

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Benjamin H. Culbertson, Circuit Court Judge

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SEP 06 2013

SC Court of Appeals

VERNTIRELL DUKES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213138

RECORD ON APPEAL

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated October 4-5, 2013).....	1
INDICTMENT	246
CERTIFICATE OF COUNSEL.....	248

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2012-GS-26-02341

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	Trial
	)	
Verntirell Dukes,	)	October 4-5, 2012
	)	
Defendant.	)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

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Melinda Knowles, Esquire
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Circuit Court Reporter

Index

2

1	(Thursday, October 4, 2012.)	
2	Motions.	5
3	William Odom	
4	Examination by State	22
5	Examination by Defense	30
6	Reexamination by State	34
7	Steven Rhew	
8	Examination by State	35
9	Examination by Defense	39
10	Voir Dire.	47
11	Jury Selection	54
12	Opening Instructions by Court.	62
13	Opening by State	74
14	Opening by Defense	76
15	Sammy Owens	
16	Direct by State.	78
17	Cross by Defense	86
18	Redirect by State.	90
19	William Odom	
20	Direct by State.	91
21	Cross by Defense	103
22	Redirect by State.	113
23	Steven Rhew	
24	Direct by State.	118
25	Cross by Defense	122

Index

3

1	Redirect by State.	126
2	John Robert Caulder, II	
3	Direct by State.	127
4	Cross by Defense	132
5	Redirect by State.	133
6	Motions.	135
7	(Friday, October 5, 2012.)	
8	Questioning Defendant Re: Rights.	137
9	Nicole MacDowell	
10	Direct by Defense.	144
11	Cross by State	152
12	Redirect by Defense.	173
13	Latashia McKenzie	
14	Direct by Defense.	178
15	Cross by State	185
16	Redirect by Defense.	196
17	Motions.	198
18	Rebuttal	
19	William Odom	
20	Direct by State.	200
21	Cross by Defense	203
22	Closing Argument by Defense.	209
23	Closing Argument by State.	212
24	Charge	222
25	Question from Jury	234

Index

4

1	Verdict.	236
2	Polling of Jury.	238
3	Motions.	241
4	Sentencing	242
5	Certificate.	245
6	E X H I B I T S	
7		ID EVD
8	S-1 Witness Statement - Sammy Owens (ID only) . .	25
9	S-2 Gun	102
10	S-3 Ammunition.	102
11	S-4 Report - Odom (ID only)	99
12	D-1 Photograph.	149
13	D-2 Photograph.	149
14	D-3 Photograph.	149
15	D-4 Photograph.	149
16	D-5 Photograph.	149
17	D-6 Photograph.	149
18	C-1 Sentencing Sheet.	19
19	C-2 Foreperson Selection.	66
20	C-3 Question From Jury.	235
21		
22		
23		
24		
25		

Motions

5

1 (On the record, October 4, 2012., The following takes
2 place outside the presence of the jury panel.)

3 THE COURT: All right, this is the case of the State
4 of South Carolina versus Verntirell, is that how you pronounce
5 it?

6 MS. KNOWLES: Yes, Your Honor.

7 THE COURT: All right, Verntirell, V-E-R-N-T-I-R-E-L-
8 L, Jerwon, J-E-R-W-O-N, Dukes, D-U-K-E-S. Is Mr. Dukes here?

9 MS. KNOWLES: He's, he's outside. I was actually
10 talking to him.

11 OFFICER: What's the name?

12 MS. KNOWLES: It's Verntirell Dukes.

13 OFFICER: Dukes?

14 MS. KNOWLES: Yeah.

15 THE COURT: Okay.

16 MS. KNOWLES: I think, Your Honor, Mr. Spratlin is going
17 to get him now.

18 THE COURT: Okay. All right, sir, I apologize, how do
19 you pronounce your name?

20 MR. DUKES: Verntirell Dukes.

21 THE COURT: Verntirell Jerwon?

22 MR. DUKES: Verntirell Dukes.

23 THE COURT: Verntirell and your middle name is?

24 MS. KNOWLES: What's your middle name?

25 THE COURT: What's your middle name?

Motions

6

1 MR. DUKES: Say that again?

2 MS. KNOWLES: What's your middle name?

3 THE COURT: Your middle name.

4 MR. DUKES: Jerwon.

5 THE COURT: Jerwon. Vernitirell Jerwon Dukes, okay.

6 All right, this is State of South Carolina versus Verntirell

7 Jerwon Dukes, indictment number 2012-GS-26-2341. All right,

8 Mr. Spratlin, I understand there's a pretrial matter we need

9 to address?

10 MR. SPRATLIN: Your Honor, there may actually be a
11 couple of them. I believe Ms. Knowles is going to have a
12 motion in regards to the prior conviction the State intends to
13 rely on to establish that the Defendant is a person convicted
14 of a crime of violence. At the appropriate time, I'll allow
15 her to make that motion. It's based on the representation by
16 counsel, Ms. Knowles. The sentencing sheet was not signed by
17 defense attorney, and at such time I believe Ms. Knowles is
18 going to make an argument that it should not count as the - as
19 the ---

20 THE COURT: All right, Ms. Knowles, do you have a
21 motion?

22 MS. KNOWLES: I have several, Your Honor.

23 THE COURT: All right, let me hear from you.

24 MS. KNOWLES: The first one is with regard to discovery.

25 I was informed around 9:30 this morning that there is a video

Motions

7

1 that exists and has not been turned over to me. The State
2 claims that that was turned over whenever they sent
3 supplemental discovery over to me with regard to his prior
4 convictions which we received in our office on September 14th.
5 I - this is the first I've heard of any disk. There's nothing
6 in the records that have been provided to me that shows that I
7 should have known about this.

8 THE COURT: All right, well, Mr. Spratlin, she says
9 you all didn't disclose the video to them.

10 MR. SPRATLIN: Your Honor, I personally placed in our box
11 in our office on the same date, September 13th, 2012, I placed,
12 I placed in there one supplemental discovery listing the
13 sentencing sheet, certified copy of the sentencing sheet for
14 the Defendant in this case along with several other related
15 documents to his Williamsburg County case that the State's
16 going to be relying on as the underlying conviction.

17 THE COURT: All right, when you say you placed it in
18 your box; what does that mean?

19 MR. SPRATLIN: Your Honor, the procedure that is
20 typically used is we have a box in our office where the Public
21 Defender's Office, someone, a representative from their office
22 actually comes to our office and gets all documents for their
23 office and takes them back to the Public Defender's Office.
24 Basically, that's - rather than us mailing out and using
25 postage or any U.S. mail system or certified mail to send the

1 voluminous amount of discovery ---

2 THE COURT: But I mean if they don't come pick it up,
3 what happens?

4 MR. SPRATLIN: Your Honor, they pick it up every day.

5 THE COURT: Okay.

6 MR. SPRATLIN: They routinely come twice a day.

7 Representatives from their office come twice a day to pick up
8 all documents. I can tell you ---

9 THE COURT: So you're saying you put this video in the
10 box and someone from the Public Defender's Office picked it
11 up?

12 MR. SPRATLIN: Yes, sir. Now, I do not ---

13 THE COURT: All right, who do you know - how - who
14 picked it up?

15 MR. SPRATLIN: Your Honor, I do not have that
16 information. It's different people from the office come in at
17 different times and pick up all the evidence and information.
18 Now, I will say that I've talked to Ms. Knowles and I've
19 discussed with Ms. Knowles other items that I sent on the same
20 date and knew that she had gotten those. So, I assumed that
21 she had also received the CD in evidence. Now, I understand
22 that Ms. Knowles may never have actually gotten the CD. It
23 may have gotten lost in transit, it may have not made its way
24 through our office. Addressing that fact, Your Honor, it is
25 an in-car video of Officer Steven Rhew who was on scene that

Motions

9

1 night. The State's contention would be we do not intend on
2 introducing that into evidence in any way.

3 THE COURT: Okay, well, then I grant the motion. If
4 they're not going to use the CD or the video, then I - that's
5 suppressed. Is it ---

6 MS. KNOWLES: Your Honor ---

7 THE COURT: --- is it ---

8 MS. KNOWLES: --- the whole crux of our case depends
9 upon or, you know, my client's argument is that how the cops
10 have alleged that all of this went down is totally not how it
11 went down with regards to how this weapon was found, with
12 regards to where he was whenever they arrived.

13 THE COURT: See, I don't know. All I'm talking about
14 is a CD now. You're saying that they didn't turn over a CD.
15 They're saying that's fine, they're not going to use it. Are
16 you saying that it's exculpatory evidence?

17 MS. KNOWLES: I'm saying that there might be some, some
18 stuff on that video that's favorable to my case.

19 THE COURT: Okay, how long is the video?

20 MR. SPRATLIN: Your Honor, the video in total is an hour.
21 Most of that time is actually the officer driving to and from
22 the scene as well as filling out paperwork in the car with no
23 audio.

24 THE COURT: Okay.

25 MR. SPRATLIN: I believe the actual part that Ms.

Motions

10

1 Knowles would be interested in watching is all of about 15
2 minutes.

3 THE COURT: Okay.

4 MS. KNOWLES: And Your Honor, with regards to what Mr.
5 Spratlin just said with how he sends discovery over,
6 supplemental discovery, I mean, I can show you - I have right
7 here, our, our standard procedure with our office is whenever
8 we receive discovery it's date stamped.

9 THE COURT: But that's, that's - it doesn't matter.
10 They're not going to use it. The sole question ---

11 MS. KNOWLES: But I may want to.

12 THE COURT: Okay, well, then I'll give the opportunity
13 to review it to see if you want to use it. If it's
14 exculpatory, if it provides evidence that tends to show - that
15 attacks their credibility, I'll give you an opportunity to
16 review that video to determine if you want to use it; okay?
17 All right.

18 MR. SPRATLIN: And Your Honor, I have the video in court
19 prepared for that.

20 THE COURT: Okay, all right, so, that's - I mean, I
21 grant the motion to suppress, but the Defense can use it if
22 they wish to use it.

23 MR. SPRATLIN: Yes, sir, Your Honor.

24 THE COURT: All right.

25 MS. KNOWLES: So, Your Honor, can we have an hour or so?

Motions

11

1 THE COURT: Well, what we'll do is we'll probably go
2 ahead and pick the jury and get them impaneled and then you'll
3 have lunch where you can watch it over lunch. You'll have an
4 hour to watch it; okay?

5 All right, what's your next motion?

6 MS. KNOWLES: Your Honor, my next motion would be
7 challenging the legality of the State's, of what appears to be
8 an un-counseled prior conviction. Mr. Dukes pled guilty
9 according to the sentencing ---

10 THE COURT: Hold for a second. Wait a minute. Looks
11 like we've got a question. All right, we're going to have to
12 stand this down. The jury in this other case has got
13 something that they want to review and look back over. I hate
14 to break it but we're going to have to break this at this
15 point in time. Don't go too far; okay? Well, this is going
16 to take probably at least 30, 45 minutes. I don't know.
17 We'll see.

18 MS. KNOWLES: I'd like to go watch the video at my
19 office.

20 THE COURT: Okay, well, let's go ahead and do the ---

21 MS. KNOWLES: At my office with my client so that it's
22 private.

23 THE COURT: Where's your office? Okay, let her go
24 ahead and review the video with her client and then when you
25 get through we should be ready to go forward then; okay?

1 MR. SPRATLIN: So, Your Honor, this is, this is the only
2 copy the State has.

3 THE COURT: Okay. All right, well, we'll go ahead and
4 break from this. You can go review the video with your client
5 and that'll let me take up this matter with the jury; okay?

6 MS. KNOWLES: He says it's about an hour? Is that
7 right?

8 MR. SPRATLIN: It's an hour start to finish, although
9 most of it is just the officer ---

10 MS. KNOWLES: When do you want me back?

11 THE COURT: Huh?

12 MS. KNOWLES: When do you want me to come back?

13 THE COURT: As soon as you finish watching the video
14 with your client, just come on back at that time.

15 OFF THE RECORD

16 (On the record. The following takes place outside the
17 presence of the jury panel.)

18 THE COURT: All right, we got Ms. Knowles?

19 MR. SPRATLIN: Your Honor, I contacted Ms. Knowles
20 earlier and told her that the jury was coming back at one,
21 that you expected us back at one.

22 THE COURT: Okay.

23 MR. SPRATLIN: I assume she'll be over here shortly.

24 OFF THE RECORD

25 (On the record. The following takes place outside the

Motions

13

1 presence of the jury.)

2 THE COURT: All right.

3 MS. KNOWLES: I apologize, Your Honor. The video was 57
4 minutes long and I didn't even get through all of it because I
5 had to stop several times to decipher who's saying what on the
6 video, but ---

7 THE COURT: Okay, all right, any other pretrial
8 motions?

9 MS. KNOWLES: Your Honor, I would just ask that you give
10 me a short continuance until tomorrow morning so that I can
11 finish reviewing the video and discussing the pros and cons of
12 us actually introducing that in our case in chief with my
13 client.

14 THE COURT: So if this goes into Saturday you all are
15 going into Saturday?

16 MS. KNOWLES: Yeah, as long as I'm prepared on ---

17 THE COURT: Okay.

18 MS. KNOWLES: --- I'm certainly ---

19 THE COURT: No, we're going to go ahead and go forward
20 with it. It was on the roster the starting of the week. So,
21 I'm not going to continue the case. We're going to go ahead.

22 All right, anything else?

23 MS. KNOWLES: Yes, sir.

24 THE COURT: Any other motions?

25 MS. KNOWLES: Yes, I don't know if this is a motion or

1 what this is technically called, but I have a matter that I
2 feel that needs to be addressed with the Court and that is
3 just the prior conviction that is the basis for this charge.
4 My client tells me that he was, in fact, represented by
5 counsel at that proceeding. However, the sentencing sheet
6 that the State intends to use to prove this does not reflect
7 his attorney's signature and it causes me some concern in the
8 unlikely event that, and we certainly hope this doesn't
9 happen, that there is a conviction in this case. I don't want
10 to have that be an issue in the future.

11 THE COURT: Well, I mean, what are you asking?

12 MS. KNOWLES: Your Honor, I guess I'm asking if the
13 sentencing sheet without the attorney's signature is going to
14 be sufficient to prove that element of the offense.

15 THE COURT: Which element are you talking about? The
16 fact that he's got a prior conviction?

17 MS. KNOWLES: Yes, sir.

18 THE COURT: All right, is that what this is is he's
19 possesses a firearm when he is prohibited from doing so
20 because of a prior conviction?

21 MR. SPRATLIN: Yes, Your Honor. Back in 2006 in
22 Williamsburg County the Defendant was convicted of burglary
23 second degree violent which is one of those offenses
24 enumerated in the code section. Your Honor, the State is
25 relying on that to show that he was, in fact, unlawfully in

Motions

15

1 possession of a firearm which, which makes it the five-year
2 felony, the fact that he's been convicted of a crime of
3 violence. I do have a copy of the sentencing sheet if Your
4 Honor would like to see it.

5 THE COURT: Well, I mean, if - as long as it satisfies
6 all of the requirements necessary then I'm not going to allow
7 the fact that it doesn't have a defense counsel's signature
8 negate the fact that he has a conviction.

9 MS. KNOWLES: And that's just my concern and it's more
10 of a question, you know, is just that that is sufficient and
11 all of the requirements are met, I mean, because I don't know
12 who to contact to find out more about that charge.

13 THE COURT: Well, I mean, they've got to prove that
14 he's got a prior conviction. Whether or not, you know, I
15 don't know if they've got a certified copy exemplification or
16 whatever it is, but if they have an exemplified, certified
17 copy of a file from Williamsburg County that shows him as
18 having a conviction.

19 MS. KNOWLES: Yes, sir, even though there is no
20 signature and we're good to go is that what Your Honor is
21 telling me?

22 THE COURT: Yeah.

23 MS. KNOWLES: Okay.

24 THE COURT: Because I've got to believe that he's got
25 a conviction. I mean, the fact of the matter is if he can

1 show that he does - well, he doesn't have to show that he
2 doesn't have a conviction. It's up to them to prove that he's
3 got a conviction and I've got to believe that a certified copy
4 of a General Sessions file from Williamsburg County that shows
5 him as having a conviction, now, I don't know if it shows up
6 on NCIC or anything like that ---

7 MS. KNOWLES: Uh-huh.

8 THE COURT: --- but either there's a conviction -
9 either he's got a conviction or he doesn't have a conviction.
10 That's a factual matter.

11 MS. KNOWLES: Yes, sir, and I guess that the issue
12 really lies in the fact that in the lower courts that's been a
13 problem, un-counseled prior convictions and ---

14 THE COURT: Well, it's a problem when it comes into
15 enhancement, sentencing enhancement. If you plead guilty to a
16 simple possession of marijuana and it's an un-counseled guilty
17 plea in a magistrate's court then it can't be used against you
18 to enhance a sentence. If you get a second, you know, if you
19 appear in General Sessions Court for a possession of
20 controlled substance second offense for the purpose of
21 enhancing a sentence, here, where this isn't sentence
22 enhancement, this is an element of the crime. Either he's got
23 a prior conviction or he doesn't have a prior conviction, and
24 if the State proves that he's got a prior conviction, then
25 that's one of the elements they have to prove beyond a

Motions

17

1 reasonable doubt. I'm not going to rule as a matter of law
2 that he does not have a prior conviction because the
3 Defendant's attorney did not sign the sentencing sheet in that
4 conviction.

5 MS. KNOWLES: Okay, Your Honor, I understand now.

6 THE COURT: Okay.

7 MS. KNOWLES: I just wanted to address that, that one
8 matter. Your Honor, the other matter is that the Defense
9 would be willing to stipulate to the existence of this prior
10 conviction, given the ruling that you just made, if, if the
11 State is so inclined to agree.

12 MR. SPRATLIN: Your Honor, the State is not so inclined
13 to agree. The State would ask to be able to tender evidence
14 of its case in chief of the Defendant's prior conviction for a
15 burglary second violent charge.

16 THE COURT: Okay, no, I'm going to allow her. If
17 they, if they - if the law is - let's see what is the law? He
18 cannot possess a pistol if he has a conviction for a ---

19 MS. KNOWLES: Crime of violence.

20 MR. SPRATLIN: A crime of violence, Your Honor.

21 THE COURT: Okay.

22 MR. SPRATLIN: Which are enumerated in the statute which
23 I'm pulling up right now.

24 THE COURT: All right, and he's going to - well, he's
25 going to stipulate that he has a conviction for a crime of

1 violence. So, I'm going to allow them to stipulate to that.

2 MR. SPRATLIN: Yes, sir, Your Honor, so there'll be no
3 need to introduce any testimony in regards to his crime of
4 violence nor the certified copy of the conviction?

5 THE COURT: As long as they're willing to stipulate
6 that on the record that he has a prior conviction for a crime
7 of violence, and then, therefore, the only issue before the
8 Court is whether or not he was possessing a firearm.

9 MR. SPRATLIN: Yes, sir, and ---

10 THE COURT: Then I'll allow them to go forward with that.

11 MR. SPRATLIN: --- and the jury so shall, so shall be
12 charged that he ---

13 THE COURT: I will charge them that he has stipulated
14 that he has a prior conviction for a crime of violence and
15 that therefore under the law he cannot possess a firearm.

16 MR. SPRATLIN: Yes, sir, Your Honor, just for
17 housekeeping purposes, would you be willing to mark the
18 certified copy from Williamsburg County as a Court's Exhibit
19 not to be sent to the jury but simply for this pretrial
20 matter?

21 THE COURT: Yeah, any objection to that?

22 MS. KNOWLES: None, Your Honor.

23 THE COURT: Okay, we'll put that as Court's Exhibit
24 One. Okay, that'll be Court's Exhibit One.

25 MR. SPRATLIN: Thank you, Your Honor.

Motions

19

1 (Whereupon, Court's Exhibit Number One [Sentencing Sheet]
2 appropriately marked.)

3 THE COURT: All right.

4 MS. KNOWLES: Your Honor, I would also make a motion to
5 sequester the witnesses in this case.

6 THE COURT: All right, any objection?

7 MR. SPRATLIN: No objection, Your Honor. The State would
8 simply ask that the investigating officer be allowed to remain
9 in the courtroom per statute.

10 THE COURT: And who is that?

11 MR. SPRATLIN: That would be Officer William Odom.

12 THE COURT: I'm sorry, spell that, William ---

13 MR. SPRATLIN: Odom, O-D-O-M.

14 THE COURT: All right, Officer William Odom can stay
15 in the courtroom. All other witnesses are to be sequestered.

16 MR. SPRATLIN: Yes, sir, Your Honor.

17 THE COURT: Of course, I'm - okay, all right.

18 MR. SPRATLIN: Your Honor, I would also ask that any
19 defense witnesses that are currently in the courtroom be also
20 so sequestered.

21 THE COURT: Okay, I'll grant that, too. Defendant can
22 be present. Everybody - anybody else - if they're in the
23 courtroom I'm not going to make them identify who they are or
24 anything at this time, but if they're in the courtroom they
25 can't testify. So, if you want to - whoever you need to get

Motions

20

1 out get out, and I'm assuming there's no victims in this case.

2 Is that correct?

3 MR. SPRATLIN: No, Your Honor, the only victim is the
4 State.

5 THE COURT: Okay. All right, anything else?

6 MR. SPRATLIN: Your Honor, the State does intend to
7 introduce one piece of evidence in this case, that being the
8 firearm and the ammunition that was recovered from the car
9 which the State is contending is the Defendant's. If Ms.
10 Knowles has any motions to suppress that evidence we would
11 just ask that she go ahead and make them now.

12 THE COURT: Well, no, she can wait and do it. She can
13 wait and raise the objection when you tender it. I'm not
14 going to make her file a motion to suppress. If she has a
15 motion in limine that she wants to she can do that, but I'm
16 not going to force her to address it now. She can wait until
17 the - you tender it to see if you've laid the proper
18 foundation and things of that nature.

19 MR. SPRATLIN: Yes, sir, Your Honor, I was just going to
20 ask as a matter of law if there's any ---

21 THE COURT: Is there any pretrial motion to suppress
22 it?

23 MS. KNOWLES: I just would like to inquire as to who he
24 intends on calling to the stand to establish the chain of
25 custody.

Motions

21

1 THE COURT: Well, I'm not going to make - I mean, he
2 can ---

3 MS. KNOWLES: The witness list doesn't reflect an
4 evidence custodian.

5 THE COURT: Okay, well, I mean if he doesn't lay the
6 groundwork then you can raise your objections at that time.

7 MR. SPRATLIN: Your Honor, the State would just contend
8 it's a non-fungible item.

9 THE COURT: Okay, all right, anything else?

10 MS. KNOWLES: Your Honor, I guess I can go ahead and
11 make the motion for suppression. We just would argue that
12 this was an unlawful search. This was a violation of Mr.
13 Dukes' Fourth Amendment right. There was no probable cause to
14 enter into the vehicle. Although the officers had probable
15 cause to detain Mr. Dukes, to investigate what was going on,
16 it would be our position that they needed a search warrant in
17 order to enter into the vehicle or consent by the owner.

18 THE COURT: All right, well at this juncture, I don't
19 know.

20 MR. SPRATLIN: Your Honor, the State's ---

21 THE COURT: Well, what's ---

22 MR. SPRATLIN: --- prepared to offer evidence on that
23 issue if Your Honor would like to hear it now or if Your Honor
24 would like to just deal with it in trial, that would also be
25 acceptable to the State.

1 THE COURT: Well, if she's got a pretrial motion I
2 guess we'll have to deal with it now.

3 MR. SPRATLIN: Yes, sir, Your Honor.

4 THE COURT: All right, let's ---

5 MR. SPRATLIN: The State would call Officer William Odom
6 to the stand.

7 THE COURT: All right, sir.

8 MR. SPRATLIN: Yes, sir, you're going to get sworn by the
9 court, by the clerk and ---

10 Whereupon, William Odom was called to the stand, duly
11 sworn by the clerk and testified as follows:

12 THE COURT: Okay, yeah, just keep them, just keep the
13 jury down there. We're going to be a while I think.

14 THE CLERK: Please state your full name and spell your
15 last name.

16 MR. ODOM: William Blake Odom, O-D-O-M.

17 EXAMINATION

18 BY MR. SPRATLIN:

19 Q Yes, sir, and where are you currently employed?

20 A Horry County Police Department.

21 Q All right, and Officer Odom, what's your current
22 assignment?

23 A A patrol officer.

24 Q How long have you been in that position?

25 A Little over a year and a half.

Motions

23

1 Q All right, how long have you been in law enforcement
2 total?

3 A Same amount of time.

4 Q A year and a half?

5 A Yes, sir.

6 Q All right, as a patrol officer, what are some of your
7 duties?

8 A Respond to calls, you know, traffic stops.

9 Q Let me ask you about April 14th, 2012. Were you at work
10 that day?

11 A Yes, sir.

12 Q All right, what time did you go on duty?

13 A Six p.m. the 13th.

14 Q And what time were you scheduled to get off duty?

15 A Six a.m. the 14th.

16 Q So, you were basically working a six to six shift?

17 A Yes, sir.

18 Q All right, in the early morning hours of the 14th, did you
19 have a chance to go to the Sun-up Bar?

20 A I did.

21 Q All right, and where is that located at?

22 A Horry County jurisdiction off of Socastee Boulevard.

23 Q Is it near 544?

24 A It is.

25 Q All right, what time was it that you went to Sun-up?

- 1 A In between 5 a.m. and 5:30 a.m., I believe.
- 2 Q So, it was early morning hours?
- 3 A Yeah.
- 4 Q All right, why did you go to the Sun-up?
- 5 A Dispatch responded me to a fight in progress.
- 6 Q And when you got there what'd you see?
- 7 A A large crowd of males and females outside.
- 8 Q All right, and what did you do when you first got there?
- 9 A I exited my vehicle. I walked up to the crowd and
- 10 basically tried to find out who had a weapon, you know, who
- 11 was in the altercation.
- 12 Q Okay, what information did you have of a weapon being
- 13 involved in this?
- 14 A At that time, the only thing I knew was a - they say a
- 15 bravo mike, a black male had a firearm.
- 16 Q And when you walked up to that crowd what if anything did
- 17 you learn about a suspect with a firearm?
- 18 A When I first approached the crowd, you know, nobody was
- 19 really wanting to talk to me, tell me what's going on. As the
- 20 crowd kind of sputtered out, I had one guy come up to me,
- 21 Leonard I believe, and described the Defendant over here, his
- 22 description and told me he did, in fact, have the firearm.
- 23 Q Did this individual tell you where the Defendant was
- 24 located?
- 25 A He did.

Motions

25

- 1 Q What did he say as far as that goes?
- 2 A That he was in a tan in color SUV that was parked
- 3 approximately 20 feet from me.
- 4 Q And was there a similarly colored vehicle parked in the
- 5 general location where he said it was?
- 6 A Yes, sir.
- 7 Q All right, did anybody else talk to you about that?
- 8 A They did, a taxi driver.
- 9 Q Do you remember his name?
- 10 A Not off the top of my head, no, sir.
- 11 Q Is there anything that would refresh your recollection
- 12 about his name?
- 13 A Yeah.
- 14 MR. SPRATLIN: Your Honor, permission to approach the
- 15 witness?
- 16 THE COURT: All right.
- 17 (State's Exhibit Number One [Witness Statement - Sammy
- 18 Owens] marked for identification.)
- 19 BY MR. SPRATLIN:
- 20 Q Let me show you, Officer Odom, what's marked for
- 21 identification purposes as State's Exhibit Number One. Do you
- 22 recognize that item?
- 23 A I do.
- 24 Q What is that?
- 25 A A witness statement.

- 1 Q Okay, and who is that a witness statement of?
- 2 A Who's it from?
- 3 Q Yes.
- 4 A Sammy, the taxi cab driver.
- 5 Q What's his full name?
- 6 A Sammy Owens.
- 7 Q How do you spell that last name?
- 8 A O-W-E-N-S.
- 9 Q All right, and now, what - and what does that - let me
- 10 retrieve that document ---
- 11 A Okay.
- 12 Q --- from you real quick. What if anything does that
- 13 document refresh your recollection as to the identity of the
- 14 person that came up and talked to you that night?
- 15 A The taxi driver, Sammy.
- 16 Q And who was that taxi driver just to be clear?
- 17 A Sammy Owens.
- 18 Q All right, now, when Mr. Owens approached you, what did
- 19 he say?
- 20 A He approached me and said that he did, in fact, see the
- 21 Defendant over here walk to the vehicle, grab an unknown
- 22 firearm and walk back to the large crowd into the Sun-up Bar
- 23 and Grill.
- 24 Q And did he tell you anything else?
- 25 A He gave me a description, yes.

Motions

27

1 Q Okay, and what was that description, if you can remember,
2 as best you can remember?

3 A Dreads, middle, middle height, average weight, a green
4 shirt.

5 Q Okay, and what if any vehicle did Mr. Owens identify?

6 A A tan in color, dark in color SUV.

7 Q All right, and now, what did you do after getting this
8 information from these two individuals?

9 A By that time Officer Rhew responded and we approached the
10 vehicle that was attempting to leave the location and we
11 stopped the vehicle and for officer safety we pulled each
12 individual out and went from there.

13 Q Now, let me ask you, what vehicle did you approach again,
14 just to be clear?

15 A The tan in color SUV.

16 Q And was this the vehicle that was described by two
17 separate individuals at the scene?

18 A Yes.

19 Q All right, now did they describe this vehicle together or
20 were they separate when they described it?

21 A Separate.

22 Q Separate, all right, now, when you approached that
23 vehicle, what did you do now?

24 A They approached the vehicle, you know, as I said they
25 were trying to leave. We made them put it into park and we

1 asked the passenger first to step out of the vehicle,
2 obviously for officer safety reasons, and patted them down,
3 made sure they had no weapons on them, set them to the side
4 and went from there, pulling each one out.

5 Q Okay, now, why were you concerned for officer safety?

6 A Because from two different witnesses that there's a known
7 firearm in that vehicle.

8 Q Okay, and now, when you - was the Defendant - when you
9 went up to the car, was the Defendant in the vehicle?

10 A Yes, sir.

11 Q All right, where was he seated in the vehicle?

12 A The back passenger side.

13 Q All right, what if anything could you say about the
14 description of the Defendant that matched the description
15 given to you by the two witnesses?

16 A I could tell you he was a black male, had a green shirt
17 on and dreads.

18 Q Okay, and who told you that he had a green shirt on
19 again?

20 A The cab driver.

21 Q All right, did any of the other occupants in the vehicle
22 have a green shirt on?

23 A No, sir.

24 Q All right, now you said that you were getting all of them
25 out of the car; correct?

Motions

29

1 A Yes, sir, one by one, yes, sir.

2 Q All right, what if anything did you notice when you were
3 getting the Defendant out of the back rear passenger seat?

4 A As Officer Rhew pulled the Defendant out I noticed a
5 black in color revolver on the floorboard by the - under the
6 seat.

7 Q All right, where was - was it - where - with the
8 backseat, which side of the backseat was it on?

9 A The back right passenger.

10 Q Where the Defendant was sitting?

11 A Yes, sir.

12 Q All right, and now, as far as - as far as the Defendant's
13 seat goes, I'm assuming - was this a bench seat or how was
14 this car laid out?

15 A It's a two door Blazer type. It's a bench seat, yes.

16 Q Okay, what if anything can you say in relation to this
17 handgun as to where the Defendant was sitting in the door, the
18 passenger, the rear passenger side door?

19 A It was against the door panel.

20 Q Okay, it was against the door panel on the Defendant's
21 side?

22 A Under the seat, yes.

23 Q All right, what did you do with that gun when you saw it?

24 A That, there again, for officer safety, we secured the gun
25 and placed it into my vehicle.

1 Q All right, and did you continue investigating after you
2 took the gun into evidence?

3 A Yes, sir.

4 Q All right, and all the events you described today they
5 occurred in Horry County?

6 A Yes, sir.

7 Q And they occurred on or about April 14th, 2012?

8 A Yes, sir.

9 Q All right, Officer Odom, please answer any questions Ms.
10 Knowles may have. Thank you.

11 EXAMINATION

12 BY MS. KNOWLES:

13 Q Officer Odom, do you recall who called in this complaint?

14 A Sammy Owens, the cab driver.

15 Q Sammy Owens?

16 A Yes, ma'am.

17 Q Okay, and you said that whenever you arrived there was a
18 large crowd present?

19 A Yes, ma'am.

20 Q And did you speak with any of those people?

21 A I did.

22 Q You did?

23 A Uh-huh.

24 Q And who did you speak to?

25 A Like I said, nobody wanted to really cooperate until the

Motions

31

1 crowd dispersed and Leonard, he came up to me and whispered in
2 my ear that - gave me the description of your Defendant.

3 Q But no one else within that large crowd was willing to
4 cooperate and offer a statement?

5 A No, ma'am.

6 Q Okay, and you said when you responded you responded after
7 being informed of a fight in progress; correct?

8 A Or a fight slash gun possibly, yes, ma'am.

9 Q Was it a fight in progress or ---

10 A A fight in progress.

11 Q Okay, and when you arrived, you were told by Mr. Owens is
12 it, the cab driver?

13 A Uh-huh.

14 Q Right, and the other individual who made a statement that
15 Mr. Dukes was the one with the weapon; correct?

16 A Yes, ma'am.

17 Q And at that time you said for officer safety you asked
18 him to exit the vehicle.

19 A No, or me and Officer Rhew, yes, ma'am.

20 Q Okay, you searched his person.

21 A We did.

22 Q Correct? And what was the result?

23 A What was the result in?

24 Q As far as did you recover any weapons or ---

25 A We did recover a firearm, yes, ma'am.

1 Q From his person?

2 A From his person, no, ma'am.

3 Q Okay, and the owner of the vehicle was present; right?

4 A Yes, ma'am.

5 Q And did she give you permission to enter into the vehicle
6 and retrieve the weapon?

7 A I don't recall that.

8 Q Okay, and you said that you saw this weapon as Mr. Dukes
9 was exiting the vehicle and you saw it underneath the seat?

