you at this time. If
8 you can please answer any questions that Mr. Bax
9 has.

10 THE COURT: Mr. Bax, you can cross-examine.

11 MR. BAX: Thank your Honor.

12 CROSS EXAMINATION

13 BY MR. BAX:

14 Q Good morning, Mr. Snodgrass.

15 A Good morning.

16 Q A couple questions for you. You've testified
17 to what happened on October 20th of 2013. And as
18 you've said, you were only able to give kind of a
19 limited description of the individual that attacked
20 you; is that correct?

21 A Yes.

22 Q And you've been through that with the jury,
23 dark clothing, taller, 6-foot, broad shouldered,
24 correct?

25 A Correct.

TESTIMONY OF JOHN SNODGRASS

1 Q African American male, correct?

2 A Yes.

3 Q At some point do you recall whether or not
4 Investigator Seifert ever showed you an array of
5 photographs to see if you could pick out who had
6 attacked you?

7 A Yes, he did.

8 Q Were you able to pick anybody out of that
9 line up?

10 A I was not able to identify one person.

11 Q Okay. You've also indicated, and you've told
12 us here today what happened, you said that the
13 individual reached behind them and then that you were
14 struck.

15 Did you ever actually see anything in
16 the attacker's hands?

17 A No. My face and head were turned away during
18 the initial strike. I never saw anything except for
19 the movements that preceded the strike. And on the
20 second strike, I could not see clearly. I could only
21 see movement.

22 Q Okay. And you've testified that it felt like
23 something other than a fist hitting you, correct?

24 A Correct.

25 Q But you have no visual confirmation of that

TESTIMONY OF JOHN SNODGRASS

1 that you can testify to here today?

2 A Correct.

3 Q Okay. Now, Mr. Snodgrass, a couple of
4 things. You testified that later on you provided a
5 list of who was working at the theater that night to
6 Investigator Seifert; is that correct?

7 A Yes.

8 Q Okay. Was that as a result of Mr. Seifert
9 asking for that information or asking some information
10 about who was working there?

11 A Yes.

12 Q And as a result of providing him that
13 information, on that list of employees for that night,
14 do you recall if Mr. Colton Delaplane was on there?

15 A Yes, he was.

16 Q Okay. Do you recall what Mr. Delaplane was
17 doing that evening? Do you remember seeing him or
18 assigning him duties, and knowing what he was doing?

19 A He worked in box office that evening.

20 Q Okay. And let me ask you a little bit about
21 the money. You've testified that as the night manager,
22 the closing manager, it's your responsibility to take
23 and make the bank deposits, correct?

24 A Correct.

25 Q Okay. And that was what was in this gray

TESTIMONY OF JOHN SNODGRASS

1 plastic bank bag, correct?

2 A Correct.

3 Q Okay. Let's talk about that a little bit.

4 How do you go about figuring out what
5 your deposit is and taking that in the evening?

6 A Our point of sale system records cash and
7 credit transactions. The cash drawers start out with a
8 uniform amount of bills and coins. At the end of the
9 night, it is signed off. The manager then counts
10 everything in the drawer and enters it in the point of
11 sale system.

12 It then determines what the drawer
13 started with, the difference, whether or not it's over
14 or short. That amount then is recorded, all the
15 drawers are counted out, and it then tells us how much
16 cash to deposit for the night.

17 Q Okay. And so you then take that amount cash
18 and put it in the bank bag. But some of the cash
19 remains there at the theater, correct?

20 A Yes.

21 Q Okay. Now, any of the employees that work at
22 the front in the box office, as you called it, they
23 would, if someone comes to pay cash for their movie
24 tickets, they would have to take that cash, correct?

25 A Correct.

TESTIMONY OF JOHN SNODGRASS

1 Q And would they make change out of their
2 drawer, or till?

3 A Yes.

4 Q Okay. And that's where you retrieved the
5 cash from in the evenings is those point of sale tills,
6 or registers?

7 A Correct.

8 Q Okay. And Mr. Delaplane was working one of
9 those that evening, correct?

10 A Yes.

11 Q Now, how long had you been working at
12 Northridge Cinemas back in October of 2013?

13 A Seven years.

14 Q And for most of that time, had you been a
15 supervisor, or a manager?

16 A I've been general manager since I started.

17 Q Okay. Is part of your responsibilities as
18 general manager to oversee and assign duties for the
19 other employees?

20 A Yes.

21 Q Okay. If there are problems with employees,
22 do you have responsibility of dealing with that, if
23 they're showing up late or not doing their duties
24 correctly?

25 A Among the other managers, yes.

1 Q And throughout that seven years leading up to
2 October, you had had that -- have you ever had to talk
3 to an employee or discipline an employee or say, you
4 know, do better or I'm not going to have you working
5 here anymore, anything like that?

9 Q Okay. And I would assume, correct me if I'm
10 wrong, that employees aren't always happy when you have
11 to have that talk with them, correct?

15 Q Okay. Did you ever have -- can you recall
16 whether or not you ever had to have any talks with
17 Mr. Delaplane?

19 Q Do you recall what it was about?

23 MR. BAX: Moment's indulgence.

25 I have no further questions, Your Honor.

TESTIMONY OF JOHN SNODGRASS

1 Thank you.

2 THE COURT: Thank you. Redirect.

3 MS. LEMPESIS: Just briefly on redirect,

4 Your Honor.

5 THE COURT: Okay.

6 REDIRECT EXAMINATION

7 BY MS. LEMPESIS:

8 Q Mr. Snodgrass, you were talking about
9 Colton Delaplane. You testified before that Colton was
10 working that night?

11 A Yes.

12 Q What time did he leave?

13 A He would have left with the rest of the
14 employees except for the ones who remain. They would
15 have left 15 or 20 minutes before I did.

16 Q So, was Colton Delaplane there or was he --
17 was Colton Delaplane -- excuse me.

18 Was he gone at the time you left the
19 building?

20 A He was not in the building nor did I see any
21 of the employees in the parking lot. So, as far as I
22 know, they had all left.

23 Q Okay.

24 MS. LEMPESIS: Thank you, Mr. Snodgrass. I
25 have nothing further.

TESTIMONY OF JOHN SNODGRASS

1 THE COURT: Mr. Snodgrass, you can step down.

2 Thank you.

3 Ladies and gentlemen, we're going to take the
4 morning recess at this time, and I'm going to send
5 you to jury room. We'll get you out in about 15,
6 maybe 20 minutes at the most, and continue the
7 story.

8 Please do not discuss this case among
9 yourselves while you're in the jury room.

10 (Recess.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

TESTIMONY OF JOHN SNODGRASS

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8

DATED this 16th day of September, 2015.

9

10

11

/s/ *Mona L. Manley*

12

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

13

14

15

16

17

18

19

20

21

22

23

24

25

1 IN THE COURT OF GENERAL SESSIONS IN AND FOR

2 BEAUFORT COUNTY SOUTH CAROLINA

3

4 State of South Carolina,

5 Plaintiff,

6 vs.

CASE NO. 2013GS0701844; 1845

7 AUSTIN LEWIS MCQUARTERS,

8 Defendant.

9

10 _____/

11

12

* * *

13

TRIAL TRANSCRIPT

14

VOLUME 8 (OUT OF ORDER BY DATE) *

15

16

17 DATE:

July 21, 2015*

18

19 PLACE:

Beaufort County Courthouse

20

Beaufort, South Carolina

21

22 REPORTED BY:

Mona Manley, Court Reporter

23

24 BEFORE:

Honorable Thomas W. Cooper, Jr.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING THE STATE:

Mary Jordan Lempesis, Assistant Solicitor

Brian Hollen, Assistant Solicitor

14th Circuit Solicitor's Office

Bluffton, South Carolina

REPRESENTING THE DEFENDANT:

Arie Bax, Esquire

James Bell, Esquire

14th Circuit Public Defender's Office

Beauort, South Carolina

* * *

1

2

INDEX

3

4

WITNESS:

PAGE:

5

JACKLYN PEREZ

6

Direct Examination By Ms. Lempesis

11

7

Cross Examination By Mr. Bax

30

8

Redirect Examination By Ms. Lempesis

50

9

10

State's Exhibits:

Marked:

Received:

11

1 car photo

17

17

12

13

14

15

16

17

18

19

20

21

22

23

24

25

COLLOQUY

1 PROCEEDINGS

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

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

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

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

COLLOQUY

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

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

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

25 THE COURT: I do, right.

COLLOQUY

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

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

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

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

COLLOQUY

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

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

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

25 Juries have traditionally been able to -- you

COLLOQUY

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

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

18 I note the objection, but renew my ruling.

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

COLLOQUY

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

5 THE COURT: Okay.

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

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

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

COLLOQUY

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

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

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

15 MS. LEMPESIS: Thank you, Your Honor.

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

19 MS. LEMPESIS: Thank you, Your Honor.

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

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

23 MS. LEMPESIS: The State calls Jacklyn Perez.

24 THE COURT: Please come forward and be sworn.

25 Thereupon,

TESTIMONY OF JACKLYN PEREZ

1 JACKLYN PEREZ

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

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

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

8 DIRECT EXAMINATION

9 BY MS. LEMPESIS:

10 Q Ms. Perez, how old are you?

11 A Nineteen -- I am 20, sorry.

12 Q And where are you from?

13 A Originally New York.

14 Q New York?

15 A Yes, ma'am.

16 Q How long have you lived in Beaufort County?

17 A About four years now.

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

19 A Yes, ma'am.

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

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

23 Q Where did you go to high school?

24 A Bluffton High.

25 Q Did you graduate from Bluffton High?

TESTIMONY OF JACKLYN PEREZ

- 1 A Yes, ma'am.
- 2 Q What do you do now?
- 3 A I work at Parker's, and I am a chef at the
- 4 Black Marlin on the south end of Hilton Head.
- 5 Q Who do you live with here or in Bluffton?
- 6 A My mother and my little sister.
- 7 Q Do you do anything besides work at Parker's
- 8 or Black Marlin, you said?
- 9 A Yes, ma'am. No, ma'am. I don't have time.
- 10 THE COURT: Ms. Perez, pull that microphone a
- 11 little closer to you, please, ma'am.
- 12 MS. LEMPESIS: Make sure that you speak loud
- 13 enough so that the court reporter can hear you.
- 14 THE WITNESS: Yes, ma'am.
- 15 Q Where did you used to work, Jacklyn?
- 16 A McDonald's.
- 17 Q Were you working at McDonald's in 2013?
- 18 A Yes, ma'am.
- 19 Q Do you know Austin McQuarters?
- 20 A Yes, ma'am.
- 21 Q How do you know Austin McQuarters?
- 22 A We went to school together.
- 23 Q Went to Bluffton High School together?
- 24 A Yes, ma'am.
- 25 Q When did you meet him?

TESTIMONY OF JACKLYN PEREZ

1 A Beginning of the 11th grade.

2 Q So when you first moved here?

3 A Yes, ma'am.

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

6 A Pretty well.

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

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

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

13 A Uh-huh. (Indicating affirmatively.)

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

15 A Brooklyn.

16 Q Brooklyn is your nickname?

17 A Yes, ma'am.

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

21 A Yes, ma'am.

22 Q Where were you working?

23 A McDonald's.

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

25 A Nine o'clock.

TESTIMONY OF JACKLYN PEREZ

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

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

5 Q To do the truck?

6 A Yes, ma'am.

7 Q What does that entail?

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

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

14 A Yes, ma'am.

15 Q Did you see Austin McQuarters that night?

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

17 Q Where is that McDonald's located?

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

21 Q Is that in Bluffton?

22 A Yes, ma'am.

23 Q Where did you first see Austin that night?

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

TESTIMONY OF JACKLYN PEREZ

1 walking up.

2 Q Okay. Did you speak to him?

3 A Yes, ma'am, said hi.

4 Q Okay. And did he speak to you?

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

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

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

13 Q To Hilton Head to the movie theater?

14 A Yes, ma'am.

15 Q Which movie theater?

16 A Cinema 10.

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

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

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

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

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

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

TESTIMONY OF JACKLYN PEREZ

1 my friends rides.

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

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

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

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

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

13 THE COURT: Yes, ma'am.

14 BY MS. LEMPESIS:

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

17 A Yes, ma'am.

18 Q How are you able to recognize that?

19 A That is my car.

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

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

23 Q In your driveway?

24 A Yes, ma'am.

25 Q And was that around the time of this

TESTIMONY OF JACKLYN PEREZ

1 incident, October 2013?

2 A Yes, ma'am.

3 Q Okay.

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

6 MR. BAX: Without objection.

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

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

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

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

14 BY MS. LEMPESIS:

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

17 A Yes, ma'am.

18 Q What kind of car was it?

19 A A '91 Toyota Celica coupe.

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

21 A Two.

22 Q All right. Thank you, Jackie.

23 A Yes, ma'am.

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

TESTIMONY OF JACKLYN PEREZ

1 A Yes, ma'am.

2 Q And you said yes?

3 A Yes, ma'am.

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

5 A We got in my car. We were on the way to

6 Hilton Head. And nothing was different. We were just

7 talking, listening to music the whole way.

8 Q What was the attitude in the car? What was

9 Mr. McQuarters like?

10 A Good. We were both happy. Nothing seemed

11 wrong.

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

13 A Yes, ma'am.

14 Q And you went to the movie theater off of

15 Matthews -- what road did you say?

16 A It is right by Matthews Drive. I am not sure

17 it's off Matthews Drive, but it's right by there.

18 Q Okay. What did you do when you got to the

19 movie theater?

20 A I turned in, parked my car, and Austin got

21 out and went to -- he's like, I'm going to go to talk

22 to Colton. And I was like, Okay.

23 Q Tell me how you parked your car; where did

24 you park at?

25 A A little farther away from the door and I

TESTIMONY OF JACKLYN PEREZ

1 backed in.

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

4 A Yes, ma'am.

5 Q Who is Colton?

6 A Another friend from school that we knew.

7 Q That you knew?

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

9 Q And how long had you known Colton?

10 A A brief period. Not very long.

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

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

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

19 A Yes, ma'am.

20 Q And what did he tell you?

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

23 Q Okay. So, what happened after that?

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

TESTIMONY OF JACKLYN PEREZ

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

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

7 Q Outside of your car?

8 A Yes, ma'am.

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

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

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

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

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

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

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

TESTIMONY OF JACKLYN PEREZ

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

4 Q The three of them, so who left?

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

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

9 A Like on the front part.

10 Q The front part of your car so --

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

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

16 A Yes, ma'am.

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

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

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

25 A Um.

TESTIMONY OF JACKLYN PEREZ

1 Q It is okay if you don't.

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

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

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

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

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

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

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

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

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

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

24 MS. LEMPESIS: Thank you, Your Honor.

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

TESTIMONY OF JACKLYN PEREZ

1 wanted to clarify.

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

4 Q And that is what you were asking him?

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

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

16 Q Swing?

17 A Like swing at him.

18 Q Okay.

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

21 Q He just keeps going doing what?

22 A He hit the man a few times.

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

TESTIMONY OF JACKLYN PEREZ

1 distance, approximately?

2 A About from me to you.

3 Q About me to you?

4 A Yes, ma'am.

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

7 A No, ma'am.

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

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

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

13 A Yes, ma'am.

14 Q Do you know how many times?

15 A A few. I didn't count.

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

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

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

TESTIMONY OF JACKLYN PEREZ

1 was getting in your car?

2 A On the ground.

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

4 A No, ma'am.

5 Q What did do you?

6 A I got in my car and left.

7 Q Okay. And you were driving?

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

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

12 A By the gas station.

13 Q Okay. Where did you drive to?

14 A Out to Bluffton.

15 Q Did Austin tell you where to go?

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

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

22 A Yes, ma'am.

23 Q Do you see Austin in the courtroom today?

24 A Yes, ma'am.

25 Q Can you point him out to the jury?

TESTIMONY OF JACKLYN PEREZ

1 A (Witness pointing.)

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

4 A White collared shirt, glasses.

5 Q Okay.

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

8 THE COURT: Yes, ma'am.

9 MS. LEMPESIS: Thank you.

10 BY MS. LEMPESIS:

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

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

16 MR. BAX: Objection, Your Honor.

17 THE COURT: Overrule the objection.

18 BY MS. LEMPESIS:

19 Q That he knows your mom and your sister?

20 A Yes, ma'am.

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

22 A Not really, no.

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

25 A Threw stuff out my window.

TESTIMONY OF JACKLYN PEREZ

1 Q He threw stuff out of your window?

2 A Yes, ma'am.

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

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

7 Q Off of Hilton Head?

8 A Yes, ma'am.

9 Q Into Bluffton?

10 A Yes, ma'am.

11 Q What did he throw out of the window?

12 A The envelope and the bag.

13 Q The envelope and the bag?

14 A Yes, ma'am.

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

17 A Woodbridge Apartments.

18 Q Say again?

19 A Woodbridge Apartments.

20 Q And where is that?

21 A On Buckwalter in Bluffton.

22 Q Do you know why you dropped him there?

23 A No, ma'am.

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

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

TESTIMONY OF JACKLYN PEREZ

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

3 A No, ma'am.

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

6 A No, ma'am.

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

9 A Yes, ma'am.

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

12 A Officer Seifert.

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

15 A Yes, ma'am.

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

18 A No, ma'am.

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

21 A Yes, ma'am.

22 Q Where were you when you were interviewed?

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

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

TESTIMONY OF JACKLYN PEREZ

1 A Yes, ma'am.

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

3 A Yes, ma'am.

4 Q And who did you pick out?

5 A Austin McQuarters.

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

7 A I was asked if I knew him.

8 Q Okay.

9 A And I said, Yes.

10 Q Okay. And you picked him out?

11 A Yes, ma'am.

12 Q Did you tell Investigator Seifert during that

13 interview -- did you originally, when you started

14 talking to him, tell him exactly what happened?

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

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

17 A I was afraid.

18 Q What were you afraid of?

19 A Not only getting in trouble, but I didn't

20 know if they had Austin or what was going on.

21 Q Did you in that interview end up telling

22 Mr. Seifert what happened?

23 A Yes, ma'am.

24 Q Did you tell him basically what you told us

25 here today?

TESTIMONY OF JACKLYN PEREZ

1 A Yes, ma'am.

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

4 A Yes, ma'am.

5 Q Is that charge still pending?

6 A Yes, ma'am.

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

10 A No, ma'am.

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

12 THE COURT: Yes, ma'am.

13 (Pause.)

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

17 THE WITNESS: Yes, ma'am.

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

19 MR. BAX: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. BAX:

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

24 A Yes, sir.

25 Q Okay. And you talked about what happened

TESTIMONY OF JACKLYN PEREZ

1 during that prior proceeding under oath, correct?

2 A Yes, sir.

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

5 A Yes, sir.

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

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

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

12 A Yes, sir.

13 Q Are you from Brooklyn in New York?

14 A I'm from Long Island.

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

19 A Yes, sir.

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

21 A Yes, sir.

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

23 A Underclassman, yes, sir.

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

TESTIMONY OF JACKLYN PEREZ

1 A Yes, sir.

2 Q That is what you testified to?

3 A Yes, sir.

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

7 A Yes, sir.

8 Q That is correct?

9 A Yes, sir.

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

11 A Yes, sir.

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

14 A Yes, sir.

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

18 A Yes, sir.

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

21 A Yes.

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

TESTIMONY OF JACKLYN PEREZ

1 A I went to work, but yes.

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

4 A No.

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

6 A No.

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

9 A Yes, sir.

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

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

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

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

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

21 A Yes, sir.

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

24 A Yes.

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

TESTIMONY OF JACKLYN PEREZ

1 difference between those two questions; correct?

2 A Yes.

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

5 A No.

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

11 A Yes.

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

14 A Yes.

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

17 A Yes.

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

22 A Yes.

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

TESTIMONY OF JACKLYN PEREZ

1 A No.

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

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

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

9 A Yes, sir.

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

12 A Yes, sir.

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

15 A Yes, sir.

16 Q And that you talked to Colton?

17 A Yes, sir.

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

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

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

25 A Yes.

TESTIMONY OF JACKLYN PEREZ

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

4 A I don't understand your question.

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

9 A Yes, sir.

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

13 A Yes, sir.

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

16 A Yes, sir.

17 Q Or it became dead, correct?

18 A Yes, sir.

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

21 A Yes, sir.

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

24 A A little while before, yes.

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

TESTIMONY OF JACKLYN PEREZ

1 couldn't call 911; is that correct?

2 A Yes, sir.

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

8 A Yes, sir.

9 Q And your phone was dead?

10 A Yes, sir.

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

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

14 Q So you got out of your car?

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

17 Q And why did you do that?

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

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

21 A Not out, I stood up.

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

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

TESTIMONY OF JACKLYN PEREZ

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

3 A No.

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

8 A Yes, sir.

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

11 A I couldn't find my keys.

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

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

17 Q Is that where they were?

18 A No.

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

21 A No.

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

24 A I never said what time it was.

25 Q Well you specifically testified earlier and

TESTIMONY OF JACKLYN PEREZ

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

4 A Yes, sir.

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

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

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

12 A Around, somewhere around there.

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

15 A No, we came from 278 up.

16 Q And that took you 45 minutes?

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

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

22 A Yes, sir.

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

TESTIMONY OF JACKLYN PEREZ

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

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

5 A Ten something.

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

10 A Mother and sister.

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

14 A Yes, sir.

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

18 A Yes.

19 Q And that was under oath, correct?

20 A Yes.

21 I wasn't asked.

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

TESTIMONY OF JACKLYN PEREZ

1 talk; correct?

2 A Yes.

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

6 A Yes.

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

9 A Yes, I did.

10 MR. BAX: Excuse me a moment, Your Honor.
11 I'll have to get the transcript.

12 THE COURT: Okay.

13 (Pause.)

14 BY MR. BAX:

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

21 A I specifically remember being asked.

22 MR. BAX: Your Honor, sidebar?

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

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

TESTIMONY OF JACKLYN PEREZ

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

3 THE COURT: Okay.

4 MR. BAX: Thank you, Your Honor.

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

9 Moments indulgence, Your Honor. I apologize.

10 THE COURT: That is fine.

11 (Pause.)

12 BY MR. BAX:

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

17 (Witness reviewing document.)

18 A It is not in here.

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

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

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

TESTIMONY OF JACKLYN PEREZ

1 A Yes.

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

4 A Yes.

5 Q So, this transcript is incorrect?

6 A I don't see it in there.

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

10 A Yes.

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

15 A Yes, sir.

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

18 A Yes, sir.

19 Q Are you represented by an attorney?

20 A Yes, I am.

21 Q Who is that?

22 A Jared Newman.

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

TESTIMONY OF JACKLYN PEREZ

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

3 A No, I'm not.

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

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

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

13 MS. LEMPESIS: Thank you, Your Honor.

14 THE COURT: Can you repeat the question?

15 BY MR. BAX:

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

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

23 THE COURT: Do you understand the question?

24 THE WITNESS: No, I don't.

25 THE COURT: The question is whether or not

TESTIMONY OF JACKLYN PEREZ

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

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

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

8 THE COURT: That is it exactly.

9 THE WITNESS: Okay. No.

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

13 THE WITNESS: No.

14 BY MR. BAX:

15 Q So you don't have any expectation?

16 A No.

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

19 A Yes.

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

22 A Yes.

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

25 A Yes.

TESTIMONY OF JACKLYN PEREZ

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

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

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

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

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

14 BY MR. BAX:

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

17 A It is the right thing to do.

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

21 A No.

22 Q Was that the right thing to do?

23 A No.

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

TESTIMONY OF JACKLYN PEREZ

1 A Yes.

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

4 A Yes.

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

10 A Yes.

11 Q Why didn't you call them then?

12 A I was scared.

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

15 A No.

16 Q No. Why were you scared?

17 A I was scared of Austin.

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

20 A Yes.

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

23 A Yes.

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

TESTIMONY OF JACKLYN PEREZ

1 A Yes.

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

5 A Not to ask him.

6 Q Well, who were you asking?

7 A I was making a statement.

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

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

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

15 A Yes.

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

19 A Yes.

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

23 A No.

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

TESTIMONY OF JACKLYN PEREZ

1 A Yes.

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

4 A No.

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

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

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

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

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

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

21 THE COURT: You can do that.

22 MR. BAX: Thank you.

23 BY MR. BAX:

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

TESTIMONY OF JACKLYN PEREZ

1 is defined as snitching?

2 A Yes.

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

5 THE COURT: All right. Redirect?

6 MS. LEMPESIS: Briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. LEMPESIS:

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

11 A Yes, ma'am.

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

14 A Yes, ma'am.

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

18 A Yes, ma'am.

19 MR. BAX: Objection, Your Honor.

20 THE COURT: Sustain the objection. Leading.

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

23 BY MS. LEMPESIS:

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

TESTIMONY OF JACKLYN PEREZ

1 mother and sister?

2 A No.

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

5 A Yes, ma'am.

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

7 A No, ma'am.

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

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

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

14 BY MS. LEMPESIS:

15 Q Were you afraid of Austin before this night?

16 A No, ma'am.

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

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

21 Q All right.

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

24 THE COURT: Any follow-up on those?

25 MR. BAX: Moments indulgence, Your Honor.

TESTIMONY OF JACKLYN PEREZ

1 (Pause.)

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

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

6 THE WITNESS: Thank you.

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

9 THE COURT: Without objection, Mr. Bax?

10 MR. BAX: Sorry, Your Honor?

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

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

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

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

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

TESTIMONY OF JACKLYN PEREZ

1 (The jury exits the courtroom.)

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

4 MS. LEMPESIS: No, Your Honor.

5 THE COURT: Mr. Bax?

6 MR. BAX: No, Your Honor.

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

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

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

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

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

21 MS. LEMPESIS: Yes, Your Honor.

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

23 MS. LEMPESIS: Thank you.

24 MR. BAX: Thank you, Your Honor.

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

CERTIFICATE PAGE

1 CERTIFICATE

2

3 STATE OF SOUTH CAROLINA:

4 COUNTY OF BEAUFORT:

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

9

DATED this 29th day of July, 2016.

10

11

12

Mona L. Manley /s/

13

MONA L. MANLEY

14

Official South Carolina Court Reporter

15

Circuit Reporter for the 14th Circuit

16

(850) 893-6662

17

mmanley@sccourts.org

18

19

20

21

22

23

24

25

26

27

28

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

3

4 STATE OF SOUTH CAROLINA,

5 Plaintiff,

6 vs.

CASE NO. 2013GS0701844; 1845

7 AUSTIN LEWIS McQUARTERS,

8 Defendant.

9 _____ /

10

11

* * *

12

13

TRIAL TRANSCRIPT

14

VOLUME 4

15

DATE:

July 21, 2015

16

17 PLACE:

Beaufort County Courthouse
Beaufort, South Carolina

18

REPORTED BY:

Mona Manley, Court Reporter

19

20 BEFORE:

Honorable Thomas W. Cooper, Jr.

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING THE STATE:

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

REPRESENTING THE DEFENDANT:

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

* * *

INDEX PAGE

1 INDEX

2

3 WITNESS: PAGE:

4 COLTON DELAPLANE (out of the presence of the jury)

5 Cross Examination By Mr. Bax 229

6 DR. PATRICK SNOWMAN (out of the presence of the jury)

7 Direct Examination By Ms. Lempesis 245

8 DR. PATRICK SNOWMAN

9 Direct Examination By Ms. Lempesis 286

10 Voir Dire Examination By Mr. Bax 290

11 Contd Direct Examination By Ms. Lempesis 291

12 Cross Examination By Mr. Bax 301

13 COLTON DELAPLANE

14 Direct Examination By Ms. Lempesis 307

15 Cross Examination By Mr. Bax 321

16 Redirect Examination By Ms. Lempesis 333

17 Re-Cross Examination By Mr. Bax 334

18 EXHIBITS:

19 EX NO.: DESCRIPTION: MARKED: RECEIVED:

20 9 photo 282

21 2-8 photos 295 295

22

23

24

25

INQUIRY OF THE JURORS

1 PROCEEDINGS

2 THE COURT: For the benefit of the court
3 staff, ladies and gentlemen, I'm going to make
4 certain inquiries of the individual jurors
5 regarding some occurrences during the lunchtime
6 today.

7 What I'm going to be doing is bringing in
8 each juror individually. We'll bring them in, in
9 the order that they were called, the order that
10 they appear on the jury list. I'll make certain
11 inquiries of them.

12 After I've completed those inquiries, and you
13 will take that juror back into a separate jury
14 room, not the one that we have -- the jury room
15 right here.

16 THE BAILIFF: Yes, sir. We'll take care of
17 it.

18 THE COURT: You'll take them into the
19 separate jury room until I've been able to make
20 inquiry of all of the jurors. And then at that
21 time we can bring them back in here and proceed at
22 pace, as we need to be doing anyway. All right?

23 Do I have -- nope, don't have Mr. Bax here.
24 As soon as Mr. Bax is back in the courtroom, we'll
25 start the --

INQUIRY OF THE JURORS

1 MR. BELL: It should be just a moment, Judge.

2 THE COURT: All right.

3 MR. BAX: Your Honor, my apologies. In all
4 the chaos, I didn't get a chance to use the
5 restroom.

6 THE COURT: All right, folks. Here is the
7 line of inquiry that I'll ask of each juror. I'll
8 ask them, first of all, did they observe Ms. Perez
9 after she left the courtroom and after they were
10 leaving the courtroom, crying in the hallway.
11 I'll ask them if they heard her make any comments
12 or statements, and if so, what were they. And
13 then I will ask them if they -- if anything that
14 they observed in that capacity has changed their
15 ability to continue to be fair and impartial as
16 jurors in the trial of this case. I'll ask those
17 three questions of each of the 14 jurors.

18 All right. Bring in Ms. Cheryl Thompson,
19 Juror Number 304, please.

20 THE BAILIFF: Do you want them to just stand
21 right here, Judge, or you want them to sit down?

22 THE COURT: If they're able, put them over
23 there in that first chair there. They'll have a
24 wall between me and them. They won't quite feel
25 so vulnerable as just standing up there in front

INQUIRY OF THE JURORS

1 of the Court.

2 Ms. Thompson, at the outset, let me tell you
3 that you have done nothing wrong. We have brought
4 you out first, your name is on the list first.
5 But we are going to bring all 14 of you out. And
6 I have to ask certain questions regarding some
7 activity that went on during the lunch hour, and
8 we just need to find out what impact, if any, that
9 will have on the trial.

10 It's brought to our attention that as
11 Ms. Perez, the last witness who testified, was
12 going -- while we were leaving the courtroom area
13 and going through the hallway, that their paths
14 crossed with you all's paths as you were leaving
15 to go to lunch. That was not intentional. Quite
16 frankly, the Court staff goes to a lot of trouble
17 to try to keep those sort of things separate. And
18 so it was inadvertent in this case.

19 But in any event, we also understand that as
20 Ms. Perez was leaving, she was somewhat emotional.
21 She was crying. I'm not sure to what extent, but
22 she was visibly crying, as we understood it.

23 First of all, I need to know if you observed
24 Ms. Perez in the hallway crying as she and you all
25 were leaving the courtroom together?

INQUIRY OF THE JURORS

1 JUROR: I did not see her crying. I did see
2 her. I was just kind of looking straight ahead, I
3 went out -- I was one of the first ones, I think,
4 probably out. She was coming just before I got to
5 the steps, but, I mean, I was aware of her
6 peripherally. But as far as I remember, she was
7 not crying at that point.

8 THE COURT: Did you hear her make any
9 statements or comments at the time you came into
10 contact with her?

11 JUROR: Not at all.

12 THE COURT: Does anything that you observed
13 or anything that I suggested to you in this
14 inquiry change your ability to continue to be fair
15 and impartial as a juror in this trial?

16 JUROR: Not at all.

17 THE COURT: Thank you so much, Ms. Thompson.
18 You can go back over. We will put you in another
19 jury room until we've asked all these questions of
20 everybody. Okay?

21 JUROR: Okay.

22 THE COURT: The next juror is Mrs. .
23 Betty Brown -- Ms. Betty Holmes-Brown, Juror
24 Number 143.

25 Ms. Holmes-Brown, let me put your mind at

INQUIRY OF THE JURORS

1 ease at the outset. You have not been brought out
2 here because anybody thinks you've done anything
3 improper. We're going to bring all the jurors out
4 here because I have to ask certain questions of
5 you, for reasons that will be apparent to you in
6 just a moment.

7 It was brought to our attention that after
8 the lunch hour -- during the lunch hour, that when
9 Ms. Jacquelyn Perez, who was the last witness who
10 testified before lunch, as they left the courtroom
11 with her father -- she and her father left the
12 courtroom and got into the area out there where
13 the stairs, the elevators, and the restrooms are,
14 that their paths inadvertently crossed with you
15 all's, the jurors, as you were leaving.

16 And that she was visibly upset and was crying
17 at the time. I need to, first of all, know did
18 you observe that? Did you observe her crying
19 or -- when you left for lunch?

20 JUROR: Yes.

21 THE COURT: Okay. Did you hear her make any
22 comments or statements when you all passed at that
23 time?

24 JUROR: No.

25 THE COURT: Okay. Would the fact that you

INQUIRY OF THE JURORS

1 saw her emotional and crying at the conclusion of
2 her testimony, did anything that you observed in
3 that regard change your ability to continue to be
4 fair and impartial as a juror in this trial?

5 JUROR: No.

6 THE COURT: Thank you so much, Ms. Holmes.
7 You can go back -- we will put you in another jury
8 room until we go through this inquiry with
9 everybody. Okay?

10 JUROR: Okay.

11 THE COURT: Thank you.

12 Mr. Jeffrey Moody, Number 212.

13 MR. BAX: Real quickly, Your Honor. Just to
14 make sure I cover my bases, my co-counsel has made
15 me aware, maybe we should ask that the jurors be
16 instructed not to discuss this with the other
17 jurors after we've had the inquiry?

18 THE COURT: We can do it. Of course, I'm --

19 MR. BAX: I see you're separating them.

20 THE COURT: I'm putting them in a separate
21 room to keep -- right. It's like everyone will
22 hear the same thing, so -- but I can mention that.
23 So far both of them said --

24 MR. BAX: I think that's fine, Your Honor.
25 That you're separating them is probably

INQUIRY OF THE JURORS

1 sufficient, Your Honor.

2 THE COURT: Now, if one of them said that it
3 made a big difference, then I'll put them
4 somewhere else.

5 MR. BAX: Certainly, Your Honor.

6 THE COURT: Mr. Moody.

7 JUROR: Yes, sir.

8 THE COURT: I've been telling the other folks
9 I've brought out here, you're not being brought
10 out here to be chastised or criticized or accused
11 of anything wrong. I'm going to ask the same
12 questions of all of the other jurors that I'm
13 going to ask of you, concerning some activity that
14 occurred during the lunch hour. You didn't have
15 any control over it, neither did we.

16 It was brought to our attention that as
17 Ms. Jacquelyn Perez, who was the last juror who
18 testified, was leaving the courtroom, and leaving
19 actually the court area and going into the
20 assembly area, more or less, down there where the
21 stairs, elevators, and restrooms all are, that she
22 was visibly upset. She was actually crying, and
23 that unfortunately her paths crossed you all's
24 paths as you were leaving for lunch. I need to
25 know at the outset if you were able to observe

INQUIRY OF THE JURORS

1 that.

2 JUROR: Yes, I did.

3 THE COURT: Okay. Did you hear her make any
4 comments or make any statements other than crying?

5 JUROR: No. No, I was the second one out,
6 and I just saw her kind of coming over and I could
7 tell she was upset.

8 THE COURT: Right. Did anything that you
9 observed during that period of time change your
10 ability to continue to be fair and impartial as a
11 juror in the trial?

12 JUROR: No, sir. I'll go with the facts.

13 THE COURT: Thank you so much, Mr. Moody. I
14 appreciate that.

15 JUROR: Sure.

16 THE COURT: And I'll put you in another jury
17 room.

18 JUROR: All right. Thanks, Your Honor.

19 THE COURT: Thank you.

20 Charlesetta Wilson, Juror Number 339.

21 Ms. Wilson, as you've probably been able to
22 observe by now, we're bringing all the jurors out
23 for me to ask questions, certain questions, in
24 regard to some things that may have happened
25 during the lunch hour. That -- not your fault,

INQUIRY OF THE JURORS

1 not anybody's fault, but we just need to know if
2 they're going to have any impact on these
3 proceedings.

4 It was brought to our attention, during the
5 lunch hour that as Ms. Jacquelyn Perez, the last
6 witness who testified before lunch, was leaving
7 this area of the courthouse and going down to the
8 steps in the elevator, to the restrooms, that her
9 path inadvertently crossed you all's path as you
10 were going for lunch. And we were also made to
11 understand that she was visibly upset. That she
12 was actually crying as she left the area.

13 I need to know, first of all, were you able
14 to observe Ms. Perez as she was crying, as she was
15 emotionally upset when you all left together?

16 JUROR: Yes.

17 THE COURT: Okay. Did you hear her make any
18 statements or comments in connection with her
19 emotional status?

20 JUROR: No, I didn't hear it.

21 THE COURT: Okay. Did anything that you
22 observed, as you observed her leaving emotionally
23 upset, did anything that you observed change your
24 ability to continue to be fair and impartial as a
25 juror in this trial?

INQUIRY OF THE JURORS

1 JUROR: No.

2 THE COURT: Okay. Thank you so much,
3 Ms. Wilson. You can -- we're going to put you in
4 another place while we continue to go over these
5 questions. Thank you.

6 Ms. Caroline Kemerling, Juror Number 168.

7 Is she any kin to Tommy Kemerling?

8 MR. BAX: Your Honor, I'm not -- I don't
9 know. I -- unfortunately once I saw the name,
10 we'd already selected her, I couldn't go talk to
11 her about it.

12 THE COURT: I was wondering if she was a
13 sister or a widow.

14 Ms. Kemerling, by now, you have -- and
15 everybody else in the jury room has come to
16 realize that we're calling everybody out of the
17 jury room to make certain inquiries. Obviously
18 there's no implication or concern about any
19 wrongdoing about anybody, we just need to inquire
20 about certain observations that may have been made
21 during the lunch hour that will be obvious in just
22 a moment, and to see if those things will have any
23 impact on this trial.

24 It's brought to our attention that

25 Ms. Jacquelyn Perez, who was the last witness who

INQUIRY OF THE JURORS

1 testified, as she was leaving this area of the
2 courthouse and going into the -- into the assembly
3 area, I suppose that is where all the halls come
4 together, the stairs and the elevators and so
5 forth -- that she was visibly upset. That she was
6 actually crying.

7 And first of all, I need to know if you
8 observed that. Were you able to see her crying?

9 JUROR: No.

10 THE COURT: Okay. Well, then, I'll tell you
11 that she was. And so I can end the inquiry at
12 that point in time, since you didn't see anything.
13 But the fact that I told you that she was crying,
14 would that have any impact on your ability to
15 continue to be fair and impartial as a juror in
16 this trial?

17 JUROR: No.

18 THE COURT: All right. Thank you so much,
19 Ms. Kemerling. We will send you back into another
20 jury room and we'll get you all out shortly to
21 resume the trial.

22 Mr. Cole Catanzarite -- Catanzarite? Cole T.
23 Catanzarite, Juror Number 55.

24 My only concern now as I send these folks
25 back to the separate jury room, will those folks

INQUIRY OF THE JURORS

1 who are left in the jury room say he's calling
2 everybody out here and nobody's coming back. I'm
3 going to have some trouble with these last two or
4 three.

5 Mr. Katanzarati -- how close am I?

6 JUROR: That was perfect.

7 THE COURT: Is that right?

8 JUROR: Yeah.

9 THE COURT: Wonderful. I've been working
10 with it for a while.

11 We have been bringing all the jurors out,
12 obviously to have a line of inquiry with you
13 concerning something that happened during the
14 lunch hour that you didn't have any control over,
15 and certainly none of you did.

