

ORIGINAL

Volume II of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

J. C. Buddy Nicholson, Jr., Circuit Court Judge

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THE STATE,

SC Court of Appeals

RESPONDENT,

V.

RYAN CARL NEWMAN,

APPELLANT

Appellate Case No. 2012-212986

RECORD ON APPEAL

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1 Q. And these are people he knows?

2 A. Correct.

3 Q. In fact, his written statement never says that
4 he was kicked.

5 A. The one from Deputy Wells?

6 Q. No. His written statement that he wrote with
7 you --

8 A. Right.

9 Q. -- never says he was kicked.

10 A. Okay. I remember him advising me of that.

11 Q. Would it help to refresh your recollection as to
12 what was written? To review his written statement?

13 A. No.

14 I remember. It might not be in the statement,
15 but I remember him advising me of it.

16 Q. Okay. He indicates he was hit with the gun
17 multiple, multiple times?

18 A. Correct.

19 Q. And the only picture you were able to take was
20 of the one right above his eye?

21 A. Yes, sir.

22 Q. The first thing Mr. Mendoza did when he came
23 into your office was said that he wanted to prosecute?

24 A. That's correct.

25 MR. CHAD SHELTON: Nothing further.

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1 THE COURT: Cross-examination, Mr. Biering?

2 MR. BIERING: May it please the Court.

3 Your Honor, before I begin, I don't know, I may
4 be a while. Didn't know if you wanted to take a break
5 at this point.

6 THE COURT: Go ahead. Cross-examination.

7 MR. BIERING: Thank you, Judge.

8 CROSS-EXAMINATION

9 BY MR. BIERING:

10 Q. Lieutenant Ashe, how many years have you been
11 employed in law enforcement?

12 A. Over twenty.

13 Q. Over twenty?

14 A. Yes, sir.

15 Q. And you're a lieutenant; is that correct?

16 A. Yes, sir.

17 Q. Approximately how many people do you supervise
18 currently?

19 A. Approximately ten.

20 Q. January of 2011, how many people did you
21 supervise within the Berkeley County Sheriff's Department?

22 A. At the time, I was the only walk-in sargent so I
23 -- I answered directly to the lieutenant. So I didn't
24 have anybody underneath me.

25 Q. Prior to January of 2011 -- because at that

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1 point you're a sargent. I mean, you're a ranking official
2 at the sheriff's department; is that correct?

3 A. Yes, sir.

4 Q. Okay. And a sargent at the sheriff's department
5 also is -- that's a ranking position at the sheriff's
6 department?

7 A. Yes, sir.

8 Q. So prior to your role of --

9 MR. BIERING: Your Honor, I've got real tension
10 issues. Could we turn this -- is it possible to turn
11 this off?

12 [Off the record momentarily]

13 Q. [Mr. Biering] So prior to you being a walk-in
14 officer, did you have supervisory roles of deputies in the
15 sheriff's department?

16 A. Yes, sir.

17 Q. So you had to actually approve reports -- on
18 occasion had to approve reports; is that correct?

19 A. Yes, sir.

20 Q. And you said you've been doing this for twenty-
21 plus years; correct?

22 A. Yes, sir.

23 Q. So Deputy Wells was just in the courtroom. Let
24 me ask you a question. If Deputy Wells turned in a report
25 and he did not include the time that he conducted his

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1 efforts -- on his report -- would you allow that report to
2 be approved? Yes or no.

3 A. You said if he did not? Yes.

4 Q. You would approve an incident report that did
5 not have a time for his activities?

6 A. Supplementals -- yes.

7 Q. Would you approve an initial incident report if
8 it did not have a time for the activity? I'm not asking
9 about a supplemental. I'm talking about an initial
10 incident report. Would you approve that incident report
11 if it didn't have a time on it?

12 A. The answer to that is no because --

13 Q. Thank you.

14 A. -- you have a block for it.

15 Q. Thank you.

16 THE COURT: Hold on. He can -- he can explain
17 it. Don't cut him off on the explanation. Okay?

18 MR. BIERING: Thank you, Your Honor.

19 THE COURT: You may explain it, Lieutenant Ashe.
20 Okay?

21 A. Our police reports are computer-generated. It
22 has all the blocks for time-stamps and dates and things
23 like that, where the incident occurred, approximate before
24 and after.

25 If you do not fill a box in, the report -- the

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1 computer will kick that report back because it's a
2 question that SLED requires. Supplemental's narratives do
3 not have to be time-stamped.

4 Q. [Mr. Biering] Do you think it's important to
5 know what time that you do things when you're
6 investigating a case?

7 A. On the forms that require the date and time,
8 yes.

9 Q. So it's only a question of whether or not the
10 form requires it; correct?

11 A. Correct.

12 Well, all my -- all my supplementals are always
13 dated of when the -- when I done it. I do not timestamp
14 my exact time I did it at.

15 Q. And you don't retain -- as I understand it,
16 based on a previous conversations with you, you don't
17 retain your written notes, either; is that correct?

18 A. No, sir.

19 Q. Would you agree that your involvement in this
20 case span -- well, began on January the 7th of 2011?

21 A. Yes, sir.

22 Q. Would you agree that it continued into January
23 the 26th of 2011?

24 A. Yes, sir.

25 Q. Do you have a copy of your report there in front

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1 of you?

2 A. Yes, sir.

3 Q. You do? If you could, I would ask you to look
4 at your supplement report for January the 26th.

5 [Whereupon, the witness reviews documents]

6 A. Yes, sir.

7 Q. [Mr. Biering] Would you agree, yes or no, that
8 that is your supplemental report?

9 A. It is my supplemental report.

10 Q. Would you agree that your name is not on it,
11 that actually another deputy's name is on it? Is that
12 correct?

13 A. That's correct.

14 Q. And would you agree that that deputy has had
15 nothing to do with this case?

16 A. That is correct.

17 Q. And would you agree that that's incorrect?

18 A. The name, yes.

19 Q. The name is incorrect?

20 A. Yes, sir.

21 Q. And if you -- and you've known that for some
22 time; is that correct?

23 A. Yes, sir.

24 I brought it up and let them know that that --
25 what happened with that report, why that --

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1 Q. And have you documented that? Is there a
2 supplemental report as it relates to the incorrect
3 information there? Yes or no.

4 A. No.

5 I would provide it to the solicitor's office and
6 my higher-ups.

7 THE WITNESS: Again, can I explain why that name
8 is there?

9 THE COURT: Yes, sir.

10 THE WITNESS: Oh.

11 THE COURT: Let him explain it.

12 Just because he asks you yes or no, you answer
13 yes or no, but you can give any explanation after you
14 answer the question.

15 THE WITNESS: Thank you, Judge.

16 THE COURT: I won't let him cut you off. Okay?

17 THE WITNESS: Okay, Judge.

18 A. In our reports, when you click on to say where
19 the name goes, when you click onto it, all the deputies at
20 the sheriff's office name pops up. Then you can roll the
21 mouse to the deputy's name and then click it and it comes
22 up. If you save the report before you click it or change
23 it, it'll automatically come up with that deputy's name in
24 it.

25 And, again, the deputy's name that is there now

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1 is Baker, which is -- his name is right after my name,
2 Ashe, in our roster. So that's how come it's -- it was
3 just a mistake of a click. So that's how come his name
4 shows up there. But it's my supplemental.

5 Q. [Mr. Biering] Thank you. Do you have any
6 other --

7 A. No, sir.

8 Q. Okay.

9 You now work in narcotics; is that correct?

10 A. Yes, sir.

11 Q. So you have the opportunity to investigate drug
12 transactions; is that correct?

13 A. Yes, sir.

14 Q. And you have occasion to work with people that
15 are on the street, maybe informants; is that correct?

16 A. That's correct.

17 Q. You work with a number of people who are not
18 certified law enforcement officers but just use their
19 street lingo and jargon; is that correct?

20 A. Correct.

21 Q. Would you agree that the reference to OC-30s,
22 OC-40s, things of that nature, are reference to OxyContin
23 and certain milligrams of OxyContin that would be supplied
24 to people?

25 A. Correct.

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1 Q. Would you agree that when a drug user references
2 a bowl, they're talking about use of marijuana or use of
3 smoking some kind of dope?

4 A. A bowl?

5 Q. A bowl.

6 A. Yeah, I've heard that before.

7 Q. Okay. Would you agree that blunt also is a term
8 that's utilized by people who are -- I don't know. You
9 tell us what a -- what's a blunt?

10 A. My understanding of a blunt is a cigar. The
11 contents inside is mixed with marijuana and they re-roll
12 it back into the cigar wrapper and smoke it as a cigar-
13 looking thing but it has marijuana laced in it.

14 MR. BIERING: Can I approach the witness, Your
15 Honor?

16 THE COURT: Yes, sir.

17 Q. [Mr. Biering] That appear to be a blunt?

18 A. Yes.

19 Q. What I'm showing you has been pre-admitted as
20 Defense Exhibit 4, page 1, 2, 3, 4, 5, 6, 7, 8 -- page 8
21 of Defense Exhibit 4. Is this the person that you spoke
22 with that you believe to be a victim of the crime that
23 we're here today about?

24 A. Appears to be Mr. Mendoza.

25 Q. Appears to be Mr. Mendoza?

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1 A. [Indicates affirmatively]

2 Q. Other than investigations, as relates to this
3 crime, that began back in -- for you on January the 7th of
4 2011, and with the supplemental reports that are here --
5 let's exclude the things that have gone on the last few
6 days of -- in the trial. Other than that, have you had
7 any contact with Mr. Mendoza?

8 A. You mean other than just the 7th?

9 Q. Yeah. You only met with him on the 7th?

10 A. Right.

11 I met with him on the 7th, then I met with him
12 again on the 20th, I believe. But after that, no, I have
13 not met with him or seen him.

14 Q. Again, this has been pre-admitted as Defense
15 Exhibit 4, Defense Clark's Exhibit 4. If I could direct
16 your attention to the next page of this document. Do you
17 see an uploaded date of that photograph?

18 A. December 28th, 2010.

19 Q. And that's a few days prior to this affair, or
20 whatever it is that we're here about?

21 A. Yes.

22 MR. BIERING: Okay. Permission to publish to
23 the jury, Your Honor.

24 THE COURT: Yes, sir.

25 [Whereupon, Mr. Biering proffers documents to

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1 the jury]

2 Q. [Mr. Biering] Let's go to your report dated
3 January the 11th, 2011. Have you gotten to that report?
4 Can you review that --

5 A. My supplemental? Yes, sir.

6 Q. Your supplemental.

7 A. Yes, sir.

8 Q. You agree that that's dated July -- I'm sorry --
9 January the 11th of 2011?

10 A. Correct.

11 Q. But you would agree that the information that
12 you've reported, as it relates to your investigation of
13 this affair, goes back to January the 7th of 2011; is that
14 correct?

15 A. Correct. As dated.

16 Q. So you had your interview on January the 7th of
17 2011; correct?

18 A. Correct.

19 Q. And you have no written notes from that January
20 the 7th, 2011 event; correct?

21 A. I actually wrote that date on the 7th. It's a
22 running log.

23 Q. It doesn't close on a daily basis? Just -- you
24 just run it? You know, I'm just --

25 A. I can. And what happened is is when I closed it

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1 out on the 11th, then that's when I closed this report,
2 this supplemental, which --

3 Q. So your testimony --

4 A. -- is dated --

5 Q. Your testimony now --

6 A. -- as the 11th, too.

7 THE COURT: Don't interrupt him. Let him
8 finish. Okay? And I won't let him interrupt you.
9 Okay?

10 MR. BIERING: Thank you, Your Honor.

11 A. I'm dated here as narrative as 1/7/11. And then
12 I take back up the report on 1/11/11. And when I closed
13 the supplemental out, it's closed out on the 11th.

14 And I've had supplemental's that's went ten
15 pages before.

16 Q. [Mr. Biering] Well, we're talking about -- I'm
17 not wondering about pages. I'm talking about this
18 supplemental.

19 So your testimony now is that you began writing
20 that -- or were you typing that on January the 7th?

21 A. Typing it, yeah, on --

22 Q. You began typing it out on January the 7th?
23 That's your testimony now?

24 A. That is correct.

25 Q. Is an investigation ongoing until it's -- until

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1 there's a conviction?

2 A. Yes. Yes, sir.

3 Q. So you've had an opportunity to work with -- on
4 an ongoing basis, with the solicitor's office as it
5 relates to the investigation and prosecution of whatever
6 we're dealing with here?

7 A. Correct.

8 Q. Correct?

9 A. Yes, sir.

10 Q. So in your attempt to investigate a crime, in
11 your attempt to determine what's going on, you have
12 occasion to review evidence; correct?

13 A. Yes, sir.

14 Q. Did the solicitor review facebook material,
15 received by subpoena, regarding Andre Mendoza? Yes --

16 A. No. I've seen --

17 Q. -- no.

18 A. I've seen facebook material on it but I don't
19 remember where it come from, whether it was the
20 solicitor's office or whatever.

21 Q. Approximately how many pages of facebook
22 material do you believe that you've reviewed of Andre
23 Mendoza?

24 A. Probably just a sheet or two. Two or three.

25 Q. Just a sheet or two?

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1 A. Uh-huh.

2 Q. You've not been given 598 pages of it?

3 A. No.

4 Q. Have they provided you any information about the
5 what appears to be drug transactions by Mr. Mendoza on
6 facebook?

7 A. No, sir.

8 Q. And you're -- what's your role in narcotics
9 again?

10 A. I'm lieutenant over the unit.

11 Q. Over the entire unit?

12 A. Correct.

13 Q. So if somebody is selling clonapin or offering
14 to sell clonapin through facebook in Berkeley County,
15 would you want to know about it? Yes or no.

16 MS. CORNWELL: Objection, Your Honor.

17 THE COURT: I'll sustain the objection.

18 MS. CORNWELL: Thank you, Your Honor.

19 Q. [Mr. Biering] In your position, if someone was
20 attempting to sell OxyContin through facebook in Berkeley
21 County, would you want to know about it?

22 MS. CORNWELL: Objection, Your Honor.

23 THE COURT: I'll sustain the objection.

24 Q. [Mr. Biering] In your position, would you want
25 to know if someone was attempting to utilize facebook to

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1 sell marijuana in Berkeley County? Yes or no.

2 THE COURT: I'll sustain the objection.

3 MS. CORNWELL: Thank you, Your Honor.

4 THE COURT: Ladies and gentlemen, when I use the
5 word sustain -- the opposing attorneys make objections
6 that in their opinion the question is not a proper
7 question under the rules of evidence.

8 When I use the word sustain, that means I agree
9 and the question is not appropriate and you're to
10 disregard the objection. If I use the words overrule,
11 that means I overruled the objection and it is a
12 proper question and you're to consider it.

13 Please proceed.

14 MR. BIERING: Thank you, Your Honor.

15 Q. [Mr. Biering] Lieutenant Ashe, you supervise
16 ten people; correct?

17 A. I do.

18 Q. A person comes into your office and confesses to
19 a crime, you believe you have a duty as a law enforcement
20 officer to make an arrest?

21 A. To investigate and arrest as necessary, yes.

22 Q. Do you agree that Mr. Mendoza in this case
23 states that he was trying to obtain marijuana the night of
24 January the 6th?

25 A. Say that again, sir.

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1 Q. Do you agree that Mr. Mendoza, on January the
2 6th, was attempting to obtain marijuana?

3 A. In my interview with Mr. Mendoza?

4 Q. Yes, sir.

5 A. He did not state that --

6 Q. He did not state that?

7 A. -- in the original report with Deputy Wells, it
8 did state that.

9 Q. Did you follow up on that?

10 A. I asked him about it. He said he was not going
11 there to get marijuana.

12 Q. I'm sorry?

13 A. He said he was not going there to get marijuana.

14 Q. He was not going to get there, --

15 A. Correct.

16 Q. -- going to get marijuana?

17 A. Correct.

18 MR. BIERING: If I could have just a moment,
19 Your Honor?

20 THE COURT: Yes, sir.

21 [Whereupon, Mr. Biering reviews documents]

22 MR. BIERING: Can I approach the witness, Your
23 Honor?

24 THE COURT: Yes, sir.

25 Q. [Mr. Biering] Will you sign your name for me?

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1 THE WITNESS: Got an ink pen?

2 MR. BIERING: Here you go. It's a free ink pen.
3 It's got my name misspelled on it.

4 You have very nice handwriting.

5 Q. [Mr. Biering] Did you witness Mr. Mendoza's
6 statement?

7 A. I did.

8 Q. Do you have a copy of his statement in your
9 investigative file there?

10 A. Yes, sir, I do.

11 Q. Would you agree that -- I just wanted to make
12 sure, because I couldn't read the -- you would agree that
13 you're the witness on Mr. Mendoza's statement that he
14 provided on January the 7th of 2011; correct?

15 A. Yes, sir.

16 Q. You would agree that that statement is three
17 pages long?

18 A. Yes, sir.

19 Q. On the second page -- on the second page --
20 that's his statement, right? I want to --

21 A. Yes.

22 Q. -- make sure that we're talking about the same
23 thing.

24 A. Yes, sir.

25 Q. He gives a statement.

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1 Second page, down at the bottom, he's asking
2 where they're going to get the blunt; is that correct?

3 A. Correct.

4 Q. Okay. So just a minute [phonetic] you testified
5 that he didn't tell you that they were going to get drugs
6 that night, that he told -- that he told Deputy Wells?

7 A. Correct.

8 Q. All right. So that wasn't true; correct? What
9 you just said wasn't true? Because he actually told you
10 that, put it in his written statement that you witnessed;
11 correct?

12 A. That he was going to get a blunt. He advised me
13 of that --

14 Q. Okay. So a blunt is not drugs?

15 A. -- he was -- Ms. Clark was wanting to get some
16 marijuana. He said blunt.

17 MR. BIERING: Thank you. Thank you so much
18 Lieutenant Ashe. I appreciate it.

19 THE COURT: Any redirect?

20 MS. CORNWELL: Nothing from the State, Your
21 Honor.

22 THE COURT: Lieutenant Ashe, you may step down.
23 Thank you very much.

24 THE WITNESS: Thank you, Your Honor.

25 [Whereupon, Mr. Ashe is excused and exits the

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1 witness stand]

2 THE COURT: All right, Madam Forelady, ladies
3 and gentlemen of the jury, we'll take a break at this
4 time, a smoke break -- smokers, go take your smoke or
5 whatever you want to do.

6 Please don't discuss the case amongst
7 yourselves.

8 If you need anything, ask the bailiff. We'll
9 get you back in about fifteen, twenty minutes.

10 [Whereupon, the jury exits the courtroom at
11 11:08 a.m.]

12 THE COURT: All right. Mr. Biering, you made an
13 objection earlier on that the solicitor was leading
14 the -- leading the witness and I think I overruled the
15 objection. You wanted to put something on the record
16 pursuant to that objection and I told you I would
17 allow you to do that. So I'm going to allow you to
18 please put on the record whatever you desire
19 concerning the objection, okay, because I did not take
20 any arguments on the objection at the time I ruled.

21 MR. BIERING: Yes, Your Honor.

22 THE COURT: Be glad to hear whatever you want to
23 tell me.

24 MR. BIERING: Your Honor, I would ask that we be
25 able to have a bench conference as it relates to that

1 objection. Put on the record, as opposed to --

2 THE COURT: All right. That's fine. If y'all
3 want to come up here.

4 [Whereupon, the Court and the court reporter
5 confer]

6 [Whereupon, a bench conference is held as
7 follows]

8 THE COURT: If you'll come stand right
9 here, her microphone here will pick it up. I
10 mean, whatever you want to put on the record, go
11 ahead and put on the record.

12 MR. BIERING: Your Honor, my objection is
13 this. I initially made my objection and I got
14 no response. I paused after my initial
15 objection and I had to again make my objection
16 and --

17 THE COURT: I think you made your
18 objection. You said it was leading the witness,
19 if I remember correctly.

20 MR. BIERING: Well, Your Honor, here's my
21 question. My question is this. There's just no
22 easy way to say this. Your Honor, you were
23 talking with your law clerk at the time.

24 THE COURT: Uh-huh. [Indicates
25 affirmatively]

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1 MR. BIERING: Madam Solicitor asked a
2 question --

3 THE COURT: Uh-huh. [Indicates
4 affirmatively]

5 MR. BIERING: -- and I didn't get a
6 response from my initial objection.

7 I'm concerned that the question that Madam
8 Solicitor asked was not clearly heard by the
9 Court. And it was a substantial issue because
10 she asked who was -- she asked this deputy who
11 was, you know, the key investigator in this case
12 who took the only written statement from this
13 alleged victim --

14 THE COURT: Uh-huh.

15 MR. BIERING: -- who was involved, and he
16 didn't name my client.

17 THE COURT: All right.

18 MR. BIERING: She then comes back and with
19 a leading question puts my client in the
20 position. I believe that question was
21 inappropriate. I believe his response -- I
22 don't know if it's a bell that, quite candidly,
23 can be unrung. But I think there was a leading
24 question, it was inappropriate, he had asked --
25 he had been asked a very specific who, what,

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1 where, when, why question.

2 It's her witness. He's one of the most
3 important witnesses in the case. Certainly she
4 would prepare. He gave the answer. She didn't
5 like the answer so she provided him a new
6 answer. So a leading, classic leading question,
7 on a key issue.

8 It's difficult. But I think the Courts
9 understand -- I think the Court understands my
10 objection.

11 THE COURT: Okay. All right.

12 MR. BIERING: I think it's a leading
13 question, I think it's on a substantial issue,
14 and I think that at least there should be a
15 curative instruction that his response naming my
16 client as part of -- all of this, should be
17 stricken from the record.

18 THE COURT: What was your actual question?
19 Do you remember?

20 MS. CORNWELL: I asked him --

21 THE COURT: Because I don't remember.

22 MS. CORNWELL: I believe -- and Mia can
23 correct me on this. I had asked him if -- if
24 the victim had --

25 THE COURT: I'm sorry?

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1 MS. CORNWELL: I asked him if the victim
2 implicated anybody in this crime. He stated
3 that he named Ryan Newman, Shane Newman and
4 Teddy.

5 THE COURT: All right.

6 MS. CORNWELL: I asked him if there were
7 any females that were involved.

8 THE COURT: Was there anyone else involved?

9 MS. CORNWELL: Any females that were
10 involved.

11 THE COURT: Any females involved?

12 MS. CORNWELL: Yes. I did not name his
13 client, I did not say anything else, and at that
14 point he said yes, he also indicated that Ms.
15 Clark -- but I did not name her by name, I did
16 not ask -- in the State's opinion it was not a
17 leading question, it was a followup to the
18 original question.

19 MR. BIERING: Well, I think it's -- I think
20 -- you know, we live in a day and age where
21 we're not to be referred to by our race or by
22 our gender. And she asked -- I mean, we do. I
23 didn't create the world.

24 MS. CORNWELL: I asked if he called a girl.
25 That's true.

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1 MR. BIERING: That's where we live. She
2 asked a question --

3 THE COURT: She asked the question was a
4 female involved?

5 MR. BIERING: No.

6 Well, here's the problem. The problem is
7 he had defined the --

8 THE COURT: Well, the problem is there's
9 just one female sitting out there as a
10 defendant. That's the problem.

11 MR. BIERING: Correct. Which makes this a
12 leading question.

13 THE COURT: Well --

14 MR. BIERING: She asked a question, she --
15 the witness defined the class of people that
16 were involved. And unless he was going to name
17 one of the class of people that he defined as
18 the witness was a female, her question was
19 leading because it was --

20 The question about leading is not just the
21 magical words. What it is is an attempt to
22 place in the mouth of the witness a response.
23 There is one female defendant on trial here.
24 She didn't like her answer so she gave him --
25 she led him to the answer that she wanted.

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1 THE COURT: Well, that's being a good
2 lawyer, isn't it?

3 MR. BIERING: It is not being a good
4 lawyer, Your Honor, on direct examination,
5 because leading is --

6 THE COURT: Well, I understand --

7 MR. BIERING: -- objectionable.

8 THE COURT: -- but it happens all the time.

9 And I think you probably do it, you're a
10 good lawyer, on direct. You probably have done
11 the same thing.

12 Now, the question is how do you cure it.

13 MS. CORNWELL: Your Honor, the State's
14 position is he could have answered Mary Sue.
15 We've talked about --

16 THE COURT: Pardon?

17 MS. CORNWELL: We've talked about Shannon.
18 We've talked about a lot of other females
19 involved in this case that the jury has heard.
20 So he could have at any time answered Shannon.
21 I think there was a Vanessa that they put into
22 evidence. They put a couple of other women in
23 evidence. So I think that asking were there any
24 females involved is an open-ended.

25 It's not a leading question, it's on open

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1 question, that is allowed on direct and he
2 answered appropriately. It's a follow-up
3 question to an original question.

4 The State's position is it was not leading.
5 And you overruled the objection, so at the time
6 you agreed that it was not a leading question.

7 THE COURT: Well, I just heard a portion of
8 it, to be honest with you. I mean, I heard a
9 portion of it but not all of it. I probably
10 should have asked you to repeat your question,
11 but I didn't do that.

12 MS. CORNWELL: I understand.

13 MR. BIERING: Your Honor --

14 THE COURT: Let me think about it. Okay?

15 MR. BIERING: I mean, I think this -- I
16 think --

17 THE COURT: Now, I can -- I can --

18 MR. BIERING: -- is an -- I'm sorry.

19 THE COURT: I can -- I can sustain the
20 objection and tell them to disregard that. But
21 there again, that just brings the jury's
22 attention to it.

23 What do you think you want me to do? I
24 mean, I've always said curative instructions
25 makes the jury focus on what you're telling them

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1 not to focus on. But, I mean, that's a strategy
2 policy that you need to determine.

3 MR. BIERING: I think that the way you --
4 the way you cure it is this: is that the
5 question was inappropriate, that it was leading.
6 I'll be able to define what a leading question
7 is in my closing.

8 You know, this is a difficult trial, Judge.
9 We've got the prosecutor stipulating that she's
10 telling a witness not to testify about his past
11 criminal history. We've got a leading question
12 --

13 THE COURT: It wasn't on the rap sheet.

14 MR. BIERING: Sir?

15 THE COURT: It was not on the rap sheet.
16 Okay?

17 MR. BIERING: A rap sheet does not define a
18 person's criminal record.

19 THE COURT: I understand. But that's --
20 but, basically, that's what happened.

21 Now, what do you want me to do?

22 MR. BIERING: I want a curative
23 instruction.

24 THE COURT: Huh?

25 MR. BIERING: I want a curative instruction

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1 and I want the jury to be instructed that the
2 question was inappropriate, that it was leading,
3 and that I want a definition of what a leading
4 question is.

5 THE COURT: Okay. I'll give it.

6 MS. CORNWELL: It's an harmless error, Your
7 Honor.

8 THE COURT: Pardon?

9 MS. CORNWELL: If anything, I think it's a
10 harmless error.

11 THE COURT: Now, let me say this in trying
12 to be fair to both sides. I don't have a
13 problem with you re-calling the witness, okay --

14 MS. CORNWELL: Your Honor, at this point --

15 THE COURT: -- I will give you an
16 opportunity to re-call the witness to lay proper
17 foundation, if you so desire. But I'm not going
18 to allow you to go talk to him before you put
19 him back on the witness stand if you want to re-
20 call him, because this was my error and I
21 created it and now I've got to try to undo it.

22 MS. CORNWELL: Your Honor --

23 THE COURT: Now, I'll give the curative
24 instructions. But you proceeded on my ruling,
25 which I am now reversing.

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1 MS. CORNWELL: Okay.

2 THE COURT: And in fairness to both sides,
3 I will give you an opportunity to recall him on
4 redirect and address that issue, if you so
5 desire.

6 MS. CORNWELL: Okay. Thank you, Your
7 Honor.

8 I would like to address the other issue
9 with the stipulation of the State. I don't want
10 Mr. Biering to be able to indicate that there
11 was any misconduct done on our part.

12 THE COURT: What I'm going to tell the jury
13 -- and I'm going to take the blame for it.
14 Okay? Not y'all.

15 MS. CORNWELL: No, sir. I was --

16 THE COURT: I'm not going to blame him or
17 you. I'm going to take the blame that I was in
18 error, the question -- the leading questions is
19 such and such --

20 MS. CORNWELL: I agree with your ruling.
21 This is a different topic. I understand --

22 THE COURT: And what's your topic?

23 MS. CORNWELL: When he was talking about
24 the rap sheet and how I advised the victim not
25 to -- I just want to make sure that the

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1 stipulation is not that I was coaching the
2 witness or instructing the witness improperly in
3 any way --

4 THE COURT: Oh. I'm not going to go into
5 any of that.

6 MS. CORNWELL: -- when we were talking
7 about the rules of evidence and our preparation
8 --

9 THE COURT: I mean --

10 MS. CORNWELL: -- I advised that he only
11 had to --

12 THE COURT: You're talking about the rap
13 sheet thing.

14 MS. CORNWELL: Yes, sir.

15 THE COURT: I mean, we covered that -- that
16 was what day? Yesterday or day before. I don't
17 remember.

18 MS. CORNWELL: He's putting that on the
19 record, and I just want to make sure that the
20 Court is aware that there was --

21 THE COURT: I don't think you were --

22 MS. CORNWELL: -- no misconduct that was --

23 THE COURT: -- coaching the record. I mean
24 apparently --

25 MS. CORNWELL: I just advised him that he

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1 only has to testify as to what's on the rap
2 sheet, that all prior bad acts do --

3 THE COURT: But it should have been on the
4 rap sheet.

5 MS. CORNWELL: -- not come in under the
6 rules of evidence.

7 It was not on the rap sheet, the State was
8 unaware, so -- why it wasn't on the rap sheet.
9 So that's why that was --

10 THE COURT: I'm not taking any offense at
11 what transpired. It happened. Okay?

12 MS. CORNWELL: I just want to make sure
13 that I'm not being accused of anything improper.

14 MR. BIERING: To quote Madam Solicitor, it
15 is what it is.

16 THE COURT: That's right. It is what it
17 is.

18 MR. BIERING: Thank you, Your Honor.

19 [Whereupon, the bench conference concludes]

20 THE COURT: Okay. We'll take about a ten- or
21 fifteen-minute break.

22 [Whereupon, a recess is taken from 11:20 a.m. to
23 11:38 a.m.]

24 THE COURT: Anything from the State before we
25 bring the jury?

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1 MS. CORNWELL: Nothing from the State, Your
2 Honor.

3 THE COURT: Are you going to re-call Lieutenant
4 Ashe?

5 MS. CORNWELL: After your instruction I --

6 THE COURT: Pardon?

7 MS. CORNWELL: After your instruction, yes, Your
8 Honor, I would like to --

9 MR. BIERING: Your Honor --

10 THE COURT: Do you want to bring him around.

11 MR. BIERING: For the record, I just want to go
12 ahead and say this. I'm going to have an objection
13 out of the box about asked and answered because I
14 think it's --

15 THE COURT: I mean, you can make your objection.
16 I don't know what her question is going to be but I'm
17 going to give her an opportunity to lay a proper
18 foundation without leading the witness. Okay?

19 Now, if she can do that, that's fine. If she
20 can't, then, you know, I'll listen to your objections.
21 But I'm going to give her that opportunity. Okay?

22 MR. BIERING: Your Honor, I --

23 THE COURT: But you can make whatever objection
24 -- I'm not -- I'm not telling you to cut off your
25 objections. Whatever you want to object to with her

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1 questions, that's fine.

2 Do you want to call -- I don't want to bring him
3 in just yet. Okay?

4 MR. BIERING: Can I have just a moment --

5 THE COURT: Because I don't want him to hear
6 this conversation.

7 MR. BIERING: Can I have just a moment?

8 THE COURT: Yes, sir.

9 [Whereupon, Mr. Biering and Defendant Clark
10 confer]

11 THE COURT: Now, we can proceed as we are, if
12 you so choose, but I'm willing to give a curative
13 instruction. It was my error. I'm going to tell the
14 jury it's my error and give them a curative
15 instruction, tell them to disregard that question.

16 But I am going to give her an opportunity to
17 redirect Lieutenant Ashe and then y'all can recross if
18 she asks any questions, as long as the questions are
19 appropriate and proper.

20 [Whereupon, Mr. Biering and Defendant Clark
21 confer]

22 MR. BIERING: Your Honor, I -- at this point,
23 I'll just put on the record I question the procedural
24 ability for her to re-call the same witness in her
25 case at this point.

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1 I understand the Court's ruling as it relates to
2 the objection. But if we take ourselves back in time,
3 if the objection had been contemporaneously sustained,
4 she would have been precluded at that point -- because
5 he had already defined the class of individuals that
6 he said were involved in the case.

7 THE COURT: Well, I don't know that because I
8 don't know what would -- how she would have handled
9 it. I'm giving her the opportunity to handle it.
10 Now, how she's going to handle it, I don't know.

11 [Whereupon, Mr. Biering and Defendant Clark
12 confer]

13 MR. BIERING: Your Honor, will she be limited to
14 that single area?

15 THE COURT: Yes, sir. We're not going into
16 anything else. Just that one area.

17 [Whereupon, Mr. Biering and Defendant Clark
18 confer]

19 MR. BIERING: With a continued objection, I
20 believe that the ruling should be simply that the
21 question was leading, that there be a curative
22 instruction. I just -- I accept the Court's ruling.
23 But a continuing objection is the response to --

24 THE COURT: I understand. And the reason I'm
25 allowing this: because if I had ruled properly at the

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1 time, she would have had an opportunity to back off
2 and re-question the witness and see what she could
3 develop. And that's all I'm giving her now. Now, she
4 might be able to accomplish that, she may not. I
5 don't know.

6 MR. BIERING: Thank you, Your Honor.

7 THE COURT: Okay. Anything else?

8 MS. CORNWELL: [No response]

9 MR. CHAD SHELTON: [No response]

10 MR. BIERING: [No response]

11 THE COURT: Anything else?

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

13 THE COURT: All right. Will you ask Lieutenant
14 Ashe to come in.

15 Bring us the jury, please.

16 [Whereupon, the jury enters the courtroom at
17 11:43 a.m.]

18 [Whereupon, Mr. Ashe re-takes the witness stand]

19 THE COURT: Where is Lieutenant Ashe?

20 MS. CORNWELL: Right here.

21 THE COURT: Okay. Just have a seat, Lieutenant
22 Ashe. I'm sorry. You slipped by. I didn't see you.

23 All right. Madam Forelady, ladies and gentlemen
24 of the jury, I would like to explain to you a leading
25 question.

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1 When the lawyers have witnesses on direct
2 examination, they are prohibited from asking leading
3 questions. When lawyers have a witness on cross-
4 examination, they can ask leading question. A leading
5 question is a question that suggests an answer. In
6 other words, if the question puts the answer in the
7 mouth of the witness or it suggests the answer it's a
8 leading question, and you're not allowed to do that on
9 direct.

10 Now, earlier, in the testimony of Lieutenant
11 Ashe, there was a question asked by the prosecutor
12 about were there any females involved in his
13 investigation. The parties objected. I overruled the
14 objection. I was in error. That was an improper
15 question, it was a leading question, and I should have
16 sustained the objection, so you are to disregard that
17 question that was asked concerning a female involved
18 in his investigation.

19 Now, the State has re-called Lieutenant Ashe, at
20 this point in time, to ask some questions.

21 Solicitor?

22 MR. BIERING: Your Honor?

23 THE COURT: Yes, sir?

24 MR. BIERING: If I understand the Court's ruling
25 is that they're to disregard both the question and his

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1 answer.

2 THE COURT: Right. The question and the answer.

3 MR. BIERING: Thank you. Thank you, Your Honor.

4 THE COURT: When I say the question -- when I
5 say a question and the answer, disregard it. You are
6 not to consider it, because it was improper.

7 I made the error. I was trying to correct that
8 error.

9 Solicitor?

10 MS. CORNWELL: Thank you, Your Honor.

11 - - - - -

12 ALLEN BRUCE ASHE,

13 Having Been Previously Sworn,

14 was Examined and Testified as Follows:

15 DIRECT EXAMINATION

16 BY MS. CORNWELL:

17 Q. Lieutenant Ashe, when you met with Mr. Mendoza,
18 did he identify the suspects he felt was involved with
19 this?

20 A. Yes, ma'am, he did.

21 Q. And who were those -- who were all the suspects
22 that he thought were involved in this matter?

23 MR. BIERING: Objection. Asked and answered.

24 Your Honor --

25 THE COURT: Y'all come up here. Let me hear

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1 your arguments on this.

2 [Whereupon, a bench conference is held as
3 follows]

4 THE COURT: Now, before, she asked a
5 different question. I can't remember exactly
6 what it was, but it was a little bit different.

7 MS. CORNWELL: Yes, Your Honor.

8 THE COURT: What was different about it?

9 MS. CORNWELL: I originally asked him what
10 -- who were the suspects involved in this case.

11 THE COURT: Who were the suspects. And he
12 listed everybody except Ms. Clark.

13 MS. CORNWELL: He did.

14 THE COURT: And you came back and asked
15 were there any females.

16 MS. CORNWELL: And I came back and asked
17 were there any females.

18 But this question I just asked him: who
19 are all the suspects that Mr. Mendoza named.

20 MR. BIERING: Your Honor, it's the same
21 question. He defined -- he's been asked the
22 question. He defined the class of people that
23 he says were involved. Asked and answered.

24 THE COURT: I think he's right.

25 MR. BIERING: Thank you, Judge.

1 MS. CORNWELL: Well, let me ask this. His
2 objection to the second question was the fact
3 that it was narrowed to a female. If I ask
4 were there any additional suspects, is that
5 going to --

6 THE COURT: I'll let you do that.

7 MS. CORNWELL: Thank you, Your Honor.

8 THE COURT: I'll let her do that.

9 MR. BIERING: Your Honor --

10 THE COURT: It's not leading. Okay? I'll
11 let her do that.

12 MR. BIERING: Can -- you're going to
13 sustain my first objection?

14 THE COURT: Pardon?

15 MR. BIERING: You're going to sustain --

16 THE COURT: I'm going to sustain your first
17 objection, yes, sir.

18 MR. BIERING: Thank you.

19 [Whereupon, the bench conference concludes]

20 Q. [Ms. Cornwell] Were any additional suspects
21 named?

22 MR. BIERING: Asked and answered.

23 THE COURT: Overruled. Go ahead.

24 A. Yes, ma'am.

25 Q. [Ms. Cornwell] Who were the suspects that were

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1 named?

2 A. Jessica Clark, Ryan Newman, Shane Newman, and a
3 subject at the time that was only identified as Teddy
4 which we say is -- which he was later identified as Tommy
5 Weathers.

6 MS. CORNWELL: Thank you. No further questions,
7 Your Honor.

8 THE COURT: All right. Any cross-examination on
9 that limited area?

10 MR. CHAD SHELTON: No, Your Honor.

11 THE COURT: Any from Defendant Clark on that
12 limited area?

13 MR. BIERING: No, Your Honor.

14 THE COURT: All right. You may step down,
15 Lieutenant Ashe. Thank you so very much.

16 THE WITNESS: Thank you, Judge.

17 [Whereupon, Mr. Ashe is excused and exits the
18 witness stand]

19 THE COURT: Will you call your next witness,
20 please.

21 MS. CORNWELL: The State calls Larry Ballard.

22 [Whereupon, Mr. Ballard comes forward]

23 MR. BALLARD: How are you?

24 THE CLERK OF COURT: Fine.

25 Raise your right hand. Place your left hand on

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1 the Bible.

2 [Whereupon, Mr. Ballard is duly sworn by the
3 clerk of court as follows: do you solemnly swear or
4 affirm the testimony you will give the Court in the
5 trial of this case will be the truth, the whole truth,
6 and nothing but the truth, so help you God]

7 THE WITNESS: I do.

8 THE CLERK OF COURT: Please be seated.

9 [Whereupon, Mr. Ballard takes the witness stand]

10 THE CLERK OF COURT: State your full name.

11 Spell your last name for the record.

12 THE WITNESS: My name is Larry Garner Ballard.

13 B-A-L-L-A-R-D.

14 - - - - -

15 LARRY BALLARD,

16 Having Been First Duly Sworn,

17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MS. CORNWELL:

20 Q. Mr. Ballard, are you involved in GPS monitoring?

21 A. Yes, I am.

22 Q. And can you explain to the Court what is
23 involved in GPS monitoring?

24 A. GPS monitoring, there's a device -- before,
25 there used to be two pieces, now they're one piece --

1 which is a transmitter and a receiver.

2 The way it works is that certainly in outer
3 space we have twenty-seven satellites and twenty-four of
4 these satellites are active. Three are up there just in
5 case some other ones break down.

6 But what it does, it sends signals, time
7 signals, data signals. It sends it down to the receivers.
8 And they know where the receivers are. And what happens
9 is that they do a triangulation and it gives the spot and
10 it gives the -- when I say the spot, the actual location
11 within twenty or thirty meters of where this device is.

12 So what I do is we take the device and we put --
13 I mean, place it around their ankle. And it's all
14 computerized, we put it in the computer, so that when this
15 person goes out -- and what I just explained about the
16 satellites doing that -- their number, their deal, what
17 they do, and it starts collecting that data in that
18 receiver around his ankle.

19 From there, it is transmitted cellularly to a
20 server in Chicago. And that data is collected and it is
21 stored as historical data so that we can go back and see
22 the places where they have been in the past. And it is in
23 real time, as well.

24 Q. And are you able to access that information in
25 your capacity?

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1 A. Yes, I am.

2 Q. And how do you access that information?

3 A. It's web-based through the --

4 Q. Do you have to log into a system?

5 A. Yes, I do.

6 Q. And do you have a password to log into that?

7 A. Yes, I do.

8 Q. How many other people have a password to that
9 system?

10 A. Three.

11 Q. And who are those three people?

12 A. Brenda Whitley is a clerk in my office; Linda
13 Kay is a clerk in my office; and myself.

14 Q. And when you log in, you can -- can you make any
15 changes or alterations to that data?

16 A. Well, once we -- once we put the data in, that's
17 it, it stays there. If we wanted to, we would have to go
18 to another monitoring unit or another -- if we were going
19 to put another unit on him, we would have to go to another
20 fill-in-the-blank, or whatever, to start it all over
21 again.

22 Q. And how do you know which device is with each
23 person?

24 A. Well, they all have a distinct serial number
25 printed on the back of them.

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1 Q. And so if you wanted to look up where a person
2 has been at a certain time, how would you do that?

3 A. Well, we would go into the system and actually
4 -- you know, it's got several actions that you can click
5 on. We actually go to what we call Web Track and we can
6 either put his -- it assigns him a number, as well, what
7 we call an OID number. It assigns him that number. Or we
8 can go by his name. And then we press on that and follow
9 the tracks on the map.

10 Q. And are those tracks accurate tracks of where
11 the person has been at that particular place and time?

12 MR. CHAD SHELTON: Objection, Your Honor.

13 THE COURT: What's your legal objection?

14 MR. CHAD SHELTON: Foundation.

15 THE COURT: Overruled. Go ahead.

16 Q. [Ms. Cornwell] Mr. Ballard, I'm going to show
17 you what's been previously marked as State's Exhibit 1
18 and 2. If you could look at those documents and tell me
19 if you can identify those documents.

20 [Whereupon, the witness reviews documents]

21 A. Yes, ma'am.

22 Q. [Ms. Cornwell] What are those documents?

23 A. Those are documents that came off of, actually,
24 our computer over there at the office from Web Track.

25 It shows Ryan Newman's on January the 6th and it

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1 gives a time frame from 1:15 a.m. in the morning to 1:28
2 a.m. in the morning.

3 Q. And where does that say that he was at that time
4 on that day?

5 A. Wide Awake Circle.

6 MR. CHAD SHELTON: Objection, Your Honor.
7 Foundation.

8 THE COURT: Same objection?

9 MR. CHAD SHELTON: Foundation. Yes, Your Honor.

10 THE COURT: Overruled. Go ahead.

11 Q. [Ms. Cornwell] And is that a true and accurate
12 copy of your computer screen?

13 A. That's correct.

14 Q. Have there been any changes, alterations,
15 deletions, or modifications made to those pages?

16 A. No.

17 MS. CORNWELL: Your Honor, at this time the
18 State would move to -- like to move Exhibits 1 and 2
19 into evidence.

20 THE COURT: Any objections?

21 MR. CHAD SHELTON: Yes. Yes, Your Honor.

22 MS. LITTLEJOHN: Yes. Your Honor, we believe
23 that the foundation hasn't been set.

24 He said that he received this from a server in
25 Chicago. We believe that if this is coming from a

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1 server in Chicago, we need to have them validate the
2 accuracy of this prior to Mr. Ballard testifying what
3 the server in Chicago is able to produce.

4 THE COURT: Okay.

5 MS. LITTLEJOHN: So if the server in Chicago --

6 THE COURT: What's your legal objection?

7 MS. LITTLEJOHN: Authenticity. Because the
8 server in Chicago can authenticate the validity of
9 this. Mr. Ballard is looking at a picture that's
10 coming from that server in Chicago.

11 THE COURT: All right. Thank you very much.
12 Objection overruled.

13 [Whereupon, State's Exhibit Number 1 is admitted
14 into evidence by the Court]

15 [Whereupon, State's Exhibit Number 2 is admitted
16 into evidence by the Court]

17 MR. BIERING: Your Honor, can I be heard on the
18 objection?

19 THE COURT: Pardon?

20 MR. BIERING: Can I be heard on the objection?

21 THE COURT: Does it -- I mean, it doesn't affect
22 your client.

23 MR. BIERING: I don't -- I don't see the -- I
24 understand what they're trying to do --

25 THE COURT: Well, I mean, that's fine. I'll be

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1 glad to hear you. I mean, but it's --

2 MR. BIERING: I just don't understand the
3 difference between this computer program and the
4 facebook program, as it relates to admission. Thank
5 you, Judge.

6 THE COURT: I mean, it's not affecting your
7 client. But, I mean, do you have an objection?

8 MR. BIERING: I just don't understand the
9 difference as to how they look at the -- this computer
10 program and facebook. Thank you.

11 THE COURT: Thank you for your comment.

12 MR. BIERING: Thank you.

13 THE COURT: I appreciate it.

14 Please proceed.

15 MS. CORNWELL: May we publish to the jury, Your
16 Honor?

17 THE COURT: Yes, ma'am.

18 MS. CORNWELL: Mr. Ballard, there's actually a
19 clicker on your thing. The top button is a laser
20 pointer.

21 Q. [Ms. Cornwell] If you will show the jury -- can
22 you see on there where Wide Awake Circle is?

23 A. Right here.

24 Q. And where does that GPS tracking place Mr.
25 Newman?

1 A. Right in here [indicates].

2 All these -- all these -- not -- it's circles
3 with arrows in it and those are locations that are
4 pinpointed he was there within ten to, you know, twenty
5 meters of each one of those spots.

