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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County
Honorable Benjamin H. Culbertson, Trial Judge
Honorable Michael G. Nettles, Circuit Court Judge
Honorable Kristi F. Curtis, Circuit Court Judge

JOHN ALEXANDER DARRIEUX,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000303

APPENDIX

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	2015-GS-08-1024, 1026, 1027, 1028,
COUNTY OF BERKELEY)	1029, 1030, 1031, 1032 and 1034
The State,)	
)	
Plaintiff,)	Transcript of Record
)	
vs.)	January 26-29, 2016
)	
John Darrieux,)	
)	
Defendant.)	

B E F O R E:

Honorable Benjamin H. Culbertson
Berkeley County Courthouse
Moncks Corner, South Carolina

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(On the record, January 26, 2016, State v. John Darrieux. The following takes place outside the presence of the jury panel.)

THE COURT: All right. We'll go forward. All right. Ladies and gentlemen, I've got -- this is the case of the State of South Carolina versus John Alexander -- do you pronounce it Darrieux?

MR. DAVIS: Darrieux.

THE COURT: Darrieux. These are indictments 2015-GS-08 -- what's been put on the desk is 1024, 1026, 1027, 1028, 1029, 1030, 1031, 1032 and 1034; is that correct?

MR. WEST: I believe it is, Your Honor.

THE COURT: Okay. Because I know -- notes on the roster you all gave me and on the website there is a 1023 for unlawful carrying of a pistol.

MR. WEST: That's correct, Your Honor, and the State has decided to forego proceeding forward on that indictment --

THE COURT: All right.

MR. WEST: -- as well as the two contributing to the delinquency of a minor charges.

THE COURT: Okay.

MR. DAVIS: So that I'll understand, nolle prossed with prejudice, Your Honor?

THE COURT: Is that correct?

MR. WEST: I guess that'll be dependent on your motion,

the motion for severance if this is --

THE COURT: Okay.

MR. WEST: If it's severed we'd obviously elect the right to go forward on all the charges that stem from the -- that particular incident.

THE COURT: Okay. All right. But for the purposes of right now and proceeding on -- in this trial and for these pretrial motions you're just doing 1024, which is burglary second degree non-violent; 1026, burglary first degree; 1027, 1028, 1029 for armed robbery; 1030, 1031 and 1032 for kidnapping; and 1034 for possession of a firearm during the commission of a violent crime; correct?

MR. WEST: That's correct, Your Honor.

THE COURT: Okay.

MR. DAVIS: Your Honor, may it please the Court, you haven't ruled on the severance yet. So either the State is calling the entire case and all the indictments or they're nolle prossing some of them. I'm not -- because obviously your evidentiary rulings, we haven't severed anything yet. So either they're all on the table and they should call the cases they're going to go forward on, and if you choose to sever them so be it and then they can elect if, if you, if you choose to sever and that effects what they want to dismiss so be it, but I would, I would object to some -- to rulings on these one, two, three, four, five, six, seven, eight, nine and

there be two or three that are outstanding in limbo that don't apply to your rulings today.

THE COURT: Okay. Well, I mean, I don't know that I can compel them to bring -- to, to bring it forward at this point in time. Now, certainly if they proceed on certain charges and it's based upon the same facts, whether or not you've got a double jeopardy issue, you may. I don't know, but I don't know that I can force the Solicitor to go forward on an indictment that the Solicitor chooses not to go forward on at this point in time or that they choose not to proceed, and I don't know that I can force them to dismiss it with prejudice. Now, I can certainly make a ruling if there's a violation of right to a speedy trial or double jeopardy or something of that nature, but unless you can show me some authority where I can compel them to bring them to trial when they bring these other ones to trial.

MR. DAVIS: Judge, I, I, I'm stunned because in 20 years I've never seen the State attempt to, from my own experience, "Call the case, Solicitor." You basically, "Call the case." "Judge, we're just going to hold on to a couple of warrants or indictments. We're not going to call them right now. I mean, it's from the same facts that we're moving forward on. We're just going to kind of hold this in the pocket," and I've had Judge, Judge Dennis, "Mr. Davis, call them or dismiss them, but now's, now's your opportunity for Mr. Darrieux," and

Judge, with all due respect this, this is the -- this is the difficulty I, I on behalf of my client we've been dealing with for, for trying to schedule this. The State has indicated they wanted to move forward on all three, but thrown their hands up when continuances got granted as though they can't delay and called them all three at one time. The State has revealed on Thursday that there's identity issue. The State has revealed just recently that there's evidently some admissions by my client, which I was unaware of at any point, and now they want to move forward and have you rule on not the entirety of the cases. I'm sort of starting to dovetail into one of my motions. I won't do that yet, Your Honor, until you deem it appropriate, but you know, I, I can't cite authority that you can compel the State to bring forward any charge. You're right on that, but I would be -- I'm, I'm hesitant on how the State could without calling or dismissing maintain in limbo a charge that arises out of these facts. Now, I'm going to argue it's two separate incidents, but it arises out of these facts, either you're calling the case or not.

THE COURT: Well, let me ask you this. Let me, let me ask you this, Mr. West. The unlawful carrying of a pistol, contributing, and the two, well, the two contributing to the delinquency of the minors, I'm assuming that at least one of those, even if I sever, grant the motion to sever, one of those is still based upon the same incident; correct?

MR. WEST: That's correct, Your Honor.

THE COURT: Okay. The unlawful carrying of a pistol, I guess the question is which --

MR. WEST: It stems from the second, quote, unquote, second incident --

THE COURT: Okay.

MR. WEST: -- of the day.

THE COURT: So the unlawful carrying of a pistol and the contributing to the delinquency, one of the contributing to the delinquencies is for the second incident. The other contributing is to the first incident.

MR. WEST: That's correct.

THE COURT: Okay. All right. And so just so we get a heads up, if, if I grant the motion to sever, and I'm assuming the motion to sever is severing the charges on the first incident and second incident?

MR. DAVIS: Yes, Your Honor.

THE COURT: Okay. All right. So if he's -- if I grant the motion to sever, then you will be going forward with the indictments, if we try the first incident you'll be going forward with the indictments on the second incident at a subsequent trial; is that correct?

MR. WEST: That's correct, Your Honor.

THE COURT: Okay. And if I deny the motion to sever then you're just going to nolle prosse them with prejudice?

MR. WEST: We would go forward on -- the only charge from the second incident we would go forward on is the burglaries, what is now second, and would be the subject of some prior or subsequent motions today.

THE COURT: No. No. I'm talking about if I deny the Defendant's motion to sever trials, and so we're going forward with all of the charges on the first and second incidents, what are you going to be doing with the unlawful carrying of a pistol and the two contributings?

MR. WEST: At that point we would nolle prosse them, Your Honor.

THE COURT: With prejudice?

MR. WEST: With prejudice.

THE COURT: Okay.

MR. WEST: Yes.

THE COURT: All right. And if I grant the motion to sever you'll just --

MR. WEST: I think --

THE COURT: -- the ones that are attributable to the second incident you're not nolle prossing them, and whenever they try the second incident you'll try those two?

MR. WEST: That's correct.

THE COURT: Okay. All right. And I don't know that he's prohibited from doing that. I think when it comes time -- if I grant the motion to sever then he's going to need -- he's

not going to be able to hold out any indictments from the, the one that he's calling for trial. The first -- let's say he goes to trial on the first incident, he's not going to be able to hold any of those in abeyance.

MR. DAVIS: I certainly understand that, Judge.

THE COURT: Yeah.

MR. DAVIS: All I'm saying is I get cart before the horse. Let's have the motion for a continuance, motion for severance, and then based on your ruling if the State chooses to, but for them to stand up before we even start any of these pretrial hearings to say, "We might or might not," I would argue that's undue influence on my client. It -- I would have to do some research on it, Judge, but I, I think, you know, the, the, the implied threat there is, "You better not be asking for this stuff -- if, if you don't ask for this stuff we'll get rid some of the, some of the charges." Judge, that's, I think that's an improper posture.

THE COURT: Okay.

MR. DAVIS: And so I, I would just simply ask that when the State calls the case they call all the charges we have, let's deal with them, because my motion applies to all of them. I'm not aware until three minutes ago that the State had any intention of dismissing any of these indictments. So my motion applies to all of them.

THE COURT: Okay. Well, and I'll still, I'll still let

you go forward on your motions.

MR. DAVIS: Thank you.

THE COURT: But for right now, as I understand, he's -- he's nolle prossing with prejudice those three indictments if I deny your motion to sever. If I grant your motion to sever then he is nolle prossing, I mean, then he is not going to nolle prosse the indictments on the case that is not going forward for trial; is that correct?

MR. WEST: That's correct, Your Honor.

THE COURT: All right.

MR. DAVIS: And just for the record, Judge, if we could have the, the three then indictments. I think I got all the ones that he, he was mentioning, but can I have the, the three that we're talking about might not -- it's two contributing --

THE COURT: I've got --

MR. DAVIS: -- it's two, two contributings.

THE COURT: -- two contributings and the unlawful carrying of a pistol.

MR. DAVIS: And can I get those --

THE COURT: 2015-GS-08-1023.

MR. DAVIS: 1023 is a contributing?

THE COURT: No. That's unlawful carrying of a pistol.

MR. DAVIS: Okay. And then what are the two, the two contributings? I'm sorry, Your Honor.

THE COURT: 1025.

MR. DAVIS: Uh-huh.

THE COURT: And 1033.

MR. DAVIS: Thank you, Judge. Thank you, Your Honor.

THE COURT: All right. Now, I guess the first thing we need to, to address would be the Defendant's motion to continue; is that correct, because you're seeking a continuance --

MR. DAVIS: Yes, Your Honor.

THE COURT: -- on all indictments --

MR. DAVIS: Yes, Your Honor.

THE COURT: -- or the trial on all indictments? All right. Let me hear from you on that.

MR. DAVIS: And Your Honor, do you have any of the filings from last week on this issue?

THE COURT: No. I do not.

MR. DAVIS: Okay.

THE COURT: On a motion to continue, no.

MR. DAVIS: Yes, sir.

THE COURT: I haven't gotten anything on that.

MR. DAVIS: May I approach, Your Honor?

THE COURT: Yes, sir.

MR. DAVIS: Judge, I'm going to hand you two filed copies. One is my motion, the State's response, and then -- those have been filed with the clerk. Today, I'm, of course, making a part of the record a more lengthy motion to continue.

I'll give you a moment. It's only just, just over a page.

THE COURT: All right.

MR. DAVIS: I'll let you review that.

THE COURT: All right, sir. Go ahead. Let me hear from you.

MR. DAVIS: Thank you, Your Honor. May it please the Court?

Judge, as a procedural history and to be -- to make the record complete, we spoke in chambers, but to get this on the record, last week it was made aware to myself and, and the Government that the Co-Defendants, there are two Co-Defendants that are not cooperating with the State, so three Co-Defendants in general on these two incidents. They're alleging four people committed both sets of crimes, alleging the same four people committed both sets of crimes. The youngest of the Defendants is in a proffer agreement with the State and we expect him to testify at this trial.

The other male Co-Defendant, his attorney had a child Thursday or Friday of what, Friday of last week, is out on maternity leave. The State understood that, and, and did not, you know, gave, gave time for that. The female Co-Defendant, her attorney was in the hospital not two days ago, but the weekend before. We're concerned, we believe she has diabetes, she had very high blood sugar, was in the hospital, a hard time seeing. She had filed a motion to continue originally.

I followed up on top of that, seeing this now was going to be my client by himself even though there's this group charged.

The motion you have is what I filed last Thursday. It's edited because I, unfortunately thought, that Ms. Gay, who is the one that was just in the hospital, had already been continued. It had not been. Judge Jefferson, who's the chief administrative judge, had a conference call with Ms. Gay, who had just been in the hospital, and myself and Mr. West on Friday afternoon. On that conference call Judge Jefferson continued Ms. Gay's case, which is Ms. Chisolm, the Defendant Ms. Chisolm, and indicated to me after hearing some argument from both sides that she was not inclined to continue my case. She did express concerns at that time about timeframe since it's a short week, we're, we're starting now on Tuesday, and it's Tuesday afternoon and we're just now doing pretrial. She did express concerns about that. She asked about any possible way to work it out. There had been plea negotiations before. There had been an offer made. My client did reject an offer in front of Judge Dennis back in November, but she encouraged both sides to see if there was a way to possibly resolve it, but did not grant my continuance.

THE COURT: All right.

MR. DAVIS: What you have before you is that, that original continuance. Judge Jefferson's clerk had asked the State to respond. They filed a one-page response, which you

also have, that she was aware of before the conference call. The, the memo in support lists -- explains in a little more detail than my one-page motion, simply a notice of motion, on why this case ought to be continued. I would like to verbally add to that a couple of things we had mentioned in chambers. Again, I filed that on Thursday, and after filing it and handing it to the Solicitor, we went to his office to discuss the case and to ensure that discovery was complete. It was at that time I was informed, and again, Mr. Darrieux was arrested October 21st of 2014. I was informed last Thursday afternoon that perhaps the occupants of the four a.m. incident may be able to identify him, and that is the first I had heard of that. It's my understanding there's been no photo arrays done, no, no other attempts to identify any of the perpetrators until the Solicitor met with them in preparations for trial, and I was informed of that verbally on Thursday. You know, obviously, I had the weekend, but in doing what I can to, to deal with that and prepare for that. Additionally, Your Honor, on that day, and this is something we had mentioned in chambers, and I -- my recollection of the conversation was that when we were discussing all the evidence that I had or didn't have, there was a, a discussion about two CDs, which have cell phone calls. The two individuals, two Defendants that were in jail, where my client who remains at jail, cannot make bond, and Ms. Chisolm, and I do have those

two CDs. There is -- it's item 238 and 239, and I, I, I would have to check exactly, Judge, on the date that I received them. There's a letter accompanying them dated the 23rd of December. I was out of state through the holidays. So it would have been I, I believe a couple of weeks ago. I can look for an exact date, Your Honor, at the appropriate time, but when I was in Mr. West's office on Thursday I had asked -- I had a litany of things that I had asked him for, specific Brady that I had asked him for and he was quick to respond to about six or seven items on specific Brady. In fact, that day we talked about rap sheets for witnesses, which they e-mailed to me that I received that day. I have no problem. They were very helpful on that, received the juvenile rap sheet today. During that conversation he referenced the jail calls, and says, "There's about 94 of them," my recollection is, "but I don't intend to get into that." I commented that if he did, let me know what ones because the issue is always, been doing this 20 years, if jail calls are used, the issue is always, one of the issues is always what's being said?

THE COURT: Right.

MR. DAVIS: And I said great, great. It wasn't until Sunday and you have a trial memo from him that he e-mailed to you and me on Sunday, and I'll be honest, I did not review it until Monday. I was at the jail on Monday visiting my client and that afternoon I read it. That's the first I was told

that there are recordings that the State intended to use. I have attempted -- there are at least eight CDs in this case. I have put every single one of them in my computer, my desktop or my laptop or McIntosh. I've got them with -- got the laptop with me. I actually have an old PC for certain files that won't play. I tried it in both systems. They would not open. They're files that, that I don't recognize, could not find a player to open them, and I went through that I believe we get Saturday, Sunday, Sunday or Monday. Again, not thinking an issue, but I just wanted to look at everything because my understanding is the State didn't intend to use anything until I read the memo on Monday afternoon.

THE COURT: So you were thinking he was giving you the, the CDs to just show the number of contacts?

MR. DAVIS: Well, I, I got -- Judge, there are, there are photo CDs that --

THE COURT: Okay.

MR. DAVIS: -- that I think a number of them will be irrelevant.

THE COURT: Okay.

MR. DAVIS: Of course, the law enforcement was very thorough and they would be relevant. Yes. They, they had them. So they have an obligation to turn them over.

THE COURT: Right.

MR. DAVIS: But many times they aren't used.

THE COURT: Right.

MR. DAVIS: If there is something that's inculpatory certainly the State has it, but I had not been aware, and I, I got appointed very early on after -- well, no, I apologize about that, Judge. I can find the exact date, but 2014, I got appointed in 2014.

THE COURT: Okay.

MR. DAVIS: And Sunday reading that memo was the first time anybody on behalf of the State indicated that there were jail calls that were going to be used. They do not play in my system.

THE COURT: Okay.

MR. DAVIS: And to dovetail back into this is a motion for severance or a motion for a continuance. Judge, I've been on both sides of the courtroom. There are some benefits for Mr. Darrieux in going forward alone. He will not be lumped in with the other folks, and we do understand that, but for judicial economy, and that's something the State is talking -- talks about all the time. In the State's position they think they have about 15 witnesses. I counted up a potential of 26, and even on the memo that you received from the State there are 20. Depending on how this trial goes, there's two remaining Co-Defendants they intend to prosecute, and I don't represent them, I understand that, but the State at the appropriate time I guess when both -- when the one attorney is

back from maternity leave and the other one's healthy enough they can wait on them and try them together. They could just as soon do that right now, Judge. We could wait and try all three of them together. On the other hand, the State might have to have three separate trials with 15 to 20 witnesses, the same 15 to 20 witnesses. We don't believe we are prejudiced by delaying, he remains in jail, and being tried with the Co-Defendants. It gives a much fuller picture of what the evidence shows, who did what, who was where, who knew what was going on, but for him to be here alone in the spotlight and us have no mechanism to explain to the jury why the other two Defendants aren't here, we can't talk about that, and I do understand that, but we think that would be a prejudice to him both being tried by, by, by himself where the State has the ability to simply wait and try all three at the same time, they're waiting on the other two, and for the evidentiary reasons that, that I've mentioned and made a record of. I understand Judge Jefferson's rulings. There's a few things that have come up since she ruled on Friday I want to make the Court aware of. So we would respectfully ask that this case be continued, trial on any of these cases, and the State could decide what ones to nolle prosse or go forward on because primarily, Your Honor, for judicial economy and not to prejudice my client because he will be here in the spotlight alone even though everyone knows there are two other

Defendants with pending charges.

THE COURT: Okay.

MR. DAVIS: For all those reasons we would respectfully ask you to grant a continuance of this trial to a different week or, and to the one specific thing, if you're not inclined to grant a continuance for the -- for all the charges, then we'd ask to be heard on how we would deal with the, the jail recordings themselves.

THE COURT: Okay. All right. Well, let me, and I can tell you, I'm assuming Judge Jefferson had already as administrative judge took into consideration judicial economy and your client going forward without the Co-Defendants. So I'm not going to grant your motion on that ground, but let me hear from the State regarding the use of the phone conversations.

MR. WEST: Thank you, Your Honor. As Mr. Davis indicated, those records were made available December 23rd of 2015. So he's had over a month to review those records.

THE COURT: Well, he said he was out of town. That was -- that's two days before Christmas and he said he was out of town.

MR. WEST: I understand.

THE COURT: So.

MR. WEST: I understand. Okay. Well, absent that, the day he picked them up he still had over two weeks, if not

close to three weeks to review them before coming to us. The conversation, to be clear with the record, last Thursday after we had what I call the final discovery meeting before my trials, was that, "If I intend to introduce any jail calls I'll tell you which ones they are," wasn't that, "I don't intend to use any jail calls." I did say there's a plethora of them. I wasn't -- I didn't intend on listening to all of them, but I had my investigator, Mr. Kevin McGowan, listen to them and his instructions were, "Find the top five and we'll figure out which the -- which five of those will intend to introduce at trial." So that's what I intended to do. We have narrowed that list down, and this morning is the first I have ever heard that he couldn't play them on his own personal computer. The easy remedy for that is, "Come to my office. Let's listen to them together or you can borrow a county laptop."

THE COURT: But I mean, have you already told him the ones you're going to use?

MR. WEST: I have not, but that is something we can go over right now, Your Honor.

THE COURT: Okay.

MR. WEST: The, the witnesses that would be required to introduce those records wouldn't be available till near the end of the trial anyway. So we still have today and tomorrow to review less than five jail calls that take 10 to 15 minutes

each. It's really no prejudice to the Defendant. They, they've been made available. The obligation of the State is to turn them over, which we did, and again, Mr. Davis never indicated to me when we met on Thursday that he didn't have the ability to listen to them, and had he indicated to me --

THE COURT: Yeah, but I mean, his argument was that he never got an indication that you were going to actually play the content of the phone conversation.

MR. WEST: Okay.

THE COURT: That it was to show a numbers, that, "Here's everything we've got," and listed on that was, you know, this many phone conversations between the Defendant and the Co-Defendant and that you weren't going to play the contents of it is his argument.

MR. WEST: Okay. Well, obviously there's some lines crossed in that communication there, but just because lines were crossed doesn't mean we hadn't met our obligations of discovery and that there isn't a potential remedy now before any of those witnesses would be called. That's a simple fix. We can provide Mr. Davis with a county laptop to go listen with his client anywhere in this courthouse, anywhere at the jail, assuming that the jailers are -- have that capability. So if, if that's the concern of Your Honor, that, that is easily fixed. That's easily remedied, and if we need to even narrow it down less than five that's possible, but I'd like to

have the opportunity to introduce all evidence against the Defendant that inculpates him and proves him guilty of these crimes, and the restriction of such is, is certainly a prejudice to the State given the fact that we've met our obligations here.

So that's where I'd leave that, Your Honor. I believe we've, we've done our duty here, and if there was some lines crossed that's not necessarily uncommon. We just need better communication. It's no fault of anybody's in particular. We just need to, you know, use common sense and figure it out right now. That's not going to take much time, and, and certainly my office doors have been open the entire time that I've had the case and that's been, been noticed by the meetings with Mr. Davis and numerous e-mails indicating that I had an open file for him to review.

THE COURT: All right. Anything in reply?

MR. DAVIS: Yes, Judge, just a couple of things. I have notes here the day I picked up the five CDs, these being two of them, I picked up the five CDs on January the 14th around three in the afternoon. I met with my client at 2:50. It was not a lengthy meeting, but I picked, I picked them up before I met with him. So the January 14th is when I got these, and Judge, I'll just -- if it had been an issue I would have raised it as soon as I knew it was an issue. There, there's an eight item specific Brady motion I filed January 15th. If,

if I had known it was an issue I would have dealt with it before this morning. I wouldn't ask the Court to rule on something this morning, it would have been in my motion for a continuance. If you're not inclined to grant the continuance, I would ask for two things, Your Honor. On other -- on, on the video-recorded statement of the testifying Co-Defendant, the CD I got had a player on there. I was able to play it on there. I would obviously like to have access to it whenever I can at home, to meet with my client. Appreciate the offer of coming to his office, but I, I need it. So the application to play it I would, I would ask for that, and Judge, if I'm overlooking it, I'm sure the State will correct me, but I don't see the chain which lists the records custodians that would testify to get it in. They're on the State's witness list, if I'm overlooking it, but I don't -- I just got the CDs and a letter on front saying, "Here's additional discovery." If I'm overlooking the chain on that, that I already have it, great. If not, that is something I would need if the State intends to introduce it.

THE COURT: Okay. All right. I'm going to deny the motion to continue, but I am going to order that either you play the recordings for them where they can listen to them or provide them with the app where he can listen to them. Okay? After you hear them, after you listen to the phone conversations, if there is any prejudice to the Defendant that

you have not argued we can readdress the issue, but as far as right now I'm not going to continue the case, but I am going to order the State to go either, either provide them with the app so they can play it or play it for them and let them listen to it. Okay?

MR. WEST: I understand, Your Honor.

THE COURT: And we'll need to do that today --

MR. WEST: I understand.

THE COURT: -- as soon as we finish these motions hearings. Okay?

MR. DAVIS: And, and the chain documents, Your Honor, if I don't already have them.

THE COURT: The chain?

MR. DAVIS: Chain of custody documents for the CDs, who obtained them, who -- because I've got search warrants for all the other evidence.

THE COURT: Okay.

MR. DAVIS: And I've got an inventory.

THE COURT: Can you provide that?

MR. WEST: Your Honor, there's not a chain of custody. Simply what our office does is goes to the jail and says, "We need recordings for this Defendant." We put the custodian on the witness list that produces that CD.

THE COURT: I mean, are these, educate me here. Is this just something that is routinely done?

MR. WEST: Absolutely, Your Honor.
THE COURT: Okay.
MR. WEST: Absolutely.
THE COURT: So it's under, I guess, what the business records exception?
MR. WEST: It, it is, Your Honor.
THE COURT: Okay.
MR. WEST: And that's why we call the records custodian to introduce --
THE COURT: All right.
MR. WEST: -- those particular calls.
THE COURT: All right. Just identify the records custodian and we'll go forward with that.
MR. WEST: She is, Your Honor.
MR. DAVIS: That's sufficient. Thank you.
THE COURT: All right.
MR. WEST: And Your Honor, just clarification on the record, it is the normal practice of that custodian to put that application on the CD. I'm, I'm, I'm not sure if he's not able to do it because he doesn't necessarily, his computer doesn't necessarily install it. All I know is what we normally do is put it in the computer and it pops right up.
THE COURT: Okay.
MR. WEST: Okay.
MR. DAVIS: If they could provide it.

MR. WEST: But we will, we'll fix that. That's remedied. We're -- we've had a good working relationship till now. So we're going to work, work through it together.

THE COURT: All right. Well, as I understand that's worked in the past, but it's not working this time. If it was -- it either wasn't done or it's not working this time. So either play it for him or provide him with an app.

MR. WEST: Will do, Your Honor.

THE COURT: And then we'll readdress it.

MR. DAVIS: Thank you, Your Honor. Thank you.

THE COURT: All right. What else have we got?

MR. DAVIS: Just a moment. Let me shift gears, Judge.

May I approach, Your Honor?

THE COURT: Yes.

MR. DAVIS: This is my motion for severance.

THE COURT: All right. Thank you.

MR. DAVIS: Judge, again, I tried to make it brief, but just to kind of give you a guide, these incidents are alleged to have occurred on October 21st, 2014. There are two different -- the undisputed facts are there are two different incidents, one at four, 4:30 in the morning at a, at a residence in Moncks Corner, then another incident at approximately four in the afternoon at a residence in Summerville, and then the -- a vehicle and the four Defendants were arrested nearby a little time later after 4:00 o'clock

nearby the Summerville location. This is not res gestae. It's not a continuing criminal activity. There are 12 hours unaccounted for. These are two different municipalities. Even though they both were investigated by the same law enforcement agency, we have two different municipalities, approximately 13 miles apart. The, the occupants of the home at four, 4:30 in the morning are different witnesses than witnesses to the alleged incident at four in the afternoon. It's not a continuous conduct. It's not res gestae. In fact what it is is a way to skirt around Lyle issues. If these were 25 hours apart, two different days I don't believe the State would attempt to go forward at one trial. They might very well try to introduce it as other acts, but that's exactly what the rule Lyle and its progeny prohibits. Let the State win or lose on each individual incident. For the State to be able to go forward on two incidents 12 hours apart, 13 miles apart, different municipalities, different witnesses, different charges would be unfair, would be prejudicial to Mr. Darrieux. Let them win or lose, convict or acquit based on each incident on its own standing. To allow them to skirt Lyle and 404(B) simply by indicting and trying them at the same time and joining these two cases as one is inappropriate, it's prejudicial and we'd ask you to sever and then they can choose which, which case they want. It's -- they are capable of going forward even with if they want to try to relate back

evidence found at arrest without talking about both incidents. It's absolutely possible to sever these charges, sever the testimony with instructions to the witnesses before testifying. As the State has indicated several officers, depending on which case they went forward on, I don't speak for the State, but, but less than a handful of, of lay witnesses on each one, and they talk about their own incident, and the law enforcement officers are the professionals that might have overlapping testimony. They could handle how to testify about one or the other independently. It would be unduly prejudicial to allow them to skirt the protections of 404(B) and Lyle simply by trying to argue these are one continuous act. They're not, Your Honor.

THE COURT: All right. Mr. West.

MR. WEST: Thank you, Your Honor.

I'd like to cite a couple of cases for Your Honor, about the joinder of offenses. In State v. Sullivan, 277 S.C. 35, 1981, the Supreme Court stated that, [as read], "Where offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has authority in its discretion to order the indictments tried together over the objection of the Defendant absent a showing the Defendant's substantial rights were violated." In my brief I go on to talk about the case of State v. Rice, which

sets forth a four-part test in order for joinder to be accomplished. In State v. Rice, 368 S.C. 610, Court of Appeals 2006, the Rice court says, [as read], "Charges can be joined in the same indictment and tried together where they arise out of a single chain of circumstances, are proved by the same evidence, are of the same general nature and again no right of the Defendant has been prejudiced."

Here we have an instance where it is one, one day. The incident happens at, at [redacted] Bryan Drive around four a.m. in the morning. The second incident happens at Cindy Drive later that same day in the afternoon. It's the same four Co-Defendants that are alleged in both incidents. It's actually the same victim for both residences, and that's important because I believe that goes to the motive that's been established through our investigation of these crimes. I believe that Charles Roberts was a specific target involved in both of these. He was the owner of the Cindy Drive address and the Bryan Drive address. He happened to be home at the Bryan Drive address during the home invasion. That is important because what that establishes is, like I said before, that there is a general nature to both of these and that there's a specific motive, and motive being one of the things listed in 404(B) that Mr. Davis cited.

Further, what we have here is a chain of circumstances that without one you don't lead to the arrest of the other.

So the way these arrests ended up going down was in the second incident at Cindy Drive a neighbor witnessed these Defendants going into a home, called the police, made a specific BOLO, be on lookout, for a specific car naming or describing specific individuals and the sheriff's office was on the lookout for those specific individuals in a specific silver Dodge Durango that had mattresses tied to the top of the car from the Cindy Drive address. Once it was established that these were the individuals that committed that second burglary, or that's what's the evidence will suggest, then the investigation of law enforcement led them to connect the dots that these were the same individuals that were involved in the home invasion, not only due to the description of the car, the description of the Defendants, the way they talked, but one of the Co-Defendants actually spilled the beans. Tristen Brower, the person that's going to be testifying here Mr. Davis has indicated, he indicated at the scene that he wished to talk to law enforcement. He also indicated that at a recorded interview that these were the individuals that were involved in both of the incidents. So we have a specific person targeted, we have like structures in that these were at one time both residences. That's issue going to come up a little bit later in a separate motion about whether the Cindy Drive was actually a residence at the time, but at the time certainly the Bryan Drive address was a residence, but Charles

Roberts was the owner of both. We have both being burglary instances. It's the same charge, the same general character of how things happened, broke into a back door in the Cindy Drive or a window in the Cindy Drive address, broke in the front door of the Bryan Drive address. So given the authority in Sullivan, in Rice, I believe the State should be permitted to go forward on both charges at once, but I'd also like to cite another case for the record going along with the State's res gestae argument. In State v. Adams, 322 S.C. 114, 1996, the Court stated, [as read], "One of the accepted basis for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case." The full presentation of the case is the fact that this all occurred in one day, they were all after the same people and they were all intent on burglarizing and essentially terrorizing the victims that were involved. These facts are so intimately connected and explanatory of both of the crimes that the res gestae of this is satisfied and the State should be permitted to join both of these offenses and go forward on them together, Your Honor. Thank you.

THE COURT: All right. Anything in reply?

MR. DAVIS: Your Honor, the State's own witnesses will indicate that the vehicle and the suspected perpetrators of the four a.m. are described. They don't need -- they, they

can, they can present evidence as to the vehicle, color, make, SUV, Durango, that kind of thing, and the folks that perpetrated it by a neighbor of four, four a.m., 4:30 a.m. They don't have to rely on the four p.m. description of the vehicle.

When stopped -- no, the car was already stopped. They didn't get pulled over, but when police arrived at the College Park Road where everyone was arrested there's nothing in that vehicle, no evidence in that vehicle relating to the morning break-in. Any tangible evidence is found at Co-Defendant Chisolm's house that they executed a search warrant on later. So that the State can identify generally vehicle and suspects independently because we've heard that obviously there's neighbors that describe the afternoon incident, the daytime incident, but the description are given independently. There's nothing -- four people were arrested, one Co-Defendant talks. That's what connects the two. That's what connects the two and then search warrants are executed and then, then the State gets all the evidence they have now, but they didn't have it at the time. That can be expressed that way.

The similarities is why the State wants to use this evidence, and it's exactly why it's prejudicial to my client. For the State to introduce them together this far apart, distance, time, different witnesses allows a jury, "Well, he must have done something. They got too much of two different

incidents, must have done something." That's inappropriate. That's exactly what Lyle, 404(B) prohibits, and 404(B) is a rule of exclusion. The State must show the probative value outweighs the prejudice because it's clearly prejudicial.

THE COURT: Well, what about his argument about motive, that you've got a single victim, that the probative value is to show motive?

MR. DAVIS: Other than the fact that the State knows that both residences are owned by the same individual there's no other evidence to that effect. The, the testifying Co-Defendant doesn't say these, these two places were targeted because it's the same, the same owner. That's certainly the State's speculation. They'll present that as a -- as why they connect if you allow them to go forward at the same time on them, but that is the State's conjecture as to what the circumstantial evidence shows. There's no direct evidence that was done. I think it'll be clear from -- I think in the light most favorable to the State the testimony will always be that the vehicle that was owned by Ms. Chisolm was driven by Ms. Chisolm, that the young testifying Co-Defendant even talks about being asleep during certain times and not know. If there was a -- if there was a targeting then that would have been by Co-Defendant Chisolm who's not on trial today at the State's -- well, that was -- her, her, her attorney is ill, but the State's going forward solely against my client, not

against Ms. Chisolm. So it would be inappropriate and there's no evidence other than that linking the two. I understand if you allow them to go forward they'll make that argument, again, exactly what the rules don't want this jury to do. For justice to be served the rules want the jury to look at each case independently especially when they're this far apart in distance and time. If it had been neighboring convenience stores within ten minutes, that is a continuous chain of conduct. That is res gestate. That is a crime spree. There is 12 hours unaccounted for. There's 12 hours unaccounted for. The State wants to, based on one person, and well, now, as of Thursday maybe identification of three others, say -- well, I'll -- no. I'll stop there. The State wants to say based on one person that the same group of people committed both crimes.

THE COURT: And I understand your argument, but I'm going to deny your motion. I mean, I think -- I understand your argument about the crime spree, but I mean, 13 miles apart, one victim owning both places that were allegedly burglarized, so you got similarity of victims, similarity of crimes, all occurring in the same day, 12 hours apart, yeah, 13 miles apart, yeah, but two separate buildings owned by the same alleged victim, I'm going to allow them to go forward with all the charges that allegedly occurred in Summerville and Moncks Corner. I deny your motion.

All right. What else have we got?

MR. DAVIS: May I ask then, Judge, now that that ruling has been made what the State's position is on what charges they're going forward on? I know that -- I got a little confused earlier, I'll be honest --

THE COURT: Yeah.

MR. DAVIS: -- because we --

THE COURT: I mean, as I understand now you're going to nolle prosse with prejudice --

MR. WEST: Both of the contributing.

THE COURT: -- the unlawful carrying of a pistol and the two contributing to the delinquency of a minor?

MR. WEST: That's correct, Your Honor.

THE COURT: All right. So 2015-GS-08-1023, 2015-GS-08-1025 and 2015-GS-08-1033 are all nolle prossed with prejudice.

MR. WEST: That's correct, Your Honor.

THE COURT: All right.

MR. DAVIS: That saves me on one motion, Your Honor. If could have just a moment.

THE COURT: All right.

MR. DAVIS: May I approach, Your Honor?

THE COURT: Yes.

MR. DAVIS: I believe, and I'll appreciate a moment after this to see, but I think this may be my last motion, Your Honor. This is obviously a Biggers motion. We were provided

information last week that the residents or the occupants of the, the Bryan Drive address, the nighttime morning incident may be able to identify Mr. Darrieux. That's the first we've heard of that. My understanding is -- well, I'll not get ahead of the testimony, but we would move to suppress that as prejudicial, and we'd ask for a hearing on that identification as to each of -- any of the witnesses that would be identifying Mr. Darrieux at, at trial, including, Your Honor, not only the occupants, but if the testifying Co-Defendant is going to as well we'd ask for a Biggers hearing on his, his identification as well.

THE COURT: All right.

MR. WEST: I believe it was --

THE COURT: Who, who exactly on the State's side is -- are you going to be using to identify the Defendant as the perpetrator?

MR. WEST: I have all three victims present, Your Honor, ready for a Biggers hearings, and I also have the testifying Co-Defendant available.

THE COURT: Okay.

MR. WEST: I believe the case law supports all, all four.

THE COURT: Well, all four of them are identifying the Defendant as the perpetrator?

MR. WEST: What I want to do is see what they say, you know. They've indicated to me that they could, but in order

to not suggest things during pretrial meetings I had to word things a different way, and I, I want to make sure that they testify correctly. All have indicated that they could identify him because of things like the length of time in the house, the close proximity of the Defendant to them.

THE COURT: Okay. Well, I mean, and that's fine, and that -- and we'll go ahead with the Biggers hearing, but I, I wanted to make sure that we weren't going to be calling somebody who's going to get up here and say, "Well, I was there, but I don't know who the perpetrator was," and that, you know.

MR. WEST: I understand, Your Honor.

THE COURT: Okay?

MR. WEST: All right.

THE COURT: So, so I guess we'll go forward with the Neil v. Biggers hearing on all four of those witnesses?

MR. WEST: Yes, Your Honor. We're prepared.

THE COURT: All right. Anything before the State calls the first witness?

MR. DAVIS: No, Your Honor. Thank you.

THE COURT: All right. Mr. West.

MR. WEST: The State calls Charles Roberts.

Whereupon, Charles Roberts was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: If you'll have a seat. State your full name

for the record and spell your last name.

MR. ROBERTS: My name is Charles W. Roberts, Roberts spelled R-O-B-E-R-T-S.

EXAMINATION

BY MR. WEST:

Q Good afternoon, Mr. Roberts. How are you today?

A I'm fine. Thank you.

Q Could you tell the Court your age and education level?

A I'm 70 years old, a high school graduate.

Q Okay. How about your work experience?

A I had my own business for 13 years. I'm more or less retired now.

Q Okay. What'd you do before then?

A I had a towing and auto repair, auto repair business.

Q Okay. Can you read and write?

A I can.

Q Okay. Do you remember the incident that brings us here today?

A I do.

Q Okay. What -- tell the Court where you live.

A I live at [redacted] Bryan Drive in Moncks Corner.

Q Okay. And can you tell the Court what you were doing immediately before this incident?

A Sleeping.

Q Okay. Where, where were you sleeping?

A I was sleeping in my bed in the, in the mobile home I, I own.
Q At [redacted] Bryan Drive?
A That's correct.
Q Okay. Who was with you in the house?
A No one was in my room with me, but I had a roommate and a girlfriend there. Girlfriend was staying on the couch at the time, and my roommate was in his bedroom.
Q Okay. And what were their names?
A Roommate name was Stephen Jones and, and, and Rose.
Q Would it be Rose Simpson?
A Yes. Rose Simpson.
Q Okay. Tell the Court the layout of your house.
A Well, when you walk in the front door you walk into the living room and the kitchen area, two bedrooms to the right and my bedroom's to the left at the very end.
Q Okay. Did you ever sleep with a light on?
A I, I had a small light on. Yes.
Q Okay. Tell the Court what woke you up that night.
A What woke me up was someone coming into my room and pointing a gun at me.
Q Okay. What's the first thing you noticed about that individual?
A Mainly is a gun pointing at me.
Q Okay. How many people came into your room?

A At that -- at first only one person.
Q Okay. Was it a male or a female?
A It was a male.
Q Was he wearing anything in particular?
A Normal clothes.
Q Normal clothes. Was he wearing anything over his face or his head?
A No. He wasn't.
Q Okay. How about his clothes? Do you remember the coloring?
A I remember it was dark clothes. That's all I remember.
Q Dark clothing. Was it a t-shirt, sweatshirt, blue jeans, do you remember anything specific like that?
A It wasn't a sweatshirt. I know that. It was just regular clothes, but --
Q And you -- how close was he when he pointed the gun at you?
A About from you to me.
Q Okay. Did he ever get any closer to you?
A Yes. He, he --
Q How, how close was?
A -- put a gun up to my head and told me, "Nothing personal."
Q Okay. How close would you say he was at that point?
A I could touch him.

Q Okay. How long did he stay like that?
A Until the -- till the lady came into the, the room there, the bedroom.
Q Okay. Was she wearing anything in particular?
A She had a mask on, but it fell down and then she told him to make me cover my head.
Q Okay. How long would you say these individuals were actually in your home?
A At least an hour, hour, maybe an hour and a half ransacking my house.
Q Okay. A pretty long period of time?
A Absolutely. Yes. Wasn't long they had -- Rose and Stephen come in my room. I have a bathroom, and they made them come into the bathroom and then they continued to go through my, my house and taking things to the, to their van.
Q Okay. How many people would you say came into your house that night?
A It was four people.
Q Four people. Did you look at any of the rest of them?
A Mainly I remember the girl and, and the one guy.
Q Okay. Could you describe the other two that didn't come into your bedroom?
A No. One I didn't see at all. He was -- I understood he was standing by the door with a gun in his hand.
Q Okay. Do you remember the age of that person?

A I heard it was young, 16, something that like.
MR. DAVIS: Objection, Your Honor, hearsay.
THE COURT: Sustained.
Q Okay. What did you do immediately after this person that was holding the gun on you left your house?
A I tried to go next door and get the -- my neighbor to call the police.
Q Okay. You quickly reported the incident?
A Directly afterwards.
Q Would you say -- directly afterwards --
A Yes.
Q -- was your answer? You didn't wait any period of time to call the police?
A No, sir.
Q Okay. Did you describe these people to the police as soon as you encountered the police?
A As much as I could. Yes.
Q Okay. Were you able to tell anything about the person that held the gun to you in terms of his age?
A I figured he was around 30 years old.
Q Okay. What about his height and weight?
A About my height and weight.
Q Was he -- what skin color was he?
A Light-skinned, Caucasian.
Q Caucasian. Okay. Is there anything in particular about

his face that you remember?
A Nothing, nothing that -- particular. It was -- I can't say of anything I can point out like a --
Q Facial hair, glasses, anything like that?
A Well, he didn't have glasses on. He had kind of shaggy hair, but it wasn't, wasn't real trimmed, about like mine.
Q Do you remember any piercings or tattoos?
A I didn't. I don't recall.
Q Okay. When he was holding the weapon on you how focused would you say you were?
A Pretty much focused after that.
Q Okay. Were you focused on the individual holding the gun?
A Yes.
Q So you got a good look at him?
A I did.
Q When was the next time you saw him?
A What do you mean? The next --
Q Did you ever, did you ever see him after the incident?
A After that night?
Q Yes.
A Up until today, no.
Q Okay. Never saw him at any hearings?
A I, I was at a hearing -- I was at a hearing with -- at his bond hearing, but I didn't get to see him very good.

Q Okay. Was the person that came in your house in the room today?
A Yes. He was. Yes. He is.
Q How sure are you of that? Could you describe how he's --
A A hundred percent sure.
Q A hundred percent?
A Yes.
Q Has his appearance changed in any way?
A Yes.
Q Could you describe for the Court how that?
A Well, he's shaved his head and, and other than that there isn't much he did change.
Q The police ever present you with a photo lineup or any other sort of identifying materials during their investigation?
A I, I don't remember that.

MR. WEST: No further questions for this witness at this time.

THE COURT: All right. Mr. Davis, any questions?

MR. DAVIS: No, Judge. He hasn't identified anybody.

THE COURT: All right. All right, sir.

MR. WEST: Would you like to go forward with the next witness or go forward --

THE COURT: No. I'm going to -- I'll go ahead and take these one at a time. I'm going to grant the motion to

suppress. I mean, he can testify as to what he's testified to, but he's not going to be able to say he knows that the Defendant John Darrieux is the one that committed the crime because --

MR. WEST: So, the --

THE COURT: -- he said he couldn't -- he never has been able to identify him, saw him at the bond hearing based upon the prodding by the State, but I don't -- I think any identification is unduly suggestive and unreliable at this point in time, but certainly he can testify that somebody came into his room, what his hair was like, how tall he was or things that he personally observed, but I'm, I'm pretty convinced that he did not know and, and he said he didn't recall seeing him at any prior hearings until the State went ahead and prodded it. So I'm going to grant the motion. He's not going to be able to testify that he knows that this Defendant is the one that came into his house, but the other contents of his testimony, I tend to agree with Mr. Davis, he really hasn't identified the Defendant as the perpetrator. He's given some pretty straightforward testimony as to what happened, and I think he can testify to that.

MR. WEST: Your Honor, part of his testimony was that he 100 percent knew this guy as the person that went into his house.

THE COURT: And I, I'm sure that's because he showed up

at a bond hearing and that was the person that was standing there.

MR. WEST: Okay.

THE COURT: And so it's unduly suggestive by law enforcement. I mean, if he had picked him out of a photo lineup prior to the bond hearing, if he knew him by name, if there had been some prior contact, that's one thing, but I'm, I'm, I'm pretty convinced the only reason that he knows this is the person is that's who was at the bond hearing and that's who's sitting in the courtroom today. All right.

MR. WEST: All right. Thank you, Judge.

THE COURT: All right, sir. You may step down. Call your next witness.

MR. WEST: The State calls Stephen Jones.

Whereupon, Stephen Jones was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: If you'll have a seat, state your full name for the record and spell your last name.

MR. JONES: Stephen Jones, last name J-O-N-E-S.

EXAMINATION

BY MR. WEST:

Q Mr. Jones, can you tell the Court your age and education level?

A Thirty. I got my GED.

Q Okay. What kind of work experience do you have? Could

you tell the Court your background if you will?
A Auto mechanic for about 12 years.
Q Okay. Can you read and write?
A Yes.
Q Do you remember the incident that brings us here today?
A Yes.
Q What were you doing immediately before the incident?
A I was sleeping.
Q Okay. Where were you sleeping?
A In my bedroom in the back of the trailer.
Q Okay. What trailer was that?
A [redacted] Bryan Drive.
Q Was anybody else with you in that room?
A In that room, no.
Q Okay. Tell the Court how you were woken up that night, that night or early morning.
A I, I heard a loud bang and a lot of yelling. I assumed it was my roommates fighting, but I wasn't sure. So I had gotten up to find out what it was.
Q Okay. When you got up what happened?
A I got up and I was putting my clothes on and felt something hit the back of my head and there was a gun, two people standing behind it.
Q Describe those two people.
A One was wearing a mask and the other was shaved head and

couldn't really make out a lot of the features right then because my room was dark.
Q Okay. Did you ever leave your room?
A Yeah. They took me -- they told me to get in the living room.
Q Okay.
A And they took me in there.
Q Would you describe the lighting in the living room?
A It was dim, but I could see.
Q You could see. How long did you stay in the living room?
A About an hour.
Q Okay. How close would you say you, you were to the individual that was not wearing a mask?
A About from me to you.
Q Okay. Did he ever approach you any closer?
A Yeah. A couple of times.
Q Okay. How close were you to his face?
A I mean, there was a couple of times he got right up in my face and then most of the time he was just standing there or going back to the back bedroom.
Q Okay. Was there any other descriptors of his face that you could give the Court?
A He had a shaved head and he looked kind of like a rough, I mean, I don't, I don't really know how to -- he looked like he might have had acne and stuff like that on his face.

Q Okay. Did he have any facial hair, glasses, anything like that?
A Not that I remember, shaved head.
Q Any tattoos or piercings?
A Not none that sticks out in my mind. No.
Q Could you give the Court his roundabout age?
A It was somewhere around late 20s to 30, early 30s.
Q Okay. How about his height and weight?
A Right around my same height and my same build.
Q Skin color?
A White Caucasian.
Q Okay. And when you saw him he was holding a weapon?
A Yeah.
Q How focused would you say you were on that individual?
A I mean, a couple, I mean, a couple of times he got in my face I got pretty focused on him, I mean.
Q Okay. So you got a good look at him?
A Yeah.
Q Have you ever seen the Defendant after that incident?
A No.
Q No. Did you ever go to any bond hearings or anything of the like?
A Not his, no.
Q Okay. Is the person that held the gun to your face in the courtroom today?

A Yes.
Q How sure are you of that?
A One hundred percent.
Q One hundred percent sure?
A Yeah.
Q You said the person that came into the house was in the courtroom today. Could you describe what he's wearing?
A What he's wearing right now?
Q Yes.
A Long sleeve shirt kind of grey.
Q Okay. Are you identifying the person that is in court today because that is the person that came into the house?
MR. DAVIS: Objection, Your Honor, leading.
THE COURT: Sustained.
MR. WEST: No further questions for this witness at this time.
THE COURT: All right. Mr. Davis, any questions?
MR. DAVIS: Yes, Your Honor. May it please the Court?

EXAMINATION

BY MR. DAVIS:
Q All right. Mr. Jones, you spoke with law enforcement the morning after, after this incident happened. Is that right?
A Yeah.
Q They came by the house?
A Yeah.

Q And they, they -- you, you knew they were going to be trying to find the folks that did this; right?
A Correct.
Q So you knew it was important to describe them in as great detail as you could so the police could go and catch these folks; right?
A Yeah. Yeah. Yes, sir.
Q Thank you. Just need to say yes or no so the court reporter can take it down. Okay? And so you -- and you wanted to cooperate with law enforcement; correct?
A Yeah.
Q Now, after that morning when you talked to law enforcement, has anybody from law enforcement come to speak with you about this incident after that?
A Not, not that I could recall right off the top of my head, no.
Q Okay. So you don't remember one of the detectives on the case coming to meet with you to go over things?
A I, I mean, they did at one time want me to identify my stuff and things like that.
Q Okay. So did they, did they have you come to the station to look at some items to see if you could identify your property?
A Yeah.
Q Okay. Fair enough. Other than that, was there any time

that the police asked you to come to the station to see if you could identify a suspect --
A No.
Q -- that they arrested, you come in to do that?
A Not to my recollection, no.
Q Okay. Did they ever come to you with any photographs to see if you could recognize anyone?
A No.
Q Okay. And this was October 21st of 2014; right, when this happened? Do you recall?
A I, I believe that was the date, yes.
Q Okay.
A I remember it was October, but I don't remember the exact day.
Q Not just three months ago, but --
A Yeah.
Q -- over a year ago; right?
A Yeah.
Q Okay. Okay. How -- you said a couple of times the person got kind of close to you?
A Correct.
Q Can you tell the Judge how close the person got when they got close to you?
A Like from here to right here.
Q Where the microphone is in front of you?

A Yeah.
Q So about two or three feet?
A Yeah.
Q Is that fair?
A That, yeah.
Q Okay. Now, I think you've already said that the person that got close to you, now that's, that's -- is that the same person that when you first got hit, is it one of those two people?
A I, I mean, the light in that room at that time was -- I didn't have any light on. So I can't say a hundred percent sure, plus I was turned away who hit me.
Q Okay. Okay. But, but I think you testified there were two people there?
A Yeah. But he was one -- I -- he was one of the people that came into my room. Yes.
Q Okay. Fair enough. Now, is your bedroom to the right when you come in the front door?
A Yes.
Q Okay. You were asleep, lights out in your room; is that right?
A Yes.
Q Okay. And then at some point you're brought into the living room, which isn't that far away; is it?
A No.

Q Okay. In the living room it was dimly lit; is that right? That was your testimony.
A Yes.
Q Now, would that have been just from a light like over on the stove there; do you recall?
A No. There's a lamp off to -- behind one of the couches.
Q Okay.
A And it has three different lights on it --
Q Uh-huh.
A -- and one of them was on and it was kind of faced away from the living room.
Q Okay. So there was a light in that room, but it certainly wasn't bright?
A No.
Q Okay. Now, did you remain on the couch the entire time?
A Until they went to leave and they told us to go in the bedroom.
Q Okay. And then you've testified that, and again, we're just going to talk about the, the, the man with the shaved head; okay? He went -- he made trips away from you to the bedrooms and back; correct?
A Correct.
Q More than two or three times?
A I mean, he was all over the house. I don't know how many times he came back and forth. I know that he came back and

forth at least a couple of times, but it was probably more than that.

Q Okay. Now, when -- let's move back when you were saying that you got a good look two to three feet away; right?

A Uh-huh.

Q You're on the couch; correct? Now, this person with the shaved head always had a gun?

A Yeah. I mean, yeah. He put it in his belt waist one time, but he always had it on him at some time -- at one place or another. Yeah.

Q Okay. So in his belt once, but usually carrying it; right?

A Yeah.

Q Do you remember the color of the gun?

A I, I believe it was a chrome gun but --

Q Okay. A revolver or automatic?

A It was a semiautomatic.

Q Semiautomatic. You were focused on that. That, that got your attention; right?

A I mean, yeah. A gun's going to.

Q Yeah. And even when it's in his waistband it wasn't out of sight?

A Yeah. Yeah. He had it --

Q You could still see it?

A Yeah.

Q Okay. When you got a good look, when he would get close to you, two or three feet, that wasn't for a long conversation, that was just to kind of --
A He'd get in my face and say something, then walk off.
Q Now, did you testify that was twice that he got in your face?
A At least, yes.
Q Okay. Now, let me go back to when the police arrived. Okay. And they wanted to get information from you; right? I need you to answer out loud for me, please. They wanted to get --
A Yeah. Yes.
Q Thank you. They asked you if you'd write a statement; right?
A Yeah.
Q And you wrote a statement; didn't you?
A Yeah.
Q Okay.
MR. DAVIS: May I approach, Your Honor?
THE COURT: Yes.
THE COURT: Let me, let me, let me see the attorneys for just a second.
(Whereupon, a bench conference is held.)
MR. DAVIS: Judge, since we're dealing with this, if I can just -- a couple of questions about this and I will get to

the issue we just approached on.

THE COURT: All right.

MR. DAVIS: Would that be all right?

THE COURT: All right.

MR. DAVIS: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. DAVIS:

Q Mr. Jones, I'm going to show you what's been marked as Defense Exhibit Number One. This is simply for identification. I'd like you to take a second, take a look at this. I'm not going to ask you any questions till you tell me you've had enough time to look at it. Okay?

A Okay.

Q You've had enough time to look at it?

A Uh-uh.

Q Okay. Is there anywhere in here in your statement that you describe the man with the shaved head?

A Not in the statement. No.

Q Okay. Is there anywhere in your statement where you talk about him getting about two or three feet away from you?

A No.

Q Okay. Thank you. Just a couple of more questions. I think you already testified that you did not go to any bond hearings; is that right?

A I went to a bond hearing, but I don't think it was his.

Q Okay. Okay. Do you remember if that was a male or a female?
A It was a male's bond hearing. Yeah.
Q White male or black male?
A White male.
Q Single individual or more than one person at that bond hearing?
A I believe it was just a single individual.
Q And would that have been -- it's tough to get the times right, I mean, four a.m. but that's the 21st when, when folks come in your -- in the house -- would it have been that next night is that the bond hearing you attended?
A I, I think, I think so, but I'm not sure.
Q Other than that, has there been any other time that you observed the shaved headed guy, yes or no?
A I don't remember him being at that bond hearing, but I -- -- other -- never seen him other than -- other than right now I don't remember ever seeing him. No.
Q Okay.
A Other than the particular incident that night, also.
Q Okay.
MR. DAVIS: Your Honor, if I could have just a moment.
THE COURT: All right.
BY MR. DAVIS:
Q Mr. Jones, final question, other than the person seated

to my left who else did you look at in the courtroom to see if you could identify the person that was the shaved headed man?
A There's nobody else in the courtroom with a shaved head.
Q So you didn't look at anybody else?
A I mean, there's nobody else so, no, I guess not.
Q Thank you, Mr. Jones. I don't have any other questions.
MR. DAVIS: Thank you, Your Honor.
THE COURT: All right. Anything on redirect?
MR. WEST: No redirect, Your Honor. I do think the record needs some clarification. We're not trying to introduce bond hearing identifications. I was under the impression we just needed hearings for in court during trial identifications and that's what I'm trying --
THE COURT: Well, as I was of -- what is your motion to suppress because you requested Neil v. Biggers, and I thought Neil v. Biggers only dealt with out-of-court pretrial identification as the perpetrator of the crime.
MR. DAVIS: May we approach on this issue, Your Honor? We, we have, we have remaining witnesses, and if I can approach rather than responding in, in the open court.
THE COURT: Well --
MR. DAVIS: Rather than sequestering, they have a right to be here, and I understand that.
THE COURT: I can understand. Well, come on up.
(Whereupon, a bench conference is held.)

THE COURT: All right. I don't know whether you call it granting your motion or denying your motion, as I understand from Mr. Jones there was no out-of-court identification of this Defendant. So certainly he can't testify as to any identification of Mr. Darrieux given out of court, I mean, because there was no police lineup, there was no photo lineup, there was nothing for him to testify to, and as I understand, he's never identified Mr. Darrieux to anyone prior to coming to trial here today, and so, I mean, so certainly he can't testify as to any out-of-court identification because he says he hasn't given one. All right.

MR. DAVIS: I understand, Your Honor. Thank you for the ruling.

THE COURT: All right, sir. You may step down.

MR. WEST: Your Honor, briefly, to support that --

MR. DAVIS: Your Honor, if I may, again, the reason we approached, you've ruled on that. I'd ask that they call the next witness before we have any open commentary.

THE COURT: Okay. Let's go on to the next one.

MR. WEST: Fair enough.

THE COURT: Because as I understand this is a Neil v. Biggers hearing that deals only with out-of-court identifications.

