

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

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SC Supreme Court

CLARENCE ROBINSON,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2008-GS-10-3832, 3845

STATE OF SOUTH CAROLINA
Plaintiff

v

DAVID BROWN, COLIN BOSTON)
and CLARENCE ROBINSON)
Defendant

TRANSCRIPT OF RECORD

JUNE 22, 2009
Charleston, South Carolina
VOLUME 1

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THE HONORABLE DEADRA L JEFFERSON, JUDGE

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1 THE COURT Do any of the defendants wish to
2 have a formal arraignment? Let me see the order that
3 you all are sitting in

4 Okay Mr Howell, you are representing David
5 Brown?

6 MR HOWELL That's correct, Your Honor

7 THE COURT Ms Crumey is representing Mr
8 Colin Boston?

9 MS CRUMEY Yes, ma'am

10 THE COURT And, Mr Harris, you are
11 representing Clarence Robinson?

12 MR HARRIS That's correct, Your Honor

13 THE COURT Mr Savage, of course you are
14 representing the State And, Mr Sahn, you are
15 assisting him?

16 MR SAVAGE Yes, ma'am

17 THE COURT Will you have anyone assisting
18 you, Mr Howell?

19 MR HOWELL Seated at the table with me, but
20 not directly participating, is Mr Jesse Goode who's
21 clerking with us He just got done passing the bar a
22 couple of weeks ago, so he will be semi-assisting me

23 THE COURT I'm asking for the benefit of the
24 court reporter so she will know who's speaking

25 Ms Crumey, will anyone be assisting you?

1 MS CRUMEY No, ma'am

2 THE COURT Mr Harris, will anyone be
3 assisting you?

4 MR HARRIS No, Your Honor

5 THE COURT Mr Robinson is charged with
6 possession of a firearm during the commission of a
7 violent crime, 2008-GS-10-3845 And an indictment
8 for armed robbery, 2008-GS-10-3832, is that correct,
9 Mr Harris?

10 MR HARRIS Yes

11 THE COURT Both of which were true billed?

12 MR HARRIS Yes, Your Honor

13 THE COURT And Mr Boston was likewise
14 charged in indictment 2008-GS-10-4199 for possession
15 of a firearm during the commission of a violent
16 crime, 2008-GS-10-5718 for armed robbery, is that
17 correct, Ms Crumey, both of which have been true
18 billed?

19 MS CRUMEY Yes, ma'am

20 MR SAVAGE Your Honor, may I interrupt
21 there? That was an incorrect indictment It was
22 re-indicted

23 THE COURT I'm sorry, I didn't hear you

24 MR SAVAGE The Colin Boston armed robbery
25 charge was re-indicted

1 THE COURT What was the number of that?

2 MR SAVAGE 2009 -- it was supposed to be
3 brought up this morning

4 THE COURT I have 2009-GS --

5 MR SAVAGE I apologize then You have got
6 the correct number

7 THE COURT I might have said 2008, if I did I
8 apologize

9 And Mr Brown which is indictment
10 2008-GS-10-3919 for possession of cocaine base,
11 2008-GS-10-3924 which is possession of a firearm
12 during the commission of a violent crime, and
13 2008-GS-10-3920 armed robbery Are those -- each
14 have been true billed, is that correct, Mr Howell?

15 MR HOWELL That is my understanding, Your
16 Honor

17 THE COURT Bear with me one moment Other
18 than Mr Howell's pretrial motions, are there any
19 other motions filed by the defendants?

20 MR HARRIS Your Honor, I did not file formal
21 motions I wanted to set -- I guess put on the
22 record the same motions as Mr Howell, I did not know
23 how we were going to handle this, because of judicial
24 economy, if you wanted to hear everybody's separately
25 then I was going to do --

1 THE COURT Actually, I just need to know if
2 you filed any, if you are going to join in his
3 motions that would be --

4 MR HARRIS Right I'm going to join in his
5 motions

6 THE COURT Ms Crumey, okay Let me ask
7 before we go any further, have any offers been made
8 to the defendants, Mr Savage?

9 MR SAVAGE Yes, they were a while ago, Your
10 Honor, they are now revoked Colin Boston had an
11 offer to armed robbery 10 years Clarence Robinson
12 had an offer to a negotiated 12 years because he has
13 a pending second charge, concurrent with that And
14 David Brown had an offer of 10 years

15 THE COURT And you said those have been
16 withdrawn?

17 MR SAVAGE All those have been rejected and
18 therefore withdrawn

19 THE COURT I was asking for PCR purposes
20 Because if offers had been made and were still
21 viable, I needed to question the defendants on the
22 record to protect their counsel regarding disclosure
23 of those offers and then rejecting them for the
24 record But you're telling me that they have already
25 been rejected and therefore have been withdrawn,

1 correct?

2 MR SAVAGE Yes, Your Honor

3 THE COURT I assume each of you had a Biggers
4 motion, is that correct, regarding the identification
5 of the defendants?

6 MR HARRIS Yes, ma'am

7 MR HOWELL Yes, ma'am

8 THE COURT Ms Crumey, is that also correct?

9 MS CRUMEY Yes, ma'am

10 THE COURT Do you all have motions to
11 suppress statements?

12 MR HARRIS Yes, ma'am

13 THE COURT Let me ask the question a
14 different way Are you going to week to introduce
15 any statements allegedly made by these defendants,
16 Mr Savage?

17 MR SAVAGE Yes, Your Honor There are
18 several statements at issue

19 THE COURT By which defendants?

20 MR SAVAGE David Brown and Darnel Brown and
21 Colin Boston

22 THE COURT David Brown is the party, correct?

23 MR SAVAGE That's correct, Your Honor

24 THE COURT Statements made by Darnel Brown
25 who is not a defendant, correct?

1 MR SAVAGE Yes, Your Honor He was a
2 defendant but he is not a party to -- he was a
3 codefendant but he has already been resolved

4 THE COURT But these are statements he
5 alleges they made to him, or they made in his
6 presence?

7 MR SAVAGE They're statements that he made
8 to one of the witnesses in this case

9 THE COURT I need you to tell me -- I think
10 we need to do this a little more simplistically
11 what statements are you seeking to elicit against
12 David Brown?

13 MR SAVAGE Give me a second, Your Honor
14 The statements against David Brown are the statements
15 that he has made on the jail recordings There are
16 statements that he has made to a girl by the name of
17 Tracy Flowers

18 THE COURT What are the statements?

19 MR SAVAGE Basically what happens is he
20 talks to Tracy Flowers on the telephone, she does a
21 three-way call to a person by the name Trey Chisolm
22 Tray Chisolm reads him the Post and Courier of when
23 this first happened that one of the robbers made the
24 statement, and pardon my French but, I feel like
25 shooting a mother fucker tonight

1 Trey asked him specifically on the telephone,
2 who said I feel like shooting a mother fucker
3 tonight David Brown responds instantaneously,
4 Lenny's brother, man, and he feeled the bitch

5 The reason why the statement he feeled the
6 bitch is important is because one of the witness's
7 inside the bar had a gun pointed to her head And
8 one of the defendant's then grabbed her breasts and
9 groin area and stuck a gun in her back and pushed her
10 up against the wall That is why that statement, he
11 feeled the bitch is also important

12 He's has also made several other -- he made
13 another statement, again using a call that he made to
14 Tracy Flowers, his girlfriend She did a three-way
15 call to a person by the name of Tyrone who she knows
16 and has identified him by voice

17 Tyrone asked -- they were talking about
18 David's bond hearing And David was talking about
19 the girl that turned up at the bond hearing and that
20 if he didn't get a bond it was because that fucking
21 white bitch cried and said she was scared for her
22 life

23 And Tyrone responded to David, talking about,
24 you're not going to get bond and I think you are
25 going to run if you get a bond, if you get out on

1 bond And then they asked him who said -- who felt
2 up the girl, and he had said, Monty grabbed the
3 bitch's ass And they wanted to know who said, I
4 feel like shooting a mother fucker, and he said the
5 same person

6 THE COURT And what statements would you be
7 seeking to elicit against -- that you claim Mr
8 Robinson made?

9 MR SAVAGE No, not Mr Robinson

10 THE COURT Mr Boston

11 MR SAVAGE Mr Boston Mr Boston has made
12 several statements He has had conversations with
13 his mother, Janice Chisolm She asked him --

14 THE COURT You mean on the jail recordings?

15 MR SAVAGE Yes, Your Honor She asked him
16 -- he told her that when he first did this that he
17 was going to have to try to plead to get four years
18 She asked him whether he did this And he told her,
19 he says I messed up And she says, they've got
20 nothing to put on you and you don't need to be doing
21 that

22 And he responds and says, I just told you I
23 messed up And she says, are you telling me you
24 committed this armed robbery And his response was,
25 I ain't taking like that on the phone

1 He also had several conversations with his
2 girlfriend at the time, Natasha Brown And she -- he
3 kept on telling her that she needed to get the car
4 back and needed to get inside of the trunk She got
5 the car back within two days after the robbery and
6 she is having a telephone conversation with him, as
7 well as he also wrote her from prison

8 And she tells him over the telephone that the
9 evidence in the trunk, such as a stocking cap,
10 bullets, gloves, pills, that she threw them all away
11 And once he finds out they're all thrown away his
12 response is, damn, I might take this case to trial
13 now

14 She also related information to Clarence
15 Robinson's mother, Sharon Robinson

16 THE COURT Okay Now do you intend to elicit
17 -- I mean if these defendants testify, it's a little
18 premature, but one of the motions is to exclude any
19 prior convictions Do you plan to introduce any
20 prior convictions of these defendants if they were to
21 testify?

22 MR SAVAGE At this stage no It depends on
23 what they testify to, Your Honor

24 THE COURT Do they have anything that would
25 qualify?

1 MR SAVAGE I don't believe so at the moment,
2 Your Honor

3 THE COURT Okay And what evidence was
4 obtained at 12 Sawgrass Road?

5 MR SAVAGE That is where the defendants were
6 found in Colin Boston's car And there were four
7 handguns found in that car, there were bullets, cash
8 on the defendants, obviously the defendants were
9 there, there were items of clothing that were taken
10 from there, hats, bandanas, gloves

11 THE COURT Were they arrested at that time?

12 MR SAVAGE Yes, they were arrested at the
13 scene, Your Honor

14 MR SAVAGE And there was drugs as well
15 inside the car

16 THE COURT Was this a search incident to
17 arrest that elicited these items?

18 MR SAVAGE Both They were actually given
19 consent by Colin Boston, verbal consent

20 THE COURT Whose car was it?

21 MR SAVAGE Colin Boston's And David Brown
22 is actually the one, it's one of the reasons why
23 David Brown's statement is in here I'm sorry,
24 Darnel Brown, I apologize Darnel Brown was actually
25 talking to Colin Boston's girlfriend and telling her

1 that they wouldn't have been able to -- they probably
2 could have suppressed the evidence if Colin Boston
3 had kept his mouth shut and not given them consent to
4 search the car

5 THE COURT The motion to sever, Mr Howell,
6 is a motion to sever the defense of your client
7 which is the offense?

8 MR HOWELL Just the cocaine charge, Your
9 Honor, yes

10 THE COURT Does the State have any objection
11 to that?

12 MR SAVAGE Yes, Your Honor

13 THE COURT Tell me why Was the cocaine
14 found at Sawgrass Road?

15 MR SAVAGE Yes, it was It was actually in
16 the car

17 THE COURT How is that relevant to the armed
18 robbery?

19 MR SAVAGE I apologize, Your Honor?

20 THE COURT Why would that be relevant or part
21 of the res just of the crime

22 MR SAVAGE Because it was there at the time
23 of the crime, it was part of the search, David Brown
24 claimed responsibility for it and it's part of the
25 facts, it's part of the case

1 THE COURT I'm inclined to severe that
2 cocaine charge I don't see how it's relevant to the
3 armed robbery and possession of a firearm during the
4 commission of a violent crime

5 If you tell me that it was somehow related to
6 the facts and circumstances of the actual offense, I
7 would be more inclined not to severe it But where
8 it search incident to arrest you find evidence of a
9 separate crime, it just tends to be extremely
10 prejudicial

11 It's not part of any of the elements of armed
12 robbery or possession of a firearm during the
13 commission of a violent crime Is it part of any of
14 the elements any of the offence?

15 MR SAVAGE No, Your Honor

16 THE COURT I will severe the cocaine charge

17 Mr Howell, did you file your motions or are
18 these the originals?

19 MR HOWELL Those were the originals I gave
20 to your clerk

21 MR SAVAGE Your Honor, may I speak again
22 about the jail tapes?

23 THE COURT I'm not going to argue the
24 motions?

25 MR SAVAGE No, but I wanted -- I have spoken

1 to some of the defense attorneys about procedurally
2 how to handle this Some of those statements given,
3 some of them are going to be needed to be redacted,
4 and some of them aren't

5 For example, the one where us talking about
6 David Brown talking to Tyrell, they're talking about
7 -- prior to making the implicating statements --
8 talking about his bond, going up the road five months
9 and things like that Obviously I think that may be
10 an issue that will probably have to be redacted out
11 for the jury

12 Are you planning on going through and
13 addressing those issues as they arise during the
14 trial or

15 THE COURT Actually, you got a little ahead
16 of me I'm about to tell you exactly how I'm going
17 to do it

18 MR SAVAGE All right I apologize

19 THE COURT What we are going to do is I have
20 jurors sitting downstairs We are going to go ahead
21 and pick a jury The strikes are 20 and 10 I would
22 assume the three of you have decided how you all are
23 going to split those strikes as codefendants And of
24 course the state will have their 10, they don't have
25 to make that determination

1 All of the other motions I will take up prior
2 to the evidence being introduced and you all need to
3 make me aware prior to any of that evidence being
4 introduced, that being the identification of any of
5 the defendants, any statements alleged to have been
6 made by the defendants, and any admissibility of any
7 evidence that was taken into police's possession from
8 12 Sawgrass Road, which really is the vehicle that
9 was located at 12 Sawgrass Road, I will hear those
10 matters in-camera

11 And if there are any -- I will take any
12 statements alleged to have been made And actually
13 the motion to suppress statements of the codefendants
14 would only become relevant if those codefendants
15 testify Because he is talking about statements made
16 by codefendants And in order for those statements
17 to come in, to some extent those people have to
18 testify unless somebody else claims they were present
19 and heard them

20 In any event, I'll have to take those up as
21 they present themselves during the course of the
22 trial But I would ask that you all stay away from
23 those in opening arguments and that you make the
24 Court aware of them as they come up so that I can
25 take each of them up in-camera so that we can have a

1 full proffer made, and also full argument Then we
2 will have a complete record

3 Then if I exclude it, you have a proffer If
4 I include it, everything is preserved The Court
5 does not take speaking objections pursuant to rule
6 18 If you make an objection, you need to stand up,
7 I'm going to ask you the basis of your objection, and
8 you need to state it succinctly without giving me
9 extra verbiage, and you should know the rules and you
10 should be able to do that, and I will rule on your
11 motion

12 Unless I ask for argument, do not give it to
13 me Do not ask to approach the bench and ask to give
14 me argument It is not recorded and I did not ask
15 you for it If I ask you to approach the bench that
16 means I want to hear argument and it's going to
17 assist me The rules do not require me to take
18 argument unless I think it's going to assist me

19 I can tell you based on my years of
20 experience, based on the parameters in which
21 questions are presented and the evidence and the
22 totality of it, I'm pretty confident to rule on the
23 objections And if I'm wrong, they got nine folks in
24 Columbia to tell me that Actually nine and five,
25 they've got 14 people to tell me I'm wrong If

1 that's the case then, contrary to what most lawyers
2 think, we don't get offended when we get reversed
3 If we weren't wrong sometime they wouldn't have a
4 job So it all balances itself out Everybody has
5 their role to play

6 Now, is there anything else we need to take up
7 before we begin jury selection from the State?

8 MR SAVAGE No, Your Honor

9 THE COURT From the defense, Mr Howell?

10 MR HOWELL Not from David Brown, Your Honor

11 THE COURT Ms Crumey on behalf of Mr
12 Boston?

13 MS CRUMEY No, ma'am

14 THE COURT Mr Harris on behalf of Mr
15 Robinson?

16 MR HARRIS No, Your Honor I would ask, if
17 possible, we haven't really worked out a way to do
18 the strikes If we could have a moment

19 THE COURT Sure why don't you all chat
20 Because the obvious math is that each of you have six
21 and then that leaves two You all may want to
22 jointly exercise your last two You know, I've never
23 known a creative way to do it You all may have a
24 better resolution than I have

25 MR HARRIS No

1 THE COURT You all talk for a moment, see how
2 you may want to do it You know, most times you
3 don't exhaust them anyway

4 MR HARRIS Thank you, Your Honor

5 THE COURT You're welcome

6 I guess, how long will it take you to present
7 your case?

8 MR SAVAGE I'm thinking probably three days

9 THE COURT Okay Then how many witnesses do
10 you anticipate you may have, Mr Howell?

11 MR HOWELL I do not know at this point but
12 just a few

13 THE COURT Okay And Ms Crumey?

14 MS CRUMEY I don't anticipate any

15 MR HARRIS Only if Mr Robinson wants to
16 testify, he'll be the only one

17 MR SAVAGE Your Honor, I told my witnesses
18 to be here today, I did not tell them to be here
19 until 2 00 I'm just trying to figure out --

20 THE COURT I think by the time we pick a jury
21 and go to lunch you will probably be okay

22 MR SAVAGE Thank you, Your Honor I did not
23 know if we were going to take a lunch after jury
24 selection

25 THE COURT By the time we pick a jury it will

1 be after 1 00

2 MR SAVAGE All right Thank you

3 (Whereupon, the jurors enter the courtroom)

4 THE COURT Ladies and gentlemen, we are going
5 to select a jury for the cases of the State of South
6 Carolina versus David Brown, State of South Carolina
7 versus Colin Boston, and State of South Carolina
8 versus Clarence Robinson

9 Does Mr Brown wish to have a formal
10 arraignment, Mr Howell?

11 MR HOWELL Not necessary, Your Honor

12 THE COURT Does Mr Boston wish to have a
13 formal arraignment, Ms Crumey?

14 MS CRUMEY No, Your Honor

15 THE COURT Does Mr Robinson wish to have a
16 formal arrangement, Mr Harris?

17 MR HARRIS No, Your Honor

18 THE COURT As I have indicated, ladies and
19 gentlemen, the first we will be selecting these
20 juries for the State of South Carolina versus David
21 Lee Brown, indictment 2008-GS-10-3924, which is an
22 indictment for possession of a firearm during the
23 commission of a violent crime

24 And that indictment alleges as follows That
25 in Charleston County, South Carolina on or about

1 February 26, 2008, the defendant, David Brown, did
2 possess a firearm or visibly display what appeared to
3 be a knife during the commission or attempted
4 commission of armed robbery, a violent crime as
5 defined by statute, and alleging a violation of
6 16-23-490 of the code of laws as amended

7 And indictment 2008-GS-10-3920, an indictment
8 for armed robbery And that indictment alleges as
9 follows That on February 26, 2008 in Charleston
10 County, South Carolina, at 1750 Savannah Highway, by
11 use of force, threats or intimidation, and while
12 armed with a deadly weapon, to wit a handgun, the
13 defendant, David Lee Brown, did take away and carry
14 away goods and/or monies from the person or immediate
15 presence of Ronald Fuller, and/or Bender's Bar and
16 Grill, with the intent to permanently deprive them of
17 possession thereof, alleging a violation of code
18 section 16-11-330(A) of the code of laws as amended

19 And indictment 2008-GS-10-4199, The State
20 versus Colin Nevel Boston, an indictment for
21 possession of a firearm during the commission of a
22 violent crime, and that indictment alleges that in
23 Charleston County, South Carolina, on or about
24 February 26, 2008, the defendant, Colin Nevel Boston,
25 did possess a firearm, or viably display what

1 appeared to be a firearm during the commission or
2 attempted commission or armed robbery, a violent
3 crime, alleging a violation of 16-23-490 of the code
4 of laws as amended

5 And indictment 2009-GS-10-5718, an indictment
6 for armed robbery And that indictment alleges as
7 follows That on or about February 26, 2008, in
8 Charleston County, South Carolina at 1750 Savannah
9 Highway at Bender's Bar and Grill, by use of force,
10 threats or intimidation, while armed with a deadly
11 weapon, to wit a handgun, the defendant, Colin Nevel
12 Boston, did take and carry away goods and/or monies
13 from Bender's Bar and Grill and the patrons, with the
14 intend to permanently deprive them of the possession
15 thereof, alleging a violation of 16-11-330(A) of the
16 code of laws as amended

17 And the State of South Carolina versus
18 Clarence Montez Robinson Indictment
19 2008-GS-10-3832, an indictment for armed robbery, and
20 that indictment alleges as follows That on February
21 26, 2008, in Charleston County, South Carolina, at
22 1750 Savannah Highway at Bender's Bar and Grill by
23 use of force, threats of intimidation, and while
24 armed with a deadly weapon, to wit a handgun, the
25 defendant, Clarence Montez Robinson, did take and

1 carry away goods and/or monies from Bender's Bar and
2 grill, and the patrons with the intent to permanently
3 deprive them of their position thereof, alleging a
4 violation of code section 16-11-330(A) of the code of
5 laws as amended

6 And indictment 2008-GS-10-3845, an indictment
7 for possession of a firearm during the commission of
8 a violent crime The State versus Clarence Montez
9 Robinson, and that indictment alleges as follows
10 That in Charleston County, South Carolina, on or
11 about February 26, 2008, the defendant, Clarence
12 Montez Robinson, did possess a firearm, or did
13 visibly display what appeared to be a firearm, or did
14 visibly display a knife during the commission of or
15 attempted commission of a violent crime, to wit
16 armed robbery, alleging a violation of code section
17 16-23-490 of the code of laws as amended

18 Ladies and gentlemen, we are going to go
19 through a process that is called voir dire, which is
20 simply a very fancy way of us saying that I'm going
21 to ask, to go through and ask you some questions that
22 will allow the attorneys to more effectively exercise
23 their preemptory challenges during jury selection

24 If a question applies, I need you to stand and
25 in a loud, clear voice give us your name and you

1 juror number, and an answer to the question if
2 applicable And remain standing until the Court has
3 completed questioning you

4 Is there any member of the panel related by
5 blood or marriage to David Lee Brown, Clarence Montez
6 Robinson, Colin Nevel Boston, Ronald Fuller, or
7 anyone who may have an ownership interest in or is
8 employed or frequents Bender's Bar and Grill, if so
9 please stand at this time

10 Does any member of the panel have a close
11 personal or social relationship with Clarence Montez
12 Robinson, Colin Nevel Boston, David Lee Brown, Ronald
13 Fuller, or anyone who frequents Bender's Bar and
14 Grill, has an ownership interest in Bender's Bar and
15 Grill, or is employed by Bender's Bar and Grill, if
16 so please stand at this time

17 The following are a list of potential
18 witnesses, I would ask that you listen very
19 carefully Detective Jennie Antonio Officer John
20 Bonanni Kathleen Butler Janice Boston Corporal
21 Larry Brown Rene Charles Officer Jenny Danik
22 Officer Richard Prior Frierson Corporal Tony
23 Garland

24 Brian Hinton Elizabeth Higgins-Mitchell
25 Officer Chris Koegler Detective Craig Kosarko

1 Anita Maestas Officer Chris Morrell Susan Moody
2 Officer William Olsen Sergeant Scott Ray Officer
3 Brian Sigmon All of the Charleston Police
4 Department

5 Natasha Brown Trevielle Trey Chisolm
6 Colleen Denham Ronald Fuller Tracey Flowers
7 Andre Finkley Marvin Hancock George Mackey Mary
8 Nance Harold Peterson Latrell Trell Peterson
9 Andre Thompson Charles Turner Adina Walden And
10 Sean Woolridge

11 Is there any member of the panel related to
12 any of the people that I have just listed, or does
13 anyone have a close personal or social relationship
14 with any of these individuals, if so please stand at
15 this time

16 I apologize, I neglected to do this If
17 counsel for the state would stand and introduce
18 anyone that will be assisting him in the trial of
19 this case, and also publish the names of the members
20 of his office

21 Following that, Mr Howell, if you would stand
22 and introduce yourself, your client and anyone who
23 will be assisting you and any of the members of your
24 office And likewise Ms Crumey and then Mr Harris

25 You may proceed, Mr Savage

1 MR SAVAGE Thank you, Your Honor

2 THE COURT You're welcome

3 MR SAVAGE Good afternoon, ladies and
4 gentlemen My name is Dale Savage, and I'm an
5 assistant solicitor here in Charleston County
6 working this case with me is Michael Sahn

7 The other solicitors in our office are
8 solicitor Scarlet Wilson Chief Deputy Solicitor
9 Bruce Durant Assistant Solicitor Mary Haskin
10 Brian Byrd Julie Cardillo Michael Dewaay
11 Rutledge Durant Elizabeth Gordon Kevin Hale Amy
12 Harrell Debbie Herring-Lash Michael Henderson
13 Culver Kidd Trip Lawton Stephanie Linder Peter
14 McCoy Kris Neely Elizabeth Michael Nelson
15 Trip Riesen Jennifer Shealy Chad Simpson
16 Gregory Voight Burns Wetmore And Tyler Schachte

17 THE COURT Mr Howell

18 MR HOWELL Yes, Your Honor My name is
19 Donald Howell I'm a lawyer here in Charleston My
20 office is on State Street With me is my client, Mr
21 David Brown

22 Who will be assisting me today in the trial
23 will be Jesse Goode, he has been clerking for us and
24 just passed the bar about two weeks ago So this is
25 his first trial I have a partner named Robert

1 Windahm who's from Mount Pleasant, the name of our
2 practice is Howell and Windahm

3 MS CRUMEY My name is Shari Crumey I am
4 representing Colin Boston and I practice alone And
5 I'm the attorney of law for the firm

6 THE COURT Mr Harris

7 MR HARRIS My name is Stephen Harris I am
8 a solo practitioner in West Ashley My client is
9 Clarence Robinson I will be trying this case alone

10 THE COURT Thank you very much Has any
11 member of the panel ever been represented by any of
12 the attorneys involved in this case or anyone with
13 whom they practice law, if so please stand at this
14 time

15 Is there any member of the panel related by
16 blood or marriage to or have a close personal or
17 social relationship with any of the attorneys
18 involved in this case or anyone with whom they
19 practice law, if so please stand at this time

20 Has any member of the panel formed or
21 expressed an opinion about any issue or matter
22 involved in this case, if so please stand at this
23 time

24 I'm sorry, I apologize

25 PROSPECTIVE JUROR I was referring to the

1 previous question John Knobloch, I think my number
2 is 125 I have one or two cases pending with the
3 solicitor's office And I believe I'm a guardian of
4 a pending domestic case with Ms Crumey

5 THE COURT As a result of these experiences
6 do you feel that you can remain fair and impartial,
7 and render a fair and impartial decision in this case
8 based solely on the evidence as it will be presented
9 and on the law as the Court will instruct

10 PROSPECTIVE JUROR I do

11 THE COURT His number is 124 Thank you,
12 sir, you may take your seat

13 Is there any member of the panel aware of any
14 bias or prejudice toward either the state or the
15 defendants in this case, if so please stand at this
16 time

17 Is there any member of the panel which was a
18 member of the grand jury which issued the indictments
19 in this case, if so please stand at this time

20 Is there any member of the panel who is a
21 member of or a contributor to any group which has as
22 its primary concern the promotion of law enforcement
23 or victim's right? These groups would include, but
24 certainly are not limited to, Mother's Against Drunk
25 Driving, Student's Against Drunk Driving, Citizen's

1 Against Violent Crime, People Against Rape, Citizen's
2 Advocating a Return to Decency and Ethics, if so
3 please stand at this time

4 Is there any member who has ever had a bad
5 experience with law enforcement, if so please stand
6 at this time

7 Does any member of the panel have any moral or
8 religious or philosophical believes that would
9 interfere with your sitting in judgment of a fellow
10 human being, if so please stand at this time

11 Does any member of the panel have a family
12 member who is formally -- who is presently
13 incarcerated in a state penitentiary, if so please
14 stand at this time

15 Does any member of the panel know of any
16 reason whatsoever why he or she should not serve as a
17 juror in this case, with particular emphasis being
18 placed on your ability to be fair and impartial to
19 both the State and the defense, if so please stand at
20 this time

21 Is number 12 in this panel?

22 Yes, sir, if you would stand for me please and
23 tell me your name and you juror number

24 PROSPECTIVE JUROR Robert Bailey, number 12

25 THE COURT And you had indicated that your

1 brother is a police officer?

2 PROSPECTIVE JUROR Yes, ma'am

3 THE COURT Sir, does that in any way affect
4 your ability to be fair and impartial

5 PROSPECTIVE JUROR I believe I can be fair

6 THE COURT Okay Do you believe you can
7 render a fair and impartial decision in this case
8 based solely on the evidence as it will be presented
9 and on the law as the Court will instruct?

10 PROSPECTIVE JUROR Yes, ma'am

11 THE COURT Thank you, sir, you may take your
12 seat

13 Are there any additional questions from the
14 State?

15 MR SAVAGE No, Your Honor

16 THE COURT From the defense, Mr Howell?

17 MR HOWELL Your Honor, could we ask Mr
18 Bailey what department his brother is in?

19 THE COURT Sir, what department is your
20 brother serving in?

21 PROSPECTIVE JUROR City of Charleston

22 THE COURT Okay Any additional questions
23 from the defendant, Mr Howell?

24 MR HOWELL That's all, Your Honor

25 THE COURT Ms Crumey?

1 MS CRUMEY No, ma'am

2 THE COURT Mr Harris?

3 MR HARRIS None, Your Honor

4 THE COURT Strikes will be 10 and 20

5 collectively Scott, you will go in the order of
6 Howell, Crumey, Harris Mr Savage of course first

7 Ladies and gentlemen, if would you pay
8 attention very carefully to the bailiff If your
9 name is called please come forward, as he is, bring
10 all of your personal belongings with you and come and
11 stand exactly where he is standing, and turn back
12 around and face forward back toward your fellow
13 jurors We thank you for your patience, thank you

14 Please use that double set of doors that Mr
15 Major is using And also, if someone gets up from
16 your pew, please slide down and let them back in so
17 that they don't have to climb back over you

18 You may proceed, Mr Clark

19 THE CLERK Yes, Your Honor

20 Juror number 106, Lynese Horton

21 (Whereupon, a black female approaches)

22 THE CLERK What say you for the State?

23 MR SAVAGE Please excuse this juror

24 THE CLERK Ma'am, you have been excused from
25 the trial of this case, please have a seat back in

1 the audience

2 Juror number 213, Lynn Szlachetka

3 (whereupon, a white female approaches)

4 THE CLERK what say you for the State?

5 MR SAVAGE Please seat this juror

6 THE CLERK what say you for the Defendant
7 Brown?

8 MR HOWELL Please seat Ms Szlachetka

9 THE CLERK what say you for the Defendant
10 Boston?

11 MS CRUMEY Yes, please seat the juror

12 THE CLERK what say you for Defendant
13 Robinson?

14 MR HARRIS Please seat the juror

15 THE CLERK Ma'am, you have been selected for
16 the trial of this case If you would have a seat in
17 the jury box

18 Juror number 237, Julia Weed

19 (whereupon, a white female approaches)

20 THE CLERK what say you for the State?

21 MR SAVAGE Please seat this juror

22 THE CLERK what say you for Defendant Brown?

23 MR HOWELL Please seat this juror

24 THE CLERK what say you for Defendant Boston?

25 MS CRUMEY Please excuse the juror

1 THE CLERK Ma'am, you have been excused from
2 the trial of this case Have a seat back in the
3 audience

4 Juror number 167, Penny Morris

5 (Whereupon, a white female approaches)

6 THE CLERK What say you for the State?

7 MR SAVAGE Please seat this juror

8 THE CLERK What say you for Defendant Brown?

9 MR HOWELL Please seat this juror

10 THE CLERK What say you for Defendant Boston?

11 MS CRUMEY Please seat this juror

12 THE CLERK What say you for Defendant
13 Robinson?

14 MR HARRIS Please seat this juror

15 THE CLERK Ma'am, you have been selected for
16 the trial of this case Have a seat in the jury box

17 Juror number 204, Maria Smith

18 (Whereupon, a white female approaches)

19 THE CLERK What say you for the State?

20 MR SAVAGE Please seat the juror

21 THE CLERK What say you for Defendant Brown?

22 MR HOWELL Please seat this juror

23 THE CLERK What say you for Defendant Boston?

24 MS CRUMEY Please seat this juror

25 THE CLERK What say you for Defendant

1 Robinson?

2 MR HARRIS Please seat this juror

3 THE CLERK Ma'am, you have been selected for
4 the trial of this case Please have a seat in the
5 jury box

6 Juror number 126, James Kubu

7 (Whereupon, a white male approaches)

8 THE CLERK What say you for the State?

9 MR SAVAGE Please seat this juror

10 THE CLERK What say you for Defendant Brown?

11 MR HOWELL Please excuse the juror

12 THE CLERK Sir, you have been excused from
13 the trial of this case Please have a seat back in
14 the audience

15 Number 16, Nicole Bernier

16 (Whereupon, a white female approaches)

17 THE CLERK What say you for the State?

18 MR SAVAGE Please seat this juror

19 THE CLERK What say you for Defendant Brown?

20 MR HOWELL Please excuse the juror

21 THE CLERK Ma'am, you have been excused from
22 the trial of this case Please have a seat back in
23 the audience

24 Juror number 188, Jerome Richardson

25 (Whereupon, a black male approaches)

1 THE CLERK What say you for the State?

2 MR SAVAGE Please excuse this juror

3 THE CLERK Sir, you have been excused from
4 the trial of this case Please have a seat back in
5 the audience

6 Juror number 279, Brooks Smith

7 What say you for the State?

8 MR SAVAGE Please seat this juror

9 THE CLERK What say you for Defendant Brown?

10 MR HOWELL Please seat this juror

11 THE CLERK What say you for Defendant Boston?

12 MS CRUMEY Please excuse this juror

13 THE COURT Sir, you have been excused from
14 the trial in this case Please have a seat back in
15 the audience

16 Juror number 22, Samuel Bradford

17 (Whereupon, a white male approaches)

18 THE CLERK What say you for the State?

19 MR SAVAGE Please seat this juror

20 THE CLERK What say you for Defendant Brown?

21 MR HOWELL Please excuse this juror

22 THE CLERK Sir, you have been excused from
23 the trial in this case Please have a seat back in
24 the audience

25 Juror number 95, Mary Hanckel

1 (Whereupon, a white female approaches)

2 THE CLERK What say you for the State?

3 MR SAVAGE Please seat this juror

4 THE CLERK What say you for Defendant Brown?

5 MR HOWELL Please seat this juror

6 THE CLERK What say you for Defendant Boston?

7 MS CRUMEY Please seat this juror

8 THE CLERK What say you for Defendant

9 Robinson?

10 MR HARRIS Please excuse this juror

11 THE CLERK Ma'am, you have been excused from
12 the trial in this case Please have a seat back in
13 the audience

14 Juror number 23, Anna Brown

15 (Whereupon, a white female approaches)

16 THE CLERK What say you for the State?

17 MR SAVAGE Please seat this juror

18 THE CLERK What say you for Defendant Brown?

19 MR HOWELL Please seat this juror

20 THE CLERK What say you for Defendant Boston?

21 MS CRUMEY Please seat this juror

22 THE CLERK What say you for Defendant

23 Robinson?

24 MR HARRIS Please seat this juror

25 THE CLERK Ma'am, you have been selected for

1 the trial of this case Please have a seat in the
2 jury box

3 Juror number 199, Catherine Shirey

4 (Whereupon, a white female approaches)

5 THE CLERK What say you for the State?

6 MR SAVAGE Please seat this juror

7 THE CLERK What say you for Defendant Brown?

8 MR HOWELL Please excuse the juror

9 THE CLERK Ma'am, you have been excused from
10 the trial of this case Please have a seat back in
11 the audience

12 Juror number 77, Joseph Gallagher

13 (Whereupon, a white male approaches)

14 THE CLERK What say you for State?

15 MR SAVAGE Please seat this juror

16 THE CLERK What say you for Defendant Brown?

17 MR HOWELL Please seat this juror

18 THE CLERK What say you for Defendant Boston?

19 MS CRUMEY Please excuse this juror

20 THE CLERK Sir, you have been excused from
21 the trial in this case Please have a seat back in
22 the audience

23 Juror number 128, James Larisey

24 (Whereupon, a white male approaches)

25 THE CLERK What say you for the State?

1 MR SAVAGE Please seat this juror

2 THE CLERK what say you for Defendant Brown?

3 MR HOWELL Please excuse the juror

4 THE COURT Sir, you have been excused from

5 the trial in this case Please have a seat back in

6 the audience

7 Juror number 50, John Crow, junior

8 (Whereupon, a white male approaches)

9 THE CLERK what say you for the State?

10 MR SAVAGE Please seat this juror

11 THE CLERK what say you for Defendant Brown?

12 MR HOWELL Please seat this juror

13 THE CLERK what say you for Defendant Boston?

14 MS CRUMEY Please seat this juror

15 THE COURT what say you for Defendant

16 Robinson?

17 MR HARRIS Please seat this juror

18 THE CLERK Sir, you have been selected for

19 the trial of this case Please have a seat in the

20 jury box

21 Juror number 156, James Meyer

22 (Whereupon, a white male approaches)

23 THE CLERK what say you for the State?

24 MR SAVAGE Please seat this juror

25 THE CLERK what say you for Defendant Brown?

1 MR HOWELL Please seat this juror

2 THE COURT What say you for Defendant Boston?

3 MS CRUMEY Please seat this juror

4 THE CLERK What say you for Defendant

5 Robinson?

6 MR HARRIS Please seat the juror

7 THE CLERK Sir, you have been selected for

8 the trial of this case Please have a seat in the

9 jury box

10 Juror number 268, Jack Meetze, junior

11 What say you for the State?

12 MR SAVAGE Please seat this juror

13 THE CLERK What say you for Defendant Brown?

14 MR HOWELL Please excuse this juror

15 THE COURT Sir, you have been excused from

16 the trial in this case Please have a seat back in

17 the audience

18 Juror number 270, Dayshawn Moore

19 What say you for the State?

20 MR SAVAGE Please seat this juror

21 THE CLERK What say you for Defendant Brown?

22 MR HOWELL Please seat the juror

23 THE CLERK What say you for Defendant Boston?

24 MS CRUMEY Please seat this juror

25 THE CLERK What say you for Defendant

1 Robinson?

2 MR HARRIS Please seat this juror

3 THE COURT Ma'am, you have been selected for
4 the trial of this case Please have a seat in the
5 jury box

6 Juror number 241, Teresa Whims

7 (Whereupon, a white female approaches)

8 THE CLERK What say you for the State?

9 MR SAVAGE Please seat this juror

10 THE COURT What say you for Defendant Brown?

11 MR HOWELL Please seat this juror

12 THE COURT What say you for Defendant Boston?

13 MS CRUMEY Please seat this juror

14 THE COURT What say you for Defendant

15 Robinson?

16 MR HARRIS Please excuse this juror

17 THE COURT Ma'am, you have been excused from
18 the trial of this case Please have a seat back in
19 the audience

20 Juror number 52, Sabrina Damon

21 (Whereupon, a white female approaches)

22 THE CLERK What say you for the State?

23 MR SAVAGE Please seat this juror

24 THE CLERK What say you for Defendant Brown?

25 MR HOWELL Please seat this juror

1 THE COURT What say you for Defendant Boston?

2 MS CRUMEY Please seat this juror

3 THE CLERK What say you for Defendant

4 Robinson?

5 MR HARRIS Please seat this juror

6 THE CLERK Ma'am, you have been selected for
7 the trial of this case Please have a seat in the
8 jury box

9 Juror number 234, Terell Washington

10 (Whereupon, a black male approaches)

11 THE CLERK What say you for the State?

12 MR SAVAGE Please excuse this juror

13 THE CLERK Sir, you have been excused from
14 the trial in this case Please have a seat back in
15 the audience

16 Juror number 36, Lisa Carter

17 (Whereupon, a white female approaches)

18 THE CLERK What say you for the State?

19 MR SAVAGE Please seat this juror

20 THE CLERK What say you for Defendant Brown?

21 MR HOWELL Please seat this juror

22 THE CLERK What say you for Defendant Boston?

23 MS CRUMEY Please seat this juror

24 THE CLERK What say you for Defendant

25 Robinson?

1 MR HARRIS Please excuse this juror

2 THE CLERK Ma'am, you have been excused from
3 the trial of this case Please have a seat back in
4 the audience

5 Juror number 280, David Smith

6 What say you for the State?

7 MR SAVAGE Please excuse this juror

8 THE CLERK Sir, you have been excused from
9 the trial of this case Please have a seat back in
10 the audience

11 Juror number 124, John Knobeloch

12 (Whereupon, a white male approaches)

13 THE CLERK What say you for the State?

14 MR SAVAGE Please excuse this juror

15 THE CLERK Sir, you have been excused from
16 the trial of this case Please have a seat back in
17 the audience

18 Juror number 144, Clarence Mays

19 (Whereupon, a black male approaches)

20 THE CLERK What say you for the State?

21 MR SAVAGE Please excuse this juror

22 THE CLERK Sir, you have been excused from
23 the trial in this case Please have a seat back in
24 the audience

25 Juror number 217, Tony Taylor

1 (Whereupon, a white male approaches)

2 THE CLERK What say you for the State?

3 MR SAVAGE Please seat this juror

4 THE CLERK What say you for the Defendant

5 Brown?

6 MR HOWELL Please seat this juror

7 THE CLERK What say you for the Defendant

8 Boston?

9 MS CRUMEY Please excuse this juror

10 THE CLERK Sir, you have been excused from
11 the trial of this case Please have a seat back out
12 in the audience

13 Juror number 127, James Lane

14 (Whereupon, a white male approaches)

15 THE CLERK What say you for the State?

16 MR SAVAGE Please seat this juror

17 THE CLERK What say you for the Defendant

18 Brown?

19 MR HOWELL Please seat this juror

20 THE CLERK What say you for the Defendant

21 Boston?

22 MS CRUMEY Please excuse this juror

23 THE CLERK Sir, you have been excused from
24 the trial in this case Please have a seat back in
25 the audience

1 Juror number 259, Christine Franks

2 What say you for the State?

3 MR SAVAGE Please seat this juror

4 THE CLERK What say you for the Defendant
5 Brown?

6 MR HOWELL Please seat this juror

7 THE CLERK What say you for the Defendant
8 Boston?

9 MS CRUMEY Please seat this juror

10 THE CLERK What say you for the Defendant
11 Robinson?

12 MR HARRIS Please excuse this juror

13 THE CLERK Ma'am, you have been excused from
14 the trial of this case Please have a seat back in
15 the audience

16 Juror number 138, Wayman Major

17 (Whereupon, a white male approaches)

18 THE CLERK What say you for the State?

19 MR SAVAGE Please excuse this juror

20 THE COURT Sir, you have been excused from
21 the trial of this case Please have a seat back in
22 the audience

23 Juror number 112, Donna Jaeger

24 (Whereupon, a white female approaches)

25 THE CLERK What say you for the State?

1 MR SAVAGE Please seat this juror

2 THE CLERK what say you for the Defendant

3 Brown?

4 MR HOWELL Please seat this juror

5 THE CLERK what say you for the Defendant

6 Boston?

7 MS CRUMEY Please seat this juror

8 THE CLERK what say you for the Defendant

9 Robinson?

10 MR HOWELL Please seat this juror

11 THE CLERK Ma'am, you have been selected for
12 the trial of this case Please have a seat in the
13 jury box

14 Juror number 31, Robert Bussey

15 (Whereupon, a white male approaches)

16 THE CLERK what say you for the state?

17 MR SAVAGE Please excuse this juror

18 THE CLERK Sir, you have been excused from
19 the trial of this case Please have a seat back in
20 the audience

21 Juror number 276, Norris Philbeck

22 what say you for the State?

23 MR SAVAGE Please seat this juror

24 THE CLERK what say you for Defendant Brown?

25 MR HOWELL Please excuse this juror

1 THE CLERK Sir, you have been excused from
2 the trial in this case Please have a seat back in
3 the audience

4 Juror number 212, David Sykes

5 (Whereupon, a white male approaches)

6 THE CLERK What say you for the state?

7 MR SAVAGE Please seat this juror

8 THE CLERK What say you for Defendant Brown?

9 MR HOWELL Please seat this juror

10 THE CLERK What say you for Defendant Boston?

11 MS CRUMEY Please seat this juror

12 THE CLERK What say you for Defendant
13 Robinson?

14 MR HARRIS Please excuse this juror

15 THE CLERK Sir, you have been excused from
16 the trial of the case Please have a seat back in
17 the audience

18 Juror 151, Nancy Meek

19 (Whereupon, a white female approaches)

20 THE CLERK What say you for the state?

21 MR SAVAGE Please seat this juror

22 THE CLERK What say you for Defendant Brown?

23 MR HOWELL Please seat this juror

24 THE CLERK What say you for Defendant Boston?

25 MS CRUMEY Please seat this juror

1 THE CLERK What say you for Defendant
2 Robinson?

3 MR HARRIS Please seat this juror

4 THE CLERK Ma'am, you have been selected for
5 the trial of this case Please have a seat in the
6 jury box

7 Juror number 249, Stephen Zecher

8 (Whereupon, a white male approaches)

9 THE CLERK What say you for the State?

10 MR SAVAGE Please excuse this juror

11 THE COURT Sir, you have been excused from
12 the trial of this case Please have a seat back in
13 the audience

14 State has one strike remaining

15 Juror number 5, Sally Altman

16 (Whereupon, a white female approaches)

17 THE CLERK What say you for the State?

18 MR SAVAGE Please seat this juror

19 THE CLERK What say you for Defendant Brown?

20 MR HOWELL Please seat this juror

21 THE CLERK What say you for Defendant Boston?

22 MS CRUMEY Please seat this juror

23 THE CLERK What say you for Defendant
24 Robinson?

25 MR HARRIS Please excuse this juror

1 THE CLERK Ma'am, you have been excused from
2 the trial of this case Please have a seat back in
3 the audience

4 Juror number 254, Evan Berry

5 What say you for the State?

6 MR SAVAGE Please seat this juror

7 THE CLERK What say you for Defendant Brown?

8 MR HOWELL Please seat this juror

9 THE CLERK What say you for Defendant Boston?

10 MS CRUMEY Please seat this juror

11 THE CLERK What say you for Defendant

12 Robinson?

13 MR HARRIS Please seat this juror

14 THE CLERK Sir, you have been selected for
15 the trial of this case Please have a seat in the
16 jury box

17 Juror number 253, Zachary Bennett

18 What say you for the State?

19 MR SAVAGE Please seat this juror

20 THE CLERK What say you for Defendant Brown?

21 MR HOWELL Please seat this juror

22 THE CLERK What say you for Defendant Boston?

23 MS CRUMEY Please seat this juror

24 THE CLERK What say you for Defendant

25 Robinson?

1 MR HARRIS Please excuse this juror

2 THE CLERK Sir, you have been excused from
3 the trial of this case Please have a seat back in
4 the audience

5 Juror number 32, Alison Carbevale

6 (Whereupon, a white female approaches)

7 THE CLERK What say you for the State?

8 MR SAVAGE Please excuse this juror

9 THE CLERK Ma'am, you have been excused from
10 the trial of this case Please have a seat in the
11 audience

12 The State has exhausted its strikes

13 Juror number 187, Nancy Rhoades

14 (Whereupon, a white female approaches)

15 THE CLERK Any challenge from the State?

16 MR SAVAGE No, sir

17 THE CLERK What say you for Defendant Brown?

18 MR HOWELL Please seat this juror

19 THE COURT Ma'am, you have been selected for
20 the trial of this case Please have a seat in the
21 jury box

22 Your Honor, those are the 12 jurors

23 THE COURT Let's go with two alternates
24 Strikes are two and one

25 THE CLERK Juror number 283, Marie Werner

1 What say you for the State?

2 MR SAVAGE Please seat this juror

3 THE CLERK What say you for Defendant Brown?

4 MR HOWELL Please excuse this juror

5 THE CLERK Ma'am, you have excused from the
6 trial in this case Please have a seat back in the
7 audience

8 Juror number 273, Kyle Norton

9 What say you for the State?

10 MR SAVAGE Please excuse this juror

11 THE CLERK Sir, you have been excused from
12 the trial of this case Please have a seat back in
13 the audience

14 Juror number 120, Julia Killingsworth

15 (Whereupon, a white female approaches)

16 THE CLERK Any challenge from the State?

17 MR SAVAGE No, sir

18 THE WITNESS What say you for Defendant
19 Brown?

20 MR HARRIS Please seat this juror

21 THE CLERK What say you for Defendant Boston?

22 MS CRUMEY Please seat this juror

23 THE CLERK What say you for Defendant
24 Robinson?

25 MR HARRIS Please seat the juror

1 THE CLERK Ma'am, you have been selected for
2 the trial of this case Please have a seat in the
3 jury box

4 Juror number 48, Janice Creed

5 (Whereupon, a white female approaches)

6 THE CLERK What say you for the State?

7 MR SAVAGE Please seat this juror

8 THE CLERK What say you for Defendant Brown?

9 MR HARRIS Please seat this juror

10 THE CLERK What say you for Defendant Boston?

11 MS CRUMEY Please seat this juror

12 THE CLERK What say you for Defendant
13 Robinson?

14 MR HARRIS Please seat this juror

15 THE COURT Ma'am, you have been selected for
16 the trial of this case Please have a seat in the
17 jury box

18 THE COURT Are there any motions regarding
19 the selection of the jury from the State?

20 MR SAVAGE None, Your Honor

21 THE COURT From the Defendant Brown?

22 MR HOWELL Not from the Defendant Brown,
23 Your Honor

24 THE COURT From the Defendant Boston?

25 MS CRUMEY Defendant Boston doesn't have

1 anything, Your Honor, with the jury selection

2 THE COURT Defendant Harris?

3 MR HARRIS Mr Robinson has a motion

4 THE COURT You said has or does not have?

5 MR HARRIS Has

6 THE COURT Please approach

7 (Whereupon, a discussion was held at the bench
8 off the record)

9 THE COURT Anything further from the
10 defendants, any further motions regarding the
11 selection of the jury from the Defendant Robinson?

12 MR HARRIS None, Your Honor

13 THE COURT And the Defendant Boston?

14 MS CRUMEY No, ma'am

15 THE COURT Okay

16 Ladies and gentlemen, you have been selected
17 for the cases of State of South Carolina versus David
18 Brown, Colin Boston and Clarence Robinson We are
19 going to break for lunch prior to us beginning the
20 trial of this case But if you all could indulge me
21 just a couple more moments before I excuse you, I
22 know you're hungry, I'm starving as well, I went to
23 the gym at 6 30 this morning I don't know what I was
24 thinking It makes you more hungry, but I'm starving
25 by the time it's lunch time

1 But in any event, if you all could just give
2 me a few moments so that I can get our scheduling,
3 get a little better grip on our scheduling As the
4 foreperson for this jury I'm selecting number 204,
5 and the jury will explain to you where you need to
6 sit

7 Ladies and gentlemen, your foreperson is
8 merely the person that fills out the verdict form and
9 writes out any questions that you may have during
10 jury deliberation They don't have any greater vote
11 or greater voice than you do It's simply an
12 administrative function

13 If you all would go with the bailiffs for me
14 Please do not discuss this case Please don't
15 speculate about what it may or could be about, that
16 would be improper In the next less than five
17 minutes I will let you know exactly how long we will
18 be out for the luncheon recess If you would go with
19 the bailiffs for me, please

20 (Whereupon, the jurors exit the courtroom)

21 To the balance of the panel I wish that I
22 could excuse you for the remainder of the day, I
23 cannot Judge Houston still needs to select a jury
24 If you would return to the assembly room by 2 35,
25 well 2 40, that gives you exactly an hour for lunch

1 Again I need you to return to the assembly
2 room at 2 40 We appreciate your patience Have a
3 wonderful day

4 (Whereupon, the jurors exit the courtroom)

5 THE COURT So the record is clear, the
6 defendants Boston and Robinson made a Batson motion
7 regarding the State's use of their preemptory
8 challenges toward every black male, that being number
9 188, 234, 144 And the State indicated that they had
10 struck these individuals because they had criminal
11 records with the exception -- and that being 234 was
12 a black male had a record for disorderly conduct
13 And 144 had a record for simple assault

14 They indicated however number 188 did not have
15 a record but they struck him because he was employed
16 at MUSC, and the defendant Mr Boston had formerly
17 been employed at MUSC?

18 MR SAVAGE That is my understanding Yes,
19 Your Honor

20 THE COURT And in what capacity was Mr
21 Boston employed at MUSC?

22 MR SAVAGE I believe he was a floor tech

23 THE COURT And this gentleman that was struck
24 was employed as a food tech?

25 MR SAVAGE I'm not sure I have written he

1 worked at MUSC, Your Honor

2 THE COURT I have food tech I did not have
3 down he was employed at MUSC

4 The State indicated that they struck the
5 defendant (sic) because he was employed at MUSC and
6 because of the similarity to their employment, they
7 had concerns about whether they knew one another and
8 therefore struck the juror

9 The burden then shifted to the defendants to
10 show that the striking party was merely providing the
11 Court with pretextual reasons, and that there was
12 disparate treatment in the selection of the State's
13 strikes because they indicated that the State seated
14 number 156 who was also employed at MUSC It was a
15 white male

16 In what capacity is he employed at MUSC? I do
17 not have that that in my -- does anyone know?

18 MR SAVAGE I don't know, Your Honor

19 MR HOWELL He was -- sounded to me like he
20 wasn't a surgeon but he was sort of managed the
21 department of surgery He was connected with the
22 Department of Surgery in some fashion

23 THE COURT Okay State then indicated that
24 in response that they were near the end of their
25 strikes and that is why they did not strike this

1 potential juror And at the time that I heard that I
2 was inclined to be in agreement with it in that the
3 defence could not show the Court some other
4 independent reason or basis upon which the Court
5 could perceive or could find that there was disparate
6 treatment, or that based on the totality of the facts
7 and circumstances of the record that they had met
8 their burden

9 However, upon looking at my strike lists
10 number 188 was your second, State's second strike
11 And they did not exercise another strike -- their
12 first strike was 106, black female What was the
13 reason for striking her?

14 MR SAVAGE She has a record, Your Honor

15 THE COURT What is her record?

16 MR SAVAGE She has a number of check fraud
17 charges, Your Honor Two from 1982, 1983 she has
18 one 1983 she has violation of check laws She has
19 another three from that same year 1987 she has a
20 check fraud which was dismissed 1988 she has a trip
21 check fraud charge 1996 she has two check fraud
22 charges And 1996 she has another check fraud charge

23 THE COURT That was your first strike Then
24 you used your second strike on number 188

25 MR SAVAGE Yes, Your Honor

1 THE COURT You then did not exercise another
2 challenge until 234, which was a black male cook,
3 which was long after number 156 And at that time
4 you still have eight remaining challenges

5 So your reason that you were short on
6 challenges and you did not have that many does not
7 hold any water So I need to know what was your
8 independent basis, gender-neutral reason for striking
9 the juror?

