

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Newberry County

Eugene C. Griffith, Jr., Circuit Court Judge

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APR 24 2014

S.C. Supreme Court

ROY JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001617

APPENDIX

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STATE OF SOUTH CAROLINA)
VS.) TRANSCRIPT OF RECORD
)
ROY JOHNSON)
DEFENDANT)

JUNE 15, 2009
NEWBERRY, SOUTH CAROLINA

B E F O R E:

HONORABLE GARRISON HILL, JUDGE.

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

MINDY ZIMMERMAN, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

CHAD JENKINS, ESQ.
ATTORNEY FOR THE DEFENDANT

JOY E. HOLSTON
OFFICIAL COURT REPORTER

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1

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(IC) - DENOTES IN CAMERA
(DW) - DENOTES DEFENSE WITNESS
(SW) - DENOTES STATE'S WITNESS

3

4

5

6

7

SW ROBERT DENNIS

8

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SW RICHARD COFER

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DIRECT EXAMINATION BY MS. ZIMMERMAN:

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SW ROBIN COFER

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21	41	PHOTOGRAPH		X	104
22	42	PHOTOGRAPH		X	104
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6	72	PHOTOGRAPH		X	104
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3	1	REQUEST FOR CHARGE	X		220
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1 THE COURT: YES MA'AM, MS. ZIMMERMAN.

2 MS. ZIMMERMAN: THANK YOU, YOUR HONOR, MAY IT PLEASE
3 THE COURT. THIS IS THE CASE OF THE STATE VERSUS ROY
4 JOHNSON CHARGED ON INDICTMENT 08-311 WITH BURGLARY FIRST,
5 08-312 WITH ARMED ROBBERY, 08-313 WITH KIDNAPPING, 08-314
6 WITH ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE
7 AND 08-315 WITH POSSESSION OF A WEAPON DURING THE
8 COMMISSION OF A VIOLENT CRIME. THIS IS THE CASE THAT THE
9 STATE INTENDS TO MOVE FORWARD ON THIS AFTERNOON WHEN THE
10 JURY COMES IN. AND WE NOW HAVE A FEW PRELIMINARY MOTIONS
11 FOR THE STATE AND FROM THE DEFENSE. I CAN PROCEED WITH MY
12 MOTIONS.

13 THE COURT: YES, MA'AM.

14 MS. ZIMMERMAN: THIS MATTER WAS HEARD IN JANUARY OF
15 THIS YEAR AND AT THAT TIME THE STATE CALLED A WITNESS, MR.
16 B.R. HUNTER TO THE STAND. MR. HUNTER HAS NOW PASSED AWAY
17 AND THE STATE HAS WHAT HAS PREVIOUSLY BEEN MARKED AS
18 STATE'S 112 WHICH IS HIS OBITUARY. THE STATE WOULD INTEND
19 TO MOVE STATE'S 108 WHICH IS THE TRANSCRIPT OF HIS
20 TESTIMONY INTO EVIDENCE AT THIS TRIAL SINCE HE IS
21 UNAVAILABLE TO TESTIFY AND THE DEFENSE DID HAVE THE
22 BENEFIT TO CROSS-EXAMINE HIM AT THE PREVIOUS TRIAL.

23 THE COURT: YES, MR. JENKINS.

24 MR. JENKINS: YOUR HONOR, WE DON'T OBJECT TO HIS
25 TESTIMONY COMING IN. I THINK THERE MAY BE BE A REDACTION

1 TO THE EXHIBIT THAT SHE IS REFERRING TO THAT WERE REFERRED
2 TO IN THE PREVIOUS TRIAL, IF THERE IS ANYTHING THAT
3 INDICATES THAT THERE WAS ACTUALLY A TRIAL. THAT IS ONE OF
4 MY MOTIONS, JUST THE TESTIMONY ITSELF WE DON'T OBJECT.

5 MS. ZIMMERMAN: IF IT HELPS, I INTEND TO CALL ANOTHER
6 INDIVIDUAL TO ACTUALLY READ THE TRANSCRIPT SO WE CAN
7 STIPULATE THAT A WRITTEN COPY OF THE TRANSCRIPT DOESN'T GO
8 BACK, JUST THAT THE JURY GETS TO HEAR THE QUESTIONS AND
9 ANSWERS THAT WOULD OF BEEN PRESENTED AT THE ORIGINAL
10 TRIAL.

11 MR. JENKINS: I DON'T OBJECT.

12 THE COURT: ALL RIGHT.

13 MS. ZIMMERMAN: IN ADDITION, THE STATE INTENDS TO USE
14 STATE'S 3 AND 4 WHICH ARE PHOTOGRAPHS OF THE VICTIM AND
15 STATE'S 100 DURING OPENING STATEMENT. WE INTEND TO,
16 DURING OPENING STATEMENT WE INTEND THAT THESE ITEMS WOULD
17 COME INTO EVIDENCE DURING THE TRIAL. I BELIEVE LAST TIME
18 THAT WAS STIPULATED TO.

19 MR. JENKINS: NO OBJECTION, TO THAT.

20 THE COURT: OKAY.

21 MS. ZIMMERMAN: NO FURTHER MOTIONS FROM THE STATE.

22 THE COURT: YES SIR, MR. JENKINS.

23 MR. JENKINS: YES SIR, I WILL HAND UP A WRITTEN, A
24 COPY AND I THINK WE HAVE AGREED ON THESE, YOUR HONOR, BUT
25 I WANT TO MAKE IT CLEAR AND HAVE IT ON THE RECORD. MR.

1 JOHNSON DOES NOT HAVE ANY PRIOR RECORD WHICH WOULD BE
2 IMPEACHABLE, EVIDENCE OR IMPEACHMENT OR OTHERWISE. AND I
3 BELIEVE MS. ZIMMERMAN AGREES WITH THAT, THAT IS NUMBER
4 ONE.

5 MS. ZIMMERMAN: THE STATE WOULD AGREE WITH THAT.

6 MR. JENKINS: YOUR HONOR, HE DOES HAVE SOME OTHER
7 PENDING CHARGES, OF COURSE HE HAS NOT BEEN FOUND GUILTY OF
8 THOSE CHARGES AND WE WOULD MOVE THAT THOSE NOT BE REFERRED
9 TO.

10 MS. ZIMMERMAN: THE STATE WOULD AGREE TO THAT.

11 MR. JENKINS: YOUR HONOR, THERE WAS SOME
12 CORRESPONDENCE, I BELIEVE, AND I DON'T THINK IT ADDS
13 ANYTHING, THE LAST TIME WE DID AGREE WITH THIS AND I THINK
14 WE WILL AGAIN. BUT THERE WAS SOME CORRESPONDENCE FROM MY
15 CLIENT TO HER, I GUESS I WOULD ARGUE, THAT WAS BEFORE I
16 WAS APPOINTED. AND I DO BELIEVE THAT SHE DOES NOT INTEND
17 TO USE THAT IN ANY WAY.

18 MS. ZIMMERMAN: THE STATE WOULD AGREE WITH THAT.

19 MR. JENKINS: AND, YOUR HONOR, THERE WAS A PREVIOUS
20 TRIAL IN THIS MATTER. I HAVE DISCUSSED WITH MS. ZIMMERMAN
21 THE POSSIBILITY OF US HAVING THE WITNESSES AND/OR THE
22 ATTORNEYS NOT INDICATED AT A PREVIOUS HEARING IN THIS
23 MATTER SO THAT THIS JURY DOESN'T, ISN'T AWARE OR NOTIFIED
24 SPECIFICALLY THAT THERE WAS ANOTHER TRIAL ACTUALLY IN THIS
25 MATTER THAT RESULTED IN A HUNG JURY.

1 MS. ZIMMERMAN: THE STATE WOULD AGREE WITH THAT.

2 MR. JENKINS: WE ARE MAKING IT EASY SO FAR. YOUR
3 HONOR, I THINK WE WILL HAVE A JACKSON V. DENNO HEARING,
4 THERE ARE SOME STATEMENTS BY MY CLIENT, THAT IS ON THE
5 SECOND PAGE, I AM JUST ASKING FOR A PRETRIAL HEARING. AND
6 I THINK THEY ARE READY TO GO FORWARD WITH THAT SHORTLY
7 AFTER I FINISH UP TAKING HERE. AND ANY IN COURT OR OUT OF
8 COURT IDENTIFICATION OF THE DEFENDANT BY ANY OTHER PERSON
9 OTHER THAN, I BELIEVE WE STIPULATED LAST TIME THAT THE TWO
10 CODEFENDANTS WHO HAVE ALREADY PLEAD, THE OTHER WITNESSES
11 AT THE SCENE OR THE OTHER WITNESSES WOULD NOT BE
12 IDENTIFYING MR. JOHNSON EITHER IN COURT OR OUT OF COURT
13 IDENTIFICATION.

14 MS. ZIMMERMAN: ACTUALLY, THE THREE CODEFENDANTS, I
15 WOULD CONSIDER MR. ASHFORD COULD IDENTIFY ROY AS SHOWING
16 UP AT THE HOUSE.

17 MR. JENKINS: CORRECT. CHAUNCEY PARTLOW, AUSTIN
18 PARTLOW OR WILLIE ASHFORD. OTHER THAN THAT WE DON'T THINK
19 THAT ANYONE CAN IDENTIFY MR. JOHNSON.

20 MS. ZIMMERMAN: THE STATE AGREES WITH THAT, THE
21 VICTIMS CANNOT IDENTIFY HIM.

22 THE COURT: OKAY.

23 MS. ZIMMERMAN: WE ARE READY TO PROCEED WITH THE
24 JACKSON V. DENNO.

25 THE COURT: ALL RIGHT, YOU MAY CALL YOUR FIRST

1 WITNESS.

2 MS. ZIMMERMAN: THE STATE CALLS ROBERT DENNIS.

3 ROBERT DENNIS, AFTER BEING DULY SWORN, TESTIFIED
4 AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. ZIMMERMAN:

7 Q STATE YOUR NAME, PLEASE.

8 A MY NAME IS ROBERT DENNIS, I AM A LIEUTENANT WITH THE
9 NEWBERRY COUNTY SHERIFFS OFFICE.

10 Q LIEUTENANT DENNIS, WERE YOU INVOLVED IN THE
11 INVESTIGATION OF THIS CASE?

12 A YES MA'AM, I WAS.

13 Q AND WHAT WAS YOUR ROLE IN THAT INVESTIGATION?

14 A AT THAT TIME I WAS SERGEANT OVER THE INVESTIGATIONS
15 UNIT, WAS NOTIFIED BY NEWBERRY COUNTY DISPATCH THAT THEY
16 HAD HAD A HOME INVASION OUT ON HIGHWAY 34 AND ORCHARD PARK
17 WHICH IS IN THE, GOING TOWARD FAIRFIELD ON HIGHWAY 34 JUST
18 OVER THE INTERSTATE AND ASKED THAT I RESPOND WITH THE
19 OTHER UNITS THAT WERE ALREADY OUT THERE.

20 Q NOW, FAST FORWARD THROUGH SOME OF THE TESTIMONY THAT
21 WE DON'T NEED FOR PURPOSES OF THIS HEARING. DID YOU AT
22 ANY TIME DEVELOP THE DEFENDANT, MR. JOHNSON AS A SUSPECT?

23 A YES, WE DID. WE WERE INVESTIGATING THE ORCHARD PARK
24 INCIDENT. WE DEVELOPED THREE SUSPECTS AND MR. JOHNSON WAS
25 ONE OF THOSE SUSPECTS.

1 Q AND SUBSEQUENT DID YOU HAVE ANY DIRECT INTERACTION
2 WITH MR. JOHNSON?

3 A YES, I DID. MR. JOHNSON WAS TAKEN INTO CUSTODY UP IN
4 NORTH CAROLINA AND ONCE WE WAIVED HIS RIGHTS FOR
5 EXPEDITION, BASED ON OUR WARRANTS THAT WERE ISSUED FOR
6 HIM, I WENT UP AND PICKED HIM UP ALONG WITH ANOTHER
7 DEPUTY.

8 Q WHO WAS THE OTHER DEPUTY?

9 A DEPUTY RYAN DICKERT.

10 Q AND I AM NOT SURE, WHERE DID YOU GO TO PICK HIM UP?

11 A WE WENT TO GASTONIA, NORTH CAROLINA.

12 Q TELL ME ABOUT THE CIRCUMSTANCES ONCE YOU ARRIVED IN
13 GASTONIA?

14 A ONCE WE ARRIVED IN GASTONIA, THERE WAS A TRANSFER
15 FROM THE NORTH CAROLINA JAIL TO US. WE GOT THE PAPER WORK
16 AND MR. JOHNSON AS WELL AS HIS BELONGINGS AND WE WENT OUT
17 TO OUR VEHICLE. ONCE WE GOT TO THE VEHICLE MR. JOHNSON
18 WAS GIVEN HIS MIRANDA RIGHTS WHICH WE DO ON A MIRANDA
19 RIGHTS FORM THROUGH THE SHERIFFS OFFICE.

20 Q I AM GOING TO SHOW YOU STATE'S EXHIBIT 101, TELL ME
21 WHAT THIS IS.

22 A THIS IS A NEWBERRY COUNTY SHERIFFS OFFICER RIGHTS
23 FORM THAT WE USE AND IT IS DATED 1/9/08 WITH ROY JOHNSON,
24 JR.'S INFORMATION ON IT.

25 Q AND WHAT IS THE PURPOSE OF THAT FORM?

1 A THE PURPOSE OF THIS FORM IS WE, AT THE TOP HALF WE
2 IDENTIFY THE INDIVIDUAL THAT WE ARE TALKING TO AS WELL AS
3 THE NAME AND TIME. THE MIDDLE PORTION OF THE RIGHTS FORM
4 IS THE MIRANDA RIGHTS, WE GIVE THOSE TO THE INDIVIDUALS
5 WHEN WE GET READY TO QUESTION THEM ABOUT A PARTICULAR
6 CRIME.

7 Q AND DID YOU USE THIS FORM WHEN YOU WERE ADVISING MR.
8 JOHNSON OF HIS RIGHTS?

9 A YES, THIS FORM WAS USED WHEN I READ MR. JOHNSON HIS
10 RIGHTS THERE IN THE MIDDLE. THERE IS A SECTION WHERE IT
11 SAYS, I HAVE READ THIS STATEMENT OF MY RIGHTS AND I
12 UNDERSTAND WHAT MY RIGHTS ARE. MR. JOHNSON SIGNED, IN HIS
13 OWN HANDWRITING.

14 MS. ZIMMERMAN: MOVE STATE'S 101 IN FOR THE PURPOSES
15 OF THIS HEARING.

16 THE COURT: ANY OBJECTION?

17 MR. JENKINS: NO OBJECTION.

18 THE COURT: IT IS IN EVIDENCE.

19 (WHEREUPON, STATE'S EXHIBIT NO. 101 WAS ADMITTED INTO
20 EVIDENCE.)

21 Q NOW, TELL ME WHERE YOU WERE WHEN THE RIGHTS WERE
22 REVIEWED?

23 A WE WERE IN THE SALLY PORT OF THE GASTONIA DETENTION
24 CENTER. WHENEVER WE GOT READY TO READ THE RIGHTS, BECAUSE
25 I TOLD HIM WE WERE GOING TO BE RIDING, TO GET THE RIGHTS

1 OUT OF THE WAY BECAUSE IT WAS GOING TO BE AN AUDIO
2 RECORDING.

3 Q AND AFTER YOU ADVISED HIM HIS RIGHTS WHAT HAPPENED?

4 A AFTER HE WAS ADVISED OF HIS RIGHTS THERE IS THE LAST
5 PART OF THE RIGHTS FORM WHICH IS A WAIVER. HE WAS ASKED,
6 I AM WILLING TO MAKE A STATEMENT, ANSWER QUESTIONS, I DO
7 NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW
8 WHAT I AM DOING, NO PROMISES OR THREATS HAVE BEEN MADE TO
9 ME AND NO PRESSURE OR COERCION USED AGAINST ME. HE
10 INDICATED THAT HE WAS GOING TO TALK TO ME WITHOUT THE
11 PRESENCE OF A LAWYER AND HE INDICATED THAT BY SIGNING HIS
12 NAME, ROY JOHNSON, JR. IN HIS OWN HANDWRITING.

13 Q I WILL NOW SHOW YOU STATE'S EXHIBIT 86, CAN YOU TELL
14 ME WHAT THAT IS.

15 A THIS IS THE CD OF THE, UNTIL I HEAR IT, WILL BE THE
16 INTERVIEW OF ROY JOHNSON, JR.

17 Q TELL ME WHERE THIS INTERVIEW WAS CONDUCTED?

18 A THIS INTERVIEW WAS CONDUCTED IN THE, MY VEHICLE, RYAN
19 DICKERT WAS DRIVING THE VEHICLE, ROY JOHNSON WAS SITTING
20 IN THE FRONT PASSENGER SEAT AND I WAS SITTING IN THE REAR
21 PASSENGER SEAT BEHIND THE DRIVER.

22 Q AND WAS THIS WHILE YOU WERE IN TRANSIT BACK TO SOUTH
23 CAROLINA?

24 A THAT IS CORRECT.

25 Q AT ANY TIME DURING THE COURSE OF THE INTERVIEW DID

1 MR. JOHNSON INDICATE THAT HE WANTED TO STOP TALKING OR TO
2 CONSULT WITH AN ATTORNEY?

3 A NO, HE DID NOT.

4 Q AND WAS HE ADVISED AGAIN OF HIS RIGHTS DURING THE
5 COURSE OF THAT STATEMENT?

6 A YES MA'AM, HE WAS.

7 MS. ZIMMERMAN: REQUEST TO PLAY STATE'S 86.

8 MR. JENKINS: NO OBJECTION.

9 THE COURT: ALL RIGHT.

10 (WHEREUPON, A CD WAS PLAYED STARTING AT 10:30 A.M.
11 AND ENDED AT 10:45 A.M.)

12 MS. ZIMMERMAN: YOUR HONOR, THE DEFENSE HAS
13 STIPULATED THAT THEY DON'T HAVE ANY OBJECTION ENDING THE
14 CONTENT AT THIS POINT.

15 MR. JENKINS: NO OBJECTION STOPPING AT THAT POINT.

16 Q NOW, LIEUTENANT DENNIS, I AM GOING TO SHOW YOU
17 STATE'S 102 AND 103, TELL ME WHAT THESE DOCUMENTS ARE.

18 A YES MA'AM, STATE'S 102 IS ONCE AGAIN IS THE NEWBERRY
19 COUNTY SHERIFFS OFFICE RIGHTS FORM. IT HAS ON IT THE DATE
20 OF 1/10/08 AT 10:20 A.M. AND IT ALSO IDENTIFIES THE
21 INDIVIDUAL THAT I AM TALKING TO IS ROY JOHNSON, JR. WITH A
22 SOCIAL, DATE OF BIRTH AND ADDRESS. THAT IS THE FIRST TOP
23 HALF. THE MIDDLE HALF IS HIS RIGHTS FORM AGAIN WHERE I
24 READ HIM HIS RIGHTS. MR. JOHNSON, AFTER HIS RIGHTS WERE
25 READ TO HIM ACKNOWLEDGED THAT HE UNDERSTOOD HIS RIGHTS AND

1 SIGNED HIS NAME.

2 Q NOW, LIEUTENANT, CAN YOU TELL ME WHAT CIRCUMSTANCES
3 LED TO A SECOND STATEMENT BEING TAKEN FROM THIS DEFENDANT.

4 A YES, MA'AM. ON 1/10/2008 MR. JOHNSON WAS TRANSFERRED
5 FROM NORTH CAROLINA TO NEWBERRY ON 1/09. ON 1/10 WAS HIS
6 ACTUAL BOND HEARING TO GO IN FRONT OF THE MAGISTRATE. AND
7 WHENEVER WE GOT THROUGH THE BOND HEARING MR. JOHNSON
8 INDICATED THAT HE WOULD LIKE TO TALK AGAIN. AND THAT WAS
9 THE REASON FOR READING HIM HIS RIGHTS AGAIN.

10 Q DID YOU SAY ANYTHING TO HIM TO GET HIM TO SPEAK TO
11 YOU AGAIN?

12 A NO, MA'AM. THAT WAS INITIATED BY MR. JOHNSON.

13 Q AND ONCE HE INFORMED YOU THAT HE WANTED TO SPEAK TO
14 YOU WHAT HAPPENED?

15 A WE WENT THROUGH THE BOND HEARING, AFTER THE BOND
16 HEARING WE WERE ON OUR WAY BACK TO THE JAIL AND THAT IS
17 WHEN MR. JOHNSON, WE WENT INTO CAPTAIN KITCHENS OFFICE
18 WHICH IS ON THE WAY BACK TO THE JAIL. YOU HAVE GOT THE
19 COURTROOM WHICH IS OUT ON LEWIS RICH ROAD WITH THE JAIL.
20 WE HAD THE BOND HEARING IN THAT COURTROOM, WALKING INTO
21 THE HALL WE WENT INTO CAPTAIN KITCHENS OFFICE AFTER MR.
22 JOHNSON HAD INDICATED THAT HE WANTED TO TALK AND THAT IS
23 WHERE I READ HIM HIS MIRANDA RIGHTS AGAIN.

24 Q AND EXPLAIN TO ME WHAT THE SURROUNDINGS LOOKED LIKE
25 IN CAPTAIN KITCHENS OFFICE?

1 A HE HAS A DESK AND A CHAIR SITTING UP AGAINST THE FAR
2 END WALL AND THEN THERE IS A TABLE THAT SITS ALONG THE
3 LEFT SIDE OF THE WALL AS YOU COME IN AND HE HAS GOT SOME
4 CHAIRS THERE IN FRONT OF HIS DESK AND AT THAT LONG TABLE.
5 SO WHEN HE HAS MEETINGS OR INTERVIEWS BECAUSE WE DO
6 FREQUENTLY USE HIS OFFICE FOR INTERVIEWS.

7 Q IS THAT THE TABLE YOU USED FOR THIS INTERVIEW?

8 A THAT'S CORRECT.

9 Q WHO ELSE, IF ANYONE, WAS PRESENT DURING THIS
10 INTERVIEW?

11 A IT WAS MYSELF AND MAJOR DANNY GILLIAM.

12 Q AND YOU EXPLAINED TO MR. JOHNSON HIS RIGHTS?

13 A YES MA'AM, HIS RIGHTS WERE READ TO HIM AND HE
14 INDICATED THAT HE UNDERSTOOD THOSE WITH HIS OWN
15 HANDWRITING SIGNING HIS NAME AND THEN I READ THE WAIVER TO
16 HIM. AND HE SAID HE UNDERSTOOD THE WAIVER AND HE STILL
17 WANTED TO TALK TO US WITHOUT THE PRESENCE OF AN ATTORNEY
18 AND HE SIGNED HIS NAME AGAIN.

19 MS. ZIMMERMAN: I MOVE STATE'S 102 IN FOR PURPOSES OF
20 THIS HEARING.

21 MR. JENKINS: WITH OBJECTION.

22 THE COURT: IT IS ADMITTED.

23 (WHEREUPON, STATE'S EXHIBIT NO. 102 WAS ADMITTED INTO
24 EVIDENCE.)

25 Q CAN YOU EXPLAIN TO ME WHAT STATE'S 103 IS?

1 A STATE'S 103 IS A VOLUNTARY STATEMENT FORM, IT IS TWO
2 PAGES. ONE IS A VOLUNTARY STATEMENT FORM THAT WE IDENTIFY
3 THE INDIVIDUAL THAT WOULD BE PERSONALLY APPEARING BEFORE
4 US WITH THEIR NAME, ADDRESS, DATE OF BIRTH, SOCIAL
5 SECURITY NUMBER, THE GRADE THEY COMPLETED, GED, THAT THEY
6 CAN OR CANNOT READ OR WRITE. AND ALSO INDICATES WHO WAS
7 THERE TO TAKE THE STATEMENT WHICH WAS MYSELF, SERGEANT
8 ROBERT DENNIS AND MAJOR DANNY GILLIAM WHO HAVE IDENTIFIED
9 OURSELVES AS NEWBERRY COUNTY SHERIFFS OFFICE EMPLOYEES.
10 THERE IS ALSO IN PARAGRAPH FORM THE MIRANDA RIGHTS AS WELL
11 AS THE WAIVER AGAIN THAT THE INDIVIDUAL CAN LOOK OVER AND
12 READ BEFORE HE ACTUALLY WRITES THE STATEMENT.

13 Q AND WHO WROTE THE STATEMENT THAT IS ON STATE'S 103.

14 A THE STATEMENT IS WRITTEN BY ROY JOHNSON, JR. IN HIS
15 HANDWRITING.

16 Q DID HE SIGN STATE'S 103?

17 A YES, HE DID. HE INITIALED IT ON PAGE 1 AT THE
18 BEGINNING, HE INITIALED IT AT THE END OF PAGE 2 AS WELL AS
19 INITIALING THE CROSS OUT MARK SHOWING THAT NO MORE
20 FOLLOWED THIS STATEMENT AND HE SIGNED HIS NAME ON PAGE 1
21 AND PAGE 2.

22 MS. ZIMMERMAN: MOVE STATE'S 103 IN FOR PURPOSES OF
23 THIS HEARING.

24 MR. JENKINS: NO OBJECTION.

25 THE COURT: OKAY.

1 (WHEREUPON, STATE'S EXHIBIT NO. 103 WAS ADMITTED INTO
2 EVIDENCE.)

3 Q AT ANY TIME DURING THE COURSE OF THE DEFENDANT GIVING
4 STATE'S 103, THAT STATEMENT, DID HE EVER INDICATE THAT HE
5 WANTED TO STOP TALKING?

6 A NO, HE DID NOT.

7 Q DID HE EVER INDICATE THAT HE WANTED TO CONSULT AN
8 ATTORNEY BEFORE GIVING A STATEMENT?

9 A NO, HE DID NOT.

10 Q AND WAS HE THREATENED IN ANY WAY BY YOU OR MAJOR
11 GILLIAM BEFORE OR DURING THE COURSE OF GIVING THAT
12 STATEMENT?

13 A NO, MA'AM.

14 Q NO FURTHER QUESTIONS.

15 THE COURT: MR. JENKINS.

16 MR. JENKINS: NO QUESTIONS, YOUR HONOR.

17 THE COURT: ALL RIGHT. THANK YOU, SIR.

18 MS. ZIMMERMAN: THE STATE HAS NO OTHER WITNESSES BUT
19 THERE WAS ANOTHER STATEMENT THAT THE STATE MAY INTEND TO
20 ADMIT WHICH IS THE DEFENDANT'S STATEMENT FROM THE FIRST
21 TRIAL AND I HAVE THE TRANSCRIPT THAT HAS BEEN MARKED AS
22 STATE'S 110. AT THAT TRIAL HE WAS ADVISED BY JUDGE RUSSO
23 OF HIS RIGHTS AND HE HAD THE ADVICE OF MR. JENKINS PRIOR
24 TO GIVING HIS STATEMENT THAT HE GAVE ON THE STAND.

25 MR. JENKINS: NOTHING FROM US, YOUR HONOR.

1 THE COURT: OKAY. HIS STATEMENT WILL BE ADMISSIBLE.
2 ANY ARGUMENT ON THE JACKSON V. DENNO ISSUE REGARDING THE
3 TWO STATEMENTS WHILE HE WAS IN CUSTODY?

4 MR. JENKINS: NO, YOUR HONOR.

5 THE COURT: I FIND THE STATE HAS PROVEN BY CLEAR AND
6 CONVINCING EVIDENCE THAT THE STATEMENT WAS MADE
7 VOLUNTARILY, THAT MR. JOHNSON WAS ADVISED OF HIS RIGHTS,
8 HE WAS NEVER COERCED AND THE STATEMENTS WERE OF HIS FREE
9 CHOICE AND WILL. AND THEREFORE I FIND THE STATE HAS
10 PROVEN THE VOLUNTARINESS AND COMPLIANCE WITH THE FIFTH
11 AMENDMENT, REQUIREMENTS AND I FIND THAT THEY ARE
12 ADMISSIBLE. FOR THE PURPOSES OF THE CONSTITUTIONAL
13 REQUIREMENTS I FIND THAT THEY CAN COME INTO EVIDENCE.

14 MS. ZIMMERMAN: NOTHING ELSE FROM THE STATE.

15 MR. JENKINS: NOTHING FROM THE DEFENDANT, YOUR HONOR.

16 THE COURT: WE WILL RESUME IN THIS CASE AT 2:30.

17 (WHEREUPON, A BREAK IN THE CASE AT 11:00 AND WILL
18 RESUME AT 2:30 P.M.)

19 THE COURT: LADIES AND GENTLEMEN, THIS IS A TERM OF
20 GENERAL SESSIONS OR CRIMINAL COURT AND AT THIS TIME I WILL
21 ASK THE ASSISTANT SOLICITOR, MS. ZIMMERMAN TO CALL THE
22 CASE.

23 MS. ZIMMERMAN: THE STATE CALLS THE STATE VERSUS ROY
24 JOHNSON, 2008-GS-36-311 THROUGH 315.

25 THE COURT: THANK YOU. AND MR. JOHNSON IS PRESENT

1 WITH HIS ATTORNEY, MR. JENKINS. WILL YOU STAND UP, MR.
2 JOHNSON, SO EVERYBODY CAN SEE YOU, SIR.

3 (WHEREUPON, THE DEFENDANT STANDS.)

4 THE COURT: THANK YOU. ALL RIGHT, I AM GOING TO READ
5 THE INDICTMENTS THAT MR. JOHNSON IS CHARGED WITH. BEFORE
6 I DO THAT I WANT TO GO OVER SOME GENERAL PRINCIPLES THAT
7 APPLY TO THIS CASE OR ANY CRIMINAL CASE AND THEY ARE AS
8 FOLLOWS. THE INDICTMENT IS NOT EVIDENCE OF ANYTHING, IT
9 SIMPLY IS A WAY THAT A CASE BEGINS, IT IS THE WAY THAT THE
10 SYSTEM IS NOTIFIED OF WHAT HE OR SHE IS CHARGED WITH. AND
11 IT IS THE TICKETS THAT ALLOWS THE PROSECUTION TO COME INTO
12 THE COURT HOUSE DOOR AND START A CASE AGAINST A CITIZEN.
13 MR. JOHNSON HAS PLEAD NOT GUILTY TO THE INDICTMENT AND
14 THAT PUTS THE BURDEN OF PROOF ON THE STATE AND HE CAN ONLY
15 BE CONVICTED IF YOU ARE CONVINCED AS A JURY, UNANIMOUSLY,
16 THAT THE STATE HAS PROVEN EACH AND EVERY ELEMENT OF THE
17 CRIME BEYOND A REASONABLE DOUBT. THERE ARE SEVERAL
18 INDICTMENTS AND YOU ARE TO CONSIDER WHETHER THE STATE HAS
19 MET ITS BURDEN OF PROOF AS TO EACH INDICTMENT AND NOT LET
20 YOUR DECISION ON ONE CHARGE INFLUENCE YOUR DECISION ON THE
21 OTHERS. MR. JOHNSON DOESN'T HAVE A BURDEN OF PROOF, THE
22 BURDEN, AS I SAID, IS SOLELY ON THE STATE. MR. JOHNSON
23 DOESN'T HAVE TO PROVIDE ANY KIND OF EXPLANATION OR PRODUCE
24 ANY EVIDENCE WHATSOEVER, HE DOESN'T HAVE TO DO ANYTHING,
25 NO ONE CHARGED WITH A CRIME EVER DOES. MR. JOHNSON IS

1 PRESUMED INNOCENT AND THAT PRESUMPTION OF INNOCENCE WILL
2 REMAIN WITH HIM THROUGHOUT THIS TRIAL AND EVEN INTO YOUR
3 DELIBERATIONS AND IT MAY ONLY BE REMOVED IF AND ONLY IF
4 YOU FIND THE STATE HAS PROVEN EACH AND EVERY ELEMENT OF
5 THE CRIME BEYOND A REASONABLE DOUBT. WITH THAT I AM GOING
6 TO READ THE INDICTMENTS TO YOU.

7 STARTING WITH 08-GS-36-311, IT ALLEGES THAT ROY
8 JOHNSON, JR. ALONG WITH ANOTHER PERSON OR PERSONS AIDING,
9 ABETTING AND ASSISTING ONE ANOTHER DID IN NEWBERRY COUNTY,
10 THE STATE AFORESAID, ON OR ABOUT THE 7TH DAY OF JANUARY OF
11 2008 WILLFULLY AND UNLAWFULLY ENTER A DWELLING WITHOUT
12 CONSENT AND WITH THE INTENT TO COMMIT A CRIME THEREIN.
13 WHEN IN AFFECTING ENTRY OR WHILE IN IMMEDIATE FLIGHT
14 THEREFROM HE OR ANOTHER PARTICIPANT IN THE CRIME WAS ARMED
15 WITH A DEADLY WEAPON OR EXPLOSIVE OR CAUSED PHYSICAL
16 INJURY TO A PERSON WHO WAS NOT A PARTICIPANT IN A CRIME OR
17 USED OR THREATENED THE USE OF A DANGEROUS INSTRUMENT OR
18 DISPLAYED WHAT WAS OR WHAT APPEARED TO BE A KNIFE, PISTOL,
19 REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM OR
20 THE ENTERING OR REMAINING OCCURRED IN THE NIGHTTIME, SAID
21 DWELLING BEING OWNED AND/OR OCCUPIED BY ROBIN COFER,
22 RICHARD ALLEN COFER, JR. AND CRYSTAL GAIL CARNES, IN
23 VIOLATION OF SECTION 16-11-311 OF THE SOUTH CAROLINA
24 CODES.

25 INDICTMENT NUMBER 312 ALLEGES THAT MR. JOHNSON ALONG

1 WITH ANOTHER PERSON OR PERSONS AIDING, ABETTING AND
2 ASSISTING ONE ANOTHER DID IN NEWBERRY COUNTY, STATE
3 AFORESAID, ON OR ABOUT THE 7TH DAY OF JANUARY OF 2008
4 WILLFULLY AND UNLAWFULLY WHILE ARMED WITH A DEADLY WEAPON
5 OR WHILE ALLEGING EITHER BY ACTIONS OR WORDS WHO WAS ARMED
6 BY USING THE REPRESENTATION OF A DEADLY WEAPON OR ANY
7 OBJECT WHICH A PERSON PRESENT DURING THE COMMISSION OF A
8 ROBBERY REASONABLY BELIEVED TO BE A DEADLY WEAPON
9 FELONIOUSLY TAKE FROM THE PERSON OR PRESENCE OF RICHARD
10 ALLEN COFER, JR. AND/OR CRYSTAL GAIL CARNES BY MEANS OF
11 FORCE OR INTIMIDATION GOODS OR MONIES DESCRIBED AS
12 FOLLOWS: UNITED STATES CURRENCY WITH THE INTENT TO
13 DEPRIVE THE OWNER, ROBIN COFER AND/OR RICHARD ALLEN COFER,
14 JR., AND/OR CRYSTAL GAIL CARNES PERMANENTLY OF SUCH
15 PROPERTY IN VIOLATION OF 16-11-330 OF THE SOUTH CAROLINA
16 CODES.

17 IN CASE NUMBER 08-GS-36-313, IT IS ALLEGED THAT MR.
18 JOHNSON ALONG WITH ANOTHER PERSON OR PERSONS AIDING,
19 ABETTING AND ASSISTING ONE ANOTHER DID IN NEWBERRY COUNTY,
20 STATE AFORESAID ON OR ABOUT THE 7TH DAY OF JANUARY OF 2008
21 WILLFULLY AND UNLAWFULLY WITH CRIMINAL INTENT SEIZE,
22 CONFINE, INVEIGLED, DECOY, KIDNAP, ABDUCT OR CARRY AWAY
23 RICHARD ALLEN COFER AND CRYSTAL GAIL CARNES WITHOUT
24 AUTHORITY OF LAW IN VIOLATION OF SECTION 16-3-910 OF THE
25 SOUTH CAROLINA CODES.

1 AND INDICTMENT NUMBER 314, IT IS ALLEGED THAT MR.
2 JOHNSON IN THIS COUNTY ON OR ABOUT THE 7TH DAY OF JANUARY
3 OF 2008 WILLFULLY AND UNLAWFULLY COMMIT AN ACT OF VIOLENT
4 INJURY TO THE PERSON OF ANOTHER, TO WIT: CRYSTAL GAIL
5 CARNES ACCOMPANIED BY CIRCUMSTANCES OF AGGRAVATION, USE OF
6 A DEADLY WEAPON AND/OR THE INFLECTION OF SERIOUS BODILY
7 INJURY AND/OR THE INTENT TO COMMIT A FELONY AND/OR THE
8 GREAT DISPARITY BETWEEN THE AGES AND PHYSICAL CONDITIONS
9 OF THE PARTIES AND/OR THE DIFFERENT SEXES AND/OR INDECENT
10 LIBERTIES OF FAMILIARITY WITH A FEMALE AND/OR THE
11 PURPOSEFUL INFLECTION OF SHAME OR DISGRACE AND/OR
12 RESISTENCE OF LAWFUL AUTHORITY IN VIOLATION OF SOUTH
13 CAROLINA LAW.

14 AND THE FINAL INDICTMENT ALLEGES IN CASE NUMBER 315,
15 THAT MR. JOHNSON ALONG WITH ANOTHER PERSON OR PERSONS,
16 AIDING, ABETTING AND ASSISTING ONE ANOTHER DID IN NEWBERRY
17 COUNTY, STATE AFORESAID ON OR ABOUT THE 7TH DAY OF JANUARY
18 OF 2008 POSSESS A FIREARM OF VISIBLY DISPLAYED WHAT
19 APPEARED TO BE A FIREARM OR VISIBLY DISPLAYED A KNIFE
20 DURING THE COMMISSION OF A VIOLENT OFFENSE TO WIT:
21 BURGLARY FIRST DEGREE AND/OR ARMED ROBBERY AND/OR
22 KIDNAPPING OR ANY LESSOR INCLUDED VIOLENT OFFENSE IN
23 VIOLATION OF SECTION 16-23-490 OF THE SOUTH CAROLINA CODE.

24 THOSE ARE THE INDICTMENTS AND MR. JOHNSON HAS PLEAD
25 NOT GUILTY, HE IS PRESUMED INNOCENT AND THE BURDEN OF

1 PROOF IS SOLELY ON THE STATE. NOW, OUR PURPOSE AT THIS
2 TIME IS TO DETERMINE WHETHER WE CAN FIND A JURY THAT CAN
3 BE FAIR AND IMPARTIAL IN THE STATE VERSUS ROY JOHNSON, JR.
4 CASE AND TO THAT END I AM GOING TO ASK YOU A NUMBER OF
5 QUESTIONS. THE FIRST QUESTION IS, IS THERE ANYONE WHO IS
6 RELATED BY BLOOD OR MARRIAGE OR KIN TO IN ANY WAY TO ROY
7 JOHNSON, JR. OR CRYSTAL GAIL CARNES OR RICHARD ALLEN
8 COFER, JR., OR ROBIN COFER. IF SO, PLEASE STAND. MA'AM,
9 I AM GOING TO ASK YOU TO COME DOWN FRONT, PLEASE.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD WITH A
11 JUROR.)

12 THE COURT: I WILL READ A LIST OF POTENTIAL WITNESSES
13 WHO MAY TESTIFY IN THE TRIAL. THE PEOPLE WHO MAY TESTIFY
14 INCLUDE AUSTIN PARTLOW, CHAUNCEY PARTLOW, BILLY HUNTER,
15 RANDALL HUNTER, B.R. HUNTER, DEBRA HUNTER, CODY ROBERT
16 HUNTER, RUSSELL ANTHONY SAVERANCE, JR., RONNIE CATO,
17 WILLIE JAMES ASHFORD, KISTA GIBSON, JASON HUEBLE, CHRIS
18 KELLER, HASTINGS HUGH MOORE, ROBERT DENNIS, CHRIS IRON,
19 ODELL SCHUMPERT, AMANDA SHEALY, SCOTT MEETZE, JIMMY HAZEL,
20 BEN BLANTON, MATT BOWERS, NICK BOUKNIGHT, BEN CHAPMAN,
21 WESLEY BOLAND, CONNIE JOHNSON, ANDY STOUT, ALEX UNDERWOOD,
22 JEFF CROOKS, RONALD DAVENPORT, TONY EIGNER, JOHN FRAMPTON.
23 ANYONE RELATED BY BLOOD OR MARRIAGE, KIN TO IN ANY WAY
24 THOSE PEOPLE OR HAVE ANY PERSONAL, SOCIAL OR BUSINESS
25 RELATIONSHIP WITH THEM? YES, LET'S SEE HOW MANY PEOPLE

1 FIRST. OKAY, WE WILL JUST ASK YOU TO COME DOWN HERE TO MY
2 RIGHT AND WE WILL TALK TO YOU ONE AT A TIME.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD WITH JURORS.)

4 THE COURT: I AM GOING TO ASK THE LAWYERS THAT ARE
5 GOING TO BE INVOLVED IN THIS CASE TO INTRODUCE THEMSELVES
6 AND THE PEOPLE WHO ARE AT THEIR TABLES.

7 MS. ZIMMERMAN: MY NAME IS MINDY ZIMMERMAN, I AM AN
8 ATTORNEY WITH THE LAW PRACTICE HERE IN NEWBERRY, ZIMMERMAN
9 AND SHEALY. I ALSO WORK AS A SPECIAL PROSECUTOR FOR
10 SOLICITOR JERRY PEACE PROSECUTING CASES HERE IN NEWBERRY.
11 SITTING AT MY TABLE I HAVE INVESTIGATOR ROBERT DENNIS WITH
12 THE NEWBERRY COUNTY SHERIFFS OFFICE, INVESTIGATOR NICK
13 BOUKNIGHT WITH THE NEWBERRY COUNTY SHERIFFS OFFICE;
14 VICTIMS ADVOCATE, CONNIE JOHNSON WITH THE NEWBERRY COUNTY
15 SHERIFFS OFFICE. I HAVE MS. ROBIN COFER; HER DAUGHTER,
16 CRYSTAL CARNES; HER HUSBAND, RICHARD COFER AND VICTIMS
17 ADVOCATE WITH THE EIGHTH CIRCUIT SOLICITORS OFFICE, KEN
18 WILKSHIRE.

19 THE COURT: THANK YOU, MS. ZIMMERMAN. MR. JENKINS.

20 MR. JENKINS: THANK YOU, YOUR HONOR. I AM CHAD
21 JENKINS, I PRACTICE LAW HERE IN NEWBERRY WITH POPE AND
22 HUDGENS. THIS IS MY CLIENT ROY JOHNSON.

23 THE COURT: THANK YOU. IS ANYONE RELATED TO BY BLOOD
24 OR MARRIAGE OR KIN TO IN ANY WAY TO ANY OF THE LAWYERS WHO
25 INTRODUCED THEMSELVES OR ANY OF THE PEOPLE WHO HAVE NOT

1 BEEN PREVIOUSLY INTRODUCED TO YOU. IF SO, PLEASE STAND.

2 (NO RESPONSE.)

3 THE COURT: DOES ANYONE HAVE ANY PERSONAL, SOCIAL OR
4 BUSINESS RELATIONSHIP WITH ANY OF THE LAWYERS OR ANYONE
5 THEY INTRODUCED. YES, SIR. COME ON UP.

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD WITH A
7 JUROR.)

8 THE COURT: HAS ANYONE EVER BEEN REPRESENTED BY ONE
9 OF THE LAWYERS HERE INVOLVED IN THIS CASE OR HAS ANYONE
10 EVER BEEN EMPLOYED BY OR A MEMBER OF THEIR IMMEDIATE
11 FAMILY BEEN EMPLOYED BY ONE OF THESE LAWYERS OR THEIR LAW
12 FIRMS OR BY THE SOLICITORS OFFICE, JERRY PEACE'S OFFICE OR
13 BY THE NEWBERRY COUNTY SHERIFFS OFFICE OR ANY OTHER LAW
14 ENFORCEMENT OFFICE.

15 (WHEREUPON, A BENCH CONFERENCE WAS HELD WITH A
16 JUROR.)

17 THE COURT: IS THERE ANYONE WHO HAS BEEN ARRESTED
18 FOR, CONVICTED OF, CHARGED WITH OR HAD A MEMBER OF THEIR
19 IMMEDIATE FAMILY HAD ARRESTED FOR, CONVICTED OF OR CHARGED
20 WITH A CRIME SUCH AS ARMED ROBBERY, BURGLARY OR AGGRAVATED
21 ASSAULT OR ANYTHING THAT WOULD INCLUDE A VIOLENT ELEMENT
22 TO IT. THAT IS ONE QUESTION. ANOTHER QUESTION IS, HAS
23 ANYONE BEEN A VICTIM OF OR HAVE AN IMMEDIATE FAMILY MEMBER
24 WHO HAS BEEN A VICTIM OF A VIOLENT CRIME. IF SO, PLEASE
25 STAND. WE WILL FORM A LINE HERE.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD WITH JURORS.)

2 THE COURT: IS THERE ANYONE WHO CONTRIBUTES TO ANY
3 GROUP WHO THEIR PRIMARY PURPOSE IS TO PROMOTE VICTIMS
4 RIGHTS OF LAW ENFORCEMENT, IF SO PLEASE STAND.

5 (NO RESPONSE.)

6 THE COURT: DOES ANYONE KNOW ANYTHING ABOUT THIS CASE
7 OTHER THAN WHAT YOU HEARD FROM ME HERE THIS AFTERNOON, IF
8 SO PLEASE STAND.

9 (NO RESPONSE.)

10 THE COURT: DOES ANYONE KNOW OF ANY REASON WHY THEY
11 COULD NOT BE FAIR AND IMPARTIAL TO BOTH THE STATE AND TO
12 MR. ROY JOHNSON, JR., IN THIS CASE. IF SO, PLEASE STAND.

13 (NO RESPONSE.)

14 THE COURT: IS ANYONE AWARE OF ANY KIND OF BIASED OR
15 PREJUDICED THEY MAY HAVE ABOUT ANYONE INVOLVED IN THIS
16 CASE OR ANY ISSUES INVOLVED IN THIS CASE. IF SO, PLEASE
17 STAND.

18 (NO RESPONSE.)

19 THE COURT: WE WILL TAKE A BREAK AND BE BACK AT 4:00.
20 THANK YOU FOR YOUR PATIENCE.

21 (WHEREUPON, THE JURY PANEL WAS EXCUSED FROM OPEN
22 COURT FOR A BREAK.)

23 THE COURT: WE WILL TAKE A SHORT BREAK.

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

25 THE COURT: BRING THE JURY IN, PLEASE.

1 (WHEREUPON, THE JURY PANEL CAME INTO OPEN COURT AT
2 APPROXIMATELY 4:10 P.M.)

3 THE COURT: ONE OF THE WITNESS THAT I NEGLECTED TO
4 MENTION IS DANNY GILLIAM. IS ANYONE RELATED BY BLOOD OR
5 MARRIAGE TO HIM OR HAVE ANY SOCIAL, PERSONAL OR BUSINESS
6 RELATIONSHIP WITH HIM PLEASE STAND.

7 (NO RESPONSE.)

8 THE COURT: WE WILL NOW PROCEED TO THE JURY
9 SELECTION. IS THERE ANY FURTHER VOIR DIRE FROM THE STATE
10 OR THE DEFENSE?

11 MS. ZIMMERMAN: NO, YOUR HONOR.

12 MR. JENKINS: NONE, YOUR HONOR.

13 THE COURT: MS. BOWERS.

14 CLERK OF COURT: WHEN I CALL YOUR NAME PLEASE STAND
15 WHERE YOU ARE. NUMBER 147, FRANKIE WILLIAMS. WHAT SAY
16 THE STATE?

17 MS. ZIMMERMAN: PLEASE PRESENT THE JUROR.

18 CLERK OF COURT: THE DEFENSE?

19 MR. JENKINS: PLEASE EXCUSE MR. WILLIAMS.

20 CLERK OF COURT: YOU CAN HAVE A SEAT, MR. WILLIAMS.

21 102, BETTY PITTS. WHAT SAYS THE STATE?

22 MS. ZIMMERMAN: PLEASE EXCUSE MS. PITTS.

23 CLERK OF COURT: MS. PITTS, YOU MAY HAVE A SEAT. 73,
24 CONSTANCE KESLER. WHAT SAYS THE STATE.

25 MS. ZIMMERMAN: PLEASE PRESENT MS. KESLER.

1 CLERK OF COURT: THE DEFENSE?

2 MR. JENKINS: PLEASE EXCUSE MS. KESLER.

3 CLERK OF COURT: YOU MAY HAVE A SEAT, MS. KESLER.

4 NUMBER 170, LISHA SENN. WHAT SAYS THE STATE?

5 MS. ZIMMERMAN: PLEASE PRESENT MS. SENN.

6 CLERK OF COURT: THE DEFENSE?

7 MR. JENKINS: PLEASE EXCUSE MS. SENN.

8 CLERK OF COURT: YOU MAY HAVE A SEAT, MS. SENN.

9 NUMBER 172, LINDSAY STRIBBLE. WHAT SAYS THE STATE?

10 MS. ZIMMERMAN: PLEASE PRESENT MR. STRIBBLE.

11 CLERK OF COURT: THE DEFENSE?

12 MR. JENKINS: PLEASE EXCUSE MR. STRIBBLE.

13 CLERK OF COURT: YOU ARE EXCUSED, MR. STRIBBLE, YOU

14 HAVE A SEAT. NUMBER 106, JOHN PUGH. WHAT SAYS THE STATE?

15 MS. ZIMMERMAN: PLEASE PRESENT MR. PUGH.

16 CLERK OF COURT: THE DEFENDANT?

17 MR. JENKINS: PLEASE SEAT MR. PUGH.

18 CLERK OF COURT: YOU MAY HAVE A SEAT IN THE JURY BOX,

19 MR. PUGH. 46, ERVIN EPPS. WHAT SAYS THE STATE?

20 MS. ZIMMERMAN: PLEASE EXCUSE MR. EPPS.

21 CLERK OF COURT: YOU MAY HAVE A SEAT, MR. EPPS.

22 NUMBER 10, HEATHER BERRY. WHAT SAYS THE STATE?

23 MS. ZIMMERMAN: PLEASE PRESENT MS. BERRY.

24 CLERK OF COURT: WHAT SAYS THE DEFENSE?

25 MR. JENKINS: PLEASE EXCUSE MS. BERRY.

1 CLERK OF COURT: YOU MAY HAVE A SEAT, MS. BERRY.

2 NUMBER 107, LAKECIA RAINER. WHAT SAYS THE STATE?

3 MS. ZIMMERMAN: PLEASE PRESENT MS. RAINER.

4 CLERK OF COURT: WHAT SAYS THE DEFENSE?

5 MR. JENKINS: PLEASE SEAT MS. RAINER.

6 CLERK OF COURT: YOU MAY HAVE A SEAT IN THE JURY BOX,

7 MS. RAINER. NUMBER 68, EVOIN HUNTER. WHAT SAYS THE

8 STATE.

9 MS. ZIMMERMAN: PLEASE PRESENT MS. HUNTER.

10 CLERK OF COURT: THE DEFENSE?

11 MR. JENKINS: PLEASE SEAT MS. HUNTER.

12 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER

13 175, MARIAN WICKER. WHAT SAYS THE STATE?

14 MS. ZIMMERMAN: PLEASE PRESENT MS. WICKER.

15 CLERK OF COURT: THE DEFENDANT?

16 MR. JENKINS: PLEASE EXCUSE MS. WICKER.

17 CLERK OF COURT: HAVE A SEAT, MS. WICKER. NUMBER 22,

18 KIMBERLY CARTER. WHAT SAYS THE STATE?

19 MS. ZIMMERMAN: PLEASE PRESENT MS. CARTER.

20 CLERK OF COURT: THE DEFENSE?

21 MR. JENKINS: PLEASE EXCUSE MS. CARTER.

22 CLERK OF COURT: YOU MAY HAVE A SEAT, MS. CARTER.

23 92, STACY MOATES. WHAT SAYS THE STATE?

24 MS. ZIMMERMAN: PLEASE PRESENT MS. MOATES.

25 CLERK OF COURT: WHAT SAYS THE DEFENSE?

1 MR. JENKINS: PLEASE SEAT MS. MOATES.

2 CLERK OF COURT: MS. MOATES, YOU CAN HAVE A SEAT IN
3 THE JURY BOX. NUMBER 53, LATRAVIS GILMORE. WHAT SAYS THE
4 STATE?

5 MS. ZIMMERMAN: PLEASE EXCUSE MR. GILMORE.

6 CLERK OF COURT: YOU CAN HAVE A SEAT, MR. GILMORE.
7 NUMBER 40, TERESA DOMINICK. WHAT SAYS THE STATE?

8 MS. ZIMMERMAN: PLEASE PRESENT MS. DOMINICK.

9 CLERK OF COURT: WHAT SAYS THE DEFENDANT?

10 MR. JENKINS: PLEASE SEAT MS. DOMINICK.

11 CLERK OF COURT: MS. DOMINICK, YOU MAY HAVE A SEAT IN
12 THE JURY BOX. NUMBER 105, WILLIE PRICE. WHAT SAYS THE
13 STATE?

14 MS. ZIMMERMAN: PLEASE PRESENT MR. PRICE.

15 CLERK OF COURT: THE DEFENDANT?

16 MR. JENKINS: PLEASE PRESENT MR. PRICE.

17 CLERK OF COURT: YOU MAY HAVE A SEAT IN THE JURY BOX,
18 MR. PRICE. NUMBER 135, JOSEPH TAYLOR. WHAT SAYS THE
19 STATE?

20 MS. ZIMMERMAN: PLEASE EXCUSE MR. TAYLOR.

21 CLERK OF COURT: YOU MAY HAVE A SEAT, MR. TAYLOR.
22 NUMBER 55 MARGARET GLASGOW. WHAT SAYS THE STATE?

23 MS. ZIMMERMAN: PLEASE PRESENT MS. GLASGOW.

24 CLERK OF COURT: THE DEFENSE?

25 MR. JENKINS: PLEASE SEAT MS. GLASGOW.

1 CLERK OF COURT: YOU MAY HAVE A SEAT IN THE JURY BOX,
2 MS. GLASGOW. NUMBER 1, KHUMA ABRAMS. WHAT SAYS THE
3 STATE?

4 MS. ZIMMERMAN: PLEASE PRESENT THE JUROR.

5 CLERK OF COURT: WHAT SAYS THE DEFENSE?

6 MR. JENKINS: PLEASE PRESENT THE JUROR.

7 CLERK OF COURT: YOU MAY HAVE A SEAT IN THE JURY BOX,
8 MR. ABRAMS. NUMBER 142, TINA WEST. WHAT SAYS THE STATE?

9 MS. ZIMMERMAN: PLEASE PRESENT MS. WEST.

10 CLERK OF COURT: THE DEFENDANT?

11 MR. JENKINS: PLEASE SEAT MS. WEST.

12 CLERK OF COURT: MS. WEST, YOU CAN HAVE A SEAT IN THE
13 JURY BOX. NUMBER 29, CHRISTOPHER COUNTS. WHAT SAYS THE
14 STATE?

15 MS. ZIMMERMAN: PLEASE SEAT MR. COUNTS.

16 CLERK OF COURT: THE DEFENSE?

17 MR. JENKINS: PLEASE SEAT MR. COUNTS.

18 CLERK OF COURT: YOU CAN HAVE A SEAT IN THE JURY BOX,
19 MR. COUNTS. NUMBER 67, ERIC HORNING. WHAT SAYS THE
20 STATE?

21 MS. ZIMMERMAN: PLEASE PRESENT MR. HORNING.

22 CLERK OF COURT: THE DEFENSE?

23 MR. JENKINS: PLEASE SEAT MR. HORNING.

24 CLERK OF COURT: YOU CAN HAVE A SEAT IN THE JURY BOX,
25 MR. HORNING. NUMBER 141, MCHARDY WAY. WHAT SAYS THE

1 STATE?

2 MS. ZIMMERMAN: PLEASE SEAT THE JUROR.

3 CLERK OF COURT: THE DEFENSE?

4 MR. JENKINS: PLEASE EXCUSE THE JUROR.

5 CLERK OF COURT: YOU MAY HAVE A SEAT, MR. WAY.

6 NUMBER 118 JOSEPH SEASE. WHAT SAYS THE STATE?

7 MS. ZIMMERMAN: PLEASE PRESENT MR. SEASE.

8 CLERK OF COURT: WHAT SAYS THE DEFENSE?

9 MR. JENKINS: PLEASE EXCUSE MR. SEASE.

10 CLERK OF COURT: HAVE A SEAT, MR. SEASE. NUMBER 74,

11 CANTRELLE KINARD. WHAT SAYS THE STATE?

12 MS. ZIMMERMAN: PLEASE PRESENT THE JUROR.

13 CLERK OF COURT: THE DEFENSE?

14 MR. JENKINS: PLEASE SEAT MR. KINARD.

15 CLERK OF COURT: MR. KINARD, YOU CAN HAVE A SEAT IN

16 THE JURY BOX. WOULD YOU LIKE ONE ALTERNATE?

17 THE COURT: YES, MA'AM.

18 CLERK OF COURT: 12, RONALD BOLAND. WHAT SAYS THE

19 STATE?

20 MS. ZIMMERMAN: PLEASE PRESENT MR. BOLAND.

21 CLERK OF COURT: THE DEFENSE?

22 MR. JENKINS: PLEASE EXCUSE MR. BOLAND.

23 CLERK OF COURT: YOU CAN HAVE A SEAT, MR. BOLAND.

24 NUMBER 16, JAMES BOWERS. WHAT SAYS THE STATE?

25 MS. ZIMMERMAN: PLEASE PRESENT MR. BOWERS.

1 CLERK OF COURT: THE DEFENSE?

2 MR. JENKINS: PLEASE EXCUSE MR. BOWERS.

3 CLERK OF COURT: YOU MAY HAVE A SEAT, MR. BOWERS.

4 NUMBER 2, RAHIAH ALI. WHAT SAYS THE STATE.

5 MS. ZIMMERMAN: PLEASE PRESENT MR. ALI.

6 CLERK OF COURT: ANY CHALLENGE FOR CAUSE FROM THE

7 DEFENSE?

8 MR. JENKINS: NO, YOUR HONOR.

9 CLERK OF COURT: COME UP AND HAVE A SEAT IN THE JURY
10 BOX, PLEASE.

11 THE COURT: ARE THERE ANY MATTERS OR MOTIONS TO THE
12 SELECTION PROCESS FROM THE STATE?

13 MS. ZIMMERMAN: NONE FROM THE STATE.

14 THE COURT: FROM THE DEFENDANT?

15 MR. JENKINS: NONE FROM THE DEFENDANT.

16 THE COURT: I FIND THAT THE PROCESS HAS FOLLOWED THE
17 STATUTORY AND CONSTITUTIONAL REQUIREMENTS. LADIES AND
18 GENTLEMEN, YOU HAVE BEEN SELECTED TO BE THE JURY IN THIS
19 CASE. I AM GOING TO ASK THAT YOU GO BACK TO THE JURY ROOM
20 WITH MS. YON, DON'T TALK ABOUT THE CASE AND WE WILL BE
21 BACK WITH YOU MOMENTARILY. THANK YOU.

22 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO
23 THE JURY ROOM.)

24 THE COURT: CALL BACK AFTER 6:00 TOMORROW NIGHT,
25 TUESDAY NIGHT AND THANK YOU FOR YOUR COOPERATION AND YOUR

1 PATIENCE. HAVE A GOOD AFTERNOON.

2 (WHEREUPON, THE JURY PANEL WAS EXCUSED FROM OPEN
3 COURT.)

4 THE COURT: BRING THE JURY IN, PLEASE.

5 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
6 APPROXIMATELY 4:42 P.M.)

7 THE COURT: GOOD AFTERNOON, WE ARE GOING TO START THE
8 CASE OF THE STATE VERSUS ROY JOHNSON, JR. AND I AM GOING
9 TO GIVE YOU SOME PRELIMINARY INSTRUCTIONS. AND I WANT TO
10 THANK YOU FOR YOUR SERVICE THIS WEEK. YOU ARE MAKING IT
11 POSSIBLE FOR THESE PARTIES TO EXERCISE THEIR RIGHT TO A
12 JURY TRIAL AND THOMAS JEFFERSON SAID THE RIGHT FOR A JURY
13 TRIAL IS THE MOST IMPORTANT RIGHT OF ALL BECAUSE ALL OF
14 OUR RIGHTS IN THE END DEPEND UPON IT. SO, WE APPRECIATE
15 YOU BEING HERE TODAY AND I KNOW WE ARE TAKING YOU AWAY
16 FROM YOUR FAMILIES AND YOUR WORK, OTHER IMPORTANT ASPECTS
17 OF YOUR LIFE, ASKING YOU TO COME UP HERE AND TO CONTRIBUTE
18 TO YOUR COMMUNITY AND WE APPRECIATE YOU DOING SO. YOU
19 PROBABLY KNOW THAT YOU WERE CHOSEN TO COME UP HERE TODAY
20 IF YOU HAVE A DRIVERS LICENSE OR YOU ARE REGISTERED TO
21 VOTE OR YOU HAVE AN IDENTIFICATION CARD ISSUED BY THE
22 HIGHWAY DEPARTMENT AND YOU MAY BE CURIOUS AS TO WHY YOU
23 WERE SELECTED TO SIT ON THIS PARTICULAR CASE. THE REASON
24 YOU WERE CHOSEN IS BECAUSE BOTH SIDES IN THIS CASE, BOTH
25 THE STATE AND MR. JOHNSON BELIEVE YOU CAN BE FAIR AND

1 IMPARTIAL AND CAN DECIDE THIS CASE WITHOUT ANY KIND OF
2 PRECONCEIVED IDEAS OR ANY KIND OF BIASED OR PREJUDICE.
3 YOU MET THE LAWYERS IN THE CASE AND THERE ARE SOME PEOPLE
4 IN THE COURTROOM WHO YOU MAY BE CURIOUS ABOUT WHAT THEIR
5 ROLES ARE. SO, I AM GOING TO TELL YOU WHAT THEY DO AND
6 THEN I AM GOING TO TELL YOU WHAT I DO AND THEN I WILL TELL
7 YOU WHAT YOU ARE GOING TO DO. MS. JOY HOLSTON, SHE IS THE
8 COURT REPORTER, CIRCUIT IS A COURT OF RECORD, SHE TAKES
9 DOWN EVERY WORD THAT IS SAID. THE CLERK OF COURT, MS.
10 JACKIE BOWERS AND HER ASSISTANT, BETH FOLK IS HELPING HER.
11 BESIDE ME IS A YOUNG LADY, RUTH HINEMAN WHO JUST FINISHED
12 HER FIRST YEAR AT USC LAW SCHOOL. SHE IS INTERNING THIS
13 WEEK TO COME TO WATCH COURT. MY LAW CLERK, JOHN MISETTO
14 IS OVER THERE ACROSS THE COURTROOM. HE IS A LAWYER AND
15 HELPS ME ON LEGAL RESEARCH AND ISSUES THAT ARISE DURING
16 CASES. AND THEN MS. YON IS THE BAILIFF AND SHE IS HERE
17 FOR YOUR ASSISTANCE WHILE YOU ARE WITH US THIS WEEK. I AM
18 GARY HILL, I AM A CIRCUIT JUDGE FROM GREENVILLE. YOU WILL
19 TAKE AN OATH TO DO YOUR JOB, SO AT THIS TIME I AM GOING TO
20 ASK MS. BOWERS TO ADMINISTER THAT OATH. AND LISTEN TO IT
21 BECAUSE IT TELLS YOU WHAT YOUR JOB IS. YES, MA'AM.

22 (WHEREUPON, THE JURY WAS SWORN AT APPROXIMATELY 4:42
23 P.M.)

24 THE COURT: MY ROLE IS, DURING THE TRIAL IF SOMEONE
25 OBJECTS TO EVIDENCE I WILL RULE ON THE OBJECTION. DON'T

1 HOLD IT AGAINST ANYBODY FOR OBJECTING, LAWYERS HAVE AN
2 ETHICAL OBLIGATION TO OBJECT IF THEY THINK EVIDENCE IS
3 IMPROPER. AND IF SOMEONE DOES OBJECT I WILL DETERMINE
4 WHETHER THE EVIDENCE IS PROPER. IF I SUSTAIN THE
5 OBJECTION THAT MEANS THE EVIDENCE IS IMPROPER AND YOU
6 CANNOT CONSIDER IT. IF I OVERRULE THE OBJECTION THAT
7 MEANS THE EVIDENCE IS PROPER AND YOU MAY CONSIDER IT.
8 USUALLY I CAN DO THAT RIGHT HERE IN THE COURTROOM DURING
9 THE TRIAL ON THE SPOT, SOMETIMES WE HAVE TO TAKE BREAKS TO
10 DO THIS SO WE WILL NOT WASTE YOUR TIME WITH THAT. THAT IS
11 MY FIRST JOB, THE SECOND JOB IS THAT AT THE END OF THE
12 CASE I WILL INSTRUCT YOU ON WHAT THE LAW IS THAT YOU MUST
13 APPLY TO THE FACTS OF THIS CASE. UNDER OUR SYSTEM OF
14 JUSTICE I AM KNOWN AS THE JUDGE OF THE LAW, OUR
15 CONSTITUTION AND OUR SYSTEM OF JUSTICE HAS TWO JUDGES IN
16 EVERY CASE. WHILE I AM THE JUDGE OF THE LAW YOU ARE THE
17 JUDGE OF THE FACTS AND YOU ARE THE SOLE AND EXCLUSIVE
18 JUDGE OF THE FACTS. SO, WHEN IT COMES TO DETERMINE WHAT
19 THE FACTS ARE IN THIS CASE IT IS YOUR JOB TO DETERMINE
20 WHAT THE FACTS ARE DURING THIS TRIAL. AND JUST AS I AM
21 NOT GOING TO MAKE ANY COMMENT ABOUT THE FACTS OR GIVE YOU
22 ANY OPINION AS TO WHAT I THINK THE FACTS ARE IN THIS CASE,
23 THAT IS YOUR EXCLUSIVE PREROGATIVE. I KNOW THAT YOU WOULD
24 NOT INTERFERE WITH MY EXCLUSIVE PREROGATIVE TO TELL YOU
25 WHAT THE LAW IS. THOSE ARE OUR ROLES AND NOW YOU GET TO

1 FIND OUT HOW YOU DETERMINE WHAT THE FACTS ARE. AND WHEN
2 YOU DO THAT, YOU LISTEN AND WEIGH AND EVALUATE THE
3 EVIDENCE YOU ARE GOING TO HEAR DURING THE COURSE OF THIS
4 TRIAL. IN DETERMINING WHAT THE FACTS ARE YOU CONSIDER
5 ONLY THE EVIDENCE AND EVIDENCE CONSISTS OF TWO SOURCES,
6 ONE IS SWORN TESTIMONY OF THE WITNESSES. PEOPLE WILL COME
7 IN AND WHO ARE SWORN AND SIT IN THIS CHAIR AND TELL YOU
8 ABOUT THINGS THAT THEY KNOW IN THIS CASE. THAT IS ONE
9 SOURCE OF EVIDENCE AS WHAT YOU CAN BASE YOUR DECISION AS
10 TO WHAT THE FACTS ARE. THE SECOND SOURCE IS BY WAY OF
11 EXHIBITS, WE MAY HAVE THEM IN THIS CASE, SOME KIND OF
12 PHYSICAL TANGIBLE OBJECT, IT MIGHT BE A PHOTOGRAPH OR A
13 MAP OR SOMETHING OF THAT NATURE. BUT YOU WILL KNOW IT IS
14 AN EXHIBIT AND YOU WILL KNOW IT IS EVIDENCE THAT YOU CAN
15 USE TO DETERMINE THE FACTS, THEY WILL BE BACK IN THE JURY
16 ROOM WITH YOU AND THEY WILL HAVE A STICKER NUMBER ON IT
17 THAT SAYS EXHIBIT NUMBER. NOW, THOSE ARE THE ONLY THINGS
18 THAT YOU CAN DETERMINE THE FACTS FROM. NOW, IN
19 DETERMINING THE FACTS YOU ARE GOING TO HAVE TO BY
20 NECESSITY DETERMINE IF THE EVIDENCE IS BELIEVABLE. SO,
21 YOU AS THE JUDGE OF THE FACTS ARE THE SOLE JUDGE OF THE
22 CREDIBILITY OR BELIEVABILITY OF ALL THE EVIDENCE. SO, FOR
23 EVERY WITNESS THAT TESTIFIES, EVERY EXHIBIT THAT IS
24 ADMITTED YOU WILL HAVE TO GAGE WHETHER IT IS WORTHY OF
25 BELIEF. YOU DID NOT SUDDENLY HAVE YOUR COMMON SENSE BE

1 TAKEN FROM YOU WHEN YOU CHECKED IN DOWNSTAIRS SO YOU CAN
2 USE YOUR COMMON SENSE IN DETERMINING WHETHER SOMEONE IS
3 TELLING THE TRUTH AND ANYTHING ELSE YOU USE IN YOUR
4 DAY-TO-DAY LIFE TO DETERMINE WHETHER SOMEBODY IS
5 BELIEVABLE. NOW, THIS IS A CRIMINAL CASE AND I AM GOING
6 TO GO OVER WITH YOU SOME GENERAL PRINCIPLES THAT APPLY TO
7 THE CASE. FIRST OF ALL, THE INDICTMENT I READ IS NOT
8 EVIDENCE, IT IS NOT A WITNESS, IT IS NOT AN EXHIBIT, IT IS
9 NOT SOMETHING THAT YOU CAN TAKE INTO ACCOUNT IN
10 DETERMINING THE FACTS OF THE CASE, IT IS SIMPLY THE FORMAL
11 WAY THE CASE STARTS AND LETS A CITIZEN KNOW WHAT HE OR SHE
12 IS CHARGED WITH. MR. JOHNSON PLEAD NOT GUILTY AND THAT
13 PUTS THE BURDEN OF PROOF ON THE STATE AND HE CAN ONLY BE
14 CONVICTED IF YOU FIND THAT THE STATE HAS PROVEN EACH AND
15 EVERY ELEMENT BEYOND A REASONABLE DOUBT. THERE ARE
16 SEVERAL INDICTMENTS IN THIS CASE, AS YOU HEARD AND YOU
17 MUST GAGE THE EVIDENCE AS TO EACH CRIME ALLEGED AND
18 DETERMINE WHETHER THE STATE HAS MET ITS BURDEN OF PROOF
19 AND YOU MUST DO THAT SEPARATELY FOR EACH OFFENSE THAT HAS
20 BEEN CHARGED AND NOT WEIGH YOUR DECISION ON ONE AND
21 INFLUENCE YOUR DECISION ON THE OTHER. NOW, MR. JOHNSON
22 DOESN'T HAVE THE BURDEN OF PROVING ANYTHING. NO CITIZEN
23 NEVER DOES WHEN THEY ARE CHARGED WITH A CRIME, THE BURDEN
24 IS ENTIRELY ON THE STATE, HE DOESN'T HAVE TO OFFER ANY
25 EVIDENCE OR EXPLANATION AND THE INDICTMENT DOES NOT EVEN

1 BEAR A SUSPICION OR GUILT. MR. JOHNSON IS PRESUMED
2 INNOCENT AND THAT PRESUMPTION OF INNOCENCE, AS I SAID,
3 STAYS WITH HIM THROUGHOUT THE TRIAL AND EVEN INTO YOUR
4 DELIBERATIONS AND IT CAN ONLY BE REMOVED IF YOU FIND THE
5 STATE HAS PROVEN EACH AND EVERY ELEMENT OF CRIME BEYOND A
6 REASONABLE DOUBT. LET ME TELL YOU ABOUT THE STRUCTURE OF
7 A CRIMINAL TRIAL SO YOU WILL KNOW WHAT TO EXPECT HERE IN
8 THE NEXT FEW DAYS. IN JUST A MOMENT WE ARE GOING TO HAVE
9 THE OPENING STATEMENT BY THE SOLICITOR AND MR. JENKINS.
10 SHE IS GOING TO GIVE YOU A ROADMAP OF WHAT THE EVIDENCE IS
11 GOING TO SHOW AND WHAT SHE THINKS THE ISSUES ARE GOING TO
12 BE IN THE CASE. THAT IS ALL THE OPENING STATEMENT IS, IT
13 IS NOT MEANT TO BE AN ARGUMENT. IT IS MEANT TO BE AN
14 OUTLINE. AFTER SHE FINISHES, SHE GOES FIRST BECAUSE THE
15 STATE BEARS THE BURDEN OF PROOF. THEN MR. JENKINS ON
16 BEHALF OF MR. JOHNSON WILL HAVE THE OPPORTUNITY BUT NOT
17 THE OBLIGATION TO GIVE AN OPENING STATEMENT AS WELL.
18 PLEASE REMEMBER THAT MR. JOHNSON DOESN'T HAVE TO DO
19 ANYTHING DURING THIS TRIAL. AFTER YOU HEARD THE OPENING
20 STATEMENT OR STATEMENTS WE WILL THEN MOVE TO THE EVIDENCE
21 PHASE OF THE TRIAL AND THE STATE WILL START PRESENTING ITS
22 EVIDENCE AND ONCE IT COMPLETES ITS PRESENTATION OF
23 EVIDENCE THEN MR. JOHNSON WILL HAVE THE OPPORTUNITY TO
24 CHALLENGE THAT EVIDENCE THAT IS PRESENTED. THEN MR.
25 JOHNSON WILL HAVE THE OPPORTUNITY, AGAIN NOT THE

1 OBLIGATION, TO PRESENT THE EVIDENCE HE WISHES. THEN YOU
2 WILL HEAR THE CLOSING ARGUMENTS OF THE LAWYERS WHERE THEY
3 WILL TELL YOU WHAT THEY THINK THE EVIDENCE SHOWS AND WHAT
4 YOUR VERDICT SHOULD BE. THEN I WILL INSTRUCT YOU ON THE
5 LAW THAT YOU WILL APPLY TO THE FACTS OF THIS CASE AND THEN
6 THE CASE WILL BE IN YOUR HANDS FOR A DECISION AND FOR A
7 VERDICT. NOW, THIS CASE WILL BE OVER BY FRIDAY BUT
8 REGARDLESS OF HOW LONG OR HOW SHORT THE CASE IS REMEMBER
9 THIS IS, THESE PARTIES, THIS IS THEIR DAY IN COURT. AND
10 THIS IS THE CASE THAT WARRANTS, LIKE EVERY CASE, SERIOUS
11 CONSIDERATION AS A JUDGE OF THE FACTS. AND LET ME TELL
12 YOU HOW IMPORTANT YOUR JOB IS BECAUSE I KNOW IT IS HARD TO
13 SIT THERE FOR LONG PERIODS OF TIME TO CASES, LISTEN TO
14 EVIDENCE. YOU MAY READ FROM TIME TO TIME IN THE PAPER
15 ABOUT HOW CASES ARE REVERSED ON APPEAL. WHEN THAT HAPPENS
16 THAT MEANS THE JUDGE MADE A MISTAKE ON THE LAW. IF I MAKE
17 A MISTAKE ON THE LAW DURING THIS TRIAL IT CAN EASILY BE
18 CORRECTED. BUT THE JURYS DECISION ON WHAT THE FACTS ARE
19 IS ALMOST ALWAYS FINAL. SO, KEEP THAT IN MIND WHEN YOU
20 ARE LISTENING TO THE EVIDENCE AND TRY TO KEEP ATTENTION
21 THROUGHOUT THE TRIAL. WE WILL TRY TO TAKE A BREAK ABOUT
22 EVERY HOUR OR EVERY HOUR AND A HALF. THE LAWYERS IN THIS
23 CASE ARE FINE LAWYERS AND THEY ARE ADVOCATES FOR THEIR
24 CLIENTS AND THEY ARE GOING TO ZEALOUSLY REPRESENT THEIR
25 CLIENTS. YOU AND I ARE NOT ADVOCATES, WE DON'T HAVE ANY

1 FRIENDS TO REWARD OR ANY ENEMIES TO PUNISH IN THIS
2 PROCESS. YOUR JOB IS TO BE NEUTRAL TO DETERMINE THE FACTS
3 IN THE CASE AND TO DETERMINE WHETHER THE STATE HAS MET ITS
4 BURDEN OF PROOF. PLEASE DON'T TALK ABOUT THE CASE UNTIL
5 THE END WHEN YOU HAVE HEARD ALL THE EVIDENCE. WHEN YOU
6 HAVE HEARD THE ARGUMENTS OF THE LAWYERS AND YOU HAVE HEARD
7 THE LAW, THEN AND ONLY THEN YOU WILL HAVE THE TOOLS TO DO
8 YOUR JOB. THANK YOU FOR YOUR ATTENTION TO ME AND AT THIS
9 TIME WE WILL HAVE OPENING STATEMENTS BY THE STATE. MS.
10 ZIMMERMAN.