6 Q. Okay. I'm going to hand these to you again. I
7 believe you just testified --

8 To refresh, what time was that?

9 A. We started this at -- it was January the 6th,
10 2011, at 1:15:35 a.m. to 1/16, 2011 to 1:28.35 a.m.

11 Q. And I'm going to show you State's Exhibit 2. I
12 believe where I've got the projector it's got a shadow
13 over it. I'm sorry.

14 If you could just use that laser pointer and
15 again show where the defendant was at that time -- I'm
16 sorry.

17 A. Okay. Right in here. These are all the small
18 movement --

19 Q. And is that also on Wide Awake Circle?

20 A. Yes, it is.

21 Q. Thank you.

22 MS. CORNWELL: Thank you, Mr. Ballard. I have
23 no further questions. Please answer any questions for
24 the defense.

25 THE COURT: Cross-examination.

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CROSS-EXAMINATION

BY MS. LITTLEJOHN:

Q. Mr. Ballard, Ms. Cornwell asked you was this tracking accurate.

A. Yes, ma'am.

Q. And she's purporting that the documentation here is accurate. She asked you about that; correct?

A. That's correct. Yes, ma'am.

Q. And I believe her words were this is a true and accurate copy?

A. That's correct.

Q. And I'm a little bit older, so I use words like -- from old commercials, like ninety-nine percent like Ivory soap. You know, you've heard that commercial from years ago.

So what you're saying is that this is one-hundred percent accurate in longitude and latitude at all times? There is absolutely no deviation, so we will know within the inch?

A. Right.

You know, this is a Department of Defense system that is allowed for civilians to use part of it and that part -- the DOD part, certainly that -- it was made for -- to guide missiles into targets. And on the civilian side -- well, back to the DOD side, they're probably within one

1 meter of accuracy.

2 Q. Right.

3 A. And ours is, you know, somewhere ten to -- you
4 know, ten to fifteen meters in accuracy. But I -- get to
5 your question. And so but -- so that information is sent
6 -- it's off of the DOD system. If it -- and if that
7 server gets the correct information -- and we are doing it
8 on a web base hooked to that server, so we're getting fed
9 the information realtime, the same information that comes
10 from the Department of Defense system.

11 Q. Just like the DOD with the missiles that you
12 were saying --

13 A. Right.

14 Q. -- and then we are civilians who are the red-
15 headed stepchildren of it?

16 A. Right.

17 Q. Okay. So if I'm here [indicates], it can't tell
18 me the difference? It's not likely to tell me the
19 difference between here and here?

20 A. It could be right there. Ten -- like I said,
21 ten to fifteen meters.

22 Q. Okay. So here to here, it's going to tell me
23 that difference?

24 A. No, it won't tell you the difference.

25 Q. So it's really not a hundred percent?

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1 A. No. You know, I think in all the tests that
2 have been done, I think -- back in 2009, the National
3 Academy of Sciences did a study on forensic evidence. And
4 in case anybody doesn't know what the National Academy of
5 Sciences are, they -- they, you know, do projects. They
6 also work with the government, on how things affect the
7 public, how things affect people, and how things affect
8 forensic evidence, as well. And in this case they did the
9 study and, like I said, it came out that there was only
10 one forensic evidence that was better than GPS tracking
11 and that was DNA. DNA was first, GPS tracking was second,
12 and then it went right on down to fingerprints,
13 ballistics, and right on down to fibers.

14 Q. And this is -- should be able to tell us, within
15 millimeters, the longitude and latitude; correct?

16 A. Within ten to fifteen meters, yes, of the
17 longitude and latitude. Yes.

18 Q. And you don't have the longitude and latitude
19 report with you, do you?

20 A. I have it on the last -- on this document right
21 here.

22 This document tells a lot of things. In this is
23 a longitude and latitude of the last mark of where he was
24 on the -- on the frame.

25 Q. But it specifies the deviation on the longitude

1 and latitude?

2 A. No. No, it won't tell us that if --

3 I mean, we just -- you know, it's just
4 understood that it'll be ten to, you know, twenty meters
5 off or ten to fifteen meters off.

6 Q. So we all -- right.

7 So it's not going to really be accurate? It's
8 going to be off some?

9 A. Well, that some -- you know --

10 Q. Kind of like a GPS in a car; right?

11 A. Well, GPS in a car cannot really be compared to
12 GPS here. It's completely different.

13 Q. But so far as longitude and latitude, it will be
14 off.

15 A. It is -- the only thing I can say is if it's
16 off, it's off -- ninety-five percent of the time it's very
17 accurate, correct and accurate. Every time it's been
18 tested, at least ninety-five percent of the time it's been
19 accurate and correct.

20 Q. But so far as accurate, we actually don't have
21 that, do we?

22 A. Have -- correct?

23 Q. When Ms. Cornwell asked if it's accurate, we
24 don't actually have the pinpoints of the longitude and
25 latitude, the numbers, do we?

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1 A. We have one set of them, yes.

2 Q. Just one set?

3 A. Yes.

4 MS. LITTLEJOHN: Court's indulgence.

5 [Whereupon, Ms. Littlejohn and Mr. Chad Shelton
6 confer]

7 MS. LITTLEJOHN: Okay. No further questions.

8 THE COURT: Any redirect? Oh. I'm sorry.

9 MR. BIERING: Thank you, Your Honor.

10 I think it's still -- well, it's good afternoon,
11 Mr. Ballard.

12 CROSS-EXAMINATION

13 BY MR. BIERING:

14 Q. Mr. Ballard, you're talking about placing a
15 person with these GPS -- this GPS system, you're talking
16 about placing Ryan Newman; correct?

17 A. Correct.

18 Q. It doesn't have anything to do with Jessica
19 Clark; is that right?

20 A. I do not know Jessica Clark.

21 MR. BIERING: Okay. That's all. Thank you very
22 much.

23 THE COURT: Any redirect now?

24 MS. CORNWELL: Nothing from the State, Your
25 Honor.

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1 THE COURT: Any reason that Mr. Ballard can't be
2 excused?

3 MS. CORNWELL: Not from the State, Your Honor.

4 MR. CHAD SHELTON: None, Your Honor.

5 MR. BIERING: None from Defendant Clark.

6 THE COURT: Mr. Ballard, thank you very much.
7 You may be excused. Have a good day.

8 THE WITNESS: You too, sir.

9 THE COURT: Call your next witness, please.

10 MS. CORNWELL: Your Honor, at this time the
11 State rests.

12 THE COURT: Okay. Madam Forelady and ladies and
13 gentlemen of the jury, what I'm going to do, I need to
14 hear motions at this time and I'm going to -- I'm
15 going to go ahead and send y'all to lunch and then
16 we're going to hear -- I'm going to hear some motions
17 and then we're going to go take lunch. We'll take it
18 earlier. I normally try to do it around 1:00, but
19 we'll go earlier today. So be back in the jury room
20 at two o'clock.

21 Well, let me see the attorneys up here just a
22 second, please.

23 [Whereupon, an off-the-record bench conference
24 is held in reference to scheduling]

25 THE COURT: All right. Madam Forelady and

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1 members of the jury, be back in the jury room at two
2 o'clock -- please don't discuss the case amongst
3 yourselves -- and hopefully we can get started at that
4 time. Have a good lunch.

5 [Whereupon, the jury exits the courtroom at
6 12:06 p.m.]

7 THE COURT: All right. Any motions from the
8 State?

9 MS. CORNWELL: None from the State, Your Honor.

10 THE COURT: Any from the Defendant Newman?

11 MR. CHAD SHELTON: Yes, Your Honor.

12 THE COURT: Any from the -- excuse me --
13 Defendant Newman?

14 MR. CHAD SHELTON: Yes, Your Honor.

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MOTION FOR A DIRECTED VERDICT

MR. CHAD SHELTON: Respectfully, we would move for a directed verdict motion on all charges. Don't believe that the State has met their burden, as far as the armed robbery and the possession of a weapon during a violent crime, as far as not meeting the elements of the charge.

Your Honor, specifically for kidnaping, I don't believe there's any testimony that he was unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted or carried away. He voluntarily went there, so as far as being decoyed to be there, Your Honor, he voluntarily went there. I just respectfully ask that the kidnaping directed verdict motion be granted for the kidnaping.

Your Honor, the testimony on the assault and battery in the first degree I don't believe rises to the level of the -- of assault and battery in the first degree. Possibly assault and battery in the second degree, but --

THE COURT: Well, what's your distinction between the first and the second?

MR. CHAD SHELTON: The great bodily injury, Your Honor.

THE COURT: Okay.

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1 MR. CHAD SHELTON: I don't believe there was
2 great bodily injury. There's marks. He denied going
3 to EMS, to the hospital. I don't believe that there's
4 great bodily injury, Your Honor. If anything, it --
5 maybe moderate bodily injury, but I don't believe it's
6 great bodily injury. And that would be -- moderate
7 bodily injury would be assault and battery second,
8 Your Honor.

9 THE COURT: All right. Then that leaves the
10 armed robbery.

11 MR. CHAD SHELTON: Your Honor, just a general
12 directed verdict motion --

13 THE COURT: I'm sorry. What?

14 MR. CHAD SHELTON: Just a general directed
15 verdict motion, as far as not meeting the elements of
16 the charge, Your Honor. I'll leave it at that, Your
17 Honor.

18 THE COURT: So you think it's moderate bodily
19 injury rather than great bodily injury? I wish
20 somebody would explain to me the moderate versus great
21 but I guess that --

22 MR. CHAD SHELTON: Yes, Your Honor. And the EMS
23 person was here and she said abrasions. She didn't
24 say anything, as far as great bodily injury.

25 THE COURT: Okay. Solicitor, let me hear you on

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1 this kidnaping issue.

2 MS. CORNWELL: On the kidnaping.

3 THE COURT: As far as the assault and battery,
4 at this point in time I'm going to deny the motion.

5 As far as the armed robbery, I'm going to deny
6 the motion.

7 But I've got -- I need to hear you on the
8 kidnaping.

9 Well, before we get there, do you want to -- do
10 you want to address both defendants at the same time
11 or do you want to do them separate, solicitor? It
12 doesn't matter to me.

13 MS. CORNWELL: Your Honor, we can do them both
14 at the same time for purposes --

15 THE COURT: All right. Let me hear from
16 Defendant Clark on any motions.

17 MR. BIERING: Your Honor, I believe that the
18 burden of proof as relates to the defendants are
19 separate and dependent, even though they're
20 consolidated for purposes of the trial, and I would
21 respectfully ask that the Court address the motions
22 independently if --

23 THE COURT: That's fine. That's fine.

24 MR. BIERING: Thank you.

25 THE COURT: Solicitor, let me hear you on the

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1 kidnaping.

2 MS. CORNWELL: Thank you, Your Honor.

3 Your Honor, it's the State's position that when
4 ruling on directed verdicts it's not weight of the
5 evidence, it's whether or not there is evidence.

6 The State has presented testimony from Mr.
7 Mendoza that stated that he was tricked into getting
8 in Ms. Clark's car under the premise of drugs and sex,
9 he was taken to the incident location, he was placed
10 at gunpoint, forced out of the vehicle. He also
11 testified that she had locked him in the vehicle; he
12 couldn't get out because there were locks on the doors
13 that --

14 THE COURT: And then the back window came down
15 and he got out.

16 MS. CORNWELL: The back window came down and he
17 was able to get out because there was a gun pointed at
18 the back of his head and he was forced out of the car.

19 THE COURT: Right.

20 MS. CORNWELL: I think that under the statute it
21 says inveigle, confine, seize, decoy. She clearly
22 decoyed him by convincing him to get in the car on her
23 premise that wasn't there. She confined him. He was
24 locked in. The only way he was allowed out is once
25 Defendant Newman opened the door, took him out,

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1 Defendant Newman forcefully took him out, they then
2 left him at the scene.

3 I believe that there's enough testimony and
4 evidence that it's going to be a weight issue, and
5 that would be for the jury to decide.

6 THE COURT: Okay. Have you got anything in
7 reply?

8 MR. CHAD SHELTON: Your Honor, just my previous
9 argument.

10 THE COURT: I'm sorry. What?

11 MR. CHAD SHELTON: Just my previous argument,
12 Your Honor.

13 THE COURT: Okay. You don't think locking the
14 doors in the car would be sufficient for abduction --

15 MR. CHAD SHELTON: Your Honor --

16 THE COURT: -- then taking him out of the car at
17 gunpoint and carrying away?

18 MR. CHAD SHELTON: Your Honor, I believe those
19 elements go to the armed robbery issue and not
20 necessarily the kidnaping. But to the --

21 THE COURT: Well, unlawfully seized --

22 MR. CHAD SHELTON: I'm looking --

23 THE COURT: The statute says unlawfully seized,
24 confined, inveigled, decoyed, kidnap, abducted or
25 carried away another without authority of law. But it

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1 covers all of them.

2 MR. CHAD SHELTON: Yes, Your Honor. I'm looking
3 for --

4 [Whereupon, Mr. Chad Shelton and Ms. Littlejohn
5 confer]

6 MR. CHAD SHELTON: Your Honor, I don't believe
7 that there was any evidence that was presented that he
8 couldn't have left at any point in time. He placed --
9 he agreed to go. There's no evidence that they
10 couldn't have left. He wanted to go, Your Honor,
11 and --

12 THE COURT: All right. I'll take the kidnaping
13 under advisement. I'll let you know after lunch.

14 MR. CHAD SHELTON: Thank you.

15 THE COURT: And does that cover Defendant
16 Newman's motions?

17 MR. CHAD SHELTON: Yes, Your Honor.

18 THE COURT: All right. Let me hear from
19 Defendant Clark on any motions, if you have any.

20 MR. BIERING: I do, Your Honor. May it please
21 the Court.

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MOTION FOR A DIRECTED VERDICT.

MR. BIERING: My motion would be a directed verdict on all charges, as well.

First, as it relates to the kidnaping, what I think is missing -- because there's a question, is there any evidence would relate to his detention. What's missing, there's no discussion of when the doors were locked. We're talking about two people in a car on what I recall them reporting as a dark, dirt road at one o'clock in the morning.

The mere fact that the door is locked I do not believe is any evidence in support of a kidnaping and I do not believe there has been testimony that has been presented or evidence presented that would address the elements of kidnaping as it relates to Jessica Clark.

And I think that we've got two issues here: the issue of what transpired in the car; and what transpired out of the car. I think the State would concede that there's been no testimony that links Jessica Clark to anything that went on outside of the car. The testimony is that they're in the car together with a common theme for the night.

THE COURT: What year car was this?

MR. BIERING: I think they testified it was a

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1 '98 Ford.

2 THE COURT: Okay. I mean, I -- solicitor, you
3 may know. I mean, most cars now, the doors lock
4 automatically when you drive off. I don't know if
5 this one did or not. Nobody has even addressed that
6 issue.

7 MS. CORNWELL: Your Honor, it's not in evidence.
8 The defendant --

9 THE COURT: And that's not even an issue in
10 evidence. But I know most cars --

11 MS. CORNWELL: The victim stated that --

12 THE COURT: Now, I don't know how far back that
13 goes.

14 MS. CORNWELL: The victim stated that the car
15 doors were locked, he was unable to open them from the
16 inside, it --

17 THE COURT: I understand.

18 MS. CORNWELL: -- was opened from the outside.

19 Defense counsel placed into his opening
20 statement that this defendant has children. There is
21 a special feature on most vehicles now that is for
22 child locks where a child can't unlock the car --

23 MR. BIERING: Objection. She is testifying at
24 this point --

25 THE COURT: I understand. But I asked her a

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1 question and she's answering it. Okay?

2 MR. BIERING: Yes, Your Honor.

3 THE COURT: I know it's not in evidence on
4 whether these doors locked automatically. I'm just
5 sort of curious.

6 MR. BIERING: Yes, sir.

7 THE COURT: Nobody has addressed that issue.
8 But go ahead with your argument.

9 MR. BIERING: Because the question was asked and
10 because she began to discuss that, what I can say,
11 Your Honor, as an officer of the Court, there's no
12 child-safety lock on the front door of this car.

13 He got in the car willingly. He admitted that.
14 One o'clock in the morning. It's very reasonable to
15 have your doors locked. If you are then -- have
16 someone who attempts to be getting into your car, it
17 would make no sense for her to push the unlock button
18 which would unlock all the doors.

19 There's been no testimony presented that links
20 her to a position that she had those doors locked to
21 kidnap him, and we would ask that there be a directed
22 verdict on that charge --

23 THE COURT: On the kidnaping.

24 MR. BIERING: -- for Ms. Clark.

25 As it relates to the armed robbery, there is no

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1 testimony that states any -- there's no testimony of
2 any conversation, there's no evidence of any
3 electronic communication, there's no evidence of her
4 and the other codefendants separating out the garments
5 of this alleged victim. There is no evidence of her
6 in possession of any of that --

7 THE COURT: Well, I mean, the only thing they've
8 got on those issues, as you well know, is hand of one
9 is the hand of all. I mean, that's the only issue
10 they really have, as far as your client is concerned,
11 from what I've heard.

12 MR. BIERING: But to get to the hand of one of
13 all -- the hand of one is the hand of all, you would
14 have to show -- there would have to be some evidence
15 presented of a common scheme or plan.

16 Here's the issue. What they've got --

17 THE COURT: Well, they get in a --

18 MR. BIERING: -- is they're in the same space.

19 THE COURT: Well, they get in a car and go to a
20 known site and there's a --

21 Was it two or three people?

22 MS. CORNWELL: Your Honor, it was three people.

23 THE COURT: -- three people there with guns, and
24 the car stops, and they get him out of the car.

25 I mean, that circumstantial evidence doesn't --

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1 you couldn't form the opinion that it was preconceived
2 by your client to go to his house, say, hey, you can
3 have sex if you get me drugs, so you go out on this
4 dirt road at one o'clock in the morning, you stop the
5 car and there's three people that rob him? I mean, I
6 think that's pretty strong circumstantial evidence
7 that she was involved, isn't it?

8 MR. BIERING: That would be strong
9 circumstantial evidence, Your Honor, if all of the
10 counsel did like they did here in Berkeley County and
11 all the law enforcement -- and we left here and we
12 went out to Senator Dennis' and Markley Dennis' place
13 on the river and had dinner and I drove everybody out
14 there and we got food poisoning, have I then caused
15 the food poisoning. And the answer to that, Your
16 Honor, is no. There is no evidence --

17 THE COURT: Is that why y'all stopped having the
18 dinners? Food poisoning?

19 MR. BIERING: I'm sorry?

20 THE COURT: Is that why you stopped having the
21 dinners? The food poisoning?

22 MR. BIERING: I think they passed away, Judge.

23 THE COURT: Oh. Okay. All right. They still
24 do it in Barnwell County --

25 MR. BIERING: Do they? I should move to --

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1 THE COURT: -- and Bamberg County.

2 MR. BIERING: I should move to Barnwell -- I
3 should move to -- my brother was in Bamberg County.

4 THE COURT: Oh. Okay.

5 MR. BIERING: Judge, there's no -- there's no
6 evidence -- there's no evidence that says there is any
7 type of common scheme. I mean, nothing. They haven't
8 presented anything. And any text -- any text
9 messages. Nothing. They object to bringing in the
10 facebook material. There is nothing that presents
11 that common scheme.

12 So our position that on the issue --

13 THE COURT: Well, how did -- how did she know to
14 go to this site and stop the car?

15 MR. BIERING: They were going to buy drugs,
16 Judge.

17 THE COURT: Oh. Okay. All right.

18 MS. CORNWELL: Your Honor --

19 THE COURT: All right. Go ahead with your -- I
20 didn't mean to interrupt you. I'm just --

21 MR. BIERING: I mean, we admitted that in our
22 opening statement.

23 THE COURT: I understand. Go ahead.

24 MR. BIERING: If you go -- what the drug dealers
25 -- I mean, unfortunately, drug dealers can't go to --

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1 come into civil court, in common pleas, and file a
2 lawsuit for breach of contract for failure to deliver
3 appropriate product or for failure to pay for product.
4 They've got one means of enforcing their activities
5 and it's called being a thug with a gun or beating
6 people up. That's what they do. So if you're going
7 to deal with a drug dealer, there might be guns.

8 Our position is there's no evidence that's been
9 presented by the State that presents some type of
10 common theme for the hand of one, the hand of all.

11 The same issues go to armed robbery, possession
12 of a firearm while in the commission of a felony, the
13 assault and battery. The testimony, direct from the
14 alleged victim, was my client didn't have -- my client
15 wasn't -- didn't do anything like that to him. That
16 was the testimony.

17 Your Honor, you've got to connect the dots at
18 the conclusion of the trial, as we use Mr. Ballard's
19 most recent testimony. You've got to connect the dots
20 at the conclusion of the trial. But you've got to put
21 the boards on the -- I mean, the dots on the board at
22 this stage in the trial. The dots have not been put
23 on the board.

24 We would ask for a directed verdict on all
25 charges as it relates to Jessica Clark. Thank you.

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1 THE COURT: Okay. Thank you very much.

2 Solicitor?

3 MS. CORNWELL: Your Honor, the State has put in
4 the testimony, per the victim, that this defendant
5 sought him out on facebook the night before or the day
6 before this incident occurred. She's the one that
7 initiated contact. She's the one that set all this
8 up. She's the one that arranged for the meeting. She
9 picked him up. She drove him back to that site.

10 There was also testimony that she turned the
11 lights off to go down the dirt road. There's
12 testimony as he was taken out of the car and being
13 beaten and robbed, she sat there with her foot on the
14 brake waiting for these defendants to get back in the
15 car with here. There's been testimony that she drove
16 off and her car was at the codefendant's house, she
17 spent the night there. I think that shows a common
18 scheme of things, they were conspiring together, that
19 this worked out before [phonetic].

20 She took them to the incident. But for her
21 taking them there, this would have never happened.
22 She sat there while he was being robbed, beaten, and
23 waited for the codefendants to get in the car and then
24 she willingly, with herself, drove them off, spent the
25 night at their house. I think that that's more than

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1 enough circumstantial evidence to put in front of a
2 jury and let the jury weigh the credibility.

3 If Mr. Biering wants to argue -- make his
4 arguments in closing, that's fine, but the State has
5 presented evidence that the weight of the evidence
6 goes to the jury and I believe that you should --

7 THE COURT: Thank you, solicitor.

8 Anything very briefly, Mr. Biering?

9 MR. BIERING: There is no evidence that she
10 willingly sat there that night. There is no evidence
11 that has been presented that she willingly drove away
12 with anybody there that night. There is no evidence
13 that's been presented that she willingly spent the
14 night at that house.

15 And as an aside, the police didn't even ask the
16 address to go find out what was going on with my
17 client.

18 THE COURT: Well, I'll concede that the police
19 didn't do a real good job investigating the crime, but
20 that's neither here nor there.

21 Your motion for -- taking evidence most
22 favorable to the non-moving party, your motion on the
23 assault and battery and the robbery is denied.

24 I'm going to take the kidnaping under advisement
25 and I'll let you know after lunch. Now --

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1 MS. CORNWELL: And the possession of a firearm
2 during a violent offense --

3 THE COURT: Pardon?

4 MS. CORNWELL: The possession of a firearm
5 during a violent offense?

6 THE COURT: Those -- I assume y'all have joined
7 in that motion for the possession of a firearm?

8 MR. BIERING: Yes, Your Honor, we do. I said
9 that.

10 THE COURT: Those motions are denied.

11 MR. BIERING: Thank you, Your Honor.

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DEFENDANT NEWMAN'S RIGHT TO TESTIFY

THE COURT: All right. Mr. Newman, Ryan Newman, if you'll stand and raise your right hand.

[Whereupon, Mr. Newman is duly sworn by the Court as follows: swear to tell the truth, nothing but the truth, so help you God]

MR. NEWMAN: Yes, sir.

THE COURT: All right. Mr. Newman, you have the right, under the fifth amendment of the constitution, not to testify.

Do you understand?

MR. NEWMAN: Yes, sir.

THE COURT: No one can compel you to testify against yourself in a criminal case.

Do you understand?

MR. NEWMAN: Yes, sir.

THE COURT: That's a personal right that you have. It's a personal privilege that you have. Only you can decide whether you want to testify or not testify.

Do you understand?

MR. NEWMAN: Yes, sir.

THE COURT: You have the right to testify. You have the right not to testify.

If you decide not to testify, I will instruct

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1 the jury that they cannot consider that in any manner
2 whatsoever in their deliberations.

3 Do you understand?

4 MR. NEWMAN: Yes, sir.

5 THE COURT: If you do decide to testify, then
6 you will be considered a witness. You'll have to
7 answer the questions, if it's an appropriate one under
8 the rules of evidence and the rules of court.

9 Do you understand?

10 MR. NEWMAN: Yes, sir.

11 THE COURT: In other words, it's not like on
12 television where you hear one question and say, I take
13 the fifth, and you answer the next question. You
14 either take the fifth or you decide to testify. Once
15 you decide to testify, you become a witness.

16 Do you understand?

17 MR. NEWMAN: Yes, sir.

18 THE COURT: Have you had an opportunity to talk
19 to your attorney about your right to testify or not
20 testify?

21 MR. NEWMAN: No, sir.

22 THE COURT: Pardon?

23 MR. NEWMAN: No, sir.

24 THE COURT: You have not talked to him at all
25 about it? Have you had any conversations with him?

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1 MR. NEWMAN: Yes, sir.

2 THE COURT: Pardon?

3 MR. NEWMAN: Yes, sir.

4 THE COURT: You have had conversations?

5 MR. NEWMAN: Yes, sir.

6 THE COURT: Did you understand those
7 conversations?

8 MR. NEWMAN: Yes, sir.

9 THE COURT: All right. Do you have any
10 questions you want to ask your attorney about your
11 right to testify or the Court about your right to
12 testify?

13 Now, I'm not going to ask you now whether you're
14 going to testify or not. I'm going to give you the
15 lunch hour to talk to your attorney and make a
16 decision whether you're going to testify.

17 Do you understand?

18 MR. NEWMAN: Yes, sir.

19 THE COURT: I just want to advise you of your
20 rights to testify or not testify.

21 Do you understand?

22 MR. NEWMAN: Yes, sir.

23 THE COURT: All right. Do you understand it's a
24 personal privilege, as I said earlier, and you have to
25 make a knowingly decision [phonetic] and your decision

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1 must be freely, voluntarily, and intelligently made.

2 Do you understand?

3 MR. NEWMAN: Yes, sir.

4 THE COURT: Has anybody forced you to testify?

5 MR. NEWMAN: No, sir..

6 THE COURT: Has anybody tried to force you to
7 testify?

8 MR. NEWMAN: No, sir.

9 THE COURT: Has anybody tried to force you not
10 to not testify?

11 MR. NEWMAN: No, sir.

12 THE COURT: Has any pressure been brought to you
13 by anyone on whether you should testify or not
14 testify?

15 MR. NEWMAN: No, sir.

16 THE COURT: Do you understand what I have
17 explained to you?

18 MR. NEWMAN: Yes, sir.

19 THE COURT: Do you have any questions you want
20 to ask the Court about the issue of the fifth
21 amendment rights to remain silent?

22 MR. NEWMAN: No, sir.

23 THE COURT: All right. I'm going to give you --
24 I'm not going to ask you now whether you're going to
25 testify or not testify. I will give you the

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1 opportunity, if you so desire, to talk to your
2 attorney during the lunch hour and make a decision
3 after -- when we come back at two o'clock, I will be
4 asking you that question.

5 Do you understand?

6 MR. NEWMAN: Yes, sir.

7 THE COURT: Okay. Thank you so very much.
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DEFENDANT CLARK'S RIGHT TO TESTIFY

THE COURT: All right. Ms. Clark, would you stand and raise your right hand.

[Whereupon, Ms. Clark complies]

[Whereupon, Ms. Clark, is duly sworn by the Court as follows: do you swear to tell the truth and nothing but the truth, so help you God]

MS. CLARK: Yes, sir.

THE COURT: All right. Ms. Clark, you were sitting at the counsel table when I advised Mr. Newman of his fifth amendment rights; is that correct?

MS. CLARK: Yes.

THE COURT: Did you understand the questions that I have asked Mr. Newman?

MS. CLARK: Yes, sir.

THE COURT: Do you also understand that you -- no one can compel you to testify against yourself?

MS. CLARK: Yes.

THE COURT: Has anybody put any pressure on you to testify or not testify?

MS. CLARK: No.

THE COURT: Have you had an opportunity to talk to your attorney about whether you want to testify or not testify?

MS. CLARK: [Indicates negatively]

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1 THE COURT: Have you discussed it at all with
2 your attorney?

3 MS. CLARK: Yes.

4 THE COURT: Pardon?

5 MS. CLARK: Yes..

6 THE COURT: Did you understand those
7 conversations?

8 MS. CLARK: Yes.

9 THE COURT: Do you have any question you want to
10 ask your attorney about your right to testify?

11 MS. CLARK: [Indicates negatively]

12 THE COURT: Do you understand it's a personal
13 privilege and only you can make the decision whether
14 you want to testify or not? Not your attorney. He
15 can advise you. But it's your decision to make.

16 Do you understand?

17 MS. CLARK: Yes, sir.

18 THE COURT: And do you also understand, as I
19 explained to Mr. Newman, if you take the fifth
20 amendment rights, I will explain to the jury that they
21 cannot consider that in any manner whatsoever in
22 deliberations before or against you.

23 Do you understand?

24 MS. CLARK: Yes.

25 THE COURT: If you elect to testify, then you

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1 will be -- assume the role as a witness.

2 Do you understand? .

3 MS. CLARK: Yes.

4 THE COURT: Do you have any questions on whether
5 or not you would like to testify or not testify to the
6 Court? Have any questions you want to ask the Court?

7 MS. CLARK: No.

8 THE COURT: All right. I'm also going to give
9 you an opportunity to talk to your attorney during the
10 lunch hour, but after the lunch hour I'm going to be
11 asking you do you want to testify or do you not want
12 to testify.

13 Do you understand? .

14 MS. CLARK: Yes.

15 THE COURT: All right. Is there any questions
16 that either attorney would like to ask their client
17 concerning the right to testify or not testify under
18 the fifth amendment?

19 Excuse me. Mr. Chad Shelton?

20 MR. CHAD SHELTON: On the record, Your Honor?

21 THE COURT: Yes, sir.

22 MR. CHAD SHELTON: No. No.

23 THE COURT: All right. Mr. Biering, anything
24 you would like to ask your client on the record
25 concerning the right to testify or not?

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1 MR. BIERING: No, Your Honor.

2 THE COURT: Now, remind me and I'll give you
3 that same opportunity when the decision-making time
4 has arrived. Okay?

5 MR. BIERING: Thank you, Your Honor.

6 MR. CHAD SHELTON: Yes, Your Honor.

7 THE COURT: All right. Is there anything else
8 from the State before we break for lunch?

9 MS. CORNWELL: Nothing from the State, Your
10 Honor.

11 THE COURT: Anything else from the defense?

12 MR. CHAD SHELTON: No.

13 MR. BIERING: Your Honor, could we discuss
14 possibly what we -- how we see the next few days what
15 -- for a scheduling standpoint?

16 THE COURT: What do you mean the next few days?
17 I'm worried about this afternoon, not the next few
18 days. I've got to get past this afternoon first.

19 MR. BIERING: I understand.

20 THE COURT: Yeah. Come on up here. We'll
21 discuss it. What do you want --

22 MR. BIERING: I've got a hundred and --

23 THE COURT: What do you want to discuss?

24 MR. BIERING: -- people that are waiting for me.
25 I feel like I'm a piece of meat tied to a pole --

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1 THE COURT: Well, you are. You're in the --
2 you're in the pit. Everybody's --

3 [Whereupon, an off-the-record bench conference
4 is held in reference to scheduling]

5 [Whereupon, a recess is held from 12:35 p.m. and
6 2:14 p.m.]

7 THE COURT: Yes, ma'am. You wanted to continue
8 your argument on the --

9 MS. CORNWELL: Kidnaping charge, Your Honor.

10 THE COURT: -- I believe on the kidnaping?

11 MS. CORNWELL: Yes, Your Honor.

12 I've placed some case law up there for you.

13 THE COURT: I'm sorry. What?

14 MS. CORNWELL: I've placed some case law up on
15 the bench for you.

16 [Off the record momentarily]

17 THE COURT: All right. Be glad to hear you.

18 MS. CORNWELL: Your Honor, it's the State's
19 position that the law on kidnaping is any unlawful
20 seizure, confining, inveigling, decoying, abducting,
21 or carrying away of a person by any means without
22 authority of law.

23 The most important case on point on these facts
24 is State v. Porter. State v. Porter [phonetic]
25 relates kidnaping to armed robbery and it stated that

1 it is not a violation of double jeopardy to charge
2 defendants with both armed robbery and kidnaping where
3 the charges grew out of the same facts, that although
4 logically an assailant must constrain the victim's
5 activities in a way to carry out an armed robbery.
6 This act of confinement can form the basis of
7 kidnaping charges, even though it's incidental to the
8 armed robbery.

9 As far as the elements for a seizure is
10 concerned, kidnaping involves the taking control of a
11 human being with force. That's State v. Barrett
12 [phonetic]. The State would stipulate that using a
13 gun on somebody is taking -- is seizing them through
14 force.

15 Confining: the crime of kidnaping is complete
16 when a person unlawfully deprives a person that's
17 kidnaped of personal freedom. Again, we would state
18 that keeping somebody on the ground, kicking them and
19 holding them at gunpoint and keeping him from leaving,
20 and therefore confining.

21 As far as inveigling: to inveigle is to seduce,
22 entice, and decoy. That's -- all the way back from
23 1844 in State v. McCoy [phonetic]. It has not been
24 overturned. There was an appellate issue and the
25 appellate court in 2001, in State v. Stowe [phonetic],

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1 stated that the fact that the victim voluntarily went
2 with the perpetrator because of the perpetrator's
3 deceit is one of significance and is qualified as
4 inveigling.

5 The State only has to prove one of those
6 elements of seizure, confinement, inveigling, and
7 unlawful intent. The State feels that it has produced
8 evidence for the testimony of the victim because the
9 victim was seized. He was also confined. He was also
10 inveigled. As long as the Court believes that any of
11 those were proven or admitted, then evidence has been
12 submitted and the weight of the evidence is one for
13 the jury to decide.

14 Furthermore, with State v. Porter [phonetic],
15 Your Honor has already denied the directed verdict for
16 the armed robbery. It's the State's position that
17 under State v. Porter, if there's an armed robbery
18 there can also be a kidnaping.

19 THE COURT: Okay. Does the defense want to say
20 anything very briefly, or have you already made your
21 arguments?

22 MR. CHAD SHELTON: I already made my argument.

23 THE COURT: Taking the evidence most favorable
24 to the non-moving party, the motion for a directed
25 verdict for both defendants on kidnaping is denied.

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1 All right. Now, Mr. Newman, before we went to
2 lunch approximately at about 12:15 -- it's now 2:15 --
3 I advised you of your fifth amendment rights to remain
4 silent and told you after lunch I was going to ask you
5 whether or not you were going to testify.

6 Have you made a decision on whether you're going
7 to testify or not testify?

8 MR. NEWMAN: Yes, sir.

9 THE COURT: What is your decision?

10 MR. NEWMAN: I'm not going to.

11 THE COURT: Has anybody forced you or threatened
12 you during lunch for you to arrive at that decision?

13 MR. NEWMAN: No, sir.

14 THE COURT: Your decision is freely, voluntarily
15 made by you; is that correct?

16 MR. NEWMAN: Yes, sir.

17 THE COURT: Have you had -- did you talk with
18 your attorney during lunch about testifying?

19 MR. NEWMAN: Yes, sir.

20 THE COURT: Are you satisfied with his answers
21 and his -- to your questions?

22 MR. NEWMAN: Yes, sir.

23 THE COURT: Do you understand the conversation?

24 MR. NEWMAN: Yes, sir.

25 THE COURT: Anything you would like to ask your

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1 client about the right to testify, Mr. Shelton?

2 MR. CHAD SHELTON: No, Your Honor.

3 THE COURT: Okay. Have a seat.

4 Ms. Clark --

5 MR. BIERING: Your Honor, can I have just one
6 moment --

7 THE COURT: Yes, sir.

8 MR. BIERING: -- before the Court --

9 [Whereupon, Mr. Biering and Defendant Clark
10 confer]

11 MR. BIERING: We're prepared, Your Honor, for
12 your --

13 THE COURT: Pardon?

14 MR. BIERING: We're prepared for your inquiry,
15 Your Honor.

16 THE COURT: Okay. Ms. Clark, prior to taking a
17 lunch break at about 12:15, 12:30, I advised you of
18 your fifth amendment rights; is that correct?

19 MS. CLARK: Yes.

20 THE COURT: And I told you after lunch -- and it
21 is now approximately 2:20 -- I was going to ask you do
22 you want to testify or do you not want to testify.
23 What is your decision?

24 MS. CLARK: At this time I believe I am.

25 THE COURT: You what?

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1 MS. CLARK: At this time I believe that I am.

2 THE COURT: You will testify. Okay.

3 Has anybody forced you or threatened you or
4 coerced you for you to make that decision?

5 MS. CLARK: No, sir.

6 THE COURT: Have you had ample opportunity to
7 talk to your attorney about that decision?

8 MS. CLARK: Yes.

9 THE COURT: Do you need any further time to talk
10 to him or ask any questions of your attorney about
11 your decision?

12 MS. CLARK: No.

13 THE COURT: Have you understood all the
14 conversations?

15 MS. CLARK: Yes.

16 THE COURT: Okay. Mr. Biering, anything you
17 would like to ask your client, concerning that, on the
18 record?

19 MR. BIERING: I do, Your Honor, if I could.

20 THE COURT: Pardon?

21 MR. BIERING: If I could, Your Honor.

22 THE COURT: Yes, sir. I want to give you that
23 opportunity, if you want to do it.

24 MR. BIERING: Ms. Clark, have you had sufficient
25 time to speak to me throughout the preparation of this

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1 case?

2 MS. CLARK: [No response]

3 MR. BIERING: Do you feel you have, or do you
4 need additional time to discuss this matter with me at
5 this point? Do you need some additional time to talk
6 with me about this matter before we move forward?

7 MS. CLARK: [No response]

8 THE COURT: Ms. Clark, let me -- if you need
9 some additional time, tell me and I will give it to
10 you. I'm not trying to press the issue. I will give
11 you some additional time if you want to talk to your
12 attorney anymore about it. Okay?

13 Please proceed.

14 MR. BIERING: Ms. Clark, you understand that the
15 State in this case has the burden of proof; is that
16 correct?

17 MS. CLARK: Yes.

18 MR. BIERING: You were not --

19 THE COURT: Ms. Clark, speak up so we can hear
20 you, please.

21 MS. CLARK: Yes.

22 MR. BIERING: And that we're not required --
23 we're not required to enter a defense at all.

24 Do you understand that?

25 MS. CLARK: Yes.

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1 MR. BIERING: And you understand that you're not
2 required to testify?

3 MS. CLARK: Yes.

4 MR. BIERING: And that you actually have a
5 constitutional right that prohibits them from even
6 making any reference to that?

7 MS. CLARK: Yes.

8 MR. BIERING: And you've had -- we've had some
9 conversations definitely over the year and a half, but
10 some pretty specific conversations over these past
11 weeks about this issue; is that correct?

12 MS. CLARK: Yes.

13 MR. BIERING: And do you need -- based on any
14 questions I've asked now, does that give rise to the
15 need for any additional time to make your decision?

16 MS. CLARK: No.

17 MR. BIERING: Thank you.

18 THE COURT: Thank you very much.

19 Anything else from the State before we bring the
20 jury in?

21 MS. CORNWELL: Nothing from the State, Your
22 Honor.

23 THE COURT: Anything else from the defendants?

24 MR. CHAD SHELTON: No, Your Honor.

25 MR. BIERING: I do have a matter, Your Honor.

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1 [Whereupon, Mr. Biering and Ms. Clark confer]

2 MR. BIERING: Your Honor, if I could approach?

3 THE COURT: Yes, sir..

4 [Whereupon, an off-the-record bench conference
5 is held]

6 THE COURT: All right. Anything else before we
7 bring the jury?

8 MS. CORNWELL: Nothing from the State, Your
9 Honor.

10 THE COURT: Bring us the jury, please, ma'am.

11 [Whereupon, the jury enters the courtroom at
12 2:25 p.m.]

13 THE COURT: Mr. Biering, if you will call your
14 first witness.

15 MR. BIERING: May it please the Court.

16 I would call Cathy Adams. I believe she's
17 sequestered in the --

18 MS. CORNWELL: Your Honor --

19 THE COURT: Ladies and gentlemen of the jury,
20 when we drew the jury Monday I called out a list of
21 names to you and Cathy Adams' name was not called out
22 and so I want to inquire of the jury panel today: do
23 you know Ms. Adams or are you related to Ms. Adams, or
24 have you ever had any type of contact with Ms. Adams?
25 If you have, would you please stand.

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1 [Whereupon, there is no response]

2 THE COURT: Thank you' very much.

3 MR. BIERING: May it please the Court, Your
4 Honor.

5 THE COURT: Yes, sir.

6 [Whereupon, Ms. Adams comes forward]

7 THE CLERK OF COURT: Please raise your right
8 hand. Place your left hand on the Bible.

9 [Whereupon, Ms. Adams is duly sworn by the clerk
10 of court as follows: do you solemnly swear or affirm
11 the testimony you will give the Court in the trial of
12 this case will be the truth, the whole truth, and
13 nothing but the truth, so help you God]

14 THE WITNESS: I do.

15 THE CLERK OF COURT: Please be seated.

16 [Whereupon, Ms. Adams takes the witness stand]

17 THE CLERK OF COURT: State your full name.
18 Spell your last name for the record.

19 THE WITNESS: Cathy Adams. A-D-A-M-S.

20 MR. BIERING: Good afternoon, Ms. Adams.

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1 CATHY ADAMS,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. BIERING:

6 Q. Ms. Adams, where do you reside?

7 A. [REDACTED] Ladson.

8 Q. And is that here in Berkeley County?

9 A. Yes, it is.

10 Q. And how long have you lived at that address?

11 A. Twelve years.

12 Q. And do you have any children?

13 A. I have four.

14 Q. And could you tell me their names and their
15 ages?

16 A. I have Donald Clark, Jr. He's twenty-six.
17 Jessica Lynn Clark, 24; Kevin Troy Clark, 22; Elizabeth
18 Clark, 21.

19 Q. And is your daughter -- there are a number of
20 Clarks in this community; is that fair to say?

21 A. Yes.

22 Q. And is your daughter, Jessica Clark, here in the
23 courtroom?

24 A. Yes, she is.

25 Q. And is she seated over at the end of the table

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1 now?

2 A. Yes, she is.

3 Q. Who resides with you?

4 A. Right now?

5 Q. Yes, ma'am.

6 A. Just my husband, Thomas Adams.

7 Q. Okay. And in the past, Ms. Jessica Clark has
8 lived with you; is that correct?

9 A. Yes, she has.

10 Q. And she's lived -- she's a grown woman; right?

11 A. Yes.

12 Q. Is she employed?

13 A. Yes, she is.

14 Q. And where is she employed?

15 A. Lady's Choice --

16 Q. Do you know --

17 A. -- off of Dorchester Road.

18 Q. Do you know how long she's been employed there?

19 A. It's over two years.

20 Q. Over two years?

21 A. Yes.

22 Q. You don't know the specific --

23 A. No, I don't.

24 Q. It's been a good while?

25 A. Yeah.

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1 Q. Do you know what she does there?

2 A. She does the day care.

3 Q. Does day care?

4 A. Uh-huh.

5 Q. And is that what she's been doing the whole time
6 she's been there --

7 A. Yes.

8 Q. -- doing the day care?

9 A. Uh-huh.

10 Q. So if somebody comes in and they want to work
11 out, they bring their kids in during their workout? Is
12 that what that's about?

13 A. Yes.

14 Q. But they're not -- it's not just like a -- it's
15 not just a daycare facility, it's --

16 A. No.

17 Q. -- just for the workout time?

18 A. Yes.

19 Q. And does she have children of her own?

20 A. Yes. She has two boys.

21 Q. And their names and ages?

22 A. Michael Slate, he's six, and Jason Slate and
23 he's five.

24 Q. Are they in school?

25 A. Yes, they are.

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1 Q. And where do they go to school?

2 A. College Park Elementary.

3 Q. Are they doing good?

4 A. Yes.

5 Q. To your knowledge, is she expecting another
6 child now?

7 A. Yes, she is.

8 Q. And do you know how far along she is?

9 A. She's like seven weeks. Maybe eight.

10 Q. Have you had occasion to go to the -- go to the
11 doctor with her?

12 A. I went to one doctor appointment with her.

13 Q. They've gotten an ultrasound?

14 A. I've seen the ultrasound.

15 Q. Always neat pictures.

16 A. Yeah. Looks like a peanut.

17 Q. Do they know what that child is going to be yet?

18 A. No.

19 Q. Ms. Adams, your daughter -- you know your -- you
20 know your daughter is on trial; correct?

21 A. Yes, I do.

22 Q. And you know she's on trial for armed robbery,
23 for kidnaping, possession of a weapon during the
24 commission of a felony, and armed robbery?

25 A. Yes, I do.

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1 Q. And let's go back in time to early January of
2 2011. At that point, early January of 2011, where was
3 your daughter living?

4 A. She was living at Sangaree Village Apartments,
5 which --

6 Q. How long --

7 A. -- is low-income apartments.

8 Q. Yes, ma'am.

9 How long had she been there?

10 A. Oh. She was there for -- oh, I really don't
11 even know. She moved in there when she had Jason, so she
12 had been there for at least three years, four years.

13 Q. And did you have occasion to go to her home?

14 A. Oh, yes.

15 Q. And you said she was working. She worked prior
16 to Lady's Choice, as well; is that correct?

17 A. I don't think so.

18 Q. You don't think so?

19 A. I don't think so.

20 Q. You had occasion to be in her home, though;
21 right?

22 A. Yes, I have.

23 Q. And who helped take care of her children back in
24 that time frame?

25 A. I would take care of them during the summertime

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1 if they weren't in school, because they went to four-year-
2 old kindergarten, too. And the other grandmother.