16 It was brought to our attention during the
17 lunch hour that Ms. Perez, who was the last
18 witness who testified, as she was leaving this
19 general area of the courthouse, her path
20 intersected with you all as you all were leaving
21 for lunch, and that she was visibly upset and
22 crying at that time.

23 I need to know, first of all, did you
24 actually observe her crying as she left?

25 JUROR: Yes, I did.

INQUIRY OF THE JURORS

1 THE COURT: Did you hear her make any comment
2 or any statement as you passed or approached?

3 JUROR: No, she was just whimpering.

4 THE COURT: All right. Did anything that you
5 observed, whatever it was that you observed
6 concerning her, change your ability to continue to
7 be fair and impartial as a juror in this trial?

8 JUROR: No, sir.

9 THE COURT: Thank you, sir, Mr. Catanzarite.
10 I'm going to send you back to another jury room.
11 Thank you for coming out.

12 JUROR: You're welcome.

13 THE COURT: Mr. Kenneth Cunningham, Juror
14 Number 78.

15 Mr. Cunningham, we have been bringing out
16 each juror individually to make certain inquiries
17 about some activity that happened during the lunch
18 hour. It did not involve any of you all directly.
19 Certainly there's no implication of any wrongdoing
20 at all.

21 We learned that Ms. Perez, Jacquelyn Perez,
22 the last witness who testified before lunch, as
23 she was leaving the area of the courthouse, walked
24 past you all as you all were leaving to go to
25 lunch in the big hallway down there. And when she

INQUIRY OF THE JURORS

1 did that, she was visibly upset, that she was
2 actually crying.

3 Some may have seen it, some may have not. I
4 needed to, first of all, know if you -- did you
5 have a chance to observe Ms. Perez as she was
6 crying when she was leaving the courthouse --
7 courtroom?

8 JUROR: No, sir. No, sir.

9 THE COURT: Okay. Well, then, good. We can
10 skip a couple of questions. I told you that she
11 was crying, but she was visibly upset. And
12 there's no question about that.

13 Would the fact that I have indicated to you
14 that she was upset following her testimony change
15 your ability to continue to be fair and impartial
16 as a juror of this trial?

17 Do you understand my question?

18 JUROR: Will I be fair, yes.

19 THE COURT: Yes, sir. In other words, the
20 fact that I told you that she was crying when she
21 left the courtroom, does that have any impact on
22 the decision that you'd make in this case?

23 JUROR: No, sir.

24 THE COURT: All right. Thank you,
25 Ms. Cunningham.

INQUIRY OF THE JURORS

1 Ms. Connie Singleton-Murphy, Juror

2 Number 285.

3 Ms. Singleton-Murphy, I've been bringing all
4 of you out to ask you some questions about
5 something that happened during the lunch hour.
6 I'll repeat, as I've told your fellow jurors,
7 there's no implication of any wrongdoing by
8 anybody. It's just a line of inquiry that I need
9 to make for reasons which will be obvious in just
10 a moment.

11 We learned during the lunch hour that
12 Ms. Perez, who was the last witness that
13 testified, as she was leaving this area of the
14 courthouse and getting into the stairway,
15 elevator, restroom area, that her path
16 inadvertently crossed yours as you were going for
17 lunch, and that she was visibly upset. She was
18 visibly crying at the time.

19 Some of the jurors observed it, some did not.
20 I need to know, did you actually see her as she
21 was crying when she was leaving this area?

22 JUROR: I didn't actually see her crying, but
23 I did see her talking, I guess, with her father.

24 THE COURT: That's right. That's who it was.
25 That's right.

INQUIRY OF THE JURORS

1 When you observed it, she did not appear to
2 be crying or upset?

3 JUROR: No.

4 THE COURT: Okay. I'll tell you some other
5 folks said that she was upset and she was crying.
6 So now I need to know, even though you didn't see
7 her crying, since I have told you she was crying,
8 would that -- would that have any impact on your
9 ability to continue to be fair and impartial as a
10 juror in this trial?

11 Do you understand my question?

12 Would that -- does that change your ability
13 to be fair and impartial?

14 JUROR: No, it doesn't.

15 THE COURT: Okay. Thank you so much,
16 Ms. Singleton-Murphy. I appreciate that.

17 Ms. Latasha Reeves, Juror Number 247.

18 Ms. Reeves, I've been asking, pulling all the
19 jurors out to make certain inquiry into some
20 things that happened during the lunch hour that
21 you all didn't have anything -- any control over,
22 and certainly not at fault in.

23 But we learned that Ms. Perez, the last
24 witness who testified here before lunch, as she
25 was leaving the courthouse, or the courtroom area

INQUIRY OF THE JURORS

1 and going down the hall with her father, that she
2 was visibly upset, that she was crying.

3 Did you observe that?

4 JUROR: Yes, sir.

5 THE COURT: Did you hear her make any
6 statements or comments as you saw her there
7 crying?

8 JUROR: No.

9 THE COURT: Would the fact that you observed
10 that, would that have any impact on your ability
11 to continue to be fair and impartial as a juror in
12 this trial?

13 JUROR: No, it won't.

14 THE COURT: All right. Thank you so much,
15 Ms. Reeves. You can go.

16 Ms. Krista Hanna, Juror Number 134.

17 Ms. Hanna, I've been making inquiry of all
18 the jurors for reasons that will be obvious in a
19 moment, to determine if you observed some things
20 that happened during the lunch hour that were
21 brought to our attention.

22 We learned that Ms. Perez, the last witness
23 who testified before lunch, as she was leaving
24 with her father and going down the hallway to the
25 elevators and so forth, that she was visibly

INQUIRY OF THE JURORS

1 upset, that she was crying and emotionally upset.

2 Did you happen to observe that?

3 JUROR: No.

4 THE COURT: Okay. Well, good. I can skip to
5 the last question then.

6 All right. I'll tell you that she was upset
7 and she was crying. And now that you know that,
8 because I told you, would that fact have any
9 impact on your continued ability to be fair and
10 impartial as a juror in this trial?

11 JUROR: No.

12 THE COURT: Thank you so much, Ms. Hanna.

13 Ms. Jean Morgan, Juror Number 214.

14 Ms. Morgan, we've been bringing the jurors to
15 allow me to ask certain questions about an event
16 that was brought to our attention that happened
17 during the lunch hour.

18 We learned that during the lunch hour, Ms.
19 Perez, the last witness who testified before
20 lunch, as she and her father were leaving this
21 area of the courthouse and going down to where the
22 steps and the elevators and the restrooms are,
23 that she happened to inadvertently pass where you
24 all were, jurors, as you were going to lunch. And
25 she was apparently visibly upset, she was actually

INQUIRY OF THE JURORS

1 crying.

2 Did you happen to observe that?

3 JUROR: I never left the jury room. I ate in
4 there.

5 THE COURT: You never left. Bless your
6 heart.

7 JUROR: I know nothing I can say.

8 THE COURT: Well, good. Well, if I tell you
9 that she was crying, is that going to impact your
10 ability to be fair and impartial?

11 JUROR: No. Because she could be crying for
12 a variety of reasons, so --

13 THE COURT: You're exactly right. Precisely.
14 And we brought you out here unnecessarily. But
15 thank you, Ms. Morgan. I'm glad we finally got
16 you out of the jury room.

17 Mr. John Gould, Juror Number 121.

18 Mr. Gould, I'm going to ask you the same
19 questions I've been asking all of the other jurors
20 who we've brought out of the room, for reasons
21 that will be obvious in just a moment.

22 We learned that during the lunch hour that
23 Ms. Perez, the last witness who testified before
24 we broke for lunch, as she and her father were
25 leaving this area of the courthouse and going down

INQUIRY OF THE JURORS

1 towards the stairs and the elevator, her path
2 crossed with you all's paths as you were going to
3 lunch. And we learned that she was visibly upset,
4 that she was actually crying at that time.

5 Did you have a chance to observe her in that
6 capacity?

7 JUROR: I -- I mean, I saw her, but I
8 didn't -- I just looked away and kept walking. I
9 didn't realize she was crying.

10 THE COURT: Okay. Well, she was crying, and
11 our main concern was we wanted to be sure that
12 whatever you all observed was not going to change
13 your ability to be fair and impartial.

14 So, can I take it that -- the fact that I
15 told you that she was crying, even though you did
16 not see it, is not going to have any impact on
17 your ability to be fair and impartial?

18 JUROR: Yeah.

19 THE COURT: Okay. Thank you. Thank you,
20 sir.

21 Ms. Lakesha Seabrook -- Seabrooks,
22 Number 270.

23 Ms. Seabrooks, I've been asking the other
24 jurors the same questions that I'm going to ask
25 you.

INQUIRY OF THE JURORS

1 During the lunch hour, did you happen to
2 observe Ms. Perez, the last witness who testified,
3 as she was going down the hall with her father,
4 and her path crossed you all's as you were leaving
5 the courtroom to go to lunch?

6 Did you observe her crying, emotionally upset
7 when you passed?

8 JUROR: Yes, sir.

9 THE COURT: Okay. Did you hear her say
10 anything or make any statements or comments when
11 you all passed?

12 JUROR: No, sir.

13 THE COURT: Okay. Well, did anything that
14 you observed in that span of time change your
15 ability to continue to be fair and impartial as a
16 juror in this trial?

17 JUROR: No, sir.

18 THE COURT: Okay. Thank you so much,
19 Ms. Seabrooks. You can go back to the jury room.

20 Mr. Clarence Mack, Juror Number 192 -- well,
21 he's the only one left.

22 THE BAILIFF: Yes, sir. We hope.

23 THE COURT: Mr. Mack, I've been asking all of
24 the other jurors whether or not they observed
25 Ms. Jacquelyn Perez, the last witness who

INQUIRY OF THE JURORS

1 testified, as she was leaving this area of this
2 courthouse. She and her father were in the same
3 vicinity where you all were as you were going to
4 lunch.

5 Did you happen to observe her crying, being
6 visibly upset, emotionally upset after her
7 testimony?

8 JUROR: Yes.

9 THE COURT: Did you hear her make any
10 statements or any comments at the time?

11 JUROR: No.

12 THE COURT: Okay. Would the fact that you
13 saw her in that way, or whatever you happened to
14 observe, did any of that change your ability to
15 continue to be fair and impartial as a juror in
16 this trial?

17 JUROR: No.

18 THE COURT: Okay. Thank you, Mr. Mack. I'm
19 going to let you go back to the jury room. Thank
20 you.

21 All right. Folks, any exceptions or requests
22 in regard to that inquiry of the jurors from the
23 State?

24 MS. LEMPESIS: Not from the State, Your
25 Honor.

INQUIRY OF THE JURORS

1 THE COURT: Thank you. Mr. Bax, the defense?

2 MR. BAX: No, Your Honor. I think it was the
3 way to go.

4 THE COURT: All right. Now, I think before
5 we bring the jury in, we wanted to deal with the
6 possible sequestration violation by Mr. Colton --

7 MS. LEMPESIS: Delaplane.

8 MR. BAX: Delaplane.

9 THE COURT: Delaplane. Thank you. Okay.

10 Is Mr. Delaplane back there in sequestration?

11 MS. LEMPESIS: He is, Your Honor.

12 THE COURT: Let's bring him out first.

13 Mr. Delaplane, come forward please, sir, and
14 be sworn in, please.

15 Thereupon,

16 COLTON DELAPLANE

17 was called as a witness, having been first duly sworn,
18 was examined and testified out of the presence of the jury as
19 follows:

20 THE COURT: You may be seated. Please state
21 and spell your name for the Court's record.

22 THE WITNESS: My name is Colton Delaplane.

23 THE COURT: Mr. Delaplane, you, of course, as
24 you know, were sequestered before this trial
25 began, as you were sequestered before the earlier

TESTIMONY OF COLTON DELAPLANE

1 trial.

2 Did you understand the reason behind that
3 sequestration?

4 THE WITNESS: Because --

5 THE COURT: Do you understand why all the
6 witnesses were being kept out of the courtroom as
7 the other witnesses were testifying?

8 THE WITNESS: Yes, sir.

9 THE COURT: And what did you understand that
10 reason to be?

11 THE WITNESS: To keep everyone on their own
12 page, sir.

13 THE COURT: That's right.

14 We also understand that during the lunch
15 hour, Ms. Perez, the last witness who testified, a
16 friend of yours, as well as a friend of
17 Mr. McQuarters, and you were conversing somewhere
18 out in the parking lot perhaps; is that right?

19 THE WITNESS: Yes, sir.

20 THE COURT: Did she come to you, or did you
21 come to her?

22 THE WITNESS: Both.

23 THE COURT: You saw her and she saw you, and
24 y'all got together?

25 THE WITNESS: Yes, sir.

TESTIMONY OF COLTON DELAPLANE

1 THE COURT: And what did you discuss?

2 THE WITNESS: How it went.

3 THE COURT: What's that?

4 THE WITNESS: How it went for her.

5 THE COURT: How what went?

6 THE WITNESS: The trial.

7 THE COURT: Did she indicate to you some of
8 what her testimony had been?

9 THE WITNESS: No, she just --

10 THE COURT: Did she indicate to you some of
11 what the questions had been that were put to her?

12 THE WITNESS: No, sir.

13 THE COURT: She didn't talk with you about
14 some questions that Mr. Bax may have asked her?

15 THE WITNESS: No.

16 THE COURT: What did she talk about?

17 THE WITNESS: She just said that he was
18 strict.

19 THE COURT: What?

20 THE WITNESS: Strict.

21 THE COURT: Say that again?

22 THE WITNESS: She said he was strict.

23 THE COURT: He was strict. Okay. Was she
24 specific in what she said?

25 THE WITNESS: No, sir. I saw her about two

TESTIMONY OF COLTON DELAPLANE

1 minutes and left.

2 THE COURT: All right.

3 Ms. Lempesis, do you have any questions of
4 Mr. Delaplane?

5 MS. LEMPESIS: I don't, Your Honor. I think
6 you've covered it.

7 THE COURT: Mr. Bax.

8 MR. BAX: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. BAX:

11 Q Mr. Delaplane, you said that you both
12 approached each other at the same time. That she saw
13 you and you saw her, and you both came together at the
14 same time; is that correct?

15 A Yes, sir.

16 Q Okay. And was -- was Jackie upset?

17 A Yes, sir.

18 Q Okay. Was she crying?

19 A No. She was upset.

20 Q Okay. How was she upset? Like, how could
21 you tell that she was upset?

22 A She had tears in her eyes.

23 Q Okay. And you said that she talked about how
24 things -- you wanted -- you -- excuse me, let me
25 rephrase.

TESTIMONY OF COLTON DELAPLANE

1 That y'all talked about how it went for
2 her in trial today, correct?

3 A Yes, sir.

4 Q Okay. And she talked about how the
5 questioning went from me; is that correct?

6 A She just said you were really strict.

7 Q Did she use the word "strict," or did she use
8 something different from that?

9 A I don't know.

10 Q Well, I'm going to ask you please to be as --
11 try to remember as best you can for us what word she
12 used when she talked about my questioning of her.

13 A She just said that you were being hard, I
14 guess, you know.

15 Q Okay. So, it's either -- was it -- you said
16 she didn't use the word "strict," now, you've used the
17 word "hard". Is that the word she used?

18 A I don't know what was the word she used.

19 Q Okay. And this conversation, about how long
20 has it been since you had that conversation?

21 A An hour and ten minutes.

22 Q An hour. Okay. But you can't remember what
23 words she used?

24 A No, sir. I saw her for about two minutes.

25 Q And as you talked about with Judge Cooper,

TESTIMONY OF COLTON DELAPLANE

1 you were aware that you weren't supposed to be talking
2 to her?

3 A Yes, sir.

4 Q Why did you talk to her anyway?

5 A Because I didn't know I wasn't allowed to
6 outside of the courthouse.

7 Q So you didn't understand that the
8 sequestration order went beyond the walls of the
9 courthouse?

10 A Yes, sir.

11 MR. BAX: A moment's indulgence, Your Honor.

12 THE COURT: Okay.

13 MR. BAX: One brief final question,

14 Your Honor. Thank you for your indulgence.

15 BY MR. BAX:

16 Q When Ms. Perez was talking about what had
17 happened in trial, I know you said you couldn't recall
18 what words she used. Did she use any curse words?

19 A Not that I know of.

20 Q Not that you know of.

21 MR. BAX: No further questions, Your Honor.

22 THE COURT: Thank you. Mr. Delaplane, you
23 can step down. You can return to the
24 sequestration room. We'll get you out shortly.

25 You'll be the first witness to testify once we get started.

COLLOQUY

1 Okay?

2 All right. Anything further regarding the
3 Delaplane/Perez conversation from the State?

4 MS. LEMPESIS: Your Honor, I would just -- I
5 would cite one case to Your Honor. It's State
6 versus Singleton, 395 SC 6 is the citation.
7 It's a 2011 Court of Appeals case, Your Honor.
8 And it does state that a party is not entitled to
9 sequestration as a matter of right.

10 THE COURT: Right.

11 MS. LEMPESIS: So I think that's pertinent
12 and important in this inquiry. It's not -- it's
13 not -- not entitled to it.

14 THE COURT: Well -- and that's true. It is a
15 matter of right, it's discretionary. But then
16 once it's imposed, then the rules change, of
17 course.

18 MS. LEMPESIS: Yes, Your Honor. I think it's
19 clear from -- well, in this case particular, we
20 have Colton's already testified once before. He's
21 going to be asked different questions than Jackie
22 was asked. Jackie was actually at the scene and
23 saw the attack. Colton wasn't at the scene and
24 saw different things and heard different things
25 and knows different things, and will be asked

COLLOQUY

1 different questions by myself and Mr. Bax. And I
2 think that's relevant, as well.

3 THE COURT: Okay.

4 MS. LEMPESIS: And as you have stated before,
5 Mr. Bax already has quite a bit of information to
6 use against Mr. Delaplane, and so this certainly
7 just adds to it.

8 THE COURT: All right. Thank you.

9 MS. LEMPESIS: Thank you, Your Honor.

10 THE COURT: Mr. Bax.

11 MR. BAX: Thank you, Your Honor.

12 First of all, Your Honor kind of hit the nail
13 on the head, which it would make it discretionary,
14 Your Honor granted the motion. So once it's
15 granted, these witnesses were both instructed
16 about the rules, and as Your Honor was able to
17 elicit in your examination of Mr. Delaplane, he
18 understood what the rule was. He stated it was so
19 that everybody would stay on their own page, I
20 believe was his testimony, which clearly intimates
21 that he knows that he's not to, you know, to try
22 to figure out what to say to coincide with other
23 witnesses.

24 THE COURT: Right.

25 MR. BAX: However, despite that, he made a

COLLOQUY

1 conscious effort to specifically talk to another
2 witness about what had happened with her
3 testimony.

4 This is also compounded by the fact that
5 Ms. Perez and Mr. Delaplane knew each other before
6 this case happened, there's allegations that they
7 conspired in some way during this event, and
8 that's certainly a fact that's going to be in
9 contention before the jury.

10 So, the fact that they both willingly
11 disobeyed that order is a problem, I think.

12 THE COURT: Right.

13 MR. BAX: And to some degree, there's an
14 issue here of the fact that, you know, one of
15 detriment. If the order is to mean something, now
16 and in future cases, there has to be a consequence
17 for willful violation of such.

18 THE COURT: Right.

19 MR. BAX: And I don't know that -- I,
20 unfortunately, have not had the opportunity to
21 look up any case law on this issue, but I have no
22 idea whether our appellate courts have ever
23 defined what those remedies are.

24 THE COURT: Contempt of court is what they
25 are. Failure to abide by an order of the court.

COLLOQUY

1 They can be punished and cited for contempt, just
2 as it could for any violation of any other court
3 ruling.

4 And, of course, it's intentionally procured
5 by your side. Then another side set of rules
6 apply. Striking answers, striking defenses,
7 striking causes of action. Even dismissing cases.
8 None of those apply in this case because this was
9 not intentionally procured by -- by the State
10 certainly, and so there's nothing to indicate
11 there's any wrongdoing other than two folks who
12 were to some extent complicit, allegedly, in this
13 crime.

14 And I suppose, given all things considered,
15 it -- talking, violating the sequestration order,
16 when they're facing armed robbery charges, is
17 probably rather insignificant.

18 But you're right. If there really is going
19 to have anything that's any significance at all,
20 the sanction would be contempt of court citation.

21 MR. BAX: Well, Your Honor, as I am here to
22 represent Colton, I certainly -- I don't -- I
23 think in this -- in this stature, Your Honor, I
24 don't really have a dog in what you decide to do
25 to them. Because it really doesn't bear on my

COLLOQUY

1 ability to defend my client.

2 THE COURT: Right.

3 MR. BAX: So, I'll leave that issue without
4 any further comment. And I certainly do think
5 that something has to be done, at least, in some
6 way.

7 THE COURT: Right.

8 MR. BAX: But I leave that to Your Honor.

9 As my co-counsel has pointed out, the problem
10 that we have is that the vast majority of the
11 State's case against my client rests on Ms. Perez
12 and Mr. Delaplane.

13 THE COURT: That's right.

14 MR. BAX: Because, as you have heard from
15 Mr. Snodgrass, he was unable to have the
16 opportunity to observe and identify the person
17 that attacked him, unfortunately.

18 And I know Your Honor can see we would be in
19 a different stature in this case if that were the
20 case. Because Mr. Snodgrass is above reproach
21 when it comes to why he was attacked. There's
22 certainly no allegation he was in any way
23 involved, so he wouldn't have any of those bias
24 arguments that could be made against him.

25 It is not true of Ms. Delaplane or Ms. Perez,

COLLOQUY

1 so the fact that the key portion of the State's
2 case, we've had this violation, and this further
3 collusion puts a taint on it.

4 As I told Your Honor in chambers, in order to
5 protect my client's rights, and I think it would
6 be kind of a cumulative motion at this time, I
7 feel that I have to move for a mistrial.

8 And I would cite two things. Number one, I
9 think that the Court's inquiry as to the jurors
10 was excellent and thorough and we got everything
11 we needed. But I think it's a cumulative effect.

12 As I look at this, Your Honor, we got, one,
13 two, three, four, five, six -- seven people who
14 said yes to your answer, to your question about
15 whether they saw her crying. There was an
16 additional person that said that they saw her
17 talking to her father. But I think that was
18 Ms. Singleton-Murphy, and she didn't say anything
19 about crying, I guess she said that she didn't
20 think she was crying at that time. Not even
21 taking into account the alternates, that's almost
22 half of the jury panel. If you take into account
23 the alternates, it's more than half of the jury
24 panel. And we certainly, at this point, don't
25 know if one of those alternates may become a part

COLLOQUY

1 of the jury in the future, if we don't have a show
2 up tomorrow or someone gets sick or something of
3 that nature.

4 I don't -- I don't think it's proper and I
5 don't really even believe, myself, that they were
6 lying to Your Honor, I think they were telling the
7 truth. The problem is, is that right now they're
8 isolated and they haven't started deliberations.
9 Once they are ordered to or allowed to begin their
10 deliberations, you have those five people who saw
11 that, and they will be talking with each other as
12 well as talking to the other jurors. I think
13 there's too much, when you combine that with what
14 we're talking about with Mr. Delaplane, and
15 Ms. Perez, I think the integrity of the case has
16 been irreparably compromised.

17 And even though, Your Honor, I have
18 absolutely no desire to try this case again, I
19 promise you I'm sick of it -- no offense to my
20 client, I'm not sick of him -- but, you know, the
21 same facts over and over again do become
22 monotonous. I just have to protect my client.

23 And I think that when you take into a
24 totality of the circumstances kind of test for
25 everything that's happened up to this point in the

COLLOQUY

1 trial, that its integrity is below the point where
2 we can constitute a fair trial here.

3 THE COURT: Thank you. Let me take the two
4 things separately.

5 We'll take the issue of the crime. The only
6 reason that we engaged in the inquiry at all is
7 because those things happened outside of the
8 courtroom. Inside the courtroom we have some
9 level of control, to control or at least observe
10 what's going on. And we can analyze those things
11 pretty well within ourselves to see what impact,
12 if any, they might have on the jury.

13 All of us who have tried cases before has
14 observed on numerous occasions witnesses become
15 upset on the stand, break down into tears.
16 Sometimes we have to have breaks so that they can
17 recompose themselves. You have victims or
18 families of victims who cannot control themselves
19 in spite of their best efforts. Victims or
20 defendants, families of defendants, likewise, who
21 break down in tears, and they can't help it, and
22 they don't mean to do it. But it does not give
23 rise to a jury trial unless it's orchestrated or
24 contrived in some way to gain some unfair
25 advantage.

COLLOQUY

1 In this case, we had somebody who managed to
2 control herself pretty well on the jury -- the
3 witness stand, but when she got outside with her
4 father, could not. There's no evidence that that
5 was contrived. There's no evidence that the
6 coincidental contact between her and the jury out
7 there in the hallway was anything other than just
8 that, coincidental.

9 The inquiry that I made here in this
10 courtroom was because none of that happened in our
11 presence, and we had to know the extent of it and
12 what impact, if any, it had on the jury. We all
13 heard the same answers. They were unequivocal.

14 And I suppose if they had seen her crying in
15 the courtroom and I pulled them aside and said,
16 Does that make any difference on your ability to
17 be fair and impartial, they would have given the
18 same answer. But I would have thought that
19 perhaps they would have a little more trouble
20 struggling with an in-court breakdown than they
21 would coincidental, as they saw outside.

22 Now, the contact between Mr. Perez -- or
23 Ms. Perez and Mr. Delaplane obviously should not
24 have happened. They both know that it was not
25 supposed to happen, but it did. That was not

COLLOQUY

1 orchestrated by the State. They don't want to try
2 this case anymore than anybody else does again.
3 But it happened.

4 And as I said earlier, I suppose the folks
5 who engage in the kind of activity they are
6 accused of engaging in, back in October of 2013,
7 the mere violation of a sequestration order would
8 seem pretty minor by comparison.

9 But more than that, there's no prejudices
10 been shown. First of all, there's nothing that we
11 know. Even if they were lying, nothing has been
12 revealed that would indicate that somehow or
13 another the playing field has been tilted. And
14 that's reinforced by the fact that insofar as
15 Mr. Delaplane is concerned, you have
16 Officer Seifert -- Investigator Seifert's
17 investigative notes as to what he said.

18 But even better than that, you have the
19 typed -- excuse me -- the taped interview of what
20 he told Investigator Seifert, and you have his
21 testimony from a prior trial. If he tries to
22 deviate from any of those things because of what
23 Ms. Perez may have told him, it's going to be
24 pretty obvious, and it's going to give you a whole
25 lot to chew on in the course of your

COLLOQUY

1 examination -- cross-examination of the witness.

2 So, I can see no prejudice there, at least
3 right now. You know, I can revisit that if
4 something comes up during his testimony that
5 changes that. But right now I can't see any
6 reason to stop this or grant a mistrial based on
7 these facts. They are unfortunate, they're time
8 consuming, and it's necessary that we inquire into
9 them. We have to do that to protect the integrity
10 of this process.

11 And I would imagine before we get through
12 these other three witnesses for the State, we're
13 going to have some more incidences come up, and
14 we'll deal with them the same way, just like we
15 did with these, and work our way through them.

16 But right this minute, I don't think that the
17 integrity of the process has been harmed, and I
18 don't think that the rights of Mr. McQuarters --
19 or of the State -- have been unfairly prejudiced
20 by those comments.

21 Request for mistrial respectfully denied.

22 MR. BAX: Thank you, Your Honor.

23 THE COURT: Bring in the jury.

24 MS. LEMPESIS: Your Honor, before we bring
25 the jury out, I did want to note, it's a little

COLLOQUY

1 after three o'clock, and I have a scheduling issue
2 with the doctor who's going to testify. And I
3 hate to do this, but I do think I'm going to go
4 ahead and call Dr. Snowman to testify because we
5 have to --

6 THE COURT: Okay. That's right. You
7 mentioned that to me before. We said we were
8 going to do that before. And he's going to be
9 here, and we've got to inquire about his ability
10 to testify as an expert witness. And I think
11 there's a photograph that has to be dealt with in
12 connection --

13 MS. LEMPESIS: Yes, Your Honor.

14 THE COURT: Okay. So we'll bring in
15 Dr. Snowman.

16 MS. LEMPESIS: Thank you, Your Honor.

17 Your Honor, I think the issues, as you
18 stated, with Dr. Snowman, is twofold. It's, one,
19 as to the picture, which might be the -- I don't
20 know which we'd like to address first.

21 There's two separate issues. One regarding
22 the picture, and one regarding his qualifications
23 and what the State intends to present him --

24 THE COURT: Well, frankly, I think that they
25 could both be folded together because his

COLLOQUY

1 observation of the injuries itself impacts on the
2 expert; is that right?

3 MS. LEMPESIS: Yes, Your Honor.

4 THE COURT: And his observation of the
5 injuries, as they're reflected on the photographs,
6 sort of limit each other, don't they?

7 MS. LEMPESIS: Yes, Your Honor.

8 THE COURT: Well, why don't we talk about his
9 expert qualifications, first of all?

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

11 THE COURT: Come forward, Dr. Snowman,
12 please, and be sworn.

13 Thereupon,

14 DR. PATRICK SNOWMAN

15 was called as a witness, having been first duly sworn,
16 was examined and testified outside of the presence of the jury
17 as follows:

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

20 THE WITNESS: My name is Patrick Snowman.

21 S-N-O-W-M-A-N. First name, P-A-T-R-I-C-K.

22 THE COURT: Ms. Lempesis.

23 MS. LEMPESIS: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. LEMPESIS:

TESTIMONY OF DR. PATRICK SNOWMAN

1 Q Dr. Snowman, we're going to go through your
2 background and talk about your prior experience.

3 Who do you work for currently?

4 A Hilton -- I work at Hilton Head Hospital.

5 Q Thank you. And do you work for somebody
6 else? I guess is the hospital owned by someone else?

7 A Yeah. The -- the group that I work with is
8 Team Health Physicians, which is a contract group that
9 I work with and for.

10 THE COURT: The name of the group again,
11 Doctor?

12 THE WITNESS: Team Health.

13 THE COURT: Thank you.

14 THE WITNESS: Uh-huh. (Indicating
15 affirmatively.)

16 BY MS. LEMPESIS:

17 Q Dr. Snowman, how long have you been at Hilton
18 Head Hospital?

19 A Eleven years.

20 Q And are you licensed to practice in South
21 Carolina?

22 A Yes.

23 Q Are you licensed anywhere else?

24 A No.

25 Q And how long have you been licensed to

TESTIMONY OF DR. PATRICK SNOWMAN

1 practice in South Carolina?

2 A Eleven years.

3 Q Tell us your background as far as education.

4 A I completed an undergraduate degree in
5 chemistry, and then went to medical school at the
6 Medical College of Pennsylvania in Philadelphia. That
7 was a four-year medical school program.

8 I then completed a residency in
9 emergency medicine, also in Philadelphia, at the
10 Medical College of Pennsylvania and several other
11 hospitals in the Philadelphia surrounding area.

12 Q And once you completed your residency
13 training, what did you do after that?

14 A When I completed residency training, I was a
15 Captain in the United States Army and served four years
16 on active duty, retire -- retiring as a Major, and
17 after -- and that was at Fort Campbell, Kentucky at
18 Darnall Community Hospital.

19 I was also the emergency services
20 director of the 86th Combat Support Hospital, which was
21 attached to the 101st Airborne Division at Fort
22 Campbell.

23 Q So, that was full time you were practicing as
24 an emergency medical physician?

25 A Correct.

TESTIMONY OF DR. PATRICK SNOWMAN

1 Q Thank you. Is that your main area of
2 practice, Mr. Snowman?

3 A Yes.

4 Q And just to make sure that I've got your --
5 your title right, can you tell me -- tell me what your
6 title is.

7 A My title is Emergency Physician.

8 Q Emergency physician.

9 A Or Emergency Medicine Physician. Either one.
10 is correct.

11 Q Thank you. And so you've been at Hilton Head
12 Hospital, you said, for 11 years?

13 A Yes.

14 Q So that entire time, was that entire time in
15 the emergency department?

16 A Yes.

17 Q Tell us about what you have to do for
18 continuing medical education. Are there any
19 requirements?

20 A Yes. In emergency medicine, it's a board
21 specialty under the American Board of Emergency
22 Medicine. And that is under the larger organization of
23 the American Board of Medical Specialties, which is the
24 same certifying organization as the, you know, surgeons
25 and internal medicine doctors and all medical

TESTIMONY OF DR. PATRICK SNOWMAN

1 specialties.

2 As part of board certification there is
3 an initial process which involves residency training,
4 several exams during residency, obviously precepted
5 care, supervised care during residency. And then it
6 requires an oral and written examination to become
7 board certified.

8 Once board certified, every year there's
9 a requirement to review approximately 15 peer review
10 medical articles, and then there's an exam every two
11 years or so. And then every ten years, after
12 completing those maintenance of certification
13 requirements throughout the ten-year period, then you
14 have to take another major recertification exam every
15 ten years. I've gone through that process one time,
16 having been an ER -- an emergency medicine physician
17 for 15 years.

18 Q Thank you. Do you, as an emergency medicine
19 physician, receive any special sort of training in
20 wound care?

21 A Very much so, yes.

22 Q Can you tell the Court about that special
23 training?

24 A Emergency medicine is a specialty that
25 results in somebody being trained to manage medical

TESTIMONY OF DR. PATRICK SNOWMAN

1 emergencies in children and adults across all
2 specialties. A specialty trauma management, or
3 certainly trauma management.

4 One of the major aspects of managing
5 trauma is the evaluation, assessment, and management of
6 wounds. And that starts with the residency training
7 program involving specialized courses in wound
8 management and evaluation, and really continues through
9 maintenance of certification and continuing medical
10 education activities.

11 Q So you said assessment and management of
12 wounds?

13 A Right.

14 Q So tell me what exactly that means.

15 A Well, in order to manage wounds effectively
16 and appropriately you have to assess them first. And
17 the assessment of wounds involves understanding the
18 mechanisms that cause wounds. And there's two broad
19 categories of wounds. There are blunt force wounds and
20 there are penetrating or wounds caused from a sharp
21 object, also called penetrating wounds.

22 Within the category of blunt wounds
23 there are bruises, abrasions, and lacerations. And
24 within the category of penetrating wounds there are
25 stab wounds and what -- and slice wounds from sharp

TESTIMONY OF DR. PATRICK SNOWMAN

1 objects.

2 There's also the category of wounds
3 caused from gunshots. So it's important to know the
4 details about assessing what type of wounds were caused
5 by what type of mechanisms, because that directly
6 relates to how those wounds are managed.

7 Q Thank you. And so during your time in the
8 emergency department at Hilton Head Hospital, how much
9 -- how many -- if you can estimate, how many wounds you
10 have treated in your time as an emergency management
11 physician there?

12 A If I may, to -- since I've been an emergency
13 medicine physician, board certified for 15 years, my
14 wound experience goes back to then.

15 Q Thank you. Please.

16 A And actually before that in residency. But
17 since being board certified in the military, in a war
18 zone situation, and as a civilian emergency physician,
19 I estimate that I've seen approximately 45,000
20 patients, total.

21 Of those 45,000 patients, I estimate 20
22 to 30 percent of those cases have been trauma related.
23 And perhaps 30 to 50 percent of those have involved
24 injuries to the skin, or wounds to the skin.

25 So, that number is probably 3- to 5,000

TESTIMONY OF DR. PATRICK SNOWMAN

1 patients over my 15-year career.

2 Q And of those 3- to 5,000 patients that you've
3 treated, can you tell us the number of times that
4 you're generally able to determine what caused the
5 injury?

6 A The vast majority of times when somebody
7 presents with a wound to the skin there's a history
8 that goes along with that. So, I would estimate
9 80 percent of the time or more the patient is able to
10 describe what happened that caused the wound. Whether
11 it was a fall or being hit with something, or stabbed
12 with something, or shot with something, most people
13 know what caused their wounds.

14 Q Okay. And so you collect this information, I
15 guess, from the patient?

16 A Correct. So, as part of the history and
17 evaluation of that patient, I obtain information about
18 what caused the wound. And so in thousands of cases I
19 have a direct correlation between what the patient
20 states a wound is caused by and what the wound looks
21 like and, therefore, how I'm going to manage it.

22 Q Going back, you said that you have to get --
23 you have to do something every year for your
24 certification, correct? You said something about
25 reviewing peer review articles?

TESTIMONY OF DR. PATRICK SNOWMAN

1 A Right. There -- that's called maintenance of
2 certification, and it's an ongoing requirement in most
3 specialties that involves reviewing peer review
4 literature and then taking examinations.

5 Q Okay. And do you -- so do you do this in
6 your daily practice?

7 A I do this as part of my -- as part of my
8 daily, you know, standard practice. I also review
9 literature well beyond what's required for those
10 maintenance and certification requirements.

11 Q Okay. And do you review any certain
12 publications regarding wound care?

13 A Well, I review the journal of emergency
14 medicine, which is the journal within the professional
15 organization that I have been a Fellow for the past 15
16 years. That's the American Academy of Emergency
17 Medicine.

18 I also review Annals of Emergency
19 Medicine, which is the journal of another professional
20 organization called The American College of Emergency
21 Physicians.

22 I also, you know, regularly review
23 journals outside of emergency medicine, such as the
24 Journal of the American Medical Association, the
25 Journal of Pediatric and Adolescent Medicine. There's

TESTIMONY OF DR. PATRICK SNOWMAN

1 many journals that I review and, you know, read
2 articles from time to time.

3 Q And all of this is to aid you in your
4 assessment and management of victims at the emergency
5 department?

6 A Victims and medical patients, as well. Many
7 of those journals, you know, in the emergency medicine
8 journals, as part of their sections within the journals
9 involve trauma. And, therefore, there's routinely
10 articles on wound care and things of that nature.

11 Q Thank you. Dr. Snowman, how many times have
12 you testified in court?

13 A This is the fourth time that I have testified
14 in a criminal trial.

15 Q Okay. And have you testified in any other
16 sort of proceeding? Civil?

17 A No.

18 Q Okay. How many times have you been qualified
19 as an expert?

20 A Four times.

21 Q Four times?

22 A Uh-huh. (Indicating affirmatively.)

23 MS. LEMPESIS: Your Honor, the State, based
24 on this testimony, would offer Dr. Snowman as an
25 expert in the field of emergency medicine.

TESTIMONY OF DR. PATRICK SNOWMAN

1 THE COURT: Okay. Thank you. Voir dire?

2 MR. BAX: Yes. Thank you, Your Honor.

3 VOIR DIRE EXAMINATION

4 BY MR. BAX:

5 Q Dr. Snowman, good afternoon.

6 A Good afternoon.

7 Q I want to ask you a few questions. And
8 briefly, I'm sure that His Honor has drawn this
9 conclusion, but one of those prior times that you've
10 testified was in the first time we tried this case,
11 correct?

12 A Yes, uh-huh. (Indicating affirmatively.)

13 Q Okay. And you were qualified as an expert in
14 emergency medicine in that prior trial, correct?

15 A Yes.

16 Q You were not qualified as an expert in
17 identification of objects that create wounds or
18 anything of that nature, correct?

19 A There's no such thing as being an expert
20 in -- except in forensic pathology. And, no, I'm
21 definitely not an expert in forensic pathology.

22 Q Okay. But -- and so you weren't -- you
23 weren't qualified in anything other than emergency
24 medicine, correct?

25 A Correct.

TESTIMONY OF DR. PATRICK SNOWMAN

1 Q Okay. Now, you've talked about, you know,
2 wound care and assessment of wounds. You said there's
3 a couple different categories. You've also talked
4 about your reviewing of emergency medicine journals and
5 some other journals.

6 Dr. Snowman, how many times have you
7 published an article in any of these journals?

8 A Well, if I may clarify, there's three types
9 of injuries. There's blunt force, penetrating, and
10 gunshot wounds. So just to clarify that.