MR. DAVIS: And the reliability thereof. Yes, sir.

THE COURT: Right. Okay.

MR. WEST: The State would call Ms. Rose Simpson.

Whereupon, Rose Simpson was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Okay. You can sit on the stand and say your full name for the record and spell your last name.

MS. SIMPSON: My name's Rose Marie Simpson, S-I-M-P-S-O-N.

EXAMINATION

BY MR. WEST:

Q Good afternoon, Ms. Simpson. Thank you for being here. Did you ever go to any bond hearings for this Defendant?

A For that one, no.

Q No. Have you ever been presented, presented any sort of identification procedures from law enforcement about this Defendant? Any photo lineups ever presented to you?

A No.

Q Okay. Have you ever been to any other proceedings where this Defendant was present?

A No.

Q No. Have you ever seen this Defendant before?

A Yes.

Q When?

A The night that we got invaded.

Q Okay. Thank you.

MR. WEST: No further questions for this witness at this

time.

THE COURT: All right. Mr. Davis, any questions?

MR. DAVIS: If I may have a moment, Your Honor.

THE COURT: All right.

EXAMINATION

BY MR. DAVIS:

Q Ms. Simpson, it's your testimony that you did not attend the bond hearing with Mr. Roberts?

A Not with him, no.

Q That was not my question, ma'am. My question was did you attend the bond hearing with Mr. Roberts?

A I don't understand the question.

Q Did you go to the bond hearing with Mr. Roberts?

A I went to a bond hearing with Mr. Roberts. Yes.

Q Okay. And the person at the bond hearing was a white male; correct?

A It was a female.

Q It was a female. You did not attend any other bond hearings for any people arrested for this incident?

A No. Can I speak for a moment?

THE COURT: No, ma'am. You can only answer the questions they ask. Okay?

Q Take your time, ma'am. Let me know when you're, when you’re ready.

A I’m ready.

Q Okay.

MR. DAVIS: Just briefly, Your Honor.

BY MR. DAVIS:

Q How is it that you're able to identify my client as one of the people --

A Because he put a gun in my face. That's how. He didn't have his little thing on his face.

Q Nothing covering his face?

A Exactly.

MR. DAVIS: If I could have just a moment.

THE COURT: All right.

MR. DAVIS: Thank you, Your Honor. No other questions.

THE COURT: All right. Anything in reply?

MR. WEST: Nothing for this witness, Your Honor.

THE COURT: All right. You may step down. All right. Just like Mr. Jones, I find that there is no out-of-court identification. So there's really nothing to suppress, certainly can't come and testify to any out-of-court identifications. So now the issue -- I did note -- any other witnesses?

MR. WEST: Yes, Your Honor.

THE COURT: Okay. Go ahead and call your next witness.

MR. WEST: The State calls Tristen Brower. He's accompanied by his attorney Ms. Leslie Sarji.

THE COURT: Okay.

MR. WEST: She obviously will not be taking the stand as well.

THE COURT: All right.

Whereupon, Tristen Brower is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Okay. If you'll have a seat, state your full name for the record and spell your last name.

MR. BROWER: Standing up?

THE COURT: You can be seated.

MR. BROWER: All right.

THE COURT: If you'll speak into the microphone.

MR. BROWER: Tristen Alexander Brower, B-R-O-W-E-R.

EXAMINATION

BY MR. WEST:

Q Good afternoon, Tristen. Can you tell the Court how old you are?

A I am 17 years old.

Q Tell the Court what your education level is.

A I’m still in GED.

THE COURT: I'm sorry. Say that again?

A Going for my GED.

THE COURT: Oh, okay.

Q Are you working right now?

A I just got a job.

Q Where’d you get a job?

A Hardee's.
Q Can you read and write?
A I can.
Q You remember the incident that brings us here today?
A I do.
Q Okay. Can you tell the Court where you were staying at the time around this incident?
A Can you explain that question?
Q Where, where were you staying around October 21st, 2014?
A With my parents.
Q Okay. How about the weekend of this incident?
A Oh, I was with my aunt, Natalia.
Q And her name is Natalia Chisolm?
A Yes, sir.
Q Okay. How many people were staying with Natalia Chisolm that weekend?
A Her four kids and three other adults.
Q Who were the other adults?
A I don't -- like the names?
Q Sure.
A Chopper, Joe, Natalia, Sam and her kids, and that was it.
Q You said the name Chopper. Do you recognize anybody in this courtroom with that name?
A I do.
Q Could you point out for the Court who you're talking

about? What is he wearing?
A A light blue shirt.
Q Okay. Now, after the incident you gave a statement to police?
A I did.
Q Okay. In that statement did you ever indicate being with this Defendant at the time of the incident?
A I do.
Q Okay. How long would you say you spent with this Defendant?
A Overnight.
Q Overnight?
A Yes, sir.
Q How about the next today, how long were you with him that day?
A Until about six in the afternoon.
Q The incident that we're talking about you were involved in; correct?
A Yes, sir.
THE COURT: I'm sorry. You're going to need to speak up and into the microphone, please.
A Yes, sir.
Q Okay. Did you go to the incident with this Defendant?
A Yes, sir.
Q Okay. How many people did you go with?

A Three others.
Q Three others. So four people total?
A Yes, sir.
Q Okay. Do you know the Defendant's real name?
A John Darrieux.
Q Okay. Do you have any relation to the Defendant?
A I don't.
Q Is that weekend the first time you ever met him?
A Yes, sir.
Q Since the incident, has his appearance changed in any way?
A Not much.
Q Okay. Is there anything specific you could point out that has changed?
A His hair has the most, that’s it.
Q Okay.
MR. WEST: No further questions for this witness at this time.
THE COURT: All right. Mr. Davis.
MR. DAVIS: Just a moment, Your Honor, if I may.

EXAMINATION

BY MR. WEST:
Q Can I call you Tristen? Is that all right?
A That's fine.
Q Okay. Tristen, when you were arrested you had a chance

to talk to the police; right?
A Yes, sir.
Q And, and they told you you didn't have to, but you wanted to talk to them; right?
A Yes, sir.
Q Okay. You spoke with them one time just kind of talking before they took you into another room and, and video-recorded you talking some more; is that right?
A Yes, sir.
Q Okay. Those were really close in time; right?
A Yes, sir.
Q Okay. At that meeting with the police when you talked to them, you identified your aunt who is Natalia; right?
A Yes, sir.
Q You've known her since you were old enough to remember; right?
A Yes, sir.
Q Okay. And then there were two other folks; right?
A Yes, sir.
Q Both males; right?
A Yes, sir.
Q Both white males; right?
A Yes, sir.
Q And I think you kept talking about one as the guy with the beard; is that right?

A I don't recall.
Q Okay. Do you remember talking about the other one called and that -- the other person Chop?
A Yes, sir.
Q Okay. So do you recall how you would have differentiated to the police between Chop and the other guy?
A I don't understand your question.
Q Okay. Didn't you describe two different guys being with you all?
A Yes.
Q Okay. And one was Chop; right?
A Yes.
Q One -- the other one, the guy with the beard?
A That’s not how I referred to him.
Q Okay. That was -- that meeting was about a half hour, the one that was recorded; do you recall that?
A I recall the video. I do. Yes, sir.
Q And that was about a half hour; do you remember?
A Yes.
Q Have you watched that with your attorney?
A I have not.
Q Okay. But it was sometime after that statement to the police you got Ms. Sarji as your attorney; right?
A Yes, sir.
Q Okay. At any point did anyone bring you photographs to

look at to see if you can identify the two white guys that were with you?
A Yes.
Q And when was that?
A What do you mean? What do you mean when that, when was that?
Q Well, first of all, did they come to your house or did they have you come to the police station?
A I had to go to the police station.
Q Okay. And do you remember when that was? Was it the same day you got arrested?
A The day I got arrested is like when they asked me.
Q Okay. When did they show you the photographs?
A In, in -- when they were questioning me.
Q Okay. And did you identify somebody then?
A I did.
Q You did or did not?
A I did.
Q Did or did not?
A Did.
Q Did. I'm sorry. I’m so sorry. Thank you. Okay. Now, after that -- so the day they were questioning you, the day you were arrested, since then, want to be specific about that, since then have you talked to law enforcement, the police since then?

A No.
Q Okay. You have talked to the solicitor's office; right?
A Yes.
Q Okay. Was that recently?
A Yes.
Q Okay. When you met with them, were you shown any photos?
A Yes.
Q Okay. And at that point you were able to pick somebody out as well?
A Yes.
Q Okay. Now, it wasn't always these gentlemen here at the solicitor's office you met with. You met with a female attorney for the solicitor's office back last year; didn't you?
A I don't remember.
Q Okay. Do you remember when you signed that proffer agreement?
A Don’t, I don't.
Q You don't remember signing that? Okay. Well, now, just recently with these gentlemen wasn't the only time you met with the solicitors; was it?
A I, I really don't know.
Q Okay. And it's your testimony that the two white guys that were with you you met that weekend for the first time?
A Yes, sir.

Q Okay. And spent the day up until about 6:00 o'clock?
A Yes, sir.
Q Okay. When you got arrested?
A Yes, sir.
Q Okay. Never seen them before?
A No, no, sir.
Q Okay. Have you seen them in person or live, not just in photos, have you seen them in person since?
A No, sir.
Q Okay.

MR. DAVIS: Your Honor, if I could have just a moment.

THE COURT: All right.

MR. DAVIS: Judge, no other questions.

THE COURT: All right. Anything in reply?

MR. WEST: No redirect, Your Honor.

THE COURT: All right. You may step down.

MR. DAVIS: Judge, I think his attorney is wanting -- I have no objection to him being excused for the day. Obviously he will --

THE COURT: Any objection?

MR. WEST: He'll be a witness first thing in the morning, Your Honor.

THE COURT: All right. But he's free to go for the day?

MR. WEST: Free to go for the day.

THE COURT: Free to go for the day. Thank you. All

right. Any other?

MR. WEST: Nothing in regards to the identification, Your Honor.

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

MR. DAVIS: Well, Judge, a couple of matters. First of all, let me deal straight with that, we would ask you to suppress it. There is nothing of specificity. He, he has mentioned the name Chop or Chopper previously, but there's nothing of specificity to connect them to my client. There was an out-of-court identification by name, and they're going to connect that -- try to attempt to connect that to my client, but since they're -- we don't have specificity on, on, on visibly how, we would ask you to suppress that. I'm, I'm going to raise this issue now, I'll be heard when you want me to. He's testified that twice he was shown photographs, which I do not have. So that raises an issue of evidentiary concerns that he said police showed him photos, he showed -- said the solicitor's office showed him photos. I've never received anything to that extent. So that -- I know that's kind of a separate matter, but that might bear on your decision on this if we see those because I've never seen them.

THE COURT: Okay. I mean, was there any out-of-court ID, photo ID of this Defendant?

MR. WEST: No, Your Honor.

THE COURT: Okay.

MR. WEST: Not, not from this witness.
THE COURT: Okay.
MR. WEST: Just by name and --
THE COURT: All right.
MR. WEST: -- participation in the incident.
THE COURT: All right.
MR. DAVIS: So the State's indicating that they -- they're aware that law enforcement never showed him photos and they're aware their office never showed him photos; is that the position of the State because he obviously testified those things happened.
THE COURT: Well, no, no. He's -- what they're saying is that this Defendant, I mean, that Mr. Brower never identified the Defendant out of a photo lineup.
MR. DAVIS: But he indicated he did. I asked him, "Were you shown photos?" "Yes." "Did you identify him?" "I did." I was afraid he was saying, "I didn't, didn't." I asked him more than once. He said, "I did."
MR. WEST: Your Honor, there was never a photo lineup presented, and I have the case agent here if we need to testify about that, but the State's not in possession of it. It was never done. The video, their interview was recorded. The simple -- that procedure that we were seeking to do was to tie the name Chop is is how he was identified originally to being this Defendant.

MR. DAVIS: And if that's -- I'll deal with the, the witness's testimony. I just want to make sure there's not something out there I don't have.

THE COURT: Yeah. In other words, you're not going to bring in -- well, I mean, as I understand, this is a motion to suppress out-of-court identifications. The State is saying there is no out-of-court picture ID of the Defendant by Mr. Brower.

MR. DAVIS: Despite his testimony that he did?

THE COURT: Well, he's not going to be able to testify that he did because they're saying there is none.

MR. DAVIS: And again, I'll deal with the inconsistencies because he has inconsistencies in other statements.

THE COURT: Yeah.

MR. DAVIS: So if that -- I just want, again, Judge, I respect your ruling on the testimony. I just want to make sure there's not evidence out there that I don't have, and as an officer of the court, I, I -- it's, it's been indicated there are photos that were shown. So I believe there is evidence that I don't have in my possession, and so we need to deal with that, Judge.

MR. WEST: Your Honor, just for clarification of the record, Ms. Sarji, Tristen Brower's attorney, has indicated to me that Ms. Sigal, the solicitor prior to my taking of the case, when in talking with Mr. Brower showed Mr. Brower a

booking photo of the Defendant. However, we do not intend to introduce that as, as evidence, obviously, but that's, that's been the indication to me from Ms. Sarji.

THE COURT: And he identified that as the perpetrator?

MR. WEST: Can she speak, Your Honor?

THE COURT: Well --

MR. WEST: I don't want to speak, speak out of turn or I can relay it from her.

THE COURT: Yeah. Check with her and just relay it to the Court.

MR. WEST: The way it's being relayed to me, Your Honor, is that during that, that meeting, both booking photos of Joseph Arsenault and John Darrieux were at the table. She was -- she provided those to Mr. Brower and asked, “Who is the skinny guy and who was the fat guy that you referenced in your interview?”

THE COURT: And that’s -- was the identification?

MR. WEST: Yes, sir.

THE COURT: Okay.

MR. WEST: That's my understanding, Your Honor.

THE COURT: All right. All right. Well, then I'm going to, I'm going to allow Mr. Brower to testify as to the name -- the way he identified him by name. I mean, I guess I'm granting the motion because you're saying you're not going to use any photo lineup in the State's case.

MR. WEST: There -- that's correct, Your Honor.

THE COURT: All right. So I guess I, I, I deny the Defendant's motion as to Mr. Brower identifying the Defendant and I can't even remember the nickname, whatever the, the alias was.

MR. WEST: Chop.

THE COURT: Yeah. Chop. He can certainly -- the testimony he gave he could use that, he can testify to that. He's not going to be able to -- you're not going to be able to bring in any photos and say, "Did you pick him out of a photo lineup?" "Yes, this is who it was." Now, the Defense can bring it up if the Defense wants to bring it up, but as I understand from the State, the State is not intending to bring it up, has not turned over any of that to the Defense and is not using it as the State's evidence in the case.

MR. DAVIS: Judge, I'd like to have it. I'd like to see the photos that were shown. I've not been provided any booking photos. I've not -- this is the first I'm hearing of it, Judge. I'm not sure --

THE COURT: Okay. Any problem --

MR. DAVIS: -- I'm not sure what I would do with it, if anything, but again, it's evidence that's out there that I don't have.

THE COURT: Is that going to be a problem?

MR. WEST: No, Your Honor. They're online.

THE COURT: Okay.

MR. WEST: I just need to go print them.

THE COURT: All right. Go ahead and get, get those for him then. All right. So as far as any out-of-court identifications, I am granting the Defendant's motion regarding Charles W. Roberts' identification of the Defendant as the perpetrator at the bond hearing. I'm granting the Defendant's motion to suppress any out-of-court identification by Mr. Jones or Ms. Simpson because, as I understand, there is no out-of-court identification. I'm denying the Defendant's motion to suppress the out-of-court identification by Mr. Brower where he refers to the Defendant as Chop and, and that testimony. Now, we have to deal with the in-court identifications, and I'm, I'm going to be honest with you, I'm going to have to take that under advisement. I don't even know what the rule is on that. I'm inclined to believe that Mr. Jones can. I'm inclined to believe that Ms. Simpson can. I don't -- I'm not sure about Mr. Roberts, but I'm going to reserve ruling. I need to double check some cases just to make sure on those. Okay?

MR. WEST: Thanks, Judge.

MR. DAVIS: Thanks, Judge.

THE COURT: All right. Anything further?

MR. DAVIS: If you'll give me just a moment, Judge.

THE COURT: All right.

MR. DAVIS: Let me check. Judge, while I'm, forgive me, I'm fumbling through this, I'll be happy at the appropriate time to hand up voir dire. Even though I don't believe, I'm going to double check, and before I sit down completely I don't believe I have any other pretrial motions.

THE COURT: All right.

MR. DAVIS: Give me just a moment, but I don't believe so. I think that covers them all. Oh, housekeeping matters, Your Honor, if we could, I apologize. I should have probably done this at the very beginning, just two things I need to put on the record if, if you'll allow me. John has been on and off medication throughout his life for depression and for ADHD. I want to make it clear that I have no issue of his competency on that. He's been quite involved. I met with him numerous times, and so I have no doubt he understands what's going on here today whatsoever, but I just -- I don't -- I want it to be on the record rather than, than not on the record.

THE COURT: So as I understand, he understands the charges against him and he's been able to assist you in the preparation of his defense?

MR. DAVIS: He has. We've talked about, again, there was a plea offer back in November that we rejected on the record. We've talked about his right to trial and the risk and consequences. We talked about the benefits and the detriment

of that plea offer back in the day. You know, he made an informed decision on that. He's asked me good questions all along. I have no issues, but I handle PCRs a lot. I just wanted to have it on the record that, that I was aware of it, but that, you know, of his health issues, but I have no concerns about his competency.

THE COURT: All right.

MR. DAVIS: One final thing on that, Judge, coincidentally, and John has no issue, I have no issue, want to have the State and the Solicitor aware of this, in some of the photos from the search warrant at Natalia Chisolm's house, I believe there's two or three, there's photos of mail to show that she's receiving mail at that house. I understand that. There's two or three photos that appears to be of the same envelope. Coincidentally, the person mailing to her is Donsurvi Chisolm who I've represented on a PCR on a conviction on an unrelated matter. Okay. I have not talked to that client, of course, about this. I let John know about that. There -- other than he wrote Ms. Chisolm, they have -- at least one of the children is, is his. So I do have that connection, but they've been wholly separate and independent and apart and been no reason for me to talk to either client about either charge. It doesn't provide me any information in representing him on his PCR about Ms. Chisolm. I received no additional information about her, didn't inquire about her,

didn't know the connection till a little about of discovery on this case, but again, as an officer of the court, to make the record full, I've talked that over with my client. I do not see any ethical issue, any conflict of interest. He has no complaint about it if you want to get him on the record for that. Thank you.

THE COURT: Do you have any idea as to how long ago that representation was?

MR. DAVIS: Judge, I apologize. I can tell you in the morning.

THE COURT: Years, months?

MR. DAVIS: I've been in private practice this is starting my fourth year. I believe I took his PCR hearing either in late '14 or early '15, but I can clarify that exactly --

THE COURT: Okay.

MR. DAVIS: -- in the morning for you.

THE COURT: Okay. Let's -- well, let me, Mr. Darrieux.

MR. DARRIEUX: Yes, sir.

THE COURT: If you'd please stand. Mr. Davis has made you aware of his prior representation of Ms. Chisolm?

MR. DARRIEUX: Yes, sir, he has.

THE COURT: Okay. Are you aware of any conflict of interest in him representing you on this charge with that being a prior client of his?

MR. DARRIEUX: No, sir. No conflict of interest at all.

THE COURT: All right. Do you have any objection to him going forward as your attorney in this case?

MR. DARRIEUX: No. No, sir. I do not.

THE COURT: All right. Mr. Davis, anything further you want put on the record in that regard?

MR. DAVIS: No, sir. Thank you, Your Honor.

THE COURT: Anything further the State wants placed on the record in that regard?

MR. WEST: Not in that regard, Your Honor.

THE COURT: All right. Thank you very much. Mr. Davis?

MR. DAVIS: And no other pretrial motions, Your Honor.

THE COURT: All right. Anything from the State?

MR. WEST: Yes, Your Honor. The victims in this case do have prior records which have been provided to Defense counsel. The State would ask the Court to bar any such cross examination under Rules 404 and 608 as they are more prejudicial than probative and don't meet the requirements of Rule 608 for impeachment purposes.

THE COURT: All right. What, what witnesses and what are the prior records?

MR. WEST: Mr. Rose Simpson has been convicted of a fraudulent check of less than $500 from 2015. That does not meet the burden of being carrying more than a year. So we would ask that that not be subject to cross-examination and

that is the only conviction within the last 10 years to meet the requirements of that rule. However, she does have convictions from 2004 for soliciting prostitution, 1995 obtaining, attempting to obtain dangerous drugs by fraud, forgery or concealment of fact and 1994 for shoplifting.

THE COURT: Wait a minute. What -- attempt to obtain drugs --

MR. WEST: Attempt to obtain -- obtaining, attempting to obtain dangerous drugs by fraud, forgery or concealment of fact.

THE COURT: Okay.

MR. WEST: And then a 1994 shoplifting. Again, I would argue that the only one within the last 10 years is the fraudulent check, and it does, it does not carry a sentence of over a year to be eligible for the impeachment rule.

THE COURT: No jail time served on any of these?

MR. WEST: Not to my --

THE COURT: Because as, as I go -- as I understand it goes from the date of conviction and/or release from incarceration.

MR. DAVIS: And Judge, I'll, I'll help out a little bit. I’m not going into any -- I would not attempt to go into anything unless the door is opened by some other mechanism other than the 2014 is a crime of honesty, dishonesty, 609(2) and it’s within the last 10 years.

THE COURT: Which one are you talking about?
MR. DAVIS: Fraudulent check.
THE COURT: The fraudulent check?
MR. DAVIS: And it's two counts is what I have.
THE COURT: And it carries less than a year in jail?
MR. DAVIS: I understand that's one way you can get at it if it's a year or more, the other is that evidence that any witness has been convicted of a crime --
THE COURT: Oh, okay. In other words, it’s --
MR. DAVIS: It’s honesty, dishonesty.
THE COURT: Honesty, sign of dishonesty or --
MR. DAVIS: Goes to her credibility.
THE COURT: -- deceit. Anything in reply?
MR. WEST: No, Your Honor. Other than I believe that it's more prejudicial than probative at this point.
THE COURT: All right. I don’t think I can even do the prejudicial probative balance if it's a, if it's a crime tending to show misrepresentation, fraud, things of that nature. So I think issuing a fraudulent check, that was the conviction, by definition I think that tends to show deceit.
MR. WEST: Okay.
THE COURT: So you would be allowed to cross examine her or attack her credibility as to the issuing a fraudulent -- well, let's see.
MR. WEST: I believe the 403 language is in 609(a), Your

Honor.

THE COURT: Yeah. But he's going under 609(b).

MR. WEST: There's an -- there's an and in between --

THE COURT: Okay. But I --

MR. WEST: -- my understanding of the rule. I'm not trying to overstep my bounds.

THE COURT: Well, let me -- hold for one second. Okay. Wait a minute, two.

MR. DAVIS: Your Honor, if I may?

THE COURT: Yeah.

MR. DAVIS: State v. Shaw, prior conviction for shoplifting was a crime of dishonesty that may be used to impeach credibility of Defendant, shoplifting, not property crime enhancement, shoplifting.

THE COURT: Well, and that, that might be the case I'm looking for because I just saw -- wait a minute, let me see.

MR. DAVIS: This is a '97 case, Judge. I can give you the cite if that's --

THE COURT: All right. It says -- I'm, I'm looking at the, the State v. Broadnax Supreme Court decision. It says the rule providing that prior convictions involving dishonesty or false statement must be admitted for impeachment purposes regardless of their probative value or prejudicial effect. I agree with you. The rule says and but the case, the Supreme Court it said regardless of the probative value or prejudicial

effect, if it involves dishonesty or a false statement it can be used for impeachment purposes. I don't think that applies. I think that this probably changes the shoplifting just like it changes the armed robbery, which was the focus in the Broadnax case, but I'm going to allow them to bring out the fraudulent check as a crime of dishonesty to attack her credibility, but none of the other, none of the other crimes.

MR. DAVIS: And Judge, just, just to be clear, it was two convictions, same date.

THE COURT: Okay. Two convictions. Okay.

MR. DAVIS: Thank you, Your Honor.

THE COURT: So two convictions, you can bring that out. All right. What else?

MR. WEST: Mr. Roberts only conviction within the last 10 years is another one of these rap sheets that's sort of hard to read. It says conspiracy cocaine HCl. I'm unfamiliar with that statute, and I'm not quite clear what that means other than --

THE COURT: Okay.

MR. WEST: -- I don't think it is a crime of dishonesty. So again, I would argue that that's not probative.

THE COURT: All right. Let me hear from you on that, Mr. Davis.

MR. DAVIS: Judge, I would argue that -- this time I'm going to argue the other one, that it comes in under 609(a)(1)

because, again, reading from the rap sheet provided by the State, disposition, this is March 2011, so within the 10 years, time served 16 months. It's punishable by excess of one year. Sixteen months is a year, almost a year and a half. So I would argue that under 609(a)(1) that this would be -- I would be able to ask about that, that -- only that conviction.

THE COURT: All right. And what is the, the probative value of admitting it? I mean, why do you want to introduce it?

MR. DAVIS: For his credibility, Your Honor. Any time any witness takes the, the stand they put their credibility at issue, and so a conviction for a federal drug conspiracy, obviously conspiracy to violate the law shows an intent to defraud, intent to be untruthful, and we would argue that based on 609(a)(1) since it carries a year or more, that it, it, it passes the 403 balancing test. It has to be more prejudicial than probative. In this case, the, the probative effect for us is to show that his credibility is at issue because of his ability to conspire with others to intent to break the law.

MR. WEST: And in response, Your Honor, State v. Bryant, 369 S.C. 511, "A conviction of robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of truthfulness."

THE COURT: Which means that it goes back to A.

MR. WEST: Well, the reason he said that he -- said that it was probative because it goes to his credibility, which is --

THE COURT: Okay. Yeah. Now, this -- let me back up. 609(a)(1) evidence that a witness other than the accused has been convicted of a crime shall be admitted subject to 403 if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted and evidence that the accused has been convicted of such a crime shall be admitted if it's the probative value. So as I understand, if it's someone other than the accused, if it is simply a crime punishable by more than one year and it's happened in the last 10 years.

MR. WEST: Well, it does say subject to Rule 403.

THE COURT: Then I go to 403. Okay.

MR. WEST: Which is the probative, prejudicial balancing test.

THE COURT: So what's the prejudice to the State if it comes in?

MR. WEST: Well, he simply just -- it's a character attack rather than any probative value about his testimony. His testimony is someone broke into his home and robbed him blind. It has nothing to do with possession of cocaine.

THE COURT: All right. I'm going to have to take that under advisement. As I understand, everybody admits it's

occurred within the last 10 years. Everybody admits it carries more than a year in jail, but the Defense wants to bring it up to attack his credibility, and the State says you can't use it just to attack his credibility.

MR. DAVIS: And Judge, the final thing I'll say is you can certainly -- you will, I would expect, again, I've not been before you in trial before, but you can give an instruction in closing as to the, the purpose of bringing up prior records --

THE COURT: All right.

MR. DAVIS: -- is to, to impeach based on credibility, the swear to tell the truth, if they hear anything of their record it’s towards that purpose only.

THE COURT: All right. Let me -- I'm going to take that one under advisement. I don't, I don't know the answer on that. I'll need to do some research. All right. Who else have we got?

MR. WEST: And then Mr. Jones we’re going to be in sort of a similar situation because of the convictions he has, 2015 possession of cocaine, neglect by a legal custodian, 2014 --

THE COURT: What was that second one?

MR. WEST: Neglect by a legal custodian, 2014 shoplifting, 2012 possession of Schedule 1(b)(c) LSD/Schedule II. I am imagining that was cocaine as well, but it doesn't

necessarily list it on the rap sheet, and then shoplifting.

THE COURT: Was it both of those shopliftings shoplifting first offense?

MR. WEST: That's correct, Your Honor, those would be 30-day offenses.

THE COURT: Okay. All right. Mr. Davis.

MR. DAVIS: Judge, as to the 2012 and 2014 shoplifting, we would argue 609(a)(2), the honesty, dishonesty, the same argument we made for -- get my, get my witnesses straight here -- Ms. Simpson, and then on the two drug convictions since they occur within the last 10 years and carry a punishment of a year or more, we would argue 609(a)(1). So we think all four of them come in, the drugs for -- based on the potential punishment and it’s not the accused, it's a witness, the same argument I made on Mr. Roberts, and then the, the two shopliftings, honesty, dishonesty. So we would ask to go into all four of those.

THE COURT: All right. Well, I'm going to, I’m going to grant the motion to suppress the shopliftings. I don't think you can bring those up. They carry less than a year, and I don't think they show false statements or dishonesty. Now, the possession of cocaine, the -- what was it, neglectful --

MR. WEST: Neglect by a legal custodian.

THE COURT: Okay. And the other drug possession, what is the probative value?

MR. DAVIS: Judge, it'd be the same argument I made on Mr. Roberts that the rule allows that if it's punishable by more than a year, and forgive me, I left out neglect. So I would ask under the drug charges and neglect --

THE COURT: Right.

MR. DAVIS: -- that the rule allows it and it's 609. So it's under Rules of Evidence for impeachment as to credibility. I will argue you can in, in jury instructions explain why that's being given under the rule. I would argue clearly allows if it's within 10 years and carried over one year and it's not the accused then it comes in.

THE COURT: All right. And the probative value to the State of keeping it out?

MR. WEST: Well, I still hadn't heard any probative value being able to use it against.

THE COURT: As I understand the arguments, they want to let the jury hear it because it makes the witness seem less believable, it attacks his credibility, and as I understand the State, you want to keep it out because if the jury hears it you're scared they're going to judge his credibility.

MR. WEST: Well, I -- well, I believe it's a character attack and he's just trying to say that, you know, they use drugs, therefore, they're lying.

THE COURT: Yeah. And that's what -- and I think that's your argument. You want to say they use drugs, therefore,

they’re lying.

MR. DAVIS: The rule allows for it.

THE COURT: Okay.

MR. DAVIS: There’s a separate rule as to actual character attacks. This isn't that. This is prior convictions. This is not prior word-of-mouth or reputation. There’s a specific rule carved out for these occasions.

THE COURT: Okay. All right. I'm going to take those under advisement as well.

MR. WEST: And the final witness is Tristen Brower. He has a juvenile conviction for shoplifting. I believe you ruled on the shoplifting for Stephen Jones, and we would rely on those same arguments for Tristen Brower, but in addition, the fact that they were juvenile adjudications rather than convictions, we don't believe that they’re subject to cross examination.

THE COURT: All right.

MR. DAVIS: 609(d), Your Honor, “Evidence of a juvenile adjudication is admissible under this rule if conviction of the crime would be admissible to attack the credibility of an adult.” So 609(d) allows you to do the same test you did on the others. I’ll not belabor the point. It is shoplifting. It would be the same argument. I understand on the prior one it's under -- by the way, did you rule against me? I’m sorry. You, you ruled against me, you’re thinking about it. I

apologize.

THE COURT: No, no, no. I've ruled against you --

MR. DAVIS: Okay.

THE COURT: -- on them bringing up the shopliftings because they carry less than a year, and I think under the Broadnax decision it says that it's not -- even though that one's talking about armed robbery, if armed robbery doesn't show propensity for dishonesty or false statement I don't see how shoplifting can.

MR. DAVIS: I understand.

THE COURT: So, so that's why I'm, I'm sustaining their motion, granting their motion to suppress any reference to the shopliftings because they carry less than a year and under the Broadnax decision it doesn't show a propensity for false statement or dishonesty.

MR. DAVIS: Thank you, Your Honor.

MR. WEST: The only and we may just need to cross this bridge later, the Defendant testifies, he does have a prior record. We're not trying to introduce it in our case in chief, but we would like the ability to cross examine him once that time comes. I mean, I don't --

THE COURT: Generally, what I do is when it comes time to question or advise the Defendant and question him regarding his right to testify, then at that time I'll ask you if there is any prior bad acts or prior convictions that the State

intends to use and I'll address them at that time.

MR. WEST: Okay. Thank you, Judge.

THE COURT: All right.

MR. WEST: And just, just for housekeeping rules, some judges have required a certification from the Clerk of Court. Some judges have relied on the NCIC rap sheets that I've provided through our office.

THE COURT: Well, I'm going to be honest with you, I've always relied on the NCIC simply because there's never been an objection.

MR. WEST: Okay.

THE COURT: So what I would suggest you do is maybe get with Mr. Davis and say, "This is what we've got," and certainly if he says --

MR. WEST: Objects to some, I understand.

THE COURT: -- if he objects to some you might need to, to verify it, but I've never had an -- I've never had a Defendant object to what was on the NCIC.

MR. WEST: And the only other motion from the State is -- it was addressed in Your Honor's chambers about evidence of third-party guilt, but I think that issue has been resolved. I just wanted to raise that for the record, and if I need to cite the appropriate authorities, I'm prepared to do so.

THE COURT: All right. Well, I know -- I guess this is a motion in limine to suppress any introduction by the Defendant

as to third-party guilt. I'm going to deny it in limine. We'll just address it when it comes up to see if there is any, any allegation --

MR. WEST: Thank you, Judge.

THE COURT: -- or any, anything to support the testimony if the Defendant presents anything of that nature or -- and we'll address it as that comes up.

MR. DAVIS: And, and as I said in chambers, we have no, no intention of raising a third-party guilt defense. There are other people accused, certainly, that, that is fair game, but as far as a third-party, some other unknown, us presenting witnesses about that, we do not intend to do that, Your Honor.

THE COURT: All right. Sounds good. All right. Anything else?

MR. WEST: Housekeeping-wise, Judge, as you can see, there is a lot of physical evidence. I have talked with the deputy solicitor. It's my understanding we will be in the other courtroom tomorrow, the Clerk of Court has indicated as well. We're going to be moving that, having that secured, but in terms of actual introduction, the items in evidence are grouped by large bags. However, there are several individual pieces. Now, this may be just something I need to work out with Mr. Davis, but I, I feel like before we start if we had this housekeeping address session whether we could identify things through one witness as all identity in one bag and then

introduce the evidence in that one bag versus individual tagging of every ring, every necklace, every Social Security card, those sorts of things.

THE COURT: All right. You can present your case however you want to present it.

MR. WEST: Okay.

THE COURT: I can tell you though, but please keep in mind that we've got to create a record --

MR. WEST: I understand.

THE COURT: -- in the event of any potential appeal or whatever the case may be. So make sure that -- generally, my preference is if the testimony or questioning deals with things as a whole all at once, it can be identified as one exhibit, but if you start picking particular pieces out like for photographs, a lot of times they'll say, "Look at these photographs." "Yeah. Those are photographs of the crime scene. They were all taken the day we got there."

MR. WEST: I understand.

THE COURT: Then that, that -- there's no problem with it being marked collectively as one exhibit, but then when you start pulling out individual photographs and saying, "Okay. Now, what does this one show there," then it probably needs to be ID'd as a separate exhibit.

MR. WEST: I understand.

THE COURT: So if it's everything within the bag is going

to be discussed simultaneously and there's no distinction with the testimony to any large degree, then I think it can be done as one, but if you start pulling pieces out and having the witness testify, "Well, here's State's Exhibit One." "Yeah. I found this in the dining room." "Okay. Now, here's the remainder of State's Exhibit One." "I found this in the bedroom" --

MR. WEST: I understand.

THE COURT: -- then you're going to have a conflict there. So you're going to --

MR. WEST: We'll, we'll keep it as clean as we can for record purposes.

THE COURT: Yeah.

MR. WEST: The only other thing I would ask, Your Honor, is I've had different judges have different preferences for pre-marking of exhibits. I don't know what your preference is. If we could pre-mark I'd like to do that today because it is going to take some time.

THE COURT: I don't -- yeah. I don't have any problem with pre-marking everything.

(Court and court reporter confer.)

MR. WEST: We'll just wait to mark it till in the morning then.

THE COURT: I mean --

MR. WEST: Can, can you --

THE COURT: Well, and I, and I don't have any problems. To be honest with you I prefer, for time purposes I prefer it being pre-marked, but by the same token, they have to keep everything they mark regardless of whether it's admitted, not admitted --

MR. WEST: I understand.

THE COURT: -- identified. It stay -- once a court reporter marks it, it stays in the possession of the court reporter so.

MR. WEST: We'll work out with Madam Court Reporter the timing and scheduling.

THE COURT: Okay. That sounds good. All right.

MR. DAVIS: And Judge, on that, as an oral motion, I guess, thinking back because I appreciate there are going to be some small items, we, of course, would, would move to suppress anything that's not directly related to the three occupants of Bryan Drive or the, or the incident at Cindy Drive in the sense of this, Judge, just for example, there is an ID in the vehicle, but there's going to be no testimony involving my client although he's there and was arrested. To someone -- to -- black female, I don't recall the name, has no relevance to this case and there's some photographs of it. I'm sure they have it in, in, in evidence. Obviously, items like that, if Ms. Chisolm were here perhaps the State might have some, some way to, to introduce that towards her. There

have been no allegations to other incidents, there's been no charges to other incidents and, you know, the State needs to get in all evidence they, they, they need to get in. I get that, but we would ask that, obviously, only things can ultimately be connected to one of the three occupants of Bryan Drive or the residence at Cindy Drive. Anything else is irrelevant and prejudicial.

THE COURT: Well, and I'll admit that's the law. The law is it's inadmissible if it's irrelevant. I'm not going to rule in limine as to certain matters. You're going to have to raise your objection when they seek to introduce it.

MR. DAVIS: Yes, sir.

THE COURT: But I grant you, the law says that if it's irrelevant then it's inadmissible.

MR. WEST: We understand, Judge.

THE COURT: And but raise your objection and I'll suppress it at that time. All right.

MR. WEST: All right. Thank you, Judge.

MR. DAVIS: Thank you.

MR. WEST: I, I don't believe the State has any further matters at this time and we'll be here as soon as Your Honor tells us to be here and I'll instruct the witnesses the same.

THE COURT: All right. Anything further?

MR. DAVIS: I would just, I'll go ahead and give you a copy of voir dire, let the State look at it overnight.

THE COURT: All right. If you want to go ahead that'll be good.

MR. DAVIS: If they have their copy I'll be happy to look at it.

THE COURT: All right. I'll take a look at it. Now, all right. I've got the jury, I instructed them to have the jury panel back at 9:15 so I can take the bench at 9:30, try to get this thing moving. You've got to deliver an app or play some phone recordings for the Defendant. You also need to get together with Ms. Hurley for marking the exhibits. When do you want to do what or how do we want to do this?

MR. WEST: Well, I intended on taking Mr. Davis downstairs with me right now to do jail recordings because I'll have my investigator still here.

THE COURT: Okay.

MR. WEST: And he's been my go to for the jail recordings. In terms of the pre-marking, we'll handle that tomorrow morning as early as Ms. Hurley tells us she wants us here.

MR. DAVIS: And one last thing, Judge, I'll get the photos, the booking photos from them when I go down.

THE COURT: All right.

MR. DAVIS: I'm happy to go now. I've got, got my laptop with me, and --

THE COURT: All right. We'll do the booking photos and

we'll do the phone recordings now. 9:00 o'clock all right?

MR. WEST: Judge, just in terms of forethought, say Mr. Davis has an objection to the introduction of some of the jail recordings, do we want to reserve some time for hearing on that?

THE COURT: Okay. Yeah. Let's -- well, let's be back -- I'll be here tomorrow morning by 9:00 o'clock.

MR. WEST: Okay.

THE COURT: So if we have anything pretrial we got the jury coming in at 9:15, and if I don't take the bench right at 9:30 that's fine, but kind of get in touch with my law clerk. If we've got anymore pretrial stuff, let's -- well, it's only -- how long is it going to take to go over these phone recordings? Okay. Let's go ahead and play that for him. I'll still be here because it's only ten till four, and if you've got anything else in that regard, I guess let me know and maybe we can address it today before we leave.

MR. WEST: And can we submit case law on the things you've held in abeyance at this point?

THE COURT: I can do -- I can just do some quick research. That's -- because all I'm -- all we're looking up is in-court identification when there's been no prior out-of-court identification and then witnesses' prior records when the Defense wants to introduce it to attack the credibility saying that that outweighs the prejudicial effect, and the

State says the probative value or the prejudicial effect outweighs the probative value when it's used just to attack credibility. So I think I've got a good handle on it.

MR. WEST: Okay. Thank you, Judge.

THE COURT: All right. Thank you. Check the phone messages and then --

MR. DAVIS: I'll give you --

THE COURT: -- send me word up right quick as to what, what you all -- whether you need any more in-court time. Okay?

MR. WEST: Thank you, Judge.

MR. DAVIS: May I approach? I'll give my cell phones.

THE COURT: It's ten -- it's about five till four. We'll stick around until 4:30.

MR. WEST: I'm hoping we can get things done by then by all indications.

MR. DAVIS: Or at least update you by then.

THE COURT: All right.

MR. WEST: Yes. We will have an update probably before then.

THE COURT: Yeah. Let me know by 4:30 whether or not we need to wait any longer or whether or not we're good to go.

MR. DAVIS: All right, sir.

THE COURT: All right. Sounds good. Thank you.

(Adjourned for day.)

(On the record, January 27, 2016, State v. John Darrieux. The following takes place outside the presence of the jury panel.)

THE COURT: All right. Anything we need to take up before we bring the jury in and select a jury?

MR. WEST: Yes, Your Honor. I'd like to address a few things. We worked with Defense counsel last night to ensure that the CD that was originally provided to him in discovery was operable. It was operable. We didn't have to change discs. The disc that was provided to him eventually worked. He worked with our IT guru in Charleston to figure out how to play those tapes, and to my knowledge, those were listened to. That objective has been accomplished. So the record should be clear that Defense counsel has had the opportunity to listen to calls that we discussed. I identified the calls that we intended to introduce, and that has been prepared properly according to your order.

THE COURT: All right. All right. Mr. Davis, anything further from the Defendant regarding the phone conversations?

MR. DAVIS: Judge, that is accurate. We -- after we reported back to you we, we got a gentleman on line. He showed me how to open the things up on a PC. I went back to my house, opened them up on a PC and was able to listen to the five the State indicated they might be introducing. It's my understanding when we departed yesterday there'll be no more

than those five, it might be less than those five, and I guess we'll deal with that at the appropriate time. Judge, I do need to record this only that the bind here being that, and just to be clear, there's a letter sent to my office on December 23rd saying they were available. I'm a West Virginia native, out-of-state with my family over Christmas. I had an order of protection the first week of January, which I think was the 4th through the 7th. So I was protected up until January 7th. I picked them up on the 14th. As we talked yesterday, even after the meeting on the 21st, I understood the State was not intending to, and I understand there may have been miscommunication, but I was unaware of that. So my first opportunity to listen to five of 94 calls was last night. Before departing and talking with Mr. West, and I greatly appreciate he, he and his staff and, and whoever the, the Jeff, the IT guy is, in helping us get access to this, but the issue becomes, you know, there was no, there's no discovery to deal with any admission issues, any evidentiary issues. As we discussed in his lot before I was leaving, you know, the State, if they intend to introduce either one of them, would need to show that it is actually my client making the phone call because I will tell you of the five that I listened to one of them is not from his account. Now, it's my understanding that the testimony would be someone from the jail goes and pulls his jail account number and then just

dumps any calls from that account onto a disc. That's why we have so many. I will tell you though one I listened -- one of the five that I listened to is not from his account. It's the State's allegation that it's him talking to his father. Now, it does give the number that is called, but as of last night was the first that, that we had a chance to discuss that issue. The State gives me updated witness list today with his father's name on it. He's not under subpoena. There's been no notice to him of that, and we're now technically the second day of trial, we did pre-trials yesterday. This, this, this rush to get to court when the State clearly wasn't fully prepared on what calls they were going to make, they did not have a full witness list, I still don't know if they know the calls they're going to try to introduce, puts us in a bind, Judge, it just does, and this is something I was not able to flesh out fully on, on, on the motion for continuance.

THE COURT: Excuse me for interrupting, but what are you asking me to do?

MR. DAVIS: Judge, again, I would renew, I would add this to my reason for a, for a continuance on this.

THE COURT: All right. Well, let me ask you this, what has this delay, what is the prejudice to your client?

MR. DAVIS: Good question, Your Honor. Two things I would, I would argue. One, I appreciate they're not -- they, they indicate they're not going to attempt to use any of the

others beyond the five, but the whole issue becomes, and this is what I told Mr. West in his office, if they're to be used the issue becomes what's being said, what, what did the person say, can you audibly hear it, and what does it mean because in context means a great deal. Well, to any phone call there are two folks, and so if they're allowed to be introduced, if they have the proper foundation, which again, they have not subpoenaed my client's father, nor is the, the mother of his child who is on some -- the other calls, she's not even on the witness list. I think there is an issue identifying the caller. Now, if, if the, if the records custodian from the jail wants to say, "Well, that's from his account," and then the jury can listen to it, but then, still, we don't have -- they can say it's from his account, we clearly have evidence being -- that has been provided to me that inmates can use other people's accounts.

THE COURT: Well, I mean, I guess my point is let's say I continue the case, we come to trial 90 days down the road, they still haven't subpoenaed your client's father, they still haven't subpoenaed the other person to the conversation, they're still relying on the custodian from the detention center to get them in, what is the prejudice to your client?

MR. DAVIS: So, so, the second part is, I, I don't -- two things, one, still, we have the, the, the, the, the issue as to the calls and we have the issue of identity, admissibility,

Crawford potential issues because we don't have another person speaking on the phone, if they're unavailable as a witness, then we have Crawford issues. The second thing, Judge, is the, do my math right, 89 other calls. Now, the State's going to pick out the bad ones. I understand that, that's their, their job. They're, they're our adversary. I don't know if there's other calls in -- that would provide context to these bad ones that, that would explain that better, but my first access to it was last night. Now, I, I, I, I don't mind telling the Court this, you know, again, 20 years doing this I, I told John when I met with him on Monday not thinking they were going to be used, "John, I've not had access, generally speaking they either don't amount to much of anything, how's mom, how's the weather, how or they're bad in my experience." So rarely has, rarely has Defense had a situation where those calls provide positive evidence, but I have, Judge. I've been second chair in a murder trial where the calls did help the Defense, and so, again, for that reason it -- one thing for the State to simply just prepare and give notice the proper way. There's a proper way to provide discovery and prepare and allow the Defense to have the material evidence prior to starting trial. Secondly, Defense should have sufficient time, whether it's bad news, to find out all the bad news or whether it's good news, to be able to have that before trial, and the final thing is this, Judge, I'll also be candid with

the Court, John and I were talking this morning about, you know, what, what these charges carry and what they face. Had we had notice of the intent to use these calls and the content of these calls and access to these calls, then it would have been a much more -- could have been and may still be a much more fruitful negotiation between the State and my client. Here we are getting ready to pick a jury, and I have, I have not yet, Judge, I was able to review one because they're -- four of the five are 15 minutes long, the last one was 10 minutes and, and some seconds, and I understand for court to get started, and I apologize, reckon, I, I don't know if I have a stomach bug, a little under the weather, but I've had only time to go over the shortest of the five calls with John. I took notes. Tried -- I didn't transcribe it. I took notes the best I could. I've only had time to tell him about one and generally about the rest of them. For him to make a informed decision about whether he ought to ask his fellow man to, to judge him or whether he ought to enter into more negotiations, we haven't even had time to discuss this new evidence that the State intend to introduce against him.

THE COURT: All right. Thank you. All right. Mr. West, let me hear from you.

MR. WEST: Your Honor, first I'd, I'd like to be clear, there's not going to be any more negotiations on this case. So that part of the argument can go ahead and be nipped in the

bud. There's not going to be anymore negotiations. We're at trial. We're ready to proceed on all the charges that we have indicated to you earlier.

Secondly, when the Defense picked up the discovery is when he had his first ability to review the records. It's not my job to make sure he listens to everything we gave him. We gave it to him. If he would have came to me the day of, the day that he received it, as our actions have demonstrated as soon as he told me, we would have bent over backwards to make sure he could listen to them. The fact that he didn't review it should not prejudice the State and our ability to present testimony. Secondly, on that issue, the admissibility of the jail calls is not in question here. There's an exception under the hearsay exceptions of the business records that allows us to introduce these jail calls. Whether the jury believes it's the Defendant or not is for them to determine. Okay. As long as we are properly admitting the testimony that's the threshold that we need to meet in order for the admission of the evidence in terms of whether --

THE COURT: Well, let me ask you this. How is the State identifying the Defendant as one of the callers?

MR. WEST: He identifies himself --

THE COURT: Okay.

MR. WEST: -- on the tapes. At the beginning of each tape they make them say their name and then throughout the

calls he identifies himself as John or somebody calls him John throughout the calls. The subjects that they talk about corroborate the case itself, and there's plenty of evidence that it's this Defendant's phone calls coming from the jail. If the jury believes it is not him making the calls, that's the jury's determination and they can choose to discard that piece of evidence, and I think that's the way that this should be treated. I think we have met all of our discovery obligations under the rules, and we've provided sufficient time for Mr. Davis to review and right now what it just seems like he's trying to dictate how I try our case.

THE COURT: All right. I understand. Anything in reply, Mr. Davis?

MR. DAVIS: Judge, this isn't the first discovery issue obviously and that's what I would point out. This is being forced into court on my client. We have a right to have the discovery, have time to deal with discovery. Fortunately, when there's been an issue they've remedied it quickly, but even as to testimony that Mr. Brower was shown photos, we found that on the record yesterday, Your Honor. They provided me those yesterday evening, but -- and I understand that Mr. West received this file from, from another assistant solicitor who had been working on it for quite some time. I think there was a even a third one that began this, this case, but the fact that we are complaining it's our, it's our right to

complain, we have to complain it because we have to be given a fair shot at the apple. This is our one shot at -- one bite at the apple, and for us to be forced to go forward -- if, if you see fit not to continue beyond this week, I would at least be -- like to be able to, as I said, I've been able to review one of the -- and each one of these is two pages, one is three, I believe my notes on the calls, and I understand the State's, for lack of a better word, ultimatum that there's no more negotiating. Judge, I've never seen the State if, and this is hypothetical at this point, I've never seen -- I, I can't recall a time I've seen the State turn down cooperation. I, I can't recall a time I've seen the State turn down cooperation especially when there are two Co-Defendants with pending charges still untried.

THE COURT: All right. I'm going to deny your motion to continue. I don't see the prejudice. I'm going to allow them to go forward. All right. Anything else from the Defense?

MR. DAVIS: No, just, Judge, I think we made it clear. I've not reviewed all the discovery with my client because I just reviewed it last night. Other than that, Judge, and I respect your ruling on that. Judge, you had spoken with us briefly yesterday about some research you did on some issues yesterday.

THE COURT: Right. Right. All right. For the motions that I had taken under advisement, number one, on the

Defendant's motion, and we had discussed this in my chambers, but I need to go ahead and get it on the record, regarding the Defendant's motion to suppress the in-court identifications by Charles W. Roberts, Stephen Jones, Rose Marie Simpson and Tristen A. Brower, I'm going to grant the Defendant's motion to suppress the in-court identification of the Defendant by Charles W. Roberts because I think he testified during the Neil v. Biggers that he did see him at the bond hearing. That was unduly suggestive, and I think to allow him to identify him in court would be unduly suggestive and unreliable. So I'm going to grant the Defendant's motion as to Charles W. Roberts. I'm going to deny the Defendant's motion to suppress the in-court identification of the Defendant by Stephen Jones and Rose Marie Simpson. My understanding of the law is where there is no out-of-court identification and for the first time the Defendant is identified in court by the testimony of a State's witness the recourse is cross examination and argument of the witness, and so I am not going to suppress Stephen Jones or Rose Marie Simpson's in-court identification of the Defendant. I'm going to also deny the Defendant's motion to suppress the in-court identification of the Defendant by Tristen A. Brower. I think there was enough testimony from Mr. Brower during the Neil v. Biggers that shows the out-of-court identifications are not inherently unreliable, were not unduly suggestive and that there was some type of at least

contact or relationship there prior to that makes his identification reliable. So on the Defendant's motion to suppress in-court identification of the Defendant, I'm granting it as to Charles W. Roberts, denying it as to Stephen Jones, Rose Marie Simpson and Tristen A. Brower.

As to the Plaintiff's motion to suppress the prior records of Rose Marie Simpson, I'm denying it as to the two fraudulent checks. They can bring that up to attack her credibility because issuing fraudulent checks is a crime that shows dishonesty and false statement. I'm denying the State's motion, so I'm denying the State's motion to suppress the prior record of Rose Marie Simpson as to the fraudulent checks. I'm granting it as to those other crimes that were over 10 years old.

I'm going to deny the State's motion as to Charles Roberts. The Defense can bring up the fact that he was convicted of conspiracy, cocaine HCL, whatever that might be. It carries more than a year in prison and it was within the last 10 years. I'm going to grant the State's motion to suppress the prior records of Stephen Jones as to the two shopliftings because those carried less than 30 days. I'm going to deny it as to the possession of cocaine, neglect by a legal guardian and possession of drugs, both -- all three of those occurred within the last 10 years and carry more than ten -- carry more than a year in jail.

I'm going to grant the State's motion to suppress Mr. Brower's shoplifting conviction because that carried 30 days, less than ten, I mean, less than a year in jail.

As to the Plaintiff's motion to suppress Defendant's reference to a third-party guilt, I might have stated this on the record yesterday, I don't recall. I'm going to deny it in limine. If and when they do it, then you can raise your objection at that time and I'll have to judge the context in which it's raised.

All right. Does that address all pretrial matters?

MR. WEST: No, Your Honor. We had discussed the amendment of indictment for burglary second degree nonviolent, indictment number 2015-GS-08-01024. The State is asking to amend the charge to burglary in the third-degree under S.C. Code 17-19-100. The South Carolina Code of Laws allows for the amendment of indictment. Under case law, State v. Meyers, 313 S.C. 391, that jurisprudence allows for the amendment of an indictment, says it is permissible if the charge is a lesser included offense. We're asking to be amending the charge to burglary in the third-degree, which is a lesser included offense of burglary in the second degree, and as such, there is no prejudice to the Defendant as, as it is to this case.

THE COURT: All right. Any change as to the content of the allegations in the, in the indictment? Let me see, 1024,

it says that the Defendant that in Berkeley County on or about October 21st, 2014, the Defendant John Alexander Darrieux did enter the dwelling of Charles William -- Willard Roberts without consent with the intent to commit a crime therein.

MR. WEST: What the State would suggest is changing the dwelling to building belonging to Charles Willard Roberts.

THE COURT: Okay. So --

MR. WEST: The statutory, the language is different for burglary third degree versus burglary second degree.

THE COURT: All right. So I understand you're seeking to amend indictment 2015-GS-08-1024, the, the charge from burglary second degree nonviolent to burglary third degree and amending the content of the indictment to read that the Defendant allegedly entered a building of Charles Willard Roberts rather than a dwelling of Charles Willard Roberts.

MR. WEST: Judge, and my -- I apologize, but I don't know if I read the right indictment number on that. Is that the one that's in the caption?

THE COURT: Yep. 2015-GS-08-01024, that's the one for burglary second degree. Do you want to see?

MR. WEST: The Court's indulgence, Your Honor.

THE COURT: All right.

MR. WEST: That's correct, Your Honor. 10 -- 1024.

THE COURT: All right.

MR. WEST: Thank you.

THE COURT: All right. Mr. Davis.

MR. DAVIS: Judge, I would like to make one comment back on the prior records. If you want me to do that first or if you want me to answer your question about this indictment first, if I could just get one clarification on your ruling on their records.

THE COURT: Okay. Let's do the indictment first.

MR. DAVIS: Sure. Yes, sir. Thank you. Judge, as to this, we would object because the charge is burg second degree nonviolent, which as the State just indicated requires them to prove that it's a dwelling. Burglary third degree does not deal with a dwelling whatsoever. We understand they're still burglaries requiring entering without permission with the intent to commit a crime, but the thing that classifies our burglaries differently, one of the things, is the type of structure, and for them now to attempt to amend it through the court process we think is inappropriate. This, this indictment was true billed June 23rd of 2015, if I'm reading it right -- yes, June 23rd of 2015, true-billed. They've had seven months to do this, and Judge, again, we -- I, I understand. I've talked to John. I know that if you grant it, it makes it a lesser charge and that very well could be to his benefit, but again, Judge, there's a way to do things, and this again shows this case is being forced forward rather than being fully prepared and discovery given before we come to

court. We've been on notice that they would be preparing to state this was a dwelling. They've already indicated to you one of their themes of their trials this was a targeted incident because this is the four, four p.m. one. This is the, the location in Summerville 12 hours before the first one.

THE COURT: Wait a minute. You said 4:00 p.m., 12 hours before the first one?

MR. DAVIS: Yes, Your Honor.

THE COURT: One happened at 4:00 p.m. and one happened at 4:00 a.m. the following day.

MR. DAVIS: The morning of, 4:00 a.m. happened first and then this one at 4:00 p.m.

THE COURT: 12 hours later?

MR. DAVIS: Yes, Your Honor. I'm sorry. Did I misspeak? 12 hours later. I apologize, 12 hours apart, but yeah, this happened 12 hours later.

THE COURT: Okay.

