

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

Honorable Eugene C. Griffith, Circuit Court Judge

BEN ROBERT STEWART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001478

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2007-GS-46-2525
6 BEN ROBERT STEWART,) 2007-GS-46-2526
7 Defendant.) 2007-GS-46-2527
8) 2007-GS-46-2528
9) 2007-GS-46-2529
10) 2007-GS-46-2530
11) 2007-GS-46-2531
12) 2007-GS-46-2532
13) 2007-GS-46-2533
14) 2007-GS-46-2534
15) 2007-GS-46-2535

TRANSCRIPT OF RECORD

SEPTEMBER 17, 2008
Union, South Carolina

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19 B E F O R E:

THE HONORABLE LEE S. ALFORD, JUDGE.

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21
22
23 A P P E A R A N C E S:

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Attorney for the Defendant

24 Michael R. Watts
25 Circuit Court Reporter

1

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WITNESSES

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(NO WITNESSES CALLED)

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EXHIBITS

NO.	DESCRIPTION	ID.	EV.

(NO EXHIBITS MARKED)			

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1 (PROCEEDINGS, SEPTEMBER 17, 2008)

2 THE COURT: Counsel?

3 MR. THOMPSON: If it please the court, Your Honor?

4 THE COURT: Yes, sir.

5 MR. THOMPSON: This is the State of South Carolina
6 versus Benjamin Stewart, or Ben Stewart.

7 These are Indictments 2007-GS-46-2525 through
8 2535, including charges ranging from murder, accessory
9 before the fact of murder, armed robbery, accessory before
10 the fact of armed robbery, and the companion charges that go
11 with that.

12 The State is the here today, Your Honor, the
13 defendant was actually extradited from the State of
14 Pennsylvania, from the city of Philadelphia. He was charged
15 with these crimes here and directly indicted on those
16 charges shortly after the incident occurred, which was a
17 shooting at the BP station, where the clerk, Ned Marshall,
18 was killed in October of 2006.

19 In January of 2007, the end of that month, the
20 defendant was captured in Philadelphia. He was at that time
21 charged with several charges there related to carjacking.
22 At that time Philadelphia would not release the defendant to
23 the State of South Carolina because they wished to try him
24 first on their charges, which they ultimately did earlier
25 this year. He was sentenced there and he's serving a term

1 of eight to sixteen years at this point in time in
2 Philadelphia. They ultimately released him to us under the
3 interstate agreement, under Statute of South Carolina
4 17-11-10, so we have a limited time in which to try him.
5 Our time expires mid-October, Your Honor.

6 We are here for a few reasons today. He was
7 appointed ultimately at the beginning when he came in at the
8 end of March to Mike Matthews to represent him. Mr.
9 Matthews, as I stated, he was working diligently to handle
10 his case.

11 A number of things have happened in the interim,
12 of course, one being that the defendant would be required to
13 give a DNA sample, which we had a separate hearing for. We
14 notified the defense, where ultimately on the date of that
15 hearing he consented to give the sample. We waited for the
16 SLED test from the DNA, which came back verbally with the
17 results at the end of August, so we are just now in the
18 position ready to really try the case.

19 During that time as well, though, especially near
20 the end of that time the defense had noticed us about a
21 month and a half ago that it was imminent that they thought
22 that he needed a mental evaluation for competency and for
23 criminal responsibility. They were getting information
24 regarding that. There was also a -- Mr. Matthews will fill
25 you in on some particulars of what he's currently been

1 diagnosed with. However, it became obvious to the State
2 that that was going to have to happen. Of course, that
3 would delay once again the timing in which we could set this
4 case for trial within the proper 180 days.

5 In speaking with Mr. Matthews, dealing with him
6 over this month and a half, we understood we had the
7 agreement that we would extend it as necessary by agreement,
8 that we would ask the court to extend it by basically
9 consent of the defendant and the State for the appropriate
10 amount of time for him to be evaluated. We were prepared to
11 have that order signed, which was then signed late last week
12 or the beginning of this week.

13 Friday the defendant notified Mr. Matthews that he
14 wished to fire Mr. Matthews as his attorney and have the
15 next attorney appointed on the list, which we also will need
16 to address at this point in time as well.

17 So basically there are three things we are here
18 for the court to address.

19 Number one, of course, the State still would ask
20 for a mental evaluation be done, even though we were
21 consented at the defendant's request, whether he withdrawals
22 that request now or not, simply because based on the
23 Interstate Agreement Act of 17-11-10, it's in the pages that
24 I believe I gave to the court, page four, if you go to
25 Article 6, Section B, it says that "no provision of this

1 agreement and no remedy made available by this agreement
2 shall apply to any person who is adjudged to be mentally
3 ill."

4 And so at this time if the defense has adequate
5 information that he may be mentally ill and is currently on
6 disability for a mental illness, it would behoove the State
7 and the court to require him to be evaluated, because even
8 under this interstate agreement we are required to show that
9 he's not mentally ill, he's competent to stand trial, or
10 else this agreement doesn't apply at all. And I don't know
11 that we have the jurisdiction to try him on this case, if
12 this agreement does not apply.

13 So I think first of all we would ask that the
14 court order an evaluation for him. That would, of course,
15 necessitate that, once again, a continuous be made, because
16 there is no way, obviously, we can try the case if it takes
17 a month and a half to be evaluated within the time period we
18 are allotted.

19 In addition, if he is to change attorneys, I don't
20 know of any attorney that would be up to speed on this case.
21 It's a rather complicated case with the number of
22 co-defendants and a good amount of evidence that deals with
23 the other co-defendants and with the crime itself. I
24 anticipate the case taking about four or five days to try.
25 So if we were to appoint a new attorney today, that would

1 also put us in the position of being unable to try this case
2 immediately within the 180 day rule. And, once again, that
3 would be something that I think is basically at the
4 defendant's either request or his doing that causes this to
5 be continued, not by the State.

6 So I would ask those two things, specifically, to
7 help then for the third thing, which is the time period to
8 be continued.

9 In looking for the continuation, I would also let
10 the court know we have one co-defendant left in this case.
11 There were five people charged regarding this case, two of
12 which were principals -- or three -- I'm sorry, four of
13 which were principals, one was accessory after the fact.
14 Three of those defendants, the State has already disposed of
15 their cases. Those are over. However, there is one more
16 defendant left, Terrell Addison, who is ready to stand
17 trial. He's represented by Jack Swerling. Mr. Swerling has
18 been noticed for a separate trial and has told us sometime
19 back that he had been noticed for trial in October and would
20 not be able to try this case in October. The State's
21 position, of course, is we want some judicial economy in
22 this and want to try these two defendants together.

23 And with that being said, and also with what Mr.
24 Matthews notified us before when he was on the case that in
25 November, he has a trial set for a day certain in November.

1 That would also take a full week. So we are looking to
2 schedule it around those time periods.

3 So really the first time for trial, if a new
4 attorney is appointed and an evaluation is done, would be as
5 early as December, possibly, but truly January or February
6 would be the better days to schedule it, just because of the
7 Christmas holidays. I think that could cause an undue
8 burden on some of the witnesses, because there would be a
9 number of witnesses coming in that have to testify around
10 Christmas time, but the State certainly would be ready to
11 go. There is nothing to hold us back, but I would like to
12 schedule it with both attorneys, the new one and with Mr.
13 Swerling, to have a date set for both of them. I can do
14 that probably within the next month to have that set, and I
15 can even relay that to the court, if the court deems it
16 necessary, so we can have that for a date certain, so that
17 it wouldn't be a mistake and it would not be continued
18 again.

19 MR. MATTHEWS: If I may, Your Honor?

20 THE COURT: Yes, sir.

21 MR. MATTHEWS: May I ask the solicitor one
22 question --

23 THE COURT: Yes, sir.

24 MR. MATTHEWS: -- I would usually ask the court?

25 Do you have a copy of the agreement, extradition

1 agreement, with you here today?

2 MR. THOMPSON: I do not have it with me today,
3 Your Honor.

4 MR. MATTHEWS: Your Honor, what I need to do is
5 the original extradition order that came here did not have
6 all these charges on them. I believe it had accessory
7 before -- accessory before the fact of murder, accessory
8 before the fact of armed robbery, criminal conspiracy, and a
9 fourth charge. My client didn't know until he got here that
10 he had actual armed robbery charges, murder charge. And on
11 here, and he wanted me to state that on the record and just
12 ask the solicitor if he could enumerate all the charges he's
13 facing here in York County, because he didn't have all the
14 charges listed on that agreement that was given him in
15 Pennsylvania.

16 MR. THOMPSON: He's been served with certified
17 copies of all the indictments the day -- the day -- the
18 first or second day after his arrival here we had an
19 arraignment, brought him in within a week. As soon as we
20 had court, we brought him in and arraigned him publicly in
21 the courtroom. We served him with the indictments on all
22 the charges that he's currently facing, so he has all those
23 charges, Your Honor.

24 MR. MATTHEWS: Your Honor, the reason why I'm here
25 and the reason why I'm being requested to be here today is

1 this, is that I have had several discussions with my client
2 in preparing this case in talking to him about fact patterns
3 of the case, going over with him the statements, discussing
4 issues about -- specifically about this evaluation scenario,
5 as well as how it affects the statute. He informed me
6 Friday he did no longer wish me to represent him. We had
7 about a 30 minute conversation. Maybe not -- well, I take
8 that back. Probably a 20 minute conversation down at the
9 jail about it. He told me quite clearly, quite at the
10 beginning of our meeting the reason why we went down on
11 Friday to meet with him is his sister called my office and
12 informed me that they no longer wanted me to represent him.
13 I, of course, could not take their word for it. I went to
14 go see my client, because I have had some contentious
15 conversations with his family, that upon discussing it with
16 him, he did affirm with me that he wished for me to be
17 relieved of counsel, and the conversation got very animated
18 from his perspective to me. So under the Rules of Ethics I
19 informed him I must inform the solicitor, I must inform the
20 court that he wishes for me to be relieved of counsel and
21 wishes for new counsel to be appointed to him. I told him
22 that that obviously means that that could be the next person
23 on the list. I informed him of that and such that -- I
24 informed him today of an attorney who is willing to take the
25 case on an appointed basis, and he does not wish for that

1 attorney to represent him and that attorney was not on the
2 list, the next attorney on the list.

3 Your Honor, there are some other people. There is
4 an attorney out of Columbia named Kenneth Snow, who is out
5 of Columbia, who is not from York County. That was one of
6 either the next name on the list or the second name on the
7 list to come up.

8 As to the that, Your Honor, I respectfully request
9 that the motion my client wants me to put forward to have me
10 relieved and to have the next person on the list to be
11 appointed be granted.

12 As to the motion to have the evaluation, as an
13 officer of the court I will inform the court, yes, I did
14 come to him. I come to the solicitor, informed him that we
15 thought we might have a necessity for an evaluation. That
16 was based on information that I received that he may be
17 schizophrenia and that he had been treated in -- early on in
18 his age. In requesting the documents from him and his
19 family, there was a delay on getting that. The doctor
20 either no longer practiced or we couldn't get ahold of the
21 doctor in this case.

22 Friday I discovered when we met with him -- or
23 actually met with him on Thursday, met with him the
24 Thursday, last Thursday, he showed me a document through the
25 glass that was the evaluation that was done, put him on

1 disability and he is receiving disability. The payee was
2 his father. That was the diagnosis.

3 Your Honor, I have with me a document that
4 explains it, and it's spelled C-Y-C-L-O-T-H-Y-M-I-C
5 Disorder. And that was the Axis I diagnosis on the
6 document.

7 In reviewing that document and reviewing this
8 investigation, I did try to determine what this disorder
9 was. This disorder is a very rare condition. According to
10 the research I have done, it only occurs in about a .4
11 percent of the teenagers and young adults in our society.
12 Your Honor, it's more common in women than men, so it's even
13 more rare in men. It's a very unpredictable disease that
14 affects them. For lack of a better term, it's almost an
15 extreme case of bipolar disorder, because research says that
16 eventually the person actually lowers into the bipolar
17 designation. It causes extreme mood swings and requires
18 antidepressant medication. My client has not been taking
19 any medication while he's been in York County detention
20 center. The item at this point also says that there is not
21 much education on how it's to be treated.

22 Your Honor, based on this information, based on
23 his -- and the type and nature of the case and the fact that
24 he has gone to -- in Philadelphia, he went to a psychiatric
25 treatment facility when he was approximately ten years of

1 age, according to that document, then, you know, I was going
2 to request a psychological evaluation, with my client's
3 permission. Friday my client has indicated that he does not
4 wish for me to ask for that evaluation anymore, so the
5 information I'm giving is for informational purposes only in
6 relation to this disorder.

7 As to the issues of the trial date, I did inform
8 my client Thursday that the psychological evaluation that we
9 were talking about, going to request, would most likely
10 continue the date of a trial time, because of the time frame
11 they would need to do the evaluation. I told him I would
12 inform the solicitor of this and go up and do that, in which
13 I did upon instruction at that point in time.

14 So I have -- and also I informed him that I had a
15 date certain trial in Common Pleas on November 10th, so it
16 would not be tried during that period of time.

17 I informed him today of the reason why we are
18 here. I informed him today that if he still wishes for me
19 to be relieved of counsel. He does not agree with the
20 continuance at this time. I have explained to him that
21 under the statute it can be given for good cause shown. I
22 have explained that all to him. He does not wish for a
23 continuance, and that's how I have it at this point in time.

24 I have informed the solicitor and I'll inform the
25 court, to best serve my client, I think it would be

1 appropriate for me to do a memorandum where I was at in the
2 investigation, what defenses I talked to about my client,
3 what information he's given me, and to hand over the entire
4 file over to the new attorney and making copies of any
5 DVD's, CD's that I have received.

6 Also I informed him that the solicitor's office
7 does have video in their possession of the inside of the BP
8 station, to let them know that they could go there and
9 review it, which does not have my client on it.

10 So that -- that's where I am in my investigation
11 of the case. We have been working on this case with due
12 diligence.

13 (Off the record)

14 (Back on the record)

15 MR. MATTHEWS: Yes, Your Honor, he was reminding
16 me that there was a DNA test that was consented to. The DNA
17 was done on that case and I believe that the solicitor, who
18 I will turn that information over to the new attorney, gives
19 forensic evidence what they tested with my client for my
20 client's DNA did not come back with his DNA on it. So
21 that's where I'm at, and that's kind for informational
22 purposes.

23 The only motion I had before the court is my
24 client's motion to be relieved as counsel and his objection
25 for the continuance at this time.

1 THE COURT: All right. Mr. Stewart, let me hear
2 from you with regard to the motion. You wish to have your
3 attorney relieved as your attorney in this case?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Why do you wish to have him relieved?

6 THE DEFENDANT: Because I feel -- I feel me and
7 him have different strategies in views of my matter, Your
8 Honor.

9 THE COURT: Well, I'm not surprised that you might
10 have different views of the matter, how to proceed with it.
11 He's an attorney trained in the law in courtroom and trial
12 procedures and evidentiary procedures. I'm not surprised
13 that he might have a little bit different view of it than
14 you, with his knowledge of the system.

15 However, the question is whether you all can
16 continue to discuss the case and come to an agreement about
17 how to proceed with your defense of this case?

18 THE DEFENDANT: Your Honor, I feel as though that
19 I don't want him to represent me during my trial, because
20 our talks weren't what I expected, and the outcome of the
21 conversations, I just didn't agree with things that he
22 was -- like the options that he was giving me and the
23 substantial evidence that was being pointed towards me. And
24 then I was being told about taking a plea agreement that I
25 wasn't agreeing about and -- that's just about it, Your

1 Honor.

2 THE COURT: Okay. You just don't agree with his
3 view of the case?

4 THE DEFENDANT: Yes.

5 THE COURT: And you don't think -- all right.

6 Well, of course, whether you accept the plea
7 agreement is totally up to you. The attorney can recommend
8 it or not recommend it, but ultimately that decision is left
9 up to you.

10 Now, what you have to understand, Mr. Stewart, is
11 this. He is your appointed attorney. If you have the
12 ability to pay an attorney, you can get anybody that you
13 want that will agree to represent you, if you have the
14 monies to pay him.

15 If you do not have the money to pay him and the
16 court appoints someone to represent you, then, you know, the
17 court has appointed someone to represent you.

18 Now, I understand that two other attorneys were
19 appointed before this attorney and each of them knew the
20 family of the victim in this case and requested they be
21 excused from the case, because they knew the family and
22 didn't feel like they could adequately represent you. They
23 were conflicted out, as far as your representation, which is
24 proper, of course, for them to do.

25 Now, Mr. Matthews was appointed. He did not have

1 a conflict with regard to the family of the victim, or
2 anything, and he has been trying to represent you on this
3 case.

4 Now, if I relieve him and appoint another attorney
5 to represent you, that will be the last appointment that you
6 get. You have to understand, be sure you understand, that
7 you don't get to keep going through attorneys until you get
8 one who says something that you like.

9 THE DEFENDANT: I understand.

10 THE COURT: You don't -- we don't do that. We are
11 not going to do that. So you have got an attorney. He's a
12 very capable criminal attorney. He's been handling criminal
13 cases for a good many years, at least longer than since I
14 have been a circuit judge, and so he's got a lot of
15 experience in criminal cases.

16 Some of the attorneys on the appointed list are
17 not so experienced criminal attorneys. Okay? But the fact
18 of the matter is I'll appoint another attorney for you. If
19 you don't agree with that attorney, then you are going to
20 wind up representing yourself. And if you don't mind
21 representing yourself, that's fine. But, of course, if you
22 do that, you are going to do that at a great disadvantage,
23 because you won't have an attorney who knows the law, the
24 courtroom procedure, evidentiary rules, the other rules of
25 court, how to proceed with the case and get discovery and

1 understand the defenses, etcetera, so you would be working
2 at a great disadvantage. But you are not going to be able
3 to pick and choose the attorneys that you want to be
4 appointed to represent you. And my policy is you get one
5 appointed attorney. And if you simply don't like what they
6 have got to say about your case and you are not in agreement
7 with them, if I relieve that attorney and appoint another
8 one, that's it. So you are going to work with that
9 attorney. If you want to fire that attorney, then you can
10 represent yourself. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: So you need to make a choice. You
13 need to make a decision. If you don't want this attorney to
14 represent you, I'm going to relieve him. You say that you
15 can't work with him, but I'm only going to appoint one more
16 and I'm not going to appoint another one. And so that's the
17 way it's going to work. Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is that what you want me to do?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right, sir.

22 Then you will get a -- I'm going to relieve him.
23 If you prepare me an order, counsel, relieving you,
24 appointing the next attorney available on the list.

25 MR. MATTHEWS: The next one that does not have a

1 conflict, Your Honor?

2 THE COURT: Yes, sir. There is no need appointing
3 someone who knows the family and is just going to move to be
4 excused anyway. So really it would be better to get
5 somebody out of the York County area.

6 MR. MATTHEWS: Like I said, Your Honor, I believe
7 in looking at the list in anticipation of that, I have the
8 second name on the list -- Mr. Thompson has the list.

9 MR. THOMPSON: Yes, sir. The first name is
10 Michael Smith. Then Phillip Smith. Now, Phillip Smith was
11 actually with our office at the time this case occurred
12 so --

13 THE COURT: He was assistant solicitor and he's
14 now got a private practice.

15 MR. THOMPSON: That's correct.

16 And then Kenneth Snow. Those are the first three
17 that appear on that list. So --

18 THE COURT: Where is Mr. Snow? Where is his --
19 where does he practice?

20 MR. MATTHEWS: I called the Clerk of Court's
21 office, because I did not know the name, and that name came
22 out of Columbia. He is an African American attorney who
23 practices in Columbia, South Carolina.

24 THE COURT: He does some work in York County.

25 MR. MATTHEWS: Ms. Cindy at the Clerk of Court

1 said she knew who he was, so obviously he's been up here.

2 THE COURT: Well, that might be who gets
3 appointed, if that's the first attorney without a conflict.
4 All right.

5 Now, in any event, Mr. Stewart, do you understand
6 I'm going to relieve this attorney. We are going to appoint
7 another attorney to represent you. But you need to -- you
8 are going to need to work very hard with that attorney to
9 try to get your case prepared, any defenses, what have you,
10 getting prepared for the trial on your case. Do you
11 understand?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Because I'm not going to, you know,
14 relieve one attorney, appoint another one and relieve that
15 one. I'm not going to do that. We would never get rid of a
16 case that way.

17 Now, they are making a motion for continuance of
18 your case beyond the 180 days, which is provided by the
19 statute on detainer agreements, and which is Section
20 17-11-10, et sequentes.

21 Now, they have 180 days to try your case.
22 However, the statute allows for the court to extend the 180
23 days for good cause shown, some reason why it couldn't have
24 gone forward. And are you opposed to continuing your case
25 beyond the 180 days?

1 THE DEFENDANT: No, Your Honor, I don't want to.

2 THE COURT: I understand.

3 Well, I think substantial good cause has been
4 shown to continue the case beyond 180 days. And all of that
5 is on the record, but basically there are number of reasons
6 why the case hasn't been set for trial, a number of them.
7 I'm not going to go back through all of them. They have
8 been put on the record by the solicitor, but also we are
9 going to relieve an attorney today. We will have to appoint
10 another attorney, and that attorney is going to have to get
11 up-to-date on this case. Obviously, that attorney can't
12 just in this case with at least one other co-defendant,
13 whose charge has not been disposed of yet. He can't jump in
14 and get ready for trial by October, which is when the 180
15 days would be up. Obviously, we're going to have to extend
16 the time.

17 There are also some conflicts with the attorney
18 for the other co-defendant who is going to be tried, and
19 so -- so I'm going to grant a continuance.

20 And also -- it appears to me that -- and the
21 issues of mental illness and whether they affect a person's
22 ability to go forward, Mr. Stewart seems -- certainly he
23 seems to the court to be coherent today and knows exactly
24 what he's saying and certainly seems to be coherent and able
25 to express himself very well, but there are some mention to

1 the court about a Cyclothymic Disorder, which I disagree
2 with counsel's assessment of that of what it actually is,
3 but -- it is fairly rare, but it is less than a psychotic
4 disorder. And so it is -- it has features of hypomania and
5 it has some depressive features to it, but it is not
6 diagnosed as a major mental illness, which is bipolar, and
7 but what it says if the systems get worse, more intense, get
8 worse and are diagnosed at some point, then they may be --
9 if the symptoms are more intense and more severe, then
10 Cyclothymic, then they might be diagnosed as bipolar, which
11 is a major mental illness, one that is treatable, very
12 treatable, but it is not diagnosed as a psychotic disorder.
13 So I would disagree with your assessment of that. I think
14 it's something less than a psychotic disorder, but one that
15 if the symptoms were to become more intense or severe, could
16 be, that the diagnosis could be changed to bipolar, but it
17 would be something more severe or intense than what may be
18 described as --

19 MR. MATTHEWS: As I stated, Your Honor, my client
20 asked me to withdraw that request for a psychological
21 evaluation. He requested that --

22 THE COURT: Well, I understand that, but the fact
23 of the matter is I'm going to wait until we get his new
24 attorney on board, let his attorney talk with him.

25 But, frankly, if he's been diagnosed with

1 Cyclothymic Disorder before, whether that would affect his
2 ability to participate and assist his counsel with the trial
3 or be able to participate in it, whether it would affect his
4 competence at the time that the offense occurred and that --
5 and whether that should -- whether he should be evaluated
6 for that purpose, if any issue about it, any question about
7 it, it's going to be better to have him examined and get a
8 report on that so we will know for sure.

9 But I think I would prefer to just leave that to
10 his new attorney and let the attorney make that decision
11 after talking with him and bring it to the court's
12 attention. But I think if there is any real issue about
13 that, then it's better to get an evaluation done now rather
14 than trying to wait until later on to do it, which would
15 further delay the trial and everything.

16 MR. MATTHEWS: I will inform his attorney. Even
17 though it's a motion by the State, Your Honor, I'll inform
18 his attorney on the psychological evaluation, that issue is
19 held in abeyance until a new attorney sits down and
20 discusses that.

21 THE COURT: Yeah, and the attorney should be
22 advised that he should talk with Mr. Stewart about that and
23 then make a request of the court one way or the other for
24 certain procedures to fall under that. We can get him
25 evaluated pretty quick, but I don't want it to come right up

1 before trial and have to delay the whole trial in order for
2 them to get that done.

3 THE DEFENDANT: Your Honor?

4 THE COURT: Yes, sir.

5 THE DEFENDANT: I don't understand why my lawyer
6 would have to request it for me to get a psychiatric
7 evaluation.

8 THE COURT: He doesn't have, but he's not yet
9 involved in the case.

10 You are saying you don't think that you need to be
11 evaluated.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. And I really -- looking at you
14 and talking to you, Mr. Stewart, I don't think that you need
15 to be evaluated, just from that standpoint.

16 THE DEFENDANT: Excuse me.

17 THE COURT: But your attorney is saying that you
18 have been previously diagnosed for purposes of Social
19 Security disability as having something less than a
20 psychotic disorder, but --

21 THE DEFENDANT: The last time I was diagnosed
22 was -- the last time I had a psychiatric evaluation was
23 2006, and -- it's been two years ago and I think I'm capable
24 of going to trial and understanding what's going on.

25 THE COURT: Well, I understand you think that.

1 You appear to be able to do that, but there are a lot of
2 reasons why we need to make sure of that. And your attorney
3 may agree with you and -- your attorney may agree with you
4 when you talk with him, or her, as the case may be, but then
5 they can decide whether they want to request it or not. If
6 they don't request it, we won't do it. Okay? But if that
7 attorney is not comfortable with going forward without doing
8 it, then he can make a motion before the court and we can
9 decide.

10 But, in any event, what you have to understand is
11 is time. If we do it right away and get the evaluation
12 report, it may come back with an evaluation report that says
13 that you are able to assist counsel and are competent to do
14 that, there is no question about your competence at the time
15 this offense occurred, then we move right along. Okay, that
16 would be the end of it. But I don't want to wait and have
17 that issue come up right before the trial and have to extend
18 the trial date to, see, a couple months to get an evaluation
19 done.

20 MR. MATTHEWS: Well, based on the conversation
21 with my client, my client didn't want that to happen either.

22 THE COURT: Pardon me?

23 MR. MATTHEWS: He doesn't want that to happen
24 either.

25 THE COURT: Okay. Well, in any event, I think

1 good cause is shown. You may -- I think we need a written
2 order on it, probably, solicitor, so if you will draw me an
3 order finding that good cause has been shown to continue
4 this.

5 And what I'm going to do is I'm going to continue
6 it, and at this point I would require you to come up with a
7 trial date within 90 days. Not that it would be tried
8 within 90 days, but you come up with a trial date within 90
9 days. Set the trial date for it. If there is a problem
10 with that beyond your control, then you can always move for
11 another continuance. What I want to ask you is try to get
12 it set within 90 days.

13 MR. THOMPSON: Thank you, Your Honor.

14 THE COURT: And we need to get a new attorney
15 appointed and get him involved as soon as possible.

16 MR. THOMPSON: All right.

17 THE COURT: And -- him or her. And if they think
18 an evaluation is necessary, we will do that. If they don't
19 think so, then we will to move on. Okay.

20 MR. THOMPSON: Thank you, Your Honor.

21 THE COURT: All right. Is there anything else we
22 need to address today?

23 MR. MATTHEWS: No, not on this issue.

24 THE COURT: Okay. Let the record reflect that I'm
25 the chief administrative judge of the circuit. This is

1 being held in Union County, which is part of our circuit,
2 but I am the chief administrative judge for this circuit and
3 obviously I have jurisdiction here this week and any others
4 of Union.

5 MR. THOMPSON: Thank you, Your Honor.

6 MR. MATTHEWS: Thank you, Your Honor.

7 (END OF REQUESTED TRANSCRIPT OF RECORD)

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1 CERTIFICATE

2 I, the undersigned, Michael R. Watts, Official Court
3 Reporter for the Sixteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of the
6 proceedings had and the evidence introduced in the trial of
7 the captioned case, in the Court of General Sessions for
8 YORK County, South Carolina, on the 17th day of September,
9 2008.

10 I do further certify that I am neither of kin, counsel
11 nor interest to any party hereto.

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14 JANUARY 17, 2011

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18 Michael R. Watts
19 Circuit Court Reporter
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2007-GS-46-2525
6 BEN ROBERT STEWART,) 2007-GS-46-2526
7 DEFENDANT.) 2007-GS-46-2527
8) 2007-GS-46-2528
9) 2007-GS-46-2529
10) 2007-GS-46-2530
11) 2007-GS-46-2531
12) 2007-GS-46-2532
13) 2007-GS-46-2533
14) 2007-gs-46-2534
15) 2007-GS-46-2535
16) FEBRUARY 11, 2009
17) YORK, SOUTH CAROLINA

18 B E F O R E:

19 THE HONORABLE LEE S. ALFORD, JUDGE.
20

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

22 WILLY THOMPSON, DEPUTY SOLICITOR .
23 ATTORNEY FOR THE STATE

24 KENNETH SNOW, ESQUIRE
25 ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, FEBRUARY 11, 2009)

2 MR. THOMPSON: If it please the court, Your Honor?

3 THE COURT: Yes, solicitor.

4 MR. THOMPSON: This is the State of South Carolina
5 versus Ben Robert Stewart, Indictment 2007-GS-46-2525, where
6 he's indicted for murder.

7 Also 2007-GS-46-2526 for accessory before the fact
8 of murder.

9 2527, for armed robbery.

10 2528, for accessory before the fact to armed
11 robbery.

12 2529, for kidnapping.

13 2530, for accessory before the fact of kidnapping.

14 2531, for conspiracy.

15 2532, for possession of a firearm during the
16 commission of a violent crime.

17 2533, for possession of a stolen vehicle.

18 And 2535, for accessory after the fact, and that
19 is after the fact of armed robbery and kidnapping and
20 murder.

21 The defendant is represented by Kenneth Snow.

22 The defense is here, Your Honor, today to request
23 a mental evaluation of the defendant.

24 Just a brief history before they make their
25 request, Your Honor. I'll point out to the court that he

1 was originally appointed Mike Matthews when he was -- when
2 he was brought here. This is the murder that happened at
3 the BP station here in Rock Hill where Ned Marshall was
4 killed back in October of 2006.

5 He was arrested in January of 2007, in
6 Philadelphia. They did not release him to us for some
7 period of time. They prosecuted him on a case there first.
8 When they finished their prosecution, then they were
9 allowed -- we were allowed to then bring him down here where
10 Mr. Matthews was appointed.

11 We thought we were close at that point to
12 resolving the case with a plea at that time. However, the
13 defendant made the motion to relieve Mr. Matthews and get a
14 different attorney.

15 At that time I asked the court if we could have a
16 mental evaluation. The court spent some time in talking
17 with the defendant about the case itself, about his rights
18 and about his decisions to relieve Mr. Matthews in the court
19 proceeding. He seemed very competent at that time. And it
20 was even brought to the court's attention that he had some
21 sort of disability, that he had received a diagnosis for a
22 certain type of mental health problem. And the court was
23 well aware of that problem and understood what that was.
24 And we did that hearing down in Union in either September or
25 October, somewhere in that area.

1 The court requested that we go ahead and set a
2 trial date, which we did soon after that, and the trial date
3 has been set for months now for the 23rd of this month, and
4 that's when the trial is set to go with this defendant and
5 his co-defendant, Terrell Addison, would go to trial on the
6 charges.

7 So that's the background leading up to where we
8 are today.

9 THE COURT: Mr. Snow.

10 MR. SNOW: Your Honor, my information I got is
11 slightly different. Certainly I think I have good working
12 relationship with this gentleman and so I'm not certainly --
13 I think he's recited pretty much what had occurred. My
14 version is somewhat slightly different, from my
15 recollection.

16 I don't know a whole lot about this case, of
17 course, other than I was called by an attorney, Mr.
18 Matthews, I believe. He -- and I think during our
19 conversation he informed me -- and he was very helpful, that
20 I would be receiving some type of memo from him, but he was
21 very helpful on the phone and told me a lot of information
22 about the case.

23 What I recall him telling me, and I may be wrong,
24 judge, but I'm telling you what I recall him telling me is
25 that the judge wanted me to consider, the new attorney,

1 rather than an evaluation or not. That's what I remember.
2 I certainly don't have that in writing, but I kind of --
3 that's what I remember from the conversation.

4 In speaking with my client, he says the same
5 thing.

6 I'll tell the judge, though, judge, I would
7 certainly would leave it to the court to make that decision
8 whether he needs one or not.

9 I'll tell the court that I'm having difficulty in
10 I think reasoning with my client relative to the actual
11 facts in the case. I'm not sure whether he correctly
12 understands the consequences of these proceedings; certainly
13 not to a reasonable degree. I am not a psychologist, I'm
14 not a psychiatrist, but certainly I am concerned. I would
15 ask the court to have him evaluated.

16 I would mention to the court one of the questions
17 that my client asked me to mention to the judge is that he
18 was evaluated, and I think this is part of the record. Mr.
19 Thompson is probably certainly aware of that. He was
20 diagnosed at some point and he was evaluated to have a
21 bipolar disorder, judge. Whether --

22 THE DEFENDANT: I'm taking medicine now.

23 MR. SNOW: Judge, he is under some medication.
24 This was done back in Philadelphia.

25 How old were you then when you got the evaluation?

1 THE DEFENDANT: 19.

2 MR. SNOW: 19.

3 Judge, if I may just approach to show you this?

4 THE COURT: Yes.

5 (Off the record)

6 (Back on the record)

7 THE COURT: All right. I do recall this now.

8 It's coming back to me a little bit. I remember his
9 diagnosis, Axis I. And, of course, there was Axis II is no
10 diagnosis. Axis III, no medical condition. So Axis I --
11 this was a Ph.D., I guess a psychologist, a Ph.D. in
12 psychology, I'm assuming, who wrote this report and who
13 found a cyclothymic disorder, which is not -- you know, it's
14 fairly new insofar as any kind of mental problems are
15 concerned, but it's not one of the major mental illnesses.

16 He also was given Axis I, a provisional diagnosis
17 of bipolar. Although, it's difficult sometimes to diagnose
18 people at that age. Sometimes bipolar really doesn't
19 manifest itself with symptoms until a person is in the mid
20 twenties or late twenties, although some are earlier than
21 that. A lot times people in their mid twenties the symptoms
22 become very easy to recognize with regard to persons, so he
23 didn't -- he says provisional. So, I mean, it's something
24 to be looked at, but it's not an actual diagnosis.
25 Sometimes -- like I say, his age at that time it's --

1 sometimes it's difficult to diagnose, even though you may
2 see some of the symptoms.

3 And I say that, because I did almost 2000
4 commitment hearings of people who were mentally ill when I
5 was a probate judge over a 13 and a half year period, so I
6 became very familiar with all of this, through all of those
7 reports from doctors and evaluations and that sort of thing.
8 So, you know --

9 And I think I said it at the time, you know,
10 bipolar is very treatable. It's a major mental illness, but
11 it's a very treatable mental illness, as long as the person
12 takes their medication. There are many people far more than
13 you would have any concept that have bipolar disorder, been
14 diagnosed with bipolar disorder in this country. Most of
15 them work every day, as long as they take the medication and
16 keep it monitored by having their blood level monitored, the
17 lithium levels in his blood. As long as they get that done
18 and take medicines prescribed, they do quite well and don't
19 have any problems. And certainly when they are taking their
20 medication, you know, their symptoms are not there and they
21 can very function very normally. And I think that's
22 probably what I said at that time with the cyclothymic
23 disorder, something that's fairly recent in I think a
24 diagnosis, but it doesn't rise to the level of something of
25 a major mental illness, like schizophrenia or bipolar,

1 severe depression, and that sort of thing. At any rate,
2 that's where we were.

3 Now, what have you seen that might be different
4 than that?

5 MR. SNOW: Well, judge, particular one or two
6 cases that I saw my client, it was certainly very difficult,
7 you know, to communicate with him, so that -- that was where
8 I got concerned. He was certainly frustrated and very angry
9 in the process, probably even with me. And --

10 THE COURT: You see, that's where we are -- were
11 with Mr. Matthews, but I don't think it was because -- I
12 think basically it's because at that time Mr. Stewart didn't
13 want to hear Mr. Matthews had to say and what his
14 recommendations were. And if you -- and if that's the
15 communication that you are having difficulty with getting
16 him to understand the seriousness of the matter and trying
17 to either prepare for trial or work something out on it, if
18 that's the problem, he doesn't agree with you, whatever your
19 recommendations are, I don't really see that as difficulty
20 in communication. It's just -- do you understand what I'm
21 saying?

22 MR. SNOW: Yes.

23 THE COURT: So you tell me. Is he having
24 difficulty understanding what he's charged with?

25 MR. SNOW: Well --

1 THE COURT: In preparation for trial?

2 THE DEFENDANT: Excuse me, Your Honor?

3 THE COURT: Sir, I didn't ask you anything. When
4 I want to hear from you, I'll ask you.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And I will hear from you, but I don't
7 want you to interrupt me. Okay?

8 THE DEFENDANT: Yes, sir.

9 MR. SNOW: Well, judge, I think I would summarize
10 it as being -- being able to get him fixated on I think on
11 what the substance of this case versus I think relying on
12 matters that may be addressed at another time and may not
13 even be of substance. So, you know, he's concerned about
14 some other issues, judge, and I certainly want to address
15 the court on that issue.

16 THE COURT: That has to do with this case or
17 something else?

18 MR. SNOW: To do with this case. And I will tell
19 the court about that. I'm trying not to get -- waste the
20 court's time in those other matters, unless the court wants
21 me to address them.

22 THE COURT: No, I'm just -- I want you to tell me
23 what you feel is important.

24 MR. SNOW: May I pass this up, judge, and --

25 THE COURT: Yes.

1 MR. SNOW: This is another document he handed me
2 to show you. And I have skimmed over that and I cannot
3 attest to, you know, that case, but that's something that
4 he's handed up to me.

5 And, judge, I will tell you that just my
6 experience with him, it's somewhat difficult to communicate
7 with him. And I am not certain whether he -- he certainly
8 understands the nature and object of the proceedings, but
9 it's very difficult sometimes, but that's -- out of an
10 abundance of caution, I would ask the court to evaluate him.
11 Certainly I would take the court's ruling or decision and we
12 would proceed the way the court will proceed.

13 THE COURT: All right.

14 Now, you wanted to talk to the court. Mr.
15 Stewart, I will be glad to hear from you now.

16 THE DEFENDANT: Now?

17 THE COURT: Yes, sir.

18 THE DEFENDANT: In your hand, Your Honor, you have
19 the interstate agreement on detainers and that's what I'm
20 under. And I wrote a petition for writ of habeas corpus.
21 And habeas corpus is the proper remedy to challenge any
22 unlawful deprivation of a person's liberty. No remedy other
23 than habeas corpus would be adequate to protect the
24 petitioner's continuous unlawful detention, submitting to
25 the court the whole question of my right for a discharge and

1 I'm being held against my liberty, Your Honor.

2 First this all started January 27th, 2007. I was
3 arrested in Philadelphia, P.A., and booked at the current
4 former facility where I have pending charges and I refused
5 to voluntarily waive extradition.

6 According to Pennsylvania and federal statutes,
7 the solicitor then would have to start process of obtaining
8 a governor's warrant. And the State of Pennsylvania would
9 have to have received that governor's warrant within 90
10 days, Your Honor, in Pennsylvania, or the fugitive warrant
11 against me, the defendant, would be dismissed and the
12 defendant will be released of the detainer. That 90 days
13 was on April 27th, 2007.

14 I have an exhibit here, if you want to see it,
15 Your Honor.

16 THE COURT: But were you -- were you being held up
17 there on charges up there?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. And so you weren't -- so you
20 weren't ready to be --

21 THE DEFENDANT: So --

22 THE COURT: Wait a minute now.

23 THE DEFENDANT: All right.

24 THE COURT: Well, you weren't being held on the
25 detainer from here -- I mean, you were on the detainer, but

1 you weren't being held on that detainer, because you were
2 serving your charge different.

3 If they sent a warrant up there to have you
4 arrested and try to extradite you, true, you are entitled to
5 an extradition hearing before the governor's office and the
6 governor has to make to make that decision whether you
7 should be extradited. No question about that. But if you
8 are up there serving time on different charges -- are you
9 serving -- you are in jail awaiting disposition of those
10 charges, you are not there being held on the detainer. That
11 doesn't come into play until you are freed up to be leave
12 from there.

13 THE DEFENDANT: Your Honor, I wasn't there serving
14 time.

15 THE COURT: Well, you are waiting charges.

16 THE DEFENDANT: Yes.

17 THE COURT: You had charges and they held you,
18 didn't they --

19 THE DEFENDANT: Yes.

20 THE COURT: -- on the charges?

21 THE DEFENDANT: Yes. It says that South Carolina
22 had a 90 day period to file a governor's warrant. And the
23 90 day period expired on 4-27-07, and they never served me a
24 governor's warrant and no governor's warrant was never
25 obtained.

1 THE COURT: What are you reading from?

2 THE DEFENDANT: South Carolina -- I'm reading
3 from -- this is a part of my motion to discovery where South
4 Carolina lost jurisdiction of it.

5 THE COURT: Something that you prepared yourself,
6 or somebody --

7 THE DEFENDANT: Yes, sir.

8 MR. SNOW: No, it's something from -- I don't
9 think the D.A. has seen it yet.

10 THE DEFENDANT: No, I sent him a copy overnight
11 and I got the receipt, Your Honor.

12 And I came down here April 25th, 2008, Your Honor.

13 THE COURT: All right. Have you seen this,
14 solicitor?

15 MR. THOMPSON: Yes, Your Honor, and --

16 THE COURT: What's your position?

17 MR. THOMPSON: Well, judge, we -- we -- we did a
18 governor's warrant. The State of Pennsylvania said they
19 were not going to release him until they did his charges
20 first, and so we waited. And then when his charges were
21 finished, we had to go through the process again to have
22 another warrant issued through the governor's office to have
23 him brought down under the extradition. So that's when we
24 started to process him again. I think ultimately he waived
25 that and came down here. We didn't have to go through the

1 final hearing on it, but we did, once again, obtain another
2 governor's warrant for this to occur, because they told us
3 they would not release him until his case has been
4 prosecuted there.

5 THE DEFENDANT: May I finish, Your Honor?

6 THE COURT: Yes, sir.

7 THE DEFENDANT: They never have time to -- I never
8 obtained a governor's warrant demanding my extradition back
9 to the State of South Carolina, which was never --

10 THE COURT: Don't just read it. Let's deal with
11 the issues, okay? Don't just read to me what you prepared.

12 He's saying -- you got listen to what he says too.
13 He's saying that they issued a governor's warrant.

14 THE DEFENDANT: They never issued one.

15 THE COURT: Well -- just listen to me, will you?
16 Okay? We are not going anywhere if you are going to sit
17 there and disagree with everything that I say before I even
18 say it, okay? Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I'm going to -- I'm listening to you,
21 but I want you to listen to me.

22 He's saying that they did issue a governor's
23 warrant. They wouldn't honor it up there. They wouldn't
24 process it and they wouldn't release you up there until they
25 disposed of your charges that were pending up there first.

1 Once they disposed of those charges, they got
2 another governor's warrant. And they are saying that you
3 waived extradition, an extradition hearing, and agreed to
4 come back and face those charges. Is that true?

5 THE DEFENDANT: No, Your Honor. That's why I
6 wanted to finish reading this.

7 THE COURT: Well --

8 THE DEFENDANT: And I have -- on my -- on my AID,
9 under Article IV, under Form II, where it states the
10 required certificate of inmate status is offered temporary
11 custody is attached, I never received my inmate status
12 attached and I never signed Form II, if you want to look at
13 it.

14 THE COURT: All right.

15 MR. SNOW: May I approach?

16 THE COURT: Well, counsel, listen, I'm not setting
17 up this hearing to go through a habeas petition on his
18 behalf.

19 MR. SNOW: That's --

20 THE COURT: You do your job.

21 MR. SNOW: Well, judge, that's what I was --

22 THE COURT: Counsel, do your job. You go through
23 all of this with him --

24 MR. SNOW: I don't mind.

25 THE COURT: -- and see what's there, see what they

1 got. And if you think you got an issue with this, present
2 it to the court. Okay? I don't know if you got an issue or
3 not.

4 MR. SNOW: Judge, that's what I was -- I was going
5 show you.

6 THE COURT: I'm not going to take time to go
7 through all this today. I have got a trial I'm fixing to
8 start.

9 MR. SNOW: I understand that, judge. That's why I
10 did not bring it forward. I asked the court -- I told you
11 my client wanted me to do it, but I certainly didn't present
12 it because I thought you wanted a hearing on that.

13 THE COURT: Well, he seems to know what he's
14 talking about, counsel. How can I say -- I don't know if
15 the facts -- that he's had that facts straight or not, I
16 don't know, but he's not saying anything that indicates to
17 me he doesn't know what he's doing, to the contrary.

18 MR. SNOW: No, I didn't -- I certainly didn't
19 imply that judge, no.

20 THE COURT: Well, I mean, you are asking for a
21 mental evaluation. Okay?

22 MR. SNOW: Oh, sure.

23 THE COURT: And I'm saying he certainly seems to
24 know what he's doing.

25 THE DEFENDANT: Excuse me, Your Honor.

1 THE COURT: He's making a -- to me he's presenting
2 a position and he's doing it coherently and -- he might not
3 be doing it succinctly, but he's doing it coherently and
4 expressing where he thinks he's entitled to some relief from
5 this. He's doing it certainly coherently.

6 I don't know what the facts are, so y'all need to
7 work that out and see. Then I'll take another look at it.

8 Anything else you want to tell me about the
9 inability to communicate with him?

10 MR. SNOW: Nothing. Nothing further, judge. I
11 certainly would be more than happy to address the court --

12 THE COURT: I think you need to look -- I mean
13 there is some requirements on these extradition to bring
14 something to trial.

15 Now, I don't know what he's talking about, but,
16 you know, of course, when he makes a motion to have his
17 counsel relieved and other counsel appointed and we have to
18 delay the thing and that, you know, he's waiving his right
19 to have disposed of within a certain amount of time. The
20 court would certainly find that he's waived his right to
21 proceed within some statutory period of time that he's
22 talking about, but -- so, at any rate, you need to look at
23 that.

24 What else do you want to tell me, briefly?

25 THE DEFENDANT: Under Article 6, Section D states

1 that no remedy made -- no remedy made under -- I don't know
2 about by heart, but it says it cannot be adjudged to any
3 person mentally ill and no remedy made and I would be -- can
4 be -- brought back, extradited.

5 THE COURT: I didn't understand that.

6 THE DEFENDANT: Under Article 6, Section D, under
7 AID that my counsel just gave you.

8 THE COURT: What about it?

9 THE DEFENDANT: It says no remedy made under
10 mental illness a person can be extradited.

11 THE COURT: Well, were you adjudged mentally ill
12 up there and -- was that issue raised up there on
13 extradition?

14 THE DEFENDANT: No, they never asked me. I was
15 taking medicine, just like I'm taking medicine right now.

16 THE COURT: Was there -- was there a hearing up
17 there on your extradition down to South Carolina from
18 Pennsylvania?

19 THE DEFENDANT: Not that I remember.

20 THE COURT: Okay. Did you waive it, the
21 extradition hearing?

22 THE DEFENDANT: I don't know.

23 MR. THOMPSON: I would point out, Your Honor,
24 before he came, he was found competent to enter his guilty
25 pleas in Pennsylvania at the time of his trial. So whether

1 they had a hearing or not regarding competency, I don't
2 know, but obviously it was --

3 THE COURT: I tell you what I'm going to do.
4 Enough of this. I'm going to have him evaluated. Just get
5 me -- I'm going to have him evaluated. I don't want this to
6 be any issue in the future, so I'm going to get him
7 evaluated.

8 Prepare me an order for evaluation to determine if
9 he's competent to stand trial and assist counsel in his
10 defense.

11 MR. SNOW: Judge, I have an order that's already
12 been prepared.

13 THE COURT: All right. Just hand it up to me
14 right now. I'm working on something else.

15 MR. THOMPSON: Your Honor, could we make a
16 stipulation that it would be under an emergency basis
17 because --

18 THE COURT: Absolutely.

19 MR. THOMPSON: So we could still go to trial on
20 the 23rd.

21 THE COURT: Sure.

22 Is that something that needs to go on here, or
23 something that y'all can you -- you got in contact --

24 MR. THOMPSON: We may have to go with yours, but
25 I'm not sure. I will have to call down and find out. If

1 that is the case, I'll provide an amended order.

2 THE COURT: I mean, these are serious charges,
3 very serious charges. If there is any question about his
4 mental capacity to assist counsel and that, you know,
5 certainly we want to -- we need to know that and deal with
6 it. I don't want it to come up at a later time. I would
7 rather just deal with it now.

8 (Off the record)

9 (Back on the record)

10 THE COURT: When you come back before the court,
11 be prepared to go through the extradition, whatever happened
12 on the extradition and where we are on that.

13 MR. SNOW: Okay. We were just talking about that,
14 judge.

15 THE COURT: Put that together and put it in a step
16 by step what happened and that sort of thing, any
17 documentation that you got of that.

18 MR. SNOW: Yes, Your Honor. I will -- I will
19 contact Philadelphia to see if they have any documentation
20 relative to the hearing as well.

21 THE COURT: All right.

22 (END OF REQUESTED TRANSCRIPT OF RECORD)

23

24

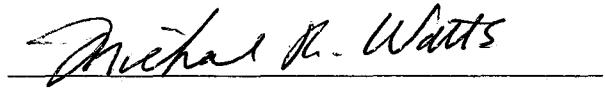
25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for YORK County, South Carolina, on the 11th day of February, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

JANUARY 17, 2011

A handwritten signature in cursive script, reading "Michael R. Watts", is written over a horizontal line.

Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2007-GS-46-0670
6 TERRELL ANTONIO) 2007-GS-46-0671
7 ADDISON,) 2007-GS-46-0672
8) 2007-GS-46-0673
9) 2007-GS-46-0675
10) 2007-GS-46-0676
11) 2007-GS-46-0676
12) 2007-GS-46-0676
13) 2007-GS-46-0676
14) 2007-GS-46-0676
15) 2007-GS-46-0676
16) 2007-GS-46-0676
17) 2007-GS-46-0676
18) 2007-GS-46-0676
19) 2007-GS-46-0676
20) 2007-GS-46-0676
21) 2007-GS-46-0676
22) 2007-GS-46-0676
23) 2007-GS-46-0676
24) 2007-GS-46-0676
25) 2007-GS-46-0676

DEFENDANT.

FEBRUARY 23, 2009

YORK, SOUTH CAROLINA

(VOLUME I)

B E F O R E:

THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

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

KEVIN BRACKETT, SOLICITOR
WILLY THOMPSON, DEPUTY SOLICITOR
ATTORNEYS FOR THE STATE

JACK SWERLING, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF GENERAL SESSIONS
3 COUNTY OF YORK)

4 THE STATE) TRANSCRIPT OF RECORD
5) 2007-GS-46-2525
6 -vs-) 2007-GS-46-2526
7) 2007-GS-46-2527
8 BEN ROBERT STEWART,) 2007-GS-46-2528
9) 2007-GS-46-2529
10 DEFENDANT. 2007-GS-46-2530
11 2007-GS-46-2531
12 2007-GS-46-2532
13 2007-GS-46-2533
14 2007-GS-46-2535

15 FEBRUARY 23, 2009
16 YORK, SOUTH CAROLINA

17
18
19 B E F O R E:

20 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.
21

22
23
24 A P P E A R A N C E S:

25 KEVIN BRACKETT, SOLICITOR
WILLY THOMPSON, DEPUTY SOLICITOR
ATTORNEYS FOR THE STATE

KENNETH SNOW, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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CT-8	JURY NOTE	1201	
CT-9	JURY NOTE	1202	

1 (PROCEEDINGS, FEBRUARY 23, 2009)

2 (Whereupon, all State's Exhibits were pre-marked
3 by the Solicitor's Office prior to the beginning of the
4 trial).

5 (911 Call on CD was marked as State's Exhibit No.
6 1 for identification).

7 (Edited Store Video - 4 Cameras - DVD marked as
8 State's Exhibit No. 2 for identification).

9 (Statement of Dontavious Mack marked as State's
10 Exhibit No. 3 for identification).

11 (Statement of Davorius Mack marked as State's
12 Exhibit No. 4 for identification).

13 (Statement of Davorius Mack marked as State's
14 Exhibit No. 5 for identification).

15 (Lineup - Reed Allen ID's Terrell Antonio Addison
16 marked as State's Exhibit No. 6 for identification).

17 (Photograph of Apartments marked as State's
18 Exhibit No. 7 for identification).

19 (Photograph of Apartments marked as State's
20 Exhibit No. 8 for identification).

21 (Photograph of Apartments marked as State's
22 Exhibit No. 9 for identification).

23 (Photograph of Apartments marked as State's
24 Exhibit No. 10 for identification).

25 (Photograph of Apartments marked as State's

1 Exhibit No. 11 for identification).

2 (Photograph of Apartments marked as State's
3 Exhibit No. 12 for identification).

4 (Photograph of Car marked as State's Exhibit No.
5 13 for identification).

6 (Photograph of Car marked as State's Exhibit No.
7 14 for identification).

8 (Photograph of Dontavious Mack at the Hospital
9 marked as State's Exhibit No. 15 for identification).

10 (Photograph of Car marked as State's Exhibit No.
11 16 for identification).

12 (Photograph of Stills from Video marked as State's
13 Exhibit No. 17 for identification).

14 (Photograph of Stills from Video marked as State's
15 Exhibit No. 18 for identification).

16 (Photograph of Stills from Video marked as State's
17 Exhibit No. 19 for identification).

18 (Photograph of Stills from Video marked as State's
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5 (Photograph of Stills from Video marked as State's
6 Exhibit No. 26 for identification).

7 (Photograph of Stills from Video marked as State's
8 Exhibit No. 27 for identification).

9 (Photograph of Stills from Video marked as State's
10 Exhibit No. 28 for identification).

11 (Photograph of Safe & Item 20 Cone marked as
12 State's Exhibit No. 29 for identification).

13 (Photograph of Behind Counter marked as State's
14 Exhibit No. 30 for identification).

15 (Photograph of Time Card marked as State's Exhibit
16 No. 31 for identification).

17 (Original VHS Security Tape from BP Station marked
18 as State's Exhibit No. 32 for identification).

19 (Latents from Hartsville marked as State's Exhibit
20 no. 33 for identification).

21 (Crime Scene Photographs marked as State's Exhibit
22 No. 34 for identification).

23 (Crime Scene Photographs marked as State's Exhibit
24 No. 35 for identification).

25 (Crime Scene Photographs marked as State's Exhibit

1 No. 36 for identification).

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25 No. 48 for identification).

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10 No. 53 for identification).

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12 No. 54 for identification).

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22 No. 59 for identification).

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24 No. 60 for identification).

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3 No. 62 for identification).

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5 No. 63 for identification).

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7 No. 64 for identification).

8 (Crime Scene Photographs marked as State's Exhibit
9 No. 65 for identification).

10 (Crime Scene Photographs marked as State's Exhibit
11 No. 66 for identification).

12 (Crime Scene Photographs marked as State's Exhibit
13 No. 67 for identification).

14 (Crime Scene Photographs marked as State's Exhibit
15 No. 68 for identification).

16 (Aerial Photograph of Harris Teeter marked as
17 State's Exhibit No. 69 for identification).

18 (Aerial Photograph of Harris Teeter marked as
19 State's Exhibit No. 70 for identification).

20 (Crime Scene Photographs of Footprints marked as
21 State's Exhibit No. 71 for identification).

22 (Crime Scene Photographs of Footprints marked as
23 State's Exhibit No. 72 for identification).

24 (Crime Scene Photographs of Footprints marked as
25 State's Exhibit No. 73 for identification).

1 (Crime Scene Photographs of Footprints marked as
2 State's Exhibit No. 74 for identification).

3 (Crime Scene Photographs of Footprints marked as
4 State's Exhibit No. 75 for identification).

5 (Crime Scene Photographs of Footprints marked as
6 State's Exhibit No. 76 for identification).

7 (Crime Scene Photographs of Footprints marked as
8 State's Exhibit No. 77 for identification).

9 (Crime Scene Photographs of Footprints marked as
10 State's Exhibit No. 78 for identification).

11 (Crime Scene Photographs of Footprints marked as
12 State's Exhibit No. 79 for identification).

13 (Victim's Pistol marked as State's Exhibit No. 80
14 for identification).

15 (Bullet Projectile - Yeuling Lager - marked as
16 State's Exhibit No. 81 for identification).

17 (Bullet Projectile marked as State's Exhibit No.
18 82 for identification).

19 (Bullet Fragment from Left Pants Leg marked as
20 State's Exhibit No. 83 for identification).

21 (Bullet Fragment marked as State's Exhibit No. 84
22 for identification).

23 (Spent Shell Casing by Bandanas marked as State's
24 Exhibit No. 85 for identification).

25 (Spent Shell casing by Morton Salt marked as

1 State's Exhibit No. 86 for identification).

2 (Bullet Projectile behind Counter marked as
3 State's Exhibit No. 87 for identification).

4 (Spent Shell Casing - Item 2 - marked as State's
5 Exhibit No. 88 for identification).

6 (Terrell Addison's Shoes marked as State's Exhibit
7 No. 89 for identification).

8 (Complete Cingular Phone Records marked as State's
9 Exhibit No. 90 for identification).

10 (Dontavious Mack's Black Tennis Shoes marked as
11 State's Exhibit No. 91 for identification).

12 (Davorius Mack's Black Tennis Shoes marked as
13 State's Exhibit No. 92 for identification).

14 (Pages 6, 7, 8 of Autopsy Report marked as State's
15 Exhibit No. 93 for identification).

16 (Cingular - 3 Color Maps - marked as State's
17 Exhibit No. 94 for identification)

18 (Terrell Addison Mental Health Examination Report
19 marked as Court's Exhibit No. 1 for identification)

20 (Ben Stewart Mental Health Examination Report
21 marked as Court's Exhibit No. 2 for identification)

22 (Whereupon, the following was an in-chambers
23 hearing. Mr. Brackett, Mr. Swerling and Defendant Terrell
24 Antonio Addison were present)

25 THE COURT: All right, sir, you are Terrell

1 Antonio Addison, is that correct?

2 DEFENDANT ADDISON: Yes, sir.

3 THE COURT: Mr. Addison, your attorney raised some
4 question of whether you wanted him to represent you in this
5 case. I know that you all have been in some discussions.
6 He had some discussions with the solicitor's office and with
7 you and your family with regard to possibly negotiating
8 something out in this case. I understand that, but what is
9 your position with regard to Mr. Swerling representing you
10 on these charges?

11 DEFENDANT ADDISON: What's my reason?

12 THE COURT: Do you wish him to represent you or
13 no? That's what I'm asking.

14 DEFENDANT ADDISON: I don't -- I want him to
15 represent me.

16 THE COURT: You want him to represent you?

17 DEFENDANT ADDISON: Yes.

18 THE COURT: Well, now is the time to say something
19 if you don't want him to represent you.

20 Of course, you know, if he's not he is going to
21 represent you, we're ready to go to trial on this case and
22 he's ready to go to trial and to represent you on it, even
23 though, I understand, you have been negotiating and trying
24 to work something out, but you are prepared for trial, Mr.
25 Swerling?