11 Q Excuse me. Gunshot wounds.

12 A I have not published in any of those -- I've
13 not published in any of those areas.

14 Q Okay. And you talked about the requirement
15 of peer review of articles and review of the journals.
16 You obviously have reviewed other doctors' articles
17 about things in these journals, correct?

18 A Yes.

19 Q But if you've not published, then you have
20 not had any other doctors review your article; is that
21 correct?

22 A I have not published articles in a peer
23 review journal.

24 Q Okay. And as a result, you haven't received
25 any critique of any kind of any of your own theories,

TESTIMONY OF DR. PATRICK SNOWMAN

1 correct?

2 A That's not correct, no.

3 Q Well, let me ask you this: Published, you
4 haven't received any critique of anything that you've
5 published?

6 A Right. I will answer no to that question
7 every time because I've not published anything. So --

8 Q Well, I just wanted to make sure I was clear.

9 All right. Now, Dr. Snowman, also I
10 think there's a little bit of an issue here. I want to
11 make sure we clarify.

12 You've testified that you have testified
13 in four trials, correct?

14 A Yes, including today.

15 Q Including today. Okay. So, you've also
16 testified that these were all criminal in nature,
17 correct?

18 A Yes.

19 Q Okay.

20 MR. BAX: A moment's indulgence, Your Honor.

21 All right. I'm a little -- I need to get some
22 clarification.

23 (Pause.)

24 BY MR. BAX:

25 Q You recall testifying in the prior trial,

TESTIMONY OF DR. PATRICK SNOWMAN

1 correct?

2 A Yes.

3 Q Okay. And we conducted the same kind of
4 examination outside the presence of the jury before?

5 A That's correct.

6 Q And do you recall when I was questioning you
7 before that I asked you at that time how many times
8 that you had testified, and that you replied three
9 times?

10 A Yes.

11 Q Okay. So, obviously, that didn't include
12 today?

13 A Correct.

14 Q Okay. Do you recall me asking of those three
15 times, I actually said, Excuse me, let's exclude today.
16 Of those two other times, how many were in criminal
17 cases?

18 And you replied, One.

19 Do you recall that?

20 A I may have misspoke because the trials that I
21 have been participants in were criminal trials.

22 Q Okay. Well --

23 A And part of the confusion may be that one of
24 them was in Tennessee. So -- and actually it may have
25 been actually Kentucky was the actual location. So in

TESTIMONY OF DR. PATRICK SNOWMAN

1 South Carolina, it has been three, including today.

2 But total, four. So, I may have misspoken because of
3 that.

4 Q Okay. So -- But you don't contest that if
5 the transcript reflects that when I asked you about the
6 cases that you'd testified to other than this one, you
7 had said only one was criminal at that time?

8 A I don't contest that, no.

9 Q Okay. And for clarification, outside of this
10 case involving Mr. McQuarters, you've only testified
11 twice before, correct?

12 A Correct.

13 Q Okay. And additionally, as I asked you last
14 time, were you qualified as a forensic expert in either
15 or any of those trials?

16 A No.

17 Q Okay. You were only court -- excuse me,
18 qualified as a medical expert; is that right?

19 A I was qualified as an expert in emergency
20 medicine.

21 Q The reason I asked, and I think it goes to
22 the heart of the issue here, Doctor, is my
23 understanding, based on last time that we had this
24 colloquy, your intention is to testify to a reasonable
25 degree of medical certainty that the object used to

TESTIMONY OF DR. PATRICK SNOWMAN

1 inflict the wounds on Mr. Snodgrass was not a fist, but
2 an object, correct?

3 A That's correct.

4 Q Okay. And that is still your intention here
5 today; is that correct? That's still your opinion?

6 A Yes.

7 Q Okay.

8 MR. BAX: Moment's indulgence, Your Honor.

9 THE COURT: Okay.

10 (Pause.)

11 MR. BAX: Sorry. It just came back to my
12 mind. I apologize.

13 THE WITNESS: That's okay.

14 BY MR. BAX:

15 Q I know I asked you last time if you had
16 any -- taken any courses in forensic pathology, and you
17 had answered at that time that you didn't.

18 My question is: Have you had any
19 further training since last trial that included
20 anything of the forensic pathology? For example, have
21 you done any kind of further training since last trial
22 involving forensic pathology, for example?

23 A What I didn't mention last time is that part
24 of what I do is review the medical literature, which
25 includes a large body of literature including

} TESTIMONY OF DR. PATRICK SNOWMAN

1 assessment and management of wounds. Those are not
2 courses or specialized training in forensic pathology.

3 So, the answer to your question is: No,
4 I have not had any special training in forensic
5 pathology then or since.

6 Q So, in other words, your answers to those
7 questions that I asked before would be the same today
8 as they were then; is that correct?

9 A Yes.

10 Q Thank you, Dr. Snowman. I appreciate it.

11 MR. BAX: Moment's indulgence, Your Honor.

12 THE COURT: Okay.

13 (Pause.)

14 BY MR. BAX:

15 Q Out of an abundance of caution, Dr. Snowman,
16 I'm just going to ask you a couple of brief follow-up
17 questions. Some of these are the same questions I
18 asked you before.

19 Based on your experience and your
20 knowledge, lacerations can occur from blunt force
21 trauma, as well, correct?

22 A Yes.

23 Q Okay. I think I used the example of when
24 there's a boxing match and someone gets hit hard enough
25 or at the right angle their tissue can tear and cause

TESTIMONY OF DR. PATRICK SNOWMAN

1 bleeding, correct?

2 A Right. And it usually causes very simple
3 lacerations, and you usually see one around the eye.
4 That's correct.

5 Q Okay.

6 MR. BAX: No further questions at this time,
7 Your Honor.

8 THE COURT: Thank you.

9 Redirect, Ms. Lempesis?

10 REDIRECT EXAMINATION

11 BY MS. LEMPESIS:

12 Q Dr. Snowman, would it be normal for an
13 emergency medicine physician to take a course in
14 forensic pathology?

15 A There are fellowships offered in forensic
16 emergency medicine. It's not common, but there is sort
17 of a subspecialty.

18 What's important to note is that
19 forensic pathology is a specialty, a medical specialty
20 that's far more detailed in the analysis of wounds than
21 is an emergency medicine. It's involved in primary
22 post mortem analysis. It requires determination of
23 whether wounds had anything to do with the cause of
24 death, the timing of multiple wounds, use of
25 microscopy, chemical assays, advanced imaging

TESTIMONY OF DR. PATRICK SNOWMAN

1 techniques. It's things well beyond the relevant
2 assessment and management of acute wounds in the
3 emergency department.

4 I make no claim of being an expert in
5 that level of wound analysis that a forensic
6 pathologist would have.

7 Q But you can say to the court today that
8 you've, in your time as an emergency medicine
9 physician, have treated 3- to 5,000 patients with
10 wounds that you had to assess and then determine how to
11 manage?

12 A Absolutely.

13 Q And so when you assess a wound, do you --
14 does that affect how you manage the wound?

15 A It does.

16 Q So it's a critical part in your day-to-day
17 practice; is that a fair statement?

18 A It's a fair statement. And, you know, in the
19 practice of emergency medicine there are several areas
20 of expertise: Airway management, toxicology,
21 pediatrics. One of the areas of expertise is wound
22 assessment and management.

23 Q Thank you.

24 A You're welcome.

25 Q Mr. Bax asked you about whether or not you

TESTIMONY OF DR. PATRICK SNOWMAN

1 yourself have been published, and we had the answer,
2 no. The articles that you review, just to make this
3 very clear, are they peer reviewed?

4 A Yes.

5 Q And they're published in recognized journals
6 of medicine?

7 A Yes.

8 Q Thank you.

9 A I'd also like to say that in addition to
10 reviewing peer review journals, I certainly have
11 reviewed resource material in forensic pathology and
12 there are forensic emergency medicine texts that I'm
13 reviewing. And that's part of my training and
14 experience in emergency medicine.

15 Q Thank you.

16 MS. LEMPESIS: Your Honor, I have no further
17 questions as to the qualifications of Mr. Snowman.

18 THE COURT: Dr. Snowman, you indicated in
19 response to one of the questions from Mr. Bax,
20 that you intended to offer, if you're allowed to,
21 an opinion as to whether a wound -- the wounds in
22 this case of the victim were caused by a fist or
23 by some object; is that right?

24 THE WITNESS: Yes.

25 THE COURT: And upon what basis would you

TESTIMONY OF DR. PATRICK SNOWMAN

1 base your conclusion that it was caused by an
2 object and not by a fist?

3 THE WITNESS: There are several factors,
4 Your Honor.

5 THE COURT: Okay.

6 THE WITNESS: One is having seen many, many
7 cases where victims have been hit, at least by
8 their history, by fists only.

9 THE COURT: Right.

10 THE WITNESS: And it tends to cause usually
11 no laceration, but in some cases it does cause a
12 laceration, and that's usually in the context of a
13 bruise. And they're simple lacerations, and
14 they're usually around the eye or the eyebrow.

15 And so in this particular case, where there
16 are multiple lacerations of varying shapes in
17 varying locations, including the forehead which
18 has thicker tissue, I've not ever seen a wound
19 caused only by a fist that involves that pattern
20 of trauma and lacerations.

21 THE COURT: I think this is where the
22 photographs come into play, Ms. Lempesis. I want
23 you to show the doctor the photograph and ask him
24 to explain to me how those particular wounds
25 indicate to him that they were caused by an object

TESTIMONY OF DR. PATRICK SNOWMAN

1 and not by a fist.

2 MS. LEMPESIS: Thank you, Your Honor.

3 And there's just one photo that I believe
4 would be at issue. Would you like me to show all
5 of the photos I intend to --

6 THE COURT: No, no. Whatever allows him to
7 explain his opinion.

8 MS. LEMPESIS: Thank you, Your Honor.

9 Your Honor, I'm going to first then hand to
10 Mr. Snowman --

11 Permission to approach the witness?

12 THE COURT: Granted.

13 MS. LEMPESIS: Mr. Snowman, these are the --

14 THE COURT: Dr. Snowman.

15 MS. LEMPESIS: Dr. Snowman. Thank you.

16 Dr. Snowman, these are State's Exhibits
17 marked 2 through 8.

18 Your Honor, would you like me to lay the
19 foundation now to admit them, or just go ahead and
20 have him explain them?

21 THE COURT: No. We'll deal with that before
22 we deal with the jury. I just need to know that
23 he saw those things, and that if they are
24 indicative of what he bases his opinion on.

25 MS. LEMPESIS: Thank you.

TESTIMONY OF DR. PATRICK SNOWMAN

1 THE WITNESS: Would you like me to stand up,
2 Your Honor?

3 THE COURT: You can stand or sit, just so the
4 microphone can pick you up.

5 THE WITNESS: Okay.

6 THE COURT: And certainly tell the number as
7 you --

8 THE WITNESS: Sure.

9 Okay. So, this is the photograph.

10 MR. BAX: Your Honor, I need to see what he's
11 showing you.

12 THE COURT: You need to show him.

13 THE WITNESS: This is Exhibit 3.

14 THE COURT: Okay.

15 THE WITNESS: This is a photograph which is
16 showing the front view of the victim's face, and
17 you can see that there are multiple lacerations.
18 They're linear in nature, and they involve tissues
19 of the lower cheek, upper cheek, the side of the
20 eye, the temple region, and the upper forehead.

21 And so this pattern of linear lacerations is
22 consistent with a blunt object other than a fist.

23 This is another photograph. This shows more
24 clearly these linear patterns and the repair of
25 the wounds that I did in the emergency department.

TESTIMONY OF DR. PATRICK SNOWMAN

1 This one in particular is clearly a -- a linear
2 wound.

3 There's also a linear pattern to this wound,
4 which has a certain curved linear pattern to it,
5 which is not consistent with a fist.

6 These wounds are also linear type abrasions,
7 which, you know, may or may not be relevant to the
8 facial wounds, but they certainly are in a linear
9 pattern which is not consistent with the fist.

10 THE COURT: Okay.

11 THE WITNESS: And that's -- and I'm sorry.
12 The second was -- the profile view was Exhibit 5.

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

14 MS. LEMPESIS: Your Honor, there is one other
15 picture. I have not marked it as a State's
16 exhibit. This is the picture that the State would
17 also intend to introduce.

18 And I think Dr. Snowman can also explain to
19 the Court how that picture is helpful in
20 describing the victim's injuries.

21 THE WITNESS: The only part of this picture
22 which is helpful in distinguishing --

23 THE COURT: What number? Does it have a
24 number?

25 MS. LEMPESIS: I have not numbered it,

TESTIMONY OF DR. PATRICK SNOWMAN

1 Your Honor.

2 THE COURT: Okay. I know what you're talking
3 about. Go ahead.

4 THE WITNESS: Is that this laceration -- I'm
5 not sure that that's -- yeah.

6 This photograph demonstrates the fact that
7 these wounds are acute. There's acute swelling,
8 there's obviously acute blood, and so it goes to
9 the timing of the wounds having happened
10 relatively soon prior to me seeing the patient.

11 In terms of what you can see in this
12 photograph, it doesn't speak directly to whether
13 they were caused by fists or some other object, in
14 my opinion.

15 THE COURT: Thank you, Doctor.

16 THE WITNESS: Thank you.

17 THE COURT: Excuse me. Ms. Lempesis, which
18 of those photographs do you intend to try to
19 elicit through Dr. Snowman?

20 MS. LEMPESIS: Your Honor, the ones that I've
21 already labeled, 2 through 8. And then this
22 picture, Your Honor, I would also -- well, I beg
23 the Court's indulgence, if I may, just one moment.

24 THE COURT: Okay.

25 (Pause.)

TESTIMONY OF DR. PATRICK SNOWMAN

1 MS. LEMPESIS: And, Your Honor, then finally,
2 this picture, which I have not yet labeled, we
3 would also intend to admit so that he could talk
4 about the acute nature of the injuries.

5 THE COURT: Would you pass up 2 through 8,
6 first of all, for me?

7 MS. LEMPESIS: Yes, Your Honor.

8 THE COURT: Dr. Snowman, of course, he's
9 qualified imminently as an expert in the field of
10 emergency medicine. He has admitted that there is
11 no expertise in the type of objects that cause
12 various wounds. That is not to say, however, that
13 the cause of those wounds is not able to be
14 determined in this case, based on experience.

15 And he has outlined how he's reached the
16 conclusion that he reached in regard to the wounds
17 that Mr. Snodgrass experienced in this particular
18 case.

19 I'm going to allow him to testify as to his
20 opinion as to the cause of those wounds. Not as a
21 specialty expert, but simply as an expert in
22 emergency medicine, who has had the experience
23 that he has in treating 3- to 5,000 skin injuries
24 during his 15 years as a practicing physician.
25 And he can explain to the jury, as he has

COLLOQUY

1 explained to me, the linear nature of these
2 wounds, as anyone looks at them. Frankly, you
3 would think that without -- without demeaning
4 Dr. Snowman's considerable expertise, that
5 probably you or I could have figured out that
6 something other than a fist caused these wounds,
7 from looking at them.

8 There's one at the top that has a curved
9 nature to it. There are some along the face which
10 are linear. There's one above the left eye, which
11 is clearly linear in nature.

12 There are the wounds on the hands themselves,
13 which obviously could not have been caused by a
14 hand or a fist. The nature of the location would
15 indicate that it's unlikely that somebody could
16 hit your fist with theirs, or your hand with their
17 fist, and cause these types of injuries, in any
18 event.

19 I'll allow him to testify as to his opinion
20 these were caused by an object other than by a
21 fist.

22 The unmarked photograph, you might want to
23 mark it for identification, Ms. Lempesis. It's
24 not going to go to the jury because the doctor
25 said it really shows nothing other than the fact

COLLOQUY

1 that the temporal nature of the wounds to that
2 photograph, it's of assistance to him deciding how
3 those things are made. These other photographs
4 which are cleaned up and don't have the emotional
5 impact of those -- of that photograph are the ones
6 that the jury will be able to see.

7 Two through eight will be allowed into
8 evidence. To the extent that the defense wishes
9 to object, of course, I'll register those
10 objections. The unmarked photograph will not go
11 into evidence. Dr. Snowman will be allowed to
12 testify regarding the origin of the wounds over
13 objection of defense counsel.

14 MR. BAX: Your Honor.

15 THE COURT: Yes, sir.

16 MR. BAX: I'd just like to be heard at the
17 appropriate time.

18 THE COURT: Is there anything you can add?

19 MR. BAX: Well, your Honor, I -- and I'm sure
20 this -- hopefully, I'm not saying this
21 incorrectly, but I don't think I was given the
22 opportunity to argue prior to your ruling about
23 why we don't think he should be allowed to testify
24 to it. There was quite a few things that I
25 intended to argue, specifically quoting the

COLLOQUY

1 Judge's ruling in the prior trial, that I haven't
2 had an opportunity to argue, including the Counsel
3 and Jones factors.

4 THE COURT: He's not being qualified as an
5 expert to testify about this. That's the
6 distinction. Counsel and Jones go to expertise
7 qualifications. He has acknowledged that there is
8 no expertise when it comes to the instrument that
9 causes injuries. And, therefore, there's not
10 going to be any peer review on those sorts of
11 things.

12 MR. BAX: Well, Your Honor, I would like to
13 say, though, that his testimony about what
14 potentially caused the injuries is still an
15 opinion testimony, and he can't testify to an
16 opinion unless he is testifying as an expert.

17 THE COURT: He is an expert in emergency
18 medicine. He is not an expert in an area where no
19 expertise exists.

20 That's not to say, however, because no
21 expertise exists as to what causes an injury --
22 short of forensic pathology, forensic medicine,
23 that a doctor with his level of expertise in the
24 field that he does, in his level of experience, is
25 not going to be allowed to say, I've looked at

COLLOQUY

1 these things and I can tell that a linear scar is
2 not caused by a fist. That the marks on the hands
3 cannot be caused by a fist. That they are
4 obviously some sort of puncture wound caused by a
5 sharp object or a blunt object, at the very least.

6 You know, that's the thing about this. There
7 are certain -- there is testimony that can be
8 offered without -- lay people even are allowed
9 under the rules, opinion testimony by a lay
10 witness. The witness is not testifying as an
11 expert, the witness's testimony in the form of
12 opinions or inferences is limited to those
13 opinions which are rationally based upon the
14 perception of the witness and are helpful to a
15 clear understanding of the witness's testimony,
16 and do not require special knowledge, skill,
17 experience, or training in that regard.

18 So, even lay people can offer opinion
19 evidence. He has the ability because of his
20 training to offer the opinion that I'm going to
21 allow him to offer.

22 I'll be glad for you to note the fact that
23 there has been no counsel analysis of this, no
24 evaluation along those regards, and there's not
25 going to be. There can be no peer review where

COLLOQUY

1 the expertise in and of itself does not
2 necessarily exist.

3 So, I'll -- you can -- I'll be glad to
4 further elucidate or to adopt your ruling -- your
5 argument from the prior hearing in its totality
6 and make that a part of the record rather than for
7 us to have to rehash all of that again, if that
8 will help you.

9 MR. BAX: And I appreciate that, Your Honor,
10 and I do ask that the prior ruling of
11 Judge Keesley be incorporated --

12 THE COURT: No, sir.

13 MR. BAX: -- at least by reference into --

14 THE COURT: No, sir.

15 MR. BAX: -- into the transcript of record.

16 THE COURT: No, sir. The prior ruling is
17 different from prior testimony. The ruling is an
18 opinion. The testimony is what it is.

19 The prior rulings have no weight on this
20 Court. That's the difference between as if there
21 were no prior proceeding. The testimony under
22 oath is there to be examined, and your arguments
23 can be examined again, but the ruling itself is of
24 no moment in this particular case.

25 MR. BAX: Well, then, Your Honor, I would

COLLOQUY

1 like to put on the record, in full, my argument.
2 And I would add to the Counsel and Jones factors,
3 that I believe that they need to be applied in
4 this situation, as they were applied before.

5 I would add also, State versus Kroma.
6 Specifically, Justice Beatty talked about, in his
7 opinion in State versus Kroma, that it's an
8 escapable fact that while my understanding of
9 Your Honor's ruling is that his testimony
10 concerning what caused the injuries is going to
11 not be expert testimony but lay opinion. He is,
12 from my understanding, to be qualified as an
13 expert in emergency medicine.

14 As far as the jury is going to see, he is an
15 expert.

16 THE COURT: Right.

17 MR. BAX: Whether we even qualify him as an
18 expert, he's going to testify he's a doctor, so
19 he's going to be seen as an expert, period.

20 THE COURT: And he should be. And frankly,
21 it is his expert -- it is his experience as a
22 doctor that gives him the basis to do this.

23 The point that I was making here, that that
24 rule is allowed, opinion testimony to be offered
25 by somebody even other than an expert. Now, he is

COLLOQUY

1 an expert, and so he's going to be allowed to
2 offer his opinion.

3 The point that I was making, that there are
4 certain areas within the realm of human knowledge
5 that can be concluded without an expert specialty
6 saying, I am an expert in looking at a wound or
7 deciding whether it was -- what it was caused by.

8 It's significant in this particular case that
9 Dr. Snowman is not going to testify so much as to
10 what this injury was caused by, as to what it was
11 not caused by. It was not caused by a fist. He
12 says an object.

13 The whole world of objects is out there.
14 Anything -- baseball bats, brass knuckles,
15 knives -- the whole world of that. The type of
16 testimony in that regard is somewhat general in
17 its nature. He has not identified an object, he's
18 simply excluded an object or a force, and that is
19 the force of a fist. The type of force that would
20 be created by a fist, because of the nature of it,
21 the physiology of it.

22 That's the point of my ruling in this regard
23 as to what he has done by applying what he has
24 known and what he has seen, is that this was not
25 caused by a fist.

COLLOQUY

1 MR. BAX: And, Your Honor, I would just point
2 out that the very nature of what Your Honor just
3 said goes right to the point here, because as you
4 yourself just stated, the world full of objects,
5 every one that you just named qualifies as a
6 weapon in order to establish the element of armed,
7 for the purposes of establishing what the State
8 has the burden of proof beyond a reasonable doubt
9 of armed robbery.

10 THE COURT: Correct.

11 MR. BAX: The problem is, is that the defense
12 highly contests the fact that he's going to be
13 able to offer opinion testimony in an area where
14 there is no expertise without the Counsel and
15 Jones factors being applied to specifically
16 establish a direct element of the offense that the
17 State needs to prove.

18 We have no peer review, we have no quality
19 control procedures, and the science and quality --
20 you know, when an expert testifies, those are in
21 place in order to keep things from going to the
22 jury that haven't gone through that quality
23 control.

24 And Dr. Snowman himself has testified there
25 is no such. He's kind of venturing away into his

COLLOQUY

1 own territory.

2 THE COURT: Right.

3 MR. BAX: And as an attorney who has
4 specifically participated in the second
5 Jeffrey Jones case, where the Supreme Court kept
6 out the science -- it was a barefoot shoe
7 impression in that particular case, as Your Honor
8 is aware -- there were only two experts left in
9 the entire world that were willing to go anywhere
10 to testify to this.

11 THE COURT: Right.

12 MR. BAX: One worked for myself and my
13 lawyers, I was not the lead counsel, it was
14 Ms. Fulwood and Mr. McCully; the other, which is a
15 Canadian Mountie, worked for Donnie Myers.

16 THE COURT: Right.

17 MR. BAX: And they were the only ones left.
18 And they weren't allowed to work for the FBI
19 because they even said, We're not doing this
20 anymore.

21 They weren't allowed to work for the Canadian
22 government because they said, We're not doing this
23 anymore. And that was let in, even though counsel
24 had looked at it. And it was still kicked at the
25 end and reversed because that is something that

COLLOQUY

1 had -- even though there had been peer review,
2 most of which in the last ten years prior to the
3 last trial, was each of them reviewing each other.
4 Each of them had written books, but there were the
5 only two. It was still kicked.

6 And the problem is, here we have a doctor
7 who's venturing out. There is no review, there is
8 no other doctors doing it. There is nothing that
9 he said, I've read a specific article about
10 identifying what objects cause blunt or non-blunt
11 force trauma.

12 Clearly, we all know there's a common sense
13 element. If someone has a hole that's about nine
14 millimeters in diameter going from one side of
15 your body to another, well, you ain't -- like you
16 said, Your Honor, you don't have to be a scientist
17 to know that's a gunshot wound, most likely.

18 But in this particular case, as the doctor
19 has already testified to, it is not completely
20 outside the realm of possibility that blunt force
21 trauma can cause lacerations.

22 Now, he's talked about the linear nature of
23 these, but as far as any quality controls for
24 being able to say when and where linear is linear,
25 when and where linear qualifies, whether or not

COLLOQUY

1 there's any other factors to consider, none of
2 that is science at this point.

3 THE COURT: He's not going to be allowed to
4 testify as to what type of instrument caused the
5 injuries because he doesn't know. He's not going
6 to be allowed to testify that it was a deadly
7 weapon because he doesn't know. He's not going to
8 be allowed to testify as to the fact that it might
9 have been brass knuckles or whatever it might have
10 been.

11 Frankly, we -- the jury has already heard
12 from the fellow who got hit, that in his view he
13 was hit by something metal, a metal object. Now,
14 he's not an expert obviously, he just happened to
15 be the one that got hit.

16 But he testified about that without
17 objection. The jury might very well conclude that
18 this was not a deadly weapon, that whatever he was
19 hit with has not been proven beyond a reasonable
20 doubt to be a deadly weapon. And, of course, that
21 is going to be an element, as you said. It's an
22 element of the offense.

23 They are going to be allowed to conclude, if
24 they choose to, based on the doctor's testimony,
25 that it's something other than a fist that caused

COLLOQUY

1 this -- not necessarily making the loop to a
2 dead -- the leap to a deadly weapon, or whatever
3 else it might have been.

4 I've heard something about brass knuckles
5 introduced into this somewhere in the vicinity of
6 all this stuff that came in pre-trial. Nobody's
7 mentioned that in this particular case that I know
8 of, and I doubt that nobody is. I'm here to see.
9 I don't know what else may materialize in this
10 case.

11 But the fact that he's going to be able to
12 testify that something other than a fist caused
13 this does not preclude the fact that it may not
14 have been a deadly weapon at all. And he's not
15 meeting the State's burden of proof in that
16 regard. He's eliminating a fist, and that's all
17 he's eliminating. Okay?

18 All right. Doctor, I'm going to ask you to
19 step down while the jury comes in. You'll be
20 introduced again and sworn to and in the presence
21 of the jury. So, if you'll just take a seat back
22 out there, we'll get you out shortly.

23 THE WITNESS: Yes, sir.

24 MS. LEMPESIS: Your Honor, I'm going to mark
25 this picture as a Court's exhibit, if that suits.

COLLOQUY

1 THE COURT: Okay.

2 Mark the State's Exhibit for Identification,
3 please.

4 *(Whereupon, State's Exhibit No(s). 9 marked*
5 *for identification.)*

6 THE REPORTER: Yes, Your Honor. Actually,
7 it's already marked.

8 THE COURT: Madam reporter, please note that
9 this record will embody all of Mr. Bax's arguments
10 against the testimony offered by the doctor that
11 were included in the original trial. They are
12 adopted as part of the record for preservation of
13 appellate review.

14 (Jury enters.)

15 THE COURT: Ladies and gentlemen of the jury,
16 I spent part of my 22 years on the bench on my
17 knees before jurors begging their forgiveness for
18 having wasted their time and kept them back there
19 in the jury room while we do what we did this
20 afternoon. And this is no exception. And I
21 apologize for that.

22 First of all, we had no way to anticipate
23 what was going to happen during lunch that I
24 inquired of each of you.

25 We think that we have some measure of control

COLLOQUY

1 over what happens in this courtroom, and we try to
2 keep those things under control. But when things
3 happen outside this courtroom that we do not
4 observe and do not control, we have to assure
5 ourselves that those things are not going to have
6 some impact on the outcome of this case, and some
7 impact upon your ability to be fair and impartial.
8 And that's the reason that I had you out here and
9 inquired about that situation that had been
10 relayed to me.

11 Quite frankly, I got a little concerned as I
12 was going down the list and I was asking you all
13 to come, and then I sent you to another jury room.
14 And by the time we got to the last two or three
15 folks, I thought they're back in that jury room,
16 and they're hearing me call all these people and
17 none of them coming back in there. I thought we
18 might have to drag some of you out here to get you
19 into the courtroom, after all that. Quite
20 frankly, I thought you might be afraid to come out
21 here.

22 But I thank you for your cooperation and your
23 patience as we worked through that.

24 And then sometimes we have to deal with
25 matters outside of your presence that help us

COLLOQUY

1 prepare the testimony of a witness for
2 presentation before you.

3 I told you earlier, before we started this
4 trial today, that you are the judge of the facts
5 and I'm the judge of the law. And that my job is
6 to decide whether you can hear somebody tell you
7 something or not. And then once I decide that you
8 can hear it, then what you do with it is entirely
9 up to you. You can believe it or not believe it,
10 or give it the weight you think it should receive.

11 But the first part of that is on what I have
12 to do, not on what you have to do. And that is to
13 determine whether or not you can hear the
14 testimony in the first place.

15 And, sometimes, in order for me to do that, I
16 have to hear that testimony outside of your
17 presence and decide whether you can hear it. I
18 don't know what it is until I hear it.

19 And sometimes it can be summarized and
20 presented to me, and sometimes I have to hear it
21 in detail and then decide whether you can hear it
22 or not.

23 I tell you again that once I decide you can
24 hear it, then it's up to you from that point on.
25 You're not to gather anything from the fact that I

COLLOQUY

1 allow you to hear something, that you're required
2 to believe it or to give it weight. That is
3 always a matter that's for you to determine.

4 And so that's what I've had to do with some
5 witnesses that are over here to testify in the
6 trial of this case. And I've sort of tried to
7 lump them all together so we could deal with that
8 at one time and not have to interrupt this at any
9 future.

10 I apologize to you again for those
11 interruptions, and I'm not going to waste any more
12 of your time. We're going to get right back to
13 the trial of the case.

14 If it's any consolation, I guess, at least,
15 you're dry. If you were outside, you wouldn't
16 have the same luxury.

17 I appreciate your patience, folks. We do, we
18 do what we can not to waste your time. I consider
19 myself a right patient judge. The only thing I
20 lose my patience over is when we waste your time,
21 and I apologize for that. Sometimes it's
22 necessary.

23 Ms. Lempesis, you can call your next witness.

24 MS. LEMPESIS: Thank you, Your Honor. State
25 calls Dr. Patrick Snowman.

COLLOQUY

1 THE COURT: Dr. Snowman, come forward,
2 please, and be sworn.

3 Thereupon,

4 DR. PATRICK SNOWMAN

5 was called as a witness, having been first duly sworn,
6 was examined and testified as follows:

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

9 THE COURT: I don't believe it. I do not
10 believe the lights go out.

11 Well, folks, you've been in the dark all day,
12 so there's nothing different.

13 MS. LEMPESIS: Shall we go ahead?

14 THE COURT: Why don't we give it another
15 shot.

16 THE WITNESS: My name is Patrick Snowman,
17 P-A-T-R-I-C-K, Snowman, S-N-O-W-M-A-N.

18 DIRECT EXAMINATION

19 BY MS. LEMPESIS:

20 Q Dr. Snowman, who do you work for?

21 THE COURT: Wait a minute. Folks, I'm sorry.
22 They say the third blink is when it goes out for
23 good. Is that right? Let's wait just a second,
24 see if it comes back on.

25 We'll give it one more shot. The third time

TESTIMONY OF DR. PATRICK SNOWMAN

1 means the transformer's gone. At least that's
2 what they tell me back home. Cross our fingers.
3 Okay?

4 Dr. Snowman, you may introduce yourself now.
5 Go ahead.

6 BY MS. LEMPESIS:

7 Q Who do you work for, Dr. Snowman?

8 A I work at Hilton Head Hospital. And the
9 company I work for is Team Health.

10 Q Thank you. And how long have you worked at
11 Hilton Head Hospital?

12 A Eleven years.

13 Q And your position at Hilton Head Hospital?

14 A I'm an emergency medicine physician.

15 Q Thank you. And are you -- where are you
16 licensed?

17 A I'm licensed in South Carolina.

18 Q And how long have you been licensed in South
19 Carolina?

20 A Eleven years.

21 Q Dr. Snowman, tell us about your educational
22 experience.

23 A I have an undergraduate degree in chemistry,
24 following which I went to medical school at the Medical
25 College of Pennsylvania in Philadelphia. That was a

TESTIMONY OF DR. PATRICK SNOWMAN

1 four-year medical school program.

2 Following that, I completed a three-year
3 residency program in emergency medicine, and then
4 completed and passed board certification in emergency
5 medicine.

6 Q And where -- how long have you practiced in
7 Hilton Head? Did you practice anywhere before Hilton
8 Head?

9 A I've practiced in Hilton Head 11 years and I
10 have been board certified for 15 years. So, I've been
11 practicing as an attending emergency physician for 15
12 years.

13 Q And your area of practice, Dr. Snowman, what
14 is that -- what has it been?

15 A It has always been emergency medicine.

16 Q And tell us about what sort of education or
17 certification you have to go through as you practice?

18 A Of course you have to complete a residency
19 and then take an oral and written examination to become
20 board certified. After becoming board certified, there
21 are maintenance certification requirements that take
22 place throughout your career on a continuing basis that
23 involves reviewing peer review medical literature,
24 taking exams, and then every ten years the requirement
25 to take a recertification exam. I've done that one

TESTIMONY OF DR. PATRICK SNOWMAN

1 time as -- at my ten-year mark.

2 Q Dr. Snowman, do you have any special training
3 in wound care?

4 A As part of standard training and residency in
5 emergency medicine, wound care and trauma evaluation is
6 a large part of what we do. So, yes.

7 Q And during your time as an emergency
8 physician, can you estimate for us about how many --
9 about how many times you've been asked to manage
10 wounds?

11 A Based upon the total number of cases that
12 I've seen over my career, I estimate somewhere between
13 3- and 5,000 cases have involved direct injuries to the
14 skin, wounds as such.

15 Q And, Dr. Snowman, do you in your practice
16 make it a point to review -- do you review articles
17 regarding treatment of patients in the emergency
18 department?

19 A Yes. We have both a requirement as part of
20 our maintenance certification to review peer review
21 literature. I also review several other journals just
22 independently in emergency medicine, and many of those
23 involve sections on trauma and wound assessment and
24 management.

25 Q Thank you. And, Dr. Snowman, have you

TESTIMONY OF DR. PATRICK SNOWMAN

1 testified in court before in South Carolina?

2 A Yes.

3 Q How many times have you testified?

4 A Three times including today.

5 Q And have you been qualified before as an
6 expert in emergency medicine?

7 A Yes.

8 MS. LEMPESIS: Your Honor, at this time the
9 State offers Dr. Snowman as an expert in emergency
10 medicine.

11 THE COURT: Mr. Bax, you can voir dire.

12 MR. BAX: Subject to all prior objections,
13 Your Honor.

14 THE COURT: Do you want to explore the
15 qualifications in the presence of the jury?

16 MR. BAX: Your Honor, briefly on voir dire.

17 THE COURT: Sure.

18 VOIR DIRE EXAMINATION

19 BY MR. BAX:

20 Q Dr. Snowman, just briefly, since we've
21 covered this a couple of times, you have testified that
22 you've only testified in three other trials here in
23 South Carolina, correct? Including today?

24 A Yes, uh-huh.

25 Q Thank you. And in those cases you were

TESTIMONY OF DR. PATRICK SNOWMAN

1 qualified as an expert in emergency medicine, correct?

2 A Correct.

3 Q Were you qualified in any other areas?

4 A No.

5 Q Okay. And your job is an emergency room
6 physician at the Hilton Head Hospital, correct?

7 A If I may? Correct.

8 Q Certainly.

9 A I'm -- operating room physicians are called
10 surgeons, emergency medical physicians are called
11 emergency medicine physicians, not emergency room
12 physicians. So, just to correct that point. But, yes.

13 MR. BAX: Okay. No further questions

14 Your Honor.

15 THE COURT: Thank you.

16 Dr. Snowman is qualified as an expert in
17 emergency medicine.

18 MS. LEMPESIS: Thank you, Your Honor.

19 CONTINUED DIRECT EXAMINATION

20 BY MS. LEMPESIS:

21 Q Dr. Snowman, when you are treating a patient
22 in the emergency room, what sort of information do you
23 gather from the patient?

24 A The first thing you do is once you've
25 established that the person isn't dying, you have a

TESTIMONY OF DR. PATRICK SNOWMAN

1 conversation with them and take a medical history. The
2 medical history includes things such as what happened,
3 when it happened, and how it happened.

4 Q And based on that information, what does that
5 information do for you in your deciding how to treat?

6 A It gives you the basis -- the most important
7 part, really, of the process is finding out from the
8 patient or other sources what happened. That's really
9 the most important part of it because that gives you
10 the information that you need in order to determine
11 what diagnostic studies are going to be necessary, and
12 then what treatment approaches, and you know procedures
13 you may have to perform.

14 Q Were you working at the Hilton Head Hospital
15 on October 20th of 2013?

16 A Yes.

17 Q And were you in your current position there,
18 emergency medicine physician?

19 A Yes.

20 Q Tell us about what, when you're working in
21 the emergency department, what your duties entail?

22 A In the emergency department I'm the attending
23 physician and that requires me to see every patient
24 that presents to the emergency department and do a
25 medical screening evaluation to determine whether they

TESTIMONY OF DR. PATRICK SNOWMAN

1 have medical emergencies, and then to diagnose and
2 treat those conditions.

3 Q Thank you. And when you were working on
4 October 20th of 2013, did you have occasion to treat a
5 Mr. John Snodgrass?

6 A Yes.

7 Q And what information did you gather when
8 Mr. Snodgrass came in for treatment?

9 A The information I gathered was that he had,
10 just before getting to the hospital, had been assaulted
11 and hit in the face and head. And he also told me that
12 he had fallen.

13 Q What was Mr. Snodgrass's state when he
14 arrived at the hospital? What was his appearance?

15 A He -- well, he looked like he had been
16 significantly injured. He had lots of swelling and
17 bleeding around his face and head. But he was awake,
18 he was alert, he was conversant. He seemed to be
19 oriented to the situation and was able to provide a
20 history as to what happened.

21 Q Dr. Snowman, can you tell us about the
22 victim's injuries as you examined him that night?

23 A He had several injuries. The most obvious
24 were injuries to the face and head involving
25 significant bruising. There was still some bleeding

TESTIMONY OF DR. PATRICK SNOWMAN

1 from several wounds that he had sustained on the face
2 and head. He also had some abrasions on the hand and
3 the knees.

4 Q What was the severity of these injuries as
5 you determined?

6 A The injuries were severe and potentially life
7 threatening.

8 Q Dr. Snowman, I'm going to hand you --

9 MS. LEMPESIS: Permission to approach the
10 witness, Your Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. LEMPESIS:

13 Q Dr. Snowman, I'm going to hand you what's
14 been marked, marked for identification purposes as
15 State's Exhibits 2 through 8.

16 Dr. Snowman, if you can look at those
17 and tell me if you recognize those pictures.

18 A I do.

19 Q And are those pictures a fair and accurate
20 depiction of the victim and his injuries?

21 A I would say that they are. What they don't
22 capture is the way he looked on initial presentation.
23 These images really are after he's been attended to and
24 after I had repaired the several lacerations.

25 Q Thank you. And have these pictures been

TESTIMONY OF DR. PATRICK SNOWMAN

1 altered in any way?