MR. DAVIS: You've heard, and I'm not going to renew it, you've ruled, but that's one of the issues on the motion for severance, they were so far apart. The State intends to go forward on both and show that there's a, a motive, a connection. We've been told all along this was a dwelling. It changes the nature of the indictment because it's not a lesser included in the sense of this -- if this was burg

second violent, if they'd said building all along, I don't know that I got a leg to stand on, but for them to change the factual allegation from dwelling to now building, you know, not some, some place where someone lived, and I believe there -- I believe, I've not had a chance, again, Judge, there's numerous photos. I've looked at them. I don't know what they intend to introduce, but there's photos of the outside of this. So it certainly looks like a residence, and for now to say, you know, it's not, it's a dwelling, Judge, again, there's an appropriate way to do this. They, they dismiss. They submit a direct indictment to the Grand Jury in the last seven months. They see if the Grand Jury wants to indict it for that. They provide it to me before they call a case for trial. There's a right way and a wrong way to do things. We object to them asking the Court to amend at this late date.

THE COURT: All right. Anything in reply?

MR. WEST: Nothing, Your Honor, other than the case law is pretty clear that since it's a lesser included offense it's permissible under our, our rules.

THE COURT: All right. And as I understand you're not -- the photographs, whatever, you're claiming it's the same structure. I understand from our pre -- from our in-chambers conferences that you're just -- the question is whether or not the house was occupied.

MR. WEST: That's correct, Your Honor.

THE COURT: Okay. So when you say building you're not changing it from a house to a commercial building. You're changing it from a occupied house to an unoccupied house is what you're saying?

MR. WEST: That's correct, Your Honor.

THE COURT: Okay. All right. I'm going to grant the motion. Amendment -- excuse me. Indictment 2015-GS-08-1024 is amended from burglary second degree nonviolent to burglary third degree, and the content is amended from dwelling to either building or unoccupied dwelling. I think we're talking about the same thing. All right. Anything further from the State?

MR. WEST: Nothing further at this time, Your Honor.

THE COURT: All right. From the Defense?

MR. DAVIS: And Judge, just go back, your ruling was as to the shopliftings they were excluded. You're granting the State's motion they were excluded because they only carried 30 days. I would ask a ruling to clarify, you're also finding then that regardless of the time punishment they do not come in as honesty dishonesty?

THE COURT: Correct. Correct.

MR. DAVIS: Thank you very much, Your Honor.

THE COURT: And I'm going to be honest with you, I'm relying totally on the Broadnax decision. If armed robbery is not a crime of dishonesty, then I don't see how shoplifting

can be a crime of dishonesty, and so following the Supreme Court's decision in that case is the reason I'm, I'm granting the suppression of those. All right. Anything further from the Defense before we bring the jury panel in and begin the selection?

MR. DAVIS: May I have a moment? I don't think, Judge.

THE COURT: All right.

MR. DAVIS: So Judge, if you'd give me just a moment. Judge, in an abundance of caution, if I didn't put it on the record, I did receive -- I believe I told you in chambers. I don't know if we put it on the record, I did receive yesterday from the State the two photographs that were shown to Tristen Brower in his meeting with the Solicitor's Office. So that other evidentiary issue has been dealt with. So if I didn't put that on the record --

THE COURT: Yeah. And I, I knew that, but I agree with you, that might have been done, done in chambers. All right. Anything else?

MR. DAVIS: Other than that, nothing else, Your Honor.

THE COURT: Anything from the State?

MR. WEST: Nothing from the State, Your Honor.

THE COURT: All right. Let's go ahead and bring the jury panel in, and now, this is a five and ten strike; right?

MR. WEST: That's my understanding, Judge.

THE COURT: Yeah.

MR. DAVIS: Yes, Your Honor.

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

THE COURT: All right. Good morning, ladies and gentlemen. My name is Judge Ben Culbertson. I'm a Resident Circuit Court Judge for the 15th Judicial Circuit, which is comprised of Horry and Georgetown Counties, but by state law we travel around the state holding terms of court, and it's my pleasure to be in Berkeley County for this term of General Sessions Court. I don't know if it was explained to you during jury qualifications or not, but our circuit courts are divided into two courts. We have a Court of Common Pleas or what's commonly referred to as civil court. That's where someone has alleged a civil violation by someone else, whether it be a car wreck, a slander action, a breach of contract or something of that nature, and they're seeking damages for that alleged wrongdoing. I'm not doing that this week. This week I am here in Berkeley County for this term of General Sessions Court or what's commonly referred to as criminal court. That's where the State has charged someone with violating a criminal statute, and they're seeking a conviction for that alleged wrongdoing, and that will be what we will be presiding over this week. All of you have been qualified. I understand you were qualified by Judge Buckner yesterday to serve as jurors for this term of General Sessions Court.

Now, I do have a series of questions to go over with you at this time, which is commonly referred to as voir dire questioning. That is to determine whether or not you're qualified to serve as jurors on this particular case, and it also gives the attorneys some additional information that assists them in the jury selection process.

So now the first thing you're going to learn as jurors is just like witnesses, jurors are constantly taking oaths. So I'll need all members of the jury panel to please stand and raise your right hand.

(Jury panel sworn by Court.)

THE COURT: Is there any member of the jury panel that did not respond to the oath by saying, "I do?" If so, please stand.

(No response.)

THE COURT: Thank you very much.

All right. Ladies and gentlemen, we are getting ready to start the case of the State of South Carolina versus John Alexander Darrieux, D-A-R-R-I-E-U-X. Now, Mr. Darrieux has been charged with burglary in the first degree, burglary in the third degree, three counts of armed robbery, three counts of kidnapping and one count of possession of a firearm during the commission of a violent crime. These crimes are alleged to have been committed on or about October, is it 21st or 22 -- October 21st, 2014. One of them occurred -- let me get these

addresses. One of them is alleged to have occurred at [redacted] Bryan Drive in Moncks Corner and the other one at [redacted] Cindy Drive in Summerville, South Carolina. Now, is there any member of the jury panel that has heard anything, read anything, discussed anything or knows anything about this case? If so, please stand.

(No response.)

THE COURT: All right. As I said, the Defendant is John Alexander Darrieux. Is there any member of the jury panel related by blood or marriage, have a close personal relationship, business relationship, social relationship or any other type of relationship with Mr. Darrieux? If so, please stand.

MR. DAVIS: Your Honor, may he stand and face the jury?

THE COURT: Yeah. That'll be fine.

(Mr. Darrieux stands and faces jury panel.)

THE COURT: Anyone related or have any type of relationship with Mr. Darrieux? If so, please stand.

(No response.)

THE COURT: Excuse me for a minute. I have misplaced my witness list.

MR. WEST: Judge, may I approach?

THE COURT: Yes. I just had it in my hand and I don't know. Here it is. I got it right here. I just found it. Thank you. All right. Ladies and gentlemen, please listen up

as these are the potential witnesses who may testify in this case: Tristen Brower; Rose Simpson; Charles Roberts; Stephen Jones; Courtney Pringle; Carlena Pringle; Officer Cassandra Drew; Officer Cody Graff; Officer Stacy Cross; Detective Brent Fenton; Detective Dan Wilson; Detective Shane Cook; Officer Justin [sic] Babson; Officer Zach Wright; Sergeant Katie Shuler; and Marcell Darrieux. Is any member of the jury panel related by blood or marriage, have a close personal relationship, business relationship, social relationship or any other type of relationship with any of these potential witnesses? If so, please stand. Yes, sir, your name and number?

MR. HARLEY: Anthony Harley, Number 69.

THE COURT: All right. Mr. Harley, who is it that you know?

MR. HARLEY: Shane Cook.

THE COURT: All right. And how do you know Shane -- who did you say? Oh.

MR. HARLEY: Shane Cook.

THE COURT: Detective Shane Cook. How do you know Detective Shane Cook?

MR. HARLEY: We went to the Citadel together for three years.

THE COURT: Okay.

MR. HARLEY: It was the same company.

THE COURT: And how long ago -- when was the last time you saw Mr. Cook?

MR. HARLEY: Last month.

THE COURT: Okay.

MR. HARLEY: And yesterday.

THE COURT: You did see him yesterday?

MR. HARLEY: Like walking out of here.

THE COURT: Okay. Do you all socialize on a regular basis?

MR. HARLEY: We keep in touch.

THE COURT: Okay.

MR. HARLEY: We speak.

THE COURT: So you all were college classmates?

MR. HARLEY: Uh-huh.

THE COURT: All right. And you stay in touch on a regular basis?

MR. HARLEY: Uh-huh.

THE COURT: Okay. And you are Mr. Harley?

MR. HARLEY: Uh-huh.

THE COURT: All right. Mr. Harley, I'm going to excuse you from this particular case. Stay with us for right now, but I'm going to excuse you from presiding over this case. Okay? Anyone else have any type of relationship with any of these potential witnesses? If so, please stand.

(No response.)

THE COURT: All right. Prosecuting this case on behalf of the State are Assistant Solicitors E. Mason West and Daniel -- how do you pronounce that, Poulos?

MR. POULOS: Yes, sir.

THE COURT: Poulos. Representing the Defendant is Attorney Rodney D. Davis. Is there any member of the jury panel related by blood or marriage, have a close personal relationship, business relationship, social relationship or any other type of relationship with any of these attorneys? If so please stand. Yes, sir. Your name and number?

MR. MILLWOOD: Vance Millwood, 181.

THE COURT: All right. Mr. Millwood, who is it that you --

MR. MILLWOOD: I know Mr. West.

THE COURT: Okay. And how do you know Mr. West?

MR. MILLWOOD: I've known him ever since he was a young man growing up all the way through.

THE COURT: All right. Do you all socialize together?

MR. MILLWOOD: No, sir. Not really. We just, you know, if I see him around town or something we'll speak, and that's about it. We really don't have that much communications other than that.

THE COURT: Okay. Would the relationship that you have with Mr. West be such that it would affect your ability to give both the State and the Defendant a fair and impartial

trial?

MR. MILLWOOD: No, sir. I think the evidence will stand for itself --

THE COURT: Okay.

MR. MILLWOOD: -- no matter who represents who to the Court.

THE COURT: All right. Would you be able to disregard your relationship with Mr. West in its entirety --

MR. MILLWOOD: Yes, sir.

THE COURT: -- and base your decision in this case exclusively on the testimony and evidence in this case?

MR. MILLWOOD: Yes, sir. I will be able to do that.

THE COURT: Okay. Thank you, Mr. Millwood, for bringing that to our attention.

Anyone else have any type of relationship with any of these attorneys?

(No response.)

THE COURT: Has anybody in the jury panel ever been represented by any of these attorneys? If so, please stand.

(No response.)

THE COURT: Has any member of the jury panel ever been involved in any legal action in which any of these attorneys represented another party to that action? If so, please stand.

(No response.)

MR. WEST: Your Honor, may we approach?

THE COURT: Yes, sir.

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury panel.)

THE COURT: Is any member of the jury panel either a witness in the prosecution of a case or being prosecuted by the Ninth Circuit Solicitor's Office? If so, please stand. Yes, sir. Your name and number?

MR. BAKER: Derek Baker, 12.

THE COURT: All right. Mr. Baker, if you'd come forward, please.

(Whereupon, an off-the-record bench conference with Juror Number 12, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: All right. I'm going to excuse Juror Number 12 from this particular case.

Anyone else a witness in the prosecution of a case or being prosecuted by the Ninth Circuit Solicitor's Office? If so, please stand. Is there any member -- yes, ma'am. Your name and number?

MS. KEYES: Your Honor, I'm Juror Number 90, Karen Keyes.

THE COURT: All right. Ms. Keyes, if you'd come forward, please.

(Whereupon, an off-the-record bench conference with Juror

Number 90, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: All right. Now, ladies and gentlemen, the Ninth Circuit Solicitor's Office covers both Berkeley County and Charleston County. So is there any member of the jury panel that is being prosecuted or is a witness in the prosecution of a case pending in Charleston County? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who either personally, has a family member or close personal friend employed with the Ninth Circuit Solicitor's Office or the Lowcountry Law Office in Charleston, South Carolina? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who is either currently or formerly employed in law enforcement? If so, please stand. All right. So starting with the gentleman in the green shirt, your name and number?

MR. MASSEY: Zechariah Massey, Juror 110.

THE COURT: All right. Mr. Massey, are you currently employed or previously employed with law enforcement?

MR. MASSEY: Previously employed, Your Honor.

THE COURT: All right. And how long ago?

MR. MASSEY: Less than a year ago, Your Honor.
THE COURT: And what law enforcement agency?
MR. MASSEY: Well, I was correctional officer with MacDougall, South Carolina Department of Corrections.
THE COURT: Okay. Would that employment and -- well, first, let me ask you this. How long were you employed there?
MR. MASSEY: Less than a year.
THE COURT: Okay.
MR. MASSEY: I got certified, the whole works, eight months.
THE COURT: All right. Would that employment affect your ability to give both the State and the Defendant a fair and impartial trial?
MR. MASSEY: No, Your Honor. I'll be able to be fair.
THE COURT: All right. Would you be able to disregard your prior employment in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?
MR. MASSEY: Yes, Your Honor.
THE COURT: All right. Thank you very much, Mr. Massey, for bringing that to our attention.
MR. MASSEY: Thank you.
THE COURT: The gentleman -- you can be seated, now.
MR. MASSEY: Yes, Your Honor.
THE COURT: The gentleman in the blue shirt, your name

and number?

MR. WELLS: Duane Wells, 174.

THE COURT: All right. Mr. Wells, are you currently or previously employed?

MR. WELLS: Previously.

THE COURT: All right. Now, how long ago?

MR. WELLS: Just over a year.

THE COURT: And who were you employed by?

MR. WELLS: Hill-Finklea, Berkeley County.

THE COURT: Excuse me?

MR. WELLS: Berkeley County, worked at Hill-Finklea Detention Center.

THE COURT: Okay. Were you involved in this case in any way?

MR. WELLS: No, sir. Not that I recall.

THE COURT: Okay. And how long were you employed at the detention center?

MR. WELLS: Two and a half years.

THE COURT: Would that employment affect your ability to give both the State and the Defendant a fair and impartial trial?

MR. WELLS: No, sir.

THE COURT: Would you be able to disregard your employment in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

MR. WELLS: I believe so, yes.

THE COURT: Okay. And I appreciate your honesty in saying you believe so, and this is no criticism of you, but I have to be sure that we get a jury that does not have any outside influence whatsoever, and it's natural that you might be influenced at times, whether it be by your job, prior incidents, whatever the case may be, but what I have to ensure is that nobody sitting on the jury has any outside influence, and if you think there's a chance that your prior employment might influence you in this case, then I need to know that.

MR. WELLS: I think it's possible.

THE COURT: Okay. All right. Thank you very much, and you were 175?

MR. WELLS: 174.

THE COURT: 174. All right. Mr. Duane E. Wells, I'm going to excuse you from this particular case. Anyone else currently or previously employed in law enforcement? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who has an immediate family member employed in law enforcement either now or previously? If so, please stand.

All right. The lady to my extreme left against the wall, your name and number?

MS. LOCKLAIR: Christina Locklair.

THE COURT: No. I'm sorry. Against the wall.

MS. CLARK: Deanna Clark, Juror 34.

THE COURT: All right. Ms. Clark, who is -- not the name, but what is the relationship with the family?

MS. CLARK: My father.

THE COURT: Your father? Is he still employed with law enforcement?

MS. CLARK: He works for the Charleston County School District as of right now, but he's retired from North Charleston Police Department.

THE COURT: Okay. Now, do you know how long ago he was employed or when he retired?

MS. CLARK: About three or four years ago.

THE COURT: All right. Would your father's prior employment affect your ability to give the Defendant and the State in this case a fair and impartial trial?

MS. CLARK: Truthfully, yes.

THE COURT: Okay. Thank you, Ms. Clark. I'll excuse you from this particular case, but please stay with us for right now. All right. Let's come to the front row, the lady on my left, you all's right with the purple coat. Your name and number?

MS. KEYES: Karen Keyes, Juror Number 90.

THE COURT: All right. Ms. Keyes who is the family member? What was --

MS. KEYES: Currently my uncle is a major I think at the, the Leeds Avenue Jail.

THE COURT: Okay. And this is your uncle?

MS. KEYES: Yes, sir.

THE COURT: Okay. Now, would your uncle's employment at the jail affect your ability to give both the Defendant and the State in this case a fair and impartial trial?

MS. KEYES: No, sir.

THE COURT: Would you be able to disregard your uncle's employment in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

MS. KEYES: Yes, sir.

THE COURT: Okay. Now, do you reside with your uncle?

MS. KEYES: I don't, but I'm very close with him.

THE COURT: Okay. All right. Thank you, Ms. Keyes, for bringing that to our attention.

MS. KEYES: Yes, sir. And previously I had another uncle who also worked at the same jail. My father was a police officer at MenRiv and my deceased uncle was also a police officer in MenRiv weapons station.

THE COURT: All right. Now, are any of them currently employed in law enforcement?

MS. KEYES: One’s deceased, two are retired and my current uncle who is alive, of course.

THE COURT: All right. Would any of those employments

affect your ability to give the Defendant in this case and the State a fair and impartial trial?

MR. KEYES: No, sir.

THE COURT: Would you be able to disregard all of those employments and all of those relationships in their entirety and base your decision in this case exclusively on the testimony and evidence in this case?

MR. KEYES: Yes, sir.

THE COURT: All right. Thank you, Ms. Keyes, for bringing that to our attention.

All right. The lady beside Ms. Keyes, your name and number?

MS. LOCKLAIR: Christina Locklair, Juror 102.

THE COURT: All right. Ms. Locklair, what was the relationship? What's the family member?

MS. LOCKLAIR: My brother's employed with Homeland Security.

THE COURT: Okay. Now, where is he employed?

MS. LOCKLAIR: The State of New Jersey.

THE COURT: Okay. Would your brother’s employment affect your ability to give the Defendant and the State in this case a fair and impartial trial?

MS. LOCKLAIR: Yes, sir.

THE COURT: Okay. Thank you, Ms. Locklair, for bringing that to our attention. I'm going to excuse you from this

particular case. All right. The lady right behind Ms. Locklair, your name and number?

MS. LAW: Jennifer Law, yes, sir, Jennifer Law, 98. My father was NCOIC of investigations in the Air Force and is now the director public safety at the Citadel.

THE COURT: Okay. Would his prior or current employment affect your ability to give both the Defendant and the State in this case a fair and impartial trial?

MS. LAW: No.

THE COURT: Okay. Would you be able to disregard your father's prior and current employments in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

MS. LAW: Sure.

THE COURT: Thank you, Ms. Law, for bringing that to our attention.

All right. The gentleman all the way back, your name and number?

MR. BREWER: Michael Brewer, Juror Number 19. I have two son-in-laws, one Moncks Corner, one Goose Creek Police Department.

THE COURT: Okay. Is Moncks Corner Police Department involved in this case?

MR. WEST: No, Your Honor.

THE COURT: Okay. All right. Moncks Corner and where?

MR. BREWER: Goose Creek.

THE COURT: All right. Would either of your son-in-laws' employments affect your ability to give the Defendant in this case and the State in this case a fair and impartial trial?

MR. BREWER: No, sir.

THE COURT: Would you be able to disregard the employment of your son in-laws in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

MR. BREWER: Yes, sir.

THE COURT: All right. Thank you, Mr. Brewer, for bringing that to our attention.

All right. The lady that just stood beside Mr. Brewer, your name and number?

MS. CORSON: Cynthia Corson, 37.

THE COURT: All right. Ms. Corson, who is employed in law enforcement?

MS. CORSON: My brother-in-law in Florida, Orlando.

THE COURT: Okay. In Orlando, Florida?

MS. CORSON: Uh-huh.

THE COURT: Okay. I need you to give a verbal response. Is that a yes?

MS. CORSON: Yes, sir.

THE COURT: Okay. Would your brother-in-law’s employment with law enforcement affect your ability to give both the

Defendant and the State in this case a fair and impartial trial?

MS. CORSON: No, Your Honor.

THE COURT: All right. Would you be able to disregard your brother-in-law's employment in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

MS. CORSON: Yes.

THE COURT: Okay. Thank you, Ms. Corson, for bringing that to our attention.

All right. Yes, ma'am. Your name and number?

MS. HILL: Jean Hill, Number 75.

THE COURT: All right. Ms. Hill, who is the family member?

MS. HILL: My father. He’s retired from Lieber.

THE COURT: Okay. And how long ago did he retire?

MS. HILL: It’s been years, but then he was retired for a while and then he went to MacDougall and he retired this past summer.

THE COURT: All right. Would your father's prior employments affect your ability to give the Defendant and the State in this case a fair and impartial trial?

MS. HILL: No, sir.

THE COURT: All right. Would you be able to disregard your father's prior employments in its entirety?

MS. HILL: Yes, sir.
THE COURT: All right. Would you be able to base your decision in this case exclusively on the testimony and evidence in this case?
MS. HILL: Yes, sir.
THE COURT: All right. And you were Ms. Hill?
MS. HILL: Ms. Hill.
THE COURT: All right. Thank you, Ms. Hill, for bringing that to our attention.
MS. HILL: Thank you.
THE COURT: Yes, ma'am. Your name and number?
MS. JUSTMAN: Mary Justman, Number 87.
THE COURT: All right. Ms. Justman, what family member?
MS. JUSTMAN: My son, one of my sons is a San Bernardino County Sheriff.
THE COURT: Okay. Where is that?
MS. JUSTMAN: California.
THE COURT: Okay. And this is a son?
MS. JUSTMAN: Yes.
THE COURT: All right. Would your son's employment affect your ability to give both the Defendant and the State in this case a fair and impartial trial?
MS. JUSTMAN: No, sir.
THE COURT: Would you be able to disregard your son's employment in its entirety and base your decision in this case

exclusively on the testimony and evidence in this case?

MS. JUSTMAN: Yes, sir.

THE COURT: All right. Thank you, Ms. Justman, for bringing that to our attention.

Yes, ma'am, your name and number?

MS. REED: My name is Leshonda Reed. I'm Juror Number 134.

THE COURT: All right. Ms. Reed, what family member is this?

MS. REED: My husband, I'm not sure, deputy law enforcement with South Carolina Department of Natural Resources.

THE COURT: Okay. And where is he? Is he in Berkeley County?

MS. REED: His office, his office is in Charleston County.

THE COURT: Charleston County. Does he work primarily out of Charleston County?

MS. REED: Yes, Sir.

THE COURT: Okay. Would your husband's employment affect your ability to give the State and the Defendant in this case a fair and impartial trial?

MS. REED: I'm sorry?

THE COURT: I said would your husband's employment affect your ability to give the State and the Defendant in this case

a fair and impartial trial?

MS. REED: No, sir.

THE COURT: Would you be able to disregard your husband's employment in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

MS. REED: Yes, sir.

THE COURT: Thank you, Ms. Reed, for bringing that to our attention.

All right. Anyone else that has an immediate family member employed in law enforcement? If so, please stand.

All right. Yes, ma'am, your name and number?

MS. HOOVER: Katherine Hoover, 81. I'm not actually sure. My sister-in-law's a judge with Berkeley.

THE COURT: I'm sorry. Your sister-in-law --

MS. HOOVER: Uh-huh.

THE COURT: -- is a judge?

MS. HOOVER: Kathleen Elisabeth Cooper.

THE COURT: I'm sorry?

MS. HOOVER: Elisabeth Cooper.

THE COURT: Okay. And what kind of judge?

MS. HOOVER: I am not sure.

THE COURT: Okay. Where does she live?

MS. HOOVER: In Ridgeville.

THE COURT: In Ridgeville? Okay. Would -- this is your sister-in-law?

MS. HOOVER: Uh-huh.

THE COURT: Would your sister-in-law's employment affect your ability to give both the State and the Defendant in this case a fair and impartial trial?

MS. HOOVER: No.

THE COURT: Would you be able to disregard your sister-in-law's employment in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

MS. HOOVER: Yes, sir.

THE COURT: All right. Thank you very much, Ms. Hoover, for bringing that to our attention, and just for everyone's education, judges are not part of law enforcement. We are impartial arbiters in pending conflicts. Okay?

Yes, ma'am. Your name and number?

MS. HALL: Jodi Hall, 67.

THE COURT: All right. Ms. Hall, who is this, the family member that --

MS. HALL: My father --

REPORTER: I can't hear her.

THE COURT: You're going to have to speak up loud and clear. We can't hear you all the way up here.

MS. HALL: My father is a correctional officer at Lee.

THE COURT: Is a correctional officer where?

MS. HALL: At Lee.

THE COURT: Lee? All right. Ms. Hall, he's currently employed there?

MS. HALL: Yes, sir.

THE COURT: All right. Would your father's employment affect your ability to give both the Defendant and the State in this case a fair and impartial trial?

MS. HALL: No, sir.

THE COURT: Would you be able to disregard your father's employment in its entirety --

MS. HALL: Yes, sir.

THE COURT: -- and base your decision in this case exclusively on the testimony and evidence in this case?

MS. HALL: Yes, sir.

THE COURT: All right. Thank you, Ms. Hall, for bringing that to our attention. Anyone else that has an immediate family member employed in law enforcement? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who either personally, has a family member or close personal friend that has been the victim of a violent crime? If so, please stand.

All right. Ma'am, your name and number?

MS. KEYES: Karen Keyes, Juror Number 90.

THE COURT: All right. Ms. Keyes, if you'd come forward,

please.

(Whereupon, an off-the-record bench conference with Juror Number 90, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: All right. I'm going to excuse Juror Number 90 from this particular case.

BAILIFF: Juror 110, Your Honor.

THE COURT: All right, sir, your name and number?

MR. MASSEY: Zechariah Massey, 110.

THE COURT: All right. Mr. Massey, if you'd come forward, please.

MR. MASSEY: Yes, Your Honor.

(Whereupon, an off-the-record bench conference with Juror Number 110, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: All right. Juror Number 110 is excused from this particular case. Anyone else either personally, family member, close personal friend that has been the victim of a violent crime? If so, please stand.

All right. Your name and number?

MS. TAYLOR: Iashia Taylor.

THE COURT: I'm sorry. Speak up, please.

MS. TAYLOR: Iashia Taylor, 163.

THE COURT: Iashia Taylor?

MS. TAYLOR: Uh-huh.

THE COURT: All right. Ms. Taylor, if you'd come forward, please.

(Whereupon, an off-the-record bench conference with Juror Number 163, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: Yes, ma'am. Your name and number?

MS. BAIR: Amanda Bair, Number 11.

THE COURT: All right. Ms. Bair, if you'd come forward, please.

(Whereupon, an off-the-record bench conference with Juror Number 11, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: Yes, ma'am. Your name and number?

MS. STINNEY: Carolyn Stinney, 159.

THE COURT: All right. Ms. Stinney, if you'd come forward, please.

(Whereupon, an off-the-record bench conference with Juror Number 159, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: All right. Juror Number 159 is excused from

this particular case. Yes, ma'am. Your name and number?

MS. HILL: Jean Hill, 75.

THE COURT: All right. Ms. Hill, if you'd come forward please.

(Whereupon, an off-the-record bench conference with Juror Number 75, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: Anyone else?

(No response.)

THE COURT: Is there any member of the jury panel related by blood or marriage, have a close personal relationship, business relationship, social relationship or any other type of relationship with Natalia Chisolm, Joseph Arsenault, Tristen Brower? Any of those? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who lives on these streets or lives near these areas: [redacted] Bryan Drive in Moncks Corner, [redacted] Cindy Drive in Summerville, [redacted] Hallmark Drive in Goose Creek or [redacted] College Park Road in Summerville? Anyone in the jury panel live near any of those areas? If so, please stand.

All right. Sir, your name and number?

MR. WELLS: Jermane Wells, 175.

THE COURT: All right. Mr. Wells, where -- which one do

you live near?

MR. WELLS: [redacted] Hallmark Drive.

THE COURT: Okay. The allegations by the State is that some of the evidence they are relying upon in this case either occurred, was collected or is referenced at [redacted] Hallmark Drive in Goose Creek. Would the fact that that location is near where you live affect your ability to give both the State and the Defendant a fair and impartial trial?

MR. WELLS: I don't know if I can answer that.

THE COURT: Okay.

MR. DAVIS: Your Honor, may we approach?

THE COURT: Yes.

(Whereupon, a bench conference is held in the presence but out of the hearing of the jury panel.)

THE COURT: All right. Sir, your name and number again?

MR. WELLS: Jermane Wells, 175.

THE COURT: All right. Mr. Wells, out of a sense of precaution I'm going to excuse you from this particular case. Stay with us for right now, but I'm going to excuse you. All right. Thank you.

Anyone else live near any of these locations? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel that has ever served on a jury in a court action before? If so,

please stand.

JUROR: Can you repeat the question, please?

JUROR: Can you repeat that question?

THE COURT: Has any member of the jury panel ever served on a jury before? If so, please stand. All right. Let me just go through and identify yourself, your name and number.

MR. BRYANT: Kevin Bryant, Juror 25.

THE COURT: All right.

MS. GUIDRY: Nancy Guidry, Juror 63.

MR. MILLWOOD: Vance Millwood, 181.

MS. HILL: Jean Hill, 75.

MS. BAYLESS: Besy Bayless, 14.

THE COURT: All right. Let's start at the front and work our way back over on this side.

MR. GOSNELL: Danny Gosnell, Number 60.

MR. BAILEY: Richard Bailey, 10.

MR. PROUDFIT: Curtis Proudfit, 131.

MS. COLBURN: Tanya Colburn, Number 36.

MR. ORVIN: Carson Orvin, 127.

MS. MOODY: Shelly Moody, 123.

MR. FERGUSON: Ronald Ferguson, 50.

MR. MILLER: James Miller, 117.

THE COURT: All right. Now, would any of you who have served on a jury before would your experiences, is there any -- and you can just signify by raising your right hand, would

any of your experiences in serving on a jury affect your ability to give both the State and the Defendant a fair and impartial trial? If you think it would affect your ability to give the State or the Defendant in this case a fair and impartial trial, please raise your right hand. Is there anybody in the jury -- anyone who is now standing that would not be able to disregard the case in which you served on a jury previously? If you would not be able to disregard it totally if you were selected as a juror in this case, please raise your right hand. All right. And your name and number?

MS. COLBURN: Tanya Colburn, Number 36.

THE COURT: All right. Ms. Colburn, so your previous service as a juror you think might affect your ability to serve as a juror in this case?

MS. COLBURN: Yes, sir.

THE COURT: Okay. Thank you, Ms. Colburn, for bringing that to our attention. I'm going to excuse you from this particular case. Anyone else who feels that their prior service as a juror in a case might affect their ability to be fair and impartial in this case? If so, please raise your right hand.

(No response.)

THE COURT: Thank you very much. You may all be seated. Has any member of the jury panel formed or expressed an opinion about any issue or matter involved in this case? If

so, please stand.

(No response.)

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

(No response.)

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

(No response.)

THE COURT: Is there any member of the jury panel that is a member of or a contributor to any group which has as its primary concern the promotion of law enforcement or victims' rights? Now, some of these organizations are Mothers Against Drunk Drivers, also known as MADD, Students Against Drunk Drivers, also known as SADD, CAVC, which is Citizens Against Violent Crime or CASA, Citizens Against Spousal Abuse. Any member of the jury panel a member of or a contributor to any of these organizations or similar organizations that promote law enforcement or victims' rights? Yes, ma'am. Your name and number?

MS. HOFFMAN: Melanie Hoffman, Number 78.

THE COURT: All right. Ms. Hoffman, are you a member of or a contributor to?

MS. HOFFMAN: A member of PAR, People Against Rape.

THE COURT: Okay. Now, would your membership in that organization affect your ability to give both the Defendant and the State in this case a fair and impartial trial?

MS. HOFFMAN: No.

THE COURT: Would you be able to disregard your membership in that organization in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

MS. HOFFMAN: Yes.

THE COURT: All right. Thank you, Ms. Hoffman, for bringing that to our attention.

Anyone else a member of or contributor to an organization whose primary focus is support of law enforcement or victims' rights? If so, please stand.

(No response.)

THE COURT: Does any member of the jury panel know of any reason whatsoever why he or she should not serve as a juror in this case, with particular emphasis being placed on your ability to be fair and impartial to both the State and the Defendant? If so, please stand.

Yes, sir. Your name and number?

MR. ZACH DAVIS: Zach Davis, 41.

THE COURT: All right. Mr. Davis, if you'd come forward, please.

(Whereupon, an off-the-record bench conference with Juror Number 41, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: I'm going to excuse Juror Number 41 from this particular case.

Sir, your name and number?

MR. BAILEY: Richard Bailey, Number 10.

THE COURT: All right. Mr. Bailey, if you'd come forward, please.

(Whereupon, an off-the-record bench conference with Juror Number 10, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: All right. Juror Number 10 is excused from this particular case.

All right. Sir, your name and number?

MR. HAIR: 66, Jimmie Hair.

THE COURT: All right. Mr. Hair, if you'd come forward, please.

(Whereupon, an off-the-record bench conference with Juror Number 66, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: All right. Juror Number 66 is excused.

Your name and number?

MS. LAW: Jennifer Law, 98.

THE COURT: All right. Ms. Law, if you'd come forward, please.

(Whereupon, an off-the-record bench conference with Juror Number 98, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: Anyone else know of any reason whatsoever why he or she should not serve as a juror in this case, with particular emphasis being placed on your ability to be fair and impartial to both the State and the Defendant? If so, please stand.

(No response.)

THE COURT: All right. Any additional questions from the State? Okay. Any from the Defense?

(Whereupon, a bench conference is held in the presence but out of the hearing of the jury panel.)

THE COURT: Previously I asked if there was any member of the jury panel that had previously served jury duty and a number of you stood. Out of those that stood, is there any member in that group that was a juror in a criminal case? If so, please stand. All right. And if you could give us your name and number.

MS. GUIDRY: Nancy Guidry, 63.

THE COURT: 63?

MS. GUIDRY: 63, yes, sir.

THE COURT: All right. And I believe I excused you; didn't I? So you can be seated if I excused you. Yes, sir. Your name and number?

MR. PROUDFIT: Curtis Proudfit, 131.

THE COURT: 131. You can be seated. Thank you. Yes, ma'am?

MS. MOODY: Shelly Moody, 123.

THE COURT: All right. Thank you, ma'am. You may be seated.

MS. HILL: Jean Hill, 75.

THE COURT: Thank you very much. You may be seated. And I apologize for making you give your name and number repeatedly, but we've got to create a record. So every time you stand we've got to get your name and number. Any additional questions? Okay. Let me see Juror 138, Leo Rollison, Jr.

All right. Sir, if you'd come forward, please.

(Whereupon, an off-the-record bench conference with Juror Number 138, counsel for the State and counsel for the Defendant is held in the presence, but out of the hearing of the jury panel.)

THE COURT: All right. I'm excusing Juror Number 138 from this particular case.

Any additional questions from the State?

MR. WEST: Nothing further from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. DAVIS: No, Your Honor.

THE COURT: All right. Ladies and gentlemen, we are getting ready to select the jury from those of you who remain and I did not excuse. You'll be the jury panel from which we'll draw a jury for this particular case. Now, had this been a civil case, your names would have been generated on a sheet of paper in random order. The list would have been given to the attorneys, and the attorneys would have struck your names without your even knowing if you were on the list. We do it a little bit differently in General Sessions court. In General Sessions court, your names are fed into a computer, generated on a list in random, but the Clerk of Court will call your name according to the order that you appear on that list. If your name is called, you need to come forward, stand here in front of the attorneys, turn and face the attorneys. Now, the State's attorney is going to look at you a little while and then look at his notes a little while and then look back at you a little while and talk to his co-counsel a little while and decide if he wants you as a juror in this case, and if he says he wants you as a juror in this case, then the Defense attorney is going to look at you a little while and then look at his notes a little while and then look back at

you a little while and decide if he wants you as a juror in this case, and we follow this procedure until we get 12 jurors, and I think we need to go ahead and get two alternates in this case. So if your name is called, please come forward, bring with you any pocketbooks, any umbrellas, coats, whatever you might have with you. Stand in front of the attorneys, turn and face the attorneys, and we'll give you some further instructions when we go through the process. Now, if you are struck by either the State or the Defense, please do not take it personally. It just means that for whatever reason you do not fit a certain profile that they're looking for in this particular case. Oftentimes I've known a juror to be struck in one case and then accepted by the same party in the next case. Conversely, I've known a party to be accepted in a first case and struck by the same party in the second case. So there's really no rhyme or reason as to why certain people are selected and why certain people are rejected. So please do not take it personally. All right. If you'd just sit tight while we get that list and then we'll be ready to proceed.

All right. Ladies and gentlemen, please listen up. If the clerk calls your name, please come forward and stand in front of the attorneys, turn and face the attorneys.

THE CLERK: Juror Number 2, Michael Allen. What says the State?

MR. WEST: Please excuse this juror.

THE CLERK: Excuse the juror. Juror 163, Iashia Taylor. What says the State?

MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?

MR. DAVIS: Please excuse Ms. Taylor from the trial of this case.

THE CLERK: Excuse the juror. Juror 181, Vance Millwood. What says the State?

MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?

MR. DAVIS: Please excuse Mr. Millwood from this case.

THE CLERK: Excuse the juror. Juror 160, Brett Storozuk.

THE COURT: I'm sorry. Could you pronounce your name, please, sir?

MR. STOROZUK: Storozuk.

THE COURT: Storozuk. Thank you.

THE CLERK: Thank you. What says the State?

MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?

MR. DAVIS: Please seat Mr. Storozuk.

MR. STOROZUK: Storozuk.

MR. DAVIS: Storozuk.

THE CLERK: Seat the juror. Juror 134, Leshonda Reed. What says the State?

MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?
MR. DAVIS: Please seat Ms. Reed.
THE CLERK: Seat the juror. Juror 68, Nona Hamlet. What says the State?
MR. WEST: Please seat the juror.
THE CLERK: What says the Defendant?
MR. DAVIS: Please seat Ms. Hamlet.
THE CLERK: Seat the juror. Juror 128, Jon Pfister. What says the State?
MR. WEST: Please seat the juror.
THE CLERK: What says the Defendant?
MR. DAVIS: Please seat Mr. Pfister.
THE CLERK: Seat the juror. Juror Number 9, Corey Bailey. What says the State?
MR. WEST: Please seat the juror.
THE CLERK: What says the Defendant?
MR. DAVIS: Please seat Mr. Bailey.
THE CLERK: Seat the juror. Juror 79, Paul Holt. What says the State?
MR. WEST: Please seat the juror.
THE CLERK: What says the Defendant?
MR. DAVIS: Please seat Mr. Holt.
THE CLERK: Seat the juror. Juror 123, Shelly Moody. What says the State?
MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?
MR. DAVIS: Please excuse Ms. Moody from this case.
THE CLERK: Excuse the juror. Juror 67, Jodi Hall. What says the State?
MR. WEST: Please seat the juror.
THE CLERK: What says the Defendant?
MR. DAVIS: Please excuse Ms. Hall from this case.
THE CLERK: Excuse the juror. Juror 122, John Moody. What says the State?
MR. WEST: Please excuse this juror.
THE CLERK: Excuse the juror. Juror 146, William Schneider, Jr. What says the State?
MR. WEST: Please seat the juror.
THE CLERK: What says the Defendant?
MR. DAVIS: Please seat Mr. Schneider.
THE CLERK: Seat the juror. Juror 11, Amanda Bair. What says the State?
MR. WEST: Please seat the juror.
THE CLERK: What says the Defendant?
MR. DAVIS: Please excuse Ms. Bair from this case.
THE CLERK: Excuse the juror. Juror 75, Jean Hill. What says the State?
MR. WEST: Please seat the juror.
THE CLERK: What says the Defendant?
MR. DAVIS: Please excuse Ms. Hill from this case.

THE CLERK: Excuse the juror. Juror 177, Sade Williams. What says the State?

MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?

MR. DAVIS: Please seat Ms. Williams.

THE CLERK: Seat the juror. Juror 60, Danny Gosnell. What says the State?

MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?

MR. DAVIS: Please seat Mr. Gosnell.

THE CLERK: Seat the juror. Juror 131, Curtis Proudfit. What says the State?

MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?

MR. DAVIS: Please excuse Mr. Proudfit in this case.

THE CLERK: Excuse the juror. Juror 130, Morgan Pritchett. What says the State?

MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?

MR. DAVIS: Please seat Ms. Pritchett.

THE CLERK: Seat the juror. Juror 14, Besy Bayless. What says the State?

MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?

MR. DAVIS: Please seat Ms. Bayless.

THE CLERK: Seat the juror. Juror 50, Ronald Ferguson, Jr. What says the State?

MR. WEST: Please seat this juror.

THE CLERK: What says the Defendant?

MR. DAVIS: Please seat Mr. Ferguson.

THE CLERK: Seat the juror.

THE COURT: All right. Let's select an alternate. The State gets one strike, Defense gets two.

THE CLERK: Juror 179, Kenneth Yeadon. What says the State?

MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?

MR. DAVIS: Please seat Mr. Yeadon.

THE CLERK: Seat the juror.

THE COURT: All right. Let's select another, second alternate. The State gets one strike. Defense gets two.

THE CLERK: Juror Number 7, Markellis Asbury. What says the State?

MR. WEST: Please seat the juror.

THE CLERK: What says the Defendant?

MR. DAVIS: Please seat Mr. Asbury.

THE CLERK: Seat the juror.

THE COURT: All right. Ladies and gentlemen, you'll be the jury that will preside over this first case. I'm going to excuse you back to the jury room for just a few minutes while

I excuse the jury panel, but before you go, let me give you some instructions. While you're in the jury room, if I could get you to do me a favor and that would be to select a foreperson for this jury. Now, I understand you might not know everybody, and if you cannot select a foreperson, don't worry about it. I can appoint someone to serve as foreperson. Many judges appoint their own foreperson. I like to give the jury the opportunity to select a foreperson on their own accord if they're able to do so. If you can select a foreperson just write his or her name on a sheet of paper with their jury number, give it to the bailiff and we'll bring you back into the courtroom at that time. Now, the foreperson has absolutely no more authority, no more influence, no more importance than any other juror. The sole function of the foreperson is to act as a liaison between the Court and the jury. If the jury has a need, the foreperson lets the Court know. If the jury has a question, the foreperson lets the Court know. When it's time to deliberate, the foreperson will preside over the deliberations, but other than that the foreperson has no more influence, no more authority, no more importance than any other juror. The only restrictions would be, Mr., is it Yeadon?

MR. YEADON: Yes. Yes, sir.

THE COURT: All right. Mr. Yeadon and Mr. Asbury, currently you are alternates, and because you're alternates at

this point in time, you would not be eligible to serve as foreperson. Any of the rest of you can serve as foreperson.

Now, when you come back in the jury room [sic], the foreperson will always occupy the first seat on the front row closest to the witness stand. Our alternates, Mr. Yeadon and Mr. Asbury, you'll always occupy the two seats where you now sit as alternates unless you become a part of the 12-person jury. The rest of you are at liberty to sit in whatever seat you like. If you want to sit in the same seat throughout the trial of the case, you can do that. If you want to alternate seats you can do that as well. The only requirement is that the foreperson occupies the first seat on the front row and the alternates occupy the alternate seats unless they become a part of the regular jury. I'm going to excuse you back to the jury room for just a few minutes, see if you can select a foreperson. As I said, if you can, write his or her name on a sheet of paper with the jury number, give it to the bailiff and we'll bring you back into the courtroom at that time. Thank you very much.

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

THE COURT: All right. Any challenges to the selection or composition of the jury by the State?

MR. WEST: Nothing from the State, Your Honor.

THE COURT: Any by the Defense?

MR. DAVIS: No, Your Honor.

THE COURT: All right.

(Whereupon, jury panel is excused by the Court.)

MR. DAVIS: May I approach, Your Honor?

THE COURT: Yes, sir.

(Whereupon, a bench conference is held.)

THE COURT: All right. Let's take about a 10, 15-minute break, kind of let me know when and if they get a foreperson selected. All right. Thank you very much.

OFF THE RECORD

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

THE COURT: Thank you very much. Please be seated. All right. The jury sent out a note where they have selected Juror Number 130, Morgan Pritchett, as the foreperson. I'll mark that as Court’s Exhibit One.

(Court’s Exhibit Number One [Jury Foreperson Selection] appropriately marked.)

THE COURT: All right. Anything from the State before we bring the jury in?

MR. WEST: Nothing from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. DAVIS: No, sir.

THE COURT: All right. I guess we'll just bring them in. We’ll go ahead and break for lunch. Then we’ll come back and

get started. Is that what we want to do?

MR. WEST: That's correct, Your Honor.

THE COURT: Okay. All right. Let's go ahead and bring the jury in.

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

THE COURT: All right. Ladies and gentlemen, welcome back. I understand, Ms. Pritchett, you have been selected as foreperson; is that correct?

FOREPERSON: Yes, sir.

THE COURT: Am I pronouncing your name correctly?

FOREPERSON: Yes, sir.

THE COURT: All right. Thank you very much for serving in that capacity. If you'd always occupy the seat where you now sit. As I said, Mr. -- is it Yeadon?

MR. YEADON: Yes, sir.

THE COURT: All right. Mr. Yeadon and Mr. Asbury, if you'd always occupy your seats. As I told the rest of you, you're at liberty to sit in whatever seat you like, whether it be during the trial of this case or alternating seats, whatever makes you feel more comfortable.

Now, we're getting ready to start the trial of the case of John Alexander Darrieux. However, given the time of day, at this point in time I think we're going to go ahead and break for lunch a little bit early so that we don't interrupt.

I don't want to get started and then have to break immediately. So I'm going to excuse you to go to lunch on your own today. I'm going to ask that you please be back in the jury room at 1:45. Okay. And that'll give you about an hour and 45 minutes to eat lunch and then we'll try to get started as soon after that as we can.

Now, do not discuss the case even among yourselves. It's too early for deliberations. We'll let you know when you can start talking about the case, but do not even discuss the case among yourselves. Don't conduct any independent investigation. Don't go on the Internet. Don't go looking through the newspapers. Don't try to find out anything about the case. Everything you need to make a decision will be presented to you here during the trial, and you're not to be influenced by any outside source. So don't conduct any independent investigations. Don't listen to any news reports. Don't go on the Internet. Don't discuss it with anyone. I hope everybody has a good lunch, and we'll see you back here -- well, I tell you what, it's -- let's be back at 1:35 and we'll try to get started at 1:45. That'll give you an hour and a half to eat lunch. So be back at 1:35, and we'll try to get started right at 1:45. I hope you have a good lunch and we'll see you back soon. Okay. Thank you very much.

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

THE COURT: All right. Anything from the State before we break for lunch?

MR. WEST: Nothing from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. DAVIS: Not at this time, Your Honor.

THE COURT: All right. I've got the jury coming back at 1:35. We'll try to get started right at 1:45. Okay. All right. Sounds good.

MR. WEST: Thank you, Judge.

THE COURT: Thank you.

OFF THE RECORD

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

THE COURT: All right. Anything from the State before we bring the jury in?

MR. WEST: No, Your Honor.

THE COURT: Anything from the Defense?

MR. DAVIS: Judge, talked to the State, I don't think factually it's an issue, but I do just want to put on the record my motion to sequester. The State indicates the lead detective and then, of course, the three occupants of Bryan Drive are the only three that they attempt to remain in the courtroom, and by, by statute I understand and we have no objection. Any other witnesses we would ask be sequestered.

THE COURT: All right. What's the State's position?

MR. WEST: The State has no objection to sequestration.

THE COURT: All right. So who are the, who are the victims?

MR. WEST: Charles Roberts, Rose Simpson, Stephen Jones and the case agent is Detective Brent Fenton, Berkeley County Sheriff's Office.

THE COURT: I'm sorry. His name again?

MR. WEST: Brent Fenton, Berkeley County Sheriff's Office.

THE COURT: All right. Likewise, anybody that the Defense intends to call other than the Defendant be sequestered as well. I just want to make sure you don't have any witnesses in here.

MR. DAVIS: Yes, sir. I understand. Yes, sir.

THE COURT: All right. I'll grant the Defendant’s motion to sequester. Anybody testifying in the case will need to go to wherever the bailiffs direct them in the waiting area with the exception of Charles Roberts, Rose Simpson, Steve Jones, Brent Fenton and the Defendant. All right. Anyone else testifying in the case needs to be excused and we’ll call you in when we need you. Okay. Is anybody here other than those names I called witnesses?

MR. WEST: No, Your Honor. We have our victim advocate, Cynthia Hampton.

THE COURT: Okay.

MR. WEST: Investigator Kevin McGowan and a family friend, Ms. Stephanie Laudano.

THE COURT: But they're not testifying?

MR. WEST: They're not testifying.

THE COURT: Okay. That's fine. All right. Anything further from the Defense before we call the jury in?

MR. DAVIS: No. Thank you, Your Honor.

THE COURT: All right. We'll call the jury in. We'll put them under oath. I'll give them opening charges, opening statements and then we'll start the trial. Okay.

MR. WEST: Thank you, Judge.

THE COURT: All right. Let's go ahead and bring the jury in.

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

THE COURT: All right. Ladies and gentlemen, welcome back. Hope everyone had a good lunch. We are getting ready to start the trial of the case of the State of South Carolina versus John Alexander Darrieux, but as I told you during voir dire, and as I'm sure you gathered during jury qualifications, just like witnesses, jurors are constantly taking oaths. So before we start the trial I'll need all members of the jury to please stand and raise your right hand while the clerk administers the oath for you to serve as jurors on this particular case.

(The jury is sworn by the clerk.)

THE COURT: All right. Thank you very much. You may be seated. Put your hands down. Is there any member of the jury who did not respond to the oath by saying, "I do?" If so, please stand.

(No response.)

THE COURT: All right, very well, ladies and gentlemen. We are getting ready to start the trial of the case of John -- the State of South Carolina versus John Alexander Darrieux. Before we do that, I've got some preliminary instructions I need to go over with you.

(Court personnel introduced to jury.)

THE COURT: Now, as I said, we're going to start the trial of the case of the State of South Carolina versus John Alexander Darrieux, but before we do that, I've got some preliminary instructions for you. I know from watching movies, TV shows, reading books, things for entertainment, trials are usually full of a lot of suspense, a lot of action, a lot of entertainment, and while that might be the case in this trial, it probably won't be. The primary function of this trial is a search for the truth, what happened. That is often a slow, deliberate, repetitive process, the exact opposite of what you might be accustomed to when you watch a movie or read a book or watch a TV show, but I hope you do find the trial educational. I hope you do find it

entertaining. I hope you do find it informative, and I want to thank you from the outset for serving as jurors in this case.

The attorneys appearing before you are advocates for the parties they represent, but first and foremost, they are officers of the court. They're sworn to uphold the integrity and fairness of our judicial system, and to help you in a search for the truth. You can expect them to be professional, competent and ethical in the representation of their clients' interests.

Now, what I now say to you is intended to serve as an introduction to the trial of this case. These remarks are not a charge on the law in this case. I will instruct you on the law applicable to this case at the end of the trial before you retire to consider your verdict. This is merely an explanation of the procedure that we will follow in the trial of this case so that you can better understand what is happening in this case.

Now, the Defendant is charged by a number of indictments in this case. He is charged with burglary in the first degree, burglary in the third degree, three counts of armed robbery, three counts of kidnapping, and one count of possession of a firearm during the commission of a violent crime. Now, I'll explain the elements of each of those crimes to you at a later time, but all you need to know at this point

in time is that these indictments simply charge -- are simply the charges by which this case is brought into this court. These indictments are not in any sense evidence of any of the allegations contained in them. The Defendant has pled not guilty to these indictments. Therefore, the State has the burden of proving each of the elements of each indictment beyond a reasonable doubt. It will be your duty, ladies and gentlemen, to decide whether or not the State has met that burden. Your purpose as jurors is to find and determine the facts of this case. You are the sole judge of the facts of this case. If at anytime I make a comment regarding the facts, you must disregard my comments. You are to determine the facts from the testimony you hear and the other evidence introduced in court. It is up to you to determine the inferences which you feel may properly be drawn from that evidence. It is especially important that you perform your duty of determining the facts diligently and conscientiously because ordinarily there is no way to correct an erroneous determination of the facts by a jury.

Now, on the other hand, and with equal emphasis, the same law that makes you the judge of the facts of this case makes me the judge of the law. The law as given by the Court is the only law that you can consider. You must accept and follow the law as I give it to you even though you may disagree with it. Just as I cannot tell you what the facts of this case

are, you cannot disagree with me about the law to be applied in this case. Your job is to take the law and give it -- excuse me, your job is to take the law as I give it to you and apply it to the facts as you find those facts to be from the testimony of the witnesses and any other evidence that is introduced at trial. After doing that, you will then render your verdict, a true and just verdict under the solemn oath that you took as jurors. Now, until I advise you to begin your deliberations, you must not discuss this case with anyone, including your fellow jurors. Don't discuss it with any friends, family members or anyone involved in the case. After the case is submitted to you, you may then discuss it, but only in the jury room with your fellow jurors. The attorneys and the parties in this case have been advised that they are not to talk to you at all. So if at any time they don't speak to you, they're not being rude. They're just following the instructions of the Court. Now, during the trial you're not to read or listen to or watch any news reports about the case. This includes anything that may be in the newspaper or on the Internet or television. You must not consider anything that you may have read or heard about the case outside of the courtroom, whether that be before or during the trial of this case.

Now, once your duty as jurors has concluded you're at liberty to talk to whoever you want to about whatever you want

to if you want to. You can conduct whatever investigations you want to. However, during the trial of this case, while you are jurors, part of this jury panel, you are not to discuss this case or any of the Court's business with anyone and you're not to conduct any independent investigations with anyone, and that will be a requirement on each of you throughout the trial of this case while you are part of this jury.

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

Now, in just a moment, the Solicitor will make what's called an opening statement in which the Solicitor will explain to you the issues in this case or at least what the Solicitor thinks the issues in this case are. The attorney for the Defendant may also make an opening statement, although he is not required to do so. What the attorneys tell you during their opening statements is not evidence in this case. It is only their contention as to what they feel the issues in

this case are. The evidence in this case will be presented to you by testimony of sworn witnesses from the witness stand and any other exhibits that may be introduced into evidence.

Now, in determining what the true facts are in this case, you must decide whether or not the testimony of a witness is believable. It will be my responsibility to rule as a matter of law as to whether certain testimony is admissible at all or not. However, once testimony is admitted into evidence whether or not you believe it is solely for you to determine. In deciding whether to believe a witness you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may testify and the way the witness acts on the witness stand. You have the right to consider anything that is in the record that will help you to evaluate the testimony of these witnesses. That means that it is your duty to pay close attention to the witnesses, to observe them and listen to them. Pay close attention to the attorneys and to the Court. Don't let your thoughts wander, but give strict attention to the testimony in this case so at the end of all of the testimony and after the arguments of counsel and a charge on the law by the Court you will then be in a position to determine what the true facts are and to apply the law to those facts and thus render a true and just verdict.

All right. Is there any challenges to the opening charges by the State?

MR. WEST: None from the State, Your Honor.

THE COURT: Any by the Defense?

MR. DAVIS: No, Your Honor.

THE COURT: All right. Ladies and gentlemen, at this time we're going to begin the trial of the case with the opening statements by the attorneys, and as I told you, these opening statements are not evidence. It's just the attorneys' contention as to what they feel the evidence in this case are. All right, Mr. West.

MR. WEST: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. WEST: Counsel. Charlie, Stephen and Rose were sleeping in their house at [redacted] Bryan Drive on October 21st, 2014. By all accounts it was quiet inside, but outside it was a little different. Outside there were four people intent on terror, intent on robbing the three of them. This case is the trial of one of those four. John Darrieux is the Defendant, and this case is going to be the trial against him for the charges of burglary first, burglary third, armed robbery, kidnapping and possession of a weapon during the commission of a violent crime. During this trial you're going to see a lot of evidence, hear a lot of witnesses, see pictures, physical

evidence. A lot of things that are going to go into this trial is just procedure. So at the outset I want to give you sort of an outline of some of the things you can come to expect, some of the people you're going to come to hear from and how you're going to hear from them. The first three people that's important for you to take note of are the three victims in this case, Charles Roberts, Stephen Jones, and Rose Simpson, all sitting on the second row. Charles Roberts was the owner of [redacted] Bryan Drive, and it was his house that was broken into, and he is one of the people who was robbed. Stephen lived there with him. He was a worker for Charles Roberts and he rented a room. Rose Simpson was Charles' girlfriend. She also lived there. All three of them lived in that house. All three of them were robbed and kidnapped on October the 21st, 2014. The other four people that are important to see or know about during this trial are the four people that were arrested and charged. The first is John Darrieux, Natalia Chisolm, Joseph Arsenault and Tristen Brower. Joseph or John Darrieux is on trial this week. It is not your job or your worry to worry about what has or will happen to Natalia Chisolm or Joseph Arsenault. You're going to hear from Tristen Brower himself. He was Natalia Chisolm's nephew. He was 16 years old when this happened. You're going to see as soon as he testifies that he is an interesting young man. He's going to be very nervous, but he's going to tell

you exactly what happened. He's going to tell you who he was with. He is going to tell you why they did it. He's going to tell you when they got there. He's going to tell you what happened inside, and he's going to describe some of the looks that Rose, Charlie and Stephen gave him as he held a gun to their heads while he was wearing a mask. Now, that's some of the people involved directly with the actual home invasion, but some of the other people you're going to hear from are going to be from law enforcement and some other people are going to be lay witnesses. The best way to describe how they're going to be presented to you is to sort of go in a chronology of the events that happened.