3 Q. Y'all took turns --

4 A. Uh-huh.

5 Q. -- spent time --

6 Okay. So would you have opportunity to bring
7 the children there or her pick up the children at your
8 home and things like that?

9 A. Yes, sir.

10 Q. And that was a regular occurrence?

11 A. Yes.

12 Q. And you saw her regularly?

13 A. Yes, I did.

14 Q. Did you see her every day?

15 A. I wouldn't say every day, but I talked to her
16 every day.

17 Q. Y'all had a close relationship?

18 A. I have a close relationship with all my kids.

19 Q. Back in early January of 2011, did you have
20 occasion to go with your daughter to the police station?

21 A. Yes, I did.

22 Q. And when you arrived at the police station with
23 your daughter, who did you and your daughter meet?

24 A. Mr. Ashe.

25 Q. Mr. Ashe?

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1 A. Detective Ashe.

2 Q. But you've not been in a courtroom during
3 testimony today or yesterday because of sequestration.
4 But did you see Lieutenant Ashe?

5 A. What? Prior?

6 Q. Did you see him coming in and out of the
7 courtroom?

8 A. Yes, I have.

9 Q. So you remember what he looked like?

10 A. Well, really, I didn't remember what he looked
11 like until somebody mentioned his name, was talking to
12 him. Then I knew that's who it was. I'm not good with
13 faces.

14 Q. You're not good with faces.

15 Does he look a little different now, maybe, than
16 he did then?

17 A. Well, I'm sure we both do.

18 Q. Okay. But you recall being there with your
19 daughter?

20 A. Yes.

21 Q. And were you present during the time that
22 Lieutenant Ashe questioned your daughter?

23 A. Yes, I was.

24 Q. Did you at any time hear your daughter say that
25 she had spent any significant amount of time with Ryan

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1 Newman?

2 MS. CORNWELL: Objection, Your Honor. Hearsay.

3 THE COURT: What's your legal objection?

4 MS. CORNWELL: Hearsay.

5 THE COURT: If you want to come up here and make
6 an argument on an exception to it, I'll be glad to
7 hear you up front -- up here.

8 MR. BIERING: I think I'll come there.

9 [Whereupon, a bench conference is held as
10 follows]

11 THE COURT: I don't think it's any question
12 it's hearsay. Now, if you've got an exception,
13 I'll be glad to listen to your exception.

14 MR. BIERING: Well --

15 THE COURT: I mean, she's testifying what
16 she heard her daughter say.

17 MR. BIERING: Correct.

18 Here's the issue. The issue is that,
19 basically, I'm eliciting an admission.

20 THE COURT: You what?

21 MR. BIERING: I'm eliciting an admission
22 against -- an admission, a statement of the
23 defendant. I'm, arguably, opening the door to
24 that conversation.

25 MS. CORNWELL: Substantive hearsay, Your

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1 Honor. I mean, there's no -- I mean --

2 THE COURT: I mean --

3 MS. CORNWELL: -- she --

4 THE COURT: -- I just think it's just
5 hearsay and I don't know of any way of getting
6 around that.

7 I mean, it's not excited utterance, it's
8 not a --

9 Let me look at one thing.

10 [Whereupon, the Court reviews documents]

11 MR. BIERING: Your Honor, I think you've
12 ruled. I'm comfortable with --

13 THE COURT: Well, come here --

14 MR. BIERING: I'm comfortable --

15 THE COURT: -- and let me look at one
16 thing. Okay?

17 MS. CORNWELL: Your Honor, I've looked over
18 the exceptions --

19 THE COURT: Pardon?

20 MS. CORNWELL: I've looked over the
21 exceptions, in anticipation of this, and don't
22 believe there's an exception.

23 THE COURT: Well, I'll just look -- let me
24 look. I want to refresh my memory on 801.
25 Okay?

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1 [Whereupon, the Court reviews documents]

2 THE COURT: I mean, it's not inconsistent
3 with --

4 Is it inconsistent?

5 MS. CORNWELL: No, Your Honor.

6 THE COURT: I mean, what's she going to
7 say?

8 Now, I'm looking at 801(d), statements
9 which are not hearsay: prior statement by a
10 witness.

11 I mean, I don't think that really applies,
12 either, to be honest with you.

13 MR. BIERING: Judge, I think you've ruled.
14 They've made an objection. They don't want her
15 to answer the question. And I understand why
16 they don't.

17 THE COURT: Okay.

18 MR. BIERING: So --

19 THE COURT: All right. The objection is
20 sustained.

21 [Whereupon, the bench conference concludes]

22 Q. [Mr. Biering] Would you agree that you were in
23 a meeting with your daughter, Jessica Clark, and
24 Lieutenant Ashe?

25 A. Yes, I was.

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1 Q. And would you agree that nobody -- did y'all
2 just drive there yourselves?

3 A. I drove her there.

4 Q. Y'all -- you drove her there?

5 A. Uh-huh.

6 Q. And did you drive her home, as well, that day?

7 A. Yes, I did.

8 Q. Do you recall about how long you were in the
9 room with Lieutenant Ashe?

10 A. I would say like forty-five -- it felt like
11 forty-five minutes. I mean, I didn't look at the clock or
12 anything. I'm saying about forty-five minutes.

13 Q. About forty-five minutes?

14 A. Or to an hour.

15 Q. And your daughter was speaking there that day;
16 right?

17 A. Yes, she was.

18 Q. Okay. And were you paying close attention?

19 A. Yes, I was.

20 MR. BIERING: I have no further questions of the
21 witness.

22 THE COURT: Cross-examination.

23 MS. CORNWELL: No questions for this witness,
24 Your Honor.

25 THE COURT: Okay. Cross-examination on behalf

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1 of Defendant Newman?

2 MR. CHAD SHELTON: Could I just have one second,
3 Your Honor?

4 THE COURT: Yes, sir.'

5 [Whereupon, Mr. Chad Shelton and Mr. Newman
6 confer]

7 MR. CHAD SHELTON: No questions, Your Honor.

8 THE COURT: Okay. You may step down. Thank you
9 very much.

10 [Whereupon, Ms. Adams is excused and exits the
11 witness stand]

12 THE COURT: Call your next witness, please.

13 MR. BIERING: If I could have just a moment,
14 Your Honor.

15 THE COURT: Yes, sir.'

16 [Whereupon, Mr. Biering reviews documents]

17 MR. BIERING: Your Honor, I would call Andre
18 Mendoza to the stand.

19 THE COURT: Okay.

20 [Whereupon, Mr. Mendoza comes forward]

21 THE CLERK OF COURT: Raise your right hand and
22 place your left hand on the Bible.

23 [Whereupon, Mr. Mendoza is duly sworn by the
24 clerk of court as follows: do you solemnly swear or
25 affirm the testimony you give the Court in the trial

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1 of this case will be the truth, the whole truth, and
2 nothing but the truth, so help you God]

3 THE WITNESS: I do.

4 THE CLERK OF COURT: Please be seated.

5 [Whereupon, Mr. Mendoza takes the witness stand]

6 THE CLERK OF COURT: State your full name.

7 Spell your last name for the record.

8 THE WITNESS: Andre Mendoza. M-E-N-D-O-Z-A.

9 - - - - -

10 ANDRE MENDOZA,

11 Having Been First Duly Sworn,

12 was Examined and Testified as Follows:

13 DIRECT EXAMINATION

14 BY MR. BIERING:

15 Q. Mr. Mendoza, it seems like a long time ago, but
16 it was just yesterday that you were on that witness stand.
17 Little tired today? You're yawning.

18 A. Yeah, I'm a little bit tired.

19 Q. You're tired?

20 I think you testified yesterday that you had
21 posted the So Caliente Entertainment picture on your
22 facebook page. That's the banner now for your facebook
23 page; is that correct?

24 A. Yes, sir.

25 Q. And that you work on promotions for the Latin

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1 Nights; is that correct?

2 MS. CORNWELL: Objection, Your Honor. He's
3 leading his witness.

4 MR. BIERING: Permission to --

5 THE COURT: I'll give you permission to lead the
6 witness. Okay?

7 MR. BIERING: Thank you, Your Honor.

8 THE COURT: All right.

9 Q. [Mr. Biering] And that you utilize it to
10 promote the Latin Nights; is that correct?

11 A. Yes, sir.

12 Q. And, you know, there are a lot of pictures. In
13 fact, if you -- you can link through the -- would you
14 agree that you can link through the So Caliente website to
15 a site called Carolina Shooters? Is that correct?

16 A. No.

17 Q. Don't know?

18 A. Don't know.

19 Q. Okay. Would you agree that there are a lot of
20 pictures taken on Latin Nights?

21 A. Yes, sir.

22 That's how we get our business and people to
23 come to our events.

24 Q. People see the pictures --

25 A. Yes.

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1 Q. -- on facebook. They're excited; is that right?

2 A. Yeah, because they see the crowd and the dancing
3 and -- because it's twenty-one and up.

4 Q. Twenty-one and up?

5 A. Twenty-one and up.

6 Q. They see the crowd, they're dancing, and they
7 see these pictures on facebook; right?

8 A. Yes, sir.

9 Q. And I think there was some testimony yesterday
10 you've got a -- I mean, currently there are like 498
11 friends on your facebook; is that right?

12 A. Yes, sir.

13 Q. And isn't it true your facebook page is open --
14 it's an open facebook page? Anybody can type on it and
15 get onto it; is that correct?

16 A. Yes.

17 But it's not open, it's private. And it's still
18 private to this day. I don't know how y'all see that, but
19 I checked it yesterday and it's been private.

20 Q. It's been private?

21 A. It's private right now.

22 MR. BIERING: Permission to use my phone in the
23 courtroom, Your Honor.

24 THE COURT: Use your what?

25 MR. BIERING: My telephone to search the

1 internet.

2 MS. CORNWELL: Objection, Your Honor. May we
3 approach?

4 THE COURT: Yes, sir. Yes, ma'am, you may
5 approach.

6 [Whereupon, a bench conference is held as
7 follows]

8 MS. CORNWELL: Your Honor, defense counsel
9 had the opportunity to cross-examine the witness
10 yesterday --

11 THE COURT: Well, I think he can cross him
12 under the Rules, because I think he's on the
13 opposite side. I'll give him permission to do
14 it.

15 Now, as far as the relevancy issue, what's
16 all this got to do with what we're doing?

17 MR. BIERING: What it has to do with --

18 THE COURT: Yeah. I mean, what's the --
19 now, I gave you a lot of latitude yesterday when
20 you were impeaching him, trying to do that, but
21 why are we rehashing this again?

22 MR. BIERING: Because the facebook needs to
23 come in and I believe there's a way for it to
24 come in. I would ask for --

25 MS. CORNWELL: Your Honor --

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1 MR. BIERING: I would ask for a slight
2 amount of latitude --

3 THE COURT: I mean, I've already ruled it
4 out yesterday.

5 MR. BIERING: And I'm going to ask to admit
6 it on a different basis.

7 THE COURT: Well, what are you going to do
8 with your phone?

9 MR. BIERING: I'm sorry?

10 THE COURT: What are you going to do with
11 your phone?

12 MR. BIERING: I'm going to go on the
13 internet and pull up his facebook.

14 MS. CORNWELL: Your Honor, I have a strong

15 --

16 MR. BIERING: I'm not his --

17 MS. CORNWELL: -- objection --

18 MR. BIERING: -- I'm not his -- I'm not his
19 -- I'll ask. I'll let him do it.

20 I'm not his -- I mean, I'm not a friend
21 with him on facebook.

22 MS. CORNWELL: Your Honor --

23 THE COURT: My question -- I guess my
24 question to you is: so he pulls it up. What's
25 the relevancy of that, anyhow?

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1 MR. BIERING: Well, number one, as Joe
2 Wilson said --

3 The other issue, Judge, I mean, I'm laying
4 a foundation for another angle in admission of
5 his facebook materials.

6 THE COURT: Well, I'm going to send the
7 jury out and listen to that before we start --

8 MR. BIERING: Sure.

9 THE COURT: -- getting on the internet in
10 the courtroom. Okay?

11 MR. BIERING: I'll be happy to. Thank you,
12 Your Honor.

13 [Whereupon, the bench conference concludes]

14 THE COURT: All right. Madam Forelady, ladies
15 and gentlemen of the jury, I'm going to have to ask
16 you to go to the jury room so I can listen to the
17 objections and be free to comment on the facts.

18 Please don't discuss the case amongst
19 yourselves. Leave your notepads in your chairs. I'll
20 get you back just as soon as I can.

21 [Whereupon, the jury exits the courtroom at
22 2:45 p.m.]

23 MS. CORNWELL: Your Honor, the State has a
24 strong objection to him going into any of the facebook
25 stuff. This victim was on the stand for almost six

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1 hours yesterday. The defense attorney is trying to
2 get a second bite of the apple. He's re-called him.
3 If he has anything -- he's never took -- anything that
4 was relevant. He never even asked this victim a
5 question about the day of the incident.

6 There's no relevancy to any of this. We went
7 through four to six hours of testimony yesterday.

8 THE COURT: I'll listen to your objection. Let
9 me see where he's going first. I'm not sure where
10 he's going. Okay?

11 MS. CORNWELL: Yes, Your Honor.

12 THE COURT: What are we trying to do? I mean,
13 we went through --

14 MR. BIERING: Your Honor --

15 THE COURT: -- the facebook yesterday. I
16 allowed anything --

17 MR. BIERING: Your Honor, can I --

18 THE COURT: -- in about the drugs.

19 MR. BIERING: I --

20 THE COURT: I don't -- I haven't heard or seen
21 anything to make me change my mind.

22 MR. BIERING: I would ask that the witness be
23 excluded from the courtroom while we argue this so
24 that through our speaking of objections, as it relates
25 to this, will not influence his testimony.

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1 THE COURT: That's fine.

2 Mr. Mendoza, step out in the hall, please, sir.

3 THE WITNESS: Yes, sir.

4 [Whereupon, Mr. Mendoza exits the witness stand
5 and exits the courtroom]

6 THE COURT: Let me say this, then I'll listen to
7 you.

8 It appears to me that we're trying to rehash
9 what we hashed yesterday for several hours. Okay?
10 I'll be glad to hear you.

11 MR. BIERING: This website is the Andre Drey
12 Mendoza So Caliente Entertainment facebook page.
13 He --

14 THE COURT: Now, he testified yesterday So
15 Caliente was not his website, if I remember correctly.
16 It was his brother's but he had used it, if I remember
17 correctly. Is that right or --

18 MR. BIERING: I can lay --

19 THE COURT: -- is that wrong?

20 I don't want to -- I don't want to remember --
21 is that correct, as far as what he said yesterday?

22 MR. BIERING: He said two things.

23 THE COURT: Okay.

24 MR. BIERING: And what I think the evidence
25 would show -- if the Court needed me to do it, I could

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1 call another witness to show that there are actually
2 two websites, that Marco Flaco Pachardo [phonetic] has
3 a So Caliente Entertainment website, okay, facebook
4 page. Andre Mendoza, Drey, has a So Caliente
5 Entertainment facebook page, as well. There are two
6 separate facebooks. There are two separate facebook
7 pages. He testifies that he utilizes it for the
8 promotion of his business.

9 I could also call witnesses to show that So
10 Caliente Entertainment is not a entity that's
11 organized pursuant to the laws of the state of South
12 Carolina. They must be operating as some type of sole
13 proprietorship. He says that he does work for them.
14 He just testified that he utilizes the website and the
15 pictures to generate excitement so that people will
16 come out to the Latin Nights.

17 He testified yesterday, Your Honor, that it's
18 the same facebook, same -- that's what he says. He
19 says it's the same facebook.

20 THE COURT: Well --

21 MR. BIERING: My position is this, Judge --

22 THE COURT: I mean, but so what --

23 MR. BIERING: -- is it -- I think it comes --

24 THE COURT: -- what's the relevancy of all of
25 this?

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1 MR. BIERING: The relevancy of all this is that
2 the jury cannot make a determination about what is
3 going on in scene one of this case without being given
4 scene one. And it's almost -- I'm enjoying this,
5 Judge, because every time I try to get something in
6 the prosecution says, I don't want it in.

7 That's great. Thank you.

8 MS. CORNWELL: Because it's not relevant.

9 MR. BIERING: It is relevant. It's relevant
10 because in her opening statement she says this case --

11 THE COURT: Well, her opening statement is not
12 evidence. But go ahead.

13 MR. BIERING: But the prosecution, through their
14 opening statement -- as defense counsel -- can make
15 admissions in their opening statements that are
16 controlling within the case. And the case law is very
17 specific on that.

18 This entire facebook, by his testimony -- it's a
19 business facebook -- by his testimony it's one
20 facebook. And we think that it should come in --

21 THE COURT: Well, other than attacking --

22 MR. BIERING: -- under the business records act.

23 THE COURT: -- his character, what is any
24 relevance of what's on the facebook, period?

25 Now, I allowed you yesterday to go into the

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1 drugs, based on his testimony. Now, what else is in
2 this facebook that has any relevancy at all? Whether
3 he's got one facebook or a dozen, what difference does
4 it make, other than just strictly character
5 assassination?

6 MR. BIERING: It's not character assassination,
7 Your Honor.

8 THE COURT: Well, what is it?

9 MR. BIERING: It is --

10 THE COURT: What are you --

11 MR. BIERING: It's his --

12 THE COURT: -- trying to prove?

13 MR. BIERING: -- habit, his routine, to conduct
14 himself on facebook in the drug trade. One of the
15 key --

16 THE COURT: Well, we covered that yesterday.

17 MR. BIERING: But what we didn't cover, Your
18 Honor, is the admission of the facebook.

19 THE COURT: The admission of the facebook? What
20 difference does it make? We covered it. There's no
21 question in this jury's mind that this man was
22 involved in drugs. It was amply covered yesterday for
23 a couple of hours.

24 Now, what else in this facebook do you think
25 would be relevant to this jury concerning this man's

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1 propensity to truthfulness or untruthfulness or any
2 relevancy as to whether they committed -- your client
3 committed a crime or not?

4 I mean, you seem to think that the facebook
5 should go in in toto.

6 MR. BIERING: I do.

7 THE COURT: I disagree with that.

8 MR. BIERING: Yes, sir.

9 THE COURT: Okay? Now, I've conceded that parts
10 of it probably are relevant.

11 MR. BIERING: Then I would -- then where I
12 can -- I can limit myself, Your Honor, then, to the
13 request that those parts that we've previously gone
14 through, that we can link those, that they're a
15 business record.

16 It is a archived system that maintains records
17 of regularly conducted transactions and it's a
18 business record and it -- with that juncture, I think
19 they come in, Judge.

20 THE COURT: Well, whether it's business records
21 or not, it still has to be relevant. My issue with
22 you and what you're trying to do is relevancy.

23 MR. BIERING: And I'm comfortable --

24 THE COURT: And confusion, and 403, cumulative,
25 whatever you want to call it.

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1 MR. BIERING: I think there's a difference in
2 somebody who smokes pot once, or offers to bring a
3 little marijuana to the party, than somebody who goes
4 on for 598 pages delivering clonapin, OxyContin,
5 marijuana --

6 THE COURT: But you --

7 MR. BIERING: -- roxies.

8 THE COURT: -- covered that yesterday.

9 MR. BIERING: And I want the documents admitted,
10 Judge.

11 THE COURT: Well, you covered it --

12 MR. BIERING: And I think I can lay a foundation
13 for it.

14 THE COURT: -- you covered it yesterday. Is
15 that right or is that wrong?

16 I don't mind you covering something that's
17 relevant that you didn't cover yesterday, but I'm not
18 -- we're not going to rehash what we did yesterday..

19 MR. BIERING: Your Honor, I'm -- my position is
20 that I will continue to lay the foundation -- my
21 intentions were to continue to lay a foundation, Your
22 Honor, and seek admission of the documents pursuant to
23 the business records rule.

24 THE COURT: As what?

25 MR. BIERING: See admissions of the documents

1 pursuant to the business records rule.

2 THE COURT: Well, assuming you're right, as far
3 as it's business records and it's been authenticated
4 as business records, that doesn't make it relevant.
5 All it does is authenticate the documents themselves.
6 That doesn't mean it's going to get into evidence.

7 It's a two-prong test: authentication and
8 relevance --

9 MR. BIERING: Your Honor --

10 THE COURT: -- or hearsay or whatever other
11 objection may be appropriate.

12 MR. BIERING: On the issues of relevance -- and
13 I will limit myself solely to those exhibits -- let
14 me --

15 [Whereupon, Mr. Biering reviews documents]

16 MR. BIERING: I'll limit myself to Exhibit 7,
17 10, 11, 12, 13 and 14. I'll limit myself to those,
18 Your Honor. Because I think the Court has already
19 ruled they're relevant, because you allowed the
20 continuing testimony on those issues over the
21 objection of counsel.

22 THE COURT: I don't know what they all are, but
23 what are 7, 10, 11, 12, 13 and 14? Would you give
24 them to the solicitor and let her take --

25 MR. BIERING: Sure.

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1 THE COURT: -- a look at them and I'll look at
2 them.

3 MS. CORNWELL: Your Honor, I'm aware of what
4 they are.

5 They're -- I believe that the Court was granting
6 some latitude. We objected. They were never moved
7 into evidence.

8 THE COURT: I think he moved them into evidence
9 and I didn't put them him.

10 MR. BIERING: No, Your Honor. These documents
11 were not moved into evidence because that victim was
12 able to say that he did -- he could not authenticate
13 them, he didn't remember the conversation, he didn't
14 know the person.

15 THE COURT: He said he could not identify the
16 conversation. I took the position one of the parties
17 involved, either the author or the recipient, had to
18 be present and identify the conversation just like a
19 phone conversation, except it's electronically, is the
20 position the Court took.

21 MS. CORNWELL: Correct. And --

22 THE COURT: And I don't know how that's going to
23 change today on your business records.

24 But that -- tell me why 7 is relevant. What's
25 relevant in 7? Let's take them one at a time.

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1 MS. CORNWELL: It's not cumulative.

2 THE COURT: What's relevant in 7.

3 MR. BIERING: Your Honor, I'm going to take my
4 directive from you, not from the solicitor.

5 What's relevant in 7? I'm sorry. I've got to
6 go back through because I had them in a different
7 order. In 7 --

8 THE COURT: Whatever order do you want? You've
9 got six of them here. Take whatever order you want.

10 MR. BIERING: I realize that, Your Honor. I
11 just have to re-familiarize myself with them.

12 In 7, there is a discussion on his business
13 facebook page about forties.

14 THE COURT: About what?

15 MR. BIERING: Forties. Reference to OxyContin.
16 I think we listened --

17 THE COURT: Well, he said yesterday he didn't --
18 if I remember, he said he didn't -- forty didn't mean
19 OxyContin to him. Now, the police officer said it
20 did, but he said it didn't.

21 MR. BIERING: Forties. That's my position on
22 Number 7.

23 THE COURT: Okay.

24 MR. BIERING: On Number 10, there's a discussion
25 about the quantity of drugs to be purchased: an

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1 eighth, a quarter, wanting to know if it's exotic, a
2 quarter, I've got a quarter only though 110
3 [phonetic].

4 THE COURT: Who's the conversation with?

5 MR. BIERING: Andre Mendoza, Vanessa Smith.

6 THE COURT: Okay. I believe he said he didn't
7 know a Vanessa Smith; is that correct?

8 MR. BIERING: He said he didn't know -- I don't
9 think he knew --

10 THE COURT: Okay. Go ahead.

11 MR. BIERING: -- anybody, Judge.

12 THE COURT: Quantity of drugs on Vanessa; right?

13 MR. BIERING: Yes, sir.

14 Then in Number 10 moves on to Jonathan Espinal,
15 who I think he said was his cousin.

16 THE COURT: All right. Go -- what's --

17 MR. BIERING: And there's a discussion there
18 about needing the green. Conversation continues on
19 about a good quarter size.

20 Number 11, discussion about getting some green,
21 I don't have a green, just a bowl or two, talking
22 about rolling a blunt, discussion about whether or not
23 they needed to -- had enough to roll the blunt. I
24 should have asked --

25 THE COURT: Okay. What about the --

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1 MR. BIERING: -- Ashe how much -- took the --
2 what's the difference in quantity you need to smoke a
3 bowl or roll a blunt. So, anyway.

4 THE COURT: All right. What's 13?

5 MR. BIERING: 13 there is a discussion about
6 delivery of aderal, discussion about green, discussion
7 about whether or not he can deliver some drugs.

8 Move on into Ralphie Santiago [phnetic] in that
9 same exhibit. I believe that's it on that one, Judge.
10 Then we move it --

11 THE COURT: 14?

12 MR. BIERING: That's --

13 THE COURT: What's 14?

14 MR. BIERING: I'm sorry, Your Honor. That was
15 12.

16 THE COURT: That was 12 you just told me?

17 MR. BIERING: Yes, sir.

18 THE COURT: Okay.

19 MR. BIERING: Now I'm on 13.

20 THE COURT: All right.

21 MR. BIERING: 13 is the conversation with Kelly
22 Rowel [phonetic] that spans from May of 2011 up and
23 through November of 2011.

24 MR. CHAD SHELTON: Your Honor? Your Honor, I'm
25 sorry. My client would like to -- requests to use the

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1 bathroom.

2 THE COURT: Pardon?

3 MR. CHAD SHELTON: My client is requesting to
4 use the bathroom.

5 THE COURT: Well, he'll just have to wait a few
6 minutes. Okay?

7 MR. CHAD SHELTON: Yes, Your Honor.

8 THE COURT: What's 14? That's the only one you
9 haven't given me.

10 MR. BIERING: No, sir. I'm on 13, Your Honor.
11 I'm sorry.

12 THE COURT: You're still on 13?

13 MR. BIERING: Yes, sir.

14 THE COURT: Okay.

15 MR. BIERING: I wanted to give the summary on
16 this one.

17 I wasn't planning on going back and do
18 individual ones, Judge. My plan was to request the
19 whole kit and caboodle. So that's why --

20 THE COURT: Well, 14 is the same as yesterday;
21 right? It was a conversation --

22 MR. BIERING: 14 is the same as yesterday --

23 THE COURT: It's a conversation on facebook with
24 who?

25 MR. BIERING: With Kelly Rowel [phonetic].

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1 THE COURT: All right. Kelly Rowel [phonetic].

2 MR. BIERING: Oh. That's 13. And then 14 is --
3 no. I'm sorry. 13 is that -- they're talking about
4 getting weed together and about not having any money.

5 THE COURT: All right. What's 14?

6 MR. BIERING: 14 is Lauren Potts [phonetic],
7 young lady who's in -- appears to be in rehab that
8 they're trying to deliver forties. Talking about
9 OxyContin. And there's an OC-40 reference there and a
10 40 reference. There's a discussion about roxies and
11 opana, which is an opiate.

12 THE COURT: All right. If my memory serves me
13 correctly -- if my memory is wrong, somebody please
14 correct me -- I ruled all of those exhibits out of
15 evidence because the witness, Mr. Mendoza, could not
16 identify the conversation. He said he didn't remember
17 or he didn't know that person and I ruled them out.

18 Now, we never -- yesterday we never got to the
19 relevancy issue. So why today should I change my mind
20 and allow them in?

21 MR. BIERING: Business records exception to the
22 hearsay rule. He says it's the entire -- he says that
23 it's the same facebook.

24 THE COURT: Okay. That is denied.

25 MR. BIERING: Thank you, Your Honor.

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1 THE COURT: Okay? I'm not going to -- I made my
2 ruling yesterday. I see no reason to change it today.

3 MR. BIERING: And you're --

4 THE COURT: Now --

5 MR. BIERING: You're denying my ability to
6 continue to attempt to lay a foundation to -- I just
7 want to be clear on the record. You're denying my
8 ability to continue to lay a foundation to potentially
9 admit these documents pursuant to --

10 THE COURT: I'll let you proffer whatever you
11 want to proffer. If you want to bring him in, I'll
12 let you proffer whatever you're going to proffer. But
13 we are not going to rehash in front of the jury what
14 we rehashed yesterday. Okay?

15 MR. BIERING: Okay.

16 THE COURT: Now, you can proffer whatever you
17 want to proffer. I'm not -- I cannot --

18 MR. BIERING: Yes, sir.

19 THE COURT: -- you're welcome to do that. Okay?

20 MR. BIERING: Thank you.

21 THE COURT: Do you want me to bring Mr. Mendoza
22 in and you proffer whatever you're going to proffer?

23 MR. BIERING: Your Honor, I think that -- I
24 think he's laid the foundation for the fact that it's
25 his business site. I respect the Court's ruling.

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1 THE COURT: Well, I don't mind you bringing him
2 back in and proffering whatever you want to proffer.

3 MR. BIERING: I think we --

4 THE COURT: I'm not trying to speed your process
5 up. Okay?

6 MR. BIERING: I understand.

7 THE COURT: If it takes another hour for your
8 proffer, that's fine. That's what I'm here for and
9 that's --

10 MR. BIERING: Yes, sir.

11 THE COURT: -- what you're here for.

12 MR. BIERING: Right.

13 THE COURT: You know, I'm not trying to prohibit
14 that.

15 MR. BIERING: But I think we've gone through it.
16 And I understand the Court's ruling that -- the ruling
17 is that we've already gone through this and that from
18 a standpoint of foundation the Court feels comfortable
19 that there's been sufficient hashing of this over and
20 that there is not a foundation that I could lay to
21 admit these documents, business records, through --

22 THE COURT: Well, if I may refresh -- from what
23 I remember yesterday, I said the facebook account
24 number was the same.

25 MR. BIERING: Yes, sir.

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1 THE COURT: Okay? And it was tied into the
2 e-mail addresses that he had. That, in itself,
3 authenticated the accounts.

4 And then you started going into the individual
5 conversations between the parties on the facebook.
6 And the Court takes the position yesterday and takes
7 the position today that unless somebody walks in this
8 courtroom and says, yes, I'm the author or I'm the
9 recipient of that message, I'm not going to allow it
10 in. And yesterday, if I remember, he said he didn't
11 remember or he didn't know the person. So those
12 particular ones I did not allow in. The ones he
13 admitted to, acknowledged, went in. I'm not changing
14 that position. Okay?

15 MR. BIERING: Thank you, Your Honor.

16 THE COURT: All right. Mr. Mendoza: do you
17 want me to bring him in and do you want anymore -- do
18 you want anymore questions in front of the jury on him
19 or do you want to proffer anything?

20 MR. BIERING: Can I ask one other -- can I ask
21 one question of the prosecution?

22 THE COURT: Yes.

23 [Whereupon, Mr. Biering and Ms. Cornwell confer]

24 MR. BIERING: If I could have a moment, Your
25 Honor.

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1 THE COURT: Yes, sir.

2 [Whereupon, Mr. Biering and Mr. Chad Shelton
3 confer]

4 THE COURT: Can somebody ask Mr. Mendoza to come
5 back in, please, sir, in case we need him.

6 [Whereupon, Mr. Mendoza enters the courtroom]

7 THE COURT: Mr. Mendoza, if you'll come around
8 and have a seat up here, please.

9 [Whereupon, Mr. Mendoza re-takes the witness
10 stand]

11 MR. BIERING: Your Honor, can counsel approach?
12 Can we all approach?

13 THE COURT: Yeah. Do you want this on the
14 record?

15 MR. BIERING: I don't think we need to.

16 [Whereupon, an off-the-record bench conference
17 is held]

18 MR. BIERING: Will you publish that to the jury,
19 Your Honor?

20 THE COURT: I'm not going to publish it to the
21 jury, but y'all write it down and I will. I'm not
22 sure what you're stipulating to. Write it down.

23 Now, let me ask you this. I'm not going to
24 publish that to the jury. The stipulation I
25 understand you want is for your basis that it should

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1 be admissible in the court, the entire package; is
2 that correct? Is that the reason you want your
3 stipulation? I'm not going to --

4 Right now, I don't see any reason to publish it
5 to the jury. I have no problem with you publishing it
6 in the record with your argument that that should
7 allow the entire 500-and-some-odd pages into evidence.
8 Because I think that's what you're asking. Right?

9 MR. BIERING: I think it lends itself to the
10 admission. I think that it will be --

11 THE COURT: Well, that's fine. If you want the
12 stipulation, put it on the record.

13 MS. CORNWELL: Your Honor, if he's asking me to
14 stipulate so he can put stuff into the record that
15 we've objected to and Your Honor has already ruled on,
16 we're not --

17 MR. BIERING: No. I --

18 MS. CORNWELL: -- stipulating to anything of
19 that nature.

20 MR. BIERING: No. I -- I -- I'm not doing that.
21 The Court has ruled on that and I'm not seeking that.
22 I'm asking for a stipulation on that. And I
23 understand the Court's ruling. That would not be
24 appropriate for me to try to do that.

25 THE COURT: All right. What do you want?

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1 MR. BIERING: I would like -- and I think we can
2 stipulate to, that -- the stipulation would be that
3 the 598 pages of Andre Mendoza's facebook that have
4 been discussed here came to the solicitor's office as
5 a result of a search warrant that they issued.

6 THE COURT: Well, why don't we do this. Okay?
7 We had a bench conference and the solicitor explained
8 to you exactly what happened, how the solicitor got
9 the records. Let's put all that in the record, okay,
10 so it's a full picture and then you can put what you
11 want in the record. Okay?

12 Solicitor, if you'll put on the record the same
13 thing that you told the Court up here at the bench
14 trial [sic] about obtaining these records from
15 facebook and the obstacles that they have put in front
16 of your efforts to do that, please, ma'am.

17 MS. CORNWELL: Yes, Your Honor.

18 The State, in investigating this incident,
19 requested facebook to send us several pages,
20 documents, regarding each individual's facebook
21 account. Facebook stated that the only way that they
22 could do that was in compliance with a search warrant.
23 The State did get a search warrant. The search
24 warrant is based on information that we heard through
25 jail tapes, through a meeting with witnesses, as to

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1 what their account name and number were. It's the
2 State's position that we can't authenticate that that
3 is actually their accounts and their pages and their
4 websites and all of that.

5 We contacted facebook to see if they would
6 respond to a subpoena and get somebody to come here
7 and testify as to the authenticity. Facebook will not
8 respond to phone calls. They will not respond to any
9 correspondence. The only thing that -- the only
10 communication we've ever had with facebook, they've
11 ever communicated back to us, was in response to the
12 search warrant for the records.

13 Our investigator down' in Charleston, Jeff
14 Osborne, has experience with trying to get with this
15 same instance in trying to get facebook to come in to
16 authenticate records. Facebook -- and from what he
17 has told our office -- and, again, we have not spoken
18 to facebook. What he has told our office is that they
19 will not come, they will not comply with a subpoena,
20 they will not testify on the record that they think it
21 could be a business -- that they --

22 Mr. Osborne's understanding of their reason for
23 not complying is it is a self-authenticating business
24 record.

25 Mr. Osborne has explained to them and spoken to

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1 them and tried to get them, based on the confrontation
2 clause, based on authentication, and not being in the
3 state of South Carolina under our rules of evidence it
4 is not a self-authenticating business record and
5 that's why we would need them to come in and
6 authenticate things and testify. They will not do
7 that.

8 Which is why the State did not try to move it
9 into evidence, because it's the State's position that
10 they cannot be authenticated. We need to have
11 somebody from facebook come in. And even then, you're
12 going to have issues because of the hacking and all
13 that. Furthermore, it was the State's objection
14 yesterday and today that it's just not relevant.

15 But as far as the business records and the
16 search warrants and all that, you know, they're not a
17 case agent of ours. We provided a copy as a courtesy
18 to both the defense counsels because it's our policy
19 to have an open-file policy and what we have they
20 have, because we're not trying to hide anything.

21 I can't make them come, I can't make them -- I
22 can't tell you what they said. I've never had any
23 personal communication with them.

24 Defense counsel is more than welcome to try to
25 speak to them, try to get them to come --

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1 THE COURT: Well, why were you getting these
2 records? What did -- was it an investigative process,
3 preparation of trial, or what?

4 MS. CORNWELL: It was, Your Honor. And, really,
5 the --

6 THE COURT: Which one? The preparation of trial
7 or investigation?

8 MS. CORNWELL: It was an investigative process.

9 As Mr. Mendoza has testified, there was a
10 misidentification of one of the defendants. We were
11 also trying -- and he was originally charged in this
12 and it's the State's position that we needed to
13 corroborate whether or not he was or was not there.

14 We also needed to corroborate, you know, what
15 each individual had in relevancy to this matter, if
16 there were in any relevancies to this matter, through
17 facebook.

18 The only way that we got certain facebook
19 accounts was through listening to jail tapes, speaking
20 with other witnesses. And it was done for
21 investigative purposes.

22 THE COURT: All right. Anything else you want
23 to add for clarification?

24 MS. CORNWELL: No, Your Honor.

25 THE COURT: All right. Anything you want to put

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1 on the record?

2 MR. BIERING: I would just ask that we be able
3 to agree on a couple of things. And I could make this
4 in a way that could be difficult for us. I think we
5 can agree that 598 pages of Andre Mendoza's facebook,
6 or -- let me back up, because I don't -- I want -- I
7 don't want to continue to argue about this.

8 I think we can agree that, number one, they
9 issued a search warrant and had it served upon
10 facebook.

11 Can we agree upon that?

12 THE COURT: She said that. Right.

13 MR. BIERING: Okay. And that, second, that in
14 response to that search warrant that was issued, they
15 would deliver files.

16 And I didn't hear them say this, but I think
17 they would also agree that it was 598 pages of
18 material that facebook provided in response to their
19 request as it relates to the search warrant that links
20 to those two e-mail addresses that have been -- that
21 have been testified to.

22 THE COURT: Okay.

23 MS. CORNWELL: Your Honor, it was actually about
24 7,000 pages.

25 THE COURT: Okay. 7,000 pages.

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1 MR. BIERING: Amen.

2 THE COURT: All right. Anything else you want
3 to put on the record concerning facebook and whatever?

4 MR. BIERING: No, Your Honor.

5 THE COURT: Any questions you want to ask him
6 pursuant to your issue of business records and
7 admissibility of the entire 500 -- how many? 589?
8 Was it 89 or 98? I don't remember.

9 MS. CORNWELL: 98, Your Honor.

10 MR. BIERING: No.

11 But I would just point out at this time --

12 THE COURT: Anything you want to proffer from
13 this witness? Or do you have anymore questions of
14 this witness in camera or before the jury?

15 MR. BIERING: No, sir, Your Honor.

16 THE COURT: Okay. Anything else you want to
17 add?

18 MR. BIERING: I think it's on the business
19 records issue --

20 THE COURT: I know what you think. I'm just
21 saying is there anything else you want to add,
22 pursuant to your motion.

23 MR. BIERING: Just for the record, so I can
24 remember things if I ever have to look back at it, I
25 just think that it's very interesting that counsel's

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1 position is that facebook's position was that it's --
2 business records exception.

3 THE COURT: What?

4 MR. BIERING: That's it's a business record.

5 THE COURT: Okay.

6 MR. BIERING: I think that's interesting.

7 THE COURT: Anything from Defendant Newman?

8 MR. CHAD SHELTON: Your Honor, I'm not far
9 out -- sure how far we're going to get in this
10 process.

11 I think you briefly ruled on this picture and --

12 THE COURT: They're all in already. Okay?
13 Aren't they?

14 MR. CHAD SHELTON: I don't know if this one is.
15 And I would -- about the getting -- getting someone
16 back.

17 THE COURT: That's the one I ruled out
18 yesterday?

19 MR. CHAD SHELTON: You --

20 THE COURT: I'm not changing it today. Okay?

21 MR. CHAD SHELTON: I know that you ruled on the
22 marijuana and you said everything else was out. I
23 just wanted to get clarification.

24 THE COURT: It's the same today. I'm not
25 changing it.

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1 MR. CHAD SHELTON: Yes, sir.

2 THE COURT: Okay? Anything else before we bring
3 the jury?

4 MR. BIERING: I guess the only other thing was I
5 had asked if I could use my phone to try to pull him
6 up on facebook.

7 THE COURT: No, sir, we're not going to do that.

8 MR. BIERING: Not going to do that?

9 THE COURT: No, sir.

10 MR. BIERING: Okay.

11 THE COURT: I don't know how that would lead to
12 allowing you to bring in all 589 pages.

13 MR. BIERING: It wouldn't. It would just show
14 that --

15 THE COURT: Okay.

16 MR. BIERING: -- there's -- we have a
17 credibility issue there, Judge.

18 THE COURT: Okay. Anything else?

19 MR. BIERING: No, sir.

20 THE COURT: All right. Are you ready to proceed
21 with your case, or do you want to take a short break.

22 MR. BIERING: If we could take a short break, I
23 think based on the rulings of the Court it potentially
24 could modify how we -- how we proceed.

25 THE COURT: Because Mr. Newman needs to use the

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1 bathroom, I'm sure. He's been waiting for a while.

2 We'll take about a ten-minute break.

3 [Whereupon, a recess is taken from 3:21 p.m. to
4 3:42 p.m.]

5 THE COURT: Is the State ready? Anything before
6 we bring the jury?

7 MS. CORNWELL: Nothing.

8 THE COURT: Anything else from the defendants
9 before we bring the jury?

10 MR. BIERING: Nothing, Your Honor.

11 MR. CHAD SHELTON: [No response]

12 THE COURT: Bring us the jury, please, ma'am.

13 Do you still want the defendant on the witness
14 stand?

15 MR. BIERING: Are you going to -- are you going
16 to -- there was an objection on the table when you
17 released the jury and then you were -- rule on the
18 objection.

19 THE COURT: Right.

20 I mean, do you have any further questions you're
21 going to ask him? I mean, that's fine if you do. I'm
22 going to tell the jury I ruled on the objection; it's
23 not admissible.

24 [Whereupon, the jury enters the courtroom at
25 3:43 p.m.]

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1 THE COURT: Madam Forelady, ladies and gentlemen
2 of the jury, there was an objection before you went
3 out. And I sent you out for that purpose. I've ruled
4 that the question is not appropriate under the rules
5 of evidence. You won't hear the question or the
6 answer. Or you heard the question.

7 Please proceed with this witness, if you have
8 any further questions.

9 MR. BIERING: No further questions of the
10 witness, Your Honor.

11 THE COURT: Does the State have any questions?

12 MS. CORNWELL: No, Your Honor.

13 THE COURT: Does Defendant Newman have any
14 questions?

15 MR. CHAD SHELTON: No, Your Honor.

16 THE COURT: All right. You may step down.
17 Thank you very much, Mr. Mendoza.

18 THE WITNESS: Yes, sir.

19 THE COURT: Please step down.

20 THE WITNESS: May I ask you a question?

21 THE COURT: No, sir. Step down.

22 [Whereupon, Mr. Mendoza is excused and exits the
23 witness stand]

24 THE COURT: Call your next witness.

25 MR. BIERING: The defense rests.

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1 THE COURT: Okay. Does the --

2 MR. CHAD SHELTON: I don't know if on the record
3 we officially rested.

4 THE COURT: Pardon?

5 MR. CHAD SHELTON: We officially rested: I
6 don't know if we did that with the jury present.

7 THE COURT: I don't know if the State rested in
8 front of the jury. I think they said it was the last
9 witness. I think they did.

10 Do you have any reply testimony?

11 MS. CORNWELL: No, Your Honor. The State rests.

12 THE COURT: Okay. Ladies and gentlemen of the
13 jury panel, Madam Forelady, the defendant, Ryan
14 Newman, chose not to offer any testimony. And I will
15 tell you that that's his right under the fifth
16 amendment of the constitution. The State cannot -- or
17 anyone cannot force him to testify. He makes the
18 decision of whether to testify or not testify.

19 And I will tell you with him exercising his
20 constitutional right to remain silent that you are not
21 to consider that in your deliberations in any manner
22 whatsoever. All he has done is exercise his right to
23 remain silent.

24 The defendant, as I told you I believe in the
25 beginning of the trial, has no obligation to prove his

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1 innocense. The State has the obligation of proving
2 the defendant guilty beyond a reasonable doubt.
3 That's the State's obligation under the law and you
4 are not to consider the fact that the Defendant Ryan
5 Newman did not testify in this trial against him in
6 any manner whatsoever. It should not even be
7 discussed in the jury room.

8 Now, the only thing left in the case will be
9 closing arguments and charge. It is now ten minutes
10 to 4:00, so I'm not going to start this late in the
11 afternoon. So if you'll be back in the morning at
12 9:30, we'll have the closing arguments and the charge
13 and that will be the -- and after that is done, you
14 will begin your deliberations.

15 So tonight do not look at the news, period.
16 Okay? There's something on one of the news stations
17 that may affect this case and I don't want you looking
18 at it and be predisposed to anything that may be on
19 that news report. Don't read the newspaper about it,
20 don't talk to anybody about it. As I told you the
21 other day, I want you to make a decision of what you
22 hear in the courtroom, not what someone outside the
23 courtroom's opinion about the case or any aspect of
24 the case.

25 So I hope you have a good evening, and I'll see

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1 you in the morning at 9:30.

2 Leave your note pads in the chairs.

3 [Whereupon, the jury exits the courtroom at
4 3:46 p.m.]

5 THE COURT: All right. Any motions from the
6 State?

7 MS. CORNWELL: Nothing from the State, Your
8 Honor.

9 THE COURT: Any motions from Defendant Newman?

10 MR. CHAD SHELTON: Your Honor, briefly, prior to
11 we go into the motions, the reason I stood up was I
12 don't think I -- officially, in front of the jury, I
13 had rested so I wanted to --

14 THE COURT: That's fine. That's fine.

15 MR. CHAD SHELTON: -- put that in front of the
16 jury.

17 Just, Your Honor, I renew all motions, all
18 pretrial motions, every -- the directed verdict
19 motion, all objections.

20 THE COURT: Okay. As far as your directed
21 verdict motion, those motions are denied.

22 Any motions from Defendant Clark?

23 MR. BIERING: I would renew all previous motions
24 that have been -- that have been made, specifically
25 those motions as it relates to -- not excluding the

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1 other motions, but specifically those that would
2 relate to our motion for directed verdict.

3 THE COURT: All right. Those motions -- I'm
4 sorry. Anything else? Any new motions?

5 MR. BIERING: Not at this time, no, Your Honor.

6 THE COURT: All right. Those motions are
7 denied.

8 MR. BIERING: Thank you, Your Honor.

9 THE COURT: All right. We will adjourn until
10 9:30 in the morning.

11 Let me see the lawyers up here so I can have a
12 very brief charge conference with you.

13 Do y'all have any request to charge? Anything
14 y'all prepared?

15 THE COURT: Come on up.

16 I don't need this on the record. I can do it --
17 I do it informally.

18 [JURY TRIAL ADJOURNS AT 3:56 p.m.]
19
20
21
22
23
24
25

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable J.C. Nicholson, Jr., on September 12, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 25th day of December, 2012.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

THE STATE OF SOUTH CAROLINA)
)
)
VS.)
)
)
RYAN CARL NEWMAN and)
JESSICA CLARK,)
)
DEFENDANTS.)