2 A It does not appear to have been altered.

3 Q Thank you.

4 MS. LEMPESIS: Your Honor, at this point the
5 State would move to admit Exhibits 2 through 8.

6 THE COURT: Any objection to any of those?

7 MR. BAX: Other than any prior objections,
8 no.

9 THE COURT: Okay. Two through eight subject
10 to only prior objections.

11 *(Whereupon, State's Exhibit No(s). 2-8 marked*
12 *for identification and received in evidence.)*

13 MS. LEMPESIS: Thank you, Your Honor.

14 Permission to publish these pictures to the jury?

15 THE COURT: Yes, ma'am.

16 MS. LEMPESIS: Thank you, Your Honor.

17 BY MS. LEMPESIS:

18 Q Mr. Snowman, I'm going to put these up on the
19 screen, up on the wall. And if you can, please, tell
20 us -- just go through and tell us what we're looking
21 at.

22 A That's a whole body photograph of
23 Mr. Snodgrass in a hospital bed, and I believe that
24 would -- that is after he had been transferred to
25 Savannah Memorial Trauma Center.

TESTIMONY OF DR. PATRICK SNOWMAN

1 Q Thank you.

2 A That's a frontal view of Mr. Snodgrass, which
3 shows the injuries after they had been attended to and
4 repaired. It shows bruising on the left side of his
5 face, the upper face, the temple area, and the
6 forehead. It also shows some redness of the eye. And
7 those lacerations have already been cleaned and
8 sutured.

9 Q Dr. Snowman, I'm going to ask permission.

10 MS. LEMPESIS: Your Honor, may Dr. Snowman
11 step down and come over so he can actually point
12 to the picture?

13 THE COURT: Sure, he can.

14 Doctor, you can step in front of the
15 instrument. You'll be facing the jury and the
16 court reporter. Just keep your voice up and speak
17 in the microphone please. Thank you.

18 THE WITNESS: And I'm pointing this with my
19 finger, Your Honor?

20 THE COURT: Unless she gives you a pencil or
21 a pointer, something like that, whichever one.
22 You'll be right up here, Doctor. You come over
23 here, and then just point with your finger or a
24 pointer. It will come up on the screen in front
25 of the jury.

TESTIMONY OF DR. PATRICK SNOWMAN

1 THE WITNESS: Okay.

2 So, there are several lacerations that are
3 visible here. This is a laceration on the lower
4 cheek, on the middle cheek, and one slightly
5 higher up. There's also a laceration here on the
6 temporal area, here, on the lower forehead, and
7 then up here is an abrasion. And then you can see
8 in general, there's bruising around here. You can
9 see some yellowish discoloration, and then on the
10 corner of the eye, which is a little difficult to
11 see in that image, there is redness under the eye
12 which is called a subconjunctival hemorrhage.

13 BY MS. LEMPESIS:

14 Q Dr. Snowman, is there a certain way that you
15 would describe the lacerations, or would you just
16 describe them as lacerations?

17 A I would describe these lacerations as being
18 mostly linear, and that's how I described it in my
19 medical record. That's a linear laceration. These two
20 appear to be linear. That is linear, and then there's
21 what was a V-shape type laceration here. And linear
22 meaning they are straight and have fairly clean
23 margins.

24 Q Thank you. And move on to State's Exhibit 4.
25 Can you --

TESTIMONY OF DR. PATRICK SNOWMAN

1 A This is a profile view of Mr. Snodgrass,
2 showing the right side of his face, and that appears to
3 be an abrasion to the earlobe. This also appears to be
4 a contusion, and those are the main findings on that
5 photograph.

6 Q State's Exhibit 5.

7 A This is a left profile view of Mr. Snodgrass.
8 This, again, shows the same lacerations as before --
9 linear laceration, linear laceration. This is a --
10 almost an upside down V. This was a V. This shows a
11 very straight laceration here. There's also a curved
12 linear abrasion and superficial laceration up here.

13 You can see also bruising with yellowish
14 discoloration around the cheek. And there appears to
15 be some superficial abrasions down lower on the neck
16 area.

17 Q Dr. Snowman, this is State's Exhibit 6.

18 A This is Mr. Snodgrass. I believe it's his
19 left hand, and it shows these two linear type abrasions
20 on the dorsum or on the back of his left hand.

21 Q Thank you. State's Exhibit 7?

22 A This is Mr. Snodgrass's knee, and shows an
23 abrasion and also contusions, where there are
24 discolorations.

25 Q Thank you. And then, finally, Dr. Snowman,

TESTIMONY OF DR. PATRICK SNOWMAN

1 State's Exhibit 8.

2 A Okay. I believe that this is a picture of
3 Mr. Snodgrass's arm and shows that there are abrasions
4 here, here, and here, and there's some surrounding
5 redness and what appear to be contusions.

6 Q Thank you. Thank you, Dr. Snowman. You can
7 go back to your seat.

8 (Witness complies.)

9 Q Dr. Snowman, now that we've seen the pictures
10 of Mr. Snodgrass's injuries, you've told us about your
11 years of being a physician in the -- an emergency
12 medicine physician and treating various wounds and
13 injuries.

14 Can you tell the jury, in your opinion
15 what the cause of these injuries were to Mr. Snodgrass?

16 THE COURT: This is subject to objection of
17 defense counsel.

18 MR. BAX: Thank you, Your Honor.

19 A The injuries that are seen on those
20 photographs are indicative of blunt force trauma or
21 being struck with an object. The -- the pattern of the
22 injury showing lacerations that are particularly linear
23 lacerations, and then the one on the forehead that
24 shows the curved pattern are indicative of being struck
25 by an object.

TESTIMONY OF DR. PATRICK SNOWMAN

1 Q And so by object, is that -- in your opinion
2 could these injuries have been caused by a fist alone?

3 A A fist may have been involved in the
4 injuries. There are contusions to the face. But the
5 nature of having multiple lacerations, many of which
6 are linear, is not consistent with being struck by a
7 fist alone.

8 Q Thank you.

9 And so, Doctor, not to belabor the
10 point, but just to make it clear, are you able to say
11 to a reasonable degree of medical certainty what
12 Mr. Snodgrass's injuries are consent with?

13 A I can say with a reasonable degree of medical
14 certainty that Mr. Snodgrass's injuries were caused by
15 being struck by a blunt force object.

16 Q Thank you. After your treatment of
17 Mr. Snodgrass in the emergency department, what, after
18 your initial treatment, what was the final result of --
19 your final treatment of Mr. Snodgrass?

20 A As part of his diagnostic assessment in the
21 emergency department he underwent imaging studies,
22 specifically a CT scan of the face and brain. He had a
23 complex fracture of the side of the face, and he also
24 had bleeding within the brain cavity.

25 Because of the severity of the injuries

TESTIMONY OF DR. PATRICK SNOWMAN

1 and the fact that there was bleeding in the brain
2 cavity, that required transfer to a Level One center
3 where they have neurosurgical services.

4 So, after I initially assessed and
5 treated Mr. Snodgrass, I arranged for him to be
6 transported by an ambulance to Savannah Memorial Trauma
7 Center.

8 Q Going back to that bleeding on the brain, I
9 think is what you said, is that the sort of injury that
10 you usually see as a result of being hit with just a
11 fist?

12 A I do not recall ever seeing --

13 MR. BAX: Objection, Your Honor.

14 THE COURT: I'll sustain that objection.

15 That is a different matter earlier -- than what we
16 talked about earlier. Thank you. I'll sustain
17 that objection.

18 MS. LEMPESIS: Dr. Snowman, I have no further
19 questions for you at this time.

20 THE COURT: Mr. Bax, you can cross-examine.

21 MR. BAX: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. BAX:

24 Q Dr. Snowman, first of all, I want to cover a
25 couple of things with you. You've testified about your

TESTIMONY OF DR. PATRICK SNOWMAN

1 education and background and your specialization in
2 emergency medicine, and that you're board certified in
3 emergency medicine, correct?

4 A Correct.

5 Q Okay. But you've also testified, but I don't
6 necessarily think in front of the jury, that there is
7 no specialization that's recognized by the boards for
8 object identification based on a wound; is that
9 correct?

10 A There's no specialization in that area.

11 Q Okay. So, you can't go to an American board
12 of object identifiers in medicine and get a
13 certification from them. Is that correct? There is no
14 such body at this time?

15 A There is no such body at this time.

16 If I may, there are fellowships
17 available in forensic pathology and other specialties,
18 but nothing, to answer your question, no, there is not.

19 Q Well, and we're -- some of us may be familiar
20 with this. There is something called forensic
21 pathology, and that's something where doctors examine,
22 a lot of times, as you said, post mortem bodies,
23 specifically to elucidate in a criminal case about what
24 happened to somebody, correct?

25 A Yes.

TESTIMONY OF DR. PATRICK SNOWMAN

1 Q But you've testified and -- and let me ask
2 you for the edification of the jury -- you don't hold
3 any board certifications in forensic pathology; is that
4 correct?

5 A That's correct.

6 Q Okay. And you haven't done any residencies
7 or internships or training programs in forensic
8 pathology, correct?

9 A Correct.

10 Q Okay. Thank you.

11 Also, wanted to ask you, you've
12 testified about these wounds and your opinion as to the
13 fact that they could not have all been caused by a
14 fist.

15 But let me ask you this: Based on your
16 training and experience and what you observed and
17 treated in the case, can you identify when each one of
18 these injuries was received in relation to each other?
19 Can you tell which one got received first versus which
20 one last?

21 A I can only say that they were caused at the
22 same basic time based on the fact that they all have
23 the same acute appearance when I evaluated the patient.

24 Q And so when you say at the same basic time,
25 you're talking about within a span of some minutes; is

TESTIMONY OF DR. PATRICK SNOWMAN

1 that correct?

2 A Seconds to minutes, yes.

3 Q Seconds to minutes. And when you've
4 testified that the cause of these injuries, in your
5 opinion, was not made all by itself a fist, there's
6 other objects involved, can you say to any degree of
7 reasonable certainty that the other objects involved
8 weren't things that Mr. Snodgrass fell on, if he fell
9 on the ground, for example?

10 A I can say with a reasonable degree of medical
11 certainty that the pattern of injuries he had was not
12 caused from a fall to the ground. I have evaluated
13 many, many patients who, when they fall to the ground
14 and hit objects, they do not appear to be in the
15 pattern of Mr. Snodgrass's injuries.

16 Q Well, Dr. Snowman, how many pictures of the
17 crime scene, or in other words, where this occurred and
18 where Mr. Snodgrass woke up did you examine prior to
19 this opinion?

20 A None.

21 Q Okay. And how many did you -- how many
22 discussions did you have with law enforcement about the
23 objects that they found at the scene of the crime in
24 this case?

25 A None.

TESTIMONY OF DR. PATRICK SNOWMAN

1 MR. BAX: Thank you, Doctor.

2 No further, Your Honor.

3 THE COURT: Thank you. Redirect,

4 Ms. Lempesis?

5 MS. LEMPESIS: No further questions,

6 Your Honor.

7 THE COURT: Thank you.

8 Doctor, you can step down. Thank you so much
9 for coming. Have a safe ride back across the
10 island.

11 How long will your next witness take,

12 Ms. Lempesis?

13 MS. LEMPESIS: Your Honor, it probably would
14 take an hour.

15 THE COURT: Folks, the next witness they say
16 will take an hour. That means you'll be here
17 until 5:30.

18 We have three more witnesses left to testify.
19 You've been on my clock all day today, I'm going
20 to get on your clock.

21 Do you all want to go home now and come back
22 tomorrow and get those three witnesses in, or do
23 you want to work past 5:30 this afternoon and get
24 one of them out of the way?

25 We still have to come back tomorrow anyway

TESTIMONY OF DR. PATRICK SNOWMAN

1 because we've got two more witnesses after this
2 one.

3 How many of you want to stay here and work
4 past 5:30 today?

5 (Most raise hands.)

6 THE COURT: Way to go. Good job. Okay.

7 First of all, let me ask if these folks --
8 some of these folks may need a break. We haven't
9 had a break all afternoon since we got here, and
10 the most important person in the courtroom when it
11 comes to this is the court reporter.

12 Ma'am, you need a break?

13 THE REPORTER: I'm fine.

14 THE COURT: She's been here since forever.
15 So, we'll take a brief break, like ten minutes.
16 Step in the jury room and give you a chance to
17 refresh yourselves as well. We'll start back at
18 25 till the hour. Thank you.

19 (Recess.)

20 THE COURT: Okay. Bring us the jury, please.

21 You can ask Mr. Delaplane to come on in. Is
22 he the next witness?

23 THE BAILIFF: The jury is entering the
24 courtroom, Your Honor.

25 (The jury enters the courtroom)

TESTIMONY OF DR. PATRICK SNOWMAN

1 at 4:45 p.m.)

2 THE COURT: Folks, thank you so much for your
3 willingness to continue to work today, and work
4 with this next witness. We appreciate your
5 patience today.

6 Madam Solicitor, you can call your next
7 witness.

8 MS. LEMPESIS: Thank you, Your Honor. The
9 State calls Colton Delaplane.

10 THE COURT: Mr. Delaplane, come forward,
11 please, and be sworn.

12 Thereupon,

13 COLTON DELAPLANE

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 THE CLERK: Come on over here and have a
17 seat. State your full name and spell it, please.

18 THE WITNESS: My name is Colton Delaplane,
19 C-O-L-T-O-N, D-E-L-A-P-L-A-N-E.

20 DIRECT EXAMINATION

21 BY MS. LEMPESIS:

22 Q Colton, before we start I just want to remind
23 you to speak loud enough so that the jury can hear you.
24 Even though you have the microphone on, it's still hard
25 to hear sometimes. Okay?

TESTIMONY OF COLTON DELAPLANE

1 A Yes, ma'am.

2 Q Thank you. Colton, how old are you?

3 A Eighteen years old.

4 Q And where do you live?

5 A In Bluffton.

6 Q Where do you work?

7 A Papa John's in Bluffton.

8 Q And who do you live with in Bluffton?

9 A My father.

10 Q Do you go to school?

11 A Yes, ma'am.

12 Q Where do you go to school?

13 A Bluffton High School.

14 MR. BAX: Your Honor, if I may. I think he
15 needs to speak up. I can't hear him.

16 THE COURT: All right. Thank you.

17 Mr. Delaplane, please pull that microphone to
18 you as close as you can. Almost -- probably not
19 quite like Rod Stewart, but get as close to it as
20 you can. And then -- nobody in here knows who
21 Rod Stewart is but me. I just dated myself.
22 Thank you.

23 So pull it a little bit closer to you, don't
24 be afraid of it.

25 THE WITNESS: Yes, sir.

TESTIMONY OF COLTON DELAPLANE

1 THE COURT: Okay. Thank you.

2 BY MS. LEMPESIS:

3 Q So, again, louder, Colton.

4 You said you live in Bluffton with your
5 dad?

6 A Yes, ma'am.

7 Q And you go to Bluffton High School?

8 A Yes, ma'am.

9 Q What grade are you in?

10 A I'm a senior.

11 Q And where did you work in October of 2013?

12 Where were you working?

13 A At Northridge Cinema on Hilton Head Island.

14 Q And were you working on October 20th of 2013?

15 A Yes, ma'am.

16 Q What shift did you work that night?

17 A The night shift, 5:00.

18 Q Okay. And where did you work in the theater?

19 A Well, I did everything, kind of. I ran
20 concessions, the ticket booth, I ushered theaters. All
21 of it.

22 THE COURT: Colton, try to project your
23 voice, if you can, a little bit stronger. Some of
24 the jurors are having difficulty hearing you. And
25 so they really need to hear what you're saying.

TESTIMONY OF COLTON DELAPLANE

1 It's important. Okay?

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4 BY MS. LEMPESIS:

5 Q Colton, how long have you been working at
6 that movie theater?

7 A About six months.

8 Q And do you know Austin McQuarters?

9 A Yes, ma'am.

10 Q How do you know Austin McQuarters?

11 A From school.

12 Q From Bluffton High School?

13 A Yes, ma'am.

14 Q And how long had you known Austin McQuarters
15 in October of 2013, about how long had you known him?

16 A Maybe a couple months, half a year.

17 Q Okay. Colton, do you see Austin McQuarters
18 in the courtroom today?

19 A Yes, ma'am.

20 Q Okay. Can you point him out?

21 A (Pointing.)

22 Q Okay. And can you describe for the record
23 what he's wearing?

24 A A white T-shirt, polo.

25 MS. LEMPESIS: And let the record reflect,

TESTIMONY OF COLTON DELAPLANE

1 Your Honor, that Mr. Delaplane has identified
2 Austin McQuarters.

3 THE COURT: Yes, ma'am.

4 BY MS. LEMPESIS:

5 Q Colton, you said you'd known him for about a
6 half a year or so?

7 A Yes, ma'am.

8 Q Would you say that you were -- what was your
9 relationship really?

10 A Friends.

11 Q Okay. Were you just casual friends or pretty
12 good friends, hung out a lot, what?

13 A We hung out about every other day, I guess.

14 Q Okay. And, Colton, do you know a man named
15 John Snodgrass?

16 A Yes, ma'am.

17 Q And how do you know John Snodgrass?

18 A He was my manager at Northridge Cinema.

19 Q And was Mr. Snodgrass working that night of
20 October 20th of 2013?

21 A Yes, ma'am.

22 Q On that night, October 20th, what -- about
23 what time did you get off of work that night?

24 A About 10:30-ish.

25 Q Okay. Did you see Austin that night?

TESTIMONY OF COLTON DELAPLANE

1 A Yes, ma'am.

2 Q When did you see him?

3 A He came up to the ticket booth during my
4 shift. Probably about an hour and a half before I got
5 off.

6 Q Okay. And did he tell you what he was coming
7 up there for?

8 A He came up there because he wanted money from
9 the ticket booth, from the drawer.

10 Q Okay. Did you give him money from the ticket
11 booth?

12 A No, ma'am.

13 Q Was it normal for Austin to come by your
14 work?

15 A Yes, ma'am.

16 Q Do you remember seeing a girl named
17 Jackie Perez that night?

18 A Yes, ma'am.

19 Q Okay. And how do you know Jackie Perez?

20 A From Bluffton High School also.

21 Q Okay. All right. Colton, you said you left
22 work that night around 10:30 or so?

23 A Yes, ma'am.

24 Q Who -- who did you leave work with?

25 A My sister picked me up and my girlfriend at

TESTIMONY OF COLTON DELAPLANE

1 the time.

2 Q Okay. Did you see Austin again at any other
3 point?

4 A Yes, ma'am. I saw him in the parking lot
5 right before I left.

6 Q All right. Did you see -- was he with
7 anybody?

8 A He was with Jackie at the time.

9 Q Okay. Do you recall what car they were in,
10 or if they were in a car?

11 A I don't know. They were at my car in the
12 parking lot. They came up to our car.

13 Q Okay. And so -- okay. So, they came over to
14 your car. What -- did you talk to him again at that
15 point?

16 A Yeah. He asked how work was and everything,
17 and I told him I was going home.

18 MR. BAX: Your Honor.

19 THE COURT: I'm like you, Mr. Bax. I
20 couldn't hear, and I'm closer than you are. Of
21 course, I'm deafer than you are, but --

22 Mr. Delaplane, I can't emphasize enough. I
23 realize that you're soft spoken, but what you say
24 here is important, and it needs to be heard by
25 everybody here, the jury as well as the lawyers.

TESTIMONY OF COLTON DELAPLANE

1 And so, please, try to keep your voice up, and
2 just assert yourself. Instead of giving your
3 inside voice, as we tell our grandchildren, use
4 the playground voice. It will be fine here in the
5 courtroom.

6 BY MS. LEMPESIS:

7 Q Okay. All right. You said you talked to
8 Austin again. What did you talk to Austin about in the
9 parking lot?

10 A Just about how work was. I told him I was
11 going home, to my girlfriend's house.

12 Q Okay. Did you tell him anything else?

13 A He asked who the manager was, and I told him
14 who John was.

15 Q Okay. Did you point who the manager was out
16 to him?

17 A Not in the parking lot, but I had earlier
18 that night.

19 Q Okay. Earlier. So, earlier when he came to
20 the box office?

21 A Yeah.

22 Q Or when he came up to the theater, you
23 pointed your manager out to him?

24 MR. BAX: Objection. Leading, Your Honor.

25 THE COURT: No, he said earlier. He said, I

TESTIMONY OF COLTON DELAPLANE

1 pointed him out earlier. I think she was
2 summarizing this time.

3 MS. LEMPESIS: Yes, Your Honor. I'll
4 rephrase anyway.

5 BY MS. LEMPESIS:

6 Q But when did you point him out?

7 A When he came up to the ticket booth.

8 Q Okay. Did Austin ask anything specific about
9 your manager?

10 A No. He just asked who he was.

11 Q What happened after you talked to Austin in
12 the parking lot when you were getting off work?

13 A I went home.

14 Q All right. Talk louder.

15 A I went home.

16 Q Who did you go home with?

17 A My sister and my girlfriend.

18 Q What -- whose home did you go to?

19 A My girlfriend's house.

20 Q And did you see or talk to Austin again at
21 any point that night?

22 A Yes, ma'am.

23 Q Okay. Where did you see or talk to Austin
24 again?

25 A About three hours later, four hours later, he

TESTIMONY OF COLTON DELAPLANE

1 came. Called me and told me to meet him down the
2 street from my girlfriend's house.

3 Q Did he tell you why to come meet him?

4 A He just told me to come meet him.

5 Q Okay. And did you go out to meet him?

6 A Yes, ma'am.

7 Q And do you remember about what time this was?

8 A It was late. It was probably, you know, four
9 hours after I got off work.

10 Q Okay. When you met Austin McQuarters out by
11 your girlfriend's house, what -- what did y'all talk
12 about?

13 A He handed me money and said, Merry Christmas.
14 And I asked what it was from, and he said I ran into
15 money at your work. Don't worry about it.

16 Q How much money did he give you?

17 A \$250.

18 Q Okay. And after he gave you money and said
19 Merry Christmas, what did you do after that?

20 A I left it at that and went back in.

21 Q Went back in where?

22 A To my girlfriend's house.

23 Q What did you do -- at any point, did you find
24 out that your manager had been robbed?

25 A The next day.

TESTIMONY OF COLTON DELAPLANE

1 Q Okay. The next day you found out?

2 A Yes, ma'am.

3 Q How did you find out?

4 A In the newspaper.

5 Q And at any point after October 20th, did you
6 talk to Austin again about that night?

7 A Yes, ma'am, the next day.

8 Q Okay. And what did Austin tell you the next
9 day?

10 A He had told me that he had robbed my manager
11 for money that he came out of the store with.

12 Q Okay. Did he tell you about anything else
13 regarding what he'd done?

14 A He said he used brass knuckles and --

15 THE COURT: He said what? I'm sorry.

16 A He used brass knuckles and beat him up pretty
17 much.

18 Q Okay. Colton, did you tell anyone ever that
19 he told you this?

20 A No, ma'am.

21 Q Did you call the police right away?

22 A No, ma'am.

23 Q Why didn't you call the police?

24 A I was just afraid. I didn't know what to do.

25 Q Do you remember being interviewed by

TESTIMONY OF COLTON DELAPLANE

1 Investigator Seifert at the sheriff's office?

2 A Yes, ma'am. Yes, ma'am.

3 Q How many times did you talk to

4 Investigator Seifert?

5 A Four.

6 Q Okay. When you first met with him, do you

7 remember where you were?

8 A I was at the high school.

9 Q And do you remember what you told him then?

10 Or let me rephrase that, Colton.

11 Did you tell Investigator Seifert about
12 what Austin had told you on that first time you met him
13 at Bluffton High School?

14 A No, ma'am.

15 MR. BAX: Objection.

16 THE COURT: I'll allow it. It doesn't
17 necessarily suggest the answer.

18 BY MS. LEMPESIS:

19 Q So you didn't tell him the first time you met
20 with him?

21 A No, ma'am.

22 Q Did you meet with him again after that?

23 A Yes, ma'am.

24 Q Do you remember where you met with him?

25 A I was taken to the sheriff's office on Hilton

TESTIMONY OF COLTON DELAPLANE

1 Head Island after that, that same day.

2 Q Okay. And at that point, did you tell
3 Investigator Seifert about everything Austin had told
4 you?

5 A Yes, ma'am.

6 Q Do you remember Austin meeting with
7 Investigator Seifert at Bluffton High School on a
8 different day?

9 A What was the question?

10 Q Do you remember, did you meet with
11 Investigator Seifert at your high school aside from
12 that first time you said that you met with him?

13 A Yes, ma'am.

14 Q Okay. Was -- who was there with you when you
15 met with him?

16 A Nobody. My dad had dropped me off at school
17 and I met with him.

18 Q Did your dad know that you were meeting with
19 the officer?

20 A Probably. He just dropped me off at school.

21 Q Okay. And what did you eventually -- now, at
22 this point you said you met with Investigator Seifert a
23 couple times.

24 At what point did you tell
25 Investigator Seifert what Austin had told you, what had

TESTIMONY OF COLTON DELAPLANE

1 happened?

2 A That morning in the car.

3 Q Say that again?

4 A That morning. I had met with him before
5 school.

6 Q Okay. And you think it was in his car, is
7 that what you said?

8 A Yes, ma'am.

9 Q Okay. In his patrol car?

10 A Yes, ma'am.

11 Q And was it at that point that you told the
12 truth?

13 A Yes, ma'am.

14 Q Colton, why did you not come on out and tell
15 the truth right when Investigator Seifert met with you?

16 A I just felt like I was stuck in the middle of
17 it. I didn't know what to do because --

18 Q On that night when Austin came to the
19 theater, did you tell him -- you said -- backtracking a
20 little bit.

21 You said that he asked you for money
22 from the box office?

23 A Yes, ma'am.

24 Q Was it then that you told him about
25 Mr. Snodgrass?

TESTIMONY OF COLTON DELAPLANE

1 A That was when I pointed out who John was,
2 yes, ma'am.

3 Q Okay. What did you say when you pointed him
4 out?

5 A I said, if you want money, that's the
6 manager. He's the one who's going to have money.

7 Q Okay.

8 MS. LEMPESIS: I beg the Court's indulgence.

9 THE COURT: Okay.

10 MS. LEMPESIS: Colton, I don't have any other
11 questions for you right now. Please answer any
12 other questions that Mr. Bax has.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Mr. Bax, you can cross-examine.

15 MR. BAX: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. BAX:

18 Q Mr. Delaplane, you testified that you met
19 with Investigator Seifert on approximately three
20 occasions; is that right?

21 A Yes, sir.

22 Q For the first time that you met with
23 Investigator Seifert, that wasn't until at least a
24 couple weeks after that night; isn't that correct?

25 A I believe it was about a week.

TESTIMONY OF COLTON DELAPLANE

1 Q Okay. Well, when did this -- what night are
2 we talking about where -- where you had these
3 conversations with Mr. McQuarters allegedly? What
4 night was that? What was the date?

5 A I'm not sure.

6 Q Well, you just testified to it on direct.
7 What was the date that you had these conversations -- I
8 mean, that's very important. That's what we're here
9 for. What was the date that you had these
10 conversations with Mr. McQuarters?

11 A October something.

12 Q October something.

13 A I don't remember the date.

14 Q What year was it?

15 A 2013.

16 Q Okay. You got that, right?

17 A Got that.

18 Q Okay. So, if you don't know exactly what
19 date this alleged conversation with my client happened,
20 how can you know that your conversation with
21 Investigator Seifert was only a week later?

22 A Because that seemed right to me. Sounds
23 right.

24 Q It seems right to you? Okay.

25 A I don't know for sure.

TESTIMONY OF COLTON DELAPLANE

1 Q If I were to tell you that this is alleged to
2 have happened on October 20th, and you didn't speak
3 with Investigator Seifert, I think, until the fourth or
4 fifth of November, would that sound right to you?

5 A Yes, sir.

6 Q Okay. How much time is that?

7 A About two weeks.

8 Q Okay. Now, I'm glad we straightened that
9 out.

10 So, there was approximately two weeks
11 between when this was alleged to have happened and when
12 you talked to Investigator Seifert the first time,
13 correct?

14 A Yes, sir.

15 Q Okay. In that time, when did you call the
16 police?

17 A I didn't.

18 Q Didn't. Okay.

19 You've also testified that you know
20 Jacquelyn Perez, correct?

21 A Yes, sir.

22 Q About how many times did you talk with
23 Ms. Perez in that two weeks before Investigator Seifert
24 talked to you?

25 A I didn't.

TESTIMONY OF COLTON DELAPLANE

1 Q You didn't at all?

2 A No, sir.

3 Q Okay. Now, this is October, correct?

4 A Yes, sir.

5 Q And you were still going to Bluffton High
6 School at the time?

7 A Yes, sir.

8 Q And Ms. Perez attended that high school as
9 well at that time, correct?

10 A I believe so.

11 Q Now, you've also testified on direct that
12 Mr. McQuarters, you allege he came up to you in the
13 ticket booth and talked to you, correct?

14 A Yes, sir.

15 Q Isn't it true that Ms. Perez came up to you
16 in the ticket booth and talked to you as well?

17 A Yes, sir. She was with Austin.

18 Q So, she came up at the same time as Austin?

19 A Yes, sir. She was with him.

20 Q Okay. So, they didn't come up at separate
21 times?

22 A No.

23 Q So, it wasn't Mr. McQuarters coming up, then
24 leaving, and then Ms. Perez coming up?

25 A No, sir.

TESTIMONY OF COLTON DELAPLANE

1 Q So, she would be incorrect about that?

2 A I don't know.

3 Q Okay. And when the two of them came up to
4 the booth, according to your testimony, at what point
5 did Ms. Perez ask you, Where's the bread?

6 A She said I owed her gas money at the time
7 because she gave me a ride to work like the week
8 before. So, she asked for gas money. Austin asked for
9 money out of the drawer.

10 Q So your testimony is she didn't ask you
11 where's the bread?

12 A She may have said that.

13 Q Okay. Well, that's my question. At what
14 point did she ask you, Where's the bread?

15 A At the ticket booth.

16 Q Okay. And what did you understand that to
17 mean?

18 A I'm sorry?

19 Q What did you understand that to mean,
20 Mr. Delaplane?

21 A What's your question? I don't understand.

22 Q When she asked you, Where's the bread, what
23 did you understand that to mean?

24 A Oh, her gas money.

25 Q Her gas money?

TESTIMONY OF COLTON DELAPLANE

1 A Yes, sir.

2 Q No other thing she could be asking about.

3 A Not that I was aware of.

4 Q Okay. Now -- now, that kind of goes to the
5 issue here.

6 You've testified that you did not have
7 any contact with Ms. Perez between the time of this
8 alleged incident and the time that Officer Seifert came
9 and started talking to you, correct?

10 A Yes, sir.

11 Q Okay. But you've testified in a prior
12 proceeding about this matter under oath, correct?

13 A Yes, sir.

14 Q Okay. And you've been requested to be here
15 by the prosecution to come testify here today, correct?

16 A Yes, sir.

17 Q And you were instructed that you were under
18 sequestration, you weren't to talk to any other
19 witnesses; is that correct?

20 A Yes, sir.

21 Q Isn't it true, Mr. Delaplane, that despite
22 that order, you talked to Ms. Perez in the parking lot
23 about an hour ago today, correct?

24 A Yes, sir.

25 Q And you talked about her testimony that she

TESTIMONY OF COLTON DELAPLANE

1 gave in this trial today, correct?

2 A Not specifically about her testimony, but I
3 asked how it went.

4 Q Okay. You asked how it went. And you said
5 she had some comments about me to make; is that
6 correct?

7 A Yes, sir. She said you were tough.

8 Q I'm sure tough was the word that was used.
9 So, you've had contact with Ms. Perez
10 before you come in and testify here today, correct?

11 A Yes, sir.

12 Q Okay. Now, I want to move on to these
13 conversation that you've had -- or that you did have
14 with Investigator Seifert.

15 Obviously, you've testified that you did
16 not give him the truth the first time you talked to
17 him; is that right?

18 A Yes, sir.

19 Q And you've testified that you were scared; is
20 that right?

21 A Yes, sir.

22 Q Eventually, on, I believe it was, November
23 6th in the morning, around seven something in the
24 morning, before school, you talked to Investigator
25 Seifert in his patrol car, whatever car is issued by

TESTIMONY OF COLTON DELAPLANE

1 law enforcement, correct?

2 A Yes, sir.

3 Q Okay. And at that time, you finally revealed
4 to him that you were giving this information, according
5 to you, to Mr. McQuarters and Ms. Perez; is that right?

6 A What information?

7 Q About who would have the money, being
8 Mr. Snodgrass?

9 A Yes, sir.

10 Q But let me ask you this: Have you been
11 charged with anything as a result of this matter?

12 A No, sir.

13 Q Have you been charged with armed robbery?

14 A No, sir.

15 Q Assault?

16 A No, sir.

17 Q Conspiracy?

18 A No, sir.

19 Q But yet you told Officer Seifert that you
20 were the one that gave the information to allegedly
21 Mr. McQuarters that Mr. Snodgrass would have any money
22 if he wanted it; is that correct?

23 A I said, he's the manager, he'd have the money
24 if someone would have it.

25 Q Well, you testified earlier on direct, if you

TESTIMONY OF COLTON DELAPLANE

1 want money, Mr. Snodgrass is the one that would have
2 it; is that correct? That is what you said. Those are
3 your words here today.

4 A I don't -- I'm not sure.

5 Q You're not sure.

6 Now, additionally, as I said, you
7 haven't been charged with anything in relationship to
8 this event, correct?

9 A Yes, sir.

10 Q But you've testified that you told
11 Investigator Seifert, and you've testified here today,
12 that approximately three to four hours later you got a
13 call from my client to meet him outside of your
14 girlfriend's house?

15 A Yes, sir.

16 Q And that you did that, and you went outside
17 your girlfriend's house?

18 A Yes, sir.

19 Q Okay. Approximately how long did you wait
20 outside the house before you say that you saw
21 Mr. McQuarters?

22 A I walked down the road and met him.

23 Q You walked down the road and met him?

24 A Yes, sir.

25 Q Now, you testified earlier that you got off

TESTIMONY OF COLTON DELAPLANE

1 of work around 10:30; is that correct?

2 A Yes, sir.

3 Q Okay. So -- and I believe October 20th, that
4 was a school night, right?

5 A Yes, sir.

6 Q It was. Okay.

7 So, if you got off work at 10:30,
8 approximately three to four hours later would have been
9 in the a.m. hours of the morning, correct?

10 A Yes, sir.

11 Q So, approximately 2:30, 1:30 or 2:30; is that
12 right?

13 A Yes, sir.

14 Q So, at 1:30 or 2:30 you were still awake at
15 your girlfriend's house?

16 A Yes, sir.

17 Q And when you talked with Mr. McQuarters, you
18 were willing to go outside at 1:30, 2:30 in the morning
19 on October 21st and walk down the road?

20 A Yes, sir.

21 Q And your testimony is, without you asking or
22 knowing anything about it, that he gave you \$250?

23 A Yes, sir.

24 Q And said, Merry Christmas?

25 A Yes, sir.

TESTIMONY OF COLTON DELAPLANE

1 Q And you're asking this jury to believe that
2 you didn't have anything to do with any robbery, yet
3 you received money, you gave information that led to
4 it, and you're the only one out of any of these people
5 who worked at the theater; is that correct?

6 A Yes, sir.

7 Q Additionally, as I said before, you met with
8 Investigator Seifert. Investigator Seifert indicates
9 in his report that you confessed to him that you set up
10 the entire robbery and that you were sorry; is that
11 correct?

12 A No, sir.

13 Q Okay. Why not?

14 A I don't believe I set up the robbery at all.

15 Q You don't believe that you set up the robbery
16 at all. So, where Investigator Seifert indicates that
17 you confessed to that, that is incorrect?

18 A I would say so.

19 Q Okay. And that where he indicates that
20 Delaplane stated, that is why McQuarters gave him \$250
21 cash after the robbery assault; is that correct?

22 A What was the question?

23 Q Well, Investigator Seifert indicates that you
24 told him that you confessed to setting this up, and
25 that you said, that's why he gave me \$250 after the

TESTIMONY OF COLTON DELAPLANE

1 fact, as payment for setting up the robbery; is that
2 correct?

3 A No, sir.

4 Q That's not correct?

5 A No, sir.

6 MR. BAX: Moment's indulgence, Your Honor.

7 THE COURT: Yes, sir.

8 MR. BAX: Thank you.

9 BY MR. BAX:

10 Q One final follow-up, Mr. Delaplane. I just
11 want to make sure I'm clear.

12 It's your testimony here today that
13 Investigator Seifert is saying that you set up this
14 robbery and that's why you got the \$250, that is wrong?

15 A Yes, sir. I did not set up the robbery.

16 Q And you didn't receive the \$250 for your role
17 in the robbery?

18 A No, sir.

19 Q And you haven't been charged with anything in
20 relationship to this case?

21 A No, sir.

22 Q One final question for you, Mr. Delaplane:
23 You understand that you're under oath?

24 A Yes, sir.

25 Q And everything you've testified in front of

TESTIMONY OF COLTON DELAPLANE

1 this jury is the truth; is that correct?

2 A Yes, sir.

3 MR. BAX: No further questions, Your Honor.

4 THE COURT: Thank you.

5 Redirect, Ms. Lempesis?

6 REDIRECT EXAMINATION

7 BY MS. LEMPESIS:

8 Q Just briefly, Your Honor.

9 Colton, do you remember when you met
10 with Investigator Seifert that final time in the car at
11 school. Do you remember if he recorded that interview?

12 A Yes, ma'am, he did.

13 Q And do you remember telling him that you had
14 told Austin McQuarters who was going to have the money
15 that night?

16 A Yes, ma'am.

17 Q So, basically, Colton, did the information
18 you gave Austin McQuarters that night, did that
19 information that you gave him help him that night?

20 A Yes, ma'am. But it wasn't intended to set up
21 a robbery.

22 Q All right. And you got \$250 from
23 Austin McQuarters?

24 A Yes, ma'am.

25 Q And to date you have not been charged with

TESTIMONY OF COLTON DELAPLANE

1 anything in relation to this?

2 A No, ma'am.

3 MS. LEMPESIS: I have nothing further.

4 THE COURT: Any follow-up, Mr. Bax?

5 MR. BAX: Your Honor, brief follow-up.

6 THE COURT: Yes, sir.

7 RE-CROSS EXAMINATION

8 BY MR. BAX:

9 Q Two questions. Number one: Mr. Delaplane,
10 what's today's date?

11 A I'm not even sure right now.

12 Q Okay. Well, let's go with the year. What is
13 the year?

14 A 2015.

15 Q Okay. And is that two more years than 2013?

16 A Yes, sir.

17 Q Okay. So, to date, it's been two years since
18 the incident; is that correct? Or close to it?

19 A Yes, sir.

20 Q And finally, do you recall, as I said before,
21 you testified in a prior proceeding under oath about
22 this incident, correct?

23 A Yes, sir.

24 Q Do you recall being asked if
25 Investigator Seifert recorded that interview in his

TESTIMONY OF COLTON DELAPLANE

1 patrol car during that proceeding?

2 A I'm not sure.

3 Q And do you recall responding, No, you didn't
4 know he recorded anything?

5 A I'm not sure.

6 Q Not sure. No further questions, Your Honor.

7 THE COURT: Thank you.

8 Ms. Lempesis, you get the last word.

9 MS. LEMPESIS: Nothing further, Your Honor.

10 THE COURT: Thank you. Mr. Delaplane, you
11 can step down. Thank you.

12 MS. LEMPESIS: Your Honor, we ask
13 Mr. Delaplane be excused.

14 THE COURT: Without objection, Mr. Bax, can
15 he be excused?

16 MR. BAX: No. No objection, Your Honor.

17 THE COURT: Thank you.

18 Mr. Delaplane, you're free to go. Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: Ladies and gentlemen, thank you
21 for, as I say, working overtime today. I'm
22 certain that your check will reflect the overtime
23 pay.