So the home invasion happens at [redacted] Bryan Drive here in Moncks Corner around four a.m. October the 21st. After the hour of terror inside Charles' home, he ran to his neighbor's house and he had his neighbor call 911. Officer Batson with the Berkeley County Sheriff's Office responded. Other officers did as well. They took pictures of the home, and you're going to see the pictures of how that home was ransacked by John Darrieux.

After that you're going to hear how Tristen Brower and his Co-Defendants went back to Natalia Chisolm's house and dumped the belongings that they got from Charles, Stephen and Rose. You're going to hear how later that day about four p.m. in the afternoon they committed a second burglary. That

burglary occurred at Cindy Drive in the Summerville area of Berkeley County. You're going to hear how a neighbor saw them go into that home, and you're going to see and hear how that neighbor saw them load the mattresses from the house on top of the silver Dodge Durango. That neighbor called the police. The police responded quickly. They found this Defendant, along with Tristen Brower, Natalia Chisolm and Joseph Arsenault in the Durango and around the Durango at that time, still with the mattresses on top of the Durango. They were arrested on the scene. Tristen Brower decided to give an interview to law enforcement and implicated himself, Natalia Chisolm, Joseph Arsenault, and for this week in particular, importantly, John Darrieux. That's the facts of the case. In a nutshell, that's why we're here, but your job as jurors is to not just listen to that, but at the end apply the law to the facts of the case.

Now the Judge is going to explain to you the law at the end of the case, but it's important for you right now to understand what the law is so that you can listen intently when the witnesses are testifying what to exactly it is you're trying to fit. So the first charge that I want to go over is burglary in the first degree. Burglary in the first degree is a long statute in our codebooks, but it's really not a complicated one. In order to get to burglary in the first degree you have to understand essentially what a burglary is.

Our laws define burglaries in three different degrees, burglary first degree being the highest and what John Darrieux is charged with here. A burglary is the unlawful entry into the dwelling house of another with the intent to commit a crime therein. Basically, John Darrieux went into somebody else's house that he wasn't supposed to be in and he took something. That's the basic elements of the burglary, but to make it a burglary in the first degree you have to have an aggravating factor. That's what it’s called under our laws. It's an aggravating factor, and here you're going to hear evidence of two separate aggravating factors. The most easy one to prove in the State’s opinion is going to be the fact that this occurred during the nighttime. This happened a little before four a.m. All the testimony is going to be that it was dark outside, and if a burglary happens at nighttime it's called a burglary first. The other thing that can make this a burglary in the first degree is that the burglary occurred while the people committing the burglary were armed with a deadly weapon. You’re going to hear how guns were held to Charlie, Stephen, and Rose's heads while the people were wearing the masks inside their home. That’s a burglary in the first degree.

Now, the second burglary that I referenced off of Cindy Drive that's not a burglary in the first degree. That’s charges of burglary in the third degree, and the difference is

that nobody was living at that trailer at that particular time. So since nobody was inside, it's not considered a dwelling. It's considered a building. So since it's a building, they broke inside, they stole the mattress, they went outside, they put the mattress on the Durango, that's a burglary in the third degree because there's not the aggravating factors of nighttime or weapons used. That's the distinguishment between the two charges.

The next charge is going to be armed robbery. Armed robbery is another one of these long statutes. It's really not that complicated and not that hard to describe. It is the taking of money or property by force or intimidation while the assailant is armed with a deadly weapon. Joseph Arsenault took property from Charlie, Stephen and Rose while he had a gun. It's as simple as that. That's an armed robbery. Now, the thing that you need to be aware of and you obviously noticed by the number of indictments against this Defendant is there's three counts of armed robbery. Each armed robbery is because of each victim. Charlie gets an armed robbery charge. Stephen gets an armed robbery charge and Rose gets an armed robbery charge. So there's going to be three counts of armed robbery because all three of them had property taken from them at gunpoint.

The next charge is going to be kidnapping. Kidnapping is another statute, again, some reason our legislature likes to

put big words in statutes. It's really not a complicated concept. It is the restriction of someone's freedom, a constraining of somebody's movements. You don't have to be tied up and thrown in the trunk of a car to be kidnapped. Rose, Charlie and Stephen were held at gunpoint, and they weren't able to leave the house. They couldn't call 911. That's a kidnapping, again, three counts of kidnapping because there's three different people. So you're going to have a charge for each victim.

The last charge is going to be possession of a weapon during the commission of a violent crime. This is a very self-explanatory statute unlike the others because all that's needed to be proved by the State in this case is that a violent crime occurred while John Darrieux or one of his Co-Defendants was in possession of a firearm. The statute itself, you'll hear from the Judge, you'll hear that kidnapping, armed robbery and burglary in the first degree are statutorily classified as violent crimes. That element is going to be satisfied through the testimony that's going to be presented through the witnesses this week, and as you've already heard, weapons were used during the commission of the kidnapping, armed robbery and burglary in the first-degree, thus this Defendant is charged with possession of a weapon during the commission of a violent crime.

That's all the charges that John Darrieux faces for this

week, and that is what the testimony is going to be presented will prove at the end of this trial. Again, this trial is going to be methodical. You can see by the amount of evidence on the table in front of you that there's a lot of physical evidence. There's going to be close to a hundred photographs presented about the home that was ransacked, the home that all the property was found in, lots of evidence presented. Sometimes that presentation of evidence can be mundane. I don't want to call it boring because it's absolutely critical to the seeking of justice, but there are questions that have to be repetitive. There are questions that aren't going to be TV drama. You can come to expect that, but at the end of this all we're after is the truth. Just like Judge Culberson told you, we're seeking the truth in this case, and at the end of the trial we're going to ask you to return a verdict. Veredicto is the Latin for speaking of the truth. That's what the word verdict actually means. The truth is not going to change. The truth does not change, and the truth is that John Darrieux is guilty of burglary first, burglary third, kidnapping, armed robbery and possession of a weapon during the commission of a violent crime. Thank you.

THE COURT: Mr. Davis.

MR. DAVIS: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. DAVIS: I'm going to start by saying something probably surprising. There's going to be some things that we don't have dispute over. I represent John Darrieux, and there's going to be some things I have no dispute with the State on. Here's another striking thing. It's not about having evidence. It's about evidence that convinces you beyond a reasonable doubt that John is guilty of these charges. That's why we have trials. It's not what the State thinks it proves. It's not what the State thinks the truth is. It's not what I or even the Judge thinks. It's what you all think. The truth is what has been proven by the evidence, not just that evidence exists, but what's been proven.

You were picked because the adversaries thought you all would be fair. That's why you were picked. Much to your chagrin, I know you'd rather be home, that's why you were picked because the adversaries thought you'd be fair. If you'll remember on Tuesday Judge Buckner was in here, and he talked about make sure justice is done, a search for the truth. Here's the truth that's undisputed, the State's going to say, don't, don't worry about Natalia Chisolm and Joseph Arsenault because it's true, Mr. Darrieux is the only person they called to trial this week. This table full of evidence, it's undisputed that the State's going to have not one single item from this table was taken from John or his house, there's not one single item of evidence on this table that has John's

prints on them, all of this, Ms. Chisolm. She's not here today. The State is prosecuting John because one of those four people, the teenager, the kid, gave a story. That's why. That's why they're prosecuting John. The police never showed photographs to anybody say, "Is this is the vehicle?" The police didn't show photographs to anybody saying, "Is John one of the guys?" When the 16-year-old was arrested, the police talked to him. He gave a statement. The State wants you to believe that that was voluntary and that was truthful. You'll hear from him. He'll sit right up here on this witness stand. He's 17 now. He'll sit right up here on this witness stand, and the thing is now police officers in the little room, interrogation room aren't the only people that get to talk to him. Folks that wear badges and guns, they're not the only people that get to talk to him. I get to ask him questions for John. I get to ask questions the police didn't ask, and you get to decide is he honest or not, is he truthful or not. What would you do for freedom? You'll find out if his charges are still pending. You'll find out there's some deal with the State. You'll find out if he has reason to tell them what he did or if he's telling the truth.

There's a second thing I told you you might not believe from me. If you believe Tristen, then you're going to convict John. If you believe him you're going to convict him. I want you to keep in mind, please, that number of charges and that

the State, this is something we agree on, number of charges, there's one incident four a.m., number of charges because there were three people there. There's a second case at four p.m., one charge. Okay. So when you analyze this we got two different things about 12 hours apart about 13 miles apart. Think about both of them because I don't doubt that, that something happened at Bryan Drive. I don't doubt that. I don't think the evidence'll show that something happened at Bryan Drive. The State has to show that John was involved in that. It's undisputed John's with those people when arrested. That's undisputed, and there's a mattress on the truck. The State has to prove that that was obtained as a result of criminal activity. Those are two most important things I want you to keep in mind during this trial. Something may have happened at four in the morning. Was John involved? John's there with the mattress. Was that obtained through a crime? Please keep that in mind.

Now, the Judge has already told you that the indictments are not evidence. They're simply telling you what you got to decide on this week. What I'm telling you is not evidence. The State's theory is not evidence. Now, the Government collected all this evidence. The Government talked to witnesses. The Government got a story from a teenager, and the Government has suggested to you what that means, that's their theory of what happened these 12 hours back in October

of 2014. We as citizens get to be skeptical of that. You took an oath. Mentally ask questions about the evidence and the witnesses. John, like any other citizen, presumed innocent. He said, "Not guilty. Prove this. I want a trial. I want my fellow citizens to hear about this. Give me a trial. I'm not guilty of this stuff. I'm not. I'm not. The evidence isn't there." Be skeptical of the Government. Test them. They've told you what they're going to prove to you. All right. Prove it.

Now, I'm going to deal with the third thing you might be surprised Defense attorney is going to talk about. John may or may not testify. I'm going to tell you that right now. He may or may not. John, if you'd come here for a second.

(Complies with request.)

MR. DAVIS: John's waited 15 months, 15 months we've been working on this case, 15 months to let you all decide it. He doesn't have to say a word, and the Judge is going to tell you he doesn't have to say a word. Let me tell you one of the biggest reasons why. If he doesn't you get to hear from me last. I get to respond to whatever the Government wants to say. That's of value. He may. We'll see. We don't have to decide yet. We get to hear everything like you get to hear it, and then we'll decide if he has anything more to say other than, "Not me, I'm not guilty, didn't do it," if so, you'll hear from him. If not, I get to talk to you last before you

decide. Straight up, want to be upfront with you about that. He may or may not. We'll see because it doesn't come from this table, and the Judge is going to tell you that. All this evidence, all the witnesses, the fact that John's here and the other two folks aren't, that's the Government. They call the case. Now it's their chance to prove it and they won't. Thank you.

THE COURT: All right. Ladies and gentlemen, we'll now begin the evidentiary portion of the trial with the State's first witness. Mr. West.

MR. WEST: Thank you, Your Honor. The State calls Rose Simpson.

THE COURT: All right.

Whereupon, Rose Marie Simpson is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: If you'd have a seat, state your full name for the record and spell your last name.

MS. SIMPSON: My full name is Rose Marie Simpson, S-I-M-P-S-O-N.

DIRECT EXAMINATION

BY MR. WEST:

Q Good afternoon, Rose. How are you?

A Horrible.

Q You nervous today?

A Uh-huh.

THE COURT: All right. I need you to speak up and give a verbal response.
A Oh, I'm sorry. I'm --
THE COURT: You need to answer yes or no because the court reporter can't pick up a shaking or a nodding of the head. Okay. All right, sir.
Q Are you scared?
A Yes.
Q Can you tell the jury where you live now?
A I live at 5505 Woodbine, Lot 1, North Charleston.
Q Did you ever live with Charles Roberts?
A Before?
Q Yes.
A Yes. A few years ago.
Q Okay. Do you know where that was?
A That was, oh goodness, Rich Street in North Charleston.
Q Was it in Moncks Corner?
A No. Are you --
Q Was the house in Moncks Corner?
A Where we were robbed or are you talking about --
Q Yes.
A Yes. Yes.
Q Okay. How did you know Charles? Were you ever in a relationship with Charles?
A Yes. Yes.

Q Okay. How long were you in a relationship?
A Well, this was our second time in dating. The first time was a little over a year. This time we were working into a year.
Q Were you living with Charles on October the 21st of 2014?
A Yes.
Q Okay. It's okay, Rose. Do you remember the incident that brings us here today?
A Yes.
Q Can you tell the jury what you were doing before the incident began?
A I was -- I know you want precise answers. I was -- I had a migraine. I was trying to get rid of the migraine. I was asleep.
Q Okay.
A Partly.
Q Where were you sleeping inside the house?
A I was sleeping on the couch at that time.
Q Okay. Was that in the living room?
A Yes.
Q How did you get woken up that morning?
A Suddenly a big bam. It was just a sudden hit. The whole door came down and all of them come in. Thank you.
Q Did people come inside?
A Yes.

Q What's the first thing you noticed when they came in?
A They -- the first thing I noticed masks.
Q How many people were there?
A There were three that came in.
Q Okay. What was the first thing that was said when they came in?
A "Where's the old man?"
Q What did you take that to mean?
A With all due respect to Charlie, he's a lot older than anybody else in the house.
Q Did you think they were referring to Charlie?
A Yes.
Q Aside from the masks, could you tell the jury what they were wearing?
A When they come in, it's the movie Scream. I don't know if you all have ever seen that movie, but it's the gory, you know, they all had that on, like a Halloween outfit.
Q Okay. All right. Did you ever see a gun?
A Yes.
Q Could you tell the jury about that?
A They let me know real quick they had one because he come and put it in my face and told me, "Sit down, be still, don't move."
Q How many people had guns?
A All three.

Q Okay. Did you ever see a fourth person?
A No.
Q Okay. Was everybody standing in the living room the whole time?
A No.
Q Was everybody wearing a mask that came in?
A At first.
Q Okay. Could you describe the types of guns that the people had?
A It was gray, a grayish color, gray.
Q Were they handguns?
A Yes. Yes.
Q Okay.
A And there -- it seemed to appear to me it was kind of heavy because one of them was shaking so bad with it.
Q Could you tell any of them's ages?
A No. Not with the masks on at that time. No.
Q Could you tell if anybody was younger than the others?
A Like the one I said, the one that was shaking so bad I would assume he was young.
Q Okay.
A Because he was so nervous. I don't know. I don't. I never seen the one I was speaking of at the moment without the mask.
MR. DAVIS: Your Honor, we'd, we'd ask that testimony

then about age be stricken.

THE COURT: Overruled. Go ahead.

Q Where did you stay during the incident? Did you ever move from the couch?

A Okay. It -- I stayed there for seemed like for eternity, for about an hour or so.

Q Was anybody else in the living room there?

A When they come in, now, you all have to remember I was in shock. I've never had this happen to me before. One went one way, one went the other way and one stayed with me and they went and got Stephen out of the bedroom and then they moved him on the loveseat, and then --

Q How do you know -- excuse me. Go ahead.

A And then the other one proceeded to Charlie's room.

Q How do you know Stephen?

A He's an employer of Charlie’s.

Q Okay. Did you have a cell phone on you?

A No.

Q Could you call for help?

A If I could, I wouldn't.

Q Did you feel like you could leave?

A No. No way.

Q Why?

A Because he told me if I moved he’d kill me.

Q Were you ever forced to go into a different room?

A Yes. I'll -- yes. Yes.
Q Where did you have to go?
A They wanted -- they forced Stephen and I into the bedroom.
Q What happened when you were in the bedroom?
A They made Stephen and I stand up against the vanity and, and the man that's in the courtroom today was over there behind -- by the closet holding a gun on Stephen and I.
Q You said the man that was in the courtroom today. Do you recognize the Defendant?
A Yes. I didn't know him before.
Q But you know that this is the man that came into your house?
A With a shadow of a doubt.
Q Without a shadow of a doubt?
A And I say this because he locked eyes with me. I don't know, you know, to, to -- well, he, he scared the hell out of me. Excuse me. I'm so sorry you all, but yeah.
Q Was he wearing a mask?
A He had a mask on, but he took it -- too hot. I mean, he said it, it got too hot.
Q So he took it off?
A Yeah.
Q So you got a good look at his face?
A Yes.

Q How good of a look would you say you got at his face?
A I would say a hundred percent.
Q Okay.
A Because in the bedroom it was pure light. It was pure light because once they started they turned every light on.
Q How close would you say he got to you?
A Which room?
Q Both, during the whole incident.
A In, in, in the den he got from the chair to there for me to see him, but when he first come in he come in like that, well, like this. I'm sorry.
Q So he was within arm's reach?
A Yes.
Q When he's with -- when he was within arm's reach did he have his mask on?
A Yes. Then.
Q Okay. But later when, when would you say you saw him without?
A After they ransacked he come out with a box. Okay. And he had his mask off, and -- but -- and he said, "Don't look at me, put your head down," the same voice, but he didn't have his mask on.
Q Did you have anything taken from you?
A Personally just my purse.
Q Okay.

A She took just my whole purse.
Q You said she. Did you notice that there was a female involved?
A Yes. Yes.
Q Could you describe the female?
A The female is about my size. She has a distinct, a distinct accent per se.
Q Okay. What, what did that sound like?
A She was like the leader. She was very intimidating.
Q Okay. Could you tell skin tone?
A She's olive.
Q Okay.
A Not dark olive, but --
Q What about the other individuals in the house?
A The other individual, I only seen two without masks. I need to make that clear.
Q Okay.
A Other individual, well, you all see what he looks like.
Q White, black, Hispanic?
A He's -- I would say he's mostly Caucasian.
Q Okay. Where were you when items were taken from you?
A Where was I when items were taken, I was still in the front on the couch.
Q Okay.
A And the way I know she took, the way I want everybody to

understand, you know how you get a nice purse, an Aigner purse, females might be able to relate, but it was a very sentimental gift, and she come out, "I got your purse, bitch," and she also took sentimental things that was in my purse I can describe.

Q You say sentimental things. What kind of things?

A A very close friend of mine brought a token back from Florida, a keychain with Mickey and Minnie from Disney World, just pictures of my children.

Q What are some of the things that were in your purse?

A Makeup, pictures, the -- my keys with the sentimental things I was speaking of.

Q Bank cards?

A Yes. Those, too. They're not sentimental to me, but yeah.

MR. WEST: I'm showing the witness State's Exhibit Number 117 which has been reviewed by Defense counsel.

BY MR. WEST:

Q Could you take a look in there?

A You want me to stand up? I would prefer.

Q However, however you'd like. Would you like gloves?

A Yeah. That, too.

Q Just take a moment and look and see what's in that bag.

A Never mind. I can't even put them on. This is the jewelry box. Yeah. That's my jewelry box Charlie gave me.

There's my purse, but not all my stuff is in my purse, but here's the keys I was speaking of. That's Mickey and there's Minnie.

Q Could you describe what else is on those keys?

A I'm a key -- oh, geez. I'm a key person.

Q Have you seen those items since it was taken from you?

A No.

Q How can you be sure that that's your keys?

A How can I make sure these are my keys? One thing, my son gave me this. Okay. As I mentioned, Charlie and I had a mutual friend named Kristin, and she had just gave me these things, the Mickey and the Minnie, I mean, maybe what, a week or two prior.

Q How do you recognize the jewelry box?

A He had given it to me, not brand new but he had given it to me and there was jewelry in it. I don't know where the jewelry is.

Q Okay. How do you recognize the purse?

A The purse, Charlie bought it for me. It's --

Q Anything inside the purse?

A Huh?

Q Is there anything inside the purse?

A These are my cards.

Q How do you recognize them as your cards?

A Because they got my name on it. At one time I did

receive food stamps, but that's my EBT card, Q-tips, my used to be phone.
Q Is there anything else in the purse?
A My pictures are gone. I had a prescription in here. I see it's gone. I guess I tore -- I don't know what's down in there.
Q It's okay. You recognize all of those items as --
A Yes. Absolutely.
Q -- as belonging to you? This may seem like a silly question, did you ever give anybody permission to take those things?
A No.
Q Okay.
A Now if she came up to me and said, "Now, Ms. Rose, can I please have your purse," with the gun to my head. "Sure, have it."
Q Again, I, I told you it may seem like a silly question.
A I know. I'm sorry. I'm nervous. I'm sorry.
Q How long would you say the people were inside of the house?
A I did not have a watch on. I would say an hour, maybe just a little over an hour.
Q Do you remember specifically what this Defendant did when he was inside of the home?
A He was like very trigger-happy, went around pointing to

make sure that Stephen and I knew he was the boss over the gun.
Q Okay. Did you ever get a look at the vehicle they were in?
A They had the front door open, and where I was on the couch Charles has lights in the yard. Okay. They had the vehicle, it's like an SUV, like a tan, copper. Now, you've got to remember it's night, but they parked in the middle of the road, not the driveway. So I seen the backend of it.
Q Okay. Did you see this Defendant take anything out of the house?
A Defendant, the driving.
Q This Defendant?
A Yes.
Q Do you remember specifically what he took out of the house?
A Just about anything he could get his hands on, him and his buddy had trouble getting the TV in the vehicle but he -- when she would say, "Get this, get that," he would get, you know.
Q Did you notice anything else specific about the female other than her voice and her skin tone?
A She was very, like she was the head honcho.
Q Okay. How about hair color?
A Brown.

Q Okay. When they left, did you see what direction they traveled?
A They went left.
Q Left out of the house?
A When they got in the vehicle, they were already headed out of Bryan Drive. They were headed to go out just like this.
Q Do you know the road that they were headed towards?
A No.
Q Okay.
A I -- we don't -- we can’t see the main road from where we live.
Q Okay. The person that you said came in the home that you identified as this is Defendant, could you tell the Court what he's wearing today?
A You want me to look at him?
Q Yes.
A He's wearing a suit, which I don’t think he deserves.
Q Can you see what color tie he has on?
A What kind of tie?
Q Yeah.
A It's a -- has multi colors actually. It's got white stripes. It's got maybe some burgundy, a little black, a little brown.
Q And this is the person --

A He has a gray shirt on.
Q And this is the person you saw in your house on October 21st?
A Yes.
MR. WEST: Let the court record reflect that the victim has identified the Defendant.
A Except at that time he had some hair on his head.
Q Okay. Any other differences between now and then appearances-wise?
A He's acting real brave and laid-back.
MR. DAVIS: Your Honor, I would --
A How could you do what you did?
THE COURT: All right. Answer questions.
MR. DAVIS: Your Honor, if I may for the record, I would object to the ID and renew objections.
THE COURT: All right. Overruled.
A I'm sorry. I'm sorry, Your Honor. I'm sorry. I'm sorry. I'm sorry. I'm sorry.
MR. DAVIS: Thank you, Your Honor.
Q Was it light or dark outside when the people came in?
A It was dark.
Q Thank you.
MR. WEST: No further questions for this witness at this time.
THE COURT: All right. Mr. Davis, cross examination.

MR. DAVIS: Thank you, Your Honor.
A Your Honor, can I say something?
THE COURT: No, ma'am.
CROSS EXAMINATION
BY MR. DAVIS:
Q Ms. Simpson, are you taking your medication today?
A Yes.
Q Okay. And what's that for?
A I am bipolar. I have PTSD. I go to mental health.
Q And that's -- you were looking for some medication earlier. That's what you were taking back then, too?
A What -- he – if I recognized anything in my purse.
Q I'm, I'm sorry. That was the same medication you were taking back then, too?
A They have changed my medication since I've gone back over this incident because it devastated me.
Q Okay. I'm sorry. I'll try to make it clear again. Was that the same medication you were taking back then?
A Was it the same medication?
Q Yes, ma'am.
A No.
Q Okay. What were you taking back then?
A I was taking -- I have Ehlers-Danlos Syndrome. I was taking pain medication. I was taking -- you talking about that night or just in general?

Q Yes. In, in October of 2014. Yes, ma'am.
A Okay. I was on Lamictal. That's my antidepressant. Trazodone and I believe at that time they were -- I forget the -- it's a sedative, but it's a very small sedative. I don't know the generic.
Q Okay. So a sedative, antidepressant and what was the third one for that you were taking?
A Trazodone.
Q What was that for?
A That's for sleep.
Q Okay. And you were taking those by prescription back then; right?
A Yes.
Q And what, what is it you're taking now for bipolar?
A Like I said, they've changed it.
MR. WEST: Objection, Your Honor, relevance.
THE COURT: Overruled. Go ahead.
A They've changed it because of the incident. I can't pronounce the first one, but it worked for me back then. So if you want to call CVS Pharmacy you're more than welcome. I can't pronounce it. They had me -- had it on me for about two and a half, almost --
Q So you're, you're just taking one medication now?
A No.
Q Okay. Well, ma'am, I'm, I'm just I'm trying to

understand because this jury needs to listen to your testimony. So what, what you're currently taking the medication you're supposed to; right?
A Yes.
Q Okay. And can you tell us, and if you can't give us the names that's fine. Can you just tell us what you're taking medication for right now?
A Bipolar.
Q Uh-huh.
A PTSD.
Q Uh-huh.
A High anxiety, eating disorder and Ehlers-Danlos Syndrome.
Q Okay. Thank you. And so when you heard the bam on the door you were asleep; right?
A I was -- can I -- I had a migraine headache.
Q Okay. Ma'am, I'm going to try to ask them so you can answer yes or no. Okay. I'll try to do that.
A I was not sound asleep, but --
Q Okay. Well, were you awake or were you asleep?
A If there's a middle in there, I was asleep.
Q Okay. And they knocked the whole -- the whole door came down. That woke you up?
A Yes.
Q I just -- I'm wanting to try to understand some things here. Okay. You said -- at one point you said she came out

and said, "I've got your purse, bitch." Right?
A Right.
Q Then another time you said she said, "Now, Ms. Rose, may I please have your purse?"
A No. He asked -- I said, I said would you -- he said something -- the one -- the person just talked to me, would I have given it to her or something to that, something like that, and I said if she would have asked me I would have given it to her.
Q Okay. So you were sleeping with your purse?
A No. I was not sleeping with my purse. My purse was in the bedroom.
Q Okay. Okay. This night you were half awake, half asleep on the couch; right?
A Correct.
Q Real quickly. Real quickly. At one point you said they were taking anything they could, but they had a little trouble with the TV?
A Right.
Q What size TV are we talking?
A Huge.
Q Okay. Hung on the wall?
A Hung on the wall.
Q Okay.
A Where I was at they took chess games, they took pictures,

they took --
Q Okay. Well, I'll, I'll, I'll ask you real quick questions.
A Okay. All right. All right.
Q I appreciate it.
A Okay. Okay. I don't mean to be angry. This is just very hard on me. I'm very pissed.
Q Now, and again, I want to be clear about this --
A Uh-huh.
Q -- you saw three people; right?
A Correct.
Q Okay. Knock the door in, come in, they all three have masks on at first; right?
A Correct.
Q And then at some point later during this, during this hour or so they're in there --
A Uh-huh.
Q -- you see two of them without masks; right?
A Correct.
Q Two white males; right?
A No.
Q Okay.
A A female and the male.
Q I apologize. Okay. Okay so one female took her mask off and one male did; right?

A Correct. And they were sweating terribly.
Q I'm sorry, ma'am?
A They were sweating.
Q Okay.
A Horribly.
Q You said they took it off because they were getting hot; right?
A Well, that's what I would assume, yeah.
Q Okay. Well, they didn't say that. You're just assuming that?
A Well, she said, "It's hot as hell in here."
Q Okay. So they said it. Okay. Thank you. Now, do you remember the police showing up a little later that morning, still dark, a little later that morning?
A Yes.
Q Several police officers came by; right?
A Not at one time, but yes.
Q Okay. And you spoke with them; right?
A As least as I possibly could. Yes.
Q I'm sorry, ma'am?
A As least as I possibly could. Yes. As least as I possibly could. Yes.
Q Okay. Well, now, you knew the police were there to investigate this crime; right?
A Correct.

Q And you knew it was important to get to the police as much information as you could; right?
A Correct.
Q Because they're going to go try to catch these folks; right?
A Correct.
Q So if you can describe these folks that'd be really important to the police at whatever time in the morning; right?
A Correct.
Q And if you could describe their clothing that'd be important?
A I did.
Q And if you describe what their faces looked like that'd be important?
A I did.
Q And if could you describe what the vehicle looked like that'd be important; right?
A I did.
Q Because you want the police to go get them; right?
A Excuse me?
Q You want the police to go get them; right?
A Right. But when they got there they said they could not --
Q Ma'am, if you'll answer my questions I'd appreciate it.

You wanted the police to go catch these folks; right?
A Not really because I was scared because they said they'd kill us.
Q Ma'am, if you'll, if you'll answer --
A Well, it's true.
Q It's true? What you're saying is true; right?
A He said --
Q Ma'am, ma'am, I have a question for you. What you're saying is true; right?
A Yes.
Q Okay. In 2015 were you not convicted of two counts of fraud?
A '15?
Q Fraudulent checks?
A Yes. But that is not --
Q Thank you, ma'am.
A Okay.
Q Whether you wanted these folks caught or not, the police talked to you to gather information; did they not?
A Yes.
Q The police asked you to provide a statement to them; did they not?
A I did it, too, but yes.
Q The police asked you to provide a statement; did they not?

A Yes.
Q And you provided one; correct?
A As much as I possibly could.
Q And you provided one; correct?
A Yes. I did, as much as I possibly could. Mind you, I was in shock. So to the point I left the residency, I left after the police left.
MR. DAVIS: May I approach, Your Honor, have this marked?
THE COURT: All right.
MR. DAVIS: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. DAVIS:
Q Ma'am, I'm going to show you what's been marked as --
A I don't have my glasses.
Q Okay. Who, who has them? We can get them for you.
A All I got is my sunglasses with me. The other -- my glasses are in the vehicle. They're in the vehicle.
Q I'm going to let you look at this. If you can't read it you're going to tell me because what I was going to tell you is I'm going to show you what's been marked as Defense Exhibit Number Two so the Court can identify it. I want you to take a look before I ask you any questions. I want to see if you recognize it and if you're able to read it or not. Okay?
A It's hard for me to read my own handwriting.
Q Okay. Do you recognize that as a document with your

handwriting though?
A As much to my ability, yes.
Q Okay. Well, again, I don't want to ask you any questions till you've had a chance. Do you recognize that to be your handwriting?
A Yes.
Q And is that the, the form, the piece of paper that the -- you wrote the statement to the police on?
A Yes. That's a voluntary statement.
Q Okay. Now, ma'am, I want you to take as long as you need to, take your time, but if you can tell the jury in your statement where you mention they took off their masks or not or if you didn't say that. Can you tell the jury if you mentioned that they took off their masks?
A No.
Q I'm sorry. No you can't or no you didn’t say that?
A I don't think I wrote that down.
Q Okay. And now, the same thing, in that statement can you tell the jury if at any place in there you describe what the folks were wearing?
A I think I said masks.
Q Okay. How about clothing, any other clothing, you describe any --
A I think I may have said black. I didn't -- gosh. I wish I had my glasses.

Q Ma'am, are, are your glasses --
A They're just for reading.
Q Did you bring, did you bring glasses with you --
A Yes. Yes. Yes.
Q -- that you just don't have in the courtroom? Are they --

MR. DAVIS: Your Honor, I'd ask we have a recess. I don't want to ask her questions.

THE COURT: All right. Let's take about a 10-minute break so she can get her -- ma'am, just stay right there. I'm going to excuse the jury. Do not discuss the case even among yourselves at this point in time. We're going to take a short break so this witness can get her glasses and we'll resume.

A They're in my purse.

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

THE COURT: All right. Ms. Simpson, we're in the middle of your testimony. So the law requires that you cannot discuss your testimony with anyone, whether that be what you've testified to thus far or what you anticipate testifying to in the future. You can't discuss it with the State's attorney, the Defense attorney or anyone else. Okay?

A Yes.

THE COURT: So we're going to take a short break, let's get her glasses and let me know when you've got her glasses

and we'll go ahead and resume at that time. All right. All right. Let's take a short break.

OFF THE RECORD

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

THE COURT: All right. Anything from the State before we bring the jury in?

MR. WEST: Nothing.

THE COURT: Anything from the Defense?

MR. DAVIS: No, Judge. I just -- obviously, Ms. Simpson needs to compose herself for a moment. We’re, we’re ready.

A I'm fine.

THE COURT: All right. Let's go ahead and bring the jury in.

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

THE COURT: All right. Ladies and gentlemen, welcome back. We’re ready to resume the trial of the case. Mr. Davis, you can continue with your cross-examination.

MR. DAVIS: Thank you, Your Honor.

BY MR. DAVIS:

Q All right. Ms. Simpson, you have your glasses now? All right. And you still have the Exhibit Number Two up there? All right. I'll go back. If you can take a moment and look at that statement, and if there's somewhere in your statement

to police that you described the clothing other than masks, can you tell the jury where that's at?
A No.
Q Okay. Is there anywhere in that statement you told the police what the vehicle looked like?
A No. No. No.
Q Is there anywhere in that statement that you indicate -- I may have already asked you this. Forgive me, Ms. Simpson, that any of them took their masks off?
A No.
Q Now, I need to go back to something so we can understand this.
A Please hurry, sir.
Q You testified earlier that, you testified earlier that my client came out with a box without a mask and told you, "Don't look at me. Get your head down." Right? That's what you testified to just a little bit ago; right?
A Correct.
Q Okay.
THE COURT: You're going to need to speak up and into the microphone.
A Correct. Correct. I'm sorry, Your Honor.
THE COURT: Thank you.
Q And can you look at your statement and didn't you say in your statement that, "A masked person told me to look down or

he would shoot me"; isn't that what you said in your statement?
A Yes. I did, but I was under shock. It don't matter. I know what you're trying to do, but --
Q And then finally in your statement to police didn't you say one had a gun, right, in that statement?
A The one that threatened to shoot me. Yes.
Q Okay. But a little while ago when the Government was asking you questions you said they all had guns; right?
A They did.
Q Okay.
A But I'm talking about the one that said to put my head down. That's the one I was talking about.
Q Your statement says, "One had a gun, told not to move, they were looking for the old man"; right?
A I said they come in. They bust the door down and they said, "Where is the old man," is what I said.
Q Okay. And I'm asking you about the statement that's in front of you. Didn't you write for the police, "One had a gun, told not to move, they were looking for the old man?" That's what you said the morning of this incident; right?
A Yes.
Q Okay. Now --
A But I know what I saw.
Q I'm sorry, ma'am?

A I know who I saw.
Q Okay. In between when you gave that statement and today, have the police ever shown up to show you photographs --
A No.
Q -- of any vehicles?
A No. Oh, showed up to my house?
Q Anywhere, either to your house --
A I, I, I've come to the Solicitor's Office and looked at pictures. Yes.
Q Okay. Okay. How many times did you come and speak with the Government here at the Solicitor's Office?
A Once, this week, well, twice, today.
Q Okay. So one meeting before today right?
A In person.
Q Yeah. Now, other than the Solicitor's Office did anybody from law enforcement between when this happened and this week ever come to you and show you any pictures --
A No.
Q -- of vehicles?
A But -- no.
Q Okay.
A But I have left Charles Roberts to move back home.
Q Okay. Well, again, ma'am, I'll try to make it yes, no questions for you.

A No.
Q Okay.
A No.
Q Did the police between when this happened and this week ever come to you and show you any photos of people?
A No.
Q Well, ma'am, if, if you'll let me finish my question. Did the police ever come to you and show you any pictures of people --
A No.
Q -- to see if you can identify?
A No.
MR. DAVIS: Your Honor, if I could have just one moment.
THE COURT: All right.
MR. DAVIS: Thank you, Your Honor. Thank you, Ms. Simpson. No other questions.
THE COURT: All right. Redirect?
A I can step down.
THE COURT: No, ma'am. Redirect.

REDIRECT EXAMINATION

BY MR. WEST:
Q Just a couple of more questions, Ms. Simpson.
A Yeah. Yes.
Q Mr. Davis asked you if you'd been convicted of fraud. You wrote a bad check; didn't you?

A Yes.
Q Okay. Now, the people that came into the house would you say they stayed in the house the whole time or were they in and out?
A They were in and out.
Q In and out, and --
A There was someone in at all times, but they -- I don't know if there was someone in the vehicle, in the vehicle, but they were constantly moving.
Q Okay.
A And one of them kept saying, "Hurry up. We got to go, we got to go, we got to go."
Q Did they identify each other by name?
A They called each other names, but I can't.
Q You can't remember them?
A I'm so sorry.
Q Okay. Does anything that Mr. Davis asked you change the fact that you know this man is the man that shoved a gun in your face and ransacked that house?
A Say -- I'm sorry, say that again.
Q Does anything that Mr. Davis just asked you change the fact that you know this man as the man that shoved a gun in your face and ransacked the house?
MR. DAVIS: Objection, Your Honor, leading. Objection, Your Honor, leading.

THE COURT: Overruled.
A Do I answer that?
Q Yes.
A Yes.
Q He's the man?
A He's the man.
Q Thank you.
THE COURT: All right. You may step down.
MR. DAVIS: Your Honor, if I may?
THE COURT: No. No recross.
MR. DAVIS: Note my objection, Your Honor?
THE COURT: All right. So noted. All right. The State can call your next witness.
MR. POULOS: The State calls Stephen Jones.
Whereupon, Stephen Jones is called to the stand, duly sworn by the clerk and testified as follows:
THE CLERK: Thank you. Have a seat. State your full name for the record and spell your last name.
MR. JONES: Stephen Jones, J-O-N-ES.

DIRECT EXAMINATION

BY MR. POULOS:
Q Good afternoon, Mr. Jones. Where do you currently live?
A I currently live 1553 Orangeburg Road in Summerville.
Q What do you do for a living?
A I’m a mechanic.

Q Do you know Charles Roberts and Rose Simpson?
A I do.
Q How do you know them?
A I've worked off and on for Charles Roberts doing automotive work for him and I lived with him.
Q Were you living with Charles Roberts on Bryan Drive on October 21st, 2014?
A I was.
Q Okay. What's the exact address of that residence?
A [redacted] Bryan Drive.
Q Okay. And that's in Berkeley County?
A Yeah.
MR. DAVIS: Your Honor, I object, lacks personal knowledge.
THE COURT: Overruled.
MR. DAVIS: Lack of foundation to that.
THE COURT: Overruled.
Q Mr. Jones, did you have your own bedroom in the house at that time?
A I did.
Q Okay. Now, specifically on October 21st, 2014, in the early morning hours, did you hear anything out of the ordinary?
A A loud bang and a bunch of yelling.
Q When you say a loud bang, describe it for us.

A It sounded almost like somebody running a car through the front of the house.
Q Okay. What did you do when you heard that noise?
A I jumped up and put my clothes on because I was asleep in the bed.
Q So at that time you were still in your bedroom?
A Yeah.
Q Okay. Did anyone come into the room?
A When I was putting my boxers on I felt something hit the back of my head and it was two people behind me with a gun to my head telling me to go in the living room.
Q Okay. Describe those people for me, male, female?
A They were wearing masks. I mean, I was turned away from them. All I heard was the male's voice and then kind of saw the shadow of the second person.
Q Were they both wearing masks at that time?
A Yes.
Q Okay. Tell me about their height, weight, hair color, if you could see it, that sort of thing.
A The best I remember they're -- I mean, at that time, I mean, I was turned away from them. So I couldn't really get a look at them. They're about my same build, I mean, about my same height, I guess.
Q White, black, Hispanic?
A Oh, white.

Q Okay. And I'm sorry you might have already said this, male, male?
A Male.
Q Both male?
A Yes.
Q Okay. How long did you stay in the bedroom with them?
A It wasn’t but a second.
Q Okay. And where did you go?
A The took me in the living room.
Q When you say they took you to the living room, what do you mean?
A Well, I mean, they had a gun in the back of my head and demanded that I go in the living room.
Q Okay. Once you went into the living room, what happened?
A They told me to sit down on the loveseat and they told what seemed to me to be the younger of the three to watch me and don't let me move, and they began basically going all through the house and just taking what they wanted out.
Q Now, just to be clear, was the younger one one of the two that was in the bedroom with you?
A I, I don't believe so.
Q Okay. So you’ve got the two in the bedroom with you and you described a younger one. Where did you see him?
A He was in the living room. When I -- the first time I actually saw him he was in the living room.

Q Okay. What was he doing?
A Basically the entire time standing there with a gun on me.
Q And did you see Rose at that time?
A Yes. She was sitting on the couch next to me.
Q Okay. So at this point you've seen three males?
A Yes.
Q And you stated one of them seemed younger?
A Yes.
Q What about him made you think he was younger?
A I just -- his whole demeanor. I mean, he was much smaller than the other two. Whenever he spoke he -- I don't know if this makes sense, but it sounds almost as if he had just hitten [sic] puberty, I mean, just had the youngness to his voice.
Q Okay. After they took you to the living room and you saw the third male, what happened? What were they doing?
A They were going all through the house taking stuff, going back and forth to Charlie's room. At one point they came out in the living room, the one without the mask, and told me that he don't take a person's tools, a man's tools and then turned around and started taking my tools.
Q What kind of tools were they?
A Drills, hand tools, just random different tools.
Q Do you recall where in the house those tools were?

A Some were in the middle room and then some were in Charlie's room.
Q Okay. And you said the man without the mask. Did one of the three men who was wearing the mask at some point take the mask off?
A I, I -- one of them I've never seen with a mask.
Q Okay.
A If he was wearing a mask I don't remember it.
Q Okay. And how good of a look did you get at that person's face?
A Pretty good.
Q How close did he get to your face during this incident?
A At one -- at one or two times there's a couple of times I could recall that he got right up in my face.
Q Okay. And do you see that person in court today?
A I do.
Q Could you please point to him and identify an article of clothing?
A Right there with the suit, gray shirt, dark colored jacket.
MR. POULOS: And Your Honor, please let the record reflect the witness has identified the Defendant.
MR. DAVIS: Your Honor, no new objection, but I would renew my old objection.
THE COURT: Overruled. Yeah.

MR. DAVIS: Thank you, Your Honor.
BY MR. POULOS:
Q Mr. Jones, I want to show you what has been marked as State's Exhibit 99. Tell me if you recognize that, please.
A That's the house that we were living in at the time.
Q When you say the house, is it a photo of the house or is it a diagram of the layout.
A It’s a diagram of the house.
Q Okay. Is that a fair and accurate representation of the layout of the house you were residing at the time?
A It is.
Q Okay.
MR. POULOS: Your Honor, I'd offer this into evidence and ask permission to publish for demonstrative purposes.
THE COURT: Any objection?
MR. DAVIS: No objection, Your Honor.
THE COURT: All right. State’s Exhibit 99 admitted into evidence without objection.
(State’s Exhibit Number 99 [Sketch] admitted into evidence and appropriately marked.)
BY MR. POULOS:
Q Mr. Jones, this is a laser pointer, hit that button there and it will point at that.
A Okay.
Q Okay. When you, when you speak, please speak into the

microphone.
A Okay.
Q Okay. Now, this is a layout of the house at Bryan Drive; is that correct?
A Yes.
Q Okay. Please show the jury where your bedroom is in that layout?
A My bedroom would be that one right there.
Q Okay. And the room next to that what, what is that room used for?
A That room is supposed to be like storage and just there's a refrigerator in there for food and just whatever we needed out the way.
Q Okay. Where is the living room that you said you were taken to?
A Right there.
Q Okay. And where is Charles Roberts' room?
A Right there.
Q Okay. All right. You can put the laser pointer down. Now, you stated during this incident they were running through the house taking things, looking through things?
A Yes.
Q Okay. Did they go back to your bedroom to take items?
A Yes.
Q Okay. What condition did they leave your bedroom in?

A For a lack of better words, it looked like a tornado came through it.
Q Mr. Jones, I'd like to show you three photographs marked as State's 19, 20 and 21. If you could look through those and just look up when you're done. Do you recognize these photographs?
A Yes, my bedroom.
Q These photographs fairly and accurately represent how your bedroom appeared after the incident?
A Yes.
Q Okay.
MR. POULOS: Your Honor, if I may, if I may publish these on the projector. I'm sorry. Offer these into evidence as State's 19, 20, 21.
THE COURT: Any objection?
MR. DAVIS: No objection, Your Honor.
THE COURT: All right.
MR. POULOS: If I may publish?
THE COURT: State's Exhibits 19, 20 and 21 are admitted into evidence without objection.
(State's Exhibit Numbers 19, 20 and 21 [Photographs] admitted into evidence and appropriately marked.)
THE COURT: You can go ahead and publish them.
BY MR. POULOS:
Q This is a photo of your bed?

A Yes.
Q Okay. And this is your room as well?
A Yeah. That's the area between my bed and the wall.
Q Okay. And 21. And again, this is a photo of your bed?
A Yes.
Q Okay. Now, I'm going to show you a couple of more photographs. I'm going to show you now photographs marked as State's Exhibits Three and Four. Take a look at these for me, please. Do you recognize those photographs?
A Yes. The living room and part of the kitchen in one of them.
Q Okay. Do those photographs fairly and accurately represent how the living room and kitchen area appeared on the date of the incident?
A Yeah.
Q Okay.
MR. POULOS: I'd offer those into evidence, Your Honor.
THE COURT: Any objection?
MR. DAVIS: Three and Four no objection, Your Honor.
THE COURT: State's Exhibit Three and State's Exhibit Four admitted into evidence without objection.
(State's Exhibit Number Three and Four [Photographs] admitted into evidence and appropriately marked.)
BY MR. POULOS:
Q Okay. Now, directing your attention there, where were

you sitting exactly?
A On the loveseat. The couch is kind of cut off. There's the loveseat. I'm sorry. I was sitting right there.
Q Okay. And where was Rose sitting?
A On the couch right there.
Q Okay. The younger male who was holding the gun on you, where was he standing?
A Well, you can't really see the spot on here, but I guess if I were to point at it it'd be right here.
Q Okay. And at this point in time, what were the other two males doing?
A They were basically going all through the house --
Q Okay.
A -- and just taking stuff out.
Q How many times did the Defendant walk by you?
A I mean, honestly, it was quite a few he had just walked by. I'm not -- don't know how many. It was quite a few.
Q How many times did he get in your face?
A He had gotten in my face at least two or three times.
Q Okay. How many times did he address you, did he say something to you?
A At least two or three times.
Q Okay. Did you see a fourth person in the house as well?
A Yeah. A female. I saw her a couple of times, but she was in the back bedroom most of the time.

Q Okay. How do you know it was a female?
A You could hear it in her voice when she talked, that and they kept calling her mom.
Q What about her -- kept calling her mom?
A Yeah.
Q Okay. What about her hair or her body type?
A It was long brown hair.
Q Okay.
A And I mean, you could see a female figure under her clothes.
Q So that's a total of four individuals who broke into the house that night?
A Yes.
Q Okay. Now, just to be clear, this is early morning. Is it dark outside?
A Yes.
Q Okay. Did you see the Defendant with a gun?
A Yes.
Q Okay. And you said you saw the younger man with a gun?
A Yes.
Q Did you see any other guns?
A I mean, they all had guns as, as to -- they all had, I believe it was semiautomatics, but I mean, I don't remember exactly what every gun looked like. I just remember there were guns and they all had one.

Q Okay. When you say semiautomatic are you referring to handguns?
A Yes.
Q Okay. Mr. Jones, what were they doing with the property?
A Taking it out the house.
Q Did they move it around the house at any point?
A There was a couple of times where they would take it out the bedrooms and set it down in front of the door and go back for more and then come back and take it out the front door outside somewhere, I assume to their car because it wasn't there when they left.
Q Mr. Jones, I want to show you what's marked as State's Exhibit 15 and see if you recognize this photograph.
A Yeah.
Q And what is that a photograph of?
A That would be photograph of my or what was parts of my computer it looks like.
Q Okay. Does that photograph depict how the property was being corralled by the Defendants in the house?
A Yeah.
Q Okay.
MR. POULOS: I'd offer this into evidence, Your Honor, as State's 15.
THE COURT: Any objection?
MR. DAVIS: No objection, Your Honor.

THE COURT: All right. State's Exhibit 15 admitted into evidence without objection.

(State's Exhibit Number 15 [Photograph] admitted into evidence and appropriately marked.)

BY MR. POULOS:

Q Now, is -- what part of the house is this?

A That's the hallway leading back to my bedroom.

Q Okay. And there's a pile of property there. Who was piling the property up like that, do you recall?

A I mean, all of them for the most part. Yeah.

Q All of them. Okay. Including the Defendant?

A Yes.

Q Okay. In total, Mr. Jones, what would you say, as far as your property, what was taken from the house?

A Well, there's a TV in my room that was taken out, my wallet, and a lot of personal belongings, I mean, I couldn't even begin to tell you now it's been so long, a couple of car radios that were put up in my room, all my -- everything that was in my wallet such as my debit cards and personal cards like that. Just my belongings or --

Q For now, yes. Just your belongings.

A Okay, yeah. I mean, there's -- I know they took my pillowcase because they had put everything that -- in my room in that pillowcase.

Q Mr. Jones, I'm going to show you an envelope marked

State’s Exhibit 115 and I’d ask you to remove the contents and tell me if you recognize those items.

A Yes. That's my driver’s license, EBT card, Social Security card and debit card.

Q Okay. Put those back in the bag for me.

A (Complies with request.)

Q Mr. Jones, at any point anybody have permission to take any of this stuff from you?

A No.

Q Okay. Now, let's get back to the living room. How long would you say you sat on the couch?

A At least an hour if not more.

Q Okay. Did there come a time when you went somewhere else in the house?

A Whenever they were leaving they told me get to go back into Charlie's room in the bathroom.

Q If you’d point out for us where exactly that is.

A I was right here when they left.

Q Okay. What did they say to you once they took you to the bathroom?

A They said that if we were to call the cops they’d come back and kill us.

Q Okay. Who specifically said that if you recall?

A I believe it was the female.

Q Okay. And how long did you stay in the bathroom after

they left?
A I'm really not sure. It wasn't long. I -- we heard them go out the door. We heard a car door shut, and then I immediately ran back into my room to finish putting on my clothes.
Q What'd you do after, after they left?
A Immediately after they left I found my keys to the truck I was driving at the time, and I went outside to kind of follow them down to hopefully at least get a license plate off their car, but they were long gone.
Q Okay. So you weren't able to find them?
A No.
Q Okay. At what point did you go back to the house?
A It was a little while after it because I -- after that, I mean, I was shooken up. So I had stopped at my girlfriend's house and kind of sat with her for a little bit to try and calm down and get myself collected back together.
Q Okay. When you eventually went back to the house were the police there?
A Yes.
Q And did you speak with them?
A Yes.
MR. POULOS: If I may just have a moment, Your Honor.
THE COURT: All right.
MR. POULOS: Thank you. No further questions, Your

Honor. Thank you.

THE COURT: All right. Cross examination.

CROSS EXAMINATION

BY MR. DAVIS:

Q All right. Mr. Jones, just to tie up a few loose ends, if we can, or to make things clear, if we can, pretty quickly after you responded to the noise there were two people in your bedroom; right?

A Yes.

Q You'd been asleep?

A Yeah.

Q Lights were out in your room?

A Correct.

Q And I think what you're saying is the way you were standing to your doorway, they came up behind you?

A Correct.

Q Okay. So you had your back to your bedroom door to the hallway?

A Correct.

Q Okay. You were trying to put clothing on?

A Yeah.

Q Okay. And then you got hit on the head with a gun from behind, hit you in the back of the head somewhere?

A Yeah.

Q Okay. Pretty quickly after that they're hustling you out

into the living room?
A Correct.
Q Sit on the sofa?
A Yeah.
Q Okay. Didn’t knock you out, just hurt real bad, the hit on the head?
A I mean, it didn't really hurt that bad. They just hit me hard enough to let me know they were there basically.
Q Okay. You never went to the hospital, got any treatment for that?
A No. No.
Q Okay. And once you got in the living room is kind of dim lighting in there because this was mid hours of the morning?
A Yeah.
Q Right? You were scared?
A Yeah. I mean, guns at me.
A Right. You had guns and you, you were able to see that I think you testified that all, all four had guns?
A Yes.
Q Okay. That got your attention?
A Yes.
Q You, you were able to focus on the guns enough to know that they are all handguns?
A Yes.
Q Right. Semiautomatic handgun; right?

A I believe they were all. Yes.
Q Didn't look like revolvers with the cylinder; right?
A No. Didn't look like it. No.
Q You, you know what guns look like?
A Yeah.
Q Automatic versus a revolver?
A Yeah.
Q Okay. One young person, male, stood near you by the couch; right?
A No. He stood across from me.
Q Across from. I'm sorry. I'm so sorry. You're on the loveseat. He's over by the couch; right?
A No. He's across from the couch in front of me.
Q Okay. Okay. Okay. You can tell that by his voice and his demeanor --
A Yes.
Q -- he was young, and he was a male; right?
A Yes.
Q Two other males running, screaming around; right?
A Yes.
Q And then I think you testified about in the back bedroom was where you could tell by voice and figure it was a female back there; is that correct?
A Yeah. When I -- yeah.
Q That's Mr. Roberts' room; right?

A Yes.
Q When -- and I'm sorry. I'm going back just a little bit. When you were getting taken out of your bedroom I think you said you were kind of turned away. You didn't get a good look, right, of, of the two people; right?
A When I was being taken out of the room, no, I never really saw them. I just -- I knew it was two people.
Q Both had masks on?
A Yeah.
Q Okay. You're telling the jury today that John is one of the folks that was running around the house?
A Yes.
Q Now, do you remember when you finally went back to the house after being at your girlfriend's the police were there; right?
A Yes.
Q And you talked to the police?
A Yes.
Q And you knew they were trying to investigate this crime; right?
A Yes.
Q Trying to figure out who did it; right?
A Yeah.
Q And go get the people who did it; right?
A Uh-huh.

Q And they asked you --
THE COURT: Excuse me. Is that a yes?
A Yes, sir.
Q I'm sorry. And they asked -- you talked to them and you said you would?
A Yes, sir.
Q And they asked you if you'd give a statement and you did?
A Yes.
Q And you handwrote your own statement; right?
A Yes.
MR. DAVIS: Your Honor, may I approach?
THE COURT: All right.
MR. DAVIS: Your Honor, may I approach the witness?
THE COURT: All right.
BY MR. DAVIS:
Q Mr. Jones, I'm going to show you what's been pre-marked as Defense Exhibit Number One for identification purposes. I'm not going to ask you any questions right up front. Just take a second. Look over that. See if you recognize it and then I may have some questions for you. Okay?
A Yes. This is my statement.
Q Okay. Fair enough. And that would've been given the morning after this happened, the same, same morning?
A Correct.
Q And your testimony today that you recognize John because

he had his mask off; right, at some point?
A Correct.
Q And he got in your face at some point; right?
A Correct.
Q Okay. In your statement can you tell the jury anywhere in there if you mention about any of the people getting in your face?
A No. Not in my statement I didn't.
Q Okay. Do recall in your statement talking about the only one not wearing a mask, you referenced that person in your statement; didn’t you?
A I don't know. Hold on. Yeah. There is something about that in here. Yes.
Q And in the statement you talk about only one of them not having a mask on; right?
A Yes.
Q And that one that didn't have a mask you couldn't see him because he stayed in the shadows or out of sight, that's what you told the police in your statement; right?
A Yeah. That is what I put in the statement. Yes.
MR. DAVIS: Your Honor, if I could have just a moment.
THE COURT: All right.
MR. DAVIS: Thank you, Your Honor. Thank you, Mr. Jones. No other questions.
THE COURT: Redirect?

MR. POULOS: Yes, Your Honor, briefly.

REDIRECT EXAMINATION

BY MR. POULOS:

Q Mr. Jones, to be clear, when you were in your bedroom could you see his face?

A No.

Q Okay. When you were taken to the living room and you sat there for an hour, at that point could you see his face?

A When he got up in my face, yes.

Q Okay. You could see this Defendant’s face?

A Yes.

Q Okay.

MR. POULOS: No further questions.

THE COURT: All right. You may step down.

A I leave all that there; right?

THE COURT: Just leave that there. Thank you.

All right. The State can call your next witness.

MR. WEST: The State calls Charles Roberts.

Whereupon, Charles Roberts is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: If you'll have a seat, state your full name for the record and spell your last name.

MR. ROBERTS: My name is Charles W. Roberts, and Roberts is spelled R-O-B-E-R-T-S.

MR. ROBERTS: My name is Charles W. Roberts and Roberts is spelled R-O-B-E-R-T-S.

DIRECT EXAMINATION

BY MR. WEST:

Q Good afternoon, Mr. Roberts. Tell the jury what you do for a living?

A I'm pretty much retired right now. I have some rental properties that I get income from, and I fix up cars and sell them.

Q Okay.

A I used to have a towing and auto repair business, and I still enjoy, you know, getting cars and fixing them up.

Q Do you have any children?

A Yes, ma'am. Yes, sir.

Q Do you have any grandchildren?

A Yes, sir.

Q Okay. Does anybody live with you now?

A Not right this second. No. My youngest grandchild was living with me for a while.

Q All right. Where do you live?

A I live at [redacted] Bryan Drive in Moncks Corner.

Q Do you know if that's in Berkeley County?

A Yes, sir.

Q Do you know this Defendant?

A Do I know the Defendant?