11 MS. ZIMMERMAN: THANK YOU, YOUR HONOR, MAY IT PLEASE
12 THE COURT. YOU HAVE MET ME, MY NAME IS MINDY ZIMMERMAN
13 AND I REPRESENT THE STATE IN THIS CASE. BUT IN DOING THAT
14 I AM GOING TO BE PRESENTING TO YOU THROUGH THE COURSE OF
15 THE TRIAL SEVERAL DIFFERENT PEOPLES PERSPECTIVES BECAUSE
16 THIS IS REALLY A TRIAL ABOUT PEOPLE AND WHAT THEY
17 EXPERIENCED ON JANUARY THE 7TH OF 2008. YOU ARE GOING TO
18 HEAR FROM SEVERAL DIFFERENT PEOPLE WHO EXPERIENCED SEVERAL
19 DIFFERENT THINGS AND AT THE END YOU ARE GOING TO HAVE TO
20 TAKE ALL OF THESE DIFFERENT STORIES AND THESE DIFFERENT
21 PERSPECTIVES AND PUT IT ALL TOGETHER TO COME UP WITH A BIG
22 PICTURE OF WHAT REALLY HAPPENED. BECAUSE EACH ONE OF
23 THESE PEOPLE YOU HEARD FROM ONLY HAD ONE LITTLE TIDBIT OF
24 INFORMATION. NOW, ONE OF THE FIRST PEOPLE YOU ARE GOING
25 TO HEAR FROM IS RICHARD COFER, YOU MET HIM EARLIER DURING

1 JURY QUALIFICATION. AND MR. COFER IS GOING TO TELL YOU
2 ABOUT WHAT HE EXPERIENCED ON JANUARY THE 7TH, HE IS GOING
3 TO TELL YOU ON THAT NIGHT HE HAD BEEN TO THE URGENT CARE
4 AND HAD COME HOME WITH HIS WIFE, ROBIN AND THEIR DAUGHTER,
5 CRYSTAL WATCHING TV, HAVING A TYPICAL AFTERNOON AND THEY
6 WENT TO BED. AND RIGHT BEFORE HE GOES OFF TO SLEEP HE
7 HEARS HIS DOG BARKING OUTSIDE, BEING VERY PERSISTENT. SO,
8 HE GETS UP, GOES TO THE BACKDOOR AND LOOKS OUTSIDE TO MAKE
9 SURE EVERYTHING IS OKAY. AND THE DOG IS BARKING AND
10 BARKING AND BARKING BUT HE DOESN'T SEE ANYTHING. WELL,
11 RIGHT ABOUT THE TIME HE GOES TO CLOSE THAT BACKDOOR HE
12 HEARS A HUGE SLAM FROM THE FRONT OF THE HOUSE AND HE FINDS
13 OUT A FEW SECONDS LATER THAT THAT WAS HIS FRONT DOOR BEING
14 KICKED IN. AND THREE MEN COME BARRELING DOWN THE HALLWAY,
15 ONE OF THEM IMMEDIATELY STRIKES HIM IN THE FACE AND KNOCKS
16 HIM DOWN AND TELLS HIM TO STAY ON THE GROUND AND TELLS HIM
17 THAT HE DOESN'T WANT TO DIE. AND AS A RESULT OF THAT
18 BRUTAL STRIKE TO HIS FACE THIS IS WHAT MR. COFER LOOKED
19 LIKE ON JANUARY THE 7TH, AFTER HIS HOME WAS INVADED HE WAS
20 BEATEN IN THE FACE, PUSHED TO THE GROUND, KICKED AND TOLD
21 TO STAY THERE. YOU WILL HEAR FROM HIM THAT CONSTANTLY
22 THROUGHOUT THESE HORRIBLE EVENTS THERE WAS ONE MAN
23 STANDING WITH HIM, HAD HIS FOOT ON HIS BACK TELLING HIM TO
24 STAY ON THE GROUND. NOW, YOU ARE ALSO GOING TO HEAR
25 TESTIMONY FROM HIS WIFE, ROBIN COFER. NOW, ROBIN LUCKILY

1 HEARD THE COMMOTION AND WAS ABLE TO ESCAPE OUT THE
2 BACKDOOR. SHE WAS ABLE TO GO ACROSS THE STREET TO WHERE
3 HER SISTER AND HER BROTHER-IN-LAW LIVE. AND AT A PANIC
4 SHE TELLS THEM, THERE ARE MEN IN MY HOUSE, THEY ARE
5 BEATING MY HUSBAND, THEY ARE BEATING MY DAUGHTER, GET YOUR
6 SHOTGUN AND GO GET THEM OUT OF MY HOUSE. AND HER
7 BROTHER-IN-LAW AND HIS SON RUN BACK OVER AND DO JUST THAT,
8 THEY SAY TODAY THAT THEY ARE RUNNING THESE GUYS OUT OF THE
9 HOUSE. IN THE MEANTIME SHE CALLS 911 TO GET LAW
10 ENFORCEMENT THERE. YOU ARE GOING TO HEAR FROM HER ABOUT
11 WHAT SHE EXPERIENCED AND YOU ARE GOING TO HEAR THAT AS SHE
12 WAS RUNNING BACK ACROSS SHE IS WATCHING TO MAKE SURE THAT
13 NOBODY IS FOLLOWING HER BECAUSE SHE IS TERRIFIED AND SHE
14 DOESN'T SEE ANYBODY SO SHE KNOWS THEY ARE ALL STILL IN THE
15 HOUSE. THE OTHER VICTIM YOU ARE GOING TO HEAR FROM IS MS.
16 CRYSTAL CARNES. CRYSTAL WAS IN HER BED ASLEEP AND SHORTLY
17 AFTER THE MEN PUSHED HER STEP-FATHER DOWN, BEAT HIM,
18 KICKED HIM, THEY WENT INTO HER BEDROOM AND TWO OF THE MEN
19 WERE TOGETHER, ONE HOLDING HER DOWN WHILE THE OTHER
20 WRAPPED DUCT TAPE AROUND HER HEAD. AND THEY BEAT HER AND
21 THEY BROKE HER ARM WHILE SHE LAYED THERE IN HER BED. AND
22 AFTER HER STEP-FATHER AND HER UNCLE HELPED HER GET THE
23 TAPE OFF OF HER HEAD THIS IS WHAT CRYSTAL CARNES LOOKED
24 LIKE ON JANUARY THE 7TH. NOW, THESE VICTIMS CAN TELL YOU
25 ABOUT WHAT THEY EXPERIENCED ON THAT NIGHT BUT IT IS NOT

1 JUST THEIR TESTIMONY THAT YOU ARE GOING TO RELY ON BECAUSE
2 YOU ARE ALSO GOING TO HEAR FROM TESTIMONY OF THE
3 CODEFENDANTS. THERE ARE THREE INDIVIDUALS THAT COMMITTED
4 THIS CRIME. AND CHAUNCEY PARTLOW AND AUSTIN PARTLOW ARE
5 GOING TO COME HERE AND THEY ARE GOING TO TELL YOU ABOUT
6 WHAT HAPPENED THAT NIGHT. THEY DON'T WANT TO BE HERE AND
7 YOU ARE GOING TO SEE THAT THEY DON'T WANT TO BE HERE BUT
8 THEY ARE. AND CHAUNCEY AND AUSTIN ARE GOING TO TELL YOU
9 THAT THAT THIRD GUY THAT HELPED THEM COMMIT THIS CRIME IS
10 SITTING OVER HERE IN THIS CHAIR BESIDE MR. JENKINS. THEY
11 ARE GOING TO TELL YOU THAT ROY JOHNSON IS THE ONE THAT
12 HELPED THEM DO THIS. YOU ARE ALSO GOING TO HEAR TESTIMONY
13 FROM WILLIE ASHFORD AND YOU ARE GOING TO FIND OUT THAT
14 WHENEVER THE THREE CAME IN WITH SHOTGUNS AND CLEARED THE
15 SCENE THESE THREE INDIVIDUALS TOOK OFF RUNNING IN
16 DIFFERENT DIRECTIONS. AUSTIN PARTLOW MADE IT BACK TO THE
17 GETAWAY CAR AND HE HIGHTAILED IT OUT OF THERE. CHAUNCEY
18 PARTLOW TRIED TO GO THROUGH THE WOODS AND HE WAS
19 APPREHENDED VERY QUICKLY BY LAW ENFORCEMENT BECAUSE HE
20 DIDN'T MAKE IT FAR. BUT ROY JOHNSON, ROY MADE IT FOR A
21 WAYS. THIS INCIDENT OCCURRED OUT ON HIGHWAY 34 ON [REDACTED]
22 [REDACTED], YOU SEE THIS MARKED RIGHT HERE. ROY JOHNSON
23 MADE IT DOWN THE ROAD, YOU ARE GOING TO FIND OUT FROM
24 STATEMENTS THAT HE GAVE LAW ENFORCEMENT THAT HE SAW POLICE
25 COME BY AND DUCKED IN THE DITCH EVERY TIME HE SAW A CAR

1 COME BY. HE RUNS DOWN THE ROAD, TURNS HERE AT THE
2 CROSSROAD AND MAKES IT ALL THE WAY UP TO SPRING HILL
3 DRIVE, A LITTLE OVER THREE AND A HALF MILES, SHOWS UP AT
4 WILLIE ASHFORD'S HOUSE COVERED IN SWEAT, COVERED IN GRASS
5 AND SAID, I NEED YOU TO GIVE ME A RIDE TO FAIRFIELD, I
6 NEED TO GET OUT OF NEWBERRY. AND IT IS IN THE MIDDLE OF
7 THE NIGHT SO WILLIE DOES THAT, TAKES HIM TO FAIRFIELD TO
8 HIS BROTHER'S HOUSE AND HIS BROTHER THEN TAKES HIM TO
9 GASTONIA AND HE IS APPREHENDED IN NORTH CAROLINA. AND YOU
10 ARE GOING TO HEAR ALL OF THIS TESTIMONY AND ALL OF THESE
11 DIFFERENT LITTLE BUILDING BLOCKS. YOU ARE ALSO GOING TO
12 HEAR FROM SEVERAL DIFFERENT INVESTIGATORS, SOME OF WHICH
13 COLLECTED EVIDENCE, SOME OF WHICH TOOK PICTURES AND YOU
14 ARE GOING TO SEE A LOT OF PICTURES FROM THIS SCENE. AND I
15 DON'T KNOW IF YOU ARE GOING TO HEAR THE DEFENDANT IN THE
16 COURTROOM BECAUSE HE HAS NO OBLIGATION TO DO ANYTHING, IT
17 IS THE STATE'S BURDEN. BUT I CAN TELL YOU THAT YOU ARE
18 GOING TO HEAR THE DEFENDANT'S STATEMENTS THAT HE GAVE TO
19 LAW ENFORCEMENT AND YOU ARE GOING TO HEAR IN ONE STATEMENT
20 WHERE HE SAYS HE IS THE LOOKOUT AND ONE STATEMENT WHERE HE
21 CHANGES IT A LITTLE BIT AND HE WAS STILL THERE AND STILL
22 SORT OF INVOLVED. ONE STATEMENT WHERE IT IS ALL THE WAY
23 IN THE HOUSE AND SEES CRYSTAL GET DUCT TAPED AND ANOTHER
24 TIME HE IS OUTSIDE ON THE FRONT PORCH WATCHING FOR ANYBODY
25 TO COME BY AND ANOTHER TIME HE HAS BEEN FORCED INSIDE OF

1 THE HOUSE AGAINST HIS WILL AND HE JUST FELL INSIDE THE
2 DOOR. YOU ARE GOING TO SEE THAT THE ONE THING THAT IS
3 CONSISTENT ABOUT ROY JOHNSON IS THAT HE IS INCONSISTENT.
4 NOW, LADIES AND GENTLEMEN, YOU ARE GOING TO HEAR A LOT OF
5 THE EVIDENCE BUT AT THE END OF ALL OF THIS, AFTER YOU HAVE
6 HEARD FROM ALL OF THESE WITNESSES AND YOU HAVE SEEN ALL
7 THE PICTURES THAT YOU ARE GOING TO SEE, ALL OF THE
8 PHYSICAL EVIDENCE, I BELIEVE THAT YOU WILL THINK THAT ROY
9 JOHNSON WAS THAT THIRD MAN. AND AT THE END OF ALL OF THIS
10 I AM GOING TO COME BACK AND I AM GOING TO ASK YOU TO
11 CONVICT HIM FOR WHAT HE DID ON JANUARY THE 7TH OF 2008.
12 THANK YOU.

13 THE COURT: MR. JENKINS.

14 MR. JENKINS: THANK YOU, YOUR HONOR. I SAW THE LOOK
15 IN YOUR EYE, THERE IS NOTHING WRONG WITH THAT LOOK BECAUSE
16 IT IS COMPLETELY NATURAL. THOSE PICTURES ARE HORRIBLE.
17 WHAT I AM GOING TO ASK YOU TO DO IS TO PUT THAT CLEAR OF
18 WHAT HAPPENED IN MY COMMUNITY, PUT THAT ASIDE FOR THE
19 DURATION OF THIS TRIAL. YOU TOOK AN OATH THAT YOU WOULD
20 DO SO, YOU HAVE TO PUT ALL OF THAT OUT OF YOUR HEAD UNTIL
21 YOU HAVE HEARD ALL THE EVIDENCE AND THEN YOU GO BACK TO
22 THAT JURY ROOM AND YOU REACH A VERDICT. IT IS COMPLETELY
23 NATURAL, DON'T BE BOTHERED THAT YOU HAVE THAT FEAR AND
24 DISGUST IN YOUR EYES BUT YOU HAVE TO PUT IT ASIDE. LET ME
25 BACK UP A LITTLE BIT. I AM CHAD JENKINS AND I WORK AT

1 POPE AND HUDGENS HERE IN NEWBERRY AND I REPRESENT ROY
2 JOHNSON. YOUR JOB HERE IS THE MOST IMPORTANT JOB, THANK
3 YOU AHEAD OF TIME BEFORE WE EVEN START. NO MATTER WHAT
4 YOUR VERDICT IS WE ARE GOING TO THANK YOU FOR SITTING HERE
5 AND BEING PRODUCTIVE CITIZENS OF NEWBERRY COUNTY AND SIT
6 HERE AND SPEND THEIR TIME AND THEIR EFFORT AND CONCENTRATE
7 AND LISTEN TO ALL OF THE EVIDENCE THAT YOU ARE GOING TO
8 HEAR. YOU HEARD A LIST OF WITNESSES THAT THE STATE MAY
9 CALL, YOU HEARD A LIST OF PEOPLE THAT WE MAY CALL, WE
10 DON'T HAVE TO BUT WE MAY CALL SOME FOLKS TOO. YOU ARE
11 GOING TO BE HERE A LITTLE WHILE, THURSDAY, FRIDAY MAYBE.
12 YOU HAVE A LOT OF EVIDENCE TO LISTEN TO AND IT TAKES SOME
13 ENERGY AND SOME CONCENTRATION TO GO THROUGH ALL OF THAT.
14 AND I AM GOING TO ASK YOU TO DO SO AND I KNOW THAT AS
15 NEWBERRY COUNTY CITIZENS YOU WILL DO SO. SO, WE DO THANK
16 YOU FOR BEING HERE, YOUR JOB IS THE MOST IMPORTANT ONE IN
17 THE COURTROOM. NOW, ROY JOHNSON IS INNOCENT, A LOT OF
18 PEOPLE WON'T STAND HERE AND MAKE THAT COMMENT. THE JUDGE
19 WILL TELL YOU AND MS. ZIMMERMAN WILL PROBABLY AGREE, AT
20 THIS POINT ROY JOHNSON IS PRESUMED TO BE ONE-HUNDRED
21 PERCENT INNOCENT. HE HASN'T DONE ANYTHING, NO MATTER HOW
22 BAD THOSE PICTURES LOOK, NO MATTER WHAT YOU HEAR FROM THAT
23 WITNESS STAND, UNTIL THE CASE IS COMPLETELY OVER AND YOU
24 GO BACK IN THAT JURY ROOM ROY JOHNSON IS PRESUMED TO BE
25 INNOCENT. HIS PLEA OF NOT GUILTY PUTS THE BURDEN ON THE

1 STATE, THEY HAVE TO PROVE SEVERAL ELEMENTS FOR EACH AND
2 EVERY CRIME THAT HE IS CHARGED WITH. HE IS CHARGED WITH
3 FOUR OR FIVE CRIMES AND EACH ONE OF THOSE CRIMES MAY HAVE
4 FOUR OR FIVE ELEMENTS. THEY HAVE TO PROVE TO YOU BEYOND A
5 REASONABLE DOUBT WHICH IS A DOUBT WOULD MAKE A REASONABLE
6 PERSON HESITATE TO ACT, THEY HAVE TO PROVE TO YOU BEYOND A
7 REASONABLE DOUBT EACH ONE OF THOSE ELEMENTS ON EACH ONE OF
8 THOSE CRIMES. IF THEY DON'T YOU HAVE TO GO BACK AND CHECK
9 NOT GUILTY FOR THAT ONE, NOT GUILTY FOR THAT ONE. IF THEY
10 FAIL TO MEET THEIR BURDEN, EVEN IF MR. JOHNSON DOESN'T PUT
11 ANYTHING ON WE DON'T HAVE TO CROSS-EXAMINE A WITNESS, WE
12 DON'T HAVE TO SAY A WORD, I DON'T HAVE TO STAND HERE AND
13 GIVE AN OPENING STATEMENT. THAT IS ONE REASON I TRY TO BE
14 BRIEF, YOU ARE GOING TO HEAR A LOT OF EVIDENCE, I AM NOT
15 GOING TO GO OVER AND TELL YOU WHAT YOU ARE GOING TO HEAR
16 FROM THIS PERSON OR WHAT YOU ARE GOING TO HEAR FROM THAT
17 PERSON. KEEP AN OPEN MIND, YOU ARE GOING TO SEE A LOT OF
18 EVIDENCE, A LOT OF PICTURES, THERE IS A GUN, THERE IS A
19 MAP, THERE IS A LOT OF THINGS YOU ARE GOING TO SEE, A LOT
20 OF THINGS YOU ARE GOING TO HEAR. I WANT YOU TO KEEP AN
21 OPEN MIND AS YOU SWORE YOU WOULD DO AND KEEP THAT OPEN
22 MIND AND THEN YOU PUT IT ALL TOGETHER AT THE END. KEEP AN
23 OPEN MIND, YOU WILL DECIDE THE VERDICT BASED UPON WHAT YOU
24 SEE AND HEAR. ALL I ASK AND ALL ROY ASK IS THAT YOU KEEP
25 AN OPEN MIND AND AT THE END YOU WILL TAKE ALL OF THE

1 EVIDENCE BACK THERE INTO THE JURY ROOM AND YOU WILL COME
2 BACK WITH A VERDICT. THE JUDGE IS GOING TO GIVE YOU THE
3 LAW AND WHEN YOU GO BACK TO THAT JURY ROOM I FEEL CERTAIN
4 YOU WILL COME BACK WITH A NOT GUILTY. THANK YOU.

5 THE COURT: ALL RIGHT. THANK YOU, MR. JENKINS.
6 LADIES AND GENTLEMEN, WE WILL BREAK FOR THE EVENING. WE
7 ARE GOING TO START AT 9:30 IN THE MORNING, DON'T TALK
8 ABOUT THE CASE, KEEP AN OPEN MIND, DON'T DO ANY KIND OF
9 OUTSIDE RESEARCH OR INVESTIGATION, DON'T GET ON THE
10 INTERNET OR ANYTHING LIKE THAT ABOUT MATTERS RELATED TO
11 THIS CASE. AS I SAID AND AS YOU PROMISED UNDER YOUR OATH
12 YOU HAVE TO CONFINE YOUR DECISION TO THE EVIDENCE YOU HEAR
13 IN THIS COURTROOM. HAVE A GOOD EVENING AND WE WILL SEE
14 YOU BACK AT 9:30.

15 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
16 THE DAY.)

17 THE COURT: ANYTHING BEFORE WE END FOR THE DAY?

18 MS. ZIMMERMAN: NO, YOUR HONOR.

19 MR. JENKINS: NO, SIR.

20 THE COURT: WE WILL SEE YOU ALL AT 9:30 A.M.

21 (WHEREUPON, THE CASE WILL RESUME AT 9:30 A.M. THE
22 NEXT MORNING.)

23 THE COURT: ANYTHING BEFORE WE BRING THE JURY IN?

24 MS. ZIMMERMAN: YES, SIR. ONE OF THE WITNESSES FOR
25 THE STATE, WILLIE ASHFORD WHO CURRENTLY HAS CHARGES

1 PENDING THAT ARE RELATED TO THIS CASE. HE IS REPRESENTED
2 BY RUSSELL BROWN OF THE RICHLAND COUNTY BAR AND PRIOR TO
3 THIS HEARING TODAY RUSSELL AND I HAVE REACHED AN AGREEMENT
4 BY WHICH ANY STATEMENTS THAT HE MAKES AT THIS TRIAL WILL
5 NOT BE USED AGAINST HIM AT ANY SUBSEQUENT PROCEEDINGS OF
6 HIS CHARGES.

7 THE COURT: ALL RIGHT, IS THAT THE ENTIRE AGREEMENT?

8 MR. BROWN: YES, YOUR HONOR.

9 THE COURT: ANYTHING ELSE YOU NEED ON THE RECORD?

10 MS. ZIMMERMAN: NO, SIR.

11 THE COURT: THANK YOU. BRING THE JURY IN, PLEASE.

12 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
13 APPROXIMATELY 10:00 A.M.)

14 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. WE
15 WILL START THIS MORNING WITH TESTIMONY. MS. ZIMMERMAN,
16 CALL YOUR FIRST WITNESS.

17 MS. ZIMMERMAN: WE CALL RICHARD COFER TO THE STAND.

18 RICHARD COFER, AFTER BEING DULY SWORN,
19 TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. ZIMMERMAN:

22 Q MR. COFER, CAN YOU TELL ME WHERE YOU WERE LIVING ON
23 JANUARY THE 7TH OF 2008.

24 A IN NEWBERRY ON [REDACTED]

25 Q ON THAT PARTICULAR DAY TELL ME WHAT HAPPENED THAT LED

1 US HERE TODAY?

2 A WE HAD A BREAK-IN.

3 Q TELL ME ABOUT YOUR EVENING ON THE 7TH?

4 A WELL, WE HAD JUST GOT HOME FROM URGENT CARE OUT OF
5 CHAPIN ABOUT 9:30 OR 10:00 O'CLOCK, SITTING THERE WATCHING
6 TV FOR A WHILE AND DECIDED TO GO TO BED. AND I WAS THERE
7 PROBABLY FIFTEEN MINUTES LAYING IN THE BED AND MY DOG WENT
8 TO BARKING, REALLY BARKING SO I GOT UP AND PEEKED OUT THE
9 BACKDOOR AND DIDN'T SEE ANYTHING. SO, I SHUT THE DOOR AND
10 STARTED UP THE HALLWAY. I GOT ABOUT THREE QUARTERS UP THE
11 HALLWAY, THREE MEN KICKED IN MY FRONT DOOR AND THEY ALL
12 RUSHED IN AT THE SAME TIME. ONE TOLD ME TO GET ON THE
13 FLOOR AND I SAID, OKAY MAN, I WILL.

14 Q ONCE YOU GOT ON THE FLOOR WHAT HAPPENED?

15 A ONCE I WAS ON THE FLOOR HE STARTED KICKING ME IN THE
16 SIDE AND THE BACK, SEVERAL TIMES IN THE FACE AND HE TOLD
17 ME TO LAY DOWN AND NOT MOVE AND HE PUT HIS FOOT IN THE
18 BACK OF MY NECK AND HE STOOD OVER ME WITH A GUN.

19 Q DID THEY SAY ANYTHING ELSE TO YOU?

20 A NO, MA'AM.

21 Q DO YOU REMEMBER HEARING ANYTHING ELSE THAT NIGHT?

22 A WELL, JUST WHEN THEY CAME IN THEY WANTED ME ON THE
23 FLOOR, MY STEP-DAUGHTER'S BEDROOM, I COULD HEAR THEM
24 STRUGGLING. AND I TOLD THEM TO PLEASE NOT HURT HER, AND
25 HE TOLD ME TO SHUT UP AND SO I DID. THERE WAS NOTHING I

1 COULD REALLY DO.

2 Q WHILE ALL OF THIS WAS GOING ON COULD YOU TELL
3 ANYTHING ABOUT THE PHYSICAL DESCRIPTION OF THE THREE MEN
4 THAT CAME IN?

5 A NO MA'AM, I COULDN'T.

6 Q DO YOU HAVE ANY IDEA HOW LONG YOU WERE THERE ON THE
7 FLOOR?

8 A IT SEEMED LIKE FOREVER BUT IT PROBABLY WASN'T ABOUT
9 TEN MINUTES OR SO.

10 Q AND WHAT HAPPENED AFTER THAT?

11 A AFTER THAT, THE NEXT THING I COULD REMEMBER IS MY
12 BROTHER-IN-LAW CAME IN THE BACKDOOR WITH A SHOTGUN.

13 Q WHAT HAPPENED WHEN HE CAME IN THE BACKDOOR?

14 A HE WALKED IN AND HE SAID, WHAT'S GOING UP IN HERE.
15 AND THE GUY THAT WAS ON ME NEVER DID EVEN MOVE, I DON'T
16 KNOW WHY. BUT HE MET ONE OF THEM AT THE BACKDOOR AND
17 TRIED TO AND HE PEEKED OUT THE BACKDOOR AND HE CAME BACK
18 IN AND HE YELLED SHOTGUN. AND WHEN HE YELLED SHOTGUN THEY
19 ALL SCATTERED.

20 Q AND YOU SAID HE YELLED SHOTGUN, DO YOU MEAN YOUR
21 BROTHER-IN-LAW?

22 A NO MA'AM, WHOEVER IT WAS AT THE DOOR.

23 Q AND THEN WHAT HAPPENED AFTER THAT?

24 A THE NEXT THING I REMEMBER IS THE POLICE WAS COMING UP
25 AND THE AMBULANCE AND ALL OF THAT.

1 Q DID YOU SUFFER ANY TYPE OF INJURES AS A RESULT OF
2 THIS INCIDENT?

3 A YES, MA'AM.

4 Q TELL ME ABOUT THOSE INJURIES?

5 A HE KICKED ME IN MY RIBS, I HAD ONE BROKE RIB, HE HIT
6 ME ABOVE MY EYE WITH THE BUTT END OF THE GUN. THAT IS
7 WHAT BUSTED AND SWOLE MY FACE UP.

8 Q AND DID YOUR STEP-DAUGHTER SUFFER ANY INJURIES AS A
9 RESULT OF THIS?

10 A YES MA'AM, SHE SUFFERED A BROKEN ARM, A BIG CUT IN
11 THE BACK OF HER HEAD AND A LOT OF BRUISES.

12 Q AND MR. COFER, I AM GOING TO SHOW YOU WHAT HAS BEEN
13 MARKED AS STATE'S EXHIBIT 3 AND STATE'S EXHIBIT 4. DO YOU
14 RECOGNIZE THOSE TWO ITEMS?

15 A YES, MA'AM.

16 Q CAN YOU TELL ME WHAT THOSE ARE?

17 A THAT WAS ME AFTER EVERYTHING HAD HAPPENED AND I WAS
18 ALL BEAT UP. THAT WAS CRYSTAL AFTER IT WAS OVER WITH,
19 THEY COME OUT AND MY BROTHER-IN-LAW'S SON HAD CUT THE TAPE
20 OFF OF HER FACE, SHE WAS ALL WRAPPED UP, NOSE AND HEAD AND
21 ALL.

22 Q DO THESE TWO PICTURES FAIRLY AND ACCURATELY DEPICT
23 WHAT YOU AND YOUR STEP-DAUGHTER LOOKED LIKE ON THE NIGHT
24 OF JANUARY THE 7TH?

25 A YES, MA'AM.

1 MS. ZIMMERMAN: THE STATE WOULD MOVE TO ADMIT STATE'S
2 3 AND 4 INTO EVIDENCE.

3 MR. JENKINS: NO OBJECTION.

4 THE COURT: THEY ARE IN EVIDENCE.

5 (WHEREUPON, STATE'S EXHIBIT NOS. 3 AND 4 WERE
6 ADMITTED INTO EVIDENCE.)

7 Q MR. COFER, WAS ANYTHING TAKEN FROM YOUR HOUSE ON THE
8 NIGHT OF JANUARY THE 7TH?

9 A THERE WAS, I DON'T KNOW EXACTLY HOW MUCH, CLOSE TO
10 \$100.00 DOLLARS THEY TOOK OUT OF MY WIFE'S PURSE. AND I
11 HEARD SOMEBODY STRUGGLING THROUGH MY DRAWERS AND STUFF,
12 THERE WAS A FEW ITEMS OF MINE. NOTHING REALLY IMPORTANT
13 BUT A KNIFE, A POCKET WATCH, STUFF SUCH AS THAT.

14 Q LET ME SHOW YOU STATE'S 106, DO YOU RECOGNIZE THAT?

15 A YES, MA'AM.

16 Q AND WHAT IS STATE'S 106?

17 A THAT IS MY KNIFE AND MY POCKET WATCH.

18 Q WERE THESE THE SAME KNIFE AND POCKET WATCH TAKEN FROM
19 YOUR HOUSE ON THE NIGHT OF JANUARY THE 7TH?

20 A YES, MA'AM.

21 MS. ZIMMERMAN: THE STATE HAS A PHOTOGRAPH OF THE
22 KNIFE AND POCKET WATCH MARKED AS STATE'S 106 THAT WE WOULD
23 MOVE TO ADMIT INTO EVIDENCE.

24 MR. JENKINS: NO OBJECTION.

25 THE COURT: IT IS IN EVIDENCE.

1 (WHEREUPON, STATE'S EXHIBIT NO. 106 WAS ADMITTED INTO
2 EVIDENCE.)

3 Q MR. COFER, DO YOU STILL LIVE OUT ON HIGHWAY 34?

4 A NO, MA'AM.

5 Q DO YOU STILL LIVE IN THAT AREA?

6 A NO, MA'AM.

7 Q AND WHY IS IT THAT YOU MOVED AWAY FROM THAT AREA?

8 A BECAUSE AFTER THIS INCIDENT HAPPENED MY WIFE AND
9 MYSELF, ESPECIALLY MY DAUGHTER COULD NOT SLEEP AT NIGHT.
10 AFTER THAT HAPPENED WE END UP SLEEPING OVER AT MY SISTER'S
11 HOUSE JUST ABOUT EVERY NIGHT.

12 Q NOTHING FURTHER.

13 CROSS-EXAMINATION

14 BY MR. JENKINS:

15 Q MR. COFER, I AM SORRY TO MAKE YOU RELIVE PART OF
16 THIS. BUT YOU INDICATED THAT ONE OF THE ASSAILANTS HAD
17 HIS FOOT ON THE BACK OF YOUR NECK HOLDING YOU DOWN?

18 A THAT IS RIGHT.

19 Q THAT WAS APPROXIMATELY TEN MINUTES OR SO, MAYBE
20 LONGER, IT FELT LIKE LONGER?

21 A YES, SIR.

22 Q NOW, YOU COULDN'T SEE REALLY WELL THROUGHOUT THE
23 MOBILE HOME WITH YOUR HEAD DOWN IN THAT POSITION, IS THAT
24 CORRECT?

25 A NO, SIR.

1 Q AND YOU DIDN'T SEE YOUR WIFE WHEN SHE LEFT OUT THE
2 HOME, DID YOU?

3 A I DID NOT.

4 Q AND THERE WAS ONLY ONE GUY WITH YOU THE ENTIRE TIME?

5 A THAT IS RIGHT.

6 Q NOW, THE MOBILE HOME, I AM TRYING TO GET A LITTLE BIT
7 BETTER PICTURE FOR THE JURY OF HOW THE AREA IS SITUATED.

8 IF YOU ARE LOOKING AT THE MOBILE HOME FROM HIGHWAY 34,
9 THERE IS A MOBILE HOME TO THE RIGHT?

10 A NO, TO THE LEFT. WELL, THERE IS ONE ON BOTH SIDES.

11 Q THERE IS ONE ON BOTH SIDES?

12 A YES, SIR.

13 Q AND THEN NEXT TO THE ONE ON THE RIGHT THERE IS AN
14 ABANDONED BRICK HOME?

15 A YES, SIR.

16 Q AND DIRECTLY ACROSS THE ROAD ARE SOME RELATIVES OF
17 YOUR WIFE, IS THAT CORRECT?

18 A THAT IS TRUE.

19 Q AND THIS AREA THAT IS OUT ON HIGHWAY 34, IS IT A WELL
20 LIT AREA OR IS IT A DARK AREA?

21 A FAIRLY DARK, FAIRLY LIT UP, I MEAN IT HAS GOT A FEW
22 STREET LIGHTS AND YARD LIGHTS.

23 Q AND BETWEEN THE MOBILE HOME NEXT TO YOURS AND THE
24 ABANDONED HOUSE, ISN'T THERE A ROW OF TREES AND SHRUBS
25 ALONG THAT WAY?

1 A YES SIR, BUT YOU CAN SEE THROUGH THEM.

2 Q THAT IS ALL I HAVE.

3 THE COURT: REDIRECT?

4 MS. ZIMMERMAN: NO FURTHER QUESTIONS.

5 THE COURT: YOU CAN STEP DOWN, THANK YOU.

6 MS. ZIMMERMAN: THE STATE CALLS ROBIN COFER TO THE
7 STAND.

8 ROBIN COFER, AFTER BEING DULY SWORN, TESTIFIED
9 AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. ZIMMERMAN:

12 Q MS. COFER, YOU HEARD YOUR HUSBAND TESTIFY THAT ON
13 JANUARY THE 7TH YOU WERE LIVING OUT ON HIGHWAY 34, IS THAT
14 CORRECT?

15 A YES, MA'AM.

16 Q WHO ALL LIVED THERE WITH YOU IN THE HOUSE THERE ON
17 34?

18 A ME, MY DAUGHTER, MY HUSBAND AND MY SON.

19 Q JUST TO CLARIFY, HIGHWAY 34 RUNS A PRETTY SUBSTANTIAL
20 DISTANCE. WHAT COUNTY ARE WE TALKING ABOUT HERE?

21 A NEWBERRY COUNTY.

22 Q AND THE PEOPLE THAT YOU JUST LISTED OFF, WERE THEY
23 ALL LIVING THERE ON JANUARY THE 7TH?

24 A YES, MA'AM.

25 Q YOUR DAUGHTER, HOW OLD IS SHE?

1 A SHE IS 33.

2 Q CAN YOU TELL ME WHY IT IS THAT YOUR ADULT DAUGHTER
3 STILL LIVES AT HOME WITH YOU?

4 A BECAUSE SHE HAS A LEARNING DISABILITY.

5 Q CAN YOU EXPLAIN THAT TO ME?

6 A CRYSTAL WAS BORN WITH SPINAL MENINGITIS WHICH CAUSED
7 CEREBRAL PALSY FROM THE HIGH FEVER, HAD DONE DAMAGE TO THE
8 WHOLE LEFT SIDE OF HER BODY. AND SHE CAN'T FUNCTION WELL
9 OUTSIDE THE HOME WITHOUT SUPERVISION.

10 Q AND SHE HAS ALWAYS LIVED WITH YOU?

11 A YES, MA'AM.

12 Q I AM GOING TO TAKE YOU BACK TO JANUARY THE 7TH AND
13 TALK ABOUT THIS INCIDENT. WHAT DO YOU REMEMBER ABOUT THE
14 EVENING OF JANUARY THE 7TH OF 2008.

15 A I HAD JUST TOOK MY HUSBAND TO URGENT CARE IN CHAPIN,
16 HE WAS REAL SICK. WE CAME HOME THAT NIGHT AND LAYED DOWN
17 TO GO TO BED AND MY DOG STARTED BARKING. HE BARKED EVERY
18 NIGHT BUT THAT NIGHT HE WAS REALLY SHOWING OUT. SO, I
19 TOLD MY HUSBAND TO GET UP AND SEE WHAT HE WAS SHOWING OUT
20 ABOUT. AND WHEN HE WENT OUT THE BEDROOM DOOR, MY BEDROOM
21 DOOR IS RIGHT BESIDE THE BACKDOOR AND I HAD A FLOOR FAN
22 GOING AND IT BLEW MY DOOR KIND OF SHUT, IT LEFT A LITTLE
23 CRACK IN IT. WHEN I HEARD HIM OPEN THE DOOR AND HE WENT
24 TO SHUT THE DOOR BACK, I HEARD THAT AND I WAS STILL LAYING
25 IN THE BED. AND ALL OF A SUDDEN I HEARD A BIG BANG, AND

1 THEN I HEARD A BUNCH OF BANGING AND SCUFFLING AND GOING
2 ON. AND I HEARD MY HUSBAND SAY, MAN, I DON'T HAVE ANY
3 MONEY AND THAT IS WHEN I KNEW, FELT SOMEBODY WAS IN THE
4 HOUSE. SO, I GOT UP, I PEEKED OUT THE DOOR AND I SEEN
5 SOMEBODY COMING TOWARD THE BEDROOM DOOR. I SEEN A BUNCH
6 OF PEOPLE IN THE HALL SCUFFING AND GOING ON. THAT IS WHEN
7 I RAN AND JUMPED ON THE OTHER SIDE OF THE BED AND STOOPED
8 DOWN, LAYED DOWN ON THE SIDE OF THE BED AND I SEEN THE
9 DOOR FROM THE BOTTOM OF THE BED CRACK OPEN, I COULD SEE
10 THE LIGHT, IT WAS LIKE A NIGHT LIGHT AND IT OPENED AND IT
11 SHUT BACK. AND I FELT LIKE, I SAID MAYBE THEY ARE LOOKING
12 TO SEE IF ANYBODY ELSE WAS IN THE BEDROOM. SO, I GOT BACK
13 UP AGAIN AND I WENT TO OPEN THE DOOR AND PEEKED OUT AGAIN
14 AND THEY WERE ALL STILL IN THE HALLWAY, THAT IS WHEN I
15 SEEN THAT MY BACKDOOR WAS WIDE OPEN. UNDOUBTEDLY FROM THE
16 SCUFFLING AND GOING ON THEY HAD HIT UP AGAINST THE WALL
17 AND THE DOOR FLEW BACK OPEN. AND THAT IS WHEN I RAN OUT
18 THE DOOR.

19 Q WHEN YOU LOOKED DOWN THE HALL COULD YOU TELL HOW MANY
20 PEOPLE THERE WERE IN THE HOUSE?

21 A NO, I COULDN'T, I COULD TELL THERE WAS MORE THAN ONE
22 PERSON.

23 Q AND DID YOU HEAR ANYTHING WHEN YOU LOOKED OUT?

24 A THE ONLY THING THAT I HEARD WAS CRYSTAL SCREAMING.

25 Q NOW, ONCE YOU MADE IT OUT THE BACKDOOR WHAT DID YOU

1 DO?

2 A I RAN NEXT DOOR TO MY NEIGHBORS HOUSE BECAUSE WE
3 DIDN'T HAVE A PHONE, ALL WE HAD WAS A CELL PHONE AT THE
4 TIME AND THE CELL PHONES WOULDN'T PICK UP IN THE TRAILER.
5 SO, I WAS GOING TO TRY TO GET TO THE NEAREST PHONE, SO I
6 RAN TO MY NEIGHBORS HOUSE WHICH WAS ON THE LEFT SIDE OF US
7 AND BANGED AND BANGED ON THEIR DOOR AND NOBODY WOULD COME
8 TO THE DOOR. SO THEN I RAN ACROSS THE ROAD TO MY SISTER'S
9 HOUSE.

10 Q AND WHAT HAPPENED WHEN YOU GOT TO YOUR SISTER'S
11 HOUSE?

12 A I BANGED ON THEIR DOOR AND THEY FINALLY COME TO THE
13 FRONT DOOR AND LET ME IN AND I RAN IN THERE AND I TOLD MY
14 BROTHER-IN-LAW THAT THERE WAS SOMEBODY THAT HAD BROKEN IN
15 THE HOUSE AND THAT I NEEDED HELP, TO GET HIS SHOTGUN TO GO
16 GET THEM OUT BECAUSE THEY WERE BEATING MY HUSBAND AND MY
17 DAUGHTER. AND I PICKED UP THE PHONE TO DIAL 911.

18 Q MS. COFER, I AM GOING TO SHOW YOU STATE'S EXHIBIT 85,
19 CAN YOU TELL ME WHAT THAT IS?

20 A IT IS A 911 TAPE.

21 Q AND YOU WERE ACTUALLY THE ONE THAT MADE THAT 911
22 CALL?

23 A I DID.

24 MS. ZIMMERMAN: I WOULD MOVE STATE'S 85 INTO
25 EVIDENCE.

1 MR. JENKINS: NO OBJECTION.

2 THE COURT: 85 IS IN EVIDENCE.

3 (WHEREUPON, STATE'S EXHIBIT NO. 85 WAS ADMITTED INTO
4 EVIDENCE.)

5 MS. ZIMMERMAN: REQUEST PERMISSION TO PLAY IT FOR THE
6 JURY.

7 THE COURT: YES, MA'AM.

8 (WHEREUPON, 911 TAPE WAS PLAYED BEGINNING AT 10:15
9 A.M. AND ENDED AT 10:23 A.M.)

10 Q MS. COFER, IT APPEARED THAT THERE WAS MORE THAN ONE
11 FEMALE VOICE ON THE PHONE, CAN YOU TELL ME IF SOMEONE ELSE
12 GOT ON THAT PHONE CALL?

13 A YES, MA'AM. BY THE TIME THAT I GOT OVER THERE I WAS
14 HYSTERICAL AND OUT OF BREATH, AND MY SISTER, AFTER I HAD
15 MADE THE PHONE CALL MY SISTER TOOK THE PHONE FROM ME
16 BECAUSE I COULDN'T TALK ANY MORE.

17 Q SO, THE SECOND VOICE IS YOUR SISTER?

18 A YES, MA'AM.

19 Q NOW, I AM GOING TO GO BACK, WHEN YOU WERE RUNNING
20 ACROSS THE STREET DID YOU HAVE A CLEAR VIEW OF THE
21 TRAILER?

22 A YES, MA'AM.

23 Q DID YOU AT ANY TIME LOOK BACK TOWARD THE TRAILER?

24 A ALL THE TIME, A LOT OF TIMES.

25 Q DID YOU SEE ANYBODY ANYWHERE OUTSIDE THE TRAILER?

1 A NO; MA'AM. BECAUSE I KEPT LOOKING BACK TO MAKE SURE
2 THEY WEREN'T CHASING ME.

3 Q WHEN YOU GOT OVER TO YOUR SISTER'S HOUSE, CAN YOU
4 DESCRIBE WHAT THE VIEW LOOKS LIKE FROM YOUR SISTER'S
5 HOUSE?

6 A IT IS OPEN.

7 Q ARE THERE ANY TREES OR ANYTHING BETWEEN YOUR HOUSE
8 AND YOUR SISTER'S?

9 A NOT IN THE FRONT, THERE IS SOME SHRUBBERY IN THE
10 FRONT AND THERE IS A COUPLE OF TREES DOWN THE SIDE.

11 Q DID YOU HAVE A CLEAR VIEW BACK TO YOUR TRAILER FROM
12 YOUR SISTER'S?

13 A YES, MA'AM.

14 Q DID YOU SEE ANYBODY OUTSIDE THEN?

15 A NO, MA'AM.

16 Q MS. COFER, DURING THE COURSE OF THIS DID YOU EVER SEE
17 ANYBODY COME BACK OUT OF YOUR TRAILER?

18 A WHEN WE WAS ON THE FRONT PORCH ON THE PHONE WITH THE
19 911 CALL WE SEEN THREE GUYS RUN OUT THE FRONT DOOR.

20 Q AND DID YOU SEE YOUR BROTHER-IN-LAW COME OUT AT ANY
21 POINT?

22 A I SEEN HIM COME OUT ON THE PORCH AFTER THEM.

23 Q NO FURTHER QUESTIONS.

24 THE COURT: CROSS-EXAMINATION.

25 CROSS-EXAMINATION

1 BY MR. JENKINS:

2 Q YOU HEARD YOUR HUSBAND EARLIER TESTIFY THAT IT SEEMED
3 LIKE FOREVER BUT IT WAS PROBABLY AROUND TEN MINUTES, IS
4 THAT FAIRLY ACCURATE?

5 A YES.

6 Q NOW, LISTENING TO THE 911 CALL, I SORT OF TIMED IT AS
7 IT WAS GOING ON AND FROM THE TIME YOU CALLED UNTIL THE
8 TIME THEY SAID THEY SAW THREE PEOPLE RUNNING OUT OF THE
9 HOME, THAT WAS ABOUT THREE MINUTES. SO THAT WOULD LEAVE
10 SEVEN MINUTES BEFORE THAT. IS THAT CORRECT?

11 A I CAN'T REMEMBER THE TIME, I MEAN IT WAS, IT HAPPENED
12 SO FAST.

13 Q WHEN YOU LEFT THE HOME YOU WENT TO THE NEIGHBORS. IF
14 YOU ARE FACING THE HOME FROM HIGHWAY 34, DID YOU GO TO THE
15 HOME ON THE LEFT OR THE RIGHT?

16 A ON THE RIGHT.

17 Q AND HOW LONG WERE YOU AT THAT HOME?

18 A A GOOD MINUTE.

19 Q AND SINCE NO ONE ANSWERED THERE YOU WENT DIRECTLY
20 ACROSS THE ROAD?

21 A YES, SIR.

22 Q WERE YOU WALKING OR STROLLING OR RUNNING?

23 A RUNNING.

24 Q OKAY. NOW, FROM YOUR HOME AT THAT TIME CAN YOU SEE
25 DOWN HIGHWAY 34 WITHOUT WALKING AWAY FROM THE FRONT PORCH

1 AREA?

2 A YES, SIR. YOU CAN SEE DOWN TO THE NEXT TRAILER PARK.

3 Q OKAY. TOWARDS NEWBERRY?

4 A YES, SIR.

5 Q WHAT ABOUT TOWARDS FAIRFIELD COUNTY?

6 A NOT FAR DOWN THAT ROAD.

7 Q BECAUSE THERE IS A ROW OF SHRUBS AND TREES AND THE
8 HOUSE AND THEN I THINK IT COMES SORT OF HOOKED AFTER THAT,
9 DOESN'T IT?

10 A YES, SIR.

11 Q SO YOU WOULD HAVE TO ACTUALLY WALK OUT TO THE ROAD TO
12 BE ABLE TO SEE DOWN THAT ROAD?

13 A RIGHT.

14 Q NOW, ON THE 911 CALL YOU FIRST INDICATED THERE WERE
15 TWO PEOPLE IN THE HOME, IS THAT CORRECT?

16 A YES, SIR.

17 Q AND THEN YOU SAW THREE PEOPLE RUNNING FROM THE HOME
18 AS YOU WERE STANDING ON YOUR SISTER'S FRONT PORCH?

19 A YES, SIR.

20 Q THAT IS ALL I HAVE, THANK YOU.

21 THE COURT: REDIRECT?

22 REDIRECT EXAMINATION

23 BY MS. ZIMMERMAN:

24 Q MS. COFER, THE HOUSE ON THE RIGHT OF YOU THAT YOU
25 WENT TO FIRST, IS IT ON THE SAME SIDE AS THE BRICK HOUSE?

1 A YES, MA'AM.

2 Q AND HOW MANY HOUSES ARE BETWEEN YOUR HOUSE AND THE
3 BRICK HOUSE?

4 A JUST THAT ONE TRAILER.

5 Q NO FURTHER QUESTIONS.

6 THE COURT: RECROSS?

7 RECROSS-EXAMINATION

8 BY MR. JENKINS:

9 Q THERE IS ONLY ONE HOUSE BETWEEN YOUR HOME AND THE
10 BRICK HOME?

11 A YES, SIR.

12 Q DID YOU NOTICE A CAR OR ANYONE AT THE BRICK HOME?

13 A I DID NOT, NO SIR.

14 Q THAT IS ALL I HAVE.

15 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT
16 WITNESS.

17 THE COURT: THE STATE CALLS WILLIE ASHFORD.

18 WILLIE ASHFORD, AFTER BEING DULY SWORN,
19 TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. ZIMMERMAN:

22 Q MR. ASHFORD, CAN YOU TELL ME IF THERE WAS ANYTHING
23 SIGNIFICANT THAT HAPPENED AT YOUR HOUSE ON JANUARY THE 7TH
24 OF 2008?

25 A CAN YOU GIVE ME A LITTLE MORE DETAIL ON THAT, PLEASE.

1 Q ARE YOU AWARE OF WHAT YOU ARE HERE TO TESTIFY ABOUT?

2 A YES, MA'AM.

3 Q CAN YOU TELL ME ABOUT THAT?

4 A ABOUT 2:45 OR 3:00 O'CLOCK JANUARY THE 7TH I GOT A
5 KNOCK AT THE DOOR AT MY HOUSE.

6 Q AND 2:45 OR 3:00 O'CLOCK, ARE YOU TALKING AFTERNOON
7 OR IN THE MORNING?

8 A IN THE MORNING.

9 Q WHO WAS AT YOUR DOOR?

10 A MR. JOHNSON.

11 Q BY MR. JOHNSON, DO YOU SEE THAT PERSON IN THE
12 COURTROOM TODAY?

13 A YES, MA'AM.

14 Q CAN YOU POINT HIM OUT FOR US.

15 A RIGHT THERE.

16 MS. ZIMMERMAN: THE RECORD WILL REFLECT THAT MR.
17 ASHFORD HAS IDENTIFIED THE DEFENDANT.

18 Q NOW, MR. ASHFORD, WHEN HE CAME TO YOUR DOOR WHAT
19 HAPPENED?

20 A WHEN HE CAME TO THE DOOR I OPENED, HE WAS LIKE, HE
21 NEEDS SOME HELP. AND I ASKED HIM, WHAT DO YOU, DO YOU
22 NEED TO USE THE TELEPHONE. AND HE WAS LIKE, NO, HE NEEDED
23 A RIDE.

24 Q DID HE TELL YOU WHERE HE WANTED TO GO?

25 A NO, MA'AM.

1 Q DID HE TELL YOU WHY HE NEEDED A RIDE?

2 A NO, HE JUST TOLD ME HE WAS IN TROUBLE, THAT IS ALL HE
3 TOLD ME.

4 Q SO, WHAT DID YOU DO AFTER HE TOLD YOU THAT?

5 A FIRST I THOUGHT ABOUT IT BUT THEN I WAS LIKE, HE SAID
6 HE WAS IN TROUBLE, EVEN THOUGH I DIDN'T HAVE NO LICENSE I
7 SAID I WOULD GET HIM AWAY FROM MY HOUSE. SO, I TOOK HIM.

8 Q WHERE DID YOU GO FROM THERE?

9 A I THINK IT WAS, WHEN I LEFT THE HOUSE I WENT TO THE
10 GAS STATION FIRST.

11 Q WHICH GAS STATION IS THAT?

12 A THE SHELL STATION OFF OF 26 AND 34.

13 Q AND WHAT DID YOU DO AFTER YOU LEFT THE SHELL STATION?

14 A WENT BACK UP 34 TOWARD FAIRFIELD COUNTY.

15 Q WHERE DID YOU EVENTUALLY TAKE MR. JOHNSON?

16 A I THINK IT WAS UNION.

17 Q OKAY. DID YOU KNOW, WAS IT A HOUSE OR A BUSINESS?

18 A I THINK IT WAS A HOUSE. YOU KNOW, IT WAS A COUPLE OF
19 HOUSES AROUND, I DON'T KNOW WHICH ONE HE WENT IN.

20 Q WHAT DID YOU DO WHEN YOU GOT THERE?

21 A WHEN I GOT THERE I JUST DROPPED HIM OFF AND CAME BACK
22 HOME. BUT ON MY WAY HOME THE POLICE GOT BEHIND ME AND
23 THEY FOLLOWED ME FOR A LITTLE WHILE AND THEN THEY TURNED
24 THE LIGHTS ON. I DIDN'T WANT TO STOP BECAUSE I WAS ON A
25 BACK ROAD WHEN THEY TURNED THE LIGHTS ON SO I WENT ON

1 HOME.

2 Q I AM GOING TO TAKE YOU BACK TO THE BEGINNING OF YOUR
3 STORY. WHEN MR. JOHNSON FIRST SHOWED UP AT YOUR HOUSE DID
4 YOU NOTICE ANYTHING ABOUT HIS CLOTHING THAT SEEMED ODD?

5 A HE WAS WET, HAD LIKE GRASS ON HIM AND STUFF. YOU
6 KNOW, LIKE SOMEBODY WAS CHASING HIM OR SOMETHING.

7 MR. JENKINS: OBJECTION, TO THE SPECULATION.

8 THE COURT: OVERRULED.

9 Q AND DID YOU ASK HIM ANYTHING ABOUT THE GRASS OR THE
10 FACT THAT HE WAS WET?

11 A NO, HE WOULDN'T TELL ME NOTHING, IT WAS LIKE HE WAS
12 IN TROUBLE, HE REALLY NEEDED A RIDE.

13 Q DURING THE TRIP WHILE YOU TRANSPORTED HIM TO THE
14 RESIDENCE DID HE SAY ANYTHING TO YOU AT ALL?

15 A NO, MA'AM.

16 Q DIDN'T EXPLAIN TO YOU WHAT HE MEANT BY HE WAS IN
17 TROUBLE?

18 A NO, HE WOULDN'T GO INTO NO DETAIL ABOUT HE WAS IN
19 TROUBLE.

20 Q MR. ASHFORD, AT THAT TIME WHERE WERE YOU LIVING?

21 A [REDACTED]

22 Q AND DO YOU HAVE ANY IDEA HOW CLOSE THAT IS TO [REDACTED]

23 [REDACTED]?

24 A I WOULD SAY ABOUT HALF A MILE, A LITTLE MORE.

25 Q MR. ASHFORD, I THINK YOU SAID YOU CAME BACK UP 34?

1 A YES, MA'AM.

2 Q DID YOU SEE ANYTHING INTERESTING ON YOUR RIDE BACK UP
3 HIGHWAY 34?

4 A AN ACCIDENT.

5 Q ANY IDEA WHERE THAT ACCIDENT WAS?

6 A WHAT DO YOU CALL IT, KEITTS CROSSING, ONCE YOU PASS
7 KEITTS CROSSING ABOUT I WOULD SAY A MILE AND A HALF, TWO
8 MILES UP THE ROAD.

9 Q AND COULD YOU TELL WHAT KIND OF VEHICLE THAT WAS
10 INVOLVED IN THAT ACCIDENT?

11 A NOT REALLY, I WAS WATCHING THE POLICE CAR MORE THAN
12 ANYTHING.

13 Q NO FURTHER QUESTIONS.

14 THE COURT: CROSS-EXAMINATION.

15 CROSS-EXAMINATION

16 BY MR. JENKINS:

17 Q DURING YOUR CONVERSATION WITH MR. JOHNSON HE
18 INDICATED THAT SOMEBODY WAS GOING TO GET HIM, DIDN'T HE?

19 A HE SAID HE WAS IN TROUBLE, HE DIDN'T SAY WHO WAS
20 COMING TO GET HIM, HE SAID--

21 Q HE SAID SOMEBODY WAS GOING TO GET HIM?

22 A SOMETHING LIKE THAT.

23 Q THAT IS ALL I HAVE.

24 THE COURT: YOU MAY STEP DOWN, MR. ASHFORD.

25 MS. ZIMMERMAN: THE STATE CALLS CHAUNCEY PARTLOW.

1 CHAUNCEY PARTLOW, AFTER BEING DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MS. ZIMMERMAN:

5 Q MR. PARTLOW, WHERE DO YOU CURRENTLY RESIDE?

6 A BROAD RIVER.

7 Q IS THAT A CORRECTIONS FACILITY?

8 A YES, MA'AM.

9 Q WHAT LED YOU TO BE INCARCERATED?

10 A BECAUSE OF A HUMBUG.

11 Q HUMBUG?

12 A YES.

13 Q I DON'T KNOW WHAT YOU MEAN.

14 A A SITUATION.

15 Q WHAT WAS THAT SITUATION?

16 A A ROBBERY.

17 Q AND IS THAT THE SAME ROBBERY THAT WE ARE HERE TO TALK
18 ABOUT TODAY?

19 A YES, MA'AM.

20 Q CAN YOU TELL ME ABOUT THE CIRCUMSTANCES THAT LED YOU
21 TO BE INVOLVED IN THAT ROBBERY?

22 A A CONVERSATION.

23 Q A CONVERSATION WITH WHO?

24 A A COUPLE OF PEOPLE. MY COUSIN AND ANOTHER PERSON,
25 ROY.

1 Q IS THAT THE SAME ROY THAT IS SITTING IN THE COURTROOM
2 TODAY?

3 A YES.

4 Q WHAT WAS THE CONVERSATION BETWEEN YOURSELF AND THE
5 DEFENDANT AND YOUR COUSIN?

6 A IT WAS JUST A CONVERSATION ABOUT SOME MONEY.

7 Q WHERE WERE YOU WHEN THIS CONVERSATION OCCURRED?

8 A NORTH CAROLINA.

9 Q WHERE IN NORTH CAROLINA?

10 A GASTONIA.

11 Q ARE YOU ORIGINALLY FROM GASTONIA?

12 A YES, MA'AM.

13 Q HOW ABOUT YOUR COUSIN?

14 A YES, MA'AM.

15 Q HOW ABOUT THE DEFENDANT?

16 A NO, MA'AM.

17 Q DO YOU KNOW WHERE HE IS ORIGINALLY FROM?

18 A NO, MA'AM.

19 Q WHEN YOU WERE HAVING THIS CONVERSATION ABOUT MONEY

20 DID YOU GUYS DEVELOP ANY KIND OF A PLAN?

21 A NO, MA'AM.

22 Q WHAT HAPPENED AFTER YOU HAD THIS CONVERSATION?

23 A JUST GOT IN A CAR AND RODE.

24 Q WHOSE CAR?

25 A MY COUSIN.

1 Q WHEN Y'ALL WERE IN THE CAR WHO WAS DRIVING THE
2 VEHICLE?

3 A MY COUSIN.

4 Q AND WHERE WERE YOU IN THE VEHICLE?

5 A ON THE PASSENGER SIDE.

6 Q THE DEFENDANT, WAS HE IN THE VEHICLE?

7 A YES.

8 Q WHERE WAS HE?

9 A IN THE BACK.

10 Q WAS THERE ANYBODY ELSE IN THE VEHICLE?

11 A NO, MA'AM.

12 Q ONCE YOU ALL GOT IN THE VEHICLE WHERE DID YOU GO?

13 A WE WENT ON SOME BACK ROADS.

14 Q DID YOU STOP ANYWHERE WHILE YOU WERE TRAVELING?

15 A NO, MA'AM.

16 Q AND WHERE DID YOU FINALLY END UP?

17 A AT SOME HOUSE.

18 Q ABOUT HOW LONG DID IT TAKE YOU TO GET FROM GASTONIA
19 TO THAT HOUSE?

20 A I DON'T KNOW.

21 Q ANY GUESS, WAS IT TEN MINUTES OR HOURS?

22 A I DON'T KNOW.

23 Q WHAT WERE YOU DOING ALONG THE WAY?

24 A TALKING, SMOKING AND DRINKING.

25 Q SMOKING CIGARETTES?

- 1 A CIGARETTES AND WEED.
- 2 Q AND DRINKING COKE?
- 3 A NO, BOOTLEG.
- 4 Q WHEN YOU GOT TO THE HOUSE WHAT HAPPENED?
- 5 A CAME AND WENT IN THE DOOR.
- 6 Q CAME AND WENT IN THE DOOR? CAN YOU EXPLAIN THAT TO
- 7 ME, WHAT DO YOU MEAN BY THAT?
- 8 A WE JUST WENT IN THE HOUSE.
- 9 Q WERE YOU LET IN?
- 10 A NO, WE FORCEFULLY.
- 11 Q AND ONCE YOU GOT INSIDE THE HOUSE WHAT HAPPENED?
- 12 A WE WENT THROUGH LOOKING FOR SOME ITEMS.
- 13 Q DID YOU ENCOUNTER ANY PEOPLE INSIDE THE HOUSE?
- 14 A YES.
- 15 Q DO YOU SEE THOSE PEOPLE IN THE COURTROOM TODAY?
- 16 A YES.
- 17 Q CAN YOU POINT THEM OUT FOR ME?
- 18 A THERE.
- 19 Q WHAT DID YOU DO WHEN YOU ENCOUNTERED THE PEOPLE?
- 20 A JUST WENT THROUGH THE HOUSE LOOKING FOR SOME STUFF.
- 21 Q WERE THERE ANY WEAPONS INVOLVED?
- 22 A YES.
- 23 Q WHO HAD WEAPONS?
- 24 A MY COUSIN.
- 25 Q WHAT KIND OF WEAPON WAS IT?

- 1 A A .45.
- 2 Q DID ANYBODY USE THE WEAPON?
- 3 A I THINK IT WAS SHOT ACCIDENTALLY.
- 4 Q ONCE YOU GOT IN THE HOUSE, I THINK YOU SAID YOU WENT
5 THROUGH THE HOUSE, WHAT WERE YOU LOOKING FOR?
- 6 A DRUGS AND MONEY.
- 7 Q DID YOU KNOW THESE VICTIMS BEFORE Y'ALL WENT TO THE
8 HOUSE?
- 9 A NO, MA'AM.
- 10 Q DID ANYBODY ELSE KNOW THEM?
- 11 A NO, MA'AM.
- 12 Q HOW DID YOU PICK THIS PARTICULAR HOUSE?
- 13 A IT WAS RANDOM.
- 14 Q ANYBODY IN THE GROUP MAKE THE DECISION OR JUST THE
15 THREE OF YOU TOGETHER?
- 16 A THE THREE OF US TOGETHER.
- 17 Q ONCE YOU GOT INSIDE THE HOUSE DID YOU FIND ANY MONEY?
- 18 A NO, MA'AM.
- 19 Q DID YOU FIND ANY DRUGS?
- 20 A NO, MA'AM.
- 21 Q WHAT HAPPENED AFTER YOU WENT THROUGH THE HOUSE?
- 22 A WE WENT THROUGH THE HOUSE, ATTACKED THE PEOPLE, I HIT
23 A WOMAN AND A MAN.
- 24 Q YOU HIT BOTH OF THEM?
- 25 A YES, MA'AM.

- 1 Q DID YOU SEE ANYBODY ELSE HIT ANYBODY?
- 2 A NO, MA'AM.
- 3 Q THERE HAS BEEN SOME TESTIMONY THAT THE FEMALE GOT
- 4 DUCT TAPED, DO YOU REMEMBER THAT?
- 5 A YES, MA'AM.
- 6 Q AND WHO DID THAT?
- 7 A I STARTED AND THEN MY COUSIN.
- 8 Q YOU STARTED IT AND DID SOMEBODY ELSE FINISH IT?
- 9 A YEAH, MY COUSIN.
- 10 Q AND WHO BROUGHT THE DUCT TAPE?
- 11 A I CAN'T REMEMBER.
- 12 Q SO, ONCE YOU HIT THE PEOPLE WHAT HAPPENED AFTER THAT?
- 13 A WE JUST HIT THEM AND THEN SOMEBODY HAD CAME AT THE
- 14 HOUSE, SOMEBODY CAME IN THE BACKDOOR WITH A SHOTGUN.
- 15 Q WHAT DID YOU DO WHEN YOU SAW THE SHOTGUN?
- 16 A WE RAN OUT THE FRONT DOOR.
- 17 Q WHERE DID YOU GO ONCE YOU GOT OUT THE FRONT DOOR?
- 18 A BEHIND THE HOUSE.
- 19 Q AND CAN YOU TELL ME WHAT HAPPENED AFTER YOU WENT
- 20 BEHIND THE HOUSE?
- 21 A I HEARD A SHOT AND THAT WAS IT, I COULDN'T SEE
- 22 NOTHING.
- 23 Q DID YOU EVENTUALLY HAVE AN ENCOUNTER WITH LAW
- 24 ENFORCEMENT?
- 25 A YEAH.

1 Q AND WHAT LED TO THAT?

2 A I GOT TIRED FROM RUNNING.

3 Q DID THEY CATCH UP WITH YOU?

4 A I WAS ON THE MAIN ROAD AND THEY PULLED UP.

5 Q DID YOU HAVE A CHANCE TO SEE WHERE YOUR COUSIN WENT?

6 A NO, MA'AM.

7 Q DID YOU HAVE A CHANCE TO SEE WHERE THE DEFENDANT
8 WENT?

9 A NO, MA'AM.

10 Q PRIOR TO THE INCIDENCES THAT OCCURRED ON JANUARY THE
11 7TH, HAD YOU ALREADY KNOWN THE DEFENDANT?

12 A WHO?

13 Q ROY JOHNSON?

14 A SOMEWHAT, NOT A LOT, SOMEWHAT.

15 Q HOW DID YOU BECOME ACQUAINTED WITH HIM?

16 A HIS GIRL USED TO DO MY HAIR.

17 Q AND YOUR COUSIN, YOU HAD KNOWN HIM BEFORE THE
18 INCIDENT?

19 A YEAH, MY COUSIN.

20 Q WHAT IS YOUR COUSIN'S NAME?

21 A AUSTIN PARTLOW.

22 Q AND IT WAS JUST THE THREE OF YOU ON THIS OCCASION?

23 A YES.

24 Q DO YOU KNOW ANYBODY NAMED SHORTY?

25 A NO, MA'AM.

1 Q DID ANYBODY IN THAT GROUP, WAS ANYBODY IN THE GROUP
2 EVER REFERRED TO AS SHORTY?

3 A NO, MA'AM.

4 Q DO YOU KNOW ANYBODY NAMED HASTINGS MOORE?

5 A NOT RIGHT OFF.

6 Q NO FURTHER QUESTIONS.

7 THE COURT: CROSS-EXAMINE.

8 CROSS-EXAMINATION

9 BY MR. JENKINS:

10 Q DID YOU EVER HAVE A GUN IN YOUR POSSESSION WHILE YOU
11 WERE IN THE HOUSE?

12 A NO, SIR.

13 Q NOW, YOU GAVE A STATEMENT BACK WHEN YOU WERE FIRST
14 ARRESTED, IS THAT CORRECT?

15 A YES, SIR.

16 Q IN THAT STATEMENT YOU INDICATED THAT YOU DIDN'T EVEN
17 GO IN THE HOUSE, DIDN'T YOU?

18 A YES, SIR.

19 Q SO, YOU DON'T ALWAYS TELL THE TRUTH, DO YOU?

20 A NO, SIR.

21 Q NOW, THERE IS A SORT OF CODE OF HONOR AMONG THIEVES,
22 SO TO SPEAK?

23 A IF THAT IS WHAT YOU WANT TO CALL IT.

24 Q AND IF SOMEONE ELSE WERE INVOLVED IN THIS CRIME,
25 SOMEONE OTHER THAN THE THREE PEOPLE THAT HAVE BEEN

1 ARRESTED; YOU, YOUR COUSIN AND MR. JOHNSON. YOU WOULDN'T
2 BE FREE TO GIVE THAT INFORMATION UP, WOULD YOU?

3 A NO, SIR.

4 Q THAT IS ALL I HAVE.

5 THE COURT: REDIRECT?

6 REDIRECT EXAMINATION

7 BY MS. ZIMMERMAN:

8 Q MR. PARTLOW, ARE YOU TELLING THE TRUTH NOW ABOUT MR.
9 JOHNSON'S INVOLVEMENT IN THIS CRIME?

10 A YES.

11 Q NOW, ARE YOU TELLING THE TRUTH ABOUT THERE ONLY BEING
12 THREE PEOPLE INVOLVED IN THIS CRIME?

13 A YES.

14 Q NO FURTHER QUESTIONS.

15 THE COURT: RECROSS?

16 RECROSS-EXAMINATION

17 BY MR. JENKINS:

18 Q IF YOU WERE TO TELL ON AN UNNAMED PERSON OR A UNKNOWN
19 PERSON, WOULD THAT SUBJECT YOU TO A RETRIBUTION WHILE YOU
20 ARE IN PRISON?

21 A NO, SIR.

22 Q YOU DON'T THINK THAT ANYBODY IN PRISON WOULD TRY TO
23 GET YOU FOR THAT?

24 A OH, PROBABLY.

25 Q THAT IS ALL I HAVE GOT.

1 MS. ZIMMERMAN: YOUR HONOR, AT THIS TIME THE STATE
2 WOULD MOVE PRIOR TESTIMONY OF B.R. HUNTER WHICH HAS BEEN
3 MARKED AS STATE'S 108 INTO EVIDENCE. AND I REQUEST TO
4 CALL JOHN FRAMPTON TO READ THE TRANSCRIPT.

5 THE COURT: ANY OBJECTION?

6 MR. JENKINS: NO OBJECTION, YOUR HONOR.

7 (WHEREUPON, STATE'S EXHIBIT NO. 108 WAS ADMITTED INTO
8 EVIDENCE.)

9 JOHN FRAMPTON, AFTER BEING DULY SWORN,
10 TESTIFIED AS FOLLOWS:

11 MS. ZIMMERMAN: MR. FRAMPTON, I AM GOING TO READ THE
12 QUESTIONS FROM THIS TRANSCRIPT AND I WILL THEN ASK YOU TO
13 THEN READ THE ANSWERS.

14 (WHEREUPON, THE TRANSCRIPT OF B.R. HUNTER WAS READ
15 INTO THE RECORD BY MS. MINDY ZIMMERMAN AND MR. JOHN
16 FRAMPTON.)

17 DIRECT EXAMINATION

18 BY MS. ZIMMERMAN:

19 Q MR. HUNTER, ARE YOU FAMILIAR WITH RICHARD AND ROBIN
20 COFER?

21 A YES, MA'AM.

22 Q AND HOW DO YOU KNOW THE COFER'S?

23 A THEY ARE MY PARENTS, I AM MARRIED INTO THEIR FAMILY.

24 Q CAN YOU EXPLAIN A LITTLE BIT BETTER FOR ME?

25 A MY FATHER IS MARRIED TO ROBIN'S SISTER.

1 Q AND YOUR FATHER IS BILLY HUNTER?

2 A RIGHT.

3 Q MR. HUNTER, ON THE NIGHT OF JANUARY 7TH, WHERE WERE
4 YOU LIVING?

5 A I WAS HAVING SOME PERSONAL PROBLEMS WITH MY FAMILY SO
6 I STAYED WITH MY DAD.

7 Q AND THAT WAS OUT ON 34?

8 A YES.

9 Q DO YOU RECALL THE INCIDENT THAT OCCURRED ON THE
10 EVENING OF JANUARY THE 7TH?

11 A YES.

12 Q CAN YOU TELL ME WHAT YOU REMEMBER ABOUT THAT NIGHT?

13 A WE HAD LAYED DOWN TO GO TO BED AND I GUESS WE HAD
14 BEEN IN THE BED AN HOUR, TWO MAYBE. AND I HEARD SOMEONE
15 HOLLERING AND MY FIRST THOUGHT THAT IT WAS THE NEIGHBORS
16 NEXT TO US. THEY GET INTO FIGHTS OVER THERE SOMETIMES,
17 YOU KNOW, WHEN I HEARD SOMEONE SCREAMING. IT DAWNED ON ME
18 THAT IT WAS ROBIN WHEN SHE CAME TO OUR FRONT DOOR
19 HOLLERING, SAID THAT SOMEONE WAS BEATING THE HECK OUT OF
20 RICK. AND TOLD US TO GET A GUN AND HURRY QUICK AND GET
21 OVER THERE AND SEE WHAT WAS GOING ON. AND SO THAT IS WHAT
22 WE DID. ME AND MY DAD AND MY UNCLE RANDALL WERE THERE
23 WITH US THAT NIGHT, WE ALL WENT ACROSS THE ROAD INTO THE
24 TRAILER. AND AS WE CAME AROUND THE END, ROBIN HAD TOLD US
25 THAT THE DOOR WAS OPEN AND WHEN YOU COME AROUND THE END OF

1 THE TRAILER WE JUST HEARD A BUNCH OF COMMOTION, BEATING,
2 BANGING AND THE WHOLE TRAILER VIBRATING AND EVERYTHING.
3 WE WENT UP ON THE BACK PORCH AND MY DAD SNATCHED THE DOOR
4 OPEN AND THERE IS A BLACK MALE STANDING RIGHT THERE AT THE
5 DOOR AND HE HAD GLASSES ON AND HE LOOKED DEAD AT MY DAD
6 AND AT ME AND STARTING SAYING, IT WAS THAT MAN RIGHT
7 THERE, POINTING DOWN THE HALLWAY. AND WE WERE BOTH
8 STANDING THERE WITH A GUN AND AT THAT TIME I SEEN HIM KIND
9 OF LOOK AROUND MY DAD AT ME AND WHEN HE SEEN ME BEHIND BY
10 DADDY HE TOOK OFF RUNNING THROUGH THE TRAILER. AND WE
11 WENT IN BEHIND HIM AND I SEEN THREE GUYS RUNNING OUT OF
12 THE TRAILER AND RICK WAS LAYING IN THE FLOOR AND MY DAD
13 WENT ON THROUGH THE TRAILER, YOU KNOW, OUT THE FRONT DOOR
14 AND I STOPPED TO HELP RICK UP IN THE HALL. AND WHEN I WAS
15 HELPING HIM UP, MY COUSIN CRYSTAL CAME OUT FROM BEHIND ME
16 AND HAD HER HANDS OUT LIKE THIS AND IT STARTLED ME BECAUSE
17 SHE COULDN'T SPEAK OR ANYTHING. AND AS I TURNED AROUND I
18 NOTICED IT WAS CRYSTAL AND HER WHOLE HEAD, WHOLE FACE AND
19 EVERYTHING WAS DUCT TAPED UP AND RICK SAID THAT THAT NIGHT
20 HE HAD JUST PUT SOME SCISSORS--
21 Q LET ME STOP YOU, YOU CAN'T GO INTO ANYTHING THAT RICK
22 SAID. JUST TRY TO TELL ME--
23 A WELL, HE HAD PUT SOME SCISSORS ON HIS DRESSER THAT
24 NIGHT, BEFORE HE HAD WENT TO BED. SO, HE RAN AND GOT THE
25 SCISSORS AND ME AND HIM BOTH STARTED TRYING TO GET THE

1 TAPE OFF OF CRYSTAL SO SHE COULD BREATHE.

2 Q LET ME TAKE YOU BACK TO WHEN YOU WERE FIRST THERE AT
3 THE DOOR. YOU SAID THAT YOUR DAD JERKED THE DOOR OPEN, IS
4 THAT RIGHT?

5 A YES, HE SAID WHAT IN THE HELL IS GOING ON.

6 Q AND YOU SAW A MAN STANDING THERE?

7 A RIGHT THERE.

8 Q IS THERE ANYTHING ABOUT HIS CLOTHING OR ANYTHING THAT
9 YOU NOTICED THAT YOU CAN TELL US ABOUT?

10 A HE WAS WEARING BLACK PANTS, A BLACK JACKET, A HOOD ON
11 AND HE HAD HIS GLASSES.

12 Q ANY IDEA ABOUT HOW TALL HE WAS?

13 A PROBABLY ABOUT 6 FOOT, A LITTLE BIT TALLER THAN I AM,
14 6 FOOT 2, 3 OR SOMETHING, AT LEAST THAT TALL.

15 Q AND YOU SAID THAT WHEN YOUR DAD WENT OUT YOU STAYED
16 TO HELP RICHARD AND CRYSTAL?

17 A YES.

18 Q I AM GOING TO SHOW YOU, CAN YOU SEE THAT SCREEN?

19 A YES.

20 Q I AM GOING TO SHOW YOU WHAT HAS BEEN PREVIOUSLY
21 ADMITTED AS STATE'S EXHIBIT 3, IS THIS RICHARD COFER LIKE
22 YOU ENCOUNTERED HIM IN THE HALLWAY?

23 A YES, MA'AM.

24 Q AND I WANT TO SHOW YOU WHAT HAS BEEN PREVIOUSLY
25 ADMITTED AS STATE'S EXHIBIT 4, IS THIS WHAT CRYSTAL LOOKED

1 LIKE WHEN YOU FIRST SAW HER?

2 A NO, HER FACE WAS DUCT TAPED COMPLETELY UP WHEN I
3 FIRST SAW HER.

4 Q AND YOU ARE THE ONE THAT HELPED HER GET THE DUCT TAPE
5 OFF?

6 A YES, ME AND RICK.

7 Q IS THIS WHAT SHE LOOKED LIKE AFTER YOU CUT THE DUCT
8 TAPE LOSE?

9 A YES, MA'AM. SHE HAD A BIG GASH IN THE BACK OF HER
10 HEAD THAT WAS BRUISED PRETTY BAD.

11 Q DID YOU STAY THERE INSIDE THE HOUSE WITH THEM WHILE
12 YOUR DAD WENT OUT?

13 A PRETTY MUCH, I WENT TO THE FRONT DOOR AFTER I HEARD A
14 SHOT AND ALL AND THEN I WENT BACK AND, AFTER WE GOT THE
15 TAPE OFF OF CRYSTAL IS WHEN I WENT THROUGH THERE. I HEARD
16 A SHOT, AFTER I GOT THE TAPE OFF OF CRYSTAL THEN I WENT
17 THROUGH THE TRAILER TO SEE WHAT WAS GOING ON. IN THE CAR,
18 THEY JUMPED IN THE CAR AND TOOK OFF.

19 Q YOUR FATHER SAID THAT YOUR HOUSE WAS DIRECTLY ACROSS
20 THE STREET FROM THE COFER'S, IS THAT CORRECT?

21 A YES.

22 Q AND DID YOU WALK STRAIGHT ACROSS THE STREET TO THEIR
23 HOUSE?

24 A YES, MA'AM.

25 Q SO, WALKING OVER, IS THAT A CLEAR VIEW OF THE FRONT

1 OF THE HOUSE? DID YOU HAVE A CLEAR VIEW OF THE HOUSE?

2 A YES.

3 Q AS YOU WERE WALKING OVER DID YOU SEE ANYONE OUTSIDE
4 OF THE HOUSE?

5 A NO, I DID NOT.

6 Q WHEN YOU GOT TO THE BACK OF THE HOUSE DID YOU SEE
7 ANYONE OUTSIDE OF THE HOUSE?

8 A NO.

9 MS. ZIMMERMAN: THERE WAS NOTHING FURTHER FROM THE
10 STATE. AT THIS POINT, CROSS-EXAMINATION.

11 CROSS-EXAMINATION

12 BY MR. JENKINS:

13 Q THE HOUSE, YOU LIVE RIGHT ACROSS THE ROAD FROM WHERE
14 THIS OCCURRED?

15 A MY FATHER DOES, YES.

16 Q AND YOU WERE LIVING WITH HIM AT THE TIME?

17 A I WAS STAYING WITH HIM.

18 Q OKAY. AND RIGHT ACROSS THE ROAD IS ONE MOBILE HOME
19 AND THEN THERE IS ANOTHER MOBILE HOME RIGHT NEXT TO IT, IS
20 THAT CORRECT, TO THE RIGHT?

21 A THAT IS CORRECT.

22 Q AND THEN A BRICK HOUSE, ONE HOUSE FURTHER DOWN?

23 A NO, THE TRAILER ON EACH SIDE FROM WHERE RICK AND
24 ROBIN LIVE, THERE IS A BRICK HOUSE ON THE OTHER SIDE OF
25 IT.

- 1 Q SO, IF YOU ARE LOOKING AT RICK'S HOUSE--
- 2 A THERE IS A TRAILER.
- 3 Q AND THEN A BRICK HOUSE?
- 4 A RIGHT.
- 5 Q AND BETWEEN THE TRAILER AND THE BRICK HOUSE THERE IS
- 6 A ROW OF TREES?
- 7 A SMALL BUSHES.
- 8 Q TREES MIXED IN?
- 9 A SOMETHING LIKE THAT, YES.
- 10 Q AND APPROXIMATELY 15 TO 20 FEET FROM THE BACKDOOR,
- 11 THAT IS WOODS, ISN'T IT?
- 12 A IT IS A LITTLE FURTHER THAN THAT BUT YES.
- 13 Q DIRECTLY FROM THE BACKDOOR, IF YOU WALKED OUT THE
- 14 BACKDOOR IT IS PRETTY THICK WOODS, RIGHT?
- 15 A EXACTLY.
- 16 Q THAT IS ALL I HAVE.
- 17 MS. ZIMMERMAN: PERMISSION FOR MR. FRAMPTON TO BE
- 18 EXCUSED.
- 19 THE COURT: THANK YOU, SIR.
- 20 MS. ZIMMERMAN: THE STATE CALLS BILLY HUNTER. YOUR
- 21 HONOR, MAY WE APPROACH?
- 22 THE COURT: YES.
- 23 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
- 24 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
- 25 JURY.)

1 MS. ZIMMERMAN: THE STATE CALLS CONNIE JOHNSON TO THE
2 STAND.

3 CONNIE JOHNSON, AFTER BEING DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. ZIMMERMAN:

7 Q MS. JOHNSON, WHERE ARE YOU EMPLOYED?

8 A WITH THE NEWBERRY COUNTY SHERIFFS OFFICE.

9 Q WHAT IS YOUR JOB WITH THE SHERIFFS OFFICE?

10 A LAW ENFORCEMENT VICTIM ADVOCATE.

11 Q CAN YOU EXPLAIN TO US WHAT THAT MEANS YOU DO?

12 A I ASSIST ALL VICTIMS OF CRIME, PRIMARILY VIOLENT
13 CRIME VICTIMS.

14 Q WERE YOU INVOLVED IN THIS PARTICULAR CASE?

15 A YES, I WAS.

16 Q WHAT WAS YOUR INVOLVEMENT IN THIS CASE?

17 A I WAS NOTIFIED BY OUR DISPATCH TO THE SCENE THE NIGHT
18 THAT THIS OCCURRED. I ACTUALLY WAS DIVERTED IN THE
19 PROCESS OF RESPONDING TO THE SCENE AND RESPONDED TO THE
20 EMERGENCY ROOM AND MET WITH THE VICTIMS.

21 Q WHY WERE YOU DIVERTED?

22 A THE VICTIMS HAD ALREADY LEFT THE SCENE PRIOR TO ME
23 GETTING THERE.

24 Q ONCE YOU MET WITH THE VICTIMS WHAT DID YOU DO?

25 A I JUST ASSISTED THEM AT THE ER EXPLAINING TO THEM THE

1 PROCESS OF WHAT WAS GOING ON, WHAT WAS GOING TO BE TAKING
2 PLACE. ALSO I COLLECTED EVIDENCE FOR OUR INVESTIGATORS.

3 Q I WANT TO SHOW YOU WHAT HAS BEEN PREVIOUSLY MARKED AS
4 STATE'S EXHIBIT 88, DO YOU RECOGNIZE THIS?

5 A YES, I DO.

6 Q CAN YOU TELL ME WHAT THAT IS?

7 A YES, THIS IS THE DUCT TAPE THAT WAS COLLECTED FROM
8 MS.. CARNES.

9 Q AND YOU COLLECTED THIS AND TURNED IT INTO EVIDENCE?

10 A YES, I DID.

11 Q IS IT SUBSTANTIALLY IN THE SAME CONDITION AS WHEN YOU
12 COLLECTED IT ON THE NIGHT OF JANUARY THE 7TH?

13 A YES, IT IS.

14 MS. ZIMMERMAN: WE MOVE STATE'S 88 INTO EVIDENCE.

15 MR. JENKINS: NO OBJECTION.

16 THE COURT: IT IS IN EVIDENCE.

17 (WHEREUPON, STATE'S EXHIBIT NO. 88 WAS ADMITTED INTO
18 EVIDENCE.)

19 Q I SHOW YOU STATE'S EXHIBIT NUMBER 87 AND DO YOU
20 RECOGNIZE THAT?

21 A YES.

22 Q AND WHAT IS STATE'S 87?

23 A THIS IS MORE DUCT TAPE AND HAIR FROM MS. CARNES THAT
24 WAS COLLECTED THAT NIGHT.

25 Q AND YOU COLLECTED STATE'S 87 AND TURNED IT INTO

1 EVIDENCE?

2 A YES, I DID.

3 Q IS IT IN SUBSTANTIALLY THE SAME CONDITION AS WHEN YOU
4 COLLECTED IT ON THE 7TH?

5 A YES, IT IS.

6 MS. ZIMMERMAN: WE MOVE STATE'S 87 INTO EVIDENCE.

7 MR. JENKINS: NO OBJECTION.

8 THE COURT: IT IS IN EVIDENCE.

9 (WHEREUPON, STATE'S EXHIBIT NO. 87 WAS ADMITTED INTO
10 EVIDENCE.)