1 MR. SWERLING: Yes, sir.

2 THE COURT: Are you ready to proceed and ready to
3 defend your client Mr. Addison?

4 MR. SWERLING: Yes, sir.

5 THE COURT: And you wish him to represent you
6 then?

7 DEFENDANT ADDISON: How you feel? Are you going
8 to represent me or not?

9 MR. SWERLING: Mr. Addison, the judge -- the whole
10 question here is right now you have indicated something
11 about potentially firing me. I'm prepared to go to trial.
12 The question that we need to resolve right now is whether
13 that's what you wish to do, which is your right, if that's
14 what you want to do, or if you don't want to fire me and you
15 want to go forward, you have to state that on the record,
16 and the judge has given that you option one way or the other
17 to state what it is that you want to do.

18 THE COURT: Having said that, let me say he will
19 represent you to the best of his ability. He's a
20 professional. If he goes to trial, he's going to do
21 everything that he can to represent you. I can you assure
22 of you that, but you tell me what your position is.

23 DEFENDANT ADDISON: Well, it really ain't the
24 lawyer. I just want more time, you know what I'm saying
25 and --

1 THE COURT: Sir, there ain't going to be any more
2 time.

3 DEFENDANT ADDISON: If I fire him, I got to
4 represent myself. That's what I'm saying. That's not what
5 I'm really asking.

6 THE COURT: That's exactly right.

7 Well, we are ready for trial, to call the case for
8 trial. You can't delay the trial by getting rid of him, no,
9 sir.

10 DEFENDANT ADDISON: But getting another -- I can't
11 get another lawyer?

12 THE COURT: No, sir. We are going to trial. We
13 are going -- he's prepared for trial. He's ready for trial.
14 He's ready to go forward.

15 DEFENDANT ADDISON: I'm ready too. I just was
16 wanting a lawyer that I feel more comfortable, you know what
17 I'm saying. That's all I'm saying.

18 THE COURT: With all due respect, if you are not
19 comfortable with this lawyer, who is one of the best
20 criminal lawyers in the state, I don't know who you would be
21 comfortable with, Mr. Addison, but that's your decision.

22 Do you want him to represent you or do you not
23 want him to represent you?

24 DEFENDANT ADDISON: I ain't going to represent
25 yourself. Yeah. I mean, yeah, I want him to represent me.

1 I ain't going to represent myself.

2 THE COURT: You want him to represent you?

3 DEFENDANT ADDISON: Yes, sir.

4 THE COURT: All right.

5 (Whereupon, the in-chambers hearing was
6 concluded).

7 (Whereupon, the following proceedings were held in
8 the courtroom)

9 THE COURT: Counsel, do you want to call your case
10 for trial?

11 MR. BRACKETT: Yes, sir, Your Honor.

12 The State is prepared to draw a jury in the
13 indictments, docket numbers 2007-GS-46-2525, 2526, 2527,
14 2528, 2529, 2530.

15 Wait a minute. We are missing Mr. Snow's client.

16 MR. SNOW: He's in the bathroom.

17 (Off the record)

18 (Back on the record)

19 THE COURT: Let me ask you, while we are waiting
20 on him, have you had a chance to look at each others voir
21 dire, or does the State have any voir dire?

22 MR. BRACKETT: Just the standard requests with
23 regards to having any personal knowledge of the defendants,
24 defendants families, or representation by either lawyer in
25 this case.

1 THE COURT: Do you have an objection to request
2 of -- Mr. Snow, if you have any voir dire?

3 MR. SNOW: I have it.

4 MR. BRACKETT: Your Honor, as regards to Mr.
5 Stewart's voir dire, I believe those are covered in the
6 general voir dire questions. Rendering a fair and impartial
7 verdict.

8 THE COURT: All right, how about No. 3 of his
9 request?

10 MR. BRACKETT: I think it's covered by the
11 general, but I don't have a particular objection to it, Your
12 Honor.

13 THE COURT: Okay.

14 MR. THOMPSON: As to Mr. Swerling's, Your Honor,
15 that only thing I would see, on No. 2, are you or anyone in
16 your family personally acquainted with anyone employed by a
17 law enforcement agency. I think that's just too broad, if
18 you or your family happened to know someone in law
19 enforcement, because that's not specific to this case or
20 anything about it. I don't know how that, because then
21 there is a bunch of people stand up for any particular
22 reason.

23 And along those lines, the Attorney General's
24 office, Sixteenth Circuit Solicitor's office, and if you
25 know anyone from there, acquainted with the solicitor's

1 office here. The Attorney General's office is not part of
2 this case. I would ask that that be taken out, because,
3 once again, that becomes extraneous, I think.

4 MR. SWERLING: Judge, I would not have any problem
5 with amending that particular one and say in the criminal
6 division of the Attorney General's Office. Prosecutors, in
7 other words.

8 And as far as No. 3, I would agree to amend, if
9 Your Honor would see fit to any close personal relationship
10 with anybody in the solicitor's office.

11 Judge, I just saw one other thing. Since the
12 State is not going forward on the crack charge at this time,
13 I put that in here just in case. It's an introductory
14 paragraph, so we would need to strike that as well.

15 THE COURT: How about the contraband charge? Is
16 that going?

17 MR. THOMPSON: No, it's not.

18 THE COURT: Not in this one?

19 MR. THOMPSON: No, sir.

20 THE COURT: Do you want to strike that one too?

21 MR. SWERLING: Yes, sir, that was part of the -- I
22 apologize, that's part of the crack charge.

23 THE COURT: All right. So on No. 2 on behalf of
24 Mr. Addison, it was agreed No. 2 will be "are you, is anyone
25 in your family, or does anyone in your family, have a close

1 personal relationship with anyone employed by any law
2 enforcement agency"? Is that --

3 MR. SWERLING: Yes, sir.

4 THE COURT: Any others, solicitor, that you are
5 concerned with?

6 MR. BRACKETT: No, sir.

7 (Whereupon, Defendant Ben Robert Stewart entered
8 the courtroom)

9 MR. BRACKETT: For the record, Your Honor, the
10 State is prepared to draw a jury in docket number
11 2007-GS-46-2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532,
12 2533, and 2535. These are all True Billed indictments
13 charging Mr. Ben Robert Stewart with, and respectively in
14 the order that I called them out, murder, accessory before
15 the fact to murder, armed robbery, accessory before the fact
16 to armed robbery, kidnapping, accessory before the fact of
17 kidnapping, criminal conspiracy, possession of a firearm
18 during the commission of a violent crime, possession of a
19 stolen vehicle, and accessory after the fact.

20 And 2007-GS-46-0670 -- these are all True Billed
21 indictments charging Terrell Antonio Addison,
22 2007-GS-46-0670, 671, 672, 673, 675, and 676, they are
23 respectively indictments for criminal conspiracy, murder,
24 armed robbery, possession of a firearm during the commission
25 of a violent crime, possession of a stolen vehicle and

1 kidnapping.

2 THE COURT: Is defense ready for trial with regard
3 to Mr. Addison?

4 MR. SWERLING: Yes, sir.

5 THE COURT: As to Mr. Stewart, are you ready for
6 trial?

7 MR. SNOW: Ready to proceed, Your Honor.

8 THE COURT: Okay.

9 MR. BRACKETT: Your Honor, I'm handing up to the
10 court now a list of potential witnesses for the State. And
11 as always, I appreciate when the court advises the jury
12 pool, we will probably not call all of those folks. We
13 don't think they want to be here for a month, but we listed
14 everybody that we could possibly call, so we could do an
15 accurate and thorough voir dire. And it also has the date
16 and the location of the crime to help familiarize the jury
17 with this incident.

18 THE COURT: Well, Defendant Stewart, I'm not going
19 to ask No. 1 on your request, voir dire request. I don't
20 think that's a proper question. It's more of a
21 profiling-type question. I'm not going to ask it.

22 MR. SNOW: Thank you, judge.

23 THE COURT: I'm going to offer a substitute for
24 that that I think is just as effective.

25 Solicitor, are we ready to proceed?

1 MR. BRACKETT: Yes, sir, Your Honor.

2 Prior to drawing the jury, one housekeeping matter
3 that we might want to just put on the record.

4 Both the defendants in this case, Mr. Stewart and
5 Mr. Addison, were evaluated at the Department of Mental
6 Health to determine their competency to stand trial.
7 Reports have been issued on both defendants, and I believe
8 pursuant to State v. Franklin, both counsel for both
9 defendants have indicated that they are -- that we can
10 introduce the reports, which I have had marked as Court's
11 Exhibit No. 1 and 2, in lieu of formal testimony on this
12 issue. I believe both of the individuals were deemed to be
13 competent to stand trial and they understood the nature of
14 the proceedings and what was going on and so forth, and so I
15 think I formal finding by the court on both of these
16 defendants pursuant to State v. Blair would be appropriate
17 at this stage of the proceeding.

18 THE COURT: Okay. Defense -- the position of the
19 Defendant Addison in this case?

20 MR. SWERLING: Your Honor, we would stipulate to
21 that report coming in evidence and Your Honor using that to
22 make the determination. My client consents to that as well,
23 so we don't challenge it and we're not offering any
24 testimony.

25 THE COURT: All right. Thank you.

1 And as to the Defendant Stewart?

2 MR. SNOW: Your Honor, we stipulate.

3 THE COURT: Okay. You are not offering any
4 testimony then?

5 MR. SNOW: No testimony, judge.

6 THE COURT: All right. Each one of these reports,
7 which would be admitted as court exhibits, indicate that
8 each defendant is competent to stand trial, not in need of
9 any mental health treatment, and so would be able to assist
10 counsel with their trial. The court finds that each of them
11 is competent to stand trial and to assist their attorney
12 with the defense in their cases and to go forward with their
13 trial today.

14 We will make -- again, these will be court
15 exhibits.

16 Anything else?

17 MR. BRACKETT: Not at this time, Your Honor.

18 THE COURT: All right. How about from --

19 MR. SWERLING: No, Your Honor.

20 THE COURT: Yes, sir.

21 MR. SNOW: Your Honor, I just ask that the record
22 reflect my client has just asked me to indicate to the judge
23 that he is on medication.

24 THE COURT: What is he taking?

25 MR. SNOW: He's taking Prozac, judge.

1 THE COURT: Okay. And is it his position that
2 he's not competent to stand trial or that would help you or
3 assist you with your defense of his case?

4 MR. SNOW: Judge, he's -- he's submitting that
5 before the judge to consider -- he's leaving it to the judge
6 to decide whether he's competent.

7 THE COURT: I don't know what game he's playing in
8 that regard, Mr. Snow, and if he wishes to be heard, I will
9 be glad to hear from him.

10 MR. SNOW: Nothing further, judge.

11 THE COURT: All right, sir. You know, I'm basing
12 my decision, he's been evaluated and they found him
13 competent to stand trial. Plenty of people take Prozac and
14 other antidepressants and they are still able to understand
15 and ready to proceed and assist counsel with defense and
16 render him competent.

17 If he feels like he has a problem with his
18 understanding and being able to assist his attorney with the
19 defense of the case, then he should say so. All right, but
20 he chooses not say so.

21 At any rate, I find based on all the information
22 in front of me, including the medical evaluations, mental
23 health evaluations, he's competent to stand trial and able
24 to assist counsel with his defense and is ready to proceed
25 with his trial.

1 Anything further?

2 MR. SWERLING: No.

3 THE COURT: Anything else you wish to state?

4 MR. SNOW: Nothing else, judge.

5 THE COURT: There is anything else with regard
6 to --

7 MR. SNOW: Nothing further with regard to his
8 evaluation.

9 THE COURT: I understand. Well, any other motions
10 that you wish to make? I made a ruling on that.

11 MR. SNOW: Judge, I think at the proper time we
12 still need to address the issue as to his extradition.

13 THE COURT: All right. I think we need to address
14 that before we get started actually with the trial and draw
15 the jury. Of course, we hadn't sworn the jury. Do you want
16 to go ahead and draw the jury and then take that up?

17 MR. BRACKETT: Take it up prior to then, because
18 if for some reason Your Honor were to decide that were an
19 issue, then it could affect the striking of the jury.

20 THE COURT: Let's go ahead and take it up now.
21 Yes, sir.

22 MR. SNOW: Your Honor, may I approach, judge?

23 THE COURT: Yes, sir.

24 MR. SNOW: I have got his petition from --

25 This would be -- we have one case from the Supreme

1 Court. May I approach, judge?

2 THE COURT: Yes, sir.

3 MR. SNOW: I have a case.

4 THE COURT: All right. Yes, sir, proceed.

5 MR. SNOW: May it please the court?

6 MR. BRACKETT: Your Honor, may I approach the
7 bench at this time?

8 THE COURT: Yes.

9 MR. SNOW: Your Honor, it would be the defense's
10 position that Mr. Stewart was brought here improperly. When
11 following the interstate agreement on detainers, judge, what
12 I just passed up to you, there is two ways, according to
13 this agreement, which I think is South Carolina as well, and
14 Pennsylvania recognizes, judge, and as part of that compact.
15 Judge, in this course of the conduct there is two ways in
16 which an individual could be brought here through a
17 detainer, judge, with him waiving or actually notifying the
18 descending or receiving state that, of course, he wants to
19 come and face the charges. The second way is, of course,
20 that the sending or receiving state request the governor
21 that he be sent here and the governor complies. In this
22 case, judge, we contend that my client did not waive his
23 right and did not ask to be brought here to South Carolina.

24 According to the agreement, judge, in order for
25 him to be transferred here, he must be given a transfer

1 hearing. The case that we handed up to the judge, Cavallaro
2 v. Wyrick, what happened in that case, judge, and I think
3 that's the case that I found that was closer to our case,
4 judge, where the defendant was transferred without a
5 hearing. This defendant was facing charges in Mississippi,
6 but before he was given a transfer here, an opportunity to
7 be heard, judge, this -- he was transferred without that
8 hearing. In this case, judge, the court did find that there
9 was a remedy. They found that this was an exceptional
10 circumstances in which he had violated the interstate
11 compact by not allowing him that hearing.

12 In this case, judge, I think there is some concern
13 whether my client waived his right.

14 If I may, judge, just pass that up to you the
15 document that I believe that the State alleges that he
16 signed, which he didn't sign, judge, and I think -- this is
17 the original copy and I think -- I think the State has --

18 Judge, if I may?

19 THE COURT: Yes, sir.

20 MR. SNOW: This is the form, judge, that I think
21 the State indicates that he had signed. Judge, clearly in
22 this -- on that particular form my client signed the bottom
23 of that form indicating that he did preserve his right to
24 counsel and that he was requesting counsel. I believe that
25 it appears that it was assumed that he signed that

1 indicating that he wanted to be transferred. In no way or
2 fashion did my client contact this state and -- or notify
3 this state and request a final disposition. At no time did
4 this happen, judge. According to that form, he didn't sign
5 where anything was indicated. It looks like a two-part
6 form. And on the face of it, judge, it appears that he
7 certainly did not sign that area, did not indicate that he
8 wanted to be transferred. In that case, judge, what we
9 would need from that, if that didn't happen, I believe the
10 agreement is pretty clear that my client -- at that time the
11 State of South Carolina needed to request of the governor
12 and get approved from the governor that he be transferred.
13 And even in that regard, judge, he would still be entitled
14 to a transfer hearing. Your Honor, this is a violation of
15 the due process and in this case my client never knew he had
16 a right to a hearing. Certainly he didn't have an
17 opportunity to request one and he wasn't heard. And,
18 therefore, judge, based on that we would contend that this
19 was exceptional circumstances in which the agreement was
20 violated. So, therefore, we would ask that he be sent back
21 to Pennsylvania and given that opportunity to be heard on
22 this matter.

23 THE COURT: Well, let me ask -- let me ask you,
24 counsel. I'm looking at the form that you handed up to the
25 court.

1 MR. SNOW: Yes.

2 THE COURT: And, of course, it appears that
3 someone wrote in, and I assume that's your client, "I did
4 not sign here", and -- on the particular one you handed up
5 to me.

6 MR. SNOW: That's correct, judge.

7 THE COURT: And what's there is a blank line and
8 it says "inmate's name and number" --

9 MR. SNOW: Yes, judge.

10 THE COURT: -- in parenthesis. That's what it
11 says. And down below that there is a place that it says
12 "inmate's signature."

13 MR. SNOW: Yes, sir.

14 THE COURT: Okay. And it does not say signature
15 on the line where he says "I did not sign here." It does
16 not say inmate's signature. It says inmate's name and
17 number need to be put in on that blank.

18 MR. SNOW: Yes, sir.

19 THE COURT: And then down where it says "inmate's
20 signature," it appears to have been signed with his name.
21 True?

22 MR. SNOW: Judge, I would agree with you as to
23 that, judge.

24 THE COURT: All right. So this -- the line above
25 that you are referring to where he says he did not sign, it

1 does not call for his signature, does it?

2 MR. SNOW: If I may, judge?

3 THE COURT: Yes.

4 MR. SNOW: Judge, the court is certainly right
5 that he -- that area appears to ask for inmate's name and
6 number. Judge, I would submit that at best this form is
7 certainly on its face ambiguous. It is certainly not clear.

8 When you are looking at something of this
9 magnitude, judge, I think the burden certainly would be on
10 the State or the transferring state to make it clear when my
11 client is giving up his substantial right to a hearing, that
12 this form be clear.

13 It's certainly reasonable, I would contend
14 reasonable, that anybody looking at this form and sees that
15 there is two pertinent questions, two important questions,
16 would certainly not sign up top, but sign where he waives
17 his right -- or requests local counsel. And in that case,
18 he signed indicating that he wanted local counsel, clearly
19 leaving the top portion of it where it looks like there is a
20 line even dividing the form. It looks to be a two-part
21 form. And I think it's certainly not clear as to what it's
22 offering. If you look at it a second, certainly I think
23 someone looking at it at first glance would look at it and
24 skip -- not put their number there, not put their name
25 there, but goes to the bottom of the page and signs. It

1 certainly, I would say, judge, an error. If the court deems
2 it as an error, it's an error that I certainly think that
3 any reasonable person might make in this case. And when one
4 is giving up his substantial right to a transfer hearing, I
5 believe the burden would be or should go on the State that
6 this is clear what you are giving up.

7 THE COURT: All right. Solicitor?

8 MR. THOMPSON: Your Honor, I would be pointing out
9 much of what the court did, Your Honor. I think this is
10 actually very clear that this form is one continuous form a
11 couple pages long and it ends with the defendant's
12 signature. It's not simply a question of whether he's going
13 to list counsel or not below. He has signed this form. It
14 is properly executed. The fact that they didn't write a --
15 basically the difference would be they had printed his name
16 on this form, other than him having signed the form, and
17 that is something that doesn't make any sense to overturn
18 this particular form.

19 In addition, Your Honor, I would point out that
20 this is governed under the detainer law. And initially to
21 kind of give the court some background of it, the defendant
22 was arrested on January 27th of 2007, in the city of
23 Philadelphia on unrelated charges. Of course, there were
24 warrants for his arrest that he was wanted here. We started
25 extradition proceedings at that time, actually with our

1 first letter, being dated February 7th of 2007, to the State
2 of Pennsylvania asking to extradite him. He had -- I'm
3 sorry, this was telling them that we were seeking a
4 governor's warrant. They had already told him. They
5 actually had a pretrial hearing on I think February 5th, or
6 somewhere in that time, in Philadelphia, where he said he
7 would not accept extradition at that time. Then the State
8 of Pennsylvania and the City of Philadelphia, through its
9 prosecutor, told me that they would not release him to us
10 until they had tried his case there in Philadelphia, which
11 they did, and those were done in February of 2007 -- I'm
12 sorry, February of 2008. So just about a year ago.

13 After that we then again filed at that point a
14 detainer, because it's no longer necessarily an extradition,
15 because he's serving time at that point. So following the
16 detainer, then that's when these come up and you have the
17 whole series of letters I think that went through.

18 They have done everything within these that is
19 required. Not only has he signed that form, but if you go
20 on, he signs the form, which is Form IV, for the delivery
21 and the temporary custody. If you go through that form, he
22 as well signs that form at the end, Ben Stewart. It's the
23 last thing on the second page of that form. And if you read
24 that entire form, basically, he is turning himself over to
25 our custody at that point in time.

1 THE COURT: Where are you now?

2 MR. THOMPSON: It's Form IV, and it would be
3 listed in Roman numeral IV. It should be within the packet
4 that I have handed up to the court.

5 MR. SNOW: Are you speaking of the one at the top
6 of the page?

7 MR. THOMPSON: Yes, there is one at the top of the
8 page, and it says agreement on detainer. It's Form IV.
9 It's Roman numeral IV.

10 MR. SNOW: Page two?

11 MR. THOMPSON: Right. If you go to page two of
12 that, which is the continuation, obviously, from the first
13 page.

14 MR. SNOW: I'm with you on it. Thank you.

15 MR. THOMPSON: And on that page he once again
16 signed. So we have a situation in which he is knowing he's
17 signing forms delivering himself into custody of our state.
18 I mean, it's clear. These forms I think are clear. There
19 is no way really around them.

20 But even if he is saying that he was not properly
21 given the right in Philadelphia, I would point to the case
22 that I handed up, State v. Waitus, with the alias Fat Eye,
23 which is South Carolina Supreme Court case 226 S.C. 44, and
24 83 S.E. 2d 629, a 1954 case.

25 In this particular case, if you go to the copy

1 that I have handed, on the Lexis copy, to page 3. At the
2 very bottom of that page, on the bottom right hand, as that
3 paragraph goes into the next page. So it's the last
4 paragraph. It's not a complete paragraph. It starts on the
5 bottom of page 3. It says "it is virtually a universal rule
6 of law that where a person accused of a crime is found
7 within the territorial jurisdiction wherein he is so charged
8 and is held under process legally issued from a court of
9 that jurisdiction," which would be us holding him legally at
10 this time, "neither the jurisdiction of the court or the
11 right to put him on trial for the offense charged is
12 impaired by the manner in which he was brought from another
13 jurisdiction, whether by kidnapping, illegal arrest,
14 abduction, or irregular extradition proceedings."

15 It clearly states that even if there is some
16 irregularly in the extradition proceedings, or even if he
17 was brought here illegally by someone grabbing him and
18 forcibly bringing him here against his will, that that
19 doesn't stop the jurisdiction of this court from having him
20 stand trial on that particular case.

21 It goes on to cite a Supreme Court case at the
22 bottom of page 4. Once again, it's the last paragraph going
23 into the next page, and it cites *Lascelles v. State of*
24 *Georgia*, 148 U.S. 537, and 13 S. Ct 687. And it says that
25 "this rule was interestingly applied in reasoning in this

1 particular case which it was established that a defendant
2 may be tried in an abandoning state for a crime other than
3 that for which he was extradited."

4 So this goes even further. Not only is it saying,
5 as it did earlier indicates he can be here for any reason we
6 can try him, but it also says by something that's not even
7 on what was the detainer that brought him here, "demanding
8 the state for a crime other than that which he was
9 extradited and surrendered by the rendering state." It's
10 there said by the court, the quote is "but it is settled by
11 the decision of this court that except in the case of a
12 fugitive surrendered by a foreign government, there is
13 nothing in the Constitution, Treaties, or Laws of the United
14 States that would exempt an offender brought before the
15 court of the State for an offense against its laws for trial
16 and punishment, even though brought from another state by
17 unlawful violence or by abuse of legal process."

18 So even if, as he contends, something is wrong
19 with the way that this -- that Philadelphia handled their
20 part of the detainer, so the court said it wouldn't be our
21 fault if they did it. He is here now and the court has
22 jurisdiction to handle his case now, to have him tried on
23 all charges that he is charged with and to force him to
24 stand trial at this point.

25 MR. SNOW: Judge, the problem -- may I respond?

1 THE COURT: Yes, sir.

2 MR. SNOW: Judge, I would just like to point out
3 that, of course, I believe here my case is the Eighth
4 Circuit and that's by a Federal Court judge. My case is
5 relatively short. My case, however, judge was resolved and
6 decided in 1983. Judge, I believe the case that Mr.
7 Thompson pointed out was decided and ruled on in 1954.

8 Judge, I would submit that even -- judge, there's
9 a reason why we have laws, such as the Interstate Act,
10 judge, as it's acting as a deterrent, the same reason we
11 have a Fourth Amendment, judge. I would argue that when we
12 have a situation like this and the laws are broken, I don't
13 believe that the states are rewarded by bringing someone
14 here. We know that the reason why we have such laws as
15 this, judge, is to create a deterrent so that we won't have
16 a situation where the state governments decide they want to
17 kidnap individuals from another state or bring them here
18 unlawfully. We are a government of laws, judge, and
19 certainly we don't -- we don't want to encourage any state
20 to violate the law, but I would submit to you that if we
21 allow the State to bring someone here without
22 properly followed by the rules and procedures, judge, I
23 think that's what we are doing. And I would submit to you
24 that in this case it acts as a deterrent. And even -- it
25 should be clear that whenever we -- that we are going to

1 have this act, that we have rules. It's not just the law,
2 but it's for a purpose, and I submit to you that the purpose
3 of this should be followed. In this case it was never
4 followed. A substantial right for someone not even to have
5 a hearing, this -- you know, that's pretty substantial.
6 And, judge, we would argue certainly that none of the form
7 that the State has deduced indicates that my client had any
8 intent to waive his notice to a hearing. That's why we are
9 here.

10 MR. THOMPSON: Your Honor, I would point out as
11 well that one of the other cases that I handed up to the
12 court, Murray Shack v. The Attorney General of the State of
13 Pennsylvania. It is a United States Court of Appeals case
14 in the Third Circuit and tried in 1985, 776 Fd.2d 1170. And
15 in this particular case it was New Jersey that failed to
16 provide a pre-transfer hearing going to the extradition
17 proceeding, but in this case as well they determined that
18 that didn't matter, that that didn't rise to a level of
19 egregious level that would cause them to send that person
20 back. And they also note at the end of that case, as I
21 would note as well, that one of the reasons that they made
22 that decision is because the agreement on the detainers says
23 that if we send them back and he's untried, then those could
24 be dismissed. So the State could be caught because of some
25 snafu in Philadelphia that may have or may not have done and

1 basically having to dismiss all the charges against the
2 defendant and being unable to try him. That would not be
3 just and that would not be right.

4 We, of course, did not kidnap him. I believe
5 certainly if you look at these forms and at the top of this
6 page where he signed up there saying that he didn't sign the
7 middle, it's not asking him to sign there. Anyone could
8 have filled in a name at that point. That's not something
9 for him to particularly fill in himself. It says at the top
10 "I hereby agree that this request will operate as a request
11 for final disposition of all untried indictments,
12 informations, or complaint on the basis of which a detainer
13 had been lodged against me from your state. I also agree
14 that this request shall be deemed to be my waiver of
15 extradition with respect to any charge or proceeding
16 contemplated hereby or included herein."

17 And it goes on to talk about a waiver to this
18 state for his body and all those sorts of things, but
19 obviously you're not entitled to a hearing if you waive it.
20 So the fact that he didn't have a hearing is not a violation
21 because this is a waiver. There would be a separate form,
22 had he had a hearing, that would say he did not waive and
23 the court decided he would go. So that -- I think -- I
24 think it's very clear that he's committed to the court's
25 jurisdiction there. Everything was done properly. But if

1 it had not been, it would have put him in no different
2 situation here. We would still be able to try him here on
3 all the charges that we have before the court.

4 THE COURT: Well, I point out that reading the
5 heading of this particular form, it says that "inmate's
6 notice of place of imprisonment and request form,
7 disposition of indictments, informations or complaints."
8 And this is his request to disposition of the indictments
9 and information, complaints. It's addressed to Willy
10 Thompson as the prosecuting officer of York, South Carolina.
11 So it's this form requesting that he be brought back and
12 tried on those charges.

13 And I would point out also on the form -- I'm
14 looking at the form, and even though he's written in in pen
15 "I did not sign here," but that does not call for his
16 signature. It's in the middle of the form and it does not
17 call for his signature. All it is is dated and it's got --
18 the blank where he says he did not sign, it says "inmate's
19 name and number." So that was to be just written in there,
20 or typed in there, but it was not put in there, but he did
21 sign it where it says "inmate's signature." And he named
22 who his counsel was. He did not request that the court
23 appoint a counsel in the second part of the form. That's
24 all one in the same form, but it's a request by him for
25 disposition of the indictment.

1 So the court finds that he waived any extradition
2 hearing. He requested disposition of those charges. He
3 signed it in the appropriate place, and that he, in fact,
4 waived his right to extradition. And even if he didn't --
5 if there is some problem with the form, if it's claimed he
6 didn't sign in the proper place, the court finds that would
7 not prohibit this court from having jurisdiction to hear
8 these cases. So I'm going to deny his motion to dismiss or
9 transfer these cases back to Pennsylvania.

10 MR. SNOW: One more thing for the record, please,
11 Your Honor?

12 THE COURT: Sir?

13 MR. SNOW: One more thing for the record?

14 THE COURT: Yes, sir.

15 MR. SNOW: I plan to appeal as to that issue,
16 judge, and ask to be --

17 THE COURT: You can appeal anytime you want to.

18 MR. SNOW: And ask the matter be stayed until that
19 matter is heard, judge.

20 THE COURT: No, sir. I don't think that's -- that
21 would be interlocutory and I don't think that you would be
22 entitled to have the matter stayed until that appeal is
23 heard, no, sir.

24 All right, we will proceed with the trial.

25 Certainly he has a right to appeal, if he files

1 his notice within ten days of the trial, in the event he
2 wants you to appeal.

3 Anything else?

4 MR. SNOW: Nothing further, judge.

5 THE COURT: Well, to be sure the record is clear
6 on that, it appears to the court that he signed in the only
7 place that's provided for him to sign on the form waiving
8 extradition and requesting that he be brought back to have
9 these charges disposed of, and the court so finds, based
10 upon my review of that form; and also find, based on the
11 cases handed up and cited by the solicitor's office, that if
12 there was some technical problem the in way the form was
13 executed in Philadelphia -- or excuse me, in Pennsylvania,
14 he was sent back by the Pennsylvania government pursuant to
15 this information, that this court would not prohibit this
16 case from having jurisdiction to resolve these cases.

17 Anything else before we bring the jury up? Any
18 pretrial motions we need to make from either side, from any
19 defendant?

20 MR. SNOW: Nothing further, judge.

21 (Off the record)

22 (Back on the record)

23 THE COURT: On the record for just a second and
24 say that the form I was referring to, I did not say that,
25 but at that time Mr. Stewart indicated on that form that he

1 had an attorney and the attorney's name was listed for the
2 purpose of that form. I want to reflect that. All right.
3 So he was not unrepresented with regard to that matter.

4 Counsel, strikes will be -- each defendant gets
5 ten, as I understand it, which would be a total twenty, and
6 have y'all decided how you are going to handle those?

7 MR. SWERLING: Judge, we can confer on that.

8 THE COURT: Either way that you want to do it
9 would be fine with the court, but we need to know what
10 order. Just ask you to kind of follow the same order each
11 time so I'll know where we are, and the State will, of
12 course, get a total of ten, is that correct?

13 MR. BRACKETT: Yes.

14 MR. THOMPSON: Your Honor, I would ask that the
15 packet of information that the court was provided be
16 included as part of the court's record.

17 THE COURT: I think we need to make all that a
18 court exhibit. Are you talking about --

19 MR. THOMPSON: Right, it would be all the letters
20 from our office. Basically all the extradition and detainer
21 proceedings, the paperwork that we had filled out that was
22 sent to us from Philadelphia.

23 THE COURT: Well, I have been handed up so much
24 stuff on that. How about y'all looking at it. And,
25 defense, if you want to look at it as well.

1 MR. THOMPSON: Okay.

2 MR. SNOW: Unless the court wants his copy, I
3 think Mr. Thompson's copy is probably sufficient.

4 THE COURT: Probably. I have been handed up so
5 much stuff.

6 (Writ of Habeas Corpus Paperwork marked as Court's
7 Exhibit No. 3 for identification)

8 MR. THOMPSON: It's been marked as Court's Exhibit
9 No. 3, Your Honor. It's one large packet.

10 THE COURT: Would counsel approach just a minute,
11 please?

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion)

14 (Off the record)

15 (Back on the record)

16 (Whereupon, the jury venire panel was brought into
17 the courtroom)

18 THE COURT: Counsel, approach just a minute,
19 please.

20 (Whereupon, the lawyers approached the bench for
21 an off-the-record discussion)

22 THE COURT: All right. Ladies and gentlemen of
23 the jury panel, if you would give me your attention, please.
24 I apologize for the fact that some of you are having to
25 stand right now. I didn't realize that -- I didn't realize

1 that you would have to stand, and we possibly could have
2 done this down in the jury assembly room, maybe, but, in any
3 event, we'll try to go ahead, since you are all up here now
4 and we will move through this as quickly as we can, but it's
5 going to take a little bit to get through this selection
6 process.

7 We are about to go into a trial in the matter of
8 the State of South Carolina versus Terrell Antonio Addison
9 and also the State versus Ben Robert Stewart.

10 Now, the State charges Mr. Addison with the
11 following charges: They charged him with murder. They
12 charged him with armed robbery. They charged him with
13 kidnapping. They charged him with possession of a firearm
14 during the commission of a violent crime. They charged him
15 with criminal conspiracy. They charged him with possession
16 of a stolen vehicle.

17 The State charges Ben Robert Stewart with the
18 offense of murder; accessory before the fact of murder;
19 armed robbery; accessory before the fact to armed robbery;
20 kidnapping; accessory before the fact of kidnapping;
21 accessory after the fact to armed robbery, kidnapping and
22 murder; possession of a firearm during the commission of a
23 violent crime; criminal conspiracy; and possession of a
24 stolen vehicle.

25 Now, to these charges each defendant has pled not

1 guilty and we are about now to go into a trial as to these
2 charges as to each of these two defendants.

3 Now, the State is represented in this case by
4 Solicitor Kevin Brackett and Assistant Solicitor Willy
5 Thompson.

6 Counsel, would you please stand and face the jury
7 panel?

8 Thank you. You may be seated.

9 Is anyone on the jury panel related by blood or
10 marriage, friends with, or have any other type social,
11 business, or professional relationship with either Kevin
12 Brackett or Willy Thompson with the solicitor's office? If
13 so, please stand.

14 Now, those of you that are already standing, I
15 guess I would ask you to raise your right hand if that
16 applies to you. Okay.

17 Please give me your name and number, sir.

18 JUROR NUMBER 69: My name is William J. Flynn,
19 number 69.

20 THE COURT: Yes, sir.

21 JUROR NUMBER 69: I used to work in the
22 solicitor's office here in '98 to 2001.

23 THE COURT: Okay. You have been gone from there
24 since 2001?

25 JUROR NUMBER 69: That's right.

1 THE COURT: You don't know anything about these
2 cases from that office, sir?

3 JUROR NUMBER 69: No, I don't.

4 THE COURT: And where do you practice now?

5 JUROR NUMBER: I'm in Charlotte as a civil defense
6 lawyer.

7 THE COURT: Sir, is there anything about those
8 relationships that would interfere in any way or that
9 employment that would interfere in any way with your ability
10 to give both the State and each defendant a fair and
11 impartial trial in this case?

12 JUROR NUMBER 69: It would not.

13 THE COURT: Thank you, sir. You may be seated.
14 Anyone else? If you are standing, if you raise
15 your right hand.

16 MR. SWERLING: Judge, can we approach one second?
17 Not about that matter, but --

18 THE COURT: Yes, sir.

19 (Off the record)

20 (Back on the record)

21 THE COURT: We are going to try to accommodate the
22 jury, if we can, not keep you standing so long. What we are
23 going to do is ask that those of you who are standing around
24 the wall, if you will follow up and take a seat in the jury
25 box. We are going to have you move back to where you are

1 shortly in a little bit, but come on up.

2 (Off the record)

3 (Back on the record)

4 THE COURT: Now, the defendant --

5 Well, let me ask you this question. Is anyone on
6 the jury panel related by blood or marriage, friends with,
7 or have any other type social, business, or professional
8 relationship with anyone who works in the Sixteenth Circuit
9 solicitor's office? If so, please stand.

10 Yes, ma'am, please give us your name and number,
11 ma'am.

12 JUROR NUMBER 63: Juror 63, Annette Dye. I work
13 for the York County Department of Social Services and I work
14 a lot with the solicitor's office.

15 THE COURT: Ma'am, is there anything about those
16 relationships that would interfere in any way with your
17 ability to give both the State and each defendant a fair and
18 impartial trial in this case?

19 JUROR NUMBER 63: No.

20 THE COURT: Thank you. Give me your number again,
21 please.

22 JUROR NUMBER 63: 63.

23 THE COURT: 53?

24 JUROR NUMBER 63: 63.

25 THE COURT: 63. Okay. Thank you, ma'am.

1 Anyone else?

2 (No response)

3 THE COURT: Terrell Antonio Addison is represented
4 in the case by attorney Jack B. Swerling.

5 Mr. Swerling, would you please stand, and also ask
6 Mr. Addison if he would stand so the jury could see who he
7 is, please, sir.

8 Thank you. You may be seated.

9 Is anyone on the jury panel related by blood or
10 marriage, friends with, or have any other type social,
11 business, or professional relationship with Terrell Antonio
12 Addison? If so, please stand.

13 (No response)

14 THE COURT: Is anyone on the jury panel related by
15 blood or marriage, friends with, or have any other type --

16 I beg your pardon, sir, I didn't see you. Give us
17 your name and number, please.

18 JUROR NUMBER 143: Juror number 143.

19 THE COURT: Sir?

20 JUROR NUMBER 143: Juror number 143.

21 THE COURT: Yes, sir.

22 JUROR NUMBER 143: I just know of him from cutting
23 his hair a few times, barbering.

24 THE COURT: Barbering?

25 JUROR NUMBER 143: Yes, sir.

1 THE COURT: Okay. And as a customer, sir?

2 JUROR NUMBER 143: Yes, sir.

3 THE COURT: All right. Sir, have you discussed
4 this case at all with him?

5 JUROR NUMBER 143: No, sir.

6 THE COURT: Have you discussed it with anyone
7 else?

8 JUROR NUMBER 143: No, sir.

9 THE COURT: Sir, is there anything about that
10 relationship that would interfere in any way with your
11 ability to give both the State and the defendant in this
12 case, Mr. Addison, a fair and impartial trial?

13 JUROR NUMBER 143: Yes, sir.

14 THE COURT: It would interfere?

15 JUROR NUMBER 143: Yes, I just wouldn't want to be
16 on it.

17 THE COURT: All right. Counsel, I would excuse
18 this juror for cause. He feels like that would be a problem
19 for him.

20 Anyone else?

21 (No response)

22 THE COURT: The defendant -- let me ask, is anyone
23 assisting you in the trial of the case on behalf of the
24 defense?

25 MR. SWERLING: This is Kelly Switzer, Your Honor,

1 my paralegal.

2 THE COURT: Thank you. Thank you, ma'am.

3 I just wanted to determine if anyone -- if she was
4 actually going to assist you in the trial.

5 MR. SWERLING: Yes.

6 THE COURT: The defendant, Ben Robert Stewart, is
7 represented in this case by attorney Kenneth Snow.

8 Mr. Snow, would you please stand, and also ask Mr.
9 Stewart if he would stand so the jury can see who he is,
10 please?

11 Thank you, sir. You may be seated.

12 Is anyone on the jury panel related by blood or
13 marriage, friends with, or have any other type social,
14 business, or professional relationship with Ben Robert
15 Stewart? If so, please stand.

16 (No response)

17 THE COURT: Is anyone on the jury panel related by
18 blood or marriage, friends with, or have any other type
19 social, business, or professional relationship with attorney
20 Kenneth Snow? In if, please stand.

21 (No response)

22 THE COURT: Ladies and gentlemen of the jury
23 panel, I'm going to go through a list of potential witnesses
24 in this case. All of these witnesses surely will not be
25 called, but some of them definitely will be called. What

1 I'm going to ask you to do is I'm going to go through this
2 long list of potential witnesses in this case. And, again,
3 all of these witnesses I'm sure will not be called. If they
4 would all be called, you know, we would extend the time, but
5 I don't think all of them will be called, but in case they
6 are called, we need to know if you have any type of
7 relationship with any of these named witnesses. So as I go
8 through this list of potential witnesses in this case, if
9 you are related by blood or marriage, friends with, or have
10 any other type social, business, or professional
11 relationship with any of these named persons, when I call
12 their names, I would ask that you please stand.

13 Johnetta Evans.

14 Qiauna, spelled Q-I-A-U-N-A, Efrid, spelled
15 E-F-R-I-D.

16 Anna Warner, spelled W-A-R-N-E-R.

17 A custodian of records with the Department of
18 Juvenile Justice. We are not sure who that would be at this
19 time, but is anyone related be blood or marriage, friends
20 with, or have any other type social, business, or
21 professional relationship with anyone who works in the
22 Department of Juvenile Justice in the records division of
23 that department? If so, please stand.

24 (No response)

25 THE COURT: Bruce Balmer, spelled B-A-L-M-E-R.

1 Sergeant V.T. Harmon of the Rock Hill Police
2 Department.

3 Officer Migul Guidry, spelled G-U-I-D-R-Y, with
4 the York detention center.

5 Officer David Gunn who works with the York County
6 detention center.

7 Officer Robert Guzmann, spelled G-U-Z-M-A-N-N, who
8 works with the York County detention center.

9 Officer Frank Gutierrez, spelled
10 G-U-T-I-E-R-R-E-Z, who also works for the York County
11 detention center.

12 Gary Addison.

13 Louise Johnson Addison.

14 Mack Lorenzo Addison.

15 Terrell Antonio Addison.

16 Carl Allen.

17 Reed nickname "Wise" Allen.

18 Rodrick Allen.

19 Jessica Montrice Arthur.

20 Tommy Ballard.

21 Tony Barber.

22 Attris Demetris Bishop.

23 James Bishop.

24 Yes, sir, I'm calling your name, but I'm not
25 calling a number, sir. This is Mr. Bishop in the back.

1 Monday Bishop.

2 Tyra Bishop.

3 Tonya Blackwell.

4 Lottie Blakeney.

5 Shoshonna Boseman.

6 Patrice Burris.

7 These potential witnesses are employed at the
8 Carolina Pines Regional Medical Center.

9 Dr. Arthur W. Cooler, spelled C-O-O-L-E-R.

10 Dr. Jason R. Dameron, spelled D-A-M-E-R-O-N.

11 Robert Elder.

12 Karisha Hocks, spelled H-O-C-K-S.

13 Dr. Jean Kohn, K-O-H-N.

14 Desmond Cato.

15 A keeper of records with Cingular telephone.

16 Again, if you are related by friends, have any
17 other type social, business, or professional relationship
18 with someone who works in the records division of Cingular,
19 if you would please stand.

20 Nikki Clark.

21 Dormetta Clyburn. I'm not sure about the spelling
22 of that, of the first name, Dormetta Clyburn.

23 Crystal Collins.

24 Chris Corn.

25 With the coroner's office, Jody Ballard.

1 Sabrina Gast, the coroner.

2 Yes, sir, please give us your name and number,
3 sir.

4 JUROR NUMBER 32: Andy Burkholder, juror 32.

5 THE COURT: Yes, sir.

6 JUROR NUMBER 32: I'm good friends with Sabrina
7 Gast, and her son and my son are very good friends.

8 THE COURT: All right. Sir, if she were to be
9 called as a witness in this case by either side, would that
10 interfere in any way with your ability to give both the
11 State and each defendant a fair and impartial trial in this
12 case?

13 JUROR NUMBER 32: I believe it would.

14 THE COURT: Give me your number again, sir.

15 JUROR NUMBER 32: 32.

16 THE COURT: All right. I'm going to excuse this
17 juror for cause. Stay with the jury panel and follow
18 instructions, sir, please.

19 Anyone else?

20 JUROR NUMBER 159: Yes, sir.

21 THE COURT: Please stand, sir.

22 JUROR NUMBER: 159.

23 THE COURT: Yes, sir.

24 JUROR NUMBER 159: She's just a family friend.

25 THE COURT: All right. Sir, if she were to be

1 called as a witness by either side in this case, would that
2 interfere in any way with your ability to give both the
3 State and each defendant a fair and impartial trial in this
4 case?

5 JUROR NUMBER 159: No, sir.

6 THE COURT: Thank you, sir. You may be seated.

7 Anyone else?

8 (No response)

9 THE COURT: Johnny Love.

10 Roy Westerlund, spelled W-E-S-T-E-R-L-U-N-D.

11 Dr. Pam Crawford. She is not with the solicitor's
12 office. This is the -- Dr. Pam Crawford.

13 All right. From the Darlington County sheriff's
14 office Lieutenant Robin Bryant.

15 Investigator Norton.

16 Tanika Davis.

17 Jeff Darr.

18 Devin Kay Dyckma, spelled D-Y-C-K-M-A.

19 From the Emergency Medical Service, Andy Clyburn.

20 Steve Newlin.

21 Ernie Wright.

22 Tiyone Evans, spelled T-I-Y-O-N-E.

23 Brian Bagwell.

24 Ray Barnwell.

25 Audra Eddie.

1 Todd Gardner.

2 John George.

3 Kevin Tolson.

4 John Williams.

5 All of these are with the sheriff's department.

6 Mike Williams.

7 Dawn Gambel, spelled G-A-M-B-E-L.

8 Alex Glenn.

9 Ron Gordon.

10 Joseph William Graham.

11 Martha Grantham.

12 William Grantham.

13 Cheryl Graves.

14 Scottie Haile, spelled H-A-I-L-E.

15 Jackie Hall.

16 Robert Harris.

17 From the Hartsville Police Department, Captain

18 Calhoun.

19 Detective April Tyner Cooke.

20 Charles N. Cusack.

21 Jacqueline T. Gause.

22 Kyle D. Hause, spelled H-A-U-S-E.

23 Officer Heater.

24 Corporal Taylor Lail.

25 Officer McCall.

1 Walter L. Meier, Jr., last name spelled M-E-I-E-R.
2 Sergeant Brian Rudick, spelled R-U-D-I-C-K.
3 Diane Heath.
4 Damon Holmes.
5 Courtney Hope.
6 Angela Hough.
7 Kelvin Hough.
8 Dennis Hunter.
9 Shanikqua Jackson.
10 Austin and Wanda James.
11 Jackie Jamieson.
12 Brian L. Jenkins.
13 Paul Jenkins.
14 Richard Dean Jennings.
15 George and Jeanette Johnson.
16 Katresha Arnese Johnson.
17 Rodney Johnson.
18 Tie Johnson.
19 Naima Jones, spelled N-A-I-M-A.
20 Brittany Kennedy.
21 Darryl Kennedy.
22 Frandolyn Kennedy, also known as Fran.
23 Jean Kohn.
24 Sallie and Rick Lemmond.
25 Stephen Long.

1 Dallas Nicole Lord.
2 Davorius Montraze Mack.
3 Deontre Mack.
4 Dontavious Richardo Mack.
5 Lorenz Mack, spelled L-O-R-E-N-Z, Mack.
6 Clarence Mason.
7 Donald Mason.
8 Dr. James L. Maynard. He's a pathologist.
9 Shameka McClure.
10 Tasha McKnight.
11 Erica McNeal.
12 Dayna Measamer, spelled M-E-A-S-A-M-E-R.
13 Quanisha Meeks.
14 CeCe and Richard Middleton.
15 Dr. Harold Morgan.
16 Earline and Ronald Nelson.
17 Randell Newton.
18 Sandra O'Neal.
19 Audrey Page.
20 Jamaal Page.
21 Laverne Page.
22 Monay Parran, spelled P-A-R-R-A-N.
23 Robin Patterson.
24 Angelina Robinson.
25 Brook Sue Robinson.

1 Jeff Rhodes, spelled R-H-O-D-E-S.
2 From the Rock Hill Police Department, Lisa Allen.
3 Brent Allmon.
4 Tim Ayers.
5 Avanette Boular, spelled B-O-U-L-A-R.
6 Tony Breeden.
7 Charles Cabaniss.
8 Michael Chavis.
9 L.R. Davis.
10 Ashley Doster.
11 M. Durham.
12 Officer Durst, spelled D-U-R-S-T.
13 Tony Ellis.
14 Bruce Haire.
15 David Hanoka.
16 Kathy Harveston.
17 Sergeant Matt Heater.
18 Les Herring.
19 Brian Lambert.
20 Johnathan Law.
21 Officer Lear, spelled L-E-A-R.
22 Lee McKellar.
23 Chaplain Tom Patterson.
24 Daniel Popov.
25 Will Rivera.

1 Kelly Schifferle.

2 Ken Tallmadge.

3 Jeff Taylor.

4 Lary Vaughan.

5 Jerry Waldrop.

6 Yes, sir, please give us your name and number,
7 sir.

8 JUROR NUMBER 95: Will Hicks, juror 95. He's my
9 father-in-law.

10 THE COURT: All right, sir. If he were to be
11 called as a witness by either side in this case, would that
12 interfere in any way with your ability to give both the
13 State and each defendant a fair and impartial trial in this
14 case?

15 JUROR NUMBER 95: No, Your Honor.

16 THE COURT: Thank you, sir. You may be seated.

17 From the South Carolina Department of Mental
18 Health, Dr. Richard L. Frierson.

19 Kenneth M. Kepler.

20 Jeffrey E. Musick.

21 Marthe Williams.

22 From the South Carolina Highway Patrol, Bruce
23 Brock.

24 Dair Smith, spelled D-A-I-R, Smith.

25 Lance Corporal Gerald B. Wyatt.

1 David Sanders.

2 Jessica Nicole Sexton.

3 Nathshua Shavon Slater.

4 From the South Carolina Law Enforcement Division,

5 Kenneth L. Bogan.

6 Tina W. Grambow, spelled G-R-A-M-B-O-W.

7 Vicki Hallman.

8 Rita Shuler.

9 Ila Simmons.

10 Ken H. Whitler.

11 Heyward Clemon Smith, II.

12 Sheila Smith.

13 Eldovose Thomas.

14 Monica Regina Mack Townsend.

15 Betty Tyson.

16 From the Upstate Evaluation Center, which is a
17 Department of Juvenile Justice facility, Rossalyn Butler.

18 Joyce R. Jones.

19 Todd Morton.

20 Sandra W. Pait, spelled P-A-I-T.

21 Alvin Ratzlaff, spelled R-A-T-Z-L-A-F-F.

22 Also Jacquetaea Walker.

23 Jarreau Lamar Walker.

24 Rommie Walker.

25 Anna Warner.

1 Dr. Donna Schwartz-Watts.

2 Lashevia Whitlock.

3 Pamela Williams.

4 Leslie B. Williamson.

5 Eloise Wilson.

6 Nata Wilson.

7 Octavious Wilson.

8 Rosalind Wilson.

9 Thomas Wilson.

10 Kennedy Woods.

11 Also from the York County Sheriff's Office Buddy

12 Brown.

13 Sergeant Wayne Smith.

14 Joey Wallace.

15 Lee Wright.

16 MR. BRACKETT: If it please the court, Your Honor,
17 there was one more from the Rock Hill Police Department,
18 evidence tech Matt Hall.

19 THE COURT: Matt Hall?

20 MR. BRACKETT: Matt Hall, yes, sir.

21 THE COURT: From the evidence division of the Rock
22 Hill Police Department, Matt Hall.

23 Ladies and gentlemen of the jury panel, I'm going
24 to ask you some questions now. I want to provide you with
25 the following information before I ask you these questions.

1 First of all, the allegations in this case concern
2 the -- it's alleged that the incident occurred in -- it's
3 referred to in this case occurred at the BP gas station,
4 which is a convenience store, located at 2690 Celanese Road,
5 I believe at an intersection with India Hook Road, which
6 took place on October the 10th, 2006, in the early morning
7 hours.

8 Now, I'm going to ask you certain questions now
9 concerning the case as to each of these defendants and
10 advise you and -- the question I'm going to ask you, there
11 are no wrong answers for you to give. We are simply trying
12 to determine whether you have any knowledge concerning the
13 facts and circumstances of this case, or if you have formed
14 or expressed an opinion concerning the facts and
15 circumstances of this case. I tell you from the onset there
16 is nothing wrong with you having viewed, listened to, or
17 read anything concerning this case, nor is there anything
18 wrong with you having discussed this case. We are simply
19 trying to determine in getting responses to these questions
20 what each of you has been exposed to and the result that it
21 has had with regard to any opinion that you might have.

22 Now, with that in mind, I would ask you the
23 following questions: Is any member of the jury panel or a
24 member of your family employed by any law enforcement
25 agency? If so, please stand.

1 Let me just start right here. Give me your name
2 and number, please.

3 JUROR NUMBER 57: Yvonne Dejacimo, juror number
4 57.

5 THE COURT: Yes, ma'am.

6 JUROR NUMBER 57: My son Michael is a deputy for
7 the York County Sheriff's Department.

8 THE COURT: Ma'am, have you discussed this case at
9 all with him?

10 JUROR NUMBER 57: No, sir.

11 THE COURT: Ma'am, is there anything about that
12 relationship that would interfere in any way with your
13 ability to give both the State and each defendant in this
14 case a fair and impartial trial?

15 JUROR NUMBER 57: No, sir.

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

18 (UNKNOWN JUROR): Jerry Waters is my father is
19 law.

20 THE COURT: Yes, sir.

21 All right. Again, let me ask you, sir, whether
22 that would interfere in any way with your ability to give
23 both sides a fair and impartial trial in this case?

24 (UNKNOWN JUROR): No, sir.

25 THE COURT: Let me further ask you whether you

1 have discussed this case at all with him, sir?

2 (UNKNOWN JUROR): No.

3 THE COURT: Thank you, sir. You may be seated.

4 Yes, ma'am.

5 JUROR NUMBER 180: Terry Richardson, juror 180.

6 My brother-in-law is a deputy for the York County Sheriff's
7 Department.

8 THE COURT: Ma'am, have you discussed this case at
9 all with him?

10 JUROR NUMBER 180: No.

11 THE COURT: Ma'am, is there anything about that
12 relationship that would interfere in any way with your
13 ability to give both the State and the each defendant a fair
14 and impartial trial in this case?

15 JUROR NUMBER 180: No, sir.

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

18 JUROR NUMBER 101: James Hollis, juror 101.
19 Willis Grady is a cousin, York County Sheriff's Department.

20 THE COURT: Sir, have you discussed this case at
21 all with him?

22 JUROR NUMBER 101: No, sir.

23 THE COURT: Sir, is there anything about that
24 relationship that would interfere in any way with your
25 ability to give both the State and each defendant a fair and

1 impartial trial in this case?

2 JUROR NUMBER 101: No, Your Honor.

3 THE COURT: Thank you, sir. You may be seated.

4 Anyone else?

5 (No response)

6 THE COURT: Does any member of the jury panel or
7 anyone in your family have a close personal relationship
8 with anyone employed by any law enforcement agency? If so,
9 please stand.

10 (No response)

11 THE COURT: Are you or any member of your family
12 related to anyone employed by any law enforcement agency?
13 If so, please stand, other than those that have already
14 stood with regard to question one.

15 Yes, sir, please give us your name and your
16 number, sir.

17 JUROR NUMBER: Omar Van-Rooyen, juror number 219.

18 THE COURT: Yes, sir.

19 JUROR NUMBER 219: My niece's husband is a police
20 officer in Canada.

21 THE COURT: In Canada?

22 JUROR NUMBER 219: Yes.

23 THE COURT: Sir, is there anything about that
24 relationship that would interfere in any way with your
25 ability to give both the State and each defendant a fair and

1 impartial trial in this case?

2 JUROR NUMBER 219: No, sir.

3 THE COURT: Thank you, sir. You may be seated.

4 Yes, sir, please give us your name and number.

5 JUROR NUMBER 58: Jeremy Devolk, number 58.

6 My cousin about a year ago married a cop down in

7 Jenson Beach, Florida, Jacksonville.

8 THE COURT: Sir, is there anything about that
9 relationship that would interfere in any way with your
10 ability to give both the State and each defendant a fair and
11 impartial trial in this case?

12 JUROR NUMBER 58: No, sir, Your Honor.

13 THE COURT: Thank you, sir. You may be seated.

14 Anyone else?

15 (No response)

16 THE COURT: I previously asked you part of this
17 question. I'll ask it again. Is any member of the jury
18 panel or a member of your family related to any member of
19 the solicitor's office of the Sixteenth Judicial Circuit or
20 a prosecutor in the South Carolina Attorney General's
21 Office? If so, please stand.

22 (No response)

23 THE COURT: Is any member of the jury panel
24 personally acquainted with any member of the solicitor's
25 office or the Sixteenth Judicial Circuit or a prosecutor in

1 the South Carolina Attorney General's office? If so, please
2 stand.

3 Yes, sir.

4 If you previously stood for that same question,
5 and again I asked you whether that employment or
6 relationship would interfere in any way with your ability to
7 give both the State and each defendant a fair and impartial
8 trial in this case?

9 JUROR NUMBER 69: It would not, Your Honor.

10 THE COURT: Thank you, sir. Appreciate it.

11 Ladies and gentlemen --

12 MR. SWERLING: Can we approach a second?

13 THE COURT: Yes, sir.

14 (Whereupon, the lawyers approached the bench for
15 an off-the-record discussion)

16 THE COURT: Ladies and gentlemen of the jury
17 panel, I want to share some additional information. In this
18 case the person alleged to have been killed at the BP
19 station on Celanese Bypass and the corner of that and India
20 Hook Road was James E. Ned Marshall, nicknamed Ned.

21 Is any member of the jury panel related by blood
22 or marriage, friends with, or have any other type social,
23 business or professional relationship with James E. Ned
24 Marshall? If so, please stand.

25 I'll tell you what to do. Give me your name, sir,

1 and your number.

2 JUROR NUMBER 6: Juror number 6, Carlos Anderson.

3 THE COURT: And you, ma'am?

4 JUROR NUMBER 89: 89, Martha Hamric.

5 THE COURT: All right. You may have a seat for
6 right now, but when I start -- I'm going to bring jurors
7 down who need to respond to certain questions. I'll ask you
8 to come down at that time so we can ask you some more
9 questions. All right? Thank you.

10 All right, ladies and gentlemen of the jury panel,
11 I'm now going to ask you a series of questions. We would
12 like to get your responses -- if you need to respond to any
13 of these questions, one or more of them, we would like to
14 get your responses down front. So what I'm going to ask you
15 to do is please listen carefully as I go through these
16 questions. When I have completed all of the questions, if
17 one or more of these questions may apply to you, or you need
18 to respond on one or more of these questions, I'm going to
19 ask you to, when I have completed all the questions, come to
20 the center aisle here and come down one at a time as you are
21 directed down front. We will take those responses down
22 front next to the court reporter here.

23 Before we do that, I'm now going to ask the jury
24 panel who is sitting in the jury box to return back to the
25 wall. We are going to need this area down here. Thank you.

1 (Off the record)

2 (Back on the record)

3 THE COURT: All right, ladies and gentlemen, here
4 are the questions. Please listen carefully to these
5 questions.

6 Has anyone on the jury panel heard or read
7 anything in news accounts of this case? That's the first
8 question.

9 Next question, have you expressed an opinion about
10 the guilt or innocence of either defendant to any other
11 individual?

12 Has anyone ever expressed to you an opinion about
13 the guilt or innocence of either of the defendants?

14 Have you participated in any discussions with any
15 other individuals concerning the facts and circumstances of
16 this case?

17 Based on any conversations that you may have had,
18 is there any information that you are aware of that would
19 render you unable to give both the State and each defendant
20 a fair and impartial trial in this case?