VOLUME 4 OF 4

held before the Honorable J.C. Nicholson, Jr.

Mia Perron, Circuit Court Reporter, 9th Judicial Circuit

in the Berkeley County Courthouse

Moncks Corner, South Carolina

on Thursday, September 12, 2012, Commencing at 9:42 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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[Exhibits pre-marked by counsel unless otherwise noted in the transcript]

MARKED/ADMITTED

Court's Exhibit Number 2 678 /
[Photograph]

Court's Exhibit Number 3 785 /
[Note From the Jury]

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PROCEEDINGS

THE COURT: Mr. Cook [sic], just have a seat
right there in that chair.

[Whereupon, Mr. Germanoff complies]

- - - - -

JUROR MICHAEL GERMANOFF EXCUSED FROM THE JURY

THE COURT: All right. It has come to the
Court's attention this morning, through the bailiff,
that Mr. Cook had approached the bailiff and told the
bailiff that he knew the defendant, Mr. Newman, in
this case. I've had a conversation with Mr. Cook in
the jury room with the -- excuse me -- in my office
with the attorneys present.

THE BAILIFF: Germanoff.

THE COURT: Michael Germanoff. I'm sorry.
Michael Germanoff. Excuse me. I said Cook. Excuse
me.

Juror number 75; is that correct?

MR. GERMANOFF: Yes, sir.

THE COURT: And Mr. Germanoff stated that he --
his daughter and his son-in-law knew him and because
of his relationship between his son-in-law and the
defendant and a group of other folks in the community
that he did not think he could be fair; he did not
realize he knew the defendant, Mr. Newman, until last

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1 night when his daughter brought it to his attention.

2 And Mr. Germanoff -- and I also asked Mr.
3 Germanoff if, in fact, he had talked to any of the
4 other jurors about this and he said, no, he had not.

5 Now, is that what transpired in the Court's
6 chambers from the State's standpoint?

7 MS. CORNWELL: The State agrees with that, Your
8 Honor.

9 THE COURT: Is that what transpired from the
10 defendant's standpoint? Defendant Newman.

11 MR. CHAD SHELTON: For the most part.

12 The part about he did talk to the head juror
13 that he knew and needed to ask for guidance and once
14 he --

15 THE COURT: But didn't tell him anything else,
16 other than he wanted to talk to somebody.

17 MR. CHAD SHELTON: Just that he knew --

18 THE COURT: All right. Anything else from
19 Defendant Clark?

20 MR. BIERING: Your Honor, first, I do think that
21 what the Court stated accurately reflects the chambers
22 meeting.

23 In addition, in that chambers meeting I had also
24 requested at that time inquiry of the juror as to the
25 name of the son-in-law and the daughter that he spoke

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1 of because I believe that that information goes to our
2 initial voir dire request as it related to facebook
3 friends and cross-referencing with Mr. Mendoza and,
4 for that matter, Mr. Newman's facebook friends, as
5 well, which I'm privy to. And I understand that the
6 Court's position was that I was not going to be able
7 to ascertain that information.

8 In addition, I had requested a determination --

9 THE COURT: What do you want?

10 MR. BIERING: I want, first, to know the name of
11 the son-in-law and the --

12 THE COURT: For what purpose? The trial
13 testimony is over. We're going to closing arguments.
14 For what purpose, other than just slandering this
15 gentleman or someone else?

16 MR. BIERING: Your Honor, I'm not slandering
17 this gentleman. I respect this gentleman and --

18 THE COURT: This gentleman voluntarily came
19 forward. Now, you're making a mountain out of a mole
20 hill, because I'm going to excuse him and put an
21 alternate on --

22 MR. BIERING: Your Honor --

23 THE COURT: -- and the testimony is over.

24 We're going to closing arguments. For what
25 valid purpose do you have to know the name of his

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1 daughter, his son-in-law? .

2 MR. BIERING: Your Honor, I respect his position
3 and agree that he has been very forthcoming and honest
4 in coming to the Court when this was brought to his
5 attention.

6 The reason that I want to know that is to
7 complete the record because it goes to the issue of
8 our initial request from a voir dire standpoint of the
9 jury which the Court overruled my request to voir dire
10 the jury --

11 THE COURT: I was not going to voir dire 400
12 names on a facebook.

13 MR. BIERING: Your Honor, and I respect --

14 THE COURT: That was the voir dire request: to
15 ask the jury if they knew 400 names that were on the
16 victim's facebook.

17 MR. BIERING: Your Honor, I respect the Court's
18 decision.

19 I'm simply asking that to complete the record in
20 this matter, that that information be placed on the
21 record. It is not in any way requesting an attempt to
22 harass or make difficult what this gentleman has done.
23 I respect what he has done and I'm thankful --

24 THE COURT: That's his private information and I
25 see no valid reason that he has to reveal it in this

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1 courtroom. He's come forward, he's been an honest
2 gentleman, he's been straightforward.

3 MR. BIERING: I agree that he has, Your Honor.
4 And I understand the Court's decision. I accept the
5 Court's ruling. I've asked, and you've denied my
6 request.

7 THE COURT: Yes, sir.

8 Any other request you have concerning this
9 juror?

10 MR. BIERING: Your Honor, it's my understanding
11 there's no additional -- there's no additional
12 information that I can request --

13 THE COURT: I didn't ask you that. I said is
14 there any other information you want to inquire about
15 this juror, period.

16 MR. BIERING: Your Honor, I have a photograph of
17 the alleged victim in this case with two individuals
18 outside of this courthouse and I desire to know
19 whether or not there's any association between the
20 son-in-law and daughter and these individuals.

21 THE COURT: All right. Show Mr. Germanoff the
22 picture, please, sir.

23 MR. BIERING: I'll be happy to, Your Honor.
24 Thank you.

25 [Whereupon, Mr. Biering complies]

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1 THE COURT: Mr. Germanoff, would you raise your
2 right hand.

3 [Whereupon, Mr. Germanoff is duly sworn by the
4 Court as follows: do you swear to tell the truth,
5 nothing but the truth, so help you God]

6 MR. GERMANOFF: Yes, sir.

7 THE COURT: All right. Thank you very much.

8 - - - - -

9 MICHAEL GERMANOFF,

10 Having Been First Duly Sworn,
11 was Examined and Testified as Follows:

12 EXAMINATION

13 BY THE COURT:

14 Q. If you'll look at this picture, and then I'll
15 ask you some questions about it. It was taken on one of
16 these super-duper phones.

17 MR. BIERING: Your Honor, I believe it may have
18 sinc'd to my iPad, as well, so that I can -- so we can
19 actually see it, if I could have just a moment.

20 [Off the record momentarily]

21 MR. BIERING: It did, Your Honor. If I could
22 approach.

23 THE COURT: Mr. Biering, if you'll show the
24 picture to the juror, please.

25 MR. BIERING: Yes, Your Honor.

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1 [Whereupon, Mr. Biering complies]

2 Q. [The Court] Mr. Germanoff, the question I would
3 like to ask you: are you looking at the photograph that
4 Mr. Biering is showing to you?

5 A. Yes, sir.

6 Q. Do you know any of the parties in that photo?

7 A. No, sir. I know --

8 Q. -- have you ever seen --

9 A. -- the jurors.

10 Q. Pardon?

11 A. I've seen them here. And I was walking by when
12 he took the picture of them.

13 Q. Okay. Who is the juror?

14 A. I don't know what their names are. I just know
15 they're on the other jury.

16 Q. Okay. They're not on this jury; is that
17 correct?

18 A. No. No, they're not on this jury.

19 Q. Have you heard that particular juror talking at
20 all about --

21 A. No.

22 Q. -- the case? This case.

23 A. No, sir.

24 Q. Okay. You just knew that one of the jurors was
25 talking to that victim in this case; is that correct?

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1 A. Yes. Yes.

2 Q. Have any of the other jurors in the jury room
3 commented on that?

4 A. No. No.

5 THE COURT: All right. Is there any other
6 information you want to know concerning this? Because
7 I do think this is relevant. Do you want to ask him
8 any questions?

9 EXAMINATION

10 BY MR. BIERING:

11 Q. I guess the only other question I would ask is
12 there was a vehicle -- if I go back to that photograph, I
13 think you would agree that the driver of the --

14 MR. BIERING: If I could just show the Court?

15 THE COURT: I don't care about seeing it.

16 MR. BIERING: Okay. Okay.

17 THE COURT: I don't care. I don't know the
18 people. I won't know them from Adam.

19 Q. [Mr. Biering] The driver -- the photograph
20 doesn't show the driver of the vehicle. Does the vehicle
21 look familiar with anyone relation -- relating to your
22 son-in-law or --

23 A. No, sir.

24 MR. BIERING: Okay. Thank you. Thank you, Your
25 Honor.

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EXAMINATION

BY THE COURT:

Q. And you don't know who the juror is that's talking to the victim in this case?

A. Personally I don't know him. Just I see him when we're waiting down there. I know who he was down there. I didn't talk to him. Just by looking at him, I can show you who he is.

Q. Okay. Have you seen him talking to anybody about --

A. No. No, sir.

Q. Do you know what he and the victim were talking about?

A. No, sir.

I was just sitting in my car and I seen him take a picture.

THE COURT: All right. Is there anything else that you would like to ask concerning this issue?

MR. BIERING: [No response]

THE COURT: Do you have that picture available? I want to try to identify that juror.

MR. BIERING: Yes, Your Honor.

THE COURT: Do you know who it is?

MR. BIERING: I do not, Your Honor. I --

THE COURT: Well, how about showing it to -- she

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1 might be -- Ollie might be able to tell you who it is.

2 Have they been dismissed for the week?

3 THE CLERK OF COURT: No, sir.

4 THE COURT: Where are they?

5 THE CLERK OF COURT: They're still over there.

6 THE COURT: Well, tell them to stay over there
7 until I can get this gentleman over here.

8 MS. CORNWELL: And it's our understanding that
9 this other juror is on the civil jury, not on a
10 criminal --

11 THE COURT: That's right. But I want to find
12 out if he's contaminated any of this juror [phonetic]
13 with any information.

14 MS. CORNWELL: Thank you, Your Honor.

15 THE COURT: I mean, I think all this is
16 relevant.

17 MS. CORNWELL: Yes, Your Honor.

18 THE COURT: The previous part that he wanted to
19 do about the facebook I don't.

20 MR. CHAD SHELTON: That's exactly what I was
21 trying to formulate, Your Honor.

22 THE COURT: Is there any reason I can't excuse
23 this juror?

24 MS. CORNWELL: None from the State, Your Honor.

25 THE COURT: Any from the defendant?

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1 MR. CHAD SHELTON: None.

2 MR. BIERING: None from Defendant Clark.

3 THE COURT: All right. Mr. Germanoff, I
4 appreciate you being here.

5 MR. GERMANOFF: Yes, sir.

6 THE COURT: And I appreciate your honesty and I
7 appreciate you coming forward. You haven't done
8 anything wrong, and don't worry about it. Okay?

9 MR. GERMANOFF: Okay..

10 THE COURT: But thank you so very much. I'm
11 sorry you didn't get to finish the trial but I think
12 I'm going to have to excuse you since you've come
13 forward with this information. Okay?

14 MR. GERMANOFF: Yes, sir.

15 THE COURT: All right. Thank you so very much.

16 You're welcome to stay. Otherwise, I'm going to
17 excuse you for the rest of the term. Okay?

18 MR. GERMANOFF: All right. Thank you.

19 THE COURT: All right. Thank you.

20 MR. BIERING: Thank you, Your Honor.

21 [Whereupon, Michael Germanoff, Juror Number 75,
22 is excused from the jury of this case and exits the
23 courtroom]

24 THE COURT: All right. I'm going to find out
25 who this other juror that was taking a picture of the

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1 victim and ask him any questions, has he talked to
2 anybody on this panel, because that's my concern at
3 this point in time.

4 Mr. Mendoza, do you know who it is?

5 MR. MENDOZA: Yes, Your Honor. It was two buddy
6 of mines from high school. I seen them there --

7 THE COURT: Come up here and have a seat on the
8 witness stand.

9 All right. Raise your right hand.

10 [Whereupon, Mr. Mendoza is duly sworn by the
11 Court as follows: do you swear to tell the truth and
12 nothing but the truth, so help you God]

13 MR. MENDOZA: I do.

14 THE COURT: All right. Have a seat.

15 [Whereupon, Mr. Mendoza takes the witness stand]

16 - - - - -

17 ANDRE MENDOZA,

18 Having Been First Duly Sworn,
19 was Examined and Testified as Follows:

20 EXAMINATION

21 BY THE COURT:

22 Q. Have you seen this picture?

23 A. Yes, sir.

24 Q. All right. Who's the picture -- who's in the
25 picture?

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1 A. It's a picture of me and two buddies of mine I
2 knew from high school. I don't remember their names, I
3 just remember their faces.

4 Q. When did all this occur?

5 A. This happened -- it happened on I believe
6 Tuesday.

7 Q. Tuesday?

8 A. Yes, sir.

9 Q. Okay. Were both of those people on the jury
10 panel?

11 A. On this jury panel?

12 Q. No. On the full jury panel.

13 A. No, sir. You mean are they juries?

14 Q. Yeah. Were they on the full --

15 A. Yes.

16 Q. -- panel that sat out in the audience?

17 A. No. They were outside smoking a cigarette.

18 Q. I know that.

19 But are they part of the jury panel, the big
20 panel, that we drew this jury from?

21 A. No.

22 Q. They're not on the jury panel at all?

23 A. Well, here. But it's on the other side.

24 Q. You know Monday morning --

25 A. Yes, sir.

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1 Q. -- when everybody was in this courtroom?

2 A. Yes, sir.

3 Q. Were they in the courtroom?

4 A. No, sir.

5 Q. They were not in the jury panel?

6 A. No, sir.

7 Q. All right. Where are they now?

8 A. I guess they're on the other side. They said
9 they was doing civil court sometime.

10 Q. All right. You went to high school with them?

11 A. Yes, sir.

12 Q. Why were y'all taking pictures?

13 A. I wasn't taking pictures. I was asking them for
14 a cigarette because my mother wasn't here and I recognized
15 them and we just sat there and started talking.

16 We was smoking a cigarette. They said that --
17 the guy that was in the driver's seat was like, why is
18 that guy taking a picture of you. I said, who. I turned
19 around and it was that officer -- I mean, that lawyer
20 right there taking a picture of me smoking a cigarette
21 with the two of them.

22 Q. Well, did you know they were on the jury?

23 A. No, sir.

24 I asked them what they was doing here and they
25 was like -- they told me they was on the jury.

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1 Q. They told you they were on the jury?

2 A. Yes.

3 Q. We didn't talk about nothing about no case or
4 nothing. They didn't -- they didn't tell me about their
5 cases or nothing like that. We just was talking.

6 THE COURT: All right. Does either party have
7 any questions of this witness concerning this
8 conversation of what transpired on Tuesday outside the
9 courtroom with these two jurors?

10 EXAMINATION

11 BY MS. CORNWELL:

12 Q. You said that you were just smoking a cigarette
13 with them?

14 A. Yeah.

15 We just smoked a cigarette and then I just came
16 back in.

17 Q. And never talked about any cases?

18 A. No, ma'am.

19 Q. What time was this?

20 A. This is when we went on lunch Tuesday around
21 1:00-something, I think.

22 Q. And they're on the civil jury? They're not on
23 this jury?

24 A. No, ma'am.

25 Q. And do you know anybody on this jury?

MIA PERRON, CVR-CM-M

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1 A. No, ma'am.

2 EXAMINATION

3 BY MR. CHAD SHELTON:

4 Q. Mr. Mendoza, you weren't here in the morning on
5 Monday?

6 A. Say that again.

7 Q. You were here in -- were you here in the morning
8 on Monday?

9 A. Yes. I was here since the whole -- since we
10 started.

11 Q. And --

12 MS. CORNWELL: Just Monday afternoon.

13 A. Well, Monday afternoon. I came around two
14 o'clock when they called me.

15 THE COURT: Anything else?

16 MR. CHAD SHELTON: No.

17 THE COURT: Mr. Biering, anything you want to
18 ask?

19 MR. BIERING: I do, Your Honor, about --

20 THE COURT: I want you to understand the Court's
21 concern. I want to find out if these two jurors have
22 contaminated these twelve people we have because if I
23 think they have, I'll declare a mistrial.

24 I didn't mean to be fussing at you, but the
25 facebook issue is irrelevant and I don't agree with

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1 that. But I do agree with this issue.

2 MR. BIERING: And I respect the Court's
3 decision.

4 THE COURT: Okay. .

5 [Off the record momentarily]

6 THE COURT: Have him stand out in the hall,
7 please.

8 MR. BIERING: Judge, the question that I
9 would have -- Judge, the questions that I have for Mr.
10 Mendoza would be related to the facebook issue.

11 THE COURT: We ain't going into that.

12 MR. BIERING: Well, can I --

13 THE COURT: You understand what issue I'm
14 approaching. Ask questions about that issue.

15 MR. BIERING: May I ask the question and then
16 you tell -- just tell me I -- that it can't be
17 answered, so I can have it on the record.

18 THE COURT: Yeah. That'll be fine.

19 MR. BIERING: Thank you.

20 EXAMINATION

21 BY MR. BIERING:

22 Q. Mr. Mendoza, do you know a Mr. Germanoff that
23 was on the jury earlier?

24 A. No.

25 Q. Do you know Mr. Germanoff's son-in-law and

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1 daughter?

2 A. No, sir.

3 Q. Do you know who Mr. Germanoff's son-in-law and
4 daughter are?

5 A. No, sir.

6 Q. You don't even know who they are?

7 A. No, sir.

8 Q. Okay. So you wouldn't know the relationship?

9 A. No, sir.

10 MR. BIERING: All right. Thank you.

11 EXAMINATION

12 BY THE COURT:

13 Q. All right. Do you know a Daniel Dimiceli?

14 A. No, sir.

15 Q. Do you know a Christopher Kaup?

16 A. No, sir.

17 Q. Those are the two people you were talking to and
18 you don't know them?

19 A. I mean, I know them but I don't know their
20 names.

21 THE COURT: Are they standing in the hall?

22 THE BAILIFF: Yes, sir.

23 THE COURT: Bring them in here and just let them
24 stand in front of the door.

25 - - -

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EXAMINATION

BY THE COURT:

Q. You tell me if those are the two people you were talking to.

MS. CORNWELL: Your Honor, just for the Court's clarification: Mr. Mendoza didn't come until two o'clock in the afternoon when we picked this specific jury, so he wasn't here for the full qualification of the full panel.

THE COURT: All right.

Q. [The Court] Do you know this gentleman here?

A. Yes.

This is the one -- I mean, I know him, but I don't know his name.

Q. Is this the one you were talking to?

A. Yes, this is the one I actually was --

THE COURT: Okay. Where's the other one?

THE CLERK OF COURT: That's the only one that --

THE COURT: Pardon?

THE CLERK OF COURT: That's the only juror that he pulled up for me to check on. Was there another juror that you wanted me to check on?

THE COURT: All right. What is your name, sir?

MR. DIMECELI: Daniel•Scott Dimiceli.

THE COURT: And Christopher Kaup. Who was with

1 you when they took a picture of --

2 MR. DIMICELI: Christopher Kaup.

3 THE COURT: Christopher Kaup was with you, also?

4 MR. DIMICELI: Yes, sir.

5 THE COURT: All right.

6 A. I didn't --

7 THE COURT: Just step out --

8 A. I didn't know their --

9 THE COURT: -- in the hall.

10 A. I don't know their names because since I -- I
11 hadn't seen them since high school and I was just asking
12 for a cigarette, just sat there and chatted with them, and
13 that's about it.

14 And then they told me, hey, some guy's taking a
15 picture of you. And I turned around and he was there with
16 his phone taking a picture of -- I was like, well, he's
17 probably trying to get something.

18 THE COURT: Okay. Does anybody else have any
19 questions?

20 MS. CORNWELL: Nothing from the State, Your
21 Honor.

22 THE COURT: All right. If you would, Mr.
23 Mendoza, you can go outside in that hall or you can go
24 in the back hall, whichever you prefer.

25 MR. MENDOZA: It don't matter to me.

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1 THE COURT: Pardon?

2 MR. MENDOZA: I'll go out in this hall.

3 THE COURT: That will be fine.

4 [Whereupon, Mr. Mendoza is excused and exits the
5 courtroom]

6 THE COURT: If you'll ask Mr. Daniel Dimiceli to
7 come in, please.

8 [Whereupon, Mr. Dimiceli enters the courtroom.

9 THE COURT: Mr. Dimiceli, come and have a seat
10 right here in this chair.

11 [Whereupon, Mr. Dimiceli comes forward]

12 THE COURT: Raise your right hand.

13 [Whereupon, Mr. Dimiceli is duly sworn by the
14 Court as follows: swear to tell the truth and nothing
15 but the truth, so help you God]

16 THE WITNESS: Yes, sir, I do.

17 - - - - -

18 MR. DIMICELI,

19 Having Been First Duly Sworn,

20 was Examined and Testified as Follows:

21 EXAMINATION

22 BY THE COURT:

23 Q. Now, you were on the jury panel Monday morning;
24 right?

25 A. Yes, sir.

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1 Q. And at some point in time you were outside
2 talking to Andre Mendoza; is that correct?

3 A. Yes, sir.

4 Q. How do you know Mr. Mendoza?

5 A. High school.

6 Q. High school?

7 A. Yes, sir.

8 Q. Have you seen him since high school?

9 A. A few times in passing. But not in hanging out
10 or nothing like that, no, sir.

11 Q. And when were y'all having a conversation
12 outside the courthouse?

13 A. I believe it was yesterday afternoon or the
14 day -- I think it was yesterday afternoon.

15 Q. It was yesterday afternoon?

16 A. I'm pretty -- yes, sir.

17 Q. Okay.

18 A. Or it might have been the day before. I'm
19 pretty -- but I'm pretty sure it was yesterday.

20 Q. All right. And who was here? Who was with --
21 in that conversation?

22 A. Just me, Mendoza, and Christopher.

23 Q. What were y'all talking about?

24 A. Just high school. Just, you know, it wasn't
25 nothing about why we were here or nothing like that.

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1 Q. Well, Monday --

2 A. We were just having a --

3 Q. Monday when you were sitting out here as a full
4 panel, I called out his name and I don't remember you
5 standing. Why didn't you stand and say you knew him?

6 A. Knew who?

7 Q. Mr. Mendoza.

8 A. Because I didn't -- I just didn't recognize him
9 and --

10 Q. He stood up -- he stood up in front of you.

11 MS. CORNWELL: Your Honor, may I -- he had
12 already split off at a civil jury. He wasn't in here
13 when Mr. Mendoza's name --

14 THE COURT: Oh. He wasn't in here?

15 MS. CORNWELL: No, Your Honor.

16 THE COURT: Okay.

17 Q. [The Court] You weren't in here when --

18 A. No, sir. I must --

19 Q. -- the jury on Mendoza?

20 A. -- have not have been because I didn't see --

21 Q. Pardon?

22 A. I didn't see him stand up or nothing like that.

23 Q. All right. My error.

24 THE COURT: Thank you, solicitor. Do you have
25 any questions of this juror?

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1 MS. CORNWELL: No, Your Honor.

2 THE COURT: Either defendant have questions?

3 MR. BIERING: Your Honor, I just need the clerk
4 to just confirm for the record, just again to protect
5 the record, that he had been split off. That's all.

6 THE CLERK OF COURT: Yes.

7 MR. BIERING: That would be all.

8 THE CLERK OF COURT: Yes. They had been already
9 split, picked, and --

10 MR. BIERING: Thank you.

11 THE COURT: Both of them?

12 THE CLERK OF COURT: Yes, sir. The rest of them
13 had.

14 Q. [The Court] All right. Have you talked to any
15 of the other jurors or informed any of the other jurors
16 that you knew Mr. Mendoza?

17 A. No, sir.

18 Q. Okay. Haven't had any conversation with any
19 other juror?

20 A. Well, besides the juror that's with me, Chris.
21 I mean, we all went to high school together so we were all
22 just -- you know, we were out in the parking lot smoking a
23 cigarette on our break so that's where we just --

24 THE COURT: Any further questions?

25 MS. CORNWELL: Nothing from the State, Your

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1 Honor.

2 THE COURT: All right. You may step out in the
3 hall. Thank you very much.

4 THE WITNESS: Yes, sir.

5 [Whereupon, Mr. Dimiceli is excused and exits
6 the courtroom]

7 THE COURT: Tell Mr. Kaup to come in.

8 [Whereupon, Mr. Kaup comes forward]

9 THE COURT: Mr. Kaup, if you'll have a seat in
10 that black chair there, please.

11 [Whereupon, Mr. Kaup takes the witness stand]

12 THE COURT: Raise your right hand.

13 [Whereupon, Mr. Kaup is duly sworn by the Court
14 as follows: swear to tell the truth, nothing but the
15 truth, so help you God]

16 THE WITNESS: Yeah.

17 - - - - -

18 CHRISTOPHER KAUP,

19 Having Been First Duly Sworn,

20 was Examined and Testified as Follows:

21 EXAMINATION

22 BY THE COURT:

23 Q. All right. Mr. Kaup, either yesterday or
24 one day this week y'all were outside with Daniel and
25 Mr. Mendoza. Do you know Mr. Mendoza?

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1 A. Yes.

2 Q. Say yes or no.

3 A. Yes.

4 Q. All right. And y'all were -- were you outside
5 talking to Mr. Mendoza earlier this week?

6 A. Yes.

7 Q. And who -- was Mr. Dimiceli there with you?

8 A. Yes.

9 Q. What was the occasion to have that three-way
10 conversation?

11 A. Just people I hadn't seen in a while. I went to
12 school --

13 Q. Pardon?

14 A. -- with them years and years ago. Just --

15 Q. Where did you know Mr. Mendoza from?

16 A. High school.

17 Q. High school?

18 A. [Indicates affirmatively]

19 Q. All right. Were you outside of the pick-up
20 truck or were you inside the pick-up truck when the
21 picture was taken?

22 A. Inside.

23 Q. Pardon?

24 A. Inside.

25 Q. Inside?

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1 A. [No response]

2 Q. All right. Have you talked to any of the other
3 jurors about Mr. Mendoza, whether you knew him or didn't
4 know him or anything, other than you and Mr. Dimiceli?

5 A. No.

6 Q. Haven't mentioned it to anybody?

7 A. No, sir.

8 THE COURT: Now, he was also split off when we
9 drew this jury; is that correct, Madam Clerk?

10 THE CLERK OF COURT: Yes, sir.

11 THE COURT: All right. Any questions from the
12 State?

13 MS. CORNWELL: Nothing from the State, Your
14 Honor.

15 THE COURT: Any from any of the defendants?

16 MR. CHAD SHELTON: Just the one -- one question.

17 EXAMINATION

18 BY MR. CHAD SHELTON:

19 Q. Did he talk about this trial or why he was here

20 A. No.

21 THE COURT: Mr. Biering, do you have any
22 questions?

23 MR. BIERING: Your Honor, not for this witness
24 as it relates to just something additional for the
25 record.

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1 THE COURT: Do you have any questions on this
2 juror?

3 MR. BIERING: No. No, Your Honor, I do not.

4 THE COURT: All right. Thank you so very much.

5 THE WITNESS: Thank you.

6 THE COURT: Appreciate it.

7 [Whereupon, Mr. Kaup is excused and exits the
8 courtroom]

9 THE CLERK OF COURT: Judge, can they go back?

10 THE COURT: Yes, ma'am. Please.

11 All right. Having brought in both jurors that
12 were talking to the victim in this case, Andre
13 Mendoza, it appears that they were highschool
14 classmates and were talking about old times.

15 I've found no evidence whatsoever that this --
16 these twelve jurors know anything about it or they
17 have been contaminated by that conversation that
18 occurred outside the courtroom, so I'm not going to
19 take any further action.

20 Are y'all ready for closing arguments?

21 MS. CORNWELL: The State is, Your Honor.

22 THE COURT: Is the defense ready?

23 MR. BIERING: Your Honor, may it please the
24 Court.

25 I would ask that we be able to provide the Court

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1 a copy of that photograph -- I just requested the
2 office to bring a copy of that -- to include in the
3 record of this trial.

4 THE COURT: That's fine. You can put it -- make
5 it a Court's Exhibit Number what? 1?

6 THE COURT REPORTER: Number 2.

7 MS. CORNWELL: Are you going to put the iPad in
8 as a Court's Exhibit?

9 THE COURT: Number 2? Make it Court's Exhibit
10 Number 2.

11 MR. BIERING: Your Honor, I'll be happy to
12 include in evidence my iPad if --

13 THE COURT: No.

14 We'll make it Court's Exhibit Number 2 if you
15 want to do that.

16 All right. Is there anything else before we go
17 to closing arguments?

18 MR. BIERING: If I could have about ten minutes
19 before we start, Your Honor. There's been a lot of
20 information and I need to discuss this information
21 with my client.

22 THE COURT: You want ten minutes?

23 MR. BIERING: Yes, sir.

24 THE COURT: All right. We'll give you ten
25 minutes.

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1 MR. BIERING: Thank you, Your Honor.

2 One thing before y'all go: we've got two
3 alternates. We've got Kimberly Ransom and Stacey
4 Funderburk. How do ya'll want the Court to select the
5 alternate that's going to replace Mr. Germanoff? Do
6 y'all want me to draw from the two, or do you just
7 want to take them as we picked them, or how do you
8 want to do it? The statute says you draw them. But
9 however y'all want to do it. It doesn't matter to me.

10 MS. CORNWELL: The State has no preference, Your
11 Honor.

12 THE COURT: Pardon?

13 MS. CORNWELL: The State has no preference.
14 We're okay with either alternate.

15 MR. BIERING: Can't go wrong with a statute,
16 Judge.

17 THE COURT: All right. If you would just put
18 those two, and we'll draw one.

19 [Off the record momentarily]

20 THE COURT: All right. Stacey Funderburk, juror
21 number 68, is now on the jury -- she was drawn between
22 the two by the clerk -- and she will be substituted
23 for Michael Germanoff.

24 Thank y'all very much. We'll take about ten
25 minutes.

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1 MR. BIERING: Thank you.

2 [Whereupon, a recess is taken from 10:05 p.m. to
3 10:23 p.m.]

4 THE COURT: Is the State ready for closing
5 arguments?

6 MS. CORNWELL: The State is, Your Honor.

7 THE COURT: Is the defense ready?

8 MR. CHAD SHELTON: Defendant Newman is, Your
9 Honor.

10 THE COURT: Mr. Biering, are you ready?

11 MR. BIERING: Defendant Clark is ready.

12 THE COURT: All right. Bring us a jury, please,
13 ma'am.

14 Can I see the attorneys up here real quick.

15 [Whereupon, an off-the-record bench conference
16 is held in reference to verdict forms and charge of
17 the Court]

18 THE COURT: Hold the jury in the hall for a
19 second, please.

20 [Whereupon, an off-the-record bench conference
21 is held in reference to verdict forms and charge of
22 the Court]

23 THE COURT: Okay.

24 MR. BIERING: Thank you.

25 THE COURT: Mia, this is Court's Number 2. That

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1 photograph.

2 [Whereupon, Court's Exhibit Number 2 is marked
3 by the court reporter]

4 THE COURT: Bring us the jury, please.

5 [Whereupon, the jury enters the courtroom at
6 10:30 a.m.]

7 THE COURT: All right. Ms. Stacey Funderburk, I
8 believe juror number 68, you are on the jury now. You
9 are no longer an alternate.. Okay?

10 MS. FUNDERBURK: Okay.

11 THE COURT: I believe yesterday I told the jury
12 about the defendant's right to remain silent and I
13 told you -- I mentioned Mr. Ryan Newman's name. The
14 same thing applies to the defendant Jessica Clark.
15 She has the constitutional right to remain silent and
16 the State is obligated under the law to find -- prove
17 the defendant guilty beyond a reasonable doubt. You
18 are not to consider the fact that she did not testify
19 in any manner whatsoever. The same thing I told you
20 yesterday, as I said, about Ryan Carl Newman also
21 applies to Jessica Lynn Clark.

22 Solicitor?

23 MS. CORNWELL: Thank you, Your Honor. May it
24 please the Court.

25

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CLOSING STATEMENT

MS. CORNWELL: The finish line is finally in sight. It's been a long week. We've heard a lot of exhaustive testimony. Right now I want to take this opportunity to thank you for paying attention. Sometimes it hasn't been easy.

What I'm going to do right now is take the opportunity to go over a little bit of law with you and what I believe the law is as it relates to this case.

The judge is the expert on the law so if there's anything that I say that the judge says is different, then clearly defer to the judge because he is the expert on the law.

After I have a chance to talk to you for a few minutes, the defense counsel's going to get up and they're going to give you their version of the events and how they think this event occurred. After they've spoken to you, I'm going to get up one more time -- I'll try not to take up a lot of your time -- and I'm going to give you my version and the judge will charge you and you'll go back and deliberate. So without delaying this any more than we have to, I'm going to go ahead and get started with you.

I told you at the beginning of this trial that

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1 Ryan Newman and Jessica Clark were charged with
2 kidnaping, armed robbery, assault and battery in the
3 first degree, and possession of a firearm during the
4 commission of a violent offense.

5 In the state of South Carolina, under Section
6 16-3-910, kidnaping is the unlawful seizure,
7 confining, inveigling, decoying, abducting, or
8 carrying away of a person by any means without
9 authority of law.

10 That's a lot of big words. What it means in
11 simple terms is if I take you from there and move you
12 to there, and you don't want to go and I use deceit,
13 force, threat, or any means necessary to get you to go
14 from there to there, I've kidnaped you. We see it in
15 movies and TV all the time. I don't have to bound
16 you, gag you, throw you in the trunk of my car and
17 drive you across state lines. It can be as simple as
18 moving you from one spot three feet over. If you
19 don't want to go and I force you, trick you, deceive
20 you into going, I've kidnaped you.

21 Again, just to go over some of the language in
22 that statute: a seizure is when the kidnaper takes
23 control of a human being through force. Confining is
24 when the kidnapper unlawfully deprived the kidnaped
25 person of their freedom. And to inveigle is to

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1 seduce, entice, and decoy. The fact that the victim
2 voluntarily goes with the kidnaper because of the
3 kidnaper's deceit is of no significance because it's
4 still considered inveigling.

5 There are six things under that statute, as
6 you'll see: seizure, confining, inveigling, decoying,
7 abducting, or carrying away. The State only has to
8 prove that these defendants did one of those six
9 things. So if you feel like there was a seizure or a
10 confining or an inveigling or a decoying, abducting or
11 carrying away, any one of those, then it's kidnaping.

12 The next thing that they're charged with is
13 armed robbery. Under 16-11-330, armed robbery is the
14 taking or attempted taking and carrying away of the
15 personal property of another with the intent to
16 deprive him of possession.

17 The way that they do this is by use of force,
18 threats or intimidation while armed with a deadly
19 weapon or while alleging to be armed with a deadly
20 weapon. It's pretty self-explanatory. If I come up
21 to you and I point a gun in your face, put a gun to
22 the back of your head, and I take something from you
23 and I have no intention of giving it back, I have
24 committed an armed robbery. It doesn't get much
25 simpler than that.

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1 Assault and battery in the first degree. This
2 statute under South Carolina is 16-3-600 and it's
3 actually got a couple of different ways that it can be
4 proved. The first way is if the State proves that an
5 unlawful injury or act occurred to another and that
6 injury occurred during the commission of a robbery, a
7 kidnaping, or a theft.

8 Here we've got a robbery and a kidnaping. So if
9 you find that a robbery or a kidnaping occurred in
10 this event and the injury came from that, you can find
11 that the defendant is guilty of assault and battery
12 first degree.

13 Another way to prove assault and battery in the
14 first degree is that it is accomplished by means
15 likely to produce death or great bodily injury or the
16 injury occurred, again, during the commission of a
17 robbery, kidnaping or theft.

18 Great bodily injury is injury that causes a
19 substantial risk of death. It can cause serious
20 permanent disfigurement, protracted loss or impairment
21 of the function of a bodily move [phonetic] or organ.

22 Now, that doesn't have to have occurred. It's
23 just that the events that led to that could have
24 likely occurred, could have likely caused great bodily
25 injury, could have likely caused death. The State

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1 will stipulate to you that the use of a firearm in
2 anything is likely to cause great bodily injury or
3 death.

4 The last thing that they're charged with is
5 possession of a firearm during the commission of a
6 violent offense. Under 16-23-490, if you convict a
7 defendant of a violent crime -- and in this case both
8 armed robbery and kidnaping are considered violent
9 crimes under State law -- and you think that at the
10 time of committing those crimes they were in
11 possession of a firearm, they visibly displayed a
12 firearm or they visibly displayed a knife, then they
13 are guilty of this statute.

14 The next thing I want to talk to you about is
15 the theory called the hand of one, hand of all. The
16 hand of one and hand of all is when a crime is
17 committed by two people who are acting together to
18 commit the crime. It means that whatever one of those
19 people did, the other person is guilty for it. So
20 just because one person didn't have the gun, just
21 because one person didn't shoot the gun, just because
22 one person didn't hit somebody, that doesn't mean
23 they're not also guilty of that, because they helped
24 that crime occur.

25 A person who joins with another to commit an

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1 unlawful act is criminally responsible for everything
2 done by the other person which happened as a probable
3 or natural consequence of the actions done in carrying
4 out a common plan or purpose.

5 The easiest way I can explain this to you is if
6 there's a murder and two people go and commit that
7 murder. Only one person is going to have that gun,
8 only one person is going to pull the trigger, there's
9 only one bullet, hopefully, that goes into that person
10 but both of them are guilty of murder. Just because
11 the other person didn't fire the weapon doesn't mean
12 that he wasn't acting in the crime.

13 When a person does the act in the presence of
14 another and with the assistance of another, the act is
15 done by both. It's kind of redundant. But, again,
16 what one does, the other is responsible for.

17 Reasonable doubt: you're going to hear a lot of
18 about reasonable doubt today. Both defense attorneys
19 are probably going to talk to you about reasonable
20 doubt. The judge is going to talk to you about
21 reasonable doubt.

22 Reasonable doubt is the kind of doubt that would
23 cause a person to hesitate to act. Proof beyond a
24 reasonable doubt is that that leaves you firmly
25 convinced of the defendant's guilt. And if based on

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1 your consideration of the evidence you're firmly
2 convinced that the defendant is guilty of the crime
3 charged, you must find that defendant guilty.

4 Nothing in this world is beyond all doubt.
5 There are very few things that you can say is beyond
6 all doubt. The State doesn't have to get beyond all
7 doubt. We only have to get beyond a reasonable doubt.
8 And if after listening to the testimony that you've
9 heard and viewing the evidence you are firmly
10 convinced that these defendants committed these
11 crimes, then you must find them guilty.

12 I'm going to sit down now and let you listen to
13 the defense attorneys. I'll be back up in just a few
14 moments to speak to you again. Thank you.

15 THE COURT: Yes, sir, Mr. Shelton.

16 MR. CHAD SHELTON: Thank you, Your Honor. May
17 it please the Court.

18 THE COURT: Yes, sir.

19 MR. CHAD SHELTON: Ms. Cornwell, Mr. Shelton.
20 No relation. Didn't say that at the beginning.

21 [Off the record momentarily]

22

23

24

25

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CLOSING ARGUMENT

MR. CHAD SHELTON: There is no crime.

He lies, he cheats, he steals. That's Andre Mendoza in a nutshell. When people get embarrassed, they make things up.

I don't know if y'all remember. You recall December of 2010. Robbers toss a pair into the river. From the headlines. Two lovers end up naked in the -- in a Charleston hotel and they say they were robbed. The police step up the park patrol. Mayor Joe Riley calls the victims. They believed them. Police defend arrests, who they ended up arresting. Alleged Hooks case is closed. They arrested two people that were embarrassed and made up the story. What's different about that than this case is the police believed them.

The police didn't do anything here, didn't believe Mr. Mendoza, because there was no crime. The State's case, all of it, rests on Andre. They're going to want you to believe Andre. So why should we not believe Andre? Well, he's a drug dealer, uses marijuana, and he's going to buy weed. Doesn't have anybody to buy it from, doesn't know where to get it. He's a drug dealer, and he smokes on a regular basis, but he doesn't know where to get it.

Unfamiliar place: well, we learn that's his

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1 neighborhood. He's been there since 1994. That's a
2 mile from his house. Not unfamiliar. Drug dealer,
3 burglar, caught with his pants down. That's
4 believable.

5 But why should we not believe Andre? He was
6 hit, hit, hit, hit with a gun, this side, that side,
7 Tommy, Ryan, hit, hit, hit, knocked down, kicked.
8 You'll get this [indicates] back there. One mark
9 right there. What else couldn't we believe from
10 Andre? He's so terrified, so scared of these people,
11 he goes back to the house, their house. He said he
12 went with his mom. I don't blame his mom. Mom loves
13 him. He's twenty-seven -- twenty-six, twenty-seven,
14 twenty-eight, living with his mom. She loves him. So
15 she says that she went with him, too. He told Ashe
16 that he went back with his cousin. So he goes back
17 with his cousin to Ryan's house. So terrified.

18 And his mom hanging out with the -- he was
19 hanging out with the wrong crowd, that's why he moved
20 away. She moved him back in because he's no longer
21 that bad person. He's no longer hanging out with that
22 loud crowd, that bad crowd. The person in this chair,
23 that's the bad crowd. He's still dealing drugs. He's
24 the bad crowd.

25 January 6, 2011, Officer Wells, this crime

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1 didn't happen. Officer Wells, January 6, 2011, he
2 goes on the scene, sits down and he's writing his
3 report. What does he write in his report? Andre
4 under the influence of drugs. He says he was beat,
5 robbed -- let me get this right. He said he was
6 robbed, stripped, and then beaten. Well, that doesn't
7 make sense. Why would he be robbed, stripped and
8 beat? He says there was two people, there's two that
9 night, friends Shane and Ryan. Roommates, he says two
10 years ago, two years -- several years prior. Wells is
11 writing it down. He refuses to write a statement. He
12 refuses to cooperate, as far as EMS, going to the
13 hospital. What does Wells -- Officer Wells do? A lot
14 in my industry -- I don't know about in y'all's
15 industry, but CYA. He covers his behind. He's got
16 told, yeah, there's -- he got beat on the head, but I
17 only see a little mark underneath his eye, but I'm
18 going to call EMS. So -- and he's talking about a
19 serious charge. So I'll call the detectives. No
20 detective comes out. Fourteen minutes later, two
21 o'clock, he leaves. Before EMS, because EMS was back
22 in the call it 2:06. EMS is apparently out there.
23 And they just said there's an abrasion on the orbital
24 bone, under here, up here. Wells said it was under
25 here. No further investigation. Got in a fight.

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1 Because he hears girls, friends, drugs, sex. So what
2 does Wells say? He got in a fight. He didn't get
3 robbed. His friends, he knows them, yeah, he got in a
4 fight. Called up to the detective. Detective doesn't
5 want to come out there that night. Have him come the
6 next day. Why did they have him come the next day?
7 Maybe if he sleeps on it, he's going to realize --
8 tell y'all the truth. But what do we know that
9 happens? He goes out with his cousin to Ryan's house
10 thinking, maybe I can get two more people out there;
11 maybe one more person will help me out.

12 And now take it from Ashe's perspective.
13 Detective Ashe, on January 7th, sitting there on both
14 -- he didn't write it down so we don't know if it's
15 the morning, if he's having his coffee and his
16 doughnut or if it's the afternoon and he's having his
17 Coke and whatever else he has snack-wise. So he
18 didn't write it down. But he -- Andre comes in. He
19 had all day of the 6th to think about it. Overnight
20 of the 6th and the 7th. And don't know on the 7th
21 what -- but Andre comes to the police station: I want
22 it prosecuted. Ashe gets the file, looks through it.
23 What does it look like? Drugs, sex, friends. Only
24 sees this mark. Refused to write a statement, refused
25 EMS. Andre says, I'll write a statement. So he

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1 writes his statement. This time there's three: Ryan,
2 Shane and a Teddy. And -- but I think I was also
3 possibly set up. So let's throw Jessica out there.
4 Now there's four possible. So he writes his
5 statement. Still doesn't mention the fact that he was
6 kicked. He still is not able to give any type of
7 description of any gun to Mr. Ashe on January the 7th.
8 Ashe takes out one warrant for armed robbery. That's
9 what Ashe charges them with, armed robbery. There's
10 no reason to do any investigation you -- there's a
11 fight. There wasn't all this stuff, so I'm not going
12 -- you know, I'm not going to go through the motions
13 and get the search warrant and start looking for these
14 things from -- he'll come to his senses. But I'm
15 going to get a -- I'm going to get a warrant for armed
16 robbery.

17 There was no crime. So how did we get here?
18 Ryan is now charged with armed robbery, assault and
19 battery first, kidnaping, possession of a weapon
20 during a violent crime. The prosecutor dropped those
21 charges.

22 You're also going to hear from the judge some
23 lessor includeds of assault and battery second,
24 difference -- assault is a nice presentation.

25 Difference between assault and battery second and

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1 first is the moderate bodily injury versus the great
2 bodily injury. That's the difference between assault
3 and battery second and assault and battery first.
4 You're also going to hear a jury charge on strong
5 armed robbery. Difference between having a gun.

6 So how did we get here? The State brought the
7 charges. Started out two suspects, robbed, stripped
8 and beaten. Well, that won't make sense. But four
9 suspects, possibly set up, beaten, stripped and then
10 robbed. What did we hear two days ago -- two days ago
11 now? I'm only certain on three, hundred percent on
12 three. Not to mention that, one of those, Shane
13 Newman, was mentioned in those other two. He was part
14 of the two at the beginning. But now, I'm not a
15 hundred percent on that. And the State dismissed
16 those charges.

17 So what were the State's problems? Wells.
18 Wells has the -- he checked the box that he was under
19 the influence of drugs, so he was asked did you check
20 that box about under the influence of drugs. And not
21 based off any other questions, he says, but I'm not a
22 -- I'm not a medical doctor; that could have -- that
23 could have happened from him being beaten. First
24 impression was he was under drugs -- under the
25 influence of drugs.