11 Q I AM GOING TO SHOW YOU STATE'S 89, DO YOU RECOGNIZE
12 THIS?

13 A YES, THIS IS THE NIGHT GOWN THAT MS. CARNES WAS
14 WEARING THE NIGHT THAT THE INCIDENT OCCURRED.

15 Q AND DID YOU COLLECT STATE'S 89 AND TURN IT INTO
16 EVIDENCE?

17 A YES, I DID.

18 Q IS IT IN SUBSTANTIALLY THE SAME CONDITION AS WHEN YOU
19 COLLECTED IT ON THE 7TH?

20 A YES, IT IS.

21 MS. ZIMMERMAN: MOVE STATE'S 89 INTO EVIDENCE.

22 MR. JENKINS: NO OBJECTION.

23 THE COURT: IT IS IN EVIDENCE.

24 (WHEREUPON, STATE'S EXHIBIT NO. 89 WAS ADMITTED INTO
25 EVIDENCE.)

1 Q NOW, MS. JOHNSON, ONCE YOU COLLECTED STATE'S 87, 88
2 AND 89 WHAT DID YOU DO WITH THESE ITEMS?

3 A ALL ITEMS WERE TURNED OVER TO INVESTIGATORS FOR
4 PROCESS.

5 Q AND WHY DID YOU DO THAT?

6 A SO THAT THEY COULD BE PROCESSED FOR TRIAL.

7 Q NO FURTHER QUESTIONS.

8 MR. JENKINS: NO QUESTIONS.

9 MS. ZIMMERMAN: THE STATE CALLS BILLY HUNTER.

10 BILLY HUNTER, AFTER BEING DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MS. ZIMMERMAN:

14 Q MR. HUNTER, DO YOU KNOW MR. AND MS. COFER?

15 A YES, MA'AM.

16 Q AND HOW DO YOU KNOW THEM?

17 A ROBIN IS MY SISTER-IN-LAW AND RICK IS MY
18 BROTHER-IN-LAW.

19 Q WERE YOU LIVING NEAR THEM ON JANUARY THE 7TH OF 2008?

20 A YES, MA'AM. I LIVED STRAIGHT ACROSS THE ROAD ON 34.

21 Q AND WERE YOU INVOLVED IN THE INCIDENT THAT LEADS US
22 HERE TODAY?

23 A YES, MA'AM.

24 Q TELL ME WHAT YOU REMEMBER ABOUT JANUARY THE 7TH?

25 A WELL, WE WERE ALL IN THE BED AND ROBIN COME OVER TO

1 OUR HOUSE AND HOLLERING AND OPENED, FOR US TO OPEN THE
2 DOOR. AND SHE TOLD ME TO GO OVER THERE, THAT THERE WAS
3 GUYS OVER THERE THAT HAD RICK, THEY WERE BEATING HIM UP.
4 TOLD ME TO GET MY GUN AND GO OVER THERE AND SEE WHAT WAS
5 GOING ON AND THAT IS WHAT I DID.

6 Q WHEN YOU GOT THERE WHAT DO YOU REMEMBER?

7 A WELL, WE WENT AROUND, IT WAS ME AND MY SON AND MY
8 BROTHER, WE WENT AROUND TO THE BACK OF THE TRAILER, TO THE
9 BACKDOOR BECAUSE ROBIN SPECIFICALLY TOLD ME THAT THE
10 BACKDOOR WAS UNLOCKED. AND WE WENT AROUND TO THE BACKDOOR
11 AND I WENT UP ON THE PORCH AND I JERKED THE BACKDOOR OPEN
12 AND THERE WAS THIS MALE STANDING RIGHT BESIDE THE WASHING
13 MACHINE AND THE DRYER RIGHT AT THE BACKDOOR.

14 Q COULD YOU TELL ANYTHING ABOUT HIS CLOTHING OR HIS
15 SIZE?

16 A IT WAS MOSTLY DARK BUT LIKE I SAID, IT WAS A MALE
17 ABOUT MY SIZE BECAUSE WE WERE LOOKING SORT OF EYE TO EYE.
18 AND I HAD A SHOTGUN IN MY HAND AND I STUCK IT UP THERE TO
19 HIM AND I ASKED HIM WHAT WAS GOING ON IN THE TRAILER.
20 LIKE I SAID, IT ALL HAPPENED REAL QUICK. BUT ANYWAY, HE
21 JUST STOOD THERE LOOKING AND HE DIDN'T DO NOTHING RIGHT
22 THEN, A SECOND OR TWO, YOU KNOW AND HE, MY BOY WAS
23 STANDING DOWN ON THE GROUND AND HE HAD A GUN TOO. AND HE
24 WAS AIMING SORT OF UP TO THERE TO HIM AT THE SAME TIME I
25 WAS. AND HE STOOD THERE AND HE JUST KIND OF ROLLED HIS

1 EYES AROUND A LITTLE BIT. I SEEN HIM MOVE HIS EYES AND
2 KIND OF LOOK OVER MY SHOULDER AND HE SEEN MY BOY STANDING
3 THERE ON THE GROUND. AND ABOUT THAT TIME, A SECOND OR TWO
4 LATER HE STARTED TRYING TO SPEAK. AND HE MOVED HIS HANDS
5 AND HE SORT OF POINTED TO SORT OF DOWN THE HALL AND SAID
6 IT WAS HIM, IT WAS HIM. HE WAS KIND OF LIKE, IT WASN'T,
7 YOU COULDN'T HARDLY UNDERSTAND WHAT HE WAS SAYING. HE WAS
8 KIND OF A MUMBLING VOICE. AND WE UNDERSTOOD THAT HE WAS
9 SORT OF POINTED AT SOMEBODY BUT WE COULDN'T SEE HOW OR
10 WHAT HE WAS POINTING AT. BUT THEN I WAS TRYING TO TALK
11 HIM OUT OF THE TRAILER AND I BACKED UP AWAY FROM HIM AND
12 KIND OF EASED THE STEPS, A LITTLE SMALL DECK AND I KIND OF
13 EASED BACK ONTO THE STEPS AND I TRIED TO TELL HIM, WELL,
14 JUST COME ON OUT OF THE TRAILER. AND JUST A SECOND OR SO
15 LATER UP THE HALL HE WENT, LIKE A STREAK OF LIGHTENING.

16 Q NOW, YOU SAID YOUR BOY WAS BEHIND HIM, IS THAT B.R.
17 HUNTER?

18 A YES, MA'AM.

19 Q AFTER HE WENT DOWN THE STEPS, OR DOWN THE HALL,
20 EXCUSE ME, WHAT HAPPENED?

21 A WELL, I WENT ON BEHIND HIM AND IT WAS PITCH DARK IN
22 THERE, WE COULDN'T SEE NOTHING BUT I HEARD A BUNCH OF
23 SCRAMBLING AND THEY SHOT A COUPLE OF TIMES GOING OUT THE
24 FRONT DOOR. AND I WENT IN BEHIND HIM AND THEY HAD THE
25 FRONT DOOR WIDE OPEN AND I WENT ALL THE WAY TO THE FRONT

1 PORCH. AND I LOOKED ACROSS THERE AND I COULD SEE A CAR
2 SITTING OVER THERE WITH THE INTERIOR LIGHTS ON AND I COULD
3 SEE THAT THERE WERE TWO PEOPLE IN THE VEHICLE BECAUSE
4 THERE WAS ONE ON THE PASSENGER SIDE AND THERE WAS ONE
5 UNDER THE WHEEL, HE HAD THE ENGINE RUNNING AND HE WAS
6 REVING THE MOTOR UP. AND I DIDN'T KNOW WHAT TO DO BUT I
7 AIMED TOWARD THEM AND I FIRED A SHOT AT THE BACK OF THE
8 CAR. AND WHEN I DONE THAT THEY TOOK OFF INTO THE HIGHWAY
9 AND THEY EASED BY THE TRAILER, THEY GOT RIGHT BY THE
10 TRAILER AND THEN THEY KICKED IT AND WENT ON UP THE ROAD.
11 WELL, MY BROTHER WAS IN THE BACK OF THE YARD AND HE TOLD
12 US, HE KNEW THE ONE GUY THAT HE SAW DIDN'T MAKE IT TO THE
13 CAR. AND WHAT WE WERE THINKING THAT THEY WERE REVING UP
14 THE MOTOR WAITING ON THE LAST PERSON TO GET THERE. AND MY
15 BROTHER KNEW THAT THE GUY THAT HE SAW DIDN'T MAKE IT TO
16 THE CAR BECAUSE THEY HAD LEFT HIM AND HE KNEW THAT.

17 Q LET ME TAKE YOU BACK, YOU SAID YOU FIRED A SHOT. DO
18 YOU HAVE ANY IDEA IF YOU HIT THE CAR?

19 A I FELT LIKE I HIT IT BUT AT THE TIME I SHOT AT THE
20 CAR, I WAS THINKING, I JUST GRABBED A SHOT. I DIDN'T
21 REALIZE UNTIL I SAW THE PICTURE WHAT KIND OF BULLET I HAD
22 BECAUSE IT WAS JUST A DEER RIFLE IN THE GUN CABINET AND I
23 JUST GRABBED ONE SHELL. I WASN'T INTENDING ON EVEN
24 SHOOTING THE SHELL BUT I JUST GRABBED A SHELL AND STUCK IT
25 IN THE GUN BECAUSE AN UNLOADED GUN ISN'T ANY GOOD NO WAY.

1 SO, I JUST STUCK A SHELL IN THERE AND I WAS THINKING THAT
2 I HAD BUCKSHOT. AND AFTER I SAW THE PICTURES OF THE CAR I
3 REALIZED IT WAS ONLY ONE BULLET SHELL THAT I HAD.

4 Q NOW, WHEN YOU AIMED AND HIT THE CAR, ARE YOU TALKING
5 ABOUT THE PASSENGER SIDE OR THE DRIVERS SIDE?

6 A THE PASSENGER SIDE ABOUT AT THE BACK WHEELS IS WHERE
7 I WAS AIMING AT.

8 Q AND WHAT HAPPENED AFTER YOU SHOT AT THE VEHICLE?

9 A WELL, THEY TOOK OFF, THEY STARTED GOING, THEY WENT ON
10 INTO THE HIGHWAY BUT THEY EASED ALONG KIND OF SLOW JUST
11 FOR A LITTLE BIT AND THEN THEY TOOK OFF FAST. I MEAN
12 AFTER THEY JUST KIND OF EASED OUT INTO THE ROAD FOR JUST A
13 LITTLE BIT AND THEY KIND OF EASED ALONG KIND OF SLOW AND
14 THEN WHEN THEY GOT ABOUT TO THE TRAILER, IN FRONT OF THE
15 TRAILER IS WHEN THEY TOOK ON OFF UP THE ROAD.

16 Q WHAT DID YOU DO AFTER THAT?

17 A I WENT ON BACK INTO THE TRAILER AND WHAT WE WERE
18 TRYING TO DO, MY SON AND RICK BOTH WAS TRYING TO GET MY
19 NIECE'S HEAD UN-TAPED. MY BROTHER-IN-LAW, HE HAD FOUND
20 SOME SCISSORS AND MY SON AND HIM, THEY WERE BOTH TRYING TO
21 GET THE TAPE OFF OF HER HEAD.

22 Q CAN YOU EXPLAIN TO ME BY WHAT YOU MEAN THAT THERE WAS
23 TAPE ON HER HEAD?

24 A IT WAS TAPE, JUST TAPE ALL THE WAY AROUND HER HEAD.
25 LIKE ABOUT A HALF OF A WHOLE, MAYBE A WHOLE ROLL OF TAPE

1 WAS ROUND AND ROUND HER HEAD JUST LIKE YOU HAD TILTED HER
2 OVER AND STUCK YOUR FINGERS IN IT AND JUST WENT AROUND AND
3 AROUND AND AROUND. I MEAN, IT WAS THICK ALL THE WAY ON
4 HER HEAD, JUST THICK AS IT COULD BE.

5 Q I AM GOING TO TAKE YOU BACK A STEP FURTHER, WHEN YOU
6 WERE COMING ACROSS FROM YOUR HOUSE CAN YOU DESCRIBE TO ME
7 WHAT THE VIEW LOOKS LIKE OF THE COFER'S HOME?

8 A WELL, IT IS SEVERAL DIFFERENT TRAILERS IN A LINE AND
9 THEY ARE ALL POINTING ABOUT THE SAME WAY. AND THEY, ABOUT
10 40 TO 50 YARDS FROM THE HIGHWAY. AND MY DRIVEWAY AND
11 THEIR DRIVEWAY WAS STRAIGHT ACROSS. AND WE COME OUT OF MY
12 DRIVEWAY AND STRAIGHT DOWN THEIR DRIVEWAY AND WE WENT
13 STRAIGHT TO THE BACK OF THE TRAILER. BUT THEY GOT A
14 STREET LIGHT BACK THERE AT THE BACK CORNER OF THE TRAILER
15 AND THE DOG PEN AND ALL, THE DOG WAS JUST RASING SAN, I
16 MEAN, THEY WERE ALL, I MEAN IT WASN'T PITCH DARK OUTSIDE
17 BECAUSE IT HAD THAT STREET LIGHT GOING. BUT WE DIDN'T SEE
18 ANYBODY UNTIL, WE HEARD A BUNCH OF BAMMING AND BEATING IN
19 THE TRAILER, A BUNCH OF NOISE, A BUNCH OF RACKET. AND
20 LIKE, WE JUST, IT WASN'T THAT FAR TO GO. I MEAN, LIKE I
21 SAID, WE COME DOWN THE DRIVEWAY AND RIGHT INTO THE BACK
22 CORNER OF THE TRAILER. IT WAS LINED UP WITH THE DRIVEWAY,
23 WE JUST WENT RIGHT ON INTO THE DRIVEWAY AND INTO THE BACK
24 CORNER OF THE TRAILER.

25 Q AND WHEN YOU WERE COMING ACROSS THE STREET ARE THERE

1 ANY TREES OR ANY OBSTRUCTION?

2 A THERE IS A COUPLE OF PINE TREES OUT BY THE ROAD
3 BEHIND THE MAILBOX BUT IT IS A CLEAR VIEW. YOU CAN SEE
4 THE WHOLE FRONT YARD, IT WAS ONLY GRASS AND A COUPLE OF
5 PINE TREES OUT BY THE ROAD.

6 Q DID YOU SEE ANYBODY STANDING OUTSIDE THE HOUSE AS YOU
7 CROSSED OVER?

8 A NO, MA'AM. I DIDN'T SEE ANYBODY OUT FRONT, EVERYBODY
9 WAS IN THE TRAILER WHEN WE WENT ACROSS THE ROAD.

10 Q NO FURTHER QUESTIONS.

11 THE COURT: CROSS-EXAMINATION.

12 CROSS-EXAMINATION

13 BY MR. JENKINS:

14 Q HOW TALL ARE YOU, MR. HUNTER?

15 A I AM ABOUT 5'11".

16 Q AND YOU CAN'T TELL ME ANYTHING ABOUT WHAT HAPPENED
17 BEFORE ROBIN COFER SHOWED UP AT YOUR DOOR, CAN YOU?

18 A NO, SIR. I WAS ASLEEP.

19 Q THAT IS ALL I HAVE.

20 THE COURT: REDIRECT?

21 MS. ZIMMERMAN: NO, YOUR HONOR.

22 THE COURT: WE WILL TAKE A SHORT BREAK, PLEASE DON'T
23 TALK ABOUT THE CASE AND KEEP AN OPEN MIND.

24 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
25 A BREAK.

1 THE COURT: WE WILL TAKE A SHORT BREAK.

2 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

3 THE COURT: ANYTHING BEFORE WE BRING THE JURY IN?

4 MS. ZIMMERMAN: NOT FROM THE STATE.

5 MR. JENKINS: NOT FROM THE DEFENSE.

6 THE COURT: LET'S BRING THE JURY, PLEASE.

7 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT

8 APPROXIMATELY 11:30 A.M.)

9 MS. ZIMMERMAN: THE STATE CALLS BEN CHAPMAN TO THE
10 STAND.

11 BEN CHAPMAN, AFTER BEING DULY SWORN,
12 TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. ZIMMERMAN:

15 Q MR. CHAPMAN, WHERE ARE YOU EMPLOYED?

16 A WITH THE NEWBERRY COUNTY SHERIFFS OFFICE.

17 Q WHAT IS YOUR JOB AT THE SHERIFFS OFFICE?

18 A I AM AN INVESTIGATOR.

19 Q HOW LONG HAVE YOU BEEN WORKING WITH THE SHERIFFS
20 OFFICE?

21 A I HAVE BEEN WITH THE SHERIFFS OFFICE A LITTLE OVER 12
22 YEARS.

23 Q AND WERE YOU WORKING IN YOUR CAPACITY AS AN
24 INVESTIGATOR ON JANUARY THE 7TH OF 2008?

25 A YES, MA'AM.

1 Q WERE YOU INVOLVED IN THE CASE THAT WE ARE HERE TO
2 TALK ABOUT TODAY?

3 A YES, MA'AM.

4 Q WHAT WAS YOUR ROLE IN INVESTIGATING THIS CASE?

5 A I RESPONDED TO THE SCENE AND ASSISTED IN THE
6 PROCESSING OF THE SCENE BY TAKING PHOTOGRAPHS.

7 Q WERE THERE ANY OTHER INVESTIGATORS WORKING ON THIS
8 CASE?

9 A THERE WAS, THERE, AS A MATTER OF FACT I BELIEVE ALL
10 OF THEM WERE THERE AT SOME POINT AND TIME.

11 Q NOW, WHEN YOU HAVE SEVERAL INVESTIGATORS IS ANYONE
12 DESIGNATED AS LEAD INVESTIGATOR?

13 A YES, MA'AM. USUALLY LIEUTENANT DENNIS IS THE LEAD
14 INVESTIGATOR.

15 Q AND SO YOUR ROLE IN THIS PARTICULAR CASE WAS WHAT?

16 A TO TAKE PHOTOGRAPHS.

17 Q INVESTIGATOR CHAPMAN, I AM GOING TO SHOW YOU WHAT HAS
18 BEEN MARKED AS STATE'S EXHIBITS 26 THROUGH 80. CAN YOU
19 LOOK THROUGH THOSE AND TELL ME IF YOU RECOGNIZE THEM.

20 A THESE ARE THE PHOTOGRAPHS THAT WERE TAKEN AT THE
21 SCENE THAT NIGHT AND THE FOLLOWING DAY.

22 Q DID YOU TAKE ALL OF THOSE PHOTOGRAPHS?

23 A I DID.

24 Q DO STATE'S EXHIBITS 26 THROUGH 80 FAIRLY AND
25 ACCURATELY DEPICT THE SCENE AS YOU SAW IT THE NIGHT OF OR

1 THE FOLLOWING DAY?

2 A YES, THEY DO.

3 MS. ZIMMERMAN: WE MOVE STATE'S 26 THROUGH 80 INTO
4 EVIDENCE.

5 MR. JENKINS: NO OBJECTION.

6 THE COURT: THEY ARE IN EVIDENCE.

7 (WHEREUPON, STATE'S EXHIBIT NOS. 20-80 WERE ADMITTED
8 INTO EVIDENCE.)

9 MS. ZIMMERMAN: REQUEST PERMISSION FOR THE
10 INVESTIGATOR TO STEP DOWN AND SHOW THESE TO THE JURY.

11 THE COURT: YES, MA'AM.

12 Q INVESTIGATOR CHAPMAN, I AM GOING TO PUT THESE UP ON
13 THE BIG SCREEN AND I AM GOING TO ASK YOU ON EACH ONE OF
14 THESE PICTURES TO DESCRIBE WHAT IS IN THE PHOTOGRAPH OR
15 WHY THEY WERE TAKEN. I AM GOING TO SHOW YOU STATE'S
16 EXHIBIT 26 AND 27, CAN YOU TELL ME WHAT THESE TWO ITEMS
17 DEPICT?

18 A THESE PHOTOGRAPHS DEPICT A SHOE IMPRESSION ON A
19 BROKEN SHELF INSIDE THE RESIDENCE AS WELL AS OUTSIDE.
20 THIS IS OUTSIDE THE RESIDENCE.

21 Q STATE'S EXHIBIT 28 AND 29?

22 A PHOTOGRAPHS OF THE SHOE IMPRESSION, ONE WITH A SCALE
23 IN IT FOR COMPARISON PURPOSES AND ANOTHER OVERALL SHOT.

24 Q NOW, INVESTIGATOR, WHEN YOU TOOK THESE IMPRESSIONS OF
25 THESE PHOTOGRAPHS OF THE SHOE IMPRESSION DID YOU KNOW FOR

1 SURE WHO THIS IMPRESSION BELONGED TO?

2 A I DID NOT BECAUSE THE AMOUNT OF PEOPLE IN AND OUT OF
3 THE RESIDENCE INCLUDING THE RESPONDING DEPUTES, EMS,
4 INVESTIGATORS, FAMILY MEMBERS, ANYBODY THAT COULD OF BEEN
5 IN AND OUTSIDE OF THE RESIDENCE.

6 Q ALL OF THOSE PEOPLE THAT YOU JUST LISTED WERE ON THE
7 SCENE BEFORE YOU GOT THERE?

8 A YES.

9 Q WHY WOULD YOU TAKE THE PICTURE OF THE SHOE IMPRESSION
10 IF YOU DIDN'T KNOW FOR SURE THAT IT BELONGED TO A SUSPECT?

11 A IT IS BETTER TO TAKE A PHOTOGRAPH OF THE EVIDENCE
12 WHILE YOU HAVE IT THAN NOT TO HAVE IT.

13 Q NOW, I AM GOING TO SHOW YOU STATE'S 30, 31, 32 AND
14 33. TELL ME WHAT WE ARE LOOKING AT HERE?

15 A THESE ARE ALL PHOTOGRAPHS OF THE SHELF WHERE THERE
16 WERE SHOE PRINTS ON THE SHELF AND IT IS VERY DIFFICULT TO
17 SEE IN THE PICTURES TO THE FLASH FROM THE CAMERA.

18 Q NOW I AM GOING TO SHOW YOU STATE'S EXHIBIT 34, CAN
19 YOU TELL ME WHAT THIS IS?

20 A PART OF THE SHELF THAT WAS INSIDE OF THE RESIDENCE ON
21 THE PORCH AS WELL AS ON THE SIDE OF THE PORCH IN FRONT OF
22 THE HOUSE.

23 Q AND WHEN YOU SAY PART OF THE SHELF, ARE YOU TALKING
24 ABOUT THE SHELF THAT WE HAD PREVIOUSLY LOOKED AT WITH THE
25 BOOT PRINTS?

1 A THE SAME SHELF, THAT IS RIGHT.

2 Q LET ME SHOW YOU STATE'S EXHIBIT 35, CAN YOU TELL ME
3 WHAT WE ARE LOOKING AT HERE?

4 A THAT'S, THIS IS THE FRONT DOOR JAM, THIS IS THE
5 DECKING FROM THE FRONT PORCH. AND THIS IS PART OF THE,
6 THE PHOTOGRAPHS, THIS IS PART OF THE PHOTOGRAPHS THAT WERE
7 ON THAT SHELF THAT WAS INSIDE OF THE DOOR THAT GOT KNOCKED
8 OUTSIDE.

9 Q STATE'S 36?

10 A THAT IS MORE PARTS TO THE SHELVES THAT WERE DAMAGED.

11 Q AND IN RELATION TO THE HOUSE, WHERE IS THIS LOCATED?

12 A THIS IS ANOTHER SHOT, IF I AM NOT MISTAKEN, THE
13 PREVIOUS ONE, PREVIOUS TO THE LAST AND THIS IS THE FRONT
14 OF THE MOBILE HOME HERE AT ANOTHER ANGLE.

15 Q COULD YOU TELL ME WHERE THE FRONT DOOR WOULD BE IN
16 RELATION TO THAT?

17 A THE FRONT DOOR IS HERE.

18 Q CAN YOU TELL ME WHAT WE ARE LOOKING AT IN STATE'S 37
19 AND 38?

20 A THIS IS ANOTHER SHELF THAT IS VERY SIMILAR IN STYLE
21 TO THE ONE THAT WAS TORE UP AND DAMAGED. YOU SEE
22 PHOTOGRAPHS THAT WERE ON IT AS WELL AS ON THE OTHER SHELF
23 THAT WAS KNOCKED DOWN. THESE ARE MORE PHOTOGRAPHS THAT
24 WERE ON THE SHELF AND YOU CAN SEE THIS IS THE FRONT DOOR
25 JAM AND THE FRONT DOOR AND ALL OF THE PHOTOGRAPHS ARE ALL

1 ON THE GROUND, OBVIOUSLY OUT OF PLACE.

2 Q STATE'S 39?

3 A THIS IS MORE PHOTOGRAPHS OF PICTURES THAT WERE ON THE
4 SHELF ON THE FRONT DECK AS YOU COME OUT THE FRONT DOOR.

5 Q STATE'S 40?

6 A THIS PICTURE IS A GENERAL PICTURE OF THE INSIDE OF
7 THE RESIDENCE OF THE LIVING ROOM AREA AND THE COUCH AND A
8 PICTURE IS KNOCKED OFF THE WALL.

9 Q STATE'S 41?

10 A THIS PICTURE IS DOWN THE HALLWAY ENTRANCE TO ONE OF
11 THE BEDROOMS, IT IS SOME SOCKS ON THE FLOOR.

12 Q STATE'S 42?

13 A THIS IS A PHOTOGRAPH OF THAT BEDROOM THAT WE WERE
14 JUST OUTSIDE OF SHOWING SOCKS. A PICTURE OF THE BED, THE
15 DRAWERS. IT IS DIFFICULT TO SEE, THIS IS DUCT TAPE, A
16 ROLL OF DUCT TAPE STROWN OUT ACROSS THE BED, DUCT TAPE WAS
17 USED IN THIS CASE ON THE VICTIM. AND THERE IS ALSO SOME
18 BLOOD ON THE BED.

19 Q DO YOU KNOW WHOSE BEDROOM THIS WAS?

20 A THIS WAS THE VICTIM'S BEDROOM.

21 Q STATE'S 43 AND 44?

22 A THESE SHOW A BETTER ANGLE OF WHAT WE ARE LOOKING AT,
23 THE TOP OF THE BED, HERE IS THE DUCT TAPE AGAIN COMING
24 OVER THE EDGE, BLOOD ON THE BED, THERE WAS MORE BLOOD
25 HERE.

1 Q THIS IS THE SAME BED THAT WAS SHOWN IN STATE'S 42?

2 A YES.

3 Q STATE'S 45?

4 A THIS IS THE SAME BEDROOM, PICTURES OF THE NIGHTSTAND
5 AND THE DRESSER. IT IS HARD TO SEE, THIS IS BLOOD HERE ON
6 THE DRESSER HERE AND BED CLOTHES AND SOME OTHER CLOTHES
7 THROWN AROUND THE BEDROOM.

8 Q STATE'S 46?

9 A THIS IS A PICTURE LOOKING DOWN THE HALLWAY OF A
10 PICTURE AND ONE THAT WAS KNOCKED OFF THE WALLS IN THE
11 HALLWAY AGAIN SHOWING SOME TYPE OF STRUGGLE TOOK PLACE.

12 Q STATE'S 47?

13 A THIS IS A PHOTOGRAPH DOWN THE HALLWAY WHICH SHOWS A
14 JEWELRY BOX KNOCKED OVER ONTO THE GROUND OR THE FLOOR.
15 SOME OF THE DRAWERS PULLED OUT OF IT AND AGAIN SHOWING
16 SOME TYPE OF STRUGGLE TOOK PLACE THROUGHOUT THE HOUSE.

17 Q CAN YOU ORIENT US TO WHERE ON THIS HALLWAY WOULD BE
18 THE FRONT OF THE HOUSE, THE BACK OF THE HOUSE?

19 A OKAY. I AM STANDING AS IF I JUST CAME IN THE FRONT
20 DOOR AND I WALKED THROUGH THE LIVING ROOM AND WAS LOOKING
21 DOWN THE HALLWAY TOWARDS THE MASTER BEDROOM.

22 Q STATE'S 48 AND 49?

23 A THIS IS ME STANDING OVER THE JEWELRY BOX WHICH WAS ON
24 THE FLOOR, I TOOK SOME PICTURES OF THE ITEMS KNOCKED
25 AROUND, KNOCKED OUT OF THE JEWELRY BOX. THIS, I BELIEVE,

1 CAME FROM OFF THE WALLS.

2 Q STATE'S 50 AND 51?

3 A THAT IS MORE PICTURES, MORE PHOTOGRAPHS OF THE
4 JEWELRY BOX SHOWING THAT IT WAS KNOCKED DOWN AND THERE
5 WERE ITEMS ON THE FLOOR THERE.

6 Q STATE'S 52?

7 A THIS DUCT TAPE HERE WAS ON THE FLOOR IN THE, KIND OF,
8 I BELIEVE THIS IS THE WASHING MACHINE AND THE DRYER IF I
9 AM NOT MISTAKEN. THIS IS KIND OF IN THE HALLWAY AND IT
10 LOOKED LIKE IT HAD BEEN TAKEN OFF.

11 Q I TAKE YOU BACK TO STATE'S 47, LOOKING DOWN THE
12 HALLWAY, CAN YOU SHOW ME WHERE STATE'S 52 WOULD BE IN THAT
13 HALLWAY?

14 A ON THE LEFT HAND SIDE, PAST THIS BEDROOM.

15 Q STATE'S 53, 54 AND 55 AND 56?

16 A THESE PHOTOGRAPHS ARE THE MASTER BEDROOM AT THE BACK
17 OF THE RESIDENCE. THIS FAN YOU CAN SEE IN THAT EARLIER
18 PICTURE OF THE HALLWAY. SOME OF THE DRAWERS WERE PULLED
19 OUT AND POSSIBLY HAD BEEN GONE THROUGH, THE BED CLOTHES
20 WERE ALL IN ARRAY. STUFF ON THE FLOOR, CLOTHING ON THE
21 FLOOR. AND THEN THIS HERE, EVERYTHING WAS ALMOST IN PLACE
22 BY THE BED EXCEPT FOR THE DRAWERS BEING OPEN AND POSSIBLY
23 BEEN GONE THROUGH.

24 Q AND STATE'S 53, ORIENT ME AGAIN, WHERE IS THE HALLWAY
25 IN RELATION TO THAT?

1 A THE HALLWAY IS STRAIGHT OUT FROM THIS OPEN AREA HERE,
2 I DON'T KNOW WHAT NUMBER YOU SHOWED EARLIER. BUT YOU CAN
3 SEE THE FAN WHEN YOU ARE STANDING IN THE HALLWAY AND
4 LOOKING.

5 Q STATE'S 57, 58, 59 AND 60?

6 A THESE ARE ALL PHOTOGRAPHS FROM THAT SAME ROOM, THAT
7 MASTER BEDROOM. THIS IS THE OTHER SIDE OF THE BED, THIS
8 IS RIGHT DOWN ON THE TOP OF THESE ITEMS JUST SHOWING THAT
9 THEY WERE ALL PULLED OUT OF THE DRAWERS AND THROWN AROUND.
10 THESE ITEMS WERE ON THE BED AS IF THE DRAWER OR SOMETHING
11 HAD BEEN DUMPED DOWN TO THE BED.

12 Q STATE'S 61?

13 A ANOTHER PHOTOGRAPH OF THE BED, IT LOOKS LIKE ITEMS
14 HAD BEEN DUMPED ONTO THE BED.

15 Q STATE'S 62 AND 63?

16 A BACK IN THE LIVING ROOM AREA AND DEN AREA. THESE
17 PICTURES HERE SHOW, THESE PHOTOGRAPHS SHOW PICTURES THAT
18 WERE KNOCKED OFF OF STANDS AND THIS IS JUST ANOTHER ANGLE
19 SHOWING THAT ITEMS HAD BEEN KNOCKED OVER AND IN THAT FRONT
20 ROOM AS WELL, THAT LIVING ROOM.

21 Q STATE'S 64, 65, 66 AND 67?

22 A THESE PHOTOGRAPHS WERE TAKEN LATER THAT DAY WHEN THE
23 SUN HAD COME UP, THEY SHOWED WHERE A GUNSHOT HAD BEEN
24 FIRED AND JUST BARELY THROUGH THE EDGE OF THE GLASS AREA.
25 AND IT APPEARED THAT THE GUNSHOT WAS FIRED WITHIN THE

1 HOUSE TO THE OUTSIDE.

2 Q HOW CAN YOU TELL THAT IT WAS FIRED FROM INSIDE OF THE
3 HOUSE?

4 A YOU CAN TELL BY THE DIRECTION PATTERN OF THE
5 SPLINTERED WOOD AS WELL AS THE GLASS AND WE FOUND A
6 PROJECTILE JACKET OUTSIDE, PART OF THE BULLET OUTSIDE OF
7 THE RESIDENCE.

8 Q FROM THOSE PICTURES CAN YOU TELL WHAT TYPE OF BULLET
9 WAS FIRED?

10 A NO.

11 Q STATE'S 68, 69, 70 AND 71?

12 A MORE PICTURES, THESE PICTURES ARE FROM THE INSIDE.
13 YOU CAN SEE WHERE THE BULLET TRAVELED THROUGH THE WALL,
14 THROUGH THE WINDOW UNIT, OUT THE WINDOW. THIS IS ANOTHER
15 PICTURE WITH A LITTLE BIT CLOSER UP THAN THAT ONE.

16 Q FROM THESE PICTURES CAN YOU TELL WHAT TYPE OF BULLET
17 WAS FIRED?

18 A NO.

19 Q STATE'S 72, 73 AND 74?

20 A THESE PICTURES ARE, THE OTHER PICTURES WERE FROM THIS
21 ANGLE SHOWING THAT THE INSIDE JAM OF THE WINDOW, THESE
22 PICTURES ARE FROM STRAIGHT ON. THEY SHOW WHERE THE BULLET
23 WENT IN.

24 Q WOULD THIS BE THE SAME SHOT THAT WAS LOOKED AT
25 EARLIER IN STATE'S 71 AND PICTURES BEFORE IT?

1 A YES.

2 Q FROM THESE SHOTS CAN YOU TELL WHAT TYPE OF GUN WAS
3 FIRED?

4 A NO.

5 Q STATE'S 75?

6 A THIS IS SOME BLOOD LOCATED ON THE FLOOR.

7 Q CAN YOU TELL ME WHERE IN THE HOUSE THIS WAS LOCATED?

8 A THIS PICTURE IS--

9 Q COMPARE TO STATE'S 47 AND 41?

10 A THIS IS JUST INSIDE OF THE FRONT DOOR.

11 Q STATE'S 46.

12 A THIS PHOTOGRAPH IS OF THIS TILE FLOOR HERE SHOWING
13 SOME BLOOD ON IT.

14 Q STATE'S 76?

15 A THAT IS MORE BLOOD, WHAT APPEARED TO BE BLOOD ON THE
16 HALLWAY FLOOR.

17 Q STATE'S 77?

18 A MORE BLOOD ON THE TILE FLOOR THERE IN THE LIVING ROOM
19 AREA.

20 Q STATE'S 78 AND 80?

21 A THESE PHOTOGRAPHS ARE FROM OUTSIDE OF THE RESIDENCE
22 WHERE WE FOUND A SHOTGUN WAD, IT IS HARD TO SEE HERE.

23 Q WHAT IS A SHOTGUN WAD?

24 A IT IS PART OF A SHOTGUN SHELL THAT COMES OUT WHEN A
25 SHOTGUN IS FIRED.

1 Q STATE'S 79?

2 A THIS IS OF A SHOE IMPRESSION WE LOCATED IN THE YARD.
3 WE TOOK PHOTOGRAPHS OF THIS SHOE IMPRESSION, WE COLLECT
4 ALL THE EVIDENCE WE CAN FIND. BUT DUE TO OUR TRAFFIC FROM
5 AGAIN, TO THE FIRST RESPONDERS AS WELL AS THE
6 INVESTIGATORS, FAMILY MEMBERS, NEIGHBORS, THERE IS NO
7 TELLING WHOSE SHOES THEY ARE.

8 Q ONCE YOU TOOK ALL THE PHOTOGRAPHS FROM STATE'S 26
9 THROUGH 80 WHAT DID YOU DO WITH THOSE PHOTOGRAPHS?

10 A I TURNED THESE PHOTOGRAPHS IN TO BE DEVELOPED AND
11 TURNED THEM OVER TO THE LEAD INVESTIGATOR.

12 Q THANK YOU. NO FURTHER QUESTIONS.

13 THE COURT: CROSS-EXAMINATION.

14 CROSS-EXAMINATION

15 BY MR. JENKINS:

16 Q DID YOU OR ANYONE TO YOUR KNOWLEDGE CHECK THE SHOE
17 IMPRESSIONS TO SEE IF THEY MATCHED ANYONE FROM EMS, FAMILY
18 MEMBERS, INVESTIGATORS THAT WERE THERE?

19 A I DID NOT.

20 Q DO YOU KNOW IF ANYONE ELSE DID?

21 A I DO NOT.

22 Q DO YOU KNOW IF ANYONE CHECKED OR DID YOU CHECK TO SEE
23 IF ANY OF THOSE SHOE IMPRESSIONS MATCHED THE THREE
24 SUSPECTS THAT Y'ALL IDENTIFIED, CHAUNCEY PARTLOW, AUSTIN
25 PARTLOW OR ROY JOHNSON?

1 A I DID NOT.

2 Q NOW, FINGERPRINTS HELP IDENTIFY IF SOMEONE WAS IN A
3 CERTAIN LOCATION, IS THAT CORRECT?

4 A YES.

5 Q BLOOD OR ANY OTHER TYPE OF EVIDENCE WHICH COULD BE
6 USED FOR DNA, THAT COULD ALSO IDENTIFY WHERE SOMEONE WAS,
7 COULDN'T IT?

8 A YES.

9 Q DID YOU TAKE ANY FINGERPRINTS FROM INSIDE THE HOME?

10 A I DID NOT. MY SOLE JOB IS TO TAKE PHOTOGRAPHS.

11 Q NOW, DID YOU FIND ANY SHELL CASINGS OR WADDINGS OR
12 ANYTHING INSIDE THE HOME?

13 A I DID NOT.

14 Q YOU ARE FAMILIAR WITH A .45 CALIBER SEMIAUTOMATIC
15 HANDGUN?

16 A YES.

17 Q NORMALLY IF THAT WAS FIRED IT WOULD LEAVE A SHELL
18 CASING NEAR WHERE IT WAS FIRED, IS THAT CORRECT?

19 A IN THE GENERAL AREA.

20 Q IT SPITS OUT AN EMPTY CASING WHEN IT FIRES THE
21 BULLET?

22 A A SEMIAUTOMATIC DOES, YES.

23 Q NOW, THE PHOTOS OF THE BULLET WE WERE TALKING ABOUT,
24 THOSE WERE OF THE FRONT DOOR?

25 A YES.

1 Q NOW, IF THE WITNESS HAS TESTIFIED EARLIER THAT THEY
2 CAME IN THE BACKDOOR AND BETWEEN THE BACKDOOR AND THE
3 FRONT DOOR WERE THE SUSPECTS OR THE PEOPLE THAT THEY COULD
4 NOT IDENTIFY, THREE UNKNOWN PEOPLE WHO ARE NOT SUPPOSE TO
5 BE THERE. IF ONE OF THE SUSPECTS FIRED THE GUN THEY WOULD
6 BE FIRING TOWARD ANOTHER SUSPECT, WOULDN'T THEY?

7 A I GUESS THAT IS POSSIBLE.

8 Q OR BEHIND TOWARDS THE BACKDOOR?

9 A OKAY.

10 Q SO, IT WOULD BE HARD FOR THEM TO FIRE TOWARDS ANYONE
11 COMING IN THE DOOR, IN THE BACKDOOR AND HIT THE FRONT
12 DOOR, WOULDN'T IT?

13 A SAY THAT ONE MORE TIME, YOU ARE TWISTING ME A LITTLE
14 BIT.

15 Q IT WOULD BE HARD FOR SOMEONE TO FIRE AT SOMEONE
16 STANDING AT THE BACKDOOR AND HIT THE FRONT DOOR?

17 A I WOULD SAY SO.

18 Q THAT IS ALL I HAVE.

19 THE COURT: REDIRECT?

20 MS. ZIMMERMAN: NO QUESTIONS.

21 THE COURT: THANK YOU, SIR. YOU MAY CALL YOUR NEXT
22 WITNESS, MS. ZIMMERMAN.

23 MS. ZIMMERMAN: AT THIS TIME THE STATE WOULD MOVE
24 STATE'S 110, PREVIOUS TESTIMONY OF DEFENDANT ROY JOHNSON
25 INTO EVIDENCE AND WE WILL CALL RODNEY GRAY TO READ THE

1 TRANSCRIPT.

2 (WHEREUPON, STATE'S EXHIBIT NO. 110 WAS ADMITTED INTO
3 EVIDENCE.)

4 (WHEREUPON, THE TRANSCRIPT OF ROY JOHNSON WAS
5 READ INTO THE RECORD BY MR. CHAD JENKINS, MR. RODNEY GRAY
6 AND MS. MINDY ZIMMERMAN.)

7 MS. ZIMMERMAN: MR. GRAY, I AM GOING TO GIVE YOU
8 STATE'S EXHIBIT 110. MR. JENKINS IS GOING TO READ OFF
9 SOME QUESTIONS AND IF YOU WILL READ THE ANSWERS.

10 MR. GRAY: OKAY.

11 MR. JENKINS: I AM GOING TO REFER YOU AS ROY BECAUSE
12 THIS IS PREVIOUS TESTIMONY OF ROY JOHNSON.

13 MR. GRAY: YES, SIR.

14 RODNEY GRAY, AFTER BEING DULY SWORN,
15 TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. JENKINS:

18 Q ROY, I AM GOING TO ASK YOU TO SPEAK LOUDLY AND
19 CLEARLY, OKAY. NOW, HOW OLD ARE YOU, ROY?

20 A 29.

21 Q AND WHERE DID YOU GROW UP?

22 A CHESTER, BLAIR, CARLISLE.

23 Q BLAIR, CARLISLE AND CHESTER, ALL THAT AREA IS
24 TOGETHER?

25 A YES, SIR.

- 1 Q HAVE YOU GOT YOUR GED?
- 2 A YES, SIR.
- 3 Q ARE YOU NERVOUS TODAY?
- 4 A YES, SIR.
- 5 MR. JENKINS: WITH PERMISSION, YOUR HONOR, I AM GOING
- 6 TO SKIP ONE QUESTION BY AGREEMENT WITH MS. ZIMMERMAN.
- 7 THE COURT: ALL RIGHT.
- 8 MR. JENKINS: NOW, I AM SKIPPING TO LINE 24.
- 9 MR. GRAY: OKAY.
- 10 Q NOW, BACK IN, LET'S SAY IN JANUARY OF 2008, WERE YOU
- 11 WORKING ANYWHERE, WHAT WERE YOU DOING, WHERE WERE YOU
- 12 LIVING?
- 13 A YES, SIR. I WAS WORKING IN NORTH CAROLINA.
- 14 Q WHERE AT IN NORTH CAROLINA?
- 15 A BEST WESTERN, GASTONIA.
- 16 Q GASTONIA, NORTH CAROLINA.
- 17 A YES.
- 18 Q NOW, WHEN YOU WERE WORKING IN GASTONIA WHERE DID YOU
- 19 LIVE?
- 20 A WITH MY MAMA.
- 21 Q AND THAT IS IN?
- 22 A CARLISLE, SOUTH CAROLINA.
- 23 Q AND DID YOU STAY IN GASTONIA AT ALL?
- 24 A YES, SIR.
- 25 Q AND WHO WERE YOU STAYING WITH WHEN YOU WERE UP THERE?

1 A IN A MOTEL WITH MY GIRLFRIEND.

2 Q NOW, LET'S JUST GET TO THE HEART OF THE MATTER.

3 JANUARY THE 7TH OF 2008, YOU HEARD ALL THE TESTIMONY THAT
4 HAS BEEN PRESENTED FROM THAT BOX IN REGARDS TO WHAT
5 HAPPENED TO THE COFER'S. YOU HEARD ALL OF THAT TESTIMONY?

6 A YES, SIR.

7 Q DO YOU KNOW ANYTHING ABOUT THAT INCIDENT?

8 A YES, SIR.

9 Q AND WERE YOU, IN FACT, AT THE COFER'S HOME ON JANUARY
10 THE 7TH OF 2008?

11 A YES, SIR.

12 Q WERE YOU THERE BECAUSE YOU CHOSE TO BE?

13 A NO, SIR.

14 Q WERE YOU THERE WITH THE INTENTION TO COMMIT ANY CRIME
15 WHATSOEVER?

16 A NO, SIR.

17 Q LET'S BACK UP AND GO BACK TO, WHERE WERE YOU
18 IMMEDIATELY BEFORE YOU CAME TO NEWBERRY ON THAT DAY?

19 A IN GASTONIA.

20 Q AND WHO WERE YOU WITH IN GASTONIA THAT DAY?

21 A I MET UP WITH CHAUNCEY PARTLOW.

22 Q AND WE HEARD SOME STATEMENTS EARLIER AND STUFF, DID
23 YOU CALL CHAUNCEY ANY OTHER NAME AT THAT TIME?

24 A CP.

25 Q SO CHAUNCEY IS CP?

1 A YES, SIR.

2 Q AND WHAT WERE YOU AND CHAUNCEY DISCUSSING AND HOW DID
3 IT COME TO BE THAT YOU CAME TO NEWBERRY THAT DAY?

4 A HE WANTED TO COME TO COLUMBIA, SOUTH CAROLINA. AND I
5 HAD, I WANTED TO COME TO NEWBERRY TO SEE MY GIRLFRIEND'S
6 UNCLE. I WAS SUPPOSE TO MEET HER AT NEWBERRY HOSPITAL.

7 Q OKAY. SO, YOU WERE GOING TO MEET YOUR GIRLFRIEND AT
8 THE NEWBERRY HOSPITAL IN NEWBERRY?

9 A YES, SIR.

10 Q DID YOU MEET WITH ANYONE ELSE IN GASTONIA BEFORE YOU
11 CAME TO NEWBERRY?

12 A NO OTHER THAN BUBEE, THE ONE THAT WAS WITH US.

13 Q BUBEE?

14 A YES, SIR.

15 Q DID BUBEE HAVE ANY OTHER NAMES?

16 A SHORTY.

17 Q SO, HE WENT BY BUBEE OR SHORTY?

18 A YES, SIR. CHAUNCEY CALLS HIM SHORTY.

19 Q NOW, YOU GOT IN THE CAR AT SOME POINT AND CAME TO
20 NEWBERRY?

21 A YES, SIR.

22 Q AND WHO WAS IN THE CAR WITH YOU?

23 A AUSTIN PARTLOW, CHAUNCEY PARTLOW, SHORTY AND ME.

24 Q AND YOU KNEW CHAUNCEY A LITTLE BIT BEFORE THIS?

25 A YES, SIR.

1 Q DID YOU KNOW SHORTY BEFORE THIS?

2 A YES, SIR.

3 Q AND HOW LONG HAD YOU KNOWN SHORTY, HOW MANY TIMES
4 HAVE YOU MET HIM?

5 A A FEW TIMES, HE WAS WITH CHAUNCEY EVERY NOW AND THEN.

6 Q HAD YOU MET AUSTIN BEFORE THIS DATE?

7 A NO, SIR.

8 Q OKAY. WHOSE VEHICLE WERE YOU IN WHEN YOU LEFT
9 GASTONIA?

10 A AUSTIN'S.

11 Q AND HOW DID Y'ALL DETERMINE THAT YOU WERE GOING TO
12 GET INTO THE VEHICLE WITH AUSTIN AND GET HERE, HOW WAS
13 THAT DETERMINED?

14 A CHAUNCEY DIDN'T WANT TO DRIVE HIS CAR TO COLUMBIA.

15 Q CHAUNCEY DIDN'T WANT TO DRIVE HIS CAR TO COLUMBIA?

16 A YES, SIR.

17 Q WHAT KIND OF CAR WAS AUSTIN DRIVING?

18 A A DODGE JEEP.

19 Q JEEP LIKE VEHICLE?

20 A YES, SIR.

21 Q AND WHERE WERE EACH OF YOU SITTING AS YOU LEFT
22 GASTONIA AND HEADED TO NEWBERRY?

23 A AUSTIN WAS DRIVING, SHORTY WAS BEHIND AUSTIN,
24 CHAUNCEY WAS IN THE FRONT PASSENGER SEAT AND I WAS BEHIND
25 CHAUNCEY.

1 Q WHEN YOU LEFT GASTONIA WHAT WERE THE GROUPS
2 INTENTIONS, WHAT DID Y'ALL INTEND TO DO, WHERE DID YOU
3 INTEND TO GO, WHERE DID THEY INTEND TO GO AND WHAT WAS THE
4 PLAN?

5 A I WAS PLANNING TO GO TO NEWBERRY HOSPITAL, AND TO BE
6 DROPPED OFF. I WAS GOING TO RIDE BACK TO GASTONIA WITH MY
7 GIRLFRIEND. AND CHAUNCEY AND THE REST OF THEM WERE GOING
8 TO GO ON TO COLUMBIA OR WHEREVER THEY WERE GOING TO GO.

9 Q DID YOU KNOW AT THAT POINT EVENTUALLY, HAD CHAUNCEY
10 MENTIONED WHAT THEY WERE GOING TO COLUMBIA FOR?

11 A AT FIRST HE DIDN'T.

12 Q AT SOME POINT DID HE?

13 A YES, SIR.

14 Q WHAT DID HE TELL YOU HE WAS GOING TO COLUMBIA FOR?

15 A TO GET DRUGS.

16 Q OKAY. NOW, WHEN YOU SAID THEY WERE GOING TO GO TO
17 COLUMBIA TO GET DRUGS, DO YOU KNOW IF THEY WERE GOING TO
18 GET A SMALL BAG OF SOMETHING TO USE THEMSELVES OR TO GET A
19 LARGE AMOUNT TO RESELL OR WHAT, WHAT WERE THEY GOING TO
20 DO?

21 A THEY WERE GOING TO GET SOME TO SELL.

22 Q DID THE PLANS CHANGE AT SOME POINT BETWEEN LEAVING
23 GASTONIA AND GETTING TO NEWBERRY?

24 A YES, SIR.

25 Q AND WHY DID THE PLAN CHANGE?

1 A BECAUSE WHEN WE GOT TO NEWBERRY MY GIRLFRIEND CALLED
2 ME AND SAID SHE WAS ON HER WAY BACK. SO, I DIDN'T EVEN
3 NEED TO GO TO THE HOSPITAL SO I WAS STILL WITH THEM.

4 Q DID, YOU WERE STUCK WITH THEM AT THAT POINT. WERE
5 ANY OTHER CHANGE IN PLANS DISCUSSED, DID YOU OFFER ANY
6 HELP OR ANYTHING ALONG THOSE LINES?

7 A YES, SIR.

8 Q WHAT HAPPENED, TELL ME WHAT Y'ALL TALKED ABOUT?

9 A CHAUNCEY WANTED TO GET SOME DRUGS. HE ASKED ME DID I
10 KNOW ANYBODY THAT I COULD GET DRUGS FROM NEWBERRY AND I
11 SAID, YES.

12 Q OKAY. HAVE YOU BEEN INVOLVED WITH DRUGS IN THE PAST?

13 A YES, SIR.

14 Q IS THAT HOW YOU KNEW SOMEONE IN NEWBERRY THAT YOU
15 MIGHT COULD GET DRUGS FROM?

16 A YES, SIR.

17 Q AND FROM THAT POINT, WHERE WERE YOU WHEN THAT
18 CONVERSATION OCCURRED ALONG THE ROADWAY, WHERE WERE Y'ALL?

19 A WE WERE COMING AROUND 176, I THINK.

20 Q CLOSE TO NEWBERRY?

21 A WE WERE JUST ABOUT TO GET TO NEWBERRY.

22 Q WHO WAS GIVING DIRECTIONS?

23 A I WAS AT THAT POINT.

24 Q BECAUSE, WHY WERE YOU GIVING THE DIRECTIONS?

25 A BECAUSE AUSTIN DIDN'T KNOW THE ROAD.

- 1 Q AUSTIN DIDN'T KNOW THE ROAD?
- 2 A NO.
- 3 Q AND YOU KNEW WHOSE HOUSE YOU WERE GOING TO?
- 4 A YES, SIR.
- 5 Q WHERE WAS THIS HOME LOCATED, THE DRUG DEALERS HOME
- 6 THAT YOU INTENDED TO GO TO?
- 7 A HIGHWAY 34, [REDACTED]
- 8 Q IS THAT NEAR THE COFER'S HOME?
- 9 A YES, SIR.
- 10 Q IT IS NOT THE COFER'S HOME THOUGH, IS IT?
- 11 A NO, SIR.
- 12 Q WHERE DID Y'ALL GO ORIGINALLY, WHERE DID YOU FIRST GO
- 13 WHEN YOU CAME INTO NEWBERRY?
- 14 A I WENT TO MY COUSIN, BRIAN'S HOUSE.
- 15 Q WHAT IS HIS LAST NAME?
- 16 A JOHNSON.
- 17 Q BRIAN, WHERE DOES HE LIVE?
- 18 A HE STAYED WITH HIS GIRLFRIEND, RIGHT DOWN THE ROAD
- 19 FROM THE COFER'S.
- 20 Q HE IS A LITTLE BIT FURTHER DOWN HIGHWAY 34?
- 21 A YES, SIR.
- 22 Q TOWARDS FAIRFIELD OR TOWARDS NEWBERRY?
- 23 A FAIRFIELD.
- 24 Q DID YOU TALK TO BRIAN?
- 25 A NO, HE WAS NOT HOME.

1 Q AFTER YOU LEFT BRIAN'S HOUSE, WERE ALL FOUR OF YOU
2 STILL IN THE CAR?

3 A YES, SIR.

4 Q WHERE DID Y'ALL GO NEXT?

5 A TO THE ABANDONED HOUSE.

6 Q TO AN ABANDONED HOUSE?

7 A YES, SIR.

8 Q WHERE IS THE ABANDONED HOUSE, IS THAT THE SAME AS THE
9 BRICK HOUSE?

10 A YES, SIR.

11 Q AND WHERE IS IT IN RELATION TO THE COFER'S HOME?

12 A I THINK TWO HOUSES DOWN.

13 Q TWO HOUSES DOWN TOWARDS FAIRFIELD OR TWO HOUSES DOWN
14 TOWARDS NEWBERRY?

15 A TWO HOUSES DOWN TOWARDS FAIRFIELD.

16 Q AND WHY DID YOU GO TO THE BRICK HOME, WHERE IS THE
17 DRUG DEALERS HOME EXACTLY?

18 A IT IS ON, CLOSE TO [REDACTED]

19 Q AND [REDACTED] IS A LITTLE BIT TOWARDS NEWBERRY
20 FROM THE COFER'S HOME?

21 A YES, SIR.

22 Q WHY DID YOU GO TO THE ABANDONED HOME INSTEAD OF GOING
23 TO THE DRUG DEALERS HOME?

24 A BECAUSE THEY WERE GOING TO GIVE ME THE MONEY AND I
25 WAS GOING TO GET THE DRUGS.

1 Q SO, WHAT WAS YOUR PLAN, WHAT WAS YOUR INTENTION?

2 A TO GO TO THE BRICK HOUSE AND THEY GIVE ME THE MONEY.

3 I WAS SUPPOSE TO GO GET THE DRUGS AND WALK DOWN THE STREET

4 AND GO TO HIS HOUSE AND MEET THE DRUG DEALER AND TO GET

5 THE DRUGS AND THEN COME BACK AND LEAVE.

6 Q IS THAT WHAT HAPPENED?

7 A NO, SIR.

8 Q TELL ME WHAT HAPPENED, DID THEY GIVE YOU THE MONEY?

9 A YES, SIR.

10 Q TELL ME WHAT HAPPENED AFTER THEY GAVE YOU THE MONEY?

11 A I STARTED DOWN THE STREET, THEY CAME BEHIND ME SO I

12 GET IN THE JEEP.

13 Q WHEN YOU SAY THEY CAME BEHIND YOU, WERE THEY WALKING,

14 RIDING?

15 A THEY WERE RIDING.

16 Q WERE ALL THREE OF THEM STILL IN THE VEHICLE?

17 A YES, SIR.

18 Q YOU GOT BACK IN THE JEEP?

19 A YES, SIR.

20 Q WHY DID YOU GET BACK IN AT THAT POINT, WHAT DID THEY

21 SAY OR WHAT DID YOU SAY?

22 A THEY WANTED TO COME TO THE HOUSE AND SEE WHERE I GET

23 THE DRUGS FROM.

24 Q WHY DID YOU GET BACK IN THE VEHICLE?

25 A TO KEEP FROM DRAWING ATTENTION.

1 Q WHAT HAPPENED AT THAT POINT, YOU GOT BACK IN THE
2 VEHICLE AND I AM GOING TO LET YOU KEEP GOING.

3 A WE TURNED AROUND ON [REDACTED] I TOLD THEM TO GO
4 BACK TO THE ABANDONED HOUSE. ME, CHAUNCEY, SHORTY GOT IN
5 THE CAR AND I TOLD THEM I DIDN'T WANT THEM TO COME TO THE
6 HOUSE, THEY DIDN'T KNOW THEM.

7 Q WAS SHORTY PLEASED WITH THAT ANSWER?

8 A NO, SIR.

9 Q WHAT DID HE SAY OR WHAT DID HE DO?

10 A HE WANTED TO GO WHERE THE MONEY WAS GOING. I TOLD
11 HIM I DIDN'T WANT HIM TO RIDE WITH ME, HE WANTED TO TALK
12 WITH THEM FACE TO FACE, HE DIDN'T WANT ME OUT OF HIS
13 SIGHT.

14 Q DID YOU TELL HIM THAT WASN'T A GOOD IDEA AND WASN'T A
15 GOOD POSSIBILITY?

16 A YES, SIR.

17 Q HOW DID HE REACT TO THAT?

18 A HE GOT KIND OF MAD, HE SAID THEY WEREN'T SOUTH
19 CAROLINA BROTHERS ANYWAY, (PHONETIC), HE SAID THE N WORD.

20 Q HE SAID THE N WORD?

21 A YES, SIR.

22 Q AFTER HE SAID THAT, TELL ME WHAT HAPPENED NEXT?

23 A I TOLD THEM, MAN, HE JUST DON'T DEAL THAT WAY.
24 EVERYTHING IS GOOD, I WON'T RUN OFF WITH HIS MONEY. YOU
25 CAN SEE WHERE I AM GOING TO. AND CHAUNCEY, SAID MAN,

- 1 THAT, THERE IS THE DUDE THAT CAME IN THE VAN THAT CAME TO
2 NORTH CAROLINA.
- 3 Q WHAT VAN WAS HE INDICATING OR POINTING TO?
- 4 A A BROWN VAN NEAR THE COFER'S YARD.
- 5 Q NEAR THE COFER'S MOBILE HOME?
- 6 A YES, SIR.
- 7 Q DID YOU KNOW WHAT HE WAS TALKING ABOUT AS FAR AS THAT
8 VAN. DID IT LOOK LIKE A VAN THAT YOU KNEW?
- 9 A NO, SIR.
- 10 Q WHAT HAPPENED NEXT?
- 11 A I TOLD HIM I DIDN'T KNOW WHAT THEY WERE GOING TO DO
12 ABOUT THE HOUSE, DIDN'T KNOW NOTHING ABOUT THE HOUSE.
13 SHORTY, SUGGESTED GOING TO THE HOUSE, I TOLD HIM I DIDN'T
14 WANT NOTHING TO DO WITH. HE GOT MAD AND PULLED OUT A GUN.
15 SO, I LOOKED AT CHAUNCEY AND I SAID, MAN, THIS AIN'T EVEN
16 COOL. SHORTY TAKE MY MONEY, TAKE MY WALLET, TAKE IT, MY
17 PHONE OUT OF MY POCKET. HE TOOK HIS MONEY BACK FIRST.
- 18 Q AT THIS POINT, WHAT KIND OF GUN DID SHORTY HAVE, WHAT
19 DID IT LOOK LIKE?
- 20 A BLACK AND SILVER, HIGHPOINT IT LOOKED LIKE.
- 21 Q AND HE HAD THE GUN ON YOU AND HE INDICATED HE WAS
22 GOING TO ROB THIS GUY?
- 23 A YES, SIR.
- 24 Q AND OR ROB YOU?
- 25 A YES, SIR.

1 Q WHAT HAPPENED NEXT?

2 A WE GOT TO THE HOUSE, WE WALKED TO THE NEXT HOUSE
3 OVER. I TRIED TO TELL HIM, THIS AIN'T COOL, THIS AIN'T
4 WORKING. BUT HE DIDN'T PAY ME NO ATTENTION.

5 Q DID YOU MAKE IT TO THE COFER'S HOME?

6 A YES, SIR.

7 Q AND DID YOU GO THERE VOLUNTARILY?

8 A NO, SIR.

9 Q WHY DID YOU GO THERE THEN?

10 A BECAUSE THEY FORCED ME TO KNOCK ON THE DOOR.

11 Q HE WANTED YOU TO KNOCK ON THE DOOR?

12 A YES, SIR.

13 Q WHY DID HE WANT YOU TO KNOCK ON THE DOOR?

14 A HE WANTED THE DUDE TO COME TO THE DOOR FIRST.

15 Q AND HE THOUGHT THAT THIS WAS THE DUDE THAT YOU KNEW?

16 A YES, SIR.

17 Q DID YOU KNOCK ON THE DOOR?

18 A NO, SIR.

19 Q WHAT HAPPENED?

20 A I TOLD HIM, I SAID, I AM NOT GOING TO KNOCK ON THE
21 DOOR. AND HE SAID, HE SAID YOU KNOCK OR YOU ARE GOING TO
22 DIE. AND I SAID, I AM NOT GOING TO KNOCK ON THE DOOR.
23 AND THAT IS WHEN I FELL BACKWARDS.

24 Q YOU FELL BACKWARDS, DID YOU HIT THE DOOR?

25 A MY BACK, YES.

- 1 Q DID IT COME OPEN?
- 2 A YES, SIR. THEY WENT STRAIGHT IN, I WAS FALLING, THEY
- 3 WERE RUNNING THROUGH.
- 4 Q SO, YOU ARE PARTIALLY IN THE HOME AT THIS TIME?
- 5 A YES, SIR.
- 6 Q YOU ADMIT TO THE JURY, I AM THERE, I AM IN THE HOME?
- 7 A YES, SIR.
- 8 Q THEY RUSH OVER YOU, THEY ARE GOING INTO THE HOME, YOU
- 9 ARE THERE AT THE DOORWAY, WHAT DO YOU SEE OR WHAT DO YOU
- 10 HEAR IMMEDIATELY AFTER THAT POINT?
- 11 A I PULLED MYSELF UP FROM THE FRONT OF THE DOOR, I
- 12 TURNED AROUND. I SEE MR. COFER'S HEAD AND WENT OVER HIM.
- 13 I TURNED AROUND, I SEEN SHORTY WITH A GUN, CHAUNCEY WAS
- 14 GOING DOWN THE HALL.
- 15 Q DID YOU RUN IMMEDIATELY?
- 16 A NO, SIR.
- 17 Q WHY NOT?
- 18 A I WAS JUST SHOCKED, I COULDN'T BELIEVE WHAT I HAD
- 19 SEEN.
- 20 Q WHAT HAPPENED NEXT?
- 21 A CHAUNCEY CAME DOWN THE HALL, SHORTY WENT DOWN THE
- 22 HALL AND THAT IS WHEN I HEARD THE GIRL START SCREAMING.
- 23 AND CHAUNCEY SAID KEEP AN EYE ON THE DOOR. I DIDN'T WANT
- 24 NOTHING TO DO WITH IT. I JUMPED OFF THE STEPS AND I TOOK
- 25 OFF.

- 1 Q AT THAT POINT YOU TAKE OFF RUNNING?
- 2 A YES, SIR.
- 3 Q WHERE WAS AUSTIN DURING ALL OF THIS?
- 4 A HE GRABBED A HOLD OF ME AND I SHOVED HIM OFF, I RAN
- 5 DOWN THE ROAD.
- 6 Q LET ME SLOW YOU DOWN.. WHERE WAS AUSTIN WHEN YOU,
- 7 SHORTY AND CHAUNCEY ORIGINALLY WENT TO THE HOME?
- 8 A IN THE CAR.
- 9 Q AND AS YOU CAME OUT YOU MET AUSTIN?
- 10 A YES, IN THE YARD.
- 11 Q IN THE YARD NEXT DOOR TO THE COFER'S?
- 12 A YES, SIR.
- 13 Q AND WHERE DID YOU GO, AFTER YOU, YOU SAID YOU PUSHED
- 14 HIM DOWN, WHERE DID YOU GO?
- 15 A DOWN THE STREET FROM THE HOME TO THE ABANDONED HOUSE.
- 16 Q TOWARDS FAIRFIELD OR TOWARDS NEWBERRY?
- 17 A TOWARDS FAIRFIELD.
- 18 Q HOW FAR DOWN THE ROAD DID YOU GET?
- 19 A MAYBE 150 YARDS.
- 20 Q DID YOU HEAR OR SEE ANYTHING ELSE?
- 21 A I SAW A BUNCH OF PEOPLE RUN ACROSS THE STREET, I
- 22 DON'T KNOW WHERE THEY CAME FROM.
- 23 Q FROM THE HOME DIRECTLY ACROSS THE STREET TO THE
- 24 COFER'S?
- 25 A YES, SIR.

- 1 Q YOU DON'T KNOW IF THEY CAME FROM THAT HOME?
- 2 A I DON'T KNOW BUT THEY CAME FROM THE STREET.
- 3 Q WHAT DID YOU SEE AFTER THAT?
- 4 A I DIDN'T SEE ANYTHING SO I RAN, BY THE TIME I CAME
- 5 BACK, I RAN TO MY COUSIN'S HOUSE. AND BY THE TIME I CAME
- 6 BACK--
- 7 Q YOUR COUSIN, WHO IS THAT?
- 8 A BRIAN JOHNSON.
- 9 Q SO YOU HAD RAN BACK TO HIS HOUSE?
- 10 A YES.
- 11 Q HOW MUCH TIME HAD ELAPSE FROM THE TIME YOU WERE FIRST
- 12 AT HIS HOUSE AND HE WASN'T THERE AND THE SECOND TIME YOU
- 13 WERE AT HIS HOUSE?
- 14 A IT WOULD BE HARD TO TIME THAT.
- 15 Q YOU DON'T KNOW HOW MUCH TIME IT WAS?
- 16 A NO, SIR.
- 17 Q OKAY. DO YOU HEAR OR SEE ANYTHING ELSE AS YOU ARE
- 18 DOWN AT BRIAN'S HOUSE?
- 19 A I HEAR A GUNSHOT AND I SAW THE CAR DRIVING OFF.
- 20 Q YOU SEE THE VEHICLE YOU WERE IN TAKE OFF?
- 21 A YES, SIR.
- 22 Q WHICH WAY DID IT GO?
- 23 A TOWARDS NEWBERRY.
- 24 Q DO YOU KNOW WHAT KIND OF GUNSHOTS YOU HEARD?
- 25 A I AM NOT SURE IF IT WAS A SHOTGUN, I AM NOT SURE.

1 A YES, SIR.

2 Q AND DID Y'ALL, WHERE DID YOU GO IMMEDIATELY AFTER
3 LEAVING HIS HOUSE?

4 A TO A SHELL STATION OR A BP STATION.

5 Q WHERE WAS THAT STATION LOCATED, DO YOU REMEMBER?

6 A I DON'T KNOW, 34, I-26.

7 Q SORT OF BACK TOWARDS WHERE THIS HAPPENED?

8 A YES.

9 Q DID YOU COME BACK BY THE COFER'S HOME WHEN YOU WENT
10 TO THIS STATION?

11 A NO, SIR.

12 Q WHAT ROUTE DID YOU TAKE?

13 A A BACK ROAD.

14 Q DID YOU GIVE WILLIE DIRECTIONS?

15 A NO, SIR.

16 Q WHEN HE LEFT THE BP OR SHELL STATION THERE AT THE
17 INTERSTATE WHERE DID YOU GO NEXT?

18 A WE WENT BACK THAT SAME ROUTE.

19 Q WHERE WERE YOU HEADED TO?

20 A HE WAS TAKING ME TO MY BROTHER'S.

21 Q AND YOUR BROTHER LIVED IN?

22 A CARLISLE.

23 Q OVER IN FAIRFIELD, CARLISLE AREA?

24 A YES.

25 Q WHY WOULD YOU TAKE THAT ROUTE INSTEAD OF GOING

- 1 STRAIGHT OUT 34 TOWARDS FAIRFIELD?
- 2 A WILLIE DIDN'T HAVE A LICENSE.
- 3 Q WERE YOU GIVING HIM DIRECTIONS?
- 4 A NO, SIR.
- 5 Q DID YOU TELL HIM GO THAT WAY, DON'T GO THAT WAY OR
- 6 ANYTHING OF THAT NATURE?
- 7 A NO, SIR.
- 8 Q DID YOU MAKE IT BACK TO YOUR BROTHER'S?
- 9 A YES, SIR.
- 10 Q WHAT DID YOU TELL YOUR BROTHER?
- 11 A I WANTED TO GO TO NORTH CAROLINA.
- 12 Q AND WHY DIDN'T YOU CALL THE POLICE WHEN YOU WERE AT
- 13 WILLIE'S HOUSE OR WHEN YOU WERE AT YOUR BROTHER'S HOUSE?
- 14 A I WAS SCARED, I DIDN'T WANT TO BE INVOLVED.
- 15 Q DID YOUR BROTHER CARRY YOU TO NORTH CAROLINA?
- 16 A YES, SIR.
- 17 Q AND WHERE DID YOU GO WHEN YOU FIRST WENT BACK TO
- 18 NORTH CAROLINA?
- 19 A I WENT TO MY GIRLFRIEND'S HOUSE.
- 20 Q WAS SHE HAPPY TO SEE YOU?
- 21 A NO, SIR.
- 22 Q WHERE DID YOU GO, DID SHE SORT OF TELL YOU TO GET OUT
- 23 OF HERE?
- 24 A NO, WE TALKED A LITTLE BIT. SHE HAD TO GO TO WORK,
- 25 SHE WENT TO WORK AND I CALLED MY SISTER, SHE TOLD ME MY

- 1 PICTURE WAS ON THE INTERNET, MOM CALLED ME AND TOLD ME TO
2 COME BACK.
- 3 Q WHAT DID YOU DO WHEN THEY TOLD YOU YOUR PICTURE WAS
4 ON THE INTERNET OR ON THE TV.
- 5 A PRAYED.
- 6 Q DID YOU RUN?
- 7 A NO, SIR.
- 8 Q DID YOU TELL YOUR SISTER AND YOUR MOTHER WHERE YOU
9 WERE?
- 10 A YES, SIR.
- 11 Q DID YOU WAIT THERE?
- 12 A YES, SIR.
- 13 Q DID THE GASTONIA POLICE OR GASTON COUNTY POLICE PICK
14 YOU UP THERE?
- 15 A YES, SIR.
- 16 Q AND FOLLOWING THAT, I THINK THE NEXT DAY ROBERT
17 DENNIS CAME TO GET YOU?
- 18 A YES, SIR.
- 19 Q AND HE HAD ANOTHER OFFICER, DICKERT, WITH HIM?
- 20 A YES, SIR.
- 21 Q DID YOU FIGHT THEM OR TELL THEM YOU DIDN'T WANT TO
22 COME BACK TO SOUTH CAROLINA?
- 23 A NO, SIR.
- 24 Q YOU WAIVED EXTRADITION?
- 25 A YES, SIR.

1 Q NOW, WE HAVE HEARD THREE VERSIONS OF THE STORY NOW.
2 WE HEARD A AUDIO RECORDING OUT OF THESE SPEAKERS, YOUR
3 CONVERSATION WITH ROBERT DENNIS AND OFFICER DICKERT COMING
4 BACK FROM GASTONIA TO NEWBERRY. YOU HEARD THAT ALSO?

5 A YES, SIR.

6 Q IS THAT STATEMENT ONE-HUNDRED PERCENT TRUE?

7 A NO, SIR.

8 Q LIEUTENANT DENNIS READ A STATEMENT THAT YOU WROTE
9 WHILE, I BELIEVE THE NEXT DAY WHILE YOU WERE AT THE
10 NEWBERRY COUNTY DETENTION CENTER. IT WAS A LITTLE BIT
11 DIFFERENT THAN THE AUDIO STATEMENT AND DIFFERENT THAN WHAT
12 YOU TESTIFIED TO IN COURT TODAY. WAS THE SECOND STATEMENT
13 ONE-HUNDRED PERCENT TRUE?

14 A NO, SIR.

15 Q HAVE YOU HAD ANY DISCUSSIONS WITH LIEUTENANT DENNIS
16 OR ANYONE ELSE REGARDING THE FACTS OF THIS CASE BEFORE YOU
17 MADE THE SECOND STATEMENT?

18 A YES, SIR.

19 Q HAD THEY GIVEN YOU ANY FACTS OR GIVEN YOU ANY
20 DIRECTION AS TO GIVING YOUR STATEMENT?

21 A YES, SIR.

22 Q WHAT HAD THEY TOLD YOU?

23 A TOLD ME TO LEAVE ONE OF THE GUYS OUT.

24 Q TOLD YOU TO LEAVE ONE OF THE GUYS OUT?

25 A YES, SIR.

1 Q AND SO WHEN YOU WROTE THE SECOND STATEMENT THERE IS
2 ONLY THREE GUYS MENTIONED, SHORTY, CP AND YOURSELF?

3 A YES, SIR.

4 Q WHAT YOU TOLD THE JURY TODAY, THEY HEARD YOU, THEY
5 GET TO SEE YOU, IS THAT THE ONE-HUNDRED PERCENT TRUTH OF
6 WHAT HAPPENED ON JANUARY THE 7TH OF 2008?

7 A YES, SIR.

8 Q ARE YOU GUILTY OF BEING WITH CHAUNCEY, AUSTIN AND
9 SHORTY THAT DAY?

10 A YES, SIR.

11 Q WOULD YOU AGREE THAT YOU ARE PROBABLY GUILTY OF SOME
12 BAD JUDGMENT IN COMING TO NEWBERRY TO GET DRUGS?

13 A YES, SIR.

14 Q ARE YOU GUILTY OF ARMED ROBBERY?

15 A NO, SIR.

16 Q ARE YOU GUILTY OF KIDNAPPING?

17 A NO, SIR.

18 Q POSSESSION OF A FIREARM IN THE COMMISSION OF A
19 VIOLENT CRIME?

20 A NO, SIR.

21 Q ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE?

22 A NO, SIR.

23 Q BURGLARY IN THE FIRST DEGREE?

24 A NO, SIR.

25 Q DID YOU INTEND OR HAVE ANY INTENTION OF GOING TO THE

1 COFER'S HOME AND COMMITTING ANY CRIME IN THEIR HOME WHEN
2 YOU CAME TO NEWBERRY COUNTY?

3 A NO, SIR.

4 Q THAT IS ALL I HAVE.

5 CROSS-EXAMINATION

6 BY MS. ZIMMERMAN:

7 Q MR. JOHNSON, YOU WERE ON YOUR WAY TO SEE YOUR UNCLE?

8 A NO, MA'AM.

9 Q YOU WERE ON YOUR WAY TO SEE SOMEBODY?

10 A MY GIRLFRIEND'S UNCLE.

11 Q OKAY. I APOLOGIZE FOR THAT. WHAT IS HIS NAME?

12 A I DON'T KNOW.

13 Q BUT YOU WERE ON YOUR WAY TO VISIT HIM AT THE
14 HOSPITAL?

15 A YES, MA'AM.

16 Q HOW WERE YOU GOING TO FIND HIS ROOM AT THE HOSPITAL?

17 A MY GIRLFRIEND WAS THERE.

18 Q IN HIS ROOM?

19 A YES.

20 Q OKAY. AND SHORTY IS ALSO BUBEE?

21 A YES, MA'AM.

22 Q IS THAT HIS REAL NAME?

23 A I DO NOT KNOW.

24 Q HOW LONG HAVE YOU KNOWN THAT YOU HAVE HAD THESE
25 CHARGES PENDING AGAINST YOU?

- 1 A MA'AM?
- 2 Q HOW LONG HAVE YOU KNOWN THAT YOU HAVE HAD THESE
- 3 CHARGES PENDING AGAINST YOU?
- 4 A HOW LONG HAVE I KNOWN?
- 5 Q YES, SIR.
- 6 A THESE CHARGES?
- 7 Q YES, SIR.
- 8 A ABOUT A YEAR AGO.
- 9 Q ABOUT A YEAR AGO?
- 10 A YES.
- 11 Q HAVE YOU TRIED TO FIND OUT THIS FORTH PERSON'S NAME
- 12 IN A YEAR?
- 13 A NO, MA'AM. I HAVE BEEN IN JAIL.
- 14 Q HAVE YOU TALKED TO ANYBODY OUTSIDE OF JAIL IN THAT
- 15 TIME?
- 16 A NO.
- 17 Q YOU SAID YOU WERE GOING TO BUY SOME DRUGS FOR
- 18 CHAUNCEY AND AUSTIN?
- 19 A YES, MA'AM.
- 20 Q WHAT KIND OF DRUGS?
- 21 A COCAINE.
- 22 Q POWDERED COCAINE?
- 23 A YES, MA'AM.
- 24 Q HOW MUCH?
- 25 A FOUR OUNCES OR SEVEN GRAMS.

- 1 Q HOW MUCH MONEY DID THEY GIVE YOU TO BUY FOUR OUNCES
2 OR SEVEN GRAMS?
- 3 A \$1,300.00 DOLLARS.
- 4 Q AND WHAT HAPPENED TO THAT MONEY WHEN YOU DIDN'T GO
5 MAKE THE TRANSACTION?
- 6 A SHORTY TOOK IT BACK.
- 7 Q SO, BASICALLY YOU ARE TELLING ME THAT YOU WERE A
8 VICTIM OF AN ARMED ROBBERY YOURSELF?
- 9 A YES, MA'AM.
- 10 Q DID YOU REPORT THAT CRIME TO THE POLICE?
- 11 A NO, MA'AM.
- 12 Q AND YOU WERE A VICTIM OF A KIDNAPPING YOURSELF?
- 13 A YES, MA'AM.
- 14 Q DID YOU REPORT THAT CRIME TO THE POLICE?
- 15 A NO, MA'AM.
- 16 Q YOU LAYED IN THE WOODS WHILE THE POLICE DROVE BY YOU?
- 17 A YES, MA'AM.
- 18 Q EVEN THOUGH PEOPLE HAD POINTED GUNS AT YOU AND SHOT
19 AT YOU?
- 20 A YES, MA'AM.
- 21 Q AND YOU RAN 3.68 MILES TO SOMEBODY ELSE'S HOUSE TO GO
22 BACK TO NORTH CAROLINA?
- 23 A YES, MA'AM.
- 24 Q AND YOU SAY THAT INVESTIGATOR DENNIS TOLD YOU THAT IT
25 WOULD HURT YOUR CASE FOR YOU TO SAY THAT THERE WERE FOUR

1 PEOPLE INVOLVED IN THIS?

2 A YES, MA'AM.

3 Q AT THAT TIME WERE YOU AWARE THAT CHAUNCEY PARTLOW WAS
4 ARRESTED FOR THIS CRIME?

5 A YES, MA'AM.

6 Q WERE YOU AWARE THAT AUSTIN PARTLOW HAD BEEN ARRESTED
7 FOR THIS CRIME?

8 A YES, MA'AM.

9 Q AND SO THE PERSON YOU CHOSE TO LEAVE OUT OF THE FOUR
10 PEOPLE WAS ONE THAT IS ALREADY IN CUSTODY?

11 A NO, MA'AM.

12 Q NO. ISN'T IT TRUE THAT IN YOUR SECOND STATEMENT YOU
13 STILL TALKED ABOUT CP WHICH IS CHAUNCEY AND YOU TALKED
14 ABOUT SHORTY?

15 A YES, MA'AM.

16 Q WHICH IS BUBEE?

17 A YES, MA'AM.

18 Q BUT IT IS NOT AUSTIN?

19 A NO, MA'AM.

20 Q SO, YOU CHANGED YOUR STORY TO EXCLUDE ONE PERSON WHO
21 WAS ALREADY ARRESTED?

22 A YES, MA'AM.

23 Q BUT KEPT IN YOUR STORY ONE PERSON WHO WAS
24 UNIDENTIFIED?

25 A REPEAT THAT.

1 Q YOUR SECOND STATEMENT STILL CONTAINS ALLEGATIONS
2 ABOUT SHORTY WHICH WAS A PERSON UNIDENTIFIED BY LAW
3 ENFORCEMENT?

4 A YES, MA'AM.

5 Q NOTHING FURTHER.

6 MS. ZIMMERMAN: REQUEST PERMISSION FOR MR. GRAY TO BE
7 EXCUSED.

8 MR. JENKINS: NO OBJECTION.

9 THE COURT: YES, SIR. YOU ARE EXCUSED. LADIES AND
10 GENTLEMEN, WE ARE GOING TO TAKE OUR LUNCH RECESS NOW.
11 DON'T TALK ABOUT THE CASE AND KEEP AN OPEN MIND. BE BACK
12 IN THE JURY ROOM AT 1:45. THANK YOU.

13 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
14 A LUNCH BREAK.)