24 The State still has two witnesses left to
25 testify, and then the defense has the opportunity

TESTIMONY OF COLTON DELAPLANE

1 to put in evidence and testimony. None of us know
2 how long those witnesses are going to take. But I
3 can tell you that we made significant progress
4 today in spite of the delays that we have
5 necessarily had to have. And we could finish --
6 certainly we should finish the testimony tomorrow.
7 Perhaps we'll finish the trial itself. That's --
8 at least we'll get it in your hands by then, then
9 you can take as long as you want to.

10 I just want to let you know what it looks
11 like from our perspective unless we have some
12 unforeseen delays and the lights go out again
13 tomorrow. We should be able to finish.

14 Have a safe trip home, ladies and gentlemen.
15 Enjoy your evening and I'll see you tomorrow at
16 9:30. Be back in the jury room at 9:30.

17 (Jury exits the courtroom at
18 5:18 p.m.)

19 THE BAILIFF: The jury is clear, Your Honor.

20 THE COURT: Thank you.

21 Ms. Lempesis, anything further from the State
22 before we break for the day?

23 MS. LEMPESIS: No, Your Honor.

24 THE COURT: All right. Mr. Bax, it occurred
25 to me in reflection that I may have cut you off

TESTIMONY OF COLTON DELAPLANE

1 too short on your argument against Dr. Snowman's
2 testimony. It embodied what you argued before,
3 before Judge Keesley. Of course, it's part of the
4 record and that's still there.

5 I realize, however, that I think there's some
6 additional facts were brought to bear, perhaps
7 before Dr. Snowman this time that were not in last
8 time's transcript. You'll be the better judge of
9 that than I am.

10 I don't want to preclude you from arguing any
11 additional grounds that you might wish to, or any
12 different argument that you might wish to before
13 this regular jury. I'll give you some time
14 tomorrow morning or before the record is closed,
15 if you wish to do that.

16 MR. BAX: Thank you, Your Honor.

17 THE COURT: Anything further on defense
18 before we break then?

19 MR. BAX: No, sir.

20 THE COURT: 9:30 tomorrow. Thank you.

21 (Recess for the day.)
22
23
24
25

TESTIMONY OF COLTON DELAPLANE

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8

DATED this 10th day of February, 2016.

9

10

11

/s/ Mona L. Manley

12

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

13

14

15

16

17

18

19

20

21

22

23

24

25

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

3

4 STATE OF SOUTH CAROLINA,

5 Plaintiff,

6 vs.

CASE NO. 2013GS0701844; 1845

7 AUSTIN LEWIS McQUARTERS,

8 Defendant.

9 _____ /

10

11 * * *

12

13 TRIAL TRANSCRIPT

14 VOLUME 5

15

16 DATE: July 22, 2015

17

18 PLACE: Beaufort County Courthouse
19 Beaufort, South Carolina

20

21 REPORTED BY: Mona Manley, Court Reporter

22

23 BEFORE: Honorable Thomas W. Cooper, Jr.

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING THE STATE:

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

REPRESENTING THE DEFENDANT:

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

* * *

INDEX PAGE

1	INDEX	
2		
3	WITNESS:	PAGE:
4		
5		
6	DOUG SEIFERT	
7	Direct Examination The Clerk	351
8	Cross Examination By Mr. Bax	378 EUFPL I
9		
10	PAOLA LABRADOR	
11	Direct Examination By Ms. Lempesis	394
12	Cross Examination By Mr. Bax	397
13		
14	AUSTIN MCQUARTERS	
15	10 Miranda	369 369
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

MOTION RULINGS

1 PROCEEDINGS

2

3 *****Audio/Yvonne started here. 23 02 29

4 THE COURT: Thank you, folks. Please be
5 seated. Good morning.

6 Is the State ready for the jury,
7 Ms. Lempesis?

8 MS. LEMPESIS: We are, Your Honor.

9 THE COURT: Mr. Bax, is the defense ready for
10 the jury?

11 MR. BAX: The defense is ready to proceed,
12 Your Honor. There's a matter of just some kind of
13 housekeeping while we don't have the jury in here.
14 There's an issue that's arisen about the statement
15 of my client.

16 In the last trial, Your Honor, the statement
17 of my client came in through the testimony of
18 Investigator Seifert. There is an audio/video
19 recording of the interview at the Sheriff's
20 Department, but there were portions that couldn't
21 be properly redacted and so they went with that.

22 My understanding from Ms. Lempesis is that
23 they kind of have somewhat of the same issue.
24 It's not where they can pull it out and create a
25 version that can go back to the jury.

7-22-2015YP

1 And, in fact, my understanding is, is that
2 during the portion that we've agreed to redact
3 that's kind of in the middle, they would -- or
4 they're proposing to mute that during that portion
5 of time.

6 I think the defense is going to take the
7 position that in this situation it would be better
8 to have Officer Seifert just testify, as he did
9 last time, to what my client stated and avoid
10 those subjects.

11 The reason being is that the jury is watching
12 a video, A, that they're not going to be able to
13 take back with them. They would have to come back
14 to the courtroom and watch again. And, B, they're
15 going to see a point where it gets muted, and so
16 they're going to see mouths moving, they're going
17 to see interaction but no words, and obviously,
18 Your Honor, we're not really going to be able to
19 give them an explanation for that.

20 THE COURT: Right.

21 MR. BAX: Of any satisfaction. I think that
22 raises new issues, creates in the minds of the
23 jury an area to discuss that they really shouldn't
24 have.

25 And even if they don't talk about it out

7-22-2015YP

1 loud, there's going to be -- they're going to be
2 thinking what are we -- what are we not hearing?
3 What are we missing? What are we not getting?

4 And we, as the attorneys, and Your Honor, we
5 really can't fill that blank for them, but we're
6 going to create that blank by letting them watch
7 it like that.

8 THE COURT: How did you handle it in the last
9 trial, Mr. Bax?

10 MR. BAX: In the last trial, Your Honor,
11 because of the fact that it couldn't be redacted
12 in a way that -- Judge Keesley wanted it to be in
13 a way that it could go back to the jury, so they
14 wouldn't have to come back out in the courtroom.

15 That couldn't be done, and so we agreed to
16 just have the Solicitor ask Investigator Seifert
17 about what statements my client made on the stand,
18 which he did.

19 THE COURT: Right.

20 MR. BAX: And that's how we did it.

21 I -- that is still an option for us here
22 today, and I don't have an objection to that. We
23 didn't have an issue with that with Doug's
24 testimony last time. That wasn't an area of
25 contention.

7-22-2015YP

1 Officer Seifert knows not to talk about the
2 dope boy statement and just give the substance of
3 his statement that -- really that they wanted in.

4 THE COURT: Thank you.

5 Ms. Lempesis.

6 MS. LEMPESIS: Thank Your Honor.

7 The video that we have, that we would enter
8 as evidence is already redacted. There are
9 portions of the interview with the defendant where
10 he talks about -- where he talks about smoking
11 marijuana with Colton. So, those parts have been
12 taken out. Those were taken out prior to the
13 previous trial.

14 The only portion that's left in here that
15 would be objectable, and that we've agreed to keep
16 out is the defendant's statement that, If I was
17 going to rob someone, I would rob a dope dealer,
18 not a -- I would rob a dope dealer, basically.

19 We have it marked exactly where that
20 statement occurs, and my plan is to stop and --
21 either stop and start or just mute the video.
22 It's about 15 seconds of muting that would be
23 required. And then to put the volume back on so
24 that the jury can hear the rest of the defendant's
25 statement.

7-22-2015YP

1 The reason that it wasn't done this way last
2 time is because Judge Keesley made it very clear
3 that he never allows discs to go back to the jury
4 unless they can be -- the jury can listen to them
5 back in the jury room.

6 I've also, of course, appeared in front of
7 judges that have allowed me to stop and start
8 videos. One example is Hope Haven of the Low
9 Country is a local -- our local place where they
10 do forensic interviews. That software, you can't
11 even -- you cannot redact that software. You
12 cannot make any redactions. So, the only option
13 is to stop and start.

14 I've done that multiple times in trial. I
15 think that's a perfectly acceptable way. In fact,
16 if the jury were to listen -- wanted to listen to
17 the defendant's interview, we can bring them out
18 and we can do it again in the courtroom. And
19 that's what we would suggest to be done if, in
20 fact, it came up during deliberations that they
21 wanted to hear it again.

22 THE COURT: Can you just fast forward and do
23 it?

24 MS. LEMPESIS: I can, Your Honor. Because
25 it's a short segment and it's just -- it might be

7-22-2015YP

1 easier just to mute over it, but we can also fast
2 forward.

3 THE COURT: All right. I take it there are
4 other redactions that have been made already.

5 MS. LEMPESIS: There are, Your Honor. And
6 that is something I did want to bring up. It's
7 clear that it skips over a portion.

8 You know, you'll see Investigator Seifert
9 asking him one thing, and then it's clipped to the
10 next part, where they're moved on to a different
11 topic. So, I think an instruction to the jury
12 would be necessary anyway to tell them there are
13 portions of the interview that have been cut out
14 that are not, you know, important for y'all to
15 hear, and so they've been redacted.

16 I think that's a perfectly acceptable way to
17 address the issue.

18 THE COURT: All right. And certainly, if
19 there have been redactions, I can explain those, I
20 think.

21 But Mr. Bax has a good point. If they're
22 sitting there watching something, it's a different
23 thing when you say there have been redactions.
24 It's slightly different when they're looking
25 there, and all of a sudden it's like the sound

7-22-2015YP

1 goes out on your TV, and you say, What in the
2 world are they talking about?

3 MS. LEMPESIS: Well, I can stop it and start
4 it again, fast forward and start over.

5 THE COURT: Fast forward it.

6 MS. LEMPESIS: Yes, sir.

7 THE COURT: Fast forward it, let it in like
8 it is.

9 MS. LEMPESIS: Yes, sir.

10 THE COURT: Okay. If you can't then we'll
11 have to do something else.

12 MS. LEMPESIS: Yes, sir.

13 THE COURT: All right.

14 MR. BAX: Your Honor, it would be my
15 position -- I would request that we not do a
16 curative instruction.

17 THE COURT: Okay.

18 MR. BAX: I think my position would be on
19 that, that a curative instruction on it would kind
20 of bring more highlight to it than is necessary.

21 THE COURT: If you don't want it, I won't
22 give it.

23 MR. BAX: I don't think it's going to be
24 necessary to do it. If they're going to fast
25 forward past it, and we understand Your Honor's

7-22-2015YP

1 ruling and my position is clear on the record, I'd
2 rather not have the jury instruction.

3 THE COURT: All right.

4 MS. LEMPESIS: Your Honor, may I have just
5 one minute to confer that we can, in fact, do it
6 clean that way? I apologize, and we practiced
7 both ways, but I don't want it to become an issue.

8 THE COURT: Okay. I understand.

9 (Pause.)

10 MS. LEMPESIS: Your Honor, we can do that.
11 What we're going to do is pause it, fast forward
12 it, and then start it again.

13 THE COURT: That's fine.

14 MS. LEMPESIS: Thank you, Your Honor.

15 (Pause.)

16 THE COURT: I understand he had
17 some technical -- there were some technical
18 difficulties with the sound system yesterday. I
19 was delighted to hear that this morning, when Rick
20 told me about, because I thought for the life of
21 me I was going completely deaf when Mr. Delaplane
22 was talking yesterday. I couldn't hear when I was
23 six feet from him.

24 MS. LEMPESIS: We're ready.

25 THE BAILIFF: The jury's entering the

7-22-2015YP

1 courtroom, Your Honor.

2 THE COURT: Thank you.

3 Good morning, ladies and gentlemen. Thank
4 you for your prompt return this morning. We were
5 ready at 9:30, but we had to make some technical
6 adjustments.

7 We learned last night, or yesterday
8 afternoon, that the microphone systems in here are
9 not working. I was frankly glad to hear it. I
10 thought that I was going even deafer than I
11 already was, when the young man was testifying
12 yesterday was so hard to hear. The microphone was
13 not working.

14 And I also learned that my microphone was not
15 working either, which means I have been dutifully
16 turning this button on and off, thinking I was
17 helping with audio system, but it was -- it's like
18 a Fisher Price toy. It's not hooked up to
19 anything. So, we had to make some adjustments to
20 deal with that this morning, and that work is
21 still in progress. And that accounted for
22 something rather lengthy.

23 But now we're ready to go.

24 As the State is continuing evidence and
25 testimony in support of the charges.

7-22-2015YP

1 Ms. Lempesis.

2 MS. LEMPESIS: Thank you, Your Honor. The
3 State calls Doug Seifert, Investigator Doug
4 Seifert.

5 THE COURT: Investigator Seifert, come
6 forward, please, be sworn.

7 Thereupon,

8 DOUG SEIFERT

9 was called as a witness, having been first duly sworn,
10 was examined and testified as follows:

11 WITNESS: Yes, sir.

12 DIRECT EXAMINATION

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

15 THE WITNESS: First name Doug, D-O-U-G. Last
16 name Seifert. It's S-E-I-F-E-R-T.

17 BY MS. LEMPESIS:

18 Q Good morning, Investigator Seifert.

19 A Good morning.

20 Q Investigator Seifert, who do you work for?

21 A I work for Beaufort County Sheriff's Office.

22 Q And how long have you worked for the
23 sheriff's office?

24 A Approximately nine years.

25 Q And what is your current rank and position?

TESTIMONY OF DOUG SEIFERT

1 A I'm a sergeant, and my position is
2 investigations.

3 Q And what do your duties include as a sergeant
4 in investigations?

5 A We take care of all different kinds of crime,
6 from all the way to stolen credit cards, all the way up
7 to murder. And it depends on what case. It's case by
8 case. If you're on duty, and you happen to actually
9 acquire different cases of when you're actually on duty
10 is what determines sometimes when you get cases.

11 Q And were you working in investigation in
12 October of 2013?

13 A Yes, ma'am.

14 Q And were you assigned to investigate a
15 robbery that occurred on October 20th of 2013?

16 A Yes, ma'am.

17 Q So, how did you get that assignment?

18 A The -- actually, the next day I actually read
19 the reports and actually read the actual robbery that
20 took place at Northridge Cinemas. Due that I actually
21 knew the actual victim through work, I actually saw
22 that he was assaulted and then actually I did a
23 follow-up call.

24 Q So, were you called out that night of the
25 robbery?

TESTIMONY OF DOUG SEIFERT

1 A No, ma'am.

2 Q Do you know if any investigators were called
3 out that night?

4 A No, ma'am.

5 Q Tell me, where did the -- where did the
6 incident occur?

7 A It's at Northridge Cinemas, which is 435
8 William Hilton Parkway, which is on the north of Hilton
9 Head Island.

10 Q What county is that in?

11 A Beaufort County.

12 Q And you mentioned that you knew the victim.
13 Did you -- who did you identify as the victim in the
14 case?

15 A John Snodgrass.

16 Q And do you know what Mr. Snodgrass's -- why
17 he was at the theater?

18 A Due to used to being on the actual road, I
19 was a road deputy, Mr. Snodgrass and I -- I did many
20 escorts, things like that. Also, working Friday or
21 Saturday night details long before all this all
22 occurred.

23 Q Do you know his position at the theater?

24 A Yes, he's a manager.

25 Q And so you said you got the -- you were

TESTIMONY OF DOUG SEIFERT

1 assigned the case the next day. What date would that
2 have been that you actually got the case?

3 A That would be the 21st of October of 2013.

4 Q What did you do first once you got the case?

5 A I made courtesy calls to actual hospital and
6 also Mr. Snodgrass. And due to not knowing where he
7 was, I didn't have any idea where he was actually at
8 the time.

9 Q Okay. Did you figure out where he was?

10 A I did.

11 Q Where was he?

12 A He was actually at Savannah Memorial
13 Hospital.

14 Q Did you -- did you ever meet with him?

15 A I did.

16 Q Where did you meet with him?

17 A I met him at Savannah Memorial Hospital, I
18 believe on October 22nd, 2013.

19 Q What did you do when you met with him at the
20 hospital?

21 A I met with Mr. Snodgrass and also the owner
22 of Northridge Cinemas. I believe his name was
23 Brian Smith, I believe. I interviewed Mr. Snodgrass,
24 not only interviewing his -- what actually occurred,
25 that he stated on the 20th, but also I took photos.

TESTIMONY OF DOUG SEIFERT

1 Q Okay. You took photos of Mr. Snodgrass?

2 A Of his injuries, yes. Yes, ma'am.

3 Q Investigator Seifert, those are the photos we
4 saw yesterday?

5 A Yes, ma'am.

6 Q So you said you interviewed Mr. Snodgrass at
7 the hospital?

8 A Yes, ma'am.

9 Q Did you get -- were you able to develop a
10 suspect based on your interview of Mr. Snodgrass?

11 A At the time, no, ma'am.

12 Q Did you get -- what sort of information did
13 you get from Mr. Snodgrass?

14 A He stated that the person who assaulted him
15 was a large, black male. He recognized the female that
16 actually was in the vehicle, and he explained that it
17 was a two-door red coupe.

18 Q So, after you got this information from
19 Mr. Snodgrass, what did you do after that, after that
20 being at the hospital?

21 A I actually -- I asked him for a list of
22 employees, and that was later after, because I knew he
23 was -- due to his injuries, he was -- had a lot going
24 on in his hospital room.

25 So, he ended up eventually giving me a

TESTIMONY OF DOUG SEIFERT

1 set of names of employees that were working that
2 evening.

3 Q Okay. Investigator Seifert, did you ever
4 look into whether or not there was -- well, did you
5 ever go to the movie theater?

6 A Many times, ma'am.

7 Q Did you determine that there was any sort of
8 surveillance footage?

9 A There was none that even -- not only with the
10 interview of Mr. Snodgrass, but there's an old system
11 that's actually inside the building that does not work.

12 Q Okay. And did you do anything else to search
13 for any kind of footage from the area?

14 A Yes, ma'am. Several gas stations that
15 surround that area, viewed video footage of that -- the
16 time -- timing of when the assault occurred, and we had
17 negative contact.

18 Q Negative contact of?

19 A Of anything that was suspicious or anybody
20 running, walking, cars, anything like that.

21 Q Okay. So, you said that Mr. Snodgrass
22 contacted you and gave you names of the employees
23 working that night?

24 A Yes, ma'am.

25 Q Did you follow-up with any of those

TESTIMONY OF DOUG SEIFERT

1 employees?

2 A I did.

3 Q And who did you follow-up with?

4 A The first individual I actually interviewed
5 was Colton Delaplane, and then I actually followed up
6 with another young lady.

7 Q Okay. What was her name?

8 A Paola Labrador.

9 Q You mentioned Mr. Delaplane. Did you -- how
10 did you follow-up with him?

11 A I met him at the Bluffton High School.

12 Q Did you meet with him just one time or more
13 or --

14 A It was several times.

15 Q You met with him at Bluffton High School, you
16 said?

17 A Yes, ma'am.

18 Q About how long after the incident on
19 October 20th did you meet with Colton for the first
20 time?

21 A Approximately a couple weeks, if I had to
22 guess.

23 Q Okay. And was anybody else present when you
24 met with Mr. Delaplane?

25 A At first there was. It was actually

TESTIMONY OF DOUG SEIFERT

1 Officer Farelli (phonetic) who actually works for
2 Bluffton Police Department.

3 Q And did you get, I guess -- did you get
4 permission to speak to Colton?

5 A I did. Due to that Colton Delaplane was
6 actually a juvenile, I got permission by his mother on
7 the phone.

8 Q How old was Colton at that time; do you know?

9 A He was 16.

10 Q Based on your conversation with
11 Mr. Delaplane, did you develop a suspect in this case?

12 A I did.

13 Q And who was that?

14 A Austin McQuarters.

15 Q And what did you do after speaking with
16 Mr. Delaplane and developing Mr. McQuarters as a
17 suspect?

18 A Actually, we actually had another interview
19 over at the Hilton Head office. That was actually the
20 second interview, and that was accompanied by
21 Mr. Delaplane's father as well. He actually met over
22 at the Hilton Head office.

23 Q Based on your conversations with
24 Mr. Delaplane, did you develop anybody else as a
25 suspect?

TESTIMONY OF DOUG SEIFERT

1 A I did.

2 Q Who was that?

3 A That was Jacklyn Perez, known as Brooklyn.

4 Q Did you ever meet with -- well, let me
5 backtrack.

6 So, you developed Austin McQuarters as a
7 suspect, you said?

8 A Yes, ma'am.

9 Q Did you ever meet with Mr. Snodgrass and show
10 him a photo line up?

11 A I did, ma'am.

12 Q And was Mr. Snodgrass able to pick anyone out
13 of that line up?

14 A He wasn't.

15 Q Did you ever meet with Jacklyn Perez?

16 A I did, ma'am.

17 Q Do you recall when and where you met with
18 her?

19 A Approximately -- can I refer to my notes?

20 Q You may.

21 A That would be November 6, 2013.

22 Q And where did you meet with her?

23 A I met with her at her house, at her residence
24 first, and then we were -- we actually went over to the
25 Hilton Head office, and she met me there.

TESTIMONY OF DOUG SEIFERT

1 Q Okay. And did you conduct an interview of
2 her?

3 A I did, ma'am.

4 Q And during that interview, did you show
5 Ms. Perez a photo line up with the defendant in it?

6 A Yes, ma'am.

7 Q And did she pick anyone out of the photo line
8 up?

9 A She did.

10 Q And did you determine during your interview
11 whether or not Ms. Perez knew Mr. McQuarters?

12 A She did.

13 Q What happened after your interview of
14 Ms. Perez?

15 A Once Ms. Perez, our interview ended, she -- I
16 actually obtained warrants and -- for Mr. McQuarters
17 and also Ms. Perez.

18 Q Was she arrested then?

19 A She was.

20 Q Did you meet with Colton Delaplane at any
21 other point?

22 A I did. I actually interviewed Mr. Delaplane
23 on a third occasion, yes, ma'am.

24 Q And where was that interview?

25 A That was at the front of Hilton Head -- I'm

TESTIMONY OF DOUG SEIFERT

1 sorry. In front of Bluffton High School.

2 Q Okay. Did you have permission again to meet
3 with him?

4 A I did, by his father.

5 Q And where did that interview take place?

6 A It was actually in my vehicle. My
7 County-issued vehicle.

8 Q And based on that third meeting with Colton,
9 did you get any more information about this incident?

10 A I did, ma'am.

11 Q And Investigator Seifert, I want to ask you a
12 little bit about your -- about how you -- how you draft
13 your reports. At what point do you generally sit down
14 and write a report?

15 A I can't give you a specific answer on that,
16 but I can advise everybody that it depends on your flow
17 of your work. It could be the next day, it could be
18 right after the person is incarcerated. It could take
19 a week, it could take two weeks. It depends on being
20 called out, vacation time, there's all -- all different
21 varieties. But as far as on the norm, it usually takes
22 about a week.

23 Q Do you recall -- and it's fine if you don't,
24 but do you recall when you wrote your report regarding
25 your meetings with Colton Delaplane?

TESTIMONY OF DOUG SEIFERT

1 A Thinking back to 2013, I would say about
2 approximately a week, if I had to guess, or a couple
3 days.

4 Q Okay. When you wrote your report,
5 specifically, the part about meeting with
6 Colton Delaplane, do you recall exactly the words you
7 used in your report?

8 A Yes, ma'am.

9 Q What did you write in your report?

10 A Stated that on the third interview, with the
11 accumulation of all of the other interviews,
12 Mr. Delaplane confessed that he set the armed robbery
13 up, and that he was sorry.

14 Q Investigator Seifert, are those Colton's, as
15 best as you can recall, are those his exact --

16 MR. BAX: Objection, Your Honor. Based on
17 prior.

18 THE COURT: No, I think she can ask that.
19 The question does not necessarily suggest an
20 answer.

21 Go ahead.

22 MR. BAX: Well, I'm sorry, Your Honor. I'm
23 objecting based on things that we've gone to
24 pre-trial about. I think it's the testimony that
25 I've made issue of before. Thank you.

TESTIMONY OF DOUG SEIFERT

1 THE COURT: I appreciate that. But I think
2 she's entitled to inquire whether those were his
3 exact words or not. I'll let it.

4 MS. LEMPESIS: Thank you, Your Honor.

5 BY MS. LEMPESIS:

6 Q Were those the exact words that Colton
7 used -- the words that you put in your report, were
8 those the exact words that Colton said to you?

9 A No, ma'am.

10 Q How would you describe what you put in your
11 report? If it's not his exact words, how do you
12 describe them?

13 A It's paraphrasing. Just conclusion of --
14 with the other interviews and also the third interview.
15 That is what I came up with as far as my conclusion.

16 Q But it's true that you never got a warrant
17 for Colton Delaplane?

18 A That is correct.

19 Q After -- so you said you got a warrant for
20 Jackie Perez and a warrant -- and warrants for
21 Austin McQuarters. At what point did you -- what did
22 you do after you had those warrants?

23 A They were executed on both individuals.
24 Ms. Perez first, and Mr. McQuarters after.

25 Q When did you come in contact with

TESTIMONY OF DOUG SEIFERT

1 Mr. McQuarters?

2 A Can I refer to my notes again?

3 Q Yes, you may.

4 A Thank you. That would be November 6th, 2013.

5 Q And where was that, that you came in contact

6 with him?

7 A It was at his residence.

8 Q And were you accompanied by any other

9 investigators or deputies?

10 A Yes, ma'am. Several on the drug task force

11 were there. Also a staff sergeant and a sergeant for

12 the road, and several other road -- road patrols as

13 well.

14 Q Were they just there to assist you in --

15 in -- was there another warrant that you had?

16 A The actual -- we actually had a search

17 warrant, which was conducted at Mr. McQuarters's

18 residence.

19 Q Is it common to call out extra people to help

20 you serve a search warrant?

21 A Absolutely. Yes, ma'am.

22 Q And so when you arrived at Mr. McQuarters's

23 house then, did you -- sorry.

24 You came in contact with Mr. McQuarters?

25 A I did, ma'am.

TESTIMONY OF DOUG SEIFERT

1 Q And did you place him under arrest?

2 A I did, ma'am.

3 Q And did you advise him of his rights at any
4 time?

5 A Yes, ma'am.

6 Q How did you advise him of his rights?

7 A I read his Miranda warnings from my card that
8 I have.

9 Q Your card that you have. Can you state that
10 for us?

11 A Can I get it out first?

12 Q Sure, yeah.

13 A I read him, You have the right to remain
14 silent. Anything you say can and will be used against
15 you in a court of law. You have the right to have an
16 attorney. If you can't afford an attorney, one will be
17 provided for you. Do you understand each -- these
18 rights I've just explained to you -- I read to you.

19 Q And did Mr. McQuarters indicate that he
20 understood?

21 A Yes, ma'am.

22 Q Did he agree to talk to you?

23 A Yes, ma'am.

24 Q Did y'all speak there or somewhere else?

25 A We actually went to the Hilton Head office.

TESTIMONY OF DOUG SEIFERT

1 Q Do you know what resulted as a -- as a result
2 of that search of Mr. McQuarters's house with the
3 warrant?

4 A Yes, I know what was collected.

5 Q Was there anything of evidentiary value
6 collected while you were there?

7 A No, ma'am.

8 Q Okay. So, you -- did you then transport
9 Mr. McQuarters to Hilton Head, the Hilton Head office?

10 A I didn't specifically myself. It was
11 actually a road deputy that actually transported Mr.
12 McQuarters.

13 Q Who was present for the -- well, did you
14 interview Mr. McQuarters at the Hilton Head office?

15 A I did, ma'am.

16 Q And who else was present for that interview?

17 A During my interview, Staff Sergeant Chapman,
18 who at the time was my boss; he came in during my
19 interview.

20 Q Okay. And could you tell whether or not the
21 defendant seemed to understand what he was doing? Was
22 there anything affecting his ability to understand what
23 he was doing?

24 A No, ma'am.

25 Q And did he have any sort of physical or

TESTIMONY OF DOUG SEIFERT

1 mental impairment that would affect his ability to
2 understand?

3 A No, ma'am.

4 Q The interview itself, where did it take place
5 inside of the Hilton Head office?

6 A We actually have an interview room. We
7 actually have two. It was in one -- we call it
8 Interview Room One, which is audio/video taped.

9 Q Okay. And do you remember about how long the
10 questioning of Mr. McQuarters took?

11 A From the time that he was in there till the
12 time he was done, I'm going to guess 45 minutes. As
13 far as questioning, 20, 30 minutes, if I had to guess.

14 Q Okay. And during that interview, was he
15 denied access to the bathroom or water or anything like
16 that?

17 A No, ma'am.

18 Q And you've told us that you advised
19 Mr. McQuarters of his rights at his house. Did you
20 also advise him of his rights under Miranda at the
21 Hilton Head investigations office?

22 A Yes, ma'am.

23 Q Okay. And how did you advise him of his
24 rights?

25 A Beaufort County Sheriff's Office has a

TESTIMONY OF DOUG SEIFERT

1 Miranda form, not only that when I read it at his
2 residence, but actually one in the interview room. I
3 read it right in front of the individual who I'm
4 talking to. They have to initial where I read the
5 actual each Miranda warning line, which is, I believe,
6 four, four lines. And at the end there's two questions
7 stating if they understand what their rights are and
8 also if they want to talk to me.

9 Q And did you use such a form in this case?

10 A I did, ma'am.

11 MS. LEMPESIS: Permission to approach the
12 witness, Your Honor?

13 THE COURT: Yes, ma'am.

14 BY MS. LEMPESIS:

15 Q Investigator Seifert, I'm going to hand you
16 what's been marked as State's Exhibit 10. Do you
17 recognize that?

18 A Yes, ma'am.

19 Q And how are you able to recognize it?

20 A This is -- my -- not only that this is in
21 front of me, but I also have my signature and the date
22 and actually the time of when it was -- where I
23 witnessed Mr. McQuarters when I read this.

24 Q Okay. And what is that, I'm sorry?

25 A This is the Beaufort County sheriff's Miranda

TESTIMONY OF DOUG SEIFERT

1 warning form.

2 Q Okay. And is it -- has it been altered in
3 any way?

4 A No, ma'am.

5 MS. LEMPESIS: Your Honor, I move to admit
6 State's Exhibit 10 into evidence.

7 MR. BAX: No objection.

8 THE COURT: Without objection, State's 10 is
9 in evidence.

10 *(Whereupon, State's Exhibit No(s). 10 marked*
11 *for identification and received in evidence.)*

12 MS. LEMPESIS: Thank you, Your Honor. I move
13 to publish it to the jury.

14 THE COURT: Yes, ma'am.

15 BY MS. LEMPESIS:

16 Q Investigator Seifert, if you would just
17 actually go through and read that form for us.

18 THE WITNESS: On the top of the form, if I
19 may, Your Honor?

20 THE COURT: Yes, sir.

21 A On the top of the form, it has, Beaufort
22 County Sheriff's Office, and underneath our logo it
23 actually has the Miranda warning form.

24 The next line is the case number of --
25 which is the incident that Mr. Snodgrass reported.

TESTIMONY OF DOUG SEIFERT

1 Next location is where the Miranda form
2 was actually read, which I put on here 70 Shelter Cove
3 Lane, Hilton Head, South Carolina 29928.

4 Next line is the individual, which is
5 Austin McQuarters. The next one is the date of birth,
6 and that was written in by Mr. Austin McQuarters.

7 The -- in bold print it says, Statement
8 of rights. And Number 1, it has, You have the right to
9 remain silent.

10 Line 2 is, Anything you say can and will
11 be used against you in a court of law.

12 Number 3 is, You have the right to have
13 an attorney present for and during questioning.

14 And Number 4 is, If you can't afford an
15 attorney, one will be appointed for you before any
16 questioning, if you wish.

17 Those were all initialed by
18 Mr. McQuarters.

19 Underneath the actual statement of
20 rights, there's a waiver of rights. Those are the two
21 questions and the line states, Do you understand each
22 of these rights have explained to you? Yes or no. And
23 he initialed, Yes.

24 And having these rights in mind, do you
25 wish to talk to us now? And he initialed, Yes, as

TESTIMONY OF DOUG SEIFERT

1 well.

2 Underneath those two questions of the
3 waiver rights, is the signature of each individual that
4 we interview, and then we have witnesses that sign
5 underneath there.

6 Q Thank you. And just, you've already gone
7 through this, but Mr. McQuarters, did he waive his
8 rights?

9 A He did.

10 Q And he agreed to speak with you?

11 A Yes, ma'am.

12 Q And did he, at any point, ever change his
13 mind and say he wanted a lawyer?

14 A No, ma'am.

15 Q And that person that you interviewed,
16 Mr. McQuarters, is he in the courtroom today?

17 A He is, ma'am.

18 Q And can you just identify him for the record?

19 A Yes, ma'am. He's in the blue golf shirt,
20 with the glasses.

21 Q Thank you.

22 MS. LEMPESIS: And just let the record
23 reflect that he's identified Mr. McQuarters.

24 THE COURT: Yes, ma'am.

25 BY MS. LEMPESIS:

TESTIMONY OF DOUG SEIFERT

1 Q Investigator Seifert, I'm going to -- did you
2 record this interview?

3 A Yes, ma'am.

4 Q Do you typically record interviews that are
5 done in investigation?

6 A Yes, ma'am.

7 MS. LEMPESIS: Permission to approach the
8 witness, Your Honor?

9 THE COURT: Yes, ma'am.

10 BY MS. LEMPESIS:

11 Q Investigator Seifert, I'm going to hand you
12 what's been marked as State's Exhibit 11. Do you
13 recognize that?

14 A I do, ma'am.

15 Q And how are you able to recognize that?

16 A Well, my initials and the date is there.

17 Q Did you, at my request, review that disc?

18 A I did.

19 Q And is it a true and accurate copy of the
20 interview of Austin McQuarters?

21 A Yes, ma'am.

22 Q And --

23 MS. LEMPESIS: And, Your Honor, at this point
24 the State would move to admit State's Exhibit 11.

25 MR. BAX: Subject to prior objections.

TESTIMONY OF DOUG SEIFERT

1 THE COURT: Thank you. Subject to prior
2 issues that were raised that's in evidence. Thank
3 you.

4 MS. LEMPESIS: Your Honor, we would move to
5 publish it to the jury.

6 THE COURT: Yes, ma'am.

7 (Audio and visual CD of the interview being
8 played.)

9 MS. LEMPESIS: Investigator Seifert, we're
10 going to stop the interview there.

11 THE COURT: I'm sorry?

12 MS. LEMPESIS: I'm sorry. We're are going to
13 stop the interview there.

14 THE COURT: Okay. All right.

15 BY MS. LEMPESIS:

16 Q Investigator Seifert, we've just seen a
17 portion of the interview of Mr. McQuarters. Can you
18 recap for us what Mr. McQuarters told you during that
19 interview?

20 A Yes, ma'am. Mr. McQuarters was stating that
21 he was actually at the Bluffton Kroger's and he was
22 standing in the parking lot.

23 MR. BAX: Objection, cumulative, Your Honor.
24 They've just seen all this.

25 THE COURT: Well, they -- they have heard it,

TESTIMONY OF DOUG SEIFERT

1 but if they're like me, they might not have heard
2 it clearly. And that's a concern. Of course, if
3 he gets -- but you know what was said, and if he
4 gets off script, you let us know, we'll get him
5 back on. Thank you.

6 BY MS. LEMPESIS:

7 Q Just want you to recap for us what we just
8 heard on that video.

9 A Okay. Mr. McQuarters was stating on
10 October 20th, 2013, the evening, he was stating that he
11 was in the parking lot of the Bluffton Kroger's. He
12 ended up coming in contact with a white female, and he
13 assisted her on putting groceries into her vehicle.

14 In the midst of putting the groceries in
15 the vehicle, Mr. McQuarters asked as far as going to
16 the movie theaters and for a ride. The white female,
17 who he did not know, agreed to this. They ended up
18 driving to the actual Northridge Cinemas, both together
19 in her vehicle. Did not see a movie and she then ended
20 up driving him back over to the actually Crescent. If
21 you don't know where that is, that's actually right by
22 46 and 278 is where Crescent Plantation is.

23 Q Is that a -- where is that?

24 A That's in Bluffton. It's real close to
25 Mr. McQuarters's residence, which is Plantation Point

TESTIMONY OF DOUG SEIFERT

1 Park.

2 And then, once he was dropped off there,
3 he never heard from her again.

4 Q Thank you. After this interview of
5 Mr. McQuarters, what happened right after that?

6 A He was transported to the Beaufort County
7 Detention Center.

8 Q And did you conduct any other investigation
9 after Mr. McQuarters was arrested?

10 A Yes, ma'am.

11 Q Did you interview anyone else?

12 A I did. I actually interviewed
13 Paola Labrador, who actually worked that evening, who
14 actually exited around the same time frame as
15 Colton Delaplane as well.

16 Q Okay. So, you interviewed Paola Labrador?

17 A Yes, ma'am.

18 Q And did you do any other kind of -- did you
19 do any other kind of investigation, look into anything
20 else regarding this case?

21 A As far as forensic and things like that,
22 those are all submitted, as well. Also did a search
23 warrant actually on Ms. Jacklyn Perez's vehicle. And
24 that was conducted, and what was collected on that was
25 actually a doormat and actually some swabs from the

TESTIMONY OF DOUG SEIFERT

1 actual passenger door handle inside.

2 Q Okay. And did you submit that to -- did you
3 submit that for testing, those items?

4 A I did, ma'am.

5 Q Did you get any sort of evident -- anything
6 of evidentiary value back from those swabs?

7 A No, ma'am.

8 Q Approximately how long -- well, do you
9 remember when you executed that search warrant on
10 Ms. Perez's car?

11 A Can I relate to my notes again?

12 Q Yes, you may.

13 A That would be on November 20th, ma'am.

14 Q Okay. So, a month later -- a month after the
15 incident?

16 A Correct, ma'am.

17 Q Any other investigation or any other
18 involvement in this case after that?

19 A Yeah, I was contacted by the victim, John
20 Snodgrass, in reference to that he happened to find
21 bloody papers that he actually put in his truck and
22 ended up finding them after he was cleaning his
23 vehicle.

24 Q Okay. Did you get those from him?

25 A I did, ma'am.

TESTIMONY OF DOUG SEIFERT

1 Q Did you put those into evidence?

2 A Yes, ma'am.

3 Q Did you do anything else in relation to this
4 case?

5 A I took photos, more photos of the evening,
6 what the actual parking lot looks like in the evening.
7 Also during the day, as well.

8 Q Okay. And is that the extent of your
9 investigation into this matter?

10 A Yes, ma'am.

11 MS. LEMPESIS: Beg the court's indulgence.

12 THE COURT: Yes, ma'am.

13 (Pause.)

14 BY MS. LEMPESIS:

15 Q One last thing, Investigator Seifert. How
16 long have you worked for the Sheriff's Office?

17 A Approximately nine years.

18 Q In all of those nine years, have you ever
19 seen what is referred to --

20 MR. BAX: Objection, Your Honor.

21 THE COURT: Yes. What -- where are we going
22 with this, Ms. Lempesis?

23 MS. LEMPESIS: Should we -- may we approach,
24 Your Honor?

25 THE COURT: Yes, ma'am.

TESTIMONY OF DOUG SEIFERT

1 (Discussion at the bench.)

2 BY MS. LEMPESIS:

3 Q Investigator Seifert, those are all the
4 questions I have for you.

5 A Thank you, ma'am.

6 Q Please answer any questions that Mr. Bax has
7 for you.

8 THE COURT: Mr. Bax, you may cross-examine.

9 MR. BAX: Thank you, Your Honor. May it
10 please the Court.

11 CROSS EXAMINATION

12 BY MR. BAX:

13 Q Investigator Seifert, you -- you've testified
14 on direct in response to questions from the Solicitor
15 that you wrote up reports in this case, correct?

16 A That's correct, sir.

17 Q Let's talk about that a little bit. Is it
18 typical policy for you to do some kind of incident
19 report or supplemental report whenever you're involved
20 with a case?