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1 Ashe: no investigation. Can't really do
2 anything to help that part for Ashe because he's got
3 to write everything down, he's got to document
4 everything, so we'll leave that to Andre. So the
5 picture. Says he noticed that there was a bump on the
6 back of his head. He says now his [indicates, -
7 indicates, indicates] story that he's getting beat,
8 beat, beat, both sides. He can't -- can't take care
9 of that side because they only took a picture of the
10 one. But beat, beat, beat, kicked on, knocked on the
11 ground. So how are we going to take care of that.
12 Well, Ashe says, I couldn't take a picture of the back
13 of his head; maybe it wouldn't -- it wouldn't have
14 come out. He doesn't have long hair, he's got short
15 hair. But that was an injury -- so Andre -- can't
16 have Andre going back to the house with his cousin.
17 Can't have that. Not going to look like he was scared
18 and terrified. Got to work with this story. So he
19 had his mom. Mom will do anything. Can't have the
20 cousin.

21 Oh. The conviction: don't worry about larceny;
22 it's not on your rap sheet; don't worry about that.
23 He says, the only time I've ever been in trouble was
24 the burglary. Don't worry about the larceny; it's not
25 on your rap sheet.

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1 Facebook files: don't worry about those,
2 because you're changed now. You're changed. So no
3 one told his mom that he's really not. But you're
4 changed now. And maybe he has. You're going to have
5 these back there. I encourage you to look at them.
6 And I'll admit there's something in here concerning
7 being hacked. Maybe I -- I can't truly read this, but
8 give him the benefit of the doubt. Ryan Walters
9 states to Andre: are you for real gay, bro. He says,
10 nigger my bro out -- my pages may. Got all my -- I
11 don't know. Got all my pages. So that was fucked up.
12 LOL. I couldn't believe that shit, man. LOL. The
13 very next line. Ryan to Andre: you know where any
14 green is. So okay. But he's still contacting him
15 about buying marijuana. They're all expecting -- all
16 these people that are expect -- that buy marijuana are
17 talking to an Andre so they're expecting to meet an
18 Andre.

19 Try to get in the fact that you've changed your
20 ways. You know, ignore all the facebook. Ignore the
21 facebook, ignore the evidence, don't worry, got --
22 changed your ways. But we've got to make this a
23 little bit more dramatic. You're only a mile from the
24 house. Let's have somebody pick you up. Pick you up
25 on the side of the -- flagged him down. Ashe

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1 testified that that's important information to know.
2 These investigators, they know about that information,
3 flag somebody down. The first time we heard about
4 that.

5 Oh. And there's no investigation. Right? Get
6 to this part. Police didn't go out to the scene.
7 Didn't believe it happened. Ashe didn't go out to the
8 scene, look for any of his stuff, side of the road,
9 look for any evidence of anything that they are saying
10 happened. But Andre's mom is now taking him to Ryan's
11 house. So let's have him go out there and for some
12 things. We'll go out and look for some things. Oh, I
13 found my shoes. He don't have to write everything
14 down. You don't have to document anything. But he
15 did the investigation.

16 There was no crime. To get it right, Mark
17 Twain, Samuel Clements, he said if you tell the truth
18 you don't have to remember anything; when you lie you
19 have to remember the new story and you have to
20 remember to tell everyone what that new story is.

21 Ashe wasn't told that the new story that -- is
22 now that the mom is going out with Andre to Ryan's
23 house. He wasn't told that. His mom wasn't told --
24 given any information that he's still selling drugs,
25 so she thinks he's still good, he's doing well.

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1 Probably other ones go out there do think of something
2 that applies to that. But there was no crime.

3 I have a three-year-old at home. I also have an
4 eighteen -- an eighteen-month-old that's teething, so
5 I'm not getting enough sleep. But I have a three-
6 year-old at home. I'm trying to do the right
7 parenting thing, give him the right foods, that sort
8 of thing. Every morning we tried to give him a cup of
9 milk. He couldn't stand it. He did not like drinking
10 milk. So we put some Ovaltine in there and now he
11 loves it. Drinks it right away. He had two glasses
12 yesterday.

13 Every morning that I pour his glass of milk, I
14 look at the date on that milk. Okay. The date is a
15 week out. Every day I open that milk and I smell it
16 just to make sure it's okay. And my wife can never
17 tell so when she smells, she has to have me smell it.

18 It could smell all right for her but she still
19 wants me to make sure. That's reasonable doubt right
20 there. You have the date right there. You hesitated
21 to act. Before you put that cup -- before you put
22 that milk in that cup, you hesitated. That's
23 reasonable doubt.

24 The State said in opening that my job is to
25 muddy the waters, I'm going to keep y'all from seeing

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1 the bottom of that water, I'm going to keep y'all from
2 seeing the truth underneath there. Well, the problem
3 is the State, they put us out in the deepest part of
4 the ocean where it is impossible to see that bottom of
5 that water. With this evidence it's impossible.

6 There's no do-over. Can't call me up tomorrow
7 and say, I was thinking about something that you said
8 and I want to change my mind. This is it, this
9 decision. It's your decision. Individually and
10 collectively, it's your decision.

11 Andre Mendoza was laughing when he got off that
12 stand, laughing as he's walking out. On direct
13 examination, asked who are the suspects. Ryan Newman.
14 He laughed. He laughed. This is funny to him.

15 But Ryan Newman, this is not funny to him. This
16 is important to him. To his family, this is
17 important. Don't let someone that lies, cheats and
18 steals -- find Ryan not guilty. Thank you.

19 THE COURT: Mr. Biering.

20 MR. BIERING: May it please the Court, Your
21 Honor.

22 THE COURT: Yes, sir.

23 MR. BIERING: Counsel.

24 - - -

25 - - -

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CLOSING ARGUMENT

1
2 MR. BIERING: Ladies and gentlemen, you don't
3 have to imagine a date line at this point. It does
4 seem like a really long time ago when I stood up in
5 front of y'all and gave my opening statement. It
6 seems like two weeks ago as opposed to a few days ago.
7 But I think it's important that we go back to that
8 point. I think it's important that we go back to that
9 point and we talk about what I said this case was
10 about.

11 Jessica Clark is here today because she involved
12 herself, on facebook, with the world of Andre Mendoza.
13 We're here today, as it relates to this corner of the
14 courtroom, because Jessica Clark involved herself with
15 Andre Mendoza on facebook. And I laid down the
16 gauntlet in my opening statement, and this was what I
17 said: to really understand beyond a reasonable doubt
18 the events of January the 6th, to really understand
19 beyond a reasonable doubt -- that's the burden of
20 proof that the State has to meet here -- the events of
21 January the 6th of 2011, we believe that through this
22 trial you must be allowed into the cyberworld, a
23 facebook world, that Andre Mendoza used and uses for
24 his life. To understand beyond a reasonable doubt
25 what transpired on January the 6th of 2011, you had to

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1 be allowed into the facebook world of Andre Mendoza
2 that he used and uses for his life.

3 I'm not sure how many of you are very familiar
4 with facebook. I'm very familiar with facebook. I've
5 got a sixteen-year-old son. He is a great young man.
6 I'm so proud of him. He plays in two worship bands,
7 he's in Beta club, he's an A student, he ranks here
8 [indicates] on everything. He's on facebook and he's
9 a young man and what I will tell you is this: I will
10 tell you that I understand the world of facebook.

11 What I'll tell you is this: that I've
12 experienced something on a number of times, by my
13 sixteen-year-old, that you've experienced this week
14 and you might not even know it. Don't know if you've
15 got a facebook page. But ladies and gentlemen of the
16 jury, you have been unfriended from the facebook world
17 of Andre Mendoza. You have been blocked from the
18 facebook world of Andre Mendoza. You have not been
19 allowed into the initial location that you'll recall
20 Madam Solicitor says we started. She says -- which
21 she's not contesting at all -- that Andre Mendoza and
22 Jessica Clark met on facebook a few days prior to
23 January the 6th. You're going to be able to take
24 these exhibits back into the jury room with you. And
25 what has been admitted into evidence -- and you'll

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1 recall they let -- some things are admitted and some
2 are not into -- some are not in evidence. You'll have
3 some in evidence.

4 But this is what you do have in evidence. You
5 have in evidence Mr. Andre Mendoza's information from
6 598 pages of facebook material. And what's
7 interesting is this. And I apologize for this,
8 because this is offensive. This is offensive. I
9 apologize for that. If I've got to create facts in
10 the law, I would win every case. I would be a
11 millionaire.

12 All right. But here's the interesting thing.
13 This picture, October the 3rd of 2010, two months
14 prior to the alleged -- or whatever happened. Who
15 knows what happened -- whatever happened on January
16 the 6th. Because we know some things happened.
17 October -- so we know that at least our 598 pages
18 begin in October of 2010, two months prior to January
19 the 6th. Just in this one exhibit. Then we -- you
20 know, I just --

21 Another example. Here's Mr. Mendoza again. And
22 you'll recall that this was the picture that
23 Lieutenant Ashe, who's -- and who's the lead narcotics
24 person in Berkeley County, the Berkeley County
25 Sheriff's Department, says that that's a blunt in his

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1 hand. That was dated December the 28th of 2010.

2 So just in this one exhibit -- you know, we've
3 got pictures that span January the 24th, 2011, picture
4 of Mr. Mendoza. You'll go through these pictures, I'm
5 sure. But what you're going to see is that this --
6 the facebook material that has been admitted spans
7 from before the events of January the 6th until far
8 out.

9 I wanted to send you a friend request so that
10 you could look into all of that, but you've been
11 unfriended. The solicitor's office didn't want you to
12 know about what was in that 598 pages of Mr. Mendoza's
13 facebook world. But it must have included -- it must
14 have included communications with Jessica Clark. But
15 she didn't want you to see it. You've been
16 unfriended. You've been blocked.

17 Here's what I know. I know that if you want to
18 build a house, if you want to build anything, you've
19 got to have a foundation. You've got to use good
20 materials. If I take a concrete block and I find
21 myself an impact drill and I drill, repeatedly, holes
22 through a concrete block and I use that block to build
23 my foundation of my house, what's going to happen to
24 that concrete block when you put any weight on it? It
25 just goes away. It's not substantial. It's not

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1 dependable. You cannot rely upon it.

2 If I did the same thing with the two-by-fours
3 for the walls or the two-by-twelves for the roof --
4 what if I did the same thing? What if I drill holes
5 in every single item that I have and I attempted to
6 build a house? Who is going to believe beyond a
7 reasonable doubt that when the winds comes, that when
8 the rains come down, that that house is going to
9 stand? Nobody. Nobody wants to be in that house in a
10 storm.

11 I have the distinct pleasure of having what I
12 consider to be one of the finest men I've ever known
13 as my grandfather. Tell you a little bit about him,
14 then I'm going to tell you a story, and then I'm going
15 to dive into some real specific issues here that we
16 need to look at. Some real specifics.

17 Let me tell you the type of man my grandfather
18 was. As a small child he used a little wagon. Lived
19 in downtown Charleston. Used a little wagon. He
20 would pull his wagon up the original Cooper River
21 bridge and help move trash, make a little -- make a
22 little change as a child. Worked. Sixth-grade
23 education. Pearl Harbor comes. What does he do? He
24 signs up with the United States Navy. So what happens
25 to him? They ship him to Maryland to the Defoe

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1 [phonetic] Shipbuilding Company. I can't imagine what
2 he does. When I think about it -- every time I think
3 about it, I get chills. He goes to the Defoe
4 Shipbuilding Company. He's like nineteen years old.
5 My dad is a little child. What happens? He builds
6 his ship that he sailed into battle. He built his
7 ship that he sailed into battle. The USS Goselin
8 [phonetic], a destroyer escort.

9 Let me tell you about that destroyer escort.
10 That destroyer escort did something magnificent. It
11 escorted the United States Missouri, the USS Missouri,
12 into Tokyo Bay for the surrender when the Japanese
13 surrendered. He built his ship. He knew where he was
14 going. He knew what he had to do. He built it. He
15 sailed it into battle. They pulled POWs out of camps.
16 They escorted that ship into battle. They escorted it
17 for the surrender. He knew what he had to do. He
18 lived his life like that.

19 Well, let me tell you what happened. I'm about
20 fourteen years old and what he loved to do -- this is
21 what he loved to do, y'all: he loved to work. That's
22 what he did for a hobby. Some men like golf, some men
23 like hunting, some men like fishing. That man loved
24 to work.

25 Well, we're sitting at his table one day and you

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1 know what he did? He commented to me, he said,
2 there's a hairline crack in the front stoop as we walk
3 into the house. At this point he had moved from
4 Charleston, he had retired to Eutawville. I grew up
5 in Orangeburg County out by the swamps that were
6 flooded to make Lake Marion. He said, there's a
7 hairline crack in my steps. And I'm thinking,
8 Granddaddy -- I certainly didn't say it. But,
9 Granddaddy, who cares there's a hairline crack in the
10 steps. But this is what he knew. He knew that wasn't
11 the end of that crack. He knew that that crack meant
12 that there was something unreliable, there was
13 something that lacked, in the foundation.

14 So a stoop about this high with a platform about
15 yea big, with brick that he had laid, concrete that he
16 had poured, we began to tear that apart. Okay? So we
17 tear it apart. And he obviously needs the stoop
18 rebuilt because he's not going to -- my grandmother is
19 not going to stand there not being a stoop. So what's
20 he do? He says, well, we're going to rebuild that
21 stoop but we're not going to have any problems with
22 our foundation.

23 So you know what he did? He dug deep. He dug
24 deep. We took posthole diggers. Talk about
25 Eutawville, sandy soil. We took posthole diggers and

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1 we dug. We dug holes at multiple points around the
2 foundation where the foundation was going to go, where
3 we were going to pour a concrete footer for this
4 stoop. We went down about eight or ten feet. And I
5 thought to myself, well, this what --

6 Whatever Granddaddy said do, that's what you
7 did. So what did we do? We dig down. We take PVC
8 pipe. We put PVC pipe down in these holes that we
9 dug. Then we take rebar. We put rebar in there. We
10 built a foundation. We knew that there was something
11 unreliable. We knew that that sand wasn't anything
12 you could build a house on, wasn't anything you could
13 build a stoop on. We dug those pillars, we poured
14 those pillars, then we rebuilt that stoop. If there
15 was a nuclear blast, I would go get underneath that
16 stoop. It will be there. I am very sorry for anyone
17 who would ever attempt to try to remove that.

18 A hairline crack. The hairline crack was the
19 evidence of there being something very wrong in the
20 foundation, something very unreliable in what had been
21 built, something that needed to be looked at,
22 something that couldn't stand.

23 So the prosecution has built their house or
24 their stoop on Andre Mendoza. You've got to call it
25 like you see it.

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1 To quote another very good lawyer: sometimes it
2 is what it is. Andre Mendoza, Andre Mendoza, is
3 lying. And you saw it over and over again.

4 There are some hardworking people in this
5 courtroom. I've got a copy of a transcript that was
6 provided me by the court reporter. It was only for
7 about sixty-five pages. It's not the entirety of the
8 court proceeding but it's excerpts from Mr. Mendoza's
9 testimony. And I think it's interesting to go through
10 and really highlight a couple of points here.

11 The first one -- again, it is what it is.
12 Here's the question on page 35 of the transcript. And
13 have you ever gotten in trouble with the law. And
14 have you ever gotten in trouble with the law: I don't
15 think that's a difficult question. This is his
16 answer, at line 6: one time. One time. Question, at
17 line 7: and what was that for; it was a burglary
18 charge.

19 If we move over to page 50 of the transcript --
20 this is what we're here about: isn't it true -- this
21 is Mr. Shelton asking. For whatever reason, Mr.
22 Mendoza seemed to be more responsive to Mr. Shelton
23 than he was to me. Isn't it true you've been
24 convicted of petty larceny. Yes, sir. In Dorchester
25 Magistrate's Court. Yes, sir.

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1 He lied. He lied. The Court gave an
2 explanation at that point about some conversation
3 between the solicitor and Mr. Mendoza. But the very
4 simple question that was asked was, and have you ever
5 gotten in trouble with the law. One time; it was for
6 a burglary charge. That was a lie.

7 You listen to him initially admit to the use of
8 drugs, admit to drug transactions, and then you
9 watched him as he shut down and denied any
10 responsibility -- any responsibility -- or
11 recollection about conversations for the delivery of
12 OxyContin, clonapin, aderal, opanas, marijuana.
13 You're going to get back in the jury room some, before
14 he shut down, his admissions to the involvement of
15 those issues. You'll recall that he testified that he
16 had quit selling drugs two years ago.

17 If we go to page 35 of the transcript. Question
18 -- and I think you'll recall that he had testified
19 that he had -- well, he testified that -- if I recall,
20 that not too much prior to this alleged event, or
21 something, whatever happened, that he had moved out of
22 Ryan Newman's house. He had lived with Ryan Newman.
23 And this is what he testified to: I wasn't down with
24 that kind of a crowd and stuff that they used to do
25 and I -- I was -- you know, I didn't want to get into

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1 more trouble.

2 He said he had to flee the house. He said that
3 he had to sneak out of the house. Something happened
4 on January the 6th. Something went terribly wrong.
5 As I told you in my opening statement, something went
6 terribly wrong on January the 6th.

7 Jessica Clark went there for an inappropriate
8 purpose. She went there for sex with someone who's
9 not her husband and she went there for marijuana. But
10 do you know what she got? She got tied up into
11 something -- I don't know what, we don't know --
12 between Ryan Newman and Andre Mendoza, who were former
13 roommates. He doesn't want to get -- he wanted to be
14 done with that lifestyle.

15 Ladies and gentlemen of the jury, I think the
16 evidence shows that as it relates to what his
17 lifestyle is, what his habit and routine would be, I
18 think y'all know. I think y'all have got just a
19 glimpse into that. I wish you could have got a full
20 picture. But you got just a glimpse into his facebook
21 world. You know what's going on there.

22 You'll recall -- just a -- recall back -- just
23 to make sure you know what's in the transcript that
24 you didn't miss here. Question, page 49 of the
25 transcript: okay, and you sell her marijuana;

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1 correct; yes.

2 That's just a sample. Let me tell you -- when
3 you go through this transcript -- and I just got it
4 this morning so I kind of have to hash through it.
5 But, you know, let's just go back to page 8. Nothing
6 adds up here. Page 8, this is what he said: okay;
7 that night she texted me and she was like she was on
8 her way to my house and she asked if I had a couple of
9 dollars; I told her yeah, for what; she was saying, I
10 need some gas; I said, that's fine, you know, I'll
11 give you some gas; I gave her some gas money and I
12 gave her a cigarette; and she was like, do you know
13 where to get any weed -- this is Mendoza talking --
14 and I said, no; around this time I don't know where to
15 get any weed; it was like one o'clock.

16 Okay. So at that point of the day it was around
17 one o'clock. On page 20 of the transcript: she
18 picked me up at my house; it was around --

19 What you think? One o'clock? Anybody? One
20 o'clock. Sorry. If you chose one o'clock, you do
21 not -- you did not win. It was around 12:00.

22 There's a connection, ladies and gentlemen, in
23 this case. It's not between Jessica Clark and Ryan
24 Newman. There have been no evidence, none, that links
25 Ryan Newman and Jessica Clark. None. Nothing.

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1 I've got to tell you where the problem is in
2 their foundation as it relates to Jessica Clark. I've
3 got to tell you what the faulty board is, or the block
4 that's got holes in it and won't stand. I've got to
5 tell you what it is. This is what they say. They
6 say, well, that -- Andre Mendoza says that he -- after
7 being what he described as some violent robbery, after
8 he meets with the police, after he meets with the
9 police for sixteen minutes, okay -- remember Deputy
10 Wells was there for sixteen minutes. Okay? After he
11 meets with them and does not give Deputy Wells an
12 address to Ryan Newman's house, his testimony is that
13 he goes out on his own to handle what has happened
14 here.

15 Well, first, that's being vigilante, which is
16 very inappropriate. Second, it doesn't make any
17 sense. If you've been violently robbed with a gun,
18 are you going to go to the house? Are you going to go
19 back to the scene without the police? Well, it
20 doesn't really make any sense to me that if the car is
21 there -- why didn't she call 911? You have been
22 robbed, he alleges, at gunpoint and beaten and
23 stripped of his clothes in the middle of the night by
24 people that he says he knew who they were and he
25 doesn't call 911? That doesn't make any sense to me.

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1 That does not make any sense to me at all. I hope it
2 doesn't make any sense to y'all, either.

3 What does Deputy Wells say that night? He says
4 he checks the box. He thinks Mendoza is using drugs.
5 That's what he does.

6 So we've got an EMS provider who's there on the
7 scene. Was it seventeen hours? Was it five hours?
8 No. It was seventeen minutes. Seventeen minutes.
9 Okay? Y'all see the pictures.

10 We don't know what happened outside of that car.
11 But it goes to the credibility -- and we don't have to
12 know, really, what happened outside that car. But it
13 goes to the credibility of Mr. Mendoza. You saw the
14 pictures. I probably wouldn't have even admitted the
15 pictures if I was prosecuting this case.

16 You know, pistol-whipped. Okay. You pistol-
17 whip somebody, you take a hard metal object and you
18 beat it on their head and their face or -- those
19 pictures -- there's something about those pictures
20 that doesn't lend itself, again, to what Mr. Mendoza
21 testified to. And it's very interesting that Dennis
22 Wells --

23 And I'll tell you, we've got to be proud of our
24 law enforcement officers and what they do for us
25 because let me tell you, when there's something scary

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1 that happens in the night and we call, and they come
2 and their family is back at home in a warm bed without
3 them, that's a big deal. And that's what Deputy Wells
4 did that night. Went there, did his job. It only
5 took him fourteen minutes that night to do it.

6 But what did Dennis Wells see that night? What
7 did he say? Do you recall? Did he say, I saw a cut
8 or an abrasion to the forehead on Mr. Mendoza?
9 Absolutely not, he did not say that. He said, I saw
10 discoloration on the cheek. That's what he said.

11 I may have said this. I've got four boys. And
12 they are all boy. Blood and stitches means they're
13 having fun. Okay? That's what -- that's their
14 definition of fun. It's all about getting intense.
15 Okay? I've seen impacts on people's heads. Okay?
16 Really? That guy got pistol-whipped? I'm just
17 looking at this guy, what my seven-year-old would say
18 was buff. Buff, something to that --

19 So Dennis Wells says he's on drugs. He's there
20 for about fourteen -- for fourteen minutes. We asked
21 Dennis Wells how many cars come to the scene. Do
22 y'all recall that? So what did he say? He said that
23 there were -- he said there were three cars that came.
24 Do you recall how many cars that Andre Mendoza said
25 came to the scene? He said nine cars came from the

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1 scene.

2 I can stand here today and admit, not proudly,
3 that I have been intoxicated with alcohol before. But
4 never in my life, never in my life, have I done
5 marijuana. Had a family member who had a bad
6 experience with drugs. Taught me everything I needed
7 to know about why I didn't want to be involved in
8 those things in my life.

9 This is what I know about intoxication: three
10 cars might look like nine cars. Three cars might look
11 like nine cars. Mr. Mendoza is so certain about what
12 transpired that night, he's so certain about what
13 transpired that night, that he gives initially the
14 statement that without a question that there were two
15 people, Ryan Newman and Shane Newman. Okay? Ryan
16 Newman and Shane Newman. Doesn't have a question in
17 that statement of his. Okay? Hundred percent
18 certain.

19 So then where do we go there -- go from there?
20 The next place we go is, well, then he's a hundred
21 percent certain that it is Ryan Newman, Shane Newman,
22 and Teddy -- or Tommy Weathers. Well, then he's a
23 hundred percent certain -- is it one of the other two?
24 Is it one of the other two previous stories that he
25 had? Was he a hundred percent certain about his --

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1 where -- where he ends up? No.

2 So now he's a hundred percent certain that what
3 he thinks is is that it's -- that it's Ryan Newman and
4 Tommy Weathers. No evidence. None. Zero. Not one
5 thing presented by the State, nothing that links my
6 client, Jessica Clark, to Ryan Newman, to Shane
7 Newman, to Tommy Weathers. Nothing.

8 We're relegated to about two foot in this
9 courtroom. And that's probably very fitting that we
10 get that much space, because this doesn't have a thing
11 to do with Jessica Clark. This doesn't have a thing
12 to do with a mother of two, who's expecting another
13 child. Keeps daycare. It doesn't have a thing to do
14 with her.

15 I think I told y'all I grew up in Orangeburg
16 County. I don't know if there's anybody here from
17 Orangeburg County. I'm from Orangeburg County. But I
18 can say this: I grew up in a small farming community
19 called Providence, right on the edge of Four Hole
20 Swamp [phonetic]. And I'm -- I didn't go to some Ivy
21 League school. Okay? I'm not a member of MENSA. I
22 didn't make a perfect score on the SAT. So maybe
23 because of my limited intelligence is why I don't
24 understand this. I don't understand how the state
25 delivers 598 pages of material from Mr. Andre

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1 Mendoza's facebook, that they obtained through valid
2 legal means, and then try to hide it from you.

3 But I've already said that a couple of times.
4 Here's the difference now. How can they do that at
5 the same time that they present Larry Ballard on this
6 witness stand? What did they give you from Larry
7 Ballard? Some very interesting letters. But once
8 again, once again, they asked you -- if we were to
9 all turn around and look behind -- if you look behind
10 that -- look at that window. If you just flipped up
11 say two of those panels from the blinds and you looked
12 out of the window, you would have a very limited scope
13 of what you could see, couldn't you? You could only
14 see a small amount. Now, if you really wanted to
15 enjoy the view of the Berkeley County detention center
16 out of that window -- I'm not sure why you would want
17 to -- you would want to pull the blinds all the way up
18 to look out.

19 Well, the State hasn't pulled up the blinds for
20 you. This is what they have. They provided you this
21 small little window of time of GPS points of Ryan
22 Newman. What happened before? What happened after?
23 Why don't they want you to know about it? Why didn't
24 they give that to you? I don't understand.

25 So you've heard from Andre's mom. And I heard

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1 it best from a client of mine one time and this is
2 what she told me. She said, Mr. Biering, you love
3 them just the same whether they're in the White House
4 or a crack house. That's what she said.

5 So Andre's mom loves him, as she should, and
6 supports him, cares for him. But you heard from her.
7 What you didn't see is me jumping up trying to block
8 her testimony. You didn't see that.

9 You heard from Andre. I've talked and talked
10 and talked and talked and talked about Andre. I know
11 I've kept everybody here while I had him on the
12 witness stand, went through I don't know how many
13 pages of facebook stuff that he says he just doesn't
14 recall that conversation. Admits to you that it's the
15 same facebook then as it is now.

16 I told you yesterday not only is it is his
17 facebook, but it's his -- it's used for business
18 purposes. It is used for business purposes. Yes, it
19 is. So we heard about Andre.

20 We talked about Lieutenant -- I mean, Deputy
21 Wells, Lieutenant Ashe. I think Mr. Shelton covered
22 Lieutenant Ashe pretty clearly. Here's the deal with
23 Lieutenant Ashe. He says as a supervisor he's not
24 going to accept a report that doesn't have a time on
25 it. But on the supplemental report, because there's

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1 no block to fill in on the computer, well, I'm not
2 going to put that in there. And you heard him
3 testify. He started taking notes on this thing back
4 on January the 7th and, you know, what we've got is
5 something that's actually typed on January the 11th.
6 He had no answer as the lead, the lead, person in the
7 Berkeley County Sheriff's Department. Well, first he
8 admitted that he -- as the person involved on the
9 case, had a continuing responsibility and had
10 continuing duties as it relates to the investigation
11 and prosecution of this case, which I'm happy to know
12 that 598 pages of facebook stuff -- sale of clonapin,
13 sale of OxyContin, sale of marijuana, sale of aderal,
14 sale of opanas. No answer. I don't even know what to
15 say about Lieutenant Ashe.

16 We've talked about Mr. Ballard.

17 So my client's mother gets on the stand. You
18 might not like me. You might think that I talk too
19 slow sometimes, that I fumble around with papers. You
20 might think that I have taken up more time than is
21 necessary on certain issues. You might think a lot of
22 things about me. But I would ask that you not think
23 this about me: that I failed to attempt to show you a
24 full picture in this case so that you can make a
25 decision, an important decision.

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1 Kidnaping. We're not talking about a bad-check
2 charge. Kidnaping. Don't you need the full picture
3 to decide a kidnaping case? Don't you need the full
4 picture to decide an armed robbery case? You might
5 not like me. I might be boring, I might be slow, I
6 might fumble papers around, but I don't think you can
7 say that I've not tried to give you the full picture.
8 So at some point everybody just gets tired. They just
9 get tired.

10 I put my client's mother up there. She was
11 there. You heard about it. You heard on a limited
12 basis that she was there during that initial meeting
13 between Jessica Clark and Lieutenant Ashe. She was
14 there. She drove her there. Very important. I want
15 y'all to think through this in a big way. She drove
16 her home from there, as well, that same day. She was
17 there in that conversation for forty-five minutes.
18 For forty-five minutes. And the prosecutor doesn't
19 want you to know -- doesn't want you to have Ms.
20 Adams' recollections of that meeting and objected
21 strongly.

22 Jessica Clark is here today because she involved
23 herself on the facebook world of Andre Mendoza. I
24 said in my opening, and I'll say it before I sit down,
25 you've got to call them the way they are. You can't

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1 hide from things that are reality. The reality was
2 there was a crime that was committed that night. But
3 it's not before you today. The crime that was
4 committed that night was that she was attempting to
5 purchase marijuana, as was Andre Mendoza. There was a
6 crime committed.

7 Jessica Clark friended the wrong guy on
8 facebook. Jessica Clark involved herself in the world
9 of Andre Mendoza and his former roommate. But you,
10 ladies and gentlemen of the jury, have not been let
11 into this facebook world. You, ladies and gentlemen
12 of the jury, have been unfriended. You've been
13 blocked. You've been denied access to the very
14 information that is requisite for you to make a
15 finding beyond a reasonable doubt in this case.

16 I thank Madam Solicitor for going through such a
17 detailed review of the definitions of all of these
18 crimes that my client has been charged with. You're
19 going to hear the judge. He's going to go through the
20 details with you. And that's really where it matters,
21 is what he says, what -- you know, my -- if I were to
22 try to describe to you what the law is in this case,
23 it's just not my place. It's for the judge to do and
24 he's going to do that.

25 Can a house stand with a faulty foundation? Can

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1 you build anything with lumber that is riveted with
2 holes? You can't do it. If my grandfather was here,
3 this is what he would say: that all is garbage and
4 just needs to be torn down. I'm asking you to tear
5 down the front stoop. Okay? I'm asking you to tear
6 down the front stoop. And here's how you tear down
7 the front stoop. It's real simple. You walk into the
8 jury room, you take a look at this facebook stuff, you
9 take a look at Andre Mendoza -- because you've got a
10 picture of him. You get to see him back in October of
11 2010. You get to see pictures of him spanning through
12 all of this time frame, right on up to the present.
13 You get the -- you get to take a peak of just the
14 front page of his current business -- well, he says
15 it's the same facebook. So the same facebook but in
16 its current view.

17 I want you to look at all of that and I want you
18 to come back out here and I want you to say that
19 Jessica Clark is not guilty on all charges. Thank
20 you.

21 THE COURT: Madam Forelady and ladies and
22 gentlemen of the jury, we've been going for about an
23 hour and a half now. Please feel free to stand up and
24 stretch, if you would, before we have the final
25 closing arguments.

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1 If anybody needs to take a short bathroom break,
2 I'll be happy to do it at this time. If you do need
3 to, raise your hand and we'll do that.

4 All right. One gentleman needs to do that. The
5 rest of you can stand and stretch while he's doing
6 that.

7 [Whereupon, a recess is taken from 11:55 a.m. to
8 11:59 a.m.]

9 THE COURT: All right. Solicitor?

10 MS. CORNWELL: Thank you, Your Honor. May it
11 please the Court.

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CLOSING ARGUMENT

1
2 MS. CORNWELL: At the very beginning of this
3 trial I told you that the State would present
4 testimony and evidence to prove to you beyond a
5 reasonable doubt that those two defendants committed
6 the crimes of kidnaping, armed robbery, assault and
7 battery in the first degree, and possession of a
8 firearm during a violent offense. The State has done
9 just that.

10 You heard testimony from Luz Rodriguez, who is
11 Andre's mother. She testified and told you that she
12 went to bed that night after the news, told Andre to
13 stay home, heard him go out -- because mothers have
14 that intuition -- looked out the blinds, saw Andre
15 getting into Jessica's car and drive off.

16 A little while later she was awoken in the
17 middle of the night. He was beating on the door. He
18 was wearing nothing but his boxer shorts in the middle
19 of January -- beginning of January, the middle of the
20 night, freezing cold weather, nothing but his boxers.
21 He was shaking, he was beaten, he was crying. He told
22 her what happened and then he called 911. Police and
23 ambulance responded. Took a statement from him.

24 Then she told you she couldn't sleep. As a
25 mother, she couldn't believe somebody would do this to

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1 her child. It bothered her. She wanted to go and
2 find out what really happened. I'm not a mother but I
3 have a mother and I know exactly what she was doing.
4 My mother used to always bother me. Wanted to know
5 all the answers, wanted to know all the information.

6 She told Andre, we're going to drive by the
7 house, I want to see, I want to know. Andre begged
8 her not to. His mom was scared. They have guns;
9 they're dangerous people; you don't know these people;
10 I do; they're dangerous and they will hurt us. Didn't
11 want to go.

12 Ms. Rodriguez told him she was going, she was
13 going to find out what happened, she was going to find
14 out why that girl got her son caught up in all this.
15 He didn't want her to go alone so he drove her out
16 there. And you heard both her and Andre testify he
17 wouldn't get too close. He took her to the cul-de-sac
18 and they looked down the street. And Ms. Rodriguez
19 testified that she saw the same burgundy Ford Contour
20 that Andre got into, at the beginning of the night,
21 sitting in Mr. Newman's driveway from the house. She
22 wanted to go in the driveway and take a picture but
23 Andre wouldn't let her. He was scared.

24 You then heard Andre testify. He told you that
25 Jessica Clark sought him out on facebook, found him,

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1 massaged him about a day or two before this happened.
2 She arranged to meet with him that night. She set him
3 up. She came to his house. She picked him up. She
4 put him in his car -- in her car. She enticed him,
5 told him she was going to give him sex, they would go
6 buy a little bit of marijuana. It sounded like a
7 great night to Mr. Mendoza. And as they're driving
8 down, she takes him to a desolate, dark dirt road.

9 As he's driving down the dirt road he sees three
10 guys wearing hoodies right before Jessica Clark
11 decides, I'm going to turn off my headlights now.
12 This is when Andre noted something is wrong, something
13 is not right. He's already given her gas money and
14 he's already given her five dollars for the marijuana
15 that they were going to go purchase. Remember when
16 she messaged him, she wanted to find out if he had any
17 money to begin with. She was already setting him up.

18 So Andre takes the little bit of money that he
19 has left and he puts it in his sock because he knows
20 something is wrong. Tries to open the car door, tries
21 to get out. The car doors are locked. Can't open the
22 doors, can't roll down the windows.

23 Jessica then stops the car and after she stops
24 the car, she rolls down the back passenger window.
25 Andre can't roll down the window. Andre can't get out

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1 of the car. The doors are locked. The windows are
2 locked. Jessica had access to the door locks and
3 Jessica had access to the window locks. Rolls the
4 passenger door -- the back passenger window down.
5 Andre feels something at the back of his head and he
6 turns around and it's a gun.

7 MR. BIERING: Your Honor --

8 MS. CORNWELL: At that time --

9 THE COURT: Yes, sir?

10 MR. BIERING: I have an objection. Can I
11 approach?

12 THE COURT: Yes, sir.

13 [Whereupon, a bench conference is held as
14 follows]

15 MR. BIERING: There's no testimony that
16 says that my client rolled the back window down.
17 I'll be happy to show --

18 THE COURT: That's the logical conclusion.
19 She's just arguing that conclusion from it,
20 because she had control of the windows. That's
21 all.

22 MR. BIERING: I think it's a misstatement
23 of facts of the record. Be happy to --

24 THE COURT: Well, she can -- she can draw a
25 conclusion from the facts that are in the

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1 record. Okay?

2 Objection is overruled.

3 MR. BIERING: Thank you, Your Honor. Is
4 that on the record?

5 THE COURT: Yeah.

6 MR. BIERING: It is? Thank you.

7 That is -- it's page 10 in the transcript.

8 THE COURT: Pardon?

9 MR. BIERING: Page 10 in the transcript.

10 THE COURT: Okay.

11 MR. BIERING: Thank you.

12 [Whereupon, the bench conference concludes]

13 THE COURT: Objection is overruled.

14 MR. BIERING: Thank you, Your Honor.

15 THE COURT: Please proceed, solicitor.

16 - - - - -

17 CONTINUED CLOSING ARGUMENT

18 MS. CORNWELL: Where were we? Oh, yeah. We
19 were talking about how Jessica had locked Andre in the
20 car and had access to the windows; how Jessica rolled
21 down that back window and Andre felt a gun at the back
22 of his head. Ryan Newman then opened the car door,
23 hit him with the pistol, and forced him out of the
24 car. Hit him again and Andre stumbled to the back and
25 told you he eventually fell on the ground. While he

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1 was on the ground, brake lights still glowing, Jessica
2 had her foot on the brake, sitting there, waiting
3 patiently, as Ryan hits Andre in the head with the
4 gun, kicks him, while his other friends are going
5 through his pockets, taking his cell phone, taking his
6 wallet, taking his keys. They know he has money on
7 him. They can't find the money so they decide to
8 strip him of his clothes. And you remember Andre told
9 you they finally found the money when they took his
10 pants and ripped them off his legs. It caught his
11 sock and his money came flying out. They took the
12 money and at that point they all jumped in Jessica's
13 car where Jessica is still sitting with her foot on
14 the brake, waiting on them, and Jessica drove them all
15 off, leaving Andre on the side of the road naked and
16 beaten in the middle of January, middle of the night,
17 thirty-degree weather.

18 Andre had to walk, get a ride home. And when he
19 did, he couldn't get in his house. He didn't have any
20 keys. Didn't have anything. So he had to beat on the
21 door until his mom opened it up. When his mom opened
22 the door up, he told her what happened. And what did
23 he do? He asked for her phone so he could call the
24 police, so he could call 911, and report what
25 happened.

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1 Police came out. The EMS came out. He told
2 them the same story. He was robbed, he was beaten.
3 He knew who it was. He told you he knew who it was
4 because while he was in the back being kicked in the
5 head, he felt a monitor hitting him in the head. He
6 saw the face in the brake light. He recognized the
7 voice. It was Ryan Newman. He used to live with
8 Ryan. He knew Ryan had to wear that monitor because
9 he had saw him charging it up. He knew he recognized
10 the voice. And that's when it all made sense to him.

11 He tells the police the three suspects robbed
12 him. He tells them that two of them were Ryan and
13 Shane, had lived with them. Tells EMS he got hit in
14 the head with a gun, that he got kicked. Then he
15 tells them the same thing his mom told you: that his
16 mom wanted to go and see; his mama wanted to find out
17 what happened; that he was scared and drove her out
18 there anyway because he didn't want her to get in any
19 trouble. And sure enough, he saw the same thing she
20 did: Jessica's car is in front of Ryan's house.
21 She's spending the night.

22 He goes to the police station the next day,
23 files a report, gives a written statement, talks to
24 the detective. He did the right thing. He did the
25 right thing.

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1 You also heard testimony from Chelsea Arrowood,
2 who was the EMT. She corroborated Mr. Mendoza's
3 statement. Said that his injuries were consistent
4 with his story, that he had been beaten, pistol-
5 whipped, hit with a blunt object.

6 You also heard testimony from Deputy Wells. And
7 Deputy Wells was reading from his report. We showed
8 the report to counsel. Deputy Wells also stated that
9 Andre said that he was robbed at gunpoint, that he was
10 beaten, that he was stripped, that his cell, that his
11 wallet and his keys and his money were taken. Three
12 people did it. Ryan and Shane were two of them.

13 We heard from Deputy -- or Lieutenant Ashe.
14 Lieutenant Ashe told you that Andre came to the
15 station, gave a statement, told him about the GPS
16 monitor. He came to the station with his cousin. He
17 went to Ryan's house with his mom at his mom's
18 insistence, but his cousin went with him to the police
19 station. He wrote the statement and he went home.

20 And you heard from Larry Ballard. And Larry
21 Ballard told you --

22 Well, first of all, let's go back to Lieutenant
23 Ashe, because Lieutenant Ashe also corroborates that
24 Andre was robbed. Told him he was robbed, told him he
25 was beaten. Lieutenant Ashe also saw the injuries

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1 that Chelsea Arrowood saw, that Luz Rodriguez saw and
2 that Deputy Wells saw. They saw exactly what he said:
3 that he got hit here. He was swollen in the eyes. He
4 had abrasions to the side of his head. Had a knot on
5 the back of his head.

6 You heard from Larry Ballard, the GPS monitoring
7 company. This crime was reported on Wide Awake Circle
8 sometime between 1:00 and 1:30 in the morning. Larry
9 showed you exactly where that GPS monitor places Ryan
10 Newman on January 6th, 2011, between 1:00 and 1:30 in
11 the morning. Right there on Wide Awake Circle.

12 Now, defense counsel told you a lot of things in
13 this case. At the very beginning, Mr. Shelton
14 explained to you this walk of shame that he knew about
15 and how sometimes people get embarrassed, they'll make
16 things up and come up with a lie. He told you about
17 his own experience with some girl named Jessica -- he
18 sang a cute little song for you.

19 But as jurors, what you bring to this table is
20 the most important thing, and that's your common
21 sense. And if you ask yourselves would it make any
22 sense in the world for somebody to leave their keys,
23 their wallet, their cell phone, their money, strip
24 themselves naked because -- I don't know about you,
25 but with the walk of shame, I think that there's still

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1 clothes when they walk home the next day; it's usually
2 just in the same clothes they wear the night before.
3 I don't know of anybody that really walks down the
4 street in just their underwear in the middle of
5 January as a walk of shame. But that's his theory
6 that and if -- he walked home in the middle of the
7 night, nothing but his boxer shorts, freezing cold.
8 Threw all his other stuff away. Couldn't get in the
9 house so he had to knock on the door, and mom saw, so
10 he was embarrassed so he decided to make this story
11 up. He decided to make this story up and take it so
12 far that he hit himself and gave himself some
13 injuries, that he decided to call the cops and put
14 himself through admitting to the cops that he was
15 going out to purchase marijuana, had an EMS come out,
16 showing his mom the people that he thought did it,
17 going to the police station the next day to continue
18 this supposed fabrication, met with my office several
19 times, came up here and sat through a whole week of
20 trial, got on that stand, testified for a full day,
21 got interrogated for a full day, just so he could
22 cover up a booty call so his mom doesn't figure it
23 out. Common sense. That doesn't make any sense.

24 You also heard from the defense attorneys that
25 they wanted you to get to know Andre Mendoza really

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1 well. They went through some exhaustive testimony
2 from what seemed like the past decade of his life,
3 just about every day that he's ever had, except for
4 January 6th, 2011. We didn't hear a whole lot about
5 that. I think he asked two questions and those two
6 questions were: were you in the car with Jessica
7 Clark; and were you on the way to purchase marijuana.

8 Andre doesn't have any reason to lie to you. He
9 didn't lie to you. He said, yes, I was going to get
10 marijuana. He admitted to you, before any of this
11 questioning, that he smokes marijuana, he's done it as
12 recently as a week ago, and that he's sold marijuana
13 in the past. He admitted that to you fully.

14 Defense counsel wants to get on the fact that
15 when asked about violations of the law, he only
16 admitted to the burglary third. And I will stipulate
17 to you that that is a mistake that I made. I'm a
18 young attorney. I'm not as experienced as some. And
19 I made an error in law in advising him what he had to
20 testify to based on what was on his rap sheet. And
21 the judge instructed to you, and we stipulated, and he
22 said that wasn't trying to intentionally deceive you.
23 That was a mistake I made and I hope you don't think
24 that he was lying to you and you hold that against
25 him.

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1 But while Andre was on the stand, after he's
2 already admitted the marijuana, the selling, the drug
3 use, we go through this exhaustive testimony of every
4 day except for the date that this occurred. Nothing
5 that was relevant to the day that this occurred,
6 nothing that's relevant to these crimes, that's what
7 we wanted to go through. That's what we went through
8 in an exhaustive amount, because he wanted to paint
9 the victim as the bad guy. He wants to make Andre the
10 bad guy. He wants to make him out to be a liar.

11 But Andre has never lied on that stand to you.
12 He told you what happened. And, in fact, at one point
13 the jury had to go out and come back in. And before
14 the jury went out I had Mr. Mendoza explain what
15 happened that night and then when you came back in I
16 had him explain it again. Nothing deviated. Nothing
17 deviated from then, nothing deviated from what he told
18 Ms. Arrowood, the EMT, nothing deviated from what he
19 told Deputy Wells, nothing deviated from what he told
20 Lieutenant Ashe.

21 Defense counsel gave you a quote, a Mark Twain
22 quote, that you don't have to remember the truth, it
23 just -- it's the truth, it's a lie that you have to
24 really remember all the details. Andre Mendoza is
25 telling the truth. Hasn't deviated, hasn't had to

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1 think of anything.

2 Defense counsel wants to say that Jessica is not
3 involved, she was just there to purchase marijuana. I
4 would stipulate to you that but for Jessica, this
5 would never have happened.

6 Andre testified and told you he used to live
7 with Ryan Newman and when he moved out, Ryan was
8 angry. Because of Ryan and the type of people he
9 hangs out with and his crowd, you don't just get to
10 leave when you want. Ryan determines when you get to
11 leave and how you get to leave his group of friends.
12 Andre told you they were doing things he didn't want
13 to be involved with anymore. He had been in trouble
14 in the past. He didn't want to get in trouble anymore
15 and he wanted to leave. Ryan didn't want him to
16 leave. Once you're in, you're in.

17 So Ryan inspired Jessica. Jessica found Andre
18 on facebook. Jessica set this up. Jessica drove
19 Andre out there. Jessica helped Ryan get in the car
20 to get to Andre. Jessica sat there with her foot on
21 the brake patiently waiting as Ryan and the rest of
22 his buddies beat and robbed Mr. Mendoza. Jessica then
23 allowed all of them to jump in the car. She drove
24 them to Ryan's house and she spent the night with him.
25 That doesn't sound like a victim to me.