15 THE COURT: WE WILL TAKE A LUNCH BREAK, SEE YOU AT
16 1:45.

17 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

18 THE COURT: ANYTHING BEFORE WE GET THE JURY IN?

19 MS. ZIMMERMAN: NOTHING FROM THE STATE.

20 MR. JENKINS: NOT FROM THE DEFENSE.

21 THE COURT: LET'S BRING THE JURY IN, PLEASE.

22 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
23 APPROXIMATELY 1:45 P.M.)

24 THE COURT: HOPE YOU ENJOYED YOUR LUNCH AND WE WILL
25 CONTINUE WITH THE CASE. MS. ZIMMERMAN, CALL YOUR NEXT

1 WITNESS.

2 MS. ZIMMERMAN: THE STATE CALLS DANNY GILLIAM TO THE
3 STAND.

4 DANNY GILLIAM, AFTER BEING DULY SWORN,
5 TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. ZIMMERMAN:

8 Q MAJOR GILLIAM, WERE YOU INVOLVED IN THE
9 INVESTIGATION OF THIS CASE THAT WE ARE HERE ABOUT TODAY?

10 A PART, YES.

11 Q CAN YOU TELL ME WHAT YOUR ROLE WAS IN THE
12 INVESTIGATION?

13 A I AM OVER THE LAW ENFORCEMENT INVESTIGATION DIVISION
14 AND I WAS WITH ROBERT DENNIS ON A DAY DURING THE BOND
15 HEARING.

16 Q WHAT DO YOU REMEMBER ABOUT WHAT HAPPENED DURING THAT
17 BOND HEARING?

18 A AFTER THE BOND HEARING WE WERE COMING BACK, GOING
19 BACK TO THE JAIL AREA AND ROY JOHNSON INDICATED HE WANTED
20 TO TALK TO LIEUTENANT DENNIS.

21 Q IS THAT THE SAME ROY JOHNSON THAT IS SEATED IN THE
22 COURTROOM TODAY?

23 A YES, IT IS.

24 Q AND ONCE HE INDICATED THAT HE WANTED TO TALK WHAT
25 HAPPENED?

1 A WE FOUND A OFFICE, CAPTAIN KITCHENS OFFICE, NOBODY
2 WAS IN THERE AND WE WENT IN THERE AND SAT DOWN THERE.

3 Q CAN YOU EXPLAIN TO ME KIND OF THE LAYOUT WHERE HIS
4 OFFICE IS IN RELATION TO WHERE THE BOND HEARING WAS?

5 A AS YOU COME FROM THE COURT AREA, THE MAGISTRATE'S
6 COURT, YOU HAVE TO GO THROUGH TWO DOORS. YOU GO THROUGH
7 THE FIRST DOOR TO GO OUTSIDE AND THEN THERE IS A LITTLE
8 HALLWAY AND THEN YOU GO THROUGH THE NEXT DOOR AND THAT IS
9 THE JAIL AREA. THERE IS A DOOR ON THE LEFT AND A DOOR ON
10 THE RIGHT AND THE ONE ON THE RIGHT IS THE ADMINISTRATIVE
11 SECRETARY, ON THE LEFT IS CAPTAIN KITCHENS.

12 Q SO, Y'ALL WENT INTO THAT OFFICE?

13 A YES, WE DID.

14 Q PRIOR TO ANY DISCUSSION ABOUT THE CASE DID YOU OR
15 LIEUTENANT DENNIS MAKE ANY THREATS TO MR. JOHNSON?

16 A NO.

17 Q DID YOU IN ANY WAY TRY TO INTIMIDATE HIM INTO MAKING
18 THE STATEMENT?

19 A ABSOLUTELY NOT.

20 Q AND DID YOU TELL HIM WHAT TO PUT IN HIS STATEMENT?

21 A ABSOLUTELY NOT.

22 Q MAJOR GILLIAM, I AM GOING TO SHOW YOU STATE'S EXHIBIT
23 102, DO YOU RECOGNIZE THAT?

24 A YES MA'AM, THAT IS A NEWBERRY COUNTY SHERIFFS OFFICE,
25 IT IS A RIGHTS FORM.

1 Q WHAT EXACTLY IS A RIGHTS FORM USED FOR?

2 A WE USE THIS TO, ALSO FOR ANYBODY WE ARE TALKING TO WE
3 READ THEM THEIR RIGHTS AND THEY HAVE THE OPPORTUNITY TO
4 READ ALONG WITH US OR THEY CAN READ IT THEMSELVES.
5 USUALLY WE READ IT TO THEM AND THEN WE WILL LET THEM READ
6 IT AND THEN IT SAYS, I HAVE READ THIS STATEMENT OF MY
7 RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. AND THEN THEY
8 WILL SIGN IT AND THEN THEY WILL DATE IT. AND AT THE
9 BOTTOM THE WAIVER SAYS, I AM WILLING TO MAKE A STATEMENT
10 AND ANSWER QUESTIONS, I DO NOT WANT A LAWYER AT THIS TIME.
11 I UNDERSTAND AND KNOW THAT WHAT I AM DOING, NO PROMISE OR
12 THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION
13 HAS BEEN USED AGAINST ME. AND THEN THEY WILL SIGN IT;
14 THEY WILL DATE IT AND THEN ON THIS CASE ROY JOHNSON SIGNED
15 IT AND HE DATED IT ON 1/10/08 AND LIEUTENANT SIGNED IT AND
16 THEN I SIGNED IT MYSELF.

17 Q DOES THAT, STATE'S 102 APPEAR TO BE IN THE SAME
18 CONDITION AS WHEN IT WAS EXECUTED ON THE 10TH?

19 A YES MA'AM, IT DOES.

20 MS. ZIMMERMAN: I MOVE STATE'S 102 INTO EVIDENCE.

21 MR. JENKINS: NO OBJECTION.

22 THE COURT: IT IS IN EVIDENCE.

23 (WHEREUPON, STATE'S EXHIBIT NO. 102 WAS ADMITTED INTO
24 EVIDENCE.)

25 Q NOW, MAJOR GILLIAM, YOU STATED THAT SOMEBODY READS

1 THE RIGHTS TO HIM, DO YOU KNOW IF IT WAS YOU OR LIEUTENANT
2 DENNIS THAT DID THAT?

3 A IT WAS LIEUTENANT DENNIS.

4 Q BUT WERE YOU PRESENT WHILE THAT WAS DONE?

5 A I WAS.

6 Q AT ANY TIME DID YOU LEAVE LIEUTENANT DENNIS AND MR.
7 JOHNSON ALONE TOGETHER?

8 A I DID NOT.

9 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
10 EXHIBIT 103. DO YOU RECOGNIZE IT?

11 A YES MA'AM, I DO.

12 Q AND CAN YOU TELL ME WHAT STATE'S 103 IS?

13 A THIS IS A NEWBERRY COUNTY SHERIFFS OFFICE FORM, A
14 VOLUNTARY STATEMENT FORM.

15 Q WAS THAT FORM USED ON JANUARY THE 10TH?

16 A IT WAS.

17 Q AND CAN YOU TELL ME WHO COMPLETED THAT STATEMENT?

18 A SERGEANT DENNIS, I AM SORRY, HE IS A LIEUTENANT NOW.
19 SERGEANT DENNIS, HE WENT OVER THIS STATEMENT WITH HIM AND
20 EXPLAINED IT TO MR. JOHNSON AND HE READ OVER IT AND THEN
21 HE HANDED IT TO HIM. AND THEN MR. JOHNSON WROTE A
22 STATEMENT OF WHAT HAPPENED.

23 Q AND DID MR. JOHNSON SIGN THAT STATEMENT?

24 A YES, HE DID.

25 MS. ZIMMERMAN: WE MOVE STATE'S 103 INTO EVIDENCE.

1 MR. JENKINS: NO OBJECTION.

2 THE COURT: IT IS IN EVIDENCE.

3 (WHEREUPON, STATE'S EXHIBIT NO. 103 WAS ADMITTED INTO
4 EVIDENCE.)

5 Q AT ANY TIME DURING THE COURSE OF MR. JOHNSON GIVING
6 HIS STATEMENT WAS HE ASSISTED IN ANY WAY WITH WHAT SHOULD
7 BE INCLUDED IN THAT STATEMENT?

8 A ABSOLUTELY NOT.

9 Q DID HE AT ANY TIME INDICATE THAT HE WANTED TO STOP
10 GIVING THE STATEMENT OR CHANGE THE STATEMENT?

11 A NO, MA'AM.

12 Q NO FURTHER QUESTIONS.

13 THE COURT: CROSS-EXAMINATION.

14 CROSS-EXAMINATION

15 BY MR. JENKINS:

16 Q DID YOU HAVE ANY OTHER INVOLVEMENT IN THIS
17 INVESTIGATION OTHER THAN THE QUESTIONING OF ROY JOHNSON?

18 A YES, I RESPONDED THAT DAY TO HIGHWAY 34.

19 Q SO, YOU WERE AT THE COFER'S HOME?

20 A NO, I WAS NOT AT THE HOME, I WAS ON A, WE WERE JUST
21 COVERING THE AREA, I WAS THERE WORKING.

22 Q AND DID YOU MAKE ANY NOTES OR ANY INVESTIGATIVE
23 REPORTS OR ANYTHING?

24 A NO, I DID NOT.

25 Q SO, YOUR SIGNATURE WOULDN'T APPEAR ANYWHERE ELSE

1 THROUGHOUT THE LAW ENFORCEMENT FILE?

2 A NO, SIR.

3 Q NOW, DO YOU KNOW WHO SHORTY IS?

4 A NO, SIR.

5 Q AND THE NEWBERRY COUNTY SHERIFFS OFFICE, THEY DON'T
6 NORMALLY VIDEOTAPE INTERROGATIONS LIKE A LOT OF OTHER LAW
7 ENFORCEMENT AGENCIES DO, DO THEY?

8 A NO, SIR.

9 Q THAT IS ALL I HAVE.

10 THE COURT: REDIRECT?

11 MS. ZIMMERMAN: NO REDIRECT.

12 THE COURT: YOU MAY STEP DOWN.

13 MS. ZIMMERMAN: THE STATE CALLS MATT BOWERS.

14 MATT BOWERS, AFTER BEING DULY SWORN,
15 TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MS. ZIMMERMAN:

18 Q MR. BOWERS, WHERE ARE YOU EMPLOYED?

19 A NEWBERRY COUNTY SHERIFFS OFFICE.

20 Q AND WHAT IS YOUR JOB AT THE SHERIFFS OFFICE?

21 A I AM A CRIMINAL INVESTIGATOR.

22 Q HOW LONG HAVE YOU WORKED THERE?

23 A SEVEN YEARS.

24 Q WERE YOU EMPLOYED AS AN INVESTIGATOR ON JANUARY THE
25 7TH OF 2008?

- 1 A YES.
- 2 Q WERE YOU INVOLVED IN THE INVESTIGATION OF THIS CASE?
- 3 A YES.
- 4 Q WHAT WAS YOUR ROLE ON JANUARY THE 7TH?
- 5 A ON JANUARY THE 7TH I WAS ACTUALLY THE ON-CALL
- 6 INVESTIGATOR FOR THE SHERIFFS OFFICE. SO, I WAS THE FIRST
- 7 INVESTIGATOR CALLED OUT TO THE SCENE. AND AFTER BEING
- 8 EXPLAINED BY TELEPHONE ON THE WAY TO THE SCENE FROM THE
- 9 SHIFT LIEUTENANT I HAD ALREADY CONTACTED THE CAPTAIN SO
- 10 OTHER INVESTIGATORS WOULD BE ON THE WAY AS WELL.
- 11 Q HOW WAS THE DECISION MADE AS TO WHETHER YOU WOULD
- 12 NEED EXTRA INVESTIGATORS?
- 13 A MAINLY IT IS THE SERIOUS NATURE OF THE CRIME, THE
- 14 NATURE OF THE CRIME WOULD DICTATE THAT. ALSO AS WELL, YOU
- 15 KNOW, IF IT WAS A LARGE SCENE, MANPOWER.
- 16 Q ONCE THE OTHER INVESTIGATORS GOT THERE IS THERE
- 17 SOMEBODY WHO IS DESIGNATED LEAD INVESTIGATOR?
- 18 A NORMALLY YES, ESPECIALLY IN A SERIOUS CASE IT WILL BE
- 19 SORT OF PREDETERMINED WHOSE CASE IT IS GOING TO BE AND IT
- 20 WILL BE THE LEAD INVESTIGATOR.
- 21 Q AND WHO WAS THE LEAD INVESTIGATOR IN THIS CASE?
- 22 A LIEUTENANT ROBERT DENNIS.
- 23 Q NOW, ONCE THE INVESTIGATORS GOT THERE WAS THERE SOME
- 24 TYPE OF DELEGATION OR DUTIES AMONGST YOU?
- 25 A YES, IT WAS.

1 Q WHAT WAS YOUR ROLE?

2 A MY MAIN ROLE WAS TO PROCESS THE SCENE FOR LATENT
3 FINGERPRINTS AND TO COLLECT EVIDENCE.

4 Q AND ANY EVIDENCE THAT YOU HAD TAKEN IN, WHAT WOULD
5 YOU DO WITH THAT EVIDENCE?

6 A I WOULD MAKE SURE THAT IT WAS PRESERVED SO THAT IT
7 WOULDN'T BECOME CONTAMINATED AND PUT IN A SAFE LOCATION.

8 Q I WILL SHOW YOU STATE'S EXHIBIT 94, DO YOU RECOGNIZE
9 THIS?

10 A YES.

11 Q CAN YOU TELL ME WHAT STATE'S 94 IS?

12 A THAT IS DUCT TAPE AND A WHITE SOCK THAT WAS FOUND AT
13 THE CRIME SCENE.

14 Q DO YOU HAVE ANY RECOLLECTION AS TO WHERE STATE'S 94
15 WAS FOUND?

16 A WITHOUT LOOKING AT THE PHOTOGRAPHS THAT CORRESPOND TO
17 THIS I BELIEVE IT WAS FOUND IN THE HALLWAY NEAR OR BETWEEN
18 THE BEDROOMS.

19 Q AND IS STATE'S 94 SUBSTANTIALLY IN THE SAME CONDITION
20 AS WHEN YOU COLLECTED IT?

21 A YES, IT IS.

22 MS. ZIMMERMAN: I MOVE STATE'S 94 INTO EVIDENCE.

23 MR. JENKINS: NO OBJECTION.

24 THE COURT: IT IS IN EVIDENCE.

25

1 (WHEREUPON, STATE'S EXHIBIT NO. 94 WAS ADMITTED INTO
2 EVIDENCE.)

3 Q LET ME SHOW YOU STATE'S 90, DO YOU RECOGNIZE THIS
4 ITEM?

5 A YES, I DO.

6 Q CAN YOU TELL ME WHAT THAT IS?

7 A THAT IS A ROLL OF DUCT TAPE THAT APPEARS TO HAVE
8 BLOOD ON IT.

9 Q AND DO YOU HAVE ANY RECOLLECTION WHERE THAT ITEM WAS
10 FOUND?

11 A AGAIN, WITHOUT LOOKING AT THE PHOTOGRAPHS THAT WERE
12 TAKEN BEFORE IT WAS COLLECTED, I BELIEVE THIS WAS FOUND IN
13 THE BEDROOM WHERE THE FEMALE VICTIM WAS AT.

14 Q IS STATE'S 90 IN SUBSTANTIVALLY THE SAME CONDITION AS
15 WHEN YOU COLLECTED IT?

16 A YES, IT IS.

17 MS. ZIMMERMAN: I MOVE STATE'S 90 INTO EVIDENCE.

18 MR. JENKINS: NO OBJECTION.

19 THE COURT: IT IS IN EVIDENCE.

20 (WHEREUPON, STATE'S EXHIBIT NO. 90 WAS ADMITTED INTO
21 EVIDENCE.)

22 Q INVESTIGATOR, I AM GOING TO SHOW YOU WHAT HAS BEEN
23 MARKED AS STATE'S EXHIBITS 81 THROUGH 84. DO YOU
24 RECOGNIZE THOSE?

25 A YES, I DO.

1 Q AND CAN YOU TELL ME WHAT THOSE ARE?

2 A THESE ARE PHOTOGRAPHS THAT I TOOK OF A VEHICLE THAT
3 WAS BELIEVED TO HAVE TRANSPORTED MR. ROY JOHNSON AWAY FROM
4 THE CRIME SCENE AREA.

5 Q WERE THOSE TAKEN ON THE NIGHT OF JANUARY THE 7TH?

6 A NO, I BELIEVE, IF I AM NOT MISTAKEN I BELIEVE THEY
7 WERE TAKEN THE NEXT DAY.

8 Q AND DO THOSE PICTURES ACCURATELY DEPICT WHAT YOU SAW
9 OF THAT VEHICLE?

10 A YES, THEY DO.

11 MS. ZIMMERMAN: I MOVE STATE'S 81 THROUGH 84 INTO
12 EVIDENCE.

13 MR. JENKINS: NO OBJECTION.

14 THE COURT: THEY ARE IN EVIDENCE.

15 (WHEREUPON, STATE'S EXHIBIT NOS. 81 THROUGH 84 WERE
16 ADMITTED INTO EVIDENCE.)

17 Q IN ADDITION TO TAKING THESE PICTURES DID YOU DO ANY
18 OTHER PROCESSING OF THAT VEHICLE?

19 A I WAS PRESENT WHILE THE STATE LAW ENFORCEMENT
20 DIVISION DID THAT PROCESSING.

21 Q AND ALL OF THE EVIDENCE THAT WAS TAKEN FROM THAT
22 VEHICLE, WHERE WOULD IT HAVE GONE?

23 A IT WOULD HAVE GONE STRAIGHT TO THE STATE LAW
24 ENFORCEMENT DIVISION.

25 Q DID YOU PERSONALLY OVERSEE ANY TESTING OF ANY OF THIS

1 EVIDENCE?

2 A NO, I DID NOT.

3 Q NO FURTHER QUESTIONS.

4 THE COURT: CROSS-EXAMINATION.

5 CROSS-EXAMINATION

6 BY MR. JENKINS:

7 Q YOUR MAIN VIEW WAS TO GATHER OR OBTAIN ANY LATENT
8 PRINTS, I BELIEVE YOU SAID?

9 A YES.

10 Q DUST FOR FINGERPRINTS?

11 A CORRECT.

12 Q DID YOU FIND ANY FINGERPRINTS?

13 A THERE WERE NO IDENTIFIABLE FINGERPRINTS.

14 Q WHEN YOU SAY, IDENTIFIABLE, WHAT DO YOU MEAN BY
15 IDENTIFIABLE?

16 A IDENTIFIABLE FINGERPRINTS HAVE TO HAVE CERTAIN
17 ELEMENTS TO IT, IT HAS TO BE CLEAR, NOT SMUDGED. IT HAS
18 TO HAVE RIDGE DETAIL, THAT TYPE OF THING.

19 Q AND YOU DIDN'T FIND ANY THROUGHOUT THE HOME THAT HAD
20 ANY OF THOSE DETAILS?

21 A NOT IN THE AREAS THAT WERE SEARCHED, NO.

22 Q AND WHY DIDN'T YOU SEARCH ANY OTHER AREAS?

23 A CERTAINLY THERE ARE OBVIOUS PLACES THAT ARE GOING TO
24 HAVE FINGERPRINTS IN ANYONES HOME. IF I WERE JUST LOOKING
25 FOR FINGERPRINTS I COULD FIND A FINGERPRINT ANYWHERE I

1 WANTED TO. THE PLACES THAT WERE SEARCHED WERE THE PLACES
2 THAT THE STRUGGLE TOOK PLACE SUCH AS DRESSER DRAWERS WHERE
3 IT WAS OBVIOUS THEY HAD GONE THROUGH, THINGS SEARCHED. IN
4 OTHER WORDS, I DIDN'T CHECK THE REMOTE CONTROL TO THE TV,
5 I DIDN'T CHECK THE TV SCREEN, I DIDN'T CHECK THE KITCHEN
6 COUNTER.

7 Q OKAY. DID YOU CHECK ALL THE DOOR WAYS IN AND OUT OF
8 THE HOME?

9 A WITHOUT LOOKING AT MY NOTES I CAN'T SWEAR THAT I
10 CHECKED ALL OF THEM. I KNOW THE DOORS WERE PROCESSED.

11 Q DID YOU CHECK ALL OF THE DRAWERS THAT LOOKED LIKE
12 THEY HAD BEEN REMOVED?

13 A YES.

14 Q THE NIGHTSTAND?

15 A YES.

16 Q AND DIDN'T FIND A SINGLE USABLE PRINT?

17 A NO.

18 Q YOU PROCESSED THE CAR THAT WAS FOUND?

19 A NO, I WAS, THE CAR, EXCUSE ME, THE CAR THAT WAS
20 WRECKED?

21 Q YES.

22 A NO, I DID NOT.

23 Q YOU PROCESSED THE CAR OF WILLIE ASHFORD?

24 A I WAS PRESENT WHILE THAT WAS BEING PROCESSED.

25 Q AND NO PRINTS WERE FOUND THERE EITHER?

1 A NONE THAT I RECALL, I DON'T KNOW FOR SURE.

2 Q THAT IS ALL I HAVE.

3 THE COURT: REDIRECT.

4 MS. ZIMMERMAN: NOTHING FURTHER.

5 THE COURT: THANK YOU, MR. BOWERS.

6 MS. ZIMMERMAN: THE STATE CALLS AUSTIN PARTLOW.

7 AUSTIN PARTLOW, AFTER BEING DULY SWORN,

8 TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. ZIMMERMAN:

11 Q MR. PARTLOW, CAN YOU TELL ME WHERE YOU CURRENTLY
12 RESIDE?

13 A I RESIDE AT LEE CORRECTIONAL INSTITUTION IN
14 BISHOPVILLE, NORTH CAROLINA.

15 Q CAN YOU TELL ME WHAT LED YOU TO BE INCARCERATED?

16 A I HAD PLEAD NOLO CONTENDERE TO ARMED ROBBERY,
17 BURGLARY, KIDNAPPING AND I THINK IT WAS ONE MORE CHARGE,
18 POSSESSION OF A FIREARM.

19 Q THOSE CHARGES THAT YOU PLEAD TO, WAS THAT THE SAME
20 INCIDENT THAT WAS INVOLVED IN THIS CASE TODAY?

21 A YES, MA'AM.

22 Q TELL ME ABOUT THE CIRCUMSTANCES THAT LED YOU TO
23 NEWBERRY ON JANUARY THE 7TH OF 2008?

24 A WELL, IT STARTED, I WAS AT WORK, I WAS WORKING FOR
25 PURDUE FARMS. I RECEIVED A CALL FROM MY COUSIN WHICH HIS

1 NAME IS CHAUNCEY PARTLOW. HE TOLD ME THAT HE NEEDED A
2 RIDE, HIM AND A FRIEND NEEDED A RIDE TO SOUTH CAROLINA,
3 THERE WAS SOME MONEY INVOLVED. IF I COULD GIVE THEM A
4 RIDE THAT THEY WOULD, THAT MY COUSIN WOULD GIVE ME SOME
5 MONEY, HE SAID LIKE A COUPLE OF STACKS WHICH IS CONSIDERED
6 LIKE A THOUSAND DOLLARS, YOU KNOW, SLANG TERM. SO, I TOLD
7 MY COUSIN, I SAID, WHEN MY BOSS MAN GIVES ME A DAY OFF OF
8 WORK I WILL COME DOWN. SO, I CALLED MY BOSS MAN AND MY
9 BOSS MAN GAVE ME A DAY OFF OF WORK, I CALLED MY COUSIN AND
10 TOLD HIM I WOULD BE DOWN THERE TO GASTONIA FROM ROCKINGHAM
11 WHICH TOOK, WHICH WOULD TAKE I WOULD SAY ABOUT AN HOUR AND
12 A HALF, MAYBE TWO HOURS TO GET TO GASTONIA. I GOT TO
13 GASTONIA AND WHEN I FINALLY GOT TO GASTON THAT IS WHEN I
14 MET MR. ROY JOHNSON WHICH IS SEATED OVER HERE TO MY LEFT.
15 WE INTRODUCED OURSELF, I TOLD HIM MY NAME, MY COUSIN. AND
16 HE TOLD ME, I ASKED MY COUSIN, WHAT IS UP WITH THIS GUY
17 AND HE SAID THAT HE IS GOING TO SHOW US THE WAY TO SOUTH
18 CAROLINA, YOU KNOW, WE ARE GOING TO GO DOWN HERE AND GET
19 SOME MONEY, A DUDE OWED US SOME MONEY FOR SOME DOPE.

20 Q NOW, PRIOR TO THAT MEETING HAD YOU EVER MET THE
21 DEFENDANT BEFORE?

22 A NO, MA'AM.

23 Q AND YOUR COUSIN WAS WHO?

24 A CHAUNCEY.

25 Q YOU HAD KNOWN CHAUNCEY FOR SOME TIME?

1 A YES, I KNOW HIM SINCE WE WERE TOTS.

2 Q AFTER YOU DISCUSSED COMING TO GET SOME MONEY WHAT
3 HAPPENED?

4 A WELL, LET ME SEE, AFTER WE TALKED ABOUT GETTING SOME
5 MONEY MY COUSIN, I TOLD HIM, WHERE WE ARE GOING. AND HE
6 SAID SOUTH CAROLINA. SO, I AM ASSUMING YORK BECAUSE FROM
7 MY WAY DON'T NOBODY MOVE OUT OF YORK, SOUTH CAROLINA OR
8 CLOVER, YOU KNOW. WE LEFT, WE ALL GOT IN THE CAR AND WE
9 WENT DOWN TO MR. JOHNSON'S GIRLFRIEND'S HOUSE FIRST. HE
10 WENT IN THE HOUSE AND CAME BACK OUT. AND THEN MY COUSIN,
11 HE HAD A PISTOL WITH HIM, I FORGET WHAT KIND BUT HE HAD A
12 PISTOL ON HIM. AND HE SAID THAT THEY NEEDED TO GET SOME
13 BULLETS FOR THE GUN.

14 Q LET ME STOP YOU BEFORE WE GO INTO THAT. THE
15 GIRLFRIEND'S HOUSE, WAS THAT BEFORE OR AFTER YOU LEFT
16 GASTONIA?

17 A THAT IS BEFORE.

18 Q AFTER YOU LEFT HIS GIRLFRIEND'S HOUSE WHERE DID YOU
19 GO?

20 A WE WENT TO WALMART.

21 Q AND WHAT HAPPENED AT WALMART?

22 A I STAYED IN THE CAR BECAUSE AT THE TIME I HAD JUST
23 CAME OUT OF PRISON AND I WASN'T SUPPOSE TO BE IN GASTONIA
24 REGARDLESS. I WAS TOLD TO STAY WITHIN THE CONFINES OF.
25 ROCKINGHAM, NORTH CAROLINA WHERE I WAS AT. SO, I STAYED

1 IN THE CAR. CHAUNCEY, MY COUSIN HAD WENT TO WALMART TO GO
2 BUY SOME BULLETS FOR THE GUN. THEY WERE COMING OUT AND
3 THEN THEY WENT BACK IN AND THEY CAME BACK OUT. SO, WHEN
4 THEY CAME BACK OUT I ASKED THEN WHAT HAPPENED AND THEY HAD
5 BOUGHT THE WRONG BULLETS FOR THE GUN. SO, WHEN THEY CAME
6 BACK TO MY CAR THEY GOT IN THE CAR AND MY COUSIN HAD
7 BOUGHT SOMETHING FROM MCDONALDS OUT OF THE WALMART. WE
8 LEFT AND WENT BACK TO MR. JOHNSON'S GIRLFRIEND'S HOUSE
9 BECAUSE ONCE AGAIN HE HAD TO GO, HE HAD TO RETRIEVE
10 SOMETHING OUT OF THE HOUSE. I DON'T KNOW WHAT HE WENT AND
11 GOT BUT I STAYED IN THE CAR.

12 Q DID YOU SEE HIM BRING ANYTHING BACK OUT OF THE HOUSE?

13 A YES MA'AM, MY COUSIN, HE WENT OUTSIDE TO THE CAR AND
14 I TALKED ON THE PHONE. I HAD A CHOCOLATE PHONE SO I AM
15 TALKING ON THE PHONE TO MY FIANCEE. MY COUSIN IS OUTSIDE
16 PUTTING BULLETS IN HIS GUN. AND ROY, HE CAME BACK OUT
17 WITH SOME TAPE, SOME ROLL OF TAPE AND A FEW MORE ITEMS, I
18 DON'T REMEMBER.

19 Q WHAT KIND OF TAPE WAS IT?

20 A IT WAS SOME DUCT TAPE.

21 Q ONCE YOU ALL GOT BACK OUT TO THE CAR WHAT DID YOU DO?

22 A WHEN THEY CAME TO THE CAR, I SPOKE TO MY COUSIN, I
23 SAID WHAT Y'ALL TRYING TO DO, I DON'T UNDERSTAND WHAT
24 Y'ALL ARE TRYING TO DO WITH THE GUN AND STUFF, YOU KNOW
25 YOU CAN'T PUT THE GUN IN MY CAR. I JUST GOT OUT OF

1 PRISON, I CAN'T HAVE A GUN IN THE CAR, YOU KNOW WHAT I AM
2 SAYING. HE SAID, MAN, WE ARE GOING TO GET SOME MONEY,
3 OWES SOME MONEY FOR SOME DOPE. BUT HE SAID, I TOLD THE
4 GUY THAT I WASN'T SUPPOSE TO HAVE A GUN IN THE CAR. MY
5 COUSIN, LOOK HERE MAN, WE ARE GOING TO GO TO ROCKINGHAM,
6 THIS GUY OWES US SOME MONEY. HE WAS GOING TO GET THE
7 MONEY REGARDLESS. I TOLD MY COUSIN AND ROY, YOU AIN'T
8 GOING TO HAVE A GUN IN MY CAR. THAT IS WHEN ROY POPPED
9 THE TRUNK AND I MEAN POP THE HOOD. I POPPED THE HOOD AND
10 HE PUT THE GUN IN THE HOOD. I SAID, LOOK IF WE GET PULLED
11 OVER WITH THIS PISTOL I AIN'T TAKING IT. THAT IS THE WAY
12 IT IS. SO, THEY GOT IN THE CAR AND THAT IS WHEN WE
13 PROCEEDED TO NEWBERRY.

14 Q LET'S GO DISCUSS THE ISSUE, YOU MENTIONED SEVERAL
15 TIMES THAT YOU HAVE BEEN IN PRISON AND YOU WERE NOT
16 SUPPOSE TO HAVE A GUN?

17 A YES.

18 Q WHAT HAD YOU BEEN IN PRISON FOR BEFORE?

19 A WHEN I WAS 17, WHEN I WAS 17 YEARS OLD, ME AND TWO
20 OLDER GUYS WHO WAS INVOLVED WITH SOME CIRCUMSTANCES WHERE
21 A GUY GOT KILLED. SO, THEY CHARGED ALL OF US IN A ARMED
22 ROBBERY. THEY CHARGED ALL OF US. I TOOK A PLEA FOR 10 TO
23 13 YEARS AND MY CODEFENDANT, THEY TOOK THEM TO TRIAL AND
24 THEY BEAT THE CHARGE ON TECHNICALITIES.

25 Q TAKE YOU BACK NOW TO JANUARY THE 7TH. YOU PUT THE

1 GUN, YOU SAID UNDER THE HOOD, ARE YOU TALKING ABOUT WITH
2 THE ENGINE?

3 A YES, MA'AM.

4 Q AND THEN YOU PROCEEDED TO LEAVE GASTONIA?

5 A YES, MA'AM.

6 Q WHERE DID YOU GO FROM THERE?

7 A WE WENT TO SOUTH CAROLINA.

8 Q DO YOU KNOW WHERE IN SOUTH CAROLINA?

9 A I DON'T KNOW, I REALLY DON'T KNOW ANY DIRECTIONS. I
10 JUST KNOW IT WAS ON 321, THAT IS WHEN MY COUSIN WAS IN THE
11 PASSENGER SIDE, ROY WAS IN THE BACK SIDE AND ROY GAVE US
12 DIRECTIONS. SO, AFTER ABOUT 45 MINUTES I WAS LOST, HE HAD
13 TOOK ME THE BACK ROADS, DARK ROADS AND I AIN'T HAVE NO
14 IDEA WHERE WE WERE GOING.

15 Q AND SO WHO WAS GIVING DIRECTIONS?

16 A MR. JOHNSON.

17 Q ONCE YOU GOT TO YOUR DESTINATION WHAT HAPPENED?

18 A WELL, ONCE WE GOT TO NEWBERRY, LET ME SEE. ONCE WE
19 GOT TO NEWBERRY JOHNSON TOOK US, HE TOLD ME WHERE THE
20 HOUSE WAS AT. SO, WHEN WE GOT TO THE HOUSE FIRST WE RODE
21 PAST THE HOUSE THEN WE TURNED BACK AROUND, WE RODE PAST
22 THE HOUSE AGAIN. THEN I TURNED BACK AROUND AND THEN I
23 CAME, INSTEAD OF GOING TO THE TRAILER WE BACKED INTO A
24 HOUSE, MAYBE TWO HOUSES DOWN FROM THE LEFT OF THE HOUSE.
25 Q AND WHAT DID YOU DO WHEN YOU BACKED IN THERE?

- 1 A OKAY. WE BACKED IN, WHEN WE BACKED IN CHAUNCEY GOT
2 OUT AND ROY GOT OUT. I POPPED THE HOOD AND THEN ROY AND
3 CHAUNCEY GOT IN THE FRONT OF THE CAR, THEY GOT THE GUN. I
4 AM ON THE PHONE TALKING TO MY FIANCEE AGAIN AND WE ARE
5 TALKING AND WHAT NOT. THEN I TOLD HER I WOULD CALL HER
6 BACK. I PUT MY PHONE IN THE CAR, IN FACT I PUT MY PHONE
7 ON TOP OF THEIR PHONES. EVERYBODY PUT THEIR PHONES AND
8 STUFF IN THE CAR AND WHATNOT. SO, CHAUNCEY WAS LIKE, WHAT
9 IS UP, TALKING TO ROY. ROY IS LIKE, LOOK HERE, MAN. THE
10 BOY HAS GOT PLENTY OF MONEY AND DOPE. WE MIGHT AS WELL GO
11 IN THERE AND GET IT ALL. SO, I AM SITTING HERE, I AM LIKE
12 OKAY. AND I AM LIKE, WHAT ARE Y'ALL GOING TO DO. SO, MR.
13 JOHNSON, HE SAID, LOOK HERE MAN. HE HAS GOT A BRICK OF
14 DOPE AND WE WILL KEEP THE DOPE AND WE GET EVERYTHING. SO,
15 THE BOY HAS GOT ABOUT 80 TO 100 STACKS IN THE HOUSE,
16 PROBABLY WE CAN GET IT ALL. YOU KNOW WHAT I AM SAYING.
- 17 Q LET ME ASK YOU THIS, I THINK YOU SAID EARLIER THAT
18 STACK IS A THOUSAND DOLLARS?
- 19 A YES, MA'AM.
- 20 Q SO, WHEN YOU SAID 80 TO 100 STACKS HE IS TALKING
21 ABOUT \$80 TO \$100 THOUSAND DOLLARS?
- 22 A YES, MA'AM.
- 23 Q AND WHAT DO YOU MEAN BY BRICKS?
- 24 A A THOUSAND GRAMS WHICH IS LIKE A KILO OF COCAINE.
- 25 Q SO, WHEN YOU ARE DISCUSSING WHAT IS GOING TO BE IN

1 THE HOUSE WHO IS TELLING YOU THERE IS GOING TO BE \$80 TO
2 \$100 THOUSAND DOLLARS AND SO MANY BRICKS?

3 A MR. JOHNSON.

4 Q AND WHAT HAPPENED AFTER HE TOLD YOU THAT?

5 A I MEAN, EVERYBODY JUST ACKNOWLEDGED THAT THEY WERE IN
6 UNISON TO IT TO THE AGREEMENT, I GUESS.

7 Q AT THIS POINT DID ANYBODY HAVE THE GUN OR IS IT STILL
8 UNDER THE HOOD?

9 A AT THE TIME CHAUNCEY GOT THE GUN, I POPPED THE HOOD
10 AND THAT IS WHEN THEY WENT IN FRONT OF THE HOOD. CHAUNCEY
11 HAD THE GUN.

12 Q WHAT HAPPENED AFTER THAT?

13 A SO, WE WENT TO THE HOUSE, THEY, CHAUNCEY AND ROY THEY
14 WENT AT THE BEGINNING TO THE HOUSE, I WAS AT THE BACK.
15 ROY GOT IN THE DOOR, HE KICKED THE DOOR, CHAUNCEY WENT IN,
16 ROY WENT IN AND I CAME IN RIGHT BEHIND THEM. CHAUNCEY, I
17 THINK, THIS GENTLEMAN RIGHT HERE, I DON'T KNOW HIS NAME
18 BUT I SEEN THE PICTURES. MY COUSIN HIT HIM WITH THE
19 PISTOL, HE FELL. WHEN HE FELL THAT IS WHEN I CAME AND I
20 TOOK THE GUN FROM MY COUSIN AND I KEPT THE GUN ON THE GUY.
21 I SAID, LOOK, MAN YOU WILL DIE, I DON'T WANT NO BULLSHIT.
22 ROY WENT TO A YOUNG LADY'S ROOM. THAT IS WHEN MY COUSIN
23 WENT AROUND THE HOUSE.

24 Q AND DID YOU FIND \$80 TO \$100 THOUSAND DOLLARS IN THIS
25 HOUSE?

1 A NO, MA'AM. BUT I DIDN'T LOOK, THINGS HAPPENED SO
2 FAST, YOU KNOW, ESPECIALLY WHEN THIS GIRL STARTED
3 HOLLERING AND EVERYTHING. THAT IS WHEN EVERYTHING FELL
4 THROUGH A LOOP.

5 Q DID YOU FIND ANY COCAINE IN THE HOUSE?

6 A NO, MA'AM.

7 Q LET'S GO BACK, WHEN YOU SAY WHEN THE GIRL STARTED
8 HOLLERING, WHAT WAS HAPPENING?

9 A WELL, I DON'T KNOW. I DIDN'T KNOW WHAT WAS HAPPENING
10 UNTIL MY COUSIN CAME BACK, I THINK HE WAS CHECKING THE
11 ROOMS AND WHAT NOT. AND WHEN HE CAME BACK TO WHERE I WAS
12 AT AND I CAME AND WENT TO THE ROOM AND THIS YOUNG LADY HAD
13 TAPE ON HER FACE, ON HER NECK. I WENT IN AND THAT IS
14 WHEN, THE LADY, THE GIRL, SHE WAS FIGHTING, TRYING TO HOLD
15 ON TO THEM. SHE WAS COMING OUT THE DOOR, I TRIED TO
16 SEPARATE THEM AND THAT IS WHEN ANOTHER GENTLEMAN CAME WITH
17 A SHOTGUN, I THINK. AND THAT IS WHEN, YOU KNOW, WHEN HE
18 CAME WITH THE SHOTGUN WE LEFT, I RAN.

19 Q WHO HAD THE GUN AS YOU WERE RUNNING OUT?

20 A I HAD THE GUN, I TOOK IT FROM CHAUNCEY.

21 Q WHAT HAPPENED, WHEN THE GUY CAME IN WITH THE SHOTGUN
22 WHAT HAPPENED?

23 A WHEN I TRIED, MY COUSIN AND I, WE ARE TRYING TO GO
24 OUT THE FRONT DOOR, MY COUSIN TRIED TO PULL ME SO HE COULD
25 GO FIRST. SO, WHEN HE PULLED MY ARM I HAD THE GUN IN MY

1 HAND AND HE PULLED THE GUN, THE GUN WENT OFF I THINK MAYBE
2 IN THE DOOR. THE GUN WENT OFF, STARTED MY COUSIN, HE SHOT
3 OUT, I SHOT OUT, AS A MATTER OF FACT I DIDN'T EVEN SEE ROY
4 COMING BEHIND ME. AS SOON AS THE GUY WITH THE GUN CAME
5 THAT IS WHEN EVERYBODY JUST STARTING LEAVING OUT THE DOOR.

6 Q WHERE DID YOU GO WHEN YOU GOT OUT OF THE HOUSE?

7 A TO MY CAR.

8 Q DID ANYBODY ELSE MAKE IT TO THE CAR WITH YOU?

9 A CHAUNCEY, HE ABOUT 300 POUNDS, HE CAME CLOSE TO THE
10 CAR UNTIL SOMEBODY SHOT WITH A SHOTGUN SO HE RAN INTO THE
11 WOODS.

12 Q DID YOU SEE WHERE MR. JOHNSON WENT?

13 A NO, MA'AM.

14 Q WHAT DID YOU DO AT THAT POINT?

15 A I MADE IT TO MY CAR AND I WAS WAITING ON THEM,
16 CHAUNCEY WAS RUNNING TO THE CAR, A GUY SHOT THE SHOTGUN
17 AND HE KIND OF WENT TO THE LEFT. I TOOK OFF AND WENT PAST
18 THE HOUSE AND WENT ON THE HIGHWAY, THAT IS WHEN I CALLED A
19 FRIEND OF MINE TO CALL MY SISTER. AND LET HER KNOW THAT I
20 AM IN SOUTH CAROLINA, THEY BUGGED OUT AND JUST GOT OUT OF
21 PRISON. I SAID, LOOK, IT WASN'T LIKE THAT BUT THIS IS THE
22 SITUATION. SO, MY SISTER WAS LIKE, LOOK, YOU LEFT
23 CHAUNCEY, THEY WILL PUT THE MURDER CHARGE ON YOU AND YOU
24 NEED TO GO BACK AND FIND YOUR COUSIN AND WHATNOT, BRING
25 HIM ON HOME AND WE WILL GET THE SITUATION STRAIGHTENED

1 OUT. SO, I WENT ALL THE WAY TOWARDS COLUMBIA TOWARDS
2 BENNETTSVILLE AND I AM GOING TO WAIT. BUT I TURNED BACK
3 AROUND AND COME LOOKING FOR MY COUSIN.

4 Q AND WHEN YOU CAME BACK WHERE DID YOU GO?

5 A I WENT, I CAME BACK TO THE SAME VICINITY AND IN WHICH
6 I WAS AT WHEN I LEFT.

7 Q YOU DROVE BACK BY THE SCENE?

8 A YES, MA'AM.

9 Q AND WHAT HAPPENED WHEN YOU DROVE BY THE SCENE?

10 A I GOT STOPPED BY A OFFICER, HE STOPPED ME. AND HE
11 SAID, HOW ARE YOU DOING. I TOLD HIM I AM DOING ALL RIGHT.
12 HE SAID, I ASKED HIM IF EVERYTHING WAS ALL RIGHT AND HE
13 SAID, YEAH, WE HAVE GOT AN INCIDENT OUT HERE. HE SAID BUT
14 YOU NEED TO KEEP ON GOING AND I TOLD HIM ALL RIGHT. I
15 PROCEEDED TO GO, THAT IS WHEN PARAPHONIA SET IN. I
16 STARTED DRIVING FASTER BUT I DIDN'T KNOW IF THEY WERE
17 GOING TO TRY TO GET BEHIND ME AND WHATNOT. UNTIL I GOT TO
18 ABOUT 85 OR 90 MILES PER HOUR, I JUST SAW AN 18-WHEELER
19 TRUCK GOING BESIDE ME, IT CAUGHT MY EYES AND I LOOKED AT
20 THE TRUCK HEADLIGHTS. WHEN I TURNED BACK AROUND A DEER
21 WAS IN THE ROAD.

22 Q WHAT HAPPENED AT THAT POINT?

23 A AND I JUST, I TURNED MY CAR AND I WAS FLIPPING LIKE
24 EIGHT OR NINE TIMES. SO, I KNOW THE LORD WAS WITH ME. I
25 GOT OUT OF THE CAR, I WASN'T BROKEN UP OR ANYTHING. I WAS

1 BLEEDING PRETTY BAD, I TRIED TO GO GET MY CELL PHONE BUT I
2 DIDN'T HAVE ENOUGH STRENGTH TO GET MY CELL PHONE. I SEEN
3 A CAR PULL UP AND TURNED HIS LIGHTS ON. I SEEN HIM INSIDE
4 THE CAB USING THE PHONE SO I KNEW HE WAS CALLING THE
5 NEWBERRY POLICE DEPARTMENT AND THAT IS WHEN I PROCEEDED TO
6 RUN. AND I RAN UNTIL I GOT FROM NEWBERRY TO FAIRFIELD AND
7 I THINK SOME PEOPLE MIGHT OF CALLED THE POLICE AND THE
8 POLICE CAME AND PICKED ME UP WHEN I WAS ON THE PHONE WITH
9 MY MOTHER.

10 Q NOW, DURING THE COURSE OF ALL OF THIS HOW MANY PEOPLE
11 WERE THERE THAT CAME DOWN FROM GASTONIA WITH YOU?

12 A ME, CHAUNCEY AND ROY.

13 Q WAS THERE ANYBODY NAMED SHORTY IN THE CAR?

14 A NO, MA'AM.

15 Q ANYBODY NAMED BUBEE IN THE CAR?

16 A NO, MA'AM.

17 Q AT ANY POINT DID ANYBODY PULL THE GUN OR POINT THE
18 GUN AT THE DEFENDANT, MR. JOHNSON?

19 A NO, MA'AM.

20 Q AT ANY POINT DID MR. JOHNSON HESITATE ABOUT HIS
21 INVOLVEMENT IN THIS CRIME?

22 A NO, MA'AM.

23 Q NO FURTHER QUESTIONS.

24 THE COURT: CROSS-EXAMINATION.

25 CROSS-EXAMINATION

1 BY MR. JENKINS:

2 Q LAST TIME YOU WERE HERE YOU REFUSED TO TESTIFY, IS
3 THAT CORRECT?

4 A YES, SIR.

5 Q AND THE JUDGE TOLD YOU THAT IF YOU DIDN'T TESTIFY
6 THAT YOU WOULD BE HELD IN CONTEMPT OF COURT?

7 A YES, SIR.

8 Q AND YOU WERE IN FACT HELD IN CONTEMPT OF COURT AND
9 SENTENCE TO SIX ADDITIONAL MONTHS IN PRISON, IS THAT
10 CORRECT?

11 A YES, SIR.

12 Q AND ISN'T IT TRUE THAT THE STATE HAS OFFERED TO
13 ASSIST YOU WITH MAYBE HAVING THAT SIX MONTHS TAKEN OFF
14 SINCE YOU ARE COOPERATING TODAY?

15 A MR. VERNER SAID HE WILL DO IT WHICH IS THE PUBLIC
16 DEFENDER, HE WOULD ASK THE JUDGE.

17 Q NOW, YOU INDICATED THAT YOU WERE INCARCERATED AND HAD
18 JUST GOTTEN OUT OF PRISON SHORTLY BEFORE ALL OF THIS
19 HAPPENED?

20 A YES, SIR.

21 Q AND I JUST WANT TO MAKE SURE WE KNEW, BECAUSE I DON'T
22 THINK WE ACTUALLY HEARD WHAT YOU WERE ACTUALLY CHARGED
23 WITH. YOU WERE ACTUALLY CHARGED WITH SECOND DEGREE
24 MURDER, WEREN'T YOU?

25 A YES, SIR.

- 1 Q NOW, DO YOU REMEMBER MEETING WITH ME?
- 2 A YES, SIR.
- 3 Q AND YOU TOLD ME THAT YOU COULDN'T REMEMBER ANYTHING,
- 4 DIDN'T YOU?
- 5 A OFF THE RECORD I TOLD YOU EXACTLY WHAT HAPPENED.
- 6 Q NOT THE SAME STORY YOU TOLD TODAY THOUGH, DID YOU?
- 7 A YES, SIR.
- 8 Q NOW, ROY WAS NOT IN THE CAR WITH YOU WHEN YOU LEFT
- 9 FROM TWO HOUSES DOWN FROM THE COFER'S, IS THAT CORRECT.
- 10 WHEN YOU LEFT TO TAKE OFF, RUN FROM THE SCENE, ROY WAS NOT
- 11 IN THE CAR WITH YOU?
- 12 A WHEN I LEFT THE HOUSE AFTER THE INCIDENCE NOBODY WAS
- 13 IN THE HOUSE, NOBODY WAS IN THE CAR.
- 14 Q CHAUNCEY WASN'T WITH YOU AND ROY WASN'T WITH YOU?
- 15 A NO, SIR.
- 16 Q NOW, CHAUNCEY TOLD US THAT HE DIDN'T HAVE A GUN AND
- 17 YOU TOLD US HE DID. WHICH ONE IS TRUE THERE?
- 18 A WELL, I AM PRETTY SURE CHAUNCEY HAD THE GUN.
- 19 Q NOW, YOU HAVE INDICATED YOU TOOK THE GUN FROM
- 20 CHAUNCEY AND YOU WERE STANDING OVER MR. COFER?
- 21 A YES, SIR.
- 22 Q BUT YOU LEFT MR. COFER TO GO SEE WHAT THE SCREAMING
- 23 WAS ABOUT FROM THE YOUNG LADY?
- 24 A YES. THAT IS WHEN CHAUNCEY CAME BACK TO MR. COFER.
- 25 Q SO, Y'ALL WERE JUST SWITCHING PLACES?

1 A NO, WE WEREN'T JUST SWITCHING PLACES.. I WAS STANDING
2 OVER THE MAN WHICH I TOLD THE MAN, YOU KNOW, GET DOWN ON
3 THE FLOOR, WE DON'T WANT NO BULLSHIT. CHAUNCEY, I THINK,
4 HE LOOKED IN THE ROOMS AND HE CAME BACK AND THAT IS WHEN
5 THE YOUNG LADY STARTED CRYING AND HOLLERING. THAT IS WHEN
6 I WENT TO THE DOOR.

7 Q OKAY. WHAT ROUTE DID YOU TAKE BACK TO FAIRFIELD
8 COUNTY?

9 A WHEN I WAS ON FOOT?

10 Q YES.

11 A I DON'T KNOW THE ROUTE.

12 Q DID YOU RUN ON THE HIGHWAY, DID YOU RUN IN THE WOODS,
13 WHAT DID YOU DO?

14 A I WAS RUNNING ON THE WOODS, HIGHWAY, BYWAYS, BACK,
15 EVERYTHING.

16 Q HOW FAR WAS IT TO FAIRFIELD COUNTY?

17 A I HAVE NO IDEA, I KNOW I RAN FOR MAYBE FIVE OR SIX
18 HOURS.

19 Q AND YOU HAD JUST BEEN INVOLVED IN A WRECK WHERE YOUR
20 VEHICLE FLIPPED?

21 A YES, SIR.

22 Q YOU WERE WORRIED ABOUT A GUN BEING IN A CAR KNOWING
23 THAT YOU WERE GOING TO DEAL DRUGS IN NEWBERRY COUNTY BUT
24 YOU WERE WORRIED ABOUT A GUN IN THE CAR, THAT WAS YOUR
25 WORRY?

1 A I WAS WORRYING ABOUT GETTING CAUGHT WITH A GUN IN THE
2 CAR.

3 Q BUT YOU WEREN'T WORRIED ABOUT GOING TO NEWBERRY
4 COUNTY TO GET DRUGS OR ROBBING A DRUG DEALER OR ROBBING
5 THE COFER'S, YOU WEREN'T WORRIED ABOUT ANY OF THAT?

6 A WELL, AT THE TIME IT WASN'T, IT WASN'T PLANNED TO BE
7 ROBBING ANYBODY. AND IF WE WOULD OF GOT DRUGS LIKE WE
8 WERE SUPPOSE TO GO GET AND THE GUN WOULD OF GOT CAUGHT AND
9 THE DRUGS WOULD OF GOT CAUGHT, THEY WERE GOING TO TAKE A
10 CHARGE REGARDLESS ANYWAY. SO, THAT IS WHY I HAD NO WORRY
11 ABOUT DRUGS OR A GUN.

12 Q THAT IS ALL I HAVE.

13 THE COURT: REDIRECT?

14 MS. ZIMMERMAN: NO REDIRECT.

15 THE COURT: THANK YOU, MR. PARTLOW, YOU MAY STEP
16 DOWN.

17 MS. ZIMMERMAN: THE STATE CALLS INVESTIGATOR ROBERT
18 DENNIS.

19 ROBERT DENNIS, AFTER BEING DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. ZIMMERMAN:

23 Q STATE YOUR NAME, PLEASE.

24 A ROBERT DENNIS, NEWBERRY COUNTY SHERIFFS OFFICE,
25 R-O-B-E-R-T D-E-N-N-I-S.

1 Q LIEUTENANT DENNIS, WHAT DO YOU DO AT THE SHERIFFS
2 OFFICE?

3 A AT PRESENT AT THE SHERIFFS OFFICE I AM A LIEUTENANT
4 OVER INVESTIGATIONS FOR THE SHERIFFS OFFICE. ONE OF MY
5 PRIMARY DUTIES AT THE SHERIFFS OFFICE IS SUPERVISE FIVE
6 INVESTIGATORS, ROUTINELY ASSIGN CASES THAT NEED FOLLOW-UP
7 SUCH AS BURGLARIES, LARCENIES, HOMICIDES, ARMED ROBBERIES,
8 BASICALLY ANY CRIME THAT WOULD BE REPORTED AT THE SHERIFFS
9 OFFICE.

10 Q WERE YOU EMPLOYED ON THAT SAME CAPACITY ON JANUARY
11 THE 7TH OF 2008?

12 A DURING THAT TIME I WAS SERGEANT IN INVESTIGATIONS BUT
13 I STILL CARRIED OUT THE SAME DUTIES.

14 Q WERE YOU INVOLVED IN THIS CASE DURING THIS TIME?

15 A YES, I WAS.

16 Q AND WHAT WAS YOUR ROLE AS INVESTIGATOR IN THIS
17 PARTICULAR CASE?

18 A ON THAT DAY WE HAVE WHAT IS CALLED AN ON-CALL
19 INVESTIGATOR. HE FREQUENTLY TAKES CALLS ONE WEEK OUT OF
20 THE MONTH. MATT BOWERS WAS THAT INVESTIGATOR. HOWEVER,
21 DUE TO THE CRIME THAT WE HAD HAPPEN WITH TWO VICTIMS AS
22 WELL AS TWO DIFFERENT CRIME SCENES THEY NOTIFIED ME SO
23 THAT WE COULD GET OTHER PEOPLE TO COME OUT AND HELP SET UP
24 A PERIMETER AS WELL AS PROCESS FOR A CRIME SCENE.

25 Q NOW, I WANT TO TALK TO YOU A LITTLE BIT MORE ABOUT

1 YOUR TRAINING. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT.

2 A I STARTED IN 1991, SO ROUGHLY ABOUT 18 YEARS IN LAW
3 ENFORCEMENT.

4 Q AND HOW LONG HAVE YOU BEEN IN INVESTIGATIONS?

5 A I HAVE PROBABLY BEEN IN INVESTIGATIONS FOR THE LAST
6 EIGHT YEARS.

7 Q DO YOU HAVE ANY IDEA APPROXIMATELY HOW MANY CRIME
8 SCENES YOU HAVE PROCESSED IN THAT TIME?

9 A WE ARE PROBABLY TALKING OVER A THOUSAND.

10 Q I AM GOING TO TAKE YOU TO THE NIGHT OF JANUARY THE
11 7TH. WHEN YOU ARRIVED ON THE SCENE WHAT DID YOU DO?

12 A THE FIRST THING THAT I ARRIVED ON WAS THE SCENE
13 LOCATED AT ORCHARD PARK TRAIL WHICH WAS THE HOME OF THE
14 COFER'S. I MET WITH INVESTIGATOR MATT BOWERS WHO GAVE ME
15 A UP-TO-DATE SYNOPSIS OF WHAT WAS GOING ON. ONCE HE
16 EXPLAINED THAT WHAT HAD HAPPENED THAT HAD BEEN RELAYED TO
17 HIM BY THE COFER'S WE HAD RECEIVED A CALL ABOUT AN
18 ACCIDENT. SO, I BASICALLY TOOK THE INFORMATION THAT MATT
19 HAD GIVEN AND SEEING IF HE NEEDED ANY ADDITIONAL HELP AT
20 THE COFER HOUSE. WITH THAT BEING SAID I INSTRUCTED
21 INVESTIGATOR BEN CHAPMAN WHO WAS COMING OUT TO GO, TO COME
22 AND HELP MATT. AND BOTH OF THEM COORDINATED WITH EACH
23 OTHER TO PROCESS THE COFER HOME. I THEN WENT TO THE
24 ACCIDENT SCENE. DUE TO THE FACT THAT THAT VEHICLE MET THE
25 DESCRIPTION THAT WAS GIVEN THAT HAD LEFT AFTER THE

1 INCIDENT. SO, I WENT DOWN THERE TO CHECK THE ACCIDENT
2 SCENE.

3 Q NOW, IS IT UNUSUAL AS YOU AS THE LEAD INVESTIGATOR
4 WOULD LEAVE THE INITIAL SCENE OF THE CRIME DURING THE
5 INVESTIGATION?

6 A NO MA'AM, IT IS NOT.

7 Q AND ONCE YOU WENT TO THE SECOND SCENE WHAT DID YOU
8 SEE?

9 A ONCE I GOT TO THE SECOND SCENE WE HAD A ROAD DEPUTY
10 THAT WE HAD ALREADY SENT AHEAD OF US. NUMBER ONE, TO FIND
11 OUT WHAT WAS GOING ON AND TO ALSO CHECK AND SEE IF THERE
12 WERE ANY INJURIES THAT WE NEEDED TO HAVE FIRE AND RESCUE
13 COME TO. ONCE HE GOT THERE HE CALLED BACK AND GAVE US A
14 DESCRIPTION OF THE CAR AND AS HE WAS GIVING IT I ARRIVED
15 ON THE SCENE. ONCE I SAW THE VEHICLE MET THE DESCRIPTION
16 THAT WE HAD RECEIVED AND AS I BEGIN LOOKING AROUND THE
17 VEHICLE I NOTICED ON THE PASSENGER SIDE REAR THERE WAS A
18 GUNSHOT TO THE REAR OF THE VEHICLE.

19 Q NOW, LIEUTENANT, AT THE TIME THAT YOU ARRIVED AT THE
20 SCENE HAD ANY SUSPECTS BEEN ARRESTED?

21 A NO MA'AM, NOT AT THAT TIME.

22 Q LET ME SHOW YOU STATE'S EXHIBITS 5 THROUGH 25. YOU
23 CAN TAKE A LOOK AT THESE AND TELL ME IF YOU RECOGNIZE
24 THEM?

25 A YES MA'AM, I DO.

1 Q CAN YOU TELL ME WHAT STATE'S 5 THROUGH 25 DEPICT?

2 A THEY DEPICT PICTURES OF EVIDENCE WE FOUND AT THE
3 WRECK CRIME SCENE INVOLVING THE VEHICLE AS WELL AS THE
4 VEHICLE IN THE ROADWAY. AND THEN THE LAST SET OF PICTURES
5 DEPICT THE VEHICLE AFTER WE HAD REMOVED IT FROM THE ROAD
6 AND TOOK IT TO THE TOWING COMPANY AND WAS ABLE TO
7 PHOTOGRAPH IT A LITTLE BIT BETTER IN A DAYLIGHT SETTING.

8 Q DOES STATE'S 5 THROUGH 25 FAIRLY AND ACCURATELY
9 DEPICT THE SCENE AS YOU SAW THEM?

10 A YES, THEY DO.

11 MS. ZIMMERMAN: WE MOVE STATE'S 5 THROUGH 25 INTO
12 EVIDENCE.

13 MR. JENKINS: NO OBJECTION.

14 THE COURT: THEY ARE IN EVIDENCE.

15 (WHEREUPON, STATE'S EXHIBIT NOS. 5 THROUGH 25 WERE
16 ADMITTED INTO EVIDENCE.)

17 MS. ZIMMERMAN: REQUEST PERMISSION FOR THE LIEUTENANT
18 TO STEP DOWN AND SHOW THESE TO THE JURY.

19 THE COURT: YES, MA'AM.

20 Q LIEUTENANT, I AM GOING TO PLACE SOME OF THESE
21 PICTURES UP HERE ON THE SCREEN AND I AM GOING TO ASK YOU
22 JUST TO EXPLAIN TO THE JURY WHAT WE ARE LOOKING AT ON
23 THESE PHOTOS. FIRST WE HAVE STATE'S 5 AND STATE'S 7?

24 A THESE TWO PICTURES INDICATE A GUN THAT WAS LOCATED IN
25 A GRASSY AREA TO THE LEFT OF HIGHWAY 34. IF YOU ARE GOING

1 OUT HIGHWAY 34 PAST KEITT'S CROSSROAD, FOR SOME THAT MAY
2 BE FAMILIAR WITH LOMINICK LOGGING, LOMINICK, HUB LOMINICK
3 OWNS A BUILDING ON THE RIGHT GOING OUT 34. AND THERE IS A
4 CURVE THERE JUST PAST WHAT IS CALLED BIG PINE ROAD. ONCE
5 THAT ROAD COMES OUT JUST PAST THAT IS WHERE THE ACCIDENT
6 OCCURRED. TO THE LEFT OF THE ROADWAY GOING TOWARD
7 FAIRFIELD IS A OPEN FIELD, GRASSY AND THIS IS WHERE THAT
8 GUN WAS FOUND.

9 Q ANY IDEA OF ABOUT HOW MANY FEET THAT WAS FROM THE
10 WRECK?

11 A IT APPEARS FROM WHAT WE LOOKED AT BECAUSE I DID NOT
12 INVESTIGATE THE WRECK, THAT ONCE THE VEHICLE LEFT THE
13 ROADWAY THE CAR BEGIN TO TURN OVER AND THEN COME BACK ON
14 TO THE ROADWAY. SO, YOU ARE PROBABLY LOOKING ANYWHERE
15 FROM 50 TO MAYBE 100 FEET FROM THE, WHERE THE CAR LANDED
16 AND STOPPED FROM WHERE THE GUN WAS FOUND.

17 Q STATE'S 6, 8, 9 AND 10. CAN YOU TELL ME WHAT THESE
18 PICTURES SHOW?

19 A YES, MA'AM. THIS IS AN AREA IN THE VEHICLE THERE
20 WHERE IN THE BACKSIDE OF THE VEHICLE WHERE A PIECE OF
21 PLASTIC WAS BROKEN. DOWN IN THAT PLASTIC IS A BULLET
22 WHICH IS RIGHT HERE. THE SECOND PICTURE OVER HERE
23 INDICATES, THIS IS A CLOSEUP AND THIS IS KIND OF THE
24 DISTANCE SHOWING WHERE THE BROKEN PIECES WITH THE BULLET
25 IN THERE. AND IT ALSO INDICATES A WALMART BAG WHERE IF

1 YOU LOOK HERE IS THE BOX OF BULLETS THAT WAS FOUND IN THE
2 VEHICLE AND ONCE AGAIN ANOTHER PICTURE THERE JUST KIND OF
3 GIVING THE SAME ANGLE OF THIS BROKEN PIECE TO WHERE THE
4 BULLETS ARE AT. I BELIEVE THERE IS, YOU CAN LOOK AT THIS
5 ONE AND SEE WHERE THE BOX ACTUALLY COMES OPEN AND YOU WILL
6 SEE A BULLET ON EACH SIDE OF THE BOX.

7 Q I WILL SHOW YOU STATE'S 11 AND 12?

8 A THIS IS THE POSITION THAT THE VEHICLE WAS FOUND ON
9 HIGHWAY 34, THE FIRST ONE INDICATES THAT. THE SECOND
10 PICTURE INDICATES, I AM STANDING DOWN ON THE LEFT SIDE OF
11 THE ROAD WHERE THAT GRASSY FIELD IS AT. THERE IS A BLACK
12 JACKET HERE AND THEN THE VEHICLE.

13 Q ARE BOTH OF THESE SHOTS FROM THE SAME ANGLE TOWARDS
14 THE VEHICLE?

15 A THIS IS MORE OF, I AM STANDING UP THIS WAY A LITTLE
16 BIT MORE WHERE IF YOU COME BACK THIS WAY TO ME YOU ARE IN
17 THAT GRASSY FIELD. AND THERE IS A DITCH THERE.

18 Q SO, LOOKING IN THE SAME DIRECTION OF THE CAR, JUST
19 ONE CLOSER TO LOOK AT?

20 A THAT IS CORRECT.

21 Q WHAT IS THIS IN THE BOTTOM HALF OF STATE'S 12?

22 A THERE AT THE BOTTOM HALF IS A BLACK LEATHER JACKET.

23 Q I WILL SHOW YOU STATE'S 13, 14 AND 15. WHAT DO THESE
24 DEPICT?

25 A HERE ON THE BOTTOM IS JUST ANOTHER PICTURE FROM A

1 DIFFERENT ANGLE OF THE BLACK JACKET THERE IN THE DITCH.
2 AND PLUS YOU SEE SOME DEBRIS FROM THE VEHICLE. WHETHER IT
3 IS PARTS OFF THE VEHICLE OR FROM INSIDE THE VEHICLE. THIS
4 AT THE TOP LEFT IS A CLOSER PICTURE OF THE JACKET POCKET
5 OF THE BLACK LEATHER JACKET. THE ONE OVER TO THE RIGHT IS
6 JUST A CLOSE OR KIND OF HALF THE DISTANCE OF WHAT YOU ARE
7 LOOKING AT HERE TO DEPICT THE BLACK JACKET, MONEY AND
8 DEBRIS FROM THE VEHICLE.

9 Q DO YOU HAVE ANY RECOLLECTION TO HOW MUCH MONEY THAT
10 WAS?

11 A NOT WITHOUT LOOKING AT THE ADDITIONAL EVIDENCE.

12 Q I AM GOING TO GO TO STATE'S 12, IF YOU LOOKED AT THAT
13 PICTURE OF THE WEAPON CAN YOU KIND OF TELL ME WHERE THAT
14 WEAPON WAS IN REFERENCE ON THIS PHOTO?

15 A I AM GOING TO STEP IN FRONT, IF I AM HERE IN FRONT OF
16 HERE TAKING A PICTURE OF THE VEHICLE AND THE BLACK JACKET
17 THE WEAPON WOULD BE BEHIND ME IN THE GRASSY FIELD, WHERE
18 THAT GRASSY FIELD WOULD BE BEHIND ME.

19 Q NOW, I WILL SHOW YOU STATE'S 16, TELL ME WHAT THIS
20 IS?

21 A THAT IS A LICENSE PLATE THAT WAS DISCOVERED ON THE
22 ROAD WAY AT THE CRIME SCENE, AT THE WRECK SCENE.

23 Q AND WHAT IS THE SIGNIFICANCE OF THIS PHOTO?

24 A UPON INSPECTION OF THE VEHICLE WE NOTED THAT THE TAG
25 HAD BEEN TAKEN OFF OF THE VEHICLE BECAUSE THE SCREWS WERE

1 SET IN THE VEHICLE AT THE TOP THAT WOULD HOLD THAT LICENSE
2 PLATE TO THE VEHICLE.

3 Q SO, YOU ARE SAYING THAT DIDN'T COME OFF IN THE WRECK?

4 A WE BELIEVE THAT WAS INSIDE THE VEHICLE AND CAME OUT
5 OF THE VEHICLE WHENEVER IT WAS WRECKED.

6 Q HAD YOU HAD A CHANCE TO RUN THAT LICENSE PLATE NUMBER
7 TO SEE IF IT CORRESPONDS WITH THE VEHICLE?

8 A YES, WE DID. AND IT CORRESPONDENCE WITH A RENTAL
9 VEHICLE, I BELIEVE OUT OF GASTONIA, NORTH CAROLINA.

10 Q AND THAT WAS THE SAME VEHICLE INVOLVED IN THE
11 COLLISION?

12 A YES, MA'AM.

13 Q AND STATE'S 17, 18, 19 AND 20?

14 A THIS IS A PICTURE OF THE VEHICLE THAT WAS WRECKED,
15 THIS IS THE PASSENGER SIDE DOOR, THE REAR DOOR THAT
16 INDICATES A BULLET WOUND OR A BULLET PROJECTILE THAT HAD
17 STRUCK THE DOOR. THIS PICTURE TO THE RIGHT INDICATES JUST
18 A LITTLE BIT CLOSER ANGLE OF THAT BULLET. HERE THE BOTTOM
19 LEFT IS JUST ANOTHER PICTURE OF THAT BULLET JUST TO THE
20 LEFT OF THE HANDLE. AND THEN ONCE AGAIN A CLOSER SHOT
21 THERE OF THE BOTTOM RIGHT.

22 Q AND STATE'S 21?

23 A THAT IS JUST A LITTLE BIT CLOSER PICTURE OF THAT SAME
24 BULLET.

25 Q WHAT IS THE SIGNIFICANCE OF THAT BULLET IMPRESSION ON

1 THE VEHICLE?

2 A DURING THE TIME OF THE INVESTIGATION WE HAD RECEIVED
3 INFORMATION THAT BILLY HUNTER HAD FIRED A SHOT AT THE
4 VEHICLE, WAS UNSURE AT THAT POINT WHETHER HE STRUCK THE
5 VEHICLE OR NOT. BUT HE DID SAY HE HAD FIRED HIS GUN AT
6 THE VEHICLE. SO, IT WAS SIGNIFICANT FOR US TO UNDERSTAND
7 THAT HE DID MAKE CONTACT WITH THE VEHICLE.

8 Q CAN YOU TELL FROM LOOKING AT THESE PHOTOGRAPHS WHAT
9 TYPE OF BULLET ACTUALLY CAUSED THAT MARK?

10 A YES, MA'AM. FROM MY LOOKING AT THE VEHICLE I BELIEVE
11 IT WAS DONE WITH WHAT IS CALLED A SLUG WHICH IS NO MORE
12 THAN A PIECE OF LEAD THAT WOULD BE FIRED PARTICULARLY FROM
13 A SHOTGUN.

14 Q I WILL SHOW YOU STATE'S 22, 23, 24 AND 25?

15 A ALL FOUR OF THESE PICTURES JUST INDICATE AT THE
16 GARAGE THAT WE TOOK THE VEHICLE TO AND WE PRETTY MUCH, I
17 WALKED AROUND THE VEHICLE AND SHOT THOSE PICTURES TO SHOW
18 THE EXTENSIVE DAMAGE TO THAT VEHICLE FROM THE COLLISION.

19 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
20 STATE'S EXHIBIT 95, DO YOU RECOGNIZE THIS?

21 A YES, MA'AM.

22 Q AND WHAT IS STATE'S 95?

23 A STATE'S 95 IS A .45 CALIBER GLOCK PISTOL.

24 Q HOW ABOUT STATE'S 96?

25 A STATE'S 96 IS A GLOCK MAGAZINE FOR A .45 CALIBER

1 PISTOL.

2 Q WAS STATE'S 95 AND 96 THE ITEMS FOUND OUT AT THE
3 WRECK SCENE?

4 A YES, THEY ARE.

5 Q AND DO THEY APPEAR TO BE IN SUBSTANTIALLY THE SAME
6 CONDITION AS WHEN YOU LOCATED THEM?

7 A YES, THEY DO WITH THE EXCEPTION OF THE GLOCK PISTOL
8 HAS MY GUN LOCK ON IT.

9 MS. ZIMMERMAN: MOVE STATE'S 95 AND 96 INTO EVIDENCE.

10 MR. JENKINS: NO OBJECTION.

11 THE COURT: THEY ARE IN EVIDENCE.

12 (WHEREUPON, STATE'S EXHIBIT NOS. 95 AND 96 WERE
13 ADMITTED INTO EVIDENCE.)

14 Q NOW, AT THE TIME YOU LOCATED THESE ITEMS WAS THE CLIP
15 IN THE WEAPON OR WAS IT REMOVED?

16 A THE CLIP WAS IN THE WEAPON AS WELL AS A SPENT ROUND
17 WAS STILL IN THE CHAMBER OF THE GUN.

18 Q AND WHY DID YOU THEN REMOVE IT?

19 A WE REMOVED IT SO IT WOULD BE SEPARATE AND IT WOULD BE
20 WHAT IS CALLED A SAFE WEAPON.

21 Q I WILL SHOW YOU STATE'S 91, CAN YOU TELL ME IF YOU
22 RECOGNIZE THAT?

23 A YES, MA'AM. THIS IS A WALLET THAT WAS COLLECTED FROM
24 THE WRECK SCENE. IT HAS THE DRIVERS LICENSE OF ROY
25 JOHNSON, JR., A SOCIAL SECURITY CARD FOR ROY JOHNSON, JR.

1 AND AN ALL SOUTH FEDERAL CREDIT UNION ATM CARD FOR ROY
2 JOHNSON. THERE WAS \$16.00 DOLLARS IN CASH, ONE TEN, ONE
3 FIVE AND ONE ONE DOLLAR BILL. THERE WAS AN ALL SOUTH
4 SAVINGS ACCOUNT CARD, SIX PHOTOS, A DHEC BIRTH CARD AND A
5 FAIRFIELD MOTEL CARD.

6 Q WHOSE HANDWRITING IS THAT ON THE OUTSIDE OF THE
7 ENVELOPE?

8 A IT IS MY HANDWRITING.

9 Q DID YOU PERSONALLY COLLECT ALL OF THOSE ITEMS?

10 A I DID.

11 Q DO THEY APPEAR TO BE SUBSTANTIALLY IN THE SAME
12 CONDITION TODAY AS WHEN YOU COLLECTED THEM?

13 A YES, THEY DO.

14 MS. ZIMMERMAN: MOVE STATE'S 91 INTO EVIDENCE.

15 MR. JENKINS: NO OBJECTION.

16 THE COURT: IT IS IN EVIDENCE.

17 (WHEREUPON, STATE'S EXHIBIT NO. 91 WAS ADMITTED INTO
18 EVIDENCE.)

19 Q STATE'S 92, DO YOU RECOGNIZE THAT?

20 A YES, MA'AM.

21 Q WHAT IS STATE'S 92?

22 A 92 IS THE BLACK WALLET FROM CHAUNCEY PARTLOW, THE
23 WALLET CONTAINED A ONE DOLLAR BILL, ALSO HIS NORTH
24 CAROLINA IDENTIFICATION CARD FOR CHAUNCEY L. PARTLOW.
25 FROM HIS POCKETS WE LOCATED A SWISHER SWEET CIGAR, A KEY

- 1 ON A FADED BLUE CLIP, A BLUE LIGHTER, A RAZOR BLADE, A
2 SMALL BAG CONTAINING A GREEN LEAFY SUBSTANCE AND \$51.35.
3 Q WHOSE HANDWRITING IS THAT ON THE OUTSIDE OF STATE'S
4 92?
5 A THAT IS MY HANDWRITING.
6 Q DID YOU COLLECT ALL OF THIS EVIDENCE?
7 A I DID COLLECT IT FROM THE PERSON OF CHAUNCEY PARTLOW.
8 Q AND IS STATE'S 92 IN SUBSTANTIALLY THE SAME CONDITION
9 AS WHEN YOU COLLECTED IT?
10 A YES MA'AM, IT WAS.
11 MS. ZIMMERMAN: MOVE STATE'S 92 INTO EVIDENCE.
12 MR. JENKINS: NO OBJECTION.
13 THE COURT: IT IS IN EVIDENCE.
14 (WHEREUPON, STATE'S EXHIBIT NO. 92 WAS ADMITTED INTO
15 EVIDENCE.)
16 Q STATE'S 93, CAN YOU IDENTIFY THAT?
17 A YES MA'AM, I CAN.
18 Q WHAT IS STATE'S 93?
19 A STATE'S 93 IS THE STATE OF NORTH CAROLINA DRIVER
20 LICENSE BELONGING TO AUSTIN O'NEAL PARTLOW AND IT WAS
21 FOUND IN THE FRONT WINDOW DASH OF THE WRECKED VEHICLE.
22 Q DID YOU COLLECT STATE'S 93?
23 A I DID.
24 Q IS THAT YOUR HANDWRITING ON THE OUTSIDE OF THE
25 ENVELOPE?

1 A IT IS.

2 Q AND IS STATE'S 93 IN SUBSTANTIALLY THE SAME CONDITION
3 AS IT WAS WHEN YOU COLLECTED IT?

4 A YES MA'AM, IT IS.

5 MS. ZIMMERMAN: MOVE STATE'S 93 INTO EVIDENCE.

6 MR. JENKINS: NO OBJECTION.

7 THE COURT: IT IS IN EVIDENCE.

8 (WHEREUPON, STATE'S EXHIBIT NO. 93 WAS ADMITTED INTO
9 EVIDENCE.)

10 Q LIEUTENANT DENNIS, I WILL SHOW YOU THE DRIVERS
11 LICENSE FROM STATE'S 91. WERE YOU ABLE TO DETERMINE THIS
12 DRIVERS LICENSE BELONGED TO THE SAME ROY JOHNSON THAT IS
13 IN THE COURTROOM TODAY?

14 A YES MA'AM, IT DOES.

15 Q AND WHERE WAS THIS LICENSE LOCATED?

16 A THAT LICENSE WAS LOCATED IN THE WALLET IN THE WRECKED
17 DODGE.

18 Q STATE'S 92, THE IDENTIFICATION OF CHAUNCEY PARTLOW.
19 IS THAT THE SAME MR. PARTLOW THAT WE HEARD FROM THIS
20 MORNING?

21 A YES MA'AM, IT IS.

22 Q AND STATE'S 93 OF AUSTIN PARTLOW IS THE SAME AUSTIN
23 PARTLOW WE HEARD FROM THIS AFTERNOON?

24 A THAT IS CORRECT.

25 Q I WILL SHOW YOU STATE'S EXHIBIT 107, CAN YOU TELL ME

1 WHAT THIS IS?

2 A STATE'S 107 IS TWO WALMART RECEIPTS FOUND ON THE
3 GROUND AT THE ACCIDENT SCENE.

4 Q DID YOU COLLECT THOSE ITEMS?

5 A I DID.

6 Q IS THAT YOUR HANDWRITING ON THAT ENVELOPE?

7 A IT IS.

8 Q AND IS THAT EXHIBIT IN SUBSTANTIALLY THE SAME
9 CONDITION AS WHEN YOU COLLECTED IT?

10 A YES MA'AM, IT IS.

11 MS. ZIMMERMAN: MOVE STATE'S 107 INTO EVIDENCE.

12 MR. JENKINS: NO OBJECTION.

13 THE COURT: IT IS IN EVIDENCE.

14 (WHEREUPON, STATE'S EXHIBIT NO. 107 WAS ADMITTED INTO
15 EVIDENCE.)

16 Q I AM GOING TO PLACE THESE TWO ITEMS UP ON THE SCREEN.
17 CAN YOU TELL ME WHAT IS THE SIGNIFICANCE OF THESE TWO
18 RECEIPTS?

19 A THE, BOTH OF THE RECEIPTS THAT WERE FOUND AT THE
20 CRIME SCENE INDICATED THAT AMMUNITION HAD BEEN PURCHASED
21 AT A WALMART THERE IN GASTONIA. ONE OF THE RECEIPTS
22 SHOWED THAT THERE WAS A PURCHASE OF .40 CALIBER AMMUNITION
23 BULLETS AND I BELIEVE THE OTHER IS WHERE THEY WENT BACK
24 AND TRADED OUT FOR .45 CALIBER.

25 Q AND WERE YOU ABLE TO DETERMINE WHAT WALMART THESE

1 RECEIPTS CAME FROM?

2 A WE KNEW THE NUMBER THAT IDENTIFIES THE STORE NUMBER
3 FOR THERE IN GASTONIA.

4 Q NOW, LIEUTENANT DENNIS, WE LOOKED AT THE LIVE
5 PHOTOGRAPHS, A LOT OF DIFFERENT ITEMS THAT WERE COLLECTED
6 BY OTHER INDIVIDUALS WITH THE SHERIFFS OFFICE. WERE ALL
7 OF THOSE ITEMS TURNED OVER TO YOU?

8 A YES, MA'AM.

9 Q AND WHAT DID YOU DO ONCE YOU RECEIVED ALL OF THESE
10 DIFFERENT ITEMS?

11 A ONCE ALL THE ITEMS WERE SORTED THROUGH AND CATALOGED
12 THEY WERE TAKEN DOWN TO THE SOUTH CAROLINA LAW ENFORCEMENT
13 DIVISION, SLED, SO THAT THEY COULD DO AN ANALYSIS OF THEIR
14 OWN.

15 Q NOW, THE ITEMS THAT WERE TAKEN BY CONNIE JOHNSON THAT
16 WE LOOKED AT WERE STATE'S 89, 88 AND 87. LET ME SHOW YOU
17 THESE ITEMS. DID YOU TAKE POSSESSION OF THESE ITEMS?