10 A When he exited the vehicle, yes, ma'am.

11 Q Okay, so, it was underneath his seat?

12 A Yes, ma'am.

13 Q Okay, he was in the rear of the vehicle?

14 A Rear passenger, yeah.

15 Q Okay, because in your report it says that it was
16 recovered from under the passenger, the passenger's seat.

17 A The rear passenger.

18 Q Okay, but you saw it whenever he was exiting?

19 A Whenever he exited, yes, ma'am.

20 Q It was in plain ---

21 A Uh-huh.

22 Q --- view? Okay.

23 THE COURT: Is that a yes? You need to say yes.

24 A Oh, yes, ma'am.

25 THE COURT: Okay.

Motions

33

1 Q Who was involved in this alleged fight? Did you
2 determine that?

3 A Leonard, the guy that came up to me first, supposedly his
4 cousins and Mr. Lewis - or ---

5 Q Mr. Lewis's cousin.

6 A --- the Defendant, your Defendant. No, Leonard's cousin
7 and the Defendant and I guess a group of guys. Like I said,
8 nobody really wanted to cooperate when I first got there.

9 Q How many people would you say were there?

10 A Outside when I arrived?

11 Q Right.

12 A Twenty, if I had to guess.

13 Q Twenty, and none of those 20 wanted to ---

14 A No, ma'am.

15 Q --- say anything? Did you speak with any of the
16 employees?

17 A They also do not like to cooperate.

18 Q Okay, all right, I think that that's pretty much all that
19 I have, but let me just make sure. So just for clarification,
20 you searched Mr. Dukes' person, no weapons found?

21 A No weapons on him, yes, ma'am.

22 Q And underneath the seat is where this gun was recovered,
23 the passenger seat?

24 A The rear passenger seat, yes, ma'am.

25 Q Okay, no further questions.

1 THE COURT: All right, redirect?

2 MR. SPRATLIN: Real briefly, Your Honor.

3 REEXAMINATION

4 BY MR. SPRATLIN:

5 Q Who was sitting in that rear passenger seat when you
6 approached the vehicle?

7 A The Defendant.

8 Q Who if anyone in the car besides the Defendant would have
9 had access to that particular area you found the gun?

10 A Nobody.

11 Q Do you see the man that you saw in the car that day known
12 to you as Verntirell Dukes here in the courtroom today?

13 A I do.

14 Q Could you please point him out and identify an article of
15 clothing he's wearing?

16 A Yes, sir, a white tan in color shirt with a red tie.

17 Q All right, I thank you, Officer Odom. That's all the
18 questions I have right now.

19 A All right.

20 Q Please answer any additional questions Ms. Knowles may
21 have.

22 THE COURT: You can step down. All right, anyone
23 else?

24 MR. SPRATLIN: Your Honor, the State would call officer -
25 or Corporal Rhew, Steven Rhew to the stand. He's currently

Motions

35

1 sequestered.

2 THE COURT: All right.

3 Whereupon, Steven Rhew was called to the stand, duly
4 sworn by the clerk and testified as follows:

5 THE CLERK: State your full name and spell your last
6 name.

7 MR. RHEW: First name is Steven and the last name is
8 Rhew, R-H-E-W.

9 EXAMINATION

10 BY MR. SPRATLIN:

11 Q Mr. Rhew, where are you currently employed?

12 A Horry County Police Department.

13 Q How long have you been there?

14 A About four and a half years.

15 Q What's your current assignment?

16 A Patrolman.

17 Q How long you been a patrolman?

18 A Four and a half years.

19 Q All right, Officer Rhew, what precinct do you work out
20 of?

21 A The south precinct.

22 Q And what county is that in?

23 A Horry County.

24 Q And do you - and what jurisdiction do you cover?

25 A I cover mainly the Carolina Forest area.

1 Q Were you on duty back on April 14th, 2012?

2 A I was.

3 Q What time did you go on duty?

4 A 6 p.m. the night before.

5 Q And what time were you expecting to get off duty?

6 A 6 a.m. that morning.

7 Q So, essentially a six to six shift?

8 A Yes, sir.

9 Q Was anybody else in particular working with you that

10 night?

11 A Officer Odom.

12 Q All right, let me ask you, Officer Rhew, did you have a

13 chance to come in or to go to the Sun-up establishment?

14 A I did.

15 Q What kind of establishment is that?

16 A It is a bar and restaurant.

17 Q Where is it located?

18 A It's on Socastee Boulevard.

19 Q And that's in Horry County?

20 A Yes, sir.

21 Q All right, why'd you go there?

22 A We received a call about a man with a gun in the bar

23 area.

24 Q Okay, and what happened when you got there? What did you

25 see?

Motions

37

1 A Whenever I arrived on scene, Officer Odom was there prior
2 to me. He was attempting to stop a tan in color Blazer from
3 backing out of its parking space that supposedly had a suspect
4 in there that had the gun.

5 Q Okay.

6 A I got out and attempted to help him stop the vehicle from
7 backing out.

8 Q And what did you do to help him stop the vehicle?

9 A Yelled at the driver multiple times to stop. She didn't
10 listen. A couple more times of yelling at her to stop, she
11 finally stopped the vehicle and put it in park.

12 Q All right, and what were you - what did you do after the
13 vehicle was stopped? What did you and Officer ---

14 A After the vehicle was stopped, we figured out which one,
15 where the suspect was sitting at and we systematically took
16 people out one by one for officer safety.

17 Q All right, and what - what kind - what were you all
18 concerned about for officer safety?

19 A The presence of a gun.

20 Q All right, let me ask you something. Do you see any of
21 those individuals that were in the car here in the courtroom
22 today?

23 A I do.

24 Q All right, would you please point them out and identify
25 an article of clothing he's wearing?

- 1 A The gentleman in the white shirt with the reddish pink
2 tie.
- 3 Q All right, where was he seated in that vehicle?
- 4 A The back rear passenger seat.
- 5 Q All right, and do you know him by the name of Verntirell
6 Dukes ---
- 7 A Yes, sir.
- 8 Q --- or something similar? He is sitting in the - what
9 area of the car again? I'm sorry.
- 10 A The rear passenger seat.
- 11 Q All right, who, who was getting him out of the, out of
12 the car?
- 13 A I got him out of the car.
- 14 Q All right, when you were getting him out of the car, up
15 there doing that, did anything happen or anything?
- 16 A While we were moving him, Officer Odom spotted a gun in
17 the floorboard area of the vehicle.
- 18 Q Did you also see that gun in the floorboard area?
- 19 A I did not, not at first because I was worried with him
20 trying to get him in handcuffs and deal with him.
- 21 Q Okay, what did you all do once Officer Odom saw that gun?
- 22 A We secured everybody in the vehicle and then we secured
23 the gun.
- 24 Q All right, and why did you secure that gun?
- 25 A For officer safety.

Motions

39

1 Q All right, is that standard procedure?

2 A Yes, sir.

3 Q All right, what are you all worried about with a gun
4 being in a car like that?

5 A Being shot.

6 Q At that point in time, so, so basically you grabbed the
7 gun for officer safety.

8 A Yes, sir.

9 Q All right, and Officer Odom to your knowledge saw it in
10 plain view?

11 A Yes, sir.

12 Q All right, thank you, Officer Rhew. That's all the
13 questions I have right now. Please answer any questions that
14 Ms. Knowles may have.

15 EXAMINATION

16 BY MS. KNOWLES:

17 Q Officer Rhew, whenever you arrived at the incident
18 location, there was a large crowd of people; correct?

19 A Close by but not where Officer Odom and the suspects we
20 were dealing with were at. It was more off to the side.

21 Q More off - they were off - more off to the side? How
22 many people would you say were there?

23 A I can't recall to be sure. Over ten I would say at
24 least.

25 Q And the bar wasn't closed?

1 A No, ma'am.

2 Q Was it? To your knowledge, did Officer Odom speak with
3 any of the employees there or did you speak to any of the
4 employees there?

5 A No, ma'am.

6 Q So no attempt was made; right?

7 A I can't say no attempt was made. I arrived on scene
8 after Officer Odom did. It was at least a couple of minutes.

9 Q Did you then - did you speak with - since you can't
10 address what he did, did you speak with any of the employees
11 there?

12 A No, ma'am.

13 Q And you approached this crowd of people?

14 A Whenever I arrived on scene Officer Odom was attempting
15 to stop the Blazer. I went - all my attention was on the
16 Blazer at that point in time.

17 Q I'm sorry. Let's go back to the crowd of people that
18 were, that were present ---

19 A Uh-huh.

20 Q --- on scene, and to your knowledge did you or Officer
21 Odom speak with any of those individuals?

22 A Sometime during the investigation, yes, ma'am. I can't
23 say when it happened, if it was before I got there, after I
24 got here because whenever I got there we were mainly worried
25 about the Blazer and the suspect inside the Blazer. Officer

Motions

41

1 Odom identified to me that the suspect was in the Blazer. So,
2 our attention was on the Blazer at that point in time.

3 Q Right, and it was based upon statements given by just two
4 witnesses; right? That you thought that ---

5 A I, I assume so.

6 Q --- the suspect was in this vehicle?

7 A Officer Odom had already spoken to those witnesses by the
8 time I had gotten there. That's what I assume. Officer Odom
9 told me that the suspect was in the vehicle. There was
10 possibly a gun involved. All my attention was on the vehicle.

11 Q So you didn't speak with anybody that was present in this
12 crowd of people, but somebody had to.

13 A Yes, ma'am, Officer Odom arrived there first. We - I
14 mean, I ---

15 Q So, we're just, okay, assuming that and did he tell you
16 anything about them, their stories?

17 A Ma'am, ma'am, in that point in time we don't have time to
18 discuss a whole background of stories that had happened. He
19 says there's a suspect in the vehicle with - possibly with a
20 gun. All of our attention is on the gun and officer safety,
21 getting the suspects out of the vehicle and assuring our
22 safety.

23 Q I understand that, but I just am trying to find out what
24 exactly you relied upon in identifying my client as the one
25 with ---

1 A You'll have ---

2 Q --- this alleged weapon.

3 A --- you'll have to ask Officer Odom that one. I can't -
4 Officer Odom pointed out which suspect it was and we put our
5 attention on that suspect.

6 Q Okay, and you were actually the one that removed him from
7 the vehicle?

8 A Yes, ma'am.

9 Q Is that correct?

10 A He had cover of the vehicle.

11 Q I'm sorry?

12 A He had cover. Whenever we're working ---

13 Q My client, I'm sorry, you removed my client from the
14 vehicle.

15 A Yes.

16 Q Right?

17 A I removed, if I'm not mistaken, I removed every person
18 out of the vehicle while he had the cover of the people.

19 Cover meaning that he was ---

20 Q Yeah.

21 A --- protecting me with a firearm because there's possibly
22 a gun in the vehicle. One person does cover, one person has
23 contact in those kind of situations. I was the contact person
24 meaning that I put hands on people.

25 Q Okay, so, he was standing right by your side whenever ---

Motions

43

- 1 A Not right by my side, not the whole time, ma'am.
- 2 Q Whenever, just whenever you were removing Mr. Dukes from
- 3 the vehicle?
- 4 A We work in pairs. I mean, he could have moved around to
- 5 get a tactical advantage. I mean, I trust him enough with my
- 6 life to say that if he needs to move, he can move and move to
- 7 a different position.
- 8 Q Yeah, and I'm not questioning anything, you know, with
- 9 regard to that.
- 10 A Uh-huh.
- 11 Q I mean, I understand that you felt like your life was in
- 12 danger. I'm just trying to determine who, in fact, removed
- 13 him from the vehicle?
- 14 A I did.
- 15 Q And who - you did?
- 16 A Yes.
- 17 Q And did you see this weapon?
- 18 A No, because at my point in time, I was removing him from
- 19 the vehicle to get him away from the vehicle in case there was
- 20 a gun in the vehicle.
- 21 Q Uh-huh.
- 22 A Put him in handcuffs, pat him down, frisk him for weapons
- 23 and while we were doing that Officer Odom alerted me that
- 24 there was a gun in the vehicle.
- 25 Q So, did you remove everyone from the vehicle or just him

1 first?

2 A I believe he was first and then everybody else followed.

3 Q Okay, and he was in the back seat?

4 A Yes, ma'am.

5 Q And the weapon was found where again?

6 A Under his seat.

7 Q Under his seat.

8 A The rear passenger seat.

9 Q The rear passenger seat, okay, and in the report that was
10 written it says that you noticed this weapon at his feet.

11 A I can't - I don't know what the report says verbatim.

12 MR. SPRATLIN: Objection, Your Honor. I believe Ms.
13 Knowles is referencing Officer Odom's report.

14 MS. KNOWLES: Oh, this is Officer Odom's report.

15 A Yes, ma'am.

16 Q Okay, who - who was it that saw the gun ---

17 A Officer Odom.

18 Q --- at the feet, okay, but weren't you the one that
19 removed him from the vehicle?

20 A Yes, ma'am, I was.

21 Q And you - you didn't see ---

22 A At that point in time ---

23 Q --- this gun?

24 A --- no because I don't look at people's feet. I look
25 where their hands are at, where their hands are going, where

Motions

45

1 their body is going. I don't look at their feet.

2 Q And what, to your knowledge, what were you originally
3 called to that location for?

4 A A man with a gun.

5 Q It, it wasn't a fight in progress?

6 A Not to my knowledge.

7 Q Okay, all right, I have no further questions.

8 MR. SPRATLIN: No follow up, Your Honor.

9 THE COURT: All right, you may step down. All right,
10 you can call your next witness.

11 MR. SPRATLIN: Your Honor, as far as the suppression
12 motion goes, the State would rest at this time and just
13 reserve argument.

14 THE COURT: All right. All right, Ms. Knowles,
15 anything the Defense wants to present at this time?

16 MS. KNOWLES: None, Your Honor.

17 THE COURT: Okay, all right, I'm going to deny your
18 motion in limine to suppress the firearm as evidence. You
19 know, is ---

20 MS. KNOWLES: Oh, I'm sorry, in relation to that, I ---

21 THE COURT: Yeah.

22 MS. KNOWLES: --- Your Honor, we just would again
23 reiterate our earlier argument that there was a lack of
24 sufficient probable cause to enter into the vehicle.

25 THE COURT: All right, I think they've established at

1 least enough to get it by your motion in limine. Certainly
2 you can re-raise your objection when they go to put it into
3 evidence or they seek to admit it then, but as far as I think
4 they've shown sufficient testimony to at least get around your
5 motion in limine.

6 MS. KNOWLES: Thank you, Your Honor.

7 THE COURT: All right, anything else pretrial?

8 MR. SPRATLIN: Nothing on behalf of the State, Your
9 Honor.

10 THE COURT: Anything on behalf of the Defense?

11 MS. KNOWLES: None, Your Honor.

12 THE COURT: All right, let's go ahead - I've got the
13 State's witness list. Does the Defense have a witness list

14 ---

15 MS. KNOWLES: I do.

16 THE COURT: --- for voir dire? Okay, get that to me
17 and let's go ahead and get the jury. They're down in the jury
18 room?

19 BAILIFF: Yes, sir.

20 THE COURT: All right, let's go ahead and be bringing
21 them up so we can select them. All right, let me get a
22 witness list. I'm going to take about a five-minute break.
23 When the jury gets up here, let me know and we'll go - or you
24 don't need to. Just let me know when the jury gets up here;
25 okay? All right.

Voir Dire

47

1 OFF THE RECORD

2 (On the record. Whereupon, the following takes place in the
3 presence of the jury panel.)

4 THE COURT: Good afternoon, ladies and gentlemen. I
5 apologize for keeping you so long down in the jury room, but
6 we did have some matters that we needed to tend to before we
7 start the trial of this case. Now we're getting ready to
8 start the trial of the case of the State of South Carolina
9 versus Verntirell Jerwon Dukes. Now, I've got some questions
10 to go over with you which is referred to as voir dire
11 questioning. All of you have been qualified to serve as
12 jurors for this term of General Sessions Court, but for those
13 of you have not gone through the voir dire process, these are
14 questions that I need to go over with you to determine whether
15 or not you're qualified to serve as jurors on this particular
16 case and it also gives the attorneys some additional
17 information that assists them in the jury selection process.
18 So, if I could please get everyone to stand and raise your
19 right hand so that I can administer the oath to you.

20 (Whereupon, jury panel sworn by Court.)

21 THE COURT: Thank you very much. Please be seated.
22 Is there any member of the jury panel who did not respond to
23 the oath by saying I do? If so, please stand.

24 (No response.)

25 THE COURT: All right, is this the indictment?

1 All right, as I said we are getting ready to start the
2 trial of the case of the State of South Carolina versus
3 Verntirell Jerwon Dukes. Mr. Dukes is charged with unlawful
4 possession of a pistol, the allegations being that on or about
5 April 14th, 2012, that Mr. Dukes did knowingly possess a pistol
6 having been convicted of a violent crime and this occurred -
7 where was this?

8 MR. SPRATLIN: Your Honor, it occurred at the Sun-up Bar
9 on Socastee Highway up near 544.

10 THE COURT: Okay, what is the name of the bar?

11 MR. SPRATLIN: Sun-up.

12 THE COURT: Okay, the Sun-up Bar in the Socastee
13 Section of Horry County and this occurred on or about April
14 the 14th, 2012. Is there any member of the jury panel who has
15 heard anything, read anything, knows anything or discussed
16 anything about this case? If so, please stand.

17 (No response.)

18 THE COURT: All right, hold for a minute. I've got to
19 find my jury list.

20 All right, ladies and gentlemen, the Defendant in this
21 case is Mr. Verntirell, V-E-R-N-T-I-R-E-L-L, Jerwon, J-E-R-W-
22 O-N, Dukes, D-U-K-E-S. Is there any member of the jury panel
23 related by blood or marriage, have a close personal
24 relationship, business relationship, social relationship or
25 any other type of relationship with Mr. Dukes? If so, please

Voir Dire

49

1 stand. (No response.)

2 All right, please listen carefully because the potential
3 witnesses in this case are Corporal Steven Rhew of the Horry
4 County Police Department, Officer William Odom of the Horry
5 County Police Department, Investigator Robert Caulder of the
6 Horry County Police Department, Sammy Ray Owens, Leonard
7 Lewis, Jr., Latashia McKenzie, and Nicole MacDowell. Are
8 there any members of the jury panel related by blood or
9 marriage, have a close personal relationship, business
10 relationship, social relationship or any other type of
11 relationship with any of these potential witnesses? If so,
12 please stand.

13 (No response.)

14 THE COURT: All right, the State of South Carolina is
15 represented by and the prosecutor in this case is Martin
16 Spratlin of the 15th Circuit Solicitor's Office. The Defendant
17 is represented by Ms. Melinda Knowles. She's with the Public
18 Defender's Office here in Horry County. Is there any member
19 of the jury panel related by blood or marriage, have a close
20 personal relationship, business relationship, social
21 relationship or any other type of relationship with either of
22 these attorneys? If so, please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury panel that
25 has ever been represented by either of these attorneys? If

Voir Dire

50

1 so, please stand.

2 (No response.)

3 THE COURT: Is there any member of the jury panel that
4 has ever been involved in any legal action in which either of
5 these attorneys represented another party to that action? If
6 so, please stand.

7 (No response.)

8 THE COURT: Has any member of the jury panel formed or
9 expressed an opinion about any issue or matter involved in
10 this case? If so, please stand.

11 (No response.)

12 THE COURT: Is there any member of the jury panel
13 aware of any bias or prejudice towards either the State of
14 South Carolina or the Defendant in this case? If so, please
15 stand.

16 (No response.)

17 THE COURT: Is there any member of the jury panel that
18 was a member of the Grand Jury which issued the indictment in
19 this case? If so, please stand.

20 (No response.)

21 THE COURT: Is there any member of the jury panel that
22 is a member of or a contributor to any group which has as its
23 primary concern the promotion of law enforcement or victims'
24 rights? Some of these organizations are Mothers Against Drunk
25 Drivers or what's commonly referred to as MADD, Students

Voir Dire

51

1 Against Drunk Drivers, commonly referred to as SADD, Citizens
2 Against Violent Crime or CAVC, or Citizens Against Spousal
3 Abuse, CASA. Is there any member of the jury panel that is a
4 member of or a contributor to either - any of these
5 organizations or similar organizations which promote law
6 enforcement or victims' rights? If so, please stand.

7 (No response.)

8 THE COURT: Is there any member of the jury panel who
9 either personally, has a close family member or close personal
10 friend that is employed in law enforcement? If so, please
11 stand.

12 Yes, ma'am, your name and number.

13 MS. FALK: Ina Falk, 117.

14 THE COURT: All right, now, this is you, a family
15 member or a close personal friend?

16 MS. FALK: Close personal friend.

17 THE COURT: All right, Ms. Falk, and where is your
18 friend employed?

19 MS. FALK: Horry County Police Department. He's a
20 detective, special something, he had in, I don't really know.

21 THE COURT: Okay, what's your friend's name?

22 MS. FALK: Neal Fribowitz [spelled phonetically].

23 THE COURT: What?

24 MS. FALK: Neal Fribowitz.

25 THE COURT: Neal Fribowitz. Is he involved in this

1 case?

2 MR. SPRATLIN: He is not involved in this case, Your
3 Honor.

4 THE COURT: Okay, would - have you - so, he's not
5 involved in the case at all, okay.

6 MR. SPRATLIN: No, sir. Your Honor, the Horry County
7 Police Department is involved in the case, but Detective
8 Fribowitz in and of himself is not ---

9 THE COURT: Okay.

10 MR. SPRATLIN: --- involved.

11 THE COURT: All right, would your association with Mr.
12 Fribowitz or his employment affect your ability to give both
13 to the State and the Defendant in this case a fair and
14 impartial trial?

15 MS. FALK: No.

16 THE COURT: Okay, would you be able to disregard his
17 employment in its entirety and disregard your association with
18 him in its entirety and base your decision in this case
19 exclusively on the testimony and evidence in this case?

20 MS. FALK: Yes.

21 THE COURT: Okay, thank you, Ms. Falk, for bringing
22 that to our attention.

23 Anyone else who either personally, has a family member or
24 a close personal friend employed in law enforcement? If so,
25 please stand.

Voir Dire

53

1 (No response.)

2 THE COURT: Is there any member of the jury panel who
3 either personally, has a family member or a close personal
4 friend employed with the 15th Circuit Solicitor's Office? If
5 so, please stand.

6 (No response.)

7 THE COURT: Is there any member of the jury panel who
8 either personally, has a family member or close personal
9 friend employed with the Horry County Public Defender's
10 Office? If so, please stand.

11 (No response.)

12 THE COURT: Does any member of the jury panel know of
13 any reason whatsoever why he or she should not serve as a
14 juror in this case with particular emphasis being placed on
15 your ability to be fair and impartial to both the State and
16 the Defendant?

17 (No response.)

18 THE COURT: Any additional questions from the State?

19 MR. SPRATLIN: No, Your Honor.

20 THE COURT: Any additional questions from the Defense?

21 MS. KNOWLES: None, Your Honor.

22 THE COURT: All right, all right, ladies and
23 gentlemen, if your name is called please come forward and
24 stand in front of the attorneys, stand here by the podium,
25 turn around and face the attorneys and each attorney gets a

1 certain number of strikes in this case. The State's attorney
2 is going to take a look at you and decide if they want you as
3 a juror in this case, and if the State wants you as a juror
4 then the Defense gets to take a look at you a little while and
5 decide if they want you as a juror in this case and we follow
6 this procedure until we get 12 jurors in this case and one
7 alternate. So, if you - your name is called, if you would
8 please come forward and bring with you any umbrellas, any
9 pocketbooks, anything that you might have in your possession.
10 Stand in front of the attorneys' benches and face the
11 attorneys and we'll direct you further from there.

12 Now, if you get struck as a juror in this case, please do
13 not take it personally. It just means that for whatever
14 reason you do not fit a particular profile that one of the
15 parties is looking for in this particular case. So, please
16 listen carefully and if your name is called please come
17 forward.

18 THE CLERK: Juror Number 44, Charlotte Butcher.

19 What say the State?

20 MR. SPRATLIN: Please present this juror.

21 THE CLERK: What say the Defense?

22 MS. KNOWLES: Your Honor, please excuse this juror from
23 the call of this case.

24 THE COURT: All right.

25 THE CLERK: You are excused from this particular case.

Jury Selection

55

1 THE COURT: Please have a seat and stay with us for a
2 little while. Thank you, ma'am.

3 THE CLERK: Number 43, Keith Buslee. What say the
4 State?

5 MR. SPRATLIN: Please present this juror.

6 THE CLERK: Defense?

7 MS. KNOWLES: Please seat this juror.

8 THE CLERK: Please be seated in the jury box.

9 240, Marisa Massey. What say the State?

10 MR. SPRATLIN: Please present this juror.

11 THE CLERK: The Defense?

12 MS. KNOWLES: Please seat this juror.

13 THE CLERK: Please be seated in the jury box.

14 Number 396, Zachary Walker. What say the State?

15 MR. SPRATLIN: Please present this juror.

16 THE CLERK: Defense?

17 MS. KNOWLES: Please seat this juror.

18 THE CLERK: Please be seated in the jury box, thank
19 you. Number 242, Susan Mayer.

20 THE COURT: No, I excused her. Her - need to go ahead
21 and put on the record, she - her husband had a doctor's
22 appointment.

23 MS. KNOWLES: What was her number again?

24 THE COURT: 242, Susan Mayer. Her husband had a
25 doctor's appointment this afternoon and I don't - I think he

Jury Selection

56

1 had a stroke or something of that nature and so I excused her
2 for this afternoon and tomorrow. All right, go ahead.

3 THE CLERK: Okay, 67, Clayton Collins. What say the
4 State?

5 MR. SPRATLIN: Please present this juror.

6 THE CLERK: Defense?

7 MS. KNOWLES: Please excuse the juror from the trial of
8 this case.

9 THE CLERK: You are excused from this particular case.
10 Juror Number 5, Donald Alston. What say the State?

11 MR. SPRATLIN: Please present this juror.

12 THE CLERK: Defense?

13 MS. KNOWLES: Please seat this juror.

14 THE CLERK: Please be seated in the jury box. Thank you.
15 267, Wanda Kay Mooney. What say the State?

16 MR. SPRATLIN: Please present this juror.

17 THE CLERK: Defense?

18 MS. KNOWLES: Please excuse this juror from the call of
19 the case.

20 THE CLERK: You are excused from this particular case.
21 97, Loretta Dickey. What say the State?

22 MR. SPRATLIN: Please present this juror.

23 THE CLERK: Defense?

24 MS. KNOWLES: Please seat this juror.

25 THE CLERK: Please have a seat in the jury box. Thank

Jury Selection

57

1 you.

2 314, John Renoe. What say the State?

3 MR. SPRATLIN: Please excuse this juror.

4 THE CLERK: You are excused from this particular case.

5 Number 335, Trevor Setzer. What say the State?

6 MR. SPRATLIN: Please present this juror.

7 THE CLERK: Defense?

8 MS. KNOWLES: Please seat this juror.

9 THE CLERK: Please be seated in the jury box, thank

10 you.

11 Juror Number 202, James Jones. What say the State?

12 MR. SPRATLIN: Please present this juror.

13 THE CLERK: Defense?

14 MS. KNOWLES: Please seat this juror.

15 THE CLERK: Please be seated in the jury box. Thank

16 you.

17 Juror Number 85, Roberta Crouch. What say the State?

18 MR. SPRATLIN: Please present this juror.

19 THE CLERK: Defense?

20 MS. KNOWLES: Please excuse this juror from the call of

21 the case.

22 THE CLERK: You are excused from this particular case.

23 Juror Number 303, David Pohto. What say the State?

24 MR. SPRATLIN: Please present this juror.

25 THE CLERK: Defense?

Jury Selection

58

1 MS. KNOWLES: Please seat this juror.

2 THE CLERK: Please be seated in the jury box. Thank
3 you. Juror Number 393, Vaughn Viles. What say the State?

4 MR. SPRATLIN: Please present this juror.

5 THE CLERK: Defense?

6 MS. KNOWLES: Your Honor, may we inquire his - as to his
7 employer?

8 THE COURT: All right, Mr. Viles, where do you work?

9 MR. VILES: Somita [spelled phonetically] America
10 Components, outside sales.

11 MS. KNOWLES: Please seat this juror.

12 THE CLERK: Please be seated in the jury box. Thank
13 you.

14 Juror Number 310, Robin Quinn. What say the State?

15 MR. SPRATLIN: Please present this juror.

16 THE CLERK: Defense?

17 MS. KNOWLES: Please seat this juror.

18 THE CLERK: Please be seated in the jury box. Thank
19 you.

20 Juror Number 320, Melva Robson. What say the State?

21 MR. SPRATLIN: Please excuse the juror from this trial.

22 THE CLERK: You are excused from this particular case.

23 Juror Number 215, Linda Knapp. What say the State?

24 MS. KNOWLES: What number? I'm sorry, what number?

25 THE CLERK: She is Number 215.

Jury Selection

59

1 MR. SPRATLIN: Please present this juror.
2 THE CLERK: Defense?
3 MS. KNOWLES: Please excuse the juror.
4 THE CLERK: You are excused from this particular case.
5 Juror Number 59, Joan Chartier.
6 MS. CHARTIER: Chartier.
7 THE CLERK: Thank you.. What say the State?
8 MR. SPRATLIN: Please present this juror.
9 THE CLERK: Defense?
10 MS. KNOWLES: Please seat this juror.
11 THE CLERK: Please be seated in the jury box. Thank
12 you.
13 Juror Number 345, Julianna Siratt. What say the State?
14 MR. SPRATLIN: Please excuse the juror from the trial in
15 this case.
16 THE CLERK: You are excused from this particular case.
17 Juror Number 90, Michael Daniels. What say the State?
18 MR. SPRATLIN: Please excuse the juror from the trial in
19 this case.
20 THE CLERK: You are excused from this particular case.
21 351, Gloria Smith. What say the State?
22 MR. SPRATLIN: Please present this juror.
23 THE CLERK: Defense?
24 MS. KNOWLES: Please seat this juror.
25 THE CLERK: Please be seated in the jury box. Thank

Jury Selection

60

1 you.

2 THE COURT: All right, we'll select one alternate.

3 The State gets one strike. The Defense gets two.

4 MR. SPRATLIN: Yes, sir.

5 THE CLERK: Juror Number 76, Richard Cottrill.

6 MR. COTTRILL: Yes.

7 THE CLERK: What say the State?

8 MR. SPRATLIN: Please present this juror.

9 THE CLERK: Defense?

10 MS. KNOWLES: Please excuse this juror.

11 THE CLERK: You are excused from this particular case.

12 Juror Number 212, Anthony King. What say the State?

13 MR. SPRATLIN: Please present this juror.

14 THE CLERK: Defense?

15 MS. KNOWLES: Please excuse this juror.

16 THE CLERK: You are excused from this particular case.

17 Thank you.

18 Juror Number 222, Jeffrey Leonard. What say the State?

19 MR. SPRATLIN: I'm sorry, what was his number one more

20 time?

21 THE CLERK: 222.

22 MR. LEONARD: 222.

23 MR. SPRATLIN: 222, all right, I see the problem. Please
24 present this juror.

25 THE CLERK: Defense?

Jury Selection

61

1 MS. KNOWLES: Please seat this juror.

2 THE CLERK: Please be seated in the jury box. Thank
3 you.

4 THE COURT: All right, ladies and gentlemen, you'll be
5 the jury that will preside over this case. I'm going to
6 excuse you back to the jury room for just a few moments. I'll
7 bring you back out with some opening instructions in just a
8 minute. I know some of you have already served on juries this
9 week and we want to thank you for your service, but I do have
10 to go through this procedure each time we do draw a new jury.
11 So, I'm going to excuse you back to the jury room for just a
12 few minutes and we'll bring you out in just a little while.
13 It'll give you an opportunity to stretch your legs, use the
14 restroom, whatever the case may be. So, we'll excuse you.
15 Please, everyone else remain seated while the jury's excused.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right, any challenges to the selection
19 or composition of the jury by the State?

20 MR. SPRATLIN: No, sir, Your Honor.

21 THE COURT: Any by the Defense?

22 MS. KNOWLES: None, Your Honor.

23 THE COURT: All right.

24 (Remaining jury panel excused by Court and given call-
25 back instructions.)

Opening Instructions by Court

62

1 THE COURT: All right, anything from the State? I'm
2 just going to bring the jury in right quick and have them -
3 send them back out to select a foreperson. Anything ---

4 MR. SPRATLIN: No, Your Honor.

5 THE COURT: --- from the State? Anything from the
6 Defense?

7 MS. KNOWLES: Nothing.

8 THE COURT: All right, let's bring them in right quick
9 and then I'm going to just send them back out. We'll take
10 about a ten-minute break and I'll send them out while they
11 select a foreperson.

12 (Whereupon, the following takes place in the presence of
13 the jury.)

14 THE COURT: All right, ladies and gentlemen, we're
15 getting ready to start the trial of this case, but I wanted to
16 bring you in briefly. I'm going to be sending you back out in
17 just a second for you to select a foreperson if you can do
18 that and I'll have some preliminary instructions for you and I
19 apologize for bringing you in and out of the courtroom, but
20 sometimes with the scheduling that's how these matters work
21 and proceed.