Q Yeah. Do you?
A Yes.
Q Okay. Well --
A I know him from what happened.
Q Do you recall the incident that brings us here today?
A I beg your pardon?
Q Do you recall the incident that brings us here today?
MR. DAVIS: Your Honor, forgive me. I'm sorry. With, with that prior testimony I would renew my objection. He evidently -- any --
THE COURT: Overruled.
MR. DAVIS: Thank you, Your Honor.
THE COURT: Oh.
MR. DAVIS: As to the --
THE COURT: Let me see the attorneys.
(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)
BY MR. WEST:
Q Do you recall the incident that brings us here today?
A Do I recall the incidents that brought us here today?
Q That's right.
A Yes. I do.
Q Okay. Were you living at [redacted] Bryan Drive on October 21st, 2014?
A Yes. I was.

Q Who was living with you on that date?
A My friend Stephen Jones and my girlfriend at the time Rose Simpson.
Q Okay. The night before the incident was everything normal?
A Pretty much normal, yes. Rose got a headache, and she left my bedroom to lay on the couch.
Q What time would you say you went to sleep?
A I stay up late. So it was probably around 2:00 o'clock before I fell asleep.
Q Okay. Were you asleep when this incident first happened?
A When it happened, yes. I was.
Q Okay. That night where did Rose sleep?
A Originally she was sleeping with me, and then she went to her -- to the living room and slept on the couch.
Q Okay. Tell the jury how you woke up that day.
A I woke up when a gentleman opened up my door and shoved a gun at me.
Q What time of day was it?
A It was after 4:00 o'clock in the morning.
Q Was it still dark outside?
A Yes, sir. It was.
Q How did the people that came in your house get inside?
A They busted my door open and I, and I had to repair it because they tore -- the frame and everything came loose when

they kicked the door in.

MR. WEST: I'm showing the witness what's been marked as State's Exhibits One through 22 and State's Three, Four, 15, 19, 20 and 21 having been previously admitted. Let the record reflect that the State has shown these to Defense counsel.

BY MR. WEST:

Q Mr. Roberts, can you look through those and tell us if you recognize those items?

A This is a picture of my front yard, and this is a picture -- let's see how that goes -- yeah, this is a picture of where they kicked my door in and it shows the --

Q Okay. We'll individually go through them in just a second. Why don't you just flip through them right now --

A Okay.

Q -- and tell me whether you recognize them.

A Yes, sir. I recognize them.

Q All right. And those items, are they accurate reflections of your home on the date of this incident?

A Those pictures are accurate. Yes.

Q Okay.

A They are accurate.

MR. WEST: The State would ask, ask these items be moved into evidence.

THE COURT: Any objection?

MR. DAVIS: No, Judge, just be clear Three, Four, 15 and

19 to 21 have already been admitted. So the remaining numbers One through 22 we have no objection.

THE COURT: All right. So that would be State's Exhibits One, Two, Five, Six, Seven, Eight, Nine, 10, 11, 12, 13, 14, 16, 17, 18, 22 are admitted into evidence without objection.

MR. DAVIS: That's correct, Your Honor.

(State's Exhibits One, Two, Five, Six, Seven, Eight, Nine, 10, 11, 12, 13, 14, 16, 17, 18 and 22 [Photographs] admitted into evidence and appropriately marked.)

MR. WEST: Permission to publish, Your Honor?

THE COURT: All right.

MR. WEST: Please publish State's Number Two.

BY MR. WEST:

Q Mr. Roberts, if you look behind you, I have a picture, and if you could, when you talk, please still talk into the microphone.

A Yes.

Q The microphone behind your head.

A Okay.

Q Sorry. I apologize.

A Go ahead?

Q Yeah. Tell the jury what that's a picture of.

A Well if it's turned sideways it's a picture where they kicked in my door.

Q Okay.

A If it's like this, if it's like the door upright instead it wasn't side, back, up, you know, sideways.

MR. WEST: Please publish State's Number Eight.

BY MR. WEST:

Q Tell the jury what that's a picture of.

A That's a picture of my bedroom.

Q Okay.

MR. WEST: Publish State's Number Nine.

BY MR. WEST:

A That's another picture of my bedroom.

Q Okay. Now, in the center of that picture could you tell the jury what that drapery leads to?

A That's my master bathroom.

Q The bathroom. Okay. How about State's Number 17, please. What's this a picture of?

A That looks like the storage room to me. Yeah. I'm, I'm sure it is.

Q And Number 19, what's this a picture of?

A That looks like Stephen's room.

Q Stephen's room. Okay. Now, did your house look like this before the incident?

A No, sir. It didn't.

Q Do you normally keep your house pretty clean?

A It was -- well, it wasn't nowhere close to that, I mean, it wasn't immaculate but it was -- I keep it fairly clean.

Q Would you say it's been turned upside down?
A Say it again, sir.
Q Would you say that, that looks like it's been turned upside down?
A That looks like it's been thrown around. Yes.
Q Okay.
MR. WEST: If I could have the lights again, please.
BY MR. WEST:
Q When you were first awoken, how many people were in your bedroom?
A Only him.
MR. WEST: Your Honor, could we approach?
THE COURT: All right.
(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)
THE COURT: All right. Ladies and gentlemen, I'm going to excuse you back to the jury room for just a few minutes while I need to take up a matter of law with the attorneys, and I tell you why we excuse you back to the jury room. It's not that I'm trying to hide anything from you or keep anything from you, but as I told you during the opening charges, you and you alone decide the facts of the case. I decide the law to be applied to the case. Well, oftentimes when I discuss the law with the attorneys it requires me as the Judge and the attorneys to reference factual issues. Well, what we say is

not evidence. So we do not want you to be influenced by anything that I might say or that the attorneys might say to influence your decision on what the facts of the case are because you're to make your determination based upon the witness's testimony, and so that's why we excuse you back to the jury room. So I'm going to excuse you back to the jury room for just a few minutes and we'll bring you back out shortly. All right?

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

THE COURT: All right. Mr. West.

MR. WEST: Your Honor, the reason we took a brief recess is I wanted to ensure the Court that I had instructed the witness not to identify the Defendant in court as per your instructions. So I would like the Court to remind the witness in your own way that he is not supposed to identify the Defendant in front of the jury.

THE COURT: All right. All right. Mr. Roberts, in my pretrial ruling I have stated that you cannot identify this Defendant as the perpetrator of the crime. You can listen to the questions proposed to you, answer those questions, but my ruling was that your identification of Mr. Darrieux sitting here in the courtroom today at trial is not sufficient and you can't reference him as the perpetrator of the crime. You can tell what happened, but you can't say he's the one that did

it. Do you understand that?
A I understand what you're saying. Yes, sir.
THE COURT: Okay. All right. Is that sufficient from the State?
MR. WEST: Yes, Your Honor.
THE COURT: All right. Is that sufficient from the Defense?
MR. DAVIS: As to that issue, yes, Your Honor.
THE COURT: All right.
MR. WEST: Thank you, Judge.
THE COURT: Anything further?
MR. WEST: I think we just need the, the record to be clear as to how, if he's not going to identify the Defendant, how he's going to reference the person that he's talking about.
THE COURT: He can just say that the, the person came into the house, the person was the male --
MR. WEST: The man, any, any physical descriptors.
THE COURT: -- the man that came -- yeah, the man who came in the house or whatever, but as I understand from our pretrial motions and everything, the mask was on him the whole time. He never saw the Defendant or could identify the Defendant until he was at the bond hearing when he showed up at the bond hearing, which is so tainted I ruled that he could not give an in-court identification because the first time he

said he ever saw Mr. Darrieux was at the bond hearing when he showed up and they said, "This is the guy that broke into your house," and so that was the basis for my ruling. So you can --

A Well, that, that wasn't true, sir.

THE COURT: Well, the fact of the matter is I've already made a ruling. You can refer to the person who broke into the house, the man who broke into the house, whoever, but you can't say when the Defendant came into the room or when the Defendant did whatever. Okay?

A All right. Whatever you say, Your Honor.

THE COURT: All right. Is that sufficient?

MR. WEST: I think that's sufficient, Your Honor --

THE COURT: All right.

MR. WEST: -- for the, the purposes of this break.

THE COURT: All right.

MR. DAVIS: And Judge, I agree. Certainly, physical descriptions, gender, race, height, weight, we understand that, but just that it -- of all the people in the world it was my client that he could not reference that. So we understand your instruction, and we have nothing in addition to it. Judge, because of the unique way, and I do understand the State didn't get it -- intend to get into this, I think the State was focused on whether my client, anyone had permission, and but the, the offhanded comment that Mr.

Roberts made on the record was he knows my client, knows John from that night. Within seconds I realized that might be an ID thing. I objected. You sustained my objection, but the more we're dwelling with this now I feel compelled to ask you to strike that and give an instruction that the jury to disregard that because that was said out loud, "I know him from that night," and that is contrast to your ruling.

THE COURT: Okay. I'm going to let it just go forward. We'll just carry it from this point forward. Okay. I'm not going to give any, any additional curative instructions.

MR. WEST: Thank you, Judge. We're ready to proceed.

THE COURT: All right. Let's go ahead and bring the jury back in.

MR. DAVIS: May we approach while they're filing in, Your Honor?

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

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

THE COURT: All right. Mr. West, you can continue with your questioning.

MR. WEST: Thank you, Your Honor.

BY MR. WEST:

Q How many people came into the house?

A As I understand four people came in.

A Okay. How many people did you physically see?
A Two people.
Q Okay. Did you stay in your bedroom the whole time?
A I stood in my bedroom the whole time.
Q Okay. The people that were in your bedroom, what were they wearing?
A Dark clothes as far, as far as I know. It was, it was dimly lit when they first walked in. Then they turned the light on, and that's when -- one of them didn't have a mask on at all. One of them dropped their mask and I seen her, and then she told me to cover my head.
Q Okay. And you said she, there was a female involved?
A Yes.
Q Could you describe the female?
A She was a petite lady with long dark hair.
Q Okay. Skin tone?
A She wasn't black. She was like, I don't know, tanned.
Q Okay. Could you tell anything specific about her voice?
A She was like, I don't know how to tell you, except foreign like she spoke English but, you know, accent.
Q She had an accent. Could you tell any of their ages?
A I just would guess that they were in their thirties, maybe early thirties.
Q Okay. Specifically, the female, could you tell her age?
A Again, I'd say in, in her thirties.

Q In her thirties. And the male was he in his thirties?
A In his thirties.
Q Was the male white, black, Hispanic?
A The male was white.
Q White male, could you describe whether he had any facial hair on his face?
A Yes. I mean, he had -- he didn't have facial hair at the time that I recall, that he had hair, hair like mine.
Q Okay. What color was his hair?
A Dark.
Q How tall would you say he was?
A I, I imagine he was about five eight like I am, five nine.
Q Okay. Skinny, fat, muscular, how would you describe his build?
A He's average, I guess, not, not fat or skinny.
Q Okay. When they were inside your bedroom could you leave?
A Did I leave?
Q Could you leave?
A Could I, no.
Q If you wanted to leave, could you have left?
A I was, I was told to stay where I was.
Q Okay. What did they do while they were inside of the bedroom?

A They, as you see through the pictures, they took -- they went through everything and took out of my bedroom what they wanted to carry out.
Q Okay. Do you know what types of items those would have been?
A Yes. They took anything they thought was of value, tools and I had satchels of tools and, and radios and, and I had electronic equipment and they took my wallet and what money they could find and I had my medicine.
Q Your medicine. How was your medicine stored?
A Part of it was in my dresser nightstand drawer, some of it was in a yellow toolbox.
Q Okay. What kind of containers were they in?
A They were in containers, prescription containers.
Q Okay. Would those containers have had your name on them?
A Yes.
Q I'm showing the witness what's been marked as State's 113 previously shown to Defense counsel. Do you recognize this item?
A A piece of cardboard. Let's see. This must've been the box where some of my meds were.
Q How do you recognize that?
A Because it has my name and the barcode on it and, and the address, it has the address where I used to live.
Q Okay.

A On Ponderosa.
Q You recognize that item as having previously belonged to you?
A Yes, sir. As it belonged to me?
Q Yes. Has it ever belonged to you?
A Had -- did this ever belong to me? Yes. Yes. It did.
Q Okay.
MR. WEST: I'm showing the witness what's been marked as State's 122 and been previously shown to Defense counsel.
BY MR. WEST:
Q Do you recognize these items?
A I do.
Q And how do you recognize them?
A This is a Civil War chess set that belonged to me. This is another one. I collect chess sets and it was more than that that was taken.
Q Okay. But you recognize as these -- these chess sets as belonging to you?
A Yes, sir. I do. I bought them from Franklin Mint.
Q Could you state that one more time for the record?
A I bought them from Franklin Mint.
Q Okay.
MR. WEST: Showing the witness what's been marked as State's Exhibit 121, previously shown to Defense counsel.
BY MR. WEST:

Q Could you look inside this and tell me whether you recognize these items?
A These are some coins that I had that I, I used to be a coin collector, and a lot of them was stolen from me before now, and this is patches where I got them from different states. I was in the Air Force and the Navy.
Q You recognize all of the items in that?
A It seems like all of them were mine. Yes, sir.
Q And you recognize all of those items as having previously belonged to you?
A Yes, sir.
MR. WEST: Showing the witness what's been marked as State's Number 119, previously shown to Defense Counsel.
BY MR. WEST:
Q If you'd please tell the jury whether you recognize what's in that envelope.
A These look like the credit cards and, and driver's license, and my where I have Medicare, and I don't see all of them there. I have a Master -- I mean, a Visa card here and these are mine. That's where I got VIP from the garage.
Q Okay.
A And --
Q How do you recognize those items?
A They're -- they have my names on them, and --
Q And you recognize those items as previously belonging to

you?
A Yes, sir. I do.
MR. WEST: I'm showing the witness what's been previously marked as State's 120, previously shown to Defense counsel.
BY MR. WEST:
Q Could you tell the jury whether you recognize those items?
A And here's my Social Security number with my name on it and one -- my drug prescription cards and these are baseball cards and belt buckles that belong to me, and that looks like a hearing aid apparatus I got from the VA.
Q Okay. Do you recognize all those items as having previously belonged to you?
A Yes, sir. Uh-huh.
Q I know that seemed tedious, Mr. Roberts, but thank you. When's the last time you saw the items that you just identified in State's 113, 119, 120, 121 and 122?
A Well, some of them I've seen like the day it happened and shortly before that happened.
Q Did you recognize those items as having been missing after this incident?
A Would I do what, sir? Would I recognize what?
Q Do you recognize those items as having been missing after this incident?
A Well, I didn't look for them to be missing, but I knew

where they were.
Q Okay.
A They were in my -- that armoire.
Q Okay. Now, the people that came into your bedroom, were they armed?
A Absolutely. Yes.
Q Okay. Do you know what type of guns they had?
A Automatics.
Q Okay. Handguns, long guns?
A Handguns.
Q They were handguns.
A They -- he stuck his gun right this close to me.
MR. DAVIS: Objection, Your Honor.
THE COURT: Hold.
A And --
THE COURT: Hold for a second. We've got an objection. What's the objection?
MR. DAVIS: May we approach?
THE COURT: Yeah. Yeah.
(Whereupon, a bench conference is held in the presence but out of the hearing of the jury.)
MR. WEST: Thank you, Judge.
THE COURT: All right.
MR. WEST: Okay.
THE COURT: Go ahead.

BY MR. WEST:
Q Mr. Roberts, you had a gun to your head?
A He -- it made -- it showed me where the safety was off on it and made a point to tell me that.
Q Okay. Do you remember anything else that was said inside the house that night?
A They -- I've heard that somebody from -- in the other room hollering, "Mom, come on, let's go," and she hollered, "Don't call me mom," or something like that.
Q Okay.
A Talking amongst themself.
Q Where was Stephen and Rose while you were in your bedroom?
A Originally they weren't where I could see them, but they escorted them into my bathroom.
Q When you say escorted, what do you mean?
A I meant they made them come in my bed -- bathroom.
Q Okay. How long were you stuck in the bathroom?
A I wasn't in the bathroom.
Q Okay. You were in the bedroom and Stephen and Rose were in the bathroom?
A That's correct.
Q Okay. How long were you, you stuck in the room?
A Well, I would -- I'd have to guess -- I -- maybe an hour or but they were there for longer than that.

Q Okay. You couldn't see anything going on in the rest of the house?
A No, sir.
Q Okay. When they finally left what did you do?
A As soon as I knew they left I, I went next door and woke up my neighbor and asked them to call 911 because they stole all our cell phones.
Q Okay. And did the police ever arrive?
A Yes, sir. They arrived.
Q How long did that take?
A It didn't seem to be too long, maybe 20 minutes, something like that.
Q Now, earlier in your testimony you indicated you owned some other properties.
A I do.
Q You own any properties on Cindy Drive?
A I did.
Q You did. What do you mean by that?
A I don't no longer own property on Cindy, Cindy Lane.
Q Okay. Do you know the address of that property?
A To tell you the truth I don't remember the address. It was Cindy Lane. As soon as you go into the, the trailer park it's like three speed bumps and it's on the left-hand side.
Q Would it be [redacted] Cindy Drive?
A It was [redacted].

MR. DAVIS: Objection, Your Honor, leading.

THE COURT: Sustained.

A I remember that now.

Q Okay.

MR. DAVIS: Objection, Your Honor. We'd move to strike that testimony.

THE COURT: Okay. No. I'm going, I'm going to allow it. Go ahead.

Q You owned that property back August 21st, 2014?

A I did.

Q Okay. Now, who was living there at the time?

A Amy and Brad, and I believe Eddie and Cee Cee were living there, too. They wasn't supposed to be, but I went in there one day and they were there.

Q Now, the tenants that you had, had they ever been evicted?

A Eddie and Cee Cee for sure had been. They wasn't supposed to be in that trailer park and I told them that.

Q Okay. Was anybody particularly living there at the time of October the 21st, 2014?

A They were in the process of moving as far as I know. They -- I'm not -- I don't believe they were living there at the time. No.

Q Okay. Had you had any new tenants?

A No, sir.

Q Okay.
A I've had several people wanting to rent the place, but no one.
Q Had you ever given this Defendant consent to go into that address?
A No, sir. Absolutely not.
Q Okay. After that tenant had vacated the property, had you given anybody permission to go back into that house?
A Are you talking about on Cindy Lane?
Q That's right.
A Have I given anybody permission? I gave --
Q On October the 21st of 2014 after you said that the property had been vacated, did you give anyone as the owner of that property permission to go inside?
A No, sir. No.
Q Thank you. No further questions at this time.
THE COURT: All right. Cross examination.
MR. DAVIS: May I have just a moment, Your Honor?
THE COURT: All right.
MR. DAVIS: Thank you. Your Honor, we have no questions. Thank you.
THE COURT: All right. You may step down.
MR. WEST: Your Honor, may we approach about scheduling?
THE COURT: Yes. Come on up.
(Whereupon, a bench conference is held in the presence,

but out of the hearing of the jury.)

MR. WEST: Okay. Thank you.

THE COURT: All right. Ladies and gentlemen, we all agree, it's probably a good time for us to go ahead and break for the day. It's, it's about 4:35. So I'm going to go ahead and send you home for the evening. I caution you, again, do not discuss the case with anyone, do not even discuss it among yourselves. It's too early for deliberations. Don't conduct any independent investigations into the case. I'm going to ask that you be back in the jury room at 9:15 tomorrow morning. We'll try to get started right at 9:30 or as soon after 9:30 as we can. So please be back 9:15 tomorrow morning.

Now, I'm not going to test your patience or your stamina or anything of that nature. However, given the length of this trial, I want to do everything we can to get it in this week. I don't know that we're going to be able to, but we're going to certainly try to. Having said that, if you have any arrangements you need to make for tomorrow evening you might need to go do it because we might work a little bit later than usual. We might work a little bit after five. As I said, we're not going to go extremely late because I know you can only take in so much at a time. So I'm not going to tax your attention span or anything of that nature, but if you have to be somewhere at 5:30, you have to be somewhere at six, you

might want to go ahead and make arrangements so -- because we might go a little bit later tomorrow evening. So having said that, I hope everybody has a good evening and we'll see you back at 9:15 tomorrow morning. Thank you very much.

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

THE COURT: All right. Having said that, I don't mind going a little bit later tomorrow evening, but I certainly acknowledge that there's only so much that attorneys and jurors can take in in one day. So I don't want to do that. Having -- I mean, I don't want to tax them too much. Having said that, I don't want -- I want everybody to have sufficient time to present their case. So if this spills over into next week that ain't a problem. I've just got to call Court Administration and let them know that to make some arrangements. Okay? I don't know what that's going to do to the jury. I don't know, but we do have two alternates, but please give me some heads up if it does look like we're going over because I do have to contact Columbia and Court Administration to let them know, number one. Number two, I can tell you right now my general practice, I've heard it was an administrative order, I've never seen it, but my general practice is I will not charge a jury and begin deliberations after four p.m. on an afternoon because I think the jury if I charge them with the law and they start deliberations after

four p.m., rather than deliberations they're probably just looking at their watches to see what time it is and trying to get out. So if we start getting later and it starts getting close to 4:00 o'clock, whether that be tomorrow or Friday, I'm probably not going to charge them and have deliberations after four p.m. Okay?

MR. WEST: Okay. Thank you, Judge.

THE COURT: All right. Anything from the State before we recess for the evening?

MR. WEST: Nothing from the State, Your Honor.

THE COURT: All right. Anything from the Defense before we recess for the evening?

MR. DAVIS: No, sir, Your Honor. Thank you.

THE COURT: All right. We'll be in recess. I'll be here early tomorrow morning. The jury's coming back at 9:15. I'll try to take the bench right at 9:30. Okay?

MR. WEST: Thank you, Judge.

THE COURT: All right. Sounds good.

(Adjourned for day.)

(On the record, January 28, 2016, State v. John Darrieux. The following takes place outside the presence of the jury.)

THE COURT: All right. Anything from the State before we bring the jury in?

MR. WEST: Your Honor, it's my understanding from the Defense counsel that he wants to have an in-camera hearing about any potential offers made to the next witness, Tristen Brower.

THE COURT: Okay. Well, I mean, I've never done an in-camera hearing about offers made.

MR. DAVIS: I don't know that I have either, Judge. Here's the situation. This is one of the Co-Defendants, the youngest of the Co-Defendants. I have had a copy of a four-page proffer agreement that was signed on September 1st, 2015, between the prior Assistant Solicitor handling the case, Mr. Brower and his attorney, Leslie Sarji, S-A-R-J-I, who's in the courtroom with us today. I've had that all along, and I knew he was going to be a testifying Co-Defendant. I know he gave a recorded statement to the police. I have had, have had a copy of that. I've reviewed that. I know he came in and met with the Solicitor's Office to do that proffer and gave a statement then, and I have the -- I got an e-mail from Ms. Sigal summarizing the information from that meeting.

Yesterday at some point in a break in the trial, Ms. Sarji was here. Mr. West was here. I was here. We were

talking planning for today, and there was a discussion about no, no offer was ever made from the State or that there was not an offer as part of this proffer from the State. Ms. Sarji kind of reacted, and well, there was an offer discussed. So that becomes a new issue now because obviously for impeachment purposes or bias purposes any hope or actual benefit to Mr. Brower for testifying, of course, is, is fair game to the Defense when he testifies. He was 16 at the time and maybe at the time of the proffer. I'm not sure exactly his birthday, but he's 17 now so that the, the real issue is what was he aware of -- there were discussions. There were -- we have their -- we have the e-mail trail.

THE COURT: I guess my question is, excuse me for cutting you off.

MR. DAVIS: Sure.

THE COURT: Why does all this have to happen in-camera? Why don't you just ask him this on cross examination?

MR. DAVIS: Because I don't know what he's going to say.

THE COURT: Well, and --

MR. DAVIS: And I have a right to know before he takes the stand because the State knows.

THE COURT: The State says there's no offer?

MR. DAVIS: There was an e-mail offer. There was an e-mail offer.

THE COURT: Okay.

MR. DAVIS: And so, and I -- you know, I saw that today for the first time, and again, Judge, this -- for just a moment, this continues this issue of discovery issues which is this is the second one to this witness alone, and so --

THE COURT: Well, let me -- wait -- excuse me. So all along they said there was no offer?

MR. DAVIS: Correct.

THE COURT: And then today you see that there was an offer?

MR. DAVIS: Correct.

THE COURT: All right. Let me hear from you on that.

MR. WEST: I'll respond to that, Your Honor. When I met with Tristen Brower, I directly asked him if any offer had ever been discussed with his attorney, and his answer was no. He had never talked with his attorney about an offer, and that's where I left it at that is that, "Okay. So you're not telling me anything today based on any promises to your attorney."

THE COURT: Okay.

MR. WEST: Okay.

THE COURT: So now you're saying there was an offer?

MR. WEST: I'm saying that there was negotiations between the prior Solicitor, Ms. Sarji, that were never conveyed to the client at the time that I spoke with him as the Solicitor over this case.

THE COURT: Okay. Now, there's a difference between negotiations and an offer that says, "You testify this, we'll drop this charges and enter a negotiated sentence for this many things," but this is a case where it's just negotiations, but there was never any obligation from one side to the other, then that's a different story.

MR. WEST: That's my understanding what has happened.

THE COURT: That there were negotiations, but there was never a firm deal in place.

MR. WEST: That's correct.

THE COURT: All right.

MR. WEST: And if Ms. Sarji could, could elaborate on that she's present in the courtroom as well.

THE COURT: All right. Ms. Sarji.

MS. SARJI: Your Honor, there was initially -- I mean, Price Sigal had conveyed to me what she would be willing to do in the case. I e-mailed her back and said, "He's so young. How about an active Y, suspended and probation." She said she would take another look at the file and consider it, and then that was the last that I've heard from her until August. That was April of 2015, and I, I forwarded it to his mom because he had given me permission to talk to his mom, hers is the e-mail address that I have. He was 16. So his mom was very actively involved in the case. So I did forward the e-mil to his mom, who now tells me she really doesn't understand the whole

process and, you know, what it really meant. At any rate, Price never got back to me until August when she says, "Tristen doesn't ever identify the Co-Defendants by name. Would, you know, would his testimony be X, Y and Z," and then we were in for a proffer last September 1st.

THE COURT: Okay. So there was never -- she made an offer.

MS. SARJI: And I --

THE COURT: You made a counteroffer and that was the end of it?

MS. SARJI: Yes, sir.

THE COURT: Okay.

MR. DAVIS: Judge, two things I'd say, the State is saying they asked Mr. Brower, who's 17, why they didn't ask the prior Assistant Solicitor, Ms. Sigal, who still is employed there, what she -- what discussions she had or not is beyond me, but they didn't. They trusted Mr. Brower, who if you'll remember at the prior hearing, he's a young kid. He couldn't have -- didn't remember a whole lot. My whole issue being this, clearly that offer was, and Ms. Sarji will correct me if I'm wrong, but in April 2015, the State sent an e-mail offering burglary second non-violent, strong arm robbery. He, he was charged with, I believe, the State'll correct me, the State charges my client was except for contributing to the delinquency and a YOA, offered him a YOA. Ms. Sarji's indicated she forwarded that to his mother, of course he's 16

years old. We understand that, forwarded to his mother. I understand his mother and he may not understand the nuances of the law, and I understand the State has represented as an officer of the court when they asked him was there any deal in their meeting he said no. My question and the reason I'm asking this unusual thing for it to be in-camera, let me ask him if he has any recollection of this, any memory of this, if it affects him in any way because it's not about what we think. It's about what he -- on his mind when he's testifying, does he think he's going to get something like that. Let me ask him. If he says yes, fine. If he says no, fine, but to wait until the jury's out here I think would be improper. Well, let's get an answer.

THE COURT: Why, why is it improper? What difference does it make if he says yes? Okay. You just said if he says yes that's fine. If he says no that's fine. What difference does it make?

MR. DAVIS: Because it's a discovery issue, and we have a right to prepare for this on, on all these issues for trial.

THE COURT: So how is your preparation going to change?

MR. DAVIS: Give me a second. That's the whole point. I'm having to think right now if he says, if he says, yes, that's on my mind when testifying then, then, great, that shows me one other level of bias and/or, you know, impeachment evidence. If it's -- if he said, no, he -- if he said no, he

didn't, I would be concerned because Ms. Sarji conveyed it to his mother and I'd be concerned on a credibility --

THE COURT: But there would --

MR. DAVIS: -- issue there on whether --

THE COURT: But as I understand as we stand right now, there is no offer being made in exchange for his testimony.

MR. DAVIS: Correct, but the issue would be does he -- because I'll always ask, do you hope, if, if we had just the proffer I'm going, and of course, dealt with these in the Ninth Circuit for years now, the discoverables run from the federal system, I'm familiar with them. In there there, there isn't any offer other than to not -- it's a use -- not use their words, but I guess, and that's the only benefit of that proffer, but I'll ask him. So if, if that's all we had, "They haven't offered anything have they?" "No." "But you hope they're going to at the end of this?" I would go that line of attack of course. If he already, "Well, they haven't promised, but you know, they mentioned this one thing way back and that" -- then that's some details that I think the jury should be entitled to hear that he remembers, you know, "There's this talk about me going to the Youthful thing or whatever," I think that's important for the jury to hear if he remembers.

THE COURT: All right. Well, let's do this. We're going to need -- is he going to be your next witness?

MR. WEST: He is.

THE COURT: All right.

MR. WEST: He's, he's just outside the courtroom.

THE COURT: All right. We're going to have to bring him in because I'm going to have to advise him of his, his right to assert his Fifth Amendment Rights to remain silent and stuff like that. At that point in time, what is the question you're going to ask?

MR. DAVIS: To the effect of --

THE COURT: No. Give me the question you want asked.

MR. DAVIS: Well, I would, I would ask, I would ask if he was aware at any time that the State had offered him -- there was an offer from the State for burglary second non-violent and strong arm robbery with a YOA sentence, which --

THE COURT: All right. Here. Let's do this. Sit down. Write out your question.

MR. DAVIS: Yes, sir.

MR. WEST: Your Honor, if I may, I think there should be some concern -- I think the general question just needs to be, "Are you aware of any offers?" If he is tainted with what potential offers could be, that might confuse his testimony in front of the jury.

THE COURT: Well, let me see what he wants to ask him first and then I'll make a decision.

MR. WEST: Okay. Thank you, Judge.

MR. DAVIS: All right, Judge. Thank you.

THE COURT: Just, just tear it out and let me see it.

MR. DAVIS: Okay. If I may approach?

THE COURT: All right. You want to ask, "Did your mom tell you about an offer from the Solicitor's Office asking you to plead guilty to burglary second, a lower charge, and strong arm robbery, a lower charge, in return for your -- in return for a Youthful Offender Act sentence?" Okay. Now, is this -- are you saying that these are offers from the State in exchange for his testimony or these were offers for him to plead guilty to these charges but were not conditioned upon his testimony?

MR. DAVIS: That's the whole issue, Judge, because a prior Solicitor -- my understanding the prior Solicitor, I've seen the e-mail, prior Solicitor sent an e-mail offering that. Ms. Sarji --

THE COURT: In exchange for his testimony against your client at trial?

MR. DAVIS: There was no, there was no discussion of that in the e-mail.

THE COURT: Okay. Well, then, no, there's no offer. This -- the sole question then is has anything been offered in exchange for his testimony. Certainly, I'm sure the Solicitor said, you know, "We'll let you plead guilty to this and this and this and we'll recommend this as a sentence. We'll lower

these charges if you plead guilty," without any reference to a testimony at trial against your client. Those are two separate issues. The question is -- as I understand there was an offer made to your client that if he pled guilty to this and this they would recommend a sentence of something. That's, that's not unusual and that happens in virtually every criminal case. So the question is was there an offer made to your client in exchange for his testimony here today against your client?

MR. DAVIS: And, and, and that's the same question I have, Judge, and all I can tell you is until yesterday, this morning, my understanding there was a proffer only period.

THE COURT: And that's what I understand, there's only a proffer only.

MR. DAVIS: But there's clearly been discussions, and let me add one more factor, after the exchange of e-mails about, simply about pleading, you're right, Judge, simply about pleading after the -- that exchange of e-mails, when my client had a -- an original offer, the major focus of -- for me on that original offer was this witness, Mr. Brower, does not identify my client. Nobody identifies my client, and so we did not accept a first offer from the State to my client. There's a follow-up e-mail following that from, again, the original Solicitor to Ms. Sarji. All right. "One of the Co-Defendants isn't interested in pleading because your guy

doesn't identify him, bring him on in." Okay. That was in August, which I saw for the first time today, and then in September is when the proffer's done, and that was done, again, by the prior Solicitor. The prior Solicitor at that date showed these two photos, which we didn't know about until Tuesday.

THE COURT: Okay.

MR. DAVIS: This Solicitor I'm not sure knows all the discussions.

THE COURT: Well, what I'm --

MR. DAVIS: And I appreciate Ms. Sarji being here and that's why we're getting into this stuff.

THE COURT: Okay. What we're going to do, I'm going to bring him in. I'm going to give him his, his right to exert his Fifth Amendment or assert his Fifth Amendment Right against self incrimination. Then you can ask this, you can just ask him, "Are you aware of any offers from the State in exchange for your testimony today?" If he says no, that's it, and if he says yes, then you can say, "What was it," because the questions that you want to ask him, as I understand it, was an offer if he pled guilty and was not an offer in exchange of testimony. Is that correct?

MR. WEST: Your Honor, Ms., Ms. Sarji has shown me the e-mail and I can tell you that it says, "I want to touch base with you and let you know that the offer for him to plead

guilty to burg second non-violent, strong arm robbery as a lesser included of armed robbery, recommendation of the State would be for an active Youthful Offender Act. The remainder of the charges will be dismissed per plea," and it does go into, "This plea is conditioned upon the cooperation with the State for the prosecution of Joseph -- Jason", it says, "Jason Arsenault, John Darrieux, Natalia Chisolm, to include, but not limited to, testifying for the State in the trial for each Co-Defendant for the burglary second non-violent, burg first, armed robbery, kidnapping, possession of a weapon during the commission of a violent crime, do not have an expiration date for this plea at this time as this plea would not be ripe until we've resolved the Co-Defendants' cases," but I don't think that changes if this was never conveyed to the client.

THE COURT: Yeah.

MR. WEST: In, in my talkings with Mr. Brower, I directly ask him, "Have you -- are you aware of anything that the State has offered you?" His answer was no.

THE COURT: Okay. Well, when he comes in I'm going to allow you to ask him, "Are you aware of any offers from the State in exchange for your testimony today," and if he says no, that's it. If he says yes, then you can say what is the offer. Okay. Or do you want the Court to ask him?

MR. DAVIS: Two things, Judge. First of all, I understand your ruling. I would take exception, if you'll

note it for the record because of this very issue that e-mail that was just read, which Ms. Sarji showed me on her phone some e-mails this morning for the first time. I don't recall seeing that language conditioned or I would have told you before now, I've never seen some of those conditions. He was 16 years old. Relying on him to remember the nuances of the law at that -- that concerns me.

THE COURT: But I mean, the fact of the matter is if he doesn't -- if he does not -- is not aware of an offer, I mean, I don't understand what you're going to do. I mean, are you going to try to attack his credibility by saying, "There was an offer and now you're lying on the stand by saying there's not," because if he genuinely does not know about an offer then that's misleading the jury by using it to attack his credibility.

MR. DAVIS: Judge --

THE COURT: Now, if you want to use it to show, attack his credibility by saying he knows he's going to get preferential treatment, then that's something else, and I think it's covered by when I allow you to ask him, "Are you aware of any offers that have been made in exchange for your testimony?"

MR. DAVIS: I understand. First of all, Judge, the reason I am asking for this in-camera is because I do not want to misrepresent evidence in front of the jury. That's exactly

why I'm asking for this. So I would not -- I want to get it cleared up. I, I just want to be able to properly attack his credibility by what the rules allow, and if there were discussions and negotiations that he believes and, and, and I understand and ultimately let me get to it, Judge, I would ask that you ask it, that, that there -- if there were discussions that he believes offers hope to him for this testimony, then, yes, that's relevant under the rules.

THE COURT: Okay. All right. Well, we'll bring him in and I'll just ask him, "Are you aware of any offers from the State in exchange for your testimony today?" Okay?

MR. WEST: Thank you, Judge. The State calls Tristen Brower.

(Clerk and Court confer.)

THE COURT: All right, sir. He can -- you can just stand right there. Is that sufficient for you?

REPORTER: He -- he's so soft spoken I need him at a mic somewhere.

THE COURT: All right. Come up here to this microphone at this podium, please, sir.

REPORTER: Right there at that podium's fine. Thank you.

THE COURT: And I'll need you to speak up loud and clearly into the microphone. Okay?

MR. BROWER: All right.

Whereupon, Tristen Brower is sworn by the clerk.

THE COURT: All right. You're going to have to speak louder than that. Okay?

MR. BROWER: Yes, sir.

THE COURT: All right. Sir, what's your name?

MR. BROWER: Tristen Brower.

THE COURT: All right. Mr. Brower, as I understand, you're going to be called as a witness in the trial of this case; is that correct?

MR. BROWER: Yes, sir. Yes, sir.

THE COURT: All right. I now advise you that as a witness you have the right to invoke the protections given to you by the Fifth Amendment to the United States Constitution. This amendment provides in part that no person shall be compelled in any criminal case to be a witness against himself. This provision means that you cannot be required to testify against yourself in this case. This is a personal right which can only be claimed by you. You have the right to refuse to answer any question asked of you which you think gives you reasonable cause to believe that the answer to the question, if given, might tend to incriminate you. If you wish to exercise this right when a question is asked you will state to the Court that you refuse to answer the question because the answer may tend to incriminate you. Do you understand that?

MR. BROWER: Yes, sir.

THE COURT: All right. Now, I also advise you that you are not the final decision-maker on this issue of whether to answer a question that you claim will violate your protections afforded to you by the Fifth Amendment to the United States Constitution. It's for the Court to determine whether or not you have to answer the question or not, but if you choose not to answer a question you need to let me know, "I refuse to answer that question because I feel like it violates my constitutional rights." Do you understand what I've explained to you?

MR. BROWER: Yes, sir.

THE COURT: All right. Do you have any questions about what I've explained to you?

MR. BROWER: I don't.

THE COURT: Okay. Do you have any questions that -- I understand Ms. Sarji is your attorney?

MR. BROWER: Yes, sir.

THE COURT: Is there anything you want to ask her at this time in private?

MR. BROWER: No, sir.

THE COURT: All right. Now, are you aware of any offers from the State?

MR. BROWER: I am not.

THE COURT: Okay. Has any offers been made by the State in exchange of your testimony today?

MR. BROWER: Not that I know of.

THE COURT: Okay. All right. Thank you very much. I'm going to ask that you step back outside because I -- well, first, is there anything further that the State wants on the record?

MR. WEST: Nothing from the State, Your Honor.

THE COURT: Anything further the Defense wants on the record?

MR. DAVIS: Not against your ruling, Your Honor.

THE COURT: Okay. All right. We're -- they're going to call you in whenever they get ready for you, but I had to go over that. Now, if at any time you have any questions and need to talk to your lawyer you let me know. Okay?

MR. BROWER: Okay.

THE COURT: All right. Thank you very much.

(Mr. Brower exits courtroom.)

THE COURT: All right. Anything further from the State before we bring in the jury?

MR. WEST: The State's prepared to proceed, Your Honor.

THE COURT: Anything further from the Defense?

MR. DAVIS: Judge, I'll bring this now while we're still in-camera. My understanding the State's going to call Mr. Brower next. That'll be -- that'll take some time, probably a little longer than any of the three that testified yesterday, not substantially, but probably a little longer. They have

two neighbors to the 4:00 o'clock in the afternoon incident. I don't think those will take very long at all, and then we've got all the chain witnesses and all that, and I appreciate Your Honor had mentioned to the jury and to us yesterday about potentially going later, you know, if it's going to run into the weekend or whatever, Judge, I, I'd be willing under the appropriate wording, to stipulate to the admission of most of the -- most of the State's exhibits from Number 37 through 98 first of all, all come from a Co-Defendant's residence. Search warrant was executed, all that stuff is found there, and then even some more from 100 on up to 123, anything found at the Hallmark Drive address I'd stipulate to, Judge, and that would certainly speed along the process. I had mentioned to Mr. West yesterday, I have not gotten a response back, but I just want to make that offer on the record.

THE COURT: All right. Mr. West?

MR. WEST: Your Honor, if the stipulation simply is that the evidence is admissible, we would be in agreement. We still want to go into the investigation of the case. So it's not going to prevent us from calling the officers that were involved, but certainly if the Defense is willing to forego the procedural requirements of admission of evidence we'd be willing to agree to that.

THE COURT: All right.

MR. WEST: I just need to know which specifically. I

heard 37 through 98 is pre-admitted.

MR. DAVIS: Well, Judge, we're, we're discussing the stipulation now. I've not said --

THE COURT: All right. So whenever we take a break I want you to get with Mr. West, you all discuss what you can stipulate to and we'll address it at that time.

MR. WEST: All right. Thank you.

THE COURT: Okay. All right. Anything further from the Defense before we bring in the jury?

MR. DAVIS: No, sir. Thank you, Your Honor.

THE COURT: All right. Let's go ahead and bring in the jury.

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

THE COURT: All right. Ladies and gentlemen, welcome back. We're ready to go forward with the trial of this case. I hope everybody had a restful evening. I haven't gone over this with you yet, most courtrooms don't allow cell phones or pagers. If you have any cell phones or pagers or other communication devices with you make sure they're turned off so that you're not interrupted.

We're ready to proceed with the State's case. Mr. West, the State can call your next witness.

MR. WEST: Thank you, Your Honor. May it please the Court? The State calls Tristen Brower.

Whereupon, Tristen Brower is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Okay. If you'd have a seat, make sure you speak into the microphone, state your full name and spell your last name.

MR. BROWER: Tristen Alexander Brower, B-R-O-W-E-R.

DIRECT EXAMINATION

BY MR. WEST:

Q Good morning, Tristen. Could you tell the jury how old you are?

A I am 17 years old.

Q And where do you live?

A 24 Craig Court.

Q In what area of Berkeley County is that?

A I don't live in Berkeley County. I live in Summerville.

Q In Summerville?

A Yes, sir.

Q Okay. Do you remember the incident that brings us here today?

A I do.

Q How old were you when that happened?

A I was 16.

Q Do you remember what you were doing the day before the incident?

A I do.

Q Okay. How are you related to Natalia Chisolm?
A The guy who raised me, I call dad and it's his sister.
Q Okay. Are you close with Natalia?
A I was.
Q Was. Does Natalia have any kids?
A She has four.
Q Okay. Are they about near your age?
A Thirteen and below.
Q Okay. Did you play with them when you were growing up?
A Yes, sir.
Q Okay. Did you go to Natalie's -- Natalia's house frequently?
A Yes, sir.
Q Okay. Around this incident were you staying at Natalia's house?
A Over the weekend I was.
Q Okay. Do you remember what day or time you, you got to Natalia's house?
A I had gotten there Friday, and I stayed there over the weekend.
Q Okay. Was anybody else staying there with you?
A What do you mean?
Q Was anybody else staying in the apartment --
A Oh, yes, sir.
Q -- that, that weekend? Could you tell the jury who was

staying at the apartment?
A John Darrieux, Joseph Arsenault and Natalia Chisolm, her four kids and Natalia and I.
Q Okay.
A That's it.
Q You've met this Defendant before?
A I have.
Q Okay. Tell the jury how you met him.
A I met him through Natalia.
Q And was that weekend the first time you had ever met him?
A Yes, sir.
Q Okay. Are you aware if he knew Natalia before then?
MR. DAVIS: Objection, Your Honor, calls for speculation.
THE COURT: Overruled. I'll allow it.
A Excuse me?
Q How did you all all come together?
A I -- she picked him up.
Q Okay.
A I guess.
Q Were the, the -- you said Joseph Arsenalt and John Darrieux. Were they friends with Natalia?
A I don't know that.
Q Okay. But they stayed at her house?
A Yes, sir.
Q Okay. Now, the person you called John Darrieux, the

person that was staying at the apartment with you, is he in the courtroom today?
A Yes, sir.
Q Okay. Could you tell the jury what he's wearing?
A He is wearing a gray shirt.
MR. WEST: Let the record reflect that the witness has identified the Defendant.
BY MR. WEST:
Q Now --
MR. DAVIS: Your Honor, no new objections, but I renew my old objections.
THE COURT: All right. Overruled. Go ahead.
Q Did you call him John Darrieux or was he called by something else?
A He was called Chopper.
Q Chopper?
A Yes, sir.
Q Okay. That weekend do you remember when you first learned that there was to be an incident?
A What are you asking?
Q Do you remember driving to a house in Moncks Corner on October 21st, 2014?
A At the last moment. Yes. I, I was on my way home.
Q Okay. All right. Who'd you get in the car with?
A Natalia.

Q And who else?
A And John and Joe.
Q Okay. What kind of car was that?
A A Durango.
Q Do you know what color it was?
A Gray.
Q Who was driving?
A Natalia.
Q How were people sitting in the car?
A Like the back seat.
Q Okay. Was everybody in the back seat besides Natalia?
A Yes.
Q Why?
A Because there was no passenger seat.
Q No passenger seat to the Durango?
A Yes, sir.
Q And this Defendant was in the car with you?
THE COURT: Excuse me. You've got to give a verbal response. The court reporter cannot pick up if you shake your head or nod your head. So when he asks a question you need to give a verbal response. Okay?
A Yes, sir.
THE COURT: All right.
Q Thank you, Tristen. When you were riding in the car, did you know where you were going?

A I did not.
Q Did you learn eventually where you were going?
A At the last moment I did.
Q Okay. Did this Defendant say anything in particular in the car that would lead you to know where you were going?
A Not him in particular.
Q Okay. What sort of discussions were had in the car?
A Joseph was -- he said that people that he was going to he, he had recently stayed with them, and that they, they kicked him out over some stuff.
Q Okay. So it's your understanding that Joseph knew the people where you were going?
A Yes, sir.
Q Okay. And anything -- was anything said about what was about to go down?
A I can't remember.
Q Okay. Now, when you arrived near Bryan Drive, the residence of the incident --
A Yes, sir.
Q -- tell the jury about how you approached or how the driver approached the house, how the car approached the house.
A We, we passed the house once, and we pulled into a, a little grass field about like 20 feet from the house and does that answer your question?
Q Sure. Okay. When you pulled into the field what

happened next?
A They -- Natalia was talking to them about like how -- what -- how things were going to go and that's all I really remember.
Q When you say Natalia was talking about how things were going to go, what things were going?
A Like who was doing what and that's pretty much it.
Q At this time did you understand that a robbery was about to happen?
MR. DAVIS: Objection, Your Honor, leading.
THE COURT: Overruled. Go ahead.
A Can you repeat that?
Q Did you understand the reason as to why you were at the residence at that point?
A Not really.
Q When did you realize that a robbery was about to happen?
A When they were getting out the -- well, when Natalia handed me a gun.
Q Okay.
A That's when I understood.
Q Could you tell the jury what you were wearing?
A I don't remember.
Q You don't remember. Do you remember what Natalia was wearing?
A I don't.

Q Do you remember what the Defendant was wearing?
A I don't.
Q Okay. Now, after the car was parked, everyone got out of the car. Okay.
A Yes.
Q Right? Was anybody wearing anything over their face or head?
A I'm, I'm trying to remember. I'm sorry. Like masks-wise?
Q Yes.
A Yes.
Q Okay. Could you describe those masks?
A I don't remember.
Q Okay. Do you remember who was wearing masks?
A Natalia was wearing one. Joe or Joseph was wearing one. John was not, and I did.
Q Okay. Now, you said Natalia gave you a gun. Did anybody else have a gun?
A Yes.
Q As you were walking up to the house do you remember the order of people as they walked towards the house?
A It was, it was Natalia and then like I was kind of distant from her, and Chopper went like he came in a little after and then, then Joe.
Q Okay. When you approached the door to that residence --

A Yes, sir.
Q -- on Bryan Drive was the door shut?
A Yes.
Q Was it locked?
A Yes.
Q How was entry into the house made?
A Chopper, John Darrieux shouldered it in.
Q Okay. He knocked in the door?
A Yes.
Q When John went into the house, when did you go into the house?
A I went in third.
Q Third?
A Yes, sir.
Q Who was, who was second?
A Natalia.
Q Okay. Immediately upon entry what did you notice?
A Like furniture.
Q Furniture.
A Uh-huh.
Q Do you remember seeing anybody inside the house?
A Not at first.
Q Not at first. Do you remember seeing anybody in the house at all?
A Yes.

Q Do you -- can you describe for the jury those people that you saw?
A One male and -- two males and one female is what I remember.
Q Okay. Do you remember approximate ages?
A One male was kind of old and the other one was middle-aged.
Q And how about the female?
A She's -- she was old. I don't know how to explain that.
Q Do you remember where the people in the house were when you first saw them?
A When I first saw them the middle-aged man was to the right and down the hallway in his room, and the old man was in his room to the left, and I don't know where the -- or the old lady was.
Q Okay. Did you ever go into the old man's room?
A I did once.
Q Okay. Did you ever go into the younger man's room?
A I did once.
Q Describe the younger man for the jury. Was he clothed, unclothed?
A He didn't have his shirt on. He just had boxers on.
Q Okay. Did it appear as if he was sleeping?
A Yes, sir.
Q How was he brought into the living room?

A I don't remember.
Q Did he come on his own free will?
A No.
Q Was he forced?
A I think so.
Q Who forced him?
A If it had been anybody it was John Darrieux.
MR. DAVIS: Objection, Your Honor, move to strike, speculation.
THE COURT: Overruled. Go ahead.
Q Was John alone when he went into that room of the younger man?
A Yes.
Q Okay. When he was brought into the hallway was he alone?
A Who?
Q Was it just John and the younger man that was sleeping?
A Yes.
Q And they walked them into the living room?
A On the couch.
Q Did the younger man ever sit down on the couch?
A He did.
Q Okay. How about the female in the house?
A He did or she did.
Q Tell the jury what you remember about the female sitting on the couch.

A She --
Q How was she acting?
A She was crying.
Q She was crying. Do you know what hysterically means?
A Yes.
Q Would you categorize it as crying hysterically?
A Yes, sir.
Q How about the younger male, what was he doing?
A He was just sitting down.
Q Okay. Now, where did you stay during the incident?
A In the house.
Q Where in the house?
A I was walking back and forth.
Q Okay. Did you have a gun the whole time?
A Yes.
Q Okay. When you were in the house with John, Natalia and Joseph, what were they doing inside the house?
A I don't really remember. They, they were doing what they were doing.
Q Were they taking things out of the house?
A Yes, sir.
MR. DAVIS: Objection, Your Honor, leading again.
THE COURT: Overruled. Go ahead.
Q What kind of stuff were they taking out of the house?
A Electronics, tools and jewelry.

Q Okay. Did you ever take anything out of the house?
A I did.
Q When stuff was being -- what, what did you take?
A I took like a computer screen and that's all I really remember.
Q Okay. Now, when stuff was being taken out of the house was stuff being taken directly to the car, was it piled up in the house? How, how was it being taken out?
A It was brought straight to the car.
Q Okay. Was anything ever piled in the hallways?
A Yes.
Q What was piled in the hallways?
A Computer monitor and keyboard.
MR. WEST: Would you publish State's Number 15?
BY MR. WEST:
Q Is this how it was piled in the hallway?
A Yes, sir.
Q Thank you. How long would you say you were in the house?
A For a very long time.
Q Who would you say was in charge?
A Natalia.
Q When you -- I'm going to back up a little bit. Before you went into the house for the first time --
A Yes, sir.
Q -- do you remember this Defendant saying anything about

what he'd do inside the house?
A He said if there was kids in the house that fingers would be broken.
Q If there were kids in the house that fingers would be broken?
A Yes, sir.
Q How would you describe how the Defendant was acting while inside?
A Just very like, just very up I would say.
Q What do you mean by up?
A Like energetic.
Q Okay. Do you remember the types of guns that were --
A I don't.
Q -- possessed?
A I don't.
Q Do you know the difference between a revolver and a semiautomatic?
A Yes.
Q Okay. Were they revolvers or semiautomatic?
A They semis, semiautomatic.
Q Okay. What color of gun did you have?
A It was gray.
Q A grayish silver?
A Yes.
Q Did any of the people that were sleeping in the house

ever say anything directly to you?
A No, sir.
Q Did Natalia's mask ever come off?
A Yes, sir.
Q How would you describe the way Natalia talks? Does she have an accent?
A Slightly.
Q Okay. Where is she from?
A Puerto Rico.
Q How would you describe her skin color?
A Tannish.
Q What, what about her hair color?
A Light brown.
Q Would you say that the people in the house were able to leave if they wanted to?
A I don't think so.
THE COURT: Excuse me for one second.
(Whereupon, a bench conference is held in the presence but out of the hearing of the jury.)
THE COURT: All right. You're going to need to speak up. Some of the jurors are having trouble understanding you. You're going to need to speak up louder and you're going to need to enunciate a little bit more. Okay? Because they're having trouble understanding you. As I understand one of the jurors did not understand your answer when he asked where was

Natalia from.
A I apologize.
THE COURT: Okay. And answer that question again. Where was Natalia from?
A Puerto Rico.
THE COURT: Okay. All right. Go ahead.
Q Were the people in the house ever directed to go anywhere inside the house?
A Um.
Q Did the, did the woman in the house and the young man did they always stay on the couch or did they go anywhere else?
A I seen them on the couch, but I heard that they were put into a bathroom.
MR. DAVIS: Objection, Your Honor.
THE COURT: Sustained.
Q When you left how did you get into the car?
A I opened up the door.
Q How were things stacked inside of the car?
A Just thrown.
Q Could you say that one more time? I'm sorry.
A Thrown, like just thrown all in the back seat.
Q Okay. Would you say the car was pretty full?
A Yes, sir.
MR. WEST: I'm showing the witness what has been marked as State's Exhibit Number 116, has previously been shown to

Defense counsel.
BY MR. WEST:
Q Would you look in there and tell me if you recognize any of those items. You can pull them out.
A I do. I do.
Q Do you recognize this item?
A I do.
Q And what is that?
A A Scream mask.
Q And who was wearing that?
A Natalia.
Q Do you recognize this item?
A I do.
Q And what is that?
A I don't know his name.
Q How would you categorize that?
A Jason mask.
Q A Jason mask?
A Yeah.
Q And who, if anybody, was wearing that?
A Joe, Joseph.
Q After you left the house and everybody started getting into the car, did anything ever fall out of the car?
A Pulling off tools I would --
Q Tools fell out of the car?

A Yes, sir.
Q Did they fall out of the door, a window, back hatch?
A They fell out the door.
Q Okay. How did everybody sit with all of this stuff in the car?
A We just kind of sat on top of it.
Q Okay. Where did you go after you left?
A We, we went back to Natalia's house.
Q Where is that?
A In Goose Creek.
Q Do you remember the name of that apartment complex?
A Hallmark.
Q Okay. When you got back to that apartment what did you do?
A I, I got out the car and we started bringing some of the stuff out.
Q Okay. Was everything taken inside Natalia's apartment?
A Yes, sir.
Q How long did that take?
A Like ten minutes, I would say.
Q Okay. Not, not an exact time, but --
A Yeah.
Q -- it a took a while to unload?
A Yes, sir.
Q Do you know where things were put inside of the

apartment?
A We put everything in the living room.
Q Okay. Do you know if anything was ever moved out of the living room?
A No, sir.
Q You don't know or it wasn’t moved?
A I don't know.
Q Okay. What’d you do when you got back to the house other than unload the stuff?
A I went back to sleep.
Q Okay. Now, what time did you wake up after you went to sleep?
A Around like two, two in the afternoon.
Q Was the Defendant still there?
A Yes, sir.
Q Okay. Did you ever leave the house again with this Defendant that day?
A Yes, sir.
Q Okay. Where did you go?
A I don't know where we went.
Q Okay. What did you do when you went there?
A Pulled up to a trailer park.
Q Okay. What did you get -- do when you went inside the trailer park?
A We drove to this -- a house that Natalia said she knew.

Q Okay. And what happened at that house?
A I sat in the car.
Q Okay.
A So I really don't know what happened.
Q What did you see the Defendant do?
A Walked to the back of the trailer.
Q Okay. Did he ever go inside the trailer?
A Yes.
Q How did he get inside of the trailer?
A I don't know for sure, but I would assume the back.
Q Okay. When he went inside the trailer did he ever come back out?
A Yes.
Q Who did he go inside the trailer with?
A Natalia and that's, that's all I remember.
Q Was Joe with you then, too?
A Yes.
Q Okay. Was anything taken out of that trailer?
A I believe two mattresses.
Q Okay. What did they do with the mattresses?
A They put them on top of the Durango.
Q Okay. When you -- when you all were at that house, that trailer, did you see anybody else approach Natalia?
A I did.
Q You did?

A Yes, sir.
Q Do you know who that was?
A I don't.
Q Did Natalia know who that was?
A I think she --
MR. DAVIS: Objection, Your Honor, calls for speculation.
THE COURT: Overruled. Go ahead.
A I think she did.
Q Okay. Did she talk to that individual?
A Yes. She had said that she knew her from --
MR. DAVIS: Objection, Your Honor, hearsay.
THE COURT: Sustained.
A -- the past. She had recently knew them.
MR. DAVIS: Objection, Your Honor.
THE COURT: Sustained. Don't -- strike the last answer.
Q After -- did the Defendant ever talk to that lady that approached? Are you aware?
A No, sir.
Q Okay. After the mattresses were put on the top of the house or not the house, excuse me, the Durango, what happened next?
A I went back to sleep.
Q You went back to sleep?
A Yes, sir.
Q Did you leave that location?