18 A YES, I DID.

19 Q AND CAN YOU TELL ME WHAT TESTING WAS DONE ON THESE
20 ITEMS?

21 A THE DRESS, I DO NOT BELIEVE THERE WAS ANY TESTING
22 DONE ON IT BECAUSE MS. CARNES AS WELL AS MS. COFER HAD
23 IDENTIFIED THIS AS CRYSTAL'S AND PLUS THAT IS WHAT SHE HAD
24 ON THAT NIGHT. AND THERE WAS NO INDICATION THAT THERE WAS
25 ANY OTHER BLOOD THERE AT THE SCENE OTHER THAN MS. CRYSTAL

1 CARNES AND MR. RICK COFER.

2 Q SO, IS IT YOUR TESTIMONY THAT YOU WOULDN'T TEST
3 SOMETHING UNLESS YOU FELT IT NEEDED TO BE TESTED?

4 A THAT IS CORRECT. IF WE HAVE INFORMATION THAT, YOU
5 KNOW, WHEN YOU INVESTIGATE THAT THERE MAY BE SAY AN
6 INDIVIDUAL, THE INTRUDER HAD HURT HIMSELF OR HERSELF THEN
7 WE WOULD SEND IT DOWN TO MAKE SOME TYPE OF DIFFERENTIATED
8 STUDY TO SEE IF IT IS THE VICTIM'S BLOOD OR THE
9 PERPETRATORS BLOOD.

10 Q AND HOW ABOUT STATE'S 88 AND 89?

11 A 87 IS THE HAIR WITH TAPE, THAT WAS NOT SENT DOWN
12 BECAUSE THE CONDITION THAT THE TAPE WAS IN WITH THE HAIR.
13 SLED, WE TALKED WITH THE EVIDENCE TECH THERE THAT CAME UP
14 AND ASSISTED US AND HE FELT, YOU WOULDN'T BE ABLE TO GET
15 ANYTHING WITH THE HAIR ALL TO IT.

16 Q IS THERE ANY QUESTION AS TO WHOSE HAIR IT WAS?

17 A NO MA'AM, IT WAS NOT. THERE WAS ALSO THE OTHER DUCT
18 TAPE STILL THERE, THERE WAS BLOOD ON IT AS WELL AS HAIR
19 AFFIXED TO THAT PIECE OF DUCT TAPE AS WELL WHICH IS
20 STATE'S EXHIBIT 88.

21 Q WE ALSO HEARD TESTIMONY FROM MATT BOWERS THAT HE TOOK
22 IN STATE'S EXHIBIT 90 AND 94. WERE ANY TESTS DONE ON
23 THOSE?

24 A NO, MA'AM. BOTH OF THESE PACKETS ARE JUST AS, THEY
25 WERE TURNED OVER TO US. THE ROLL OF DUCT TAPE HAD BLOOD

1 ON IT AND WE DID A, JUST A VISUAL EXAMINATION WITH LIGHTS
2 TO SEE IF ANYTHING STOOD OUT TO US OTHER THAN THE BLOOD
3 THAT WAS ON THAT TAPE. THE SAME WITH THE OTHER DUCT TAPE
4 THAT HAD THE SOCK IN IT.

5 Q DID YOU FIND ANYTHING THAT STOOD OUT TO YOU?

6 A NOTHING THAT STOOD OUT TO US AND THAT WAS STATE'S
7 EXHIBIT 90 AND 94.

8 Q LIEUTENANT DENNIS, I THINK YOU TESTIFIED EARLIER THAT
9 YOU HAVE PROCESSED MAYBE A THOUSAND CRIME SCENES?

10 A YES, MA'AM.

11 Q DO YOU ALWAYS FIND FINGERPRINTS AT A CRIME SCENE?

12 A NO, MA'AM.

13 Q AND WHY IS THAT?

14 A YOU KNOW, IT DEPENDS ON THE INDIVIDUAL THAT HAS
15 COMMITTED THE CRIME. HE MAY HAVE GLOVES ON, HE MAY HAVE
16 SOCKS ON OVER THE HAND, AND HE MAY JUST BE IN A AREA THAT
17 HE DOESN'T TOUCH ANYTHING, THAT HE IS GOING TO LEAVE
18 SOMETHING.

19 Q DO YOU HAVE ANY TYPE OF POLICY WITH THE SHERIFFS
20 OFFICE ABOUT HOW EVIDENCE IS TO BE COLLECTED?

21 A YES MA'AM, WE DO.

22 Q WHAT IS THAT POLICY?

23 A ONCE AN INDIVIDUAL, WHETHER IT IS AN INVESTIGATOR OR
24 A DEPUTY, LOCATES EVIDENCE THAT THEY FEEL WOULD BE OF
25 VALUE WE PHOTOGRAPH, WE COLLECT IT AND WE PUT IT IN A

1 CONTAINER THAT WILL PROTECT IT AND WE PUT ON IT WHERE WE
2 FIND IT AT, THE DATE, THE CASE NUMBER IF WE HAVE IT AT THE
3 TIME AND WHO COLLECTED IT.

4 Q IS THAT POLICY FOLLOWED WITH REGARDS TO ALL OF THE
5 EXHIBITS THAT WE HAVE SEEN SO FAR IN THIS CASE?

6 A YES, MA'AM.

7 Q LIEUTENANT DENNIS, I AM GOING TO TAKE YOU BACK TO THE
8 SCENE, DID AT ANY POINT DID YOU HAVE ANY DIRECT CONTACT
9 WITH THE DEFENDANT IN THIS CASE?

10 A NOT UNTIL THE NEXT DAY.

11 Q TAKE ME THROUGH THAT, HOW DID YOU COME IN CONTACT
12 WITH HIM?

13 A WE BEGIN ON THE NIGHT OF THE 7TH AND WE LED INTO THE
14 8TH, WE HAD RECEIVED INFORMATION LATER THAT AFTERNOON
15 WHERE MR. JOHNSON WOULD BE. AFTER WE HAD ENTERED HIM INTO
16 WHAT IS CALLED A NCIC WE HAD SLED AGENTS FROM FUGITIVE
17 TEAM WERE TRACKING MR. JOHNSON AND HE WAS TAKEN INTO
18 CUSTODY LATER ON THAT NIGHT OF THE 8TH IN GASTONIA, NORTH
19 CAROLINA. ON THE 9TH IS WHENEVER I WENT UP TO PICK HIM
20 UP.

21 Q AND WHAT HAPPENED WHEN YOU GOT TO GASTONIA?

22 A MYSELF AND DEPUTY RYAN DICKERT, WE BOTH TRAVELED UP
23 TO GASTONIA, NORTH CAROLINA TO THE DETENTION FACILITY THAT
24 WAS HOLDING ROY JOHNSON WHERE WE MET WITH THE DETENTION
25 CENTER EMPLOYEES, THAT WE WERE THERE TO PICK UP MR.

1 JOHNSON AND TRANSPORT HIM BACK TO NEWBERRY, SOUTH
2 CAROLINA.

3 Q AND ONCE YOU MET WITH THEM WHAT DID YOU DO?

4 A ONCE I MET WITH THE DETENTION THEY WENT AND GOT ALL
5 THE PAPERWORK TO MAKE THE TRANSFER RELEASE OF MR. JOHNSON
6 INTO OUR CUSTODY. WE TOOK MR. JOHNSON OUT INTO THE SALLY
7 PORT OF THE DETENTION CENTER IN GASTONIA, NORTH CAROLINA
8 WHERE HE WAS SHACKLED AND HANDCUFFED. AND HE WAS GIVEN
9 HIS MIRANDA RIGHTS.

10 Q I WILL SHOW YOU STATE'S EXHIBIT 101, DO YOU RECOGNIZE
11 THAT?

12 A YES, MA'AM. THIS IS THE NEWBERRY COUNTY SHERIFFS
13 OFFICE RIGHTS FORM THAT WE USE WHEN WE SPEAK WITH
14 INDIVIDUALS INVOLVED IN A CRIME.

15 Q DID YOU USE THAT RIGHTS FORM IN THIS CASE?

16 A YES MA'AM, I DID.

17 Q WHERE WERE YOU WHEN YOU WENT OVER THAT RIGHTS FORM?

18 A WE WERE AT MY VEHICLE WHICH AT THE TIME WAS A FORD
19 EXPEDITION AND IT WAS ON 1/9/08 AT 2:34 P.M. AT THE
20 DETENTION CENTER THERE IN GASTONIA IN THE SALLY PORT AREA.

21 Q AND DID MR. JOHNSON SIGN HIS NAME TO THAT RIGHTS
22 FORM?

23 A YES MA'AM, HE DID.

24 Q IS THAT FORM IN SUBSTANTIALLY THE SAME CONDITION AS
25 WHEN IT WAS EXECUTED?

1 A YES MA'AM, IT IS.

2 MS. ZIMMERMAN: MOVE STATE'S 101 INTO EVIDENCE.

3 MR. JENKINS: NO OBJECTION.

4 THE COURT: IT IS IN EVIDENCE.

5 (WHEREUPON, STATE'S EXHIBIT NO. 101 WAS ADMITTED INTO
6 EVIDENCE.)

7 Q NOW, WHEN YOU WENT OVER THAT FORM DID YOU EXPLAIN TO
8 MR. JOHNSON THAT HE DIDN'T HAVE TO TALK TO YOU?

9 A YES, MA'AM.

10 Q AND THAT HE HAD A RIGHT TO AN ATTORNEY?

11 A YES, MA'AM.

12 Q AND WHAT HAPPENED AFTER YOU EXPLAINED THAT TO MR.
13 JOHNSON?

14 A THERE IS A STATEMENT THERE IN BETWEEN THAT WE
15 ACTUALLY READ OVER WITH THE PERSON THAT WE ARE GETTING
16 READY TO QUESTION. ONCE I READ THAT STATEMENT OF RIGHTS
17 TO REMAIN SILENT AND ASK FOR AN ATTORNEY I ASK THEM IF
18 THEY UNDERSTAND THEIR RIGHTS AND IF THEY UNDERSTAND WHAT
19 THEIR RIGHTS ARE. MR. JOHNSON INDICATED THAT HE DID BOTH
20 VERBALLY AND IN WRITING. THE LAST PART OF THIS STATEMENT
21 IS A WAIVER WHICH CLEARLY ASK, ARE YOU WILLING TO MAKE A
22 STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT
23 THIS TIME, I UNDERSTAND AND KNOW WHAT I AM DOING. NO
24 PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE
25 OR COERCION HAS BEEN USED AGAINST ME. MR. JOHNSON WAIVED

1 HIS RIGHTS FOR AN ATTORNEY BOTH VERBALLY AS WELL AS HERE
2 IN WRITING.

3 Q WHAT DID YOU DO ONCE THAT FORM WAS EXECUTED?

4 A ONCE THIS FORM WAS EXECUTED I ADVISED HIM THAT WE
5 WOULD DO THE RIGHTS OF STATEMENT ON AUDIO BECAUSE WE WERE
6 GOING TO BE RIDING IN A VEHICLE ON OUR WAY BACK TO SOUTH
7 CAROLING SO I WANTED TO KIND OF HAVE IT AUDIO TAPED.

8 Q NOW, TELL ME THE POSITIONS OF EVERYBODY IN THE
9 VEHICLE?

10 A RYAN DICKERT, DEPUTY RYAN DICKERT WAS DRIVING MY
11 VEHICLE. I WAS SITTING IN THE BACK DRIVERS SIDE, THE REAR
12 SEAT BEHIND THE DRIVER. AND MR. JOHNSON WAS SITTING UP
13 FRONT, HE HAD LEG SHACKLES ON AND HIS HANDS WERE SHACKLED
14 IN FRONT WHERE HE WOULD BE MORE COMFORTABLE.

15 Q AND DID YOU NOTIFY HIM THAT YOU WERE ACTUALLY AUDIO
16 RECORDING THE STATEMENT?

17 A YES, MA'AM.

18 Q I WILL SHOW YOU STATE'S 113, DO YOU KNOW WHAT THAT
19 IS?

20 A WITHOUT LISTENING TO IT, IT HAS BEEN MARKED AS
21 PHOTOS, 911 CALL AND INTERVIEW OF ROY JOHNSON.

22 Q I REQUEST TO PLAY THE INTERVIEW PORTION FOR THE
23 LIEUTENANT TO IDENTIFY IT.

24 MR. JENKINS: NO OBJECTION.

25 THE COURT: ALL RIGHT. THIS WILL BE A GOOD TIME FOR

1 A BREAK. LADIES AND GENTLEMEN, WE WILL TAKE A SHORT
2 RECESS, DON'T TALK ABOUT THE CASE AND CONTINUE TO KEEP AN
3 OPEN MIND. IF YOU WOULD SELECT SOMEONE TO BE THE
4 FOREPERSON FOR THE JURY AND JUST LET THE BAILIFF KNOW WHO
5 YOU SELECTED AND WRITE THEIR NAME DOWN. THANK YOU.

6 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
7 A BREAK.)

8 THE COURT: WE WILL TAKE A SHORT BREAK. I UNDERSTAND
9 WE HAVE THE FIREARM IN EVIDENCE NOW AND THE CLIP, IS THAT
10 WHAT IT IS?

11 MS. ZIMMERMAN: YES, SIR.

12 THE COURT: ALL RIGHT, WE JUST HAVE ONE FIREARM?

13 MS. ZIMMERMAN: YES, SIR.

14 THE COURT: OKAY. CAN YOU JUST VERIFY THAT IT IS
15 UNLOADED WHILE YOU ARE SITTING THERE LIEUTENANT.

16 (WHEREUPON, LIEUTENANT DENNIS CHECKED THE GUN AND IT
17 IS UNLOADED.)

18 THE COURT: THANK YOU, VERY MUCH. AND IT HAS BEEN
19 DISABLED AND IT HAS GOT THE LOCK ON IT. AND JUST A COUPLE
20 OF THINGS ABOUT THE FIREARM. IF Y'ALL CAN JUST SEND A
21 PICTURE BACK THAT IS FINE, MS. HOLSTON WILL HAVE CUSTODY
22 OF IT, THE CLERK WILL HAVE SOME SECURE PLACE FOR IT TO BE,
23 DEPOSITED DURING RECESSES. THE AMMUNITION AND THE GUN ARE
24 TO BE KEPT SEPARATE AT ALL TIMES AND NEVER TO BE GIVEN TO
25 A WITNESS OR THE JURY AT THE SAME TIME. THE LAWYERS, IF

1 YOU WANT TO USE IT AT ANY TIME JUST LET ME KNOW YOU ARE
2 GOING TO DO IT. AND WHAT YOU ARE GOING TO DO WITH IT AND
3 I WILL DECIDE ABOUT THAT, HANDLE IT BY THE BARREL AT ALL
4 TIMES. OKAY. AND I WILL TELL THE JURY, SO THEY ARE AT
5 EASE, THAT IT HAS BEEN CHECKED. THANK YOU. WE WILL TAKE
6 ABOUT A TEN MINUTE BREAK.

7 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

8 THE COURT: MR. HORNING IS THE FOREPERSON. ANYTHING
9 BEFORE WE BRING THE JURY IN?

10 MS. ZIMMERMAN: NOTHING FROM THE STATE.

11 MR. JENKINS: NOTHING, YOUR HONOR.

12 THE COURT: BRING THE JURY IN, PLEASE.

13 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
14 APPROXIMATELY 3:30 P.M.)

15 THE COURT: MR. HORNING, YOU HAVE BEEN SELECTED TO BE
16 THE FOREPERSON AND PRESIDE OVER THE DELIBERATIONS AND ALSO
17 IF THERE IS ANY COMMUNICATION THAT NEEDS TO BE MADE TO THE
18 COURT PLEASE UNDERSTAND I CAN ONLY RESPOND TO YOU OUT HERE
19 IN OPEN COURT OR IN WRITING. SO, HOPEFULLY YOU WON'T NEED
20 TO CONTACT ME BUT IF YOU DO JUST SEND A NOTE AND I WILL
21 RESPOND. WITH THAT WE WILL PROCEED WITH THE DIRECT
22 EXAMINATION. MS. ZIMMERMAN.

23 CONTINUE DIRECT EXAMINATION

24 BY MS. ZIMMERMAN:

25 (WHEREUPON, THE TAPE WAS PLAYED STARTING AT 3:31 P.M.)

1 AND ENDED AT 4:15 P.M.)

2 Q LIEUTENANT DENNIS, STATE'S 113 THAT WE JUST PLAYED,
3 DOES THAT FAIRLY AND ACCURATELY DEPICT THE CONVERSATION
4 YOU HAD WITH THE DEFENDANT ON THE RIDE BACK FROM GASTONIA?

5 A YES MA'AM, IT DOES.

6 MS. ZIMMERMAN: WE MOVE THAT PORTION OF STATE'S 113
7 INTO EVIDENCE.

8 MR. JENKINS: NO OBJECTION.

9 THE COURT: IT IS IN EVIDENCE.

10 (WHEREUPON, STATE'S EXHIBIT 113 WAS ADMITTED INTO
11 EVIDENCE.)

12 Q NOW, LIEUTENANT, WAS THIS THE ONLY CONVERSATION THAT
13 YOU HAD WITH THE DEFENDANT?

14 A NO, IT WAS NOT.

15 Q CAN YOU TELL ME ABOUT THE CIRCUMSTANCES THAT LED TO
16 THE SECOND ENCOUNTER?

17 A THE SECOND ENCOUNTER OCCURRED THE FOLLOWING DAY AT
18 THE NEWBERRY COUNTY DETENTION CENTER MAGISTRATE'S OFFICE
19 WHERE MR. JOHNSON, ONCE HE WAS DROPPED OFF THE DAY BEFORE
20 THE WARRANTS WERE SERVED ON HIM AT THE DETENTION CENTER.
21 THE FOLLOWING MORNING MR. JOHNSON WAS BROUGHT UP TO HIS
22 BOND HEARING IN THE MAGISTRATE'S OFFICE.

23 Q AND WHAT HAPPENED AT THE BOND HEARING?

24 A AFTER THE BOND HEARING WAS OVER WITH, MYSELF AND
25 MAJOR GILLIAM WERE WALKING MR. JOHNSON BACK TO THE JAIL

1 AREA WHICH THEY ARE BOTH HOUSED UNDER THE SAME ROOF. THE
2 FRONT PART IS NEWBERRY COUNTY MAGISTRATE'S OFFICE, THEY
3 HAVE A COURTROOM. AS YOU WALK BACK TOWARD THE REAR OF THE
4 BUILDING YOU GO PAST OFFICES, YOU GO IN THROUGH A HALLWAY,
5 CAPTAIN KITCHENS HAS AN OFFICE AND THE ADMINISTRATOR THAT
6 KEEPS THE INMATE RECORDS ALSO HAS AN OFFICE THERE. AND
7 THEN THERE IS A DOOR THAT LEADS INTO THE BACK PART OF THE
8 JAIL. WHILE WE WERE WALKING MR. JOHNSON, GOING BACK TO
9 THE JAIL, HE INDICATED TO ME THAT HE WANTED TO TALK TO US.
10 WE FOUND AN UNOCCUPIED OFFICE WHICH WAS CAPTAIN KITCHENS
11 OFFICE ON THE LEFT SIDE AND WE WENT INTO THAT OFFICE WHERE
12 HE WAS GIVEN HIS RIGHTS AGAIN.

13 Q NOW, PRIOR TO THE STATEMENT THAT HE WANTED TO TALK TO
14 YOU, DID YOU SAY ANYTHING TO HIM TO GET HIM TO MAKE A
15 SECOND STATEMENT?

16 A NO, MA'AM. THE BOND HEARING, AS WE WERE IN THERE FOR
17 THE BOND HEARING WE RAN OFF INFORMATION WHERE BOND WAS
18 DENIED, THE JUDGE GAVE HIM INFORMATION AS FAR AS HIS
19 PAPERWORK AND THEN WE WENT BACK TOWARD THE JAIL AFTER THE
20 BOND HEARING WAS OVER.

21 Q LIEUTENANT DENNIS, I AM GOING TO SHOW YOU STATE'S 102
22 WHICH WAS PREVIOUSLY ADMITTED. DID YOU GO OVER THAT
23 RIGHTS FORM WITH MR. JOHNSON?

24 A YES, MA'AM. AFTER WE GOT INTO CAPTAIN KITCHENS
25 OFFICE WE STILL GO OVER THE RIGHTS FORM WHICH IS ON

1 NEWBERRY COUNTY SHERIFFS OFFICE FORM AND I WENT THROUGH
2 AND LABELED MR. ROY JOHNSON'S INFORMATION AT THE TOP AS
3 WELL AS SOME OTHER INFORMATION THERE LIKE THE GRADE HE
4 COMPLETED. AND THEN THE MIDDLE PART IS HIS RIGHTS FORM
5 WHICH WAS READ TO HIM.

6 Q AND THAT INCLUDES THE RIGHT TO REMAIN SILENT?

7 A THAT IS CORRECT. THE RIGHT TO REMAIN SILENT AS WELL
8 AS THE RIGHT TO AN ATTORNEY OR IF HE HAD NO MONEY A LAWYER
9 WOULD BE APPOINTED TO HIM.

10 Q AND HE AGREED TO WAIVE THOSE RIGHTS AND SPEAK TO YOU?

11 A YES, HE DID. BOTH VERBALLY AND WITH HIS SIGNATURE.

12 Q DID YOU THREATEN HIM IN ANY WAY TO MAKE HIM SPEAK TO
13 YOU?

14 A NO MA'AM, WE DID NOT.

15 Q DID YOU TELL HIM WHAT TO SAY IN THIS STATEMENT?

16 A NO MA'AM, WE DID NOT.

17 Q I WILL SHOW YOU STATE'S 103 WHICH WAS PREVIOUSLY
18 ADMITTED, IS THAT THE STATEMENT THAT HE GAVE AFTER THIS
19 RIGHTS FORM WAS GONE OVER?

20 A YES, MA'AM. THIS IS A TWO PAGE VOLUNTARY STATEMENT
21 FORM. THE TOP PAGE IS USED TO, ONCE AGAIN RECORD THE
22 PERSON'S INFORMATION THAT WE ARE TALKING TO THEN THERE IS
23 IN PARAGRAPH FORM HIS RIGHTS AGAIN AND THEN THERE ARE
24 LINES PROVIDED FOR HIM TO GIVE US A STATEMENT. THE SECOND
25 PAGE IS NO MORE THAN LINES, YOU HAVE A PLACE YOU IDENTIFY

1 WHO IS WRITING THIS STATEMENT AND THEN IS MORE LINES
2 PROVIDED FOR HIM.

3 Q AND WHO WROTE THAT STATEMENT, STATE'S 103?

4 A THAT STATEMENT IS WRITTEN IN THE HANDWRITING OF ROY
5 JOHNSON.

6 Q AT ANY TIME DURING THIS STATEMENT DID HE INDICATE
7 THAT HE WANTED TO STOP TALKING TO YOU?

8 A NO, HE DID NOT.

9 Q REQUEST PERMISSION FOR THE LIEUTENANT TO STEP DOWN
10 AND SHOW THE STATEMENT TO THE JURY.

11 THE COURT: ALL RIGHT.

12 Q LIEUTENANT, I AM GOING TO PUT THIS ON THE PROJECTOR
13 AND I WILL ASK YOU JUST TO READ THIS STATEMENT TO THE
14 JURY?

15 A THE STATEMENT IS AS FOLLOWS. JANUARY THE 7TH OF
16 2008, I, ROY JOHNSON MET CP AT A FRIENDS HOUSE IN NORTH
17 CAROLINA. I ASKED CP COULD I CATCH A RIDE TO SC BECAUSE
18 MY GIRLFRIEND'S UNCLE HAD PASSED, 6:00 P.M. WE THEN WENT
19 TO GET GAS AND TO WALMART TO RETRIEVE BULLETS FOR A .40
20 CAL AROUND 8:00, 8:30. WE WAS ON OUR WAY DOWN TO SC TO
21 VISIT MY GIRLFRIEND'S UNCLE IN NEWBERRY, SC. ON THE WAY
22 DOWN WE COME THROUGH 321 HIGHWAY TO SHARON, THROUGH
23 LOCKHART, UNION AND DOWN 176 HIGHWAY. ONCE IN NEWBERRY I
24 GO DIRECTLY TO HIGHWAY 34 TO VISIT BRIAN. AND I CAN'T
25 MAKE OUT, IT IS M-C-C- AND THEN I BELIEVE THE LAST LETTERS

1 ARE L-L, I DON'T KNOW WHAT THAT IS, WHICH WAS NOT HOME. I
2 THEN SAW SHORTY STOP AND RETRIEVE A BLACK WEAPON FROM
3 UNDER THE HOOD OF VEHICLE. CP SUGGEST, AIN'T NO NEED TO
4 GO INTO HOSPITAL IF HE BRAIN DEAD, WE NEED TO COME UP WITH
5 THAT FIRST. SHORTY SAID, I AIN'T GOING BACK TO NORTH
6 CAROLINA WITH NO MONEY. YOU ARE GOING TO SHOW US WHERE
7 THE MONEY IS. I, MYSELF, TRIED TO BLUFF MOVE TO THROW
8 THEM OFF BUT CP RECOGNIZED THE VEHICLE USED TO BRING DRUGS
9 INTO NORTH CAROLINA. AND THEN ON PAGE 2, AT ABOUT 10:15
10 P.M. I WALKED DOWN HIGHWAY 34 TO NEARBY TRAILER PARK WHEN
11 SHORTY CAME BEHIND AND MADE ME GET INTO VEHICLE. AFTER
12 ENTERING VEHICLE WE PROCEEDED BACK UP HIGHWAY 34 AND
13 TURNED AROUND. SHORTY SUGGEST THAT I GO TO DOOR AND HAVE
14 REGULAR CONVERSATION. I DISAGREED. SHORTY THEN GET ANGRY
15 AND PERSIST AND TELLS ME TO SHUT UP AND TAKE MY WALLET AND
16 PHONE AND MONEY FROM MY POCKET. WE THEN PROCEEDED TOWARD
17 TRAILER WITH ME IN FRONT AND SHORTY BEHIND ME AND CP A FEW
18 STEPS BESIDE HIM. SHORTY THEN NOD, NUDGED ME IN THE BACK
19 WITH PISTOL AND TELLS BE READY OR DIE. FORCES ME TO KICK
20 THE DOOR, AFTER I KICK TO I FELL BACKWARDS INTO HOME AND
21 SHORTY AND CP STUMBLE OVER ME. I GET UP WITNESSING SHORTY
22 HITTING GUY ACROSS HEAD NUMEROUS TIMES. CP MOVED DOWN THE
23 HALL AND SHORTY HOLD A GUN OVER MAN AND SCREAM AT A FEMALE
24 WHICH I COULD NOT SEE. CP THEN COMES AND STOOD OF MAN AND
25 YELLS AT ME, KEEP YOUR FUCKING EYES ON THE DOORS. SHORTY

1 THEN ANGRY, I DON'T KNOW IF THAT IS ANGRY OR WHAT THAT
2 WORD IS, AS THE GIRL THINKS OR DONE, THANKS TO THE GIRL
3 WHICH CAUSES HER TO SCREAM OUTRAGEOUSLY. I THEN NOTICED
4 THE GUY WITH A SHOTGUN AND PROCEEDED TO RUN. SHORTY THEN
5 TOOK A SHOT TOWARDS ME AND FORCEFULLY SHOVED HIM DOWN AND
6 RAN FOR MY LIFE. AS I RAN I COULD HEAR SHOTS FIRED AND
7 TIRES SCREECHING. I PROCEEDED TO RUN ON, I CAN'T MAKE THE
8 NEXT WORD OUT, TO A NEARBY TRAILER PARK AND THEN I
9 CONTINUED TO RUN DOWN HIGHWAY 34 UNTIL I REACH HIGHWAY
10 176. I THEN, SOMETHING, I AM NOT SURE WHAT THAT LINE IS,
11 TO GET HOME AND THEN BRIBED ANOTHER PERSON TO GET TO NORTH
12 CAROLINA. ONCE IN CAROLINA I GET MOTEL AND RESTED UNTIL
13 GASTON COUNTY ARRESTED ME. AND HIS INITIAL, RJ, IS AT THE
14 END.

15 Q THANK YOU, LIEUTENANT. NOW, WHAT IS THE DIFFERENCE
16 THAT YOU NOTICE BETWEEN THE FIRST STATEMENT AND THE SECOND
17 STATEMENT?

18 A THE FIRST STATEMENT THAT WAS GIVEN ON THE AUDIO WAS
19 MORE OF A SELF RIGHTEOUS STATEMENT, PROTECTING HIMSELF.
20 THE SECOND STATEMENT HAD A LITTLE BIT MORE OF THE TRUTH IN
21 IT FROM WHAT WE HAD GATHERED FROM THE WITNESSES AS WELL AS
22 THE OTHER TWO DEFENDANTS.

23 Q SPEAKING OF SELF RIGHTEOUS, YOU MENTIONED SOMETHING
24 IN THE TAPE ABOUT THE STATEMENT BEING CONVENIENT. WHAT
25 DID YOU MEAN BY THAT?

1 A WELL, EVERYTHING THAT ROY WAS TALKING ABOUT PRETTY
2 MUCH WAS CONVENIENT TO HIM NOT BEING INVOLVED. EVERYTHING
3 THAT HE TALKED ABOUT WAS THE OTHER THREE GUYS.

4 Q AND DURING THE SECOND STATEMENT HOW MANY GUYS WERE
5 INVOLVED THEN?

6 A THE SECOND STATEMENT THAT WAS GIVEN HE NAMED JUST
7 THREE WHICH WOULD BE HE, SHORTY AND CP.

8 Q LIEUTENANT, I AM GOING TO SHOW YOU STATE'S EXHIBIT
9 100. DO YOU RECOGNIZE THIS?

10 A YES, MA'AM. IT IS A OVERVIEW FROM BOB BEARD WHICH
11 PUTS THESE MAPS TOGETHER FOR US OF NEWBERRY COUNTY.

12 Q DOES THIS MAP FAIRLY AND ACCURATELY DEPICT THE AREA
13 OF THESE DIFFERENT INCIDENCES?

14 A YES MA'AM, IT DOES.

15 MS. ZIMMERMAN: WE WOULD MOVE STATE'S 100 INTO
16 EVIDENCE.

17 MR. JENKINS: NO OBJECTION.

18 THE COURT: IT IS IN EVIDENCE.

19 (WHEREUPON, STATE'S EXHIBIT NO. 100 WAS ADMITTED INTO
20 EVIDENCE.)

21 MS. ZIMMERMAN: REQUEST PERMISSION FOR THE LIEUTENANT
22 TO STEP DOWN AGAIN.

23 THE COURT: OKAY.

24 Q LIEUTENANT, THERE ARE SEVERAL THINGS MARKED ON THIS
25 MAP, CAN YOU EXPLAIN TO ME WHAT WE ARE LOOKING AT.

1 A YES, MA'AM. THE LABELS STARTING DOWN HERE ON THE
2 LOWER LEFT CORNER IS [REDACTED] HERE IN
3 NEWBERRY COUNTY. THAT IS THE LOCATION, THE INCIDENT
4 LOCATION AND HOME OF ROBIN AND RICHARD COFER. THE NEXT
5 PLACE IS IDENTIFIED IN FRONT OF 5458 HIGHWAY 34, POMARIA
6 SECTION OF NEWBERRY COUNTY ON OUT 34. THIS IS THE HUB
7 LOMINICK LOGGING COMPANY OUT ON 34. THE TOP LEFT IS [REDACTED]
8 SPRING HILL DRIVE IN NEWBERRY. THIS LOCATION IS WHERE THE
9 INDIVIDUAL THAT ROY JOHNSON IDENTIFIED ON THE PAGE THAT WE
10 IDENTIFIED AS WILLIE ASHFORD'S HOME. THE TWO OR THE THREE
11 BIGGER BLOCKS, THE DISTANCE THAT WAS TRAVELED BY ROADWAY
12 FROM [REDACTED] TO [REDACTED] SPRING HILL DRIVE IS
13 APPROXIMATELY 3.68 MILES. SO, FROM THIS POINT HERE, 34 TO
14 KEITTS CROSSROAD, 176 TO SPRING HILL DRIVE IS 3.68 MILES.
15 THE MILAGE FROM [REDACTED] WHICH IS HERE TO
16 5458 HIGHWAY 34 POMARIA IN FRONT OF MR. LOMINICK'S LOGGING
17 COMPANY, THAT IS WHERE THE ACCIDENT TOOK PLACE. IT IS 4.2
18 MILES FROM [REDACTED] TO 5458 HIGHWAY 34. THE
19 OTHER THAT WE HAVE UP HERE IS FROM [REDACTED] SPRING HILL DRIVE
20 TO 5458 HIGHWAY 34. SPRING HILL DRIVE OUT TO 34 IS 3.65
21 MILES.

22 Q NOW, THE PATH THAT MR. JOHNSON INDICATED TO YOU HE
23 HAD TAKEN, CAN YOU SHOW THAT TO US ON THIS MAP?

24 A MR. JOHNSON INDICATED THAT ONCE HE LEFT FROM THE
25 INCIDENT LOCATION FROM [REDACTED] HE STAYED TO

1 THE ROADWAY AS WELL AS IN THE WOODS ALL THE WAY DOWN TO
2 176 AND THEN FROM 176 TO SPRING HILL DRIVE.

3 Q AND THAT IS THE 3.68 MILES?

4 A THAT IS CORRECT.

5 Q NOW, CAN YOU ORIENT ME WHERE THIS MAP IS, SHOW ME?

6 A YES, MA'AM. THIS, AT ORCHARD PARK TRAIL, THE LINE
7 THAT YOU SEE HERE IS HIGHWAY 34 GOING TOWARD FAIRFIELD.
8 34, TO THE LEFT OF THAT WOULD BE TOWARD I-26 WHERE YOU
9 HAVE THE INTERCHANGE, THE BP GAS STATION, THE SHELL GAS
10 STATION, BILL AND FRAN'S RESTAURANT. THIS CROSS ROAD IS
11 HIGHLY KNOWN TO FOLKS HERE IN NEWBERRY AS KEITTS
12 CROSSROADS.

13 Q THANK YOU, YOU CAN HAVE A SEAT. LIEUTENANT, I AM
14 GOING TO SHOW YOU STATE'S 1 AND 2 AND ASK IF YOU CAN
15 IDENTIFY THESE ITEMS?

16 A YES MA'AM, I CAN.

17 Q AND WHAT ARE THOSE PHOTOS OF?

18 A THESE ARE PHOTOGRAPHS THAT I TOOK OF MR. RICK COFER
19 ON 1/9/2008 WHICH WAS THE FOLLOWING DAY AFTER THE INCIDENT
20 OR TWO DAYS AFTER THE INCIDENT.

21 Q DO STATE'S 1 AND 2 FAIRLY AND ACCURATELY DEPICT WHAT
22 HE LOOKED LIKE TWO DAYS AFTER THE INCIDENT?

23 A YES, MA'AM.

24 MS. ZIMMERMAN: WE MOVE STATE'S 1 AND 2 INTO
25 EVIDENCE.

1 MR. JENKINS: NO OBJECTION.

2 THE COURT: THEY ARE IN EVIDENCE.

3 (WHEREUPON, STATE'S EXHIBIT NOS. 1 AND 2 WERE
4 ADMITTED INTO EVIDENCE.)

5 Q LIEUTENANT, I AM GOING TO ASK YOU TO TELL ME WHAT
6 LEAD YOU TO TAKE THESE ADDITIONAL PHOTOGRAPHS OF MR.
7 COFER?

8 A WE HAD INTERVIEWED MR. COFER THAT NIGHT OF THE
9 INCIDENT. AND MR. COFER AND ROBIN AND CRYSTAL CAME OUT OT
10 THE NEWBERRY SHERIFFS OFFICE TO MEET WITH OUR VICTIMS
11 ADVOCATE, CONNIE JOHNSON TO GO OVER SOME PAPERWORK AS TO
12 WHETHER TO MEET WITH US SO THAT WE CAN LET THEM KNOW WHERE
13 WE STOOD WITH THE CASE AND SEE IF THEY CAN GIVE US ANY
14 ADDITIONAL INFORMATION.

15 Q NO FURTHER QUESTIONS.

16 THE COURT: CROSS-EXAMINATION.

17 CROSS-EXAMINATION

18 BY MR. JENKINS:

19 Q ISN'T IT TRUE THAT JAILERS NORMALLY TRANSPORT PEOPLE
20 WHO HAVE BEEN CHARGED WITH A CRIME OVER TO THE
21 MAGISTRATE'S COURT FOR BOND HEARINGS?

22 A THAT'S CORRECT.

23 Q IT IS NOT NORMALLY A MAJOR OR A LIEUTENANT
24 TRANSPORTING A DEFENDANT BACK AND FORTH?

25 A NO, SIR.

1 Q IN THIS SECOND STATEMENT, WRITTEN ONE THAT YOU READ
2 INTO THE RECORD FOR US. ONLY THREE PEOPLE ARE MENTIONED,
3 A SHORTY, MR. JOHNSON AND CP OR CHAUNCEY PARTLOW, IS THAT
4 CORRECT?

5 A THAT IS CORRECT.

6 Q AUSTIN PARTLOW IS LEFT OUT COMPLETELY?

7 A IF THAT IS NOT NAMING A PERSON BY NAME, THAT IS
8 CORRECT.

9 Q OKAY. NOW, NO PRINTS, NO PHYSICAL EVIDENCE
10 WHATSOEVER WAS FOUND TO MATCH OR EXCLUDE ANYONE THAT WAS
11 INCLUDED IN THIS CASE, IS THAT CORRECT?

12 A THAT IS CORRECT.

13 Q NOT FROM THE GUN, NOT FROM THE WALLS, NOT FROM THE
14 VEHICLES, NOT FROM THE BULLETS, CASINGS. ANYTHING THAT
15 WAS FOUND, NOTHING HAD A FINGERPRINT OR DNA EVIDENCE THAT
16 MATCHED ROY JOHNSON, AUSTIN PARTLOW, CHAUNCEY PARTLOW OR
17 ANYONE ELSE TO THIS CRIME SCENE?

18 A THAT IS CORRECT.

19 Q NOW, THE GLASSES YOU FOUND THAT YOU DISCUSSED WITH
20 MR. JOHNSON ON THE AUDIO TAPE WE HEARD, THOSE WERE AUSTIN
21 PARTLOW'S GLASSES, WEREN'T THEY, THAT WAS DETERMINED,
22 WASN'T IT?

23 A THAT'S CORRECT.

24 Q AND THE BLACK JACKET THAT WAS FOUND, I THINK WE HAD A
25 PHOTO OF IT, THAT WAS AUSTIN'S, IS THAT CORRECT?

1 A THAT'S CORRECT.

2 Q FOOTPRINTS THAT WERE FOUND IN THE PHOTOGRAPH, WE SAW
3 PHOTOGRAPHS OF THOSE, PARTIAL PRINTS OR PARTIAL
4 FOOTPRINTS, THEY DIDN'T MATCH, ROY, AUSTIN, CHAUNCEY OR
5 ANYONE ELSE THAT WAS KNOWN TO BE AT THE SCENE, DID THEY?

6 A THAT IS CORRECT.

7 Q THAT IS NOT IN SIZE OR IN TREAD PATTERN?

8 A FOR THE TREAD PATTERN THAT WE HAD AS FAR AS THE SHOES
9 THAT WE LOOKED AT TO INCLUDE THE THREE DEFENDANTS AS WELL
10 AS MYSELF, LOOKING AT MY SHOES AND THE INVESTIGATORS
11 THERE, IT DIDN'T MATCH ANY OF US. WE DON'T KNOW IF IT DID
12 NOT MATCH EMS, RESCUE, OTHER FAMILY MEMBERS THAT HAD BEEN
13 IN AND OUT THERE AT THE HOUSE.

14 Q THAT WASN'T CHECKED?

15 A THAT WAS NOT CHECKED.

16 Q ROY WAIVED EXTRADITION, DIDN'T HE?

17 A THAT IS CORRECT.

18 Q CAME BACK TO NEWBERRY WILLINGLY?

19 A THAT IS CORRECT.

20 Q AND ACTUALLY WHEN HE WAS CONTACTED IN GASTONIA I
21 THINK THE MESSAGE WAS RELAYED BY SOME OF HIS RELATIVES AND
22 HE INDICATED, HERE I AM, I AM JUST GOING TO WAIT ON THE
23 POLICE TO COME GET ME?

24 A I AM NOT SURE THAT THAT IS EXACTLY THE CASE.

25 Q SO, YOU DON'T KNOW?

1 A NO, I DO NOT.

2 Q BUT YOU DON'T KNOW OF ANY TROUBLE OR ANYTHING HE DID
3 AFTER HE GOT TO GASTONIA, TO GIVE LAW ENFORCEMENT ANY
4 TROUBLE ABOUT COMING BACK TO NEWBERRY?

5 A NO, I DO NOT.

6 Q YOU NEVER HEARD CHAUNCEY, ROY OR AUSTIN REFER TO BY
7 ANYONE AS BUBEE OR SHORTY, DID YOU?

8 A NO, WE DID NOT.

9 Q WOULD IT BE FAIR TO SAY THAT LAW ENFORCEMENT NORMALLY
10 KNOWS SOME OF THE, LAW ENFORCEMENT IN A LOCAL AREA WOULD
11 NORMALLY KNOW SOME OF WHAT WE WOULD CALL THE USUAL
12 SUSPECTS?

13 A THAT IS CORRECT.

14 Q SOME PEOPLE THAT ARE NORMALLY IN TROUBLE WITH THE
15 LAW?

16 A THAT IS CORRECT.

17 Q AND THEY WOULD KNOW NOT ONLY BY THEIR REAL NAME BUT
18 OFTEN BY THEIR NICKNAME OR STREET NAME?

19 A SOMETIMES.

20 Q AND IF YOU CAN GIVE SOMEONE A DESCRIPTION AND A
21 NICKNAME IN AN ENJOINING OR A LOCAL JURISDICTION IT IS
22 OFTEN TIMES THAT LAW ENFORCEMENT THERE WOULD BE ABLE TO
23 SAY, YES, I KNOW WHO YOU ARE TALKING ABOUT?

24 A THAT IS CORRECT.

25 Q DID YOU CHECK WITH THE GASTONIA POLICE DEPARTMENT OR

1 GASTON COUNTY POLICE DEPARTMENT?

2 A I TALKED WITH GASTONIA DETECTIVES, DUE TO THE FACT
3 THAT THEY HAD WENT OUT WITH OUR SLED, SOUTH CAROLINA LAW
4 ENFORCEMENT DIVISION, THEY HAD NO INDICATION OF ANY OF THE
5 THREE BEING IN ANY TYPE OF TROUBLE UP THERE AS WELL AS ANY
6 OF THE, AND AT THE TIME WE DID NOT HAVE THE TWO NICKNAMES
7 ROY WAS GIVING US. BUT NONE OF THE DETECTIVES UP THERE
8 RECOGNIZED THOSE.

9 Q OKAY. SO, YOU DIDN'T HAVE THOSE NICKNAMES AND THEY
10 DIDN'T RECOGNIZE ROY, AUSTIN OR CHAUNCEY?

11 A THAT IS CORRECT.

12 Q DID YOU CHECK THE SECURITY CAMERAS AT WALMART IN
13 GASTONIA?

14 A WE HAD, ONE OF THE INVESTIGATORS CHECKED WITH
15 GASTONIA AND THERE WAS, AS THEY TOLD THE INVESTIGATOR--

16 MR. JENKINS: I AM GOING TO OBJECT TO HEARSAY, SAYING
17 WHAT ANOTHER INVESTIGATOR SAID.

18 Q DID YOU CHECK WITH THE GASTONIA WALMART?

19 A I DIDN'T CHECK.

20 Q DO YOU KNOW WHO DID?

21 A YES, I DO.

22 Q AND WHO WAS THAT?

23 A I BELIEVE IT WAS MATT.

24 Q OKAY. AND DO YOU HAVE ANY FIRSTHAND KNOWLEDGE OTHER
25 THAN WHAT MATT BOWERS HAD TOLD YOU IN REGARDS TO ANY

1 SECURITY CAMERAS OR VIDEOS FROM THE WALMART IN GASTONIA?

2 A NONE.

3 Q THAT IS ALL I HAVE.

4 THE COURT: REDIRECT.

5 REDIRECT EXAMINATION

6 BY MS. ZIMMERMAN:

7 Q WHY WERE YOU AT THE BOND HEARING?

8 A THE BOND HEARING, WE WERE THERE SO WE COULD GET HIS
9 BOND DENIED DUE TO TWO ISSUES. ONE, IS HE A FLIGHT RISK
10 AND TWO, IS HE A DANGER TO THE COMMUNITY. AND WE FELT
11 LIKE UNDER THE CIRCUMSTANCES HE MET BOTH THE CRITERIA
12 BECAUSE HE WAS NOT BASICALLY LIVING HERE IN NEWBERRY, HE
13 FLED A SCENE AS WELL AS THE SERIOUSNESS OF THE CRIME THAT
14 HE WOULD BE A DANGER TO THE COMMUNITY.

15 Q HAVE YOU EVER GONE TO BOND HEARINGS?

16 A YES MA'AM, I HAVE.

17 Q YOU WERE THE SUPERVISING INVESTIGATOR, IS THAT
18 CORRECT?

19 A THAT'S CORRECT.

20 Q SO, MATT BOWERS ANSWERS TO YOU?

21 A THAT IS CORRECT.

22 Q AND YOU DELEGATE RESPONSIBILITIES TO HIM?

23 A YES MA'AM, IT KIND OF HELPS OUT A LITTLE BIT.

24 Q DID YOU DELEGATE RESPONSIBILITIES TO HIM TO TRY TO
25 OBTAIN ANY SECURITY CAMERA FOOTAGE IF IT WAS AVAILABLE?

1 A YES, WE DID.

2 Q AND WAS HE ABLE TO RETURN ANY SECURITY CAMERA FOOTAGE
3 TO YOU?

4 A NO, HE WAS NOT.

5 Q NO FURTHER QUESTIONS.

6 REXCROSS-EXAMINATION

7 BY MR. JENKINS:

8 Q WHEN DID YOU HAVE INVESTIGATOR BOWERS CHECK FOR
9 SECURITY CAMERA FOOTAGE?

10 A IT WAS PROBABLY SEVERAL DAYS OR EVEN WEEKS AFTER
11 THAT.

12 Q THAT IS ALL I HAVE.

13 THE COURT: THANK YOU, YOU CAN STEP DOWN.

14 MS. ZIMMERMAN: THE STATE CALLS CRYSTAL CARNES.

15 CRYSTAL CARNES, AFTER BEING DULY SWORN,

16 TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. ZIMMERMAN:

19 Q MS. CARNES, DO YOU LIVE WITH YOUR MOM AND DAD?

20 A YES, MA'AM.

21 Q WERE YOU LIVING WITH THEM LAST JANUARY?

22 A YES, MA'AM.

23 Q DO YOU REMEMBER THE INCIDENT THAT WE ARE HERE TO TALK
24 ABOUT TODAY?

25 A YES, MA'AM.

1 Q WHAT CAN YOU TELL ME ABOUT IT?

2 A I CAN TELL YOU THAT I WAS SCARED ONE NIGHT AND THEY
3 OPENED MY DOOR, THEY OPENED MY DOOR AND PUSHED MY DOOR
4 OPEN AND THEY CAME TO MY BED AND THEY SCARED ME. THEY
5 CAME TO MY BED AND THEY WOKE ME UP BY SCARING ME.

6 Q WHAT DID THEY DO TO YOU ONCE THEY CAME TO YOUR BED?

7 A THEY CAME TO MY BED AND SCARED ME AND THEY SAID,
8 SHHH, SHHH, SHHH, NOTHING IS GOING TO HAPPEN, BE QUIET, BE
9 QUIET AND I WOULDN'T BE QUIET.

10 Q AND WHAT DO YOU REMEMBER AFTER THAT?

11 A I REMEMBER GOING TO MY WINDOW, BREAKING THE BLIND ON
12 MY WINDOW. SO, I WENT TO THE WINDOW AND BROKE MY BLIND ON
13 MY WINDOW AND I REMEMBER TRYING TO GET OUT THE WINDOW.
14 AND I WAS TRYING TO GET OUT THE WINDOW, TWO GUYS PULLED ME
15 BACK ACROSS THE BED. AND THEN I WENT BACK ACROSS THE BED
16 I ALSO HIT MY CHIN ON THE SIDE OF THE BED AND FELL TO THE
17 GROUND. WHEN I FELL TO THE GROUND THEY ALSO STARTED
18 BEATING ME IN THE HEAD WITH THEIR FIST OR BRASS KNUCKLES,
19 I DON'T KNOW WHICH ONE WAS WHICH. WHEN THEY WERE BEATING
20 ME THEY ALSO TWISTED MY ARM AND IT BROKE MY ARM.

21 Q WHAT HAPPENED AFTER THAT?

22 A THEN I HEARD ONE OF THE GUYS SAY, DUCT TAPE. THEY
23 ALSO STARTED DUCT TAPING MY HEAD ALL THE WAY UP.

24 Q WHAT DO YOU REMEMBER AFTER THEY DUCT TAPED YOUR HEAD?

25 A I HEARD SHOTGUNS IN THE HOUSE, SOMEBODY HOLLERED

1 SHOTGUNS IN THE HOUSE.

2 Q WHAT HAPPENED AFTER THAT?

3 A AND ALL OF THEM TOOK OFF RUNNING. THEY ESCAPED FROM
4 ME.

5 Q WHAT HAPPENED AFTER THEY RAN?

6 A THEN I COME OUT OF MY ROOM AND I HEARD MY DADDY AND
7 MY COUSIN, B.R., WHICH IS B.R. HUNTER AND MY UNCLE WHICH
8 IS BILLY HUNTER DOWN THE HALLWAY, SO I JUST RAN TO THEM.
9 AND I WAS LIKE, AH HH, AH HH, HELP ME, HELP ME, HELP ME.
10 SO, THEY, B.R. HUNTER UN-DUCT TAPED ME AS QUICKLY AS HE
11 COULD BECAUSE I COULDN'T GET NO AIR TO ME.

12 Q B.R. HELPED YOU GET ALL THE DUCT TAPE OFF OF YOUR
13 HEAD?

14 A YES, MA'AM.

15 Q DID YOU GO TO THE HOSPITAL?

16 A YES.

17 Q DO YOU REMEMBER ANYTHING ABOUT YOUR INJURIES?

18 A YES, MA'AM. I WAS, MY HEAD HAD A BIG CUT IN THE BACK
19 OF MY HEAD FROM WHERE THEY HAD BEAT ME. AND IT WAS MY
20 STOMACH FROM WHERE HE HAD PUNCHED ME IN THE STOMACH AND
21 ALSO MY ARM.

22 Q HAVE THOSE THINGS HEALED UP NOW?

23 A YES, MA'AM.

24 Q DID YOU HAVE TROUBLE SLEEPING BACK AT THAT HOUSE
25 AFTER THIS?

1 A YES, MA'AM.

2 Q BUT Y'ALL MOVED NOW?

3 A YES, MA'AM.

4 Q DO YOU SLEEP BETTER NOW?

5 A YES, MA'AM.

6 Q NO FURTHER QUESTIONS.

7 MR. JENKINS: NO QUESTIONS, YOUR HONOR.

8 THE COURT: THANK YOU.

9 MS. ZIMMERMAN: AT THIS TIME THE STATE REST.

10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE HAVE
11 REACHED THE POINT WHERE THE STATE HAS COMPLETED THEIR
12 PRESENTATION OF EVIDENCE. AND IT IS ALMOST 5:00 O'CLOCK
13 SO WE ARE GOING TO RECESS FOR THE DAY AND JUST RETURN
14 TOMORROW MORNING AT 9:30. DON'T DO ANY OUTSIDE
15 INVESTIGATION, KEEP AN OPEN MIND, YOU HAVEN'T HEARD THE
16 ENTIRE CASE. DON'T TALK ABOUT THE CASE. WE WILL SEE YOU
17 AT 9:30 IN THE MORNING.

18 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
19 THE DAY.)

20 (WHEREUPON, STATE'S EXHIBIT NOS. 86, 97, 98, 99, 104,
21 105, 109, 111, 112 WERE MARKED FOR IDENTIFICATION
22 ONLY.)

23 THE COURT: OKAY. BEFORE WE RECESS FOR THE EVENING,
24 MR. JOHNSON, LET ME JUST MAKE SURE YOU UNDERSTAND ABOUT
25 YOUR RIGHT TO TESTIFY OR NOT TO TESTIFY. I KNOW THAT YOU

1 HAVE HAD SOME EXPERIENCE WITH THIS BUT FIRST OF ALL I AM
2 GOING TO ASK MS. FOLK TO SWEAR YOU IN, SIR.

3 ROY JOHNSON, AFTER BEING DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 THE COURT: WE HAVE REACHED THE STAGE OF THE TRIAL
6 WHERE TOMORROW YOU WILL BE ABLE TO PRESENT EVIDENCE THAT
7 YOU WISH TO PRESENT, OF COURSE YOU DON'T HAVE TO. BUT YOU
8 DO HAVE THE OPPORTUNITY TO AND THAT INCLUDES YOUR RIGHT TO
9 TESTIFY. AND IF YOU DID TESTIFY YOU WOULD BE ABLE TO TELL
10 YOUR SIDE OF THE STORY AND YOU WOULD BE ALSO SUBJECT TO BE
11 CROSS-EXAMINED JUST AS YOUR LAWYER HAS CROSS-EXAMINED THE
12 STATE'S WITNESSES. THE STATE WOULD CROSS-EXAMINE YOU
13 ABOUT ANY ISSUE THAT MIGHT BEAR ON ANYTHING THAT IS
14 RELEVANT TO THIS CASE OR ANYTHING THAT MIGHT AFFECT YOUR
15 CREDIBILITY. I DON'T KNOW, IS THERE ANYTHING THAT THE
16 STATE WOULD SEEK TO IMPEACH HIM WITH?

17 MS. ZIMMERMAN: NO, YOUR HONOR.

18 THE COURT: SO, THERE IS NO PRIOR RECORD ISSUE AND IF
19 YOU CHOSE NOT TO TESTIFY, MR. JOHNSON, I WOULD TELL THE
20 JURY AT THE END OF THE CASE THAT YOU HAVE THE RIGHT TO
21 REMAIN SILENT GUARANTEED BY LAW AND THEY COULD NOT HOLD IT
22 AGAINST YOU OR TAKE IT INTO ACCOUNT WHATSOEVER. THEY
23 COULD NOT EVEN DISCUSS THAT FACT BACK IN THE JURY ROOM OR
24 RELY ON IT IN ANY WAY TO REACH THEIR VERDICT. DO YOU
25 UNDERSTAND THAT, SIR?

1 MR. JOHNSON: YES, SIR.

2 THE COURT: YOU ALSO HAVE THE RIGHT TO GIVE THE
3 CLOSING ARGUMENT TO THE JURY. THAT IS, MR. JENKINS, IF
4 YOU DID NOT PRESENT THE EVIDENCE, WOULD HAVE THE LAST
5 WORD, SO TO SPEAK, BY GIVING THE FINAL CLOSING ARGUMENT TO
6 THE JURY. IF YOU DID PRESENT EVIDENCE THEN THE STATE
7 WOULD HAVE THE RIGHT TO GIVE THE FINAL CLOSING ARGUMENT.
8 SO, THE RIGHT TO TESTIFY IS A PERSONAL RIGHT THAT YOU
9 HAVE, IT IS YOUR RIGHT, NOBODY ELSE'S. YOU ARE THE ONE
10 THAT HAS TO MAKE UP YOUR MIND ABOUT THAT BUT I HAVE TO
11 MAKE SURE YOU UNDERSTAND THE RIGHT THAT YOU DO HAVE, THE
12 CONSEQUENCES OF TESTIFYING OR NOT TESTIFYING. AND MAKE
13 SURE YOU HAVE HAD ENOUGH TIME TO TALK TO MR. JENKINS ABOUT
14 THAT. HAVE YOU UNDERSTOOD ALL OF MY STATEMENTS, SIR?

15 MR. JOHNSON: YES, SIR.

16 THE COURT: ALL RIGHT. AND I WILL JUST ASK YOU IN
17 THE MORNING IF YOU HAVE DECIDED WHETHER YOU WANT TO
18 TESTIFY OR NOT AND DO YOU HAVE ANY QUESTIONS OF ME ABOUT
19 YOUR RIGHT TO TESTIFY?

20 MR. JOHNSON: NO, SIR.

21 THE COURT: DO YOU HAVE ANY QUESTIONS OF ME ABOUT THE
22 CONSEQUENCES TO TESTIFY OR NOT TO TESTIFY?

23 MR. JOHNSON: NO, SIR.

24 THE COURT: THANK YOU FOR YOUR ATTENTION AND WE WILL
25 SEE YOU IN THE MORNING. ANYTHING FURTHER?

1 MS. ZIMMERMAN: NOTHING FROM THE STATE.

2 MR. JENKINS: YOUR HONOR, I WOULD RESERVE ANY RIGHT
3 TO MAKE ANY MOTIONS AT THE CLOSE OF THE STATE'S CASE UNTIL
4 IN THE MORNING.

5 THE COURT: YES, SIR.

6 (WHEREUPON, THE CASE WILL RESUME THE NEXT MORNING.)

7 THE COURT: ANY MOTIONS AT THIS STAGE, THE STATE REST
8 YESTERDAY. YES SIR, MR. JENKINS.

9 MR. JENKINS: YOUR HONOR, I WILL MAKE A MOTION FOR A
10 DIRECTED VERDICT FOR LACK OF SUFFICIENT EVIDENCE AT THIS
11 TIME.

12 THE COURT: THE MOTION IS RESPECTFULLY DENIED.

13 MR. JENKINS: WE ARE NOT CALLING ANY WITNESSES.

14 THE COURT: OKAY. I WILL BE GLAD TO DISCUSS ANY
15 CHARGES AND THE VERDICT FORM. THE REQUEST TO CHARGE, MR.
16 JENKINS, YOU WANT TO BE HEARD ON THOSE, SIR?

17 MR. JENKINS: YES SIR, YOUR HONOR. BRIEFLY, I KNOW
18 MS. ZIMMERMAN HANDED UP TO YOU THE CHARGES THAT WE USED
19 THE LAST TIME.

20 THE COURT: CORRECT.

21 MR. JENKINS: I THINK YOU INDICATED THAT YOU WERE
22 FAIRLY WELL PLEASED WITH THAT CHARGE. I DON'T HAVE ANY
23 OBJECTION TO THE CHARGE BUT I DO WANT TO POINT OUT ONE
24 SPOT, ON PAGE 307 IT SAYS ACCIDENTALLY OR INVOLVE, I THINK
25 INVOLVE SHOULD BE INVOLUNTARY. YOUR HONOR, ON DEFENSE

1 REQUEST TO CHARGE NUMBER ONE, TWO AND THREE. WE WOULD
2 SUBMIT I BELIEVE THEY ARE CLEAR AND ACCURATE AND WE THINK
3 SHOULD BE INCLUDED IN THE REQUEST TO CHARGE.

4 THE COURT: WHAT IS THE STATE'S RESPONSE.

5 MS. ZIMMERMAN: AS TO DEFENSE REQUEST ONE, THE CHARGE
6 THAT WE SUBMITTED GOES OVER THE HAND OF ONE IS THE HAND OF
7 ALL IN GREAT DETAIL. AND ON PAGE 307, IT TALKS ABOUT
8 INTENT BEING NECESSARY. I BELIEVE THIS CHARGE MAY BE
9 UNNECESSARILY CONFUSING TO THE JURY. AND I BELIEVE THAT
10 WHAT HE IS TRYING TO COVER IN THIS CHARGE HE HAS ALREADY
11 SUBMITTED IN THE TOTAL BODY OF THAT THREE OR SO PAGES THAT
12 EXPLAINS THE HAND OF ONE IS THE HAND OF ALL AND IT IS
13 NECESSARY THAT THERE BE INTENT. AS TO DEFENSE REQUEST
14 TWO, ON PAGE 306, LINES 1 THROUGH 4. IT SAYS THAT UNDER
15 THIS THEORY THAT THE STATE MUST PROVE BEYOND A REASONABLE
16 DOUBT THAT THE DEFENDANT'S ACT WERE A NATURAL AND PROBABLE
17 CONSEQUENCE OF THE COMMON PLAN. THIS IS EXACTLY WHAT HE
18 IS ASKING FOR IN PARAGRAPH 2. IT SAYS IT DOESN'T USE THE
19 WORDS, YOU MUST FIND THE DEFENDANT NOT GUILTY BUT IT STILL
20 COVERS THAT THE STATE HAS THE BURDEN TO PROVE THOSE. AND
21 THEN DEFENSE REQUEST 3, ON PAGE 313 AND ON TO THE NEXT
22 PAGE GOES INTO GREAT DETAIL ABOUT THE DEFENSE OF COERCION
23 OF DURESS AND WHAT IS NECESSARY THERE. AGAIN, THE ONLY
24 DIFFERENCE IS, IS IT DOESN'T END WITH YOU MUST FIND HIM
25 NOT GUILTY WHICH IS THE EXTRA PART HE IS PUTTING IN IN THE

1 DEFENSE PARAGRAPH. AND I BELIEVE THAT PARAGRAPH
2 SUFFICIENTLY COVERS WHAT HE IS ASKING FOR.

3 THE COURT: AS FAR AS THE POSSESSION OF A WEAPON
4 CHARGE, MY MEMORY IS ABHAN IS NOT CONSIDERED A VIOLENT
5 CRIME IN THAT SECTION, IS THAT CORRECT?

6 MR. JENKINS: I BELIEVE THAT IS CORRECT.

7 MS. ZIMMERMAN: THAT IS CORRECT.

8 THE COURT: BUT THE OTHER THREE ARE.

9 MS. ZIMMERMAN: YES, SIR.

10 THE COURT: MR. JENKINS, AS FAR AS YOUR REQUEST
11 NUMBER 3, I THINK THE CHARGE ON COERCION OR DURESS COVERS
12 THE BASIS OF YOUR CHARGE. WHAT WOULD THIS ADD TO WHAT IS
13 ALREADY PROPOSED.

14 MR. JENKINS: YOUR HONOR, THERE MAY BE ANOTHER WORD
15 THAN WAS INTENDED. ON PAGE 314, LINE 3, THERE IS ANY
16 REASONABLE LEVEL ON ONE PART OF IT. I JUST FELT THAT THE
17 DEFENDANT'S REQUEST TO CHARGE WOULD MORE ACCURATELY STATE
18 THE LAW AS FAR AS COERCION OR DURESS. I DON'T KNOW THAT
19 THAT WORD, LEVEL, THAT WORD LEVEL MAY HAVE THROWN ME OFF A
20 LITTLE BIT ALSO, YOUR HONOR. I DON'T KNOW WHAT THE PROPER
21 WORD WOULD BE THOUGH. MAYBE, OPTION.

22 THE COURT: I THINK OPTION WOULD BE FINE. AND AS TO
23 THE CHARGE NUMBER 2. I KNOW THERE WAS FAIRLY A RECENT
24 CASE, I THINK THE LANGUAGE I HAVE USED IN THE PAST IS
25 SOMETHING ALONG THE LINES OF A PERSON WHO ENJOINS WITH

1 ANOTHER AND COMMITTED AN UNLAWFUL ACT IS CRIMINALLY
2 RESPONSIBLE FOR EVERYTHING THAT IS DONE BY THE OTHER
3 PERSON, CARRYING OUT THE COMMON PLAN AND PURPOSE.

4 MR. JENKINS: I BELIEVE THAT COVERS NUMBER 2, YOUR
5 HONOR.

6 THE COURT: AND NUMBER 1, AS I UNDERSTAND IT YOU ARE,
7 THAT EVEN THOUGH THE HAND OF ONE IS THE HAND OF ALL
8 APPLIES, THE DEFENDANT IS NOT RESPONSIBLE FOR SOME TYPE OF
9 SPECIFIC MALICE.

10 MR. JENKINS: YES SIR, YOUR HONOR.

11 THE COURT: WHAT IS THE STATE'S POSITION ON THAT.

12 MS. ZIMMERMAN: YOUR HONOR, I BELIEVE THAT THAT, IN
13 YOUR STATEMENT THAT IT MUST BE A NATURAL AND PROBABLE
14 CONSEQUENCE OF THE CRIMINAL ACTIVITY OR THE CRIMINAL PLAN,
15 I THINK THAT COVERS WHAT HE IS ASKING FOR HERE. I THINK
16 THIS PARTICULAR STATEMENT JUST MAY BE CONFUSING TO THE
17 JURY BECAUSE OF THE WAY THAT IT IS WORDED BUT I THINK IT
18 IS COVERED IN THE DETAILED OUTLINE OF THE HAND OF ONE IS
19 THE HAND OF ALL THEORY.

20 THE COURT: WELL, I WILL CERTAINLY LET YOU ARGUE
21 SPECIFIC ACT OR MINDSET OR SPECIFIC COCONSPIRATORS IS NOT
22 A NATURAL OR PROBABLE CONSEQUENCE OF A PLAN. AND I THINK
23 THAT WOULD BE AN ARGUMENT THAT COULD BE MADE WITHIN THE
24 FRAMEWORK IS THE HAND OF ONE IS THE HAND OF ALL AS IT IS
25 CURRENTLY SET OUT. BUT FOR ME TO GET INTO SPECIFIC

1 EXAMPLES AS TO WHAT IS KNOWN AS PROBABLE OR NATURAL
2 CONSEQUENCES, I THINK THE GENERAL CHARGE COULD BE
3 CONFUSING TO THE JURY. BUT I WILL MAKE THE CHARGES A PART
4 OF THE RECORD.

5 (WHEREUPON, COURT'S EXHIBIT NO. 1 WAS MARKED FOR
6 IDENTIFICATION ONLY.)

7 MR. JENKINS: THANK YOU, YOUR HONOR.

8 THE COURT: ANYTHING FURTHER?

9 MS. ZIMMERMAN: NOTHING FROM THE STATE.

10 MR. JENKINS: NOTHING, YOUR HONOR.

11 THE COURT: BRING THE JURY IN, PLEASE.

12 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
13 APPROXIMATELY 10:30 A.M.)

14 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN, I
15 HOPE YOU HAD A GOOD EVENING. WE ARE READY TO GET STARTED
16 THIS MORNING. YOU HAVE HEARD THE STATE REST ITS CASE AND
17 THEY CONCLUDED THEIR PRESENTATION OF THE EVIDENCE AND AT
18 THIS STAGE MR. JOHNSON HAS THE OPPORTUNITY BUT NOT THE
19 OBLIGATION TO PRESENT ANY EVIDENCE HE WISHES TO. SO, YES
20 SIR, MR. JENKINS.

21 MR. JENKINS: THE DEFENSE REST, YOUR HONOR.

22 THE COURT: THAT MEANS YOU HAVE HEARD ALL THE
23 EVIDENCE YOU ARE GOING TO HEAR IN THIS CASE AND IT IS NOW
24 TIME FOR THE CLOSING ARGUMENTS FROM THE LAWYERS. SO, WITH
25 THAT, MS. ZIMMERMAN.

1 MS. ZIMMERMAN: THANK YOU, YOUR HONOR, IF IT PLEASE
2 THE COURT. WELL, AS THE JUDGE TOLD YOU YOU HAVE HEARD ALL
3 THE WITNESSES THAT YOU ARE GOING TO HEAR IN THIS CASE.
4 AND NOW IT IS MY JOB TO COME BACK AND TRY TO SUMMARIZE
5 WHAT THE STATE'S CASE IS AND THE RELEVANT FACTORS FOR YOU
6 TO CONSIDER FROM THE STATE'S POINT OF VIEW WHEN YOU GO
7 BACK IN THE JURY ROOM. AND IN ORDER TO DO THAT I AM GOING
8 TO TAKE JUST A MOMENT AND GO THROUGH THE DIFFERENT CRIMES
9 THAT THE DEFENDANT IS CHARGED WITH AND THE ELEMENTS OF
10 EACH ONE OF THESE CRIMES AND TRY TO SHOW YOU WHAT THE
11 STATE CONTENDS IT HAS SHOWN TO PROVE EACH OF THESE
12 ELEMENTS. HE IS CHARGED WITH FIVE DIFFERENT CRIMES,
13 BURGLARY IN THE FIRST DEGREE, KIDNAPPING, ARMED ROBBERY,
14 ASSAULT AND BATTERY WITH A HIGH AND AGGRAVATED NATURE AND
15 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
16 CRIME. AND AS THE JUDGE IS GOING TO TELL YOU IN HIS
17 CHARGE, IT IS THE STATE'S BURDEN TO PROVE EACH ONE OF
18 THOSE ELEMENTS. I AM GOING TO FIRST TALK TO YOU ABOUT THE
19 BURGLARY IN THE FIRST DEGREE. THIS IS THE BREAKING AND
20 ENTERING OF A DWELLING OR RESIDENCE WITH THE INTENT TO
21 COMMIT A CRIME ACCOMPANIED BY AN AGGRAVATED FACTOR AND
22 THERE ARE SEVERAL AGGRAVATED FACTORS LISTED HERE. THE
23 STATE HAS TO PROVE TO YOU ONE OF THOSE. WELL, THE FIRST
24 THING IS, THERE HAS BEEN A BREAKING AND ENTERING. THERE
25 IS TESTIMONY ALL OVER FROM THE VICTIMS, FROM THE

1 CODEFENDANTS THAT THE DOOR WAS BUSTED IN. THERE IS NOT
2 REALLY MUCH DISPUTE TO THAT. THERE HAS ALSO BEEN
3 TESTIMONY THAT THIS WAS THE RESIDENCE OF RICHARD AND ROBIN
4 COFER AND CRYSTAL CARNES. THERE IS NOT MUCH DISPUTE TO
5 THAT. WITH THE INTENT TO COMMIT A CRIME. YOU HAVE BEEN
6 TOLD BY CHAUNCEY PARTLOW AND BY AUSTIN PARTLOW THAT THEY
7 WENT INSIDE THAT RESIDENCE TO TAKE SOME MONEY. THEY MAYBE
8 HIT THE WRONG HOUSE, MAY OF BEEN JUST A RANDOM THING, NOT
9 SURE IF THEY WERE GOING TO A DRUG DEALERS HOUSE OR JUST
10 PICKED ONE OUT OF THE AIR. BUT FOR WHATEVER REASON THEY
11 CHOSE THIS HOUSE AND THEY WENT IN THERE TO TRY TO STEAL
12 SOMETHING. YOU HAVE HEARD TESTIMONY FROM THE VICTIMS THAT
13 THEY ACTUALLY DID TAKE \$100.00 DOLLARS FROM THEN AND THEY
14 TOOK MR. COFER'S WATCH AND POCKETKNIFE, SO THEY HAD THE
15 INTENT TO COMMIT A CRIME. THE AGGRAVATING FACTORS HERE,
16 WERE THEY ARMED WITH A DEADLY WEAPON. DID THEY CAUSE
17 PHYSICAL INJURIES TO ANY OF THE PARTIES INSIDE. DID THEY
18 USE ANY KIND OF DANGEROUS INSTRUMENT, DISPLAYED WHAT
19 APPEARED TO BE A FIREARM OR ENTER AT THE NIGHTTIME. NOW,
20 YOU SEEN THE GUN AND I COULD WAIVE IT AROUND UP HERE BUT
21 SOME OF YOU MAY BE DUCKING UNDER YOUR CHAIRS SO I AM NOT
22 GOING TO MAKE ANYBODY NERVOUS. BUT THERE HAS BEEN A .45
23 CALIBER PISTOL ADMITTED INTO EVIDENCE. AND THERE HAS BEEN
24 TESTIMONY FROM CODEFENDANTS THAT THEY HAD A PISTOL AND
25 THERE HAS BEEN TESTIMONY FROM MR. COFER THAT HE GOT HIT

1 WITH A PISTOL. SO, THAT GUN SATISFIES SEVERAL OF THESE
2 AGGRAVATING FACTORS BECAUSE A .45 CALIBER PISTOL IS A
3 DEADLY WEAPON. THAT SATISFIES THREE. AND REMEMBER, WE
4 ONLY HAVE TO PROVE ONE AGGRAVATING FACTOR. THERE HAS ALSO
5 BEEN PHYSICAL HARM. YOU HAVE SEEN THE PICTURE OF THE
6 PHYSICAL HARM OF MR. COFER. YOU HAVE SEEN THE INJURY HE
7 SUFFERED. YOU HAVE ALSO HEARD CRYSTAL TELL YOU ABOUT HER
8 ARM BEING TWISTING BEHIND HER BACK SO FAR THAT IT WAS
9 BROKEN. SO, THERE HAS BEEN PHYSICAL HARM TO THE VICTIMS.
10 AND FINALLY YOU HEARD TESTIMONY THAT THIS HAPPENED AT THE
11 NIGHTTIME. SO, WHILE THE STATE ONLY HAS TO PROVE ONE OF
12 THOSE AGGRAVATING FACTORS THERE HAVE BEEN FIVE. THIS
13 CRIME HAPPENED ON JANUARY THE 7TH.

14 THE NEXT OFFENSE IS A KIDNAPPING. AND YOU HAVE
15 WATCHED TV OR MOVIES YOU MIGHT HAVE AN IDEA IN YOUR HEAD
16 OF WHAT YOU THINK KIDNAPPING IS. BUT LAY THAT ASIDE AND
17 LISTEN TO THE LAW AS THE JUDGE CHARGES IT BECAUSE WHAT HE
18 IS GOING TO TELL YOU IS THAT A KIDNAPPING INCLUDES THE
19 SEIZURE OR THE CONFINEMENT OF A PERSON. NOT JUST LIKE IN
20 THE MOVIES WHEN THEY THROW YOU IN THE TRUNK AND DRIVE OFF.
21 IF YOU CONFINED A PERSON TO WHERE THEY NO LONGER CAN
22 EXERCISE THEIR FREE ABILITY TO MOVE ABOUT AS THEY PLEASE
23 THEN THAT IS AN ELEMENT OF KIDNAPPING AS OUR STATE DEFINES
24 IT. SEIZURE OR CONFINEMENT OF ANY PERSON BY ANY MEANS
25 WITHOUT AUTHORITY OF THE LAW. YOU HAVE HEARD TESTIMONY

1 ABOUT MR. COFER BEING HELD DOWN ON THE GROUND, A FOOT IN
2 THE BACK OF HIS NECK AND BEING TOLD, DON'T MOVE, THIS
3 ISN'T WORTH DIEING FOR. YOU HAVE HEARD TESTIMONY ABOUT
4 CRYSTAL BEING DUCT TAPPED AND HELD BY TWO MEN IN HER BED.
5 THAT IS SEIZURE OR CONFINEMENT OF A PERSON. THAT IS, BY
6 ANY MEANS, WHETHER IT IS A THREAT OF FORCE, THE THREAT OF
7 THAT GUN THEN HE KNOWS HE IS BEHIND IT OR WHETHER IT IS
8 THAT DUCT TAPE WRAPPED AROUND CRYSTAL'S HEAD. THOSE ARE
9 MEANS OF CONFINEMENT. AND THEY DID NOT HAVE AUTHORITY TO
10 CONFINE THESE VICTIMS IN THAT WAY. SO THIS CRIME OCCURRED
11 ON JANUARY THE 7TH OF 2008.

12 THE NEXT ONE IS AN ARMED ROBBERY. AN ARMED ROBBERY
13 IS THE INTENTIONALLY TAKING AWAY THE PERSONAL PROPERTY OF
14 ANOTHER FROM THE PERSON OR PRESENCE OF ANOTHER WITHOUT
15 THEIR CONSENT, WITH INTIMIDATION OR THREAT OF VIOLENCE AND
16 WHILE ARMED WITH A DEADLY WEAPON. NOW, YOU HEARD THE
17 TESTIMONY THAT THEY TOOK ABOUT \$100.00 DOLLARS AND THEY
18 TOOK THE KNIFE AND THE POCKET WATCH. THAT SATISFIES THIS,
19 THEY DIDN'T HAVE TO GET THE \$80 TO \$100,000.00 DOLLARS
20 THAT THEY WERE HOPING TO GET, THEY TOOK SOMETHING FROM
21 THESE VICTIMS. AND THEY INTENDED TO TAKE THOSE THINGS.
22 THEY TOOK IT AWAY FROM THEIR PERSON, OUT OF THEIR HOUSE
23 WITHOUT THEIR CONSENT WITH THE INTIMIDATION OR THREAT OF
24 VIOLENCE. YOU HAVE SEEN THE PICTURES, YOU HAVE SEEN THE
25 FORCE THAT WAS USED. RICHARD COFER DIDN'T GIVE THESE

1 THINGS UP, HE DIDN'T HAVE A CHANCE, HE WASN'T ASKING IF HE
2 WANTED TO GIVE IT UP. AND THEY WERE ARMED WITH A DEADLY
3 WEAPON. THERE AGAIN, I AM NOT GOING TO WAIVE THE PISTOL
4 AROUND AND MAKE EVERYBODY RUN BUT IT HAS BEEN ADMITTED
5 INTO EVIDENCE, THERE WAS A .45 CALIBER PISTOL. SO, THIS
6 CRIME OCCURRED ON JANUARY THE 7TH OF 2008.

7 NEXT IS THE ASSAULT AND BATTERY OF A HIGH AND
8 AGGRAVATED NATURE. BASICALLY THREE ELEMENTS OF THIS,
9 THERE HAS TO HAVE BEEN AN ASSAULT WHICH IS A THREAT OF AN
10 UNWANTED TOUCHING. A BATTERY WHICH IS CARRYING OUT THAT
11 THREAT AND THEN AGAIN, ONE AGGRAVATED FACTOR, ONLY ONE IS
12 NECESSARY. BUT IT WOULD BE THE STATE'S INTENTION THAT
13 THERE ARE SEVERAL OF THESE THAT WE HAVE. RICHARD COFER
14 DID NOT WANT WHAT HAPPENED TO THEM ON JANUARY THE 7TH TO
15 HAPPEN. CRYSTAL CARNES DID NOT WANT WHAT HAPPENED TO HER
16 ON JANUARY THE 7TH TO HAPPEN. THERE WAS A THREAT OF FORCE
17 AND IT WAS CARRIED OUT. SO, THE ASSAULT AND BATTERY HAVE
18 BOTH BEEN SATISFIED.

19 NOW, AGGRAVATING FACTORS, WE HAVE THE PISTOL AGAIN,
20 THAT .45 CALIBER WAS IN THAT HOUSE AND IT WAS USED TO
21 ASSAULT RICHARD AND IT WAS THERE WHILE CRYSTAL WAS BEING
22 DUCT TAPED. THERE WAS SERIOUS BODILY INJURY. YOU HEARD
23 ABOUT RICHARD'S BROKEN RIB, YOU HEARD ABOUT CRYSTAL'S
24 BROKEN ARM. THEY INTENDED TO COMMIT A FELONY. WE JUST
25 TALKED ABOUT SEVERAL OF THEM. THE BURGLARY, THE ARMED

1 ROBBERY, THE KIDNAPPING. SATISFIES THAT ELEMENT. THERE
2 WAS A DISPARITY IN PHYSICAL CONDITIONS. CRYSTAL CANNOT
3 TELL YOU WHO DID THIS TO HER BUT SHE CAN TELL YOU THAT
4 THERE WERE TWO BIG MEN ON TOP OF HER WHILE SHE WAS LAYING
5 IN HER BED. THEY ARE BIGGER THAN HER AND THEN THE
6 DIFFERENCE IN SEXES IS ALSO AN AGGRAVATING FACTOR. SO,
7 AGAIN, WHILE THE STATE ONLY NEEDS TO PROVE ONE OF THESE IT
8 WOULD BE THE STATE'S POSITION THAT THERE ARE ACTUALLY FIVE
9 OF THE AGGRAVATING FACTORS SATISFIED. THE ASSAULT AND
10 BATTERY OF A HIGH AND AGGRAVATED NATURE OCCURRED ON
11 JANUARY THE 7TH OF 2008.

12 THE NEXT CHARGE IS THE WEAPON DURING THE COMMISSION
13 OF A VIOLENT CRIME. KNOWINGLY POSSESSING A FIREARM OR
14 WHAT APPEARS TO BE A FIREARM WHILE COMMITTING A VIOLENT
15 CRIME. YOU ARE GOING TO HEAR THE CHARGE FROM THE JUDGE
16 ABOUT A THEORY OF LAW CALLED THE ACT OF ONE IS THE ACT OF
17 ALL. AND WHAT THAT TELLS YOU IS THAT IF THREE PEOPLE WENT
18 IN THIS HOUSE WITH THE PLAN TO COMMIT THIS BURGLARY, TO
19 COMMIT THIS ARMED ROBBERY, THEY DIDN'T ALL THREE HAVE TO
20 POSSES THE GUN. IF ONE HAD THE GUN AND THEY HAD THE
21 COMMON PLAN TO COMMIT THIS CRIME THEY ARE ALL GUILTY OF
22 THIS ACT AS LONG AS THEY KNOWINGLY AND COLLECTIVELY WERE
23 IN POSSESSION OF THAT GUN. NOW, THERE HAS BEEN STATEMENTS
24 ADMITTED, MR. JOHNSON'S OWN STATEMENTS. HE KNEW THERE WAS
25 A GUN. AS A MATTER OF FACT, HE EVEN SAYS THERE WERE TWO

1 GUNS. HE DESCRIBES ONE THAT WAS SOLID BLACK AND ONE WAS
2 SILVER WITH A BLACK HANDLE ON IT. SO, HE KNEW THEY WERE
3 POSSESSING A WEAPON. AND WHETHER THERE WAS ACTUAL
4 TESTIMONY THAT WEAPON WENT INTO HIS HAND DOES NOT MATTER.
5 IF HE KNEW THERE WAS A WEAPON AND HE KNEW WHAT THEY WERE
6 IN THERE DOING THESE ELEMENTS HAVE BEEN MET AND HE KNEW
7 IT. HE KNEW THEY WERE IN POSSESSION, HE KNEW THERE WAS A
8 FIREARM AND WHILE COMMITTING A VIOLENT CRIME. OUR LAW
9 DEFINES WHAT A VIOLENT CRIME IS. AND IN OUR LAW BURGLARY
10 IN THE FIRST DEGREE IS A VIOLENT CRIME, KIDNAPPING IS A
11 VIOLENT CRIME AND ARMED ROBBERY IS A VIOLENT CRIME. SO,
12 AGAIN, ANY ONE OF THESE LEADS YOU TO THAT CHARGE BUT HERE
13 WE HAVE GOT THREE. THERE WAS A POSSESSION OF A WEAPON
14 DURING THE COMMISSION OF A VIOLENT CRIME, THIS CRIME
15 OCCURRED ON JANUARY THE 7TH OF 2008.