21 Are you aware of any or conscious of any bias or
22 prejudice either for or against each defendant in this case?

23 Are you aware of any evidence in this case as a
24 result of any conversations or through the news media?

25 Have you or any member of your family or a close

1 personal friend ever done any business with James E. Ned
2 Marshall, III, at the BP station, 2690 Celanese Road, Rock
3 Hill, or did you know the deceased or any member of his
4 family?

5 All right. Those are the questions, ladies and
6 gentlemen. If you need to respond to one or more of these
7 questions or one or more of these questions apply to you, I
8 would ask you now come to the center aisle and we will take
9 your responses to those questions down front. That would
10 include the two jurors who stood up first.

11 (Whereupon, the following were on-the-record
12 bench conferences)

13 THE COURT: Come up here, please, and give us your
14 name and number.

15 (Juror Number 242 approached the bench)

16 JUROR NUMBER 242: Linda Winter, 242.

17 THE COURT: Yes, ma'am.

18 JUROR NUMBER 242: I live in Rock Hill about maybe
19 a half a mile from that BP station and I get the Rock Hill
20 newspaper, so I remember reading about it in the newspaper.

21 THE COURT: Let me ask you, ma'am, whether there
22 is any -- do you remember what you read about it in the
23 newspaper?

24 JUROR NUMBER 242: Just that it happened. I don't
25 even -- I was sitting there trying to recall. I don't

1 remember anything about the case. I was even trying to
2 recall -- I can't remember anything about it. I just
3 remember that it happened and what -- the reason I remember
4 it is because it wasn't terribly far from my house.

5 THE COURT: All right. Let me ask you whether
6 there is anything that you read about it or heard about it
7 that would interfere in any way with your ability to be fair
8 to both the State and each defendant in this case?

9 JUROR NUMBER 242: No, sir.

10 THE COURT: Could you put that aside and base your
11 decision solely on the sworn testimony and evidence that
12 comes in through the trial and the court's instruction to
13 you with regard to the law that applies? Could you do that?

14 JUROR NUMBER: Yes, sir.

15 (Juror Number 242 returned to the jury venire
16 panel).

17 (Juror Number 38 approached the bench)

18 THE COURT: Come up and give us your name and
19 number, sir.

20 JUROR NUMBER 38: Heyward Canty, number 38.

21 THE COURT: Yes, sir.

22 JUROR NUMBER 38: The morning of the incident I
23 rode by and I saw the police officers and the lady I worked
24 for at the time. When I went to work she came in and she
25 was crying and she told me it was one of her best friends,

1 so I followed it in the papers.

2 THE COURT: Let me ask you -- did you read
3 something about it in the papers?

4 JUROR NUMBER 38: Yes.

5 THE COURT: Let me ask you, sir, do you recall
6 what you read in the paper now?

7 JUROR NUMBER 38: Just what, you know, the paper
8 about the incident and what happened.

9 THE COURT: All right. Let me ask you, sir,
10 whether you could put aside anything that you may have read
11 in the paper or heard about this case and render a decision
12 which would be based solely on the testimony and evidence
13 that comes in during the course of the trial and the court's
14 instructions to you with regard to the law that applies to
15 the issues in this case? Could you do that?

16 JUROR NUMBER 38: Yes, sir.

17 THE COURT: Thank you, sir. You may return to
18 your seat.

19 (Juror Number 38 returned to the jury venire
20 panel)

21 (Juror Number 67 approached the bench)

22 THE COURT: Come right here, please, ma'am. Give
23 us your name and number, please.

24 JUROR NUMBER 67: Barbara Lynn Ferrell, juror
25 number 67.

1 THE COURT: Yes, ma'am.

2 JUROR NUMBER 67: I lived down the street from the
3 BP and I remember discussing it with my mother. I believe
4 that she told me my brother was friends with Mr. Marshall's
5 brother at one point, but I didn't know him personally.

6 THE COURT: Okay. Let me ask you if you had any
7 conversations with this particular area about what happened
8 there?

9 JUROR NUMBER 67: Just -- I mean, just because how
10 it was tragic.

11 THE COURT: Okay. Let me ask you whether there is
12 anything about your experiences in that regard that would
13 interfere in any way with your ability to give both the
14 State and each defendants in this case a fair and impartial
15 trial?

16 JUROR NUMBER 67: I believe I could give them a
17 fair and impartial trial.

18 THE COURT: Let me ask you specifically whether
19 you could listen to the sworn testimony and evidence that
20 comes in during the course of the trial and the court's
21 instruction to you with regard to the law that applies to
22 the issues in this case and render a decision which would be
23 fair and impartial as to both the State and each defendant
24 in this case? Could you do that?

25 JUROR NUMBER 67: Yes, sir.

1 THE COURT: Thank you, ma'am.

2 (Juror Number 67 returned to the jury venire
3 panel)

4 (Juror Number 89 approached the bench)

5 THE COURT: Give us your name and number for the
6 record.

7 JUROR NUMBER 89: Martha Hamric, 89.

8 THE COURT: Yes, ma'am.

9 JUROR NUMBER 89: I was friends with Virginia.

10 THE COURT: The sister of Mr. Marshall?

11 JUROR NUMBER 89: Yes.

12 THE COURT: Okay.

13 JUROR NUMBER 89: And with her family. I dated a
14 cousin.

15 THE COURT: Let me ask you to be as honest as you
16 can. Have you discussed the case with anybody?

17 JUROR NUMBER 89: Just friends. You know, not
18 that family.

19 THE COURT: Let me ask you, and be as honest with
20 the court as you can. Based on that relationship, could you
21 be fair and impartial as to both the State and each
22 defendant in this case?

23 JUROR NUMBER 89: I don't think so.

24 THE COURT: Okay. I appreciate your honesty. I'm
25 not going to require you to sit on this particular case.

1 JUROR NUMBER 89: Okay.

2 THE COURT: Just stay with the jury and follow
3 instructions.

4 (Juror Number 89 returned to the jury venire
5 panel).

6 (Juror Number 208 approached the bench)

7 THE COURT: Give us your name and number.

8 JUROR NUMBER 208: My name is James Stoudemire,
9 208.

10 THE COURT: Yes, sir.

11 JUROR NUMBER 208: On the way up the stairs a lady
12 stopped and spoke to me and hugged me and she said "oh, my
13 favorite singer." She recognized me from my band. I
14 recognized her, but I don't really know her, but I didn't
15 want to -- you know.

16 THE COURT: I understand.

17 To be honest with you, we brought all the jurors
18 up here. We are not going to ask you to serve on this jury,
19 because we don't know if it will go into Thursday. I have
20 protected you for Thursday and Friday, so you are really not
21 going to be selected, but we appreciate you coming up and
22 telling us that. We were aware of it, but I appreciate you
23 coming. Just return to your seat and follow instructions.

24 JUROR NUMBER 208: Okay.

25 (Juror Number 208 returned to the jury venire

1 panel).

2 (Juror Number 93 approached the bench).

3 THE COURT: Please give us your name and number,
4 please.

5 JUROR NUMBER 93: Shelley Hawk, number 93.

6 When I drove by the BP, I saw the evidence markers
7 on the ground they put around the BP, and I read about the
8 circumstances in the paper the next day, or whenever it was.

9 THE COURT: Okay. Let me ask you, ma'am, whether
10 you could put aside anything that you may have seen or
11 whatever you might have heard in the newspaper about that
12 and put that aside and base your decision in this case, if
13 you were on the jury, solely on the sworn testimony and
14 evidence that comes in during the course of the trial and
15 the law as instructed by the court and render a decision
16 which would be fair and impartial as to both the State and
17 each defendant in this case? Could you do that?

18 JUROR NUMBER 93: Yes.

19 THE COURT: Thank you, ma'am. You may return to
20 your seat.

21 (Juror Number 93 returned to the jury venire
22 panel).

23 (Juror Number 249 approached the bench)

24 THE COURT: Come right here please, sir. Give us
25 your name and number, sir.

1 JUROR NUMBER 249: David Yommer, 249.

2 THE COURT: Yes, sir.

3 JUROR NUMBER 249: I followed the news report of
4 what happened. I used to drive by there all the time.

5 THE COURT: Let me -- do you recall what you read
6 about it or any of the details?

7 JUROR NUMBER 249: Other than the -- I knew the
8 accused were outside of Rock Hill.

9 THE COURT: Let me ask you, sir, whether you could
10 put aside anything that you may have heard or read about the
11 case and render a decision in this case based solely on the
12 sworn testimony and evidence that comes in during the course
13 of the trial and the court's instruction to you with regard
14 to the law that applies to the issues in this case and
15 render a decision which would be fair and impartial as to
16 both the State and each defendant in this case? Could you
17 do that?

18 JUROR NUMBER 249: I think so, yes, sir.

19 THE COURT: Thank you, sir.

20 JUROR NUMBER 249: Thank you.

21 (Juror Number 249 returned to the Jury Venire
22 Panel).

23 (Juror Number 195 approached the bench)

24 THE COURT: Come right here, please, sir. Please
25 give us your name your number, sir.

1 JUROR NUMBER 195: Nitin Shah, 195.

2 THE COURT: Yes, sir.

3 JUROR NUMBER 195: When this happened and I read
4 several things and I knew him.

5 THE COURT: Get gas?

6 JUROR NUMBER 195: Yes.

7 THE COURT: And you knew him?

8 JUROR NUMBER 195: Yes, I knew him.

9 THE COURT: Let me ask you, sir, have you
10 discussed this case with anybody?

11 JUROR NUMBER 195: No, never.

12 THE COURT: Let me ask you --

13 JUROR NUMBER 195: We talked about that, because
14 when it happened we knew him.

15 THE COURT: Let me ask you whether there is
16 anything about your relationship there that would interfere
17 in any way with your ability to give both the State and each
18 defendant a fair and impartial trial in this case?

19 JUROR NUMBER 195: I think it would.

20 THE COURT: It would affect you?

21 JUROR NUMBER 195: It would affect me.

22 THE COURT: Well, I appreciate your honesty. I'm
23 not going to require you to sit on this particular case
24 then, and if you would just stay with the jury then and
25 follow instructions.

1 JUROR NUMBER 195: Thank you.

2 (Juror Number 195 returned to the Jury Venire
3 Panel).

4 (Juror Number 95 approached the bench)

5 THE COURT: Come right here. Please give us your
6 name and number, sir, again.

7 JUROR NUMBER 95: Will Hicks, juror 95.

8 THE COURT: Yes, sir.

9 JUROR NUMBER 95: I drove past the scene the
10 morning of going to work and just followed up on it in the
11 newspaper the next day, but that's it. I don't remember any
12 of the details.

13 THE COURT: Let me ask you whether you -- have you
14 discussed the case with anybody?

15 JUROR NUMBER 95: No, sir.

16 THE COURT: Could you listen to the testimony and
17 evidence that comes in during the course of this trial, the
18 sworn testimony and evidence, and the instruction by the
19 court with regard to the law that applies to the issues in
20 this case and render a decision which would be fair and
21 impartial as to both the State and the each defendant in
22 this case? Could you do that, sir?

23 JUROR NUMBER 95: Yes, sir.

24 THE COURT: Thank you, sir. You may return to
25 your seat.

1 (Juror Number 95 returned to the Jury Venire
2 Panel)

3 (Juror Number 186 approached the bench)

4 THE COURT: Come right here, please, sir, and give
5 us your name and number.

6 JUROR NUMBER 186: Daniel Rogers, juror number
7 186.

8 THE COURT: Yes, sir, Mr. Rogers.

9 JUROR NUMBER 186: James, the victim, and I shared
10 one mutual personal friend and I was also a regular customer
11 at the store.

12 THE COURT: Let me ask you, sir, then have you
13 discussed the case with anybody?

14 JUROR NUMBER 186: I followed it pretty closely in
15 the media and then just discussed it with the personal
16 friend.

17 THE COURT: Okay. Let me ask you, sir, whether
18 you could put aside anything that you may have read in the
19 paper about what happened there and anything that you might
20 have discussed with your friend, could you put all of that
21 aside and listen and base a decision solely on the sworn
22 testimony and evidence that comes in through the trial and
23 the court's instruction on the law? Could you do that, or
24 could you not do that?

25 JUROR NUMBER 186: I feel like I could.

1 THE COURT: You think you could?

2 JUROR NUMBER 186: Yes.

3 THE COURT: Thank you, sir. You may return to
4 your seat.

5 (Juror Number 186 returned to the Jury Venire
6 Panel).

7 (Juror Number 6 approached the bench)

8 THE COURT: Come right here, please, sir.

9 JUROR NUMBER 6: Yes, sir.

10 THE COURT: Give us your name and number again for
11 the record.

12 JUROR NUMBER 6: Carlos Anderson, number 6.

13 THE COURT: Yes, sir, Mr. Anderson.

14 JUROR NUMBER 6: I have been knowing him a long
15 time from driving a truck.

16 THE COURT: Mr. Marshall, you knew him for quite a
17 while?

18 JUROR NUMBER 6: Yes, you know, from driving the
19 truck, ran into him all the time.

20 THE COURT: Did you work that store anyhow?

21 JUROR NUMBER 6: No, that store. It wasn't opened
22 then. Come to other stores that he worked at.

23 THE COURT: Sir, let me ask you whether there is
24 anything about your relationship with -- that would
25 interfere in any way with your ability to give both the

1 State and each defendant a fair and impartial trial in this
2 case?

3 JUROR NUMBER 6: Yes, I think it would.

4 THE COURT: You think it would interfere?

5 JUROR NUMBER 6: Yes, sir.

6 THE COURT: Thank you. I appreciate your honesty.

7 JUROR NUMBER 6: Yes, sir.

8 THE COURT: I'm not going to require you to serve
9 on this case, but just go back and have a seat and follow
10 instructions. Thank you, sir.

11 (Juror Number 6 returned to the Jury Venire
12 Panel).

13 (Juror Number 88 approached the bench)

14 THE COURT: Please give us your name and number,
15 sir.

16 JUROR NUMBER 88: It's Jeff Hale, number 88.

17 THE COURT 88: Yes, sir, Mr. Hale.

18 JUROR NUMBER 88: I frequent this particular
19 convenience store. It's on my way home from work. I did
20 not know the victim and haven't discussed anything with
21 anyone or seen anything in the news since about three days
22 after the incident occurred.

23 THE COURT: But you bought gas there every now and
24 then?

25 JUROR NUMBER 88: Yes, sir, many times.

1 THE COURT: Let me ask you, have you read anything
2 about the case or discussed it with anybody?

3 JUROR NUMBER 88: Not since about three days after
4 it occurred.

5 THE COURT: Do you recall what you read or --

6 JUROR NUMBER 88: No.

7 THE COURT: -- what discussions you had?

8 JUROR NUMBER 88: No, sir.

9 THE COURT: Let me ask you, could you put aside
10 anything that you may have heard about this case or read
11 about this case, put it aside and base your decision solely
12 on the sworn testimony and evidence that comes in during the
13 course of the trial and the court's instruction to you with
14 regard to the law that applies to this issues in this case
15 and render a decision which would be fair and impartial to
16 both the State and each defendant in this case? Could you
17 do that?

18 JUROR NUMBER 88: To be honest, sir, I would not
19 ask for this burden, but I believe I could, if called upon.

20 THE COURT: Thank you, sir. You may be seated.

21 JUROR NUMBER 88: Thank you.

22 (Juror Number 88 returned to the Jury Venire
23 Panel).

24 (Juror Number 239 approached the bench)

25 THE COURT: Come up here, please.

1 Yes, ma'am, please give us your name and number
2 for the record.

3 JUROR NUMBER 239: Kim Wilson, 239.

4 THE COURT: Yes, ma'am.

5 JUROR NUMBER 239: Oh, I just read the article
6 when it happened.

7 THE COURT: Okay. Do you recall what you read
8 about it?

9 JUROR NUMBER 239: Just that he was killed.
10 That's all I remember.

11 THE COURT: Let me ask you, have you discussed the
12 case with anyone then?

13 JUROR NUMBER 239: No.

14 THE COURT: Can you put aside anything that you
15 might have read? You say you don't recall what you read,
16 except when he was killed, but could you put aside anything
17 that you may have read about it and render a decision that
18 would be fair and impartial as to both the State and each
19 defendant in this case, based solely on the sworn testimony
20 and evidence that comes in during the trial and the court's
21 instruction to you with regard to the law that applies as to
22 the issue in this case? Could you render a decision to be
23 fair and impartial based on all that?

24 JUROR NUMBER 239: Absolutely.

25 THE COURT: Okay. Thank you, ma'am. You may

1 return to your seat.

2 (Juror Number 239 returned to the Jury Venire
3 Panel).

4 (Juror Number 115 approached the bench)

5 THE COURT: Please give us your name and number
6 for the record.

7 JUROR NUMBER 115: Beverley Keely. It's 115.

8 THE COURT: Yes, ma'am.

9 JUROR NUMBER 115: I read it in the paper.

10 THE COURT: Okay. Do you recall what you read in
11 the paper about it, ma'am?

12 JUROR NUMBER 115: Just that there was a murder at
13 the BP station and it's really about all I can remember.

14 THE COURT: Okay. Have you discussed the case at
15 all with anybody, ma'am?

16 JUROR NUMBER 115: No.

17 THE COURT: Let me ask you whether you could put
18 aside anything that you may have read about the case in the
19 paper and base your decision solely on the sworn testimony
20 and evidence that comes in during the course of the trial
21 and court's instruction to you with regard to the law that
22 applies and base it solely on that and render a decision to
23 be fair and impartial as to both the State and each
24 defendant in this case? Could you do that?

25 JUROR NUMBER 115: Yes, sir.

1 THE COURT: Thank you, ma'am.

2 (Juror Number 115 returned to the Jury Venire
3 Panel).

4 (Juror Number 163 approached the bench)

5 THE COURT: Give us your name and number for the
6 record.

7 JUROR NUMBER 163: Rena Owens. I'm number 163.

8 THE COURT: Yes, ma'am.

9 JUROR NUMBER 163: I read about it in the
10 newspaper and we did discuss it at work. I think Mr.
11 Albright was a patient of ours.

12 THE COURT: Mr. Albright or Marshall?

13 JUROR NUMBER 163: I mean Mr. Marshall.

14 THE COURT: Do you think he was a patient of
15 yours?

16 JUROR NUMBER 163: Yes.

17 THE COURT: Did you know him personally?

18 JUROR NUMBER 163: No.

19 THE COURT: And, ma'am, as a result of what you
20 read in the paper, any discussions that you may have had
21 about it, would that affect your ability to be fair and
22 impartial as to both the State and each defendant in this
23 case?

24 JUROR NUMBER 163: No.

25 THE COURT: Could you listen to the sworn

1 testimony and evidence that comes in during the course of
2 the trial and the court's instruction to you with regard to
3 the law that applies and render a decision which would be
4 fair and impartial with regards to the State and each
5 defendant in this case? Could you do that?

6 JUROR NUMBER 163: Yes, I could.

7 THE COURT: Thank you, ma'am. You may return to
8 your seat.

9 (Juror Number 163 returned to the Jury Venire
10 Panel).

11 (Juror Number 45 approached the bench)

12 THE COURT: Come right here, please, ma'am, and
13 please give us your name and number for the record.

14 JUROR NUMBER 45: Rhonda Collins, 45.

15 THE COURT: Yes, ma'am.

16 JUROR NUMBER 45: I just read the article in the
17 paper.

18 THE COURT: Do you recall what you read, ma'am?

19 JUROR NUMBER 45: I just knew it was a murder, but
20 as far as someone that I knew, no, I don't.

21 THE COURT: Okay.

22 JUROR NUMBER 45: Okay. Have you discussed this
23 case with anybody, ma'am?

24 JUROR NUMBER 45: No.

25 THE COURT: Could you put aside anything that you

1 may have read at the time in the newspaper about this case
2 and base a decision solely on the sworn testimony and
3 evidence that comes in during the course of the trial and
4 court's instruction with regard to the law that applies, the
5 issues in this case, and render a decision which would be
6 fair and impartial as to both the State and each defendant
7 in this case? Could you do that?

8 JUROR NUMBER 45: I sure can.

9 THE COURT: Thank you, ma'am.

10 (Juror Number 45 returned to the Jury Venire
11 Panel)

12 (Juror Number 99 approached the bench)

13 THE COURT: Please give us your name and number,
14 please.

15 JUROR NUMBER 99: Carol Hipskind, juror 99.

16 THE COURT: Okay. Yes, ma'am.

17 JUROR NUMBER 99: I remember it because of where I
18 live. I pass by there frequently, so it did make an
19 impression on me because of that.

20 THE COURT: Okay. Have you discussed this case
21 with anyone?

22 JUROR NUMBER 99: No, I haven't.

23 THE COURT: Do you recall what you might have read
24 about it?

25 JUROR NUMBER 99: Basically it was from television

1 and it was -- I remember someone being murdered at the BP
2 station. The one at India Hook and Celanese, is that
3 correct?

4 THE COURT: Yes.

5 JUROR NUMBER 99: Yes.

6 THE COURT: Let me ask you, ma'am, whether you
7 could put aside anything that you may have read or heard
8 about this case and render a decision in this case based on
9 the sworn testimony and evidence that comes in during the
10 course of the trial and the court's instruction to you with
11 regard to the law that applies to the issues in this case
12 and render a decision which would be fair and impartial to
13 both the State and each defendant in this case? Could you
14 do that?

15 JUROR NUMBER 99: I think I could.

16 THE COURT: Okay. Thank you, ma'am.

17 (Juror Number 99 returned to the jury venire
18 panel)

19 (Juror Number 204 approached the bench)

20 THE COURT: Yes, ma'am, please give us your name
21 and number, please.

22 JUROR NUMBER 204: Kimberley Spyridon, 204.

23 THE COURT: Yes, ma'am.

24 JUROR NUMBER 204: I vaguely remember something
25 about that incident, but I don't remember any of the

1 details, but what you said up at the bench sounded vaguely
2 familiar.

3 THE COURT: Okay.

4 JUROR NUMBER 204: I listen to the radio sometimes
5 on the way to work, so I may have heard something there.

6 THE COURT: Let me ask you -- you don't recall
7 exactly what you heard?

8 JUROR NUMBER 204: No.

9 THE COURT: Let me ask you, ma'am, whether you
10 could put aside anything that you may have heard about the
11 case, seen about the case, and render a decision in this
12 case, based solely on the sworn testimony and evidence that
13 comes in during the course of the trial and the court's
14 instruction to you with regard to the law that applies to
15 the issues in this case and render a decision which would be
16 fair and impartial as to both the State and each defendant
17 in this case? Could you do that?

18 JUROR NUMBER 204: Yes, sir, I could.

19 THE COURT: Thank you, ma'am.

20 (Juror Number 204 returned to the Jury Venire
21 Panel)

22 (Juror Number 82 approached the bench).

23 JUROR NUMBER 82: Mark Goss, number 82.

24 THE COURT: Yes, sir.

25 JUROR NUMBER 82: I have read about this in the

1 paper. I remember their pictures and all, but I guess
2 mainly what I want to tell you that I was a city policeman
3 in York about four years in my early twenties, been through
4 the Criminal Justice Academy. I might be sitting on the
5 prosecution's side. I thought I'd make you aware of that.

6 THE COURT: Well, let me just ask you point blank
7 whether you could render a decision in this case that would
8 be fair and impartial as to both the State and each
9 defendant in this case? Could you do that?

10 JUROR NUMBER 82: Probably not.

11 THE COURT: Okay.

12 JUROR NUMBER 82: I would like to be on this case.
13 I would like to be on it.

14 THE COURT: I'm going to excuse you from this
15 particular case and not require you to sit on this case, but
16 I ask you just to stay with the jury panel and follow
17 instructions, okay?

18 JUROR NUMBER 82: Yeah.

19 THE COURT: Thank you.

20 (Juror Number 82 returned to the Jury Venire
21 Panel)

22 MR. SWERLING: I was just going to bring it up
23 while we're here. Juror number 95 has come up a couple of
24 times. I think his father-in-law is a --

25 MR. BRACKETT: Waldrop.

1 MR. SWERLING: And he's a -- he's a witness to the
2 case, a potential witness.

3 MR. BRACKETT: Yeah, he was going to be called as
4 a witness.

5 THE COURT: Walker?

6 MR. BRACKETT: Waldrop.

7 MR. SWERLING: Waldrop.

8 Will any of the -- if I can, will any of the other
9 people - 57, 181, 101 - who are also -- any of them going to
10 be involved?

11 MR. BRACKETT: We called out every name and just
12 ask the question in general --

13 MR. SWERLING: That's what I mean.

14 MR. BRACKETT: Yeah.

15 MR. SWERLING: I think they were all York County.

16 MR. BRACKETT: If their name wasn't on that list,
17 they won't be called. There is no chance of them being
18 called.

19 (Off the record)

20 (Back on the record)

21 MR. SWERLING: I just wanted to make sure.

22 THE COURT: Okay. Well, I have got one, two,
23 three, four, five, six. I got six I'm going to excuse for
24 cause.

25 MR. SWERLING: Yes, sir.

1 Judge, before we strike, can you give us about
2 five minutes to go back and just get our notes together?

3 THE COURT: This is criminal court, not civil
4 court. How much longer we going to keep these jurors
5 standing up? I'll give you a couple of minutes.

6 MR. SWERLING: That's all I wanted to do is put
7 this on my list, these names on my list, and that would make
8 it a little smoother.

9 THE COURT: Okay.

10 MR. SWERLING: We can do it in place too.

11 THE COURT: Well, I just do it in place. I don't
12 want to send the jury out.

13 MR. SWERLING: I just want to transpose my notes.

14 (Whereupon, the on-the-discussion bench conference
15 were concluded)

16 THE COURT: All right, ladies and gentlemen of the
17 jury panel, let me ask you this question. Is there any
18 member of the jury panel who could not listen to the
19 testimony and evidence in this case and the instruction from
20 the court as to the law that applies to the issues in this
21 case and render a verdict solely on that sworn testimony and
22 evidence in this case? If you could not do that, please
23 stand. Or if you are standing, raise your right hand.

24 (No response).

25 THE COURT: Has any member of the jury panel

1 formed or expressed an opinion as to the guilt or innocence
2 of the defendant Terrell Antonio Addison or the defendant
3 Ben Robert Stewart? If so, please stand, or raise your
4 right hand in the case of those who are already standing.

5 (No response)

6 THE COURT: Has any member of the jury panel
7 formed or expressed an opinion as to the guilt or innocence
8 of the defendant Terrell Antonio Addison or the defendant
9 Ben Robert Stewart? If so, please stand or raise your hand,
10 as the case may be.

11 (No response).

12 THE COURT: Is any member of the jury panel
13 conscious of any interest, bias or prejudice for or against
14 the defendant Terrell Antonio Addison or the defendant Ben
15 Robert Stewart? If so, please stand.

16 (No response)

17 THE COURT: Or raise your hand, as the case may
18 be.

19 (No response).

20 THE COURT: Can each member of the jury panel give
21 both the State and each defendant, Terrell Antonio Addison
22 and Ben Robert Stewart, a fair and impartial trial in this
23 case? If not, please stand.

24 (No response).

25 THE COURT: Is any member of the jury panel who

1 could not give each defendant, Terrell Antonio Addison and
2 Ben Robert Stewart, a fair and impartial trial in this case
3 on each of the charges against them because there are
4 multiple charges in this case? Is there anyone who would be
5 prejudiced by that fact and could not give each defendant a
6 fair and impartial trial on each of these charges against
7 each of them in this case? If you couldn't do that, please
8 stand.

9 (No response).

10 THE COURT: Can each member of the jury panel,
11 again, give each defendant in this case a fair and impartial
12 trial in this case and not be governed by sympathy,
13 prejudice, passion, public opinion, or any other arbitrary
14 factor? If you couldn't do that, please stand.

15 (No response).

16 THE COURT: Does any member of the jury panel know
17 of any reason whatsoever why he or she should not serve as a
18 juror in this particular case? If so, please stand, or
19 raise your right hand.

20 All right. All right, sir. All right, give us
21 your name and number, sir.

22 JUROR NUMBER 143: Lejuan Mccullough, juror number
23 143.

24 THE COURT: Okay. All right, sir. We understood
25 that and we are not going to require you to serve on this

1 case. Thank you very much.

2 JUROR NUMBER 143: Yes, sir.

3 THE COURT: Anyone else?

4 (No response)

5 THE COURT: Raise your right hand or stand.

6 (No response).

7 THE COURT: All right. Any additional questions
8 requested of the jury panel from the State?

9 MR. BRACKETT: No, sir, not from the State.

10 THE COURT: All right. From each defendant?

11 MR. SWERLING: No, Your Honor.

12 THE COURT: Mr. Snow?

13 MR. SNOW: Nothing further.

14 THE COURT: Sir?

15 MR. SNOW: Nothing further.

16 THE COURT: I think -- I'll give you a couple of
17 minutes to look over your list and then we will start with
18 the strikes.

19 (Off the record)

20 (Back on the record)

21 THE COURT: State ready?

22 MR. BRACKETT: The State is ready, Your Honor.

23 THE COURT: All right. We will proceed with the
24 strikes then, please, Madam Clerk.

25 THE CLERK: When I call your name, if you will

1 please come to the front with all of your belongings and
2 stand next to the bailiff.

3 Number 97, Keith Highland.

4 What say you for the State?

5 MR. BRACKETT: Please present the juror.

6 THE CLERK: Defense?

7 MR. SWERLING: Please excuse the juror from this
8 case.

9 THE COURT: You are excused from this case, sir.

10 Number 8, Stevie Anderson.

11 What say you for the State?

12 MR. BRACKETT: Please excuse the juror.

13 THE CLERK: You are excused from this case, sir.

14 Number 39, Elizabeth Carlisle.

15 What say you for the State?

16 MR. BRACKETT: Please present the juror.

17 THE CLERK: Defense?

18 MR. SWERLING: Please swear the juror.

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

21 Number 215, Mary Thompson.

22 What say you for the State?

23 MR. BRACKETT: Please present the juror.

24 THE CLERK: Defense?

25 MR. SWERLING: Please seat the juror.

1 THE CLERK: Please have a seat in the jury box,
2 ma'am.

3 Number 219, Omar Van-Rooyen.

4 What say you for the State?

5 MR. BRACKETT: Please present the juror.

6 THE CLERK: Defense?

7 MR. SWERLING: Please excuse the juror from this
8 case.

9 THE CLERK: You are excused from this case, sir.

10 Number 140, Mary McClure.

11 What say you for the State?

12 MR. BRACKETT: Please present the juror.

13 THE CLERK: Defense?

14 MR. SWERLING: Please seat the juror.

15 THE CLERK: Please have a seat in the jury box,
16 ma'am.

17 Number 175, Thomas Rawlinson.

18 What say you for the State?

19 MR. BRACKETT: Please present the juror.

20 THE CLERK: Defense?

21 MR. SWERLING: Please seat the juror.

22 THE CLERK: Please have a seat in the jury box,
23 sir.

24 Number 24, Douglas Bolin.

25 What say you for the State?

1 MR. BRACKETT: Please excuse the juror.

2 THE CLERK: You are excused from this case, sir.

3 Number 58, Jeremy Devolk.

4 What say you for the State?

5 MR. BRACKETT: Please present the juror.

6 THE CLERK: Defense?

7 MR. SWERLING: Please excuse the juror from this

8 case.

9 THE CLERK: You are excused from this case, sir.

10 Number 12, Elouise Baldwin.

11 What say you for the State?

12 MR. BRACKETT: Please present the juror.

13 THE CLERK: Defense?

14 MR. SWERLING: Please seat the juror.

15 THE CLERK: Please have a seat in the jury box,

16 ma'am.

17 Number 51, Noel Cruz.

18 What say you for the State?

19 MR. BRACKETT: Please present the juror.

20 THE CLERK: Defense?

21 MR. SWERLING: Please seat the juror.

22 THE CLERK: Please have a seat in the jury box,

23 sir.

24 Number 187, Terry Rolla.

25 What say you for the State?

1 MR. BRACKETT: Please present the juror.

2 THE CLERK: Defense?

3 MR. SWERLING: Please seat the juror.

4 THE CLERK: Please have a seat in the jury box,

5 sir.

6 Number 159, Joseph Muller.

7 What say you for the State?

8 MR. BRACKETT: Please present the juror.

9 THE CLERK: Defense?

10 MR. SWERLING: Please excuse the juror.

11 THE CLERK: You are excused from this case, sir.

12 Number 107, Willie Isom.

13 What say you for the State?

14 MR. BRACKETT: Please excuse the juror.

15 THE CLERK: You are excused from this case, sir.

16 Number 163, Rena Owens.

17 What say you for the State?

18 MR. BRACKETT: Please present the juror.

19 THE CLERK: Defense?

20 MR. SWERLING: Please excuse the juror for this

21 case.

22 THE CLERK: You are excused from this case, ma'am.

23 Number 108, Patricia Jackson.

24 What say you for the State?

25 MR. BRACKETT: Please present the juror.

1 THE CLERK: Defense?

2 MR. SWERLING: Please seat the juror.

3 THE CLERK: Please have a seat in the jury box,

4 ma'am.

5 Number 29, Henrietta Brown.

6 What say you for the State?

7 MR. BRACKETT: Please present the juror.

8 THE CLERK: Defense?

9 MR. SWERLING: Please seat the juror.

10 THE CLERK: Please have a seat in the jury box,

11 ma'am.

12 Number 95, William Hicks.

13 What say you for the State?

14 MR. BRACKETT: Please present the juror.

15 THE CLERK: Defense?

16 MR. SWERLING: Please excuse the juror from this

17 case.

18 THE CLERK: You are excused from this case, sir.

19 Number 239, Kimberly Wilson.

20 What say you for the State?

21 MR. BRACKETT: Please present the juror.

22 THE CLERK: Defense?

23 MR. SWERLING: Please excuse the juror for this

24 case.

25 THE CLERK: You are excused from this case, ma'am.

1 Number 177, Travis Reynolds.

2 What say you for the State?

3 MR. BRACKETT: Please present the juror.

4 THE CLERK: Defense?

5 MR. SWERLING: Please excuse the juror from this
6 case.

7 THE CLERK: You are excused from this case, sir.

8 Number 23, Mary Boatwright.

9 What say you for the State?

10 MR. BRACKETT: Please present the juror.

11 THE CLERK: Defense?

12 MR. SWERLING: Please seat the juror.

13 THE CLERK: Please have a seat in the jury box,
14 ma'am.

15 Number 73, James Fox.

16 What say you for the State?

17 MR. BRACKETT: Please present the juror.

18 THE CLERK: Defense?

19 MR. SWERLING: Please seat the juror.

20 THE CLERK: Please have a seat in the jury box,
21 sir.

22 THE COURT: Excuse me. Those of you who are
23 standing up, if you want to have a seat, go ahead and find
24 one now.

25 Go ahead.

1 THE CLERK: Number 38, Heyward Canty.

2 What say you for the State?

3 MR. BRACKETT: Please present the juror.

4 THE CLERK: Defense?

5 MR. SWERLING: Please excuse the juror in this
6 case.

7 THE CLERK: You are excused in this case, sir.

8 Number 94, Deborah Hess.

9 What say you for the State?

10 MR. BRACKETT: Please present the juror.

11 THE CLERK: Defense?

12 MR. SWERLING: Please seat the juror.

13 THE CLERK: Please have a seat in the jury box,
14 ma'am.

15 Number 186, Daniel Rogers.

16 This would be for the first alternate, please.

17 What say you for the State?

18 MR. BRACKETT: Please present the juror.

19 THE CLERK: Defense?

20 MR. SWERLING: Please excuse the juror for this
21 case.

22 THE CLERK: You are excused from this case, sir.

23 Number 122, Kenneth Lake.

24 What say you for the State?

25 MR. BRACKETT: Please present the juror.

1 THE CLERK: Defense?

2 MR. SWERLING: Please excuse the juror for this
3 case.

4 THE COURT: You are excused from this case, sir.
5 Number 127, Warren Lewis.

6 MR. BRACKETT: 127, Madam Clerk?

7 THE CLERK: Yes, sir.

8 What say you for the State?

9 MR. BRACKETT: Please present the juror.

10 THE CLERK: Defense?

11 MR. SWERLING: Please excuse the juror for this
12 case.

13 THE CLERK: You are excused from this case then,
14 sir.

15 Number 242, Linda Winter.

16 What say you for the State?

17 MR. BRACKETT: Please present the juror.

18 THE CLERK: Defense?

19 MR. SWERLING: Please excuse the juror.

20 THE COURT: You are excused from this case, ma'am.

21 THE CLERK: Number 184, Barbara Robinson.

22 What say you for the State?

23 MR. BRACKETT: Please present the juror.

24 THE COURT: Defense?

25 MR. SWERLING: Please seat the juror.

1 THE CLERK: Please have a seat in the jury box,
2 ma'am.

3 Number 200, Joan Sipe.

4 What say you for the State?

5 MR. BRACKETT: Please present the juror.

6 THE CLERK: Defense?

7 MR. SWERLING: Please seat the juror.

8 THE CLERK: Please have a seat in the jury box,
9 ma'am.

10 THE COURT: Questions concerning the selection
11 process, from the State?

12 MR. BRACKETT: None from the State, Your Honor.

13 THE COURT: From each defendant?

14 MR. SWERLING: None from Addison, Your Honor.

15 MR. SNOW: Nothing further.

16 THE COURT: All right. Ladies and gentlemen of
17 the jury panel who were not selected for this particular
18 case, I'm going to excuse you at this time and ask you to
19 call in tonight after seven o'clock to your voicemail number
20 anytime after seven. You will get instructions as to when
21 you need to report back or call back again, as the case may
22 be. Thank you very much for your patience, ladies and
23 gentlemen. You may go at this time.

24 (Whereupon, the Jury Venire Panel left the
25 courtroom)

1 THE COURT: Counsel, approach just a minute for
2 scheduling.

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion)

5 THE COURT: Ladies and gentlemen of the jury
6 panel, if you would give me your attention, please. We are
7 not going to really get into the case tonight, because it's
8 already six o'clock. We appreciate your patience.

9 I am going to give you what I call a preliminary
10 instruction about the trial and the format of the trial and
11 what to expect as we go through it. I know most of you are
12 unfamiliar with these surroundings, having not served on a
13 jury in General Sessions Court, in Circuit Court before. I
14 hope that this information will make you feel a little bit
15 more comfortable in these surroundings.

16 The first thing that will happen in the morning --
17 we are not going to do that tonight. The first thing that
18 will happen in the morning is that an attorney for the
19 State, who is an assistant or deputy solicitor, will make an
20 opening statement to you. And then the attorneys for the
21 defendant will have the same opportunity to address you in
22 opening statement. These opening statements by the
23 attorneys are not evidence, but you should pay close
24 attention, because they are, in essence, going to identify
25 to you what they perceive or say the issues in this case

1 are.

2 After they have made their opening statements to
3 you, then the State will proceed by presenting the testimony
4 and evidence they want you to consider. The reason the
5 State goes first is that the State has the burden of proof
6 in this case. There is no burden of proof upon the
7 defendants to prove their innocence. The burden of proof is
8 upon the State of South Carolina to prove the charges
9 against each defendant by evidence that satisfies you, the
10 jury, beyond a reasonable doubt before you can return a
11 verdict of guilty. If the State fails to meet that burden
12 of proof, then your verdict must be not guilty.

13 After the assistant solicitor -- excuse me, the
14 solicitor or deputy solicitor has presented to you the
15 evidence they want you to consider on behalf of the State,
16 then the same opportunity will be afforded to the defense.
17 Each defendant may, but is not required, to present any
18 testimony or evidence, because the State has the burden of
19 proving the defendant guilty beyond a reasonable doubt. The
20 defendant, each defendant, does not have to prove he is
21 innocent. He is presumed innocent, and that presumption
22 stays with him throughout the trial and may only be removed
23 if the State meets its burden of proving the guilt of the
24 each defendant beyond a reasonable doubt.

25 What is evidence in the case? Evidence is the

1 sworn testimony you will hear from the witness stand right
2 to my right, exhibits admitted into the record for your
3 consider by me, the presiding judge, and any stipulation or
4 agreement by counsel.

5 Now, exhibits may take many forms, such as
6 documents, pictures, videotape, maps, diagrams, and so
7 forth. Exhibits may take many forms --

8 Excuse me, stipulations are agreements of fact by
9 the attorneys. If the attorneys enter into a stipulation or
10 agreement of fact, that will be made known to you and you
11 can consider that, along with all of the other testimony and
12 evidence in the case. Give it such weight as you determine
13 appropriate when you begin your deliberations.

14 Sworn testimony, exhibits, and stipulations are
15 the only evidence you may consider in your deliberation of
16 the innocence or guilt of each defendant. You may not
17 consider anything that you heard from any other source about
18 this case in making your decision, because that is not
19 evidence.

20 After you have heard all the evidence and the
21 attorneys for the State and the defendant will once again
22 appear before you and make what we call closing arguments.
23 We call them arguments because the attorneys are allowed at
24 that time to argue their positions, will attempt to persuade
25 you as to their view or position as to the facts.

1 When you have heard final arguments from counsel,
2 I will then charge you, which simply means to instruct you,
3 as to the law that applies to the issues in this case. You
4 will then retire to the jury room to deliberate and reach
5 your verdict.

6 That's how a case is tried in General Sessions
7 court, whether it be this case or any other case. Some
8 cases take a half a day or a day, some cases take weeks, but
9 the same format applies in every case.

10 As the trial judge I have three functions to
11 perform during the trial. I am the presiding officer, and,
12 therefore, see that the trial is run in an orderly manner.
13 I decide, based on rules of civil and criminal procedure,
14 whether testimony and exhibits are admissible into evidence
15 for your consideration. And at the conclusion of the trial
16 I instruct you as to the law you must apply to the facts in
17 this case in reaching your verdict.

18 You, ladies and gentlemen, are also judges in this
19 case. You are the judges of the facts. In other words, you
20 determine the truth of the facts in this case. Under our
21 Constitution I am not permitted as the judge of the law to
22 have an opinion about the facts, so I do not get into
23 whether I believe a witness or not. That is not my
24 function. I'm not even permitted to express an opinion, if
25 I had one, as to the facts in this case. So you, the

1 jurors, determine what is the truth of the facts.

2 Now, I do not permit jurors to take notes during
3 the trial because it's my experience that while writing the
4 notes you may miss something very important for you to hear
5 and you may fail to observe a witness when testifying. It
6 is important that you pay careful attention to all testimony
7 and introduction of evidence, since you must judge the
8 credibility or believability of the witnesses and the weight
9 to give all evidence introduced in this case in determining
10 the truth of the facts.

11 Now, during the trial the attorneys may object to
12 the admissibility of certain testimony or other evidence. I
13 will either sustain the objection, which means I agree, and
14 the testimony or evidence may not be made part of the record
15 for your consideration; or, I will overrule the objection,
16 which means as the judge of the law I have determined that
17 it is admissible as part of the record for your
18 consideration. The mere fact that I have admitted it does
19 not mean that you must believe it or disbelieve it. I have
20 simply determined that it is admissible under our rules, and
21 it is up to you then to believe it or disbelieve it and to
22 assign such weight to it as you determine to be appropriate.

23 At the conclusion of the trial when we send you to
24 the jury room every exhibit that is admitted into evidence
25 will be sent to the jury room for you to examine further and

1 to consider.

2 As jurors in this case it would be your exclusive
3 duty to determine the facts in this matter through your
4 evaluation of the evidence that was received during the
5 course of this trial and to give such evidence whatever
6 value, weight, or effect as you deem appropriate with the
7 goal of reaching the truth in this matter. In doing so, you
8 will have fulfilled your obligations as jurors, and that is
9 to give both the State and each defendant a fair and
10 impartial trial in this matter.

11 Now, ladies and gentlemen of the jury panel, under
12 our Constitution a person charged with a criminal offense is
13 presumed innocent. The defendant does not have to prove he
14 did not commit a crime. The State of South Carolina is
15 required to prove the charges made against each defendant by
16 evidence that satisfies you of his guilt beyond a reasonable
17 doubt.

18 Whatever your verdict in this case, it must be
19 your unanimous verdict, which means all twelve jurors who
20 deliberate in this case must agree on the verdict which the
21 foreperson would be authorized to write on behalf of the
22 jury.

23 Now, ladies and gentlemen, you are not to discuss
24 this case at any time during the trial until I tell you, and
25 that will not occur until you have received all of the

1 evidence and I have instructed you upon the law that
2 applies. You should not discuss the case among yourselves,
3 and you should not discuss it with your family, friends or
4 anyone else you might see on a recess from court. And you
5 might say "well, what's wrong with our discussing the case
6 as we go on through the trial? What's wrong if somebody
7 finds out I'm on a jury and they want to know something
8 about the case that I'm sitting on, what's wrong with
9 discussing it with them?" The problem with discussing the
10 case is that once you start discussing the case, you start
11 forming opinions, and you wouldn't be fair to all sides in
12 this case if you didn't wait until you have heard all the
13 testimony and evidence and I have instructed you upon the
14 law that applies before you start forming opinions. Until
15 then you should wait until you have all the information that
16 you need before you start forming opinions or discussing the
17 case.

18 Now, if anyone should deliberately try to discuss
19 the case with you, you should not discuss it with them, but
20 leave and report that attempt to me through the bailiff or
21 clerk of court's office and I will deal appropriately with
22 that person. No one should try to discuss the case with
23 you. If they do, I certainly wish to be made aware of it
24 and I will deal appropriately with that person.

25 If you should hear anyone standing around outside

1 of the courtroom who might be in discussing the case, please
2 do not listen to any conversations anybody else might have
3 outside of the courtroom. It's very important that you form
4 your opinion based solely on the testimony and evidence that
5 comes in during the course of the trial and not from any
6 other source about which we cannot guarantee the accuracy.

7 It's very important if there should be any media
8 coverage of this trial, please do not read, listen to, or
9 watch any media account of this trial until after the trial
10 is over. If there should be some media coverage of this
11 trial, whether it be radio, television, newspaper, whatever,
12 and I will include in there, very important, the Internet,
13 those of you who have computers and get on the Internet.
14 There is lot of information nowadays available on the
15 Internet, not only from news media, but from other sources.
16 During the course of this trial please do not go on the
17 Internet and get any information about this case or read
18 anything about this case. Now, I don't think that would be
19 a hardship on anybody not to go on the Internet during the
20 time that you are serving on this trial. After the trial is
21 over with, you are welcome to read, listen to, or watch any
22 media account of this trial from any source. And if someone
23 wants to save it for you until after the trial, you are
24 welcome to read, listen to, or watch any media account of
25 the trial after the trial is over with, and you are welcome

1 to go back to the Internet and read whatever you want to on
2 there. But in the meantime I'm going to ask you to stay off
3 Internet and not read any kind of media account or anything
4 else that might apply to this particular case. That's very
5 important.

6 If there should be any media coverage of the trial
7 and I'm aware of it, I may very well ask you if you have
8 read, listened to, or watched any media account of the
9 trial. And if you have to tell me that you have, and I will
10 expect you to be honest about it, but if you have to tell me
11 that you have, then that's going to cause us a big problem
12 in this case, so please do not do that.

13 I'm concerned about your comfort, your ability to
14 see and hear the testimony and evidence so you can properly
15 do your job. I try to take a break about every hour and a
16 half, once we get started with the trial tomorrow. If you
17 need a break before the time a break is taken, please raise
18 your right hand and let me know and I'll take a break as
19 quickly after that as I can.

20 If you cannot see or hear something you need to
21 see or hear during the course of the trial, I'll try to
22 anticipate that, but some of you are much further away from
23 the witness stand than where the attorneys might be standing
24 than I. If you cannot hear or see something you need to
25 hear or see during the trial, please do not hesitate to

1 raise your right hand and let me know and I'll make sure
2 that you are able to make sure that you are able to hear or
3 see so you can properly do your job.

4 If you wish to communicate with the court, other
5 than needing a break or the inability to see or hear, please
6 write the message down on a tablet provided for you back in
7 the jury room and give that to the bailiff and the bailiff
8 will bring it to me and I'll correspond appropriately.

9 All right. I believe that's all the information
10 that I wanted to impart to you. I hope you have a pleasant
11 night tonight. I'm going to ask you to be back in the jury
12 room ready to go in the morning at 9:30. 9:30. Please try
13 to be on time and we will try to get started promptly at
14 9:30. The bailiff will show you where the jury room is and
15 how to leave out of here and how to get back to it in the
16 morning. Thank you, ladies and gentlemen.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: For those of you attending this trial,
20 let me tell you I do not allow anyone to stand up, move
21 around, or carry on any conversations while the jury is
22 going out or coming in. I ask you to observe that rule. Do
23 not stand up, talk, or move around while the jury is going
24 out an or coming in. Thank you.

25 All right, gentlemen, we will recess.

1 Anything we need to take up at this time from
2 either party?

3 MR. BRACKETT: Not from the State, Your Honor.

4 MR. SWERLING: No, sir.

5 MR. SNOW: No.

6 THE COURT: All right. Then we will resume in the
7 morning at 9:30. Of course, I'll be here before that. If
8 you need to bring something to my attention, I will be
9 available. Thank you.

10 (Whereupon, proceedings were adjourned to February
11 24, 2009)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2007-GS-46-0670
6 TERRELL ANTONIO) 2007-GS-46-0671
7 ADDISON,) 2007-GS-46-0672
8) 2007-GS-46-0673
9) 2007-GS-46-0675
10) 2007-GS-46-0676
11 DEFENDANT.

12 FEBRUARY 24, 2009
13 YORK, SOUTH CAROLINA

14 (VOLUME II)

15 B E F O R E :

16 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

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

18 KEVIN BRACKETT, SOLICITOR
19 WILLY THOMPSON, DEPUTY SOLICITOR
20 ATTORNEYS FOR THE STATE

21 JACK SWERLING, ESQUIRE
22 ATTORNEY FOR THE DEFENDANT

23 MICHAEL R. WATTS
24 CIRCUIT COURT REPORTER
25

1
2 STATE OF SOUTH CAROLINA)
3 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

4
5 THE STATE) TRANSCRIPT OF RECORD
6 -vs-) 2007-GS-46-2525
7 BEN ROBERT STEWART,) 2007-GS-46-2526
8 DEFENDANT.) 2007-GS-46-2527
9) 2007-GS-46-2528
10) 2007-GS-46-2529
11) 2007-GS-46-2530
12) 2007-GS-46-2531
13) 2007-GS-46-2532
14) 2007-GS-46-2533
15) 2007-GS-46-2535

16 FEBRUARY 24, 2009
17 YORK, SOUTH CAROLINA

18
19 B E F O R E:

20 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.
21

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

23 KEVIN BRACKETT, SOLICITOR
24 WILLY THOMPSON, DEPUTY SOLICITOR
25 ATTORNEYS FOR THE STATE

KENNETH SNOW, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, FEBRUARY 24, 2009)

2 THE COURT: Can we please get the defendants?

3 Counsel, approach just a minute.

4 (Whereupon, the lawyers approached the bench for
5 an off-the-record discussion)

6 (Whereupon, the defendants were brought into the
7 courtroom)

8 THE COURT: All right, counsel, before we get
9 started, is Mrs. And Mrs. Darryl Kennedy here? All right.

10 The record will reflect that I have a letter from
11 Mr. And Mrs. Darryl Kennedy indicating to the court that Mr.
12 Addison doesn't feel he's being adequately represented and
13 there are facts in the case that were not disclosed until
14 yesterday, I guess, they are saying today, and he's
15 requesting time to get adequate counsel.

16 I addressed that yesterday with Mr. Addison on the
17 record about his satisfaction or dissatisfaction with his
18 attorney, Mr. Swerling, and he chose to go forward with the
19 trial. We were ready for trial. We are got going to delay
20 the trial at that point.

21 And I would say to you Jack Swerling is one of the
22 better -- considered to be one the very best criminal
23 lawyers in the state, most in demand in the state. I
24 would -- and so -- and he's an attorney that I assume that
25 the family has chosen, or Mr. Addison chose to represent

1 him.

2 It is not unusual -- his attorney -- a defense
3 attorney is required to do everything for their client,
4 including exploring any possibilities of trying to work a
5 case out and see if there is any basis for an agreement or
6 something can be done and to make recommendations to the
7 client as to what he thinks the client's best interests is,
8 but it ultimately is up to the client to decide what he
9 wants to do or not do. But it's not unusual, once we reach
10 that stage, for a client to start -- an attorney is making
11 some recommendations to them and that, to make them feel
12 like their not in their best interests. However, Mr.
13 Swerling is very well prepared for trial, ready to go
14 forward with the trial, and we are going forward with the
15 trial.

16 Now, if you need a few minutes to discuss
17 something, talk about something, I will give you an
18 opportunity to do that, if you haven't already had the
19 opportunity on the overnight recess from court to do that,
20 but we are going forward with the trial today.

21 I'm going make your letter a court exhibit in this
22 case, make it a part of the file. It's not to go to the
23 jury, but for the -- for that to be part of the record in
24 this case, but the court -- this case has been scheduled for
25 some time. All the witnesses have been subpoenaed,

1 etcetera, to be here and we are ready to go to trial. There
2 has been ample time for preparation for the trial and we are
3 ready for the trial and we are going forward with the trial.

4 (Letter from Mr. & Mrs. Darryl Kennedy marked as
5 Court's Exhibit No. 4 for identification)

6 MR. BRACKETT: May it please the court, Your
7 Honor?

8 THE COURT: Yes.

9 MR. BRACKETT: The only thing I would ask, so that
10 it's on the record, is that, of course, the defendant has a
11 Constitutional Right to represent himself. And if that's
12 been a problem before, I want to make sure that he's aware
13 of that. If he chooses to do that, that's always an option
14 to do as well, but he can't come back later and say "I would
15 have done that, had I known."

16 THE COURT: Well, of course, we discussed that
17 yesterday on the record back in chambers and he was made
18 aware that he could -- if he chose to relieve his attorney,
19 that he can represent himself in the trial. He certainly
20 has a right, a Constitutional Right to represent himself if
21 he wished to do that, but he did not wish to do that
22 yesterday on the record. We discussed it before with a
23 hearing. The option is still open to him today.

24 So Mr. Addison, do you want Mr. Swerling to
25 represent you, or do you want to represent yourself?

1 DEFENDANT ADDISON: I'm going to go with Jack
2 Swerling.

3 THE COURT: All right. Thank you.

4 All right, the record is clear on that. We are
5 going forward with the trial.

6 Anything else from anybody before we get started?

7 MR. BRACKETT: Not from the State, Your Honor.

8 THE COURT: All right.

9 Counsel, for your information, the first thing we
10 are going to do is -- of course, we have got to swear the
11 jury panel, and I'm going to let the jury -- when they take
12 their first break, I'm going to let them elect their own
13 foreperson in this case. And the court does not have one
14 person that stands out as a foreperson, so I'm going to let
15 the jury select their foreperson from someone they agree.

16 And one of them was a little late this morning.
17 That's the reason we are a little late getting started. I'm
18 going to admonish them about that, but we are ready to get
19 started now.

20 If you will please bring the jury in.

21 (The following takes place in the presence of the
22 jury panel)

23 THE COURT: Good morning, ladies and gentlemen of
24 the jury. I hope you had a pleasant night last night. We
25 are ready to get started with the trial.

1 Before we do that, I would note that one of you,
2 I'm not sure which one and I'm not going to single you out,
3 but one of you were late this morning which caused us to
4 delay the trial by fifteen or twenty minutes. So I'm going
5 to ask you, as I have told you earlier, please try to be on
6 time. Otherwise, if even one juror is late, that means we
7 have got to wait until that juror arrives to get started
8 with the trial, and it's going to be -- it's going to take a
9 good bit of time to try this case this week, so we want to
10 try to maximize our use of time as we can, so please try to
11 be on time.

12 I'm going to ask the clerk, please, if you will
13 swear the jury panel.

14 THE CLERK: Ladies and gentlemen of the jury,
15 please stand and raise your right hand.

16 You shall well and truly try and in true
17 deliberance make between the State of South Carolina and the
18 defendants at the bar whom you shall have in charge and a
19 true verdict give according to the evidence and the law, so
20 help you got. Please acknowledge by saying I will.

21 JURY PANEL: I will.

22 THE CLERK: Let the record show all affirmed.

23 THE COURT: Please be seated, ladies and
24 gentlemen.

25 Now, ladies and gentlemen of the jury panel, we

1 are going to have opening statements in this case. And
2 after we have had opening statements from each of the
3 counsel, then we are going to take a short break at that
4 time and you may refresh yourselves during that break. At
5 that time when we take that break I'm going to ask you, if
6 you will, from your group, from the first twelve jurors
7 chosen, not the two alternates, but from the first twelve
8 chosen, if those twelve will elect from your group a
9 foreperson.

10 And I'll explain the role of the foreperson. The
11 foreperson is asked to serve as the spokesperson for the
12 jury back to the court and the court will respond
13 accordingly. Also, the foreperson is asked to serve as
14 moderator, once we reach the deliberative stage of the
15 trial, to maintain order and deliberations and make sure
16 that everyone is allowed to participate. And then, finally,
17 once a unanimous verdict is reached by the jury, to record
18 that verdict on the verdict forms which would be provided to
19 you and explained at the appropriate time.

20 The primary role of the foreperson is the same as
21 the other jurors, and that's to listen carefully to the
22 testimony and evidence so you would be in a position to
23 deliberate and help reach a verdict in this case. So I'm
24 going to ask you, if you will, to give some thought about
25 that, and discuss that when you go back among your group and

1 elect from your group a foreperson.

2 Once you have done that, if you will write that
3 person's name and juror number down and gave it to the
4 bailiff, the bailiff will again bring it to me.

5 One other thing as housekeeping. I would tell you
6 if you have something to drink back in the jury room that
7 you want to bring into the jury box to drink - coffee, Coke,
8 tea, whatever - you are welcome to bring that back to the
9 jury box with you. Counsel and myself will be drinking
10 water as we go through the trial. And if you want to bring
11 something back to drink with you, you are welcome to do
12 that.

13 Thank you for your kind attention. Now we are
14 ready to get started with the trial now. I ask that you
15 listen attentively as counsel address you in opening
16 statement.

17 MR. THOMPSON: If it please the court, Your Honor?

18 THE COURT: Solicitor.

19 MR. THOMPSON: Good morning.

20 October 10th, 2006, a morning like any other,
21 Tuesday morning, for Ned Marshall it was another day to go
22 to work, someplace where people liked him and he liked to
23 see the people that came in. It was a BP station and
24 convenience store on the corner of 161 and India Hook Road.
25 He had been there quite some time. He gets there quite

1 early, as you will see from the testimony that will come in.

2 On this particular morning he would have come in
3 just a little after three o'clock in the morning to open
4 things up, or get things running, so that people who have
5 early jobs can have their coffee, stop and get their sodas
6 and stop and fill up on gas on their way to work.

7 This particular morning, though, would be the last
8 for Ned Marshall. People knew him there as "Pie". As a
9 matter of fact, he had a name tag with the name "Pie" on it,
10 because he was friendly and talked to folks and people just
11 liked to stop in and say hi, even if they didn't buy
12 anything. But this particular morning when he comes in, he
13 does his normal stuff. And you will see from the evidence
14 that as he opens up the store, he does the normal things you
15 do when you open up the store. As he waits for customers to
16 arrive, he even pulls out the paper and is working a
17 crossword puzzles. And a couple of them go in there and
18 filling them out and taking his morning like any other,
19 until two young men come into that store. One comes in
20 and -- you will be familiar with this store before it's all
21 over, but some of you may be familiar with it already to
22 some extent. Someone comes in the one door on one side and
23 this person is dressed all in black with a hood. The
24 evidence will show it's Dontavious Mack. Dontavious Mack
25 comes in waving a gun at that point, all in black - gloves,

1 hood, mask, the whole nine yards.