A Yes, sir.
Q Okay. Where did you go after that?
A I don't know, but when I woke up I was in a cul-de-sac.
Q Okay. What was happening at that cul-de-sac?
A Natalia and John were picking up a TV.
Q Okay. What, what kind of TV was that?
A It was -- I don't know what it was called.
Q Was it big, small?
A It was big.
Q Okay. And what were they doing with that TV?
A Trying to fit it into the back of the Durango.
Q Okay. Did you ever encounter law enforcement?
A Yes.
Q Okay. Would it have been in that cul-de-sac?
A Yes.
Q Tell the jury about that encounter.
A After the TV was put into the Durango a, a, a car pulled behind us, and the lady approached us asking us what we were doing and then one after another cop, the cops came.
Q Was the first lady that approached you a police officer?
A I don’t know.
Q Okay. Did she have a gun and a badge?
A I didn’t see that.
Q Okay. Now, other police officers arrived?
A Yes, sir.

Q What happened when the other police officers arrived?
A I, I got out and they just started questioning us what we were doing.
Q Okay. Was anyone arrested at that point?
A Yes.
Q Okay. What happened then?
A I don't remember.
Q Were you put into the -- all the same car, separate cars?
A Separate cars.
Q Okay. Was -- are you aware if the Durango was searched by the police there?
A Yes.
Q Okay. The people that you were arrested with at the cul-de-sac --
A Yes, sir.
Q -- that same day, are those the same people that went into the house in Bryan Drive?
A Yes, sir.
Q Is there any doubt in your mind that this Defendant helped go into the house on Bryan Drive?
A There is none.
Q How about the second house?
A No doubt.
Q Thank you.
MR. WEST: No further questions at this time.

THE COURT: All right. Cross examination.

CROSS EXAMINATION

BY MR. DAVIS:

Q Right now you have a pending burglary in the first degree pending against you; correct?

A Yes, sir.

Q Okay. Right now you have a burglary in the second degree pending against you; correct?

A Yes, sir.

Q Okay. Right now you have three armed robberies pending against you; correct?

A Yes, sir.

Q Right now you have three kidnappings pending against you; right?

A Yes, sir.

Q Okay. This office is prosecuting you; right?

A Yes, sir.

Q The Solicitor's Office. Okay. Now, and you have an attorney; right?

A I do.

Q Ms. Sarji who's here in the courtroom with you?

A Yes, sir.

Q Okay. You're aware on a burglary in the first degree if convicted it carries a mandatory minimum of 15 years up to life possibly? You've been told that?

A Yes, sir. Yes, sir.
Q And if convicted and if sentenced, you have to serve 85 percent of whatever sentence you get. You've been told that?
A I have not.
Q Okay. As to each armed robbery you're aware that it carries a mandatory minimum sentence of 10 years up to 30 years; right?
A Yes.
Q And any sentence you get on that you have to serve at least 85 percent of it. Have you been told that?
A No.
Q Okay. And then on each of the three kidnappings there's no minimum sentence, but it carries a possible punishment up to 30 years? You been told that?
A No, sir.
Q Okay. Have you been told if you're sentenced on a kidnapping how much percentage you have to serve?
A No, sir.
Q Okay. Natalia is your aunt by -- not by blood relationship; right?
A Yes, sir.
Q But you've grown up thinking of her that way; right?
A Yes, sir.
Q Okay. And that's whose house you were staying with --
A Yes, sir.

Q -- over the weekend; right?
A Yes, sir. Yes, sir.
Q You'd rather not be here today; right?
A Excuse me?
Q You'd rather not be here today?
A Yes, sir.
Q The State's the ones that gave you a subpoena and told you and your attorney to be here today; right?
A Yes, sir.
Q Prior to coming here today you've met with the Solicitor's Office before; right?
A Yes, sir.
Q Talked with them to prepare you for your testimony; right?
A Yes, sir.
Q How many times did you meet with them preparing for your testimony?
A Once.
Q Once? Now, you met with the -- someone from the Solicitor's Office another time to enter into an agreement; right?
A No, sir.
Q So during the meeting on the agreement is when you talked about your testimony?
A What, what agreement?

Q Okay.
MR. DAVIS: May I approach, Your Honor?
THE COURT: Yes.
MR. DAVIS: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. DAVIS:
Q Can I call you Tristen?
A You can.
Q Thank you. Tristen, I'm going to show you what's been marked as Defense Exhibit Number Three for identification purposes only. It's a few pages. I'm going to wait. I want you to have time to look at it. When you have enough time to look at it let me know. Okay?
A Okay.
THE COURT: Are you through looking at it?
A I did not. No. I didn't understand what he said. I'm sorry.
MR. DAVIS: Thank you, Your Honor.
A I'm done.
Q Okay. Do you remember entering in that -- into that agreement with your attorney and the Solicitor's Office?
A I don't remember.
MR. DAVIS: May I approach the witness again, Your Honor?
THE COURT: All right.
BY MR. DAVIS:

Q On the fourth page of Defense Exhibit Number Three is that your signature?
A It is.
Q Okay. Well, by testifying today you're hoping that the State's not going to go after you on all those charges; aren't you?
A Yes, sir.
Q You're hoping you don't have to do anywhere near life in prison; right?
A Yes, sir.
Q Or 15 years?
A Yes, sir.
Q Or 10 years?
A Yes, sir.
Q You hope they get rid of these charges?
A It would be nice.
Q Now, when you -- after you were first arrested and taken into custody, the police took you to the police station; right?
A Yes, sir.
Q Put you in cuffs; right?
A Yes, sir.
Q And they talked to you a little bit at the police station at first and kind of chatted with you about whether you knew anything or not, right?

A Yes, sir.
Q Then you gave them some information then; right?
A I did.
Q And then based on that they take you to this little room with three chairs in it; right?
A Yes, sir.
Q And do you remember two officers coming in that room with you?
A I remember one.
Q Okay. You remember one.
A Yes, sir.
Q Okay. Okay. You don’t, you don’t remember two plainclothes, meaning they weren’t wearing a uniform, white male officers being in the room with you?
A I just remembered one.
Q Okay.
A Cop with me.
Q Is that officer in the courtroom here today?
A I don’t remember. I don’t know what he looks like.
Q Okay. And in that little room you were sitting in a chair kind of in the corner; right?
A Yes, sir.
Q You had on a dark shirt, pants, you had flip flops on; right?
A I don't remember.

Q Baseball cap?
A I don't remember.
Q They asked you to take the cap off so they could see you on the camera that was recording it; right?
A I don't remember.
Q You don't recall during that interview them telling you, “Hey, we’re recording this on audio and video?”
A I do.
Q You do remember that?
A I do.
Q Okay. Do you remember the -- one of the officers going through your rights with you, your right to remain silent, right to have an attorney? Do you remember one of the officers going through that with you?
A Yes, sir.
Q Okay. And got, got up beside you, had an -- had a notepad and had you initial on, on your leg that you understood those; right?
A Yes, sir.
Q You were still handcuffed though; right?
A Excuse me?
Q You were still handcuffed when you signed?
A I don't remember.
Q You don’t remember, but you do remember signing that sheet?

A I do.
Q Okay. And then they asked -- the officer asked if you wanted to talk to them about what happened; right?
A Yes.
Q You hesitated for a second, and then he went over those rights again with you. Do you remember that?
A Yes. Yes.
Q Okay. So after he asked you again you decided you would talk to him; is that right?
A Yes.
Q Now, when you talked to that officer, didn't you tell that officer that Natalia needed her money back because she had got robbed of $500 recently?
A Yes.
Q And then when they started talking about when the car parked in the field beside the house, when they started talking about that didn't you tell the police that you stayed in the car for a little while?
A I don't remember.
Q Well, when they started getting real specific about what happened at that, and we're talking Bryan Drive, okay, the middle of the night, all right, when the police started asking about that, some details about that, didn't you say, "I don't really want to talk about that." Didn't you tell the officer that?

A I don't remember.
Q So do you remember the officer pushing a little bit more and then you did start talking?
A I do remember that.
Q Do you recall that? I'm sorry?
A I do remember that.
Q Do you remember telling that officer that one of the guys was involved with you had his shirt off?
A I don't remember.
Q Do you remember first telling the officer that Natalia was not wearing a mask and then later saying that she was? Do you remember that?
A I don't.
Q Do you remember telling that officer that you were in that house about 10 or 15 minutes?
A I don't.
Q Do you remember talking to that officer for over a half hour?
A Yes.
Q You don't remember a whole lot about it, though?
A I don't.
Q Other than Natalia you didn't give that officer names of anybody else that was involved; did you?
A I don't remember.
Q That would have been the -- in the evening-time after the

arrest; right?
A Yes.
Q Same day?
A Yes.
Q Right after all this stuff happened?
A Yes.
Q Now, Defense Exhibit Number Three, you don't remember it, but that is your signature on it; right?
A Yes, sir.
Q Do you remember talking with a female Assistant Solicitor about this case, coming down to their office and talking to her?
A Can you explain your question?
Q Do you remember coming down and talking to a female Assistant Solicitor with your attorney, Ms. Sarji?
A When?
Q I'm sorry?
A When?
Q September 1st, 2015.
A I don't remember.
Q Do you remember at that meeting being shown a couple of photos of two white males?
A I don't remember what meeting you were talking about.
Q Just get this simple question out of the way, Tristen, where you were arrested there were multiple police cars that

showed up; right?
A Yes, sir.
Q I'm sorry?
A Yes, sir. I don't, I don't know where I was at. I was just in a cul-de-sac.
Q Right. But multiple police cars showed up lights flashing or do you recall?
A I don't recall.
Q Okay. But you knew they were police cars?
A Yes, sir.
Q Okay. And at that location a big old TV was being loaded up into the vehicle; right?
A Yes, sir.
Q One of those big tall really wide, not a flat screen; right?
A No, sir. Just a big TV.
Q Okay. And you understood, I mean, it was coming from the side of the road. It was on the grass there?
A Yes, sir.
Q Abandoned?
A Yes, sir.
MR. DAVIS: Your Honor, if I could have a moment?
THE COURT: All right.
MR. DAVIS: Your Honor, could we approach for a moment?
THE COURT: All right.

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

BY MR. DAVIS:

Q Tristen, I want to make sure I'm clear about something, I know details of the meeting with the police you're not remembering a whole lot; right?

A Yes, sir. Yes, sir.

Q But you do recall them telling you that there was a camera in the room that was video and audio-recording that statement; right?

A Yes, sir.

Q Okay. If you're able to see that would that help you remember what you did or didn't say?

A It would.

Q Okay.

MR. DAVIS: Your Honor, we'd ask for a brief recess.

THE COURT: All right. What's the State's position?

MR. WEST: The State allows it, Your Honor.

THE COURT: All right. All right. Ladies and gentlemen, we're going to take -- it's a good time for us to take a brief recess anyway. I'm going to let you -- excuse you back to the jury room, give you an opportunity to stretch your legs, get something to drink, use the restroom, whatever the case may be, but do not discuss the case even among yourselves. Don't conduct any independent investigation. We'll take our morning

break and we'll bring you back out shortly. All right. Thank you very much.

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

THE COURT: All right. Do we want to take a recess while he reviews this or how do we want to --

MR. DAVIS: Your Honor, yeah, if I could, if I could have a little just quick bathroom break. I was, I was hoping you'd obviously instruct the witness, but yeah, if I -- we'd take a little break, and then I've got the disc right here and we'll start.

THE COURT: Okay. But what I'm saying is do we need a court reporter? I mean, can we take a break while he reviews it to refresh his memory and then we'll come back and you can question him on it?

MR. DAVIS: Judge, that would actually be the quickest rather than trying to start and stop and play it awkwardly in front of the jury. By seeing it, it'll refresh his memory. It speeds the process up.

THE COURT: Okay. Well, what I'm saying is I'm just allowing a break so he could review it to refresh his memory. As this point in time I'm not aware of any prior inconsistent statements that would make it admissible or, or viewable by the jury, but I'm going to allow him to review it to refresh his memory. Okay?

MR. DAVIS: I understand. Yes, sir. Yes, sir.

THE COURT: All right. Let's go ahead and take a break. Mr. Brower, I need to tell you, we're still in the middle of your testimony. So you cannot discuss your testimony with anyone. You can't discuss it with your attorney, your mother or anyone else, either what you've testified to thus far or what you anticipate testifying to in the future. Okay.

A Okay.

THE COURT: All right. So all we're going to do is you're going to play that. He's going to review it with no questions involved.

MR. DAVIS: Yes, sir.

THE COURT: Is that correct?

MR. WEST: That's correct, Your Honor.

THE COURT: All right.

MR. WEST: Thank you.

THE COURT: Let's take a break, let me know when he finishes reviewing it. Okay?

MR. DAVIS: Again, Judge, just for the record, it's almost 40 minutes, but I intend to go to the specific questions I asked.

THE COURT: All right.

MR. DAVIS: And only play those.

THE COURT: That'll be good.

MR. DAVIS: Thank you, Judge.

OFF THE RECORD

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

THE COURT: Anything further from the State before we bring the jury in?

MR. WEST: Nothing from the State, Judge.

THE COURT: Anything from the Defense?

MR. DAVIS: Judge, just, just to be clear, we've played the portions that I intend to ask questions about. I just realized, and I want to be, you know, transparent on this. We played however long we've been about. It's been a few minutes, but I realized one of the things I am going to ask him about, don't mind him being right here for this is we did not play the full 40 minutes for the absence of something. For example, no names were made or he didn't name any names on that video. I did not play the entirety for that. Again, I'm just letting the Court and the State be aware, nor was this issue about the allegations John would snap the fingers off their children in the room nor that he said they were an hour. All of those things are not on that and that's why we didn't play it. Now, in an abundance of caution, if he or you need the whole thing played before I ask him that, that's fine, but that's 40 minutes so.

THE COURT: I don't know.

MR. DAVIS: I, I -- the direct questions that that would

refresh his memory on, the direct questions we played those parts, and as I'll not ask anything beyond that, but the absence, of course, it's, it's not there.

THE COURT: But I mean, so what, what are you telling me, what are you asking me?

MR. DAVIS: I'm, I'm ready to move forward. I just want to make sure that there's no objections from, from anyone. I'm ready to move forward. It's a 40 minute video. We've played however long we've been out on the specific questions I intend to ask that that would have reminded him of the affirmative answers.

THE COURT: Okay. And that's all you're asking?

MR. DAVIS: That's all I'm putting on the record. Yeah. I mean, it's not really asking him, just putting that on the record.

THE COURT: All right. Anything further? All right. Let's bring the jury in.

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

THE COURT: All right. Ladies and gentlemen, welcome back. Mr. Davis, you can resume your cross examination.

MR. DAVIS: Thank you, Your Honor.

BY MR. DAVIS:

Q Tristen, during the break have you had a chance to watch portions of the recorded interview with law enforcement?

A Yes. Yes.
Q Okay. Do you recall now having viewed that that, in fact, there were two white male officers in the room with you?
A I now know.
Q And there were two white male officers in that room with you?
A Yes. Yes.
Q Do you recall now that you were, in fact, cuffed, handcuffed at the wrist the entire time?
A Yes, sir.
Q Okay. Do you recall now after Miranda being read to you that you hesitated to talk to them at first? Do you recall that now?
A Yes, sir.
Q Then after some prodding by Captain Shuler you went ahead and spoke; correct?
A Yes, sir.
Q And do you recall that he had wheeled his chair over and he was right knee to knee with you when he asked that; right?
A Yes, sir.
Q Do you recall now telling those officers that you at the 4 a.m. incident that you had stayed in the car for a while? Do you recall that now?
A I mean, I said it, but I, I don’t know why I would say that.

Q But you did tell them that then.
A Yes.
Q And soon after that when they started getting details you told the officers you didn't really want to talk about that. Do you recall that now?
A Yes, sir.
Q Again, with some, as Officer Shuler moved his chair closer to you, do you recall that, and he asked you to talk and then you changed your mind and decided to. Do you recall that now?
A Yes.
Q Do you recall now telling the officers at that interview the one guy during the incident had his shirt off?
A I, I, I said it, but I don't know why.
Q Okay. And do you recall telling the officers that day that you were not wearing a mask, but then a few seconds later, "No. No. I was wearing a mask," correcting them and saying you were wearing a mask? Do you recall that?
A Yes.
Q Do you recall telling the officers that day that people were in the house for about 10 or 15 minutes?
A Yes.
Q You did not tell the officers that day that you were in the house about an hour?
A I didn't.

Q You told the Solicitors that later?
A Yes.
Q You didn't give names of the two men you say were with you to the police that day, you gave those names to the Solicitor's Office later?
A I, I don't know.
MR. DAVIS: Your Honor, just a moment. That may be all, if you'd give me just a moment, please.
THE COURT: All right.
BY MR. DAVIS:
Q When you were arrested you had $200 in cash on you; right?
A Yes, sir.
Q You got that from Natalia some time during the day of the 21st; right?
A Yes, sir.
Q The police took that from you when you were arrested; right?
A Yes, sir.
Q You wanted them to take it?
A Yes, sir.
Q Because it came from Natalia?
A Yes, sir.
Q And you understood it came from the four a.m. burglary; right?

A Yes, sir.
Q Did you meet with either one of these Solicitors recently?
A Yes, sir.
Q How recently?
A Like two weeks or about a week ago.
Q About a week ago, came to their office?
A Yes, sir.
Q With your attorney?
A Yes, sir.
Q Okay. And talked to them about your testimony here this week; right?
A Yes, sir.
Q And your case hasn't been resolved yet, your charges?
A Is that a question?
Q Yeah. Your charges have not been resolved yet; right?
A No, sir.
Q And you know this office decides what happens about your charges; right?
A I did not know that, but, but I do now.
MR. DAVIS: May I approach, Your Honor?
THE COURT: All right.
BY MR. DAVIS:
Q You signed an agreement with them; right?
A I did.
Q And you sure hope that after your testimony today when

they decide what they're going to do with the charges they help you out; right?
A Can you explain that question?
Q You hope that when they decide what do with your charges after today, after your testimony against my client, they're going to help you out on your charges? You hope for that; right?
A I do.
Q Thank you, Tristen. No other questions.
MR. DAVIS: Thank you, Your Honor.
THE COURT: All right. Redirect?

REDIRECT EXAMINATION

BY MR. WEST:
Q Tristen, how far did you get in school?
A Tenth grade.
Q Okay. When you were arrested were you scared?
A I was.
Q How close in time to the arrest was the prior home invasion, the same day?
A Yes, sir.
Q Okay. Does anything that Mr. Davis has asked you has that changed the truth about you being --
MR. DAVIS: Objection, Your Honor, vouching.
THE COURT: All right. Also, it -- redirect is only as to issues he brought up in his examination. So I sustain the,

sustain the objection.

Q Has anything Mr. Davis asked you changed your mind about your previous testimony?

A No.

Q This Defendant went in the home with you on Bryan Drive?

A Yes, sir.

Q This Defendant went into a home, a trailer and brought out a mattress?

A Yes, sir.

Q This Defendant was arrested, with you, along with the other Co-Defendants?

A Yes, sir.

MR. WEST: No further questions at this time.

THE COURT: All right. You may step down.

All right. The State can call their next witness.

MR. POULOS: The State calls Courtney Pringle.

MR. WEST: Your Honor, may the previous witness be excused?

THE COURT: Any objection? Well, let's hold him for right now.

MR. DAVIS: Subject to recall, but I'm fine for him to not have to remain here, Your Honor, and I can't imagine he would, but subject to recall, if we can do it that way.

THE COURT: All right. That'll be fine.

MR. DAVIS: I can see him, Judge.

THE COURT: I'll allow him to go, but he's still under subpoena and they can call him back.

MR. WEST: Thank you, Your Honor.

THE COURT: All right.

Whereupon, Courtney Pringle was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Okay. If you'll have a seat, state your full name for the record and spell your last name.

MS. PRINGLE: Courtney Pringle, P-R-I-N-G-L-E.

DIRECT EXAMINATION

BY MR. POULOS:

Q Thank you, Ms. Pringle. Please tell the jury where you live.

A Now?

Q Yes.

A Goose Creek.

Q Okay. Where were you living on October 21st of 2014?

A Cindy Drive.

Q I'm sorry.

THE COURT: You're going to need to speak into the microphone.

A Cindy Drive.

Q Thank you. And what was your address on Cindy Drive?

A I don't remember it. Was it [redacted] Cindy Drive?

Q Okay. Thank you. Who were you living with at that time?

A Me and my sister, Carlena.
Q Okay. On that particular date did you see anything occurring at a nearby house that was out of the ordinary to you?
A Yes.
Q Please tell us what you saw.
A Natalia and a couple of men breaking in a home.
Q Okay. Did you see how they broke in?
A No.
Q Okay. What exactly did you see? Were they in a vehicle?
A Yes.
Q What did that vehicle look like?
A A Dodge Durango.
Q Okay. And did you see them go into that house?
A No. I didn’t see them go in. I saw them walking around it and coming out with things.
Q What did they come out with?
A A mattress and some other stuff. I don't remember everything.
Q Okay. What did they do with the mattress?
A Put it in the truck.
Q In the trunk?
A Uh-huh.
Q Okay. Did you -- at what point did you recognize Natalia?

A Soon as they pull up.
Q Okay. How did -- how do you know her?
A From working with her.
Q Okay. Did she approach you at any point?
A Yes.
Q What did she -- when did she approach you and where were you when she approached you?
A Whenever they were done.
Q Okay. And did she come to your house?
A Yes.
Q Okay. What did she say to you?
A She just told me they -- what they were doing and where they were going.
Q Okay. Well, what did she say they were doing?
MR. DAVIS: Objection, Your Honor.
A Breaking in.
THE COURT: Sustained. Sustained.
MR. POULOS: May we approach, Your Honor?
THE COURT: Strike the last question.
MR. POULOS: May we approach, Your Honor?
THE COURT: All right. Come on up.
(Whereupon, a bench conference is held in the presence but out of the hearing of the jury.)
THE COURT: All right. The jury is to disregard the witness' last statement.

BY MR. POULOS:

Q Ms. Pringle, after you spoke with Natalia, did you call the police?

A Yes.

Q Okay. And how long afterwards did the police arrive?

A I don't remember that.

Q They did arrive at some point?

A Yes.

Q Okay. And they spoke with you --

A Yes.

Q -- about what you saw?

A Yes.

Q Okay. Do you recall how many people you saw with Natalia?

A No.

Q Okay. Do you remember giving a statement to police?

A Yes.

Q A written statement?

A Yes.

Q Would it refresh your recollection if you could review that statement?

A Yes.

MR. POULOS: May I approach the witness, Your Honor?

THE COURT: Yes.

MR. POULOS: Thank you.

BY MR. POULOS:

Q I'm going to show you what's marked for identification as State's Exhibit 124. Do you recognize that document?

A Yes.

Q Is that -- what is it? What is the document?

A A statement.

Q Is it your statement that you gave to police?

A Yes.

Q Okay. Could you just take a moment to review it and look up when you're finished. Is your memory refreshed by that statement, Ms. Pringle?

A Uh-huh.

Q So let me ask you, do you recall how many people you saw with Natalia on that date?

A Three males.

Q Three males. Okay.

MR. POULOS: I have no further questions, Your Honor.

THE COURT: All right. Cross examination.

CROSS EXAMINATION

BY MR. DAVIS:

Q Ms. Pringle, I think you answered this on direct. You didn't see any of these folks actually go inside the residence?

A No.

Q Okay. Thank you, ma'am.

MR. DAVIS: No other questions, Your Honor.

THE COURT: All right. Redirect?

REDIRECT EXAMINATION

BY MR. POULOS:

Q Ms. Pringle, did you see them coming out of the residence?

A Yes. When they -- they walked around a couple of times and I guess they went through a window or something. Don't know.

Q Okay. And you saw them walk out of the residence with property?

A With the items. Yes.

Q Thank you.

THE COURT: You may step down.

The State can call your next witness.

MR. POULOS: The State calls Joshua Babson.

Whereupon, Joshua Babson was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: If you'll have a seat, state your full name for the record and spell your last name.

MR. BABSON: My name is Joshua Babson, B-A-B-S-O-N.

THE COURT: Hold for a second. Let me see the attorneys up here for a second.

(Whereupon, a bench conference is held in the presence but out of the hearing of the jury.)

THE COURT: All right. Ladies and gentlemen, during voir dire I asked you if you had any type of relationship with any of the witnesses, and I misidentified this witness. His name is Joshua Babson, and I think I identified him during voir dire as Justin Babson. So I want to ask everybody on this jury now, is there any member of the jury who has a social relationship, business relationship, related by blood or marriage or have any other type of relationship with this witness, Mr. Joshua Babson, if so, please raise your hand.

(No response.)

THE COURT: All right. Let the record reflect no one raised their hand. You can resume your examination.

MR. POULOS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. POULOS:

Q Officer Babson, where do you work?

A I work for the Berkeley County Sheriff's Office.

Q And how long have you worked there?

A I've worked there for a little over -- about two years now.

Q Okay. What's your current position?

A I'm a road deputy.

Q Okay. What are your responsibilities as a road deputy?

A I patrol areas, answer calls for service, and basically.

Q Were you working on October 21st of 2014?

A Yes, sir.
Q On that date did you and other officers respond to [redacted] Bryan Drive in Moncks Corner?
A Yes, sir.
Q Okay. Why did you respond to that location?
A A man had called in, said his neighbor came beating on his door saying something about a robbery.
Q Approximately what time did you show up?
A I got there -- the call came at about 5:51 in the morning. I got there at 5:57.
Q What did you do specifically once you arrived at the home?
A Parked at the neighbor's house, walked up with my flashlight and could see some stuff laying in the road. Met with Ms., Ms. Simpson, Mr. Roberts and Mr. Jones. They proceeded to tell me that they had just been robbed.
Q Okay. Did they provide you with written statements?
A Yes, sir. I think Ms. Simpson's I wrote for her.
Q Okay. Did you also search the perimeter of the house?
A Yes, sir. We searched out by the roadway and we actually came back later on that day to try to speak to neighbors, see if they had seen anything.
Q Okay. Did you locate any property in the driveway area of the residence?
A Yes, sir. The driveway, driveway into the road we found

some, some miscellaneous tools, pliers. I think we found some Allen keys, screws, things of that nature.

Q And is -- we said driveway, but that -- it's, it's an area in front of the house where someone would park a car?

A Yes, sir.

Q Okay.

MR. POULOS: May I approach the witness, Judge?

THE COURT: Yes.

MR. POULOS: Thank you.

BY MR. POULOS:

Q I'm going to show you what's been marked as State's Exhibits 23, 24, 25, which have been reviewed by Defense counsel. Tell me if you recognize those photographs.

A Yes, sir. These are some of the items that were in the roadway.

Q Okay. And what are they specifically in those photographs?

A I see an Allen key, some screws, some sockets, looks like some nails from a nail gun.

Q Okay. And again, those items were recovered from a location where a vehicle would be parked normally?

A Yes, sir. In that general area.

Q Okay. Did you recover other items as well?

A Yes, sir. We recovered some pliers as well that I think was in the, in the yard, and we also, I think we recovered

like a nerf camera, but I, I believe that was either in their front yard or on the front porch of the residence.

Q Okay.

MR. POULOS: Your Honor, I'd ask to move 23, 24 and 25 into evidence.

THE COURT: Any objection?

MR. DAVIS: No, Your Honor.

THE COURT: State's Exhibits 23, 24 and 25 are admitted into evidence without objection.

(State's Exhibit Numbers 23, 24 and 25 [Photographs] admitted into evidence and appropriately marked.)

MR. POULOS: I don't have any further questions for Officer Babson at this time. Thank you.

THE COURT: All right. Cross examination.

MR. DAVIS: No questions, Your Honor. Thank you, Officer.

THE COURT: All right. You may step down.

The State can call your next witness.

MR. POULOS: The State calls Sergeant Cassandara Drew.

Whereupon, Cassandra Drew was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Okay. If you'll have a seat, state your full name for the record and spell your last name.

MS. DREW: Cassandra Drew, D-R-E-W.

DIRECT EXAMINATION

BY MR. POULOS:

Q Good morning, Officer.

A Good morning.

Q Where do you work?

A Berkeley County Sheriff's Office.

Q And how long have you been with the Sheriff's Office?

A Since 1987.

Q Okay. What's your position there?

A Civil process division.

Q And what does that entail?

A I work serving papers, divorce papers, subpoenas, child support papers, stuff like that.

Q Do you also assist in other routine patrol duties when necessary?

A Yes.

Q Okay. Were you working on October 21st of 2014?

A Yes.

Q Was there a dispatch put over the radio sometime that day about -- regarding a potential robbery?

A Yes, sir.

Q And what do you recall about that?

A They dispatched to, to be on the lookout for a silver Durango with mattresses on top. So I was in the area. So I was riding around. I went into a trailer park, [redacted] College Park Road, just to see if they might have went in there and

located them inside the trailer park.
Q Okay. You said you located them. Where were they, what were they doing?
A It was -- they were at the -- in a cul-de-sac, and two of the people of the vehicle were loading a large TV, appeared to be trash, so they were loading it inside their, their vehicle.
Q Okay. How many people were there with the Durango in total?
A Four.
Q How many males, how many females?
A Three males, one female.
Q When you came upon them at that time you were aware of the prior incident on Bryan Drive?
A No, sir.
Q No. Okay. At the time you came upon them did you know to be on the lookout for a vehicle of this description?
A Right.
Q Okay. When you saw them what'd you do?
A I got out of my vehicle and I went up, I approached them and asked them what they were doing and they advised me they were loading a TV that a friend had said they can have for trash and their -- I just talked to them for a minute. I asked for all of them to come out and stand behind their vehicle so I can see them and I just talked with them until other, other officers got there.

Q Did you observe anything else about the vehicle or inside the vehicle?
A No, sir.
Q Okay. Did you relay to dispatch that you had come upon this vehicle matching the description of one they were looking for?
A Yes.
Q Okay. Did other officers arrive at that point?
A Yes.
Q How much time had passed by the time they showed up?
A Probably three, four minutes.
Q Okay. How many officers would you say arrived at that location in total?
A I remember when I left there was four.
Q Okay. Once the other deputies arrived how long did you stay on scene?
A Probably about another 10 minutes.
Q And were the suspects still at that location when you left?
A Yes.
Q Do you recall what -- who specifically arrived from your department?
A Officer Graff and I don't remember the rest.
Q Okay.
MR. POULOS: I don’t have any further questions, Your

Honor. Thank you.

THE COURT: All right. Cross examination.

MR. DAVIS: No, sir. Thank you, Officer, no questions.

THE COURT: All right. You may step down.

A Thank you, sir.

THE COURT: The State can call your next witness.

MR. POULOS: The State calls Officer Cody Graff.

Whereupon, Cody Graff is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Okay. If you'll have a seat, state your full name for the record and spell your last name.

MR. GRAFF: Cody Graff, G-R-A-F-F.

DIRECT EXAMINATION

BY MR. POULOS:

Q Good morning, Mr. Graff. Where do you work?

A Berkeley County Sheriff's Office.

Q How long have you been there?

A Seven years.

Q Okay. What's your current position?

A I am corporal on the road.

Q Okay. What was your position on October 21st of 2014?

A I was a corporal on the road.

Q Okay. What are your responsibilities in that role?

A I do traffic, answer calls.

Q On October 21st of 2014, did you respond to the area of

[redacted] College Park Road?
A Yes, sir.
Q Why?
A We had a call that there was a possible burglary on Cindy Drive, I believe it was [redacted], and we were informed that it was a silver Dodge Durango missing a headlight and it was possibly headed towards [redacted] College Park Road.
Q Okay. What did you observe once you arrived at that location?
A When I arrived on scene Sergeant Drew was there, and the vehicle was parked in a cul-de-sac at the back of [redacted] College Park Road, which is a trailer park, and when I got there there was the Dodge Durango parked and all the subjects were out towards the rear of the Dodge Durango.
Q Okay. What color do you recall the Durango being?
A Silver.
Q Okay. Was there anything out of the ordinary about that Durango?
A It had two mattresses tied to the top of it.
Q Okay. When you arrived were there any subjects around that Durango?
A Yes, sir.
Q How many?
A There were four.
Q Okay. How many males, how many females?

A Three males, one female.
Q Okay. And what did you do once you arrived?
A I arrived and I began speaking with the subjects. I walked around the vehicle and I got a phone call from Deputy Babson.
Q Okay. Did you at some point begin to speak to them and question them?
A I did speak to them.
Q Okay. Did you take a look inside that vehicle at some point?
A I did.
Q What was the first thing you noticed?
A I noticed that there was an open container of a Raz-Ber-Rita Bud Light in the console.
Q Okay. Is that an alcoholic beverage?
A Yes, sir.
Q Okay. Did you recover that beverage from the vehicle?
A I did.
Q Okay. I'm going to show you what's been marked as State's 101. Tell me if you recognize that item.
A May I pull it out?
Q Yes.
A Yes, sir.
Q What is it?
A That is a Bud Light Raz-Ber-Rita alcoholic drink.

Q That's, that's the beverage you recovered from the vehicle?
A Yes, sir.
Q Okay.
MR. POULOS: I'd offer that into evidence, Your Honor, as State's 101.
THE COURT: Any objection?
MR. DAVIS: To 101 no objection, Your Honor.
THE COURT: All right. State's Exhibit 101 admitted into evidence without objection.
(State's Exhibit Number 101 [Bud Light Raz-Ber-Rita can] admitted into evidence and appropriately marked.)
BY MR. POULOS:
Q Officer, at that time were you aware of the incident at Bryan Drive?
A I was after I received a phone call from Deputy Babson.
Q Okay. And you received that phone call prior to looking in the vehicle?
A Yes.
Q Okay. After recovering that beverage where -- first of all, where in the vehicle was it?
A In the center console in the front.
Q Okay. Did you continue to search through the vehicle at that time?
A When I observed the Bud Light I grabbed it and all

parties were detained.
Q Okay. After detaining the four suspects did you at that point search the vehicle?
A Yes.
Q And did you recover some items?
A I did.
Q Okay. First of all, what did you see inside the vehicle?
A There was a lot of things. There were TVs, car radios, tool boxes.
MR. DAVIS: May we approach, Your Honor?
THE COURT: Excuse me?
MR. DAVIS: May we approach, Judge?
THE COURT: All right.
(Whereupon, a bench conference is held in the presence but out of the hearing of the jury.)
BY MR. POULOS:
Q What did you observe in the vehicle?
A There were car radios, tool boxes, a lot of miscellaneous items.
Q Okay. I'm going to show you some photographs here, State's 26 through 36. Items 26 through 36 have been shown to Defense counsel. Officer, before I show you these, let me ask, was the Defendant one of the suspects at that location?
A Yes, sir.
Q Okay. I'm going to show you State's 26 through 36, flip

through those and look up when you're done, please.
A Okay.
Q Those ten photographs, do you recognize them?
A Yes, sir.
Q And what are they?
A They're items that were inside the Dodge Durango.
Q Are they photos of the Durango and its contents?
A I'm sorry?
Q Are they photos of the Durango and its contents?
A Yes, sir.
Q Okay.
MR. POULOS: Your Honor, I'd offer these into evidence as State's 26 through 36.
THE COURT: All right. Any objections?
MR. DAVIS: Only as to 30, 31 and 32 as previously mentioned at the bench.
THE COURT: All right. State's Exhibits 26, 27, 28, 29 -- wait a minute, your objections are what, to which ones?
MR. DAVIS: Relevance and the prejudice, Your Honor.
THE COURT: But I mean, which exhibits?
MR. DAVIS: Oh, I'm sorry, 30, 31 and 32.
THE COURT: All right. State's Exhibits 26, 27, 28, 29, 33, 34, 35 and 36 are admitted into evidence without objection. State's Exhibits 30, 31 and 32 are admitted into evidence over Defendant's objection.

(State's Exhibits 26 through 36 [Photographs] admitted into evidence and appropriately marked.)

MR. POULOS: Permission to publish, Your Honor.

THE COURT: All right.

MR. POULOS: 33.

BY MR. POULOS:

Q Officer, directing your attention behind you on the screen here, is that the Durango we're talking about?

A Yes, sir.

Q Okay.

MR. POULOS: 26.

BY MR. POULOS:

Q Is that just another view of that same vehicle?

A Yes, sir.

Q Okay.

MR. POULOS: 29.

BY MR. POULOS:

Q And what is that?

A That is the inside back seat area.

Q Okay.

A Of the Durango.

MR. POULOS: Number 30.

BY MR. POULOS:

Q Okay. What are we looking at here, Officer?

A That is the front seat what it looks like a car speaker

and a bag and stuff in the front.
Q All right. Thank you. Officer, did you recover any firearms from the vehicle?
A Yes. I did.
Q I'm showing Defense counsel State's Exhibit 102. Where from within the vehicle did you find a firearm?
A I found it under the back seat in the middle.
Q Okay. Was it inside of anything?
A It was inside of a black glove.
Q Okay. I'm going to show you what's been marked as State's Exhibit 102. Just remove that from the bag and hold it up, please. Do you recognize that firearm?
A Yes, sir. That's the weapon I retrieved from the vehicle.
Q Okay. What type of weapon is that?
A It's a Beretta 22 caliber.
Q Okay.
MR. POULOS: Your Honor, I'd offer that into evidence as State's 102.
THE COURT: Any objection?
MR. DAVIS: No, Your Honor.
THE COURT: State's Exhibit 102 admitted into evidence without objection.
(State's Exhibit 102 [Beretta 22 caliber firearm] admitted into evidence and appropriately marked.)

BY MR. POULOS:
Q At what point did other deputies arrive to assist?
A I really don't know, probably ten minutes after I was there, five, ten minutes.
Q Okay. How long did you stay on scene?
A I really don't know.
Q Okay. Were the suspects still present and in custody when you left?
A I, I transported I think two of them, two to the jail.
Q Okay. Okay. Officer, did you complete a booking report for this Defendant, John Darrieux?
A Yes, sir.
Q Okay. And in that booking report did, did you write down a phone number?
A Yes, sir.
Q Okay. Do you recall that phone number off the top of your head?
A Not off the top of my head I don't.
Q Okay. Would seeing that booking report refresh your recollection?
A Yes, sir.
Q Officer, the information you put on the booking report, is that information you would have gotten from the Defendant himself?
A From the Defendant and his driver's license.

Q Okay. Now, back to the question of the phone number, I'm going to show you your booking report. Just review it and look up when you're done, please.
A Okay.
Q What was the phone number he gave you?
A 843-830 it's either [redacted] or [redacted].
Q Okay. It's a little smudged?
A Yes, sir.
Q Okay.
MR. POULOS: I have no further questions, Your Honor.
THE COURT: All right. Cross examination.

CROSS EXAMINATION

BY MR. DAVIS:
Q Is it Graff or Graff?
A Graff.
Q Graff, okay.
A Yes, sir.
Q Officer Graff, three males, one female at this the location on College Park Drive; right?
A Yes, sir. College Park Road.
Q College Park Road. I'm sorry.
A Yes, sir.
Q Everybody is arrested by you?
A Yes, sir.
Q For the open container?

A Yes, sir.
Q That was found in the front center console?
A Yes, sir.
Q There's a big old console TV in the back of this vehicle; right?
A Yes, sir.
Q Okay. Messy car everywhere else?
A Yes, sir.
Q In your investigation are you aware the female was the driver of the vehicle?
A I was.
Q Are you aware the female owned the vehicle?
A Yes.
Q It was her SUV. Okay.

MR. DAVIS: May I approach, Your Honor, just for a moment, the court reporter.

THE COURT: Yes.

MR. DAVIS: Your Honor, if I could have just a moment?

THE COURT: All right.

MR. DAVIS: Thank you, Your Honor. Thank you, Officer. No other questions.

THE COURT: Redirect?

MR. POULOS: Nothing from the State, Your Honor.

THE COURT: All right. You may step down.

A Thank you.

THE COURT: The State can call their next witness.

MR. WEST: Your Honor, may we approach about schedule?

THE COURT: All right.

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

THE COURT: All right. Ladies and gentlemen, speaking with the attorneys trying to schedule witnesses and things of that nature, we've agreed that it's a good time for us to go ahead and break for lunch. We're going to go ahead and break for lunch. However, we've got lunch coming for you today. Okay. So we're going to take a shorter lunch break today, and that's simply to ensure that we get this trial in this week and we don't go over. So it's on its way. It has not arrived yet, but it should be here shortly. I'm going to give you plenty of time to eat. Don't worry about that. I anticipate breaking for about 45 minutes. I'd like to resume at one, but certainly depending on when lunch gets here'll dictate when we resume. So take your time eating. Don't worry about it. I'm not going to rush anybody if we go a little past one before we resume. I caution you again, do not discuss the case even among yourselves at this point in time, don't conduct any independent investigations. Hope you have a good lunch, and we'll bring you back as soon as lunch is over. All right. Thank you very much.

(Whereupon, the following takes place outside the

presence of the jury.)

THE COURT: All right. Anything from the State before we recess?

MR. WEST: Nothing for the record, Your Honor.

THE COURT: Anything from the Defense?

MR. DAVIS: No, Your Honor.

THE COURT: All right. Let's go ahead -- I don't know when lunch is going to get here. They said it's on the way and I'm going to give them plenty of opportunity. I'd like for -- to resume as close to one as we can. Okay? But certainly if you all are working things out that'll shorten the trial, I'll give you whatever time you need. Okay?

MR. DAVIS: Thank you.

MR. WEST: What's the, what's the latest we would close and charge? I think there's a possibility we can do it today. It'd be my preference to do it in the morning.

THE COURT: Yeah. And I don't -- to be quite honest with you, I don't know that I can get the charges together today.

MR. WEST: Okay.

THE COURT: Because we've got --

MR. WEST: Quite a few.

THE COURT: -- quite a few charges to --

MR. WEST: I understand.

THE COURT: -- go over. So and then with multiple indictments and you've got certain charges on that.

MR. WEST: We've still got to do directed verdicts and --
THE COURT: And stuff like that. So with you still having witnesses, I don't anticipate being able to charge today, but we'll see, but you know, if we came back at one --
MR. WEST: At least one of our witnesses --
THE COURT: -- if you're talking about just another hour's testimony that's two, and for me being able to get everything together, closing arguments, jury charges, deliberations before four is going to be pushing it.
MR. WEST: That's pushing it. Okay. I would agree, Your Honor, and at least one of our witnesses could be potentially 45 minutes to an hour.
THE COURT: Okay. All right. Well, it looks like then that we'll probably be charging and deliberations tomorrow at some point in time. I'd like to get in, but you know, we still -- I still don't know what kind of defense or if they're going to put up a defense --
MR. WEST: I understand.
THE COURT: -- or how many witnesses they're going to have. So we still have that to deal with, too, and that's why I'm telling you I don't want to rush anybody. I want you -- to give you plenty of opportunity to present your case, whether it be from the Prosecution or Defense side. If it runs over that's not a problem. If I need to come back next week that's not a problem, but I do have to have enough

opportunity to contact Court Administration and let them know that we're in a trial that was not completed and then we'll see.

MR. WEST: Thank you, Judge.

THE COURT: All right.

MR. DAVIS: Two, two things, Judge, one, I think we'll know a whole lot more about all that after we, we have this lunch break. Second of all, if I understood and recall correctly about how you prefer to charge or not during at the time to where even if we were able to work out a stipulation and finish early today, but it was close to that 4:00 o'clock we just break early.

THE COURT: Right.

MR. DAVIS: And then do things in the morning; is that correct?

THE COURT: That's right. That's right.

MR. DAVIS: Okay. Okay. Thank you, Judge.

THE COURT: It's generally been my standard practice, unless it was on a Friday and we're trying to wrap it up before the end of the week, you know, Monday through a Thursday I generally do not charge and begin deliberations after four p.m. because then I think you've got a jury looking at their watches, and not really deliberating. All right?

MR. DAVIS: Thank you, Your Honor.

THE COURT: All right. Thank you. All right. We'll be

in recess at least until one depending on when the food gets here for the jury.

MR. WEST: Thank you, Judge.

THE COURT: All right.

OFF THE RECORD

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

THE COURT: Please be seated. All right. Gentlemen, my law clerk has brought back an evidentiary stipulation that says -- now, these are Plaintiff's, I mean, excuse me, State's Exhibits?

MR. WEST: That's correct, Your Honor.

THE COURT: It just says exhibits.

MR. POULOS: Yes, Your Honor.

THE COURT: Okay. So I understand that you're stipulating to the introduction of State's Exhibits 37 through 98 and State's Exhibits 107 through 122. Correct?

MR. POULOS: Yes, Your Honor.

THE COURT: Okay.

MR. POULOS: And Your Honor, we can provide an exhibit list to make a Court's Exhibit for the record if necessary. If there, if there's any need --

THE COURT: Well, I mean, they're already pre-marked; right?

MR. POULOS: Yes, Your Honor.

THE COURT: Okay. Now, we can, we can just stipulate and I can go ahead and rule that they are introduced into evidence or when the jury comes in the State can say, "Before we go forward we'd move for the introduction of these exhibits," and the Defense can say without objection and I'll go ahead and I'll admit them into evidence. Now, the evidentiary stipulation that you all have signed and handed up, it says the State and Defense hereby agree that the following exhibits are items seized from [redacted] Hallmark Drive, Apartment [redacted], Goose Creek, South Carolina, 29445, pursuant to a lawfully executed search warrant on October 22nd, 2014, and/or photographs of that search warrant execution. Is the Defense stipulating to all of that or are you just stipulating to the introduction of the evidence? In other words, I've got -- put it this way, I've got a charge on stipulations. If all you're doing is stipulating to the introduction of the exhibits then when they come in, you move to -- the State moves to introduce the exhibits, the Defense says without objection, I'll enter them without objection. If you're stipulating to these others then when -- I'll give the jury a brief instruction that says the parties have stipulated as a fact and that they must accept as a fact that Exhibits 37 to 98 and Exhibits 107 to 122 are properties seized from [redacted] Hallmark Drive, Apartment [redacted], Goose Creek, 29445, pursuant to a lawfully executed search warrant on October 22nd, 2014, and/or are photographs of that

search warrant execution, those issues are not in dispute and they have to accept those as true.

MR. POULOS: I'd prefer that, Your Honor.

THE COURT: Well, I mean, what is the Defense stipulating to?

MR. DAVIS: That's what we're stipulating to, that second one, Your Honor, to again --

THE COURT: Okay.

MR. DAVIS: -- to save time, economy, it's not of issue to my client. This is a Co-Defendant's residence. So we stipulate, we concur with the State that that's an accurate factual statement.

THE COURT: Okay. So when they come in I'm going to go ahead and tell them the stipulation, put the exhibits into evidence and tell them what they must accept as fact. Okay?

MR. WEST: Thank you, Judge.

THE COURT: All right. Let me go ahead before we go further mark this as -- what is that Court's Exhibit Two? All right. That's Court's Exhibit Two, and if I could have that back.

(Court's Exhibit Number Two [Stipulation] appropriately marked.)

THE COURT: Thank you, ma'am. All right. Anything from the State before we bring the jury in?

MR. WEST: Nothing from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. DAVIS: So, Judge, you will read the stipulation and instruct them and that'll be a Court Exhibit, won't go back with evidence?

THE COURT: That's correct.

MR. DAVIS: Okay. Thank you, Judge. No, nothing further.

THE COURT: All right. Let's go ahead and bring the jury in.

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

THE COURT: All right. Ladies and gentlemen, welcome back. Hope everybody had a good lunch. We're now ready to proceed with the trial of the case, and I apologize for keeping you back in the jury room for so long, but we have been able to shorten things to the following extent. The parties have reached a stipulation. Okay. Now, the stipulation is that State's Exhibits 37 through 98 and State's Exhibits 107 through 122 are admitted into evidence without objection. Those are coming into evidence.

(State's Exhibit Numbers 38 through 98 [Photographs] and 107 through 122 [See index for description] admitted into evidence and appropriately marked.)

THE COURT: The parties also stipulate that State's Exhibits 37 to 98 and State's Exhibits 107 to 122 are

properties, are items seized from [redacted] Hallmark Drive, Apartment [redacted] in Goose Creek, South Carolina, 29445, pursuant to a lawfully executed search warrant on October 22nd, 2014, or are photographs of that search warrant execution. So because the parties stipulate to those facts, those are facts that you must accept, and you cannot dispute. They're agreeing that those are the facts in this case, those facts being that State's Exhibits 37 to 98 and 107 to 122 are items or photographs -- are items seized pursuant to a lawfully executed search warrant on October 22nd, 2014, from [redacted] Hallmark Drive, Apartment [redacted], in Goose Creek, South Carolina, 29445, or are photographs of that search warrant execution. Is that the State's stipulation?

MR. WEST: That's correct, Your Honor. Thank you.

THE COURT: Is that the Defendant's stipulation?

MR. DAVIS: It is, Your Honor.

THE COURT: All right. Anything further to add from the State?

MR. WEST: Nothing from the State.

THE COURT: Anything further from the Defense?

MR. DAVIS: No, Your Honor.

THE COURT: All right. We'll go ahead and proceed with the trial of the case. The State can call their next witness.

MR. WEST: Thank you, Your Honor. The State calls Detective Dan Wilson.

Whereupon, Daniel Kendrick Wilson was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Okay. If you'll have a seat. State your full name for the record and spell your last name.

MR. WILSON: Daniel Kendrick Wilson, W-I-L-S-O-N.

DIRECT EXAMINATION

BY MR. WEST:

Q Detective Wilson, could you tell the jury where you work?

A Berkley County Sheriff's Office.

Q And how long have you worked there?

A Six years.

Q Can you tell the jury some of your general background, training and experience in law enforcement?

A Sure. I was a federal officer with a -- the federal agency for 22 years. Upon leaving that agency, I immediately went to work for the Sheriff's Office, did two years on patrol, and on the last four years I've been assigned to the detective division and currently assigned as a sergeant in the detective division.

Q As a sergeant in the detective division, could you tell the jury what your roles and responsibilities are?

A I actively investigate reported complaints of crimes and also supervise the detectives under my supervision as far as making sure that they comply, follow, you know, guide them and give them advice, whatever needs to be done.

Q Were you working for the Berkeley County Sheriff's Office in that capacity on October 21st, 2014?
A I was a corporal, but I was in the detective division at that time, yes.
Q Did you have a role in the investigation in the matter that brings us here today?
A I did.
Q Could you tell the jury what that role was?
A On the -- basically, I collected in the incident on the -- some of the -- I interviewed one of the Defendants, conducted an interview and I also collected some of the evidence that was placed into evidence.
MR. WEST: I'm showing the witness what has been pre-admitted as State's Number 106.
BY MR. WEST:
Q Could you please tell me whether you recognize that item?
A Yes. This, this is $205 cash. We interviewed one of the Defendants and on his possession he had this cash and we took it and placed it into evidence.
Q Okay. Who did you interview?
A Tristen -- I'm not familiar with his last name.
Q Okay. After you interviewed Tristen, did you have any other further role in the investigation of this matter?
A I also participated in the execution of a search warrant at one of the Co-Defendant's residences.

Q Okay. Do you know which Co-Defendant that was?
A Natalia Chisolm.
Q Okay. Did you ever respond to the scene of arrest or were involved in any search of a car?
A I responded to the scene. The patrol division had -- I heard on the radio that they had stopped a vehicle suspected in the burglary -- in the couple of burglaries, a earlier home invasion and in a burglary that had just occurred on, on College Park Road. So I responded to that scene where they -- the patrol division, patrol deputies had stopped that vehicle. I -- at that point I transported the younger juvenile, Tristen, up to the detective division to be interviewed, and subsequently I also participated in the search of the vehicle that was brought up later.
Q Okay. I'm showing you Exhibit Number 104 which has been pre-admitted. Could you tell the jury --
THE COURT: Excuse me. 104 and 106, neither one of those are in evidence.
MR. WEST: Oh, that is not.
THE COURT: You've said they were pre-admitted into evidence and neither one.
MR. WEST: Okay. I apologize, Your Honor.
THE COURT: Okay.
MR. WEST: We would ask after the recognition of 106, Number 106 be admitted into evidence.

THE COURT: Any objection?
MR. DAVIS: No objection on 106.
THE COURT: All right. State's Exhibit 106 admitted into evidence without objection.
MR. WEST: Okay.
(State's Exhibit Number 106 [Cash] admitted into evidence and appropriately marked.)
BY MR. WEST:
Q And Item Number 104, do you recognize that?
A Yes. This is my chain of custody. It was filled out and signed by me to place the items into evidence.
Q Okay. Would you open that up?
A This is the -- a knit hat, some rubber latex gloves and some black gloves that I placed into evidence.
Q Do you recognize those items as items that you collected during your involvement in this investigation?
A Yes, sir. During the search of the vehicle.
Q Okay.
MR. WEST: The State would ask State's 104 be admitted into evidence.
THE COURT: Any objection?
MR. DAVIS: Yes, Your Honor, relevance. There's been no testimony of any gloves or a knit hat.
THE COURT: All right. What's the relevance?
MR. WEST: Your Honor, we'd -- do believe there has been

some testimony about the clothing of the Defendants in this case.

THE COURT: All right. Let me see the attorneys for a second.

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

THE COURT: All right. Defendant's objection's sustained.

BY MR. WEST:

Q Detective Wilson, did you have any further involvement in the investigation of this case?

A I participated in the execution of the search warrant at Natalia Chisolm's residence, a Co-Defendant in this case.

Q Okay. Who helped participate in that search warrant?

A I believe Detective Fenton obtained the -- helped obtain the warrant, myself, Captain Shuler. Detective Shane Cook was also there, also.

Q Okay. Thank you.

MR. WEST: No further questions at this time.

THE COURT: Cross examination.

MR. DAVIS: Just one moment, Your Honor. Thank you, please.

CROSS EXAMINATION

BY MR. DAVIS:

Q Sergeant Wilson.

A Yes, sir.
Q And you're a detective with the sheriff's office; right?
A That is correct.
Q Okay. So you were involved in the investigation of the incident we're on trial for; correct?
A I assisted. Yes, sir.
Q Okay. You mentioned a while ago that one of the things you searched was not only we just -- not only the, the vehicle at the arrest site; correct?
A Correct.
Q But also --
A Well, I didn't search the vehicle at the arrest site. I transported Tristen from the arrest site --
Q Okay.
A -- to the, to the sheriff's office.
Q At some point that vehicle was brought back to an impound building?
A That is, that is correct.
Q And it was searched and processed there?
A That is correct.
Q And for the jury to understand, process means it was dusted with that black print [sic] to see if any fingerprints on the outside of the vehicle, all over; right?
A That is correct.
Q You took photos of that?

A That is correct.
Q Okay. Some evidence that was found at the execution of the search warrant at Natalia Chisolm's house, you seized some identification cards; is that correct?
A I, I recall some identification cards.
Q And those also were dusted and printed, they were processed as well?
A I'm, I'm not a forensics technician. So I don't know what. Once we collected and placed them into evidence I'm not sure what process they did from that.
Q And even on the vehicle you didn't personally do that?
A I did not personally do that. That is correct.
Q Other officers that that's what they're tasked to do.
A That is correct.
Q Crime scene investigators?
A That is correct.
Q They're the ones that apply the, the powder to anything, they're going to try to lift fingerprints; right?
A That is correct.
Q Okay. As a detective you kind of would have been a supervisor, but you wouldn't have been hands on on that part?
A That is correct.
Q Fair enough. Okay. You're one of the two officers involved in the interview with Tristen Brower, the young man that was arrested; correct?

A I was.
Q Okay. That was audio and video recorded; right?
A It was.
Q Okay. That's at a Charleston County Sheriff's Office interview room?
A That is -- that's in the Berkeley County Sheriff's interview.
Q I'm sorry. Forgive me, sir. I apologize.
A Yes, sir.
Q Berkeley County Sheriff's Office interview room. You also talked about patrol cars or police cars arriving at the arrest location.
A They were already there when I arrived there.
Q Okay. Did the vehicle you were in have a video camera recording camera?
A It does not.
Q Do you know if any of the other responding cars did?
A I do not know.
Q Okay. All right.
MR. DAVIS: Your Honor, if I can have a moment.
THE COURT: All right.
MR. DAVIS: Thank you, Your Honor. Thank you, Sergeant Wilson. No other questions.
THE COURT: All right. Redirect?
MR. WEST: Your Honor, may we approach?

THE COURT: All right.

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

MR. WEST: Madam Court Reporter, may I mark these as State's Exhibit 126?

THE COURT: Will that mark it on it? Okay.

REDIRECT EXAMINATION

BY MR. WEST:

Q Again, Detective Wilson, are these the gloves that you collected during your involvement in the investigation?

A They are.

MR. WEST: The State would ask State's 126 be admitted into evidence.

THE COURT: All right. State's Exhibit 126 admitted into evidence over Defendant's objection.

(State's Exhibit Number 126 [Gloves] admitted into evidence and appropriately marked.)

MR. WEST: Thank you. No further questions for this witness at this time.

THE COURT: All right. You may step down.

A Thank you, sir.