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1 At the beginning of this, we went through some
2 law. And I'm going to take a brief moment now to go
3 through the law with you and show you how the State
4 has proven each and every element of each and every
5 crime beyond a reasonable doubt, because that is our
6 burden.

7 We talked about kidnaping. We talked about it
8 was the unlawful seizure, confining, inveigling,
9 decoying, abducting or carrying away a person by any
10 means without authority of law.

11 We talked about seizure, when the kidnaper takes
12 control of the person through force. Well, Andre
13 testified that Ryan put a gun to the back of his head
14 and opened the door, forcing him to get out of
15 Jessica's car. I would stipulate to you that that's
16 seizing.

17 Confining is when a kidnaper unlawfully deprives
18 the kidnaped person of his freedom. Again, Andre
19 testified that all the doors and windows in Jessica's
20 cars [phonetic] were locked, he couldn't get out until
21 Jessica rolled down the back passenger window and Ryan
22 put a gun to the back of her [phonetic], opened the
23 door and forced him out of the car.

24 We talked about inveigling and how it's to
25 seduce, indice [phonetic], and decoy and that the fact

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1 that the victim voluntarily went with the kidnapper
2 because of the kidnapper's deceit is of no
3 significance. Andre testified to you that the reason
4 he got in Jessica's car is because she promised him
5 sex.

6 In order to prove each and every element of this
7 crime, the State has to prove that, one, there was an
8 unlawful seizure or a confining or inveigling or
9 decoying or abducting or carrying away. The State
10 only has to prove one of those six. The State has
11 proven at least three of six. It has to be of a
12 person -- well, Andre is a person -- by any means and
13 that can be deception, use of a firearm, use of force.
14 We had all of those in this. And without authority of
15 law. And what that means is there's no lawful reason
16 for them to keep him there.

17 They're charged with armed robbery. Armed
18 robbery is a taking. Andre testified that Ryan and
19 others searched through his pockets and took his
20 wallet, his keys, his money, his phone, then stripped
21 him of his clothes all the way down to his boxers.
22 Took all of those and then jumped into Jessica's car,
23 where she was waiting to drive them away. Carrying
24 away of. Well, again, Andre testified that after they
25 took all of his stuff, they jumped in the car and

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1 drove off with all those things. So they carried them
2 away. They carried away his personal property:
3 wallet, keys, cell phone, money, shirt, jacket, pants.
4 All of those are personal property.

5 It was of another. It was of Andre.

6 They had the intent to deprive him of his
7 possessions. Clearly if they're going to beat him and
8 take his things at gunpoint, they don't have any
9 intention of ever returning these things.

10 By use of force, threats, or intimidation:
11 well, I would say that a gun is being pointed at the
12 back of your head, being pistol-whipped, kicked
13 repeatedly, being stripped of your clothes, that's
14 force.

15 And while armed with a deadly weapon: and here
16 Andre has testified again that there was a gun
17 involved. At least one gun.

18 Assault and battery in the first degree the
19 State has to prove that they unlawfully injured
20 another. Well, Andre testified that he was pistol-
21 whipped and repeatedly kicked in the head. Luz
22 testified that Andre was beaten, bruised, and crying.
23 You heard Chelsea testify that Andre had injuries in
24 his head consistent with a blunt-force trauma. Deputy
25 Wells testified that there was redness under Andre's

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1 eye and Andre complained of dizziness and headaches.
2 And Lieutenant Ashe testified that Andre had abrasions
3 along the right side of his head, swollen eyes, and a
4 knot in the back of his head.

5 In addition to this element, we have to show
6 that it occurred during the commission of a robbery,
7 kidnaping or theft. Andre has testified that he was
8 confined inside Jessica's car until Jessica rolled
9 down the back window where Ryan put a gun to the back
10 of Andre's head. Ryan opened the door, forced Andre
11 out of the car, pistol-whipped and kicked him --

12 MR. BIERING: Your Honor --

13 MS. CORNWELL: -- then took his keys --

14 MR. BIERING: I have an objection --

15 MS. CORNWELL: -- his wallet, his phone --

16 MR. BIERING: -- can I approach?

17 MS. CORNWELL: -- his money and his --

18 THE COURT: Pardon?

19 MR. BIERING: I have an objection. May I
20 approach?

21 THE COURT: Yes, sir.

22 [Whereupon, a bench conference is held as
23 follows]

24 MR. BIERING: Your Honor, I understand the
25 Court's ruling that she can draw conclusions

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1 from the testimony. What she just stated was
2 that Mr. Mendoza testified that she rolled the
3 window down. That is just a misstatement of the
4 witness' testimony and the evidence that has
5 been presented in this court and I don't think
6 that in closing you can --

7 THE COURT: If you said he testified to
8 that, clear that up however you want to clear it
9 up. Okay? I'll sustain that objection --

10 MS. CORNWELL: Okay.

11 THE COURT: -- if it's not in that
12 transcript.

13 MR. BIERING: I would like the Court --

14 THE COURT: Just clear it up. I mean, the
15 logical conclusion is --

16 MS. CORNWELL: Okay. I can do that, Your
17 Honor.

18 THE COURT: -- the doors were locked.

19 She had to lock them. Nobody else could
20 put the window down without unlocking the door.
21 And that's a conclusion she can draw. I have no
22 problem with that.

23 MR. BIERING: No. I understand can draw
24 conclusions. But can't misstate the testimony.

25 THE COURT: I have a problem with --

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1 MR. BIERING: Thank you.

2 THE COURT: -- the State misquoting
3 testimony.

4 MR. BIERING: Thank you very much, Your
5 Honor.

6 [Whereupon, the bench conference concludes]

7 - - - - -

8 CONTINUED CLOSING ARGUMENT

9 MS. CORNWELL: It states up here that Andre
10 testified he was confined inside Jessica's car until
11 Jessica rolled down the back window. Andre never said
12 Jessica rolled down the back window. His testimony
13 was that he couldn't roll down the windows, he
14 couldn't open the doors, and then the back window
15 rolled down and a gun was put in the back of his head.
16 There are two people in that car: Andre and Jessica.
17 Andre said he didn't roll down the window. I would
18 assume that that would mean Jessica rolled down the
19 window. But that's your conclusion to draw.

20 They took his keys, his wallet, his phone, his
21 money. They took all of this after they beat him
22 during the commission of their robbery and kidnaping.

23 I told you there's a couple of ways that you can
24 prove assault and battery. The other way is to show
25 that it was by means likely to produce death or great

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1 bodily injury. Andre testified he was pistol-whipped
2 and repeatedly kicked in the head. I stipulate to you
3 that any time a gun is involved, there's the
4 likelihood of death or great bodily injury not only to
5 the person involved but when there's a gun there's
6 also a danger to anybody in that area of that gun
7 going off.

8 And that, again, that it occurred during the
9 commission of a robbery, kidnaping or a theft. I
10 think we've gone over that pretty extensively.

11 The last charge they're charged with is
12 possession of a firearm during the commission of a
13 violent offense. Here if you decide that the
14 defendants are guilty of committing or attempting to
15 commit a violent crime -- and in this matter a violent
16 crime is armed robbery or kidnaping. If you find that
17 he's guilty of armed robbery -- find that either one
18 of them is guilty of armed robbery, then they're also
19 guilty of possession of a firearm during the
20 commission of a violent offense because armed robbery
21 is a violent offense and in order to get to armed
22 robbery, you have to find that a firearm has been
23 involved.

24 You can also find that they were in possession
25 of a facebook during the commission of a violent

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1 offense if you commit them guilty of kidnaping because
2 kidnaping, under state statute, is considered a
3 violent offense. And again, just to reiterate, Andre
4 has testified that Ryan had a gun.

5 Talked about the hand of one, the hand of all,
6 and how one person does something and the other person
7 is culpable for it. I would stipulate to you that
8 Jessica and Ryan conspired together to set up Andre.
9 If not for Jessica luring Andre in her car and taking
10 him to where Ryan and the others were waiting, none of
11 this would have occurred. Jessica kidnaped Andre in
12 her car, took him to the incident location, confined
13 him in the car until Ryan could come up to the car
14 where the back window is rolled down and Andre is
15 forced out of the car at gunpoint. She then sat there
16 with her foot on the brake and patiently waited while
17 Ryan and the other suspects beat and robbed Andre.

18 MR. BIERING: Your Honor --

19 MS. CORNWELL: Once Ryan --

20 MR. BIERING: I apologize for interrupting but
21 the presentation is in direct violation of what the
22 Court just ruled as it relates to testimony.

23 MS. CORNWELL: There's nothing that says that he
24 testified to anything.

25 THE COURT: Overruled. Go ahead.

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1 MR. BIERING: Thank you, Your Honor.

2 MS. CORNWELL: Thank you, Your Honor.

3 THE COURT: Thank you very much.

4 MS. CORNWELL: Again, Jessica sat there
5 patiently, with her foot on the brake, waited for them
6 to rob him, waited for them to beat him. And then
7 when they were done, they jumped in her car, she drove
8 them away, leaving Andre naked on the side of the road
9 while she went to Ryan's house and spent the night.
10 That's the hand of one, hand of all. Whatever you
11 find Ryan guilty of, you should also find Jessica
12 guilty of.

13 A person doesn't act in the presence of another
14 with the assistance of another. The act is done by
15 both. Ryan and Jessica were both at the crime scene.
16 Both actively participated in the crimes. Therefore,
17 Jessica and Ryan are both guilty of kidnaping, armed
18 robbery, assault and battery in the first degree, and
19 possession of a firearm during the commission of a
20 violent offense.

21 Based on the testimony you've heard and the
22 evidence as presented to you, the State has proven
23 beyond a reasonable doubt that Ryan Newman is guilty
24 of kidnaping, Ryan Newman is guilty of armed robbery,
25 Ryan Newman is guilty of assault and battery in the

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1 first degree, and Ryan Newman is guilty of possessing
2 a firearm during the commission of a violent offense.

3 Based on the testimony and the evidence that you
4 have before you, the State has also proven that
5 Jessica Clark is guilty of kidnaping, Jessica Clark is
6 guilty of armed robbery, Jessica Clark is guilty of
7 assault and battery in the first degree, and Jessica
8 Clark is guilty of possessing a firearm during the
9 commission of a violent offense.

10 Thank you.

11 THE COURT: Thank you, ma'am.

12 Madam Forelady, ladies and gentlemen of the
13 jury --

14 MR. BIERING: Your Honor, can I approach on one
15 issue?

16 THE COURT: Yes, ma'am. Yes, sir.

17 MR. BIERING: Thank you, Your Honor.

18 [Whereupon, a bench conference is held as
19 follows]

20 MR. BIERING: I agree that you can draw
21 conclusions, but here's the -- here's the -- you
22 can't misstate facts. And the only testimony
23 was that -- that there was seen that the vehicle
24 --

25 THE COURT: There was what, now?

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1 MR. BIERING: There was only testimony --
2 okay. Let's take ourselves outside of this
3 court and let's take ourselves into a court
4 where this issue is regularly looked at.

5 THE COURT: Well, just tell me what you
6 object that she did.

7 MR. BIERING: I object because there is no
8 testimony to support the logical conclusion of
9 spending the night.

10 There is a plethora of law as it relates to
11 spending the night, because it goes to the issue
12 of adultery and --

13 MS. CORNWELL: Defense counsel -- because
14 he's the one that said that --

15 MR. BIERING: And I'm -- and --

16 THE COURT: Your objection is --

17 MR. BIERING: But here's --

18 THE COURT: -- she said she spent the night
19 --

20 MR. BIERING: Because there's only
21 testimony that there was a visualization of the
22 car there with one snapshot of time. That's the
23 only testimony. There is no testimony that
24 there is --

25 If I can finish, Your Honor. I believe

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1 it's on the record.

2 There is no testimony that she entered
3 their house. There is no testimony --

4 THE COURT: Well, that's --

5 MR. BIERING: -- that she was ever seen
6 exiting the house.

7 THE COURT: -- that's argument.

8 The conclusion that can be drawn: when they
9 got in the car and drove away with Jessica in it
10 and the next morning -- at 1:30, two o'clock in
11 the morning --

12 What time was it?

13 MS. CORNWELL: Four o'clock in the morning.

14 THE COURT: What time?

15 MS. CORNWELL: They went by the house
16 around four o'clock in the morning.

17 THE COURT: Four o'clock, three or four
18 hours later --

19 MR. BIERING: They saw a car.

20 THE COURT: -- you can draw a conclusion.

21 Okay?

22 MR. BIERING: It's a misstatement of facts.

23 THE COURT: Objection is overruled. Okay?

24 MR. BIERING: Thank you, Your Honor.

25

- - -

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CHARGE OF THE COURT -

THE COURT: All right. Madam Forelady, I instruct you and emphasize that the fact that the defendants in this case did not elect to testify on their own behalf is not a factor to be considered by you in any way in your deliberations and in your consideration of the question of the guilt or innocence of the defendants. It must not be considered by you in any manner whatsoever.

A defendant has a constitutional right to remain silent and the assertion of this right must not be considered by you in your deliberations. I repeat: under your oath, you are to draw no conclusion whatsoever from the fact that the defendants in this case did not testify. The fact that this defendant did not testify should not even be discussed in the jury room. The burden of proof, as I stated to you earlier, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove the guilt beyond a reasonable doubt.

Now, I've allowed I believe two or three of you to take notes. You've been obligated to take -- you are not obligated to take notes but if you've taken notes, they should be used only as memory aids. You should not give your notes precedence over the independent recollection of the evidence. If you chose not to take

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1 notes, you should rely on your own independent
2 recollection of the proceedings and you should not be
3 influenced by the notes of other jurors. I emphasize that
4 notes are not entitled to any greater weight than the
5 recollection or impression of each juror as to what the
6 testimony may have been. They're your personal notes.
7 You may keep them yourselves or you may return them to the
8 clerk and the clerk will destroy them for you.

9 Now, I will give you a copy of these
10 instructions, that I'm reading to you now, in written
11 form. During your deliberations you may refer to the
12 instructions to guide your decision-making. You must
13 consider the instructions as a whole and not follow some
14 and ignore others.

15 Please return the instructions to the Court,
16 Madam Forelady, after you have reached a verdict.

17 The defendant has pled not guilty -- the
18 defendants has pled -- have pled not guilty to these
19 indictments, which places the burden on the State to prove
20 the defendant guilty. A person charged with committing a
21 criminal offense in South Carolina is never required to
22 prove himself innocent.

23 I charge you it is a vital important rule of law
24 that the defendant in a criminal trial, no matter what the
25 seriousness of the charge may be, must always be presumed

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1 to be innocent until his guilt has been proven beyond a
2 reasonable doubt. This presumption of innocence remains
3 with the defendant at all times from the moment he appears
4 in this court, throughout the trial, until you the jury
5 reach a verdict of guilty beyond a reasonable doubt based
6 on the testimony and evidence produced.

7 The presumption of innocence is a substantial
8 right to which every defendant is entitled unless and
9 until you reach a verdict of guilt beyond a reasonable
10 doubt. If you the jury do not find the defendant guilty
11 beyond a reasonable doubt, it's your duty to acquit the
12 defendant.

13 Now, what is reasonable doubt? A reasonable
14 doubt is the kind of doubt that would cause a reasonable
15 person to hesitate to act. The State has the burden of
16 proving the defendant guilty beyond a reasonable doubt.
17 Some of you may have served as jurors in civil cases where
18 you were told it's only necessary to prove a fact is more
19 likely true than not true, such as a greater weight or
20 preponderance of the evidence. In criminal cases, the
21 State's proof must be more powerful than that. It must be
22 beyond a reasonable doubt. Proof beyond a reasonable
23 doubt is proof that leaves you firmly convinced of the
24 defendant's guilt. There are very few things in this
25 world that we know with absolute certainty. In criminal

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1 cases, the law does not require proof that overcomes every
2 possible doubt. If based on your consideration of the
3 evidence you're firmly convinced that the defendants are
4 guilty of the crime charged, you must find the defendants
5 guilty. On the other hand, if you think there's a real
6 possibility that the defendants are not guilty, you must
7 give them the benefit of the doubt and find the defendants
8 not guilt -- or defendant not guilty.

9 Direct and circumstantial evidence. There are
10 two types of evidence which are generally presented during
11 a trial. Direct evidence: the testimony of a person who
12 claims to have actual knowledge of a fact, such as an eye
13 witness, is evidence which immediately establishes the
14 main fact to be proven. Circumstantial evidence is proof
15 of a chain of facts and circumstances indicating the
16 existence of a fact. It is evidence which immediately
17 establishes collateral facts from which a main fact may be
18 inferred. Circumstantial evidence is based on inference
19 and not on personal knowledge or observation. The law
20 makes absolutely no distinction between the weight or
21 value to be given to either direct or circumstantial
22 evidence, nor is a greater degree of certainty required of
23 circumstantial evidence than of direct evidence. You
24 should weigh all of the evidence -- you should weigh all
25 the evidence in the case. After weighing all of the

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1 evidence if you're not convinced of the guilt of the
2 defendant beyond a reasonable doubt, you must find a
3 defendant not guilty.

4 The evidence or lack of evidence from which you
5 are to decide the facts include the following: the sworn
6 testimony of the witness, both on direct and cross-
7 examination, regardless of which side called the witness;
8 the exhibits that have been received into evidence by the
9 Court; and any facts agreed or stipulated to by all the
10 attorneys.

11 The following things are not evidence and you
12 may not consider them in deciding the facts. Arguments
13 and statements made by the lawyers are not evidence. The
14 lawyers are not witnesses. Their opening statements,
15 closing arguments and other statements are intended to
16 help you interpret the evidence but are not evidence. If
17 the facts as you remember them differ from the lawyers'
18 statements, your memory controls. Questions and
19 objections by the lawyers are not evidence. Lawyers have
20 a duty to their client to make objections when they
21 believe a question is improper under the rules of
22 evidence. You should not allow any objection, or the
23 Court's ruling on the objection, to influence you.
24 Testimony that's been stricken or that you've been
25 instructed to disregard is not evidence and must not be

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1 considered. Anything you may have seen on television,
2 read in the newspaper, on the internet, or heard from
3 others when court is not in session is not evidence. You
4 should base your decision solely on the sworn testimony of
5 the witnesses, the exhibits received into evidence by the
6 Court, and any facts agreed or stipulated by the -- all of
7 the attorneys.

8 The fact the defendant was arrested, charged and
9 indicted in this case is not evidence and cannot be
10 considered as evidence of guilt, nor does it create any
11 presumption or inference of guilt. The indictment is
12 simply a written instrument form which contains the
13 charges made by the defendant [phonetic].

14 Under the constitution and code of laws only
15 you, the jury, can make findings of facts in this case.
16 I'm not permitted to indicate to you how I may feel about
17 the testimony and evidence which has been presented.
18 Throughout this trial, it's been my intention to be fair
19 and impartial with each of the parties involved.

20 Necessarily, you must determine the credibility
21 of the witnesses who have testified. Credibility simply
22 means believability. It is your duty as jurors to analyze
23 and evaluate the evidence to determine which evidence
24 convinces you of its truth. As you decide whether or not
25 to believe a witness' testimony about a particular matter,

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1 you may consider the following: the manner and appearance
2 of the witness while on the witness stand; was he or she
3 straightforward or hesitant in answering; the testimony of
4 the witness, was it consistent or inconsistent; how the
5 witness came to know the facts that he or she testified
6 to; was the witness present during the incident or did the
7 witness happen on the scene after the incident occurred;
8 the reason the witness would want to give testimony which
9 would help or hurt one side or the other; has the witness
10 exhibited to you any interest, bias, prejudice, or other
11 motive in this case, thus you may consider whether a
12 particular witness may gain some reward, payment, personal
13 advantage, or vindication through his or her testimony,
14 the strength of the testimony of the witness; was the
15 testimony of the witness strengthened or weakened by other
16 testimony and evidence. The duration and length of time
17 between the incident and when they were reported: would
18 the duration and length of time weaken or strengthen the
19 witness' memory of the incident. All prior statements:
20 were prior statements made by the witness consistent and
21 consistent with the witness' testimony.

22 In determining the believability of the
23 witnesses who have testified in this case, you may believe
24 one witness against several witnesses or several over one.
25 You may believe a part of the testimony of a witness and

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1 reject the remaining part of the testimony of the same
2 witness. You may believe the testimony of a witness in
3 its entirety or reject the testimony of a witness in its
4 entirety. Of course, you should not determine the truth
5 by merely counting the number of witnesses presented by
6 both -- each side. Throughout the process, you have one
7 objective: to determine the truth.

8 The same constitution which designate and make
9 you the finders of the fact make me the sole instructor of
10 the law. It's my duty to charge you law applicable to
11 this case and it's your duty as jurors to accept and apply
12 the law as I now state it to you. The lawyers are not the
13 instructors of the law. You must accept the law and apply
14 the law exactly as I state it to you. You must not base
15 your decision -- make it on your idea of what the law is
16 or what the law -- what you think the law should be.

17 Kidnaping: the defendants are charged with
18 kidnaping. The State must prove beyond a reasonable doubt
19 that the defendants knowingly unlawfully seized, confined,
20 inveigled, decoyed, kidnaped, abducted or carried away
21 another person without authority of law. Knowingly means
22 with knowledge or consciously, not accidentally. Seized
23 means to take hold of suddenly or forcibly. Confined
24 means to limit, restrict, or enclose within bounds,
25 imprison or shut or keep in. Inveigle means to lure,

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1 entice or lead astray by false representation, promise, or
2 other deceitful means. Decoy means to lure by or if by
3 decoy. Decoy is something to entice a person to a trap.
4 Kidnap is to remove a person against his will by unlawful
5 force or by fraud. Abduct means to carry off secretly or
6 by force or an illegal purpose. Carry away means to
7 remove. The State does not have to prove that the
8 defendant did all of these things. Instead, if you find
9 beyond a reasonable doubt that the defendant did any of
10 these things, you may find the defendants guilty of
11 kidnaping. Something done without authority of law is
12 something which the law does not sanction, permit, allow,
13 condone or provide justification for. The kidnaping does
14 not have to be for any personal or monetary gain or any
15 illegal purpose. May be -- may be for any reason
16 whatsoever.

17 Assault and battery first degree: a person
18 commits the offense of assault and battery in the first
19 degree if the person unlawfully injures another person and
20 the act occurred during the commission of a robbery,
21 burglary, kidnaping or theft. A person may also commit
22 the offense of assault and battery in the first degree if
23 the person unlawfully offers or attempts to injure another
24 person with the present ability to do so and the act
25 either is accomplished by means likely to produce death or

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1 great bodily injury or occur during the commission of a
2 robbery, burglary, kidnaping or theft. Great bodily
3 injury means bodily injury which causes a substantial risk
4 of death or which causes serious permanent disfigurement,
5 or protracted loss or impairment of the function of a
6 bodily member or origin -- or organ. Excuse me.

7 Now, a lesser included offense of the assault
8 and battery first is assault and battery second. If you
9 find that the State has failed to prove that the
10 defendants are guilty beyond a reasonable doubt of assault
11 and battery in the first degree, you must then decide
12 whether the State has proven that the defendant is guilty
13 of assault and battery in the second degree. A person
14 commits the offense of assault and battery in the second
15 degree if a person unlawfully injures another person or
16 offers or attempts to injure another person with the
17 present ability to do so and moderate bodily harm to
18 another person results or moderate bodily harm to another
19 person could have resulted. Moderate bodily injury means
20 physical injury requiring treatment to an organ, system of
21 the body other than the skins, muscles, or connective
22 tissues of the body except when there is penetration of
23 the skin, muscles and connective tissues that require
24 surgical repair of a complex nature or when treatment of
25 the injury requires the use of regional or general

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1 anesthesia.

2 Armed robbery: the defendants are charged with
3 armed robbery. In order to prove this offense, the State
4 must prove beyond a reasonable doubt that the defendants
5 took personal property from the person or presence of
6 another person. Property is in the presence of a person
7 if it's within the person's reach, inspection,
8 observations, control, so that a person could, if not
9 overcome by violence or presented by fear, keep possession
10 of the property. The State must also prove beyond a
11 reasonable doubt that the defendant carried the property
12 away, intending to permanently deprive the owner of the
13 property and to keep the property for defendant's own use.
14 The slightest removal of the property or the complete
15 possession of the property even for an instant by the
16 defendants is sufficient to show a taking and carrying
17 away of property. The taking and carrying away of the
18 property must have been done with violence by putting the
19 owner of the property in fear of violence. Finally, the
20 State must prove beyond a reasonable doubt that the
21 defendant was armed with a deadly weapon during the
22 robbery. A deadly weapon is any instrument, article, or
23 substance which is likely to cause death or great bodily
24 harm. Whether an instrument has been used as a deadly
25 weapon depends on the facts and circumstances of each

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1 case. The following are examples of instruments which may
2 be deadly weapons: a pistol, a shotgun, a rifle, a dirk,
3 a dagger, a knife, a slingshot, metal knuckles, a razor,
4 gasoline, a firebomb, a Molotov cocktail, lighter fluid.
5 A gun may be a deadly weapon, even if it is not operating.

6 Now, a lessor included offense of armed robbery
7 is what is referred to as common law robbery or strong
8 armed robbery. If you find that the defendant [sic] has
9 failed to prove that the defendant was armed with a deadly
10 weapon, you may then consider whether the State has proven
11 beyond a reasonable doubt that the defendant committed
12 robbery. In order to prove robbery, the State must prove
13 beyond a reasonable doubt all of the evidence that I have
14 just explained, except the defendant was armed with a
15 deadly weapon. In order to prove robbery, the State must
16 prove beyond a reasonable doubt that the defendant took
17 the personal property from the person or presence of
18 another without that person's consent and carried it away.
19 Property is in the presence of a person if it is within
20 the person's reach, inspection, observation or control so
21 that the person could, if not overcome with violence or
22 prevented by fear, retain possession of the property. The
23 State must show a defendant carried the property away with
24 the intent to permanently deprive the owner of the
25 property and convert the property to the defendant's own

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1 use. The slight removal of property, the complete
2 possession of property, even for an instant, by the
3 defendants is sufficient to show a taking and carrying
4 away of the property. The taking and carrying away of the
5 property must have been done with violence or by putting
6 the owner of the property in fear of violence.

7 Possession of a weapon during the commission, or
8 attempt to commit, a violent crime: the defendant is
9 charged with possession of a weapon during the commission
10 of, or attempt to commit, a violent crime. The State must
11 prove beyond a reasonable doubt that the defendant was in
12 possession of a firearm, or visibly displayed what
13 appeared to be a firearm, during the commission of a
14 violent crime. A firearm means any machine gun, automatic
15 rifle, revolver or pistol. In order to find the defendant
16 guilty of possession of a weapon during the commission of
17 a violent crime, you must first find the defendant guilty
18 of either committing a violent crime or attempting to
19 commit a violent crime.

20 Armed robbery and kidnaping and common law
21 robbery are all defined as violent crimes in the state of
22 South Carolina.

23 The hand of one is the hand of all: if a crime
24 is committed by two or more people who are acting together
25 in committing a crime, the act of one is the act of all.

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1 A person who joins with another to commit an unlawful act
2 is criminally responsible for everything done by the other
3 person which happens to be a probable or natural
4 consequence of the act done in carrying out the common
5 plan and purpose. For example, two persons can be guilty
6 of killing another person when only one of the two had a
7 gun, there was only one bullet, only one of the two fired
8 the shot that caused the death. Two or more people
9 together -- acting together, assisting each other in
10 committing the offense, the act of one is the act of all,
11 or, as sometimes said, the hand of one is the hand of all.

12 Prior knowledge that a crime is going to be
13 committed, without more, is not sufficient to make a
14 person guilty of that crime. Mere knowledge that another
15 person is going to commit a crime, even if the defendant
16 is present when the crime is committed, is not sufficient
17 to convict a defendant as a principal. Guilty as a
18 principal is shown by actual or constructive presence at
19 the scene as a result of prior arrangement; therefore, a
20 finding of a prior arranged plan or common scheme is
21 necessary for a finding of guilt as a principal. The
22 State must prove beyond a reasonable doubt by competent
23 evidence the theory of the hand of one is the hand of all.
24 A principal in a crime is one who either actually commits
25 a crime or who is present, aiding, abetting, assisting in

1 committing the crime. When a person doesn't act in the
2 presence of and with the assistance of another, the act is
3 done by both where two or more acting with a common plan
4 or intent are present at the commission of a crime. It
5 does not matter who actually commits the crime. All are
6 guilty. The hand of one is the hand of all.

7 Present at the commission of a crime means to be
8 sufficiently near to aid and abet and assist in the
9 commission of a crime; however, mere presence at the scene
10 of a crime is not sufficient to convict one as a principal
11 on the theory of aiding and abetting.

12 Intent is also a necessary element or there must
13 have been a common design or intent to commit the crime
14 and the crime must have been committed pursuant thereto
15 with the person aided and abetted by some overt act.

16 Intent means intending the results which actually occurred
17 not accidentally or involuntarily. Intent may be shown by
18 acts and conduct of the defendant under circumstances
19 which you may naturally and reasonably infer intent. The
20 State must prove those elements beyond a reasonable doubt.

21 Now, you've been selected as fair and impartial
22 jurors to impartially try and determine the facts of this
23 case and when you comply with your oath to do so, no one
24 will have the right to criticize your verdict. You will
25 have fully discharged your duty as jurors. You are to

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1 decide this case according to the testimony you have heard
2 from the lips of sworn witnesses, along with other
3 evidence introduced.

4 I charge you as jurors you must make your
5 decision in this case without bias and without prejudice
6 to any party. Do not allow yourself to be governed by
7 sympathy, prejudice, passion, public opinion, or any other
8 arbitrary factor. Both the State and defendant have the
9 right to expect each of you will carefully and impartially
10 consider all of the evidence in the case and to follow the
11 law as I've explained it to you.

12 Nothing I may have said or done during the
13 course of this trial has been in any way to intend to
14 express or suggest a view of the case or an opinion as to
15 the facts, the weight of the evidence, the credibility of
16 the witnesses. If you believe any of my actions or words
17 have indicated otherwise, you must disregard such, form
18 your own view of this case or your own opinion as to the
19 facts, the weight of the evidence, the credibility of the
20 witnesses.

21 Ladies and gentlemen of the jury, I have
22 prepared four verdict forms and the first four, the State
23 v. Ryan Carl Newman, has at the top the indictment number
24 and it says as to kidnaping, we, the jury, by unanimous
25 consent find the defendant guilty of kidnaping or not

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1 guilty. As to armed robbery, we, the jury, by unanimous
2 consent find the defendant guilty of armed robbery or not
3 guilty. Or as to the lesser included offense, we, the
4 jury, by unanimous consent find the defendant guilty of
5 robbery or not guilty.

6 In order to go to the lesser included, you have
7 to find the defendant not guilty of the first charge.

8 As to possession of a firearm during the
9 commission of a violent crime, we, the jury, by unanimous
10 consent find the defendant guilty of possession of a
11 firearm during the commission of a violent crime, not --
12 or not guilty.

13 As to assault and battery first degree, we, the
14 jury, by unanimous consent, find the defendant guilty of
15 assault and battery first degree, or not guilty.

16 And as to the lesser included offense of
17 burglary -- assault and battery of the second degree, we,
18 the jury, by unanimous consent find the defendant guilty
19 of assault and battery second degree, or not guilty.

20 As far as the pistol is concerned, if you find
21 the defendant not guilty of kidnapping, not guilty of armed
22 robbery and -- you cannot find him -- and guilty of
23 assault and battery, you cannot find him guilty of the
24 possession. The three violent crimes, as I said earlier,
25 are the kidnapping, armed robbery and the common law

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1 robbery.

2 I have prepared the same verdict forms -- I'm
3 not going to read them verbatim -- as to the defendant,
4 Jessica Lynn Clark. They are identical as to the charge
5 and the information on the verdict forms.

6 Madam Forelady and ladies and gentlemen of the
7 jury, I will tell you that the -- as I said earlier, the
8 verdict has to be unanimous. All twelve of you have to
9 agree. I would ask you to respect each others opinions.
10 It's a collective reasoning and decision-making process.
11 I would ask you to review the evidence, look at the
12 evidence, discuss the evidence, and reach a fair and just
13 verdict.

14 Now, Madam Forelady and ladies and gentlemen of
15 the jury, I'm going to ask you to go to the jury room --
16 if the alternate will please keep their seat -- but please
17 don't begin your deliberations until the bailiff brings
18 the exhibits that have been introduced, the charge book,
19 and the verdict forms and instruct you to begin your
20 deliberation.

21 I have to take up my charge with the attorneys.
22 I may bring you back and change something, I may bring you
23 back and add something, so don't begin your deliberations
24 until the bailiff brings you all that information, Madam
25 Forelady.

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1 Now, if you'll -- if y'all will follow the
2 bailiff to the jury room, except for the alternate.

3 [Whereupon, the jury exits the courtroom at
4 12:50 p.m.]

5 THE COURT: All right. Any exceptions to the
6 charge from the State?

7 MS. CORNWELL: Your Honor, it's the State's
8 position that strong armed robbery, while a crime of
9 violence in the statute, is not considered a violent
10 crime for purposes of this.

11 THE COURT: You think -- you don't think it's a
12 violent crime for purposes --

13 MS. CORNWELL: I believe it -- and I've got --

14 THE COURT: What's 60 -- what is it? 61 what?

15 MS. CORNWELL: 16-1-300. I've got our paralegal
16 pulling the actual statute.

17 THE COURT: Because the -- it says it's violent
18 in the statute. Now, I did not look at 16-1-60, which
19 I will.

20 MS. CORNWELL: I believe -- and I may be
21 incorrect. I've started pulling the statute. My
22 understanding was it was considered a crime of
23 violence for diversionary program purposes, PTI, YOA,
24 things of that nature, but it was not considered a
25 violent crime for purposes of serious strike offenses.

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1 And defense counsel can correct me if I'm wrong on
2 that.

3 THE COURT: All right. Has anybody pulled out
4 16-1-60, which specifies violence for that purpose?

5 MR. BEN SHELTON: I'm pulling it from my file,
6 Your Honor. It does reference, in the red book,
7 16-1-130. That has to do with diversionary programs.
8 That's the code section for that.

9 I know it is also classified -- robbery is
10 classified as a crime of violence --

11 THE COURT: Right.

12 MR. BEN SHELTON: -- per 16-23 --

13 THE COURT: So you think it's a crime of
14 violence as to --

15 MR. BEN SHELTON: As to the firearm --

16 THE COURT: -- one third versus a fourth versus
17 --

18 MR. BEN SHELTON: It's a crime of violence --
19 it's considered a crime of violence -- sorry if I'm
20 not answering the question the judge -- Your Honor is
21 asking.

22 It's a crime of violence according to the
23 firearm section of the code, but that's different from
24 a violent crime specified by 16-1-60. Which I'm
25 trying to pull up. It's not hard to --

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1 THE COURT: Well, it's either in -- it's either
2 in 60-1-60 or it's not. I don't --

3 But we'll pull it up and look at it. If I'm
4 wrong, I'll correct the --

5 MS. CORNWELL: And, Your Honor --

6 THE COURT: -- the charge to the jury.

7 MS. CORNWELL: -- just for protection of the
8 record, I believe that when you were giving your
9 charges you stated: if you find that the defendant
10 has failed to prove strong arm robbery. It's clearly
11 if you feel the State has failed to prove strong arm
12 robbery. And I just want to make sure we protect the
13 record for any appellate purposes.

14 THE COURT: Okay.

15 MR. BIERING: I'm trying to pull the statute up
16 as well, Your Honor.

17 THE COURT: We'll get it pulled up.

18 Mr. Shelton, you were standing.

19 MR. CHAD SHELTON: It was on the -- it was on
20 the common law robbery. I didn't -- I don't think
21 that's a violent crime so -- but we'll get to that.

22 THE COURT: We'll pull up the code section. I
23 mean, that's the code section that specifies it. I
24 did not look under the code section. I just looked in
25 that red sentencing book and it said violent.

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1 Yes, sir? Anything, other than what you've
2 said, on the exception to the charge? Mr. Shelton,
3 any other exception to the charge?

4 MR. CHAD SHELTON: The only thing that --
5 sometimes it's said -- and it's up to Your Honor. But
6 the order on the verdict form: don't take any
7 position towards that, that you have a certain
8 position --

9 THE COURT: I'm not going to go into all that.
10 You've got to put some form -- you've got to start it
11 one way or the other.

12 Mr. Biering, any exceptions to the charge other
13 than the violent and the --

14 MR. BIERING: Yes, Your Honor.

15 THE COURT: -- common law robbery.

16 MR. BIERING: I apologize for my handwriting.
17 But I'm going to pass this to Mr. Shelton and ask that
18 it be passed over to Madam Solicitor. It's just a
19 request that you instruct the jury that the -- while
20 the cases have been tried together --

21 THE COURT: I think I told them that when we
22 very -- started at the very beginning. Do you want me
23 to tell them again?

24 MR. BIERING: Yes, Your Honor.

25 THE COURT: I mean, I told them that at the very

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1 beginning.

2 MR. BIERING: I understand that, Your Honor.

3 THE COURT: You want me to tell them again? I
4 don't have any problem with --

5 MR. BIERING: And that if -- that basically
6 there could be inconsistent verdicts, that --

7 THE COURT: I don't have any problem charging
8 that.

9 MR. BIERING: -- one defendant can be charged
10 [phonetic] guilty, one can be found not guilty at the
11 same time. But I've not specified in my request any
12 specific charge or any specific defendant in either
13 category not to have any type of --

14 THE COURT: I mean, that's fine.

15 But, I mean, they've got verdict forms and it's
16 very obvious they can pick and choose which -- out of
17 the eight which ones they're going to find guilty and
18 not guilty. I mean, the verdict form controls that.

19 But I'll be happy to tell them.

20 MR. BIERING: Thank you, Your Honor.

21 THE COURT: I've already told them one time.

22 I'll tell them again.

23 MR. BIERING: Thank you, Your Honor.

24 THE COURT: Want me to tell them a third time?

25 MR. BIERING: Your Honor -- thank you, Your

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1 Honor.

2 THE COURT: Okay.

3 MS. CORNWELL: Your Honor, we have found the
4 statute on the strong armed robbery not a violent
5 crime under the statute.

6 THE COURT: All right. I will correct that.

7 MS. CORNWELL: Thank you, Your Honor.

8 THE COURT: All right. We'll take about a five-
9 minute break. Let me go get the book and correct it.

10 [Whereupon, a recess is taken from 12:55 p.m. to
11 12:59 p.m.]

12 THE COURT: Solicitor, tell me where you were
13 referring, so I can find it, to be sure about I said I
14 used the word defendant and not State.

15 MS. CORNWELL: I believe that it was in the
16 strong armed robbery in the lessor included charge.
17 It just --

18 THE COURT: You said on the strong armed
19 robbery?

20 MS. CORNWELL: Yes, sir.

21 I believe when you were speaking -- I don't
22 think it's --

23 THE COURT: Where were you talking about?

24 MS. CORNWELL: Your statement was if you find
25 that the defendant has failed to prove strong armed

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1 robbery. The correct charge is obviously if the State
2 has failed to prove strong armed robbery.

3 THE COURT: The State must prove beyond a
4 reasonable doubt that the defendant was armed with a
5 deadly weapon? Or where are you talking about?

6 MS. CORNWELL: It's the strong armed robbery
7 charge, Your Honor. You gave the lessor included
8 offense on strong armed robbery and I believe your
9 last statement was that if you find that the State has
10 failed to prove strong armed robbery, you must find
11 the defendant not guilty. You accidentally inverted the
12 words and you stated if you find the defendant failed
13 to prove strong armed robbery, you must find him not
14 guilty.

15 THE COURT: On the lessor included on the
16 robbery?

17 MS. CORNWELL: Yes, Your Honor.

18 THE COURT: Okay. I'll correct that.

19 MS. CORNWELL: Thank you, Your Honor.

20 THE COURT: Thank you.

21 And I'll tell them about the indictments -- I
22 mean, the verdict forms.

23 Anything else?

24 MR. BIERING: Nothing from Defendant Clark.

25 THE COURT: Pardon?

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1 MR. BIERING: Nothing from Defendant Clark, Your
2 Honor.

3 THE COURT: Okay.

4 MR. CHAD SHELTON: The -- this goes without
5 speaking, but I -- still I probably should put the
6 common law, if it is the non violent -- or not
7 violent, according to the statute with the gun, it's
8 also on the verdict form. So --

9 THE COURT: It's also what?

10 MR. CHAD SHELTON: It was said -- it was said
11 both times, as far as --

12 THE COURT: I'm going to correct that. Just as
13 soon as I get a minute here, I'm going to correct it.

14 MR. CHAD SHELTON: Thank you, Your Honor.

15 [Off the record momentarily]

16 THE COURT: All right. The smokers aren't back.
17 As soon as the smokers get back, we'll bring them.

18 THE COURT: While we're waiting on that, will
19 the parties come up and look at the exhibits and make
20 sure they're all here. Put on the record that you
21 examined them and they are all present.

22 [Off the record momentarily]

23 THE COURT: Bring the jury in, please.

24 [Whereupon, the jury enters the courtroom at
25 1:05 p.m.]

RE-CHARGE OF THE COURT

THE COURT: Madam Forelady and ladies and gentlemen of the jury, I want to correct one thing that I was in error on.

The crime of robbery -- common law robbery is not a violent crime in reference to the possession of the pistol during the commission of a violent crime, and kidnaping and armed robbery are considered violent crimes in the state of South Carolina in reference to possession of a weapon during the commission of or attempt to commit a violent crime. In other words, in order to find one or both or either of the defendants guilty of that crime, you have to find them guilty of kidnaping and/or armed robbery.

And I was in error about the common law and I apologize to you. That was my mistake, but the very able attorneys pointed it out to me and I'm correcting it.

Also, as I told you at the beginning of the trial, the defendants are being tried together but you are to consider the evidence against each defendant separately. You can find all -- both defendants innocent of all eight, you can find them guilty of all eight, you can find them any combination thereof.

We've got the verdict forms. You can go through the verdict forms as to each charge. You've heard the

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1 evidence. You're going to have the law and the book
2 concerning each charge. So you've got to determine each
3 defendant based upon what you believe as to that
4 defendant. Just because you find one defendant innocent
5 doesn't mean you find the other one innocent. Or vice
6 versa. Just because you find one defendant guilty doesn't
7 mean you've got to find the other defendant guilty. Base
8 your decision on your interpretation of the facts and
9 apply it to the law on each individual charge as to each
10 individual defendant as if they were being tried
11 separately.

12 Now, also, apparently when I was talking to you
13 about the lessor included I apparently said that -- I said
14 that if you find that the defendants failed to prove. If
15 you find that the State has failed to prove the defendant
16 was armed with a deadly weapon, you may consider whether
17 the State has proven beyond a reasonable doubt the
18 defendant committed robbery.

19 The defendant, as I said earlier, has no
20 obligation to prove anything. It's up to the State to
21 prove the defendant or the defendants guilty beyond a
22 reasonable doubt.

23 Now, Madam Forelady, the bailiffs are going to
24 bring you the charge book, the verdict forms, and all the
25 exhibits and you may begin your deliberations.

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1 If you'll follow the bailiff.

2 [Whereupon, the jury exits the courtroom at
3 1:08 p.m.]

4 THE COURT: Is there any exceptions to the last
5 portion of the charge where I made correction on
6 behalf of the State? Thank you for pointing it out to
7 me. And thank you for pointing out the other to me
8 from the defense bar.

9 Any other exceptions to what I just charged?

10 MS. CORNWELL: Nothing from the State, Your
11 Honor.

12 MR. CHAD SHELTON: Nothing.

13 MR. BIERING: Nothing from Defendant Clark, Your
14 Honor. Thank you.

15 THE COURT: All right. If you'll take this and
16 get the exhibits together and take them to the jury, I
17 sure would appreciate it.

18 [Whereupon, evidence goes out to the jury at
19 1:08 p.m.]

20 THE COURT: All right. Can I see the attorneys
21 up here just a second, please.

22 [Whereupon, an off-the-record bench conference
23 is held in reference to scheduling]

24 [Whereupon, a recess is taken from 1:10 p.m. to
25 4:13 p.m.]

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VERDICT

THE COURT: All right. Anything from the State before we bring the jury?

MS. CORNWELL: No, Your Honor.

THE COURT: Anything from the defendants before we bring the jury?

MR. CHAD SHELTON: No, Your Honor.

MR. BIERING: Nothing from Defendant Clark, Your Honor.

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

[Whereupon, the jury enters the courtroom at 4:14 p.m.]

THE COURT: I understand you've reached a verdict; is that correct?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Madam Forelady, would you give the verdict forms to the bailiff, please, ma'am. Thank you very much.

[Whereupon, the foreperson proffers documents to the bailiff. The bailiff proffers documents to the Court]

THE COURT: Thank you.

[Whereupon, the Court reviews documents]

THE COURT: Madam Forelady, I have prepared on

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1 Defendant Ryan Carl Newman your guilty verdicts on the
2 indictment and I'm going to hand these to the bailiff
3 and ask you to sign down here where it says
4 foreperson. And I'll get the ones from the other
5 defendants while you're doing that.

6 [Whereupon, the foreperson complies]

7 THE COURT: All right. Madam Forelady, I have
8 prepared the indictments for the Defendant Jessica
9 Clark. If you would please sign those -- and I dated
10 them today -- please, ma'am. Thank you so very much.

11 [Whereupon, the foreperson complies]

12 THE COURT: Madam Clerk, if you would publish
13 the verdicts as to Defendant Jessica Lynn Clark and
14 Defendant Ryan Carl Newman, please, ma'am.

15 THE CLERK OF COURT: The State of South
16 Carolina, County of Berkeley, versus Jessica Lynn
17 Clark, indictment number 2011-GS-08-1674, as to
18 kidnaping, we, the jury, by unanimous consent, find
19 the defendant guilty of kidnaping. Signed by the
20 foreperson.

21 The State of South Carolina, County of Berkeley,
22 versus Jessica Lynn Clark, indictment number 2011-GS-
23 08-0402, as to armed robbery, we, the jury, by
24 unanimous consent, find the defendant not guilty. As
25 to the lesser included offense, we, the jury, find --

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1 by unanimous consent find the defendant guilty of
2 robbery. Signed by foreperson.

3 The State of South Carolina versus Jessica Lynn
4 Clark, indictment number 2011-GS-08-1675, we, the
5 jury, by unanimous consent find -- as to the -- as to
6 assault and battery first degree, we, the jury, by
7 unanimous consent find the defendant guilty of assault
8 and battery first degree. Signed by foreperson.