2 And Ned had just walked to the back at that point
3 in time. He went to the back and got them. As the evidence
4 will show, he walked them back to the front of the store.
5 You will be able to even see on the video camera. He brings
6 them back around the counter to the front of that store
7 where the cash register is. But then he has him stand back
8 as Dontavious decides. As you will see, he gets the money
9 himself.

10 But, now, that's not all. There is one other
11 person coming in the store, and that's Terrell Addison. The
12 evidence will show that that's him right here in the purple
13 shoot. Terrell Addison is also covered head to toe. He's
14 got a mask on. His mask is a blue bandana that covers his
15 face, a hoodie coming up over the top, gloves as well.

16 The evidence will also show that he also carried a
17 pistol with him. While he did not draw it in the store, he
18 had it on his person. He comes in from the other door.
19 There is two opposite doors in the store; one on one side
20 and one on the other. He comes in and actually the cameras
21 don't show that door directly as to when he comes in, but
22 you can see him come by the camera as he's coming in. As he
23 stops at the opening behind the counter where the victim is
24 there standing, and then he moves to the front of the
25 counter and stands and waits as his friend starts trying to

1 find money on that side of the counter.

2 Now, at some point you will find out that Ned
3 Marshall actually carried a little pistol with him, a little
4 .22, a revolver, a little five shot in one. As anyone will
5 know, a .22 is not a very powerful gun. It's a very small
6 gun, as a matter of fact. You will see it. It was provided
7 to you. You can look at it. It's just a tiny little gun.

8 At some point, though, he draws that gun. And
9 it's unsure as to exactly where, because it's hard to see on
10 that videotape. But before anything really happens,
11 ultimately Dontavious Mack turns around with his gun while
12 he's still behind the counter trying to collect money and he
13 shoots Ned Marshall.

14 The pathologist will testify about where the shots
15 hit him, but it seems obvious from the videotape, as you
16 will see, that the first shot is one that at least took out
17 his legs, because he falls down, but he is still able to sit
18 back up after he falls down. He falls down not behind the
19 counter, but as he tries to move toward the -- into the
20 aisle out in front of the counter, that's where he falls,
21 hitting displays, knocking things over, at the same time
22 having been shot in the hand, which as you will see, as he
23 falls his hands flies up. And you will see from the
24 evidence there is blood splattered all over back there where
25 his hand was bleeding as you swung it around.

1 Then you will see Terrell Addison, who is out in
2 front of the spot, because the victim at that point now has
3 the gun in his left hand. His little pistol, he pulls it up
4 in his left hand. He sits there. Because as a right in
5 South Carolina anyone who is being robbed can defend
6 themselves. And so he's doing what's within the law at that
7 point in time. And the law also will tell you that the only
8 thing that someone who is robbing him has a right to do --
9 they don't have a right to shoot him, whether he pulls a gun
10 on them or not. Their right is either to submit to him or
11 run, not to shoot him. But you will see as Dontavious comes
12 back around that counter now with one armful of change or
13 rolled up coins, and that was from under the counter, that
14 he comes back by as he runs around that counter and he fires
15 back as Terrell holds the door for him. He fires back, but
16 at some point there Ned Marshall gets off one shot and it
17 hits Dontavious square in the back left shoulder.

18 Now the plans are kind of ruined for him. Now
19 things are going not the way that they necessarily wanted
20 them to be, but the shots that Dontavious Mack fires going
21 backwards as he runs out of that store are fatal to Ned
22 Marshall immediately. He dies right at that spot on the
23 floor.

24 Dontavious and Terrell run out together, but
25 they're not there alone. There are other people there as

1 well. They are not right there in that parking lot, but
2 they are close by, because in that area, if you go -- if you
3 go through that area, one side of the -- on one side of the
4 store there is a bank and there is a Harris Teeter and all
5 that on the one side. On the other side of the store there
6 is a the car wash that belongs to the store, and then there
7 is some other business establishments right in between and
8 some fields, and then there is an apartment complex. And in
9 that apartment complex you will find that's where the other
10 guys were parked, but they all came here together. They
11 were in the same car, same Buick, and the other guys were
12 Dontavious's brother, Davorius Mack, and this man, Ben
13 Stewart. The evidence will show that he was there. And
14 they both had their part in what happened that night too,
15 because they weren't here in Rock Hill by accident. It
16 wasn't just a mistake that they happened to be here. Most
17 of these guys were from Hartsville. There is only one from
18 Rock Hill in this group. And the evidence will show the
19 only one is Terrell Addison. He's the reason they are here
20 that night. He's the reason that they came to Rock Hill,
21 because all the rest of them were from Hartsville. And
22 everyone knows where Hartsville is, it's down around
23 Florence. So it's a little bit of a drive from here, not
24 something that you just do one evening to come rob a
25 convenience store.

1 They go back to that apartment complex with these
2 guys who are parked, and you will hear from Davorius Mack,
3 who will testify, who has entered a plea of guilty to a
4 number of charges and you will hear about those, who is now
5 facing 50 years in prison at the discretion of the judge.
6 He's going to tell you what happened in that car before all
7 of this went down. He's going to tell you how they got
8 here. He's going to tell you that Terrell needed a ride
9 back up to Rock Hill, because he had been dropped off down
10 in Hartsville and his momma had left him. He didn't have a
11 ride back. Now, he did have some family down in Hartsville.
12 It's not like he's just there blind. He's got some family
13 there, but he wants a ride back, so he gets Dontavious and
14 Davorius to take him back. Now, granted it's a stolen car.
15 They all come back up here. And while they are up here,
16 Davorius will tell you how they drove around Rock Hill
17 talking about the next place they might want to rob, who
18 they might want to jack up, who is going to be next. And he
19 will tell you about the Domino's place they considered
20 robbing. He will tell you about some guy who was just
21 driving a fancy car and who they thought of robbing. Talked
22 about a couple other things that they thought about robbing.
23 So they finally settled on this PB station, because all its
24 lights were on and they knew it was open.

25 What are the actions that we'll show that Ben

1 Stewart did? Well, Ben Stewart -- the gun that killed Ned
2 Marshall, Ben Stewart supplied that gun. It was his gun,
3 the .380, the semiautomatic. And that was the gun that was
4 used, because before they go in, they start talking about
5 who is going to go to do the robbery. And Dontavious is
6 asking various people. Ultimately him and Terrell go, but
7 Dontavious didn't have a gun, so he asked Ben for his, and
8 Ben gave it to him, knowing that he was going to rob this
9 place.

10 So that gets us to the charges that we currently
11 have. And on Ben Stewart we are leaving a lot of this up to
12 you. He is charged with murder and accessory before the
13 fact to murder. Now, we are not asking you to convict of
14 both. He can't be convicted of both. It's one or the
15 other, and that's where you come in as the jury.

16 Someone who is guilty as the principal in
17 murder -- let's say what murder is first. It's the killing
18 of another with malice aforethought.

19 And what is malice? Well, the judge can describe
20 to you as something that somebody is fatally bent on
21 mischief, evil, or depraved heart. What I like to say is
22 now it's something that's just mean. Doing something that's
23 just mean.

24 And one thing that you have to remember when you
25 have a situation with all these co-defendants, the principle

1 of law that it's based on is the hand of one is the hand of
2 all. What do I mean by that? The man who at the beginning
3 hands the gun to the other guy so that he can go do the
4 robbery, whatever that guy does in the robbery is the same
5 as using the hand of this man back here just as if he did
6 it, because they are acting in concert together. They are
7 deciding what they do. They have conspired with what they
8 have done.

9 And the conspiracy is also a charge that each of
10 these men face. They talked about the robbery. They knew
11 it was going to happen, so you have to look at that as it
12 goes along. He's then a principal in the robbery. Even
13 though he did not go in store, even though he did not, he
14 was the principal in it because of what he did beforehand.
15 And then you look again at what he did afterwards, because
16 the evidence will show that when they went back to
17 Hartsville, that Terrell Addison, Ben Stewart and Davorius
18 Mack all went to another man's house named Reed Allen.
19 Actually his girlfriend's place, and they gave the gun and
20 some of the masks and some of the gloves, they gave those to
21 Reed Allen for him to hide for them. And he took them and
22 hid them under a bush, until -- Reed Allen will testify Ben
23 Stewart came back and got the gun back and took the stuff
24 back. But you will hear that testimony as well. So once
25 again we are looking at the possibility of accessory after

1 the fact for him. Not only has he done something to further
2 the crime at the beginning, but he's done something to
3 further the crime at the end.

4 And another principle of law is that if you both
5 have accessory before and after the fact, you are guilty of
6 the principle of murder. He can't be guilty of both
7 accessories before and the actual crime of murder. He's
8 guilty of one or the other. And really he can be guilty of
9 either one in this case. So quite honestly you just have to
10 decide in your deliberations which one.

11 It goes the same with the armed robbery. He's
12 been charged with accessory before the fact to the armed
13 robbery, obviously knowing that's going to happen.

14 And one other thing that you have to be aware of,
15 too, is something called the Felony Murder Rule. And now
16 what that basically is these men might have gone in just
17 thinking I'm going to commit an armed robbery. They might
18 have had no intent to kill Ned Marshall that night. It's
19 just an armed robbery at that point, but by the fact that he
20 gets killed during the commission of that violent crime,
21 that once again is imputed onto everybody else, because of
22 the evil consequences when you take a gun and you rob a man
23 of what he is, that you end up having to kill that man. You
24 are there, therefore, guilty of that murder. And that's how
25 that works, and that's how Felony Murder Rule works. You

1 can infer by the fact that someone was killed during the
2 robbery that malice was there. You can infer malice as well
3 by the use of a deadly weapon; in this case obviously a
4 firearm.

5 And what is armed robbery? It's simply stealing
6 something from another with threat, force, or intimidation,
7 while you are armed with a deadly weapon. And all of those
8 apply. Once again, the hand of one is the hand of all, so
9 everyone is guilty that had a hand in it.

10 Then kidnapping. A lot of people think of
11 kidnapping as something that, you know, you stuff someone in
12 the trunk and drive them across the state line and keep them
13 bound and gagged, but that's not exactly kidnapping. That
14 is kidnapping in one aspect, but kidnapping has many
15 aspects. As you will see, and the judge will charge you,
16 that basically kidnapping includes unlawfully seizing,
17 confining, decoying, kidnapping, abducting or carrying away
18 someone. So simply the act of making someone do something
19 that they wouldn't otherwise do. In this case, the act of
20 kidnapping comes when Dontavious Mack goes to the back of
21 the store, takes Ned marshall, brings him to the front of
22 the store at gunpoint and makes him stay there, because Ned
23 Marshall has no control of his actions at that point in
24 time. He is kidnapped. He is basically a hostage from one
25 point to the other and made to stay. So he has no choice in

1 what he does and someone is controlling that and it's
2 unlawful. It's against his will. That is kidnapping. And,
3 once again, kidnapping, the hand of one is the hand of all.

4 As to the final indictments which they are
5 charged, of course, I had mentioned criminal conspiracy.
6 And that's the joining together of two or more people to
7 conspire to do some unlawful act. And obviously these
8 people got together conspiring by driving around Rock Hill
9 talking to each other about what place they are going to rob
10 or who they were going to rob or what they are going to do.
11 That's conspiring. It's conspiring the whole way through.

12 Possession of a firearm during the commission of a
13 violent crime. The crime of murder, kidnapping, and armed
14 robbery, and accessory before the fact to each one of those
15 are all considered violent crimes. So if you possess a gun
16 at any point during any of those violent crimes, you are
17 guilty of possession of a firearm during the commission of a
18 violent crime. And, once again, the hand of one is the hand
19 of all. If one of them possesses it, they all possess it.

20 Possession of a stolen vehicle. In this case they
21 came up here in a stolen vehicle. You will see the value of
22 it is more than five thousand dollars. They had that stolen
23 vehicle while they were up here, all of them driving in it,
24 riding in it. If you are riding in a stolen vehicle, you
25 can be considered as having and being in possession of it.

1 So it comes down simply along those lines on the
2 charges as to Ben Stewart.

3 Terrell Addison, on the other hand, since he's
4 physically within the store, he's not charged with just
5 accessory before the fact. He's charged simply as a
6 principal, both of murder, armed robbery, kidnapping,
7 conspiracy, and also with possession of a stolen vehicle,
8 and possession of a firearm during the commission of a
9 violent crime. So if you determine each of these, you will
10 have them before you and you will be able to make those
11 decisions.

12 You will hear a lot of evidence in this case. You
13 will hear a lot of testimony. You will see physical
14 evidence from the scene. You will see the shell casings
15 before that they picked off the floor that all come from a
16 .380 semiautomatic. You will see two bullets that they
17 recovered from -- that actually went through the body of Ned
18 Marshall. You will see the crime scene itself. You will
19 see the area, footprints that were left behind when they ran
20 back over to the vehicle that they had come from.

21 And you will hear, as I said, from two of the
22 people who were ultimately charged in this case. You will
23 hear from Davorius Mack and you will hear from Reed Allen.
24 He was charged with conspiracy in Hartsville, conspiring
25 again to get rid of that weapon for him, to get rid of it.

1 He will be able to tell you a little bit about that, a
2 little bit about what happened in Hartsville and his little
3 niche in this. Now, we're not alleging that Reed Allen knew
4 anything ahead of time. You will see when he testifies that
5 he just kind of came in on the tail end of it. He did
6 something very stupid by helping them out.

7 But I ask that you keep an open mind as you look
8 and you listen to the evidence. These young men made a
9 decision that night and the decision was one that ultimately
10 took a life. So it becomes very serious, and so your duty
11 is very serious in looking at this case. But the evidence
12 will show you that these defendants are guilty, that they
13 are guilty of the crimes with which they are charged. And
14 whether you determine for Benjamin Stewart accessory before
15 the fact of murder, or whether it's for the murder as the
16 principal, or accessory before the fact to armed robbery, or
17 the armed robbery as the principal, that's your
18 determination, but the evidence will show you he's guilty of
19 those things.

20 It's never easy in a case like this to have to
21 watch and hear and listen to all these things, but it is
22 your duty, and I ask that you take it seriously and look at
23 everything, that you truly deliberate to look at what's
24 happened in this case. And when you do, the evidence will
25 show you the proper way to go to find them guilty, to find

1 each one of these men guilty of the crimes with which they
2 are charged. You just can't commit these type of crimes and
3 walk away. It just doesn't happen and it shouldn't happen.
4 Thank you.

5 THE COURT: Counsel.

6 MR. SWERLING: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 MR. SWERLING: May it please the court?

9 THE COURT: Yes, sir.

10 MR. SWERLING: Good morning, ladies and gentlemen.
11 My name is Jack Swerling and I practice law in
12 Columbia and have been in practice for about thirty-six
13 years, so I'm getting on there.

14 It has always been a pleasure for me and I have
15 had the occasion on many times to come up to York County and
16 handle cases up here. I having been doing that over that
17 thirty-six year period, and it's again a privilege for me to
18 be here again today to speak with a York County jury.

19 I'm representing Terrell Addison today, who you
20 met yesterday. He's seated over here right next to me. And
21 next to him is Kelley Switzer, who is a paralegal in my
22 office. We are out of Columbia.

23 Terrell's parents are seated back there on that
24 third row, Darryl and Fran Kennedy.

25 Ladies and gentlemen, this is obviously a very

1 serious case from what you have heard from what the judge
2 told you yesterday and what Mr. Thompson told you today.
3 It's a murder case, armed robbery, kidnapping, and various
4 other charges that happened on October 10th, 2006.

5 Now, let me say from the outset that everyone
6 here, including myself and Mr. Addison, recognize that this
7 is a terrible tragedy for the Marshall family, but Terrell
8 Addison has appeared before a court and he's entered a not
9 guilty plea to these charges. And when that happens, that
10 places the burden on the State of South Carolina, who is the
11 prosecuting authority in this case, to prove each one of the
12 crimes that Mr. Thompson talked about beyond a reasonable
13 doubt.

14 Now, our system, our entire judicial system, is
15 based on two very strong important principles that kind of
16 make us different than anybody else in the world. On the
17 one hand, our Forefathers and all the judges, case law,
18 Supreme Courts have always said that a person in this
19 country, in this state, who is charged with a crime is
20 presumed to be innocent. We have an actual presumption of
21 innocence. At this point you are supposed to look at Mr.
22 Addison, or any other person charged with a crime, no matter
23 what the crime is, as if he is innocent. You are supposed
24 to presume that. In other countries they don't have that
25 presumption. And that presumption is so powerful, that at

1 the conclusion of the case when you walk out that door and
2 go to deliberate on the facts of this case and what the
3 verdict should be, Mr. Addison, as well as any other
4 defendant, is still presumed innocent, even at that point.
5 And when you go in the jury room and you discuss the facts
6 and discuss the law that the judge will give you at the
7 conclusion of the case, that presumption of innocence still
8 stays with Mr. Addison. That is a fact.

9 That presumption of innocence can only be taken
10 away from Mr. Addison, or any other defendant, when you are
11 convinced, all twelve of you who deliberate, when you are
12 convinced beyond a reasonable doubt that he committed these
13 crimes. Only then does that presumption of innocence is
14 taken away. Only at that point is that presumption of
15 innocence taken away, but you have to reach that level first
16 of proof beyond a reasonable doubt.

17 Well, what does that mean? Well, you use that
18 standard all the time in your life, when you -- you don't
19 use the legal standard, but you use the standard of proving
20 something to yourself and to other people and you try and
21 eliminate doubt in your mind or that other person's mind.
22 For example, let's just say -- let's just say buying a
23 house. When you go to buy a house, you make all sorts of
24 calculations whether you can afford it. You go to the bank.
25 You fill out your credit forms and everything else and you

1 look at other homes and you negotiate on the house, and at
2 some point when you are satisfied, when you are satisfied,
3 that that is the right thing to do, then you go ahead and
4 make the purchase. If you are not satisfied, if you have a
5 hesitation, if you think it's not the right thing to do, not
6 the right time to do it, it's too much, I can't afford it,
7 the rates are too high, then you won't do it. That's the
8 doubt that you use every day in your life in important
9 decisions.

10 In the courtroom, however, the State has to prove
11 beyond a reasonable doubt. They have to eliminate
12 reasonable doubt from your minds in order to get a verdict
13 in the case. What that means is if at the end of the case
14 you go in the jury room and you deliberate on the case and
15 you hesitate, you have a doubt, you have a reasonable doubt.
16 On the outside you just don't make the purchase, but in the
17 courtroom that means that you have to give him, and any
18 other defendant, the benefit of the doubt. The law mandates
19 that. The law says that if you have a reasonable doubt or
20 hesitate, there is something there from the evidence, or the
21 lack of evidence, doesn't convince you beyond a reasonable
22 doubt that Mr. Addison is guilty, then the law mandates
23 under the oath that you took this morning that you have to
24 find him not guilty.

25 Now, let me just say this. You folks, no

1 disrespect to anybody else in this courtroom, you are the
2 most important people in this courtroom. The judge is
3 important, because he is the judge of the law. He will give
4 you the law. I can tell you what the law is. The solicitor
5 can tell you what the law what our versions of the law is,
6 but the judge is the one who will tell you what the law is
7 and what you law is that you apply to the facts in the case,
8 the facts that you will hear from the witnesses stand. You
9 will see evidence physical evidence and oral evidence being
10 given in the case. That's how it works in a courtroom.

11 But you are the judges of the facts. You are
12 judges. Just in the same way His Honor is the authority on
13 the law, you will judge the facts and no one can question
14 your view of the facts. You're either convinced beyond a
15 reasonable doubt or you're not convinced beyond a reasonable
16 doubt, and all twelve of you are going to have to come
17 together on that. It has to be unanimous.

18 So I always say that the jury is the most
19 important people in the courtroom, because you have to
20 actually decide guilt or innocence in a case. You have to
21 listen to the law and you have to listen to the facts and
22 you have to come up with a verdict in the case.

23 We go through a very careful jury selection
24 process to go ahead and select you. Yesterday, if you will
25 recall, the judge asked a number of questions of people and

1 many of them were excused. Some were excused up front.
2 Some were excused when they came down here because of
3 certain answers that they gave; whether or not they read
4 something about the case, whether they knew someone, and
5 they couldn't be fair. What we do in the jury selection
6 process is we filter out anybody who brings anything into
7 the courtroom other than an unbiased attitude. Everybody
8 sitting on the jury has to be unbiased, has to have no stake
9 in this process, has to be fair and open minded about what
10 they are going to hear in a case. So we go through that
11 process, and the judge excused people, the State excused
12 people, and we excused people. And all of us - the court,
13 the solicitor and the defense, Mr. Addison - are satisfied
14 that we have fourteen people to sit in judgment of this case
15 who are going to be fair, who are the most fair that we
16 could select out of that panel yesterday.

17 As a jury, you sit between the government, that's
18 the prosecuting agency, and any person accused of a crime.
19 You're the buffer. You're the folks that say the government
20 has got to prove this case beyond a reasonable doubt. And
21 if they don't, whether it's a shoplifting case or a murder
22 case, that person has to be acquitted. You are that buffer
23 between government and the people. That's why you are so
24 important.

25 Now, let me address the facts a little bit. Let

1 me tell you some things that are not going to be in dispute.
2 Terrell Addison was in Hartsville visiting some relatives.
3 Terrell Addison knew of the Mack brothers, but was not very
4 familiar with them. Somewhere around October 10th there was
5 a decision made that Terrell needed to go back home to Rock
6 Hill. The Mack brothers said that they would drive him up
7 here. They wanted some gas money, but they would drive him
8 up here, because they were going up towards the Charlotte
9 area.

10 Now, they got in a car. The State contends that
11 Mr. Addison knew that that car was stolen. Well, they are
12 going to have to prove that beyond a reasonable doubt. On
13 the way up here, Mr. Thompson said that as they got to Rock
14 Hill, they were going -- they were trying to decide what
15 their next, next, job was going to be, their next robbery.
16 Well, ladies and gentlemen, I submit to you you will not
17 hear any evidence that Mr. Addison did anything else prior
18 to that evening when he got to Rock Hill. So they are going
19 to have to prove that as well.

20 When they got up here, and you will hear some
21 facts as they develop through the witnesses, there was a
22 period of time when Mr. Addison could not come up with any
23 money to get the gas. I'm not going to tell you all the
24 details at this point, because that's not the purpose of an
25 opening statement. It's to give you a broad view of the

1 case.

2 At that point Dontavious Mack and the others told
3 Terrell Addison "you are going to have to go in that store
4 with me," Dontavious, "while I rob that store." It was
5 unfortunately an event that Terrell Addison found no way out
6 of. Dontavious was armed. His brother was armed. You will
7 hear stuff about their brother, the brothers. You will hear
8 about them, and you will compare them to Terrell Addison
9 over the course of this trial. And I would like you to. I
10 want you to. I want you to listen to the testimony you will
11 hear from the witness stand, but Terrell Addison was ordered
12 and directed to go into that store with Dontavious Mack.

13 Now, you may say well, how does that happen.
14 Well, you will hear about it. You will hear how that
15 happens. In order for someone to be guilty of a criminal
16 offense, they have to be a willing participant. They have
17 to have the intent, criminal intent, to commit a criminal
18 act. Just being merely present, merely associated, mere
19 knowledge is not enough to convict someone of a crime. The
20 person has to be a willing participant and have the intent
21 to commit a crime. And I submit to you you will hear during
22 the course of this trial that Terrell Addison was not a
23 willing participant. In fact, he was a coerced participant
24 in this case.

25 And I submit it's not going to just be based on

1 the testimony that you will hear, but you watch the video
2 that Mr. Thompson talked about. You will never see Terrell
3 Addison pull a gun. You will never see on that video
4 Terrell Addison do a thing except basically stand there.
5 You will never see Terrell Addison have any contact with Mr.
6 Marshall, direct anything towards Mr. Marshall, do anything
7 to Mr. Marshall, take anything from Mr. Marshall. He is
8 standing there as if he was forced to be there. If he was
9 not forced to be there, then he would have a gun drawn. If
10 he was not forced to be there, he would be participating in
11 the robbery, but you won't see that on the video, and the
12 video is going to be the best evidence in this case. And I
13 would like you to consider if someone was a willing
14 participant, would that willing participant look like
15 Terrell Addison on that video?

16 Now, there is one further bit of evidence that you
17 will hear, I submit, during the course of this trial. I
18 believe it's going to come from Davorius, who is going to be
19 the witness in this case and the State has entered into a
20 plea agreement with, and has taken off the table some
21 serious sentences. He's still looking at a serious
22 sentence, but we will get into it during the trial what he
23 really was looking at.

24 Davorius will tell you that he and Dontavious
25 Mack, his older brother, who has pled guilty to the murder,

1 he will tell you that they were mad at Terrell Addison
2 because he didn't do anything in the store. They were angry
3 at him because he didn't do anything in the store. And I
4 submit to you that that's further evidence that Terrell
5 Addison was not a willing participant in this murder and
6 armed robbery. I submit to you that it supports what you
7 will hear he was coerced into those activities that night.

8 Now, you will have to be not only the judge of the
9 facts, but you will have to judge the credibility of the
10 witnesses. Davorius Mack is going to be one of the State's
11 key witnesses and he's going to get up on the stand and tell
12 you all sorts of things about Terrell Addison, but nothing
13 about himself or his brother. It's all Terrell Addison.
14 You will have to judge that. You will have to judge what
15 he's getting in this case. You will have to judge what his
16 exposure on this case is. You will have to judge his
17 motive, his interests, and his bias in getting up there and
18 telling the story he's going to.

19 This is not going to be an easy case. It's a
20 complicated case. It's an emotional case, because Mr.
21 Marshall was killed that night and his family is suffering,
22 but there is an issue in this case that's going to demand
23 justice, just as well as having people held responsible for
24 the death of Ned Marshall, and that is going to be that that
25 young man was not a willing participant in this case and

1 that he should be found not guilty.

2 I will have another opportunity to address you at
3 the end of the case. We don't want to have too much lawyer
4 talk at this point, but all of us want to kind of present to
5 you an overview of what to expect during the course of this
6 trial. Thank you for your attention and I look forward to
7 seeing and being with you this week.

8 THE COURT: Counsel.

9 MR. SNOW: May it please the court?

10 THE COURT: Yes, sir, counsel.

11 MR. SNOW: Co-counsel.

12 Misery loves company.

13 Members of the jury, Ben Stewart is not guilty of
14 any of the charges, any of the hodge-podge of charges
15 against him. He's not guilty of kidnapping. He's not
16 guilty of possession of a firearm in the commission of a
17 crime. He's certainly not guilty of murder.

18 My name is Kenneth Snow and I have the privilege
19 of representing Mr. Stewart.

20 Now, we are not hiding back there. We are just
21 short people, so we kind of back there behind the table.

22 This is a serious matter and you have a serious
23 duty, and I thank you for participating in this matter.

24 That is a serious case, as Mr. Swerling said, and it will
25 bring about emotions. The facts in this case are certainly

1 not easy ones to deal with, but it's something that you, as
2 jurors, have to do. And part of your civic duty is you are
3 standing as jurors and you will be deciding the factors in
4 this case or deciding people in this case. I thank you for
5 doing it.

6 Now, you sat here already for almost forty-five
7 minutes, so I won't be very long before you. I have the
8 pleasure of coming behind two excellent attorneys. I won't
9 be very long. They laid out the facts for you pretty much.
10 Mr. Swerling has done a good job of telling you what we
11 presume that the court will introduce as the law, but I
12 agree with most of the facts that the solicitor laid out.
13 Certainly on October 10th, 2006, something terrible
14 happened. I agree that there was a robbery in Rock Hill. I
15 agree that Mr. Marshall was killed, and that's a terrible
16 thing. There is not a heart in this courtroom that doesn't
17 go out to his family. We understand it's a serious matter.
18 We certainly understand that his family has been grieving,
19 but this also is the case where this young man is facing
20 serious matters, and you, as the jury, will certainly
21 resolve the facts.

22 The State's case is what I consider as kind of a
23 hodge-podge of charges. It kind of reminds me of my
24 upbringing in Georgetown, South Carolina. We didn't have
25 much and my mother and father would have to, you know, work

1 most of the time. I had an older sister and she would
2 prepare meals for us when my parents weren't there, and she
3 would cook this soup that I called the kitchen sink soup,
4 where she would put everything in the soup. You know,
5 everything from this and that, spice from here and there,
6 vegetables, everything, in hoping that we would -- all kind
7 of leftover things, and she would do all she could. Great
8 person, but not a very good cook. Didn't have very good
9 meals. Kind of a hodge-podge of soup hoping that something
10 would stick, hoping that we would like something, and that's
11 what this case is about.

12 There is a laundry list of charges, and you heard
13 the deputy solicitor mention them. A hodge-podge. Just a
14 bunch of things in this big pot hoping that something is
15 going to stick. Well, I would submit to you that my client
16 was not involved in this matter. You will hear most of the
17 facts, but he was not involved in that. It's as simple as
18 that. You will hear throughout the witnesses for the next
19 couple of days why he was not involved.

20 Now, all of the facts that the DA mentioned, the
21 solicitor mentioned, certainly are not his facts, but the
22 burden of proof, and the judge will tell you, the burden of
23 proof is not on Mr. Stewart. It's not on the defense to
24 show anything. That is part of our fine democracy. We
25 don't have to prove anything. The burden of proof is on the

1 State. And the judge will tell you that. And the standard
2 of proof is beyond a reasonable doubt. So we don't have to
3 do anything. It's the State's case, and he is presumed to
4 be innocent, and I won't get into that. I think Mr.
5 Swerling has done a good job of talking about that already.
6 But you, as jurors, you have an obligation, I submit to you,
7 an obligation I'm sure that you embrace to listen to all the
8 facts, both sides, and decide what you believe are the true
9 facts in this case.

10 I submit to you that you listen to all the
11 witnesses and very carefully listen to all the witnesses,
12 because the defense won't try to hide anything. We won't
13 try to do anything where it's very complicated, but just lay
14 out the facts. No tricks here.

15 Members of the jury, my client is not guilty of
16 any of the charges, any of the hodge-podge, that kitchen
17 sink soup cases, the charges he's been charged with. He's
18 not guilty of kidnapping. Not guilty of robbery. Certainly
19 not guilty of murder.

20 Misery loves company. Thank you.

21 THE COURT: All right, ladies and gentlemen of the
22 jury panel, that concludes the opening statements by the
23 attorneys. We will take a short recess at this time. You
24 may refresh yourselves during the break. If you want to
25 bring something back to the jury box to drink with you, you

1 are welcome to do that.

2 I would ask you again to, from the first twelve
3 jurors chosen, elect a foreperson to be spokesperson for the
4 jury. And the bailiff will put the foreperson in the
5 appropriate chair when you come back. We will tell the two
6 alternates, please, to keep those same seats throughout the
7 trial. And once the foreperson is seated, the foreperson
8 will keep that same seat throughout the trial. All the
9 other seats are interchangeable, so it really does not
10 matter where you sit, but we like to keep the alternates and
11 the foreperson in the same seat throughout the trial.

12 Thank you. Please retire to the jury room.

13 (The following takes place outside the presence of
14 the jury panel)

15 THE COURT: All right, counsel, we will take about
16 a ten or fifteen minute break.

17 MR. BRACKETT: Thank you, Your Honor.

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 THE COURT: All right, please bring the jury in.

21 (The following takes place in the presence of the
22 jury panel)

23 THE COURT: All right, ladies and gentlemen of the
24 jury panel, I have your note indicating that you have
25 elected juror number 187, Terry Rolla, as the foreperson of

1 the jury. That's you, sir?

2 JURY FOREPERSON: Yes.

3 THE COURT: All right. And, again, I would ask
4 you to keep that same seat throughout the trial.

5 Counsel, ready to proceed.

6 MR. THOMPSON: The State is ready, Your Honor.

7 THE COURT: Please call your first witness.

8 MR. THOMPSON: May it please the court, Your
9 Honor, as the State's first witness we would call Dontavious
10 Mack.

11 Mr. Mack, if you will come forward to the Bible
12 and be sworn in, please.

13 DONTAVIOUS MACK, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. THOMPSON:

16 Q. Good morning, Mr. Mack.

17 Can you state your full name for the record, please?

18 A. Dontavious Richardo Mack.

19 Q. And how do you spell Dontavious?

20 A. D-O-N-T-A-V-I-O-U-S.

21 Q. Okay. Mr. Mack, we will just start out right away and
22 ask you. Did you plead guilty to your charges involved in
23 this case?

24 A. Yes, sir.

25 Q. Can you tell me what charges that you pled to?

1 A. Murder, armed robbery, kidnapping, possession of a
2 firearm during a violent crime, possession of a firearm
3 under the age of 21, and possession of a stolen vehicle.

4 Q. All right. And what was your sentence, your ultimate
5 sentence, from all of those?

6 A. Life without parole.

7 Q. So you are currently serving a life sentence?

8 A. Yes, sir.

9 Q. Mr. Mack, can you tell me how do you know the people
10 involved in this case? How do you know Davorius Mack?

11 A. He's my brother.

12 Q. How do you know Terrell Addison?

13 A. Just from around the way.

14 Q. How long have you known him?

15 A. A little minute. About six, seven years.

16 Q. If you could speak up just a little bit.

17 A. About six or seven years.

18 Q. About six or seven years?

19 A. Probably more than that.

20 Q. And you used to hang out with Terrell Addison?

21 A. Not that much, but --

22 Q. All right. How about Ben Stewart, how do you know him?

23 A. Through his sister.

24 Q. Who is his sister?

25 A. Monday Bishop.

1 Q. And you knew him through her?

2 A. (Shaking head yes).

3 Q. How long had you known him at the time that this crime
4 occurred?

5 A. As long as I knew her, about -- since I was about
6 sixteen, seventeen years old.

7 Q. Okay. And how old are you now?

8 A. Twenty-two.

9 Q. All right. Now, can you tell me on October 10th of
10 2006, how did you get to Rock Hill that day?

11 A. Me and my brother, Terrell, and Ben drove down here.

12 Q. Drove from where?

13 A. Hartsville.

14 Q. Is that where you lived at the time?

15 A. Yes, sir.

16 Q. And was everyone down in Hartsville that day, Ben
17 Stewart and Terrell Addison?

18 A. Yes, sir.

19 Q. How was it that you decided to come to Rock Hill?

20 A. He asked us to take him to his house.

21 Q. I'm sorry, I'm still having a hard time hearing you.

22 A. He asked us to bring him up to Rock Hill.

23 Q. And who is he?

24 A. Terrell Addison.

25 Q. Okay. And why is that?

- 1 A. Wanting to go to his house.
- 2 Q. So he lived in Rock Hill?
- 3 A. Yes, sir.
- 4 Q. Have you come up to Rock Hill before for anything?
- 5 A. No, sir.
- 6 Q. Did you know how to get to Rock Hill from Hartsville?
- 7 A. No, sir.
- 8 Q. Who told you how to get to Rock Hill?
- 9 A. Terrell.
- 10 Q. Now, when y'all came up, do you remember what kind of
- 11 car that y'all came up in?
- 12 A. A Buick.
- 13 Q. Was that your car?
- 14 A. No, sir.
- 15 Q. Was it your brother's car?
- 16 A. No, sir.
- 17 Q. What do you know about that car?
- 18 A. I didn't really know nothing about it.
- 19 Q. But you know it didn't belong to either one of y'all?
- 20 A. Yeah.
- 21 Q. Did you know where he had gotten it?
- 22 A. No, sir.
- 23 Q. Now, when y'all came up in that Buick, had you spent
- 24 time earlier in the day together before you came up here?
- 25 A. No.

1 Q. Was it daylight when you started driving up this way?

2 A. No, sir.

3 Q. Had it already -- I understand that the 10th that we
4 are talking about is early morning. Did you actually leave
5 before the 10th, on the 9th late at night, or did you leave
6 early in the morning on the 10th?

7 A. Late at night on the 9th.

8 Q. Okay. What did you do when you got to Rock Hill?

9 A. Rode around first.

10 Q. All right. And who was telling you where to go?

11 A. Terrell.

12 Q. What time -- why were y'all riding around? What was
13 the purpose of that?

14 A. Trying to commit robbery.

15 Q. All right. And whose idea was this?

16 A. It was -- all of us had -- all of us just talking about
17 it.

18 Q. All right. So everyone, including Terrell?

19 A. Yes, sir.

20 Q. Including Ben Stewart?

21 A. Yes, sir.

22 Q. Including yourself?

23 A. Yes, sir.

24 Q. All right. Including your brother?

25 A. Yes, sir.

1 Q. All right. Did you talk about robbing anyplace
2 specific or anything specific?

3 A. No.

4 Q. Do you recall going by any places and asking -- or
5 talking about robbing any places at all?

6 A. Rode past Domino's. Rode -- we was at a store and we
7 seen some dudes in a car. And that's it.

8 Q. Now, when you say you rode past Domino's, did y'all
9 talk about whether to rob that Domino's?

10 A. Yes, sir.

11 Q. Do you remember whose idea that was?

12 A. All of us was just talking about it.

13 Q. Okay. Did y'all decide to rob the Domino's?

14 A. No, sir.

15 Q. And did you talk about some dude in a car. Describe
16 that a little bit for me.

17 A. They was in a Capris Chevy and wanting to rob the dudes
18 in the car, but I wasn't -- I told them no, I wasn't robbing
19 them.

20 Q. Why wouldn't you rob him?

21 A. Because I didn't -- I didn't know what they had in the
22 car.

23 Q. Okay. Did anyone in your vehicle have a gun?

24 A. Yes, sir.

25 Q. Who had a gun?

1 A. Terrell and Ben.

2 Q. All right. Do you remember how you found out they had
3 guns?

4 A. I knew they had them when we was going up there.

5 Q. Okay. Did you end up seeing either of their guns that
6 night?

7 A. Yes, sir.

8 Q. Whose gun did you see?

9 A. Both of them.

10 Q. All right. What kind of gun did Ben Stewart have?

11 A. .380.

12 Q. Now, you met Ben in Hartsville, right?

13 A. Yes, sir.

14 Q. Is Ben actually from Hartsville?

15 A. No, sir.

16 Q. Where is he from?

17 A. Philadelphia.

18 Q. He's from Philadelphia?

19 A. Yes, sir.

20 Q. And I'm sorry, you had said what kind of pistol he had
21 again was what?

22 A. .380.

23 Q. Was it a revolver or a semiautomatic?

24 A. Semiautomatic.

25 Q. Do you remember anything about the color of it?

1 A. Black and gray.

2 Q. Now, how about Terrell Addison, what type of gun did he
3 have?

4 A. .38.

5 Q. All right. Do you remember anything about how that gun
6 looked?

7 A. It was a black revolver.

8 Q. It was a revolver, not a semiautomatic?

9 A. Yes.

10 Q. And to get it straight, when we talk about a revolver,
11 that's the one with the cylinder in it that goes around,
12 correct?

13 A. Yes.

14 Q. Whereas a semiautomatic is the one that you have to
15 crank up and when you fire, the shell get ejected from it,
16 is that right?

17 A. Yes.

18 Q. How is it that you came to decide to rob the BP
19 station?

20 A. We was riding and Terrell just asked us to pull in the
21 projects, so we get in the projects --

22 Q. When say the projects, is that the apartment complex?

23 A. Yeah, the apartment complex, where him and Ben was
24 supposed to rob that store. Me and my brother was going to
25 rob another store on the way back home, but they -- Ben

1 wouldn't do it, so that's when me and Terrell went in there.

2 Q. So you asked Ben to rob the store?

3 A. They were supposed to, him and Terrell.

4 Q. Okay. But Ben didn't want to go to with Terrell?

5 A. No.

6 Q. So you went with Terrell?

7 A. Yes, sir.

8 Q. Now, did you take a gun in?

9 A. Yes, sir.

10 Q. And how did you get a gun?

11 A. I got it from Ben.

12 Q. Okay. So while Ben didn't want to go in, he gave you
13 the gun to go in?

14 A. Yes, sir.

15 Q. Had y'all talked about robbing the BP station at that
16 point?

17 A. Yes, sir.

18 Q. So when he gave you the gun, he knew that you were
19 going to rob the BP station?

20 A. Yes, sir.

21 Q. All right. How about Davorius? Had you asked Davorius
22 to go as well?

23 A. No. No. They were supposed to rob a store on the way
24 back home.

25 Q. Okay. Now, the apartment complex you were talking

1 about that y'all pulled up on, that was near the BP station,
2 is that correct?

3 A. Yes, sir.

4 Q. All right. Who told you about that place and how to
5 park there?

6 A. Terrell.

7 Q. Okay. Had you ever been to that apartment complex
8 before?

9 A. No, sir.

10 Q. Had y'all driven by the BP station when you decided to
11 rob it?

12 A. Yes, sir.

13 Q. Did you notice anything about it at that time?

14 A. No, sir.

15 Q. Did it appear to be open?

16 A. Yes, sir.

17 Q. And at that point when you were at the apartments, do
18 you recall from the car who was driving at that point?

19 A. I was.

20 Q. All right. Were you the one driving all the way from
21 Hartsville?

22 A. Yes, sir.

23 Q. And why is that? Why did you end up driving?

24 A. I was the only one that had a license.

25 Q. Now, when you're at Hartsville, tell me how it is that

1 you picked up each person. How did each person get in this
2 car?

3 A. I was sitting at my grandma's house in the yard. My
4 brother and Ben -- I mean my brother and Terrell came and
5 picked me up and that's when all this got -- you know, my
6 brother and Terrell went to the apartment complex and picked
7 Ben up.

8 Q. Okay. So your brother and Terrell picked you up and
9 then y'all drove to another apartment complex. Do you
10 remember what the other apartment complex was called?

11 A. Swift Creek.

12 Q. I'm sorry?

13 A. Swift Creek.

14 Q. Swift Creek.

15 And that's where you picked up Ben?

16 A. Yes.

17 Q. Had you actually seen the guns before the time of the
18 robbery? Had they actually brought them out at any point
19 during the night?

20 A. Yes, sir.

21 Q. Okay. And do you recall when?

22 A. Before we left Hartsville.

23 Q. Before you left Hartsville?

24 A. Yes.

25 Q. So you saw both of those guns at that point?

1 A. Yes, sir.

2 Q. Now, when you pulled into that apartment, did you pull
3 in like front ways into a parking space, or where did you
4 stop at that apartment?

5 A. In the back of it.

6 Q. Okay. Now, there is a number of buildings in this
7 apartment complex, correct?

8 A. (Shaking head yes).

9 Q. Did you back up into a space or did you pull forward
10 into a space? Do you recall?

11 A. Pulled forward.

12 Q. Okay. And when you got out, what did you do to get
13 ready for the robbery?

14 A. Got the masks and went up.

15 Q. Where were you masks?

16 A. In the trunk of the car.

17 Q. All right. How did the masks get there in the trunk of
18 the car?

19 A. I don't -- they was already in there.

20 Q. They were already in there?

21 A. Yes.

22 Q. Do you know who the masks belonged to?

23 A. No, sir.

24 Q. What type of mask is it that you put on?

25 A. Ski mask.

1 Q. Like the one with the holes for the eyes and the mouth?

2 A. Yes.

3 Q. Cover your whole head?

4 A. (Shaking head yes)

5 THE COURT: Excuse me, please answer verbally,
6 because you are nodding your head and he can't record that
7 please, sir.

8 BY MR. THOMPSON:

9 Q. Is that what type of mask it was?

10 A. Yes, sir.

11 Q. What color was it?

12 A. Black.

13 Q. What other stuff were you wearing?

14 A. A hoodie.

15 Q. A hoodie?

16 A. Yeah.

17 Q. Was that black as well, or dark?

18 A. Black.

19 Q. Okay. And what kind of pants, do you recall?

20 A. Black pants.

21 Q. And what type of shoes were you wearing? Do you recall
22 that?

23 A. Black shoes.

24 Q. Okay. Do you remember what type they were?

25 A. No, sir.

1 Q. Ultimately after you were arrested, I believe they
2 recovered some shoes from you. Were those the shoes that
3 you wore in the robbery?

4 A. I don't -- probably -- probably was.

5 Q. Okay. You don't recall that?

6 A. (Shaking head no).

7 Q. Now, what did -- what did Terrell put on?

8 A. A hat and a bandana.

9 Q. Okay. And what type of bandana was this?

10 A. A blue bandana.

11 Q. All right. How did he put it on his face? I mean,
12 where was it? Did it just cover like the mouth, or did it
13 go up higher, or --

14 A. Yeah, covered like right over his nose.

15 Q. Okay. So basically right up to the eye?

16 A. Yeah.

17 Q. Did he carry that blue bandana with him all the time?

18 A. Yes, sir.

19 Q. Did he also have a hoodie on?

20 A. No, sir.

21 Q. Okay. Now, which way did you guys go to get to the
22 store from there? Did you head up along the street, or did
23 you walk through back behind some of the businesses?

24 A. We walked behind the -- we had walked from the
25 apartments -- behind the apartments. We didn't walk along

1 the street.

2 Q. So you didn't go up onto the main street? You stayed
3 back behind it?

4 A. Yes.

5 Q. What was the plan? What did y'all discuss about how to
6 rob this place?

7 A. Just go in there and get the money and leave.

8 Q. Did you talk about how to do it, as far as like what
9 door to come in, who had a job, what the job was, or
10 anything like that?

11 A. Yeah.

12 Q. What was that?

13 A. I told Terrell to go around this side and I was going
14 to this door. When I tell him to get in, he grabbed the man
15 so I could get the money and leave.

16 Q. Okay. Now, did you guys talk about that back at the
17 car before you ever went up, or did you make that plan --

18 A. When we was going up.

19 Q. When you were walking up?

20 A. Yeah.

21 Q. Now, when you got up there, did y'all stop at some
22 point to get ready, or were you like behind the place, or
23 where were you to get -- before you came into the door?

24 A. On the side of the building.

25 Q. Now, was that the back side of the building that you

1 were on?

2 A. Yes, sir.

3 Q. All right. And how was it that you notified it's time
4 to go in? What did y'all say?

5 A. I just -- we just walked -- I just got down and walked
6 around -- went to this door, the door I was going to go in,
7 and Terrell did the same thing on the other side.

8 Q. Now, when you say you got down and went around, did you
9 physically get down low and go around?

10 A. Yeah.

11 Q. Is that so no one would see you through the windows as
12 you came around?

13 A. Yes, sir.

14 Q. And he went around the other side at the same time?

15 A. (Shaking head yes)

16 Q. Had you had an opportunity to see the video in this
17 case?

18 A. Yes, sir.

19 Q. And there was a robbery itself on this video?

20 A. Yes, sir.

21 Q. And I believe there was four angles that it's shown
22 from, is that correct?

23 A. Yes, sir.

24 Q. Did you see all those angles?

25 A. Yes, sir.

1 Q. Does each of those angles fairly and accurately depict
2 what happened in the robbery that night?

3 A. Yes, sir.

4 Q. Are you the one that's holding the gun that comes into
5 the store first?

6 A. Yes, sir.

7 Q. What did you do when you came into the store?

8 A. Went to the store clerk and --

9 Q. Where was he when you came in?

10 A. In the aisle. Like in the back of the store between
11 the aisles.

12 Q. All right. And you had your gun out at that point?

13 A. Yes, sir.

14 Q. And which gun was it that you had out at that time?

15 A. .380.

16 Q. And where did you get it from again?

17 A. Ben.

18 Q. What did you tell the clerk at that point?

19 A. Get the money, but then I told him don't worry about
20 it, I will get it.

21 Q. All right. Did you take him from the back to the
22 front?

23 A. Yes, sir.

24 Q. What did you tell him when you got him to the front?

25 A. When I took -- when I got to the front, I took --

1 that's when I told him to get the money, but I didn't want
2 him to get it. That's when I just told him Terrell to grab
3 him and I was going to get the money.

4 Q. Okay. So Terrell had come in?

5 A. Yes, sir.

6 Q. All right. And did y'all have gloves on for this too?

7 A. Yes, sir.

8 Q. You had gloves?

9 A. (Shaking head yes).

10 Q. Did Terrell have gloves as well?

11 A. Yes.

12 Q. Okay. Did Terrell end up actually grabbing this guy?

13 A. No, sir.

14 Q. Now, Mr. Marshall ever tell you anything or say
15 anything to you while you were in there?

16 A. He just asked me to let him get the money.

17 Q. Okay. Why wouldn't you let him get the money?

18 A. I know there was a button you can press and set the
19 alarm off.

20 Q. Okay. And you didn't want him to set the alarm off
21 while you were in there?

22 A. Yes.

23 Q. Did you find any money at that point? What did you
24 find?

25 A. Wasn't nothing but the rolled up coins.

1 Q. Just rolled up coins?

2 A. (Shaking head yes).

3 Q. Did you start trying to take those?

4 A. Yes, sir.

5 Q. And where were they in the store?

6 A. Under the cash register.

7 Q. Okay. And as you are trying to get those, what
8 happened?

9 A. While I was trying to get those, that's when I had -- I
10 had seen him with the gun and that's when I shot him.

11 Q. You saw who with the gun?

12 A. Mr. Marshall.

13 Q. And he was behind you at that point?

14 A. Yes, sir.

15 Q. What was he doing with the gun?

16 A. Like pointing it at me.

17 Q. Do you remember which hand it was in?

18 A. I think it was his right hand.

19 Q. Okay. And when he pointed it at you, what did you do?

20 A. That's when I shot him in the hand.

21 Q. Had he said anything to you at the time?

22 A. No, sir.

23 Q. What happened when you shot him at that point?

24 A. Terrell ran out the door and that's when I was coming
25 around and that's when I -- when I jumped over to go out the

1 store, he shot me in the back, and I turned around and
2 started back shooting.

3 Q. Okay. So he actually shot you in the back as you went
4 out of the store?

5 A. Yes, sir.

6 Q. And do you recall how many times you shot at him?

7 A. No, sir.

8 Q. Okay. Now, when you went out, where was Terrell as you
9 got to the door?

10 A. He was going back towards the car.

11 Q. And did y'all go back to the car together at that
12 point?

13 A. Yes, sir.

14 Q. Did y'all yell anything at each when you were going
15 back?

16 A. Yes, sir.

17 Q. What did you yell?

18 A. I was telling him to grab the dude, but he didn't want
19 to grab him.

20 Q. All right. Were y'all in a hurry to get back?

21 A. Yes, sir, I wanted to go back and get to the hospital.

22 Q. But you didn't go to the hospital here in York County,
23 did you?

24 A. No, sir.

25 Q. When you got back to the apartment complex, what was

1 happening?

2 A. My brother was coming up because he heard us yelling.
3 He wanted to see what was going on, and I told him I was
4 shot. So him and Terrell started arguing. I tell him
5 "ain't no need for all that." I said "let's go ahead and
6 get in the car and go back to Hartsville. I need to go to
7 the hospital."

8 Q. Okay. So did y'all get back in the car at that point?

9 A. Yes, sir.

10 Q. Every one of you?

11 A. (Shaking head yes)

12 Q. Ben got in the car then, too, or was he already in the
13 car?

14 MR. SNOW: I'm going to object to the leading,
15 Your Honor.

16 THE COURT: Okay. Please avoid leading, counsel.
17 BY MR. THOMPSON:

18 Q. Where was Ben when you came back?

19 A. Ben, he was already -- he was out of the car, like he
20 was about to -- running somewhere, but we told him to get
21 back in the car, we was about to go.

22 Q. Did he get back in the car with you?

23 A. Yeah.

24 Q. And did your brother get back in the car as well?

25 A. Yes.

1 Q. How about Terrell, where did he go?

2 A. He got back in the car too.

3 Q. All right. Now, did you actually -- were you actually
4 able to keep any of the coins that you had picked up and
5 tried to run out with?

6 A. No, sir.

7 Q. What happened to those?

8 A. I dropped it when I got shot.

9 Q. Now, when you get back to the car, who drives?

10 A. I did.

11 Q. All right. And where did you go?

12 A. Back to Hartsville.

13 Q. Were you in a lot of pain at that point for being shot?

14 A. No.

15 Q. Is that why you went back to Hartsville because you
16 thought you could make it?

17 A. Yeah.

18 Q. So when you are on your way back to Hartsville, did you
19 call anybody?

20 A. Yes.

21 Q. Who did you call?

22 A. Jessica.

23 Q. Jessica. Is that Jessica Arthur?

24 A. Yes, sir.

25 Q. Who was she?

1 A. That was my girlfriend at the time.

2 Q. Okay. What did you tell her?

3 A. That I was on the way to the hospital and that I had
4 got shot.

5 Q. Okay. Do you remember about what time it was that you
6 got to the hospital?

7 A. I think it was probably about four o'clock, five
8 o'clock, something like that, in the morning?

9 Q. Early in the morning?

10 A. Yes.

11 Q. Was it daylight yet, or was it dark at the time when
12 get to the hospital?

13 A. It was dark.

14 Q. Who went into the hospital with you?

15 A. Me, my brother and Terrell.

16 Q. All right. What did Ben do?

17 A. Stayed in the car.

18 Q. All right. This is still that Buick?

19 A. (Shaking head yes).

20 Q. Now, did Terrell and Davorius stay with you for a long
21 time in the hospital?

22 A. Tried to tell them to leave.

23 Q. You told them to leave?

24 A. Yes.

25 Q. Had y'all -- had you realized at this point that the

1 police would come and talk to you for being shot when you
2 went to the hospital?

3 A. Yes.

4 Q. Had y'all talked about what to do if the police came to
5 talk to you?

6 A. Yeah, told them to tell them that I got shot in the
7 Farmington Apartments.

8 Q. The Farmington Apartments, where are they located?

9 A. 14th Street.

10 Q. Is there here in Rock Hill, or in Hartsville?

11 A. Hartsville.

12 Q. Now, did you talk about this on the way back as you
13 were riding back?

14 A. Yes.

15 Q. So Terrell Addison was in the car when you talked about
16 it?

17 A. Yes, sir.

18 Q. How about Ben Stewart?

19 A. Yes, sir.

20 Q. And what was it that -- what was the story that you had
21 come up with to tell the police at that point?

22 A. That I got shot in a drive-by shooting.

23 Q. Okay. At Farmington Apartments?

24 A. Yes.

25 Q. At that point were you going to tell the police

1 anything about Ben or Terrell being there?

2 A. No, sir.

3 Q. Were you going to tell them that Dontavious (sic) was
4 or not?

5 A. No, sir.

6 Q. So basically you were telling the police you, yourself,
7 was -- you were the only one at those apartments when you
8 got shot?

9 A. Yes, sir.

10 Q. And in a drive-by manner, is that correct?

11 A. (Shaking head yes).

12 Q. Did you even -- is that what you told the police down
13 in Hartsville?

14 A. Yes, that's what I told them.

15 Q. Did you tell them about anyone that might have shot you
16 at that point?

17 A. No, I just said -- I just gave a fake car to tell
18 them -- I didn't tell nobody names. I just said a fake car.

19 Q. Okay.

20 MR. THOMPSON: Now, the court's indulgence just
21 one moment, Your Honor.

22 (Off the record)

23 (Back on the record)

24 BY MR. THOMPSON:

25 Q. I'll show you State's Exhibit No. 2. I believe it's

1 marked as the camera 1, 2, and 3 from the BP, is that
2 correct?

3 A. Yes.

4 Q. Okay. Speak up?

5 A. Yes, sir.

6 Q. And are those the videos that you have watched?

7 A. Yes, sir.

8 Q. And do they fairly and accurately depict the scene that
9 day?

10 A. Yes, sir.

11 MR. THOMPSON: Your Honor, I would ask at this
12 time to enter this into evidence, State's Exhibit No. 2.

13 THE COURT: Any objection, counsel?

14 MR. SWERLING: Your Honor, as I understand it,
15 they are going to go ahead and lay the foundation of how the
16 video is made. So subject to that, then we have no
17 objection.

18 THE COURT: Okay. No problem with doing that
19 later, as long as it's done?

20 MR. SWERLING: Correct, I believe they are going
21 to go ahead and have somebody come up and testify as to how
22 they got the video and how it was compiled. So subject to
23 that, we are trying to just accommodate some witnesses who
24 could not be here.

25 THE COURT: Is that correct, solicitor?

1 MR. THOMPSON: Yes, sir, Your Honor.

2 THE COURT: Okay.

3 MR. SNOW: No objection.

4 THE COURT: All right. With that understanding,
5 you may proceed and it's admitted up to that.

6 MR. THOMPSON: Your Honor, if I could ask anyone
7 who does not wish to see the video, please exit the
8 courtroom now. If anyone who does not wish to see the
9 video, please exit the courtroom.