22 I'm going to ask that you retire back to the jury room to
23 select a foreperson if you're able to do so. If you can't
24 select a foreperson, don't worry about it. I can appoint
25 someone to serve as foreperson and many judges appoint their

Opening Instructions by Court

63

1 own foreperson. 'I like to give the jury the opportunity to
2 try to select one on their own if they're able to do so. Now,
3 the foreperson has no more authority, no more importance, or
4 no more influence than any other juror. The foreperson is
5 simply the contact between the Court and the jury. If the
6 jury has a need or if the jury has a question or if a
7 situation arises, then the foreperson lets the Court know.
8 When it's time to deliberate on the verdict, the foreperson
9 will preside over the deliberations, but other than that there
10 - the foreperson has no more importance or influence or
11 authority than any other juror.

12 Now, when you come back in the - well, first, if you can
13 select a foreperson, just write the foreperson's name on a
14 sheet of paper with the jury number, give it to the bailiff
15 and we'll bring you back into the courtroom at that time. The
16 foreperson will always occupy the first seat here on the front
17 row. That it - well, really, technically it's the second
18 seat. It's the one closest to the gate which is nearest to
19 the witness side of the regular jurors. Our alternate, Mr.
20 Leonard, you will always occupy the seat where you are unless
21 and until you become a member of the regular jury. The rest
22 of you are at liberty to sit in whatever seat you like. If
23 you want to sit in the same seat, you can do that. If you
24 want to alternate seats, you can do that. The only
25 restriction is that we have the foreperson sit in the first

Opening Instructions by Court

64

1 chair and the alternate always occupying the alternate seat.

2 Now, when you come back into the courtroom if you have
3 any cell phones, pager devices or other communication devices,
4 I ask that you'll turn them off completely. We'll give you
5 plenty of opportunities to return phone calls and things of
6 that nature but while the trial is going on, I ask that you
7 have those communication devices turned off completely or
8 leave them out of the courtroom altogether. Do not discuss
9 the case even among yourselves. Don't conduct any independent
10 investigations. I'll let you know when you can begin
11 deliberations on this case.

12 So, we're going to take about a ten minute break while
13 the attorneys get everything squared away and get ready to get
14 this trial started and I ask that you select a foreperson and
15 then send that information out and we'll bring you back into
16 the courtroom at that time; all right?

17 You're excused for the jury room, select the foreperson.
18 Everyone else please remain seated while the jury is excused.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right, when we bring them back in
22 we'll put them under oath, I'll give the preliminary charges.
23 At the conclusion of the preliminary charges, as I understand,
24 I guess I'll go - do you all want me to put the stipulations
25 on record before opening statements? And as I understand, the

Opening Instructions by Court

65

1 Defense stipulates that the Defendant has a prior conviction
2 for a crime of violence, and therefore, the Defendant by law
3 is prohibited from possessing a firearm.

4 MS. KNOWLES: Yes, Your Honor.

5 THE COURT: The Defense stipulates to that; correct?

6 MS. KNOWLES: Yes, sir.

7 THE COURT: All right, so, that will be a given fact
8 that I will advise the jury. Do you want me to - do we want
9 to put that on the record before your opening statements or at
10 the time you start presenting your evidence?

11 MR. SPRATLIN: Your Honor, the State would ask that it be
12 put on the record prior to opening statements.

13 THE COURT: Any objection?

14 MS. KNOWLES: No objection, Your Honor.

15 THE COURT: Okay, we'll go ahead and do it then and
16 then - okay, we can go ahead and do it and then you can do
17 your opening statements and then we'll go straight into the
18 evidentiary portion; okay?

19 MR. SPRATLIN: Yes, sir. Your Honor, there - also
20 there's a handgun that will be introduced into evidence here
21 today or the State intends to try to introduce into evidence
22 today. It has been secured and is in non-firing condition. I
23 didn't know if you wanted to put anything on the record in
24 regards to that, the fact that it is secured by a gun lock and
25 is unable to fire or be fired or operate at this point in

Opening Instructions by Court

66

1 time.

2 THE COURT: Okay, well, I'll just go on your placing
3 it on the record now that that's the condition. I haven't
4 seen it and I don't know, but I'm relying on you all to make
5 sure it doesn't shoot anybody.

6 MR. SPRATLIN: Yes, sir.

7 THE COURT: Okay?

8 MR. SPRATLIN: Thank you.

9 THE COURT: All right, let's take about a ten-minute
10 recess; okay?

11 OFF THE RECORD

12 (On the record. Whereupon, the following takes place outside
13 the presence of the jury.)

14 THE COURT: Thank you very much. Please be seated.
15 All right, they sent out a note. Juror Number 310, Robin
16 Quinn is the foreperson. We'll put that as Court's Exhibit
17 Two.

18 (Whereupon, Court's Exhibit Number Two [Foreperson
19 Selection] appropriately marked.)

20 THE COURT: All right, anything from the State before
21 we bring the jury in?

22 MR. SPRATLIN: Nothing from the State, Your Honor.

23 THE COURT: Anything from the Defense?

24 MS. KNOWLES: Nothing, Your Honor.

25 THE COURT: All right, let's go ahead and bring the

Opening Instructions by Court

67

1 jury in.

2 (Whereupon, the following takes place in the presence of
3 the jury).

4 THE COURT: All right, ladies and gentlemen, welcome
5 back. We're ready to start the trial of the case of the State
6 of South Carolina versus Verntirell Jerwon Dukes. I
7 understand, Ms. Quinn, they've selected you as foreperson. I
8 appreciate for you serving in that capacity and if you'd
9 always sit where you are now seated. Our alternate always
10 occupy that seat, and as I told the others of you, you're at
11 liberty to sit in whichever seat you like during the trial of
12 this case.

13 Now, as is the general rule of qualifications, voir dire
14 and for those of you who have served on juries before, I'll
15 need everyone to please stand and raise your right hand while
16 the clerk administers the oath for you to serve as jurors on
17 this particular case. If you'd please stand and raise your
18 right hand. All right.

19 (The jury is sworn by the clerk.)

20 THE CLERK: Thank you.

21 THE COURT: All right, is there any member of the jury
22 panel that did not respond to the oath by saying I do? If so,
23 please stand.

24 (No response.)

25 THE COURT: All right, all right, ladies and

1 gentlemen, we're about to begin the trial of the case of the
2 State versus Verntirell Jerwon Dukes and before we begin the
3 trial I want to tell you that the trial will probably be
4 different from what you're accustomed to watching TV. Those
5 of you who have sat as jurors before, you'll understand the
6 procedures in trial.^a Those of you who have not performed jury
7 duty before, from watching movies, TV shows, reading books,
8 things of that nature, jury, jury trials are often a lot more
9 glamorous than they are in reality. They usually appear to be
10 full of a lot of action, a lot of suspense and things of that
11 nature, and while that might be the case in this trial, it
12 probably won't be.

13 The primary function of a trial is to determine the
14 truth, factually what happened, and that is often a slow,
15 deliberate, repetitive process, the exact opposite of what you
16 may be accustomed to when you watch a movie or TV or read a
17 book, but I hope that you do find this trial educational and I
18 do want to thank you from the outset for serving as jurors on
19 this particular case.

20 The attorneys appearing before you are advocates for the
21 parties they represent, but first and foremost they're
22 advocates of the court. They're sworn to uphold the integrity
23 and fairness of our judicial system and you can expect them to
24 be professional, competent and ethical in the representation
25 of their clients. Likewise, the court system expects you to

Opening Instructions by Court

69

1 be professional, competent and ethical as you serve on jury
2 duty in this case.

3 Now, what I'll now say to you is intended to serve as an
4 introduction to the trial of this case. These remarks are not
5 a charge on the law of the case. I will instruct you on the
6 law applicable to this case at the end of the trial before you
7 retire to consider your verdict. This is merely an
8 explanation of the procedure that we'll follow during the
9 trial of this case so that you may better understand what is
10 happening in this trial.

11 Now, the Defendant is charged by an indictment and this
12 is the indictment and this indictment charges the Defendant
13 with unlawful possession of a pistol, the elements of which
14 I'll explain to you at a later time. Now, the indictment is
15 simply the charge by which this case is brought into this
16 court. It is not in any sense evidence of any of the
17 allegations contained in the indictment. The Defendant has
18 pled not guilty to this indictment and the State, therefore,
19 has the burden of proving each of the elements of the
20 indictment beyond a reasonable doubt. It'll be your duty,
21 ladies and gentlemen, to determine whether or not the State
22 has met that burden of proof.

23 Your purpose as jurors is to find and determine the facts
24 of this case. You are the sole facts of this case. If at any
25 time I make a comment regarding the facts, you must disregard

Opening Instructions by Court

70

1 my comments. You are to determine the facts from the
2 testimony you hear and the other evidence introduced in court.
3 It will be up to you to determine the inferences which you
4 feel may properly be drawn from that evidence. It is
5 especially important that you perform your duty of determining
6 the facts diligently and conscientiously because ordinarily
7 there is no way to correct an erroneous determination of the
8 facts by a jury. On the other hand and with equal emphasis,
9 the same law that makes you the judge of the facts makes me
10 the judge of the law in this case. The law as given to you by
11 the Court is the only law that you can consider. You must
12 accept and follow the law as I give it to you even though you
13 may disagree with it. Just as I cannot tell you what the
14 facts of this case are, you cannot disagree with me about the
15 law to be applied in this case. Your job is to take the law
16 as I give it to you and apply it to the facts as you find
17 those facts to be from the testimony of the witnesses and the
18 other evidence that is introduced at trial.

19 After doing that you can then render your verdict, a true
20 and just verdict under the solemn oath that you just took as
21 jurors. Until I advise you to begin your deliberations, you
22 must not discuss this case with anyone whether it be your
23 fellow jurors, your friends, family members or anyone involved
24 in the case. After the case is submitted to you, you must
25 discuss the case only in the jury room with your fellow

Opening Instructions by Court

71

1 jurors. The attorneys and the parties have been directed that
2 they're not to speak with you about the case. So, they're not
3 being rude, they're just following the instructions of the
4 Court as well.

5 Now, during the trial you're not to read or listen to or
6 watch any news reports about this case, if there is any. This
7 includes anything that may be in the newspapers or on the
8 internet, the radio or the television. You cannot consider
9 anything you may have read or heard about the case outside of
10 the courtroom whether that be before or during the trial of
11 this case.

12 It's important that you keep an open mind and not decide
13 any issue in this case until all of the evidence has been
14 presented to you, the parties have made their closing
15 arguments and I have instructed you on the law to be applied
16 in this case. It's your solemn responsibility to determine
17 the guilt or innocence of the Defendant and your verdict must
18 be based solely on the evidence as it is presented to you in
19 trial and on the law as I instruct you during and at the close
20 of the trial.

21 Now, in just a moment, the Solicitor will make what is
22 called an opening statement in which the Solicitor will
23 explain to you the issues in this case, or at least what the
24 Solicitor feels the issues in this case are. The attorney
25 for the Defendant may also make an opening statement, although

Opening Instructions by Court

72

1 she is not required to do so. What the attorneys tell you
2 during their opening statements is not evidence in this case.
3 It is simply their contention as to what the evidence in this
4 case is.

5 The evidence in this case will be presented to you by
6 testimony of sworn witnesses from the witness stand and any
7 other exhibits that might be introduced at trial. Now, in
8 determining what the true facts are in this case, you must
9 decide whether or not the testimony of a witness is
10 believable. It will be my responsibility to rule as a matter
11 of law as to whether certain testimony is admissible at all or
12 not, but once testimony is admitted into evidence, whether or
13 not you believe it is solely for you to determine. In
14 deciding whether to believe a witness, you have the right to
15 consider the interest of any witness, the bias of any witness,
16 the prejudice of any witness, the opportunity for the witness
17 to have seen the matters and things about which the witness
18 may testify and the way the witness acts on the witness stand.
19 You have the right to consider anything that is in the record
20 that will help you evaluate the testimony of the witnesses.
21 That means that it is your duty to pay close attention to
22 these witnesses, to observe the witnesses, to listen to the
23 witnesses and pay close attention to the attorneys and the
24 Court. Don't let your thoughts wander, but give strict
25 attention to the testimony in this case so at the end of all

Opening Instructions by Court

73

1 of the testimony, after the arguments of counsel and a charge
2 on the law by the Court, you will then be in a position to
3 determine what the true facts are and apply the law to those
4 facts and thus render a true and just verdict.

5 Is there any challenges to the opening charges by the
6 State?

7 MR. SPRATLIN: No, Your Honor.

8 THE COURT: All right, any by the Defense?

9 MS. KNOWLES: No, sir.

10 THE COURT: All right, ladies and gentlemen, we're
11 going to begin the trial of this case with the opening
12 statements. As I said, these opening statements are not
13 evidence in this case; however, before we do so the Defense
14 has made a stipulation in this case that will cut down on the
15 trial of this case to some degree. The Defense stipulates as
16 factual matters that the Defendant has been convicted of a
17 crime of violence, and therefore, by law, the Defendant cannot
18 possess a gun. The Defendant stipulates to that and agrees
19 that he has a prior conviction for a crime of violence, and
20 therefore, by law, cannot possess a gun; all right? So, that
21 will be given to you as a factual finding that you will accept
22 as a fact and you don't have to make that factual
23 determination.

24 We'll now begin with the trial of the case, the opening
25 statements. Does the State wish to begin with its opening

Opening Statement by State

74

1 statement?

2 MR. SPRATLIN: Yes, Your Honor. The State does.

3 THE COURT: All right.

4 MR. SPRATLIN: Good afternoon, ladies and gentlemen of
5 the jury. I may have some good news for you. This case
6 shouldn't take very long, a very simple case, a very
7 straightforward case.

8 As the Judge told you the Defendant is charged with
9 unlawful possession of a pistol. As the Judge also just told
10 you, he's been convicted of a crime of violence which under
11 state law means that he cannot possess a firearm. Under no
12 circumstances can he own, touch, fire, discharge or handle a
13 firearm by state law.

14 What the facts of this case are going to show you today,
15 ladies and gentlemen, is back on April 14th, 2012, the
16 Defendant did possess a firearm. He did handle the firearm.
17 He did touch it. He did hold it. He did in a way use it
18 because what you're going to hear, ladies and gentlemen, is
19 that back on April 14th, 2012, at the Sun-up Bar and Grill,
20 which is located off of, off of 544 in the Socastee area of
21 town off Socastee Boulevard, 707 basically if you're familiar
22 with that area, the Defendant was there. The Defendant was
23 there with several other people, potentially a fight or some
24 sort of conflict arose between the Defendant and another
25 individual at that club. The Defendant went out to his car,

Opening Statement by State

75

1 got a handgun, took it into the club, didn't discharge it,
2 didn't fire it, but took it into the club, showed it, caused a
3 scene, caused the police to get called because there's a guy
4 in the Sun-up waving around a gun, and then the police show up
5 and by the time the police got there, the Defendant's already
6 exited the bar, he's already gotten back into the car.
7 They're going to tell you when they pull up they get told by
8 several witnesses that the guy with the gun's in that car,
9 beige Blazer.

10 They go up to the beige Blazer. It's trying to leave.
11 They tell it to stop, have to tell it to stop several times.
12 It does stop and doesn't leave the scene and the officers for
13 officers' safety pull everyone out of the car, pull the
14 Defendant out first because he matches the description that
15 they got from the witnesses that - for the person who had the
16 gun.

17 You're going to hear from Officer William Odom with the
18 police department that when his partner, Corporal Rhew, was
19 pulling out the Defendant, Verntirell Dukes, Officer Odom saw
20 in plain view, stuffed right underneath the seat, right
21 between the Defendant, right in the part of the seat where -
22 between the doorjamb and where the Defendant's sitting on the
23 passenger side, the rear passenger seat, a handgun. In fact,
24 ladies and gentlemen, this is the handgun and today that's
25 going to also be introduced into evidence.

Opening Statement by Defense

76

1 That's, it's a simple case, simple, straightforward case.
2 It shouldn't take long, but it's a serious case because that
3 man is not allowed to have a firearm and on April 14th, 2012,
4 he did, and so, that's why, ladies and gentlemen, at the end
5 of the day you're going to find the Defendant guilty. Thank
6 you.

7 THE COURT: All right, Ms. Knowles, does the Defense
8 wish to make an opening statement?

9 MS. KNOWLES: Yes, Your Honor.

10 THE COURT: All right.

11 MS. KNOWLES: Good afternoon, ladies and gentlemen. My
12 name is Melinda Knowles and I represent the accused in this
13 case, Mr. Dukes. My representation of Mr. Dukes began in
14 April of this year and within minutes of meeting him he began
15 to profess his innocence of this crime, a claim that he has
16 never wavered from since day one.

17 I believe to fully understand this case, you have to
18 understand who this person is. So, I want to give you a
19 little bit of a background on Mr. Dukes. He is 27 years old.
20 He grew up in Williamsburg County, which as some of you may
21 know is about an hour and a half from here. He grew up with
22 his two brothers, raised by a single mother and it was because
23 his father chose to leave the family when Mr. Dukes was a very
24 small child, never to return. Now, Mr. Dukes ---

25 MR. SPRATLIN: Your Honor, I'm going to object to all of

Opening Statement by Defense

77

1 this as a play on the jury's emotions. I don't see any
2 relevance to this as to why we're here today.

3 THE COURT: This is just opening statements. This is
4 not facts. It's not evidence. So, I'm going to allow her to
5 go ahead.

6 MR. SPRATLIN: Yes, sir.

7 THE COURT: All right.

8 MS. KNOWLES: Now, Mr. Dukes admits that there was a
9 time in his life that he got into some legal trouble, but that
10 was years ago, and the man that's seated here behind me is not
11 the same man that he was back then. What matters most to him
12 is his family and his friends. Mr. Dukes left his home on the
13 night in question with one goal in mind and that was to spend
14 some quality time with his family and friends. He had
15 absolutely no intention of getting into any trouble, no
16 intention of causing any trouble. Unfortunately, for Mr.
17 Dukes trouble found him and it came in the form of a mere
18 accusation of wrongdoing.

19 In closing I want to say that I firmly believe that at
20 the end of this trial the 12 of you will reach the same
21 conclusion that I made early on in this case and that is that
22 Mr. Dukes is innocent of this crime, that the State's evidence
23 has failed to meet its burden of proof, which is a very
24 substantial one, proof beyond a reasonable doubt, and that Mr.
25 Dukes was nothing more than a victim of circumstance. Thank

1 you for your service, your time and your patience.

2 THE COURT: All right, we'll now begin the evidentiary
3 portion of this trial and as I told you, I'll repeat, that it
4 is a stipulated fact because it is now evidence in this case
5 that the Defendant has a prior conviction for a crime of
6 violence, and therefore, by law cannot possess a firearm.

7 All right, Mr. Spratlin, you can call your first witness.

8 MR. SPRATLIN: Mr. Sammy Owens, Your Honor.

9 THE COURT: All right.

10 MR. SPRATLIN: The State calls Mr. Sammy Owens to the
11 stand. If you'd come forward and just be sworn.

12 Whereupon, Sammy Owens was called to the stand, duly
13 sworn by the clerk and testified as follows:

14 THE CLERK: State your full name and spell your last
15 name.

16 MR. OWENS: Sammy Owens, O-W-E-N-S.

17 DIRECT EXAMINATION

18 BY MR. SPRATLIN:

19 Q Mr. Owens, where do you reside?

20 A Horry County.

21 Q How long have you lived in Horry County?

22 A Lived in Horry County about four months.

23 Q Where did you live before you lived in Horry County?

24 A Georgetown County.

25 Q All right, how long were you there?

Sammy Owens - Direct by State

79

- 1 A Four and a half to five years.
- 2 Q Where are you originally from?
- 3 A North Carolina.
- 4 Q Okay, what's - what do you do for a living?
- 5 A I drive a taxi.
- 6 Q All right, which company do you drive for?
- 7 A I drive for Beachside Taxi.
- 8 Q All right, what ---
- 9 A Myrtle Beach.
- 10 Q How long you been working for Beachside?
- 11 A Since about February.
- 12 Q February of this year?
- 13 A Yes, sir.
- 14 Q All right, back in April of this year, were you - so, you
- 15 were working at Beachside back in April of this year?
- 16 A Yes, sir, I was.
- 17 Q What shift were you working?
- 18 A I was working night shift, six p.m. to six a.m.
- 19 Q All right, so, were you working on the night of April
- 20 14th, 2012?
- 21 A Yes, sir.
- 22 Q Where were you that night?
- 23 A I was all over the beach.
- 24 Q Okay, what, what's a general night for you as a cab
- 25 driver? What do you do?

- 1 A On the night shift we generally take people out to
2 dinner. After dinner, we'll take them from their motels to
3 the clubs, to bars, to different entertainment areas.
- 4 Q All right, did you have a chance to go to the Sun-up Bar
5 or that general area that night?
- 6 A Yes, sir, I did.
- 7 Q Where is the Sun-up Bar?
- 8 A It's located on Highway 544 in Socastee.
- 9 Q All right, what - and it's obviously a bar kind of
10 establishment?
- 11 A Yes, sir, it's a bar, grill.
- 12 Q All right, why were you going there?
- 13 A I had received a call from Los Compadres, which is a
14 Mexican bar right next door to pick up a customer and I had
15 pulled up in the parking lot.
- 16 Q All right, let me ask you about the parking lot of these
17 two stores. How close are the parking lots?
- 18 A They actually - the buildings share the same sidewalk.
- 19 Q Okay, so, it's all one big parking lot area?
- 20 A It's like one strip mall ---
- 21 Q All right.
- 22 A --- of the buildings.
- 23 Q Now, where were you parked in regards to where the Sun-up
24 Bar was when you were waiting on this person from Compadres?
- 25 A I would be like right in front. The two actually join

Sammy Owens - Direct by State

81

1 and I was pulled right in front of the, in front of the
2 building.

3 Q Okay, what if anything did you see out of the ordinary
4 when you were there that night?

5 A The first thing I noticed when I first pulled up was the
6 crowd on the sidewalk and like a big commotion going on, a
7 bunch of arguing going back and forth.

8 Q What - did you see the Defendant there that night?

9 A The Defendant?

10 Q Did you see the Defendant there that night?

11 A Being the gentleman sitting there, yes, sir.

12 Q All right, what was he doing when you pulled up?

13 A They were all arguing in the crowd and I seen this
14 gentleman and another gentleman break loose from the crowd and
15 go to a vehicle.

16 Q What color vehicle did they go to if you remember?

17 A If I remember, seems to be like a dark grayish or dark
18 brownish SUV.

19 Q All right, what did they do when they went to that
20 vehicle?

21 A Opened the doors and both reached in and grabbed firearms
22 and started back to the building.

23 Q All right, what did - what specifically in regards to the
24 Defendant did you see him do when he went to that vehicle?

25 A Seen him reach under the, under the driver's seat and get

1 a firearm, large firearm and tuck it under the belt in the
2 back.

3 Q Okay, now, when he was walking towards the van, how far
4 away was he from you?

5 A Maybe from here to this lady to my left, about that far.

6 Q All right, and what - and were you in your vehicle, your
7 cab?

8 A Yes, sir.

9 Q All right, so, how far away from your cab was he?

10 A How far away from my cab was he?

11 Q Yes.

12 A About a foot from the end of the hood.

13 Q Okay, and that was when he was walking towards the van;
14 right?

15 A Right, that's when he was going to his van.

16 Q Or going towards his SUV.

17 A From the building, yes.

18 Q When he was coming back from the SUV, how far did he pass
19 in front of you?

20 A Maybe a foot or two farther like the other side of the
21 sidewalk, closer to the building.

22 Q All right, let me ask you a couple of more questions
23 about the parking lot of Sun-up and Los Compadres. How well
24 lit is that area?

25 A It's decently lit. There's a convenience store right on

Sammy Owens - Direct by State

83

1 the one end and then there's restaurants and street poles,
2 also.

3 Q What time of night was it that you were there, if you
4 remember?

5 A If I remember right it was between - if I had to guess,
6 between 3:30, 5:30 a.m.

7 Q Okay, and so even that time of night did you have any
8 trouble seeing?

9 A No.

10 Q All right, all right, when you saw that - when you saw
11 the Defendant go to the car and pull out the firearm, what did
12 you do?

13 A I backed away from the building.

14 Q Why'd you do that?

15 A Well, for my own safety, more or less, and to give room
16 if any - anything else went down. I didn't want to be stuck
17 in the crossfire.

18 Q And what else did you do when you were backing away from
19 the building?.

20 A I backed away and sat in the corner and observing.

21 Q Did you call anyone or do anything?

22 A Called - used my cell phone to call 911 and realized that
23 other - they had said they had already received a call also.

24 Q All right, what's the next thing you - when's - when is
25 the next time you saw the Defendant that night?

1 A He came back out of the, out of the building and went
2 back to the vehicle and proceeded to do, look like change
3 clothes. He was in, in like a green t-shirt when I first saw
4 him.

5 Q What color shirt was he in when - did you see what he
6 changed into?

7 A No, sir.

8 Q Okay, when if at all did you see the gun again that
9 night?

10 A The only time I saw the gun was when I saw him sticking
11 it in his - in - that I knew it was a firearm, that he was
12 sticking in, in his belt.

13 Q All right, how far away - did you get a good look at that
14 gun?

15 A Not a real good look, not a hand - not an arm's length
16 per se but I ---

17 Q Let me show you what's already been marked for
18 identification purposes as State's Exhibit Number Two. Is it
19 possible that that could be the weapon you saw that night?

20 A Yes, sir.

21 Q And again, where did you see the Defendant shoving that
22 weapon?

23 A In his back - like in the back, he pulled his shirt up
24 and like stuck it in the belt.

25 Q Okay, and you said earlier that before the police arrived

Sammy Owens - Direct by State

85

1 he had gone back to a vehicle; right?

2 A Right, he came out, yes.

3 Q Which vehicle did he go back to?

4 A It looked to be a, looked to be an SUV, looked like a
5 Blazer, like a Chevy Blazer.

6 Q Was it the same one that he had originally gotten the gun
7 out of that you saw?

8 A Yes.

9 Q All right, did you see him get in that vehicle at all?

10 A Yes, I did.

11 Q All right, do you remember, I mean, do you recall where
12 he got in the vehicle as far as seating-wise goes?

13 A No, I don't remember ---

14 Q Okay.

15 A --- once he came back out and got in it. It was just
16 shots, I remember seeing look like the shirt off and the shirt
17 on kind of thing inside.

18 Q All right, let me ask you something, when the police
19 arrived, did you talk to them?

20 A Yes, I did.

21 Q And what if anything did you tell them?

22 A Just basically what I had saw, what I had observed, that
23 I had pulled up and noticed a big commotion going on and saw
24 the two men come out, get the guns, go back in and then one
25 come back out and the crowd started dispersing.

1 Q After you saw - after the - after you talked to the
2 police and finished with them, what did you do then?

3 A Proceeded to leave the parking lot and continue my shift.

4 Q All right, now, Mr. Owens, let me ask you, do you see the
5 individual that you saw with the handgun that night here in
6 the courtroom?

7 A Yes, I do.

8 Q For the record, would you identify him and describe an
9 article of clothing he - point him out and identify an article
10 of clothing he's wearing.

11 A That's the gentleman there that's wearing the yellow
12 shirt.

13 Q All right, please let the record reflect the witness has
14 identified the Defendant, and Mr. Owens, did all the events
15 you described today occur on or about April 14th, 2012?

16 A Yes, sir.

17 Q And did they occur here in Horry County?

18 A Yes, sir.

19 Q All right, thank you, Mr. Owens. I have no further
20 questions. Please answer any questions Ms. Knowles may have.

21 THE COURT: Ms. Knowles?

22 CROSS EXAMINATION

23 BY MS. KNOWLES:

24 Q Good afternoon, Mr. Owens.

25 A Good afternoon.

1 Q You said that whenever all of this took place as far as
2 the altercation that you claim that you witnessed, you were in
3 the parking lot; correct, of this bar?

4 A I don't know - I didn't claim there was an altercation as
5 I - when I pulled up, the - there was the disturbance going
6 on, the commotion in front of the building.

7 Q You heard arguments?

8 A Heard arguments, yes, ma'am.

9 Q Okay, and did - were you able to see who, who was
10 exchanging words?

11 A Not as the crowd, not as the crowd was in the first
12 huddle, but I seen this gentleman and another gentleman run
13 out of the crowd mouthing ---

14 Q Okay.

15 A --- and that, "We'll be back," and ---

16 Q All right, and how many people would you say made up this
17 crowd, just a rough estimate?

18 A Six to, six to ten, maybe.

19 Q Six to ten, and at what time did you arrive at this
20 location? Do you recall that?

21 A I don't recall the exact time. It was between three to
22 five a.m.

23 Q Okay.

24 A 3:30 to 5:30 is when we're our busiest.

25 Q And how long do you think that you were there?

1 A How long were I there?

2 Q Total, at this location.

3 A How long was I at the location?

4 Q Uh-huh.

5 A From start to talking to the police officers, maybe an
6 hour.

7 Q Okay, and you were there to pick up a customer?

8 A Yes.

9 Q And so how long had you been there waiting on that
10 customer before all of this took place?

11 A I had just pulled up to get the customer. I never did
12 make - get to make contact with my customer.

13 Q Okay, and you acknowledge it was dark ---

14 A Yes.

15 Q --- outside, okay. You just mentioned earlier that you
16 saw my client and another man leave the crowd and go into the
17 car and grab firearms; correct? Isn't that what you just
18 said?

19 A I didn't say I saw both the gentlemen go in the vehicle.
20 I only saw one gentleman reach. I saw your Defendant reach
21 in, get the vehicle - then get the gun. There was another
22 younger man walking with him to the car.

23 Q Okay, so, let me get this - let me get this straight.

24 Two men left the crowd.

25 A Uh-huh.

Sammy Owens - Cross by Defense

89

1 Q You claim one of which was my client.

2 A Uh-huh.

3 Q And they both retrieved a weapon or one of them retrieved
4 a weapon?

5 A I don't know if the other gentleman had a weapon or not
6 but I did see your client with a weapon.

7 Q Okay, and you called 911?

8 A Yes.

9 Q A moment ago you said that you saw my client go to this
10 vehicle and change clothes. Isn't that what I heard?

11 A That was afterwards, after, after the fact that he had
12 went back with the gun.

13 Q Okay, did you tell law enforcement that ---

14 A Yes.

15 Q --- because I don't see anything about that in your
16 statement. Do you recall making this statement ---

17 A Yes.

18 Q --- to law enforcement?

19 MS. KNOWLES: Give me one moment.

20 THE COURT: All right.

21 BY MS. KNOWLES: /

22 Q Did you at any point in time go into the bar?

23 A No, ma'am.

24 Q You didn't, okay. Make sure that I have asked you
25 everything that I needed to.

1 MS. KNOWLES: No further questions, Your Honor.

2 THE COURT: Redirect?

3 MR. SPRATLIN: Real briefly in redirect, Your Honor.

4 REDIRECT EXAMINATION.

5 BY MR. SPRATLIN:

6 Q Mr. Owens, did you have any trouble seeing that night?

7 A No, sir.

8 Q All right, and you gave a written statement to officers;
9 right?

10 A Yes, sir.

11 Q Did you put everything in that statement that you told
12 officers or did you just kind of make a summary of what you
13 told them?

14 A I just - that night I was so scared, so nervous about the
15 incidents, I just made a short brief statement to get the
16 hello out of there.

17 Q But what if anything - but you told officers more than
18 what's just in that written statement; right?

19 A Yes, sir, I did.

20 Q All right, no further questions.

21 A Because if you'll notice, that written statement looks
22 like chicken scratch I was so nervous.

23 Q Yes, sir. Thank you. No further questions, Mr. Owens.

24 THE COURT: All right, you may step down.

25 MR. SPRATLIN: Your Honor, may this witness be released

William Odom - Direct by State

91

1 from his subpoena?

2 THE COURT: Any objection?

3 MS. KNOWLES: No.

4 THE COURT: All right, he's free to go. Thank you
5 very much.

6 All right, the State can call its next witness.

7 MR. SPRATLIN: Your Honor, the State would next call
8 Officer William Odom to the stand.

9 THE COURT: All right.

10 Whereupon, William Blake Odom is called to the stand,
11 duly sworn by the clerk and testified as follows:

12 THE CLERK: Please state your full name and spell your
13 last name.

14 MR. ODOM: William Blake Odom, O-D-O-M.

15 DIRECT EXAMINATION

16 BY MR. SPRATLIN:

17 Q All right, this may be an obvious question, Mr. Odom, but
18 where are you currently employed?

19 A Horry County Police Department.

20 Q How long have you been with the Horry County Police
21 Department?

22 A A little over a year and a half.

23 Q How long have you been in law enforcement total?

24 A Same amount of time.

25 Q All that time with the Horry County Police Department?

1 A Yes, sir.

2 Q All right, what's your current assignment?

3 A I'm a patrol officer.

4 Q What's a patrol officer do?

5 A We respond to calls and traffic.

6 Q All right, so, just general police work?

7 A Yes, sir.

8 Q All right, how long have - and for how long have you been
9 in patrol?

10 A A year and a half.

11 Q All right.

12 A A little over a year.

13 Q So, again, the whole time you were with Horry County?

14 All right, so, you were on patrol back in April 14th, 2012?

15 A Yes, sir.

16 Q All right, were you on duty that day?

17 A Yes, sir.

18 Q All right, what time did you go on duty?

19 A Six p.m. the night before.

20 Q So, you went on duty 6 p.m. April 13th?

21 A Yes, sir.

22 Q And what time were you supposed to get off?

23 A Six a.m. the 14th.

24 Q All right, did you have a chance to go to the Sun-up Bar?

25 A I did.

William Odom - Direct by State

93

1 Q All right, where is that restaurant or bar or whatever it
2 is?

3 A Sun-up is located in Horry County jurisdiction on
4 Socastee Boulevard.

5 Q All right, how close is that to the 544?

6 A .3 miles, maybe.

7 Q Pretty close?

8 A Yeah.

9 Q All right, who else with the Horry County PD went with
10 you to the Sun-up or was there?

11 A Officer Rhew.

12 Q All right, who, and who is Officer Rhew?

13 A He is one of my squad members.

14 Q Okay, all right, let me ask you, when you went to the
15 Sun-up, why did you go there?

16 A We received a call of a fight in progress.

17 Q Fight in progress, did you receive any other information
18 regarding the fight or possible weapons or anything?

19 A Possibly a black male carrying a firearm.

20 Q I'm sorry, what was that again?

21 A Possibly a black male carrying a firearm.

22 Q All right, so, when you responded to the incident
23 location you had information there was possible black male
24 with a firearm and there was a fight or some kind of
25 disturbance in progress?

