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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARL CHAPLIN,

APPELLANT

APPELLATE CASE NO. 2012-213297

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER 2012-GS-18-0126
2012-GS-18-0127
2012-GS-18-0128

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
 -vs-)
) October 8-11, 2012
 CARL CLYDE CHAPLIN,)
) St. George, South Carolina
 Defendant.)

B E F O R E:

The Honorable Kristi Lea Harrington, Judge, and a jury

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Circuit Court Reporter

1 prejudice of any witness, the opportunity for that
2 witness to have seen and heard the testimony and facts
3 about which the witness testifies, as well as the way the
4 witness acts on the witness stand.

5 You have a right to consider anything that is
6 in the record to help you evaluate the testimony of the
7 witnesses. That means it's your duty to pay close
8 attention. Please do not let your thoughts wander, but
9 pay strict attention, observe the witnesses, and listen
10 to the witnesses and attorneys and pay close attention to
11 the Court.

12 After arguments of counsel and the charge on
13 the law, you will be in a position to determine what the
14 true facts are, apply the law to those facts, and render
15 a true and just verdict.

16 Ladies and gentlemen: Please give your
17 strict attention. Mr. Justis?

18 MR. JUSTIS: Thank you, Your Honor. May it
19 please the Court: A pickup truck eases in front of

20 . It's a Saturday night, three weeks before
21 Christmas, approximately 9 p.m. Three individuals are in
22 the pickup truck. Two of them get out. They get out of
23 the pickup truck with masks, dark clothing, a shotgun,
24 and a rope. They go up to the door of
25 They knock on the door. Inside, Amber Fish, with her

1 boyfriend and their ten-month-old daughter, ^{Child} they're
2 watching a movie.

3 As Shawn dozes on the couch, Amber gets up,
4 goes to the door, opens the door. Immediately a shotgun
5 is thrust into her chest. She knocks the gun away, says,
6 Get out of here.

7 She starts to struggle with the armed
8 assailant. Eventually, the other assailant and the armed
9 assailant push her into her living room, ordering her on
10 the ground at gunpoint. As Shawn awakes, he too is
11 ordered on the ground at gunpoint. As one assailant with
12 the shotgun alternates between sticking the muzzle of
13 that shotgun in the back of Amber's head and the back of
14 Shawn's head, the other assailant takes the rope and hog
15 ties each victim, right in front of their ten-month-old
16 daughter.

17 They start to go through the house, taking
18 items of value, and at one point pick up ten-month-old
19 ^{Child} and toss her on to the couch. After they collect
20 what they want, they're exiting, one of the assailants
21 turns and says, Merry Christmas, bitch.

22 They go outside, around the corner. The
23 pickup truck is waiting on them. At the wheel of that
24 pickup truck, Carl Chaplin. They get in and they race
25 off into the night.

1 Now, ladies and gentlemen: My name is Glenn
2 Justis, and along with Matt Austin, we're solicitors here
3 in Dorchester County, and we're bringing this case to you
4 this week, trying this case against Carl Chaplin. He's
5 charged with one count of burglary in the first degree
6 and two counts of kidnapping.

7 Now, burglary in the first degree is simply
8 defined as the breaking and entering of a dwelling
9 without permission with the intent to commit a crime
10 therein, and there must be an aggravating circumstance to
11 justify burglary in the first degree, such as the
12 defendant or another participant in the crime being armed
13 with a deadly weapon or that the burglary occurred during
14 the nighttime.

15 Now, kidnapping, kidnapping is defined as the
16 unlawful seizing or confining, inveigling, decoy,
17 kidnapping, abducting, or carrying away another person by
18 any means without the authority of law. As the State's
19 burden, you'll hear this throughout the trial, the
20 State's burden is to prove these crimes were committed by
21 the defendant beyond a reasonable doubt. Notice it says
22 beyond a reasonable doubt, not any and all doubt, but a
23 reasonable doubt. If, at the end of the testimony, at
24 the end of the trial when you're deliberating you find
25 yourself firmly convinced of the defendant's guilt, then

1 you must find him guilty.

2 Now, let's go back to December 3, 2011.

3 Earlier that day, late afternoon, early evening, three
4 individuals get together, led by that man, Carl Chaplin.

5 He recruits 16-year-old Christopher B. the man with
6 the rope, and another young man named Dristin Johnson,
7 the one with the shotgun.

8 They meet up at , which is right
9 down the road and around the corner from the victims'
10 house. They know a lady that lives there by the name of
11 Karen Parker. They go and hang out there that night,
12 earlier in the evening, waiting for it to get late.
13 They're seen there by Ms. Parker, and they're overheard
14 by her daughter plotting this crime.

15 At some point prior to 9:00, Carl Chaplin,
16 Christopher B. drive Ms. Parker to the store to get
17 cigarettes. On the way back, they slow down in front of
18 Amber's house and they point to it. They go back to Ms.
19 Parker's house. They drop her off. They get Dristin
20 Johnson, and all three of them leave together, shortly
21 before 9 p.m.

22 When police arrive that night, they start
23 canvassing the area, and they receive tips that all three
24 individuals, they get their names, were together that
25 night, just minutes before this home invasion. Now,

1 ladies and gentlemen: Throughout this trial you're going
2 to hear from witnesses that put these suspects together,
3 right before, discussing the crime.

4 You're going to hear from the witness.
5 She'll explain to you what happened, and you're going to
6 hear from Christopher B. the man with the rope, who's
7 going to give you a firsthand account of what happened
8 and who was involved. And when you hear all this
9 evidence and you go back in the jury room to deliberate
10 and to return a verdict, which is the Latin -- it comes
11 from the Latin word *verdicto*, which means to speak the
12 truth, the State is going to ask you to return a verdict
13 of guilty of burglary in the first degree against Carl
14 Chaplin and guilty of two counts of kidnapping against
15 Carl Chaplin.

16 Thank you.

17 THE COURT: Mr. Smiley?

18 MR. SMILEY: If it please Court, Mr. Justis,
19 ladies and gentlemen: If all of that that he tells you
20 is going to happen happened we probably wouldn't be here.
21 Of course we have different jobs in this courtroom, and I
22 think it might be helpful before we begin to understand
23 what each person's job is.

24 This is Detective Smith. He's the case
25 agent. He's an officer. His job is to make arrests.

1 That's what he does in our system. And then we have the
2 solicitors, the prosecutors, the DAs they're called in
3 some jurisdiction. They're the prosecutors. Their job
4 is to do justice. We've got Ms. Hensley and myself. I
5 have the honor of representing Carl Chaplin, and my job
6 is to zealously represent my client, do everything within
7 the boundaries of the rules to make sure that he gets a
8 fair trial.

9 We've got the Clerk of Court that sits here.
10 Her job is to bring the documents to the courtroom and
11 make sure it's all available to the judge, and she's the
12 one that summons y'all here today. She's the assistant,
13 but she acts the same as Ms. Graham. We got the court
14 reporter. Her job is to write every single word that's
15 said in this courtroom, so it's really hard when we talk
16 too fast or we talk on top of each other or too quietly,
17 so we'll do our best.

18 Judge Harrington is the judge of the law.
19 It's her job to make sure that Mr. Justis and myself
20 follow a set of rules and the rules of evidence. She is
21 also the one that makes sure that you are given the law
22 of the State of South Carolina, which to match facts
23 against.

24 Now, y'all are the judges of the facts, the
25 only people that matter. We're here for y'all today.

1 Y'all are the ones that are going to listen to the
2 evidence, and at the end measure it up against the law to
3 determine whether, in fact, the State has met their
4 burden and whether Carl Chaplin is guilty.

5 Right now, Carl Chaplin walks in this
6 courtroom just like me, just like you, just like anyone
7 else, innocent, and he's going to remain that way. The
8 only way that changes is if the State, when they meet
9 their burden, can remove that robe of innocence.

10 Now, I almost forgot one more important
11 person. We got Major Moultrie in the corner over here.
12 He's the judge's right hand. He makes sure there is
13 order in this courtroom, and that's his job. He does it
14 very well, has been here for a very long time.

15 Now, I agree, I think the facts are going to
16 be very clear that Ms. Fish and her boyfriend were robbed
17 that night. I don't think there is any doubt about that.
18 That person she will identify as ^{Christopher B.} went in with
19 a young black male and robbed them. I think there will
20 be testimony that this was a house that ^{Christopher B.} had
21 bought marijuana before, that he knew they had it and
22 that's what he was after. That's where we start to
23 differ, though.

24 You'll hear evidence about Carl Chaplin and
25 him being present that evening. They've got to do more

1 than that. They've got to show there was a plan, a
2 pre-plan, and that he participated in that pre-plan, and
3 they have to do that beyond a reasonable doubt.

4 Now, in looking at the evidence as it comes
5 into the court, use your common sense. That's why y'all
6 are here. You come in with your life experiences. Sit
7 down and figure out what makes sense, but just as
8 important as what's said from that witness stand is
9 what's not said. As you try to figure it out, remember,
10 the State has the burden here. I don't have to say a
11 word. Mr. Chaplin doesn't have to say a word. It's on
12 the State to prove their case.

13 I will submit to you at the end of this case
14 they have not met their burden, and not guilty is the
15 only verdict that is just.

16 Thank you.

17 THE COURT: Call your first witness.

18 MR. JUSTIS: Thank you, Your Honor. May it
19 please the Court: The State would call Amber Fish to the
20 stand.

21 AMBER FISH,

22 having been first duly sworn,
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY

1 BY MR. JUSTIS:

2 Q. Good morning, Ms. Fish.

3 A. Good morning.

4 Q. Where do you currently live?

5 A. Michigan.

6 Q. And how long have you lived in Michigan?

7 A. About two months.

8 Q. And who lives with you in Michigan?

9 A. My daughter and my fiance.

10 Q. And what is your fiance's name?

11 A. Shawn Rabine.

12 Q. And is that the same individual or are those the

13 same individuals that lived with you on last

14 year?

15 A. Yes.

16 Q. Okay. And who did you come down from Michigan

17 with?

18 A. My daughter, ^{Child}

19 Q. Why didn't Shawn come down with you?

20 A. He had to work. We couldn't afford for him to

21 come down with us.

22 Q. Where do you both work?

23 A. McDonald's.

24 Q. Do you both work there?

25 A. Uh-huh.

1 THE COURT: Is that a yes?

2 THE WITNESS: Yes. Sorry.

3 BY MR. JUSTIS:

4 Q. And do you have any relatives in Michigan?

5 A. His family is in Michigan and my family is all
6 down here.

7 Q. Is that how you got back to Michigan, he has
8 family back there?

9 A. Uh-huh.

10 THE COURT: Is that yes?

11 THE WITNESS: Yes.

12 THE COURT: Thank you.

13 BY MR. JUSTIS:

14 Q. Let me turn your attention to December 3, 2011.
15 Do you remember that day?

16 A. Yes, I do.

17 Q. And what were you doing that evening?

18 A. We were watching a movie. Shawn was sleeping on
19 the couch. I had just heated up some chicken for my
20 daughter, and I heard somebody outside. I walked out,
21 looked out my door, and there were a group of younger
22 kids in my yard. I waited for them to leave. It was
23 about 8:30. I went out and locked my van up, and
24 somebody came and pounded on my door, about 9:00, 9:10.

25 Q. You said there were some individuals that were

1 walking by your house earlier that night?

2 A. Uh-huh, yes.

3 Q. And were they walking or driving?

4 A. They were kind of walking, but they were kind of
5 huddled up in my front yard.

6 Q. Did they have a vehicle with them?

7 A. No. I was worried they were going to get in my
8 vehicle. That's why I went and locked it up.

9 Q. And you said you returned back into your house.

10 A. Yes.

11 Q. And I think you stated about 9:00 there was a
12 knock on your door?

13 A. Yes. It was more like a pound.

14 Q. And what were you doing when that pounding on the
15 door came? Where were you? What were you doing?

16 A. I was walking from the kitchen with a plate of
17 chicken to get my daughter some barbecue chicken and I
18 set it down and opened the door, and Dristin was there
19 with a gun.

20 Q. And when you opened the door, what did you see?

21 A. I saw the gun and I saw all black. He had a mask
22 on. He had his hood up. I just saw his eyes and a gun,
23 and it was kind of tucked up in the arm of his hoody, so
24 all I saw was the barrel pointed at my stomach.

25 Q. Could you tell the jury where the barrel was

1 pointed?

2 A. Right here. He shoved it right into my gut.

3 Q. When the gun got shoved into your gut, what did
4 you do at that point?

5 A. I pushed it away and grabbed it and tried to hit
6 him with it a couple times, and then Christopher B.
7 grabbed my front door and opened it all the way and
8 pushed me inside.

9 Q. When you say Christopher B. who was Christopher B.
10 ?

11 A. He was just some kid from the neighborhood. He
12 used to come by and ask me for cigarettes now and then,
13 knock on my door.

14 Q. How were you able to -- was he in disguise that
15 night?

16 A. Yes, he was, but his voice -- he has a speech
17 impairment and I could tell it was him once he started
18 talking, and his size, he was pretty distinguishable by
19 his height and size.

20 Q. Okay. But when they were at your door, when you
21 opened up that door, did you have any idea at that point
22 who these individuals were?

23 A. No.

24 Q. Did you know at any point during this incident who
25 Dristin Johnson was?

1 A. I had never met him before, no.

2 Q. The only one you had met before was the second
3 individual.

4 A. Was Christopher B. yes.

5 Q. And is it your testimony that you only recognized
6 him because of his voice?

7 A. And his size, yes.

8 Q. Okay. So these two individuals are at the door.
9 What happens at that point?

10 A. They kept telling me to get in and lay down, and
11 my daughter was standing right behind me. I didn't want
12 the gun in my house, so I was trying to keep them out,
13 and I didn't know ^{Christophe}_{r R} was there. I thought it was just
14 the one, the one guy, but when ^{Christop}_{her R} finally stepped out
15 and helped the guy, then they got me in the house and
16 they pushed me over the baby gate that was blocking her
17 from getting to the door.

18 And I picked her up, held her in my arms, and sat
19 on the floor like they asked me to, and they kept yelling
20 at me to lay on my face on the floor, and then they
21 grabbed my daughter and they threw her on the couch. And
22 then I yelled for my boyfriend to wake up because he was
23 dozing. He got up and they put the gun right in his
24 face, and he laid on floor and tied us both up. And they
25 took my daughter off the couch and took her back off the

1 couch and threw her in my face and went through the
2 house, which ^{Christophe}_{RR} started rummaging through the living
3 room a little bit.

4 Q. When they got in the house, your daughter was
5 behind you?

6 A. He was behind the baby gate, right behind me.

7 Q. And you picked up your daughter?

8 A. Uh-huh. Yes.

9 Q. And at that point they pulled the daughter out of
10 your arms?

11 A. He grabbed her by her shirt and just kind of
12 tossed her away from me.

13 Q. Did he use two hands or one?

14 A. One. He just grabbed one hand and tossed her. He
15 didn't even really touch her, just grabbed her shirt.

16 Q. Where did he toss her at that point?

17 A. On the couch, about four feet away from me.

18 Q. What was your daughter doing? Was she --

19 A. She was crying, trying to get back to me, trying
20 to crawl off the couch, and she couldn't really get down
21 off the couch yet, so I was worried she was going to fall
22 and hurt herself, and I was crying, asking him to just
23 pick her up and put her next to me, and instead he just
24 walked over and threw her back at me and kept telling me
25 to shut up.

1 Q. How old was your baby at that time?

2 A. She was only ten months.

3 Q. When was her birthday?

4 A.

5 Q. And let me backtrack a little bit. What is your
6 address?

7 A. There? It was

8 Q. And is that in Dorchester County?

9 A. Uh-huh. Yes.

10 Q. Now, after your daughter was thrown on the couch,
11 you're on the ground, at what point does your daughter
12 get back to you? How does she get back to you?

13 A. When I'm crying, begging him to pick her off the
14 couch so she doesn't fall, he picks her up and throws her
15 at me, Christopher B. did. And she just kind of clung
16 around my head and stayed there with me the rest of the
17 time.

18 Q. And how were you -- were you sitting on the floor?
19 Were you laying on the floor?

20 A. I was face down on the floor with my hands and
21 feet behind my back the way ^{Christophe}_{RR} put me.

22 Q. And what about Shawn?

23 A. He was the same way.

24 Q. And did they tie you up?

25 A. Yes.

1 Q. How did they -- explain that process, who tied you
2 up and how they did that.

3 A. Dristin held the gun to Shawn's head and Shawn
4 just kind of laid down and did what he asked him to. And
5 ^{Christophe}_{r R} tied him up, and then the baby, when she was on the
6 couch, when I was -- I tried to grab her, get to her, and
7 ^{Christophe}_{r R} kind of grabbed me and threw me to the floor and
8 yanked my arms behind my back and tied me up and tied my
9 feet to him.

10 Q. At this point I'm showing you what's been marked
11 as State's Exhibit 6. Do you recognize this?

12 A. Yes.

13 Q. What does it appear to be?

14 A. That's the rope he brought with him.

15 Q. Now, could you describe for the jury the two
16 individuals, what they were wearing, what they looked
17 like.

18 A. ^{Christophe}_{r R} had a big jacket on. They both had black
19 ski masks on. They were both wearing blue jeans. The
20 only thing I really recognized of ^{Christophe}_{r R} that I could see
21 of him was his shoes, because I was laying on the floor,
22 and I remember his shoes were gray with red and black on
23 them. Dristin was all black with blue jeans, and I
24 didn't pay attention to his shoes.

25 Q. Could you tell what race each individual was?

1 A. Dristin was black and ^{Christophe}_{r R} was white, or mixed --
2 I don't know what he is, but light skinned.

3 Q. I'm showing you what has been marked as State's
4 Exhibit 5. Do you recognize these?

5 A. Those are the shoes ^{Christophe}_{r R} was wearing. No, those
6 look different. No, I don't recognize those.

7 Q. Okay. Now, what color were these -- was the mask
8 that they were wearing?

9 A. Black.

10 Q. So after they tied you up, you said they were
11 going through -- they were rummaging through the house?

12 A. ^{Christophe}_{r R} did. Dristin just kind of stayed in the
13 living room, watching us with the gun. They went around
14 to the TV and fiddled with stuff on top of it. I
15 couldn't really see him. I was facing the opposite way
16 of where he was at, but ^{Christophe}_{r R} went through our entire
17 house, from room to room.

18 Q. And what items did they take?

19 A. The Xbox-360, any games that were sitting by it.
20 There was rent money on the TV. They took that, about
21 \$400. He took my cross pendant off my neck, cigarettes
22 and lighter. That's all I can remember. We didn't have
23 anything. I don't know why they robbed us.

24 Q. You said they took the pendant around your neck?

25 A. Yes.

1 Q. Who took that?

2 A. ^{Christophe}_{r R} did.

3 Q. It was on your neck?

4 A. Uh-huh. He took it right off my neck. Right
5 before he went to leave, he just walked up and yanked it
6 off my neck.

7 Q. And you also mentioned there was some rent money
8 you had in the house?

9 A. Uh-huh. Yes, it was about \$400.

10 Q. Was that in cash?

11 A. Uh-huh, yes.

12 Q. And where did you have that?

13 A. On the TV, in the living room. We were going to
14 pay rent the next day. The landlord wanted cash, so we
15 just had it sitting there.

16 Q. And you think you stated Dristin had been messing
17 around the TV?

18 A. Yes, he was.

19 Q. Did either assailant -- did they say anything
20 while they were in there?

21 A. ^{Christophe}_{r R} was running his mouth the whole time he that
22 was there. Dristin didn't say much at all, and as they
23 were leaving, ^{Christophe}_{r R} was talking about taking our van, and
24 Dristin told him that was stupid and threw the keys back
25 at Shawn, and as ^{Christophe}_{r R} was walking out the door, he said,

1 Merry Christmas, bitch.

2 Q. After they left the house, what did you do?

3 A. I got up. I was -- ^{Christop}_{her R} tied -- my hands weren't
4 tied that tight. I don't know if he did that on purpose
5 or not, but my hands weren't tied that tight. Shawn was
6 tied up pretty tight, but I was loose within a couple
7 minutes. I grabbed my daughter, I untied Shawn, and then
8 I went next door and called the cops, called 911.

9 Q. So you went to a neighbor's house to call 911?

10 A. Yes, because they took our cell phones too. I
11 forgot about that.

12 Q. So you didn't have your cell phone to --

13 A. No. He stole those.

14 Q. Okay. So you called 911?

15 A. Uh-huh -- well, I think the neighbor called -- he
16 dialled it and then gave me the phone.

17 Q. But you talked to a 911 operator?

18 A. Yes, I did.

19 Q. You remember making that phone call?

20 A. Yes, I do.

21 Q. Earlier today, did you have an opportunity to
22 listen to the 911 call that you made?

23 A. Yes.

24 Q. I'm showing you what has been marked as State's
25 Exhibit No. 12. Do you recognize this?

1 A. Yes.

2 Q. What is that?

3 A. That's the 911 call recording.

4 Q. So this is the recording that you listened to
5 earlier?

6 A. Yes.

7 Q. Is this recording a fair and accurate
8 representation of the phone call you made that night?

9 A. Yes, it is.

10 MR. JUSTIS: At this time, Your Honor, state
11 would offer State's 12 into evidence.

12 MR. SMILEY: I don't object to it being put
13 into evidence, Your Honor, but before it's played, I do
14 have a matter.

15 THE COURT: All right. Do you wish to play
16 it now?

17 MR. JUSTIS: I do wish to play it.

18 MR. SMILEY: Could we approach?

19 (Discussion held at sidebar.)

20 THE COURT: Noting your exception to my
21 ruling, Mr. Smiley. You may publish the 911 call.

22 MR. JUSTIS: Thank you, Your Honor.

23 (CD of 911 recording marked for
24 identification and admitted into evidence as State's
25 Exhibit No. 12.)

1 (Whereupon the recording was played for the
2 jury.)

3 BY MR. JUSTIS:

4 Q. Just a few more questions, Ms. Fish. You were
5 describing the two assailants. Could you describe their
6 size.

7 A. Dristin was about my size, a little taller than
8 me. Chris was about my height and stocky, bigger, wide
9 in the shoulders.

10 Q. So one was shorter and stockier?

11 A. The other was taller than me and skinny.

12 Q. Okay.

13 MR. JUSTIS: I beg the Court's indulgence.

14 BY MR. JUSTIS:

15 Q. Amber, I'm showing you what has been marked for
16 identification purposes as State's 13, 14, 15, and 16.
17 Do you recognize those?

18 A. Those are the pictures they took afterwards.

19 Q. And whose -- what's the first picture of?

20 A. Me.

21 THE COURT: And what number is that on the
22 box?

23 THE WITNESS: 13.

24 BY MR. JUSTIS:

25 Q. And please look at State's Exhibit 14, which is

1 the next picture. What is that a picture of?

2 A. Shawn and Child

3 Q. And who are they?

4 A. Child is my baby, and Shawn is her father.

5 Q. And the next, State's Exhibit 15?

6 A. The rope that they used to tie us up.

7 Q. And what about State's Exhibit 16?

8 A. That's my house, with my van in front.

9 Q. Are all four of those pictures fair and accurate
10 representations of what everything looked like that
11 evening?

12 A. Uh-huh, yes.

13 MR. JUSTIS: At this time, Your Honor, the
14 State would ask to introduce State's 13, 14, 15, and 16
15 into evidence.

16 THE COURT: Any objection?

17 MR. SMILEY: No, objection, Your Honor. 13
18 14 and publish for the jury.

19 THE COURT: State's 13, 14, 15 and 16 into
20 evidence. You may publish.

21 (Photographs marked for identification and
22 admitted into evidence as State's Exhibit No. 13 through
23 16.)

24 BY MR. JUSTIS:

25 Q. I'm showing you what has been marked as State's 1.

1 Could you explain to the jury what that is and where that
2 picture was taken?

3 A. In my living room after -- I don't know why they
4 took them, but it was after I had the cops there and we
5 were filling out the police report. I think I was
6 actually writing my statement then.

7 Q. Okay. I'm showing you what has been marked as
8 State's 14. Who are they?

9 A. Shawn and ^{Child} my baby and her daddy.

10 Q. Was that picture taken that night also?

11 A. Yes, it was.

12 Q. State's 15?

13 A. That's the rope ^{Christophe}_R brought with him.

14 Q. And where was that? That looks look it's outside
15 somewhere.

16 A. Yeah. The cops -- they took it off my floor and
17 just kind of dropped it outside -- oh, no. I think we
18 carried it out there, and they told us to drop it, just
19 let it go.

20 Q. And, finally, State's 16.

21 A. My van and my -- the house we were living in.

22 Q. So that's

23 A. Yes.

24 Q. And that's your van parked in front of ?

25 A. Yes, it is.

1 Q. Is that where the van was parked that night when
2 the burglary occurred?

3 A. Yes. That's where it was always parked.

4 MR. JUSTIS: Thank you, Ms. Fish. Please
5 answer any questions Mr. Smiley might have for you.

6 THE COURT: Mr. Smiley?

7 MR. SMILEY: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MR. SMILEY:

10 Q. Ms. Fish, I'm Jim Smiley, and I've got some
11 questions for you, all right?

12 A. Okay.

13 Q. Now, let's just start with just generally the area
14 around your house, okay? You live on a gravel unpaved
15 road, right?

16 A. Yes.

17 Q. And your van is sitting in, I guess it's the front
18 yard, but there is not a whole lot of room between that
19 gravel road and your front door, is there?

20 A. No. Maybe about -- I would say about half an
21 acre, maybe.

22 Q. I'm talking about from the front door to the road
23 right there, where your van is. The road is right there
24 on top of the house, right?

25 A. No, there's a good 20 yards from me.

1 Q. Twenty yards?

2 A. Yeah.

3 Q. So you pull in parallel, routinely?

4 A. Uh-huh.

5 Q. Okay. Now, the lighting out there, is there any
6 streetlights around your house?

7 A. I haven't lived there in over a year -- or almost
8 a year, but I'm pretty sure there were lights. Yeah,
9 there was actually fields behind me, the neighbor's farm,
10 and there were lights. It was all lit up. My landlord
11 lived right next door. He liked to keep the whole
12 property lit up.

13 Q. So the back has got lights with the farm thing?

14 A. The back and the front. He had lights in both.

15 Q. So you can see well, is what your position is.

16 A. Yes.

17 Q. All right. Very good. So you had testified that
18 earlier that night you had seen people that you know as
19 Chris and the one that you later learned as Dristin in
20 front of your house, right?

21 A. I didn't see them that clearly. I knew it was
22 Chris and I knew it was two of the other kids that lived
23 down the street around the corner. I didn't know if
24 Dristin was there. I didn't even know who he was.

25 Q. I understand, and I'm not playing tricks. I'm

1 just trying to ask some questions, okay? And in relation
2 to when these fellows came in your house, all right, how
3 much earlier was that?

4 A. An hour at the most.

5 Q. So we're talking about 8:00-ish, give or take?

6 A. Yes.

7 Q. It was already dark?

8 A. It was getting dark.

9 Q. I'm sorry. But it's important, was it dark or
10 getting dark when you saw them?

11 A. I would say that it had to be dark. It's
12 December. It would be dark by 8:00.

13 Q. That's what I was thinking too, but you said I
14 thought it was getting dark. That's why I wanted to ask
15 you. So it was dark, so that puts it around, you
16 thought, about an hour beforehand, about 8:00 or so.
17 Okay. And you were suspicious, right?

18 A. Right. I saw them out there and they -- he's not
19 involved in the case, but one of the boys was a
20 troublemaker, so I just went out and locked my van up
21 after.

22 Q. Okay. Now, what kind of work were you doing then?

23 A. I was a stay-at-home mother then.

24 Q. And what kind of work was Shawn doing?

25 A. He was working for Stark Trust. They kind of put

1 together picnic tables and they work with wood.

2 Q. How many hours a week was he working for them?

3 A. Forty, full time.

4 Q. All right. Good. And you said you had \$415 cash
5 on your --

6 A. On the TV.

7 Q. And that was your rent money?

8 A. Yes.

9 Q. And they took that, right?

10 A. It was gone. They say they didn't, but it was
11 gone.

12 Q. I'm not asking what they said. I'm asking you to
13 answer the question, and your testimony is they took
14 \$415?

15 A. Yes. It was gone after that night.

16 Q. And it was your rent money, so you knew how much
17 it was going to be?

18 A. It was less than rent money. I just knew it was
19 about \$400.

20 Q. Okay. Now, when they came in the house, you said
21 that Shawn was asleep, right, or dozing?

22 A. Yes, he was sleeping.

23 Q. He was on the couch right there?

24 A. Uh-huh.

25 Q. All right. And at some point you yelled at him to

1 get up?

2 A. Yeah. He doesn't wake up for anything unless I
3 yell.

4 Q. Okay. I got you. So even though there is all
5 this commotion going at the front door and the guy
6 pointing a gun at you and everything else, he didn't wake
7 up?

8 A. He wasn't -- the guy at the door wasn't really
9 making a lot of noise. He was kind of being quiet, and I
10 wasn't. I was too busy trying to get him away from the
11 door. He didn't wake up until I yelled.

12 Q. Get up, basically.

13 A. Uh-huh.

14 Q. Now, you said the gun was initially somewhat
15 hidden?

16 A. It was in his sleeve, the sleeve of his hoody.
17 Just like maybe that much of the barrel was sticking out.

18 Q. Okay. All righty. And then you didn't see the
19 second guy at first.

20 A. No. My door opened outwards, and he was standing
21 behind the door. The other guy was right there.

22 Q. So you had to actually pull the door open?

23 A. That's what he did, yeah. He pulled it open when
24 I started fighting off.

25 Q. All right. And they pushed you in and tied you

1 up, and it was ^{Christophe}_{RR} that was going around through the
2 house, right?

3 A. Yes.

4 Q. And he took your money, right?

5 A. Yes.

6 Q. Your Xbox, some games, a pendant, but he took some
7 other stuff?

8 A. He took my phones, my cigarettes, and my lighter.

9 Q. He took your bong?

10 A. No. I didn't have a bong in my house.

11 Q. You did not have a bong?

12 A. No, I didn't.

13 Q. You didn't have a rolling machine?

14 A. A rolling machine? No.

15 Q. Okay. You didn't have plastic baggies?

16 A. Yeah, I had plastic baggies, but I had a
17 ten-month-old who I was packing snacks for.

18 Q. Were they light blue, small ones?

19 A. No. They were regular sandwich baggies.

20 Q. And there wasn't a baggy with any marijuana in it?

21 A. No.

22 Q. Okay. They also took your keys at first, right?

23 A. Chris did, yes.

24 Q. He grabbed your keys and the other fellow, the one
25 you think is Dristin, said, We ain't taking the van,

1 basically?

2 A. He said, That's stupid, we don't need it, threw
3 the keys at Shawn's head.

4 Q. Okay. You never saw Mr. Chaplin, did you?

5 A. No.

6 Q. Okay. Do you know Ms. Karen Parker?

7 A. I met her after, yes.

8 Q. I'm asking -- bad question. I'm sorry. My fault.

9 At the time of this incident, did you know your
10 neighbors, Ms. Parker, that live around the corner?

11 A. I knew of her, but I had never spoken to her.

12 Q. Okay. And ^{Christophe}_R had come to your house before,
13 right?

14 A. I walked my daughter around a lot. He asked me
15 for cigarettes when I was walking, and eventually he
16 would come to my door and ask to bum a cigarette off me,
17 once in a while.

18 Q. Had he ever been outside?

19 A. I think he stepped into the living room once when
20 I had to walk over to the table to get a cigarette, and
21 that was it.

22 Q. He had no relationship with your boyfriend, now
23 fiance? Maybe he was then, I don't know --

24 A. That's okay. Not more than I did, just knowing
25 him from passing him on the street.

1 Q. And so he had never bought marijuana from y'all?

2 A. No. We didn't sell marijuana.

3 Q. I'm just asking the question.

4 A. It's just offensive to me because I have a baby.
5 I'm sorry.

6 Q. I understand. So -- now, I understand Shawn is
7 still in Michigan.

8 A. Yes.

9 Q. Now, is the expense -- the State brought you down
10 here, right?

11 A. Yes.

12 Q. Just so we're clear, as I understand getting off
13 work, but they paid for you to get here.

14 A. Yeah.

15 Q. All right.

16 MR. SMILEY: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 BY MR. SMILEY:

19 Q. The games, do you know how many games?

20 A. Three or four.

21 Q. Do you know the titles of them?

22 A. It's been a long time. I know there was maybe a
23 couple Guitar Heroes and Oblivion, the Elder Scrolls.

24 Q. So it's three games or four games?

25 A. Yeah, and in the Xbox there was a baby DVD.

1 That's really what got me. I never found it anywhere
2 else. I found it at a thrift store, and inside it was
3 the DVD. I never found it anywhere else.

4 Q. I understand. Now, the shoes the prosecutor
5 showed you, those were the shoes that were in your face
6 that night?

7 A. They weren't ^{Christoph}_{or R}'s, no. I didn't see Dristin's
8 shoes.

9 Q. All right.

10 MR. SMILEY: That's all I have, Your Honor.

11 THE COURT: Redirect?

12 MR. JUSTIS: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. JUSTIS:

15 Q. The State's paid for you to come down here, right,
16 paid for your transportation?

17 A. They had to. I have no money to pay it.

18 Q. And is the State reimbursing you for any lost
19 wages?

20 A. No. I'm doing this because I want to.

21 MR. JUSTIS: Thank you. No further
22 questions.

23 THE COURT: Mr. Smiley?

24 MR. SMILEY: Nothing further.

25 THE COURT: You may step down. Thank you.

1 MR. AUSTIN: The State calls Karen Parker.

2 KAREN PARKER,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION.

6 BY MR. AUSTIN:

7 Q. Good morning, Ms. Parker. Just tell the Court a
8 little bit about yourself. Where do you live?

9 A. I live in Knightsville.

10 Q. Where were you living back in December of 2012?

11 A. At

12 Q. Do you have any children?

13 A. I have four.

14 Q. And how old are they?

15 A. I have a 21-year-old, a set of 17-year-old twins,
16 and an 11-year-old.

17 Q. And are they all girls, all boys?

18 A. All girls.

19 Q. And do you know Christopher B. , Dristin Johnson, and
20 Carl Chaplin?

21 A. Yes, I do.

22 Q. And how do you know that?

23 A. I met ^{Christophe}_R first, from Gadsden Acres, when we
24 first moved into Gadsden Acres.

25 Q. Explain your relationship to him. How do you know

1 him?

2 A. He kind of had some home problems and stuff. My
3 daughters became friends with him first, and then I found
4 out his mother was dying -- had terminal cancer, and me
5 being a cancer survivor, I tried to kind of take him
6 under my wing and help him out some because she was so
7 sick, and then eventually he started dating one of my
8 twin daughters.

9 Q. What about Mr. Chaplin?

10 A. I actually met him through Christoph^{er} Christophe^r was
11 working for him at the flea market.

12 Q. Okay. And was that the extent of your
13 interactions with him before?

14 A. Well, I actually bought a washing machine from
15 him, like, you know, a few weeks prior.

16 Q. Okay. And what about Mr. Johnson?

17 A. That would be -- Dristin?

18 Q. Yes, ma'am.

19 A. I didn't know him by his last name. I met him in
20 Gadsden Acres.

21 Q. Let's go back to that night. Were you at home the
22 night of December 3rd, 2011?

23 A. I got home after dark.

24 Q. Okay. And who was at your house when you got
25 home?

1 A. Let's see. My children were there. Carl,
2 Dristin, and ^{Christophe}_{rR} were there.

3 Q. And what were they doing?

4 A. And my daughter's other boyfriend. They were just
5 kind of sitting in the living room, hanging out.

6 Q. It wasn't unusual for ^{Christophe}_{rR} to be hanging out at
7 your house?

8 A. Not at all. ^{Christophe}_{rR} spent many nights at my house.

9 Q. And how long would you say that they hung out
10 there?

11 A. I don't know how long they had been there before I
12 got there. After I got there, it wasn't long, because I
13 remembered that I had forgotten cigarettes on the way
14 home, and I asked Carl to take me to the store.

15 Q. And so did Carl take you to get cigarettes?

16 A. Yes, he did.

17 Q. Was it just you two in the car?

18 A. No, it was he, I ^{Christopher}_{rR}, and Dristin may or may
19 not have been there. I'm not sure.

20 Q. Where did y'all go to get cigarettes?

21 A. Up to the gas station.

22 Q. Did y'all come back straight after that?

23 A. Yes, sir.

24 Q. And did anything unusual happen on your way home?

25 A. Well, we came in from the opposite end of -- it

1 was closer to come in the other way, the way we had gone
2 to the store, but we came in the other way, behind
3 Knightsville school, and -- you know, which is still a
4 route to my house, so I didn't think anything about it.

5 And when we turned the corner to get on to the
6 dirt road, which is actually , one of them in
7 the vehicle had said, had pointed towards the right and
8 said, That's them.

9 Q. And did you know what they were pointing at?

10 A. All I seen was just a trailer.

11 Q. Okay. And did you ever figure out whose house
12 that was, or whose trailer?

13 A. Later, after.

14 MR. SMILEY: Objection, Your Honor.

15 THE COURT: Basis?

16 MR. SMILEY: It calls for speculation.

17 THE COURT: Overruled. You may answer.

18 THE WITNESS: I found out later who lived in
19 the home.

20 BY MR. AUSTIN:

21 Q. And who was that?

22 A. Amber and her baby and her boyfriend.

23 Q. So then they took you back to your house. Did
24 they drop you off there?

25 A. Yes, sir.

1 Q. And what happened after that?

2 A. I went inside, and I had a lot going on, so, you
3 know, I was trying to get things kind of settled down. I
4 went in my room to take a bath.

5 Q. And what about everybody in the truck?

6 A. They were still in the yard when I came inside.

7 Q. And what were they doing?

8 A. They -- I had seen Savage pull a gun.

9 Q. I'm sorry. Who is Savage?

10 A. Savage, pull a gun from the driver's side.

11 Q. Is that Dristin?

12 A. Dristin. That's what I knew him as, Savage.

13 Q. And what kind of gun was that?

14 A. It was a black shotgun.

15 Q. Okay. And so you said you went back inside after
16 that, and take us through your night. What happened
17 after that?

18 A. About 30 minutes later, my niece called, and she
19 was hysterical, because she heard on the police scanner
20 where there was a home invasion on , and she
21 didn't know what number my address was because she had
22 not been there yet.

23 So she called my phone in hysterics, wanting to
24 make sure that me and the girls were okay, and I told her
25 we were fine. And then it just kind of dawned on me, and

1 my heart sank, my stomach got a big ball in it, because I
2 realized, chances are, what had happened.

3 Q. And so what did you do after that?

4 A. I went out into my yard, and police were
5 everywhere. They were everywhere.

6 Q. And did you ever talk to the police?

7 A. Yes, I did.

8 Q. And what did you tell them?

9 A. They were asking me about ^{Christophe}_R, where he was. I
10 told him that he, Carl, and Dristin had been there, to my
11 house, like 30 minutes prior to that, had taken me to the
12 store. And I told him where, you know, how to get to
13 ^{Christopher}_R house because they wanted to know he lived at.
14 And I didn't know the exact address, but I knew how to
15 get to his house.

16 Q. And did you ever talk to anybody from law
17 enforcement after that night?

18 A. Yes, sir.

19 Q. And who did you talk to?

20 A. Smith, I think.

21 Q. And what was the nature of that conversation?

22 A. He came out to take a written statement from me to
23 do the photo lineup.

24 Q. And did you give a written statement?

25 A. Yes, sir.

1 Q. And did you identify anybody in the lineup?

2 A. Yes, sir.

3 Q. And who was that?

4 A. I identified ^{Christoph}_{or R} Dristin, and Carl.

5 Q. I'm going to show you what has been marked as
6 State's Exhibit 3. Do you recognize that?

7 A. Yes, sir.

8 Q. And what is it?

9 A. It's one of the photo lineups I had done.

10 Q. And did you identify anybody in that lineup?

11 A. Yes, sir.

12 Q. And who was that?

13 A. Carl.

14 Q. And what number was that?

15 A. Four.

16 Q. And did you sign it?

17 A. Yes, sir. I initialed and put the date and his
18 name and circled the picture.

19 Q. Okay. And when you did this lineup, how did they
20 explain it to you? Were you pressured to identify
21 anybody in particular in it?

22 A. No, sir. Actually, you know, I was told he may or
23 may not be in there.

24 Q. Okay. And --

25 MR. AUSTIN: Your Honor, at this time I would

1 like to enter this into evidence as State's Exhibit 3.

2 MR. SMILEY: No objection, Your Honor.

3 THE COURT: State's 3 into evidence without
4 objection.

5 (Photo lineup marked for identification and
6 admitted into evidence as State's Exhibit No. 3.)

7 MR. AUSTIN: Please answer any questions
8 Mr. Smiley has.

9 THE COURT: Mr. Smiley?

10 CROSS-EXAMINATION

11 BY MR. SMILEY:

12 Q. Jim Smiley. Now, I think you testified you knew
13 Carl before that night, right?

14 A. Yes, sir.

15 Q. You had met him a couple of occasions, enough so
16 that you had bought an appliance from him, right?

17 A. Correct.

18 Q. So when they show you a lineup with Carl in it,
19 you know who Carl is, right? It wasn't any secret?

20 A. No, I knew who he is.

21 Q. You would expect that you could pick him out,
22 right? I mean, you know who he is?

23 A. I should be able to, yeah.

24 Q. I would hope so. Okay. You said you went up to
25 the store that night and asked Carl to give you a ride.

1 A. Right.

2 Q. So Carl is driving.

3 A. Uh-huh.

4 Q. You're in the front passenger seat?

5 A. Uh-huh.

6 THE COURT: Yes?

7 BY MR. SMILEY:

8 Q. You got to say yes.

9 A. Yes, sir.

10 Q. ^{Christophe}_R is in the back seat, because that's one of
11 those pickups that's got a front seat and a back seat?

12 A. Front seat and back seat, yes, sir.

13 Q. And you believe Dristin may or may not have been,
14 but he could have been back there too?

15 A. Correct.

16 Q. And you said you had a lot going on, as your
17 sister was very sick at that time, right?

18 A. Correct.

19 Q. And so when you got home, realized you didn't have
20 cigarettes, asked Carl to take you, he said sure, right?

21 A. Correct.

22 Q. Now, I've been out there, and I'm not going to
23 tell you I'm an expert on Knightsville, so help me a
24 little bit, okay? There is a really nice Kangaroo up by
25 the CVS, right?

1 A. Right.

2 Q. And then there is another Kangaroo over -- I get
3 my streets wrong, on Orangeburg. Isn't there another one
4 over in there, close the other direction, or am I getting
5 backwards?

6 A. There is a Kangaroo up on Boone Hill Road.

7 Q. Right. Okay. But y'all went to the one --

8 A. Right near my house.

9 Q. You zip out, go by the school?

10 A. It's right there.

11 Q. And that's where you got your cigarettes?

12 A. Uh-huh.

13 Q. Did everybody stay in the truck at that point?

14 A. I believe so.

15 Q. Now, you've been to that Kangaroo a bunch, right?

16 A. I wouldn't say a bunch, several times.

17 Q. Several times. And it's one of those new ones,
18 right? It's pretty nice.

19 A. Yeah.

20 Q. Did you ever notice the surveillance cameras out
21 there?

22 A. No.

23 Q. Okay. Y'all didn't go anywhere else?

24 A. We might have went to Walgreen's.

25 Q. Now, is Walgreen's right there in that same --

- 1 A. They're all at the same light.
- 2 Q. That four way?
- 3 A. It's four-way crossing.
- 4 Q. And do you remember what you got at Walgreen's?
- 5 A. No, sir. I'm not certain.
- 6 Q. Okay. Now, when you came back in -- there's
- 7 several different ways to get on , right?
- 8 A. Yes, sir.
- 9 Q. It's almost like in between a triangle. It's like
- 10 Central and Orangeburg meet, and then is sort of in
- 11 the middle; is that fair?
- 12 A. Yeah, kind of.
- 13 Q. And you can come in both --
- 14 A. It's kind of complicated back there.
- 15 Q. Tell me. But you can come in both ways, right?
- 16 A. Right.
- 17 Q. And there is a part that is -- a short piece
- 18 that's paved, right?
- 19 A. Correct.
- 20 Q. And then the rest of it is packed gravel, light
- 21 dirt road type thing?
- 22 A. Dirt road type.
- 23 Q. And y'all came back in, and at some point you
- 24 remember that ^{Christopher}_R or someone, said, There it is?
- 25 A. I heard somebody say that.

1 Q. It wasn't Carl in the front, though, it was
2 somebody in the back?

3 A. I wasn't even paying attention. I was just kind
4 of leaning toward the door.

5 Q. It didn't ring a bell or anything for you?

6 A. I didn't think I had to, you know --

7 Q. And how do you know what they were talking about?

8 A. Well, I mean, the only thing that is back there,
9 in that direction, you know, is trailers.

10 Q. Okay. There is a bunch of different trailers back
11 there?

12 A. So I knew -- and I just assumed maybe it was a
13 girl that one of them wanted to talk to or something like
14 that, so --

15 Q. It could have meant a bunch of different things,
16 right?

17 A. Yeah.

18 Q. All right. Now, when you got back home, you went
19 inside?

20 A. Yes, sir. I spoke to him for a couple of minutes,
21 told Carl thank you. Told ^{Christophe}_{RR} to stay out of trouble.

22 Q. Yeah.

23 A. And I went in the house.

24 Q. And you told ^{Christophe}_{RR} to stay out of trouble, because
25 he's apt to get in trouble, right?

1 A. Well, that and the company he was with.

2 Q. And when you say that, you only knew Carl from
3 appliances, correct?

4 A. Correct.

5 Q. Are you referring to Dristin?

6 A. Yes, sir.

7 Q. All right. So the fact that ^{Christophe}_{r R} and Dristin
8 together gave you some pause?

9 A. Made me worry about ^{Christoph}_{er R}

10 Q. All right. And I think you said that -- well, let
11 me ask you this way: Do you remember giving a statement
12 to -- I think you said Detective Smith?

13 A. I believe that was his name.

14 Q. Yeah, and you would have given it later down --
15 maybe a week or so afterwards, a little longer, maybe?

16 A. Give or take.

17 Q. Okay. And you told Detective Smith everything you
18 could remember?

19 A. Yes, sir.

20 Q. And then he wrote it down, you read over it, and
21 signed it.

22 A. No, I wrote the statement.

23 Q. Wrote it. All right. Very good. Hard to tell
24 sometimes who wrote it?

25 A. I wrote the statement.

1 Q. So you wrote the statement, and in writing that
2 statement, you wanted to write down everything you could
3 remember, right? The important stuff, right?

4 A. Correct.

5 Q. Okay. And now in that statement, you didn't put
6 anything about Dristin pulling out a gun, did you?

7 A. I don't remember.

8 Q. Would it refresh your memory if I showed you your
9 statement?

10 A. Yes, sir.

11 MR. SMILEY: All right. Just one moment.
12 Your Honor, may I refresh her memory with a copy of her
13 statement?

14 THE COURT: You may.

15 BY MR. SMILEY:

16 Q. For purposes of refreshing your memories, is this
17 your statement? If it is, I'll give you an opportunity
18 to read it.

19 A. Yes, sir.

20 Q. Take a minute and read it, if you don't mind.
21 Take your time. When you're done, let me know.

22 A. Okay.

23 Q. You read it?

24 A. Yes, sir.

25 Q. Does it refresh your memory?

1 A. Yes, sir.

2 Q. Now, you didn't put anything about Dristin having
3 a gun in your statement, did you?

4 A. No, sir.

5 Q. Okay. And this was a week afterwards, right, when
6 you gave this statement?

7 A. I'm assuming it was -- it was a short while
8 afterwards.

9 Q. I promise I'm not trying to trick you. I promise.
10 On the bottom left hand corner, it's dated --

11 A. December 12th, 2011.

12 Q. All right. So you gave this statement nine days
13 after, right?

14 A. Yes, sir.

15 Q. Okay. And, of course, when you were writing this
16 statement, you tried to put everything that you thought
17 was important in that statement, right?

18 A. Yes, sir.

19 Q. Okay. But you did not put anything about seeing a
20 gun that night, did you?

21 A. No, sir.

22 Q. Okay.

23 MR. SMILEY: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. SMILEY: Just a couple more.

1 BY MR. SMILEY:

2 Q. Earlier that day, you had been down at the
3 hospital; is that right?

4 A. The day of the incident?

5 Q. Yeah.

6 A. Yes, sir.

7 Q. And about what time do you think you got home?

8 And I know it's hard.

9 A. It was dark.

10 Q. It was already dark?

11 A. It was already dark.

12 Q. And when you pulled up, Carl's truck was already
13 there.

14 A. Yes, sir.

15 Q. Okay. When you went inside to go take a bath --

16 A. Uh-huh.

17 Q. That -- when you went inside is the last time you
18 saw Carl?

19 A. Yes, sir.

20 MR. SMILEY: Beg the Court's indulgence one
21 more time.

22 BY MR. SMILEY:

23 Q. Now -- and I'm sorry. One other area. When you
24 come around the corner there in that area that you said
25 somebody said, There it is, or something to that

1 effect --

2 A. Yes, sir.

3 Q. It's really dark in there, isn't it?

4 A. Yes, sir.

5 Q. There is no streetlights or anything like that.
6 It's hard to see anything, right?

7 A. Yes, sir.

8 MR. SMILEY: That's all I got. Thank you.

9 MR. AUSTIN: Nothing further from the State.

10 THE COURT: All right. Is this witness
11 excused?

12 MR. AUSTIN: She is.

13 THE COURT: Any objection?

14 MR. SMILEY: No, ma'am.

15 THE COURT: You are excused. You may remain
16 with us in the courtroom, but feel free to leave. Thank
17 you.

18 THE WITNESS: Thank you.

19 THE COURT: Ladies and gentlemen: This is an
20 appropriate time for us to take a short break. Do not
21 begin the deliberations. Don't discuss this case among
22 yourselves. You may leave your notepads in your chair,
23 but I just ask that you turn them so nobody can see
24 what's on your pad.

25 Please rise for the jury. We're going to

1 take about ten minutes.

2 (In open court, jury not present.)

3 THE COURT: Thank you. Be seated. Before we
4 take a break, Mr. Smiley, I'm going to allow you to place
5 on the record the objection concerning the 911 tape.

6 MR. SMILEY: Yes, ma'am. Before the
7 admission of the 911 take, the prosecutor had asked me if
8 I had a problem with him not calling the dispatcher
9 because, of course, that would be the appropriate person,
10 the custodian of records to put it in, and I said I did
11 not have an objection.

12 However, when I realized that Mr. Shawn
13 Rabine was not going to testify and there is a statement
14 he made on the 911 tape, I objected to it as being
15 hearsay.

16 And, Your Honor, as I would argue that it
17 does not meet the exceptions one or two of 803, Your
18 Honor, I believe it is, which is present sense impression
19 or excited utterance, first by the testimony of Ms. Fish
20 herself, who says it was not an emergency anymore, so it
21 did not happen contemporaneously with the event;
22 secondly, she said it was not an emergency, therefore
23 would not be an excited utterance at that point, and I do
24 not believe it would be a present sense impression.

25 I believe that to allow it is a statement --

1 the statement, so I can put it on the record what the
2 statement is, is Shawn Rabine says, It's a 20 gauge.

3 I can't cross-examine that. It denies my
4 client his right under the U.S. constitution, the Sixth
5 Amendment right of confrontation, and South Carolina's
6 constitution, and therefore I make exception to your
7 ruling, Your Honor.

8 THE COURT: It is well noted for the record
9 just on the basis that the Court relied on is she
10 indicated in the 911 she sounded distraught. When she
11 called, she said we just got untied. They left about ten
12 minutes ago.

13 So based upon those statements under 803 (1)
14 and (2), I find Mr. Rabine is unavailable, he's out of
15 state, and note your exception, so it's on the record.

16 Thank you.

17 MR. SMILEY: Actually --

18 THE COURT: I've ruled. It's on the record.
19 Thank you.

20 MR. SMILEY: Yes, ma'am.

21 (Recess taken.)

22 MR. SMILEY: Not that I ever doubted that you
23 weren't, but you are correct, there is a presumption that
24 all children now are competent. There used to be a rule
25 in the common law that under 14 that -- so I apologize

1 for that.

2 THE COURT: But if there is any indication,
3 Mr. Smiley, we can, outside the presence of the jury --

4 MR. SMILEY: I've never met her and any
5 statements made is -- if I could quickly voir dire, just
6 outside the presence about does she know the difference.
7 I have no reason to believe she isn't other than her age,
8 Your Honor.

9 MR. JUSTIS: Well, Your Honor, if the judge
10 would like to voir dire her, the State would have no
11 objection to that.

12 THE COURT: Let's place her on the stand. If
13 you'll just ask her basic questions, where she goes to
14 school, those kinds of things, or if I have any questions
15 or Mr. Smiley has any questions, I'll ask.

16 She's in the courtroom?

17 MR. JUSTIS: She is right here, Your Honor.

18 THE COURT: I need you to come forward. The
19 witness stand is right here. We're going to swear you
20 in.

21 Kelsey P.

22 having been first duly sworn,
23 was examined and testified as follows:

24 THE COURT: I'm going to need you to speak
25 very loudly. Can you do that for me?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: What's going to happen right now
3 is Mr. Justis is going to ask you a few questions, and
4 Mr. Smiley may ask you a few questions, and we'll bring
5 the jury in so we'll have to swear you in again. So I
6 don't want you to think you did it wrong or anything. Do
7 you understand?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Thank you. Mr. Justis?

10 DIRECT EXAMINATION

11 BY

12 BY MR. JUSTIS:

13 Q. Okay, ^{Kelsey P.} As the judge said, you're going to
14 have to speak real loud because my ears don't work real
15 good and I'm far away, so you pretend like you have to
16 talk loud enough for me to hear you, okay, and I'm
17 getting old too so my ears don't work good. How old are
18 you?

19 A. Eleven.

20 Q. Where do you go to school?

21 A. Greg Middle.

22 Q. What grade are you in?

23 A. Sixth.

24 Q. And what is your favorite subject in school?

25 A. All subjects.

1 Q. You like all of them? What is your least favorite
2 subject?

3 A. Reading.

4 Q. Reading? How about -- who lives in your house
5 with you right now? Like, who is in your family that
6 lives at your house?

7 A. Me, my sister, my mom, and my three cousins.

8 Q. Okay. And how many sisters do you have?

9 A. Three.

10 Q. Are they older or younger or --

11 A. Older.

12 Q. All of them are older, so you're the youngest?

13 A. Yes, sir.

14 Q. Who's the most mature?

15 A. Me.

16 Q. You are? Who helps mommy around the house?

17 A. Mostly me because my sisters mostly going off to
18 her friend's house.

19 Q. Okay. Are they teenagers?

20 A. Yes, sir.

21 Q. Okay. Is that why -- are they messy around the
22 house?

23 A. Sometimes.

24 Q. Okay. What about -- let me ask you this question:
25 Do you know the difference between a truth and a lie?

1 A. Yes, sir.

2 Q. And what is the truth?

3 A. A truth is where you're being honest to one
4 another.

5 Q. Okay. If I said I have a pink tie on, would that
6 be the truth or a lie?

7 A. A truth.

8 Q. Okay. And if I said that Mr. Matt has a green tie
9 on, would that be a truth or a lie? This guy right here,
10 the guy that's taller.

11 A. A lie.

12 Q. That would be a lie. Is it a good thing or bad
13 thing to tell the truth?

14 A. It's a good thing.

15 Q. What about a lie?

16 A. It's a bad thing.

17 Q. What could happen to you if you tell a lie?

18 A. You get punished.

19 Q. And what happens if you tell the truth?

20 A. Sometimes it depending you could get rewarded.

21 Q. Okay.

22 MR. JUSTIS: I have no further questions.

23 THE COURT: Mr. Smiley, do you have any
24 questions?

25 MR. SMILEY: No, sir -- no, ma'am. I think

1 the presumption has been met.

2 THE COURT: Thank you. All right. Now, here
3 is what's going to happen. I don't want you to get
4 confused.

5 We just had to do a hearing to make sure that
6 you understood that everything you said here today in
7 court was the truth, so you understand that everything
8 you say here today has to be the truth under the oath
9 that you took.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: And what I need for you to do is
12 have a seat back -- you can sit next to your mom, and
13 then when the jury comes back in, we're going to call you
14 back in and swear you in again, all right?

15 So you just had a little practice run. So
16 can you do that for me, Kelsey P. ?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Thank you. Anything we before we
19 bring in the jury?

20 MR. JUSTIS: Nothing from the State, Your
21 Honor.

22 MR. SMILEY: Your Honor, I assume that police
23 or Mr. Justis have met -- I have no summaries, no
24 statement, nothing. I just want to put on the record
25 there is nothing in the discovery to indicate that, so I

1 assume they've met their burden -- or met the
2 requirements of Brady and Kyles v. Whitley and turned
3 over anything that was produced as a result of any
4 interviews with her that I would have been entitled to.

5 THE COURT: All right.

6 MR. JUSTIS: We have, Your Honor. There was
7 no written statement taken by police from Kelsey P.
8 Kelsey P. I actually found out Friday afternoon she
9 had gone to her mother and told her she needed to speak
10 with her about something that had been bothering her,
11 told her, and that's when her mother contacted me.

12 I met with them. It was from about 5:00 to
13 about 7:30 Friday night, and that's where she told me
14 what she had observed that night.

15 MR. SMILEY: I believe a summary of that
16 conversation would be discoverable.

17 THE COURT: Mr. Justis, what's the basis of
18 her testimony?

19 MR. JUSTIS: The basis of the testimony is
20 she was actually at the Parker residence, which is
21 , okay, where the three individuals met up. She
22 was there that night, along with other individuals, and
23 that was listed in the police report that the children
24 were there. And she basically observed all three
25 individuals together at the truck, and she overheard a

1 conversation between the three individuals. And she saw
2 them leave together and saw them drive down towards the
3 victim's house.

4 THE COURT: All right. The conversation was
5 overheard. Has the basis of that conversation been
6 disclosed to Mr. Smiley?

7 MR. JUSTIS: The basis of the conversation
8 actually --

9 THE COURT: The content of the conversation.

10 MR. JUSTIS: The content of the conversation,
11 from what I understand it to be, is that she did not hear
12 anything that Mr. Chaplin said. She was actually in the
13 trailer in her bedroom, looking out the window, saw them
14 talking, could hear Dristin Johnson saying some things to
15 Christopher B. and ^{Christop}_{her B} replying to that, and that's
16 the basis, or that's the content of the conversation.

17 THE COURT: All right. Mr. Smiley, do you
18 need any additional time to review that information or
19 to --

20 MR. SMILEY: No, ma'am. I appreciate it
21 being disclose beforehand. I'm going to argue that
22 anything that Dristin or Chris said is going to be
23 hearsay.

24 THE COURT: How is that not going to be
25 hearsay?

1 MR. JUSTIS: I would say -- it's
2 co-conspirator's statement made in furtherance of the
3 conspiracy.

4 THE COURT: Mr. Smiley?

5 MR. SMILEY: Since I don't have the
6 statement, I don't know whether it was in furtherance of
7 the conspiracy. I'm not doubting you, Mr. Justis. I'm
8 not saying it's not.

9 THE COURT: What is she going to testify to?
10 What is she going to say?

11 MR. JUSTIS: We can proffer her testimony.
12 She can say that Christopher B. was --

13 MR. SMILEY: Your Honor, maybe she should be
14 sequestered before it's said what her testimony will be.

15 THE COURT: I'm trying to determine whether
16 or not to bring the jury in and let them go to lunch. So
17 that's --

18 MR. SMILEY: I understand.

19 THE COURT: Let's do that. Let's bring the
20 jury in.

21 (In open court, jury present.)

22 THE COURT: Thank you. Please be seated.
23 Ladies and gentlemen: I have determined -- I don't like
24 to interrupt a witness during their testimony, and I
25 think it's going to take us past what I think would be an

1 appropriate lunch hour, so we're going to go ahead and
2 break for lunch. Do not begin your deliberations. Do
3 not discuss this case amongst yourselves.

4 Please remember you're going to likely have
5 access to the Internet. Please do not do any independent
6 investigations. Do not read, watch, listen to any news
7 accounting regarding this case should there be any.
8 Please be back in the jury room at 1:45 p.m. You may
9 leave your notepads in the jury room, but please take
10 them with you since we're going to be -- no one will be
11 in the courtroom during lunch while y'all are gone.

12 All right? Thank you. Please rise for the
13 jury.

14 (In open court, jury not present.)

15 THE COURT: Thank you. Be seated. All
16 right. Mr. Justis, you wish to proffer her testimony; is
17 that correct?

18 MR. JUSTIS: That's correct, Your Honor.

19 State calls Kelsey P.

20 Kelsey P.

21 having been first previously duly sworn,
22 was examined and testified as follows:

23 THE COURT: All right. Kelsey P., if you'll
24 just come -- you've already been sworn, so just come and
25 have a seat back here.

1 Now, you are still under oath. Do you
2 remember the oath that was administered to you that you
3 swore to tell the truth and the whole truth? Do you
4 remember that? Do you remember this lady giving you the
5 oath?

6 THE WITNESS: To be -- to tell the truth?

7 THE COURT: Yes, ma'am. Do you remember
8 that?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: All right. That still applies.
11 Is that a yes?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: And I need you to always say yes
14 or no or speak your answer so she can write down what
15 you're saying, all right?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Mr. Justis?

18 MR. JUSTIS: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. JUSTIS:

21 Q. Kelsey P. I think we mentioned before, where do you
22 go to school?

23 A. Greg Middle.

24 THE COURT: We already know that, and I think
25 we can move on it. She seems to be very comfortable.

1 BY MR. JUSTIS:

2 Q. Let me turn your attention to December 3, 2011.

3 Do you remember that night?

4 A. Yes, sir.

5 Q. Where were you that night?

6 A. At home.

7 Q. And who was home with you that night?

8 A. It was just me and my sisters and her boyfriend
9 and -- my other sister and mom came later on, and Carl
10 and Chris and Savage and his girlfriend.

11 Q. Okay. Whose girlfriend?

12 A. Savage.

13 Q. Savage's girlfriend. Did she stay all night?

14 A. No, sir.

15 Q. Did what was Carl, Chris, and Savage doing when
16 they were at your house that night?

17 A. They were outside talking by the truck.

18 Q. Okay. Whose truck was it?

19 A. Carl's.

20 Q. Did you have the opportunity to hear what they
21 were talking about?

22 A. Only in my sister's bedroom.

23 Q. Okay. So tell me, where were you when you heard
24 them talking?

25 A. I was by my sister's window in her room.

1 Q. And they were out by the truck?

2 A. Yes, sir.

3 Q. And is it really far away where the truck was to
4 where the window is?

5 A. Sort of.

6 Q. How far would you say from me to you?

7 A. Probably a little bit more farther.

8 Q. Just a little bit further? What did you hear any
9 of them say? Did you Carl say anything?

10 A. Yes, sir.

11 Q. What did you hear Carl say?

12 A. He was just agreeing to what Savage said.

13 Q. And what was Savage saying?

14 A. He was talking about where they could both jump in
15 the truck, with Carl, after they could -- after they
16 already go in the house and they could take off.

17 Q. Okay. Was Chris saying anything?

18 A. Yes, sir.

19 Q. What was Chris saying?

20 A. Chris was acting like he was saying that he didn't
21 want to do it because he already -- he already got caught
22 doing it before.

23 Q. Okay. And was that pretty much the extent of what
24 you heard them talking about?

25 A. No, sir.

1 Q. Did you hear him talk about anything else?

2 A. Yes, sir.

3 Q. What did you hear them talk about?

4 A. They were talking about where they could blame --
5 Carl and Chris was saying that if them two -- if they did
6 it, that if they got caught, Savage could get blamed on
7 it.

8 Q. Okay. Was Savage there listening to that?

9 A. Yes, sir. He was right there with them.

10 Q. Okay. And did you see them leave your house at
11 any point?

12 A. Yes, sir.

13 Q. And did they leave separately or all together?

14 A. All together.

15 Q. And how did they leave the house?

16 A. When my mom pulled up, they said bye, and they
17 jumped in the truck together and they all left, and I
18 went to the bedroom and I saw them hit the curve.

19 Q. Okay. You saw them drive away?

20 A. Yes, sir.

21 Q. And which direction did they go? Is there one way
22 to get out of your neighborhood or two ways?

23 A. Two ways.

24 Q. Okay. And which way did they go?

25 A. They went the longest way.

1 Q. Okay. And this conversation that you heard, was
2 your mom home at that time?

3 A. No, sir.

4 Q. So your mom came home after you heard that
5 conversation?

6 A. Yes, sir.

7 MR. JUSTIS: That would be probably all the
8 questions, Your Honor.

9 THE COURT: Mr. Smiley?

10 MR. SMILEY: Beg the Court's indulgence.

11 THE COURT: Kelsey P. , Mr. Smiley is just
12 taking a break, so I just need you to sit right there.
13 Do you need some water? Do you have water? Okay.

14 BY MR. SMILEY:

15 Q. So -- first name is Kelsey P. ?

16 A. Yes, sir.

17 Q. I'm Jim Smiley, all right? I'm going to ask you
18 some questions. You are in your sister's bedroom. Which
19 sister was that?

20 A. Caitlin.

21 Q. Caitlin's bedroom. Were you in there by yourself?

22 A. Yes, sir.

23 Q. And was it dark?

24 A. Inside the bedroom?

25 Q. Outside.

1 A. It was nighttime, but we had the front porch light
2 on, so could I see all of them.

3 Q. All right. So it was nighttime. And you said
4 they were over near Carl's truck?

5 A. Yes, sir.

6 Q. Okay. And Mr. Justis asked you if this was this
7 far away, but you said it was further. When I get the
8 distance, let me know, okay?

9 A. About right there.

10 Q. Okay. And let the record reflect -- I'm not good
11 with measurements, Your Honor, but it appears to be 30,
12 40 feet, fair enough?

13 THE COURT: All right.

14 BY MR. SMILEY:

15 Q. Thirty to forty feet away? All right. And were
16 they outside the truck or inside the truck?

17 A. They were outside.

18 Q. All three of them?

19 A. Yes, sir.

20 Q. Was there anybody else around?

21 A. No, sir.

22 Q. Where were your sisters and Dristin's girlfriend
23 and that at the time?

24 A. We told Dristin's girlfriend that she had to
25 leave. My -- one of my sisters was in the living room

1 with her boyfriend, and my other sister was with my mom
2 on the way home, and that was Caitlin.

3 Q. Okay. I'm trying to keep everybody straight too,
4 all right? So Caitlin was with your mom that wasn't
5 home, right?

6 A. Yes, sir.

7 Q. And everybody else was inside?

8 A. Yes, sir.

9 Q. Peaches and -- that's Dristin or Savage's
10 girlfriend's name, right?

11 A. She left.

12 Q. She had already left.

13 A. Yes, sir.

14 Q. How did she leave, by car or foot?

15 A. Foot.

16 Q. Okay. And so where -- they're standing about 40
17 feet away, okay?

18 A. Yes, sir.

19 Q. And you said you heard Dristin talking?

20 A. Yes, sir.

21 Q. And you hear Chris talking?

22 A. Yes, sir.

23 Q. Now, you said you saw Carl agreeing. What do you
24 mean by that?

25 A. Can you please repeat that?

1 Q. I think you said, ^{Kelsey P.} , that you saw Carl
2 agreeing.

3 A. Yes, sir.

4 Q. So what words was he saying?

5 A. On the fact it was that he said, We could do that.
6 They were all -- Savage said we could jump in the truck,
7 and Carl could drive them somewhere.

8 Q. Okay. So -- and I'm just trying -- not trying to
9 trick you, I'm just trying to make sure I understand.
10 Carl's exact words were --

11 A. I agree, but he was mumbling it, like he didn't
12 want to agree to it.

13 Q. So you really couldn't heard words, he was just
14 sort of --

15 A. He was like, uh-huh. He was mostly agreeing to
16 what Savage was saying.

17 Q. And I guess what I'm asking you, ^{Kelsey P.} , were you
18 perceiving -- or guessing that he was agreeing or was he
19 saying -- what words was he saying?

20 A. He was saying, I agree.

21 Q. That's the word, I agree.

22 A. Uh-huh.

23 Q. Okay. And exactly what words did Dristin say?

24 A. He was mostly explaining, from the beginning, that
25 we should go do something tonight, and he was saying,

1 well, I see this girl walking down the street all the
2 time, so why don't we go into her house.

3 Q. Okay. So Dristin said we should go do something.

4 A. Uh-huh, yes.

5 Q. I'm just making sure I'm clear, and I see some
6 girl walking. We could go in her house.

7 A. Yes, sir.

8 Q. And when he said that, you're at the window, 30
9 feet away, and Carl is standing there?

10 A. Yes, sir.

11 Q. And Chris is standing there?

12 A. Yes, sir.

13 Q. Nobody else?

14 A. No, sir.

15 Q. Now, what did Chris say?

16 A. Chris was, like, I don't want to. I already did
17 something like that before, and I got talked into it by
18 doing it, and he's, like, then -- that's mostly like all
19 he said.

20 Q. Okay. So Chris didn't really agree to anything.

21 A. No, sir.

22 Q. Dristin is doing most of the talking?

23 A. Yes, sir.

24 Q. And Carl is just sort of standing there?

25 A. Yes, sir.

1 MR. SMILEY: Beg the Court's indulgence.

2 THE COURT: Take your time.

3 MR. SMILEY: Just a couple more and we're
4 done.

5 BY MR. SMILEY:

6 Q. Now, you heard that that night?

7 A. Yes, sir.

8 Q. Okay. And you hadn't talked about it at all until
9 last Friday.

10 A. Yes, sir.

11 Q. You've never talked to anybody else.

12 A. No, sir.

13 Q. Not your mom, police, sisters, nobody?

14 A. No, sir. No, sir, only talked to my mom that
15 Friday -- no, it was that Thursday, talked to her because
16 that's when she let me know about what was happening.

17 Q. About the trial?

18 A. Yes, sir.

19 Q. Okay. And then that's when you said, I heard
20 something.

21 A. Yes, sir. I didn't want to say anything to my
22 mama because I didn't know if they were actually going to
23 do it.

24 Q. But did you ever hear them say the word rob?

25 A. No, sir. They were, like, making Savage was,

1 like, making words to go over that, to, like, to make a
2 word that means that word.

3 Q. But what was the word?

4 A. He was saying just to go in someone's house.

5 Q. Okay. But so they never -- you took what he says
6 going in someone's house to be a robbery?

7 A. Yes, sir.

8 Q. Okay. And that's what you thought when you heard
9 it that night?

10 A. Yes, sir.

11 Q. Okay. But nobody said, let's go rob so-and-so.

12 A. No, sir.

13 Q. And you didn't -- you heard Chris say he didn't
14 want to do it, right, whatever that something was --

15 A. Yes, sir.

16 Q. -- that you thought was a robbery, and Carl just
17 stood there, basically?

18 A. Yes, sir.

19 Q. All right.

20 MR. SMILEY: That's all I have, Your Honor.

21 THE COURT: All right. Mr. Justis, is there
22 anything else that we need to have, any more questions
23 you have for her?

24 MR. JUSTIS: Not for the witness, Your Honor.

25 THE COURT: You may step down. Thank you.

1 Before you step down, you are -- we have invoked what is
2 called the rule of sequestration, so you can't talk about
3 this case until I tell you you can. Do you understand?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: So you can go back. I'm -- your
6 mom is a witness, so you can't talk to her. You can't
7 talk to the State or to Mr. Smiley about your testimony.
8 Do you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And if anybody tries to talk to
11 you, what are you going to do?

12 THE WITNESS: Not tell them anything.

13 THE COURT: Correct. And you will let me
14 know if they do?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Thank you. You may step down.
17 All right.

18 Mr. Justis -- or Mr. Smiley?

19 MR. SMILEY: I'm trying to make sure I put my
20 words correctly, Your Honor. I believe it is hearsay,
21 what she heard. I think it's undoubtedly hearsay.

22 THE COURT: It is hearsay.

23 MR. SMILEY: As far as in furtherance of a
24 conspiracy, they have yet to establish a conspiracy, and
25 I do not believe at this point in time it would meet an

1 exception.

2 THE COURT: Mr. Justis?

3 MR. JUSTIS: Your Honor, I think there has
4 been evidence of the conspiracy from Karen Parker when
5 she testified that when she was in the car with them, at
6 least two of them, if not all three, that they slowed
7 down at one house, pointed at that time and said, That's
8 it.

9 I think there is some evidence of a
10 conspiracy. They're there together. She said normally
11 they're not there, all three of those individuals
12 altogether. She testified about Savage and the whole
13 deal, that she doesn't trust them, so she does think
14 there is a conspiracy at that point, and this little
15 girl, you know, furtherance of that testimony. They're
16 discussing going down the road and going in someone's
17 house.

18 I think it's pretty -- and then we have the
19 response to Christopher B.: I don't want to do that. I've
20 gotten in trouble with that before.

21 I mean, I think it just reeks of a conspiracy
22 going on at that time and she overhears it. It's
23 definitely an exception to the hearsay. All three
24 co-conspirators' statements in furtherance. They're
25 discussing the actual burglary. I don't know how more

1 furtherance you can be at that point when you're all
2 talking about it in one group.

3 MR. SMILEY: I heard Kelsey P. 's testimony a
4 little different. I don't believe she testified about
5 slowing down or who said what, but according to the
6 little girl, Chris says he didn't want to, so that's
7 certainly not privileged. Carl didn't say anything, so
8 we've got Dristin that is making hearsay statements, and
9 it's her interpretation what that means because I asked
10 about the robbery.

11 And, by the way, Chris said he was in trouble
12 for that. It couldn't be. He was never arrested for
13 robbery before. He had got in trouble for it, he hadn't,
14 so they're trying to link too many things together there.

15 Also, I mean, this is the eleventh hour to
16 find out about a surprise witness in a separate issue. I
17 sure wish we had known about it on Friday instead of when
18 she came in to testify, but that's a separate issue.

19 On the issue before us, it's hearsay. I
20 don't believe it fits the exception. I don't believe
21 they've established it's in furtherance of any conspiracy
22 at this point in time, Your Honor.

23 THE COURT: All right. As to the statement,
24 I will allow Kelsey P. , Kelsey P. , to testify to the
25 statements that were given through the proffer under

1 801(d)2(e), the statements by co-conspirators or parties
2 during the course in furtherance of the conspiracy. Note
3 your exception as to -- Mr. Smiley, I am concerned, and
4 we will break.

5 Do you want more -- do you need more time to
6 meet with ^{Kelsey P.} ? I mean, she's already testified as
7 to what she will testify to.

8 MR. SMILEY: She's sequestered at this point.

9 Actually, Your Honor, what I would like,
10 based on the information she got, is enough time -- and
11 she talks about distances and where she was located and
12 efforts. I would like an opportunity to go over to
13 Knightsville, to that residence, so I can see the
14 location again because when I went there, I didn't have
15 this information, so I wasn't looking specifically. It
16 will take me an extra half hour to get there and back, I
17 guess, each way.

18 THE COURT: Let me ask you, just for
19 scheduling, Mr. Justis what do we have for the afternoon?

20 MR. JUSTIS: For the afternoon, I have, after
21 these witnesses, essentially a group of law enforcement
22 officers.

23 THE COURT: What if we begin with the law
24 enforcement officers and break at an appropriate time and
25 put her on in the morning to allow Mr. Smiley to go --

1 information earlier, to do any investigation that I might
2 need to do before the cross.

3 And I just want to place on the record that
4 the Court was kind enough to give me that. Now, of
5 course, I still object. I understand your ruling to the
6 admission of this hearsay, but I understand your ruling
7 to be an exception, and I appreciate it, Your Honor.

8 THE COURT: And with that, we're going call
9 the SLED witness and then we'll call Kelsey P.

10 MR. SMILEY: Yes, Your Honor.

11 THE COURT: Let's bring in the jury.

12 (In open court, jury present.)

13 THE COURT: Thank you. Please be seated.

14 Ladies and gentlemen: I apologize. Sometimes I
15 overestimate time. There were some matters unrelated to
16 this case that I had to take care of, so please accept my
17 apologies and we'll now hear -- call your next witness.

18 MR. JUSTIS: Thank you, Your Honor. May it
19 please the Court: The State calls Janice Bryson.

20 JANICE BRYSON,

21 having been first duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. JUSTIS:

25 Q. Ms. Bryson, where do you work?

1 A. I'm retired from the South Carolina Law
2 Enforcement Division.

3 Q. And how long have you been retired?

4 A. Approximately six months.

5 Q. Okay. And how long did you work at the South
6 Carolina Law Enforcement Division?

7 A. Twenty-three years.

8 Q. And what was your job at SLED?

9 A. I was a forensic technician in the evidence
10 processing department.

11 Q. And what kind of things did you do as an evidence
12 technician?

13 A. Whenever items of evidence were submitted to the
14 lab with the request to process for hair, fiber, blood,
15 semen, or skin cells, it was my responsibility to process
16 the evidence, collect any evidence, and make sure that
17 evidence was routed to the proper department.

18 Q. Okay. And did you have an opportunity to process
19 any evidence involving a Christopher B. Dristin
20 Johnson, or Carl Chaplin?

21 A. Yes, sir.

22 Q. And to your knowledge, what was the evidence you
23 were attempting to collect?

24 A. The request was made by the submitting law
25 enforcement agency. The request was for DNA ownership.

1 Q. And what items were you asked to attempt to
2 collect some DNA off of?

3 A. SLED item number one was a black ski mask with
4 three holes, and SLED item number two was a pair of blue
5 cloth gloves.

6 Q. I'm showing you what has been marked as State's
7 Exhibit 7 for identification purposes. Do you recognize
8 this?

9 A. Yes, sir, I do.

10 Q. And what is that?

11 A. This is the container that I received from our
12 evidence control department that contained item one and
13 item two.

14 Q. And items one and two were what?

15 A. Item one was the black ski mask, and item two was
16 the pair of blue gloves.

17 Q. And could you explain how those items are
18 packaged.

19 A. If you can see, there's two manilla envelopes, and
20 both are packaged in a heat-sealed pouch.

21 Q. And who would have put that in that heat-sealed
22 pouch?

23 A. When the evidence is brought into SLED, the
24 officer that brings the evidence, he places the items in
25 the heat-sealed pouch, and then he would seal the pouch,

1 initial, and date the pouch.

2 Q. So when you picked up the pouch from your evidence
3 custodians there at SLED, when you first obtained that,
4 was that pouch sealed?

5 A. Yes, sir, it was.

6 Q. Did it appear to have been tampered with in any
7 way?

8 A. No, sir, it wasn't.

9 Q. After you get that pouch, it's sealed, what do you
10 do with it?

11 A. I break open the seal, and I process one item at a
12 time, so I take the item out of one of these manilla
13 envelopes and I place the item on white butcher block
14 paper, and then I take a plastic scalpel, and I do a
15 visual, looking for any hair or just things I might see.

16 And then I take that item and I scrape it with the
17 plastic spatula, and I keep the item contained in one
18 area so anything that will fall off the gloves or the ski
19 mask will be in that one area. And I take a swab and I
20 put a little bit of distilled water on it, and I swab the
21 area on the butcher block paper that I scraped the item.

22 And then I let that swab air dry, and I place that
23 swab in a gold coin envelope. I label it and give it a
24 sub-item number, and then I would send -- package it all
25 together and then send that heat-sealed pouch to the

1 DNA department.

2 Q. I'm showing you what has been marked as State's
3 Exhibit No. 9. Do you recognize this item?

4 A. Yes, sir, I do. This is the heat-sealed pouch
5 that I generated when I collected my swabs. This is my
6 name. I heat sealed the pouch, initial, and date it.

7 Q. So let me get this straight: You get the bigger
8 pouch, which I showed you first. That has the items in
9 it?

10 A. That's correct.

11 Q. You open it up, take them out, you get your
12 scrapings and then you put those -- I guess, the mask and
13 the gloves, you would put them back in that pouch?

14 A. Yes, sir, I do.

15 Q. And what do you do with it when you put them back
16 in there?

17 A. After I place the items back in the heat-sealed
18 pouch, I seal the pouch, initial it, and then I date it
19 and then I take this pouch back to our evidence control
20 department to be returned back to the submitting agency.

21 Q. So that would have been sealed up and sent back to
22 your evidence room, essentially, so that they can contact
23 law enforcement to come get it back?

24 A. That's correct.

25 Q. And how do you know that you sealed it back up?

1 A. These are my initials and the date that I sealed
2 it.

3 Q. And what was the date that you sealed it?

4 A. May 15 of 2012.

5 MR. JUSTIS: At this time, Your Honor, the
6 State would offer State's 7 into evidence -- never mind.
7 Never mind, Your Honor. Yeah, we would like to offer
8 this into evidence. This is just the --

9 THE COURT: Any objection?

10 MR. SMILEY: Yes. Foundation.

11 THE COURT: Sustained at this time.

12 MR. JUSTIS: That's fine, Your Honor.

13 BY MR. JUSTIS:

14 Q. What about the second item? You explained those
15 pouches.

16 A. That's correct. I do the same thing with the item
17 two, which was the gloves.

18 Q. And you then took the scrapings and put them in
19 those envelopes that is in State's Exhibit 9?

20 A. I take the swabs and take the scrapings and place
21 them in the gold coin envelope.

22 Q. What do you do after you place them in the gold
23 coin envelopes?

24 A. I seal them, initial them, and date them, and
25 after I place all the evidence that I collected, I seal

1 the heat-sealed pouch and date it.

2 Q. And did you do that in that case?

3 A. Yes, sir, I did.

4 Q. And what is the date that you sealed those?

5 A. May 15th of 2012.

6 Q. And where would they have gone after you sealed
7 those?

8 A. I took these to our evidence control department to
9 be placed in the DNA storage area.

10 Q. And then was that for further processing of those
11 items?

12 A. That's correct.

13 Q. Thank you. Was that the extent of your
14 involvement in this case?

15 A. Yes, sir.

16 Q. And when you placed -- when you placed these --
17 couple more questions about those.

18 When you placed these in the bag, these envelopes,
19 did you write anything on those envelopes?

20 A. Yes, sir, I did. I wrote the sub-item number and
21 a description of what the item was.

22 MR. JUSTIS: Thank you. No further
23 questions. Please answer any questions Mr. Smiley may
24 have.

25 THE COURT: Mr. Smiley?

1 MR. SMILEY: No questions, Your Honor.

2 THE COURT: May this witness be excused and
3 released?

4 MR. JUSTIS: Yes, Your Honor.

5 THE COURT: Any objection?

6 MR. SMILEY: No objection, Your Honor.

7 THE COURT: You may step down. You are
8 released from your subpoena. You are free to stay with
9 us.

10 Thank you. Call your next witness.

11 MR. JUSTIS: At this time the State calls
12 Kelsey P.

13 MR. SMILEY: Subject to my prior, Your Honor.

14 THE COURT: Thank you.

15 Kelsey P.

16 having been first previously duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. JUSTIS:

20 Q. Hey there, Kelsey P., how are you?

21 A. Good. You?

22 Q. I'm fine. Could you tell us how old you are?

23 A. Eleven years old.

24 Q. And where do you go to school?

25 A. Greg Middle.

1 Q. And what grade are you in?

2 A. Sixth.

3 Q. And what is your favorite subject?

4 A. All.

5 Q. All of them. Can you -- let's turn your attention
6 to the night of December 3rd, 2011. Do you remember what
7 you were doing that night?

8 A. Yes, sir.

9 Q. What were you doing that night?

10 A. I was at home with my sister and her boyfriend.

11 Q. Okay. And who's your mom?

12 A. Karen Thelma Parker.

13 Q. Okay. Was your mom home?

14 A. No, sir.

15 Q. Okay. When you were home with your sister and her
16 boyfriend, you said --

17 A. Yes, sir.

18 Q. -- was there anyone else that came to the house
19 that night?

20 A. Yes, sir.

21 Q. Who came to the house?

22 A. Savage, his real name Dristin; Chris, his real
23 name is Christopher B. and Carl and Savage's girlfriend.

24 Q. Okay. Do you know her name?

25 A. No, sir.

1 Q. Okay. What were they doing at the house that
2 night?

3 A. They were all in the yard talking, but before,
4 Savage and his girlfriend was in my sister's bedroom.

5 Q. Okay. Well, after they were in the bedroom, you
6 said they were all talking?

7 A. Yes, sir.

8 Q. And where were they talking?

9 A. Outside.

10 Q. And where were you?

11 A. Inside.

12 Q. Okay. And could you see them from where you were?

13 A. Yes, sir. I was in my sister's bedroom.

14 Q. Does her bedroom have any windows?

15 A. Yes, sir.

16 Q. So you could see them out through the window?

17 A. Yes, sir.

18 Q. And where were they standing?

19 A. They were standing in front of a blue truck.

20 Q. Okay. Whose truck was that?

21 A. Carl's.

22 Q. And how far from where you were in the bedroom to
23 where the truck was parked would you say you were? Was
24 it as far as from me to you?

25 A. A little bit more back.

1 Q. Okay. Maybe here or so?

2 A. Yes, sir.

3 Q. Okay. And what, if anything, did you hear any of
4 those three people say?

5 MR. SMILEY: And, Your Honor, again, I
6 believe I need to renew my objection.

7 THE COURT: All right. You may answer.

8 BY MR. JUSTIS:

9 Q. What, if anything, did you hear any of those
10 individuals say?

11 A. Savage, he was talking about going to this girl
12 that used to walk up and down the street, her name was
13 Amber, and he could go into a house.

14 Q. Okay. And did anybody else say anything when he
15 said that?

16 A. Yes, sir.

17 Q. Who?

18 A. Chris. He was saying that, well, I don't want to
19 because when I already been through something like that
20 before. I got talked into doing it.

21 Q. Okay. And did Mr. Chaplin -- did Carl say
22 anything?

23 A. He only said after that, Carl, he said -- he was
24 agreeing to what Savage said.

25 Q. Okay. So when they were standing there, were they

1 all standing next to each other?

2 A. No, sir. They were in a circle.

3 Q. Okay. So they were kind of in a circle.

4 A. Yes, sir.

5 Q. And did your mom come home at some point that
6 night?

7 A. Yes, sir.

8 Q. Well, was she home when you saw that conversation,
9 or heard that conversation? Was she home at that point?

10 A. When they were having it, no, sir.

11 Q. Okay. But she came home later?

12 A. Yes, sir.

13 Q. Where had your mom been?

14 A. She was at the hospital with my Aunt Shelley. She
15 came home and Carl and Chris took her to the store.

16 Q. Okay. After they took her to the store, did Carl,
17 Chris, and, I guess, Savage, did they ever leave the
18 house that night?

19 A. Yes, sir.

20 Q. Did they leave separately or together?

21 A. Together.

22 Q. And how did they leave the house? In what way?
23 Did they walk, did they drive, did they --

24 A. They were driving Carl's truck.

25 Q. Did you see them leave in the truck?

1 A. Yes, sir.

2 Q. When you saw them leave in the truck, which way
3 did they go?

4 A. They went the long way.

5 Q. When you say the long way, what do you mean by
6 that?

7 A. When you pull out, they went to the right.

8 Q. To get out of your neighborhood?

9 A. Yes, sir.

10 Q. So there is more than one way to get out of your
11 neighborhood?

12 A. Yes, sir.

13 Q. Now, when they were talking outside, when you were
14 inside in the bedroom looking out the window --

15 A. Yes, sir.

16 Q. Was it light outside or dark outside?

17 A. It was dark, but we had the front porch light on.

18 Q. Okay.

19 MR. JUSTIS: Beg the Court's indulgence.

20 THE COURT: Take your time.

21 MR. JUSTIS: No further questions. Please
22 answer any questions Mr. Smiley might have for you.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Smiley?

25 CROSS-EXAMINATION

1 BY MR. SMILEY:

2 Q. All right, Kelsey P. , and I introduced myself
3 earlier. I'm Jim Smiley, okay?

4 A. Yes, sir.

5 Q. And I got a bunch of questions, so we're going to
6 take them one at a time. All right?

7 A. Yes, sir.

8 Q. You said at first you were home with your sister
9 and her boyfriend?

10 A. Yes, sir.

11 Q. Okay. Help me here. What is your sister's name?

12 A. My sister was Courtney.

13 Q. How old is Courtney?

14 A. She's 17, going to be 18.

15 Q. And her boyfriend?

16 A. Dustin.

17 Q. Not the Dustin that you called Savage, or is that
18 the same guy? I'm sorry. Let me back up and ask a
19 simpler question.

20 All right. You know someone that you call Savage,
21 right?

22 A. Yes, sir.

23 Q. Okay. That's not her boyfriend?

24 A. No, sir.

25 Q. There is a -- so Dristin is a different guy?

1 A. Dristin. We call him Savage.

2 Q. All right. Your sister, I wrote it down.

3 Courtney, is that her name?

4 A. Yes, sir.

5 Q. Courtney's boyfriend is named Dristin too?

6 A. Uh-huh, Dustin.

7 Q. Dustin, okay. How old he, do you think?

8 A. I don't --

9 Q. Is he older, about the same age as your sister?

10 A. Yes, sir.

11 Q. All right. And so it was just the three of y'all
12 at the house, right?

13 A. Yes, sir.

14 Q. All right. And was the TV on?

15 A. Yes, sir.

16 Q. More than one TV, do you remember?

17 A. It was only -- well, when Savage came out -- when
18 he was in the room, his girlfriend was on, when I walked
19 in, it was on, so it was just like the living room TV on
20 and the bedroom TV on.

21 Q. Okay. So there was a couple of TVs on in the
22 house.

23 A. Yes, sir.

24 Q. All right. Now, this person that you call Savage,
25 Dristin, you don't like him very much, do you?

- 1 A. No, sir.
- 2 Q. Okay. Now, the truck outside, was it blue?
- 3 A. It was like a navy blue color.
- 4 Q. And you're sure of that?
- 5 A. Yes.
- 6 Q. Okay. Before I go on that, I need to ask you some
7 other questions, okay?
- 8 A. Yes, sir.
- 9 Q. Now, you found out later that night Chris got
10 arrested, right?
- 11 A. Yes, sir.
- 12 Q. Now, Chris, did he -- he dated one of your
13 sisters -- was he dating her then?
- 14 A. Yes, sir.
- 15 Q. Okay. And which sister was that?
- 16 A. Caitlin. That was Courtney's twin.
- 17 Q. I got you. So Courtney and Caitlin are twins.
- 18 A. Yes, sir.
- 19 Q. So they're the same age, and Courtney went with
20 Dustin?
- 21 A. Yes, sir.
- 22 Q. And Caitlin went with Chris.
- 23 A. Yes, sir.
- 24 Q. Okay. And you knew Chris pretty well.
- 25 A. Yes, sir.

1 Q. He was over there a good bit, wasn't he?

2 A. Yes, sir. He was really nice to me.

3 Q. You liked Chris.

4 A. Yes, sir.

5 Q. Chris actually spent the night over there before,
6 right?

7 A. Yes, sir.

8 Q. Okay. So fair to say that of the three fellows
9 you're talking about, Dristin and Carl and Chris, you
10 knew Chris the best?

11 A. Yes, sir.

12 Q. Okay. After Chris got arrested, the police came
13 by, didn't they?

14 A. Yes, sir.

15 Q. And they talked to your mom, right?

16 A. Yes, sir.

17 Q. And you were home when that happened, right?

18 A. Yes, sir.

19 Q. Okay. And they were asking about what went on
20 that night, right?

21 A. Yes, sir.

22 Q. Because you heard them talking, didn't you?

23 A. Yes, sir.

24 Q. Okay. They didn't talk to you, though, did they?

25 A. No, sir.

1 Q. And you didn't go up and tell them you had
2 anything to tell them, did you?

3 A. No, sir, because at that point I didn't know
4 exactly if they did what they were planning to do.

5 Q. Okay.

6 A. I didn't know if he was actually getting arrested
7 for that. All I really knew is he was getting arrested,
8 because I know that night that Savage was coming, and he
9 knocked on our window.

10 Q. Uh-huh?

11 A. And then he left, because our friend Ashley
12 stated -- Ashley came after mom got home.

13 Q. Uh-huh?

14 A. And that's --

15 Q. Okay. You're giving me lots of information. I
16 don't mean to cut you off, but who is Ashley?

17 A. Ashley is one of my sisters' best friends.

18 Q. Okay. Well, you got a bunch of sisters. Which
19 sister?

20 A. Caitlin and Courtney.

21 Q. So both of them?

22 A. Uh-huh.

23 Q. So Ashley is good friends with both your twin
24 sisters?

25 A. Yes, sir.

1 Q. And she came over after your mom got home?

2 A. Yes, sir. We never knew she was coming.

3 Q. She just showed up.

4 A. She called my mom -- well, like, I didn't know she
5 was coming.

6 Q. Right.

7 A. But my mom knew.

8 Q. And she came over.

9 A. Yes, sir.

10 Q. All right. You said that Dristin -- Dristin, now,
11 make sure I get the names right. Dristin's girlfriend
12 came over at some point, right?

13 A. Yes, sir.

14 Q. All right. So she came inside, obviously, because
15 her and Dristin went in the bedroom, right?

16 A. Yes, sir.

17 Q. Then had a TV on, and that's before your mama got
18 home?

19 A. Yes, sir.

20 Q. And you don't know his girlfriend's name, do you?

21 A. No, sir.

22 Q. Okay. But y'all asked her to leave, didn't you?

23 A. Yes, sir.

24 Q. Y'all don't like her.

25 A. I don't know her. My sisters did. I really

1 didn't know her. My sister Courtney is the one that told
2 her to leave.

3 Q. Okay. So before your mama got home, you got you
4 and Courtney and Dustin?

5 A. Yes, sir.

6 Q. And then at some point, Chris comes over, along
7 with Dristin, or Savage?

8 A. He walked up to our house.

9 Q. Oh, Chris did?

10 A. No, Savage.

11 Q. Savage did?

12 A. Dristin.

13 Q. So let me back up a step. We're going to get this
14 straight. So you're at home with your sister Courtney
15 and Dustin.

16 A. Yes, sir.

17 Q. Okay. Chris comes up with Carl, right?

18 A. Yes, sir.

19 Q. In Carl's truck.

20 A. Yes, sir.

21 Q. So now there's five of you at the house, right?

22 A. Yes, sir.

23 Q. Check me on my math, because I'm going to see if
24 we can get this right, and then Dristin comes up.

25 A. With his girlfriend.

1 Q. With his girlfriend. Okay. And you don't know
2 her name.

3 A. No, sir.

4 Q. So there is seven people at the house right now,
5 right?

6 A. Yes, sir.

7 Q. Your mama is still not home yet.

8 A. Yes, sir.

9 Q. Okay. And a lot of commotion going on with seven
10 people in that house, aren't there?

11 A. Yes, sir.

12 Q. And on top of that, Dristin and the girl you
13 didn't know, they go in a bedroom.

14 A. Yes, sir.

15 Q. And they start arguing?

16 A. No, sir. I guess they were laying down in bed.

17 Q. Okay. I understand. I'm not asking you to guess,
18 just what you saw, all right, and if I say something
19 that's not right, you just correct me.

20 You saw them go in the bedroom, right?

21 A. Yes, sir.

22 Q. And they closed the door?

23 A. Yes, sir.

24 Q. All right. Now, let's talk about those bedrooms,
25 okay?

1 A. Yes, sir.

2 Q. Now, your trailer, or house, excuse me, it has
3 steps on both sides, right?

4 A. One in the front and one in the back.

5 Q. Right. Because it sits -- like, this is the road,
6 it sits perpendicular to it, right?

7 A. Yes, sir.

8 Q. I'm getting all crossed up here, but now if we're
9 standing at the road and looking at your trailer, okay?

10 A. Yes, sir.

11 Q. There's a set of steps on the left side, right?

12 A. Yes, sir.

13 Q. And there is also a set of steps on the right
14 side, right?

15 A. Yes, sir.

16 Q. The left side is the front, correct?

17 A. Yes, sir.

18 Q. And that is where the porch light is?

19 A. Yes, sir.

20 Q. And then you've got a back door with a set of
21 steps going down on the other side, on the right side?

22 A. Yes, sir.

23 Q. All right. Now, which bedroom did Dristin -- let
24 me get the names right, Dristin and his girlfriend go in,
25 the one up front or --

1 A. I knew the one up front, when you're looking at
2 the house.

3 Q. Whose bedroom is that?

4 A. That was Caitlin's.

5 Q. That is Caitlin's room, and that's the room they
6 went in and closed the door?

7 A. Yes, sir.

8 Q. And there is a TV on in that room.

9 A. Yes, sir.

10 Q. Now, at the time this happened, just about
11 December of last year, had you turned 11 yet or were you
12 ten? When is your birthday?

13 A.

14 Q. So you were almost 11?

15 A. Yes.

16 Q. Okay. Good. So your mom, she comes home with
17 Caitlin.

18 A. Yes, sir.

19 Q. So when she comes home, there is seven people at
20 your house, or has anybody left yet?

21 A. No one had left yet.

22 Q. When she comes home with Caitlin and they come in,
23 there is now nine people at the house, right?

24 A. Yes, sir.

25 Q. Okay. We got nine people, and that's about the

1 time that Dristin's girlfriend got the bye-bye, like, go
2 home?

3 A. No. There would actually be eight, because she
4 left right before mom got home.

5 Q. Did she come by foot too?

6 A. Yes.

7 Q. She didn't have a car?

8 A. Who?

9 Q. That girlfriend of Dristin's.

10 A. Yes, sir.

11 Q. She had a car?

12 A. Uh-huh.

13 Q. No, she walked. I'm sorry. I'm not trying to
14 confuse you. We'll get on the same page. All right. So
15 the seven people turned into six when the girlfriend left
16 of Dristin?

17 A. Yes.

18 Q. So he came out of the bedroom. Whatever they were
19 doing, it looked like they were laying on the bed, you
20 said, with the door closed.

21 A. Yes, sir.

22 Q. It's hard to hear, though, if they were saying
23 anything. They had a TV on in there, right?

24 A. Yes, sir.

25 Q. And you got all these other people out in the main

1 living area and you got a TV on out there too, don't you?

2 A. Yes, sir.

3 Q. But when they came out, it was about the time
4 Courtney told Dristin or Savage's girlfriend to head on
5 down the road, right?

6 A. Yes, sir.

7 Q. Okay. So we're down to six, right? We were at
8 seven. She leaves and we're at six. Okay? I know it
9 seems like I'm going over the same thing, but it's real
10 important. So we got you, all right?

11 A. Yes, sir.

12 Q. We got Courtney. We got Dustin, right?

13 A. Yes, sir.

14 Q. We got Dristin, right?

15 A. Yes, sir.

16 Q. We've got Carl?

17 A. Yes, sir.

18 Q. Right? We got Chris?

19 A. Yes, sir.

20 Q. So we're at six, right?

21 A. Yes, sir.

22 Q. Okay. Then at some point, your mom comes home
23 from the hospital, and Caitlin's with her, right?

24 A. Yes, sir.

25 Q. Okay. And so they come in the house, and now we

1 got eight, right?

2 A. Yes, sir.

3 Q. Okay. And people are going in and out and
4 everything. Everybody is not just sitting there looking
5 at the walls, are they?

6 A. No, sir.

7 Q. Okay. So your mom -- well, let's talk about a
8 couple things before you mom gets home when it's just six
9 of you, all right?

10 A. Yes, sir.

11 Q. You had talked about Carl's dark blue truck,
12 right? It was outside, parked, right?

13 A. Yes, sir.

14 Q. Now, remember how I was talking about looking at
15 your trailer from the road and we got a left side and a
16 right side?

17 A. Yes, sir.

18 Q. Now, was his truck parked parallel to the trailer
19 or across the trailer, perpendicular? Do you know what
20 I'm talking about?

21 A. It was just, like, lined up.

22 Q. And that's what I'm talking about. Was it lined
23 up in the same direction your trailer runs?

24 A. Yes, sir.

25 Q. And was it parked on the road or in the yard?

1 A. It was parked in the driveway.

2 Q. Okay. On the left side or the right side?

3 A. The left.

4 Q. And, remember, I'm looking at it from the road, so
5 the front door, the same side as the front door, where
6 the light is, right?

7 A. Yes, sir.

8 Q. Okay. And you said they were about this far away
9 from the window, Caitlin's window?

10 A. Yes, sir.

11 Q. Okay.

12 MR. SMILEY: And for the record, Your Honor,
13 approximately 40 feet, I don't think that Mr. Justis
14 disagrees with me, from the -- that she's indicated.

15 MR. JUSTIS: I would agree with that.

16 THE COURT: All right. Thank you.

17 BY MR. SMILEY:

18 Q. So just about 40 feet there, and you said you saw
19 Savage, right?

20 A. Yes, sir.

21 Q. I'm going to get it. We're going to get it, and
22 Carl and Chris?

23 A. Yes, sir.

24 Q. Out there. All right. Were they all -- was the
25 truck between them and the trailer, or were they between

1 the -- do you understand what -- let me -- let me back
2 up. I'm going to ask another question first.

3 The truck was parked in the driveway?

4 A. Yes, sir.

5 Q. And it was nose in, front end?

6 A. Yes, sir.

7 Q. Wasn't backed in, is what I'm asking.

8 A. Yes.

9 Q. So you got the front of the truck, right? And you
10 got the trailer, right?

11 A. Yes, sir.

12 Q. Okay. Now, were they standing between the truck
13 and the trailer or on the other side of the truck?

14 A. They were in front of the truck.

15 Q. The back of the truck or the front of the truck?

16 A. The front.

17 Q. Okay. So when you look out Caitlin's window, they
18 aren't on the roadside, they're in the yard side, right?

19 A. Yes, sir.

20 Q. Okay. Just making sure we get where they were.

21 Now, the window in Caitlin's bedroom, right, there is --

22 A. Yes, sir.

23 Q. There is one on the road side, right?

24 A. Yes, sir.

25 Q. And there is one on the --

1 A. On the front.

2 Q. Right. There's one on each side. One looks out
3 towards the truck, right, and it's on the driveway?

4 A. Yes, sir.

5 Q. And one that looks out from the street, okay?

6 A. Yes, sir.

7 Q. And where -- and I know this is going to seem like
8 a weird question, but it's important for a reason, all
9 right?

10 The bed, did it run the same direction as the
11 truck or across from the truck? Do you understand what I
12 mean?

13 A. It was -- like, where the front window is, it's
14 like lined up with that.

15 Q. Okay. So if you were sleeping in the bed, your
16 head would point towards the street?

17 A. No, wait. We switched it at that time. It was,
18 like --

19 Q. The other way.

20 A. Yeah. It was, like, slanted against the wall
21 where that window was.

22 Q. So it's catty corner?

23 A. Yes, sir.

24 Q. Got it. So if you're laying in the bed you're
25 head is pointed in the corner?

1 A. Yes, sir.

2 Q. Of the trailer, which has a window, actually, on
3 each side?

4 A. Yes, sir.

5 Q. Okay. We got it.

6 Now, that TV, was that at the foot of the bed or
7 on the side of the bed?

8 A. It was at the front.

9 Q. So the foot, at the -- when you're laying in the
10 bed with the corner behind you, the TV would be at the
11 foot of the bed?

12 A. It was on a dresser.

13 Q. Okay. That's at the foot of the bed -- you don't
14 happen to remember what it was on, do you? What --

15 A. Like where the back window is?

16 Q. I got you, Hon, but my question, do you remember
17 what station it was on? I know that's a tough question,
18 but --

19 A. No, sir.

20 Q. That's fine. I'm trying to paint that picture as
21 best as I can. Okay?

22 So we got a TV on, and we got that bed. Oh, let
23 me ask you this: You said they were in a circle, right?

24 A. Yes, sir.

25 Q. So who was facing the front door?

1 A. I don't remember.

2 Q. Okay. If they're in a circle, somebody had their
3 back to you, right?

4 A. Yes, sir.

5 Q. Do you remember who that was?

6 A. No, sir. I don't remember what position they
7 were, like, who was where.

8 Q. Okay. But somebody had their back to you, and
9 somebody was facing you and somebody is sort of in
10 between you. Is that fair enough?

11 A. Yes, sir.

12 Q. All right. The window in that room -- it was
13 December, right? It was pretty cold out.

14 A. Yes, sir.

15 Q. So that window was down, right?

16 A. Yes, sir.

17 Q. And it's your testimony today that you at some
18 point before your mama came home went in Caitlin's room
19 and saw the three of them outside, right?

20 A. Yes, sir.

21 Q. Okay. And it's your testimony that you hear
22 Dristin talking about Amber? Did he say Amber?

23 A. He wasn't saying the name, he just said the girl,
24 and Amber is the only girl that walks up and down the
25 street.

1 Q. I'm just asking because it's important what you
2 think you heard, all right?

3 A. Yes, sir.

4 Q. So he was talking about some girl that walked up
5 and down the street?

6 A. Yes, sir.

7 Q. Okay. Did you ever hear Carl say the words, I
8 agree, or was he just standing there looking like he was
9 going along?

10 A. It was probably like that. I didn't hear him,
11 like, saying, I agree, but it was, like, Uh, okay.

12 Q. Just --

13 A. He was --

14 Q. He wasn't really saying much of anything, was he?

15 A. No, sir.

16 Q. Okay. As a matter of fact, Chris now said
17 something about, as the best you remember, was he didn't
18 want to do it, right?

19 A. Huh-uh.

20 Q. All right. And Dristin was the one talking
21 something about the girl that comes down the street?

22 A. Yes, sir.

23 Q. Okay. Now, getting back to the police, okay, is
24 they came that night, but you didn't realize that you
25 needed to talk to them, right?

1 A. No, sir.

2 Q. If you're going to sneeze, it's okay, honey, all
3 right?

4 THE COURT: Mr. Smiley, please, I understand
5 you're trying to be kind, but please --

6 MR. SMILEY: I'm doing my best.

7 THE COURT: Thank you.

8 BY MR. SMILEY:

9 Q. The police came more than just that night, right?

10 A. As far as I remember.

11 Q. They came back to the house and talked to your mom
12 another time. Were you there?

13 A. No, sir.

14 Q. Okay. But then, at some point, you realized
15 that -- I keep getting this mixed up. Who did Chris
16 date, Caitlin?

17 A. Yes, sir.

18 Q. That Caitlin's boyfriend got put in jail, right?

19 A. Yes, sir.

20 Q. At that point there was talk around the house
21 about it? I'm sure Caitlin was upset, wasn't she?

22 A. Yes, sir.

23 Q. Was there any music on?

24 A. No, sir.

25 Q. You heard last week that Chris's trial was coming

1 up, right?

2 A. Yes, sir.

3 Q. And between the time of that night and last week,
4 there had been a lot of conversation, I am sure, about
5 Chris's situation, right?

6 A. Yes, sir.

7 Q. And he was in a bad spot, wasn't he?

8 A. Yes, sir.

9 Q. Now, on Friday of this past week, right?

10 A. Yes, sir.

11 Q. Your mom had to talk to the prosecutor, right?

12 A. Yes, sir.

13 Q. And you told your mom you might need to talk to
14 him too, right?

15 A. I told her first what happened, and that's when
16 she asked me, if you feel like it, you could talk to him,
17 and I told her I would do it because it's the right thing
18 to do.

19 Q. All right. You don't want Chris to get in trouble
20 for something he didn't want to do, right?

21 A. Yes, sir.

22 MR. SMILEY: Beg Court's indulgence.

23 THE COURT: Take your time.

24 BY MR. SMILEY:

25 Q. All right. Just a few more things, okay? I

1 appreciate the latitude, Your Honor. I'm trying to --

2 Okay. Mom comes home with Caitlin.

3 A. Yes, sir.

4 Q. Everybody's in and out of the house but there,
5 right?

6 A. Yes, sir.

7 Q. And your mom needed to go up to the store.

8 A. Yes, sir.

9 Q. And she asked Carl to take her, right?

10 A. Yes, sir.

11 Q. Does your mama not have a car?

12 A. No, sir.

13 Q. So somebody brought them home?

14 A. Yes, sir.

15 Q. Okay. Very good. So the best you remember is

16 Carl takes your mom and Chris goes too?

17 A. Yes, sir.

18 Q. How about Savage? Does he go?

19 A. No, sir.

20 Q. He stayed there?

21 A. Yes, sir.

22 Q. So it's just the three of them, to the best of
23 your memory, that went to the store?

24 A. Yes, sir.

25 Q. And so while they're gone, there is five of you

1 there, right? I want to make sure I get them --

2 A. Yes, sir.

3 Q. You, your twin sisters, Dustin, and Dristin,
4 right?

5 A. Yes, sir.

6 Q. You had met Carl before?

7 A. Yes, sir.

8 Q. Okay. So your mom and Carl and Chris come back
9 from the store.

10 A. Yes, sir.

11 Q. Then they all go inside?

12 A. No, sir. It was only my mom.

13 Q. Mom, okay. And then Carl and Chris -- Savage, he
14 came out and got in the car?

15 A. Yes, sir.

16 Q. And they left, right?

17 A. Yes, sir.

18 Q. Okay. We're getting there. Wasn't there a dog
19 outside?

20 A. Not that I remembered, cause it was probably my
21 dog. His name is Buckshot, and I don't remember if he
22 was outside on the chain or if he was inside.

23 Q. Okay. But there is a dog there too. We just
24 missed him?

25 A. Yes, sir.

1 Q. What kind of dog is it?

2 A. It's a chihuahua.

3 Q. Its a little yipper that makes a lot of noise?

4 A. Yes, sir.

5 Q. Especially with that many people there, right?

6 A. Yes, sir.

7 Q. While Chris has been in jail, Caitlin's talked to
8 him, right?

9 A. While he was in jail?

10 Q. Yeah.

11 A. No, sir.

12 Q. Okay. All right.

13 MR. SMILEY: Nothing further, Your Honor.

14 MR. JUSTIS: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. JUSTIS:

17 Q. Kelsey P. is Caitlin still dating Chris?

18 A. No, sir.

19 Q. Okay. And you stated that the window was down.

20 A. Yes, sir.

21 Q. How did you hear what they were saying?

22 A. We had a thin wall, and I just put my ear to it
23 and I could hear perfectly what they -- well, not perfect
24 perfect, but I could hear them.

25 Q. So the only adult before your mama came home, the

1 only adult that was there was Carl?

2 A. Yes, sir.

3 Q. Okay. Do you -- and you stated you met Carl
4 before. Do you see Carl in the courtroom today?

5 A. Yes, sir.

6 Q. Could you point him out for me?

7 A. (Indicating.)

8 MR. JUSTIS: Please let the record reflect
9 the witness has identified the defendant as Carl.

10 THE COURT: Record will reflect.

11 MR. JUSTIS: No further questions.

12 THE COURT: Mr. Smiley?

13 RE-CROSS-EXAMINATION

14 BY MR. SMILEY:

15 Q. So you put your ear up against the wall?

16 A. Yes, sir.

17 Q. Okay. So when you were -- had your ear against
18 the wall, you couldn't look out the window, could you?

19 A. No, sir.

20 Q. So you were just listening the best you could?

21 A. Yes, sir.

22 Q. All right.

23 MR. SMILEY: That's all I got. Thank you,
24 Your Honor.

25 THE COURT: You may step down. Thank you.

1 Call your next witness.

2 MR. JUSTIS: The state calls Winfred Boyd.

3 THE COURT: We're going to go ahead and take
4 a break. I apologize. Do not begin your deliberations.
5 Do not discuss this case among yourself. We'll all just
6 take a comfort break and bring you back in.

7 Please rise for the jury. Please feel free
8 to leave your notepads in the chair. Thank you.

9 (Recess taken.)

10 THE COURT: All right. Let's bring in the
11 jury. Thank you.

12 (In open court, jury present.)

13 THE COURT: Thank you. Be seated. Call your
14 next witness.

15 MR. JUSTIS: State calls Deputy Winfred Boyd.

16 WINFRED BOYD,

17 having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. JUSTIS:

21 Q. Deputy Boyd, where do you work?

22 A. Dorchester County Sheriff's Office.

23 Q. And how long have you worked there?

24 A. Three years.

25 Q. And what is your primary duties there?

1 A. I'm a patrol deputy.

2 Q. And what does that include?

3 A. Respond to various 911 calls for service, and we
4 also do traffic enforcement.

5 Q. Did you work anywhere else prior to the sheriff's
6 department?

7 A. Charleston city police department.

8 Q. How many years of law enforcement do you have?

9 A. About four.

10 Q. Did you have an opportunity to respond to a call
11 on December 3rd, 2011 on ?

12 A. I do.

13 Q. And are you familiar with the address you
14 responded to?

15 A. Yes, sir.

16 Q. Okay. And is that located in Dorchester County
17 where you responded?

18 A. Yes, sir.

19 Q. And when you arrived at the location, what did you
20 observe?

21 A. Once I got on scene, I spoke with Mr. Rabine and
22 Ms. Fish. They were very uneasy, very nervous. They
23 were saying that they had just been robbed.

24 MR. SMILEY: Objection, Your Honor. Hearsay.

25 THE COURT: Sustained.

1 BY MR. JUSTIS:

2 Q. Did -- were you the first officer to arrive on
3 scene?

4 A. Yes, sir.

5 Q. Were other officers -- did other officers respond?

6 A. They did.

7 Q. And what was their demeanor?

8 A. The victims?

9 Q. The victims' demeanor, I'm sorry.

10 A. They were very upset, nervous.

11 Q. Did you have an opportunity to speak with them?

12 A. I did.

13 Q. Did you have an opportunity to obtain statements
14 from them?

15 A. I did.

16 Q. Were those statements memorialized in a writing?

17 A. They were.

18 Q. And what did you do with those statements?

19 A. I submitted them with the rest of the paperwork at
20 the end of the call.

21 Q. And did you have an opportunity to go in the
22 residence?

23 A. I did.

24 Q. And what did you observe when you went in the
25 residence?

1 A. It looked like things had been thrown about, or
2 misplaced, things on the floor. It was very
3 disorganized, things like that.

4 Q. Did you observe any other items that seemed
5 unusual to you?

6 A. No, other than the displaced items in the
7 residence.

8 Q. Did you find any --

9 MR. SMILEY: Objection. Leading.

10 THE COURT: Overruled. Overruled.

11 BY MR. JUSTIS:

12 Q. Did you find any kind of illegal narcotics in the
13 residence?

14 A. I didn't, no, sir.

15 Q. What other officers responded to the scene that
16 night?

17 A. Deputy Will, Lieutenant Caudle, Sergeant
18 Tumbleston, Deputy George Taylor -- I believe that was it
19 for that scene, yes.

20 Q. I'm showing you what has been marked as State's
21 Exhibit No. 6. Do you recognize this?

22 A. Yes, sir.

23 Q. What is this?

24 A. It's a rope that I found in the front yard.

25 Q. Okay. And what did you do with this rope?

1 A. I put it in a paper bag and submitted it into
2 evidence.

3 MR. JUSTIS: At this time, Your Honor, the
4 State would like to offer State's 6 into evidence.

5 THE COURT: Any objection?

6 MR. SMILEY: No objection, Your Honor.

7 THE COURT: State's 6 in evidence without
8 objection.

9 (Rope marked for identification and admitted
10 into evidence as State's Exhibit No. 6.)

11 MR. JUSTIS: No further questions. Please
12 answer any questions Mr. Smiley might have for you.

13 THE COURT: Mr. Smiley?

14 CROSS-EXAMINATION

15 BY MR. SMILEY:

16 Q. Yes, ma'am. It's deputy, right?

17 A. Yes, sir.

18 Q. Deputy Boyd, Jim Smiley.

19 When you got to the scene that night, you went
20 directly to ?

21 A. Yes, sir.

22 Q. And when you got there, Ms. Fish, Mr. Rabine, they
23 were outside the house?

24 A. Yes, initially, and then we kind of walked inside,
25 yes.

1 Q. When you say that you observed disarray in the
2 house, was there anything broken, overturned, or was the
3 house just messy?

4 A. I didn't see anything broken. It just looked like
5 items had been thrown all over the place, possibly books,
6 things like that.

7 Q. Okay. In relation to the trailer, the house, the
8 rope that you found -- and you were the first person to
9 find that?

10 A. I believe Lieutenant Caudle pointed it out.

11 Q. He pointed it out so he actually found it and
12 asked you to collect it?

13 A. Yes, sir.

14 Q. Did the crime scene come?

15 A. No, they didn't.

16 Q. They didn't?

17 A. No, they did not.

18 Q. So Lieutenant Caudle asked you to collect the rope
19 which you put in the bag and marked, correct?

20 A. Yes.

21 Q. Lieutenant Caudle took photographs?

22 A. He did.

23 Q. The lighting out there, it was pretty dark in that
24 dirt road, wasn't it?

25 A. It was pretty dark.

1 Q. When you came in, did you come in from the Central
2 Avenue side or Orangeburg Road, do you remember?

3 A. Orangeburg Road, I believe.

4 Q. And Orangeburg Road is the one that has a paved
5 portion before it turns into -- or is that backwards?

6 A. That's the other side. Orangeburg is dirt.

7 Q. It's dirt the entire time you get on it, right?

8 A. Uh-huh.

9 Q. What time did you arrive?

10 A. Let's see. 9:01 p.m., I believe.

11 Q. Okay. From the time you were dispatched to the
12 time you arrived was pretty quick?

13 A. Yes, sir.

14 Q. Now, Ms. Fish, Mr. Rabine, they gave you written
15 statements that night, right?

16 A. They did.

17 Q. Do you typically -- in a robbery case like that,
18 you're typically the guy that takes statements?

19 A. Yes, sir.

20 Q. Okay. The detectives don't come out to the scene?

21 A. Not initially, no, sir. I work night shift,
22 and --

23 Q. I'm just trying to figure it out. So when they
24 gave statements, were they together or did they do it
25 separately, do you remember?

1 DIRECT EXAMINATION

2 BY MR. JUSTIS:

3 Q. May it please the Court: Would you please state
4 your name for the record.

5 A. Joli Tumbleston.

6 Q. Where do you work?

7 A. Dorchester County Sheriff's Office.

8 Q. What is your position there?

9 A. I'm a patrol sergeant.

10 Q. How long have you been there?

11 A. Approximately 13 years.

12 Q. And did you work in law enforcement prior to the
13 sheriff's department?

14 A. No, sir.

15 Q. Okay. And you said you were a patrol sergeant.

16 A. Yes, sir.

17 Q. What are some of the duties of a patrol sergeant?

18 A. I supervise a night shift, and I also answer
19 calls, conduct traffic stops, you know, daily routine
20 business on the road.

21 Q. Okay. As a sergeant, I guess you got more
22 authority than some of the other deputies, or do you have
23 deputies under you?

24 A. I do.

25 Q. And did you have an opportunity to respond to a

1 call on the evening of December 3rd, 2011?

2 A. Yes, sir.

3 Q. And what was that call in regards to?

4 A. An armed robbery home invasion that occurred at a
5 residence.

6 Q. And when you arrived, who was there at the scene?

7 A. Deputy Boyd with the sheriff's office, I believe
8 Corporal Taylor, and the victims.

9 Q. Okay. And did you have an opportunity to speak
10 with any of those individuals?

11 A. I did.

12 Q. Were you briefed on -- briefed by the victims on
13 what had happened?

14 A. Yes, sir.

15 Q. Were you briefed by other officers on scene when
16 you arrived?

17 A. Yes, sir. I was briefed by Deputy Boyd.

18 Q. Okay. What did you observe -- as far as the
19 victims are concerned, what did you observe about their
20 demeanor when you responded that evening?

21 A. The female victim, she appeared to be a little
22 upset, a little shaken {sic} up, I would say.

23 Q. Okay. And what did you do as a result when you
24 arrived on scene? What were some of the duties you
25 carried out when were you there?

1 A. When I first arrived on scene, I met with Deputy
2 Boyd and he briefed me as to what happened. I also went
3 in, just barely, through the front door, and I made
4 contact with the female victim and I spoke with her, and
5 she disclosed to me the events of what happened.

6 Q. Okay.

7 A. Prior to us getting there.

8 Q. Did you have an opportunity to go through the
9 whole house?

10 A. Not the whole house.

11 Q. And what did you do -- did you contact any other
12 law enforcement officers?

13 A. Well, I knew that Lieutenant Caudle was en route
14 there, so I was basically waiting on Lieutenant Caudle to
15 give him the run-down on everything that happened.

16 Q. And Lieutenant Caudle, was he your superior?

17 A. Right. He's the shift commander for our team.

18 Q. All right. And is that all you did at that
19 residence that evening?

20 A. At that residence, yes.

21 Q. Did you have an opportunity to go anywhere else
22 that evening in regards to this case?

23 A. I did.

24 Q. And where did you go?

25 A. I went to Drive located in Gadsden

1 Acres, which is located in Summerville.

2 Q. Why did you respond to that address?

3 A. I was given information from another deputy that a
4 possible suspect was there at that residence, which would
5 be his mother's house, and that's when we went over
6 there.

7 Q. And when you arrived there, what suspect was that?

8 A. Christopher B.

9 Q. And you stated that he was actually at that
10 residence when you got there?

11 A. That's correct.

12 Q. And what were your functions at that residence?
13 What did you do?

14 A. When I got there, he was detained by Summerville
15 police officers. I made contact with Christopher B. mother.
16 I believe her name was Patricia. I explained to
17 Ms. Baty, you know, where we were over on , what
18 happened over there, and that we had some information
19 that her son was a possible suspect in the home invasion.

20 After speaking with her, I notified the on-call
21 detective at the time.

22 Q. And who would that have been?

23 A. It was detective Derek Cheek.

24 Q. And at that point, did you leave the residence?
25 Did you stay at the residence?

1 A. I stayed at the residence until the end of the
2 shift, several hours.

3 Q. Why did you stay at the residence?

4 A. Derek Cheek, the detective who was on call, was
5 going to secure a search warrant, so he left the
6 residence to go to the sheriff's office, the detective's
7 office, so I stayed on scene to secure the residence.

8 Q. And were there other officers with you that
9 secured the residence?

10 A. There was.

11 Q. And who were they?

12 A. Lieutenant Caudle.

13 Q. While you were there, I guess, securing the
14 residence -- what does that consist of, really?

15 A. Just making sure things aren't being brought in
16 and out.

17 Q. Did you observe anything while you were there?

18 A. I did. When we were initially there, when I made
19 contact with Ms. Baty, I came back outside to use the
20 telephone to call the on-call detective. When I was out
21 walking to the left side of the residence, there was a
22 trash can sitting right next to the house, and while I
23 looked down into that trash can, it was wide open, and
24 that's when I observed the victim from the home invasion,
25 her South Carolina driver's license sitting face up on

1 top of a pile of trash.

2 I would assume it was in a trash bag. I don't
3 know what was in it. The license was just sitting right
4 on top of it, and I also noticed next to the trash can
5 which -- I believe it was an Xbox-360 game insert, or the
6 instruction manual that would go to a gaming console
7 game. I noticed that outside, and I recalled that some
8 Xbox-360 items were taken from during the
9 burglary, or the robbery.

10 Q. And did you take those items out of the trash can?

11 A. I did not. I left them where they were.

12 Q. And why did you leave them there?

13 A. Well, due to the fact that, you know, we were
14 going to be having a search warrant done, we already knew
15 the crime scene investigators were going to come and, you
16 know, they would be taking care of the evidence and
17 anything else at the residence.

18 MR. JUSTIS: Beg Court's indulgence.

19 THE COURT: Take your time.

20 MR. JUSTIS: Get these marked.

21 BY MR. JUSTIS:

22 Q. I'm showing you what has been marked as State's
23 Exhibits 17 through 23.

24 THE COURT: Could you show those to Mr.
25 Smiley please? Thank you.

1 BY MR. JUSTIS:

2 Q. Sergeant Tumbleston, items 17 through 23, do you
3 recognize those?

4 A. Yes, sir.

5 Q. And what do they appear to be?

6 A. The trash can is Exhibit 17. That was sitting to
7 the left of the residence that I saw, and the gaming
8 instructions and the South Carolina driver's license that
9 was sitting on top of the bag of trash that was in the
10 trash can.

11 Q. Thank you. And at some point that evening, or
12 that morning, did officers return with a search warrant?

13 A. That's correct.

14 Q. And when they returned with the search warrant,
15 was the search warrant conducted of the residence?

16 A. Yes, sir.

17 Q. Were you there for the search warrant?

18 A. I was.

19 Q. And did you -- how long did you remain?

20 A. I remained there throughout the entire execution
21 of the search warrant.

22 Q. Okay. And what were you doing while they were
23 doing the search warrant? What actually were you doing?

24 A. I was inside talking to Ms. Baty a good bit, kind
25 of keeping her company, and at one point I did walk into

1 one of the bedrooms with Lieutenant Asbell, who responded
2 with our crime scene unit, and that was basically all I
3 did during the execution of the actual search warrant.

4 Q. Okay.

5 MR. JUSTIS: Beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 MR. JUSTIS: No further questions. Please
8 answer any questions Mr. Smiley might have for you.

9 THE WITNESS: Yes, sir.

10 THE COURT: Mr. Smiley?

11 CROSS-EXAMINATION

12 BY MR. SMILEY:

13 Q. Did you prepare any reports whatsoever for this
14 case?

15 A. No, sir.

16 Q. And so everything you're testifying to today is
17 your memory?

18 A. Yes, sir.

19 Q. All right. Did you refresh your memory with any
20 materials?

21 A. Yes, sir.

22 Q. Whose materials did you refresh your memory with?

23 A. Deputy Boyd's initial report.

24 Q. Okay. So your memory was refreshed by what he
25 collected and wrote down?

1 A. Correct.

2 Q. Okay. What time did you arrive at

3 A. I don't remember the exact time. It was -- I
4 would say within ten to fifteen minutes of a call being
5 put out, from what I remember.

6 Q. And if Deputy Boyd arrived at 1 after 9:00, which
7 he testified to, you were about 9:15?

8 A. I would say that's correct, yes, sir.

9 Q. And would have been considered a
10 primary crime scene?

11 A. Correct.

12 Q. All right. And when evidence is found at a
13 primary crime scene, it's not just picked up, is it?

14 A. It just depends. Each case is -- you know, each
15 case is different. It depends on what we're doing.

16 Q. Let me ask you something. There was some rope
17 that was collected.

18 A. Right.

19 Q. But the crime scene wasn't called to collect it?

20 A. Correct.

21 Q. If there wasn't any thought about getting any
22 evidence off of it, it was just put in for what it was,
23 correct?

24 A. It was collected, yes, by a deputy on the scene.

25 Q. Right. Then after being at that residence, as you

1 went to Pintail, how far away is that?

2 A. Maybe five minutes, at the most.

3 Q. About -- and I know you didn't do reports, so I'm
4 not holding you to the minute, but about what time did
5 you get to Pintail?

6 A. I mean, I can't really remember the exact time,
7 but I would say maybe around 10:00 p.m., maybe in that
8 time frame.

9 Q. 45 minutes to an hour after you had started over
10 at ?

11 A. I would say that would be accurate.

12 Q. Okay. Because you weren't at Cone terribly long,
13 were you?

14 A. No, sir, not more than an hour, 45 minutes to an
15 hour, from what I can remember.

16 Q. Okay. I got you. And when you were at Pintail
17 and keeping his mom company and keep -- let me make sure
18 I understand. When you got there, your primary duty was
19 to secure it, right?

20 A. That's correct.

21 Q. They had already detained Chris, the Summerville
22 police had?

23 A. That's correct.

24 Q. So at that point, that is your secondary crime
25 scene, correct?

1 A. That's correct.

2 Q. And it became -- just besides Christopher B. being
3 there, it became a true crime scene when you actually
4 observed what you believed to be evidence taken from the
5 primary crime scene?

6 A. Yes, sir.

7 Q. And you didn't touch any of that stuff there?

8 A. No, sir.

9 Q. Because you knew the crime scene was coming to
10 that one.

11 A. Correct.

12 Q. All right.

13 MR. SMILEY: Beg the Court's indulgence.

14 THE COURT: Take your time.

15 BY MR. SMILEY:

16 Q. Other officers actually conducted the search,
17 right? You were just there -- your job was to keep the
18 scene secure while others got the search warrant and
19 executed it.

20 A. Yes, sir.

21 Q. All right.

22 MR. SMILEY: Nothing further.

23 MR. JUSTIS: Nothing, Your Honor.

24 THE COURT: Is this witness excused?

25 MR. JUSTIS: Yes, Your Honor.

1 THE COURT: Any objection?

2 MR. SMILEY: Certainly. No problem.

3 THE COURT: Sergeant, you are free to leave.

4 You are welcome to remain with us.

5 Call your next witness.

6 MR. AUSTIN: State calls Officer Caudle.

7 MICHAEL CAUDLE,

8 having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. AUSTIN:

12 Q. Where do you currently work?

13 A. Dorchester County Sheriff's Office.

14 Q. And how long have you worked there?

15 A. Twelve years.

16 Q. And what do you do there?

17 A. I'm a shift supervisor.

18 Q. Could you explain for the Court what that entails.

19 A. The lieutenant in charge of 13 people, two
20 sergeants, corporals, and six POCs.

21 Q. Were you working in that capacity back in December
22 2011?

23 A. Yes, sir.

24 Q. And were you working on the night of December 3rd,
25 2011?

1 A. Yes, sir.

2 Q. And did you have a chance to respond to a burglary
3 at

4 A. I did.

5 Q. And about what time did you arrive?

6 A. The call approximately came out at 8:50 p.m. We
7 had, I think, two deputies and a sergeant that were
8 already on scene. When I arrived, I would say it was
9 approximately maybe ten, fifteen minutes later after the
10 initial deputies were on scene.

11 Q. Okay. And what did you observe when you got
12 there?

13 A. I observed Sergeant Tumbleston speaking with -- I
14 believe it's Amber Fish, which was the female victim in
15 the residence.

16 Q. And what were your duties when you got there?
17 What did you do?

18 A. When I got on scene, Sergeant Tumbleston informed
19 me what had happened. She was explaining to me that
20 apparently two subjects entered the residence with a gun,
21 forced them -- forced Ms. Fish and, I believe it was, her
22 boyfriend, Mr. Shawn Rabine, to the floor, at which time
23 they were tied up.

24 Q. Let me stop you right there. As far as your
25 investigation went, what did you do when you got on the

1 scene?

2 A. When I got on the scene, I was getting information
3 on what had happened. So I was told -- like I said, I
4 was informed what was going on. At that time, Deputy
5 Jacob Will and Corporal George Taylor were right in the
6 area. Apparently they got out with two subjects and just
7 to identify who they were walking out of the
8 neighborhood. Apparently while talking to them, they
9 weren't given information.

10 At that time they instructed me what was going on
11 with that. At that time Sergeant Tumbleston informed me
12 she was familiar with one of the subjects, that
13 apparently the victim informed her who the victims {sic}
14 were.

15 Q. But when you arrived at the --

16 MR. SMILEY: Objection, Your Honor. This is
17 hearsay.

18 THE COURT: Overruled. You may continue.

19 BY MR. AUSTIN:

20 Q. Did you have a chance to walk through the home at
21

22 A. I walked through. It didn't seem as if it was
23 disturbed. There was just stuff laying on the living
24 room floor.

25 Q. Did you take any photographs?

1 A. Yes.

2 Q. And what did you take photographs of?

3 A. I took photographs of -- there was a white piece
4 of rope that was laying in the front yard. The van was a
5 green in color van. It was in the front yard. The front
6 of the residence, the living room, and the victim.

7 Q. And did you contact crime scene?

8 A. Not for that initial incident, no, sir.

9 Q. And can you explain why you didn't do that?

10 A. The reason why I didn't notify the crime scene was
11 we had just a piece of rope that was laying on the floor
12 on the grass in the front lawn. There was no forced
13 entry to the residence. From what the victims informed
14 the deputies, they came in and grabbed certain items from
15 the residence and left.

16 Q. And did he go anywhere else that night, besides
17

18 A. Did who?

19 Q. Did you.

20 A. No, sir, not after that.

21 Q. Okay. You said you received some information
22 about some suspects that were contacted by other
23 officers.

24 A. Yeah. Corporal Taylor informed me --

25 MR. SMILEY: Objection, Your Honor. Hearsay.

1 THE COURT: Is there any exception?

2 MR. AUSTIN: I can't think of any.

3 THE COURT: Rephrase your question.

4 Sustained.

5 BY MR. AUSTIN:

6 Q. Did it lead to any other residence?

7 A. Yes, it led to Pintail.

8 Q. Whose house was that?

9 A. It was the house of Christopher B.

10 Q. And what did do you there?

11 A. With information we had a possible suspect, I
12 believe Sergeant Tumbleston notified Summerville police
13 department and asked if he could go to the residence
14 because that is under jurisdiction and see if they can
15 make contact with a description of a vehicle that was
16 apparently involved in this incident. Town of
17 Summerville did respond and located Christopher B.

18 Q. And was a search warrant executed there?

19 A. Yes, sir, after Detective Cheek was notified of
20 the incident.

21 Q. Did you supervise execution of that search
22 warrant?

23 A. I was on scene up until the search warrant
24 arrived.

25 Q. Okay.

1 MR. AUSTIN: I beg the Court's indulgence at
2 this time, Your Honor.

3 THE COURT: Take your time.

4 BY MR. AUSTIN:

5 Q. I'm going to show you what has been marked for
6 State's identification purposes as State's 24. Do you
7 recognize that?

8 A. Yes.

9 THE COURT: Hold on one second before he does
10 that. Could you show Mr. Smiley? Thank you.

11 BY MR. AUSTIN:

12 Q. Could you explain to Court what that is.

13 A. It's a bunch of videos. It looks like a drum set
14 for a kid, and I guess a bunch of boxes that were stolen
15 for video and game systems, video games.

16 Q. Is that a fair and accurate representation of the
17 crime scene as you saw it?

18 A. Yes, sir.

19 Q. And did you take that photo?

20 A. Yes, sir.

21 MR. JUSTIS: I would like to have this
22 admitted into evidence as State's Exhibit 24.

23 MR. SMILEY: No objection.

24 THE COURT: State's 24 into evidence. With
25 that, you may publish if you wish.

1 (Photograph marked for identification and
2 admitted into evidence as State's Exhibit No. 24.)

3 BY MR. AUSTIN:

4 Q. Would you describe what you see there?

5 A. Yes, sir. Apparently the victims were using boxes
6 as storage for their video games and their videos movies
7 and kid videos. Toy drum set, I guess, for their child.

8 MR. AUSTIN: I have no further questions,
9 Your Honor.

10 THE COURT: Mr. Smiley?

11 CROSS-EXAMINATION

12 BY MR. SMILEY:

13 Q. It's lieutenant, right? I want to make sure I get
14 your rank right.

15 A. Yes, sir.

16 Q. Jim Smiley. Just got a couple of questions.

17 You were the highest ranking officer on scene at
18 Cone?

19 A. Yes, sir.

20 Q. Is your responsibility to assess the situation and
21 give direction on what to do next?

22 A. If the sergeant isn't making the correct decision,
23 yes, sir.

24 Q. And is that -- forgive me. I'm civilian. A
25 sergeant is the guy under you?

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. AUSTIN:

4 Q. Mr. Cheek, where do you currently work?

5 A. I currently work for the Dorchester County
6 magistrate's court.

7 Q. And were you employed there back in December of
8 2012?

9 A. I was employed at the Dorchester County Sheriff's
10 Office.

11 Q. In what capacity were you employed?

12 A. I was a white collar investigator at the criminal
13 investigations division.

14 Q. And please explain what your job was, what that
15 entailed.

16 A. I was under a federal grant, and I handled the
17 investigation in white color crimes, anything that came
18 through the sheriff's office. I also was responsible for
19 responding in an on-call status to any other incidents
20 that arose within the county.

21 Q. Okay. And were you called out to an incident that
22 happened at Cone Lane?

23 A. I was. That was on December 3rd of 2012.

24 Q. And did you investigate that by yourself?

25 A. I had assistance from Detective Smith, but I was

1 the initial responding detective, being that I was on
2 call at that time.

3 Q. Okay. And where did you first respond?

4 A. I responded to Pintail, which is in the
5 Gadsden Acres subdivision.

6 Q. Is that close to

7 A. Not really.

8 Q. Okay. And when you arrived, did you make contact
9 with any individuals there?

10 A. I made contact with the patrol deputies that were
11 on scene, Sergeant Tumbleston; I believe Lieutenant
12 Caudle was on the scene, and I made contact with -- I
13 think members of Summerville police department were also
14 there, but I did at that time, the individual I made
15 contact with was Patricia Baty.

16 Q. And who's that?

17 A. That was or is Christopher B. mother.

18 Q. At this point was he a suspect in that case?

19 A. Yes.

20 Q. What was the nature of your conversation with her?

21 A. I advised her basically of the incident, that we
22 had a home invasion at that Christopher B. was a
23 suspect in the case and the detectives would likely be
24 serving a search warrant at her residence.

25 Q. And what happened after that?

1 A. At that point, after I advised her of the nature
2 of the incident, I ended up securing the scene and went
3 back to the criminal domestic violations office.

4 Christopher B. was transported from there back to the
5 criminal investigations division office for a formal
6 interview.

7 Q. So he had been arrested at that point?

8 A. He was detained. He was a juvenile, correct.

9 Q. And where did you first speak with Christopher B. ?

10 A. At the criminal investigations division office.

11 Q. And tell me about that. Did you conduct an
12 interview with him?

13 A. We did. It was myself and Detective Smith. We
14 proceeded to Mirandize him, or issue Miranda rights to
15 Christopher B. He indicated he understood each of his rights
16 but did not wish to speak with us at that time.

17 Q. Did your interview end right there?

18 A. It did.

19 Q. And what else did you do after that? Did you go
20 back out to the incident location?

21 A. A short while later. After that, or at that
22 point, Detective Smith began drafting a search warrant
23 for the residence at Pintail Drive. I was making
24 arrangements with DJJ to have Christopher B. transported to DJJ
25 in Columbia to be booked in as a juvenile.

1 Q. And about what time was it that you went out to
2 Christopher B. house?

3 A. I received a call from Sergeant Tumbleston at
4 10:40 p.m. on December 3rd. I believe it was about 30
5 minutes after that. It was 11:09 p.m. on that same date,
6 December 3rd.

7 Q. Did you ever have a chance to actually interview
8 Christopher B.?

9 A. It was a couple days later. Christopher B., who was
10 booked in pending service of the arrest warrants by
11 Detective Smith, he requested to speak to detectives
12 about the incident.

13 Q. And did you re-Mirandize him at that point?

14 A. We did.

15 Q. And why did you do that?

16 A. Just proper procedure, protocol.

17 Q. Did he ask to have a lawyer present?

18 A. He did not.

19 Q. And what specifically was your involvement in his
20 statement?

21 A. I was present during the interview. He was
22 Mirandized by Detective Smith. I witnessed the issuance
23 of Miranda rights at that time. After the formal
24 interview was conducted, we asked Christopher B. if he wished
25 to provide a written statement. He advised myself that

1 he was not comfortable with spelling or grammar and
2 advised that he would provide a written statement as long
3 as it was notated by myself or Detective Smith. I ended
4 up writing that statement for him, word for word from
5 what he recalled during the incident.

6 Q. And did he get a chance to look over it
7 afterwards?

8 A. He did. I showed him the written statement, and
9 he said he recalled it as best as his recollection word
10 for word, and he signed off at the bottom of this.

11 Q. And did you all force him to give this statement?

12 A. We did not, no.

13 Q. He asked to speak to you?

14 A. He did.

15 MR. AUSTIN: Please answer any questions
16 Mr. Smiley has.

17 MR. SMILEY: Beg the Court's indulgence.

18 THE COURT: Take your time.

19 CROSS-EXAMINATION

20 BY MR. SMILEY:

21 Q. DJJ means Department of Juvenile Justice?

22 A. Correct.

23 Q. And he was going to be sent up to be housed there
24 since he was a juvenile?

25 A. Yes, sir, correct.

1 DIRECT EXAMINATION

2 BY MR. JUSTIS:

3 Q. Lieutenant Asbell, where do you work?

4 A. Dorchester County Sheriff's Office.

5 Q. How long have you worked there?

6 A. Twenty-four and a half years.

7 Q. And did you work in law enforcement prior to that?

8 A. I had 13 years of reserve with Dorchester County
9 prior to becoming full time.10 Q. And what is your job title at the sheriff's
11 department?

12 A. I'm a lieutenant over the crime scene unit.

13 Q. Okay. And what does that involve, being a
14 lieutenant over the crime scene unit?15 A. Just supervising by other officers. We handle all
16 the evidence and most of the major calls and processing
17 evidence, transporting back and forth to SLED and store
18 it until it's time for court.19 Q. And do you -- did you have an opportunity to
20 respond to Pintail Drive in Summerville on December 3rd
21 or 4th?22 A. It was December the 4th. I received the call from
23 Detective Adam Smith about 2:30 in the morning, asking me
24 could I meet him at Pintail to assist in a search
25 warrant.

1 Q. And did you assist in that search warrant?

2 A. Yes, I did. I went there to do the photography
3 and collect any evidence that was done.

4 Q. You did photography. What did you photograph, or
5 what's your standard procedure? When you got there, what
6 did you photograph?

7 A. First of all, we fill out a little card. It's an
8 identification card showing the case number, the date,
9 who is taking the photographs, and then we take over all
10 scenes of the exterior of the house and we go through and
11 photograph the interior of the residence.

12 Q. So on this case you photographed inside and
13 outside the residence?

14 A. Yes, sir.

15 Q. And you stated you collected some evidence also.
16 What evidence did you collect?

17 A. There was four items that we took from the
18 residence. There was an Xbox-360, the Elder Scrolls V
19 Skyrim. We detected a game cover, a video manual, and a
20 flyer from another game called Prey, plus a South
21 Carolina driver's license number 102 578 363 for Amber
22 Ann Fish, and a pair of Nike Air size 12 shoes. They
23 were blue, gray, and white with red in color soles.

24 Q. I'm showing you what has been marked as State's
25 Exhibit No. 5. Do you recognize these?

1 A. Yes, sir. These were the Nike Air tennis shoes
2 that were removed from the bedroom, placed in the bag,
3 and documented on the outside of the bag the description
4 of what they are.

5 Q. Okay. And these were recovered from the bedroom
6 of the house?

7 A. Yes, it was.

8 Q. The Xbox and the Xbox games and the driver's
9 license, where did you discover those?

10 A. The game cover, the Xbox Elder Scrolls V Skyrim
11 video game cover that was on the ground next to the trash
12 can, and I think it was Sergeant Tumbleston that had
13 discovered that inside the trash can there were two more
14 Elder Scroll video games manual and a Prey video game
15 flyer along with Amber Ann Fisher's driver's license was
16 in the garbage can.

17 Q. And Sergeant Tumbleston pointed out those to you?

18 A. Yes, she did.

19 Q. Did you photograph those?

20 A. Yes, sir. I photographed them and collected them.

21 Q. Let's show you what is State's 17, 18, 19, 20, 21,
22 22, and 23. Do you recognize these? Could you identify
23 each one by the number on the back?

24 A. I will.

25 Q. And just tell us what each one is.

1 A. State's Exhibit 17, this is the Elder Scrolls V
2 Skyrim video game cover that was found on the ground
3 next to the trash can, to the left of the trash can.

4 Q. Okay.

5 A. On the left side of the residence.

6 Q. What is the next one?

7 A. State's Exhibit 18. This is a close-up of that
8 same photograph prior to me collecting it.

9 Q. Okay.

10 A. State's Exhibit 19. This is a photograph down
11 inside of the trash can. Just part of the objects can be
12 seen, but that's the trash inside of the trash can.

13 That's State's Exhibit 20. It's photo placard
14 number one. That's the photograph of Amber Ann Fish's
15 driver's license inside of the trash can. State's
16 Exhibit 21 is a close-up of that photograph; actually,
17 State's Exhibit 21 is the first photograph, and then I
18 placed a photo placard next to it.

19 State's Exhibit 22 is showing part of the
20 Xbox-360. I believe it's The Prey. There was two of
21 them inside, and I'm not sure which one this is, but it's
22 showing the corner of one of the Xbox-360 game flyers,
23 and State's Exhibit 23 is a close-up of that, the
24 Xbox-360 game, Liar.

25 Q. Are those pictures accurate representations of

1 what you saw and photographed that evening?

2 A. That's correct.

3 MR. JUSTIS: At this time, Your Honor, the
4 State would offer State's 17, 18, 19, 20, 21, 22, and 23
5 into evidence.

6 MR. SMILEY: No objection.

7 THE COURT: They're admitted.

8 BY MR. JUSTIS:

9 Q. At this time I would like to publish to the jury.
10 I'm showing you State's Exhibit 23 at this time. What is
11 that a photograph of?

12 A. As you can see, the 360 that's part of either the
13 booklet or the flyer of one of the game box 360 brochures
14 that was in the trash.

15 Q. And how is that picture taken?

16 A. Straight down over the --

17 Q. So you're standing over the trash can?

18 A. That's correct.

19 Q. I'm showing you State's Exhibit 22.

20 A. That's another photograph, a little bit different
21 angle. You can see the corner of the flyer sticking out
22 by number three there.

23 Q. All right. State's Exhibit 21?

24 A. That is Amber Fish's driver's license.

25 Q. And State's 19?

1 A. That was just an overall photograph of the inside
2 of the garbage can.

3 Q. That is a further away picture?

4 A. Yes, sir.

5 Q: State's 17.

6 A. That shows the Xbox Elder Scrolls V Skyrim video
7 game cover that was lying on the ground beside the trash
8 can.

9 Q. And is that the trash can were you taking the
10 pictures of?

11 A. Correct, and we found the cover, you know, on the
12 outside, and the rest of the stuff was found inside of
13 that trash can.

14 Q. Okay. Thank you.

15 Now, when you collect all this evidence, what do
16 you do with it?

17 A. We transport it back to the office. That
18 particular night there, I went ahead and took it back and
19 processed the covers for latent prints.

20 Q. So you made an attempt to see if you could get any
21 fingerprints off it?

22 A. That's correct.

23 Q. Okay. And to the best of your knowledge, were you
24 able to successfully identify or get any prints?

25 A. Yeah. There were several latents lifted off of

1 it. A couple of them, I could see that they wouldn't
2 lift and I had a hard time photographing them so at a
3 later date they were all sent to SLED. Everything was
4 sent to SLED.

5 Q. Are you aware if SLED -- what, if anything, do you
6 know whether or not they were able to match those to
7 anyone?

8 MR. SMILEY: Objection, Your Honor.

9 THE COURT: What is the basis?

10 MR. SMILEY: First, hearsay.

11 THE COURT: Rephrase your question. Stained.

12 BY MR. JUSTIS:

13 Q. What, if anything, do you know about the results
14 of those --

15 MR. SMILEY: Objection, Your Honor. Require
16 a hearsay response.

17 THE COURT: Overruled. You may answer.

18 THE WITNESS: I have the report from SLED.
19 There was no identifications made.

20 MR. SMILEY: Objection, Your Honor. Now it's
21 certainly hearsay.

22 THE COURT: The objection would be hearsay.
23 Thank you. Is there an exception to the last part to
24 that hearsay?

25 MR. JUSTIS: No, Your Honor. The State will

1 withdraw the question.

2 THE COURT: Ladies and gentlemen: I have
3 determined that the last response -- the last part of the
4 response to this witness's question is not appropriate.
5 Please strike it from any notes that you have taken.

6 Mr. Justis, thank you.

7 MR. JUSTIS: Thank you, Your Honor.

8 BY MR. JUSTIS:

9 Q. Lieutenant Asbell, when you -- what did you
10 photograph inside the house?

11 A. I photographed the whole inside of the house, each
12 room inside the house, plus the pair of tennis shoes that
13 were located in the bedroom.

14 Q. Okay. And you stated that you took the evidence
15 back to the sheriff's department. What did you do with
16 it at the sheriff's department after you processed it?

17 A. It was placed in storage, in the evidence room
18 upstairs.

19 Q. Okay. And is that kept under lock and key?

20 A. Yeah. There's only five of us, and all the crime
21 scene officers have keys to the office. We're the only
22 ones that have keys to that particular part of the
23 building.

24 Q. And subsequent to that night, did you have an
25 opportunity to collect any other evidence or any other

1 samples from anyone?

2 A. I did buccal swabs on two of the defendants in
3 April.

4 Q. Okay. And explain to the jury what buccal swabs
5 are.

6 A. Buccal is referring to the cheek, or the mouth,
7 and what we do is we take a sterile swab and we swab the
8 inside of the cheeks for the buccal swabs, and it's
9 transported to SLED and tested for DNA. This is how we
10 do that, or in years past, we had to draw blood from
11 people to get their DNA, but now we just swab the insides
12 of their cheek.

13 Q. And you performed some buccal swabs on some of the
14 individuals in this case?

15 A. Yes. I had a Court order that was signed on the
16 4th of April, and on the 13th of April I went to the
17 Dorchester County Jail and did buccal swabs on two of the
18 people.

19 Q. Okay. And do you know which ones it was?

20 A. Christopher B. and Dristin Johnson.

21 Q. Okay. And when you swabbed their mouth, what do
22 you do -- kind of explain that a little bit and what you
23 do, how do you it, what you do with the evidence.

24 A. We just -- like I said, the swabs are sterile.
25 They're in a sealed pack. We break them open and they're

1 encased in a little plastic cap. We slide that down and
2 ask them to open their mouth, and all I'll do is put a
3 lot of pressure and swab the inside of the cheeks, trying
4 to get some cells from the cheek area.

5 Once that's done, I place the cap back into it,
6 slide it up, lock it, and then place it back in the
7 envelope.

8 Q. And what do you do with that envelope? Do you see
9 it? Do you --

10 A. Yes. Well, then it's placed into another
11 envelope, and then that is sealed and placed into
12 evidence until we call the SLED then where everything
13 that we're going to transport to SLED, and we have one of
14 our officers, that's all he does is transport back and
15 forth, and he transports it to SLED so that they can do
16 the tests that are required.

17 Q. Okay. And you would seal this before you sent it?

18 A. Oh, yes.

19 MR. JUSTIS: Beg the Court's indulgence.

20 THE COURT: Take your time.

21 BY MR. JUSTIS:

22 Q. I'm showing you what has been marked as State's
23 Exhibit 10 and State's Exhibit 11. Do you recognize
24 these?

25 A. Yes. This is a SLED envelope that the evidence

1 was placed in once it gets to SLED, and this is our
2 envelope here, showing the victim's name on it and the
3 buccal swab from Dristin Johnson. This is State's
4 Exhibit 10. State's Exhibit 11 is the same thing. This
5 is just an envelope, buccal swab from Christopher B.
6 The -- his name was so long it was cut off here, but this
7 is from Christopher B.

8 We just got the home invasion and the case number,
9 and then this is SLED's -- that's one of their items that
10 they returned back to the office. That's not mine. And
11 the swab should be inside these envelopes.

12 Q. Okay. So when you sent them -- thank you very
13 much. When you sent them, they were just in the yellow
14 envelopes sealed?

15 A. Yeah. Well, there is another envelope inside of
16 that that contains the swab.

17 Q. And there is an envelope inside the envelope?

18 A. Right, that's the one that I place it in the bag
19 that I do it and then seal it.

20 Q. And then who puts this clear baggy on it?

21 A. They do that at SLED.

22 Q. When you put it in the envelope, can you sign it
23 or anything or -- is there any identification?

24 A. On the inside it's got the case number, my
25 initials, and the date that I took it on there.

1 Q. So if I was to open this up and go all the way
2 down to the envelope inside the envelope, it would have
3 your initials on it?

4 A. Yeah. There should be another envelope in there.
5 I think it's a nine-by-six envelope or nine-by-seven
6 envelope.

7 Q. Okay.

8 MR. JUSTIS: Beg the Court's indulgence.

9 BY MR. JUSTIS:

10 Q. I'm showing you what has been marked as State's
11 Exhibit 25. Do you recognize this photo?

12 A. No, sir, I don't. When I take over all around the
13 outside of the house, this might be the back yard, but I
14 can't say for sure.

15 Q. Okay.

16 MR. JUSTIS: The State would offer State's
17 Exhibit 25 into evidence.

18 THE COURT: Any objection?

19 MR. SMILEY: No objection.

20 THE COURT: State's 25 into evidence without
21 objection.

22 MR. JUSTIS: No further questions. Please
23 answer any questions Mr. Smiley may have for you.

24 THE COURT: Mr. Smiley?

25 BY MR. SMILEY:

1 Q. I'm Jim Smiley. I know we've met before, and I
2 think I say every time we have this conversation, you're
3 the CSI guy, right?

4 A. Yes, sir.

5 Q. At least the first step to that link?

6 A. That's correct.

7 Q. All right. And your job is to do what, to go to a
8 crime scene and collect what you're direct to, correct?
9 Sometimes you do it on your own, but officers might say,
10 I need this, this, and what have you.

11 A. Correct.

12 Q. You're the collector of the evidence to begin
13 with, right?

14 A. Correct.

15 Q. So when an officer finds what he believes to be a
16 piece of evidence, of course he's not supposed to disturb
17 it, right?

18 A. If I'm coming out there.

19 Q. Right. That's what I'm saying. Crime scene is
20 coming and there is an item, they leave it where it is
21 until you can document its location and its condition,
22 correct?

23 A. That's correct.

24 Q. Whether it's with a photograph, description, or
25 otherwise, right?

1 A. Right.

2 Q. And so you were sent to Pintail Lane in
3 Summerville, correct?

4 A. That's right.

5 Q. And the photographs that you've identified, that
6 is part of you collecting the evidence that night?

7 A. Yes, sir.

8 Q. All right. Now, the trash can and what have you
9 is all those items that you photographed, the license and
10 the game, leaflets and what have you, that's what you
11 took -- attempt to take fingerprints from?

12 A. Yes, sir.

13 Q. All right. Now, you used the word that I know
14 what it means, but if I could ask you to explain to the
15 jury what latent print means.

16 A. Latent means hidden. A lot of times when you see
17 a fingerprint, you don't see it until you apply some type
18 of chemical or you process it, for example, with
19 Superglue, sometimes just ambient light you can see it,
20 but what we try to do is we bring it in, we visualize it,
21 we Superglue it, and then we take care of the processors
22 from there to make the print visible to where we can
23 either lift it or photograph.

24 Q. So a latent print is one that you raised?

25 A. Correct.

1 Q. And if possible you transfer it?

2 A. Yes, sir.

3 Q. To another medium, I guess, is the best word?

4 A. Yeah, to a latent print card.

5 Q. So you try to put it on a card through tape or

6 what have you, right?

7 A. Yes, sir.

8 Q. That sort of preserves it, is that the best --

9 A. Correct.

10 Q. And then later it's analyzed by someone else,

11 right?

12 A. Yes, sir.

13 Q. And on that driver's license that looks like it's

14 folded or what have you, you actually found some latent

15 prints on it, didn't you?

16 A. I believe it's on the front of the license, yes,

17 sir.

18 Q. And you lifted those?

19 A. Yes, sir.

20 Q. And that is when you were actually able to lift,

21 right?

22 A. That's correct.

23 Q. Okay. And then on the game console and leaflets

24 you found some prints, but you couldn't lift all of them;

25 is that correct?

1 A. Not all of them. I looked at -- I don't know,
2 four or five maybe off of the booklet, the paperwork, a
3 shiny finish paper we were able to Superglue it, powder
4 it, and make the list. One of them did tear when I
5 attempted to make it.

6 Q. So you take that black powder we're familiar with
7 and dust it to raise the print?

8 A. Correct.

9 Q. And then you tape it and move it, correct?

10 A. That's correct.

11 Q. And sometimes on different material you have to
12 use that process, the Superglue process to make it stand
13 out more before you remove it, is that --

14 A. When you heat the Superglue, what it does is it
15 pulverizes all the moisture on the fingerprint and forms
16 kind of an acrylic print, and then you can powder it, dye
17 stain it, whatever you need to do.

18 Q. And that's one method to collect that evidence to
19 be analyzed by someone else later?

20 A. That's correct.

21 Q. So you took pictures and you lifted prints, and
22 then later you were directed to get the buccal swabs,
23 right?

24 A. That's correct.

25 Q. And that's the extent of your involvement in this

1 ANDY DAVID MARTIN,
2 having been first duly sworn,
3 was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. AUSTIN:
6 Q. Good morning, Detective Martin. Where do you
7 currently work?
8 A. I work for the Dorchester County Sheriff's Office.
9 Q. In what capacity do you work there?
10 A. I'm a detective.
11 Q. Were you working as a detective back in December
12 of 2012?
13 A. Yes, sir.
14 Q. And were you involved in the investigation of a
15 burglary on that night, on the night of
16 December 3rd, 2011?
17 A. I was involved the next day, sir.
18 Q. Could you explain the extent of your involvement.
19 A. Yes, sir. Detective Adam Smith made contact with
20 me and told me there was possible evidence associated to
21 a burglary behind the residence of Pintail Drive.
22 That's in Summerville, South Carolina, in Dorchester
23 County.
24 At approximately 1240 hours, I arrived at Pintail
25 Drive, and I met with Lieutenant Burnett. He's our

1 senior K-9 officer. I observed him release his canine
2 for an article search in the area. During the search the
3 canine did discover a plastic bag behind a mound of pine
4 straw. Lieutenant Burnett and I walked over to the
5 plastic bag.

6 Q. Let me stop you right there. In relation to the
7 house, where was that bag located?

8 A. If you have the house here in front of me, there
9 is a back yard. There's a fence, like a cattle fence,
10 and it's rusted, and part of it is pushed down. Right
11 behind that, behind the house, behind the back yard,
12 other side of the fence, is where we located the bag,
13 sir.

14 Q. Okay. And did you immediately collect the bag or
15 look inside it? Did you have --

16 A. The bag wasn't a clear plastic bag, like a
17 sandwich bag. It was a bag that was white in color, like
18 a Dollar General bag or something. I could see the
19 contents inside. It was small items, a lot of items
20 pushed in there, not tied on the top. I collected the
21 bag. I did not open it at that point. I took the bag
22 back to my office. I laid it on my desk, I undid the
23 knot, and I laid down each item on my desk. I
24 photographed each item, cataloged it on an evidence
25 sheet, and then submitted it into evidence, sir.

1 Q. What did you find inside the bag?

2 A. One black three-hold cold weather mask, one pair
3 blue cotton type gloves, one multicolored bong, one job
4 cigarette paper roller, one Cricket phone, model 500,
5 with the number 101531, one red in color plastic phone
6 protective case, one digital scale model M600, one empty
7 pill bottle with a Walmart pharmacy lid, one pack of blue
8 baggies, small baggies. There were 17 of them. One
9 knotted but torn open plastic bag. It was clear. One
10 clear plastic sandwich bag, 51 count, just shoved in
11 there. Plastic bag, six count, plastic bag tied in knot,
12 shoved inside.

13 Q. I'm going to show you what's marked State's
14 Exhibit 8. Do you recognize those?

15 A. Yes, sir.

16 Q. Could you please explain to the Court what those
17 are.

18 A. That would be the second item on the evidence
19 list, one pair blue in color cotton type glove.

20 Q. And are those the gloves you retrieved?

21 A. Yes, sir.

22 MR. AUSTIN: At this time I would like to
23 offer these gloves into evidence as State's Exhibit 8.

24 THE COURT: Any objection?

25 MR. SMILEY: No, ma'am. No objection.

1 THE COURT: State's 8 into evidence without
2 objection.

3 (Gloves marked for identification and
4 admitted into evidence as State's Exhibit No. 8.)

5 THE COURT: Ladies and gentlemen of the jury?
6 I don't remember if I told you this, but all the evidence
7 that is entered into evidence will go back in the jury
8 room with you during your deliberations.

9 BY MR. AUSTIN:

10 Q. I'll show you what has been marked as State's
11 Exhibit 7. Please tell the Court what that is.

12 A. May I touch it? That's item number one on the
13 evidence sheet which I submitted. It is one black
14 three-hole cold weather mask.

15 Q. And that's the mask you had found inside the bag?

16 A. That's correct, sir. I photographed that mask.

17 MR. AUSTIN: Your Honor, at this time I would
18 like to offer State's Exhibit 7 into evidence.

19 THE COURT: Any objection?

20 MR. SMILEY: No objection.

21 THE COURT: State's 7 is in evidence without
22 objection.

23 (Mask marked for identification and admitted
24 into evidence as State's Exhibit No. 7.)

25 BY MR. AUSTIN:

1 Q. Do you mind taking us through the process of what
2 you did with the mask once you took it into evidence,
3 once you collected it.

4 A. All the items were treated the same way, sir. As
5 I said, I collected the evidence. There was a mound of
6 pine straw. The bag was there. I stood back. I
7 photographed the bag once I caught sight of it. I
8 photographed it again, picked it up, carried it to my
9 car, went to my office, and at my desk I undid every item
10 and placed it there.

11 Inside the investigative file you'll see each item
12 on my desk, and once I photographed them, I entered them
13 on to the evidence sheet and submitted them into crime
14 scene as evidence, sir.

15 Q. Why do you go through that whole process?

16 A. It's a chain of custody issue, sir. I collected
17 it and I made sure it went directly from me to Lieutenant
18 Asbell.

19 Q. So nobody touched it between you collecting it and
20 it being submitted into evidence?

21 A. No, sir.

22 MR. AUSTIN: No further questions.

23 CROSS-EXAMINATION

24 BY MR. SMILEY:

25 Q. Is it Detective?

1 A. Yes, sir.

2 Q. Okay. Thank you. Jim Smiley.

3 A. Nice to meet you, sir.

4 Q. Now, you said were you directed there when a K-9
5 officer and his dog hit on that bag there?

6 A. I was directed to 110 by Detective Smith, he told
7 me there may be evidence behind that location.

8 Q. Okay.

9 A. So I arrived on scene, and I met with the K-9
10 officer, yes, sir.

11 Q. And he directed you to the back where they had
12 located some evidence, or did -- let me back up. I'm not
13 doing very good this early.

14 Were you the one that initially discovered this
15 bag?

16 A. No, sir.

17 Q. Did the K-9 officer direct you to where it had
18 been discovered?

19 A. No, sir. May I just go through the process?

20 Q. Sure. Yeah.

21 A. When I got there, I parked my vehicle. Lieutenant
22 Burnett parked in front of me. He got out, he got his
23 leash. He removed his dog. We walked to the side of the
24 road at 110 Pintail and he released his dog. He gave the
25 dog a command. The dog started working that area.

1 The dog went over the fence. We stepped over the
2 fence but we stood there. We did not move. The dog
3 walked straight. There was a concrete block structure,
4 like an abandoned shed or something there. The dog
5 walked over, sniffed around, turned around, came back
6 towards us but in, like, a 30-degree angle, stopped,
7 sniffed a branch above it, walked around a pile of pine
8 straw and alerted on that spot.

9 Q. So you actually watched the dog discover the bag?

10 A. Yes, sir.

11 Q. So now you've got a bag of potential evidence, and
12 that's behind Pintail Avenue?

13 A. That's correct, sir.

14 Q. All right. And now you're an evidence technician
15 at the scene in this particular case?

16 A. I'm a detective at the scene, yes, sir.

17 Q. Well, rather than bring Lieutenant Asbell out
18 there to collect evidence, were you there to collect
19 evidence?

20 A. Yes, sir.

21 Q. So you were acting a crime scene to a certain
22 degree in this situation?

23 A. I was acting as a detective collecting evidence.

24 Q. I'm not trying --

25 A. I'm not a technician, yeah.

1 Q. I'm not trying to argue with you. I'm just trying
2 to make sure we understand because we heard from a crime
3 tech yesterday. I just wanted to make sure we
4 understand. All right. And you had a camera with you?

5 A. That's correct.

6 Q. Before you did anything, you photographed the bag,
7 correct?

8 A. Yes, sir.

9 Q. And where it was located?

10 A. Yes, sir.

11 Q. Once that was done, you collected the bag, put it
12 in another bag?

13 A. No, sir.

14 Q. Okay. Just took it the way it was, put it in your
15 car, and drove it back to the station.

16 A. Yes, sir.

17 Q. Once you were at the station and you were in your
18 office is when you took everything out of the bag?

19 A. That's correct, sir.

20 Q. Now, let's make sure the jury understands what was
21 in the bag. You got a pair of gloves. We put that in
22 evidence?

23 A. Yes, sir.

24 Q. We got a mask, correct?

25 A. Yes, sir.

- 1 Q. We got a bong, correct?
- 2 A. Multicolored, yes, sir.
- 3 Q. The bong, that being a smoking pipe?
- 4 A. That's correct.
- 5 Q. A pipe ordinarily used to smoke marijuana?
- 6 A. Correct, sir.
- 7 Q. You said a Job rolling machine?
- 8 A. Yes, sir.
- 9 Q. To roll marijuana cigarettes?
- 10 A. Possible.
- 11 Q. Regular cigarettes, but in general it's used to
- 12 roll -- lots of people use them to roll marijuana
- 13 cigarettes, would you agree?
- 14 A. I would agree.
- 15 Q. And then you found, I think you said -- before we
- 16 get there, you found a phone, correct?
- 17 A. Yes, sir.
- 18 Q. Okay. Were you involved in determining whose
- 19 phone that was?
- 20 A. No, sir.
- 21 Q. You just wrote down what it was?
- 22 A. Yes, sir.
- 23 Q. And photographed it?
- 24 A. Yes, sir.
- 25 Q. Now, also with the mask, the phone, the bong, the

1 rolling machine were some baggies, right?

2 A. Yes, sir.

3 Q. And I think you said there was some blue-ish ones?

4 A. Yes, sir.

5 Q. There's a bunch of those, right?

6 A. Seventeen.

7 Q. Seventeen of them? And are those consistent with
8 what someone who sells drugs would use to package their
9 drugs?

10 A. They would, sir.

11 Q. All right. And the pill bottle, it didn't have
12 anybody's name on it, did it?

13 A. No, sir.

14 Q. It was just empty with the label peeled off?

15 A. Yes, sir.

16 Q. Now, all these items I'm describing, you took
17 pictures of them, right?

18 A. Yes, sir.

19 Q. And those pictures were turned into evidence,
20 right?

21 A. Yes, sir.

22 Q. Oh, you said there was a bigger baggy that had a
23 knot in it?

24 A. Yes, sir.

25 Q. And it was torn open?

- 1 A. Yes, sir.
- 2 Q. From your experience, is that the kind of bag that
3 would hold a quantity of marijuana?
- 4 A. It was a -- it was also a similar to a Dollar
5 General bag.
- 6 Q. Okay. And something was in there.
- 7 A. Something at one time had been in there.
- 8 Q. And I'm not asking you to speculate, I guess. It
9 was tied up, right, in a knot, and the other end was
10 ripped open?
- 11 A. That's correct.
- 12 Q. Okay. Then you found some other baggies, correct?
- 13 A. Yes, sir.
- 14 Q. And you found a digital scale, right?
- 15 A. Yes, sir.
- 16 Q. And is that digital scale the kind that is
17 commonly used to weigh drugs?
- 18 A. Commonly, yes, sir.
- 19 Q. I'm not saying it's the only use, I'm just saying
20 it's commonly used.
- 21 A. Yes, sir.
- 22 Q. And, of course, you took a picture of that that
23 you put into evidence.
- 24 A. Yes, sir.
- 25 Q. And that's all contained in one bag, right?

1 A. Yes, sir.

2 MR. SMILEY: I beg the Court's indulgence.

3 THE COURT: Take your time.

4 MR. SMILEY: Nothing further.

5 MR. AUSTIN: Briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. AUSTIN:

8 Q. Detective Martin, had the dog hit on any evidence
9 prior to you arriving at the scene?

10 A. No, sir.

11 Q. And in these bags you're describing, the plastic
12 bags, they sound like they're just normal bags; is that
13 correct?

14 A. Plastic bags.

15 Q. Did you find any drugs in them?

16 A. No, sir.

17 Q. Okay.

18 MR. AUSTIN: No further questions, Your
19 Honor.

20 RECROSS-EXAMINATION

21 BY MR. SMILEY:

22 Q. Did you test to see if there was any drug residue
23 in it?

24 A. I did not.

25 Q. Especially the one that was torn, no tests were

1 done on that?

2 A. I didn't do any test.

3 Q. Okay. And the extent of your involvement in this
4 case is you went there, you took pictures of that
5 evidence, you collected it, took it back to your office,
6 took it out of the bag, took pictures of it, and then put
7 the pictures at a later date and that evidence into
8 safekeeping, correct?

9 A. That's correct.

10 MR. SMILEY: Nothing further.

11 THE COURT: You may step down. Is this
12 witness excused?

13 MR. AUSTIN: Yes.

14 THE COURT: Any objection?

15 MR. SMILEY: No objection.

16 THE COURT: Yeah free to remain with us, but
17 you're free to go. Call your next witness.

18 MR. JUSTIS: State calls Catherine Leisy.

19 CATHERINE LEISY,

20 having been first duly sworn,

21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY

24 BY MR. JUSTIS:

25 Q. Ms. Leisy, where are you employed?

1 A.: For the South Carolina Law Enforcement Division,
2 commonly known as SLED.

3 Q. And how long have you been employed there?

4 A. For six years.

5 Q. And what's your job at SLED?

6 A. I'm a forensic scientist assigned to the DNA and
7 serology unit. My responsibilities include processing
8 forensic cases, generating reports based on the results
9 and conclusions drawn, and testifying to those reports as
10 necessary.

11 Q. Okay. And what is your educational background?

12 A. I have a bachelor of science degree in genetic
13 engineering from Cedar Crest College in Allentown,
14 Pennsylvania.

15 Q. And what kind of specialized training have you
16 had?

17 A. I've received in-house training by other Court
18 qualified DNA analysts and all the different type of
19 tests and analysis that I'm required to perform as part
20 of my job.

21 I'm also required to participate in continuing
22 education, but includes attending seminars and
23 conferences that are specific to the types of testing I'm
24 required to perform. I also have four years of
25 experience as a forensic DNA analyst at a private

1 forensic firm known as Orchid Cellmark where I perform
2 the same type of tests I do at SLED.

3 Q. Have you been qualified as an expert in
4 DNA analysis before?

5 A. Yes.

6 MR. SMILEY: I will stipulate that she's an
7 expert in forensic DNA analysis. I believe I have done
8 so --

9 THE COURT: How do you wish to qualify this
10 witness?

11 MR. JUSTIS: DNA analysis is fine, Your
12 Honor.

13 THE COURT: Any objection to just
14 DNA analysis?

15 MR. SMILEY: That's fine, Your Honor. I
16 don't know the difference, but I know what she's here
17 for, and I think the jury does too.

18 THE COURT: Ladies and gentlemen: Ordinarily
19 a person cannot give opinion testimony. Typically when a
20 person testifies, they testify to what they heard or
21 smelled or sensed, something of that nature. There is an
22 exception when someone is qualified because of their
23 education and experience they are permitted to give their
24 opinion in certain areas if they are qualified that way.

25 This witness will be qualified as an expert

1 in the area of DNA analysis to give opinion testimony in
2 that area. That does not mean that you must accept the
3 opinion. It is simply evidence for you to use in any way
4 that you see fit.

5 Mr. Justis?

6 MR. JUSTIS: Thank you, Your Honor. May it
7 please the Court:

8 BY MR. JUSTIS:

9 Q. Real briefly, could you explain to the jury what
10 DNA is.

11 A. DNA stands for Deoxyribonucleic Acid. It's the
12 genetic material found in all of our body cells with the
13 exception of our red blood cells. DNA is packaged into
14 structures called chromosomes which contain our genes,
15 and genes are simply strands of DNA that code for our
16 physical characteristics, such as our height or our eye
17 color. We receive half of our DNA from our mother and
18 half from our father; therefore, we have two copies of
19 every gene.

20 Approximately 99.9 percent of an individual's
21 DNA is identical to that of everyone else's, and it's the
22 variation in that .1 percent that allows us to tell
23 different people apart.

24 Q. Okay. And did you have the opportunity to perform
25 any DNA analysis in this case?

1 A. Yes, I did.

2 Q. And what items did you test?

3 A. I received four swabs that were taken from items
4 of evidence submitted in this case. They were identified
5 to me as swabs from both the outside and inside of a
6 black ski mask and swabs from the outside and inside of a
7 pair of blue gloves. I also received what we call known
8 DNA standards that were buccal swabs, or cheek swabs,
9 that were collected from both Christopher B. and
10 Dristin Johnson.

11 Q. At this time I'm showing you what's been marked as
12 State's 9, 10, and 12. Do you recognize these items?

13 A. Yes, I do.

14 Q. And what are they? If you could tell us by item
15 number what they are, by State's Exhibit number?

16 A. State's Exhibit 9 is a heat-sealed pouch that's
17 identified as SLED lab number L12-4751. It contains four
18 small envelopes, each one identified with an individual
19 item number. These contain the swabs that were taken
20 from the ski mask and from the pair of gloves.

21 State's Exhibit No. 10, again, heat shield pouch
22 with the SLED case number and matching item number. This
23 particular pouch contains the buccal swab, or cheek swab,
24 of Dristin Johnson that I used to develop a known
25 DNA profile from that individual, and State's Exhibit

1 No. 11, another heat-sealed pouch identified as SLED lab
2 number L12 4751 item three, this being the buccal swab of
3 Christopher B.

4 Q. And when you received those three items, were
5 those packages open?

6 A. No. When I take custody of each individual
7 package, I check to make sure that all the sides are
8 sealed, that the individual who last sealed it initialed
9 and dated that seal. The fact that the pouch is intact
10 when I take custody indicates to me there has been no
11 tampering or contamination of the item.

12 Q. When you receive those items, did there appear to
13 be any tampering with them?

14 A. No, they did not.

15 Q. After you receive them, then what do you do with
16 them?

17 A. My job is to try to determine a DNA profile from
18 an item of evidence to compare to an DNA of a known
19 individual to determine whether that individual
20 contributed their DNA that to that particular evidence.

21 Q. Is that what you did in this case?

22 A. It is.

23 Q. And after you did your testing, what do you do
24 with the items at that point?

25 A. Once I've completed my testing, the items are

1 repackaged. Each heat-sealed package is resealed and
2 marked with my initials and date. It's then returned to
3 our evidence control department and picked up by the
4 submitting agency at their convenience.

5 Q. And is your signature and date located on each one
6 of those packages?

7 A. Yes, it is.

8 Q. And how did you denote on each package? Please
9 explain.

10 A. When I receive a heat-sealed pouch such as this,
11 again, each side would be sealed. To be able to access
12 the items inside, I take a scalpel and slice along one
13 edge so that I can remove the items from the pouch. Once
14 I've completed my testing, all of the items are returned
15 back to the pouch, and the heat seal is placed along the
16 cut that I made. I would then place my initials and the
17 date that I resealed the item to show that it's been --
18 once again, that it's intact and at this point -- from
19 this point on, if there is any tampering or anyone has
20 access to the items, you will be able to tell because the
21 pouch will have been opened again.

22 MR. JUSTIS: At this time, Your Honor, the
23 State's would offer State's 9, 10 and 11 into evidence.

24 THE COURT: Any objection?

25 MR. SMILEY: No objection, Your Honor.

1 THE COURT: State's 9, 10, and 11 into
2 evidence without objection.

3 (Heat-sealed pouches marked for
4 identification and admitted into evidence as State's
5 Exhibit Nos. 9, 10, and 11.)

6 BY MR. JUSTIS:

7 Q. After you perform the testing, Ms. Leisy, do you
8 document your results in any kind of report?

9 A. A report is issued listing what items were tested
10 and what conclusions were drawn regarding the comparisons
11 between the known standards and the items.

12 Q. What were the results of the testing that did you
13 in this case?

14 A. The DNA profile developed from outside of the
15 black ski mask is a mixture of at least three
16 individuals. Christopher B. and Dristin Johnson cannot
17 be excluded as possible contributors to this mixture.
18 The probability of randomly selecting an unrelated
19 individual who could have contributed to this mixture is
20 approximately one in seven.

21 The DNA profile developed from the inside of the
22 ski mask is a mixture of at least two individuals. The
23 DNA profile developed from the major contributor to this
24 mixture matches the DNA profile of Christopher B. The
25 probability of randomly selecting an unrelated individual

1 having an unrelated profile matching the major
2 contributor from this mixture is approximately one in 330
3 billion, and Dristin Johnson is excluded as a possible
4 minor contributor this mixture.

5 The DNA profile developed from the outside of
6 the blue gloves is a mixture of at least three
7 individuals. Christopher B. cannot be excluded as a
8 possible contributor to this mixture, and no conclusive
9 statement can be made regarding the inclusion or
10 exclusion of Dristin Johnson as a possible contributor,
11 and the DNA profile developed from the inside of the blue
12 gloves is a mixture of at least four individuals.

13 Christopher B. and Dristin Johnson cannot
14 be excluded as possible contributors from this mixture,
15 and the probability of randomly selecting an unrelated
16 individual who could have contributed to this mixture is
17 approximately one in eight.

18 MR. JUSTIS: Thank you very much. Please
19 answer any questions Mr. Smiley may have for you.

20 THE WITNESS: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. SMILEY:

23 Q. Ms. Leisy, I've met you before. Jim Smiley.

24 Let's start with some basic stuff. You said
25 mixtures, which is -- somebody's DNA is their DNA, right?

1 A. Correct.

2 Q. A mixture of more than one person -- if you'll
3 just explain to the jury how that happens.

4 A. Any time we report out a mixture, it's just an
5 indication that we have DNA from two or more individuals.
6 From an item such as what we have in this case, a ski
7 mask or a pair of gloves, it's any type of transfer that
8 would cause an individual's cells to end up on the item,
9 whether they wore it and it came in physical contact with
10 their skin and their skin cells were transferred that
11 way.

12 It could also be caused by transfer of bodily
13 fluids, such as sweat, semen, saliva, blood. Any
14 transfer of their biological material on to that item
15 would result in their DNA being present.

16 Q. For example, I just picked up this tissue and was
17 holding it, and so maybe some of my DNA got on it. Most
18 likely, but maybe, right?

19 A. Yes, sir.

20 Q. Now, if you set that down and somebody else goes
21 to pick it up, they could leave their DNA on it, right?

22 A. That's correct.

23 Q. And if they threw it in the trash bag and the maid
24 came by four days later and she picked it up, she could
25 leave her DNA on it?

- 1 A. That's correct.
- 2 Q. And if all of them left their DNA, you would say
3 you had a mixture of at least three individuals, right?
- 4 A. If I was able to detect DNA from that many
5 individuals, yes, sir.
- 6 Q. All right. So you don't know when the DNA was put
7 on there, you just know that there is at least -- when
8 you say at least, because there could be more than that.
9 That's just what you were able to detect, right?
- 10 A. Correct. I can only ever report out the minimal
11 number of contributors. There are possible there are
12 more.
- 13 Q. And I think all of it that you collected had some
14 combination, correct?
- 15 A. Yes, sir.
- 16 Q. And at least two on one item, at least four on
17 another item, right?
- 18 A. Yes, sir.
- 19 Q. So whoever, at whatever time, had touched those
20 gloves and that mask had left behind some DNA, at least
21 two on some and at least four on others?
- 22 A. That's correct.
- 23 Q. Now, you can only compare the DNA to samples
24 you're given, right?
- 25 A. Yes, sir.

1 Q. And those buccal swabs in this, case who were
2 these collected by? Can you tell from looking at the
3 envelopes?

4 A. Everything we received was submitted by, I
5 believe, the Dorchester County Sheriff's Office. I would
6 have to double-check to see if I had specific information
7 as to who exactly collected them.

8 Q. Okay. But the buccal swabs are actually where
9 someone went and collected DNA for someone, right?

10 A. Yes, sir.

11 Q. So they scraped inside of the cheek, did it in a
12 scientific manner to bring to you, and then you used it
13 to compare?

14 A. That's correct.

15 Q. You don't tell them who to bring to you, right?
16 You just compare what you got?

17 A. We may request subject standards in general, but
18 for a case like this, I'm only able to compare what I'm
19 sent.

20 Q. Okay. Have you ever heard of Carl Chaplin other
21 than in connection with having to come and testify in
22 this case?

23 A. The name is included in a submission paperwork.
24 Other than that, I'm not familiar.

25 MR. SMILEY: Beg Court's indulgence.

1 THE COURT: Take your time.

2 MR. SMILEY: Nothing further.

3 MR. JUSTIS: Nothing Your Honor.

4 THE COURT: Is this witness excused and
5 released from subpoena?

6 MR. JUSTIS: Yes, Your Honor.

7 MR. SMILEY: She's excused, Your Honor.

8 THE COURT: You are free to leave. You're
9 also welcome to remain with us.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Call your next witness.

12 MR. JUSTIS: At this time, the State calls
13 Christopher B.

14 Christopher B.

15 having been first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JUSTIS:

19 Q. Good morning, Christopher B.

20 A. Good morning, good morning.

21 Q. Christopher B. let me ask you a few questions just
22 to find out a little bit about you. How old are you
23 currently?

24 A. Seventeen.

25 Q. And prior to being incarcerated, where did you

1 live?

2 A. Summerville.

3 Q. Okay. And who did you live with?

4 A. My mother.

5 Q. And did you have a job?

6 A. Yes, yes, I did.

7 Q. Okay. Did you go to school?

8 A. Home school, yes, yes, sir, I did.

9 Q. Okay. And what grade would you be in if you were
10 being home schooled, or when you were being home
11 schooled?

12 A. Now?

13 Q. Correct.

14 A. Eleventh.

15 Q. And who were you home schooled by?

16 A. I can't recall their name, but it was a female
17 teacher.

18 Q. Would she come to your house?

19 A. Yes, sir.

20 Q. And do you have any kind of learning disabilities?

21 A. Yes, sir, I do.

22 Q. And what are they?

23 A. Reading and writing.

24 Q. And, Christopher, do you know Carl Chaplin?

25 A. Yes, I do.

1 Q. And how do you know Carl?

2 A. By working for him at the flea market.

3 Q. Okay. And what did you and Carl do at the flea
4 market, what kind of work?

5 A. Sell appliances.

6 Q. What kind of appliances?

7 A. Refrigerators, washing machines, appliances, home
8 appliance.

9 Q. So that was something you did on the weekends?

10 A. That's correct.

11 Q. Let's turn your attention back to December 3rd,
12 2011. Okay? It was right before you were incarcerated.
13 Did you work for Carl at the flea market that Saturday?

14 A. Yes, I did.

15 Q. Okay. When you were at the flea market that day
16 with Carl, who else was there?

17 A. Me, Carl, Dristin.

18 Q. Okay. And when you say Dristin, is that Dristin
19 Johnson?

20 A. Yes, yes, it is.

21 Q. And while you were at the flea market that day,
22 did anyone have a gun?

23 A. Yeah.

24 Q. Who had a gun?

25 A. Dristin.

1 Q. What kind of gun was it?

2 A. A rifle of some sort.

3 Q. Okay. And while you were at the flea market that
4 day -- did you know Dristin before that?

5 A. I saw him around but I don't know him.

6 Q. Okay. Did you know if Carl knew him?

7 A. Yeah.

8 Q. Okay. Did -- how did you get to the flea market
9 that morning?

10 A. By a guy that picked me up.

11 Q. Do you know that guy's name?

12 A. Paul.

13 Q. Paul picked you up?

14 A. Yeah.

15 Q. So Carl didn't take you to the flea market that
16 morning?

17 A. No, he didn't.

18 Q. Was Carl already at the flea market when you got
19 there?

20 A. Yeah, he was.

21 Q. Was Dristin already there?

22 A. No.

23 Q. Dristin came later?

24 A. Yeah.

25 Q. Did Carl mention anything to you when you were at

1 the flea market that day?

2 A. Yeah. You could say that.

3 Q. Okay. Well, what did he say? Did you talk about
4 anything that day?

5 A. Yeah.

6 Q. Did you talk about any plans you had that day?

7 A. Yeah.

8 Q. And what were they?

9 A. Robbery.

10 Q. Speak up a little.

11 A. A robbery.

12 Q. A robbery. Was it your idea to do a robbery?

13 A. No.

14 Q. Who brought it up? Who was there when you --

15 MR. SMILEY: Objection, Your Honor. I would
16 ask that he answer the question that was asked.

17 THE COURT: Christopher B., you need to answer the
18 questions that the State poses to you. Do you
19 understand?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Could you repeat your initial
22 question? Your objection was sustained, Mr. Smiley.

23 BY MR. JUSTIS:

24 Q. I believe it was -- who brought up the idea about
25 the robbery?

1 A. Carl.

2 Q. And who was --

3 THE COURT: Christopher B., I'm going to need you
4 to speak loudly. Could you do that for me?

5 THE DEFENDANT: Yes, sir.

6 BY MR. JUSTIS:

7 Q. Who was present? Who did they bring it up to?
8 Who else was there besides him? Obviously, he brought it
9 up.

10 A. Me.

11 Q. You. Was anybody else there?

12 A. Yeah.

13 Q. Who?

14 A. Dristin.

15 Q. So you and Dristin.

16 A. Yeah.

17 Q. Did he say why he wanted to do it?

18 A. Needed some extra money.

19 Q. So did you stay at the flea market all day with
20 Carl?

21 A. Yes, I did.

22 Q. Did you buy a gun at the flea market?

23 A. Me?

24 Q. Right.

25 A. No.

- 1 Q. Did you buy a mask at the flea market?
- 2 A. No.
- 3 Q. Eventually that day you left the flea market?
- 4 A. Yes, I did.
- 5 Q. Who did you leave the flea market with?
- 6 A. Carl.
- 7 Q. And did you ride with Carl? Did he ride with you?
- 8 A. I rode with Carl.
- 9 Q. What was he driving?
- 10 A. A truck.
- 11 Q. Like a pickup truck?
- 12 A. Yeah.
- 13 Q. Do you remember what color it was?
- 14 A. Blue.
- 15 Q. A blue pickup truck. Was anybody else with you?
- 16 A. Huh?
- 17 Q. Was anybody else with you and Carl when you left?
- 18 A. Yes.
- 19 Q. Who?
- 20 A. Dristin.
- 21 Q. Okay. So when you leave the flea market, where
- 22 did you go from there?
- 23 A. To his shop.
- 24 Q. And where is his shop at?
- 25 A. Moncks Corner.

1 Q. And what does he have in his shop?

2 A. Just appliances.

3 Q. Is that where he fixes them?

4 A. Yes.

5 Q. Did he pick up anything from his shop?

6 A. What you mean by that?

7 Q. You went to his shop. What was the purpose for
8 going to his shop?

9 A. To drop off some appliances.

10 Q. When were you done there, where did you go?

11 A. To the liquor store.

12 Q. What did you buy at the liquor store?

13 MR. SMILEY: Objection, Your Honor. May we
14 approach?

15 THE COURT: You may.

16 (Discussion held at sidebar.)

17 THE COURT: Rephrase your question, Mr.
18 Justis. Thank you.

19 BY MR. JUSTIS:

20 Q. Where did you go after Carl's shop?

21 A. The liquor store.

22 Q. Did Carl purchase anything at the liquor store?

23 A. Yeah.

24 Q. After the liquor store, where did you go?

25 A. To Walmart.

- 1 Q. To Walmart?
- 2 A. Yes.
- 3 Q. And what happened at Walmart?
- 4 A. Went in there to buy some bullets and
- 5 cheeseburgers.
- 6 Q. Bullets and burgers?
- 7 A. Yeah.
- 8 Q. What kind of bullets?
- 9 A. Shotgun bullets, shotgun shell.
- 10 Q. And who paid for that?
- 11 A. Carl.
- 12 Q. And who were the hamburgers for?
- 13 A. Me, Carl, and my mother.
- 14 Q. And who were the bullets for?
- 15 A. For us.
- 16 Q. Were they for the shotgun that you had?
- 17 A. Yeah.
- 18 Q. After Walmart, where did you go?
- 19 A. Back to my house.
- 20 Q. Okay. And do you know the address of your house
- 21 back then?
- 22 A. Pintail Drive.
- 23 Q. And that's in Summerville?
- 24 A. That's in Summerville.
- 25 Q. What did you do when you got back to the house?

1 A. Give my mother a cheeseburger, and I changed out
2 of work clothes to street clothes.

3 Q. What was the difference between work clothes and
4 street clothes back then?

5 A. Like work clothes, you know, like go to work in,
6 get them dirty or, you know, clothes you wear to work
7 that you don't care about.

8 Q. And you put street clothes on. Do you remember
9 what you were wearing?

10 A. No, I don't recall.

11 Q. And -- so you're at your house. You give your mom
12 one of the hamburgers. You change clothes. Do you stay
13 at your house?

14 A. No.

15 Q. Where do you go?

16 A. To Karen's house.

17 Q. Is that Karen Parker?

18 A. Yes.

19 Q. Is that what you call her?

20 A. No, I don't call her Karen.

21 Q. What do you call her?

22 A. Mama K.

23 Q. Who all went to Mama K's with you?

24 A. Me, Carl, and Dristin.

25 Q. And what was the purpose for going to Mama K's?

1 A. We arrived later that night.

2 Q. Wait around until later that night. What was
3 going to happen later that night?

4 A. Robbery.

5 Q. Did you know who you were going to rob?

6 A. Yes.

7 Q. And how did that all come about? How did you
8 figure out who to rob?

9 A. Somebody that had some money, some drugs, somebody
10 that, you know, it would be worth doing something, you
11 know.

12 Q. Okay. So you picked somebody you thought had some
13 drugs. What kind of drugs?

14 A. Marijuana.

15 Q. Marijuana? And where did those people live?

16 A. In the same area that Karen live at.

17 Q. Okay. And who decided -- and how did you figure
18 to pick them? How did you know they had?

19 A. I buy weed from them.

20 Q. So you're familiar with that area.

21 A. You could say that.

22 Q. Did you suggest the house to Carl?

23 A. Me? Yes, yes, I did.

24 Q. So all three of you -- how did you get to Mama
25 K's?

1 A. By Carl's truck.

2 Q. Who's at Mama K's when you get there?

3 A. I think her -- I mean, not her yet, her daughters,
4 I think. I really don't remember too much about who was
5 there.

6 Q. And you've been to Mama K's before?

7 A. Yes, I have.

8 Q. And you know the daughters?

9 A. Yes, I do.

10 Q. And when you got to Mama K's, you testified you
11 went there to just kind of hang out until it got late?

12 A. Yes.

13 Q. At some point did Mama K come home?

14 A. Yes, she did.

15 Q. At any point that night, did you leave the house?

16 A. Yes.

17 Q. Where did you go?

18 A. Over to the store with Mama K to get some
19 cigarettes.

20 Q. Okay. And after you went to the store, got the
21 cigarettes, you were coming back, who was with you -- do
22 you remember who was with you to get the cigarettes?

23 A. I think just me, her, and Carl.

24 Q. And who drove?

25 A. Carl.

1 Q. Okay. And then you drove back to the house?

2 A. Yes.

3 Q. What did you do when you got back to the house?

4 A. We dropped her off, and it was getting kind of
5 late then, so we probably just stayed around there maybe
6 a little while, not very long.

7 Q. Okay. And then at some point you left?

8 A. Yeah, we left.

9 Q. And who -- when you left, who all left?

10 A. Me, Carl, and Dristin.

11 Q. And how did you leave?

12 A. In the truck.

13 Q. Okay. Now, when you get in the truck, you leave,
14 where are you heading to?

15 A. To the house, that house --

16 Q. The house that you were going to rob?

17 A. Yes.

18 Q. Which is in the same area?

19 A. Same area.

20 Q. You testified. Explain to me what's kind of going
21 on as you're in the truck, as you're driving there. Kind
22 of put me in that truck and let me see what you're seeing
23 and hear what you're hearing.

24 A. We were just going there to get ready to rob
25 somebody, like I said.

- 1 Q. And you said preparing yourself. What did you
2 have to do to prepare yourself?
- 3 A. Gloves on.
- 4 Q. And where did you get the gloves from?
- 5 A. Out the truck.
- 6 Q. Where in the truck were the gloves?
- 7 A. I don't recall.
- 8 Q. Okay. But Carl had the gloves?
- 9 A. Yeah.
- 10 Q. What about the mask?
- 11 A. Yeah, it was in the truck too.
- 12 Q. Did you buy a mask that day?
- 13 A. No.
- 14 Q. Did you bring the mask that day?
- 15 A. Huh-uh, no, no.
- 16 Q. The mask was in the truck?
- 17 A. In the truck.
- 18 Q. And what else did all of you have with you?
- 19 A. Rope and gun.
- 20 Q. Okay. And where did the rope come from?
- 21 A. Truck.
- 22 Q. Okay. Whose rope was it?
- 23 A. Carl's.
- 24 Q. What do you use the rope for?
- 25 A. To tie down appliance.

1 Q. So this was rope he normally kept in his truck?
2 A. Yeah.
3 Q. What about the gun? Where did the gun come from?
4 A. Dristin.
5 Q. Is this the same gun we've heard about earlier?
6 A. Yes, yes, yes.
7 Q. The one that Carl bought bullets for?
8 A. Yes.
9 Q. When did you put the masks on?
10 A. In the truck -- I don't remember when, but it was
11 before we got to the house.
12 Q. So you were in the truck.
13 A. Yes.
14 Q. Now, when you're sitting in the truck, what kind
15 of truck is it? Is it, like, an extra cab, has seats in
16 the back too?
17 A. Yeah, has seats in the back.
18 Q. Do you remember who was sitting where? Well, who
19 was driving, first of all?
20 A. Carl.
21 Q. Okay. It was his truck?
22 A. Yes.
23 Q. And was there -- so that leaves you and Dristin.
24 A. Yeah.
25 Q. Do you remember if you were both in the front,

1 both in the back --

2 MR. SMILEY: Objection, Your Honor. Series
3 of leading questions.

4 THE COURT: Watch your leading questions.
5 Rephrase. Thank you.

6 BY MR. JUSTIS:

7 Q. Where was everybody in the truck?

8 A. I think I was in the front and Dristin was in the
9 back.

10 Q. And I think you testified you put your mask on in
11 the truck?

12 A. Yes, I did.

13 Q. Who was carrying the gun?

14 A. Dristin.

15 Q. Do you remember how he was carrying the gun?

16 A. Huh-uh, no, I don't.

17 Q. What did you have -- you had a mask on?

18 A. Yes.

19 Q. Did you have anything else?

20 A. Gloves and rope.

21 Q. Gloves and rope?

22 A. Yes.

23 Q. Where was the rope? Where did you have the rope,
24 was it --

25 A. In my hand.

1 Q. And was that while you were sitting in the truck?

2 A. Yes, I believe so.

3 Q. Okay. So you're in the truck. You're getting
4 ready. You're driving towards the house. What happens
5 next?

6 A. After we drive to the house?

7 Q. As you drive to the house.

8 A. To get dropped off in front of the house, not in
9 front of house, but close to the house.

10 Q. Okay. Were you dropped off, like, before you got
11 to the house?

12 A. After.

13 Q. Okay. So after you pass the house, that's when he
14 dropped you off.

15 A. Yes.

16 Q. Did he completely stop the truck?

17 A. Yes.

18 Q. And you said it was -- and this was at nighttime?

19 A. Yes.

20 MR. SMILEY: Again, Your Honor. Objection.
21 Leading.

22 THE COURT: Mr. Justis?

23 BY MR. JUSTIS:

24 Q. What time of day or evening was it?

25 A. It was 9:00, probably around 9:00, nighttime.

1 Q. Nighttime. What happened after he stopped the
2 truck?

3 A. He drove off, and we went to his house.

4 Q. Where did he drive off to?

5 A. Just right around the corner.

6 Q. Did you tell him to drive off?

7 A. Me?

8 Q. Yes.

9 A. Yeah.

10 Q. Was that --

11 A. Yes, yes, yes, yes.

12 Q. What did you tell him?

13 A. Huh?

14 Q. What did you say to him?

15 A. I said go ahead.

16 Q. When you told him that, what did you mean by that?

17 A. Just go ahead and wait.

18 Q. And after you get out of the truck, who got out of
19 the truck with you?

20 A. Me and Dristin.

21 Q. Then what did you and Dristin do at that point?

22 A. Headed to the door.

23 Q. When you got to the door, what did you do?

24 A. Well, I knocked on the door, and then the lady
25 answered the door and Dristin put the gun to her.

1 Q. Okay. And you said he put the gun to her. Where
2 did he put the gun to her?

3 A. To her chest.

4 Q. What did the victim do?

5 A. Huh?

6 Q. What did the victim do?

7 A. She shoved it out the way.

8 Q. And what did you and Dristin do as a result of
9 that?

10 A. He told her to get in the house, told her to get
11 in the house so she got in the house. She thought we
12 were playing, probably. I don't know what she thought,
13 but when we went to her house, she laid down. We told
14 them to lay down, and then after that, I tied them up and
15 we went through the house.

16 Q. Okay. So you were tying them up. What was
17 Dristin doing while you were tying them up?

18 A. Holding them down.

19 Q. Holding them down?

20 A. Yes.

21 Q. How was he holding them down?

22 A. By gunpoint.

23 Q. At any point -- and what room were you in --

24 A. The living room.

25 Q. So the living room. Is that the first room you

1 come into?

2 A. Yes.

3 Q. Are there other rooms --

4 A. Just kitchen and the bedrooms.

5 Q. Okay. Did you have an opportunity to go in any of
6 the other rooms?

7 A. Yes.

8 Q. Did Dristin go in any of the other rooms?

9 A. He stayed in the living room.

10 MR. SMILEY: Again, Your Honor, leading.

11 THE COURT: Mr. Justis?

12 MR. JUSTIS: Withdrawn.

13 BY MR. JUSTIS:

14 Q. What did you do after you tied her up and you went
15 through the rooms and you started gathering things?

16 A. Yes.

17 Q. What did you do at that point?

18 A. After we done what we went in there for, we left.

19 Q. When you left, what did you do -- you walked out
20 the door. What did you do at that point?

21 A. Went back to the truck.

22 Q. And who was in the truck?

23 A. Just Carl.

24 Q. After you got in the truck, what happened?

25 A. We drove off.

1 Q. Did anybody say anything?

2 A. What do you mean?

3 Q. When you got in the truck.

4 A. No.

5 Q. Where did you drive to?

6 A. My house.

7 Q. What happened when you got to your house?

8 A. We just started looking through the stuff. We

9 were splitting up stuff.

10 Q. So you looked through stuff, you split up stuff.

11 Who got what stuff?

12 A. There was a little bit of weed. They had a little

13 bit of weed. Dristin took the Xbox and the games and the

14 movies, and then we put the rest of the stuff in the bag,

15 and after that, we put them in the woods.

16 Q. Okay. Were all three of you there when that was

17 going on?

18 A. Yes.

19 Q. Nobody left at that point?

20 A. No.

21 Q. What about -- you said you put some stuff in a bag

22 in the woods.

23 A. Yes.

24 Q. Who did that?

25 A. Me.

1 Q. Okay. Were Dristin and Carl still at your house
2 when you did that?

3 A. Yes.

4 Q. Why did you put the stuff in the woods?

5 A. To hide it.

6 Q. What did you do with your mask and gloves?

7 A. Put it in the bag.

8 Q. What about the shotgun? What happened with the
9 shotgun?

10 A. Dristin left with that. I don't know what
11 happened with that.

12 Q. You didn't keep the shotgun?

13 A. No.

14 Q. Did Carl take anything?

15 A. Just some weed.

16 Q. After you hid the items in the woods, what
17 happened then?

18 A. Everybody left.

19 Q. Okay. When you say everybody, who are you
20 referring to?

21 A. Me, Carl, and Dristin.

22 Q. Did you leave together?

23 A. No. Everybody went their separate ways.

24 Q. Okay. After everybody left, what happened next?

25 A. I went in the house and then the cops came after

1 that.

2 Q. How long would you say after you went in the house
3 the cops came?

4 A. Ten or fifteen minutes after that.

5 MR. JUSTIS: Beg the Court's indulgence.

6 THE COURT: Take your time.

7 BY MR. JUSTIS:

8 Q. Christopher B. when you were going through all the
9 stuff, did anybody say anything about any of the stuff
10 you brought back?

11 A. No.

12 Q. Okay. Did Carl say anything about it?

13 A. No.

14 Q. Okay. Now, Christopher B. you've pled guilty,
15 haven't you?

16 A. Yes, I have.

17 Q. And what charges did you plead guilty to?

18 A. Burglary first and two counts of kidnapping.

19 Q. Is that what you were charged with?

20 A. At first, no.

21 Q. What were you charged with at first?

22 A. Burglary first, two kidnappings, and a possession
23 of a weapon during a violent crime.

24 Q. And when you pled guilty, did the state make any
25 kind of recommendation as to your sentencing?

1 A. No.

2 Q. So you pled guilty with no recommendation?

3 A. Yes.

4 Q. To what you were charged with to?

5 A. Yes.

6 Q. Now, after you pled guilty, did the State promise
7 you any kind of a deal?

8 A. Yes.

9 Q. And what did the State promise you?

10 A. They told me that if I come up here, they would
11 take five years off my sentence and try to recommend --
12 try to help me get the minimum I can.

13 Q. Okay. So the deal would be if you testified
14 truthfully --

15 A. Yes.

16 Q. Correct?

17 A. Yes.

18 Q. -- in this trial --

19 A. Yes.

20 Q. -- and any future trial of Dristin Johnson that
21 the State would recommend that your sentence be reduced?

22 A. Yes.

23 Q. Is that your understanding of the deal?

24 A. That's my understanding.

25 Q. And when was that deal made?

1 A. Yesterday.

2 Q. Was that before or after you pled guilty?

3 A. That's after I pled guilty.

4 Q. And had you already been sentenced, correct?

5 A. I had already been sentenced.

6 Q. Do you see the man you know as Carl Chaplin in the
7 courtroom today?

8 A. Yes, I do.

9 Q. Could you please point him out for the jury.

10 A. Right there.

11 MR. JUSTIS: Please reflect the witness has
12 identified the defendant.

13 MR. SMILEY: Actually, Your Honor, I would
14 ask for him to better describe who he was pointing at.

15 BY

16 BY MR. JUSTIS:

17 Q. What individual were you pointing at? Describe
18 what he's wearing.

19 A. A black shirt with a tie.

20 THE COURT: Any objection?

21 MR. SMILEY: No objection.

22 THE COURT: The record will reflect this
23 witness has identified the defendant.

24 MR. JUSTIS: Thank you, ^{Christopher}. Please
25 answer any questions Mr. Smiley may have for you.

1 THE COURT: Mr. Smiley?

2 MR. SMILEY: May I quickly go to the rest
3 room? I'm sorry.

4 THE COURT: Christopher, I need you to remain
5 seated. Ladies and gentlemen: We're going to go ahead
6 and take a short break. Please do not begin
7 deliberations. Please do not discuss this case among
8 yourselves. Please leave your notepads in the chair.

9 (Recess taken.)

10 (In open court jury present.)

11 THE COURT: Thank you be seated. Mr. Smiley,
12 your witness.

13 CROSS-EXAMINATION

14 BY MR. SMILEY:

15 Q. Yes, ma'am. Hey, Chris. I'm Jim Smiley. I
16 introduced myself on Monday when I asked you if you
17 wanted to talk to me.

18 A. Yes.

19 Q. And you told me you didn't, right?

20 A. Yes.

21 Q. You said you pled guilty to burglary first and two
22 kidnappings, right?

23 A. Correct.

24 Q. So you're looking at 15 to life and zero to 30 on
25 two charges, right?

1 A. Yes.

2 Q. And the judge gave you a 20-year sentence, right?

3 A. Yes.

4 Q. Okay. Up to that point, you didn't want to do
5 anything as far as testify, right?

6 A. Yes.

7 Q. But after you got that and the prosecutor talked
8 to you, with your lawyer there --

9 A. Yes.

10 Q. -- you decided that you wanted to try to get five
11 years off, right?

12 A. Yes, correct.

13 Q. And they said if you came and testified
14 truthfully -- but, of course, you and I both know that
15 all testimony should be truthful, right?

16 A. Correct.

17 Q. All right. So if you came and testified and they
18 were satisfied that they would ask the judge to reduce
19 your sentence down to the minimum of 15 years, right?

20 A. Correct.

21 Q. Okay. So that's why you're up here now, right?

22 A. Correct.

23 Q. All right. Now, let's start off with some basic
24 stuff, all right? You had bought weed from
25 before, right?

1 A. Correct.

2 Q. And you knew the two people that lived inside,
3 right?

4 A. Correct.

5 Q. You had been inside before?

6 A. Correct.

7 Q. And you had bought various quantities of marijuana
8 from them on multiple times, correct?

9 A. Correct.

10 Q. Sometimes as little as a dime bag?

11 A. Yes.

12 Q. And sometimes as much as an ounce, right?

13 A. Correct.

14 Q. So they were marijuana dealers, right?

15 A. Correct.

16 Q. Okay. How long had you been working out at the
17 flea market? I'm not talking about just with Carl but in
18 general.

19 A. Oh, my whole life.

20 Q. I'm going to back up --

21 A. Not my whole life, but, you know.

22 Q. I'm sorry to talk on top of you. We'll try very
23 hard, because she's got to write down what we say, and
24 sometimes I make a mistake trying to get us going, I
25 talk, you talk, and we'll try to keep it clear, all

1 right?

2 So you had been going to that flea market pretty
3 much all your life that you can remember, right?

4 A. Yes.

5 Q. All right. And you knew Carl because he sold
6 appliances out there at the flea market, right?

7 A. Correct.

8 Q. And just so the jury understands, because I'm not
9 going to assume anything, that's that flea market that's
10 there on College Park Road?

11 A. Correct.

12 Q. It's at pretty big flea market, isn't it?

13 A. You could say that.

14 Q. And after a while, Carl would get you to help him,
15 either at his booth or moving around appliances, that
16 kind of thing, right?

17 A. Yes.

18 Q. And he would pay you cash as a result of that,
19 right?

20 A. Yes.

21 Q. All right. To get to the flea market -- you had a
22 truck, right?

23 A. No, no, I don't have no truck.

24 Q. So that red S-10 is not yours?

25 A. No, that's my parents'.

1 Q. Very good. The one that was at Pintail that
2 night?

3 A. No, that's my mom's.

4 Q. So you had no transportation, so you always had to
5 get rides?

6 A. Yes.

7 THE COURT: Christopher , I need both of you to
8 not talk over each other, so if you could wait until he
9 finishes his question and if you could wait until he
10 finishes his response, just so we have a complete record.

11 MR. SMILEY: Yes, ma'am.

12 BY MR. SMILEY:

13 Q. I'm bad about that, Chris, so I'm going to try
14 real hard to let us both get it in, all right?

15 So that day, Saturday, December the 3rd, Mr.
16 Russom took you out, Paul Russom took you out to the flea
17 market?

18 A. Correct.

19 Q. What time do you think you got there?

20 A. 7:30.

21 Q. It was early, right?

22 A. Early.

23 Q. And your purpose that day, did you know you were
24 going to be working for Carl or were you going out --

25 A. I knew I was going to work for Carl.

1 Q. Okay. Now, when you're at the flea market with
2 Carl, did you stay in one place or do you pretty much
3 move around during the day?

4 A. I move around.

5 Q. The other vendors at the flea market, they know
6 you, right?

7 A. Yes.

8 Q. Because you're pretty regular there.

9 A. Yes.

10 Q. And it's your testimony you did not buy a shotgun
11 that day?

12 A. Yes.

13 Q. You're sure of that?

14 A. I'm sure.

15 Q. And you're just as sure you didn't buy a toboggan
16 cap?

17 A. I'm sure.

18 Q. You recognize these, right?

19 A. Yes, I do.

20 Q. These are -- and I apologize, Your Honor. May I
21 approach the witness?

22 THE COURT: You may.

23 BY MR. SMILEY:

24 Q. This is the rope you had?

25 A. Correct.

1 Q. And you -- it's your testimony you took this rope
2 out of Carl's truck, right?

3 A. Correct.

4 Q. All right. And these pieces of rope were used
5 from time to time to tie appliances, you said?

6 A. Correct.

7 Q. Okay. Is your testimony that Dristin was out at
8 the flea market with you?

9 A. Correct.

10 Q. All right. Was he working for Carl?

11 A. No.

12 Q. He just hanging out?

13 A. Yes.

14 Q. And you're sure that he was out there as you are
15 that you didn't buy a shotgun, you didn't buy a toboggan
16 cap?

17 A. Correct.

18 Q. All right. And people would have seen y'all
19 together out there, right?

20 A. Correct.

21 Q. And you got there at 7:30. He came later?

22 A. Correct.

23 Q. Before lunch or after lunch?

24 A. After lunch.

25 Q. Okay. Y'all left the flea market around 2:00?

- 1 A. Around 4:00, probably a little bit after, but
2 yeah.
- 3 Q. Around that time?
- 4 A. Around that time.
- 5 Q. Because Dristin had come between lunch and before
6 you left, right?
- 7 A. Yes.
- 8 Q. And he was hanging out with you.
- 9 A. Yes.
- 10 Q. Now, he didn't buy a shotgun, did he?
- 11 A. He had it. I don't know where he got it from.
- 12 Q. He brought a shotgun to the flea market?
- 13 A. Yes.
- 14 Q. And he brought it into the flea market?
- 15 A. He must have did.
- 16 Q. Did he have a car there?
- 17 A. I don't know.
- 18 Q. Okay. You don't know how it got there?
- 19 A. I don't know how it got there.
- 20 Q. But when he came to the fleet market and came up
21 and found you, he had a shotgun?
- 22 A. Yes, correct.
- 23 Q. It was in a case, wasn't it?
- 24 A. Correct.
- 25 Q. Ask you about a couple other things, and we'll

1 come back to that. We'll ask you another area.

2 You were 16, right?

3 A. Correct.

4 Q. Okay. And you were familiar with the Department
5 of Juvenile Justice?

6 A. Correct.

7 Q. And at that point in time, you weren't in school?

8 A. I was home schooled.

9 Q. It's because you couldn't go to school, right?

10 A. Correct.

11 Q. And that teacher whose name you don't remember
12 would come to your house on Pintail?

13 A. Yes.

14 Q. How often would she come?

15 A. Three times a week.

16 Q. Monday, Wednesday, Friday?

17 A. She would make it around.

18 Q. Okay.

19 A. It varies.

20 Q. But you don't know her name?

21 A. No, I don't remember.

22 Q. Now, let's talk about . You know
23 Caitlin, right?

24 A. Yes.

25 Q. You dated Caitlin, right?

- 1 A. Yes.
- 2 Q. You stayed over at many times,
3 correct?
- 4 A. Correct.
- 5 Q. Spent the night over there?
- 6 A. Correct.
- 7 Q. You know her twin sister, Courtney; is that right?
- 8 A. Correct.
- 9 Q. Courtney. And you knew Courtney's boyfriend,
10 Dustin?
- 11 A. Correct.
- 12 Q. And of course you knew Mama K?
- 13 A. Correct.
- 14 Q. And you were aware that Mama K's sister was sick
15 at that time?
- 16 A. Yes, I was.
- 17 Q. So Dristin, he lived over there in Gadsden Acres
18 with you, right?
- 19 A. Yes.
- 20 Q. Pretty close by, right?
- 21 A. Yes.
- 22 Q. And you had lived over in that Gadsden area for a
23 while, right?
- 24 A. No, not for a while. Not even a year.
- 25 Q. Okay. Several months, though.

1 A. Yes.

2 Q. And so you knew Dristin from being over there,
3 right?

4 A. I don't know him. I saw him around.

5 Q. Oh, okay. But he came and saw you at the flea
6 market, right?

7 A. Yes.

8 Q. So at 4:30 or so, you and Carl left the flea
9 market?

10 A. And Dristin.

11 Q. So Dristin was with you?

12 A. Yes.

13 Q. The three of you left in Carl's truck?

14 A. In Carl's truck.

15 Q. And you drove from College Park over to Carl's
16 shop in Moncks Corner?

17 A. Correct.

18 Q. Because he needed to unload some appliances,
19 right?

20 A. Correct.

21 Q. So you helped him do that?

22 A. Correct.

23 Q. So after that you stopped by the liquor store?

24 A. Correct.

25 Q. And you went to the Walmart?

1 A. Correct.

2 Q. And which Walmart is that, the one right up by 17?

3 A. Over the bridge in Summerville. I don't know
4 exactly where it's at, but I know it's like right when
5 you come from the interstate.

6 Q. That's what I was going to say. It's the one that
7 is close to the interstate there, that super Walmart?

8 A. Yes.

9 Q. They got surveillance cameras in that parking lot,
10 don't they?

11 A. Yeah.

12 Q. They got them everywhere, don't they?

13 A. Got them everywhere.

14 Q. And it's your testimony that you and Carl went
15 into the Walmart?

16 A. Yes.

17 Q. And it's your testimony that Dristin stayed in the
18 truck.

19 A. Yes.

20 Q. All right. And you bought four cheeseburgers?

21 A. Four.

22 Q. One for you, one for your mom, and Carl had two?

23 A. Yes.

24 Q. And Carl bought some shells for a 410 shotgun,
25 right?

1 A. It was a rifle.

2 Q. Oh, he bought rifle bullets?

3 A. But -- rifle, shotgun, it's basically the same
4 thing. It's a long gun.

5 Q. Okay. The one that you say Dristin brought,
6 that's the gun he was buying bullets for?

7 A. Yes.

8 Q. Okay. So you picked that house on as
9 the one to rob, correct?

10 A. Yes.

11 Q. That's because you knew them?

12 A. Yes.

13 Q. And you knew they sold marijuana?

14 A. Yes.

15 Q. And when you ransacked the house, you took the
16 Xbox?

17 A. No.

18 Q. You didn't take the Xbox?

19 A. No.

20 Q. Took the money?

21 A. No, there was no money taken {sic}.

22 Q. No money was taken?

23 A. No.

24 Q. All right. So --

25 A. Not that I took. I don't know who took what, but

1 I know I took.

2 Q. Back up. In the living room, Dristin, you
3 testified, was holding the gun?

4 A. Yes.

5 Q. To the two while you went through the house and
6 got things, right?

7 A. Yes.

8 Q. All right. And you said you didn't take the Xbox?

9 A. No.

10 Q. Did you take her phone?

11 A. No.

12 Q. Okay.

13 A. I took, like, the bong, rolling machine and weed
14 and stuff like that. That's what I took.

15 Q. You cleaned them out of their drug supplies,
16 right?

17 A. Yes.

18 Q. To make sure, you took the bong?

19 A. Yes.

20 Q. The rolling machine?

21 A. Yes.

22 Q. Their weed?

23 A. Weed.

24 Q. Some baggies?

25 A. Yes.

1 Q. Their scale?

2 A. Yes.

3 Q. Okay. That's all you took.

4 A. That's all I took.

5 Q. All right. And while you were going around
6 finding that stuff --

7 A. Yeah.

8 Q. -- Dristin, was just standing there, right?

9 A. He was standing there, but he was right in the
10 living room, so it was easy for him to take the Xbox and
11 stuff. It was right there. They were already tied up.

12 Q. All right. I'm just making sure we get it clear.
13 He took the Xbox.

14 A. He took the Xbox.

15 Q. And he took the games?

16 A. Took the game.

17 Q. He took her phone?

18 A. Took the phone.

19 Q. Took her ID?

20 A. I don't know who took her ID. I don't remember.

21 Q. Did you go through her purse?

22 A. No.

23 Q. Did you see him go through her purse?

24 A. No.

25 Q. , that place, pretty dark over there,

1 right?

2 A. Pretty dark.

3 Q. And right around there, it bends around to the
4 left, right?

5 A. Yes.

6 Q. And there is -- just past there is Mr. Rivers'
7 place with the vegetables and all that. I don't know his
8 name, but you know what I'm talking about?

9 A. Yes.

10 Q. Right next to the house y'all went in, there is
11 like a garden and stuff, right?

12 A. Yes.

13 Q. And that's where the road turns?

14 A. Yes.

15 Q. And there is, like, a MAC truck, a big old truck
16 right there?

17 A. Yeah.

18 Q. So as soon as you get past the house, you take a
19 left, right?

20 A. No. We didn't take no left.

21 Q. You're missing my question. So let me back up.

22 All right? When you're heading down , all
23 right?

24 A. We take a left.

25 Q. You would take a left as soon as you got past

1 their house, right there at the garden, right?

2 A. Yeah.

3 Q. And the Mack truck is sitting right there?

4 A. Yeah.

5 Q. It's all close together, right?

6 A. It's all close together.

7 Q. Now, when you're over at the other place on
8 , Mama K's, all right?

9 A. Yes..

10 Q. When you arrived, it's your testimony that it's
11 you and Carl and Dristin that drove up.

12 A. Yes.

13 Q. Okay. And Carl parked where?

14 A. In the driveway.

15 Q. Okay. Just regular pulled?

16 A. Just regular pulled in.

17 Q. And when you got there, Courtney was there.

18 A. Yes.

19 Q. Courtney's boyfriend was there.

20 A. I don't recall.

21 Q. Okay. That's fair enough. There -- Kelsey was
22 there?

23 A. Kelsey was there.

24 Q. Mama K wasn't there?

25 A. No.

- 1 Q. And Dristin's girlfriend came over, right?
- 2 A. Who?
- 3 Q. Dristin. His girlfriend came over, right?
- 4 A. No.
- 5 Q. You never saw his girlfriend that night?
- 6 A. No.
- 7 Q. Nobody ever asked her to leave?
- 8 A. No.
- 9 Q. All right. And you're sure of that, right?
- 10 A. Yeah, I'm sure.
- 11 Q. And then y'all sat around the house, right?
- 12 A. Yes.
- 13 Q. Oh, let me ask you this: After you left work and
14 before you got to Mama K's, y'all were looking to get
15 some weed, right?
- 16 A. Yes, we was.
- 17 Q. Going over the tracks to see if you could get some
18 there?
- 19 A. Oh, no. We weren't looking for no weed like that.
20 Talking about getting some but not looking like that.
- 21 Q. Oh, I got you. All right. So you're saying from
22 your house you went straight over to Mama K's?
- 23 A. Yes.
- 24 Q. All right. And you got to Mama K's it was already
25 dark, right?

1 A. It was getting dark.

2 Q. Okay. Did you smoke some weed over there?

3 A. Yeah.

4 Q. Okay. You had the weed, right?

5 A. I had a little bit.

6 Q. Oh, I've been meaning to ask. Dristin, he's in
7 his mid 20's, right?

8 A. Yes.

9 Q. He ain't nearly as young as you, is he?

10 A. No.

11 Q. Carl's appliance business, he does pretty good,
12 doesn't he?

13 A. Yes.

14 Q. Probably makes \$1,000, 2,000 a week, right?

15 A. Sometimes. Sometimes you make a little bit,
16 sometimes you can't. It's all on how it's going out at
17 the flea market.

18 Q. He had a pretty established business out there.
19 He had been there for a while, right?

20 A. Yeah, yeah.

21 Q. Dristin had on, like, a hoody, coat, do you
22 remember?

23 A. Yeah.

24 Q. Like dark -- it was December. It was cold, right?

25 A. Yes.

- 1 Q. So he a fairly heavy coat on, right?
- 2 A. Uh-huh.
- 3 Q. And it had a hood on it?
- 4 A. Yes.
- 5 Q. And it would be your testimony he had a mask on?
- 6 A. Yes.
- 7 Q. And he had gloves?
- 8 A. Yes.
- 9 Q. All right. And, now, you had changed out of your
10 work clothes into some street clothes, right?
- 11 A. Yes.
- 12 Q. But it was December. You had a coat, right?
- 13 A. Yes.
- 14 Q. Pretty big coat?
- 15 A. Not big coat, but a coat.
- 16 Q. Okay. I don't want to put words in your mouth, so
17 thank you.
- 18 And you had on blue jeans?
- 19 A. Yes.
- 20 Q. And a pair of shoes, right?
- 21 A. Yes.
- 22 Q. So you're at Mama K's and she comes home?
- 23 A. Yes.
- 24 Q. And she comes home with your girlfriend, Caitlin?
- 25 A. Yes.

1 Q. All right. So when she gets there, there's
2 Courtney and Caitlin, Kelsey, there's you, Carl, Dristin,
3 Mama K is now there, and you said that -- wasn't there a
4 baby there too?

5 A. I don't recall.

6 Q. Okay. And you know Buckshot, right?

7 A. Yeah.

8 Q. Buckshot --

9 A. The dog, yeah.

10 Q. Little yappy chihuahua?

11 A. Yeah.

12 Q. Do you remember the TVs being on?

13 A. The TV? Yeah, it was on.

14 Q. Did you go back in Caitlin's room?

15 A. Huh-uh.

16 Q. Okay. Now, you and Dristin went over to
17 before the robbery, right?

18 A. Yeah.

19 Q. Okay. And the girl saw you.

20 A. The girl saw me? No.

21 Q. No. Okay. So -- all right. Y'all are at the
22 house. And Mama K needs to go out, right?

23 A. Yes.

24 Q. Because she had somebody bring her back to the
25 house.

- 1 A. Yes.
- 2 Q. And she's pretty upset because of her sister,
3 right?
- 4 A. Yes.
- 5 Q. And so y'all went out and went and got her, I
6 think she said, like, hang on a second -- so y'all went
7 out and got her some pills.
- 8 A. Some pills?
- 9 Q. Yeah.
- 10 A. I don't remember pills.
- 11 Q. Okay. And then you went over to the Kangaroo.
- 12 A. She went with us.
- 13 Q. Right. I'm talking about where y'all went.
- 14 A. Yeah.
- 15 Q. So you went over and got her some pills?
- 16 A. I don't remember that.
- 17 Q. Okay. That's fine. And then you went to the
18 Kangaroo?
- 19 A. Got some cigarettes.
- 20 Q. Got some cigarettes?
- 21 A. That's what I remember.
- 22 Q. All right. And then you said it was just you --
23 you were in the back seat?
- 24 A. Yes.
- 25 Q. Mama K's in the front seat?

1 A. Yes.

2 Q. Carl's driving?

3 A. Yes.

4 Q. You don't remember Dristin being with you?

5 A. No.

6 Q. He wasn't with you?

7 A. No.

8 Q. All right. Now, Dristin, at the flea market he
9 used to come out there pretty often?

10 A. I don't know.

11 Q. You're there all the time, right?

12 A. I don't see him.

13 Q. Well, that answered the question. You don't see
14 him out there regular?

15 A. Yes.

16 Q. Okay. And the yes meaning no, you don't see him
17 out there regularly?

18 A. Yes, right.

19 Q. Just making sure. I promise I'm not trying to
20 trick you. I'm just asking questions.

21 So he's out there that day. Y'all walked around
22 together, right?

23 A. No.

24 Q. No? He was at the flea market and he was doing
25 his own thing?

1 A. He walked around. He just hang around where I was
2 at, yes.

3 Q. All right. Now, is it your testimony you didn't
4 have anything to do with weapons?

5 A. Yes.

6 MR. SMILEY: Your Honor, I have a matter to
7 take up with Your Honor.

8 THE COURT: All right. Can you approach?

9 (Discussion held at sidebar.)

10 THE COURT: You may proceed.

11 MR. SMILEY: Thank you, Your Honor.

12 BY MR. SMILEY:

13 Q. So you've had problems with weapons before,
14 haven't you?

15 A. You asked me -- in a way that I could understand
16 your question, I had a problems in school before, yes, I
17 have.

18 Q. Okay. With weapons?

19 A. Yes.

20 Q. Okay.

21 A. But let me explain myself. I thought you were
22 rephrasing to this case, is what I thought you was.

23 Q. I understand. Okay. Anything else about that?

24 A. No.

25 Q. Okay. All right. So you had had a problem at

1 school with a weapon before.

2 A. Yes.

3 Q. All right. From to your house in
4 Pintail, it's about ten minutes?

5 A. If you say that.

6 Q. Well, is that what you say?

7 A. Yes, yes.

8 Q. So y'all went -- when you got back in the truck,
9 you and Dristin, y'all went to your place?

10 A. Yes.

11 Q. Pintail. And everybody -- your testimony is
12 everybody got out, right?

13 A. Uh-huh, yes.

14 Q. Okay. And you went through the loot?

15 A. Yes.

16 Q. Came across, like, the booklets and stuff for the
17 games and tossed those away?

18 A. Yes.

19 Q. And there a driver's license there, right?

20 A. Yes.

21 Q. You tried to bend it in half and break it?

22 A. No.

23 Q. It was bent though.

24 A. Yes.

25 Q. It wasn't bent when you got?

- 1 A. It I didn't get it, though.
- 2 Q. Dristin got it, though. Did you see who was
3 trying to break it in half?
- 4 A. There was something going on. I don't recall.
- 5 Q. But one of you did for sure?
- 6 A. Yeah, one of us.
- 7 Q. Okay. And then you got a bag and put everything,
8 your stuff, in it, right?
- 9 A. Yes.
- 10 Q. So you took the bong you had stolen?
- 11 A. Yes.
- 12 Q. The rolling paper machine that you had stolen, the
13 baggies, what was left of the pot, right, and your mask
14 and gloves and put them in that bag and then went out,
15 over that fence, and put them in the woods. Carl and
16 Dristin left, right?
- 17 A. Yes.
- 18 Q. Dristin just walked home, didn't he?
- 19 A. Yes.
- 20 Q. And Carl went to his house in North Charleston,
21 right?
- 22 A. I don't know where he went.
- 23 Q. You're right. You're exactly right. That's a bad
24 question. He left your house, right?
- 25 A. Yes.

1 Q. Okay. While you've been in jail, you have talked
2 to Caitlin, haven't you?

3 A. No.

4 Q. Wrote her letters?

5 A. I wrote her letters. I don't know if she ever
6 wrote me back or not.

7 Q. But you wrote Caitlin letters?

8 A. One. One.

9 Q. One letter. Okay. Fair enough.

10 A. Yes, yes.

11 Q. All right.

12 MR. SMILEY: Beg the Court's indulgence.

13 THE COURT: Take your time.

14 BY MR. SMILEY:

15 Q. Now, is it your testimony that this robbery was
16 Dristin's idea?

17 A. Yes.

18 Q. When you were in the house and you got the
19 marijuana stuff, you grabbed the keys to her van?

20 A. No.

21 Q. You didn't take the keys and --

22 A. I could have, but I don't recall. I was under the
23 influence a lot. I only remember pieces of what
24 happened.

25 Q. I got you. I understand. So you could have, but

- 1 you don't remember --
- 2 A. I could have.
- 3 Q. -- about taking her van, but you didn't take her
- 4 van?
- 5 A. I don't recall.
- 6 Q. Okay. Very good. Now, they had a ten-month-old
- 7 baby?
- 8 A. Yes.
- 9 Q. Do you remember tossing her on the couch?
- 10 A. I did touch the baby, but I ain't tossed the baby.
- 11 Q. It was a little baby, right?
- 12 A. Right, but I ain't tossed it.
- 13 Q. You picked her up and put her on the couch?
- 14 A. I didn't toss, just gently, yes.
- 15 Q. I'm not saying you didn't otherwise.
- 16 A. I don't harm no baby.
- 17 Q. All right. I understand.
- 18 A. Yes.
- 19 Q. Put her on the couch. Did you move her back to
- 20 mom?
- 21 A. Yes.
- 22 Q. After you had mom tied up?
- 23 A. Yes.
- 24 Q. Now, you say the gloves you used were Carl's?
- 25 A. Yes.

1 Q. That came out of Carl's truck?

2 A. Yes.

3 Q. You seen Carl wear them before?

4 A. Yes.

5 Q. They were work gloves that were just in the truck?

6 A. Yes.

7 Q. And the mask was just in his truck?

8 A. Yes.

9 Q. Had you seen him wear that before?

10 A. No.

11 Q. Okay. Now, this thing -- you didn't want to do
12 this, right, this robbery?

13 A. Correct.

14 Q. This was against your will.

15 A. Correct.

16 Q. Because you felt like you had to.

17 A. Correct.

18 Q. Because you felt like if you didn't, that Dristin
19 or Carl would get you?

20 A. Correct.

21 Q. So this whole thing that you're going to do 20
22 years for is something that you were forced to do?

23 A. Correct.

24 Q. Carl bought the cheeseburgers, right?

25 A. I bought the cheeseburgers but from his money.

1 Excuse me.

2 Q. So he gave you money to buy the cheeseburgers?

3 A. Correct.

4 Q. So he had money?

5 A. Correct.

6 Q. Now, at the end of the robbery, you were getting
7 ready to go out the door, right?

8 A. Yes.

9 Q. Amber and Shawn, they're tied up, laying in the
10 living room, right?

11 A. Correct.

12 Q. But you go on out, you say, Merry Christmas,
13 bitch?

14 A. I don't recall that either. I could have said it,
15 but I don't recall it. I ain't saying that I did it and
16 I ain't saying that I didn't.

17 Q. Fair enough.

18 A. Yes.

19 Q. Now, right before you went out the door of
20 , you popped her chain off her neck?

21 A. Yes, I did.

22 Q. So you took her chain?

23 A. Yes.

24 Q. Oh, you know what discovery is, right?

25 A. Yes.

1 Q. It's all the police reports and everything?

2 A. Yes.

3 Q. What everybody said in the case and everything
4 like that.

5 A. Yes.

6 Q. So you and your attorney were able to go through
7 all of that before you testified today?

8 A. No.

9 Q. You never talked about your discovery?

10 A. I mean, I looked through it, but I didn't go over
11 it and I didn't talk about it.

12 Q. Okay. Then bad question. Let me ask another
13 question. You had your discovery, right?

14 A. I had my discovery.

15 Q. And you had plenty of time because you've been
16 sitting a while, right?

17 A. Yes.

18 Q. To go through it and see what everybody was
19 saying?

20 A. Yes.

21 Q. Just -- beg the Court's indulgence.

22 THE COURT: Take your time.

23 BY MR. SMILEY:

24 Q. Almost done. When you got arrested over on
25 Pintail and taken down to the station, you thought were

1 you going up to DJJ for another juvenile charge, right?

2 A. That's what I though.

3 Q. That's what you thought, right?

4 A. Correct.

5 Q. And at that point in time when they asked you
6 about giving a statement, you said no?

7 A. Correct.

8 Q. And then a couple days later, you realized that
9 you were looking at some real serious charges as an
10 adult, right?

11 A. Correct.

12 Q. That same day, you gave a statement.

13 A. Correct.

14 Q. And that's where you said that you did it under
15 duress, right?

16 A. Correct.

17 Q. When you got arrested, how much money did you have
18 on you?

19 A. Me?

20 Q. Yes.

21 A. None.

22 Q. You didn't have a penny?

23 A. None.

24 Q. Last couple of questions.

25 It's your position that Carl knew what was going

1 on, right?

2 A. Correct.

3 Q. And you are just as sure that you didn't buy a
4 shotgun, right?

5 A. Correct.

6 Q. So --

7 MR. SMILEY: That's all I got.

8 REDIRECT EXAMINATION

9 BY MR. JUSTIS:

10 Q. Christopher B. you stated on cross-examination that
11 you took the chain from Amber?

12 A. Yes.

13 Q. What did do you with that chain?

14 A. I don't recall what happened to it. Somebody had
15 jewelry, but it was a lot of stuff going through. I
16 don't know who took it about.

17 Q. Okay. And I think you also stated, or agreed,
18 with Mr. Smiley's statement that at that
19 area right there where the house is that night that there
20 is not streetlights?

21 A. Yes.

22 Q. It's dark?

23 A. Yes.

24 Q. Were the lights the truck on when you drove up?

25 A. No.

1 Q. Were they on earlier?

2 A. Yes.

3 Q. When did they get turned off?

4 A. Approaching the house.

5 Q. And who turned them off?

6 A. The driver.

7 Q. And who was that?

8 A. Carl.

9 Q. Now, Christopher B. Mr. Smiley also mentioned that

10 you gave a written statement in this case.

11 A. Correct.

12 Q. When did you give that statement?

13 A. Two days later, after I got arrested, a day or two

14 later.

15 Q. Yes. So you were arrested when? When did the

16 police first get you?

17 A. December the 3rd.

18 Q. Is that that same night?

19 A. That same night.

20 Q. And then you said a few days later you gave a

21 statement.

22 A. Correct.

23 Q. Tell us how that came about.

24 A. Well, it -- they transport me to juvenile, I think

25 that same night or the morning, and then I started

1 thinking about a lot of stuff, and I think I was supposed
2 to come back down here to get something served to me or a
3 bond hearing, and I asked to talk to the detectives to
4 make a statement, and I didn't care if my lawyer was
5 there. That's how I came along.

6 Q. So you told the detectives you wanted to talk?

7 A. I wanted to speak, yes.

8 Q. Without an attorney?

9 A. Without an attorney.

10 Q. Do you remember which --

11 A. I think it was him.

12 Q. Okay. Detective Smith right here?

13 A. Yes.

14 Q. Okay. And what did Detective Smith do when you
15 told him that? What happened he -- okay. And did you
16 give a statement?

17 A. Yes.

18 Q. And did you write that statement?

19 A. No. I asked him to write it.

20 Q. Okay. And why did you ask them to write it?

21 A. Because I can't spell that good.

22 Q. But did you tell him what to write?

23 A. Yes. I told him what to write.

24 Q. Did they give you an opportunity to read over what
25 was written down?

1 A. Yes.

2 Q. Did you agree with everything that was written
3 down?

4 A. Yes.

5 Q. And I think you stated this statement was given a
6 day or two after you were picked up?

7 A. Yes.

8 MR. JUSTIS: Could I get this marked.

9 BY MR. JUSTIS:

10 Q. At time I'm showing you what has been marked as
11 State's Exhibit 26. Do you recognize that, Christopher ?

12 A. That's my statement.

13 Q. Is that your statement? Is that your signature on
14 the statement?

15 A. Yes, yes, it is.

16 Q. Are these your initials?

17 A. Yes, it is.

18 Q. Is this your writing on the question and answer
19 part?

20 A. Yes.

21 MR. JUSTIS: At this time, Your Honor, the
22 State would like to admit State's Exhibit 26 into
23 evidence.

24 MR. SMILEY: Objection, Your Honor. May I
25 approach?

1 I find that your questions about him
2 testifying in the outcome would be indicative and that
3 you implicitly did indicate that the statements were
4 acting in response to an improper influence or motive.
5 Note your exception for the record. Thank you.

6 All right. Before we bring everybody back
7 in, do you need a comfort break?

8 MR. SMILEY: Yes, ma'am.

9 THE COURT: All right. And so here is my
10 plan now: We're going to go till 12:30 or until we're
11 done with Christopher. All right?

12 (Recess taken.)

13 THE COURT: All right. Anything before we
14 bring in the jury?

15 MR. JUSTIS: No, Your Honor.

16 THE COURT: Let's bring in the jury.
17 Christopher, remember, stay seated.

18 (In open court, jury present.)

19 THE COURT: State's 26 will be admitted into
20 evidence.

21 (Statement marked for identification and
22 admitted into evidence as State's Exhibit No. 26.)

23 BY MR. JUSTIS:

24 Q. Christopher B. you testified you made this
25 statement.

1 A. Yes.

2 Q. Let read your statement to you. When he -- when
3 we was getting off work, we went to Walmart, me and Carl.
4 Dristin was there with us, but he stayed in the truck --

5 MR. SMILEY: Objection, Your Honor. May we
6 approach?

7 THE COURT: You may.

8 (Discussion held at sidebar.)

9 MR. JUSTIS: At this time, Your Honor, the
10 State would like to publish statement by Christopher
11 State's Exhibit 26 to the jury.

12 THE COURT: All right. With the exception of
13 your previous exception, do you have any objection to him
14 publishing?

15 MR. SMILEY: No, ma'am, not to the
16 publishing.

17 THE COURT: All right. Thank you.

18 BY MR. JUSTIS:

19 Q. This statement is given to me voluntarily as
20 written for me by Detective Corporal D. Cheek at my
21 request. It's initialed by Christopher B.

22 When we was getting off work, we went to Walmart,
23 me and Carl. Dristin was there with us, but he stayed in
24 the truck while Carl and I went inside.

25 Me and Carl bought bullets. He gave them to me

1 with the money to buy food with, the bullets and the
2 money. Then we went to McDonald's inside Walmart and
3 bought four double cheeseburgers. Then we went to the
4 truck and took my mom one cheeseburger. I ate one
5 burger, Carl ate two. We went to Ms. Karen's house to
6 wait until it get late.

7 Then like around 9:00 Carl took me and Dristin to
8 the peoples' house and drop us off. He then went and
9 parked around the corner to wait on us, and then me and
10 Dristin went to the door. Dristin had the gun. He told
11 me to knock on the door. I knock on the door, and she
12 answered it.

13 When she answered, Dristin pointed the gun at her
14 and told her to get in the house. She pushed the gun
15 away and said, Get out of here with that shit. Dristin
16 told her, What, bitch? Get the fuck on the ground. We
17 went inside and told them to lay on the ground.

18 Dristin told me to tie them up. I was, like, nah,
19 no. And he told me to tie them up so I tied them up.
20 Then we just run through the house and we just took
21 everything. Dristin took the Xbox, movies, and games. I
22 took the rest of the stuff. I gave the stuff to Dristin
23 and Carl when we left.

24 We went back to my house. We started going
25 through the stuff. Then they see the ID card. Carl

1 tried to break the ID but couldn't. Carl gave me the
2 ID and I threw it in the trash can. That's when they
3 started putting the stuff in the bag, the ski mask,
4 gloves, water bong, scale, rolling machine, and cell
5 phone. I helped them too, and they told me to go hide
6 it, so we went behind my house and they saw the woods.

7 They showed me where to hide it in the woods. We
8 hid it in the woods and they said they would come back
9 and get it, and then they left. I went in the house, and
10 that's when the police showed up. Like ten or fifteen
11 minutes later, my house was covered in police.

12 This statement was written at my request by
13 Detective Corporal D. Cheek. It is accurate, as I
14 recall, and has been written as I detailed the incident
15 verbally to Detective D. Cheek. This has been read back
16 to me, word for word, by Detective A. Smith, and he
17 initialed C.B.

18 Then there is a question and answer section.
19 Questions written by Detective Cheek, answers written in
20 Christopher B. 's handwriting.

21 Who set up the burglary?

22 Answer: Carl and Dristin.

23 Question: Who brought the gun?

24 Answer: Dristin.

25 Question: How do you know Carl and Dristin?

1 Q. You just remembered that today?

2 A. Yes.

3 Q. While you can't remember other stuff, but you
4 remember that?

5 A. Yes.

6 MR. SMILEY: Nothing further.

7 MR. JUSTIS: Briefly.

8 FURTHER REDIRECT EXAMINATION

9 BY MR. JUSTIS:

10 Q. But you remember him turning off the lights?

11 A. Yes.

12 THE COURT: Mr. Smiley?

13 MR. SMILEY: Nothing further.

14 THE COURT: All right. Ladies and gentlemen:
15 This is now an appropriate time for us to take our lunch
16 break. Please be back in the jury room at 1:30, and we
17 will begin at that time. Please remember all of my
18 admonitions, and have a wonderful lunch. Please rise for
19 the jury.

20 (In open court, jury not present.)

21 THE COURT: Thank you. Be seated. Anything
22 before we break for lunch, Mr. Justis?

23 MR. JUSTIS: Nothing from the state, Your
24 Honor.

25 THE COURT: Let's go ahead -- since

1 Mr. Chaplin is closer, go ahead and take Mr. Chaplin out,
2 and once he's secured, we'll take ^{Christopher B.} . All right.

3 Thank you.

4 And you have one witness; is that correct?

5 MR. JUSTIS: That's correct, Your Honor.

6 THE COURT: Mr. Smiley?

7 MR. SMILEY: Ma'am?

8 THE COURT: Are your witnesses here and how
9 long do you anticipate that they're going to take?

10 MR. SMILEY: Pardon -- my witnesses -- at the
11 last break, I told Carl's girlfriend go get them and
12 bring them. I have three to four witnesses.

13 THE COURT: All right. And in your
14 estimation, Mr. Smiley, how long are those -- do you
15 plan --

16 MR. SMILEY: They're short witnesses. I
17 would guess to five to ten minutes each.

18 THE COURT: All right. Just for the record,
19 the reason I did it procedurally that way, because we're
20 only talking about scheduling, is when ^{Christopher B.} was
21 brought in initially, there appeared to be somewhat -- I
22 observed to be some looks between the two, and so just in
23 order to preserve -- that's why I did that.

24 MR. SMILEY: Thank you.

25 THE COURT: Anything before we break?

1 MR. JUSTIS: No, Your Honor.

2 THE COURT: Thank you.

3 (Recess taken.)

4 A F T E R N O O N S E S S I O N

5 THE COURT: Anything before we bring in the
6 jury, from the State? Mr. Justis, please call your next
7 witness.

8 MR. JUSTIS: State calls Detective Adam
9 Smith.

10

11 ADAM SMITH,

12 having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. JUSTIS:

16 Q. Detective Smith, where do you work?

17 A. Currently work for the Dorchester County Sheriff's
18 Office.

19 Q. And how long have you worked there?

20 A. Approximately six years.

21 Q. And what is your job title?

22 A. I'm a detective currently in the criminal
23 investigations division.

24 Q. And what are some of your responsibilities as a
25 detective?

1 A. We're assigned cases by our supervisors. Those
2 incident reports are taken by the patrol deputy. They're
3 assigned out to us for further investigation. They
4 include assaults, burglaries, thefts, things of that
5 nature.

6 Q. Did you have an opportunity to become involved in
7 a case at in Dorchester County?

8 A. Yes, I did.

9 Q. And when did your involvement with that case
10 begin?

11 A. It began on December 4th approximately, 12:25 a.m.
12 I was contacted by Detective Cheek who was the on-call
13 detective at the time. He was requesting assistance in
14 reference to a case that he had been called out for about
15 a home invasion.

16 Q. Okay. And after you got that call, where was the
17 first place you responded to?

18 A. I met Detective Cheek at the Dorchester County
19 Sheriff's Office at the criminal investigations office
20 and obtained further information from him at that
21 location.

22 Q. After you received information from Detective
23 Cheek about the case, what was the next step you took?

24 A. At that point in time, we had a juvenile suspect,
25 who was Christopher B. who was in there, and we were

1 going to interview him regarding the home invasion as
2 being a suspect in that case.

3 Q. And did you have an opportunity to Mirandize him
4 at that point?

5 A. Yes, we did.

6 Q. And did you have an opportunity to obtain a
7 statement from him at that point?

8 A. Not at that point in time. He invoked his right
9 to counsel.

10 Q. After that what, did you do?

11 A. Detective Cheek was completing papers for
12 Christopher B. for the Department of Juvenile Justice.

13 I then began preparing a search warrant for Christopher B.

14 's residence, which was in
15 Dorchester County.

16 Q. Did you eventually obtain a search warrant for
17 that residence?

18 A. Yes. I went in front of the magistrate, presented
19 him with a search warrant. They granted a search warrant
20 and issued it to me.

21 Q. And approximately -- do you know approximately
22 what time of day that search warrant was executed?

23 A. It was executed approximately 3:02 a.m. on the
24 morning of December 4th.

25 Q. And do you know -- do you happen to know what day

1 of the week that was?

2 A. Off the top of my head, I can't remember.

3 Q. Were you present for the search warrant?

4 A. Yes, I was.

5 Q. And do you remember if there were other officers
6 present at the time?

7 A. Yes. There were several other officers present.

8 Q. And briefly describe what occurred when the search
9 warrant was executed.

10 A. I arrived on scene. I had made contact with the
11 supervisor of our crime scene unit, Lieutenant Earl
12 Asbell, and informed him that we were going to be doing a
13 search warrant at that location. He met me at that
14 residence. At that point in time, he began conducting
15 his investigation.

16 I met with Christopher B. mother, Patricia
17 Baty, and actually read the search warrant affidavit to
18 her at that time.

19 Q. Okay. Now, let me back up a little bit. This was
20 the residence of Christopher B. you were at.

21 A. Yes.

22 Q. Did you have an opportunity that particular night
23 to go to the residence of the victim where the home
24 invasion occurred?

25 A. No, I didn't. I was contacted after the fact that

1 that part of the investigation had been done.

2 Q. Okay. Now, you conducted the search warrant.

3 Were there any items of evidence collected?

4 A. Yes, there was.

5 Q. And who collected those items?

6 A. Lieutenant Asbell with our crime scene unit.

7 Q. After executing the search warrant, what was the
8 next thing that you did?

9 A. Well, the following morning, I had actually
10 obtained the case from Detective Cheek, since he's on a
11 white color grant, and he was on call with the detective.
12 At that time it actually got turned over to me for
13 investigation, and I had obtained arrest warrants on
14 Christopher B. for that case.

15 Q. And what arrest warrants did you obtain? What
16 charges?

17 A. For burglary in the first degree and two counts of
18 kidnapping.

19 Q. And after you obtained those arrest warrants, what
20 did you do at that point?

21 A. I went to the Dorchester County jail annex, which
22 is a holding facility that's located at our sheriff's
23 office. I met with the detention staff who was Corporal
24 Hightower. He took me in the juvenile holding facility
25 where he made contact with Christopher B.

1 I informed Christopher B. I had arrest warrants for him.
2 I then read those arrest warrants and affidavits to him
3 and advised him of the charges that he was going to be
4 arrested under. At that point in time, he told me that
5 he wanted to speak with me and did not care if his
6 attorney was present.

7 Q. And did you have an opportunity to speak with
8 Christopher B. at that time?

9 A. Yes, I did. Myself and Detective Cheek actually
10 retrieved Christopher B. from his holding cell and then brought
11 him back to the investigations office so we could
12 interview him regarding this case.

13 Q. And that's where you conducted the interview?

14 A. Yes, that's correct.

15 Q. Prior to interviewing him, did you advise him of
16 his Miranda rights?

17 A. Yes, I did.

18 Q. And did he waive those Miranda rights?

19 A. Yes, he did.

20 Q. After obtaining that statement from Christopher B.
21 , what did you do next?

22 A. The statement was obtained from him. He was then
23 transported back over to the annex so he could be held
24 for his hearing.

25 Q. Based on his statement that he gave you, was there

1 any other investigation that you took regarding his
2 statement?

3 A. As far as his statement?

4 Q. Correct.

5 A. There was -- there was two other individuals that
6 he named that were involved with him during this
7 incident, which we also investigated.

8 Q. And what did you do next?

9 A. At that point in time, based on the evidence and
10 the statement I obtained from Christopher B. I
11 obtained arrest warrants for the two other individuals,
12 Dristin Johnson and Carl Chaplin.

13 Q. Okay. And what date would that have been that you
14 obtained those arrest warrants?

15 A. Those warrants were obtained on December 5th.

16 Q. You had mentioned earlier that when you conducted
17 the search warrant there that there was some evidence
18 collected at the scene.

19 A. Yes, sir.

20 Q. Was that the only evidence collected in this case?

21 A. Not in this case. There was additional evidence
22 that was recovered from the initial crime scene.

23 Q. Okay. So the initial crime scene being --

24 A.

25 Q. So you had evidence obtained from

1 and then also evidence that was obtained from the search
2 warrant when that was executed?

3 A. That's correct.

4 Q. Was there any other evidence obtained in this
5 case?

6 A. Yes, sir. There was -- during the course of our
7 interview with Christopher B. he advised us that he
8 had stored -- or stashed evidence in a bag in a wooded
9 area behind his residence on Pintail Drive. Myself and
10 Detective Cheek were interviewed, and at that point in
11 time, I contacted Detective Andy Martin, advised him of
12 where that evidence should be located, and he then
13 followed up with that information that I provided.

14 Q. So after Mr. Baty's statement, I'm assuming you
15 took him back to his holding cell?

16 A. That is correct.

17 Q. And what did you do next?

18 A. Well, at that point in time we began to search for
19 the other two parties that were involved with this
20 incident.

21 Q. Let me -- what does that entail when you say began
22 to search for him? What is the standard protocol you do
23 when you obtain arrest warrants for someone that
24 currently isn't in custody?

25 A. At that point in time when we obtain arrest

1 warrants, we then take them to our warrants division so
2 they can be put into NCIC, which is the National Crime
3 Information Center. It's the national database for law
4 enforcement, and basically those warrants are entered
5 under that person's name, date of birth, social security
6 number so if law enforcement comes in contact with them
7 and they run their information, they will come back that
8 they have an active warrant for their arrest.

9 Q. And that was done in this case?

10 A. That was done, yes.

11 Q. What was the next thing you did?

12 A. Made contact with the victim again after that to
13 touch bases with them, let them know how the
14 investigation was going.

15 Q. Now, did you have written statements from the
16 victim at this time?

17 A. I did. I had copies that were taken by the
18 initial reporting deputy on the scene.

19 Q. After contacting the victim, what else did you do?

20 A. After the victim was contacted on December 8th, I
21 was contacted by Deputy Vasquez that the second subject,
22 Dristin Johnson, had been located and he was booked into
23 our jail and served with the arrest warrants that I had
24 for him.

25 Q. So at this point Christopher B. is arrested?

1 A. That's correct.

2 Q. And Mr. Johnson is arrested?

3 A. Yes, sir.

4 Q. And the only person not arrested yet --

5 A. Was Carl Chaplin.

6 Q. What did you do next?

7 A. At that point in time, I had obtained -- sent off
8 for SLED to do photo lineups for me in reference to this
9 investigation. We fill out a form that SLED requests for
10 each person that has their information on it, and I
11 e-mailed that to them so they could complete them and
12 then send them back to me.

13 Q. Okay. I'm showing you what has been entered into
14 evidence as State's Exhibit 3. Do you recognize this?

15 A. Yes, sir, I do.

16 Q. What is that?

17 A. This is a photo lineup that I had shown to Karen
18 Parker in this case.

19 Q. Okay. So you were the officer that showed her the
20 photo lineup?

21 A. Yes, sir, I was.

22 Q. How did you go about showing her that photo
23 lineup?

24 A. I met with her at her residence on December 8th,
25 obtained a written statement from her regarding

1 information that she had about the incident, about what
2 she had witnessed, and during -- after the statement was
3 obtained, I then showed her two photo lineups regarding
4 this case.

5 Q. And, in addition to this photo lineup, what was
6 the photo lineup you showed her?

7 A. For Dristin Johnson.

8 Q. And when you showed her this photo lineup, did you
9 suggest anybody for her to pick?

10 A. No, I did not.

11 Q. Explain a little bit how you went through that
12 process, how did you do that that day.

13 A. After she had completed the written statement, I
14 then retrieved the photo lineup, and there is a clause on
15 the front page of that that explains to her what she's
16 about to do, what she's about to be looking at and then
17 kind of give her guidelines on whether or not she should
18 or should not indicate somebody that she recognizes in
19 them.

20 And they're asked to actually sign that form at
21 the bottom, if they understand the clause and they
22 understand the instructions, and it's also dated, timed,
23 and also I witness that form as well.

24 Q. And you state you also obtained a statement from
25 her?

1 A. That is correct.

2 Q. After speaking with Ms. Karen Parker, what did you
3 do next?

4 A. Well, at that point in time I also made contact
5 with the mother of Christopher B. Patricia Baty, and
6 had advised her of the case as well, and she had provided
7 me with a possible phone number.

8 MR. SMILEY: Objection. Hearsay.

9 THE COURT: Is there an exception, Mr.
10 Justis?

11 MR. JUSTIS: No, Your Honor. We'll withdraw
12 that.

13 THE COURT: Thank you. Sustained.

14 BY MR. JUSTIS:

15 Q. And do you know Ms. Baty's whereabouts now?

16 A. She's now deceased.

17 MR. SMILEY: Objection. Relevance.

18 THE COURT: Counsel, what is the relevance?

19 MR. JUSTIS: Just -- it's relevant to show
20 that she's no longer alive, Your Honor, so she cannot be
21 called --

22 MR. SMILEY: Relevance.

23 THE COURT: Counsel, move on. Sustained.

24 MR. SMILEY: I move to strike from the
25 record.

1 THE COURT: Ladies and gentlemen: The
2 witness's last response and question should be stricken
3 from your notes and not to be considered in any way.

4 BY MR. JUSTIS:

5 Q. What was the next thing you did after talking with
6 Ms. Parker and obtaining a statement from her?

7 A. Through the course of my investigation, I had
8 obtained a possible phone number for Carl Chaplin. He
9 was still an outstanding subject in this case, and I was
10 still trying to locate him and serve him with these
11 active arrest warrants, so I attempted to make contact
12 with him by telephone.

13 Q. And what date did you attempt to make contact with
14 Mr. Chaplin?

15 A. That was on December 13th.

16 Q. And were you able to make contact with him on that
17 day?

18 A. During the first time when I called him on that
19 date, the call went through and then disconnected
20 immediately, and then upon call back, I got the voice
21 mail and left a voice mail asking for Carl Chaplin to
22 contact me.

23 Q. And when you say the call was disconnected, could
24 you explain that a little bit?

25 A. Just as it -- when it got done ringing, it went

1 through, and then just immediately disconnected right
2 after that. I wasn't able to speak with anybody at that
3 time.

4 Q. And did you call that number back?

5 A. Yes, I did, and I left a voice mail immediately
6 after that, advising who I was and my office phone number
7 and asking Carl Chaplin to contact me.

8 Q. And did Carl Chaplin ever contact you?

9 A. Yes, a few hours later he did, on the same date.

10 Q. And what did Carl Chaplin tell you when you made
11 contact with him?

12 A. I advised him of who I was, and I advised him that
13 I was investigating the case and I needed to speak with
14 him. He advised me that he was out of town in north
15 Augusta and wouldn't be able to meet with me until the
16 20th of December regarding this case.

17 Q. And what day was this phone conversation?

18 A. That was on December 13th, approximately 1:05 p.m.

19 Q. Okay. And did you meet with him on December 20th?

20 A. No, I did not.

21 Q. And why did you not meet with him on the 20th?

22 A. Because shortly thereafter, on December 13th, Carl
23 Chaplin called me back and advised me -- or asked why I
24 needed to speak with him. At that point in time I
25 advised him that I was investigating a home invasion and

1 that I had arrest warrants for him and that he needed to
2 come in and talk to me.

3 At that point in time he advised me that he had
4 counsel and provided me with the name of James Smiley as
5 his attorney. He provided me with his attorney's phone
6 number so I could contact him.

7 Q. And did you make attempts to contact Mr. Smiley?

8 A. Yes. On that date I attempted to make contact
9 with him and left voice mail for him. He was out of the
10 office working.

11 Q. Okay. At some point did you make actual contact
12 with Mr. Smiley?

13 A. Yes, we did.

14 Q. And what date was that?

15 A. It was on or about December 22nd is when we
16 actually got in touch. We were both playing phone tag
17 due to us both being busy at the time.

18 Q. As a result of that phone call, did you ever meet
19 with Mr. Chaplin?

20 A. Yes. On December 22nd, Mr. Smiley advised me that
21 he would bring his client in on December 28th to meet
22 with me at the office to surrender himself.

23 Q. And on December 28th, did Mr. Smiley bring
24 Mr. Chaplin in?

25 A. Yes, he did. He turned himself in.

1 Q. And did you serve the arrest warrants on him at
2 that time?

3 A. Yes, sir, I did.

4 MR. JUSTIS: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 MR. JUSTIS: No further questions. Please
7 answer any questions Mr. Smiley might have for you.

8 THE WITNESS: Yes, sir.

9 THE COURT: Mr. Smiley?

10 MR. SMILEY: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 MR. SMILEY: I don't have any questions.

13 THE COURT: All right. You may step down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: You're going to stay with us?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Call your next witness.

18 MR. JUSTIS: At this time the State rests,
19 Your Honor.

20 THE COURT: Reserving all motions in matters,
21 Mr. Smiley, do you have a witness available?

22 MR. SMILEY: Yes, ma'am.

23 THE COURT: Well, let me -- ladies and
24 gentlemen: There is a matter of law I must take up
25 outside your presence. Do not begin your deliberations.

1 DIRECT EXAMINATION

2 BY MR. SMILEY:

3 Q. Now, Mr. Russom, you got to speak loudly and
4 clearly so everybody in the courtroom can hear and the
5 court reporter can write thing downs. Tell us where you
6 live.

7 A. I live at Road in Summerville. They
8 call it Knightsville, but it's still Summerville, South
9 Carolina.

10 Q. All right, sir. Where do you work?

11 A. I work for Wager's Trucking. We haul vans from
12 there.

13 Q. How old are you, sir?

14 A. I'm 70.

15 Q. Are you familiar with -- I may have the wrong
16 name, the flea market?

17 A. Yes, sir, Coastal Carolina Flea market.

18 Q. Coastal Carolina Flea market. How do you know
19 about it?

20 A. Well, I just started -- I retired, and I was
21 selling stuff out there on the weekends and really got
22 into it.

23 Q. So you're a vendor?

24 A. Yes, sir. I'm there every weekend now.

25 Q. All righty. Back in December of 2011, you were

1 working out there then?

2 A. Yes, sir.

3 Q. Do you know Christopher B.

4 A. Yes, sir.

5 Q. How do you know him?

6 A. From the flea market.

7 Q. All right. When you say from the flea market,
8 would you explain to the jury how you came to know him.

9 A. Well, Carl is the appliance man. He's right next
10 to where I set up, and Chris would work for him. We come
11 out there and help him with stuff.

12 Q. Did you know any of Chris's relatives?

13 A. I know of his -- I believe it's his uncle.

14 Q. Okay.

15 A. Freddy. I knew him.

16 Q. So you have some familiarity with Chris?

17 A. Yes, sir.

18 Q. When you go to the flea market, do you ever have
19 the occasion to take Chris with him?

20 A. Yes, I do. In fact, I was picking him up a lot of
21 mornings because he had no way to get there and Carl
22 needed him.

23 Q. Is it fair to say that Chris was at the flea
24 market a good bit of the time?

25 A. Yes, sir.

1 Q. All right. I'm going to turn your attention --
2 let me ask you this: You know Carl, right?

3 A. Yes, I do, very well.

4 Q. And Carl, you know him through the flea market?

5 A. Yes, sir.

6 Q. And did you say he sells appliances?

7 A. Yes, sir.

8 Q. Do you know how long he's been out there,
9 approximately?

10 A. I've been out there approximately ten years and he
11 was there before I got there.

12 Q. So he's been a vendor out there --

13 A. I good while, yes, sir.

14 Q. Okay. Turn your attention to December the 3rd,
15 that Saturday, 2011. All right? Were you out at the
16 flea market that day?

17 A. Yes, sir.

18 Q. Did you have an occasion to see Carl that day?

19 A. Yes, sir.

20 Q. Where was Carl at the flea market?

21 A. Inside, selling appliance.

22 Q. Is that where he usually is?

23 A. Yes, sir.

24 Q. Did you have an occasion to see Christopher B.
25 that day?

1 A. Yes, sir, I did.

2 Q. When is the first time you saw Christopher B.

3 A. I believe I brought him in that morning.

4 Q. Okay. Yes, sir. Go ahead.

5 A. Did you have the correct date?

6 Q. It's Saturday, December 3rd, 2011, yes, sir.

7 A. Okay. That's correct.

8 Q. Okay. What time do you usually arrive at the flea
9 market?

10 A. A lot later than Carl, because he used to fuss. I
11 need my helper.

12 Q. Okay.

13 A. Probably 8:00, around 2:00.

14 Q. All right. And that day you were at the flea
15 market pretty much all day?

16 A. Yes, sir.

17 Q. And you had a chance to observe Chris that day?

18 A. Yes, sir, I did.

19 Q. Did you see Chris with any items that day?

20 A. Yes, sir.

21 Q. Specifically, did you see him with a gun?

22 A. Yes, sir, I did.

23 Q. Tell this jury about that.

24 A. Well, he came over to my booth in the flea market.
25 We had inside booths.

1 Q. Okay.

2 A. And I just sit in my door in the chair and he come
3 up with something by his side. It was in a case and he
4 opened it up, and I'm not real familiar with guns --

5 Q. Yes, sir?

6 A. But it looked like a shotgun.

7 Q. Okay.

8 A. And he asked me if I would -- could saw the barrel
9 off for him.

10 Q. So let me make sure I get this. Chris came to
11 your booth, right?

12 A. Yes, sir.

13 Q. And you pulled out the case and the gun?

14 A. Yes, sir. He didn't take it out of the case.
15 He's just showing it to me in the case.

16 Q. He asked you if you could saw it off?

17 A. If I could saw the barrel off.

18 Q. What did you tell him?

19 A. I told him he was crazy. Get out of there with
20 that thing. He ain't brought anything but trouble.

21 Q. Let me ask you, since you were in close proximity
22 to Carl's booth, did you see any black man, around middle
23 20's, hanging around with Carl and Chris that day?

24 A. No, sir.

25 Q. Would you find it surprising if someone said that

1 Carl was good friends with a middle aged African
2 American?

3 A. Yes. I would find it kind of strange, yes, sir.

4 Q. That's not his normal circle of friends?

5 A. No, sir.

6 Q. Now, at the end of the day -- about what time do
7 you think you left?

8 A. I usually leave about 4:00. I start packing up
9 around 2:00, 2:30, and usually get out of there around
10 4:00.

11 Q. Did you leave before or after Carl that day?

12 A. I'm sure I left before. He's always after me.

13 Q. Okay. Did you know if he needed Chris or not that
14 afternoon?

15 A. No, sir, I do not know that.

16 Q. Okay.

17 A. But Chris told me he did not need a ride home,
18 that he would have to help Carl.

19 Q. All right. So Chris told you he was going to help
20 Carl.

21 A. Yes, sir.

22 Q. Okay.

23 MR. SMILEY: Beg the Court's indulgence.

24 THE COURT: Take your time.

25 MR. SMILEY: Answer any questions the

1 prosecutor might have.

2 THE COURT: Mr. Justis?

3 MR. JUSTIS: Thank you, Your Honor. May it
4 please the Court:

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. JUSTIS:

8 Q. Good afternoon, Mr. Russom.

9 A. How are you today?

10 Q. I'm fine. Chris and Carl left together that
11 afternoon, correct?

12 A. I do not know. I was already gone. I left at
13 4:00.

14 Q. Did you give a statement in this case?

15 A. Yes, I did.

16 Q. And who did you give that statement to?

17 A. You should have a copy of it there.

18 Q. Well, I do. I'm just asking you who you gave that
19 statement to.

20 A. To Deidra.

21 Q. Who is Deidra?

22 A. That's Carl's girlfriend.

23 Q. When did you give that statement?

24 A. I don't remember the exact date, but it should be
25 on the statement.

1 Q. Like what month was it?

2 A. I really don't know.

3 Q. Well, can you tell me what season it was? Was it
4 winter time, springtime --

5 MR. SMILEY: Objection, Your Honor.

6 Relevance.

7 THE COURT: Overruled.

8 THE WITNESS: Well, it was probably around, I
9 would say, November maybe, last year.

10 BY MR. JUSTIS:

11 Q. So you gave a statement November of last year.

12 A. Yes, sir.

13 Q. So that would be November 2011?

14 A. Approximately, yes.

15 Q. Well, this offense didn't happen until December of
16 2011. How could you give a statement a month before that
17 happened? Can you answer that for me?

18 A. It happened in December, right?

19 Q. Uh-huh, and you just said --

20 A. I said I was just guessing. I wasn't really sure,
21 so it's been a while since I gave the statement.

22 Q. Would it surprise you if I said you gave that
23 statement on March 22nd?

24 A. No, it wouldn't.

25 Q. Okay. Would it surprise you if I told you in the

1 statement you said Chris and Carl left the flea market
2 that day at 4 p.m. together?

3 A. That would surprise me, because I don't believe I
4 said that.

5 MR. JUSTIS: Could I get this marked.

6 BY MR. JUSTIS:

7 Q. I think you stated your booth was right next to
8 Carl's, right?

9 A. Yes.

10 Q. And that you've known Carl for ten years?

11 A. At least.

12 Q. Is that correct? Well, did you know that Carl
13 drove Chris and another individual to a house on

14 ?

15 A. No, sir.

16 Q. You didn't know that?

17 A. No, sir, I did not.

18 Q. Did you know that this alleged shotgun you saw was
19 used in a home invasion?

20 A. No, sir, I did not.

21 Q. And you live in Knightsville, do you not?

22 A. Yes, I do.

23 Q. You didn't hear anything about a home invasion in
24 December?

25 A. No, sir.

1 Q. What prompted you to give this statement to Carl's
2 girlfriend in March of 2011?

3 A. Because Carl's a very good friend and I don't
4 believe he would do anything like this.

5 Q. What I'm asking is, how did you know about it?
6 Like, did it just come to you in a dream to go give a
7 statement? How did you know to go give a statement? Who
8 asked you?

9 A. Deidra.

10 Q. Okay. So Deidra came to you and asked you to
11 write a statement?

12 A. Sure. I found out that he went to jail, of
13 course.

14 Q. Okay.

15 A. He lost his business. He lost everything.

16 Q. And when did she come tell you this?

17 A. Sir, I do not know the exact date.

18 Q. Well, what did she tell you about why he was in
19 jail?

20 A. Well, that he was accused of being involved, and,
21 of course, I still don't believe he was, but --

22 Q. But you don't know any of the facts of the case.

23 A. No, sir.

24 Q. Well, how did you know to talk about this shotgun
25 in the statement?

1 A. Because he brought it to my booth.

2 Q. Who brought it to your booth?

3 A. Chris.

4 Q. But Carl got arrested, so what does Carl and Chris
5 have anything to do with each other if you didn't know
6 they were together --

7 A. Because I know they both worked together, and
8 Chris, we've always told him, he's always buying guns and
9 things like that. We all tried to talk to that boy,
10 that, you know, this is going to get you in trouble, you
11 know. He was always into something.

12 Q. And your booth is right next to Carl's?

13 A. Yes, sir.

14 Q. So if you're standing in your booth, can you see
15 Carl -- I mean, how far away are we talking?

16 A. I have one booth.

17 Q. Uh-huh.

18 A. Carl's got -- had several booths, and all I got to
19 do is look out and there's Carl. I mean, he's all about
20 settling the prices, going from one booth to another. He
21 had to have several booths.

22 Q. What kind of appliances did he sell?

23 A. Washing minutes, dryers, refrigerators. He had a
24 good business.

25 Q. Where did he get these appliances from?

1 A. That, I don't know. That's none of my business.

2 Q. But when he gets arrested and charged with
3 burglary and his girlfriend comes to you asking you to
4 write a statement months later, then it becomes your
5 business?

6 A. I don't think this has anything to do with where
7 he gets his appliances from, you know.

8 Q. Well, let me ask you a question: Did you ever
9 tell police what you saw that day?

10 A. No, sir.

11 Q. Did you ever think to tell police?

12 A. No, sir. They never questioned me.

13 Q. Do you think this shotgun had anything to do with
14 the crime that day?

15 A. I do not know.

16 Q. Then I still don't understand why you would write
17 this statement, because Deidra asked you, isn't that
18 correct?

19 A. I didn't say the shotgun had anything to do with
20 it. I said he brought the gun to me and asked me to saw
21 off the barrel.

22 Q. Isn't it correct the only reason you wrote the
23 statement is because Carl's girlfriend came to you months
24 later and asked you to write a statement?

25 A. No, sir. I would have wrote it anyway for anybody

1 that was --

2 Q. Then why didn't you write it December 4th?

3 A. Nobody asked me to.

4 Q. So as long as somebody asks you, you'll write
5 whatever someone asks you to write?

6 A. No, sir. I won't write whatever they ask me to
7 write, no, sir. If you would read that statement, it's
8 the truth. That's all I can tell.

9 Q. Well, let's talk about this statement.

10 A. Okay.

11 Q. Is this the statement you made?

12 A. I would have to read it. Yes, sir. That's
13 basically what I told them.

14 Q. So you agree with the highlighted portion there,
15 what I highlighted?

16 A. Yes, sir. They left at 4:00. I think I told them
17 I left at 4:00. I don't know what time Carl and Chris
18 left, so that's a mistake there.

19 Q. So you agree you lied in your statement here.

20 A. I wouldn't say I lied.

21 Q. You didn't tell the truth.

22 A. I left at 4:00. Maybe she misunderstood it, but I
23 did --

24 Q. She misunderstood it. Did you write this
25 statement?

1 A. Yes, sir.

2 Q. Or did somebody else write it for you and you
3 signed it?

4 A. Okay. I'm not very good at handwriting. It was
5 written by someone else, and I carefully read it and then
6 signed it.

7 Q. And who wrote it for you? Remember, you're under
8 oath here, Mr. Russom.

9 A. Yes, sir. Deidra.

10 Q. Carl's girlfriend wrote this statement for you and
11 asked you to sign it, didn't she?

12 A. But I worded it. I told her what to write.

13 Q. But you signed it?

14 A. Yes.

15 Q. And who are these people that witnessed it?

16 A. May I see it?

17 Q. Look at those names. Tell us who those people
18 are.

19 MR. SMILEY: Objection, Your Honor.

20 THE COURT: Basis?

21 MR. SMILEY: May we approach?

22 THE COURT: You may.

23 (Discussion held at sidebar.)

24 BY MR. JUSTIS:

25 Q. Mr. Russom, do you know who those witnesses are

1 that witnessed that statement?

2 A. To be honest with you, I didn't bring my glasses
3 with me. I can't even read the name.

4 Q. Would you like me to read them for you?

5 A. Yes, please.

6 Q. Absolutely. I've got to get my glasses. Stanley
7 Wieczorek, W-i-e-c-z-o-r-e-k, Stanley? Do you know
8 anybody named Stanley?

9 A. They were there when I signed it, but I don't know
10 him personally.

11 Q. So you know him personally?

12 A. No, I did not know them personally. They just
13 witnessed me signing it.

14 Q. And Nicholas Hamm? Do you know Nicholas?

15 A. I met him that day.

16 Q. Let me ask you this: Where did you sign this
17 statement? Where were you?

18 A. If I remember, I think the flea market. I'm
19 positive it was the flea market, yes. She brought it --

20 Q. So at your booth?

21 A. Yes.

22 Q. So March 22nd would have been a weekend, because
23 the flea market is open on the weekends, correct?

24 A. Only on weekends except during Christmas.

25 Q. And then you stated -- you stated something on

1 direct about -- I think Mr. Smiley asked you if you
2 recall seeing a young black male hanging around Carl that
3 day.

4 A. Uh-huh.

5 Q. And you said no, and that would be very unusual.
6 What did you mean by that?

7 A. I don't know. As far as hanging out with Carl,
8 don't get me wrong, he had a lot of black customers,
9 which was great.

10 Q. Uh-huh.

11 A. But the way he stated was he hanging around, the
12 market, and around Carl, no, I never saw this guy. I
13 don't even know who they're talking about in that
14 statement.

15 MR. JUSTIS: Beg the Court's indulgence.

16 THE COURT: Take your time.

17 BY MR. JUSTIS:

18 Q. Would it surprise you if I told you March 22nd was
19 a Thursday? Could it have been a Thursday that you
20 signed this statement?

21 MR. SMILEY: Objection, Your Honor. Can we
22 approach again, briefly?

23 THE COURT: You may.

24 MR. SMILEY: And I'll bring the original up.

25 (Discussion held at sidebar.)

1 THE COURT: All right. Thank you.

2 BY MR. JUSTIS:

3 Q. And, Mr. Russom, I apologize. My eyes aren't
4 working good. It's actually April 22nd, but your
5 testimony would be here today that you actually left the
6 flea market before 4:00?

7 A. That's when I normally leave. That's my normal
8 time.

9 Q. And your testimony today would be you didn't see
10 Carl and Chris leave because you were already gone?

11 A. That's correct, and Chris stated he told me he had
12 some work to do with Carl, so I did not take him home
13 that day. I passed right by his house going home.

14 Q. So it's possible another person could have rode
15 with him too then?

16 A. I do not know. It's possible. Certainly.

17 MR. JUSTIS: Okay. Thank you. No further
18 questions.

19 THE WITNESS: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. SMILEY:

22 Q. Did the police ever come out and talk to you?

23 A. No, sir.

24 Q. And your booth is right next to Carl's, so if the
25 police had been out there wanting to talk to people and

1 about the situation, you would have talked to them?

2 A. Yes, sir, I would have. I would have been glad
3 to.

4 Q. And when Ms. Deidra came out and talked to you and
5 told you about the situation, you're like -- this is when
6 you said what you said, right?

7 A. Exactly.

8 Q. Okay.

9 MR. SMILEY: And, Your Honor, I ask you to
10 take judicial notice that April the 22nd is a Sunday of
11 2012.

12 THE COURT: Is that correct?

13 MR. JUSTIS: I'm not sure, Your Honor, but I
14 believe Mr. Smiley if he says so.

15 THE COURT: April 22nd, 2012 is a Sunday.

16 MR. SMILEY: Mr. Russom, that's all I have.

17 MR. JUSTIS: Nothing further, Your Honor.

18 THE COURT: You may step down. This witness
19 is excused?

20 MR. SMILEY: Yes, ma'am.

21 THE COURT: Any objection?

22 MR. JUSTIS: No objections, Your Honor.

23 THE COURT: You are free to leave the
24 courtroom.

25 MR. SMILEY: I call Fleet Counts, Your Honor.

1 FLEET COUNTS,

2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SMILEY:

6 Q. Mr. Counts, I'm going to stand back here and ask
7 you some questions. I need you to speak clearly and
8 loudly so this jury can hear you because they're the only
9 ones that count and so that court reporter can write down
10 what you say. All right? Now, just before we get
11 started, when did you meet me?

12 A. Approximately 30 minutes ago.

13 Q. All right. So you and I haven't had any long
14 extended conversations?

15 A. None.

16 Q. All right. How old are you, sir?

17 A. I'm going to be 59 in a couple weeks.

18 Q. I understand. Where do you live?

19 A. I live Drive, Summerville.

20 Q. Are you familiar with the Carolina flea market?

21 A. Yes.

22 Q. How?

23 A. I have a booth there and been working there for
24 about three years.

25 Q. All right. Are you familiar with Christopher B.

1 Baty?

2 A. Yes.

3 Q. All right. Could you tell this jury how you know
4 Christopher B.

5 A. I know him from the Carolina flea market. He
6 would work with Carl on the weekends, with the
7 appliances. I worked beside him, and that's where I know
8 him from.

9 Q. All right. Now, I'm going to turn your attention
10 to the subject of this trial, December the 3rd, 2011,
11 that Saturday out at the flea market. Were you there?

12 A. Yes, sir.

13 Q. On that day, did you have an opportunity to see
14 Christopher B. ?

15 A. Yes, sir.

16 Q. Tell this jury -- well, let me ask you, before we
17 get to that, how long was Chris there that day, do you
18 know?

19 A. He was there -- my first notion of seeing him was
20 10:00 in the morning, and I left kind of early that day.
21 I left around -- I'm going to say 1:00.

22 Q. All right. During that 10:00 to 1:00 time range,
23 did you have any occasion to see or speak with Mr. Baty?

24 A. Yes.

25 Q. Would you tell the jury about that.

1 A. He had a tendency to always come over and talk to
2 me, and I call him the little gangster.

3 Q. Yes, sir.

4 A. And he always come up to me when he bought a gun
5 or if he got a new knife or -- he always wanted to talk
6 about it and he always wanted to roughhouse. And he come
7 over to me this day, and he said, I just bought a new
8 gun. He says, You want to see it?

9 And I said, No, I got -- we call him Chunk. I
10 said, No, Chunk, I don't want to see it.

11 Q. So he came over and asked if you wanted to see his
12 new gun, and you said no. Was that at your booth that he
13 did that?

14 A. Yes.

15 Q. Okay. So at that point -- continue, please. What
16 next?

17 A. He said, Well, it's a really nice gun.

18 I said, Chris, I got customers. I don't want to
19 play around with you and your guns, and pretty much that
20 was the extent of what I had to say to him.

21 Later on I did see the gun laying in the hallway.
22 There is a hallway between our booths, and it was laying
23 there. I just happened to notice it -- I thought it was
24 a rifle or shotgun. It was one or the other. I didn't
25 look at it close, I just know that he had it and he was

1 bragging about it. It wasn't uncommon for Christopher B. to
2 buy a gun.

3 Q. Now, you know Carl Chaplin?

4 A. Yes.

5 Q. Okay. Tell this jury how you know Carl.

6 A. Been good friends with Carl and worked with him
7 for the last three years.

8 Q. All right?

9 A. At the flea market, and he had a shop that I
10 visited a couple times and did contract work for him on
11 appliances.

12 Q. So you helped him out on his appliance business
13 when he needed extra help, fair to say?

14 A. Yes.

15 Q. Between 10:00 and 1:00 while you were out there,
16 did you see -- you saw Carl's booth that day, right?
17 You're close by that you can watch what's going on?

18 A. Pretty much in the same booth, just sectioned.

19 Q. I got you. Did you have the opportunity to see
20 any black male in his mid 20's hanging out with Chris or
21 Carl or either that day?

22 A. No.

23 MR. SMILEY: Beg the Court's indulgence.

24 THE COURT: Take your time.

25 MR. SMILEY: Nothing further. Answer any

1 questions that the prosecutor might have, all right?

2 THE WITNESS: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. JUSTIS:

5 Q. Is it Mr. Counts?

6 A. Yes.

7 Q. Mr. Counts, if it wasn't uncommon for Chris to
8 have a gun, why do you remember this incident so well?

9 A. Well, because he was a braggart, and I called him
10 the gangster type because he's always talking about
11 robbing people or beating somebody up or, you know, even
12 at one point he actually wanted to shove me around a
13 little bit and I had to teach the little boy to back off,
14 and that was probably a year ago.

15 He was just one of those individuals that thought
16 it was cool to be tough.

17 Q. Okay. So you actually had some conflict with
18 Chris at one time, about a year --

19 A. No, I wouldn't call it a conflict. It was just
20 that he was wanting to wrassle around. He wasn't being
21 serious, but he grabbed my arm and was going to try to
22 twist it behind my back, and I shoved him off and said,
23 Chris, we ain't playing like that. I'm too old and
24 you're too young and you wouldn't like it.

25 That's the extent of that.

1 Q. Again, I don't think you answered my question. If
2 it was so common for him to have a gun, why does this
3 particular gun this day -- why do you remember it so
4 well?

5 A. Well, because he always showed me the guns. He
6 usually bought junk pistols. It was not uncommon for him
7 to come and show me a pistol, and he was the type when he
8 got something like that, he showed everybody.

9 MR. JUSTIS: I would object. The witness is
10 being unresponsive to this question.

11 THE WITNESS: I'm sorry. I'm not
12 understanding.

13 THE COURT: First of all, please don't speak
14 over each other. The court reporter can't get it down.
15 I need you to listen to the question and answer his
16 question. Please rephrase your question.

17 BY MR. JUSTIS:

18 Q. And I'll rephrase it, Mr. Counts.

19 You have testified that it was common for Chris --
20 he was always coming by showing you guns, correct? That
21 is what you testified to.

22 A. Yes.

23 Q. He was always showing you guns and knives. You
24 called him Chunk, little gangster, all this stuff. That
25 happened all the time. Why, on December 3rd, 2011, when

1 he showed you or tried to show you this shotgun, why does
2 it stick in your mind so much? What do you know about
3 that shotgun that makes that different from all the other
4 instances?

5 A. It was unusual for him to buy a large gun.

6 Q. So normally he only bought small guns?

7 A. Yeah. Small pistols, junk pistols, most generally
8 I call them, and I'm not talking about 20, I'm talking,
9 over a two year period, three to four.

10 Q. How do you know he bought it?

11 A. Well, I assumed he did. I can't --

12 Q. So you assumed he bought the gun?

13 A. Yes.

14 Q. You don't know that he bought the gun?

15 A. He said that he had bought it.

16 Q. I thought you had said you didn't have time to
17 talk to him that day.

18 A. Excuse me. I'll go back over it. He came to me.
19 He says, I got a new gun. You want to see it?

20 And I said, Chunk, I ain't got time for that.

21 I was selling movies. I sell movies, and I had a
22 lot of people in front of the table, and it's just one of
23 them things that he's kind of aggravating anyway, and I
24 said, No, I don't have time for that. I'm busy.

25 Q. Okay.

1 A. Okay. That's --

2 Q. Well, let me ask you a question. How did you know
3 to be here today? How did you find out about today?

4 A. Well, I knew from the very beginning. That, you
5 know, the circumstances, what is leading to a trial.

6 Q. Okay.

7 A. And I offered my assistance.

8 Q. Okay. Well, tell the jury what you knew about
9 this case. Tell us what you know about this case.

10 A. I don't understand what you're --

11 Q. What do you know about this case? Do you know
12 what happened?

13 A. I know that the boys had been arrested and that
14 Carl later on was arrested, and I knew about the day that
15 came into question through -- mostly through Carl's
16 better half, Dee. She explained the circumstances to me,
17 and other than that, I'm just here just to tell the facts
18 of what I knew about that morning, you know. That's --

19 Q. All right. So Deidra asked you to come today?

20 A. No, actually. I volunteered my services.

21 Q. But she contacted you.

22 A. Yes.

23 Q. And she asked you to come here and testify?

24 A. No.

25 Q. She didn't ask you to testify?

1 A. No. I volunteered my services -- as a matter of
2 fact, I volunteered my services to come and talk to you,
3 but it never came about that way.

4 Q. Who did you volunteer your services to?

5 A. Dee. I said she could let you know, and I'm more
6 than willing to come and talk to you. This is --

7 Q. How long ago?

8 A. A year ago -- well, whenever it all came about.

9 Q. So almost a year ago? December of last year is
10 when this happened?

11 A. Yes.

12 Q. You're aware of that, correct?

13 A. Yes.

14 Q. So December of last year, you told Dee, which is
15 Carl's girlfriend, that you would be willing to talk to
16 police on his behalf?

17 A. Yes.

18 Q. Did she ever take you up on that?

19 A. At one time, I had written a statement, but things
20 got jumbled up and I never got to turn it in. That's all
21 I know.

22 Q. Did you ever give it to Dee?

23 A. No.

24 Q. So you just kept it at home? I mean, were you
25 good friends with Carl?

1 A. Very good.

2 Q. So your very good friend is arrested, and almost a
3 year goes by and you don't contact police to help your
4 friend out?

5 A. No. I didn't call the police personally, no.

6 Q. I mean, you come into court today and you state
7 Christopher B. had this gun. You knew he had this gun.
8 He showed it to you, tried to show it to you, and you had
9 this information for nearly ten months, and you wait ten
10 months while your good friend Carl has these charges
11 hanging over his head, and you don't think to tell
12 anybody?

13 A. That's not quite how it's working, I don't
14 believe. I think you're going to the far extreme.

15 Q. Tell me how it's working.

16 A. I let it be known that I was available to Dee.

17 Q. You let it be known to his girlfriend.

18 A. Yes. And, matter of fact, my statement to her, I
19 said if you talk to the prosecutor, I'm willing to talk
20 to him. I'm willing to talk to your attorney, and just
21 for whatever reason, it just never has happened, and I
22 sometimes had wondered about that.

23 Q. Right.

24 A. This is not something I just come up on the spur
25 of the moment and say, well, let me go and testify in

1 Carl's behalf. No. I've been willing to do that since
2 the happening.

3 Q. Well, who called you about court today?

4 A. Dee.

5 Q. Thank you.

6 MR. JUSTIS: No further questions.

7 REDIRECT EXAMINATION

8 BY MR. SMILEY:

9 Q. You're out at the flea market every Saturday and
10 Sunday?

11 A. Yes.

12 Q. Did police ever come out and talk to anybody that
13 you saw?

14 A. No.

15 Q. All right. Now, the last day you saw Chris would
16 have been December the 3rd, right?

17 A. Yes.

18 Q. And he hasn't been out there since?

19 A. No.

20 Q. And that's the day you saw him with the gun?

21 A. Yes.

22 MR. SMILEY: That's all I got.

23 MR. JUSTIS: Nothing further, Your Honor.

24 THE COURT: You may step down. You are free
25 to leave. Thank you.

1 Mr. Justis?

2 MR. JUSTIS: Thank you, Your Honor. May it
3 please the Court: Good morning, ladies and gentlemen.
4 First of all, on behalf of the State, on behalf of the
5 victim, and on behalf of the defense, I would like to
6 thank you for your service here this week.

7 Jury service is one of the most important
8 things you can do as a citizen, because without you, we
9 could not resolve issues, so I want to thank you for your
10 service.

11 What I'm going to talk to you about right now
12 is the law in this case, and the law in this case,
13 Mr. Chaplin is charged with burglary in the first degree,
14 one count, and two counts of kidnapping, one for Amber
15 Fish and one for her boyfriend, Shawn. That's what he's
16 charged with.

17 The judge is the judge of the law in this
18 case. That's her responsibility. She will charge you on
19 the law when we are finished. If I say anything that
20 counteracts or is different from what the judge says,
21 just follow the law and listen to what the judge says.
22 Just as you are the judge of the facts, you take the
23 facts and determine what the true facts are.

24 As I mentioned, Mr. Chaplin is charged with
25 burglary in the first degree, and, real briefly, burglary

1 in the first degree is entering the dwelling of another
2 without consent with the intent to commit a crime therein
3 and there is aggravating circumstances that have to be
4 proven in burglary first.

5 Now, if we can go back on the slide, back to
6 the first slide, entering the dwelling of another.
7 Sometimes they say breaking or entering a dwelling. What
8 that means is going inside. It didn't mean you have to
9 break a window, you have to break a door down if you
10 enter a dwelling of another. If the door is wide open
11 and you step in, without consent, that's the second part,
12 without consent.

13 All right. Here, we had a situation where
14 she certainly opened the door, but the question is, did
15 they have consent to go in? With the intent to commit a
16 crime therein, when they're at that door, when they're
17 going in that house, they have an intent to commit a
18 crime in that house, or in that dwelling.

19 Here we would say their intent was to commit
20 a larceny, to steal, and we would also say to commit a
21 kidnapping. That's why they have a rope. That's why
22 they have a gun. That's why they have masks. They
23 expect people to be in there.

24 And the aggravating circumstances that have
25 to be proven. It's an either or. There has to be either

1 while entering or leaving, the defendant or codefendant
2 is armed with a deadly weapon or uses or threatens the
3 use of a deadly weapon or displays what is or what
4 appears to be a knife or firearm.

5 So if they went in with a deadly weapon, here
6 we would say a shotgun, that would satisfy that element,
7 or if they left with a shotgun, that would satisfy the
8 element, or they threatened someone with a shotgun, that
9 would satisfy the element.

10 The second aggravating circumstance on
11 there -- and we just have to prove either one, not both,
12 just either one. If you find they did either one, then
13 that then that would satisfy.

14 The second one, the breaking or entering,
15 occurs during the nighttime. You heard testimony it was
16 9:00 that night. It was dark. If it occurred during the
17 nighttime, that satisfies that element.

18 The second charge, second and third charge,
19 is kidnapping. Kidnapping is the unlawfully seizing,
20 confining, inveigle, decoy, kidnap, abduct, or carry away
21 another person by any means without the authority of law,
22 and let me start at the bottom. Without the authority of
23 law means when you arrest somebody, you have the
24 authority of law to arrest them. So you haven't
25 kidnapped someone when they illegally arrest someone.

1 However, when you go in a house with a gun
2 and you tell someone to get on the floor and you don't
3 let them move, you've confined them. Or when you tie
4 them up, you've confined them. You've seized them.
5 That's what it's talking about, unlawfully seized,
6 confine another person by any means, rope, duct tape,
7 stay right there, don't move, gun, all those things.
8 That's a kidnapping.

9 Now, you probably thinking well, Carl didn't
10 go in the house. South Carolina has what they call
11 accomplice liability, and what that simply means is as
12 that case up there states, if a crime is committed by two
13 or more persons acting together in the commission of the
14 crime, then the act of one is the act of both, or all, if
15 there is more than two.

16 What that means, think of it in terms of a
17 team, like a baseball team. They win together, they lose
18 together. If Alex Rodriguez strikes out and the team
19 still wins, the team still won even though he struck out.
20 If Raul Ibanez hits a home run for the Yankees, like he
21 did last night, the whole team wins, even Alex Rodriguez
22 whom he replaced in the roster to bat for. Okay?

23 The act of one is the act of all. They all
24 take responsibility for it, and the reason they do is
25 because they're all acting together in the commission of

1 a crime. They're all intending to commit the same
2 offense, to get the same result. What is that result?
3 Get the stuff.

4 A baseball team? Win the game. Same thing,
5 so it's a very simple concept. It seems difficult,
6 accomplice liability. It's a fancy word, but really all
7 it is, is team work, and everyone is going to share.
8 Let's be fair. Everyone participates, everyone either
9 wins or loses. That's what accomplice liability says.

10 In South Carolina, it's better known as the
11 hand of one is the hand of all. If two people drive up
12 to a bank and one person gets out, goes in, robs the
13 bank, comes back, gets in the car and they live together
14 and they split the proceeds, they both robbed the bank.

15 Sure, the one guy did not go in, but his job
16 in the crime was to be the getaway driver. But for him,
17 the other guy doesn't get to the bank, but for him, the
18 other guy doesn't get away from the bank, and but for
19 him, the other guy doesn't have a lookout while he's in
20 there committing the crime.

21 Now, I'm going to talk to you real briefly
22 about credibility factors because, as I said, you're the
23 judge of the facts, and most times, in cases, most of the
24 facts, most of the evidence is presented right there,
25 through that seat, that microphone, the witness stand.

1 You hear testimony. People tell you what
2 they saw, smelled, touched, felt, okay. Their sense,
3 sometimes what they heard. So as the judge of the facts,
4 how do you determine who's telling the truth? Well,
5 you've been trained for that. You've been trained for it
6 your whole life because every day you make decisions.

7 If you have children, when they tell you
8 something, you're making a judgment. Do I believe them?
9 Are they telling me the truth? Or your spouse, or your
10 boyfriend or your friends or your enemies. You're
11 constantly evaluating credibility, constantly. You're
12 well prepared for that, but some of the things you look
13 at are demeanor of the witness. When they're on the
14 witness stand, are they forthright or are they hesitant?
15 When they're asked a question, are they, like, well,
16 looking all over the place, not being able to answer, or
17 do they just answer the questions? Are they consistent,
18 or does their story change?

19 Did they have the opportunity to know the
20 facts they're testifying to, or are they just testifying
21 to what somebody else told them happened? Do they have
22 any bias? Do they have a reason to lie? Are they best
23 buddies with someone? Are they a relative of someone?
24 And, finally, was the testimony corroborated, which means
25 did their testimony fit with the testimony of other

1 people?

2 Obviously, if more people are saying the same
3 thing, it's more likely it's true than if this person is
4 the only person saying that and someone else, everyone
5 else, is saying something different. It's a
6 corroboration. That's important.

7 Now, the defendant has no duty to do
8 anything, to put up a defense. However, if he does, and
9 he puts up the defense witnesses, like we had in this
10 case, then they're judged, just like any other witness.
11 You judge them like you would a police officer or just
12 like you would Kelsey P. for any other witness that
13 took that stand, use the same credibility factors.

14 Now, you'll hear in the judge's charge, and
15 I'm sure in Mr. Smiley's closing, about reasonable doubt.
16 That's the burden that the State has. That's the burden
17 that the state accepts in every case. We have to prove
18 the crimes were committed, and each element was committed
19 beyond a reasonable doubt. The defendant has rights, but
20 the state has rights too, and we have a right to a guilty
21 verdict when there is proof beyond a reasonable doubt of
22 the defendant's guilt.

23 As I said in my opening, it's not proof
24 beyond any doubt. There are few things in world that we
25 are 100, absolute certain about. As an example, I may

1 doubt the earth revolves around the sun, but is that a
2 reasonable doubt? Would that be reasonable in today's
3 day and age to doubt that? It comes down if you're
4 firmly convinced of the defendant's guilt, then you must
5 find him guilty. You must apply the law as the judge
6 gives it to you. Whether you disagree with the law or
7 not, it's the law.

8 Have you to take that law and apply it to the
9 facts as you found them, and when do you that, you'll
10 come up with a verdict that speaks the truth.

11 Now, ladies and gentlemen, I'm going to sit
12 down. Mr. Smiley is going to speak to you now. He's
13 going to tell you what he thinks the facts show.
14 Remember what he says and I say is not evidence. The
15 evidence came from there and what's in this box, the
16 different exhibits you will have back there. That's the
17 evidence. What we say isn't.

18 So keep an open mind. Do not make a decision
19 about this case until you go back there. You'll hear
20 from him, you'll hear from me, you'll be charged on the
21 law, then you'll go back there and you'll be able to
22 deliberate, and, finally, you'll be able to talk about
23 the case and talk about the facts.

24 Thank you.

25 THE COURT: Mr. Smiley?

1 MR. SMILEY: May it please the Court, Mr.
2 Justis. Ladies and gentlemen, I represent -- and let's
3 make sure we get clear on this -- Carl Chaplin. What I
4 just heard was a pretty good case about Christopher B. and
5 Dristin Johnson.

6 I usually don't comment about the law, that's
7 for the judge to do, but you didn't hear the law and the
8 judge will give it to you. He uses this example of a
9 bank robbery, if they go in and do the robbery, that the
10 person out in the parking lot is responsible too. He
11 left out a part. There had to be a plan. He had to know
12 the guy getting out of the car was going in to rob the
13 bank. Okay? That's clear. The judge will give you that
14 law.

15 Then he used the baseball team, the guy
16 sitting on the bench, all right? He's part of that team
17 so he's just as responsible as everybody else? You know,
18 there's people sitting in the stand. They're merely
19 present. That doesn't make them part of that team.

20 Credibility. When you come in this
21 courtroom, and when I became a lawyer, I took an oath,
22 and in my oath I swore on a Bible to zealously represent
23 my clients. The witnesses come to that stand, they put
24 their hand on this Bible, they raise it, and they swear
25 to tell the truth, the whole truth, so help me God.

1 That means something. That's important.
2 Liars. Liars. Amber Fish, Christopher B. We know,
3 at least if not both of them, came up here and perjured
4 themselves, because they testified about something that
5 was -- their answers were mutually exclusive.

6 Ms. Fish got offended when I suggested that
7 they were selling drugs in that trailer. Christopher B.
8 testified that that was the purpose, to go get the drugs,
9 and you know what? I wouldn't ask you to take Chris's
10 word for it, but where they found these gloves and this
11 mask, you know, remember Detective Martin? They took
12 pictures of a bong, a rolling machine, took pictures of
13 17 baggies, blue baggies, consistent with drug dealing, a
14 bigger baggy that was knotted that had been torn open,
15 but you didn't get to see those pictures, but understand,
16 Detective Martin saw that bag. Took pictures of it.

17 He carefully collected it, took it back to
18 his office, and took each object out: A bong, took a
19 picture; rolling machine, took a picture; digital scale,
20 took a picture. Cell phone, did you ever hear whose cell
21 phone that was? Took a picture.

22 Mask? Took a picture. You got to see the
23 mask and gloves, and we'll talk about it a little bit.
24 Where is the picture of the mask and the other stuff?
25 You know why they didn't? It didn't fit their case.

1 They're trying to hide it from you.

2 Christopher B. testified it was about marijuana,
3 that he went to rob for marijuana, so there is a liar.
4 That is not someone who's mistaken, be clear, someone who
5 put their hand on this Bible, swore to tell the truth, so
6 help me God. Somebody is lying, if not both.

7 Now, I agree, there was a robbery that night,
8 no doubt about that, because Christopher B. came in and told
9 you that he did it. Now, in opening statements, Mr.
10 Justis told you a lot, but the lynchpin of his case is
11 that my client, Carl Chaplin, recruited Christopher B. and
12 Dristin Johnson to go commit a robbery because Carl
13 needed money.

14 It's what he promised he would show you.
15 Now, what happened to Amber Fish I am not here for a
16 second to say was a good thing. Somebody robbed her.
17 That is terrible. I am not saying that's a good thing,
18 but to let your witness come up and lie on the witness
19 stand is a bad thing. I hope we all can agree on that.

20 This is serious business. This isn't just
21 coming up and throwing it up there. When you vouch for
22 your witness, you need to be careful on what they're
23 going to say. So let me talk about the witnesses a
24 little bit.

25 Amber Fish, not a drug dealer. She was very,

1 very persistent in that, that the place was lit up that
2 night, that they took \$415 worth of cash, and she was
3 sure of that. She never mentions Carl; she never
4 mentions a truck outside at all because that would be
5 something, if I was sitting in the jury, I would be
6 looking for. If they say this fellow Carl is involved,
7 let's see some evidence.

8 She also talked about earlier that she saw a
9 young guy that she believed to be Chris outside her
10 place, which she thought was suspicious, made her leery.
11 Made her lock her van. She doesn't mention Carl or a
12 truck then. She says that the fellow she believed to be
13 Chris, that we know now is Chris, after he tied her up,
14 went through the house and collected the items, on the
15 way out said, Merry Christmas, bitch. I want you to
16 remember that.

17 Where is Shawn Rabine? Wouldn't have you
18 liked to have heard from the other guy in the house? The
19 defense has no duty to present any evidence, but the
20 prosecution does. You can be sure if Shawn added to
21 their case he would have been here.

22 There is a couple of things that Amber said
23 that I hoped gives you pause about there was some plan
24 and there was Carl waiting outside to drive him away,
25 that they had a pickup truck sitting outside. Why didn't

1 they take the TV? I mean, they took everything else,
2 supposedly, of value. Why didn't they take the TV that
3 goes with the Xbox?

4 And she testified, because Chris couldn't
5 remember it, that Chris grabbed the keys to take her van.
6 That tells you right there. Why would they need the van
7 if there was someone right there waiting to take them
8 away?

9 Now, Karen Parker, she got on the stand, and
10 she told you, her sister was dying. She had been at the
11 hospital. She was very distracted. She only puts Carl
12 at her house that night, nowhere. The crime did not get
13 committed at

14 Then when Carl was nice enough to take her up
15 to the store, on the way back, she said somebody in the
16 truck -- and she wasn't even sure who was in the truck --
17 said, There it is, or something like that, and she now
18 testifies she felt like they were pointing at a house,
19 but when I asked her about it, she couldn't tell me. It
20 was dark. She wasn't sure. She couldn't tell you who
21 said it.

22 If that was so important in creating this
23 plan, why didn't Chris talk about it, and say, Yes, I did
24 that or Dristin did that or Carl did that? It didn't
25 fit.

1 In the lineup, I hope she could pick out
2 Carl. If she couldn't pick out Carl, then I really,
3 really would be concerned. She knew Carl. She bought
4 appliances -- an appliance from Carl before. Of course,
5 of course, we know she's got a bias towards Chris. Chris
6 is dating her daughter Caitlin. Chris has been staying
7 at her house. She's been looking after him. He's almost
8 a member of the family.

9 Of course their concern, Chris's trial is
10 coming up. Chris is in a bad spot, and then the Friday
11 night before trial, some ten months later, an 11-year-old
12 little girl, who is precious, who came in here trying to
13 help the best she could, comes up that she heard
14 something, that she heard something.

15 Now, the time she said she heard something, I
16 went through it a million times. I believe there were
17 eight people in the house, a chihuahua, two TVs on. She
18 was inside a room where there is a TV on. There was a
19 bed, and then she looked out and 40 feet away she saw the
20 three of them standing, and then she said she could hear
21 it, but when she realized on the stand with all that
22 noise she might not be able to help, not at the
23 beginning, but at the end, she said, Oh, and I put my ear
24 to the wall where she couldn't see but she could hear
25 through the wall, 40 feet away with all that going on.

1 Don't you think if she had her ear to the
2 wall that would have been one of the first things she
3 would have said? I went in the room and put my ear to
4 the wall to hear what they're saying.

5 I'm not telling you anything other than she
6 is a young, little girl that Chris has been nothing but
7 good to and she wants to help. She wants to help.

8 She also testified to a couple things that
9 just don't fit anywhere. She says Dristin, Savage, was
10 there earlier before anybody else and was in the bedroom
11 with his girlfriend on the bed and the door was closed.
12 She doesn't like Dristin, and there is no cooperation
13 whatsoever with that, and, again, I think the young lady
14 took what was going on to talk backwards about Caitlin's
15 boyfriend being in jail, about him being in trouble, and
16 she wanted to help. She wanted to help.

17 Now, we heard about gloves and a mask, and we
18 heard about the detective that took samples off there and
19 sent them off. I keep wondering, why is that in this
20 case? What does it show for Carl Chaplin? Nothing,
21 absolutely nothing.

22 Now, we heard from Chris that those gloves
23 came out of Carl's truck, as did some ski mask. Why
24 didn't they test it for Carl's DNA? He knows if Carl's
25 DNA was on it, it would have been in this courtroom. We

1 know it. Then we heard from lunchtime, all afternoon,
2 officer after officer, and I didn't realize it at the
3 time, but after court was over and I was leaving, I was
4 thinking, Carl's name wasn't brought up one time, one
5 single time.

6 This is a case about a robbery that has ^{Christop}
_{her R}
7 in it and a black male believed to be Dristin
8 Johnson. Carl wasn't mentioned. The police were done,
9 done with their case on December the 5th because they had
10 Chris. They had a statement from him.

11 Now, I'm going to break down each officer,
12 because there are a couple things they add. Officer on
13 scene, Deputy Boyd, he gets there, secures the scene.
14 Shawn and Amber are outside with the guy that called 911.
15 Who was he? Why wasn't he interviewed? Why didn't
16 anybody see if he saw anything? Doesn't fit. Doesn't
17 help him with Carl, so he's not here to help.

18 How about any other neighbors? Did they talk
19 to anybody else in that area? Didn't hear about it, did
20 you? One thing they found at the scene was the rope, the
21 rope that Chris said came off Carl's truck that Carl used
22 to tie in appliances.

23 Well, I had asked the SLED lady how you get
24 DNA on things because when you touch things, you leave
25 behind DNA, skin cells. Why didn't they test the rope?

1 There would have been a connection. This isn't
2 guesswork. You are asked to judge the evidence presented
3 to you. That's told to you in opening arguments. It
4 isn't just about the few things they brought in here,
5 it's about the things they didn't bring.

6 Fingerprints, my gosh they collected
7 fingerprints. They made a big deal to bring in these
8 gloves and this mask that didn't have Carl's DNA on it,
9 but was with a bong, a scale, a telephone, and other
10 things from the crime, and we know from Chris that Carl,
11 he believed, or somebody, tried to break in half that ID.
12 We know from Lieutenant Asbell that he lifted prints off
13 it. I asked him about dust and Superglue transfer. The
14 reason it's not here for you to consider, why nobody came
15 in and gave you a report, is because Carl Chaplin's
16 fingerprints weren't found.

17 But instead of using crime scene on the rope,
18 they just collected it. I understand, but they just
19 collected it. They didn't do anything further. Then we
20 went through some other officers that were basically all
21 the same, and they came up -- forgive me. I'm losing --
22 his name escaping me, but it's the last guy. He said
23 that he got some information. They were already over at
24 Pintail.

25 He talked to a couple guys in the street and

1 he ended up going over to Pintail, and he also went to
2 Dristin Johnson's house. It's in Gadsden Acres in the
3 same neighborhood, Woodstock, Pintail. Why didn't he do
4 a search warrant there, see if they found anything? Why
5 didn't they do a search warrant at Carl's house if he's
6 involved and somehow getting proceeds? How about going
7 over there and getting a search warrant and seeing what
8 can you find? How about impounding the truck, see what's
9 inside? Take fingerprints. See if Dristin -- when he was
10 in the truck, if he was in the truck?

11 How about any of that? Is that too much to
12 ask when we're in this case, in a serious matter? This
13 isn't playing. When you take that oath and you testify,
14 that's important. Committing perjury is no laughing
15 matter. Doing a halfway job is just not right.

16 And then we heard from the SLED lady who told
17 you about combined DNA and all that, and they found some
18 DNA that matched Chris. They might have found some that
19 included Dristin. They didn't find anything of Carl's.
20 They didn't even look. You know if it had been there it
21 would be in this courtroom. It would be in this
22 courtroom.

23 Then we get to Chris. Don't let Chris fool
24 you. He may be young and he may have a learning
25 disability, but he's street smart. You saw his demeanor.

1 You heard his nicknames, and Chris got arrested for this.
2 He thought he was going to juvie. You know, been there,
3 thought he was going to juvie. Got booked in. No, I
4 don't want to talk to y'all. Between that time and when
5 he's being served arrest warrants for February 1st and
6 burglary first and kidnapping, he realizes, uh-oh. I'm
7 looking at 15 to life and two 30's. Oh, my.

8 So he comes up with this story, comes up with
9 a story, and he writes, through the detective, a
10 statement. I beg your patience for just one second. And
11 y'all have it, and y'all can read it. But it's the
12 questions and answers, you know, the statement was
13 written out, reads over it.

14 Do you want to add anything? Who set up the
15 burglary?

16 Carl and Dristin.

17 Who brought the gun?

18 Dristin.

19 How do you know Carl and Dristin?

20 I worked for Carl, and Dristin is Carl's
21 friend.

22 How do you know the victim?

23 From getting weed from them.

24 Then went to the victim's house, tied them up
25 because Dristin said so and took their stuff.

1 Okay? Was there any money in the victim's
2 house?

3 No.

4 Is there anything else that you forgot or
5 need to add to your statement?

6 Yeah. This was against my will.

7 What was against your will?

8 Tying them up and the burglary.

9 Well, the prosecutor asked you to believe
10 Christopher B. . Then he convicted a fellow that had a
11 defense of duress. Because we know that's not true. His
12 job is to do justice, justice. We know that that
13 statement and that testimony is a lie, know it.

14 Everything in his statement is all on
15 somebody else. Don't let him fool you. When he was
16 going to juvie, no statement. When he's getting charged
17 as an adult, it's everybody else's fault. But even then,
18 he comes in, I got a deal, comes in, pleads, gets his
19 sentence. You will knock five years off to come in here
20 and testify truthfully? Well, ladies and gentlemen, I
21 want to get real clear: When you testify, it shouldn't
22 be if you testify truthfully. There is testifying. You
23 put your hand on the Bible. You swear an oath.
24 Testifying should be truthful. We shouldn't have to say
25 that.

1 And I got to watch him. You got to watch
2 him. He is the scapegoat. This just doesn't make sense,
3 ladies and gentlemen. We got Carl Chaplin. He's been
4 working out at the Coastal Carolina for 15 years. He's
5 built up a business, an appliance business. He has
6 several booths there. He has his own shop. He is hiring
7 Chris, who hangs out there, to help him with appliances,
8 but he needs money so he's going to have a 16-year-old go
9 in and do a robbery for him? Inconceivable.
10 Incredulous. Really?

11 Now, we do know some things. We do know some
12 things. We know Amber Fish or Shawn or both of them sold
13 marijuana. They got the byproduct of that in evidence.
14 We know there was a robbery. We know there was a
15 kidnapping. We know that. But after that, as far as the
16 crime goes, what do we know? Not much else. That's what
17 you got. That's the evidence. That's the competent
18 evidence.

19 The rest is hide it. Don't call it. Give
20 you just what they want. Just focus in on it. Come on.
21 I mean, I told you in the beginning, everybody had a
22 different job. My job is to zealously represent my
23 clients, and I've tried my best within the rules to make
24 sure I have presented as good a defense in Carl's behalf.
25 He has nothing, nothing to prove. He doesn't

1 have to put up witnesses. Didn't have to do anything,
2 still doesn't have to do anything, nothing, but after
3 Chris had the audacity to sit up here on this witness
4 stand and say, Oh, I didn't have a gun. You know,
5 Dristin brought it, or Carl brought it, or wherever he
6 got it, flat out lied, flat out lied, oh, Dristin, I
7 don't know him. He's not my friend. That's Carl's
8 friend.

9 Now, come on. You heard three fellows, and
10 they're all friends of Carl's, of course. Yeah, they
11 worked together up at the flea market. Yeah, it's Carl's
12 girlfriend who went out and asked if they would help.
13 That doesn't mean they would come in and lie. Where were
14 they inconsistent? Okay. Got tripped up when he gave
15 the statement. He's 70 years old. He knows what he
16 knows because he never saw Chris again. Chris got
17 arrested. He didn't come back to the flea market, so
18 that will mark the day that it happened.

19 He saw Chris with a long gun that he wanted
20 cut down. He told you about his experience with Chris.
21 You think he's going to come in here -- he doesn't need
22 to, he wasn't subpoenaed -- and lie? You heard from
23 three of them, one of which said that Chris told him that
24 he had bought the shotgun for 100 to 125 bucks.

25 Don't let him for a second say that Gary

1 Laframboise who saw a Hispanic or dark male handing,
2 delivering Chris a gun, don't let them say that's Dristin
3 because Chris said he paid 100 to 125 bucks for that gun.

4 Chris had the gun. Chris, little gangster,
5 committed the crime. He needed a scapegoat. He needed
6 some way to make it not his fault. And so Carl Chaplin
7 gets to be chump, and it's a shame. A man who has
8 worked hard gets torn down by a desperate 16-year-old
9 kid.

10 Now, if you go back in that jury room after
11 hearing the close and the law and think this evidence is
12 up to snuff, that there was a pre-plan and that Carl
13 participated in that pre-plan, that evidence is good
14 enough, I haven't done my job. I need to find a new one.
15 Serious business.

16 There is only one verdict in this case, and
17 it's not guilty.

18 THE COURT: Mr. Justis?

19 MR. JUSTIS: Thank you, Your Honor. May it
20 please the Court: Ladies and gentlemen: Mr. Smiley is
21 right. This is serious business, and, as he stated,
22 somebody robbed her, and that's a bad thing. That is a
23 bad thing. It's a bad thing to have a shotgun put to the
24 back of your head.

25 And while that shotgun is to the back of your

1 head and you're hog tied, your daughter is trying to
2 crawl -- she's crying. She's trying to crawl off the
3 couch to get to you.

4 That's a bad thing. That's one of those
5 things you remember. You know, kind of like where you
6 were on 9/11, you know, traumatic events. You remember
7 those events because they burn into your mind, and it
8 doesn't matter if it was Dristin holding that gun to the
9 back of her head or if it was Carl Chaplin, because he
10 was a participant in that plan.

11 It doesn't matter if it was Christopher B. tying
12 those ropes and tossing that baby or if it was Carl
13 tossing that baby. The hand of one is the hand of all.
14 So that hand that was gabbing that little baby and
15 tossing it on the couch might as well have been his hand,
16 because how did they get there? How did they get the
17 rope? How did they get what they needed to do that, and
18 how, most importantly, did they get away and who was
19 looking out for them while they were in there?

20 Of course I'm sure he would have sped away if
21 someone would have drove up. That's why he parked around
22 the corner. That's why he got two young kids, two stupid
23 young kids. He wants to play the victim, like he's
24 Mr. Oh, I'm just a poor man, businessman. He's a
25 successful businessman, according to the defense. He's

1 smart enough to know what to do.

2 Now, quickly, I'll go as quick as I can
3 through some of the assertions. That's what they are,
4 assertions that the defense made, and, remember, the
5 judge will tell you, what us lawyers say is not evidence.
6 Evidence came from that witness stand, so what are some
7 of the assertions? Mere presence, must have a pre-plan.
8 So I assume he's saying his guy was there.

9 We know the witnesses, Karen Parker puts him
10 at her house, with the other two, minutes before. She
11 said that. She said they left her house, and 20 to 30
12 minutes later she gets a call from her niece, just heard
13 there was a home invasion, 20 to 30 minutes. That
14 timeline is very important, because they drive down

15 , they go in, they commit the burglary. That takes
16 at least five minutes to do that, and you heard on the
17 911 tape, Amber Fish. It was about ten minutes from the
18 time they left to the time she calls, gets untied and
19 calls. So there is 15 minutes.

20 Then it's going out on the scanner. It fits
21 perfectly in with what Karen Parker said during that time
22 frame, and also Kelsey P. , the little liar, as he
23 would call her, what did she say? She saw them leave.
24 Again, she corroborates her mom; she corroborates Chris.
25 See saw them leave together and head down towards Amber's

1 house, which was the longer way to get out of the
2 neighborhood. Why are they going that way? They're
3 going to the house, that's why.

4 And he said, you know, you can't just merely
5 be present. Like the baseball fan, you can be present in
6 the stands. Last night, if you were present in the
7 stands at Yankee stadium when the home run was hit,
8 you're not part of the team. That's right, you're not
9 part of the team. That's why you don't get a ring if
10 they win the World Series, but he got a share of the loot
11 because he was part of the team.

12 Planning? There was a plea plan. We heard
13 it from Kelsey. She saw them standing in a circle
14 together. And what did Chris say? It was Carl's idea.
15 It started at the flea market and it continued all day.
16 Why were they at Karen's house? Why does that man go and
17 hang out with a bunch of teenagers that night? Why?
18 Exactly what Chris Baty said, to wait, because Chris -- I
19 want to do a robbery. I need some money. I know some
20 people I get weed off of. We can go there, and it's
21 right down the road from Mama K's, Karen Parker, as
22 Christopher B. refers to her as.

23 Because yes, he hangs out there. He was
24 dating the one daughter. They're not dating anymore. He
25 wrote her one letter. She never wrote him back. So

1 there is not -- there is no conspiracy there.

2 How are they trying to help him out? He's
3 already pled guilty, got 20 years. They can't help him
4 out in this case. Police should have done more, should
5 have done this, should have done that. Every trial you
6 hear that same argument. Could they have done this?
7 Sure. Could have done a lot of things? Probably.
8 Everybody could have.

9 They could have talked to every single person
10 in Chris's neighborhood to see if they heard anything,
11 every single person on . Of course, we do know,
12 and you heard on the 911 tape, there were police all over
13 that neighborhood looking and talking to people, and who
14 did they find? Karen Parker. That's how they found
15 Karen Parker. That's how they got the names, because
16 they were out looking.

17 You know, they collected evidence at the
18 crime scene. They collected evidence at Christopher B.
19 Baty's house. He got a written statement from
20 Christopher B. and collected more evidence as a result
21 of that statement, because he told them exactly where
22 that bag of stuff was. They lifted fingerprints. They
23 collected DNA. Why was the DNA in the case? Because it
24 shows Christopher B. wasn't lying that night when he
25 wrote his statement.

1 He told them where the mask was that he knew
2 was going to have his DNA on. Why would he do that?
3 Because he was doing the right thing. He realized he was
4 caught, and he realized the best thing he could do is
5 just tell the truth, and that's what he did. That's why
6 the DNA is there. It corroborates his story that he did
7 wear a mask that night. It corroborates Amber Fish that
8 they did have masks on, and it begs the question where
9 did the mask come from, and Chris answered that question
10 on the stand and he said it came from Carl.

11 Within one to two hours of this home
12 invasion, they already arrested Christopher B.
13 They're waiting on a search warrant, and they've got
14 leads on other two individuals. Why didn't they get
15 search warrants? There are things you have to do to get
16 a search warrant. You can't just barge into somebody's
17 house with probable cause. There is something called the
18 constitution there.

19 You know what they should have done more?
20 They should have found the gun, because according to the
21 defense and their theory, it's Christopher B. gun.
22 Everybody they trumped up there, it's Christopher B. gun.
23 He buys guns all the time. They went through the entire
24 house, found zero guns, zero bullets, zero shells. What
25 did he do with all these guns? What did he do with the

1 gun he bought that day?

2 Because he didn't have time to run all over
3 Summerville hiding guns. They went straight back to the
4 house, all three of them. The gun left the house that
5 night, but it didn't leave with Chris Baty. Chris says
6 it left with Dristin. Who bought the bullets for the
7 gun? Carl.

8 Why do you buy bullets for a gun that isn't
9 yours? Bullets and burgers, that's what they bought at
10 Walmart because you know Walmart didn't sell bullets to a
11 16-year-old.

12 MR. SMILEY: Objection, Your Honor. Arguing
13 something that's not in evidence.

14 THE COURT: Move on, Mr. Justis. Thank you.

15 MR. JUSTIS: I will, Your Honor.

16 The victims are drug dealers. Let's paint
17 them as drug dealers. They're slinging weed.

18 I don't know whether or not she was selling
19 drugs or not. Christopher B. says she was; she says she
20 wasn't, just like Christopher B. really didn't want to admit
21 that he tossed that baby. I don't know. Maybe she
22 didn't want to admit that her husband sells some weed, or
23 smokes weed and they've got a baby.

24 I don't know, but I do know this: Does that
25 mean she didn't have the gun to the back of her head?

1 Does that mean she wasn't tied up? Does that mean that
2 her baby wasn't tossed?

3 But remember what she does say: Rope, mask,
4 shotgun, just like Chris says. And Kelsey P. is a
5 liar. She's 11 years old. What reason does she have to
6 lie? To help Chris. Again, how did she help Chris? I
7 think 11-year-old is important because she's not
8 sophisticated enough to -- she was on that stand over 30
9 minutes on cross-examination, over 30 minutes, and she
10 just kept answering the questions.

11 Mr. Smiley asked her questions about which
12 way the trailer is cocked, and if you're laying toward
13 the bed, is your head toward the street and she answered
14 all those questions. She didn't sit there, uh, unlike
15 some of the defense witnesses who within 30 seconds are
16 changing their story.

17 She was consistent. Did she tell some big
18 elaborate story? Absolutely, she did. But, you know,
19 there is a saying, if you tell the truth, you don't have
20 to have a good memory. What did she tell you? They were
21 all there that night. That is corroborated by her mom,
22 by Chris. She said that they got there before her mom
23 did. That's corroborated by her mom. They left to take
24 her mom to the store. That's corroborated by the mom and
25 Chris.

1 She said they all left together. That's
2 corroborated by her mom and Chris. So we're to believe
3 that she concocted this or someone told her this whole
4 story. She's able to remember it all, and after 30, 45
5 minutes on the stand not get caught changing her story.
6 I submit to you that's because it's the truth.

7 I mean, we had a 70 year-old man who couldn't
8 keep his story straight on the stand. She was 11. And,
9 of course, Christopher B. is lying. He needed a
10 scapegoat. That's why he blamed poor Carl, because he
11 needed a scapegoat. Christopher B. according to their
12 witnesses, he's this horrible person, always talking
13 about robberies, always got guns and stuff like that.

14 Where did he learn it from? Who is his
15 mentor? Who has he worked for? Who hired him? It's
16 Carl and his friends there. They all know him. If they
17 know all this about him, I mean, that's essentially what
18 he's saying. He's such a horrible person, but we work
19 for him.

20 You can't have it both ways. You can't
21 create Chris to be this horrible person but at the same
22 time you're buddies with him, and you're a good person.

23 You know, Christopher B. is not my friend.
24 He's his friend. I don't get him to move washing
25 machines on the weekend for me. He does. Christopher B.

1 testified. In fact, on cross-examination it came out
2 Christopher B. moves the machines. He's the muscle. Kind
3 of like this. Kind of like this burglary. He was the
4 muscle. That's why he had the rope. He's a shorter,
5 stockier guy, stronger guy. He was the muscle. Dristin
6 was the gun man, and he was the brains.

7 You know, Mr. Smiley made a big deal of the
8 deal. He pled guilty with no deal, straight up to what
9 he was charged with. Straight up to it, not knowing what
10 the judge is going to give him. After he did that, we
11 went to him and said, Would you testify truthfully at
12 trial and we'll make a motion to cut five years off?
13 Absolutely.

14 Now, did he do it to get five years cut off?
15 I'm sure he did, but the question is, did he lie? Just
16 because he did it to get some time off doesn't mean he
17 lied, because what it's going to come down to, and it's
18 in here, is his statement, and you'll have it back there.
19 Read it.

20 It is eerily similar, and identical, to what
21 he said on the stand. Why? Because it's the truth. If
22 you tell the truth, you don't have to have a good memory,
23 and he made that statement that you'll get to read 36
24 hours after the event.

25 You saw him up in the stand. He's not the

1 sharpest knife in the drawer. Do you honestly believe --
2 and Mr. Smiley will argue he had that statement in his
3 memory. He could have memorized it. Ten months later
4 he's going to memorize that whole ten-page statement and
5 hit every single detail? Why didn't he put in the
6 statement about this or that?

7 If I wrote a statement right now about what's
8 going on, I would leave some things out. I would
9 remember things later and stuff like that. Everyone does
10 that. Look at that statement and look at your notes of
11 what he said on that stand. It's identical. Why?
12 Because it's the truth.

13 He says I wouldn't ask you to take Chris's
14 word, but he did. He said believe Chris when he says,
15 Oh, they're drug dealers, but don't believe him when he
16 tells you everything else and corroborates everything
17 else with all of these other witnesses. You can't have
18 it both ways.

19 Amber never mentioned that there was a truck
20 outside. That's because she had a shotgun in her chest
21 and she was too busy fighting off people. She doesn't
22 have time to look around the corner and see if Carl's
23 truck is out there.

24 Where is Shawn? I think that came out in her
25 testimony they're up in Michigan. They work at the same

1 place. They couldn't both miss work. They don't get
2 reimbursed for work.

3 So the State had to choose. Which one do we
4 call? She's on the 911 tape. We call her. Why didn't
5 they take the TV? I don't know why criminals take the
6 things they take. What difference does it make? Why
7 would they take the van if they knew the truck was
8 outside? Christopher B. grabbed the keys. That's why, and
9 he testified Dristin said, No, leave it.

10 Okay. How did they get there? Did they
11 walk? Where were they going to go afterwards? Were they
12 going to carry all this stuff? Most burglars don't walk
13 and then carry TVs and stuff like that down the road.

14 They didn't need the van, that's why they
15 didn't take it, because they had the car outside, because
16 they knew good old Carl was waiting for them.

17 What do we know? I'll tell you what we know.
18 We know what the defense witnesses said. Okay? And I
19 can basically sum them up in about a minute, and
20 basically all three had one major theme: Chris had a
21 shotgun that day. They were all adamant, that he had a
22 shotgun on December 2nd. Okay?

23 Problem with their testimony is all three are
24 really good friends with Carl. Bias? All three are
25 contacted by Carl's girlfriend to write statements or to

1 come into court. In fact, the two that wrote statements
2 admitted, on the stand, the actual statements were
3 written by his girlfriend and they signed them.

4 And she actually -- or they testified
5 differently than what was written in the statement. They
6 never told anybody else about their story. They wrote
7 these statements back in April. Their good friend is
8 facing charges, and if they know they've got information
9 that could help him, they don't bother to call police.

10 MR. SMILEY: Your Honor, burden shifting.

11 THE COURT: Overruled.

12 MR. JUSTIS: They did not even know the
13 witnesses that signed the statements, that witnessed them
14 signing the statements. They didn't know the names. I
15 think one individual said he signed it at the flea
16 market, so these were supposedly signed at the flea
17 market. One of it was typed up, so I guess his
18 girlfriend must have brought the computer out to the flea
19 market, typed it up as they talked, printed it up, and
20 just signed it, unless she just typed up at home, brought
21 it and said, Here, sign this.

22 You know, if you -- now I submit to you
23 they're not believable, but if you believe them -- let's
24 assume you believe them. What did we learn? C is a
25 bad guy. Christopher does robberies. Christopher always got guns.
hr R R

1 Carl and ^{Christop}_{her R} are buddies because he works for Carl all
2 the time, and they were together that day, just like
3 Christopher B. says.

4 And defense counsel said Chris didn't come
5 back after December 3rd. That's why they know the date.
6 That's why they can remember the date. Even the one
7 gentleman thought he wrote the statement in November
8 before it ever even happened, but they know the date
9 because Chris stopped coming.

10 Carl was still coming because he wasn't
11 arrested until the 28th of December. Gives him enough
12 time to maybe talk to them.

13 You know, Kelsey and Karen, the Parkers, mom
14 and daughter, put all these at the house just down the
15 road, going to the store together, testified they take
16 the longer way back. Karen puts them together minutes
17 before, as I mentioned. Minutes before this burglary,
18 they were with her. She tells police that.

19 Kelsey talks about them being in the circle,
20 talking, and he makes it -- how could she hear him? How
21 could she hear him? She didn't say, you know, the window
22 was open -- she was honest. The window was closed, so I
23 stood up and said, Well, if the window was closed, how
24 could you hear?

25 And she said immediately, she said, I put my

1 ear to the wall.

2 So the defense would have you believe she's
3 so sophisticated she can come up with a response to my
4 question like that, on the stand, under pressure.

5 I submit to you she came up with an answer
6 because that's what she did. Again, why is he hanging
7 out there? He doesn't live there. Hanging out with a
8 bunch of teenagers because Christopher B. told us why:
9 Because they were planning. They were waiting till it
10 got dark.

11 Christopher B. told us what they did. They
12 went to Walmart, got the bullets. They had already
13 talked about it. Dristin was with them. I said, Where
14 did you get the rope? Carl's truck. Why does Carl have
15 rope in his truck? Because he transports appliances back
16 and forth because that's why they went back to his shop,
17 to take appliances back.

18 You take a washing machine on the back of
19 your pickup truck, driving down the road. You want to
20 tie it down. That's where they got the rope from. They
21 went back to Chris's house, changed into street clothes.
22 If it was Chris's gun, why didn't he just leave it at the
23 house? And Carl's with him. Carl gave him a ride home.
24 Chris doesn't drive. How does he get home? He got a
25 ride from that Paul individual in the morning, and people

1 said they left together, so he gave him a ride back to
2 his house, with this gun, and on the way he buys him
3 bullets for the gun? If he knows this kid is a bad kid,
4 always talking about robberies and stuff? Does that make
5 sense? Is that reasonable?

6 And then when he gets to the house, we're
7 going to go to Mama K's. Okay. I'm going to bring this
8 gun with me. Okay. Get in my truck. I'll take you with
9 the gun. I don't know what you're going to do with it,
10 but here's some bullets you can have. He knew what he
11 was doing. He knew what he was doing.

12 He knows what he's doing because when they
13 get in that truck to drive down , Christopher B.
14 testified that is when they put on the mask. That's when
15 they grabbed the rope. He has that gun, according to
16 Amber Fish, with the barrel sticking out. As they're
17 driving up, what does Carl do? Turn the lights off.
18 They're not going to buy weed. Going to buy weed, just
19 pull in the driveway, knock on the door, hey, got any
20 weed?

21 You don't need a gun. Don't need masks.
22 Don't need rope. If you bring those things, you're
23 assuming that you're going to need them, or you want to
24 be prepared. Somebody is going to be in there. We might
25 have to tie them up. We don't want them to see what we

1 look like, and if things get out of control, we got a gun
2 and, thanks to Carl, we got bullets to use for the gun
3 too.

4 That was his job in this whole burglary. Get
5 the young stupid kids, the muscle, to do the hard work,
6 and I'll sit around the corner. This way if I hear a
7 shot, I'm out of here. They're on their own. I can
8 just -- yeah, I saw -- they say they wanted to go see a
9 friend. I dropped them off at the house. I don't know.

10 MR. SMILEY: Objection. Arguing facts not in
11 evidence.

12 THE COURT: Sustained. Ladies and gentlemen:
13 As I indicated to you, what is contained in closing
14 arguments is merely the contention of the attorneys.

15 You may move on, Mr. Justis.

16 MR. JUSTIS: Yes, Your Honor. And then after
17 they commit the robbery, where do they go? In Carl's
18 truck. Where do they go from there? Christopher B. house.
19 What did he say? We smoked some weed, and then we split
20 up some stuff, and he tells police exactly what they're
21 going to find in that bag, exactly what they're going to
22 find.

23 And, as I mentioned, Amber Fish, she's a drug
24 dealer. The only way we have any inference of that is
25 Christopher B. says it, and Christopher B. tells him where to

1 find this evidence that he said he took from that house.
2 When police get to the house that night, Amber's house,
3 they don't find any of that. They don't find -- the
4 \$415, what happened with that? Because Chris said there
5 wasn't money. Amber is lying. She's lying about the
6 money.

7 Well, remember what she said: The money was
8 on the TV. It was rent money. Who was messing around
9 with the TV? Dristin. Where was Chris? He was running
10 through the house. I submit to you, while he's running
11 through the house, Dristin puts that money his pocket
12 kept his mouth shut.

13 That's why Chris didn't know about the money.
14 Dristin got the money. Dristin didn't want to share.
15 That's where the money went. That's why Chris doesn't
16 know, because she's saying on the 911 tape, \$415.

17 And then, you know, they took that stuff,
18 they bagged it up, hide it in the woods. He hides it in
19 the woods. Then they live. Dristin leaves with the
20 shotgun, and they all leave and go their separate ways
21 and police come.

22 The question I have is where is the gun?
23 And, if it's Chris's, because he's not going to let
24 somebody take his gun, and if it's Chris's where is the
25 gun? And Chris gave the statement, he gave them the mask

1 with his DNA. He gave them all the evidence that was in
2 the woods. He gave them everything. He gave them
3 everything they needed to convict him.

4 Why wouldn't he just say, Well, the gun is
5 such and such? I didn't carry the gun. I know where it
6 is. It's such and such? Because it wasn't his gun. He
7 didn't take the gun away from there. He says Dristin
8 took it.

9 I mean, it would hurt him nothing to say
10 where the gun was. He doesn't know, because he doesn't
11 know what happened to it that night when they left with
12 the gun.

13 Now, members of the jury, when you get
14 together, you plan a crime together, and you gather the
15 materials you need together, the rope, the mask, the gun,
16 and this is something that started occurring earlier in
17 the day. They were talking about it, and they go to all
18 these different places.

19 They go to the store. They buy bullets.
20 They go back. They change clothes. Chris changes
21 clothes. Carl doesn't need to change clothes because
22 he's not going in. Chris puts his street clothes on, I
23 submit to you, his burglary clothes. They do all that.
24 They go, they wait. How much more of a plan do you need?
25 He drives them there. He turns off the light. They're

1 dressing or putting their masks on in his car.

2 You would have to believe that everything
3 Christopher B. said was a lie, and why would he lie? It's
4 the same thing he said months ago, and he's pled to it.
5 He pled without a recommendation. There was no deal when
6 he made that first statement, no deal.

7 When you do all that, that's the hand of one.
8 That's what it is. It's not accessory before the fact.
9 It's not somebody letting you use their truck to commit a
10 burglary and then bringing it back. You help them
11 before, or picking them up or taking them somewhere after
12 they did a burglary. You can't be an accessory before
13 and after if you're at the scene, present at the scene
14 and participating.

15 MR. SMILEY: Objection, Your Honor.
16 Misstatement of the law.

17 THE COURT: Ladies and gentlemen: I will
18 instruct you on the law applicable to this case.

19 MR. JUSTIS: If you're present at the scene
20 and there is a pre-plan, you're a principal, and he's not
21 just sitting at the scene. He's a lookout. He's waiting
22 on him. You heard Karen Parker say she walked out her
23 door that night, police everywhere. But for Carl being
24 there to take him, police probably would have caught him
25 still in the neighborhood, carrying all the stuff, but he

1 provided them the means to escape just for a little
2 while, but to escape, and he brought them there. How did
3 they walk there?

4 Detective Cheek said those two neighborhoods,
5 where it happened and where Chris lives, is
6 five, ten minutes by car. You can't walk there in that
7 amount of time, but you could drive there pretty quick.

8 Finally, ladies and gentlemen, as I said,
9 hand of one is the hand of all. It's like that baseball
10 analogy. They were a team. They were a team, and
11 everybody has different functions on the team, much like,
12 you know, a pinch hitter. Like last night in the ball
13 game. Pinch hitter gets put in in the ninth inning.
14 Team's losing by a run. Comes in and hits a home run.

15 That was his part. He sat on the bench,
16 didn't do anything the entire night, but the pre-plan
17 was, I'm here if you need me.

18 That's what Carl was. He helped them out
19 before, helped them out after, and during it he was there
20 if they's needed. That's the hand of one. That's all
21 the hand of all.

22 So when you go back in that jury room and you
23 deliberate, the State asks that you return with a verdict
24 of guilty for two counts of kidnapping and one count of
25 burglary in the first degree against Carl Chaplin.

1 THE COURT: It's all or nothing. I send the
2 whole charge back. We're at ease.

3 (At 11:22 a.m., the jury retires to
4 deliberate.)

5 THE COURT: We have a verdict. Anything
6 before we bring in the jury, from the State?

7 MR. JUSTIS: Nothing from the State.

8 THE COURT: From the defense?

9 MR. SMILEY: No, Your Honor.

10 (1:08 p.m., in open court, jury present.)

11 THE COURT: Be seated. Mr. Foreman, I
12 understand you have reached a verdict. If you'll hand
13 the verdict forms to the bailiff. Madame clerk,
14 Mr. Chaplin: If you'll please rise.

15 THE CLERK: In the matter of the State of
16 South Carolina versus Carl Clyde Chaplin, indictment
17 2012-GS-18-128, we, the jury, find the defendant guilty
18 of kidnapping of Amber Fish. Signed by foreperson,
19 Michael {sic} Goodwin, October 11, 2012.

20 In the matter of State of South Carolina
21 versus Carl Clyde Chaplin, indictment 2012-GS-18-127, we,
22 the jury, find the defendant guilty of kidnapping of
23 Shawn Rabine. Signed by foreman, Reginald Goodwin,
24 October 11, 2012.

25 In the matter of State of South Carolina

1 versus Carl Clyde Chaplin 2012-GS-18-126 we, the jury,
2 find the defendant guilty of burglary first degree.
3 Signed by the foreperson, Reginald Goodman, October 11,
4 2012.

5 THE COURT: Anything further from the State?

6 MR. JUSTIS: Nothing from the State, Your
7 Honor.

8 MR. SMILEY: Ask they be polled, Judge.

9 THE COURT: Okay.

10 THE CLERK: When I call your name, please
11 stand.

12 THE COURT: If you will go by juror number.

13 THE CLERK: Juror 69, Reginald Goodman. Was
14 this your verdict in the jury room on all three counts?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Thank you. Juror 32, was this
19 your verdict in the jury room on all three counts?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Juror 25, was this your verdict
24 in the jury room on all three counts?

25 THE JUROR: Yes.

1 THE CLERK: Is it still your verdict.

2 THE JUROR: Yes.

3 THE CLERK: Thank you. Juror 45, was this
4 your verdict in the jury room on all three counts?

5 THE JUROR: Yes.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Thank you. Juror 30, was this
9 your verdict in the jury room on all three counts?

10 THE JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Thank you. Juror 105, was this
14 your verdict in the jury room on all three counts?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Thank you. Number 53, was this
19 your verdict in the jury room on all three counts?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Number 21, was this your verdict
24 in the jury room on all three counts?

25 THE JUROR: Yes, ma'am.

1 THE CLERK: Is it still your verdict?

2 THE JUROR: Yes, ma'am.

3 THE CLERK: Thank you. Number 98, was this
4 your verdict in the jury room on all three counts?

5 THE JUROR: Yes.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Thank you. Number 92, was this
9 your verdict in the jury room on all three counts?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: Thank you. Number 71, was this
14 your verdict in the jury room on all three counts?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Thank you. And, number 90, was
19 this your verdict in the jury room on all three counts?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Thank you.

24 THE COURT: Anything further?

25 MR. SMILEY: Nothing for the jury.

1 THE COURT: Okay. Is the State prepared for
2 sentencing at this time?

3 MR. JUSTIS: State is, Your Honor. We might
4 need one single moment.

5 THE COURT: Mr. Smiley, is the defendant
6 prepared for sentencing at this time?

7 MR. SMILEY: Yes, ma'am.

8 THE COURT: All right. Is there any
9 additional testimony the State wishes to present?

10 MR. JUSTIS: As far as the facts, no, Your
11 Honor. I think the Court and the jury heard all the
12 facts. The only additional thing would be the
13 defendant's prior record.

14 THE COURT: Let me hear about the prior
15 record.

16 MR. JUSTIS: As far as convictions, Your
17 Honor, back in 1972, the defendant was convicted of house
18 breaking, grand larceny, safe cracking, and escape; 1979,
19 shoplifting; 1981, three counts of house breaking, three
20 counts of grand larceny; 1985, two counts of breaking and
21 entering an automobile, one count of burglary in the
22 second degree, one count of financial transaction card
23 fraud; 1994, one count of grand larceny; 1997, two counts
24 of burglary in the second degree, and one count of grand
25 larceny.

1 That is the extent of his prior convictions
2 Your Honor.

3 THE COURT: What was the sentence received in
4 '97?

5 MR. JUSTIS: The last sentence, I believe,
6 was five years probation, and he did receive 15 years
7 earlier on one of the --

8 THE COURT: 15 years active on the 1985
9 sentence?

10 MR. JUSTIS: Yes, Your Honor.

11 THE COURT: Mr. Justis, just so I'm correct,
12 the possible punishment as to burglary in the first
13 degree?

14 MR. JUSTIS: It's 15 years to life, Your
15 Honor.

16 THE COURT: All right. And that is a violent
17 and most serious?

18 MR. JUSTIS: It is violent and most serious.

19 THE COURT: And as to kidnapping, zero to 30?

20 MR. JUSTIS: Zero to 30. That is also
21 violent and most serious, Your Honor.

22 THE COURT: And anything further from the
23 State?

24 MR. JUSTIS: Nothing further from the State,
25 Your Honor.

1 THE COURT: All right. Mr. Smiley, I'll be
2 happy to hear from you, your client, or anyone else
3 regarding sentencing.

4 MR. SMILEY: Yes, ma'am. From here or
5 from --

6 THE COURT: Wherever you're comfortable.

7 MR. SMILEY: Your Honor, I have some motions
8 that I will do afterwards, just to make sure, and before
9 I forget, I would ask you, before we even begin, if I
10 have to make a finding on the record that there's no
11 sexual element to the kidnapping so he's not placed on
12 any registry. I just do that before I forget.

13 I've known Carl since I practiced law. I met
14 Carl about 1995. I represented him in 1997, and after he
15 got his probation, he got his life on track. Carl
16 started a business, he meet Deidra, the young lady that's
17 been with him the whole time, and his sister Brenda
18 that's with him, been here through the trial.

19 Carl started slowly, because he had a rough
20 past, as he started this appliance business, and he's
21 always been a good handyman and he worked around my
22 office. As a matter of fact, he went and painted Ms.
23 Hensley's house inside as a way to work off some of the
24 stuff I had done for him.

25 Your Honor, I never expected to get a call

1 from Carl again. I mean, he's had a good life going. He
2 was building. He was doing great, and years went by that
3 I didn't hear from him until this incident came up, and I
4 was quite surprised that he would ever get rearrested,
5 Your Honor, for anything.

6 And I took this case pro bono. I'm not being
7 paid, Your Honor. I believed in Carl, still do, and I
8 respect the jury's verdict. I'm not by any means
9 downplaying that, Your Honor.

10 Carl's 58 years old; is that right? 58 years
11 old, Your Honor. Deidra has been his companion for the
12 last 15 years, and she knows nothing but a good man. She
13 doesn't know his past. And he has a past, you can't get
14 away from that.

15 Your Honor, as I think you've heard the
16 facts -- I'm not going to go into the facts in this case
17 in front of you. Your Honor, he did provide a statement
18 to the police when he went in on the 28th. He maintained
19 that his only involvement was to drive them away, and he
20 believed that they were buying -- or buying marijuana
21 that night.

22 He admits he was wrong to even be out there.
23 If he had to do it over, he would have left Chris's house
24 and he wouldn't have gone anywhere else and would have
25 gone home. I would ask you for a minimum sentence on

1 this. The most culpable is, obviously, the young man
2 that you heard from, seen his situation in this case.
3 Any sentence you give him is going to be -- well, not
4 life, but certainly life changing.

5 That's all I got, Judge.

6 THE COURT: All right. Mr. Chaplin, I'm
7 going to assume that your attorney has advised you of
8 your appeal rights; is that correct?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: You have the right to appeal this
11 sentence that I'm about to impose on you, but you must do
12 so within ten days.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you wish to address the Court
16 at this time?

17 THE DEFENDANT: I'm sorry it happened. I
18 didn't know it was going to happen like this, Your Honor,
19 and I just ask you to have mercy on me. That's all.

20 THE COURT: You understand that all three of
21 these indictments are classified as violent and most
22 serious. Do you understand what that means?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Has Mr. Smiley explained to you
25 the significance of that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you have any questions for the
3 Court concerning anything that has happened here this
4 week before I impose sentence?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Mr. Smiley, is there anyone else
7 you wish for the Court to hear from?

8 MR. SMILEY: I think they're here in support.
9 I think she's a little too upset to speak. I think you
10 noticed her support throughout, so no, ma'am.

11 THE COURT: All right. Mr. Chaplin, I have
12 listened to the facts of this case all week. I took
13 Mr. Baty's plea. I listened to the facts as presented to
14 the jury, and I disagree with your attorney. You are the
15 most culpable one. You may not have gone in there, but
16 you knew, 58, 57 years old and with the criminal history
17 that you have -- and I'll take your attorney's word that
18 you had turned your life around, but you knew what you
19 were doing, and there was no doubt in my mind, based upon
20 the testimony of your friends that testified yesterday,
21 that everyone knew the behavior and what Mr. Baty and
22 Mr. Johnson were doing, and you, of all people, took him
23 to Walmart and bought bullets for a 16-year-old. So in
24 my mind you are the most culpable.

25 It is the order of the Court on indictment

1 2012-GS-18-126, 127, and 128 they will all run
2 concurrent, that you be committed to the State Department
3 of Corrections for a term of 20 years. Give you credit
4 for the time that you have served. I am making a finding
5 on 127 and 128 that there is to be no sexual registry
6 pursuant to the statute which requires that the Court
7 make that finding.

8 Mr. Chaplin, again, you have ten days to
9 appeal this sentence. Good luck to you.

10 MR. SMILEY: Only thing I would say further
11 is the State did not go forward on a criminal conspiracy
12 indictment. I ask that be dismissed on the record.

13 MR. JUSTIS: And the State will null prosee
14 that.

15 MR. SMILEY: And, additionally, there is the
16 amended indictment with the same number --

17 THE COURT: We are going -- you will need to
18 let me know how we're going to address that indictment,
19 so we'll need to address that.

20 MR. SMILEY: Lastly, Your Honor, thank you
21 very much for the trial. We respect the jury's verdict,
22 and thank you very much.

23 THE COURT: Good luck to you, Mr. Chaplin.
24 Thank you.

25 MR. JUSTIS: Thank you, Your Honor.

WITNESSES

A Smith

Dorchester County Sheriff

ARREST WARRANT NUMBER
M472555

Arrested: December 28, 2011

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: March 1, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS18-0126

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

March 5, 2012 TERM

THE STATE
vs.

Carl Clyde Chaplin

Indictment for

BURGLARY - FIRST DEGREE

SC Code: 16-11-311

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

[Signature]
CLERK OF COURT
DORCHESTER COUNTY
2012 NOV 28 AM 10:25
CERTIFIED COPY

FILED - RECORDED
2012 MAR - 1 PM 2:10
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2012GS18-0126

At a Court of General Sessions, convened on March 5, 2012 the Grand Jurors of
Dorchester County present upon their oath:

BURGLARY - FIRST DEGREE

That in Dorchester County, South Carolina, on or about December 3, 2011, the
Defendant, Carl Clyde Chaplin, did willfully and unlawfully enter the dwelling of
Shawn Rabine, without consent and with the intent to commit a crime therein and
the defendant or another participant in the crime was armed with a deadly
weapon and/or the entry occurred during the nighttime. This offense being a
violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

CERTIFIED COPY
2012 NOV 28 AM 10:25
Christy Williams
CLERK OF COURT
DORCHESTER COUNTY

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided

JUSTIS

Glenn P. Justis
Glenn P. Justis, Solicitor

WITNESSES

A Smith

Dorchester County Sheriff

ARREST WARRANT NUMBER
M472556

Arrested: December 28, 2011

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: March 1, 2012

VERDICT

Foreperson of Petit Jury

DOCKET NO. 2012GS18-0127

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS
March 5, 2012 TERM

THE STATE
vs.

Carl Clyde Chaplin

Indictment for
KIDNAPPING

SC Code: 16-3-910

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED--RECORDED
2012 MAR - 1 PM 2:10
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
[Signature]
2012 NOV 28 AM 10:25
CERTIFIED COPY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2012GS18-0127

At a Court of General Sessions, convened on March 5, 2012 the Grand Jurors of
Dorchester County present upon their oath:

KIDNAPPING

That in Dorchester County, South Carolina, on or about December 3, 2011, the
Defendant, Carl Clyde Chaplin, unlawfully did seize, confine, inveigle, decoy,
kidnap, abduct or carry away the victim, Shawn Rabine, without authority of law.
This offense in violation of Section 16-03-910, of the South Carolina Code of
Laws, as amended

CERTIFIED COPY
2012 NOV 28 AM 10:25
Christy Williams
CLERK OF COURT
DORCHESTER COUNTY

Against the peace and dignity of the State; and contrary to the statute in
such case made and provided

JUSTIS

Glenn P. Justis
Glenn P. Justis, Solicitor

WITNESSES

A Smith

Dorchester County Sheriff

ARREST WARRANT NUMBER
M472557

Arrested: December 28, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: March 1, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS18-0128

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

March 5, 2012 TERM

THE STATE
vs.

Carl Clyde Chaplin

Indictment for
KIDNAPPING

SC Code: 16-3-910

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2012 NOV 28 AM 10:28
CERTIFIED COPY
Clerk of Court
DORCHESTER COUNTY
Clerk of Court
DORCHESTER COUNTY

FILED - RECORDED
2012 MAR - 1 PM 2:10
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2012GS18-0128

At a Court of General Sessions, convened on March 5, 2012 the Grand Jurors of
Dorchester County present upon their oath:

KIDNAPPING

That in Dorchester County, South Carolina, on or about December 3, 2011, the
Defendant, Carl Clyde Chaplin, unlawfully did seize, confine, inveigle, decoy,
kidnap, abduct or carry away the victim, Amber Fish, without authority of law.
This offense in violation of Section 16-03-910, of the South Carolina Code of
Laws, as amended

CERTIFIED COPY
2012 NOV 28 AM 10:25
Cheryl Williams
CLERK OF COURT
DORCHESTER COUNTY

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided

JUSTIS

Glenn P. Justis

Glenn P. Justis, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF STATE

Dorchester

VS Carl Clyde Chaplin

AKA:

Race: W Sex: M Age: 58

DOB: SS#:

Address:

North Charleston, SC 29405

DL#: SID#:

CDL: Yes No CMV: Yes No Hazmat: Yes No

In disposition of the said Indictment comes now the Defendant who was:

TO: Burglary - First Degree

In violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Glenn P. Justis, Jr. Justis, Glenn P.

76606 SC Bar#

Carl Clyde Chaplin

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2012-GS-18-127 & 128 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Dept. of Corrections The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS: RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$ Payment Terms: set by SCDPPPS Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like 14-1-206 (Assessments 107.5%), 14-1-211(A)(1) (Conv. Surcharge) \$100, 14-1-211(A)(2) (DUI Surcharge) \$100, 56-5-2995 (DUI Assessment) \$12, 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, 73.3, 1B TP (Law Enforce. Funding) \$25, 33.7, 1B TP (Drug Court Surcharge) \$150, 50-21-114 (BUI Breath Test Fee) \$50, 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Cheryl Graham Clerk of Court/ Deputy Clerk Amanda Shepherd

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS18-0126 AAW#: M472555 Date of Offense: 12/3/2011 S.C. Code § 16-11-311 CDR Code #: 0079

SENTENCE SHEET

CONVICTED OF or PLEADS

days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning \$ paid to Public Defender Fund Other:

Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition. Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Justis, Glenn P. Judge Code: 251 Sentence Date: 10/11/12

Vertical stamp: CERTIFIED COPY 2012 NOV 28 AM 10:25 CLERK OF COURT DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester)
STATE VS)
Carl Clyde Chaplin)
AKA: _____)
Race: W Sex: M Age: 58)
DOB: _____ SS#: _____)
Address: _____)
North Charleston, SC 29405)
DL#: _____ SID#: _____)

CDL: Yes No CMV: Yes No Hazmat: Yes No
In disposition of the said indictment comes now the Defendant who was:

TO: Kidnapping

In violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant Initial)

The plea is: Without Negotiations or Recommendation; Negotiated Sentence, Recommendation by the State.

ATTEST: Glenn R. Justis SC Bar# 76606 Carl Clyde Chaplin Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 20 days/months/years or under the Youthful Offender Act, not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2012-G-S-18-126 & 128
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Dept. of Corrections
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

| *Fine: | \$ |
|--|-----------|
| 14-1-206 (Assessments 107.5 %)* | \$ |
| § 14-1-211(A) (1)(Conv. Surcharge) | \$ 100 |
| § 14-1-211(A)(2) (DUI Surcharge) | \$ 100 |
| § 56-5-2995 (DUI Assessment) | \$ 12 |
| § 56-1-286 (DUI Breath Test) | \$ 25 |
| Proviso 47.9 (Public Def/Prob) | \$ 500 |
| § 73.3, 1B TP (Law Enforce. Funding) | \$ 25 |
| § 33.7, 1B TP (Drug Court Surcharge) | \$ 150 |
| § 50-21-114 (BUI Breath Test Fee) | \$ 50 |
| § 56-5-2942(J) (Vehicle Assessment) | \$ 40/ea |
| Proviso 90.5 (SCCJA Surcharge) | \$ 5 |
| § 44-53-450(C) (Conditional Discharge) | \$ 350 |
| 3% to County (if paid in installments) | \$ 3.90 |
| TOTAL | \$ 133.90 |

Cheryl Graham
Clerk of Court/Deputy Clerk

Court Reporter: Amanda Hoffender

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS18-0127
A/W#: M472556
Date of Offense: 12/3/2011
S.C. Code § 16-3-910
CDR Code #: 0095

SENTENCE SHEET

CONVICTED OF or PLEADS

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

no sexual offender registry

Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE: Kristina King
Judge Code: 7251

Sentence Date: 10/18/12

2012 NOV 28 AM 10:25
CERTIFIED COPY
Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
STATE VS Carl Clyde Chaplin
AKA:
Race: W Sex: M Age: 58
DOB: SS#:
Address: 22 North Charleston, SC 29405
DL#: SID#:

CDL: Yes No CMV: Yes No Hazmat: Yes No

In disposition of the said indictment comes now the Defendant who was:
TO: Kidnapping

in violation of 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

Justis, Glenn P. SC Bar# Carl Clyde Chaplin Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2012-05-18-126+127
The Defendant is to be given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Dept. of Corrections
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65
(Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
RESTITUTION: Deferred Def. Waives Hearing Ordered
PTUP
days/hours Public Service/employment

Total: \$ plus 20% fee: \$
Payment Terms:
set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like 14-1-206 (Assessments 107.5%), 14-1-211(A)(1) (Conv. Surcharge) \$100, 14-1-211(A)(2) (DUI Surcharge) \$100, 56-5-2995 (DUI Assessment) \$12, 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, 73.3, 1B TP (Law Enforce. Funding) \$25, 33.7, 1B TP (Drug Court Surcharge) \$150, 50-21-114 (BUI Breath Test Fee) \$50, 58-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCJA Surcharge) \$5, 44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Cheryl Graham Clerk of Court/ Deputy Clerk
Amanda Henderson Court Reporter

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS18-0128
AW#: M472557
Date of Offense: 12/3/2011
S.C. Code: 16-3-910
CDR Code #: 0095

SENTENCE SHEET

CONVICTED OF or PLEADS

CERTIFIED COPY
2012 MAY 28 AM 10:25
CLERK OF COURT
DORCHESTER COUNTY
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning
paid Public Defender Fund

Other: Sexual
No Registry required

Conditional Discharge 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.
Appointed PD or appointed other counsel, 47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE: Justis, Glenn P.
Judge Code:
Sentence Date: 10/11/12
SCCA/217 (06/2010)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 10th, 2014



Benjamin John Tripp
Appellate Defender


South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 10th, 2014



Benjamin John Tripp
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Dorchester County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.


CARL CHAPLIN,

APPELLANT

APPELLATE CASE NO. 2012-213297

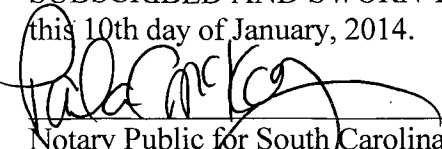
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of January, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 10th day of January, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

RECEIVED

JAN 10 2014

SC Court of Appeals