THE COURT: The State can call their next witness.

MR. POULOS: The State calls Detective Shane Cook.

Whereupon, Shane Cook was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. If you'll have a seat. State your full name for the record and spell your last name.

MR. COOK: Detective Shane Cook, C-O-O-K.

DIRECT EXAMINATION

BY MR. POULOS:

Q Good afternoon, Detective. Where do you work?

A Berkeley County Sheriff's Office.

Q How long have you been with the Sheriff's Office?

A Approximately two years, and prior to that Greenville County for five.

Q Okay. What is your position at the Sheriff's Office?

A Currently assigned to criminal investigations division.

Q And what does that entail? What are your responsibilities?

A We deal with a multitude of different issues, but property crimes, violent crimes, burglaries, things of that nature.

Q Detective, were you working on October 21st, 2014?

A I was.

Q Did you assist in the investigation of the incident that occurred at [redacted] Bryan Drive in Moncks Corner?

A Yes. I did.

Q Okay. How did you assist in that investigation?

A It was my responsibility to execute the search warrant on a Co-Defendant's residence on Hallmark Drive in Goose Creek.

Q What residence was that, Detective?
A I -- may I see the search warrant, please, for the exact apartment number?
Q Detective, I'm going to show you what's been marked for identification purposes as State's 100. Do you recognize that? Do you recognize that document?
A Yes. I do.
Q Is that the search warrant?
A Yes. It is. [redacted] Hallmark Drive, Apartment [redacted] in Goose Creek, within Berkeley County.
Q Okay. And during the course of the Sheriff's Office investigation whose residence was that determined to be?
A Natalia Chisolm's residence.
Q Now, pursuant to that search warrant did you recover items from that residence?
A Yes. We did.
Q Okay. Do you recall what items you recovered?
A Not all of them offhand.
Q Okay. Would reviewing the search warrant help you to recall which items you recovered?
A Yes. It would.
Q All right. If you could at this time tell the jury what items you recovered from that execution.
MR. DAVIS: Your Honor, if we could -- could we have just a moment if I can talk with opposing counsel on one issue.

THE COURT: All right.

MR. WEST: May we approach, Your Honor?

THE COURT: All right.

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

BY MR. POULOS:

Q Detective, if you could just relay to the jury what items you recovered, please?

A Sure.

Q One First Union credit card bearing account number [redacted]; one Sam's Club card; one South Carolina driver's license issued to Charles Willard Roberts; one Social Security card bearing the name Charles Willard Roberts; one AutoZone card; one South Carolina driver's license issued to Shawn Marie Scissile [spelled phonetically]; one South Carolina driver's license issued to Charles Willard Roberts; one BP Driver Rewards card; one Care Improvement Plus card from the master bedroom; four chess game sets; one poker game set; one game card box; miscellaneous sports cards; one set of keys; one black pouch containing hearing aids; miscellaneous belt buckles, miscellaneous military patches; two bowie knives; one Garmin GPS; one black BB gun; miscellaneous collector coin sets; 11 cell phones; empty box of 25 auto ammunition; one round of 45 ACP ammunition; one T-Mobile one-touch cell phone from the living room; silver DVD player from

the first bedroom; two chess sets from bedroom number two; one cell phone from the dining room; one LG flip phone; one Lorcin 25 semiautomatic handgun, serial number L, Lima, T, Tango, 040594; one round of 25 auto, automatic ammunition; two rounds of nine millimeter ammo; nine millimeter handgun magazine; 20 rounds of 45 ACP ammunition; one used nine millimeter casing; one decorative pipe; one Ryobi 18-volt battery; from the kitchen, tool bag with miscellaneous tools and prescription bottles issued to Charles Roberts; from the pantry closet, one central pneumatic framing nailer in a blue case; one green Ryobi bag; one DeWalt cordless reciprocating saw; one Black and Decker drill; one Ryobi cordless screwdriver; one Ryobi cordless reciprocating saw; one Ryobi cordless circular saw; one Porter-Cable cordless drill; one Ryobi cordless band saw; one Ryobi cordless drill; one Ryobi cordless flashlight; two charging bases; one Ryobi battery; miscellaneous hand tools; one jewelry box from the hallway closet; one gray briefcase from the pantry closet; one piece of cardboard box bearing Charles Roberts' name, and nothing further.

Q Okay. Thank you, Detective. Were photographs taken of the residence?

A Yes. They were.

Q Okay. I want to show you what's already in evidence as State's 37. Take a look behind you. It's tilted the other way, but what part of the residence is that?

A That is the kitchen where the Styrofoam cups are. To the left is the living room and the hallway where bedroom number one and number two are.
Q Okay. Number 39, what do we have here?
A That is the dining room which was to the left of the kitchen.
Q Okay. 45, what do we have here?
A That is the master bedroom which was to the left of the living room.
Q Okay. What are we looking at in that photo?
A On the left-hand side is an inflatable mattress, also we have several chess games, game boards and then a flat screen TV on top of a larger tube TV.
Q Okay. Number 52, what is this?
A And this is another picture of the master bedroom, more specifically the inflatable mattress and the TV on top of it.
Q 54, what are these items?
A Cards with the name Charles Roberts located within the residence and also a Wal-Mart money card.
Q What are we looking at here?
A These are various IDs and bank cards bearing the name Charles Roberts.
Q What is this, Detective?
A Prescription bottles located within the kitchen and pantry areas bearing the name Charles Roberts.

Q Okay. 82, what is this, Detective?
A This is one of the framing nailers located within that residence as well.
Q 88, what are we looking at here, Detective?
A Several other ID cards and bank cards bearing the name Charles Willard Roberts.
Q Thank you. Detective, did you also recover masks from that residence?
A Yes. We did.
Q Okay. I'll show you what's been admitted into evidence as State's 116. I'm going to ask you to take a look at this bag, pull out the contents and tell me if those are masks you recovered?
A Yes. Those are the masks recovered from the master bedroom closet.
Q Thank you, Detective, and you indicated you recovered some firearms as well; correct?
A That is correct.
Q I'm going to first show you State's 107 already entered into evidence. What is that, Detective?
A That is the BB gun located within the master bedroom.
Q Okay. State's 108 already into evidence, please tell us what that is.
A This is the Ruger SR-9C or, excuse me, the SR-9, which was also recovered within the residence.

Q Okay. And State's 109, also already into evidence.
A And this is the Lorcin 25 caliber which was recovered at the residence as well.
Q And lastly, Detective, I'm going to show you State's 110. State's 110, which is already in evidence, if you'd please remove that and tell us what it is.
A This is the backpack that was located within the residence containing ammunition.
Q Detective, how was that backpack collected, if you recall?
A To my understanding it was actually collected off of one of the juveniles from within the residence.
MR. POULOS: No further questions, Your Honor.
THE COURT: All right. Cross examination.
MR. DAVIS: No, Your Honor. Thank you very much. No questions, Officer.
THE COURT: All right. You may step down.
A Thank you, Your Honor.
THE COURT: The State can call their next witness.
MR. WEST: Thank you, Your Honor. The State calls Zach Wright.
Whereupon, Zachary Wright was called to the stand, duly sworn by the clerk and testified as follows:
THE CLERK: Okay. If you'll have a seat. State your full name for the record and spell your last name.

MR. WRIGHT: My name is Zachary Wright, W-R-I-G-H-T.

DIRECT EXAMINATION

By MR. WEST:

Q Mr. Wright, would you please tell the jury where you work?

A For the Berkeley County Sheriff's Office.

Q And how long have you worked there?

A Approximately two years.

Q What'd you do before you worked at the Sheriff's Office?

A I was actually active-duty marine.

Q What is your rank and title at the Sheriff's Office now?

A I'm currently a corporal and I'm a patrol deputy.

Q What are those -- what does that title give you responsibilities?

A We answer calls. People dial 911, we show up on scene, assess the situation and take appropriate action.

Q Did you have an opportunity to respond to a call out at Cindy Drive on October the 21st of 2014?

A I did.

Q Is that in Berkeley County?

A It is.

Q Tell your -- the jury your involvement with that call.

A I responded in reference to a burglary. Upon arriving on scene I met with a Courtney Pringle, a female. She advised me that the, the residence across the street was being

burglarized and that she, she witnessed it.
Q Okay. And did you take a statement from her?
A I did.
Q Okay. Did you have any role in the investigation of a home invasion that occurred on Bryan Drive on that same date?
A I did not.
Q Did you have any other role in the investigation of the burglary on Cindy Drive?
A I did not.
Q Did you ever advise dispatch as to what, what to look for in the, in the area?
A I did.
Q Okay. Would you tell the jury about that?
A Upon meeting with Ms. Pringle she was able to give me a vehicle description and a suspect description at which time I passed it on the radio, advised dispatch to issue it out as a BOLO at which time they did.
Q Okay. Did you ever make contact with this Defendant?
A I did not.
MR. WEST: Nothing further for this witness at this time.
THE COURT: All right. Cross examination.

CROSS EXAMINATION

By MR. DAVIS:
Q That was your only involvement with this, this case?

A It was.
Q So you've forgotten talking to Carlena Pringle, who is related to Courtney Pringle? You forgot about that?
A There was two ladies present at that residence when I responded. Yes.
Q Okay. So that wasn't all your involvement? You spoke with two folks; right?
A Yes, sir.
Q Okay. And the second lady, the second Ms. Pringle, told you she'd observed things as well; correct?
A I, I'd have to have her statement in front of me to recall what she said.
MR. DAVIS: May I approach, Your Honor?
THE COURT: Yes.
MR. DAVIS: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. DAVIS:
Q Officer, I'm going to show you what's been marked as Defense Exhibit Number Four for identification purposes only. If you'll take a second, unfortunately it's my only copy, I'm going to loiter here, but take as long as you need to look at it, and I won't ask you any questions until you've had a chance to review it.
A All right. All right. I've completed reading it, sir.
Q All right.

MR. DAVIS: I'm going to approach again, Your Honor.

THE COURT: All right.

BY MR. DAVIS:

Q Do you recall now speaking with Ms. Pringle, taking a statement from her?

A I do remember speaking with two ladies. Yes, sir.

Q Okay. Do you recall Carlena Pringle indicating that -- forgive me just a second. I apologize.

MR. WEST: Objection to hearsay, Your Honor.

THE COURT: I --

MR. DAVIS: I don't think I've completed my, my question yet.

BY MR. DAVIS:

Q During your conversation with both of the Pringle ladies did your investigation reveal that one of them had recorded these --

MR. WEST: Objection, Your Honor, hearsay.

THE COURT: Sustained.

MR. DAVIS: Goes to the -- further into the investigation, Your Honor. It's not the truth of the matter asserted. It's what the law enforcement did with the information.

THE COURT: Okay. You all come on up.

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

THE COURT: All right. Overruled. Go ahead.
BY MR. DAVIS:
Q In speaking with the two Pringle ladies, were you aware that one of them videotaped this incident?
A I was.
Q Did you collect that videotape?
A I did not.
Q Thank you.
MR. DAVIS: No other questions, Your Honor.
THE COURT: All right. Redirect.

REDIRECT EXAMINATION

BY MR. WEST:
Q Why didn't you collect that video?
A I gave one of the Pringle ladies the opportunity to transfer that video to a storage device, whether a thumb drive or disc, and then turn into the Sheriff's Office.
Q And you didn't follow up on that?
A I did not. No.
Q Okay. As a routine patrol deputy that's not within your normal gamut of responsibilities?
MR. DAVIS: Objection, Your Honor, leading.
THE COURT: Overruled. Go ahead.
A I'm sorry. Can you repeat the question?
Q As a, as a, as a routine patrol officer is that within your normal gamut of responsibilities?

A Depending on time restraints, but typically speaking, that's something that was usually passed off to a detective.
Q Thank you. No further questions of this witness.
THE COURT: All right. You may step down.
A Thank you, Your Honor.
MR. WEST: Your Honor, I believe there's a matter of law that needs to be addressed with the Court.
THE COURT: All right.
Ladies and gentlemen, the attorneys have advised me that I need to discuss a legal matter with them. So I'm going to excuse you back to the jury room for just a minute while we discuss this legal matter. Again, I caution you, don't discuss the case even among yourselves. It's too early for deliberations. We'll take a short break and we'll bring you back in just a minute. Thank you very much.
(Whereupon, the following takes place outside the presence of the jury.)
THE COURT: All right. What have we got?
MR. WEST: At this time, Your Honor, the State would be calling the records custodian from the Hill-Finklea Detention Center. We intend on introducing State's Exhibit Number 123, jail calls elicited from this Defendant while incarcerated. Mr. Davis has indicated to me he has some objections to that.
THE COURT: All right. What's the basis for your objection?

MR. DAVIS: Several, Your Honor, and first of all, I'm still not aware, the State has indicated five potentially they may use, and I'm still not aware of those five, which I've listened to and yesterday at lunch reviewed with my client because didn't have access until Tuesday night. I'm still not aware of those five which they intend to use. First of all I'd ask that.

THE COURT: All right. But you're heard all five?

MR. DAVIS: I've heard all five. Yes, Your Honor.

THE COURT: All right. Overruled. I'm, I'm not going to suppress it because of that.

MR. DAVIS: No. This is not my motion to suppress. I'd simply like to be told of, of the five which ones they intend to use and then I'll -- because depending on what it is I'll, I'll address my specific --

THE COURT: All right. Let's say for the purposes of your argument they're going to introduce all five.

MR. DAVIS: Fair enough. Fair enough, Your Honor.

THE COURT: All right.

MR. DAVIS: Judge, I would argue, I would argue there's four hurdles for these to be admitted, and I would argue that there is an issue as to the fact that they are hearsay. I expect the State would suggest that under 803(6) they're admissible.

THE COURT: These are phone conversations between the

Defendant?

MR. WEST: The Defendant is the caller, Your Honor.

THE COURT: Okay. So how are they hearsay if the Defendant is --

MR. DAVIS: Because it's not a live person who heard him say it.

THE COURT: Okay.

MR. DAVIS: It's not a written statement of him. It's a phone call recorded by a third party.

THE COURT: All right.

MR. DAVIS: Third party, not either person on the phone. So that goes to my second thing is to authenticate it. I think not only must the, the State show that it comes in over top of any hearsay objection, they have to be -- able to authenticate it. My understanding, Your Honor, is that this is a records custodian that works at the jail who will put in some identifying number, inmate number or something to that effect, identifying number, and that pulls all the calls from that account that go out of the jail. I, I expect that custodian to say that account number corresponds to my client, John, but I don't expect this records custodian to be able to tell us if one of the two people talking on the phone is John. I, and I also have higher concerns because one of the ones they may attempt to introduce they allege is John talking on the phone from a different number, another inmate's number.

So clearly the number identifying who the caller is is not foolproof. So the State not only has hearsay issue, they have authentication issue, and then finally, Your Honor, again, this is a conversation between two people, of the four -- five calls, four of them are with a female, one is with a male. The State has issues on that because it's recorded by a third party. We have Crawford issues, confrontation issues because that other person is on the phone, it's a conversation, and for that to be understood then that person receiving the call, certainly John can choose to testify or not, but if they're going to introduce evidence that has contents from another person, we're talking two other people, a male is on one call, female on three, on four, then we are in a bind for confrontational, constitutional issues. So unless, unless the State can overcome those series of hurdles I would argue they're inadmissible.

THE COURT: All right. What's the State's position?

MR. WEST: Thank you, Your Honor. First of all, the hearsay objection is unfounded as under 801(D)(2) these statements are stated by the Defendant and admission by a party opponent admission against interest.

THE COURT: Well, now, but not all of the statements are by the Defendant. Some of them is by someone he is talking to.

MR. WEST: That's correct, but at that point, those

statements aren't going to be inserted, introduced for the truth of the matter asserted, and therefore, are not hearsay, but the State --

THE COURT: So what -- so you're not --

MR. WEST: -- what the State intends to introduce is the phone conversation, Your Honor, but during the phone conversation it is the elicitations by the Defendant about the actual incident that we intend to use as proof against him as guilt in this instance.

THE COURT: Okay. So anything that is inculpatory -- is there any inculpatory statements made by the other party to the phone conversation or are all of the -- is all of the inculpatory evidence against the Defendant statements made by the Defendant?

MR. WEST: Could you please rephrase the question?

THE COURT: Okay. I guess my question is is there anything said by the other party to the phone conversation?

MR. WEST: About the incident itself?

THE COURT: That, that implicates the Defendant?

MR. WEST: I mean, it's -- it is a dialogue, Your Honor.

THE COURT: Okay. But if -- it's one thing if the Defendant says, "Yeah. We broke into the house last week." It's a completely different issue if the Defendant says, "Why are you calling," and the other party says, "I want to talk to you about us breaking into the house last week."

MR. WEST: Okay. It is not at all like that second scenario. The phone calls are between the Defendant and his father and the Defendant and his child's mother, and so they're not participants in the crime. Most of it is reactionary phone calls after he's arrested telling what has occurred.

THE COURT: Him telling them what has occurred?

MR. WEST: That's correct.

THE COURT: All right. So they don't say anything --

MR. WEST: Would you like to listen to them in-camera?

THE COURT: -- out of a personal knowledge or anything of that nature?

MR. WEST: What I don't want to do is misquote a 15-minute phone call, Your Honor, and be in a position where you're not fully informed.

THE COURT: And that's why I'm wondering. I might need to listen to it anyway because if the other party to the conversation says anything to implicate the Defendant then he has a right to cross examine that. He can't cross examine a phone conversation.

MR. WEST: I understand that.

THE COURT: He has the right to put them on the stand and cross examine them.

MR. WEST: And I would argue that they are readily available as it's his child's mother. So he knows who it is

and it's his father, he knows who it is, and earlier this week --

THE COURT: Yeah. But he can't, I mean, but that's forcing him to prove his innocence. The question is is does the State have to get his father in and does the State have to get the other party to the conversation in? Now, if it is true that it is not hearsay, it's not being offered for the truth of the matter asserted, then it may very well be admissible. However, it's one thing for the State to say, "We're not offering it for the truth of the matter asserted," but if they are making a statement that implicates the Defendant you've got a confrontation problem.

MR. WEST: Okay.

THE COURT: And I don't know because I don't know what the conversations say. I don't know what the other party to the phone conversation says.

MR. WEST: Sure. Well, let's have a hearing on -- let's just play the calls. I think that's the best way.

THE COURT: I think that's the best thing to do. Mr. Davis?

MR. DAVIS: Certainly, Judge, and this will help understand which ones are -- I will tell you four of the five are 15 minutes each and some seconds, like it cuts off at an automated time. So it's just over 15 minutes, four, four of the five and the last one's at about a 10-minute call. So as

you see fit, it took me two and a half hours the other night to get through five of them.

THE COURT: Well, and I think we're going to have to do that because I don't know whether -- I don't know what's said.

MR. WEST: I can help you.

THE COURT: And put it this way, hearsay is inadmissible unless it falls under one of the exceptions, and I don't know that this fits within one of those exceptions.

MR. WEST: Okay.

THE COURT: You're offering an out-of-court statement by someone other than the Defendant, and if it implicates the Defendant then you're going to have to call that person and put them on the stand and subject them to cross examination by the Defendant. If it's not incriminating and all of the incriminating testimony is spoken by the Defendant, then that's another, another issue, but without knowing what is said -- now, the thing is is we're going to have to get that marked for -- is it already marked for identification? Okay. And what -- what's the identification?

MR. WEST: 123, Your Honor.

THE COURT: All right. This is State's Exhibit 123.

MR. WEST: I believe I need to call the witness to get it authenticated.

THE COURT: No. This is just for identification at this point in time. You're still going to have to authenticate it

before it comes into evidence. I just want to review it to find out if it's -- if I should grant the Defendant's motion to suppress because of hearsay.

MR. DAVIS: And one housekeeping matter at this point, Judge, does that one disc have all 94 calls on it?

THE COURT: I don't know.

MR. WEST: It does.

MR. DAVIS: Then at -- in a future time if the two or three or five are admitted we're going to have to redact that to another disc because they all can't go back. Just I know I'm getting ahead of myself, but --

THE COURT: Yeah. Well, and the thing is is how we're going to identify which -- what conversations they are?

MR. WEST: Well, they're indexed on the, on the call.

THE COURT: Okay.

MR. DAVIS: They're numbered. It's, it's --

THE COURT: Okay.

MR. DAVIS: -- a list of them almost like a spread sheet.

THE COURT: All right. So as you get ready to play them let's identify what number they are.

MR. WEST: Correct. And for purposes of redaction the software that's used, our office, once it has been downloaded, cannot redact the contents of the call or what's on that CD. So we'll just have to get a new CD from the jail with the calls that are introduced.

THE COURT: Well, what we'll do is we'll just have the CD and if the jury wants to listen to it we'll just bring them back into the courtroom and replay it.

MR. WEST: That's what we've done in the past, Your Honor.

THE COURT: We'll do it that way.

MR. WEST: All right.

THE COURT: All right. So which conversation is this? What number?

MR. WEST: We'll be listening to number five, indexed as number five, first, Your Honor, and that is a phone call from November the 1st of 2014 at 13:47:18 to phone number 843-830-1737.

MR. DAVIS: And Judge, whatever securities we can have to not have it too loud for the -- and have the door shut so the jury's not hearing this.

THE COURT: I'm assuming the jury can't hear any. If the jury can hear us in here then --

MR. DAVIS: Well, I just -- I want to make sure it's not played very loudly. You know, certainly you need to hear it, Judge, but that -- thank you.

THE COURT: All right.

(State's Exhibit Number 123 played in open court.)

MR. DAVIS: Judge, we'd ask that --

THE COURT: Hold for a minute. Just stop it for a second

because I'm talking louder than that, and if you're saying the jury can hear that then they've heard everything that's going on. Can they hear that back there?

(Officer and Court confer.)

MR. POULOS: Judge, the room with the speaker is the court officer room. It's not the jury room. It's a separate thing.

THE COURT: What is it for?

MR. POULOS: It's so the bailiffs can monitor what's happening in the room. The jury's in a completely separate room on the other end of the hallway.

THE COURT: Okay. Well, then go and make sure that door's shut and the jury can't hear what's going on. Okay. All right. All right. Go ahead and play it.

(State's Exhibit Number 123 played in open court.)

MR. WEST: Your Honor, that's all we really intended to introduce from that phone call.

THE COURT: All right.

All right. Let me hear from you, Mr. Davis. Any -- what's the objection to that?

MR. DAVIS: Again, Your Honor, as it comes on, there's an automated indication of what, and again, if you need the testimony, but I expect the testimony to be, the records custodian say that that name here, John Darrieux called it because it corresponds to his PIN number, to his inmate

number, to some number at the, at the jail, and then, then we hear the recording. I'm -- I still don't believe the State -- now you've heard it, but I would just renew my objections. They have to show -- they have to authenticate it. They have to get it by hearsay as to John and the other speaker if they intend to introduce the conversation, and if they intend to do that then we have a confrontational clause issue. It's, as you said earlier, it's the State's burden to lay the foundation and get through the evidentiary requirements.

THE COURT: Well, what part of what the other party to the conversation was said that is being offered for the truth of the matter asserted that, that implicates your client?

MR. DAVIS: Give me just a second, Your Honor. I don't believe there's anything said by the female that implicates my client. I would argue there's some things said by my -- by the female that would be prejudicial if played. I'll address that now or at the appropriate time.

THE COURT: Okay.

MR. DAVIS: But it's -- as to your question you're right.

THE COURT: Go ahead and address it now. What is --

MR. DAVIS: Okay. She references being in prison herself. She references that she, she has dealt with this stuff before. Obviously, it's someone close, if it's introduced, if the jury hears it, saying that you determined that the State's authenticated it and that it's, as a matter

of evidence it's, it's admitted, that the fear is there it would be prejudicial to John to have talked about prior knowledge of serving time in prison because there's also a reference here in response or in close proximity to her saying she was in prison, they're talking about how much time could be served, whether it's 85 percent or 35 percent. I -- he had already said, "I hadn't been advised of this." So where's that knowledge come from on how long you serve, how long you don't serve. That conversation between the two of them can't be -- it is intertwined and it would be prejudicial if that's presented to the jury. It's similar to, you know, 404(B) prior bad act. The, the, the caller says, "I have not been advised of this." So the only other way that person has that knowledge is from prior convictions.

THE COURT: All right.

MR. DAVIS: So that would be of concern.

THE COURT: All right. They're still going to have to authenticate it and meet all the hurdles to get it in, but I don't see anything that the female to that conversation said that implicates the Defendant, it's not being offered for the truth of the matter asserted on her part. So I think that conversation, number five, assuming you authenticate it and get it in -- I'm not going to suppress it on grounds of hearsay. All right?

MR. WEST: All right.

THE COURT: All right.

MR. DAVIS: And if I may just to communicate that further, Judge, since there's no implicating statements, it's not a confrontation clause issue either; correct?

THE COURT: Correct.

MR. DAVIS: Is that your ruling?

THE COURT: That's right.

MR. DAVIS: And Judge, I would again ask that -- I know and I appreciate the State shortening it a little bit, but there, there are some conversations in there about, you know, him seeing the, the, the person receiving the call or a child, that's stuff I would argue is irrelevant. If they, if they want to play some of it, that's fine. I, I just -- there's, there's some chitter chatter that I would argue is irrelevant and I'd ask be redacted even further.

THE COURT: Okay. No. I think it's going to further complicate it if you're stopping, starting, stopping, starting. So I'm going to allow him to go forward with that one. All right. What's the next number?

MR. WEST: State's Number or we would play index number 59 from December the 15th of 2014 starting at 17:10 to number 843-425-9558.

(State's Exhibit Number 123 played in open court.)

MR. WEST: And that's all we would introduce from that call, Your Honor.

THE COURT: All right. I'm going to sustain his objection on that one. I mean, she said, "I can't take this anymore. You did this to yourself. You'll get 15 years reduced to five," then talks about the people he's hanging around she doesn't like him, I think, I think you've got a confrontation problem on that. So I'm going to sustain the Defendant's objection to call number 59.

MR. WEST: Your Honor, given the light of that ruling I believe we would only try to introduce number five.

THE COURT: All right.

All right. Anything further from the Defense?

MR. DAVIS: Not at this time, no, Your Honor.

THE COURT: All right. All right. Has that got it?

MR. WEST: That's it, Your Honor, and our records custodian witness is present --

THE COURT: Okay.

MR. WEST: -- or in the lobby and --

THE COURT: Let's take about a 10-minute break.

MR. WEST: Okay.

THE COURT: And then we'll come back in, bring the jury back in and go forward.

MR. DAVIS: I'd ask Your Honor, consider allowing them to proffer it and see if they can authenticate it outside the presence of the jury because if they cannot then I wouldn't want the jury to hear the beginning of this and then -- she

has nothing else to provide than this.

THE COURT: Well, they can't -- none of it's going to be played until she authenticates it.

MR. DAVIS: Correct, not the recordings, but just to not even have a witness called, what was that witness for, if we get a little bit into it they'll hear that it was -- she works at the jail, she is -- has access to phone calls and it would shut down. I just ask out of an abundance of caution the few foundational questions be asked in camera.

THE COURT: No. I'm going to, I'm going to let them try the case they want to. Either they can authenticate it and it comes in or they run the risk of me ruling as a matter of law that the witness is not a proper witness to get this in and it's suppressed. So --

MR. DAVIS: Yes, sir.

THE COURT: I'm going to let them do it that way. All right. Anything before we take a break?

MR. DAVIS: Nothing else, Your Honor.

THE COURT: All right. Let's take about a 10-minute break.

MR. DAVIS: Thank you, Your Honor.

OFF THE RECORD

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

THE COURT: All right. Anything further from the State

before we bring the jury in?

MR. WEST: The State's ready to proceed, Your Honor.

THE COURT: Anything from the Defense?

MR. DAVIS: The Defense is ready, Your Honor.

THE COURT: All right. Let's go ahead and bring the jury in.

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

THE COURT: All right. Ladies and gentlemen, welcome back. Mr. West, the State can call your next witness.

MR. WEST: Thank you, Your Honor. The State calls Sergeant Katie Shuler.

THE COURT: All right.

Whereupon, Katie Shuler was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Okay. If you'll have a seat, state your full name for the record and spell your last name.

MS. SHULER: Okay. My full name is Katie Shuler, K-A-T-I-E, S-H-U-L-E-R.

DIRECT EXAMINATION

BY MR. WEST:

Q Good afternoon. Could you tell the jury where you work?

A I work at Hill-Finklea Detention Center.

Q And what is your responsibilities at the Hill-Finklea Detention Center?

A I am over all the inmates, canteen, mail, phone, basically all their money that comes in and out of, you know, the detention center.
Q Okay. And when you say phone, what does that mean?
A I'm over all of making sure that they're -- that they have a PIN number and all that so they can access and use the phone once they are in our facility.
Q Okay. Does the jail record outgoing phone calls for the inmates, from the inmates?
A Yes.
Q Okay. How are those recorded?
A We go through a company called Securus and they have those stored and recorded.
Q Okay. Describe how that system works.
A Once an inmate is booked in they have their information in the computer and then they will have an actual PIN number that is connected to their information to their name. So every time they make a phone call they have to punch in that PIN number. Then they have to record or they record their voice so they have to say their name and if it doesn't recognize it then they can't make a phone call. It helps with people stealing their PIN numbers, and you know, other people using their phone account when they're not allowed to.
Q Okay. Are you familiar with how the actual voice identification technology works?

A It's all -- it's computerized, and what it does is they have to repeat their name three times with the computer system and it, it, it makes sure that like when they -- how they pronounce their name because they have to say their first and last name, how they pronounce things that, you know, that's how it indicates if that's that person or not.

Q Okay. Is there any way to alter or modify those calls once they are recorded?

A No, sir.

Q Did you ever receive a request to pull records of phone calls related to this Defendant?

A Yes, sir.

Q Did you provide those to the Solicitor's Office?

A Yes, sir.

MR. WEST: I'm showing the witness what's been marked as State's Exhibit Number 123.

BY MR. WEST:

Q Do you recognize that?

A Yes, sir.

Q And --

A This is the CD that -- now, this one here.

Q Yeah. Does it have your initials on it?

A It does, but I -- that ain't my handwriting.

Q I understand that, but is that, is that a CD you provided to our office?

A Yes. That's my initials, but I didn't do the writing on here.
Q The writing on top?
A Yes.
Q But the initials you provided on it would indicate that those are the calls that you provided to our office?
A Yes. Every CD that I burn I make sure that my initials are on the CD.
Q And that's how you were able to identify State's 123 as the recordings that you provided in relation to this Defendant?
A Yes.
MR. WEST: At this time the State would ask State's 123 be moved into evidence.
THE COURT: Any objection?
MR. DAVIS: My prior objections, Your Honor, and specifically, now I would focus on authentication.
THE COURT: All right. All right. Plaintiff's Exhibit Number 123 is admitted into evidence over Defendant's objection.
(State's Exhibit Number 123 [CD - Jail Calls] admitted into evidence and appropriately marked.)
MR. WEST: Permission to publish, Your Honor?
THE COURT: All right.
MR. WEST: The Court's indulgence as it's being cued.

THE COURT: All right.

MR. WEST: At this time, Your Honor, we would ask to publish the phone call from November the 1st, 2014, at 13:47 and 18 seconds to the called party 843 --

MR. DAVIS: Objection, Your Honor.

THE COURT: It's, it's in. You just go ahead and play the conversation.

MR. WEST: Thank you, Judge.

THE COURT: Okay. Without any additional information.

(State's Exhibit Number 123 played in open court.)

MR. WEST: Your Honor, for purposes of the record we're stopping it at 10 minutes and 46 seconds.

THE COURT: All right.

MR. WEST: May I approach briefly, Your Honor?

THE COURT: All right.

(Whereupon, a bench conference is held in the presence but out of the hearing of the jury.)

BY MR. WEST:

Q I'm going to ask you to step off of the stand for a minute. If you could walk over to the computer.

MR. WEST: Would you like them --

THE COURT: All right. You're going to need to speak up loud and clearly so the court reporter can hear and take everything down.

BY MR. WEST:

Q Could you identify for the jury how the calls are labeled on Exhibit 123?
A When you pull it up the Securus system comes up and it states exactly each call. It tells you the time and the day it was done on. It gives you the number that was called, how much -- how many seconds the call was, where, where the inmate was at in our facility, where he made that phone call and then it has the inmate's name with their account number, which would be their PIN number that they would have to put in and then it tells on the other side like once it's end if the caller, you know, caller hung up due to they're allowed 15 minute phone call.
Q Okay. Now, we listened to State's Exhibit Number Five [sic]. Could you identify the call date and time to that indexed as call number five?
A Call number five was made on 11-1-14 at 13:47 and -- do you need me to say, say the number or --
Q Yeah. If you could, who -- what phone number was that call made to?
A 843-830-[redacted].
Q Okay. And what is the inmate's name that made that call?
A John Darrieux -- okay.
Q And how about the PIN number?
A The PIN number is [redacted] and then it should be his birthdate behind that, too.

Q Okay.
A I just think that it's not showing because it's not long enough in that bracket.
Q Okay. All right. You can please take the stand again.
A (Complies with request.)
MR. WEST: No further questions for this witness at this time.
THE COURT: All right. Cross examination.
MR. DAVIS: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. DAVIS:
Q Ms. Shuler.
A Yes.
Q Okay. Exhibit 123, you identified that how? What do you call that?
A That's -- it's our computer system and that's -- it is called Securus. It's the company that we go through. It's their personal --
Q Software.
A -- program.
Q Yeah.
A Yeah, that we use.
Q But what's on disc 123?
A That would be the phone calls for Mr. John Darrieux.
Q Okay.

A And how I pull that up is through the Securus system and either by one, his name, or his PIN number and then those calls are burnt by me on the computer system that cannot be, you know, manipulated in any way.
Q Okay. The State asked you to do that? The Government asked you to pull those calls; right?
A Uh-huh.
Q I need you to say yes or no.
THE COURT: I'm sorry.
Q I'm sorry.
A Oh, I'm sorry. Yes.
Q And they give you a date range to do that; right?
A Yes.
Q And they give you a name; correct?
A Yes.
Q And then you go as you just have that name or the inmate's number and you pull the calls for that, you dumped them on that disc and you turn it over to the Government; right?
A Yes.
Q Okay. How long you been working at Hill-Finklea?
A Ten years.
Q You know inmates use other inmates' PIN numbers to make calls. That happens?
A The only way that could happen is if the inmate puts his

PIN number and verifies his voice, and then if he hands it over to another inmate we can't stop that.

Q That happens from time to time?

A Yes.

Q Okay. Ms. Shuler --

MR. DAVIS: I'm sorry, Your Honor.

BY MR. DAVIS:

Q Ms. Shuler, thank you. That's all the questions I have. Thank you.

THE COURT: All right. Redirect?

MR. WEST: No redirect, Your Honor.

THE COURT: All right. You may step down.

A Thank you.

THE COURT: Thank you.

MR. WEST: Your Honor, at this time the State rests its case.

THE COURT: All right. Ladies and gentlemen, the State has rested their case, and so the law provides that now is the time where I have to address some matters of law with the attorneys. It's a procedural requirement that we do at this time. So I'm going to excuse you back to the jury room for just a few minutes while I discuss these legal matters with the attorneys and we'll bring you back out in just a second. All right. Thank you very much. I caution you again, don't discuss the case even among yourselves.

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

THE COURT: All right. Any motions?

MR. DAVIS: Yes, Your Honor.

THE COURT: All right.

MR. DAVIS: Your Honor, at this time the Defense would ask for a directed verdict as to all charges. We would argue that any testimony or evidence at this point presented to Your Honor is mere suspicion, it doesn't rise to the level that would allow you to allow the jury to deliberate on it. I make that general motion, but now I want to shift to a couple of specific, four specific indictments, Judge. As to the -- forgive me, I won't have the number -- the amended burglary, Your Honor, I think it's 1024.

THE COURT: Correct.

MR. DAVIS: Okay. Judge, as to that burglary third we would ask for a directed indictment for two reasons. The evidence on the record before you today is insufficient for a burglary in the third degree. The evidence before you today indicates that in the light most favorable to the State two mattresses may or may not have been taken from the interior of that structure. The evidence before you today in the light most favorable to the State does not say it was taken without permission because the alleged owner of that property could not give you the address of that property. "I used to own

some property on Cindy Lane," the State tried to rehab him with the actual number. I objected. You sustained. He didn't give you an address. Some property on that address he testified he owned. Some property on that address he said, "I didn't give permission for anybody to go into." There is no evidence before you that the owner of that property has come before you during this trial. Burglary, while it's an offense against property, there has to be a property ownership in that, and so we don't have before you on the record anyone to testify the, the incident at [redacted] Cindy Drive, we have no evidence before you that that property was owned by anyone. It's simply not on the record, Judge, and so for the State to be able to go forward on that there has to be an ownership interest established from which something was taken without permission unlawfully. Furthermore, they have to show an entry was actually made. So as to that one, and if you want to take them in order, it -- it's a cumulative argument as to the armed robberies next, but as to that one we'd ask for a directed verdict. We think that the State has failed to present sufficient evidence as to the elements of burglary.

THE COURT: All right. Your motion is noted. I'm going to deny it. I think they've got enough to get to the jury on that.

MR. DAVIS: Okay. Judge, we next specifically focus on the armed robbery charges.

THE COURT: All right.

MR. DAVIS: Judge, you're well aware of the statute. I won't belabor the point on that, but the case law further defining robbery, and I'm citing here from State v. Moore, which is 649 S.E.2d 84, 2007 Court of Appeals case. Judge, I'll summarize. There's a couple of long quotes here, but ultimately the gravamen of a robbery charge is taking from a person or immediate presence of another by violence or intimidation, Moore quoting State v. Rosemond, R-O-S-E-M-O-N-D, which is 589 S.E.2d 757. Coincidentally Rosemond was a directed verdict case. In that case they did not direct a verdict, but the facts of that case dealt with an armed robbery at a convenience store. The Defendant went behind the counter to the register. The employee came back from, I believe, the restroom or the freezer or something, but came back to the counter and the facts are that they were in with -- within feet, I'll find this in a second, Your Honor, but in feet of each other when the Defendant flipped the register over, causing it to open and took the property from the register, took the money from the register within feet of the employee.

Judge, in this case, the evidence in the light most favorable to the State, Ms. Simpson was asleep on the couch. She testified about her purse, her jewelry box, her jewelry being taken. I asked her, "Were you asleep on the couch with

your purse?" "No. I was not." That did not come from the living room. She remained in the living room until the end of this incident once the property had already been taken. They -- the allegations are they put them in the back bedroom or bathroom, but the property was not taken from her person or from the immediate presence, immediate presence. Now, I will be honest, I could not find a case law definition of immediate presence. I think that's not incredibly precise, but I would argue immediate presence would be within arm's reach. Her property, the only property that is testified to have been taken that belonged to her, purse, the jewelry box, jewelry. If I'm misstating I'm sure the State will correct with me, but that -- my recollection, Judge, of the, of the evidence, not from her person. She's asleep on the couch. She was only moved during the time of getaway. So it was not taken from her person or in her immediate presence.

Mr. -- forgive me, Your Honor, have a moment, Jones, Stephen Jones, he's the gentleman who's boarding there, roommate there, staying in the bedroom to the right, gets hit on the back of the head, brought into the living room. He testified he was trying to put on his boxers. He'd been asleep. He comes out in boxers -- trying to put on pants, sorry. He'd been asleep. He was in boxers only, gets brought to the couch or the chair, one or the other, in the living room. What -- he testified that what they took from him, his

belongings were from his bedroom from the pillowcase, everything was stuffed in a pillowcase, taken out, from his bedroom. You've seen the diagram of this. Bedroom is at least feet, meaning several feet, I would argue more than ten feet, but certainly not within arm's reach. He was then, the testimony is, moved to the other bedroom and bathroom. So all the property that was taken was not from his person. He had his clothes off, boxers, he was asleep or his immediate presence from another room through a door down the hallway, another room.

Finally, Mr. Roberts, he testified about cards, and oh, and let me deal with, any identification, wallets, that kind of stuff, but again they're, they're asleep. They're not wearing clothing. It's not in their pockets. There has been no testimony that even their cell phones were under their pillow or under the mattress or some cell phones being taken, chess sets, wallets, purse, none of this, none of this at any time did any witness say, "It was taken from my person or from the immediate presence." So as to the armed robberies, we would argue the State has failed on that element. They could have charged it something else. They could have gotten testimony that it really did come from their person or from their immediate presence. That's not the evidence before you. So I understand your position is not to weigh the evidence, but I'm arguing that that evidence is lacking as to the armed

robberies and we'd ask for a directed verdict on those charges.

THE COURT: All right. I'm going to deny your motion. I think there's enough to go to the jury.

MR. DAVIS: Thank you.

THE COURT: Anything else?

MR. DAVIS: Not, not for -- not that type of motion, Your Honor, and I told your law clerk I'd already spoken with my client --

THE COURT: All right.

MR. DAVIS: -- if you'd like to take it up now about whether he will testify or not.

THE COURT: We can go ahead and do that.

All right, sir. If you'd please stand and raise your right hand.

(Defendant sworn by Court.)

THE COURT: All right. Thank you very much. You can put your hand down now. Your name is John Alexander Darrieux?

MR. DARRIEUX: Yes, sir.

THE COURT: All right. Mr. Darrieux, at this time I'm going to explain to you certain rights that you have. If you do not understand anything I say please let me know. If you want me to explain anything in more detail please let me know. Do you understand that?

MR. DARRIEUX: Yes, sir.

THE COURT: All right. We've now reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the United States Constitution, which states in part that no person shall be compelled in any criminal case to be a witness against himself. This means that you cannot be required to testify in this case. You have the right to testify on your own behalf. However, no one can make you testify. This is a personal right and no one can waive this right except for you. If you decide to testify you will be subject to the same rules that govern other witnesses, and you may be examined and cross examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than on year and this Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the Solicitor will be able to introduce your record to attack your credibility.

Now, does the State have any prior convictions of this Defendant that they would be seeking to introduce if he takes the stand?

MR. WEST: We do, Your Honor.

THE COURT: All right. What have you got?

MR. WEST: The Defendant has a criminal record of a 2014 open container, 2013 financial transaction card theft,

possession of methamphetamines, 2011 burglary in the second degree and driving under suspension, 2010 breach of trust.

THE COURT: Hold for a second. I'm, I'm trying to write these down.

MR. WEST: I'm sorry. I'll slow down.

THE COURT: 2014 open container.

MR. WEST: That's correct. 2013 financial transaction card theft.

THE COURT: Okay.

MR. WEST: Possession of methamphetamine.

THE COURT: Okay.

MR. WEST: 2011 burglary in the second degree.

THE COURT: All right.

MR. WEST: Driving under suspension, 2010 breach of trust and possession of a stolen motor vehicle, 2009 trespassing, 2006 possession of a Schedule II controlled substance, a 1998 possession of a controlled substance.

THE COURT: All right. Possession of a stolen vehicle was when?

MR. WEST: 2010.

THE COURT: And trespassing was?

MR. WEST: 2009.

THE COURT: And possession of -- the last two drug possession charges were when?

MR. WEST: 2006 and 1998.

THE COURT: All right. What would be the probative value of possession of a stolen vehicle, trespassing and the last two drug possession charges?

MR. WEST: I believe --

THE COURT: Or any of the drug charges?

MR. WEST: Well, Your Honor, we've hashed this out a little earlier this week about the victims' prior records, and I believe the same arguments could be said for this Defendant in regards to possession of methamphetamine, controlled substance. The 1998 one I realize is, is quite a time ago, but 2006 is obviously still within the ten-year period.

THE COURT: All right. I'm going to allow you --

MR. DAVIS: Judge, if, if I may -- may I?

THE COURT: Now, I -- well, let me hear from you -- I'm not going to allow the open container, the possession of methamphetamine from 2013, the burglary second, the DUS or the trespass or the last two possession of drugs. Let me hear from you, Mr. Davis, on the financial transaction card theft, the breach of trust, the possession of a stolen vehicle, yeah, those three. Let me hear from you on those.

MR. DAVIS: And Judge, if you will help me, I've got his actual rap here. The breach of trust was --

THE COURT: He said 2010.

MR. DAVIS: Okay. And I would simply ask whether the State's trying to introduce that under 609(A)(1) because it

carries potentially more than a year or under the honesty dishonesty.

THE COURT: Okay. I would -- I think it's admissible as a crime tending to show dishonesty.

MR. DAVIS: Then, then, Judge, based on that, we, we don't have any defense to that, is in -- is within ten years and we understand your ruling on that. What was the other two?

THE COURT: Financial transaction card theft in 2013.

MR. DAVIS: What year, Your Honor? '13? And Your Honor, again, if you would be inclined to allow it to come in because of the honesty dishonesty then we don't have a response.

THE COURT: Okay. And the possession of a stolen vehicle 2010.

MR. DAVIS: Well, on that I know Broadnax, and I printed it, Judge, but I skimmed it. I was more looking for my directed verdict argument, but I do have it, but I would, I would make it akin to on the one hand I was -- the Defense was not allowed to get into shoplifting partially because it's a 30-day offense, arguably more because similar to Mullinax [sic], which was a robbery charge; is that right, Judge?

THE COURT: Broadnax?

MR. DAVIS: Broadnax.

THE COURT: Armed robbery.

MR. DAVIS: Correct.

THE COURT: Armed robbery.

MR. DAVIS: So I would, I would analogize possession of a stolen motor vehicle to that. There's no inherent in this like fraud. The fact that it was stolen and he possessed it doesn't mean he got by fraud. There's many different ways that could come in to someone's possession. So I would argue it's more under the umbrella of a robbery and not to honesty dishonesty and/or if you're inclined to let it in under the first part of the rule then I'll argue that as well.

THE COURT: All right. What would be the probative value of the possession of a stolen vehicle?

MR. WEST: Your Honor, I believe it goes to credibility of the Defendant. Here we have a stolen item that's worth --

THE COURT: Okay.

MR. WEST: -- more than $2,000, Your Honor, and that's, that's a substantial amount for this Defendant.

THE COURT: All right. That's good enough. So I would allow you to impeach his testimony by bringing out the 2013 financial transaction card theft, the 2010 breach of trust, and the 2010 possession of a stolen vehicle.

MR. DAVIS: And Judge, just one final thing on that. I, I would argue that, one, 609(A)(1) flips the requirement. Normally 403 is a rule of admission. It comes in unless the prejudicial effect substantially outweighs the probative value. As to the accused, 609 says it's the opposite. It's a

rule of exclusion. It's out unless they can show it's so probative that the prejudicial --

THE COURT: Not so probative. It's just an equal balance. The probative value -- 403 says that it has to be a substantial probative value over the prejudicial effect. The rest I don't think it says substantial. It just says probative value versus prejudicial effect.

THE COURT: It, it, it, it -- but it flips it, Judge, that's what I'm saying. It flips it to a rule of exclusion. 403 is inclusion. 40 -- 609(A)(1) is a rule of exclusion.

THE COURT: Yeah. I understand.

MR. DAVIS: Okay. Thank you, Judge.

THE COURT: All right. So I'm going to allow them to bring in the 2013, in other words, Mr. Darrieux, if you testify they will be able to cross examine you as to your 2013 conviction for financial transaction card theft, your 2010 conviction for breach of trust and your 2010 conviction for possession of a stolen vehicle. Okay?

MR. DARRIEUX: Okay.

THE COURT: All right. If you decide to testify this decision on your part must be freely, voluntarily and intelligently made, with knowledge of the protections given to you by the Fifth Amendment to the United States Constitution and the consequences of your decision to testify. If you decide not to testify I will instruct the jurors that they

cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not you testify. You may talk with your attorney, your family and friends or anyone else, but the final decision will be left entirely up to you. Now, do you understand what I've explained to you?

MR. DARRIEUX: I do, sir.

THE COURT: All right. Do you have any questions about what I've explained to you?

MR. DARRIEUX: No. I do not.

THE COURT: All right. Have you discussed with your lawyer whether or not you wish to testify in this case?

MR. DARRIEUX: We've discussed it.

THE COURT: All right. Is there anybody else you want to talk to about this?

MR. DARRIEUX: No, sir.

THE COURT: All right. Do you want to talk to your attorney further about this?

MR. DARRIEUX: No, sir, I don't.

THE COURT: Have you decided whether or not you wish to testify in this case?

MR. DARRIEUX: I've decided I will not testify against -- in this case.

THE COURT: All right. Mr. Davis, anything further you

want put on the record?

MR. DAVIS: No, sir, Your Honor.

THE COURT: All right. Anything further the State wants put on the record in that regard?

MR. WEST: No, Your Honor.

THE COURT: All right. Does the Defendant intend to introduce or to put up any defense?

MR. DAVIS: No, Your Honor.

THE COURT: I know he's not going to testify. Does he want to put up any defense at all?

MR. DAVIS: No, Your Honor.

THE COURT: All right. Then I suggest we bring the jury in. The Defense can go ahead, rest on the record. I'll send them home. We'll come back tomorrow morning for closing arguments, charges and deliberations. Does that sound all right?

MR. WEST: Thank you, Your Honor.

MR. DAVIS: Yes, Your Honor.

THE COURT: All right. Anything from the State before we bring the jury in?

MR. WEST: Nothing from the State.

THE COURT: Anything from the Defense?

MR. DAVIS: No, Your Honor.

THE COURT: All right. Let's go ahead and bring the jury in.

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

THE COURT: All right. Ladies and gentlemen, welcome back. The State has rested their case and now is the time of the trial where the Defendant can present a defense if he chooses to do so. Mr. Davis, does the Defendant intend to present a defense in this case?

MR. DAVIS: The Defense rests, Your Honor.

THE COURT: All right. Ladies and gentlemen, the Defense has rested in this case, and so the only thing left in this trial is for the attorneys to make their closing arguments, for me to charge you on the law to be applied in this case and then for you to deliberate on your verdict, but given the time of day I think we're going to go ahead and break for the day. We're breaking a little bit earlier than I thought we would. So I'm going to ask that you please be back in the jury room tomorrow morning again at 9:15, and we'll resume the trial of this case. I caution you again, do not discuss the case even among yourselves. It's too early for deliberations. You cannot deliberate on this case until the attorneys have made their closing arguments and I've charged you on the law to be applied. Don't conduct any independent investigations into the case. I hope everybody has a good evening, and we'll see you back at 9:15 tomorrow morning. Thank you very much.

(Whereupon, the following takes place outside the

presence of the jury.)

THE COURT: All right. Anything from the State before we recess?

MR. WEST: Judge, I'm not sure if you do your charge conference on the record or --

THE COURT: Well, what I generally do is I will prepare some closing charges. I'll print them out and I'll let both sides read them. I'll give you an opportunity to raise any objections or challenges -- well, first of all, if you have anything special you want me to consider go ahead and submit it to me. I'll let you read my closing charges before I charge the jury. You can raise any objections, then after I charge the jury I'll give you another opportunity because sometimes it sounds differently when you hear it read versus when you read it on written paper. So I'll give you two opportunities to raise any objections or challenges, and that's generally how I do it. Before we break, let me ask, any lesser included offenses that the Defense and/or the State is requesting that I charge from those that are on the indictments?

MR. DAVIS: If I may, Judge, before I answer that, in an overabundance of caution we rested right after you ruled, but without argument I would renew all my directed verdict motions just as a -- out of an abundance of caution.

THE COURT: Okay. Motions are noted, but they're going

to be denied. I don't know if you have to raise them again, but --

MR. DAVIS: Exactly, Judge.

THE COURT: -- so noted. All right.

MR. DAVIS: Being over careful.

THE COURT: All right.

MR. DAVIS: Judge, I don't believe I have any special requests, and if you'll -- while the State's thinking, if you'll give me a moment to think. I don't believe we're asking for any lesser includeds, but if we can have a seat and I'll, I'll let you know momentarily.

THE COURT: All right. And if you have any just let me, just let me know as soon as you decide. Is there any that the State knows right now that they want charged, any lesser offenses?

MR. WEST: No, Your Honor.

THE COURT: Okay.

MR. DAVIS: Judge, I don't anticipate any lesser includes. The only one I'd ask a little time to think about coincidentally is the burglary in third. What I would ask is this, I believe I have either you or your law clerk's e-mail, I would send it to you tonight if we'd ask for it be -- that would be the only one I think we'd ask for a lesser included possibly.

THE COURT: One the -- what would be a lesser included of

burglary third?

MR. DAVIS: Trespass or -- trespass or housebreaking, and again, I'd need to check that.

THE COURT: Okay.

MR. DAVIS: I don't -- but it's doubtful, Judge.

THE COURT: Okay.

MR. DAVIS: If so I'll make sure you all get an e-mail tonight so you can see first thing in the morning.

THE COURT: That sounds good. All right. Sounds good.

MR. DAVIS: Thank you, Judge.

THE COURT: Anything from the State before we recess for the evening?

MR. WEST: Instructions on what time to be here.

THE COURT: I've got the jury coming back at 9:15. So I can take the bench hopefully at 9:30 or soon thereafter. I'm going to work on these charges. Hopefully I'll have them ready for you by nine or 9:15. I'm going, I'm going to be working on them tonight, and I don't know that I can get them to you, but I'll try to print them out and get them to you first thing in the morning by 9 or 9:15. Okay?

MR. WEST: Thank you, Judge.

THE COURT: All right.

MR. DAVIS: Thank you, Your Honor.

(Adjourned for day.)

(On the record, January 29, 2016, State v. John Darrieux. The following takes place outside the presence of the jury.)

THE COURT: All right. Good morning, everyone. You should have been given a copy of my proposed instructions and a proposed verdict form. Any objections or challenges from the State at this time? As I told you yesterday I'll give you an opportunity to raise any objections or challenges now, and then after I charge the jury you can raise any objections again because it does sound differently sometimes when you hear it read versus when you read it. Any from the State?

MR. WEST: Nothing from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. DAVIS: Judge, two things. I would ask on page 24, which is dealing with the armed robbery, at the top the first paragraph there the last, next to the last line, from the person or presence of another persons, I would ask you to add immediate presence. The case law I argued on directed verdict I would just ask you to add the word immediate in front of presence, and I believe that was Rosewood, I can -- Rosemond, Rosemond was the case yesterday I argued on directed verdict that talked about.

THE COURT: Let me see that case if you've got it.

MR. DAVIS: Yes, sir. Yeah. Can you give me a moment?

THE COURT: And it says -- because this came straight out of the charge book.

MR. DAVIS: May I approach, Your Honor?

THE COURT: Yes.

MR. DAVIS: And I will bring Rosemond and Moore. Moore cites Rosemond and gives the exact page number and the quote but here are both cases. So there's Moore with the tab where it cites Rosemond and there's the entitled case. Rosemond was a directed verdict motion.

THE COURT: Now, but these deal with jury charges?

MR. DAVIS: No, Judge. They were not a -- the, the issue on appeal was not jury charges. No, Judge.

THE COURT: Okay.

MR. DAVIS: But I would argue obviously it's helping define the elements, and the case law finds defines the elements as the person or the immediate presence.

THE COURT: All right. If I add immediate presence, then in the next paragraph I'm going to have to say property is in the immediate presence where I explain it, and --

MR. DAVIS: Right.

THE COURT: -- and you're not going to be able to argue that because, you know, you're going to have to stick to that argument.

MR. DAVIS: Well, Judge, I, I --

THE COURT: That if it's within the person's reach, inspection, observation or control.

MR. DAVIS: And as I argued on directed verdict yesterday

before seeing the instructions I argued it should be within reach, but I didn't have the instructions, I appreciate that. I was arguing another room or further away than reach wouldn't be appropriate. I'm -- and so on line three before presence, line five before presence I would ask immediately or immediate be inserted.

THE COURT: Okay. But I mean, it doesn't have to be just within the person's reach.

MR. DAVIS: I understand.

THE COURT: If it's within their control then it's within immediate presence.

MR. DAVIS: I understand.

THE COURT: Okay. What's the State's position?

MR. WEST: Your Honor, at this point I think we're going too far into semantics. I think your charge is perfectly acceptable as within, within the law. It does say within a person's reach, inspection, observation or control, and we would ask the charge remain as is.

THE COURT: Okay. Well, let me ask you this, Mr. Davis, if you have a situation where a person enters a dwelling in the nighttime with a firearm, takes property that is not within the immediate presence, following your argument, because it's in another room, what is the crime?

MR. DAVIS: Depending on the value of the property, petit larceny, grand larceny.

THE COURT: And the fact that they have a firearm.

MR. DAVIS: That's the burglary, that's possession of a weapon in that violent crime.

THE COURT: So you're saying it would just --

MR. DAVIS: That's right.

THE COURT: -- it would not be armed robbery. It would just be grand larceny even though they have a firearm and they took it by violence, intimidation, everything of that nature, but because the property was not in the room with the person it is not an armed robbery, it's a grand larceny?

MR. DAVIS: Yes. Because the violence and intimidation has to be towards the person that controls the object that's being taken.

THE COURT: Well, let's say that's it. It's -- it is towards the person against whom you're taking the property.

MR. DAVIS: If they're in the other room I can't be --

THE COURT: Well, I think, but you're arguing that because the violence, the intimidation and the alleged victims are in the living room and because the property was taken out of the bedroom that it is not an armed robbery.

MR. DAVIS: Correct.

THE COURT: That it's a grand larceny.

MR. DAVIS: Or, or, you know, the State has other theft offenses to charge. We have some other theft perhaps --

THE COURT: Okay.