- 1 A Yes, sir.
- 2 Q All right, when you got to the Sun-up what'd you see?
- 3 A When I arrived, a large crowd of people.
- 4 Q And what did you do when you got there?
- 5 A Exited my vehicle, walked up to the crowd and tried to
- 6 get some information on what was going on and who had the
- 7 firearm for my safety.
- 8 Q Okay, what information were you able to garner from this
- 9 talking to the crowd?
- 10 A At first nothing, nobody really wanted to help me out
- 11 any. As the crowd dispersed, I had one guy, Leonard Lewis,
- 12 come up to me and kind of whisper in my ear the description of
- 13 Mr. Owens over here and that he entered a tan in color
- 14 vehicle, SUV.
- 15 Q You said Mr. Owens?
- 16 A Yes, sir, or the Defendant. I believe it's Owens.
- 17 Q Mr. Dukes.
- 18 A Mr. Dukes, there you go.
- 19 Q Verntirell Dukes. Are you certain about who it was that
- 20 the description matched?
- 21 A Yes.
- 22 Q And was that the description of a black male?
- 23 A Yes.
- 24 Q All right, with dreads?
- 25 A Yes.

William Odom - Direct by State

95

1 Q All right, now, who else came up to you when you were at
2 the Sun-up besides Mr. Lewis?

3 A Mr. Sammy Owens.

4 Q All right, Mr. Owens, did he - what did he tell you?

5 A He told me or he gave me the description of the male and
6 he told me he saw him go to his tan in color vehicle, grab an
7 unknown type of pistol, stuff in his belt and walk back to the
8 bar.

9 Q All right, and what did you do after you got all of this
10 information?

11 A I located the vehicle and I approached it, and by that
12 time Officer Rhew arrived on scene and the vehicle was
13 attempting to leave the Sun-up and we were able to stop it.

14 Q All right, once you stopped the vehicle, what'd you do?

15 A Once we stopped the vehicle, for officer safety reasons,
16 possibly there was a firearm in the vehicle, we pulled each
17 individual out starting with the passenger.

18 Q Okay, and when you were - and let me ask you, was the
19 Defendant in that vehicle?

20 A Yes, sir.

21 Q All right, where was he seated in that vehicle?

22 A The rear passenger seat.

23 Q All right, now, was the Defendant pulled out of that
24 vehicle?

25 A Yes, sir.

1 Q Who was in charge of pulling the individuals out of the
2 car?

3 A Officer Rhew, I was the cover.

4 Q And you said you were the what now?

5 A Cover.

6 Q Covener?

7 A Cover.

8 Q Cover, cover.

9 A Cover.

10 Q What exactly did you do in that situation as a cover on
11 that, in that case?

12 A I kept my eyes on the other individuals that were in the
13 vehicle while he pulled the other individual out.

14 Q All right, now did Officer Rhew wind up pulling the
15 Defendant out?

16 A Yes, sir.

17 Q All right, what was the Defendant wearing when he was
18 pulled out?

19 A A green in color polo type shirt.

20 Q All right, and when he was pulling him out, did you
21 happen to notice anything?

22 A When Officer Rhew pulled him out, I noticed a black in
23 color revolver pistol on the floorboard under the back rear
24 seat, passenger seat.

25 Q Now, again, who was sitting in that back rear passenger

William Odom - Direct by State

97

1 seat?

2 A The Defendant.

3 Q All right.

4 MR. SPRATLIN: Your Honor, beg the Court's indulgence for
5 one second to set up a brief demonstration. It should only
6 take a minute to grab two chairs.

7 THE COURT: All right.

8 MR. SPRATLIN: Your Honor, permission for the witness to
9 step down from the witness stand.

10 THE COURT: As long as he's near a microphone so the
11 court reporter can pick up his testimony.

12 MR. SPRATLIN: Yes, sir.

13 BY MR. SPRATLIN:

14 Q Officer Odom, if you would please come down. All right,
15 what kind of seat - what, what kind of seat - you can, you can
16 stand right there. Sorry. What kind of seat did the back of
17 that vehicle have?

18 A It was a two door SUV Blazer type. So, it had a full
19 bench seat.

20 REPORTER: He's going to have to turn and face me or
21 get near a microphone.

22 THE COURT: Yeah, you're going to need to speak into a
23 microphone.

24 A It was a, it was a two door blazer type SUV with a full
25 bench rear seat.

1 Q All right, just for demonstration purposes only, if you
2 could show the jury pretending that - pretending that the jury
3 box is at the hood of the car and the clerks of courts are the
4 rear of the car, if you would please show the jury for
5 demonstration purposes only where you saw that handgun.

6 A It was located in this area of the rear passenger seat
7 with the door frame being right here.

8 Q And again, who was seated in this seat?

9 A The Defendant.

10 Q Verntirell Dukes?

11 A Yes, sir.

12 Q All right, thank you, officer. You can have a seat back
13 on the witness stand. Actually I'll just leave it up for Ms.
14 Knowles in case she wants to - now when you saw that weapon,
15 Officer Odom, what did you do?

16 A I secured it and unloaded the ammunition for officer
17 safety and placed it in my vehicle.

18 Q Why do you - why did you do that?

19 A For the safety of me and Officer Rhew and others.

20 Q What were you concerned about with that gun being on the
21 floorboard?

22 A Me getting shot.

23 Q Let me show you what's been marked as State's Exhibit
24 Number Two and Number Three for identification purposes only
25 at this point in time. Could you please just describe what

William Odom - Direct by State

99

1 that is, what State's Exhibit Number Two is.

2 A A revolver pistol.

3 Q All right, and you may have to open it, but what is
4 State's Exhibit Number Three? If you need gloves feel free to
5 use gloves.

6 A I don't think I need them. What appears to be, what
7 appears to be the ammunition to the firearm.

8 Q All right, let me ask you, is there any way you can tell
9 for certain that that was the gun that you found in the car
10 that night?

11 A I'm sure I can.

12 Q How could you do that?

13 A The serial number.

14 Q All right, do you remember what the serial number was of
15 the gun you found?

16 A Not off the top of my head, no, I do not recall.

17 Q Would your report refresh your recollection?

18 A Yes, sir.

19 MR. SPRATLIN: Can I mark this for identification
20 purposes, just so?

21 (Whereupon, State's Exhibit Number Four [Report - Odom]
22 marked for identification.)

23 BY MR. SPRATLIN:

24 Q All right, Officer Odom, let me show you what's been
25 marked for identification purposes as State's Exhibit Number

1 Four. What is that item?

2 A 38-caliber revolver handgun.

3 Q No, what, what is State's Exhibit Number Four, the piece
4 of paper I just handed to you?

5 A Oh, my incident report.

6 Q All right, does that have listed the serial number of the
7 weapon that night?

8 A Yes, sir.

9 Q All right, does that refresh your recollection as to what
10 the serial number was?

11 A Yes, sir.

12 Q And what was that serial number?

13 A 461101.

14 Q Give that to me one more time.

15 A 461101.

16 Q Sorry, one more time, 4611?

17 A 01.

18 Q 01, 461101. All right, if you would, Officer Odom, and
19 you may want to put some gloves on for this. If you could
20 locate the serial number on that firearm.

21 A Where's it at?

22 Q Perhaps it's on the handle of the weapon, on the bottom.

23 A Oh, there it is.

24 Q Can you read that serial number?

25 A Yes, sir.

William Odom - Direct by State

101

1 Q What is that serial number?

2 A 461101.

3 Q Does that match the serial number that was listed in your
4 incident report?

5 A Yes, sir.

6 Q All right, so, can you say for certain that that is in
7 fact the weapon that you pulled out of the car that night?

8 A Yes, sir.

9 Q And are those, the ammunition that you identified
10 earlier, is that consistent with the ammunition that you
11 unloaded from that gun?

12 A Yes, sir.

13 MR. SPRATLIN: Your Honor, at this time I would tender
14 State's Exhibits Number Two and Three into evidence.

15 THE COURT: Any objection?

16 MS. KNOWLES: You want to enter the weapon into
17 evidence?

18 MR. SPRATLIN: Yes.

19 MS. KNOWLES: I would object to the chain of custody.

20 MR. SPRATLIN: Your Honor, it's a non-fungible item.
21 Chain of custody is not necessary for non-fungible items.
22 It's a firearm. The officer has identified it positively as
23 the firearm he pulled out of that car that night and I would
24 state that the State has established that it is relevant to
25 this case and it is admissible.

1 THE COURT: All right, I'm going admit State's
2 Exhibits Two and Three into evidence over Defendant's
3 objection.

4 MR. SPRATLIN: Thank you, Your Honor.

5 THE COURT: Thank you.

6 (Whereupon, State's Exhibit Number Two [Gun] and State's
7 Exhibit Number Three [Ammunition] admitted into evidence and
8 appropriately marked.)

9 BY MR. SPRATLIN:

10 Q Now, Officer Odom, when you removed that - let me just
11 retrieve that so it's not blocking our view. When you
12 retrieved that gun from the vehicle, how did you retrieve it?

13 A I picked it up with my hands.

14 Q Did you have gloves on or anything?

15 A No, sir.

16 Q All right, did you have time to get gloves?

17 A No, sir.

18 Q All right, why couldn't you go get gloves or some way to
19 pick it up without having to touch it?

20 A Officer safety reasons, again. My vehicle was too far
21 away from me to leave the gun there and come back and grab it.

22 Q All right, and where did you secure the gun once you took
23 possession of it?

24 A In my vehicle.

25 Q All right, how many other vehicle, how many other weapons

William Odom - Direct by State

103

1 did you all find that in that vehicle that night?

2 A Zero.

3 Q Was that the only weapon found?

4 A Yes, sir.

5 Q And again, where was it seated?

6 A The right rear passenger seat, under it.

7 Q And who was seated in that seat?

8 A The Defendant.

9 Q Who else in that vehicle, where you found it, where
10 you've already demonstrated to the jury where you found it,
11 who else in that vehicle would have had reach or access to
12 that area?

13 A Nobody to my knowledge.

14 Q All right, and Officer Odom, all the events you described
15 they occurred on or about April 14th, 2012?

16 A Yes, sir.

17 Q And they occurred in Horry County?

18 A Yes, sir.

19 Q All right, Officer Odom, and one last thing, would you -
20 I believe you already identified the Defendant. Please answer
21 any questions Ms. Knowles may have.

22 A Okay.

23 THE COURT: All right, cross examination.

24 CROSS EXAMINATION

25 BY MS. KNOWLES:

1 Q Officer Odom, again, tell us what you were called to the
2 incident location for.

3 A Dispatch came over as a fight in progress.

4 Q And ---

5 A And they do update the calls while I'm in route.

6 Q And again, what was the description that was given of the
7 person that you were told was responsible for this, for this
8 crime?

9 A From?

10 Q Who allegedly had this weapon.

11 A Who did I get the description from?

12 Q From, from, yeah, from the witnesses or whoever,
13 dispatch.

14 A Oh, Sammy Owens, Sammy Owens gave me the description of
15 your Defendant, a black male, dreads, medium height, medium
16 weight wearing a green in color polo type t-shirt.

17 Q And when you arrived to the scene, wasn't there a large
18 crowd present?

19 A Yes, ma'am.

20 Q And how many people would you say were present?

21 A When I arrived, approximately anywhere from 15 to 20.

22 Q And do you recall seeing any black males within that
23 crowd of people?

24 A I do.

25 Q Any with dreads?

William Odom - Cross by Defense

105

1 A I do.

2 Q And did you speak with any of the people that were within
3 this crowd and take statements from any of them?

4 A Like I said earlier, at first nobody wanted to cooperate.
5 The crowd finally started to disperse. Had one guy come up to
6 me, Leonard, and he whispered in my ear and give me the
7 description and that he did enter a tan in color SUV.

8 Q So, Mr. Leonard was the first one that approached you?

9 A He was the only one to approach me out of that crowd,
10 yes, ma'am.

11 Q So, you spoke with him before you spoke with the cab
12 driver, Mr. Owens?

13 A Yeah.

14 Q And Officer Odom, do you recall writing a, a crime report
15 with regards to this case?

16 A An incident report, yes, ma'am.

17 Q And in this report it appears that you, you did speak
18 with some of the people within that crowd.

19 MR. SPRATLIN: Your Honor, I'm going to object to this
20 line of questioning as improper - either improper impeachment
21 or improper questioning.

22 THE COURT: Overruled.

23 MR. SPRATLIN: Yes, sir.

24 Q And in your report, did you - you noted that all of those
25 people had different stories. You remember that?

1 A Yes, ma'am.

2 Q Do you remember writing your report?

3 A Yeah.

4 Q And what do you recall that you included?

5 A Yes, ma'am.

6 Q What did you include within, within that report regarding
7 the initial contact that you made with the people that were
8 there?

9 A I mean the majority of them?

10 Q If I, if I offered a copy to you, would that refresh your
11 memory?

12 A Sure.

13 MS. KNOWLES: Your Honor, may I approach?

14 THE COURT: Yeah.

15 BY MS. KNOWLES:

16 Q If you'd go ahead and take the time to read it all.

17 THE COURT: I mean, do you have - oh, okay, he's just
18 reading it now?

19 MS. KNOWLES: I don't have another copy.

20 THE COURT: Okay, when you're ready for him to
21 respond, ask your question.

22 A All right, thank you.

23 MS. KNOWLES: I just wanted to allow him the opportunity
24 to refresh his memory. I don't have another copy.

25 THE COURT: All right.

William Odom - Cross by Defense

107

1 BY MS. KNOWLES:

2 Q You finished?

3 A Yeah, the top part, yeah.

4 Q And so, you admit that you noted that the crowd all had
5 different stories?

6 A I do.

7 Q And it was Officer Rhew who came to assist you; correct?

8 A Yes, ma'am.

9 Q And he was responsible for pulling out my client from the
10 vehicle; correct?

11 A Yes, ma'am.

12 Q And you were by his side when he was doing this?

13 A When he first pulled out the first individual I was on
14 the driver's side at a tactical advantage.

15 Q Uh-huh.

16 A And he removed him and when he went to go remove your
17 client I was at the tactical advantage and then moved from my
18 side over to his side.

19 Q Okay, let me get this straight. Who was removed first
20 because there were ---

21 A The, the passenger, the front passenger.

22 Q Let's go back just for a second, try to help you out and
23 maybe ask it a different way. How many people occupied the
24 vehicle whenever you arrived?

25 A Four.

1 Q Four, okay, and who was removed first?

2 A The ---

3 Q Passenger?

4 A Yeah, the passenger.

5 Q The front passenger?

6 A Front passenger.

7 Q Okay, and that was not my client; was it?

8 A No.

9 Q So, you removed the front, you removed the front seat
10 passenger first despite the fact that you had been told that
11 my client was the, the one with the weapon?

12 A Officer Rhew removed the first passenger first because
13 it's a two-door vehicle, Blazer, and I mean, how else are you
14 to get your client out the vehicle?

15 Q Okay, which is it gets to my point, the seat had to be
16 pushed up; correct whenever ---

17 A The front passenger seat, yes.

18 Q The rear passenger?

19 A The back, yeah, pushes up.

20 Q Okay, and so, where again did you say that you saw this
21 weapon?

22 A Under the back rear passenger seat, the bench seat.

23 Q The bench seat?

24 A Yeah.

25 Q So, there was a compartment there or ---

William Odom - Cross by Defense

109

1 A No, do I need to show you?

2 Q Okay, I'm just trying to understand how if he was
3 removing my client and you were responsible for what again?

4 A Cover.

5 Q So, your job was to watch everyone else, make sure that
6 ---

7 A At the time he was pulling the first one out, yes, ma'am,
8 and I mean, yes, I was.

9 Q So, you were watching everyone else whenever you saw the
10 weapon?

11 A The - I mean, the weapon was, was in plain view, yes,
12 ma'am.

13 Q Okay.

14 A But there again, there was another passenger in the -
15 behind the driver's seat.

16 Q And again, how many people were in this vehicle when you
17 arrived?

18 A Four.

19 Q And wouldn't you agree that it is not a compact car, but
20 they all had the ability to, to be responsible for this weapon
21 being in the vehicle.

22 A I can't answer that, possibly.

23 Q They all had the dominion and control. They all had the
24 opportunity. It wasn't like my client had a specific
25 advantage. They all could have been responsible for this.

1 A Before we stopped the vehicle and approached the vehicle,
2 maybe yes.

3 Q I mean, given your story, it wasn't just him is my point
4 that was in the car. It wasn't just him.

5 A Oh, no. There's four others.

6 Q And do you recall questioning any of them?

7 A Yes, ma'am.

8 Q What did they tell you?

9 A They had no clue the gun was in the car, the vehicle,
10 both the male and the two females.

11 Q Bear with me for one moment.

12 A Okay.

13 Q And did you at any point in time speak with any of the
14 employees inside the bar?

15 A Negative because, I mean, I know typically they do not
16 want to cooperate with the police, the employees at Sun-up.

17 Q Did you ask about, I mean, did you think about the
18 possibility that maybe they were equipped with surveillance
19 cameras?

20 A They are, but in recent ---

21 Q They are?

22 A They are, but in recent previous calls there, they -
23 their surveillance is not in operation.

24 Q But you never asked about it?

25 A That night, I did not.

William Odom - Cross by Defense

111

1 MS. KNOWLES: If you'd just give me one more
2 second.

3 THE COURT: All right.

4 BY MS. KNOWLES:

5 Q And I apologize.

6 A No, you're fine.

7 Q Did you ever run the serial number that Mr. Spratlin
8 addressed in his direct?

9 A We did. We had Horry County dispatch run it through NCIC
10 which it came back clear.

11 Q It did?

12 A Yes, ma'am.

13 Q Okay, and did you ever record this in any of your
14 reports, the initial report or the supplemental?

15 A That it came back, the weapon came back clear?

16 Q That it was even ran through NCIC?

17 A I, I'm not sure to my knowledge right now.

18 Q Who searched Mr. Dukes' person, his person? Was it you
19 or the other officer?

20 A Officer Rhew, there again, pulled him out the vehicle and
21 patted him down to make sure he had no weapons on him for
22 officer safety reasons.

23 Q And what was the result, to your knowledge?

24 A I mean, no weapons.

25 Q And did anybody ask any questions of him, either you or

1 the other officer as far as what had happened, what their
2 version of the story was?

3 A Well, your Defendant was very intoxicated at the time,
4 slurred speech, unbalanced, we were unable to communicate with
5 him.

6 Q He was unresponsive?

7 A No, slurred speech, intoxicated.

8 Q So, then that means he couldn't answer any questions ---

9 A Well, I mean, we didn't, we didn't ---

10 Q --- or give you a statement?

11 A We, I mean, I didn't really ask him no questions, and I
12 mean, no or - no.

13 Q Isn't it a standard practice in your profession to try to
14 discover the truth?

15 MR. SPRATLIN: Objection, Your Honor.

16 MS. KNOWLES: I'll rephrase, Your Honor.

17 THE COURT: All right.

18 BY MS. KNOWLES:

19 Q Isn't it part of your job to ask questions and document
20 those responses from all potential witnesses as well as
21 anybody that allegedly was involved in an incident?

22 A I mean, it's up to me if I wanted to question Mr. Dukes
23 over here.

24 Q And I'm not necessarily speaking as to Mr. Dukes now ---

25 A Uh-huh.

William Odom - Redirect by State

113

1 Q --- because it is clear that no one spoke to him to get
2 his side of the story.

3 A Uh-huh.

4 Q I'm speaking about the other people that were present
5 within this large crowd.

6 A Okay, I'm sorry. The ---

7 Q Getting statements from them.

8 A Oh, like I said nobody wanted to cooperate besides the
9 other two, which is Owens and ---

10 Q So, out of those you say almost 20 people was it, 10 to
11 20?

12 A Around that, yes, ma'am.

13 Q None of those were willing to even speak with you?

14 A It's nothing new.

15 Q Okay, all right, I have no further questions. Thank you.

16 A You're welcome.

17 THE COURT: Redirect?

18 MR. SPRATLIN: Yes, sir, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. SPRATLIN:

21 Q Officer Odom, you mentioned a gentleman by the name of
22 Leonard Lewis or Leonard Lewis. Do you know where he is now?

23 A I do not.

24 Q All right, Ms. Knowles asked some questions about the
25 other people in the car. Were any one of them charged with

1 this weapon?

2 A Negative.

3 Q All right, and again, whose seat was that gun found
4 under?

5 A The Defendant's.

6 Q And again, who if anyone else in that car could have
7 reached while in that car to place it there?

8 A No one to my knowledge.

9 Q Now, you said that the Sun-up does have surveillance
10 video; right?

11 A They claim they do, yes.

12 Q All right, and have you ever - have they ever been
13 cooperative with you in providing that?

14 A No, sir, not in my year and a half of work.

15 Q All right, did you think there would be any evidentiary
16 value obtained in trying to go get the Sun-up surveillance
17 video?

18 A No, sir.

19 Q Based on your prior experience dealing with Sun-up?

20 A Yes.

21 Q All right, now, Ms. Knowles, she asked you why didn't you
22 ask the Defendant any questions. How intoxicated was the
23 Defendant?

24 A I mean, he was pretty intoxicated.

25 Q Did he have trouble standing on his own?

1 A He did.

2 Q What if anything would you say about his demeanor that
3 night?

4 A I mean ---

5 Q Was he fully cooperative?

6 A Not fully, no, not at first.

7 Q When asked to get out of the car the first time, what did
8 he do?

9 A He acted like he didn't want to.

10 Q All right, when asked to get out of the car the second
11 time, what did he do?

12 A Same thing.

13 Q When asked to get out of the car the third time, what did
14 he do?

15 A Started working on it.

16 Q When asked to get out of the car the fourth time, what
17 happened?

18 A He eventually started getting out, yes.

19 Q All right, in your job, in your training and your
20 experience, is it common to talk to highly intoxicated
21 individuals who are being combative with you about their
22 charges?

23 A Yes.

24 Q It is normal to talk and ask questions for them, is that
25 what you're saying?

1 A Oh, I mean, if - I mean depending on their intoxication
2 level, I mean it goes from there.

3 Q All right, so, if someone's - if someone's obviously very
4 drunk you wouldn't want to ask them a whole lot of questions?

5 A No.

6 Q In fact, it wouldn't even be admissible down the road
7 anyway; would it?

8 A No.

9 Q All right, thank you, Officer Odom. That's all the
10 questions I have in follow up. Please answer any additional
11 questions Ms. Knowles may have.

12 THE COURT: You may step down. Thank you.

13 All right, ladies and gentlemen, we've been going at it a
14 while. It's a good time for us to go ahead and take about a
15 10, 15-minute break, give you an opportunity to stretch your
16 legs, get something to drink, use the restroom, whatever the
17 case may be. Please do not discuss the case even-among
18 yourselves at this point in time. If you need to return phone
19 calls or make phone calls, you can do that, but do not discuss
20 this case with anyone. Don't conduct any independent
21 investigation. We'll take about a 10, 15-minute break and
22 we'll bring you back in just a minute. Thank you.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right, anything from the State before

William Odom - Redirect by State

117

1 we take a break?

2 MR. SPRATLIN: No, Your Honor, I would apologize for the
3 officer getting up and leaving.

4 THE COURT: Oh, that's no problem.

5 MR. SPRATLIN: I don't think he realized.

6 THE COURT: All right, anything from the Defense
7 before we take a break?

8 MS. KNOWLES: Nothing, Your Honor.

9 THE COURT: All right, let's take about a 10, 15-
10 minute break.

11 MR. SPRATLIN: Thank you, Your Honor.

12 THE COURT: Thank you.

13 OFF THE RECORD

14 (On the record. Whereupon, the following takes place outside
15 the presence of the jury.)

16 THE COURT: All right, anything from the State before
17 we bring the jury in?

18 MR. SPRATLIN: No, Your Honor.

19 THE COURT: Anything from the Defense?

20 MS. KNOWLES: No, sir.

21 THE COURT: All right, let's go ahead and bring the
22 jury in. Thank you, ma'am.

23 (Whereupon, the following takes place within the presence
24 of the jury).

25 THE COURT: All right, ladies and gentlemen, welcome

1 back. We're now ready to resume the trial of this case. I
2 remind you, if you have any cell phones or pager devices or
3 anything of that nature, please turn them off at this time so
4 that we do not interrupt the trial of this case. All right,
5 the State can call its next witness.

6 MR. SPRATLIN: Thank you, Your Honor. The State would
7 next call Corporal Steven Rhew.

8 THE COURT: All right.

9 Whereupon, Steven Rhew was called to the stand, duly
10 sworn by the clerk and testified as follows:

11 THE CLERK: State your full name and spell your last
12 name.

13 MR. RHEW: First name is Steven, last name is Rhew,
14 R-H-E-W.

15 DIRECT EXAMINATION

16 BY MR. SPRATLIN:

17 Q Mr. Rhew, this may seem like an obvious question, but
18 where are you currently employed?

19 A Horry County Police Department.

20 Q How long have you been working there?

21 A Four and a half years.

22 Q How long have you been in law enforcement total?

23 A Four and a half years.

24 Q All the time with Horry County Police Department?

25 A Yes, sir.

Steven Rhew - Direct by State

119

- 1 Q All right, what's your current assignment?
- 2 A Patrol.
- 3 Q How long have you been on patrol?
- 4 A Four and a half years.
- 5 Q All right, were you working back on April 14th, 2012?
- 6 A I was.
- 7 Q What time did you go on shift that day?
- 8 A Six p.m. the night before.
- 9 Q And what time were you supposed to get off?
- 10 A Six a.m. that morning.
- 11 Q All right, during your shift, did you have a chance to go
- 12 to the Sun-up Bar?
- 13 A I did.
- 14 Q Where's that located at?
- 15 A In the Socastee area.
- 16 Q All right, and what county is that in?
- 17 A Horry County.
- 18 Q All right, why'd you go there?
- 19 A We received a call about a man with a gun at the bar.
- 20 Q And when you got there, what'd you see?
- 21 A When I arrived on scene, Officer Odom had arrived prior
- 22 to me. He was attempting to stop a tan in color Blazer from
- 23 backing out of its parking space. Whenever I arrived on
- 24 scene, I assisted him in stopping the Blazer.
- 25 Q Were you able to stop it?

1 A Yes, sir.

2 Q All right, did it immediately stop or did you have to ask
3 a couple of times?

4 A Had to ask multiple times.

5 Q All right, now, as far as who was in charge at the scene,
6 what was your role and what was Officer Odom's roles?

7 A Officer Odom, he played more of a cover, more like a
8 protection for me and I was more hands-on, removing people out
9 of the vehicle.

10 Q Okay, when you got to the scene and saw that Blazer,
11 where if at all was the Defendant in that car?

12 A He was in the rear passenger seat of the vehicle.

13 Q At some point during that incident did you have a chance
14 to get him out of the car?

15 A I did, yes, sir.

16 Q All right, when you were getting him out of the car, what
17 if anything unusual happened?

18 A Pulled him out of the car and while I was searching him
19 and handcuffing him, Officer Odom advised me that there was a
20 gun in the floorboard of the Blazer where he was sitting at.

21 Q All right, and what did you all do when you saw that gun?

22 A Removed the rest of the people and then secured the gun.

23 Q Did you actually get a chance to see where that gun was?

24 A The gun was under his seat where he was sitting at in the
25 rear passenger seat.

Steven Rhew - Direct by State

121

1 Q Okay, was it closer to the door or closer to the middle
2 of the seat?

3 A Closer to the door.

4 Q His, his immediate door?

5 A Yes, to the right.

6 Q When you first got there how many people were in the car?

7 A Four.

8 Q All right, where you saw that gun, who if anyone else of
9 those four occupants or let me first back up. Let me ask you,
10 how many named - four people, were they all sitting like one -
11 like driver, passenger, rear driver, rear passenger?

12 A Yes, sir.

13 Q Is that about right?

14 A Yes.

15 Q All right, and again, where was the Defendant at?

16 A The rear passenger.

17 Q Rear passenger seat. All right, so, of those four
18 people, who if any one of them in your opinion would have had
19 reach access to the area in which that gun was?

20 A Only the Defendant.

21 Q All right, Officer Rhew, please - that's all the
22 questions I have at this point in time or actually let me ask
23 you, do you see the individual that was sitting in that rear
24 passenger seat where you found that gun here in court today?

25 A I do.

1 Q Could you please point him out and identify an article of
2 clothing he is wearing?

3 A The gentleman wearing the white shirt with the reddish
4 pink tie.

5 Q Please let the record reflect the witness has identified
6 the Defendant. That's all the questions I have at this point
7 in time, Officer Rhew or Corporal Rhew. Please answer any
8 questions Ms. Knowles may have.

9 A Yes, sir.

10 THE COURT: Cross examination?

11 MS. KNOWLES: Yes, sir, Your Honor.

12 CROSS EXAMINATION

13 BY MS. KNOWLES:

14 Q Officer Rhew, you were simply an assisting officer in
15 this case; weren't you?

16 A I was back up, yes, ma'am.

17 Q And did you speak with anyone at the scene?

18 A I did.

19 Q You did? And who did you speak with?

20 A Occupants of the car while we were, you know, obviously
21 taking them out of the car and other people randomly walked
22 up. I wouldn't say I interviewed anybody, but I did speak
23 with other people.

24 Q Okay, but you never asked them what their version of what
25 had transpired with regards to this alleged incident?

Steven Rhew - Cross by Defense

123

1 A No, ma'am.

2 Q Altercation?

3 A No, ma'am.

4 Q And isn't it true that the initial call was for a fight
5 in progress?

6 A I don't recall what the initial call was for, how it was
7 labeled in the computer system whenever we received the call,
8 but I know whenever I got there I knew that there was somebody
9 there with a gun.

10 Q Okay, allegedly?

11 A Allegedly.

12 Q And most of your knowledge about what happened came from
13 Officer Odom; correct?

14 A Yes, ma'am.

15 Q And you were the one responsible for taking my client out
16 of the car; correct?

17 A Yes, ma'am.

18 Q And this Blazer or Jimmy, I can't recall what make that
19 the vehicle was, but it was a - it's a, it's a more of a
20 compact car. It's not like a van or a bus or, I mean, the -
21 there were four occupants in the vehicle when you arrived;
22 correct?

23 A Yes, ma'am.

24 Q And wouldn't you agree that any of those four could have
25 reached into or reached under that front seat to put something

1 in there?

2 A No, it wasn't under the front seat, ma'am.

3 Q The passenger seat.

4 A The rear passenger seat.

5 Q The rear ---

6 A Not the front.

7 Q --- passenger seat. So, are you telling me then the

8 driver could not - there's no way that the driver ---

9 A No, ma'am.

10 Q --- could have put anything there.

11 A No, ma'am.

12 Q There's absolutely no way?

13 A No, ma'am.

14 Q Not even if he or she threw something, slid something

15 under the seat?

16 A There's no way that sitting in the driver's seat that she

17 could have reached back and placed that to where the gun was

18 at.

19 Q But wasn't there a passenger in the front seat?

20 A Yes.

21 Q Okay, and did you speak with that passenger at any point

22 in time?

23 A I'm sure I did, but I don't recall what was said.

24 Q And tell me where Officer Odom was in relation to where

25 you were whenever you were taking my client out of the car.

Steven Rhew - Cross by Defense

125

- 1 A He was ---
- 2 Q Was he standing right beside you or ---
- 3 A To be honest, I can't tell you exactly where he was at
- 4 because he moves whenever I move. It all depends where I'm
- 5 standing at so I don't get caught in crossfire if, you know,
- 6 something that bad were to happen. We all take tactical
- 7 advantages to where we stand at and he can move without me
- 8 recognizing that he moves right then and there.
- 9 Q Okay, so, initially whenever my client was removed from
- 10 the car, I mean, it was that very moment that - is it your
- 11 testimony it was that very moment that Officer Odom said there
- 12 was a weapon?
- 13 A It is not the exact second when I pull him out the car
- 14 that Officer Odom advises. It may have been a couple of
- 15 seconds later, but it was in that relative same time period.
- 16 Q And given what you had been told with regard to a
- 17 possible weapon ---
- 18 A Uh-huh.
- 19 Q --- is it fair to say that you were exercising extreme
- 20 caution?
- 21 A Yes, ma'am.
- 22 Q And so, when you removed my client from the vehicle,
- 23 didn't you have to push the front seat up to get him out?
- 24 A No, ma'am.
- 25 Q It was one of those reclining ---

1 A There were four doors to the vehicle. He got out of the
2 rear passenger door.

3 Q There were four doors?

4 A As far as I remember, yes, ma'am.

5 Q Hold on one second. So it's your testimony here today
6 that there were four doors to this vehicle, just for
7 clarification?