10 (Off the record)

11 (Back on the record)

12 MR. THOMPSON: Madam Clerk, if you could dim the
13 lights for me, please. All right.

14 (Whereupon, State's Exhibit No. 2 was played for
15 the jury panel)

16 BY MR. THOMPSON:

17 Q. Mr. Mack, if you will look at this video for me as we
18 play it, we will start with the camera angle number 1.

19 We will move forward to the spot where the robbery
20 occurred.

21 If you will watch for me and tell me as this happens
22 which person you are.

23 A. I'm right there.

24 Q. That one is you?

25 A. Yes.

1 Q. Is that the door that you came in?

2 A. Yes, sir.

3 Q. Now, is there a door on the opposite side of this door?

4 A. Right in front of it.

5 Q. Is that the door that Terrell comes in?

6 A. Yes, sir.

7 Q. You have your gun out at that time?

8 A. Yes, sir.

9 Q. And who was that second person that's there now?

10 A. Terrell right there.

11 MR. THOMPSON: Okay. All right. We could stop.

12 (Whereupon, the videotape was stopped)

13 BY MR. THOMPSON:

14 Q. Now, were you talking to each other during the time
15 that you were doing the robbery?

16 A. During the time I just told him to grab him.

17 Q. Was he saying anything back to you then?

18 A. No.

19 (Whereupon, the videotape was started)

20 BY MR. THOMPSON:

21 Q. Now, I believe if we can go back just a little bit to
22 as they exit the store. If we can go slowly through this.

23 Is that Mr. Marshall on the floor at that point?

24 A. Yes, sir.

25 Q. Is that after you shot him the first time?

1 A. Yes, sir.

2 Q. Who was at the exit of the door right there?

3 A. Terrell.

4 Q. Are you still on the other side of the counter at the
5 moment?

6 A. Yes, sir.

7 Q. If we could slowly walk through that, please. Okay.

8 Is that where you say that you turned around and shot
9 Mr. Marshall at that point?

10 A. Yes, sir.

11 Q. Is he pointing his gun at you at that point as well?

12 A. Yes, sir.

13 Q. And is that still Terrell holding the door open for
14 you?

15 A. Yes, sir.

16 Q. All right. Go to the next frame.

17 If we could go one more frame.

18 Does that accurately depict as Terrell is waiting for
19 you at the door?

20 MR. SWERLING: Your Honor, I'm going to have to
21 object to the leading at this point.

22 THE COURT: Please avoid the leading, solicitor.

23 BY MR. THOMPSON:

24 Q. Does that accurately depict what happened?

25 A. Yes, sir.

1 Q. Thank you.

2 (Whereupon, the videotape was stopped)

3 MR. THOMPSON: You can turn the lights back on,
4 please.

5 BY MR. THOMPSON:

6 Q. Now, that side that you ran out, is that the side where
7 the apartments are?

8 A. Yes, sir.

9 Q. Okay. And you guys run straight back to the apartments
10 at that point?

11 A. Yes, sir.

12 Q. Okay. Now, is there any time that Terrell told you
13 that he didn't want to do anything?

14 MR. SWERLING: Objection, Your Honor, leading.

15 THE COURT: Please avoid the leading, counsel.

16 MR. THOMPSON: I'm sorry, Your Honor?

17 THE COURT: Please avoid the leading. You can
18 rephrase it, if you wish.

19 MR. THOMPSON: Okay.

20 BY MR. THOMPSON:

21 Q. When Terrell talked to you, did he ever tell you
22 whether or not he wanted to commit this robbery?

23 A. He wanted to do it.

24 Q. Did you force him in any way to do this robbery?

25 A. No, sir.

1 Q. Did your brother force him in any way to do this
2 robbery?

3 A. No, sir.

4 Q. Now, when you got back to Hartsville --

5 I'm sorry, let's go back into Rock Hill.

6 At the time that Ben Stewart gave you his gun, had
7 y'all talked about doing the robbery?

8 A. In Hartsville?

9 Q. No, here in Rock Hill at the time that he gave you his
10 gun.

11 A. Oh, yes, sir.

12 Q. All right. So did he know if you were going to commit
13 a robbery at that time?

14 A. Yes, sir.

15 Q. Now, going into Hartsville, did you ever have the
16 bullet taken out?

17 A. No, sir.

18 Q. It's still in your back today?

19 A. Yes, sir.

20 Q. How long did you have to stay in the hospital that day?

21 A. Couple hours.

22 Q. Couple hours?

23 A. (Shaking head yes).

24 Q. So were you released that day?

25 A. Yes, sir.

1 Q. So the bullet apparently didn't hit anything vital?

2 A. No, sir.

3 Q. Afterwards did you tell anybody with the robbery?

4 A. Yes, sir.

5 Q. Do you remember who you told?

6 A. Johnetta and Tiyone.

7 Q. And who was the other person?

8 A. Tiyone, the one who wrote the statement who called the
9 Crime Stoppers.

10 Q. They are both Evans, right, their last name?

11 A. Yes.

12 Q. And you told them about what happened?

13 A. Yes, sir.

14 Q. Was anyone with you when you told them what happened?

15 A. No, sir.

16 Q. Are they friends of yours?

17 A. No.

18 Q. No.

19 Was he a friend of yours at the time?

20 A. Yeah, they was at the time.

21 Q. Okay. But not now?

22 A. No.

23 Q. Is that because they told what you had said?

24 A. Yeah.

25 Q. Who did they tell?

1 MR. SWERLING: Objection. Does he know? I mean,
2 he's asking him for information that I would have to object,
3 not first-hand knowledge.

4 THE COURT: He's asking him if he knows who they
5 told. If he knows, he can answer. If he doesn't, of
6 course, he can answer that.

7 A. Crime Stoppers.

8 THE COURT: You can answer the question.

9 A. Crime Stoppers.

10 BY MR. THOMPSON:

11 Q. They called the Crime Stoppers?

12 A. (Shaking head yes).

13 Q. So law enforcement?

14 A. Yes.

15 Q. Thank you, Mr. Mack. Please answer any questions that
16 the defense has for you.

17 MR. SWERLING: Judge, I have one document. I
18 wonder if the clerk could make a copy of it while I examine
19 him?

20 THE COURT: Yes, sir.

21 MR. SWERLING: Could I stand here, Your Honor?

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION BY MR. SWERLING:

24 Q. Mr. Mack, I'm Jack Swerling.

25 How are you doing?

1 A. I'm doing all right.

2 Q. Good. How old are you?

3 A. Twenty-two.

4 Q. Twenty-two. Okay.

5 Let's make sure I understand and the jury understands.

6 You are the one who murdered Ned Marshall, is that correct?

7 A. Yes, sir.

8 Q. You went in the store with a gun, a .380, and you shot
9 him dead, didn't you?

10 A. Yes, sir.

11 Q. And for that you are serving a life sentence?

12 A. Yes, sir.

13 Q. And you are now in here in this courtroom testifying
14 because you want to help your brother, isn't that true?

15 A. No, sir.

16 Q. Didn't you tell the solicitor that?

17 A. I'm here to testify, because they are trying to put
18 something on my brother that he didn't even do.

19 Q. Okay. My question -- so you want to help your brother?

20 A. Yes, sir.

21 Q. Isn't that -- so the answer is yes?

22 A. Yes, sir.

23 Q. You want to help your brother.

24 So your brother didn't do anything?

25 A. No, sir.

1 Q. Your brother didn't discuss a robbery?

2 A. Yeah, he discussed it.

3 Q. Okay. And so he knew that you were going to go to
4 commit a robbery, correct?

5 A. Yes, sir.

6 Q. So what didn't he do?

7 A. He didn't go in the store.

8 Q. But he's not charged with that.

9 A. He didn't force nobody neither.

10 Q. He didn't force anybody.

11 A. No.

12 Q. So you want to help him and you want to also help him
13 on his sentence too, don't you?

14 A. I don't want to help him. I just want to help him -- I
15 didn't want nobody to try to put nothing on my brother that
16 he didn't do.

17 Q. Well, your brother has already pled guilty.

18 A. Yes, sir.

19 Q. Isn't that true?

20 A. Yes, sir.

21 Q. And he's pled guilty to an accessory after the fact,
22 correct?

23 A. Yes, sir.

24 Q. So he's not being accused of doing anything before the
25 fact.

1 A. No, sir.

2 Q. Isn't that true?

3 A. (Shaking head yes).

4 Q. Didn't you tell Mr. Thompson here that you wanted --
5 any testimony that you give, you want your brother to get
6 credit for it?

7 A. That -- yes, sir.

8 Q. Didn't you say that?

9 A. Yes, sir.

10 Q. Now, let me ask you something. You stood in front of
11 the judge and you pled guilty. You admitted to being the
12 one that shot Mr. Marshall --

13 A. Yes, sir.

14 Q. -- correct?

15 And you pled guilty that day, admitted your guilt. You
16 were questioned about your guilt, correct?

17 A. Yes, sir.

18 Q. My understanding is you filed an appeal.

19 A. Yes, sir.

20 Q. So if you stood up in front of the judge and you pled
21 guilty and admitted your involvement in this and shot Mr.
22 Marshall, what is your appeal based on?

23 A. What is it based on?

24 Q. Yeah, what are you appealing?

25 A. I'm just trying to get a lesser sentence.

1 Q. Trying to get a lesser sentence?

2 A. Yes, sir.

3 Q. And what error have you and your lawyer down in
4 Columbia alleged was the error in the case?

5 A. I -- I don't know that right now. I don't know that
6 yet, but I filed an appeal the day that I got sentenced.

7 Q. Correct.

8 So my question is you are now testifying in this case,
9 you have admitted your guilt before this judge, but now you
10 are filing an appeal. And what I'm asking you to do is tell
11 the jury, in addition to the fact that you wanted your
12 brother to get credit for your testimony, what is your
13 appeal based on? You are denying it, aren't you?

14 A. Denying?

15 Q. You are denying your involvement, aren't you?

16 A. No, I ain't denying my involvement. If -- if I was
17 denying the involvement, I wouldn't -- I wouldn't have pled
18 guilty. I pled guilty because I didn't want nobody else to
19 get -- I mean go down for something that I did.

20 Q. Well, you pled guilty because you thought, and haven't
21 you alleged that you thought that you were going to get
22 thirty years?

23 A. Yes, sir.

24 Q. Okay. But you got life?

25 A. Yes, sir.

1 Q. And you knew at the time that you entered your guilty
2 plea, that even though you could get thirty years on murder,
3 which is the least amount that you can get for murder, but
4 you could also get up to life, isn't that true?

5 A. Yes, sir.

6 Q. So what are you going to argue down in the court down
7 in Columbia? The judge gave you what he could give you.

8 A. What I'm going to argue?

9 Q. Yeah.

10 A. Talking about?

11 Q. You are saying that you were told that you would get
12 thirty years. Isn't that what you told your lawyer down in
13 Columbia?

14 A. Yes, sir.

15 Q. So you told -- in this appeal that you have filed that
16 you told that -- you were told that you were going to get
17 thirty years?

18 A. Yes, sir.

19 Q. But you didn't get thirty years?

20 A. No, sir.

21 Q. You got life?

22 A. Yes, sir.

23 Q. So you are not very happy about the sentence that you
24 got, isn't that true?

25 A. No, sir.

1 Q. And you intend -- you are pursuing this appeal to go
2 ahead and try and get your sentence cut, because you were
3 told, not by this court, but by your lawyer that you were
4 going to get thirty years?

5 A. He said a ninety-nine percent chance of getting thirty
6 years.

7 Q. That's what your lawyer told you, is that right?

8 A. Yes, sir.

9 Q. All right. Now, let's make another thing I really want
10 to get clear is when you were first questioned about this
11 thing, okay, when you were down in Hartsville, when you were
12 in the hospital, you told them that you got shot at
13 Farmington Apartments, correct?

14 A. Yes.

15 Q. You told that to a police officer?

16 A. Yes, sir.

17 Q. Correct?

18 A. Yes.

19 Q. You lied to a police officer?

20 A. Yes, sir.

21 Q. Isn't that true?

22 A. (Shaking head yes).

23 Q. And you don't have any problem lying when it's in your
24 interests, do you?

25 A. To a police officer?

1 Q. Well, it's okay to lie to a police officer?

2 A. I wasn't going to tell them what really happened that
3 day.

4 Q. I said is it all right to lie to a police officer? You
5 made it sound like it was okay to lie to a police officer.

6 A. No, it wasn't all right.

7 Q. Pardon?

8 A. It wasn't all right.

9 Q. But you did lie, though?

10 A. Yes, sir.

11 Q. And my question before was that you don't have a
12 problem telling a lie when you need to tell a lie, when it's
13 in your benefit, do you?

14 A. I ain't going to -- I ain't going to tell no lie to
15 hurt nobody else. I'm going to tell the truth.

16 Q. That's not my question, though.

17 My question was, if it's in your interests, you will
18 tell a lie?

19 A. Yeah.

20 Q. As a matter of fact, you wrote a letter to Willy
21 Thompson, didn't you?

22 A. Yes, sir.

23 Q. Do you recognize that?

24 A. Yes, sir.

25 Q. All right, I'm going to let you hold it for a minute.

1 MR. SWERLING: Your Honor, I would like to mark
2 that for identification, if we could.

3 THE COURT: Yes, sir.

4 (Dontavious Mack Letter marked as Defendant
5 Addison Exhibit No. 1 for identification)

6 BY MR. SWERLING:

7 Q. There is a letter and I'm just going to ask you about
8 parts of it, okay?

9 You wrote this letter to Mr. Thompson when you were
10 sitting down in the jail and you were waiting to get tried,
11 correct?

12 A. Yes.

13 Q. Now, you had already given a statement to the police
14 sometime before that after you initially lied to the police
15 on -- let's see, October 20th you gave them a statement,
16 isn't that true --

17 A. (Shaking head yes).

18 Q. -- and you admitted your involvement in this thing?

19 A. Yes, sir.

20 Q. So this letter was written after October 20th, 2006,
21 correct?

22 A. Yes, sir.

23 Q. And it's in your own handwriting, so I'm not -- this is
24 not somebody else wrote it, correct?

25 A. Yes, sir.

1 Q. You told Mr. Thompson, did you not, that you were
2 taking the blame for something that you didn't do, because
3 "y'all didn't have the guys who did it and my brother
4 Davorius and I were both going to get charged with the
5 shooting." That's what you told Mr. Thompson, correct?

6 A. Yes, sir.

7 Q. You also told him you didn't want your brother Davorius
8 getting charged because his girlfriend was pregnant and was
9 due in December. You told him that as well, didn't you?

10 A. Yes, sir.

11 Q. You also told Mr. Thompson, did you not, that Captain
12 Thickens, and I'm reading it as you have, with the Rock Hill
13 Police Department said that you acted in self-defense in
14 this case?

15 A. Yes, sir.

16 Q. That you wouldn't get charged with murder?

17 A. Yes, sir.

18 Q. That's what you told Mr. Thompson in this letter?

19 A. That's what he told me.

20 Q. He told you that. Mr. -- sergeant -- Captain Thickens
21 told you that you acted in self-defense in this case and
22 wouldn't get charged with murder?

23 A. Yes, sir.

24 Q. Now, you also said that he told you you were not going
25 to get charged with murder and your brother would get a

1 bond --

2 A. Yes, sir.

3 Q. -- correct? And that Captain Thickens was lying?

4 A. Yes, sir.

5 Q. Had lied to you, is that right?

6 A. Yes, sir.

7 Q. Okay. Now, you also told Mr. Thompson on that day that
8 you weren't the shooter. This is on the bottom of the page,
9 that you can prove that Ben was the actual shooter, isn't
10 that true?

11 A. Yes, sir.

12 Q. That's what you said in the letter, isn't that true?

13 A. Yes, sir.

14 Q. So that contradicts what you just said before, that you
15 wouldn't lie about getting somebody else in trouble, doesn't
16 it?

17 A. That was -- at first I was --

18 Q. My question was that it contradicts what you said
19 before --

20 A. Yes, sir.

21 Q. -- that you said that you would not lie to get someone
22 else in trouble. But the fact is you would, isn't that
23 true? Isn't it true?

24 A. You say would I lie to get somebody in trouble, or
25 right now?

1 Q. You lied here.

2 A. That is when I first got locked up.

3 Q. Well, when you first -- when you first got locked up,
4 you gave a statement admitting that you were involved. This
5 letter was written after you said that you were involved
6 and you are pointing the finger here at Ben Stewart, that he
7 was the shooter, isn't that true?

8 A. Yes, sir.

9 Q. So you lied?

10 A. Yes, sir.

11 Q. To get Ben in trouble, correct?

12 A. Yes, sir.

13 Q. Okay. Now --

14 MR. SWERLING: Excuse me one moment.

15 (Off the record)

16 (Back on the record)

17 MR. SWERLING: I'm sorry, judge, can I grab the
18 one copy?

19 Let me see the copy now. Okay.

20 BY MR. SWERLING:

21 Q. Now, you also told Mr. Thompson in this letter -- there
22 is no dispute about this. Terrell Addison asked you to take
23 him home to Rock Hill, isn't that true?

24 A. Yes, sir.

25 Q. I mean, even in this letter you say that.

1 A. (Shaking head yes).

2 Q. The reason you would have taken him home is because
3 y'all were going to go onto Charlotte, isn't that true?

4 A. We were going to go on to Charlotte?

5 Q. You and Ben and your brother were going to go on to
6 Charlotte?

7 A. No, sir.

8 Q. Okay. So you just drove him up here to Hartsville for
9 the heck of it?

10 A. Drove him --

11 Q. I mean from Hartsville you drove up here to Rock Hill
12 for the heck of it?

13 A. No, sir.

14 Q. What did you drive up here for?

15 A. He had wanted to go to his house to get some money, but
16 then we started talking about robbing.

17 Q. Okay. So you drove up here for him to go to his house
18 to get money, is that correct?

19 A. Yes.

20 Q. Which is the money that you wanted for gas to drive him
21 up here, correct?

22 A. He was going to give me gas money for driving him up
23 here.

24 Q. That's what I just said. Isn't that true?

25 A. All the money wasn't going to be for gas. He was going

1 to give me --

2 Q. What was it for?

3 A. I don't know.

4 Q. So he -- well, I mean -- well -- all what money? How
5 much money was he going to give you?

6 A. I don't -- he was going to give me some gas money for
7 bringing him to get some money from his house.

8 Q. Right. You said it was not all going to go to gas.

9 A. Yeah, he said --

10 Q. What else --

11 THE COURT: Hold it. Hold it. Hold it. Let him
12 finish his answer.

13 MR. SWERLING: Yes, sir.

14 A. He said all his money that he was going to give me was
15 going to gas. I didn't know if he was -- he wasn't going to
16 give me all his money to go to gas. If he was going to give
17 me all his money to go to gas, why would he have asked me to
18 bring him up to Rock Hill to get some money?

19 BY MR. SWERLING:

20 Q. All right. But you told him that you wanted, what did
21 you tell him fifty dollars? I think you said in here if I
22 paid -- "if he paid fifty dollars, I would take him to Rock
23 Hill."

24 A. Yes, sir, that's what I said.

25 Q. Okay. So what was the fifty dollars for?

1 A. Taking him to Rock Hill.

2 Q. So all the money that he was going to get, fifty
3 dollars, he was at least going to give you fifty dollars?
4 That's what your fee was to take him up here?

5 A. Yes, sir.

6 Q. Isn't that true? Is that true?

7 A. Yes, sir.

8 Q. When you got to -- when you were -- when had -- in this
9 journey that you say that you took from Hartsville up here,
10 at what the point did you start discussing robbing somebody?

11 A. We started discussing it when we passed Domino's.

12 Q. Domino's where? In Rock Hill?

13 A. Yes, sir.

14 Q. So there was no --

15 A. I don't know where the Domino's was. I just know it
16 was a Domino's. I don't know where it was located in Rock
17 Hill. I know it was on our way down here.

18 Q. Well, was it in the city near Rock Hill?

19 A. Yeah, it was near Rock Hill.

20 Q. And you were the one and your brother were the one that
21 initiated the discussion about robbing that Domino's,
22 weren't you?

23 A. No, all of us was talking about it.

24 Q. All of you.

25 Let's go back to the letter then.

1 Terrell also said not only he's going to get some money
2 to pay you fifty dollars to pay you to take him home, but he
3 wanted to get some clothes and he was going to get the money
4 from his mom. That's not in dispute, is it?

5 A. No.

6 Q. All right. Now, you took no dispute either that in
7 this letter you said that you took Terrell by his house?

8 A. We didn't went by his house.

9 Q. That's what you say in the letter, isn't it?

10 Look in the middle of letter, on the second page.

11 A. That's what the letter said, but we ain't never went by
12 his house.

13 Q. Doesn't it say there in the middle of the page on this
14 270, next to this page here, doesn't it say right there that
15 "we took Terrell by his house"?

16 A. (No response).

17 Q. Doesn't it say that you took Terrell by his house?

18 A. (No response).

19 Q. Mr. Mack, it's a simple question. Doesn't it say --

20 A. I'm looking for it. Oh, yeah, I see what you are
21 talking about.

22 Q. -- that you took Terrell by his house?

23 A. Yes, sir, that's what it says.

24 Q. And then you told Mr. Thompson that you were also about
25 empty and you asked Terrell for the gas money and he said

1 that he had to go to some apartments and get the money from
2 his mom because that's where he was. There is no dispute
3 about that, right?

4 A. Yes, sir.

5 Q. We went ahead and -- you and your brother went ahead
6 and pumped ten dollars worth of gas in it, correct?

7 A. I told him my brother to pump ten dollars.

8 Q. Now, let me ask you something. In this letter it says
9 "Ben was talking about robbing some boys that pulled up in
10 an orange and black car."

11 There is nothing in there about Terrell saying anything
12 about robbing anybody in a car, is there?

13 A. No, sir.

14 Q. Now, when you got -- you were at these apartments and
15 there is some discussion you are saying here that you
16 overheard that Ben and Terrell were going to go ahead and
17 rob the store. That's on that page 271, isn't that true?

18 A. Yeah, they was going to rob the store. They was going
19 to rob that store and me and my brother was going to rob
20 another store on the way home, but Ben didn't want to rob
21 the store, so me and my brother went inside.

22 Q. So you had already decided --

23 A. Not me and my brother. Me and Terrell went in the
24 store.

25 Q. So you had already decided that you and your brother

1 were going to rob another place on the way home?

2 A. Yes, sir.

3 Q. You were dropping Terrell off, weren't you?

4 A. No, sir.

5 Q. Where was Terrell going?

6 A. He was going back to Hartsville.

7 Q. He was going back to Hartsville.

8 So you and your brother had decided to rob another
9 store. What store was that?

10 A. Any store we came by.

11 Q. Any store that you could find?

12 A. Yes.

13 Q. At random?

14 A. Yes.

15 Q. You and your brother?

16 A. (Shaking head yes).

17 Q. Now, according to this letter that you wrote, Terrell
18 and Ben went in the store, isn't that true?

19 A. Yes, sir.

20 Q. And you saw Ben and Terrell running out and you saw the
21 clerk on the ground, correct?

22 A. Yes, sir.

23 Q. So according to what you told Mr. Thompson in this
24 letter, you didn't even go in the store?

25 A. Yes, sir.

1 Q. Isn't that true?

2 A. Yes, sir.

3 Q. As a matter of fact, you said that the clerk was shot
4 when you -- before you ever got to the store, isn't that
5 true?

6 A. Yes, sir.

7 Q. But you got shot in the back?

8 A. Yes, sir.

9 Q. That's what you told Mr. Thompson, isn't it?

10 A. (No response).

11 Q. Now, you told Mr. Thompson also on that last page, you
12 said "if you watch the tape, you will see that I did not do
13 the shooting." Is that what you told Mr. Thompson?

14 A. Yes, sir.

15 Q. But we just watched the tape and you told the jury that
16 that was you that did the shooting, correct?

17 A. Yes, sir.

18 Q. So you lied in here again?

19 A. Yes, sir.

20 Q. And you lied in here because you were trying to put it
21 on Ben Stewart and you are trying to put it on Terrell
22 Addison, correct?

23 A. Yes, sir.

24 Q. You were trying to lie -- you were lying to go ahead
25 and get them, weren't you?

1 A. Yes, sir.

2 Q. Now, you also ended your letter that you promised if
3 you could have stopped it, you would have, and you are sorry
4 for what happened. Isn't that what you wrote?

5 A. Yes, sir.

6 Q. Well, that's a lie, wasn't it?

7 A. Yes, sir.

8 Q. Because actually you are the one that killed him,
9 correct?

10 A. Yes, sir.

11 Q. All right. Mr. Mack, you are not unfamiliar with
12 firearms, are you?

13 A. No, I'm not familiar with them.

14 Q. You have had firearms in the past?

15 A. Yes, sir.

16 Q. And you have fired firearms in the past?

17 A. Yes, sir.

18 Q. Isn't that true?

19 A. (Shaking head yes).

20 Q. Before October 10th, 2006?

21 A. Yes, sir.

22 Q. As a matter of fact, a bunch of incident reports, there
23 are several situations --

24 MR. THOMPSON: Objection, Your Honor.

25 MR. SWERLING: 405.

1 THE COURT: Approach.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 THE COURT: Mr. Foreman, ladies and gentlemen of
5 the jury, we are going to take a short recess at this time.
6 There is a matter i need to up with counsel out of your
7 presence. If you will please retire to the jury room for a
8 brief time.

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT: All right, counsel, let me hear from
12 you.

13 MR. SWERLING: Thank you, Your Honor.

14 Judge, what I'm intending to pursue, if the court
15 will allow me, under Rule 405(b) -- (a) and (b), the defense
16 in this case is coercion or duress, and I would intend to
17 pursue, if the court would allow me, asking him about
18 specific instances. I'm not just going on a fishing
19 expedition.

20 THE COURT: The way you got to go there, counsel,
21 is you have got to show that this is matters within the
22 knowledge of your client. If you complained he was
23 intimidated or was under duress because of some previous
24 conduct of this witness, you have to be able to show that he
25 acted with full knowledge of all of these things, that

1 whatever it is you are going to try to ask him about. Isn't
2 that true? Otherwise, it's not relevant to this case, not
3 relevant to your defense.

4 MR. SWERLING: Yes, sir.

5 THE COURT: Okay.

6 MR. SWERLING: I respectfully disagree, but
7 because I believe that we are allowed to bring out this
8 individual's character or specific instances of violence or
9 specific incidents of his conduct to show how he has acted
10 in the past as to duress. In other words, in this
11 individual here --

12 THE COURT: Wouldn't it have to be something
13 that's in the mind of your client, if it's going to be
14 relevant to what happened in this particular case?

15 MR. SWERLING: I think that there are situations
16 where, number one, you have to show that my client knew it.
17 And then there are other situations where you are allowed to
18 bring in a person's reputation for specific acts of
19 violence, where the individual does not know or would not be
20 aware of.

21 In other words, Your Honor, if someone had a
22 reputation in the community for being a violent person, I
23 submit you would be able to bring that out in a self-defense
24 case, even if the defendant himself did not know that.

25 THE COURT: No, sir.

1 If you are saying that the defendant was acting in
2 self-defense because of something he knew that that person
3 was a violent person, and, therefore, he had to defend
4 himself which gives him special knowledge about that
5 person's proclivities for violence and he had took that in
6 mind in deciding whether he was justified in defending
7 himself, yes, but you have got to -- it doesn't matter if
8 he's had fifty episodes of violence, if he had no knowledge
9 of it, if you are claiming self-defense. If he was not
10 aware of it or had any inclination, didn't act in response
11 to that or what knowledge he had, it doesn't come in as
12 self-defense, because he can't act on what he doesn't know
13 anything about in response to it.

14 Now, insofar as duress is a different matter.
15 I'll be glad to hear from you on it, insofar as duress is
16 concerned.

17 MR. SWERLING: Yes, sir.

18 THE COURT: But I still think if you are saying he
19 acted in duress, out of duress, because he's afraid of this
20 person, the witness, then you have to show that he had some
21 reason to know these things, if he's acting out of duress.

22 If you are saying, well, at some point down there
23 is an incident over here where he fired a gun, he has no
24 knowledge of it, how is that relevant to this particular
25 case or what he did, or whether he was under duress, or what

1 conduct, his conduct? How?

2 MR. SWERLING: Judge, it would be my position that
3 if this individual in the past had had weapons and has fired
4 weapons at people and has assaulted people and intimidated
5 people during those assaults, then that would be specific
6 instances of conduct on his part that goes by reputation or
7 otherwise or specific instances.

8 THE COURT: If the person who is acting says they
9 are acting under duress has knowledge of it.

10 MR. SWERLING: Right.

11 THE COURT: Okay?

12 MR. SWERLING: Yes, sir.

13 THE COURT: How can you act -- if you walk in
14 here, mild mannered with a suit and tie on and you come in
15 and you kill ten people over here, but I don't know that,
16 how can I act in response to what I don't know? I may think
17 you are the most mild mannered guy in this world.

18 MR. SWERLING: Yes, sir.

19 It's not being offered to show what he knew. What
20 is being offered is to show what this person is like. And
21 you can do that. For example, in a self-defense case, the
22 reputation of the deceased for violence would be admissible
23 on the issue of who was probably the aggressor in this
24 situation.

25 THE COURT: Well, I mean, in an aggressive

1 situation, perhaps so.

2 MR. SWERLING: Yes, sir.

3 THE COURT: You are talking about self-defense,
4 and we are talking about here duress.

5 MR. SWERLING: Yes, sir.

6 So my -- I guess the analogous position would be
7 that if this person is known and admits that down in
8 Hartsville he carries a gun and has done some shooting down
9 there and has intimidated some people and assaulted some
10 people --

11 THE COURT: But if your client didn't know
12 anything about that, he can't feel he's under duress if it's
13 something that he doesn't know. That's what I'm asking you.

14 MR. SWERLING: Yes, sir.

15 THE COURT: It's got to be something that he's
16 aware of, if you are claiming it's relevant on the issue of
17 duress.

18 If you are simply going to attack his character by
19 saying he's had these incidents before, some incident arrest
20 which is just pure hearsay, I'm asking you what is the
21 relevance? I mean, I'm listening to you. I'm not
22 forestalling you. I'm not closing you out. I'm listening
23 to you, but I'm saying if your sole purpose is to make him
24 look bad and attack his character before the jury and it's
25 not relevant to this case, then it becomes more prejudicial

1 than probative under --

2 First of all, the question of whether it's
3 relevant or not, and, third, under 403 whether it's more
4 prejudicial than probative and confusing to the jury.

5 405 is subject to the 403 analysis as well.

6 MR. SWERLING: Yes, sir.

7 Well, again, I think I just want to -- excuse me
8 one minute, Your Honor.

9 THE COURT: You make it relevant, I'm going to let
10 it in, but you got 402, question of relevancy; 403, and the
11 rule says although relevant. "Evidence may be excluded if
12 its probative value is substantially outweighed by the
13 danger of unfair prejudice, confusion of the issues,
14 misleading the jury," etcetera, etcetera. Okay. And I'm
15 asking you to tell me how it's going to be relevant to this
16 particular case.

17 MR. SWERLING: Judge --

18 THE COURT: Why it's more probative than
19 prejudicial.

20 MR. SWERLING: Well, I think it's more probative
21 than prejudicial if I just asked him specific questions,
22 rather than going into details in trying to bring out
23 extraneous matter. It's specifically just asking him "have
24 you done these things in the past," without -- without
25 detail. That's what I would propose to do.

1 It would be my position under 405, even if he did
2 not know the specific instances, that it demonstrates this
3 person and the character of this individual -- I hate to use
4 the word character, because I'm not limiting it to
5 character, but his propensity at that point to do something
6 that my client is claiming, and that is coercion? If he
7 is -- again, propensity is not a great word either, but what
8 it does, it goes toward --

9 THE COURT: Let me see your incident report. Let
10 me see what you are going to ask him.

11 MR. SWERLING: They are all in here, but I can
12 give you a list of just the incidents I would ask him about.

13 (Off the record)

14 (Back on the record)

15 THE COURT: Judge, I could probably cut this
16 short. You don't need to go through all those. There is
17 only just a few of them that I could make a proffer for the
18 court, but those are all the incidences.

19 THE COURT: Well, I mean, I'm reading this first
20 one and this first one and I don't even see this witness'
21 name up here appearing on it anywhere. That's the --

22 MR. SWERLING: Judge, those are a stack of
23 incident reports. I have just a few that I could outline so
24 you don't have to read all of those. I mean, there is a
25 bunch of incident reports.

1 THE COURT: Where is his name on this one,
2 counsel?

3 MR. SWERLING: I didn't say there was.

4 THE COURT: Well, how are you going to ask him
5 about it if it's --

6 MR. SWERLING: I'm not asking him about this one.

7 THE COURT: Well, I asked you to hand me up what
8 you wanted to me to look at.

9 MR. SWERLING: I'm handing you a bunch of incident
10 reports. I haven't gone through those. They are all --
11 they are all relevant to these people.

12 THE COURT: How am I -- you tell me what you are
13 going to ask him. You bring up this irrelevant stuff that
14 doesn't even mention him, has nothing to do with him. I'm
15 certainly not going to allow you to ask him about that, but
16 tell me what it is that you want to ask him.

17 MR. SWERLING: Judge, I was going to ask him about
18 a situation where he threatened a Johnetta House with a gun.
19 Well, I was going to ask him if that was on May 21st, 2006.

20 I was going to --

21 THE COURT: Is that a criminal domestic violence
22 thing?

23 MR. SWERLING: Pardon me?

24 THE COURT: Is that a criminal domestic violence?

25 MR. SWERLING: No, it was not. It was just

1 another person. It had nothing to do with a -- it would not
2 satisfy the elements of criminal domestic violence, because
3 it was not a person that he was living with under that
4 definition.

5 THE COURT: Well, it was a girlfriend or something
6 like that?

7 MR. SWERLING: No, sir.

8 Another situation was that he, on May 21st, the
9 same day, entered a Sonic restaurant in Hartsville and
10 assaulted an individual named Mr. McCloud, because Mr.
11 McCloud owed him some money.

12 Another situation was there is at least -- there
13 is one situation he was picked up on January 26th, 2006, in
14 Hartsville with a gun in the console.

15 THE COURT: Well, obviously -- what's the
16 relevance of that, if he had a gun in the console? You are
17 allowed to have a gun in the console.

18 MR. SWERLING: Not if -- I'm sorry, Your Honor?

19 THE COURT: Sir?

20 MR. SWERLING: Not at his age. This was back in
21 2006. He wouldn't have been allowed to have it at that
22 point under the law at that time.

23 THE COURT: I mean, he didn't show any violence or
24 threats or intimidation of anybody, which would go -- but
25 not relevant to your particular case whether he had a gun in

1 the console and didn't use it.

2 MR. SWERLING: The other thing would be that he
3 participated in the assault of Alex Stamey's son, a lawyer
4 down in Hartsville.

5 Another situation would be a shooting incident on
6 at Holmes Security Apartments on April 16th, 2004, in
7 Hartsville.

8 And then on March 14th --

9 THE COURT: Wait a minute. Is he named in there
10 as a shooter on that?

11 MR. SWERLING: It is my understanding that he is,
12 Your Honor. He was a suspect, let's put it that way.

13 THE COURT: I mean, you know, that's not good
14 enough. Okay. He was a suspect --

15 MR. SWERLING: Well, he --

16 THE COURT: -- on a police report somewhere.

17 MR. SWERLING: He wasn't convicted.

18 THE COURT: What's proof of that? I mean, what --

19 MR. SWERLING: Well, I guess he could either
20 answer it or he could say yes or no.

21 THE COURT: Well, it's just an accusation.

22 If you are going to try to impeach him with prior
23 bad acts, you have got to have clear and convincing evidence
24 of that.

25 MR. SWERLING: I'm not offering it under 404. I'm

1 offering in under 405, which I don't think is the same
2 standard.

3 Judge, I'm not -- with all due respect to the
4 court, I'm not trying to argue with the court.

5 I guess what I'm trying to say is this. We are
6 not offering it for character under 404. There is a defense
7 in this case of duress. Our claim is that he, along with
8 his brother, coerced Mr. Addison.

9 THE COURT: I understand that.

10 MR. SWERLING: So I was trying to go to specific
11 instances of this person --

12 THE COURT: I understand that. And what I'm
13 trying to get you to do --

14 MR. SWERLING: Yes, sir.

15 THE COURT: -- is not throw out a shotgun out
16 there every time he had a gun in his console, a police
17 report mentioned his name as a possible suspect when a gun
18 was fired. I mean, that's not -- you know, that -- it has
19 to be more to it than that. That's pure hearsay there.
20 It's not -- he wasn't even charged with it or anything like
21 that. And so if he's a mere suspect in something in a
22 police report, I mean, you know, that's the problem I have
23 got. I mean, that doesn't say he did anything. He's a
24 suspect. That's the problem I got. You are just throwing
25 it out there and basically trying to attack his character

1 without giving specific incidents to something that he
2 actually did, including anything that he actually did.
3 That's the problem I have got with it.

4 MR. SWERLING: Yes, sir.

5 THE COURT: Let me hear from the solicitor on it.
6 Do you wish to be heard, solicitor?

7 MR. THOMPSON: Your Honor, I agree with the court.
8 I want to point out, this is kind of a way of getting around
9 trying to impeach someone on convictions. In other words,
10 when you impeach someone on something that they are
11 convicted of and it carries more than a year, you are
12 allowed to say "you have been convicted of such and such,
13 haven't you?" Maybe the date of it, but this is going
14 farther. This is not only trying to do that with something
15 that's not a conviction. It's trying to say not only
16 convicted of that, but part of that is you did this, this,
17 this and this in that particular crime. We are not allowed
18 to go into it for more impeachment. We are just allowed to
19 go into the actual conviction itself, and that's the fact
20 that he was convicted of this charge. And some of those are
21 not even allowed to say the charge because they are too
22 close to the charge someone may be on trial for.

23 But in this particular case I think it's kind of
24 circumventing that with this young man, because he's just
25 going into these instances, which as he said many of them

1 are just accusations where no charges arose. Some of them
2 sounds like they may amount to a simple assault and battery,
3 which they wouldn't allowed to be cross-examined on as a
4 conviction, even if he were convicted of it, because it
5 doesn't carry enough time. It's not the crime of moral
6 turpitude. It's not -- so the relevance really becomes very
7 far out there. It's not -- it's not something that's very
8 relevant to what's happening here.

9 I mean, he's already been impeached with a number
10 of things. You know, the fact that he's pled to murder, a
11 pretty big thing. But if you just add on all these other
12 things, it becomes like public enemy number one, which I
13 don't think anyone could actually say. You know, he's not,
14 you know, from the Gotti family or something to beat the
15 law. This is not -- but he's obviously not a great person
16 either, but I don't think that we can just allow these
17 extrinsic things to be argued, because I think it does
18 become too prejudicial at some point and I think this is the
19 point where it is.

20 MR. BRACKETT: We have a rap sheet on him too.
21 Perhaps we can go through that. That might be helpful in
22 doing a probative versus prejudicial analysis under 403,
23 because I believe some of what Mr. Swerling is attempting to
24 accomplish through this line of questioning, he can get the
25 same effect through legitimate impeachment cross-examination

1 and we avoid the prejudicial effects of questioning on a
2 bunch of unproven incidents. So we might use this time
3 while the jury is not here to review his records to see if
4 we can't add that into our analysis and see if that maybe
5 helps the issue.

6 MR. SWERLING: Judge, the other issue is that he's
7 also claiming that he didn't have a gun, that the gun
8 belonged to Stewart, and Mr. Addison had a gun as well.
9 Yet, I think -- I think he'll even admit, and has admitted,
10 he's possessed a gun on a number of other occasions. So it
11 also impeaches him when you ask him about specific instances
12 of conduct. I'm not going on a broad fishing expedition.
13 I'm not trying to do that. I'm talking about like four or
14 five instances where he has demonstrated that he has a gun,
15 would use a gun, which is obviously an issue in duress or
16 coercion, and will assault somebody if he has to as well.
17 So that's the purpose of introducing it.

18 MR. BRACKETT: We didn't object when he asked
19 about "your prior experience with firearms." So we didn't
20 have a problem with him saying "yes, you have had a gun in
21 the past." And I believe he has an assault and battery of a
22 high and aggravated nature conviction --

23 MR. THOMPSON: Yes.

24 MR. BRACKETT: -- which can accomplish, will allow
25 and open and door for Mr. Swerling to make the same argument

1 that he wants through legitimate impeachment -- what we
2 contend would be a legitimate impeachment for prior
3 conviction. So we think, I guess, that he's going to be
4 able to accomplish the same thing, lay the foundation to
5 make the same argument he's bad, you know, and that he
6 acknowledges that he had has had a gun in the past. He's
7 already admitted that. So I think we can get to the same
8 destination without having to go through a litany of
9 incidents to which may or may not be founded and we submit
10 are overly prejudicial.

11 MR. SWERLING: Judge, the reason I think the
12 probative value outweighs the prejudicial effect is because
13 of the nature of the instances, or the types of instances we
14 are pointing to, as well as the defense in the case, as well
15 as what his position is in the statement, that it was all
16 Terrell Addison, and Terrell Addison had the gun and Mr.
17 Stewart had the gun. So that's -- that's what I was trying
18 to focus on, judge.

19 THE COURT: Well, now, counsel you have already
20 asked him and -- you have already asked him that. He
21 admitted having a gun in the past, firing a gun in the past,
22 he's admitted that. So, what else -- where else are you
23 going to go?

24 MR. SWERLING: I guess the only other -- if Your
25 Honor doesn't want me to pursue anything about shooting a

1 gun, different apartment locations I refer to, I would
2 respect Your Honor's ruling on that.

3 THE COURT: Well, the problem is I don't want you
4 to do it based on an incident report in which he was named
5 as a possible suspect, or a suspect in the case, I don't
6 want you to do it based on that.

7 MR. SWERLING: Yes.

8 THE COURT: It's just to indefinite, and if no
9 charges were made against him or anything like that, and
10 nobody -- you know, no arrest was made of him for that.
11 Nobody could prove that he did it. They didn't have any --
12 that's what I'm saying. I think it has to be a little more
13 definite. This is just an incident report being filed
14 without any more than that. His name is just mentioned as a
15 possible suspect, I don't think that rises to the level
16 where you can try to use that to attack his character for
17 impeachment, because it's hearsay. We don't know where the
18 information came from or what the circumstances on it were.
19 That's the problem I have got.

20 Now, I think you certainly can -- he's answered
21 he's had a gun in the past, he's fired a gun in the past.

22 MR. SWERLING: Yes.

23 THE COURT: And that responds to the question
24 whether his saying that they had the gun. Okay. So it
25 shows that obviously he's familiar with guns and had them in

1 his possession before, and so I will allow you to ask him
2 about that.

3 You know, I guess in that regard I'll even let you
4 ask him about having a gun in the console, because that
5 again goes to the fact that he has in the past possessed a
6 pistol, so I think you are probably right about that.

7 MR. SWERLING: Yes.

8 THE COURT: I'll allow you to ask him about that,
9 even though that's not -- just having it there for the
10 average person is not a violation. You can ask him that.

11 Now, what else?

12 MR. SWERLING: One -- I'm sorry.

13 THE COURT: Go ahead.

14 MR. SWERLING: One was the threat with the gun to
15 Johnetta Evans.

16 THE COURT: Was that the subject of a criminal
17 charge?

18 MR. SWERLING: No charges brought, as I understand
19 it.

20 Judge, one of them was that, as I told you,
21 Johnetta House. I'm sorry, I said Johnetta Evans. That was
22 the threatening with a gun.

23 The other situation was the assaulting of Mr.
24 McCloud at the Sonic. Just those two instances.

25 THE COURT: Did that arise out of criminal charges

1 against him?

2 MR. SWERLING: No, judge, none of these.
3 Apparently they just haven't charged him in any of these
4 things. I mean, there is some charges pending in
5 Hartsville, but they have to do with larcenies, which I'm
6 not getting into.

7 THE COURT: Well, if you are going to ask him
8 about criminal offenses to impeach him with, if they are the
9 subjects of these incident reports or they grew out of these
10 incident reports, I'm not going to allow you to ask him
11 about it twice, so you need to verify that.

12 MR. SWERLING: I'm sorry, ask him --

13 THE COURT: I'm not going to allow you to ask him
14 about an incident report and then turn around and ask him if
15 he was charged with an offense that arises out of the same
16 incident. I'm not going to allow you to impeach him twice
17 with the same information.

18 MR. SWERLING: No, sir. I'm sorry if I may have
19 misstated it. I wasn't going to intend on asking him if he
20 was charged.

21 THE COURT: Well, I understand, but if they got
22 a -- if you are going to turn around and ask you "didn't you
23 intimidate, or threaten, or hit somebody over here," and
24 then turn around -- you are going to come back and say
25 "didn't you plead guilty to assault and battery of a high

1 and aggravated nature" and they arose out of the same
2 incident, I'm not going to allow you to ask him about the
3 same incident twice. You are going to try to impeach him
4 twice, just use the assault and battery of a high and
5 aggravated nature, which would be quite sufficient, it
6 appears to me, to impeach him with a violent offense. Okay?

7 So what I'm saying is if you are going to ask him
8 about an incident report --

9 MR. SWERLING: Yes, sir.

10 THE COURT: -- and he was charged out of that
11 incident and the charges are disposed of one way or the
12 other, you can ask him about the criminal offense. I'm not
13 going to allow you to impeach him twice out of an incident
14 report, which is pure hearsay, and out of a charge, if the
15 actual charge was made and disposed of. In other words, if
16 an incident happened and he was charged out of that incident
17 with assault and battery of a high and aggravated nature,
18 I'm not going to allow you to ask him about the incident
19 itself and then impeach him with that and then turn around
20 and ask him if he pled guilty to assault and battery of a
21 high and aggravated nature which arose out of the same
22 incident. In other words, pick or choose.

23 MR. SWERLING: Yes, sir.

24 THE COURT: You can impeach him with the assault
25 and battery of a high and aggravated nature, but you

1 can't -- I'll not allow you to impeach him with the same
2 event twice.

3 MR. SWERLING: Judge, I was not -- I was not going
4 to ask him about the conduct -- anything about the assault
5 and battery, except the conviction part, the part of that
6 particular case.

7 THE COURT: I understand.

8 MR. SWERLING: There is another assault and
9 battery.

10 THE COURT: Well, that's what I'm saying. If
11 charges arose out of what you plan to ask him about an
12 incident report, then you need to ask him about the charge
13 itself.

14 MR. SWERLING: Right, I understand your ruling.

15 THE COURT: That's --

16 MR. SWERLING: Maybe that's -- and I have no
17 problem with that. But just so you will know, the assault
18 and battery the solicitor was talking about is a completely
19 unrelated incident that I was not going -- prepared to ask
20 him on the incident report. I was going to ask him under
21 609.

22 THE COURT: Well, I just don't want you to ask him
23 under 609 and also 405.

24 MR. SWERLING: No, I agree with you.

25 THE COURT: Out of the same incident.

1 MR. SWERLING: I have no problem with that, judge.

2 THE COURT: And I don't have any way of knowing
3 that. That's why I'm asking. You are the one that's got to
4 know --

5 MR. SWERLING: Yes, sir.

6 THE COURT: -- if you are going to try to impeach
7 him with.

8 MS. SWERLING: That's what I'm saying, judge. I'm
9 not. I'm not trying to impeach him on the assault and
10 battery that the solicitor was talking about with an
11 incident report. I'm just impeaching him on that with
12 respect to a conviction under 609.

13 The assault and battery that I was talking about
14 is an unrelated matter, the one that was at the Sonic where
15 he assaulted that individual. That did not arise or did not
16 result in a charge.

17 THE COURT: All right. Tell me why that's just
18 not pure propensity or character as opposed to how your
19 client may have acted in regard to a particular situation.

20 MR. SWERLING: Because this particular individual
21 has the ability and will, if given the opportunity, carry
22 out the threats by either having a gun and shooting people,
23 threatening people with a gun, or beating people up. And
24 that's going to be -- that is the issue in the case when,
25 you know, you are referring to duress.

1 THE COURT: Why is that propensity, which you are
2 not allowed to do, as opposed to what your client was
3 intending to rely on, if he claims he was under duress?

4 MR. SWERLING: Why was it not propensity?

5 THE COURT: Yeah.

6 MR. SWERLING: It's -- it's the ability -- we are
7 trying to point out based on his specific conduct in the
8 past that he has the ability and the -- and will carry out
9 the threats that he has -- that my client, or as a result of
10 this particular incident relied on coercion and duress.

11 THE COURT: In other words, if he's more likely to
12 do it because he's done it in the past, propensity?

13 MR. SWERLING: Yes, because this is not 404(b)
14 evidence.

15 MR. THOMPSON: One of it noted for relevance
16 charge, Your Honor, basically a leap Mr. Swerling wants the
17 jury to take is that sometimes he's intimidated someone
18 about maybe he was angry over something and he intimidated
19 that person in some way. This is totally different. This
20 is taking a leap of intimidating one person that you are
21 dealing with one on one to I'm going to intimidate you to
22 the point that I'm going to make you commit a heinous crime
23 and come in with me and do this and basically almost control
24 you like a puppet through this, so that if you do this
25 crime. It's a big leap between that and not often do those

1 two ever meet. We have had plenty of people that we
2 prosecuted that are good at intimidating people one on one
3 and have never taken someone on that sort of situation. So
4 I think there is a disconnect in the two. I would still say
5 it just doesn't become to be as relevant. It becomes more
6 prejudicial at that point throwing more and more things at
7 this guy, and I would just point that out.

8 MR. SWERLING: Judge, I have the two incidents
9 that --

10 THE COURT: Let me see them, please.

11 Well, you know, let me take them in turn.

12 First of all, and this one is headed up
13 2006-05-438, just says simply that he assaulted his uncle at
14 a Sonic who said he owed him money and he wanted his money
15 and he did it with his hands. What's that got to do with a
16 firearm or threaten somebody with a firearm?

17 MR. SWERLING: Intimidation, threat, physically
18 or -- I mean, it doesn't have to just be firearm. It can be
19 physical as well.

20 THE COURT: All right, counsel, I'm going to do
21 this. I'm going to allow you to ask him about the incident
22 with regard to the gun in the console, because of his -- and
23 the reason I'm doing that is because his testimony that the
24 weapons came from somebody else other than him. And so I
25 think that's fair impeachment evidence that he had

1 previously owned a gun or had a gun.

2 MR. SWERLING: Yes, sir.

3 THE COURT: So I'm going to let you ask him if he
4 had a gun in the console.

5 I'm going to allow you to ask him if he assaulted
6 his uncle because he owed him some money with his hands,
7 with his fists.

8 MR. SWERLING: Yes, sir.

9 THE COURT: And with regard to this other one,
10 this other incident, I'm going to allow you to ask him if he
11 pulled a handgun and threatened Johnetta, whatever her name
12 is, at the request of his girlfriend, who was her sister.

13 MR. SWERLING: Yes, sir.

14 THE COURT: Okay. I'm going to allow you to ask
15 him that. You accept whatever answer he gives you, but you
16 are not going to go into any more detail about it.

17 MR. SWERLING: Yes, sir.

18 THE COURT: And then that's as far as I'm going to
19 let you ask him those.

20 Now, really it's questionable whether you are
21 allowed to do that, but because of your defense, I think you
22 are allowed to -- or your theory or your defense, because
23 tangentially at least they touch on it. I'm going to allow
24 it, but you are going to have to do it in that fashion. I'm
25 not going to allow you to go into incident reports and start

1 leaving stuff out, like sometimes you do. Don't do that.

2 MR. SWERLING: I won't, Your Honor.

3 THE COURT: Okay. That's it. All right.

4 MR. SWERLING: Judge, one other issue before the
5 jury comes back. The incident that the solicitor is
6 referring to, the assault and battery of a high and
7 aggravated nature, judge, that was a juvenile conviction, of
8 course, which is admissible under 609. He and his brother
9 were convicted together and sent to DJJ together. Of
10 course, they are acting in concert this evening as well,
11 October the 10th, 2006. But on that particular occasion
12 what he was found guilty of was assault and battery of a
13 high and aggravated nature where he and his brother held
14 down a ten year old boy and sexually assaulted him. So,
15 number one, I think it's admissible under 609.

16 Number two, it also would be admissible under 405,
17 because it showed a specific instance of conduct on his part
18 and his brother's part where they acted together.

19 MR. BRACKETT: And what does that have to do with
20 the defense of duress?

21 MR. SWERLING: Well, because his brother and he
22 were both there that same night. And so it goes toward the
23 concept or action between two brothers I think would be
24 relevant to the issue of whether or not Mr. Addison felt
25 threatened or coerced that evening.

1 MR. BRACKETT: I think that's -- I don't think
2 that that's -- I believe he could impeach him with the
3 actual conviction, but to go into the details of the
4 conviction and say and "this is what you did, and here is --
5 "your brother was acting with you on that date."

6 THE COURT: Well, part of the problem I have got
7 is if he was allowed to plead to assault and battery of a
8 high and aggravated nature, some question about whether
9 there was any sexual assault involved. And so there is the
10 problem I have got with that. I mean, sometimes people are
11 charged, they plead to something else and it doesn't -- so
12 it's not an admission that they did whatever they were
13 originally charged with, if they pled to something different
14 or lesser offense. And that's the problem I have got with
15 it. It's a huge difference theoretically in the two. And
16 so that's the problem I have got with it.

17 I think -- I think you could ask him if both he
18 and his brother were charged with assault and battery of a
19 high and aggravated nature when they were on a certain age,
20 and I think I'm going to limit you to that.

21 MR. SWERLING: Yes, sir.

22 THE COURT: Because I don't have anything showing
23 what they actually -- I know if they pled to assault and
24 battery of a high and aggravated nature, that's what you can
25 ask him about; if he and his brother were both accused of

1 that, they were a certain age and the victim was a certain
2 age. Okay. And I think that's as far as you are entitled
3 to go. I think because of the involvement with everybody in
4 this, that you would be able to show that they acted in
5 concert on that particular occasion.

6 MR. SWERLING: Without going into the specifics.

7 THE COURT: You can't go into specifics.

8 MR. SWERLING: You said the age? Did you say I
9 could ask him about the age of the victim?

10 MR. BRACKETT: Of the victim, because that
11 wouldn't -- an aggravated assaults is an aggravated assault,
12 but that gets into the details of the case. It doesn't
13 matter whether --

14 THE COURT: All right. I'll just let you ask him
15 both of them were perhaps -- you are right. I'll allow you
16 to ask him if both of them were acting in concert, both are
17 charged with assault and battery of a high and aggravated
18 nature out of the same incident. All right. I think that's
19 fair to the defense.

20 MR. SWERLING: Yes, sir.

21 THE COURT: Okay.

22 MR. SWERLING: I won't go beyond that.

23 THE COURT: All right, sir. Anything else?

24 MR. SWERLING: No, sir.

25 THE COURT: All right. Now, don't go beyond what

1 I have told you I have allowed to get into. It's
2 questionable whether you are allowed to get anything like
3 these incidents reports, but given the nature of your
4 defense, I'm going to allow you a little leeway there, but
5 it's tangential. Don't go any further than I'm allowing you
6 to go.

7 MR. SWERLING: I won't, judge.

8 THE COURT: All right. Only those two that I told
9 you and the way you ask them I told you.

10 MR. SWERLING: One, and the console, did you say,
11 or --

12 THE COURT: Console, and the other two were after
13 he assaulted his uncle with his fists and the other if he
14 put the gun and threatened the girlfriend and sister.

15 MR. SWERLING: I won't go beyond that.

16 THE COURT: All right.

17 (The following takes place in the presence of the
18 jury panel)

19 THE COURT: All right. Counsel, you may proceed.

20 MR. SWERLING: Yes, sir.

21 BY MR. SWERLING:

22 Q. Mr. Mack, a couple of questions along that line.

23 Have you ever been picked up with a gun in your
24 console?

25 A. Yes, sir.

1 Q. And do you know what type of gun it was?

2 A. .32.

3 Q. .32.

4 Have you ever been in a situation where your give
5 friend, Jessica Arthur, sent you to the home of Johnetta
6 Wheeler Evans and threatened to kill her --

7 A. No, sir.

8 Q. -- with a pistol?

9 A. No, sir.

10 Q. And have you on one occasion entered a Sonic and
11 assaulted your uncle with your fists because he owed you
12 money?

13 A. Yes, sir.

14 Q. Okay. Also you have been convicted of assault and
15 battery of a high and aggravated nature, along with your
16 brother, some several years ago, is that correct?

17 A. Yes, sir.

18 Q. Okay. And that was a juvenile conviction?

19 A. Yes, sir.

20 Q. And how old were you at that time?

21 A. About twelve, thirteen.

22 Q. And your brother was younger than you?

23 A. Yes, sir.

24 Q. And how much younger than you is he?

25 A. Two years.

1 Q. Now, I want to ask you some more questions about the
2 events of that evening, okay? October 10th, okay?

3 Now, you had indicated that Terrell Addison and your
4 brother were in the car already --

5 A. Yes, sir.

6 Q. -- when you saw them.

7 And who was driving the car?

8 A. My brother.

9 Q. And what kind of car was it, do you recall?

10 A. A Buick.

11 Q. Now, you said that you did not know anything about
12 where that car came from, is that right?

13 A. Yes, sir.

14 Q. You did not know it was stolen?

15 A. No, sir.

16 Q. Did you and your brother ever discuss the fact that it
17 was stolen?

18 A. No, sir, he had the keys to it.

19 Q. He had the keys to it, and you didn't ask him where he
20 got that car?

21 A. I already know where he got it from.

22 Q. Where did he get it from?

23 A. He probably got it from --

24 Q. He stole it?

25 A. No, he didn't steal it. But if you -- a crack head

1 probably gave it to him.

2 Q. I'm sorry?

3 A. A crack head probably gave it to him.

4 Q. A crack head gave it to him?

5 A. Yeah, just for the money or something.

6 Q. I'm sorry, go ahead.

7 A. For the money.

8 Q. For some money?

9 A. Yeah. Like renting the car, but I don't think it was
10 stolen.

11 Q. Do you know why he would have owed him money?

12 A. No.

13 Q. So you knew that it wasn't your brother's car?

14 A. I knew that.

15 Q. All right. And you didn't know under what
16 circumstances he had gotten the car, except what you are
17 speculating now that maybe some crack head gave it to him
18 for some money that he owed him?

19 A. Yes, sir.

20 Q. Now, did I understand you to say before the reason that
21 you drove the car is because you were the only one in the
22 car that had a license?

23 A. Yes, sir.

24 Q. But Davorius was driving the car when he came up to see
25 you on this particular day.

1 A. Yes, sir.

2 Q. So he was driving without a license as well?

3 A. That was in Hartsville.

4 Q. Yeah, in Hartsville?

5 A. Yeah.

6 Q. Okay. I'm not -- the issue is not whether he had a
7 license or not had a license, but you have said before that
8 the reason you drove it was because he did not have a
9 license, is that right?

10 A. Yes, sir.

11 Q. Now, you went ahead and you picked up Ben, is that
12 right?

13 A. Yes, sir.

14 Q. All right. Now, in your statement that you gave the
15 police on October 20th, I believe -- and let me just show
16 you this. Is that a copy of your signature?

17 A. Yes, sir.

18 MR. SWERLING: Your Honor, since I'm going to
19 refer to it, can I mark it?

20 THE COURT: Just for identification.

21 (Dontavious Mack Statement marked as Defendant
22 Addison Exhibit No. 2 for identification)

23 BY MR. SWERLING:

24 Q. Now, Mr. Mack, didn't you tell the officers when you
25 gave this statement that, again, there is no dispute Terrell

1 asked Davorius to take him home so he could get him some
2 money?

3 A. Yes, sir.

4 Q. But he would get some money to pay you for the ride?

5 A. Yes, sir.

6 Q. So that's consistent in this statement, as well as in
7 that letter that you wrote to Mr. Thompson, correct?

8 A. Yes, sir.

9 Q. That's the reason why you were going up to Rock Hill?

10 A. Yes, sir.

11 Q. So he could get some money to pay you for the ride?

12 A. Yes, sir.

13 Q. Okay. So at that point were you the one that took over
14 the car and started driving?

15 A. Once we left Swift Creek Apartments, yeah.

16 Q. And that's where you picked Ben? I'm sorry, is it
17 Swill Creek?

18 A. Swift Creek.

19 Q. Swift Creek.

20 So you picked up Ben there and then you drove the rest
21 of the way?

22 A. Yes, sir.

23 Q. And just for everybody's information, not only did you
24 drive up to Rock Hill, but it's my understanding that you
25 drove back to the hospital --

1 A. Yes, sir.

2 Q. -- is that correct?

3 A. Yes, sir.

4 Q. You drove yourself. You were shot in the back, but you
5 were operator of the vehicle?

6 A. Yes, sir.

7 Q. So pretty much when after you left the Swift Creek
8 Apartments no one else was driving that car except you?

9 A. Yes, sir.

10 Q. Is that true?

11 A. Yes, sir.

12 Q. Now, you said Ben had a gun. It was a .380. It was
13 blacks and gray, and Terrell had a .38 revolver?

14 A. Yes, sir.

15 Q. That's what you said. That's what you have testified
16 here today too.

17 A. Yes.

18 Q. Did you have a gun on you that night?

19 A. No.

20 Q. Did you have a gun in the car?

21 A. No, sir.

22 Q. Did your brother have a gun?

23 A. No, sir.

24 Q. But here you placed it on Mr. Stewart and Mr. Addison
25 that they had the guns?

1 A. Yes, sir.

2 Q. Is that correct?

3 A. Yes, sir.

4 Q. Let me ask you about, you said that the masks were
5 already in the car?

6 A. Yes, sir.

7 Q. Didn't you go get those masks?

8 A. No, sir.

9 Q. Didn't you, in fact, have a gun?

10 A. Did I have a gun?

11 Q. Yeah.

12 A. When?

13 Q. That evening.

14 A. When we went --

15 Q. No, before you went up to Rock Hill.

16 A. No, sir.

17 Q. And your brother didn't have one either?

18 A. No, sir.

19 Q. Well, let's talk about these masks that you said were
20 already in the car, okay? Where did they come from?

21 A. I don't know.

22 Q. When did you get them?

23 A. When we got to Rock Hill.

24 Q. You got them when you went to Rock Hill?

25 A. Yes.

1 Q. And where did you get them from?

2 A. Out of the trunk of the car.

3 Q. Out of the trunk of the car.

4 Were you the one that went to the trunk of the car to
5 get them?

6 A. Yes, sir.

7 Q. Okay. And how did you know they were in the trunk of
8 the car? Because your brother told you?

9 A. No, sir, because we put them there.

10 Q. So they were in the car when you got in the car?

11 A. Not when we got in the car. When we got to Rock Hill
12 we get them.

13 Q. Okay, but they were in the trunk of the car when you
14 got in the car?

15 A. From Hartsville?

16 Q. Yes, sir.

17 A. No, sir.

18 Q. Well, that's what I said. When did you go ahead and
19 get -- when did you and your brother go ahead and get those
20 masks?