10 MR SAVAGE Are you talking 234?

11 THE COURT You struck number 188 And you
12 said the reason you struck him was because he was
13 employed at MUSC, and so was Mr Boston And that
14 you were short on strikes

15 MR SAVAGE Yes, Your Honor

16 No, 188 was not because I was short on
17 strikes I struck 188 because --

18 THE COURT Okay, I misunderstood then Who
19 was the person you said you struck because you were
20 short on strikes?

21 I need to know your independent reason why you
22 struck number 188, which is the juror that is in
23 contention

24 MR SAVAGE My independent reason for
25 striking 188 is because he was employed at MUSC And

1 it was my understanding so was Mr Boston at the
2 time

3 THE COURT But you sat someone similarly
4 situated

5 MR SAVAGE Later on, yes, Your Honor At
6 that point we were getting lower on the strikes so it
7 was strategy

8 THE COURT You had only exercised two
9 strikes You had eight more

10 MR SAVAGE When the other one was sat? When
11 was the other one -- who was the other one? I don't
12 even know who the other one was

13 THE COURT You used your first challenge
14 which was 106, which was a black female You used
15 your second strike which was 188, black male You
16 then did not exercise any challenges again until
17 number 234, which was well after when number 156 was
18 seated on the jury So --

19 MR SAVAGE Was 156 the MUSC worker as well
20 then?

21 THE COURT He is Mr Howell has indicated
22 that he had some involvement with managing the
23 surgery department at MUSC

24 MR SAVAGE All I can tell you, Your Honor, I
25 remember going through and it -- my understanding was

1 at the time that when he was sat he was the sixth
2 juror, and at that time before we only had five, so
3 we had another seven jurors to go That's the reason
4 why

5 THE COURT So tell me the reason, what is the
6 race-neutral reason that you struck number 188?

7 MR SAVAGE 188 was based on where he worked
8 I was worried that he may have known the defendant

9 THE COURT Why weren't you concerned whether
10 156 would have known him?

11 MR SAVAGE I was concerned about 156 But
12 by that time we still had a number of jurors to be
13 seated and it was just strategy

14 THE COURT Anything further from the
15 defendant, Ms Crumey?

16 MS CRUMEY Anything additional or anything
17 in response to that?

18 THE COURT Anything in response to that for
19 the record

20 MS CRUMEY I am still not hearing the
21 reasoning in terms of strategy At that point there
22 had been no additional strikes from the State to
23 indicate that there was any -- they were close to
24 being close to their number of strikes or anything
25 strategic at that point because there had been a

1 number of strikes exercised by the defendants, but
2 nothing by the state for probably the next 13, there
3 was another 13 jurors were sat prior to them making
4 those strikes

5 THE COURT Anything further, Mr Harris?

6 MR HARRIS Your Honor, just to the second
7 strike, they had 10 jurors left, we sat 2 between
8 that so there were plenty of strikes left There
9 was 7 as opposed to 10 Just again I ask why 188 was
10 struck when the other gentleman from MUSC was not

11 THE COURT Yes, sir

12 MR SAVAGE Your Honor, basically here's the
13 thing 188 didn't have a record, okay, he worked at
14 MUSC 156 did not have a record, he worked at MUSC
15 Obviously there are two strikes there with people
16 that don't have records

17 You go through the complete list of everyone
18 in the jury pool and how many people that do have
19 records and could be potential jurors, we made a
20 strategic decision that we weren't going to waste a
21 strike, a strike on someone else without a record
22 So that's why he was sat, that's why the first one
23 wasn't The decision was made based on whether we're
24 going to strike someone with a record or without a
25 record at that point

1 THE COURT As required by case law, the Court
2 has conducted the Batson hearing The first step
3 that is required is that the striking party must
4 offer an explanation for its use of its preemptory
5 strikes Their reason does not have to be specific,
6 it does not have to be legitimate, nor does it have
7 to be persuasive to the Court, it only needs to be
8 race or gender neutral

9 The ultimate burden lies on the defendants who
10 are the parties, in this instance, is the defendant
11 Boston and Robinson who are challenging the use of
12 the strikes Of course we have no race or gender
13 stereotypes and generalization which there have been
14 none for the record

15 The burden then -- and they have provided that
16 reason The burden then shifts to the proponent of
17 the strikes, and they are required to show the Court
18 that even though race gender neutral reasons have
19 been given, that there has been disparate treatment,
20 that made the use of the strikes fundamentally
21 implausible

22 The Court must ultimately look at the totality
23 of the facts and circumstances of the record to
24 determine if the challenging party has met their
25 burden of proof

1 The Court would find that the State has
2 provided race, gender neutral reasons for the use of
3 their preemptory challenges I understood something
4 different than has been presented after full hearing
5 on the matter regarding the strategic use of their
6 challenges in that what they have articulated for the
7 record is after they struck number 188 they made a
8 strategic decision that they would not exercise their
9 challenges on everyone who was employed at MUSC
10 without a record after looking at the balance and the
11 number of jurors to be presented and their remaining
12 strikes

13 The Court finds that that is a race neutral
14 reason Again emphasizing that it does not have to
15 be specific, legitimate or persuasive The ultimate
16 burden lies on the challenging party The Court
17 finds they have failed to meet that burden of proof,
18 therefore the motions are noted for the record and
19 overruled, the selection of the panel will stand

20 Now is there anything else we need to take up
21 before we do opening argument in this case?

22 From the state?

23 MR SAVAGE No, Your Honor

24 THE COURT From the defense, Mr Brown?

25 MR HOWELL No, Your Honor

1 THE COURT From the defense, Mr Boston?

2 MS CRUMEY No, Your Honor It is my
3 understanding all motions are going to be held prior
4 to the -admission --

5 THE COURT Absolutely And you all need to
6 make me aware of it so that we can take it up
7 in-camera

8 From the defendant, Mr Robinson?

9 MR HARRIS Nothing further, Your Honor

10 THE COURT okay We will break for lunch
11 until 3 15 I'm going to give the jury enough time
12 to go eat and get back If you could bring the jury
13 in for me, please Then we will begin with opening
14 arguments, and -- Court's instruction and opening
15 arguments

16 (Whereupon, the jurors enter the courtroom)

17 THE COURT Thank you, ladies and gentlemen,
18 we appreciate your patience We are going to break
19 for lunch until 3 15 During this break please do
20 not discuss the case among yourselves or with anyone
21 else Please don't speculate about what you think
22 the case may or could be about, that would be
23 improper

24 Please don't do any independent research, that
25 includes anything that could be found on the Internet

1 or otherwise, that would also be improper You are
2 the fact finders in this case and it is essential
3 that you only decide this case based on the testimony
4 that you will hear from the lips of the sworn
5 witnesses and the other evidence that will be
6 introduced in this case

7 Also, please don't have any contact with
8 anyone in or about the courthouse Again I would not
9 want an innocent conversation to be observed by
10 someone and misconstrued

11 Scott, if you would please swear the jury If
12 you all would stand for me, please, and raise your
13 right hands to be sworn

14 (Whereupon, the Clerk administers the oath to
15 the jury panel)

16 THE COURT You all have a wonderful lunch I
17 will see you at 3 15 You will return directly to
18 your jury room, the bailiffs will show you how to do
19 that

20 (Whereupon, the jurors exit the courtroom)

21 THE COURT Have a good lunch I will see you
22 at 3 15

23 (Whereupon, a recess was taken)

24 THE COURT Is the State ready to proceed?

25 MR SAVAGE We are going through the

1 evidence 10 to 15 minutes, Your Honor

2 THE COURT If that will save time, why don't
3 we go ahead and do that That's fine You all go
4 ahead and finish

5 (Whereupon, State's Exhibits 1 through 21 are
6 marked for identification)

7 THE COURT Is there anything before we
8 proceed with the Court's opening instructions and
9 open arguments, from the State?

10 MR SAVAGE No, Your Honor

11 THE COURT From the Defendant Brown?

12 MR HOWELL None from Mr Brown, Your Honor

13 THE COURT Defendant Boston?

14 MS CRUMEY No, ma'am

15 THE COURT Defendant Robinson?

16 MR HARRIS Nothing, Your Honor

17 THE COURT Please bring in the panel

18 MR SAVAGE Your Honor, the only thing we
19 have a motion to sequester the witnesses

20 THE COURT Any objection?

21 MR HOWELL We join in that

22 MR HARRIS We also join in that

23 THE COURT Okay, witnesses will be
24 sequestered You all need to identify those for the
25 bailiff They would have no way of knowing who needs

1 to be sequestered and who doesn't

2 (Whereupon, the jurors enter the courtroom)

3 THE COURT Ladies and gentlemen, I hope that
4 you all had a good luncheon recess We apologize for
5 the delay, we had some administrative matters that we
6 needed to take up, some things that help us move the
7 trial along a little more smoothly So we appreciate
8 all being so very patient while we handled those
9 matters

10 The case that we are about to try, ladies and
11 gentlemen, is the State versus David Brown, the State
12 versus Colin Boston, and the State versus Clarence
13 Robinson What I will now say is intended to serve
14 as an introduction to the trial of this case These
15 remarks are not an instruction on the law I will
16 instruct you on the law applicable to this case at
17 the end of the trial before you retire to consider
18 your verdict

19 This is merely an explanation of the
20 procedures that we will follow during the course of
21 this trial so you may better understand what is
22 happening During the course of this trial you will
23 be given the opportunity to take notes, and if the
24 bailiffs could help me pass those out The bailiffs
25 are going to give you some notebooks as well as pass

1 around some pens I will give further instructions
2 regard note-taking near the conclusion of the
3 instruction

4 Please write your juror number on the white
5 sticker that is on the front of the notebook, that
6 way you will be able to identify those which belong
7 to you

8 The defendants are charged by indictments
9 filed with this Court with the crimes of armed
10 robbery and possession of a firearm during the
11 commission of a violent crime, the elements of which
12 I will explain to you during -- at the end of the
13 trial

14 The indictments are simply the charges by
15 which the cases are brought into court And they are
16 not in any sense evidence of any of the allegations
17 they contain The defendants have pled not guilty to
18 the indictments, therefore the State has the burden
19 of proving each of the elements of the indictments
20 beyond a reasonable doubt And it will be your duty,
21 ladies and gentlemen, to decide whether the State has
22 met that burden or not

23 You purpose as jurors is to find and determine
24 the facts Ladies and gentlemen, you are the sole
25 judges of the facts in this case If at any time I

1 make any comment regarding the facts, you must
2 disregard it You are to determine the facts from
3 the testimony you hear and the other evidence
4 introduced in court It is up to you to determine
5 the inferences which you feel may be properly drawn
6 from the evidence

7 It is especially important that you perform
8 your duty of determining the facts diligently and
9 conscientiously, because ordinarily there is no way
10 to correct an erroneous determination of facts made
11 by a trial jury

12 On the other hand, and with equal emphasis,
13 the same law that makes you the judges of the facts
14 makes me the judge of the law The law as instructed
15 by the Court is the only law that you may consider
16 You must accept and follow it even though you may
17 disagree with it

18 The Court cannot tell you what the facts are
19 and you cannot disagree with the Court about what the
20 law is or what the law should be Your
21 responsibility is to take the law as the Court
22 instructs it, and to apply it to the facts as you
23 find them from the testimony of the witnesses and the
24 other evidence that will be introduced After doing
25 that, you will render your verdict, a true and just

1 verdict under the solemn oath that you have taken as
2 jurors in this case

3 Until I advise you to begin your
4 deliberations, you must not discuss this case with
5 anyone That includes your fellow juror members,
6 your friends, your family, or anyone else involved in
7 the case After the case is submitted to you, you
8 must discuss it only among the 12 once you are sent
9 to deliberate in your jury room

10 The attorneys and the parties have been
11 advised that they're not to speak with you at all
12 so if you should see them at a restaurant, in the
13 lobby or in the hallways or even in the elevator, and
14 they don't speak with you, please don't think they're
15 being rude, they're simply strictly following the
16 Court's instruction Again we would hate for an
17 innocent conversation to be observed by someone who
18 cannot hear the context of that conversation, make
19 assumptions and misconstrue it

20 In other words, we would not want them to
21 think that you are talking about the facts of this
22 case inappropriately

23 During the trial, ladies and gentlemen, you
24 are not to read, listen to or watch any news reports
25 about this case That includes anything that might

1 be in the newspapers or on the Internet, radio or
2 television In addition, you are strictly instructed
3 that you are not to do any Internet type searches
4 such as Goggle or ASK com or Bing I think is the new
5 thing for MSN

6 You are not to do any type Internet searches
7 or any newspaper type searches to find any
8 information that could possibly be found via
9 electronically outside of the evidence of this case
10 You must not consider anything that you may have read
11 or heard about this case outside of the courtroom,
12 whether before or during the course of the trial

13 It is essential that you keep an open mind and
14 not decide any issue in this case until all of the
15 evidence has been presented, the parties have made
16 their closing arguments, and I have instructed you on
17 the law in this case

18 It is your solemn responsibility to determine
19 the guilt or innocents of the defendants And your
20 verdict must be based solely on the evidence as it is
21 presented to you in this trial, and on the law as I
22 will instruct you during and at the close of this
23 trial

24 In just a moment the solicitor will make what
25 is called an opening statement in which the solicitor

1 will explain to you what he believes the issues to be
2 in this case The attorneys for the defendants may
3 also make opening statements, although they are not
4 required to do so

5 What the attorneys tell you during their
6 opening statements is not evidence in this case It
7 is only their contention as to what they believe the
8 issues to be The evidence in this case will be
9 presented to you by the testimony of sworn witnesses
10 from the witness stand, and/or by exhibits that may
11 be introduced into evidence

12 From time to time during the trial you may
13 hear one of the attorneys say something like, Your
14 Honor, I object Just as in sports, business or any
15 other structured activity, there are certain rules
16 that we must obey in the presentation of evidence
17 These rules ensure that you receive the most
18 trustworthy and reliable evidence available

19 An objection is a procedure that an attorney
20 uses to call a possible violation of these rules to
21 my attention as the Judge of this court And for
22 this reason you should never hold an attorney's
23 objection against them, nor should you conclude from
24 the Court overruling or sustaining an objection that
25 I favor one side of the other

1 Also from time to time you may hear the
2 attorneys say something like, Your Honor, we have a
3 question of law, or they may ask to approach the
4 bench, or I may ask them to approach the bench, or it
5 may be necessary for us to excuse you from the
6 courtroom for a short while while we discuss matters
7 of law. The reason we do this is because, as I have
8 explained, you are the finders of the facts. And the
9 law does not permit me to have an opinion about the
10 facts.

11 And sometimes when I am discussing matters of
12 law with the attorneys, it might be necessary for me
13 to make some comment about the facts in connection
14 with ruling whether a particular law, particular
15 evidentiary rule or procedural rule applies, and for
16 this reason we exclude you from the courtroom so that
17 in no way will you be influenced by anything that the
18 Court may say or do in connection with the facts of
19 this case.

20 You also from time to time if the attorneys
21 approach the bench may hear that little white noise.
22 And I always sort of smile to myself when I think
23 about that. I had a juror one time when the white
24 noise was going on he raised his hand and said, we
25 can't hear you. I said, that's the purpose of the

1 white noise You are not supposed to be able to hear
2 us

3 So I sort of chuckle to myself when I think
4 about that now every time we hit that button But
5 that is directly over your head and it is for that
6 purpose, so that you cannot hear us speaking so that
7 again you will not be influenced by anything that the
8 Court may say or do in connection with the facts of
9 this case

10 In determining what the true facts are, you
11 must decide whether or not the testimony of a witness
12 or witnesses is believable It will be my
13 responsibility to rule as a matter of law as to
14 whether certain testimony is admissable at all or
15 not But once it is admitted, ladies and gentlemen,
16 it is solely for you to determine whether or not you
17 believe the testimony or not, something we generally
18 refer to as credibility

19 In deciding whether to believe a witness you
20 have to right to consider the interest of any
21 witness, the bias of any witness, the prejudice of
22 any witness, the opportunity for the witness to have
23 seen the matters and things about which the witness
24 is testifying, and the way the witness acts on the
25 witness stand, something again we commonly refer to

1 as demeanor

2 You have a right to consider anything that is
3 in the record that will help you evaluate the
4 testimony of the witnesses That means that it is
5 your duty to pay close attention to the witnesses, to
6 observe them, to listen to them, and to pay close
7 attention to the attorneys and the Court

8 Although I know it is very difficult,
9 especially in a room without windows, please do not
10 allow your thoughts to wander, but pay strict
11 attention to the testimony so that at the end of the
12 case, at the end of the testimony, after the
13 arguments of the attorneys and the instructions on
14 the law as given by the Court, you will then be in a
15 position to determine what the true facts are, and to
16 apply the law to those facts and thus render a true
17 and just verdict

18 As I have indicated, during the course of this
19 trial you will be given the opportunity to take
20 notes Note-taking is a privilege that you may
21 choose to exercise or choose not to exercise Not
22 everyone finds note-taking helpful to them Please
23 do not feel compelled to take notes It is not
24 something that is required

25 If you should decide that you want to take

1 notes, please don't try to write down everything that
2 is said It's physically impossible We all talk at
3 about the rate of 200 words a minute And the only
4 reason the court reporter can take it down is because
5 she has trained herself in a very complex form of
6 shorthand that allows her to reduce a sentence to
7 maybe a key stroke of a couple of syllables, or a
8 word to one sound So that it allows her to take
9 down everything that is said

10 Again as the fact finders it is essential that
11 you rely on your powers of observation, which means
12 you cannot allow note-taking to become a distraction
13 to you, or to dilute those powers of observing the
14 witnesses so that you can determine credibility and
15 believability

16 You may want to make an outline of the main
17 points that are being made And once you are sent to
18 your jury room to deliberate, take a few moments to
19 allow those notes to refresh your memory Again I
20 would remind you that your notes are for your
21 specific and your individual purposes, and for the
22 sole purpose of refreshing your own memory, they are
23 not to be shared with anyone else

24 Please don't consider your notes more reliable
25 than someone else's memory Someone else's memory

1 should be considered just as reliable as those who
2 may have taken notes During the breaks and recesses
3 your notes will have to be left in your seats, and
4 that's to make sure that you do not prematurely
5 discuss the case and have any premature deliberation
6 or any temptation to talk about the facts of the
7 case

8 Madam Forelady, it will be your responsibility
9 to preside in the jury room and be the jury
10 spokesperson here in the courtroom during jury
11 deliberations in the event that the jury has any
12 questions It will also be your responsibility to
13 fill out the verdict forms But I will give you
14 further instructions regarding that at the conclusion
15 of the case

16 In order to preserve everyone's rights, I will
17 give the parties an opportunity to take exception to
18 anything that the Court has said by way of opening
19 instruction

20 Are there any exceptions from the State?

21 MR SAVAGE No, Your Honor

22 THE COURT Any exceptions from the Defendant
23 Brown?

24 MR HOWELL None, Your Honor

25 THE COURT Any exceptions from the Defendant

1 Boston?

2 MS CRUMEY None, Your Honor

3 THE COURT Any exceptions from the Defendant
4 Robinson?

5 MR HARRIS None, Your Honor

6 THE COURT Mr Savage, you may proceed

7 Ladies and gentlemen, I would ask that you
8 give the attorneys your undivided attention

9 MR SAVAGE Thank you, Your Honor, may it
10 please the Court

11 THE COURT Yes, sir

12 MR SAVAGE Opposing counsel

13 Ladies and gentlemen of the jury, this case is
14 about taking It's about four men working together
15 with gloves, guns, bandanas, and how they robbed
16 Bender's Bar and Grill in West Ashley, and the
17 patrons inside

18 Sitting behind me are three of those men
19 involved in the robbery They are David Lee Brown,
20 Colin Boston and Clarence Robinson The fourth
21 defendant, Darnel Brown, will have his day in court
22 at another time

23 More important than the money, these men took
24 away the victims' sense of security and their right
25 to be safe

1 The defendants planned this robbery together
2 and they acted together All four of them stormed
3 into the bar and demanded that everybody get on the
4 ground Two of the defendants went to the back of
5 the bar where the cash register was, and the other
6 two stayed near the front door and one of them acted
7 as a lookout One of those defendants went to the
8 back of the bar, jumped over the bar counter, smashed
9 open the cash register and stole the money inside

10 They also robbed several patron inside that
11 bar One of those patrons was David Alsbrooks Mr
12 Alsbrooks was sitting at the bar at the time of the
13 robbery and was knocked off his chair and thrown to
14 the ground While he was on the ground, one of the
15 defendant's stood over the top of him, pointed a gun
16 at him, and took the money out of his wallet

17 Another victim in this case was Adina Walden
18 Ms Walden walked up to the front of the bar as the
19 robbery was in progress The person standing as the
20 lookout opened up the door and dragged her in before
21 she knew what was going on

22 That defendant standing at the front door
23 pointed a gun at her head and demanded that she tell
24 him where the safe was She didn't work there so she
25 didn't know

1 while that defendant held her, another one
2 came up to her on her other side, and he pointed his
3 gun at her head They stole \$20 from her, but they
4 weren't satisfied They decided they would try to
5 humiliate her One of those defendants grabbed her
6 breast, her groin, and then shoved her up against the
7 wall with a gun in her back

8 After the defendants got all the cash from the
9 people inside there, they fled the bar together and
10 left in Colin Boston's car

11 Police responded to the crime scene within
12 minutes They spoke to the victims inside, got a
13 general description, and began their investigation
14 About 20 minutes after the robbery, about four miles
15 away from the crime scene, these defendants were
16 stopped in Colin Boston's car Inside that car were
17 four guns, gloves, bandanas and other evidence
18 related to this crime

19 Because of what happened each of them are
20 charged with armed robbery and possession of a
21 firearm during the commission of a violent crime
22 During this trial you will hear from the witnesses
23 inside and the officers involved They will tell
24 about what happened that night and how the case was
25 made

1 After you've heard their testimony and seen
2 the evidence, I will come back and ask you to find
3 these defendants guilty of all crimes charged in the
4 indictment

5 THE COURT Mr Howell

6 MR HOWELL May it please the Court

7 THE COURT Yes, sir, you may proceed

8 MR HOWELL Madam Forelady, and ladies and
9 gentlemen of the jury, I introduced myself earlier,
10 my name is Donald Howell and I represent Mr David
11 Brown who's seated in the plaid shirt there

12 Let me talk to you about how the trial is
13 going to work and what your job as a juror is going
14 to be There's no doubt what happened at Benders
15 that night was a terrible thing The question is
16 whether they have the right people

17 And you are going to be looking at some
18 evidence to see if the State can prove its case And
19 I'm going to talk to you a little bit about how you
20 analyze the evidence and how you look at things The
21 Judge has given you some initial instructions, and I
22 want to talk to you about how as jurors you should be
23 looking at the evidence and challenging the evidence
24 and why it works that way for a second

25 There are -- well, first of all, I have to

1 look at my notes Nobody says it's fun to be on a
2 jury We know that this is an imposition on your
3 time, an imposition on your comfort level, and it may
4 be an uncomfortable place to be

5 I can only tell you that we appreciate you
6 being here One of my favorite quotes as a lawyer I
7 guess, and I do believe this, Winston Churchill, who
8 was the prime minister of England during the second
9 world war, said that jury service was the single most
10 important service a citizen can do for his or her
11 country in peacetime

12 That's a pretty incredible thing What is it
13 that keeps this country free on a day-to-day basis
14 other than armed forces? It's juries It's you
15 You should have a tremendous sense of power, you
16 should have one, and you have a tremendous sense of
17 responsibility

18 Now in approaching this case and exercising
19 that responsibility in a responsible manner, there
20 are three concepts that you may have heard about a
21 little bit on TV, and they're going to become very
22 important in the context of this case, presumption of
23 innocence, burden of proof, and beyond a reasonable
24 doubt

25 If you watch any cop shows you've probably

1 heard some of that sometime When you are watching
2 it on the TV it means one thing, when you are in the
3 courtroom these are dead serious, big deal matters
4 And they're all kind of flip-sides of the same thing
5 and it goes like this

6 As Mr Brown sits here at this table, brought
7 in by the indictments that were read, he is presumed
8 innocent And as you look at him from this jury box
9 right now you've taken an oath to say, that guy is
10 innocent I believe he didn't do anything They're
11 going to really have to show me that that's not the
12 case

13 And you have taken an oath to follow that
14 direction And what the law says is the burden of
15 proof is on Mr Savage, as the representative of the
16 state of South Carolina, to prove him guilty beyond a
17 reasonable doubt

18 what does that mean? That means if you have
19 some doubt at the end of the case, if there are other
20 theories or things don't add up correctly in terms of
21 what was said at Benders and who they got some four
22 miles away and some time away, that those things
23 should fit like this if you've got the right people
24 If they don't fit, then they have not carried their
25 burden of proof

1 So what does that all mean as a practicable
2 standpoint? Big legal phrases, stuff we study for
3 months and years in law school, basically it means
4 this, be skeptical, be challenging To be trite with
5 you for a second, have inquiring minds When
6 somebody says, well I saw this, or I think, why do
7 you say that? Don't just take it as conclusion at
8 face value, look at the basis of the conclusion why
9 do you say that? Okay

10 If they said one thing at the bar and then
11 they said one thing somewhere else, ask yourselves
12 why that happens and see whether those things
13 connect

14 There are many areas that we believe that
15 during the course of the trial that things will not
16 add up under your scrutiny as jurors The
17 description of the get-away car was a dark -- I
18 believe will be a dark truck or SUV, and these
19 gentlemen were found in a red sedan Chevrolet

20 There was some very distinctive clothing by
21 some of the defendants that we think would have drawn
22 anyone in the bar's attention to it, but not found on
23 these guys And vice-versa, some things that some of
24 these guys had on that would have drawn their
25 attention had they been there and don't see if

1 those things link up to your satisfaction Be
2 challenging, be skeptical about that, pay close
3 attention

4 There is a phrase you've heard many times, a
5 chain is as strong as its weakest link And that's
6 what cases in courts are about Evidence is the
7 links Each piece of evidence that comes on this
8 witness stand is a link Each link has to be strong
9 at the end

10 Your job is to say, are all of the links
11 strong, or are some of them strong, does it reach the
12 legal burden of beyond a reasonable doubt at the end
13 of this case

14 We honestly believe, we honestly submit to you
15 that if you pay close attention, if you look at the
16 details, we urge you to look at the details, not the
17 general description, but the detailed description, at
18 the end of this case you will see that the State has
19 not met its burden and that Mr Brown is entitled to
20 a verdict of not guilty Thank you very much

21 THE COURT Ms Crumey

22 MS CRUMEY May it please the Court

23 THE COURT Yes, ma'am

24 MS CRUMEY Mr Savage, co-counsel, ladies
25 and gentlemen, I won't take much of your time As

1 Attorney Howell explained, although they are here
2 together, each of these defendants have different
3 counsel and each of them can address you separately

4 One thing that I want you to focus on, one
5 thing that I want Attorney Howell to focus on is the
6 identification Identification of the vehicles,
7 identification of the clothing, identification of the
8 people that were involved

9 And I believe that once you listen to all of
10 that carefully, listen to each witness carefully, and
11 the evidence that the State intends to present, we
12 believe that you will come to the conclusion that Mr
13 Colin Boston is not guilty I'd ask you to listen
14 carefully, and I thank you for your attention

15 THE COURT Mr Harris

16 MR HARRIS Thank you, Your Honor, may it
17 please the Court

18 THE COURT Yes, sir

19 MR HARRIS Couple hours back you all
20 remember we had that long selection process So you
21 all can feel special, you are a very select few
22 today You may not want to be in that select few,
23 but I'm sorry you are And we are glad you are here
24 And as Mr Howell said, this is a civil duty that we
25 truly appreciate This is a process that all of us

1 have come into, and we are here to make sure the
2 system works

3 A little time ago you were in the jury pool,
4 right now you are to consider yourself judges There
5 are 13 judges in this room There is Judge
6 Jefferson, she told you she's the judge of the law
7 The law in this courtroom is determined by Judge
8 Jefferson

9 You are 12 individual judges of the facts
10 This is not a group sport, this is not a group
11 effort, you are 12 individuals Each and every one
12 of you have your own opinion You are going to
13 analyze the facts your own way And every one of you
14 are going to judge the evidence that is shown today
15 individually This is not a team game

16 At the end we all have to have 12 people say
17 ya or nay But while you listen to the facts I want
18 you to listen to them individually And there is
19 going to be -- there's a term, circumstantial
20 evidence That's what this case is based on You
21 are going to see a lot of circumstantial evidence A
22 lot of things that, well, because of this, maybe
23 this

24 You are not going to see photo evidence You
25 are not going to see DNA evidence You are not going

1 to see anything that shows these people in this bar
2 You are going to hear witness statements, and there
3 are inconsistencies in those You are going to hear
4 statements about clothing, and there are
5 inconsistencies in those

6 We are going to show you those things today
7 I don't want to get into all of them because I would
8 be standing up here the rest of the day and I don't
9 want to do that But at the end of this, the term
10 that the Judge used, beyond a reasonable doubt
11 Okay

12 Beyond a reasonable doubt, and we will explain
13 it to you I'm sure the Judge will explain it to you
14 later and I'm going to explain it to you later on,
15 it's a hesitancy to act If you hear all these
16 facts, and you hear the closing arguments and then
17 you go back in your jury room and you hesitate to
18 act, then you've got to find my defendant and the
19 rest of them not guilty Thank you

20 THE COURT Mr Savage, you may proceed

21 MR SAHN State calls Colleen Denham

22 MS COLLEEN DENHAM,

23 after having first been duly sworn to state the
24 truth, the whole truth and nothing but the truth,
25 testified on her oath as follows

1 THE COURT You may proceed

2 MR SAHN Thank you, Your Honor

3 DIRECT EXAMINATION

4 BY MR SAHN

5 Q Good afternoon, Colleen I wanted to start
6 off by thanking you for being here I know it can't
7 be easy for you, and we do appreciate you coming in

8 I want to start off by just asking you
9 specific questions How old are you, Colleen?

10 A I'm 33

11 Q Do you live in the Charleston area?

12 A I do

13 Q About how long have you lived here?

14 A About almost all my life

15 Q Do you have any children?

16 A Yes, sir, I have four

17 Q What are their names and ages?

18 A Miguel is 16, Linda is 15, Nina is 14 and
19 Marcus is 12

20 Q Colleen, were you convicted of two counts of
21 financial transaction card forgery in 2000?

22 A Yes, sir

23 Q Okay, Colleen I'd like to now turn your
24 attention to the evening of Tuesday February 26,
25 2008 Did you go to Benders Bar and Grill that day?

1 A Yes, sir

2 Q Where is that located?

3 A Off Savannah Highway

4 Q Is that in Charleston County?

5 A I think so

6 Q Who did you go there with?

7 A A friend of mine, Charles Turner

8 Q And, Colleen, what were your plans that night?

9 A I had been at Benders the evening before and I
10 thought I left my passport So I was just going in
11 there to see if my passport was in the bar

12 Q Do you remember about what time in the evening
13 you arrived at Benders that night?

14 A No, sir

15 Q When you got inside the bar that night, where
16 did you and your friend, Chuck, go physically inside
17 the bar?

18 A Physically, he went to the bar, I went to
19 speak to the manager who was watching the debates
20 there on the TV And we started walking over towards
21 the bar and that's when these gentlemen came in

22 Q Okay You walked to the bar, then what
23 happened next, Colleen?

24 A Two guys came into the bar holding guns And
25 so I went and ducked down underneath the bar and

1 pulled two barstools in front of me

2 Q Why did you pull the barstool in front of you?

3 A So I would not be seen

4 Q Did that barstool block your view from the men
5 that walked in?

6 A Not completely But I could see -- I didn't
7 pay attention to anything really afterwards except
8 for like feet because we were on the ground, so all
9 we saw were feet

10 Q Did you see anyone else walk in after the
11 first two men came in?

12 A Two more came in afterwards

13 Q For a total of four?

14 A Correct

15 Q Could you tell how many of these four men had
16 guns?

17 A I only saw two guns

18 Q You saw two guns, okay And did they say
19 anything when they came in the bar?

20 A Tell everybody to get down, and that's about
21 all I remember hearing

22 Q Now I know you are down on the ground behind
23 the barstool, but can you describe these men at all?

24 A What drew my attention like the first one, the
25 first few guys that came in had a yellow -- something

1 yellow around his face, was really bright And so --

2 Q Let me stop you right there, Colleen This
3 man that had the yellow thing around his face, did he
4 go near your friend Chuck Turner?

5 A Yes

6 Q What did he do when he went over to Chuck
7 Turner?

8 A He had the gun to the back of his head And
9 just -- he didn't search him or anything, my friend
10 Chuck had put his chain underneath his shirt And I
11 just saw the gun to the back of his head

12 Q Do you remember what color the gun was?

13 A Silver

14 Q Okay And how close to you were you to that
15 man with the gun when he had the gun at Chuck's head?

16 A Had to be like two feet

17 Q Okay So were you able to see what kind of
18 shoes this man had on?

19 A Black Timberlands

20 Q Black Timberlands What about the other man,
21 can you describe what any of the other armed robbers
22 were wearing?

23 A One guy had Willie D's on

24 Q Can you explain what Willie D's are?

25 A High-top Nikes

1 Q Okay And do you remember a color on those?

2 A Black And I remember something white about
3 them

4 Q Now, Colleen, could you see any of the other
5 armed robbers' faces?

6 A No, sir

7 Q Why was that?

8 A I did not want to be identifying anybody

9 Q So you purposely looked away from the faces,
10 is that what you're saying?

11 A Yes

12 Q How long would you estimate the armed robbers
13 were in the bar for, Colleen?

14 A I don't know 10, 20 minutes It's so fast
15 when it's happening to you It just seemed -- didn't
16 seem like very long

17 Q And what did the men do after they finished
18 robbing the place?

19 A They went out the front door

20 Q Did the police arrive at that bar shortly
21 after the incident?

22 A Yes, sir

23 Q Did you talk to the police that night?

24 A Yes

25 Q Did you give them a written statement as to

1 what happened the best you could at that time?

2 A I did

3 Q Colleen, could you tell us what was going
4 through your mind during that whole time when these
5 men where robbing the place with guns that night?

6 MR HOWELL Objection, Your Honor, not
7 relevant

8 THE COURT Basis?

9 MR HOWELL It's not relevant to anything

10 THE COURT Repeat the question, please

11 MR SAHN Can you tell us what was going
12 through your mind that night when these men were
13 robbing the place with guns?

14 THE COURT Please rephrase and eliminate the
15 characterization

16 Q (By Mr Sahn) Colleen, how did you feel that
17 night?

18 A I was scared I was scared I was going to
19 watch my friend get shot

20 MR SAHN Beg the Court's indulgence

21 THE COURT Uh-hum

22 Q (By Mr Sahn) Colleen, did these men take any
23 money from you?

24 A No, sir

25 Q Please answer any questions defense counsel

1 may have for you

2 A Yes, sir

3 THE COURT Mr Howell, you may proceed

4 MR HOWELL Thank you, Your Honor

5 THE COURT You're welcome

6 CROSS-EXAMINATION

7 BY MR HOWELL

8 Q Ms Denham, is that your last name, ma'am?

9 A Yes, sir

10 Q I just wanted to very briefly The policeman
11 came pretty quickly as I understand it?

12 A Yes, sir

13 Q Within, virtually within minutes?

14 A Yes, sir

15 Q And they asked various people questions about
16 what they had seen, didn't they?

17 A Yes, sir

18 Q And you were one of those people?

19 A Yes, sir

20 Q And you gave a statement?

21 A Yes, sir

22 Q And you actually wrote it down?

23 A Yes, sir

24 Q Okay And I have copy of it Is this your
25 writing on it or did they write it for you?

1 A I wrote it

2 Q Okay And you mentioned something about a
3 yellow thing, but it's a yellow bandana, is that
4 correct?

5 A That's what I put on there because they told
6 me -- I did not know what to put so they were like,
7 just put what you think it was I thought it was a
8 yellow bandana

9 Q And you actually put yellow bandana twice, it
10 was a man with the yellow bandana that had the silver
11 gun to your friend's head?

12 A Yes

13 Q The shoes that you saw were black Timberlands?

14 A Uh-hum

15 Q And in terms of the faces you were really
16 trying not to make contact with anyone?

17 A No, sir

18 Q So you did not see any faces?

19 A No All I saw was feet

20 Q And you were purposefully not looking for
21 faces at that point?

22 A Correct

23 Q For your safety, which is understandable

24 A Correct They taught us that when I worked at
25 the grocery store Do not look them in the eye, give

1 them what they want

2 Q Okay And the person with the black
3 Timberlands is the second man all black with black
4 Timberlands?

5 MR HOWELL Is it okay if I hand this to her,
6 Your Honor?

7 THE COURT You may, to refresh her memory

8 A I have read it It's confusing to me because
9 it was all coming out so fast, and you are trying to
10 like keep track but you are still like shaking

11 What was the question?

12 Q (By Mr Howell) I think the question where
13 I'm heading to make sure I understand what you wrote
14 down, okay, is the person with the black Timberlands
15 had all black And it sounded like you saw from
16 knees down, so from the knees down the Timberlands
17 and everything was black?

18 A Yes Hold on, the black clothing?

19 Q Yeah, is that what you --

20 A I'm not sure what color the clothing was I
21 did not pay any attention

22 Q Okay Any maybe I just -- the reason I'm
23 asking, so that I understand it is, man with --
24 second man all black with black Timberlands That
25 sounds like that's clothes and shoes, or am I wrong

1 on that?

2 A I don't know

3 Q Just read it out loud so that I make sure I've
4 got my questions correct and I'm communicating that?

5 A Dressed in black with yellow bandana, black
6 with white shoes Second man all black with black
7 Timberlands Man with black and white shoes and
8 black gun jumped over the counter Yellow bandana
9 had a silver gun to my friend's head

10 Q So the second man was all black with black
11 Timberlands That was your statement at that time?

12 A Yes, sir

13 Q Looks like you may be having a hard time
14 remembering now, but that's what you wrote down?

15 A No It was so fast, you know what I mean?
16 Like I remember the guy with the yellow bandana And
17 then he came over this way, and that's where my
18 friend was, and that's when he had the gun to his
19 head And the guy with the black and white shoes,
20 the black shoes with white on them, jumped over the
21 counter

22 Q Okay And then after you wrote this they
23 actually asked you, were the parties' faces concealed
24 and you said yes and two didn't have gloves?

25 A The two that -- the main two gentlemen that I

1 could see, they did not have gloves

2 MR HARRIS That all the questions I have,
3 thank you very much

4 THE COURT Any questions, Ms Crumey?

5 MS CRUMEY Just a few

6 THE COURT You may proceed

7 CROSS-EXAMINATION

8 BY MS CRUMEY

9 Q Ms Denham?

10 A Yes, ma'am

11 Q You were sitting at the front of the bar?

12 A I wasn't even sitting

13 Q So you were standing in front of the bar?

14 A I was walking towards the bar As soon as I
15 got to the bar they came in and I turned around

16 Q And when you pulled the two barstools in front
17 of you, where exactly were you?

18 A There was a lip on the bar, like if you pull
19 your stool under, I was underneath that And I
20 pulled to two barstools in front of me

21 Q So you went under and pulled the barstools?

22 A I was under the lip It's like a little lip
23 on the bar

24 Q What kind of barstools were in front of you?

25 Like were they flat tops or do they have backs

1 on them?

2 A They have backs

3 Q So did you pull back in front of you?

4 A I just grabbed the bottom rung, the silver
5 thing on the bottom, and pulled it forward

6 Q And what were looking through? Were you
7 looking through the bottom of the rungs?

8 A I was looking underneath because my friend
9 Chuck was laid down right in front of me And then I
10 turned to the side because they had the gun to his
11 head and I did not want to see if anything happened
12 and that's when I saw the other shoes

13 Q So the only thing that you remember are shoes?

14 A Yes

15 Q But you also remember this yellow bandana?

16 A It's like as soon as they walked in it was
17 like you look, and then you got down

18 Q So when you saw -- you saw the first two men
19 come in You said two men came in later, but you did
20 not actually see them?

21 A I couldn't -- I only had -- my view wasn't
22 that good because of the barstools in front of me,
23 but there was like a space between them And then
24 like I was just trying not to draw attention to
25 myself by looking around

1 Q And the only thing that you could say about
2 those two, correct, is that they didn't have gloves
3 on?

4 A Yes

5 MS CRUMEY That's all I have

6 THE COURT Any questions, Mr Harris?

7 MR HARRIS Briefly, Your Honor

8 CROSS-EXAMINATION

9 BY MR HARRIS

10 Q You said you had just gotten there to get your
11 passport, you said you left it there the night
12 before?

13 A Yes

14 Q So you hadn't had any drinks at the bar?

15 A No, sir

16 Q So you were sober?

17 A Dead sober

18 Q Dead sober So you remember exactly what was
19 going on?

20 A Yes

21 Q I know you were scared, but you know what was
22 going on, you hadn't been drinking?

23 A No, sir, I knew

24 Q And again you said two men had their faces
25 concealed Is that the two you saw?

1 A I said the two gentlemen, the guys I seen, all
2 I saw when I was at face level was yellow around the
3 face And then I got down, pulled the barstools and
4 I was trying not to look at faces

5 Q Yellow covering this part right here?

6 A It was in the facial vicinity It was so
7 fast When you see a gun you drop

8 Q I understand And just to reiterate, you did
9 write this statement and you signed it down here?

10 A Yes, sir

11 Q This is your signature And you mentioned
12 black with white shoes twice One time you called
13 them -- was it all black dress with white shoes or
14 black shoes with white on them?

15 A They were black shoes with white somewhere on
16 them I remember white on them

17 Q Okay And I'm not trying to ask you again,
18 but when you referred to all blacks with black
19 Timberlands, do you think you were maybe talking
20 about clothes? I don't know It says all black with
21 black Timberlands?

22 A It was probably the clothing, I'm not --

23 Q You saw pants, though?

24 A Or maybe it was they were all black
25 Timberlands I don't

1 Q Okay So either clothing or they were all
2 black Timberlands, okay

3 MR HARRIS I have no further questions, Your
4 Honor

5 THE COURT Any redirect?

6 MR SAHN Very briefly, Your Honor

7 THE COURT You may proceed

8 REDIRECT EXAMINATION

9 BY MR SAHN

10 Q Colleen, your statement you said two robbers
11 had gloves, two did not, correct?

12 In your statement did you say two robbers had
13 gloves on?

14 It's not a trick question What did you say
15 about gloves in your statement?

16 A I remember that two did not

17 Q Okay And could it be possible the men were
18 wearing clear gloves?

19 MR HOWELL Objection, leading

20 THE COURT Basis?

21 MR HOWELL It's a leading question

22 THE COURT Sustained, leading You may
23 rephrase

24 MR SAHN No further questions, Your Honor

25 THE COURT Any objection to the witness being

1 excused from the State?

2 MR SAHN No, Your Honor

3 THE COURT From the Defendant Brown?

4 MR HOWELL None, Your Honor

5 THE COURT From the Defendant Boston?

6 MS CRUMEY No, ma'am

7 THE COURT Defendant Robinson?

8 MR HARRIS No, ma'am

9 THE COURT Ma'am, you are excused

10 Call your next witness

11 MR SAHN State calls Adina Walden

12 MS ADINA WALDEN,

13 after having first been duly sworn to state the
14 truth, the whole truth and nothing but the truth,
15 testified on her oath as follows

16 THE COURT You may proceed

17 MR SAHN Thank you

18 DIRECT EXAMINATION

19 BY MR SAHN

20 Q Good afternoon, Adina

21 A Hi

22 Q How old are you?

23 A 27

24 Q Do you live in the Charleston area?

25 A Yes, I do

1 Q About how long?

2 A All my life

3 Q Do you currently work?

4 A Yes

5 Q Where do you work?

6 A D D Peckers

7 Q What do you do there?

8 A I'm a waitress/bartender

9 Q Were you working at the time of this incident
10 in February of 2008?

11 A I was

12 Q Where were you working at that time?

13 A At that time I was working at Ruby Tuesdays

14 Q And, Adina, were you convicted of breach of
15 trust six years ago?

16 A I was

17 Q Let's talk about February 26, 2008 for a
18 moment You already told us you were working at Ruby
19 Tuesdays at the time Were you working that night,
20 Tuesday night?

21 A I was

22 Q At Ruby Tuesdays?

23 A Yes, sir

24 Q About what time did you get off work that
25 night?

1 A 8 00, 8 30ish

2 Q Did you go anywhere after work that night?

3 A Yes I went to --

4 Q Where did you go?

5 A Benders

6 Q Where is that located?

7 A On Savannah Highway

8 Q Is that Charleston County?

9 A I think so

10 Q How did you get to Benders that night?

11 A I drove

12 Q And once you arrived at the bar, where did you
13 park?

14 A Right in front

15 Q Is there a parking lot right in front?

16 A Yes

17 Q What did you do after you parked your car?

18 A I still had my book, my workbook in my pocket
19 so I took that out And I was only running in for a
20 second, so I grabbed I think like 20 bucks and stuck
21 it in my apron and left the rest of my money and
22 stuff in the car

23 And I got out of the car and proceeded to walk
24 up to the door and that's when somebody opened the
25 door I kind of like jumped back at first because I

1 thought it was the other bartender like playing a
2 joke And I got pulled inside

3 Q Okay Slow down for one second You said you
4 put \$20 in your apron What apron was that?

5 A My work apron

6 Q From Ruby Tuesdays?

7 A Yes

8 Q Now when you walked up to the door, tell us
9 exactly what happened?

10 A The door opened and there was a guy with a
11 bandana on his face And he just kind of -- I kind
12 of like jumped and he just grabbed me and said, get
13 inside

14 Q Okay About how tall was this man that
15 grabbed you and pulled you inside?

16 A I want to say he was maybe like two inches
17 taller than me if that He was shorter

18 Q How tall are you, Adina?

19 A 5'2"

20 Q Do you remember what this man was wearing at
21 all?

22 A No, I don't

23 Q So when he pulled you inside, what did you do
24 next?

25 A He put a gun to the right side of my head and

1 he started asking me where the safe was

2 Q What did you tell him when he asked you where
3 the safe was?

4 A That I did not work there, I had no idea

5 Q Did he take any money from you that night?

6 A Yes

7 Q How much did he take?

8 A Just the 20

9 Q Is that all you had on you?

10 A Yes

11 Q The gun he put to your face, do you remember
12 what color that was?

13 A That was a black one

14 Q So what happened after the first armed robber
15 took your \$20?

16 A Well he just asked me if I had any money I
17 said I had some in my apron Then at that point
18 another gunman ran up on my left side, and he put a
19 gun to the left side of my head and started asking me
20 about the safe and if I had any money And I just
21 kept saying, I don't work here

22 Q What color was this gun, do you remember?

23 A That was silver

24 Q Silver And what about this man's height?

25 A He was tall

1 Q Taller than the first gunman?

2 A Yes

3 Q Taller than you?

4 A Yes

5 Q After you told him you didn't work there, what
6 did he do after that?

7 A He started pushing me like I guess towards the
8 wall at that point when he put his hand on my back
9 he kind of like -- like he grabbed my butt but it
10 kind of like was my private as well Then he pushed
11 me up against the wall and told me to get down and
12 stay

13 Q I know this could be difficult, but I just
14 need to ask By your private you mean the front of
15 your body?

16 A Well, I mean it was from the backside, but
17 yes

18 Q He reached around the front of you?

19 A No No It was kind of like somebody was
20 grabbing your butt, but it slides up a little bit
21 farther I don't know how to describe that

22 Q What happened after he finished grabbing your
23 butt area?

24 A He pushed me into the wall, said sit down and
25 stay And they both kind of disbursed back And I

1 just huddled next to some jukebox or something I
2 cannot really remember

3 Q When he pushed you up against the wall, was
4 the gun still on you?

5 A Yes, both of them

6 Q What happened after you were pushed against
7 the wall?

8 A I sat there

9 Q Were you standing, were you sitting?

10 A No, I sat down

11 Q During the time of the armed robbery, were you
12 able to see or otherwise figure out how many armed
13 robbers were in the bar?

14 A Well, I had the one on one side and the other
15 one on the other side You knew there was somebody
16 else, but I didn't know how many more there were
17 You knew that there was a couple more in there But
18 to be honest, no, I don't, I couldn't tell you

19 Q Now could you see any of their faces?

20 A No

21 Q Why was that?

22 A They were covered with bandanas except for the
23 eyes And to be honest I didn't -- you're taught --
24 I was always taught where I work, you know, you don't
25 want to identify people So I was taught that

1 Q You were taught that for your own safety?

2 A Yes

3 Q During the course of the robbery, how many
4 other people were in the bar besides the armed
5 robbers, approximately?

6 A I'm going to say seven or eight There wasn't
7 that many I don't think

8 Q Did the police arrive at the bar shortly after
9 this incident?

10 A Yes

11 Q Did you talk to them?

12 A Yes

13 Q Did you give them a written statement?

14 A I did

15 Q Adina, what was going through your mind when
16 this man had a gun to your head and was fondling you?

17 MR HOWELL Objection

18 MR HARRIS Objection

19 THE COURT Basis?

20 MR HOWELL It's just not relevant

21 MR HARRIS Relevance

22 THE COURT Rephrase Do not characterize

23 Overruled, subject to the limitations I have
24 just given you

25 MR SAHN Beg the Court's indulgence

1 THE COURT Uh-hum

2 Q (By Mr Sahn) During the course of the armed
3 robbery, Adina, do know whether the guns were loaded
4 or not?

5 A I did not No, sir

6 Q Were you scared?

7 A Yes, very much so

8 Q Were you humiliated when you got fondled?

9 MR HOWELL Objection, Your Honor

10 THE COURT Basis

11 MR HOWELL It's not relevance to anything in
12 the charge

13 THE COURT I'm going to overrule it however
14 you need to rephrase Stay away from the
15 characterization and the leading

16 Q (By Mr Sahn) How did you feel?

17 A Awful There are so many things that run
18 through your mind at that point I mean, you don't
19 know what's going to happen I was terrified

20 MR SAHN Thank you Please answer any
21 questions defense counsel may have

22 THE COURT Mr Howell

23 MR HOWELL Yes, ma'am, Your Honor

24 CROSS-EXAMINATION

25 BY MR HOWELL

1 Q About what time was it?

2 A I probably got there about 8 30ish

3 Q And I still have this sense that as soon as
4 you are getting to the door it just sort of pops
5 open?

6 A Yes

7 Q That's what kind of caught you off guard?

8 A Yes

9 Q You even thought that was somebody maybe just
10 cutting up with you a little bit?

11 A Yeah

12 Q So you didn't have any sense that anything bad
13 was going on?

14 A No, not at all

15 Q The first thing you know a gun is pointed to
16 your head?

17 A Yes

18 Q And as you said it was a terrifying
19 experience?

20 A Yes

21 Q You mentioned that where you work, they
22 actually sort of trained you not to look and not to
23 make eye contact?

24 A Yes, sir

25 Q Did you follow those directions basically?

1 A Basically, yes The only person I had eye
2 contact with was the person who pulled me in the
3 door

4 Q And I believe you said you didn't see, to the
5 extent you saw anybody you saw them from the nose up?

6 A That's correct

7 Q There wasn't anything distinctive particularly
8 about the way anybody looked from the nose up?

9 A No, sir

10 Q And let me hand you this I forget you were
11 not here when I asked the first witness The police
12 got there pretty quickly after this happened?

13 A Yes, sir

14 Q Within a matter of minutes?

15 A Yeah

16 Q And they sat down and interviewed you to get
17 as much information as they could at that time?

18 A That's correct

19 Q And you cooperated with them?

20 A Yes, sir

21 Q And you gave them as much information as you
22 could?

23 A Yes, sir

24 Q And as accurately as you could?

25 A Yes, sir

1 Q I just want to hand you a copy of your
2 statement If you'll look at that They asked you
3 to describe height and weight, I think you only did
4 height With the first guy what height did you give
5 at that time?

6 A 5'5", 5'6"

7 Q Okay And the second guy?

8 A 5'7", 5'8"

9 Q Okay So they were pretty close in height but
10 one a little taller than the other?

11 A Uh-hum

12 Q But nobody towering over anybody?

13 A No

14 MR HOWELL That's all the questions I have,
15 Your Honor

16 THE COURT Any questions, Ms Crumey?

17 MS CRUMEY No questions

18 THE COURT Mr Harris?

19 MR HARRIS Just a few, Your Honor

20 THE COURT You may proceed

21 CROSS-EXAMINATION

22 BY MR HARRIS

23 Q Good afternoon, Ms Walden

24 A Good afternoon

25 Q So the man that came out had a bandana over

1 his face?

2 A Yes, sir

3 Q But you did not see any clothing he had on?

4 A No I wasn't paying attention to be honest

5 Q Okay So no description except for the

6 bandana?

7 A That's correct

8 Q Was it a yellow bandana?

9 A I don't remember I really don't

10 Q Okay And the man that, the second man that
11 came in, couldn't have been over 6' tall?

12 A To be honest I don't -- I don't know Most
13 people think I'm 5' but I'm 5'2" I have no clue

14 Q I totally understand

15 MR HARRIS Nothing further, Your Honor

16 THE COURT Any redirect?

17 MR SAHN No, Your Honor

18 THE COURT Any objection to the witness being
19 excused from the State?

20 MR SAHN Not from the State, Your Honor

21 THE COURT From the Defendant Brown?

22 MR HOWELL None, Your Honor

23 THE COURT Boston?

24 MS CRUMEY No, Your Honor

25 THE COURT Robinson

1 MR HARRIS No, Your Honor

2 THE COURT Ma'am you're excused

3 You may call your next witness

4 MR SAVAGE State calls David Alsbrooks

5 MR DAVID WALTER ALSBROOKS,

6 after having first been duly sworn to state the
7 truth, the whole truth and nothing but the truth,
8 testified on his oath as follows

9 THE COURT Thank you, you may proceed

10 MR SAVAGE Thank you, Your Honor

11 DIRECT EXAMINATION

12 BY MR SAVAGE

13 Q Mr Alsbrooks, I'm over here just in case you
14 didn't see me Where do you live, Mr Alsbrooks?

15 A Trailmore Trailer Park

16 Q And how long have you lived in Charleston?

17 A Past six years now

18 Q Do you remember an incident that occurred at
19 Benders Bar on February 26, 2008?

20 A Yeah

21 Q And were you at the bar at that time?

22 A Yeah

23 Q Can you tell the jury a little bit about --
24 actually, let's go back Where were you located in
25 the bar at that time?

1 A I was right next to the cash register

2 Q Okay And was that at the front of the bar,
3 the back of the bar?

4 A Well, it wasn't either end of the bar

5 Q Okay Could you tell me a little bit -- or
6 tell the jury about what happened that night when you
7 were in the bar, what you saw?

8 A Well I just saw three guys run in with
9 clothing all over their face I couldn't identify
10 anybody All I could tell you is it was three young
11 black guys And the whole face was covered with
12 various kinds of clothing I couldn't see anything
13 other than the eyes

14 Q Did you see anyone with guns that night?

15 A Oh, yeah

16 Q And you mentioned that there were three young
17 black males Did all of them have guns, or how many
18 did you see that were guns?

19 A All three of them had guns They came running
20 in with the guns up in front of their face They
21 wanted us to see the guns to put the fear of God into
22 us obviously

23 Q When they first entered the bar, did you hear
24 them say anything or anybody else say anything?

25 A Nobody said anything to me

1 Q Okay When was the first time you noticed
2 that someone was in the bar with a gun on them?

3 A When was the first time?

4 Q Yeah What did you see, what did you notice?
5 Did someone come up to you or did you see something
6 else?

7 A I saw them running through the front door with
8 the guns raised in front of their face

9 MR SAVAGE Okay Your Honor, may I approach
10 the witness?

11 THE COURT You may

12 (Whereupon, State's Exhibit Nos 22 and 23 are
13 marked for identification)

14 Q (By Mr Savage) Mr Alsbrooks, I am going to
15 hand you what is State's Exhibit for identification
16 purposes 22 and 23 Could you have a look at those,
17 please?