8 A Yes, ma'am. As far as I remember, yes, ma'am.

9 MS. KNOWLES: Your Honor, I don't think I have any
10 further questions.

11 THE COURT: All right, redirect?

12 MR. SPRATLIN: Real briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SPRATLIN:

15 Q Corporal Rhew, can you be absolutely 100 percent certain
16 that there was a four door vehicle that day?

17 A I guess there's a chance it could have been two doors,
18 but I mean, from my memory, possibly.

19 Q Okay, but you do remember very clearly where the
20 Defendant was sitting in that vehicle?

21 A Yes.

22 Q All right, and you do remember very clearly where you saw
23 that gun?

24 A Yes.

25 Q Let me ask you about - Ms. Knowles asked you real briefly

John Robert Caulder, II - Direct by State

127

1 about the other three occupants of that vehicle. What if
2 anything did they say about who owned that gun? Anything?

3 A Nobody owned up to it.

4 Q And again, you were just kind of there to provide backup
5 for Officer Odom; right?

6 A Yes, sir.

7 Q He was the primary officer on the case?

8 A Yes.

9 Q All right, Corporal Rhew, that's all the questions I have
10 right now. Thank you.

11 THE COURT: All right, you may step down.

12 The State can call its next witness.

13 MR. SPRATLIN: Your Honor, the State calls investigator
14 Robbie Caulder to the stand.

15 THE COURT: All right.

16 Whereupon, John Robert Caulder, II, was called to the
17 stand, duly sworn by the clerk and testified as follows:

18 THE CLERK: State your full name and spell your last
19 name.

20 MR. CAULDER: John Robert Caulder, II, C-A-U-L-D-E-R.

21 DIRECT EXAMINATION

22 BY MR. SPRATLIN:

23 Q Mr. Caulder, where are you currently employed?

24 A The Horry County Police Department.

25 Q What's your job there?

1 A I am the senior investigator in the crime scene unit.

2 Q How long have you been working in the crime scene
3 division?

4 A Since 2004.

5 Q All right, what training and experience have you received
6 in detecting or fingerprinting items?

7 A I have received several different training schools as - I
8 have been to the National Forensics Technology Center in
9 Florida where I received a month's training in the aspects of
10 developing and examining latent prints along with ten-print
11 comparison. I have been to various schools in regards to
12 fingerprint and detection and photographing with the Federal
13 Bureau of Investigation at Quantico, Virginia, as well as in-
14 house training. That's pretty much ---

15 Q All right, what education did you have to get to where
16 you are now?

17 A Right now the only requirement that the Horry County
18 Police Department has is that you have two years as a road
19 officer or uniformed patrol officer and then you transfer or
20 you test for a detective's position, which is in essence my
21 position. I currently - I myself personally have a - an
22 associate's degree at - from Horry-Georgetown Technical
23 College in criminal justice and then I have a four-year degree
24 or finishing a four-year degree with - in a Bachelor of
25 Forensic Science with American Military University.

John Robert Caulder, II - Direct by State

129

1 Q Okay, how long have you been with Horry County PD again?

2 A I have been with Horry County Police Department since
3 1998.

4 Q All right, and how long have you been in your current
5 position?

6 A Since 2004.

7 Q 2004, so, eight years?

8 A Yes, sir.

9 Q All right, in those eight years, if you could give me a
10 rough, I know it's going to be hard for you, could you give me
11 an estimate on how many times you have attempted to get
12 fingerprints off of an item?

13 A Every Wednesday at least, every Wednesday for the past
14 eight years. It can vary. We, we process items in the lab.
15 There are, excuse me, there are three examiners or three
16 investigators in the crime scene unit for the county. We have
17 days set aside for processing, which is typically Wednesdays.
18 We process items from - that uniform patrol officers turn in
19 as well as from our own scenes that we may process. So, it
20 could be - it can vary from one item to 50 items a week.

21 Q All right, have you ever testified in court before?

22 A Yes, sir, I have.

23 Q Have you ever been qualified as an expert witness before?

24 A Yes, sir, I have.

25 Q And in what areas were you qualified as an expert

1 witness?

2 A In crime scene reconstruction.

3 Q Okay, have you ever been qualified as an expert in
4 fingerprints before?

5 A We got to this point, but no, sir.

6 Q All right, but you have sufficient training and
7 experience in that department you believe?

8 A Yes, sir, that is correct.

9 MR. SPRATLIN: Your Honor, at this time I would tender
10 Investigator Caulder as an expert in the area of fingerprint
11 analysis and detection.

12 THE COURT: All right, any questions or challenges?

13 MS. KNOWLES: None, Your Honor.

14 THE COURT: All right.

15 BY MR. SPRATLIN:

16 Q Investigator Caulder, do you have the ---

17 THE COURT: Excuse me, I'll find this witness
18 qualified as an expert in the field of fingerprint analysis.

19 All right, ladies and gentlemen, typically a witness can
20 only testify as to their personal knowledge, what they saw,
21 what they tasted, what they smelled, what they felt, things of
22 that nature. There is an exception and I'll give you some
23 further instructions when I charge you on the law that deals
24 with expert witnesses. Some witnesses because of a given
25 education or experience in a certain area can be qualified as

John Robert Caulder, II - Direct by State

131

1 an expert in that area. Now, all that means is that they are
2 allowed to give an opinion in the area in which they are
3 qualified as an expert and that's the only difference between
4 a lay witness and an expert witness is that we do allow
5 experts to give opinions in their field in which they are
6 qualified as an expert.

7 All right, Mr. Spratlin.

8 MR. SPRATLIN: Thank you, Your Honor.

9 BY MR. SPRATLIN:

10 Q Investigator Caulder, let me show you what's been marked
11 as State's Exhibit Numbers Two and Three. Have you had a
12 chance to have any interaction with those items?

13 A Let me just verify the serial number.

14 Q Yes, sir, I was just going to get you gloves.

15 A Yes, sir, I have.

16 Q What did you do to those items?

17 A Those items, the firearm and the, the bullet casings were
18 processed in the laboratory to determine if any fingerprints
19 could be found on the items.

20 Q All right, and were you able to find any fingerprints?

21 A No, sir, no fingerprints, only partial ridges were found,
22 but nothing of identifiable sources.

23 Q Not enough to make an analysis or anything?

24 A That is correct.

25 Q All right, so, basically the Defendant's fingerprints

1 weren't found on that weapon.

2 A No, sir.

3 Q The Defendant's fingerprints weren't found on the bullet?

4 A No, sir.

5 Q Officer Odom's fingerprints weren't found on the weapon?

6 A No, sir.

7 Q Officer Odom's fingerprints weren't found on the bullet?

8 A No, sir.

9 Q Thank you, Investigator Caulder. That's all the
10 questions I have. Please answer any questions Ms. Knowles may
11 have.

12 THE COURT: Cross examination?

13 MS. KNOWLES: Yes, sir, I'll be very brief.

14 CROSS EXAMINATION

15 BY MS. KNOWLES:

16 Q You weren't present at the scene on the night of April
17 14th, 2012; were you?

18 A No, ma'am.

19 Q So, your only role in this was just to process the
20 evidence that was given to you in this case?

21 A Yes, ma'am.

22 Q And based upon your testimony earlier, this is not your
23 first rodeo so to speak. You've done this several years did
24 you say?

25 A Yes, ma'am.

John Robert Caulder, II - Redirect by State

133

1 Q Okay, no further questions.

2 THE COURT: Anything on redirect?

3 MR. SPRATLIN: Real briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. SPRATLIN:

6 Q Investigator Caulder, does the lack of fingerprints mean
7 that no one - that someone has not touched an item?

8 A No, sir, it could also mean that there has been an
9 excessive amount of holding of an item.

10 Q Thank you, Investigator Caulder. That's all I have in
11 follow-up.

12 THE COURT: All right, you may step down.

13 MR. SPRATLIN: Your Honor, may this witness be excused?

14 THE COURT: Any objection?

15 MS. KNOWLES: No, objection, Your Honor.

16 THE COURT: All right, he's free to go.

17 MR. CAULDER: Thank you, Your Honor.

18 THE COURT: Thank you.

19 All right, you can call your next witness.

20 MR. SPRATLIN: Your Honor, at this time the State would
21 rest.

22 THE COURT: All right. All right, ladies and
23 gentlemen, the State has presented their case and so

24 it is the time of the trial where I need to take up

25 some matters of law with the attorneys. As I've explained

1 to some of you that have been on the jury before, the reason
2 we excuse you to the jury room while I deal with these matters
3 of law is not because we're trying to hide anything from you.
4 It's just that as I told you in your opening instructions, you
5 and you alone decide the facts of this case and you're to
6 determine those facts exclusively from the testimony and
7 evidence presented at trial. When I discuss these legal
8 matters with the attorneys regarding the law to be applied and
9 what the law of the case is, sometimes it requires us to refer
10 to factual issues and we do not want you to be influenced by
11 anything that I might say or anything that the attorneys might
12 say in discussing these legal matters to influence you in your
13 finding of the facts; and so, that's why we excuse you to the
14 jury room.

15 Now, given the time of day, it's going to take us a while
16 to discuss these matters. Given the time of day, I think
17 we're going to go ahead and break for the day; okay? I'm
18 going to ask that you please be back in the jury room at 9:15
19 tomorrow morning and we'll resume the trial of the case at
20 that point in time because it's - it would be after 5 o'clock
21 before we could resume the trial here today. So, I'm going to
22 excuse you for the remainder of the day. Please be back in
23 the jury panel room downstairs at 9:15 tomorrow morning. Do
24 not discuss the case even among yourselves at this point in
25 time. Don't conduct any independent investigations. Don't go

Motions

135

1 looking on the internet or through the newspapers or anything
2 of that nature to find out anything about the case. I hope
3 you have a good evening and we'll see you back tomorrow
4 morning. Thank you very much.

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right, any motions at this time?

8 MR. SPRATLIN: None on behalf of the State.

9 THE COURT: All right, anything from the Defense?

10 MS. KNOWLES: Yes, sir, Your Honor, the Defense would
11 make a motion for a directed verdict at this time. We believe
12 that the State has not presented the evidence necessary to
13 substantiate this charge and meet the elements.

14 THE COURT: All right, your motion's noted. I'm going
15 to deny it. I think there's enough to get around a directed
16 verdict.

17 MS. KNOWLES: Thank you very much.

18 THE COURT: All right, anything else?

19 MS. KNOWLES: Nothing.

20 THE COURT: All right, will the Defendant be
21 presenting a defense in this case?

22 MS. KNOWLES: There will be two witnesses.

23 THE COURT: Okay, all right. Well, if you're going to
24 be presenting any witnesses at all, I'm just - I'll just wait
25 and question your client regarding his right to testify

1 tomorrow morning.

2 MS. KNOWLES: Okay, perfect.

3 THE COURT: Okay? And we'll deal with it that way.

4 All right, anything from the State before we break?

5 MR. SPRATLIN: Your Honor, there is a matter of bond. As
6 you know, the case has been called for trial, the Defendant's
7 bond is up, the jury has been sworn. The State would
8 respectfully request that the Defendant be taken and
9 incarcerated pending resolution of the trial tomorrow morning.

10 THE COURT: All right, Ms. Knowles?

11 MS. KNOWLES: Your Honor, I, I just would object to
12 that. I've had no problem with, with reaching Mr. Dukes.
13 He's always appeared every time I've instructed him to do so.
14 I do not believe that he in any way is a flight risk and I
15 would like to have him available to go over some matters this
16 afternoon.

17 THE COURT: Well, unfortunately the State is right
18 and, Mr. Dukes, that is a problem when we have these cases
19 that spill over, over the day. Your bond is technically ended
20 when the, when the trial starts; and so, the bondsman or
21 whoever posted property to ensure your appearance at trial is
22 no longer obligated under that bond. So, I am going to have
23 to direct that you be taken into custody tonight to compel
24 your appearance tomorrow; okay? All right.

25 All right? Anything further from the Defense before we

Questioning of Defendant Re: Rights

137

1 break for the evening?

2 MS. KNOWLES: Nothing that I know of, Your Honor.

3 THE COURT: Okay.

4 MS. KNOWLES: Thank you for your patience.

5 THE COURT: All right, thank you very much. I'll take
6 the bench at 9:15 tomorrow morning.

7 MR. SPRATLIN: Yes, sir, Your Honor.

8 THE COURT: All right, thank you.

9 OFF THE RECORD

10 (On the record, October 5, 2012. Whereupon, the following
11 takes place outside the presence of the jury.)

12 THE COURT: All right, Ms. Knowles, let me go ahead
13 and go over with your client his right to testify and the
14 constitutional protections and then we'll take a short break;
15 okay?

16 Please stand. Go ahead and put him under oath, please.

17 (Whereupon, the Defendant is sworn by the clerk.)

18 THE COURT: All right, sir, your name is Verntirell
19 Jerwon Dukes?

20 MR. DUKES: Yes, sir.

21 THE COURT: All right, Mr. Dukes, at this time I'm
22 going to explain to you certain rights that you have. If you
23 do not understand anything I say, please let me know and if
24 you want me to explain anything in more detail, please let me
25 know. Do you understand that?

1 MR. DUKES: Yes, sir.

2 THE COURT: All right, we've now reached the stage of
3 the trial where you may present your defense. You have the
4 right to claim the protections given to you by the Fifth
5 Amendment to the United States Constitution. This amendment
6 states in part that no person shall be compelled in any
7 criminal case to be a witness against himself. This means
8 that you cannot be required to testify in this case. You have
9 the right to testify on your own behalf; however, no one can
10 make you testify. This is a personal right and no one can
11 waive this right except for you. If you decide to testify,
12 you will be subject to the same rules that govern other
13 witnesses and you may be examined and cross examined on any
14 relevant issue in this case. In addition, if you have any
15 convictions involving dishonesty or false statement or for
16 crimes punishable by imprisonment for more than one year and
17 this Court determines that the probative value of admitting
18 the evidence outweighs its prejudicial effect to you, the
19 Solicitor will be able to introduce your record to attack your
20 credibility.

21 All right, do you all have his record ---

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

23 THE COURT: --- that you all would be using? What
24 would you all be wanting to cross examine him on?

25 MR. SPRATLIN: A 2003 grand larceny conviction, Your

Questioning of Defendant Re: Rights

139

1 Honor, a 2006 possession of a stolen pistol charge, a 2006
2 ABHAN and burglary second degree violent convictions, they're
3 all convictions.

4 THE COURT: All right, 2003 grand larceny, 2000 - what
5 are the dates of the others?

6 MR. SPRATLIN: 2006 is both - all the others, Your Honor,
7 possession of a stolen pistol ABHAN and burg second violent.

8 THE COURT: All right, so, what would the probative
9 value of the possession of a pistol and the ABHAN be?

10 MR. SPRATLIN: Your Honor, the State would rely - the
11 possession of a stolen pistol is analogous to possession of
12 or receiving stolen goods which the State would contend is a
13 crime of dishonesty. The fact that he had a gun that had, in
14 fact, been stolen, the State would contend would - would go to
15 show his veracity as a witness and his, his ---

16 THE COURT: So, that was - conviction was for
17 possession of a stolen pistol?

18 MR. SPRATLIN: A stolen pistol, Your Honor.

19 THE COURT: Okay.

20 MR. SPRATLIN: And also the ABHAN the State would, the
21 State would not actually even - we would, we would be fine not
22 using that conviction, Your Honor.

23 THE COURT: Okay. All right, yeah, I think the
24 prejudicial effect of that would outweigh any probative value;
25 however, I do see grand larceny - burglary, is that a crime of

1 moral turpitude?

2 MR. SPRATLIN: Your Honor, I believe it is.

3 THE COURT: But it is?

4 MR. SPRATLIN: I believe so.

5 THE COURT: Yeah.

6 MR. SPRATLIN: I believe there's a specific case on point
7 for that.

8 THE COURT: I think so.

9 MR. SPRATLIN: I can't think of it off the top of my
10 head, but I do believe it is.

11 THE COURT: All right.

12 MR. SPRATLIN: And if need be, I can do the research real
13 quick.

14 THE COURT: Okay, all right, and I'm going to, I'm
15 going to tell you the truth, even though the possession of a
16 pistol is a stolen pistol, with these others charges I'm not
17 going to let you use the possession of a pistol.

18 MR. SPRATLIN: Yes, sir, Your Honor.

19 THE COURT: All right. All right, so, Mr. Dukes, if
20 you take the stand, they would be able to cross examine you
21 and to question you regarding your 2003 conviction for grand
22 larceny and your 2006 conviction for burglary because those
23 are classified as crimes of moral turpitude which could be
24 used to attack your credibility if you take the stand. Do you
25 understand that?

Questioning of Defendant Re: Rights

141

1 MR. DUKES: Yes, sir.

2 THE COURT: All right, now, if you decide to testify
3 this decision on your part must be freely, voluntarily and
4 intelligently made with knowledge of the protections given to
5 you by the Fifth Amendment and the consequences of your
6 decision to testify. If you decide not to testify, I will
7 instruct the jurors that they cannot give the fact that you
8 did not testify any consideration whatsoever and that there is
9 to be absolutely no prejudice to you because you did not
10 testify. It is left entirely up to you whether or not you
11 testify. You may talk with your attorney, your family and
12 friends or anyone else, but the final decision will be left
13 entirely up to you.

14 All right, do you understand what I've explained to you?

15 MR. DUKES: Yes, sir.

16 THE COURT: All right, have you - do you have any
17 questions about what I've explained to you?

18 MR. DUKES: No, sir.

19 THE COURT: All right, have you had an ample
20 opportunity to discuss this matter with your attorney, with
21 your family, friends or whoever else you want to discuss it
22 with?

23 MR. DUKES: Yes, sir.

24 THE COURT: Okay, all right, let's go ahead - I'm
25 going to take about a five or ten minute break since you've

1 already discussed it and when I come back I'm going to ask you
2 at that time, Mr. Dukes, whether or not you wish to testify in
3 this case. Okay?

4 MR. DUKES: Yes, sir.

5 THE COURT: All right, thank you. Let's take about a
6 five minute break.

7 OFF THE RECORD

8 (On the record. Whereupon, the following takes place outside
9 the presence of the jury.)

10 THE COURT: Thank you very much. Please be seated.
11 All right, Mr. Dukes, if you'd please stand. You recall
12 before we took this break the instructions I gave you
13 regarding your rights to testify in this case and the
14 protections granted to you under the United States
15 Constitution?

16 MR. DUKES: Yes, sir.

17 THE COURT: All right, do you have any questions about
18 your right to testify?

19 MR. DUKES: No, sir.

20 THE COURT: Do you have any questions about your
21 rights under the, the Fifth Amendment rights under the United
22 States Constitution?

23 MR. DUKES: No, sir.

24 THE COURT: All right, have you had an ample
25 opportunity to discuss this matter with your attorney and with

Questioning of Defendant Re: Rights

143

1 | whomever else you want to discuss it with?

2 | MR. DUKES: Yes, sir.

3 | THE COURT: All right, and do you wish to testify in
4 | this case?

5 | MR. DUKES: No, sir.

6 | THE COURT: All right, thank you very much.

7 | All right, anything further from the State before we
8 | bring the jury in?

9 | MR. SPRATLIN: No, Your Honor.

10 | THE COURT: Anything further from the Defense?

11 | MS. KNOWLES: Nothing, Your Honor.

12 | THE COURT: All right, will the Defense be calling any
13 | witnesses?

14 | MS. KNOWLES: We will, Your Honor.

15 | THE COURT: Okay, all right. Let's go ahead and bring
16 | the jury in.

17 | (Whereupon, the following takes place in the presence of
18 | the jury.)

19 | THE COURT: All right, welcome back, ladies and
20 | gentlemen. I hope everyone had a good evening. We're now
21 | ready to resume the trial of this case in the State of South
22 | Carolina versus Verntirell Jerwon Dukes. I remind you that if
23 | you have any cell phones or pager devices, if you would please
24 | turn them off at this point in time if you brought them into
25 | the courtroom.

1 The State has rested their case and now is the time of
2 the trial where the Defendant can present a defense should he
3 choose to do so. Ms. Knowles, you can call your first
4 witness.

5 MS. KNOWLES: The Defense would call Nicole MacDowell.

6 THE COURT: All right.

7 Whereupon, Nicole Ann MacDowell was called to the stand,
8 duly sworn by the clerk and testified as follows:

9 THE CLERK: Please state your full name and spell your
10 first and last name.

11 MS. MACDOWELL: Okay, Nicole Ann MacDowell, N-I-C-O-L-E,
12 M-A-C, capital D-O-W-E-L-L.

13 DIRECT EXAMINATION

14 BY MS. KNOWLES:

15 Q Ms. MacDowell, good morning.

16 A Good morning.

17 Q Can you tell me where you currently reside?

18 A In Socastee.

19 Q Okay, and how long have you lived in Horry County?

20 A Probably 15, 16 years.

21 Q Okay, and do you work anywhere?

22 A Yes.

23 Q Where do you work?

24 A Carrabba's Italian Grill.

25 Q And do you remember working on the night of April 13th ---

Nicole MacDowell - Direct by Defense

145

- 1 A Yes.
- 2 Q --- 2012? And did you drive to work that night?
- 3 A I drove to work, but I did not keep my car.
- 4 Q Okay, and do you own your own vehicle?
- 5 A Yes.
- 6 Q And what kind of car is it?
- 7 A A 1999 GMC Jimmy.
- 8 Q Okay, and does it have two doors or does it have four
- 9 doors?
- 10 A It's a two door.
- 11 Q It's a two door. Now, are you the only one that uses
- 12 this vehicle?
- 13 A No.
- 14 Q Who else uses this vehicle?
- 15 A Friends, family, whoever's in need.
- 16 Q And are you married?
- 17 A Engaged.
- 18 Q Engaged. Does your husband use this vehicle?
- 19 A Yes.
- 20 Q Okay, now, let's go back to April 13th, 2012. You said
- 21 you had worked.
- 22 A Yes.
- 23 Q What did you do after work?
- 24 A My fiancé picked me back up. We went back home. I got
- 25 dressed, took a shower, got dressed and went to Verntirell and

1 Latashia's room.

2 Q Okay, and what did you guys do?

3 A Played cards pretty much for a while.

4 Q Okay, and did you go anywhere or ---

5 A After, it was probably after 2 a.m. we decided to leave.

6 Q Okay, and where did you go?

7 A To Sun-up Bar and Grill.

8 Q All right, now, do you recall my client causing any
9 trouble while he was at this bar?

10 A No.

11 Q And how long do you say that you - the four of you stayed
12 there?

13 A Hour and a half, maybe.

14 Q Okay.

15 A Maybe two hours.

16 Q And how far was it from where you picked my client and
17 his girlfriend up did - because you did say that you picked
18 both my client and his girlfriend up?

19 A Yes.

20 Q How far is it from their home or their home at the time
21 to the bar that you went to, this Sun-up?

22 A Ten, 15 minutes at the very most.

23 Q Okay, so, Mr. Dukes was in your vehicle - let me go back,
24 did you drive your car to the Sun-up?

25 A Yes.

Nicole MacDowell - Direct by Defense

147

1 Q Okay, and so, how long would you estimate that Mr. Dukes
2 was in your car that night?

3 A Just from the time from their house to Sun-up, 10, 15
4 minutes.

5 Q Fifteen minutes, and at any time during the night did you
6 see him with any sort of weapon?

7 A No.

8 Q And do you recall locking your vehicle before you entered
9 the bar?

10 A Yes, because me and Latashia left our pocketbooks in the
11 car.

12 Q And were you the only one with a key to the vehicle?

13 A Yes.

14 Q Did you give the keys at any point in time to anyone
15 else?

16 A No.

17 Q Now, let's go back and talk about your car. You provided
18 me with some photos and did you take these photos that you
19 gave me?

20 A Yes.

21 Q And because this is your vehicle, you would be familiar
22 with the inside and the outside of the vehicle?

23 A Yes.

24 Q And is your car in the same or substantially in the same
25 condition that it was back in April?

1 A Yes.

2 Q Now, I've already provided Mr. Spratlin with copies of
3 these pictures. Would you be able to recognize the pictures
4 that you had given me and identify the ones that you provided?

5 A Yes.

6 Q Let me show you. I want you to take a quick look at all
7 these for me. Now, the first picture has been marked, pre-
8 marked as Defense Exhibit One. Do you recognize this?

9 A Yes.

10 Q Okay, and is it a fair and accurate representation of the
11 car?

12 A Yes, this one is just to show the ---

13 Q Hold, hold on one second.

14 MS. KNOWLES: Your Honor, actually let me go back.

15 BY MS. KNOWLES:

16 Q I want you to explain what this shows.

17 A Just the passenger side with the door open.

18 Q Okay, and we'll, and we'll go back in more detail in just
19 a minute.

20 MS. KNOWLES: Your Honor, at this time the Defense would
21 ask to enter this photo into evidence.

22 THE COURT: All right, what is that? Defendant's
23 Exhibit what?

24 MS. KNOWLES: Exhibit One.

25 THE COURT: All right, any objections?

Nicole MacDowell - Direct by Defense

149

1 MR. SPRATLIN: Your Honor, there's no objection. In the
2 interest of judicial economy the State would also have no
3 objection to Defendant's One, Two, Three, Four, Five and Six
4 being introduced into evidence.

5 THE COURT: Are you going to put all of those in?

6 MS. KNOWLES: Yes, sir.

7 THE COURT: All right, Defendant's Exhibits One, Two,
8 Three, Four, Five and Six are admitted into evidence without
9 objection.

10 MS. KNOWLES: Thank you very much.

11 (Whereupon, Defendant's Exhibit Numbers One through Six
12 [Photographs] admitted into evidence and appropriately
13 marked.)

14 MS. KNOWLES: And Your Honor, may I publish to the jury

15 ---

16 THE COURT: Yes.

17 MS. KNOWLES: --- as I'm going through ---

18 THE COURT: Yes.

19 MS. KNOWLES: --- these photos?

20 BY MS. KNOWLES:

21 Q Okay, so, this shows the - what - tell me what this
22 shows.

23 A The side of the vehicle on the passenger side to show
24 with the door open and it's a two door.

25 Q Okay, start with you and pass it around, and what about

1 this picture? What does that show?

2 A This one shows that to get out from the back seats ---

3 Q Actually hold on one second. Let's, let's pause. Let
4 all of them take a look at that so that their attention is not
5 focused in the wrong direction, and what about this one? What
6 does this show?

7 A That in order to get out of the back seat the front
8 passenger seat has got to be pushed all the way up to the
9 dashboard to get out of the back seat.

10 Q Okay.

11 MS. KNOWLES: And Your Honor, just to expedite this
12 process may I ask her just to come and step in front of the
13 jury at this point?

14 THE COURT: As long as she is by a microphone so the
15 court reporter can pick up her testimony.

16 MS. KNOWLES: That's fine, and that's probably the
17 easiest way to do this.

18 REPORTER: She needs to get by that microphone. No,
19 that one over there.

20 MS. KNOWLES: Oh, this one.

21 BY MS. KNOWLES:

22 Q Okay, this is Exhibit Four and what does this show?

23 A Just a better view that the seat has to be pushed all the
24 way up and it shows the tracks on the back passenger side to
25 get out.

Nicole MacDowell - Direct by Defense

151

- 1 Q Okay, now, this is Exhibit Five. What does this show?
- 2 A That only two people can sit in the back seat.
- 3 Q So, it's a very compact ---
- 4 A It's very small in the back.
- 5 Q Okay, and if someone were to be removed from the back, is
- 6 there a light that illuminates when the door is open?
- 7 A Yes, yes.
- 8 Q Okay, so, everything in the floorboard should be visible?
- 9 A Yes.
- 10 Q To that person?
- 11 A Yes.
- 12 Q Okay, and then this one is what?
- 13 A That shows ---
- 14 Q This is Defense Exhibit Six.
- 15 A --- how small the area is underneath the back seats and
- 16 the floorboard.
- 17 Q Okay, and once again, what about this area here? It's
- 18 ---
- 19 A Very small.
- 20 Q Very small?
- 21 A Very small.
- 22 Q Okay, Ms. MacDowell, to your knowledge, was there any
- 23 weapon in the vehicle that whenever you left, you, you
- 24 certainly didn't have a weapon; did you?
- 25 A No.

1 Q And again, you never saw my client with a weapon; did
2 you?

3 A No.

4 Q If you would, answer any questions that Mr. Spratlin has.
5 Thank you.

6 MR. SPRATLIN: Thank you, Ms. Knowles.

7 MS. KNOWLES: Uh-huh.

8 CROSS EXAMINATION

9 BY MR. SPRATLIN:

10 Q Ms. MacDowell, how are you doing today?

11 A Good.

12 Q I'm Martin Spratlin. I don't think we've ever got a
13 chance to meet. So, I just want to introduce myself. I just
14 got a couple of questions for you today, not too much. You
15 said you work at Carrabba's?

16 A Yes.

17 Q Where's that located at?

18 A 68th Avenue North.

19 Q All right, and that's in Myrtle Beach?

20 A Yes.

21 Q All right, so that's a ways away from the Sun-up.

22 A Yes.

23 Q All right, okay, and you said you drove to work that day?

24 A I was in the car that day, but I did not keep my car at
25 work that day.

Nicole MacDowell - Cross by State

153

- 1 Q Okay, who took your car?
- 2 A My fiancé.
- 3 Q And what's your fiancé's name?
- 4 A Clevon Dantzler [spelled phonetically].
- 5 Q Clevon Dantzler. All right, let me ask you a little bit.
- 6 Was Mr. Dantzler in the car with you when you went to Sun-up?
- 7 A Yes.
- 8 Q So, now, who all was in the car on the way to Sun-up?
- 9 A Myself, Clevon Dantzler was in the passenger seat. Dukes
- 10 was behind him and Latashia was behind me.
- 11 Q All right, so, you're driving. You fiancé Clevon is
- 12 sitting next to you?
- 13 A Yes.
- 14 Q Verntirell's in the back.
- 15 A Behind Clevon.
- 16 Q All right, and you said Latashia ---
- 17 A Yes.
- 18 Q --- is sitting behind you?
- 19 A Yes.
- 20 Q All right, what's Latashia - who - what relationship is
- 21 Latashia to the Defendant? Is it a girlfriend?
- 22 A Yes.
- 23 Q All right, now, if I'm right you said that you had gone
- 24 back to your place after work to shower and change clothes;
- 25 right?

1 A Yes.

2 Q And then you said you went over to Mr. Dukes' and
3 Latashia's place. So, I'm assuming they live together?

4 A Yes.

5 Q All right, and when you went - how far away do they live
6 from where you live?

7 A Maybe 15 to 20 minutes because I don't live too far from
8 the Sun-up.

9 Q Okay, so, and how far do they live from the Sun-up?

10 A About 10 to 15 minutes.

11 Q And how far do you live from the Sun-up?

12 A Five minutes.

13 Q So, you live five minutes from the Sun-up. They live 15,
14 10 to 15 minutes from the Sun-up.

15 A Yeah.

16 Q So, you live closer ---

17 A Roughly.

18 Q --- to the Sun-up than they do?

19 A Yes.

20 Q All right, but you all - but you went over to their place
21 rather than them coming to your place; right?

22 A Yes.

23 Q All right, and you drove your car the same - what color
24 is your car? Is it grey or beige?

25 A It's like a beige.

Nicole MacDowell - Cross by State

155

1 Q Beige, so, all right, a dark kind of beige right, though?

2 A Yeah.

3 Q Okay, got you. So, you drove your dark beige Jimmy,
4 right, GMC Jimmy?

5 A Yes.

6 Q Over to Verntirell's and Latashia's place. You all said
7 - you said you played cards there for a little while and then
8 you all left and went to the Sun-up.

9 A Yes.

10 Q All right, who was in - and when you all were going to
11 the Sun-up, you said you were driving. Clevon was a passenger
12 and Latashia was behind you and Verntirell was behind me. Let
13 me ask you a little bit about your fiancé, Clevon. Let me ask
14 you, obviously, we know he's a male; right?

15 A Yes.

16 Q I mean, he's a guy. Is he black or white or other?

17 A He's black.

18 Q Black? All right, let me ask you about his hair. Does
19 he have dreads or is he close cut?

20 A Low cut.

21 Q Low cut? Let me ask you about his weight, is he a thin
22 man, small guy; right? I mean, small - not small in stature.

23 MS. KNOWLES: Your Honor, I would just object to the
24 relevancy. I'm not sure that this - any of this questioning
25 is relevant.

1 THE COURT: All right, relevancy?

2 MR. SPRATLIN: Your Honor, relevancy is a description was
3 given of a somewhat heavy set man with dreads which had a gun
4 in his hand. I'm simply trying to introduce evidence of what
5 her boyfriend looks like to establish that if it could have
6 been him.

7 THE COURT: I understand. I understand. Overruled.
8 I'm going to allow it.

9 MR. SPRATLIN: All right.

10 MS. KNOWLES: Thank you.

11 BY MR. SPRATLIN:

12 Q So, you got - he's got low cut hair, not dreads like Mr.
13 Verntirell Dukes does.

14 A Yes.

15 Q And he's a much thinner man than Mr. Dukes; isn't he?

16 A Yes.

17 Q And he was in the driver's side; right, the driver - I
18 mean the passenger ---

19 A He - pass - he was in the ---

20 Q --- the front passenger side?

21 A Yes.

22 Q Okay, so, that's on the way to Sun-up. Now, at Sun-up
23 when you all were there, how long were you all there again?

24 A We probably got there about 2:30 in roughly.

25 Q 2:30 a.m.?

Nicole MacDowell - Cross by State

157

- 1 A Yeah, maybe a little after.
- 2 Q Okay, and how long did you stay?
- 3 A Maybe an hour and a half.
- 4 Q Hour and a half? So that puts you staying there at the
- 5 latest 4 a.m.; right?
- 6 A Yes.
- 7 Q Okay, if I told you officers didn't arrive until after
- 8 four o'clock, would you, would you say that would be an
- 9 inaccurate statement?
- 10 A I'm sorry?
- 11 Q If I told you that officers didn't arrive to the Sun-up
- 12 bar until after four o'clock would that be an improper
- 13 statement?
- 14 A No.
- 15 Q So, they could have arrived after four o'clock?
- 16 A Yes.
- 17 Q Okay, but you were still there when they arrived; weren't
- 18 you?
- 19 A Yes.
- 20 Q All right, so, you could have been there a little bit
- 21 after four?
- 22 A Yes.
- 23 Q Could have been there say 4:45 when officers arrived?
- 24 A We were still there because of the incident that
- 25 happened.

1 Q Okay, but you hadn't left the bar - you - so, you're
2 basically saying you stayed in the bar, just inside the bar
3 for an hour and a half or were you there for an hour and a
4 half total?

5 A No, inside the bar for about an hour and a half ---

6 Q Okay, well, that makes sense.

7 A --- because we were on our way out.

8 Q All right, so, you were on your way out, the incident
9 happened. Now, there was an incident out front of Sun-up.
10 Wasn't there?

11 A Yes.

12 Q There was kind of a shoving match kind of a fight of some
13 sort.

14 A There was - it didn't get as far as a fight or anybody
15 putting their hands on each other.

16 Q So, no one put their hands on each other?

17 A No.

18 Q All right, who was involved in that fight?

19 A Words were exchanged between my fiancé and another man.

20 Q So, your fiancé and who I'm assuming since they're all
21 riding in the car together and you all went over to his house,
22 is a friend of Mr. Dukes; right? Isn't he?

23 A Yes.

24 Q Your fiancé is a friend of Mr. Dukes?

25 A Yes.

Nicole MacDowell - Cross by State

159

1 Q All right, so, words were exchanged between your fiancé,
2 Mr. Dukes' friend, and another individual there?

3 A No, he was not present at - Mr. Dukes was not present at
4 that time.

5 Q Okay, but you were; right?

6 A Yes.

7 Q So, you didn't see Mr. Dukes all night; did you? There
8 were times where you didn't have eyes on Mr. Dukes?

9 A We were all in the bar together. We were playing pool.

10 Q All in the bar together, but once you went outside you
11 didn't have eyes on Mr. Dukes the whole time; did you?

12 A No, because he was paying his bar tab when we were
13 leaving.

14 Q Okay, so, you didn't have eyes on Mr. Dukes. All right,
15 but - so, words are exchanged between your fiancé and one of
16 the other patrons of the Sun-up?

17 A Yes.

18 Q Okay, what's the next thing that happened?

19 A When my fiancé and the other man were exchanging words,
20 there was a group of guys that started circling my fiancé.

21 I'm assuming it was the other man's friends.

22 Q So, a large group of guys starts encircling your fiancé?

23 I mean, I'm assuming this argument was kind of heated. Wasn't
24 it?

25 A It was.

1 Q Okay, still haven't seen Mr. Dukes?

2 A I can - because it was in between the doors when we were
3 going out ---

4 Q Uh-huh.

5 A --- that the incident happened, so, the doors were still
6 open and I can still see Mr. Dukes and Latashia at the end of
7 the bar trying to pay their tab.

8 Q So, you did have eyes on Mr. Dukes the whole time is what
9 you're saying?

10 A Not the whole time.

11 MS. KNOWLES: Your Honor, I would object just based upon
12 just - she's already testified to this three times now as far
13 as ---

14 THE COURT: Overruled. I'm going to allow it. Go
15 ahead.

16 MR. SPRATLIN: Thank you, Your Honor.

17 BY MR. SPRATLIN:

18 Q So, Mr. Dukes is in the bar. All right, let me, let me
19 just speed ahead. Your fiancé is in the middle of a circle of
20 people, fight - about - having a heated exchange of words with
21 another individual.

22 A Yes.

23 Q All right, and it never gets physical?

24 A No.

25 Q How did it dissolve? What happened?

Nicole MacDowell - Cross by State

161

- 1 A While all that was going on ---
- 2 Q Uh-huh.
- 3 A --- I turned around to go get Mr. Dukes so that ---
- 4 Q Where'd you go get him at?
- 5 A From the corner of the bar where he was paying his tab.
- 6 Q Okay.
- 7 A For him and Latashia to come outside so that we can go
- 8 ---
- 9 Q Okay.
- 10 A --- because that is a regular bar for us and we ---
- 11 Q Go ahead. Go ahead.
- 12 A --- didn't want any problems. We go there ---
- 13 Q Yeah.
- 14 A --- every weekend. We know the bartender.
- 15 Q Yeah, you don't want - I mean, you don't want to cause
- 16 problems to a place, I mean, that's understandable.
- 17 A Yes.
- 18 Q You don't want to cause problems at a place where you go
- 19 all the time. So, you left your fiancé in the middle of a
- 20 group of guys who are adversarial to him while you went in to
- 21 calmly get Mr. Dukes and just say, "Hey, hey, Verntirell, we,
- 22 we got to go get in the car and leave here." That's, that's
- 23 what happened?
- 24 A Approximately 20 feet away, yes.
- 25 Q Okay, and what did you all do then? Just all go and get

1 in the car and leave?

2 A We tried to.

3 Q Okay, how'd your fiancé get out of that large group of
4 people?

5 A It was more or less myself and Tashia that tried to
6 dissolve the issue.

7 Q So, you were busy trying to dissolve the issue?
8 Latashia's outside now?

9 A Yes.

10 Q And she was with Mr. Dukes; right?

11 A Yes.

12 Q And so, Mr. Dukes is outside now?

13 A Yes.

14 Q How far is your car away from this large group of people
15 and the bar in general?

16 A Maybe four or five parking spots ---

17 Q Okay.

18 A --- away from the front door.

19 Q So, a short distance from that front door?

20 A Yes.

21 Q A very short distance. All right, and you're busy with
22 Latashia trying to pull your fiancé out of this large group of
23 people?

24 A Yes.

25 Q Not really focusing on Mr. Dukes; are you?

Nicole MacDowell - Cross by State

163

1 A We were all trying to keep each other together.

2 Q Okay, but you didn't say that Mr. Dukes was there helping
3 you pull your fiancé out of that fight; did you?

4 A Latashia and I were ---

5 Q Okay.

6 A --- with both of them trying to get them.

7 Q So, Mr. Dukes got in the fight?

8 A By the time he came back outside from when I went to get
9 him there was words exchanged between everybody.

10 Q Okay, so, Mr. Dukes was now getting actively involved in
11 this dispute that your fiancé was having with this other
12 gentlemen and this group of people?

13 A Yes.

14 Q All right, so, he's actually involved in this dispute as
15 well. All right, and now, this is - you said you got there at
16 2:30 and you got out of there an hour and a half later. So,
17 I'm assuming this would be right around maybe 4:10, 4:15 that
18 all of this is going on; right?

19 Q Roughly, yes.

20 A Okay, but you said it wouldn't surprise me to tell you
21 that the officers didn't arrive there till right around 4:40
22 or 4:45; right? You said that wouldn't surprise you.

23 A The dispute didn't last that long.

24 Q Okay.

25 A Between like 4:15 to 4:40, it did not last that long.

1 Q Okay, but you could be - but you could be wrong on when
2 you left the bar, how much time has passed?

3 A Yes, my timing could be off.

4 Q Okay, all right, so, you can't be exactly sure. Let me
5 ask you something, how much did you have to drink that night?

6 A Honestly, not that much because from the time that I got
7 off to go home to get dressed and by the time we had got to
8 Mr. Dukes and Latashia's house, I really didn't have that much
9 time to drink.

10 Q I mean, you were working that day. You were probably
11 tired and you didn't want to drink a whole lot; right?

12 A No.

13 Q Yeah, I understand that. Let me ask you about Mr. Dukes.
14 Was he intoxicated?

15 A If he was, he was holding his composure very well.

16 Q Okay, so, you didn't notice any slurred speech?

17 A No.

18 Q He didn't seem like he didn't know what he was doing?

19 A No.

20 Q There's no reason he would have been out of his mind to
21 the point where he wouldn't understand what people were
22 telling him to do?

23 A No.

24 Q Okay, so, as far as you're concerned, he would have been
25 able to handle himself in a situation like this just fine?

Nicole MacDowell - Cross by State

165

1 MS. KNOWLES: Your Honor, I would object as to - she is
2 not going to be able to testify as to his state of mind.

3 THE COURT: I understand, but he was asking her how he
4 appeared to her. So, I'll allow it. Overruled.

5 MR. SPRATLIN: Thank you, Your Honor.

6 BY MR. SPRATLIN:

7 Q So, he would have appeared to you to be able to handle
8 himself in this kind of situation just fine?

9 A As far as being like circled ---

10 Q No, I'm sorry.

11 A --- with a bunch of men or ---

12 Q Well, just - let me - I'll back up and ask that question
13 again in a couple of minutes. So, basically, how were you all
14 able to get them out of that group of people?

15 A Because we just kept telling Mr. Dukes and Clevon, you
16 know, "This is our little spot. This is our bar. Let's just
17 go before it escalates to something that it shouldn't even
18 have to go to."

19 Q Got you.

20 A "It's not necessary."

21 Q And once you did get Clevon and Verntirell out of that
22 group of people, what did you all do?

23 A Went to the car.

24 Q Okay, got in the car?

25 A Yes.

1 Q Who was driving?

2 A Me.

3 Q You were driving. Who was sitting in the front passenger
4 seat?

5 A Clevon.

6 Q Clevon. Who was sitting in the rear passenger's seat?

7 A Mr. Dukes.

8 Q Mr. Dukes. Who was sitting in the rear driver's seat?

9 A Tashia.

10 Q Tashia, it's the same, same, same layout as when you all
11 came?

12 A Yes.

13 Q All right, okay, and then the cops showed up; didn't
14 they?

15 A Yes.

16 Q And when the cops showed up you were trying to leave;
17 weren't you?

18 A Yes, I actually almost hit them because I did not see
19 them behind me.

20 Q Uh-huh, in fact, they, at one point, got out of the car
21 and had - and well, an officer on foot was approaching you;
22 right, from the front?

23 A Yes.

24 Q And officer - corporal - a separate officer was
25 approaching you kind of from the rear in his patrol car;

Nicole MacDowell - Cross by State

167

1 right?

2 A I don't remember.

3 Q Okay, but you wouldn't say that'd necessarily be wrong.

4 There were two officers there that night?

5 A Yes.

6 Q All right, now, both officers asked you not to move the
7 car. Didn't they?

8 A Yes.

9 Q All right, and at first you didn't necessarily
10 immediately stop the car. Did you?

11 A Yes, I did.

12 Q Okay, so, you immediately cut the car off?

13 A Yes.

14 Q No hesitation, soon as you saw police officers, you were
15 like put it in park, take the keys out ---

16 A Well, I ---

17 Q --- and you're good.

18 A --- couldn't go anywhere. They were behind me.

19 Q Okay.

20 A So, there's - yes.

21 Q So, they, they blocked you in effectively?

22 A Yes.

23 Q Did you immediately cut the motor off?

24 A I don't remember.

25 Q Okay, there wasn't space in front of you that you could

1 have, you know, tried to get around if you really wanted to?

2 A No.

3 Q Okay, all right.

4 A The parking spot's right in front of another building.

5 Q Okay, and you were still in that same parking spot?

6 A Yes.

7 Q All right, how long were you all sitting in the car
8 before you left? But - how long after Verntirell and Clevon
9 get out of that fight are you all sitting in the car before
10 you leave Sun-up?

11 A As soon as we all got in we immediately tried to leave.

12 Q As soon as you get in you try to leave.

13 A There was no reason to sit there.

14 Q Got you. All right.

15 MR. SPRATLIN: Beg the Court's indulgence for one minute.

16 THE COURT: All right.

17 BY MR. SPRATLIN:

18 Q All right, and you testified earlier that your car is
19 equipped with what's commonly called a dome light; right?

20 A Yes.

21 Q So, that when a door is open, it's very well illuminated.

22 A Yes.

23 Q When the officers got there who did they pull out first?

24 A My fiancé.

25 Q Your fiancé, Clevon. Who did they pull out second?

Nicole MacDowell - Cross by State

169

- 1 A Mr. Dukes.
- 2 Q So, Mr. Dukes was the second person pulled out?
- 3 A Yes.
- 4 Q Okay, and is that because it would have been impossible
- 5 to pull Mr. Dukes out without pulling Clevon out?
- 6 A Yes.
- 7 Q All right, and it was when they were pulling Mr. Dukes
- 8 out that - well, and you're saying that you never saw Mr.
- 9 Dukes with a weapon that night?
- 10 A No.
- 11 Q Right? And that when an officer pulled that gun out of
- 12 that car, you were totally surprised?
- 13 A Absolutely.
- 14 Q Okay, wasn't your gun?
- 15 A No.
- 16 Q To your knowledge it wasn't your fiancé's that you lived
- 17 with ---
- 18 A No.
- 19 Q --- wasn't his gun. You have no idea how that gun got in
- 20 the car?
- 21 A No, because a lot of people are in and out of my car.
- 22 Q A lot of people are in and out of your car. Mr. Dukes in
- 23 and out of your car a whole lot?
- 24 A Yes, just as much as everybody else.
- 25 Q Okay, and you said that the car was locked while you all

- 1 were in the bar?
- 2 A Yes.
- 3 Q And that you were the only one with a key?
- 4 A Yes.
- 5 Q But several people drive your car, you said that; right?
- 6 A Yes.
- 7 Q Several people get in your car?
- 8 A Yes.
- 9 Q Several people generally had access to your car?
- 10 A Yes.
- 11 Q All right, your fiancé, does he have a spare key?
- 12 A No.
- 13 Q Are you certain he doesn't have a spare key?
- 14 A Yes.
- 15 Q But he's had your keys numerous times; right?
- 16 A Yes.
- 17 Q Mr. Dukes, does he have a spare key?
- 18 A No.
- 19 Q Are you certain he doesn't have a spare key?
- 20 A Yes.
- 21 Q But he's had access to your keys numerous times; right?
- 22 A No, he has never drove my vehicle.
- 23 Q Never driven your car. What about Latashia, has she
- 24 driven your car?
- 25 A Not much, but she has.

Nicole MacDowell - Cross by State

171

- 1 Q Okay, but she has driven it?
- 2 A Yes.
- 3 Q And so, she would have access to your keys, too?
- 4 A No, not.
- 5 Q You wouldn't have given her your keys if she drove your
- 6 car?
- 7 A Oh, yes, if she was ---
- 8 Q Okay.
- 9 A --- to drive my car, but that night she didn't.
- 10 Q Okay, but she did have access to your keys at some point
- 11 in time without your supervision?
- 12 A Yes.
- 13 Q All right, and can you even - and again, didn't have,
- 14 didn't keep an eye on Mr. Dukes the whole night, can't say
- 15 that; can you?
- 16 A No.
- 17 Q Okay, even when that fight started, you couldn't really
- 18 say that you saw Mr. Dukes the whole time.
- 19 A Well, while we were going out the door, all I would have
- 20 to do was turn my back and I could see them at the bar paying
- 21 their tab.
- 22 Q Okay, but somehow Mr. Dukes when he came out actually got
- 23 involved in the fight that your fiancé was in.
- 24 A In an altercation, yes.
- 25 Q But at some point you left your fiancé in that

1 altercation to go to the bar and get them to come out; right,
2 so you could leave?

3 A Yes.

4 Q And again, Ms. - all right, now, let me ask you
5 something, when the cops showed up, I had asked you earlier
6 about Mr. Dukes' level of intoxication and you had kind of
7 said that you didn't think he was that intoxicated, and if he
8 was, he was doing a great job covering it up.

9 A Yes.

10 Q Right? So, you didn't notice any slurred speech?

11 A No.

12 Q Okay, you didn't notice any stumbling or anything that
13 you'd commonly associate with being under the influence.

14 A No.

15 Q All right, and so, there's no reason in your mind that
16 based on what you observed from Mr. Dukes that he would not be
17 able to understand the situation or know what was going on;
18 right?

19 A Yes.

20 Q All right, and when the officers arrived, you - Mr. Dukes
21 was in that same general condition; right?

22 A Yes.

23 Q In fact, there's no reason when those officers were there
24 pulling you all out of the car and questioning you all that
25 you - that you believe that Mr. Dukes wouldn't be able to know

Nicole MacDowell - Redirect by Defense

173

1 what was going on?

2 A For the officers to come to us we were all kind of
3 confused because we weren't the ones that started the whole
4 altercation, it was the other people that started it. So,
5 when they stopped us trying to pull out of the parking lot we
6 were kind of all shocked.

7 Q You were confused, but not - but, Mr. Dukes may have been
8 confused but he wasn't intoxicated to the point where he
9 wouldn't have understood what was going on.

10 A Yes.

11 Q All right, and you never saw that gun in the car that
12 night; did you?

13 A No.

14 Q Until the officer pulled it out?

15 A Yes.

16 Q Thank you, Ms. MacDowell, that's all the questions I
17 have.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MS. KNOWLES:

21 Q Where was Mr. Dukes when these words were exchanged, this
22 argument occurred?

23 A At the corner of the bar paying their tab.

24 Q So, he was inside the bar?

25 A Yes.

1 Q And during the time that you were there did you ever see
2 him leave and go outside or anything like that?

3 A No, because for the most part we were playing pool, all
4 four of us were playing pool.

5 Q And you told Mr. Spratlin that you weren't intoxicated.

6 A No.

7 Q So, you were in a sober state of mind then? Is it fair
8 to say that?

9 A Yes.

10 Q And when this argument occurred between your fiancé and
11 some other individuals what was your main reason for going
12 into the bar to retrieve Mr. Dukes and Latashia?

13 A Because there was at least six, seven people that was
14 exchanging words with my fiancé.

15 Q Okay, and so because you were in a sober state of mind or
16 not - we'll say not intoxicated, you were able to exercise
17 good judgment and ---

18 A Yes.

19 Q --- you saw a bad situation?

20 A Yes.

21 Q And to your knowledge this was only an argument that
22 occurred, no blows were exchanged?

23 A No.

24 Q And just for clarification, when the cops did arrive your
25 fiancé was pulled out first?

Nicole MacDowell - Redirect by Defense

175

1 A Yes.

2 Q And then Mr. Dukes?

3 A Yes.

4 Q And do you recall where the officers were at the time
5 that they pulled Mr. Dukes out of the vehicle? Were both
6 standing on one side or what? Where were they at, what side
7 of the vehicle?

8 A When ---

9 Q If you don't remember, you don't remember.

10 A I'm not, I'm not sure.

11 Q And because of the makeup of your vehicle and it being a
12 compact car you've just testified that the light illuminates
13 when someone opens up the car door. So, would you be able to
14 see something sitting at the rear passenger's feet ---

15 A Yes.

16 Q --- if it existed? Okay, immediately upon opening the
17 door?

18 A The passenger seat that you are sitting on, when you open
19 the door you can see under the back. The floor underneath the
20 front passenger seat, the seat would have to be pushed up to
21 see under that.

22 Q And Mr. Spratlin mentioned that you were in the vehicle
23 when the weapon was recovered.

24 A No, I was not in the vehicle when they found the gun.

25 Q You weren't?

1 A No.

2 Q Oh, okay.

3 A None of us were in there, in the vehicle when the gun was
4 found.

5 Q Where were you at?

6 A Myself, Latashia and Clevon we were all cuffed and Mr.
7 Dukes was already obtained in the police car with the door
8 shut when they found the gun.

9 Q So, Mr. Dukes was in the patrol car?

10 A Yes.

11 Q Did the officers ever ask you any questions, offer you
12 the opportunity to make a statement?

13 A They asked us who the gun belonged to. None of us knew
14 whose gun it was.

15 Q And you said that you lend out your vehicle frequently?

16 A All the time.

17 Q Give us some examples as to why you would do that.

18 A If - as to why, because there was a point in time where -
19 when I didn't have a vehicle and the people that I help now,
20 they have helped me previously, grocery store, getting bills
21 paid, picking my children up. They have helped me when I was
22 in need.

23 Q So, how many times out of the week do others have your
24 vehicle?

25 A Pretty much every day that I work.

Nicole MacDowell - Redirect by Defense

177

1 Q But there's only one key ---

2 A Yes.

3 Q --- to your knowledge.

4 A Yes.

5 Q Where did the officers say that they located this gun?

6 A Under the front passenger seat by Mr. Dukes' feet, like
7 where his toes would have been.

8 Q The front passenger seat, the front passenger seat, is
9 that what I heard?

10 A Yes, in the back underneath.

11 Q But under the front seat.

12 A The front seat pushed up, the passenger seat like in the
13 back floor panel under the front seat.

14 Q Okay, so, shouldn't - if that is where the gun was found,
15 shouldn't it have been seen whenever they removed Mr. Dukes?

16 A Yes, because the seat would have had to have been pushed
17 all the way up for him to get out of the back seat, so it
18 would have ---

19 Q So, it would have been clearly visible?

20 A Yes.

21 Q But it wasn't because it wasn't even found until later
22 on. Is that your testimony?

23 A Yes.

24 Q Just make sure I don't have anything else. I think
25 that's it.

1 THE COURT: All right.

2 MS. KNOWLES: Thank you.

3 MR. SPRATLIN: Your Honor, the State would ask for a
4 brief re-cross?

5 THE COURT: No, that's enough. You may step down.

6 A Thank you.

7 THE COURT: Thank you.

8 All right, Ms. Knowles, you can call your next witness.

9 MS. KNOWLES: The Defense would call Latashia McKenzie.

10 THE COURT: All right.

11 Whereupon, Latashia Latrese McKenzie was called to the
12 stand, duly sworn by the clerk and testified as follows:

13 THE CLERK: State your full name and spell your first
14 and last name.

15 MS. MCKENZIE: Okay, Latashia Latrese McKenzie, L-A-T-A-
16 S-H-I-A, M-C-K-E-N-Z-I-E.

17 DIRECT EXAMINATION

18 BY MS. KNOWLES:

19 Q Ms. McKenzie, good morning.

20 A Good morning.

21 Q Where do you currently live?

22 A Socastee, South Carolina.

23 Q And where were you living back in April of this year?

24 A Myrtle Beach, South Carolina.

25 Q And how do you know my client, Mr. Dukes?

Latashia McKenzie - Direct by Defense

179

- 1 A That's my boyfriend.
- 2 Q Do the two of you live together?
- 3 A Yes.
- 4 Q Do you recall what you were doing the late night hours of
- 5 April 13th, early morning hours of April 14th?
- 6 A Yes.
- 7 Q Okay, and tell me a little bit about what happened, what
- 8 you did.
- 9 A On the night of April 13 ---
- 10 REPORTER: You need to slip up and speak up.
- 11 A On the night of April the 13th, we was at the house and
- 12 our friends came by and we played some spades and then we
- 13 decided we wanted to go have a couple of drinks.
- 14 Q Okay, and who were those friends?
- 15 A Nichole MacDowell and her boyfriend, fiancé.
- 16 Q You said Ms. MacDowell and, and who?
- 17 A Her fiancé.
- 18 Q Her fiancé.
- 19 A Yeah.
- 20 Q And so, you were - they came to your house.
- 21 A Yes.
- 22 Q And what time was that?
- 23 A After she got off of work.
- 24 Q And how long did you stay at your house?
- 25 A A couple of, couple of - about - I'd say about 45

1 minutes, a hour. She was playing some spades and stuff.

2 Q And you said you decided to go out.

3 A Yeah.

4 Q Where did you go?

5 A We decided to go to the Sun-up Bar.

6 Q Had you gone there before?

7 A Yes.

8 Q And what time, to your best recollection, did you get
9 there?

10 A I know it was after two because all the rest of the bars
11 was closed.

12 Q And what did you do whenever you got there?

13 A Me and my boyfriend had a couple of drinks and we was
14 just sitting at the bar having a couple of drinks.

15 Q Okay, and where were Ms. MacDowell and her fiancé? They
16 were there with you or what?

17 A Yeah, they was there at the bar with us.

18 Q So, were you sitting at the bar the whole time or what?

19 A Yes.

20 Q And how long do you think you were there?

21 A Maybe like a hour, hour and a half probably.

22 Q And was Mr. Dukes with you the entire time you were at
23 your house and at the bar?

24 A Yes.

25 Q For the most part?

Latashia McKenzie - Direct by Defense

181

- 1 A Yes.
- 2 Q You never saw him leave and go outside; did you?
- 3 A Not until ---
- 4 Q It was time to leave?
- 5 A Yeah.
- 6 Q And weren't there words exchanged with Ms. MacDowell's
- 7 fiancé and someone, another bar patron?
- 8 A Yes.
- 9 Q And where were you and Mr. Dukes whenever all of that
- 10 happened?
- 11 A We were still sitting at the bar.
- 12 Q Okay, inside at the bar?
- 13 A Inside, yes.
- 14 Q And how did you find out about what was going on outside?
- 15 A Ms. MacDowell came in, got my fiancé.
- 16 Q And said ---
- 17 A Well, my boyfriend.
- 18 Q Right.
- 19 A And told him that his cousin was involved into a
- 20 confrontation.
- 21 Q And so, what - she was ready to leave; is that fair to
- 22 say?
- 23 A Yes, we all - yeah, all of us was ready to leave at that
- 24 time.
- 25 Q And is that what you did?

- 1 A We was getting ready to leave, yes.
- 2 Q And you're aware that officers were called to the scene
- 3 for an alleged fight in progress; aren't you?
- 4 A Yes.
- 5 Q Okay, but Mr. Dukes was not involved in any sort of
- 6 fight; was he?
- 7 A No, ma'am.
- 8 Q And so, Ms. MacDowell came in, got the two of you ---
- 9 A Yes.
- 10 Q --- and you all got in the car.
- 11 A Yes.
- 12 Q Now, tell me how the seating arrangement was when you got
- 13 in the vehicle going to the bar and also when you were coming
- 14 out to leave.
- 15 A Same seating arrangement, Ms. MacDowell was the driver
- 16 and her fiancé was the passenger. I was sitting behind Ms.
- 17 MacDowell and my boyfriend was sitting behind her fiancé.
- 18 Q Okay, and so, the four of you go to get into the car ---
- 19 A Yes.
- 20 Q --- and what happened after that?
- 21 A As soon as we was back - as we was backing out, the
- 22 police officers pulled behind us.
- 23 Q Okay, and what were you thinking at that time?
- 24 A That why they blocking us from leaving the bar.
- 25 Q So, you were just at a loss for ---

Latashia McKenzie - Direct by Defense

183

- 1 A Yes.
- 2 Q --- for that, why they were after you.
- 3 A Yes.
- 4 Q How many drinks would you say that you had that night?
- 5 A Like a few, maybe one, two.
- 6 Q But you weren't driving.
- 7 A No.
- 8 Q Okay, and to your knowledge Mr. Dukes doesn't own a
- 9 weapon or carry a weapon; does he?
- 10 A No, ma'am.
- 11 Q And the car you were riding in is not your vehicle.
- 12 A No, ma'am.
- 13 Q And can you tell me what happened after the police
- 14 arrived?
- 15 A After the officers arrived they came to the vehicle and
- 16 they told everyone to get out the vehicle.
- 17 Q Okay.
- 18 A And after they told everyone to get out the vehicle, they
- 19 apprehended everyone, and then they went to search the vehicle
- 20 and then when they searched the vehicle they - before they
- 21 searched the vehicle they obtained Mr. Dukes in the officer's
- 22 car.
- 23 Q So, you're saying that, just so I'm getting it clear as
- 24 far as your testimony goes, that immediately whenever they
- 25 arrived they got all four of you out of the car.

1 A Yes.

2 Q Okay, but they took Mr. Dukes and put him in - okay.

3 A In handcuffs and in the back seat of the officer's car.

4 Q And did you ask why or were you just stunned as far as
5 that?

6 A I was stunned.

7 Q At any point in time when the four of you were getting
8 out of the vehicle or being, you know, escorted out of the
9 vehicle, taken out of the vehicle did you hear one of the
10 officers say something about a weapon?

11 A Not at that moment.

12 Q Okay, when, when did you find out about that?

13 A Well, they was searching the vehicle and then after they
14 like searched the vehicle I was over at the officer's car
15 talking to Mr. Dukes and that's when I seen one of the
16 officers with a gun in their hand and they was emptying the
17 gun out. That's when I noticed a gun.

18 Q But Mr. Dukes was already in the patrol car whenever ---

19 A Yes.

20 Q --- they found the gun.

21 A Yes.

22 Q And did they ask you any questions or anything like that?

23 A No.

24 Q Did they tell you why they were stopping the four of you?

25 A No.

Latashia McKenzie - Cross by State

185

1 Q Let me just make sure, and you were with Mr. Dukes the
2 entire night ---

3 A Yes.

4 Q --- before and after going to Sun-up?

5 A Yes.

6 Q Okay, if you would ask any or answer any questions that
7 Mr. Spratlin would have for you; okay?

8 A Okay.

9 MR. SPRATLIN: Thank you, Ms. Knowles.

10 CROSS EXAMINATION

11 BY MR. SPRATLIN:

12 Q Good morning, Ms. McKenzie. How you doing today?

13 A Good morning. I'm fine, thank you.

14 Q I'm Martin Spratlin. I'm with the Solicitor's Office.
15 I'm just going to have a couple of questions for you today,
16 not a whole lot. I'm just going to kind of back track a
17 little bit and start at the end of that questioning right
18 there. Let's start when you were all in the car getting ready
19 to leave Sun-up. You said that the officers pulled in, kind
20 of blocking you all from leaving; right?

21 A They did block us.

22 Q Because you all were trying to leave when the officer
23 pulled in behind you?

24 A We was leaving.

25 Q But that wasn't the only officer on scene that night; was

1 it?

2 A No.

3 Q There was another officer walking towards your vehicle.

4 A If - I don't know. We was backing up, so.

5 Q Okay, not talking about the officer in the car, but the
6 officer - there was another officer on foot there that night
7 too; right, Officer Odom who's in the courtroom sitting right
8 there?

9 A It was another officer there. I don't know whether he
10 was walking up.

11 MS. KNOWLES: Your Honor, I would object that that
12 fact's not in evidence. That's the first I've heard.

13 MR. SPRATLIN: I'm ---

14 THE COURT: Of another ---

15 MR. SPRATLIN: There are two officers there, Your Honor.

16 THE COURT: Well, I mean there were two officers
17 there, yeah.

18 A Yes.

19 MS. KNOWLES: But he wasn't on foot to my knowledge.

20 THE COURT: Okay, overruled. I'm going to allow the
21 questioning, go ahead.

22 BY MR. SPRATLIN:

23 Q There was another officer, Officer Odom, who's sitting
24 right there. He was there that night, too; right?

25 A I know there was another officer there.

Latashia McKenzie - Cross by State

187

1 Q Okay, but you can't be sure that's the officer?

2 A No.

3 Q All right, even looking at him right now you can't
4 remember from that night if that's the gentleman that was
5 talking to you and pulled your - and put your boyfriend in the
6 back of the car. You can't be sure?

7 A No.

8 Q Okay.

9 A All I know is the outfits.

10 Q Okay, all right, now, you said that it wasn't until all
11 of you all were pulled out of the car that the officer you
12 said found the gun; right?

13 A Yes.

14 Q But in truth, it wasn't until after all of you all were
15 pulled out of the car that the officer actually pulled the gun
16 out of the car; right?

17 A Say that again, please?

18 Q It wasn't until all of you all were out of the car that
19 the officer actually pulled the gun out of the car; right?
20 You were all out of the car when the officer went and pulled
21 the gun out of the car?

22 A We was out of the vehicle when the officer - he was
23 obtained in the officer car when the officer found the gun.

24 Q When he went and pulled it out of the vehicle; right?

25 A Yes.

- 1 Q When he went and pulled the gun out of the vehicle and
2 you saw that officer emptying the rounds from that gun.
- 3 A Yes, at the police officer car.
- 4 Q At the police officer's car.
- 5 A Yes.
- 6 Q And you saw him or I don't even know if you were paying
7 attention to what he was doing with the gun after that though,
8 but all of you all were out of the car when he went and
9 actually got the gun out of the vehicle; right?
- 10 A Yes.
- 11 Q Okay, now, you were pulled out of the car; right?
- 12 A All of us was, yes.
- 13 Q You were. Ms. MacDowell, she was pulled out of the car
14 too; wasn't she?
- 15 A Yes.
- 16 Q Her fiancé, Clevon, he was pulled out of the car too;
17 wasn't he?
- 18 A Yes.
- 19 Q And your boyfriend, Verntirell Dukes, he was pulled out
20 of the car, too?
- 21 A Yes.
- 22 Q All right, the only one of you that was put in the back
23 of a police car though was Verntirell Dukes?
- 24 A Yes.
- 25 Q Okay, you weren't put in the back of a police car?

Latashia McKenzie - Cross by State

189

- 1 a No.
- 2 Q Ms. MacDowell wasn't put in the back of a police car?
- 3 A No.
- 4 Q And Clevon wasn't put in the back of a police car?
- 5 A No.
- 6 Q Okay, do you know Clevon's last name?
- 7 A Dantzler.
- 8 Q Astor, how do you spell that?
- 9 A No, Dantzler.
- 10 Q Dantzler, okay, all right. Where's he today?
- 11 A At home.
- 12 Q Okay, let me also address with you, Ms. McKenzie, about -
- 13 you said you never saw Mr. Dukes with a gun that night; right?
- 14 A Yes.
- 15 Q And were you by his side the entire night?
- 16 A Yes.
- 17 Q Okay, did he ever leave your side at any point in time
- 18 when you all were at the Sun-up?
- 19 A No.
- 20 Q All right, and so, let me ask you about the dispute that
- 21 was going on out front. You know there was a dispute between
- 22 Clevon and - hold on, let me back up for a second. You said
- 23 Clevon's your boyfriend's cousin?
- 24 A Yes.
- 25 Q So, he's a cousin, he's family?

1 A Yes.

2 Q Okay, so, you know there's a dispute between your
3 boyfriend's cousin and a couple of other people out in the
4 front of the Sun-up; right?

5 A It was a dispute between my boyfriend's cousin, yes.

6 Q Okay, and a couple of other people in front of the Sun-
7 up.

8 A Yes.

9 Q All right, how many people was it; do you know?

10 A Can't tell you.

11 Q More than - I mean, did you see how many people it was at
12 any time?

13 A Upon coming outside.

14 Q Okay, was it more than five?

15 A Looked like it.

16 Q More, more than ten?

17 A I can't tell you where there was more than ten. It was
18 just a lot of people.

19 Q All right, a lot of people. So, Clevon's having a lot of
20 trouble with a lot of people?

21 A No, Clevon's having trouble with one person, well ---

22 Q But there's a lot of people around him?

23 A Yes.

24 Q All right, and your boyfriend, he didn't get involved in
25 that at all; did he?

Latashia McKenzie - Cross by State

191

1 A I can't tell you that.

2 Q You were with him the whole night, why can't you tell me
3 that?

4 A Because of the fact that I didn't see him like arguing
5 with anybody.

6 Q You didn't see your boyfriend argue with anyone?

7 A No.

8 Q You didn't see him go stand with his cousin or anything
9 like that?

10 A I seen him go stand with his cousin, but I did not see
11 him arguing with anyone.

12 Q Okay, so, you saw him go stand with his cousin?

13 A Yes.

14 Q Did you go stand next to him while he was standing with
15 his cousin?

16 A Yes.

17 Q So, you got in the middle of that circle of guys, too?

18 A I wasn't in the middle.

19 Q Okay, but the cousin was; wasn't he?

20 A He was the part of the argument.

21 Q Okay, and your boyfriend, he was also - he stood next to
22 his cousin; right?

23 A Yes.

24 Q And you were standing next to him?

25 A Yes.

1 Q But you weren't in the middle of that?

2 A No.

3 Q Okay, all right, so, basically you all come out of the
4 bar and according to you kind of all peacefully want to get in
5 the car and leave?

6 A Yes.

7 Q All right, so, you all go, get in the car and prepare to
8 leave and then you're shocked when a car comes in behind you?

9 A A officer's car.

10 Q An officer's car comes in behind you.

11 A Yes.

12 Q All right, and that was the first time you saw any
13 police; right?

14 A Yes.

15 Q All right, but you know that there was another officer on
16 scene earlier; right, because this officer is on foot standing
17 outside when the other officer comes behind you; right?

18 A No, I do not know that.

19 Q You don't remember. Well, there, there was another
20 officer out there; right?

21 A Okay.

22 Q Yes or no, ma'am.

23 A If you ---

24 Q You're going to have to answer yes or no, I'm sorry, for
25 the record.

Latashia McKenzie - Cross by State

193

- 1 A Oh, I didn't know that was a question.
- 2 Q There was another officer out there; right?
- 3 A Was there another officer out there?
- 4 Q Yes, was there another officer out there?
- 5 A Yes.
- 6 Q Yes, okay, so, we know - we got that there's two officers
- 7 out there. We got one in the vehicle coming up behind you;
- 8 right?
- 9 A I - one in the officer's car, yes ---
- 10 Q Yes, and that was ---
- 11 A --- in the vehicle, yes.
- 12 Q --- that was - and where was that - where was that
- 13 officer's car in relation to your vehicle?
- 14 A In the back of the vehicle.
- 15 Q Okay, so, an officer in a car at the rear of your
- 16 vehicle?
- 17 A Yes.
- 18 Q All right, and there's another officer out there. Did
- 19 you see his car that night?
- 20 A I can't recall.
- 21 Q Okay, you don't remember seeing another police car?
- 22 A I can't recall. I only - I remember seeing the one
- 23 vehicle because I was standing at the vehicle while Mr. Dukes
- 24 was obtained ---
- 25 Q Okay.

1 A --- inside the vehicle.

2 Q But you can't recall seeing another officer's car, a big
3 blue light flashing, car there that night?

4 A No, nope.

5 Q Okay, but you do remember seeing another officer there?

6 A Yes.

7 Q How much you had to drink that night?

8 A A few drinks.

9 Q Were you intoxicated?

10 A Not intoxicated.

11 Q You shouldn't have been driving, I mean, more intoxicated
12 that you shouldn't have been driving a car, to that extent?

13 A No, that's like inebriated.

14 Q Okay, do you - you would have - I mean, so, in your
15 opinion you would not have been so intoxicated that you
16 couldn't have like driven a car or something?

17 A No.

18 Q All right, so, you would - just to clarify, just to make
19 sure we're clear, you would have been okay to drive a car?

20 A Yes.

21 Q All right, what about your boyfriend, how much did he
22 have to drink that night?

23 A Like a couple, a few drinks, also.

24 Q All right, a few drinks also. He's about the same state
25 as you?

Latashia McKenzie - Cross by State

195

1 A Little bit more.

2 Q A little bit more, okay. Was he slurring his speech at
3 all?

4 A No.

5 Q Was he stumbling around or anything like that?

6 A No, he wasn't stumbling.

7 Q Did he have any kind of trouble understanding what you
8 were saying?

9 A No.

10 Q If you asked him to get you something, like grab your
11 purse, would he have done it?

12 A Yes.

13 Q Okay, but he wouldn't have had any trouble following any
14 requests you had?

15 A No.

16 Q All right, and just to clarify, never saw your boyfriend
17 go outside when you were in that bar; right?

18 A Not until we got ready to go, yes.

19 Q Okay, so, when you all got ready to go, but you never saw
20 him go out earlier?

21 A No.

22 Q All right, your friend Ms. MacDowell came in, asked you
23 or told you there was a fight going on out front?

24 A Yes.

25 Q Involving his cousin, Cleland, Clevon, excuse me.

1 A Yes.

2 Q You guys kind of go outside ---

3 A Together.

4 Q --- together.

5 A Yes.

6 Q You and your boyfriend go and stand next to Clevon in
7 this dispute together?

8 A Yes, and ---

9 Q And then you go and get in the car and leave together?

10 A Yes.

11 Q All right, that's your testimony?

12 A Yes.

13 Q All right, that's all the questions I have. Thank you.

14 THE COURT: Hold for a second. Redirect?

15 MS. KNOWLES: Very briefly.

16 THE COURT: All right.

17 REDIRECT EXAMINATION

18 BY MS. KNOWLES:

19 Q Ms. McKenzie, again, tell the jury where you were
20 whenever this fight happened.

21 A I was inside the bar with Mr. Dukes.

22 Q Okay, and he was with you the entire time?

23 A Yes, every time he move, I move.

24 Q Because you were, you testified earlier, you were seated
25 at the bar having a few drinks and you wouldn't really have a

Latashia McKenzie - Redirect by Defense

197

1 reason to leave the situation and go outside; would you?

2 A No.

3 Q And so, when this weapon was discovered, where was Mr.
4 Dukes?

5 A When the weapon was discovered, Mr. Dukes was obtained in
6 the back of the officer's car.

7 Q And it was discovered and retrieved at the same time?

8 A Yes.

9 Q And to your knowledge, what happened outside was only an
10 argument?

11 A Yes, there was no blows or fist fighting or anything like
12 that.

13 Q And did Mr. Dukes not want to leave? Was he combative in
14 any way with you or anyone else with regards to wanting to
15 stay, stay there?

16 A No.

17 Q So, when Ms. McKenzie said, "Hey, let's go," you all were
18 ready to get out of there?

19 A Yes.

20 Q Okay, I have no further questions.

21 THE COURT: All right, you may step down.

22 MS. MCKENZIE: Thank you.

23 THE COURT: Thank you. All right, Ms. Knowles,
24 Defense can call its next witness.

25 MS. KNOWLES: The Defense has no remaining witnesses,

1 Your Honor.

2 THE COURT: All right.

3 All right, ladies and gentlemen, the Defense has now
4 rested their case, so as with the close of the State's case
5 it's now time of the trial where I need to take up some
6 matters of law with the attorneys before we progress. So,
7 I'm going to excuse you back to the jury room and also we've
8 been at it a little while. It'll give you an opportunity to
9 stretch your legs, use the restroom, whatever the case may be.
10 Do not discuss the case even among yourselves at this point in
11 time. Don't conduct any independent investigations and we'll
12 bring you out in just a few minutes. Thank you very much.

13 Everyone else please remain seated while the jury's
14 excused.

15 (Whereupon, the following takes place outside the
16 presence of the jury).

17 THE COURT: All right, any motions at this point in
18 time?

19 MR. SPRATLIN: None on behalf of the State, Your Honor;
20 however, the State does intend to introduce one rebuttal
21 witness.

22 THE COURT: You do? You will be introducing one?

23 MR. SPRATLIN: Yes, sir, just one short rebuttal witness.

24 THE COURT: Okay.

25 MR. SPRATLIN: This officer has already testified.

Motions

199

1 THE COURT: All right, any motions at this time by the
2 Defense?

3 MS. KNOWLES: Your Honor, I think for purposes of the
4 record I have to just restate my earlier motion for a directed
5 verdict.

6 THE COURT: All right, motion's noted. I'm going to
7 deny it. I think that there is sufficient evidence at this
8 point in time to get around a directed verdict.

9 All right, let's take about a five, 10-minute break,
10 then we'll come back and do the reply witness and then we'll
11 ---

12 MS. KNOWLES: Is there any way that we could break for
13 lunch and then do closings?

14 THE COURT: It depends on what time it is. It's only
15 eleven o'clock. So, I don't know if we will or not. It
16 depends on what time. All right?

17 MR. SPRATLIN: Thank you, Your Honor.

18 THE COURT: Let's take about a five or 10-minute
19 break.

20 OFF THE RECORD

21 (On the record. Whereupon, the following takes place outside
22 the presence of the jury.)

23 THE COURT: Thank you very much. Please be seated.
24 Let's go ahead and order the jury lunch. We can get that
25 going.

1 All right, anything from the State before we bring the
2 jury in?

3 MR. SPRATLIN: No, Your Honor.

4 THE COURT: Anything from the Defense?

5 MS. KNOWLES: Not at this time, Your Honor.

6 THE COURT: All right, let's go ahead and bring the
7 jury in.

8 (Whereupon, the following takes place in the presence of
9 the jury.)

10 THE COURT: All right, ladies and gentlemen, welcome
11 back. We're ready to resume the trial of the case. Now's the
12 time of the trial where the State can call a rebuttal witness
13 should they choose to do so. Mr. Spratlin?

14 MR. SPRATLIN: Your Honor, the State would call in
15 rebuttal Officer William Odom to the stand.

16 THE COURT: All right.

17 MR. SPRATLIN: Having already been duly sworn.

18 THE COURT: Well, we'll go ahead and swear him again.

19 Whereupon, William Blake Odom is called to the stand,
20 duly sworn by the clerk and testified as follows:

21 THE CLERK: State your full name and spell your last
22 name.

23 MR. ODOM: William Blake Odom, O-D-O-M.

24 DIRECT EXAMINATION

25 BY MR. SPRATLIN:

William Odom - Direct by State

201

1 Q Officer Odom, let me show you what was just introduced
2 into evidence by the Defense as their exhibit number six. Is
3 that a fair and accurate representation of the back seat of
4 the car as you remember it from that night?

5 A Yes.

6 Q Now, how many times have you seen that car?

7 a One time.

8 Q Just that night?

9 A Uh-huh.

10 Q Okay, if you would ---

11 MR. SPRATLIN: Your Honor, permission to have the witness
12 come off the witness stand?

13 THE COURT: As long as he's standing near the
14 microphone facing the court reporter so she can pick up his
15 testimony.

16 MR. SPRATLIN: Yes, sir, Your Honor.

17 BY MR. SPRATLIN:

18 Q Officer Odom, if you would come stand next to this
19 microphone right here.

20 REPORTER: He doesn't have to face me if he just
21 stands right there in front of that microphone.

22 Q Yes, sir, if you would turn the picture or let me just
23 hold the picture for the jury. If you would, does this
24 picture show the location that you saw the handgun that night?

25 A Yes.

1 Q And if you would please just point on this exhibit where
2 you saw the handgun.

3 A In this general area.

4 Q Was it - which seat was it more under?

5 a The right rear passenger seat.

6 Q All right, and who was seated in that seat again?

7 A The Defendant.

8 Q All right, if you would, you can go back to the witness
9 stand real quick, Mr. - Officer Odom. All right, now, let me
10 ask you about that vehicle. Was it a two door or a four door
11 vehicle?

12 A Two door.

13 Q Two door. Anyone who said it was a four door vehicle
14 would have either been confused or incorrect about that
15 statement?

16 A Yes, sir.

17 Q All right, now, was - was every - prior to you retrieving
18 that handgun, when did you first see that handgun?

19 A Whenever Officer Rhew removed the Defendant out the
20 vehicle.

21 Q All right, and when did you retrieve that handgun?

22 A For officer safety reasons, we retrieved it after the
23 individuals were out the vehicle and then we, you know,
24 secured the handgun.

25 Q Why would you get everyone out of the vehicle before

William Odom - Cross by Defense

203

1 grabbing the gun?

2 A There again, officer safety.

3 Q What, what's particular about officer safety causes you
4 to get everybody out?

5 A So nobody can reach over and grab it.

6 Q All right, thank you. That's all the questions I have
7 right now.

8 THE COURT: All right.

9 Q If you'd answer any questions Ms. Knowles may have.

10 THE COURT: Cross examination?

11 MS. KNOWLES: May I see the picture?

12 MR. SPRATLIN: Yes, the original's up there, Ms. Knowles.

13 MS. KNOWLES: A clear understanding where - was it
14 exhibit?

15 MR. SPRATLIN: It was, it was exhibit number six, Ms.
16 Knowles.

17 CROSS EXAMINATION

18 BY MS. KNOWLES:

19 Q I didn't make it over there in time.

20 A Oh, that's fine.

21 Q So, just tell me where it was that you saw it?

22 A It's in this general area.

23 Q Okay, okay, and you say that it was discovered when my
24 client was being removed from the vehicle by Officer Rhew?

25 A No, it was discovered by me. Officer - he removed your

1 client I kind of stepped in to keep eyes on the driver and the
2 passenger.

3 Q Okay, so, you were keeping eyes on the driver and the
4 passenger.

5 A Uh-huh.

6 REPORTER: Is that a yes?

7 A Oh, I'm sorry, yes, ma'am.

8 Q Okay, but yet you still - even though you were watching
9 them, you saw this weapon in the floorboard?

10 A Plain view, yes, ma'am.

11 Q Okay, and Officer Rhew didn't notice it?

12 A Like he stated to you yesterday, he kept his eyes on him,
13 his hands, his upper body ---

14 Q Uh-huh.

15 A --- for officer safety.

16 Q I don't think I have any more questions. Thank you.

17 A You're welcome.

18 THE COURT: Redirect?

19 MR. SPRATLIN: No further, Your Honor.

20 THE COURT: All right, you may step down.

21 MR. SPRATLIN: Your Honor, the State would at this time
22 rest its rebuttal case.

23 THE COURT: All right.

24 All right, ladies and gentlemen, the State has closed
25 their rebuttal. So, there again, it's time for me to take up

State v. Dukes

205

1 matters of law with the attorneys. I'm going to excuse you
2 back to the jury room for just a few minutes and we'll bring
3 you back out shortly. Thank you very much.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, any motions?

7 MR. SPRATLIN: None on behalf of the State.

8 THE COURT: Any from the Defense?

9 MS. KNOWLES: None at this time, Your Honor.

10 THE COURT: All right.

11 All right, here are my proposed charges. We're going to
12 go straight on in to closing arguments. We'll take a little
13 bit - about a five - probably about a 10-minute break and give
14 you all an opportunity to look over the charges. Then we'll
15 bring the jury back in and do closing arguments.

16 MS. KNOWLES: Because I, I just want to make sure, I
17 have a couple of requests. You have to bear with me.

18 THE COURT: Okay.

19 MS. KNOWLES: This is like only my third trial I've
20 done, so.

21 THE COURT: Okay.

22 MS. KNOWLES: A mere presence charge.

23 THE COURT: Okay, I can add that in, mere presence. I
24 have not got it in there but I will add a mere presence
25 charge. What else?

1 MS. KNOWLES: And a circumstantial evidence charge.

2 THE COURT: I can ---

3 MS. KNOWLES: Or would the charge, the reasonable doubt
4 charge probably would cover that. We just ---

5 THE COURT: I mean, I don't see where there is any
6 circumstantial evidence and matter of fact now, mere presence,
7 that charge states that a person's presence at the scene of a
8 crime is not proof - is not, in and of itself, but here if
9 he's not present and if it's not illegal for anybody to
10 possess the pistol, well, I'm going to go head, I'll put it in
11 there out of precaution. I guess the fact that it was under a
12 floorboard means that the other three could be charged because
13 it wasn't carried in a glove compartment or a trunk like it's
14 supposed to be. So, unless they had a concealed weapons -
15 well, I think even with concealed weapons permit. I don't
16 know how it is, but the fact that it was under a floorboard of
17 a car makes it illegal even for the other passengers.

18 MR. SPRATLIN: Yes, sir.

19 THE COURT: So, I will charge mere presence.

20 MR. SPRATLIN: No objection from the State on that
21 charge.

22 THE COURT: All right.

23 MS. KNOWLES: Okay, so, what we're going to do is I - we
24 need to read this and then we're going to go straight in?

25 THE COURT: Straight into closing arguments.

State v. Dukes

207

1 MS. KNOWLES: Okay.

2 THE COURT: You'll close. Then Mr. Spratlin will
3 close since you called witnesses. Then I'll charge them ---

4 MS. KNOWLES: Could you give, could you just give like
5 ten minutes?

6 THE COURT: Do what?

7 MS. KNOWLES: After I read this, will you give me ten
8 minutes just to gather my thoughts on what was just ---

9 THE COURT: Okay, yeah, that'll be good.

10 MS. KNOWLES: --- testified to?

11 THE COURT: All right, so, I'll add a mere presence
12 charge and after I charge the jury, I'll give you an
13 opportunity to raise any objections at that time as well.

14 MR. SPRATLIN: Yes, sir, Your Honor.

15 THE COURT: Okay.

16 MS. KNOWLES: Okay.

17 THE COURT: All right, let's take about, let's take
18 about a 15-minute recess. That'll give you an opportunity to
19 look over this and then we'll come back; okay?

20 MR. SPRATLIN: Yes, sir.

21 THE COURT: All right.

22 OFF THE RECORD

23 (On the record. Whereupon, the following takes place outside
24 the presence of the jury.)

25 THE COURT: All right, have you had an opportunity to

1 go over the charges and I'll give you an opportunity after
2 charging if you have any additional objections or challenges
3 at that time, but prior to doing opening, excuse me, closing
4 arguments and charges, any challenges from the State?

5 MR. SPRATLIN: No, Your Honor.

6 THE COURT: Any from the Defense?

7 MS. KNOWLES: None, Your Honor.

8 THE COURT: All right, anything from the State before
9 we bring the jury back in?

10 MR. SPRATLIN: No, sir, Your Honor.

11 THE COURT: Anything from the Defense?

12 MS. KNOWLES: No, sir.

13 THE COURT: All right, let's go ahead and bring the
14 jury in. Ms. Knowles, you'll close first and then the
15 State'll close.

16 (Whereupon, the following takes place in the presence of
17 the jury.)

18 THE COURT: All right, ladies and gentlemen, I think I
19 can see everyone. All of the evidence to be presented to you
20 in this case has now been presented to you and now is the time
21 of the case where the attorneys will make their closing
22 arguments. Now, just like their opening statements, these
23 closing arguments are not evidence in this case. It is simply
24 the attorneys' contention as to what they think the evidence
25 in this case has shown and what the law is to be applied in

Closing Argument by Defense

209

1 this case.

2 If at any time during their closing arguments an attorney
3 makes a factual determination that is different from the facts
4 as you find them to be or references the law that is different
5 from the law as I will charge you at the close of their
6 arguments, then you're to disregard their closing arguments or
7 that portion of their closing arguments because as I said,
8 like their opening statements, these arguments are simply the
9 attorneys' opinion as to what they think the evidence in this
10 case has shown to you.

11 All right, Ms. Knowles?

12 MS. KNOWLES: Oh, I'm sorry.

13 Ladies and gentlemen, if there ever was a case riddled
14 with reasonable doubt, it's this one. The burden of proof
15 here rests on the shoulders of the State. It's a significant
16 burden because someone's freedom is at stake. The State must
17 prove beyond a reasonable doubt that my client was in
18 possession of this weapon. The evidence that they provided
19 comes nowhere close to meeting this burden.

20 Let's take a moment and look at what they've presented.
21 The first witness that was called was Mr. Owens. He testified
22 that he was the one that called in the complaint. He first
23 said that he saw two men retrieve weapons from the car and
24 then he said it was only one, claimed he was so shaken up by
25 what he had seen, but when Officer Odom arrived, he never ran

1 up to him to tell him what happened. Officer Odom had to find
2 Mr. Owens. He admitted on direct examination that it was dark
3 outside when he saw all of this take place. He was there on
4 duty looking for the person that had called for a cab when he
5 claims he saw all of this happen.

6 Now, the second witness that they called was Officer
7 Odom. Officer Odom responded to the scene for a fight in
8 progress. Upon arrival he noticed a large crowd of people
9 gathered. He testified 15 to 20 people. Initially he
10 testified that none of them were willing to cooperate, but he
11 later admitted upon reviewing his report that he did speak
12 with some members of that crowd and that they gave different
13 stories about what had happened; however, their stories were
14 never recorded or noted in his file in the information that
15 was provided to me. He never once mentioned this in his
16 report. So, therefore, we do not have the benefit of knowing
17 what they witnessed. Testified that Mr. Owens was not the
18 first person that he spoke to, but it was some other man, some
19 other man that we haven't heard from.

20 He also admitted that there were several black males with
21 dreads which was - when, when he arrived on the scene which
22 was the exact description of the suspect. He never once spoke
23 to any of the bar employees and he never requested a copy of
24 the surveillance video that he knew the bar possessed. He saw
25 this weapon under the passenger seat as he was covering or

Closing Argument by Defense

211

1 watching the other individuals in the car. I don't know how
2 you can do two things at once, but apparently he can.

3 Now, next we have Officer Rhew, who was the assisting
4 officer, and he did not speak to anyone at the scene. He
5 relied mostly on what Odom had told him, taking my client out
6 of the car, but never seeing a weapon whenever he did this,
7 and you heard the testimony here today from the witnesses that
8 I produced that the car light was illuminated, that this
9 weapon should have been clearly visible when my client was
10 removed from the vehicle.

11 He testified that the car was a four-door vehicle, but we
12 now know that it's not a four-door vehicle. It's a two-door
13 car. He denied that the front passenger seat had to be pushed
14 forward to get my client out. We now know that to be a
15 misstatement, and he admitted that there was a front seat
16 passenger and that there were four occupants in the vehicle.

17 And last, the State called Investigator Caulder, and he
18 was the one responsible for processing this weapon for prints.
19 What were the results? No viable prints found. However, you
20 heard Officer Odom testify that he was the one that retrieved
21 this weapon and he did so without gloves. So, you would think
22 that at, at the very least his prints would be on the weapon,
23 but most importantly my client's prints were not found on that
24 weapon and that is a key element in this case. The State must
25 prove that my client was in possession of that weapon and

1 there were no fingerprints found belonging to him.

2 The State's evidence consists of conflicting witness
3 testimony, very little investigation by officers, no prints at
4 all, none belonging to my client most importantly discovered
5 on the weapon, and as I stated in my opening statement, we've
6 stipulated to the fact that Mr. Dukes has a prior conviction.
7 This was something that happened when he was a very young man
8 and it was years ago. He's not the same man that he was back
9 then and just because somebody got into some trouble when they
10 were young and they made a mistake doesn't mean that they
11 can't change and Mr. Dukes has changed. He is a family man
12 now and he is not guilty of what the crime - of what the State
13 is alleging here. He is not guilty of this crime and we would
14 ask that you so find. Thank you very much.

15 THE COURT: All right, Mr. Spratlin?

16 MR. SPRATLIN: Thank you, Your Honor.

17 Ladies and gentlemen of the jury, I want to thank you for
18 your time and service here today. I know that everybody has
19 somewhere else they'd rather be, but I appreciate you sitting
20 here and I appreciate you listening to all the evidence we
21 presented and I hope that at the very least you learn
22 something from today and maybe you'll take that with you home
23 and, you know, have a story to tell everybody.

24 I think it's important for me to tell you a little bit
25 about the law before I get specifically into the facts of this

Closing Argument by State

213

1 case because the law's a part of this case and in a second the
2 Judge is going to charge you on the law. The State, Ms.
3 Knowles correctly stated that the Defendant is presumed
4 innocent. He walks into this courtroom presumed innocent.
5 What that means is I want you to - everybody's seen the lady
6 holding the set of scales called Lady Justice, basically
7 holding the scales of justice, guilty not guilty. When the
8 Defendant walks into the courtroom the scales are tipped to
9 not guilty; however, ladies and gentlemen, the burden's on the
10 State to come in here and present enough evidence to not only
11 get the scales even, get them almost tipped all the way the
12 other way. Now, I said almost because the State has to prove
13 the Defendant guilty beyond a reasonable doubt. Now, that's
14 not, as the Judge is going to tell you in a minute, beyond all
15 doubt. Very few things in this world you can know with
16 absolute, 100 percent certainty. The Defendant's guilt
17 doesn't have to be one of those things. Rather you need to be
18 firmly and strongly convinced of the Defendant's guilt by
19 looking at the evidence as it was presented to you here today.

20 Now, the Judge is also going to tell you about
21 credibility. Credibility is probably one of my favorite
22 things about having jury trials because it's something that
23 you guys do every single day without even realizing it. Every
24 day someone tells you a story. Every day someone tries to
25 sell you an item. Every day someone tries to come up and talk

1 to you and you use your experience. You use your common
2 sense, your knowledge that you bring into this courtroom which
3 is why we have jurors in the first place anyway, ladies and
4 gentlemen, but you are the ones who tell or look at the
5 credibility of the witnesses and decide who's telling the
6 truth, who has a motive to lie, who has a motive to shade the
7 truth, who's answering the questions honestly, who's trying to
8 hide the ball, who's over-thinking their answers. That's what
9 you do, and in doing that you decide what weight if any you're
10 going to give to a witness's testimony. Don't over-think that
11 because, ladies and gentlemen, that's something you do every
12 day. You're experts at it. That's why you're here.

13 Now, let me talk to you a little bit about credibility of
14 the witnesses and just talking a little bit about what Ms.
15 Knowles brought up about some of the inconsistencies you've
16 seen here today. I'm not going to lie to you, there has been
17 a couple of inconsistencies, minor inconsistencies, not the
18 large inconsistency that would cause you to have a reasonable
19 doubt. You're - all of you are going to experience this in a
20 minute. When you go back into that witness [sic] room,
21 there's no doubt in the world that all 12 of you, 13 of you,
22 excuse me, sir, the alternate, you all are all sitting in here
23 in court and you have all seen the exact same thing. You all
24 are going to remember it a little differently. Some of you
25 maybe remember Corporal Rhew saying this, some of you may

Closing Argument by State

215

1 remember Corporal Rhew saying that. Some of you may think
2 Odom said something. Some of you may think Odom said
3 something else. You all saw the same thing, but may have
4 little, little inconsistencies. You're going to remember the
5 big things. You're going to remember the big important
6 things, but the little details may get lost as you each tell
7 your side of what you saw.

8 That's what you've seen here today. Did Corporal Rhew
9 say it was a four-door vehicle? Yeah, he did, but was it a
10 two-door vehicle? Yes, it was. Does that matter? No,
11 because what's consistent? Look at what's consistent. No one
12 challenges that that gun, well, no one challenges that that
13 gun was at that Defendant's feet. The only way you can
14 believe that gun was not at the Defendant's feet is if one of
15 the officers or both of the officers are lying first off and
16 that they put that gun there. If you want to believe that
17 Corporal Rhew or Officer Odom would jeopardize their careers
18 over a gun charge, well, then so be it. I can't tell you
19 anything else on that, ladies and gentlemen, except that I
20 submit to you that would not make a whole lot of sense. That
21 gun was found at his feet. I think you all, I'm pretty sure
22 that you all know that, that that gun was found at his feet.

23 Now, how did the State get it from his feet to his hands?
24 If all I had was that gun being found at his feet in the car
25 with three other people, we wouldn't be here today. If that

1 was all I had, we would not be having a trial on this case,
2 but that's not all we have. We have Sammy Owens. You heard
3 Sammy Owens. You saw him testify. You heard the way he
4 responded to my questions. You heard the way he responded to
5 Ms. Knowles' question. If you think Mr. Owens was trying to
6 hide anything from you then you go back there and find the
7 Defendant not guilty, but I submit to you Mr. Owens was not
8 trying to hide a thing from you. Mr. Owens doesn't have a dog
9 in this fight. He doesn't know the Defendant. He doesn't
10 know the officers. He's a cab driver working that night.
11 He's simply on duty going to pick up a fare, something he does
12 all the time as he told you. He's there waiting to pick up
13 his fare. He sees the Defendant and another individual who I
14 submit to you is the man who didn't come into court today, the
15 fiancé of Ms. MacDowell, go to a vehicle, saw the Defendant
16 get a gun. Told you he couldn't really tell what the - there
17 was some confusion on that. Maybe it wasn't exactly clear
18 what he was saying when he was answering my questions about
19 two men going and getting the gun, but what was sure clear
20 is when Ms. Knowles was asking him questions it was clear
21 that he didn't see what the other guy got. He just saw that
22 man, a heavy set black male with dreads, with dreads, walking
23 with a gun, walking as far away from him as he said Ms. Grace
24 is from the witness stand and says when he saw him walk by,
25 saw him put that gun in the back of his pants, said it was a

Closing Argument by State

217

1 handgun, said that could be the gun. He didn't get a good
2 enough look at it to say. If he was lying I guarantee you he
3 would have said, "Yeah, that's the gun. I'm sure of it," but
4 he's not lying. He's telling the truth. He's telling the
5 truth because he has no reason not to.

6 Let's talk about the officers' testimony, no major
7 inconsistencies. If you think for one second any of those
8 officers that testified today were trying to hide something
9 from you, again, not guilty, but they weren't and you know
10 that because you're the judge of their credibility. You saw
11 the way they answered my questions. You saw the way they
12 answered Ms. Knowles' questions and that's the most important
13 thing, is not just the way they answered my questions but how
14 they responded to hers. Were they trying to hide something or
15 were they trying to answer the questions as best they could?
16 I submit to you, ladies and gentlemen, they were trying to
17 answer the questions as best they could and the story that
18 they both told is, "Got a call, knew there was a weapon
19 involved, may have been about a fight, may have been about a
20 weapon, man with a gun, but when both of them arrived on
21 scene, they knew there was a weapon involved somehow."

22 Officer Odom says he walks up to a large group of people,
23 talks to a couple of people. Nobody's being real helpful.
24 Some guy named Leonard Lewis who Officer Odom told you he has
25 no idea where he is now, sometimes people just disappear,

1 ladies and gentlemen, sometimes they go away, but he tells you
2 that Leonard Lewis came up to him said, "The guy's over in
3 that car." Gives a description that matches the Defendant.
4 He told you that after that Sammy Owens, the cab driver, comes
5 up to him basically says the same thing, tells him he saw, he
6 went to that car.

7 Now, ladies and gentlemen, Corporal, I mean, Officer Odom
8 did say that there were other men, other black males with
9 dreads in the crowd that day. There were no other black males
10 with dreads in the crowd that day that were also in that
11 Blazer. That was just the Defendant.

12 What does, what does Officer Odom do? Well, goes to the
13 vehicle, tells her to stop. Now, according to the witnesses
14 that Ms. Knowles called today, Ms. McKenzie and McDonald
15 [sic], they stopped immediately. You heard the officers
16 testify that they didn't stop immediately. They had to tell
17 them several times, "Turn off the car. Turn off the car," but
18 the did finally stop. They didn't back up partially because I
19 submit to you as one they testified to Corporal Rhew was
20 blocking them in. Officers, for officer safety, started
21 getting people out because they think there's a gun in that
22 car. Yeah, they got out the front seat passenger first and
23 then they get out Mr. Dukes.

24 Mr. Dukes was, according to the witnesses as we heard
25 today, two witnesses Ms. Knowles called, the Defense

Closing Argument by State

219

1 witnesses, Mr. Dukes wasn't fall down drunk. He was
2 responding. He, he was not stammering on his feet. He was in
3 general acting very composed. What did he do when the officer
4 asked him to get out of the car the first time? He didn't get
5 out. What did he do when the officer asked him to get out the
6 second time? He didn't get out. What did he do when the
7 officer asked him to get out of the car the third time? He
8 started thinking about it and moving, I think Officer Odom
9 said or Corporal Rhew said. I'm not sure exactly which one
10 said it, but what did he - it was the fourth time officers
11 asked him to get out of that vehicle that he finally got
12 hisself out of that car, and when he got out, ladies and
13 gentlemen, that's when Officer Odom saw that gun. Why didn't
14 Officer Odom see it before? Mr. Dukes was hiding it. That's
15 the easy answer and that's the correct answer I submit to you
16 all. You can't see something if someone has their foot on it.
17 Can't see something if someone has it shoved under their seat
18 covering it with their legs, but you can sure see it when that
19 person gets out and you see it sitting right there, and ladies
20 and gentlemen, just briefly on the last witness we called,
21 Investigator Caulder, I want to talk to you a little bit.
22 It's not so prevalent anymore, but there used to be a show on
23 television, I think it's still there, but I honestly don't
24 know, but Criminal - Crime Scene Investigation, CSI, and
25 everybody's probably seen one of those episodes or one of

1 those shows, NCIS, I think is, is one now where you have this
2 lab that can do magic, basically. They can take a little
3 image and blow it up and make it crystal clear. It can get
4 fingerprints off of something that was buried in a coffin 200
5 years ago. That's not reality.

6 Investigator Caulder told you he couldn't get any prints
7 off that gun. He couldn't get the Defendant's prints off the
8 gun. We don't deny that. We don't deny that he could not get
9 the Defendant's prints off the gun. He also couldn't get
10 William Odom's prints off that gun. Who do we know touched
11 that gun? Who do we know picked this gun up and handled it?
12 Who do we know? William Odom, with no doubt, we know that
13 beyond all doubt because he sat here and told you and we
14 couldn't even get a print of him off this gun. The lack of
15 fingerprints as Investigator Caulder told you does not mean
16 someone didn't handle the weapon. He told you just the
17 opposite. He told you it could mean that a whole lot of
18 people handled that weapon, a whole lot of people in a car
19 could have handled that weapon. A whole lot of people before
20 could have handled that weapon. We don't know, but we know we
21 can't get a print but, ladies and gentlemen, don't need a
22 fingerprint. When you have an eyewitness and you have the gun
23 at his feet you don't need a fingerprint.

24 I told you at the beginning, ladies and gentlemen, this
25 was not going to be a difficult case and it's not. The

Closing Argument by State

221

1 Defense stipulated, which means they basically admitted that
2 the Defendant has a conviction for a violent felony. He's not
3 allowed to possess a firearm. He's not allowed to carry a
4 firearm. He's not allowed to hold one, stuff in his jacket,
5 walk in there. If his cousin was about to lose a fight he's
6 not allowed to come pull that handgun out and stop that fight.
7 He's not allowed to possess a firearm for any purposes. If
8 you have any sympathy for him, I'm not saying you do, but if
9 you do that's also not why you're here. Ladies and gentlemen,
10 the question, the only issue for you is whether or not he
11 possessed the firearm and the evidence today has shown that
12 and he's a convicted felon, a violent felon, excuse me, and he
13 is not allowed to possess that firearm. Maybe he thought he
14 was doing the right thing. Maybe he thought, "My cousin's
15 about to get jumped by six people, I got to go get a gun," or
16 maybe if the cousin was with him he thought, "Man, now, these
17 guys have been disrespecting us. Let's go get our guns, show
18 them we mean business." I don't know, but what I do know is
19 he went and got a gun. Do you want to know what also kind of
20 confirms that for me in my head, heated argument, his cousin's
21 having a heated argument, six people surround him. How does
22 it resolve itself so easily? "Back up," that's how it
23 resolves itself so easily. That's how everybody dispersed.
24 That's how they were able to walk away from this fight. It's
25 a simple case, ladies and gentlemen. The fact that they

1 stipulated that he's a person convicted of a crime of violence
2 means that all you guys decide is if he had a gun and that's a
3 simple question for you and there are simple facts here from
4 which you need to determine that and now you have a simple
5 decision to make, did the Defendant possess a firearm and I
6 submit to you based on the evidence you've seen today you can
7 find no other verdict than he did and if he did he's guilty.
8 Thank you, ladies and gentlemen, I appreciate your time.

9 THE COURT: Can we move this easel, please?

10 MR. SPRATLIN: Yes, sir, Your Honor.

11 THE COURT: Thank you.

12 MR. SPRATLIN: Would you like me to move the podium as
13 well?

14 THE COURT: Well, let me move that. No, I can see
15 fine. Thank you.

16 All right, ladies and gentlemen, all of the evidence has
17 been presented to you in this case, the attorneys have made
18 their closing arguments and now is the time of the trial when
19 I will charge you with the law to be applied in this case.

20 Now, the indictment in this case, this is the indictment,
21 it charges the Defendant with unlawful possession of a pistol.
22 I remind you that the fact that the Defendant was arrested,
23 charged and indicted in this case is not evidence in this case
24 and cannot be considered by you as evidence of guilt in this
25 case, nor does the Defendant's arrest, charge or indictment

Charge

223

1 create any presumption or inference of guilt. This document
2 is simply the formal written instrument which contains the
3 charge made against the Defendant. It is the formal document
4 by which this case is brought into this court.

5 The Defendant has pled not guilty to this indictment and
6 that plea puts the burden on the State to prove the Defendant
7 guilty. A person charged with committing a criminal offense
8 in South Carolina is never required to prove his innocence.
9 I charge you that an important rule of the law is that the
10 Defendant in a criminal trial, no matter what the seriousness
11 of the charge may be, will always be presumed to be innocent
12 of the crime for which the indictment was issued unless guilt
13 has been proven by evidence satisfying you of that guilt
14 beyond a reasonable doubt. This presumption of innocence does
15 not end when you begin your deliberations but it accompanies
16 the Defendant throughout the trial until you reach a verdict
17 of guilt based on evidence satisfying you of that guilt beyond
18 a reasonable doubt.

19 The presumption of innocence is like a robe of
20 righteousness placed about the shoulders of the Defendant
21 which remains with the Defendant until it has been stripped
22 from the Defendant by evidence satisfying you of the
23 Defendant's guilt beyond a reasonable doubt. The presumption
24 of innocence is not a mere legal theory. It is not just a
25 legal phrase. It is a substantial right to which every

1 Defendant is entitled unless you, the jury, are satisfied from
2 the evidence of the Defendant's guilt beyond a reasonable
3 doubt.

4 Now, what is a reasonable doubt in the law? A reasonable
5 doubt is the kind of doubt that would cause a reasonable
6 person to hesitate to act. Proof beyond a reasonable doubt is
7 proof that leaves you firmly convinced of the Defendant's
8 guilt. We know very few things in this world with absolute
9 certainty and in criminal cases the law does not require proof
10 that overcomes every possible doubt. If based on your
11 consideration of the evidence you are firmly convinced that
12 the Defendant is guilty of the crime charged, you must find
13 the Defendant guilty. If on the other hand you think a real
14 possibility exists that the Defendant is not guilty you must
15 give the Defendant the benefit of that doubt and find the
16 Defendant not guilty.

17 I remind you that during this trial you and I have
18 certain duties to perform. As the trial judge my
19 responsibility is to preside over the trial of this case. I
20 also have the duty to rule on the admissibility of evidence
21 offered during this trial. You are to consider only the
22 competent evidence before you. If any testimony was ordered
23 stricken from the record in this case during this trial you
24 must disregard that testimony. You are to consider only the
25 testimony which has been presented from the witness stand, any

Charge

225

1 exhibits which have been made a part of the record in this
2 case and any stipulations of counsel.

3 I have the additional duty to charge you the law
4 applicable to this case. As the presiding judge I am the sole
5 judge of the law of this case. Your duty as jurors is to
6 accept and apply the law as I now state it to you. If you
7 already have an idea as to what the law is or what the law
8 ought to be and your idea is different from what I now tell
9 you the law is, you must disregard your idea of what the law
10 is or ought to be because you are sworn to accept the law and
11 apply the law exactly as I state it to you.

12 In every case tried in this court before a jury, the jury
13 is the sole and exclusive judge of the facts in a case. A
14 trial judge cannot intimate, state, comment on or make any
15 statement to a trial jury about the facts in a case. Since
16 you, the jury, are the sole judge of the facts in this case,
17 you are not to infer from what I have said during the progress
18 of this trial in ruling upon the admissibility of evidence or
19 otherwise or anything that I say now during the course of this
20 instruction to you that I have any opinion about the facts in
21 this case. The law does not allow me to have an opinion about
22 the facts in this case. This is a matter solely for you, the
23 jury, to determine. As jurors it is your duty to determine
24 the effect, value, weight and truth of the evidence presented
25 during this trial.

1 Necessarily, you must determine the credibility of
2 witnesses who have testified. Credibility simply means
3 believability. Your duty as jurors is to analyze and to
4 evaluate the evidence and determine which evidence convinces
5 you of its truth. In determining the believability of
6 witnesses who have testified in this case, you may believe one
7 witness over several witnesses or several witnesses over one
8 witness. You may believe a part of the testimony of a witness
9 and reject the remaining part of the testimony of that same
10 witness. You may believe the testimony of a witness in its
11 entirety or reject the testimony of a witness in its entirety.
12 You may consider whether any witness has exhibited to you any
13 interest, bias, prejudice or other motive in this case. You
14 may also consider the appearance and manner of a witness while
15 on the witness stand.

16 The rules of evidence ordinarily do not permit witnesses
17 to testify to opinions or conclusions. An exception to this
18 rule exists for witnesses we call expert witnesses. A witness
19 who by education and experience has become expert in some art,
20 science, profession or calling may state an opinion as to
21 relevant and material matter in which the witness claims to be
22 an expert and may also state the reasons for that opinion.
23 You should consider any expert opinion received in evidence in
24 this case and like any other evidence give it the weight you
25 think it deserves. If you decide that the opinion of an

Charge

227

1 expert witness is not based on sufficient education and
2 experience or if you conclude that the reasons given in
3 support of the opinion are not sound or that the opinion is
4 outweighed by other evidence, you may disregard the opinion
5 entirely. An expert witness's testimony is to be given no
6 greater weight than that of any other witness simply because
7 the witness is an expert. Further, you are not required to
8 accept an expert's opinion, even though it is not
9 contradicted.

10 I instruct you and emphasize that the fact that the
11 Defendant did not testify is not a factor to be considered by
12 you in any way in your deliberations and in your consideration
13 of the question of the guilt or the innocence of the
14 Defendant. The Defendant's failure to testify must not be
15 considered by you in any manner whatsoever. A Defendant has
16 the constitutional right to remain silent and the assertion of
17 this right must not be considered by you in your
18 deliberations. I repeat, under your oath you are to draw no
19 conclusion whatsoever from the fact that the Defendant in this
20 case did not testify. The fact that this Defendant did not
21 testify should not even be discussed in the jury room. The
22 burden of proof, as I have stated to you, is on the State.
23 The Defendant is not required to prove his innocence. The
24 burden of proof remains on the State to prove guilt beyond a
25 reasonable doubt.

1 An issue in this case is the identification of the
2 Defendant as the person who committed the crime charged. The
3 State has the burden of proving identity beyond a reasonable
4 doubt. You must be satisfied beyond a reasonable doubt of the
5 accuracy of the identification of the Defendant before you can
6 convict the Defendant.

7 Identification testimony is an expression of belief or
8 impression by a witness. You must determine the accuracy of
9 the identification of the Defendant. You must consider the
10 believability of each identification witness in the same way
11 and as any other witness. You may consider whether the
12 witness had an adequate opportunity to observe the offender at
13 the time of the offense. This will be affected by things like
14 how long or short a time was available, how far or close the
15 witness was, the lighting conditions and whether the witness
16 had the chance to see or know the person in the past. Once
17 again, I instruct you the burden of proof is on the State and
18 it extends to every element of the crime charged, and this
19 specifically includes the burden of proving beyond a
20 reasonable doubt the identity of the Defendant as the person
21 who committed the crime. If after examining the testimony you
22 have a reasonable doubt as to the accuracy of the
23 identification, you must find the Defendant not guilty.

24 The Defendant is charged with unlawful possession of a
25 pistol. Under state law it is unlawful for a person who has

Charge

229

1 been convicted of a crime of violence in any court of the
2 United States, the several states, commonwealths, territories,
3 possessions or the District of Columbia or who is a fugitive
4 from justice or a habitual drunkard or a drug addict or who
5 has been adjudicated mentally incompetent to possess or
6 acquire handguns within this state.

7 The Defendant stipulates that he has been convicted of a
8 crime of violence and by law cannot possess a pistol. You may
9 accept this stipulation as a fact in this case. In other
10 words the State is not required to prove facts to which the
11 Defendant has stipulated. However, the Defendant's prior
12 conviction is not evidence that he possessed a pistol in this
13 case and cannot be considered by you as to whether or not he
14 possessed a pistol in this case. It is only a stipulated
15 acknowledgment by the Defendant that by law he cannot have a
16 pistol in his possession.

17 Mere presence at the scene is not sufficient to prove
18 someone guilty of a crime. A Defendant's presence where a
19 crime is being committed or mere association with a person who
20 commits a crime does not make a Defendant an accomplice or an
21 aider or abetter of the person committing the crime. The
22 burden is on the State to prove every element of the crime
23 charged. If you find after reviewing all of the evidence that
24 the State has proved that the Defendant was only present at
25 the scene and that they have not proved beyond a reasonable

1 doubt any other participation in the crime then you must find
2 the Defendant not guilty. The law is that proof at the scene
3 of a crime is not sufficient to find someone guilty.

4 Now, there are two possible verdicts which you may find
5 in this case, guilty or not guilty. No significance
6 whatsoever is to be given to the order in which I stated these
7 possible verdicts to you. I simply had to advise you of one
8 first and one second. Ladies and gentlemen, your verdict must
9 be a unanimous one. Ms. Quinn, when the jury reaches a
10 verdict as foreperson you will write that verdict underneath
11 the verdict portion of the indictment, sign your name, date it
12 and then knock on the door and advise the bailiff that the
13 jury has reached a verdict.

14 Now, I'm going to excuse you back to the jury room, but
15 please do not discuss this case until you are told to do so by
16 the bailiff. I need to check with the attorneys to see if
17 they have any additional charges that I need to give you. If
18 they do have any additional charges and I deem that I need to
19 give them to you I'll bring you back in the courtroom and give
20 them to you at that time. If not we'll send the exhibits with
21 the indictment back to the jury room and the bailiff will
22 instruct you that you can begin your deliberations.

23 Now, we've ordered lunch for you. So, you will have
24 lunch. If it's not here yet it will be coming shortly. When
25 lunch arrives if it's not here it's up to you as to what you

Charge

231

1 want to do regarding your deliberations. If you want to stop
2 your deliberations, eat lunch and then resume your
3 deliberations when you finish lunch you can do that. If you
4 want to deliberate while you eat lunch you can do that. The
5 only requirement is that everybody must do the same thing. If
6 anyone stops deliberations to eat lunch then all must stop.
7 If everybody wants to continue you can continue but you can't
8 have part of the jury deliberating while other jurors do not
9 deliberate. So, that'll be a joint decision that you'll all
10 have to make.

11 I'm going to excuse you back to the jury room at this
12 time, but please do not begin deliberations until you're
13 instructed to do so. Everyone else please remain seated while
14 the jury is excused.

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right, any challenges or exceptions to
18 the jury charge by the State?

19 MR. SPRATLIN: No, sir, Your Honor.

20 THE COURT: Any by the Defense?

21 MS. KNOWLES: None, Your Honor.

22 THE COURT: All right, let's make sure that we've got
23 all of the exhibits up here.

24 MR. SPRATLIN: Yes, sir, Your Honor, would you like to
25 send the entire gun back at once or would you rather keep the

Charge

232

1 bullets and the gun separate? It's secured and locked.

2 THE COURT: As long as it's secured and locked we'll
3 send, they're all exhibits and we'll send them all back there.

4 (Exhibits reviewed and approved by counsel for State and
5 Defense.)

6 THE COURT: All right, and there's the - that's the
7 indictment and when you take those back you can tell them they
8 can begin their deliberations but I'll need you to bring Mr.
9 Leonard, the alternate out.

10 MR. SPRATLIN: Your Honor, may we also send some gloves
11 back? The gun has been processed. So, there is fine powder
12 on it, black powder ---

13 THE COURT: Yeah.

14 MR. SPRATLIN: --- that will spread to all of their hands
15 if they touch it, so.

16 THE COURT: Any objection, Ms. Knowles?

17 MS. KNOWLES: Hopefully they won't want to touch it, but
18 ---

19 THE COURT: They may want to.

20 MS. KNOWLES: If they do, yeah, I don't have any
21 objection.

22 MR. SPRATLIN: And Your Honor, perhaps to let the bailiff
23 also just be allowed to inform them that it has been processed
24 and there is powder on it so they could put their gloves on if
25 that would be appropriate.

Charge

233

1 THE COURT: No, just send the exhibits back.

2 MR. SPRATLIN: Yes, sir.

3 THE COURT: We'll do that if ---

4 MR. SPRATLIN: So, no gloves?

5 THE COURT: No gloves.

6 MR. SPRATLIN: Your Honor, may we - has the jury form

7 gone back, too, the verdict form?

8 THE COURT: I just sent the indictment back for them

9 to - I'm just going to let her write on the indictment ---

10 MR. SPRATLIN: Yes, sir.

11 THE COURT: --- since it's not a lesser included

12 offense. It's just a guilty or not guilty. I'm going to let

13 her put that on the indictment.

14 MR. SPRATLIN: Yes, sir, Your Honor.

15 (Alternate discharged by Court.)

16 THE COURT: All right, anything from the State before

17 we recess?

18 MR. SPRATLIN: No, Your Honor.

19 THE COURT: Anything from the Defense?

20 MS. KNOWLES: Nothing, Your Honor.

21 THE COURT: All right, we'll stand in recess until and

22 unless we hear a verdict from the jury, okay, all right.

23 Thank you very much.

24 MR. SPRATLIN: Yes, sir, Your Honor.

25 (Deliberations begin at 12:32 p.m.)

Question from Jury

234

1 OFF THE RECORD

2 (On the record. Question from jury at 1:20 p.m. Whereupon,
3 the following takes place outside the presence of the jury.)

4 THE COURT: All right, the jury has sent in a note.
5 It says, "We, the jury, request the cab driver, Mr. Sammy
6 Owens' testimony and the police report from April 14th, 2012,"
7 signed by Robin Quinn. I think we can play back the testimony
8 but the police report's not in evidence. So, I'm just going
9 to tell them that - I'll just bring them in, tell them we can
10 play the report [sic], the report's not in evidence and ---

11 MR. SPRATLIN: Your Honor, the State would just ask that
12 the testimony in full be played, direct and cross.

13 THE COURT: Yeah, the entire testimony will be played
14 of Mr. Owens, yeah.

15 MR. SPRATLIN: Yes, sir.

16 THE COURT: All right, anything further from the
17 State?

18 MR. SPRATLIN: No, sir.

19 THE COURT: All right, anything further from the
20 Defense?

21 MS. KNOWLES: No, sir.

22 THE COURT: Okay, all right, let's go ahead and bring
23 the jury in. I'm going to go ahead and mark this as Court's
24 Exhibit what?

25 REPORTER: Three.

Question from Jury

235

1 THE COURT: Three.

2 MR. SPRATLIN: No objection from the State.

3 (Whereupon, Court's Exhibit Number [Question from Jury]
4 appropriately marked.)

5 (Whereupon, the following takes place in the presence of
6 the jury. Jury enters courtroom at 1:35 p.m.)

7 THE COURT: All right, ladies and gentlemen, welcome
8 back. I understand the jury had a request. Number one is to
9 hear Mr. Owens' testimony again, and we've got that prepared
10 and we'll play that back for you in its entirety. The other
11 request was to review the police report. Now, the police
12 report is not in evidence, and therefore, is not to be
13 considered by the jury. So, you're not going to be able to
14 review the police report, but you are going to be allowed to
15 listen to Mr. Owens' testimony again, okay. All right, if you
16 cannot hear please raise your hand so that we can make sure
17 everybody can hear the testimony.

18 (Whereupon, testimony of Sammy Owens replayed in open
19 court.)

20 THE COURT: All right, ladies and gentlemen, that's
21 the testimony of Mr. Owens. I'm going to ask you to resume
22 your deliberations back in the jury room. Thank you very
23 much.

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

Verdict

236

1 THE COURT: All right, anything further from the
2 State?

3 MR. SPRATLIN: No, sir, Your Honor.

4 THE COURT: Anything from the Defense?

5 MS. KNOWLES: Nothing, Your Honor.

6 THE COURT: All right, we'll stand in recess until we
7 hear something.

8 OFF THE RECORD

9 (On the record. Verdict reached at 2:18 p.m. Whereupon, the
10 following takes place outside the presence of the jury.)

11 THE COURT: Thank you very much. Please be seated.

12 All right, I understand the jury has reached a verdict;
13 is that correct?

14 OFFICER: Yes, sir.

15 THE COURT: All right, anything from the State before
16 we bring the jury in?

17 MR. SPRATLIN: No, sir, Your Honor.

18 THE COURT: Anything from the Defense?

19 MS. KNOWLES: Nothing.

20 THE COURT: All right, let's go ahead and bring them
21 in.

22 (Whereupon, the following takes place in the presence of
23 the jury.)

24 THE COURT: All right, Ms. Quinn, I understand the
25 jury has reached a verdict in this case; is that correct?

Verdict

237

1 MS. QUINN: We have, Your Honor.

2 THE COURT: All right, have you filled in that verdict
3 on the indictment and signed your name to it?

4 MS. QUINN: We have.

5 THE COURT: All right, if you'd please hand the
6 indictment to the bailiff.

7 (Complies with request and Court reviews.)

8 THE COURT: All right, I'll ask the Defendant to
9 please stand while the Clerk of Court gives the verdict.

10 THE CLERK: Indictment number 2012-GS-26-2341, the
11 State of South Carolina, County of Horry versus Verntirell
12 Jerwon Dukes, on the charge of unlawful possession of a pistol
13 we, the jury, by unanimous consent find the Defendant guilty,
14 dated October 5th, 2012, signed by foreperson, Robin Quinn.

15 Ladies and gentlemen of the jury, if this is your verdict
16 so signify by raising your right hand.

17 (All jurors raise hand.)

18 THE COURT: All right, ma'am, I noticed you raised
19 your left hand. Is this your verdict?

20 MS. SMITH: Yes.

21 THE COURT: Okay, all right, let the record reflect
22 that all jurors raised their right hand.

23 Any polling of the jury?

24 MS. KNOWLES: Yes, Your Honor.

25 THE COURT: All right.

Polling of Jury

238

1 All right, ladies and gentlemen, the Defendant requests
2 that the jury be polled. What that means is when the clerk
3 calls your number if you would please stand and she's going to
4 ask you two questions. She's going to ask you if this is your
5 verdict and she's going to ask you if this is still your
6 verdict. So, please listen up. If your - when your juror
7 number is called if you would please stand and respond to
8 those questions.

9 THE CLERK: 43, is this your verdict?

10 MR. BUSLEE: It is.

11 THE CLERK: Is it still your verdict?

12 MR. BUSLEE: Yes.

13 THE CLERK: 240, is this your verdict?

14 MS. MASSEY: Yes.

15 THE CLERK: Is it still your verdict?

16 MS. MASSEY: Yes.

17 THE CLERK: Thank you. 396, is this your verdict?

18 MR. WALKER: Yes.

19 THE CLERK: Is it still your verdict?

20 MR. WALKER: Yeah.

21 THE CLERK: Thank you.

22 Five, is this your verdict?

23 MR. ALSTON: Yes.

24 THE CLERK: Is it still your verdict?

25 MR. ALSTON: Yes.

Polling of Jury

239

1 THE CLERK: Thank you.
2 97, is this your verdict?
3 MS. DICKEY: Yes.
4 THE CLERK: Is it still your verdict?
5 MS. DICKEY: Yes..
6 THE CLERK: Thank you..
7 335, is this your verdict?
8 MR. SETZER: Yes, sir.
9 THE CLERK: Is it still your verdict?
10 MR. SETZER: Yes..
11 THE CLERK: Thank you..
12 202, is this your verdict?
13 MR. JONES: Yes..
14 THE CLERK: Is it still your verdict?
15 MR. JONES: Yes..
16 THE CLERK: Thank you..
17 303, is this your verdict?
18 MR. POHTO: Yes..
19 THE CLERK: Is it still your verdict?
20 MR. POHTO: Yes..
21 THE CLERK: Thank you..
22 393, is this your verdict?
23 MR. VILES: Yes..
24 THE CLERK: Is it still your verdict?
25 MR. VILES: Yes.

Polling of Jury

240

1 THE CLERK: Thank you. 310, is this your verdict?
2 MS. QUINN: Yes.
3 THE CLERK: Is it still your verdict?
4 MS. QUINN: Yes.
5 THE CLERK: Thank you.
6 59, is this your verdict?
7 MS. CHARTIER: Yes.
8 THE CLERK: Is it still your verdict?
9 MS. CHARTIER: Yes.
10 THE CLERK: Thank you.
11 351, is this your verdict?
12 MS. SMITH: Yes.
13 THE CLERK: Is it still your verdict?
14 MS. SMITH: Yes.
15 THE CLERK: Thank you.
16 THE COURT: All right, ladies and gentlemen, that
17 concludes your services as jurors in this case and it also
18 concludes your service as jurors for this week's term of
19 court. I want to thank you for your service. This has been a
20 busy week. I don't know that I've had a jury panel that has
21 worked as hard as the jury panel this week between Judge
22 John's civil court and my criminal court. You all have heard
23 a lot of cases and decided a lot of issues and I want to thank
24 you for your service. So, you're free to go for the remainder
25 of the day and also for the remainder of the week and I want

Motions

241

1 to thank you again for your services this week and in this
2 case. Thank you very much. Everyone please remain seated
3 while the jury's excused.

4 (Whereupon, jury exits courtroom.)

5 THE COURT: All right, any post-trial motions at this
6 time?

7 MR. SPRATLIN: None for the State.

8 THE COURT: All right, you still have your time limits
9 if you want to do it then or if you want to make them now you
10 can make them now, whichever you wish to do.

11 MS. KNOWLES: My what, Your Honor? I'm sorry, I didn't

12 ---

13 THE COURT: Do you want to make any post-trial motions
14 at this time?

15 MS. KNOWLES: Your Honor, we would just make a motion
16 for a new trial. I just believe that the State's evidence did
17 not satisfy ---

18 THE COURT: All right.

19 MS. KNOWLES: --- the elements.

20 THE COURT: All right, your motion for a new trial is
21 noted. I'm going to deny it. I think there's sufficient
22 evidence to support the verdict.

23 MS. KNOWLES: Thank you.

24 THE COURT: All right, anything else? Any reason why
25 we can't go forward with sentencing at this time?

Sentencing

242

1 MS. KNOWLES: I don't know of a reason.

2 THE COURT: All right, have we got a ---

3 MR. SPRATLIN: Yes, sir, Your Honor, I have a sentence
4 sheet prepared.

5 THE COURT: --- sentencing sheet? All right.

6 All right, Mr. Dukes, if you'd please stand.

7 (Complies with request.)

8 THE COURT: All right, Ms. Knowles, anything in
9 mitigation?

10 MS. KNOWLES: Yes, Your Honor, Mr. Dukes is 27. He is
11 single, has no children. He is gainfully employed, no trouble
12 since 2006. He's just been working and hanging out with his
13 family. I believe that he's a changed man, not the man that
14 he once was whenever he received the conviction in 2006 and we
15 just would ask for leniency in this case, Your Honor, with
16 regard to sentencing.

17 THE COURT: All right, Mr. Dukes, anything you want to
18 say or does anybody want to speak on your behalf?

19 MS. MACDOWELL: I do.

20 THE COURT: Well, speak, speak with his attorney
21 first.

22 MS. KNOWLES: Your Honor, is it okay? She's going to
23 state her name.

24 THE COURT: That's up to you all. It's up to Mr.
25 Dukes. He can speak or he can allow anybody to speak on his

Sentencing

243

1 behalf.

2 THE COURT: All right, ma'am, your name?

3 MS. MACDOWELL: Nicole MacDowell.

4 THE COURT: All right, Ms. MacDowell, what would you
5 like to say?

6 MS. MACDOWELL: I know him very well, well enough to
7 trust him with my children. My kids love him, you know, I do
8 ask for your leniency, too.

9 THE COURT: All right, thank you, ma'am.

10 MS. KNOWLES: One more, Your Honor.

11 THE COURT: All right.

12 MS. KNOWLES: State your name for the Court.

13 THE COURT: Yes, ma'am, your name?

14 MS. MCKENZIE: Latashia McKenzie.

15 THE COURT: All right, Ms. McKenzie, what would you
16 like to say?

17 MS. MCKENZIE: I've known the Defendant for ---

18 THE COURT: I'm sorry. I can't understand.

19 MS. MCKENZIE: I've been knowing ---

20 THE COURT: I need you to speak into this microphone.

21 MS. MCKENZIE: I've been knowing the Defendant for two
22 years now and we been dating for a year and since then he's
23 not been anything but the sweetest man that I ever known and
24 he always take care of me and when I was down and didn't have
25 anything he gave me a place to stay and that's how we started

1 talking and everything and I, too, ask that you have leniency
2 for your sentence.

3 THE COURT: All right, thank you, ma'am.

4 All right, Mr. Dukes, anything you want to say?

5 MR. DUKES: No, sir.

6 THE COURT: All right, prior record?

7 MR. SPRATLIN: Yes, sir, Your Honor.

8 2003 Mr. Dukes was convicted of grand larceny value more
9 than \$1,000; 2006, he was convicted of possession of a stolen
10 pistol, that was the first weapons charge. In 2006 he was
11 also convicted of ABHAN and burglary second. It looks like
12 according to his NCIC in 2008 he went to prison on a probation
13 violation based off that burglary second violent conviction.
14 The State would ask for a significant prison sentence.

15 THE COURT: Okay.

16 All right, Mr. Dukes, the sentence of the Court is that
17 you be confined to the State Department of Corrections for
18 five years. You'll be given credit for time served thus far.

19 MR. SPRATLIN: Thank you, Your Honor.

20 THE COURT: All right, thank you.

21 (Adjourned.)

22

23

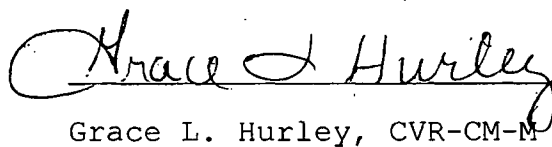
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25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus Verntirell Jerwon Dukes, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on October 4-5, 2012.

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



Grace L. Hurley, CVR-CM-M

Official Reporter

January 11, 2013.

WITNESSES

William Odum Horry County Police Department

DOCKET NO. 2012-GS-26

CERTIFIED COPY

FILED
HORRY COUNTY

2012 OCT -9 AM 10:57
The State of South Carolina
County of Horry

Melanie Huggins-Ward
Martin D. Sprallin
CLERK OF COURT
HORRY COUNTY

2012 OCT -9 AM 10:56
MELANIE HUGGINS-WARD
CLERK OF COURT

COURT OF GENERAL SESSIONS

JUNE, 2012 TERM

REST WARRANT NUMBER

M972233
CDR. 3434 16-23-0500(A)
DOA 4/14/2012

THE STATE

vs.

Verntirell Jerwon Dukes
B/ M

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury

JUN 21 2012

ATTORNEY: Knowles, Melinda

VERDICT

Indictment for

UNLAWFUL POSSESSION OF A PISTOL

J. Gregory Hembree, Solicitor

ORIGINAL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HORRY)

At a Court of General Sessions, convened on June 21, 2012, the Grand Jurors of Horry County present upon their oath:

UNLAWFUL POSSESSION OF A PISTOL

CDR: 2364 16-23-0030(B), 16-23-50

That Vertirell Jerwon Dukes did in Horry County on or about April 14, 2012, knowingly possess or acquire a pistol after having been convicted of a crime of violence defined in Section 16-23-10, S. C. Code of Laws, 2003, as amended, in violation of Section 16-23-1030(B), S. C. Code of Laws, 1976, as amended.

CERTIFIED COPY
2012 OCT -9 AM 10:57
Melanie Huguenin-Ward
CLERK OF COURT
HORRY COUNTY

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

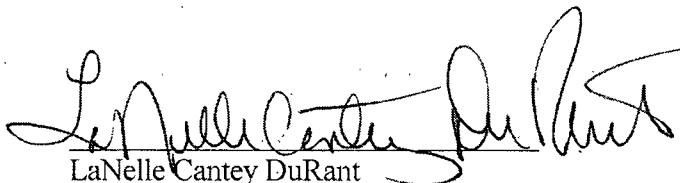
FILED
HORRY COUNTY
2012 OCT -9 AM 10:56
MELANIE HUGUENIN-WARD
CLERK OF COURT


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 6th, 2013



LaNelle Cantey DuRant
Appellate Defender

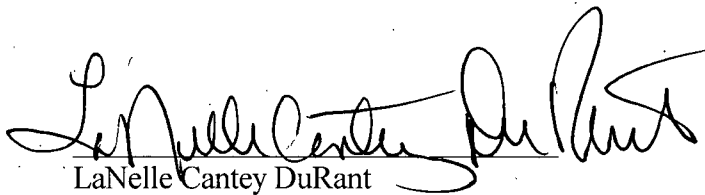
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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September 6th, 2013



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County
Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

SEP 06 2013

SC Court of Appeals

VERNTIRELL DUKES,

PETITIONER,

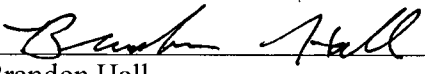
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of September, 2013.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 6th day of September, .

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.