21 A Yes, sir.

22 Q Okay. You've testified that you have been an
23 officer or been employed with the Beaufort County
24 Sheriff's Office for approximately nine years; is that
25 right?

TESTIMONY OF DOUG SEIFERT

1 A Yes, sir.

2 Q Okay. Now, in order to be a law enforcement
3 officer, do you have to get training at a place called
4 The Academy in Columbia?

5 A Yes, sir.

6 Q Did you attend The Academy in Columbia at
7 some point, Mr. Seifert?

8 A Yes, sir.

9 Q Okay. About when was that?

10 A 2006, 2007. I don't really know.

11 Q Okay. In fact, you even referenced that in
12 the video when you were talking to my client, that you
13 had been to The Academy and that they made you put on
14 cuffs for a little while; is that right?

15 A Yes, sir.

16 Q Okay. And when you were at The Academy, they
17 also had classes on things like doing incident reports;
18 is that correct?

19 A I don't recall that.

20 Q You don't recall?

21 Do you recall anything at The Academy,
22 training on making sure that you document what you do
23 at a time at which you can remember it best?

24 A I never had a class like that, sir.

25 Q Okay. All right. Have you ever received any

TESTIMONY OF DOUG SEIFERT

1 training that involved making sure that you had filled
2 out the proper paperwork, such as incident reports?

3 Have you had any training on the incident reports at
4 the sheriff's department?

5 A Through several supervisors that you go
6 through on the road, and then whatever department you
7 go to, yes.

8 Q And have those instructors ever told you not
9 to be accurate with those?

10 A No, sir.

11 Q Have they encouraged you to be accurate with
12 those?

13 A Yes, sir.

14 Q Make sure you get the information correct?

15 A That's correct.

16 Q And Investigator Seifert, how many times, if
17 you can, have you testified in a criminal courtroom
18 like we are today?

19 A I would say two handfuls, if I had to guess.

20 Q Say again?

21 A Like, ten times, eight to ten times, if I had
22 to guess.

23 Q Okay. And you've testified before this jury
24 that your current duties is an investigator in major
25 crimes, correct?

TESTIMONY OF DOUG SEIFERT

1 A Yes, sir.

2 Q Things like what we have here today, which is
3 an armed robbery, correct?

4 A That's correct, sir.

5 Q And that's considered fairly severe, correct?

6 A Yes, sir.

7 Q Okay. So, despite all that, your testimony
8 here today is when you put in your incident report, and
9 I quote, Delaplane confessed to me that the entire
10 robbery was set up by him and he was sorry, that that's
11 incorrect.

12 A I'm saying it's not incorrect. That is --

13 Q You're saying that's not incorrect. You're
14 saying that that is correct?

15 A That is, that's my conclusion, yes, sir.

16 Q Well, let's be clear. This does not say, It
17 is my conclusion that Delaplane confessed to me, does
18 it? It doesn't say, This is my conclusion?

19 A No, sir.

20 Q And in fact, the next line of that report
21 says, and I quote, Delaplane stated that is why
22 McQuarters gave him \$250 cash after the robbery
23 assault?

24 A That is correct, sir.

25 Q Thank you. So, is that a conclusory

TESTIMONY OF DOUG SEIFERT

1 statement?

2 A That was the actual previous other interviews
3 that I had and also the third interview, sir.

4 Q Well, this statement, you would agree, says,
5 Delaplane stated that; correct?

6 A Correct, sir.

7 Q Isn't it true that that's not open for
8 interpretation, that's you saying in your report that
9 Mr. Delaplane said he received the cash for setting up
10 the robbery, correct?

11 A Correct, through the actual other interviews,
12 yes, sir.

13 Q So, it is in your report that he said he got
14 the money for setting up the robbery, correct?

15 A That was my conclusion, yes, sir.

16 Q Well, see, now we're -- this is the problem.
17 Okay. Let me ask you this: Have you ever testified in
18 a prior proceeding under oath about this case?

19 A Yes, sir.

20 Q Okay. And in that prior testimony, I
21 questioned you about this same matter; is that correct?

22 A That is correct, sir.

23 Q And in that time, I asked you, and I quote,
24 In your report you indicate that Mr. Delaplane told you
25 at that time, after these multiple interviews and his

TESTIMONY OF DOUG SEIFERT

1 father standing there the -- that the entire robbery
2 was set up by him and that he was sorry.

3 That's the language in your report. Is
4 that accurate? That's what he relayed to you at that
5 time.

6 And you responded, Yes, sir.

7 Is that correct?

8 A That is correct, sir.

9 Q In that prior testimony, isn't it correct
10 that you never say that this is conclusory or an
11 interpretation; is that correct?

12 A I didn't explain my answer, I just gave you a
13 yes, sir. Yes, sir.

14 Q And you are aware, because you've testified
15 upwards of ten times that you're allowed to explain
16 your answers when you're on the stand, correct?

17 A Yes, sir.

18 Q And so you chose not to give any further
19 explanation. You just said, Yes, sir. Correct?

20 A That is correct, sir.

21 Q Okay. And, in fact, I asked you about that
22 another three times during that testimony, and you gave
23 me the same answer, Yes, sir. Correct?

24 A That's correct, sir.

25 Q But here today, in front of this jury, your

TESTIMONY OF DOUG SEIFERT

1 testimony is that that is not a direct statement from
2 Mr. Delaplane, it's your conclusion about what he said?

3 A That is correct, sir.

4 Q So, you have changed your story between then
5 and now, correct?

6 A No, sir.

7 Q It's your testimony that choosing not to
8 explain that and leave it as a definitive statement
9 about what Mr. Delaplane told you, and now you're
10 explaining it, that that's not a flop, that's not a
11 flip, that's not a twist?

12 A No, sir.

13 Q Okay. And that's what you want this jury to
14 believe?

15 A Yes, sir.

16 Q Okay. Let's go back.

17 You've testified that in your
18 investigation you determined there's no video
19 surveillance that was active at the time that this
20 supposedly happened, October 20th, correct?

21 A That is correct, sir.

22 Q And that after speaking with Mr. Snodgrass
23 and him providing you a list of employees that were on
24 duty that night, that the very first person you went to
25 was Colton Delaplane, correct?

TESTIMONY OF DOUG SEIFERT

1 A That is correct, sir.

2 Q And isn't it true that you -- when you talked
3 to Mr. Snodgrass, he indicated some of the people that
4 he might have had problems with as a boss, correct?

5 A Yes.

6 Q And as a result of that, you went to Colton
7 Delaplane first, correct?

8 A That is negative. If I may.

9 Q You know you can explain your answers.

10 A In the transcripts that was previous before
11 that, it was later found out that that was -- there is
12 an issue between Mr. Snodgrass and Mr. Delaplane, yes,
13 sir.

14 Q But after your discussions with Mr. Snodgrass
15 in getting that list, you don't dispute that the very
16 first person that you went to was Colton Delaplane,
17 correct?

18 A I don't dispute it, no, sir.

19 Q And that's the person that you wrote in your
20 report confessed to me that the entire robbery was set
21 up by him and he was sorry. Delaplane stated that
22 McQuarters gave him \$250 cash after the robbery
23 assault, correct?

24 A That is correct sir.

25 Q So, you didn't just get lucky, you went right

TESTIMONY OF DOUG SEIFERT

1 to the person that you were able to determine had
2 something to do with this, correct?

3 A Sometimes that happens, yes, sir.

4 Q Now, when you went to talk with
5 Mr. Delaplane, he starts out by lying to you, correct?

6 A Yes, sir.

7 Q He starts out saying he knows nothing about
8 this robbery, correct?

9 A That is correct, sir.

10 Q After interviewing him a couple of times,
11 you're able to develop that he gives you
12 Austin McQuarters's name and Brooklyn's name, correct?

13 A That is correct sir.

14 Q But even when he gives you Mr. McQuarters's
15 name and Brooklyn's name, he's still saying that he had
16 nothing to do with the robbery in that second
17 interview, correct?

18 A In a round about way, yes, sir.

19 Q And then finally you interview him a third
20 time, and he tells you that he gave all this
21 information to them and assisted them, and that's when
22 you put in your report that he confessed to you; is
23 that correct?

24 A He stated that Mr. McQuarters asked him about
25 money, and then he stated that he pointed where his

TESTIMONY OF DOUG SEIFERT

1 manager, Mr. Snodgrass, and that's the gentleman who
2 would have the money, yes, sir.

3 Q Okay. And he also stated, that was why
4 Mr. McQuarters gave him the \$250, correct?

5 A No. That was actually the prior other
6 interviews, as well.

7 Q Okay. So, in the other interviews he stated
8 that was why Mr. McQuarters gave him the \$250?

9 A He met him at the -- yes. He met him at his
10 girlfriend's residence.

11 Q Let's go to that.

12 I believe during these interviews, I
13 think in the second and the third interview, he told
14 you that he received a call from Mr. McQuarters some
15 three to four hours after this robbery occurred; is
16 that correct?

17 A On the interview, yes, sir.

18 Q Okay. And that that phone call was one
19 between Mr. McQuarters and him, and Mr. McQuarters told
20 him to meet him outside; is that right?

21 A That's correct, sir.

22 Q Okay. At what point during your
23 investigation did you subpoena the cell phone records
24 from Mr. Delaplane?

25 A I didn't, sir.

TESTIMONY OF DOUG SEIFERT

1 Q Okay. Now, in prior cases, you have
2 subpoenaed cell phone records before, correct?

3 A That is correct, sir.

4 Q And you know how to do that, right?

5 A Yes, sir.

6 Q But you didn't make the attempt in this case
7 to confirm whether or not that phone call actually
8 happened?

9 A No, sir.

10 Q Did you ask Mr. Delaplane for his cell phone,
11 take that into evidence and have it examined?

12 A No, sir.

13 Q Additionally, he stated to you, and I believe
14 Ms. Perez stated to you, that Mr. Delaplane was with
15 his sister and girlfriend after he got out of work that
16 night, correct?

17 A That's correct, sir.

18 Q And when during your investigation did you
19 talk to Mr. Delaplane's sister, or Mr. Delaplane's
20 girlfriend?

21 A I did not, sir.

22 Q And in fact, in this case, you did show a
23 photo line-up with my client to Ms. Perez, because
24 Ms. Perez had told you she already -- that she knew
25 Mr. McQuarters, correct?

TESTIMONY OF DOUG SEIFERT

1 A That is correct, sir.

2 Q But you didn't show a line up to
3 Mr. Delaplane, did you?

4 A I did not, sir.

5 Q And once again, you did not charge or have
6 anything to do with warrants being issued for
7 Mr. Colton Delaplane for anything related to this
8 incident; is that correct?

9 A That is correct, sir.

10 Q So, despite the fact that he's the only one
11 that works at this theater where it happened, correct?

12 A That is correct, sir.

13 Q And you were able to determine that neither
14 Ms. Perez nor Mr. McQuarters worked at that theater
15 ever?

16 A That is correct.

17 Q Despite the fact that he's informed you that
18 he gave this information to these people, correct?

19 A That is correct, sir.

20 Q And that you testified earlier that he
21 confessed, and now you're saying that's your
22 conclusion.

23 A Yes, sir.

24 Q And that he stated repeatedly that that's why
25 he received the money was because he set it up,

TESTIMONY OF DOUG SEIFERT

1 correct?

2 A That is correct, sir.

3 Q Despite all that, you arrest my client, who's
4 an African American male, correct?

5 MS. LEMPESIS: Objection, Your Honor.

6 THE COURT: I'll sustain that objection.

7 It's obvious the race of the defendant.

8 MR. BAX: Okay. So, I'm sorry, Your Honor.

9 It's obvious.

10 BY MR. BAX:

11 Q You arrested Mr. McQuarters, correct?

12 A Yes, sir.

13 Q And you charged Ms. Perez, correct?

14 A That is correct, sir.

15 Q But you didn't charge Mr. Delaplane, the one
16 that we saw on the stand yesterday evening?

17 A That is correct, sir.

18 Q And we all saw who that was and what he looks
19 like, correct?

20 MS. LEMPESIS: Objection, Your Honor.

21 THE COURT: I sustained the objection, folks.

22 That really is not an element to be injected into
23 this trial. Thank you.

24 BY MR. BAX:

25 Q Other than Mr. Delaplane's statements to you

TESTIMONY OF DOUG SEIFERT

1 and Ms. Perez's statements to you, you have testified
2 here today that there is no physical evidence that was
3 recovered that ties my client to this scene at all,
4 correct?

5 A That is correct, sir.

6 Q So, there was no fibers or hairs or DNA
7 evidence at the scene of the crime that was connected
8 to my client, correct?

9 A That is correct, sir.

10 Q Additionally, you executed a search warrant
11 at my client's residence, correct?

12 A Yes, sir.

13 Q And, in fact, you seized a pair of shoes; is
14 that right?

15 A I did, sir.

16 Q And there was no DNA on those shoes
17 connecting him to this incident at all, correct?

18 A We don't even know if that were the shoes
19 that were worn that night.

20 Q But there was nothing that came back from
21 those shoes?

22 A That's correct.

23 Q So, there was no blood of Mr. Snodgrass's on
24 those shoes?

25 A No, sir.

TESTIMONY OF DOUG SEIFERT

1 Q There was no fibers or anything that
2 connected him to the scene, no gravel or anything that
3 could identify as being from Northridge Cinemas parking
4 lot?

5 A No, sir.

6 Q And once again, you testified in a prior
7 proceeding that he had confessed, and that he had said
8 that he had gotten money from Mr. McQuarters, correct?

9 MS. LEMPESIS: Your Honor, I object. This
10 question has been asked and answered several times
11 now.

12 THE COURT: He's laying the premise, I think,
13 for another question to follow that one.

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

15 THE COURT: Go ahead.

16 BY MR. BAX:

17 Q In addition to those questions, I also asked
18 you about your knowledge of whether or not there was
19 any warrants for Mr. Delaplane at that time, as well,
20 correct?

21 A Yes, sir.

22 Q Okay. And you answered the same, that there
23 hadn't been any warrants, correct?

24 A That is correct, sir.

25 Q And as of now, that still remains the same?

TESTIMONY OF DOUG SEIFERT

1 A That is correct.

2 MR. BAX: Moment's indulgence, Your Honor.

3 THE COURT: All right, sir.

4 MR. BAX: Thank you.

5 (Pause.)

6

7 BY MR. BAX:

8 Q Final question. Based on your investigation,
9 it's your testimony that the only thing of substance
10 that puts my client involved in this case, we get from
11 Jacklyn Perez and Colton Delaplane, correct?

12 A Yes, sir.

13 MR. BAX: No further questions. Thank you.

14 THE COURT: Redirect, Ms. Lempesis?

15 MS. LEMPESIS: No redirect, Your Honor.

16 THE COURT: Thank you.

17 Investigator, you may step down.

18 THE WITNESS: Thank you, sir.

19 THE COURT: Ms. Lempesis.

20 MS. LEMPESIS: Thank you, Your Honor. The

21 State calls Paola Labrador.

22 THE COURT: Thank you.

23 Come forward please, to be sworn.

24 Thereupon,

25 PAOLA LABRADOR

TESTIMONY OF PAOLA LABRADOR

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

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

5 WITNESS: Hello. My name is Paola Labrador,
6 P-A-O-L-A. Labrador, L-A-B-R-A-D-O-R.

7 THE COURT: Ms. Labrador, unfortunately, our
8 microphones are not working. I wish they were.
9 And so we're going to have to ask you to project
10 your voice loudly enough so that all those folks
11 in the jury can hear you. What you say is
12 important. They need to hear it. Okay?

13 THE WITNESS: Okay.

14 MR. BAX: Your Honor, before we begin the
15 testimony from this witness can I approach the
16 bench please?

17 THE COURT: Okay.

18 MR. BAX: Thank you.

19 (Off-the-record discussion
20 held.)

21 DIRECT EXAMINATION

22 BY MS. LEMPESIS:

23 Q Hey, Ms. Labrador. Can I call you Paola?

24 A Yes.

25 Q Paola, how old are you?

TESTIMONY OF PAOLA LABRADOR

1 A Twenty-two.

2 Q And where do you work?

3 A Northridge Cinema Ten.

4 Q Where is that?

5 A Hilton Head Island, South Carolina.

6 Q Thank you. And how long have you worked at

7 Northridge Cinemas?

8 A Overall, I'm going to say almost ten years.

9 Q And who is your manager?

10 A John Snodgrass.

11 Q Were you working, Paola, on the night of

12 October 20th of 2013?

13 A A Sunday, probably, yeah.

14 Q And what shift were you working?

15 A The night shift. Usually, like five to 10:30

16 or 11:00 or so.

17 Q Do you remember about what time you got off

18 that night?

19 A I'm going to say around 10:30.

20 Q Do you recall, or did you work with a person

21 named Colton Delaplane?

22 A Yes, ma'am.

23 Q Was he working that night, as well?

24 A Yes, ma'am.

25 Q And so you said you got off probably around

TESTIMONY OF PAOLA LABRADOR

1 10:30?

2 A Around.

3 Q Did you leave -- who did you leave with at
4 that time? Who did you leave the theater with?

5 A That night, with one of my friends, who's
6 also a co-worker, Victoria Letty.

7 Q Did you see Colton that night as you were
8 leaving?

9 A Yes, ma'am.

10 Q What was Colton doing?

11 A Well, the last thing I saw of him, he was, I
12 believe, talking to a friend or just some other male
13 person in the parking lot.

14 Q And can you describe what that friend or that
15 male person looked like?

16 A Definitely bigger than Colton. I mean, he's
17 pretty small, so bigger than Colton, male, African
18 American male. That's really all I saw of him.

19 Q Did you -- do you remember seeing anybody
20 else with Colton that night when you were leaving?

21 A Yes. His sister and girlfriend were awaiting
22 his exit, so --

23 Q Did you -- what did you do, I guess, as
24 you're leaving work? Did you leave?

25 A Yes. I was in my car and I just went about

TESTIMONY OF PAOLA LABRADOR

1 my night.

2 Q Okay. Did you ever have the opportunity to
3 speak with Investigator Seifert at some point?

4 A Yes. If I recall, yes.

5 Q Thank you. And do you remember just telling
6 him what you told us today?

7 A Yes, ma'am.

8 MS. LEMPESIS: Beg the court's indulgence.

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 BY MS. LEMPESIS:

12 Q Paola, those are all the questions I have for
13 you. Please answer any questions that Mr. Bax may have
14 for you. Okay?

15 A Okay.

16 THE COURT: Mr. Bax, any cross-examine?

17 MR. BAX: Thank you, Your Honor. May it
18 please the Court.

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. BAX:

22 Q Briefly, Ms. Labrador, you also -- when you
23 talked with Investigator Seifert, do you remember
24 giving a written statement, writing down what you had
25 told --

TESTIMONY OF PAOLA LABRADOR

1 A Yes, uh-huh. (Indicating affirmatively.)

2 Q Okay. And do you recall in that written
3 statement that you put that Mr. Delaplane, you saw that
4 he was with his sister and girlfriend; is that correct?

5 A Yes.

6 Q So you saw them there?

7 A Yes.

8 Q And you know who they are; is that correct?
9 You've seen them before?

10 A I've seen them before at the theater, yes.

11 Q Okay. All right.

12 MR. BAX: No further questions. Thank you.

13 THE COURT: Okay. Redirect, Ms. Lempesis?

14 MS. LEMPESIS: None, Your Honor.

15 THE COURT: Ms. Labrador, you may step down.

16 Thank you, ma'am, for coming.

17 THE WITNESS: Thank you.

18 MS. LEMPESIS: And we'd ask Ms. Labrador be
19 excused?

20 THE COURT: And without objection, you may be
21 excused. Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: Ms. Lempesis.

24 MS. LEMPESIS: Thank you, Your Honor.

25 Your Honor, at this point, the State rests.

TESTIMONY OF PAOLA LABRADOR

1 THE COURT: Thank you.

2 Ladies and gentlemen, the State has rested
3 its case-in-chief. That means that you have now
4 heard all of the evidence and testimony that you
5 will hear from the State in the presentation of
6 this case.

7 Always at this juncture of any proceeding of
8 this nature, we have to send you out to the jury
9 room to deal with certain matters of the law.
10 After I have dealt with those matters of the law,
11 I'll bring you back out to the courtroom to
12 continue with your work.

13 This is a good time for a morning break, in
14 any event. Please remember, as always, not to
15 discuss this case among yourselves in the jury
16 room. Thank you.

17 (Jury exits the courtroom at
18 1:13.)

19 THE BAILIFF: The jury is clear, Your Honor.

20 THE COURT: Thank you.

21 Mr. Bax, I'll be glad now to hear motions
22 from the defense.

23 MR. BAX: Thank you, Your Honor.

24 The defense would now move for directed
25 verdict. First of all, based on all objections,

TESTIMONY OF PAOLA LABRADOR

1 exceptions, and concerns expressed by the defense
2 up to this point in this trial.

3 THE COURT: Right.

4 MR. BAX: Secondly, Your Honor, I would move
5 for a directed verdict specifically on armed
6 robbery. I would move for that because the State
7 has once again failed to present any evidence that
8 there was a weapon used. I would argue that what
9 they have so far is merely the statement, a
10 hearsay statement, despite the fact that it's
11 alleged to my client, from Colton Delaplane saying
12 that brass knuckles were used.

13 However, Mr. Delaplane has already proven
14 himself to be a liar on the stand repeatedly.
15 There's no corroboration about whether the phone
16 call even happened.

17 Additionally, you've heard the testimony from
18 Dr. Snowman, who was very happy to offer his
19 opinion in an area that there is no specialty or
20 expertise in. And we lodge our objection to his
21 ability to testify to that as inadmissible.

22 But even he can't say what it was. And
23 despite his attempt to rehabilitate himself, he
24 cannot for certain say that it was something that
25 was struck as he hit the ground. Because as he

TESTIMONY OF PAOLA LABRADOR

1 admitted on the stand, he has not seen any
2 photographs of the scene where Mr. Snodgrass fell
3 to the ground. Did not talk to any officers about
4 what was found at that scene. He doesn't know if
5 there were any linear objects on the ground. I
6 really believe that that testimony was just
7 another desperate attempt to become the doctor
8 prosecutor in the room.

9 Based on those grounds, I would move for
10 directed verdict of the armed robbery charge,
11 specifically that the element of armed hasn't been
12 established as a matter of law.

13 Furthermore, Your Honor, I would go on to
14 reiterate my motion for mistrial based on not just
15 what I covered yesterday, but in addition what's
16 been put on the record today.

17 I think that the evidence presented by
18 Officer Seifert further destroys the integrity of
19 this case. It's just -- I can't say that I'm not
20 upset about it, honestly.

21 THE COURT: Thank you, Mr. Bax.

22 As to the directed verdict motion on the
23 armed robbery charge, I'll acknowledge that
24 Dr. Snowman, according to my view of what he says,
25 has ruled out the fist. Other than that, he has

TESTIMONY OF PAOLA LABRADOR

1 been no more specific.

2 He said some blunt object, I think were his
3 words, to some effect, which does not necessarily
4 connote a deadly weapon. Although,
5 circumstantially, it could be interpreted at that.

6 But the more direct evidence in that regard,
7 comes from the victim himself who said, Having
8 been involved in playground brawls before, he
9 understands the feel of a fist against his face,
10 but this was something harder, something metal.

11 And, of course, Colton's testimony cannot be
12 discounted in spite of the fact that he was
13 complicit in this in some degree.

14 Nonetheless, I take that evidence as I'm
15 required to do, in the light most favorable to the
16 State. And taking the evidence in that light,
17 there is sufficient evidence a weapon was used, I
18 think, to survive the motion for directed verdict.

19 As to the renewal of the mistrial motion for
20 reasons that you stated today, and that you stated
21 eloquently yesterday, I simply adopt my earlier
22 rulings in that regard. We need not re-negotiate
23 those things, from this perspective. They've been
24 ruled on by the Court previously.

25 For that reason, the motion for directed

TESTIMONY OF PAOLA LABRADOR

1 verdict is respectfully denied.

2 Now, Mr. Bax, do you wish for me to inquire
3 of Mr. McQuarters, his understanding of his right
4 to testify or not testify at this time?

5 MR. BAX: I do, Your Honor. Thank you.

6 THE COURT: Mr. McQuarters, if you'll stand,
7 please, and raise your right hand. I'm going to
8 put you under oath.

9 Thereupon,

10 AUSTIN MCQUARTERS

11 was called as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 THE COURT: You can be seated.

14 Mr. McQuarters, we are now entering the phase
15 of the trial where you have a right, but not the
16 obligation, to present evidence, if you choose to
17 do it. You heard me tell the jury the day before
18 yesterday that you don't have to testify and you
19 don't have to present evidence in this case. You
20 are presumed to be innocent of these charges. But
21 you do have the right to testify, if you choose to
22 testify.

23 Under our law, the Fifth Amendment of our
24 United States Constitution and a similar
25 counterpart of our State Constitution says that,

TESTIMONY OF AUSTIN MCQUARTERS

1 No person in a criminal trial can be forced or
2 compelled to testify against himself.

3 That means just what it says. You cannot be
4 compelled to take the stand and testify on your
5 own behalf.

6 If you choose to exercise that right, the
7 jury will be instructed that they cannot take that
8 into account in their deliberations. They'll be
9 told that they can't even talk about that in the
10 course of their deliberations. They'll be told
11 that you have a Constitutional right to remain
12 silent. And if you exercise that Constitutional
13 right, that fact cannot and must not be held
14 against you in their deliberations, and in their
15 consideration of your guilt or innocence.

16 On the other hand, you have the right to
17 testify. If you choose to testify, you will be
18 asked questions not only by Mr. Bax, but by also
19 Ms. Lempesis. And you can be cross-examined and
20 impeached on any issue that is relevant to this
21 case.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand what your
25 rights are relative to testifying and not

TESTIMONY OF AUSTIN MCQUARTERS

1 testifying in this case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I don't need right this minute to
4 know what your decision is going to be. If you've
5 reached it, then Mr. Bax will tell me. But can I
6 assume that whatever that decision is, that
7 decision is based on a full understanding of what
8 your rights are?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Bax, how long do you think it
11 might take to present the defense?

12 MR. BAX: Your Honor, I would like a few more
13 minutes to confer with my client. But my
14 understanding throughout the trial, in discussions
15 with Austin, has been, as last time, that we
16 intend to rest when the jury is brought back in
17 and proceed to closings and charge, Your Honor.

18 THE COURT: Okay. Good.

19 MR. BAX: Just to be on the safe side, I'd
20 like to go ahead and ask that question one more
21 time.

22 THE COURT: Sure.

23 MR. BAX: And I can certainly just do that
24 over a break, if Your Honor would like.

25 THE COURT: That will be fine. We're still

TESTIMONY OF AUSTIN MCQUARTERS

1 in the break, and you can take whatever time you
2 need to deliberate that issue with Mr. McQuarters.

3 Assuming that the outcome is going to be the
4 same as it was before, let me at least
5 preliminarily go over what I deem to be charges to
6 give in this case, and verdict forms, as well.

7 My standard felony charge that all of you
8 have heard before -- although I don't expect you
9 to remember it -- but it involves the reasonable
10 doubt definition from Victor versus Nebraska or
11 State versus Darby. And that is the definition
12 that I alluded to in my opening remarks to the
13 jury. Firmly convinced definition.

14 You're free, of course, under our law, to
15 argue any reasonable doubt definition that has
16 been adopted by our Supreme Court before a jury,
17 if you choose to do that. You have that
18 prerogative as long as it's a correct statement of
19 the law, and there are many of them. I simply
20 didn't want you to go out on a limb and say that
21 when the judge is instructing you he's going to
22 tell you that a reasonable doubt is a doubt that
23 causes a reasonable person to hesitate to act.
24 Because that's not what I'm going to tell them.
25 So, that's the only thing about that.

TESTIMONY OF AUSTIN MCQUARTERS

1 I will instruct on the fact the defendant did
2 not testify, of course. The credibility of the
3 witnesses in this particular case. The statement
4 by defendant. Circumstantial evidence.

5 The only -- frankly, the only circumstantial
6 evidence that was introduced in this case was the
7 evidence that was just offered by Ms. Labrador.
8 Everything else was direct evidence. So, I'll
9 instruct on circumstantial evidence.

10 Obviously, I'm not going to comment to the
11 jury what I believe the circumstantial evidence is
12 in this case.

13 The elements of armed robbery, the verdict
14 form as to that is guilty or not guilty. The
15 elements of assault and battery in the first
16 degree, the verdict form as to that would be
17 guilty or assault and battery in the first degree.

18 And if you request it, Mr. Bax, guilty of
19 assault and battery in the second degree. And not
20 guilty.

21 Those appear to be the appropriate verdicts
22 based on my view of the evidence, but I'll be glad
23 to hear any exceptions to those matters or any
24 requests for additional matters as you had a
25 chance to reflect on them. Okay.

TESTIMONY OF AUSTIN MCQUARTERS

1 MR. BAX: Thank you, Your Honor.

2 THE COURT: All right. Folks, we'll continue
3 to be in recess for a few more moments, and try to
4 start back in about 15 more minutes. Okay? Thank
5 you.

6 (Whereupon, a brief recess was taken.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

TESTIMONY OF AUSTIN MCQUARTERS

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8

DATED this 10th day of February, 2016.

9

10

11 /s/ Mona L. Manley

12

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

13

14

15

16

17

18

19

20

21

22

23

24

25

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

3

4 STATE OF SOUTH CAROLINA,

5 Plaintiff,

6 vs.

CASE NO. 2013GS0701844; 1845

7 AUSTIN LEWIS McQUARTERS,

8 Defendant.

9 _____ /

10

11

* * *

12

13

TRIAL TRANSCRIPT

14

VOLUME 6

15

DATE:

July 22, 2015

16

17 PLACE:

Beaufort County Courthouse
Beaufort, South Carolina

18

REPORTED BY:

Mona Manley, Court Reporter

19

20 BEFORE:

Honorable Thomas W. Cooper, Jr.

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING THE STATE:

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

REPRESENTING THE DEFENDANT:

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

* * *

INDEX PAGE

1	INDEX	
2	Closing Argument by the State	Page 421
3	Closing Argument by the Defense.....	Page 440
4	Jury Charge	Page 453
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

INDEX PAGE

1

2

PROCEEDINGS

3

THE COURT: Mr. Bax, what is the decision?

4

MR. BAX: Your Honor, my client's decision is that he will not testify. We will rest upon the re-entry of the jury into the courtroom, Your Honor.

7

8

THE COURT: Okay. The jury will be brought in and you will be allowed to rest in the presence of the jury. We will then go to closing arguments. Ms. Lempesis, you will open first, of course, and then I have the verdict form. And there's one change, under two, that should be 1845. I missed that. I apologize. I can change that. The indictment number is 1845; is that okay?

10

11

12

13

14

15

16

17

MS. LEMPESIS: That's fine. But I had wanted to address the charges, Your Honor.

18

19

THE COURT: Okay.

20

MS. LEMPESIS: I would ask that the lesser included strong armed robbery be charged anything. I think that it's appropriate. Certainly, the burden, and all of the elements of armed robbery, included in the strong armed robbery. And we do think that there was only a -- and if they choose

21

22

23

24

25

COLLOQUY

1 not to believe his statement that he told him that
2 he used brass knuckles, then the other testimony
3 is, of course, the testimony of the doctor, but we
4 have no weapon recovered. I think that I -- you
5 know, I would think that Mr. Bax would probably
6 argue that he hasn't recovered a weapon and I
7 think that it's appropriate in this case.

8 It was charged last time by Judge Keesley.
9 I'm going to actually -- I look back at the
10 transcript and Mr. Bax had said he was going to
11 ask for it as a charge in that case. I asked for
12 it today, Your Honor, I do think it's appropriate.

13 THE COURT: Okay.

14 MS. LEMPESIS: And then as to the second
15 charge of assault and battery in the first degree,
16 the indictment was based -- and the charge is
17 based on the elements of assault and battery first
18 degree, in that Mr. Snodgrass was injured during
19 the commission of a robbery. And that is the
20 element that we are focusing on and premise on
21 battery in the first degree, not the degree of
22 injury.

23 THE COURT: You're right. You're right. And
24 so, if he was not guilty of --

25 MS. LEMPESIS: Of robbery, then he wouldn't

COLLOQUY

1 be guilty of the assault and battery.

2 THE COURT: Right.

3 Mr. Bax, what do you say, first of all, as
4 the strong-armed robbery verdict?

5 MR. BAX: Your Honor, we oppose it. Yes, we
6 did request it last time, and the jury hung. And
7 as has been ruled -- as the rule is, as you stated
8 it, as the prosecution has stated it, the mistrial
9 means that there was no trial before.

10 THE COURT: True.

11 MR. BAX: And that has been, you know, what's
12 good for the goose is good for the gander, I
13 suppose. You know, at this point we have the
14 right, as Your Honor has said, just as the State
15 has, to change our strategy.

16 THE COURT: Right.

17 MR. BAX: I think that in this case, the
18 State has worked very hard to keep the armed
19 robbery alive and now they want to hedge their
20 bets. We don't want to do that.

21 We oppose the charge of strong-armed robbery.
22 They think that they've proved an armed robbery,
23 let them -- let them try to see if they can sink
24 that putt. We don't request it. We would oppose
25 it. We don't want the jurors to look at it. They

COLLOQUY

1 are going to argue for it.

2 THE COURT: Right.

3 MR. BAX: I do agree with the assault and
4 battery issue, Your Honor. And, in fact,
5 Ms. Lempesis asked me why I hadn't argued specific
6 directed verdict on the assault and battery. It
7 took me a minute to remember that issue had come
8 up before, but because it was the aggravating
9 factor of happening during a robbery, there wasn't
10 really an argument to be made about the severity
11 of the injury. And thus, I didn't make that
12 argument last time, and I didn't make that
13 argument this time.

14 THE COURT: Right. Okay.

15 All right. The question, of course, is
16 candidly, not so much what you all want, but what
17 the evidence supports. And you're right, the
18 aggravated circumstance is the commission of a
19 robbery. So, without a doubt, this should be
20 reduced to assault and battery, guilty of assault
21 and battery first degree or not guilty as to that.

22 The only -- the only thing that remains then,
23 is whether there is evidence of -- before this
24 jury for which it can conclude that he is guilty
25 of strong-armed robbery. The direct evidence, of

COLLOQUY

1 course, that was offered by Mr. Snodgrass was that
2 he -- that he thought that he had been struck by
3 something that -- by a metal object. Whether that
4 rises to a weapon, of course, is another matter
5 entirely.

6 I will, over objection of defense counsel,
7 charge on guilty of strong-armed robbery.
8 Clearly, the jury could believe or disbelieve
9 Mr. Delaplane. It could believe -- it could
10 believe Dr. Snowman and still believe that there
11 was not a weapon used.

12 And so the totality of the evidence suggests
13 that there is evidence from which the jury could
14 conclude that a weapon was not used in this
15 particular case.

16 I will change the verdict form. I will. I'm
17 using the royal "I". I'm going to impose on
18 Mr. Martin, who happens to be Judge Nettle's law
19 clerk to make that change for me.

20 The verdict form as to that charge,
21 Indictment 1844, will be guilty of armed robbery,
22 or guilty of strong-armed robbery, or not guilty.

23 As to Indictment 1845, it will just be guilty
24 of assault and battery first degree.

25 Thank you. All right.

COLLOQUY

1 Okay. Thank you, folks.

2 All right. That being done, now are both
3 sides ready for the jury?

4 MR. BAX: Your Honor, I'm just going to pass
5 this back up.

6 THE COURT: Okay. This is the verdict form?

7 MR. BAX: Yeah.

8 THE COURT: You can throw it away. We'll
9 just get another one with those changes on it.
10 Those are your copies.

11 MS. LEMPESIS: Okay. The State's ready,
12 Your Honor.

13 THE COURT: The State's ready for the jury?

14 Mr. Bax?

15 MR. BAX: Yes.

16 THE COURT: Then bring in the jury.

17 (Jury enters the courtroom at
18 11:45 a.m.)

19 THE COURT: Ladies and gentlemen, as you
20 recall, the State has rested its case-in-chief.
21 Now, the defense has the opportunity to offer
22 evidence and testimony, but is under no obligation
23 to do so, for reasons that I've told you earlier.

24 Mr. Bax.

25 MR. BAX: Your Honor, at this time the

COLLOQUY

1 defense rests.

2 THE COURT: Thank you.

3 Ladies and gentlemen, the defense has now
4 rested its case-in-chief. That means that you
5 have heard all of the evidence that you will hear
6 in the presentation of this case.

7 You have yet to hear the arguments, which
8 will be presented momentarily, and the charge on
9 the law which I will give you after that has been
10 done.

11 I was told beforehand that the -- that we --
12 the defense might choose to rest at this juncture,
13 so we went ahead preliminarily and dealt with some
14 matters that we normally have to deal with outside
15 of your presence. That's the reason that your
16 break was somewhat prolonged, so that we could get
17 those things out rather than have to send you back
18 and take care of them outside of your presence.

19 But now you're back here, and we're ready to
20 conclude the trial portion before you all and put
21 it in your hands so you can take whatever time you
22 need with it.

23 The State will present the first of the final
24 arguments in its regard, and after the State has
25 presented its final argument, then Mr. Bax will

COLLOQUY

1 have the right to present the final argument on
2 behalf of Mr. McQuarters. And then I'll instruct
3 you as to what the law is in this case. And then
4 you'll be able to go back to your jury room and
5 deliberate and reach a verdict in this case.

6 Just as a matter of housekeeping, lunch will
7 be provided for you in the jury room. You won't
8 have to leave. It'll be brought in to you.
9 That's the best use of everybody's time rather
10 than have you have to leave and come back. It
11 works smoother that way.

12 You have been attentive throughout the trial
13 of this case. We appreciate that attention. And
14 it hasn't taken a long time to try. The lawyers
15 have made efficient use of your time, and we
16 appreciate that as well.

17 I'm sure that you all understand that the
18 importance of a trial of a case is never
19 determined by the length of time that it takes to
20 try it. The importance of a trial is determined
21 by the issues that are involved. And you all
22 appreciate the importance of this case, and you've
23 given it the attention that it deserves.

24 It's now equally important that you continue
25 to give that same attention to the lawyers now, as

COLLOQUY

1 they present their final arguments to you. Thank
2 you.

3 Ms. Lempesis.

4 CLOSING ARGUMENT BY STATE

5 MS. LEMPESIS: Thank you, Your Honor. May it
6 please the Court. Mr. Bax.

7 THE COURT: Yes, ma'am.

8 MS. LEMPESIS: Good morning. I want to start
9 also by thanking you for your time and patience
10 during this trial. This is a very important job
11 that y'all have, and we couldn't do our job
12 without you. So, thank you.

13 This case, when I came before you yesterday
14 morning, I told you that this case is about
15 Austin McQuarters. This is Austin McQuarters' day
16 in court. Mr. Bax mentioned the same thing.

17 This is the case of the State versus
18 Austin McQuarters. It is not the case of the
19 State versus Jacklyn Perez, and we're not here
20 about Colton Delaplane. This is about
21 Austin McQuarters and what he did to
22 John Snodgrass, an innocent man leaving his work
23 at night, beaten, robbed, and left laying on the
24 ground.

25 Mr. Bax also mentioned in opening that I was

Closing Argument by the State

1 going to tell you a story -- and I told you a
2 story -- that this is all just a story, and I'm
3 going to appeal to your emotions, that I want you
4 to make an emotion -- an emotional decision. That
5 couldn't be further from what I want you to do.

6 In fact, I'd like you to set your emotions
7 aside when you're back in that deliberation room.
8 What I want you to do is to consider thoughtfully
9 and thoroughly all of the evidence that's been
10 presented to you, and I want you to take that
11 information, along with what Judge Cooper is going
12 to tell you about the law, and I want you to
13 decide this case based on that alone.

14 I'm not telling you a story. I'm not
15 appealing to your emotions. What we've presented
16 are facts that we have. Some of them are not
17 pretty, we've heard them all.