21 A. When we was in Rock Hill.

22 Q. And you got them at a store?

23 A. Yes, sir.

24 Q. Who went in the store? You and your brother, didn't
25 you?

1 A. Yes, sir. I went in the store.

2 Q. You went in the store. So nobody else went in the
3 store with you?

4 A. No, sir.

5 Q. And the purpose of going in the store was to get masks
6 so that you could rob a store?

7 A. So we could rob a store, not just me.

8 Q. But you are the one that's going in the store.

9 A. Yes, sir.

10 Q. And you bought masks?

11 A. (Shaking head no).

12 Q. Did you steal them?

13 A. Yes, sir.

14 Q. What store was it?

15 A. I don't know.

16 Q. What time of the morning was it?

17 A. I don't know.

18 Q. What did you get?

19 A. Just paid for some gas and the masks.

20 Q. I'm sorry?

21 A. Just paid for the gas and got some masks and some
22 gloves.

23 Q. Well, that's what I'm trying to ask you, what you got.
24 So you went into this store, which you can't identify, by
25 yourself. You went in and got masks and gloves?

1 A. Yes, sir.

2 Q. How many masks did you get?

3 A. One.

4 Q. And how many gloves did you get?

5 A. Two.

6 Q. A set of gloves? Two?

7 A. Yes.

8 Q. When you came out of the store, you put them in the
9 trunk, is that right?

10 A. Yes, sir.

11 Q. Nobody else went in the store with you?

12 A. No, sir.

13 Q. Correct?

14 A. Yes.

15 Q. Now, when the solicitor was asking you questions about
16 that, you just said they were in the car when you got there.
17 So that wasn't -- that wasn't true when you told the jury
18 that, was it?

19 A. That -- the masks was already in the car?

20 Q. Yes, sir.

21 I'll just remind you when the solicitor asked you about
22 the masks, you said when you got in the car, they were
23 already in the car, but now we find out -- the jury is
24 finding out that actually you were the one that went ahead
25 and got the masks. You didn't buy them, but you stole them?

1 A. Yes, sir.

2 Q. Isn't that true?

3 A. Yes, sir.

4 Q. So you didn't tell the jury the truth?

5 A. I didn't think about it right then.

6 Q. You didn't tell the jury the truth?

7 A. Yes, sir.

8 Q. Isn't that true?

9 A. (No response).

10 Q. Isn't that true?

11 A. Yes, sir.

12 Q. Now, when you got to Rock Hill, you didn't say anything
13 about Terrell wanting to rob the Domino's. You said that
14 Ben wanted to rob the Domino's, isn't that true?

15 A. We all wanted to rob Domino's.

16 Q. Well, that's not what you said in here, was it, in that
17 second paragraph, third line?

18 A. That's --

19 Q. Isn't that right?

20 A. Yes, sir.

21 Q. So then you said something about before on your
22 testimony that there was some talk about jacking a Capris,
23 is that right?

24 A. Yes, sir.

25 Q. But you didn't want to do that because you didn't know

1 what they had in the car?

2 A. Yes, sir.

3 Q. If you had known they had something in the car, you
4 would have jacked the car?

5 A. No, I didn't know if they had a gun on them or not.

6 Q. And that's what you were referring to?

7 A. Yes, sir.

8 Q. So we don't want to go ahead and jack a car if somebody
9 has a gun in the car, correct?

10 A. Yes, sir.

11 Q. Now, there is no question in your statement that you
12 gave on October 20th, you said that Terrell got out and went
13 into his house, correct?

14 A. No, sir. He said --

15 Q. He went and got some clothes?

16 A. In this one?

17 Q. And went to get some money?

18 A. In this one?

19 Q. Yes, sir.

20 A. No, sir.

21 Q. Terrell got out and said he would be right back,
22 correct?

23 A. That's when we was going to rob a store.

24 Q. This is in the store?

25 A. Yeah, that's when we was going to rob the store.

1 Q. But -- fine.

2 So that's when he said he would go out -- he would get
3 out and come right back. Is that what you were talking
4 about?

5 A. Yeah.

6 Q. But you did go by his brother's house, or his mother's
7 house?

8 A. No, sir.

9 Q. Did you go there and he told you that he didn't have
10 any money, they didn't have any money, and he couldn't give
11 you any money for the gas?

12 A. No, sir.

13 Q. Well, did you ask him for the money?

14 A. Yes, sir.

15 Q. And didn't he tell you he didn't have it?

16 A. Yeah. Then we come -- we already was talking about
17 robbing, so there wasn't no need.

18 Q. Wasn't no need for what?

19 A. To go to his house and get some money.

20 Q. But isn't it true that you went to his house or an
21 apartment, and you may not remember which one, and for him
22 to go get the money, and when he came out, he told you that
23 he didn't have any money, isn't that true?

24 A. He didn't go into no apartment.

25 Q. Or a house?

1 A. He didn't go in no house.

2 Q. So you don't remember him going to a house or an
3 apartment and telling you he couldn't get any money?

4 A. No, sir.

5 Q. Weren't you mad that he did not have any money?

6 A. Wasn't I mad?

7 Q. Yes. Haven't you told people in the past that you were
8 mad because he didn't get any money when you got to Rock
9 Hill?

10 A. No, sir.

11 Q. Now, you attributed -- you have told the jury that it
12 was actually Ben and Terrell that were talking about robbing
13 the store, is that right?

14 A. Yes, sir.

15 Q. Not you?

16 A. They was supposed to rob that store and --

17 Q. Pardon?

18 A. They were supposed to rob that BP station, and me and
19 my brother were supposed to rob the store on the way back.

20 Q. But my question, though, is according to you, none of
21 this was your idea to rob the BP station?

22 A. Not that store.

23 Q. Okay. But another store?

24 A. Yes, sir.

25 Q. And they -- they. I want to just point out. You keep

1 saying they wanted you and your brother to rob a store on
2 the way home?

3 A. (Shaking head yes).

4 Q. So was it your idea and your brother's idea to rob a
5 store on the way home, or are you saying that Ben and
6 Terrell wanted you to rob a store on the way home?

7 A. We was like if they go in and rob this store, we are
8 going to rob a store when we get back home, on the way back
9 home.

10 Q. Okay. But in your statement didn't you say they?

11 A. They wanted to us rob a store on the way back home.

12 Q. They wanted you to rob a store?

13 A. If they was going to rob that store, they wanted us to
14 rob a store on the way back home.

15 Q. So you are putting it on them the entire time, isn't
16 that true?

17 A. It was all of us.

18 Q. Well, I'm not asking you what you are testifying to
19 now. I'm asking you what you wrote then.

20 A. I didn't put it on them.

21 Q. Well, look in this line here.

22 MR. SWERLING: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. SWERLING:

25 Q. Look on this line up here. You are saying over here

1 that "Ben and Terrell were saying to each other come on and
2 let's do it." That's the BP station, and that they wanted
3 you to rob the store on the way home?

4 A. Yes, sir.

5 Q. So, according to you, this whole plan is going by Ben
6 and Terrell? You and your brother don't have a thing to do
7 with it? Isn't that what you told them that night?

8 A. No, I didn't tell them me and my brother had anything
9 to do with it. I told them it was talking. We was talking.

10 Q. I'm talking --

11 THE COURT: Wait, counsel.

12 MR. SWERLING: Yes, sir.

13 THE COURT: Hold it. Let him finish answering his
14 question. The jury can't hear both of you and he can't
15 record two people at one time.

16 MR. SWERLING: Yes, sir.

17 A. I told them that we was all talking about robbing the
18 store. I told the detective that.

19 BY MR. SWERLING:

20 Q. I'm sorry, I didn't understand you.

21 A. I said I tell them we was talking about robbing, all --
22 we was talking about robbing the store. All of us talking
23 about it.

24 Q. Okay. I understand what you are saying now, but in
25 your statement don't you say it was Ben and Terrell talked

1 about robbing the store?

2 A. That store.

3 Q. Right.

4 And then Ben and Terrell wanted you and your brother to
5 rob a store on the way home?

6 A. Yes.

7 Q. That's what you told them that day?

8 A. Yes, sir.

9 Q. All right. Now, at some point all of the sudden it
10 became you and Terrell going in the store, correct?

11 A. Yes, sir.

12 Q. Ben was not in it any more?

13 A. Ben didn't want to go in there.

14 Q. But you were willing to do it?

15 A. Yes, sir.

16 Q. And, of course, you were not directing Terrell to do
17 it?

18 A. No, sir.

19 Q. You weren't mad at Terrell about not having any money
20 for gas?

21 A. No.

22 Q. Or giving you the money for the ride home?

23 A. No, sir.

24 Q. And what about the second sentence or third sentence
25 there? Didn't you tell the police that night that "I was

1 mad because Terrell had got us all the way down there and
2 lied to us about getting the money for the ride"?

3 A. That's what it say.

4 Q. Well, isn't that what you did? Isn't that what you
5 told them?

6 A. Yes, sir.

7 Q. That's your signature on that page, isn't it?

8 A. Yes, sir.

9 Q. One of those pages?

10 A. That ain't my signature on that page.

11 Q. On one of those pages of this statement? Is that your
12 signature?

13 A. That's my signature right there.

14 Q. Okay. So that day, on October 20th, you told them that
15 you were mad that Terrell had gotten you down there and lied
16 to you about getting the money for the ride, correct?

17 A. Yes, sir.

18 Q. So my question now is this. How did you know that he
19 lied to you about getting the money for the ride if you
20 didn't go by his house?

21 A. We went by his house. He said when we was going down
22 there he started talking about robbing the store. I was --
23 I was already mad because I didn't want -- I wasn't staying
24 home, but then again I wanted to go, because I knew there
25 wasn't nothing else to do.

1 Q. Okay. I'm not sure I understood. I asked you a
2 question is how would you be mad that he didn't -- he lied
3 to you about getting the money for the ride if you didn't
4 ask him for the money when he went to either the house or
5 the apartment and didn't have any?

6 A. Well, he said he wasn't going to get it.

7 Q. He just said he wasn't going to go get it?

8 A. Yeah, he wasn't going to his house.

9 Q. So you got mad?

10 A. Yes.

11 Q. You agree you got mad?

12 A. I wasn't mad.

13 Q. That's what you said.

14 A. That's what that says, but I wasn't mad.

15 Q. Did you tell the police that you got mad?

16 A. Yes, sir.

17 Q. Which is more accurate, what you said two years ago or
18 now?

19 A. Two years ago. You say which is more accurate?

20 Q. Yeah.

21 A. About this right here?

22 Q. Which is more accurate, that what you said here two
23 years ago to the police or what you are telling the jury
24 now?

25 A. What I'm telling the jury now.

1 Q. So this was not -- this was a lie?

2 A. Yes, sir, some of it.

3 Q. Was that a lie that you were mad because Terrell had
4 gotten you all the way down there and lied to us about
5 getting the money for the ride? Was that a lie?

6 A. Yes, sir.

7 Q. You lied to the police about that?

8 A. Yes, sir.

9 Q. Is that right?

10 A. Yes, sir.

11 Q. Okay. Now, you said "Ben had a .380 and got it out of
12 the trunk and handed it to me. Terrell had a .38 and he
13 took the .38 in the store."

14 A. Yes, sir.

15 Q. That's what you said.

16 Now, let me ask you something, Mr. Mack. When you
17 looked at that video and when you were in that store,
18 Terrell Addison does not have a .38 in his hand, isn't that
19 true?

20 A. He did have a gun in his hand.

21 Q. It's on that video?

22 A. I don't know if you can see it, but I know he had a
23 gun.

24 Q. Okay. Well, let's -- you said the video was accurate,
25 is that right?

1 A. Yeah, it's accurate.

2 Q. And if the video does not show that he had a gun in his
3 hand, you would agree that he does not have a gun in his
4 hand?

5 A. He wasn't pointing the gun at the man. I was pointing
6 the gun at the man.

7 Q. Well, we know that.

8 A. Yeah, he had the gun in his hand.

9 Q. Okay. And that would be shown -- that's what I'm
10 saying is if it's on -- if you are saying the gun was in his
11 hand, it would be on the video --

12 A. Yes.

13 Q. -- is that correct?

14 A. Yes, sir.

15 Q. And if the video does not show him having a gun in his
16 hand, then you are not telling the truth again, isn't that
17 true?

18 A. No, sir.

19 Q. Well, if the video doesn't show he had a gun in his
20 hand, then he didn't have a gun in his hand.

21 A. I know he had a gun, because when we went to the store
22 he had a gun in his hand and I had a gun in my hand.

23 Q. Well, somebody gave him a gun?

24 A. No, that was his own gun.

25 Q. You or your brother gave him that .38 and told him to

1 go in the store, didn't you?

2 A. That was his own gun.

3 Q. Didn't you and your brother threaten him that if he
4 didn't go in the store, because he hadn't gotten you the
5 money, that you and your brother were going to hurt him?

6 A. No, sir.

7 Q. You did not coerce him or force him to go in the store
8 because of this money issue?

9 A. Nobody forced him to go in there.

10 Q. And you are denying that you or your brother handed him
11 that .38?

12 A. Yes, sir.

13 Q. And told him to go in the store?

14 A. Yes, sir.

15 Q. Now, you said that -- told the police that night that
16 "we were just supposed to get the money." You weren't in
17 your right mind.

18 A. (Shaking head yes).

19 Q. Now, what does that mean you weren't in your right
20 mind? You were are drugs?

21 A. Yes, sir.

22 Q. You didn't tell the solicitor that when he was asking
23 you questions. What had you taken that night?

24 A. I was smoking marijuana.

25 Q. Well, you were doing more than that. You told them

1 about some Ecstasy?

2 A. Yes, sir.

3 Q. Well, do I have to ask you every question, or when I
4 ask you a question, are you going to give the full
5 information?

6 A. Yeah, I was on Ecstasy and marijuana.

7 Q. So that's what you meant by that you were not in your
8 right mind that night?

9 A. Yes, sir.

10 Q. And you are used to those kinds of drugs, correct?

11 A. Yes, sir.

12 Q. Now, in the next -- the third paragraph, you look in
13 there and it says you told the man to go get the money,
14 correct?

15 A. Yes, sir.

16 Q. Terrell didn't tell the man to get the money, did he?

17 A. No, sir.

18 Q. And then you say you took him to the counter?

19 A. Yes, sir.

20 Q. Terrell didn't take him to the counter?

21 A. Yes, sir.

22 Q. Isn't that true?

23 A. (Shaking head yes).

24 Q. Now, here you say "I think maybe Terrell and I may have
25 swapped guns, but when we got to the store I had the .380

1 and he had the .38."

2 A. We didn't swap guns.

3 Q. Well, that's what you said here, didn't you, that "I
4 think we may have swapped guns because --

5 A. We may have. I think we may have, but we didn't swap
6 guns.

7 Q. "I had the .380 and he had the .38."

8 A. I did have the .380.

9 Q. Okay. That's -- I'm asking you what you told the
10 police that night.

11 A. Yes, sir.

12 Q. Correct?

13 A. (Shaking head yes).

14 Q. So if it was Terrell's .38, then why would you have to
15 swap guns?

16 A. No. You see, I was -- I said I think we may have
17 swapped guns. He got the .380 and I got the .38, but I had
18 the .380 and he had the .38. That was his gun.

19 Q. Well, I understand that.

20 A. We didn't swap guns.

21 Q. I understand, but you just said now that you thought
22 that you had the .38 and he had the .380.

23 A. No, that's what I was saying when I said I think we
24 swapped guns.

25 Q. Okay. Well, if you think that you swapped guns, so

1 that leaves open the possibility that you did swap guns?

2 A. We didn't swap guns.

3 Q. Okay. But that's what you put in here to the police?

4 A. Yes, sir.

5 Q. You told them that you may have swapped guns?

6 A. Yes, sir.

7 Q. Now, let me ask you this. Well, the problem with that
8 is that if you did swap guns and you gave him -- he gave you
9 the .38 and you gave him the .380, or vice versa, that
10 wouldn't make any sense, would it?

11 A. No, sir.

12 Q. Because you are saying the .38 was his gun?

13 A. Yes, sir.

14 Q. So if you swapped it, that means that you had it and
15 you gave it to him.

16 A. Yes, sir.

17 Q. If you accept what's in here, correct?

18 A. Yes, sir.

19 Q. And that wouldn't be true, right?

20 A. We didn't swap guns.

21 Q. I understand that, but you did tell the police that you
22 did?

23 A. I didn't say we did.

24 Q. Didn't you say --

25 A. I think we may have, but I didn't say we did.

1 Q. Mr. Mack, you said "I think maybe Terrell and I may
2 have swapped guns, but when we got to the store, I had the
3 .380 and he had the .38."

4 A. I ain't never said we did swap guns.

5 Q. I didn't say that you did.

6 What I'm asking you here is the reason that that
7 wouldn't make any sense is because you are saying Terrell
8 had the .38, isn't that true?

9 A. He did have the .38.

10 Q. Okay. Now, the next paragraph you told -- it says that
11 you told Terrell to go grab the money -- the man, I'm sorry?

12 A. Yeah.

13 Q. It says "I told Terrell to grab the man."

14 Terrell hadn't said a word so far, according to this
15 statement, correct?

16 A. Yes, sir, I told him to grab the man while I go get the
17 money.

18 Q. Right.

19 You were doing all the instructing, isn't that true?

20 A. He was just standing there just watching.

21 Q. That's my point. You were doing all the instructing,
22 correct?

23 A. In the store? Yeah.

24 Q. You were doing all the instructing?

25 A. In the store, yeah.

1 Q. Yes, sir.

2 You took Mr. Marshall to the cash register. You told
3 Terrell to grab him, but he didn't grab him, did he?

4 A. No, sir.

5 Q. All the action in the store and all the direction, all
6 the words were yours, isn't that true?

7 A. Yes, sir.

8 Q. And you said that "Terrell was just standing there
9 watching me."

10 A. Yes, sir.

11 Q. Isn't that true?

12 A. Yes, sir.

13 Q. Terrell didn't do anything in that store, did he?

14 A. No, sir.

15 Q. You were the one that did the whole thing?

16 A. Yes, sir.

17 Q. Correct?

18 A. Yes, sir.

19 Q. You were the one that did the robbery, correct?

20 A. Yes, sir.

21 Q. You were the one that went behind the register,
22 correct?

23 A. Yes, sir.

24 Q. You were the one that saw the money, correct?

25 A. Yes, sir.

1 Q. Terrell was just standing there watching?

2 A. Yes, sir.

3 Q. Correct?

4 A. Yes, sir.

5 Q. In fact, Mr. Marshall said to you "let me get the
6 money," and you said no, because you had enough knowledge
7 that you knew that if he took the money, there was a way for
8 him to set off the alarm, isn't that true?

9 A. Yes, sir.

10 Q. Terrell -- that wasn't Terrell that said that, or did
11 that, correct?

12 A. Yes, sir.

13 Q. You said there was just change down there, there were
14 no bills. That's what you observed, not Terrell, correct?

15 A. Yes, sir.

16 Q. That's when you heard a pop and he shot you going out
17 the door. You felt it in your back --

18 A. Yes, sir.

19 Q. -- correct?

20 A. Yes, sir.

21 Q. Now, Terrell, according to that video, he's already out
22 the door. He's leaving the store already, isn't that true?

23 A. Yes, sir.

24 Q. And he took off ahead of you, didn't he?

25 A. Yes, sir.

1 Q. And he was out the store by the time that you got out
2 the store, isn't that true?

3 A. (No response).

4 Q. Isn't that true?

5 A. Yes, sir, he was at the door.

6 Q. Pardon?

7 A. Yes, sir.

8 Q. He got out the door and he was ahead of you, isn't that
9 true?

10 A. Yes, sir.

11 Q. He was running, correct?

12 A. We was -- we got -- we left together. When he went
13 out, he was right there. As soon as I go out the store and
14 he was right there, so both of us just left together and we
15 was arguing with each other.

16 Q. But he was ahead of you?

17 A. Yes, sir.

18 Q. Okay.

19 MR. SWERLING: Your Honor, could we just run that
20 clip again, briefly?

21 THE COURT: Yes.

22 MR. SWERLING: I'm nearing the end of my --

23 THE COURT: Yes, sir.

24 MR. SWERLING: -- cross-examination.

25 (Whereupon, the videotape was played).

1 MR. SWERLING: Stop right there.

2 BY MR. SWERLING:

3 Q. Mr. Mack, that was you coming in the store. We all
4 agree with that, is that right?

5 A. Yes, sir.

6 Q. Is that right?

7 A. Yes, sir.

8 MR. SWERLING: And stop there, if you could.

9 BY MR. SWERLING:

10 Q. That's you taking Mr. Marshall behind the counter,
11 correct?

12 A. Yes, sir.

13 Q. At gunpoint, correct?

14 A. Yes, sir.

15 Q. We don't see Mr. Addison yet, do we?

16 A. No, sir.

17 Q. All right. So you are going behind the counter in that
18 photo, right?

19 A. Yes, sir.

20 Q. Okay.

21 MR. SWERLING: Now, stop it there.

22 BY MR. SWERLING:

23 Q. You are behind the cash register at that point with Mr.
24 Marshall, aren't you?

25 A. Yes, sir.

1 Q. Still don't see Mr. Addison?

2 A. He was right there at the door. I was telling him to
3 come grab him. That's when I was telling him to come grab
4 him.

5 Q. And, again, you are the one that told him to grab him?

6 A. Yes, sir.

7 Q. That's -- now, that's Mr. Addison?

8 A. Yes, sir.

9 Q. Okay. Do you see anything in his hand there?

10 A. Not in his left hand.

11 MR. SWERLING: Keep going.

12 BY MR. SWERLING:

13 Q. Do you see anything in the right hand?

14 A. I can't even barely see it.

15 Q. Okay. Now, he's just standing there, right?

16 A. Yes, sir.

17 Q. He is not doing anything?

18 A. He's telling me to hurry up.

19 Q. Well, you just said before when I asked you if he had
20 said anything and you said no.

21 A. You said -- asked me did he give any orders in there.
22 I was like no. He said "come on. Come on."

23 Q. He was saying "come on. Come on." You just forgot
24 that before, is that right?

25 A. He was right there talking to me.

1 Q. All right. Go ahead.

2 Do you see his right hand?

3 A. Yes, sir.

4 Q. There is nothing in it.

5 THE COURT: Counsel, are you going to testify --

6 MR. SWERLING: No, sir.

7 THE COURT: -- or are you going to ask him a
8 question?

9 MR. SWERLING: All right.

10 BY MR. SWERLING:

11 Q. Is there anything in that right hand?

12 A. (No response)

13 Q. All right.

14 MR. SWERLING: Keep going. That's all right.

15 Now, can we stop right there?

16 BY MR. SWERLING:

17 Q. Who is leaving the store?

18 A. Terrell.

19 Q. You're not even out behind the counter yet when Terrell
20 was already leaving the store, isn't that true?

21 A. Yes, sir.

22 Q. And you are starting to go out the door?

23 A. Yes.

24 Q. Now, right there you --

25 MR. SWERLING: Can you back that up just one

1 second?

2 BY MR. SWERLING:

3 Q. Just watch. When you leave the door, isn't he ahead of
4 you?

5 A. We was right there together. We were right beside each
6 other.

7 MR. SWERLING: You can turn the light on.

8 (Whereupon, the videotape was stopped)

9 BY MR. SWERLING:

10 Q. Mr. Marshall, you knew --

11 I'm sorry, Mr. Mack, you knew that Mr. Marshall had
12 been shot, isn't that true?

13 A. You say I knew what?

14 Q. You knew that Mr. Marshall had been shot?

15 A. When I was leaving out?

16 Q. Yes, sir.

17 A. Yes, sir.

18 Q. And in your statement you said that you had told the
19 police when you got to Hartsville, that you had gotten shot
20 in Farmington. That's when you were at the hospital,
21 correct?

22 A. Yes, sir.

23 Q. And here is where you say that you were taking some
24 Ecstasy pills that night, correct?

25 A. Yes, sir.

1 Q. And you said here that if you hadn't taken those pills,
2 the whole night might have been different. Isn't that what
3 you said?

4 A. Yes, sir:

5 MR. SWERLING: Court's indulgence for just one
6 moment.

7 THE COURT: Yes, sir.

8 (Off the record)

9 (Back on the record)

10 MR. SWERLING: That's all I have, judge. Thank
11 you.

12 THE COURT: Counsel, approach just a minute, if
13 you will.

14 (Whereupon, the lawyers approached the bench for
15 an off-the-record discussion)

16 MR. SNOW: I have a few questions of the witness.

17 THE COURT: Yes, sir.

18 MR. SNOW: I would certainly try to be mindful
19 that the jury hadn't gone to lunch yet. My colleague
20 covered most of the questions that I wanted to ask of Mr.
21 Mack.

22 CROSS EXAMINATION BY MR. SNOW:

23 Q. Mr. Mack, just to be straight, you have been charged
24 and you have been convicted of murder?

25 A. Yes, sir.

1 Q. And you are the person that shot the gentleman, Mr.
2 Marshall?

3 A. Yes, sir.

4 Q. Shot and killed him?

5 A. Yes, sir.

6 Q. And how long have you been in custody on this charge?

7 A. About two and a half years.

8 Q. Two and a half years.

9 And your sentence is life?

10 A. Yes, sir.

11 Q. Life without parole?

12 A. (Shaking head yes).

13 Q. And that's a long time, isn't it?

14 A. Yes, sir.

15 Q. And you have had a lot of time to think about this case
16 and your life, haven't you?

17 A. Yes, sir.

18 Q. And you're not happy with it, are you?

19 A. No.

20 Q. In fact, you are pretty miserable?

21 A. No, I ain't miserable.

22 Q. But you're not happy spending your life in prison?

23 A. Yeah, I ain't happy.

24 Q. But you're not miserable, but you're not happy.

25 A. No, I ain't miserable.

1 Q. Now, let's talk about a few things.

2 You admitted that -- you admitted that you had -- you
3 possessed guns before?

4 A. Yes, sir.

5 Q. That means that you had guns before October 10th, 2006?

6 A. Yes, sir.

7 Q. And you fired guns before?

8 A. Yes, sir.

9 Q. So you don't need anyone to show you how to fire a gun,
10 do you?

11 A. No, sir.

12 Q. In fact, you don't want anybody to give you a gun,
13 because you possess guns?

14 A. Yeah.

15 Q. Now, you have also admitted that you have been
16 convicted of a violent crime?

17 A. Yes, sir.

18 Q. Correct?

19 A. Yes.

20 Q. You have admitted that you and your brother acted
21 together in a violent crime?

22 A. Only once and this.

23 Q. Okay. Mr. Mack, do you remember talking to police
24 officers in Hartsville on or about October 10th, 2006, as it
25 relates to this case or you being shot?

1 A. Yes.

2 Q. And you -- you were interviewed by a police officer
3 while you were in the hospital, and I'm not sure whether you
4 remember her name, but her name was April Cooke. Do you
5 remember her?

6 A. I remember it, but I don't remember her name.

7 Q. Now, she came to speak with you about being shot. Was
8 she nice to you?

9 A. Yeah. She wasn't really --

10 Q. She wasn't mean to you?

11 A. Yeah.

12 Q. And she didn't force you to give a statement?

13 A. No.

14 Q. And she asked you about the incident being shot?

15 A. Yes.

16 Q. And she asked you to just tell her the truth?

17 A. Yes.

18 Q. And she wanted to know what happened, right?

19 A. Yes.

20 Q. But instead of telling her the truth, you told her some
21 lies that you and your brother had concocted, correct?

22 A. Yes, sir. All -- yeah.

23 Q. Well, just let me ask you now. Tell me if you don't
24 remember. I'm going to ask you some questions.

25 Now, you told her that you had been shot by some

1 gentlemen, people in a vehicle, right?

2 A. Yes, sir.

3 Q. That's how you explained to her you got shot.

4 Now, did you tell her that you were -- that the driver
5 of the car was a pale light skinned black male?

6 A. No, I don't remember.

7 Q. You don't remember telling her that?

8 A. No.

9 Q. Did you remember telling her anything about the driver
10 of the vehicle?

11 A. No, I just told her the vehicle. I remember telling
12 the vehicle.

13 Q. Okay. Did you tell her anything about this gentleman
14 wearing a scarf?

15 A. I don't remember.

16 Q. You don't remember that?

17 A. No.

18 Q. But do you remember telling her a story that you made
19 up?

20 A. I just remember telling her I was shot in the drive-by
21 shooting.

22 Q. So you don't remember any of the details that you told
23 her?

24 A. No, sir.

25 Q. Okay. Well -- but you would admit that what you told

1 her wasn't the truth?

2 A. Yes, sir.

3 Q. And you knew that as a result of you telling them this,
4 they would go out and look and investigate this, correct?

5 A. Yes.

6 Q. Right.

7 So you knew that you were causing the police department
8 in Hartsville to waste time, right?

9 A. I didn't thought they was going to look any further.

10 Q. So you didn't know that they were going to send police
11 officers out to investigate you being shot?

12 A. Yes.

13 Q. You didn't know they were going to send police officers
14 to the scene to investigate, spend their time looking?

15 A. Yeah, I knew they was going to do that.

16 Q. And you didn't care, did you?

17 A. No.

18 Q. You didn't care that these police officers could be on
19 the street doing their job, but instead they were out
20 following up on this concocted story that you had made,
21 correct?

22 A. Yes.

23 Q. Okay. You didn't care that they were looking for other
24 people that had allegedly shot you? You didn't care about
25 that, did you?

1 A. No.

2 Q. You didn't care that possibly they could have stopped
3 innocent people, taken them into custody and questioned them
4 because of what you said? You didn't care about that, did
5 you?

6 A. I wasn't thinking about that.

7 Q. But the question is, did you care?

8 A. I wasn't thinking about it.

9 Q. Okay. You didn't think.

10 You didn't think that this would cause anybody some
11 inconvenience, right?

12 A. No.

13 Q. You didn't think that they would go out and talk with
14 the people in the community and waste their time? You
15 didn't think about that, did you?

16 A. No, sir.

17 Q. And you didn't care, did you?

18 A. I didn't think about it, so it wasn't on my mind.

19 Q. Does that mean you didn't care?

20 A. That don't mean I didn't care. That means it wasn't on
21 my mind.

22 Q. You didn't think enough to care about it?

23 THE COURT: Counsel, you are getting
24 argumentative. Let's move on.

25 BY MR. SNOW:

1 Q. So, is it fair to say that the only thing you care
2 about is yourself and your brother?

3 A. I care about a lot. I care about more than that.

4 Q. Okay. Well, did you ever bother to tell the police?
5 Let's see, you made a statement. I think Mr. Swerling went
6 over that pretty well, but let me ask you this. The
7 statement that -- do you remember giving a statement to the
8 police on October 28th of 2006?

9 A. Yes.

10 Q. Right.

11 Now, this was, what, ten days after the incident?

12 A. Yes, sir.

13 Q. Right?

14 A. Yes.

15 Q. Before that you didn't bother to even call the police
16 and say "look, don't waste your time, this is what really
17 happened"?

18 A. I wasn't going to -- no, I wasn't going to call the
19 police and say that.

20 Q. But you didn't happen to mention -- you didn't say
21 anything else to them before you had been arrested on these
22 charges, right?

23 A. No, I didn't say nothing else to them.

24 Q. Right.

25 And then that's when you decided to concoct another

1 story, right?

2 A. What really happened.

3 Q. What really happened.

4 Before that you never mentioned anything about anybody
5 else. You didn't mention Mr. Stewart was involved with
6 this. You didn't mention anything about Mr. Addison, did
7 you?

8 A. Talking about to the Hartsville police, right?

9 Q. Right.

10 A. No, I didn't.

11 Q. And --

12 A. No, I wasn't going to mention -- I didn't mention their
13 names.

14 Q. You didn't bother to mention it?

15 A. No.

16 Q. And, in fact, you didn't say anything about anybody
17 giving you any guns --

18 A. No.

19 Q. -- before -- let me finish my question. Before October
20 20th, did you?

21 A. No, sir.

22 Q. And you were in custody?

23 A. I wasn't -- I wasn't even going to tell the Hartsville
24 police department, because I didn't think they would look
25 into it any farther than what they did.

1 Q. Right.

2 But, even when you told them your original story, you
3 didn't mention anything about Mr. Stewart or Mr. Addison,
4 right?

5 A. Who? The Hartsville Police Department?

6 Q. Right.

7 A. I ain't never tell them about this right here.

8 Q. Exactly.

9 What I'm saying is you didn't even mention anybody
10 else's name except you and your brother?

11 A. I didn't never mention my brother's name, is what I'm
12 saying. I just said I got shot out there in Farmington.

13 Q. Okay. So if someone testified that you mentioned
14 something about your brother, would they be lying?

15 A. No.

16 Q. So they would be telling the truth then?

17 A. He went to the hospital with me, him -- me and him and
18 Terrell.

19 Q. And you told the police officer that you and your
20 brother were walking that night, early that morning, and
21 someone came by and shot at you?

22 A. I didn't really want to told them, but I know I told
23 them I got shot in a drive-by shooting.

24 Q. You don't remember because you were lying?

25 A. Yeah.

1 Q. So you admit that you tell lies?

2 A. Yes.

3 Q. Now, let me ask you a few more questions.

4 Relative to your original story that you told the
5 police in Hartsville, would it be fair to say that you told
6 them more than one lie about that night?

7 A. I don't think so.

8 Q. You just told them one lie?

9 A. I think so.

10 Q. Well, did you ever tell them about any guys shooting
11 you?

12 A. Yeah, I just say some guys in the car.

13 Q. You described the car to them, didn't you?

14 A. I just said it was a white car.

15 Q. Uh-huh.

16 And you even went into detail in what they were
17 wearing?

18 A. I don't even -- I just know I said it was a white car.

19 Q. Do you remember telling them anything about a gun, what
20 kind of guns they had?

21 A. No.

22 Q. And you told them about the location, didn't you?

23 A. Yes.

24 Q. Where was it?

25 A. The police told me what kind of gun it might be was.

1 Q. But you told them where the location allegedly was?

2 A. Yes.

3 Q. So it's fair to say you told them more than one lie on
4 that night, or that morning or that night?

5 A. Yes.

6 Q. Now, if you recall, would it be fair to say that you
7 probably told them about thirty lies that night?

8 A. I don't know.

9 Q. Mistruths, even some half-truths?

10 A. I don't know.

11 Q. You don't know.

12 A. I know -- I know I was telling them that I got shot at
13 Farmington in a drive-by shooting. I do know that.

14 Q. The only thing that you were concerned about is
15 yourself that night?

16 A. And everybody else. You could say what really happened
17 that night, everybody would have been locked up that night.

18 Q. Now, you testified that -- you haven't known Mr.
19 Stewart that well, do you? You don't know him that well.

20 A. No.

21 Q. And you haven't known him just as long as you have
22 known him sister, right?

23 A. No.

24 Q. Right.

25 But you testified earlier that you knew him as well as

1 you know his sister?

2 A. Through his sister.

3 Q. Okay. But you don't know him well at all, do you?

4 A. No.

5 Q. In fact, you knew that Ben had a fight with your
6 brother, don't you?

7 A. (Shaking head no).

8 Q. And you knew that he put a thumping on your brother?

9 A. I don't remember that.

10 Q. You don't remember that.

11 So your brother didn't tell you that?

12 A. No.

13 Q. Your brother didn't tell you that Ben had a fight with
14 him and beat him up?

15 A. When?

16 Q. I don't know when he told you. When did he tell?

17 A. I said when did they have a fight? I don't know.

18 Q. You didn't see a knot on your brother's head?

19 A. No, my brother ain't going to tell -- my brother, if he
20 fights somebody, he will tell me. I don't think him and Ben
21 fight.

22 Q. But aren't you trying to protect your brother?

23 A. How am I going to try to protect my brother?

24 Q. Aren't you here today to make sure to -- because your
25 brother is in trouble and you are trying to make sure he

1 gets a lesser sentence of some sort?

2 A. No. I ain't -- it's the fact that we ain't trying to
3 make nobody do nothing.

4 Q. The question is, aren't you here today because you are
5 testifying on behalf of your brother?

6 A. Yes.

7 Q. Right.

8 That's your little brother?

9 A. Yes.

10 Q. You're the big brother?

11 A. Yes.

12 Q. And you would protect your little brother, wouldn't
13 you?

14 A. Yeah.

15 Q. And you would do anything to protect him?

16 A. Yeah.

17 Q. And you know that if you testify here for the State and
18 you do a good job, they will take that into consideration,
19 right?

20 A. Yes.

21 Q. So if you knew your little brother got a thumping from
22 somebody, that would make you unhappy, wouldn't it?

23 A. Well, my brother -- my brother can handle his own, so I
24 ain't worried about that.

25 Q. He can handle his own?

1 A. Yeah.

2 Q. That wouldn't want to make you get back at somebody?

3 A. No.

4 Q. Your brother is facing a lot of time and you know that,
5 correct?

6 A. (No response).

7 Q. Answer the question.

8 A. I know what his plea bargain was.

9 Q. And what's that?

10 A. I think it's 15 years.

11 Q. That's not a lot of time?

12 A. Not compared to what I got. No, it ain't a lot of
13 time.

14 Q. But you don't want your brother to spend any time in
15 jail, do you?

16 A. I already know he's going to do some time.

17 Q. The question is you don't want your brother to spend
18 any time in jail, do you?

19 A. If I -- no, I wouldn't want him to, but --

20 Q. That's a yes?

21 A. I wouldn't want him to spend no time, but I already
22 know it's going to happen anyway.

23 Q. And you would do whatever you can to make sure he gets
24 a lesser penalty, right?

25 A. Yes.

1 Q. Including coming here today and telling your story?

2 A. It ain't no story.

3 Q. And on October 10th, 2006, you tried to play the
4 Hartsville Police Department, correct?

5 A. Yes.

6 Q. All right. Just like you are here today trying to play
7 this jury?

8 A. I ain't trying to play them.

9 MR. SNOW: No further questions.

10 MR. THOMPSON: Briefly, Your Honor.

11 THE COURT: Yes, sir.

12 MR. THOMPSON: If it please the court.

13 REDIRECT EXAMINATION BY MR. THOMPSON:

14 Q. Mr. Mack, have I ever sat down and talked with you any
15 day other than today?

16 A. No, sir.

17 Q. About how long did I talk to you before you came into
18 this courtroom?

19 A. No, sir, not long.

20 MR. SWERLING: Judge, that's not in response to
21 anything that's on cross-examination.

22 THE COURT: Overruled. Questions were asked about
23 negotiations and why he was here. I would allow it.

24 Go ahead.

25 BY MR. THOMPSON:

1 Q. And you understand that you are doing life without
2 parole, correct?

3 A. Yes, sir.

4 Q. And that will never change for you, will it?

5 A. No, sir.

6 Q. As a matter of fact, I believe that you talked to your
7 attorney before testifying today?

8 A. Yes, sir.

9 Q. Did he advise you what effect this would have on your
10 appeal?

11 A. Yes, sir.

12 Q. What did he tell you?

13 A. That they can use it against me.

14 MR. SWERLING: Objection, Your Honor. That would
15 be hearsay.

16 MR. THOMPSON: Your Honor, it goes to show what he
17 thinks can happen with his appeal.

18 THE COURT: I'll allow it. Go ahead.

19 A. They can use it -- it could be used against me if I was
20 to get my case overturned.

21 BY MR. THOMPSON:

22 Q. Is that your testimony today, it could be used against
23 you if you have your case overturned?

24 A. Yes.

25 Q. Now, Mr. Swerling mentioned a letter that you had sent

1 to me. That letter you sent before you pled guilty, didn't
2 you?

3 A. Yes, sir.

4 Q. And in that letter, you tell me, were you trying to get
5 these other guys in trouble, or were you trying to get
6 yourself out of trouble?

7 A. Trying to get myself out of trouble.

8 Q. And it didn't work, did it?

9 A. No.

10 Q. Now, Mr. Swerling was going over the statement that you
11 had given to the police back on October 20th, 2006, is that
12 correct?

13 A. Yes.

14 MR. THOMPSON: Your Honor, I have marked this as
15 State's Exhibit No. 3. I would ask the defendant to
16 identify this.

17 BY MR. THOMPSON:

18 Q. Is that the statement?

19 A. Yes.

20 Q. Is that the original, I believe?

21 A. Yes, sir.

22 MR. THOMPSON: Your Honor, I would ask to enter
23 this into evidence under the rule of completeness. They
24 have been cross-examining thoroughly on it. I ask that they
25 receive the whole thing.

1 MR. SWERLING: Judge, I would object to the
2 statement itself coming in. The rule of completeness
3 applies for him being able to ask questions to put my
4 questions in context. The statement itself is not
5 admissible.

6 THE COURT: I agree. I think you can ask him
7 about anything else that's in the statement under the rule
8 of completeness, but not be admitted into evidence under the
9 completeness rule.

10 MR. BRACKETT: May we approach?

11 THE COURT: Yes, sir, approach.

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion)

14 THE COURT: I'm going to admit the statement over
15 objection of counsel pursuant to Rule 802(b)(1)(b) as a
16 prior consistent statement. I'm going to allow it in.

17 BY MR. THOMPSON:

18 Q. State's Exhibit No. 3, Mr. Mack, if you will look at
19 that. Look at the back page and tell me what day was it
20 that you gave that statement to the police?

21 A. October 20th.

22 Q. October 20th. Was that 2006?

23 A. 2006.

24 Q. All right. Now, were you arrested right away after the
25 robbery happened?

1 A. No, sir.

2 Q. How long after the robbery before you became arrested?

3 A. About four days.

4 Q. All right. Were you actually arrested for the robbery
5 at that time, or something else?

6 A. Something else.

7 Q. All right. And so you weren't arrested for this
8 robbery at the time the statement was given, were you?

9 A. No.

10 Q. Was this the first time that anyone from the police had
11 asked you about the robbery and shooting at the BP?

12 A. When I was in -- when I was in Hartsville?

13 Q. When you gave this statement, is that the first time
14 anyone asked you about this robbery -- anyone from the
15 police asked you about the robbery and shooting at the BP?

16 A. Yes, sir.

17 Q. So in the first interview you had with the Rock Hill
18 Police Department is this day, on the 20th?

19 A. Yes, sir.

20 Q. And then you give this statement to them at that time,
21 correct?

22 A. Yes, sir.

23 Q. Did the police go into as much detail in the statement
24 as Mr. Swerling went in with you?

25 A. No, sir.

1 Q. Did they just pretty much ask you to tell --

2 MR. SWERLING: Objection, Your Honor. That's
3 leading.

4 THE COURT: Please avoid leading, solicitor.

5 BY MR. THOMPSON:

6 Q. How did the interview go? Did they ask you specific
7 questions, or did they ask you open-ended questions? How
8 did it go?

9 A. They just told me "tell me what happened."

10 Q. And you just told them what happened?

11 A. Yes.

12 Q. Did anyone promise to help you, or your brother, or
13 anybody, if you gave a statement?

14 A. No, sir.

15 Q. And at the beginning of that statement did they read
16 your Miranda Rights to you?

17 A. Yes, sir.

18 Q. And did you waive your right to talk to them?

19 A. Yes, sir.

20 MR. THOMPSON: Thank you. I have no further
21 questions.

22 MR. SWERLING: One.

23 THE COURT: Briefly, yes, sir.

24 RECROSS EXAMINATION BY MR. SWERLING:

25 Q. Mr. Mack, I just wanted to ask you something.

1 The solicitor just asked you a question about whether
2 or not anybody promised you anything. As your testimony
3 under cross-examination was that the captain over at the
4 Rock Hill Police Department promised you that you wouldn't
5 get charged because it was self-defense?

6 A. He said it was a self-defense charge. He said "you
7 ain't going to get charged with murder." So he -- he said
8 "it's not a murder charge." He said "it's a self-defense
9 charge." So I thought -- I didn't even know I was going to
10 get charged with murder. He ain't never said I was or I
11 wasn't. He just say he was going to try to talk -- he was
12 going to tell the solicitor I cooperated and gave a
13 statement. That's all he said.

14 Q. But you in your letter said that he told you that you
15 were not going to get charged, your brother was going to get
16 bond, and you used the exact words "he lied".

17 A. Yes, sir.

18 Q. Isn't that what you told in that letter?

19 A. Yes, sir.

20 Q. That he lied.

21 So you did give that statement with some inducement?
22 You did give that statement, because you were told that you
23 weren't going to get charged with murder, isn't that true?

24 A. Yes, sir.

25 MR. SWERLING: That's all I have, Your Honor.

1 Thank you.

2 MR. SNOW: A couple more, judge.

3 THE COURT: Okay.

4 MR. SNOW: May I approach, judge?

5 THE COURT: Yes, sir.

6 MR. SNOW: I'm going to ask that this be marked
7 for identification purposes.

8 THE COURT: Yes, sir.

9 (Dontavious Mack Letter marked as Defendant
10 Stewart Exhibit No. 1 for identification)

11 MR. SNOW: Judge, may I approach the witness?

12 THE COURT: Yes, sir.

13 RECROSS EXAMINATION BY MR. SNOW:

14 Q. Mr. Mack, is that your signature on the bottom of that
15 page?

16 A. Yes.

17 Q. It's your signature.

18 And that's -- the date on the top of that page is
19 October 20th, correct?

20 A. Yes.

21 Q. And that's the date that you were -- you had given your
22 story to the police about that Mr. Solicitor just passed up
23 to you, correct?

24 A. Yes.

25 Q. Introduced into the record?

1 A. Yes, sir.

2 Q. The same day.

3 And you were interviewed with the police?

4 A. Yes, sir.

5 Q. Right.

6 And you asked -- according to this letter that you
7 signed, you asked the presiding judge not to -- I'll just
8 read it for you, if I may?

9 THE COURT: Yes, sir.

10 Well, it hadn't been admitted yet, so I don't
11 think you better read it.

12 BY MR. SNOW:

13 Q. Well, I won't read it, but in this you told the
14 judge -- this letter is addressed to the municipal judge,
15 correct?

16 A. Yes, sir.

17 Q. And in this letter you indicated that you were
18 cooperating in working with the police, right?

19 A. Yes. In this it says, yes, sir.

20 Q. You said that you were. So you asked them not -- and
21 this is the judge that decides the bond, correct?

22 A. Yes.

23 Q. And, in fact, you asked the judge not to even set a
24 bond hearing because you were working with the police?

25 A. No. He asked me do I want a judge present at the bond

1 hearing and I told him no.

2 Q. Okay. And you asked him not to appoint an attorney, is
3 that right?

4 A. Yes.

5 Q. Because --

6 A. At the bond hearing.

7 Q. At the bond hearing.

8 Because you were working with the police?

9 A. Yes.

10 Q. Right.

11 So you knew already that you could curry some favor
12 from police by giving them a statement, right?

13 A. By giving them that statement, he told -- he already
14 told me like if my brother was going to get a bond and I
15 wasn't going to get charged with murder, but that's the
16 only -- but as far as testifying against somebody, doing --
17 getting less time, none of that.

18 Q. But you do admit that you said in this letter that you
19 submitted to the judge -- and you signed this letter, right?

20 A. Yes.

21 Q. And you read over this letter, right?

22 A. Yes.

23 Q. You told the judge that you were working with the
24 police at that point, October 20th, 2006?

25 A. Yes.

1 Q. Right?

2 A. (Shaking head yes).

3 Q. So is it true that you were already working with the
4 police on that at that time?

5 A. I just -- you see, I was cooperating with them to give
6 them that statement that I wrote.

7 Q. And you were cooperating because you knew you would
8 want to curry favor, right?

9 A. No.

10 Q. So you were doing it out of the goodness of your heart?

11 A. I did it because I didn't want my brother to get
12 charged with a murder charge.

13 Q. Right. Right.

14 Because you were looking out for your brother?

15 A. Yes.

16 Q. You are looking out for your brother today, right?

17 A. Yes.

18 MR. SNOW: Nothing further, judge.

19 THE COURT: All right. Thank you, sir. You may
20 stand down, sir.

21 MR. THOMPSON: Your Honor, may this witness be
22 excused?

23 THE COURT: No objection?

24 MR. SWERLING: No.

25 MR. SNOW: No.

1 THE COURT: You may be excused, sir.

2 All right, counsel, we will go ahead and adjourn
3 for lunch at this time.

4 Mr. Foreman, ladies and gentlemen of the jury, I
5 apologize for the long morning. It just happened to be --
6 this may be the most lengthy witness we are going to have in
7 the case. We wanted to try to finish his testimony before
8 we adjourned for lunch. We won't be going this long without
9 a break as we go along, but we had to finish with this
10 witness. Again, I apologize for the long time that you have
11 had to sit.

12 We are going to recess for lunch at this time.
13 What I'm going to do -- there is a matter I need to attend
14 to during the lunch hour, so what I'm going to ask you to do
15 is be back in the jury room ready to go at three o'clock.
16 It's right now about five minutes 'til two. I'm going to
17 ask you to be back in the jury -- get lunch and be back in
18 the jury room ready to go at three o'clock. Please try to
19 be on time. We will try to get started. Thank you.

20 Please do not discuss the case. Thank you.

21 (The following takes place outside the presence of
22 the jury panel)

23 THE COURT: We will go ahead and recess for lunch.

24 Do you want to put something on the record for the
25 motion?

1 MR. SWERLING: Yes, Your Honor, that's fine.

2 THE COURT: Yes, sir.

3 Yeah, you better leave them right there.

4 MR. SWERLING: Judge, the issue was our objection
5 to the introduction of the full written statement of October
6 20th. The State is offering that under Rule 801(d)(1)?

7 THE COURT: (B)(1).

8 MR. SWERLING: I'm sorry?

9 THE COURT: I think. Let me -- maybe I'm
10 mistaken.

11 What are you offering it under, solicitor?

12 MR. BRACKETT: 801 (d)(1)(b).

13 THE COURT: (D)(1)(b)?

14 MR. BRACKETT: Yes, sir, 801 (d)(1)(b). Sub
15 (d)(1)(b), "a prior statement by the witness that was
16 consistent with the declarant's testimony and is offered to
17 rebut an expressed or implied charge against the declarant
18 of recent fabrication or improper influence or motive;
19 provided, however, the statement must have been made before
20 the alleged fabrication or before the alleged improper
21 influence or motive arose."

22 We submit that both Mr. Snow and Mr. Swerling
23 cross-examined him about his improper influence being the
24 desire to help his brother Davorius Mack and that that would
25 shade his testimony in its entirety. Not only on a specific

1 issue, but would shade his entirety and improperly influence
2 or motivate him throughout the duration of his testimony and
3 that that in turn --

4 THE COURT: Tell me again what section that you
5 are relying on.

6 MR. BRACKETT: Subsection 801(d), statements which
7 are not hearsay; (1), prior statement by a witness; (b),
8 which starts "consistent with the declarant's testimony."

9 THE COURT: Well, he was saying (b), and I wanted
10 to sure I was going (b) and that's what --

11 MR. BRACKETT: (D) as in dog.

12 THE COURT: No, you are relying on (b)?

13 MR. BRACKETT: No, (d) as in dog, (d).

14 THE COURT: What rule book are you following?

15 MR. BRACKETT: 801(d).

16 MR. SWERLING: (D), as in David.

17 THE COURT: Well, I understand.

18 MR. BRACKETT: 801(d), prior statement.

19 THE COURT: Yeah, (b), not dog. (B).

20 MR. BRACKETT: (B) says it's the definition of a
21 declarant in mine.

22 MR. SWERLING: Could I see that, judge?

23 MR. BRACKETT: This is the 2009 South Carolina
24 rules of court.

25 MR. SWERLING: Here it is, (d).

1 THE COURT: Well, yeah, (d)(1)(b).

2 MR. BRACKETT: (D)(1)(b).

3 THE COURT: I thought you said (d)(1) --

4 MR. BRACKETT: No, no, I thought that you were
5 saying --

6 THE COURT: Y'all were saying dog.

7 MR. BRACKETT: That's what I'm relying on.

8 THE COURT: Let's be sure on the record.

9 We are talking about 801 (d)(1), subsection (b).
10 Okay. Now we are on the same page.

11 MR. SWERLING: Judge, so under that section, my
12 position was that -- the State was saying this was a prior
13 consistent statement under that section. My position was
14 that the entire statement should not come in.

15 The rule of completeness would allow them to
16 examine the witness about other parts of that statement that
17 explained or put the questions I was asking in context, but
18 not that the entire statement would come in.

19 I understand Your Honor has admitted the statement
20 under Rule 801 (d)(1)(b)(2), (b)(2), but my position would
21 be that if Your Honor would remember when I was asking the
22 questions, I submit it was nothing more than just
23 cross-examination, which the court has held is not
24 sufficient to raise that rule -- to implicate that rule,
25 where you are just attacking the witness' credibility.

1 The second thing is --

2 THE COURT: You see, I don't disagree with you
3 there. We are on the same page. The problem is, if you
4 read the rules, what it says it's not hearsay and therefore
5 admissible would be prior statement by a witness consistent
6 with the declarant's testimony and is offered to rebut and
7 express or implied charge against the declarant of recent
8 fabrication or improper influence or motive. That's exactly
9 what you tried to do with his whole testimony is to -- both
10 in express and in implied charge that there was recent
11 fabrication or improper motive in making his testimony
12 today, insofar as it's inconsistent with the prior statement
13 that you were asking him about. And so -- that's the thing.
14 So now they are offering the statement. They say it's not
15 hearsay under those circumstances, and they are offering it
16 into evidence before the jury to rebut that. So I think the
17 jury is entitled to see what prior statements that you asked
18 him some questions about and tried to point out any
19 inconsistencies with.

20 Of course, they can ask him under the rule of
21 completeness. They can ask him about the rest of the
22 statement, all the rest of the statement that has anything
23 to do with what you asked him, and basically it will.

24 But I'm saying -- but under this rule it's not
25 hearsay, and, therefore, admissible, when you have attacked

1 his testimony today and implied and expressly asked him if
2 he's improperly motivated to give his statement in court
3 today to the extent that it differs with his prior
4 statement. And I -- so that's the reason I think it comes
5 in.

6 So, in any event, anything else?

7 MR. SWERLING: Just to put two issues I wanted to
8 put on the record.

9 THE COURT: Yes.

10 MR. SWERLING: One is that I think under that
11 analogy, then any witness who is impeached about or asked
12 questions about whether or not he's getting something for
13 his testimony would bring in the Rule 801 and allow prior
14 consistent statements. It would be my position that I would
15 not be allowed --

16 THE COURT: Not unless you impeach him on a
17 written statement you are asking him about. Okay? You
18 didn't just try to impeach him with improper motive. You
19 didn't just do that. Then you tried to point out
20 inconsistencies in the statement and saying those were
21 made -- where it's different today is because improper
22 motivation. So you didn't just try to impeach him with
23 improper motive for coming in here and giving his testimony
24 today. You tried to say that he changed his testimony from
25 his prior statement and motivated for whatever reason that

1 you asked him about today.

2 MR. SWERLING: Judge, the other part that I wanted
3 to put in there was that if -- my cross-examination was
4 really designed to point out what he did tell the police on
5 October 20th, which supports our position that he was the
6 one, the primary actor in the robbery and Mr. Terrell
7 Addison didn't do anything. So I was actually reading lines
8 out of that statement that were not impeaching him.

9 THE COURT: Did you ask him if there was anything
10 in that statement that said this, that, and the other that
11 he was saying? Did you ask him those questions, counsel?

12 MR. SWERLING: You know, judge, I just recall my
13 cross-examination was designed to bring out the things I
14 thought was favorable that he had already said about Terrell
15 Addison. So that's why I say that I don't think it's a Salt
16 Saltz issue of a prior consistent statement, because I
17 didn't impeach him on the whole statement. I was basically
18 actually doing the solicitor's job, by pointing out that he
19 said certain things in that statement that were favorable to
20 Mr. Addison.

21 THE COURT: Did you ask him if in the statement he
22 said this one had a gun and that one had a gun? Did you ask
23 him those kind of things, if he said those in the statement?

24 MR. SWERLING: I think I pretty much stuck with
25 the statement. I mean -- now, I may have asked some

1 question that he may not have put in the statement.

2 THE COURT: Right.

3 MR. SWERLING: But I don't think that implicates
4 Saltz, but that's just my position.

5 THE COURT: All right. Let me hear from you
6 further, solicitor.

7 MR. BRACKETT: I think any inconsistencies --
8 first of all, I think the minute he raises the implication
9 that he is here and motivated to testify improperly because
10 he has some outside influence that has affected his decision
11 to sit in that chair today, the minute that happened, we are
12 entitled -- whether he impeaches himself on anything or not,
13 he is calling into question his entire credibility. And I
14 can guarantee you that's what they do with closing argument.
15 And even if they didn't, I can guarantee you that jury is
16 going to go back there and go "yeah, but he just came in
17 here today to help his brother."

18 The minute they raised that improper motive or the
19 outside influence, that raises the specter that his entire
20 testimony shouldn't be believed because he's motivated to
21 help his brother. So once they have done that and once that
22 implication has been raised in the jury's eye and in their
23 head, we can't undo it. The only thing we can do under that
24 statute, because typically a prior consistent statement
25 would be improper bolstering, and I actually had a case,

1 State v. Gerald, I think it was, where it was a close call
2 and I almost got reversed. I almost had my conviction
3 reversed because of that issue. It didn't turn out that
4 way, but the up-shod of it is that the case law is clear. A
5 prior consistent statement cannot come in, because it is
6 hearsay, unless it meets that exception. And the only
7 reason you asked the question about the deal or any improper
8 motive is put the notion in their head that his entire
9 testimony is incredible and shouldn't be believed, because
10 he's doing it to help his brother and it's fantastic and he
11 has this improper motive. So the only thing I can do to
12 rehabilitate him is to then say wait a minute, before
13 anybody ever mentioned helping his brother, he said
14 virtually the same thing to the police within ten days of
15 the crime. And the jury, out of fairness, is entitled to
16 know that, and that's the basis for that ruling.

17 THE COURT: I think it comes in. I'm going to
18 admit it. I think, in any event, they could have sat there
19 and read the whole statement to him and asked him about what
20 was in the statement, so I don't think it would be any real
21 prejudice to the defense in any event. But I believe it
22 comes in under that rule. I think that rule was designed to
23 allow it, take it out of the hearsay category when the
24 witness is attacked as to his motive and recent fabrication
25 and he expressly implied or implied that he's coming into

1 court today provides his testimony solely to help his
2 brother. All right.