9 The State of South Carolina versus Jessica Lynn
10 Clark, indictment number 2011-GS-08-1673, as to
11 possession of firearm during the commission of a
12 violent crime, we, the jury, by unanimous consent,
13 find the defendant not guilty. Signed by foreperson.

14 As to indictments for Jessica Lynn Clark, Madam
15 Forelady and ladies and gentlemen of the jury, have I
16 accurately published your jury -- your verdict?
17 Please signify by raising your right hand at this
18 time.

19 [Whereupon, jurors comply]

20 THE CLERK OF COURT: Thank you.

21 State of South Carolina versus Ryan Carl Newman,
22 indictment number 2011-GS-08-1671, as to kidnaping,
23 we, the jury, find -- by unanimous consent find the
24 defendant guilty of kidnaping. Signed by the
25 foreperson.

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1 State of South Carolina versus Ryan Carl Newman,
2 indictment number 2011-GS-08-1672, as to assault and
3 battery first degree, we, the jury, by unanimous
4 consent find the defendant guilty of assault and
5 battery first degree. Signed by foreperson.

6 State of South Carolina, County of Berkeley,
7 versus Ryan Carl Newman, indictment number 2011-GS-08-
8 0453, as to armed robbery, we, the jury, by unanimous
9 consent find the defendant not guilty. As to the
10 lesser included offense, we, the jury, by unanimous
11 consent, find the defendant guilty of armed robbery
12 [sic]. Signed by foreperson.

13 State of South Carolina, County of Berkeley,
14 versus Ryan Carl Newman, indictment number 2011-GS-08-
15 1670, as to the possession of firearm during the
16 commission of a violent crime, we, the jury, by
17 unanimous consent find the defendant not guilty.
18 Signed by foreperson.

19 As to Defendant Ryan Carl Newman, Madam Forelady
20 and ladies and gentlemen, have I accurately published
21 your verdict? Please signify by raising your right
22 hand at this time.

23 [Whereupon, jurors comply]

24 THE CLERK OF COURT: Thank you.

25 UNIDENTIFIED: When you read back the robbery

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1 charge, you read back the --

2 THE COURT: I'm going to correct that right now.
3 Okay?

4 She said armed robbery. The jury found him
5 guilty of common law robbery and not guilty of armed
6 robbery. Okay. You said armed robbery when you spoke
7 it out. That was a mistake.

8 All right. Anything from the State, as far as
9 the jury is concerned?

10 MS. CORNWELL: [No response]

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POLLING OF THE JURY

THE COURT: Do you want the jury polled?

MS. CORNWELL: No, Your Honor.

THE COURT: Does either of the defendants want the jury polled by the clerk?

MR. CHAD SHELTON: For procedure wise, yes, Your Honor.

THE COURT: Pardon?

MR. CHAD SHELTON: For procedure wise, yes, Your Honor, from us.

THE COURT: All right. Madam Clerk, would you poll the jury.

MR. BIERING: Your Honor, if the jury is being polled, if they could be polled at the same time as relates to --

THE COURT: Yes, sir. We're going to do both of them on --

MR. BIERING: Thank you.

THE COURT: -- both of them at the same time.

Madam Clerk, do you need these -- do you need these back to do it?

THE CLERK OF COURT: Am I doing this all at one time?

THE COURT: Yes. Whatever you feel comfortable doing, since there's eight of them. Okay?

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1 THE CLERK OF COURT: Okay.

2 THE COURT: However you want to do it.

3 THE CLERK OF COURT: All right. Juror 133,
4 Rachel Morga, is this your verdicts?

5 MS. MORGA: Yes.

6 THE CLERK OF COURT: Is it still your verdicts?

7 MS. MORGA: Yes.

8 THE CLERK OF COURT: Juror 42, Michael Cook, is
9 this your verdict?

10 MR. COOK: Yes.

11 THE CLERK OF COURT: Is it still your verdicts?

12 MR. COOK: Yes.

13 THE CLERK OF COURT: Juror 187, Jennifer
14 Wagoner. Raise your hand. Is this your verdicts?

15 MS. WAGONER: Yes.

16 THE CLERK OF COURT: Is it still your verdicts?

17 MS. WAGONER: Yes.

18 THE CLERK OF COURT: Juror 129, Kirsis Cabrera-
19 Mobley.

20 MS. CABRERA-MOBLEY: Yes, ma'am.

21 THE CLERK OF COURT: Is this your verdict?

22 MS. CABRERA-MOBLEY: Yes.

23 THE CLERK OF COURT: Is it still your verdicts?

24 MS. CABRERA-MOBLEY: Yes.

25 THE CLERK OF COURT: Juror 202, Henry Wright.

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1 MR. WRIGHT: Yes.
2 THE CLERK OF COURT: Is this your verdict?
3 MR. WRIGHT: Yes.
4 THE CLERK OF COURT: Is it still your verdicts?
5 MR. WRIGHT: [Indicates affirmatively]
6 THE CLERK OF COURT: Juror 94, Arlene Holloway.
7 MS. HOLLOWAY: Yes.
8 THE CLERK OF COURT: Is this your verdicts?
9 MS. HOLLOWAY: Yes.
10 THE CLERK OF COURT: Is it still your verdicts?
11 MS. HOLLOWAY: Yes.
12 THE CLERK OF COURT: Juror 82. Carol -- is
13 it --
14 MS. GRINDER: Grinder.
15 THE CLERK OF COURT: Is this your verdict?
16 MS. GRINDER: Yes.
17 THE CLERK OF COURT: Is it still your verdict?
18 MS. GRINDER: Yes.
19 THE CLERK OF COURT: Juror 97, Christy Holmes.
20 MS. HOLMES: yes.
21 THE CLERK OF COURT: Is this your verdicts?
22 MS. HOLMES: Yes.
23 THE CLERK OF COURT: Is it still your verdicts?
24 MS. HOLMES: Yes.
25 THE CLERK OF COURT: Juror 120, Amy Lopez, is

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1 this your verdict?

2 MS. LOPEZ: Yes.

3 THE CLERK OF COURT: Still your verdict?

4 MS. LOPEZ: Yes.

5 THE CLERK OF COURT: Juror 47, Amelia Davis.

6 MS. DAVIS: Yes.

7 THE CLERK OF COURT: Is this your verdict?

8 MS. DAVIS: Yes.

9 THE CLERK OF COURT: Is it still your verdicts?

10 MS. DAVIS: Yes.

11 THE CLERK OF COURT: Juror 78, Gary Gist.

12 MR. GIST: Yes.

13 THE CLERK OF COURT: Is this your verdict?

14 MR. GIST: Yes, ma'am.

15 THE CLERK OF COURT: Still your verdicts?

16 MR. GIST: Yes, ma'am.

17 THE CLERK OF COURT: And juror 68, Stacey

18 Funderburk. Funderburk?

19 MS. FUNDERBURK: Uh-huh.

20 THE CLERK OF COURT: Is this your verdict?

21 MS. FUNDERBURK: Yes.

22 THE CLERK OF COURT: Is it still your verdict?

23 MS. FUNDERBURK: Yes.

24 THE CLERK OF COURT: Your Honor, I polled the

25 verdict -- the jury, and the verdict stands.

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1 THE COURT: And when she asked you your
2 verdicts, she was talking about all eight charges
3 against both defendants.

4 Let the record reflect that all twelve jurors
5 asked and answered in the affirmative.

6 And as to the previous question, all twelve
7 jurors raised their right hand.

8 And for the record, Mr. Ryan Carl Newman, the
9 jury found him guilty of robbery, common law robbery,
10 and not guilty of armed robbery. And that's the same
11 for Defendant Clark.

12 THE COURT: All right. Let me see the attorneys
13 up here very briefly.

14 [Whereupon, an off-the-record bench conference
15 is held in reference to scheduling]

16 THE COURT: All right. I'm going to -- I'm
17 going to postpone sentencing until eleven o'clock in
18 the morning. And I will continue Ms. Jessica Clark on
19 her bond.

20 Ms. Clark, you understand if you're not here
21 tomorrow at eleven o'clock, I will sentence you, seal
22 the sentence, issue a bench warrant for your arrest
23 and when they find you, you will serve the time.

24 Do you understand?

25 MS. CLARK: Yes.

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1 THE COURT: And, quite frankly, if you don't
2 show, your sentence may be much more severe.

3 Do you understand?

4 MS. CLARK: Yes.

5 THE COURT: Do you understand?

6 MS. CLARK: Yes.

7 THE COURT: All right. We will adjourn until
8 eleven o'clock -- I'm sorry. Where is the --

9 Come up here. What time do you want to get
10 started in the morning? I'm through for today.

11 [Whereupon, Court's Exhibit Number 3 is marked
12 by the court reporter]

13 [JURY TRIAL CONCLUDES AT 4:30 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable J.C. Nicholson, on September 13, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 25th day of December, 2012.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-786-

THE STATE OF SOUTH CAROLINA)
)
)
VS.)
)
)
RYAN CARL NEWMAN and)
JESSICA CLARK,)
)
DEFENDANTS.)
)

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Berkeley County Courthouse
Moncks Corner, South Carolina
on Friday, September 14, 2012, Commencing at 12:25 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
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PROCEEDINGS

1
2 THE COURT: All right. I believe we are here
3 for sentencing on Jessica Lynn Clark on the jury
4 verdicts from yesterday and on Ryan Carl Newman. I
5 guess we can start with Mr. Newman.

6 Solicitor, what's his criminal history?

7 MS. CORNWELL: Thank you, Your Honor. May it
8 please the Court.

9 Mr. Newman's prior record is a burglary second
10 that he received a YOA for. He was out on parole on
11 that YOA. He was violating the YOA. He was picked
12 up, given a bond for the YOA parole revocation stuff.
13 That's why he was on the ankle monitor. While he was
14 pending for the YOA revocation hearing on the monitor,
15 he committed these crimes. Those were taken care of
16 together.

17 He was picked up on this crime based on
18 warrants. A traffic stop was made and he was in the
19 car. That traffic stop was made based on officer at
20 McDougall's detention center's [phonetic] report that
21 the car that he was in was trying to throw contraband
22 over the walls. Berkeley County made a traffic stop
23 and that's when he was picked up on these warrants.
24 He bonded out on these charges earlier this year. The
25 conditions of his bond were house arrest.

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1 He was also arrested again in June of this year
2 for violation of town ordinance in Summerville. I do
3 not know if that matter has been resolved yet.

4 THE COURT: Arrested for what? I'm sorry.

5 MS. CORNWELL: Violation of a town ordinance.

6 THE COURT: Okay.

7 MS. CORNWELL: So it's the State's position that
8 he's been in trouble with the law and he has a
9 complete disregard for the law. He's done
10 revocations, he's committed crimes while he's been on
11 bond, he's committed crimes while he's been out. It
12 doesn't really matter how many times he's been in jail
13 or what his punishment has been, he doesn't care, he's
14 going to do what he wants to do anyway.

15 The State, Your Honor, was going to present
16 evidence. There was a witness that Your Honor
17 actually signed a bench warrant for. We subpoenaed
18 him to court. He did not show. It's Shane Newman.
19 It's this defendant's brother. He was originally
20 charged in this. He met with our office several times
21 and did a proffer with us.

22 If I could, Your Honor, I'm going to hand up to
23 you, so you can review -- this is Shane's proffer.
24 Both the counsels have this.

25 [Whereupon, Ms. Cornwell proffers documents to

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1 the Court]

2 MS. CORNWELL: In that --

3 MR. BIERING: Your Honor, could I see the entire
4 package that was just handed up?

5 THE COURT: Pardon?

6 MR. BIERING: Could I see the entire package
7 that was just handed up to the Court?

8 THE COURT: Let me review it. If I decide to
9 share it with you, I will. It's not -- I don't think
10 it -- I'll see if it's concerning your client, okay?

11 MS. CORNWELL: And they have been provided that
12 in discovery, Your Honor.

13 Mr. Newman --

14 THE COURT: Now, tell me what this is, first.

15 MS. CORNWELL: Shane Newman was originally a
16 defendant in this matter. He was brought in --

17 THE COURT: All right. We've got a yellow sheet
18 and then we've got a copy. That's the same thing?

19 MS. CORNWELL: The yellow sheet is when he met
20 with our office the first time. He gave us a written
21 statement. The white sheet: he came in for a
22 polygraph on -- he made some edits to that thing on
23 the -- when he spoke with the polygraph person.

24 Because it was with the polygraph, Mr. Burnett with
25 SLED kept the original of the addendum and we got a

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1 copy of the addendum, so I've got a copy of that
2 addendum, as well.

3 THE COURT: Okay. Can you just tell me
4 basically what --

5 MS. CORNWELL: Sure. We --

6 THE COURT: -- what it all consists of?

7 MS. CORNWELL: We met with Shane. Like I said,
8 he was identified through this crime as one of the
9 suspects. Through our investigation we determined
10 that he was not, in fact, at the crime. Mr. Newman
11 came and met with us several times and advised us that
12 he had spoken to his brother, as well as Ms. Clark and
13 Mr. Weathers regarding this crime. He was aware that
14 Ms. Clark had set this up, that she found Andre on
15 facebook. He was also aware that guns were involved,
16 that Ryan and Tommy both had guns and had used guns in
17 this case.

18 He met with us further and discussed the gang
19 affiliation that he has. I believe Mr. Shane Newman
20 is a part of the Bloods and he was saying that this
21 defendant, Ryan Newman, has a gang called the Gs. I'm
22 not real familiar with the gang stuff. My
23 investigator was in with all these meetings and I
24 believe he understands them a little bit more.

25 We've also met with other witnesses that would

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1 confirm that he is involved with gang affiliation,
2 through jail tapes, through facebook records. We've
3 seen that he is continuing to commit crimes. He's in
4 the drug-selling business. He's also gotten girls to
5 go out and perform sexual favors for others.

6 Basically, it's the State's position that I
7 understand the jury verdict and I respect their
8 verdict and I agree. I think that their issue was
9 whether or not a gun was involved. It seems like they
10 agree that all three crimes occurred but their
11 position was whether or not there was a gun.

12 The State, based on the rules of evidence, was
13 not able to present all of the gun testimony but if
14 this victim -- this witness would have shown up, we
15 would have been able to present testimony that there
16 was, in fact, a gun involved, that Mr. Newman has a
17 reputation in the community to be a violent person,
18 and that the State would at that point --

19 For Mr. Newman, as far as his involvement, our
20 recommendation in sentencing would be a range of
21 fifteen to twenty years, based on his prior record,
22 his reputation in the community, his propensity to
23 continue committing crimes.

24 THE COURT: Okay. Anything else from the State?

25 MS. CORNWELL: Nothing on Mr. Newman, Your

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1 Honor.

2 THE COURT: Okay.

3 MS. CORNWELL: I'm sorry. There actually is.

4 Shane Newman was -- deception was detected in
5 that polygraph. We met with him a third time, after
6 that polygraph. That meeting is not documented
7 written. Mr. Roston [phonetic], who is with my
8 office, was also in on that meeting, as was Shane
9 Newman and his attorney, Bill Thrower. We asked him
10 several times about the deception and failing to
11 disclose.

12 He, at that meeting, then disclosed that -- what
13 else he knew and that after Jessica got arrested, she
14 called Tommy and Ryan and told them about the arrest
15 warrants. And at that time, Shane witnesses Mr.
16 Newman and Mr. Weathers take all of Mr. Mendoza's
17 belongings, that they were stolen, piled them in a
18 pile in the driveway and burned them so they could get
19 rid of all of the evidence.

20 I talked to John Burnett at SLED and asked him
21 if the withholding of that information would be what
22 caused the deception. He said that that's very --
23 that's very possible, that that's what the deception
24 was, that deception is not always detected in
25 polygraphs because you're lying but because a lot of

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1 times you're withholding information and you're not
2 being completely truthful and completely forthcoming.
3 Mr. Roston will attest to that, as well as I believe
4 Mr. Thrower, in that meeting.

5 So not only were these defendants aware of the
6 crimes, they were committing crimes while they were
7 out on bond for crimes and they also got -- you know,
8 were aware that they were going to get charged with
9 this and disposed of evidence.

10 I believe that there's evidence that there was a
11 gun involved. And that's why we're asking for the
12 fifteen- to twenty-year range, Your Honor.

13 THE COURT: Okay. Thank you very much.

14 [Whereupon, the Court reviews documents]

15 THE COURT: Okay. Here's your -- the papers
16 back. I've reviewed them.

17 I'll be glad to hear from Mr. Ryan Carl Newman
18 on sentencing.

19 MR. BIERING: Your Honor, as I understand it
20 with the procedure where we are, this is the
21 sentencing phase as it relates to Mr. Newman. I'm
22 concerned that what just transpired may also involve
23 my client.

24 THE COURT: Well, I'll let you see it when we
25 get to your client. Okay? I mean, I don't think what

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1 she showed me really has a whole lot to do with
2 anything about sentencing, to be honest with you. But
3 I'll be glad to share it with you if you want to look
4 at it. Okay?

5 MR. BIERING: I just -- whatever was shown --

6 MR. CHAD SHELTON: And, Your Honor, that part --
7 and procedural wise, I want to make sure that I
8 haven't lost my ability to argue motions, post trial
9 motions, and all of that. Are we doing that after the
10 sentencing?

11 THE COURT: Right.

12 MR. CHAD SHELTON: Is that your procedure?

13 THE COURT: Right.

14 MR. CHAD SHELTON: Thank you.

15 THE COURT: We'll hear motions after sentencing.

16 MR. CHAD SHELTON: Thank you, Your Honor.

17 And for -- also for purposes of the record, I
18 obviously object to everything that's brought out
19 concerning this trial that wasn't brought out during
20 trial. I believe the solicitor is trying to
21 supplement the record. But there's a reason these
22 things weren't brought out at trial. And they weren't
23 brought out at trial, Your Honor, and so I would
24 object to all of that. And I think Your Honor
25 mentioned something about that, but I would object and

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1 ask Your Honor not to consider that in the sentencing.

2 THE COURT: Okay.

3 MR. CHAD SHELTON: Your Honor, as to Mr. Newman,
4 I have -- he's talked to me about an express desire to
5 talk to Your Honor.

6 THE COURT: He does what, now?

7 MR. CHAD SHELTON: He has talked to me -- he did
8 have -- wanted a desire to talk to Your Honor. I have
9 advised him not to talk to Your Honor. To preserve
10 the record for appeal, I have advised him not to talk
11 to Your Honor. So I want -- I think you understand
12 that, Your Honor. Ryan --

13 THE COURT: No. To be perfectly honest with
14 you, I don't understand that.

15 MR. CHAD SHELTON: Well, Your Honor --

16 THE COURT: I mean, if he doesn't want to -- if
17 he doesn't want to talk to me about sentencing -- I'm
18 not talking about the crime. I'm not asking him to
19 incriminate himself. But if he doesn't want to talk
20 about sentencing, that's his prerogative.

21 MR. CHAD SHELTON: Yes, sir.

22 THE COURT: But, no, I really don't understand
23 that. But go ahead.

24 MR. CHAD SHELTON: He's -- he has -- he's always
25 invoked his right to remain silent, Your Honor, and --

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1 THE COURT: I just said I'm not going to ask him
2 anything about the crime. But if he does not want to
3 talk about sentencing, that's fine. But, yes, I do
4 not understand that. Sentencing and the trial are two
5 different processes. There's different elements for
6 sentencing.

7 MR. CHAD SHELTON: Yes, Your Honor. Yes, Your
8 Honor. I understand.

9 THE COURT: Primarily retribution, detention,
10 rehabilitation. I mean, there's three of them.

11 MR. CHAD SHELTON: And we'll -- and I'll --

12 THE COURT: Confinement --

13 MR. CHAD SHELTON: And I --

14 THE COURT: I mean, that's the basis for
15 sentencing.

16 MR. CHAD SHELTON: Absolutely.

17 THE COURT: And that doesn't have anything to do
18 with whether he wants to acknowledge his guilt or not
19 acknowledge his guilt. The jury has decided that
20 issue. That's over and done with.

21 MR. CHAD SHELTON: Yes, Your Honor. Okay. Yes,
22 Your Honor. I'll talk with him after I -- after I get
23 done. If he -- if we decide that he wants to address
24 that, we will discuss that at the time, Your Honor.

25 Ryan, he's twenty-two years old. The charge

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1 that he was on, the YOA, is continue -- he is on the
2 YOA currently. He's done with that in October. He
3 was placed on that -- that charge occurred when he was
4 sixteen. He has continued to be under the YOA
5 provision, Your Honor. He did have a violation.
6 We've talked about that. It was regarding being
7 around people that had a record. That was the
8 violation of that YOA.

9 Your Honor, there was a new charge -- or
10 arrested for a violation of town ordinance. His car
11 broke down. They charged him with loitering. They
12 called the police because there were people standing
13 outside of the car. They charged him with loitering.

14 Since that arrest -- Agent Bracey was his agent
15 -- she has him come in every week. It's my
16 understanding that he has reported every week. And I
17 tell you that because he did serve 498 days prior to
18 bonding out.

19 I've represented him for -- since February of
20 2011. He was arrested January --

21 THE COURT: He served 498 days on this charge?

22 MR. CHAD SHELTON: Prior to -- prior to trial,
23 he's --

24 THE COURT: On these charges?

25 MR. CHAD SHELTON: Yes, Your Honor. And he's

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1 now served an extra four days, five days, since he's
2 been -- during trial, a total of -- my count is 503
3 days.

4 Your Honor, he would be honest with you, as far
5 as when he first got arrested and when he was sixteen.
6 He didn't get probation. He went right up and did his
7 Youthful Offender Act sentence. He didn't take
8 advantage of that. Since he was violated on his
9 parole this last time, since I've been representing
10 him, he did go up the road, do -- doing the minimum
11 ten months. He got his GED right away. He started
12 taking advantage of the things that were available at
13 the Youthful Offender Act sentence.

14 Since day one, he's been nothing but respectful
15 to me. He's been honest. He has done everything I've
16 ever asked him to do. He's gone above and beyond
17 anything I've asked him to do.

18 He was bond -- he was able to bond out in June
19 of this year. For the last three months, he's been
20 out. We've had -- we've had tons -- a lot of meetings
21 on this, Your Honor. He's come to my office whenever
22 I asked him. He has done -- he's been a great client.
23 He's always, as I said, been respectful. If he wasn't
24 charged with what he's charged with, I wouldn't
25 believe it from my interactions with him and my

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1 conversations with him.

2 He wants -- he would want to indicate that the
3 contraband charge was his brother. There's a lot of
4 stuff that's going on with a lot of other people, Your
5 Honor.

6 There are three, possibly four, people that want
7 to talk on his behalf and so I would like to introduce
8 those people right now.

9 THE COURT: Be glad to hear them.

10 MR. CHAD SHELTON: His father, John. Would you
11 like to start?

12 And John has also been a contact for me, been
13 more than helpful in talking with -- about Ryan and
14 with Ryan.

15 THE COURT: This is his father?

16 MR. CHAD SHELTON: This is his father John.

17 THE COURT: What's his father's name?

18 MR. CHAD SHELTON: John, Your Honor.. John
19 Newman.

20 THE COURT: John Newman?

21 MR. CHAD SHELTON: Yes, sir.

22 THE COURT: Mr. Newman, I'll be glad to hear
23 you. You can just stand right there.

24 MR. JOHN NEWMAN: All right. I'm the father of
25 Ryan Newman. When Ryan Newman was born, he was a

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1 beautiful boy with black hair, coal-black hair. When
2 he was about seven years old, he moved in with me.
3 I've raised him from that time until about sixteen
4 years old. He was active in baseball every year that
5 he lived with me. He made the All-Star team every
6 year with me. He had plenty of good friends that I
7 approved of from the team. Everybody loved him. He
8 was like a hero to them. He would come through in the
9 ninth inning and knock -- win the game.

10 I've never known him to be associated with any
11 kind of organization or anything like that. And he
12 spent most of his time with me. And especially since
13 he's been bonded out of jail he has spent a great deal
14 of time with me and he's been -- he's been just a
15 great boy, yes, sir, no, sir. Anything I would say to
16 him, he would do. He's always been respectful to me.

17 THE COURT: How far did he go in school?

18 MR. JOHN NEWMAN: He went to school up until he
19 was incarcerated when he was, what, fifteen or
20 sixteen, and then got his GED --

21 THE COURT: Got his GED while he was in --

22 MR. JOHN NEWMAN: -- while he was in --

23 THE COURT: -- youthful offender?

24 MR. JOHN NEWMAN: Yes, he did.

25 THE COURT: Okay. Anything else you would like

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1 to tell me about him?

2 MR. JOHN NEWMAN: Nothing that he's been
3 disrespectful to me and I've never seen him do
4 anything or hear him talk about anything against the
5 law.

6 THE COURT: Thank you, Mr. Newman.

7 MR. JOHN NEWMAN: Thank you, sir.

8 THE COURT: Thank you for being here.

9 MR. CHAD SHELTON: His friend, Zavon Clayton.

10 THE COURT: Yes, sir. Your name?

11 MR. CLAYTON: Yes, sir. My name is Zavon
12 Clayton.

13 THE COURT: Be glad to hear you.

14 MR. CLAYTON: Well, basically, I met Ryan a few
15 years back and he took me in when I was having a hard
16 point in time in my life and ever since then we've
17 been like brothers. He's did a lot of stuff for me.
18 And not just me, but like people that I know and stuff
19 like that. He's got a real good heart, right. But
20 everybody that we know as Ryan, he really is a good
21 kid. And we would just thank you so much -- like just
22 with us being around the house, just me and him,
23 spending time with him. He's just like the normal kid
24 when we was growing up. We all had dreams and wanted
25 to become something.

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1 But sometimes, you know what I'm saying, things
2 -- bad things happen to good people. But he really is
3 a good person on the inside, man, and that's -- for
4 the rest of my life -- I can tell my mama right now
5 that she knows he's always going to be my brother.
6 And he really is a good person, and that's one --
7 that's one thing that I know for a fact. And I love
8 him to death.

9 THE COURT: Okay. Thank you so very much.

10 MR. CHAD SHELTON: His grandfather. Mr. Carol,
11 his grandfather.

12 THE COURT: I'm sorry. Who is it, Mr. Shelton?

13 MR. CHAD SHELTON: Mr. Carol, his grandfather.

14 THE COURT: Okay. .

15 MR. CAROL: Good morning, sir.

16 I would like to speak on Ryan's behalf. I
17 really don't know a whole lot about the case at stake
18 now. But he spent an awful lot of time with me.
19 Matter of fact, they lived with us for a while. He
20 worked for me on two or three different occasions.
21 He's worked for both of my sons. And I have never
22 heard him have a confrontation with anybody. He is
23 the most politist young man.

24 He just seems out of place with the modern-day
25 times. I mean, he's just always been a great kid,

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1 just very nice. And, I mean, you just have to drag
2 him into a conversation and -- to get him to say
3 anything. And he's just very pleasant, very nice to
4 be around.

5 THE COURT: Thank you so very much.

6 MR. CAROL: Yes, sir.

7 MR. CHAD SHELTON: And I'm not sure if William
8 would like to address Your Honor.

9 MR. GEIGER: I really don't have anything to
10 add. I just -- I've only been around him for probably
11 six months. From all I can tell, he's a good guy.

12 THE COURT: What's your name?

13 MR. GEIGER: My name is William Geiger.

14 I'm currently dating his mother and that's how I
15 met Ryan. And I know that he's really close with his
16 family.

17 And as far as the gangster that they've been
18 portrayed to be, I have never seen anything like that.
19 I mean, all his friends from Zavon to -- there's a
20 couple of people I've met, they're all super
21 respectful, they all have jobs, you know, and it's
22 just not -- I don't see the gang, you know, kidnaping
23 and whatever else he was charged with. I have never
24 seen that from him.

25 He's a good guy, from what I can tell, and I

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1 just wanted to speak on behalf of him, you know, to
2 give you some insight on what he is.

3 THE COURT: Okay. Thank you very much.

4 MR. CHAD SHELTON: Your Honor, throughout the
5 course of my representation, I've had many friends
6 call, come by my office, to talk about Ryan and what
7 he's done for them.

8 He was originally, as Your Honor heard in trial,
9 charged with the armed robbery. A long time ago, I
10 talked about strong armed robbery. We never were able
11 to come to that agreement. I just want Your Honor to
12 understand that part of the case.

13 MR. NEWMAN: Your Honor, can I say something
14 now?

15 THE COURT: I'm sorry. What?

16 MR. NEWMAN: Can I say something?

17 THE COURT: I'll be glad to hear anything you
18 want to tell me. It'll probably be your last
19 opportunity to talk to me.

20 MR. NEWMAN: Thank you.

21 I just -- I just ask that you have mercy on me,
22 Your Honor, for this -- for these charges. Only the
23 people that's involved with this case knows what
24 really happened. And I just ask that you have mercy
25 on me.

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1 THE COURT: Okay. Thank you very much.
2 Anything else you would like to tell me?

3 MR. NEWMAN: No, sir.

4 MR. CHAD SHELTON: He's twenty-two, Your Honor.

5 THE COURT: I'm sorry?

6 MR. CHAD SHELTON: He is twenty-two. He has a
7 long life to live. I would ask Your Honor to have
8 mercy on him.

9 THE COURT: Okay. Anything else, Mr. Shelton?

10 MR. CHAD SHELTON: He understands -- understands
11 that the most serious, the violent, the eighty-five
12 percent of the kidnaping charge, Your Honor, the
13 allegations were mainly about the robbery. I would
14 ask Your Honor to take that into consideration.

15 THE COURT: Anything else?

16 MR. CHAD SHELTON: That's all.

17 THE COURT: Okay. Thank you so very much.

18 MR. CHAD SHELTON: One thing about the
19 kidnaping, Your Honor. I'm sorry. But it's not a
20 sex offense --

21 THE COURT: I'm sorry. What?

22 MR. CHAD SHELTON: This is not a sex -- not a
23 sex offense to be placed on the registry. I think
24 that needs to be a part of the record, also, on
25 kidnaping.

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1 THE COURT: Solicitor, does this five hundred --
2 498 days sound correct, is that -- from your records?
3 You know, on these charges is what I'm referring to.

4 MS. CORNWELL: I believe so, Your Honor. He
5 never bonded out before he got taken up on the YOA. I
6 believe once he completed the YOA he got brought back
7 down and that's when he -- he bonded out shortly after
8 the YOA was finished. So that --

9 THE COURT: I mean, the 498 days, I mean, that's
10 almost a year and a half.

11 MS. CORNWELL: Yes, Your Honor.

12 THE COURT: Was he in jail for that long
13 before --

14 MS. CORNWELL: It is our understanding that he
15 was, mainly because of the YOA revocation.

16 THE COURT: Well, that's --

17 MS. CORNWELL: He didn't bond out --

18 THE COURT: -- why I'm asking. Was the time --

19 MS. CORNWELL: He didn't bond out.

20 THE COURT: -- the YOA revocation? Was it the
21 arrest on these charges?

22 MS. CORNWELL: I believe so, Your Honor.

23 THE COURT: Okay. It was the arrest on these
24 charges?

25 MS. CORNWELL: I believe. And Agent Bracey can

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1 speak to that more clearly than I can.

2 He was brought in on these charges, he was
3 violated on his YOA while he was in on these charges.
4 I don't know if the bond -- the revocation was based
5 on these charges, though. I believe that they may
6 have been based on prior --

7 THE COURT: What does it show?

8 PROBATION: He was revoked on his Y on June 3rd,
9 2011, for community safety, for being arrested.

10 THE COURT: On the YOA?

11 PROBATION: On the YOA.

12 THE COURT: Because he was arrested on these
13 charges.

14 PROBATION: On these charges.

15 He was released on June 1st, 2012, with these
16 charges pending. He's due to max out on his YOA on
17 October 9th, 2012.

18 THE COURT: All right. So how many -- okay.

19 MR. CHAD SHELTON: Your Honor, if it's not too
20 late, I think he does want to have one -- one other
21 thing he would like to say --

22 THE COURT: I'm sorry. What?

23 MR. CHAD SHELTON: If it's not too late, he does
24 have one other thing he would like to say to Your
25 Honor.

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1 THE COURT: Okay.

2 MR. NEWMAN: I wanted to let you know that since
3 I have been on my YOA, since I caught that charge
4 that's the only felony that I've caught. When I got
5 revoked, it was for -- it was for breaking the rules
6 on the parole. I never caught another charge.

7 And I want -- and I want to let you know that
8 since then, I have changed my life a lot and separated
9 myself from a lot of the people that I did hang out
10 with at the time that I caught my YOA.

11 Since I've been home, I did nothing but stay
12 with my family, as they've all come up here and let
13 you know. I just wanted to let you know that that's
14 all I do is hang with my family and try to support
15 them.

16 THE COURT: Okay. Thank you very much.

17 All right. Mr. Newman, indictment number 1671,
18 that's the kidnaping, sentenced to the State
19 Department of Corrections for a period of fourteen
20 years. Give you credit for 503 days. Run that
21 concurrent, which means it runs together. Indictment
22 number 453, that's the strong armed robbery, sentenced
23 to the State Department of Corrections for fourteen
24 years. Give you credit for 503 days. That's
25 concurrent, which means it runs together. Indictment

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1 number 1672, that's the assault and battery, sentenced
2 to the State Department of Corrections for a period of
3 ten years. That's concurrent. Give you credit for
4 503 days. That's ten years on the assault and battery
5 first. Thank you very much.

6 MS. CORNWELL: Thank you, Your Honor.

7 THE COURT: All right. Mr. Biering, be glad to
8 hear you.

9 And let me say this. As far as what she handed
10 up, I don't think that has anything to do with
11 sentencing. Okay? I'm not even going to consider it.

12 MR. BIERING: Thank you, Your Honor.

13 THE COURT: Okay? I mean, I don't have any
14 problem with her handing it up. As far as I'm
15 concerned, it doesn't have anything to do with
16 sentencing.

17 MR. BIERING: Thank you, Your Honor.

18 THE COURT: The sentence is an entirely separate
19 issue than --

20 MR. BIERING: Yes, sir.

21 THE COURT: -- innocence or guilt.

22 MR. BIERING: Your Honor, before I begin, I just
23 want to make sure. I previously handed up and
24 provided a copy of a few documents. The first, an
25 article, a presentation of James Austin [phonetic].

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1 I provided that copy to the Court, I believe. And
2 also --

3 THE COURT: I've read the medical records --

4 MR. BIERING: Yes, sir.

5 THE COURT: -- and this is dated September the
6 1st.

7 MR. BIERING: Yes, Your Honor.

8 THE COURT: And the doctor I guess that saw her
9 at the Trident emergency room --

10 MR. BIERING: Yes, Your Honor.

11 THE COURT: -- stated for her to get a physician
12 and to follow up with a physician. Has that been
13 done?

14 MR. BIERING: Your Honor, it has, but I don't
15 have a complete record of everything from the
16 physician. I didn't have an opportunity to get --

17 THE COURT: I mean, I'll be perfectly honest
18 with you, my concern is the unborn child, not
19 necessarily Ms. Clark.

20 MR. BIERING: And I thank you for your concern,
21 Your Honor.

22 THE COURT: Okay?

23 MR. BIERING: Yes, sir.

24 THE COURT: And what's the best thing for the
25 unborn child, not necessarily her.

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1 I have no problem putting her in jail today, but
2 I am concerned about the unborn child that she's
3 having difficulty in delivering.

4 MR. BIERING: Your Honor, one -- I've got a
5 presentation as relates to that. Can I --

6 THE COURT: I have read all of your materials.

7 MR. BIERING: I'm sorry, Your Honor?

8 THE COURT: I've read all your materials.

9 MR. BIERING: Thank you, Your Honor.

10 THE COURT: Do you want to supplement the
11 materials?

12 And I want to thank you for giving me the
13 materials.

14 MR. BIERING: Your Honor, it's our position --
15 we've attached two --

16 THE COURT: Well, first of all, let me just ask
17 you this question. If I decide -- you know, in
18 federal court they sentence them, then they let them
19 go and give them a reporting date. It's a common
20 practice in federal court. In state court, it's not.

21 MR. BIERING: Yes, sir.

22 THE COURT: But that's probably seventy-five,
23 eighty percent of the people that get sentenced in
24 state -- in federal court are turned loose on the bond
25 and told to report on such and such a date and --

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1 MR. BIERING: Yes, Your Honor.

2 THE COURT: -- that doesn't happen very often in
3 state court.

4 MR. BIERING: Yes, sir.

5 THE COURT: So my question to you: if I decide
6 to leave her out for purpose of the birth of the child
7 and the bonding between the mother and the child for a
8 four- to six-week period after birth --

9 MR. BIERING: Yes, sir.

10 THE COURT: -- should that be done by postponing
11 sentencing? Or do the sentence and then issue an
12 order that she won't be -- have to start serving it
13 until such and such a date?

14 MR. BIERING: Your Honor, I'm perfectly
15 comfortable postponing sentencing. What I would
16 believe is that part of -- part of this issue, quite
17 candidly, involves stress. And she's had -- she's had
18 complications with past pregnancies. So I would just
19 ask that we be able to postpone sentencing.

20 THE COURT: And my second question to you is
21 will the bondsman continue the bond.

22 MR. BIERING: Your Honor, I can --

23 THE COURT: Or has that been addressed?

24 MR. BIERING: It has not been addressed, but I
25 can inquire as to that. My understanding was that we

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1 were to move forward with sentencing, there could be
2 potentially a delay of execution.

3 THE COURT: I understand.

4 MR. BIERING: But I think that the bondsman
5 would continue the bond. She's been very compliant
6 both with the bondsman and all --

7 THE COURT: How much is the bond?

8 MS. CORNWELL: It's \$25,000, Your Honor.

9 THE COURT: Twenty-five? Okay. Surety?

10 MS. CORNWELL: Yes, Your Honor.

11 And I believe the conditions are also house
12 arrest. If you'll give me one moment, I'll --

13 THE COURT: Okay. Well, I mean, obviously she's
14 going to be on house arrest if I do what I'm thinking
15 about.

16 MR. BIERING: And we're comfortable with that,
17 Your Honor. We certainly --

18 THE COURT: Who's her OB-GYN? Or does she even
19 have one?

20 MR. BIERING: She's got -- she goes to Trident
21 Family Health and they don't have a specific doctor.
22 They rotate doctors through, which made it a little
23 more complicated for me this morning basically with an
24 hour to try to get there, wanted to be able to talk
25 with him. So that'll give us the opportunity to pour

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1 through that, Your Honor.

2 But, you know, I think the Court -- we've
3 already made the Court aware of the condition, the
4 subcreotic hemorrhage. And I've provided a copy of a
5 learned treatise that talks about, quite specifically,
6 Your Honor -- certainly, I think on the record it
7 would be important for all present that we look -- if
8 we look to page 423 of that first article, there is a
9 seventeen percent difference in the number of --

10 And before I say this word -- the word abortion
11 is used. It's not abortion in a -- in the sense of a
12 person wanting to abort. It's a spontaneous abortion.
13 It's the body's reaction to bad things.

14 Women who adhered to -- and the bed-rest issue
15 comes in later in the pregnancy and they monitor the
16 bleeding and things of that nature, monitor the size
17 of this issue -- had fewer spontaneous abortions, 6.5
18 percent versus the non-controlled group with
19 aggressive treatment of this condition where there was
20 23.3 percent spontaneous abortion.

21 So seventeen children potentially die as a
22 result of not having the appropriate care. And I
23 think the Court's attention to and concern for a child
24 who has no part in anything that's -- that there's
25 been --

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1 THE COURT: Well, that's my major concern.
2 That's why I'm sitting here talking to you about it.

3 MR. BIERING: Yes, sir.

4 THE COURT: As I say, I have no problem putting
5 her in jail.

6 MR. BIERING: Yes. I understand. I would
7 certainly try to talk you out of that at the
8 appropriate time.

9 But I would ask that we just continue
10 sentencing. I think that's the smoothest way for
11 this process.

12 THE COURT: All right. From what you've told
13 me, I understand you're opposed to any continuation or
14 postponing of sentencing until after the birth of the
15 child. And as I very clearly said, my concern is not
16 necessarily for Jessica Clark, my concern is for the
17 unborn child, who is an innocent bystander in all
18 this.

19 MS. CORNWELL: Your Honor, and --

20 THE COURT: And I'm not sure being in prison is
21 the appropriate place, that the difficulty she's
22 having with this unborn child is appropriate for the
23 child. And that's my concern, not Ms. Clark. I want
24 you to understand that.

25 MS. CORNWELL: And the State understands that

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1 and we respect that and we'll defer to Your Honor on
2 that.

3 The reason that the State is opposed to it is a
4 public policy issue. She's been convicted of a
5 violent crime and we just need -- and we just can't
6 consent, based on public policy record, and the fact
7 that she is now going to be --

8 THE COURT: I'm not asking you to consent. I'm
9 just asking your thoughts on it. Okay?

10 MS. CORNWELL: Yes, Your Honor. And I --

11 THE COURT: I'm not asking your consent.

12 MS. CORNWELL: I'll defer to the Court on that,
13 Your Honor.

14 THE COURT: Okay. I wasn't asking you to
15 consent. I mean, I -- quite frankly, I don't care
16 whether you consent or not. I'm going to do what I
17 think is right. Okay?

18 MS. CORNWELL: Yes, Your Honor.

19 THE COURT: All right?

20 MS. CORNWELL: Yes, Your Honor.

21 THE COURT: I just wanted your thoughts, your
22 input. Okay?

23 MS. CORNWELL: Yes, sir.

24 Our only concern will be public policy and the
25 fact that she's been convicted of a violent crime, and

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1 potentially of committing crimes while she's out.

2 That's our only concern.

3 THE COURT: Well, I'll have to -- and I don't
4 mean this -- her participation in the crime was not
5 necessarily violent. However, I do agree with you
6 that if it wasn't for her involvement, it would never
7 have occurred. But as far as conducting any violent
8 conduct herself, from what I heard she didn't. You
9 know, but I understand what you're saying and I
10 respect your position. Okay?

11 MS. CORNWELL: Thank you, Your Honor.

12 THE COURT: All right. Two questions. I need
13 to know if the bondsman will continue her on the bond,
14 number one.

15 MR. BIERING: Yes, sir.

16 THE COURT: And number two, I need to set up --
17 number one, she's going to be on house arrest.

18 MR. BIERING: Yes, sir.

19 THE COURT: Who is she going to stay with and
20 where can she stay?

21 UNIDENTIFIED: With her mother.

22 THE COURT: Okay. Are you going to see that she
23 gets to the doctor?

24 UNIDENTIFIED: Yes, I will.

25 THE COURT: Who is her doctor?

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1 UNIDENTIFIED: She goes to Trident Family
2 Practice.

3 THE COURT: Okay. And I need to set up
4 something in the order where these doctors
5 periodically write a report to the solicitor, because
6 I'm going to let the solicitor keep track of this
7 pregnancy. In case she does -- the baby is -- does
8 abort or she loses the child, then we can move forward
9 with sentencing.

10 I want some method from the doctors to
11 communicate to you. They can communicate to you,
12 Mr. Biering, or directly to the solicitor, however you
13 want to set it up.

14 MR. BIERING: I don't mind --

15 THE COURT: -- and I want an order to that
16 effect --

17 MR. BIERING: I don't mind preparing --

18 THE COURT: -- is what I'm telling you.

19 MR. BIERING: Yes, sir.

20 THE COURT: I will continue her on her bond.

21 MR. BIERING: Yes, sir.

22 THE COURT: I want a process where the doctor,
23 every thirty days, reports to you --

24 MR. BIERING: Yes, sir.

25 THE COURT: -- and you report to the solicitor,

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1 if you feel more comfortable with that, of her medical
2 condition and whether she's going to the doctor.

3 MR. BIERING: Yes, sir.

4 THE COURT: And I'm going to put her on house
5 arrest. The only reason she can leave that house is
6 to go to church and to see her attorney, period.

7 MR. BIERING: Yes, Your Honor.

8 THE COURT: Okay?

9 MR. BIERING: And to go see the doctor.

10 THE COURT: Right, go see the doctor.

11 Now, the next question I have for you: are
12 we going to make that passive monitoring or GPS
13 monitoring?

14 MR. BIERING: Your Honor --

15 THE COURT: And I know the GPS monitor is right
16 expensive and I don't know the economic whereforth of
17 the family.

18 MR. BIERING: Your Honor, there is no economic
19 whereforth for the family. I'm appointed counsel.
20 She's got two other children, five and six.

21 Your Honor, I would ask that you not do the GPS
22 monitoring. She's been very compliant with me. The
23 Court -- you know, when you think about extending
24 grace, the Court has extended grace to her through
25 this week by not revoking the bond. I think it's -- I

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1 think it's Your Honor's, you know, general standard
2 procedure that once the trial begins, you revoke the
3 bond.

4 THE COURT: They go to jail.

5 MR. BIERING: And she has reported here
6 faithfully. She's gotten here before me almost
7 every day.

8 THE COURT: How are we -- how are we going to
9 keep check on her?

10 MR. BIERING: Your Honor, I don't mind --

11 THE COURT: Will the bondsman do that?

12 MR. BIERING: I can ask the bondsman to do it.
13 And I don't mind if she had to come by my office, you
14 know, maybe say once every -- well, say twice a month
15 and check in and we submit something --

16 THE COURT: All right. Put that in writing.

17 MR. BIERING: Yes, sir. Be happy to do that.

18 THE COURT: Okay. Put that in the order.

19 All right. Solicitor, can you think of anything
20 else that we need to put in the order to monitor the
21 situation?

22 MS. CORNWELL: The only thing that we ask in
23 addition to the report every thirty days: if there is
24 an unfortunate event that occurs, such as a
25 miscarriage or something like that, that we be

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1 immediately notified and not have to wait the full
2 thirty days for that. Just immediate notice of any
3 change of circumstance.