18 I'm asking you to decide based on those facts
19 alone. That's it.

20 So what I want to do now is go over some of
21 those facts. I want to go over what we know from
22 the testimony in this trial. We know that on
23 October 20th of 2013, John Snodgrass, manager of
24 the Northridge Cinemas on Hilton Head Island, in
25 Beaufort County, was leaving work that night. He

Closing Argument by the State

1 was holding a bank bag with about \$4,000 in cash,
2 and he was walking in the parking lot when he was
3 approached by a larger built African American
4 male, and then was attacked.

5 We know from Sergeant Rhett Parnell, who was
6 one of the original responders, that
7 Mr. Snodgrass, when they arrived, was conscious
8 but obviously beaten badly. He was bleeding. We
9 know that Sergeant Parnell described some of the
10 blood droplets he saw near Mr. Snodgrass' car.

11 We also know that they searched for physical
12 evidence that night. And unfortunately found
13 none, and none was collected.

14 They also searched that night for the suspect
15 and unfortunately didn't find anyone that night.

16 We know that there was blood, like I said, on
17 the ground near the victim's truck and on his
18 door, where he told us that he had opened his door
19 and put in papers inside of his truck, and then he
20 had gone to call the police.

21 We also heard from John Snodgrass. And from
22 Mr. Snodgrass, you learned exactly how this attack
23 occurred. And we -- we heard about that in great
24 description. He stood before you and he -- he
25 showed you how close Mr. McQuarters was standing

Closing Argument by the State

1 to him, how the first blow came to the back of his
2 head, how he then fell to the ground, and the next
3 blow came to his face. All the while, he was
4 trying to protect himself with his hands, and how
5 he fell to the ground. He was unconscious at that
6 point, came to, and realized that his stuff was
7 missing. The money was gone.

8 We got a general description from
9 Mr. Snodgrass about the man who attacked him.
10 Said he was wearing dark clothing, he weighed
11 approximately, in Mr. Snodgrass's opinion, maybe
12 200 pounds or so. He was probably about 6 feet
13 tall, and that he had shorter hair.

14 Mr. Snodgrass never identified
15 Austin McQuarters. He didn't identify him here in
16 trial, and didn't identify him before. And I
17 didn't ask him to. He couldn't identify
18 Austin McQuarters, something that he can do now.
19 We got a general description.

20 He also told you, Mr. Snodgrass told you that
21 as he walked out in the parking lot that night, he
22 saw a small, older Toyota car backed into a
23 parking lot -- a parking spot on his left. And
24 that the car was backed in, and his truck was up
25 ahead. You saw that on the video I showed you

Closing Argument by the State

1 with the map of the parking lot. That car was
2 backed in.

3 He noticed that there was a female in the
4 driver's seat of that car. He remembered that, as
5 well. He saw his attacker pop up out of nowhere
6 and walk towards him. He told you about how the
7 man asked him about the movie times, about whether
8 or not he could borrow his cell phone, and about
9 finally what time it was.

10 He told you, as I mentioned already, about
11 the beating that occurred next. He also told
12 you -- he told you what it felt like when he was
13 hit. He described that for you. He remembers it
14 vividly. He said it felt like metal. He said
15 he's been in school yard fights before, he's been
16 hit with a fist before, he knows what that feels
17 like, and this was different.

18 He said that it felt like metal hitting his
19 skin. And that makes sense based on what we know
20 from Dr. Snowman's testimony, which I'll get to in
21 a minute.

22 So, Mr. Snodgrass is knocked out, wakes up,
23 the \$4,000 from the night receipts is gone. He's
24 laying bloody and beaten on the ground, calls the
25 police. Those are the facts. That's what he told

Closing Argument by the State

1 you, that's not a story.

2 We heard from Jacklyn Perez. We saw Jackie,
3 or Brooklyn. She told you everything that she
4 knows about that night. She told you how she
5 knows Austin. She's known him for a little while.
6 They were friends from school. They all went to
7 Bluffton High School.

8 She was at work that night at McDonald's when
9 she saw Austin around nine o'clock, when she got
10 off at first.

11 She saw Austin, he asked her for a ride to
12 Hilton Head. She testified that she was -- that
13 he was going to meet a girl or something, and that
14 she's given him rides before. And he asked her --
15 that Austin gave her some gas money in exchange
16 for giving him a ride.

17 So, she told you that she drove him to Hilton
18 Head, and that he was acting normal, that Austin
19 was -- she didn't think anything was amiss. She
20 told you that when she arrived at the theater, she
21 backed into that parking spot, just like
22 Mr. Snodgrass told you he saw that car backed in.
23 And you saw a picture of that car, that red,
24 smaller, two-door Toyota that we forgot. And she
25 identified that as the car that she was driving

Closing Argument by the State

1 that night.

2 And since she told that you she backed into
3 the spot, and that she and Austin both, they both
4 know Colton Delaplane, and they went and at some
5 point, they both talked to Colton, and he was
6 working at the box office. She said that she had
7 gone to talk to Colton about some money that he
8 owed her from gas -- for gas. Mr. Bax talked a
9 lot about what language she used when she asked
10 about that money. Apparently, she said, Where's
11 the bread? And she was talking about money. She
12 testified that she was asking him about money that
13 he owed her for gas.

14 So, she said she talked to Colton, and Austin
15 talked to Colton, as well. She told y'all that
16 she and Austin stayed there until Colton got off
17 work, sometime around 10:30 or so. And that when
18 Colton got off work, his sister, Colton's sister
19 and girlfriend were there, as well, and that she
20 talked to Colton's sister and girlfriend, and
21 Austin and Colton went off and talked, as well.

22 We just heard from Paola -- Paola, who was
23 working that night, and she said that she saw
24 Colton talking to a larger African American male,
25 and she also saw Colton -- saw Colton's sister and

Closing Argument by the State

1 girlfriend, as well. So, we all -- we know that.
2 It's true.

3 Jackie told you that at some point in all of
4 this hanging around, her phone died and she wasn't
5 sure what time it was. She asked Austin about
6 needing to go back to work. She told y'all that
7 she was going back to work at McDonald's to help
8 unload the truck.

9 It was then that she told you about what she
10 witnessed that happened between Austin and Mr. --
11 and, excuse me, Austin and Mr. Snodgrass.

12 Jackie told you that she saw and heard Austin
13 ask the man about movie times. And Mr. Snodgrass
14 told you that, too, that the man first asked him
15 about the movie times. And then she told you that
16 she saw Austin hit the man a few times, that she
17 was panicked, is maybe the word she used. She was
18 standing, I think she said, that she was probably
19 the distance between that stand and where I was
20 standing over here at the *** stool.

21 She said she saw the whole thing. She saw
22 the beating, she saw the man fall. That Austin
23 then came back to her car, threw the bank bag and
24 a white folder into her passenger seat, and then
25 she drove away.

Closing Argument by the State

1 She told you that on that drive to Bluffton,
2 Austin threw some stuff out of her car window,
3 that he threw some items out of her car window
4 when they were on the foot of the bridge.

5 Jackie told you that Austin, also in that car
6 ride back, said to her that he knew her mom and he
7 knew her sister. Jackie told you she panicked,
8 she didn't know what to do.

9 She testified at this point she was scared of
10 Austin. Minutes before, when they were hanging
11 out, she had not been scared of him. Her
12 testimony was that she became scared of him after
13 because she'd never seen him flip out like that.

14 So, she didn't say a word. She drove him to
15 Bluffton, she dropped him off, and she didn't say
16 a word. She didn't tell the police, she didn't
17 report it. She knew this man had been beaten and
18 robbed. She didn't say anything.

19 She didn't say anything until Investigator
20 Seifert came knocking on her door. And we
21 acknowledge, and you have heard, that
22 Jacklyn Perez was maybe charged with something.

23 And you've heard from myself and from Mr. Bax
24 that she's been made no promises in exchange for
25 her testimony. Mr. Bax, focused on that quite a

Closing Argument by the State

1 bit and asked that question many ways. No
2 promises have been made. And that's true.

3 But again, we're not here about
4 Jacklyn Perez. This is not the case of the State
5 versus Jacklyn Perez, this is the case of the
6 State versus Austin McQuarters. And this is not a
7 story, these are the facts that are in evidence.

8 Even if you don't believe Jacklyn completely,
9 think about where the information that she told
10 you matches up with the other information that you
11 know. Again, she said she backed her car into
12 that parking spot. Seems small, but we know from
13 Mr. Snodgrass that that car was backed in, and
14 that there was a female in the driver's seat,
15 Jacklyn Perez.

16 She said she spoke to Colton at the theater
17 that night. And I think she said she talked to
18 him at the box office. She said that Austin took
19 the bank bag and threw it in her car,
20 and Sergeant Parnell told you that they searched
21 the parking lot looking for that bank bag and
22 couldn't find it, because he took it with him.

23 Moving on to Dr. Snowman, you heard from
24 Dr. Snowman -- he's an emergency medicine
25 physician at Hilton Head Hospital -- you heard a

Closing Argument by the State

1 pretty good amount of detail about his experience
2 and his qualifications. He's been at Hilton Head
3 for 11 years, he's board certified as an emergency
4 medicine physician, and he's in the emergency room
5 all that time. He's treated various types of
6 injuries, various types of wounds. That's one of
7 the things that he does on a daily basis is
8 assesses and treats wounds.

9 You saw, with Dr. Snowman, the pictures of
10 the victim in the hospital. These are after his
11 injuries have been cleaned and sutured and -- and
12 he had been cleaned up. And you heard Dr. Snowman
13 take you through those picture and describe to you
14 the type of injuries that Mr. Snodgrass had
15 suffered.

16 Give me a moment.

17 You saw this picture, and you recall that
18 Dr. Snowman -- or Dr. Snowman walked you through
19 the injuries on the victim's face and the linear
20 lacerations, the bruising, the contusions --
21 that's the medical word. The linear lacerations.

22 You heard Dr. Snowman testify specifically
23 that in his opinion to a reasonable degree of
24 medical certainty that these injuries were not
25 caused by being hit with a fist alone. Not caused

Closing Argument by the State

1 by being hit with a fist alone.

2 You heard from Colton Delaplane, and I feel
3 like we've heard his name more than we've heard
4 Mr. McQuarters' name, Colton Delaplane is 18 years
5 old today, or when he testified he was 18 years
6 old. He was, I think, 16 years old when this
7 incident occurred. He was a lower classman, you
8 heard, at Bluffton High School. He knew
9 Jacklyn Perez and Austin McQuarters.

10 You saw Mr. Delaplane. Hopefully, you heard
11 him. He's soft spoken, difficult to hear. Let's
12 recap what Colton told you. He told you that he
13 was working at Northridge Cinemas that night at
14 the box office, when Austin and Jackie Perez,
15 Jackie, who he knows, when they arrived together.
16 They both asked him for money that night.

17 She asked him for gas money he owed her. He
18 asked him -- Austin asked him for some money from
19 the cash register. He said he didn't give either
20 one of them money.

21 But what did he do? He told Austin that --
22 he told Austin who was going to have it, that
23 John Snodgrass was the manager and he would have
24 the money. He gave Austin the information he
25 needed to know who to rob that night.

Closing Argument by the State

1 And I suppose Austin paid him back for that
2 information, gave him \$250 later that night. He
3 said, Merry Christmas. He said he's come into
4 some money at his work and not to worry about it.

5 And so Colton, whatever reason, didn't worry
6 about it. And he didn't tell anybody, and he
7 didn't tell the police. He didn't tell his
8 parents, he didn't tell a teacher, he didn't tell
9 anybody. He didn't. We're not ignoring that, the
10 fact he didn't tell anyone.

11 When Investigator Seifert came to talk to
12 him, he started to tell a little about -- a little
13 bit about what he knew. You saw, it's hard to get
14 information out of him. Austin was interviewed by
15 Investigator Seifert three times, and each time
16 with the permission of his parents and -- excuse
17 me, Colton was interviewed three times with
18 permission from his parents, and Colton told you
19 in that third interview with Investigator Seifert
20 is when he told Investigator Seifert that Colton
21 had -- or excuse me, that Austin had -- he had
22 talked to Austin the next day and that Austin had
23 told him that he had used brass knuckles when he
24 robbed his manager, John Snodgrass, and that
25 Austin said he had beat him up, he had used brass

Closing Argument by the State

1 knuckles. We know that from Colton.

2 And remember back to what Dr. Snowman said.
3 We know Colton said that Austin told him he used
4 brass knuckles. We have to take that information
5 and remember what Dr. Snowman said, which is that
6 it was the injuries were consistent with the --
7 hit with something other than a fist, not a fist
8 to skin. And Mr. Snodgrass had told you that it
9 felt like metal on his skin.

10 Mr. Bax has spent a lot of time talking about
11 Colton Delaplane, and you've heard this a lot.
12 Colton, Mr. Bax has pointed out, is the only one
13 in this mess that hasn't been charged, and he's
14 tried desperately to distract you with that.

15 MR. BAX: Objection, Your Honor. That's an
16 improper argument.

17 THE COURT: Frankly, I couldn't hear the
18 statement because your back was to me.

19 Ladies and gentlemen, the argument should be
20 confined to the facts which have been produced, if
21 they decide to go beyond the facts that are
22 alleged -- and that have been introduced in proof,
23 in their argument. So I ask you to disregard any
24 statement that was made that is not supported by
25 the evidence in this case. Thank you.

Closing Argument by the State

1 MS. LEMPESIS: We talked a lot about
2 Colton Delaplane. And whatever you want to think
3 about Colton, I want you to remember that we're
4 not here about him. I want you to set your
5 emotions aside and settle this case based on the
6 facts. It's not about Colton and it's not about
7 Jacklyn, it's about Austin McQuarters.

8 Now, today, you've heard from Investigator
9 Seifert, and I want to go back briefly over what
10 you heard from him.

11 Investigator Seifert was assigned to
12 investigate this case. He was assigned the day
13 after the incident occurred. He did not report
14 out that night. Unfortunately, no investigator
15 was called out that night.

16 So, Investigator Seifert first made contact
17 with Mr. Snodgrass at the hospital. He took those
18 pictures of Mr. Snodgrass at the hospital. He
19 gathered what information he could about the
20 suspect and also gathered information about who
21 else was working that night, and who might know
22 about the -- who might, from the theater, know
23 about the incident.

24 So, he got names of other employees. He met
25 with Colton Delaplane, he met with Jacklyn Perez,

Closing Argument by the State

1 he took all these interviews. He also testified
2 about the search warrant they got for
3 Austin McQuarters' house, and that nothing of
4 evidentiary value was found. He told you about
5 the search warrant they got for Jacklyn Perez's
6 car, which was about a month later, and nothing
7 again of evidentiary value was found in that car.

8 And we also heard during Investigator
9 Seifert's testimony, we heard Austin's statement.
10 You saw the interview of Austin McQuarters at that
11 Hilton Head sheriff's office.

12 And here's the story Austin McQuarters told
13 you. Austin said he met a girl he didn't know at
14 the Kroger shopping center, the Kroger parking
15 lot. That he helped her with her groceries, that
16 he didn't know her. He asked her if she wanted to
17 go see a movie, and she was inclined to, and they
18 rode to Hilton Head together to the movie theater
19 on Hilton Head, to Northridge Cinemas, where his
20 boy, Colton, worked.

21 Okay. So, we know from Austin himself that
22 he was at Northridge Cinemas where
23 Colton Delaplane was working that night. He said
24 so himself. He was there.

25 Which makes sense, because Colton told us he

Closing Argument by the State

1 was there, and Jackie said that he was there, and
2 Paola saw Colton talking to a guy, an African
3 American male in the parking lot.

4 So, Austin had told you that he was at the
5 movie theater. That he saw Colton. They didn't
6 end up seeing a movie, so like they that -- they
7 didn't see a movie that night, and then that they
8 left and the girl drove on, dropped him off in
9 Bluffton, and he never saw or heard from her
10 again. I think he said he didn't even get her
11 number.

12 So, that's Austin. That's his story.

13 The last witness you heard from was
14 Paola Labrador. And I've already mentioned her.
15 She just told you that she was working that night,
16 as well. She worked with Colton, she left that
17 night about the same time as he did, and that she
18 saw him talking in the parking lot to a larger
19 African American male that she didn't know.

20 She said she also saw Colton's girlfriend and
21 sister, which is consistent with what Jackie told
22 you about seeing Colton's girlfriend and sister,
23 and what Colton told you as well. She saw them
24 that night. And she was familiar with them
25 because she worked with Colton, and had for a

Closing Argument by the State

1 little while.

2 Those are all the facts that you've heard.
3 That's the evidence that's been presented to you.
4 You've seen the pictures, you've heard the --
5 you've seen the interview, heard interview of
6 Austin McQuarters. You saw the picture of
7 Jacklyn's car, you saw the Miranda form that was
8 used when they read off his rights. Those are all
9 the facts in evidence. That's the testimony.
10 That's what you have to consider when you go back
11 into your jury deliberation room.

12 It's not a big elaborate story that I have
13 come to present to you. Those are the facts, and
14 like I said, they're not all pretty.

15 The judge is going to charge you on the
16 elements of the law. And so I'm not going to get
17 too much into what the elements of these charges
18 are, but you've heard that Austin McQuarters is
19 charged with armed robbery and also charged with
20 assault and battery in the first degree. It's
21 armed robbery because he committed a robbery, he
22 took something from Mr. Snodgrass. He took that
23 \$4,000, that bank bag. And that when he did it he
24 was armed with brass knuckles.

25 Brass knuckles, we know he used because

Closing Argument by the State

1 Colton -- he told Colton Delaplane that he used
2 them, and Colton testified that -- about that
3 statement.

4 We know that Dr. Snowman said that he was hit
5 with something beyond just a fist, and we know
6 that John Snodgrass -- most importantly,
7 John Snodgrass said he was hit with something
8 metal. And those linear lacerations, that was
9 something metal hitting his face, and that makes
10 it armed robbery.

11 Assault and battery in the first degree is,
12 very briefly, that a person commits an offense
13 when they injure another person during the
14 commission of a robbery. Mr. Snodgrass was
15 injured, and he was robbed.

16 In my opening, I talked to you about the
17 burden that the State bears, and the judge will
18 again talk to you about that, and he's going to
19 define that for you, the burden to prove to you
20 all beyond a reasonable doubt that
21 Mr. Austin McQuarters is guilty of these crimes.
22 And I told you that it is not a burden that I bear
23 lightly, and it's one that I've attempted during
24 this trial to satisfy.

25 This hasn't been the telling of one great big

Closing Argument by the State

1 story. I'm not trying to romanticize or dramatize
2 what you've heard. I don't want you to decide
3 based on your emotions. Like I said before, I
4 want you to set those emotions aside and take just
5 the facts that you have before you.

6 Austin McQuarters said he was there, we have
7 people who said they watched him do this, that it
8 was with brass knuckles, and he was robbed, \$4,000
9 was taken -- and Austin McQuarters said he was
10 there.

11 I'm confident that after you consider all the
12 facts and all of this information, that you will
13 not hesitate to come back and find Mr. McQuarters
14 guilty of the offenses of armed robbery and
15 assault and battery in the first degree. Thank
16 you.

17 THE COURT: Thank you, Ms. Lempesis.

18 Mr. Bax?

19 CLOSING ARGUMENT BY DEFENSE

20 MR. BAX: Thank Your Honor.

21 A house of cards. I talked to you about that
22 when we first started this trial. And I think
23 that you've seen what I was talking about. A good
24 example is what you just heard from the
25 prosecution. They've said my client said he was

Closing Argument by the Defense

1 there, but they don't want to talk about the fact
2 that he said he didn't commit any kind of robbery.

3 She's argued that people saw the assault.

4 Well, people didn't see the assault. Only
5 Jackie Perez. Mr. Snodgrass was the victim of the
6 assault. The only person that saw the assault was
7 Jackie Perez, and we know how weak of a card she
8 is.

9 Let's make sure that when we look at the
10 facts, that we look at the facts and not just the
11 facts that help one side or the other. That's
12 your job, and I know that you know this. That's
13 why we picked you.

14 I told you at the beginning of this case, as
15 anyone knows, if you build a house of cards and
16 then you try to flip those cards, the house is
17 going to come down. You have seen on the stand
18 how much flipping their cards they have done. The
19 house can't stand.

20 Now, I want to make sure I talk to you about
21 your oath. You took it at the beginning of the
22 trial. One of the lines in that oath is to make a
23 true deliverance, to a true deliverance make.
24 That means you must deliberate and apply the law
25 to the facts, and I agree with Ms. Solicitor,

Closing Argument by the Defense

1 without emotion or bias.

2 But you can look at the bias that you have
3 seen presented to you from the stand, from the
4 witnesses, from the State. And you take that into
5 consideration.

6 In thinking about this case, to get up here
7 and talk to you folks today, I always try and
8 struggle with how is the best way to communicate?
9 That's my job. And what came to mind for me, with
10 the aid of my co-counsel, of course, is that the
11 burden of proof here is beyond a reasonable doubt.
12 So, you have to find that the State has produced
13 evidence that firmly convinces you beyond a
14 reasonable doubt that my client is guilty.

15 I equate that to building a bridge across a
16 deep cavern. Think in your mind, you're standing
17 on the edge of a deep cliff, you can't see the
18 bottom. You can see the other side, you can't see
19 the bottom. The State has the requirement, and
20 you have the job under your oath to hold them to
21 that job, to build a bridge for you that you can
22 cross, that you can have confidence that you can
23 walk out on that bridge and that you can get all
24 away across that bridge to the other side without
25 falling.

Closing Argument by the Defense

1 But let's think about how they've built that
2 bridge for you. The State is trying to convince
3 you that they can build a bridge with
4 Colton Delaplane and Jackie Perez.

5 Now, the State has argued that there's more
6 to this bridge than just that. But if you look at
7 the evidence, that's not the case. Yes, there was
8 a robbery, no one is disputing that. Yes,
9 Mr. Snodgrass was attacked and beaten, no one is
10 disputing that. That is uncontroverted evidence
11 in this case.

12 The question is: Who did it? And can they
13 prove it's the defendant here?

14 In fact, for you all in this case, the only
15 question is: Can they prove that it's my client?
16 Who it may have been is not even a question that
17 we're asking you to do. That was Investigator
18 Seifert's job.

19 So, think to yourself, can you walk across
20 the bridge that's made only by Jackie Perez and
21 Colton Delaplane? I submit to you, I wouldn't
22 cross that bridge. And I don't think you will
23 either. Because a bridge made from lies in a
24 courtroom is the bridge that you're not supposed
25 to cross. That's exactly why our justice system

Closing Argument by the Defense

1 was designed the way it was, so that you could
2 evaluate the witnesses, decide on their
3 credibility. Because the Judge is going to charge
4 you that credibility is a key area for juries to
5 look at witnesses and their testimony.

6 If the only thing was to believe a witness
7 once they took the oath, and there is no other
8 option, then we wouldn't even need a jury, would
9 we? We'd take the statements, we'd issue a
10 verdict, we'd forget the whole jury part of it.
11 And we could feed them to a computer, spit out the
12 verdict.

13 We don't do that. The reason why is to be
14 able to evaluate whether someone is telling the
15 truth is an innate human thing. Machines can't do
16 it. When you look at someone and you listen and
17 you talk with someone, you can only make a
18 judgment on their veracity, on their truth, based
19 on your common sense and based on your
20 observations of that person. And we all know it's
21 not perfect, but there are times when it's clear.

22 I've been doing this for 11 years -- God
23 knows why -- but I can tell you in my job, and I
24 am certain in your job, there's never been any
25 clearer case of liars than what you've seen on the

Closing Argument by the Defense

1 stand between Colton Delaplane and Jackie Perez.

2 Let's talk about it. Ms. Perez took the
3 stand yesterday. What did she do? She lied about
4 the reason that they were at the theater. She
5 testified it was her understanding that
6 Mr. McQuarters was there to meet a girl. But when
7 I challenged her on it, she had absolutely no
8 basis for that assumption. That was just
9 something she'd come up with. She couldn't say
10 that he ever told her that. There was no reason
11 for it.

12 She lied about where they went. You heard
13 her testimony, that according to her, they left
14 the McDonald's and they went straight to the
15 theater on Hilton Head Island, but that it took 45
16 minutes to get there.

17 You're all members of our community here in
18 Beaufort. I hope to assume that all of you have
19 at least gone to Bluffton and Hilton Head one
20 time. Some of you may live in that area. I don't
21 tend to remember the addresses on -- on any of the
22 information I get, so I apologize. But some of
23 you do, I'm sure that you know exactly what I'm
24 talking about. I'm sure everybody does. Because,
25 frankly, anybody that lives here has had to go to

Closing Argument by the Defense

1 Bluffton at some point. That's where all the good
2 shopping is. We don't have a Target down here --
3 or up here, excuse me, in Beaufort.

4 The difference between Bluffton and Hilton
5 Head is not 45 minutes. Certainly, not at nine
6 o'clock at night on Sunday, in the winter, when
7 there's no tourists from Ohio to slow us down on
8 the road.

9 So, she's also lied about what she talked
10 about with Colton. She testified that she said,
11 Where's the bread?

12 Now, this is just a clear example of using
13 your common sense. If you're going up to ask
14 somebody for gas money, you don't -- I don't care
15 where you're from, you don't go up and say,
16 Where's the bread, and expect that person to know
17 what you're talking about. Use your common sense.
18 You know that's not what she was talking about.

19 She also lied about being scared of my
20 client. She testified that at that moment she
21 became scared of my client, according to her
22 statement, according to her story. Because let's
23 be clear, that's what it was. It was a story
24 she'd come up with.

25 But if you're scared of somebody, suddenly

Closing Argument by the Defense

1 scared of someone you've known this -- all this
2 time, why would you get out of the car and get
3 closer to that person instead of far away? Why
4 would you be sitting in the driver's seat of your
5 vehicle with the ability to flee right there in
6 front of you, and instead choose to step out the
7 car and make further statements to the air, not to
8 anybody in general. Does that make any sense to
9 anybody? No.

10 And finally, if you can say finally, she lied
11 about why she's testified. I think it's clear to
12 everyone, and she did say when I finally got her
13 to, She doesn't want to lose her job, she doesn't
14 want to go to jail.

15 The testimony that she gave that she's not
16 expecting anything in the way of a lenient deal
17 from the State for her testimony is simply not
18 credible. She testified to you that she's
19 represented by an attorney, Jared Newman.

20 Jared Newman is a fine attorney, handles a
21 lot of criminal cases in this county. Is it
22 believable that a fine attorney like Jared Newman
23 would allow her to come in here and testify if he
24 hadn't advised her he expects that it's going to
25 help her get a better deal? Is that credible?

Closing Argument by the Defense

1 No, it's not.

2 And finally, you have heard that right after
3 she got done testifying, after she ran by all of
4 you crying in the hallway, she went straight to
5 Colton Delaplane in the parking lot, in violation
6 of the Judge's order, in contempt of this Court.

7 MS. LEMPESIS: Objection, Your Honor.

8 THE COURT: I'll sustain the objection as to
9 contempt of court. Violation of the order, of
10 course, is -- is appropriate.

11 MR. BAX: Thank Your Honor.. My apologies.
12 In violation of an order of this Court.

13 You've heard testimony from Colton Delaplane
14 that that's what happened. You've heard from him
15 that he knew that they were under that order, and
16 he still went and talked with her.

17 You've heard from him that they talked about
18 her testimony in court that day. You heard she
19 probably had some pretty choice words for me in
20 that conversation. And I would submit to you, it
21 wasn't that I was tough. And I'm going to go back
22 to that in just a minute.

23 Colton then takes the stand. We had some
24 people in between, but Colton takes the stand.
25 Colton testifies that he lied about his

Closing Argument by the Defense

1 involvement from the beginning with Investigator
2 Seifert, that he had to be interviewed multiple
3 times. He lied about his conversation with
4 Ms. Perez. He even, despite the collusion, gives
5 a different story than her even today about when,
6 where they came up to his window.

7 He lied about getting the money from the
8 robbery. He didn't tell that to Investigator
9 Seifert at first. It wasn't until the second and
10 third interview that he even revealed that.

11 He lied about why he got it. He continues to
12 lie today. He continues to lie on the stand in
13 this trial. He lied -- this is the approximately
14 fifth time that he's told his story. This is the
15 second time under oath, as you heard, and he's
16 still lying. He's still denying that he had any
17 knowledge or involvement with this said robbery.

18 As you've heard, he's the only one that could
19 have been the one to set it up. No one else
20 worked there that's been involved with this case
21 that they have found. He's the only one that
22 would have known the information that was
23 necessary.

24 Is it credible for him to say, I gave the
25 information, but I had nothing to do with it? No.

Closing Argument by the Defense

1 Is it credible for him to say, I got a call at
2 1:30 or 2:30 in the morning and went out and got
3 money from someone, but I am not guilty of
4 anything. I didn't do anything. Is that
5 credible? That makes no sense.

6 Regardless of what kind of life he's leading,
7 is he really going to be up at 1:30, 2:30 in the
8 morning, waiting for a phone call to go outside in
9 October? Does that make sense? No, it doesn't.

10 Jackie Perez and Colton Delaplane also have
11 both testified, you've seen from the facts, they
12 had two weeks, maybe more. If you think about it.
13 October 20th to November 5th, that's quite a few
14 days. At least two weeks they had to get their
15 story straight.

16 They knew each other, they both testified to
17 that. You know that they did because even here
18 during this trial, even under order of the court,
19 they continued to collude. They don't have
20 respect for the court's order, they don't have
21 respect for the oath they took, so why, under your
22 oath, doing your job, should you have respect for
23 the words that they've given you?

24 You know that they've lied, and it's the only
25 thing that puts my client there. My client has

Closing Argument by the Defense

1 said, I left. I didn't do it.

2 Now, you also heard from Investigator
3 Seifert. You heard that he has changed his
4 testimony. You have heard that he put in his
5 report that Colton Delaplane confessed to me that
6 he set up the robbery and that he was sorry.
7 Colton Delaplane stated that's why he got \$250 for
8 the robbery.

9 Are those statements conclusory? Absolutely
10 not. He's been an investigator for nine years, he
11 has worked for the sheriff's department for nine
12 years. He has been writing incident reports for
13 nine years. Investigator Seifert knows the
14 difference between a conclusory statement and a
15 factual statement that he puts in his reports.

16 He put a factual statement in his report. He
17 chose now to come in and change his story. He
18 chose to come in here and lie to you.

19 He does not want it to sound as bad that he
20 never charged Colton. He wants to give it some
21 wiggle room there because he knows how bad that
22 is. But he cannot escape the fact that he still
23 believes Colton to be guilty. He cannot escape
24 the fact that he specifically avoided doing any
25 investigation on Mr. Colton Delaplane's story.

Closing Argument by the Defense

1 When he already thought of him as being involved,
2 he didn't do any back checking. He didn't go to
3 talk to the sister, he didn't go talk to the
4 girlfriend, he didn't get cell phone records, all
5 commonly done. Because he didn't want the story
6 to crumble apart, and he knew that was what was
7 going to happen if he went behind it.

8 He had focused his sights on my client, he
9 did not want anything to crumble that. The bridge
10 that they are trying to build can't be crossed.
11 It's got huge gaps in it.

12 You cannot put your weight on a plank made of
13 lies, or you will fall. And why should you ignore
14 the law? Why should you fall for them, for the
15 State, for the government? Because our law is,
16 you are not to do their job for them.

17 As I talked about at the beginning of this
18 case in my opening statements, there's a reason
19 why we have the system that we do. Our founders
20 put together the Constitution and many, many, many
21 of us have fought for it in many ways to keep it
22 alive. Because we believe in it.

23 And they put that Constitution into place
24 because they knew that the greatest danger was a
25 government that oversteps their bounds. They knew

Closing Argument by the Defense

1 that it doesn't have to be a government that rolls
2 tanks down the middle of the road that you've got
3 to be scared of. That's not how it works. It's
4 one at a time. One at a time.

5 If they can't meet their burden, which they
6 clearly have not here, you cannot fly across that
7 bridge in violation of the law just for them. You
8 cannot compromise your morality to solve their
9 problem. Thank you.

10 JURY CHARGE

11 THE COURT: Thank you, Mr. Bax.

12 Now, Madam Forelady and members of the jury,
13 I ask that you give me your attention for a few
14 more moments. You have been very patient and
15 listened very attentively to the arguments
16 presented by Ms. Lempesis and Mr. Bax. And now, I
17 ask that you give that same attention to me as I
18 instruct you or charge you as to what the law is
19 in this case.

20 It becomes my duty under our Constitution to
21 instruct you as to what the law is, and it is your
22 duty as jurors to accept the law and to apply it
23 to the facts of this case, as you find them to
24 exist.

25 It is your exclusive duty to decide all

JURY CHARGE

1 issues and facts in a case, and for reason you
2 have to determine the effect and the value and the
3 weight and the truthfulness of the evidence that
4 you have seen and heard.

5 Both the State and the defendant have a right
6 to expect that you will conscientiously consider
7 and evaluate the evidence, and that you will apply
8 the law of the case to that evidence so that both
9 the State and the defendant will receive a fair
10 and impartial trial at your hands.

11 Throughout the course of this charge, ladies
12 and gentlemen, when I use the word defendant, I'm
13 referring to Mr. Austin McQuarters.
14 Mr. McQuarters has been indicted by the Grand Jury
15 of Beaufort County and charged in one indictment
16 with the crime of armed robbery. That indictment
17 alleges that here in Beaufort County, on or about
18 October the 20th of 2013, the defendant,
19 Mr. McQuarters, by use of force, threats, or
20 intimidation, and while alleging either by action
21 or words that he was armed, using a representation
22 of a deadly weapon or some other object that a
23 person present would reasonably believe to be a
24 deadly weapon, he took and carried away goods or
25 moneys from the person or immediate presence of

JURY CHARGE

1 John Snodgrass with the intent to steal those
2 things in violation of the law.

3 Mr. McQuarters is also charged with assault
4 and battery in the first degree. That indictment
5 alleges that at the same time and place,
6 Mr. McQuarters committed an assault and battery by
7 unlawfully injuring Mr. Snodgrass during the
8 commission of a robbery in violation of the law.

9 I remind you again, as I told you before the
10 trial began, that those indictments are not
11 evidence or proof of the charges. They are
12 charging documents, legal documents that tell us
13 what this case is all about.

14 As you know, Mr. McQuarters has entered pleas
15 of not guilty and has requested and now has
16 received a jury trial at your hands. The effect
17 of the pleas of not guilty to the charges in those
18 indictments is to place the burden of proof on the
19 State to prove by evidence the guilt of the
20 accused beyond a reasonable doubt before you as a
21 jury can convict him and find him guilty.

22 Mr. McQuarters is presumed in law then to be
23 innocent of the charges contained in these
24 indictments. It is a fundamental rule of our law
25 of evidence that a defendant, regardless of the

JURY CHARGE

1 nature or the seriousness or the number of charges
2 against him, will always be presumed innocent of
3 the charges against him unless and until his guilt
4 has been proven by evidence that satisfies you of
5 that guilt beyond a reasonable doubt.

6 The presumption of innocence is not a mere
7 legal theory. It is not an empty legal phrase.
8 The presumption of innocence is like a robe of
9 righteousness that is placed about the shoulders
10 of a defendant. It remains with him, it assigns
11 to him that class known as the innocent. And that
12 presumptive robe of righteousness continues to
13 exist to his benefit unless and until it has been
14 stripped from his person by evidence. Evidence
15 that satisfies you of that guilt, beyond a
16 reasonable doubt.

17 The presumption of innocence accompanies a
18 defendant throughout every course of these
19 proceedings. It follows him as you go into your
20 jury room to deliberate and to reach a verdict in
21 this case. It continues to exist to his benefit
22 until you, the jury, reach the conclusion that the
23 State has proven his guilt beyond a reasonable
24 doubt. So, that then is a burden of the State to
25 prove guilt beyond a reasonable doubt.

JURY CHARGE

1 Some of you might have served as jurors in
2 civil cases before. And if you did, the judge
3 told you in the civil case that it is only
4 necessary that the party who has the burden of
5 proof present evidence to you that is more
6 convincing on that side than the evidence is on
7 the other side of the issue.

8 But in criminal cases, the State's proof has
9 to be more powerful than that. Here it has to be
10 proof beyond a reasonable doubt.

11 So, what do we mean by proof beyond a
12 reasonable doubt? Proof beyond a reasonable doubt
13 is proof that leaves you firmly convinced of a
14 defendant's guilt.

15 Now, there are very few things in this world
16 that you and I know with absolute certainty. And
17 in criminal cases, the law does not require proof
18 that overcomes every possible doubt. And so, if
19 based on your consideration of the evidence you
20 are firmly convinced that the defendant is guilty
21 of the crime charged, you must find him guilty.

22 If, on the other hand, you think there's a
23 real possibility that he's not guilty, you must
24 give him the benefit of the doubt and find him not
25 guilty.

JURY CHARGE

1 Reasonable doubt could arise from evidence in
2 the case. It might arise from the lack of
3 evidence in the case. But you, ladies and
4 gentlemen, have to decide whether or not
5 reasonable doubt exists as to the guilt of this
6 defendant.

7 I tell you that he's entitled to every
8 reasonable doubt which arises in the case. And so
9 if on any issue of fact which is necessary to a
10 conviction and a verdict of guilty, you have a
11 reasonable doubt as to how that issue should be
12 resolved, it is your duty to resolve that
13 reasonable doubt in favor of the defendant.

14 Because the defendant is never required to
15 prove his innocence. The State is required in law
16 to prove every essential element of the offense
17 charged against the defendant by evidence that
18 satisfies you of that guilt before you as a jury
19 can convict the defendant and find him guilty.

20 Now, I instruct you furthermore that the fact
21 that the defendant in this trial did not testify
22 in his own behalf is not a factor to be considered
23 by you in any way in your deliberation and in your
24 determination of his guilt or innocence.

25 It must not be considered by you in any

JURY CHARGE

1 manner whatsoever. It must not militate against
2 in any way whatsoever.

3 A defendant has a constitutional right to
4 remain silent. And if he chooses to exercise that
5 constitutional right, that fact cannot and must
6 not be considered by you in your deliberations.

7 And so under your oath then, you are to reach
8 no inference and draw no conclusion whatsoever
9 from the fact that this defendant did not himself
10 testify. That should not even be discussed by you
11 in the jury room, because the burden of proof, as
12 I said, is upon the State.

13 The defendant has no obligation to prove his
14 innocence, and the burden remains upon the State
15 to prove guilt beyond a reasonable doubt. And the
16 fact that the defendant did not testify is not a
17 factor to be considered by you.

18 So then, ladies and gentlemen, if in front of
19 the whole case you have a reasonable doubt as to
20 the guilt or the innocence of the defendant, he is
21 entitled to that reasonable doubt and would be
22 entitled to an acquittal and verdict of not
23 guilty.

24 But on the other hand, if upon the whole case
25 you find that the State has proven the guilt of

JURY CHARGE

1 the defendant by evidence, it satisfies you as a
2 jury beyond a reasonable doubt, then in such
3 circumstances, it is equally your duty to convict
4 the defendant and to find him guilty.

5 During this trial, folks, you and I have our
6 certain duties to perform. As a trial judge, it's
7 my responsibility to preside over the trial of
8 this case, and I also have the duty to preside
9 upon the -- rule upon and pass upon the evidence
10 and the admissibility of the evidence that has
11 been offered during into the record during the
12 course of this trial.

13 And you are to consider only the competent
14 evidence that has been offered before you. That
15 is, the testimony from this witness stand. And
16 the items or the documents that have been
17 introduced into evidence during the course of this
18 trial.

19 And I have the additional duty to charge you
20 or instruct you as to what the law is, and that's
21 what I'm doing right now. As I've told you, and
22 as you know, I'm the sole judge of the law in this
23 case. And it is your duty to accept the law as I
24 tell it to you now, and apply it to the case to be
25 the correct one.