MR. DAVIS: -- but would not be an armed robbery.

THE COURT: No. I'm going to, I'm going to disagree. I don't think that's right. I'm going to deny your motion. I'm going to leave it as it is. It's straight out of the charge book, and I'm not going to let you argue to the jury that simply because these properties were in a separate room while the armed intimidation was in the living room and the properties were in the bedroom that it's a grand larceny but rather than armed robbery. That's, as a matter of law, I just don't think that's right. So I'm going to deny your motion. All right.

MR. DAVIS: And then, Judge, the other thing we would ask, I have no issue with the verdict form.

THE COURT: Right.

MR. DAVIS: It puts the burglary third up top and then everything else together. In your charge it's burg first, burg third and then the rest, and since we've got two incidents that are 12 hours apart and I kind of talked about in the opening I would ask that you move the burglary third charge to the bottom, just put all the charges that deal with the one incident together. I know it's you went burg first, burg third because they're both burglaries, I guess.

THE COURT: Well, and I just, to be honest with you, I put on the verdict sheet, I just went according to the numerical order of the indictments.

MR. DAVIS: And I'm fine with the verdict form. I'm talking about in your charge, the sequence in which you describe the different offenses and the elements of the offenses, you go burg first then burg third and then it's the other activity at the first incident. I would ask that they not be mixed like that. I would just ask you to move burg third to the bottom of your specific offense on the charges so it's not second and then mixed with all the others. You put the four p.m. in the middle of the four a.m. charges, and I would just ask that be at the bottom.

THE COURT: You're talking about in the charges?

MR. DAVIS: Yes, sir. Yes, sir. Just the sequence in which you --

THE COURT: Okay. No. I think it just reads better if I say burglary, this is burglary you got the first, you got the third.

MR. DAVIS: Thank you, Your Honor.

THE COURT: Then you got the armed robbery. So --

MR. DAVIS: No, no, no other objections to the, to the charge or the verdict form.

THE COURT: Okay. All right. Anything else?

MR. WEST: I just wanted some clarification on the first thing. Are, are you precluding him from arguing that immediate presence part during his closing?

THE COURT: Well, no. He can argue it now since I'm not

changing -- what I didn't want to do is change the charge --

MR. WEST: Thank you, Judge.

THE COURT: -- and let him say, "All right. The Judge told you it has to be in the immediate presence, and so because they were in the living room and the property was in the bedroom" --

MR. WEST: All right.

THE COURT: -- by his own definition, but I'm going to let him make that argument but you -- your counter-argument is if it's within the reach or the inspection or the observation or the control, then it -- it's within the presence as defined under the, under the law.

MR. WEST: Thank you, Judge.

THE COURT: All right. Now, we'll bring the jury in. Since there was no defense presented, the State will close first, then the Defense will close, then I'll charge on the law and then, then we'll start deliberations; correct?

MR. WEST: Yes, Your Honor. Mr. Poulos has brought one more thing to my attention. The evidence did not include anything about Charles Roberts or Stephen Jones' prior convictions despite the pretrial motions. I want to make sure that's precluded during closing arguments.

THE COURT: Right. The only thing that came out was Ms. Simpson's prior convictions.

MR. DAVIS: In your charge you say one witness.

THE COURT: Yeah. Yeah.

MR. WEST: Thank you, Judge.

THE COURT: That's right. That's why I said that. All right. Anything else?

MR. DAVIS: Your Honor, if I can just -- I've not closed in this courtroom.

THE COURT: Okay.

MR. DAVIS: If I can just check the podium here real quick. Is this -- do we prefer this remains here? Would I be able to move this slightly forward? It's just kind of close to this table here.

THE COURT: Well, I mean, I don't --

MR. WEST: Well, I mean, I'm, I'm going first so --

THE COURT: Yeah. When it comes your time you can put it wherever you want to.

MR. DAVIS: Well, yeah, I know. Before we get into, I stand up and I came over, I just wanted to make sure that it's on wheels and it's all right for everybody if I, if I'm able to most it just forward slightly.

THE COURT: Oh, this podium, is it mobile? Okay. It's mobile. That's fine.

MR. DAVIS: Okay. Thank you all.

THE COURT: All right. Anything else?

MR. WEST: We're ready to proceed, Your Honor.

THE COURT: All right. Let's bring the jury in.

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

THE COURT: All right. Ladies and gentlemen, welcome back. I hope everybody had a good evening. We're now ready to resume the trial of the case. As I told you at the close of yesterday's events, all of the evidence has been presented to you that's going to be presented to you in this case. Now is the time of the trial where the attorneys will make their closing arguments and then I will charge you on the law to be applied in this case. Now, just like their opening statements these closing arguments are not evidence in the case. It is simply the attorneys' contentions as to what they feel the evidence has shown and the law to be applied in the case. If at any time an attorney makes reference to a factual issue that is different from the facts as you find them to be or references the law that is different from the law as I will charge you at the close of their arguments, then you're to disregard that portion of their closing arguments because their arguments is not evidence and it is not a charge on the law. It's their opinion and their contention as to what the facts are and the law to be applied.

All right. Mr. West.

MR. WEST: Thank you, Judge. Counselor.

Good morning, ladies and gentlemen of the jury. Thank you for your patience this week. We've had a long week and I

want to thank you for your attention to this trial.

I want to start by, again, going over some of the procedural aspects of what -- where we are right now. This is the closing arguments. This is the State's opportunity to convince you that the Defendant, the Defendant is actually guilty of the charges we've brought before you today. After I speak Mr. Davis gets the last word. So I'm going to be very thorough in the way I go over things. Some of it may seem repetitive, but mind you, there's been a lot of witnesses, a lot of testimony, a lot of things presented to you this week. After we both get to argue to you, the Judge is going to read you the law. The law is as the Judge reads it that's how you have to take it because that's the law of the state. I'm going to go over some portions of the law and explain how they fit into the facts that have been presented, similar to how I did in opening statements, but a little more thorough with a little more discussion now that the evidence has been presented.

Again, I started with the burglary in the first degree charge. Burglary in the first degree, again, is the unlawful entering of a dwelling with some aggravating factors. Here the testimony has been that this occurred during the nighttime. There was an entry into Charles Roberts' home during the nighttime. The evidence suggested it was dark outside. Therefore, it's a burglary in the first degree. One

of the first exhibits you're going to see is a picture of the outside of Charles Roberts' house while it's still dark. That is physical proof that it was still dark, in addition to the testimony from the witnesses that provided evidence that this happened in the nighttime making it a burglary in the first degree. The other testimony that makes this a burglary in the first degree came from the witnesses themselves. Rose, Charles and Stephen all said that the assailant was armed, all of the assailants had guns and Tristen said that as well. The guns are sitting before you in evidence. These are the guns that were taken into the house. This makes this a burglary in the first degree as well.

The other burglary is a burglary in the third degree because no one was living in the house, that's the only -- one of the main differences that distinguishes the level of burglary that this Defendant is charged with. You heard evidence from Tristen, Courtney Pringle, Zach Wright about a second burglary that happened off of Cindy Drive in the Summerville area of Berkeley County. You heard that there was a trailer where people went into. They came out with a mattress, the physical evidence, and they were caught with the mattress still on top of the car. Okay. So you heard from Courtney, Tristen. Tristen described how John Darrieux went in the house, how they came out with the mattress with Natalia, and how they were eventually caught with the physical

evidence from the burglary. So that's a burglary in the third degree. It happened later in the day, but it's one big chain of events. One thing to note here, again, is Charles Roberts owned that house. This was obviously a targeted individual here. What we have here is a victim of a similar crime from the same Defendant in the same day. This isn't a mistake. These people went after Charles Roberts. That was clear from the testimony. That's clear from the charges here.

Armed robbery, I think there's going to be some nitpicking in the language of the statute for armed robbery. What we have here, armed robbery, can generalized be stated as the taking of property by force or intimidation while armed with a deadly weapon. Okay? Now, there's going to be some semantics about where the property was, how it was taken. I believe the Defense is going to argue that if it's -- the property's in one room and the man with the gun is in the next it's not an armed robbery, that's not the case. Okay. An armed robbery is the taking of property within somebody's control. Charles' house had property in it. It was taken from him while people were threatening him with a gun. That's an armed robbery. Okay. An armed robbery is not a difficult concept to comprehend. Don't let the semantics of how the statute's written confuse you during your deliberations. It's as simple as gun pointed at somebody, property taken from them. That's an armed robbery.

Kidnapping, again, a lot of semantics in this charge. These three individuals were held in their own home against their will. They couldn't leave when they wanted to. They couldn't call 911. They were helpless. They were held on the couch. They were moved from room to room. They were threatened. They were told that they were going to get killed if they called the cops. This is a kidnapping. Kidnapping is the restriction of freedom, a constraining of movements. That is the definition of kidnapping, and that is exactly what happened during the burglary, during the armed robbery, which causes the kidnapping.

The last charge is one of the easier charges to describe legally. It's the possession of a weapon during the commission of a violent crime. Again, you're going to hear the Judge describe kidnapping, burg first and armed robbery as all statutorily defined violent crimes. The other element of that is you have to prove possession of a weapon. This is where some, again, some semantics in the law may come in. Possession can be this Defendant holding a gun directly in his hand or it can be constructive possession. You'll hear a little about that during the Judge's explanation of the law, but what we know here is that all of the assailants had guns. That can be proved by four people going into the house, four guns in evidence. Okay. So that's possession of a weapon during the commission of a violent crime.

Next I want to get into the witnesses themselves. The witnesses themselves are going to be how the case is proved. Okay. So testimony from witnesses is considered evidence. Evidence is not necessarily just the physical things that you see on the tables. It's not necessarily just the pictures. Everything they say is considered evidence. So what is the evidence of this crime or these crimes that John Darrieux is charged with?

What do we know from Rose Simpson? The first thing anybody noticed about Rose Simpson was she is an emotional wreck. There's no getting around that. She was robbed at gunpoint and everything was taken from her. Her life has been changed since then and that's understandable. Okay. These people wore Scream masks, Halloween masks, woke them up in the middle of the night and now she's distraught. If the Defense wants to use that against Rose Simpson to explain that she's not telling the truth, then I just ask you to use your common sense that this has affected her in a way where she's still telling the truth.

MR. DAVIS: Your Honor, I'm going to object. May I, may I approach?

THE COURT: All right.

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

THE COURT: Overruled.

MR. WEST: So what was Rose doing when she was robbed? She was sleeping on the couch. She said she had a migraine that night, that things were a little out of the ordinary. She was in and out, that she was sleeping on the couch. She heard a loud bang. People came into the house. She immediately noticed weapons and masks. People were in and out of the house. They were taking things. They loaded it up in the Durango. She described seeing the car as they were loading it and driving it away. What was taken from Rose specifically you'll see that there's purses, keys, jewelry box and cards. One thing that I want to point out is Rose hadn't seen some of those items since it was taken from her that night. One of the big things that I picked up on when I was questioning her about that is the genuine raw emotion that came out from those sentimental things that were introduced into evidence, those key chains given to her by her kids and friends, that purse she hadn't seen this happened. That's raw emotion. That's, that's the ability to judge the credibility of a witness. She remembers the Scream mask specifically. It's in evidence here. You heard Tristen describe this as the mask that Natalia was wearing. This is the mask that Natalia, the person in charge according to all of the victims, wore as she robbed them blind. She remembers that specifically.

She also remembers the Defendant didn't have a mask on. She got a good look at this Defendant. He was very close to

her. He held a gun to her face. That's something that's etched into her memory forever. She identified this Defendant as being one of the assailants right here in front of you during this week.

Stephen Jones, he worked for Charles. He lived with Charles. He was sleeping in his room when this happened, and he had to come out in the hallway, put some pants on. Tristen said that as well, said the younger man in the house sleeping in his room, they brought him out, then they forced him onto the couch. Some of the things that Stephen described can most certainly be corroborated by what Tristen says. He was moved from the living room into the bathroom. All of the victims in the house say that at one point Rose and Stephen were forced into the bathroom. Tristen says that as well. That's corroboration, and that can go to your judging of the credibility of the witnesses. He also said tools were taken, IDs were taken, TV, electronics, things of that nature were taken. You're going to see the pictures from the search warrant of Natalia's house, and you're going to see how Stephen Jones' belongings were in there. Specifically you're going to see his driver's license and some things of that sort that specifically identify him as being the owner of that property found in this Co-Defendant's house. Another thing that he did specifically he said this Defendant got in his face. He got a good look at this Defendant. He identified

the Defendant as being the unmasked man during the robbery.

Charles Roberts, again, he was the elderly man that was testifying this week. He was asleep in his bedroom. He was held in his bedroom during the entirety of this robbery. So he didn't get to see exactly what was going on in the rest of the house, so he couldn't describe the number of people, those sorts of things. He was forced onto his bed. He specifically had jewelry taken off of him. That was one of the things that he testified to. A lot of the things in Natalia's house that were found you're going to see have Charles Roberts' names on it, ID cards, pill bottles, things of that sort. Everything that was found during that search warrant you're going to see had these victims' names on them. It didn't get there by accident. It was taken there after a deliberate plan to burglarize, rob and kidnap these victims.

Next we got into the law enforcement witnesses. Officer Babson was one of the first officers to respond to the home invasion on Bryan Drive. He told you that he responded, took statements. He, again, corroborates that it was dark outside, which goes to the burglary in the first degree charge. One of the other things that he told you, and you'll see the pictures of, is he found tools in the driveway. Why is that important? Because the more that can be corroborated of what Tristen says the more you have the ability to judge the credibility of a witness. Office Babson, who's not a part of any of this,

comes up on later says, "I found tools in the driveway." Tristen sits on the stand and says, "We dropped tools out of the car as we were driving out," that's something you all can mesh together to make one full picture story. Okay. So that was one of the important things that Officer Babson did along with his general response to the scene.

Courtney Pringle, again, we had to take her a little out of order. Again, she was the neighbor of the second burglary. She came in and told you that she witnessed -- she couldn't see the entry of the, the trailer because they went behind the trailer, but common sense tells you they come out of the trailer with a mattress, they were not invited there, that's a burglary. Charles Roberts owned the property. He told you that he never gave permission to this Defendant or anybody with them to go into that property, and they were caught with the mattress on top of the Durango. That's a burglary in the third degree, and that's what's the important, importance of her as well as specifically identifying Natalia. She knew Natalia, and then she called the police. After she called the police she's the reason they actually even caught all of these people. They caught them a short time after she called. They sent out the BOLO. They eventually caught them with the property on top of the van or on top of the Durango.

Officer Zach Wright, he was a quick witness. He responded to the burglary on Cindy Drive. He took the

statements from Courtney Pringle. His importance was mainly the fact that Courtney Pringle couldn't call out the, the be on the lookout for the rest of the cops. He had to do it. So he, he told the rest of law enforcement to be on the lookout for a silver Dodge Durango with a mattress on top and that's what he did in this case.

So when he did that then Officer Drew and Officer Graff were on the lookout for the silver Dodge Durango. They found it a very short distance away from the burglary in the third degree, and they found it with the mattress still on top. Some of the things they pointed out was that this happened in a cul-de-sac. Tristen said it happened in a cul-de-sac. Tristen described the entry, the taking of the mattress. They go into the cul-de-sac, they load up the TV. Those sorts of things were all corroborated by Officer Drew and Officer Graff. The other things they corroborated is they were all together. All four of them were together that morning at Bryan Drive. All four of them were still together that afternoon on Cindy Drive. They were arrested there together. Officer Graff was the officer that actually arrested all four of the Defendants. They searched the car and found one of these guns that you see here before you today. It's in evidence.

Again, I want to point out some of the details the State has presented to you to prove this Defendant's guilt. You all

heard a jail call later in the testimony from the State. We specifically asked Officer Graff when he booked the Defendant in what phone number he gave as the next-of-kin contact. On the booking report he read off the number. It's the same phone number that the Defendant called from the jail proving his identity of the call.

Detectives Dan Wilson and Shane Cook, they were involved in the search warrant of Natalia's house, Hallmark Drive. They recovered all of the property that was taken during the burglary, during the initial burglary on Bryan Drive. One of the things that Dan Wilson told you as well was that Tristen got a cut for being involved in the home invasion. He actually collected the $200 that he got. That's in evidence. You all will have that back with you during your deliberations, just another piece of corroboration evidence to show you that Tristen's story is actually what happened.

Now, you heard during the trial that the State and the Defense agree that there was a proper search warrant. That was some of the things we cut out to eliminate some of the time yesterday. We got you out a little earlier than we anticipated. That's one of the things that we all agreed on. We, we entered all the pictures from the search warrant. You'll be able to flip through those back with you in the, in the jury room and see what Natalia's house looked like. You'll see where the things were found. You'll see all of the

property belonging to the victims that was found in that residence and that was done by these officers.

Katie Shuler was the sergeant from the jail. She introduced the jail tape yesterday. This Defendant -- this is an appropriate time to talk about another legal standard that we have here. The State is obligated to prove the Defendant guilty beyond a reasonable doubt. What does that mean? It's not beyond a shadow of a doubt. It's not beyond all doubt. You'll hear that from the Judge. What it is is a reasonable doubt. What is reasonable? It is something that leaves you firmly convinced. So let's take a look at this jail call. I imagine that, again, the Defense gets last time to talk to you, so I'm anticipating some of the things that he's doing to tell you. He doesn't necessarily have to say this, but this is just an example of reasonable doubt. He may argue that this wasn't his client on the jail call. Now, let's look at the call as a, as a whole. Again, Officer Graff already testified that the phone number that was given to him by the Defendant was the same phone number that Katie Shuler read to you. Each inmate is given a PIN number when they get into the jail. That PIN number is entered into the Securus system which can't be modified or altered. There's voice identification technology that will cut off the call if it's not the same voice that was used during that automation. During the call the caller is identified as John several

times. The context of the call talks about the context of what we're talking about here in the trial. All of that together is circumstantial evidence, but it's also some direct evidence, and that is in its totality proof that this Defendant was the caller. Is that everything that can be used to prove that that Defendant was the actual caller? Probably not, but is it enough to get over that reasonable doubt standard? I would suggest to you that it is. Everything in conglomeration together proves that it's the Defendant on the jail call. So when you hear about reasonable doubt, keep that in mind. It's you being firmly convinced this Defendant committed the crimes that he's charged with.

This is going to take a little while. Tristen Brower, he was -- he's a young guy. You all saw him. You all got to hear him, and you got to hear some of the horrible things that he admitted he did. Think about his testimony. He was related to Natalia. He gave up his aunt, somebody he loved, somebody he played with her kids, and he came here and testified that she committed these crimes. Again, that goes to the credibility of the witness. Does some of the things that he's telling you make sense? Why would he say these things about his aunt and then make something up about somebody he just met that weekend?

Tristen described the robbery and burglary at Bryan Drive in specific detail. He identified this Defendant as being

with him that weekend. He identified him as being one of the people that went into the house, and specific details of his testimony certainly corroborate the other witnesses which we've already gone through a lot of. So I'm not going to belabor the point, but go back in your memory and, and think about some of the things that Tristen said that was matched up by the other witnesses. He said the Defendant was not wearing a mask. All three victims said that he was not wearing a mask, and two of them specifically identified the Defendant as being in the house. He said all of them had guns. Four guns found, one in the car, three in the house, four Defendants. He described the types of masks and the types of at least two of them that was being worn by some of his Co-Defendants. He said that this was the type of mask and this was found in Natalia's house, a Jason mask. Again, he described Natalia wearing the Scream mask. This was found in Natalia's house. The victims described that as well. Before he was shown any pictures about what was left of the Bryan Drive residence I was asked how -- I asked him how things were being taken out of the house, whether anything was stacked in the hallway. You saw pictures of the electronics being stacked in the hallway. We asked him what types of items were taken. He said electronics, and basically anything they could get their hands on, and that's exactly what was did -- done and you can see through Exhibits One through 25 that house is turned upside

down. It was described as if a tornado went through there.

All of the victims, since they didn't Natalia, I just asked for physical descriptors of Natalia, hair color, skin tone, what her voice sounded like, things like that. All of them said she had olive, tan skin, an accent, dark brown hair. Well, you heard Tristen, all of those things, and you heard she was from Puerto Rico. So it matches up what Tristen said and all the victims were saying.

We gave a description of the Durango. One of the, again, sort of minor details in this is he said there wasn't a front seat in the Durango. Okay. Well, you'll see the pictures of the Durango. There's not a front seat. There's speakers in the front seat and all kind of other junk Natalia and these people stuffed in the front seat of the car.

He said that they were there about an hour. That's what all the victims said, maybe a little over an hour. The timeline certainly corroborates all of the victims as well as Tristen Brower's statements.

The second burglary he described it just the way that Courtney Pringle did. He said he couldn't see John Darrieux go behind the house, but he said he saw him come out with a mattress, tied it to the top of the Durango. The mattresses were still in the Durango when they were in the cul-de-sac and stopped by Officer Drew and Officer Graff. He said there was a large TV on the side of the road. It was loaded in the back

of the Durango. You'll see pictures of that large TV in the back of the Durango. He said all four were arrested together. All of this is adding up to the same story that the victims told and that lead to the charges that this Defendant faces.

One of the shocking things that I heard from Tristen was not necessarily all the details of the robbery. The robbery was scary enough, but this is the train of thought that the Defendant had before he went and burglarized and terrorized these people. He said, "If kids are inside I'm going to break their fingers." That's sadistic. That's terror. That's the way this Defendant was thinking before he changed these people's lives forever.

So that's the witnesses. That's the testimony from them. Now let's talk about the big picture here. What's the big story here? What are some of the uncontroverted facts and how do we tie them together? Well, one of the uncontroverted facts is that there was a mattress found on top of a Durango. There's pictures of it. There's no disputing it. I don't think the Defense is going to argue that there wasn't a mattress found on top of the Durango, but that mattress being found on top of the Durango led to everything else. John Darrieux arrested minutes after the Cindy Drive burglary with Natalia Chisolm, Joseph Arsenault and Tristen Brower, they were all arrested together. Again, don't think anybody's going to argue that they weren't arrested together, they were

separated or anything like that. They were all found at that cul-de-sac and arrested together. Charles Roberts, Rose Simpson and Stephen Jones' property was found at Natalia Chisolm's house. The State and the Defense agreed on that. We stipulated to the entry of that evidence, the evidence you will see through pictures and the physical evidence that is introduced. Lastly, Charles, Stephen and Rose had property stolen from them at Bryan Drive. Again, there was an event that happened at Bryan Drive. It didn't happen to themselves. Somebody did it to them. Now, let's connect the dots.

You've got mattress on top, which led to the BOLO, which led to the arrest. The arrest led to talking to Tristen. Tristen led to the search warrant. The search warrant led to the property belonging to the victims, and that led to the arrest of these Defendants for the armed robbery, burglary first, the kidnapping of the Bryan Drive. The uncontroverted facts in this case are connected, the dots are there, draw the lines in between them when you're deliberating.

Now, those were some of the uncontroverted facts. The last thing I want to talk about is what you heard from the jail call of John Darrieux. That jail call is critical evidence in this case as it gives you, again, a picture of what the Defendant thought about all of what was going on. This Defendant said, "I f'd up. I'm sorry. I f'd up big time. Fortunately, no one got hurt real bad with this

situation here." He wasn't one of the ones in the house how would he know those details about what happened in the house? He made this call from jail, and what he was telling the person that accepted the call was he kind of asked for this and this is what he got, talking about him having to sit in jail until his trial. That's exactly what the Defendant said, and a person that is not guilty of these crimes doesn't say this to his girlfriend.

One of the last things he said that you heard is he thinks he's got a lot of wiggle room, wiggle room, he thinks he has a lot of wiggle room, but I suggest to you the evidence is clear. Four people bust into Charles, Stephen and Rose's house on October the 21st of 2014. Masks covered some of their faces, and the guns they held made them feel invincible for the moment. All four bust into the house waving the guns around as if to say, "Your life doesn't matter now. Everything you've worked for, everything you own, everything you know, your friends and family, none of that matters. Everything I have no right to I'm going to take because laws don't apply to people with guns and masks." Madam Foreperson, ladies and gentlemen of the jury, if the truth is what you seek, that sadistic, twisted way of thinking couldn't be farther from the truth. Our laws don't give John Darrieux wiggle room. Our laws say that John Darrieux is guilty of kidnapping, armed robbery, burg first, burg third and

possession of a weapon during the commission of a violent crime. Thank you.

THE COURT: Mr. Davis.

MR. DAVIS: Thank you, Your Honor.

Maybe I'm going to surprise you again. That's a believable theory. It's a believable theory, but it's just that it's a theory and it has faults. Let me start with a couple right off the top. The State wants you to buy that entire theory and to do that you must believe Mr. Roberts was a target. There's no proof of that. There's not. Remember any witness that said that he was a target. Remember any testimony he gave that he knew any of the folks that have been charged. To target someone you have to know them. To target Mr. Roberts you have to believe both of these residences belong to him. If you'll remember his testimony, he didn't remember. He used to own a property on Cindy Lane. "Someone got evicted. I'm not sure what residence it was." Well, you have to be firmly convinced. You have to be firmly convinced. The Judge is going to tell you that. That's the law. To convict someone you have to be firmly convinced. How can you be firmly convinced that Cindy Drive, the residence the mattress was taken from, belonged to Mr. Roberts? He could have testified to it. He didn't. The State could have shown him a picture of it. "Is that it? You can't remember the address. Is that it?" For you to convict John you have to

look here for the Government to bring you evidence to prove this. What do you need to believe that? What do you need to know that's true? You need something. For their theory that John was targeted, both residences were his, what do you need? More than they gave you. That's their theory, but what if there's another theory? There is. There's plenty of other theories. Here's one. At 4, 4:30 in the morning on a random October night John's asleep. Well, if you're asleep, then you don't have an alibi. There's not going to be a witness come in. Even if you have a partner to sleep with you, if they're asleep there's not an alibi, and we don't go around recording where we are and what we're doing all day so long so if we get accused of something we go, "You know what? I know that's where I was. I couldn't have done it." So by him telling the State, "Give me a trial, I didn't do it. I'm not guilty. Prove it," there's no reason for him to take the stand and say, "I was asleep."

Then in the afternoon, in the afternoon, collecting items is not a crime. Collecting, for example, this massive TV, you'll see it in the back, from the roadside, that's not a crime, not charged with that. They -- the -- what do you have to be convinced of for the -- for you to convict John of the afternoon burglary? You have to be convinced that he went in or somebody he's with went in, you have to be convinced they didn't have permission to go in and you have to be convinced

that it was Mr. Roberts' property, have Mr. Roberts identify the mattresses. "Yeah. Those are my mattresses up there. I didn't give anybody permission to do that." Did they do that? They didn't. Isn't it just as likely that permission was given to take those mattresses, that if entry was made it was allowed? Is there any broken windows? Is there any busted in door? Is there any signs of forced entry? Is there any ransacked rooms? If there was don't you think you would have seen it, and whether or not Natalia had permission to have those mattresses, how in the heck did the State say John knew she didn't have permission to have those mattresses? So the morning the State wants to promote this theory that it's a targeted thing, it's one connected event, it's a theory. There's another theory just as plausible, and I just told you, and when there's two explanations, when there's two competing theories and both of them are plausible, both of them are believable, that's reasonable doubt. You should hesitate to be firmly convinced when there's just as much of belief in that theory as the other theory.

Now, when you're trying to decide between theories, when you're trying to determine the credibility and what the truth is here, John has no obligation, as any citizen of this great country, has no obligation to prove anything. The Judge is going to remind you of that. I know you know that. You took an oath. We don't have to prove anything. The State does.

So you look here for all of your questions. Every question you have you look to the Government, and if they've proven it to you, I told you at the beginning, you're going to convict John. So to believe their theory, to believe their witnesses, you've got to trust them. As I go through my closing, I want you to keep this in mind when you filter everything else. You need to trust the Government, the Government who called one of the two Pringles to testify. You remember Ms. Pringle, Courtney Pringle? They called her. Did they call her sister or her relative, Carlena? No. You remember the one that video-recorded what happened? Did they call her? Did they call her to convince you John was involved? Nope. Just trust them. Just trust them. Did they want you to know? Did they want Tristen testifying about this video-recorded interview with the police? We had to take a break. "Tristen, do you remember?" "I don't remember." "Do you remember?" "I don't remember." "Can we take a break, Judge?" "Sure." Come back. "Tristen, do you now remember?" "Yeah." They didn't want you to know about that. When you -- when I remind you of some things that actually happened and things that didn't actually happen and they're asking you to trust them that they got the right guy, please remember that.

Now, I've told you in the opening if you believe Tristen you're probably going to convict John, and that's still true. He's the link that the State relies on to connect both

incidents. He must be believed to convict. I just want to get back to him in just a bit.

What about all this evidence, all this evidence, and if you'll recall when we started this trial there was a whole lot more out here. So there's evidence that, that they don't care to, to have here now. This is the evidence you get to consider. Remember this table full, and I told you at the beginning nothing, nothing at his residence, no search warrant at his residence. All this stuff is from Natalia's, and we agreed to that. I told you there's going to be things I don't dispute with the State. We did that. All this is found at Natalia's. Was there one, one, one item of evidence belonging to John Darrieux at Natalia's house? Is there any proof other than Tristen he was ever there? If they had it they'd show it to you. If they found anything at John's that belonged to Ms. Simpson, Mr. Roberts or Mr. Jones they would have shown it to you. If there's anything that belonged to John at Natalia's house they would have showed it to you. It doesn't exist.

Now, I want to talk about the folks there at Bryan Drive. I think I referenced this in the opening, but we don't dispute this happened. We don't dispute what happened to these folks. We don't, and they came in and told you what happened. The evidence is here. Mr. Jones' stuff is found at Natalia's. Mr. Roberts' stuff is found at Natalia's, and Ms. Simpsons' stuff is found at Natalia's. I don't doubt that. The issue

is John. They're saying he was involved.

Now, Mr. Roberts took the stand. He testified about what happened. He has no idea John was involved or not, can't identify John. Ms. Simpson, Mr. Jones did in court, and I don't blame them. This is who the State, this is who the Government arrested, charged, incarcerated, brought to trial. They've told them like they're telling you he's the guy. They're telling them just like they told you, "He's the guy." In the 15 months since this happened did they once take a photo of him to them to see is it this guy? How about close in time to when happens so it's, you know, real familiar in their mind? "Is, is this the guy?" No. They didn't, but just trust them. Just trust the Government they got it right. The only time based on their testimony that they saw John was 15 months ago and this week. They want to believe the Government got the right guy. They hope the Government got the right guy, and I don't blame them for sitting on that witness stand in the trial that the State says, "Here's one of them," and pointing at John. Who else are they going to point to? Look in the courtroom. Whose else are they going to point to? I don't blame them, but they're trusting the Government, and you don't have to. That's part of your action, be skeptical, question, have the Government prove this to you, and if you'll remember when, when pushed, and I have to do this, it's my job, Ms. Jones or, I'm sorry, Ms. Simpson,

admitted that when the police talked to her she didn't give any description whatsoever and I gave her her statement. She had to get her glasses. She wears glasses. So she couldn't see real well, but she can identify him from 30 feet. She didn't give any description to the police. She hopes it's John. She wants to believe it's John, and if you remember Mr. Jones, he identified John in court. He wants to believe it's John. He hopes it's John. He hopes, he trusts the Government to get it right, but the morning it happened told the police, "I'm not going to be able identify," the one person that didn't have a mask because he was in the shadows, stated, said that in his statement, said in his statement to police, "The guy without the mask was in the shadows. I won't be able to identify him." They trusted the Government to fully investigate this case and to get the right people. They trusted them. They have no basis from the burglary to identify John. They have no basis. Only there was general descriptions were given in here, and I think Mr. Jones said, "About my height, about my weight." Well, we've seen John stand up and, John, could you just right there, if you can stand up a moment, please. Can you just face the jurors? In fact, keep turning just a little bit, keep turning just a little bit. Anybody talk about a tattoo on the back of his neck, a big old tattoo? Thank you, John.

Seems to me instead of just middle-aged or twenties,

thirties, white male, about my height, about my weight, and he's really up in your face that would be a very recognizable and easy thing to remember. They never testified about it. They hope, they trust, they want to believe that the Government did the right thing. They're emotionally connected to this. They're buying into this. You don't have to. You're independent jurors that get to evaluate this evidence.

So unfortunately, they can't help and neither can this evidence that's found because it doesn't go back to John's residence and nothing of John's at the residence where it was found. It's all at Natalia's Chisolm's house.

Now, the State in the beginning doesn't want to talk about Natalia. We're the only one on trial, but Natalia's not here. Joseph Arsenault's not here. The State wants you to just trust them on this guy. Trust the Government despite the Government failing to do its job, failing to try to identify the SUV, taking photos, failing to take photos of the suspects, "Can you identify them," failing to collect evidence, video of this break-in at Cindy Drive, failing to call the witness who did videotape it. Just trust them. Just trust them. They've got four guns here. Did anybody identify those guns? No. But you know, there's four. "So just trust us. Trust us that these are the guns that were used." Again, I don't doubt the crime happened at Bryan Drive, but you know, trust these guns were used, only the vaguest of descriptions.

Any prints off these guns? What do you need, what do you need to be firmly convinced before you convict somebody of burglary in the first degree, three armed robberies, three kidnappings and another burglary? What do you need more than that? Not just the guns, any other items of evidence, including the SUV. Asked one of the detectives, "Was it dusted for fingerprints?" "Yes." "Anything found?" "No." No fingerprints in this case whatsoever. What does the State do? Gets back up and goes, "Aha. Gloves were worn." Did anybody mention any gloves being worn whatsoever? No. "But trust us. We'll have an explanation for any of the holes in our case. Just trust us." Nobody said anybody wore gloves, and when I point that out, "Well, by God, at the house, we" -- or at the, forgive me, "We seized gloves. We seized gloves. So that has to be the explanation for that. Just trust us," even though that doesn't connect with anybody else's testimony.

Let's talk about Cindy Lane for a second because they charged him with burglary in the third degree at Cindy Lane. Okay. There's a call. People were suspicious, maybe a break-in. It's four in the afternoon, daylight in October. Officer Wright arrives on the scene, talks to Ms. Pringle. She says, "You know what, a lady I used to work with just drove up in an SUV, SUV with a few folks. I wasn't sure what they were doing at the house but they show up. She comes talks to me. She

comes talks to me. Talks to me, and then they load up mattresses and go." So suspicious, so call the police. Okay. Suspicious. Burglary in the third degree is entering a building without permission with the intent to commit a crime, entering a building without permission with intent to commit a crime. How does she know they didn't have permission? How do you know they didn't have permission? What do you need to be firmly convinced that he or who he was with entered without permission? How about signs of entry? How about somebody identifying the mattresses? Didn't give permission to have those. How about somebody saying, "That's my residence, as a matter of a fact," either by remembering the address or seeing a photo. Mr. Roberts did not. The State wanted him to. The State sure did want him to, but he didn't. He didn't, but just, just trust the Government. Trust that they, trust that they didn't have permission to go in there. Trust that they broke in, although there's no proof of that. Trust that they hauled off these mattresses without permission. Is there any evidence of that? And again, remember now, remember now, my first question to Officer Graff who was testifying about that responded to that, actually seated over here before I even got up, "That's all you did?" "That's all I did." "Really? Didn't you talk to another Ms. Pringle?" "Yeah. That's -- yeah, yeah, I talked to another Ms. Pringle." "Didn't she tell you she had a video of this showing the people and what

they did on her cell phone?" "Yeah. As a matter of a fact they did." Who got that evidence to you? Not the Government. They didn't want you to know about it. They didn't call the other Ms. Pringle. They didn't ask the officer when he was on the stand about it. They don't want you to know about that. Wouldn't it have been great to see that video? Would it have been great to see that video? Who was actually there? What did they actually do? We don't have it. The police didn't collect it, but you know, just trust the Government.

"Well, all right, John, you call them." No. We don't have to call anybody, and we don't have the ability of law enforcement, local police, sheriff's department, SLED. We don't have that ability. We're not required to do that, but if the State comes in here and says, "We want you to convict John of these charges," then what do you need to be firmly convinced? More than that.

Now, you know, the Government tells you how fast to drive. The Government tells you how much money to give to them. The Government tells you where roads are built. There's two times, two times you get to tell the Government something is when you vote and that's now. You don't want to be jurors. Nobody really wants to, but now's your chance to say something back to the Government. Be skeptical of the Government. What have they done to earn your trust? "Just trust on these things that don't really, trust us." What have

they done to earn your trust? Not call witnesses, not collect evidence, not show photos of John or the SUV. What did the Government do? This is rudimentary. Sorry, I don't -- two plus two; right? Two plus two. The Government says, "Trust us. You know what that is. You know what that is," and go back there and say, "You know what that is. Look at all this. Look at all this evidence." We're -- you're going to take all this back with you. You'll have all this back with you in the, in the jury room. Look at all this, but you know what this reminds me of? This reminds me of in school when you get that two-part question and you don't know a dang thing about the first part, so you just write and write and write and write and write about the second part and hope the teacher gives you credit for everything? "Look. Look. A burglary was committed. Look at all this stuff we've got that belonged to those folks. Look. And John did it. Just trust us. John did it, but look at all this evidence." They've got to prove he was involved, table full of evidence, and none of it back to John. The, yeah, the mattress, the big console TV which you'll see, they were dumpster diving. That's what I call it. I'm from West Virginia originally. Dumpster diving. Right? Getting items from the side of the road. So could they have had permission? Could they have been dumpster diving? I'm speculating, but I'm speculating just as much as the Pringles were and just as much as the Government is, and if you'll

recall Tristen's testimony he gets really vague about that part, really vague, kind of sleeping in the vehicle, really vague about that.

Just trust the Government that they got it right. Trust the Government that it's John on that critical, says the Government, the critical phone call. If it's that critical, call the person talking on the other end. If it's that critical, bring somebody in, say, "You know what, I've known John all my life. I've had conversations with him for 30 years. That's his voice." No, no, no, no. Just trust the Government. They got this computer thing that downloads it, and just trust that it can only be from him even though the lady said, "Yes, I know inmates use other inmates' PIN numbers." What do you need to trust them? You need more than, "We don't know who those people are, but had to been John at one of them." It was so critical they would have proved that more, and we'll talk about Tristen and then I'm going to let you go do your job.

Sixteen year old kid, 16 year old kid isolated by the police, put in an interrogation room, two male officers in there with him, cuffed him, parents weren't there and got him to talk with them in the generalist of terms that everybody that was, that was just arrested did everything. Everybody that was just at the SUV got arrested. "Yeah. They did, they did everything," and they ran with it, the Government ran with

it even if the stories didn't match. After I reminded him, after he had a chance to refresh his memory, he told them that he didn't -- he stayed in the car for a long while. That doesn't match up with what they want you to believe now. He told them it was 10, 15 minutes. Well, that doesn't match what the State, the Government wants you to believe now. Says one guy had his shirt completely off. Doesn't match what the Government wants you to believe now. Gave no actual names of the people involved, but that was enough for this -- the Government to start running with it, but it wasn't enough for trial. So what'd they do? The Government called him in and prepared him for his testimony. The Government went with the Prosecutors to prepare him for his testimony, and then it gets detailed. Then it gets detailed. Then you get stuff like, "Breaking fingers," then you get stuff like that after he talks to the Government, attorneys, after he talks to the Government attorneys who are presenting this case to you. Why? Because he's hoping for something, and I don't blame him either. He's hoping for something. He's 17 now. He's charged with the same things. He knows, he knows what he's facing, and he's got an agreement with the State to come testify, and he sure does hope they do right by him. He sure does hope they go easy on him. He sure does hope he doesn't ruin his life at 16 years old. So when he comes in this week what does he have to do? He has to point to John. If not,

what are they going to do to him? If he does, what are they going to do to him? We don't know yet. But he has a reason to say what he said, a teenager. It's understandable, absolutely understandable.

The Government's asked you to go back to the jury room and convict John burglary in the first degree, three armed robberies, three kidnappings, burglary in the third degree, possession of a weapon during a violent crime. The Judge is going to tell you to do that you have to be firmly convinced of John's guilt of each one. You're going to have a sheet that has each charge. Consider each one of them individually. Firmly convinced beyond a doubt that's reasonable then he's guilty. Now, if you hesitate because you have reasonable concerns about what the Government has presented to you, then it's not guilty. Do you hesitate because you didn't get to hear from the second Ms. Pringle? Do you hesitate because the Government didn't bring you that video? Do you hesitate because they can't really identify Cindy Drive as belonging to Mr. Roberts? Do you hesitate because he can't identify the mattresses? Do you hesitate because there's no signs of entry? Do you hesitate because there's no broken glass? Do you hesitate because it wasn't ransacked? Do you hesitate? Do you hesitate to believe that John was in there with a mask off and yet when they first talk to police they never describe him, they never describe the

tattoo? Do you hesitate to act when the only other time they've seen him in their lives is in court and who else are they going to point out to? They want to believe it's John. You have taken an oath to want to believe it wasn't John unless they convinced you.

The final thing I'll say, we do agree on this, both sides picked you because we think you'll be fair, you'll use common sense and you'll back with a verdict, but to convict somebody, to convict somebody, you've got to get it right. This wasn't John. He wasn't in that house at four a.m., and he did not steal anything, burglarize those mattresses. Now, if you go back there and you're firmly convinced the opposite, you'll find him guilty, but if there's things that cause you to hesitate to trust the Government's case because there are things, because John's not guilty, then just check the boxes all the way down not guilty because that's the right thing to do. Thank you, Your Honor.

THE COURT: All right. Ladies and gentlemen, all of the evidence in this case has been presented to you, the attorneys have made their closing arguments, and now is the time of trial when I charge you with the law to be applied in this case.

The indictments in this case allege several different offenses against the Defendant. The charges against the Defendant in this case are burglary in the first degree;

burglary in the third degree; three counts of armed robbery; three counts of kidnapping; and possession of a firearm during the commission of a violent crime.

Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it uninfluenced by your decision as to any other indictment. The Defendant may be convicted or acquitted on any or all of the offenses charged. You'll be asked to write a separate verdict of guilty or not guilty for each indictment.

I remind you that the fact that the Defendant was arrested, charged and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does the Defendant's arrest, charge or indictment create any presumption or inference of guilt. These indictments are simply the formal written instruments which contain the charges made against the Defendant. They are the formal documents by which this case is brought into this court.

The Defendant pleads not guilty to these indictments, and that plea puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove his innocence.

I charge you that an important rule of the law is that the Defendant in a criminal trial, no matter what the

seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations, but it accompanies the Defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant which remains with the Defendant until it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory. It is not just a legal phrase. It is a substantial right to which every Defendant is entitled unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

Now, what is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. We know very few things in this world with absolute certainty, and in criminal

cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find the Defendant guilty of that crime. If on the other hand, you think a real possibility exists that the Defendant is not guilty, you must give the Defendant the benefit of that doubt and find him not guilty.

I remind you that, during this trial, you and I have certain duties to perform. As the trial judge, my responsibility is to preside over the trial of this case. I also have the duty to rule on the admissibility of evidence offered during this trial. You are to consider only the competent evidence before you. If any testimony was ordered stricken from the record in this case during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from the witness stand, any exhibits which have been made a part of the record in this case and any stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law of this case. Your duty as jurors is to accept and apply the law as I now state it to you. If you have any idea as to what the law is or what the law ought to be and your idea is different from what I now tell you the law

is, you must disregard your idea of what the law is or ought to be because you are sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury, the jury is the sole and exclusive judge of the facts in a case. A trial judge cannot intimate, state, comment on or make any statement to a trial jury about the facts in a case. Since you, the jury, are the sole judge of the facts of this case, you are not to infer from what I have said during the progress of this trial in ruling upon the admissibility of evidence, or otherwise, or anything that I say now during the course of this instruction to you, that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine. As jurors, your duty is to determine the effect, value, weight and truth of the evidence presented during this trial.

Now, two types of evidence are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence is testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The State has the burden of proving the Defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the

State relies on direct evidence, circumstantial evidence or some combination of the two. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. However, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the Defendant's behavior as suspicious, the proof has failed. The State has the burden of proving the Defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence or some combination of the two. You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty. On the other hand, after weighing all of the evidence, if you are firmly convinced of the guilt of the Defendant beyond a reasonable doubt you must find the Defendant guilty.

Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. Your duty as jurors is to analyze and to evaluate the evidence and determine which evidence convinces

you of its truth. In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the appearance and manner of the witness while on the witness stand.

Now, evidence has been presented that a witness made prior statements which are not consistent with the witness' present testimony. You may use this evidence to decide whether to believe the witness. You may consider -- excuse me -- you may also use evidence of the earlier contradictory statements to determine the truth of those statements. You are to decide whether to believe the earlier statements or the testimony given at trial.

If a witness is shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the witness' testimony as to other matters. You may reject all testimony of that witness or give all or part of the testimony the weight you think it deserves.

One of the witnesses in this case has a prior criminal record. A person who has a past criminal record is competent to testify during a trial. A past record does not affect the ability of that witness to testify. The past record may only be considered by you, if at all, in determining the witness' believability. Remember, you are the sole judge of the facts in the case and of the believability of any or all of the witnesses.

Now, I instruct you and emphasize that the fact that the Defendant did not testify in this case is not a factor to be considered by you in any way in your deliberation and in your consideration on the question of the guilt or innocence of the Defendant. The Defendant's failure to testify must not be considered by you in any manner whatsoever.

A Defendant has the constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you are to draw no conclusion whatsoever from the fact that the Defendant in this case did not testify. The fact that the Defendant did not testify should not even be discussed in the jury room.

The burden of proof, as I have stated to you, is on the State to prove the Defendant's guilt beyond a reasonable doubt. The Defendant is not required to prove his innocence. The burden of proof remains on the State to prove the

Defendant's guilt beyond a reasonable doubt.

Now, if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose. For example, two people can be guilty of killing another person when only one of the two had a gun, only one bullet was used, and only one of the two people fired the shot that caused the death. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all or, as it is sometimes said, "The hand of one is the hand of all".

Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the Defendant is present when the crime is committed, is not sufficient to convict the Defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal.

The State must prove beyond a reasonable doubt by

competent evidence the theory of the hand of one is the hand of all. A principal is in a crime -- excuse me -- a principal in a crime is one who either actually commits the crime or who is present aiding, abetting or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more, acting with a common plan or intent, are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting. Intent is also a necessary element, for there must have been a common design or intent to commit the crime and the crime must have been committed pursuant to the common design or intent with the person aiding and abetting by some overt act.

Intent means intending the result which actually occurs, not accidentally or involuntary. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent.

The State must prove these elements beyond a reasonable doubt.

Now, in order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. No way exists to prove intent to a mathematical certainty. Medical science cannot dissect a person's brain and determine what the person had in mind, so the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent is present.

Intent does not have to be established by direct and positive evidence. Intent may be established by inference in the same way as any other fact, by taking into consideration the acts of the parties and all of the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. You must determine what the Defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness or an indifference to duty or to consequences that is considered by the law to be the

equivalent of criminal intent.

Excuse me. An issue in this case is the identification of the Defendant as the person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict the Defendant. Identification testimony is an expression of belief or impression by a witness. You must determine the accuracy of the identification of the Defendant. You must consider the believability of each identification witness in the same way as any other witness. Once again, I instruct you the burden of proof is on the State and it extends to every element of the crime charged, and this specifically includes the burden of proving beyond a reasonable doubt the identity of the Defendant as the person who committed the crime. If, after examining the testimony, you have a reasonable doubt as to the accuracy of the identification, you must find the Defendant not guilty.

As I have previously advised you, the Defendant is charged with burglary in the first degree, burglary in the third degree, three counts of armed robbery, three counts of kidnapping and possession of a firearm during the commission of a violent crime.

Now, to prove the Defendant guilty of first degree

burglary, the State must first prove beyond a reasonable doubt that the Defendant entered a dwelling without consent.

A dwelling is any building or portion of a building in which a person ordinarily sleeps. A building constructed as a dwelling that has never been occupied cannot be considered a dwelling for purposes of burglary, but a building is a dwelling even if the residents are temporarily absent from the building.

In order to prove that the Defendant entered the dwelling, the State does not have to show that the Defendant's entire body entered the dwelling. The smallest entry is sufficient. It may be any part of the body, such as a hand or foot, or even an instrument, such as a hook or other instrument. In addition, the State does not have to prove that force was used to gain entry. If a person enters a building by using deception, artifice, trick or misrepresentation to get consent to enter, this is an entry without consent.

Next, the State must prove beyond a reasonable doubt that the Defendant intended to commit a crime, either a felony or a misdemeanor, at the time of the entry. The mere entry into a dwelling without consent is not burglary. If the intent to commit a crime is formed after the entry, it is not burglary. On the other hand, if the Defendant intended to commit a crime at the time of the entry, it is a burglary even if the intent

was abandoned after the entry. It does not matter that the intended crime was not committed. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent.

Finally, the State must prove beyond a reasonable doubt at least one of the following but need not prove all of the following: one, when entering, while in the dwelling, or when fleeing, the Defendant or an accomplice was armed with a deadly weapon or explosive. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. The following are examples of instruments which may be deadly weapons: a pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a sling shot, metal knuckles, a razor, gasoline, a fire bomb or Molotov cocktail and lighter fluid. A gun may be a deadly weapon even if it is not operating.

Or the State may prove burglary by showing -- burglary in the first degree by showing that when entering, while in the dwelling or when fleeing, the Defendant or an accomplice displayed what was or appeared to be a knife, a pistol, a revolver, a rifle, a shotgun, a machine gun or other firearm, or the State may prove burglary, burglary in the first degree by showing that the Defendant entered or remained in the dwelling in the nighttime. Nighttime is the period between

sunset and sunrise during which there is not enough daylight to recognize a person's face, except by artificial light or moonlight.

The Defendant is also charged with burglary in the third degree. In order to prove third-degree burglary, the State must first prove beyond a reasonable doubt that the Defendant entered a building without consent. A building is any structure, vehicle, watercraft or aircraft where any person lodges or lives or where people assemble for the purpose of business, government, education, religion, entertainment, public transportation or public use or where goods are stored. In order to prove that the Defendant entered the building the State does not have to show that the Defendant's entire body entered the building. The smallest entry is sufficient. It may be any part of the body such as a hand or foot or even an instrument such as a hook or other instrument. In addition, the State does not have to prove that force was used to gain entry. If a person enters a building by using deception, artifice, trick or misrepresentation to get consent to enter, this is an entry without consent.

Next, the State must prove beyond a reasonable doubt that the Defendant intended to commit a crime, either a felony or a misdemeanor at the time of the entry to be guilty of burglary. The mere entry into a building without consent is not burglary. If the intent to commit a crime is formed after the

entry it is not burglary. On the other hand, if the Defendant intended to commit a crime at the time of entry, it is a burglary even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent.

The Defendant is also charged with three counts of kidnapping. To convict the Defendant of kidnapping, the State must prove beyond a reasonable doubt that the Defendant knowingly and unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away another person without authority of law. To do a thing unlawfully is to do it willfully against the law. Knowingly means with knowledge, consciously, not accidentally. Seize means to take hold of suddenly or forcibly. Confine means to limit, restrict, or enclose within bounds, imprison or shut or keep in. Inveigle means to lure, entice, or lead astray by false representations, promises, or other deceptive means. Decoy means to lure by, or as if by, decoy. A decoy is something to entice a person into a trap. Kidnap is to remove a person against his will by unlawful force or by fraud. Abduct means to carry off secretly or by force for an illegal purpose. Carry away means to remove. The State does not have to prove that the Defendant did all of these things. Instead, if you

find beyond a reasonable doubt that the Defendant did any of these things, you may find the Defendant guilty of kidnapping.

Something done without authority of law is something which the law does not sanction, permit, allow, condone or provide justification for. The kidnapping does not have to be for any personal or monetary gain or for any illegal purpose, but may be for any reason whatsoever.

The Defendant is also charged with three counts of armed robbery. In order to prove this offense, the State must first prove beyond a reasonable doubt that the Defendant took personal property from the person or presence of another person. Property is in the presence of a person if it is within the person's reach, inspection, observation or control so that the person could, if not overcome with violence or prevented by fear, keep possession of the property.

The State must also prove beyond a reasonable doubt that the Defendant carried the property away intending to permanently deprive the owner of the property and to keep the property for the Defendant's own use. The slightest removal of the property or the complete possession of the property, even for an instant, by the Defendant is sufficient to show a taking and carrying away of the property. The taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence.

Finally, the State must prove beyond a reasonable doubt that the Defendant was armed with a deadly weapon during the robbery. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. The following are examples of instruments which may be deadly weapons: a pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a sling shot, metal knuckles, a razor, gasoline, a fire bomb or Molotov cocktail and lighter fluid. A gun may be a deadly weapon even if it is not operating.

The Defendant is also charged with possession of a weapon during the commission of a violent crime. To convict the Defendant of this crime the State must prove beyond a reasonable doubt that the Defendant was in possession of a firearm or visibly displayed what appeared to be a firearm during the commission of a violent crime. A firearm means any machine gun, automatic rifle, revolver, pistol or any weapon which will, is designed to or may be readily converted to expel a projectile. In order to find the Defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the Defendant guilty of either committing a violent crime or attempting the commission of a violent crime. Burglary in the first degree, armed robbery and kidnapping are violent crimes. The State must also prove

beyond a reasonable doubt that the weapon further advanced or helped in the commission of the crime.

Now, you have heard testimony concerning the penalty a person can serve for the crimes alleged in the indictments. In determining the guilt or innocence of the Defendant you cannot consider any possible penalty for any particular crime. The punishment for a crime is a matter for me to determine and should never be considered by you in any way whatsoever in arriving at an impartial verdict on the guilt or innocence of the Defendant.

Now, there are two possible verdicts for each indictment in this case. No significance whatsoever is to be given to the order in which I state these possible verdicts to you. I simply have to state one first and one second.

The possible -- on each charge and indictment in this case your possible verdicts are either guilty or not guilty. Ladies and gentlemen, your verdicts must be unanimous. As stated before, you must decide each indictment separately on the evidence and the law applicable to that indictment uninfluenced by your decision as to any other indictment.

Ms. Pritchett, as foreperson, when the jury agrees on a verdict, the indictments are itemized right here. You'll check guilty or not guilty for each indictment. When you've reached a verdict on each indictment, sign your name on the verdict form, then knock on the door and let the bailiff know

that the jury has a reached a verdict and we'll bring you back in the court at that time.

Now, I'm going to excuse you back to the jury room, but please do not begin your deliberations at this point in time. I need to check with the attorneys to see if they have any challenges or additional charges that I need to give you. If they do and I deem them appropriate I'll bring you back in and make whatever corrections or additional charges are necessary. If there are none then the exhibits, the verdict form will all be brought back to the jury room and the bailiff will tell you you can begin your deliberations, but please do not begin your deliberations until the bailiff instructs you to do so. Thank you very much.

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

THE COURT: Any exceptions or additional charges from the State?

MR. WEST: Nothing from the State, Judge.

THE COURT: Any from the Defense?

MR. DAVIS: No new objections, Your Honor, no.

THE COURT: All right. Here is the verdict form. Let's mark sure we've got all the exhibits so we can take them back. Here's the verdict form. I tell you, while they're doing this could you -- let me -- I'm looking for my jury list -- can you go ahead and bring the alternates out, yeah, Mr. Yeadon, Mr.

Yeadon and Mr. Asbury. Thank you. Yeah. Just bring them back in here.

MR. WEST: Judge, do you send the guns back or leave them out here?

THE COURT: Huh? They've got the thing, if they've got the thing on them you can send them back.

MR. WEST: Tags on them.

(Alternates enter courtroom.)

THE COURT: Just, if you all just have a seat right there for just a second.

MR. DAVIS: Your Honor, obviously there's a concern. We've got ammunition and weapons. My concern is if there's ammunition in with the weapons, it not be removed out, but I'll leave that to you.

THE COURT: Oh, no. Just send the weapons back without ammunition in it.

MR. DAVIS: And there's an entire exhibit that's a bag, backpack full of ammunition.

THE COURT: Well, I mean, it's an exhibit.

MR. DAVIS: Well, sir, I would prefer that the other items not be altered then. I mean, it is what it is. If we're concerned about safety then none of the ammunition should go back or --

THE COURT: Okay. Send the, send the weapons back but not loaded or without any ammunition. Send the bag back

that's got it in there. The clip that goes in the gun leave it out. I'm not going to send it back there.

MR. DAVIS: Okay. Thank you, Judge.

THE COURT: Okay. If it's evidence, what is -- I mean, if it's an exhibit, send it back to the jury room. All right?

(Exhibits reviewed and approved by counsel for the State and counsel for the Defense.)

MR. DAVIS: Your Honor, the Defense has reviewed the exhibits with the court reporter, and we have no objection to the exhibits that are going back.

THE COURT: I mean, can we empty, empty those bullets out of the clip?

MR. WEST: That's what I was attempting to do, Judge, I mean.

THE COURT: Okay. But I mean, the guns are, are secured where they can't fire; correct?

OFFICER: Yes, sir.

THE COURT: Okay. If they're secured where they can't fire then that's fine. Go ahead and send them in.

MR. DAVIS: And may we approach on one thing, Your Honor?

(A bench conference is held.)

THE COURT: This is the verdict form that goes with that. All right. Give them that, and you can tell them they can