3 MR. BRACKETT: Thank you, Your Honor.

4 MR. SNOW: Would the court prefer me to object
5 when I join with Mr. Swerling, or would the court just take
6 note that I join in that motion as well?

7 THE COURT: I think the record will reflect that,
8 that you join in his motion on behalf of your client.

9 MR. SNOW: Do I have to say it, or --

10 THE COURT: No, no, you have to say it.

11 MR. SNOW: I just want to make sure that -- I know
12 we had another case with you before. I just want to make
13 sure I understood the court's ruling.

14 THE COURT: Okay. You join in his motion for the
15 same reasons and object for the same reasons?

16 MR. SNOW: Yes, sir, Your Honor.

17 THE COURT: All right. And the record will
18 reflect that then. Okay.

19 MR. SWERLING: Judge, could I -- I wanted to make
20 sure that I said this. I may have said it and I apologize
21 if I did, that -- I'm not trying to re-argue the issue. I
22 understand your ruling, but that I was -- what I was saying
23 was I was not trying to show that his testimony today was
24 inconsistent from the statement. I was trying to show that
25 he had made the statements about Mr. Addison in his

1 statement, so that's what I was wanted to make sure I had on
2 the record.

3 THE COURT: All right.

4 MR. SWERLING: I was not impeaching him on that
5 statement.

6 THE COURT: Well, there is absolutely no question
7 but what you were attacking his testimony today as to his
8 motive and reasons for coming in to testify in his testimony
9 today and he's here to help his brother, etcetera. So
10 there's no question about that.

11 MR. SWERLING: I wasn't trying to re-argue it. I
12 just wanted to make sure I had it.

13 THE COURT: Thank you.

14 MR. BRACKETT: Thank you, judge.

15 THE COURT: We'll start back around three.

16 (Whereupon, proceedings were recessed)

17 (Whereupon, proceedings were reconvened)

18 THE COURT: All right, are counsel ready to
19 proceed?

20 MR. BRACKETT: The State is ready, Your Honor.

21 MR. SWERLING: Yes.

22 THE COURT: I want to go back on the record for a
23 minute.

24 With regard to the motion that was made before we
25 broke for lunch, I would point out that the defendant for

1 Mr. -- the attorney for Mr. Addison spoke. Also the
2 attorney for Mr. Stewart spoke. Mr. Snow, on behalf of Mr.
3 Stewart, really didn't -- he just adopted the motion by
4 counsel for Mr. Addison. However, I would in that -- that
5 is made part of the record.

6 The court would point out also, though, that any
7 questions asked by the attorney for Mr. Stewart likewise
8 would be considered in determining whether the court's
9 ruling was appropriate or not on Mr. Thompson's question,
10 whether the door was open or not. I didn't state that on
11 the record. I need to put that on the record.

12 All right. Anything else we need to do before we
13 get started?

14 MR. BRACKETT: Not from the State, Your Honor.

15 THE COURT: All right. I'm going to ask you to do
16 this. Insofar as the statement that we admitted into
17 evidence of Mr. Mack, I see no reason for that to go to the
18 jury before we get ready to submit it, is that correct, when
19 we get down to submitting the exhibits?

20 MR. BRACKETT: Yeah, we weren't going to publish
21 it.

22 THE COURT: Right. What I ask you is not to
23 publish it. I'm going to look at it a little further at
24 this. I'm pretty satisfied with my ruling, but I have a
25 couple other books that I'm going to look at. As long as

1 it's not published to the jury, there is no prejudice in any
2 of that. It would, of course, be -- unless the court
3 changes it mind, it would obviously go to the jury among the
4 exhibits here when they go for deliberation.

5 All right, ready to proceed then?

6 MR. SWERLING: Yes.

7 THE COURT: Bring the jury in, please, ma'am.

8 (The following takes place in the presence of the
9 jury panel)

10 THE COURT: Good afternoon, Mr. Foreman, ladies
11 and gentlemen of the jury. I hope you enjoyed your lunch
12 today. We are ready now to resume with the trial.

13 Counsel, ready to proceed.

14 MR. THOMPSON: If it please the court, Your Honor,
15 the State would call Davorius Mack.

16 DAVORIUS MACK, having been first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION BY MR. THOMPSON:

19 Q. Mr. Mack, would you give your whole name for the court,
20 please?

21 A. Davorius Montraze Mack.

22 Q. And how is Davorius spelled?

23 A. D-A-V-O-R-I-U-S.

24 Q. And how is Montraze spelled?

25 A. M-O-N-T-R-A-Z-E.

1 Q. Thank you, Mr. Mack.

2 Can you tell me how do you know each of these men in
3 this room? How do you know Terrell Addison?

4 A. Since I was young kid, grew up.

5 Q. All right. And where did you grow up?

6 A. Hartsville.

7 Q. All right. And did you know him a lot while you were
8 there in Hartsville?

9 A. Yes, sir.

10 Q. Y'all used to play together?

11 A. Yes, sir.

12 Q. How about Ben Stewart, how did you know Ben Stewart?

13 A. I used to talk to his -- I talked to his -- I used to
14 talk to his niece, but I knew him ever since we was young.
15 He used to come down from Philly to Hartsville.

16 Q. When you say Philly, do you mean Philadelphia?

17 A. Yes, sir.

18 Q. You used to see him there in Hartsville?

19 A. Yes.

20 Q. Did you sometimes hang out with each other?

21 A. Yes, sir.

22 Q. And, of course, Dontavious Mack, that's your brother,
23 correct?

24 A. Yes, sir.

25 Q. Can you tell me what charges in this case did you plead

1 guilty to?

2 A. Accessory after the fact of murder, accessory after the
3 fact of armed robbery, criminal conspiracy to armed robbery,
4 attempted escape, possession of a stolen vehicle, and
5 malicious injury to property.

6 Q. All right. And in that you are facing I believe a
7 total of 50 years, is that correct?

8 A. Yes, sir.

9 Q. Okay. And it's up to the judge's discretion on how
10 much you receive on that, is that correct?

11 A. Yes, sir.

12 Q. Now, can you tell me how did this happen? How did you
13 become involved in this event that led up to the death and
14 robbery of Ben Marshall?

15 A. I was on my way home and got a call from my brother.

16 Q. All right. This is in Hartsville?

17 A. Yes, sir.

18 Q. And where were you on the way home from?

19 A. Coming from Darlington.

20 Q. And what was the call about?

21 A. He told me to come to his girlfriend's house. He told
22 me he had wanted me to ride with him and take Terrell
23 Addison home to Rock Hill.

24 Q. And did you go to where he was?

25 A. Yes, sir.

1 Q. What were you driving?

2 A. It's a 2000. I don't know what kind of year. It was a
3 Buick Century. A champagne Buick Century.

4 Q. Buick Century?

5 A. (Shaking head yes).

6 Q. You have to answer yes or no so the court reporter can
7 record it, not just nod your head, okay?

8 A. All right.

9 Q. Was that Buick Century yours?

10 A. No, sir.

11 Q. How did you get it?

12 A. I possessed it.

13 Q. Well, how? How did you get it?

14 A. I gave a man crack cocaine for the car.

15 Q. And tell me how that worked.

16 A. I just handed him like two or three grams and he give
17 me the car, and I bring it back to him whenever he wanted
18 his car back.

19 Q. All right. Did he have a time he wanted his car back?

20 A. Yes, sir.

21 Q. When did he want his car back?

22 A. Six o'clock.

23 Q. Six o'clock when?

24 A. On the 10th.

25 Q. Six o'clock?

1 A. The 9th. It was the 9th, the day before.

2 Q. Oh, the day before?

3 A. Yes, sir.

4 Q. Did you take it back to him like you were supposed to?

5 A. No, sir.

6 Q. What did you guys do on the night instead?

7 A. Rolled around, came to Rock Hill.

8 Q. Rolled around, you mean drive around?

9 A. Drive -- drove around.

10 Q. Now, you had mentioned your brother called you and
11 asked you to take him and Terrell Addison to Rock Hill, is
12 that right?

13 A. Yes, sir.

14 Q. So did you go there at that point?

15 A. Yes, sir.

16 Q. And who did you pick up there?

17 A. I picked up my brother. He got in the car. Well, I
18 got in the passenger's side and he got in the driver's side
19 and then we drove and we went to go pick up Ben Stewart.

20 Q. And where did you go to pick up Ben Stewart?

21 A. Swift Creek Apartments.

22 Q. All right. And did Ben Stewart stay over at those
23 apartments sometimes?

24 A. Yes, sir.

25 Q. Was it someone else's apartment he was staying there,

1 or was it his?

2 A. I reckon he was -- I didn't know whose apartment it
3 was.

4 Q. All right. Now, you picked him up there. Why did
5 y'all pick up Ben?

6 A. For him to ride with us to Rock Hill.

7 Q. And did y'all then go to Rock Hill after you picked him
8 up?

9 A. No, sir.

10 Q. Where did you go?

11 A. Went to Farmington Apartments and picked up Terrell
12 Addison.

13 Q. So Terrell wasn't with you yet?

14 A. No, sir.

15 Q. You went to Farmington Apartments to pick him up?

16 A. Yes, sir.

17 Q. And what apartment was he at in Farmington Apartments,
18 do you recall, as far as whose apartment it was?

19 A. We had pulled up beside my cousin's apartment, [REDACTED], and
20 I think he was in [REDACTED], upstairs at this girl named Shonda's
21 apartment.

22 Q. Okay. So he had family there in Rock Hill?

23 A. In Hartsville.

24 Q. I'm sorry, yes, in Hartsville?

25 A. Yes, sir.

1 Q. Did he also have family here in Rock Hill?

2 A. Yes, sir.

3 Q. Did he stay in one place more than another, that you
4 know of?

5 A. No, sir. I don't know.

6 Q. You don't know. Okay.

7 And was he wanting to get back to his family here in
8 Rock Hill?

9 A. Yes, sir.

10 MR. SWERLING: Your Honor, I object to the
11 leading.

12 THE COURT: Please avoid the leading, counsel.

13 MR. THOMPSON: All right.

14 BY MR. THOMPSON:

15 Q. Now, had you ever been to York County before?

16 A. No, sir. When I was younger.

17 Q. Well, what did you come for when you were younger?

18 A. Come to Carowinds.

19 Q. So had you ever actually been in Rock Hill before?

20 A. No, sir.

21 Q. Do you know your way around Rock Hill at all?

22 A. No, sir.

23 Q. What about your brother, did he know his way around?

24 A. No, sir.

25 Q. How about Ben Stewart, did he know his way around Rock

1 Hill?

2 A. No, sir.

3 Q. Who knew their way around Rock Hill?

4 A. Terrell Addison.

5 Q. Did he tell you how to get up here?

6 A. Yes, sir.

7 Q. Now, when y'all came to Rock Hill, what did you do when
8 you first got here?

9 A. We rode -- we drove around for a little while. Terrell
10 was like -- we went -- we were riding through some
11 apartments. Terrell was like he had some beef with some
12 dude. Some dude was trying to play him, so we were riding
13 around, rode through some apartments, but we didn't see the
14 dude, so we started riding around. And we kicked -- we
15 pulled up to this auto place behind. We kicked -- tried to
16 break in there, kicked the door in, but the alarm went off,
17 so we jumped back in the car and rode.

18 Drove off and went to the Exxon station on Cherry Road.
19 And the dude -- got some gas and then these two dudes in the
20 car, in a black and orange Chevy Capris with some rims on
21 them. Terrell Addison was like "let's stick." He wanted to
22 get the dude. So my brother was like no, because, you know,
23 what I'm saying, he don't know what -- we don't know what
24 the boys got in the car. So we followed them for a little
25 while and then we turn off. And we turned off, we don't

1 know where we turn off at. Well, I know when we turned, we
2 were riding for a little while. That's when we seen the BP
3 station.

4 Q. Before you go on, let me take you back a little bit.

5 You mentioned that Terrell had some dudes he had a beef
6 with?

7 A. Yes, sir.

8 Q. Y'all rode around those apartments?

9 A. Yes, sir.

10 Q. Did anyone have guns with them at that time?

11 A. Yes, sir.

12 Q. Who had guns with them?

13 A. Ben Stewart and Terrell Addison.

14 Q. How do you know they had guns with them?

15 A. Because I seen them.

16 Q. All right. And when did you see them?

17 A. On the way -- on the way to Rock Hill.

18 Q. All right. Did they -- describe how they showed them
19 to you.

20 A. Ben -- Ben had his on his lap, and Terrell had his
21 sitting on the seat.

22 Q. Okay. And do you remember what kind of guns they each
23 had?

24 A. Yes, sir.

25 Q. What kind did Ben have?

1 A. A .380.

2 Q. Okay.

3 A. It was black. Black and gray.

4 Q. All right. Was it a -- what kind was it? Was it a
5 revolver or semiautomatic?

6 A. An automatic.

7 Q. Okay. And what about Terrell, what kind did he have?

8 A. A .38 revolver.

9 Q. Okay. And as a revolver, we are talking about the one
10 with the cylinders that go around?

11 A. Yes, sir.

12 Q. Now, do you remember the color of either of those
13 weapons?

14 A. Terrell -- the .38, what Terrell had, was gray with a
15 wooden handle.

16 Q. Okay. And how about -- how about Ben, what did he
17 have?

18 A. It was a gray and black .380 with a hammer on the back.

19 Q. Okay. Now, you mentioned after you rode around the
20 apartments -- where did you go after that, after the
21 apartments?

22 A. After which apartment?

23 Q. The apartments where Terrell said you would ride around
24 in.

25 A. We got in the car. We went to the gas station. And

1 then we down the road coming to Rock Hill.

2 Q. Okay. Now, this is all in and around Rock Hill that
3 you are all doing this, is that right, when you start
4 looking for folks?

5 A. Yes, sir.

6 Q. Now, what was the purpose of looking at these various
7 places? What were y'all doing?

8 A. Talking about for the guys or --

9 Q. For you guys, looking at the rim place or the guys in
10 the --

11 A. Just to break into something.

12 Q. To break into something?

13 A. (Shaking head yes).

14 Q. Is everyone talking about that, or was it just you and
15 your brother?

16 A. Everyone.

17 Q. Did y'all ever talk about a pizza place?

18 A. Yes, sir.

19 MR. SWERLING: Objection, Your Honor, leading.

20 THE COURT: Please avoid leading, counsel.

21 BY MR. THOMPSON:

22 Q. Did y'all talk about any other places than the one that
23 you mentioned?

24 A. Yes, sir.

25 Q. What place is that?

1 A. On the way up here when we first got into Rock Hill it
2 was Domino's on the right side. Terrell asked "well, like
3 we could hit the Domino's." My brother was like "no," you
4 know what I'm saying, so we drove for a little while and we
5 pulled into this store. My brother got out and went in the
6 store and got some gloves and came back out. Then we got --
7 he got back in the car and we came on to Rock Hill.

8 Q. Okay. And so now the stores that were y'all looking at
9 at this point, you said there was a rim shop, is that right?

10 A. Yes, sir.

11 Q. A rim shop.

12 Do you know where that was located?

13 A. On Cherry Road.

14 Q. And how were y'all getting around in Rock Hill? How
15 did y'all know where to go?

16 A. Terrell was directing us around.

17 Q. Now, you mentioned you went by the BP store. What, if
18 anything, did you notice about the BP store?

19 A. It was litted up.

20 Q. Okay. Now, when y'all drove up here, did you drive up
21 here, was it already in the 10th, like the early morning of
22 the 10th, or was it still on the 9th, just kind of late at
23 night?

24 A. We got here about one o'clock in the morning.

25 Q. So when you left off?

1 A. About eleven.

2 Q. About eleven?

3 A. Yes, sir.

4 Q. Did you know how to get here from Hartsville?

5 A. I didn't know.

6 Q. Okay. Who told you how to get here?

7 A. Terrell Addison.

8 Q. Now, was anyone angry with each other or arguing with
9 each other in the car at this point?

10 A. No, sir.

11 Q. After you saw the BP station, what did you -- what
12 happened in the conversation? What did y'all say?

13 A. Terrell was just like -- he -- when we got to the BP
14 station?

15 Q. Uh-huh.

16 A. We was -- I was like -- we pulled into the apartments
17 and my brother was like -- my brother told Terrell -- I mean
18 my brother asked Ben to come with him. He was like Ben
19 ain't wanting to go. So Terrell was like -- my brother --
20 my brother didn't want Terrell to go, you know, because how
21 they was acting, because they had just had took some pills,
22 some Ecstasy pills.

23 Q. Okay.

24 A. And so he got to the -- got in the parking lot. My
25 brother asked Ben to come with him, but Ben didn't want to

1 go, so my brother told him let him hold the gun.

2 Q. Okay.

3 A. So my brother -- I mean so Ben gave my brother the gun
4 and my brother told Terrell to come with him. So they got
5 out and he popped -- Terrell popped the trunk and went to
6 the trunk and I reckon that's when they got the masks and
7 the hoodies out of the trunk.

8 Q. All right. So did your brother put a mask on?

9 A. Yes, sir.

10 Q. All right. And a hoodie, you said as well? Did he put
11 that on?

12 A. Terrell -- yeah, he put a hoodie on.

13 Q. How about Terrell, did he -- what did he put on his
14 head?

15 A. He had a blue bandana.

16 Q. Okay. Did he carry that bandana with him on his own?

17 A. Yes, sir.

18 Q. Did he always have that bandana with him?

19 A. Yes, sir.

20 Q. Now, when they put that on, y'all said that you were in
21 the apartment complex at this point?

22 A. Yes, sir.

23 Q. Was that the one that's close to where the BP station
24 is?

25 A. Yes, sir.

1 Q. Did you actually see the BP station from where y'all
2 were parked at that point?

3 A. No, sir.

4 Q. Was there an apartment building in the way?

5 A. Yes, sir.

6 Q. Now, when they get out, what do you and Ben do?

7 A. We start -- they asked me do we -- I asked Ben did we
8 want to leave them, so we got out of the car. We waited
9 about twenty minutes. Then we got out of the car. When we
10 got out of the car, we jumped over a brick wall. When we
11 jumped over the brick wall, we were walking. We seen them
12 coming back running, and my brother stopped. It looked like
13 he got shot, so we started running back towards the car and
14 we jumped the brick wall. My brother and Terrell was
15 yelling at us telling us to get in the car, get in the car.

16 Q. About how far from the car did you get before you went
17 back to it?

18 A. About ten, twenty yards.

19 Q. Not very far?

20 A. No, sir.

21 Q. Was it in the direction of where the BP was that y'all
22 started walking?

23 A. Yes, sir.

24 Q. When they came -- is there any doubt as to what they
25 were doing when they left the vehicle to go towards the BP?

1 A. They were going to rob the store.

2 Q. And you knew that at that point?

3 A. Yes, sir.

4 Q. Would Ben have known that as well?

5 A. Yes, sir.

6 Q. And did Terrell take his gun with him at that time too?

7 A. Yes, sir.

8 Q. When they came back, how were they acting?

9 A. Just wired. My brother had been sweating and
10 Terrell -- my brother -- brother -- they was wired, telling
11 us to get in the car, get in the car. We got in the car.

12 Q. And where did y'all get in the car? Who got where?

13 A. My brother got in the driver's side. I got in the
14 passenger's side. Terrell got behind me, behind passenger
15 side. And then Ben behind the driver's side.

16 Q. And did y'all take off from there at that point?

17 A. Yes, sir.

18 Q. Where did you go from there?

19 A. We made a right and went towards -- when we seen the BP
20 station, you didn't see anybody moving inside the BP
21 station. We made a left right at the light.

22 Q. And did you head back to Hartsville at that point, or
23 did you stay in Rock Hill?

24 A. We started to head back to Hartsville.

25 Q. Okay. Now, what was the conversation like in the car

1 at this point?

2 A. My brother was like -- asking Terrell why he didn't
3 grab the dude. Terrell was like my brother had already shot
4 him. He was like "because y'all shot him."

5 Q. Okay. And were they kind of discussing what happened
6 in the robbery then at that point? Is that what you are
7 saying?

8 A. Yes, sir.

9 Q. What, if anything else, did Terrell and your brother
10 say?

11 A. My brother was just like -- nothing, really.

12 Q. Okay.

13 A. He -- my brother just told me to roll up. We started
14 arguing. All this started -- well, all us started
15 communicating and my brother just telling me to roll up some
16 reefer, some reefer, some marijuana, and that's what I did,
17 and we just rode back to Hartsville.

18 Q. And going back to Hartsville what did y'all talk about?

19 A. How we were going to -- because my brother wanted to go
20 to the hospital and we was telling him not to go to the
21 hospital because it's going to lead to the police, so he was
22 like we was just going to make up a story that we had been
23 at Farmington Apartments.

24 Q. And ultimately is that the story that you used when the
25 police first came?

1 A. Yes, sir.

2 Q. Did the Hartsville police talk to you after you got
3 back?

4 A. Yes, sir. When I got back -- when we dropped my
5 brother off to the hospital, I rolled him in. Terrell came
6 in there in the hospital with me for a little while. And I
7 told him to get in the car and take it back and go to Ben
8 Stewart's sister's house, Monday, and I would meet them
9 there once my brother's girlfriend Jessica there.

10 Q. Hold on. You are going a little fast. I'm not quite
11 catching everything.

12 Ben Stewart's sister's house?

13 A. Yes, sir.

14 Q. What was her name?

15 A. Monday Bishop.

16 Q. Monday Bishop?

17 A. Yes.

18 Q. And before we go to that, tell me first when y'all get
19 to the hospital, what happened?

20 A. Well, on the way there my brother mentioned they had --
21 it was some -- my brother had a cell phone. They were
22 making calls. My brother called his girlfriend and Ben
23 Stewart called -- Ben Stewart's girlfriend called my
24 brother's phone.

25 Q. All right. And who is -- what is her name?

- 1 A. Kathleen Johnson.
- 2 Q. I'm sorry, what is it?
- 3 A. Kathleen Johnson, something like that.
- 4 Q. Kathleen?
- 5 A. That's Ben Stewart's girlfriend name.
- 6 Q. And did they carry on a conversation, that you recall?
- 7 A. Yes, sir.
- 8 Q. Did Ben talk to his girlfriend at that point?
- 9 A. I think that he had lost the signal.
- 10 Q. Okay. And that's sometime on the way back, is that
- 11 correct?
- 12 A. Yes, sir.
- 13 Q. Now, when you get to the hospital in Hartsville, who
- 14 goes in?
- 15 A. Me, my brother, and Terrell.
- 16 Q. Where does Ben go?
- 17 A. He sat in the car.
- 18 Q. Okay. Where did y'all go from there? What happened
- 19 after you took your brother into the hospital?
- 20 A. I waited until my brother's girlfriend came, Jessica
- 21 Arthur.
- 22 Q. Jessica Arthur?
- 23 A. Yes.
- 24 Q. And when she came, what happened?
- 25 A. I left and got in Ryan's car that Jessica was driving.

1 It was a gray Buick, Park Avenue.

2 Q. So Jessica was driving Ryan's car, is that what you are
3 saying?

4 A. Yes, sir.

5 Q. And you used car to drive off in?

6 A. Yes, sir.

7 Q. What happened to the other car? What happened to the
8 Buick?

9 A. Ben and Terrell had drove it to Monday's house.

10 Q. Okay. Was it Monday Bishop?

11 A. Yes, sir.

12 Q. Where did she live?

13 A. In Middletown Apartments.

14 Q. Did you get there around the time they got there?

15 A. They got there like -- I got there like ten minutes
16 after them.

17 Q. And when you got there, who was there at the apartments
18 there?

19 A. Monday Bishop, Allen Reed, Ben Stewart and Terrell
20 Addison, and some other female. I don't know her name.

21 Q. Okay. So a total of five of you -- or get that right.
22 Six of you, I guess?

23 A. Yes, sir.

24 Q. You, Terrell, Ben, Monday, another girl, and Reed Allen
25 you said?

1 A. Yes, sir.

2 Q. So six of you.

3 When you are there, what happens while you are there?

4 A. All right. I was about to knock on the door and then I
5 heard them in there talking -- talking like loud talking, so
6 I listened for a little while and I heard Terrell Addison
7 and Ben telling --

8 MR. SNOW: Objection.

9 A. I heard Terrell Addison and Ben --

10 THE COURT: Hold on. Wait just a minute.

11 Counsel, if you want to object, stand and state
12 your objection, please.

13 MR. SNOW: Yes, Your Honor.

14 THE COURT: What's your objection?

15 MR. SNOW: Hearsay.

16 THE COURT: Please avoid hearsay, counsel.

17 BY MR. THOMPSON:

18 Q. Without saying what you hear, did you then go inside?

19 A. Yes, sir.

20 Q. What did you see when you got inside?

21 A. They looked at me like -- they were shocked, like --
22 like they just seen a ghost or something. And I tell
23 Terrell and Ben to come follow me to my girlfriend's house,
24 my baby's momma's house, to drop the car off.

25 Q. Okay. What happened with the -- did you see what

1 happened with stuff while you were there, anything while you
2 were there?

3 A. Yes, sir. When we was walking out the door, me and
4 Terrell was talking, and Ben Stewart and Allen Reed was
5 talking and handed -- Ben had handed Terrell -- I mean Ben
6 had handed Allen Reed a brown -- a brown bag, like a Piggly
7 Wiggly bag --

8 Q. Uh-huh.

9 A. -- with the masks and the gun in it.

10 Q. So kind of one of those plastic grocery bags, kind of
11 brown, but you can still kind of see what --

12 MR. SNOW: Objection, leading.

13 A. Yes, sir.

14 MR. THOMPSON: I'm just trying to clarify what
15 type of bag, judge.

16 THE COURT: All right. I'll -- it's harmless. Go
17 ahead.

18 BY MR. THOMPSON:

19 Q. Now, what, if anything, could you see in that bag at
20 that point?

21 A. I just seen -- the only thing I could have seen was the
22 gun, the print of the gun.

23 Q. You could see that through the bag?

24 A. Yes, sir.

25 Q. And who was giving it to whom?

1 A. Ben Stewart was giving it to Allen Reed.

2 Q. And was he given any instructions on what to do with
3 it?

4 A. No, he was just -- they were just talking. And Terrell
5 came and was talking to me and like they wanted him to put
6 the gun in the bag so they can go hide it. They were going
7 to go hide it.

8 Q. Terrell -- they wanted Terrell to put his gun in the
9 bag?

10 A. Yes, sir.

11 Q. Did he?

12 A. No, sir.

13 Q. So did he keep his gun at that point?

14 A. Yes, sir.

15 Q. What happened then?

16 A. Terrell -- Ben -- I mean Allen Reed started walking
17 towards the apartments and --

18 Q. Which apartments?

19 A. Towards the other apartments going towards the field.
20 It's a field in the back of the apartments.

21 Q. Okay. So away from the apartment? He's into another
22 set of apartments?

23 A. Yes, ma'am -- I mean, yes, sir.

24 Q. And did you see where he put the stuff?

25 A. No, sir.

- 1 Q. Did he come back right after that?
- 2 A. No, sir.
- 3 Q. Did you see him again after that?
- 4 A. No, sir.
- 5 Q. When he left, what car did you leave in?
- 6 A. I got in the Park Avenue, Ryan's car.
- 7 Q. Ryan's car?
- 8 A. Yes.
- 9 Q. And did anyone follow you then after that?
- 10 A. Yes, sir.
- 11 Q. Who?
- 12 A. Ben Stewart and Terrell Addison.
- 13 Q. What car did they go in?
- 14 A. In the Buick we drove to Rock Hill.
- 15 Q. All right. And where did y'all go from there?
- 16 A. We went to my baby's mother's house.
- 17 Q. Now, does Reed Allen have a nickname you call him by?
- 18 A. Yes, sir.
- 19 Q. What's that?
- 20 A. "Wise".
- 21 Q. "Wise"?
- 22 A. Yes, sir.
- 23 Q. Now, you said you went to your baby's momma's house.
- 24 Who is your baby's momma?
- 25 A. Natasha Slater.

1 Q. And where is that located?

2 A. [REDACTED] Bill Circle.

3 Q. How long did you stay there?

4 A. I used to stay at my mother's at the beach. I just
5 come home on the weekends, like Friday and Saturday and
6 Sunday, and I leave Sunday night and go back to the beach.

7 Q. Well, where did -- what I'm saying is that day when you
8 get back, where do you go from there?

9 A. To my baby's mother's house?

10 Q. Right.

11 A. I went -- I went in the house and they stayed in the
12 car. They had parked the car in the back. And they went
13 and go get in the Park Avenue and I went in my baby's
14 mother's house and was telling them what happened.

15 Q. So they went into Ryan's car then at that point?

16 A. Yes, sir.

17 Q. Did they leave then?

18 A. No, sir.

19 Q. When was the last time that you see them?

20 A. After I -- well, I drove -- I dropped -- my baby's
21 mother kind of got in the car with me. All four of us in
22 the car; me, my baby's mother, Terrell Adams and Ben
23 Stewart. I dropped Ben Stewart off back at the Swift Creek
24 Apartments.

25 Q. What about Terrell Addison?

1 A. We drove to the store. I drove it to the store and I
2 got some cigarettes and I dropped him off back to Farmington
3 Apartments.

4 Q. Okay. And then who -- was anyone left in the car with
5 you at that point?

6 A. Just my baby's mother.

7 Q. Where did you go from there?

8 A. We went back to the hospital.

9 Q. And when you went back to the hospital, who was with
10 you when you get to the hospital?

11 A. It just was me and my baby's mother was in there and
12 Jessica Arthur and my brother.

13 Q. Okay. And you parked the car at the hospital there at
14 that point?

15 A. Yes, sir.

16 Q. Did the police come around that time?

17 A. No -- yes, sir the police was there. She -- the
18 detective was like she needed to talk to me.

19 Q. And what police department was this?

20 A. Hartsville Police Department.

21 Q. So Hartsville was there.

22 Did they start talking to you about what had happened
23 and how your brother got shot?

24 A. Yes.

25 Q. What did you tell them?

1 A. I tell them that me and my brother were at the
2 Farmington Apartments and a white -- a white Buick came
3 around and started shooting and we took off running and my
4 brother got shot in the back.

5 Q. Okay. Is that the story that y'all talked about in the
6 car?

7 A. Yes, sir.

8 Q. How long did your brother stay in the hospital that
9 day?

10 A. Until like four o'clock that afternoon.

11 Q. Did you stay with him most of the afternoon after that?

12 A. No, sir.

13 Q. Where did you go?

14 A. I took my baby's mother back home, because she had to
15 go to school. And I went to go -- I went to go get the
16 other Buick, the one that I had possessed from who I gave
17 the man -- the crack for, the crack cocaine for. I went to
18 go get that Buick and I started riding around in it. And
19 when I was getting back -- driving back towards the hospital
20 way, somebody -- well, I pulled into the hospital. I went
21 back to the hospital. My mother was there then. So I
22 parked the car and got out and went in the hospital. And I
23 jumped in -- told my home boy that was in there to take me
24 to get the other car, Ryan's car, the gray car.

25 Q. Right.

1 A. So we -- I got in the truck with him and we got in the
2 car to go get the gray car out and I went back to the
3 hospital. When I got to the hospital, my family was in
4 there. So I left the hospital and went to the barber --
5 well, I went to go pick up Terrell Addison and my cousin
6 Rodney Johnson from Farmington Apartments.

7 Q. All right.

8 A. We rode. I went to the barbershop and got my hair cut.
9 And then we got on the road. We went to the store and got
10 some gas. So I was about to go to Darlington -- I was about
11 to go to Darlington to meet Terrell and my cousin Rodney.
12 So I was like -- I told Terrell he can't come, so he was
13 like just drop him off at his grandmother's house. So I
14 dropped him off at his grandmother's house on I think it was
15 Fletcher -- Fletcher, or some -- Fletcher Street on the way
16 to Darlington, and then I went ahead on to Darlington.

17 Q. Did you and your brother ever threaten Terrell at all?

18 A. No, sir.

19 Q. Did Terrell ever threaten y'all?

20 A. No, sir.

21 Q. Did anyone get in a fight, physically hit each other,
22 or threaten to?

23 A. No, sir.

24 Q. Now, did the Rock Hill police come looking for you
25 right away, or did it take a little while?

1 A. It took a little while.

2 Q. All right. When was it that you recall that you were
3 brought to Rock Hill?

4 A. Like on the 19th of October.

5 Q. Okay. So is that the first contact that you had with
6 the Rock Hill Police Department at that point?

7 A. Yes, sir.

8 MR. THOMPSON: Court's indulgence just one moment,
9 Your Honor.

10 (Off the record)

11 (Back on the record)

12 BY MR. THOMPSON:

13 Q. I'll give you a few phone numbers and ask if you
14 recognize those numbers. [REDACTED] area code, [REDACTED] 2807. Do you
15 recognize that number?

16 A. Yes, sir.

17 Q. Who is that?

18 A. Ben Stewart's girlfriend.

19 Q. That's who?

20 A. Kathleen Johnson.

21 Q. Kathleen Johnson?

22 A. Yes, sir.

23 Q. How about [REDACTED] [REDACTED] 9428? Do you recognize that one?

24 A. Monday Bishop.

25 Q. Okay. Monday Bishop is -- now Monday Bishop is whose

1 sister?

2 A. Ben Stewart.

3 Q. Ben Stewart's sister.

4 Now, this is the house where Reed Allen was, right, was
5 Monday Bishop?

6 A. Yes, sir.

7 Q. Was there any relationship between Monday Bishop and
8 Reed Allen?

9 A. I think they have been talking. They was in a
10 relationship.

11 Q. That was like boyfriend girlfriend?

12 A. Yes, sir.

13 Q. How about [REDACTED] 4744?

14 A. That was my brother's girlfriend, Jessica Arthur.

15 Q. All right. Now, going back one more time to the
16 robbery. Do you recall with both Terrell and with
17 Dontavious what color were the clothing that they were
18 wearing?

19 A. My brother had on some black Air Force Ones, some black
20 jeans.

21 Q. What are black Air Force One's?

22 A. Nike's.

23 Q. Nike tennis shoes?

24 A. Yes, sir.

25 Q. Okay.

1 A. He had on some black pants and a black shirt.

2 Q. All right. Do you have Air Force One tennis shoes as
3 well?

4 A. Yes, sir.

5 Q. What do you recall that Terrell had on?

6 A. He had on some blue and white Air Force One, some blue
7 jeans.

8 Q. So now blue and white Air Force Ones, these are shoes,
9 right?

10 A. Yes, sir, and a white shirt.

11 Q. Okay. Now, you say he had a white shirt. What did he
12 wear when he went in to rob the place? Was the white shirt
13 underneath everything?

14 A. Yes, sir.

15 Q. What color was the stuff was it that he wore when he
16 went in?

17 A. He had a black hoodie and he had a blue bandana.

18 Q. Okay. Did anyone force Terrell to do this robbery, or
19 did he do it on his own?

20 A. He do it -- he did it on his own.

21 Q. All right. Thank you.

22 Please answer any questions that the defense has for
23 you.

24 THE COURT: Yes, sir.

25

1 CROSS EXAMINATION BY MR. SWERLING:

2 Q. Mr. Mack, my name is Jack Swerling.

3 How are you doing?

4 A. I'm doing all right.

5 Q. Good.

6 How old are you?

7 A. Twenty.

8 Q. So Dontavious is, what, two years older than you are?

9 A. Yes, sir.

10 Q. And Dontavious has got a pretty rough reputation down
11 in Hartsville, doesn't he?

12 A. Not that I know of.

13 Q. Doesn't he like to fight?

14 A. No, sir.

15 Q. He carries a gun?

16 A. No, sir.

17 Q. You have never seen him with a gun?

18 A. No, sir.

19 Q. What about drugs? I heard you mention that you gave
20 somebody some crack cocaine for a car.

21 A. Yes, sir.

22 Q. So you and your brother sell drugs?

23 A. I just know -- I just speak for what I do.

24 Q. Do you know if your brother does?

25 A. No, sir.

1 Q. Did your brother use drugs that night, October 10th?

2 A. All -- all of us did.

3 Q. What kind of drugs did you use?

4 A. I just used marijuana.

5 Q. What did he use?

6 A. Well, the rest of the -- the rest of the three -- the
7 other three used Ecstasy and with marijuana.

8 Q. Ecstasy and marijuana?

9 A. Yes, sir.

10 Q. So how long have you been selling drugs?

11 A. About -- well, I just -- about a year.

12 Q. About a year. Prior to this?

13 A. Yes, sir.

14 Q. So this happened on October 10th, 2006, so you had been
15 selling crack cocaine in Hartsville for about a year?

16 A. Yes, sir.

17 Q. Now, you had indicated that you knew Terrell. He had
18 some family down in Hartsville, is that correct?

19 A. Yes, sir.

20 Q. But y'all didn't hang out?

21 A. Yes, sir.

22 Q. You did?

23 A. Yes, sir.

24 Q. Well, do you know when he got to Hartsville? That --
25 was it on that Tuesday, October 10th?

1 A. No, he had been there before that because I had dropped
2 him off, him and my brother. On that Sunday my brother
3 called me and told me to come and pick him up, him and
4 Terrell up, to take them to go back up Ryan because they
5 were going to the club.

6 Q. Well, I guess my question is did you see Terrell
7 frequently when he came down to Hartsville, or was it
8 infrequent association?

9 A. I seen him like -- my grandmother was staying -- my
10 grandmother well -- well, not my grandmother, but my cousin
11 that was staying out there and Terrell, we used to be over
12 there to the house like a week before this happened. A
13 couple days before this -- when this happened.

14 Q. Well, you would see him out at the apartments --

15 A. Yes, sir.

16 Q. -- is that correct?

17 And you said that you --

18 A. He stayed at -- sir?

19 Q. At Shonda's apartment?

20 A. He had been at my cousin's apartment, Rodney Johnson,
21 and at Shonda's apartment.

22 Q. But my question is, not just to where he was staying,
23 but when he would come down there, it's not like the two of
24 you and your brother would hang out together? You saw him
25 infrequently at the apartments from time to time, isn't that

1 true?

2 A. No, sir.

3 Q. What is true?

4 A. We would hang out together.

5 Q. And how long have you been doing that?

6 A. Since I was little.

7 Q. And how often did Terrell come down to Hartsville?

8 A. I don't know, because, like I say, I have been to DJJ.

9 Before I went to DJJ, I used to see Terrell all the
10 time. He used to be with his cousin Mondrel Addison. He
11 used to come over and wrestling and stuff like that in the
12 yard and stuff like that.

13 Q. Your brother was there as well?

14 A. Yeah, we used to be young wrestling.

15 Q. What I'm saying is your brother was hanging around with
16 Terrell, too, so he knew him really well as well?

17 A. Yes, sir.

18 Q. Is that right?

19 A. Yes, sir.

20 Q. So it's not just you, but your brother as well?

21 A. Yes, sir.

22 Q. Now, you mentioned DJJ?

23 A. Yes.

24 Q. What year -- how old were you when you went out to DJJ?

25 A. Twelve.

1 Q. And so that's eight years ago?

2 A. Yes, sir.

3 Q. And you went out there -- you and your brother actually
4 went out there together, didn't you?

5 A. No, sir.

6 Q. Weren't you both convicted of assaulting an individual?

7 A. Yes, sir.

8 Q. And he went out to DJJ and you went out to DJJ?

9 A. I went out to DJJ -- when I went to DJJ, my brother
10 wasn't there. My brother came like nine months or six
11 months after I done had did my time.

12 Q. Okay. But he was there on the same charge that you had
13 been there on?

14 A. Yes, sir.

15 Q. Because the assault took place -- both of you committed
16 the assault?

17 A. Yes, sir.

18 Q. Is that correct?

19 A. (No response).

20 Q. Is that correct?

21 A. Yes, sir.

22 Q. So let me see if I can -- I just want to make sure I
23 understand some of the things, because I got a little
24 confused there.

25 On October 10th, the day that this happened, you were

1 where? Where were you when got picked up?

2 A. I didn't get picked up.

3 Q. Who did you pick up?

4 A. I picked up my brother. My brother got in the car and
5 started driving. My brother was the driver. Once I picked
6 my brother up, my brother started driving. Then we picked
7 Ben Stewart up. Went to Swift Creek Apartments and picked
8 Ben Stewart up. And then we went to the Farmington
9 Apartments to pick up Terrell Addison.

10 Q. That's what I want to make sure.

11 So just to break it up a little bit here, the first
12 thing is your brother -- you picked your brother up? Then
13 you and your brother picked Ben Stewart up?

14 A. Yes, sir.

15 Q. And your brother was driving. And then the last person
16 that got picked up was Terrell?

17 A. Yes, sir.

18 Q. Is that right?

19 A. Yes, sir.

20 Q. And that was at the Farmington Apartments?

21 A. Yes, sir.

22 Q. Now, the purpose of -- when you went to -- left
23 Farmington Apartments was to go ahead and take Terrell home,
24 is that correct?

25 A. Yes, sir.

1 Q. Isn't that true?

2 A. Yes, sir.

3 Q. Okay. Because he lived in Rock Hill?

4 A. Yes, sir.

5 Q. And he didn't have a ride back to get to Rock Hill?

6 A. Yes, sir.

7 Q. And he was going to pay for the gas for y'all to take
8 him to Rock Hill?

9 A. Yes, sir.

10 Q. Is that true?

11 A. Yes, sir.

12 Q. And y'all were going to go on to Charlotte that day?

13 A. No, sir.

14 Q. Or were you going to come right back to Hartsville?

15 A. Come back to Hartsville.

16 Q. But Terrell wasn't coming back with you? He was going
17 home, correct?

18 A. Yes, sir.

19 Q. And where did Terrell sit when he got in the car?

20 A. What did he say?

21 Q. Where was he sitting?

22 A. He was sitting behind me on -- behind the passenger's
23 side.

24 Q. Was he driving?

25 A. No, sir. He drove a little bit when we got to Rock

1 Hill.

2 Q. So he did drive some when he got to Rock Hill?

3 A. Yes, sir.

4 Q. At what point did he get in the car and start driving?

5 A. Whenever we had tried to kick in the rim shop, he
6 started driving then until we got to the store.

7 Q. Okay. So when he was driving, where were you sitting?

8 A. In the back seat.

9 Q. On the -- behind the driver or on the other side?

10 A. Behind the passenger.

11 Q. Behind the passenger?

12 A. (Shaking head yes).

13 Q. And where was Ben Stewart sitting?

14 A. Behind -- beside me, behind the driver.

15 Q. Okay. And where was your brother Dontavious sitting?

16 A. On the passenger's side.

17 Q. On the passenger side?

18 A. Yes.

19 Q. And so how long was Terrell behind the wheel of the
20 car?

21 A. Not long.

22 Q. How long?

23 A. About five minutes.

24 Q. Five minutes?

25 A. Probably not even that.

1 Q. And why did he take over driving the car?

2 A. Because when the alarm went off, we had -- we ran to
3 the car and jumped in and we drove off.

4 Q. Okay. Now, this -- you know what place that is that
5 you are referring to?

6 A. No, sir, I don't know what place. I just know the
7 street.

8 Q. And who went over and kicked it and set the alarm off?

9 A. My brother.

10 Q. Your brother did?

11 A. Yes.

12 Q. But you don't even know what kind of place it was? It
13 was a --

14 A. A rim --

15 Q. A rim place?

16 A. Yes, sir.

17 Q. Now, the car that you were in, that was a car that you
18 gave somebody crack cocaine to drive the car?

19 A. Yes, sir.

20 Q. You knew the car was stolen, correct?

21 A. No, sir.

22 Q. Well, you pled guilty to possessing that stolen
23 vehicle --

24 A. Yes, sir.

25 Q. -- correct?

1 A. Yes, sir.

2 Q. So obviously you knew the car was stolen?

3 A. I just went ahead and take it because I had possession
4 of the car. I was the man in charge of the car so I wanted
5 to own up to what I did.

6 Q. So this was a champagne car?

7 A. Yes.

8 Q. Color car?

9 A. Yes.

10 Q. What kind of car was it?

11 A. A Buick.

12 Q. Okay. And when did you get that car that day?

13 A. I didn't get it. I got it like that Saturday.

14 Q. So you had it for several days before?

15 A. Saturday, Sunday. The Monday -- I put supposed to take
16 it back that Monday.

17 Q. Okay. And what if the car -- so you said that you had
18 that car in your possession for, what, since Saturday,
19 Sunday, Monday, and Tuesday?

20 A. Yes, sir.

21 Q. So if that car was stolen, it had to be stolen on
22 Saturday, or before Saturday, correct?

23 A. I don't think he even turned the car in, report the car
24 stolen until that Monday.

25 Q. Well, you pled guilty to possessing a car on October

1 9th, 2006.

2 A. Receiving stolen goods.

3 Q. That would have been the day before this incident.

4 That's the charge that you pled guilty to down in

5 Darlington.

6 A. Yeah, I pled guilty to that car.

7 Q. It was October 9th, 2006, when you were possessing that
8 car, or you were receiving stolen goods? Do you recall
9 that?

10 A. I had the car before that.

11 Q. Okay. But the -- if you pled guilty to receiving it on
12 October 9th, 2006, that would be incorrect?

13 A. Yes, sir.

14 Q. Let me just see if you can recognize this, this
15 document, as well as that document. Do you recognize it?

16 A. Yes, sir.

17 Q. This is the indictment for your receiving stolen goods
18 on that car, is that correct?

19 A. Yes, sir.

20 Q. And it says October 9th, 2006, does it not?

21 A. Yes, sir.

22 Q. Okay. So whether it's October 9th, or Saturday, which
23 would have been October 7th, the fact is that you were in
24 possession of a stolen vehicle?

25 A. Yes, sir.

1 Q. Now, so you get in the car -- well, everybody is in the
2 car and driving up to Rock Hill. And were you discussing
3 robbing a place?

4 A. There was discussion. First Terrell was like he was
5 wanting to get them boys.

6 Q. So it was Terrell?

7 A. Yes, sir. He was like he wanted to get them boys, but
8 as we got farther down and came to Rock Hill, yes, we did
9 start about robbing places.

10 Q. But you agree that the only reason to go to Rock Hill
11 was to go ahead and take Terrell home?

12 A. Yes, sir.

13 Q. There was no agreement to go to Rock Hill and rob
14 anything?

15 A. No, sir.

16 Q. There was no agreement to go to Rock Hill and hurt
17 anybody, correct?

18 A. No, sir.

19 Q. So the sole purpose was to take him up there and come
20 back?

21 A. Yes, sir.

22 Q. And for which your brother was going to get paid for
23 some gas?

24 A. Yes, sir.

25 Q. So my question is, when did you start talking about a

1 robbery, and who was talking about it?

2 A. After we got -- when we got to Rock Hill, we rode
3 around a for a little while. The only way they -- they
4 started talking robbing it -- we started talking about
5 robbing it. All four of us started talking about robbing
6 it.

7 Q. Well, what brought up the fact you had to rob somebody,
8 when prior to that there was no discussion about robbing?

9 A. On the way -- on the way there Terrell had called his
10 mother, but nobody answered the phone. So my brother was
11 like, you know what I'm saying, he wanted his money so.

12 Q. Go ahead.

13 A. Terrell was like "we are going to get the money." He
14 called again and they didn't answer. Then so my brother was
15 like -- Terrell was like "man, we are going to get the
16 money." So at the time we were passing a Domino's by this
17 time here. That's when the robbery started, talking about
18 it.

19 Q. So according to your version of the events, the sole
20 reason to go ahead or the sole discussion that brought about
21 this robbery was the fact that Terrell didn't have any money
22 for gas, is that correct?

23 A. I don't -- I don't know.

24 Q. Well, that's what you said now. There was no
25 discussion about a robbery. You were going to Rock Hill to

1 take him home, get some gas money to take him home, correct?

2 A. Yes, sir.

3 Q. And you didn't start discussing the robbery until he
4 didn't have any gas money?

5 A. Until his momma didn't pick up. I don't know what he
6 had. I wasn't -- I ain't -- I wasn't concerned about that.

7 Q. So my question is this. Up until that time there had
8 been no discussion about robbing anything?

9 A. Just about -- no, sir, just about he wanted some
10 retaliation on some boys for doing something to him, for
11 trying to play him and stuff.

12 Q. But that wasn't -- that wasn't the purpose to go to
13 Rock Hill?

14 A. No, sir.

15 Q. Okay. So -- well, my question again is this. The
16 robbery discussion came about when Terrell Addison didn't
17 have any money for gas, according to your version of the
18 facts?

19 A. I didn't say that, but if you want to put it like that.

20 Q. Well, no, I'm asking you, because I don't know.

21 A. Not -- I'm saying -- I don't know.

22 Q. Well, didn't you say that there was no discussion about
23 a robbery --

24 A. Yes, sir.

25 Q. -- until he couldn't come up with any money for gas,

1 and that's when you started discussing -- "we started
2 discussing a robbery"?

3 A. I ain't never say about him coming up with the money.
4 I said his momma didn't pick up the phone. I don't know
5 what he was calling his mom about. That was between him and
6 my brother.

7 Q. But you were in the car?

8 A. Yes, sir.

9 Q. Well, did you go by anybody's house?

10 A. No, sir.

11 Q. Did you go by anybody's apartment?

12 A. No, we rode around some apartments.

13 Q. Didn't he try to go get some money from somebody?

14 A. No, sir.

15 Q. You never stopped for him to go ahead and get some
16 money?

17 A. No, sir.

18 Q. At a house or an apartment?

19 A. No, sir.

20 Q. But you are saying he got on the phone and was trying
21 to get the money?

22 A. (Shaking head yes).

23 Q. Correct?

24 A. I didn't say. He called -- he called his mom. He got
25 to the phone to call his mom and didn't nobody pick up the

1 phone.

2 Q. Well, Davorius, I'm not trying to put words in your
3 mouth, but you are the one that brought up the fact that he
4 couldn't get the money.

5 So what brought up the discussion about him not being
6 able to get the money? What was the reason that y'all
7 started discussing that?

8 A. When I was telling you about the money, I was saying he
9 said -- you said he was going to pay my brother for some
10 gas. I said yeah. I ain't never said he couldn't come up
11 with the money.

12 Q. Well, did he come up with the money?

13 A. No, sir.

14 Q. Okay. And after he didn't come up with the money, you
15 said you started discussing this robbery, correct?

16 A. When he called his mother and she didn't answer the
17 phone, we started -- we were going -- when she answered the
18 phone, whatever, we started riding around. We went all the
19 way by the Domino's. And like -- he was like "let's just
20 rob Domino's."

21 Q. All right. So I'm just trying to get the sequence. So
22 he was calling his mom. He was supposed to be getting your
23 brother some money, but after he couldn't get in touch with
24 his mom is when the discussion about robbing the Domino's
25 came up?

1 A. Yes, sir.

2 Q. Correct?

3 A. Yes, sir.

4 Q. So back to my original question. The discussion about
5 the robbery didn't take place until there was a discussion
6 about the money for the gas?

7 A. Yes, sir.

8 Q. Correct?

9 A. Yes, sir.

10 Q. And after he called his mother, correct?

11 A. Yes, sir.

12 Q. And he didn't get any money, correct?

13 A. No, sir.

14 Q. Because, according to you, you didn't stop anywhere, is
15 that correct?

16 A. Yes, sir.

17 Q. Now, at what point did he go ahead and take over
18 driving up there in this scenario you are talking about?

19 A. Once we got -- once we -- after my brother -- after he
20 had kicked in the rim shop and the alarm went off, everybody
21 ran to the car. He jumped in the driver's side.

22 Q. And he started driving then?

23 A. That's when we all got in the car.

24 Q. How did he stop driving? Who told him to stop driving?

25 A. When we got to -- no, we pulled up in the gas station

1 and when my brother got out and he got out and got in the
2 back seat. My brother went in the car. I was pouring the
3 gas. My brother got back in the driver's side and I got in
4 the passenger's side and we drove off.

5 Q. So the gas station where you got gas is when Terrell
6 got out of the driver's seat?

7 A. Yes, sir.

8 Q. And he went to sit where?

9 A. He went back to sit behind the passenger's side.

10 Q. Your brother pumped the gas or did you pump the gas?

11 A. I pumped the gas.

12 Q. Your brother went to pay for the gas?

13 A. Yes, sir.

14 Q. Okay. He came out and where did you go then?

15 A. We followed the orange and black Chevy that Terrell had
16 said he knew the boys and that we were -- he had wanting to
17 rob. My brother was telling him "no, you don't know what
18 them boys got in the car." So we followed them up and then
19 we turn off and that's what led us to the BP station.

20 Q. So everything starting out is just a trip to Rock Hill
21 to get -- to take him home and for y'all to come back, but
22 now, according to you, Terrell is talking about robbing the
23 Domino's, robbing those guys, and robbing the BP station --

24 A. No.

25 Q. -- is that correct?

1 A. No, when it come to the BP station, that's my brother.

2 Q. Your brother decided to rob the BP station, is that
3 right?

4 A. Yes, sir.

5 Q. Because he didn't have any money, correct?

6 A. Yes, sir.

7 Q. Because Terrell didn't give him any money for gas?

8 A. I don't know if he had money, because he paid for gas,
9 so obviously he did have money.

10 Q. Well, didn't he get upset with Terrell because he
11 didn't have the money?

12 A. No, he didn't get upset.

13 Q. You didn't hear that conversation?

14 A. No.

15 Q. Well, at what point did you start agreeing that the
16 robbery -- y'all should be committing the robberies?

17 A. I just was like, man, if I knew -- I was like "if I
18 knew it was going to come down to -- "we was coming down
19 here for this, I would have brung a gun." That's all I
20 said.

21 Q. So you own a gun?

22 A. No.

23 Q. You have a gun?

24 A. No, sir.

25 Q. But you would have brought a gun?

1 A. I would have got one.

2 Q. You wouldn't have any problem getting a gun?

3 A. If I know somebody wanted to come off one.

4 Q. Right. If you were going to commit a robbery, then you
5 would have gotten a gun?

6 A. Yes, sir.

7 Q. So it's obviously something that you thought about
8 before?

9 A. No, sir.

10 Q. Correct?

11 A. No, sir.

12 Q. Well, according to you, if you knew that you were going
13 to be committing a robbery, you would have gotten a gun?

14 A. Yeah, I would have got one.

15 Q. Does that indicate that you have done it before?

16 A. No, I ain't never did no robbery before.

17 Q. Okay. But you would not hesitate to take a gun into a
18 robbery, is that correct?

19 A. I -- wasn't no need. I just -- when -- what I mean by
20 the gun, I was saying about when they was talking about
21 retaliation. When he was talking about them boys, that's
22 when I say that would have made me bring up about the gun.

23 Q. What did you bring up?

24 A. I said -- I said "if I knew we were coming down here
25 for this, I would have got a gun. I would have brung a

1 gun."

2 Q. You would have brung a gun?

3 A. Yes.

4 Q. But you have no idea where you would have gotten that
5 gun from?

6 A. No, sir.

7 Q. Is that right?

8 A. Yes, sir.

9 Q. How about from your brother?

10 A. My brother didn't have no gun.

11 Q. He never had any guns?

12 A. (Shaking head no).

13 Q. Okay. So I guess back to my original question. When
14 is it that you started discussing participating in a
15 robbery?

16 A. Whenever we got by the BP station. I was -- I didn't
17 discuss with it. I was just agreeing with it. Well, I
18 wasn't really agreeing with them, but I just wasn't saying
19 nothing. I'm just riding.

20 Q. Well, you must have agreed with them, because you pled
21 guilty to accessory after the fact.

22 A. Because -- the reason why I pleaded to that is because
23 I wrote statements trying to cover up of what happened in a
24 crime.

25 Q. Uh-huh.

1 A. That's why I went ahead and did what I -- and took them
2 charges because of that.

3 Q. So you are not guilty?

4 A. Yeah, I'm guilty.

5 Q. You are guilty.

6 You are guilty of all the things that you pled guilty
7 to?

8 A. Yes, sir.

9 Q. And you are awaiting sentence right now?

10 A. Yes, sir.

11 Q. All right. So, my understanding then is that you never
12 agreed to commit a robbery?

13 A. No, sir.

14 Q. You and your brother were not going to go rob some
15 other store --

16 A. No, sir.

17 Q. -- on the way home?

18 A. When we got -- who?

19 Q. You and your brother?

20 A. (Shaking head no).

21 Q. You have to -- the gentleman has to type it down.

22 A. No, sir.

23 Q. So then you and your brother never agreed that you and
24 he would commit a robbery on some other store on the way
25 home? Is that what your testimony is?

1 A. No, I ain't never -- I ain't never mentioned about
2 robbing no other store.

3 Q. Now, let me talk about the BP station for a minute,
4 just so I can understand something.

5 Who was going to rob the BP station, that your
6 testimony is?

7 A. My brother, and -- my brother asked Ben to come with
8 him first.

9 Q. Okay. That's what I thought you said.

10 So the discussion about robbing the BP station was
11 between your brother Dontavious and Ben Stewart, correct?

12 A. No, that's when we pulled up in the parking lot, my
13 brother told Ben to come with him. But Terrell and my
14 brother was talking about the BP station, when we pulled up
15 to the stop light right there and they seen it open.

16 Q. So Terrell was the one that was talking with your
17 brother about it, but your brother wanted Ben Stewart to go
18 into the store with him?

19 A. Yeah, once we got to the apartment.

20 Q. Okay. To the apartment, or to the BP station?

21 A. Once they got to the apartments.

22 Q. And the apartments is across the street from the BP
23 station?

24 A. Yes, sir.

25 Q. So your brother said "Ben, you come with me"?

- 1 A. Yes, sir.
- 2 Q. And did Ben get out of the car?
- 3 A. No, sir.
- 4 Q. Did Ben have a gun?
- 5 A. Yes, sir.
- 6 Q. Who did he give the gun to?
- 7 A. My brother.
- 8 Q. And so because Ben didn't go, then -- let's see, your
- 9 brother told Terrell to come?
- 10 A. Yes, sir.
- 11 Q. Is that correct?
- 12 A. Yes, sir.
- 13 Q. Now, at that point was there any discussion or argument
- 14 between your brother and Terrell about the fact that he had
- 15 not given him any money?
- 16 A. No, sir.
- 17 Q. You have mentioned something about some masks and some
- 18 hoodies and some gloves. Where did the masks come from?
- 19 A. My brother -- they had gotten -- my brother had gotten
- 20 the masks out of the trunk.
- 21 Q. But where did he get them from?
- 22 A. I don't know. I think from that store.
- 23 Q. Well, you were the one that drove up in the car.
- 24 A. I didn't drove in no car.
- 25 Q. You went to pick up your brother?

1 A. Yes, sir.

2 Q. Then you went to Rock Hill?

3 A. Yes, sir.

4 Q. So my question is, when did the masks get into the
5 trunk?

6 A. I think when they -- my brother pulled up at the store
7 after we -- do you remember I tell you when I was
8 testifying, I was like my brother pulled up to the store and
9 went in the store and got the gloves, I think he got the
10 masks then.

11 Q. Did he steal them or buy them?

12 A. I don't know. I didn't go in the store with him.

13 Q. Did he tell you that he had gotten the masks?

14 A. Yes, sir, I seen the masks.

15 Q. Where did you see them, in the car?

16 A. He got -- he got the masks in the car. Then we drove.
17 Then they put them in the trunk.

18 Q. Who put them in the trunk?

19 A. My brother.

20 Q. So you knew at that point that he had bought masks for
21 what, presumably what, not Halloween?

22 A. Yes, sir.

23 Q. For a robbery?

24 A. Yes, sir.

25 Q. Okay. So your brother was bent on committing a robbery

1 that night, isn't that true?