16 NOW I TALKED TO YOU ABOUT THE CRIMES AND ABOUT THE
17 ELEMENTS BUT THERE REAL QUESTION IN THIS CASE IS WHO DID
18 IT. THERE IS NOT MUCH DISPUTE THAT ALL OF THESE CRIMES
19 OCCURRED. SO, NOW, LET'S LOOK AT THE TESTIMONY THAT
20 POINTS TO THAT MAN AS THE GUILTY PARTY. FIRST, WE HAD
21 CHAUNCEY PARTLOW AND HE TOLD YOU I PLEAD GUILTY TO THIS, I
22 HAD A PART IN IT, I DID IT BUT I DIDN'T DO IT BY MYSELF.
23 I DID IT WITH MY COUSIN AUSTIN AND I DID IT WITH ROY
24 JOHNSON. HE TOLD YOU ABOUT ALL THREE'S ROLE, HE TOLD YOU
25 THEY ALL WENT IN THE HOUSE. AND HE ADMITTED, WHEN MR.

1 JENKINS WAS CROSSING HIM THAT HIS INITIAL STATEMENT TO LAW
2 ENFORCEMENT THAT HE MINIMIZED HIS ROLE. BUT HE ALSO
3 ADMITTED THAT HE WAS INVOLVED, HE SAID THEY ALL THREE KNEW
4 WHAT WAS GOING ON, THEY ALL THREE COMMITTED THESE CRIMES.
5 YOU HAVE HEARD FROM WILLIE ASHFORD WHO TESTIFIED THAT HE
6 IS IN HIS BED ASLEEP WITH HIS FAMILY AT 3:00 O'CLOCK IN
7 THE MORNING WHENEVER ROY JOHNSON SHOWS UP AT HIS HOUSE,
8 COVERED IN GRIM, SOAKING WET AND SAYS, I AM IN TROUBLE AND
9 I NEED HELP GETTING OUT OF HERE. AND WHILE WE ARE ON THE
10 SUBJECT OF WILLIE, THE DEFENDANT'S STATEMENT SAYS WILLIE
11 GAVE ALL THE DIRECTIONS BECAUSE WILLIE DIDN'T HAVE A
12 LICENSE, HE MADE THE DECISION ON WHERE TO GO. AND THAT IS
13 THE REASON WE TOOK BACK ROADS, I WASN'T TRYING TO HIDE
14 FROM ANYBODY. WELL, THE PROBLEM WITH THAT IS, WILLIE
15 DOESN'T KNOW ROY JOHNSON'S BROTHER, HADN'T NEVER BEEN TO
16 HIS HOUSE, AS A MATTER OF FACT, DIDN'T EVEN REALLY KNOW
17 WHAT COUNTY THEY WENT TO, MAYBE IT WAS UNION, MAYBE IT WAS
18 FAIRFIELD, I AM NOT SURE. SO, YOU KNOW WHO WAS GIVING
19 DIRECTIONS THAT NIGHT AND WE KNOW WHY THEY AVOIDED THE
20 SCENE OF THE CRIME BECAUSE THAT DEFENDANT DIDN'T WANT TO
21 GO BACK THERE. SO, YOU HAVE THAT TESTIMONY FROM WILLIE
22 ABOUT WHAT HE EXPERIENCED AT 3:00 O'CLOCK IN THE MORNING
23 THAT SATURDAY MORNING. WE HAD TESTIMONY FROM AUSTIN
24 PARTLOW WHO ALSO SAID I WAS INVOLVED IN THIS, I PLEAD
25 GUILTY BUT I DIDN'T DO IT BY MYSELF. IT WAS ME AND

1 CHAUNCEY, MY COUSIN AND ROY JOHNSON. AND HE TOLD YOU
2 ABOUT THEIR ROLES. HE TOLD YOU THAT THEY GOT OUT THERE AT
3 THE BRICK HOUSE AND THEY STOOD THERE AND THEY TALKED ABOUT
4 THE PLAN AND HE DIDN'T KNOW WHO LIVED THERE, HE AND
5 CHAUNCEY ARE FROM NORTH CAROLINA, HE LIVED IN ROCKINGHAM,
6 JOHNSON LIVED IN GASTONIA. THE GUY FROM SOUTH CAROLINA
7 PICKED THE HOUSE. THE GUY FROM SOUTH CAROLINA TOLD US THE
8 PLAN. MR. JOHNSON GREW UP IN CARLISLE, BLAIR AREA, THAT
9 IS A WHOLE LOT CLOSER TO NEWBERRY THAN GASTONIA, A WHOLE
10 LOT TO NEWBERRY THAN ROCKINGHAM. AND AUSTIN TOLD YOU, I
11 WAS INVOLVED BUT SO WAS ROY JOHNSON. NOW, YOU ALSO HEARD
12 STATEMENTS FROM THE VICTIMS ABOUT WHAT HAPPENED TO THEM.
13 AND WE KNOW THAT THERE WERE THREE PEOPLE ACTIVELY INVOLVED
14 IN THIS CRIME, NOT TWO PEOPLE INVOLVED AND ONE STANDING
15 AROUND, BUT THREE INVOLVED. AND HOW DO WE KNOW THAT.
16 BECAUSE RICHARD COFER TOLD YOU, THE WHOLE TIME I WAS DOWN
17 ON THE GROUND THERE WAS ONE GUY STANDING OVER ME, HAD HIS
18 FOOT IN THE BACK OF MY NECK TELLING ME, DON'T MOVE, DON'T
19 SAY ANYTHING, STAY WHERE YOU ARE. ONE GUY STAYED WITH HIM
20 THE WHOLE TIME. CRYSTAL TOLD YOU THAT IT TOOK TWO OF THEM
21 TO HOLD HER IN HER BED. ONE HELD HER DOWN WHILE THE OTHER
22 DUCT TAPED HER. THAT IS THREE GUYS IN THE HOUSE, THREE
23 GUYS INVOLVED. SO, THE STORY THAT ROY WAS OUTSIDE AND
24 MAYBE GOT KNOCKED DOWN INTO THE HOUSE, WE KNOW THAT THERE
25 WERE THREE OF THEM THERE. WHILE WE ARE TALKING ABOUT

1 ROY'S STORIES, LET'S LOOK AT THE THREE DIFFERENT
2 STATEMENTS HE GAVE. THERE ARE SO MANY DISPARITIES IN
3 THESE THREE STORIES I DON'T KNOW HOW TO MAKE HEADS OR
4 TAILS FROM IT. I WILL GIVE YOU AN EXAMPLE. IN HIS AUDIO
5 RECORDING WHILE HE IS IN TRANSIT BACK FROM GASTONIA HE
6 SAYS, I CAME DOWN TO NEWBERRY BECAUSE MY GIRLFRIEND'S
7 UNCLE HAD JUST PASSED AWAY. HE GOES ON TO SAY, THEY
8 DIDN'T EVEN TAKE THAT INTO CONSIDERATION, THEY DIDN'T
9 THINK ABOUT HOW I FELT. MY GIRLFRIEND'S UNCLE HAD JUST
10 PASSED AWAY. THEN IN HIS STATEMENT TWO DAYS LATER TO THE
11 LIEUTENANT AFTER HIS BOND HEARING HE SAYS THAT HIS
12 GIRLFRIEND'S UNCLE WAS BRAIN DEAD. SO, HE IS NO LONGER
13 JUST PASSED AWAY, HE IS BRAIN DEAD. THEN IN HIS
14 TRANSCRIPT WHICH YOU HEARD HE SAYS, I WAS GOING TO VISIT
15 MY GIRLFRIEND'S UNCLE IN THE HOSPITAL. WHEN YOU ARE
16 MAKING IT UP IT IS HARD TO KEEP IT STRAIGHT. AND SPEAKING
17 OF THAT, I ASKED HIM, YOUR GIRLFRIEND'S UNCLE THAT YOU
18 DROVE DOWN FROM GASTONIA TO NEWBERRY TO VISIT IN THE
19 HOSPITAL, WHAT IS HIS NAME. I DON'T KNOW. WHAT ROOM
20 NUMBER WAS HE IS. I DON'T KNOW. I WAS GOING TO CALL MY
21 GIRLFRIEND WHEN I GOT THERE. I AM GOING TO DRIVE A COUPLE
22 OF HOURS DOWN THE BACK ROADS, DRINKING MOONSHINE, SMOKING
23 MARIJUANA, CARRYING A GUN, STOP ON THE WAY TO BUY BULLETS
24 SO I CAN GO TO THE HOSPITAL TO VISIT MY UNCLE WHO IS
25 EITHER DEAD OR BRAIN DEAD OR SICK AND IN THE HOSPITAL. I

1 DON'T KNOW HIS NAME, I DON'T KNOW HIS ROOM NUMBER. LET'S
2 TALK ABOUT THE BULLETS. ON THE WAY TO SEE HIS
3 GIRLFRIEND'S UNCLE, THEY STOP AT WALMART AND BUY BULLETS,
4 COME OUT AND REALIZE THEY ARE NOT THE RIGHT BULLETS TO PUT
5 IN THE GUN, GO BACK IN AND EXCHANGE THEM FOR THE RIGHT
6 BULLETS. WE KNOW THAT HAPPENED BECAUSE WE FOUND THE
7 RECEIPTS FROM THE TRANSACTION THAT HAPPENED THAT DAY.
8 THEN THEY GO BACK TO HIS GIRLFRIEND'S HOUSE AND GET DUCT
9 TAPE AND SOME OTHER SUPPLIES TO GO TO THE HOSPITAL. HE IS
10 DOING ALL OF THIS ON HIS WAY TO THE HOSPITAL. NOW, HIS
11 LAST VERSION OF THE STORY WAS THAT HE WAS GOING, AFTER
12 THEY FOUND OUT THEY WERE NOT GOING TO THE HOSPITAL HE WAS
13 GOING TO GO AND BUY SOME DRUGS FROM THESE GUYS. THINK
14 ABOUT THAT STORY, ABOUT WHAT HE SAYS HAPPENED THERE AND
15 APPLY THAT TO THE OTHER STORY AND DECIDE IF YOU THINK ANY
16 OF THEM ARE CREDIBLE. I WAS GOING TO BUY DRUGS BUT THEY
17 DIDN'T REALLY WANT ME TO GO WITHOUT THEM AND SO WE GET
18 INTO AN ARGUMENT AND WE JUST DECIDE TO BREAK INTO SOME
19 OTHER RANDOM HOUSE INSTEAD OF GOING TO THE DRUG DEALERS
20 HOUSE. WE BREAK INTO THESE VICTIMS. I TOLD YOU FROM THE
21 BEGINNING THAT THE ONLY THING THAT ROY JOHNSON IS
22 CONSISTENT ABOUT IS THAT HE IS INCONSISTENT, NONE OF HIS
23 STORIES ADD UP. BUT YOU DON'T HAVE TO TAKE MY WORD FOR
24 IT, TAKE HIS.

25 (WHEREUPON, A CD WAS PLAYED FOR THE JURY.)

1 MS. ZIMMERMAN: HE TELLS YOU, HE WANTS YOU TO BELIEVE
2 THAT THE REASON THAT HE DIDN'T TELL THE POLICE THE TRUTH
3 UP FRONT BECAUSE HE DIDN'T WANT THEM TO KNOW THAT HE WAS
4 GOING TO BUY SOME DRUGS. HE WAS SCARED THAT WAS GOING TO
5 GET HIM IN TROUBLE. BUT HE CLAIMS THAT HE WAS FORCED TO
6 DO THIS AND HE DIDN'T TELL HIS FRIEND THE TRUTH, HE DIDN'T
7 TELL HIS BROTHER THE TRUTH, HE DIDN'T TELL HIS MAMA THE
8 TRUTH, HE DIDN'T TELL HIS GIRLFRIEND THE TRUTH. HE HAS
9 LIED TO EVERYBODY SINCE THIS HAPPENED. THAT IS THE REASON
10 THAT NONE OF HIS STORIES ADD UP. NOW, THERE HAS BEEN SOME
11 ISSUE AS TO WHETHER THERE WAS A FORTH PERSON. I SAY SOME
12 ISSUE BECAUSE THE ONLY TIME THAT THE FORTH PERSON WAS EVER
13 MENTIONED WAS BY THE DEFENDANT. JOHNSON SAYS THREE OF US,
14 AUSTIN SAID THREE OF US, THE VICTIM SAYS THREE PEOPLE BUT
15 THE DEFENDANT WANTS YOU TO BELIEVE THAT THERE WAS THIS
16 FORTH PERSON NAMED SHORTY OR BUBEE WHO HAS NO REAL NAME,
17 NO PHYSICAL DESCRIPTION, NO WHEREABOUTS, NOBODY HAS HEARD
18 OF HIM EXCEPT THE DEFENDANT. THAT IS WHY ROBERT DENNIS
19 SAYS, IT KIND OF SOUNDS LIKE YOUR STORY IS A LITTLE
20 CONVENIENT BECAUSE YOU WEREN'T INVOLVED, THIS OTHER GUY
21 THAT WE CAN'T FIND AND WE HAVEN'T HEARD OF REALLY DID IT.
22 THAT IS THE PROBLEM WITH THE STORY ABOUT A FORTH PERSON.
23 AND I WANT TO GO AHEAD AND GO INTO SOME OF THE PHYSICAL
24 EVIDENCE BECAUSE YOU MAY BE THINKING, I HAVE WATCHED CSI
25 AND AS A MATTER OF FACT I HEARD ROBERT DENNIS TALK ABOUT

1 CSI ON THE AUDIO TAPE, I KNOW THEY CAN TEST ALL KINDS OF
2 STUFF AND YOU ARE RIGHT, THEY CAN. BUT SOME THINGS CAN'T
3 BE TESTED. CRYSTAL'S NIGHTGOWN, IT HAS GOT BLOOD ON IT
4 AND YOU CAN TEST THAT AND YOU CAN FIND OUT THAT THAT
5 MATCHES CRYSTAL'S DNA. THERE IS NO REASON TO LOOK FOR DNA
6 ON THIS BECAUSE THE VICTIMS TELL YOU WE DIDN'T INJURE
7 ANYBODY ELSE, WE GOT INJURED. SO, I COULD HAVE SENT THIS
8 DOWN TO SLED AND THEN I COULD BRING SOME KIND OF ANALYST
9 UP HERE WHO IS AN EXPERT AND HE COULD TELL YOU THAT THAT
10 IS CRYSTAL'S BLOOD. BUT THERE IS NOT REALLY MUCH QUESTION
11 ABOUT THE FACT THAT THAT IS CRYSTAL'S BLOOD. SO, YOU
12 DON'T HAVE THAT. LIEUTENANT DENNIS TOLD YOU THAT WE DON'T
13 TEST STUFF THAT WE DON'T NEED TO TEST. JUST LIKE
14 CRYSTAL'S HAIR THAT WAS CUT OFF OF HER BECAUSE THE DUCT
15 TAPE WAS TANGLED UP IN IT. WE COULD OF SENT THIS HAIR
16 DOWN TO TEST IT FOR DNA BUT WE KNOW IT IS CRYSTAL'S HAIR..
17 CONNIE JOHNSON, THE VICTIM'S ADVOCATE TOLD YOU, I WAS
18 THERE AT THE HOSPITAL AND THEY CUT IT OFF OF HER HEAD.
19 THAT IS NOT TESTED. YOU ALSO HEARD TESTIMONY FROM BEN
20 CHAPMAN AND MATT BOWERS ABOUT THE EVIDENCE THAT THEY
21 COLLECTED AND THE DIFFERENT THINGS THEY DID. AND THEY
22 BOTH TOLD YOU, WHEN WE GET TO THE SCENE WE DON'T KNOW
23 WHETHER SOMETHING IS EVIDENCE OR NOT SO WE TAKE IT JUST IN
24 CASE. YOU SAW A LOT OF PICTURES, I DON'T KNOW IF
25 SOMETHING IS EVIDENCE BUT I DON'T WANT TO MISS THE

1 OPPORTUNITY SO I TAKE A PICTURE. I COLLECT THINGS THAT
2 LOOK LIKE THEY MIGHT BE EVIDENCE. SO, YES, THERE WAS A
3 BOOT PRINT, A PICTURE TAKEN OF A BOOT PRINT. BUT
4 INVESTIGATOR CHAPMAN TOLD YOU ABOUT THE TIME HE GOT ON THE
5 SCENE, EMS HAD BEEN THERE, ALL OF THESE VICTIMS HAD BEEN
6 THERE AND THEIR FAMILIES ACROSS THE STREET HAD BEEN IN
7 THERE, THE INITIAL RESPONDERS, LAW ENFORCEMENT HAD BEEN
8 THERE, OTHER INVESTIGATORS HAD BEEN THERE. SO, YOU TOOK A
9 BOOT PRINT IN CASE YOU NEEDED IT. HE DIDN'T BECAUSE HE
10 ENDED UP CATCHING ALL THREE SUSPECTS. DON'T LET THAT BOOT
11 PRINT FOOL YOU INTO ANYTHING THAT THERE WAS A FORTH
12 PERSON. AND EVEN IF YOU THINK THERE WAS A FORTH PERSON,
13 EVEN IF THERE IS SOMEBODY THAT LAW ENFORCEMENT HAD MISSED,
14 THAT DOES NOT MEAN THAT HE IS INNOCENT. IF THERE WAS A
15 FORTH PERSON THAT WAS THERE AND SOMEHOW HE BYPASSED IT,
16 THERE HAS BEEN TESTIMONY THAT HE WAS INVOLVED. HE EVEN
17 SAYS IN ONE OF HIS STATEMENTS THAT HE WAS THE LOOKOUT AND
18 THE LOOKOUT IS JUST AS GUILTY AS EVERYBODY ELSE. YOU HAVE
19 HEARD FROM A LOT OF DIFFERENT PEOPLE AND YOU HAVE HEARD A
20 LOT OF TESTIMONY ABOUT WHAT HAPPENED. AND THIS IS A VERY
21 SCARY SITUATION BUT I AM NOT ASKING YOU TO CONVICT MR.
22 JOHNSON BECAUSE YOU ARE SCARED ABOUT WHAT HAPPENED ON
23 JANUARY THE 7TH. I AM ASKING YOU TO CONVICT BECAUSE HE IS
24 GUILTY. I AM ASKING YOU TO CONVICT HIM BECAUSE HE BROKE
25 INTO THE COFER'S HOME, I AM ASKING YOU TO CONVICT HIM

1 BECAUSE HE HELPED THE OTHER TWO DEFENDANTS ASSAULT THESE
2 VICTIMS, BECAUSE HE ROBBED THESE VICTIMS, BECAUSE HE
3 KIDNAPPED THESE VICTIMS. THAT IS WHY I AM ASKING YOU TO
4 CONVICT HIM. THANK YOU.

5 THE COURT: MR. JENKINS.

6 MR. JENKINS: THANK YOU, YOUR HONOR. THAT IS FOR THE
7 PERSON WHO IS NOT HERE. ROY HAS NEVER DENIED FROM DAY ONE
8 THAT A CRIME TOOK PLACE, HE HAS NEVER DENIED FROM DAY ONE
9 THAT RICHARD COFER, ROBIN COFER AND CRYSTAL CARNES WERE
10 THE VICTIMS OF A HORRIBLE, SENSELESS CRIME, HAS NEVER BEEN
11 DENIED, NOT IN COURT, NOT TO THE POLICE OFFICERS, NOT TO
12 ANYONE. THESE PEOPLE ARE VICTIMS, THERE IS NO DOUBT ABOUT
13 THAT AND HAVE NO QUESTION ABOUT THAT. AND YOU HEARD MS.
14 ZIMMERMAN WITH HER POWER POINT GO THROUGH EACH OF THE
15 ELEMENTS OF A CRIME. AND YOU NOTICE AFTER EACH ONE OF
16 THEM, THAT IS A CRIME. WE DON'T DENY THAT. IT IS NOT
17 OFTEN YOU HEAR A DEFENDANT TELL YOU THAT A CRIME OCCURRED,
18 EACH ONE OF THOSE CRIMES OCCURRED. BUT ROY JOHNSON IS NOT
19 GUILTY OF IT. MY HEART GOES OUT TO THE COFER'S AND MS.
20 CARNES AS YOURS DOES, I AM SURE. THERE IS FEAR, THIS IS
21 OUR TOWN, OUR COMMUNITY, IT IS SCARY, VERY SCARY. YOU MAY
22 BE THINKING, THAT CAN HAPPEN TO ANYBODY AND YOU ARE RIGHT,
23 IT COULD. BECAUSE THEY DIDN'T DO ANYTHING TO CAUSE THIS
24 IN ANY WAY SHAPE OR FORM. BUT YOU HAVE TO PUT THAT FEAR
25 ASIDE AND I AM ASKING YOU TO DO. I AM ASKING YOU TO LIVE

1 UP TO THE OATH THAT YOU TOOK AT THE BEGINNING OF THIS CASE
2 AND PUT THAT FEAR ASIDE AND LET'S CONSIDER THE EVIDENCE
3 THAT WE HAVE. NOW, I AM GOING TO BACK UP FOR JUST A
4 MOMENT AND I APOLOGIZE FOR USING NOTES, I HATE TO USE
5 NOTES BUT THERE IS A GOOD BIT OF EVIDENCE SUBMITTED AND I
6 WANT TO MAKE SURE I DON'T MISS ANYTHING. IT IS OUR ONLY
7 CHANCE TO SUMMARIZE THE EVIDENCE. IT MAY TAKE A LITTLE
8 BIT TO GO THROUGH THE EVIDENCE BUT IT IS IMPORTANT THAT WE
9 GO THROUGH THE SET OF THINGS SO I AM GOING TO GO THROUGH
10 MY NOTES. I WANT TO THANK YOU FOR BEING PATIENT AND
11 ALERT, I WANT TO THANK YOU FOR SPENDING THE TIME THAT YOU
12 SPENT WITH US. IT IS NOT AN EASY TASK, I HAVE HAD JURORS
13 TO TELL ME BEFORE, I DIDN'T REALIZE HOW PHYSICALLY TIRED I
14 WOULD BE AT THE END OF THE DAY. YOU ARE CONCENTRATING AND
15 YOU ARE LISTENING TO A LOT OF DIFFERENT TESTIMONY AND YOU
16 ARE SEEING A LOT OF DIFFERENT EVIDENCE AND YOU ARE TRYING
17 TO PIECE IT ALL TOGETHER AS YOU GO EVEN THOUGH YOU CAN'T
18 REALLY DISCUSS IT AND MAKE UP YOUR MIND, YOU ARE TRYING TO
19 FIGURE OUT WHERE EVERYBODY IS GOING. AND I KNOW THERE ARE
20 THINGS THAT EACH AND EVERY ONE OF YOU WOULD RATHER HAVE
21 BEEN DOING THAN SITTING IN NEWBERRY COUNTY'S COURTROOM
22 LISTENING TO THIS CASE OR ANY CASE. WHAT I WANT YOU TO DO
23 IS ASK YOURSELF, IF THE CHANCE THAT I FOUND YOU ON THIS
24 SIDE OF THAT RAIL, AT THIS TABLE OR THIS TABLE WHAT KIND
25 OF JUROR WOULD YOU WANT TO SIT IN THIS JURY BOX. YOU

1 WOULD WANT A JUROR JUST LIKE YOURSELF, KEEP AN OPEN MIND
2 AND LISTEN TO THE EVIDENCE AND COME UP WITH A FAIR
3 VERDICT. PROCEDURE WISE, I WILL GO OVER IT BRIEFLY, THE
4 JUDGE IS GOING TO TELL YOU THE LAW AND WE GET TO CLOSE
5 LAST IN THIS CASE BECAUSE WE DIDN'T PRESENT ANY EVIDENCE.
6 THE JUDGE IS GOING TO TELL YOU, YOU CAN'T CONSIDER THE
7 FACT, YOU CAN'T CONSIDER OR TAKE INTO ACCOUNT THE FACT
8 THAT MR. JOHNSON NOT GETTING UP HERE AND TESTIFY OR THAT
9 THE DEFENDANT DIDN'T PUT UP ANY EVIDENCE. I AM STILL
10 GOING TO EXPLAIN TO YOU WHY WE DIDN'T. YOU HEARD ROY
11 JOHNSON'S TESTIMONY. YOU HEARD ME ASK THE SAME QUESTIONS,
12 YOU HEARD THE SAME ANSWERS. YOU HEARD MS. ZIMMERMAN
13 CROSS-EXAMINE, YOU HEARD THE SAME ANSWERS. YOU HEARD THE
14 SAME EXACT TESTIMONY, YOU HEARD THE WORDS, YOU KNOW WHAT
15 THEY ARE, THEY ARE THE SAME THING. REGARDLESS YOU CAN'T
16 USE IT AGAINST ROY THAT HE DIDN'T TESTIFY, YOU CAN'T EVEN
17 CONSIDER IT OR TALK ABOUT IT IN THE JURY ROOM, IT IS NOT
18 PROPER. BECAUSE A DEFENDANT IS PRESUMED TO BE NOT GUILTY
19 AND HAS NO DUTY TO PRESENT ANY EVIDENCE WHATSOEVER. THE
20 JUDGE IS GOING TO GIVE YOU THE LAW, I AM GOING TO TELL YOU
21 A LITTLE BIT AS I GO THROUGH. AND IF I SAY SOMETHING
22 DIFFERENTLY THAN THE JUDGE SAYS LISTEN TO HIM. THAT IS
23 WHY HE GETS TO WEAR THE BLACK ROBE, HE GETS TO TELL YOU
24 THE LAW AND THAT IS WHAT YOU HAVE TO APPLY. I AM GOING TO
25 TRY TO BE ACCURATE, IF I SAY A AND YOU REMEMBER B, GO WITH

1 B, THAT IS WHAT YOU ARE SUPPOSE TO DO, USE YOUR OWN
2 COLLECTIVE MEMORIES IN THE JURY ROOM. AND IF I SAY A AND
3 THE JUDGE SAYS B, YOU USE B. THE JUDGE IS GOING TO GO
4 THROUGH THE ELEMENTS JUST LIKE MS. ZIMMERMAN DID, THE
5 ELEMENTS OF EACH OFFENSE. THE STATE HAS TO PROVE EACH AND
6 EVERY ONE OF THOSE ELEMENTS BEYOND A REASONABLE DOUBT.
7 WHAT IS A REASONABLE DOUBT. THE JUDGE IS GOING TO TELL
8 YOU AND I AM GOING TO EXPLAIN THAT TO YOU SO YOU WILL HAVE
9 THAT IN CONTEXT AS WE GO OVER THE FACTS. A REASONABLE
10 DOUBT IS A DOUBT THAT CAUSES A REASONABLE PERSON TO
11 HESITATE TO ACT. WHAT DOES THAT MEAN. I SUBMIT TO YOU IF
12 YOU GO BACK IN THE JURY ROOM AND YOU HESITATE TO CONVICT
13 BECAUSE YOU HAVE SOME DOUBT IN YOUR MIND ABOUT WHAT REALLY
14 HAPPENED HERE THAT IS A REASONABLE DOUBT ACCORDING TO THE
15 LAW. YOU ARE NOT FIRMLY CONVINCED, IF YOU ARE NOT ABLE TO
16 ACT WITHOUT HESITATION THAT IS A REASONABLE DOUBT AND YOU
17 TOOK AN OATH AND YOU HAVE TO FIND MR. JOHNSON NOT GUILTY.
18 HE IS GOING TO TALK TO YOU ABOUT THE HAND OF ONE IS THE
19 HAND OF ALL OR THE ACT OF ONE IS THE ACT OF ALL. WHAT
20 THAT MEANS IS THAT IF TWO PEOPLE GO INTO A BUSINESS WITH
21 AN INTENT TO COMMIT AN ARMED ROBBERY AND SOMETHING ELSE
22 OCCURS THAT IS A NATURAL AND PROBABLE CONSEQUENCE, THAT
23 COMMON SCHEME OR THAT COMMON PLAN TO COMMIT A CRIME, BOTH
24 PEOPLE ARE GUILTY OR EVEN THOUGH ONE PERSON PULLS THE
25 TRIGGER THE OTHER PERSON CAN BE FOUND JUST AS GUILTY AS

1 LONG AS IT IS A REASONABLE AND PROBABLE CONSEQUENCE OF
2 THEIR COMMON CRIMINAL PLAN. WHAT IS IMPORTANT ABOUT THE
3 ACT OF ONE IS THE ACT OF ALL HERE IS THAT THE STATE
4 DOESN'T KNOW. THEY HAVE SAID ALTERNATIVELY THAT THEY
5 BELIEVE THAT MR. JOHNSON DID OR HE WAS WITH THE FOLKS THAT
6 DID IT AND IT WAS A COMMON PLAN. ONE OF THOSE TWO THINGS
7 HAPPENED, WE JUST DON'T KNOW EXACTLY WHICH ONE. YOU HAVE
8 GOT SOME OF THEIR WITNESSES SAYING HE DID IT, YOU HAVE GOT
9 SOME OF THEM SAYING, WELL, HE WAS WITH US. IN REGARDS TO
10 DIFFERENT SPECIFIC ACTS AND WE WILL GET INTO THAT IN A
11 LITTLE BIT. BUT THAT IS WHAT IS IMPORTANT ABOUT THE HAND
12 OF ONE IS THE HAND OF ALL. THE STATE DOESN'T EVEN KNOW
13 AND IF THEY DON'T EVEN KNOW HOW CAN THEY EXPECT YOU TO GO
14 BACK THERE AND SAY GUILTY. IN REGARDS TO THE LAW, THE
15 VERDICT MUST BE UNANIMOUS, EACH ONE OF YOU HAVE INDIVIDUAL
16 THOUGHTS. YOU HAVE TO GO BACK THERE AND COLLECTIVELY COME
17 BACK WITH A VERDICT, EITHER GUILTY OR NOT GUILTY. HALF OF
18 YOU CAN'T SAY ONE THING AND HALF THE OTHER, THAT IS NOT
19 THE RULES. EACH ONE OF YOU HAVE TO LISTEN TO THE
20 ARGUMENTS AND RESPECT EACH OTHERS OPINIONS. BUT IF YOU
21 ARE FIRMLY CONVINCED AND YOU BELIEVE THAT THERE IS A
22 REASONABLE DOUBT, AND THERE IS A REASONABLE DOUBT IN YOUR
23 MIND AND YOU HESITATE TO ACT YOU HAVE TO GO WITH NOT
24 GUILTY, BOTH INDIVIDUALLY AND AS A GROUP.

25 NOW, I AM GOING TO COVER A FEW POINTS THAT MS.

1 ZIMMERMAN BROUGHT UP IN HER CLOSING ARGUMENT. THE STATE
2 SUBMITS TO YOU THAT YOU DON'T REALLY NEED TO KNOW ALL THE
3 DETAILS. WE DIDN'T TEST THE GOWN FOR DNA BECAUSE WE KNEW
4 IT WAS HER BLOOD. DNA COMES IN A LOT OF FORMS, IT IS JUST
5 NOT BLOOD. WE COULD OF FOUND OUT IF IN FACT THE STATE'S
6 THEORY IS TRUE, THEY COULD OF PROVED IT. THEY COULD OF
7 PULLED DNA OFF OF THAT GOWN AND THAT DNA SHOWED THAT ROY
8 JOHNSON WAS THERE OR PULLED DNA OFF OF SOME DUCT TAPE AND
9 THAT DUCT TAPE SHOWED THAT ROY JOHNSON HAD IT IN HIS HANDS
10 AND WAS BACK THERE TAPING UP CRYSTAL. THAT BLOWS OUR
11 THEORY COMPLETELY OUT OF THE WATER. THAT IS BEYOND A
12 REASONABLE DOUBT. LET'S TALK ABOUT NOT SURE, I HEARD THAT
13 PHRASE SEVERAL TIMES. WE ARE NOT SURE IF HE HAD THE GUN,
14 WE ARE NOT SURE HOW FAR HE WENT IN, HE MAY OF GONE IN, HE
15 MAY OF BEEN AT THE BACKDOOR, HE MAY OF BEEN WITH CRYSTAL,
16 WE ARE NOT SURE. IF PEOPLE PRESENTING THIS CASE TO YOU
17 HOW CAN YOU BE SURE. SHE TALKED ABOUT TWO GUNS, THAT DOES
18 MAKE SENSE THAT THERE WERE TWO GUNS. AS YOU RECALL,
19 AUSTIN SAID I AM GOING FOR THE DOOR, TALKING ABOUT
20 MINIMIZING THEIR STATEMENT, HE GRABBED MY HAND AND I
21 ACCIDENTALLY SHOT TOWARDS THE DOOR. WELL, THAT IS A
22 LITTLE CONVENIENT, IT MATCHES UP JUST RIGHT WITH THE
23 PICTURES THAT WERE SHOWN. JUST RIGHT WITH THE PICTURES
24 THAT LAW ENFORCEMENT PRODUCED ABOUT THE GUN SHOOTING
25 AFTERWARDS AT THE FRONT DOOR. BUT WHERE IS THE CASING,

1 THIS IS A GLOCK .45 CALIBER SEMIAUTOMATIC PISTOL. WE
2 HEARD FROM THE OFFICER, WHEN YOU SHOOT A SEMIAUTOMATIC
3 PISTOL, A CASING FLIES OUT IN THE GENERAL VICINITY OF
4 WHERE YOU FIRED THE SHOT FROM. AND I AM TALKING LIKE YOU
5 HAVE NO IDEA WHAT I MEAN. A CASING IS WHAT HOLDS THE
6 ACTUAL PROJECTILE, THAT HOLDS THE GUN POWDER. BUT WHEN
7 YOU FIRE A SEMIAUTOMATIC PISTOL IT COMES OUT IN GENERAL.
8 SO, IF THAT GUN HAD BEEN FIRED AS AUSTIN SAID WHERE IS THE
9 CASING. THERE WASN'T ANY TESTIMONY THAT THEY STOPPED AND
10 PICKED UP AFTER THEMSELVES, TO CLEAN IT UP, THIS IS AS
11 THEY WERE TRYING TO GET OUT THE DOOR, AUSTIN AND CHAUNCEY,
12 WHERE IS THAT CASING. WILLIE ASHFORD, WILLIE SAYS ROY
13 COMES UP TO MY HOUSE. ROY SAYS, A STORY ABOUT TO GET A
14 RIDE. THERE IS NOT A WHOLE LOT OF DISPUTE ABOUT WHAT ROY
15 SAID, HE DID SAY THAT ROY SAID HE WAS SCARED OF SOMEONE,
16 SOMEBODY WAS TRYING TO GET HIM. WHO WAS THAT. THE SAME
17 GUY WITH THAT REVOLVER WITH THE CASING. SHE TALKS ABOUT
18 INCONSISTENCIES IN ROY'S STATEMENTS AND I WOULD BE A FOOL
19 TO SIT HERE AND TELL YOU THAT THERE ARE NO
20 INCONSISTENCIES, I AM NOT GOING TO TELL YOU THAT BUT THERE
21 ARE CONSISTENCIES ALSO. AND WHILE WE ARE TALKING ABOUT
22 INCONSISTENCIES, WE WILL GET TO THEM IN A MINUTE, WE WILL
23 TALK ABOUT THE INCONSISTENCIES. NOW, LET'S GO INTO THE
24 EVIDENCE A LITTLE BIT IN DETAIL. I AM GOING TO POINT OUT
25 SOME THINGS THAT I THINK ARE IMPORTANT THAT I WANT YOU TO

1 CONSIDER WHILE YOU ARE IN THE JURY ROOM. ROY JOHNSON, YOU
2 HEARD THREE STATEMENTS FROM HIM. YOU HEARD ONE THAT
3 LIEUTENANT DENNIS SAID AS THEY RODE BACK FROM NORTH
4 CAROLINA. YOU ALSO HEARD THAT HE DIDN'T RUN, HE WAS
5 WAITING ON, AS SOON AS HE GOT TO NORTH CAROLINA HE SAID,
6 HERE I AM, COME AND GET ME. HE WAS SCARED, WHY WAS HE
7 SCARED. I AM NOT GOING TO SUBMIT TO YOU THAT ROY JOHNSON
8 IS AN ANGEL, HE DOESN'T HAVE TO BE, THAT IS NOT WHAT WE
9 ARE HERE ABOUT. ROY ADMITS AND YOU HEARD HIS TESTIMONY ON
10 THAT STAND THAT I CAME HERE INITIALLY TO GET A RIDE WITH
11 THESE FOLKS, THEY WERE GOING TO COLUMBIA TO GET DRUGS BUT
12 MY GIRLFRIEND CALLED AND SAID I AM HEADING BACK TO NORTH
13 CAROLINA, I AM NOT AT THE HOSPITAL ANYMORE. SO, HE SAID
14 WELL, I WILL CUT THE TRIP SHORT, I KNOW WHERE YOU CAN BUY
15 SOME DRUGS. WHY, WELL, I HAVE DEALT WITH THEM BEFORE.
16 THAT WILL CAUSE SOMEONE TO BE A LITTLE BIT SCARED OF LAW
17 ENFORCEMENT. THEY CAME TO NEWBERRY FOR A CRIMINAL
18 ACTIVITY OF BUYING DRUGS. HE REALIZED HE WAS IN A MESS.
19 REGARDLESS OF WHETHER HE WANTED TO BE THERE OR NOT. HE
20 REALIZED SOMETHING REALLY BAD WAS GOING TO HAPPEN AND HE
21 DIDN'T WANT TO BE A PART OF THAT, HE JUST WANTED TO GET
22 AWAY. FLIGHT INSTINCT TOOK OVER, HE RAN TO WILLIE
23 ASHFORD'S AND TOLD WILLIE SOMEBODY WAS TRYING TO GET HIM,
24 I JUST NEED TO GET OUT OF TOWN, DIDN'T GIVE WILLIE ANY
25 DETAILS. SHE TRIED TO MAKE A MOUNTAIN OUT OF A MOLE HILL,

1 AS I SAY, WHO GAVE THE DIRECTIONS. WELL, I AM SURE ROY
2 TOLD HIM TO GO TO CARLISLE. BUT AS FAR AS THE ROUTE, HE
3 TOOK A ROUTE TO GO TO THE BACK ROADS, HE DIDN'T HAVE A
4 LICENSE. YOU HEARD HIM SAY HE WAS DRIVING WITHOUT A
5 LICENSE, IT IS PRETTY SIMPLE. CONSIDER STATEMENT NUMBER
6 TWO, HE LEFT OUT A PERSON, WHO DID HE LEAVE OUT, AUSTIN.
7 NOW, IF THIS WERE GOING TO BE THE STATEMENT HE LEFT OUT
8 ONE OF THE PEOPLE. ROY SAYS LAW ENFORCEMENT LEFT SOMEBODY
9 OUT, THE FORTH GUY DIDN'T MATCH UP SO LET'S GO WITH THREE
10 GUYS. IT IS A LITTLE STRANGE, NOT NORMAL PROCEDURE FOR A
11 MAJOR AND A LIEUTENANT TO BE TRANSPORTING SOMEONE FOR A
12 BOND HEARING. THEY SAID THEY WANTED TO BE THERE FOR THE
13 BOND HEARING BUT THEY NORMALLY TRANSPORT THEM, THEY ARE
14 ONLY THERE FOR THE BOND HEARING. ROY TOLD THEM, THE GUY
15 JUST LEFT THE NAME OUT. LIEUTENANT DENNIS TOLD YOU, I
16 DON'T KNOW WHICH NICKNAME WAS TO THE PERSON. HE DID TELL
17 YOU THAT NEITHER ROY NOR CHAUNCEY NOR AUSTIN WERE EVER
18 REFERRED TO AS SHORTY OR BUBEE. SO HOW DOES THAT
19 STATEMENT MATCH UP, NOT QUITE RIGHT. NOW, THE TESTIMONY
20 THAT YOU HEARD, THE SWORN STATEMENT, RODNEY GRAY READ THE
21 ANSWERS JUST AS THEY WERE GIVEN IN PRIOR TESTIMONY UNDER
22 OATH. I READ THE QUESTIONS AND MS. ZIMMERMAN READ HER
23 QUESTIONS. YOU HEARD THE SAME EXACT ANSWERS, THE SAME
24 EXACT TESTIMONY. NOW, HE IS COMING BACK AND DECIDES TO GO
25 TO NEWBERRY, HE IS ADMITTING CRIMINAL ACTIVITY, HE IS NOT

1 DENYING OR NOT SAYING I AM AN ANGEL OR A PERFECT PERSON.
2 HE DOESN'T TRY TO CONVINCE EVERYONE THAT I HAVE NO
3 INVOLVEMENT WHATSOEVER. THEY GET TO THE PLACE AND THEY
4 GIVE HIM THE MONEY AND THEY DON'T KNOW HIM REAL WELL,
5 SHORTY AND DOESN'T REALLY WANT ROY GOING DOWN THE STREET.
6 THEY ARE NERVOUS. WHAT ABOUT THE GUN. THEY WERE GOING TO
7 GET DRUGS SOMEWHERE, DRUG DEALERS ARE NOT THE SAFEST OF
8 ACTIVITIES, YOU ARE NOT DEALING WITH DOMESTIC PEOPLE AT
9 THE TIME YOU ARE DOING THAT. SO, IT IS UNNATURAL FOR
10 THOSE GUYS TO HAVE GUNS WITH THEM. AND UNFORTUNATELY ROY
11 WASN'T UNCOMFORTABLE WITH THE GUN BEING THERE BECAUSE HE
12 HAD BEEN INVOLVED WITH DRUG ACTIVITY BEFORE, IT IS PRETTY
13 SIMPLE. WHAT CAN WE BELIEVE FROM ALL OF THESE STATEMENTS,
14 THERE ARE SOME INCONSISTENCIES. BUT WHAT YOU CAN BELIEVE
15 IS THAT THEY CAME DOWN FOR ONE ACTIVITY, SHORTY DIDN'T
16 WANT HIS MONEY GOING ANYWHERE. SHORTLY SAID, NO, WE ARE
17 GOING THERE. CHAUNCEY SAID, WELL THERE IS A CAR OR A VAN
18 OR SOMETHING THAT USED TO BRING US TO NORTH CAROLINA SO
19 THAT MUST BE THE GUY OR THAT MUST BE THE HOUSE. IT IS A
20 HORRIBLE TRAGIC THING ON THE OTHER PEOPLES PART. ROY SAID
21 I DON'T WANT TO GO INSIDE THIS HOUSE, I DON'T WANT TO GO
22 IN THERE, THIS ISN'T COOL, LET'S JUST GET OUT OF HERE,
23 THIS ISN'T COOL. FORCED HIM TO THE DOORSTEP, THE DOOR
24 GOES IN, PUSH HIM INTO IT, KICK IT IN AS THEY GO THROUGH
25 AND ROY GOES IN THE HOUSE. ROY ADMITS THAT, HE ADMITS I

1 AM THERE, I AM STANDING IN THE THRESHOLD. AND HE SAYS, I
2 GUESS I WAS THE LOOKOUT. WHAT ABOUT THE FACT THAT THE
3 THREE PEOPLE IN THE HOUSE, ONE STANDING OVER MR. COFER AND
4 TWO WITH CRYSTAL. HIS STATEMENT WILL TELL YOU WHAT
5 HAPPENED. HE IS AT THE DOOR AND HE SEES THEM GOING AFTER
6 MR. COFER. HE SEEMS THEM AT MR. COFER WITH GUNS AND
7 SAYING DON'T MOVE, PUT ON HIS THROAT SAYING DON'T LOOK UP,
8 DON'T DO ANYTHING, YOU DON'T WANT TO GET HURT. HE HEARS
9 THE GIRL SCREAMING, THAT IS WHAT SHOCKS HIM INTO TAKING
10 OFF. HE SAYS, IF YOU CAN RECALL, AUSTIN WAS IN THE CAR,
11 HE WASN'T GOING IN TO START WITH. BUT I GUESS AUSTIN
12 HEARS THE COMMOTION TOO AND THEY MEET AS AUSTIN IS RUNNING
13 AWAY. WE ARE TALKING ABOUT A VERY SHORT DISTANCE, WE ARE
14 TALKING ABOUT A ONE LITTLE BIT AWAY FROM WHERE THEY PARKED
15 FROM THE COFER'S HOME. HE IS GONE, AUSTIN IS GOING ON.
16 THERE ARE THREE PEOPLE IN THERE, THERE ARE TWO WHEN ROY
17 LEAVES AND THEN THREE AGAIN WITH AUSTIN COMES BACK IN. IT
18 IS PRETTY SIMPLE. THERE WERE SOME QUESTIONS ASKED OF ROY,
19 WHY DIDN'T YOU CALL THE POLICE, WHY DIDN'T YOU STOP THE
20 POLICE WHEN YOU RAN DOWN 34. THE PROBLEM IS ROY, HE HAD
21 COME TO NEWBERRY TO GET DRUGS. HE WAS SCARED AND JUST
22 WANTED TO GET OUT OF THE HOUSE. WHY WOULD AUSTIN, THE
23 FIRST TIME HE WAS THERE HE IS SCARED. CHAUNCEY PARTLOW,
24 HE SAID, CHAUNCEY WAS A LITTLE BIT HONEST WITH US. BUT HE
25 SAID I WOULDN'T BRING SOMEBODY INTO IT IF I COULD HELP IT

1 BECAUSE I MAY BE SUBJECT TO RETRIBUTION. HE WASN'T GOING
2 TO BRING THIS GUY IN, NEITHER WAS AUSTIN. THEY HAD
3 ALREADY BEEN HELD DOWN ON THEIRS, I DON'T WANT TO TESTIFY,
4 IF YOU ARE GOING TO MAKE ME I AM NOT GOING TO GIVE YOU
5 THIS OTHER GUY. THAT WOULD SUBJECT ME TO RETRIBUTION.
6 THE STATE'S WITNESS, HOW THEY SUPPORT WHAT ROY'S TESTIMONY
7 WAS THAT WE READ IN COURT. NOW, RICHARD COFER WAS AT
8 LEAST TEN MINUTES IN THE HOUSE, FELT LIKE FOREVER, TEN
9 MINUTES, COUPLED THAT WITH ROBIN COFER WHO HAD THE 911
10 CALL, SHE WENT FROM THERE TO THE NEIGHBORS FOR A MINUTE,
11 ACROSS THE ROAD, RUNNING, LOOKING THE WHOLE WAY. BEFORE
12 THEY SEE PEOPLE RUNNING OUT OF THE HOUSE IT WAS ABOUT
13 THREE MINUTES, GIVE HER TWO MINUTES FROM THE HOUSE OVER TO
14 HER SISTER'S HOUSE, YOU STILL HAVE FIVE MINUTES. YOU
15 HEARD ROY TESTIFY, I AM THERE AT THE VERY BEGINNING, I
16 TAKE OFF AND MEET AUSTIN AS HE COMING IN AND I AM GOING
17 OUT. AUSTIN HAD GOTTEN INTO THE HOUSE BEFORE MS. COFER
18 EVER GOT OUT OF THE HOUSE. AND SHE TOLD US, I WAS LOOKING
19 BACKWARDS, CAN'T SEE DOWN 34 UNLESS YOU ARE ACTUALLY OUT
20 IN THE ROAD. HE IS TRYING TO GET AWAY FROM THE SITUATION.
21 THEIR TESTIMONY MATCHES UP PERFECTLY WITH WHAT HE TOLD
22 YOU. ROBIN COFER WAS SURE SHE DIDN'T SEE ANYBODY COMING
23 IN OR OUT AS SHE WENT ACROSS THE ROAD AND I BELIEVE THAT.
24 BUT YOU DO HAVE TO CONSIDER THE CONTEXT, YOU HEARD THE 911
25 CALL, THAT IS UNDERSTANDABLE. THERE IS NO DOUBT, I WOULD

1 BE HYSTERICAL, SHE KEPT IT TOGETHER PRETTY WELL COMPARED
2 TO WHAT I WOULD DO, COMPARED TO WHAT SHE HAD JUST SEEN AND
3 HEARD AND THOUGHT WAS GOING ON IN HER HOUSE. SHE SAID ON
4 THE 911 CALL, TWO PEOPLE ARE IN THE HOUSE, SHE ONLY SAW
5 TWO. ADMITTED SHE COULDN'T SEE DOWN THE ROAD. IN MY
6 CALCULATIONS AT LEAST FIVE MINUTES, PROBABLY SIX MINUTES
7 IN THE HOUSE BEFORE SHE COULD GET OUT, ROY WAS LONG GONE.
8 AS I SAID, WILLIE ASHFORD TALKED ABOUT ROY, TOLD HIM
9 SOMEBODY WAS ABOUT TO GET HIM, SHORTY. WHO WAS OUT TO GET
10 HIM, HE WAS TRYING TO GET AWAY FROM THIS GUY IN THAT
11 SITUATION. AUSTIN PARTLOW AND CHAUNCEY PARTLOW, BOTH OF
12 WHO WERE DRESSED IN KHAKI UNIFORMS OF THE SOUTH CAROLINA
13 DEPARTMENT OF CORRECTIONS. WHAT IS THEIR MOTIVATION, THAT
14 IS THE FIRST THING THAT YOU HAVE TO LOOK AT. LET'S LOOK
15 AT CHAUNCEY, CHAUNCEY ADMITTED THAT HE LIED, HE TOLD YOU
16 THAT. HE SAID HE NEVER HAD A HANDGUN. AUSTIN SAID HE
17 DID. HE ADMITTED TO YOU THAT THERE IS SOME HONOR AMONG
18 THIEVES KIND OF THING WHERE HE WOULDN'T TRY TO BRING
19 SOMEBODY ELSE INTO IT IF LAW ENFORCEMENT HADN'T OF ALREADY
20 BROUGHT THEM INTO IT. ROY IS ALREADY IN IT, HE IS TRYING
21 TO GET SOME PREFERENTIAL TREATMENT, IT MAKES GOOD SENSE,
22 HE WILL SAY WHATEVER THEY WANT HIM TO SAY. HE ALSO SAID
23 HE WOULD BE SUBJECT TO RETRIBUTION IF HE BROUGHT ANYBODY
24 ELSE INTO IT. HE ADMITTED THAT TO YOU. AUSTIN PARTLOW,
25 HE KNEW ABOUT THE BULLET HITTING THE WALL RIGHT THERE AT

1 THE DOOR BUT OF COURSE CHAUNCEY GRABBED HIS ARM AND MADE
2 HIM DO THAT, HE DIDN'T MEAN TO SHOOT THE GUN. AUSTIN IS A
3 CONVICTED MURDERER, HE HAD BEEN OUT OF JAIL SHORTLY BEFORE
4 THIS. NOW, ACCORDING TO HIM HIS INVOLVEMENT IS I AM JUST
5 RIDING ALONG, I AM WORRIED ABOUT THE GUN BEING IN THE CAR
6 IS WHAT I AM WORRIED ABOUT. HE IS GOING TO BUY DRUGS, HE
7 KNOWS THERE IS GUNS AROUND BUT HE IS WORRIED ABOUT THE GUN
8 BEING IN THE CAR. HE IS WORRIED ABOUT COMMITTING A
9 CRIMINAL ACT BECAUSE HE JUST GOT OUT OF PRISON, THAT
10 DOESN'T MAKE A WHOLE LOT OF SENSE. HE ACCIDENTALLY FIRED
11 THIS GUN, WHERE IS THE CASING, IT IS NOT THERE. THE FACTS
12 ARE JUST A LITTLE TOO PERFECT, MATCH UP JUST A LITTLE TOO
13 WELL. AND NOBODY IS IN THE CAR WITH HIM, REMEMBER THAT.
14 WHEN HE LEFT OUT WHO WAS IN THE CAR WITH HIM. THEN YOU GO
15 TO BILLY HUNTER. ONE-HUNDRED PERCENT POSITIVE THERE ARE
16 TWO PEOPLE IN THAT CAR, I SAW THE DRIVER, I SAW THE
17 PASSENGER. THERE IS NO QUESTION WHATSOEVER FROM ANY OF
18 THE WITNESSES THAT CHAUNCEY PARTLOW AND ROY JOHNSON WERE
19 NOT IN THE CAR WHEN IT LEFT THAT LOCATION. TWO PEOPLE IN
20 THAT CAR, AUSTIN PARTLOW, HE WAS DRIVING AND SHORTY WAS IN
21 THE PASSENGER SEAT. TWO PEOPLE DID MAKE IT BACK TO THE
22 CAR, HE IS POSITIVE BECAUSE HE KNOWS, HE KNOWS WHAT HE
23 SAW. THOSE TWO PEOPLE, AUSTIN PARTLOW AND SHORTY, YOU GET
24 TO DECIDE THAT. NOW, A CONVICTED MURDERER, CONVICTED
25 BURGLAR, KIDNAPPING OR ARMED ROBBERY, THEY HAVE A SELF

1 INTEREST. TRYING TO GET THAT SIX MONTHS THAT I GOT ADDED
2 ON LAST TIME FROM NOT TESTIFYING AT ALL KNOCKED BACK OFF.
3 IT IS A PRETTY GOOD MOTIVATION TO SAY WHATEVER SOMEBODY
4 WANTS TO HEAR. AND THE MOST INFLUENTIAL THING ON THEIR
5 TESTIMONY, AUSTIN TESTIFIED THE FIRST TIME HE CAME IN HERE
6 BECAUSE HE WAS UNDER FEAR, FEAR OF RETRIBUTION. CHAUNCEY,
7 HE TOLD YOU, FEAR OF RETRIBUTION. WHAT DID THAT FEAR
8 CAUSE THEM TO DO, CAUSE THEM TO LEAVE THAT GUY OUT OF IT
9 BECAUSE HE IS NOT HERE, THE POLICE HAVEN'T LOCATED HIM.
10 AND MS. ZIMMERMAN SAID SOMETHING TO THE EFFECT OF, CAN'T
11 FIND HIM, DIDN'T GET A PHYSICAL DESCRIPTION, ONLY HAD A
12 NICKNAME. THEY DID GET A PHYSICAL DESCRIPTION, ROY
13 JOHNSON GAVE THEM THAT, THEY DID HAVE A NICKNAME. LAW
14 ENFORCEMENT USUALLY KNOWS THE NICKNAME OF PEOPLE THAT
15 WOULD BE INVOLVED IN THIS KIND OF STUFF. YOU HAVE GOT A
16 PHYSICAL DESCRIPTION AND A NICKNAME, YOU KNOW THE GENERAL
17 AREA HE IS IN, GASTONIA, NORTH CAROLINA, YOU CAN FIND HIM.
18 NO ATTEMPT WAS MADE TO FIND HIM, NO ATTEMPT WAS MADE TO
19 FIND HIM WHATSOEVER. B.R. HUNTER, YOU HEARD HIS TESTIMONY
20 IN THE SAME MANNER WE HEARD MR. JOHNSON'S TESTIMONY. 6
21 FOOT 2 WAS THE DESCRIPTION. MR. JOHNSON IS NOT 6 FOOT 2,
22 NOT EVEN CLOSE. FOUND A FOOT PRINT, TOOK A PICTURE OF IT
23 BUT DIDN'T COMPARE IT TO ANYONE. WELL, NO BECAUSE SOME
24 PEOPLE HAD BEEN IN THE HOUSE, IT DIDN'T MATCH ANYBODY THAT
25 THEY KNEW THERE. DIDN'T MATCH ROY, DIDN'T MATCH AUSTIN,

1 DIDN'T MATCH CHAUNCEY, DIDN'T MATCH ROY BECAUSE ROY HAD
2 NOT BEEN IN THAT HOUSE, BEEN AT THE THRESHOLD AND THAT IS
3 IT. DIDN'T MATCH THE OTHER TWO, DIDN'T MATCH ANY OF THE
4 COFER'S THAT WE KNEW OF, DIDN'T MATCH ANYBODY THAT WE KNEW
5 WHO HAD BEEN IN THE HOUSE BUT WE DIDN'T TRY TO DO ANYTHING
6 ELSE. THE FOOTPRINT BELONGS TO THE EMPTY CHAIR.
7 LIEUTENANT DENNIS WAS THE MAIN INVESTIGATOR WITNESS ON
8 THIS CASE. LET'S TALK ABOUT HIS TESTIMONY AND WHAT WAS
9 NOT PRESENTED AND THEN I WILL TALK ABOUT WHAT WAS
10 PRESENTED. NO PHYSICAL EVIDENCE LINKED ROY JOHNSON
11 ANYWHERE IN THIS HOUSE. ROY TOLD YOU HE WAS AT THE
12 THRESHOLD, NO PHYSICAL EVIDENCE WHATSOEVER. WHY, WELL,
13 THEY SAID THEY DIDN'T FIND ANY FINGERPRINT, I WILL GIVE
14 THEM THAT. DNA, NEVER REALLY TESTED, NEVER REALLY WORRIED
15 ABOUT THAT. WE HAVE GOT OUR GUYS, WE ARE NOT WORRIED
16 ABOUT IT. THERE IS NO USE FOR IT. WELL, I SUBMIT THAT
17 THERE IS A USE. THE STATE NEEDS TO LET YOU KNOW WHAT
18 HAPPENED AND FIND BEYOND A REASONABLE DOUBT THAT SOMEONE
19 IS GUILTY. THEY DON'T KNOW THEMSELVES. DIDN'T CHECK THE
20 PHONE RECORDS. YOU HEARD LIEUTENANT DENNIS TELL ROY
21 JOHNSON, THERE IS SOME STUFF ON THESE TV SHOWS THAT DON'T
22 MAKE GOOD SENSE BUT SOME OF IT DOES AND WE CAN CHECK PHONE
23 RECORDS AND FIGURE OUT WHERE YOU WERE AT DIFFERENT TIMES.
24 HE COULD OF CHECKED OUT ROY'S STORY TO SEE WHO HE CALLED,
25 WHO HE TALKED TO, WHERE HE WAS WHEN HE TALKED TO THEM. HE

1 COULD OF PROVEN HIS STORY, IT COULD OF SHOWED HIM THAT
2 MAYBE THIS GUY IS THE ONE TELLING ME THE TRUTH. DIDN'T
3 CHECK WITH THE GASTONIA POLICE EVEN THOUGH THEY HAD A
4 PHYSICAL DESCRIPTION AND A NAME FOR HIM. DIDN'T CHECK THE
5 SECURITY CAMERAS AT WALMART, THEY JUST SENT SOMEONE TO
6 CHECK LATER BUT THEY WERE NOT AVAILABLE. THEY KNEW THE
7 PHOTOGRAPHS AND THE RECEIPTS FROM WALMART GOING ON DAY
8 ONE, OUT OF THE CAR. ON DAY TWO THEY HAVE GOT A STATEMENT
9 FROM ROY JOHNSON SAYING THAT THERE IS ANOTHER GUY
10 INVOLVED. DON'T BOTHER TO GET VIDEOS TO SHOW OR TO PROVE
11 OR DISPROVE. IT COULD OF SHOWN ROY AND CHAUNCEY AND
12 AUSTIN. I SUBMIT THAT IT WOULD SHOW CHAUNCEY AND SHORTY.
13 THEY WOULD OF HAD A PICTURE OF HIM, THEY DIDN'T BOTHER TO
14 DO THAT, NOT IN THE COURTROOM. WELL, WHAT DID THEY HAVE.
15 THEIR EVIDENCE, PHYSICAL AND TESTIMONY SUPPORTS ROY'S
16 TESTIMONY, SUPPORTS WHAT ROY TELLS YOU. THE FOOTPRINT
17 BELONGS TO AN UNKNOWN PERSON, THEY KNEW EVERYBODY THAT HAD
18 BEEN IN THAT HOUSE. IT IS NOT HARD TO GO, LET ME SEE YOUR
19 FOOT, NOPE, THAT DOESN'T MATCH. NOT HARD TO DO THAT,
20 DIDN'T BOTHER TO DO IT BECAUSE IT BELONGED TO SOMEONE WHO
21 MADE IT OUT WHO WAS GONE. DIDN'T CHECK THE BLOOD IN THE
22 CAR FOR DNA, DIDN'T CHECK ANYTHING IN THE CAR FOR DNA
23 EVIDENCE OR HAVE IT TESTED. SOME OF IT WAS GOING TO BE
24 AUSTIN, HE TOLD YOU HE WAS DRIVING. THE OTHER DNA IN THE
25 CAR WAS GOING TO SHOW YOU THIS GUY NAMED SHORTY. DIDN'T

1 BOTHER WITH THAT EITHER. NOW, THEIR TESTIMONY AND THEIR
2 EVIDENCE SUPPORTS WHAT ROY JOHNSON TOLD YOU. YOU MAY NOT
3 LIKE ROY JOHNSON, YOU MAY SAY HE HAD NO BUSINESS TO COME
4 IN NEWBERRY COUNTY AND TRY TO BUY DRUGS AND HANGING OUT
5 WITH PEOPLE LIKE HE WAS WITH AND WE JUST DON'T LIKE HIM.
6 I AM NOT ASKING YOU TO LIKE HIM, I AM ASKING YOU TO FOLLOW
7 YOUR OATH. I AM ASKING YOU TO PUT THAT FEAR ASIDE AND
8 FOLLOW YOUR OATH AND CONSIDER ALL THE EVIDENCE THAT YOU
9 HAVE. I THINK WITH THE EXCEPTION OF THE GUN YOU WILL GET
10 ALL OF THIS, YOU TAKE THIS BACK THERE AND LOOK AT IT.
11 REMEMBER ALL THE TESTIMONY THAT YOU HEARD, YOU PUT ALL OF
12 THAT TOGETHER AND YOU DETERMINE IF THERE IS REASONABLE
13 DOUBT, A DOUBT THAT CAUSES YOU TO HESITATE TO CONVICT ROY
14 JOHNSON. TWO PEOPLE IN THE CAR, TWO PEOPLE OUT. THERE
15 ARE WITNESSES THAT ESTABLISH THAT, THAT IS REASONABLE
16 DOUBT. A SHOE PRINT THAT DOESN'T MATCH ANYONE, THAT IS
17 REASONABLE DOUBT. NO PHYSICAL EVIDENCE TO MATCH THEIR
18 VERSION OF EVENTS, THAT IS REASONABLE DOUBT. THEY ARE
19 RELYING UPON THE TESTIMONY OF A CONVICTED MURDERER, A
20 CONVICTED KIDNAPPER, BURGLAR AND ARMED ROBBERY TO
21 ESTABLISH ROY JOHNSON IS GUILTY, THAT IS WHAT THEY ARE
22 RELYING ON. I DON'T DOUBT ANYTHING THAT THE COFER'S WENT
23 THROUGH, THEY WERE UNDER THE STRESS OF WHAT JUST HAPPENED,
24 IT IS NOT FAIR TO ASK THEM TO BE PERFECT. BUT TAKE
25 EVERYTHING THEY SAID AS ONE-HUNDRED PERCENT TRUE. IT

1 MATCHES UP PERFECTLY TO WHAT ROY JOHNSON SAID. THE STATE
2 IS UNSURE, YOU GO BACK IN THAT ROOM AND IF YOU HESITATE TO
3 CONVICT ROY JOHNSON BECAUSE IF YOU HAVE SOME DOUBT AS TO
4 WHAT REALLY HAPPENED THAT NIGHT BECAUSE THE STATE CAN'T
5 TELL YOU WHAT HAPPENED. THEY PRESENTED A COUPLE OF
6 THEORIES, THE ACT OF ONE IS THE ACT OF ALL OR HE REALLY
7 WENT IN AND DID IT HIMSELF, WE DON'T KNOW. BUT UNDER ONE
8 OF THOSE THINGS HE IS GUILTY. THEY DON'T KNOW AND NOBODY
9 CAN TELL YOU. THE STATE HAS DOUBTS AND I SUBMIT TO YOU IF
10 YOU HAVE DOUBTS YOU MUST FIND ROY JOHNSON NOT GUILTY.
11 THANK YOU.

12 THE COURT: THANK YOU, MR. JENKINS. LADIES AND
13 GENTLEMEN, WE HAVE REACHED THE POINT NOW WHERE IT IS MY
14 OBLIGATION TO INSTRUCT YOU ON THE LAW. YOU HAVE HEARD ALL
15 THE EVIDENCE YOU ARE GOING TO HEAR IN THE CASE, YOU ARE
16 NOT GOING TO HEAR ANY MORE WITNESSES, THERE ARE NOT GOING
17 TO BE ANY MORE EXHIBITS AND IT IS YOUR DUTY TO FIND THE
18 FACTS FROM THE EVIDENCE IN THIS CASE AND TO THOSE FACTS
19 YOU MUST APPLY THE LAW AS I GIVE IT TO YOU. YOU SHOULD
20 NOT BE CONCERNED WITH WHAT THE LAW SHOULD BE BUT WHAT THE
21 LAW IS. AND YOU SHOULD NOT BE INFLUENCED IN THIS CASE BY
22 ANY PERSONAL LIKES OR DISLIKES OR UNDUE SYMPATHY OR BIASED
23 OR PREJUDICED AND THAT MEANS YOU MUST DECIDE THIS CASE
24 SOLELY ON THE EVIDENCE AND ACCORDING TO THE LAW. AND YOU
25 WILL RECALL YOU TOOK AN OATH PROMISING YOU WILL DO JUST

1 THAT WHEN WE STARTED THIS TRIAL. NOW, IN FOLLOWING MY
2 INSTRUCTIONS YOU MUST FOLLOW ALL OF THEM AND NOT SINGLE
3 OUT SOME AND IGNORE OTHERS. THEY ARE ALL EQUALLY
4 IMPORTANT AND YOU MUST NOT READ INTO THESE INSTRUCTIONS OR
5 INTO ANYTHING THAT I MAY OF SAID OR DONE DURING THE COURSE
6 OF THIS TRIAL AS INDICATING TO YOU WHAT I THINK YOUR
7 VERDICT SHOULD BE OR WHAT I THINK THE FACTS ARE IN THIS
8 CASE. BECAUSE AS I TOLD YOU AT THE OUTSET THAT IS A
9 MATTER ENTIRELY FOR YOU TO DECIDE BECAUSE UNDER OUR
10 CONSTITUTION AND UNDER OUR SYSTEM OF JUSTICE I AM NOT
11 ALLOWED TO HAVE AN OPINION ABOUT THE FACTS THAT I CAN
12 SHARE WITH YOU. AND YOU AND YOU ALONE ARE THE SOLE AND
13 EXCLUSIVE JUDGE OF WHAT THE FACTS ARE. NOW, HOW DO YOU
14 DECIDE WHAT THE FACTS ARE, YOU DO THAT BY EVALUATING AND
15 WEIGHING THE EVIDENCE YOU HAVE HEARD DURING THE COURSE OF
16 THIS TRIAL. OBVIOUSLY IT IS NOT PRACTICAL FOR ME TO GIVE
17 YOU A SET OF SCALES TO GO BACK AND WEIGH THE EVIDENCE AND
18 OF COURSE THAT IS NOT WHAT WE ARE TALKING ABOUT. WHEN I
19 AM TALKING ABOUT WEIGHING EVIDENCE AND EVALUATING EVIDENCE
20 IT IS A MENTAL PROCESS AND YOU DO THAT BY SIMPLY USING
21 YOUR GOOD COMMON SENSE AND YOUR LIFE EXPERIENCES AND YOUR
22 SENSE OF LOGIC AND REASON AND YOU BRING THOSE THINGS TO
23 BEAR ON WHAT YOU HAVE HEARD DURING THE COURSE OF THIS
24 TRIAL. AND ONCE YOU DO THAT YOU WILL BE ABLE TO DETERMINE
25 THE FACTS OF THE CASE AND DETERMINE WHETHER THE STATE HAS

1 MET ITS BURDEN OF PROOF.

2 NOW, LADIES AND GENTLEMEN, I TOLD YOU AT THE
3 BEGINNING THAT IN DETERMINING THE FACTS YOU MUST CONSIDER
4 ONLY EVIDENCE AND I TOLD YOU THAT EVIDENCE CONSIST OF
5 WITNESS TESTIMONY AND EXHIBITS. AND I TOLD YOU EVERYTHING
6 ELSE IS NOT EVIDENCE AND YOU CANNOT CONSIDER ANYTHING ELSE
7 IN DETERMINING WHAT THE FACTS ARE. THE STATEMENTS OF THE
8 LAWYERS DO NOT CONSTITUTE EVIDENCE BECAUSE THE LAWYERS ARE
9 NOT WITNESSES. WHAT THEY SAY IS DESIGNED TO HELP YOU
10 UNDERSTAND THE EVIDENCE BUT IT IS NOT THE EVIDENCE IN
11 ITSELF. IF YOU RECALL THE TESTIMONY AND THE EVIDENCE IS
12 DIFFERENT THAN WHAT THE LAWYERS RECALLED YOUR MEMORY
13 CONTROLS. AND DON'T BE INFLUENCED BY ANY OBJECTIONS THAT
14 MAY OF BEEN MADE DURING THE COURSE OF THIS TRIAL. AS I
15 TOLD YOU AT THE BEGINNING THE LAWYERS HAVE AN ETHICAL DUTY
16 TO OBJECT WHEN THEY THINK THE EVIDENCE IS IMPROPER AND I
17 KNOW THAT YOU WOULDN'T HOLD IT AGAINST THEM FOR DOING
18 THEIR JOB.

19 NOW, IN ADDITION TO THE DIFFERENT SOURCES OF EVIDENCE
20 THERE ARE DIFFERENT TYPES OR KINDS OF EVIDENCE. AND WHAT
21 I AM TALKING ABOUT IS DIRECT AND CIRCUMSTANTIAL EVIDENCE.
22 DIRECT EVIDENCE IS DEFINED AS THE DIRECT PROOF OF A FACT
23 SUCH AS THE TESTIMONY OF AN EYE WITNESS. CIRCUMSTANTIAL
24 EVIDENCE, ON THE OTHER HAND, IS INDIRECT EVIDENCE. IT IS
25 PROOF OF A CHAIN OF FACTS FROM WHICH YOU COULD FIND THAT

1 ANOTHER FACT EXIST EVEN THOUGH IT HAS NOT BEEN PROVEN TO
2 YOU DIRECTLY. THE LAW ALLOWS YOU TO GIVE BOTH KINDS OF
3 EVIDENCE EQUAL WEIGHT. IT IS FOR YOU TO DECIDE WHETHER A
4 FACT HAS BEEN PROVEN BY DIRECT OR CIRCUMSTANTIAL EVIDENCE.
5 AND IN MAKING THAT DECISION YOU MUST CONSIDER ALL THE
6 EVIDENCE IN LIGHT OF REASON, COMMON SENSE AND EXPERIENCE.
7 IF AFTER YOUR REVIEW OF ALL THE EVIDENCE YOU ARE NOT
8 CONVINCED OF THE GUILT OF MR. JOHNSON BEYOND A REASONABLE
9 DOUBT THEN YOU MUST FIND HIM NOT GUILTY. ON THE OTHER
10 HAND, IF AFTER WEIGHING ALL THE EVIDENCE INCLUDING ALL
11 DIRECT AND CIRCUMSTANTIAL EVIDENCE YOU ARE FIRMLY
12 CONVINCED OF HIS GUILT IT WILL BE YOUR OBLIGATION TO FIND
13 HIM GUILTY.

14 NOW, I TOLD YOU THAT IN DETERMINING WHAT THE FACTS
15 ARE YOU WOULD HAVE TO BY NECESSITY DETERMINE THE
16 CREDIBILITY OF BELIEVABILITY OF ALL THE EVIDENCE. I GAVE
17 YOU SOME GUIDELINES ON HOW TO DO THAT WHEN IT COMES TO A
18 WITNESSES TESTIMONY, I AM NOT GOING TO REPEAT THAT, I KNOW
19 YOU HEARD ME THE FIRST TIME. I WILL TELL YOU SIMPLY THAT
20 YOU MAY BELIEVE EVERYTHING THAT A WITNESS SAYS OR YOU MAY
21 BELIEVE NOTHING A WITNESS SAYS. YOU MAY BELIEVE PART OF A
22 WITNESSES TESTIMONY AND DISBELIEVE OTHER PARTS. YOU MAY
23 BELIEVE ONE WITNESS OVER SEVERAL OR SEVERAL OVER ONE. IT
24 IS YOUR PREROGATIVE TO DETERMINE THE CREDIBILITY OF THE
25 WITNESSES AND I KNOW YOU WOULD NOT DO THAT LIKELY OR

1 ARBITRARILY BUT YOU WILL HAVE A SOUND BASIS FOR DECIDING
2 WHAT EVIDENCE IS BELIEVABLE OR NOT.

3 NOW, THIS IS A CRIMINAL CASE AND I GAVE YOU SOME
4 PRINCIPLES THAT APPLY TO ALL CRIMINAL CASES WHEN WE BEGAN
5 AND WHEN WE WERE SELECTING THE JURY AND I AM GOING TO
6 BRIEFLY REMIND YOU OF THOSE AND EMPHASIZE TO YOU THEIR
7 IMPORTANCE. FIRST OF ALL, THE MERE FACT THAT MR. JOHNSON
8 HAS BEEN CHARGED IN AN INDICTMENT DOESN'T MEAN ANYTHING,
9 IT IS NOT SOMETHING THAT YOU CAN CONSIDER IN DETERMINING
10 WHETHER HE IS GUILTY OR NOT GUILTY. THE INDICTMENTS ARE
11 SIMPLY PIECES OF PAPER, THEY ARE NOT EVIDENCE BECAUSE AS I
12 SAID THEY ARE NOT WITNESSES AND THEY ARE NOT EXHIBITS. IT
13 IS SIMPLY THE FORMAL WAY THE CASE BEGINS AND THE WAY A
14 CITIZEN IS INFORMED WITH WHAT HE IS CHARGED WITH AND YOU
15 MAY NOT CONSIDER IN ANY FASHION. MR. JOHNSON PLEAD NOT
16 GUILTY TO THE INDICTMENT AND THAT PUTS THE BURDEN ON THE
17 STATE TO PROVE HIM GUILTY. A PERSON CHARGED WITH
18 COMMITTING A CRIME IS NEVER REQUIRED TO PROVE THEMSELVES
19 INNOCENT OR PROVE THEMSELVES NOT GUILTY. IT IS AN
20 IMPORTANT AND FUNDAMENTAL RULE OF LAW THAT A DEFENDANT IN
21 A CRIMINAL TRIAL, NO MATTER WHAT THE CHARGE MAY BE IS
22 ALWAYS PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE
23 INDICTMENT WAS ISSUED UNLESS AND UNTIL GUILT HAS BEEN
24 PROVEN BEYOND A REASONABLE DOUBT.

25 NOW, THIS PRESUMPTION OF INNOCENCE, LADIES AND

1 GENTLEMEN, DOES NOT END WHEN THE CASE ENDS IN THE
2 COURTROOM. IT ACCOMPANIES THE DEFENDANT EVEN INTO YOUR
3 DELIBERATIONS AND INTO THE JURY ROOM AND IT CAN ONLY BE
4 REMOVED IF YOU FIND THAT THE STATE HAS SATISFIED TO EACH
5 ONE OF YOU OF GUILT BEYOND A REASONABLE DOUBT AS TO EACH
6 ELEMENT OF THE CRIME.

7 NOW, THERE ARE SEVERAL CHARGES IN THIS CASE AND I
8 WILL GO OVER WITH YOU THE VERDICT FORM WHICH LIST OUT EACH
9 CHARGE SEPARATELY AND ASK YOU TO RETURN A VERDIT AS TO
10 EACH CHARGE. AND REMEMBER THAT YOU MUST CONSIDER AND
11 WEIGH THE EVIDENCE AS TO EACH CHARGE SEPARATELY AND NOT BE
12 INFLUENCED BY YOUR DECISION ON ONE CHARGE IN REACHING YOUR
13 VERDICT ON ANOTHER CHARGE. MR. JOHNSON IS ENTITLED TO
14 INDEPENDENT AND IMPARTIAL CONSIDERATION ON EACH CHARGE.
15 NOW, THE PRESUMPTION OF INNOCENCE HAS BEEN LIKENED TO A
16 ROBE OF RIGHTEOUSNESS THAT HAS BEEN PLACED AROUND THE
17 SHOULDERS OF ONE CHARGED WITH A CRIME AND REMAINS WITH HIM
18 UNTIL IT HAS BEEN STRIPPED BY EVIDENCE SATISFYING YOU OF
19 GUILT BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF
20 INNOCENCE IS NOT SOME LEGAL TECHNICALITY OR THEORY OR JUST
21 SOME LEGAL PHRASE THAT WE LIKE TO THROW AROUND. IT IS A
22 SUBSTANTIAL AND FUNDAMENTAL RIGHT TO WHICH EVERYONE IS
23 ENTITLED AND YOU SHOULD GIVE IT THAT WEIGHT AND IN THAT
24 SERIES OF FASHION. I HAVE TALKED TO YOU ABOUT THE PHRASE,
25 REASONABLE DOUBT, AND I WANT TO DEFINE THAT FOR YOU. A

1 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A
2 REASONABLE AND SINCERE AND HONEST AND CONSCIENTIOUS PERSON
3 TO HESITATE TO ACT IN AN IMPORTANT MATTER IN THEIR OWN
4 AFFAIRS.

5 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES
6 YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THE LAW
7 DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE
8 DOUBT. IF BASED ON YOUR VIEW AND CONSIDERATION OF THE
9 EVIDENCE YOU ARE FIRMLY CONVINCED THAT MR. JOHNSON IS
10 GUILTY OF THE CRIME CHARGED YOU MUST FIND HIM GUILTY. ON
11 THE OTHER HAND IF YOU THINK THAT THERE IS A REAL
12 POSSIBILITY THAT HE IS NOT GUILTY YOU MUST GIVE HIM THE
13 BENEFIT OF THAT DOUBT AND FIND HIM NOT GUILTY. A
14 REASONABLE DOUBT MAY ARISE FROM THE EVIDENCE OR FROM THE
15 LACK OF EVIDENCE. AND I FURTHER TELL YOU THAT A DEFENDANT
16 IS ENTITLED TO EVERY REASONABLE DOUBT THAT MAY ARISE IN
17 THE CASE AND WHAT THAT MEANS IS SIMPLY THIS. THAT IF AS
18 TO ANY ISSUE OF FACT IS THAT ESSENTIAL TO A CONVICTION AND
19 A VERDICT OF GUILTY OF AN DEFENSE, AND IF YOU HAVE A
20 REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE RESOLVED
21 IT IS YOUR DUTY TO RESOLVE THAT DOUBT IN FAVOR OF MR.
22 JOHNSON.

23 NOW A STATEMENT OR STATEMENTS ALLEGED TO HAVE BEEN
24 MADE BY MR. JOHNSON HAS BEEN ADMITTED INTO EVIDENCE IN
25 THIS CASE. AND WHILE IT HAS BEEN ADMITTED I INSTRUCT YOU

1 THAT YOU MAKE THE ULTIMATE DECISION AS TO WHETHER MR.
2 JOHNSON MADE THE STATEMENT. IF YOU FIND HE DID MAKE THE
3 STATEMENT YOU MUST DETERMINE WHETHER THE STATEMENT WAS
4 MADE BY INVOLUNTARILY AND OF HIS OWN FREE CHOICE AND WILL.
5 THAT MEANS THE STATEMENT WAS NOT CAUSED BY PRESSURE,
6 FORCE, FEAR, THREATS, COERCION OR INTIMIDATION OR BY HOPE
7 OR BY PROMISE OF LENIENCY OR REWARD OF ANY KIND. IN
8 DETERMINING WHETHER THE STATEMENT WAS VOLUNTARY YOU SHOULD
9 CONSIDER BOTH THE CHARACTERISTICS OF A DEFENDANT AND THE
10 DETAILS OF THE QUESTIONING. YOU MAY CONSIDER THE AGE OF
11 MR. JOHNSON, HIS EDUCATION OR LACK OF EDUCATION, HIS
12 MENTAL ABILITY OR CAPACITY, HIS INTELLIGENCE, HIS
13 BACKGROUND AND ENVIRONMENT, PLACE AND LENGTH OF THE
14 DETENTION, NATURE OF THE QUESTIONING, THE ADVICE OR LACK
15 THEREOF TO HIM OF HIS CONSTITUTIONAL RIGHTS INCLUDING HIS
16 RIGHT TO REMAIN SILENT, THAT ANY STATEMENT COULD BE USED
17 AGAINST HIM IN A COURT OF LAW, THE RIGHT TO HAVE A LAWYER
18 PRESENT, IF HE COULD NOT AFFORD ONE ONE WOULD BE APPOINTED
19 TO REPRESENT HIM WITHOUT COST AND THAT HE COULD STOP
20 MAKING A STATEMENT AT ANY TIME. YOU MUST CAREFULLY
21 CONSIDER ALL OF THE CIRCUMSTANCES BEFORE YOU GIVE ANY
22 WEIGHT TO AN ALLEGED STATEMENT AND THE STATE HAS THE
23 BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE
24 ALLEGED STATEMENT WAS VOLUNTARY. IF YOU DETERMINE IT WAS
25 YOU MAY GIVE IT WHATEVER WEIGHT YOU THINK PROPER. YOU

1 MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO THE
2 ALLEGED STATEMENT. AND IF YOU DETERMINE THE STATEMENT WAS
3 NOT THE FREE AND VOLUNTARY STATEMENT OF MR. JOHNSON YOU
4 SHOULD NOT CONSIDER IT AT ALL.