JURY CHARGE

1 If you brought with you into your service
2 this week some ideas about what you think the law
3 is or what you'd like for it to be, and if your
4 ideas or your preferences about the law disagree
5 with what I'm telling you now the law actually is,
6 under your oath you're obligated to forget what
7 you think about the law, or what you would like
8 the law to be, because under your oath, you're
9 bound to accept the law as I state it to you now
10 to be the correct law.

11 I'm the judge of the law, you're the judge of
12 the facts. Our Constitution has said that the
13 trial judge can't comment upon the facts of the
14 case. I can't innovate or hint to you, or make
15 statement to you about the facts of the case
16 because that's solely a matter for you to
17 determine.

18 So you're not to gather from anything that I
19 have said during this trial, or anything that I am
20 saying to you right now, that I have an opinion
21 about the facts in the case. Frankly, the law
22 does not allow me an opinion about the facts of
23 the case. That's solely for you folks to
24 determine.

25 And as jurors, then, it becomes your duty, as

JURY CHARGE

1 I have said, to determine the value and the
2 effect, and the weight and the truthfulness of the
3 evidence presented during the course of this
4 trial.

5 As you determine what the facts are, as you
6 determine what the truth is, you must necessarily
7 pass upon the credibility of the witnesses who
8 have testified.

9 Credibility is just another word that means
10 believability. You have to decide the force and
11 the effect and the weight and the truth of the
12 testimony that you have heard.

13 Now, there are a lot of things that you can
14 take into account as you decide that matter of
15 truth and credibility. You have the right to take
16 into account the appearance, the manner of the
17 witnesses as he or she testified here from the
18 witness stand. We call that the demeanor of the
19 witness. In other words, how did the witness act
20 on the witness stand?

21 You have a right to ask yourself whether that
22 witness was forthcoming or was the witness
23 hesitant? Was the witness's testimony consistent,
24 or did it contain discrepancy.

25 What was the ability of that witness to know

JURY CHARGE

1 the things that he or she was telling you about.
2 Did the witness have a cause or a reason or an
3 interest to be served by the testimony that he or
4 she was giving? Was the testimony of a witness
5 made stronger by other evidence, or was it made
6 weaker by other evidence in a case?

7 As jurors, ladies and gentlemen, you've got
8 the right to believe a small portion of the
9 testimony of a single witness, and to disbelieve
10 the larger portion of the testimony of that same
11 witness. Or you can do it the other way around,
12 believe the larger portion, disbelieve the smaller
13 one.

14 You can believe all of what a witness tells
15 you or none of what a witness tells you. And what
16 we expect you to do to make that determination
17 about how you evaluate the credibility and weight
18 of the evidence is to exercise your mental
19 processes, to use your good sound logic, your
20 common sense, your sense of logic and reasons,
21 your experiences in life. That's what makes this
22 system work as marvelously and as wonderfully as
23 it does. Folks like you who come into a jury box
24 like where you're sitting now, without knowing a
25 thing in the world about a case until you get

JURY CHARGE

1 there and start to hear it. And you bring your
2 collective wisdom and your individual attributes
3 and experiences in life to bear on what you've
4 heard.

5 If you put all those things together and
6 determine the truth of the case that exists in
7 this case. And once you have decided what the
8 truth is, you apply the law that I'm now giving
9 you, and those two things will come together to
10 result in a verdict which will speak the truth of
11 this case.

12 Now, let me instruct you as to what the
13 elements of the charges are, because you have to
14 determine whether or not those elements have been
15 proven to your satisfaction beyond a reasonable
16 doubt.

17 We begin with the charge of armed robbery.
18 The law defines armed robbery in the following
19 manner: A person who commits robbery while armed
20 with a pistol, dart, slingshot, metal knuckles,
21 razor, or other deadly weapon, or by alleging
22 either by action or words that he was armed while
23 using a representation of a deadly weapon, or any
24 object which a person present during the
25 commission of a robbery reasonably believed to be

JURY CHARGE

1 a deadly weapon, is guilty of armed robbery.

2 So, I will define for you the offense of
3 robbery while armed with a deadly weapon, which we
4 call armed robbery.

5 In order to do that, I'm going to also define
6 for you lesser offenses which are included in the
7 greater. I'll start with the lesser. The least
8 of the offenses is called larceny.

9 Larceny is what you and I commonly refer to
10 as stealing. That is embraced in a greater
11 offense of strong-armed robbery, and I'll tell you
12 about that. And then that offense is also
13 embraced in the greater offense of armed robbery,
14 which are the charges contained in this
15 indictment.

16 So, let's begin with the charge of larceny.
17 What is larceny? As I've said, larceny is
18 commonly referred to as stealing. It doesn't
19 require a great legal mind to figure it out. The
20 essential elements of larceny are that -- that
21 somebody takes into possession somebody else's
22 personal property. I'll tell you that money,
23 cash, is personal property.

24 And secondly, that person takes that personal
25 property and carries it away, removes it. And

JURY CHARGE

1 thirdly, the taking of that personal property and
2 carrying it away is done with the intent to steal
3 it, that is to wrongfully deprive the owner of its
4 use and to convert it to the taker's own use.
5 That's larceny. Stealing.

6 Now, what is robbery? Robbery is all of
7 those things that I just told you. It is taking
8 somebody else's personal property and carrying it
9 away with the intent to steal it, but robbery is
10 the taking and carrying away of the property from
11 the person himself or herself, or from the
12 presence of that person himself or herself, by
13 violence or by putting that person in fear of
14 violence.

15 So, robbery includes larceny, but it adds the
16 element of taking it away from someone's person or
17 in the presence of that person by using force or
18 fear or intimidation or violence.

19 To distinguish those two, and I'm sure it
20 occurs to you, you could be the victim of larceny
21 and not even know it when it happens. Somebody
22 can take your property and you might not even
23 realize it until much later. You come to find
24 it's gone, and you don't know where it is, and you
25 realize somebody has taken it.

JURY CHARGE

1 But a robbery, you know it when it happens.
2 Because it's taken from your person or in your
3 presence, by force or violence or by putting you
4 in fear of violence. That's robbery. We
5 sometimes call it strong-armed robbery.

6 So, what is armed robbery? Armed robbery is
7 a taking of personal property of somebody else and
8 carrying it away with the intent to steal it. And
9 taking it from that person or from the persons of
10 that person, by the use of force, fear, or
11 intimidation and by the use of a deadly weapon,
12 while being armed with a deadly weapon.

13 A deadly weapon is any object which can
14 reasonably be considered to use -- to cause death
15 or serious bodily harm. So, I tell you, ladies
16 and gentlemen, the State is required to prove
17 every element of the offense of armed robbery, or
18 strong-armed robbery, because that's a lesser
19 element that I'll tell you can be a possible
20 verdict in this case. And whatever charge you
21 find them guilty of -- him guilty of, they have to
22 prove every element of that offense beyond a
23 reasonable doubt before he can be convicted and
24 found guilty.

25 If the State fails to meet its burden of

JURY CHARGE

1 proof as to any of those elements, or the State
2 has failed to meet its burden of proof as to the
3 crime itself, then the defendant is entitled to a
4 verdict of not guilty as to that charge.

5 The defendant is also charged with the crime
6 of assault and battery in the first degree. A
7 person commits the offense of assault and battery
8 in the first degree if the person unlawfully
9 injures another person, and if that injury
10 occurred during the commission of a robbery.

11 The State, in order to meet its burden of
12 proof as to assault and battery in the first
13 degree has to prove that the defendant injured
14 another person, and that that injury occurred
15 during the commission of the crime of robbery.

16 All of those things have to be proven beyond
17 a reasonable doubt in order for you to find the
18 defendant guilty of the crime of assault and
19 battery in the first degree. If the State meets
20 its element, its burden as to those elements, its
21 entitled to a verdict of guilty. If it fails as
22 to any of those elements, it has failed its burden
23 of proof as to that charge and the defendant must
24 be found not guilty of that charge.

25 Now, ladies and gentlemen, you have heard

JURY CHARGE

1 entered into the record of this case a statement
2 made by the defendant. I determined that you're
3 entitled to see that, but you have to decide
4 whether or not it was a voluntary statement and
5 you must decide the weight that you will give to
6 the statement.

7 If you determine that the defendant made the
8 statement, and then you must determine whether it
9 was voluntarily made, and then finally you
10 determine what weight, if any, you choose to give
11 to it.

12 Because you have to decide whether the
13 statement was the product of the free and
14 unconstrained choice of the maker itself. You
15 have to decide the voluntariness of it, and the
16 State has to prove that it was a voluntary
17 statement beyond a reasonable doubt. And if you
18 find that it was a -- a statement was given freely
19 and voluntarily beyond a reasonable doubt, then
20 you can give it whatever consideration you think
21 it should receive.

22 If you determine that it was not a free and
23 voluntary statement, then you can't give it any
24 consideration whatsoever.

25 When you decide whether a statement was

JURY CHARGE

1 freely and voluntarily made, or whether the will
2 of the person making it was overcome, the law
3 requires you to consider all of the facts and
4 circumstances. We call it the totality of the
5 circumstances surrounding the questioning.

6 You can take into account the age of a
7 defendant, the educational background, the mental
8 ability, and things of that nature, and all of the
9 other facts which are obvious in surrounding the
10 statement itself.

11 You also have to determine whether or not the
12 defendant received his Constitutional rights,
13 Miranda rights they're called under the law. And
14 you know those laws -- those rights, they've
15 become a part of the fabric of our -- of our
16 criminal justice system over the years.

17 The defendant, who is in custody, before he
18 can be asked any questions has to be advised that
19 he has the right to remain silent, that any
20 statement that he uses could be used against him.
21 That he has the right to have a lawyer present.
22 If he can't afford one, one will be appointed to
23 represent him. That he can stop making the
24 statement at any time he chooses to do so.

25 And so you carefully scrutinize all of the

JURY CHARGE

1 facts surrounding the statement, and you have to
2 be satisfied beyond a reasonable doubt that the
3 statement was freely and voluntarily made before
4 you can give it any weight whatsoever.

5 Now, ladies and gentlemen, the State in this
6 case seeks to meet its burden of proof, as I've
7 just described that to you, by offering both,
8 direct and circumstantial evidence.

9 Direct evidence is kind of like eyewitness
10 evidence, where somebody who goes into Court says,
11 This is what I saw or this is what I heard.
12 That's direct evidence. That's evidence that
13 doesn't requires any conclusion or deduction on
14 your part. It's just whatever they said.

15 Direct evidence proves that the existence of
16 a fact directly, and it doesn't require any
17 deduction on your part. But circumstantial
18 evidence, on the other hand, is a proof of a chain
19 of facts of circumstance which indicate the
20 existence of some other fact.

21 Over the years I've tried to think of a
22 simplistic way to describe that. I've gotten into
23 a rut using this example. And I just can't get
24 out of it, and I can't think of a better one, so
25 I'll burden you with it.

JURY CHARGE

1 Circumstantial evidence can be described by
2 using your imagination for a few moments and
3 trying to think yourself out of a heat index of
4 114, which I understand it's going to be today
5 when you walk back out into it, and -- and fast
6 forward into the winter, when the -- when the
7 grass is all dead and brown, and it's deep winter,
8 and you all might not have it down here, but just
9 a little farther north where I am occasionally we
10 have snow.

11 If you can imagine yourself standing in your
12 window and looking out across your lawn before you
13 go to bed and you see the brown dead grass of
14 winter, and that's all you see. And you get up
15 the next morning and you look out and you see that
16 that grass is covered with snow. And you also see
17 footprints leading through that snow to your front
18 door. Well, what do you conclude from that? By
19 circumstantial evidence, what do you conclude?

20 First of all, you conclude that after you
21 went to bed last night it snowed. You didn't see
22 a single flake fall, but you know that it snowed
23 from what you observed the next day.

24 And you also know that sometime after it
25 snowed somebody came to your front door. You

JURY CHARGE

1 didn't see them, you don't know who they are, but
2 you know that they came because they left tracks
3 in the snow. That's a very simplistic example of
4 circumstantial evidence.

5 Now, the law doesn't make any distinction
6 between direct and circumstantial evidence.
7 Crimes can be proven by circumstantial evidence.
8 It doesn't distinguish between the weight or the
9 value that you give to either direct or
10 circumstantial evidence.

11 But to the extent that the State relies on
12 circumstantial evidence, that all of the
13 circumstances that they rely on have to be
14 consistent with each other. And when taken
15 together they have to point conclusively to the
16 guilt of the accused beyond a reasonable doubt.

17 If circumstances merely portray the
18 defendant's behavior as suspicious, then the proof
19 has failed. The State has the burden of proving
20 the defendant guilty beyond a reasonable doubt, as
21 you well know by now. And the burden rests with
22 the State regardless of whether it relies on
23 direct evidence or circumstantial evidence or some
24 combination of the two.

25 Now, ladies and gentlemen, finally -- that's

JURY CHARGE

1 a word you've been hanging on to hear for a while,
2 right, finally?

3 Finally, let me tell you that you are not
4 partners nor are you advocates for the State of
5 South Carolina or for this defendant. You don't
6 serve as jurors to punish your enemies nor to
7 reward your friends. You have been chosen both by
8 the State and this defendant to be fair and
9 impartial jurors. It is your duty then, by your
10 joint deliberations, to determine the truth of
11 this case, giving to the defendant the benefit of
12 every reasonable doubt on each and every issue.
13 And to the facts which you determine to be true,
14 you take and apply the law which I have given you
15 and thus arrive at a verdict which will speak the
16 truth of this case. That's how this system works.
17 Your truth and the law come together to speak the
18 truth of this case.

19 And once you have done that, you will have
20 discharged the oath which you took when this case
21 began to well and truly try this case and to
22 render a true verdict according to the law and the
23 evidence, so help you God. We are all confident
24 that you will do just that, and that you will do
25 nothing less than that.

JURY CHARGE

1 Now, ladies and gentlemen, I'm going to
2 instruct you at this time as to the verdict, and
3 the forms of verdict which exist in this case. I
4 have written them down on this sheet of paper. I
5 tell you that the order in which they're written
6 down on this sheet of paper, on this verdict form,
7 doesn't mean anything at all. You're not to reach
8 any conclusions or inferences from the order that
9 I have written them down. I simply write them in
10 the order that I find them easiest to explain.

11 I've given the verdict form to the forelady,
12 because she's the one who's got to fill it out.
13 But it will not be her verdict alone, it has to be
14 unanimous.

15 There are two charges in this case. And so
16 you will write two verdicts. Your verdict on one
17 charge does not necessarily determine your verdict
18 on the other. The defendant could be convicted or
19 acquitted of either or both of these charges,
20 depending upon your view of the evidence.

21 We begin with the charge of armed robbery.
22 There are three possible verdict forms for that
23 charge.

24 The first possible verdict form is, We, the
25 jury, by unanimous consent, find the defendant

JURY CHARGE

1 guilty of armed robbery. That is the verdict form
2 that you will arrive at if you find that the State
3 has met its burden of proof of all the elements of
4 the charge of armed robbery, as I instructed you.

5 And if you find that the State has met its
6 burden of proof, Madam Forelady, you will indicate
7 that by putting an X or a checkmark in the space
8 you see we have provided for you.

9 The second possible verdict form is if you
10 don't find that the State has met its burden of
11 proof beyond a reasonable doubt as to guilty of
12 armed robbery, a possible verdict form is guilty
13 of strong-armed robbery. That's a verdict form
14 that you will arrive at if you find that the State
15 has met all of its burden as to the charge of
16 strong-armed robbery, as I instructed you earlier.

17 And, likewise, if that's a verdict you arrive
18 at, you will place a checkmark or an X mark in
19 that space.

20 The final verdict form that you may arrive at
21 in this case is, We find that the defendant is not
22 guilty. That's the verdict form that you will
23 find -- that you will use if you find that the
24 State has not met its burden of proof as to any of
25 the elements of the above two charges, as I have

JURY CHARGE

1 instructed you.

2 As to the charge of assault and battery in
3 the first degree, there are only two possible
4 verdict forms. Guilty if the State has met its
5 burden of proof as to that charge, and not guilty
6 if the State has failed in its burden.

7 Likewise, that will be indicated in the same
8 manner.

9 I remind you again, that the verdict has to
10 be unanimous. Madam Forelady, you can't write
11 that verdict form nor sign it until all 12 of your
12 number have agreed to what the verdict shall be.

13 We're going to send you now to your jury
14 room. But I'm going to ask you to wait just a few
15 moments before you begin your deliberations. I
16 have to talk to the lawyers to see if I've missed
17 anything or left out anything. And if I have,
18 we'll have to bring you back out to re-instruct
19 you or to correct any errors I may have made.

20 If we don't have to bring you back out, we
21 will send in the items of evidence. And once
22 those items of evidence are brought into the jury
23 room, Madam Forelady, that's your signal to begin
24 your deliberations. And once the items of
25 evidence have been delivered to you, you will

JURY CHARGE

1 begin your deliberations. You will deliberate
2 until you have reached a verdict, at which time,
3 Madam Forelady, you'll fill out the verdict form
4 and sign it and knock on the door, advise the
5 bailiff, and we'll bring you out to receive the
6 verdict at that time.

7 Your food has been ordered. It might even be
8 there, I'm not sure. But it will be along
9 shortly. You can deliberate while you eat or you
10 can stop deliberating to eat, that's up to you.
11 You make your own choice. But all 12 of you have
12 to be in the room during deliberations, however.

13 So I'm going to send you to your jury room.
14 Ms. Seabrooks and Mr. Mack, if you'll stay right
15 where you are for the time being. Okay?

16 Ladies and gentlemen, you can retire to your
17 jury room. Please do not yet begin your
18 deliberations. Okay?

19 (Jury exits the room at
20 1:05 p.m.)

21 THE COURT: Ms. Lempesis, any exceptions or
22 requests for additional charge from the State?

23 MS. LEMPESIS: Not from the State, Your
24 Honor.

25 THE COURT: Thank you.

JURY CHARGE

1 Mr. Bax, for the defense?

2 MR. BAX: Other than already noted about the
3 strong-armed robbery, no, Your Honor.

4 THE COURT: Okay.

5 Folks, if you all will check and make sure
6 all of the evidence is together there, and then we
7 can send it in.

8 Ms. Seabooks and Mr. Mack, folks, you all
9 have figured out by now, as alternate jurors, your
10 job is -- was going to be to move into one of
11 these chairs up here if one of these folks
12 couldn't go on, if they got sick or had some
13 emergency that kept them from coming. Then you
14 moved later. You paid just as good attention as
15 these folks did, you're equally capable of
16 reaching a verdict as they are. We didn't need
17 you because they all survived the trial.

18 But what you've done for us was to give us
19 peace of mind to know that you were going to be
20 here with us once we got started. That you were
21 going to be here regardless of what might happen
22 to somebody else. If we had not had alternates
23 like you, and if something had happened, a family
24 emergency or an illness or whatever, that kept any
25 of these other 12 jurors, if you were not here, we

JURY CHARGE

1 would have had to start that whole trial over.

2 So every day when I knew that you were here,
3 I knew that we were going to be able to go
4 forward. And I appreciate that.

5 Your food has been ordered, too, but you
6 can't go back to the jury room. They can put you
7 in a separate jury room, and you can -- when your
8 food is delivered you can take it and eat it there
9 or you can take it with you, either one. But
10 after you've done that, you don't need to come
11 back. Your service has been completed, and we
12 thank you so much.

13 Thank you. Put them in another jury room,
14 please. Thank you.

15 Got it all together?

16 MS. LEMPESIS: Yes, Your Honor. The only
17 question is, as to the disc, they have no way to
18 play it back in the jury room. So, I would
19 suggest not sending it back.

20 THE COURT: Well, send it -- they don't have
21 to -- if there's nothing they can do, they can't
22 play it back there. Send it back, they'll know if
23 they need to see it they can come back and raise
24 their hand and we'll put it out here. Otherwise,
25 they might forget it exists. Okay?

JURY CHARGE

1 MS. LEMPESIS: Thank you.

2 MR. BAX: All right.

3 THE COURT: All right, folks. Thank you. I
4 appreciate you, as always.

5 MR. BAX: Your Honor, just to cover my bases,
6 can I look at the second verdict form before we
7 send it back? I know I looked at the first one
8 and there's been some changes that were made.

9 THE COURT: Okay. I have two extra ones.
10 They just came in while you all were arguing, I
11 didn't have a chance to give them to you.

12 MS. LEMPESIS: Sorry, Your Honor.

13 MR. BAX: Sorry, Your Honor.

14 THE BAILIFF: Your Honor, do you have the
15 verdict sheet?

16 THE COURT: No, she's got it. The forelady's
17 got it.

18 THE BAILIFF: Oh, she's already got it. All
19 right.

20 THE COURT: Yeah, that's right.

21 THE BAILIFF: You ready for this to go back?

22 THE COURT: Yes, sir, that can go in.

23 MR. BAX: Thank you, Your Honor.

24 MS. LEMPESIS: Thank you, Your Honor.

25 THE COURT: All right. Thank you all.

JURY CHARGE

1 All right. Folks, we'll stand at ease until
2 we hear from the jury. And we'll have a lunch
3 hour. I understand that you got some pleas signed
4 up that we may deal with, but we will, at least,
5 take a lunch hour before we deal with those.

6 MS. LEMPESIS: Your Honor, should I tell the
7 jail to bring inmates at maybe 2:00; is that okay?

8 THE COURT: That will be enough time for
9 lunch hour.

10 MS. LEMPESIS: I that enough time? Okay.

11 And, of course, you probably won't start at
12 two, but maybe two -- we wouldn't start at two
13 anyway, as I'll have to get the lawyers here as
14 well.

15 THE COURT: Okay. If you tell them to be
16 here at two, they'll be here probably later.

17 MS. LEMPESIS: Thank you, Your Honor.

18 THE COURT: All right. Thank you, folks.
19 We'll stand down until then.

20 MS. LEMPESIS: Thank you, Your Honor.

21 (Jury begins deliberations.)
22
23
24
25

JURY CHARGE

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8 DATED this 10th day of February, 2016.

9

10

/s/ Mona L. Manley

11

12

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

13

14

15

16

17

18

19

20

21

22

23

24

25

1 IN THE COURT OF GENERAL SESSIONS IN AND FOR

2 BEAUFORT COUNTY SOUTH CAROLINA

3

4 STATE OF SOUTH CAROLINA,

5 Plaintiff,

6 vs.

CASE NO. 2013GS0701844; 1845

7 AUSTIN LEWIS McQUARTERS,

8 Defendant.

9 _____ /

10

11

* * *

12

13

TRIAL TRANSCRIPT

14

VOLUME 7

15

DATE:

July 22, 2015

16

17

PLACE:

Beaufort County Courthouse
Beaufort, South Carolina

18

REPORTED BY:

Mona Manley, Court Reporter

19

20

BEFORE:

Honorable Thomas W. Cooper, Jr.

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING THE STATE:

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

REPRESENTING THE DEFENDANT:

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

* * *

INDEX PAGE

1	INDEX	
2	Jury question.....	Page 487
3	Verdict.....	Page 494
4	Jury dismissed.....	Page 502
5	Sentencing.....	Page 503
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

JURY QUESTION

1 PROCEEDINGS

2 THE COURT: Folks, a note came out from the
3 jury some time ago. The note said, We would like
4 to see the video.

5 As we sent in to get the video, Captain Smith
6 was told that they only wanted to watch the
7 portion of the video in which a description was
8 given of the young lady at Kroger's. I'll confirm
9 with the jury, once they are in the jury room, if
10 that's the only portion that they want to see, if
11 that's a fact, then we'll go forward with it.

12 Is the State ready for the jury?

13 MS. LEMPESIS: Yes, Your Honor. And for your
14 information I have keyed it up to the portion
15 where he starts to talk about -- to describe her
16 exactly, and it's not a very lengthy portion. So,
17 I guess, I'll just stop it after --

18 THE COURT: Okay. That's the part they asked
19 for. And I'll ask them to raise their hand once
20 they've heard what they need to hear.

21 MS. LEMPESIS: Okay.

22 MR. BAX: And Your Honor, just as -- for the
23 record, I've looked at what they've got. And
24 we've just agreed she -- we're going to start
25 playing it right before he starts describing the

JURY QUESTION

1 person at Doug's request, and then at the end of
2 his description. It's only like 15 or 20 seconds.

3 THE COURT: All right. Good. Thank you.

4 Bring in the jury.

5 THE BAILIFF: Ready, Your Honor? The jury is
6 entering the courtroom now.

7 (Time is now 2:44 p.m.)

8 THE COURT: Thank you.

9 Folks, we received your request in the note
10 that you wanted to replay the video. And then we
11 got an oral request that you only wanted to see
12 that portion of the video that contained the
13 description given of the young lady met at Kroger;
14 is that correct?

15 JUROR: Yes.

16 THE COURT: All right. So, they keyed it up
17 to that point on the video. It's not a lengthy
18 portion. And once that has been played, of
19 course, if you'll just raise your hand once you've
20 heard everything that you need to hear, that we've
21 satisfied your request, then we can cut it off at
22 that time.

23 We will keep it running as long as you all
24 want to run it, though, until -- is that okay?

25 All right.

JURY QUESTION

1 (Audio of the interview of the
2 defendant playing.)

3 MR. BAX: Your Honor, we have gone well past
4 the description, I'm not sure they understood --

5 THE COURT: What I told them.

6 (Audio resumes play.)

7 THE COURT: Ladies and gentlemen, do you need
8 to hear any more of it? You can hear -- listen.
9 We'll play the whole thing if you want to. I'm
10 not trying shut you off.

11 Does anybody need to listen to any more of
12 the tape than you've heard? You raise your right
13 hand. Anybody? Anyone wants to hear any more?

14 JUROR: Is there a written transcript of
15 that, to where we can -- some of it, I can't quite
16 hear. Is that down on paper at all?

17 THE COURT: No, sir. I don't think that they
18 prepared a written transcript. I'm sorry. I'm
19 like you, there are parts of it I can't hear as
20 well as I can others.

21 JUROR: Okay.

22 THE COURT: We'll be glad to try to focus on
23 those parts and replay them so that you can hear
24 better. But that's the best we have. Again, I'm
25 sorry.

JURY QUESTION

1 Does anybody need to hear anything else?

2 Okay. Record should reflect that no hands
3 were raised. And so we'll send you back to your
4 jury room. Folks, let us know if there's anything
5 else.

6 (The jury leaves the courtroom.)

7 THE BAILIFF: The jury is clear, Your Honor.

8 MS. LEMPESIS: Ms. Lempesis, anything further
9 from the State?

10 MS. LEMPESIS: No, Your Honor.

11 THE COURT: Mr. Bax.

12 MR. BAX: Your Honor, I'd like to note for
13 the record my objection. What we agreed to was
14 that one portion, and I was unaware that
15 Your Honor was going to instruct them to raise
16 their hands.. I'm not sure that they really
17 understood that because they all just kind of kept
18 watching. It went well past that point, I didn't
19 have an opportunity to be heard on the idea that
20 they would raise their hands when they were done
21 listening. So, I object to it.

22 THE COURT: They had the right to hear as
23 much or as little of that as they wanted. We knew
24 where to start, quite frankly, and I didn't know
25 whether there was some other description came in

COLLOQUY

1 later or after that intial description or not.
2 And so I made that plain to them, that we could
3 play as much of it as they wanted to. And once
4 they heard all of it, please raise their hands and
5 get my attention, we could cut it off, that I was
6 not going to cut it off without some affirmative
7 statement from them because I didn't want to
8 presume that they had heard all that they wanted
9 to hear from our description. I didn't want to
10 make the error of drawing the conclusion that
11 might be different from what they said.

12 And so I made that plain to them, raise your
13 hand and let us know, and the record will reflect
14 all that. And when it went on past that, well,
15 you got my attention that it was going past that.
16 And when we had a pause in the tape, then I took
17 advantage of that and they told me that they had
18 heard all that they wanted to hear.

19 But I was not going to cut it off without
20 some affirmative action for the reasons that I
21 mentioned. Thank you.

22 I note the objection, in any event.

23 All right. Folks, we can stand at ease now
24 until we hear further from them. And, you know,
25 I'll note that the record needs to be burdened

COLLOQUY

1 with my own reflection of audio and video taped
2 confessions and statements, audio and video taped
3 drug buys, audio and video taped conversations
4 with people -- even in the controlled area like
5 that, in a room where there's no outside noise.

6 I am sure that there is within the realm of
7 science somewhere a microphone that doesn't sound
8 like it's a reject from the McDonald's drive-in
9 window, somebody could play so that you could
10 actually hear what's being said and make out the
11 words. Not everyone speaks and enunciates
12 clearly. I don't myself.

13 But even in most all circumstances, we can
14 surely have some technology. And in all candor,
15 in 22 or 23 years doing this, I don't believe that
16 I have ever listened to one of those tapes in
17 which I understood everything that was said. I
18 have counted on the jury to understand it. And,
19 thank goodness, this is the first time I've ever
20 heard a juror tell me, I didn't understand it.

21 Although, I will say that when officer --
22 when Investigator Seifert was paraphrasing those
23 things after the fact, and you made a timely
24 objection, Mr. Bax, because it said it's
25 cumulative, and frankly it was, and -- because

COLLOQUY

1 they heard it once. But I made the comment, I'm
2 afraid that they may not have understood it all.
3 And when I did that, I got about two or three nods
4 of heads across the front of the jury to agree,
5 that they had not been able to understand it all
6 either.

7 And that's -- nobody ever knows who suffers
8 when those things happens, that they didn't hear
9 it.

10 Well, that's the preaching for today, folks,
11 and I won't be doing this much longer, in any
12 event, and that will be lost in antiquity. And
13 judges for the next generation will have to do the
14 same thing, and listen to garbled folks talk like
15 the -- either the teacher on Peanuts or drive-in
16 window at McDonald's.

17 We'll stand aside.

18 I've got a list of folks here. Are these
19 folks in place now, or do we need to take a few
20 minutes to get them lined up?

21 MS. LEMPESIS: We've got maybe five minutes,
22 Judge. I'm sorry. We may not even need that. .

23 THE COURT: No, that's all right. I just saw
24 the list when I came out here, and I was going to
25 deal with it if we could, while I was here.

COLLOQUY

1 MS. LEMPESIS: Thank you, Your Honor.

2 THE COURT: Folks, please be seated.

3 (The time is now 3:00 p.m.)

4 THE COURT: Ladies and gentlemen, we're
5 advised that the jury has reached a verdict in
6 this case. We will bring in the jury momentarily,
7 and the jury and the verdict will be announced.

8 I remind all of you in the courtroom, of
9 course, that none of us knows what the jury is
10 going to be saying. And I imagine that there will
11 be relief on one side of the courtroom and
12 disappointment on the other side. I don't know
13 how that's going to fall.

14 If you are a spectator here and feel like
15 that you might not be able to control your
16 emotions once the verdict is announced, I'll give
17 you this opportunity to leave the courtroom.
18 Because if you stay here I'm going to expect you
19 to abide by the principle of decorum and dignity
20 that we demand in court. That is, not any outward
21 display of emotions of any sort when the verdict
22 is announced.

23 Everybody understand that? Thank you.

24 THE BAILIFF: You ready, Your Honor?

25 THE COURT: Yes, sir.

VERDICT

1 THE BAILIFF: The jury is entering the
2 courtroom, Your Honor.

3 THE COURT: Thank you.

4 (The jury enters at 3:00 p.m.)

5 THE COURT: Madam Forelady, we are advised
6 that the jury has reached a verdict. Is the
7 verdict unanimous?

8 JUROR: Yes, it is.

9 THE COURT: If you'll hand it to the bailiff,
10 and he'll hand it up to me. Thank you, ma'am.

11 Madam clerk, you may publish the verdict.

12 THE CLERK: In the State versus
13 Austin Louis McQuarters, we the jury, unanimously
14 consent, find the defendant, Austin McQuarters,
15 guilty of armed robbery, armed robbery. And in
16 Count II, as indictment 2013GS0701845, guilty of
17 assault and battery first degree.

18 Ladies and gentlemen, is this your verdict?
19 Please raise your right hand.

20 THE COURT: Let the record reflect that all
21 12 have raised their hands.

22 Mr. Bax, does the defense desire polling of
23 the jury?

24 MR. BAX: Yes, Your Honor.

25 THE COURT: Thank you.

VERDICT

1 Ladies and gentlemen, you're going to be
2 polled now individually. As your names are
3 called, you'll be asked to stand in place. The
4 clerk will ask you was this your verdict, is it
5 still your verdict, and you'll give what the
6 appropriate answer is to those questions. Thank
7 you.

8 THE CLERK: Juror No. 304, Thompson. Is this
9 your verdict?

10 JUROR: Yes, it is.

11 THE CLERK: Is this still your verdict?

12 JUROR: Yes, it is.

13 THE CLERK: Juror No. 143, Holmes-Brown, is
14 this your verdict?

15 JUROR: Yes, it is.

16 THE CLERK: Is this still your verdict?

17 JUROR: Yes.

18 THE CLERK: Juror No. 212, Moody, is this
19 your verdict?

20 JUROR: It is, yes.

21 THE CLERK: Is this still your verdict?

22 JUROR: Yes.

23 THE CLERK: Juror No. 339, Wilson, is this
24 your verdict?

25 JUROR: Yes.

VERDICT

1 THE CLERK: Is this still your verdict?

2 JUROR: Yes.

3 THE CLERK: Juror No. 168, Kemerling, is this
4 your verdict?

5 JUROR: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR: Yes.

8 THE CLERK: Juror No. 55, Catanzarite, is
9 this your verdict?

10 JUROR: Yes, ma'am.

11 THE CLERK: Is this still your verdict?

12 JUROR: Yes, ma'am.

13 THE CLERK: Juror No. 78, Cunningham, is this
14 your verdict?

15 JUROR: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR: Yes.

18 THE CLERK: Juror No. 285, Singleton-Murphy,
19 is this your verdict?

20 JUROR: Yes.

21 THE CLERK: Is this still your verdict?

22 JUROR: Yes.

23 THE CLERK: Juror No. 247, Reeves, is this
24 your verdict?

25 JUROR: Yes.

VERDICT

1 THE CLERK: Is this still your verdict?

2 JUROR: Yes.

3 THE CLERK: Juror No. 134, Hanna, is this
4 your verdict?

5 JUROR: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR: Yes.

8 THE CLERK: Juror No. 214, Morgan, is this
9 your verdict?

10 JUROR: Yes.

11 THE CLERK: Is this still your verdict?

12 JUROR: Yes.

13 THE CLERK: Juror No. 121, Gould, is this
14 your verdict?

15 JUROR: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR: Yes.

18 THE CLERK: Thank you.

19 THE COURT: Thank you. The record will
20 reflect that all 12 jurors have concurred to the
21 verdict reached in this regard.

22 Is there anything else before the jury,
23 Mr. Bax, before the jury is dismissed?

24 MR. BAX: Can we approach?

25 THE COURT: Sure.

VERDICT

1 (Off-the-record discussion held.)

2 THE COURT: Madam clerk, do you have the
3 indictment?

4 Ladies and gentlemen -- folks, let's put that
5 aside for just a second, please, if you will.
6 I'll give her a chance to do that.

7 I want to thank you now for your service that
8 you've rendered during the week for us and for the
9 people of Beaufort County.

10 I never comment upon the verdicts the juries
11 reach because I'm glad that you have to make those
12 tough decisions and not me. But I do comment upon
13 the quality of your service that you've rendered
14 during the week. That is, your punctuality, your
15 attention to what's been going on, the fact that
16 you have deliberated these issues thoroughly and
17 have asked questions when you had questions before
18 you reached a verdict in this case, the good humor
19 that you have borne up under interruptions in the
20 schedule, and all those things that can set some
21 people on edge and cause some measure of
22 disenchantment for the way the system works. If
23 you've done those things, we haven't seen it. And
24 certainly nothing in this courtroom has reflected
25 anything other than the best quality of jury

CLOSING REMARKS BY THE COURT

1 service that you've given, and we appreciate it.

2 I'm going to be able to let you go now. You
3 don't have to call back, you don't have to come
4 back. Your service obviously has been completed
5 with your service on this trial. You will get a
6 check in the mail sometime in the next week or so.
7 It's not going to begin to pay you for the time
8 that you have spent with us.

9 You will find that you have in large measure
10 made a contribution of your time. And we
11 appreciate the contribution that you've made. And
12 I hope that you will add our sincere gratitude to
13 the amount of those small checks and hopefully in
14 some way you'll be compensated for what you've
15 done this week.

16 I tell folks like you from time to time, who
17 have served so well like you have, that I hope you
18 never find yourself caught up in this system. I
19 hope you never find yourself seated where the
20 victims are seated on this side of the courtroom,
21 or where the defendants and defendant's family are
22 seated on the other side of the courtroom.

23 I hope that you never come to court and find
24 yourself seated in any of those areas. But I can
25 tell you that you don't have to volunteer to get

CLOSING REMARKS BY THE COURT

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

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

CLOSING REMARKS BY THE COURT

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

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

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

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

17 (Jury dismissed at 3:10 p.m.
18 The indictment is signed.)

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

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

MOTIONS

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

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

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

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

16 Is the State ready to proceed to sentencing?

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

19 THE COURT: Please.

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

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

SENTENCING

1 violent. I beg the Court's indulgence.

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

3 MS. LEMPESIS: Not violent. Okay.

4 Thank you, Your Honor.

5 THE COURT: Okay.

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

8 MS. LEMPESIS: Thank you, Your Honor.

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

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

14 MS. LEMPESIS: Thank you, Your Honor.

15 THE COURT: Mr. Snodgrass.

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

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

SENTENCING

1 on.

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

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

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

21 THE COURT: Thank you, Mr. Snodgrass.

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

25 Mr. McQuarters pled guilty on September 16th

SENTENCING

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

7 THE COURT: All right. Thank you.

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

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

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

15 MS. LEMPESIS: Thank you, Your Honor.

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

23 Mr. McQuarters did this while on probation,
24 having just pled guilty a month before.
25 Your Honor, I would ask that you impose the

SENTENCING

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

4 THE COURT: Thank you, Ms. Lempesis.

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

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

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

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

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

SENTENCING

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

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

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

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

SENTENCING

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

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

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

17 THE COURT: I understand.

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

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

23 MR. BAX: Thank you.

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

SENTENCING

1 Ms. McQuarters be heard first.

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

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

10 THE COURT: Thank you, Ms. McQuarters.

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

13 MR. McQUARTERS: Yes.

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

16 THE COURT: Mr. McQuarters.

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

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

SENTENCING

1 THE COURT: Thank you, sir.

2 MR. BAX: Thank you, Your Honor.

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

5 THE COURT: Mr. McQuarters.

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

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

14 THE COURT: Thank you.

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

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

SENTENCING

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

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

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

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

SENTENCING

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

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

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

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

SENTENCING

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

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

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

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

19 Thank you.

20 (Trial concluded. Recess
21 taken.)

22

23

24

25

SENTENCING

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8 DATED this 10th day of February, 2016.

9

10

/s/ Mona L. Manley

11

12

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

13

14

15

16

17

18

19

20

21

22

23

24

25

1 IN THE COURT OF GENERAL SESSIONS IN AND FOR
2 BEAUFORT COUNTY SOUTH CAROLINA
3
4 STATE OF SOUTH CAROLINA,
5 Plaintiff,
6 vs. CASE NO. 2013GS0701844; 1845
7 AUSTIN LEWIS McQUARTERS,
8 Defendant.

9 _____ /

10

11 * * *

12

13 MOTION HEARING

14

15 DATE: August 12, 2015

16 PLACE: Beaufort County Courthouse
17 Beaufort, South Carolina

18 REPORTED BY: Mona Manley, Court Reporter

19 BEFORE: Honorable Thomas W. Cooper, Jr.

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING THE STATE:

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

REPRESENTING THE DEFENDANT:

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

* * *