18 A Okay

19 Q Do you recognize those two pictures?

20 A Oh, yes

21 Q What are they?

22 A They're Benders Bar

23 Q Is that how it looked the night that you were
24 there?

25 A Yes

1 MR SAVAGE At this point, Your Honor, the
2 State moves Exhibits 22 and 23 into evidence

3 THE COURT Any objection Brown?

4 MR HOWELL None from Defendant Brown

5 THE COURT Boston?

6 MS CRUMEY No objection

7 THE COURT Robinson?

8 MR HARRIS Without objection

9 THE COURT Marked and admitted without
10 objection What are the numbers again?

11 MR SAVAGE 22 and 23, Your Honor

12 THE COURT Okay, you may proceed

13 (Whereupon, State's Exhibit No 22 and 23 are
14 admitted into evidence)

15 MR SAVAGE Thank you, Your Honor

16 Q (By Mr Savage) Mr Alsbrooks, I'm not sure,
17 can you see that picture from there or not?

18 A Yeah, I can see it

19 Q Do you need to come down a little closer to
20 see it or can you see it from there?

21 A I can't see all of it from here

22 THE COURT She's going to adjust it

23 MR SAVAGE Okay, thank you

24 Q (By Mr Savage) Mr Alsbrooks, from that
25 picture there, can you see where you were sitting

1 that night?

2 A Yep

3 Q Can you explain to me where it was you were
4 sitting?

5 I tell you, why don't you come down from the
6 chair there

7 MR SAVAGE Is that okay if he comes down,
8 Your Honor?

9 THE COURT Yes, sir

10 Q (By Mr Savage) And could you show the jury
11 whereabouts you were sitting at the time that this
12 occurred?

13 A I was sitting about right here

14 Q Okay

15 A There's a -- it turns 90 degrees, and I was
16 sitting right there

17 Q Okay, thank you You can take your seat
18 again

19 Now I am going to show you a second picture
20 that we just looked at while you were up there Is
21 that the same location where you were sitting, just
22 from a different angle?

23 A Yeah, the last stool on the right

24 Q That last stool on the right there, do you see
25 a drink there on the bar there?

1 A Yeah

2 Q Do you recognize that drink?

3 A Yeah

4 Q Is that the drink that you were drinking that
5 night when this occurred?

6 A Uh-hum

7 Q And you mentioned that they came in when you
8 were sitting on that chair, what happened to you
9 while you were sitting there as the robbery was going
10 on?

11 A I got side-blinded from one side

12 Q Okay Did you fall to the ground?

13 A Yeah I went to the floor real hard

14 Q And when you fell to the ground, what happened
15 then?

16 A He started going through my back pockets

17 Q When you say he started going through your
18 back pockets, is that someone just at the bar or is
19 that one of the people with a gun?

20 A One of the people with a gun went through my
21 left pocket and couldn't find the wallet, so he
22 started going through the right pocket and found the
23 wallet And took the money out and threw my wallet
24 on the ground Shortly after that they left

25 Q Okay While you were on the ground and the

1 person was going through your wallet, did he have --
2 was a gun pointed at you?

3 A Yes

4 Q Was it the person that was going through your
5 wallet who had the gun pointed at you?

6 A Yeah

7 Q Did you see his face at all?

8 A I couldn't see anything but his eyes

9 Q Okay But you do look at his face but it was
10 covered?

11 A No

12 Q His face wasn't covered? Maybe I'm confusing
13 you You did look at his face but his face was
14 covered?

15 A Yeah, his face was covered I couldn't see,
16 identify anything

17 Q You can't identify anyone that you saw that
18 night by face, could you?

19 A No

20 Q No, okay How much cash did you roughly have
21 in your wallet that night?

22 A How much?

23 Q Yes

24 A I'm deaf in one ear so I have a hard time
25 hearing It was approximately \$700

1 Q okay why did you have that much money in
2 your wallet that night?

3 A I'd just drawn \$700 out of the bank the day
4 before and I just always carried a lot of money on
5 me I don't anymore

6 Q Is that something that's normal for you to
7 take out that amount of money?

8 A Yes, it is

9 Q Do you do that on a regular, monthly basis?

10 A Yep

11 Q Okay Did you talk to the police after this
12 incident occurred?

13 A Did I what?

14 Q Did you talk to the police after this occurred
15 once they left, after the robbers left?

16 A No After the robbery was over I left before
17 the police got there

18 Q So you didn't actually talk to the officers --
19 you didn't see the police when they got there, you
20 left before the police got there?

21 A Yeah

22 MR SAVAGE I have no more questions at this
23 time

24 THE COURT Any cross, Mr Howell?

25 MR HOWELL Yes, ma'am

1 THE COURT You may proceed

2 CROSS-EXAMINATION

3 BY MR HOWELL

4 Q Mr Alsbrooks, I'm going to talk to you from
5 here because I'm going to try to get a little feel
6 for where the bar is, and I might point some things
7 out

8 A okay

9 Q If I need to speak up just remind me, okay?

10 A okay

11 Q You are sitting basically this chair here?

12 A Right

13 Q okay Now where is the front door? Is the
14 front door this way or is it down that way?

15 I'm trying to get situated a little bit

16 A It's not either way To the right is the back
17 door

18 Q Back door is back this way?

19 A Yeah

20 Q okay

21 A And the other way you pointed is just down to
22 the wall To the left would be the front door

23 Q okay And I'm going to switch pictures and
24 we're going to look at No 22 So is this coming
25 from the front door?

1 A Yeah That's exactly from the front door

2 Q Okay So as you would come in you go by --

3 A Go by the pool table

4 Q This one looks like it's kind of going length
5 ways maybe? Anyway, that's another pool table?

6 A Yeah You walk by the pool table to get to
7 the front door

8 Q Okay

9 A To come in the front door

10 Q And were you a regular at Benders?

11 A Fairly regular

12 Q And the check -- are you retired?

13 A Yes

14 Q Disability?

15 A Pardon?

16 Q Are you disability or just regular retirement?
17 Where did you work?

18 A I was a pipe-fitter for like 40 years

19 Q How old are you now?

20 A 72

21 Q How long had you been in Benders that night?

22 A Probably an hour or so

23 Q What were you drinking?

24 A Bourbon and ginger

25 Q And how long were the robbers that came in,

1 how long were they actually there?

2 A I don't think like five minutes

3 Q And you did not stay around and talk to the
4 police that night?

5 A No

6 Q And did you just go on home?

7 A Yeah I did something I shouldn't have done
8 because I had a lot to drink If I has been sober I
9 wouldn't have done that

10 Q Okay And you saw three men?

11 A I am pretty sure it was three men Maybe
12 four

13 MR HOWELL That's all the questions I have
14 Thank you

15 THE COURT Any cross-examination, Ms Crumey?

16 MS CRUMEY Yes, thank you

17 CROSS-EXAMINATION

18 BY MS CRUMEY

19 Q Mr Alsbrooks, when was the first time you
20 spoke with officers about --

21 A You are going to have to speak up I'm half
22 deaf

23 Q When was the first time you spoke with
24 officers about this case?

25 A I called them two or three days later and told

(

(

(

1 them I was there

2 Q And who did you speak with?

3 A I don't remember the name

4 Q Did anyone ever take a statement from you?

5 A Not other than what I gave them on the phone

6 Q The officers?

7 A The officer that was in the bar? That came to
8 the bar?

9 Q Yes, you spoke with someone on the phone Do
10 you know who you spoke with?

11 A No, I don't remember the name

12 Q Did you tell them at that time that you were
13 missing \$700-some?

14 A Yeah

15 Q And did you drive home from the bar?

16 A Yeah

17 Q You were alone?

18 A Yeah

19 Q You walked out immediately after the robbery?

20 A Yeah

21 Q And you said you got side-blinded, you mean
22 you were hit?

23 A Yeah I was hit very hard from the side I
24 never saw it coming I wasn't hit like in the face
25 with a fist So like a linebacker hitting a

1 quarterback from the side, same thing

2 Q Like someone tackled you?

3 A Yeah Just hit me very hard I just went
4 sprawling on the floor

5 MS CRUMEY That's all the questions I have

6 THE COURT Any questions, Mr Harris?

7 MR HARRIS Just a few, Your Honor May it
8 please the Court

9 THE COURT Yes, sir

10 CROSS-EXAMINATION

11 BY MR HARRIS

12 Q I'm going to walk through this I talk pretty
13 loud, most people can hear me pretty well But you
14 tell me if I'm not talking loud enough

15 A Okay

16 Q All right Now these are two pool tables
17 right here, right?

18 A Right

19 Q They look -- I cannot really tell, are they
20 going lengthwise that way?

21 A Yeah, that's right

22 Q You are sitting back here?

23 A Yeah

24 Q Sitting there in this chair on this side?

25 A Right

1 Q Somebody comes in the door, you turn and look
2 this way?

3 A Right

4 Q Towards where we are right here, right?

5 A Uh-hum, that's right

6 Q Okay So I'm going to give a small estimate
7 and say that's about 12 or 15 feet from the front
8 door to where you are?

9 I know from playing pool you have to have a
10 little room to play between the pool tables

11 A I would say it's more like 16, 18 feet

12 Q Okay So you turn and you see them come in?

13 A Yeah

14 Q And you see them running in?

15 A No, they're just walking in

16 Q Okay And they had their faces all covered
17 with guns?

18 A Yeah, they had their faces covered and the
19 guns up in front of their face like this

20 Q And while they're walking that distance
21 between here and there, did you see what they were
22 wearing?

23 A I'm sorry?

24 Q You didn't mention what they were wearing?

25 A No, I didn't notice It was dark clothes I

1 think

2 Q Okay They were coming from here and you --
3 are you looking at them the whole time?

4 A I coincidentally happened to be looking that
5 way when they came through the door

6 Q Okay I am just trying to figure out, so
7 where did the guy come from that tackled you on the
8 side? I'm trying to figure out where he would come
9 from So they came straight at you?

10 A Well, they didn't rob me at first, they were
11 talking with other customers

12 Q Okay

13 A And I think I was probably the last one to get
14 robbed

15 Q Okay You didn't see anything other than the
16 guns and the clothes on their head?

17 A That's all I can identify is just three young
18 black guys I don't know what it was, I'm not sure
19 about that

20 Q And when they walked out the front door -- did
21 they walk out front door or the back door?

22 A They went out the front

23 Q And you walked right behind them and got in
24 your car?

25 A Yeah, a couple minutes later I left

1 Q Okay And the police were not there yet?

2 A No

3 MR HARRIS I got nothing further, Your
4 Honor

5 THE COURT Any redirect?

6 MR SAVAGE Yes, Your Honor

7 THE COURT You may proceed

8 REDIRECT EXAMINATION

9 BY MR SAVAGE

10 Q Mr Alsbrooks, when you left did you follow
11 directly behind them that you saw where they went out
12 the front door?

13 A No Once they left and went out the door I
14 never saw them again

15 Q So a little bit of time had passed, maybe a
16 minute or two minutes had passed by the time they had
17 left and then you left the bar You don't know where
18 they went, do you?

19 A That's right I left and that was it

20 MR SAVAGE I have no further questions, Your
21 Honor

22 THE COURT Any objection to the witness being
23 excused from the State?

24 MR SAVAGE No, Your Honor

25 THE COURT From the defense Brown?

1 MR HOWELL No, Your Honor

2 THE COURT Defense Boston?

3 MS CRUMEY No, ma'am

4 THE COURT Defense Robinson?

5 MR HARRIS No, ma'am

6 THE COURT Sir, you are excused

7 Madam Forelady, ladies and gentlemen of the
8 jury, we are going to take advantage of this break in
9 testimony to take our evening recess

10 During the break please again abide by the
11 Court's instructions and have no discussion about
12 this case among yourselves or with anyone else I
13 know it may seem very simple, but if someone asks you
14 what type case you have been hearing on jury duty to
15 begin to talk about it

16 But I would ask that you refrain from that,
17 because to do that would require you to talk about
18 what you have been hearing and process it and then
19 draw conclusions based upon it And that by its very
20 nature is what we would refer to as deliberations
21 And it is essential that you hear all of the
22 testimony in this case, you hear the arguments of
23 counsel and the Court's instruction on the law before
24 you begin any deliberation

25 I will also instruction that you not watch,

1 read or listen to any media accounts about this case
2 And again please don't do any independent research of
3 any type on the Internet

4 when you return in the morning, please come
5 directly to your jury room just as you did after
6 lunch We will resume in the morning at 9 30 We
7 appreciate your patience Please leave your notepads
8 in your seats We will see you in the morning at
9 9 30

10 (Whereupon, the jurors exit the courtroom)

11 THE COURT Anything before we adjourn for
12 evening from the State?

13 MR SAVAGE No, Your Honor

14 THE COURT From the defense Brown?

15 MR HOWELL No, ma'am, Your Honor

16 THE COURT Boston?

17 MS CRUMEY No, ma'am

18 THE COURT Or Robinson?

19 MR HARRIS No, ma'am

20 THE COURT Also I -- sometimes when I rule I
21 don't go into a lot of detail, I don't like to make
22 extraneous comments in the presence of the jury But
23 there were -- Mr Howell specifically made objections
24 regarding the relevance of the witness's state of
25 mind I overruled them on relevance and instructed

1 Mr Sahn to rephrase because of the characterization
2 he was saying during the armed robbery or otherwise
3 which was inappropriate But it is relevant because
4 it goes to the element of being placed in fear of
5 violence

6 Okay, see you all in the morning

7 (Whereupon, the proceedings in the matter
8 before the Court were adjourned for the evening)

9 * * * * *

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, in the General Sessions Court for the week of June 22nd through June 26th, 2009

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

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2008-GS-10-3832, 3845

STATE OF SOUTH CAROLINA)

Plaintiff)

V)

TRANSCRIPT OF RECORD

DAVID BROWN, COLIN BOSTON)
and CLARENCE ROBINSON)

Defendant)

JUNE 23, 2009
Charleston, South Carolina
VOLUME 2

B E F O R E

THE HONORABLE DEADRA L JEFFERSON, JUDGE

A P P E A R A N C E S

MR DALE SAVAGE, Assistant Solicitor
MR MICHAEL SAHN, Assistant Solicitor
Representing the State

MR DONALD HOWELL, Esquire Representing the
Defendant Brown

MS SHARI CRUMEY, Esquire
Representing the Defendant Boston

MR STEPHEN HARRIS, Esquire
Representing the Defendant Robinson

Anne Bouley Meyer, RPR
Circuit Court Reporter

1 (Whereupon, State's Exhibit Nos 24, 25, 26
2 and 27 are marked for identification)

3 THE COURT Is the State ready to proceed?

4 MR SAVAGE We are, Your Honor

5 THE COURT Is the defense ready to proceed,
6 Brown?

7 MR HOWELL Yes, ma'am

8 THE COURT Boston?

9 MS CRUMEY Yes, ma'am

10 THE COURT And Robinson?

11 MR HARRIS Yes, ma'am

12 THE COURT You all can take your seats
13 Please bring in the jury

14 (Whereupon, the jurors enter the courtroom)

15 THE COURT Good morning, ladies and
16 gentlemen I hope that you all had a restful
17 evening We will now resume with the trial The
18 bailiffs are going to assist you in passing out your
19 notebooks Pass them down as you realize they're not
20 yours, that will help move it more quickly

21 State may proceed

22 MR SAHN State calls Mary Nance

23 MS MARY EMILY NANCE,
24 after having first been duly sworn to state the
25 truth, the whole truth and nothing but the truth,

1 testified on her oath as follows

2 THE COURT You may proceed

3 MR SAHN Thank you, Your Honor

4 DIRECT EXAMINATION

5 BY MR SAHN

6 Q Good morning, Mary

7 A Good morning

8 Q Do you go by Mary or Emily?

9 A Emily

10 Q How old are you, Emily?

11 A 28

12 Q Do you live in the Charleston area?

13 A Yes, West Ashley

14 Q How long have you lived there?

15 A Five years

16 Q Do you currently work?

17 A Yes

18 Q Where do you work?

19 A Buffalo Wild Wings

20 Q What do you do there?

21 A Server

22 Q Were you employed on February 26th, 2008?

23 A Yes

24 Q Where were you working at that time?

25 A Benders Bar and Grill

1 Q What was your job at Benders?

2 A Bartender

3 Q And were you working on the night of February
4 26th, 2008?

5 A Yes

6 Q Do you remember about what time you got to
7 work that night?

8 A About 7 00 or 8 00

9 Q Now inside the bar, where were you working?

10 A I was behind the bar

11 Q Is that near the back of the bar or the front?

12 A Yeah Like across from the entrance

13 Q Can you describe for the jury the scene inside
14 the bar that night up until about 9 45?

15 A There's people sitting at tables There's
16 people playing pool There's people sitting at the
17 bar, just chilling out

18 Q Ordinary Tuesday night?

19 A Yeah

20 Q So what happened at that time, about 9 45
21 p m ?

22 A I was sitting at the end of the bar in front
23 of the entrance, behind the bar on a stool And I
24 was watching TV, you know, making some drinks And
25 some guys came in with guns and told everybody to get

1 down on the ground

2 Q Could you see what any of the guys looked
3 like?

4 A No, they had on masks

5 Q So what did you do when these three guys came
6 in, four guys?

7 A I got down on the ground, and I crawled around
8 the bar through the kitchen and then exited out the
9 back entrance

10 Q When you went to the back entrance, did
11 anybody meet you there?

12 A One of the patrons, yes

13 Q Do you know this patron?

14 A Yes

15 Q So what happened when you met the patron at
16 the back door?

17 A I unlocked the door, we went out and we got
18 into his truck I got on to the passenger floor part
19 and he got in the driver's side

20 Q Okay Once you were inside the vehicle, then
21 what happened?

22 A He called 911

23 Q How did he call 911?

24 A From his cell phone

25 Q Okay During that 911 call what was he

1 saying?

2 A He was saying there were men in there with
3 guns and to send somebody out

4 Q After he finished his 911 call, what happened
5 after that?

6 A We waited for a few And then he was like,
7 I'm going to go check and see what's going on And
8 I'm like, no, don't leave me by myself please But
9 he went ahead and went in I'm not sure what
10 entrance he used, but then he came back out and told
11 me to come in

12 Q Why did you tell him not to leave you?

13 A Because I didn't know if they were going to
14 come out through the back, they had guns, they could
15 have shot me who knows what could happen

16 Q When he left you to go back in the bar, what
17 did you do inside the truck?

18 A I was hidden on the floor part I peaked up
19 every now and then to see what was going on Locked
20 the doors of course

21 Q Did you see the patron again?

22 A Yes He came back out

23 Q After he came back out, what did you do?

24 A He motioned for me to come back in, said it
25 was okay So I went back in and waited for the

1 police

2 Q Did the police arrive?

3 A Yes

4 Q Did you provide them with a written statement
5 about what you saw that night?

6 A Yes

7 Q Inside the bar, were you in fear?

8 A Oh, yeah

9 MR SAHN Court's indulgence

10 Emily, please answer any questions defense
11 counsel may have for you

12 THE COURT Any questions, Mr Howell?

13 MR HOWELL Yes, Your Honor, thank you

14 THE COURT You may proceed

15 CROSS-EXAMINATION

16 BY MR HOWELL

17 Q Ms Nance, just a couple of follow-up things

18 A Okay

19 Q You had some pictures up yesterday, apparently
20 if you walk in the front door of Benders, there is a
21 couple of pool tables and then the bar?

22 A Yes

23 Q So you would have been behind the bar, put you
24 behind the bar as we are standing this way

25 A Yes

1 Q Front door would have been in front of you?

2 A Yes

3 Q Now sort of acclimate me a little bit, is
4 there a back door to the left?

5 A Yeah There's, I believe, the bathrooms and
6 then there's the back door

7 Q And is it the back door you went out or is it
8 another one?

9 A No, it's that one

10 Q Okay So you saw trouble coming, you ducked
11 behind the bar?

12 A Yes

13 Q And then you make your way out?

14 A I crawled out through the thing I went out
15 through the bar this way There's a kitchen, the
16 doors were like this big, like the half-door, and
17 crawled out --

18 Q Swinging door, western --

19 A Yeah, and crawled out through the kitchen
20 When I was at the kitchen door I went out the back
21 door

22 Q Okay And who was the patron who had the
23 truck?

24 A Danny Hogan

25 Q Danny Hogan Now you gave a statement

1 May I approach, Your Honor?

2 THE COURT You may

3 Q (By Mr Howell) Does this look like the
4 statement that you gave that night? You've got one
5 with you?

6 A Yeah

7 Q Okay, great This says, this statement, I'm
8 looking at sort of the written part, if you look with
9 me The written statement was given on the night of
10 2/26/08 at 10 30?

11 A Yes

12 Q This is about an hour after this happened?

13 A Yes

14 Q And you mentioned in your statement that once
15 you get in the truck, if you go to the second page
16 for me And I am trying to get a sense of time here,
17 this is why we are going --

18 A Okay

19 Q In the truck, while in the truck I was ducking
20 down He called 911 And that's Mr Hogan?

21 A Yes

22 Q We waited a minute or two and then he went
23 back in the bar to check?

24 A Yes

25 Q So he went in pretty quickly then?

1 A It all happened so quickly It could have
2 been longer

3 Q Okay And then a little further down, you
4 apparently heard and then saw a car leaving?

5 A Yes

6 Q And did you -- were you able to get a look at
7 that at all?

8 A I ducked down I kind of looked up, it could
9 have been a neighbor because there's a neighborhood
10 back there I really did not get a good look at the
11 vehicle

12 Q So the only car you saw coming or going, or
13 heard coming or going, was apparently an SUV or truck
14 that you saw?

15 A Yes

16 Q And so you ducked down, you hear something and
17 you look up to see if somebody is leaving, I guess,
18 to see if it's safe?

19 A Yeah

20 Q As you said, you were scared, you were waiting
21 for the threat to leave And when you see something
22 going you want to get a look at it?

23 A Yes

24 Q All right So you pop your head up and you
25 see an SUV or a truck, is that correct?

1 A Yes

2 Q Okay Did you see which way they went?

3 A No, I got back down immediately

4 Q Okay It was a Tuesday night I think you
5 said?

6 A Yes

7 Q How quickly did the police get there?

8 A By the time I got back in, I want to say like
9 five to ten minutes

10 Q Okay So Mr Hogan leaves He actually, as I
11 understand it, kind of walks around and comes back in
12 through the front as far as you know?

13 A As far as I know I was ducked down, I didn't
14 see which entrance he went in?

15 A Okay You just know he went in and came out
16 and got you and said the coast is clear?

17 A Yes

18 MR HOWELL Okay That's all the questions I
19 have Thank you, Your Honor

20 THE COURT Ms Crumey

21 MS CRUMEY No questions

22 THE COURT Mr Harris

23 MR HARRIS Just a few, Your Honor May it
24 please the Court

25 THE COURT Yes, sir

CROSS-EXAMINATION

BY MR HARRIS

Q Ms Nance, you didn't write this statement but you were talking to the officer, Officer Kosarko, and he wrote it for you?

A Yes

Q And then you read it and you signed it down here?

A Yes

Q It was, like you said, just shortly afterwards when you did this statement, right?

A Yes

Q And you wanted to tell the police exactly what you saw because you wanted them to catch these people, right?

A Yes

Q You did not see what they were wearing?

A I just know they had masks over their face, hats and like jackets on, guns So I mean it was so quick that I got down, I really didn't have time to get a good, good-good look

Q Okay And one question You were sitting at the end of bar down here by the jukeboxes?

A Yes

Q Was there a patron sitting right next to you?

1 A I think that was where Danny Hogan was
2 sitting

3 Q Was there an older gentleman setting next to
4 him?

5 A Yes, I think so Yeah I'm not sure

6 Q Okay And so the only car you saw leave was a
7 truck or SUV?

8 A Yes

9 Q Going down the side street there?

10 A (Affirmative head shake)

11 Q Okay

12 MR HARRIS I have got no further questions

13 THE COURT Any redirect of the witness?

14 MR SAHN Thank you, Your Honor

15 REDIRECT EXAMINATION

16 BY MR SAHN

17 Q Emily, the truck or SUV you saw on the side
18 street, did you see who was in that truck or SUV?

19 A No

20 Q You got no look at all as far as who was
21 inside?

22 A No It was dark I couldn't see anything
23 really

24 MR SAHN Thank you No further questions

25 THE COURT Any objection to the witness being

1 excused from the State?

2 MR SAHN No, Your Honor

3 THE COURT Mr Howell?

4 MR HOWELL No, Your Honor

5 THE COURT Ms Crumey?

6 MS CRUMEY No objection

7 THE COURT Mr Harris?

8 MR HARRIS No objection, Your Honor

9 THE COURT Ma'am, you are excused

10 You may call your next witness

11 MR SAVAGE May it please the Court

12 THE COURT Yes, sir

13 MR SAVAGE The State calls Officer Jenny

14 Danik

15 MS JENNY DANIK,

16 after having first been duly sworn to state the

17 truth, the whole truth and nothing but the truth,

18 testified on her oath as follows

19 THE COURT You may proceed

20 MR SAVAGE Thank you, Your Honor May it

21 please the Court

22 DIRECT EXAMINATION

23 BY MR SAVAGE

24 Q Good morning, Ms Danik

25 A Good morning

1 Q Where do you work?

2 A Charleston Police Department Specifically
3 Team 4 area, West Ashley

4 Q How long have you worked for the Charleston
5 Police Department?

6 A Little over two years

7 Q Can you briefly explain what your duties are
8 with the Charleston Police Department?

9 A Sure Basically I'm your patrol officer, so
10 we try to keep the area a good eye on, first
11 responders to any call we get So we pretty much go
12 to everything

13 Q Were you involved in the Benders Bar armed
14 robbery back in February of 2008?

15 A Yes, sir, I was

16 Q How did you first learn about this case?

17 A Our dispatch over channel three -- which is
18 the West Ashley, James, John area -- they advised us
19 that there was armed robbery which just occurred at
20 that location on Savannah Highway I was the first
21 unit that responded on scene

22 Q And is that in Charleston County?

23 A Yes, sir It's in the city and county

24 Q Approximately what time did you respond to the
25 bar?

1 A It was 21 51 hours

2 Q Okay And that's for regular folks?

3 A 9 51 at night

4 Q Were you the first responding officer?

5 A Yes, sir, I was

6 Q As the first responding officer, what did you
7 do?

8 A First thing that you do when you have a
9 situation like this is to make sure that everyone
10 who's in the area is okay, safe, secure, no one has
11 been harmed After that you want to secure the crime
12 scene, which is what I did

13 And then initially you want to talk to
14 everyone who's in there as fast as you can and get a
15 good description put out to know what we are looking
16 for, which area to flood in And then from there you
17 call your crime scene or central detectives, your
18 supervisor and you pretty much get the story

19 Q Let's talk about when you actually first got
20 to the bar before you actually got inside the bar
21 From the outside of the bar, did you see anyone or
22 see anyone or any person outside the bar?

23 A No No I just pulled up in a good tactical
24 location and entered and there was nobody outside

25 Q Once you first went inside the bar, would you

1 describe what you saw when you walked in?

2 A There were several parties in there kind of
3 shell-shocked I guess you would say kind of
4 couldn't believe what just happened

5 Initially the first person advised that two
6 men prior, they had just been robbed and the subjects
7 has fled the scene So everybody kind of just wanted
8 to say their own part, advise me what happened So
9 you kind of have to calm everyone down and let them
10 know what's going on

11 Q Did you call any other officers or crime scene
12 to report to -- to respond to the scene?

13 A I did After, like I said, after you get out
14 your description of who you are looking for and who
15 your suspects are, then you contact your crime scene
16 so that they can process the whole area Then you
17 also call your detectives so that they can get
18 statements from the parties who were involved

19 Q And did you talk to several of the victims and
20 patrons who were inside that bar that night?

21 A Yes, sir, I did I got a brief story from
22 each one about what happened to them

23 Q Did you get a general description of what the
24 robbers were wearing or what they saw?

25 A Yes, I did

1 Q Did you broadcast that description over the
2 police radio?

3 A Absolutely That's about the initial thing
4 that you want to do after you know that it's a secure
5 crime scene

6 Q Did that description consist of such things as
7 the suspects' age that was reported to you?

8 A Yes The approximate age I got was 20 years
9 of age, four black males subjects, all wearing black
10 clothing

11 Q Did you report to any other locations apart
12 from the Benders Bar?

13 A I did not After we had completed all of our
14 tasks at the Bender's Bar, that was pretty much the
15 end of my shift I went and wrote up the report and
16 aided other officers that needed assistance

17 Q Did you have any other involvement in this
18 case apart from what you testified to just now?

19 A No, sir, I did not

20 MR SAVAGE Court's indulgence, Your Honor

21 I have no further questions, Your Honor

22 THE COURT Any questions, Mr Howell?

23 MR HOWELL Yes, Your Honor

24 THE COURT You may proceed

25 CROSS-EXAMINATION

1 BY MR HOWELL

2 Q Officer Danik, did you bring a copy of your
3 report with you today?

4 A Yes, I did

5 Q I am going to get there, I just wanted to make
6 sure you have a copy before I start firing questions

7 A Sure

8 Q What I'd like to do with you first is talk a
9 little bit about, I guess, training in terms of when
10 you come to a scene what you are trying to
11 accomplish You touched on that a little bit First
12 thing obviously is safety?

13 A Yes, sir

14 Q Your own and the other people?

15 A Yes

16 Q You did that, that was clear of any threats,
17 the robbers were gone?

18 A They had left the scene

19 Q Okay And --

20 A Nobody inside had been harmed

21 Q Okay And when people came up and start
22 talking with you, as you said they were forthcoming
23 with whatever details they could give you?

24 A Yes

25 Q And once -- well, I'm going to jump ahead and

1 then we will jump backwards one of the things you
2 did is you're the person that puts out the report
3 that says, be on the look out for, whatever list you
4 can come up with?

5 A Yes, sir

6 Q Now you also called in I guess what I would
7 describe as a team, for lack of a better word, of
8 other officers to do certain things, is that right?

9 A Yes Everybody has their own responsibilities
10 as to what they're trying to accomplish

11 Q Okay So rather than me guess at it, tell us
12 who the people are and what the responsibilities are
13 and how you all work as a team to sort of pin down
14 whatever that you can get at that time

15 A Okay I guess pretty much what I do as the
16 first responding --

17 Q Okay, let's start there

18 A Like I said, you initially get on the scene,
19 you want to make sure that everybody is safe Myself
20 and any parties that are involved And, you know,
21 you want to make sure that your suspects are gone or
22 detain them, or do whatever you need to do if they're
23 still on scene

24 After you've accomplished that, you want to
25 secure your crime scene so that it can be processed

1 later on And then initially, as quickly as you can,
2 you want to get the best description for your bolo,
3 be on the lookout All the other officers who are
4 working around you, what they need to have their eyes
5 set on

6 And from there I speak to all the parties who
7 are involved And then just pretty much get their
8 own part of what they were involved with

9 Q Okay And when you were speaking to the
10 parties, is it fair to say you are trying to get as
11 accurate information as possible about the people
12 that have fled?

13 A Yes We always want the most accurate
14 information

15 Q Right And you want it to be precise?

16 A Yes

17 Q And you want it to be complete?

18 A Yes, sir

19 Q So for instance, not to be corny but to use an
20 example, if someone said a person had on a red
21 Carolina sweatshirt, you don't want to write down had
22 on a college sweatshirt because that could be a
23 Clemson Tiger, right?

24 A Yes

25 Q You wouldn't want a tiger blamed for a game

1 cock or vice versa

2 A Uh-Hum

3 Q So specificity is important?

4 A It is important

5 Q And you are trained to find as much detail as
6 you can?

7 A I am But as a first responder I would say I
8 get the most general information Later on whenever
9 we get, who we call our central detectives, who come
10 in and they get a lot of specification They spend a
11 little bit more time with each witness or victim and
12 get more precise details

13 Q And so that would be the people that actually
14 come and take the statements separately?

15 A Yes, sir

16 Q And so they're actually sitting down and maybe
17 there's a little more time and people have calmed
18 down and one on one?

19 A It's more one on one

20 Q Is that part of your all's training to kind of
21 do that?

22 A Yes, sir

23 Q All right Who were the detectives that would
24 have been taking statements?

25 A At that time the detectives were -- it was

1 Sgt Kosarko, Cpl Brown and Detective Antonio

2 Q So you had actually three people to come in
3 and get the statements?

4 A Yes, sir

5 Q And I think it would be obviously you want to
6 get it as soon as possible while it's fresh on
7 everybody's mind?

8 A Yes, sir

9 Q Now let's talk a little bit, because I skipped
10 up I am looking at your report and it says the
11 dispatch time was 21 51?

12 A Yes, sir

13 Q And the time you arrived was 21 51?

14 A I believe I got there within 31 seconds

15 Q So you were pretty close?

16 A Well you're moving quick

17 Q Yeah Because you got there, you weren't on
18 the other side team thing, you were right there?

19 A I mean I was relatively close But when
20 you're running code, as they say, with blue lights
21 and siren, you're moving pretty quick

22 Q All right And when you got in, and I think
23 you mentioned this and you've got it in the report,
24 Andre Thompson, was he like the manager or something?

25 A He was -- I know he was an employee I

1 believe he was the manager that night

2 Q Okay And he stated that it had been less
3 than two minutes that these guys had done the rob --
4 taken off at least but done the robbery?

5 A Yes, sir

6 Q So you were right on their heels apparently?

7 A Pretty quick

8 Q Okay Now the information that you sent out
9 on this be on the lookout call, what exactly did that
10 include?

11 A Initially it is relatively general So we
12 knew that we were looking for four subjects with
13 firearms, all dressed in black clothing, about 20
14 years of age We weren't sure at that point if it
15 was on foot or necessarily in a vehicle

16 Q Let me ask you about that If you look at the
17 -- did you hear anything about a black SUV or truck
18 or anything like that? Anybody say anything about a
19 vehicle to you?

20 A The only party that said anything about a
21 vehicle was there was a female bartender who was in
22 there

23 Q Right, Ms Nance?

24 A Yes, sir And she actually had exited the bar
25 through the rear door whenever she saw the subjects

1 enter into the business And she hid in a vehicle

2 And the real main statement I heard from her
3 was that soon after, while she was hiding, she heard
4 a vehicle leave that area but she didn't know a
5 description to provide for me

6 Q Okay Now if you look at the I guess next to
7 the last sentence on your report Reporting officer
8 was advised that the subjects fled the scene in the
9 direction of Artmore area?

10 A Yes, sir

11 Q What led to that conclusion? Who saw what?
12 How did you find out about that? I just didn't see
13 in your report which person said what, so how did you
14 come to that conclusion?

15 A I don't specific remember which party would
16 have said that at this time My best guess is that
17 it would have ran out the front door which is in that
18 bar is not too far from the Artmore area

19 Q Okay All right And there was one guy named
20 Charles Turner that I want to ask you You've got
21 just a little bit above on that same page?

22 A Yes, sir

23 Q Did he give any particular description about
24 anybody in particular?

25 A Mr Turner, anything specific he would have

1 given to one of the three detectives that would have
2 come out there Like I said, the general information
3 is what I received And then --

4 Q All right And I understand that, but just
5 for my clarity did he had say anything particular to
6 you? Did he say, I saw black shoes, or I saw a red
7 hat, or anything like that?

8 A I do remember, I believe it was Mr Turner,
9 but I haven't kept up with all the parties that were
10 involved, it has been so long But I do remember
11 there was one individual who was inside the bar who
12 said that he owned a pair of shoes that one of the
13 suspects was also wearing

14 So he had a very good reminder, you would say,
15 that that really stuck out at him, as he was on the
16 ground, he had to look over and just like anything
17 that's familiar with yourself you see it and was, oh,
18 I have that So it's going to stick out in your
19 mind

20 Q Well, did you record that? That would have
21 been something I mean That's the level for the next
22 team?

23 A Yes, sir That would have been things that
24 they would have taken statement-wise

25 Q And that's pretty typical of something that

1 somebody would want to get down in connection with a
2 case like this?

3 A I would say so

4 MR HOWELL That's all the questions I have,
5 Your Honor, thank you

6 THE COURT Ms Crumey?

7 MS CRUMEY No questions

8 THE COURT Mr Harris?

9 MR HARRIS Thank you, Your Honor

10 CROSS-EXAMINATION

11 BY MR HARRIS

12 Q You mentioned just now that you had a
13 statement from him about specifically remembering
14 those shoes?

15 A Uh-hum

16 Q And when you go to the police academy they
17 teach you about reports? You've talked today already
18 about how important the reports are

19 A Yeah

20 Q One reason is because this case happened in
21 February of 2008 and it has been a long time?

22 A Yes, sir

23 Q All our memories, I know as I get older my
24 memory goes It's getting worse and worse every
25 year You do these specifically because you may not

1 be with the police department, you may have left,
2 this is your record for when we come to court If
3 you weren't here today, the solicitor introduces this
4 and says -- Sgt Danik?

5 A Officer Danik

6 Q Officer Danik, this is her testimony She is
7 not with us, but this is what she saw that day This
8 is everything specific, right? This is what you saw
9 when you first got there?

10 A This is my report at that time and what I
11 encountered whenever I was on scene

12 Q But you didn't put that statement in here?

13 A Because we have our way of going about things
14 Like I said, we have our detective who really get
15 into the specification, and they take that in their
16 report

17 Q Okay But you did not feel that necessary to
18 put in here You thought somebody would get it later
19 or you assumed someone would get it later, right?

20 A It's not how we do our report writing

21 MR HARRIS Thank you, that's all

22 THE COURT Any redirect?

23 MR SAVAGE Yes, Your Honor

24 REDIRECT EXAMINATION

25 BY MR SAVAGE

1 Q Officer Danik, just so we are clear, your role
2 as being the first reporting officer, responding
3 officer at a situation like this, we have got four
4 males with guns, they have left the scene, they have
5 left the scene I guess within maybe two minutes from
6 the report you received So right now time is of the
7 essence?

8 A Absolutely

9 Q This is a dangerous situation You, as the
10 first responding officer, you are not there to get --
11 you don't have the luxury of time at this point to be
12 so specific in detail of every description because
13 there is something serious going on

14 MS CRUMEY Objection

15 THE COURT Basis?

16 MS CRUMEY Leading

17 THE COURT Sustained, leading Rephrase

18 MR SAVAGE Okay, Your Honor

19 Q (By Mr Savage) Time is of the essence of
20 this, isn't it?

21 A Absolutely

22 Q And as an officer you want to get out as much
23 information as you can --

24 MR HARRIS Objection, Your Honor

25 THE COURT Basis?

1 MR HARRIS Leading

2 THE COURT Overruled I'm going to give him
3 some latitude

4 Q (By Mr Savage) You want to get as much
5 information as you can in the hopes of maybe
6 capturing the people that just left the scene, right?

7 A Absolutely

8 Q And so you may not be as strictly concerned
9 with every single detail you can at that point, can
10 you?

11 A No

12 THE COURT Watch the leading, Mr Savage

13 MR SAVAGE Yes, Your Honor

14 Q (By Mr Savage) And your -- through your
15 training, you're trained not to get down every detail
16 at this point as the first responding officer at this
17 point, is that correct?

18 MR HARRIS Objection

19 THE COURT Basis?

20 MR HARRIS Still leading

21 THE COURT No editorial comments Sustained,
22 rephrase

23 Q (By Mr Savage) Your training, are you trying
24 to get down every detail or what are you trying to do
25 as the first responding officer?

1 A My role as the first responder I've relatively
2 covered It's just really to secure the scene, get
3 the most -- I get the general information because we
4 want to get out -- if we have, kind of awkward word
5 get it out -- but we just want to get the most
6 general thing So it's like you say, time is of the
7 essence We are working in seconds Like I said I
8 got there in 31 seconds and minutes are everything
9 So as quickly as we can get out what we are looking
10 for is the best for us

11 But like I said, once you have the luxury of
12 time where you can come 10, 15 minutes after the
13 fact, then you can actually settle some of the
14 parties who are involved down and speak to them, then
15 you can really get into the specifications

16 Q And at this point, do you know, as the first
17 reporting officer, do you know that there's going to
18 be other central detectives that are going to respond
19 to the scene and maybe get into that more significant
20 detail?

21 A Absolutely I mean we have a protocol that we
22 follow for, you know, shootings, robberies, any kind
23 of sexual assaults, anything I mean we know that
24 that's how we are going to do things because this is
25 how we are trained And it's not a great thing to

1 say but we go to robberies relatively often, and
2 these are the protocol you follow

3 Q So basically you were following police
4 procedure at that time as you were trained?

5 A Absolutely

6 MR SAVAGE I have no further questions, Your
7 Honor

8 MR HOWELL Could I have one follow-up
9 question?

10 THE COURT Uh-hum

11 RECROSS-EXAMINATION

12 BY MR HOWELL

13 Q So there was no part of your report that even
14 placed these guys in a vehicle when you said --

15 A As mentioned, I believe Ms Nance, Mary, she
16 was the only party who made a comment to me about a
17 vehicle

18 Q Okay

19 A And like I said, that was because she was
20 outside of the business hiding in the rear of it and
21 she heard a vehicle leave soon after

22 Q So no one else in the bar mentioned, we say a
23 vehicle leave or we even heard a vehicle leave?

24 A Not to myself

25 Q You certainly never reported that?

1 A If they didn't say it to me I didn't report
2 that

3 MR HOWELL That's all I have, thank you

4 THE COURT Anything further from the State?

5 MR SAVAGE Briefly, Your Honor

6 THE COURT You may proceed

7 REDIRECT EXAMINATION

8 BY MR SAVAGE

9 Q Officer Danik, the vehicle that was reported,
10 I guess you said by Emily Nance?

11 A Yes

12 Q Do you know whether that was the vehicle used
13 in the robbery?

14 A Do I know?

15 Q At the time when it was reported to you?

16 A I don't know one hundred percent

17 Q Does that mean that Emily Nance didn't know?
18 Did she tell you whether --

19 MR HOWELL Objection, Your Honor

20 THE COURT Basis?

21 MR HOWELL She is asking what Emily Nance's
22 perceptions --

23 THE COURT No speaking objections Is it
24 speculations, lack of foundation?

25 MR HOWELL It's speculation and --

1 THE COURT Sustained, speculation Rephrase

2 Q (By Mr Savage) Did Emily Nance tell you that
3 that was the vehicle used in the robbery?

4 A She did not She told me that she heard a
5 vehicle leave the area, but she did not say, I know
6 this vehicle was the one that was a part of this
7 robbery

8 Q Did she tell you that she saw anyone get into
9 that vehicle?

10 A No She told me that she was too nervous and
11 scared and just wanted to be hidden away and that's
12 why she ran out

13 Q So, if you know, the vehicle that she saw
14 leave, is that the vehicle that she saw when she was
15 outside in the car making the 911 call?

16 A I don't know what her --

17 Q Do you know if she saw that vehicle when she
18 was outside bar or inside the bar?

19 A I can't recall

20 Q okay

21 A All I can recall is her stating to me
22 specifically that she heard a vehicle leave As for
23 what she saw, I would go by, like I said, our
24 protocol, whatever statement she gave to the
25 detectives after the time had passed and she could

1 sit there

2 MR SAVAGE I have no further questions, Your
3 Honor

4 THE COURT Any objection to the witness being
5 excused from the State?

6 MR SAVAGE No, Your Honor

7 THE COURT From the defense, Mr Howell?

8 MR HOWELL None, Your Honor

9 THE COURT Ms Crumey?

10 MS CRUMEY None, Your Honor

11 THE COURT Mr Harris?

12 MR HARRIS None, Your Honor

13 THE COURT You're excused

14 To those in the gallery, if you have any cell
15 phones they need to be placed in the off position,
16 not vibrate or otherwise If they go off they will
17 be confiscated, they will not be returned to you

18 You may call your next witness

19 MR SAHN Thank you, Your Honor State calls
20 Officer Bonanni,

21 MR HOWELL Your Honor, could we approach the
22 bench?

23 (Whereupon, a discussion was held at the bench
24 off the record)

25 THE COURT Please swear the witness

1 MR JOHN BONANNI,
2 after having first been duly sworn to state the
3 truth, the whole truth and nothing but the truth,
4 testified on his oath as follows

5 THE COURT You may proceed

6 MR SAHN Thank you, Your Honor

7 DIRECT EXAMINATION

8 BY MR SAHN

9 Q Good morning, Officer Bonanni

10 A Good morning, counselor

11 Q Where are you currently employed?

12 A Charleston City Police

13 Q How long have you been employed with the
14 Charleston City Police?

15 A Three years

16 Q Do you have any prior law enforcement
17 experience?

18 A I do, as a Capital Police Officer in '85
19 during the Reagan/Bush administration Served with
20 the South Carolina Department of Corrections I was
21 a detention officer in Greenville County And I was
22 a deputy sheriff of Maclenberg County

23 Q Were you employed as an officer with the City
24 of Charleston Police Department on February 26, 2008?

25 A Yes, sir, I was

1 Q Tell us a little bit about some of your
2 general duties at that time?

3 A I was on routine mobile patrol, covering James
4 Island at that time I was on the night shift

5 Q Have you had any special training or education
6 that would help you in carrying out those duties?

7 A Yes, I went to five different police academies
8 in my career

9 Q And, Officer Bonanni, were you on duty on
10 Tuesday night, February 26th, 2008?

11 A Yes Yes, I was

12 Q On the date did you see the defendants in this
13 case?

14 A Initially I didn't when I was in the car

15 Q That night did you see the defendants?

16 A I did

17 Q Are any of those defendants present in the
18 courtroom today?

19 A Yes, they are They are to my right

20 Q Point them out

21 A To my right wearing orange, plaid shirt

22 MR SAHN For the record, Your Honor, the
23 witness has pointed out the defendants

24 THE COURT Let the record so indicate

25 Q (By Mr Sahn) About what time did you first

1 see the defendants that night?

2 A It was six minutes after 10 00

3 Q How do you remember the exact time? You said
4 10 06

5 A I wrote it on my report, I called it in at
6 that time It's in my notes

7 Q And what were you doing at that time when you
8 first saw the defendants?

9 A I was just on foot patrol -- I mean mobile
10 patrol And just came upon them when I was in the
11 car

12 Q And by mobile patrol you just mean in your
13 police vehicle?

14 A I was in a car, I was in a cruiser

15 Q Please tell the jury how you first came in
16 contact with the defendants that night?

17 A I was in the car and I was just driving on
18 Sawgrass, I wanted to look at the construction at
19 Roper Hospital, the progression of it And I saw a
20 four-door vehicle parked in the darkened fenced in
21 area of James Island Christian Church which was
22 unoccupied at that time

23 And rather than just going by and ignoring it,
24 I proceeded on through in the parking lot Put my
25 lights on, came upon four black males in the vehicle

1 Q When you said it was unoccupied, just for
2 clarity, you said you were talking about the church?

3 A The church and the parking lot was closed

4 Q Church and school parking lot was unoccupied?

5 A It was a darkened parking lot

6 Q Now you said you saw a four-door vehicle?

7 A I did

8 Q Do you remember what color this four-door
9 vehicle was?

10 A Maroon, burgundy color

11 Q Burgundy And who was inside the vehicle?

12 A Four black males were inside the vehicle

13 Q Now at this point do you know anything about
14 an armed robbery that had occurred at Benders Bar and
15 Grill?

16 A Yes, the tones came out that there was an
17 armed robbery at West Ashley But the description of
18 the vehicle didn't come out over the air

19 Q Now you said it was about 10 00 that night,
20 was this school open or closed?

21 A Closed

22 Q And tell us about where that four-door vehicle
23 was parked in the closed school parking lot?

24 A It would be -- it was parked against the fence
25 behind the Captain D's, driver facing the fence with

1 the lights shut off in the vehicle

2 Q Now I probably just asked you this a moment
3 ago, but for those of us unfamiliar with that area,
4 where is this church --

5 A Sawgrass It's on Sawgrass near Folly Road

6 Q It's off of Folly Road?

7 A Yeah

8 Q What is that area like, residential, business?

9 A It's residential and it's commercial

10 Q What did you do after you saw the car?

11 A I called it into 911, gave a description of
12 the plate Approached the driver, asked for his
13 driver's license, came back and asked for a backup

14 Q After you asked for backup, did backup arrive?

15 A Yes

16 Q About how long after you asked?

17 A Minute, two minutes

18 Q And who arrived backup?

19 A Sgt Ray and Sigmon

20 Q When they arrived at the scene, did they take
21 over the investigation more or less?

22 A Yes Yes, they did

23 Q Why did they take over the investigation at
24 that time?

25 A They were more experienced than I was

1 Q And that's standard protocol?

2 A Yes

3 MR SAHN One moment, Your Honor

4 Officer Bonanni, please answer any questions

5 defense counsel may have for you

6 THE COURT Mr Howell

7 CROSS-EXAMINATION

8 BY MR HOWELL

9 Q Couple things, Officer when you pulled in,
10 where did you park?

11 A I parked at an angle right behind the vehicle

12 Q As I understand it that keeps them from
13 leaving?

14 A Right

15 Q Okay So there's a fence in front of them and
16 you pull up so there is no wiggle room basically?

17 A (Affirmative head shake)

18 Q You are nodding, you have to say yes or no
19 She has got to be able to write that down

20 A Yes, I did I had my alley lights on

21 Q What are alley lights?

22 A They're on the top of the light bar, we use
23 them at night when we do traffic stops so you can see
24 inside the vehicle

25 Q Okay So it's providing more light

1 A Yes

2 Q It's not like parking lot lights it's extra
3 light?

4 A Yes

5 Q Okay, got you And at that point you had
6 gotten some report that there had been a robbery with
7 four black males or something?

8 A Yes

9 Q Any other details other than that?

10 A No other details

11 Q Did you know where that robbery had been?

12 A Benders on Savannah Highway

13 Q So where you are that would be over the Wappoo
14 Bridge?

15 A That's correct

16 Q And then down a-ways, then you get to South
17 Windemere Shopping Center?

18 A That's correct

19 Q Down some more and you get to where the Ye Ole
20 Fashion Ice Cream is on 17 and is that Wesley?

21 A Yes

22 Q Then back up 17 past the residential, you go
23 past the United Methodist Church and the Catholic
24 Church?

25 A Yes

1 Q You know where I'm talking about, where the
2 pumpkins are for sale in the fall, right?

3 A That's correct

4 Q Okay And then further up past Avondale and
5 past Doshers?

6 A Yes

7 Q And then past Rick Hendrick's with the big
8 flag and all the car places?

9 A That's correct

10 Q Okay And then a little bit further up until
11 you reach -- almost to Wappoo Road I guess?

12 A I believe so

13 Q I think Shades Uniform is across the street?

14 A To my recollection But I never covered that
15 area in my beat so I'm not familiar with that

16 Q Okay I'm just trying to get an idea of the
17 difference in spot Now when you first approached
18 the car, did you asked for their license or driver's
19 license?

20 A I did

21 Q Everybody or just one?

22 A Just the driver

23 Q Okay And did you do that?

24 A Yes, I did

25 Q When the driver does that, what do you do with

1 that license? You take back and check to see if
2 there is any problems?

3 A Run it on channel two at that time back in the
4 car

5 Q Okay When you say run it on channel two, I
6 have absolutely no idea what you are talking about

7 A Now it's on a computer, so we would just do it
8 by computer But back about a year ago we would call
9 the dispatcher and run it with them

10 Q So what do you run? What are you doing? What
11 are you trying to find?

12 A Warrants

13 Q Okay Was anything?

14 A It's just the driver's license and warrants
15 which encompasses insurance and registration

16 Q Was there anything wrong when you ran it? Did
17 you come back and say, we have a problem or anything?

18 A No, I waited for backup at that time I did
19 not do anything until the backup cars came

20 Q Did you keep his license with you at that
21 point?

22 A I did

23 Q Did you get ID's from anybody else in the car?

24 A Not at that point

25 MR HOWELL That's all I have, thank you

1 THE COURT Ms Crumey?

2 MS CRUMEY No questions

3 THE COURT Mr Harris

4 MR HARRIS Court's indulgence, Your Honor
5 Just briefly

6 THE COURT You may proceed

7 CROSS-EXAMINATION

8 BY MR HARRIS

9 Q 22 06 is when you said you called this in?

10 A Approximately

11 Q Approximately 22 06 And you had pulled by,
12 seen the car parked there?

13 A Right

14 Q You didn't follow the car in?

15 A No, I didn't

16 Q Okay, so they were parked there You have no
17 idea how long they were parked there?

18 A I don't know

19 Q But they're parked there, you drive by and you
20 see it, and you say to yourself, church isn't open,
21 I'm just going to check this out?

22 A (Affirmative head shake)

23 Q Okay They weren't committing any crime?

24 A No, they were not

25 Q They were just in a parking lot and you were

1 checking them?

2 A That is correct

3 Q So at approximately 22 06 you called it in, is
4 that when you got the license from them or is that
5 when you turned your alley lights is what you called
6 it?

7 A The alley lights

8 Q Did you turn the alley lights on and then you
9 called it in to say, I am looking at this tag and you
10 call this car in?

11 A That's correct

12 Q And then a couple minutes later you called for
13 backup

14 A I called for backup right away

15 Q So just parked car, you drive by, a couple
16 minutes later 22 06 you call it in?

17 A That's correct

18 MR HARRIS Okay, nothing further

19 THE COURT Any redirect?

20 MR SAHN Thank you, Your Honor

21 REDIRECT EXAMINATION

22 BY MR SAHN

23 Q Officer, do you know roughly how far in miles
24 it is from Benders Bar to the location where you
25 first saw the car?

1 A 11, 12 -- 8 to 11 miles

2 Q When you first saw that car that night had you
3 gotten a description of the getaway car?

4 A No

5 Q And the car, when you saw it at ten o'clock at
6 night, did it have its headlights turned on or off?

7 A They had all the lights shut off

8 Q When you first saw the car, what did you
9 think?

10 A At first I couldn't really see who was in the
11 car from the Roper I thought maybe it was a couple
12 that was parked there, or somebody from the church
13 left a car there

14 MR SAHN No further questions

15 THE COURT Any objection to the witness being
16 excused from the State?

17 MR SAHN None, Your Honor

18 THE COURT From the defense Mr Howell?

19 MR HOWELL None, Your Honor

20 THE COURT Ms Crumey?

21 MS CRUMEY None, Your Honor

22 THE COURT Mr Harris?

23 MR HARRIS None, Your Honor

24 THE COURT Sir, you are excused

25 You may call your next witness

1 MR SAVAGE State calls Andre Thompson
2 MR ANDRE THOMPSON,
3 after having first been duly sworn to state the
4 truth, the whole truth and nothing but the truth,
5 testified on his oath as follows

6 THE COURT Thank you, sir
7 You may proceed

8 DIRECT EXAMINATION

9 BY MR SAVAGE

10 Q Good morning, Mr Thompson

11 A Good morning

12 Q Can you hear me okay from there?

13 A Sure

14 Q Is that a little better?

15 A That's better

16 Q Mr Thompson, where do you live?

17 A I live in 45 Sycamore, West Ashley

18 Q And back in February of 2008, were you working
19 at Benders Bar and Grill in West Ashley?

20 A I was

21 Q And what was your -- what did you do there?

22 A I was the general manager

23 Q Were you there the night that the bar was
24 robbed?

25 A I was

1 Q And pull that microphone forward How many
2 robbers were there that night?

3 A Four

4 Q Did you see those robbers had handguns?

5 A Yes

6 Q When they first came into the bar, did they
7 say anything?

8 A They said to -- they said to get on the
9 ground

10 Q Okay where were you located in the bar when
11 they came in?

12 A I was in the front of the establishment to the
13 right So when they came in the front, I was
14 immediately on their left-hand side

15 Q Is there kind of like a stage area in that
16 portion of the bar?

17 A There is a stage area, yes

18 Q Is there a TV there?

19 A Yes

20 Q What were you doing in that area?

21 A I was watching the democratic national debate

22 Q Okay when the robbers first came in, you
23 mentioned there were four?

24 A There was four

25 Q Where did they go once they came in?

1 A One came over to the area where another
2 gentleman and I were sitting And the other ones,
3 one was stood by the door and the other two went
4 towards the bar area

5 Q Okay Now the one that came over towards you,
6 did he -- do you know whether he had a gun?

7 A He did have a gun

8 Q You saw that gun?

9 A I saw that gun

10 Q Did you see what color that gun was?

11 A It was gray

12 Q Gray, okay Did you see that person, did you
13 see the robber's face?

14 A I did not

15 Q Why couldn't you see his face?

16 A Because I was forced to the ground

17 Q Okay Did you look at his face at all?

18 A Not -- no

19 Q Okay When you were on the ground, did you
20 notice anything about the clothing of that person
21 that pushed you?

22 A I noticed the tennis shoes that he wore
23 because I own the same tennis shoes

24 Q Okay And could you describe those tennis
25 shoes for us?

1 A They are red and black Air Jordan tennis
2 shoes I noticed that his was a little bit different
3 because they had the white laces on them

4 Q Okay Did you notice anything about whether
5 the defendant was wearing a bandana or hat or
6 anything like that?

7 A He had a red mask over his face

8 Q Okay Did that person that had the gun on
9 you, did he take any money from you?

10 A No

11 Q Did he take any money from the person that was
12 next to you? You mentioned there was a person next
13 to you?

14 A I'm not sure about that

15 Q Do you know if the cash register of your bar
16 was robbed that night?

17 A It was

18 Q Do you know if it was robbed -- done by one of
19 the robbers that went in there?

20 A It was

21 Q Did you see anyone rob the cash register?

22 A I didn't see but I heard the cash register hit
23 the ground

24 Q Okay So that's how you know somebody got in
25 there?

1 A Yes

2 Q Do you know roughly how much money was in the
3 cash register on that night at that time?

4 A Probably, well anywhere between \$200 and \$300

5 Q You mentioned earlier that when they first
6 came in, I'm sorry, could you just refresh my memory
7 again what did you hear them say when they came in?

8 A I feel like killing a mother fucker today

9 Q Okay Do you know which robber said that?

10 A The one that with the Air Jordan tennis shoes
11 on, that had a pistol, or whatever kind of gun it
12 was, in my face

13 Q That's the person that was --

14 A Standing over me, yes

15 Q During the robbery did you see any patrons
16 walk up to the bar as it was in progress?

17 A I did

18 Q Do you know who that person was?

19 A Her name was Adina

20 Q Do you know her personally or was that just
21 someone that you knew after this?

22 A I know her personally

23 Q So you knew her before?

24 A Yes

25 Q You were friends?

1 A Acquaintances

2 Q She -- so she had been to the bar before, I
3 guess, like a regular?

4 A Yes

5 Q What happened when Adina walked up to the bar?

6 A Well, like I mentioned earlier that there was
7 a guy that was kind of standing on watch, if you
8 will And when the guy that had the gun to my head,
9 because there's a glass door where we were, noticed
10 that she was outside as well and she -- he told the
11 guy at the door to go out and get her and he did

12 He went outside and grabbed her and brought
13 her into the bar

14 Q Okay Did you see what happened to her once
15 she was pulled inside the bar?

16 A No

17 Q Okay Did you see a robber with her?

18 A Yes When she -- when they walked in the door
19 she was forced -- made to sit on the opposite end of
20 bar where I was on the ground

21 Q Okay

22 MR SAVAGE May I approach the witness, Your
23 Honor?

24 THE COURT You may

25 (Whereupon, State's Exhibit Nos 28 and 29 are

1 marked for identification)

2 Q (By Mr Savage) Mr Thompson, I'm going to
3 hand you what has been marked as State's Exhibit 28
4 and 29 for identification Can you take a look at
5 them, please?

6 A Sure

7 Q Do you recognize them?

8 A I do

9 Q And what are they?

10 A They're pictures of the outside entrance of
11 the bar And this is a picture of the inside of the
12 bar

13 Q Is that how it looked on the night of the
14 robbery?

15 A It is

16 Q Can you see that from there where you are?

17 A I can

18 Q Is that the front of the bar where you worked
19 when the robbery took place?

20 A That is

21 Q And do you recognize that picture?

22 A I do

23 Q Can you use that laser pointer from there, see
24 if it works Can you show, point out to where you
25 were at the time the robbers came in?

1 Do you want to come up a little closer?

2 A Sure

3 Q Let's try it this way Do you see the TV up
4 in the top right-hand corner?

5 A I do

6 Q Is that what we call the stage area?

7 A Yes

8 Q Is that the area where you were --

9 A That's the area I was at

10 Q When they came in? And is that the area where
11 one of those robbers put -- I guess forced you to the
12 ground and pointed a gun at you?

13 A Yes

14 Q And the -- can you point out where the front
15 door is to the bar?

16 A There

17 Q Is that where the other robbers was standing
18 and acting as lookout?

19 A Yes

20 Q And the other two, what area of the bar did
21 they go to?

22 A To the bar area which is the area there to the
23 right

24 Q To the counter?

25 A Counter area, yes

1 Q where is the cash register located?

2 A Just right here

3 Q On the end of the bar there?

4 A Yes

5 MR SAVAGE Your Honor, State moves these
6 into evidence I'm not sure that I actually did
7 that

8 THE COURT What are the numbers?

9 MR SAVAGE 28 and 29

10 THE COURT Any objection, Mr Howell?

11 MR HOWELL None from the Defendant Brown,
12 Your Honor

13 THE COURT Ms Crumey?

14 MS CRUMEY No objection

15 THE COURT Mr Harris?

16 MR HARRIS No objection, Your Honor

17 THE COURT Marked and admitted without
18 objection

19 (Whereupon, State's Exhibit Nos 28 and 29 are
20 admitted into evidence)

21 Q (By Mr Savage) Mr Thompson, did you talk to
22 the police that night?

23 A I did

24 Q At the bar?

25 A I did

1 Q Did you call 911 at any point that night?

2 A I called 911 immediately after the robbers
3 left

4 Q Roughly how long after the robbery occurred
5 did the first police arrive?

6 A Between two and three minutes

7 Q And you spoke to the officer when they came
8 there?

9 A I did

10 Q And did you give a written statement?

11 A I did

12 Q And did you give that written statement, I
13 guess, right there when the police arrived or within
14 that night sometime?

15 A I did

16 Q Do you know roughly how long it was after the
17 robbery until you gave your written statement?

18 A Probably about 30 minutes

19 Q At some point in time, were you asked to go
20 another identification that night by police?

21 A I was

22 Q Did you go to the location?

23 A I did

24 MR HOWELL Your Honor, there are going to be
25 objections to motions filed about certain aspects --

1 THE COURT No speaking objections Is there
2 a matter that you would like the Court to take up in
3 camera?

4 MR HOWELL Yes

5 THE COURT Madam Forelady, ladies and
6 gentlemen, I have a matter of law I need to take up
7 with the attorneys It should be fairly brief
8 During this break please do not discuss the case and
9 please leave your notepads in your seats

10 (Whereupon, the jurors exit the courtroom)

11 THE COURT You may continue, Mr Savage

12 IN-CAMERA EXAMINATION

13 BY MR SAVAGE

14 Q Mr Thompson, you just mentioned you were, I
15 guess transported to another location Did you drive
16 there or were you taken there by the police?

17 A I was taken there by the police

18 Q And what were you told -- why were you taken
19 somewhere else? what were you told?

20 A I was told to go with the police officers to
21 see if these were the guys who robbed Benders that
22 evening

23 Q Okay And when you get to that location,
24 could you -- were you shown anyone?

25 A I was shown four guys, yes

1 Q Did you get out of the car at any time?

2 A I did not

3 Q And did you identify any of the faces of the
4 people that you were shown?

5 A No

6 Q Did you identify anything about any of the
7 people that you were shown?

8 A Yes, the tennis shoes

9 MR SAVAGE Your Honor, that's pretty much it
10 as far as --

11 THE COURT Is there any objection?

12 MR HOWELL Yes, Your Honor, there is

13 THE COURT Basis of the objection?

14 MR HOWELL The basis of the objection is any
15 shown-up at the car would be inherently suggestive of
16 any characteristic Generally in the cases, this is
17 the Neel v Biggers and Lesley case, and Al Rashid
18 case that I submitted to the Court earlier A showup
19 at the car with a suspect surrounded basically by
20 policemen is inherently unreliable, has been ruled to
21 be unreliable as a matter of law

22 I can develop the record a little bit more on
23 this, Your Honor In his statement, this witness was
24 very specific that he was wearing and aware of black
25 Air Jordan tennis shoes Yet today he has testified

1 to black and red which is different

2 THE COURT That would be subject to your
3 cross-examination Those issues go to weight

4 MR HOWELL Well --

5 THE COURT And the reliability of his
6 statement and the veracity of his recollection

7 MR HOWELL I disagree, respectfully disagree
8 on that point In the context of -- I think any
9 characteristic, if it's inherently unreliable for a
10 facial, it's inherently unreliable for anything

11 Just like you have to have some kind of facial
12 lineup, you don't point out somebody and say, here is
13 this guy, oh, are those the shoes he was wearing?
14 Yeah, that's the same black and red shoes I remember
15 that I saw --

16 THE COURT What you arguing, though, is not
17 within the ambit of how it has been presented in the
18 evidence They didn't go to him and say, these are
19 the sneakers that -- you are talking now about
20 suggestive comments made by the police And there is
21 nothing in the record to support that

22 MR HOWELL Under Neel V Biggers, and under
23 the cases I supported, the showup itself constitutes
24 inherently unreliable suggestiveness You look at
25 the opportunity of the witness to view the accused,

1 the degree of attention, the accuracy of the prior
2 description And the level of certainty

3 And I think the accuracy of the prior
4 description is very specific, black shoes and they
5 have turned into black and red shoes, that's
6 different In the context of this identification I
7 think it reaches constitutional proportions of Neel
8 versus Biggers and not just a matter of weight
9 That's our position

10 THE COURT Any argument, Ms Crumey?

11 MS CRUMEY Your Honor, I think in
12 furtherance of Mr Howell's argument I think that the
13 purpose of any identification is to be to identify an
14 individual, not necessarily articles of clothing

15 Supposedly he was brought there to see if he
16 could identify an individual He indicated he could
17 not identify any faces, so at that point anything
18 else that is used for identification would at that
19 point be suggestive in that if he had indicated
20 previously that he could identify something
21 distinctive, distinctive characteristic, then that
22 would be something that is brought up

23 But we are not talking about somebody
24 identifying faces, it's just a pair of tennis shoes
25 So at that point it becomes suggestive that you're

1 looking at just tennis shoes, not being able to
2 identify any other individuals

3 THE COURT Since when is identification
4 limited to faces? We do tatoos, we do scars,
5 clothing, it all comprises an identification, doesn't
6 it?

7 MS CRUMEY I guess but at that point we are
8 talking about --

9 THE COURT Voices

10 THE COURT -- identifying tennis shoes At
11 that point he's already identified tennis shoes
12 There is nothing else that distinguishes this from
13 any other tennis shoe that's similar to that So
14 that does not constitute in itself identification
15 without anything else matching to that

16 We didn't even go into, he didn't even go into
17 the fact that a description of tennis shoes other
18 than black tennis shoes

19 THE COURT They are a specific kind of tennis
20 shoes known as Willie D's Isn't that what they're
21 called? Isn't that what most kids call it?

22 MS CRUMEY That's not the tennis shoes
23 that's being identified

24 THE COURT It's a different type of tennis
25 shoe?

1 MS CRUMEY The problem is that willie D's
2 are not what are apparently being identified today,
3 or being identified as part of the showup The
4 willie D's are what's described in the statement, but
5 they're a different type of tennis shoes that are
6 described in this testimony

7 The willie D's are the all black tennis shoes
8 We are now talking about red and black Jordans

9 MR SAVAGE Can I respond to that?

10 THE COURT I'm going to give you an
11 opportunity to respond after they all make their
12 arguments

13 Is there anything further, Ms Crumey?

14 MS CRUMEY No, ma'am

15 THE COURT Mr Harris, did you have any
16 argument regarding the admissability of the
17 identification?

18 MR HARRIS Your Honor, just I join in the
19 same arguments Mr Howell made At the same time
20 also if there is a question of the -- whether the
21 time is of the essence type thing, they had enough

22 They bring him there and said, we want you to
23 tell us if this is the guy, these are the guys that
24 robbed you He testified to that And again other
25 than that I believe I was going to join with the

1 others on their objection

2 That's it, Your Honor

3 THE COURT Thank you

4 Mr Savage, would you like to respond?

5 MR SAVAGE Yes, Your Honor Officer Danik
6 actually testified that she spoke to an individual,
7 she said she didn't know, she couldn't recall his
8 name, but she said that individual, the witness told
9 her that one of the suspects owned the same pair of
10 shoes that he did

11 That person that she was talking about is
12 Andre Thompson So she did get that description He
13 was talking about these pair of shoes when he spoke
14 to Officer Danik In the report it does say black
15 shoes The shoes coming up are also black and red,
16 but you know he gave the police statements that said,
17 I recognize these shoes because they're the same pair
18 of shoes that I own

19 And so when he goes to the lineup, he looks
20 there, he sees the pair of shoes, he recognizes
21 they're the same pair of shoes I recognize those, I
22 own those, those are the same pair of shoes that I
23 saw in the bar on the person standing over me with a
24 gun

25 I don't know whether that's the person, all I

1 know is that I saw those shoes about 20 minutes -- I
2 guess at this time maybe an hour ago at the bar And
3 he also identified something specific about them
4 which is the white laces in the shoes

5 So I think there has been testimony that
6 clearly outlined that he did give prior testimony to
7 the officer, the police there, that he was talking
8 specifically about a pair of shoes that he owned An
9 identical pair of shoes

10 And that statement Officer Danik gave came up
11 on cross-examination of the defense attorney
12 They're the ones that brought that out

13 MR HOWELL Your Honor, I would just like to
14 address a couple of things

15 THE COURT Yes

16 MR HOWELL If it's possible I'd like to
17 cross-examine him just to keep -- he gave a
18 statement Let me find a copy so that I can have it
19 marked

20 May I approach, Your Honor

21 THE COURT I don't need the statement

22 MR HOWELL This is a copy of the statement
23 he gave I think Your Honor made an excellent point
24 in terms of the Neel versus Biggers when you asked
25 Ms Crumey, you said, so when is identification

1 limited to faces? And the answer is it's not So it
2 has the same weight or purpose to say it's a face as
3 it is the shoes

4 When you have inherent unreliability in the
5 showup of someone, it goes to shoes as much as face
6 We have an exact, what I would say, is a very
7 opposite statement about what he saw And it's
8 written that he saw black shoes, there is nothing
9 about laces, there is nothing about anything else
10 So we just think that inherent unreliability goes to
11 all aspects and that it should be excluded

12 THE COURT Mr Harris, you're standing

13 MR HARRIS Your Honor, I was going to ask if
14 I could also respond to that?

15 THE COURT Sure

16 MR HARRIS Your Honor, we are going by the
17 statement he made Mr Savage is talking about the
18 statement that Ms Danik took or verbally heard but
19 did not take it because she specifically said that's
20 somebody else's job They're going to do that later

21 That's done right here This is the specific
22 statement later on The first time he is asked he
23 says, they had on a pair of black shoes, black Air
24 Jordans Describe the suspect I only saw the feet
25 of the guy He held me down, he was wearing a pair

1 of black Air Jordan tennis shoes

2 This was the statement that Officer Danik was
3 talking about where they were going to get all this
4 information that she had heard from the witness
5 Therefore, according to this statement, and according
6 to the specifics they're going to have later on, this
7 is not the witness that she was talking about
8 earlier If this is the witness she was talking
9 about earlier, they would have put that in the
10 statement because it's supposed to be a specific
11 statement later on

12 He describes black shoes Then, after seeing
13 the shoes, today in court describes black and red
14 shoes with white laces because that's what was on the
15 guy at the showup lineup

16 That's all

17 THE COURT Our case law is very clear
18 showup's, while disfavored, our Supreme Court and
19 Court of Appeals have made distinctions about showup
20 and they have made qualifiers regarding showup

21 And our courts, our appellate courts have
22 indicated that while a showup is generally suggestive
23 and disfavored and less preferable to a lineup, that
24 the showup may be proper where it occurs under
25 certain circumstances, and they have enumerated

1 those Those being, having occurred shortly after
2 the alleged crime, near the scene of the crime, as
3 the witness's memory is still fresh, and the suspect
4 has not had time to alter his looks or dispose of
5 evidence, and the showup may expedite the release of
6 innocent suspects, and enable police to determine
7 whether to continue searching

8 Most of the cases dealing with showup lineups
9 usually deal with one suspect This situation is a
10 little different because it had four suspects
11 involved which factually is a little dissimilar to
12 those cases usually dealing with showup lineups where
13 there is only one individual and therefore only one
14 choice making it generally more suggestible and more
15 disfavored

16 Our courts have been very clear, the closer in
17 time and place to the scene of the crime is less
18 objectionable that the showup is in terms of
19 reviewing its propriety And our courts have been
20 very clear that showup may be proper even though the
21 police refer to a suspect as a suspect, and even
22 though the suspect is handcuffed or is in the
23 presence of the police

24 And again as I have indicated, the case law
25 has indicated that a single-person showup are

1 disfavored because they're suggestive by their nature
2 and by virtue of it there is only one person to
3 select and therefore enhancing the suggestibility of
4 the procedure

5 An identification, nevertheless, may be
6 reliable under the totality of the circumstances,
7 even when a suggestive procedure has been used And
8 the suggestiveness and a pretrial identification
9 alone does not mandate the exclusion of the evidence,
10 reliability being the linchpin in determining the
11 admissibility of identification testimony

12 And the factors again that have been
13 enumerated in determining reliability are as follows,
14 and are -- and the Court should consider these in
15 determining the totality of the circumstances and the
16 reliability factor

17 One is the opportunity of the witness to view
18 the criminal at the time the crime, the witness's
19 degree of attention, the accuracy of the witness's
20 prior description of the criminal, the level of
21 certainty demonstrated by the witness at the time of
22 confrontation, and the amount of time between the
23 crime and confrontation

24 Once the Court determines that the witness's
25 identification is reliable and it goes before the

1 jury, the issue then becomes whether it has been
2 proven beyond a reasonable doubt to the satisfaction
3 of the jury This Court is only required to look at
4 the admissability of identification testimony from a
5 preponderance of the evidence

6 The Court only stands in a gatekeeper
7 function It's not for me to weigh testimony and
8 determine its credibility That is a matter solely
9 within the province of the jury

10 Many of the things that have been argued deal
11 with the reliability or the accuracy of the previous
12 description While that is one factor for the Court
13 to consider, it is not the totality of the factors
14 that the Court must consider Many of those things
15 that have been raised really go to weight, and those
16 are things that you can use to impeach the
17 credibility of this witness and to impugn it, so to
18 speak, so that you try to convince the jury that it
19 should not be given any weight and that the
20 description is inaccurate and therefore that the
21 testimony should not be given any weight

22 However, considering what we commonly refer to
23 as the Jones' factors on reliability, the opportunity
24 of the witness to view the criminal at the time of
25 the crime was acute He testified that he saw them

1 as they came in, not their faces, but that he was
2 forced to the ground, that at that time I would
3 imagine being on the ground close to the floor near
4 someone's feet he noticed this person's sneakers and
5 he noticed them and had the acute awareness of them,
6 my words not his, because he has a pair like them
7 But they had different laces

8 And that he observed the guys with the
9 sneakers making the statement regarding that has
10 already been elicited from him on the record

11 His level of degree of attention I cannot
12 imagine you being more acutely aware of your
13 surroundings than when you are forced to the ground
14 in a situation next to someone's feet that you would
15 not be able to -- that you would not be acutely aware
16 of what was next to your eyes or in front of your
17 eyes

18 The accuracy of the witness's prior
19 description of the criminal And as I understand the
20 statement he did not describe any physical features
21 of the defendant, he described his shoes He
22 described them as black In his testimony today he
23 described them as the laces being different or
24 otherwise

25 I think all of those things really go to

1 weight not to admissability And those are things
2 you can use to impeach his credibility And that
3 would be used for you to persuade the jury as to the
4 level of credibility and weight that should be given
5 to the identification

6 Again it's for the jury to determine beyond a
7 reasonable doubt the accuracy of the -- well, the
8 validity of an identification It's only for the
9 court to determine its admissability by a
10 preponderance of the evidence

11 The level of certainty demonstrated by the
12 witness at the time of the confrontation He
13 indicated that he was taken to by the police -- that
14 he wrote a statement within 30 minutes of the
15 incident, and then within that same proximity he was
16 taken by the police to see if these were the guys
17 that robbed Benders that night He was taken to see
18 four men

19 He was not able to identify the men because he
20 had not seen their faces, but he did identify the
21 sneakers So there was clearly a level of certainty
22 demonstrated by him at the time of the confrontation
23 And the amount time I think is uncontested between
24 the time between the crime and the confrontation was
25 fairly short in its span

1 And as the case law has been very clear that
2 that is something that the Court should consider that
3 when looking at the totality of the circumstances is
4 that a showup may be proper, the closer in time and
5 place the less objectionable

6 You know, proximity is really very subjective
7 Of course I'm familiar with where they found the car
8 and where this -- I don't really know where Benders
9 is, I know the general location on Savannah Highway,
10 anyone that has lived in Charleston knows where
11 Savannah Highway is When you really think about it
12 it really isn't that far in distance driving it

13 So, while it is true that showup are generally
14 disfavored, our case law has made some distinctions
15 as to how the Court should judge that in terms of its
16 gate-keeping function Therefore, I will note your
17 exceptions for the record The identification is
18 admissible, however that does not limit you of course
19 from going into all of the things you've argued to
20 the Court regarding the weight and the veracity to be
21 given to that identification Is there
22 anything further before we bring in the jury?

23 MR HOWELL Can we take a five-minute break?

24 THE COURT Absolutely I would suggest that
25 this is probably a good time to take a break why

1 don't we break until 11 20

2 MR HOWELL Thank you

3 THE COURT You're welcome

4 whereupon, a recess was taken)

5 THE COURT Is the State ready to proceed?

6 MR SAVAGE Yes, Your Honor

7 THE COURT Defense ready to proceed?

8 MR HOWELL Yes, Your Honor

9 THE COURT Ms Crumey?

10 MS CRUMEY Yes, ma'am

11 THE COURT Mr Harris?

12 MR HARRIS Yes, ma'am

13 THE COURT Please bring in the jury

14 And when there is a matter that we know is

15 subject to the motions somebody needs to say, we

16 have a matter of law to take up Don't go into the

17 testimony

18 MR HOWELL I'm trying to learn

19 THE COURT It's for the State as well It's

20 for everyone when you know, especially the

21 identification or anything, you need to tell me you

22 have a matter of law

23 MR SAVAGE To be honest, Your Honor, I did

24 talk with Mr Howell about this I didn't think it

25 was a Neel v Biggers issue, so that's why I did not

1 bring it up

2 THE COURT Okay

3 (Whereupon, the jurors enter the courtroom)

4 THE COURT You may resume questioning, Mr

5 Savage

6 MR SAVAGE Thank you, Your Honor May it
7 please the Court

8 THE COURT Yes

9 CONTINUED DIRECT EXAMINATION

10 BY MR SAVAGE

11 Q Mr Thompson, before we took a brief break
12 there we were discussing after the armed robbery
13 occurred you spoke to the police that responded to
14 the bar, and then you were transported to another
15 location Do you remember that?

16 A I do

17 Q And did you go to that other location by
18 yourself or were you taken by an officer?

19 A I was taken by two police officers

20 Q And when you were taken to that other
21 location, what were you told you were being taken
22 for?

23 A To identify the individuals that were -- that
24 robbed the bar

25 Q Okay Were told that they were the

1 individuals or that may or may not be?

2 A I was not told I was just told I was going
3 to the location to identify some individuals

4 Q Okay Did you go to that location?

5 A I did

6 Q And approximately how long did it take to
7 drive to that location from the bar?

8 A Ten minutes, tops

9 Q Would you say that's roughly a three, four
10 mile drive?

11 MR HOWELL Objection

12 A Probably about a four mile drive

13 THE COURT I'm sorry, is there an objection?

14 MR HOWELL Objection, leading

15 THE COURT Sustained, leading

16 Q (By Mr Savage) How long -- distance-wise,
17 how long would you say that was?

18 A Approximately three to four miles

19 Q And when you get to that location, were you
20 able to make -- were you shown individuals at that
21 location?

22 A I was shown four individuals at that time

23 Q Four Were you able to make any
24 identifications regarding their faces?

25 A No

1 Q Did you look at them altogether at once or was
2 it individually?

3 A Individually

4 Q Were you able to identify anything at all
5 about any of the individuals that you saw at that
6 location

7 A Like I said the tennis shoes is what I recall
8 And that's what I was going to identify at that time

9 Q All right

10 MR SAVAGE Your Honor, may I approach the
11 witness?

12 THE COURT You may

13 (Whereupon, State's Exhibit No 30 is marked
14 for identification)

15 Q (By Mr Savage) Mr Thompson, I'm showing you
16 what has been marked as State's Exhibit 30 for
17 identification could you please look at that?

18 A Sure

19 Q Do you recognize it?

20 A I do

21 Q What is it?

22 A It is a pair of black and red Air Jordan
23 tennis shoes

24 Q Is that the pair of shoes that you saw when
25 you went to that location and identified one of the

1 people that you saw there after the robbery?

2 A Yes

3 MR SAVAGE Your Honor, at this point State
4 moves Exhibit 30 into evidence

5 THE COURT Show it to them

6 Any objection, Mr Howell?

7 MR HOWELL Just note our earlier objections

8 THE COURT Ms Crumey?

9 MS CRUMEY Same

10 THE COURT Mr Harris?

11 MR HARRIS Same, Your Honor

12 THE COURT Marked and admitted

13 (Whereupon, State's Exhibit No 30 is admitted
14 into evidence)

15 Q (By Mr Savage) Mr Thompson, I'm putting up
16 on the projector here what is marked as State's
17 Exhibit No 30 Are those the pair of shoes that you
18 saw at the bar that night during the robbery?

19 A I do

20 Q Are they the pair of shoes that you saw on the
21 robber who was standing above you with a gun?

22 A Yes

23 Q Are they the same pair of shoes that you saw
24 when you went to the location I guess it was about an
25 hour after the robbery?

1 A It was

2 Q Were they the same pair of shoes that you saw
3 at one of the individuals at that location?

4 A Yes

5 Q Thank you

6 MR SAVAGE I have no further questions at
7 this time

8 THE COURT Mr Howell, any questions for the
9 witness?

10 MR HOWELL Yes, ma'am

11 THE COURT You may proceed

12 CROSS-EXAMINATION

13 BY MR HOWELL

14 Q What kind of shoes are they?

15 A Air Jordan tennis shoes

16 Q Is that the kind I see advertised on Michael
17 Jordan doing the great dunks?

18 A It is It's the same pair of tennis shoes
19 that I own myself

20 Q They were pretty popular?

21 A They were

22 Q The thing that made Nike great, isn't it?

23 A Supposedly

24 Q Police got there within a couple of minutes of
25 these guys leaving?

1 A Yes

2 Q And at some point after that they took
3 statements from various people in the bar?

4 A That's correct

5 Q And you were one of those people?

6 A Yes

7 Q And you sat down with Officer Kasarko, I
8 think, and he asked you what you remember?

9 A Yes, sir

10 Q And do you have a copy of your statement with
11 you?

12 A I do

13 Q And did he ask you to describe the suspects?
14 I only saw the feet of the guy who held me down
15 wearing a pair of black Air Jordans Is that what
16 you told him?

17 A Yes

18 Q And can you describe any movement? And you
19 said, no, I was facedown

20 Q Facedown on the ground, yes

21 Q So of all the things he asked you, you only
22 commented on the shoes and you said they were black?

23 A Yes

24 Q And at the bottom, this is where I am pointing
25 right here, that is your signature?

1 A It is

2 Q This is the policeman signing off that he took
3 it from you?

4 A Sure

5 MR HOWELL That's all the questions I have,
6 Your Honor

7 THE COURT Any questions, MS Crumey?

8 MS CRUMEY Just a few

9 THE COURT You may proceed

10 CROSS-EXAMINATION

11 BY MS CRUMEY

12 Q Mr Thompson, when the officer took your
13 statement, did he tell you you had to hurry?

14 A No

15 Q You took your time and gave a statement as
16 best you can recall?

17 A I did

18 Q And but you didn't mentioned in your statement
19 about seeing shoes that you wore?

20 A Actually I did clearly says in the report,
21 if you scroll down just a little bit, a pair of black
22 Air Jordan tennis shoes Every pair of Air Jordans
23 are actually black and red

24 Q Every pair of Air Jordans are black and red?

25 A Most of the time, yeah Pretty much

1 Q They're not black? You've never seen black
2 Air Jordans, all black Air Jordans?

3 A I have not

4 Q And they're pretty popular shoes?

5 A Yes

6 Q And lots of people wear them?

7 A Sure

8 Q So it's not uncommon for someone to have on
9 black Air Jordans?

10 A No But it is pretty uncommon to have the
11 white laces

12 Q And you didn't mention that in this statement
13 either, anything about the white laces?

14 A I'm sure I did I don't think the police
15 wrote it down, but I did say about the Air Jordan
16 tennis shoes

17 Q Did you read the statement before you signed
18 it?

19 A Yes

20 Q Did you ask them to add anything to it?

21 A I did not think that small technicality really
22 truly mattered

23 Q After you saw the picture that you identified
24 earlier, did you ask them to add anything to your
25 statement?

1 A At that time I didn't add They were gone by
2 the time I got back It was crime scene that was
3 there after that

4 Q Did you speak with anyone during the ride?

5 A No Well the police officers, we were talking
6 about sports

7 Q And this statement you said was taken about 30
8 minutes after?

9 A Sure

10 MS CRUMEY That all the questions I have

11 THE COURT Any questions, Mr Harris?

12 MR HARRIS Yes, Your Honor

13 THE COURT You may proceed

14 CROSS-EXAMINATION

15 BY MR HARRIS

16 Q Those are the shoes you saw?

17 A Yes

18 Q Okay And the police came and talked to you,
19 you gave a statement, correct?

20 A I did

21 Q That's the statement we have shown up on the
22 screen?

23 A Yes

24 Q You signed that statement?

25 A I did sign that statement

1 Q You read that statement?

2 A I read that statement

3 Q okay Let me ask you, when the police came
4 you wanted them to catch these people?

5 A of course

6 Q okay, because they had just robbed you?

7 A Sure

8 Q And you want to give as much information to
9 catch them as possible, right?

10 A Yeah

11 Q okay You have a pair of shoes like this?

12 A I do

13 Q okay You said the one difference is those
14 have white laces?

15 A Uh-hum

16 Q But you didn't put that in your statement?

17 A It says Air Jordan tennis shoes

18 Q It says black Air Jordan tennis shoes

19 A Those are black, don't you see?

20 Q Is that red?

21 A Those are red

22 Q Those are not solid black tennis shoes,
23 though?

24 A No

25 Q okay And they're actually all the outside of

1 them is red, and the toe is black?

2 A And the side is black

3 Q Okay And the laces are white?

4 A Yes

5 Q And that's the difference between yours and
6 those, right?

7 A Yes

8 Q Okay

9 THE COURT Is that your phone? Go ahead and
10 turn it off

11 You may continued, Mr Harris

12 THE WITNESS I'm sorry

13 THE COURT It's okay

14 Q (By Mr Harris) The only thing you saw from
15 your statement was these shoes?

16 A was black Air Jordan Tennis shoes, yes

17 Q No face?

18 A Beg your pardon?

19 Q No face?

20 A No face, no, sir

21 Q And so in your statement here that you -- that
22 the police gave, the police took from you and you
23 signed?

24 A Uh-hum

25 Q No mention of white laces? Yes or no, no

1 mention of white laces?

2 A No

3 Q No mention of red on the shoes?

4 A No mention of red on the shoes

5 Q Okay

6 MR HARRIS I've got nothing further

7 THE COURT Any redirect?

8 MR SAVAGE Yes, Your Honor

9 REDIRECT EXAMINATION

10 BY MR SAVAGE

11 Q Mr Thompson, when the police first responded,
12 did you speak to more than one officer that night?

13 A Yes

14 Q And prior to speaking to the officer who took
15 down this written statement, did you talk to an
16 officer before that about the shoes that you saw on
17 the person standing above you?

18 A Yes

19 Q And what did you tell that officer about the
20 shoes?

21 A That they were Air Jordan tennis shoes

22 Q Did you mention anything to that officer about
23 owning the same pair of shoes?

24 A I did

25 Q Mr Harris just stated that the only thing you

1 mentioned that you saw that night were the shoes I
2 believe you testified a little bit earlier about
3 seeing the color of the gun?

4 A Yes

5 Q What color of the gun was it that you saw?

6 A Gray

7 Q You also mentioned about a bandana or a mask
8 or something that the person standing above you with
9 those shoes was wearing?

10 A Yes

11 Q What color was that bandana?

12 A Red

13 Q When you were on the ground and that person
14 with the shoes that you saw, the person standing
15 above you with the gun, how far away were those shoes
16 from your face?

17 A Probably eight to ten inches They were
18 directly in my direct eyesight

19 MR SAVAGE Court's indulgence, Your Honor

20 Q (By Mr Savage) Mr Thompson, you also
21 mentioned that when they first initially I guess
22 rushed into the bar, and one of them stated, I feel
23 like shooting an MF'er tonight?

24 A Yes

25 Q Did you perceive that as a threat?

1 A Absolutely

2 Q Did you think the guns were real?

3 A Absolutely

4 Q Did you know whether or not the guns were
5 loaded?

6 A I did not

7 Q But you certainly didn't want to take that
8 chance?

9 A Absolutely not

10 Q Did you feel intimidated?

11 A 100 percent

12 Q Were you scared?

13 A Absolutely

14 Q Did you think you were going to get shot?

15 A 100 percent

16 MR SAVAGE I have no further questions, Your
17 Honor

18 THE COURT Any objection to the witness being
19 excused from the State?

20 MR SAVAGE No, Your Honor

21 THE COURT Mr Howell?

22 MR HOWELL No, Your Honor

23 THE COURT Ms Crumey?

24 MS CRUMEY No, ma'am

25 THE COURT Mr Harris?

1 MR HARRIS No, ma'am

2 THE COURT Sir, you are excused

3 You may call your next witness

4 MR SAVAGE Your Honor State calls Sgt Ray

5 MR SCOTT RAY,

6 after having first been duly sworn to state the
7 truth, the whole truth and nothing but the truth,
8 testified on his oath as follows

9 THE COURT You may proceed

10 DIRECT EXAMINATION

11 BY MR SAVAGE

12 Q Good morning, Sgt Ray Where do you work?

13 A Charleston Police Department, patrol

14 Q And how long have you worked for the
15 Charleston Police Department?

16 A Almost nine years

17 Q Could you briefly explain your duties with the
18 CPD?

19 A Right now I'm a patrol supervisor in West
20 Ashley, Team 4

21 Q Were you involved in the Benders Bar and Grill
22 armed robbery back in February of 2008?

23 A Yes, sir

24 Q And did you respond to the bar that night?

25 A No

1 Q Where did you respond to?

2 A I responded to 12 Sawgrass, was approximately
3 15 minutes after the robbery

4 Q What is located at 12 Sawgrass Road?

5 A James Island Christian School

6 Q And approximately what time was it that you
7 responded?

8 A My arrival time was 22 09

9 Q Okay And that is I guess, regular time --

10 A 10 09 p m

11 Q Thank you What time did the robbery occur?

12 A I believe it was 21 50 Ten till 10 00

13 Q Okay Were any other officers -- what was at
14 the 12 Sawgrass Road?

15 A Officer Bonanni stopped a suspicious vehicle,
16 it was parked behind the Christian school

17 Q At that time were any other officers with
18 Officer Bonanni?

19 A No, he was alone

20 Q Was Officer Bonanni talking to anyone at that
21 time?

22 A When I arrived he was talking to the driver

23 Q To the driver How many people were with
24 officer Bonanni at that time? In the car I mean

25 A There was four occupants in the car

1 Q Okay And when you arrived on the scene, were
2 you with anyone yourself?

3 A I was with my partner, Officer Chris Morel

4 Q Okay And when arrived on the scene with
5 Officer Morel, the four individuals that Officer
6 Bonanni was talking to, were they in the car or out
7 of the car?

8 A They were all seated in the vehicle

9 Q Okay When you arrived at that location, you
10 mentioned it was a Christian school Was the school
11 open?

12 A No

13 Q At this point were you aware that an armed
14 robbery had taken place and guns may have been
15 involved?

16 A Yes, sir

17 Q Was there a description broadcast out over the
18 police radio like a general description of what
19 happened, a description of the robbers?

20 A Yes

21 Q And you heard that description?

22 A Yes, sir

23 Q Part of that description, do you recall
24 whether it mentioned the suspects ages?

25 A I don't recall the specifics

1 Q Okay But did it mention a number of possible
2 suspects?

3 A Four

4 Q Four Did it give any description regarding
5 clothing or any items like that?

6 A I remember they were issuing defendant
7 clothing description, dark clothing some of them I
8 think there was some shoe descriptions going out over
9 the radio

10 Q So something?

11 A I don't recall the specifics There were
12 descriptions going out over the radio

13 Q Sure When you arrived to that location, did
14 you get out of your car --

15 A Yes

16 Q -- at the school Did you see the men, the
17 four males, that were inside the car?

18 A Yes

19 Q Could you describe their demeanor when you
20 first saw them?

21 A When I first pulled up we were in an unmarked
22 vehicle so I think they didn't know we were there
23 yet They were talking to just Officer Bonanni and
24 seemed sort of relaxed

25 And it seems like when I approached and came

1 around, and my partner went around the other side,
2 everyone became really nervous and silent And all
3 four of them looked straight forward

4 Q Did you ask -- who was in the driver's seat?

5 A Clarence Robinson

6 Q And is Clarence Robinson, do you see Mr
7 Robinson in the courtroom today?

8 A Yes

9 Q Could you please point him out and state what
10 he is wearing?

11 A The far right

12 Q Can you describe the color shirt?

13 A Orange

14 MR SAVAGE Your Honor, let the Court reflect
15 that the witness has identified Clarence Robinson

16 THE COURT Let the record so indicate You
17 may proceed

18 Q (By Mr Savage) Did you ask Mr Robinson to
19 get out of the car at this point?

20 A I did

21 Q Did you pat him down for weapons?

22 A Yes, sir

23 Q Is that standard police procedure?

24 A Yes

25 Q Did you ask anyone else to get out of the car?

1 A Yes, sir

2 Q Who was it that you asked to get out of the
3 car?

4 MR HOWELL Your Honor

5 THE COURT Yes, sir

6 MR HOWELL I have a matter of law at this
7 point

8 THE COURT Please approach

9 (Whereupon, the following discussion was held
10 at the bench)

11 THE COURT Is it going to be the incident?
12 Is it going to be what, if anything, he seized?

13 MR SAVAGE Not right now, but he is just the
14 pat-down Later on I get into evidence inside the
15 car and stuff I will let you know that

16 MR HOWELL Okay I just -- my position is
17 it's not articulable suspicious I can make that on
18 the record later

19 THE COURT Well the suspicion is he sees the
20 vehicle, not the stop of the car

21 MR HOWELL Right But my point here at this
22 point is they should have let them go There is no
23 articulable suspicion to stop

24 THE COURT It is

25 MR HOWELL I understand I can put it on

1 the record

2 THE COURT You don't have an objection to
3 when he's outside the vehicle at the point, they can
4 stop anytime, they can get him out

5 MR HOWELL If they have articulable
6 suspicion

7 THE COURT They do

8 MR HOWELL I understand They go beyond
9 that stop Thank you

10 (In open court)

11 THE COURT You may proceed

12 MR SAVAGE Thank you, Your Honor

13 Q (By Mr Savage) Sgt Ray, after you asked Mr
14 Robinson to get out of the car, did you ask anyone
15 else to get out?

16 A Yes

17 Q Who was that?

18 A Darnel Brown

19 Q And where was Darnel Brown located inside the
20 vehicle?

21 A Rear seat behind the driver

22 Q Did you pat them down for weapons?

23 A Yes, sir

24 Q Where was Officer Morel at this point in time?

25 A He was on the passenger side watching both of

1 the others

2 Q Did he remove anyone from the vehicle?

3 A Yes, he did

4 Q Who did he remove from the vehicle?

5 A First we removed front the seat passenger,
6 Colin Boston

7 Q Do you see Mr Boston here in the courtroom
8 today?

9 A Yes, sir

10 Q Can you please point him out and tell the
11 Court what he's wearing?

12 A Black suit, white shirt and tie

13 Q Probably a lot of people in this courtroom to
14 be honest Is he sitting --

15 A Seated at the second table from the left

16 MR SAVAGE Okay Your Honor let the Court
17 reflect that he's identified Mr Boston

18 THE COURT Let the record so indicate

19 Q (By Mr Savage) And do you know if Officer
20 Morel patted down Mr Boston for weapons as well?

21 A I don't remember seeing if he did I assume
22 he did I was watching the others

23 Q Okay Did he pull anyone else out of the car?

24 A He did

25 Q Who was that?

1 A David Brown

2 Q And where was David Brown located inside the
3 car?

4 A He was seated in the rear seat, passenger side
5 of the vehicle behind Mr Boston

6 MR SAVAGE Your Honor, at this point I think
7 we may have a matter of law to discuss

8 THE COURT Madam Forelady, ladies and
9 gentlemen, I have a matter of law to take up with the
10 attorneys It should be brief

11 During the break please do not discuss the
12 case and please leave your notepads in your seats I
13 anticipate we will probably be breaking for lunch
14 shortly

15 (Whereupon, the jurors exit the courtroom)

16 THE COURT Proceed

17 IN-CAMERA EXAMINATION

18 BY MR SAVAGE

19 Q Sgt Ray, when David Brown was removed from
20 the vehicle did you see anything on the floorboard of
21 that car?

22 A Yes, I did

23 Q what did you see?

24 A I saw a silver-black handgun

25 Q what type of gun was that? Do you know what

1 caliber?

2 A It was a 22

3 Q Did that gun have live ammunition?

4 A Yes, it did

5 Q Did the gun have a serial number?

6 A No

7 Q Based on your experience, why would a gun have
8 the serial number removed?

9 A My experience it usually indicates it was
10 stolen

11 Q Were the defendants placed under arrest at
12 this point?

13 A Yes

14 Q Were you defendants read their Miranda
15 warnings at this point?

16 A They were

17 Q Did you question the defendants?

18 A I did

19 Q Okay what did you ask them?

20 A I asked them whose gun it was

21 Q Okay And did anyone claim ownership of that
22 gun?

23 A No one did

24 Q When you looked -- at this point did you
25 search, did you continue to search the car?

1 A Yes, sir

2 MR SAVAGE Your Honor, can I -- I'm kind of
3 confused here What I'm worried about is I have two
4 issues We are not supposed to mentioned the drugs,
5 but what I am getting into is he's looking in the car
6 he finds --

7 THE COURT We are in-camera, you are supposed
8 to mention everything that's objectionable You need
9 to create your proffer so I can kind of -- I need to
10 rule You need to question him what you want to
11 present to this jury

12 MR SAVAGE I -- obviously I'm not going to
13 be able to present that to the jury

14 THE COURT You mean about the drugs?

15 MR SAVAGE Yes What I am worried about is
16 I think what's coming is they're going to be
17 objecting to evidence that's found in the car here,
18 and I will be anticipating they're going to say that
19 the search was an illegal search

20 The problem that Officer Ray is going to have
21 here is he finds the gun which I am going argue is in
22 plain view As he continues the search incident to
23 arrest, he also finds drugs inside that vehicle He
24 is not going to be able to testify to that

25 THE COURT That's the subject of the

1 possession of cocaine charge which I have severed

2 MR SAVAGE I know and that's what I'm
3 saying He is not going to be able to testify that
4 so therefore he is finding additional evidence in
5 that car to a crime, I think he is going to be
6 restricted enable to justify why he is searching

7 THE COURT I think you should ask him what he
8 found in the vehicle whether he found drugs or not
9 is only tangential to whatever else he found in the
10 vehicle

11 MR SAVAGE I can ask him that in the
12 presence of the jury?

13 THE COURT No Only ask him about what he
14 found in the vehicle except for the drugs

15 MR SAVAGE Okay

16 THE COURT He would have found what else he
17 found with the search incident to arrest and an
18 inventory of the vehicle So it really doesn't
19 matter whether he found the drugs or not It's just
20 tangential to the fact that he found everything else

21 MR SAVAGE Very well, Your Honor

22 Q (By Mr Savage) Officer Ray, Sgt Ray, I
23 apologize Did you look further into the vehicle?

24 A Yes

25 Q Do know whose vehicle that was by the way?

1 A It was registered to Colin Boston

2 Q Okay And when you searched the vehicle, did
3 you find any other items of interest to you?

4 A Yes, I did

5 Q Did you find any other additional handguns?

6 A Three additional handguns

7 THE COURT Don't lead You need to ask him
8 direct questions

9 MR SAVAGE Very well, Your Honor

10 Q (By Mr Savage) Could you tell the Court what
11 else you found?

12 A I found three additional handguns in the trunk
13 of the vehicle

14 Q Did you find any other items?

15 A Also removed from the trunk were a black
16 hooded sweatshirt, two pairs of black gloves, a pair
17 of clear latex gloves, a black and white knit hat, a
18 black knit hat, a pair of red and black Nike shoes, a
19 piece of gray cloth tied into a handkerchief

20 Removed from the interior of the vehicle were
21 another pair of black gloves from the rear
22 floorboard, a yellow Nike brand knit hat from the
23 rear driver's seat, from the rear driver's side, and
24 a piece of red cloth tied into a handkerchief in the
25 front console

1 Q Let's go back to the three additional guns
2 that you found in the trunk Did you have a key for
3 the trunk or did you open the trunk?

4 A No

5 Q I guess, how did you see that the guns were in
6 the trunk? How did that happen?

7 A In the search of the vehicle the backseat
8 could pull forward slightly, and you could see into
9 the trunk A lot of vehicles the backseat will pop
10 down forward, you obviously have access This one it
11 came out three or four inches and you could visually
12 see into the trunk from the top of the seat

13 Q Okay

14 MR SAVAGE Your Honor, at this point do you
15 want me to mark the items for identification?

16 THE COURT Marked for ID only Well at this
17 point, I don't know that you need to because you are
18 creating a proffer for the purposes of the objection.
19 They will not be marked until such time as the Court
20 makes a decision about their admissibility

21 If I determine that they are not admissible
22 they will be marked as Court's exhibits

23 MR SAVAGE Okay Court's indulgence, Your
24 Honor

25 THE COURT Okay

1 MR SAVAGE I have no further questions at
2 this time, Your Honor

3 THE COURT Any questions for the witness, Mr
4 Howell?

5 MR HOWELL Yes, ma'am

6 THE COURT You may proceed

7 IN-CAMERA CROSS-EXAMINATION

8 BY MR HOWELL

9 Q When you first pulled up was just Officer --

10 A Bonanni

11 Q Bonanni, right And how was his car pulled
12 in? He was pulled in right behind?

13 A He was right behind them

14 Q Okay And did you discuss anything with him
15 as you got there?

16 A I don't believe we did

17 Q And you said that you had gotten some
18 information over the radio about suspects in the
19 armed robbery, is that correct?

20 A Yes

21 Q Tell me all of the information that you
22 remember that you got

23 A I remember that it was four males I remember
24 they all were supposedly had guns And there was
25 various closing descriptions that they were putting

1 out on the radio that I don't recall right now

2 Q Were those -- when these descriptions go out
3 over the radio, is that recorded?

4 A It should be

5 Q I guess it's obvious that you didn't bring any
6 of that with you today?

7 A No

8 Q You did not review any of that before today?

9 A No

10 Q Was there any description of a car that came
11 out?

12 A Not that I recall

13 MR HOWELL Court's indulgence

14 THE COURT Uh-hum

15 Q (By Mr Howell) I might be wrong Is this
16 the gun that was found on the floor? I might be
17 wrong on that, I'm just trying to get --

18 A No, this is not

19 Q That's not, okay

20 A That's a 38

21 Q And the kind of gun that you found was what
22 kind?

23 A A 22 caliber revolver

24 Q And this one then, does that look more --

25 A That looks like it

1 Q Okay And is there anything on the evidence
2 labels that helps you make sure that's it?

3 A This is it

4 Q So you are pretty sure?

5 A That was the one inside the passenger
6 compartment

7 Q And at that point, it was after that point
8 that you looked in the trunk?

9 A Yes, sir

10 Q And explain to me again how you looked in the
11 trunk Are you looking in from the backseat as I
12 understand?

13 A Right The seat actually between the back
14 window partition was the seat

15 Q Speak up just a little bit

16 A A lot of times there is a section you tuck
17 things behind the seat, or the seat will rock forward
18 and give you access to the trunk You could rock
19 this seat forward several inches, but it would not
20 pull all the way down You could visually see into
21 the trunk

22 Q Okay And you kind of used your hands, for
23 the record what you're indicating is you grabbed over
24 the top of the seat and just pull it?

25 A It would rock forward and you could see in

1 there

2 Q Okay

3 MR HOWELL Bear with me one second, Your
4 Honor

5 THE COURT Take your time

6 Q (By Mr Howell) And how did you ultimately
7 get in the trunk?

8 A I called a locksmith to open it

9 Q There was no key to the trunk?

10 A Not that we could locate

11 Q How long did it take them to get there?

12 A They arrived at 11 45 and they were able to
13 finally get it open at 1 15

14 THE COURT I'm sorry, please repeat that

15 THE WITNESS They arrived at -- A1 Locksmith
16 arrived at 11 45, and they opened the trunk at 1 15
17 a m

18 Q (By Mr Howell) And do you know why it took
19 them so long to get in?

20 A I guess it wasn't a good locksmith, it took
21 him awhile He was working on it for quite awhile

22 Q Do you know if it was just a matter of losing
23 the key or was there any other problems with the lock
24 itself?

25 A You'd have to ask the locksmith I don't

1 know

2 MR HOWELL I think that's all the questions
3 I have, Your Honor

4 THE COURT Ms Crumey, any questions?

5 MS CRUMEY No, ma'am

6 THE COURT Mr Harris, any questions?

7 MR HARRIS Beg the Court's indulgence, Your
8 Honor

9 THE COURT Uh-hum

10 IN-CAMERA CROSS-EXAMINATION

11 BY MR HARRIS

12 Q When you arrived you mentioned they were
13 speaking with an officer?

14 A Yes

15 Q And that their demeanor at that point seemed
16 calm?

17 A It just seemed to change to real nervous when
18 I moved up to the other side, to the driver's window

19 Q So when they were surrounded by the police
20 they got nervous?

21 A I don't know what caused them to do that

22 Q There's three officers surrounding them at
23 that point?

24 A I cannot tell you why they became nervous

25 Q I understand that There were three officers

1 surrounding the car at that point?

2 A There was three of us

3 Q Okay But they had just been talking to --
4 what was the other officer's name?

5 A John Bonanni

6 Q Okay And did Officer Bonanni, did he -- was
7 he arresting them?

8 A No

9 Q Okay

10 A He was looking into the windows

11 Q Okay And he had been there for a few minutes
12 before you got there?

13 A Maybe two or three minutes

14 Q Okay

15 MR HARRIS I have no further questions, Your
16 Honor

17 THE COURT Any redirect?

18 MR SAVAGE No, Your Honor

19 THE COURT Mr Howell, you may proceed with
20 the argument

21 MR HOWELL Yes, ma'am, Your Honor

22 Basically the defendant's motion is that -- this is
23 what we approached the bench for so I will back up
24 just a little bit As I understand it, as I hear the
25 evidence, Your Honor, a report goes out that there

1 were four black males in a robbery some miles away
2 And that an officer, Officer Bonanno, sees a car in a
3 parking lot He goes to investigate

4 He says that he doesn't know, it could be a
5 couple pulled over there, there wasn't anything wrong
6 with the vehicle being there But he pulls in behind
7 them and angles his car so that they can't leave So
8 at that point they're clearly seized for
9 constitutional purposes

10 THE COURT Actually our constitution and the
11 case law seems to say that simply stopping and asking
12 for ID is not seizure Now it could be argued that
13 by blocking them in might rise to the level of
14 seizure

15 MR HOWELL That is exactly what I am
16 arguing If I'm walking down the street and I ask
17 somebody, I'd like to see your ID, they can say, no,
18 thanks, officer, and keep going But when I hem them
19 in, that's different I think that's a significant
20 difference

21 If I grab them by the arm so they cannot keep
22 moving, that's clearly a seizure, and in parallel if
23 I pull behind their car For instance, Your Honor,
24 the cases that are clear, a license check is a
25 seizure

1 THE COURT Well, they seem to say though
2 until they're forced out of the vehicle that's when
3 it becomes a seizure At least that's what our
4 Supreme Court seems to indicate

5 MR HOWELL Well, I --

6 THE COURT But you can continue to make your
7 argument

8 MR HOWELL Our position is the seizure is
9 there whether in or out of the car Once you can't
10 leave, you can't leave To say your free to roam the
11 contents of your car I don't think rises to the level
12 of general freedom

13 So at that point I think there has to be some
14 articulable suspicion to call in the additional
15 people who are coming for robbery purposes And the
16 only information those people have at that point is
17 that there were four people involved in a robbery
18 They don't know, according to the earlier
19 information, whether they left on foot or in a car

20 The only information they have about any car
21 leaving the scene is a car that is very different
22 from this car, it was identified as an SUV or truck
23 and this is a red Chevrolet And so they have been
24 seized They're obviously being investigated for a
25 robbery, and there is not enough to hold them for a

1 robbery at that point

2 THE COURT Does it have to be enough to hold
3 them for a robbery? The Supreme Court seems to
4 indicate that even though you can stop somebody for
5 one reason and arrest them for another All you have
6 to have is a reasonable articulable suspicion of
7 criminal activity afoot

8 To stop them you don't really need that, to
9 detain them to talk to them

10 MR HOWELL But Officer Bonanni has
11 testified that as them being parked there, when he
12 checked the license, there was nothing about any
13 criminal activity being afoot The only evidence of
14 criminal activity being afoot is this robbery There
15 is nothing is else that suggests criminal activity
16 being afoot, and that's directly out of Officer
17 Bonanni's mouth

18 I think Mr Harris asked him, was there
19 anything wrong with being parked there? No Any
20 problems with their license, I think I asked him
21 that, he said no

22 THE COURT I don't know that the case law
23 supports it having to rise to that level There is
24 case law that indicates it's okay for the police to
25 stop somebody who's sitting and letting their car

1 run

2 All they have to have is a reasonable
3 suspicion or something articulable that would support
4 them stopping and talking to the person And then we
5 start going into the plain view stuff

6 But, I mean, the Supreme Court has said that
7 being concerned about somebody being -- you know, of
8 course the car was not -- enough to stop their car
9 and getting them out and talking to them and ask them
10 why they're sitting there

11 And you have a situation, based on officer's
12 testimony, where they were sitting in an abandoned,
13 well not abandoned, his original concern was the fact
14 that here was somebody's car parked in a school, a
15 church school which I know, I think most people know
16 where James Island Christian School is right off
17 Folly Road, and it was dark and there was nobody
18 there It wasn't like there was school activity
19 going on

20 MR HOWELL And the scope and the nature of
21 the stop has got to be limited by the nature of the
22 articulable suspicion In other words when he comes
23 up and says, gosh, it looked like -- I did not know
24 what was going on

25 Yes, I think he can say, hey, guys what's

1 going on, any problems? No, officer, no problems
2 They seemed relaxed according to the officer Can I
3 see your license? Yeah, I see your license And
4 then but he parks and waits specifically for the
5 robbery team to come in

6 And he doesn't have -- at that point they're
7 supposed to be free to go He doesn't have -- he has
8 seized them And the only articulable suspicions
9 have been resolved And the only articulable
10 suspicion that comes up, comes up later as a result
11 of the seizure The suspicion comes later, the
12 seizure predates it and has had time to lapse and
13 insulate itself for Terry purposes

14 THE COURT Anything further?

15 MR HOWELL That's all I have, Your Honor

16 THE COURT Ms Crumey, any argument on the
17 motion? I assume you are joining in Mr Howell's
18 motion

19 MS CRUMEY Yes, Your Honor I don't believe
20 I have anything in addition to what Mr Howell has
21 argued I think the only -- I guess the only
22 question becomes at the point of I believe that when
23 they were moved from the vehicle, there is a question
24 as to whether or not they were searched based on the
25 arrest, possession -- everyone is placed under arrest

1 for the possession of one weapon It is not clear
2 from the testimony

3 And I guess at that point we are talking about
4 -- actually I think there was a question about the
5 gun being found Some, I guess, manipulation of the
6 backseat to look into the trunk prior to actually
7 being placed -- like, I said, I'm not sure

8 THE COURT It's my understanding of the facts
9 it was a continuum, that they were under arrest
10 before they went to the trunk They had been
11 Mirandized, and that was an inventory search incident
12 to arrest, the trunk

13 MS CRUMEY I guess the question I have is I
14 understand that once they were under arrest and the
15 locksmith was called and the car was actually opened,
16 that that part of the search But I think the only
17 issue I have is there is a question about whether the
18 backseat being able to move three or four inches
19 prior to that The backseat being able to move and
20 looking into the trunk

21 THE COURT You lost me, tell me --

22 MS CRUMEY I think after they were removed
23 from the vehicle, then there was a question about the
24 gun being in plain view And the backseat being, I
25 guess being rocked forward Like I said, I'm a

1 little confused I thought that occurred afterward

2 THE COURT There was testimony that the seat
3 was rocked forward I must have misunderstood the
4 way it was

5 MS CRUMEY There was a look into the trunk
6 from the backseat prior to the locksmith being
7 called

8 THE COURT But that was after they were
9 placed under arrest After the first article was
10 found in plain view in the front

11 MS CRUMEY I guess I was a little confused
12 at that point

13 THE COURT Do you need to ask him a question
14 to clarify that?

15 MS CRUMEY Yeah

16 THE COURT You may proceed

17 IN-CAMERA CROSS-EXAMINATION

18 BY MS CRUMEY

19 Q Officer Ray, after the initial -- did you
20 remove Mr David Brown from the vehicle?

21 A Officer Morel did

22 Q So you were not -- you didn't actually remove
23 him Did you view the weapon on the floor?

24 A What happened was I took the two on my side of
25 the car out, patted them down, and passed them back

1 to the back of the car And he took the front
2 passenger out, and I'm watching the back passenger
3 while he takes him out

4 And I watched him from the other side take out
5 David Brown and I see the gun on the floor in plain
6 view under his feet on that side of the floor where
7 as he exits the vehicle to Officer Morel to be patted
8 down for weapons

9 Q Then did what at that point?

10 A I didn't say anything until he got to the
11 back, then we secured all four in handcuffs and then
12 I retrieved it

13 Q At what point did you go back into the
14 vehicle?

15 A When all four were detained in handcuffs, I
16 went into the vehicle to retrieve the handgun

17 Q And then did you secure the handgun and go
18 back in the vehicle at that point?

19 A I am trying to remember I cleared the
20 weapon, made sure to check and see if it was loaded
21 And I think I removed it from the vehicle

22 Q Okay After you removed it from the vehicle,
23 did you go back into the vehicle?

24 A At that point they were all placed under
25 arrest for the unlawful carrying and the obliterated

1 serial number

2 MS CRUMEY The all the questions I have,
3 Your Honor It was my understanding, I thought his
4 earlier testimony was that the seat had been pulled
5 back a couple inches prior to them actually being
6 placed under arrest

7 THE COURT That's why I asked I didn't hear
8 that That's the why I allowed you to clarify I
9 wanted to make sure I did not miss something

10 It was my understanding it was seen in plain
11 view and then subsequently the parties were
12 Mirandized -- placed under arrest, Mirandized, and
13 then the rest of the search took place incident to
14 the arrest I would assume for inventory purposes,
15 although that was not elicited

16 Is there any further argument from Ms Crumey?

17 MS CRUMEY No

18 THE COURT Mr Harris, I'm glad to hear from
19 you

20 MR HARRIS Thank you, Your Honor Your
21 Honor when we spoke to the officer earlier, the
22 Officer Bonanni, there was no traffic violation this
23 was a stop for My understanding is let's go see
24 what is going on with this car, see if it's two
25 people parking, see what's going on

1 He does pull behind them, disable his car from
2 leaving Comes up, checks the ID ID check out
3 License plate checks out At that point, my
4 understanding is for officer's safety if you are
5 talking about Terry, they get four people out of the
6 car that at that point are not stopped for doing
7 anything -- there is no suspicion of them doing
8 anything wrong They weren't even driving They
9 were sitting in a car in a parking lot that's not
10 illegal to sit in

11 They weren't pulled over for a traffic
12 violation

13 THE COURT It's private property Isn't not
14 like you can just sit in James Island Christian
15 parking lot That's not public property It's
16 privately owned by the church, isn't it? I don't
17 think you get to just go park in somebody's driveway

18 MR HARRIS I have not seen it posted no
19 trespassing I know it is a church, I am assuming
20 that the congregation parks there

21 THE COURT Yeah, but they own the church,
22 don't they They have a right to use the parking
23 lot Does a stranger have the right to use a parking
24 lot of private property?

25 MR HARRIS Your Honor, there is no evidence

1 that it is no trespassing

2 THE COURT There is evidence that it's a
3 church parking lot I don't think that would make it
4 public property, would it?

5 MR HARRIS There is no evidence that the
6 officer that was arresting them for parking on
7 private property or suspicion of parking on private
8 property

9 THE COURT Just factually the distinction
10 that you're making I needed you to address it, that's
11 why I asked the question I don't think because
12 that's like saying that -- I can tell you now that if
13 you go to my church there are no posted no
14 trespassing signs, but if you park there over a
15 certain amount of time the police are going to be
16 called And the maintenance people are going to come
17 out and ask why you're there

18 MR HARRIS I understand that, but there's --

19 THE COURT If they don't recognize you
20 they're going to wonder why are you here, why is your
21 car here, for what purpose are you on this private
22 property because it's not public

23 MR HARRIS I guess for the purpose of this
24 argument there is nothing in the record from the
25 officer that says he was called because they were in

1 a private parking lot, or they were doing anything
2 wrong Actually, the words were they weren't doing
3 anything wrong There was no evidence of any crime

4 So I'd ask you at that point the concern for
5 officer safety to pull four people out of the car, at
6 that point that's when the gun was seen when they
7 have been seized because they cannot leave, they're
8 talking to an officer just only talking to the
9 officer that's there, and when two more officers
10 arrive after they have been seized and after they
11 have been determined that there is no crime that the
12 license plate checked out and the license checked
13 out, that's when the officer comes out, takes all
14 four people out of the car, and sees a gun under the
15 seat

16 Nothing further on that

17 THE COURT Anything further from the State in
18 response to the arguments of defense counsel?

19 MR SAVAGE Yes, Your Honor, I guess a couple
20 things The original reason why Officer Bonanni
21 stopped there was it was around 10 00 at night, I
22 believe, it was maybe five past, ten past 10 00 at
23 night, the church is closed, he pulls up, it's
24 suspicious, he looks in there, he sees four people
25 stopped in the car He is running the license check

1 at the time

2 The reference that Sgt Ray is part of the
3 robbery team or whatever, Sgt Ray never responded to
4 the bar He wasn't part of that whole bar
5 investigation, getting in there and doing all that
6 stuff at this time

7 He hears over the radio that Officer Bonanni
8 announces that he has got someone stopped, there are
9 four people in that car, it's 10 00 at night, he
10 responds there to backup, that's standard police
11 procedure to offer to assist help

12 Officer Bonanni in the car when they actually
13 arrived at the scene, Officer Bonanni I believe
14 testified that he was currently running the license
15 check at that point what he was doing is they were
16 trying to verify who he is talking to, what do they
17 have -- I think he testified he was trying to find
18 out whether they do have any warrants

19 He hadn't gone back in there and spoken to
20 them, he's testified that he said, okay, what are you
21 guys doing here, what is going on So he hadn't
22 actually finished his investigation So I think for
23 them to make that leap of faith and say, well as soon
24 as he found out the exact time when the warrant came
25 out, boom, all bets are off I don't think that's

1 what the case is here

2 And, you know, when Sgt Ray responds here he
3 is aware that there is an armed robbery with four
4 individuals has taken place within the last 15, 16
5 minutes close by and he, you know, for officer safety
6 pulls them out, as well as Officer Morel and pats
7 them down for weapons He doesn't search them at
8 that point, doesn't go into their pockets

9 And once he does remove them from the vehicle,
10 that's when he sees the gun in plain view on the
11 floorboard car They are then placed under arrest
12 for unlawful carrying They're not placed under
13 arrest for armed robbery at this point, he doesn't
14 know whether he is dealing with armed robbers right
15 now, that's why he places them under arrest for the
16 unlawful carrying

17 And then when he conducts the search incident
18 to arrest, which he states in his report, after the
19 unlawful carrying, that's when he finds the rest of
20 the guns behind the backseat They cannot get into
21 the trunk without a key, so then they bring in the
22 locksmith to gain access to that, and that's where
23 they find the rest of the evidence as well as the
24 evidence that was recovered from the inside
25 compartment of the car

1 And that's not even touching the drugs that
2 were found which really aren't subject to here --
3 there is evidence of a crime occurring here

4 THE COURT Well they found the drugs after
5 everything else You are not arguing the drugs were
6 in plain view?

7 MR SAVAGE No, I'm not arguing that

8 THE COURT That would have been part of the
9 inventory search, so certainly that would not have
10 provided the basis for probable cause, correct?

11 MR SAVAGE Yes, Your Honor

12 THE COURT You all give me a few moments,
13 please

14 (Whereupon, a recess was taken)

15 THE COURT I have considered the arguments of
16 counsel regarding the motion to suppress and made the
17 following observations regarding that motion

18 The police may stop a vehicle, and that is
19 permissible even when it does not -- let me restate
20 that, I apologize

21 Simply stopping a vehicle and asking occupants
22 for their identification does not amount to a
23 seizure, and that is appropriate under many
24 circumstances and it is done every day There seems
25 to be some distinction drawn however between a car

1 that is traveling along the highway versus a car that
2 is stationary I don't know that those really are
3 germane to the Court's decision, so I will not go
4 into any long discourse regarding that

5 However, our Supreme Court has noted that it
6 is appropriate under certain circumstances to stop a
7 vehicle And the case that I am looking at is where
8 the police stopped a vehicle where the occupant was
9 sitting in a vehicle, it was parked, it was in
10 someone else's driveway, he did not know the
11 occupants of the house and the car had been running
12 for two hours

13 And the Supreme Court said it was appropriate
14 and that -- that it was appropriate for the police to
15 approach the vehicle and to make inquiry of its
16 occupant under those circumstances

17 And while not exactly the same factually, it
18 is similar in that it is questionable when you
19 approach a vehicle that is parked in a place where
20 people apparently have no connection or a reason for
21 being on the premises, and I don't know that I am
22 stating that as well as I'd like to, but hopefully I
23 will be able to make it more clear as I go through
24 the analyses regarding the stop

25 Initial detentions are justified even where

1 probable cause may not become apparent until later
2 justifying an extension of the stop The police
3 clearly can briefly detain and question a person upon
4 reasonable suspicion short of probable cause for an
5 arrest that they are involved in criminal activity
6 And if the officer's suspicions are confirmed or
7 further aroused, the stop may be prolonged and the
8 scope enlarged as required by the circumstances

9 Under these circumstances it was clearly
10 permissible for the officer to approach the vehicle
11 and it was reasonable And at the time up until they
12 were arrested, it did not amount to a detention of
13 their occupants

14 The police can stop short of -- they can
15 approach the vehicle, they can ask the occupant to
16 step out of the vehicle for safety purposes, they can
17 ask for identification And again the scope of that
18 stop can be prolonged and enlarged as required by the
19 circumstances if the officer's suspicions are
20 confirmed or further aroused regarding probable
21 cause

22 However, I am not finding that probable cause
23 did not exist for this stop of this vehicle or the
24 detention of its occupants for further inquiry And
25 clearly the stop, as required by the circumstances,

1 it was appropriate for it to be prolonged and its
2 scope enlarged based on the plain view of the gun as
3 the occupants were asked to exit the vehicle for a
4 Terry pat-down

5 officer Bonanni testified that he, at around
6 10 06, he saw the defendants He was on mobile
7 patrol He was in the area of James Island Christian
8 School, that what aroused his suspicion is that there
9 was a car, a four-door vehicle parked there, that
10 there were four individuals in the vehicle, that the
11 church school was closed, that it was unoccupied, and
12 what he found suspicious about it is that a car was
13 parked facing and behind the fence with its lights
14 off

15 At that point -- and within a fence that
16 clearly they would have had no reason to be within
17 considering the fact that the school was closed and
18 unoccupied, and especially at that time of night

19 Contrary to what has been argued to this
20 Court, a church parking lot is not public property
21 I don't think you have to have no trespassing signs
22 posted And it would -- although maybe it would
23 amount to probable cause such that it would arouse
24 the officer's suspicion that under those
25 circumstances to reasonably suspect and articulate

1 that individuals were involved in criminal activity

2 It was not like say a Walmart parking lot or a
3 K-mart parking lot open visibly to the public,
4 although that might not be the best example because
5 clearly most of those have no trespassing signs
6 posted as well as signs that say, you now, this lot
7 is subject to police authority pursuant to whatever
8 regulation or ordinance that is applicable to that
9 particular municipality

10 But it is not an area that would have been
11 readily open to the public, nor some place that
12 someone would simply have pulled into or parked in
13 behind the fence with their lights off and parked

14 I agree with the argument that if they could
15 not leave the premises with the -- and the officer
16 admitted he parked his car such that they would not
17 have been able to remove their vehicle And that
18 after he got the -- once he called in the plate, that
19 he approached the driver for his driver's license and
20 he then requested backup of more experienced officers
21 and having adhered to what he indicated was standard
22 protocol

23 And I agree with the defenses argument that
24 absent more it would not have been appropriate for
25 the vehicle to have been searched Them simply

1 getting out, providing their identification without
2 more would not have been sufficient for the stop to
3 have been prolonged

4 However, when they came out of the vehicle for
5 the purpose of the pat-down for officer safety, once
6 the object, that being the gun, was in plain sight,
7 that did justify prolonging the scope of the stop and
8 enlarging it as required by the circumstances

9 And when referring to the plain view doctrine
10 or the plain view principle, either way you can refer
11 to it, the case law is very clear, and I agree with
12 Ms Crumey, if the scene had to be manipulated, that
13 would be a whole different set of circumstances
14 Certainly a warrant -- it could be really
15 legitimately argued that a warrant would have been
16 necessary

17 But under these circumstances the officer
18 testified, and I find him credible on that point,
19 that -- and I'm referring to the officer that is
20 currently on the stand --

21 MR HOWELL Officer Ray, Your Honor

22 THE COURT I'm sorry, I've got my notes all
23 over and I apologize Went back to Officer Bonanni's
24 testimony

25 That when one of the occupants was getting out

1 of the vehicle, the gun was readily in view And in
2 order to meet the requirements of the plain view
3 doctrine, the initial intrusion had to be lawful
4 And the Court has found that there was a probable
5 cause for the stop And really, frankly, not sure
6 that it had to even rise to that level because at
7 that point it was merely -- they were merely being
8 stopped and detained and questioned

9 For officer safety, it could be argued, for
10 asking -- and the case law is clear -- that to ask
11 for identification and to question, that that is
12 permissible and that you may briefly detain for that
13 purpose And clearly that's what the police were
14 doing

15 They were briefly detaining them and
16 questioning them upon a reasonable suspicion that
17 based upon the fact that the church school was
18 closed, it was unoccupied, it was dark, based on
19 where the vehicle was postured and the fact that its
20 lights were off, and that it was unusual or
21 suspicious that you would have a vehicle, especially
22 with people, where it was really very -- I think
23 would be ready apparent to me that they had no reason
24 for being in that particular area of the parking lot
25 or at that facility, that they were, short of

1 probable cause for their arrest, that they were
2 involved in criminal activity

3 Based upon the standard protocol, the other
4 officers arrived As they were being questioned and
5 detained, as they got out of the vehicle, the
6 officers' suspicions were confirmed and further
7 aroused by the plain view of the weapon, therefore it
8 was appropriate that the stop be prolonged and the
9 scope of that stop enlarged as required by those
10 circumstances, that being the plain view of the
11 vehicle

12 And again looking at those requirements, that
13 is that the initial intrusion was lawful, which it
14 was, the discovery of the gun was completely
15 inadvertant, again I agree with Ms Crumey, if the
16 seat had to be manipulated it would not have been
17 inadvertant, but based on the officer's testimony,
18 the gun was in plain view, and that the incriminating
19 nature of the evidence is immediately apparent to the
20 seizing authority

21 And of course a gun is immediately
22 incriminating, is immediately apparent to them in
23 light of the fact that there was -- they knew an
24 armed robbery had just taken place, even without a
25 description of the vehicle

1 But even if they did not know an armed robbery
2 had taken place, the fact that a gun was present is
3 immediately incriminating and certainly would warrant
4 the search being prolonged and them investigating it
5 The case law is very clear that you can stop someone
6 for one purpose but arrest them for a totally
7 different and unrelated purpose if there is evidence
8 in plain view

9 So based on what has been presented to the
10 Court, and the State's burden of proof, the motion to
11 suppress is denied And the Court relied on State
12 versus Culbreath and its progeny which is found at
13 300 S C 232, 387 S E 2d 255, as well as those line
14 of cases relying on Culbreath

15 Is there anything further before we proceed
16 with the officer's testimony from the State?

17 MR SAVAGE No, Your Honor

18 THE COURT From the defense, Mr Howell?

19 MR HOWELL No, Your Honor

20 THE COURT Ms Crumey?

21 MS CRUMEY No, ma'am

22 THE COURT And, Mr Harris?

23 MR HARRIS Nothing, Your Honor

24 THE COURT Please bring in the jury

25 It's almost 1 00 How much longer is this

1 witness's testimony going to be?

2 MR SAVAGE I'm trying to decide that now,
3 Your Honor

4 THE COURT What I'm thinking is we could
5 complete his testimony, break for lunch and then
6 allow -- how long do you all think your cross is
7 going to be?

8 MR HOWELL It will be a while, Judge

9 THE COURT I was thinking, I don't know about
10 you all but I would imagine -- a lot of people eat
11 lunch at 12 00 or 12 30 I really don't want to go
12 beyond 1 00 I think that would be testing the
13 jury's patience

14 MR SAVAGE I think I'm probably going to go
15 beyond 1 00 I can pick this up after lunch

16 THE COURT Well, we will question him until
17 1 00 You do as much as you can and then we will
18 finish the witness after lunch

19 MR SAVAGE Very well

20 THE COURT And also, just to note for the
21 record, after the plain view, everything else would
22 have been appropriate They were under arrest, they
23 were Mirandized and everything else would have been
24 search incident to arrest or an inventory search of
25 the vehicle so they would have been discovered

1 Although I caution you stay away from the
2 cocaine It's not relevant and I have severed that
3 charge

4 MR SAVAGE I'm not going to go over that at
5 all, Your Honor

6 (Whereupon, the jurors enter the courtroom)

7 THE COURT Thank you, ladies and gentlemen,
8 we appreciate your patience We are going to
9 continue with the witness's testimony until 1 00 and
10 then we are going to break for lunch

11 You may continue, Mr Savage

12 MR SAVAGE Thank you, Your Honor, may it
13 please the Court

14 CONTINUED DIRECT EXAMINATION

15 BY MR SAVAGE

16 Q Sgt Ray, we left off last time you arrived at
17 the scene with Officer Morel, you pulled four
18 suspects out of the vehicle, patted them down The
19 last suspect that was pulled out, his name was David
20 Brown

21 When Mr Brown got out of the car, did you
22 notice anything on the floorboard of the vehicle?

23 THE COURT Watch the leading, Mr Savage

24 A I did On the floorboard, the rear floorboard
25 behind the passenger seat in plain view was a

1 revolver

2 Q (By Mr Savage) And do you know what caliber
3 revolver that was?

4 A It was a 22 caliber revolver

5 Q Did that revolver have live ammunition?

6 A It did

7 Q Was there anything lying next to that
8 revolver?

9 A There were two additional Super X brand unused
10 rounds of ammunition

11 Q And did you look at that revolver?

12 A I did

13 Q Did that revolver have a serial number?

14 A It appeared to have been scratched off

15 Q Based on your experience, why would a gun
16 typically have the serial number removed?

17 MR HOWELL Objection

18 THE COURT Basis?

19 MR HOWELL Relevance

20 THE COURT Please approach

21 (Whereupon, a discussion was held at the bench
22 off the record)

23 THE COURT The objection is sustained,
24 relevance

25 Q (By Mr Savage) Sgt Ray, were the defendants

1 placed under arrest at this point?

2 A Yes, they were

3 Q And --

4 MR SAVAGE Your Honor, may I approach the
5 witness?

6 THE COURT You may

7 Q (By Mr Savage) Sgt Ray, I am showing you
8 what has been marked as State's Exhibit 21 for
9 identification purposes Can you please look at
10 that?

11 Do you recognize that?

12 A Yes, sir

13 Q What is it?

14 A It's a 22 caliber revolver

15 Q And is that the 22 caliber revolver that you
16 pulled out of the car that you saw on the floorboard
17 that night?

18 A Yes

19 Q Is that --

20 MR SAVAGE No further questions

21 Your Honor, at the point the State moves
22 Exhibit No 21 into evidence

23 THE COURT Marked and admitted subject to the
24 defendants' objection And I'm referring to all the
25 defendants, not just one

1 You may proceed

2 (Whereupon, State's Exhibit No 21 is admitted
3 into evidence)

4 Q (By Mr Savage) After the defendants were
5 placed under arrest, were they read their Miranda
6 warnings?

7 A They were

8 Q Did you do that or did someone else?

9 A Officer Chris Morel did

10 Q Were the defendants questioned at this point?

11 A Yes

12 Q Did you question them?

13 A I did

14 MR SAVAGE Your Honor, we may have a matter
15 of law at this point

16 THE COURT Madam Forelady, ladies and
17 gentlemen, we are going to take advantage of this
18 break in testimony to take our luncheon recess We
19 will resume at 2 30

20 I suspect I have some matters of law I need to
21 take up with the attorneys that may take us a little
22 beyond so that we will need adequate time for lunch
23 as well Please be punctual, we will resume promptly
24 at 2 30

25 During the break, please do not discuss this

1 case among yourselves or with anyone else, and please
2 leave your notepads in your seats Again, please
3 don't allow yourselves to be exposed to any potential
4 media coverage about the case If you would go with
5 the bailiffs for me, please

6 (Whereupon, the jurors exit the courtroom)

7 THE COURT Yes, sir

8 MR SAVAGE I -- this is really out of an
9 abundance of caution I don't believe he's going to
10 testify to anything different than he what he said
11 before I believe he is just going to testify that
12 he spoke to him, asked him who owned the gun and no
13 one claimed it

14 But I did not want to get into that in case
15 something came out that shouldn't come out

16 THE COURT Like what?

17 MR SAVAGE Maybe that the drugs -- I wanted
18 to make sure I was just clearly we don't talk about
19 the drugs, he was only going to mention that he asked
20 them who owned the gun and no one claimed
21 responsibility

22 I just wanted to be crystal clear because you
23 made it sure not to talk about the drugs --

24 THE COURT Drugs are not to be mentioned in
25 any manner whatsoever

1 MR SAVAGE I know and I just want to be
2 clear that that doesn't happen And once the cat is
3 out of the bag, the cat is out of the bag So I just
4 wanted, out of an abundance of caution, I just wanted
5 to stop there before he walked into that all

6 THE COURT You just need to make all of your
7 witnesses very clear that they cannot discuss that

8 MR SAVAGE Yes, Your Honor

9 THE COURT That that charge has been severed

10 MR SAVAGE Yes, Your Honor

11 THE COURT Okay Yes, Mr Howell

12 MR HOWELL Your Honor, I would add to that
13 that I don't think he should be able to comment even
14 that nobody replied That's the essence of Miranda
15 and if they're silent, you are not supposed to talk
16 about their silence and shouldn't even get into that

17 MR SAVAGE I can move on, Your Honor I'm
18 not going to fight for that one

19 THE COURT Okay All right, so we are on the
20 same page regarding that last question Okay

21 We will then break for lunch until 2 30 You
22 all have a good lunch, I will see you then You all
23 can leave your stuff if you want, no one will be in
24 the courtroom during the recess

25 (Whereupon, a recess was taken)

1 THE COURT Is the State ready proceed?

2 MR SAVAGE Yes, Your Honor

3 THE COURT Defense, Mr Howell?

4 MR HOWELL I think Mr Harris has something
5 he joined in, he is ready to argue it

6 THE COURT Okay

7 Ms Crumey, ready to proceed?

8 MS CRUMEY Yes, ma'am

9 THE COURT Mr Harris, are you ready to
10 proceed?

11 MR HARRIS Yes, Your Honor I do have,
12 Judge, a matter of law I'd like to take up in-camera
13 I got to thinking about --

14 THE COURT I'm not rearguing something I
15 ruled upon If it's something new

16 MR HARRIS It's something that is going to
17 come up It's not about the search and seizure, it's
18 not technically the same issue It's a search issue
19 but about the trunk itself, search incident to arrest
20 where I did not hear that there was a warrant to do
21 an inventory search of this car

22 THE COURT Your suppression we have heard, I
23 have ruled upon it, I'm not going to revisit it If
24 you did not argue it, then unfortunately I think you
25 waived it It has to be taken up contemporaneously

1 We would all love the benefit of hindsight to be able
2 to amend what we have argued, because now I have
3 already admitted testimony based on what was argued
4 to me

5 Now it's like an afterthought based on what
6 has already been argued, because you have already
7 argued suppression of the evidence Your argument
8 was there was no probable cause and it wasn't a legal
9 stop I already ruled upon that

10 MR HARRIS Technically now we are saying
11 that it was --

12 THE COURT You said everything that was
13 seized was illegal because the stop was illegal
14 That was your argument that everything -- none of it
15 should come in, from the gun all the way back to the
16 stop You said it was an illegal stop, that was the
17 basis of your argument

18 MR HARRIS Okay

19 MR SAVAGE I have one issue I wanted to
20 raise to the Court

21 THE COURT Certainly, you may proceed

22 MR SAVAGE I spoke with the defense attorney
23 at length I went and had lunch with a friend, I was
24 in there, there were jurors in there, I did not talk
25 to them, they were inside the restaurant at the time

1 I went and got my order and ate back at the office
2 Just in the interest of disclosure, I wanted the
3 Court to be aware of that

4 THE COURT Okay

5 Yes, Mr Howell

6 MR HOWELL Your Honor, I don't want to
7 re-argue, but I want to make sure my position is
8 clear on something that -- one small error the Court
9 might have made My original motion to suppress was
10 based on the fact that there was not articulable
11 suspicion for the initial detainment

12 THE COURT It was based on probable cause
13 The lack of probable cause

14 MR HOWELL the lack of articulable
15 suspicion

16 THE COURT That's probable cause That's the
17 definition of probable cause, reasonable and
18 articulable suspicion that criminal activity is
19 afoot

20 MR HOWELL And this particular motion under
21 Gant which is 129 Supreme Court 1710 is that once an
22 arrest is made, and I agree with Your Honor that once
23 the arrest is made there is a search incident to
24 arrest, but the scope of that would be limited to the
25 inside of the car

1 And while we have discussed that in-camera, I
2 do not believe that has been discussed in front of
3 the jury yet, and so I don't believe it's untimely
4 made and can done timely if addressed at this point
5 And that is our position would be that Gant would
6 keep them from going into the trunk without a
7 warrant

8 Secondly, as to the involuntary, there was no
9 inventory needed because nobody had a key to the
10 trunk, the trunk was secure And an inventory comes
11 up when you want to send it to Turke's which is where
12 it went, and send the keys and anybody can go in and
13 steal from it And the police have to have an
14 inventory

15 THE COURT No, they take an inventory search
16 of every vehicle This car would have been
17 inventoried prior to it being sent anywhere They
18 would have searched the entire contents, and that's
19 for their protection to make sure if something is
20 stolen that they're not held responsible for the
21 contents of the vehicle

22 MR SAVAGE If it's not secure But in a
23 trunk that has no access to it other than a
24 locksmith, I would say that I think the inventory
25 would be wrong And that's my -- I just want to make

1 sure --

2 THE COURT I understand, but what you all are
3 doing is you are re-arguing your motion which you
4 made before lunch But for the fact that I broke for
5 lunch, this testimony would have already been
6 elicited And I'm very stringent about motions being
7 argued and re-argued and re-argued

8 Hindsight is always 20/20 Frankly, there are
9 many times I make rulings that I would like a second
10 bite I would like to go back and be more
11 articulate, I would like to state more reasons for
12 it, that's just human nature It's the nature of who
13 we are as a litigator -- or who I used to be as a
14 litigator, we want our record to be perfect

15 But once you've argued a motion, I don't
16 expect to revisit it after we have already argued it
17 And once the basis of your motion has already been
18 stated you don't get to enlarge it, you don't get to
19 come back and sort of append to it what you haven't
20 argued

21 And that concerns me because we have already
22 fully argued it, we've heard the matter completely in
23 camera, we have elicited all the testimony, I have
24 heard full argument on it and I've ruled

25 MR HOWELL I understand I'm not trying to

1 -- on the other hand as an advocate for my client if
2 there is a theory that hasn't been given to the
3 Court, and there's a timely way for me to do it, I'm
4 under an obligation to do it I'm just doing the
5 best I can on it I apologize if I --

6 THE COURT Well, if we do that then we will
7 be doing that all day Every time I hear something
8 and we send the jury out, then you all will be able
9 to say to me, oh by the way I forgot to tell you
10 this, or by the way I'd like to enlarge it to include
11 this

12 MR HOWELL And if it was just back to my
13 original motion --

14 THE COURT Well, it is your original motion
15 Your motion was a motion to suppress evidence which
16 we fully argued

17 MR HOWELL It was a specific legal ground
18 I understand your ruling It's a different ground

19 THE COURT Yeah, but you don't -- once you've
20 argued it it has been argued And the rule is the
21 same for everyone I would not let the State do it
22 either

23 Once it has been argued, it's been argued and
24 you had a basis for arguing it And now what you've
25 basically done is changed your theory of what you

1 were arguing So now what you are basically asking
2 me to do is reconsider the entire motion

3 MR HOWELL Yes, ma'am

4 THE COURT But for the fact that we broke for
5 lunch, the jury would have already heard this
6 testimony

7 MR HOWELL But they didn't and that's the
8 reality and I think my client is entitled to that
9 And I'll just put that on the record and I'm sorry

10 THE COURT It's not the reality because if I
11 allow that then we will be doing that for the next
12 five days Every time you argue something you all
13 will come back and ask me to re-argue it and to
14 re-hear it and then to re-rule on it And I don't
15 think that -- that's not -- it's just not the way
16 it's done

17 And good, bad, or indifferent, once you argue
18 a theory, that's the basis upon which you argued your
19 motion And in fact you reduced that motion to
20 writing and your basis of your motion was that all
21 evidence obtained against him as a result of his
22 detention at 12 Sawgrass be suppressed, that the
23 officer who initially detained the defendants had no
24 reasonable suspicion to detain them at the time, and
25 therefore any evidence obtained was obtained in

1 violation, et cetera, of Terry, Galscutaine, Cortez
2 and Lesley which we fully argued the motion and now
3 you are asking me to argue the motion again and to
4 reconsider the Court's ruling and to then rule again

5 And while I may in this instance allow you to
6 do it, I'm not doing it anymore during the course of
7 this trial Once you have set forth a theory, your
8 theory on your motion, that's it I'm not going to
9 re -- you know, hindsight is always 20/20 Every
10 time I take a break I'm not going to come back and
11 re-hear a motion I'm not going to hear new grounds
12 for it

13 Our rules are very clear that you're required
14 to make a contemporaneous objection, you preserve
15 that motion on your grounds and the Court rules I'm
16 not going to spend two days, if that were the case,
17 revisiting a motion every time it's argued Because
18 every time a motion is argue -- at lunch time I
19 thought about some additional grounds for which I
20 could have ruled either way regarding the
21 suppression, but I didn't come back into court and
22 say, oh by the way, I thought about it at lunch and I
23 would like to add this to the record That's just
24 not the way it works

25 There is an orderly way that we have to

1 conduct motions and hear them And again, but for
2 the fact that we broke for lunch we would have
3 already completed his testimony

4 would the State like to respond?

5 MR SAVAGE Only, Your Honor, I think it has
6 been argued, it was litigated and I agree with you,
7 we're ready to move on But for the break, we would
8 have been finished with his testimony The issue has
9 been decided

10 what I'm worried about, I think is kind of
11 what you are worried about, we have a series of
12 statements coming up in the future --

13 THE COURT I'm not worried, I'm just setting
14 the ground rules and they're not going to be
15 violated Because once I've ruled on something,
16 that's it There is not going to be anymore
17 revisiting it Absent there be something additional
18 factually that comes up that requires a
19 contemporaneous objection

20 Once I've heard a matter in-camera and full
21 argument has been made and the Court has ruled,
22 that's the end of it, subject to there be something
23 new factually that comes up that needs to be
24 addressed, of course counsel is required to make a
25 contemporaneous objection regarding that

1 I'm not prohibiting anyone from making an
2 additional objection based on something that is
3 factually different - The rules are very clear that
4 once I have heard it in-camera you don't have to
5 renew your objection is preserved for the record
6 But I'm not going to continually re-visit rulings

7 It's not fair to me frankly, because once I've
8 considered it I've considered it completely and I'm
9 not going to continue to rehash it It's just not
10 appropriate protocol or decorum It's just not the
11 way we conduct trials

12 You may continue, Mr Savage

13 MR SAVAGE I have nothing more, Your Honor

14 THE COURT Do you want to address -- and I
15 guess, Mr Harris, what is your additional ground?

16 MR HARRIS I'm sorry

17 THE COURT What is your additional ground,
18 what is the additional basis that you wanted the
19 Court to be aware of?

20 MR HARRIS It was that there was no warrant
21 on the search incident to arrest that seeded the
22 compartment -- passenger compartment of the car And
23 according to Gant because that trunk was securely
24 locked, the key was not available, that warrantless
25 search of that trunk is not appropriate That was

1 our position, Your Honor

2 THE COURT Would the State like to respond or
3 -- Ms Crumey, do you have anything additional to add
4 to what Mr Harris has stated for the record?

5 MS CRUMEY Only I guess the only additional
6 information I would add is that based on the Court's
7 prior ruling we were starting from the beginning of
8 the search And once the Court ruled that there was
9 reasonable suspicion and that they were allowed to
10 bring them out of the car, and then we had a plain
11 view finding of the weapon and an arrest, I believe
12 this motion then would have come at that juncture

13 Because once the Court has ruled that there
14 was reasonable suspicion, they could be lawfully
15 arrested based on the plain view finding of the
16 weapon, they are under arrest at that point And
17 once the officer testified up to that point, then a
18 new objection could be raised as to any subsequent
19 search and I believe that's where Mr Harris'
20 argument would come into play

21 Because it basically does not have to be a
22 continuous argument in that we argued suppression
23 from the beginning of the search because it was
24 argued that they should never have been stopped in
25 the beginning

1 But once we got past that and the Court ruled
2 that it was a proper stop and the officer then begins
3 to testify again to what happened, subsequent to that
4 a new objections would be raised as to the items that
5 were found on these new grounds since it had not been
6 raised previously

7 THE COURT Mr Howell

8 MR HOWELL I join in what has been said

9 THE COURT would the State like to respond?

10 MR SAHN Your Honor, it is my understanding
11 that what we have in this case is an inventory search
12 of the trunk incident to arrest And although I
13 haven't read the Gant case in probably a month now, I
14 think the Gant case only applies to the searches of
15 the compartment incident to arrest

16 And once an inventory is conducted, the Gant
17 case does not really address that issue Before the
18 current case law is inventory search is legal at that
19 point, Your Honor

20 THE COURT Is there any testimony -- I think
21 you all are going to have to continue the officer's
22 testimony in-camera because there really is no
23 testimony regarding that

24 MR SAHN We are prepared to do that

25 THE COURT officer, please retake the stand

1 SIR, I will remind you you are still under oath
2 While I think it's a very imaginative
3 argument, I think when you argue suppression, you are
4 required to argue your entire suppression You don't
5 get to piecemeal it You knew from the beginning
6 what your objection was to the admissibility and you
7 argued it, and your argument was based on lack of
8 probable cause I think we all know what the rules
9 are

10 SIR, if you would re-take the stand I will
11 remind you that you are still under oath And the
12 State may proceed when you are ready Please
13 proceed

14 MR SAVAGE Thank you, Your Honor, may it
15 please the Court

16 THE COURT Yes, sir

17 IN-CAMERA DIRECT EXAMINATION

18 BY MR SAVAGE

19 Q Sgt Ray, getting back to where you searched
20 the Colin Boston's vehicle, you found the gun inside,
21 I guess the 22 revolver on the floorboard, is that
22 correct?

23 A Yes, sir

24 Q And from there could you explain what you did
25 with your search?

1 A We continued to search the vehicle

2 THE COURT I'm sorry, sir, could you please
3 speak up, I can barely hear you

4 THE WITNESS Yes, ma'am

5 A After we found the 22 they were all placed
6 under arrest for that weapon And then we continued
7 to search the vehicle

8 There was several of us searching it At one
9 point we realized that the backseat would rock a
10 little bit forward and you could see into the cavity
11 of the trunk from the backseat And we could see
12 three handguns in the trunk visible from that gap
13 between the seat and the back of the window

14 Q Were there any other items in that trunk once
15 you got it opened?

16 A Yes, there were

17 Q And what were those items?

18 A A black in color hooded sweatshirt, two pairs
19 of black in color gloves, a pair of clear latex
20 gloves, black and white knit hat, black knit hat, and
21 a pair of red and black Nike shoes, and a piece of
22 gray cloth tied into a handkerchief

23 Q Now did you take note of those in your report?

24 A Yes, sir

25 Q And, for example, in another situation when

1 you have a search of a car, is it commonly -- common
2 for you, or is it police procedure probably is the
3 more correct term, to make notations of what is
4 inside that car for evidence and whatever else may be
5 in there?

6 A Yes During an inventory of the vehicle
7 anything taken out the trunk or taken out of the
8 vehicle would be put in the report

9 MR SAVAGE Court's indulgence, Your Honor
10 I have no further questions at this time, Your
11 Honor

12 THE COURT Any questions, Mr Howell?

13 MR HOWELL Yes, ma'am

14 THE COURT You may proceed

15 IN-CAMERA CROSS EXAMINATION

16 BY MR HOWELL

17 Q You used the term rock forward, that's what
18 you are talking about when you put your hands and
19 pull it?

20 A Yeah, the seat was sitting flush

21 Q Right By flush you mean you couldn't see --

22 A I don't know what it's called But, yeah, in
23 its regular seated position you couldn't see, but if
24 you pulled the seat forward, which it would pull
25 forward, you could see in

1 Q So that you and I are clear, in its regular
2 position you can't see in the trunk?

3 A Correct

4 Q And when you talk about pulling forward, you
5 are not talking about pulling the seated part forward
6 like you'd pull to pull close to the driver?

7 A Correct

8 Q You are talking about grabbing the top of the
9 seat and pulling it forward?

10 A Where the headrest would be

11 Q Where the headrest would be, okay It is also
12 my understanding that once the arrest was made and
13 after you had looked into the trunk it was then that
14 the locksmith was called?

15 A Correct

16 Q And it took the locksmith an hour or so to get
17 in

18 A It took him awhile

19 Q And you certainly never sent a key to the
20 trunk to the towing place afterwards, did you?

21 A No

22 Q You never found one?

23 A No

24 MR HOWELL That's all I have

25 THE COURT Anything, Ms Crumey?

1 MS CRUMEY Just a few questions

2 THE COURT You may proceed when you are
3 ready

4 IN-CAMERA CROSS-EXAMINATION

5 BY MS CRUMEY

6 Q Officer Ray, initially after you began to
7 search the vehicle, was the seat obviously tilting
8 forward or did you have to shake the seat in order to
9 make it come forward?

10 A It wasn't obviously forward

11 Q So you had to actually physically pull it
12 forward?

13 A Yes, ma'am

14 Q And after you said you looked into the trunk,
15 did you then approach Mr Boston to request him to
16 sign a form?

17 A No

18 Q Did any other officer around you request that
19 he sign a form?

20 A I don't know

21 Q Did you ever ask Mr Boston about searching
22 the trunk?

23 A I did not

24 Q You did not And were you the person who
25 actually called the locksmith?

1 A Yes, ma'am, I believe I was

2 Q And you indicated that you searched the
3 vehicle and each of the four individuals and you
4 didn't find a key or anything to open the trunk?

5 A After they were placed under arrest we
6 searched them I did not locate a key

7 Q Did you inquire about a key?

8 A I did

9 Q Who did you ask about a key?

10 A I believe it was the vehicle owner, Mr
11 Boston, if he had a key

12 Q And after he indicated he did not have a key,
13 did you inquire further?

14 A No

15 Q At what time did you contact the locksmith?

16 A I'm not sure what time I contacted him, but I
17 did note his arrival time of 11 45 I believe it was
18 roughly 30 minutes probably before that

19 Q And the reason you contacted a locksmith is
20 because even with rocking the seat you didn't have
21 full access to the trunk?

22 A Correct We would have had to damage the car
23 MS CRUMEY That's all the questions I have
24 THE COURT Mr Harris
25 MR HARRIS Briefly, Your Honor May it

1 please the Court

2 THE COURT Uh-hum

3 IN-CAMERA CROSS-EXAMINATION

4 BY MR HARRIS

5 Q You placed all four suspects under arrest
6 after you found the gun?

7 A Correct

8 Q They were handcuffed?

9 A Yes, sir

10 Q Did they have access to the car?

11 A No

12 Q Couldn't have gotten into it? Could not have
13 gotten into the car?

14 A After they were placed under arrest?

15 Q Yes

16 A No

17 Q Did you get a warrant to search the rest of
18 the car?

19 A No

20 MR HARRIS No further questions

21 THE COURT Anything further from the State?

22 MR SAVAGE Yes, Your Honor

23 IN-CAMERA REDIRECT EXAMINATION

24 BY MR SAVAGE

25 Q Sgt Ray, you mentioned the backseat I guess

1 there is, for lack of a better term, a panel that
2 goes across the top of the backseat to the rear
3 window?

4 A Yes

5 Q Did you notice anything particular about that
6 back panel?

7 A Not that I recall

8 Q Okay

9 MR SAVAGE No further questions, Your Honor
10 THE COURT Is there any evidence that's going
11 to be introduced that the defendant who had title to
12 the vehicle gave consent to the vehicle being
13 searched?

14 MR SAVAGE Yes, Your Honor

15 THE COURT Which witness is that?

16 MR SAVAGE Latasha Brown

17 THE COURT Who is that?

18 MR SAVAGE That was Colin Boston's
19 girlfriend at the time

20 THE COURT Was she present?

21 MR SAVAGE No

22 THE COURT Then how is she going to testify
23 he gave consent to the search?

24 MR SAVAGE Because she's had a conversation
25 with the defendant who is not here today, Darnel

1 Brown And Darnel Brown states on the jail tapes
2 that Colin Boston -- he's talking about suppressing
3 the evidence, and he says they could have suppressed
4 the evidence if fricking Colin Boston didn't give
5 them consent to search the car

6 So one defendant in this case certainly is
7 aware that Colin Boston gave --

8 THE COURT Is that the defendant going to
9 testify that he heard the defendant give consent to
10 search the vehicle?

11 MR SAVAGE No But she had a conversation
12 --

13 THE COURT That's not my question Is the
14 co-defendant going to testify that he heard this
15 defendant give consent to search the vehicle?

16 MR SAVAGE No, Your Honor

17 THE COURT Officer, what is the procedure of
18 an inventory search? What is the procedure and the
19 policy employed by the Charleston County Police
20 Department

21 THE WITNESS Charleston City Any evidence
22 taken out of a vehicle would be logged into the
23 report And you do evidence sheets on it

24 THE COURT Who does that?

25 THE WITNESS Whichever officer is actually

1 towing the car does the inventory search The main
2 purpose of the inventory search is to protect the
3 property within the vehicle

4 THE COURT So what parts of the car are
5 searched as a part of the inventory search? What is
6 the procedure?

7 THE WITNESS Usually that's a search anywhere
8 within access of the interior I am trying to --

9 THE COURT I'm sorry, I can't hear you

10 THE WITNESS Anywhere within reach of the
11 passengers of the vehicle

12 THE COURT What does that mean? Define that
13 for me

14 THE WITNESS Anywhere that someone in the
15 compartment of the vehicle would have access to from
16 where they're at

17 THE COURT So what would you all routinely
18 search as part of the inventory search?

19 THE WITNESS I'm trying to follow you here

20 THE COURT When you take a car into
21 possession after you have taken someone and you've
22 placed them under arrest, what do you do next?

23 THE WITNESS Search the vehicle

24 THE COURT And what do you search? Take me
25 through it step by step what would you have

1 searched in this vehicle, and who would have
2 performed this search?

3 THE WITNESS This search was conducted by
4 myself, members of my squad, and eventually crime
5 scene when they got there

6 We searched the passenger compartment first
7 And then where the seat went forward we could see
8 into that, so they have access to that, so we ended
9 up searching the trunk after we could see the guns
10 through the portion between the backseat

11 THE COURT You would have done that for
12 inventory purposes?

13 THE WITNESS Yes

14 THE COURT What else would you have searched

15 THE WITNESS That would be it, the interior

16 THE COURT I need you to take me step by step
17 through exactly what your procedure would have been
18 on that evening, of what you would have searched for
19 purposes of an inventory search, and what is the
20 city's policy and how is that performed?

21 Because I'm not clear, and I need to be clear

22 THE WITNESS I don't even know if we have a
23 policy in searching vehicles

24 THE COURT Okay so what would you normally
25 have done, what would have been the protocol? I need

1 to know exactly what you would have searched, how
2 that search would have been conducted, and who would
3 have done it

4 THE WITNESS Me, myself, Officer Morel and
5 two other members of my squad who showed up would
6 have done the search

7 Usually I'll do a search if it's my stop And
8 then once I'm done I will have another member do
9 another one to see if they see anything I didn't see
10 we do it together though, we are not too far apart
11 from each other

12 We would search the interior Going through
13 step by step how I search a car personally?

14 THE COURT No What you did that evening
15 with this vehicle

16 THE WITNESS That evening?

17 THE COURT As a result of the inventory
18 search, what did you do that evening

19 THE WITNESS Well I started with the area
20 where the gun was Some of the things are out of the
21 question but we can discuss it now, right? I began
22 with the original area where the gun was Looked
23 under the seat in front of the gun There was a
24 pocket in the seat in front of the gun which I looked
25 in and found the cocaine base

1 Then I moved to the other side of the back,
2 searched that area Then moved to the front section
3 of the car, under the seats, under the dash, the
4 obvious places, console, glove box Then you start
5 looking into the harder to see areas where you look
6 up underneath things with a flashlight, look up under
7 seats, look at visors

8 Then we moved around to the back you look to
9 where things can pull up to where you can see in them
10 and that's where we saw from where the seat rocks
11 forward you could see in it And if we didn't see
12 anything in there visible, that probably would have
13 stopped there But seeing the guns we took it a step
14 farther to get the locksmith because we could already
15 see in there

16 THE COURT And is it your testimony that that
17 was for the purposes of inventorying the vehicle?

18 THE WITNESS For inventory and search for
19 further contraband, for further weapons and
20 narcotics

21 THE COURT Any questions as a result of the
22 Court's questions from the State?

23 IN-CAMERA REDIRECT EXAMINATION

24 BY MR SAVAGE

25 Q Sgt Ray, let's see if we can clarify exactly

1 the three guns that were found in the trunk, see if
2 we can clarify exactly where they were

3 When you pulled the seat forward a little you
4 could see down in there If you're sitting down on
5 that back seat would you be able to reach over and
6 grabbed those guns from the seated position inside
7 there on the backseat, rear seat of that car?

8 A Can you reach through and grab them?

9 Q Yeah would you be able to reach over and get
10 down and grab those guns where they were?

11 A I think you probably could I didn't try

12 Q But based on where you saw and what you saw
13 those guns could have been arm's reach of someone
14 sitting in that backseat?

15 A I believe so

16 MR SAVAGE I have no further questions, Your
17 Honor

18 THE COURT Any questions, Mr Howell, as a
19 result of the Court's questions?

20 MR HOWELL Yes, ma'am, I think just one

21 THE COURT You may proceed

22 IN-CAMERA RECROSS EXAMINATION

23 BY MR HOWELL

24 Q Had you rocked back the seat and looked and
25 seen in the back of the trunk and seen an I-pod and a

1 green shirt and that's all you saw, okay, would you
2 have called a locksmith?

3 A There is a lot of factors involved

4 Q And that's why -- I'm giving you all the
5 factors I want you to consider for this question I
6 am assuming you pull it back, and you look, and you
7 get a good view inside

8 MR SAVAGE Your Honor, I'm going to object,
9 this is a hypothetical I don't see how it's
10 relevant I'm just worried where we're going to --

11 THE COURT I'm going to give him some
12 latitude It goes to their procedure and their
13 protocol He can answer the question You may
14 complete the question And, sir, you may answer the
15 question

16 MR HOWELL Thank you

17 Q (By Mr Howell) You actually get a good have
18 view, okay, you can get a very clear view and all you
19 see is an I-pod and a green shirt would you have
20 called the locksmith not having the key?

21 A Probably not

22 MR HOWELL That's all the questions I have

23 THE COURT Ms Crumey, any questions as a
24 result of the Court's questions

25 MS CRUMEY No, ma'am

1 THE COURT Mr Harris, any questions as a
2 result of the Court's questions?

3 MR HARRIS Briefly, Your Honor May it
4 please the Court

5 THE COURT You may proceed

6 IN-CAMERA RECROSS EXAMINATION

7 BY MR HARRIS

8 Q You testified earlier when you pulled it back
9 there was about two to three inches where you could
10 see into it?

11 A Probably

12 Q And you testified that the only way you could
13 get in there is if you damaged the car?

14 A To get into the back of the trunk, what we
15 couldn't see, yes

16 Q But there was about a two to three inch
17 opening?

18 A Probably

19 Q Okay To get down in there, you said to get
20 to that area you'd have to damage the car was your
21 testimony earlier?

22 A No, to search the trunk To search the trunk
23 we would have had to damage the car Not to have
24 access to the weapons which were at the very front,
25 almost behind the seat But the trunk still goes

1 back three feet, probably more, where we couldn't
2 even see

3 MR HARRIS I have no further questions

4 THE COURT Anything further from the State?
5 Any redirect?

6 MR SAVAGE Yes

7 IN-CAMERA RE-DIRECT EXAMINATION

8 BY MR SAVAGE

9 Q Sgt Ray, if you looked in that backseat and
10 saw an I-pod, and you found a gun on the floorboard
11 of the car, there are four suspects in that car, you
12 just had an armed robbery committed nearby with four
13 suspects with four guns, would you want to do an
14 inventory search of that trunk still?

15 A Yes

16 THE COURT Are there any other witnesses that
17 are going to talk about the search of this vehicle?
18 Are any of his colleagues going to testify as to the
19 search of the trunk or what led to the search of the
20 trunk?

21 MR SAVAGE Court's indulgence, Your Honor
22 Yes, Your Honor

23 THE COURT Who would those be?

24 MR SAVAGE Officer Koegler can talk about
25 that

1 THE COURT Is his testimony going to be the
2 same as this witness?

3 MR SAVAGE It's going to be slightly
4 different, Your Honor

5 THE COURT Give me a summary of what his
6 testimony -- what you're going to elicit from his
7 testimony

8 MR SAVAGE Officer Koegler is going to
9 testify that the back panel of the backseat there was
10 some sort of indentation there Basically that when
11 he was looking in the car, he was on the scene,
12 Officer Koegler and Officer Olsen are not in any
13 police reports, though I have e-mailed the defense
14 attorneys and let them know that they were here so
15 they do know who they are

16 They were there at time when Sgt Ray was
17 there with Officer Morel Officer Koegler will
18 testify that at the time that they were searching the
19 backseat, Colin Boston kept on throwing his head
20 back, looking back trying to see what was going on
21 whenever they started looking near that rear seat,
22 near where that rear panel was That made them
23 suspicious that something was going on, something was
24 near that backseat, near that panel there And so
25 that's why they were still looking in that search

1 here is the automobile exception, which does not
2 require exigency

3 The -- it is not a situation where the police
4 had to force or rip the seat away from its -- it's
5 not like --

6 MR SAVAGE Brackets

7 THE COURT Yes, brackets That's the word
8 I'm looking for It's not like they had to use a
9 knife to cut it away, or they had to forcibly remove
10 it

11 The testimony is that it was with very little
12 manipulation they were able to move it and they saw
13 contraband in the vehicle So I think it would be
14 admissible under the automobile exception to the
15 Fourth Amendment requirement of a warrant

16 Again, case law is clear regarding that And
17 that exception is based on the ready mobility of the
18 automobile for potential that evidence may be lost or
19 destroyed before a warrant is obtained And the
20 lessened expectation of privacy in a motor vehicle
21 which are subject to government regulation

22 And that if there is probable cause to search
23 a vehicle, a warrant is not necessary so long as the
24 search is based on facts that would justify the
25 issuance of a warrant, even though a warrant has not

1 area going down

2 And Colin Boston, they're going to testify
3 that he actually did this two times They actually
4 swapped positions Officer Olsen came in there, and
5 again Colin Boston, they had him facing the opposite
6 direction so his back was to the car And while
7 they're looking in that area Mr Boston kept on
8 throwing back and wanted to see what was going on
9 when they were searching through that back area So
10 they became suspicious based on his activities and
11 what they saw sort of that rear panel as to what was
12 there

13 THE COURT The additional motion to suppress
14 regarding items found in the trunk, I have at the
15 defense's request allowed them to enlarge their
16 argument from what was previously argued to the Court
17 and taken additional evidence in-camera regarding
18 that

19 There are several principles at play when you
20 start dealing with a motor vehicle, one of which is
21 the State is alleviated from the warrant requirement
22 if it is a vehicle that is ready mobile, probable
23 cause exist to believe it contains contraband

24 The Fourth Amendment permits police to search
25 the vehicle without more so what we have at play

1 been actually obtained

2 Under these circumstances, there was probable
3 cause, and we know the definition of probable cause
4 without me restating that, that there was contraband
5 in the vehicle, that being the plain sight of the
6 other weapon, as well as the fact that the weapons
7 were seen from the backseat of the car as the
8 officers were conducting the inventory search of the
9 vehicle after the defendants had been arrested and
10 Mirandized

11 And certainly those would have been facts
12 sufficient upon which to justify the issuance of a
13 warrant Clearly probable cause existed to believe
14 there was contraband in the vehicle as the officers
15 saw the guns in the trunk While -- and I guess
16 there could be some argument, well a car is always
17 readily mobile even those this car was blocked in,
18 but there is another case that I was just reading
19 that where the Supreme Court upheld the search where
20 the car was actually parked in the defendant's
21 driveway, the keys were not in it, the defendant was
22 not in it and they were allowed to search the trunk
23 based on the co-defendant's statement that the gun
24 was in the trunk And they were able to seize it
25 pursuant to the automobile exception

1 And the case law is very clear that to
2 justification to conduct a warrantless search of an
3 automobile does not vanish once the automobile has
4 been immobilized. And there is also no requirement
5 that that search occur contemporaneously with the
6 vehicle seizure.

7 In addition, it is a separate and independent
8 ground, the police certainly would have discovered
9 the vehicle inevitably when they did the inventory
10 search of the vehicle. And the State has established
11 by a preponderance of the evidence that the
12 information ultimately or inevitably would have been
13 discovered by lawful means. Despite the fact that
14 there could be a legitimate argument, or at least it
15 was being argued, that it was illegally obtained.

16 In addition to that, it also could be
17 validated on the fact that at some point it would
18 have been discovered under the independent source
19 doctrine, although I'm not going to rely on that
20 because I have not heard any testimony regarding that
21 at this point, and I'm not certain whether that
22 testimony is going to be admissible regarding any
23 admissions or any consent.

24 So I'm not going to base my ruling on that.
25 So we can ignore that I even mentioned that because

1 that's not the basis of the Court's ruling

2 I think certainly under the automobile
3 exception, as well as the inevitable discovery that
4 the evidence is admissible

5 The Court will note your exceptions for the
6 record and we will move along with the testimony

7 Is there anything further before we proceed
8 from the State?

9 MR SAVAGE No, Your Honor

10 THE COURT From the defense, Mr Howell?

11 MR HOWELL No, Your Honor

12 THE COURT From the defense, Ms Crumey?

13 MS CRUMEY No, Your Honor

14 THE COURT From the defense, Mr Harris?

15 MR HARRIS No, Your Honor

16 THE COURT Please bring in the panel

17 The Court relied on State versus Weaver as
18 well as the State versus Cox Although State versus
19 Weaver goes into whether it's private or public
20 property, that's not really relevant or germane to
21 this case It's still covered under the automobile
22 exception

23 (Whereupon, the jurors enter the courtroom)

24 THE COURT Ladies and gentlemen, we
25 appreciate your patience We had some matters of law

1 that we needed to cover after lunch, and want you to
2 know we don't take your time for granted and we
3 appreciate your patience

4 we will now resume with the examination of the
5 witness

6 Mr Savage, you may proceed

7 MR SAVAGE Thank you, Your Honor May it
8 please the Court

9 THE COURT You may proceed

10 CONTINUED DIRECT EXAMINATION

11 BY MR SAVAGE

12 Q Just to quickly recap, Sgt Ray You are at
13 the Christian school, James Island Christian School
14 location, all four defendants have been removed from
15 Colin Boston's car, and when the last defendant --
16 when the last defendant David Brown was removed, did
17 you notice anything when he gets out of that vehicle?

18 A Yes

19 Q What was that?

20 A 22 caliber revolver on the floorboard

21 Q And that's the revolver that we admitted into
22 evidence just before lunch?

23 A Correct

24 Q Did you continue to search the vehicle?

25 A After all four were placed under arrest, we

1 did search the vehicle

2 Q And did you find any other items or any other
3 items that interested you?

4 A Yes, sir

5 Q What did you find?

6 A Found three additional handguns

7 Q Where did you find them?

8 A Behind the rear seat in the trunk

9 Q And what -- what type of handguns were they?

10 A A silver in color Taurus revolver, 38
11 special, a high-point model CF 380 caliber
12 automatic, and a high-point model C9 automatic, 9mm

13 Q Were those guns loaded with live ammunition?

14 A All three were loaded

15 Q Okay

16 MR SAVAGE May I approach the witness, Your
17 Honor?

18 THE COURT You may

19 Q (By Mr Savage) Sgt Ray, I am showing you
20 what has been marked as State's Exhibit 19 for
21 identification purposes Can you please -- did you
22 recognize that?

23 A Yes

24 Q What is it?

25 A It's a Taurus silver in color 38 special

1 revolver

2 Q And is that one of the guns that you found I
3 guess inside the trunk there near the rear seat?

4 A Correct

5 MR SAVAGE Your Honor, at this time State
6 moves to admit State's Exhibit 19 into evidence

7 THE COURT Marked and admitted subject to the
8 objections of all defendants

9 (Whereupon, State's Exhibit No 19 is admitted
10 into evidence)

11 Q (By Mr Savage) Sgt Ray, I am now showing
12 you what has been marked State's Exhibit 20 for
13 identification purposes Do you recognize that?

14 A Yes

15 Q What is it?

16 A This is the high-point 9mm Luger

17 Q And is that one of the guns that was found in
18 Colin Boston's car in the rear seat on that night?

19 A Yes, sir

20 MR SAVAGE Your Honor, at this time State
21 moves Exhibit No 20 into evidence

22 THE COURT Marked and admitted subject to the
23 objection of all defendants

24 (Whereupon, State's Exhibit No 20 is admitted
25 into evidence)

1 Q (By Mr Savage) And, Sgt Ray, I am now
2 showing you what has been marked as State's Exhibit
3 18 for identification purposes Do you recognize
4 that?

5 A Yes

6 Q What is it?

7 A It's a high-point model CF 380

8 Q It's a 380 caliber?

9 A Yes, sir

10 Q And is that the 380 that you saw in the trunk
11 of Colin Boston's car that night?

12 A Yes, it is

13 MR SAVAGE Your Honor, State moves exhibit
14 No 18 into evidence

15 THE COURT Marked and admitted subject to all
16 defendants' objections

17 (Whereupon, State's Exhibit No 18 is admitted
18 into evidence)

19 MR SAVAGE Your Honor, may I approach the
20 witness?

21 THE COURT Yes

22 (Whereupon, State's Exhibit Nos 31 through 34
23 are marked for identification)

24 Q (By Mr Savage) Sgt Ray, you mentioned --
25 once you found the guns, did you search the trunk of

1 that vehicle?

2 A Yes

3 Q What did you find inside that trunk? I guess
4 what items did you take into evidence that night?

5 A Beside the three guns we also removed a black
6 in color hooded sweatshirt, two pairs of black in
7 color gloves, a pair of clear latex gloves, a black
8 and white knit hat, a black knit hat, a pair of red
9 and black Nike shoes, and a piece of gray cloth tied
10 into a handkerchief

11 MR SAVAGE May I approach, Your Honor?

12 THE COURT Uh-hum

13 Q (By Mr Savage) Sgt Ray, I am showing you
14 what has been marked as State's Exhibit 12 Do you
15 recognize them?

16 A Yes

17 Q What are they?

18 A Red and black Nike shoes from the trunk

19 Q And they're the shoes that you found in the
20 trunk that night of Colin Boston's car?

21 A They appear to be

22 MR SAVAGE Your Honor, the State moves
23 Exhibit 12 into evidence

24 THE COURT Marked and admitted subject to the
25 objection

1 (Whereupon, State's Exhibit 12 is admitted
2 into evidence)

3 Q (By Mr Savage) Sgt Ray, I'm now showing you
4 what is marked as State's Exhibit 10 for
5 identification purposes Do you recognize that?

6 A Yes

7 Q What is it?

8 A The black and white knit hat from the truck

9 Q The black and white knit cap that came from
10 Colin Boston's car that night?

11 A From the trunk, yes

12 MR SAVAGE Your Honor The State moves
13 Exhibit 10 into evidence

14 THE COURT Marked and admitted subject to the
15 objection

16 (Whereupon, State's Exhibit No 10 is admitted
17 into evidence)

18 Q (By Mr Savage) Sgt Ray, I am now showing
19 you what has been marked as Exhibit 6 Do you
20 recognize that?

21 A Yes

22 Q What is it?

23 A It's the gray piece of cloth tied into a
24 handkerchief

25 Q And is that the cloth that you found in Colin

1 Boston's car that night?

2 A Correct

3 MR SAVAGE Your Honor, State moves Exhibit 6
4 into evidence

5 THE COURT Marked and admitted subject to the
6 objection

7 (Whereupon, State's Exhibit No 6 is admitted
8 into evidence)

9 Q (By Mr Savage) Sgt Ray, I am now showing
10 you what has been mark as Exhibit 8 Do you
11 recognize those items?

12 A Yes

13 Q What are they?

14 A It is one of the pairs of black gloves that
15 were in the trunk of the vehicle

16 Q And that was in Colin Boston's vehicle on the
17 night of the arrest?

18 A Yes

19 MR SAVAGE Your Honor, the State moves
20 Exhibit 8 into evidence

21 THE COURT Marked and admitted subject to the
22 objection

23 (Whereupon, State's Exhibit No 8 is admitted
24 into evidence)

25 Q (By Mr Savage) Sgt Ray, I am now showing

1 you what has been marked as Exhibit 9 Do you
2 recognize that?

3 A Yes

4 Q What is it?

5 A The black knit hat from the trunk of the
6 vehicle

7 Q Colin Boston's vehicle on the night of the
8 arrest?

9 A Yes

10 MR SAVAGE Your Honor, State moves into
11 evidence Exhibit 9

12 THE COURT Marked and admitted subject to the
13 objection

14 (Whereupon, State's Exhibit No 9 is admitted
15 into evidence)

16 Q (By Mr Savage) Sgt Ray, I'm now showing you
17 what has been marked as Exhibit 7 Do you recognize
18 those?

19 A Yes

20 Q What are they?

21 A It's the other pair of black gloves from the
22 trunk

23 Q Colin Boston's trunk?

24 A Yes

25 MR SAVAGE Your Honor, the State moves

1 EXHIBIT 7 INTO EVIDENCE

2 THE COURT Marked and admitted subject to the
3 objections

4 (Whereupon, State's Exhibit No 7 is admitted
5 into evidence)

6 Q (By Mr Savage) Sgt Ray, I'm now showing you
7 what has been marked as State's Exhibit 11 Do you
8 recognize those?

9 A Yes

10 Q What are those?

11 A Latex gloves from the trunk of the vehicle

12 Q And that's Colin Boston's vehicle?

13 A Yes

14 MR SAVAGE Your Honor, the State moves
15 Exhibit 11 into evidence

16 THE COURT Marked and admitted subject to the
17 objection

18 (Whereupon, State's Exhibit No 11 is admitted
19 into evidence)

20 Q (By Mr Savage) Sgt Ray, did you also search
21 the passenger compartment of that vehicle, Colin
22 Boston's vehicle?

23 A Yes

24 Q And what did you -- did you take anything into
25 evidence that night?

1 A I did

2 Q What was that?

3 A A pair of black gloves which were on the rear
4 floorboard, a yellow Nike brand knit hat which was on
5 the rear seat driver's side, and a piece of red cloth
6 that was tied into a handkerchief

7 MR SAVAGE Your Honor, may I approach

8 THE COURT You may

9 Q (By Mr Savage) Sgt Ray, I'm now showing you
10 what has been marked as Exhibit 1 Do you recognize
11 that?

12 A Yes

13 Q What is it?

14 A Red cloth tied into a handkerchief

15 Q And is that the red cloth that was in Colin
16 Boston's car on the night of the arrest?

17 A Yes It was in the front console

18 MR SAVAGE Your Honor, the State moves
19 Exhibit 1 into evidence

20 THE COURT Marked and admitted subject to the
21 objections

22 (Whereupon, State's Exhibit No 1 is admitted
23 into evidence)

24 Q (By Mr Savage) Sgt Ray, I'm now showing you
25 what has been marked as Exhibit 2 for identification

1 purposes Do you recognize that?

2 A Yes

3 Q What is it?

4 A It's a yellow Nike knit hat

5 Q And is that the yellow Nike knit hat that came
6 from Colin Boston's car on the night of the arrest?

7 A Yes, sir Rear seat driver's side

8 MR SAVAGE Your Honor, the State moves
9 Exhibit 2 into evidence

10 THE COURT Marked and admitted subject to the
11 objections

12 (Whereupon, States Exhibit No 2 is admitted
13 into evidence)

14 Q (By Mr Savage) Sgt Ray, I am now showing
15 you what has been marked as State's Exhibit 3 for
16 identification purposes Do you recognize those?

17 A Yes

18 Q What are those?

19 A A pair of black gloves

20 Q Are they the pair of black gloves that came
21 from Colin Boston's passenger compartment on the
22 night of the arrest?

23 A Yes Rear floorboard

24 MR SAVAGE Your Honor, the State moves
25 Exhibit 3 into evidence

1 THE COURT Marked and admitted subject to the
2 objection

3 (Whereupon, State's Exhibit No 3 is admitted
4 into evidence)

5 Q (By Mr Savage) Sgt Ray, I am now showing
6 you what has been marked as State's Exhibit 5 Do
7 you recognize that?

8 A Yes

9 Q What is it?

10 A Black in color hooded sweatshirt

11 Q And is that the black hoodie that came from
12 the trunk of Colin Boston's vehicle?

13 A Yes

14 MR SAVAGE Your Honor, State moves into
15 evidence Exhibit 5

16 THE COURT Marked and admitted subject to the
17 objections

18 (Whereupon, State's Exhibit No 5 is admitted
19 into evidence)

20 Q (By Mr Savage) Sgt Ray, I am now showing
21 you what has been marked as State's Exhibit 4 Do
22 you recognize that?

23 A Yes

24 Q What is it?

25 A It's a red and black jacket

1 Q And is that the red and black jacket that you
2 recovered from Colin Boston's trunk on the night of
3 the arrest?

4 A Yes

5 MR SAVAGE Your Honor, the State moves
6 Exhibit 4 into evidence

7 THE COURT Marked and admitted subject to the
8 objections

9 (Whereupon, State's Exhibit No 4 is admitted
10 into evidence)

11 MR SAVAGE May I approach the witness, Your
12 Honor?

13 THE COURT You may

14 Q (By Mr Savage) Sgt Ray, I am showing you
15 what has been marked as State's Exhibits 31, 32 and
16 33 Do you recognize those?

17 A Yes

18 Q What are they?

19 A Photographs of the interior of Mr Boston's
20 trunk

21 Q Could you go through each one?

22 A 33 is the interior of the trunk with the
23 Taurus revolver and both high-point automatics
24 visible on the right side of the trunk looking in

25 Q This one?

1 A 31 is the photo of Mr Boston's vehicle while
2 at the James Island Christian School where it was
3 parked 32 is a open picture of the truck showing
4 the red and black Nikes, and the black sweatshirt and
5 black jacket visible And 33 shows the three visible
6 firearms in the trunk

7 Q And is that how it looked on the night of the
8 arrest?

9 A Yes, it is

10 MR SAVAGE Your Honor, State moves Exhibit
11 31, 32, and 33 into evidence

12 THE COURT Have you shown those to counsel?

13 MR SAVAGE I did that before, Your Honor

14 MR HOWELL To subject to our earlier
15 exceptions

16 THE COURT Marked and admitted subject to the
17 earlier objections

18 (Whereupon, State's Exhibit Nos 31, 32 and 33
19 are admitted into evidence)

20 Q (By Mr Savage) Officer Ray, I am going to
21 come over here for a second

22 Officer Ray, I am showing you what has been
23 marked as State's Exhibit 31 Could you tell the
24 jury what that is?

25 A That's Mr Boston's 1998 Chevy

1 Q Where is that car currently parked in that
2 picture?

3 A That's at 12 Sawgrass, James Island Christian
4 School and Church It's on the school side of the
5 parking lot versus the church side

6 Q Okay I am now showing you what is marked as
7 State's Exhibit 32 What is that picture showing?

8 A It's a view of the open trunk of the vehicle

9 Q Go ahead

10 A You can see the red and black Nike shoes, and
11 the black jacket on top which would be the back of
12 the trunk

13 Q Just to clarify for the record, when you say
14 that vehicle, is that Colin Boston's vehicle that you
15 -- from the night of the arrest?

16 A Yes

17 Q And the last thing, this is State's Exhibit
18 33 Could you tell the jury what that is?

19 A That's a photo of the back of the trunk, if
20 you are standing at the back, it's the deepest part
21 from you It's a Taurus 38 special in the middle
22 on the right side of the screen you can see the two
23 high-point automatics on the far right side of the
24 frame of the picture

25 Q Now you mentioned that three guns there,

1 the 38 special, the 9mm and the 38 caliber, is that
2 correct?

3 A There is a 38 special in the middle There
4 is a 9 mm Luger high-point, and the 380 caliber
5 high-point

6 Q Is that where those guns were located?

7 A That's where they were located

8 Q And obviously we can't see the whole part of
9 the trunk here, but whereabouts is that located in
10 the trunk? Is that near the rear seat, near the I
11 guess the back rear bumper, on the side?

12 A Far from the bumper and behind the seat

13 Q Behind the rear seat?

14 A Behind the rear seat

15 Q Approximately how far away were they from the
16 rear seat?

17 A I would say less than a foot

18 Q Less than a foot?

19 A I'm not positive But they were more close to
20 the rear seat versus the middle or towards the
21 bumper

22 Q Okay

23 MR SAVAGE Court's indulgence

24 THE COURT Uh-hum

25 MR SAVAGE I have no further questions at

1 this time

2 THE COURT Mr Howell, you may proceed when
3 you are ready

4 MR HOWELL Yes, ma'am

5 CROSS-EXAMINATION

6 BY MR HOWELL

7 Q Good afternoon, officer How are you doing?

8 A Good

9 Q Good The one thing I wanted to get straight
10 with you first when you talk about looking back into
11 this trunk area where you found these other three
12 guns, that wasn't just like glancing, you had to
13 actually pull down part of the car, right?

14 A To view them from the interior of the vehicle
15 you would have to rock the top of the backseat
16 forward, and you could see -- there was a gap and you
17 could see into the trunk

18 Q Right And I guess what I'm trying to get
19 across here is this car is not made to be accessible
20 from the backseat to the trunk?

21 A I'm not sure

22 Q I have like a little portal in mine for people
23 who ski or something wasn't like something you pull
24 down naturally, there wasn't a door there, you were
25 actually rocking the seat?

1 A Correct

2 Q Okay And so to actually get in the trunk and
3 look in the trunk you all had to call a locksmith,
4 didn't you?

5 A Not to look into it, to get into it

6 Q Yes, to get into it?

7 A Yes

8 Q And nobody had a key You all looked at the
9 people and they were under arrest, you searched them
10 and you couldn't find a key, could you?

11 A Couldn't find a trunk key

12 Q Now I want to hold this up If we need to put
13 it up there we will What is this big gray thing,
14 any idea?

15 A I can't tell from the picture

16 Q Do you remember?

17 A It has been a while

18 Q Right

19 A I can't tell from the photo what it is

20 Q Okay

21 A I did not take these photos

22 Q There is another question Who actually comes
23 and takes the photos?

24 A Crime scene

25 Q Do you remember who took these?

1 A I believe it was Rene Charles

2 Q Now this jacket, this was found in the trunk?

3 A That was in the trunk

4 Q Okay It's a Godfather jacket or something?

5 A Yes, Godfather

6 Q Right here?

7 A I see it

8 Q And you were standing with the defendants

9 outside, you had a good look at them, didn't you?

10 A Yes

11 Q Do you remember one of them was wearing a
12 jacket, black and white, had Scarface written in red
13 letters across it?

14 A I don't recall what they were wearing

15 Q Okay I'm having technical difficulties I
16 want to hand you this that has been provided to me
17 Does that refresh your memory?

18 A Yes

19 Q It's one of the defendant's had a jacket,
20 black and white, had red letters Scarface over the
21 front, didn't it?

22 A Yes

23 Q A picture of Al Pacino on it?

24 A I'm not sure

25 Q And he has an earring in his ear?

1 A Yes

2 Q And another one of the defendants had on blue
3 jeans?

4 A Appears so, but I cannot tell who that picture
5 is of because it's just below the waist

6 Q Okay Ms Charles did an inventory of those
7 pictures and --

8 A Rene Charles would be able to tell you about
9 the pictures

10 Q Okay One of the guns, I don't know if this
11 is something I can just ask you, has a piece out, it
12 was bent was that done later for safety or is that
13 --

14 A I'd have to look at it I don't know

15 Q The silver gun

16 A It may have been for safety

17 Q I just noticed that and I didn't know if --

18 A It's possible that crime scene did that

19 Q Did they do that? Okay

20 A I have never -- I don't know what their
21 procedures are

22 Q To keep it from closing

23 A I could see why that would make sense

24 Q okay

25 A I'd have to find out from a crime scene

1 technician if they did that

2 Q See what I am talking about?

3 A Yeah, they might have made a notation on their
4 evidence sheets It could have possibly been done by
5 crime scene, I'm not sure I don't know of their
6 procedures I'm not sure

7 Q This piece, though, you cannot close it
8 without that being straight?

9 A I'd have to manipulate it a little to find out
10 if I could I'd have to cut the tie off of it The
11 red tie is keeping the cylinder from closing That's
12 what's the safety is right now

13 Q Do you see what I'm talking about? There's a
14 piece that's sticking out

15 A I see what you mean I don't know if -- I
16 don't know if it's functional, I'd have to actually
17 take it to the range to tell you

18 Q Okay And this is the yellow hat that you are
19 talking about?

20 A Yes

21 Q You got Nike?

22 A Yes

23 Q Kind of hat you pull down over the top of your
24 head like that to keep your ears warm?

25 A Right

1 Q How long approximately did it take the
2 locksmith to get into the trunk?

3 A He arrived at 11 45 And he was able to get
4 it open at 1 15 a m

5 Q 11 45 to 1 15?

6 A Yes, sir

7 Q So about an hour and a half?

8 A Correct

9 Q And was that the last contact I guess you had
10 in terms of involvement with this case was that night
11 securing of the defendants, getting in the trunk, you
12 didn't have any other particular touch with this case
13 after that period, did you?

14 A I waited until the -- I was there until the
15 car was taken by tow truck But all of the
16 investigation was done by the central detective
17 division

18 Q Yeah, tell me how that works Central
19 detective is just a little bit different branch?

20 A Not necessarily You have -- well, the
21 department is broken up into a lot of different
22 divisions But certain crimes meet the requirements
23 that a central detective will come out and do
24 interviews, get witness statements

25 Certain crimes will be where crime scene will

1 be out We have policies on which crimes entail
2 different people responding

3 Q Okay And in this case would Officer or
4 Detective Kosarko have been one of those people?

5 A He could have been I think he was there

6 MR HOWELL That's all the questions I have
7 Thank you

8 THE WITNESS Okay

9 THE COURT Ms Crumey

10 MS CRUMEY No questions

11 THE COURT Mr Harris

12 MR HARRIS Just a few, Your Honor

13 THE COURT You may proceed

14 MR HARRIS May it please the Court

15 May I approach the evidence table, Your Honor?

16 THE COURT Yes, you may

17 CROSS-EXAMINATION

18 BY MR HARRIS

19 Q Now you searched the trunk after the locksmith
20 came and opened it up, right?

21 A Yes

22 Q And you did an inventory search on this car,
23 is that correct?

24 A Yes

25 Q But you don't know what this big giant thing

1 is right here?

2 A I can't tell from the photo

3 Q Okay who would have that inventory search
4 you did on this car?

5 A It would probably be -- anything that was left
6 on the vehicle would be on the tow sheet if it was
7 deemed significant

8 Q Okay But you would have put it on your
9 inventory report for the tow truck?

10 A Right I don't have that in front of me

11 Q So we don't know what this is?

12 A That's a blanket

13 Q That's a blanket?

14 A Yes

15 Q What about this thing over here?

16 A I can't tell from the photo

17 Q That looks like a jacket to me

18 A It's hard to tell

19 Q Okay And you said that that is the back of
20 the trunk like behind the seat, right?

21 A That's -- see I did not take these photos,
22 from my recollection I believe that's a photo from
23 outside of the vehicle into the trunk

24 Q Okay So I'm guessing that he kind of came
25 down to this one?

1 A Yes

2 Q To see the back of the trunk

3 A Yes, to see the back

4 Q They have to see the back, right?

5 A Right

6 Q And this is that blanket it looks like again

7 A Right

8 Q And that's the three guns?

9 A Right

10 Q Okay These are the guns that you saw from
11 pulling forward the backseat, it's not a backseat
12 that's releasable, it's just a backseat that you
13 could kind of pull out?

14 A It would if you pulled on it and rocked it
15 forward enough to visually look into the trunk
16 cavity

17 Q How many inches was that, two or three?

18 Q Two or three inches that you can pull it away
19 from the top of what we call the deck of the top
20 between the window and the seat And you could
21 actually see in

22 Q Okay So it's night time, you are pulling the
23 seat back two or three inches, I guess you had a
24 flashlight, looked down in there?

25 A Correct

1 Q And you see three guns

2 A You could see the guns

3 Q They were like that, you said they were about
4 a foot in, maybe, inside a foot?

5 A Possibly They were closer to the seat than
6 to the middle I don't know the exact distance

7 Q Okay But they're not sitting like on the
8 backseat or in a little crack right there?

9 A No, sir They were in the trunk cavity

10 Q Okay And this is two to three inches, the
11 opening?

12 A Approximately

13 Q And you couldn't -- as a police officer you
14 couldn't get down there and grab it?

15 A I could have, but it's not what I did

16 Q So when you pulled the seat back you did not
17 grab those guns?

18 A No I did not want to move them from where
19 they were

20 Q Okay But did you move the one from the front
21 seat when they got arrested originally?

22 A Yes

23 Q Okay So you moved that one, but you don't
24 want to move these?

25 A That was for safety reason, it's still in play

1 I guess when it's out in the open like that so I
2 secured that one

3 Q Okay So these you did not feel you needed to
4 secure these for safety reasons?

5 A No They were in the trunk and you could only
6 visually see them from the backseat

7 Q Okay So this jacket, the Godfather jacket?

8 A Right

9 Q These shoes, these gloves, these hats, the
10 hoodie, three guns, a big blanket, what appears to be
11 a jacket, or whatever, that's not important, are all
12 in this trunk that nobody has a key to?

13 A Correct

14 Q Okay

15 A That we could find

16 Q To a point where you had to call a locksmith
17 while these people were under arrest?

18 A Right

19 Q Did you search their persons?

20 A After they were under arrest?

21 Q Yes

22 A Yes

23 Q You did not find a key to the trunk?

24 A No, sir

25 Q So all this stuff in the trunk that for all

1 intents and purposes this night is inoperable with no
2 key

3 Q It's inoperable?

4 Q Could you open it?

5 A Could we?

6 Q Right

7 A No

8 Q So with no key it was inoperable for all

9 intents and purposes?

10 A I'm not following you

11 Q Without a key you couldn't get it open, right?

12 A Without a key we could, but we couldn't open

13 it without damaging it

14 Q Right And you couldn't pull the seat all the
15 way out without damaging it either?

16 A I don't know, I didn't try I did not want to
17 damage it

18 Q Okay

19 MR HARRIS I have no further questions, Your
20 Honor

21 THE COURT Any redirect?

22 MR SAVAGE Yes, Your Honor

23 THE COURT You may proceed

24 MS SAVAGE Your Honor may I approach

25 witness?

1 THE COURT You may

2 REDIRECT EXAMINATION

3 BY MR SAVAGE

4 Q Sgt Ray, when defense counsel Donald Howell
5 spoke to you, he mentioned -- he showed a photo and
6 mentioned that the person with the Al Paccino jacket
7 and I guess the earring in the ear, is that the
8 person -- let me take that back

9 MR SAVAGE Let me have this marked for
10 identification I apologize, Your Honor

11 (Whereupon, State's Exhibit No 35 is marked
12 for identification)

13 Q (By Mr Savage) Sgt Ray, I am showing you
14 what has been marked as State's Exhibit 35 Is that
15 the person that defense counsel, Donald Howell, was
16 referring to when he mentioned the person in the Al
17 Paccino jacket and the earring?

18 A Yes

19 Q And was that one of the defendants that was
20 there that night?

21 A Yes

22 MR SAVAGE Your Honor, State move Exhibit
23 No 35 into evidence

24 THE COURT Any objection?

25 MR HOWELL None from Brown

1 MS CRUMEY No objection

2 THE COURT Mr Harris?

3 MR HARRIS No, Your Honor

4 THE COURT Marked and admitted without
5 objection

6 (Whereupon, State's Exhibit No 35 is admitted
7 into evidence)

8 Q (By Mr Savage) Sgt Ray, just getting back
9 to I guess the trunk area And you mentioned when
10 you were searching the car you kind of rocked the
11 backseat and pulled forward a little, maybe two or
12 three inches?

13 A Yeah, we could move it forward

14 Q Now when you're rocking it, you didn't pull
15 the seat off its brackets or anything holding in the
16 backseat or anything like that, did you?

17 A I wasn't the first one to pull it back But I
18 don't -- I don't believe any brackets were broken

19 Q But when you grabbed it, you didn't like grab
20 it so hard that you had to pull it and force it off?

21 A No

22 MR HOWELL Objection

23 THE COURT Basis?

24 MR HOWELL Leading

25 THE COURT I'm going to give him a little

1 latitude

2 Q (By Mr Savage) Did you have to force the
3 seat or did you just kind of shake it a little to
4 move it forward?

5 A I did not It was pointed out to me by one of
6 my two employees

7 Q This basically you mentioned two or three
8 inches, is that correct?

9 A I believe

10 Q Was that enough, in your opinion, for what you
11 saw, was that enough room to be able to place those
12 handguns down into the trunk from above, from inside
13 the car?

14 MR HOWELL Objection

15 THE COURT Basis?

16 MR HOWELL Leading

17 THE COURT Sustained, leading

18 Q (By Mr Savage) Let me ask it to you this
19 way From what you saw, were those handguns fit
20 through that space between the rear seat and the
21 trunk?

22 A I believe they would

23 Q Okay And from what you saw, if you wanted to
24 be able to gain access, because I know you said that
25 you didn't put your arm down there, from what you saw

1 if you wanted to, you desperately wanted to get those
2 guns, do you think you could reach down and grab them
3 from the space that was there from what you saw?

4 A I don't know

5 Q Okay You mentioned the central detectives
6 respond to certain crimes, you are talking about the
7 different layers I guess of CPD And one of those,
8 one of those crimes that they respond to are like
9 violent felonies such as armed robbery?

10 A Correct

11 Q So it's not unusual for detectives to respond
12 to an armed robbery, I guess charge, is it?

13 A No

14 Q In fact it's kind of protocol?

15 A Absolutely is

16 Q And when central detectives respond to a
17 scene, they usually I guess exceed your authority, do
18 they take sort of control of the scene as procedure?

19 A Usually if centrals on scene they take over
20 the scene regardless of rank

21 Q Okay And at the Christian school, the James
22 Island Christian School, do you remember the
23 detectives that responded to there? I think one of
24 them you mentioned was Kosarko?

25 A Kosarko

1 Q Do you remember any other detectives?

2 A Jennie Cice1

3 Q Does she go by Jennie Antonio now?

4 A She goes by Jennie Antonio now

5 MR SAVAGE Court's indulgence

6 THE COURT Yes, sir

7 Q (By Mr Savage) Sgt Ray, one last question

8 Do you know approximately how far it was from the

9 Benders Bar and Grill to the James Island Christian

10 School?

11 A I could give you a rough estimate

12 Q What is your rough estimate?

13 A Maybe three miles

14 Q Three miles And if you drove that distance,

15 could you give a rough estimate, at that time around

16 10 00 at night, how long it would take to get from

17 Benders Bar and Grill to James Island Christian

18 school?

19 A Depends on the speed 60 miles an hour would

20 be three minutes

21 MR SAVAGE No further questions, Your Honor

22 THE COURT Any objection to the witness being

23 excused?

24 MR HOWELL I have just two brief follow-up

25 THE COURT You may proceed

RECROSS-EXAMINATION

BY MR HOWELL

Q How many stoplights between?

A I could probably tell you I worked there a long time Maybe nine, eight or nine

Q And so like when you get close to Crescent there's sort of two or three real close in there sometimes too?

A There is two, one at 17 and Wesley and one at Folly and Wesley And one on the other side at Maybank and Folly And then there's another one at Cross Creek and Folly, so that's one more

Q There's one at Mirmosa just past South Windemere

A That's the one I was saying --

Q That's the angled one And right before that you get to -- I can't think of the name -- it's another one that actually goes into the neighborhood to the east and not the west, there's another one that goes into the shopping center as well?

A There is one in front of South Windemere and there's a second one -- there's two at South Windemere, one at each end

Q Right

A And then there is one down actually at 17 and

1 Wesley There are three between there and Wappoo
2 Drive

3 Q There are number of stoplights between So
4 three minutes and going 60 miles an hour, but there's
5 a lot of stoplights between point A and point B?

6 A Just a time in miles, that's just a basis

7 Q Did you notice anything unusual or funny about
8 the panel in the car or the seat or anything before
9 you started --

10 A I don't recall seeing anything It was
11 pointed out to me so it wasn't my original, you know

12 Q The fact it even could be rocked --

13 A It was pointed out to me by two other officers
14 that worked for me

15 Q And what they pointed out was that you could
16 rock it and get a peek in there?

17 A Correct

18 MR HOWELL That's all I have

19 THE COURT Any objection to the witness being
20 excuse, Ms Crumey?

21 MS CRUMEY No, Your Honor

22 THE COURT Mr Harris?

23 MR HARRIS None, Your Honor

24 THE COURT Any redirect as a result of Mr
25 Howell's questioning, Mr Savage?

1 MR SAVAGE No, Your Honor

2 THE COURT Any objection to the witness being
3 excused from the State?

4 MR SAVAGE No, Your Honor

5 THE COURT Sir, you are excused

6 THE WITNESS Thank you

7 THE COURT You may call your next witness

8 MR SAVAGE State would call Detective
9 Kosarko

10 MR CRAIG ANDREW KOSARKO,
11 after having first been duly sworn to state the
12 truth, the whole truth and nothing but the truth,
13 testified on his oath as follows

14 THE COURT You may proceed

15 DIRECT EXAMINATION

16 BY MR SAVAGE

17 Q Good afternoon, Detective Kosarko Where do
18 you work?

19 A Charleston City Police Department, sir

20 Q And how long have you worked at CPD?

21 A Little over 8 years About 8 and a half
22 years

23 Q Could you briefly tell the jury, or describe
24 your duties with the Charleston City Police
25 Department?

1 A I'm currently assigned to the central
2 detective division I investigate armed robberies
3 and strong-arm robberies

4 Q Were you involved in the Benders Bar
5 investigation armed robbery?

6 A Yes

7 Q How did you first hear about that robbery?

8 A I was dispatched over the radio from our
9 dispatch center They advised me that a armed
10 robbery occurred at Benders Bar and I responded

11 Q And so you responded to the Benders Bar?

12 A Yes, sir

13 Q When you responded to the bar, did you talk to
14 to any victims or witnesses inside?

15 A Yes, sir I spoke to Andre Thompson and Mary
16 Emily Nance

17 Q And you took their statements, their written
18 statements?

19 A Yes, sir

20 Q Did you help, I guess as a detective when you
21 arrived, did you sort of help organize other officers
22 to sort of speak to other witnesses and get their
23 statements and any sort of information that they may
24 have had?

25 A Yes, sir, I was the first detective on the

1 scene So when I came into the bar I more or less
2 had everybody stop talking, separate all the
3 witnesses, go to different tables so that we could
4 more or less organize who we could talk to first

5 When I did that, I initially started with
6 Andre Thompson

7 Q Once you sort of spoke to some of the
8 witnesses and victims, did you talk to other officers
9 and sort of gather information that they had?

10 A I had spoke to the initial officer on the
11 scene, the one that was taking the initial
12 information for things in her report

13 Q Were you able to determine how many robbers
14 there were that night?

15 A At least four

16 Q Okay Were you able to determine whether they
17 all had handguns?

18 A Yes, sir

19 Q At some point in the night, did you learn that
20 there were four suspects located at the James Island
21 Christian School?

22 A Yes, sir

23 Q And that's located at 12 Sawgrass Road?

24 A Yes

25 Q Did you go to that location?

1 A Yes, sir

2 Q Did you go to that location with anyone else?

3 A I went with a Detective Antonio

4 Q And is Detective Antonio with the Charleston
5 Police Department?

6 A Yes, sir

7 Q When you arrived at that location, were the
8 four suspects, four defendants in this case there?

9 A Yes, sir

10 Q Did you see them?

11 A Yes, sir

12 Q Did you and Detective Antonio separate the
13 defendants at this time and then talk to them?

14 A They were already separated at that point

15 Q Did you talk to them?

16 A Yes, sir

17 Q Were they read their Miranda rights?

18 A They were, sir

19 MR SAVAGE Your Honor, I believe at this
20 time we may have an issue of law

21 THE COURT Madam Forelady and ladies and
22 gentlemen, I have a matter of law to take up with
23 counsel During this break please do not discuss the
24 case among yourselves Please leave your notepads in
25 your seats

1 And if anybody would like to go downstairs and
2 get some air, I'm giving you permission to go ahead
3 and take them If you would go with the bailiffs

4 (Whereupon, the jurors exit the courtroom)

5 MR SAVAGE Your Honor, at this point I may
6 be able to clarify this fairly quickly, I'm not sure,
7 to give defense counsel time to discuss this as well
8 I don't intend on asking them about -- basically what
9 is going to happen is I'm going to elicit, did you
10 talk to them, yes

11 And they asked three -- they asked them where
12 they had been that night All these three people,
13 defendants, gave different stories as to where they
14 were

15 I spoke to defense counsel Donald Howell who
16 was concerned about any follow-up questions there to
17 verify their alibi I don't intend on going into any
18 additional questions about determining alibi I'm
19 not going to broach that subject, so I don't think
20 that's going to be an issue

21 One of the issues that I'm concerned about,
22 which may be a Bruton issue, is that the defendants
23 from what you are about to hear, they will reply that
24 we were at -- for example Clarence Robinson said
25 that, we were all at my girlfriend's house on James

1 Island

2 I think we can get around that by I guess
3 redacting that statement to a certain extent where he
4 can say, I was at my girlfriend's house, instead of
5 implicating other defendants in this case with him
6 I don't know whether the Court is interested in
7 doing, that but that's kind of what --

8 THE COURT I guess I'm trying to figure out
9 exactly what testimony do you plan to elicit from
10 this witness? And then I will have to see what the
11 basis of the objection is

12 Other than that, you all will have to talk and
13 see if that is something you all can work out before
14 I even approach it

15 MR SAVAGE Do you want me to just go ahead
16 and do it first?

17 THE COURT Well I think you need to ask --
18 well, I think you need to tell me, what is it that
19 you're going to elicit from him?

20 MR SAVAGE I'm going to elicit from him, did
21 you speak to Colin Boston, David Brown, Darnel --
22 Clarence Robinson And then I'm going to ask him,
23 did you ask them any questions Did you and
24 Detective Antonio question them And from them, what
25 did you ask them

1 And he's probably going to respond that they
2 asked them where they were that night And Clarence
3 Robinson -- it has been reported to me that Clarence
4 Robinson stated that we were at my girlfriend's house
5 on James Island

6 THE COURT What were the responses of the
7 other defendants?

8 MR SAVAGE David Brown stated that we were
9 at my girlfriend's house downtown on Bay Side And
10 Colin Boston I believe said that we were riding
11 around Let me double-check Colin Boston said, we
12 are driving around like we always do

13 THE COURT Is there any objection to the
14 testimony, Mr Howell?

15 MR HOWELL Yes, ma'am I think number one
16 he is going to have to establish Miranda rights And
17 number two I think --

18 THE COURT Well I mean, we are going to get
19 into all that in-camera I'm trying to ask in theory
20 do you have any objection to what he is going to
21 elicit from the witness?

22 MR HOWELL Yes

23 THE COURT What is the basis of the
24 objection?

25 MR HOWELL The basis would be the client did

1 not understand Miranda rights And the second would
2 be he has identified on direct --

3 THE COURT I'm sorry, I can't hear you

4 MR HOWELL I'm sorry, Your Honor The
5 second would be as he mentioned that when they use
6 the word we were here and we are there, that tends to
7 implicate where they were as a group

8 THE COURT Let me maybe ask this
9 collectively What Mr Savage has suggested is
10 redacting any statements that these defendants made
11 regarding their codefendants, is that correct?

12 MR SAVAGE Yes, I was going to say --

13 THE COURT In theory, do you all have any
14 objection to that? So in other words there are no
15 Bruton issues because then Mr Brown won't be
16 referring to what Mr Boston and Mr Robinson were
17 doing, and likewise They would only be referring to
18 what they did individually

19 MR HARRIS Would that be resolved by instead
20 of saying we just saying, at my girlfriend's house?

21 THE COURT I think what he's suggesting is if
22 you redact it from the statement altogether

23 MR HARRIS As long as -- if the statement
24 comes out altogether, that's fine too If it's
25 redacted --

1 THE COURT I think what he wants to do is
2 redact any reference to we

3 MR HARRIS That's fine

4 MR SAVAGE At my girlfriend's house, at
5 my --

6 THE COURT You just take out we

7 MR SAVAGE I guess just driving around

8 THE COURT Ms Crumey?

9 MS CRUMEY I guess my only objection, well
10 concern would be the relevance of the question

11 THE COURT Well I'm going get to all of that,
12 but I'm trying to resolve each layer at a time
13 Because I assume he's going to testify in-camera that
14 he Mirandized them

15 I'm going to have to make some rulings about
16 whether they were properly Mirandized, vountariness,
17 coercion, whether they were under any sort of duress,
18 whether they had some mental deficit, and whether
19 they were under the influence from drugs or alcohol

20 Then we get to the substance of the statement
21 which I will have to determine is relevant, and
22 whether it's relevant I assume that's going to be
23 an objection And then if all that comes in then we
24 get to -- and I'm sort of going in backwards order, I
25 guess, because that's the first thing Mr Savage

1 suggested which was redacting the statements

2 So I'm trying to establish preliminary, is
3 there any exception to redacting the statements as he
4 has suggested to avoid any Bruton issues?

5 MS CRUMEY If we get past the prior, I have
6 no problem without being specific about we

7 THE COURT I understand Mr Harris, you've
8 already indicated you don't have a problem with it
9 And, Mr Howell, you have indicated you don't have a
10 problem likewise, correct?

11 MR HOWELL Correct

12 THE COURT You need to continue questioning
13 your client regarding --

14 MR SAVAGE Yes, Your Honor

15 IN-CAMERA DIRECT EXAMINATION

16 BY MR SAVAGE

17 Q Detective Kosarko, when you were at the James
18 Island Christian School, did you talk to Colin
19 Boston?

20 A Primarily Detective Antonio did any type --
21 most of the conversation I was more of a standby on
22 the side of her so she did most of the questioning

23 Q You were present, though, when she questioned
24 them?

25 A I was, but I was more behind her I really

1 didn't hear most of exactly what they were saying at
2 that time

3 Q Okay Is that the same as the others?

4 A It is, sir Yes, sir

5 MR SAVAGE This is kind of a moot point
6 right now I guess we will deal with this with
7 Detective Antonio I apologize

8 THE COURT So then we don't have a matter of
9 law?

10 MR SAVAGE Not as to this witness I think
11 a better way to address it will be with Detective
12 Antonio

13 THE COURT What is the scope of what you are
14 going to ask this witness so that while I have the
15 jury out I can deal with anything else

16 MR SAVAGE He is going to establish that
17 they spoke to them, gave them Miranda rights That
18 basically he searched --

19 THE COURT You need to go through the
20 foundational questions about Miranda if he is the
21 person that gave the Miranda warnings I still have
22 to make findings regarding that Or did Detective
23 Antonio Mirandize them? Who Mirandized them?

24 Q (By Mr Savage) Who Mirandized them?

25 A I did, sir

1 THE COURT Well then you need to ask him the
2 appropriate questions regarding that

3 Q (By Mr Savage) Detective Kosarko, when you
4 were talking to Colin Boston, did you read him his
5 Miranda rights?

6 A Yes, sir

7 Q Was that something you read off a card? Did
8 he sign something? How was it done, the procedure?

9 A I read a card

10 Q You read it off a card?

11 A Yes, sir

12 Q Do you have that card with you?

13 A Yes

14 Q Could you please read those ones that you read
15 to Mr Boston?

16 A Yes, sir These are cards that I carry in my
17 pocket all the time You have the right to remain
18 silent Anything you say can and will be used
19 against you in a court of law You have the right to
20 talk with a lawyer and have him present during any
21 questioning

22 If you cannot afford to hire a lawyer, one
23 will be appointed to represent you before any
24 questioning if you wish one If you decide to answer
25 questions without a lawyer present, you have the

1 right to stop answering questions at any time you so
2 choose Do you understand your rights?

3 Q And did Mr Boston acknowledge these rights?

4 A Yes, sir

5 Q And how did he do that?

6 A Verbally yes

7 Q Verbal yes?

8 A I understand, yes

9 Q Let's talk about I guess the personal
10 observations of Mr Boston Did he appear to be
11 intoxicated to you?

12 A No, sir

13 Q Under the influence of anything?

14 A No, sir

15 Q Was he waving or swerving while he was on his
16 feet, or while you were talking to him on his feet?

17 A No, sir

18 Q Was he standing when you were talking to him?

19 A I cannot recall exactly where he was, if he
20 was seated or standing

21 Q Did he seem to understand and respond to your
22 questions logically?

23 A Absolutely, yes

24 Q And in a manner that you thought that someone
25 would if they understood what you meant?

1 A Yes, sir

2 Q And was he under arrest at this point?

3 A I believe he was at this time

4 Q Okay And at some point did you search Mr
5 Boston?

6 A I did not search him physically No, sir

7 Q Did -- do you know whether Detective Antonio
8 searched him?

9 A At that time I don't believe so

10 Q You don't believe Did you see her or you are
11 just not sure?

12 A I am not sure

13 Q Okay At some point did you come into
14 evidence taken from Mr Boston?

15 A Yes I believe Officer Koegler collected the
16 shoes, put them in the paper bags that I had -- or
17 they were put in the paper bags and then I collected
18 the paper bags and I marked them and tagged them

19 Q Okay So you received those from Officer
20 Koegler?

21 A Correct Yes

22 Q And they were from the scene?

23 A Correct

24 Q Were those shoes -- I mean, were those shoes
25 taken from the scene or were they brought in from

1 someone else or were they taken that night?

2 A We took them directly from the scene in our
3 custody and straight to the station where I tagged
4 them and put them into evidence

5 Q Prior to you getting them, the shoes weren't
6 taken off that site anywhere?

7 A Correct They went strictly from the
8 defendant to the bag to me

9 Q And at some point were you given money that
10 was taken from Colin Boston as well?

11 A I believe so, yes

12 MS CRUMEY Your Honor, we are beyond the
13 Miranda

14 THE COURT Is there some question about the
15 custody of the evidence?

16 MR SAVAGE I'm sorry, Your Honor

17 THE COURT Is there some question about the
18 custody of the evidence?

19 MR SAVAGE Custody of the evidence?

20 THE COURT You need to ask the questions that
21 are relevant to the giving of the Miranda warnings
22 Did he only Mirandize Mr Boston or did he Mirandize
23 all three of these defendants?

24 Q (By Mr Savage) Did you Mirandize all three
25 of the defendants?

1 A Yes, sir

2 Q And did all three defendants acknowledge their
3 Miranda rights?

4 A Yes, sir

5 Q Did all -- did any of the defendants that you
6 Mirandized appear to be intoxicated or under the
7 influence of anything?

8 A No, sir

9 Q Did they appear to understand your questions
10 and respond in a logical manner?

11 A Yes, sir

12 MR SAVAGE Anything else you wanted?

13 THE COURT I don't know, it's your burden of
14 proof You'll have to make that decision if you need
15 to ask additional questions

16 MR SAVAGE Very well

17 Q (By Mr Savage) And did you collect items of
18 evidence from the other two defendants as well such
19 as shoes, clothing or cash?

20 A Yes, sir

21 Q Did you tag that?

22 A It was tagged, yes

23 Q You placed that into evidence?

24 A Correct

25 MS CRUMEY We are getting beyond I think

1 we are only trying to establish the Miranda

2 THE COURT This in-camera hearing is confined
3 to Miranda Anything beyond that is surplus

4 MR SAVAGE Okay So do you want me to go
5 through the evidence or not?

6 THE COURT We need to go through the
7 requirements of Miranda, and whether you have met
8 them by a preponderance of the evidence

9 MR SAVAGE Okay Court's indulgence, Your
10 Honor

11 Q (By Mr Savage) Detective Kosarko, did you or
12 to your knowledge you or Detective Antonio, did you
13 threaten the defendants in any way?

14 A No, sir

15 Q Did you promise them anything in exchange for
16 talking to you?

17 A No, sir

18 Q Did you promise them that the solicitor's
19 office will extend them any courtesies or favors by
20 talking to you?

21 A No, sir

22 MR SAVAGE I have no further questions
23 regarding Miranda

24 THE COURT Did he elicit any other statements
25 from any -- the only person that elicited statements

1 is Detective Antonio?

2 MR SAVAGE That's correct, Your Honor

3 THE COURT Mr Howell, do you have any
4 questions?

5 MR HOWELL Yes, ma'am, very briefly

6 THE COURT You may proceed

7 MR HOWELL Thank you, Your Honor

8 IN-CAMERA CROSS-EXAMINATION

9 BY MR HOWELL

10 Q You mentioned to Mr Savage that you sort of
11 evaluated them in terms of thinking, understanding
12 that they understood you Kind of a strange way to
13 say it, I'm sorry

14 A Uh-hum

15 Q Tell me about the nature of that evaluation?
16 What kind of conversation did you have with them?

17 A As far as just their mannerisms, their speech
18 was normal from what I could tell They understood
19 exactly what the questions were to them from
20 Detective Antonio So that they weren't in any way
21 slurring their speech or anything like that

22 Q Yeah Let me ask it this way just to make
23 sure we're on the same wave length You come up, and
24 I'm here for Mr Brown in the plaid shirt When you
25 came up, Mr Brown was probably in handcuffs?

1 A Yes

2 Q Handcuffed behind his back?

3 A Uh-hum

4 Q Standing outside in the parking lot area,
5 correct?

6 A I believe he was, yeah I cannot recall
7 exactly

8 Q okay And before you read him his Miranda
9 rights, did you converse with him at all?

10 A I did not speak to him about anything, no

11 Q So then you read the card that you just read
12 into evidence, correct?

13 A Correct

14 Q And what did he say to you?

15 A I remember him just saying, yes, sir, I
16 understood

17 Q Other than that word yes, was there any
18 particular conversation between the two of you?

19 A I don't recall anything further from him as
20 far as the Miranda, no

21 MR HOWELL That's all the questions I have

22 THE COURT Any questions, Ms Crumey?

23 IN-CAMERA CROSS-EXAMINATION

24 BY MS CRUMEY

25 Q As far as Mr Boston was concerned, did you

1 specifically ask him about his educational level?

2 A Did I personally?

3 Q Yes

4 A I don't remember asking him, no

5 Q And your interpretation that he understood was
6 based on his verbal yes?

7 A Uh-hum

8 Q And did you ask about any alcohol consumption?

9 A No, ma'am

10 Q And how close were you standing to him?

11 A I was probably as far as me to this microphone
12 if he's sitting there

13 Q So you just -- he didn't appear to be
14 intoxicated, but you don't know if he had anything to
15 drink?

16 A No, ma'am

17 Q If he had had anything to drink, would that
18 have affected the way you asked the questions?

19 A I can't answer that I don't know I can't
20 answer it to how much alcohol impairs him He
21 answered yes to the Miranda

22 Q And yes was the only response he made?

23 A Yes

24 MS CRUMEY That's all the questions I have

25 THE COURT Mr Harris

IN-CAMERA CROSS-EXAMINATION

BY MR HARRIS

Q Just a few regarding my client, this is
Clarence Robinson I believe you also read him his
Miranda rights And also no story from him
beforehand?

A To my knowledge, no, sir

Q Okay Did you ask him if he could understand
the English language?

A Personally, no, I did not Before I read the
Miranda or?

Q Right

A No, sir

Q To determine beforehand if he understood
English?

A No, sir

Q Okay Didn't ask him about education or
alcohol?

A No, sir

Q Drugs?

A No, sir

Q Okay And the answer is yes, that was it?

A From what I recall, yes

Q Then he was questioned by Antonio?

A Correct

1 Q Okay

2 MR HARRIS I've got nothing further, Your
3 Honor

4 THE COURT Any redirect?

5 MR SAVAGE No, Your Honor I just want to
6 clarify what I told you before, I misspoke The
7 statements that are going to be elicited from Colin
8 Boston is that they asked him who the car was
9 registered to, and also they asked him --

10 THE COURT Who is they? Who are you
11 referring to?

12 MR SAVAGE I guess Detective Antonio asked
13 him

14 THE COURT I have to take that up when
15 Detective Antonio --

16 MR SAVAGE I know, yes But I just wanted
17 to clarify with you I misspoke Before I said the
18 statement that was going to be elicited from Colin
19 Boston was that they were driving around I just
20 wanted to point out to you that's not correct

21 I misspoke and I just wanted to clear that up
22 with the Court so if I changed it later on you did
23 not think I was trying to mislead you

24 THE COURT I have not heard anything
25 objectionable up to this point from this witness

1 He's going to testify giving Miranda warnings, but he
2 is not testifying as to any statements that were made
3 other than the defendants saying yes

4 I think it's premature for me to make any
5 ruling as to the admissability of their statements
6 because they have not been elicited yet

7 MR HOWELL I agree with that, Your Honor

8 THE COURT So I have to hear from Detective
9 Antonio and we'll have to go from there

10 MR SAVAGE Yes, Your Honor

11 THE COURT Please bring in the jury Still
12 downstairs? Let's take advantage of this, you all
13 take a quick restroom break

14 (Whereupon, a recess was taken)

15 THE COURT Is the State ready to proceed?

16 MR SAVAGE Yes, Your Honor

17 THE COURT The defense ready, Mr Howell?

18 MR HOWELL Yes, ma'am

19 THE COURT Ms Crumey?

20 MS CRUMEY Yes, Your Honor

21 THE COURT Mr Harris?

22 MR HARRIS Yes, Your Honor

23 THE COURT We are going to try to finish this
24 witness today, and I don't plan to go very far beyond
25 5 00 if possible Juries just hate it The county

1 hates it, we are broke I hate to be that direct but
2 it's the truth And I have made a promise to them
3 that I will try to keep them within budget So
4 that's what we are going to try to do today

5 Yes, sir

6 MR HARRIS I have one issue It's probably
7 not a big deal The officer that just testified was
8 outside talking with officers that are going to be
9 testifying And --

10 THE COURT Do you have some indication they
11 were talking about the testimony?

12 MR HARRIS I have no idea, but I don't --
13 I'm not saying there was anything wrong When I
14 walked near them they stopped talking So I don't
15 know if they were talking about the testimony of the
16 case or what, but it's the officer that just
17 testified I just to keep the sequestering of the
18 witnesses that have testified from going out and
19 talking to witnesses that are about to testify I
20 just ask that that be kind of monitored because it
21 was going on right there

22 MR SAVAGE I don't know, Your Honor I'm in
23 here

24 THE COURT But you might want to instruct
25 them not to They might have been talking about the

1 weather, but it's no different that what I tell the
2 jurors, even an innocent conversation might be
3 misperceived or misconstrued to someone else
4 observing it You don't know what they're talking
5 about

6 So I think probably just to keep it all
7 aboveboard just make sure they say hello and keep it
8 moving

9 MR SAVAGE I will, Your Honor

10 THE COURT Okay All right Please bring in
11 the jury

12 (Whereupon, the jurors enter the courtroom)

13 THE COURT Ladies and gentlemen, we
14 appreciate your patience We are going to resume the
15 testimony I anticipate that we will go a little
16 over 5 00 today, but no later than 5 30

17 If that's going to create a problem for
18 anyone, if you all could let me know so that I can
19 make any phone calls But in the absence of that we
20 will proceed with the witness But I assure you that
21 we will not go any later than 5 30

22 You may proceed

23 MR SAVAGE Thank you, Your Honor

24 CONTINUED DIRECT EXAMINATION

25 BY MR SAVAGE

1 Q Detective Kosarko, did you -- when you
2 responded to the Christian school, who were you with?

3 A Detective Antonio

4 Q And you spoke to all three defendants that
5 were there at the time?

6 A Yes

7 Q Did you read them their Miranda rights?

8 A I did

9 Q And how did you -- did you read them from a
10 card, from memory, how did you read that to them?

11 A I read it from a card that were issued

12 Q And could you read to the jury what you read
13 to the defendants?

14 A Sure You have the right to remain silent
15 Anything you say can and will be used against you in
16 a court of law You have the right to talk to a
17 lawyer and to have him present during any
18 questioning If you cannot afford to hire a lawyer,
19 one will be appointed to represent you before any
20 questioning if you wish one

21 If you decide to answer any questions without
22 a lawyer present, you have the right to stop
23 answering questions at any time you so choose Do
24 you understand your rights

25 Q Did the defendant Colin Boston acknowledge his

1 rights?

2 A Yes, sir, he did

3 Q How did he do that?

4 A Nodding and saying yes

5 Q Verbally said yes?

6 A Correct, verbally

7 Q And did Clarence Robinson acknowledge his
8 rights?

9 A Yes, sir

10 Q How did he do that?

11 A Verbally saying yes

12 Q And David Brown, did he acknowledge his
13 rights?

14 A Yes, sir verbally saying yes

15 Q Okay, very well At some point did you
16 collect items to place into evidence that night?

17 A I did, sir

18 Q Do you remember collecting any evidence
19 pertaining to Colin Boston?

20 A I believe shoes

21 MR SAVAGE Your Honor, may I approach?

22 THE COURT You may

23 Q (By Mr Savage) Detective Kosarko, I'm
24 showing you what has been marked as State's Exhibit
25 17, and State's Exhibit 16 Could you tell me --

1 let's do these one at a time State's Exhibit 16, do
2 you recognize those?

3 A Yes, those are Air Jordan, black Air Jordan
4 sneakers

5 Q And where did they come from?

6 A I believe Colin Boston

7 Q Were they taken from Colin Boston on the night
8 he was arrested?

9 A Yes, sir

10 Q Did you take those shoes?

11 A I believe Officer Koegler actually took them
12 off and put them in a bag and I collected them from
13 him

14 Q And placed them into evidence?

15 A Yes, sir

16 MR SAVAGE Your Honor, at this time the
17 State moves Exhibit 16 into evidence

18 THE COURT Any objection?

19 MR HOWELL None from Mr Brown

20 MS CRUMEY No objection

21 MR HARRIS No, Your Honor

22 THE COURT Marked and admitted without
23 objection

24 (Whereupon, State's Exhibit No 16 is admitted
25 into evidence)

1 Q (By Mr Savage) And, Detective Kosarko, I'm
2 showing you what has been marked State's Exhibit 17
3 Do you recognize that?

4 A Yes, sir

5 Q What is that?

6 A That's the shirt that Boston was wearing that
7 night

8 Q That's Colin Boston, the defendant?

9 A Yes, sir

10 Q That was the shirt he was wearing that night?

11 A Correct

12 MR SAVAGE Your Honor, at this point the
13 State moves Exhibit 17 into evidence

14 THE COURT Any objection?

15 MR HOWELL No objection, Your Honor

16 MS CRUMEY No objection

17 MR HARRIS None, Your Honor

18 THE COURT Marked and admitted without
19 objection

20 (Whereupon, State's Exhibit No 17 is admitted
21 into evidence)

22 Q (By Mr Savage) Detective Kosarko, I'm now
23 showing you what has been marked as State's Exhibit
24 13 Do you recognize those?

25 A Yes Those are the sneakers that were worn by

1 one of the defendants that night

2 Q Which defendant, if you know?

3 A Darne1 Brown

4 MR SAVAGE Your Honor, the State moves
5 Exhibit 13 into evidence

6 THE COURT Any objection?

7 MR HOWELL No objection

8 THE COURT Ms Crumey?

9 MS CRUMEY No objection

10 MR HARRIS None, Your Honor

11 THE COURT Marked and admitted without
12 objection

13 (Whereupon, State's Exhibit No 13 is admitted
14 into evidence)

15 Q (By Mr Savage) Detective Kosarko, I'm
16 showing you what has been marked as State Exhibit 15
17 Do you recognize those?

18 A Yes, sir It's also a pair of sneakers taken
19 from a defendant

20 Q Which defendant?

21 A These are from Clarence Robinson

22 Q And they were taken from the night of the --

23 A Robbery, yes

24 MR SAVAGE Your Honor, the State moves into
25 evidence State's Exhibit 15

1 THE COURT Any objection, Mr Howell?

2 MR HOWELL None, Your Honor

3 THE COURT Ms Crumey?

4 MS CRUMEY No, Your Honor

5 THE COURT Mr Harris?

6 MR HARRIS No, Your Honor

7 THE COURT Marked and admitted without
8 objection

9 (Whereupon, State's Exhibit No 15 is admitted
10 into evidence)

11 Q (By Mr Savage) Detective Kosarko, I'm now
12 showing you what is marked as State's Exhibit 14
13 what are they?

14 A Gray and black Timberland sneakers -- boots

15 Q Where did they come from?

16 A They came from David Brown

17 Q And is that taken from the night he was
18 arrested?

19 A Yes, sir

20 MR SAVAGE Your Honor, State moves Exhibit
21 14 into evidence

22 MR HOWELL No objection, Your Honor

23 THE COURT Ms Crumey?

24 MS CRUMEY No objection

25 MR HARRIS No objection

1 THE COURT Marked and admitted without
2 objection

3 (Whereupon, State's Exhibit No 14 is admitted
4 into evidence)

5 Q (By Mr Savage) Detective Kosarko, I'm
6 showing you what has been marked as State's Exhibit
7 24 Do you recognize that?

8 A Yes That was money that was taken off one of
9 the defendants that night Looks like Robinson
10 again, Clarence Robinson

11 Q How much money is it?

12 A According to the tag it's \$225

13 MR SAVAGE Your Honor, at this time State
14 moves into evidence Exhibit 24

15 THE COURT Any objection?

16 MR HOWELL None, Your Honor

17 THE COURT Ms Crumey?

18 MS CRUMEY No objection

19 THE COURT Mr Harris?

20 MR HARRIS No objection, Your Honor

21 THE COURT Marked and admitted without
22 objection

23 (Whereupon, State's Exhibit No 24 is admitted
24 into evidence)

25 Q (By Mr Savage) Detective Kosarko, I'm

1 showing you State's Exhibit No 26 Do you recognize
2 that?

3 A Yes, sir It is also money taken from one of
4 the defendants

5 Q How much is it and which defendant?

6 A Darnel Brown and \$230 from the armed robbery

7 MR SAVAGE Your Honor, State moves into
8 evidence Exhibit No 26

9 THE COURT Any objection, Mr Howell?

10 MR HOWELL None, Your Honor

11 THE COURT Ms Crumey?

12 MS CRUMEY No objection

13 THE COURT Mr Harris?

14 MR HARRIS No objection

15 THE COURT Marked and admitted without
16 objection

17 (Whereupon, State's Exhibit No 26 is admitted
18 into evidence)

19 Q (By Mr Savage) Detective Kosarko, I'm
20 showing you what has been marked as State's Exhibit
21 25 Do you recognize that?

22 A Yes, sir

23 Q What is that?

24 A It's money taken from Colin Boston, \$210

25 MR SAVAGE Your Honor, at the point the

1 State moves into evidence Exhibit 25

2 THE COURT Mr Howell?

3 MR HOWELL No objection

4 THE COURT Ms Crumey?

5 MS CRUMEY No objection

6 THE COURT Mr Harris?

7 MR HARRIS No objection

8 THE COURT Marked and admitted without
9 objection

10 (Whereupon, State's Exhibit No 25 is admitted
11 into evidence)

12 MR SAVAGE Court's indulgence

13 I have no further questions, Your Honor

14 THE COURT Any questions, Mr Howell?

15 MR HOWELL Yes, ma'am, Your Honor

16 THE COURT You may proceed

17 CROSS-EXAMINATION

18 BY MR HOWELL

19 Q Your first involvement was to go down to
20 Benders itself?

21 A Yes, sir

22 Q And what did you do there?

23 A I was the first arriving detective on the
24 scene So I more or less got everybody separated who
25 weren't separated already, had everybody stop talking

1 and began taking the written statements

2 Q Okay And the purpose of taking the
3 statements is to get good, accurate information while
4 it's fresh in everybody's mind, correct?

5 A Correct

6 Q You're trying to catch these guys, whoever
7 they may be, correct? You have to answer out loud

8 A Yes

9 Q I'm not trying to pick at you That does not
10 come in the typewriter

11 A Yes

12 Q And you want to be as accurate as possible?

13 A Yes

14 Q You want to get as much information as you
15 can, correct?

16 A Yes

17 Q You want to be as precise as you can?

18 A Correct

19 Q I think the two people that you talked to were
20 Ms Nance and Andre Thompson, does that sound right?

21 A Yes, sir

22 Q Was it limited to those two?

23 A It was that night, yes

24 Q Okay And Mr Thompson, I believe, told you
25 that he saw someone wearing black Air Jordan tennis

1 shoes?

2 A That's correct

3 Q And that he only saw the feet and that's all
4 he saw?

5 A Yes, sir

6 Q Did he mention to you any other details about
7 any of the suspects?

8 A No, sir Not that I --

9 Q And when you are talking you are trained to
10 get as much as you can, right?

11 A Yes

12 Q You don't want one fact if there's three, you
13 want to get all three?

14 A Correct

15 Q Was anybody in the bar that didn't talk to you
16 for any reasons?

17 A There were many people in the bar that didn't
18 talk to me

19 Q Okay But did anyone say we don't want to
20 cooperate or not give information or anything that
21 you knew of?

22 A Not to my knowledge as far as someone telling
23 me no, they did not want to talk to me, no

24 Q Okay One of the things you obviously want to
25 know is whether there was, I guess, a getaway car or

1 vehicle that you could identify?

2 A Yes

3 Q Did you get any information on that?

4 A Not on -- the only information we received was
5 from the bartender

6 Q Ms Nance?

7 A Ms Nance, correct She stated that she
8 believes she saw an SUV leaving the street from
9 behind the bar

10 Q Okay But no other information about any
11 other possible vehicle that could have been involved?

12 A That's correct, sir

13 Q Now you took these various shoes from the
14 people at the scene that had been arrested, didn't
15 you?

16 A Yes

17 Q Did you see -- so I guess you saw all of them,
18 didn't you?

19 A Yes, sir

20 Q And in your conversations with people at the
21 bar, did anybody ever mention to you that anybody had
22 on blue jeans?

23 A I don't recall that, no

24 Q Did anyone mention that somebody had an
25 earring?

1 A No, sir

2 Q Did anybody mention that somebody had on a
3 black and white Scarface jacket?

4 A No, sir

5 Q Do you remember see one of the fellows out
6 there with that on?

7 A I don't recall that, no, sir

8 Q Okay Let me -- do you remember seeing that
9 individual on the scene?

10 A Yes, sir

11 Q Okay Now you see he has got on a black and
12 white jacket?

13 A Uh-hum

14 Q It's got Scarface written across it?

15 A Yes, sir

16 Q Looks like Al Pacino up here?

17 A Uh-hum

18 Q He's got an earring Did you gather any
19 information or know of any information gathered in
20 the bar about an individual that fit that
21 description?

22 A No, sir

23 MR HOWELL I think that's all the questions
24 I have, Your Honor

25 THE COURT Ms Crumey

CROSS-EXAMINATION

BY MS CRUMEY

Q Investigator Kosarko?

A Yes, ma'am

Q You spoke with Ms Nance and Mr Thompson?

A Correct

Q And you actually took statements from those two individuals?

A Yes, ma'am

Q And you wrote statements for them?

A Yes, ma'am

Q And you do that for any particular reason that you write the statement as opposed to having them writing the statement?

A Yes, ma'am Not everybody has handwriting that's legible So I can read my own writing That way when I get back to the station I know exactly what that person said as I wrote it word-for-word what they told me

Q So when you record the statement you wrote word-for-word what they told you?

A Yes, ma'am

Q And then you have them read it and sign it?

A Well I read it to them, yes, ma'am And then they sign it as being true and correct If there is

1 any corrections they want to make at that time, I can
2 scratch out or add anything else and then they can
3 sign it

4 Q So if they had anything to add or subtract
5 from the statement at that point, you would have them
6 do that at that time?

7 A Yes, ma'am

8 Q And based on the statements that you took, did
9 you go back and retract any of their statements?

10 A No, ma'am

11 Q And you didn't add anything else to those
12 statements?

13 A No, ma'am

14 Q And you spoke with them within probably an
15 half hour of the time the robbery occurred?

16 A Probably The time is on top of the
17 statements, so

18 Q You responded to the scene shortly thereafter?

19 A Yes, ma'am

20 Q And you began to take statements shortly
21 thereafter?

22 A Correct

23 Q And as far as the items that were taken from
24 Mr Boston and Mr Brown and Mr Robinson, were they
25 passed to you or did you physically collect these

1 items?

2 A They were passed to me on scene right there
3 and I took custody of them, yes

4 Q So as you recited what the items that were
5 marked into evidence, you just read what was marked
6 or previously passed to you, you didn't physically
7 take them from anyone?

8 A Right And I tagged them into evidence, yes

9 Q So you don't know as to where money was
10 located or how it was actually physically located,
11 because it was just given to you as coming from this
12 individual, is that correct?

13 A Right There was I believe it's Officer
14 Koegler and Detective Antonio and I was behind them
15 so they were removing -- they take the items off and
16 just passing them to me

17 Q So they just told you the name that goes with
18 them, correct?

19 A Well I was there as they were doing that, yes
20 I mean I was right there so I know, right

21 MS CRUMEY That's all I have

22 THE COURT Mr Harris

23 MR HARRIS Thank you, Your Honor, may it
24 please the Court

25 THE COURT Yes, sir, you may proceed

CROSS-EXAMINATION

BY MR HARRIS

Q Detective Kosarko, detective, right?

A Yes, sir

Q You've had a lot of police training, correct, to be a detective?

A More or less, yes, sir

Q But you went to the police academy?

A Yes, sir

Q You've taken courses on I'm sure a lot of different areas of police work since you finished?

A Yes

Q Okay You have to have continuing education to keep up with -- or to become a detective you have to work a long time to -- how long have you been a police officer?

A About eight years and about seven months

Q Okay When you were at the academy, they teach you about the importance of police reports, right?

A Yes

Q Because this is your record of what happened?

A Correct

Q You were the detective on the scene determining what happened?

1 A (Affirmative head shake)

2 Q Okay These words that are in your report are
3 the words that -- because this case is February of
4 2008, here we are it's June, right, June 2009 So a
5 year-and-a-half later?

6 A (Affirmative head shake)

7 Q So this is so you don't have to just remember
8 stuff on the fly from a year-and-a-half ago because
9 we never know when a case is going to trial, it may
10 be two years?

11 A Right

12 Q And God forbid something may happen to you, or
13 you may retire, right?

14 A Yes

15 Q Or you may be transferred You may say, I
16 don't want to be a cop anymore, I want to be a lawyer
17 now Anything, right?

18 A Yes

19 Q Okay So when you write this statement you
20 want to make sure you put anything and everything in
21 there just in case somebody else gets it and has to
22 be sitting here in this seat going, this is Detective
23 Kosarko's report, I'm taking it as this is the word,
24 this is what happened that day?

25 A It is I mean it's a summary of what events

1 that took place that night, yes

2 Q Right So let's go to this statement you took
3 from Mr Andre Thompson

4 MR HARRIS May I approach the witness, Your
5 Honor?

6 THE COURT You may

7 Q (By Mr Harris) Is that a copy of the
8 statement?

9 A It is

10 Q Okay And you said you took it word-for-word
11 from what he said, right?

12 A Correct

13 Q You are writing it because you wanted to be
14 able to read it later for your report?

15 A Right

16 Q Okay So when you said, describe the
17 suspects, he gave you -- and you wrote that question,
18 that was your question to him?

19 A Correct

20 Q And he word-for-word gave you an answer, I
21 only saw the feet of the guy who held me down,
22 period He was wearing a pair of black Air Jordan
23 tennis shoes and he had a gray pistol

24 A Uh-hum

25 Q Right?

1 A Yes

2 Q That's his word-for-word?

3 A Yes

4 Q Okay And in your report --

5 MR HARRIS Court's indulgence, Your Honor

6 THE COURT Uh-hum

7 Q (By Mr Harris) Your report you also said,

8 Mr Thompson said he could only describe the suspect

9 who was holding the gun to his head He was wearing

10 a pair of black Air Jordan tennis shoes When asked

11 to describe the four suspect's movements Mr Thompson

12 responded, he couldn't because his face was down the

13 majority of the time the suspects were in the bar

14 Okay This is based on his statement and your
15 interview with him?

16 A Yes

17 Q Okay

18 MR HARRIS I have nothing further, Your
19 Honor

20 THE COURT Any redirect?

21 MR SAVAGE Yes, Your Honor

22 THE COURT You may proceed

23 REDIRECT EXAMINATION

24 BY MR SAVAGE

25 Q Detective Kosarko, let me show you what is

1 State's Exhibit 35 The shoes in that picture, what
2 color are they?

3 A Black and red

4 Q And now I am showing you what is marked as
5 State's Exhibit 13 what color are those shoes?

6 A Black and red

7 Q Detective Kosarko, do you know who Officer
8 Tina Danik is?

9 A I'm sorry?

10 Q Officer Danik, do you know who she is?

11 A She is a new officer or?

12 Q I'm asking you

13 A I know the name, but I don't know her
14 personally, I have never worked with her

15 Q Okay Do you know whether she was at the
16 scene that night at all at the bar?

17 A I believe she might have taken the initial
18 incident reports

19 Q Do you know whether Andre Thompson spoke to
20 her or not?

21 A I do not

22 Q Regarding the money that you collected, you
23 made the statement -- just to clarify You
24 personally observed the shoes coming -- the shoes,
25 the articles of clothing and the cash, did they come

1 from each individual defendant that you took it from,
2 or was it just kind of lying on the ground?

3 I want you to be a little more clear as to
4 where, if you know, where those items came from?

5 A They came from each individual defendant We
6 moved from car to car to car on each individual
7 defendant

8 Q So each shoe, the shoes you collected came off
9 the feet of the defendants?

10 A Correct

11 Q And the cash that you collected came?

12 A From those --

13 Q Person of the defendant?

14 A Yes, sir

15 Q Some were on the person, you may not know
16 exactly where, but it came off their person?

17 A Right

18 Q And the same with the other articles of
19 clothing?

20 A Yes, sir

21 MR SAVAGE Court's indulgence

22 No further questions, Your Honor

23 THE COURT Any objection to the witness being
24 excused from the defense, Mr Howell?

25 MR HOWELL May I have one follow-up?

1 THE COURT You may

2 MR HOWELL Thank you

3 RECROSS-EXAMINATION

4 BY MR HOWELL

5 Q When you were interviewing -- when you went to
6 interview Ms Nance and Mr Thompson, just go through
7 very briefly with us, the jury, you sit down at the
8 table, what do you tell them? I'm here to get a
9 statement, I want to hear, what is your kind of MO on
10 doing that? How do you stress the importance to let
11 them know what you are doing?

12 A Well as I sit them down, I explain to them my
13 job, what I am here to do At that point I'll just
14 ask them, I'm going to write the statement for you if
15 that's okay

16 If they agree, what I will say is I cannot
17 write as fast as you talk, so bear with me if I
18 interrupt you And go ahead and tell me what
19 happened Start from the beginning and go from
20 there

21 Q Okay All right And your job as you said is
22 to get it down word-for-word

23 A To the best of my ability, yes, sir

24 Q You have control over that, you are doing the
25 writing?

1 A Yes, sir

2 MR HOWELL Thank you

3 THE COURT Anything further, Mr Savage?

4 MR SAVAGE Yes, Your Honor

5 REDIRECT EXAMINATION

6 BY MR SAVAGE

7 Q Detective Kosarko, Mr Harris talked about the
8 training that you go through, that extensive
9 training And when you are taking a statement it's
10 important to get all those details down and be
11 accurate and make is as much information as possible?

12 A Uh-hum

13 Q Do you know whether Andre Thompson had that
14 training?

15 A No, sir

16 MR SAVAGE No further questions, Your Honor

17 THE COURT Any objection to the witness being
18 excused from the State?

19 MR SAVAGE None, Your Honor

20 THE COURT Did you have other questions?

21 MR HARRIS I did, Your Honor, briefly

22 THE COURT I will give you some latitude
23 You may proceed

24 RECROSS-EXAMINATION

25 BY MR HARRIS

1 Q Regarding the shoes

2 THE COURT Is that within the scope of
3 redirect?

4 MR HARRIS It was the first question that
5 Mr Howell responded to

6 THE COURT I will give you some latitude,
7 but

8 MR HARRIS I'm sorry, I stood up and you --

9 THE COURT I'm sorry, I might not have seen
10 you out of the corner of my eye I'm sorry

11 Go ahead, proceed

12 MR HARRIS May I approach the witness?

13 THE COURT Yes, sir, you may

14 Q (By Mr Harris) These shoes you said are
15 what?

16 A Red and black

17 Q With white laces?

18 A White laces, yes

19 Q And these are Jordan's?

20 A I believe so, yes

21 Q There's Michael right there?

22 A These shoes, you referred to those as -- what
23 are those?

24 A Air Jordan's

25 Q And what color are those?

1 A Black

2 Q Okay And these are not the shoes that were
3 taken off of Darnel Brown, is the correct?

4 A I'd have to look at the tag This is Colin
5 Boston's tag

6 Q So Colin Boston had black Air Jordan's?

7 A Yes, sir

8 Q Darnel had black and red Air Jordan on?

9 A Yes, sir

10 Q And Air Jordan, that's a Nike shoe and do you
11 know -- that's Michael Jordan, the basketball player?

12 A I'm assuming, yes

13 MR HARRIS I have nothing further, Your
14 Honor

15 THE COURT All right Any objection -- any
16 further redirect from the State?

17 MR SAVAGE No, Your Honor

18 THE COURT Any objection to the witness being
19 excused from the State?

20 MR SAVAGE No, Your Honor

21 THE COURT From the defense, Mr Howell?

22 MR HOWELL None, Your Honor

23 THE COURT From the defense, Ms Crumey?

24 MS CRUMEY No

25 THE COURT From the defense, Mr Harris?

1 MR HARRIS No, ma'am

2 THE COURT The witness is excused

3 THE WITNESS Thank you

4 THE COURT You're welcome

5 Madam Forelady, ladies and gentlemen, we are

6 going to take advantage of this break in testimony

7 and take our evening recess During this break

8 please do not discuss the case among yourselves or

9 with anyone else Please don't allow yourselves to

10 be exposed to any media coverage about the case And

11 again please don't do any independent research on the

12 Internet

13 We will resume in the morning at 9 30 And we

14 would ask you be prompt, we will begin punctually at

15 that time Please leave your notepads in your seats

16 and again you'll return directly to your jury room,

17 but please don't have any contact with anyone in or

18 about the courthouse in the morning

19 Have a great evening and we will see you in

20 the morning

21 (Whereupon, the jurors exit the courtroom)

22 THE COURT Is there anything before we

23 adjourn for the evening from the State?

24 MR SAVAGE No, Your Honor

25 THE COURT From the defense, Mr Howell?

1 MR HOWELL None, Your Honor

2 THE COURT From the defense, Ms Crumey?

3 MS CRUMEY No, Your Honor

4 THE COURT From the defense, Mr Harris?

5 MR HARRIS None, Your Honor

6 THE COURT You all have a good evening, I'll

7 see you in the morning at 9 30

8 (Whereupon, the proceedings in this matter

9 before the Court were adjourned for the evening)

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, in the General Sessions Court for the week of June 22nd through June 26th, 2009

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

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2008-GS-10-3832, 3845

STATE OF SOUTH CAROLINA)

Plaintiff)

V)

TRANSCRIPT OF RECORD)

DAVID BROWN, COLIN BOSTON)
and CLARENCE ROBINSON)

Defendant)
-----)

JUNE 24, 2009
Charleston, South Carolina
VOLUME 3

B E F O R E

THE HONORABLE DEADRA L JEFFERSON, JUDGE

A P P E A R A N C E S

MR DALE SAVAGE, Assistant Solicitor
MR MICHAEL SAHN, Assistant Solicitor
Representing the State

MR DONALD HOWELL, Esquire Representing the
Defendant Brown

MS SHARI CRUMEY, Esquire
Representing the Defendant Boston

MR STEPHEN HARRIS, Esquire
Representing the Defendant Robinson

Anne Bouley Meyer, RPR
Circuit Court Reporter

1 THE COURT Is the State ready to proceed?

2 MR SAVAGE Yes, Your Honor

3 THE COURT Is the defense, Mr Howell, ready
4 to proceed?

5 MR HOWELL Yes, Your Honor

6 THE COURT Defense, Ms Crumey, ready to
7 proceed?

8 MS CRUMEY Yes, ma'am

9 THE COURT And defense, Mr Harris, ready to
10 proceed?

11 MR HARRIS Ready, Your Honor

12 THE COURT Go ahead and bring in the jury
13 (Whereupon, the jurors enter the courtroom)

14 THE COURT Madam Forelady, ladies and
15 gentlemen, I hope that you all had a restful evening
16 We will now resume with the trial testimony

17 Mr Savage, you may proceed when you are
18 ready

19 MR SAVAGE Thank you, Your Honor State
20 calls Detective Jennie Antonio

21 THE COURT Come to the witness stand to be
22 sworn

23 MS JENNIE ANTONIO,
24 after having first been duly sworn to state the
25 truth, the whole truth and nothing but the truth,

1 testified on her oath as follows

2 THE COURT You may proceed

3 MR SAVAGE Thank you, Your Honor

4 THE COURT You're welcome

5 DIRECT EXAMINATION

6 BY MR SAVAGE

7 Q Good morning, Ms Antonio

8 A Good morning

9 Q Where do you work?

10 A City of Charleston Police Department

11 Q And how long have you worked for the
12 Charleston City Police Department?

13 A September of this year will be 12 years

14 Q And can you briefly explain or describe your
15 duties at the Charleston Police Department?

16 A I'm currently assigned to the central
17 investigative office, I'm a detective I have been
18 there for I guess about nine years

19 Q And as a detective, what crimes do you
20 generally investigate?

21 A Now I am currently I have a duty as a task
22 force officer with the ATF, with the federal agency,
23 to primarily investigate cases involving felons with
24 guns

25 Q And prior to that?

1 A Prior to that I was assigned to the armed
2 robbery and sexual assault unit And we would cover
3 from armed robberies to aggravated assaults and
4 sexual assaults

5 Q Were you involved in the investigation of
6 Benders Bar and Grill in West Ashley in February of
7 2008?

8 A Yes, sir, I was working night shift that
9 night

10 Q And did you respond to the bar that night?

11 A Yes, sir, I did

12 Q When you arrived there, did you talk to any
13 witnesses and take statements?

14 A Yes, sir There were several patrons in the
15 bar at the time There were two other detectives
16 there, Detective Kosarko and Corporal Brown who were
17 on the night shift

18 So, yes, we did take statements

19 Q At some point during that night while you were
20 at the bar, did you learn that there were four
21 suspects located at another location?

22 A Yes, I did

23 Q Did you respond to that location?

24 A Yes, sir We were requested by the patrol
25 officers in the Team 3 area to respond to their

1 location

2 Q And where was that location that you responded
3 to?

4 A It was 12 Sawgrass Road

5 Q What is at that location?

6 A I'm not sure on the exact name, but it's a
7 church and it's a church school, and it's a pretty
8 large parking lot behind some fast food businesses
9 and a gas station

10 Q Did you respond to that location with another
11 detective?

12 A Yes, sir, Detective Kosarko

13 Q When you arrived at that location, did you see
14 -- did you see the suspects there?

15 A Yes, sir, I saw four defendants at the time
16 were in four individual marked patrol cars

17 Q And who were they?

18 A They were Colin Nevel Boston, Clarence Montez
19 Robinson, David Lee Brown and Darnel Wayne Brown

20 Q At some point -- when you got there, were the
21 defendants placed under arrest at that time?

22 A Yes, sir, they had been

23 Q Did you search that car at any time?

24 A I was shown the car by Sgt Scott Ray In the
25 backseat of the car, the first time I had ever seen

1 where the top of the seat was kind of open where you
2 could see into the trunk He showed me three guns
3 that were there in plain sight

4 Then they showed me there was money crumpled
5 up and stuffed into the glove compartment

6 Q How much money was that?

7 A That money totaled \$21 Sixteen \$1 bills and
8 one \$5 bill

9 Q Did you collect that money?

10 A Yes, sir, we did

11 MR SAVAGE Your Honor, may I approach?

12 THE COURT You may

13 Q (By Mr Savage) Detective Antonio, I'm
14 showing you what is marked as State's Exhibit 27
15 Could you please take a look at that Do you
16 recognize that?

17 A Yes, sir

18 Q What is that?

19 A It's the sixteen \$1 bills and the one \$5 bill
20 that was removed from the glove-box of his vehicle,
21 Mr Boston

22 Q Colin Boston's vehicle on the night of the
23 arrest?

24 A Yes, sir

25 MR SAVAGE Your Honor, the State moves

1 Exhibit 27 into evidence

2 THE COURT Any objection, Mr Howell?

3 MR HOWELL No, Your Honor

4 THE COURT Ms Crumey?

5 MS CRUMEY No, Your Honor

6 THE COURT Mr Harris?

7 MR HARRIS None, Your Honor

8 THE COURT Marked and admitted without

9 objection State the number for the record?

10 MR SAVAGE Number 27

11 THE COURT Thank you, you may proceed

12 (Whereupon, State's Exhibit No 27 is admitted
13 into evidence)

14 Q (By Mr Savage) Detective Antonio, besides
15 the money that we just spoke about, were any other
16 items removed from the defendants that you are aware
17 of?

18 A From the defendants, yes, sir

19 Q When were they?

20 A Do you want each individual defendant? Each
21 item?

22 Q Yes, thank you

23 A The items removed from the defendant David
24 Brown was one pair of black and gray Timberland
25 boots From Darnel Brown was a pair of red and black

1 Nike Air Jordan sneakers, \$230 of U S currency

2 From Clarence Montez Robinson, black high-top

3 Nike Air Jordans, commonly known as Willie D's, \$225

4 U S currency And Colin Nevel Boston, a black

5 t-shirt, red t-shirt, black Nike Air Jordans and \$210

6 U S currency

7 Q Were you present when those items were
8 removed?

9 A Yes, sir

10 MR SAVAGE Your Honor, may I approach the
11 witness?

12 THE COURT You may

13 (Whereupon, State's Exhibit No 36 is marked
14 for identification)

15 Q (By Mr Savage) Detective Antonio, I'm
16 showing you what is marked as State's Exhibit 36
17 Can you please take a look at that? Do you recognize
18 it?

19 A Yes, sir This is one of the defendants

20 Q Which defendant is that?

21 A This is going to be Mr David Brown

22 Q How do you recognize that as Mr David Brown?

23 A Because he's wearing the black and gray -- the
24 black Timberland boots trimmed in gray

25 Q And that's the Timberland boots he was wearing

1 on the night he was arrested?

2 A Yes, sir This is what he had on

3 MR SAVAGE Your Honor, State moves Exhibit
4 36 into evidence

5 THE COURT Any objection?

6 MR HOWELL None, Your Honor

7 THE COURT Ms Crumey?

8 MS CRUMEY No

9 THE COURT Mr Harris?

10 MR HARRIS None, Your Honor

11 THE COURT Marked and admitted without
12 objection

13 What number is that?

14 MR SAVAGE It is State's 36

15 (Whereupon, State's Exhibit No 36 is admitted
16 into evidence)

17 Q (By Mr Savage) Detective Antonio, did you
18 talk to the defendants this night?

19 A Yes, sir, we did

20 Q When you say we, who is we?

21 A Myself and Detective Kosarko, we were --

22 Q Sorry, go ahead

23 A We were riding together And what we did is
24 we went to each defendant in each single patrol car
25 together

1 Q So the defendants were separated?

2 A Yes, sir, they were all separated

3 Q Did you talk to Colin Boston?

4 A Yes, sir, we did

5 Q Was Mr Boston read his Miranda rights?

6 A Yes, sir Detective Kosarko read him his
7 Miranda rights

8 Q And you heard him read those Miranda rights?

9 A Yes, sir, we were standing side by side

10 MR SAVAGE Your Honor, I think at this point
11 I think we may have an issue of law

12 THE COURT Madam Forelady, ladies and
13 gentlemen, I have a brief matter of law that I need
14 to take up with the attorneys During this break
15 please do not discuss the case and please leave your
16 notepads in your seats We appreciate your patients

17 (Whereupon, the jurors exit the courtroom)

18 THE COURT You may proceed

19 MR SAVAGE Thank you, Your Honor

20 IN-CAMERA DIRECT EXAMINATION

21 BY MR SAVAGE

22 Q Detective Antonio, did you talk to all three
23 defendants that were there that night separately?

24 A Yes, sir, all four

25 Q All four, I apologize, yes And were all four

1 read their Miranda rights?

2 A Yes, sir, they were

3 Q And were all those Miranda rights read by the
4 same person?

5 A Yes, sir

6 Q Who was that?

7 A Detective Craig Kosarko

8 Q Were you present for each time those rights
9 were read?

10 A Yes, sir

11 Q And did the defendants acknowledge those
12 rights after they were read to them?

13 A Yes, sir, they did

14 Q How did they do that?

15 A They were asked -- once the rights were read
16 they were asked do they understand and they all said
17 yes

18 Q So it was a verbal response?

19 A Yes, sir

20 Q They did not sign a card, they verbally?

21 A Correct

22 Q When you spoke to them, did they appear to be
23 under the influence of any drugs or alcohol?

24 A No, sir, I didn't see any signs

25 Q Did they respond to your questions in a

1 logical manner that you would expect that someone
2 would that understood you?

3 A Yes, sir

4 Q Did you promise them anything in exchange for
5 talking to you?

6 A No, sir

7 Q Did you threatened them?

8 A No, sir

9 Q Did you promise them that the solicitor's
10 office would cooperated with them if they spoke to
11 you?

12 A No, sir

13 MR SAVAGE I have no further questions at
14 this time, Your Honor

15 THE COURT Mr Howell

16 MR HOWELL Yes, ma'am, Your Honor Thank
17 you very much

18 IN-CAMERA CROSS-EXAMINATION

19 BY MR HOWELL

20 Q Detective, my name is Donald Howell, I
21 represent Mr Brown As to -- so my question will be
22 primarily directed to him

23 A Is that David Brown?

24 Q David Brown, yes, ma'am Not Darnel

25 Did you ask Mr Brown anything about his

1 education or background?

2 A I do not remember so, no, sir

3 Q Do you know anything about his intellectual
4 ability or his intellectual level?

5 A No, sir

6 Q And as I understand from Detective Kosarko, he
7 read all of the -- he read all of it and he got a
8 yes, is that correct?

9 A Correct

10 Q Did he read each piece or did he read all of
11 it? In other words Miranda is about five lines of
12 Miranda

13 A There's five sentences, correct

14 Q Right So did he get five yeses or one yes,
15 do you remember?

16 A There was no interruption between each five
17 sentences to say no, or I want my attorney, there
18 were no interruptions

19 Q And when Mr Savage asked you about did they
20 seem to respond logically to your questions, was this
21 yes that you got the only response?

22 A From Mr David Brown, no, sir

23 Q What else about Miranda rights did he ask?

24 A I'm sorry, about Miranda, yes

25 Q And so that simple yes that you got was

1 everything that you had to judge their level and
2 degree of understanding of these rights?

3 A He never denied speaking to us He never
4 stopped us asking him any further questions?

5 Q Right

6 A Right He never made any indication that he
7 did not understand what we were saying to him

8 Q Right But the only positive affirmation was
9 the simple word yes?

10 A That he understood his rights?

11 Q Yes

12 A Yes, sir, that's correct

13 MR HOWELL That all I have Thank you

14 THE COURT Any questions for the witness, Ms
15 Crumey?

16 MS CRUMEY Yes, ma'am

17 IN-CAMERA CROSS-EXAMINATION

18 BY MS CRUMEY

19 Q Detective Antonio, as to Colin Boston, when
20 you spoke with him, was he seated in the vehicle or
21 was he standing?

22 A In the patrol vehicle, ma'am?

23 Q Yes

24 A I believe he was actually seated in the rear
25 side, passenger side

1 Q And the extent of his response to Miranda was
2 a verbal yes, or was it a head shake, or how did he
3 acknowledge?

4 A It was a verbal yes

5 Q And when you indicated that he did not appear
6 to be under the influence of any alcohol drugs, what
7 exactly did you do to determine that?

8 A He wasn't slurring his speech, as most people
9 that would be under the influence of alcohol He was
10 not laying down on the seat as if he were
11 unresponsive

12 He was sitting up straight He looked at us
13 He listened to us He let us finish And he
14 answered yes that he understood his rights

15 Q Did you ask him about the consumption of any
16 alcohol or drugs?

17 A Not to my recollection

18 Q Did you look, were you able to look into his
19 eyes or anything of that nature to determine whether
20 or not he maybe had something? He may not have been
21 under the influence to where he could not stand, but
22 may have had something?

23 A I do not remember any distinct redness to the
24 whites of his eyes

25 Q While you were speaking to him, did he ever

1 stand?

2 A At some point, yes, ma'am But I don't
3 believe he did during that point when we went back
4 and removed the items, yes, he stood And when
5 pictures, photographs were taken of each individual
6 he stood

7 MS CRUMEY That's all the questions I have

8 THE COURT Mr Harris

9 MR HARRIS Just briefly, Your Honor May it
10 please the Court

11 THE COURT Yes, sir, you may proceed

12 IN-CAMERA CROSS-EXAMINATION

13 BY MR HARRIS

14 Q In reference to Mr Robinson, Clarence
15 Robinson, he was the driver of the vehicle, correct?

16 A Yes, sir, that was what we were advised

17 Q And you watched him get Mirandized?

18 A Yes, sir

19 Q And his response was yes?

20 A Correct

21 Q And had you given any field sobriety, because
22 of the driver of the vehicle, any type of DUI test?

23 A No, sir

24 Q So the only indication that during and right
25 after the Miranda that he was not intoxicated or on

1 any kind of drugs was yes He did not slur the word
2 yes?

3 A No, sir Again there was no slurring, there
4 was no slumping, there is no nodding off There was
5 no levels that were apparent that he was incoherent,
6 no, sir

7 Q And again, not to reiterate, but you didn't
8 have -- nobody asked him about level of education,
9 right?

10 A No, sir It's not required when he read the
11 Miranda rights

12 Q And nobody found out about if he understood
13 the English language? You did not ask him if he
14 understood the English language, right?

15 A No, sir When we asked him the questions he
16 answered yes

17 Q Okay, I appreciate it Thank you

18 THE COURT Any redirect, Mr Savage?

19 MR SAVAGE Yes, Your Honor

20 THE COURT You may proceed

21 IN-CAMERA REDIRECT EXAMINATION

22 BY MR SAVAGE

23 Q Detective Antonio, did you smell alcohol on
24 the breath any of the defendants that night?

25 A No, sir I do not recall any strong odor of

1 alcohol on any of them

2 Q When you spoke to Colin Boston, what did you
3 ask him?

4 A I asked him about did the car belong to him
5 because the officers had advised they had already
6 ascertained that information He confirmed that the
7 car did

8 And I asked him about the guns that were
9 located in his vehicle He advised that he didn't
10 own -- he had a gun registered to him, and he had
11 just recently found the 22 revolver that was
12 recovered in the vehicle

13 Q Did he state which gun was his that he had
14 registered to him, or whether that was one of the
15 guns that was in the car?

16 A No, sir He just indicated that he actually
17 had a gun registered to him

18 Q In reference to Clarence Robinson, what did he
19 tell you? or did you talk to him?

20 A I did Each defendant we asked, gave an
21 opportunity to tell us where they had been, where
22 they had been coming from, why were they sitting in
23 that parking lot

24 And Mr Robinson indicated that, been at a
25 girl's house located on -- somewhere on James Island

1 I then tried to ask him who was the girl so that we
2 could verify, you know, if he did come from the
3 girl's house And he refused to provide any detailed
4 information, no phone number, no first name, no
5 nickname, no street name of where he had been

6 Q And now going to David Brown What did he
7 tell you?

8 A I will just clarify this Each set of
9 questions were pretty much the same with each
10 defendant The Miranda they agreed, yes, they
11 understood And then we asked them where were you,
12 where were your whereabouts

13 And David Brown indicated, just came from
14 downtown He had a girl over on Bayside I am very
15 familiar with Bayside, who, where We can again call
16 her, you know, help you in this situation if that's
17 where you came from And he said he did not want to
18 get her involved in any of this

19 Q You mentioned that you were familiar with
20 Bayside What street is that Bayside area located
21 on?

22 A Bayside runs off of North Romney in the
23 downtown area

24 MR SAVAGE Court's indulgence, Your Honor
25 THE COURT Uh-hum

1 Q (By Mr Savage) Detective Antonio, did you
2 also talk to Darnel Brown?

3 A Yes, sir, I did

4 Q What did you ask him?

5 A Again once his Miranda rights were advised, he
6 said, yes, he understood. Asking could he provide
7 his whereabouts. His response, they had been just
8 driving around

9 And I then again asked specific places, maybe
10 thinking he might have come from Bayside, might have
11 been on James Island, again we could confirm if they
12 had been somewhere, and he couldn't provide anything
13 specific

14 Q When you spoke to all these defendants
15 individually and asked them these questions, did
16 their responses -- were they logical responses in
17 your opinion to your questions?

18 A Yes, sir

19 Q It appeared to you that they were responding
20 to the questions that you were asking them?

21 A Yes, sir

22 MR SAVAGE I have no further questions

23 THE COURT Are you going to elicit the
24 statements made by Mr Robinson? You have not
25 covered them or did he not make any statements?

1 MR SAVAGE I believe he did I think he was
2 the one that said --

3 THE COURT You only covered Boston and Brown

4 MR SAVAGE Okay, I'll cover that again
5 Thank you, Your Honor

6 Q (By Mr Savage) Did you speak to Mr
7 Robinson?

8 A Yes, sir, we did

9 Q What did you ask Mr Robinson?

10 A Asked if he could tell us where he had been
11 And what he advised is at a girl's house located on
12 James Island But he would not provide us a street,
13 a girl's name, telephone number, no specific
14 information

15 MR SAVAGE That's it, Your Honor

16 THE COURT Any further questions, Mr Howell?

17 MR HOWELL Yes, one brief

18 THE COURT You may proceed

19 MR HOWELL Thank you, Your Honor

20 IN-CAMERA CROSS-EXAMINATION

21 BY MR HOWELL

22 Q I don't have one with me, but I'm sure you've
23 seen them You all actually use Miranda type forms
24 when people give statements at the station?

25 A A written statement, yes

1 Q Written statement, right And it is my
2 understanding the way that is set up is for the first
3 third of the page maybe?

4 A Yes

5 Q You got one?

6 A No, sir, this is a witness

7 Q But about the first third kind of lists each
8 of those five sentences?

9 A Correct And on that suspect statement form
10 there is a question, what is your level of education?

11 Q Okay

12 A And that is the Charleston Police Department
13 form

14 Q Okay Is that on the -- on that form that
15 would be that question?

16 A Correct

17 Q And also as to each question there is a place
18 where they initial each one of those individually?

19 A There is not an individual place, it just has
20 been a routine practice If someone is signing the
21 same for the card, the little card that a lot of
22 times you will have someone to initial each and every
23 one, two, three, four, five And then in addition
24 answer a question, yes, you understand

25 Q Okay And the card is just a smaller paper

1 card?

2 A It's the size of a business card, maybe a
3 little bit larger

4 Q And there are times when you actually use the
5 card and say, here, look at this, and you get them to
6 sign off on it?

7 A Correct It would just depend on the setting
8 And in this particular setting there were a lot of
9 patrons in this business, different states where you
10 could or couldn't take a written statement

11 These gentlemen were all already detained for
12 an unlawful carrying charge They were already
13 handcuffed It is not a typical practice to
14 un-handcuff them just to sign that card

15 Q Okay So that was not done in this case?

16 A No, sir

17 Q Thank you very much

18 THE COURT Anything further, Ms Crumey?

19 MS CRUMEY No, ma'am

20 THE COURT Anything, Mr Harris?

21 MR HARRIS Just briefly, Your Honor

22 IN-CAMERA CROSS-EXAMINATION

23 BY MR HARRIS

24 Q Miranda, that little card we are talking
25 about, says you have the right to remain silent, and

1 anything you say can and will be used against you in
2 a court of law which is where we are?

3 A Yes, sir

4 Q When they gave you an answer to where they
5 were before, and you said who was it, you know, what
6 street, what was it, they have every right in the
7 world not to say who's street or where it was, right?

8 A That's correct I was just trying to give
9 them reasonable doubt that if they were somewhere
10 else I could verify it if there were any question of
11 their involvement

12 Q But if they had a girlfriend that they didn't
13 want to get involved in this, then they don't have to
14 tell you who that is I mean, one reason we have
15 Miranda is so if someone wants to not talk, they
16 don't have to talk?

17 A Correct But they provided the answer of a
18 girl driving around, a girl downtown I did not ask
19 them, were you at a girl's house

20 Q Right But to provide an answer that you were
21 at your girlfriend's house and then to not provide
22 any further answers, they have a right is all I'm
23 asking They have a right not to provide you with
24 further answers after that They can stop the
25 questioning at any time?

1 A Correct that is also one of the five sentences
2 on the card

3 Q Right, exact Okay, just checking

4 THE COURT Any re-redirect?

5 MR SAVAGE No, Your Honor

6 THE COURT Okay Are there any objections to
7 the statements being admitted?

8 MR HOWELL I guess I go first On behalf of
9 Mr Brown the answer would be yes Certainly there
10 is a big conclusion that they understood, but there
11 is no real factual basis for foundation laid for
12 that

13 These guys as you can see from the picture,
14 they're standing out on the street, there are four,
15 five police cars, there are people all around, and
16 you know a guy comes up and reads the card to them
17 and they say yes And whether that reaches the
18 point, we just don't believe that reaches the point
19 of satisfactorily identifying the fact that they
20 truly understand those things

21 And I don't mean to be trite with the Court
22 but there's the Saturday Night Live thing about the
23 guys from another country go in and order something,
24 and say cheeseburger That was the one word they
25 knew in English

1 And, you know, just to say yes, they don't
2 know what these guys' level of education is or
3 anything like that Just the word yes I don't think
4 in that context is enough, particularly when the
5 standard practice when you are sitting down at the
6 station and it's quiet and there is a much better
7 interview is to go through each one and get them to
8 initial each one

9 This was a very shorthand version I don't
10 think it reaches the level needed to allow the
11 statement to come in Thank you

12 THE COURT You're welcome

13 MS Crumey, any argument or are you joining in
14 the motion?

15 MS CRUMEY I would join in that motion The
16 only addition that I would as Mr Harris pointed out
17 in his cross-examination --

18 THE COURT I'm sorry, I can't hear you You
19 need to speak up a little bit louder for me

20 MS CRUMEY As Mr Harris pointed out in his
21 cross-examination about any, I guess, further
22 inquiries as to the people they were with and that
23 type of thing and not refusing to answer, I don't
24 believe that that portion, if the Court were to allow
25 any portion of the statement, that that portion of

1 the statement would be appropriate in that the only
2 thing that the jury at that point would have to deal
3 with respectfully as to why they did not answer or
4 draw conclusions from something that is within their
5 right to refuse to answer more than what they already
6 answered

7 And so if anything I believe that that portion
8 of any refusal to answer anything addition should
9 definitely be excluded

10 THE COURT Mr Harris, any argument on the
11 motion or are you joining in the motion?

12 MR HARRIS Your Honor, I'm joining on both
13 But I would also like to add what Ms Crumey talked
14 about, the reason I did ask that is because the where
15 have you been question is fine We have gotten
16 through that, the answer of, at my girlfriend's
17 house

18 But to ask him to say, when the officer said,
19 well the reason I asked that was to give them
20 reasonable doubt, it just almost makes it sound like
21 I'm trying to give you a way to get out of this
22 charge but you're not answering makes you look more
23 guilty Because if you don't
24 answer, you are not giving us reasonable doubt

25 THE COURT I think it can be rephrased I

1 think she is entitled to ask follow-up questions
2 And frankly most of the questions she asked them
3 really could have been asked as the result of the
4 investigatory stop and not -- really they didn't --
5 most of these questions really didn't have to be
6 Mirandized

7 But I think there is a different way for it to
8 be phrased I think that she is entitled to present
9 to the jury that she was trying to eliminate them as
10 suspects, because I think that's what she is trying
11 to convey I just think it could be said a little
12 more artfully than the way it's being said

13 MR HARRIS That's what I'm asking for

14 THE COURT Yes, sir

15 MR HOWELL And there is a fine line between
16 commenting on their silence, which they have an
17 absolute right to do

18 THE COURT Absolutely

19 MR HOWELL And then saying all the reasons
20 and I just -- I wouldn't caution her but I just want
21 to put that on the record that's my concern

22 THE COURT Clearly the defendants were in
23 custody It could be questionable as to whether
24 their statements are incriminating I'm not certain
25 that they necessarily are, they simply were saying

1 where they were

2 Of course I have not heard the full context of
3 the case So I really am at a little bit of a
4 deficit as to whether they're incriminating because
5 it seems that they're saying that they were someplace
6 else So that really in and of itself could be
7 considered as exculpatory statements instead of
8 inculpatory statements

9 It is clear to the Court that the statements
10 were voluntary I have listened to the testimony of
11 Officer Antonio I find her credible Her -- she
12 observed, as well as Detective Kosarko, who testified
13 on yesterday, I as well find him credible He is the
14 officer that actually administered the Miranda
15 warnings

16 They both indicated that they observed the
17 individuals as they Mirandized them, that they
18 appeared to not be under the influence of any drugs
19 or alcohol, they appeared to have been oriented as to
20 time and place, they did not appear to suffer from
21 any deficits

22 And while it may be true that the average
23 person -- and I don't know really that I could make
24 that kind of a blanket characterization because I
25 think some things are really kind of boil down to

1 life experience clearly they had sufficient
2 experience on the job as police officers, as well as
3 life experience, to have been able to discern whether
4 these individuals were suffering from some deficits
5 that they could not understand them as they were
6 being Mirandized

7 The State is only required at this time to
8 meet their burden by a preponderance of the evidence
9 whether they can prove the statements were made beyond
10 a reasonable doubt is for that jury to determine
11 The concerns raised by the defense are issues of
12 weight And these are things that they can question
13 the witness to have the jury question her credibility
14 and question the weight that they give any alleged
15 statements, any statements alleged to have been made

16 But the Court finds it credible and would find
17 for the record that it appears each of the -- I'm
18 referring to Brown, Boston and Robinson collectively,
19 that they were not under the influence of any drugs
20 or alcohol, it is clear from the testimony that they
21 were not under any duress, that they were not
22 threatened, that they were not given any promises of
23 leniency, that they did not appear to be under the
24 influence of any drugs or alcohol, and that they
25 answered logically and appropriately, that they --

1 there was no indication at the administering of their
2 Miranda warnings that they did not understand what
3 was being explained to them, that they were each
4 attentive as the rights were being administered to
5 them, and they also gave verbal answers

6 There's no indication from these witnesses
7 that they were incoherent, nor any necessity of
8 asking about their educational background It is
9 always preferable to have parties sign their Miranda
10 warnings, an acknowledgment that they understand
11 them And frankly I have seen those cards used by
12 the City many times and they usually have them
13 initial and sign, but it really isn't necessary

14 There is nothing that invalidates an oral
15 Miranda warning or a suspect indicating orally that
16 they had received their Miranda warnings And the
17 Court finds it's credible Detective Antonio's
18 explanation that as a matter of protocol once they
19 were placed under arrest they were handcuffed, and as
20 a matter of policy they would not have un-handcuffed
21 them to sign the Miranda warning cards

22 So the statements are admissible All the
23 objections go to weight, credibility of the
24 testimony Again it's for the State to prove the
25 statements were made beyond a reasonable doubt The

1 Court of course at the appropriate time will instruct
2 regarding all of the factors that the jury is to
3 consider in determining that And the jury can then
4 decide whether the statements were actually made or
5 not

6 Motions are denied and noted for the record
7 Ready to proceed?

8 MR SAVAGE Yes, Your Honor Your Honor, I
9 wanted to clarify so I don't get into an area that I
10 shouldn't After Detective Antonio states that their
11 response is yes, at the girl's house, driving around
12 Do I just not go any further there or how does the
13 Court want --

14 THE COURT She can say that she asked them a
15 follow-up question I just don't want any
16 characterizations about reasonable doubt, legal
17 things that there's not foundation That's for the
18 jury

19 MR SAVAGE As far as I guess that's really
20 --

21 THE COURT She can explain why she asked
22 those questions which is to corroborate their story
23 or to -- she wanted to follow up That's part of the
24 investigation process

25 MR HOWELL That's the part I just want to

1 have an objection to I don't think she can talk
2 about her motive I asked this question, I got this
3 answer, but I was looking for ways to --

4 THE COURT I think he can say, I wanted to
5 contact them without saying corroboration or
6 otherwise There is nothing that precludes her from
7 saying, I wanted to try to eliminate them as
8 suspects

9 MR HOWELL But that indirectly becomes a
10 comment on their silence and that's where the line is
11 drawn

12 THE COURT No, she can say what she did in
13 her investigation It's no different than if she
14 were saying, I had 20 suspects and I went through
15 each one of them trying to eliminate each one of them
16 and I talked to each one of them And as a result of
17 what this person told me, I eliminated this person or
18 I included this person

19 It's not a comment on their silence, they have
20 a constitutional right to remain silent The things
21 that I would find troubling and that I would caution
22 her not to say, because I don't want any burden
23 shifting to go on, is stuff like, I wanted to -- I
24 was trying to find reasonable doubt You know, legal
25 characterizations that really are not appropriate

1 Or if she wants to say, I was trying to
2 eliminate them as a suspect, that's not a comment on
3 their silence She can say that before she ever
4 started talking to them She can say, I questioned
5 them because I wanted to eliminate them as suspects
6 And that's part of the investigatory process, I don't
7 have any problem with that

8 But I don't want any characterizations made
9 about their silence, that would be inappropriate
10 They can remain silent They can assert that at any
11 time They don't have to answer any questions once
12 they were Mirandized

13 MR SAVAGE Just so that the Court knows the
14 way that I was thinking about doing it, when she
15 says, say for example Clarence Robinson said, at my
16 girlfriend's house My next question will probably
17 be, did he provide that contact information? If she
18 says no I'm just going to leave it at that Is that
19 fine with the Court?

20 THE COURT I think that you need to stop
21 leading You need to ask her, what was your next
22 question And then, what was his response And that
23 eliminates all the characterization because she will
24 simply say, I asked for her address And did he give
25 you one No

1 MR SAVAGE That's fine, Your Honor

2 MR HOWELL Just note my objection on that

3 THE COURT It's noted for the record I
4 think your objection though was to the
5 characterization of the testimony and I have
6 eliminated that I don't think that's proper and I
7 won't allow it

8 She can ask exactly what she asked him and
9 what his response was He was Mirandized, at any
10 time he could have said, I don't want to answer your
11 question And that would have been the end of the
12 inquiry and he certainly would have been allowed to
13 do that And he certainly was aware he had the right
14 to do that All right Ready to
15 proceed from the State?

16 MR SAVAGE Yes, Your Honor

17 THE COURT From the defense, Mr Howell?

18 MR HOWELL Yes, Your Honor

19 THE COURT Ms Crumey?

20 MS CRUMEY Nothing further

21 THE COURT Mr Harris?

22 MR HARRIS Ready to go, Your Honor

23 THE COURT All right Please bring in the
24 jury

25 (Whereupon, the jurors enter the courtroom)

1 THE COURT Ladies and gentlemen, we
2 appreciate your patience We will now resume with
3 the witness's testimony

4 Mr Savage, you may proceed

5 MR SAVAGE Thank you, Your Honor

6 CONTINUED DIRECT EXAMINATION

7 BY MR SAVAGE

8 Q Detective Antonio, we just left off before the
9 jury left, had the defendants been read their Miranda
10 rights?

11 A Yes, sir, they had

12 Q And did you talk to the defendants?

13 A Yes, sir Myself and Detective Kosarko
14 approached each defendant

15 Q And did you talk -- how did you talk to them,
16 separately or as a group?

17 A They were separated We went to each patrol
18 unit where they were sitting and we spoke to each one
19 separately

20 Q Did you talk to Colin Boston?

21 A Yes, sir, we did

22 Q Was he read his Miranda rights?

23 A Yes, sir Detective Kosarko read the Miranda
24 card

25 Q Did he acknowledge those rights to you?

1 A Did Mr Boston acknowledge? Yes, sir, he did

2 Q Was Mr Boston willing to talk to you after he
3 was read his rights?

4 A Yes, sir He did not indicate --

5 THE COURT Let me interrupt you one second
6 Do not characterize when asking a direct question

7 Ladies and gentlemen, you are to disregard the
8 last question You are to give it absolutely no
9 consideration in your deliberations You may
10 rephrase

11 MR SAVAGE I apologize, Your Honor

12 Q (By Mr Savage) Did Mr Boston talk to you
13 after being read his rights?

14 A Yes, sir, he did

15 Q What did you ask him?

16 A I had asked him did the vehicle belong to him
17 The other patrol officers had advised them that they
18 had already ascertained that information that it did
19 He said that the vehicle did belong to him

20 Then I proceeded to ask him, did the guns in
21 the vehicle belong to him He responded that he had
22 a gun registered to him, and he had just recently
23 found the 22 revolver two days prior to this
24 incident

25 Q And where was that 22 revolver, if you know?

1 A I believe Sgt Ray found it on the rear
2 floorboard

3 Q Of what?

4 A Of Mr Boston's vehicle

5 Q Did you talk to Clarence Robinson? The
6 defendant Clarence Robinson?

7 A Yes, sir, we did

8 Q Was Mr Robinson read his Miranda rights?

9 A Yes, sir Again Detective Kosarko read the
10 Miranda rights to him

11 Q And did he acknowledge those rights?

12 A Yes, sir, he did

13 Q How did he acknowledge those rights?

14 A He -- in the reading of Miranda there is a
15 question, do you understand your rights And he
16 indicated yes by stating yes, he did

17 Q Did Mr Robinson talk to you after having his
18 rights read?

19 A Yes, sir, he did I asked him if he could
20 tell us where he had been prior to being found in the
21 parking lot with the other three codefendants in the
22 car by patrol officers He responded, been at a
23 girl's house located on James Island

24 I then asked him if he could provide
25 information where on James Island or who he had been

1 with to maybe, you know, confirm or deny he had been
2 there He then did not provide any information as to
3 how I would contact this particular person

4 Q Was Mr David Brown read his Miranda rights?

5 A Yes, sir, he was

6 Q And did he acknowledge those rights?

7 A Yes, sir, he did Again he stated yes when he
8 was asked, do you understand your rights Then we
9 proceeded to ask him -- each defendant was asked, the
10 Miranda rights were read first, each defendant was
11 then asked where have you been earlier this night

12 Mr Brown stated he, that he been at his
13 girl's house on Bayside I'm very familiar with
14 Bayside and the area of the apartment complex in the
15 downtown area of Charleston I then asked who was
16 his girl or how could I verify this information And
17 he stated that he didn't want to get her involved in
18 this situation That he had nothing further to say

19 Q Did you talk to Darnel Brown?

20 A Yes, sir, we did

21 Q Was he read his Miranda rights?

22 A Yes, he was

23 Q Did he acknowledge those rights?

24 A Yes, sir, he did

25 Q Did you talk to him after reading those

1 rights?

2 A Yes, sir Again each defendants was read
3 their rights and then asked the same question, where
4 have you been Mr Darnel Brown responded --

5 MR HOWELL Objection

6 (Whereupon, the following discussion was held
7 at the bench)

8 MR HOWELL He's not a defendant It's not
9 -- it's not a defendant says that's how -- he is not
10 a defendant, so anything he says --

11 THE COURT I don't --

12 MR SAVAGE I think under the hand of one is
13 the hand of all theory, Your Honor

14 THE COURT That's not part of this case
15 really why would he need --

16 MR SAVAGE Because of the hand of one is the
17 hand of all theory basically

18 THE COURT He is not a defendant, they're the
19 defendants You can only claim accomplice liability
20 for these three defendants, not all four of them
21 It's liability on all four, that's how you worked it
22 You have to have it over, between these three, you
23 did not bring a fourth person in this case

24 MR SAVAGE I think I can under the hand of
25 one is the hand of all

1 THE COURT Accomplice liability is these
2 three individuals

3 (In open court)

4 THE COURT Sustained

5 Q (By Mr Savage) Detective Antonio, when you
6 asked Colin Boston, David Brown and Clarence Robinson
7 to confirm, I guess, when you asked them like the
8 address or contact info --

9 MS CRUMEY I'm going to object

10 THE COURT Basis

11 MS CRUMEY Mischaracterizes the testimony

12 THE COURT Rephrase the question Please let
13 me hear it in it's totality I didn't hear it, he
14 hasn't finished his question Repeat the question

15 Q (By Mr Savage) Detective Antonio, when you
16 asked Clarence Robinson the information of where he
17 was, why did you ask that?

18 MR SAVAGE Do you want me to approach for a
19 minute?

20 THE COURT Uh-hum

21 (Whereupon, a discussion was held at the bench
22 off the record)

23 THE COURT Please rephrase Don't lead

24 Q (By Mr Savage) Detective Antonio, regarding
25 Clarence Robinson why do you ask -- or is there a

1 reason why you asked for the contact information?

2 A Yes, sir It was to for us as an investigator
3 to confirm or deny if he had actually just come from
4 -- Mr Robinson stated he had been at a girl's house
5 on James Island And it was to just indicate, yes,
6 he was or, no, he wasn't

7 Q And same for the defendant David Brown?

8 A Yes It was the same reason for the two of
9 them Because Mr Brown provided that, came from a
10 girl's house on Bayside Bayside is located downtown
11 Charleston on the northern eastern side of the
12 peninsula James Island is across the river

13 And wanted to confirm or deny if in fact they
14 had been at these locations Or at both locations,
15 neither location, or we are there responding because
16 they were identified for this armed robbery

17 MR SAVAGE Court's indulgence, Your Honor

18 THE COURT Uh-hum

19 MR SAVAGE I have no further questions at
20 this time, Your Honor

21 THE COURT Mr Howell

22 MR HOWELL Yes, Your Honor, thank you

23 CROSS-EXAMINATION

24 BY MR HOWELL

25 Q Good morning, detective, how are you?

1 A Very well, thank you

2 Q Good Back up a little bit When as a
3 detective involved in a case such as this, you have I
4 guess two areas where the witnesses come -- the
5 evidence is coming from I'm going to do a little
6 walking around One will be here at Benders, we will
7 be Benders in the black box here, okay?

8 A Yes, sir

9 Q And then one is down the road at some point
10 over at the parking lot, correct?

11 A Yes, sir

12 Q And you are going to get evidence here from
13 the parking lot to some extent And you are going to
14 get evidence here from Benders to some extent?

15 A Correct

16 Q The job of the police department is to gather
17 the evidence to form a link between the evidence
18 that's over here and the evidence that is over here,
19 correct?

20 A That's correct

21 Q Okay So when you are getting the evidence at
22 Benders, that's where you are talking to the people
23 and taking the statements, correct?

24 A Yes, sir

25 Q And you actually took one of the statements I

1 think

2 A Yes, sir

3 Q Is that correct? Ms Walden, is that right?

4 A Yes, sir

5 Q And when you are taking those statements, you
6 have been trained and part of your job as a detective
7 is you are looking for details, aren't you?

8 A Yes, sir

9 Q Because the details are what connect this with
10 this?

11 A That's correct

12 Q Okay And you are trained to elicit those
13 details as best you can from the people that you talk
14 to?

15 A Yes, sir

16 Q And when you get those details you're trained
17 to report them as precisely as you can, correct?

18 A Correct

19 Q Because you guys do a lot cases, don't you?

20 A Yes, sir, we do

21 Q How many armed robberies have you worked on in
22 the last year?

23 A Now since I am now a part of the ATF task
24 force, I primarily work gun cases

25 Q Back in the day when you were armed robbery?

1 A We could get anywhere from three to five new
2 cases a day, Monday through Friday

3 Q Per day?

4 A Per day, yes

5 Q So it's critical that you go by your reports
6 and what you write because that's how you keep it
7 straight?

8 A Yes, sir Because in this situation we were
9 the responding detectives, we weren't necessarily
10 working the case from just off of a police report
11 we were responding to the incident location and also
12 responding to an apprehension of the defendants

13 Q If I am hearing you right, the distinction
14 there is sometimes as a detective you haven't had the
15 luxury of responding to the scene itself and you just
16 get the reports and they say go to work?

17 A Correct And in addition we also don't have
18 the luxury of sitting down with every person involved
19 maybe at the police station or pulling every person
20 that may be involved if there is an arrest to do
21 written statements or even a different detailed
22 investigation

23 Q But in this case you did have that luxury of
24 actually being on the scene rather quickly?

25 A We had the luxury of responding

1 Q Of responding You got there, do you remember
2 about what time you got there? You got there pretty
3 quickly, didn't you?

4 A I remember I responded from a suicide call,
5 and I was in west Ashley So it was fairly quickly

6 Q But you were at Benders, there were patrons
7 still there No one had gone home yet, you hadn't
8 called for backup or anything like that?

9 A No, sir

10 Q You spoke to a lady Colleen Denham, is that
11 right? You interviewed her, correct me if I'm
12 reading your report You actually interviewed, says
13 took a statement from Adina Walden Then about in
14 the middle the witness Colleen Denham

15 A Yes, sir

16 Q Okay So she advised that she had observed
17 someone with black Timberland boots on, correct?

18 A Correct

19 Q That's what you put in your report to
20 preserve?

21 A Correct, because it was a detailed piece of
22 information that she stated

23 Q Precisely That's the kind of detail you are
24 looking for?

25 A Right

1 Q And in her statement there was something about
2 the two people were not wearing gloves, did you hear
3 that?

4 A No, sir If I had heard it, it would have
5 been written here as far as that's concerned I'm
6 not even sure if she provided any written statement
7 or not

8 Q Okay, fair enough That would have been
9 someone else that happened?

10 A Correct Because there were two other
11 responding detectives taking the statements at the
12 same time

13 Q Mr --

14 A Detective Kosarko and then someone who was
15 just assigned to the night shift, Cpl Brown

16 Q Is that Larry Brown, the real big guy?

17 A Real big, yes, sir

18 Q Now in getting the details that you got, did
19 you hear anybody at any time that night mention
20 anything about someone having on a black and white
21 jacket with red letters across it that said Scarface?

22 A No, sir

23 Q Okay Picture of Al Pacino?

24 A No, sir

25 Q Did you hear anybody mentioned anything about

1 one of the suspects having an earring?

2 A No, sir, I don't recall

3 Q Did you hear anything about any of the
4 suspects mentioning the fact that someone had on a
5 white t-shirt like the one of my client in this
6 picture that you helped introduce into evidence?

7 A No, sir But they did mention his black
8 Timberlands trimmed in gray that he was wearing

9 Q They mentioned black Timberlands?

10 A No, sir Another individual specifically
11 mentioned black Timberlands trimmed in gray

12 Q Okay But this lady in your report, the only
13 thing in your report is black Timberlands, isn't it?

14 A From the witness, Colleen Denham But there
15 was --

16 Q That's right and that's what I'm asking you
17 about

18 A Okay

19 Q I don't want you to get into something that
20 may or may not get into evidence, all right?

21 A Okay, that's fine

22 Q And nobody said anything about a white
23 t-shirt? That you know of?

24 A Not that I recorded

25 Q Nobody said anything about blue jeans?

1 A That wasn't something that stood out, no, sir
2 It wasn't recorded as blue jeans

3 Q What Ms Denham told you was that she saw
4 black Timberlands?

5 A She said black Timberlands, and another
6 subject wearing all black clothing and a black gun

7 MR HOWELL That's all the questions I have
8 Thank you, Your Honor

9 THE COURT Ms Crumey

10 CROSS-EXAMINATION

11 BY MS CRUMEY

12 Q Detective Antonio, you actually spoke with
13 just Ms Walden Did you speak with any other
14 witnesses besides Ms Walden?

15 A I only took a written statement from Ms
16 Walden I spoke to a Mr George Mackey

17 Q As far as a written statement, the only
18 written statement that you actually took --

19 A Correct I spoke to others, but the only
20 written statement was from Ms Walden, yes, ma'am

21 Q You only spoke to others, you didn't take
22 written statements from anyone else?

23 A No, ma'am I did not have the time to take
24 statements from every patron that was in the bar

25 Q So other officers would have taken statements

1 from these individuals? would other officers have
2 taken statements from the people that you spoke with
3 or did not get a written statement from?

4 A I believe there was definitely another person
5 that I spoke to who had also provided a written
6 statement, yes, ma'am

7 Q So there was another written statement that
8 you took?

9 A No, ma'am You asked if I had knowledge of
10 someone else had taken a written statement but I had
11 verbally spoken to that same person, yes

12 Q Okay And Ms Walden provided you with -- did
13 she write the statement or did you write it for her?

14 A No, ma'am It's in her handwriting

15 Q So she wrote it herself and you witnessed it?

16 A Correct And just I had two questions for her
17 where she answered those questions that I wrote in my
18 handwriting

19 Q The questions at the end of her statement are
20 written by you?

21 A Yes, ma'am

22 Q And the questions that, what was taken from
23 you, was written in your handwriting?

24 A I didn't ask her that question -- I'm sorry,
25 there was a third page, I apologize There's a total

1 of one, two -- five questions what was taken from
2 you, she responded \$20, and she said bill

3 Q \$20 bill?

4 A Correct

5 Q Is what her --

6 MS CRUMEY That's all the questions

7 THE COURT Any questions, Mr Harris?

8 MR HOWELL Briefly, Your Honor

9 THE COURT You may proceed

10 CROSS-EXAMINATION

11 BY MR HARRIS

12 Q I'm going to use Mr Howell's map here I'm
13 not going to walk around as much as he did This was
14 Benders?

15 A That's right

16 Q This is the church parking lot This is also
17 across the river, right?

18 A Yes, sir, it is

19 Q You mentioned downtown is across the river,
20 this is across the river from that?

21 A Correct

22 Q So this is the river I guess So what time
23 did you respond to Benders?

24 A It doesn't appear I indicated my exact time on
25 my report

1 Q Okay?

2 A Of arrival

3 Q Okay But your testimony earlier was that
4 they're found on James Island here, at the Benders --
5 I'm sorry, I need to mark that thing They were
6 found in the parking lot on James Island?

7 A Yes, sir

8 Q My client says he had been at his girlfriend's
9 house on James Island?

10 A Correct

11 Q And then there was downtown which you said is
12 across the river?

13 A In the other direction

14 Q Right And Benders is across the river in the
15 other direction?

16 A The opposite direction, correct

17 Q So just to clarify, you would have to cross
18 the river to get to both places?

19 A Yes, sir

20 MR HARRIS Okay I have nothing further

21 THE COURT Any redirect from the State?

22 MR SAVAGE Yes, Your Honor

23 THE COURT You may proceed

24 REDIRECT EXAMINATION

25 BY MR SAVAGE

1 Q Detective Antonio, do you know how many
2 patrons were in the bar when you were in there
3 approximately?

4 A I did not take a number, a head count of when
5 I entered the bar It appeared between 12 to 18
6 people when I walked in

7 Q How many of those patrons did you personally
8 talk to?

9 A I personally spoke to Ms Walden, Mr Mackey,
10 Ms Denham, and Mr Thompson and Mr Turner

11 Q So anywhere from seven or more patrons in that
12 bar that you didn't talk to?

13 A Yes, sir And because it is a bar, you know
14 there were some people that was very obvious we
15 wouldn't be able to take a statement from because of
16 their --

17 Q There are other officers on the scene there
18 talking to those other people as well You do not,
19 as a detective, you don't come in and take control of
20 everything and say, I talk to everyone individually,
21 me and only me That's not how it works, is it?

22 A No, sir In this situation, something that
23 was unique about it, you have a bar, you have music,
24 you have low lights that are things are going on
25 And you have several people And the biggest -- when

1 we respond we want everybody separated where they're
2 not talking to each other because it's important we
3 hear what they have to say

4 It's important that we get the details down,
5 just got the case of what happened and how to
6 identify who had possibly been responsible for doing
7 this So we were separating people we had -- I
8 remember several patrol officers assisting in that,
9 but not taking statements from every person

10 Q Okay

11 MR SAVAGE Court's indulgence

12 I have no further questions, Your Honor

13 THE COURT Any objection to the witness being
14 excused from the State?

15 MR SAVAGE No, Your Honor

16 THE COURT From the defense, Mr Howell?

17 MR HOWELL No, Your Honor

18 THE COURT Ms Crumey?

19 MS CRUMEY No, ma'am

20 THE COURT Mr Harris?

21 MR HARRIS None, Your Honor

22 THE COURT You are excused, ma'am

23 Please call your next witness

24 MR SAVAGE Your Honor, we have a matter of
25 law I think needs to be brought up before we move on

1 THE COURT Madam Forelady, ladies and
2 gentlemen, we have a matter of law that we need to
3 take up I anticipate it will be fairly short

4 During the break please do not discuss the
5 case and please leave your notepads in your seats
6 We appreciate your patients

7 (Whereupon, the jurors exit the courtroom)

8 THE COURT Yes, sir

9 MR SAVAGE I'm planning on calling as my
10 next witness Anita Maestas, she is the crime scene
11 technician while I was doing this direct
12 examination on Detective Antonio, Ms Maestas brought
13 along fingerprint cards, one of those fingerprint
14 cards is a swab that she took off one of the guns for
15 -- and then she submitted that to the fingerprint
16 analysis who then confirmed it matched to David
17 Brown

18 I have submitted a copy to the defense
19 attorneys, a photocopy of that latent print card, and
20 then the analysis that the fingerprint analysis I
21 never had that latent print card, but apparently it
22 wasn't in evidence, I never had it or seen it
23 Apparently it's being brought today by Ms Maestas

24 THE COURT Do you want to give them an
25 opportunity to look at it?

1 MR SAVAGE I have not even seen it myself
2 So I just wanted to let them know that I have not
3 seen it, it's being brought here today And I just
4 wanted them to have an opportunity or let them be
5 aware, you know, that something else has turned up
6 that I did not know was out there

7 We knew it was there because it's on the
8 photocopy of the analysis, but I have not actually
9 seen it And obviously --

10 THE COURT So are you asking that all of you
11 get a chance to look at it? Is that the point?

12 MR SAVAGE Yes, Your Honor, I'm sorry

13 THE COURT We will take a 10-minute recess,
14 well 15 to give you all an opportunity to do that

15 MR SAVAGE Thank you, Your Honor

16 THE COURT You're welcome

17 (Whereupon, a recess was taken)

18 THE COURT Is the State ready to proceed?

19 MR SAVAGE Yes, Your Honor

20 THE COURT Mr Howell?

21 MR HOWELL Yes, Your Honor

22 THE COURT Ms Crumey?

23 MS CRUMEY Yes, ma'am

24 THE COURT Mr Harris?

25 MR HARRIS Once they get here, yes, Your

1 Honor

2 THE COURT Please bring in the panel

3 (Whereupon, the jurors enter the courtroom)

4 THE COURT Ladies and gentlemen, I hope you
5 enjoyed your break We will now resume with the
6 testimony

7 You may call your next witness

8 MR SAVAGE State calls Anita Maestas

9 MS ANITA MAESTAS,

10 after having first been duly sworn to state the
11 truth, the whole truth and nothing but the truth,
12 testified on her oath as follows

13 THE COURT You may proceed

14 MR SAVAGE Court's indulgence, Your Honor

15 DIRECT EXAMINATION

16 BY MR SAVAGE

17 Q Good morning, Ms Maestas

18 A Good morning

19 Q What do you do for a living?

20 A I'm a crime scene investigator for the City of
21 Charleston Police Department

22 Q Could you describe your educational
23 background?

24 A I have a bachelor's degree in chemistry from
25 the college of Charleston I also attended the

1 National Forensic Academy, it's a 10-week program, in
2 Knoxville, Tennessee I'm also certified by the
3 International Association of Identification as a
4 crime scene analyst

5 Q Where do you work?

6 A For the Charleston Police Department

7 Q How long have worked for the Charleston Police
8 Department?

9 A About eight and a half years

10 Q Could you briefly describe your duties as a
11 crime scene technician?

12 A My duties are to go out to a crime scene and
13 to process for any potential evidence, collect,
14 record, document And in this instance I'm also a
15 latent processor

16 Q Did you receive any evidence to process in
17 this case?

18 A I did

19 Q What did you receive?

20 A I received four weapons to fingerprint for
21 latents

22 Q How did you receive that evidence?

23 A When the crime scene technicians process a
24 crime scene out in the field, they collect any
25 possible evidence They bring it back to our office

1 where they package it for safety, and then they put
2 it into a secured locked locker That's where I then
3 collect it from there

4 MR SAVAGE Your Honor, may I approach the
5 witness?

6 THE COURT You may

7 Q (By Mr Savage) Ms Maestas, I'm showing you
8 what is marked as State's Exhibit 18 Do you
9 recognize that?

10 A I do

11 Q what is that?

12 A That is one of the guns that I collected or
13 from the locker to process

14 Q Thank you I am now showing you what is
15 State's Exhibit 19 Do you recognize that?

16 A Yes Again this is another one of the
17 weapons

18 Q Thank you And I am now showing you what is
19 State's Exhibit 20 Do you recognize that?

20 A Yes, I do

21 Q what is it?

22 A It's another one of the guns that was
23 collected and processed

24 Q And lastly I am showing you what is State's
25 Exhibit 21

1 A Yes This is one of the -- the last one

2 Q Thank you Ms Maestas once you received the
3 four guns in this case, the evidence, what did you do
4 with the evidence?

5 A We have a procedure that we normally go by for
6 processing We do a visual examination We do an
7 alternate light source examination And then from
8 there we do a super glue process and then we
9 fingerprint it with powder to see if there are any
10 fingerprints available

11 Q Could you explain a little bit about each of
12 those processes and how it works?

13 A A visual examination is just looking at the
14 weapon to see if there's anything, any latent -- any
15 prints that are available Alternate light source is
16 using different wave lengths from a light source to
17 help see if there's anything florescence that's going
18 to be able to be seen and be photographed

19 If nothing is visible at that point, the next
20 step is to super glue Super gluing is a process
21 where we put it into a vacuum chamber, and the glue
22 actually adheres to any oils or sweats that are left
23 behind from when the gun has been touched At that
24 point once it has been super glued, we can put powder
25 on it and that actually shows the latent prints

1 Once we see something there, we can lift it
2 with tape. And we're using black powder and we put
3 it on a contrasting card. And then we'll pull the
4 tape up and lay it onto a white card, that way you
5 can actually see if there are any details.

6 Q What exactly is a latent print?

7 A A latent print is a fingerprint that has been
8 left behind that is not visible to the naked eye to
9 where you have to process it in some manner, either
10 by powder or chemical treatments, to be able to bring
11 it out to where you can see it to lift it or
12 photograph it.

13 Q Do you know what a patent print is?

14 A A patent print is one that is left behind in
15 say oils or blood or some type of mixture. Let's say
16 makeup, if you touch your face and you touch
17 something that's left behind that's something that's
18 visible, readily visible to your eye.

19 Q So a patent print is something that can be
20 seen?

21 A Yes.

22 Q And a latent print is something that without
23 any sort of process done, you can't see?

24 A Right, you can't see.

25 Q What were the results of your work in this

1 case?

2 A Collected one lift off of one of the guns

3 MR SAVAGE Your Honor, may I approach the
4 witness?

5 THE COURT You may

6 Q (By Mr Savage) Ms Maestas, I'm showing you
7 what is State's Exhibit 37 Do you recognize that?

8 A Yes, I do That's -- I'm sorry

9 Q What is that?

10 A This is the lift that I collected from, it
11 says the clip off of item number 4-A, it's got my
12 signature on it

13 Q Do you know what item number 4-A is?

14 A It was a hi-point C-9 9mm

15 Q That's the gun that was submitted to you in
16 this case for processing?

17 A Yes, it was

18 MR SAVAGE Your Honor, at this point the
19 State moves Exhibit No 37 into evidence

20 THE COURT Any objection, Mr Howell?

21 MR HOWELL None, Your Honor

22 THE COURT Mr Crumey?

23 MS CRUMEY No, Your Honor

24 THE COURT Mr Harris?

25 MR HARRIS No, Your Honor

1 THE COURT Marked and admitted without
2 objection What was the number again?

3 MR SAVAGE 37, Your Honor

4 (Whereupon, State's Exhibit No 37 is admitted
5 into evidence)

6 Q (By Mr Savage) Ms Maestas, what did you do
7 with the fingerprint that you recovered in this case?

8 A Once I collected a lift, I am going to go
9 ahead and seal it and secure it Then I'm going to
10 drop it into a lock box where a latent identification
11 specialist can pick it up to do the comparisons

12 MR SAVAGE Court's indulgence, Your Honor

13 I have no further questions at this time, Your
14 Honor

15 THE COURT Mr Howell, any questions for the
16 witness?

17 CROSS-EXAMINATION

18 BY MR HOWELL

19 Q What I am trying to see, you said it the right
20 way and if I say it wrong just correct me What you
21 are getting is when someone holds something is the
22 oils or sweat off their hand?

23 A Correct Any time when you are just normal
24 daily use and your hands are secreting oils, sweat,
25 touching your face, touching your arms, just

1 generally, when you touch something you are leaving
2 an impression behind of your fingerprints

3 Q So I guess the more oily, the more sweaty your
4 palms or hands are the better chance usually you're
5 gonna get a print?

6 A That's yes and no question unfortunately If
7 you have too much oils or too much sweats then you
8 are taking a chance of creating too much oils on
9 there where you cannot see the details But if you
10 have a little bit more oils or sweat, yes, it does
11 leave a little bit better print

12 Q When a print is on something, is there a way
13 to time it to say when it got there?

14 A No, sir

15 Q So you find a print you might know it was
16 there, but you really don't have any indication of
17 when it got there?

18 A No

19 Q And the item that you found this on was
20 actually a clip that went inside somewhere in the
21 gun, is that right?

22 A Yes, sir It's the ammunition clip that goes
23 in the gun

24 Q So it wasn't actually the gun itself, it was
25 the clip?

1 A Which is a part of the gun, yes

2 Q And to get the clip in you have to hold the
3 gun and insert the clip somewhere?

4 A Yes, sir

5 Q And you did not find any prints on the gun?

6 A Yes, I did not find anything on the gun which
7 is not uncommon

8 Q Now it is my understanding that there were
9 other prints taken, one off the register which was
10 compared with these defendants as well?

11 A I have no knowledge of that

12 Q Okay Tell me what this is?

13 A That is the latent identification specialist's
14 report from what they identified

15 Q Okay So tell me who would have prepared that
16 and when does that get prepared?

17 A That's the latent identification specialist
18 when she is done doing her comparisons of all the
19 prints I've turned in on a case, she prepares the
20 report

21 Q Okay And where does she get her prints from?

22 A They're turned in either from whoever
23 processes the evidence or the crime scene technician
24 who processed the evidence on scene

25 Q Okay And who did the crime scene on this?

1 A I don't know for sure I believe it was Renee
2 Charles, but I'm not sure who did the actual case

3 Q What prints were indicated that were looked at
4 by this report?

5 A It says seven latent prints cards from R
6 Charles, and one latent print card from A Maestas

7 Q What was the first card that was looked at?

8 A It states latent lift number one developed on
9 the side of the cash register drawer Possess a
10 quality and quantity to affect identification

11 Q So that means you could compare it?

12 A This is beyond the realm of what I do I do
13 latent processing This falls under the latent
14 identification specialist She would be best
15 qualified to answer

16 Q But tell me in your world, you understand what
17 an identifiable print means, don't you?

18 A Right If they have something to compare it
19 to

20 Q Sometimes you get some that just don't have
21 enough points?

22 A Right Well, sometimes they just don't look
23 right

24 Q Who's prints did they compare the cash
25 register print with?

1 A I don't know

2 Q Look on the top of the page

3 A There's three different names, I am not sure

4 Q Who is it?

5 A I cannot testify to this, I did not do this
6 work

7 Q I understand I'm asking the question, just
8 tell me who the report --

9 MR SAVAGE Objection, Your Honor,
10 argumentative

11 THE COURT Sustained Outside -- well
12 several reasons, one of lack foundation, speculation
13 she has indicated she did not do the report She is
14 not competent to testify to it

15 Q (By Mr Howell) Have you every seen a report
16 like that before?

17 A Yes

18 Q Do you see that in the normal part of your
19 work?

20 A We do them occasionally, yes

21 Q And you have been to schools about those kinds
22 of reports, haven't you?

23 MR SAVAGE Objection, Your Honor, vague

24 THE COURT Overruled Ma'am, you may answer
25 the question

1 A I have been to numerous schools, yes There
2 is no one particular school for this particular
3 report I'm sorry, I don't understand what you are
4 looking for me to answer

5 Q Just that part You know what the term latent
6 print means, correct?

7 A Yes

8 Q The term, possess the quality and quantity to
9 affect identification, is that a term that you use in
10 your work?

11 A I generally don't, no That is a term that
12 the latent identification specialist uses I mean I
13 understand what it means from their point of view,
14 but I don't do their work

15 Q I understand that, but you understand what the
16 term means?

17 A Yes

18 Q You understand, side of cash register drawer,
19 that's nothing complicated about that?

20 A No

21 Q How about interior front door, you understand
22 what that term means?

23 A Yes, I do

24 Q And you understand interior front door, you
25 understand what that means?

1 A Yes

2 Q And you understand interior front door, you
3 understand what that means, looks like three times
4 And then Kalisha Gill is the examiner?

5 A Yes

6 Q So does she have more or less expertise than
7 you do?

8 A In her own field she has more than I do
9 That's another field of expertise I don't have that
10 expertise in that field

11 Q Now with these -- hang on a second I think I
12 may be finished

13 MR HOWELL That's all the questions I have

14 THE COURT Ms Crumey, any questions for the
15 witness?

16 MS CRUMEY No, Your Honor

17 THE COURT Mr Harris, any questions for the
18 witness?

19 MR HARRIS Beg the Court's indulgence, Your
20 Honor

21 I don't have any questions I apologize

22 THE COURT Any objection to the witness being
23 excused from the State?

24 MR SAVAGE Can I briefly redirect, Your
25 Honor?

1 THE COURT I'm sorry, I apologize Any
2 redirect from the State?

3 MR SAVAGE Thank you, Your Honor

4 THE COURT You may proceed

5 REDIRECT EXAMINATION

6 BY MR SAVAGE

7 Q Ms Maestas, what items were you submitted in
8 this case to analyze for prints? I guess to analyze
9 to see if there was a print there?

10 A The four weapons

11 Q Mr Howell mentioned about terms such as, you
12 understand what inside of rear door means Did you
13 analyze anything, were you asked to analyze anything
14 regarding the inside rear door?

15 A No, I was not

16 Q Anything to do with a cash register?

17 A No, I did not

18 Q None of that items was submitted to you and
19 asked for you to do that, was it?

20 A No

21 MR SAVAGE Court's indulgence, Your Honor

22 Q (By Mr Savage) Ms Maestas, you testified
23 that it's not uncommon to find a print, I guess, on
24 the body of the gun, the outside of the gun Can you
25 explain why?

1 A The surface, when you leave prints behind, the
2 surface does have some hinderance sometimes to what
3 you see and what you get Generally I think that
4 hi-points are of a plastic, rough surface so the
5 outline of the gun is not going to leave very good
6 prints behind

7 Ideally for a legal print you want a nice,
8 smooth, clean surface The other thing with guns is
9 oils and the heat from the gun sometimes will hinder
10 leaving prints as well

11 MR SAVAGE I have no further questions, Your
12 Honor

13 THE COURT Any objection to the witness being
14 excused from the State?

15 MR SAVAGE No, Your Honor

16 THE COURT From the defense, Mr Howell?

17 MR HOWELL No, Your Honor

18 THE COURT Ms Crumey?

19 MS CRUMEY No, ma'am

20 THE COURT Mr Harris?

21 MR HARRIS No, Your Honor

22 THE COURT Ma'am, you are excused

23 You may call your next witness

24 MR SAVAGE Your Honor, the State calls
25 Colleen Butler

1 MS COLLEEN BUTLER,
2 after having first been duly sworn to state the
3 truth, the whole truth and nothing but the truth,
4 testified on her oath as follows

5 THE COURT You may proceed

6 DIRECT EXAMINATION

7 BY MR SAVAGE

8 Q Good morning, Ms Butler

9 A Good morning

10 Q Where do you work?

11 A I work for the Charleston Police Department

12 Q And what do you do with the Charleston Police
13 Department?

14 A I'm the senior latent examiner

15 Q Could you describe the nature of your work at
16 the Charleston Police Department?

17 A I analyze and compare fingerprints collected
18 from a crime scene to those of known individuals for
19 the purpose of identification and elimination I
20 also run the Automated Fingerprint Identification
21 System known as AFIS

22 Q How much of your time is devoted to print work
23 at the Charleston Police Department?

24 A 100 percent

25 Q How long have you been doing this work at the

1 CPD?

2 A Little over seven years

3 Q What study and preparation have you made for
4 this work?

5 A Prior to becoming a latent examiner I worked
6 as a crime scene officer So I was trained to
7 recognize, collect and preserve evidence

8 From there I became interested in latent
9 fingerprints I did an independent study under the
10 previous latent examiners who were certified, Chris
11 Scott and Libby Allberg, and that was in my own spare
12 time I also went to several courses, basic
13 fingerprint, pattern recognition

14 When a space became available I was
15 transferred into the latent print examiners' office
16 and I went to as many schools as I possible could,
17 over 250 hours worth More recently I have done
18 several courses online that deal in fingerprint work
19 through West Virginia University

20 I also read any material that is out there
21 that pertains to my field of expertise When there
22 are funds available I request to attend courses that
23 I haven't yet attended And I am also member of the
24 International Association for Identification And I
25 read their journals which come out every couple of

1 months

2 Q What do you do to keep updated on new
3 techniques in your field?

4 A Other than the contacts that we make during
5 seminars with other latent examiners, we exchange
6 information back and forth You read journals put
7 out by the International Association for
8 Identification

9 Internet is a great source to get updated
10 information, newer technology out there So
11 basically those things

12 Q What type of technique or equipment do you use
13 in your line of work, or your field of work?

14 A Basically it's fingerprint pointers,
15 fingerprint magnifiers and additional light

16 Q Have you had any occasion to identify persons
17 by comparing latent prints with inked print cards?

18 A Yes, I have

19 Q Approximately how many times?

20 A Over 50,000 times with day-to-day casework,
21 courses that we take, training of other new latent
22 examiners, the reviews of casework for each other

23 And just once a year we are proficiency
24 trained So we have to take a test by an outside
25 agency sends us and pass that

1 Q Have you been qualified as an expert before in
2 court as a fingerprint analyst?

3 A Yes, I have

4 Q Yes, you have And how many times?

5 A Twelve times altogether Ten in the general
6 sessions court of South Carolina, twice in Federal
7 Court for South Carolina

8 Q Are you certified as a latent examiner?

9 A I am

10 MR SAVAGE Your Honor, at this time the
11 State moves to qualify Ms Butler as an expert as a
12 latent examiner

13 THE COURT Any questions or objection from
14 the defense, Mr Howell?

15 MR HOWELL No, Your Honor

16 THE COURT Ms Crumey?

17 MS CRUMEY None, Your Honor

18 THE COURT Mr Harris?

19 MR HARRIS None, Your Honor

20 THE COURT So admitted

21 MR SAVAGE Thank you, Your Honor

22 Q (By Mr Savage) Could you please explain to
23 the jury what a latent fingerprint is

24 A Latent means hidden So it's an invisible
25 impression of the friction ridges left on surfaces

1 and objects in the form of perspiration and other
2 contaminants, dust, blood, et cetera And it's
3 through development with powders and chemicals that
4 these images are made visible so that you can compare
5 them

6 Q Could you explain what a known fingerprint is

7 A Known is, a known fingerprint is when you know
8 the individual and by applying printer's ink to the
9 hands and rolling each finger from nail to nail on a
10 suitable backing card, a permanent record is created
11 on that individual

12 And you use those to compare to the unknown
13 latent

14 MR SAVAGE Your Honor, may I approach the
15 witness?

16 THE COURT Uh-hum

17 Q (By Mr Savage) Ms Butler, I'm showing you
18 what is marked as State's Exhibit 37 Do you
19 recognize that?

20 A Yes, I do

21 Q What is that?

22 A It's a latent print card that was turned in to
23 me by Anita Maestas

24 Q Is that related to this case?

25 A Yes, it is

1 MR SAVAGE Court's indulgence, Your Honor

2 Q (By Mr Savage) Ms Butler, did you perform I
3 guess a fingerprint comparison on what you received
4 in this case, that latent print there?

5 A I did Originally Kalisha Gill performed the
6 casework And I was the verifier on the complete
7 case

8 Q Could you explain to the jury how
9 identifications are made?

10 A We use the ACEV methodology, which stands for
11 analyze, compare, evaluate and verify It's basic
12 steps to each process

13 For analyze you basically look at that latent,
14 see what information is affordable to you, such as
15 creases, thickness or thin ridges, the areas between
16 the ridges, whether -- we call them furrows -- if
17 they're wide spaces, short spaces Pattern types,
18 loops, arches or whorls that can give you a starting
19 point to look from the latent to the known
20 individual

21 Next you go to the comparison part If I find
22 -- if I am working with a loop, if I find a loop that
23 meets similar characteristics of the one that I have,
24 I go into the actual points of the latent

25 Q Let me cut you off there I don't mean to be

1 rude

2 MR SAVAGE Your Honor, may I approach?

3 THE COURT Uh-hum

4 (Whereupon, State's Exhibit No 38 is marked
5 for identification)

6 Q (By Mr Savage) Ms Butler, I'm showing you
7 State's Exhibit 38 Do you recognize that?

8 A Yes, I do

9 Q What is it?

10 A It's a chart that we prepared to explain how
11 we went through the identification

12 Q And the chart that you used to prepare there,
13 is that the latent print that was submitted to you in
14 this case?

15 A Yes

16 MR SAVAGE Your Honor, State moves Exhibit
17 38 into evidence

18 THE COURT Any objection?

19 MR HOWELL None, Your Honor

20 THE COURT Ms Crumey?

21 MS CRUMEY No, ma'am

22 THE COURT Mr Harris?

23 MR HARRIS Without objection

24 THE COURT Marked and admitted without
25 objection

1 (Whereupon, State's Exhibit No 38 is admitted
2 into evidence)

3 MR SAVAGE Thank you, Your Honor At this
4 point what I wanted to was put it up on the
5 projector But I also wanted to give each juror a
6 copy of this just for the purpose of them viewing so
7 that she can go through and explain how she did and
8 what she did

9 THE COURT Any objection, Mr Howell?

10 MR HOWELL No, Your Honor

11 THE COURT Ms Crumey?

12 MS CRUMEY No

13 THE COURT Mr Harris?

14 MR HARRIS None, Your Honor

15 MR SAVAGE I'll collect it obviously after
16 the jurors

17 Q (By Mr Savage) Ms Butler, before I
18 interrupted you, you were about to discuss about the
19 comparisons you did in this case?

20 A Yes There are levels or steps that you take
21 in order to perform a comparison, starting with the
22 latent and going into the known As I was telling
23 you there was the first step which was things that
24 are readily identifiable Is there a pattern type,
25 are there creases or scars that can draw your

1 attention to a possible area to start looking at

2 Once you finish that phase you go into what is
3 commonly referred to as points You pick a segment
4 of points And if you would like I can come up there
5 and walk them through it?

6 Q Yes I just realized I just took it away from
7 you So if you would like to come down here and show
8 the jury, I guess

9 A All right The fingerprint that I'm pointing
10 out now is the latent fingerprint You always start
11 with that You find a sequence of points, and I
12 start at the top Because when you look at this
13 print, it has some smudging to it, right in the core
14 of it

15 which as you can see it's a loop, but you
16 can't tell much from that actual formation of the
17 loop You just can tell that's the pattern type you
18 are working with So when I started with this I
19 would look at the ridges that were the best looking
20 to start at and figure out the sequence of points

21 You start at the top You come to these, and
22 you take three or four to where you look for three or
23 four points that are together, go from your latent,
24 go to your known If it was these three here I would
25 come across to the loop that I was looking at in the

1 defendant's or the individual's 10-print card and
2 find them You have what we call a hand over hand

3 Starting with this point, sliding down one
4 And then right to a ridge ending It's in the latent
5 fingerprint as well Starting here with the ridge
6 ending, hand over hand, and go to the right, there's
7 another point Come down and you have the ridge
8 ending right there

9 Then you count one, two and there is another
10 ridge ending Go to the known, one, two ridge
11 ending From that point you can keep branching out
12 You want to look at all the similarities in that
13 latent fingerprint, and all the dissimilarities

14 Distortion causes dissimilarities It's just
15 pressure, the type of surface that you're leaving it
16 on If it's a greasy surface you could have a slide
17 of movement which will throw off your ridges
18 Excessive pressure causes a fattening of the ridges
19 leaving the furrows, the area between those ridges,
20 very thin

21 So you have to be able to explain
22 discrepancies from a latent to a known If you
23 can't, you cannot call it an identification

24 Now there is in the latent to this known, the
25 left middle finger of David L Brown, there is over

1 ten identification -- points of identification
2 There is not a specific number that we set our mind
3 to It's based on everything within that
4 fingerprint

5 And if there are dissimilarities, we have to
6 explain them Well, there is not really a lot of
7 dissimilarities other than there is excessive
8 pressure right here in the center

9 So based on the points, the ridges available
10 and also you if you look at this known fingerprint
11 you can see a crease come across with the crease
12 underneath it and you've got the shadow of a crease
13 right under, and the latent also So those are other
14 things that you look at when you are matching an
15 individual

16 The evaluation part is is there enough for me
17 to make an identification and call it And then a
18 report is written up and that whole case is
19 transferred over to another latent examiner, who
20 reviews it like it has not been worked

21 Now even though we know there is an
22 identification, you are still going through each
23 latent looking for any mistakes in the reports, any
24 non-identifications that should have been
25 identifications, and any erroneous identifications

1 If a mistake is found then we have to notify
2 our director who documents it We are ASCLAD lab
3 accredited, so that goes into our file and it stays
4 on our record for the rest of our career So there
5 is a documentation trail for the things that we do,
6 whether it's misses or erroneous identification

7 If an erroneous identification is made, then
8 you basically are no longer a licensed print
9 examiner

10 Q Now the report in this case, the examiner's
11 name is Kalisha Gill Can you sort of explain the
12 process of how does Kalisha Gill do an examination
13 and then you do an independent examination, our how
14 does that work?

15 A Just as I was saying, she does the original
16 The case was hers, she looks at it, writes up a
17 report to her finding I go through the whole case,
18 review each latent to each individual that was asked
19 to be compared like it had not been worked prior If
20 I find any discrepancies, I note them Whether it be
21 a misspelled word in her report, which is common We
22 all double-type a litter or something To anything
23 she has missed as far as an identification or an
24 erroneous identification

25 If I completely agree with everything that she

1 has submitted to me, I sign off on the report on a
2 case review sheet And then the investigators
3 forwarded a report and the solicitor would ask for
4 it

5 Q Did you completely agree with her report in
6 this case?

7 A I did

8 Q And that was based on your independent
9 analysis that you conducted?

10 A Yes

11 Q What were the results of your comparison?

12 A That latent lift number one submitted by crime
13 scene Officer Anita Maestas was identified to the
14 left middle finger of the card bearing the name David
15 Lee Brown

16 Q Now were you asked to compare just one
17 individual or was it three, four, how many were you
18 asked to compare it to?

19 A Originally it was three individuals, Colin
20 Boston, Clarence Robinson and David Lee Brown Later
21 we were asked to add one more, and that was Darnel
22 Brown

23 Q And did any of those other individual's
24 prints, did you find a comparison with those
25 individuals?

1 A I compared those individuals but was not able
2 to identify any of them to be other latent
3 fingerprints turned in

4 Q Were you asked to analyze any other prints in
5 this case? Sorry, was there any other prints
6 submitted or was it just this one latent print or
7 were there other latent prints that were submitted as
8 part of this case?

9 A There were two sets of envelopes One
10 envelope contained seven latent fingerprint cards
11 turned in by crime scene Officer Charles And then a
12 single latent turn in by Anita Maestas

13 Q And those, I guess you mentioned those seven
14 latent prints that were turned in, do you know what
15 objects they were from?

16 A Yes, I do

17 Q What objects?

18 A The first envelope turned in by Renee Charles,
19 one of the latent prints came from the side of the
20 cash register drawer Second latent print came from
21 interior front door The third latent came from the
22 back of the cash register drawer Latent lift four
23 came from the cash register Latent lift number
24 five, interior front door Latent lift number six,
25 the interior front door And latent lift number

1 seven, interior front door

2 Q I guess, did you run a comparison for those
3 four individuals that you mentioned before to see if
4 they matched those prints?

5 A Each individual was looked at to each latent
6 turned in by the case

7 Q What were the results of that regarding the
8 cash register drawer and those items there?

9 A None of these latents matched up to Colin
10 Boston, Clarence Robinson or Darnel Brown

11 MR SAVAGE I have no further questions
12 Court's indulgence, Your Honor

13 I have no further questions at this time, Your
14 Honor

15 THE COURT Mr Howell, any questions?

16 MR HOWELL Yes, 'ma'am

17 THE COURT You may proceed

18 CROSS-EXAMINATION

19 BY MR HOWELL

20 Q So no single fingerprint was found at the
21 Benders that matched David Brown, Mr Robinson or Mr
22 Boston?

23 A Okay Which Mr Brown?

24 Q David Brown

25 A David Brown matched up to the latent I

1 explained to the jury

2 Q The clip on the gun?

3 A The clip on the gun

4 Q Did he match up with any of the things that
5 you found that came from the instant location of the
6 robbery known as Benders?

7 A None of them matched up to the latents turned
8 in by Renee Charles, which is the incident location

9 Q And that's also true of Mr Boston, correct?

10 A Yes, sir

11 Q It's also true of Mr Robinson?

12 A Yes, sir

13 Q Now it's my understanding that when you get a
14 print, there is no way to time-date a print, is
15 there?

16 A No, there isn't

17 Q So when you find a clip on a gun, there is no
18 way to know when someone touched that clip or when it
19 was put in the gun?

20 A No, sir

21 Q There is no way to know that the person that
22 handed somebody a clip one day, it had been put in
23 the gun a month later, there's no way to -- that's
24 completely consistent, isn't it?

25 A For the most part, yes

1 Q And how long can prints really last? what's
2 the longest you've seen?

3 A No one can put a time on how long a
4 fingerprint can last

5 Q I did not ask that question, I'm sorry What
6 is the longest, have you ever picked one up that has
7 been there more than a month?

8 A I won't put a time on how long a fingerprint
9 can stay I will only say that under the right
10 conditions, in an area that is not in direct
11 sunlight, does not get touched very often, can stay
12 for a very long time

13 Those fingerprints left on objects that are
14 coming in contact with others causing friction or
15 constantly touched will be wiped away very quickly
16 That's the best answer I can give

17 Q I'm just trying to get a feel for what a very
18 long time will be Is that a week, is that a year,
19 somewhere, what?

20 MR SAVAGE Objection, asked and answered

21 THE COURT Overruled I'm giving him some
22 latitude You may answer the question

23 Q (By Mr Howell) I think your testimony was
24 you've looked at 50,000 fingerprints?

25 A Yes

1 Q What's -- give us an idea of some of the, in
2 your experience in some of the cases you've worked
3 on, on what a longer time period would be for a print
4 to lift?

5 MR SAVAGE Objection, Your Honor, relevance
6 THE COURT Please restate the question

7 Q (By Mr Howell) You have worked on 50,000
8 prints, right?

9 A Yes, sir

10 Q Okay You've worked on a number of different
11 cases?

12 A Yes

13 Q Have you worked on any cases where the print
14 was over six months old?

15 MR SAVAGE Objection, Your Honor, relevance
16 THE COURT Overruled

17 A When the latent fingerprints are turned into
18 me, they're collected by a crime scene officer They
19 go out to the scene It doesn't say on the actual
20 cards how long that latent stayed on that object

21 Q (By Mr Howell) I understand that So you
22 don't know, in your experience, you do not know if
23 any fingerprint has lasted more than six months?

24 A I have read materials where a fingerprint of
25 an officer was found a year later Under the right

1 conditions, yes, fingerprints can stay for a very
2 long time It's not for me to say whether that's a
3 year, ten years, fifteen years

4 Q I understand, that's all I'm asking I am
5 just trying to get a feel for I don't know if
6 that's a day or ten years I'm trying to get some
7 feel for it

8 A I cannot pinpoint that, sir

9 Q I'm not asking for a pinpoint I'm asking
10 form some reasonable explanation in your field of
11 expertise?

12 A As a latent examiner you don't collect the
13 fingerprints

14 Q Okay But in the materials that you've
15 studied you've seen things of a year?

16 A A year

17 Q Now As I understand it the fingerprint
18 itself really is exact If you could take two
19 perfect fingerprints you would get a complete match
20 everywhere, wouldn't you?

21 MR SAVAGE Objection vague to perfect
22 fingerprint

23 THE COURT Rephrase the question

24 Q (By Mr Howell) Are fingerprints exact?

25 A The fingerprint science is exact As far as a

1 latent goes, a latent is an impression of the
2 friction ridges left on an object It's not going to
3 be exactly like a controlled rolled fingerprint You
4 are get a chance happening, so you may get pieces and
5 parts of that full picture

6 Think of it like a puzzle A piece of a
7 puzzle of that whole impression

8 Q My question is a little different I'll
9 direct you to my question if you don't mind If two
10 fingerprints were taken, and in a controlled
11 situation were taken in exactly the same way with
12 exactly the same pressure, they should show exactly
13 the same lines, shouldn't they?

14 A For the most part, yes Exactly the same way,
15 pressure, everything exact, yes

16 Q Okay And if you see something on the sample
17 print that's not on the comparison print, and there's
18 no other explanation for it, you've got a different
19 print, don't you?

20 A If there was any inconsistencies that you
21 cannot explain, you cannot call it You can't match
22 it, no

23 Q Now what kind of camera takes a picture over
24 on that side?

25 A That is not a camera, that's a scanner

1 Q You don't computer enhance that in any way or
2 something? I mean is the image that you got on this
3 paper the best image that you used to compare?

4 A I'm going to answer and hopefully I get this
5 the way you are asking it When we scan in a
6 fingerprint on a fix-tracker, which is the system we
7 use to do our charts, we scan in at 600 DPI So
8 that's per minute

9 You can lighten and darken, but as far as
10 changing, we don't do any of that

11 Q I am just looking, I'm going to pull this
12 down Is that high enough for you to see?

13 A Which part of it would you like me to see?

14 Q Top part

15 A Top part, yes

16 Q I can't reach high enough Looks to me like
17 the first thing that you were sort of pointing to
18 that was distinctive was this piece, there is like a
19 little zig-zag?

20 A Right

21 Q That's where you start, right?

22 A Right

23 Q And you are saying that you see a zig-zag in
24 there, that's where the mark is at, you see that?

25 A I do see that

1 Q Okay And tell me what is it that you see
2 here? Do I need to move that up a little bit?

3 A I would need to get closer to it

4 Q Come on down

5 A You have your charts in front of you We have
6 a ridge that comes up and dead ends in the latent
7 And then another ridge that continues on and ends
8 This is the ridge that comes and ends, and then the
9 one above it comes and dead end

10 You are going off of the spacing And there
11 is distortion, I've already explain to you there is
12 pressure distortion in here Also when you think of
13 a clip to a gun, you have got a sliding motion, all
14 right, which causes movement

15 But the points that are pointed out from the
16 latent to the known are exact They count off
17 perfectly from each point identified In the latent
18 to the known

19 Q So you see, right here, you are seeing a dead
20 end somewhere?

21 A Yes, I am Come up with this ridge here and
22 flow it down right here

23 Q How about is this -- is that a distinctive
24 pattern or is that a smudge over here on the control?

25 Q It looks to me like over-inking

1 Q Looks like an X to me Looks like a dead end
2 to me

3 A It's fine When you look at the
4 characteristics in a fingerprint, I can call
5 something a hand-over-hand, whether it be left hand
6 over right Somebody else might call it a crossover
7 from ridges I can call it a ridge end

8 I can say something looks like a smiley face
9 within the core of the fingerprint It's anything
10 that catches your eye and makes you associate the
11 things that you are looking at, a latent and the
12 latent fingerprint, to a known

13 And if -- all right, up here would be a good
14 example You see how this ridge comes and dead ends?
15 And then you have this hump that I would call You
16 have it right here It comes and dead ends, and this
17 ridge flows and then humps and comes back down

18 That's the flow that you are looking for in
19 each ridge Is it consistent with the flow? If
20 there is a hump in one is there a hump with the
21 latent? Doesn't matter whether I call it a hill, a
22 hump or a break, maybe a break in the actual ridge

23 Q Let's get back to what I asked you about which
24 was the X You can call it a hump, you can call it a
25 smiley face This is what I am asking you about,

1 somehow you got up here

2 MR SAVAGE Objection, Your Honor,

3 argumentive Is there a question?

4 MR HOWELL The question is, if --

5 THE COURT Let me -- there is an objection,

6 let the Court rule

7 Rephrase the question

8 Q (By Mr Howell) All right Do you see where

9 my pen is pointing?

10 A Yes, I do

11 Q Do you see that it appears to they come

12 together at some point there?

13 A I'm not going to say that they come together

14 I'm saying that that ridge stops there

15 Q okay

16 A And the two ridges on either side continue on

17 Q okay so there is something black this way,

18 and there is something black that way?

19 A Yes

20 Q And do you see that anywhere over here? Can

21 you identify that point?

22 A I see where you're coming off of this one and

23 that one ends Yes, I see the ending Now --

24 Q whoa, whoa, whoa, now

25 A -- going from a -- go ahead

1 Q I'm asking you --

2 MR SAVAGE Your Honor, can she be allowed to
3 explain her answer

4 THE COURT She can answer the question yes or
5 no and then she can explain her answer Then you can
6 ask your next question

7 MR HOWELL My trouble --

8 THE COURT You asked a question, she answers
9 yes or no, she can explain her answer in full and
10 then you asked your next question she's allowed to
11 explain her answer

12 MR HOWELL But she's not answering my
13 question

14 THE COURT Yes or no and then she can explain
15 her answer

16 MR HOWELL Okay

17 THE COURT And the Court gives directions to
18 the witness not either attorneys Thank you

19 You may continue your questioning

20 Q (By Mr Howell) This, what do you want to
21 call this?

22 A A ridge end

23 Q Ridge end

24 THE COURT You might want to use the other
25 end of that pen so you don't write on the screen