5 IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL
6 INTENT IS REQUIRED TO BE PROVEN BY THE STATE BEYOND A
7 REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT
8 THE JURY MUST DETERMINE FROM THE CIRCUMSTANCES. AND, OF
9 COURSE, THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL
10 CERTAINTY, WE CAN'T DISSECT SOMEONE'S BRAIN AND DETERMINE
11 WHAT THEY HAD IN MIND AT A CERTAIN MOMENT. SO, THE LAW
12 SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE
13 CIRCUMSTANCES. IT IS NOT NECESSARY TO ESTABLISH INTENT BY
14 DIRECT AND POSITIVE EVIDENCE. INTENT MAY BE ESTABLISHED
15 BY INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING
16 INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE
17 CIRCUMSTANCES. CRIMINAL INTENT IS A MENTAL STATE,
18 CONSCIOUS WRONGDOING AND IT IS UP TO YOU TO DETERMINE WHAT
19 THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES.

20 NOW, LADIES AND GENTLEMEN, AS I MENTIONED, THE STATE
21 HAS THE BURDEN OF PROOF AND MR. JOHNSON IS PRESUMED
22 INNOCENT. AND AS I TOLD YOU EARLIER, HE DOESN'T HAVE ANY
23 BURDEN OF PROOF WHATSOEVER. HE DOESN'T HAVE TO PRODUCE
24 ANY EVIDENCE OR EXPLANATION OR PROVE HIMSELF INNOCENT OR
25 NOT GUILTY. AND RELATED TO THAT IT IS THE CONSTITUTIONAL

1 RIGHT THAT WE ALL ENJOY THAT WE HAVE TO REMAIN SILENT.
2 AND IF A DEFENDANT CHOOSES TO REMAIN SILENT THAT IS NOT
3 SOMETHING THAT YOU CAN CONSIDER IN YOUR DELIBERATIONS AND
4 IN YOUR CONSIDERATION OF WHETHER HE IS GUILTY OR NOT
5 GUILTY. THE MERE FACT THAT MR. JOHNSON CHOSE TO REMAIN
6 SILENT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER
7 WHATSOEVER. A PERSON HAS THE CONSTITUTIONAL RIGHT TO
8 REMAIN SILENT AND THE ASSERTION OF THIS RIGHT MUST NOT BE
9 CONSIDERED BY YOU IN YOUR DELIBERATIONS. SO, UNDER YOUR
10 OATH YOU ARE NOT TO DRAW ANY CONCLUSIONS WHATSOEVER FROM
11 THE FACT THAT MR. JOHNSON CHOSE NOT TO TESTIFY AND THE
12 FACT THAT HE DID NOT TESTIFY SHOULD NOT BE EVEN DISCUSSED
13 OR MENTIONED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I
14 TOLD YOU REPEATEDLY, IS ENTIRELY ON THE STATE.

15 NOW, IF A CRIME WAS COMMITTED BY TWO OR MORE PEOPLE
16 WHO WERE ACTING TOGETHER IN COMMITTING THE CRIME THE ACT
17 OF ONE IS CONSIDERED THE ACT OF ALL. A PERSON WHO JOINS
18 WITH ANOTHER TO COMMIT AN UNLAWFUL ACT IS CRIMINALLY
19 RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER PERSON THAT
20 HAPPENED AS A PROBABLE OR NATURAL CONSEQUENCE OF THE ACTS
21 DONE IN CARRYING OUT THE COMMON PLAN AND PURPOSE. FOR
22 EXAMPLE, TWO PEOPLE CAN BE GUILTY OF KILLING ANOTHER
23 PERSON WHEN ONLY ONE OF THE TWO HAD A GUN, THERE WAS ONLY
24 ONE BULLET AND ONLY ONE OF THE TWO FIRED THE SHOT THAT
25 CAUSED THE DEATH. IF TWO OR MORE PEOPLE ARE TOGETHER,

1 ACTING TOGETHER, ASSISTING EACH OTHER IN COMMITTING THE
2 OFFENSE THE ACT OF ONE IS THE ACT OF ALL. OR AS IT IS
3 SOMETIMES SAID, THE HAND OF ONE IS THE HAND OF ALL.
4 AGAIN, UNDER THIS THEORY THE STATE MUST PROVE BEYOND A
5 REASONABLE DOUBT THAT MR. JOHNSON'S ACTIONS WERE A NATURAL
6 OR PROBABLE CONSEQUENCE OF THE COMMON PLAN AND PURPOSE.
7 PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE COMMITTED
8 WITHOUT MORE IS NOT ENOUGH TO MAKE A PERSON GUILTY OF THAT
9 CRIME. MERE KNOWLEDGE THAT ANOTHER PERSON IS GOING TO
10 COMMIT A CRIME, EVEN IF THE DEFENDANT IS PRESENT WHEN THE
11 CRIME IS COMMITTED IS NOT SUFFICIENT TO CONVICT THE
12 DEFENDANT AS A PRINCIPLE. GUILT AS A PRINCIPLE IS SHOWN
13 BY ACTUAL OR CONSTRUCTIVE PRESENCE AT THE SCENE AS A
14 RESULT OF PRIOR ARRANGEMENT. THEREFORE A FINDING OF A
15 PRIOR ARRANGED PLAN OR A COMMON SCHEME IS NECESSARY FOR A
16 FINDING OF GUILT AS A PRINCIPLE. THE STATE BEARS THE
17 BURDEN OF PROVING BEYOND A REASONABLE DOUBT THE THEORY OF
18 THE HAND OF ONE IS THE HAND OF ALL. A PRINCIPLE IN A
19 CRIME IS ONE WHO EITHER ACTUALLY COMMITS THE CRIME OR WHO
20 IS PRESENT, AIDING, ABETTING OR ASSISTING IN COMMITTING A
21 CRIME. WHEN A PERSON DOES AN ACT IN THE PRESENCE OF AND
22 WITH THE ASSISTANCE OF ANOTHER THE ACT IS DONE BY BOTH.
23 WHERE TWO OR MORE ACTING WITH A COMMON PLAN OR INTENT OR
24 PRESENT AT THE COMMISSION OF A CRIME IT DOES NOT MATTER
25 WHO ACTUALLY COMMITS THE CRIME, ALL ARE GUILTY. THE HAND

1 OF ONE IS THE HAND OF ALL. HOWEVER, MERE PRESENCE AT THE
2 SCENE OF A CRIME IS NOT SUFFICIENT TO CONVICT ONE AS A
3 PRINCIPLE ON THE THEORY OF AIDING AND ABETTING. INTENT IS
4 ALSO A NECESSARY ELEMENT FOR THERE MUST OF BEEN A COMMON
5 DESIGN OR INTENT TO COMMIT THE CRIME AND THE CRIME MUST OF
6 BEEN COMMITTED PURSUANT THERETO WITH THE PERSON AIDING AND
7 ABETTING BY SOME OVERT ACT. INTENT MEANS INTENDING THE
8 RESULT THAT ACTUALLY OCCURS, NOT ACCIDENTALLY OR
9 INVOLUNTARILY. INTENT MAY BE SHOWN BY ACTS IN CONDUCT OF
10 THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
11 NATURALLY AND REASONABLY INFER INTENT. AND THE STATE MUST
12 PROVE THESE ELEMENTS BEYOND A REASONABLE DOUBT.

13 NOW, MR. JOHNSON IS CHARGED WITH SEVERAL OFFENSES AND
14 I AM GOING TO GO THROUGH EACH ONE OF THEM. THE FIRST ONE
15 I AM GOING TO TELL YOU ABOUT IS FIRST DEGREE BURGLARY. IN
16 ORDER TO CONVICT MR. JOHNSON OF THIS CHARGE THE STATE MUST
17 FIRST PROVE BEYOND A REASONABLE DOUBT THAT HE ENTERED A
18 DWELLING WITHOUT CONSENT. A DWELLING IS ANY BUILDING OR
19 PORTION OF A BUILDING IN WHICH A PERSON ORDINARILY SLEEPS.
20 BUT A BUILDING IS A DWELLING EVEN IF THE RESIDENTS ARE
21 TEMPORALLY ABSENT FROM THE BUILDING. IN ORDER TO PROVE
22 THAT THE DEFENDANT ENTERED THE DWELLING THE STATE DOES NOT
23 HAVE TO SHOW THAT THE DEFENDANT'S ENTIRE BODY ENTERED THE
24 DWELLING, THE SMALLEST ENTRY IS SUFFICIENT. IF A PERSON
25 ENTERS A BUILDING BY USING DECEPTION, ARTIFICE, TRICK OR

1 MISREPRESENTATION TO GET CONSENT TO ENTER THIS IS AN ENTRY
2 WITHOUT CONSENT. AND THE STATE DOES NOT HAVE TO PROVE
3 THAT FORCE WAS USED TO GAIN ENTRY. NEXT THE STATE MUST
4 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
5 INTENDED TO COMMIT A CRIME, EITHER A FELONY OR A
6 MISDEMEANOR AT THE TIME OF THE ENTRY. THE MERE ENTRY INTO
7 A DWELLING WITHOUT CONSENT IS NOT BURGLARY, IF THE INTENT
8 TO COMMIT A CRIME IS FORMED AFTER THE ENTRY IT IS NOT
9 BURGLARY. ON THE OTHER HAND, IF THE DEFENDANT INTENDED TO
10 COMMIT A CRIME AT THE TIME OF THE ENTRY IT IS A BURGLARY
11 EVEN IF THE INTENT WAS ABANDONED AFTER THE ENTRY OCCURS.
12 IT DOES NOT MATTER THAT THE INTENDED CRIME WAS NOT
13 COMPLETED. INTENT MAY BE SHOWN BY ACTS IN CONDUCT OR THE
14 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
15 NATURALLY AND REASONABLY INFER INTENT. FINALLY, IN ORDER
16 TO CONVICT THE DEFENDANT OF FIRST DEGREE BURGLARY THE
17 STATE MUST PROVE BEYOND A REASONABLE DOUBT WHEN ENTERING,
18 WHILE IN THE DWELLING OR WHEN FLEEING THE DEFENDANT OR AN
19 ACCOMPLICE WAS ARMED WITH A DEADLY WEAPON. A DEADLY
20 WEAPON IS ANY ARTICLE, INSTRUMENT OR SUBSTANCE THAT IS
21 LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN
22 INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE
23 FACTS AND CIRCUMSTANCES OF EACH CASE. THE FOLLOWING ARE
24 EXAMPLES OF INSTRUMENTS THAT MAY BE DEADLY WEAPONS, A
25 PISTOL, A SHOTGUN, A RIFLE, A DAGGER, A KNIFE, SLINGSHOT,

1 METAL KNUCKLES, A RAZOR, GASOLINE AND A GUN MAY BE A
2 DEADLY WEAPON EVEN IF IT IS NOT OPERATING. WHEN ENTERING
3 OR WHILE IN THE DWELLING OR WHEN FLEEING THE DEFENDANT AN
4 ACCOMPLICE CAUSED PHYSICAL INJURY TO ANYONE NOT
5 PARTICIPATING IN THE CRIME IS AN ALTERNATIVE BASIS UPON
6 WHICH YOU COULD FIND FIRST DEGREE BURGLARY. ANOTHER
7 CIRCUMSTANCE THAT THE STATE CAN PROVE IN ORDER TO CONVICT
8 SOMEONE OF FIRST DEGREE BURGLARY INCLUDES THAT WHEN
9 ENTERING, WHILE IN THE DWELLING OR WHEN FLEEING THE
10 DEFENDANT OR AN ACCOMPLICE CAUSED PHYSICAL INJURY TO
11 ANYONE NOT PARTICIPATING IN THE CRIME OR WHEN ENTERING
12 WHILE IN THE DWELLING OR WHEN FLEEING THE DEFENDANT OR THE
13 ACCOMPLICE USED OR THREATENED TO USE A DANGEROUS OBJECT OR
14 THAT WHEN ENTERING WHILE IN THE DWELLING OR WHEN FLEEING
15 THE DEFENDANT OR AN ACCOMPLICE DISPLAYED WHAT WAS OR
16 APPEARED TO BE A KNIFE, PISTOL, REVOLVER, RIFLE, SHOTGUN,
17 MACHINE GUN OR OTHER FIREARM OR THE DEFENDANT ENTERED OR
18 REMAINED IN THE DWELLING IN THE NIGHTTIME. AND NIGHTTIME
19 IS DEFINED AS THE PERIOD BETWEEN SUNSET AND SUNRISE DURING
20 WHICH THERE IS NOT ENOUGH DAYLIGHT TO RECOGNIZE A PERSON'S
21 FACE EXCEPT FOR ARTIFICIAL LIGHT.

22 NOW, THE NEXT OFFENSE CHARGED IS ARMED ROBBERY. AND
23 TO CONVICT MR. JOHNSON OF THIS CHARGE THE STATE MUST PROVE
24 BEYOND A REASONABLE DOUBT FIRST THAT HE TOOK PERSONAL
25 PROPERTY FROM THE PERSON OR PRESENCE FROM ANOTHER PERSON.

1 SECOND, THAT HE CARRIED THE PROPERTY AWAY INTENDING TO
2 PERMANENTLY DEPRIVING THE OWNER OF THE PROPERTY AND KEEP
3 IT FOR HIS OWN USE. THIRD, THE TAKING AWAY AND CARING
4 AWAY WAS DONE WITH VIOLENCE OR BY PUTTING THE OWNER OF THE
5 PROPERTY IN FEAR OF VIOLENCE. AND FINALLY THAT HE WAS
6 ARMED WITH A DEADLY WEAPON DURING THE ROBBERY. AND I HAVE
7 ALREADY DEFINED FOR YOU WHAT A DEADLY WEAPON MAY BE. AS I
8 SAID THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT
9 THE DEFENDANT CARRIED THE PROPERTY AWAY INTENDING TO
10 PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY AND TO KEEP
11 THE PROPERTY FOR HIS OWN USE. THE SLIGHTEST REMOVAL OF
12 THE PROPERTY OR THE COMPLETE POSSESSION OF THE PROPERTY
13 EVEN FOR AN INSTANCE BY THE DEFENDANT IS SUFFICIENT TO
14 SHOW A TAKING AND CARRYING AWAY.

15 THE NEXT CHARGE IS KIDNAPPING. AND IN ORDER TO
16 CONVICT MR. JOHNSON OF THIS CHARGE THE STATE MUST PROVE
17 BEYOND A REASONABLE DOUBT THAT MR. JOHNSON KNOWINGLY AND
18 UNLAWFULLY SEIZED, CONFINED, DECOYED, KIDNAPPED, ABDUCTED
19 OR CARRIED AWAY ANOTHER PERSON WITHOUT AUTHORITY OF LAW.
20 TO DO A THING UNLAWFULLY IS TO DO IT WILLFULLY AGAINST THE
21 LAW. KNOWINGLY MEANS WITH KNOWLEDGE, CONSCIOUSLY AND NOT
22 ACCIDENTALLY. SEIZE MEANS TO TAKE HOLD OF SUDDENLY OR
23 FORCIBLY. CONFINE MEANS TO LIMIT, RESTRICT OR TO ENCLOSE
24 WITHIN BOUNDS, IMPRISON OR SHUT OR KEEP IN. KIDNAP IS TO
25 REMOVE A PERSON AGAINST HIS WILL BY UNLAWFUL FORCE OR BY

1 FRAUD. ABDUCT MEANS TO CARRY OFF SECRETLY OR BY FORCE FOR
2 AN ILLEGAL PURPOSE. CARRY AWAY MEANS TO REMOVE. THE
3 STATE DOES NOT HAVE TO PROVE THAT THE DEFENDANT DID ALL OF
4 THESE THINGS. INSTEAD IF YOU FIND BEYOND A REASONABLE
5 DOUBT THAT THE DEFENDANT DID ANY OF THESE THINGS YOU MAY
6 FIND HIM GUILTY OF KIDNAPPING. SOMETHING DONE WITHOUT
7 AUTHORITY OF LAW IS SOMETHING THAT THE LAW DOES NOT
8 SANCTION, PERMIT, ALLOW, CONDONE OR PROVIDE JUSTIFICATION
9 FOR. KIDNAPPING DOES NOT HAVE TO BE FOR ANY PERSONAL OR
10 MONETARY GAIN, FOR ANY ILLEGAL PURPOSE BUT MAY BE FOR ANY
11 REASON WHATSOEVER.

12 THE NEXT OFFENSE IS ASSAULT AND BATTERY OF A HIGH AND
13 AGGRAVATED NATURE. AND IN ORDER TO CONVICT MR. JOHNSON OF
14 THIS OFFENSE THE STATE MUST PROVE BEYOND A REASONABLE
15 DOUBT THIS OFFENSE WHICH IS DEFINED AS AN UNLAWFUL ACT OF
16 VIOLENT INJURY TO THE PERSON OF ANOTHER ACCOMPANIED BY A
17 CIRCUMSTANCE OF AGGRAVATION.

18 AN ASSAULT OCCURS WHEN A PERSON UNLAWFULLY ATTEMPTS
19 OR OFFERS TO COMMIT A VIOLENT INJURY UPON ANOTHER PERSON
20 AND HAVE THE PRESENT ABILITY TO COMPLETE THE ATTEMPTED
21 INJURY. AN ASSAULT IS THE INTENTIONAL CREATION OF A
22 REASONABLE FEAR OF IMMEDIATE BODILY HARM. IT IS NOT
23 NECESSARY THAT THE ATTEMPTED INJURY ACTUALLY OCCUR. FOR
24 EXAMPLE, IF I WALK UP TO YOU AND WHEN WE ARE WITHIN ARMS
25 REACH I DRAW BACK MY FIST TO HIT YOU, THAT IS AN ASSAULT

1 THAT IS DEFINED BY THE LAW. A BATTERY IS THE UNLAWFUL
2 TOUCHING OF ANOTHER PERSON BY A PERSON WHO HAS COMMITTED
3 THE ASSAULT. AN UNLAWFUL TOUCHING CAN BE CAUSED BY PART
4 OF THE ACCUSED BODY OR BY ANY OBJECT THE ACCUSED PUTS IN
5 MOTION. A BATTERY IS THE COMPLETION OF THE ASSAULT BY
6 USING OR APPLYING FORCE TO ANOTHER PERSON HOWEVER SLIGHT
7 IN A RUDE, ANGRY OR RESENTFUL MANNER WITHOUT LEGAL
8 JUSTIFICATION. USING MY EARLIER EXAMPLE, IF I CARRY
9 THROUGH THE ASSAULT BY HITTING YOU THEN THAT WOULD BE A
10 BATTERY. THE STATE MUST ALSO PROVE A CIRCUMSTANCE OF
11 AGGRAVATION IN ADDITION TO PROVING THE ASSAULT AND THE
12 BATTERY. CIRCUMSTANCES OF AGGRAVATION INCLUDE THE USE OF
13 A DEADLY WEAPON, THE INTENT TO COMMIT A FELONY, THE
14 INFLECTION OF SERIOUS BODILY INJURY, A GREAT DISPARITY
15 BETWEEN THE AGES OR PHYSICAL CONDITIONS OF THE PARTIES,
16 THE DIFFERENCE IN GENDER, THE PURPOSEFUL INFLECTION OF
17 SHAME AND DISGRACE AND THE RESISTENCE OF LAWFUL AUTHORITY.
18 AND THESE ARE ONLY EXAMPLES OF AN AGGRAVATING
19 CIRCUMSTANCE.

20 NOW, THE FINAL OFFENSE THAT MR. JOHNSON IS CHARGED
21 WITH IS POSSESSION OF A WEAPON DURING THE COMMISSION OF A
22 OR ATTEMPT TO COMMIT A VIOLENT CRIME. THE STATE MUST
23 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS IN
24 POSSESSION OF A FIREARM OR VISIBLY DISPLAYED WHAT APPEARED
25 TO BE A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

1 A FIREARM MEANS ANY MACHINE GUN, AUTOMATIC RIFLE,
2 REVOLVER, PISTOL OR ANY WEAPON WHICH WILL, IS DESIGNED TO
3 OR MAY BE READILY CONVERTED TO EXPEL A PROJECTILE. IN
4 ORDER TO FIND MR. JOHNSON GUILTY OF POSSESSION OF A WEAPON
5 DURING THE COMMISSION OF A VIOLENT CRIME YOU MUST FIRST
6 FIND HIM GUILTY OF EITHER COMMITTING A VIOLENT CRIME OR
7 ATTEMPTING THE COMMISSION OF A VIOLENT CRIME. UNDER SOUTH
8 CAROLINA THE OFFENSES OF FIRST DEGREE BURGLARY, ARMED
9 ROBBERY AND KIDNAPPING ARE DEFINED AS VIOLENT CRIMES FOR
10 PURPOSES OF THIS OFFENSE.

11 NOW, THAT COVERS ALL OF THE OFFENSES THAT MR. JOHNSON
12 IS CHARGED WITH. AND MR. JOHNSON HAS RAISED THE DEFENSE
13 OF COERCION OR DURESS. COERCION OR DURESS IS WHEN A
14 PERSON MAKES ANOTHER PERSON COMMIT A CRIME AGAINST SOMEONE
15 ELSE'S PERSON OR PROPERTY BY THE THREAT OF IMMEDIATE
16 PHYSICAL VIOLENCE. THE COERCION OR DURESS MUST BE
17 PRESENT, IMMINENT AND OF THE TYPE THAT CREATES A WELL
18 GROUNDED FEAR OF DEATH OR SERIOUS BODILY HARM IF THE ACT
19 IS NOT DONE. THE FEAR OF INJURY ON THE PART OF THE
20 DEFENDANT MUST BE REASONABLE. COERCION OR DURESS IS NOT A
21 DEFENSE IF THERE IS ANY REASONABLE WAY OTHER THAN
22 COMMITTING THE CRIME FOR THE DEFENDANT TO ESCAPE THE
23 THREAT OF HARM. THE DEFENDANT MUST PROVE THE DEFENSE OF
24 DURESS BY THE GREATER WEIGHT OF THE EVIDENCE. IF YOU FIND
25 THE DEFENDANT WAS COERCED OR UNDER DURESS IN COMMITTING

1 THESE CRIMES THEN YOU MUST FIND HIM NOT GUILTY. HOWEVER,
2 IF YOU FIND THE DEFENDANT WAS NOT COERCED OR UNDER DURESS
3 IN COMMITTING THESE CRIMES THEN COERCION OR DURESS WOULD
4 NOT BE A DEFENSE TO THESE CHARGES.

5 NOW, THAT COVERS ALL THE LAW THAT APPLIES TO YOUR
6 DELIBERATIONS. AND LET ME JUST COMMENT BRIEFLY ON YOUR
7 DELIBERATIONS AND GO OVER WITH YOU THE VERDICT FORM. NOW,
8 YOU WERE NOT CHOSEN TO BE A JUROR IN THIS CASE TO BE A
9 PARTISAN OR ADVOCATE= FOR EITHER THE STATE OR FOR MR.
10 JOHNSON. YOU WERE CHOSEN BECAUSE BOTH SIDES BELIEVED YOU
11 COULD BE FAIR AND IMPARTIAL AND THAT YOU COULD DECIDE THIS
12 CASE WITHOUT ANY KIND BIASED OR PREJUDICED OR ANY
13 PRECONCEIVED IDEAS. AND AS I SAID, USE YOUR LIFE
14 EXPERIENCES AND YOUR COMMON SENSE AND YOUR SENSE OF LOGIC
15 AND REASON AND BRING THOSE THINGS TO BEAR ON THE EVIDENCE
16 THAT YOU HAVE HEARD DURING THIS TRIAL. THEN ONCE YOU DO
17 THAT YOU WILL BE ABLE TO DETERMINE THE FACTS OF THE CASE
18 AND DETERMINE WHETHER THE STATE HAS MET ITS BURDEN OF
19 PROOF AND YOU WILL TAKE THE LAW THAT I HAVE GIVEN TO YOU
20 AND YOU APPLY IT TO THE FACTS. AND ONCE YOU DO THAT YOU
21 WILL COME UP WITH A VERDICT IN THIS MATTER. IF YOU LOOK
22 UP THE WORD, DELIBERATIONS, IN THE DICTIONARY YOU WOULD
23 SEE IT IS DEFINED AS A CAREFUL CONSIDERATION, A WEIGHING
24 UP OR TO THE VIEW TO A DECISION. AND I HAVE ALREADY
25 TALKED TO YOU ABOUT THIS IDEA ABOUT WEIGHING THE EVIDENCE,

1 EVALUATING THE EVIDENCE. THE GENIUS OF OUR JURY SYSTEM IS
2 THAT IT ALLOWS TWELVE PEOPLE FROM DIFFERENT BACKGROUNDS
3 AND WALKS OF LIFE AND LIFE EXPERIENCES TO COME TOGETHER
4 AND TO DISCUSS THE EVIDENCE, EVALUATE IT AND CONSIDER EACH
5 OTHERS PERSPECTIVES AND POINTS OF VIEW. AND YOU EACH HAVE
6 A VOTE AND YOU EACH MUST CAST YOUR VOTE IN A CONSCIENTIOUS
7 AND IMPARTIAL MANNER. AND REMEMBER YOU ARE NOT PARTISANS
8 OR ADVOCATES FOR EITHER SIDE, YOU ARE JUDGES, YOU ARE
9 JUDGES OF THE FACTS AND YOUR SOLE INTEREST IS TO DETERMINE
10 THE FACTS OF THE CASE IMPARTIALLY, FAIRLY AND TO DETERMINE
11 WHETHER THE STATE HAS MET ITS BURDEN OF PROOF ON EACH ONE
12 OF THESE OFFENSES. NOW, I AM GOING TO GIVE YOU THE
13 VERDICT FORM AND JUST GO OVER THAT WITH YOU. AS YOU WILL
14 SEE, IT STARTS OUT BURGLARY FIRST DEGREE, THE SECOND IS
15 ARMED ROBBERY, THIRD IS KIDNAPPING, FORTH IS ASSAULT AND
16 BATTERY OF A HIGH AND AGGRAVATED NATURE AND THEN FINALLY
17 THE FIFTH IS THE POSSESSION OF A WEAPON DURING THE
18 COMMISSION OF A VIOLENT CRIME. AS THE NOTE SAYS, YOU ONLY
19 CONSIDER THE FIFTH CHARGE IF YOU FOUND MR. JOHNSON GUILTY
20 OF A VIOLENT CRIME AND DON'T ATTACH ANY SIGNIFICANCE AS TO
21 WHICH OPTION I PUT FIRST. I HAVE TO PUT ONE BEFORE THE
22 OTHER. AND YOUR VERDICT MUST BE UNANIMOUS. WHEN YOU
23 DECIDE YOUR VERDICT, SIGN IT AND LET THE BAILIFF KNOW AND
24 WE WILL BRING YOU OUT AND WE WILL RECEIVE YOUR VERDICT AND
25 PUBLISH IT. NOW, THE RECORD IS CLOSED, THERE IS NOT GOING

1 TO BE ANY MORE EXHIBITS OR WITNESSES SO WHEN YOU RECEIVE
2 THE EXHIBITS BACK THERE WITH YOU THAT IS YOUR SIGNAL TO
3 START DELIBERATING.. AS WAS POINTED OUT, THERE IS A
4 FIREARM AND WE WILL NOT SEND THAT BACK. WE HAVE A
5 PROTOCOL TO FOLLOW AND IT HAS BEEN INSPECTED AND IT IS
6 DISABLED, WE ARE NOT GOING TO SEND IT BACK BUT YOU HAVE
7 THE RIGHT TO ASK FOR IT IF YOU WANT IT. AND IF YOU DO
8 WANT THE FIREARM BACK THERE WE WILL SEND IT BACK. IF YOU
9 WANT THOSE THINGS WE WILL SEND THEM BACK SEPARATELY.
10 THANK YOU FOR YOUR ATTENTION. I AM GOING TO ASK THE
11 ALTERNATE TO STAY HERE AND THE REST OF YOU CAN GO BACK.
12 DON'T START TALKING ABOUT THE CASE UNTIL THE EXHIBITS ARE
13 BROUGHT IN. THANK YOU.

14 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
15 12:03 P.M.)

16 THE COURT: ANY OBJECTIONS, EXCEPTIONS TO THE CHARGE
17 FROM THE STATE?

18 MS. ZIMMERMAN: NONE FROM THE STATE.

19 THE COURT: FROM THE DEFENSE?

20 MR. JENKINS: YOUR HONOR, I WOULD LIKE TO MAKE THE
21 CHARGES A COURT EXHIBIT.

22 THE COURT: YES, SIR.

23 THE COURT: MS. ALI, THE LAW DOESN'T ALLOW YOU TO GO
24 BACK IN THE JURY ROOM. IN FACT, IT REQUIRES THAT YOU BE
25 DISCHARGED NOW. SO, JUST CALL BACK TONIGHT AFTER 6:00 AND

1 THEY WILL GIVE YOU FURTHER INSTRUCTION. THANK YOU FOR
2 YOUR SERVICE, YOU GAVE US A PIECE OF MIND TO KNOW THAT WE
3 WOULD BE ABLE TO FINISH THE CASE IF SOMETHING HAPPENED TO
4 SOMEONE ELSE. THANK YOU FOR YOUR SERVICE.

5 (WHEREUPON, THE ALTERNANT WAS EXCUSED FROM THE TRIAL
6 OF THE CASE.)

7 THE COURT: ALL RIGHT, TAKE THE EXHIBITS BACK AND
8 TELL THEM THEY CAN BEGIN DELIBERATIONS.

9 (WHEREUPON, THE JURY STARTED DELIBERATIONS AT
10 APPROXIMATELY 12:10 P.M.)

11 THE COURT: THE JURY HAS SENT A NOTE THAT SAYS WAS
12 THERE A SPENT SHELL IN THE PISTOL THAT WAS FOUND. MAKE
13 THAT A COURT'S EXHIBIT.

14 (WHEREUPON, COURT'S EXHIBIT NO. 2 WAS MARKED FOR
15 IDENTIFICATION ONLY.)

16 THE COURT: WHAT IS THE STATE'S POSITION.

17 MS. ZIMMERMAN: THE STATE HAS ADMITTED ONE OF THE
18 EXHIBITS WHICH WAS THE AMMUNITION, INCLUDES THE CLIP WHICH
19 WAS LOADED WITH THE WEAPONS AS WELL AS THE SPENT CASING
20 THAT WAS FOUND IN THE GUN. SO, WE WOULD ARGUE JUST TO
21 SEND THAT EXHIBIT BACK AND LET THE JURY TO LOOK AT AND
22 DETERMINE AS THEY WILL. THERE WAS TESTIMONY FROM
23 LIEUTENANT DENNIS THAT THE SPENT CASING WAS FOUND IN THE
24 WEAPON WHICH WAS THE TESTIMONY THAT LED UP TO THE
25 ADMISSION OF THAT EXHIBIT.

1 MR. JENKINS: WE DON'T OPPOSE THE GUN AND/OR THE
2 AMMUNITION OR JUST SEND THE AMMUNITION OR THE GUN BACK TO
3 THE JURY.

4 MS. ZIMMERMAN: ALL OF THE AMMUNITION IS ADMITTED AS
5 ONE EXHIBIT SEPARATE FROM THE WEAPON SO THAT ONE EXHIBIT
6 COULD GO BACK INCLUDING THE SHELL CASING IS IN THAT ONE
7 EXHIBIT.

8 THE COURT: Y'ALL WOULD AGREE TO JUST SEND BACK, I
9 CAN WRITE THEM BACK AND SAY, WITH YOUR CONSENT, WE CAN
10 ARRANGE TO HAVE THE AMMUNITION AND THE GUN SENT BACK
11 SEPARATELY, IF YOU WOULD LIKE THESE EXHIBITS LET US KNOW.
12 AND THEN I CAN HAVE ONE OF THE COURT'S SECURITY OFFICERS
13 HAND THE GUN TO THE BAILIFF TO GIVE TO THE JURY AND THEN
14 WHEN THEY ARE DONE WITH THE GUN OR THE AMMUNITION,
15 WHICHEVER ONE GOES IN FIRST, WE CAN GIVE THEM THE OTHER.
16 BUT BOTH ARE NOT GOING BACK AT THE SAME TIME.

17 MR. JENKINS: I DON'T OBJECT TO, I GUESS SEND THE
18 AMMO AND IF THEY INDICATE THEY DO WANT THE OTHER THEN WE
19 WILL SEND THAT BACK.

20 MS. ZIMMERMAN: THE STATE WOULD AGREE WITH THAT.

21 THE COURT: THIS IS THE NOTE, IT SAYS WE WILL SEND IN
22 EXHIBIT 96. IF YOU WOULD LIKE TO SEE THE ACTUAL GUN,
23 EXHIBIT 95, PLEASE LET US KNOW AND WE WILL SEND IT IN ONCE
24 EXHIBIT 96 IS RETURNED. JUST LET US KNOW IN WRITING. YOU
25 WILL HAVE TO RELY ON YOUR MEMORY AS TO ANY TESTIMONY. WE

1 WILL BE AT EASE UNTIL WE HEAR BACK FROM THE JURY.

2 (WHEREUPON, THE NOTE WAS SENT BACK TO THE JURY WITH
3 EXHIBIT 96.)

4 THE COURT: PLEASE MARK THIS AS COURT'S EXHIBIT.

5 (WHEREUPON, COURT'S EXHIBIT NO. 3 AND 4 WERE MARKED
6 FOR IDENTIFICATION ONLY.)

7 THE COURT: THE LAWYERS HAVE SEEN THE NOTE AND WE
8 HAVE DISCUSSED IT. THEY ESSENTIALLY ADDRESSED ABOUT THE
9 HAND OF ONE IS THE HAND OF ALL. COURT'S EXHIBIT 3 AND 4,
10 NUMBER 3 SAYS, DOES THE HAND OF ONE HAND OF ALL APPLY TO
11 KIDNAPPING IF WE AREN'T SURE ROY WAS THE ONE DOING IT?
12 HOLDING DOWN, TAPING. NUMBER 4 SAYS, SIR, WHICH CHARGES
13 APPLY THE HAND OF ONE HAND OF ALL. KIDNAPPING, ASSAULT
14 AND BATTERY WITH A HIGH AND AGGRAVATED NATURE. DO THEY
15 APPLY THE HAND OF ONE HAND OF HAND OF ALL. SO, I CAN
16 RESPOND TO THEM BY WRITING BACK AND SAYING, THEORY OF THE
17 HAND OF ONE HAND OF ALL OR AIDING AND ABETTING COULD APPLY
18 TO ALL CHARGES HOWEVER THE STATE BEARS THE BURDEN OF PROOF
19 BEYOND A REASONABLE DOUBT THAT THE HAND OF ONE THE HAND OF
20 ALL THEORY.

21 MR. JENKINS: I AM JUST TRYING TO DETERMINE, YOUR
22 HONOR, FROM THE READING OF THEIR NOTES THAT IT APPEARS
23 THEY HAVE CONFUSION OF THE HAND OF ONE HAND OF ALL THEORY
24 IN AND OF ITSELF. WHETHER IT APPLIES TO ONE CHARGE AND
25 NOT TO ANOTHER. WE WOULD RESPECTFULLY REQUEST THAT THE

1 JURY BE BROUGHT BACK IN AND REREAD THE HAND OF ONE IS THE
2 HAND OF ALL PORTION OF THE JURY CHARGE.

3 THE COURT: BUT THAT WOULDN'T ANSWER THEIR QUESTION
4 ABOUT WHICH CHARGES APPLY TO. THAT IS THEIR QUESTION. I
5 DON'T MIND BRINGING THEM BACK OUT AND CHARGE THEM AND TELL
6 THEM IN RESPONSE TO THEIR QUESTION, TELL THEM WHAT I HAVE
7 ALREADY TOLD THEM.

8 MR. JENKINS: I DON'T HAVE A PROBLEM WITH THAT.

9 THE COURT: I HAVE ANOTHER NOTE, LET'S SEE WHAT IT
10 IS.

11 (WHEREUPON, COURT'S EXHIBIT NO. 5 WAS MARKED FOR
12 IDENTIFICATION ONLY.)

13 THE COURT: BRING THE JURY IN PLEASE.

14 MS. YON: ONE OF THE JURORS WANTED TO KNOW IF HE
15 COULD TAKE NOTES.

16 THE COURT: SURE.

17 MS. YON: I TOLD HIM I THOUGHT THAT WOULD BE FINE
18 AND HE IS BRINGING A NOTE PAD IN.

19 THE COURT: ALL RIGHT.

20 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
21 APPROXIMATELY 1:56 P.M.)

22 THE COURT: OKAY. YOU SENT OUT TWO NOTES AND LET ME
23 RESPOND TO THEM THIS WAY. THE THEORY OF THE HAND OF ONE
24 IS THE HAND OF ALL IS A THEORY IN CRIMINAL LAW WHICH
25 RELATES TO CRIMINAL RESPONSIBILITY FOR AIDER AND ABETTOR.

1 YOU HAVE HEARD THE TERM I HAVE USED BEFORE, AIDING AND
2 ABETTING. THEY MEAN THE SAME THING. SO, THE THEORY OF
3 THE HAND OF ONE OR THE ACT OF ONE BEING THE ACT OF ALL CAN
4 APPLY TO ALL THE OFFENSES THAT ARE BEFORE YOU NOW. AND AS
5 I SAID EARLIER, IF A CRIME IS COMMITTED BY TWO OR MORE
6 PEOPLE WHO ARE ACTING TOGETHER IN COMMITTING A CRIME THE
7 ACT OF ONE IS THE ACT OF ALL. AND A PERSON WHO JOINS WITH
8 ANOTHER PERSON TO COMMIT AN UNLAWFUL ACT IS CRIMINALLY
9 RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER PERSON THAT
10 HAPPENS AS A PROBABLE OR NATURAL CONSEQUENCE OF THE ACTS
11 DONE IN CARRYING OUT THE COMMON PLAN AND PURPOSE. FOR
12 EXAMPLE, TWO PEOPLE CAN BE GUILTY OF KILLING ANOTHER
13 PERSON WHEN ONLY ONE OF THE TWO HAD A GUN, THERE WAS ONLY
14 ONE BULLET. AND ONE OF THE TWO FIRED THE SHOT THAT CAUSED
15 THE DEATH. IF TWO OR MORE PEOPLE ARE TOGETHER, ACTING
16 TOGETHER, ASSISTING EACH OTHER IN COMMITTING THE OFFENSE,
17 THE ACT OF ONE IS THE ACT OF ALL OR AS IT IS SOMETIMES
18 SAID, THE HAND OF ONE IS THE HAND OF ALL. AGAIN, UNDER
19 THIS THEORY THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
20 THAT THE DEFENDANT'S ACTIONS WERE A NATURAL OR PROBABLE
21 CONSEQUENCE OF THE COMMON PLAN AND PURPOSE. PRIOR
22 KNOWLEDGE THAT A CRIME IS GOING TO BE COMMITTED WITHOUT
23 MORE IS NOT SUFFICIENT TO MAKE A PERSON GUILTY OF THE
24 CRIME. MERE KNOWLEDGE THAT ANOTHER PERSON IS GOING TO
25 COMMIT A CRIME EVEN IF THE DEFENDANT IS PRESENT WHEN THE

1 CRIME IS COMMITTED IS NOT SUFFICIENT TO CONVICT THE
2 DEFENDANT. GUILT AS A PRINCIPLE IS SHOWN BY ACTUAL OR
3 CONSTRUCTIVE PRESENCE AT THE SCENE AS A RESULT OF PRIOR
4 ARRANGEMENT. THEREFORE A FINDING OF A PRIOR ARRANGED PLAN
5 OR COMMON SCHEME IS NECESSARY FOR FINDING GUILT AS A
6 PRINCIPLE AND THE STATE BEARS THE BURDEN OF PROVING BEYOND
7 A REASONABLE DOUBT THE THEORY OF THE HAND OF ONE IS THE
8 HAND OF ALL. A PRINCIPLE IN A CRIME IS ONE WHO EITHER
9 ACTUALLY COMMITS THE CRIME OR WHO IS PRESENT, AIDING,
10 ABETTING OR ASSISTING IN COMMITTING THE CRIME. WHEN A
11 PERSON DOES AN ACT IN THE PRESENCE OF AND WITH THE
12 ASSISTANCE OF ANOTHER THE ACT IS DEEMED TO BE DONE BY
13 BOTH. WHERE TWO OR MORE ACTING WITH A COMMON PLAN OR
14 INTENT ARE PRESENT AT THE COMMISSION OF A CRIME IT DOES
15 NOT MATTER WHO ACTUALLY COMMITS THE CRIME, ALL ARE GUILTY,
16 THE HAND OF ONE IS THE HAND OF ALL. PRESENT AT THE
17 COMMISSION OF A CRIME MEANS TO BE SUFFICIENTLY NEAR TO AID
18 AND ABET AND ASSIST IN THE COMMISSION OF THE CRIME.
19 HOWEVER, MERE PRESENCE AT THE SCENE OF THE CRIME IS NOT
20 SUFFICIENT TO CONVICT ONE AS A PRINCIPLE. INTENT IS ALSO
21 A NECESSARY ELEMENT, THERE MUST HAVE BEEN A COMMON DESIGN
22 OR INTENT TO COMMIT THE CRIME AND THE CRIME MUST HAVE BEEN
23 COMMITTED PURSUANT THERETO WITH THE PERSON AIDING AND
24 ABETTING BY SOME OVERT ACT. INTENT MEANS INTENDING THE
25 RESULT WOULD ACTUALLY OCCUR AND NOT ACCIDENTALLY OR

1 INVOLUNTARILY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF
2 THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
3 NATURALLY AND REASONABLY INFER AN INTENT. AND THE STATE
4 MUST AGAIN PROVE THESE ELEMENTS BEYOND A REASONABLE DOUBT.
5 THAT IS THE THEORY OF THE HAND OF ONE IS THE HAND OF ALL.
6 AND FURTHER RESPONSE TO YOUR QUESTION, IT COULD APPLY TO
7 ALL OF THE OFFENSES THAT HAVE BEEN ALLEGED. THANK YOU
8 VERY MUCH AND YOU CAN RETURN TO YOUR JURY ROOM.

9 (WHEREUPON, THE JURY CONTINUED TO DELIBERATE AT
10 APPROXIMATELY 2:00 P.M.)

11 THE COURT: WE WILL BE AT EASE UNTIL WE HEAR
12 SOMETHING.

13 MS. YON: THEY ARE WRITING ANOTHER QUESTION.

14 THE COURT: ANOTHER NOTE FROM THE JURY, IT SAYS CAN
15 ERIC HORNING SPEAK TO THE JUDGE. HE IS THE FOREPERSON.

16 MR. JENKINS: I GUESS I DON'T OPPOSE IF WE CAN BRING
17 HIM OUT AND PUT IT ON THE RECORD.

18 THE COURT: I AM NOT GOING TO SPEAK TO HIM BY MYSELF.
19 I DON'T KNOW WHAT HE IS GOING TO SAY.

20 MR. JENKINS: YOUR HONOR, I DON'T OPPOSE TO BRING HIM
21 OUT AND LET HIM SAY WHAT HE IS GOING TO SAY AND THEN WE
22 CAN DISCUSS IT AND THEN BRING THEM BACK OUT.

23 THE COURT: I DON'T KNOW WHY HE COULDN'T JUST WRITE
24 ME A NOTE. I DON'T KNOW WHAT HE WOULD HAVE TO SAY THAT
25 COULDN'T BE PUT IN WRITING.

1 MS. ZIMMERMAN: I DON'T HAVE ANY OBJECTION.

2 THE COURT: IF Y'ALL DON'T OBJECT TO HIM COMING OUT
3 WE CAN PUT IT ON THE RECORD.

4 MS. ZIMMERMAN: NO OBJECTION.

5 MR. JENKINS: NO OBJECTION.

6 THE COURT: TELL THE FOREMAN TO COME ON OUT.

7 (WHEREUPON, THE FOREMAN, MR. ERIC HORNING WAS BROUGHT
8 INTO THE COURTROOM.)

9 THE COURT: YES, SIR.

10 MR. HORNING: WE JUST, WE HAVE SOME DISCRETION ABOUT
11 THE HAND OF ALL, THE HAND OF ONE THE HAND OF ALL WORKS
12 BECAUSE, THERE IS SOMETHING--

13 THE COURT: I DON'T WANT TO KNOW WHAT YOU ARE
14 DISCUSSING BACK THERE. WHAT DO YOU WANT FROM ME.

15 MR. HORNING: THAT IS WHAT I HAD A QUESTION ABOUT
16 BECAUSE WE KEEP RUNNING CIRCLES AND CIRCLES ABOUT THE SAME
17 THING.

18 THE COURT: SO YOU WANT TO BE INSTRUCTED AGAIN ON
19 THAT.

20 MR. HORNING: I KNOW IT IS GOING TO BE THE SAME THING
21 READ TO US AND WE JUST CAN'T COME TO ANY AGREEMENT TO WHAT
22 THE LAW IS REALLY. I CAN'T ASK YOU ABOUT IT WITHOUT GOING
23 INTO DETAIL. HE DOESN'T PHYSICALLY HAVE TO DO THE CRIME
24 TO BE COMMITTED OF THE CRIME, RIGHT, LIKE IF THERE IS NO
25 PHYSICAL PROOF OR WHATEVER, OF THE KIDNAPPING AND ASSAULT

1 AND BATTERY.

2 THE COURT: WELL, IF THE JURY HAS A SPECIFIC QUESTION
3 ABOUT IT YOU CAN JUST WRITE THE QUESTION DOWN LIKE YOU
4 HAVE BEEN DOING AND THAT WOULD BE THE BETTER WAY TO HANDLE
5 IT. I WILL BE GLAD TO, AT ANY TIME TO INSTRUCT THE JURY
6 ON THE LAW THAT APPLIES.

7 MR. HORNING: MAYBE I CAN WRITE ANOTHER QUESTION.

8 THE COURT: ALL RIGHT.

9 (WHEREUPON, THE FOREMAN, MR. ERIC HORNING RETURNED TO
10 THE JURY ROOM.)

11 THE COURT: ANYTHING ELSE YOU WANT ME TO DO?

12 MR. JENKINS: I DON'T THINK THERE IS ANYTHING YOU CAN
13 DO OTHER THAN THEY WANT YOU TO READ THE CHARGES OVER.

14 THE COURT: I MEAN, IF Y'ALL AGREE WE CAN SEND IT
15 BACK IN WRITING TO THEM, GIVE EACH ONE OF THEM A COPY OF
16 IT. BUT IT IS UP TO YOU.

17 MS. ZIMMERMAN: I DON'T HAVE ANY OBJECTION TO THAT.

18 MR. JENKINS: YOUR HONOR, I WOULD SAY YOU WOULD HAVE
19 TO GIVE THEM THE ENTIRE CHARGE.

20 THE COURT: ALL RIGHT. WE WILL BE AT EASE UNTIL WE
21 HEAR SOMETHING ELSE.

22 (WHEREUPON, A BREAK WAS TAKEN UNTIL WE HEAR FROM THE
23 JURY.)

24 (WHEREUPON, COURT'S EXHIBIT NO. 6 WAS MARKED FOR
25 IDENTIFICATION ONLY.)

1 THE COURT: ALL RIGHT, THE QUESTION WHICH HAS BEEN
2 MARKED AS COURT'S EXHIBIT 6, ACCORDING TO THE HAND OF ONE
3 IS THE HAND OF ALL CAN ROY BE HELD ACCOUNTABLE FOR OTHERS
4 ACTION DURING THE CRIME. IF IT IS UNSURE HE COMMITTED
5 THOSE CERTAIN CRIMES, ASSAULT AND BATTERY, KIDNAPPING.

6 BASED ON PRIOR NOTES IT WOULD APPEAR THAT THE JURY
7 HAS SOME QUESTION ABOUT WHO PERSONALLY COMMITTED THE
8 ALLEGED ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
9 NATURE AND KIDNAPPING. THAT IS WHY THEY ARE ASKING ABOUT
10 THE DUCT TAPE, HOLDING DOWN. SO, DOESN'T MAKE IMPUDENCE
11 FOR THE QUESTION BUT I WILL BE GLAD TO HEAR ANY TYPE OF
12 REMARKS.

13 MR. JENKINS: YOUR HONOR, IT SOUNDS LIKE THEY WANT
14 YOU TO TELL THEM WHAT THE FACTS IN THIS CASE MEAN IN
15 REGARDS TO THE HAND OF ALL, ON THOSE TWO CHARGES. AND I
16 DON'T KNOW OF ANYTHING THAT YOU CAN TELL THEM OTHER THAN
17 WHAT WE HAVE DONE SO FAR WHICH IS TO RECHARGE THE HAND OF
18 ONE IS THE HAND OF ALL.

19 MS. ZIMMERMAN: OR POSSIBLY SEND BACK THAT PORTION OF
20 THE CHARGE BACK. THEY ARE TRYING TO HASH OUT WHAT IT
21 MEANS, IT MAY HELP THEM REACH A CONCLUSION IF THEY CAN
22 DISCUSS IT AND ACTUALLY LOOK AT IT.

23 MR. JENKINS: WE OPPOSE TO THAT, IF THEY ARE GOING TO
24 SEE A WRITTEN CHARGE TO THEM WE REQUEST THAT THERE BE AN
25 ENTIRE CHARGE.

1 THE COURT: WHAT DO YOU MEAN BY THE ENTIRE CHARGE.

2 MR. JENKINS: FROM THE BEGINNING TO WHAT YOU TOLD
3 THEM TO THE END OF WHAT YOU TOLD THEM.

4 THE COURT: WELL, I CAN DO THAT. I CAN DO THAT.

5 MS. ZIMMERMAN: I DON'T HAVE AN OBJECTION TO THAT. I
6 THINK THAT MAY HELP THEM BECAUSE JUST LIKE THEY WANTED TO
7 COME OUT AND TAKE NOTES. IF THEY CAN SIT BACK THERE AND
8 LOOK AT THAT, THAT MAY HELP THEM ANSWER THE QUESTIONS THAT
9 THEY HAVE.

10 MR. JENKINS: YOUR HONOR, MY UNDERSTANDING IS SO FAR,
11 I THINK THE BEST WAY TO HANDLE IT BECAUSE IT SEEMS TO BE
12 IS THAT THEY WANT THE COURT OR SOMEONE TO COMMENT ON THE
13 FACTS AS IT APPLIES TO THIS CASE PARTICULARLY AND NOT WHAT
14 IS THE HAND OF ONE IS THE HAND OF ALL MEANS.

15 THE COURT: WELL, LET'S BREAK IT DOWN, THEY ARE
16 ASKING FIRST OF ALL, ACCORDING TO THE HAND OF ONE IS THE
17 HAND OF ALL, CAN ROY BE HELD ACCOUNTABLE FOR OTHERS ACTION
18 DURING THE CRIME. IF IT IS UNSURE HE COMMITTED THOSE
19 CERTAIN CRIMES, ASSAULT AND BATTERY AND KIDNAPPING.

20 MS. ZIMMERMAN: THEY ARE INTERESTED IN THE LAW AND
21 NOT THE FACTS.

22 MR. JENKINS: THEY ONLY WANT THOSE TWO CHARGES, A
23 FACTUAL QUESTION AND A LEGAL QUESTION AND IT HAS BEEN
24 ANSWERED. BOTH IN THE GENERAL CHARGES AND SPECIFICALLY
25 WHEN THEY ASKED THE HAND OF ALL THE HAND OF ONE APPLIES,

1- TO EITHER OF THOSE CHARGES. AND I AM CONTEMPLATING ASKING
2 FOR A MISTRIAL ON THOSE TWO CHARGES. I AM NOT ASKING FOR
3 ONE NOW BUT I AM TRYING TO FIGURE OUT THE BEST WAY TO
4 HANDLE IT, YOUR HONOR.

5 THE COURT: WHY WOULDN'T IT BE SUFFICIENT TO RESPOND
6 BY SIMPLY SAYING A PERSON WITH ANOTHER COMMITTED AN
7 UNLAWFUL ACT IS CRIMINALLY RESPONSIBLE FOR EVERYTHING DONE
8 BY THE OTHER PERSON BY THE PROBABLE AND NATURAL
9 CONSEQUENCE OF THE ACTS DONE AND CARRYING OUT THE COMMON
10 PLAN. DOESN'T THAT ANSWER THEIR QUESTION.

11 MR. JENKINS: YOUR HONOR, I THINK THE PROBLEM WITH
12 THAT IS, THAT IS ONLY TO THAT PART OF THE CHARGE AND THE
13 CHARGE HAS TO BE READ AS A WHOLE. AND TO SIMPLY STATE
14 THAT TO ME IS INDICATING TO THE JURY THAT THAT WOULD BE
15 PROPER TO FIND HIM GUILTY ON THOSE CHARGES WITHOUT GIVING
16 THEM REASONABLE DOUBT CHARGE, WITHOUT GIVING THEM ALL THE
17 OTHER INFORMATION THAT WE GIVE THEM AS A WHOLE.

18 THE COURT: I THINK IN LIGHT OF THE QUESTIONS I AM
19 INCLINED TO GIVE THEM THE ENTIRE CHARGE. I ALREADY HAVE
20 IT, I DON'T NEED IT TYPED OUT, I HAVE IT ALREADY IN
21 WRITING SO WE CAN JUST MAKE A COPY. I AM GOING TO CONSULT
22 THE RECENT CASES, THE STATE VERSUS COLBERT, I BELIEVE
23 WHICH TALKS ABOUT THIS. IT APPEARS THAT BASED ON THE
24 QUESTION FROM THE JURY AND APPLYING THE LAW TO THE FACTS,
25 CERTAINLY FROM THE FOREPERSON'S, I WILL HEAR FROM EITHER

1 SIDE, IF Y'ALL HAVE SOME SPECIFIC PREJUDICE I WILL BE GLAD
2 TO CONSIDER THAT. BUT WE ASK THE JURORS TO PERFORM A
3 MENTAL EXERCISE AND IT SEEMS THAT WE SHOULD GIVE THE TOOLS
4 TO DO THAT. OF COURSE, THIS IS A WRITTEN CHARGE, PEOPLE
5 LEARN BY LISTENING, SOME PEOPLE LEARN THROUGH AUDITORY
6 MEANS AND SOME PEOPLE LEARN BETTER BY PROCESSING
7 INFORMATION AND LOOKING AT THE MATERIAL. I DON'T KNOW WHY
8 JURY INSTRUCTIONS WOULD BE IMMUNE FROM THAT PROCESS THAT
9 EVERYTHING ELSE IN THE WORLD IS SUBJECT TO. SO, I WILL BE
10 GLAD TO HEAR ANY STATEMENTS ABOUT PREJUDICE THAT MIGHT
11 FLOW FROM GIVING THEM A WRITTEN COPY OF THE CHARGE.

12 MR. JENKINS: IF THE ENTIRE CHARGE IS SENT TO THEM WE
13 WOULD REQUEST THAT IT INCLUDE A NOTE FROM YOUR HONOR
14 INDICATING THAT THE ENTIRE CHARGE IS TO BE READ TOGETHER
15 AND TO BE CONSIDERED TOGETHER, NOT IN INDIVIDUAL PIECES.
16 I DON'T WANT THEM TO CONCENTRATE ON ONE THING AND IT
17 SOUNDS LIKE THAT IS WHAT THEY ARE DOING. BUT WE CAN'T BE
18 CERTAIN, WE DON'T KNOW WHAT IS GOING ON. I THINK THAT
19 WOULD INSURE THAT THEY CONSIDER THE ENTIRE CHARGE AS A
20 WHOLE.

21 THE COURT: OKAY. I WILL DO THAT, IT PROBABLY WILL
22 TAKE SOME TIME TO PIECE TOGETHER WHAT I ACTUALLY TOLD
23 THEM. BUT I WILL START LOOKING.

24 MR. JENKINS: THANK YOU, YOUR HONOR.

25 MS. YON: THEY HAVE REACHED A VERDICT.

1 THE COURT: ANYTHING BEFORE WE BRING THE JURY IN.

2 MS. ZIMMERMAN: NOTHING FROM THE STATE.

3 MR. JENKINS: NO, SIR.

4 THE COURT: I APPRECIATE THE BOTH SIDES HARD WORK ON
5 THE CASE AND THE EXCELLENT ADVOCACY ON BEHALF OF THEIR
6 CLIENTS AND I APPRECIATE EVERYONES DECORUM DURING THE
7 TRIAL. IF SOMEONE THINKS THAT THEY MAY NOT BE ABLE TO
8 CONTROL THEIR EMOTIONS WHEN THE VERDICT IS READ THE TIME
9 TO LEAVE WOULD BE NOW SO IT IS NOT SOMETHING THAT WE WOULD
10 HAVE TO TAKE CARE OF. YOU CAN BRING THE JURY IN.

11 (WHEREUPON, THE JURY CAME INTO OPEN COURT WITH THE
12 VERDICT AT APPROXIMATELY 3:37 P.M.)

13 THE COURT: MR. FOREMAN, HAS THE JURY REACHED A
14 UNANIMOUS VERDICT?

15 MR. HORNING: YES SIR, WE HAVE.

16 THE COURT: IF YOU CAN HAND IT TO MS. YON WE WILL
17 RECEIVE IT AND PUBLISH IT.

18 (WHEREUPON, THE FOREMAN HANDS THE VERDICT FORM TO THE
19 BAILIFF.)

20 THE COURT: ALL RIGHT, YES MA'AM.

21 CLERK OF COURT: THE STATE VERSUS ROY JOHNSON, JR.,
22 INDICTMENT 2008-36-311, 312, 313, 314 AND 315. AS TO THE
23 CHARGE OF BURGLARY FIRST DEGREE, THE JURY UNANIMOUSLY
24 FINDS THE DEFENDANT, ROY JOHNSON, JR. GUILTY. AS TO THE
25 CHARGE OF ARMED ROBBERY, WE THE JURY UNANIMOUSLY FIND THE

1 DEFENDANT, ROY JOHNSON, JR. GUILTY. AS TO THE CHARGE OF
2 KIDNAPPING, WE THE JURY UNANIMOUSLY FIND THE DEFENDANT,
3 ROY JOHNSON, JR. GUILTY. AS TO THE CHARGE OF ASSAULT AND
4 BATTERY WITH A HIGH AND AGGRAVATED NATURE. WE THE JURY
5 UNANIMOUSLY FIND THE DEFENDANT, ROY JOHNSON, JR. GUILTY.
6 AS TO THE CHARGE OF POSSESSION OF A WEAPON DURING THE
7 COMMISSION OF A VIOLENT CRIME, WE THE JURY UNANIMOUSLY
8 FIND THE DEFENDANT, ROY JOHNSON, JR. GUILTY. SIGNED ERIC
9 HORNING, JUNE 17TH, 2009. LADIES AND GENTLEMEN OF THE
10 JURY, IF THIS IS YOUR VERDICT PLEASE INDICATE BY RAISING
11 YOUR RIGHT HAND. THANK YOU.

12 (WHEREUPON, ALL JURORS RAISED THEIR HAND.)

13 THE COURT: ANY MATTERS OR MOTIONS BEFORE THE JURY IS
14 DISCHARGED. FROM THE STATE?

15 MS. ZIMMERMAN: NOTHING FROM THE STATE.

16 THE COURT: THE DEFENSE?

17 MR. JENKINS: YOUR HONOR, I WOULD LIKE TO POLL THE
18 JURY.

19 THE COURT: YES MA'AM, LET'S POLL THE JURY.

20 THE CLERK: LADIES AND GENTLEMEN, AS I CALL YOUR NAME
21 PLEASE INDICATE SO.

22 THE CLERK: JOHN W. PUGH, WAS THIS YOUR VERDICT?

23 JUROR: YES.

24 THE CLERK: IS IT STILL YOUR VERDICT?

25 JUROR: YES.

1 THE CLERK: LAKECIA RAINER, WAS THIS YOUR VERDICT?
2 JUROR: YES.
3 THE CLERK: IS IT STILL YOUR VERDICT?
4 JUROR: YES.
5 THE CLERK: EVOIN HUNTER, WAS THIS YOUR VERDICT?
6 JUROR: YES.
7 THE CLERK: IS IT STILL YOUR VERDICT?
8 JUROR: YES.
9 THE CLERK: STACY MOATES, WAS THIS YOUR VERDICT?
10 JUROR: YES.
11 THE CLERK: IS IT STILL YOUR VERDICT?
12 JUROR: YES.
13 THE CLERK: TERESA DOMINICK, WAS THIS YOUR VERDICT?
14 JUROR: YES.
15 THE CLERK: IS IT STILL YOUR VERDICT?
16 JUROR: YES.
17 THE CLERK: WILLIE PRICE, WAS THIS YOUR VERDICT?
18 JUROR: YES.
19 THE CLERK: IS IT STILL YOUR VERDICT?
20 JUROR: YES.
21 THE CLERK: MARGARET GLASGOW, WAS THIS YOUR VERDICT?
22 JUROR: YES.
23 THE CLERK: IS IT STILL YOUR VERDICT?
24 JUROR: YES.
25 THE CLERK: KHUMA ABRAMS, WAS THIS YOUR VERDICT?

1 JUROR: YES.

2 THE CLERK: IS IT STILL YOUR VERDICT?

3 JUROR: YES.

4 THE CLERK: TINA WEST, WAS THIS YOUR VERDICT?

5 JUROR: YES.

6 THE CLERK: IS IT STILL YOUR VERDICT?

7 JUROR: YES.

8 THE CLERK: CHRISTOPHER COUNTS, WAS THIS YOUR
9 VERDICT?

10 JUROR: YES.

11 THE CLERK: IS IT STILL YOUR VERDICT?

12 JUROR: YES.

13 THE CLERK: ERIC HORNING, WAS THIS YOUR VERDICT?

14 JUROR: YES.

15 THE CLERK: IS IT STILL YOUR VERDICT?

16 JUROR: YES.

17 THE CLERK: CANTRELLE KINARD, WAS THIS YOUR VERDICT?

18 JUROR: YES.

19 THE CLERK: IS IT STILL YOUR VERDICT?

20 JUROR: YES.

21 THE COURT: OKAY. THAT CONCLUDES YOUR SERVICE THIS
22 WEEK AND THANK YOU FOR YOUR TIME. AGAIN, WE APPRECIATE
23 YOUR TIME. I KNOW IT IS DIFFICULT TO SIT IN JUDGMENT, I
24 KNOW IT IS DIFFICULT TO DO THAT AND I WANT TO THANK YOU
25 FOR YOUR COOPERATION, YOUR PATIENCE WITH US THIS WEEK.

1 YOU HAVE A THREE YEAR EXEMPTION NOW FROM CIRCUIT COURT
2 JURY DUTY. THANK YOU AND YOU ARE EXCUSED.

3 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
4 APPROXIMATELY 3:42 P.M.)

5 THE COURT: ALL RIGHT, PLEASE BRING MR. JOHNSON
6 AROUND. MS. ZIMMERMAN, WHENEVER YOU ARE READY.

7 MS. ZIMMERMAN: THANK YOU, YOUR HONOR. YOUR HONOR,
8 MR. JOHNSON DID NOT HAVE ANY SERIOUS CRIMINAL RECORD BUT
9 HE DOES HAVE A CONVICTION FROM 1997, A DRIVING UNDER
10 SUSPENSION. FROM 2001, A DRIVING UNDER SUSPENSION AND IN
11 ADDITION HE WAS OUT ON BOND IN UNION COUNTY FOR TWO ARMED
12 ROBBERIES WHEN THESE OFFENSES WERE COMMITTED. THE COURT
13 HAS HEARD ALL THE FACTS AND WE ARE HAPPY WITH THE VERDICT
14 AND WE JUST ASK THAT THE COURT GIVE A SENTENCE THAT YOU
15 DEEM APPROPRIATE UNDER THE CIRCUMSTANCES.

16 THE COURT: DO ANY OF THE VICTIMS WISH TO SAY
17 ANYTHING.

18 VICTIMS ADVOCATE: NOT AT THIS TIME, SIR.

19 THE COURT: ALL RIGHT. I APPRECIATE THEM BEING HERE
20 AND I APPRECIATE THE VICTIM WITNESS ADVOCATES FINE
21 SERVICE. YES SIR, MR. JENKINS.

22 MR. JENKINS: THANK YOU, YOUR HONOR. THIS IS, I
23 CONSIDER, THE TOUGHEST PART OF A DEFENSE ATTORNEYS JOB IS
24 COMING BACK FROM A GUILTY VERDICT TO ASK YOUR HONOR FOR
25 LENIENCY OR MERCY IN ANY WAY SHAPE OR FORM CONSIDERING THE

1 FACTS THAT WERE PRESENTED IN COURT. THERE ARE TWO THINGS.
2 ONE, MR. JOHNSON, THE DAY I WAS APPOINTED TO REPRESENT
3 HIM, HE HAS BEEN IN THE NEWBERRY COUNTY DETENTION CENTER
4 THE ENTIRE TIME. A BOND WAS NOT SET ON HIM, I THINK
5 MAINLY BECAUSE OF THE OTHER CHARGES IN UNION COUNTY. HE
6 HAS BEEN PLEASANT, HE HAS BEEN ONE OF THE BEST CLIENTS I
7 HAVE EVER HAD, VERY COOPERATIVE, VERY POLITE AND VERY
8 NICE. YOU DIDN'T GET A CHANCE TO HEAR HIM TESTIFY AS THE
9 LAST JUDGE DID WHEN THE CASE ENDED IN A MISTRIAL. HE IS
10 INTELLIGENT AND HE HAS A CHANCE TO DO SOMETHING POSITIVE.
11 IT IS SURPRISING WITH HIM AND WHEN I TALK TO AUSTIN
12 PARTLOW, ONE OF THE CODEFENDANTS, HOW INTELLIGENT THEY
13 WERE TO BE INVOLVED IN SOMETHING LIKE THIS. WE ALSO WOULD
14 POINT OUT THAT HE HAS NO OTHER SERIOUS RECORD WHATSOEVER.
15 SO, WE WOULD INDICATE A LESS THAN MAXIMUM SENTENCE WOULD
16 BE APPROPRIATE GIVEN THOSE CIRCUMSTANCES.

17 THE COURT: THANK YOU, MR. JENKINS AND I APPRECIATE
18 YOUR FINE REPRESENTATION AND YOUR EFFORTS AS A LAWYER.
19 MR. JOHNSON, I WILL BE GLAD TO HEAR ANYTHING YOU WOULD
20 LIKE TO TELL ME, SIR. YOU DON'T HAVE TO, I JUST GIVE YOU
21 THE OPPORTUNITY.

22 (WHEREUPON, NO RESPONSE FROM THE DEFENDANT.)

23 THE COURT: STARTED 1/18/08. WHAT IS THE SENTENCE
24 START DATE?

25 MS. ZIMMERMAN: HE WAS TAKEN INTO CUSTODY ON JANUARY

1 THE 9TH OF 2008.

2 THE COURT: THE 9TH?

3 MS. ZIMMERMAN: YES.

4 THE COURT: ALL RIGHT, AGAIN I THANK EVERYBODY

5 INVOLVED. I KNOW IT IS A DIFFICULT CASE. AND, MR.

6 JENKINS, I CAN'T OVERLOOK THE FACTS OF WHAT HAPPENED. THE

7 SENTENCE ON THE BURGLARY FIRST, IS YOU BE COMMITTED TO THE

8 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 25 YEARS, CREDIT

9 FOR TIME SERVED. THE ARMED ROBBERY IS 25 YEARS,

10 CONCURRENT. KIDNAPPING IS 20 YEARS, CONCURRENT. ASSAULT

11 AND BATTERY OF A HIGH AND AGGRAVATED NATURE IS 10 YEARS,

12 CONCURRENT. AND THE WEAPON CHARGE IS 5 YEARS, CONCURRENT.

13 CREDIT FOR THE TIME SERVED SINCE JANUARY THE 9TH OF 2008.

14 THANK YOU.

15 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

16

17

18

19

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21

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23

24

25

CERTIFICATE OF REPORTER

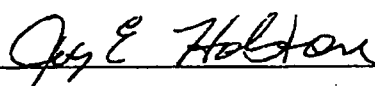
STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

I, JOY E. HOLSTON, OFFICIAL COURT REPORTER FOR THE
EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
NEWBERRY COUNTY, SOUTH CAROLINA, ON THE 15TH DAY OF JUNE,
2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

DECEMBER 30, 2009


JOY E. HOLSTON, COURT REPORTER

MY COMMISSION EXPIRES: MARCH 13, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF NEWBERRY) 08-GS-36-311, 08-GS-36-312, 08-GS-36-313
08-GS-36-314, 08-GS-36-315, 08-GS-36-316

State of South Carolina,
Plaintiff,

v.

Roy Johnson, Jr.

Defendant.

**NOTICE OF MOTION AND MOTION
FOR NEW TRIAL**

FILED
NEWBERRY COUNTY
2009 JUN 23 P 1:49
JACKIE S. BOWERS
CLERK OF COURT

The defendant, by and through his undersigned attorney, hereby moves for an Order of this Court setting aside the jury's verdict in the above referenced matter and granting the defendant a new trial on all charges. Defendant bases this Motion on the following:

I. Defendant is entitled to a new trial based upon insufficiency of the evidence.

Defendant hereby relies upon his Motion for a Directed Verdict presented at the close of the State's case. The State failed to produce evidence which was sufficient to convict the defendant on each of these charges. The State's evidence failed to meet its burden and failed to prove each and every element of each charge beyond a reasonable doubt.

II. The Court's failure to charge Defendant's Request to Charge No. 1 was reversible error and defendant should be granted a new trial.

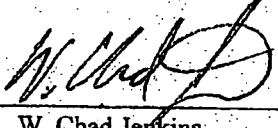
Defendant presented three (3) Request to Charge, all of which were made a Court Exhibit for the record. Attached herewith is Defendant's Request to Charge No. 1 which was presented to the Court and not charged to the jury.

The Defendant's Request to Charge No. 1 is an accurate and proper statement of the law and should have been charged to the jury in this matter. Furthermore, this problem was compounded by the jury's obvious confusion with the hand of one - hand of all theory as evidenced by numerous notes which were presented to the Court during deliberations, all of which were questions about the hand of one - hand of all or the act of one is the act of all theory and how it applied to some of the charges in this case.

Based upon the above, defendant hereby respectfully requests that this Court set aside the verdict and grant him a new trial in this matter. Defendant and/or his attorney shall be available for oral arguments should the Court deem same necessary.

Respectfully Submitted,

POPE AND HUDGENS, P.A.

By: 

W. Chad Jenkins
1508 College Street
Post Office Box 190
Newberry, South Carolina 29108
(803) 276-2532

Attorneys for Defendant

Newberry, S.C.
June 23, 2009

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

) IN THE COURT OF GENERAL SESSIONS
)

) Indictment Nos.: 2008-GS-36-311
) 2008-GS-36-312
) 2008-GS-36-313
) 2008-GS-36-314
) 2008-GS-36-315
) 2008-GS-36-316

State of South Carolina,

v.

ORDER

Roy Johnson, Jr.
Defendant.

The Defendant's motion for reconsideration of sentence or for new trial is respectfully denied.

IT IS SO ORDERED

August ^{5th}, 2009
Newberry, South Carolina

[Signature]
D. Garrison Hill
Circuit Judge

FILED
NEWBERRY COUNTY
2009 AUG -7 A 10:45
JACKIE S. JOHNS
CLERK OF COURT

SCANNED

J640995

08-311

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Roy Johnson, Jr.,

Appellant.

Appeal From Newberry County
D. Garrison Hill, Circuit Court Judge

Unpublished Opinion No. 2011-UP-465
Submitted October 1, 2011 – Filed October 21, 2011

AFFIRMED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Mark R. Farthing, all of
Columbia; and Solicitor Jerry W. Peace, of
Greenwood, for Respondent.

SCANNED

PER CURIAM: Roy Johnson, Jr. appeals his convictions for first-degree burglary, armed robbery, kidnapping, assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime. He argues the trial court erred in allowing Willie Ashford, the State's witness, to testify about why Ashford thought Johnson's clothing appeared odd. We affirm.¹

"[A]n insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." *State v. Price*, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006). "Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." *Id.*

The trial court overruled Johnson's objection to Ashford's testimony that Johnson's clothing, wet and with grass on it, appeared like somebody was chasing Johnson. Even assuming Ashford's statement was objectionable, its admission is not reversible error. See *Price*, 368 S.C. at 500, 629 S.E.2d at 366 (holding improper admission of testimony was harmless in light of the other evidence in the record). The record indicates Johnson admitted participating in the events, but maintained an alleged participant forced him. Johnson's two co-participants testified at trial he was a willing participant and denied the involvement of a fourth person or forcing Johnson's participation. Also, Ashford's testimony was merely cumulative. Johnson maintained he hid in ditches every time he saw cars, including police cars, on the road towards Ashford's house as a result of being scared of the alleged participant. Thus, a review of the record establishes an error, if any, was harmless beyond a reasonable doubt.

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 8, 2011

REMITTITUR

The Honorable Jackie S. Bowers
1226 College St Rm 7
PO Drawer 10
Newberry, SC 29108-0278

Re: The State v. Johnson, Roy Jr.
2008-GS-36-00311 2008-GS-36-00312 2008-GS-36-00313
2008-GS-36-00314 2008-GS-36-00315

Dear Ms. Bowers:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The exhibits being returned are: State's Exhibit 3, Photograph - State's Exhibit 4 Photograph - State's Exhibit 113 CD. Please sign attached copy of this letter and return to acknowledge receipt of these items.

Sincerely,


Renee S. Johnson
Administrative Specialist


JAG/rj

cc: Appellate Defender Elizabeth Franklin-Best
Assistant Attorney General Mark R. Farthing
Jerry W. Peace, Esquire

Receipt Acknowledgement:

Name: Beth Falk Date: 11/9/11

FORM 5

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF NewberryRoy Johnson Jr. #335360
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2012 CP36-203

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corrections, Ridgville, S.C.
2. Name and location of Court which imposed sentence Newberry Cty. Court House
3. Name(s) of co-defendant(s) (if any) Shawney Parker; A. Parker; W. Ashford
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Burglary 1st 08-05-36-311; Arm robbery 08-05-36-312;
 - (b) Kidnapping 08-05-36-313; Assault and battery 08-05-36-0314
 - (c) Carrying during violent 08-05-36-315
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Burglary 1st 6-17-09; 25 yrs; Arm Robbery 6-17-09; 25 yrs;
 - (b) Kidnapping 6-17-09; 20 yrs; Assault and battery 6-17-09; 10 yrs

Revised 3/2003

- (c) Weapon during violent crime; 6-17-09; 5 yrs
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty yes _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Office of Appellate Defense _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 7-09-2010 ; 8-23-2010 _____
- ii. Submitted 10-1-2011 ; Filed 10-21-2011 _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. decided the case without oral argument pursuant to _____
- ii. Rule 215; SCAR _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

State of South Carolina
County of Newberry

Ray Johnson Jr. -- Defendant

v.

State of South Carolina -- Respondent

1 In Court of Common Pleas

1 Memorandum In Support

1 of Application for Post-Conviction

1 Relief Pursuant to S.C. Code

1 Ann. § 16-3-910; 16-11-311; 16-11-330(A);

1 16-23-490

Herefore, Applicant Ray Johnson Jr. pro-se; Seeking relief in this Honorable Court Pursuant to S.C. Code Ann.

§ 16-3-910; 16-11-311; 16-11-330(A); 16-23-490; Claiming his rights were violated in a number of ways; including but not

limited to his Sixth (6th) Amendment right to the Assistance of Counsel; and his fourth (4th) Amendment right that is protected under the United States Constitution.

Respectfully Submitted;

/s/ Ray Johnson Jr.

Ray Johnson Jr.

CLERK OF COURT

2012 APR 10 A 10:35

CLERK OF COURT

State of South Carolina

County of Newberry In the Court of Common Pleas

Roy Johnson Jr. -- Defendant

v.

State of South Carolina -- Respondent

Memorandum In Support of Application
for Post-Conviction Relief Pursuant to: S.C. Code
Ann. § 16-3-910; 16-11-311; 16-11-330(4); 16-23-490

Respectfully Submitted:

/s/ Roy Johnson Jr.
Roy Johnson Jr.

Applicant's Counsel

FILED
CLERK OF COURT
2012 APR 10 A 10 35
NEWBERRY COUNTY

Defendant Barely argues;

- A) 1) There was ineffective assistance of Counsel due to the facts that Counsel failed to investigate that there was an existing party that was involved in the crime taking place. Counsel failed to intimate that suspect "Bubba" was next door neighbor to Channon Parlow; in fact neither investigator Robert Duggs nor authorities seemed to apprehend the suspect. - Counsel failed to be effective on account of due process. Counsel informed Defendant on day of trial seconds before trial began of what type of defense he would apply. Defendant had no knowledge of the defense in which Counsel had written Defendant on June 12, 2009 stating to meet him that weekend of trial but thereafter, never met Defendant until the day of trial.
- 2) - During the time of preparation Defendant was informed by Counsel that "all the years of being an attorney, your take a stand a 2nd time." "You can't take the stand anyways." "Hastings isn't going to be out there"; "We can't find Hastings' name and it's not like he's going to make a difference." "You won't take the stand and by doing so the State will begin closing arguments and I will have the opportunity to talk with the jury last and longer."
- 3) - Ineffective assistance of Counsel is established when it is proved that Counsel for a criminal defendant failed to investigate adequately a purported alibi defense and consequently failed to contact, subpoena and call alibi witness who were willing and able to testify for the Defendant in the case in which the alibi was the Defendant's sole possible defense or a material defense.

2012 APR 10 A 10:36

CLERK OF COURT
CLERK OF COURT

4) - Trial Counsel was ineffective when stating to Defendant the 3rd day of trial that Defendant's witness could not be found and it was best not to take the stand; and it wouldn't make a difference if witness didn't testify. - *State v. Thomas* 157 W.Va. 640; 230 S.E.2d 445 (1974).

5) - Defendant argues that trial Counsel was deficient in providing him with erroneous sentencing advice. "See *Hirson v. State*." Defendant asserts that Counsel was deficient when Counsel told him "he" would spend the rest of his natural life in prison and would die in prison if he did not plea. Defendant was repeatedly being pressured by Counsel into taking a (20) twenty year plea after Defendant had requested trial by jury several times. Counsel states to Defendant after leaving his tank "you better hope there's a God cause you going to feed him." The following days after Counsel questioned Defendant rather he feel his "he" being a bit coercive or pressuring on getting him to plea. Defendant stated to Counsel; "yes and I feel you're not really helping me as you should." see *Judge v. State*, 471 S.E.2d 146 G.C. (1996).

6) - Defendant asserts that he reported to Counsel that he was also held at gun point during the day of crime and he had no capital of the prior incidents. Due to the Defendant's statement's saying co-defendant Willie Ashford gave "him" a ride to his brother's home and thereafter, asserts that Defendant's sister-in-law and Brother would be arrested "if" Defendant didn't take a guilty plea violated the doctrine of Unconstitutional Conditions. The doctrine of Unconstitutional Conditions precludes the (state) from coercing of the waiver of Constitutional right -

7) — on the waiver of ~~any~~ ^{any} other. See e.g. *Sinmons v. United States*, 390 U.S. 570 (1968) or by attaching conditions that penalize the exercise of a Constitutional right (right to trial by jury). See e.g. *State v. Jackson*, 390 U.S. 570 (1968). Defendant is entitled to a new trial.

8) — Defendant hereby asserts that Counsel ^{was} ineffective by not acknowledging that Defendant had only been served (4) four warrants/indictments: J640995; J640996; J640997; J640998. Hereafter at trial Defendant was recorded with (5) five warrant/indictment including "ABHAN". On state's plea agreement sheet which was served to Defendant specifically shows that (4) warrants/indictments was served but states at bottom "on info". — A Criminal is entitled to be tried only on indicted offenses. *State v. Munn*; 292 S.C. 497; 357 S.E. 2d 461 (1987). A material variance between charge and proof entitles the defendant to direct verdict; such a variance is not material if it is not an element of the offense. "Keynote 753.2 (3)" Indictment and Info "Keynote 71".