4 MR. BIERING: Soon as I hear of anything --
5 unless it gets reported, I cannot --

6 THE COURT: Okay.

7 MR. BIERING: But the defendant has a duty to
8 immediately report to her attorney.

9 THE COURT: I understand.

10 Is there anything else you think needs -- would
11 be appropriate to put in the order?

12 MR. BIERING: No, Your Honor. I think that --

13 THE COURT: Make sure you cover HIPAA in the
14 order. Okay?

15 MR. BIERING: I will do that. If I can, Your
16 Honor, if we can talk about this: if I put in there
17 that she will sign all appropriate releases --

18 THE COURT: That's fine.

19 MR. BIERING: -- that I won't have to --

20 THE COURT: -- whatever the medical community
21 wants. I just want -- I just want to cover whatever
22 they want.

23 MR. BIERING: Well, they accept my form now. I
24 don't even know if they read them now because they --
25 read mine. They've seen it, they like it, so -- you

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1 know, most of them seem to like it so --

2 THE COURT: Well, whatever they want signed.

3 MR. BIERING: Thank you. Thank you, Judge.

4 Thank you.

5 THE COURT: All right.

6 MR. BIERING: I will run to my office. I will
7 type --

8 THE COURT: Ms. Clark, do you understand what
9 I'm doing?

10 MS. CLARK: [Indicates affirmatively]

11 THE COURT: Do you have any questions about it?

12 MS. CLARK: [Indicates negatively]

13 THE COURT: I'm going to let you stay out and
14 take care of yourself and the baby.

15 Do you understand?

16 MS. CLARK: [Indicates affirmatively]

17 THE COURT: And once the baby is born, about a
18 month or six weeks later, I'm going to bring you in
19 for sentencing.

20 Do you understand?

21 MS. CLARK: [Indicates affirmatively]

22 THE COURT: So you need to be making
23 arrangements for the baby.

24 Do you understand?

25 MS. CLARK: [Indicates affirmatively]

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1 THE COURT: I think your mother back there will
2 probably have to take that burden.

3 UNIDENTIFIED: I'm going to take all three.

4 THE COURT: Pardon?

5 UNIDENTIFIED: I'll take all three.

6 THE COURT: That's a big burden. I sympathize
7 with you.

8 UNIDENTIFIED: They're grandchildren --

9 THE COURT: Pardon?

10 UNIDENTIFIED: -- not a burden.

11 THE COURT: I understand. Grandchildren are
12 great. It's great to see them, it's great to play
13 with them, it's great to have them for a while, but it
14 sure is nice sometimes to see them go.

15 MR. BIERING: Your Honor, at that sentencing, I
16 would -- I would have an opportunity to be heard on
17 all issues as related to sentencing, as well, wouldn't
18 I?

19 THE COURT: Yeah. Why wouldn't you be entitled
20 to be heard on that?

21 MR. BIERING: Thank you, Your Honor. I just --
22 thank you, Your Honor.

23 THE COURT: All right. How fast can you get
24 this order to me?

25 MR. BIERING: I'll be back by 1:45.

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1 THE COURT: Okay. I'll be sitting here waiting
2 on you.

3 MR. BIERING: I'll be here with bells on.

4 THE COURT: Make sure you check with the
5 bondsman on whether --

6 MR. BIERING: I will.

7 THE COURT: -- and she's going to stay here
8 until we get word from the bondsman, okay, on whether
9 he'll continue the bond.

10 MR. CHAD SHELTON: Post-trial motions, Your
11 Honor?

12 THE COURT: Yeah. We've got to do that.

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POST-TRIAL MOTIONS

1
2 MR. CHAD SHELTON: Your Honor, I just renew all
3 motions that were made throughout the trial, prior to
4 trial. I don't know if that was -- handed-up written
5 motion was made a part of the record, but I would ask
6 that that be made a part of the record. And ask Your
7 Honor for a new trial, based off the prejudicial
8 effect of the GPS monitor that came in that put my
9 character's -- my client's character into evidence.
10 There was no testimony of good testimony and that was
11 a prejudicial effect of my client -- had a prejudicial
12 effect and had the jury made that decision based off
13 the prejudice, Your Honor, and I would ask for a new
14 trial on that behalf. Renew all directed verdict
15 motions as to -- and also the kidnaping, that this was
16 really a robbery, assault, kidnaping, Your Honor. But
17 just renew all those motions.

18 THE COURT: Okay. Anything else? All right.
19 Motions denied.

20 MR. CHAD SHELTON: Thank you.

21 THE COURT: Do you want to make your motions
22 today or wait until after sentencing?

23 MR. BIERING: After sentencing, Your Honor.

24 I'll be back with the order.

25 [SENTENCING CONCLUDES AT 1:09 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the sentencing held before the Honorable J.C. Nicholson, on September 14, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 25th day of December, 2012.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF BERKELEY) CASE NO.: 2011-GS-08-0453
 2011-GS-08-1671
 2011-GS-08-1672

THE STATE OF SOUTH CAROLINA)
)
)
 VS.)
)
)
 RYAN CARL NEWMAN and)
 JESSICA CLARK,)
)
 DEFENDANTS.)
)
)

JURY TRIAL

IN-CHAMBERS SUPPLEMENT TO TRIAL RECORD

held before the Honorable J.C. Nicholson, Jr.
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Berkeley County Courthouse
 Moncks Corner, South Carolina
 on September 14, 2012, Commencing at 12:10 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
 Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
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 1-706-231-6028

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ALSO ATTENDING

Anne Williams, Assistant Solicitor
Trey Harold, Law Clerk

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PROCEEDINGS

IN CHAMBERS

SUPPLEMENT TO TRIAL RECORD

THE COURT: All right. We're back on the record.

All right. We had a sidebar concerning the victim's petty larceny charge in Magistrate's Court,, which was not part of a rap sheet on the victim, and the sidebar was where the prosecuting attorney explained to the Court and defense counsel -- we had a sidebar that's not on the record.

The Court is going to supplement what transpired at that sidebar for the record, from the State and from the defendants, whatever they would like to add.

And this is concerning where you did not bring out the petty larceny charge on the victim. Please, solicitor, state your --

MS. CORNWELL: Thank you, Your Honor.

Throughout this process the State has met with the victim several times, particularly in preparing him for this trial. We told him that -- I told him, in the presence of my investigator, Tom Roston [phonetic] -- I'm not sure if Ms. Williams was in on this conversation or not.

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1 We were -- he was asking me what he had -- you
2 know, if he got questions on certain things. I
3 explained to him that my understanding of the rules of
4 evidence were that those were considered prior bad
5 acts and that the only prior bad acts that he would
6 have to testify to would be any felony that was in the
7 last ten years or possibly anything that was
8 considered untruthfulness, the truth -- the voracity
9 of truthfulness.

10 We looked at his rap sheet together. He had the
11 burglary second charge that was convicted as a
12 burglary third. He was asking me about that and if he
13 had to explain all of that and at that time I told him
14 that if was asked a question about his prior record
15 based on his rap sheet he would have to admit to the
16 conviction -- not the charge, because it was charged
17 as a burglary second, it was convicted as a burglary
18 third -- that he would have to admit to the conviction
19 of the burglary third.

20 I told him that other than that burglary third,
21 based on his rap sheet I did not believe that anything
22 else would come into play; if he was asked if he had
23 gotten in any trouble with the law, he should be one
24 hundred percent truthful and explain -- and admit to
25 this burglary third; that I would likely object, based

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1 on the relevancy of it, but if my objection was
2 overruled he should answer.

3 He then told me about a petty larceny. We
4 discussed that petty larceny. He said that it was in
5 Dorchester. It was -- at that time we ran a current
6 rap sheet. It did not show up on that current rap
7 sheet. I asked him to explain those charges to me.
8 He stated that he was in Dorchester; it was a petty
9 larceny; Berkeley County came and got him from
10 Dorchester and took him from Dorchester to Berkeley
11 County, so he never went home on it; he did not
12 remember if he appeared in front of a judge; he didn't
13 think that he pled guilty in any way; that it was just
14 taken care of. And those were his words.

15 So, again, we pulled the rap sheet. We looked
16 it up. It was not on the rap sheet. I told him that
17 he -- it was not on the rap sheet, that it doesn't
18 appear to be, that I think that the only thing that
19 they could ask him about would be the burglary second
20 -- or the burglary third conviction that he had.

21 And at that time, and with every other meeting
22 that I've had with him, I've told him that, you know,
23 if you're asked any questions, you should always be
24 truthful; you know, don't ever try to cover up
25 anything; be honest with the Court; and that if there

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1 was anything that I thought they asked him about his
2 prior bad acts that I did not think is proper, I would
3 object at the proper time; just because I objected did
4 not mean that he shouldn't answer; if my objection was
5 overruled, he should clearly answer truthfully. I
6 believe that that's what he did in relation to the
7 petty larceny.

8 Like I said, we pulled three rap sheets. We
9 pulled a rap sheet when this incident first occurred
10 on our victim, we pulled a rap sheet when we met with
11 him that day to see if it was on the rap sheet that
12 day, and then for the Court we pulled a rap sheet the
13 day of the -- the day that Mr. Shelton brought us the
14 conviction and pulled a rap sheet.

15 And it's never been on his rap sheet. My
16 investigator has contacted SLED and they're trying to
17 figure out why it's not on the rap sheet. I mean, not
18 even the arrest is on the rap sheet.

19 So it was my understanding of the rules of
20 evidence, the rules that we have before us, that the
21 only prior bad acts and prior convictions that could
22 be brought in were felonies that were on his record
23 and crimes of moral turpitude. It did not appear to
24 me that he had any of those, other than the burglary,
25 and that's what I advised him of. I was --

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1 THE COURT: Well, do you know in your
2 investigation whether or not the petty larceny --
3 was it a bond forfeiture or did he actually appear
4 before the judge?

5 MS. CORNWELL: I do not know that, Your Honor.
6 And when I asked my -- the victim, he stated that he
7 does not remember ever appearing in front of a judge
8 on it. But he doesn't remember, so he doesn't know.
9 He said that with this charge -- that with this crime
10 that was committed, the burglary that he pled to, and
11 everything that was going on, he wasn't sure what was
12 what and what was with what county but he was aware
13 that he was charged with it.

14 THE COURT: All right. For the record, who all
15 is present?

16 MR. BEN SHELTON: Ben Shelton, solicitor --

17 THE COURT: State your name for the record.

18 MR. BEN SHELTON: Assistant Solicitor Ben
19 Shelton.

20 MS. LITTLEJOHN: Debbie Littlejohn, public
21 defender.

22 MR. CHAD SHELTON: Chad Shelton, public
23 defender's office.

24 MS. WILLIAMS: Anne Williams. This is the
25 solicitor.

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1 MR. BIERING: Christopher Biering, Berkeley
2 County Bar, private practice.

3 MR. HAROLD: Trey Harold, Judge Nicholson's law
4 clerk.

5 THE COURT: All right. Does anybody else that's
6 present want to supplement the record on that
7 particular issue, on what transpired, since some of it
8 occurred at the bench, some of it occurred in open
9 court?

10 And, quite frankly, I can't remember what
11 occurred at the bench and what occurred in open court
12 because it was -- we had a lot of bench conferences
13 during this trial. We were dealing with a lot of
14 facebook issues.

15 MR. BEN SHELTON: I would like to supplement the
16 record by saying that I had no knowledge of it
17 whatsoever until it was brought to our attention by
18 Mr. Chad Shelton and that to my knowledge, as soon as
19 that was brought to our attention Ms. Cornwell told
20 the Court and let the Court know about the issue.

21 THE COURT: Mr. Shelton, anything you want to do
22 to supplement the record that you remember may have
23 transpired during the process of the bench hearing
24 since that's not on the record?

25 MR. CHAD SHELTON: I don't believe there was

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1 anything said that --
2 THE COURT: Pardon?
3 MR. CHAD SHELTON: I don't believe there was
4 anything said that was -- has not been said here.
5 THE COURT: Hasn't been brought out?
6 All right. Now, you weren't involved, so you
7 don't know [indicates Ms. Williams].
8 Anything you want to add, Mr. Weston [sic]?
9 MR. BIERING: Mr. Biering.
10 THE COURT: Mr. Biering. I'm sorry. What am I
11 thinking.
12 MR. BIERING: That's okay.
13 Judge, I think that I worked hard enough to
14 protect the record during the trial and I don't
15 have -- and I think the record is the record.
16 THE COURT: All right. Anything else?
17 MS. CORNWELL: Nothing from the State, Your
18 Honor.
19 THE COURT: Thank y'all very much.
20 [PROCEEDINGS ADJOURN AT 12:18 P.M.]
21
22
23
24
25

State v. Newman and Clark
In-Chambers Supplement to Trial Record
September 14, 2012

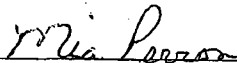
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable J.C. Nicholson, Jr., on September 14, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 25th day of December, 2012.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

Defendant Statement
BERKELEY COUNTY SHERIFF'S OFFICE
 Moncks Corner, S. C. 29461

2011-01000730

This statement of Jessica L. Clark is taken before Deputy A. Bruce Ash

Date 01-07-11 Time 1720 hrs DOB 09-27-87 SSN 249-73-9196

I Jessica L. Clark, whose address is 775 SANGAREE PKWY APT. 17-G

am 23 years of age and have completed the 10TH grade in school.

Deputy A. B. Ash who has advised me that he is a member of the Berkeley County Sheriff's Department, has advised me -

- X 1. That I have the absolute right to remain silent and do not have to answer any questions or give a statement and this cannot be used against me.
- X 2. That if I do answer questions or give a statement, anything I say, can and will be used against me in a court of law.
- X 3. That I have the right to consult with a lawyer of my choice before I answer questions or give a statement and also to have him present while I am being questioned.
- X 4. That if I wish to talk to a lawyer or have him present, but am unable to afford to hire a lawyer, one will be appointed to represent me free of charge.
- X 5. That if I decide to answer questions or give a statement without a lawyer present representing me, I have the absolute right during this interview to stop answering questions and to remain silent.

I fully understand each of these rights which have been explained to me, and having these in mind, I wish

to waive these rights and answer questions concerning the charge of ARMED ROBBERY which I have been accused of committing. No threats force or promise of any kind have been made to me by anyone to induce me to waive these rights and answer questions.

WITNESSES:

Sgt. A. Bruce Ash

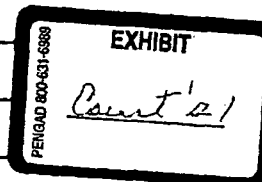
Jessica Clark

- I Refused write a statement at this time until I can consult with a lawyer Cause I dont want something get pin on me when I had nothing do with it.

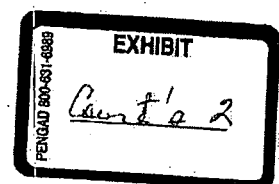
END

OK

57A-



COR0029



9/13/12

Are we required to use "The Hands of
One" in respect to the "Assault & Battery"
charge? YES

Can we find one def. Not Guilty and one
def. GUILTY? YES

J. Milburn
Circuit Ct. Judge
9/13/12



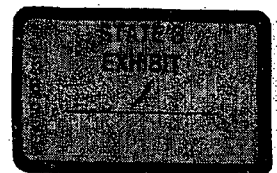
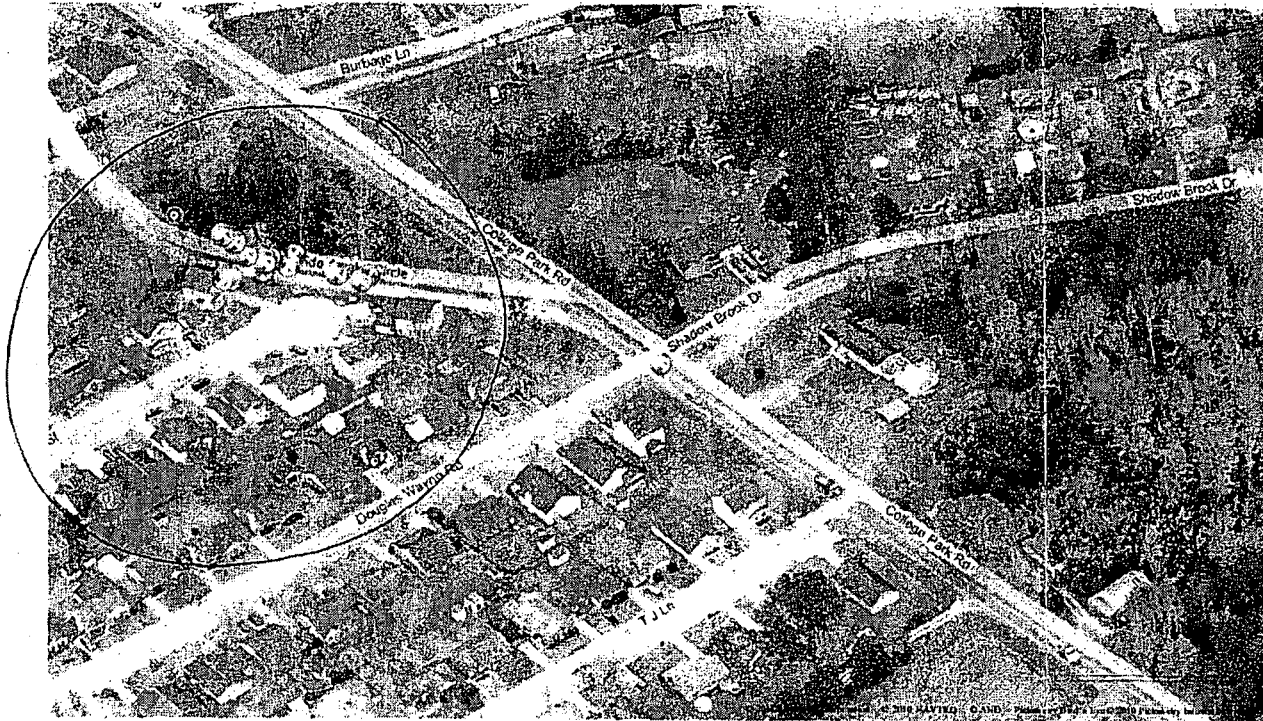
WebTrack

Ver 1.3 (2/1/2011 4:15:12 PM)

1:06:31 PM

Welcome Switiley Logout

Start From: 1/06/2011 1:15:35 AM To: 1/06/2011 1:28:35 AM Interval (ms): 1500 Ryan Newman (RNM) 06 Dec 11 08:28:06.7439416-8009625



WebTrack->Map

2011-01000730 Page 1 of 1

WebTrack

Ver: 1.5 (2/6/2011 4:15:21 PM)

11:11:17 PM

For: 1000730, B: 1000730, Logout

Start

From: 1/06/2011 1:15:35 AM

To: 1/06/2011 1:28:35 AM

Interval (ms): 1500

By: Newcom (1000730) 06 Jan 11 08:28:35 AM 1000730

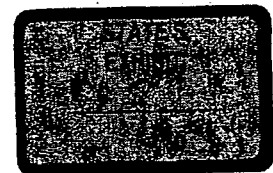
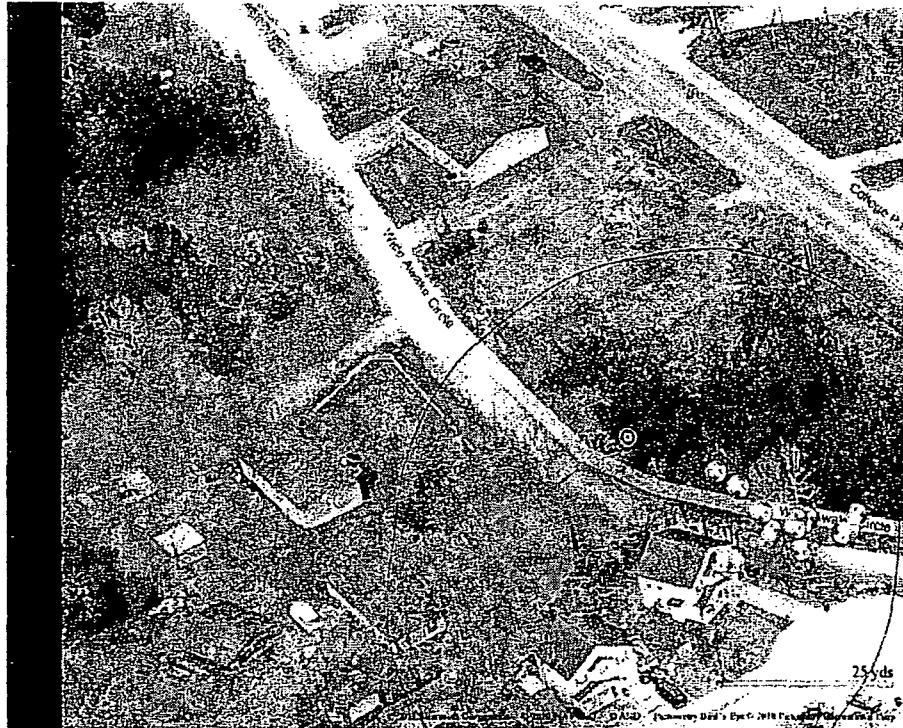


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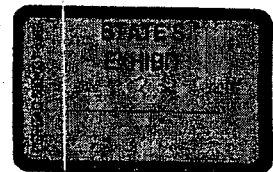
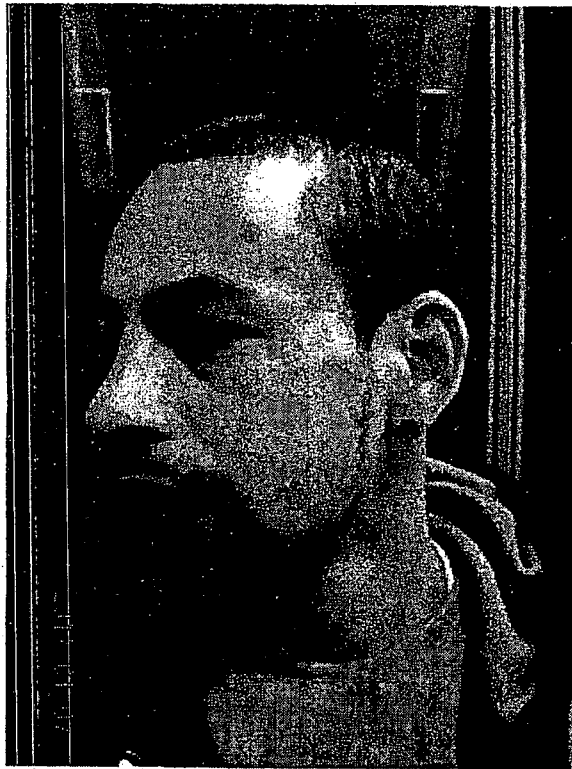


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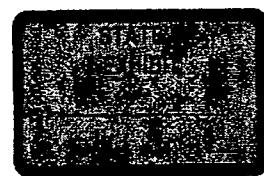
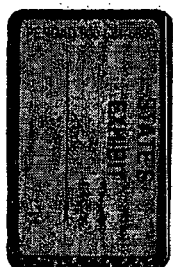


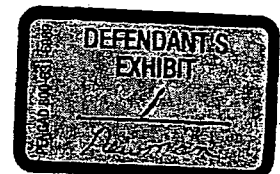
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Sent 2011-12-02 14:37:12 UTC
Body mofo i quit my job i dont
Recipients Andre Mendoza (100000504098721)
Author Kelly E Rule (25004945)
Sent 2011-12-02 14:37:14 UTC
Body seriously
Recipients Andre Mendoza (100000504098721)
Author Kelly E Rule (25004945)
Sent 2011-12-02 14:37:19 UTC
Body thats why i havent been smokin

Id eld11d117ac9475ea3b4234dead09b6e

Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-05-27 18:14:07 UTC
Body yo
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-05-27 18:18:07 UTC
Body whats good man?
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-05-27 18:18:43 UTC
Body u need green
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-05-27 18:19:53 UTC
Body True.. what is your number.. i have to talk to matt and see if he wants some.
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-05-27 18:21:34 UTC
Body 8435664461
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-10-16 16:30:31 UTC
Body i have that green hit me up if u need some
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-10-16 16:31:13 UTC
Body thats whats up man.. ill let you know.
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-10-16 16:32:58 UTC
Body k
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-10-17 22:12:43 UTC
Body are you for real gay boo??
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-10-18 03:21:56 UTC
Body \n nigga my bro ouy my pags mae
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-10-18 04:01:42 UTC
Body that was fucked up. lol i couldnt believe that shit man. lol
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-11-21 18:26:12 UTC
Body u know where any green is??
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-11-21 19:22:40 UTC
Body what u wanted



Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-11-21 19:23:15 UTC
Body like 40 or 50.. trying to find a ride now
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-11-21 19:23:34 UTC
Body yea i got u
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-11-21 19:24:11 UTC
Body thats whats up... im just trying to get this ride thang handled.. you dont have a whip do u?
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-11-21 19:24:48 UTC
Body i can get one where u at
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-11-21 19:26:15 UTC
Body dont trip... in mt. pleasant.. its cool if thats too far. if you can do it.. ill give you like ten or twelve for gas.
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-11-21 19:28:12 UTC
Body ok hold up
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-11-21 19:28:26 UTC
Body dame that a ride
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-11-21 19:29:55 UTC
Body yeah i know.. im trying to find a way out there. i just got paid. its really not that horrible tho
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-11-21 19:34:05 UTC
Body u got gas right
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-11-21 19:35:22 UTC
Body HELL YEA
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-11-21 19:35:48 UTC
Body plenty of gay
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-11-21 19:35:51 UTC
Body ok wat ur number
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-11-21 19:35:52 UTC
Body gas.. lol
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-11-21 19:36:05 UTC
Body lol
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-11-21 19:36:13 UTC
Body 843-605-0474
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-11-21 19:36:22 UTC

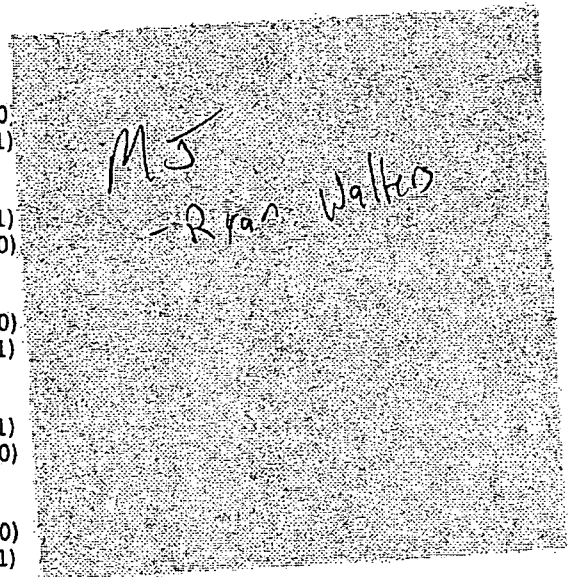
Body imma call u
Recipients Andre Mendoza (100000504098721)
Author Ryan Walters (100001577102755)
Sent 2011-11-21 19:36:38 UTC
Body or shit call me cuz i dont have urs anymore
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-12-02 00:26:46 UTC
Body wat up
Recipients Ryan Walters (100001577102755)
Author Andre Mendoza (100000504098721)
Sent 2011-12-02 00:28:17 UTC
Body have u talk to karly

Id id.195656803852445

Recipients Cody Sealey (100001700758152)
Author Andre Mendoza (100000504098721)
Sent 2011-12-01 01:35:03 UTC
Body wat u doin
Recipients Andre Mendoza (100000504098721)
Author Cody Sealey (100001700758152)
Sent 2011-12-01 23:53:06 UTC
Body just got your message man workin all week.. hit me up for the weekend brah!!
Recipients Cody Sealey (100001700758152)
Author Andre Mendoza (100000504098721)
Sent 2011-12-01 23:53:23 UTC
Body ok]

Id kE5XTILKO2REnCjQYNzpiA

Recipients (100000134580040)
Author (100000504098721)
Sent 2011-03-03 20:59:26 UTC
Body wat ur number
Recipients Stacie Leverock (100000134580040)
Author Andre Mendoza (100000504098721)
Sent 2011-10-03 22:04:02 UTC
Body what up sexy
Recipients Andre Mendoza (100000504098721)
Author Stacie Leverock (100000134580040)
Sent 2011-10-03 22:20:45 UTC
Body What's up Mr. Mendoza??
Recipients Stacie Leverock (100000134580040)
Author Andre Mendoza (100000504098721)
Sent 2011-10-03 22:27:30 UTC
Body no mr. im mendoza that al wat up
Recipients Andre Mendoza (100000504098721)
Author Stacie Leverock (100000134580040)
Sent 2011-10-03 23:43:29 UTC
Body Ain't shit! What's up with you??
Recipients Stacie Leverock (100000134580040)
Author Andre Mendoza (100000504098721)
Sent 2011-10-04 00:18:00 UTC
Body chillin when im i goin to chill with u
Recipients Andre Mendoza (100000504098721)
Author Stacie Leverock (100000134580040)
Sent 2011-10-04 00:32:19 UTC
Body Mmmmmmm.....Don't know!!
Recipients Stacie Leverock (100000134580040)
Author Andre Mendoza (100000504098721)
Sent 2011-10-04 00:32:48 UTC
Body why that
Recipients Andre Mendoza (100000504098721)



Body i dont just what she told me
Recipients Andre Mendoza (100000504098721)
Author Amy Sue Sommers (743775392)
Sent 2011-11-28 22:32:36 UTC
Body i know of u
Recipients Amy Sue Sommers (743775392)
Author Andre Mendoza (100000504098721)
Sent 2011-11-28 22:33:03 UTC
Body is it bad i mean i know it ant :)
Recipients Andre Mendoza (100000504098721)
Author Amy Sue Sommers (743775392)
Sent 2011-11-28 22:33:11 UTC
Body NO
Recipients Amy Sue Sommers (743775392)
Author Andre Mendoza (100000504098721)
Sent 2011-11-28 22:34:50 UTC
Body im waitin on her now it was nice meetin u i hope i see u around soon
Recipients Andre Mendoza (100000504098721)
Author Amy Sue Sommers (743775392)
Sent 2011-11-28 22:35:21 UTC
Body U will if ur hangin with Karley :)~ Nice to mee u soon!
Recipients Amy Sue Sommers (743775392)
Author Andre Mendoza (100000504098721)
Sent 2011-11-28 22:36:36 UTC
Body oh ill be with her all the time that my boo lol
Recipients Andre Mendoza (100000504098721)
Author Amy Sue Sommers (743775392)
Sent 2011-11-28 22:37:24 UTC
Body well tell her to call me !!!!
Recipients Amy Sue Sommers (743775392)
Author Andre Mendoza (100000504098721)
Sent 2011-11-28 22:40:35 UTC
Body i will when she get here
Recipients Andre Mendoza (100000504098721)
Author Amy Sue Sommers (743775392)
Sent 2011-11-28 23:20:59 UTC
Body ok

Id id.203250516398249

Recipients Vanessa Smith (1446453032)
Author Andre Mendoza (100000504098721)
Sent 2011-08-08 03:08:25 UTC
Body wow where have ubeen
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-08 03:08:53 UTC
Body around the world!
Recipients Vanessa Smith (1446453032)
Author Andre Mendoza (100000504098721)
Sent 2011-08-08 03:09:19 UTC
Body lol
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:51:13 UTC
Body dre???
Recipients Vanessa Smith (1446453032)
Author Andre Mendoza (100000504098721)
Sent 2011-08-11 01:51:42 UTC
Body ya
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:51:55 UTC
Body dude, can you help me find some bud for the weekend?
Recipients Andre Mendoza (100000504098721)



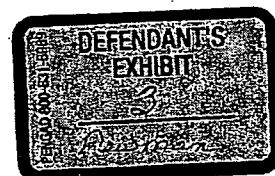
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:52:05 UTC
Body super!
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:52:08 UTC
Body any exotic>
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:52:12 UTC
Body or just reg?
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:52:21 UTC
Body i have a good connect for molly
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:52:23 UTC
Body legit shit
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:52:32 UTC
Body next time i pick u ill let you know so you can try
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:53:27 UTC
Body gimme ur number, ill call tmorrow
Recipients Vanessa Smith (1446453032)
Author Andre Mendoza (100000504098721)
Sent 2011-08-11 01:53:50 UTC
Body when u want it
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:54:10 UTC
Body by fri
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:54:20 UTC
Body is it regular or exotic?
Recipients Vanessa Smith (1446453032)
Author Andre Mendoza (100000504098721)
Sent 2011-08-11 01:54:23 UTC
Body 2nite when
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:54:41 UTC
Body nah, i cant do tonigh, im already in mt p
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:54:59 UTC
Body i can prolly do tomorrow sometime or on fri
Recipients Vanessa Smith (1446453032)
Author Andre Mendoza (100000504098721)
Sent 2011-08-11 01:55:14 UTC
Body exotic wat u want how much
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:55:32 UTC
Body i wont pick any molly up for a few weeks; my dude is in colombia and he is out of town right now
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:55:42 UTC
Body an 8th
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)

Sent 2011-08-11 01:55:47 UTC
Body half a quarter
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:56:06 UTC
Body if its exotic
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:56:15 UTC
Body if reg, ill take a quarter
Recipients Vanessa Smith (1446453032)
Author Andre Mendoza (100000504098721)
Sent 2011-08-11 01:58:29 UTC
Body i got quarter only tho 110
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:58:45 UTC
Body k, send me your number
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 01:58:54 UTC
Body ill text you then youll have mie
Recipients Vanessa Smith (1446453032)
Author Andre Mendoza (100000504098721)
Sent 2011-08-11 02:01:21 UTC
Body 8433435811 wat time u want to do this so im save u one ok
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 02:05:56 UTC
Body after 5; can you meet me? did you get my msg? if no my num is 859-802-4396
Recipients Andre Mendoza (100000504098721)
Author Vanessa Smith (1446453032)
Sent 2011-08-11 02:06:23 UTC
Body i gotta run, kid be screaming and ready 4 bed!
Recipients Vanessa Smith (1446453032)
Author Andre Mendoza (100000504098721)
Sent 2011-11-28 20:15:48 UTC
Body u need any green

Id 2547c32d2242407ba57bcedd1983f010

Recipients Jonathan Espinal (1491600178)
Author Andre Mendoza (100000504098721)
Sent 2011-05-27 18:13:49 UTC
Body u good
Recipients Andre Mendoza (100000504098721)
Author Jonathan Espinal (1491600178)
Sent 2011-05-27 18:14:10 UTC
Body im bored.
Recipients Jonathan Espinal (1491600178)
Author Andre Mendoza (100000504098721)
Sent 2011-05-27 18:14:48 UTC
Body no u need gren
Recipients Jonathan Espinal (1491600178)
Author Andre Mendoza (100000504098721)
Sent 2011-05-27 18:14:56 UTC
Body green
Recipients Andre Mendoza (100000504098721)
Author Jonathan Espinal (1491600178)
Sent 2011-05-27 18:15:06 UTC
Body im broke.
Recipients Andre Mendoza (100000504098721)
Author Jonathan Espinal (1491600178)
Sent 2011-05-27 18:15:14 UTC
Body lol but its brandy's birthday.

Recipients (100001376124045)
Author (100000504098721)
Sent 2011-01-18 18:19:46 UTC
Body Wat ur number u nd green
Recipients (100001376124045)
Author (100000504098721)
Sent 2011-02-04 04:18:22 UTC
Body Do u wnt to somke
Recipients Andre Mendoza (100000504098721)
Author Ashley Driggers (100001376124045)
Sent 2011-05-16 02:34:04 UTC
Body hey you know where I can get any opanas right now?
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-05-16 02:49:39 UTC
Body Na i dont
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-06-28 15:28:54 UTC
Body wat ur #
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-07-05 23:07:49 UTC
Body Wat ur number i need to ask u something
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-08-14 00:44:06 UTC
Body Wat u
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-08-14 00:44:12 UTC
Body Up to
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-08-14 00:44:47 UTC
Body I got oc 20' come chill
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-03 01:09:03 UTC
Body what up
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-03 01:18:46 UTC
Body yo
Recipients Andre Mendoza (100000504098721)
Author Ashley Driggers (100001376124045)
Sent 2011-10-03 03:25:05 UTC
Body whats up?
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-03 05:38:20 UTC
Body when in see u
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-03 16:22:48 UTC
Body hello
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-06 04:36:59 UTC
Body was up
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-06 04:37:40 UTC
Body why u dont talk to anybody
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)



Sent 2011-10-09 04:00:02 UTC
Body we need to get up i called u
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-09 17:22:42 UTC
Body lets smoke buddy
Recipients Andre Mendoza (100000504098721)
Author Ashley Driggers (100001376124045)
Sent 2011-10-09 17:23:29 UTC
Body where you at?
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-09 17:23:53 UTC
Body my mom
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-09 17:23:57 UTC
Body on cp
Recipients Andre Mendoza (100000504098721)
Author Ashley Driggers (100001376124045)
Sent 2011-10-09 17:24:49 UTC
Body k
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-09 17:25:30 UTC
Body so wats up u comin
Recipients Andre Mendoza (100000504098721)
Author Ashley Driggers (100001376124045)
Sent 2011-10-09 17:34:07 UTC
Body yeah gimme a like 20 min
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-09 17:34:28 UTC
Body k
Recipients Andre Mendoza (100000504098721)
Author Ashley Driggers (100001376124045)
Sent 2011-10-09 17:34:31 UTC
Body I gotta see if I can get some gas money cause I'm on E
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-09 17:34:42 UTC
Body k
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-16 07:58:26 UTC
Body Come smoke with me
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-16 18:08:14 UTC
Body u need any green?
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-19 15:48:13 UTC
Body U need green
Recipients Ashley Driggers (100001376124045)
Author Andre Mendoza (100000504098721)
Sent 2011-10-24 02:22:01 UTC
Body U WANT TO SMOKE

Id id.248305285217179

Recipients Andre Mendoza (100000504098721)
Author Michelle Glenn (100002234574747)
Sent 2011-10-23 19:50:58 UTC
Body Hi. Do we know each other?

Summerville Magistrate Court

CASE HISTORY FOR CASE M119914

The State of South Carolina VS Andre Mendoza III

FILED DATE: 10/5/2010

CASE TYPE: CR

STATUS: Disposed

JUDGE: Murphy, Maite

ARRESTING AGENCY: Dorchester County Sheriff

CASE PARTIES:

Defendant: Mendoza, Andre III

Officer: Bistromowitz, J

Solicitor: Popowski, Jean Marie

Summerville, SC 29483

Public Defender: LeMatty, Mary Frances

Summerville, SC 29483

CASE HISTORY FOR CASE M119914

Mendoza, Andre III
2159 Cindy DrAge: 28
DL#: 090487700DOB: 03/16/1984
SSN: 097-68-4388

Summerville, SC 29483-8724

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0173 Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000	11/12/2009	Pled Guilty Jail Time Served	11/12/2010

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000				
Fine to General Fund	\$0.00	\$0.00	\$0.00	999
Victim Services Asm 38.0013% / 5.783	0.00	0.00	0.00	999
Victim Conviction Surcharge \$100 / \$2	0.00	0.00	0.00	999
Law Enforcement Funding Surcharge \$	0.00	0.00	0.00	999
SC Criminal Justice Academy Training	0.00	0.00	0.00	999
State Assessment	0.00	0.00	0.00	999
Total:	\$0.00	\$0.00	\$0.00	

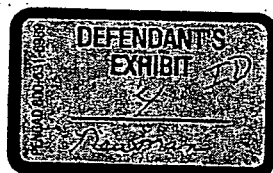
DATE	TIME	EVENT DESCRIPTION
04/01/2010	12:00 am	Bond 3 was set in the amount of .00 by Murphy, Maite
04/07/2010	12:00 am	Filing recorded: Charging Documents/Bond Form(s)

Print Date: 06/14/2012
 Print Time: 12:51:51 PM
 Requested By: MCTLSC

CaseHistory.rpt

A TRUE COPY
 MAGISTRATE
 DORCHESTER COUNTY
 DATE 6/14/15

Page 1 of 2



STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

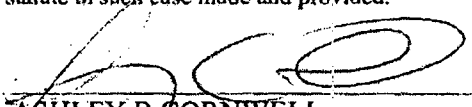
INDICTMENT

At a Court of General Sessions, convened on March 9, 2011 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

That on or about January 5, 2011, in Berkeley County, South Carolina, the Defendant, Ryan Carl Newman, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he 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 and/or monies from the [person or immediate presence of Andre Mendoza with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the 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.


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR

COR2011-01-00050

WITNESSES

Allen Ashe

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2011-01000730

ARREST WARRANT NUMBER

M332969

DATE OF ARREST

January 20, 2011

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 3/19/11Indictment for
Armed Robbery

VERDICT

Not Guilty AS TO

Armed Robbery but Guilty

AS TO Common Law Robbery AS lesser included

Grand Jury Date 3/19/11

INDICT

DOCKET NO. 2011-GS-08-0453

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

March Term 2011

THE STATE

vs.

Ryan Carl Newman
DOB: 1989-12-01
W/MFILED
2011 MAR -9 PM 12:41
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
 STATE VS.
Ryan Carl Newman
 AKA:
 Race: WHITE Sex: M Age: 22
 DOB: 12-01-1989 SS#: _____
 Address: _____
 City, State, Zip: Summerville, SC 29483
 DL#: 090601889 SID#: _____

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

In disposition of the said indictment comes now the Defendant who was
 TO: Strong Arm Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS080453
 A/W#: M332969
 Date of Offense: 1/5/2011
 S.C. Code § : 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137
☒ 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:

Cornwell, Ashley B SC Bar# 76577 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 14 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:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 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 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP _____
 _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 211

Sentence Date: 9/14/12

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 2, 2011 the Grand Jurors of Berkeley County present upon their oath:

Possession of a Weapon During the Commission of a Violent Crime

That Ryan Carl Newman, while acting in concert with others, did in Berkeley County, South Carolina, on or about January 6, 2011, possess a firearm or visibly display what appeared to be a knife or firearm during the commission, or attempted commission, of armed robbery, a violent crime. This is in violation of 16-23-490 of the 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.


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR

COR2011-01-00050

WITNESSES

Allen Ashe

Berkeley County Sheriff's Office

Allen Ashe

AGENCY CASE NUMBER

201101000730

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

January 20, 2011

ACTION OF GRAND JURY

FORWARDED

Foreperson of Grand Jury

Date: 11/2/11

VERDICT

Not Guilty

David S. Murphy
Foreperson of Petit Jury
Date: 11/3/11

INDICT

DOCKET NO. 2011-GS-08-1670

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

Vs

RYAN CARL NEWMAN
DOB: 1989-12-01
W/M

Indictment for

Possession of a Weapon During the
Commission of a Violent Crime

2011 NOV -2 PM 12:09
CLERK OF COURT
BERKELEY COUNTY

894

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 2, 2011 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That Ryan Carl Newman, while acting in concert with others, did in Berkeley County, South Carolina, on or about January 6, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct and/or carry away one Andre Mendoza, III without authority of law, in violation of Section 16-03-910 of the 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.


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR

COR2011-01-00050

WITNESSES

Allen Ashe

Berkeley County Sheriff's Office

Allen Ashe

AGENCY CASE NUMBER

201101000730

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

January 20, 2011

ACTION OF GRAND JURY

Indictment

Foreperson of Grand Jury

Date: 11/2/11

VERDICT

Guilty

Allen Ashe 11/3/11
Foreperson of Petit Jury Date

INDICT

DOCKET NO. 2011-GS-08-1671

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

Vs

RYAN CARL NEWMAN

DOB: 1989-12-01

W/M

Indictment for

Kidnapping

MAINTENANCE
CLERK OF COURT
BERKELEY COUNTY, SC

2011 NOV -2 PM 12:09

FILE

18

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Berkeley
 STATE VS.
Ryan Carl Newman

AKA: _____

Race: WHITE Sex: M Age: 22

DOB: 12-01-1989 SS#: _____

Address: _____

City, State, Zip: Summerville, SC 29483

DL#: _____ SID#: _____

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

In disposition of the said indictment comes now the Defendant who was
 TO: Kidnapping **30**

INDICTMENT/CASE#: 2011GS0801671

A/W#: 2011GS0801671

Date of Offense: 1/6/2011

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ 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: [Signature] 76577
Cornwell, Ashley B 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 14 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:

☒ 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. **503 days**

☐ 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 PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: NO SEXUAL REGISTRATION

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (DUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk Linda J. Hill

Court Reporter: Miss Perron

SCCA/217 (03/2011)

Presiding Judge [Signature]

Judge Code: _____

Sentence Date: 9/14/12

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 2, 2011 the Grand Jurors of Berkeley County present upon their oath:

Assault and Battery, First Degree

That Ryan Carl Neman, while acting in concert with others, did in Berkeley County, South Carolina, on or about January 6, 2011, the commit or attempt to commit an unlawful act of injury to Andre Mendoza, III and the act is accomplished by means that would have likely produced great bodily injury To wit: striking the victim about the face, the defendant did physically or attempt to physically assault the victim in violation of Section 16-03-0600 S.C. 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.


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR

COR2011-01-00050

WITNESSES

Allen Ashe

Berkeley County Sheriff's Office

Allen Ashe

AGENCY CASE NUMBER

201101000730

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

January 20, 2011

ACTION OF GRAND JURY

FROEDER

Foreperson of Grand Jury

Date: 11/23/11

VERDICT

Guilty

Foreperson of Petit Jury

Kathleen Morgan 9/13/12
Date:

INDICT

DOCKET NO. 2011-GS-08-1672

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

VS

RYAN CARL NEWMAN

DOB: 1989-12-01

W/M

Indictment for

Assault and Battery, First Degree

2011 NOV -2 PM 12:09
MAINTENANCE
CLERK-COURT
BERKELEY COUNTY, SC

FILE

11/28

1/28

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
STATE VS.Ryan Carl Newman

AKA: _____

Race: WHITE Sex: M Age: 22DOB: 12-01-1989 SS#: _____

Address: _____

City, State, Zip: Summerville, SC 29483

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 / Assault & Battery 1st degree (10)in 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: 36097
Cornwell, Ashley B 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:☒ 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. 503 days☐ 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 PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐☐ Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling ☐§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing ☐§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ prmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/ Deputy Clerk Linda J. HillCourt Reporter: Mia Person

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS0801672A/W#: 2011GS0801672Date of Offense: 1/6/2011S.C. Code § : 16-03-0600(C)(1)CDR Code #: 3412

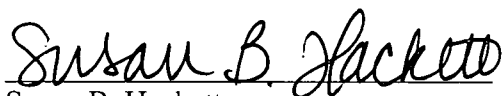
SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSPresiding Judge: [Signature]Judge Code: 2117Sentence Date: 2/14/12

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 30th, 2013

A handwritten signature in cursive script that reads "Susan B. Hackett". The signature is written in dark ink and is positioned above the printed name and title.

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Berkeley County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RYAN CARL NEWMAN,

APPELLANT

Appellate Case No. 2012-212986

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, and Ryan Carl Newman, #317742, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, Columbia, SC 29201, this 30th day of July, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 30th day of July, 2013.



(L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.

RECEIVED
JUL 30 2013
SC COURT OF APPEALS