2 A. All of us.

3 Q. All of you were?

4 A. Yes, sir.

5 Q. Is that right?

6 A. Yes, sir.

7 Q. And so you knew there were those masks in the trunk.

8 Now, where were the guns?

9 A. In the car.

10 Q. Where?

11 A. Ben Stewart had his on his lap and Terrell had his on
12 the seat.

13 Q. So they were driving from Hartsville to Rock Hill and
14 they had those guns on the seats?

15 A. Yes, sir.

16 Q. Is that right?

17 A. Terrell -- I mean, Ben had his on his lap and Terrell
18 had his on the seat.

19 Q. Okay. Well, if there was no discussion -- and, of
20 course, let me -- that was when they left Hartsville to go
21 to Rock Hill, is that correct?

22 A. Yes, sir.

23 Q. Well, if there was no discussion about a robbery until
24 you got up there and started discussing the Domino's, why
25 was Ben and why was Terrell sitting there with a gun on the

1 seat?

2 A. Because -- I don't know, because I know Ben stayed with
3 his gun, and Terrell, I don't know where he got his gun
4 from.

5 Q. You never saw that gun before?

6 A. (Shaking head no).

7 Q. Correct?

8 A. Until that time right there.

9 Q. Yeah.

10 It looked like what you said? It had some kind of
11 handle, a wooden handle?

12 A. It was a revolver. What Terrell had?

13 Q. Yeah.

14 A. A revolver. A .38 revolver.

15 Q. With a wooden handle?

16 A. No, the one Ben had was an automatic with a hammer on
17 the back.

18 Q. Yeah, I'm talking about Terrell's.

19 A. What about it?

20 Q. What kind -- that gun looked like?

21 A. A revolver. It was --

22 Q. No, color?

23 A. Gray with a wooden handle.

24 Q. A wooden handle?

25 A. Yes.

1 Q. Gray with a wooden handle?

2 A. Yes.

3 Q. What color was the wood?

4 A. Brown.

5 Q. It wasn't your gun?

6 A. No, sir.

7 Q. It wasn't your brother's gun?

8 A. No, sir.

9 Q. Your brother or you didn't stick that in Terrell's hand
10 and tell him to go into the store?

11 A. No, sir.

12 Q. Was there any discussion at all between your brother
13 and you and Terrell Addison that he had to go into that
14 store with your brother while your brother robbed the store?

15 A. No, sir.

16 Q. Didn't y'all force him to go ahead and do that?

17 A. No, sir.

18 Q. Neither one of you gave him a gun?

19 A. No, sir.

20 Q. Neither one of them told him that he had to go with
21 you --

22 A. No, sir.

23 Q. -- is that right?

24 You are saying you didn't do it and you say your
25 brother didn't do it?

1 A. My brother was like "I'll be asked Ben." My brother
2 was like "just come on, Terrell," and he popped the trunk
3 and got out of the car.

4 Q. But it was Terrell's idea, but yet he wasn't going to
5 do it?

6 A. My brother.

7 Q. Ben was going to do it?

8 A. My brother didn't want -- my brother didn't want
9 Terrell to do it.

10 Q. But it was your brother's -- your brother seems to be
11 the primary actor and mover in this particular robbery. You
12 agree with that, don't you?

13 A. Yes, sir. And I agree that he manned up and took the
14 charges to whatever he did.

15 Q. Right.

16 And had he not wanted to go into that BP station and
17 rob the station, Mr. Marshall would still be alive, correct?

18 A. If all of us wouldn't have agreed to go in for a
19 robbery.

20 Q. And you were agreeing, too? That's what you are
21 telling this jury?

22 A. (Shaking head yes).

23 Q. You knew what they were going to do?

24 A. Yes, sir.

25 Q. Now, you said you left the car?

1 A. Yes, sir.

2 Q. You and Ben went where?

3 A. We got out of the car and jumped a wall. We started --
4 we started walking. We started walking. That was like
5 twenty minutes after they left the car. And then we started
6 walking and then we seen them running back. And my brother
7 is like, man, he is talking like he's hit -- he shot, so we
8 got -- we start walking and we got up and ran, jumped back
9 over the wall and we jumped in the car and we left.

10 Q. Well, that's what I -- where were you going over a
11 wall?

12 A. We jumped over the wall. I don't know where the wall
13 is. We jumped over wall and we was going the same way they
14 left.

15 Q. You were going towards them?

16 A. Well, we walked -- we was going -- when we was turning
17 off down there, they was running back, and then that's when
18 they were telling us that -- my brother was saying that he
19 got shot.

20 Q. You were going back towards the station, is that what I
21 understand?

22 A. Back towards that way, yes, sir.

23 Q. Towards the station, not away from it?

24 A. Yes, sir.

25 Q. Is that right?

1 A. Yes.

2 Q. So when your brother, when you realized that he had
3 been shot, who drove the car back to Hartsville?

4 A. My brother.

5 Q. And there was some discussion in the car at that point
6 about the fact that Terrell didn't do what your brother
7 wanted him to do in that robbery, isn't that true?

8 A. Yes, sir.

9 Q. He wanted -- your brother wanted him to grab Mr.
10 Marshall, isn't that true?

11 A. Yes, sir.

12 Q. And he was really angry with him about that?

13 A. No, sir, he just was like -- my brother was like "why
14 you didn't grab him? My brother was like "I told you to
15 grab him, man." Terrell was like "I didn't grab him because
16 the minute you had already shot him."

17 Q. "You had already shot him"?

18 A. Yes.

19 Q. And you are saying your brother didn't say that with
20 any particular type of anger at all? There was no argument
21 or anything like that?

22 A. No, sir.

23 Q. You get back to Hartsville and you go to the hospital?

24 A. Yes.

25 Q. Correct?

1 A. Yes, sir.

2 Q. Now, I just got lost there a little bit about after the
3 hospital, when you went to the hospital.

4 When you left the hospital, who did you leave with?

5 A. I left by myself. I was with myself.

6 Q. In that car, the champagne car?

7 A. No, sir.

8 Q. Who did you go -- what kind of car did you go in? What
9 car did you leave in?

10 A. In a car that Jessica, my brother's girlfriend pulled
11 up to the hospital in.

12 Q. And what car was that?

13 A. Ryan Dixon's car, a gray Park Avenue, Buick.

14 Q. And where did you go from there?

15 A. Monday Bishop's house.

16 Q. And did you say that you saw Ben Stewart and Terrell at
17 Monday Bishop's house?

18 A. When I opened the door, there was in there.

19 Q. They were already there.

20 So they had left the hospital before you?

21 A. I told Terrell to take the car to Ben's sister's house
22 and I will be there.

23 Q. So Terrell never went in the hospital?

24 A. Yes, I came in the hospital with me.

25 Q. Ben never went in the hospital?

1 A. No, sir.

2 Q. So they were already there at Monday Bishop's. And who
3 else was there?

4 A. Then Monday Bishop, Terrell Addison, Ben Stewart, Allen
5 Reed, me. When I showed up, it was me, and some girl. I
6 don't know her name.

7 Q. And how long were you there?

8 A. It was about five minutes.

9 Q. And what happened in there?

10 A. When I opened the door -- well, I just -- when I opened
11 the door, I just come in. They looked at me and I told
12 them -- I told Ben -- I mean I told Terrell then to come
13 follow me to my baby's mother's house.

14 Q. Okay. And what car did he have?

15 A. Who?

16 Q. Terrell.

17 A. Champagne.

18 Q. So he had the champagne car?

19 A. Yes, sir.

20 Q. Who drove the champagne car away from Monday Bishop's
21 house?

22 A. Oh, Ben Stewart.

23 Q. Not Terrell?

24 A. No, sir.

25 Q. And who was in that car when Ben Stewart drove that car

1 away?

2 A. Terrell.

3 Q. Were you there when they drove away?

4 A. I was in the parked -- I was in the other car.

5 Q. And that was the car -- Ryan's car?

6 A. Yes, sir.

7 Q. And where did you go from there?

8 A. I went to my baby's mother's house.

9 Q. And after you left your baby's mother's -- when you
10 were at baby's mother's house, where did you go from there?

11 A. I dropped -- I dropped Ben Stewart back off. It's
12 on -- where we picked him up from at Swift Creek Apartments.
13 Me and Terrell and my baby's mother went to the store and I
14 got some cigarettes and I dropped Terrell back off in
15 Farmington.

16 Q. And that was where Shonda stayed?

17 A. Yes, sir.

18 Q. That's not where is relatives stay. That's where this
19 young lady Shondra stays, correct?

20 A. He had -- his family -- he had some I think -- I don't
21 know, his cousins or something, they stayed over there, you
22 know, at the apartments too.

23 Q. But Shonda did as well?

24 A. Yes, sir.

25 Q. Now, what car did you drive from your girlfriend's --

1 your baby's momma's house to drop Ben and Terrell off?

2 A. Ryan Dixon's car.

3 Q. What happened to the champagne car?

4 A. I left it at my baby's mother's house.

5 Q. And did you drive that car again?

6 A. Yes, sir.

7 Q. When did you drive that car again?

8 A. Whenever Ryan Dixon came -- I mean, whenever I had
9 dropped -- after I dropped them off and I went to go pick my
10 baby's mother's back up -- I mean I went to go drop by
11 baby's mother back off home because she had to go to school.
12 That's when I got in the car.

13 Q. You got in the champagne car again?

14 A. No, I had -- I had got back in the Buick car and
15 dropped my baby's mother off. That's when -- yeah, that's
16 when I got in the champagne car and I drove back -- drove
17 back to the hospital.

18 Q. To the hospital?

19 A. No, I went to Farmington Apartments first.

20 Q. You said Farmington Apartments. Then you drove to the
21 hospital?

22 A. (Shaking head yes).

23 Q. Is that right?

24 A. Yes.

25 Q. What happened to the champagne car?

1 A. I parked it in the hospital parking lot and I went in.
2 When I came out, I seen the police around it.

3 Q. Okay. What did you do?

4 A. I got in the car -- got in the truck with -- with my
5 brother's friend Will and he took me back to my baby's
6 mother's house to get the other car.

7 Q. And that was Ryan's car?

8 A. Yes, sir.

9 Q. Did you ever see the champagne car again?

10 A. No, sir.

11 Q. When did you see Terrell again?

12 A. After I got -- after I got to Ryan's car from my baby's
13 mother's house and drove back to Farmington Apartments, I
14 picked my cousin Rodney Johnson. Terrell -- he was with
15 Terrell. Him and Terrell were together. I picked them up
16 and went to -- we went into the barbershop. Well, I went
17 back to the hospital first. Then I went back to the -- went
18 to the barbershop to get my hair cut and me, Terrell, and my
19 cousin was together and we went to the store to get some gas
20 because I was going to Darlington.

21 Q. Did you go to Darlington?

22 A. Yes, sir.

23 Q. In whose car?

24 A. In Ryan Dixon's car.

25 Q. Did Terrell go with you?

1 A. No, I dropped him off at his grandmother's house.

2 Q. Did you see him again after that?

3 A. Yes, sir.

4 Q. When?

5 A. That Thursday before, I think. I think that Thursday
6 at a club. Thursday or Friday at a club.

7 Q. So you just happened to just run into him at the club?

8 A. Yes, sir.

9 Q. Now, none of this thing about going to Darlington or
10 going to the club afterwards did you ever tell anybody, any
11 of the police, isn't that true?

12 A. No, sir.

13 Q. It's not in your statements at all?

14 A. No.

15 Q. You just testified to it today for the first time,
16 correct?

17 A. Yes, sir. I told the officers when they picked me up.

18 Q. But not in your statements?

19 A. (Shaking head no).

20 Q. Correct?

21 A. Told him what?

22 Q. About going to Darlington --

23 A. No, no, sir.

24 Q. -- you going to the club and seeing Terrell later, none
25 of that is in your statements, correct?

1 A. No, sir. I think it's in one of my statements.

2 Q. Now, you entered a plea to these charges. Let me make
3 sure I understand it. On March 27th, 2007, correct?

4 A. Yes, sir.

5 Q. You pled guilty to conspiracy to commit armed robbery
6 at the BP station, correct?

7 A. Yes, sir.

8 Q. You pled guilty to accessory after the fact to murder
9 and armed robbery.

10 You pled guilty to possession of a stolen vehicle,
11 correct?

12 A. Yes, sir.

13 Q. And attempted escape and malicious injury to property,
14 correct?

15 A. Yes, sir.

16 Q. Where did you attempt to escape from?

17 A. Rock Hill city jail.

18 Q. After you were arrested on this charge?

19 A. Yes, sir.

20 Q. So you did -- you tried to escape as well?

21 A. Tore bricks out of the wall.

22 Q. And you pled guilty to that?

23 A. Yes, sir.

24 Q. Now, you are looking at a total I think we computed
25 about 50 years?

1 A. Yes, sir.

2 Q. Did you tell your brother that you were looking at
3 about 15 years?

4 A. No, sir.

5 Q. Or you expected about 15 years?

6 A. No, sir.

7 Q. Did you ever make that statement to him?

8 A. No, sir.

9 Q. Do you know where he would have gotten that idea?

10 A. No, sir.

11 Q. Well, it's fair to say that you are hoping that by your
12 testifying here today, that you are hoping that your
13 sentence is going to be as light as possible, correct?

14 A. Yes, sir.

15 Q. That's your hope?

16 A. Yes, sir.

17 Q. And we agree that you went and you pled guilty to
18 receiving stolen goods on August 28th, 2008, in Darlington
19 County, and that was the Grantham car? That's the champagne
20 car.

21 And you also pled guilty to a grand larceny of a
22 Chevrolet Capris that you stole on October 17th, 2006, and
23 you pled guilty to that also on August 28th, 2008, is that
24 correct?

25 A. Yes, sir.

1 Q. Whose car was that?

2 A. Which one?

3 Q. The 2000 -- I mean, the 1989 Chevy Capris.

4 A. I don't know.

5 Q. You pled guilty to it.

6 A. (Shaking head yes).

7 Q. Let me see if I understand. You are telling -- you are
8 telling jury that you pled guilty to stealing a Chevy
9 Capris, but you don't know anything about it?

10 A. Yeah, I -- I -- I stole it.

11 Q. You stole it?

12 A. Yes, sir.

13 Q. Who did you steal it from?

14 A. I don't know. It was in the apartments, in the
15 Farmington Apartments.

16 Q. Okay. So you just stole another car?

17 A. I didn't steal it -- well, if you want to say it like
18 that.

19 MR. THOMPSON: Your Honor, I would object.

20 THE COURT: Sustained, counsel. You know better.
21 Move on.

22 BY MR. SWERLING:

23 Q. I want to go through and just kind of touch on some of
24 these issues in your statement.

25 Are you smiling?

1 A. (Shaking head no).

2 Q. When you were picked up on October 10th, 2006, you told
3 Detective April Cooke that you were walking with your
4 brother in the Farmington Apartments and somebody drove by
5 in a white Buick and they started shooting. Is that
6 correct?

7 A. Yes, sir.

8 Q. And that was not a true story?

9 A. No, sir.

10 Q. And then on October 18th, 2006, you were interviewed by
11 Detective Herring, is that correct?

12 A. Yes, sir.

13 Q. And, of course, this was also not a true statement as
14 well, isn't that true?

15 A. Yes, sir.

16 Q. You told Detective Herring on that day that your
17 girlfriend's mom, Pam Slater, picked you up, or you were
18 with her and went over to their house and Terrell was there,
19 correct?

20 A. No, sir.

21 Q. What did you say?

22 A. I said that I was in the house asleep at my baby's
23 mother's and my baby's mother's mother came in there and
24 tell me that somebody was at the door for me. And I got up
25 to put my pants and that's when Terrell Addison was at the

1 door.

2 Q. But that's Pam Slater and Natasha Slater?

3 A. Yes, sir.

4 Q. And so you told them on that day Terrell came to that
5 house?

6 A. Yes, sir.

7 Q. Correct?

8 A. Yes, sir.

9 Q. And that you got in Ryan's car --

10 A. Yes, sir.

11 Q. -- on that day. October 10th, correct?

12 A. Yeah, I told them that on October 10th.

13 Q. And you told Detective Herring that Terrell told you
14 that your brother had been shot?

15 A. Yes, sir.

16 Q. You also told Detective Herring that Terrell said that
17 he had been shot at the Farmington Apartments, correct?

18 A. Yes, sir.

19 Q. You also told the police that Terrell had told you that
20 he had taken him to the hospital and that's where your
21 brother was, correct?

22 A. Yes, sir.

23 Q. You went back to Ryan's -- or you got back in Ryan's
24 car. You went back to your girlfriend's house. That's what
25 you told the detective, correct?

1 A. I can't remember that.

2 Q. Now, you said that you spoke with your brother in the
3 emergency room?

4 A. Yes, sir.

5 Q. And that your brother told you that he and Terrell were
6 in the Farmington Apartments when he got shot by someone in
7 a white Buick, correct?

8 A. Yes, sir.

9 Q. You had this whole elaborate story you and your brother
10 had come up with about being shot in the Farmington
11 Apartments by somebody driving by in a white Buick, isn't
12 that true?

13 A. Yes, sir.

14 Q. Y'all had come up with that story and concocted it?

15 A. We had came up with that story. All of us was in
16 there, because he knew I was the one that would take him in
17 the hospital. So he told me to tell the detective to ask
18 them that's the story we were going to use.

19 Q. And you spoke with your cousin -- you even told the
20 police you spoke with your cousin Rodney Johnson and you
21 told him about your brother and Rodney told you that your
22 brother had been there in the morning?

23 A. Yes, sir.

24 Q. To look for him?

25 A. Yes, sir.

1 Q. Correct?

2 So it wasn't just a simple statement? It was a fairly
3 elaborate concoction that you had come up with, both of you,
4 true?

5 A. Yes, sir.

6 Q. All right. Now, on October 19th you were interviewed
7 by John Thickens, correct?

8 A. Yes, sir.

9 Q. Did he make you any promises?

10 A. No, sir.

11 Q. So there were no promises made to you about bond or
12 anything like that?

13 A. No, sir.

14 Q. Now, you told him that on that day, October 10th, you
15 were at Hartsville High and Ben Stewart and Terrell Addison
16 pulled up in that champagne car looking for your brother?

17 A. Yes, sir.

18 Q. That's like a third version of what you have told the
19 police, correct?

20 A. Yes, sir.

21 Q. So you are at the high school and Ben and Terrell drive
22 up? That's what you told them?

23 A. (Shaking head yes).

24 Q. Then you told them that you went to your grandmother's
25 house. Then you said "let me stop. I want to get this

1 right." Do you remember that?

2 A. Yes, sir.

3 Q. You said that you left Hartsville in a stolen car about
4 eleven o'clock. That's what you told the police?

5 A. Yes, sir.

6 Q. That Terrell needed to get home.

7 You first saw the car again and you repeated that when
8 Ben and Terrell drove up, correct?

9 A. Are you talking about --

10 Q. That's what you told them, that's when you saw the car
11 first?

12 A. Yes, sir.

13 Q. Here is really something important now. In that
14 statement of October 19th, 2006, you told the police that
15 Terrell Addison was driving the vehicle when they picked you
16 up. Isn't that true?

17 A. I can't remember.

18 MR. SWERLING: If the court would indulge me a
19 moment.

20 THE COURT: Yes, sir.

21 (Off the record)

22 (Back on the record).

23 MR. SWERLING: May I approach, Your Honor?

24 THE COURT: Yes.

25 BY MR. SWERLING:

1 Q. Mr. Mack, is that your signature on that statement?

2 A. Yes, sir.

3 Q. That's October 19th. Do you see that?

4 A. Yes, sir.

5 Q. Now, I'm going to ask you to look at this last page
6 right down here where I said "okay. Stop. I want to get
7 this right. Terrell was with my brother in the store, not
8 me. I was in the car. Terrell was driving the car. Ben
9 was in the back left. I was in the back right. My brother
10 don't Donte was in the front right." Is that correct?

11 A. That's when we was in the -- that's when we was at the
12 store.

13 Q. Okay. Ben was driving -- I mean -- I mean Terrell was
14 driving at that point?

15 A. That's correct.

16 Q. That's what you are saying there?

17 A. That's when we was at the store.

18 Q. Not when he pulled up, is that right?

19 A. Yes, sir.

20 Q. Well, who was driving when they pulled up at the high
21 school?

22 A. I just made that story up.

23 MR. SWERLING: I'm sorry, I lost my place, Your
24 Honor.

25 BY MR. SWERLING:

1 Q. Now, you said in that statement of October 19th that
2 you got to Rock Hill and he was driving at that time when
3 you got to Rock Hill, Terrell Addison. Do you remember
4 that?

5 A. Yes, sir.

6 Q. So you have him driving a little bit more in here than
7 you have testified to this jury, because you said it was
8 only about five minutes that he was driving the car. But in
9 this statement that you gave to the police you have Terrell
10 driving quite a bit. You have him driving when you went to
11 the store. You had him driving around Rock Hill. So it's a
12 little bit more. Which is correct?

13 A. Yes, sir.

14 Q. Which is correct?

15 A. Yes, sir.

16 Q. No, which is correct?

17 A. He -- what do you mean?

18 Q. Huh?

19 A. I said what you -- I don't get what you are saying.

20 Q. Well, which is correct? Was he driving the car just a
21 little bit, or was he driving the car a lot?

22 A. Just a little bit. Just that one time when we drove
23 from the rim shop to the store.

24 Q. I want you to look at that statement again, if you
25 would, okay? Go to on the top of it. It says page 13. You

1 see that up there?

2 A. Uh-huh.

3 Q. In that top paragraph?

4 "Terrell said he needed to get back home to Rock Hill.
5 He said his momma came down there and he say she left him
6 down there."

7 What's the next sentence, what does that say?

8 A. Saying "the first time I saw the car, Ben and Terrell
9 rode up in it and Terrell was driving, so I think Terrell
10 stole the car."

11 Q. Okay. So let's go back to what I said before. You
12 said the first time that you ever saw that car was when Ben
13 and Terrell drove up in the car and Terrell was driving it,
14 and that was in Hartsville?

15 A. Yes, sir.

16 Q. Now, which was it? Was he driving down in Hartsville
17 or wasn't he driving down in Hartsville?

18 A. He wasn't driving in Hartsville.

19 Q. So you lied?

20 A. Yes, sir.

21 Q. Why did you have Terrell driving the car? Why did you
22 think it was important to say that Terrell was driving the
23 car down in Hartsville? To try and show that he was the one
24 that stole the car?

25 A. I was trying to cover up my own -- cover up my own

1 tracks.

2 Q. So you blamed him? You were willing to blame Terrell
3 and put the car stolen car on him, when, in fact, you gave
4 the drug dealer or you gave the guy some drugs so you could
5 have the car?

6 A. Yes, sir.

7 Q. You didn't have any hesitation telling the police that
8 Terrell Addison was the one that drove up in the car and he
9 must have been the one that stole it, isn't that true?

10 A. Yes, sir.

11 Q. So you don't whatever you have to do to go ahead and
12 help yourself, because that's what you were doing that day,
13 isn't that true?

14 A. At that point in time trying to cover -- trying to see
15 if I could get away -- get around from it, but there wasn't
16 no way out, so I just gave them the straight truth of what
17 happened.

18 Q. But you didn't do that until you got caught. First you
19 said that Terrell was driving the car and he must have
20 stolen the car.

21 A. Yes.

22 Q. So you were willing to lie on Terrell Addison to help
23 yourself?

24 A. At that time, yes, sir.

25 Q. Let me ask you this. How does one no when you are

1 telling the truth and not? How does the jury know you are
2 telling the truth today versus what you told the police on
3 October 19th? How do they make that distinction?

4 A. I don't know.

5 Q. Because you will lie, correct?

6 A. Everybody will.

7 Q. But you will lie to go ahead and hurt somebody else to
8 save yourself, correct?

9 A. Not really, because I wouldn't even -- I wouldn't have
10 took -- owned up to the car when I went down to Darlington
11 County for the car, if I wanted to blame it on somebody
12 else.

13 Q. But on October 19th you were blaming Terrell Addison?

14 A. Yes, sir.

15 Q. Now, on that statement as well I asked you whether or
16 not your brother and Terrell were having a dispute or an
17 argument about it and you said no, but I'm going to ask you,
18 isn't it true that your brother said he was going home.

19 "You sent me down here on a blank mission." He said that to
20 Terrell?

21 A. Yes, sir.

22 Q. And that was the money, to get some money?

23 A. Yes, sir.

24 Q. Isn't that true?

25 A. Yes, sir.

1 Q. So I asked you before wasn't the issue that Terrell
2 didn't get the money -- couldn't get the money for gas, but
3 yet right here you told the police on October 19th that he
4 was -- your brother was mad because he told Terrell "you
5 sent me down here on a blank mission"?

6 A. That was -- that was about three years ago.

7 Q. Well, which is more accurate, what you said three years
8 ago or what you are saying today?

9 A. I said that was -- what I'm saying is that was about
10 three years ago. What I'm saying now I'm telling -- I know
11 some of it I'm saying I forgot about what I said in the
12 statement, but --

13 Q. Well, there is only one truth.

14 A. You are right.

15 Q. You can only tell the truth one way.

16 A. I'm telling the truth today.

17 Q. You are telling the truth today?

18 A. Yes.

19 Q. But yet you told them on that day, on October 19th, a
20 lot of different things. Don't you agree that your memory
21 would be better on October 19th, 2006, than it would be
22 today, February 24th, 2009?

23 A. I'm speaking the truth today. I'm speaking what really
24 happened today.

25 Q. My question, though, was would your memory be better in

1 October of 2006, as opposed to today, February 24th, 2009?

2 A. Yes, sir.

3 Q. You would agree with that?

4 A. Yes, sir.

5 Q. And your brother told Terrell, according to your
6 statement of October 19th, that he would not have come to
7 Rock Hill, had he known that Terrell would not have the
8 money for gas. Isn't that what you told the police that
9 day?

10 A. I think so.

11 Q. Okay. Now, you -- let me ask you something. At some
12 point when you were -- this just comes up kind of out of the
13 clear blue, but it's actually relevant to this. At some
14 interview you had when you went into DJJ, you admitted that
15 you were a member of a gang, didn't you, Folk Nation?

16 A. When I went to DJJ?

17 Q. Yeah.

18 A. (Shaking head no).

19 Q. Are you a member of a gang, the Folk Nation?

20 MR. THOMPSON: Objection, Your Honor.

21 A. No, sir.

22 MR. THOMPSON: It's not relevant.

23 THE COURT: What's the relevance, counsel?

24 I sustain the objection.

25 MR. SWERLING: Yes, sir.

1 THE COURT: Move on.

2 MR. SWERLING: Okay.

3 BY MR. SWERLING:

4 Q. In that statement I asked you, and I'm going to ask you
5 this way, that your brother told Terrell that he was
6 supposed to have grabbed that dude, but he didn't do it,
7 correct?

8 A. Yes, sir.

9 Q. I had asked you whether or not they were arguing about
10 that and you had said no. Would you tell the jury what you
11 told the police that day?

12 Didn't you tell the police on October 19th that him and
13 Terrell were arguing?

14 A. I stated -- do you remember when I pulled up -- and I
15 said when we pulled up in the apartment -- whenever we got
16 in the apartments we all started communicating talking loud.
17 And my brother was like why -- "why didn't you grab the
18 dude? He's the reason I got shot."

19 Q. Now, when you were at Monday Bishop's, what happened to
20 Terrell's .38?

21 A. He still had it with him.

22 Q. So he didn't put it in the bag?

23 A. No, sir.

24 Q. Is that right?

25 A. Yes, sir.

1 Q. Where was it?

2 A. He had it on him.

3 Q. Where?

4 A. In his pants -- in his pants pocket.

5 Q. So you are sure that he did not put that .38 in the
6 bag?

7 A. He told me. He said he ain't -- he told me he ain't
8 putting his gun in the bag.

9 Q. Did you have somebody write a letter for you when you
10 were sitting in jail on April 27th, 2007?

11 A. Yes, sir.

12 Q. Is that your signature?

13 A. Yes, sir.

14 Q. Did you have that person write a letter to the
15 solicitor's office? I think it's addressed to actually
16 David Hamilton, the Clerk of Court's office. That was April
17 27th?

18 A. Yes, sir.

19 Q. You were telling this individual who you had writing
20 the letter for you -- well, he put down that you had totally
21 lost your mind. Isn't that correct?

22 A. I told him what to put.

23 Q. And you told him to put down in that letter that you
24 had forgotten what you were in there for and that you had no
25 knowledge of what happened in court during your plea

1 agreement. Is that what you told that individual to write?

2 A. Yes, sir.

3 Q. And you signed it?

4 A. Yes, sir.

5 Q. That you wanted to fire your lawyer? You didn't want
6 him to handle the case any longer?

7 A. Yes, sir.

8 Q. And that you had been in another world lately.

9 Correct?

10 A. When I wrote that?

11 Q. Yes.

12 A. Yes, sir.

13 Q. And you told him to write the letter and you would sign
14 your name?

15 A. Yes, sir.

16 Q. Now, while you were in the jail, that was not the only
17 thing that was going on with you there, was it? You were
18 having actually hallucinations, weren't you?

19 A. No, sir.

20 Q. You were not hearing voices?

21 A. No, sir.

22 Q. You didn't tell anybody down at the jail that you were
23 hearing voices?

24 A. I told the mental health lady that so I could get onto
25 Seraquil to help me sleep.

1 Q. So you told them something so you could get some
2 medicine to help you sleep?

3 A. Yes, sir.

4 Q. But you do admit that you told the mental health people
5 that you were having hallucinations and hearing voices?

6 A. Yes, sir.

7 Q. And you were taking an anti-psychotic drug when you
8 were at the jail?

9 A. Yes, sir.

10 MR. SWERLING: Judge, can we approach one moment?

11 THE COURT: Yes, sir.

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion)

14 BY MR. SWERLING:

15 Q. I just have a couple more questions, Mr. Mack.

16 On January 5th, 2007, did you at the York County jail
17 over here tell Officer Guidry "if you shoot me with that MF,
18 I will kill you." And "you shoot me, you are a dead MF.
19 I'll put a hit on your ass." Did you tell him that?

20 A. Yes, sir.

21 Q. And on January 5th, did you --

22 I'm sorry. On February 7th, 2007, did you tell Officer
23 Gunn that you were going to smack him?

24 A. Yes, sir.

25 Q. Thank you.

1 MR. SWERLING: That's all I have, judge.

2 THE COURT: All right. I want to work a little
3 bit late so we can make sure we can at least finish with
4 this witness. I think it's a good time to take a break.

5 Mr. Foreman, ladies and gentlemen of the jury, we
6 are going to take a short recess at this time. We are going
7 to work a little bit late tonight, not real late, but we are
8 going to work probably to about 6:00, 6:30. I want to at
9 least finish this witness and see what we can get done.

10 If somebody absolutely has got to make a phone
11 call, the bailiff will take you down and let you make a
12 phone call. They have to be with you when you make a call,
13 if you need to call somebody and tell them you are going to
14 be here at 6:00 or 6:30. You are allowed to do that.

15 You may refresh yourselves during the break. We
16 will take about ten minutes.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: All right. Let's take about ten
20 minutes or so.

21 Mr. Mack, we are going to take a short recess at
22 this time. I will allow you to refresh yourself, like
23 everyone else, so you can stand down from the stand. You
24 cannot discuss your testimony with anyone.

25 THE WITNESS: Yes, sir.

1 THE COURT: Do you understand?

2 THE WITNESS: Yes.

3 THE COURT: At the time that you are at the break.
4 It's the same as if you are on the stand. But other than
5 that, you can refresh yourself.

6 THE WITNESS: All right.

7 THE COURT: Thank you.

8 (Whereupon, proceedings were recessed)

9 (Whereupon, proceedings were reconvened)

10 THE COURT: Well, counsel, let's go back on the
11 record.

12 With regard to the admissibility of prior
13 statement of Dontavious Mack, I'm going to put on the record
14 in support of my ruling the State v. Gerald, found at 350
15 S.C. 390, page 100, 564 S.E. 2d, 362, at page 368, Court of
16 Appeals, 2002.

17 Also State v. Saltz, S-A-L-T-Z. I have that case
18 here if you want to look at it, found at 346 S.C. 114, 551
19 S.E. 2d 240.

20 Also Tome v. United States, T-O-M-E, Tome v.
21 United States, 513 U.S. 150, 115 S. Ct 696, 130 Lawyers
22 Edition 2d 574.

23 There are others, but I think that would be
24 sufficient.

25 In other words, I affirm my ruling on that. I'm

1 not going to change my mind about that.

2 Are you ready to move on?

3 MR. BRACKETT: Yes, sir, I believe we have one
4 more cross-examination.

5 THE COURT: Exactly.

6 Please bring the jury in.

7 (The following takes place in the presence of the
8 jury panel)

9 THE COURT: Counsel, ready to proceed.

10 MR. SNOW: Your Honor, I have a few questions that
11 I want to ask this gentleman.

12 CROSS EXAMINATION BY MR. SNOW:

13 Q. Mr. Mack, how long have you been in custody?

14 A. Since October the 14th.

15 Q. Is this the longest time that you have ever spent in
16 jail?

17 A. Yes, sir.

18 Q. You are not happy about that, are you?

19 A. No, sir.

20 Q. You are not pleased that you can't see your family when
21 you want to?

22 A. What?

23 Q. You are not pleased that you can't see your family when
24 you want to, is that right?

25 A. Yes.

1 Q. You are not pleased that you can't see your child when
2 you want to?

3 A. Yes, sir.

4 Q. You are not pleased that you can't watch TV when you
5 want to?

6 A. Yes, sir.

7 Q. It's pretty rough being in custody, correct?

8 A. Yes, sir.

9 Q. Wouldn't it be fair to say that you certainly are
10 miserable, right?

11 A. Yes, sir. It feels uncomfortable.

12 Q. Right. Feels uncomfortable.

13 You are not happy. You are miserable, in fact?

14 A. (Shaking head yes).

15 THE COURT: Counsel, when you ask him a question,
16 don't make a statement. Ask him a question.

17 BY MR. SNOW:

18 Q. Is that correct?

19 A. Yes, sir. Nobody wants to feel happy locked up.

20 Q. Now, just to clarify, when the solicitor asked you
21 about talking with the police, the Rock Hill police, that
22 is, you -- you didn't tell them the truth the first time
23 that you spoke with them, did you?

24 A. No, sir.

25 Q. In fact, even after you talked with the Rock Hill

1 police you were still telling them lies, right?

2 A. Yes, sir.

3 Q. Let's just go back.

4 October 10th you gave a statement -- you gave a
5 statement to the Hartsville police, isn't that right?

6 A. Yes, sir.

7 Q. And in this statement you indicated that you and Donte
8 were walking in Farmington Apartments, right?

9 A. Yes, sir.

10 Q. That was a lie, wasn't it?

11 A. Yes, sir.

12 Q. And you told him -- and you told him the police --
13 detective, I'm sorry, her -- I'm sorry Detective Cooke, that
14 you and your brother were being shot at?

15 A. Yes, sir.

16 Q. Isn't that true, you told them that?

17 A. Yes, sir.

18 Q. That was a lie, wasn't it?

19 A. Yes, sir.

20 Q. And you told them that you saw a car, a Buick. There
21 was no Buick, right?

22 A. Yes, sir.

23 Q. And that was a lie?

24 A. Yes, sir.

25 Q. So on October 10th you told lies to the Hartsville

1 police?

2 A. Yes, sir.

3 Q. Many lies, isn't that right?

4 A. Yes, sir.

5 Q. And you knew because of what you told them, you and
6 your brother, that caused them to lose time and go out and
7 investigate? Didn't you know that?

8 A. It was all -- whenever they come -- came to get me,
9 they was already out there investigating, because my brother
10 had already told them.

11 Q. So this was a lie you and your brother contacted?

12 A. All of us concocted.

13 Q. Well, you never mentioned in this statement anything
14 about Mr. Addison or Mr. Stewart, correct?

15 A. Yes, sir.

16 Q. And you had other occasions to speak with the officers,
17 the Rock Hill police, on October 18th, didn't you?

18 A. Yes, sir.

19 Q. Were you already in custody then?

20 A. Yes, sir.

21 Q. You were in custody.

22 And so what you told the DA -- what you told the
23 solicitor on direct, what you said and you had told the
24 truth, you were lying, weren't you?

25 A. The DA -- I just -- I confessed it to the Rock Hill

1 department before the DA even got involved.

2 Q. But you didn't tell them the truth on when they first
3 interviewed you, did you?

4 A. No, sir.

5 Q. You were still telling lies then?

6 A. To the Rock Hill Police Department?

7 Q. Right.

8 A. Yes, sir.

9 Q. And I would just touch on that a little bit.

10 You told them that you ran home with your girlfriend at
11 your girlfriend's house?

12 A. Yes.

13 Q. And Terrell came and got you?

14 A. Yes, sir.

15 Q. All right. That didn't happen, did it?

16 A. No, sir.

17 Q. That was a lie?

18 A. Yes, sir.

19 Q. And let me just ask you this. Do you remember signing
20 the statement?

21 A. Yes, sir.

22 MR. SNOW: And if I may, judge, may I approach the
23 witness?

24 THE COURT: Yes, sir.

25 MR. SNOW: I'm just marking this for ID.

1 (Davorius Mack Statement marked as Defendant
2 Stewart's Exhibit No. 2 for identification)

3 MR. SNOW: I'm going to hand him this statement,
4 judge.

5 BY MR. SNOW:

6 Q. Is that your signature right here on the bottom of this
7 page?

8 A. Yes, sir.

9 Q. Okay. That's marked page 18, is that correct?

10 A. Yes, sir.

11 Q. And is that your signature on page 19?

12 A. Yes, sir.

13 Q. In fact, you signed that twice, didn't you?

14 A. Yes, sir.

15 Q. And you signed page 20 at the bottom of the page?

16 A. Yes, sir.

17 Q. Okay. So there is no mistake that you wrote this too
18 and you signed this?

19 A. (Shaking head yes).

20 Q. And before you signed it, you --

21 THE COURT: Counsel, excuse me. For the clarity
22 of the record will you please refer to it by its ID number
23 so the record will reflect what you are talking about?

24 MR. SNOW: I apologize, judge.

25 This is Defendant's No. 2, Stewart Defendant No. 2

1 I'm asking he to read from.

2 BY MR. SNOW:

3 Q. I want -- I'll read it, if I may, and allow you to tell
4 me if I'm correct or not.

5 Before you ask --

6 MR. THOMPSON: Objection, Your Honor. I would ask
7 that he introduce it first into evidence, if we are going to
8 publish it.

9 BY MR. SNOW:

10 Q. Is this your statement?

11 A. Yes, sir.

12 Q. It's a statement that you wrote?

13 A. Yes.

14 Q. Does it appear -- other than the fact that it's a
15 little mark on the top here that's pink and the sticker,
16 does it appear to be your statement?

17 A. I didn't read it yet.

18 Q. Well, take a look at it.

19 A. (Witness reviewing statement).

20 Q. Does that appear to be your statement?

21 A. Yes, sir.

22 Q. By reading it, did it refresh your recollection that's
23 your statement?

24 A. Yes, sir.

25 Q. So was it helpful?

1 A. I -- I -- no, it's a lie.

2 Q. It's a lie.

3 Was it helpful to identify it was your statement that
4 you said?

5 A. Yes, sir.

6 MR. SNOW: Judge, I would move it into evidence
7 without objection.

8 MR. THOMPSON: No objection, Your Honor.

9 MR. SWERLING: You are admitting what?

10 MR. SNOW: This is the exhibit. It's been marked
11 Exhibit -- Defense Exhibit No. 2. This is the statement
12 that he made on October 18th.

13 THE COURT: What year, please?

14 MR. SNOW: 2006.

15 MR. SWERLING: Judge, can I confer with Mr. Snow?

16 THE COURT: Yes, sir.

17 (Off the record)

18 (Back on the record)

19 MR. SNOW: Judge, I would withdraw my motion to
20 move it into evidence, but I'm just going to ask you a few
21 questions about it.

22 BY MR. SNOW:

23 Q. Now, in this statement you knew that you had a right to
24 an attorney, right?

25 A. Yes, sir.

1 Q. You knew that you had a right to talk with someone
2 involved in this case, right?

3 A. Like a detective?

4 Q. An attorney. You had right to get counsel before you
5 made these statements?

6 A. Yes, sir.

7 Q. You know that you had this statement possibly could be
8 used against you?

9 A. Yes, sir.

10 Q. So you knew it was a pretty serious statement, correct?

11 A. Yes, sir.

12 Q. Pretty serious and could get you in trouble?

13 A. (Shaking head yes).

14 Q. In fact, you knew also that this could possibly be used
15 in court, right?

16 A. Yes, sir.

17 Q. Even though you knew that, you still told the police
18 several lies, right?

19 A. Yes, sir.

20 Q. And so it's something that you contemplated quite a
21 bit?

22 A. At the time I thought I could get around -- try to get
23 around and beat around the bush with the police or the
24 detective, but I see that I couldn't, so I just went on
25 ahead and told him the truth.

1 Q. So you knew that it wasn't going to be something, a
2 little small lie or a white lie, you knew it was pretty big
3 to lie to the police?

4 A. Not at the time.

5 Q. Not at the time.

6 So you didn't know making false police -- statements to
7 the police was serious?

8 A. No, sir.

9 Q. You didn't care, did you?

10 A. I didn't -- no, I didn't say that.

11 Q. Okay. Now, in this statement -- in that statement you
12 don't mention anything to the police about -- this is the
13 October 18th statement. That's the one that you have,
14 correct?

15 A. Yes, sir.

16 Q. Now, you don't mention -- what you are telling the
17 police, tell me if I'm right or wrong, you told them that it
18 was a Buick, a four-door Buick, right?

19 A. In my first statement or this statement?

20 Q. The statement dated October 18th, 2006.

21 A. Yes, sir.

22 Q. And that wasn't the truth either.

23 And you told them that this was Ryan's car that Mr. --
24 that Mr. Addison came to your house in?

25 A. Yes, sir.

1 Q. It's Ryan's car.

2 Now, that wasn't Ryan's car that came, correct?

3 A. Statement -- this statement is not true. This whole
4 statement is not true.

5 Q. Right.

6 Did you lie throughout the whole statement?

7 A. Yes, sir.

8 Q. Everything that you told in this statement?

9 A. Yes, sir.

10 Q. Now, so even after you were in custody and speaking
11 with the Rock Hill police, you still continued telling this
12 elaborate lie that you and your brother had made up,
13 concocted?

14 A. All of us. Why do you keep saying me and my brother?
15 All of us was involved.

16 Q. And you also had another occasion to talk to police,
17 right?

18 A. Yes, sir.

19 Q. You talked to the Rock Hill police and you gave them a
20 statement on October 19th, 2006?

21 A. Yes, sir.

22 Q. In this statement, this is when you -- well, let's go
23 back.

24 Did you ever talk to your brother between the time --
25 between October 10th, 2006, and October 18th, 2006, did you

1 have an occasion to talk to your brother?

2 A. No, sir.

3 Q. You didn't have any occasion to talk to your brother at
4 all?

5 A. Yeah, we talked.

6 Q. Right.

7 And you talked about this case, didn't you?

8 A. No, sir.

9 Q. Right.

10 And you talked about the lies that you were telling,
11 didn't you?

12 A. No, sir.

13 Q. So y'all never talked about this case?

14 A. No, sir.

15 Q. No more?

16 A. No, sir.

17 Q. Didn't you see him?

18 A. When they locked us up.

19 Q. You never saw your brother after October 10th?

20 A. Yeah, I seen him at the hospital.

21 Q. So you had an occasion to talk to him, right?

22 A. Yes, sir.

23 Q. You had -- you have had family members to visit you,
24 correct?

25 A. Yes, sir.

1 Q. You had family members, if you know, to visit your
2 brother?

3 A. Yes, sir.

4 Q. Right?

5 A. Yes.

6 Q. Did you tell them anything to tell your brother?

7 A. My visitation has been gone ever since 2007. My
8 brother wasn't even convicted yet of this crime.

9 Q. But before that you had visitors?

10 A. Yes, sir.

11 Q. Right?

12 A. Yes, sir.

13 Q. And at that time did you tell them anything to tell
14 your brother?

15 A. No, sir.

16 Q. Now, the October 19th statement that you told -- you
17 gave to the police in Rock Hill, is this the truth in this
18 statement?

19 A. Some of it.

20 Q. Some of it.

21 Some of it was untruths, right?

22 A. Yes, sir.

23 Q. So you were still telling lies even October 19th? Even
24 when you had a second chance to tell the Rock Hill police
25 the truth, you were still telling lies?

1 A. Only about the car part.

2 Q. Only about the car part.

3 So you could pick and choose what you lied about?

4 A. I just -- I was just trying to -- yes, sir.

5 Q. Okay. But now you testified today -- you testified on
6 direct that you went to Monday's house after you left the
7 hospital, right?

8 A. (Shaking head yes).

9 Q. Correct?

10 A. Yes, sir.

11 Q. But you didn't tell the police that on the 19th, did
12 you?

13 A. No, sir.

14 Q. And, in fact, you said that you went with your
15 girlfriend after you left the hospital?

16 A. I said he followed me to my girlfriend's house.

17 Q. And you indicated that you hadn't talked to Mr.
18 Stewart, Ben, since the hospital, right?

19 A. We talked in the car when I was taking him back.

20 Q. The question is in the statement of October 18th --
21 now, you can look at it.

22 A. October the 18th, yeah.

23 Q. You told the police that since you left the hospital
24 that morning, you hadn't talked to Ben, did you? Didn't you
25 put that in your statement?

1 A. You say on the 18th?

2 Q. That statement that you have in your hand that's marked
3 October 18th --

4 A. 18th.

5 Q. -- 2006?

6 A. Yeah. I don't even see Ben Stewart's name in this
7 statement right here.

8 MR. SNOW: May I approach, judge?

9 THE COURT: Yes, sir.

10 BY MR. SNOW:

11 Q. Hold on just a second. I give you the wrong page. I
12 apologize.

13 Actually that's the 19th, the statement that you made
14 on the 19th.

15 So even on your statement on the 19th, if you recall,
16 and I can show you the statement if you want to see it, you
17 didn't tell the police that you had gone -- that you -- that
18 you had seen Ben after you left the hospital?

19 A. Yeah, I told them -- I told them -- no, I didn't tell
20 them on that statement right there.

21 Q. On the 19th you didn't tell them that -- you told them
22 that you had not spoken with Ben after you left the
23 hospital, right?

24 A. I can't remember that now.

25 Q. Okay. You can't remember. Okay.

1 MR. SNOW: Judge, I ask that this be marked.

2 (Davorius Mack Statement marked Defendant Stewart
3 Exhibit No. 3 for identification)

4 BY MR. SNOW:

5 Q. This has been marked Defendant Exhibit Stewart No. 3
6 for identification purposes. Does that appear to be your
7 statement there?

8 A. Yes, sir.

9 Q. It's marked October the 19th?

10 A. (Shaking head yes).

11 Q. Now, even in this statement, the 19th, you still were
12 lying to the police, right?

13 A. Some of it.

14 Q. Some of it.

15 So when did you decide to tell the truth?

16 A. I told the truth in this statement. I just was
17 covering up about the car, about the car part.

18 Q. So you told the truth in that statement. You just were
19 covering up the car part?

20 A. Yes, sir.

21 Q. So that's the truth in that statement?

22 A. Yes, sir.

23 Q. Right.

24 So then -- therefore, then, the statement that you made
25 on the 27th, you were still lying to the police then?

1 A. No, sir.

2 Q. Well, on the 19th, you indicated that you hadn't seen
3 or talked to Mr. Stewart, Ben, after you left the hospital,
4 right?

5 A. It don't say nothing about at the hospital. You say I
6 haven't talked to Ben Stewart since.

7 Q. Since?

8 A. You say since.

9 MR. SNOW: May I approach, judge?

10 THE COURT: Yeah.

11 BY MR. SNOW:

12 Q. Just to refresh -- right.

13 Didn't you say in this -- in the paragraph before that
14 that you were at the hospital and you left the hospital?
15 And when you left the hospital, you didn't talk to Ben?

16 A. I just said "we went to the hospital in Hartsville. I
17 took my brother in. Terrell came in for a minute, but then
18 he and Ben got in the car and left. They took my brother in
19 the back and Jessica showed up. I went to my baby's
20 mother's house. She opened the door for me. She was mad
21 and I dropped her in front of the bus stop crying." And I
22 say "I hadn't talked to Ben since."

23 I don't see nothing where they are saying nothing about
24 the hospital.

25 Q. All right. So according to your statement you just

1 read, after you left the hospital, you went to your baby's
2 momma's house --

3 A. Uh-huh.

4 Q. -- and you -- right after that you said "I haven't
5 talked to Ben since," right?

6 A. Yes, sir.

7 Q. Okay. So you hadn't talked to him since you left the
8 hospital, according to that statement?

9 A. Yes, sir.

10 Q. So then even on October 27th, even at that time you are
11 still lying -- or let me correct myself.

12 So, therefore, on the statement of October, you said
13 that you were telling the truth then. On October 27th you
14 were still lying.

15 A. No, sir.

16 Q. Well, if you are telling the truth then, did you tell
17 the police in the statement on October 27th that you had
18 seen Ben after you left the hospital, then that must be a
19 lie, right?

20 A. I'm saying after I left the hospital and I went to
21 Monday's house where they was, that's when I seen Ben.
22 That's the last time I seen Ben.

23 Q. Right.

24 But in that statement, October 19th, you said the last
25 time that you spoke to him was on the 19th, right?

1 A. Yes, sir.

2 Q. But then you -- and you said -- you just said that that
3 was the truth?

4 A. Yes, sir.

5 Q. On the 19th?

6 A. Yes, sir.

7 Q. So then what is the truth, because in this statement
8 marked -- dated -- that you gave October 27th, you told to
9 police that you hadn't talked to him after that, right?

10 THE COURT: Show him what you are talking about,
11 counsel. It's confusing.

12 BY MR. SNOW:

13 Q. You gave a statement on October 27th --

14 A. Yes, sir.

15 Q. -- right?

16 Does that appear to be your statement?

17 A. Yes, sir.

18 Q. And that's your handwriting, right?

19 A. Yes, sir.

20 Q. And you signed it too, didn't you?

21 A. Yes, sir.

22 Q. All right.

23 MR. SNOW: And, judge, let me find my spot on
24 here. Give me a second.

25 (Off the record)

1 (Back on the record)

2 BY MR. SNOW:

3 Q. Just so you can look at it while -- okay.

4 In your handwritten statement you indicated that
5 "Terrell and I went to the hospital with Donte." You
6 indicated that "Mr. Stewart waited in the car," according to
7 your statement?

8 A. Yes, sir.

9 Q. And you said that "I left the hospital and I went to
10 Monday's house."

11 A. Yes, sir.

12 Q. Right?

13 And you indicated that Ben and Terrell was there?

14 A. Yes, sir.

15 Q. Right?

16 A. Yes, sir.

17 Q. This was on the 27th?

18 A. Yes, sir.

19 Q. But in your statement on the 19th you said that you
20 hadn't seen them, right?

21 A. Yes, sir.

22 Q. And you testified that you were telling the truth then?

23 A. I said I haven't talked to him. Yeah, I said that. I
24 said I hadn't talked to him. Now you are saying -- first
25 you said talked to him. Now you are saying seen him.

1 Q. Well, you said on the 19th you hadn't seen him.

2 A. I haven't talked to him.

3 Q. So you saw them, but you didn't talk to him at all,
4 okay. Is that what you mean by that?

5 A. Yes, sir.

6 Q. But you didn't mention anything about that on the 19th,
7 did you?

8 A. Going by Monday's house?

9 Q. Right.

10 A. No, I didn't mention it.

11 Q. You didn't mention that.

12 You didn't mention anything about "Wise" on the 19th,
13 did you?

14 A. No, sir.

15 Q. Right.

16 But you mentioned that in your statement on the 27th,
17 right?

18 A. Yes, sir.

19 Q. And today you mentioned that as well?

20 A. Yes, sir.

21 Q. You didn't mention anything about Mr. Stewart asking
22 anybody to hide a gun on the 19th?

23 A. No, sir.

24 Q. Right.

25 In that statement on the 19th, correct?

1 A. Yes, sir.

2 Q. So you don't mention anything about any -- about this
3 incident about seeing Mr. Stewart after you left the
4 hospital, right?

5 A. Yes, sir.

6 Q. So when did you make that up?

7 A. I didn't make -- I didn't make it up. I just didn't
8 mention it.

9 Q. You just didn't mention it.

10 So you selectively didn't mention that then?

11 A. Yes, sir.

12 Q. I guess the point is it's pretty hard to tell when you
13 are lying, right?

14 A. (No response)

15 MR. THOMPSON: Objection. He's making statements
16 now.

17 THE COURT: Counsel, don't be argumentative. Ask
18 him a question, please.

19 BY MR. SNOW:

20 Q. So how do we know when you are telling the truth?

21 A. I'm telling the truth now.

22 Q. Today you are telling truth?

23 A. And in this statement.

24 Q. Okay. Well, let's just talk about -- you and Ben are
25 not friends, are you?

1 A. Yeah, we are straight.

2 Q. You are straight?

3 A. Pretty good.

4 Q. You have a pretty good reputation of being a bad guy,
5 don't you?

6 A. No, sir.

7 MR. THOMPSON: Objection.

8 THE COURT: Sustained, counsel.

9 Approach just a minute. All of you.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 BY MR. SNOW:

13 Q. Let me rephrase the last question that I asked you.
14 You -- you are known as a good fighter, right?

15 A. What?

16 Q. Fighter.

17 A. Yeah, I know how to fight.

18 Q. You know how to fight.

19 And you and Mr. Stewart had a fight in 2006, didn't
20 you?

21 A. No, sir.

22 Q. And in that fight you had with him, he whooped you
23 pretty good, didn't he?

24 A. What fight?

25 Q. He put a knot on your head, didn't he?

1 A. What fight?

2 Q. Right.

3 And you were embarrassed about that, correct?

4 A. What fight?

5 Q. The fight that you had with him on October -- in the
6 month of October of 2006.

7 A. I'm saying -- I'm saying what date it was?

8 Q. Did you have a fight with Mr. Stewart?

9 A. No, sir.

10 Q. Did you ever tell your brother about the fight?

11 A. No, sir.

12 Q. You didn't tell your brother about the fight?

13 A. No, sir.

14 Q. You didn't tell him that Mr. Stewart whipped you pretty
15 good?

16 A. No, sir.

17 Q. All right. Let's talk about this case then, your plea
18 agreement. At any time were you charged with murder?

19 A. No, sir.

20 Q. In this case?

21 A. No, sir.

22 Q. And are you familiar with your plea agreement?

23 A. Sir?

24 Q. Are you familiar with your plea agreement?

25 A. Yes, sir.

1 Q. And as part of your plea agreement, the State has
2 agreed not to pursue any other charges, other than the one
3 that you have already pled guilty to, related to murder or
4 armed robbery of James Marshall. Isn't that part of your
5 plea?

6 A. Yes, sir.

7 Q. And as part of the agreement, you agreed that the
8 statement dated October 19th, 2006, and October 27th, in
9 which you confessed to the involvement with the robbery and
10 murder of James Marshall, you admit that those are true?

11 A. Yes, sir.

12 Q. Right?

13 A. Yes, sir.

14 Q. But not all of those statements are true, right?

15 A. There were just one of them made that day, the 19th.

16 Q. Now, you also know that for whatever reason -- for not
17 whatever reason, if you don't uphold your end of the
18 bargain, that the deal could be off the table?

19 A. Yeah, if I don't testify.

20 Q. You don't testify, right?

21 And you also know that you do a good job, because you
22 haven't been sentenced yet, have you?

23 A. I just got five years right now for malicious injury of
24 property. That's on my plea.

25 Q. You have five years now?

1 A. Yes, sir.

2 Q. But you also know that you could be sentenced to more
3 than that, correct?

4 A. Yes, sir.

5 Q. And part of that is for you to testify -- part of your
6 agreement is to testify here today?

7 A. And that they won't pursue no other charges, just the
8 charges on me.

9 Q. So you have a lot riding on your testimony?

10 A. Not really.

11 Q. Do you know how long your brother is in custody or
12 going to be in prison?

13 A. Yes, sir.

14 Q. How long is that?

15 A. Life.

16 Q. Life.

17 Do you know what he pled guilty to?

18 A. Yes, sir.

19 Q. What has he pled guilty to?

20 A. Murder. All his charges.

21 Q. Right.

22 You are not charged with that, are you?

23 A. No, sir.

24 Q. Now, as part of your agreement you also know that if
25 you tried to back out of the deal, that the agreement can be

1 vacated or erased, right?

2 A. Yes, sir.

3 Q. And then the State could come back and pursue any
4 charge that they want --

5 A. Yes, sir.

6 Q. -- according to the agreement, right?

7 A. Yes, sir.

8 Q. And you have no interests in spending -- you want to
9 spend as less time in prison as you can?

10 A. It's up to the judge as to how much time he wants to
11 give me.

12 Q. But you don't want to spend a lot of time in prison?
13 In fact --

14 A. Nobody wants.

15 Q. You don't want to spend any time, do you?

16 A. (No response).

17 MR. SNOW: Just one moment, judge.

18 (Off the record)

19 (Back on the record)

20 BY MR. SNOW:

21 Q. Now, before you testified in this case you had an
22 opportunity to look at your statement, correct?

23 A. Yes, sir.

24 Q. You had a -- you had an opportunity to go back and look
25 at what you said before?

1 A. My statements are down in my property.

2 Q. But you had an opportunity, because you received
3 discovery in this case, didn't you?

4 A. No, sir.

5 Q. You didn't receive any copies of your statements?

6 A. Yeah, I had gotten copies of my statement, but I ain't
7 got -- I ain't got no motion of discovery. I ain't got none
8 of that.

9 Q. Did you have an opportunity to speak with anyone about
10 this case?

11 A. Nobody but --

12 Q. Before you testified?

13 A. Nobody but my attorney.

14 Q. Did you have an opportunity to speak with anybody from
15 the solicitor's office about this case?

16 A. They was just telling me that I had to come to court,
17 had to be in court today.

18 Q. So you had an opportunity to speak with someone about
19 this case from the solicitor's office?

20 A. Yes, sir.

21 Q. Did you have an opportunity to go over your statements?

22 A. Since I have been here?

23 Q. Yeah.

24 A. No, sir.

25 Q. You didn't look at them?

1 A. (Shaking head no).

2 Q. So you didn't have an opportunity -- you didn't think
3 about what you were going to testify to?

4 A. I was going to testify to the truth of what happened
5 that day. That's what I did.

6 Q. Okay. The truth?

7 A. Yes, sir.

8 Q. Okay.

9 MR. SNOW: Nothing further, Your Honor.

10 THE COURT: Redirect.

11 REDIRECT EXAMINATION BY MR. THOMPSON:

12 Q. Let me clear that up a little bit, Mr. Mack.

13 I believe you had -- you had talked to us about your
14 statements prior to this trial, correct?

15 A. Yes, sir.

16 Q. Okay. And kind of told us what you believed the truth
17 to be, is that correct?

18 A. Yes, sir.

19 Q. Okay. And going back to your plea agreement, did he
20 give a copy of the plea agreement?

21 A. No, sir.

22 Q. Let me show you a copy of it. When is that plea
23 agreement dated?

24 A. March 22nd, 2007.

25 Q. March 22nd, 2007?