9) — Defendant hereby asserts his argument to ineffective assistance of Counsel where Counsel failed to have ^{Asked} ~~charge~~ of an motion for mistrial when seeing that jury would most likely be confused on the instructions of the law. Hereafter several attempts during deliberations when in fact both Counsels was bit confused themselves. See *trump*, pages 217-220; pages 284-285. "A mistrial cannot be granted after the jury reaches a verdict." See *Howell v. Davis*; 278 S.C. 510; 299 S.E. 2d 336 (1983)

10) - Defendant hereby asserts that Counsel was ineffective when Counsel failed to address to Courts that Defendant had been highly sedated on "meds" the days of trial and Counsel himself constantly gave Defendant "meds" due to the Defendant's entire facial area was swelling with inflammation pertaining "mrsa" above the left eye. Trial had ended early once due to the conditions of the Defendant's health and need of medical attention.

11) - Defendant asserts that trial Counsel ^{was} ineffective due to Counsel failing to give Defendant knowledge of Sex offender registry. Counsel failed to establish to the Court that there was not in fact a finding, accusation, nor any type of typical Sexual Conduct involved in Defendant's trial. Defendant was sanctioned to be registered as sex offender. "For purposes of article '23-3-430'; Any persons who has been convicted of, plead guilty, or who's conduct to or been adjudicated delinquently for any of the following offenses shall be referred to as an offender 'Kidnapping 16-3-10' of a persons (18) eighteen years of age or older 'EXCEPT' when the Courts makes a finding on the record that the offense did not include any Criminal Sexual offense nor any attempted Criminal Sexual offense." See trans. pages 92-95 v. etim's Advocate." See trans. pages 210-213; v. etim testimony"

12) - Defendant asserts that trial Counsel was ineffective due to Counsel failing to investigate the matters of the defendant being coerced in making verbal statements to investigator Robert Dennis after stating he would like to have a lawyer. Investigator further abused his tactics in pressuring the Defendant to give him some indications of what took place at the Café's house on January -

13) - 8, 2008. Defendant asked to use his rights by remaining silent until appointed by attorney. Investigator Robert Dennis no longer questioning Defendant though until vehicle was in motion to South Carolina. Defendant stated to Robert Dennis that "he" was still a bit "high" off cocaine & a little "wuzie" from the previous night from drinking Paul mason liquor, after Investigator Robert Dennis mentioned the smell of alcohol. During the course of this Deputy Ryan Dickert stated that Investigator Robert Dennis is "a good guy but Defendant wouldn't like him if he gets angry so don't make him angry." Deputy Ryan Dickert sped vehicle up to 115 mph going in and out of traffic, while Investigator Robert Dennis stated to Defendant "I'm gonna ask you some questions I can make sure you are acknowledged for your cooperation that you wouldn't get blamed for these crimes committed." Investigator Robert Dennis attempted to record Defendant's conversations several times after having numerous recordings. Investigator Robert Dennis indicated to Defendant that it was proper procedure to sign an agreement after replaying recordings to Deputy Ryan Dickert and Defendant while Defendant asked several times to what the recordings was for cause he hadn't took part of any crime and to "stop trying to confuse him by trying to make him contradict himself."

14) - Defendant explained each detail to Counsel and Counsel failed to investigate of both occasions where Defendant was interrogated once again before going into bond court. Defense had asked once again for an attorney. Major Darryl Gilliam was present with Investigator Robert Dennis at the time *Rhode Island v. Innis* 466 U.S. 291, 64 L.Ed.2d 297, 100 S.Ct. 1682 (1980)

15) - Defendant asserts that Counsel failed to investigate interrogating matters when Defendant was in fact intoxicated and hysterically emotional. Defendant was not in proper state to convey an interrogation without Counsel. Therefore Counsel should had suppressed statements from entering into trial. Counsel was in fact ineffective. U.S. v. SCHENK, 477 F.2d 116

Hereby the Defendant's asserts his 5, 6, and 14th amendment has been violated and hereby request for an new and fair trial.

B. 1) - Insufficiency of Evidence; Defendant asserts that Therefore he relies upon this motion for a directed verdict presented at the closing of the State's case. The state failed to produce evidence which was sufficient to convict the Defendant on each of these charges. The evidence failed to meet its burden and failed to prove each and every element of each charge beyond a reasonable doubt. - "More presence at the scene of a crime is insufficient to convict one as a principal or theory of aiding and abetting." State failed to prove Defendant in actions participating; aiding or abetting in presence of committing an act of kidnapping when in fact Co-defendant's admits to roles of involuntary which excludes the Defendant from committing an actual crime or plan. "Kidnapping requires proof of an unlawful act such as seizure, confinement, inviolent, decoy, kidnapping, abduction, or carrying away of a person." Code 1976 § 16-3-910; State v. Bersten; 367 S.E. 2d 152, 295; S.C. 52. See also, State v. East; 578 S.E. 2d 748, 353; S.C. 634. Defendant is entitled to a new trial based upon insufficiency of evidence.

2) - Defendant asserts that assault and battery "ABHAN" requires an unlawful act of violent injury accompanied by circumstances of aggravation; such aggravating circumstances include the use of a deadly weapon, the infliction of serious bodily injury, the intent to commit a felony, great disparity between the ages and physical conditions of the parties involved and differences in sexes. "State v. Spawse; 325 S.C. 275, 286; 712 S.E. 2d 871, 877 712 (Ct. App. 1996)." "State v. Murphy; 322 S.C. 321, 324-25; 471 S.E. 2d 739, 740-41 (Ct. App. 1996)"

3) - Arm Robbery. State must prove arm robbery by establishing the Commission of a robbery and either one of the two additional elements: 1) that the Defendant was armed with a deadly weapon; or 2) that the Defendant alleged that he was armed with a deadly weapon; either by action or words; while using a representation of a deadly weapon or any object which a person present during the Commission of the robbery reasonably believed to be a deadly weapon. (Keynote 11) State v. Kelvin Jones aka 342 S.E. 248, 536 S.E. 2d 396 (App. 2000) reversed.

4) - Defendant asserts that to be liable as an aider or abettor the participants must be chargeable with knowledge of the principal criminal conduct; mere presence at the scene is not sufficient to establish guilt as an aider or abettor. "State v. Leonard 292, S.E. 133, 355 S.E. 2d 270 (1987)"

5) - Defendant asserts that Solicitor erred during closing arguments adding the jury with her comments stating that: "He told you that they got to the brick house and talked about the plan, co-defendants are from North Carolina; and Defendant was from South Carolina so he ostrated the plan because he grew up in Carlisle and that's alot closer to Newberry. See Traps. page 229 & Solicitor comments stating to the jurors that all suspects was caught and best print wasn't needed and that jurors shouldn't consider the best print which was evidence. See Traps. pages 234 State v. Sweet 342 S.E. 342, 536 S.E. 2d 91." Defendant bears the burden of demonstrating the Solicitor's words deprived him a fair trial; and altered improperly must be examined on appeal in light of the entire record. (Keynote 1178.5) See State v. Torrey, 305 S.E. 45, 406 S.E. 2d 315 (1991). See Johnson v. State, 325 S.E. 182, 480 S.E. 2d 733 (1997)

6) - Defendant presented (3) three request to charge all of which were made a court exhibit for the record. Defendant's request to charge no. 1 which was presented to the Court and not charged to the jury. Defendant's request to charge no. 1 is an accurate and proper statement of the law and should have been charged to the jury in this matter. Furthermore, this problem was compounded by the jury's obvious confusion with the hand of one - hand of all theory as evidence by numerous notes which were presented to the Court during deliberations; all of which were questions about the hand of one - hand of all or the act of one - Act of all theory and how it applied to some of the charges in this case. See Traps. pages 217-220; 276-286. (Keynote 673(3)) States Defendant was entitled to cautionary instructions advising jury that prior inconsistent statements of witnesses could be considered only as affecting credibility; and not as substantive evidence of content of statement; even though statement was not admitted into evidence where statement was read in jury's hearing during course of laying foundation. (Keynote 1144.15) There is presumption that juries conscientiously follow explicit cautionary instruction promptly given; unless record expressly shows otherwise. See *Jane Dudley Maxwell Pugh Hall v. Commonwealth* 355 S.E. 2d 591 (1987). (Keynote 769) Purpose of instructions is to enlighten jury and to aid jury in arriving at a correct verdict. (Keynote 809) It's error to give instructions which are calculated to confuse or mislead the jury. See *State v. Elmore* 308 S.E. 2d 781.

- 7) - Criminal law Keynote) 770(1); 1173.1; Law to be charged is determined by the evidence presented at trial; If the evidence supports a particular requested charge; the trial Court commits reversible error by refusing to use or issue it. See *State v. Gourdige*, 322 S.C. 396, 472 S.E.2d 241 (1996). See *State v. Burmiss*, 334 S.C. 256, 513 S.E. 2d 104 (1999)
- Keynote 1159.2(2) If reasonable jury would doubt whether evidence proves essential elements of crime; Court of appeals must reverse conviction.
- Keynote 772(6); 829(4) Defendant is entitled to instructions on his theory of defense if: 1) the purpose a correct statement of law; 2) theory is supported by evidence; 3) theory is not otherwise part of charge and 4) failure to include an instruction on defendant's theory of defense would deny him a fair trial. See eg. *United States v. Neville*; 82 F.3d 750, 761 (7th Cir. 1996) See *United States v. Edwards*; 36 F.3d 639, 645-46 (7th Cir. 1994)

C) 1) Conflict of Interest: Defendant Herfore asserts that there should have been a Conflict of Interest due to the facts that the Defendant's Counsel had conducted private and confidential communications with both Co-defendants. Here also, the Defendant brings to the Court's attention that on June 17, 2009 during the course of the jury's deliberations the Court was paused for a unknown timely matter and as Defendant was escorted by an officer to the holding tank. Later, Defendant was brought back into Courtroom and allowed to return to defense table. Defendant was questioned by Counsel did "he" have anything to do with his house being shot at.

- 2) - Trial Counsel stated to Defendant, "you don't have anything to do with this shooting do you?" "I own a gun and I do know how to use it." Defendant moves to assert that this should be a violation of his Constitutional rights and should be considered a conflict of interest. Defendant asserts Counsel felt a certain spite within himself and may not have offered the defendant an proper representation. Defendant is entitled to a new and fair trial. *Cuyler v. Sullivan*, Supra; 446 U.S., at 350, 348, 100 S.Ct.
- 3) - The defense such as it was did not support an appropriate defense for Defendant's charge of being coerced and under duress and threatening matters. Instead defense Counsel left the jury with an all or nothing choice and based his hopes for acquittal on the jury's entertaining a reasonable doubt that one of the Co-Defendant's relatives, neighbors, or Co-Defendant's creditworthiness would argue for acquittal.

Based upon the above, Defendant hereby respectfully requests that this Court set aside the verdict and grant the Defendant a new and fair trial in this matter, or vacate sentencing, convictions, or remand in the alternative; Howsoever the relief this Honorable Court deems just and appropriate.

Respectfully Submitted,
 Roy Johnson Jr.
 Roy Johnson Jr.

- (a) Speltzine assistance of Counsel
- (b) Insufficiency of evidence
- (c) Conflict of Interest

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See attachments (1) pages 1-2
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. *N/A*
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) *Case was directed Appointed prior to Conviction*
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

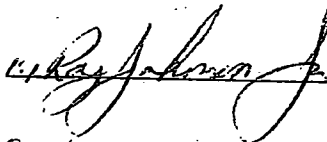
- (a) your arraignment and plea? N/A
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. W. Chad Jenkins: 1508 College St P.O. box 190 Newberry
- ii. Elizabeth A. Franklin-Best: P.O. box 11589 Columbia S.C.
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Newberry Trial Court (General Sessions)
- ii. Division of Appellate Defense
- iii. _____
19. State clearly the relief you seek in filing this application:
- New trial, set aside sentence, sentence reduction, or whatever seems
20. Are you now under sentence from any other court that you have not challenged?
- no

STATE OF SOUTH CAROLINA

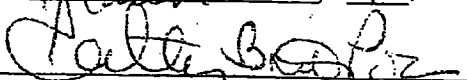
County of

VERIFICATION

I, RL, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 28th
day of March, 2012.



Notary Public

(L.S.)

My Commission Expires:

5/1/2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, R.J., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ray Johnson Jr.
Applicant

SWORN or affirmed to and subscribed before me this
28 day of March, 2012

Patti Broder
Notary Public

My Commission Expires: 3/1/2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	EIGHTH JUDICIAL CIRCUIT
	)	
	)	
Roy Johnson, Jr., #335360,	)	2012-CP-36-0203
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 10, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. The Applicant was indicted at the April 2008 term of the Newberry County Grand Jury for Burglary, 1st degree (2008-GS-36-0311), Armed Robbery (2008-GS-36-0312), Kidnapping (2008-GS-36-0313), Assault and Battery of a High and Aggravated Nature (ABHAN) (2008-GS-36-0314) and Possession of a Weapon during the Commission of a Violent Crime (2008-GS-36-0315). The Applicant was represented by Chad Jenkins, Esquire. On June 15-17, 2009, the Applicant underwent trial by jury and was convicted of all charges as indicted. The Honorable D. Garrison Hill sentenced the Applicant to imprisonment for twenty-five (25) years for Burglary, 1st degree, twenty-five (25) years, concurrent, for Armed Robbery, twenty (20) years, concurrent, for

Kidnapping, ten (10) years, concurrent, for ABHAN and five (5) years, concurrent, for the weapons charge.

A Notice of Appeal was timely filed on behalf of the Applicant and an appeal was perfected. The South Carolina Court of Appeals by written Order affirmed the Applicant's conviction and sentence. State v. Johnson, 2011-UP-465 (Ct. App. filed on October 21, 2011). The Remittitur was sent on November 8, 2011.

Attached herewith and incorporated herein are the records of the Newberry County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Insufficiency of Evidence"
3. "Conflict of Interest"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also alleges "Insufficiency of evidence" as a ground for PCR. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

The Applicant further alleges "Conflict of Interest" as a ground for PCR. The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a

party whose interests were adverse to the Applicant. Id; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). However, the allegation of conflict of interest probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

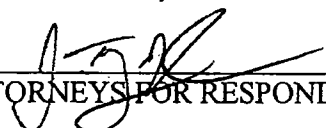
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

July 19, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

ROY JOHNSON, JR.,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

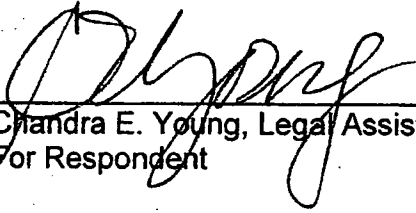
2012-CP-36-0203

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Jack H. Glymph
 1303 Main St., Ste 407
 Newberry, SC 29108

DATED this 19th day of July, 2012.


 Chandra E. Young, Legal Assistant
 For Respondent

State of South Carolina)
County of Newberry) Court of Common Pleas-PCR
 2012-CP-36-00203

Roy Johnson, Jr.)
 vs.) Transcript of Record
)
State of South Carolina)
 DEFENDANT)

June 4, 2013
Laurens, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Rutledge Johnson, Assistant Attorney General
Attorney for the State

Nicole Singletary, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

1		
2	(IC) - Denotes In Camera	
3	(DW) - Denotes Defense Witness	
4	(SW) - Denotes State's Witness	
5	<u>(DW) Roy Johnson</u>	
6	Direct examination by Ms. Singletary:	6
7	Cross-examination by Mr. Johnson	24
8		
9		
10	<u>(SW) Chad Jenkins</u>	
11	Direct examination by Mr. Johnson:	29
12	Cross-examination by Ms. Singletary:	39
13	Redirect examination by Mr. Johnson:	46
14		
15		
16		
17	Certificate of Reporter	53
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25		

1 THE COURT: All right, Mr. Johnson, what have we got.

2 MR. JOHNSON: Thank you, Your Honor, this case is Roy
3 Johnson versus the State of South Carolina. This is case
4 number 2012-CP-36-0203. Mr. Johnson was indicted at the
5 April of 2008 term of Newberry County Grand Jury for
6 burglary first degree, armed robbery, kidnapping, assault
7 and battery with a high and aggravated nature, possession
8 of a weapon during the commission of a violent crime. He
9 was tried, I believe, on January the 6th of 2009 which
10 resulted in a hung jury. He was thereafter tried on June
11 the 15th through the 17th of 2009 pursuant which he was
12 convicted of all charges as indicted. The Honorable D.
13 Garrison Hill sentenced him to imprisonment for 25 years
14 for the burglary first degree, 25 years concurrent for
15 armed robbery, 20 years concurrent for kidnapping, 10
16 years concurrent for the ABHAN and 5 years concurrent for
17 the weapons charge. A notice of appeal was timely filed
18 on his behalf and the appeal was perfected. The South
19 Carolina Court of Appeals by written order affirmed his
20 conviction sentence. The remitter was thereafter issued
21 on November the 8th of 2011. He filed a timely PCR
22 application on April the 10th of 2012. The State filed
23 its return on July 19th of 2012. I believe as the
24 previous case, I have spoken to Ms. Singletary, he is
25 represented here today by Ms. Nicole Singletary. I

1 believe Mr. Johnson is also placed on the sex offender
2 registry. This again, this kidnapping was non-sexual in
3 nature and therefore the Attorney General's office will
4 consent to him being taken off the sex offender registry.

5 MS. SINGLETARY: Yes, Your Honor, that is correct.
6 As the transcript shows that this actually was not a
7 sexual in nature kidnapping, it was a general kidnapping.
8 We just respectfully ask for the Judge to order that he be
9 removed from the sex offender registry.

10 THE COURT: Prepare an addendum to the sentencing
11 sheet showing that finding that it was a non-sexual
12 factual based crime and that as such he would not be
13 required to register as a sex offender upon his release.

14 MS. SINGLETARY: Yes, Your Honor, thank you.

15 THE COURT: It will just be an addendum to the
16 sentencing sheet, not an amendment but an addendum to it.
17 It is not marked so it is added to.

18 MS. SINGLETARY: Your Honor, at this time we are
19 ready to go forward on the grounds of a PCR.

20 THE COURT: Call your witness.

21 MS. SINGLETARY: I call Roy Johnson to the witness
22 stand.

23 MR. JOHNSON: Your Honor, at this time I would ask
24 Ms. Singletary to narrow down the PCR issue. He has a
25 laundry list in his application. Some of them actually,

1 trial court error which would be a direct appeal issue and
2 not proper PCR.

3 THE COURT: Place him under oath and then we will do
4 that.

5 ROY JOHNSON, being
6 first duly sworn, testified as follows:

7 THE COURT: All right, Ms. Singletary, if you will
8 outline for me and for the record the PCR application
9 issues which you wish to pursue through this hearing if
10 you can.

11 MS. SINGLETARY: Yes, Your Honor. If it please the
12 Court. Your Honor, we respectfully are going to present
13 evidence based on ineffective assistance of counsel. As
14 it relates to ineffective assistance of counsel Mr.
15 Johnson will make the argument that his counsel failed to
16 investigate witnesses that he actually gave information to
17 that trial attorney to actually subpoena those witnesses
18 so that they could actually testify on his own behalf.
19 Additionally, Your Honor, Mr. Johnson actually will
20 testify to the fact that he felt that his attorney should
21 object to the prosecution using his statement or allowing
22 statement to be read into the record in their
23 case-in-chief opposed to allowing Mr. Johnson to testify
24 in his own defense therefore violating his Fifth Amendment
25 rights, Your Honor. Additionally as it relates to failure

1 to object by trial counsel, Your Honor, my client relies
2 on, and I beg the Court's indulgence. The case of Vail
3 versus South Carolina. It is an appeal from Charleston
4 County, appellate case number 2009-112367 where he will
5 allege that his attorney failed to make no objections at
6 all during his second trial actually prejudiced him and
7 that his attorney cannot rely on trial strategy. That was
8 the basis for the attorney not making any objections, Your
9 Honor.

10 THE COURT: All right, you may proceed.

11 MS. SINGLETARY: Thank you, Your Honor. If it
12 pleases the Court.

13 DIRECT EXAMINATION

14 By Ms. Singletary:

15 Q Mr. Johnson, state your full name for the record.

16 A Roy Johnson, Jr.

17 Q Where are you currently housed at?

18 A At Leiber Corrections.

19 Q And why are you housed at Leiber Corrections.

20 A For the kidnapping, ABHAN and first degree burglary.

21 Q And possession of a firearm?

22 A Possession of a firearm.

23 Q And how much time did you get total?

24 A 25 years.

25 Q And who actually represented you in these offenses?

1 A My counsel, Chad Jenkins.

2 Q He is in the courtroom today?

3 A Yes, ma'am.

4 Q And did you actually enter into a guilty plea or did
5 you go to trial?

6 A I went to trial.

7 Q Did you just go to one trial or did you go to two
8 trials?

9 A I had two.

10 Q Now, let me back up a little bit. In your actual
11 meetings with trial counsel, how many times would you
12 actually say you met with him?

13 A First trial maybe three times, on both trials, I
14 think if I am not mistaken, I recall three times, three
15 different occasions.

16 Q So is it your testimony in the duration of time that
17 trial counsel actually represented you you only met him
18 three times?

19 A Yes, three times before the time of the trial, I met
20 him three times.

21 Q Okay. Now, could you tell the Court in your
22 estimation how many hours did you spend with trial counsel
23 preparing for trial?

24 A I am not actually sure how many hours I spent with
25 him but I am quite sure maybe an hour and a half or so.

1 Q Is that an hour and a half total or an hour and a
2 half each meeting?

3 A Each meeting.

4 Q Okay. So in these hour and a half meetings what did
5 you and your trial counsel discuss as it relates to the
6 offenses and strategy?

7 A For the very first time we pretty much introduced one
8 another to get to know one another. He pretty much tells
9 me that he had communicated with my codefendant and
10 whatnot and whether or not should I plead or whether or
11 not to plead for what I was up against.

12 Q What else did you talk about in these meetings?

13 A Evidence, about maybe what went on during the time of
14 the incident, when it occurred, such things like that.

15 Q You understand that only one in this court here today
16 was present during those conversations except for you and
17 Mr. Jenkins, correct?

18 A Yes.

19 Q So you understand it is important for you to be very
20 specific as it relates to what you are testifying in your
21 PCR because of the relief you are requesting?

22 A Yes, ma'am.

23 Q And one of the allegations that you made is that you
24 gave your trial counsel some information in reference to
25 some witnesses?

1 A Yes.

2 Q And could you tell the Court what information you
3 gave your trial counsel in reference to those witnesses?

4 A Well I related to my attorney at the time that it was
5 a fourth person and I gave him the nickname of that fourth
6 person. And I told him where about, where he could
7 possibly find him and I asked him would he investigate it
8 or how to investigate. But I don't know what further
9 extent did he take it but I don't think he took it any
10 further from what I told him because the name was never
11 mentioned or brought up again.

12 Q So did you ever get a report from a private
13 investigator?

14 A No, ma'am.

15 Q Did your attorney ever tell you that he attempted to
16 try to track down this individual?

17 A He said he checked on it but that was it. He never
18 told me that he actually hired an investigator to go to
19 the address or the home or where he could possibly find
20 the suspect.

21 Q And when you said he checked on it, what do you mean
22 he checked on it. What did he tell you that he actually
23 did?

24 A He actually didn't tell me anything that he had done,
25 he actually didn't do anything. He just said that he

1 checked on it, that was the words that he phrased to me.

2 Q Now, was it important for your trial counsel to track
3 down this party?

4 A Yes, it was because it would have made, it would have
5 cleared things up because the person was the suspect was
6 actually the one that held me at gunpoint.

7 Q Okay. Now how could that affect your case. You said
8 it would clear things up. The Court needs to know how
9 would that clear things up in your case?

10 A Because that suspect, like I was telling him, as I
11 say, held me at gunpoint and he was the one that I was,
12 had he gone from the very beginning, he took my belongings
13 and escorted us to the house before the robbery even took
14 place.

15 Q And you being held at gunpoint, why would that be
16 important for, to come out at trial?

17 A Because at the point and time I was under distress
18 and it was not in my control at the time so I couldn't
19 control what was going on. The only thing that I had done
20 was flee from the scene. What took place was, because of
21 the suspect doing what he done it would have justified the
22 fact that I was not the aggressor during that time when
23 the crime was taking place.

24 Q So are you saying that you, that would intend to
25 prove you not guilty?

1 A Yes, ma'am.

2 Q And then in what manner would it tend to prove you
3 not guilty?

4 A It would prove my innocence because I also would, I
5 was also a victim. Then it would also make the case
6 stronger against my codefendants. They indicated that I
7 was involved but they didn't never put me actually in the
8 house committing a crime or participating, doing any of
9 the crimes.

10 Q Now let me ask you this, do you remember going to
11 trial that second time that you actually were convicted?

12 A Yes, ma'am.

13 Q Did any of the victims that were in that home, did
14 they pick you out of a photo lineup?

15 A No ma'am, they did not.

16 Q And so no one picked you out on the photo lineup?

17 A No one picked me out of a photo lineup. I think it
18 was mistaken by Ms. Zimmerman that I was picked out in the
19 photo lineup where she had written a letter to me and Chad
20 indicating her apology for stating she had picked me out
21 of a lineup. She said she had mistaken and it was another
22 case.

23 MR. JOHNSON: Your Honor, this is going to
24 prosecutorial misconduct. The State would object, this is
25 not part of the allegations.

1 THE COURT: It sounds to me like it was, he is
2 referring to the prosecutor, made a comment and then
3 retracted the comment by a written letter. I understand
4 what he is talking about. That wasn't part of the trial,
5 clear that up for me or was a part of the trial, I don't
6 know.

7 Q And that letter that you received from Ms. Zimmerman,
8 was that part of the trial?

9 A No, ma'am.

10 Q That was just communications between your trial
11 counsel and the prosecutor?

12 A Yes, ma'am.

13 Q But to clear it up, at either trial did any witness
14 pick you out as the actual perpetrator?

15 A No, ma'am.

16 Q Now you stated that you actually, were there any
17 other witnesses that you asked your attorney to try to
18 track down to assist in your defense?

19 A No, ma'am. It was Hastings Moore was the only
20 witness that I asked because he had had conversations with
21 my codefendant, Chauncey Partlow, he had related a lot of
22 information with Hastings Moore. I felt like the
23 relationship that they had and whatever they had
24 communicated should have been brought through the trial
25 and would have helped me prove my innocence.

1 Q Did you give this information to your trial counsel?

2 A Yes, ma'am.

3 THE COURT: Go back, Hastings Moore had a
4 conversation with which codefendant of him?

5 A Chauncey Partlow.

6 MS. SINGLETARY: P-A-R-T-L-O-W.

7 THE COURT: And so Partlow was a codefendant,
8 Hastings Moore which is an inmate.

9 MS. SINGLETARY: Yes, Your Honor, that is what we are
10 going to get to.

11 Q Who is Hastings Moore?

12 A Hastings Moore was an inmate at Newberry County
13 Detention Center.

14 Q And who was Hastings Moore bunked up with?

15 A He was bunked up with Chauncey Partlow at the
16 beginning before I was apprehended. So when I was
17 arrested he took me as to be Chauncey Partlow's first
18 cousin, Austin Partlow but I was the wrong individual and
19 he related all of the information to me to tell me what
20 was their strategy to get out of the thing and once he
21 told the strategy to me I never revealed to him that I
22 wasn't Chauncey Partlow's cousin.

23 Q Not let's back up and let's clear this up. Who is
24 Austin Partlow?

25 A Austin Partlow is Chauncey Partlow's first cousin.

1 Q And how was Austin Partlow related to your case?

2 A Austin Partlow is also the individual that plead to
3 nolo contend, (phonetic), in this case.

4 Q Are you saying that Austin Partlow is also a
5 defendant or a codefendant?

6 A Yes, he is a codefendant.

7 Q To clear up your testimony you are saying that when
8 you made it to the jail Hastings Moore thought that you
9 were Austin Partlow?

10 A Yes, ma'am.

11 Q And what did Hastings Moore relate to you
12 specifically?

13 A He related to me that if they wanted--

14 MR. JOHNSON: Anything that Hastings Moore said is
15 hearsay, Your Honor. If he is not here to testify Mr.
16 Johnson can't testify for him.

17 MS. SINGLETARY: Your Honor, I think we are trying to
18 get to the substance of why Mr. Johnson actually asked his
19 attorney--

20 THE COURT: Is it being offered for the truth or
21 being offered that it was said?

22 MS. SINGLETARY: Just that it was said, Your Honor.

23 THE COURT: Then I will allow the question.

24 A Can you relate the question to me again.

25 Q You wanted your attorney to actually subpoena

1 Hastings Moore to testify at trial in your defense,
2 correct?

3 A Yes, ma'am.

4 Q And what did Hastings Moore say to make you want your
5 attorney to subpoena him to testify in your defense?

6 A Hastings Moore related to me, he was saying, well,
7 you are Chauncey's cousin, right. I didn't reply. So he
8 said, well, your cousin said y'all want to see the day of
9 light put it all on Roy Johnson because, you know, he just
10 came off down so the best thing for us to do is put it all
11 on him. So at that time he was telling me, you know, put
12 the gun on him, put everything on him because, you know,
13 we got to get out of this. So to relate every word, I
14 can't relate every word that was said.

15 Q And you felt that that was important?

16 A I felt that that was important.

17 Q And did he, Hastings Moore, ever testify at any of
18 your trials?

19 A Yes ma'am, he testified in my first trial because I
20 related that information to my trial counsel, and my trial
21 counsel subpoenaed him.

22 Q And in your first trial were you convicted?

23 A No, ma'am.

24 Q Did Hastings Moore testify at your second trial?

25 A No, ma'am.

1 Q In your second trial were you convicted?

2 A Yes, ma'am.

3 Q Do you think that the absence of Hastings Moore's
4 testimony influenced the jury to reach a conviction in
5 your second trial?

6 MR. JOHNSON: Objection, speculation as to what
7 influences the jury.

8 THE COURT: I will let him present that, I understand
9 your objection.

10 A I feel that I wouldn't have been convicted if
11 Hastings Moore was there to testify and would also gave me
12 grounds to testify on my own behalf, speak for myself
13 during that trial. I think it would have made my case a
14 lot stronger.

15 Q Now let's move on to your second trial that you were
16 convicted on. Did you testify?

17 A No, ma'am.

18 Q But at any point was a statement of yours read into
19 the record?

20 A Yes, ma'am. They read the statement, the testimony
21 from my first trial was a violation to me because if he
22 was going to bring my statement, my testimony from the
23 first trial why not let me testify.

24 Q And why didn't you testify at your second trial?

25 A Well, during my second trial trial counsel informed

1 me that Hastings Moore wasn't going to be there that day
2 and it was best for me not to take the stand because it
3 would give him a strong closing argument where he would be
4 able to, I guess, emphasize to the jury, a longer closing
5 argument.

6 Q But, let me ask you this, what I am trying to clear
7 is, what was the strategy or in your opinion what was the
8 talks between you and your trial counsel about the
9 prosecution reading your statement into the record, your
10 former testimony into the record as their case-in-chief?

11 A Well, my trial counsel had informed me that it would
12 be best not to mention anything that the first trial had
13 ever taken place. From my understanding I felt the
14 testimony should have never come in because that revealed
15 to the jury that it was a trial that existed before.

16 Q Were there any other conversations between you and
17 your trial counsel about that statement being read into
18 the evidence?

19 A No, ma'am.

20 Q Now, I can imagine you can vividly remember your
21 second trial?

22 A Yes.

23 Q And you had a copy of the transcript from your second
24 trial, correct?

25 A Yes.

1 Q At any point did your trial counsel object to any
2 evidence or any statements that were made in your second
3 trial?

4 A No, ma'am. He never objected to any evidence but I
5 think he did object to, once on a speculation where he was
6 speculating that I had leaves and I was wet or whatnot
7 like that.

8 Q Now, you all had a Jackson v. Denno hearing and you
9 understand what a Jackson v. Denno hearing is, correct?

10 A Yes, ma'am.

11 Q And a Jackson v. Denno hearing is the voluntariness
12 of your statement?

13 A Yes.

14 Q Now, that hearing was held, did your attorney object
15 to the admissibility of the statement?

16 A No, ma'am.

17 Q Did your attorney object to the former testimony at
18 your first trial being admitted into evidence?

19 A No, ma'am.

20 Q Did your trial counsel object to the photographs of
21 the victims that the prosecutor displayed to the jury in
22 their opening statement?

23 A No, ma'am.

24 Q Did your trial counsel object to the testimony of Mr.
25 D.R. Hunter being read into the record?

1 A No, ma'am.

2 Q And do you remember who Mr. D.R. Hunter was?

3 A He was one of the witnesses for the victim, if I am
4 not mistaken.

5 MR. JOHNSON: Your honor, that's a direct appeal
6 issue. First of all, it is State's motion that Mr. D.R.
7 Hunter had passed away so his prior testimony was admitted
8 under 804.

9 MS. SINGLETARY: And, Your Honor, we are just using
10 this simply to show the lack of objections being made to
11 any evidence by trial counsel.

12 THE COURT: I know but there is not a reasonable
13 basis to make an objection. You are not suppose to make
14 an objection because then you end up on the, an objection
15 is for the sake of an objection are looked down upon and
16 really are against the rules. So if there is not a basis
17 to keep it out then keeping your mouth shut is the proper
18 course. So I think that would be a direct appeal issue so
19 I kind of agree with that. I wouldn't object to it had I
20 been trial counsel.

21 MS. SINGLETARY: Tahnk you, Your Honor. I withdraw
22 that question.

23 Q I beg the Court's indulgence, Your Honor.

24 THE COURT: Yes.

25 Q Now, Mr. Johnson, you understand the purpose of a

1 PCR, correct?

2 A Yes.

3 Q And what are you asking this Court to do today?

4 A I am asking for relief to get it overturned and get a
5 fair trial.

6 Q And you understand how important a post conviction
7 relief application is, correct?

8 A Yes, ma'am.

9 Q Is there anything else that you would like to relate
10 to the Court as it relates to the representation that Mr.
11 Jenkins gave you as trial counsel that resulted in your
12 conviction?

13 A Yes. I would like to say, I feel that I wouldn't
14 have been convicted if I had had a proper and a more
15 stronger defense, if we had of worked on a better strategy
16 than what we did. Because at the time we did not come up
17 with a defense. I remember the day, he asked me, well,
18 were you prepared or say during your trial. I told him
19 that I was going to testify, that was my first trial. And
20 I noticed that we never came up with a defense for me to
21 defend myself during that trial, it was, we were just, he
22 was relying on strategy of his past tactics or whatnot.
23 And I feel if he had a better defense he could have proved
24 that the State never, failed to prove any of the charges
25 that was held against me because they never proved that I

1 actually committed a crime or even was in that house.

2 Q Now, you understand that Mr. Jenkins wasn't at this
3 incident on that date, correct?

4 A Yes.

5 Q So did you give him defense, did you tell me what
6 happened on that day?

7 A Yes, I told him what happened on that day. But I
8 didn't feel that he had, I didn't feel that he allowed me
9 to give him the best estimation of everything that went on
10 that day. It was always like he was taking bits and
11 pieces instead of asking me, just helping me go by and get
12 my witnesses and a suspect. If we had of got all of that
13 information consolidated I feel like we could have came up
14 with a stronger defense at that time.

15 Q Now let me ask you this. Did the State ever make any
16 plea offers in your case?

17 A Yes--

18 MR. JOHNSON: Objection, Your Honor, that is not in
19 the allegations. She narrowed down to a couple of issues
20 and anything about plea offer was not in the allegations.
21 The State would object.

22 THE COURT: Is it in the application itself?

23 MS. SINGLETARY: Your Honor, he does talk about the
24 plea negotiations in the application. I just have to
25 narrow it down because it is very extensive.

1 THE COURT: If he mentions the allegations of an
2 offer or an offer not being conveyed prior to the trial
3 then I will allow that. I mean, she did frame her issues
4 beforehand but I don't think I can limit her to that
5 because she perhaps forgot standing there, as y'all said
6 the application is extensive or lengthy.

7 MR. JOHNSON: If I can be directed where that is,
8 Your Honor.

9 THE COURT: Y'all tell me.

10 MS. SINGLETARY: Your Honor, it may take me some time
11 for me to find that so we are going to move on, it isn't
12 necessary.

13 THE COURT: Okay.

14 Q Mr. Johnson, how do you feel that Mr. Jenkins'
15 performance in your trial prejudiced you?

16 A I feel a lot of things that Mr. Jenkins could have
17 objected to. A lot of things he could have addressed to
18 the Court at times that would reveal a lot of defense at
19 that time also.

20 Q And that is the actions of him with you saying he is
21 ineffective. But what I am asking is, what do you think
22 his action, him not or doing something, how did it affect
23 you personally?

24 A Well, I feel I have not fully investigated the issue
25 when I asked about, when I informed him about the fourth

1 party. I feel that that took a lot from me too. I feel
2 that I wouldn't have been convicted if that fourth party
3 had been apprehended also. If he had been at trial with
4 me or if he had of been apprehended at all by any of the
5 authorities. I feel that if he had of went further and
6 also have Hastings Moore during that time and to have me
7 testify at that time, it would also have helped me during
8 my trial and I would not have been convicted because I
9 felt the jury would have a better understanding of what
10 went on that night undergoing by two individuals that have
11 already plead to their charges. And I would also have had
12 a stronger defense for my innocence which I was trying to
13 prove and the burden had been shifted on me to prove my
14 innocence at that time.

15 Q Is there anything else you would like for the Court
16 to know?

17 A And during the course of this trial I would also like
18 to state, when it was confusion of the law during that
19 time on my trial which I also think that Chad and the
20 prosecutors, a jury note was brought as an issue at that
21 time. And during the course of the jury, only the jury
22 foreman was coming out and I feel had he of objected to
23 that at that time I feel also I would not have been
24 convicted because it would have gave me a better, a better
25 understanding because the Court could have brought the

1 entire jury out as a whole and the Judge could have
2 instructed the entire jury at that time. But I feel that
3 it was prejudiced to me because he allowed that to
4 continue and didn't ask for a mistrial or did not subject
5 to an objection at that time.

6 Q I have no further questions.

7 THE COURT: All right, Mr. Johnson.

8 MR. JOHNSON: Just for Your Honor's clarification
9 there is a jury note about the hand of one, hand of all
10 and which offenses it applied to. That all is on page
11 276.

12 CROSS-EXAMINATION

13 By Mr. Johnson:

14 Q Mr. Johnson, the first allegation you have is that
15 counsel was ineffective for failing to subpoena the fourth
16 party, it is Bubba or Bubber to come and testify in your
17 trial, isn't that correct?

18 A Yes, sir.

19 Q Is he here today to testify?

20 A No, sir.

21 Q You also state that Mr. Hastings Moore should have
22 been subpoenaed to testify in the second trial, isn't that
23 correct?

24 A Yes, sir.

25 Q Is he here today, called for testimony?

1 A No, sir.

2 Q You also say that this Bubber gentleman held you at
3 gunpoint and was the aggressor in this trial, correct,
4 that is your defense and that you were forced into the
5 house, or forced to commit to kick down the door?

6 A I was forced into the house, I neither kicked down
7 the door, kicked the door or anything. I was pushed
8 against that door at that time.

9 Q But after the crime was committed didn't you run and
10 hide from the police?

11 A No sir, that was a misunderstanding of which the
12 Solicitor illustrated during that trial. When I fled from
13 the crime I wasn't fleeing from the police, I was fleeing
14 from the suspect.

15 Q But you testified at the first trial that you saw
16 police cars coming back and fourth but you never went back
17 and said, hey, listen. These guys just robbed me at
18 gunpoint, they made me go and do this. You never did that
19 did you?

20 A Correct.

21 Q As a matter of fact, the Partlow brothers are from
22 North Carolina, aren't they?

23 A Yes, sir.

24 Q And they asked you to testify, you were the one from
25 Newberry, he knows that area. Correct. Is that what you

1 testified to?

2 A No, sir.

3 Q That was not Austin Partlow's testimony at trial,
4 your second trial?

5 A No, sir. Not that I recall.

6 MR. JOHNSON: Your Honor, I am looking at page,
7 around 156 I believe, 160. May I approach the witness,
8 Your Honor.

9 THE COURT: Sure.

10 Q This is to refresh your memory and this is Mr. Austin
11 Partlow's testimony. This is about when y'all came to
12 Walmart that you proceeded to buy duct tape and that you
13 gave directions, you were the one that actually gave them
14 directions.

15 A Yes, I did give directions to Newberry that night
16 because, I did know the directions to Newberry County.
17 But those were not the purposes of us coming to Newberry
18 County at that time. The robbery was not a plan or in
19 mind at the time.

20 Q The purpose was actually to buy drugs, wasn't it?

21 A Yes.

22 Q But the testimony is that you gave directions to
23 Newberry because you are familiar with the area, correct,
24 the Partlow brothers are not?

25 A Yes, sir.

1 Q Okay. You also, your claim is that counsel is
2 ineffective for not allowing you to testify yourself at
3 trial, isn't that correct?

4 A Yes, sir.

5 Q But the Judge actually warned you on your right to
6 testify, didn't he?

7 A Yes, sir.

8 Q But you are saying it is now, it is counsel's
9 decision for you not to testify?

10 A Repeat that.

11 Q Now your testimony is that it is counsel's decision
12 that you did not testify at your own trial?

13 A No. I am not saying it was counsel's decision, I am
14 saying that counsel persuaded me at the time not to take
15 the stand.

16 Q But whose decision was it not to take the stand.

17 A It was my own.

18 Q Okay. You also state that you think counsel should
19 have given a better defense and that you gave Mr. Jenkins
20 your version of the facts but that he should have given
21 you a stronger defense, correct?

22 A Yes, sir.

23 Q But your defense is duress in this case, right?

24 A Yes.

25 Q Do you agree with me that counsel argued duress

1 during the closing arguments of this case? He argued that
2 you were forced into that house?

3 A I can't recall his closing argument but I don't feel
4 he made a strong issue of me being under the threat at
5 that time.

6 Q But he brought that to the jury's attention, did he
7 not. He argued that in closing arguments?

8 A I don't want to put words in his mouth or take words
9 out.

10 MR. JOHNSON: The Court's indulgence, Your Honor.

11 THE COURT: Sure.

12 Q Look at page 244.

13 MR. JOHNSON: May I approach the witness, Your Honor.

14 THE COURT: You may.

15 Q Look at page 244. Do you agree with me that counsel
16 argued that during closing arguments?

17 A Yes, sir.

18 Q Would you agree with me that the Judge charged duress
19 as a complete defense to this crime in the jury
20 instructions?

21 A I think that was part of the jury trial.

22 Q So your counsel argued it and the Judge charged it to
23 the jury?

24 A Okay.

25 Q But you were still found guilty of these as indicted,

1 correct?

2 A Yes.

3 Q Okay. That is all I have.

4 MS. SINGLETARY: No redirect, Your Honor. We have no
5 further witnesses, Your Honor.

6 MR. JOHNSON: May I have just a two minute break,
7 Your Honor.

8 THE COURT: You may.

9 (Whereupon, a short break was taken.)

10 MR. JOHNSON: Your Honor, we would call Chad Jenkins
11 to the stand.

12 CHAD JENKINS, being
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Jenkins:

16 Q Good morning, Mr. Jenkins.

17 A Good morning.

18 Q Please tell the Court whether you were appointed or
19 retained in this matter?

20 A I was appointed to represent Mr. Johnson.

21 Q About how many times did you meet with Mr. Johnson?

22 A Actually I was looking through my notes and at least
23 eight times I think at the jail. He was in jail for quite
24 a long time. We had a long period before the first trial
25 and then a shorter period before the second trial. But I

1 think it was eight times or so at the jail and then
2 numerous at the court house prior to the trial.

3 Q So I take it he never made bond?

4 A No, sir.

5 Q And in preparation for the first trial what all would
6 you have discussed with Mr. Johnson?

7 A First thing that I normally do when I am appointed to
8 a case is of course try to get discovery done, Rule 5 and
9 Brady motion. And I normally send a letter to the client
10 saying, look, I am not going to come out there and waste a
11 whole bunch of time until I see what the State has. But
12 it look a little while for the State to get me the
13 discovery in this case. I think maybe they had given it
14 to the public defender initially and then I had to get it
15 from him. I don't remember exactly and quite honestly I
16 get the two trials mixed up a little bit in my head
17 between the two separate trials we had on this case. But
18 then normally I have got to meet with the client, go
19 through the discovery with him, discuss possible defenses,
20 discuss witnesses, discuss anything relative to the case.
21 Q And did Mr. Johnson give you a list of witnesses to
22 pursue?

23 A He did mention, I think it was three people. There
24 was a girlfriend I believe and I don't remember her name,
25 never provided me any contact info for her. But then the

1 fellow that testified at the first trial, Hastings, I do
2 remember him. I was unable to meet with him ahead of the
3 first trial but did subpoena him and get him to the court
4 house for the first trial and then Bubbe or Bubba, I am
5 not sure exactly how they, the name that they were
6 pronounced, had mentioned this was a person who forced him
7 into the house. That was his testimony at the first trial
8 and that was his assertion.

9 Q Did he give you contact information for this Bubbe,
10 Bubba?

11 A He did not.

12 Q So you had no way of getting in touch with this
13 fellow?

14 A No, I did not.

15 Q Did you even know his real name?

16 A Bubber or Bubbe, I think it was Bubbe, B-U-B-B-E, I
17 think is what he called him. That is the only name I ever
18 had and that is the only thing I ever knew about him other
19 than he may be from the Gastonia area. I believe it was
20 Gastonia area, where the other two guys were from also.

21 Q Were you ever able to locate this gentleman?

22 A No and I never really looked very hard for the reason
23 being I asked Mr. Johnson specifically would help me or
24 help you if I hired a PI to go look for Bubbe and the
25 answer was no. So I failed to do so because I did not

1 want to waste the time or the money doing so because I
2 remember specifically Mr. Johnson saying no, there is no
3 need for that.

4 Q So you were relying on information that Mr. Johnson
5 provided to you?

6 A Correct.

7 Q Defenses, what all defenses did you discuss with Mr.
8 Johnson?

9 A There was really only one defense in this case. He
10 had a tape recorded conversation with Robert Dennis who is
11 an investigator with the sheriffs office and I forget who
12 rode with him. But two of them went to pick him up in
13 Gastonia. He had gotten, he had either turned himself in
14 or got arrested in Gastonia and they were driving him from
15 Gastonia back to Newberry, had a tape recorded
16 conversation after reading him his Miranda rights and him
17 waiving his Miranda rights where he indicated that he was
18 there, he stood at the doorway and that I believe the
19 investigator asked him specifically, were you sort of the
20 lookout. And he said, yes, I guess I was the lookout. So
21 it was going to be very hard to argue that he wasn't
22 there, it was impossible to argue that a crime didn't
23 occur. These were people who had no prior dealings with
24 Mr. Johnson or the codefendant, they were just people that
25 were home and their home gotten broke into and the facts

1 were not pretty facts, the pictures were not pretty
2 pictures. But I couldn't argue that a crime didn't occur
3 and I couldn't argue that my client wasn't there. So what
4 he presented to me and what we argued was that he was
5 under duress, that Bubbe, a fourth defendant that the
6 sheriffs office never investigated and never followed up
7 the place that they were told, forced Mr. Johnson into the
8 house and that everybody was literally scared of this guy,
9 that he was the one that was the bad guy.

10 Q As a side note, I know that he has brought up the
11 allegations of his counsel for not objecting to the
12 pictures in the opening statement by the Solicitor. And
13 those pictures would show what, what did they show to the
14 jury?

15 A I am trying to remember exactly which pictures, we
16 had narrowed them down some. They had a stack of pictures
17 a foot high and they wanted to use several of them. We
18 went through them and I don't remember specifically at the
19 first or second trial but I know, I believe it was part of
20 my opening statement in both trials. I held them up and
21 shook them too and said I am not hiding from these
22 pictures. We agreed that a horrible crime happened here,
23 it just wasn't my client's willful doing, that he
24 participated in this crime. That was the argument. I did
25 not, it was a trial strategy to not object as much as you

1 may object if there is some real questionability about the
2 evidence coming in. But here some of the pictures were
3 going to come in. I believe one of them, the worst
4 picture I believe was the young daughter and step-daughter
5 of the couple that was there. I say young, she was about
6 34 years old but she had some development issues and I
7 remember her wearing a Miley Cyrus tshirt to the first
8 trial and she looks a lot younger than she really is. And
9 she had been duct taped during this incident at their
10 house and I think there was a picture of her with duct
11 tape in her hair or something along those lines. That was
12 probably the worst.

13 Q I guess to summarize, would you agree with me that
14 regardless of these pictures your defense is duress. My
15 client was forced into this crime?

16 A Correct.

17 Q So those pictures were fully irrelevant to your
18 client's case. They were more showing what the Partlow
19 brothers had done?

20 A Correct.

21 Q Did you discuss the defense of duress with Mr.
22 Johnson?

23 A On numerous occasions.

24 Q And did he give you his version of the facts?

25 A He did.

1 Q And did he give you more than one version of his
2 facts?

3 A He was fairly consistent with me. Of course, you
4 know, anybody if you talk to them 20 times, I would almost
5 say the story changes but they may remember something that
6 they didn't remember before. He was fairly consistent
7 with me. The problem was, we had a previous tape recorded
8 conversation and a previous written statement that he made
9 also that we had to contend with. I didn't want, and he
10 testified at the first trial, Mr. Johnson did. And quite
11 honestly did as well as could possibly be expected, at his
12 first trial he testified very well.

13 Q Let's break those two down. You said there was a
14 problem with a tape recorded conversation, a written
15 statement. Was there a Jackson v. Denno hearing in this
16 case?

17 A There was.

18 Q And the second go around I guess you didn't ask any
19 questions or cross-examine the witnesses?

20 A I don't believe that I did.

21 Q And is there a reason for that?

22 A We, as far as at the trial?

23 Q Yes, sir.

24 A At the Jackson v. Denno hearing or at the trial
25 itself?

1 Q At the Jackson V. Denno hearing.

2 A I don't remember exactly why but I think, I don't
3 know is the answer.

4 Q You see any reason to object?

5 A They had the waiver, they had Miranda and wavier on
6 audiotape on the first statement and they had a written
7 wavier, I believe, on the second statement. It would be
8 very hard to oppose either one of those.

9 Q Would it be a frivolous argument to raise, a
10 frivolous objection?

11 A It would be hard to argue with a straight face.

12 Q The testimony at the first trial, you testified that
13 he, Mr. Johnson testified pretty much as well as he could
14 have?

15 A Yes.

16 Q And I know that counsel brought up the fact that you
17 may be ineffective for not objecting to his prior
18 testimony, the first trial being read in in the State's
19 case-in-chief at his second trial?

20 A Correct.

21 Q Is there a reason you did not object to that?

22 A If they didn't read it I was going to ask that it be
23 read in. I didn't want him to have to testify again and
24 we discussed it and as every client gets to make that
25 decision and make it on the record in a case like that

1 this, he decided he wasn't going to testify. But I
2 encouraged him not to testify at the second trial, I will
3 make no bones about that. I felt that it was in his best
4 interest that if that first trial testimony came in, we
5 knew exactly what was coming in if that was read in. If
6 he testified we had to worry about further
7 cross-examination. And we had to worry about if the story
8 didn't exactly coincide with what was said at the first
9 trial and he gets impeached with his own words. I wanted
10 the testimony to come in, the fact that the State brought
11 it in or I brought it in really didn't matter. And I
12 think it probably helped us because I got the last closing
13 argument because they brought it in.

14 Q Even from the strategy point would there be a legal
15 basis to object to his own statements coming in?

16 A I can't imagine what it would be.

17 Q You did not follow the category of issue by party
18 opponent?

19 A Prior to sworn testimony.

20 Q Jumping to, I guess, Austin Partlow, did Mr. Austin
21 Partlow testify at the first trial?

22 A No, he tried not to very hard and did not testify
23 hardly at all.

24 Q Was he found in contempt of court?

25 A He was and I think he got an extra six months tacked

1 on to his sentence.

2 Q Did he testify in the second trial?

3 A He did.

4 Q Can you explain that affect, what you would opine to
5 his effect on the trial?

6 A I think it was very detrimental. He actually made a
7 decent witness. I had traveled to meet with him, I think
8 he was at Leiber also when I met with him prior to the
9 first trial. But he had indicated to me that he didn't
10 want to testify and was not going to testify if he could
11 help it. When they threatened him with contempt I was
12 supposed, he didn't go ahead and testify the first time.
13 He testified much, very much the same as he talked to me
14 when I went to visit with him down at Leiber Correctional
15 Institution that, here is what happened and it was very
16 detrimental the fact that he testified because you had one
17 more person saying here is what happened according to the
18 State's version of events.

19 Q And in fact he said Mr. Johnson was a lone
20 participant in this crime, correct?

21 A Correct.

22 Q And just to, I guess to confirm, you did argue duress
23 in your closing argument?

24 A Yes, sir.

25 Q And you asked the Judge for a duress defense charge?

1 A Yes, sir.

2 Q And he did charge that to the jury?

3 A Yes, sir.

4 Q And the jury's question, was it just about the hand
5 of one, the hand of all as in relation to which offenses
6 that it would apply?

7 A I have not reviewed my notes and I have not reviewed
8 the transcript recently. I read it when I first got the
9 PCR notice but it has been quite some time so I do not
10 remember.

11 Q Okay. That is all I have at this time.

12 CROSS-EXAMINATION

13 By Ms. Singletary:

14 Q Now, Attorney Jenkins, you have already told this
15 Court how many times you actually met with Mr. Johnson, my
16 client. And is it your testimony that Mr. Johnson
17 actually gave you the information for three different
18 individuals, a girlfriend that you never got the contact
19 information for and for a Hastings who was, "a jailhouse
20 snitch". And Bubbe or Bubba who was the alleged fourth
21 suspect?

22 A Correct.

23 Q And that based on your conversations with Mr. Johnson
24 you made a decision not to hire a private investigator?

25 A Correct.

1 Q Did you, yourself, do any internal investigation to
2 try to track down Bubbe or Bubba?

3 A No.

4 Q Okay. Now, you stated that you actually, you didn't
5 know the reason that you did not testify or object or
6 answer any questions during the Jackson v. Denno?

7 A I don't remember that, that's correct.

8 Q Now, and just correct me if I am wrong, if an
9 attorney wants to preserve an issue on appeal what should
10 an attorney do at the trial level?

11 A You would have object if you want to appeal.

12 Q And would you actually disagree with me if I say that
13 you didn't object to anything at the second trial?

14 A I have not read the transcript recently so I can't
15 agree with you but you say it is true I will go with it, I
16 will agree with you.

17 Q So that means that no issues were actually preserved
18 on Mr. Johnson's behalf for in direct appeal, correct?

19 A If no objections were made, yes.

20 Q And but you filed a motion for a new trial in this
21 case, correct?

22 A Correct.

23 Q And whatever happened to that motion for a new trial,
24 was it denied?

25 MR. JOHNSON: Objection, Your Honor, that is outside

1 the scope of direct examination.

2 A I am not talking about the motion for a new trial. I
3 know I filed the notice of appeal and then it was turned
4 over obviously because of the appointed case. That is all
5 I remember about it exactly.

6 Q And you stated that even, as it related to Mr.
7 Johnson's first trial's testimony being presented in the
8 second trial by the prosecution's case-in-chief that you
9 had no objection to that?

10 A Correct.

11 Q Because you were going to actually enter it in
12 yourself if they didn't enter it in?

13 A If the State did not I think we would have, yes.

14 Q Now, what and I was kind of confused, in your opinion
15 what rule of evidence did the State rely on to enter that
16 into evidence?

17 A Just prior statements of the party under oath, a
18 statement of a party of the case. Like I said, if they
19 hadn't I was going to. I didn't consider the legal
20 reasoning behind it because I was looking at it as a
21 strategic decision. I don't care how it comes in, I
22 wanted it to come in. The fact that they put it in let me
23 get the last closing. Quite honestly I had made the
24 decision or had talked to him about it and he made the
25 decision not to testify. My advice was not to testify at

1 the second trial because I don't think there was any way
2 he could have done as well at the second trial as he did
3 at the first trial and the same facts came in therefore I
4 could argue the same things in closing, I could argue the
5 same things to the jury.

6 Q Are you familiar with South Carolina Code Section
7 19-1150?

8 A No I am not, off the top of my head, no.

9 Q And if I tell you that that code actually says, as it
10 relates to the use of testimony. Prior to 2012 South
11 Carolina Legislature agenda and the repealing of that code
12 barred recorded testimony from another trial from being
13 used against a defendant by prosecution in their
14 case-in-chief. Were you aware of that section?

15 A No, I was not.

16 MR. JOHNSON: What is that code.

17 MS. SINGLETARY: 19-1150, it came up in 2008 in a
18 death penalty case where the testimony was not allowed by
19 the defendant from the previous trial and it wasn't
20 repealed until 2012.

21 MR. JOHNSON: It was a death penalty case?

22 MS. SINGLETARY: Yes, it was a case from 2008.

23 MR. JOHNSON: All right, thank you.

24 Q And typically and you said, so let me ask you about
25 this statement. Was Mr. Johnson unavailable at the second

1 trial?

2 A He was sitting right next to me.

3 Q And he could have testified at that second trial?

4 A Yes, ma'am.

5 Q And can I ask you this, were there any and I don't
6 know how to phrase this. Did anything happen, any new
7 evidence come about or any new revelation that came about
8 during the time between the first trial and the second
9 trial?

10 A Only new evidence that I think would have been
11 presented, it wasn't new to us but it would have been new
12 to the jury was the Walmart receipt.

13 Q But because of the fact that Mr. Johnson didn't get
14 to testify at the second trial and the testimony of his
15 first trial was read into the record there was no way for
16 you all to clean up any statements that could have been
17 detrimental to him that was actually read into the record
18 from the first trial? And I guess I need to--

19 A I don't understand that question.

20 Q Because Mr. Johnson didn't get to testify at his
21 second trial, during the first trial he got to testify, he
22 was cross-examined by the prosecution.

23 A Correct. He did excellent.

24 Q But there may have been some things that he and you
25 talked about and y'all wanted to tweak about his

1 testimony?

2 A I don't recall anything that he would have testified
3 to differently or anything he would have tweaked and any
4 consistency between the first trial and the second trial
5 would have been highly detrimental to him. So I don't, I
6 don't see any, I didn't see any reason to call him and I
7 agreed with his decision and encouraged him not to
8 testify.

9 Q Did there happen to be any event that occurred during
10 the second trial that may have caused some type of pause
11 in the second trial?

12 A Yes, there was. The and I will go ahead and just
13 sort of spit it out and I am not sure exactly where we
14 were in the trial when it happened. I remember we were at
15 a break. My first instance was I got a message actually
16 from a highway patrolman that I know who had my cell phone
17 number and he had called my phone and I saw, I listened to
18 the voice mail. So I know it was at a break and there was
19 a report of gunfire near my house, my nextdoor neighbor
20 had called and said, you know, called 911 I guess, there
21 is gunfire at Chad's house. I was nervous and my wife was
22 suppose to be home that day, I think she had actually
23 left. That was my first call and she was actually headed
24 to Union to visit with her mom so she was gone. So I
25 wasn't as worried about. But I go out there, the sheriffs

1 deputy, some of them who were involved in this trial go
2 out there. I think it was a truck backfiring or
3 something, there were no bullet fragments, no bullet
4 holes, no casings, no anything to be found. So nobody
5 knows exactly what it was, the neighbor thought there was
6 gunshots near my house.

7 Q Did you mention this to Mr. Johnson?

8 A Yes, I told him what was going on.

9 Q Okay.

10 A I actually drove out to my house so there was a
11 break. I don't remember if it was around lunchtime or if
12 the jury had the case. I remember telling Judge Hill
13 something is going on, I have got to get out to my house
14 and that is about the extent of it.

15 MR. JOHNSON: Judge, just for the record, on appeal,
16 first of all this is irrelevant. Second of all, this is
17 not brought up in his direct examination, he could have
18 brought that up so I would ask to strike this testimony
19 from the record.

20 THE COURT: What is the relevance.

21 MS. SINGLETARY: Your Honor, my client is, would like
22 to relay to the Court that as a result of this incident he
23 is saying that his trial counsel and another investigator
24 actually came to him and said he had hired someone to
25 shoot up trial counsel's home. And that there was a

1 disagreement between trial counsel and Mr. Johnson in
2 which he believed the jury overheard the conversation.

3 THE COURT: Is that in the application.

4 MS. SINGLETARY: No, Your Honor, it is not.

5 THE COURT: Let's stay away from it.

6 MS. SINGLETARY: Your Honor, I have no further
7 questions.

8 REDIRECT EXAMINATION

9 By Mr. Johnson:

10 Q Mr. Jenkins, the Walmart receipts that were not
11 brought into evidence because he didn't testify, what
12 would those have shown?

13 A My understanding from speaking with Mr. Johnson, what
14 they would have shown is that Chauncey Partlow went into
15 Walmart in Gastonia or somewhere between Gastonia and
16 Newberry to buy bullets for the gun that was used in the
17 crime. That Mr. Partlow being who he is did not buy the
18 right caliber and that Mr. Johnson actually went back
19 inside and traded them in or exchanged them for the right
20 caliber for the gun. To me it showed the, a preplanning
21 of a gun being involved in this crime. It was kept out of
22 the first trial because the State didn't provide me with
23 the receipt. I think it was by mistake, I don't think it
24 was, they were hiding it from me. But they didn't have it
25 at the first trial until the day of trial, I objected,

1 Judge Russo kept it out. The second trial obviously had
2 it well ahead of time and so it came in and they found the
3 receipt in the car that was, the car that had been
4 utilized to get there and back.

5 Q And that would have shown that Mr. Johnson was
6 actually involved in planning a robbery?

7 A And if I was the prosecutor in that case I would and
8 he had testified about it also, you know, if he testified
9 that I went in and traded the bullets then that cuts down
10 on some of your argument that you didn't know what was
11 going on and that you were forced into this situation. If
12 that were the case, if you were truly forced into this
13 situation then when you got into Walmart why didn't you
14 just go hide in the bathroom and call the police kind of
15 thing. It was not going to be good to be cross-examined
16 about it. All the State had was the receipt, they didn't
17 actually have Mr. Johnson going back in and getting it and
18 that kind of thing.

19 Q And had he testified he would have had to admit that
20 he went in and exchanged the caliber bullets, therefore it
21 would be detrimental to his defense of duress?

22 A Correct.

23 Q That is all I have.

24 MS. SINGLETARY: No further questions, Your Honor.

25 MR. JOHNSON: The State has no further witnesses.

1 THE COURT: Ms. Singletary, anything else?

2 MS. SINGLETARY: No, Your Honor. We just ask that
3 you respectfully grant the applicant's relief sought. We
4 just are relying on the Strickland standard. We think he
5 eventually met both prongs. Your Honor, more specifically
6 as it relates to the failure of trial counsel to object we
7 would rely on Vail versus South Carolina, again Appellate
8 case number 2009112367, opinion number 5092 which actually
9 came out in February of 2013, Your Honor, in which the
10 Court says that trial counsel cannot use failure to object
11 to inadmissibility hearsay as trial strategy being the
12 basis of being transparent, the evidence that is elicited
13 at trial by the jury. That if credibility is crucial in
14 the case as in the case of Vail which is the case here
15 that trial counsel should have objected because there was
16 no overwhelming evidence of defendant's guilt. The three
17 witnesses that were victims of the burglary did not pick
18 out my actual client. The only people who put my client
19 at this scene is his two codefendants. As my client
20 testified that there were some issues about their
21 credibility based on the conversation that he had with
22 Hastings Moore who actually testified at the first trial
23 in which a hung jury actually resulted but with the
24 absence of Hastings Moore being at the second trial he
25 actually got convicted. So that is the prejudice, Your

1

2 Honor. Also we rely on the fact that trial counsel, even
3 though trial counsel said that it was strategy, the use of
4 my client's testimony being granted into the record at his
5 second trial violated his Fifth Amendment rights to remain
6 silent, Your Honor. So based on that we respectfully--

7 THE COURT: Now, on that argument you can't have it
8 both ways. You can't say don't read it and I want to
9 testify.

10 MS. SINGLETARY: Your Honor, I guess in our opinion
11 we did not want it to be, he did not want it to be read
12 in. He thought that he was prejudiced by it being read
13 in. However he felt that because of the fact that it was
14 read in and because his counsel actually advised him not
15 to testify then that prejudiced him in some way, Your
16 Honor.

17 THE COURT: What doesn't make sense to me is, he
18 wants to testify to explain the Walmart receipt or perhaps
19 not, and could explain some things so he wants to testify
20 to explain some nuances or some questions that may have
21 come up in the second trial and yet by all accounts it is
22 uncontradicted that at the first trial he testified as
23 good as could be expected all things considered and didn't
24 get beat up too bad on cross-examination. The second time
25 though there is more leniency and lead way, the prosecutor

1 gets a second run at you. The prosecutor would probably
2 do a better job of cross-examining you and got a little
3 ammunition with the Walmart receipt that is now allowed
4 into evidence, it could go down hill South quick. So if
5 you want to testify, that first clean statement it is
6 pretty good and they are willing to put it in and then we
7 still get closing argument. That is more than just one
8 simple trial strategy, that is about three things mixed
9 into one. We kind of get our cake and we get to eat too
10 and then we don't let you get beat up. So I understand
11 the argument, that is a tricky argument because I read it
12 in a good statement and I would like to have gotten on the
13 stand but I really didn't want to testify but I would like
14 to get on the stand and explain some new, that is tricky.

15 MS. SINGLETARY: It is, Your Honor.

16 THE COURT: That is slippery sloppy walking up, kind
17 of a, you could fall off both ways.

18 MS. SINGLETARY: And I understand, Your Honor.

19 THE COURT: I have had a client that had that
20 slippery slope going both ways, there is not a right way
21 or a wrong way, it is just the way you do it and you hope
22 it works and when it does great and when it doesn't,
23 wonder how it would have worked out the other way. Well,
24 in the middle of a trial you can't go back and do it both
25 ways. But that is a pretty good way to do it is taking

1 the cross-examination with the prosecutor instead of
2 getting closing argument, that is clever.

3 MS. SINGLETARY: And I understand, Your Honor.

4 MR. JOHNSON: Just briefly in reply. There have been
5 two allegations brought. One is failure of counsel to
6 interview and call Bubbe, Bubber at trial and also
7 Hastings Moore at the second trial. However, under
8 Bannister v. State, 333 SC 298, the applicant must produce
9 the testimony of a witness which he claims that counsel
10 failed to call in accordance to the rules of evidence to
11 establish any prejudice from counsel's failure to call
12 that witness. Furthermore as Your Honor stated, the
13 decision not to have Mr. Johnson to testify a second time,
14 first as he admitted on the stand, Mr. Johnson admitted on
15 the stand, it was his decision not to testify. Second of
16 all, when counsel does articulate a strategic reason, no
17 prejudice can be shown in his actions. The State will
18 submit that this application should be denied, he has not
19 shown any ineffective assistance of counsel and failed to
20 show any prejudice.

21 THE COURT: I am going to read the record, I am not
22 going to make a decision today. They presented some
23 interesting questions that I would like to read and
24 decide. I will let y'all know.

25 MR. JOHNSON: Thank you, Your Honor.

1 MS. SINGLETARY: Thank you, Your Honor.

2 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER

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4 State of South Carolina)

5 County of Newberry)

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7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Newberry, South
14 Carolina on the 4th day of June, 2013.

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

17

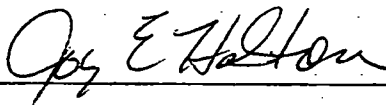
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November 13, 2013

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Joy E. Holston, Court Reporter

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My Commission expires: March 13, 2016

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STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Roy Johnson, Jr., #335360,

2012-CP-36-0203

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED
NEWBERRY COUNTY
2013 JUL 22 A 10:48

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 10, 2012. The Respondent made its Return on July 19, 2012. An evidentiary hearing into the matter was convened on June 4, 2013, at the Laurens County Courthouse. Nicole Singletary, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Chad Jenkins, Esquire also testified. This Court had before it a copy of the records of the Newberry County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. The Applicant was indicted at the April 2008 term of the Newberry County Grand Jury for Burglary, 1st degree (2008-GS-36-0311), Armed Robbery (2008-GS-36-0312), Kidnapping (2008-GS-36-0313), Assault and Battery of a High and Aggravated Nature (ABHAN) (2008-GS-36-0314) and Possession of a

SEP 11/8

Weapon during the Commission of a Violent Crime (2008-GS-36-0315). The Applicant was represented by Chad Jenkins, Esquire. On June 15-17, 2009, the Applicant underwent trial by jury and was convicted of all charges as indicted. The Honorable D. Garrison Hill sentenced the Applicant to imprisonment for twenty-five (25) years for Burglary, 1st degree, twenty-five (25) years, concurrent, for Armed Robbery, twenty (20) years, concurrent, for Kidnapping, ten (10) years, concurrent, for ABHAN and five (5) years, concurrent, for the weapons charge.

A Notice of Appeal was timely filed on behalf of the Applicant and an appeal was perfected. The South Carolina Court of Appeals by written Order affirmed the Applicant's conviction and sentence. State v. Johnson, 2011-UP-465 (Ct. App. filed on October 21, 2011). The Remittitur was sent on November 8, 2011.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Insufficiency of Evidence"
3. "Conflict of Interest"

At the hearing, the Applicant proceeded on his claim of ineffective assistance of counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

507 48

This Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. This Court also has read the trial transcript, all of which assists the Court in judging the witnesses' credibility. This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is very credible.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at

117-18, 386 S.E.2d at 625.

Failure to Interview/Call witnesses on the Applicant's behalf

The Applicant alleges Counsel was ineffective for failing to interview and subpoena witnesses on his behalf.

At the PCR hearing, the Applicant testified Counsel failed to interview and/or subpoena witnesses on his behalf. Specifically, Applicant alleged Counsel failed to track down and interview "Bubba," who would have supposedly testified that he held Applicant at gunpoint and forced Applicant to enter the Victims' house. "Bubba's" testimony would have shown that Applicant was not guilty, but rather a victim of duress. Applicant also stated he gave Counsel information about Hastings Moore, who testified at his first trial, but not his second trial. Counsel testified Applicant gave him no contact information for either of these witnesses.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

This Court finds Counsel was not ineffective for failing to interview or subpoena witnesses on the Applicant's behalf. The Applicant failed to produce any testimony or evidence at the PCR

hearing to show what these witnesses would have testified to at trial or how their testimony would have altered the outcome of his trial. Further, Applicant was unable to give "Bubba's" real name and as such, it would have been impossible for Counsel to find this individual and interview or subpoena him. Additionally, the Applicant has failed to prove any resulting prejudice from Counsel's alleged shortcoming. Accordingly, this allegation is denied.

Failure to object to State's entering Applicant's testimony from first trial into evidence

The Applicant also asserted Counsel was ineffective for not objecting to the State introducing his testimony from his first trial, which resulted in a hung jury, into evidence at his second trial.

The Applicant testified his testimony from his first trial was read into the record by the solicitor at his second trial without objection from Counsel. He also stated Counsel advised him not to testify at his second trial. On cross-examination, Applicant admitted he was questioned by the trial judge concerning his right to testify in his own defense. He stated it was his decision not to testify.

Counsel testified he did not object to the State reading Applicant's testimony from his first trial into the record because Counsel wanted the testimony in evidence. Counsel stated had the State not read Applicant's testimony into evidence, he would have. Counsel testified, in his professional opinion, that Applicant testified about as well as he could have at the first trial. He also stated, by having the State read the testimony, he knew exactly what was being introduced into evidence. Additionally, Counsel testified that because the State read Applicant's testimony into the record, the State was not able to cross-examine Applicant again. Further, Counsel testified because he did not have to introduce Applicant's testimony in his case-in-chief, he was able to preserve last argument to the jury.

Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Counsel articulated valid strategic reasons for allowing the State to read Applicant's testimony from the first trial into the record at Applicant's second trial. Because in this case Applicant's defense was duress and other co-defendants testified that Applicant was a willing participant, Applicant's testimony was a necessity. Not only did Counsel get in the testimony that he wanted from Applicant concerning the defense of duress, but he also preserved last argument. Essentially, Counsel had his cake and ate it too. Had Applicant testified a second time, there is a very likely chance his testimony would have varied in some way, which would have allowed the State to cross-examine him about prior inconsistent statements and thus, allowed the State to attack Applicant's credibility. This Court finds Applicant has not shown that counsel was deficient in that choice of tactics or any resulting prejudice.

Additionally, where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991). Even assuming *arguendo*, Counsel was deficient for not objecting to the State's reading of Applicant's testimony into the record, no resulting prejudice occurred because of the overwhelming evidence of Applicant's guilt in this case. First, Applicant admits he was at the scene and in the house on the night of the incident. (See Tr. p. 122 lines 9-16; p. 128 line 5- p. 129 line 7). His only claim was that he was forced into the house. However, his two co-defendants (Austin Partlow and Chauncey Partlow) both testified Applicant was not forced into committing these

crimes, but was a willing participant and planner of the robbery. (See Tr. p. 76 lines 15-25; p. 79 lines 4-10; p. 80 lines 14-16; p. 84 lines 8-13; p. 157 lines 13-19; p. 160 lines 7-10; p. 161 lines 18-22; p. 162 lines 9-16; p. 162 lines 13-16; p. 176 lines 17-22). At the PCR hearing, Counsel testified evidence of Wal-Mart receipts were discovered between the first and second trial, but were not used at the second trial. These receipts show that Applicant purchased bullets for the gun used in the robbery and ABHAN from Wal-mart, which proves Applicant helped plan and was a willing participant in these crimes. Therefore, based on the testimony at trial and the PCR hearing, there is overwhelming evidence of Applicant's participation in these crimes.

This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to meet his burden of proving any of the numerous allegations contained in his application. Therefore, any and all remaining allegations are denied and dismissed.

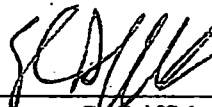
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR.

Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

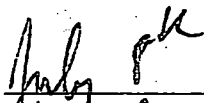
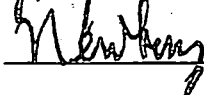
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Eugene C. Griffith, Jr.
Presiding Circuit Court Judge
Eighth Judicial Circuit

, 2013
, South Carolina

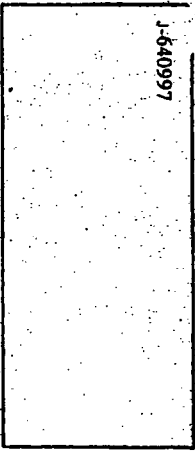
X

WITNESSES

Nick Boulknigh

WARRANT NUMBERS

J-640997



THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

April Term, 2008

Indictment # 08GS36-3/3

THE STATE

vs.

ROY JOHNSON, JR.

Foreman of the Grand Jury

Date:

4-25-08

VERDICT

TRUE BILL

Guilty

True Verdict 6/17/08
Foreman

INDICTMENT FOR

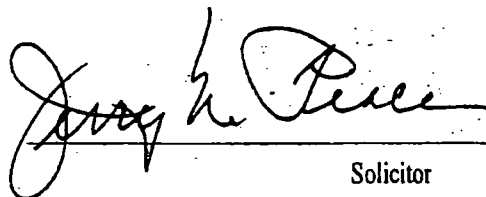
KIDNAPPING

County present upon their oath:

COUNT ONE

That ROY JOHNSON, JR., along with another person or persons, aiding, abetting and assisting one another, did in Newberry County, state aforesaid, on or about the 7th day of January, 2008, wilfully and unlawfully with criminal intent, seize, confine, inveigle, decoy, kidnap, abduct or carry away Richard Allen Cofer, Jr., and Crystal Gail Carnes without authority of law, in violation of Section 16-3-910 of the South Carolina Code of Laws, 1976, as amended

— Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

X/

WITNESSES

Nick Bouknight

WARRANT NUMBERS

ON INFO

[Empty box for ON INFO]

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

April Term, 2008

Indictment # 08GS36-0314

THE STATE

VS.

ROY JOHNSON, JR.

Foreman of the Grand Jury

Date:

4-25-08

VERDICT

TRUE BILL

Guilty

INDICTMENT FOR

ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE

Foreman

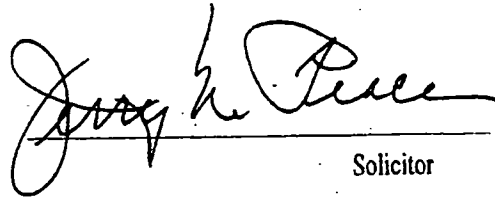
Con Henry 6/17/09

At a Court of General Sessions, convened on the 25th day of April, 2008, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That ROY JOHNSON, JR., did in Newberry County, state aforesaid, on or about the 7th day of January, 2008, wilfully and unlawfully commit an act of violent injury to the person of another, to wit: Crystal Gail Carnes, accompanied by circumstances of aggravation, the use of a deadly weapon, and/or the infliction of serious bodily injury, and/or the intent to commit a felony, and/or the great disparity between the ages and physical conditions of the parties, and/or the difference in sexes, and/or indecent liberties or familiarities with a female, and/or the purposeful infliction of shame and disgrace, and/or resistance of lawful authority, in violation of the laws of South Carolina

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

X

WITNESSES

Nick Boulknigh

WARRANT NUMBERS

J-640996

[Empty box for warrant numbers]

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

April Term, 2008

Indictment # 08GS36- 312

THE STATE

vs.

ROY JOHNSON, JR.

[Signature]
Foreman of the Grand Jury

Date: 4-25-08

VERDICT

TRUE BILL

Guilty

Emi Morning 6/17/09
Foreman

INDICTMENT FOR

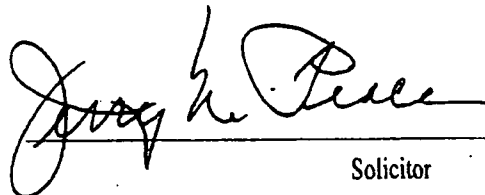
ARMED ROBBERY

County present upon their oath:

COUNT ONE

That ROY JOHNSON, JR., along with another person or persons, aiding, abetting and assisting one another, did in Newberry County, state aforesaid, on or about the 7th day of January, 2008, wilfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Richard Allen Cofer, Jr. and/or Crystal Gail Carnes by means of force or intimidation, goods or monies described as follows: United States currency, with intent to deprive the owner, Robin Cofer, and/or Richard Allen Cofer, Jr., and/or Crystal Gail Carnes, permanently of such property, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

X

WITNESSES

Nick Bouknight

WARRANT NUMBERS

J40995

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

April Term, 2008

Indictment # 08GS36- *311*

THE STATE

vs.

ROY JOHNSON, JR.

FILED
NEWBERRY COUNTY

2012 JUL 20 A 10:16

JACKIE S. BOWERS
CLERK OF COURT

[Signature]
Foreman of the Grand Jury

Date: *4-25-08*

VERDICT

TRUE BILL

Guilty

Foreman

Eric J. Herring 2677109

INDICTMENT FOR

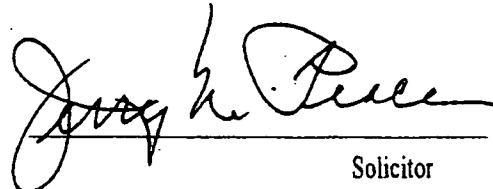
BURGLARY, 16-11-311(A)(1)(a)(b)(c)(d)(3)

08-0000613

COUNT ONE

That ROY JOHNSON, JR., along with another person or persons, aiding, abetting and assisting one another, did in Newberry County, state aforesaid, on or about the 7th day of January, 2008, wilfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, when in effecting entry or while in immediate flight therefrom, he or another participant in the crime; was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by Robin Cofer, Richard Allen Cofer, Jr. and Crystal Gail Carnes, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

✓

WITNESSES

Nick Booknight

WARRANT NUMBERS

J-040998

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

April Term, 2008

Indictment # 08GS36-315

THE STATE

VS.

ROY JOHNSON, JR.

Foreman of the Grand Jury

Date:

4-25-08

VERDICT

TRUE BILL

Guilty

Eric Moring 6/17/09
Foreman

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

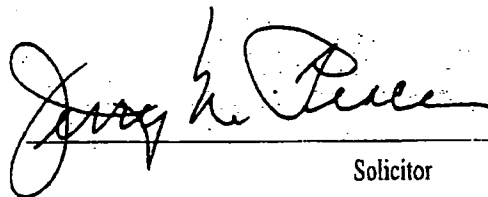
08-0000617

County present upon their oath:

COUNT ONE

That ROY JOHNSON, JR., along with another person or persons, aiding, abetting and assisting one another, did in Newberry County, state aforesaid, on or about the 7th day of January, 2008, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Burglary-First Degree, and/or Armed Robbery, and/or Kidnaping, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor