

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

George C. James, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RECO ANTONIO GODBOLT,

APPELLANT

APPELLATE CASE NO. 2013-000456

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

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2 COUNTY OF SUMTER) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 RECO ANTONIO GODBOLT,) 2012-GS-43-00227
7 JAMAL HELTON) DECEMBER 3, 2012, 2012
8 DEFENDANTS. SUMTER, SOUTH CAROLINA

9 (VOLUME I)

10
11 B E F O R E :

12 THE HONORABLE GEORGE C. JAMES, JUDGE. ; And a Jury.

13
14
15 A P P E A R A N C E S :

16 JOHN MEADORS, ASSISTANT SOLICITOR
17 CHIP FINNEY, SOLICITOR
18 ATTORNEYS FOR THE STATE

19 GRANT SMALDONE, ASSISTANT PUBLIC DEFENDER
20 ATTORNEY FOR DEFENDANT RECO ANTONIO GODBOLT

21 JACK SWERLING, ESQUIRE
22 ATTORNEY FOR DEFENDANT JAMAL HELTON

23 MICHAEL R. WATTS
24 CIRCUIT COURT REPORTER
25

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1 (PROCEEDINGS, DECEMBER 3, 2012)

2 THE COURT: Okay.

3 MR. MEADORS: May it please the court, Your Honor,
4 at this time the State would call the State of South
5 Carolina versus Mr. Jamal Helton and Reco Godbolt.

6 Mr. Jamal Helton is represented by Mr. Jack
7 Swerling.

8 Mr. Reco Godbolt is represented by Mr. Grant
9 Smaldone.

10 Your Honor, the State would call 2012-GS-43-0227,
11 a Sumter True Billed indictment for kidnapping, burglary
12 first, attempted murder, armed robbery, possession of a
13 weapon during the commission of a violent crime, and
14 criminal conspiracy.

15 Also 2012-GS-43-1314, indictment for burglary in
16 the second degree.

17 THE COURT: All right. Do we have some things
18 that y'all want to resolve before we actually select a jury
19 because calling the indictments would be an issue?

20 MR. MEADORS: Yes, sir. We thank you, judge, for
21 your patience. I believe Mr. Swerling and Mr. Smaldone have
22 a motion.

23 THE COURT: All right, Mr. Swerling.

24 MR. SWERLING: Judge, I have an objection on
25 behalf of Mr. Helton about trying the two cases together.

1 One is on Canvasback, and that's the one that has the
2 burglary first, which is I think the first one mentioned by
3 Mr. Meadors with the Widgeon Way charges.

4 They are separate unrelated incidents, it would be
5 our position. Even though they took place in the same
6 neighborhood, it's my information that the one on
7 Canvasback, it took place somewhere around 12:20, because
8 when the incident report, as well as the victim in that case
9 called the police with the 911 tape and -- my understanding
10 is around 12:15 to 12:20.

11 The one on Widgeon Way, according to the incident
12 report, the information we have is that the incident took
13 place sometime between the hours of seven o'clock and 12:30.

14 THE COURT: A.m.?

15 MR. SWERLING: Yes.

16 That they -- it's not pinpointed in the incident
17 report, I guess because the victims of that particular case
18 were not home.

19 So it would be my position that these two cases
20 should not be called together and they should not have to be
21 tried together. Possibly the State might try to get it in
22 under a Lyle theory later on, or a res gestae theory later
23 on, if they meet the proper evidentiary standard, but not of
24 the call of the cases together.

25 THE COURT: Just for my clarification, you

1 represent him on both of these folks?

2 MR. SWERLING: Yes, Your Honor.

3 THE COURT: Okay.

4 Mr. Meadors, you mentioned at one point that one
5 of the defendants may have given a statement as to the time
6 of the Widgeon Way?

7 MR. MEADORS: Yes, sir.

8 If it please the court, Mr. Reco Godbolt, after --
9 was arrested at the scene on Canvasback, which is the 0227
10 indictment. He gave a statement then at some point later
11 talking about the facts and the incident at Canvasback.

12 He also talks about how prior to that -- he didn't
13 give an exact time. He said prior to that, immediately
14 prior to that, they had gone to Widgeon Way, which is the
15 1314 indictment, so inferentially it happened right after
16 that.

17 Now, I haven't talked to the victims in the case,
18 Sergeant and Master Sergeant Davis both back here in the
19 courtroom, but his testimony they usually came and -- this
20 day he came home for lunch around twelve. So it was I think
21 circumstantially at least happened right before the other
22 one.

23 Judge, I guess I'm just trying to --

24 THE COURT: Mr. Godbolt said immediately prior?
25 Those were his words?

1 MR. MEADORS: No, sir, not immediately prior.

2 Just --

3 MR. SWERLING: I don't see that at all.

4 THE COURT: The same day, though?

5 MR. MEADORS: Yes, sir.

6 At this point I don't want to mislead.

7 THE COURT: As far as any case law that allows you
8 to try these together, or -- is this something that's just
9 done as a matter of course?

10 MR. MEADORS: State v. Tucker, at 178 S.E. 2d 260,
11 charges arise out of a single chain of circumstances proved
12 by the same evidence or of the same general nature, no real
13 right of the defendant is prejudiced. The case held they
14 can be tried together.

15 I guess I'm just trying to --

16 THE COURT: That's a Sumter -- I think that's a
17 Sumter County case.

18 MR. MEADORS: State v. Simmons, judge, 573 S.E. 2d
19 856 --

20 THE COURT: 856?

21 MR. MEADORS: Yes, sir.

22 That basically stands for the premise that, you
23 know, the crime is necessary for a full presentation of the
24 case. And that's all I'm trying to do. I'm just trying
25 to --

1 THE COURT: I think you made the point on the res
2 gestae part of it, but maybe not trying both cases together.
3 I'll just have to look at those two cases.

4 Either one of you have any copies?

5 MR. MEADORS: Judge, I don't. I'm sorry. I'll
6 get them to you.

7 MR. SWERLING: Judge, I guess that's what I'm
8 saying is he may be able to try and get it in under proper
9 showing as res gestae, but that does not mean he can try the
10 case together.

11 THE COURT: Mr. Smaldone, under the court's rules
12 require that you if you want to join in or not join in a
13 particular position taken by your co-defendant, you have to
14 let me know.

15 What's your position?

16 MR. SMALDONE: I would joint in on Mr. Swerling's
17 motion.

18 THE COURT: All right.

19 MR. MEADORS: Judge, I also cite State v.
20 Sullivan, 282 S.E. 2d 831, when offenses charged on separate
21 indictments are the same general nature involving connected
22 transactions, plus related in time, place, and character,
23 Your Honor has the discretion to order them tried together,
24 as long as none of the defendant's rights are prejudiced.

25 Again, Your Honor, for the record, I'm just trying

1 to get the whole story out more than necessary to the
2 charges, but I don't want --

3 THE COURT: You are asking them to try them both
4 together?

5 MR. MEADORS: At this point, yes, because I don't
6 know how to do it to ensure --

7 THE COURT: All right. Okay.

8 Anything else, Mr. Swerling or Mr. Smaldone?

9 MR. SWERLING: No, Your Honor, that would be it on
10 this.

11 MR. SMALDONE: No, Your Honor.

12 THE COURT: All right.

13 MR. MEADORS: Judge, if I --

14 THE COURT: If you were to call them separately,
15 which one would you call today?

16 MR. MEADORS: I would call 2012-0227.

17 THE COURT: All right. Okay.

18 I'm sorry, Mr. Meadors, did you want to say
19 something?

20 MR. MEADORS: Yes, sir, there was a piece of
21 evidence from Widgeon Way in the car that was found at
22 Canvasback.

23 So what we would have is a co-defendant's redacted
24 statement and a laptop that would be identified as Davis' in
25 the car at Canvasback.

1 THE COURT: But the Bruton issues would be the
2 same, Mr. Swerling? Does his statement cover both events?

3 MR. SWERLING: It covers several different events,
4 and so we have to -- we would have to be real careful about
5 the statements, redacting them. That's why I think Bruton
6 may be an issue about and would be our basis for a severance
7 motion, because I don't know if they could be adequately
8 redacted to protect Mr. Helton's rights, especially if Mr.
9 Godbolt does not take the stand.

10 THE COURT: Does the severance matter have to be
11 addressed before we pick a jury?

12 MR. SWERLING: Can I consult with my --

13 (Off the record)

14 (Back on the record)

15 THE COURT: Mr. Meadors, you got 478 S.E. 2d 260,
16 573 S.E. 2d 856, and 282 S.E. 2nd 831?

17 MR. MEADORS: Yes, sir.

18 MR. SWERLING: 838.

19 MR. MEADORS: 838.

20 THE COURT: 838?

21 MR. MEADORS: Yes, sir.

22 MR. SWERLING: Judge, I think the Bruton issue
23 probably -- we wouldn't get to the Bruton issue if the
24 statement is suppressed.

25 THE COURT: Well, yeah, I'm trying to figure out

1 how to pick a jury. If we pick it for both defendants here,
2 then when the jury is seated, we only got one of them
3 sitting here. Sometimes the one who is remaining says that
4 would make me look good if the other defendant is gone. So
5 I just thought that I would toss that out.

6 All right, give me just a few minutes to -- I'm
7 going to review -- I'm familiar with Tucker and Simmons. I
8 haven't read State v. Sullivan, so give me a few minutes.

9 Anything else you want to bring to my attention
10 before --

11 MR. MEADORS: Are we going to deal with the
12 severance matter now? I have got some --

13 THE COURT: I don't know. I have to --

14 MR. SWERLING: All right. I just mentioned that.
15 The severance would be an issue if the statement was not
16 suppressed. It's not an issue if the statement were to be
17 suppressed in a Jackson v. Denno. I have no standing on
18 that.

19 THE COURT: Right. Okay.

20 Well, but your position on severance, you don't --
21 so we don't need to address that until I have a Jackson v.
22 Denno Hearing?

23 MR. SWERLING: Correct. But, I mean, as far as
24 whether or not Your Honor was going to sever them, I would
25 agree with Your Honor there is some concern about calling

1 the case together at this point, if later on he is severed
2 out or we are severed out.

3 THE COURT: All right. So do y'all want me to
4 hear that now?

5 Assuming that I don't grant the Jackson v. Denno,
6 then we can -- I'll do it either way that you gentlemen want
7 me to do it. We can do it before the jury is picked or
8 after.

9 MR. MEADORS: I think we ought to respectfully do
10 it now, but --

11 THE COURT: Mr. Swerling?

12 MR. SWERLING: Yes, sir, I agree, sir. I agree.

13 THE COURT: All right. I'll be glad to hear from
14 you then.

15 MR. SWERLING: Well, judge, the Jackson v. Denno
16 is not mine.

17 THE COURT: Well, I was going to do the severance.

18 MR. SWERLING: Oh, you were going to do the
19 severance?

20 THE COURT: Yes, sir.

21 MR. SWERLING: Well, judge, as to the severance
22 issue, I guess you are going to have to have a copy of the
23 statement to see.

24 THE COURT: I don't have that.

25 MR. SWERLING: Let me see if I have got -- there

1 is actually two separate statements.

2 Do you know where -- are you proposing to get both
3 of them in?

4 MR. MEADORS: I'm just going to combine to the
5 first statement in these two instances.

6 THE COURT: If you would just get those marked,
7 please.

8 (Two-Page Written Statement marked as Court's
9 Exhibit No. 1 for identification)

10 (Three-Page Written Statement marked as Court's
11 Exhibit No. 2 for identification)

12 THE COURT: And when I say I'll go ahead and do
13 the severance now, we are just trying to make the best use
14 of our time.

15 If we do the Jackson v. Denno and the severance,
16 we might as well send the jury to lunch now.

17 MR. MEADORS: I don't --

18 THE COURT: I think it may be the best use of our
19 time to do it this way.

20 MR. MEADORS: The Jackson v. Denno, those folks
21 won't be here this afternoon. I think we are doing that
22 this morning. I think we can summarize the statement to the
23 meet for Your Honor -- enough information for Your Honor to
24 make a decision on severance.

25 MR. SWERLING: There is two different statements,

1 Your Honor.

2 THE COURT: Mr. Meadors, Mr. Swerling and Mr.
3 Smaldone, we can do one of two things. We can go ahead and
4 get into this issue about the statements now. I can read
5 the other cases that Mr. Meadors cited to me and we can have
6 the jury panel come back at one, pick a jury then, whichever
7 way we do it. I just don't want to keep them down there
8 waiting inordinately long.

9 Can I just tell them to be back for jury selection
10 at one o'clock?

11 MR. SWERLING: That's fine with me.

12 MR. MEADORS: Thank you, Your Honor.

13 MR. SMALDONE: That's fine with me.

14 THE COURT: And I can get Judge Cothran to tell
15 them that.

16 Let's go ahead and make it -- let's go ahead and
17 make it 1:30 so that everybody connected with this case can
18 get some lunch and develop your plans with a little bit more
19 time, okay? 1:30.

20 MR. MEADORS: Thank you.

21 THE COURT: Just tell them to be in courtroom
22 number one at 1:30.

23 THE CLERK: Yes, sir.

24 THE COURT: All right, Mr. Swerling, I have got
25 two statements marked as Court's Exhibits and I need those

1 back.

2 MR. SWERLING: Judge, apparently Mr. Meadors is
3 going to try and introduce only one statement and that's the
4 one -- that's the two-page statement dated October 31st,
5 2011.

6 THE COURT: That's Court's Exhibit 1.

7 MR. SWERLING: Okay.

8 Your Honor, in reading this statement, I mean,
9 it's so -- Mr. Godbolt implicates Mr. Helton in this
10 statement and it is so intertwined in the statement that to
11 try and redact it is clearly going to give the impression
12 that Mr. Helton is the other individual in here. And I
13 don't see how -- I don't see how Mr. Meadors can redact that
14 adequately to protect Mr. Helton's rights of confrontation
15 under the Bruton issue.

16 So if you read it, I just -- it's just every
17 sentence has to do with "Mall", which is Helton's nickname.

18 THE COURT: Jamal?

19 MR. SWERLING: Well, yeah, but the short, right,
20 is "Mall". So basically every sentence has his name in it
21 and so I would like to know how Mr. Meadors proposes to
22 redact that to protect Mr. Helton's rights to a fair trial
23 and his rights of confrontation.

24 THE COURT: All right. Mr. Meadors?

25 MR. MEADORS: May it please the court, Your Honor,

1 as long as the statement on its face does not incriminate
2 the defendant, it can be properly redacted. And I think
3 that's the case of Richardson v. Morris, which is a similar
4 case, 481 U.S. 200, a 1987 case.

5 I went through it last night in my head and was
6 going to do it today. I didn't think we would get to this
7 this afternoon, but actually I think you could put "another
8 person", "another person" all the way through.

9 The most recent South Carolina case is a case out
10 of Kershaw. I think State v. Cannon, I actually tried that
11 case in front of Judge Cooper from Kershaw, where we had
12 three co-defendants. One of the co-defendants testified --
13 excuse me, one of the co-defendants had given a statement
14 against the other two, and we redacted that to say "another
15 person and another person." That was upheld I believe by
16 the Court of Appeals recently this past summer.

17 As to Bruton, as long as it doesn't incriminate on
18 its face, I think the case law say that if it naturally is
19 intertwined, you are weighing that against the cost to the
20 State for separate trials. As long as it can be neutral on
21 its face, I believe that's what the law requires, and I
22 think we could redact that.

23 Even if the actual statement didn't go back there.
24 Even if the officer just read it, I think there is several
25 ways to -- because it would have to be whited out,

1 obviously, and "another person" put in there, but if Your
2 Honor found that that was prejudicial, I think you could
3 just read it and include "another person", and that would be
4 neutral, would not incriminate on its face, and in joint
5 trials I don't think there is any other way the State for me
6 to do it.

7 THE COURT: All right. I see -- of course, the
8 kind of small print and I haven't had time to read it in
9 detail. The judge used -- Mr. Swerling is correct, does use
10 the word "Mall", M-A-L-L, numerous times.

11 I think the problem with most of the time the
12 prejudice comes in when the actual document comes in with
13 all this stuff blacked out or whited out all over the place
14 and the jury is -- the defendants argue that well, that
15 logically makes the jury conclude that it is, in fact, the
16 other defendant sitting at the table.

17 Mr. Swerling, do you have any response as to what
18 Mr. Meadors has to say?

19 MR. SWERLING: Well, judge, I would say this. I
20 think that it is incriminating on its face, the document
21 itself, and the story in which Mr. Godbolt tells. And I do
22 think that it's intertwined to the extent that it's going to
23 leave the implication that it's Mr. Helton who is sitting
24 next to Mr. Godbolt in the courtroom and that's the person
25 he's referring to.

1 Clearly I think what Your Honor just said is that
2 if the statement doesn't come in itself, the written
3 statement, that might make it a little bit better if you
4 allow in Mr. Godbolt's statement.

5 But I do believe that in a joint trial we have to
6 protect not only Mr. Godbolt's interests and his rights of
7 confrontation at a fair trial, but Mr. Helton's too. And I
8 think when you have -- when you are trying these people
9 individually and you are trying to get in Mr. Godbolt's
10 statement where he clearly implicates himself in this thing,
11 but also casts blame on the other individual more than
12 his -- I mean, he's actually saying in here that Mr. Godbolt
13 is the more culpable one than he is. He's passing off blame
14 to Mr. Helton, so I do think that that's incriminating on
15 its face and I don't believe that it can be redacted to the
16 extent that it's going to give Mr. Helton a fair trial and
17 his rights to confrontation, if they are tried together.

18 THE COURT: All right. Mr. Smaldone, do you have
19 any position on this?

20 MR. SMALDONE: I don't, Your Honor.

21 You know, obviously I think Mr. Helton is possibly
22 the one that's more -- that this affects more so than Mr.
23 Godbolt, so I don't have any position.

24 I think you could try them both fairly.

25 THE COURT: Okay. Anything else from the State?

1 MR. MEADORS: Your Honor, State v. Evans, 450 S.E.
2 2d 47, 1994 case, basically held to require the State to
3 totally redact anything to be viewed in combination with
4 other evidence is a reference or illusion to the defendant
5 would unduly handcuff the government's ability to introduce
6 admissible confessions and statements that are on trial. So
7 I think it may -- I don't think the law requires totally --

8 THE COURT: Well, we are talking about severance
9 more likely -- more than just --

10 MR. MEADORS: I'm more into the Bruton issue
11 there.

12 THE COURT: Right.

13 All right, any other argument on your severance?

14 MR. SWERLING: No, Your Honor, I'm just -- and,
15 I'm just -- again, I am just focusing on the Bruton issue
16 here, if the court were to let in Mr. Godbolt's statement.

17 THE COURT: But no other issues on the severance
18 that you want to bring up?

19 MR. SWERLING: No, there is no other issue that I
20 think in this particular case that I could bring up on the
21 severance issue. It would be only the Bruton issue.

22 THE COURT: Okay. All right. I'll take a few
23 minutes, gentlemen.

24 And you don't want to get into the other
25 statement? You would not be seeking to introduce that one,

1 because that was -- that is the Widgeon Way matter?

2 MR. MEADORS: No, Widgeon Way is in this one, Your
3 Honor.

4 THE COURT: Okay. How about the --

5 MR. MEADORS: I will keep it clean and not try to
6 go into any of that.

7 THE COURT: All right, I'll take them both back
8 there and y'all give me a few minutes and I'll be back out
9 soon.

10 And take a look also, Mr. Meadors, at Mr.
11 Swerling's voir dire and see if you have any objections to
12 those so we can cover that as well. Thank you.

13 MR. MEADORS: Thank you.

14 (Whereupon, proceedings were recessed)

15 (Whereupon, proceedings were reconvened)

16 THE COURT: Okay, anything else before I make my
17 ruling?

18 MR. MEADORS: Not from the State.

19 THE COURT: Mr. Swerling, Mr. Smaldone?

20 MR. SMALDONE: Nothing, Your Honor.

21 MR. SWERLING: Your Honor, just going over the
22 statement again, I just reenforce my belief that it could
23 not be adequately redacted to protect Mr. Helton's rights of
24 confrontation in the case, because virtually everything that
25 Mr. Godbolt is talking about is something that Mr. Helton

1 did, not what he did, but what Mr. Helton did.

2 THE COURT: Yeah, but what case law says -- and I
3 know there is a line somewhere. Obviously that's what
4 Bruton stands for. Bruton says that if it can't be redacted
5 in such a way for the jury to have no other idea but it must
6 be the other guy sitting at the table, which is Mr. Godbolt,
7 then it has to be -- you are entitled to the relief that you
8 have requested, but I'm going through this statement and
9 whether you refer to him as "Mall" or Jamal, most of the
10 time it says "him" and "he".

11 And you say even if -- even if he mentions Jamal
12 by name one time, and exclusively thereafter he used the
13 words "he" or "him", you say it's still too much?

14 MR. SWERLING: Well, I agree with you there is a
15 lot of "he" and "him" in references.

16 THE COURT: Right.

17 MR. SWERLING: But there is also a lot of --
18 mostly references I believe to "Mall".

19 THE COURT: Right, but if you put --

20 All right, let's just go to the -- do you have the
21 one that's it got underlined with "shortly after this?"

22 MR. SWERLING: Yes, sir.

23 THE COURT: Okay. It says "shortly after this
24 Jamal helps him." Obviously if this was redacted it would
25 say "shortly after this another person," or "another guy,"

1 however you chose to do it, "called me." I would probably
2 take out 220 phone number, "and asked me to pick him up from
3 the South Side. I told him I would and I met him at the
4 South Side Gym." That's already using "him".

5 MR. SWERLING: Yes, sir.

6 THE COURT: If you uniformly said "him" throughout
7 the statement, would your argument still be the same?

8 MR. SWERLING: Well, yes, sir, because I still
9 think it points to the guy who is sitting at the table.

10 Richardson v. Morris and Parker v. Randolph, you
11 know, are the leading -- and, of course, Bruton on the
12 leading cases, and I still think that, you know, he has
13 clothing descriptions in there. He has about where he ran
14 when -- after I guess confronted by Dr. Funke. It's clearly
15 pointing to the other guy here at the table, I think, or --
16 and I would submit that it does, even because it says
17 "Mall." It doesn't say just "him". That would be one thing
18 I guess my argument would not be as strong if it just said
19 "him" without any further descriptions, but I still think
20 you still have a severance issue or Bruton problem.

21 THE COURT: And, again, I think you are beating
22 this dead horse, but are you talking about a physical form
23 with all these physical redactions, or are you talking about
24 just the heated reference to any other person, whether it's
25 blacked out with a "him" put over it, or just the word "him"

1 already typed in it?

2 MR. SWERLING: Well, I think the statement itself
3 is the problem, especially when you talk about physical
4 descriptions or what people are wearing as well..

5 THE COURT: All right. Going back to the joint
6 trial of the two indictments, I'm thinking about State v.
7 Simmons, which is a 2002 Court of Appeals case, where two
8 burglaries were tried together and they occurred at
9 different places within the same geographic vicinity,
10 within, you know, several minutes of one another, the trial
11 judge allowed those to go forward during the same trial.
12 And the points the trial judge has taken into account in
13 exercising his or her discretion is the charges can be
14 joined and tried together when they arise out of a single
15 chain of circumstances or proved by the same evidence or the
16 same general nature and no real right of the defendant has
17 been prejudiced.

18 What is the right that's been prejudiced or rights
19 that have been prejudiced, as far as Mr. Helton and Mr.
20 Godbolt are concerned, if these two indictments are tried
21 together?

22 MR. SWERLING: Well, I think that the cumulative
23 effects of having two charges, indictments, going forward at
24 the same time, that would be the impact of prejudice having
25 two indictments, two separate charges going forward at the

1 same time. So I think it's a cumulative type of prejudice.

2 THE COURT: Doesn't the same prejudice potentially
3 arise if they are not tried together, but the first one
4 comes in as part of the res gestae, if it comes in under
5 that theory?

6 MR. SWERLING: Well, that's -- excuse me, to me
7 that would be a separate evidentiary issue as to whether or
8 not you would let it in as res gestae. That puts it on me
9 to try anything.

10 THE COURT: But your prejudice argument would
11 basically be the same?

12 MR. SWERLING: Well, I would certainly argue that
13 it is prejudicial to allow it in under res gestae as well.

14 THE COURT: Okay. Of course, that is within my
15 discretion.

16 I haven't frankly had a chance to read all of
17 those cases that you gentlemen cited, but, Mr. Smaldone, do
18 you join in all this, at least on the joint indictment?

19 MR. SMALDONE: On the joint indictment I do join,
20 yes, Your Honor.

21 THE COURT: Anything else, Mr. Meadors?

22 MR. MEADORS: No, sir, Your Honor.

23 THE COURT: I guess the awkward thing for me is on
24 the joining the indictments, I don't know -- I haven't heard
25 any evidence about whether or not the evidence is going to

1 be introduced. In other words, the second element they have
2 to be proved by these same evidence.

3 In this burglary case, the Simmons case, it's two
4 different victims, two different MO's. One I think the door
5 was kicked in. Another one was busted, but Judge Johnson,
6 the trial judge, he let those be tried together and the
7 Court of Appeals said that was fine, that it was in his
8 discretion. He didn't abuse it.

9 So what's the evidence in general that would be
10 submitted on Widgeon Way? Forced entry?

11 MR. MEADORS: Entry to the rear. Knocked out a
12 rear window, which was consistent, I believe, with
13 Canvasback.

14 It was entry to the rear. It was not the same
15 entry as Canvasback.

16 Reco Godbolt's statement, a laptop from Widgeon
17 Way was found in the vehicle that Reco Godbolt and we
18 believe Jamal Helton fled from. A police officer saw two
19 black males flee. In that vehicle was the laptop that
20 Sergeant Davis have ID'd coming from that house, Your Honor.

21 Godbolt is caught. We believe Helton flees.

22 A do rag is found. I'm not exactly sure how far,
23 sixty yards, or so, from the Canvasback house. That do rag
24 was sent to SLED and DNA on the do rag does come back to
25 Jamal Helton. So that clearly ties him to the Canvasback.

1 The question then Widgeon Way is, you know better
2 than I do. Just I think a -- not very far. A street or two
3 over.

4 THE COURT: Not very far.

5 MR. MEADORS: So as far as Widgeon Way itself, it
6 would be the statement of Reco Godbolt and the laptop that's
7 found from Widgeon Way in the car I think thirty minutes
8 less after the burglary.

9 Then Mr. Helton is tied in, I guess you would say,
10 to both of them through the do rag that's found near
11 Canvasback, Your Honor.

12 MR. SWERLING: Judge, just I want to correct that.
13 I think the -- there is no evidence that Mr. Helton -- other
14 than Mr. Godbolt's statement, there is no evidence that Mr.
15 Helton broke into Widgeon Way. It would only be through Mr.
16 Godbolt's statement.

17 THE COURT: Now, the do rag, what connection was
18 that to -- Dr. Funke's identification said he had a do rag?

19 MR. MEADORS: Something tied on his head, yes,
20 sir.

21 THE COURT: And a do rag was found?

22 MR. MEADORS: Yes, sir. And I think --

23 THE COURT: Nothing about a do rag in Widgeon Way?

24 MR. SWERLING: No, sir, because nobody was home.
25 I mean, as I understand it, it was unoccupied at the time.

1 They didn't discover it until they came home at lunch.

2 MR. MEADORS: They think that they had just left
3 when they came home.

4 THE COURT: All right. Here is my inclination.
5 I'm going to read all this during lunch. My inclination is
6 to not allow both indictments to be tried together, but I'll
7 certainly hear testimony and evidence this afternoon about
8 the res gestate or any Lyle evidence on the Widgeon Way.

9 Also my inclination at this point is not to grant
10 a severance because the content of the statement, but
11 certainly I'll read that in more detail, along with the
12 Richardson case, and Parker case, and all the others just to
13 make sure. I just want to give you kind of an idea where
14 I'm heading. Of course, I may change my mind.

15 MR. SWERLING: Yes, sir.

16 THE COURT: Okay. If you gentlemen could be back
17 at about 1:15 so we can cover any other basis we have.

18 MR. MEADORS: Thank you, Your Honor.

19 MR. SWERLING: Thank you, judge.

20 THE COURT: Mr. Meadors, have you had a chance to
21 look at his voir dire yet?

22 MR. MEADORS: We did, Your Honor, and no
23 objections.

24 Judge, the other thing I left off, the entry was
25 at the rear of Canvasback, but nothing was broken. The

1 window wasn't broken out, but other than that, that was it.

2 THE COURT: All right.

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 THE COURT: Okay, Mr. Meadors.

6 MR. MEADORS: May it please the court?

7 THE COURT: Yes, sir.

8 MR. MEADORS: Your Honor, at this time the State
9 would call the State of South Carolina versus Jamal Helton
10 and the State of South Carolina versus Reco Godbolt.

11 This is Sumter County True Billed Indictment
12 2012-GS-43-0227.

13 Mr. Helton is represented by Mr. Swerling.

14 Mr. Godbolt is represented by Mr. Smaldone.

15 This is an indictment of kidnapping, burglary
16 first degree, attempted murder, armed robbery, possession of
17 a weapon during the commission of a violent crime, and
18 criminal conspiracy.

19 THE COURT: All right, ladies and gentlemen, let
20 me have your attention please. We are going to now select a
21 jury for the trial of the case of the State of South
22 Carolina versus Reco Godbolt, Reco Antonio Godbolt,
23 actually, and State versus Jamal DaJohn Helton.

24 The questions that I'm going to ask you are
25 designed specifically to make sure that we impanel a jury

1 that will be fair and impartial and one which will base a
2 verdict in this case solely on the evidence and the law and
3 free from any improper motivation, any bias or prejudice, or
4 anything outside the evidence in the law.

5 Please note that you are under oath. And if I do
6 ask a question that applies to you, it really doesn't do any
7 good for you to raise your hand, because I may not be able
8 to see. If I do ask a question that applies to you, just
9 stand up, and then I will either from where you stand or
10 I'll ask you to come forward, I'll ask you some follow-up
11 questions, but what I do not want you to do is just to stand
12 up and start talking. That is not what I want you to do.

13 The first thing I'll need, of course, is your
14 name. Then we go from there. And some questions, you know,
15 a multiple of people may stand. We will handle that
16 accordingly.

17 Also, if you do come up and give information to me
18 up here, typically that's because to be on the safe side I
19 don't know what you are going to say and I will just get it
20 on the record up here, but if any of you do come forward,
21 please do not share with any of your fellow jurors anything
22 that we spoke about up here. And, likewise, don't ask any
23 of your fellows jurors what was talked about up here.

24 All right. The fact, ladies and gentlemen, that
25 someone is arrested or charged or indicted for any crime is

1 not evidence of guilt. In this state, and in most states,
2 the criminal proceedings begin by way of an indictment.
3 That is simply an allegation or a set of allegations that
4 the State is required to prove beyond a reasonable doubt.

5 Now, in criminal cases the defendants do not have
6 any burden of proving or disproving anything.

7 A jury is the sole fact finder; in other words,
8 the jury reaches a verdict, not the judge. So the fact that
9 I may reference allegations made by the State when I read
10 from these indictments is not intended to be a comment by me
11 on the facts of the case, but I do have to let you know what
12 the charges are about so that you can answer the first
13 question, and that will be is there anyone who knows
14 anything about this case.

15 First of all, the defendants are Reco Godbolt.

16 Mr. Godbolt, if you could please stand. Face the
17 jury panel please, sir.

18 All right. You may have a seat.

19 And also Jamal Helton.

20 Mr. Helton, if you could stand, please, and face
21 the jury panel.

22 Thank you, sir.

23 The defendants, according to the allegations of
24 the State, on or about October 31, 2011, did commit several
25 offenses. One of those was kidnapping, in that they did on

1 that date unlawfully seize or confine, so forth, one Bryan
2 Funke.

3 If Bryan Funke would please stand and face the
4 jury panel.

5 Thank you, sir.

6 Also the indictment alleges that on or about the
7 same date the defendants did commit the crime of burglary,
8 in that they entered his dwelling, the Funke dwelling,
9 without consent at [REDACTED] without consent and
10 with the intent to commit a crime therein; and that during
11 the course of that one or both of these defendants were
12 armed with a deadly weapon.

13 The third count says that on or about the same
14 date the defendants committed the crime of attempted murder.

15 Also on that date the indictment alleges that the
16 defendants did commit the offense of armed robbery.

17 And that they were in possession of a weapon
18 during the commission of a violent crime.

19 And also that they did engage in a conspiracy to
20 commit the crime of burglary in the first degree.

21 Now, ladies and gentlemen, is there anyone on this
22 jury panel who knows anything about this case, and that is
23 as follows: Basically by any stretch at all have you heard
24 anything about it, read anything about it, listened to
25 anything about it, or do you have any information whatsoever

1 in your mind, other than what I have just referenced from
2 reading the allegations in the indictment? If so, please
3 stand.

4 All right, the record will show no one stood.

5 You have been introduced on a limited basis to Mr.
6 Helton, Mr. Godbolt, and Bryan Funke.

7 If I use the term immediate family member as I go
8 through these questions, that means you, your father,
9 mother, brother, sister, or child, or anyone else you
10 consider to be a close family member.

11 Is there anyone on this jury panel or anyone in
12 your immediate family who, first of all, may be kin to,
13 that's related by blood or marriage, to Jamal Helton, Reco
14 Godbolt or Brian Funke? Related by blood or marriage? Some
15 people just say kin.

16 Anybody? You or any member of your immediate
17 family?

18 (No response)

19 THE COURT: All right. Is there anyone on this
20 jury panel or, to your knowledge, anyone in your immediate
21 family who has any, and that's any, connection or
22 acquaintance, however slight, or association now or in the
23 past with either Mr. Helton, that's Jamal Helton, Reco
24 Godbolt, or Brian Funke? Do you know them in any way? And
25 that could be very, very well, or just ever so slightly. If

1 so, please stand.

2 Your name, sir?

3 JUROR NUMBER 81: Darryl McElveen.

4 THE COURT: Mr. McElveen?

5 JUROR NUMBER 81: Yes.

6 THE COURT: And which individuals is it that

7 you --

8 JUROR NUMBER 81: Probably both.

9 THE COURT: The defendants?

10 JUROR NUMBER 81: Yes, sir.

11 THE COURT: How long have you known them?

12 JUROR NUMBER 81: I'm a bondsman.

13 THE COURT: How long, sir?

14 JUROR NUMBER 81: I'm a bondsman.

15 THE COURT: Okay. All right.

16 All right, come on up, please.

17 (Juror Number 81 approached the bench for a bench
18 conference)

19 THE COURT: The question is how long have you
20 known them? How long have you known them?

21 JUROR NUMBER 81: Over several years. I think I
22 bonded them out about '09, or something like that. I can't
23 remember when.

24 THE COURT: Okay.

25 JUROR NUMBER 81: And we had -- you know, the

1 family communicated with us.

2 THE COURT: All right. You can have a seat.

3 Thank you, sir.

4 (Juror Number 81 returned to the jury venire
5 panel)

6 THE COURT: All right. Any problems with that?

7 MR. SWERLING: I have a problem.

8 MR. FINNEY: They had to get out. I mean, they --
9 they said they had -- he has to get out. You have got to
10 have a bondsman. Everybody knows that.

11 MR. SWERLING: That does give the connotation they
12 have got a criminal history.

13 THE COURT: All right. We will just --

14 MR. FINNEY: Are you going to leave him on?

15 THE COURT: No.

16 MR. FINNEY: Okay.

17 (Whereupon, the bench conference was concluded)

18 THE COURT: All right. Anyone else?

19 (No response).

20 THE COURT: All right. The following, ladies and
21 gentlemen, is a list of possible witnesses in this case and
22 these are all potential witnesses. That doesn't mean that
23 they will all be called, but they may.

24 If any of the witnesses are present, please stand
25 and face the jury panel.

1 The question would be the same. Is there anyone
2 on this panel or any member of your immediate family who
3 would be kin the to any of these possible witnesses, or do
4 you have any type of connection or acquaintance or
5 association, however slight? It could be that you went to
6 school with them, go to school with them, went to church
7 with them, worked with them, so forth and so on, by whatever
8 stretch.

9 James Allsbrook, Sumter Police Department.

10 Agent Catherine Leisy of SLED, also State Law
11 Enforcement Division.

12 Lieutenant Truman Duggin of the Sumter Police
13 Department.

14 Marie Hodge of the police department.

15 Detective Brian Christmas of the police
16 department.

17 Detective Rick Morse of the police department.

18 Betty Butler, John Roberts and Hue Tang from SLED.

19 Dr. Bryan Funke, who has already stood.

20 Carol Funke, if you please.

21 MR. MEADORS: That should be Carolyn Funke, I'm
22 sorry.

23 THE COURT: Carolyn Funke, please stand and face
24 the jury panel. Thank you.

25 Detective William Lyons of the Sumter Police

1 Department.

2 Also Robbie Richburg.

3 Detective Melton. John Melton, police department.

4 Detective J.B. Tallon. Trey Tallon of the Sumter
5 Police Department.

6 Officer Nicholas Palumbo and Officer Caleb Miller
7 of the police department.

8 Master Sergeant Michael Davis.

9 Sergeant Gretchen Davis.

10 Monyca Uecker.

11 Sue Johnson.

12 Officer Scott Bonner and Corporal Kevin Sergeant
13 of the police department.

14 You can stay standing, if you would like. Thank
15 you.

16 Shirlene Skipper, a 911 dispatcher.

17 Detective Johanna Aleck of the police department.

18 Ronnie Randolph, also known as Ronnie Richbourg.

19 Spencer Braxton.

20 Jessica Hodge.

21 Brittany Braxton.

22 David Lee Stevenson.

23 Diamond --

24 Are you Mr. Stevenson?

25 MR. STEVENSON: Yes, sir.

1 THE COURT: Okay, Mr. Stevenson is over to your
2 left. Thank you, sir.

3 Diamond Young.

4 Detective Natalie Kelly of the police department.
5 Jason Lyons. He's with the police department,
6 correct?

7 MR. MEADORS: Former.

8 THE COURT: Formerly, okay.

9 Officer Russell Brannon of the Sumter Police
10 Department.

11 Again, the question is anyone kin to -- anyone on
12 the panel or any member of your immediate family who is kin
13 to any of these individuals or know them, acquainted with
14 them, connected with them in any way at all?

15 Your name, please?

16 JUROR NUMBER 15: Joan Bonner.

17 THE COURT: All right, first of all, just give me
18 the name of the potential witness. Just the name.

19 JUROR NUMBER 15: Scott Bonner.

20 THE COURT: Okay. And is he related to you?

21 JUROR NUMBER 15: My stepson.

22 THE COURT: Okay. I'll have you come forward in
23 just a minute. Thank you, ma'am.

24 Do you know your juror number?

25 JUROR NUMBER 15: 15.

1 THE COURT: Okay. Thank you.

2 Anyone else?

3 (No response)

4 THE COURT: All right, the defendant, Mr. Helton,
5 is represented by Jack Swerling.

6 Mr. Swerling, you can stand and introduce yourself
7 and anyone else who may be assisting you in this case.

8 MR. SWERLING: Good afternoon, ladies and
9 gentlemen. My name is Jack Swerling and I'll be
10 representing Mr. Helton in this matter.

11 THE COURT: Thank you.

12 Mr. Smaldone?

13 MR. SMALDONE: Good afternoon. My name is Grant
14 Smaldone. I represent Mr. Godbolt in this matter.

15 THE COURT: And the State of South Carolina is
16 represented by Mr. Meadors.

17 Mr. Meadors?

18 MR. MEADORS: May it please the court?

19 THE COURT: Yes, sir.

20 MR. MEADORS: John Meadors, assistant solicitor.
21 I'm working with Chip Finney, III.

22 THE COURT: Thank you.

23 Anyone on this jury panel, or, to your knowledge,
24 anyone in your immediate family, first of all, who may be
25 related by blood or marriage to any of these attorneys?

1 Is anyone on the jury panel, or, to your
2 knowledge, anyone in your immediate family who has any type
3 of acquaintance, however slight, or connection or
4 association with any of these lawyers?

5 (No response)

6 THE COURT: Is there anyone on this jury panel,
7 or, to your knowledge, anyone in your immediate family who
8 has ever been represented by any of these attorneys or
9 anyone from their respective offices? If so, please stand.

10 All right, come on up, please, Mr. Noyes.

11 And Ms. Bonner, if you could come on up too,
12 please.

13 (Juror Number 97 approached the bench for a bench
14 conference)

15 THE COURT: You can just stand right there at the
16 gate, Ms. Bonner.

17 Okay, what's your answer to that?

18 JUROR NUMBER 97: I have been represented by the
19 solicitor's office in the case of my son.

20 THE COURT: Okay. And what was that case about?

21 JUROR NUMBER 97: Someone stole my son's
22 sunglasses and beat him up.

23 THE COURT: Okay. That was over there on Ginyard?

24 JUROR NUMBER 97: Yeah.

25 THE COURT: Okay. Is that charge still pending?

1 JUROR NUMBER 97: I have no idea.

2 THE COURT: Okay. All right. That was about two
3 years ago?

4 JUROR NUMBER 97: Yeah.

5 THE COURT: Okay. All right. If you were a juror
6 in this case, sitting on a jury in this box, first of all
7 keeping in mind that the solicitor's office is prosecuting
8 that case, could you be fair and impartial to the
9 defendants?

10 JUROR NUMBER 97: I think so.

11 THE COURT: And are you sure about that, or --

12 JUROR NUMBER 97: I'm positive.

13 THE COURT: Okay. And tell the folks who are in
14 the courtroom from time to time who may be familiar with
15 what the situation with your son, but these two lawyers may
16 not be, so why don't you just --

17 JUROR NUMBER 97: My son a couple years ago got
18 accosted and beat up over a pair of sunglasses and a couple
19 of hoodlums stole from him and I was involved with the
20 solicitor's office for that, and that's my association.

21 THE COURT: Okay. Taking that into account, the
22 fact that your son, who is about what, ten or eleven at the
23 time?

24 JUROR NUMBER 97: He would have been probably
25 twelve at that time.

1 THE COURT: If he was the victim of that type of
2 offense, could you be fair and impartial in this type of
3 case, where the allegations were what I just put on the
4 record a few minutes ago?

5 JUROR NUMBER 97: Absolutely.

6 THE COURT: Okay. And while I have got you up
7 here, have you ever been a victim yourself of any type of
8 violent offense, such as, you know, including that, but
9 limited to a burglary, or an assault, sexual assault, a
10 murder, anything like that?

11 JUROR NUMBER 97: I have been a victim of a
12 burglary too.

13 THE COURT: Okay. When was that?

14 JUROR NUMBER 97: A little over a year ago.

15 THE COURT: Okay. And you live on the corner of
16 Tucson --

17 JUROR NUMBER 97: And Haynsworth.

18 THE COURT: -- and Haynsworth.

19 Do you know what happened?

20 JUROR NUMBER 97: Somebody broke in my house and
21 tried to take my stuff.

22 THE COURT: Were you there?

23 JUROR NUMBER 97: No.

24 THE COURT: Okay. And keeping that in mind, could
25 you be fair and impartial in this type of case, where it is

1 alleged that these types of offenses occurred?

2 JUROR NUMBER 97: My judgment would be to the
3 facts of this case.

4 THE COURT: Okay. Thank you.

5 All right, you can have a seat. Thank you, sir.

6 MR. SWERLING: What was your number?

7 JUROR NUMBER 97: 97.

8 THE COURT: Thank you.

9 (Juror Number 97 returned back to the jury venire
10 panel)

11 THE COURT: All right, Ms. Bonner.

12 (Juror Number 15 approached the bench for a bench
13 conference)

14 THE COURT: On the record again, what your answer
15 to that question was?

16 JUROR NUMBER 15: Scott Bonner is my stepson.

17 THE COURT: Okay. And is he an officer?

18 MR. MEADORS: He would lead the dogs.

19 THE COURT: All right. If he were to testify in
20 this case, could you be fair and impartial?

21 JUROR NUMBER 15: I don't know, I will be honest.

22 THE COURT: Okay. What I'm going to do is stand
23 you aside for this trial.

24 JUROR NUMBER 15: Okay.

25 THE COURT: You don't have to stand up in response

1 to any more questions in this case.

2 JUROR NUMBER 15: Okay.

3 THE COURT: Okay?

4 JUROR NUMBER 15: And while I'm up here, I have a
5 brother that's a judge, and another brother that's a cop
6 too.

7 THE COURT: Okay.

8 JUROR NUMBER 15: And I'm with Mothers Against
9 Drunk Drivers.

10 THE COURT: Okay. You don't need to answer any
11 more questions in this case.

12 JUROR NUMBER 15: Thank you.

13 (Juror Number 15 returned back to jury venire
14 panel)

15 (Whereupon, the bench conferences were concluded)

16 THE COURT: Are there anyone on the jury panel or
17 anyone in your immediate family who is now employed by any
18 law enforcement agency? That might be a city law
19 enforcement agency, county, state or federal. These would
20 include, but certainly not limited to, a police department,
21 sheriff's department, SLED, highway patrolman, or perhaps a
22 federal investigative body, such as the FBI.

23 (No response).

24 THE COURT: Is there anyone on the jury panel or
25 anyone in your immediate family who is now in the United

1 States Air Force? If so, please stand.

2 Your name, please?

3 JUROR NUMBER 16: Wanda Carney.

4 THE COURT: Wanda?

5 JUROR NUMBER 16: Carney.

6 THE COURT: All right, Ms. Carney, if -- what is
7 your answer to that question, please?

8 JUROR NUMBER 16: My husband is in the National
9 Guard.

10 THE COURT: How long has he been in the National
11 Guard?

12 JUROR NUMBER 16: Somewhere around nineteen years.

13 THE COURT: Nineteen years?

14 JUROR NUMBER 16: Yes, sir.

15 THE COURT: All right. If there was testimony in
16 this case from a member of the Armed Services or members of
17 the Armed Services, could you be fair and impartial?

18 JUROR NUMBER 16: Yes, sir.

19 THE COURT: Could you base your verdict on the
20 evidence as a whole and the law as I give it to you?

21 JUROR NUMBER 16: Yes, sir.

22 THE COURT: Thank you, ma'am.

23 Is there anyone on this jury panel or any member
24 of your immediate family who is related to any member of the
25 Third Circuit solicitor's office, that's Mr. Finney's

1 office, or related to any member or anyone employed by the
2 South Carolina Attorney General's office? If so, please
3 stand.

4 (No response)

5 THE COURT: Is anyone on the panel who is
6 acquainted with anyone employed by the solicitor's office or
7 the Attorney General's Office?

8 (No response)

9 THE COURT: Is there anyone on this panel, or, to
10 your knowledge, is there anyone in your immediate family who
11 is a member of or a contributor to any organization that has
12 as its primary focus the promotion of law enforcement or the
13 enforcement of victims rights, and these are included, but
14 not limited to, Mothers Against Drunk Driving, Students
15 Against Drunk Driving, Citizens Against Violent Crime, the
16 South Carolina Law Enforcement Officers Association, the
17 South Carolina Troopers Association, the Fraternal Order of
18 Police, Palmetto Citizens Against Sexual Abuse, or any other
19 type organizations, again, that deal with the promotion of
20 law enforcement or the enforcement of victims rights? If
21 so, please stand.

22 Come on up, please, sir.

23 (Juror Number 6 approached the bench for a bench
24 conference)

25 THE CLERK: What's your name, sir?

1 JUROR NUMBER 6: Joe Blas, number 6.

2 THE COURT: Yes, sir.

3 JUROR NUMBERT 6: I'm a current member of the
4 Fraternal Order of Police.

5 THE COURT: Okay. How long have you been a member
6 of that?

7 JUROR NUMBER 6: Six years, I think.

8 THE COURT: Obviously I had called out the names
9 of some law enforcement officers who may testify. Taking
10 that into account, and anything else involving your
11 involvement in this organization, or, as a matter of fact,
12 formerly being a reserve officer, could you be fair and
13 impartial in this case and base a verdict on the evidence
14 and the law?

15 JUROR NUMBER 6: Yes.

16 THE COURT: How long were you a law enforcement
17 officer?

18 JUROR NUMBER 6: Five years.

19 THE COURT: And that was totally as a reserve?

20 JUROR NUMBER 6: Yes.

21 THE COURT: What did you do?

22 JUROR NUMBER 6: I was an active on the road
23 officer.

24 THE COURT: And that was in Summerville?

25 JUROR NUMBER 6: In Summerville.

1 THE COURT: That's what you said up here earlier.
2 And could you base your verdict on the evidence in
3 this case?

4 JUROR NUMBER 6: Yes, sir.

5 THE COURT: Thank you.

6 All right, thank you, sir.

7 (Juror Number 6 returned back to the jury venire
8 panel).

9 MR. MEADORS: You haven't ask if anyone is a
10 member of the ACLU.

11 THE COURT: You never asked that.

12 MR. MEADORS: Don't you consider that?

13 MR. SWERLING: What was the question?

14 MR. MEADORS: The American Civil Liberties Union,
15 if you are a member. I just thought of it in my head.

16 THE COURT: All right.

17 (Whereupon, the bench conference was concluded).

18 THE COURT: Is there anyone on the panel who is a
19 member of the American Civil Liberties Union, the ACLU?

20 (No response).

21 THE COURT: All right, is there anyone on the
22 panel who has heard or seen or read anything about any of
23 these -- any news accounts about this case at all?

24 All right, come on, please, ma'am.

25 (Juror Number 5 approached the bench for a bench

1 conference)

2 THE COURT: You are juror number?

3 JUROR NUMBER 5: Benson.

4 THE COURT: Your number?

5 JUROR NUMBER 5: Number 5.

6 THE COURT: What's your answer to that?

7 JUROR NUMBER 5: I believe I do remember reading
8 about that in the newspaper.

9 THE COURT: What did you read, do you remember?

10 JUROR NUMBER 5: Well, actually my house was
11 burglarized.

12 THE COURT: And where is your house?

13 JUROR NUMBER 5: That summer, so I was real in
14 tune to hearing about things like that. I remember
15 reading --

16 THE COURT: I know, Ms. Benson.

17 Do you live in the subdivision across from
18 Idlewild?

19 JUROR NUMBER 5: Uh-huh. I just remember hearing
20 about it.

21 THE COURT: Okay. Is there anything -- do you
22 remember what you read about or heard about?

23 JUROR NUMBER 5: Just -- I just remember that -- I
24 think it's the same case. I just remember that this
25 gentleman might have come home and seen a car. I'm not sure

1 if that's the same one, and saw the car and called 911. And
2 I just remember reading that in the newspaper.

3 THE COURT: Based on anything that you may have
4 read about or heard about, has any of that given you any
5 type of predisposition as to whether these two people who
6 were charged --

7 JUROR NUMBER 5: No.

8 THE COURT: -- would be guilty?

9 JUROR NUMBER 5: No. Not one thing about them,
10 or --

11 THE COURT: And if you were on this jury, would
12 you be inclined to substitute what you read or heard from
13 what the evidence was that was introduced in this case, or
14 could you base your verdict on the evidence introduced in
15 this courtroom?

16 JUROR NUMBER 5: Absolutely.

17 THE COURT: Could you do that?

18 JUROR NUMBER 5: Absolutely.

19 THE COURT: And would you do that?

20 JUROR NUMBER 5: Absolutely.

21 THE COURT: Okay. If you were on this jury, would
22 you -- of course, you would be instructed, but would you
23 abide by the instruction that you could not discuss with the
24 other jurors anything that you had read or heard anything
25 about the case? Could you do that?

1 JUROR NUMBER 5: Absolutely.

2 THE COURT: Okay.

3 JUROR NUMBER 5: I'm just saying it's the case, I
4 remember reading about it.

5 THE COURT: Okay.

6 JUROR NUMBER 5: Because there was a case -- I
7 don't know that it was -- when you said if we had read
8 anything, I do remember reading that.

9 THE COURT: Okay. If it was or it wasn't, you
10 would be charged that you would have to try this case
11 according to the evidence and the law that you receive in
12 the courtroom. Could you do that?

13 JUROR NUMBER 5: Absolutely.

14 THE COURT: Okay. Thank you, ma'am.

15 (Juror Number 5 returned back to the jury venire
16 panel)

17 MR. SWERLING: On my voir dire questions, for some
18 reason I left out the subdivision. We had a question that
19 we wanted to ask about did anybody live in that subdivision.

20 THE COURT: I'll do that.

21 MR. SWERLING: I apologize. I thought it was on
22 there, but it's not.

23 THE COURT: Okay.

24 (Whereupon, the bench conference was concluded)

25 THE COURT: All right. Is there anyone on the

1 panel who lives in Idlewild -- or excuse me, anyone on the
2 panel or member of your immediate family who resides in
3 Idlewild Subdivision?

4 All right. No one stood.

5 Is there anyone on the jury panel or any member of
6 your immediate family who has ever been the victim of, or
7 claimed to be the victim of, or been accused of committing a
8 crime involving violence? These include, but are not
9 limited to, a murder, or attempted murder, an armed robbery,
10 or a burglary, a sexual assault, or any other event that you
11 would consider to be violent?

12 Anyone on the panel or any member of your
13 immediate family who has ever been the victim of it, claimed
14 to be the victim of it, or ever been accused of that. If
15 so, please stand.

16 All right, if you could form a line in the center,
17 please. And these would typically not include something
18 such as breaking into your automobile, while certainly that
19 is criminal offense, but that's not the type of thing that
20 I'm referencing.

21 (Whereupon, the following were bench conference,
22 including the attorneys)

23 (Juror Number 100 approached the bench for a bench
24 conference)

25 THE COURT: All right.

1 THE BAILIFF: Joe Pearson.

2 THE COURT: Mr. Pearson?

3 JUROR NUMBER 100: Yes, sir.

4 THE COURT: Yes, sir.

5 JUROR NUMBER 100: Yeah, I got a son that was
6 locked up in the county eighteen months for some of those
7 same charges that --

8 THE COURT: What is his name?

9 JUROR NUMBER 100: Emanuel Pearson.

10 THE COURT: Okay. He's been in the local jail for
11 eighteen months?

12 JUROR NUMBER 100: Yeah, but he wasn't even in the
13 house. He was an accessory to the crime. He was in the
14 car.

15 THE COURT: Okay. What are the charges? Do you
16 know what they are called?

17 JUROR NUMBER 100: I think it was a home invasion.

18 THE COURT: Okay. Whereabouts was it in the
19 county, do you know?

20 JUROR NUMBER 100: This happened in Sumter.

21 THE COURT: I know, but whereabouts?

22 JUROR NUMBER 100: I don't even know.

23 THE COURT: Okay. If you were a juror on this
24 case, could you be completely fair and impartial to the
25 State of South Carolina and to the defendant?

1 JUROR NUMBER 100: I mean, I was really trying to
2 get out of this jury because of what my son is going
3 through.

4 THE COURT: All right.

5 JUROR NUMBER 100: It would be hard for me to kind
6 of deal with.

7 THE COURT: My question is could you --

8 JUROR NUMBER 100: Yes, I could. I could.

9 THE COURT: Could you be fair if you were on a
10 jury?

11 JUROR NUMBER 100: Yeah.

12 THE COURT: And that's to the State and to the
13 defendant?

14 JUROR NUMBER 100: Yes, sir.

15 THE COURT: And could you base your verdict on the
16 evidence and the law from this courtroom and not based on
17 anything involved involving your son?

18 JUROR NUMBER 100: Yeah.

19 THE COURT: Thank you, Mr. Pearson.

20 (Juror Number 100 returned back to the jury venire
21 panel).

22 THE BAILIFF: Contina Preston.

23 (Juror Number 107 approached the bench for a bench
24 conference)

25 THE COURT: Yes, ma'am. Ms. Preston?

1 JUROR NUMBER 107: Yes.

2 THE COURT: Yes, ma'am.

3 JUROR NUMBER 107: Is that part of magistrate
4 court?

5 THE COURT: What happened? Were you the
6 defendant, or somebody else?

7 JUROR NUMBER 107: Somebody else.

8 THE COURT: What was the charge, do you know?

9 JUROR NUMBER 107: Assault and battery third.

10 THE COURT: Okay. Were you the victim?

11 JUROR NUMBER 107: Uh-uh.

12 THE COURT: Who was?

13 JUROR NUMBER 107: Latoya Anthony.

14 THE COURT: Who was the defendant? You?

15 JUROR NUMBER 107: Yes.

16 THE COURT: How long ago was that?

17 JUROR NUMBER 107: It's just last week.

18 THE COURT: What?

19 JUROR NUMBER 107: Last week.

20 THE COURT: Last week.

21 And what happened with that?

22 JUROR NUMBER 107: I asked for a jury trial. She
23 wanted to drop it, but I got up to the judge first before
24 she even got to speak to me.

25 THE COURT: Okay. And did you get convicted?

1 JUROR NUMBER 107: No.

2 THE COURT: Okay. If you were on a jury in this
3 case --

4 JUROR NUMBER 107: Uh-huh.

5 THE COURT: -- could you be fair and impartial?

6 JUROR NUMBER 107: Yes, sir.

7 THE COURT: And base your verdict on the evidence
8 and the law?

9 JUROR NUMBER 107: Yes, sir.

10 THE COURT: Thank you.

11 (Juror Number 107 returned back to the jury venire
12 panel)

13 THE BAILIFF: Cindy Benson.

14 (Juror Number 5 approached the bench for a bench
15 conference)

16 THE COURT: Yes, ma'am.

17 JUROR NUMBER 5: Yeah.

18 THE COURT: The burglary charge?

19 JUROR NUMBER 5: Uh-huh.

20 THE COURT: When was that, do you know?

21 JUROR NUMBER 5: August, 2011.

22 THE COURT: Okay. And was anybody apprehended?

23 JUROR NUMBER 5: No.

24 THE COURT: Do you know how they got in the house?

25 JUROR NUMBER 5: Uh-huh.

1 THE COURT: How?

2 JUROR NUMBER 5: Back door.

3 THE COURT: Okay. And was anybody hurt?

4 JUROR NUMBER 5: No.

5 THE COURT: Daytime or nighttime?

6 JUROR NUMBER 5: Day.

7 THE COURT: All right. And the police came?

8 JUROR NUMBER 5: Yes.

9 THE COURT: And nobody was ever apprehended?

10 JUROR NUMBER 5: Uh-uh.

11 THE COURT: Okay. If you were on the jury, taking
12 that into account, could you be fair and impartial?

13 JUROR NUMBER 5: I could.

14 THE COURT: And base your verdict on the evidence
15 and the law in this case?

16 JUROR NUMBER 5: I could.

17 THE COURT: Thank you.

18 (Juror Number 5 returned back to the jury venire
19 panel)

20 THE BAILIFF: Number 13, Taylor Campbell.

21 (Juror Number 13 approached the bench for a bench
22 conference)

23 THE COURT: Ms. Campbell?

24 JUROR NUMBER 13: Yes, sir.

25 THE COURT: Yes, ma'am.

1 JUROR NUMBER 13: I was here nine months ago. My
2 brother.

3 THE COURT: Back up a little bit. She needs to
4 get it in that microphone.

5 JUROR NUMBER 13: My brother was accused of
6 something he didn't do.

7 THE COURT: What's his name?

8 JUROR NUMBER 13: Shawn Campbell.

9 THE COURT: Shawn Campbell?

10 JUROR NUMBER 13: Uh-huh.

11 THE COURT: What was he accused of?

12 JUROR NUMBER 13: Sexual contact with a minor,
13 with our nieces.

14 THE COURT: Okay. Did he have a trial?

15 JUROR NUMBER 13: No, not yet.

16 THE COURT: Not yet. Okay.

17 If you were on this jury -- and, of course, you
18 answered the question properly, because I did mention that
19 particular range of offenses.

20 If you were on this jury, could you be fair and
21 impartial to the State and to the defendants?

22 JUROR NUMBER 13: Uh-huh.

23 THE COURT: Ma'am?

24 JUROR NUMBER 13: Yes, sir.

25 THE COURT: Could you base your verdict on the

1 evidence and the law in this case?

2 JUROR NUMBER 13: Yes, sir.

3 THE COURT: All right. Thank you.

4 JUROR NUMBER 13: Yes.

5 (Juror Number 13 returned back to the jury venire
6 panel)

7 THE BAILIFF: Number 46, Lillie Hancock.

8 (Juror Number 46 approached the bench for a bench
9 conference)

10 THE COURT: Your last name again?

11 JUROR NUMBER 46: Hancock.

12 THE COURT: Yes, ma'am.

13 JUROR NUMBER 46: Someone broke into my home.

14 THE COURT: How long ago?

15 JUROR NUMBER 46: It was about five years ago.

16 THE COURT: And what street?

17 JUROR NUMBER 46: Clematis Trail.

18 THE COURT: Okay. That's over there in Sunray
19 Hollows?

20 JUROR NUMBER 46: Uh-huh.

21 THE COURT: How long ago?

22 JUROR NUMBER 46: About five years.

23 THE COURT: Okay. Was anybody apprehended?

24 JUROR NUMBER 46: No.

25 THE COURT: Do you know how they got in?

1 JUROR NUMBER 46: Yes, they came through a window.

2 THE COURT: Okay. Did they take some things?

3 JUROR NUMBER 46: Yes.

4 THE COURT: And were you home?

5 JUROR NUMBER 46: No.

6 THE COURT: Was anyone home?

7 JUROR NUMBER 46: No.

8 THE COURT: Okay. If there is a trial in this

9 case and you were on the jury, could you set aside

10 completely what happened with you, if you were on this jury?

11 JUROR NUMBER 46: Yes.

12 THE COURT: And could you be fair and impartial to

13 the State and to the two defendants?

14 JUROR NUMBER 46: Yes.

15 THE COURT: Could you base your verdict on the

16 evidence --

17 JUROR NUMBER 46: Yes.

18 THE COURT: -- in this courtroom?

19 JUROR NUMBER 46: Yes.

20 THE COURT: Thank you, ma'am.

21 (Juror Number 46 returned back to the jury venire
22 panel)

23 (Whereupon, the bench conferences were concluded)

24 THE COURT: Is there anyone on this panel who has
25 by chance ever had any discussions with anyone else

1 pertaining to whether or not these defendants are guilty or
2 not guilty?

3 No one stood.

4 Is there anyone on the jury panel who has formed
5 or expressed any opinion about any of the issues involved in
6 this case, which would certainly include, but not limited
7 to, whether or not either one or both of these defendants
8 are guilty or not guilty?

9 (No response).

10 THE COURT: Is there anyone on the jury panel who
11 is aware of any bias or prejudice that you might have for or
12 against the State, for or against either defendant, any of
13 the attorneys, or any of the witnesses in this case? That's
14 a bias or a prejudice for or against any of these
15 individuals.

16 (No response)

17 THE COURT: Is there anyone on the panel -- to the
18 extent that you have not already imparted that information,
19 is there anyone on this panel or any member of your
20 immediate family who has ever had any official business with
21 the Third Circuit solicitor's office or the South Carolina
22 Attorney General's office? That's what you would consider
23 to be the official business.

24 (No response)

25 THE COURT: Is there anyone on this panel or any

1 member of your immediate family who has served on the
2 Circuit County grand jury this calendar year?

3 (No response)

4 THE COURT: Again, is there anyone who knows of
5 any reason why you cannot be completely fair and impartial
6 to the State and to Jamal Helton and to Reco Godbolt?

7 (No response)

8 THE COURT: Any additional questions from the
9 State?

10 MR. MEADORS: No, sir.

11 THE COURT: Any from Mr. Helton?

12 MR. SWERLING: No, Your Honor.

13 THE COURT: Mr. Godbolt?

14 MR. SMALDONE: No, Your Honor.

15 THE COURT: All right. Could I see the lawyers up
16 here for just a minute?

17 (Whereupon, the lawyers approached the bench for
18 an off-the-record discussion)

19 THE COURT: All right. Ladies and gentlemen, the
20 way the process works in General Sessions Court is if your
21 name is called --

22 First of all, your names are in a computer. It
23 used to be in little capsules and you put them into a little
24 brass drum and you have to turn it around and names were
25 selected individually. Now the process calls for a computer

1 to juggle the names. The computer generates a list, which
2 is printed, and Mr. Bradley and I will have a copy of that.
3 The lawyers don't get a copy of that.

4 If your name is called, simply come forward toward
5 these two microphones up here. You go to that point, stop
6 and turn around. You don't have to say anything. All you
7 have to do is just walk up here, stop and turn around and
8 the jury will be selected at that time.

9 If you are selected, you will have a seat in the
10 jury box, so make sure -- Mr. Bradley will tell you to bring
11 anything that you have with you, like your purse or jacket
12 or anything like.

13 All right, Mr. Bradley.

14 THE CLERK: All right, sir.

15 (Off the record)

16 (Back on the record)

17 THE COURT: As we typically are, we are at the
18 mercy of a machine. Sometimes the machine doesn't work, so
19 they are going down the hall to print the list.

20 (Off the record)

21 (Back on the record)

22 THE COURT: Could I see the lawyers up here for
23 just a minute?

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 THE COURT: All right, ladies and gentlemen, you
2 probably can assume that the computer is not printing. You
3 probably heard the beep. The integrity of the system is and
4 any necessary repairs, or whatever you call it, have to be
5 done through an office in Columbia and that's what they are
6 doing now. If it's not fixed within the next few minutes,
7 we are going to do it the old way and we are going to deal
8 with strips of paper in a brass drum. I apologize for that.

9 And Mr. Bradley, if you could take a list of those
10 present and start cutting out names. Find that brass drum
11 or cigar box. Thank you.

12 Ladies and gentlemen on the jury, if you could be
13 back in your seats in ten minutes. Of course, you can stay
14 right where you are. But if you do leave the courtroom,
15 please be back in your seats in ten minutes.

16 (Whereupon, proceedings were recessed)

17 (Whereupon, proceedings were reconvened)

18 THE CLERK: If it please the court, Your Honor?

19 THE COURT: Yes, sir.

20 THE CLERK: Ladies and gentlemen, when your name
21 is called, please come through the double gate to your left,
22 or the single gate on your right, which is most convenient.
23 Come and stand in front of the bar facing back to the
24 courtroom, please. Bring with you any personal belongings
25 that you may have.

1 Juror number 103, Kimberly Pollard.

2 What sayeth the State?

3 MR. MEADORS: Please present the juror.

4 THE CLERK: What sayeth the defendant?

5 MR. SMALDONE: Please seat the juror.

6 THE CLERK: Have a seat in the jury box, please,

7 ma'am.

8 Juror number 73, William Lane, Jr..

9 What sayeth the State?

10 MR. MEADORS: Please present the juror.

11 THE CLERK: What sayeth the defendant?

12 MR. SMALDONE: Please seat the juror.

13 THE CLERK: Have a seat in the jury box, please,

14 sir.

15 Juror number 100, Joe Pearson, Jr..

16 What sayeth the State?

17 MR. MEADORS: Please excuse the juror.

18 THE CLERK: Have a seat back with the panel. You
19 have been excused from this trial, please, sir.

20 Juror number 36, Hazel Oletego.

21 What sayeth the State?

22 MR. MEADORS: Please present the juror.

23 THE CLERK: What sayeth the defendant?

24 MR. SMALDONE: Please excuse the juror.

25 THE CLERK: Have a seat back with the panel. You

1 have been excused from this trial, please, ma'am.

2 Juror number 49, George Hatfield.

3 What sayeth the State?

4 MR. MEADORS: Please present the juror.

5 THE CLERK: What sayeth the defendant?

6 MR. SMALDONE: Please seat the juror.

7 THE CLERK: Have a seat in the jury box, please,

8 sir.

9 Juror number 143, Barbara Wigfall.

10 What sayeth the State?

11 MR. MEADORS: Please present the juror.

12 THE CLERK: What sayeth the defendant?

13 MR. SMALDONE: Please seat the juror.

14 THE CLERK: Have a seat in the jury box, please,

15 ma'am.

16 Juror number 97, Charles B. Noyes.

17 What sayeth the State?

18 MR. MEADORS: Please present the juror.

19 THE CLERK: What sayeth the defendant?

20 MR. SMALDONE: Please excuse the juror.

21 THE CLERK: Have a seat back at the panel. You

22 have been excused from this trial, please, sir.

23 Juror number 106, Mary Prescott.

24 What sayeth the state?

25 MR. MEADORS: Please present the juror.

1 THE CLERK: What sayeth the defendant?

2 MR. SMALDONE: Please seat the juror.

3 THE CLERK: Have a seat in the jury box, please,

4 ma'am.

5 Juror number 6, Joe Blas.

6 What sayeth the State?

7 MR. MEADORS: Please present the juror.

8 THE CLERK: What sayeth the defendant?

9 MR. SMALDONE: Please excuse the juror.

10 THE CLERK: Have a seat back with the panel. You

11 have been excused from this trial, please, sir.

12 Juror number 17, Adelle Carter.

13 What sayeth the State?

14 MR. MEADORS: Please present the juror.

15 THE CLERK: What sayeth the defendant?

16 MR. SMALDONE: Please seat the juror.

17 THE CLERK: Have a seat in the jury box, please,

18 ma'am.

19 Juror number 7, Randy Boston.

20 What sayeth the State?

21 MR. MEADORS: Please present the juror.

22 THE CLERK: What sayeth the defendant?

23 MR. SMALDONE: Please seat the juror.

24 THE CLERK: Have a seat in the jury box, please,

25 sir.

1 Juror number 35, Lucky Fulwood:

2 What sayeth the state?

3 MR. MEADORS: Please present the juror.

4 THE CLERK: What sayeth the defendant?

5 MR. SMALDONE: Please seat the juror.

6 THE CLERK: Have a seat in the jury box, please,

7 sir.

8 Juror number 82, Angelo McGainey.

9 What sayeth the State?

10 MR. MEADORS: Please seat the juror.

11 THE CLERK: What sayeth the defendant?

12 MR. SMALDONE: Please seat the juror.

13 THE CLERK: Have a seat in the jury box, please,

14 sir.

15 Juror number 5, Cynthia Benson.

16 THE CLERK: What sayeth the State?

17 MR. MEADORS: Please present the juror.

18 THE CLERK: What sayeth the defendant?

19 MR. SMALDONE: Please excuse the juror.

20 THE CLERK: Have a seat back with the panel. You

21 have been excused from this trial, please, ma'am.

22 Juror number 89, Asalene Morrison.

23 What sayeth the State?

24 MR. MEADORS: Please present the juror.

25 THE CLERK: What sayeth the defendant?

1 MR. SMALDONE: Please seat the juror.

2 THE CLERK: Have a seat in the jury box, please,

3 ma'am.

4 Juror number 131, Benjamin Vicczorek.

5 What sayeth the State?

6 MR. MEADORS: Please present the juror.

7 THE CLERK: What sayeth the defendant?

8 MR. SMALDONE: Please seat the juror.

9 THE CLERK: Have a seat in the jury box, please,

10 sir.

11 Juror number 16, Wanda Carney.

12 What sayeth the State?

13 MR. MEADORS: Please present the juror.

14 THE CLERK: What sayeth the defendant?

15 MR. SMALDONE: Please excuse the juror.

16 THE CLERK: Have a seat back with the panel. You
17 have been excused from this trial, please, ma'am.

18 Juror number 139, Billy Weidner.

19 What sayeth the State?

20 MR. MEADORS: Please present the juror.

21 THE CLERK: What sayeth the defendant?

22 MR. SMALDONE: Please seat the juror.

23 THE CLERK: Have a seat in the jury box, please,

24 sir.

25 THE COURT: One and two on the alternate.

1 THE CLERK: Alternate juror, juror number 60,
2 Richard Jackson.

3 What sayeth the State?

4 MR. MEADORS: Please excuse the juror.

5 THE CLERK: Have a seat back with the panel. You
6 have been excused from this trial, please, sir.

7 Juror number 14, Lekeisha McMillan.

8 THE CLERK: What sayeth the State?

9 MR. MEADORS: Please present the juror.

10 THE CLERK: What sayeth the defendant?

11 MR. SMALDONE: Please seat the injure.

12 THE CLERK: Have a seat in the jury box, please,
13 ma'am.

14 THE COURT: All right. Any motions or any other
15 matters pertaining to jury selection, from the State?

16 MR. MEADORS: No, sir, Your Honor.

17 THE COURT: Mr. Swerling?

18 MR. SWERLING: No, Your Honor.

19 THE COURT: Mr. Smaldone?

20 MR. SMALDONE: No, Your Honor.

21 THE COURT: All right. Ladies and gentlemen of
22 the jury, those of you who were just selected for the trial
23 of this case, we are going to begin tomorrow morning. If
24 you would go in just a moment with the bailiff, he will show
25 you where to report tomorrow morning. I would like for you

1 to be there at ten o'clock. We typically would start
2 earlier than that, but I am supposed to have two hearings
3 scheduled to start at nine. It won't take long, but just to
4 be sure we don't keep you any longer than we have to.

5 Between now and then, as a matter of fact during
6 the course of this trial, you may not discuss this case with
7 anyone. That includes amongst yourselves. More than likely
8 this is the only thing that the thirteen of you have in
9 common, but you may not discuss it at all. You may not
10 discuss any of the issues, any of the parties, the potential
11 witnesses, even the lawyers. You can't talk about any of
12 it.

13 Likewise, when you go on about your business
14 today, you may go back to work, home, wherever you might go,
15 you cannot talk to anyone on this earth about this case at
16 all. You may have some people who are dying to know what
17 you have been doing all day. The only thing you can tell
18 them is that you have been participating in a jury
19 selection. That's it. Don't talk to them about anything
20 involving this case at all.

21 Likewise, I'm required to tell you by order of the
22 chief justice that you are not permitted to do any type of
23 research on your own in this case, whether that be reading
24 anything, listening to anything, or gathering any
25 information from any source at all, and that includes, but

1 is not limited to, the Internet, newspaper, magazines.
2 Whatever you might gather information from you can't do it
3 at all.

4 Also during the course of this trial you are not
5 permitted to do what I assume people call blogging. You get
6 on the computer and you type in there, or Facebook, and you
7 are telling people what you have been doing all day. You
8 can't do that at all.

9 I guarantee you that if you do any of that, it
10 will probably come back to bite you, so don't do anything
11 like that during the course of the trial.

12 You will be taking an oath to try this case and
13 render a verdict according to the evidence and the law. You
14 will get all of that right here in this courtroom and it
15 would be terribly inappropriate for you to get any other
16 information from any other source.

17 So I'll see you tomorrow morning at ten o'clock.
18 I thank you for your patience today.

19 (The following takes place outside the presence of
20 the jury panel)

21 THE COURT: Okay, ladies and gentlemen of the jury
22 panel who were not selected as jurors for the trial of this
23 case, it may be that Judge Cothran is prepared to select a
24 jury in courtroom number two, so if you would kindly go down
25 the hall to courtroom number two where you have been already

1 today, I believe. Well, if they are prepared to select a
2 jury in that other case, he will do that in just a few
3 minutes. If not, he will give you or the Clerk's office
4 will give you some other instructions.

5 Thank you for your patience.

6 (Whereupon, the jury venire panel left the
7 courtroom)

8 THE COURT: Could I see the lawyers up here for
9 just a minute?

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 (Off the record)

13 (Back on the record)

14 THE COURT: All right. First of all let me put on
15 the record the rulings that I made earlier, specifically
16 concerning Indictment 2012-GS-43-1314. I did not ever put
17 it on the record, but I told the attorneys up here while the
18 jury was in the courtroom that I would not permit the State
19 to go forward in trying both indictments. In the second
20 indictment, 1314, it dealt with the burglary of the Davis
21 dwelling.

22 And I told the attorneys also that I would permit
23 or would not sever the two defendants or require separate
24 trials with the defendants. I believe that any Bruton issue
25 can be resolved by redaction, and I will certainly allow the

1 lawyers to do what they need to do to protect themselves
2 further on the record on that, but my reading of the cases
3 that were cited on both of these issues are that even though
4 arguably under the State v. Simmons, the two events did
5 arise out of a single chain of circumstances and are of the
6 same general nature.

7 I just don't see how they can be proven by the
8 same evidence, and I know it's within my discretion to allow
9 or not to allow the indictments to be tried together, but
10 I'm going to make -- I believe that I'm correct in stating
11 that they should not be tried together.

12 The redaction, I think if it's done properly,
13 would be able to cure any problems with regard to any
14 confrontation rights or hearsay issues that would arise, if
15 Mr. Godbolt's statement is allowed into evidence and we will
16 go forward in that fashion.

17 Could somebody give me perhaps a list of what
18 issues we have to resolve this afternoon? I know we had a
19 Jackson v. Denno matter. What else we have?

20 MR. SWERLING: Judge, can we approach?

21 THE COURT: Yes, sir.

22 (Whereupon, the lawyers approached the bench for
23 an off-the-record discussion)

24 (Whereupon, proceedings were recessed)

25 (Whereupon, proceedings were reconvened)

1 THE COURT: All right, Mr. Meadors.

2 MR. MEADORS: Beg the court's indulgence.

3 (Off the record)

4 (Back on the record)

5 THE COURT: All right, Mr. Meadors.

6 MR. MEADORS: Yes, sir, Your Honor.

7 As we packed up to leave, we were just trying to
8 find this first statement.

9 THE COURT: We are going to go forward with the
10 Denno matter today, and Mr. Swerling has absented himself
11 from this proceedings. Anything that y'all want to put on
12 the record on that?

13 MR. MEADORS: Your Honor --

14 (Off the record)

15 (Back on the record)

16 MR. MEADORS: Yes.

17 MR. SWERLING: Well, judge, we can't.

18 THE COURT: No, if you don't want to, that's fine.
19 I just wanted to give you that opportunity.

20 MR. SWERLING: Just so I think everybody would
21 feel better, Mr. Meadors and I have been negotiating on this
22 and I think we have reached an agreement, a negotiated
23 sentence. So with that in mind I'm just going to step back,
24 if the court is okay with that, and Mr. Meadors and I will
25 just finalize the details of it by tomorrow morning.

1 I understand the State doesn't want to do it until
2 tomorrow morning. That's fine.

3 MR. MEADORS: We have some victims that requested
4 to be here. Of course, if Your Honor doesn't mind taking
5 the plea in the morning, we would appreciate it.

6 THE COURT: All right, we have the one motion, the
7 Jackson v. Denno motion.

8 All right, Mr. Meadors, you can call your first
9 witness.

10 MR. MEADORS: Your Honor, if I could just have
11 this marked as State's 1 and 2 for ID.

12 (Miranda Rights Form marked as State's Exhibit No.
13 1 for identification)

14 (Statement of Reco Godbolt marked as State's
15 Exhibit No. 2 for identification)

16 MR. MEADORS: Natalie Kelly.

17 THE CLERK: State your name, please.

18 THE WITNESS: Detective Natalie Kelly.

19 DETECTIVE Natalie Kelly, having been first duly
20 sworn, testified as follows:

21 THE CLERK: Please state your full name and spell
22 your last name for the record.

23 THE WITNESS: Natalie Kelly, K-E-L-L-Y.
24
25

1 DIRECT EXAMINATION BY MR. MEADORS:

2 Q. Good afternoon, detective.

3 I'm going to ask you some questions specifically about
4 when you had the opportunity to talk with Reco Godbolt on
5 October the 31st of 2011?

6 A. Uh-huh.

7 MR. MEADORS: May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 What's that?

10 MR. MEADORS: I have had it marked State's 1 for
11 ID.

12 THE COURT: State's 1, okay.

13 BY MR. MEADORS:

14 Q. I'm going to show you what's marked State's 1 for
15 identification. Do you recognize that?

16 A. I do.

17 Q. What is that?

18 A. This is a Waiver of Rights.

19 Q. Please tell His Honor --

20 And what's the date of that?

21 A. October 31st, 2011.

22 Q. Did you have an occasion to meet with Reco Godbolt on
23 October 31st, 2011?

24 A. I did.

25 Q. And where was that?

1 A. At the Sumter Police Department, in the interview room.

2 Q. And what time was that?

3 A. That was at 1:43 p.m..

4 Q. Who else were you with?

5 A. Detective Robbie Richburg.

6 Q. Were y'all both together when these rights were read?

7 A. That's correct.

8 Q. And actually Detective Richburg read these rights in
9 this case, correct?

10 A. That's correct.

11 Q. But were you present?

12 A. I was.

13 Q. And read the rights as they were read to the defendant
14 Reco Godbolt, please.

15 A. "You have the right to remain silent.

16 "Anything you say can be used against you in court.

17 "You have the right to talk to a lawyer for advice
18 before we ask you any questions and to have him or her with
19 you during questioning.

20 "If you could not afford a lawyer, one would be
21 appointed for you before any questions, if you wish.

22 "If you decide to answer any questions now without a
23 lawyer present you will still have the right to stop
24 answering at any time until you talk with a lawyer."

25 Q. Let me go back first.

1 Now, the first right that you read, "you have the right
2 to remain silent."

3 Based on your training, experience, and just your
4 observations on October 31st, 2011, did Reco Godbolt appear
5 to understand that?

6 A. Yes, sir, he did.

7 Q. And did he indicate to you and/or Richburg that he
8 understood that?

9 A. He did.

10 Q. How?

11 A. By initialing it.

12 Q. Did he also say "I understand it"?

13 A. Yes, he did.

14 Q. And as far as the right down on the list "anything you
15 say can be used against you," did he initial that?

16 A. He did.

17 Q. Did he say he understood that?

18 A. He did.

19 Q. And number three, "you have the right to talk to a
20 lawyer for advice." Did he initial that?

21 A. He did.

22 Q. Did he indicate orally he understood that?

23 A. He did.

24 Q. "If you cannot afford a lawyer, one will be appointed
25 for you before any questioning." Did he indicate he

1 understood that?

2 A. He did.

3 Q. Orally and in writing?

4 A. He did.

5 Q. Were those his initials?

6 A. It is.

7 Q. Did you see him do them?

8 A. I did.

9 Q. Did y'all force him to do it?

10 A. No, sir.

11 Q. And finally, "if you decide to answer any questions now
12 without a lawyer present, you will still have the right to
13 stop answering at any time." Did he indicate he understood
14 that?

15 A. He did.

16 Q. Did he indicate that orally and by initialing it?

17 A. He did.

18 Q. Detective, let me ask you, from the process of reading
19 Mr. Godbolt his Miranda Rights, did he appear to be under
20 the influence of any alcohol, drugs, or other intoxicants?

21 A. No, sir, he didn't.

22 Q. Did he have trouble understanding?

23 A. No, sir.

24 Q. Were his answers content and timely? In that, I mean
25 as you are asking the question, did he say -- was it a

1 timely response?

2 A. It was.

3 Q. And was it content appropriate?

4 A. It was.

5 Q. And you could understand his words?

6 A. Yes, sir.

7 Q. Did he appear to understand your words?

8 A. Yes, sir.

9 Q. Or Richburg's when these were read to him?

10 A. Yes, sir.

11 Q. After that on there is what is referred to as the
12 Waiver of Rights?

13 A. That's correct.

14 Q. And was that also read to Mr. Godbolt?

15 A. It was.

16 Q. And were you present when they were read?

17 A. Yes, sir.

18 Q. Please read them as they were read to Mr. Godbolt on
19 October the 31st, 2011.

20 A. "Before any questioning I was furnished the above
21 statement of my rights at 1:43 p.m. on October 31st, 2011,
22 at Sumter Police Department by Officer Richburg of the
23 Sumter Police Department. I have read or had read to me
24 this statement of my rights. I understand what my rights
25 are. I am willing to answer questions at this time without

1 a lawyer present. No promises or threats have been made to
2 me and no pressure has been used against me."

3 Q. And were you present when that was read to the
4 defendant?

5 A. Yes, sir, I was.

6 Q. And did he appear to understand that when the Waiver of
7 Rights was read to him?

8 A. Yes, sir.

9 Q. And did he indicate he understood it?

10 A. He did.

11 Q. Did he indicate that orally?

12 A. He did.

13 Q. And did he also sign this?

14 A. Yes, sir, he did.

15 Q. And who else's signature is down here as a witness?

16 A. Myself and Detective Richburg.

17 Q. Is that your signature at the bottom?

18 A. It is.

19 Q. And did Mr. Godbolt sign here?

20 A. He did.

21 Q. At what time is his signature?

22 A. 1:43.

23 Q. And, again, at any time during the reading of the
24 Miranda Rights or the reading of the Waiver of Rights did
25 Mr. Godbolt say to you "detective, I don't want to talk to

1 you?"

2 A. No, sir, he didn't.

3 Q. Did he ever say "give me a lawyer?"

4 A. No, sir, he didn't.

5 Q. At any time during this process did you threaten,
6 coerce, or hold out any hope of reward for Mr. Godbolt in
7 exchange for this statement?

8 A. No, sir.

9 Q. Describe the room for the judge, the interview room.

10 A. It's a fairly small room. We have two chairs in
11 there -- three chairs, I'm sorry. A table. There is a
12 small window that you can't see from the other side. There
13 is a small window to the door that you can see out and in.

14 Q. And it was you, Detective Richburg, and Mr. Godbolt?

15 A. That's correct.

16 Q. I don't know if he asked, but if he had asked for
17 bathroom privileges, would you have given those to him?

18 A. Absolutely.

19 Q. Do you remember if he did, or do you know?

20 A. No, sir.

21 Q. All right. And if he had wanted something to drink, a
22 beverage, or some sort of snack, would those have been made
23 available to him, if he wanted those?

24 A. Yes, sir.

25 Q. After you had read the rights of --

1 I won't ask you to read it all, but did you get a
2 statement from the defendant?

3 A. Yes, sir.

4 Q. This is State's 2 for identification.

5 A. Uh-huh.

6 Q. That's a page and a half, page and quarter? Maybe not
7 quite a page and a quarter?

8 A. Uh-huh.

9 COURT REPORTER: Is that a yes?

10 A. Yes.

11 BY MR. MEADORS:

12 Q. And tell the judge after you read his rights, said he
13 understood his rights, waived them, was this statement taken
14 contemporaneously, or was the information taken typed later?
15 How was that statement produced?

16 A. When he talked and told what was happening is when we
17 wrote -- you know, typed the statement along with what he
18 was saying.

19 Q. Okay. So as he's talking, the statement is being
20 typed?

21 A. Uh-huh, yes, sir.

22 Q. And after this statement was completed, did Mr.
23 Godbolt -- did y'all, you and Detective Richburg, go over
24 this statement with him?

25 A. That's correct.

1 Q. Did you read over it with him?

2 A. That's correct.

3 Q. And did he sign the bottom of page one of State's 2 for
4 ID?

5 A. He did.

6 Q. And he dated it?

7 A. He did.

8 Q. And page two, is his signature on there?

9 A. Yes, sir.

10 Q. And whose signature is below that?

11 A. Mine.

12 Q. That's your signature?

13 A. Yes, it is.

14 Q. At any time during the taking of this statement did he
15 say "Natalie, I don't want to talk to you?"

16 A. No, sir.

17 Q. "Give me a lawyer, Natalie?"

18 A. No, sir.

19 Q. If he had done that, what would you have done?

20 A. Got him a lawyer or stop taking a statement.

21 Q. There is some background information on here. And just
22 for communication ability, I guess, did he provide his
23 address to you?

24 A. He did.

25 Q. His phone number?

1 A. He did.

2 Q. Social Security?

3 A. Yes, sir.

4 Q. Did he have any trouble giving you -- like the Social
5 Security, did he have to think about it, or did he just kind
6 of spit it off?

7 A. He spit it off.

8 Q. Okay. And you didn't have any trouble understanding
9 him when he did that?

10 A. No, sir.

11 Q. And y'all actually wrote it down, correct?

12 A. That's correct.

13 Q. And is the person in the room that you took State's 2
14 for ID in the courtroom? Is he in the courtroom?

15 A. He is.

16 Q. Please point him out.

17 A. Over there.

18 Q. Mr. Godbolt?

19 A. Uh-huh.

20 Q. The red tie and white shirt?

21 A. That's correct.

22 Q. Was he placed under arrest after this, or at this point
23 he was under arrest?

24 A. He was under arrest, yes, sir.

25 MR. MEADORS: Thank you, judge. That's all I

1 have.

2 THE COURT: Mr. Smaldone.

3 CROSS EXAMINATION BY MR. SMALDONE:

4 Q. Who is your employer? In what capacity were you? Is
5 this for Sumter County, or the City of Sumter?

6 A. Sumter City Police Department.

7 Q. Sumter City.

8 Are y'all a pretty well funded organization, would you
9 say?

10 A. I would say so.

11 Q. Okay. Do y'all have paper, plain paper there?

12 A. Plain paper?

13 Q. Yes, like -- do you have pens?

14 A. Yes.

15 Q. Well, you didn't have him write the statement, did you?

16 A. Repeat the question.

17 Q. Did you have him -- you didn't have him write the
18 statement, did you?

19 A. No, sir.

20 Q. You used a typewriter?

21 A. Yes, sir.

22 Q. Do you have any video cameras or anything like that?

23 A. No, sir.

24 Q. You didn't record this interview, did you?

25 A. No, sir.

1 Q. So irrespective so what you typed it is what he said,
2 correct?

3 A. That's correct, with him signing it to state that those
4 are his words.

5 Q. And that's true, that he didn't have a chance to
6 actually read it in his hands, did he? You just read it
7 back to him, correct?

8 A. That's correct.

9 Q. So he never read it? You just read it to him?

10 A. No, he read it along with us reading it to him.

11 Q. Okay. Do you know who Jessica Hodge is?

12 A. Yes, sir.

13 Q. Jessica Hodge?

14 A. Uh-huh.

15 Q. Do you know who she is?

16 A. Uh-huh. Yes.

17 Q. Isn't it true that you told Mr. Godbolt that you would
18 charge Jessica Hodge, who is his girlfriend, with a series
19 of burglaries if he didn't cooperate?

20 A. That's not true.

21 Q. That's not true?

22 A. No, sir.

23 Q. Okay. Was Jessica Hodge charged with burglaries?

24 A. To my knowledge she was not.

25 Q. She's not.

1 And did Mr. Godbolt give the statement?

2 A. Yes, he gave a statement.

3 Q. Okay. Thank you.

4 MR. SMALDONE: That's all I have.

5 THE COURT: Redirect?

6 MR. MEADORS: No, sir. Thank you.

7 THE COURT: Okay. Thank you. You may step down.

8 Any other witnesses?

9 MR. MEADORS: No, sir.

10 THE COURT: Mr. Smaldone, do you have any
11 witnesses?

12 MR. SMALDONE: Your Honor, I believe Mr. Godbolt
13 would like to testify.

14 THE COURT: All right, if you would swear him in.

15 THE CLERK: Place your left hand on the Bible and
16 raise your right hand.

17 State your name, please.

18 THE WITNESS: Reco Godbolt.

19 RECO ANTONIO GODBOLT, having been first duly
20 sworn, testified as follows:

21 THE CLERK: Have a seat up here, please.

22 THE COURT: Ask him to spell his first name too.

23 THE CLERK: All right.

24 Please state your full name and spell your first
25 and last name, please.

1 THE WITNESS: Reco Godbolt, R-E-C-O,
2 G-O-D-B-O-L-T.

3 DIRECT EXAMINATION BY MR. SMALDONE:

4 Q. Good afternoon, Mr. Godbolt.

5 So did you ever give a statement to the Sumter County
6 or Sumter City police --

7 A. Yes, sir.

8 Q. -- while you were there?

9 You did.

10 Describe the conditions when you gave that statement.

11 Describe the room.

12 A. It was a small room. It was a small window.

13 Q. Okay.

14 A. You couldn't see out the window. There were three
15 chairs and a table.

16 Q. All right. After you gave the statement did you have a
17 chance to review it?

18 A. They read the statement over to me.

19 Q. Did you ever hold the statement in your hand to read
20 it?

21 A. No, sir.

22 Q. You did not?

23 A. No, sir.

24 Q. Did they tell you -- did they hold out any promise of
25 reward or punishment if you did not give the statement?

1 A. They said if I didn't give a statement, they were going
2 to charge my girlfriend Jessica Hodge with more charges.

3 Q. Did they specify what charges those were?

4 A. Yes, sir.

5 Q. What were those charges?

6 A. Burglary charge.

7 Q. Burglary charge.

8 Did they explain the reason why they could charge her?

9 A. No, sir.

10 Q. No, sir. All right.

11 Who told you that?

12 A. Detective Kelly and Detective Richburg.

13 Q. Both of them?

14 A. Yes, sir.

15 Q. Were they both in the room together?

16 A. Yes, sir.

17 Q. And how long after they -- I'm sorry, let me back up.

18 Were you willing to give a statement when you first
19 arrived to the --

20 A. No, sir.

21 Q. How long after you got into room did you make a
22 statement?

23 A. Probably after like -- well, they hold me in the room
24 for about thirty minutes still pacing in and out of the
25 room. By that time I lost track of time, but I was in the

1 room a good minute. Probably like forty-five minutes.

2 Q. And after the forty-five minutes, is that when you
3 started talking?

4 A. Yes, sir.

5 Q. Would you have talked if not for them threatening your
6 girlfriend?

7 A. No, sir, I wouldn't talk.

8 Q. Did they threaten anyone else?

9 A. No, sir.

10 Q. And just to clarify, whose -- describe your
11 relationship with Jessica Hodge.

12 A. She was my fiance. We are broken up now, but me and
13 her have two children together, two daughters.

14 Q. All right.

15 MR. SMALDONE: I don't have any further questions.

16 THE COURT: Mr. Meadors?

17 MR. MEADORS: If it please the court.

18 CROSS EXAMINATION BY MR. MEADORS:

19 Q. Mr. Godbolt, how far did you go in school?

20 A. 12th grade.

21 Q. Graduated?

22 A. Yes, sir.

23 Q. Did you go on to do some education after that?

24 A. No, sir.

25 Q. You seem like a very intelligent young man. You can

1 read and write?

2 A. Yes, sir.

3 Q. And when Detective Richburg and I believe Ms. Kelly
4 present read you your Miranda Rights, there is no question
5 you understood --

6 MR. MEADORS: Do you mind if I approach?

7 A. No, sir.

8 MR. MEADORS: Judge, can I approach?

9 THE COURT: Yes.

10 BY MR. MEADORS:

11 Q. You understood these rights as they were read to you,
12 right?

13 A. Yes, sir.

14 Q. I mean, you are smart?

15 A. Yes.

16 Q. You agree with me that you are smart?

17 A. Yes, sir.

18 Q. And "you have the right to remain silent," you
19 understood what they were saying?

20 A. Yes, sir.

21 Q. And you signed your name there, your initials?

22 A. Yes, sir.

23 Q. And they didn't make you sign your name? I mean, they
24 didn't force you to -- so that's your --

25 A. They didn't force me, I mean, but they --

1 Q. Is the same -- go ahead.

2 "Anything you say can be used against you in court."

3 You understood that?

4 A. Yes, sir.

5 Q. And that's your initials there?

6 A. (No response).

7 Q. "You have the right to talk to a lawyer for your advice
8 before we ask you any questions and to have him or her with
9 you during the questioning," and you said that you
10 understood that, correct?

11 A. Yes, sir.

12 Q. And you never asked for a lawyer?

13 A. No, sir.

14 Q. I mean, or you didn't. I'm not trying to --

15 "If you cannot afford a lawyer, one will be appointed
16 for you before any questioning, if you wish," and you
17 understood that, didn't you?

18 A. Yes, sir.

19 Q. And you signed your initials there.

20 "If you decide to answer any questions now without a
21 lawyer present, you will still have the right to stop
22 answering at any time until you talk to a lawyer." You
23 understood what they said there?

24 A. Yes, sir.

25 Q. And you signed your initials there?

1 A. Yes, sir.

2 Q. And this Waiver of Rights, do you remember when they
3 read that to you?

4 A. Yes, sir.

5 Q. Okay. "I have read or had read to me this statement of
6 my rights. I understand what my rights are and I'm willing
7 to answer questions at this time without a lawyer present.
8 No promises or threats have been made to me and no pressure
9 has been used against me." Do you remember when they read
10 that to you?

11 A. Yes, sir.

12 Q. And you understand what that means. That means no
13 threats were made against you, and you signed that
14 underneath Reco Godbolt, right?

15 A. Yes, sir.

16 Q. And you understood that?

17 And that's Ms. Natalie. Do you remember when she
18 signed.

19 A. I don't remember when she signed, but --

20 Q. She was there.

21 A. She was there.

22 Q. Okay. And you had been -- and I'm allowed to do it in
23 this proceeding, you are familiar with law enforcement and
24 the proceedings and all before? I mean, you have got two
25 A&B convictions and discharging a firearm into a vehicle, so

1 you are familiar with the process and talking to police and
2 what your Miranda Rights are, correct?

3 A. Yes, sir.

4 Q. And then this State's 2 for ID, do you -- you gave them
5 all this information, right?

6 A. Yes, sir.

7 Q. I mean, they didn't know what time you got up that
8 morning and where you took your girlfriend and what you and
9 Jamal did that day, did they?

10 A. No, sir.

11 Q. I mean, you provided all that to them, right?

12 A. Yes.

13 Q. And this information is correct, isn't it?

14 A. No, sir, not all of it.

15 Q. Okay. But, I mean, it's what you gave to them, right?

16 A. Majority of it.

17 Q. Okay. And you signed at the bottom, right, Reco
18 Godbolt?

19 A. Yes.

20 Q. And they read it back to you, didn't they?

21 A. Yes, sir.

22 Q. Okay. And you are sitting right there and you could
23 hear them when they are reading it?

24 A. Yes, sir.

25 Q. Okay. And you signed that that was your statement,

1 right?

2 A. Yes, sir.

3 Q. And on page two did you sign it also?

4 A. Yes, sir.

5 Q. And date it?

6 A. Yes, sir.

7 MR. MEADORS: Thank you. That's all.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION BY MR. SMALDONE:

10 Q. It's correct that you did sign that statement, right?

11 A. Yes, sir.

12 Q. What did you think would have happened if you didn't
13 sign that statement?

14 A. My girlfriend would get charged with burglary.

15 MR. SMALDONE: Thank you. I have no further
16 questions.

17 THE COURT: All right.

18 You may step down. Thank you, sir.

19 Any other witnesses, Mr. Smaldone?

20 MR. SMALDONE: No, sir.

21 THE COURT: Anything else from the State, as far
22 as witnesses?

23 MR. MEADORS: No, sir.

24 THE COURT: Your position on the statement, Mr.
25 Meadors?

1 MR. MEADORS: Your Honor, it's freely and
2 voluntarily given, no threats or promises.

3 Based on detective's testimony, he clearly said he
4 understood his rights, acknowledged that he signed and
5 initialed, and said those were his words. He said maybe not
6 all of it, but he admitted he told them what happened in
7 that statement. Again, he signed his statement, Your Honor.
8 I don't think we have any problem.

9 THE COURT: Mr. Smaldone?

10 MR. SMALDONE: Briefly, Your Honor.

11 The statement was -- we are supposed to trust a
12 typewritten statement somehow from Mr. Godbolt, and he's
13 testified there was -- they were threatening and coercion
14 involved. You know, Ms. Hodge was charged with misprision
15 of a felony. It's odd to me -- I know how the State likes
16 to charge anyone they can. It's odd to me why she wasn't
17 charged with burglary, so, I think, you know, the
18 coercion --

19 THE COURT: It's odd that she was not charged?

20 MR. SMALDONE: It's odd that she was not charged.
21 You know, I know the State likes to charge everyone they can
22 with any sort of crime, but, you know, the fact -- and just
23 his testimony saying that "look, I wouldn't have talked to
24 the cops."

25 And then Mr. Meadors is right, he has had numerous

1 times with the justice system. I think he's smart enough to
2 know not to talk to the cops.

3 And, quite frankly, it's our position that the
4 statement was influenced by coercion.

5 THE COURT: Could I see the two -- or the Miranda
6 form and the waiver form? I don't know what numbers they
7 are.

8 (Off the record)

9 (Back on the record)

10 THE COURT: They were shown to Mr. Godbolt during
11 cross.

12 I think Mr. Meadors has them.

13 MR. MEADORS: I probably do. Give me a second.

14 THE COURT: All right.

15 (Off the record)

16 (Back on the record)

17 MR. MEADORS: I put them back in the folder.

18 THE COURT: Okay. It says State's No. 1 for ID is
19 the Miranda form and the waiver form altogether.

20 No. 2 is the suspect's statement.

21 Anything else, Mr. Smaldone?

22 MR. SMALDONE: No, Your Honor.

23 THE COURT: All right! Of course, my findings --
24 in order for the statement not to be suppressed, I have to
25 make these findings by the greater weight of the evidence.

1 And I do find by the greater weight of the
2 evidence that before the alleged statement was obtained from
3 the defendant, he was fully advised of his rights under the
4 Fifth and Sixth Amendments to the Constitution and that he
5 was specifically made aware of those safeguards as follows:

6 That he was advised prior to any questioning that
7 he had the right to remain silent and that anything he said
8 could be used against him in court.

9 He also was advised that he had the right to speak
10 to a lawyer prior to any interrogation or questioning and
11 the lawyer could be present during that time.

12 If he couldn't afford one, one would be appointed
13 to represent him at no costs.

14 He was also advised that during the course of any
15 questioning in any statements he made that he could stop
16 answering the questions at any time until he did speak with
17 an attorney.

18 According to the evidence he was in the room at
19 1:43 p.m..

20 There is no evidence that he was under the
21 influence of alcohol, drugs, or other substances.

22 And he was not -- there is no evidence that he
23 was -- or at least I find by the greater weight of the
24 evidence that the statement was given freely and
25 voluntarily, without duress, promise of favor or reward,

1 without threat of injury, and without any compulsion or
2 inducement of any kind.

3 And that all and all he's knowingly and
4 intelligently waived his rights in the manner that I have
5 indicated and the statement is admissible.

6 Of course, it would be up to the jury to determine
7 as to whether or not they believe the statement was given;
8 and if it was, whether it was given in the manner to comport
9 with the Constitution.

10 All right, anything else from the State on that
11 issue?

12 MR. MEADORS: No, sir.

13 THE COURT: Anything from Mr. Godbolt?

14 MR. SMALDONE: No, sir.

15 THE COURT: All right. Any other issues we have
16 to resolve today?

17 MR. MEADORS: No, sir.

18 THE COURT: The statement -- of course, any Bruton
19 issues that we discussed today would be irrelevant if Mr.
20 Helton takes the action that's anticipated tomorrow.

21 If the lawyers could be here at 9:15. I have got
22 two civil hearings starting at nine. Those should not take
23 very long at all, and we will get back together at 9:15, and
24 the jury would be coming in at ten.

25 All right, thank you.

1 MR. MEADORS: Thank you, judge.

2 MR. SMALDONE: Thank you.

3 THE COURT: Could I see the lawyers one more time
4 and then I'll leave you alone.

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion)

7 (Whereupon, proceedings were adjourned to December
8 4, 2012)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SUMTER) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 RECO ANTONIO GODBOLT,) 2012-GS-43-00227
7 DEFENDANT.) DECEMBER 4, 2012
SUMTER, SOUTH CAROLINA

8
9 (VOLUME II)

10 B E F O R E:

11 THE HONORABLE GEORGE C. JAMES, JUDGE. ; And a Jury.
12

13
14 A P P E A R A N C E S:

15 JOHN MEADORS, ASSISTANT SOLICITOR
16 CHIP FINNEY, SOLICITOR
17 ATTORNEYS FOR THE STATE

18 GRANT SMALDONE, ASSISTANT PUBLIC DEFENDER
19 ATTORNEY FOR THE DEFENDANT

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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1 (PROCEEDINGS, DECEMBER 4, 2012)

2 THE COURT: We are back on the record.

3 This is the State of South Carolina versus Reco
4 Godbolt. This is 2012-227.

5 The first thing I want to cover, gentleman, Mr.
6 Meadors and Mr. Smaldone, what's your position on what, if
7 any, to assist the jury about the fact that Mr. Helton is
8 not here any more?

9 MR. MEADORS: I would look for Your Honor's
10 guidance.

11 THE COURT: Mr. Smaldone?

12 It would be one of two things. I would say that
13 the trial proceeding with Mr. Godbolt only and they are to
14 draw no inference from that whatsoever as to anything
15 involving Mr. Godbolt; or, I can tell them the truth, that
16 Mr. Helton has entered pleas of guilty or has entered a
17 guilty plea to this charge. I certainly wouldn't go into
18 these other charges; or I could just not say anything.

19 I certainly -- if either of you -- if both of you
20 agree on what I should say, I will do that. Otherwise, I'll
21 just have to make a decision.

22 MR. SMALDONE: Your Honor, you could -- since he
23 hasn't been sentenced yet, you could say we will resolve Mr.
24 Helton's matter in the future.

25 THE COURT: I don't really like that, since he's

1 already -- they were here and picked a jury on him.

2 I think the better thing to do would to either say
3 that he's changed his plea to guilty; or, that you will
4 notice that Mr. Helton is not present and that they are to
5 draw no inference or conclusion from that whatsoever.

6 MR. MEADORS: I will be happy with either one.

7 MR. SMALDONE: I would almost rather you not say
8 anything.

9 THE COURT: All right. I'll say the latter one
10 and I'll note your objection.

11 What's the basis for that, just if you want to put
12 it on the record?

13 MR. SMALDONE: Obviously it would pretty
14 prejudicial for them to know that the co-defendant --

15 What was the latter one, I'm sorry?

16 THE COURT: The latter was that, ladies and
17 gentlemen, you will note that Mr. Helton is no longer
18 present in the courtroom. The trial is going to go forward
19 as to Mr. Godbolt and they are to draw no inference from
20 that in any way.

21 MR. SMALDONE: My only -- my -- my objection would
22 be that they would probably conclude that Mr. Helton entered
23 a plea of guilty on those charges and --

24 THE COURT: It seems to me you might not mind them
25 knowing that. But, anyway, you know, there is all kinds of

1 things to go through their mind, but what I'm going to say
2 is that the fact that Mr. Helton is not present is to be
3 considered by them in no way at all and they are to draw no
4 conclusions from it. All right, and I know you object to
5 that.

6 MR. SMALDONE: Yes, sir.

7 THE COURT: Okay. All right, are you ready for
8 the jury, Mr. Meadors?

9 MR. MEADORS: Yes, sir.

10 THE COURT: Mr. Smaldone?

11 MR. SMALDONE: Yes, sir.

12 THE COURT: Okay. Bring the jury in.

13 (The following takes place in the presence of the
14 jury panel)

15 THE CLERK: Your Honor, we have all the jurors and
16 the alternate present in the courtroom.

17 THE COURT: Thank you, sir.

18 All right, ladies and gentlemen, first of all I
19 realize that you have been back in your jury room for quite
20 sometime and I apologize for that, but certain things that
21 were unavoidable, so please accept my apologies.

22 You will notice that Mr. Helton is no longer in
23 the courtroom and the trial will proceed as to Mr. Godbolt.
24 You are to draw no conclusions or inferences adverse to Mr.
25 Godbolt in that regard. You are to weigh the evidence as I

1 will discuss with you in a minute, without any regard to the
2 fact that which, if any, defendant is or is not present in
3 the courtroom. So what we are going to do now is get
4 started with the trial.

5 The first order of business would be for you to be
6 sworn, so if you please stand.

7 Mr. Bradley.

8 MR. SMALDONE: Your Honor, may we approach
9 briefly?

10 THE COURT: Yes, sir.

11 (Whereupon, the lawyers approached the bench for
12 an off-the-record discussion)

13 THE COURT: Thank you, Mr. Smaldone.

14 All right. Mr. Bradley?

15 THE CLERK: Ladies and gentlemen, please stand and
16 raise your right hand.

17 In the State of South Carolina, County of Sumter,
18 in the Court of General Sessions, Docket Number
19 2012-GS-43-0227, the State of South Carolina versus Reco
20 Godbolt, you should well and truly try and in true
21 deliverance make between the State of South Carolina and the
22 defendant Reco Godbolt, whom you shall have in charge and a
23 true verdict give according to the evidence, so help you
24 God.

25 Please respond and say I will.

1 JURY PANEL: (Collectively said I will)

2 THE CLERK: Thank you. You may be seated.

3 THE COURT: All right, ladies and gentlemen, you
4 now have been sworn as jurors in the case of the State of
5 South Carolina versus Reco Godbolt.

6 I'm going to talk to you now about what your
7 responsibilities are during the course of the trial.

8 How many of you have actually sat on a jury
9 before, whether it's a civil case or a criminal case? How
10 many of you have actually sat on a jury?

11 Some of you may have heard the remarks I going to
12 make now.

13 Suffice it to say that during the course of the
14 trial you and I will have different duties to perform, you
15 are the judges of the facts. In other words, there is no
16 one else in the world, other than you, who will be able to
17 make the determinations of what the verdict you will do in
18 the case. You are the only people who will be able to do
19 that.

20 Now, as you know, the defendant has been charged
21 with various criminal offenses and in a moment the lawyers
22 are going to stand up and perhaps explain what those charges
23 are.

24 Mr. Godbolt has entered pleas of not guilty to
25 those charges. He is presumed innocent and the State has

1 the sole burden of proving the elements of those crimes
2 charged beyond a reasonable doubt. I will explain to you in
3 detail at the end of the case what that means, what beyond a
4 reasonable doubt means.

5 The fact -- as I mentioned to you during jury
6 qualifications, the fact that a person is arrested or
7 charged or indicted for any criminal offense is not evidence
8 of anything. The indictment is simply a charging document.
9 It's a piece of paper that walks the case into the
10 courtroom, and the fact that he has been indicted is not
11 evidence in any way that he is guilty.

12 Your responsibility is to be the finders of the
13 facts, and there is no way that you can do that without
14 paying very, very close attention to all of the evidence
15 that is introduced. Now, that's going to be pretty easy
16 this morning, but I can tell you, and you may already know,
17 this, it becomes difficult as the case goes on, but these
18 parties have selected you to be fair and impartial jurors.
19 The only way that you can give them what you have just sworn
20 to do is to give all the evidence due consideration. And
21 obviously the way that you do that is to pay very close
22 attention.

23 There will be several witnesses who testify. You
24 have heard the names of possible witnesses. That doesn't
25 mean they are all going to be here, but if they all do

1 testify, whether it's ten, twenty, thirty or forty, it's
2 your responsibility to pay very close attention to everyone
3 who testifies, because under the law, of course, the
4 testimony of the first, or the fifth, tenth, fifteenth, or
5 fiftieth witness is no more and no less important than the
6 testimony of any other witness who testifies, so please make
7 sure that you pay attention.

8 In the afternoon after you have had lunch, you may
9 have a tendency to let your attention wander. It's going to
10 be extremely important for you to keep your focus, and I'll
11 remind you of that.

12 Evidence is going to come in in different ways.
13 It's going to come in by way of testimony. It going to come
14 in by way of exhibits. It's going to come in perhaps by way
15 of stipulation. That last one is when the two lawyers stand
16 up and agree that a certain fact is true. If there is a
17 stipulation, the lawyers will let me know and either one of
18 them or I will tell you what that stipulation is.

19 Now, with regard to witness testimony, since you
20 are the judges of the facts, you have to determine whether
21 or not you believe the witnesses who testify. Another word
22 for believability is credibility. When you watch someone
23 talk every day, more than likely, at least subconsciously,
24 you are deciding whether or not you can believe what they
25 have to say.

1 In determining who to believe or what to believe
2 when a witness testifies, use your common sense. We all
3 come perhaps armed every day with that valuable tool and you
4 are to use your common sense in determining that. You can
5 believe every single word of what a witness has to say. You
6 can disbelieve every word, or you can believe parts and
7 disbelieve the rest. That's up to you.

8 You can take into account certain things. You are
9 certainly not limited to this, in determining who to believe
10 and what to believe. You can take into account demeanor; in
11 other words, how does the witness appear on the stand. Was
12 he or she hesitant or straightforward in answering
13 questions.

14 You can also take into account what that witness'
15 ability to know the facts that he or she claims to know.

16 Also you can take into account, if you would like,
17 whether or not that witness has a bias or a prejudice for
18 one particular result or party in this case.

19 You can also take into account whether or not that
20 witness' testimony has been strengthened or weakened by
21 other evidence that's in the record, and also whether or not
22 the witness may have said something different or the same on
23 a prior occasion. And, again, anything else that you think
24 is appropriate. Now, that's witness testimony.

25 Exhibits will come in in different forms. They

1 might be a piece of paper. They might be a photograph. In
2 some cases I have seen automobile tires, or even a whole
3 automobile introduced as an exhibit. So those are examples
4 of things that come in as exhibits.

5 And lastly the stipulations that I mentioned.

6 If evidence comes in, you can consider it.

7 During the course of the trial if I order a
8 question or an answer or an exhibit not to be admissible, I
9 will tell you that you can't consider it, and under your
10 oath as trying this case, according to the law, you cannot
11 consider what I tell you to disregard.

12 Now, at the end of the case you will be told this
13 by me. You take your common sense view of the evidence and
14 the law as I give it to you in the final jury charge, you
15 put those two things together and you will reach unanimous
16 verdicts which speak the truth. And, again, the only way
17 that you can give what you have sworn to do is pay very
18 close attention. I know you will do that.

19 Now, you are the judge of the facts.

20 Let's switch gears for a minute. I'm the judge of
21 the law. For example, during the course of the trial it's
22 likely that one or both of the attorneys at any given time
23 will stand up and make an objection. They may object to a
24 question or to an answer or to any proposed exhibit. Now,
25 that's where I come in. In South Carolina we have the South

1 Carolina Rules of Evidence. My copy is in this brown book.
2 The small part of the book are the rules. The rest of it is
3 interpretation.

4 From time to time the lawyers may have a
5 difference of opinion as to whether or not something is
6 admissible or properly asked and so forth. I'll make that
7 ruling. Please don't keep score. Don't take from anything
8 that I do or say during a ruling that hey, that judge thinks
9 so and so, because I don't. My rulings are based on the law
10 and not on anything else.

11 Likewise, don't hold it against the lawyer for
12 making an objection. Don't think that the lawyer is trying
13 to hide something that you ought to hear or see. That's not
14 the way it works.

15 Also if a lawyer does ask a question that's
16 objected to, don't think that that lawyer is trying to slip
17 something in that you ought not see or hear. They have
18 responsibilities, and their responsibility is to try the
19 case according to the rules. And I also have a copy of the
20 rules up here. That's in this purple book, and it's my
21 responsibility to make sure that the case is tried according
22 to the evidentiary rules and the procedural rules. Don't
23 take from anything that I say or do that I favor one side
24 over the other, because I don't. That's your responsibility
25 to make the determinations of what the verdict in the end is

1 going to be.

2 The case itself will be tried in stages. In a
3 minute the lawyers are going to stand up and give you an
4 opening statement.

5 The State, through Mr. Meadors, does have the
6 right to stand up and tell you what he believes the evidence
7 will or will not prove. He doesn't have a right to argue
8 during that. It would be an opening statement. It's
9 designed to give you what he believes is a road map of the
10 case.

11 Mr. Smaldone for Mr. Godbolt also has the right,
12 even though he does not have to, to give an opening
13 statement. Mr. Smaldone can wait until end of the State's
14 case and give an opening statement, if he wants. He may go
15 ahead and decide just to do it after Mr. Meadors does, or he
16 may not give an opening statement at all. That's his right.

17 After the opening statements the State will
18 present its case in chief and will do that by calling
19 witnesses and offering other evidence. And, again, that's
20 the State's case in chief.

21 After that the defendant, if he chooses, he does
22 not have to, because he has no burden of proving or
23 disproving anything. The defendant may, again if he
24 chooses, present evidence as well. If he doesn't, that's
25 his right, and I will explain all that to you in detail

1 later.

2 After all the evidence is in, whether it's today,
3 or tomorrow, or some other time, the lawyers will give a
4 closing argument to you, and then I will give you a charge
5 on the law, and then you will be released back to your jury
6 room to deliberate.

7 You may not discuss this case amongst yourselves
8 or with anyone else in the universe until I tell you that
9 you can. That is because you will not be able to render a
10 fair and impartial verdict on all the evidence until you
11 have considered all the evidence. So it would be
12 inappropriate for you to begin any discussions or
13 deliberations until you have seen and heard everything. So
14 please follow that instruction very, very carefully.

15 All right. Any objection to those remarks, Mr.
16 Meadors?

17 MR. MEADORS: No, sir.

18 THE COURT: Mr. Smaldone?

19 MR. SMALDONE: No, sir.

20 THE COURT: All right, Mr. Meadors.

21 MR. MEADORS: Your Honor, can we approach briefly?

22 THE COURT: Yes, sir.

23 (Whereupon, the lawyers approached the bench for
24 an off-the-record discussion)

25 THE COURT: One final thing that I just thought of

1 when they were walking up here. Sometimes if they make an
2 objection I may have to send you out. Blame me for that
3 because I don't know what they are going to tell me, and to
4 be on the safe side sometimes I may send you out. And in
5 lots of trials when they send you out, make a ruling, bring
6 you back in and something else comes up and I have to send
7 you right back out. Don't blame any of these parties. You
8 can blame me for that.

9 And I haven't appointed a foreman yet, or
10 foreperson. I will appoint one of you to act as the
11 foreperson. That will be during the course of the trial
12 sometime. I haven't done that yet.

13 All right, Mr. Meadors?

14 MR. MEADORS: May it please the court?

15 THE COURT: Yes, sir.

16 MR. MEADORS: "Please help me. Please help me."
17 Those are the words of Bryan Funke. Bryan Funke to the 911
18 operator "please help me," as he's being chased from his
19 residence across the yard, shots fired at him, as he will
20 testify, as he's fleeing his own residence there are two
21 males following, "please help me."

22 Ladies and gentlemen, good afternoon.

23 As I was introduced earlier, my name is John
24 Meadors. I'm an assistant solicitor in the Third Judicial
25 Circuit. I am working with Honorable Ernest A. Chip Finney,

1 III, your elected official solicitor.

2 I'm here today representing the People of the
3 State of South Carolina, the people of Sumter, against the
4 defendant Mr. Reco Godbolt, who is represented by Mr. Grant
5 Smaldone.

6 First of all, to echo His Honor, I want to thank
7 you for being here. Thank you for being here. Thank you
8 for the attention that I know that you will give the court,
9 to the witnesses, all of us. Being a juror is not easy, but
10 it is an important job. Without y'all the system can't
11 function. Thank you for being here.

12 Mr. Campbell doesn't have a school to put you in,
13 jury school, yesterday when you come; here is what you do to
14 be a juror. Y'all are going through a crash course. But
15 you have been going through a course your whole life to be a
16 juror. It's just called living and every day common sense.
17 It's the things that you have gathered throughout your life
18 talking to people, evaluating people, and being with people.
19 You bring those same abilities and skills in here with you
20 as jurors as you listen and evaluate the testimony, and
21 that's all we can ask you.

22 In this case, like every other case, it's
23 credibility and believability. What's the truth, and that's
24 what you will have to figure out. Again, thank you for
25 being here.

1 Very briefly, this is the opening statements, as
2 His Honor said. It gives us a chance to give you an
3 overview of what this case is about.

4 You heard that the defendant is charged with
5 several counts, several charges. I'm going to go over those
6 with you. It's a charging document. It's not evidence, as
7 the judge has told you, and will tell you again. It's a
8 part of the process, the indictment process.

9 The Sumter County Grand Jury did return an
10 indictment against Mr. Godbolt and Mr. Helton for
11 kidnapping, burglary in the first degree, attempted murder,
12 armed robbery, armed robbery, possession of a firearm during
13 the commission of a violent offense, and criminal
14 conspiracy.

15 What are all those? Just old common sense. And
16 what's kidnapping? You take, confine. They use a little
17 word inveigle in there the judge will tell you, but you hold
18 somebody against their will. You don't let them go. You
19 physically take ahold of their body. You can't go. You are
20 going to go here. That's what kidnapping is. That's what
21 you are going to hear from Dr. Funke what happened to him on
22 October 31st, Halloween afternoon, 2011.

23 Burglary first. Y'all know this is as good as I
24 do. It's the unlawful entry to the dwelling of another.
25 It's not your dwelling, and you enter without consent with

1 the intent to commit a crime. In this case stealing. You
2 enter a dwelling without consent with the intent to commit a
3 crime.

4 And then there is different types of ways the law
5 says burglary first can be shown. Burglary first can be
6 shown by entering the dwelling in the nighttime.

7 Burglary first can be shown, proven to you, if the
8 person is either armed or becomes armed with a deadly weapon
9 while he's entering or exiting the dwelling, as the case we
10 believe here will show, as Dr. Funke will testify to you
11 what he saw and what he heard as he was being pursued.

12 Attempted murder. An attempt is an intent to do
13 something. You take the step in that direction. Dr. Funke
14 is going to tell you that as he's running away -- he's going
15 to talk about his background in the military and his combat
16 experience, that he hears a gunshot as he's running away.
17 That's attempted murder. An attempt to commit a crime and
18 take a step in that direction. The gun is fired. It
19 doesn't matter who fired the gun, which of the defendants.
20 Two people are pursuing him, a gun is fired, he hears it.
21 "Please help me."

22 Armed robbery. Armed robbery, take from the
23 person or presence of another by means or force -- by means
24 or force or intimidation the goods or other items of
25 another. It's not yours. You go up and take it. If you

1 didn't have a weapon, it's strong armed robbery. If you had
2 a weapon, you are armed with a deadly weapon, it's armed
3 robbery. That's Count IV of this indictment.

4 Possession of a weapon during the commission of a
5 violent crime. It kind of speaks for itself.

6 Burglary first degree, you got a weapon on you,
7 possession of a firearm during the commission of a violent
8 crime.

9 And criminal conspiracy. Obviously two folks that
10 gather together and have an agreement to commit a crime and
11 they are going to do it together in concert, that's a
12 criminal conspiracy. Two or more people, they are more
13 successful when they do that, and that's what a criminal
14 conspiracy is. It's an agreement between two or more people
15 to commit a crime.

16 That's a bunch of charges. They are not
17 complicated, but they are important. If these elements that
18 I went through are what we have to prove to you.

19 And His Honor, he's the law. His Honor is the
20 law. He's the judge of the law and the end of the case he's
21 going to tell y'all this is the law, and he will have it
22 right, and that's the law that you will have to take.

23 Now, you are also a judge. You are a judge of the
24 facts. You will take the law His Honor gives you and you
25 will apply it to the facts that you decide are the truth

1 that come from this witness stand, that come from exhibits
2 that this fine court reporter may mark, and we get into
3 evidence. That's what you will decide the case on.

4 Well, what kind of evidence is it that you might
5 ask? Well, there is direct evidence. You are going to hear
6 from Dr. Funke in just a little bit. Direct evidence is
7 evidence you gather with one of your senses; you see it, you
8 hear it, you feel it, you touch it, and you come in here and
9 take that stand and you say this is what I heard, ladies and
10 gentlemen. This is what I felt, this is what I touched.
11 That's direct evidence.

12 There is circumstantial evidence, and the judge
13 will tell you the law gives no -- there is no greater weight
14 given one to the other.

15 Circumstantial evidence is proof of facts that
16 basically you can take in conjunction and that leads to the
17 conclusion of another fact. If you went to bed that last
18 and there wasn't snow on the ground and you got up today and
19 it snowed, there was snow on the ground, you didn't see it,
20 but you know it snowed. That's an example of circumstantial
21 evidence. There is some of that in this case; documents,
22 pictures, other types of evidence.

23 Statements. You are going to hear a statement
24 from Detective Natalie Kelly, who is in the courtroom back
25 here, took from the defendant. She's going to go through it

1 and tell you what rights were read to him, whether in her
2 opinion he understood his rights. And you are going to be
3 able to hear, perhaps see the statement, and see what the
4 defendant Reco Godbolt said. He implicated himself in this.
5 He implicated himself, along with Mr. Jamal Helton. You are
6 going to hear what that statement says.

7 Ladies and gentlemen, what happened in this case?
8 It is October 31st, a year ago. It is Halloween, not
9 Valentine's, Halloween, 2011, Dr. Funke decides to come
10 home. He's a medical doctor, military experience. He's
11 going to get up and tell you about what he's done and what
12 he's doing now. He decides he's just going to come to his
13 house. He just wants to go home for lunch.

14 He's walking up and he sees a car that's not his
15 car. It's not his wife's car.. He says well, I don't know
16 what that's all about. He's kind of walking up and then he
17 looks in the car and the testimony will be I see my TV in
18 there. I see my computer. The doctor knows then something
19 is up.

20 He then decides I'm going to go in the house. He
21 opens the door. He doesn't hear the dogs like he usually
22 does. That's kind of suspected. What does he do then? He
23 calls 911. He calls 911 and I think the words he uses were
24 "I have a burglary in process," but you are going to be able
25 to hear his voice. And the 911 operator does an excellent

1 job, "do you know who it is?"

2 At first he says no.

3 "Do you know how many?

4 "No, I'm not sure."

5 He goes in, you hear the dogs barking.

6 And then you can hear him, he said "there are two,
7 two black males. They are chasing me. They are chasing me.

8 "You what's going on?"

9 He starts to running and you can actually hear it
10 picked up. He left the 911 on and put it in his pocket and
11 he's running from his house. And you hear him say "I don't
12 know where they are. I don't have your keys."

13 But what I didn't tell you about the car, when he
14 first came up there, the evidence will show, when he saw
15 this car, he had his keys in it, he took the keys out and he
16 locked the car. He then threw the keys to the side of the
17 house so it wouldn't damage it.

18 These two individuals, Reco Godbolt and Jamal
19 Helton, the evidence will show, come out and try to get away
20 in their car and they can't get in their car. Then they
21 start chasing Bryan Funke, catch up with him. They fire a
22 shot at him, "please help me." Tells the 911 "please help
23 me." They catch him. They catch up with him. They grab
24 him. They physically grabbed him. They take control of his
25 body, and they take him and tell him where to go and march

1 him. That's what the evidence will show, over to an area
2 where he tells them he threw the keys. They looked at him
3 and they say there it is. There it is. That's the
4 kidnapping we believe the evidence will show. He couldn't
5 go anywhere else. They took control of his body.

6 They find the keys. They go back to the car. The
7 car then tries to take off, but they run over some kind of
8 little drainage or some kind of little ditch or telephone
9 pole and they get stuck and they try to rock it back and
10 forth. Bryan Funke will tell you what he saw.

11 But what's happened all this time? What's
12 happened during this story? It's live, it real, right?
13 Well, 911 was called. The police get a dispatch? You know
14 what? The Sumter Police Department arrived while they are
15 still in their car. They are still at the car.

16 You are going to hear from Rick Morse, Brian
17 Christmas. They get there. They see it in action. Funke
18 tells them they got a gun. Morse takes off after Godbolt.
19 Christmas takes off after Helton.

20 They are going to testify and you are going to see
21 that Reco Godbolt was caught closer to the scene, caught
22 there not far from the house that he had just gone in, that
23 he and Jamal Helton broke in.

24 Jamal Helton takes off, goes to the area, gets
25 away and eventually is caught and arrested.

1 Reco Godbolt was caught. He's brought back. They
2 search his person. On his person we believe the evidence
3 will show is the phone that Bryan Funke had used to call
4 911. He reached into his pockets and took all of it.
5 That's going to be the goods for the armed robbery.
6 Personal presence. He took his phone right there. It's in
7 Rico Godbolt's pocket.

8 Reco Godbolt is taken down to law enforcement and
9 meets with Natalie Kelly and another officer and was advised
10 of his rights, implicates himself and Jamal Helton.

11 Jamal Helton was subsequently arrested and charged
12 with these offenses also.

13 That's a short version of what we believe the
14 evidence will show. All I can ask you as this is being
15 presented to you, look at the witnesses, evaluate them,
16 decide what the truth is, because that's what you got to
17 decide. What is the truth that comes from this witness
18 stand and only here in the evidence. That's what you have
19 to -- that's how all cases are decided.

20 Ladies and gentlemen, I love this courtroom. I
21 love my specialty. All deference to the judge, I like to
22 call this my space, my little office. It's the judge's
23 courtroom. We are here week in and week out. This is what
24 we do because we love it. We are -- Mr. Smaldone, we all
25 love it. We are all just trying to get justice. That's

1 what it it's about. What is justice? But as much as we
2 love this and we love our jobs, it's almost like a
3 basketball team, because this is no game, basketball game.
4 We are here every week, week in and week out, but every week
5 a star player comes in, an MVP, and usually decides the
6 game. Now, you are like that star player that comes into
7 the team because you will decide what happens. You will
8 decide what's believable, what's true.

9 After the judge tells you the law, you will return
10 to your jury room and then you will all start discussing the
11 case.

12 I'm going to respectfully ask you now and I
13 believe after you have heard the evidence and I'm going to
14 respectfully ask you at the end to come back with a verdict.
15 And verdict simply means to speak the truth, the verdict
16 that says on October 31st, 2011, Reco Godbolt entered the
17 dwelling of Bryan Funke with another individual, Jamal
18 Helton, but Reco Godbolt entered the residence with the
19 intent to commit a crime; chased after Bryan Funke; a shot
20 was fired at Bryan Funke; took the stuff off his body, his
21 phone; kidnapped him, took him over to where he threw the
22 keys of the car that was in his yard; that he agreed to do
23 this with Helton; and that he's in possession of a firearm;
24 and find him guilty of all counts. Thank you.

25 THE COURT: Thank you, Mr. Meadors.

1 Mr. Smaldone, any opening statement?

2 MR. SWERLING: Yes, sir.

3 THE COURT: Yes, sir.

4 MR. SMALDONE: May it please the court.

5 I noticed that almost most of y'all have served on
6 a jury in the past and you would probably would serve on a
7 hundred juries before you hear a defense lawyer say what I'm
8 about to say, and that is that Reco did it. I just blew
9 your mind. That's Mr. Godbolt right there. Mr. Godbolt
10 committed a burglary.

11 So you might ask why am I here? What am I doing
12 here?

13 The problem is that what Mr. Godbolt is charged
14 with isn't what happened. Mr. Godbolt -- the evidence will
15 show Mr. Godbolt was involved with someone else. He drove
16 the car to the scene of [REDACTED] I believe. And
17 at that time Mr. Jamal Helton entered the residence, got the
18 stuff from it.

19 And then Mr. Funke came home and there are two
20 black males in his house that he didn't know, he had never
21 seen them before, so he ran out. They both ran out. He
22 called the police and the police showed up and that's all
23 that happened.

24 The evidence will show that there is nothing about
25 a gun. First of all, there is no gun. The evidence --

1 Mr. Godbolt has made a statement. You will hear
2 it. You will hear the statement first. He's implicating
3 himself. He says here is what happened, and you will see
4 the statement. You will hear it. There is no gun. There
5 is no kidnapping.

6 There is a person who came home early one day,
7 terrified, someone was in his house during the day. There
8 is no deadly weapon. There is no sort of kidnapping. There
9 are no threats.

10 There was a chase and he said "give me my stuff
11 back and I won't call the cops." Of course, he's a smart
12 man. He had already called the cops. He was stalling for
13 time. He stalled for time so he could show where the keys
14 were. He knew the cops were on the way, and around that
15 time the cops came, and that's the end of story, and that's
16 why Reco is here right now, because he got caught, and he
17 has admitted this. He said "look, I was involved in a
18 burglary." And at the end of the day he knows he's going to
19 pay the piper for what he did and he's ready to do that; or
20 what he's not ready to do is to admit to a whole series of
21 facts that never happened. So that's why --

22 I'm going to be brief today. I hope you won't
23 hold it against me. My closing is a little bit longer than
24 my opening, but real brief. I want you to weigh all the
25 evidence. And now that we both -- I think both me and the

1 State has asked this, weigh all the evidence, turn it over
2 in your mind. Like Mr. Meadors said, you have been going to
3 jury school your whole life. Weigh the credibility, weigh
4 the evidence, weigh the absence of evidence, and at the end
5 of day you will come back with a verdict that said Mr.
6 Godbolt was wrong, he messed up, but he didn't do every
7 little thing that they could think of that never happened.
8 That's why you come back with a verdict of not guilty of
9 burglary first degree, not guilty on all the charges, but
10 what he's guilty of a second degree burglary nonviolent.

11 Now, briefly what that means is when you enter the
12 house with another, or involved with someone else to enter
13 the house with another during the day, that's a second
14 degree burglary. When there is no deadly weapon or there is
15 no gun that, in this case the evidence will show it's
16 imaginary, when it's a simple daytime break-in, it's a
17 stupid thing to do, dumb, he knows that, he's not happy to
18 be here, but what he's really not happy about is the fact
19 that there is all these other things that he's accused of
20 doing that just came out of thin air. And that's why I'm
21 asking you to return a verdict of not guilty on all these
22 charges except for what he freely admits to doing. Thank
23 you.

24 THE COURT: Thank you, Mr. Smaldone.

25 Your first witness, Mr. Meadors.

1 MR. MEADORS: May it please the court, we call
2 Bryan Funke.

3 THE CLERK: Place your left hand on the Bible and
4 raise your right hand.

5 State your name, please.

6 THE WITNESS: Bryan Funke.

7 BRYAN FUNKE, having been first duly sworn,
8 testified as follows:

9 THE CLERK: Please state your full name and spell
10 your first and last name for us, please.

11 THE WITNESS: Yes, sir.

12 My name is Bryan Funke, F-U-N-K-E. First name is
13 is B-R-Y-A-N.

14 DIRECT EXAMINATION BY MR. MEADORS:

15 Q. Good afternoon, Dr. Funke.

16 A. Good afternoon, sir.

17 Q. I would like for you to tell the ladies and gentlemen
18 of this jury a little bit about yourself; where you are
19 from, your background, kind of what you have been doing in
20 your life, and what are you doing now?

21 A. Yes, sir.

22 My name is Bryan Funke, ladies and gentlemen of the
23 jury. I grew up in California. And after high school I
24 joined the military. I was in the Army for a year and then
25 I went to the Air Force Academy in Colorado, where I was

1 commissioned a second lieutenant in the Air Force.

2 Then I went to medical school at the Uniform Services
3 University in Washington D.C, and the School of Aerospace
4 Medicine and became a flight surgeon in the Air Force. I
5 served twenty-eight years in the Air Force.

6 My last assignments, I was deployed to Operation Iraqi
7 and Enduring Freedom.

8 And following that assignment I came to Shaw Air Force
9 Base where I was the command surgeon of Headquarters U.S.
10 Air Force of Central Command where I was responsible for all
11 the medical facilities that the Air Force has in Iraq and
12 Afghanistan.

13 Q. You say command surgeon?

14 A. Yes, sir.

15 Q. Okay. And when did you come to Sumter?

16 A. I arrived in the summer of 2006, when the Air Force
17 assigned me here.

18 I retired from the Air Force the 1st of February 2009.

19 My family and I, we found this a great community and
20 nice place to raise our kids. Both my children attended
21 Sumter High School and are now going to school at Clemson
22 University.

23 It seemed like a nice place to settle. We initially
24 had moved to another neighborhood, but we moved to the
25 Idlewild neighborhood because we found that a nice diverse

1 neighborhood with children and a place that we wanted our
2 kids to be raised.

3 Q. And your wife is?

4 A. My wife is Carolyn K. Funke. She's sitting in the blue
5 jean jacket over there.

6 Q. Carolyn Funke right there.

7 Going back to your background, just very briefly, were
8 you ever in combat situations?

9 A. Yes, sir, I served several times in the first Gulf War.
10 I was deployed where I commanded a hospital at King Abdul
11 Air Base.

12 And then as a command surgeon and also previously as
13 the 4-SG, I worked directly for the commander of United
14 States Air Force of Central Command, three star general. I
15 was responsible for advising him on all health care matters
16 and the daily operations of our health care facilities, our
17 various E-meds and the hospitals, the biggest ones being
18 Bahlad and Bahgram Air Bases.

19 Q. And have you fired weapons before?

20 A. Yes, sir. As a military officer I had to maintain
21 qualification. I have been qualified in the M-16, the M-4
22 and the M-9 9 millimeter Baretta pistol.

23 Q. In your combat situations, have you experienced
24 gunfire?

25 A. I have.

1 Q. Live, real?

2 A. Yes, sir.

3 Q. Let's go back on October 31st of last year, 2011,
4 doctor. What was your job then?

5 A. I had retired from the Air Force and was working as a
6 physician. At that time I was working for the base as a
7 flight surgeon. I do family medicine and occupational
8 medicine and aerospace medicine at Shaw Air Force Base.

9 I take care of the fliers and their families, as well
10 as do occupational health exams, pre-employment physicals, a
11 variety of work for the base clinic there at 20th Medical
12 Group at Shaw, taking care of our military and their
13 families, retirees, and the National Guard.

14 Q. Do you have an office on base?

15 A. Yes, sir.

16 Q. What is your routine during the week?

17 Well, back in October of 2011, what was your work
18 routine?

19 A. I usually go to work between 6:30 and 7:00. And then I
20 have sick call or, you know, airmen or soldiers that are ill
21 or injured can come in without an appointment.

22 And then I have appointments in the morning, and then I
23 take lunch from twelve to one.

24 Then I go back in the afternoon for more clinic.

25 Q. What time does your day usually end?

1 A. Usually I leave work in the afternoon to come home for
2 the evening around 5:30.

3 Q. So your lunch typically would be around noonish?

4 A. Yes, sir.

5 Q. And on October 31st, 2011, what was your lunch plans?

6 A. On the day in question I drove -- I left the office at
7 twelve o'clock and drove home, departing Shaw's main gate
8 and heading out to 441 and then up to the Shell station on
9 the corner of Loring Mill and made a right and then turned
10 left into my neighborhood, which is Idlewild neighborhood.
11 It's -- it's kind of between Rice Avenue and -- I forgot the
12 name of the other street.

13 Q. Okay. Your address is 555 Canvasback?

14 A. That's correct.

15 Q. And that's in Sumter County?

16 A. Yes, sir.

17 Q. Okay. Were you going home to eat, doctor?

18 A. Yes, sir.

19 Q. You are driving down your road, Canvasback. Tell the
20 ladies and gentlemen of this jury what, if any -- not what,
21 if anything, but what did you observe?

22 A. Yeah. Well, my house is situated in the back end of
23 Idlewild where it abuts against the Deerfield neighborhood.
24 There is a lake there, Idle Lake, and then there is a dam.
25 Below that dam there is some woods. And then on the other

1 side of those woods is Second Mill Pond.

2 As I was driving up to my house I noticed that my
3 wife's car was not in the driveway where it normally is when
4 she's home. It's a 2005 Chevy Suburban.

5 There was another car in my driveway.

6 If you look at my house, the garage is oriented such
7 that the garage doors are on the left side of the house, so
8 they are not facing towards the street, and there was a late
9 model Nissan Altima, that's gold in color, that was parked
10 on my driveway up against the garage door. It didn't really
11 strike me as anything unusual. I thought perhaps one of my
12 wife's friends had come over and maybe she had gone out with
13 them. At that point I didn't have any suspicions that
14 anything was wrong yet.

15 MR. MEADORS: Beg the court's indulgence.

16 THE COURT: All right.

17 THE WITNESS: Do you want me to continue?

18 MR. MEADORS: No, sir. One second, I'm sorry.

19 (Car Keys marked as State's Exhibit No. 3 for
20 identification)

21 (Cell Phone marked as State's Exhibit No. 4 for
22 identification)

23 (Camera and Coins marked as State's Exhibit No. 5
24 for identification)

25 (Watering Wand marked as State's Exhibit No. 6 for

1 identification)

2 (Photograph marked as State Exhibit No. 7 for
3 identification)

4 BY MR. MEADORS:

5 Q. I'll show you what's marked State's 7.

6 MR. MEADORS: Your Honor, can I approach?

7 THE COURT: Yes, sir.

8 BY MR. MEADORS:

9 Q. Just tell me if you recognize that and does it relate
10 to your testimony?

11 A. Yes, sir.

12 Q. Just does it relate your testimony?

13 A. Yes, sir, that --

14 Q. That's fine.

15 MR. MEADORS: Your Honor, No. 7, I believe without
16 objection.

17 THE COURT: All right, 7?

18 MR. SMALDONE: No objection.

19 THE COURT: All right, that's in.

20 (State's Exhibit No. 7 was entered into the record
21 as evidence)

22 BY MR. MEADORS:

23 Q. What is No. 7?

24 You can tell us now.

25 A. Sir, that's a picture of my house looking at the garage

1 from the left side from my driveway.

2 Q. And when you pulled up to your drive, where was the car
3 that you said wasn't usually there?

4 A. It was between the little flowered pot and the large
5 green bush right in front of the right garage door.

6 Q. Would you point to that?

7 A. Yes, sir, it was parked right here.

8 MR. MEADORS: And he's pointing to the garage door
9 on the right of State's No. 7.

10 BY MR. MEADORS:

11 Q. And what did you do after that? I mean, you saw this
12 car that you didn't know.

13 A. I pulled my car into the driveway and I got out.

14 And as I was walking towards the house I noticed that
15 there was a bunch of electronics in the back of that car, so
16 I went up and took a closer look and I noticed that my
17 television set was in there; the computer that I have in the
18 kitchen of my house; my daughter's camera. There was a
19 laptop, which I initially thought, because it's the same
20 model as my son's, but it actually belonged to the Davis
21 couple that are neighbors of mine.

22 Q. Did you realize something might be up at that point?

23 A. Yes. Yes, sir, at that point I knew something was
24 wrong.

25 And I also noticed that the walk-in door to the garage

1 was open, so I took my cell phone and I called 911 and I
2 reported to the dispatcher that I believe there was a
3 burglary in progress at my house and that they may be in the
4 house.

5 Q. Now, I'm going to show you State's 7 again. When you
6 say walk-in door, what are you talking about?

7 A. It's the small door on the left. There is a -- to the
8 left of the picture is a brick wall that separates my
9 driveway from the backyard. And then this door -- the small
10 door walks into the garage. And then on the other side of
11 the garage there's another door into the house. Both those
12 doors were open.

13 Q. Do you usually leave those open or closed?

14 A. No, sir, I never leave them open.

15 Q. Okay. You saw your TV and other electronics in the
16 car. You see that door open. What did you do?

17 A. I called 911 and I reported a burglary in progress and
18 that I believe they may be still in the house. And that --

19 I could not understand what the dispatcher was saying,
20 so I left the phone alive. I left the connection to 911 on
21 and I stuck the phone in my pocket.

22 I then proceeded into the house to investigate, because
23 I have two dogs. I have approximately a seventy pound brown
24 lab, an older dog, and I also have a Chesapeake Bay
25 retriever, also about seventy, seventy-five pounds. It was

1 a rescue dog. Both those dogs are normally, you know, on
2 alert. They come out to greet me.

3 Q. Do they usually greet you?

4 A. Yes, sir.

5 Q. When you went in this day did they greet you?

6 A. They did not, so I knew something was awry.

7 So I went into the house --

8 Q. Did you see anybody outside that house?

9 A. I did not see anybody outside the residence.

10 Q. And was there any bodies, anybody in the car?

11 A. No, the car had no occupants.

12 Q. You are going into your house now, what happened?

13 A. Well, before I go in the house I went back to the car
14 and I noticed that there was -- the ignition keys were in
15 the ignition. And I took the keys out of the ignition and
16 then I locked the car and then I threw the keys into the
17 wooded area to the east of my house adjacent to the left
18 side of the Idle Lake dam and the woods between my home and
19 Victor Jones' home.

20 Q. Why did you do that, doctor?

21 A. Well, in case something happened, I knew that if I
22 could keep the car there, that would create evidence for
23 y'all to use to help find the robbers.

24 Q. So did you -- you went in the house a little bit and
25 then came back and did that, or did you do --

1 A. No, I did that before I entered the house.

2 The first thing I did was I called 911.

3 Then I took the keys and locked the car.

4 Then I entered the house.

5 When I entered the house, I noticed --

6 Q. Let me stop you.

7 A. Okay.

8 Q. I want you to look at what's marked as State's 3 and

9 see if you can recognize that?

10 A. Yes, sir, that's the key chain that I removed from the

11 suspects vehicle. /

12 Q. And after you removed it, did you lock the car?

13 A. I did.

14 Q. How did you do that, remotely or with the keys?

15 A. I don't recall whether I used the remote or whether I

16 used the lock button on the driver's door.

17 Q. But you locked it?

18 A. I did lock the car.

19 Q. And then --

20 MR. MEADORS: Your Honor, at this time State's 3 I

21 believe without objection.

22 THE COURT: That's No. 3? .

23 MR. SMALDONE: No objection.

24 THE COURT: All right, 3 is in, and that's a

25 physical object, not a photograph?

1 MR. MEADORS: These are car keys, Your Honor.

2 (State's Exhibit No. 3 was entered into the record
3 as evidence)

4 THE COURT: All right, go ahead.

5 BY MR. MEADORS:

6 Q. Dr. Funke, what did you do with the car keys?

7 A. I threw them in the woods to the east of my house
8 adjacent to the Idle Lake dam, between my property and
9 Victor Jones'.

10 Q. Victor Jones' property?

11 A. Yeah, he's my next door neighbor to the east.

12 I live on the end of a cul-de-sac.

13 Q. I'm going to show you a map in a minute.

14 You have thrown the keys, you have gone inside, you got
15 911 on the phone. What happens next?

16 A. I see that indeed my television is missing from its
17 usual location and my computer in the kitchen.

18 And I hear some commotion upstairs. My dogs. They
19 don't sound right. I don't know, but they are not greeting
20 me, so I assumed there are strangers, or something, and I
21 know that somebody is still in the house, so I become very
22 fearful at this point.

23 Q. You were scared at this point?

24 A. Yes, sir.

25 MR. SMALDONE: Objection, leading.

1 THE COURT: Overruled. Go ahead.

2 A. I was scared.

3 BY MR. MEADORS:

4 Q. What happens next?

5 A. I decided to leave the house because I was scared and
6 my best interests to leave and not confront a robber inside
7 my quarters.

8 Q. How far did you get inside your quarters or your house?

9 A. I went into the house through the garage door into my
10 kitchen. And next to the kitchen is the family room, and
11 then I made a right and out the front door.

12 Q. Where did you hear noise coming from?

13 A. The noise I heard was upstairs.

14 Q. All right. Now, had you given permission for anyone --
15 well, specifically, had you given permission to Reco Godbolt
16 to enter your house?

17 A. No, sir. And I may have actually -- when I left the
18 house, I believe I said "hey robbers, I have called the
19 police. Get out of my house."

20 Q. So you said "get out"?

21 A. Yes, sir.

22 Q. And what did you do --

23 And prior to this you didn't know Reco Godbolt or Jamal
24 Helton, did you?

25 A. No, sir, I had never heard of them.

1 Q. And after you yelled "get out", what did you do after
2 that?

3 A. At that point I went out my front door, I crossed the
4 yard and I started looking for neighbors that were home. I
5 figured since it was the middle of the day that some of my
6 neighbors should be home, but it didn't appear that anybody
7 was home, and I started running down the street looking for
8 a neighbor.

9 Q. Did you have any idea where you were going? I mean,
10 any neighbor --

11 A. Well, I just wanted to get away from my house to
12 safety, and at that point I heard -- I was in front of the
13 next house over and I heard a gunshot behind me, and I
14 looked back and there was two black males chasing me and one
15 of them yelled "we got a gun." The other one yelled "we are
16 going to kill you."

17 Q. You have been in combat situations before?

18 A. Yes, sir.

19 Q. As part of your training, you have to get certified in
20 weaponry, if you will.

21 You heard a gunshot?

22 A. Yes, sir.

23 Q. And did it appear or did you think it was coming in
24 your direction?

25 A. I had no way of knowing that but, that was my

1 assumption. At that point I was very scared and began --

2 Q. Were you running?

3 A. Yes, sir.

4 Q. Were these two individuals running?

5 A. They were chasing me and I was running in kind of a
6 zigzag pattern to avoid getting shot, because I
7 was extremely scared, and I took the phone out of my pocket
8 and I actually started pleading with the operator to get the
9 police over here in hurry because I was under attack.

10 Q. And you were?

11 A. Yes, sir.

12 Q. And you said these two individuals said what?

13 A. They said "we've got a gun and we are going to kill
14 you."

15 Q. Is there any way that you misunderstood those words?

16 A. No, sir.

17 Q. What happened next?

18 A. I continued to run. I briefly hesitated at the yard of
19 Maureen Cox, who lives a couple of doors down, and she's an
20 elderly woman. I figured she was home, but -- and I was
21 yelling as I was running up the street for neighbors to help
22 me, but nobody heard me.

23 And the next house down the road belonged to a retired
24 police -- or, I'm sorry, a Sumter County sheriff, and his
25 name is -- I'm sorry, I'm drawing a blank.

1 Q. That's okay.

2 A. But I was hoping he could help me. I figured he would
3 be home and he would be armed and could come to my
4 assistance, but I was very fearful at that point.

5 The -- Mr. Godbolt and Mr. Helton both caught up with
6 me in Maureen Cox's front yard and they were carrying a blue
7 pipe, a watering wand, that they had gotten from my
8 backyard.

9 Q. I'm going to show you what's marked State's Exhibit 6.
10 Is that the wand?

11 A. Yes, sir, it is. The --

12 Q. Hold on one second.

13 MR. MEADORS: Your Honor, State's 6 I believe
14 without objection.

15 THE COURT: Any objection?

16 MR. SMALDONE: No, sir.

17 THE COURT: That's in.

18 (State's Exhibit No. 6 was entered into the record
19 as evidence)

20 BY MR. MEADORS:

21 Q. Is this your watering wand?

22 A. Yes, sir.

23 Q. And where do you usually keep that?

24 A. I keep it in the backyard next to the water faucet. I
25 use it to water the shrubs and bushes in the yard.

1 Q. So as you were being chased, did one of the individuals
2 have this watering wand?

3 A. Yes, sir. Mr. Helton was holding this wand.

4 Q. And what, if anything, happened with that wand?

5 Did they finally catch up with you, doctor?

6 A. Yes, sir, they caught up with me and they tackled me to
7 the ground.

8 At this time I was partially disabled. I had torn my
9 bicep tendon on my left arm, which is my dominant arm, and I
10 was under the care of Dr. Joseph Jackson, an orthopedic
11 surgeon in Camden, and he had splinted my arm to prevent me
12 from putting any stress on the tendon and allow it to heal.
13 And Mr. Godbolt and Mr. Helton caught up to me and they
14 tackled me to the ground and they began beating me with the
15 wand, and then they ripped my splint off my arm, and it was
16 a fiberglass custom-formed splint that I gotten over at
17 Sumter Physical Therapy.

18 MR. MEADORS: Beg the court's indulgence.

19 (Photograph marked as State's Exhibit No. 8 for
20 identification)

21 BY MR. MEADORS:

22 Q. I show you State's 8. Is that you with the splint that
23 you were just describing?

24 A. Yes, sir.

25 MR. MEADORS: Your Honor, I believe without

1 objection.

2 THE COURT: 8?

3 MR. MEADORS: 8, yes, sir.

4 MR. SMALDONE: No objection.

5 THE COURT: All right.

6 (State's Exhibit No. 8 was entered into the record
7 as evidence)

8 BY MR. MEADORS:

9 Q. State's 8, that's you, Dr. Bryan Funke, with the --

10 A. Yes, sir.

11 Q. You had that on prior to this?

12 A. Yes, sir, I had it on for approximately a month.

13 Q. Okay. And where were you being hit on your body with
14 that blue watering wand?

15 A. On my injured arm, and they actually -- they hit me. I
16 was probably -- because it was fiberglass, I was using it to
17 defend myself from the blows of this metal pipe.

18 And then --

19 Q. And who was using that on you? Who was hitting you?

20 A. Defendant Helton was hitting me with that. He was
21 wearing a bluish -- a bright blue or blue red -- a bluish
22 reddish colored like athletic jacket, and Mr. Godbolt was
23 wearing a gray sweat suit with a hoodie jacket.

24 Q. Are you on the ground when you are being hit with this
25 blue stick?

1 A. They had knocked me to the ground and were hitting me
2 with it, and they demanded that I tell them where the keys
3 were, and I told them that I didn't know where the keys
4 were. And --

5 Q. Did they do it like that? How did they say it? What
6 was their tone and their volume when they said it?

7 A. They were yelling at me and they said "give me the keys
8 or I'll kill you."

9 And then Mr. Godbolt produced a weapon. He showed me a
10 gun in the -- may I demonstrate?

11 Q. With His Honor's permission, yes, sir.

12 THE COURT: Stand and step down, if you would
13 like.

14 THE WITNESS: I'd just like to stand.

15 THE COURT: Mr. Smaldone, you can get to where you
16 can see.

17 A. He had his hand in his pocket with his hoodie and he
18 produced a large -- it was a handgun and it was a
19 semiautomatic handgun with a large squared off slide. It
20 was inside the hoodie.

21 MR. SMALDONE: Objection to the speculation to the
22 object.

23 A. I could see the outline.

24 THE COURT: Overruled. Go ahead.

25 A. I could clearly see the outline of the gun. And he

1 told me it was a gun and he was going to kill me. He said
2 "you see this? I'm going to kill you."

3 And the other defendant, Mr. Helton, said, quote, "kill
4 that nigga."

5 BY MR. MEADORS:

6 Q. How far were you from who you said was Reco Godbolt
7 when he was flashing that --

8 MR. MEADORS: I mean, can he step down for a
9 second, judge?

10 THE COURT: Yes.

11 (Witness off the witness stand)

12 BY MR. MEADORS:

13 Q. Sir, let me be you, and where was Reco Godbolt when he
14 showed you --

15 A. When he first showed me, he was on this side.

16 Q. Speak up so the court reporter can hear you.

17 A. He was to my right side and he was about this close.
18 He was holding my arm and showed me this.

19 Q. Did he -- he is touching you?

20 A. They were physically -- quite physical with me, pushing
21 me and shoving me, yes.

22 He brandished a weapon and showed it to me at about
23 this range, two feet, maybe. He was right in my face.

24 Q. And what did he say?

25 A. He said "I'm going to kill you if you don't give me the

1 keys."

2 Q. And that -- he showed you that and that looked like
3 what to you?

4 A. It looked like a handgun.

5 Q. Did you see the outline of it?

6 A. Yes, sir, I saw the outline of what appeared to be a
7 semiautomatic handgun.

8 Q. And based on your experience and training, had you seen
9 a gun like that before?

10 A. Oh, yes.

11 Q. And he told you "I had a gun?"

12 A. So I was very scared.

13 And then he came and reached in my pockets and they
14 frisked me and they took my cell phone.

15 Q. Let's me -- who reached in your pockets?

16 A. It was Mr. Godbolt.

17 Q. Reach into my pocket like Reco Godbolt reached into
18 your pocket.

19 A. He reached in, into my pocket, and pulled my phone out
20 and then he stuck it -- I had left the phone on to transmit
21 and he pushed the buttons, I assume, to turn off the phone
22 and then he stuck it in his pocket.

23 Q. So he stuck it in his pocket?

24 A. Yes, sir.

25 Q. You saw him do this?

1 A. Yes, sir.

2 Q. And I won't keep you up here much longer, but where
3 were the keys?

4 A. The keys were back at the house, and I told them I
5 didn't know where they were, and they became very irritated,
6 so then they each grabbed me by the arm on each side and
7 they said they had a gun in my back and they said "march
8 with us or else we are going to kill you."

9 Q. Did you feel something in your back when they were
10 saying --

11 A. Yes, sir.

12 Q. -- "march with us or we are going to kill you?"

13 A. Yes, sir.

14 Q. And did they physically -- did they physically have
15 you, doctor?

16 A. Yes, sir.

17 Q. What did they do with your body?

18 A. They basically grabbed me by each arm and walked me
19 back about 150, 200 yards back to the wooded area next to my
20 house.

21 Q. Did you want to go with them?

22 A. No, sir, I resisted. I told them that I was -- that I
23 was injured and that I couldn't move real fast because I
24 knew that time was my friend now. If -- without the police
25 I felt I would probably not make it. I thought I was going

1 to get killed that day.

2 (Witness back on the witness stand)

3 A. So I was trying to stall for time. You know, I was
4 walking slow, resisting as much as I could. I told them I
5 was injured and I couldn't go real fast and they marched me
6 back to my driveway.

7 BY MR. MEADORS:

8 Q. They took you back to your driveway, basically?

9 A. Yes, under gunpoint and threat of killing me.

10 Q. What happened when you got back?

11 Did you know exactly where the keys were?

12 A. I knew where I had thrown them, but in order to stall I
13 told them that I couldn't remember where I had thrown them,
14 and I said "they are just kind of over there in the woods."

15 And they got very irritated and very angry and started
16 yelling and again threatening me and they said "show us or
17 else."

18 So at that point I pointed in the direction where I had
19 thrown them and they, you know, shoved me over that way and
20 then one of the defendants let go of my arm and began
21 searching.

22 Q. Say that again.

23 A. One of the defendants let go of my arm and began
24 searching the ground for the keys, and in a few minutes he
25 found the key ring and he yelled to his partner "let's get

1 out of here before the cops come."

2 At that point they got into the car and they put it in
3 reverse and started squealing tires down the driveway. And
4 my driveway has a little bit of a curve that they failed to
5 negotiate and the car backed up on top of the cable box and
6 the telephone box and the wheel was in the air and spinning
7 wildly. And at that point one of them got out of the car
8 and began rocking while the other one was trying to get the
9 wheels to grab traction and drive out, but the car was stuck
10 and it was just spinning furiously burning rubber on the
11 cable box.

12 Q. They were trying to get away?

13 A. They were trying to get away.

14 And when they got into the car, I started running
15 towards my neighbor Darrell Lowder who lives due north of my
16 house.

17 Q. What's the name again?

18 A. Alden Lowder or Darrell Lowder. He's an accountant in
19 town.

20 I didn't make it to very far. I got to the driveway of
21 Jones' house, which is right next to mine, when an unmarked
22 blue Sumter police cruiser with two officers arrived and the
23 officers immediately drew weapons and ordered Mr. Godbolt
24 and Mr. Helton to stop, and both of the defendants failed to
25 yield to the officers commands and ran.

1 Mr. Godbolt ran due north between Lowder's house and
2 the house to the right of theirs, and Mr. Helton ran due
3 east into the woods between Idle Lake dam and Jones' house.
4 There is a wooded area that's a little bit swampy that
5 connects from there to Second Mill Pond.

6 Q. With His Honor's permission, would you step down for
7 just a minute?

8 (Witness off the witness stand).

9 THE COURT: What's on there, has that been marked
10 for ID, at least?

11 MR. MEADORS: I'm going to put something on here,
12 Your Honor.

13 THE COURT: Okay.

14 (Aerial Map marked as State's Exhibit No. 9 for
15 identification)

16 BY MR. MEADORS:

17 Q. Doctor, do you recognize this aerial map, what's marked
18 9, and do you see your house down here?

19 A. Yes, sir. That's an aerial map of the Idlewild
20 Subdivision.

21 Q. And that's Idlewild?

22 A. Idlewild.

23 MR. MEADORS: Your Honor, State's 9 without
24 objection.

25 MR. SMALDONE: No objection.

1 THE COURT: No. 9 is in.

2 (State's Exhibit No. 9 was entered into the record
3 as evidence)

4 BY MR. MEADORS:

5 Q. I think your voice is strong enough, but if you would
6 stand over here and face Madam Court Reporter.

7 Now again referring to State's 9, can you show the
8 ladies and gentlemen of the jury where your house is,
9 doctor?

10 A. Yes, my house is -- my yard is outlined in the yellow
11 with the red outline, highlighted in yellow. It's --
12 Canvasback Cove is --

13 Q. Back up. Take a step back maybe so everybody can see
14 it.

15 A. So, you know, this is Musckovy and Mallard, and
16 Canvasback Cove comes off of Mallard Avenue and it's a
17 cul-de-sac. Some maps actually show it as continuing to
18 Deerfield, but this is actually a walking path between the
19 two neighborhoods.

20 This is my house.

21 This is the Cox house where they caught up with me. I
22 was trying to get to this house.

23 And this is where I ran off my front yard and down the
24 street and I was trying to get neighbors to help me, and I
25 ended up in Maureen Cox's house where the defendants, Mr.

1 Godbolt and Mr. Helton, caught up with me and beat me with
2 the pipe and threatened me with the gun.

3 And then they marched me down the street here back to
4 my house, and you can kind of see the outline of the house.
5 It's sort of a rectangular shape and the garage doors are to
6 the side.

7 This is the Idle Lake dam.

8 This is Victor Jones' house.

9 This is the wooded area where I threw the keys.

10 Mr. Helton -- when the police officers arrived and
11 parked right here, Mr. Helton got out of the vehicle -- the
12 vehicle ended up right there next to the mailboxes.

13 Q. Let me stop you now. You said you threw the keys.
14 Where on State's 9?

15 A. The keys were -- this is the dam, and this is -- there
16 is a brick wall that marks the end of my property, and then
17 Jones' property is here. And kind of at the end of the dam
18 right here there is a little wooded area with some trees and
19 some shrubs.

20 Q. So, doctor, they marched you from where to where to get
21 the keys?

22 A. From right here.

23 Q. Right -- and what's the address on that?

24 A. That is [REDACTED]

25 Q. Whose house is that?

1 A. That belongs to Maureen Cox.

2 Q. So they marched you from this house to where?

3 A. Down the street back to my driveway, and back to the
4 driveway, and then over to the area where the keys were.

5 Q. And were they -- did they have you that whole way?

6 A. Yes, sir. They had me by each arm and told me that
7 they had gun in my back and would kill me.

8 Q. Once --

9 A. Mr. Helton proceeded through the woods --

10 Q. Stop a minute.

11 Once they retrieved the keys, where was the car? Where
12 was the car on State's 9?

13 A. The car was initially parked up against the house and
14 they backed up and -- at the street --

15 It's not a simple cul-de-sac. It's actually an island
16 here and it goes off this way and then dead ends right here,
17 so there is this little island.

18 And the driveway makes a little bit of a curve and they
19 missed that curve and ended up on top of the cable box and
20 the telephone box.

21 MR. MEADORS: Beg the court's indulgence.

22 THE COURT: Yes, sir.

23 (Photograph marked as State's Exhibit No. 10 for
24 identification)

25 (Photograph marked as State's Exhibit No. 11 for

1 identification)

2 BY MR. MEADORS:

3 Q. I'm going to show you what's been marked State's 10 and
4 11. Do these relate to what you were just talking about?
5 You can just say yes or no.

6 A. Yes, sir.

7 MR. MEADORS: Your Honor, State's 10 and 11
8 without objection.

9 MR. SMALDONE: No objection.

10 THE COURT: Okay.

11 (State's Exhibit No. 10 was entered into the
12 record as evidence)

13 (State's Exhibit No. 11 was entered into the
14 record as evidence)

15 BY MR. MEADORS:

16 Q. State's 10, you described where -- this wasn't your
17 car, right?

18 A. No, sir, that's the defendants vehicle that they used.

19 Q. In State's 10, it appears to be -- it's wrecks on
20 something. Is that what you were describing when --

21 A. Yes, sir, the box on the left is the television, the
22 Farmer's -- I'm sorry, telephone -- Farmer's telephone box.

23 And then the box on the right is the Time Warner cable
24 box.

25 And then this is a pampas grass shrub that, you know,

1 obscures the vision of the boxes from the street just to
2 make it look a little nicer. And behind that is a mailbox.

3 Q. Okay.

4 A. Oh, there is the mailbox right there.

5 Q. And that's State's 11?

6 A. Yes, sir.

7 Q. I'm just telling you that's State's 11.

8 A. Yes, sir.

9 Q. So did you observe this -- they basically backed out
10 and got stuck trying to back out?

11 A. Yes, sir.

12 And then when the officers arrived they fled and --

13 Q. Do you know who was driving the vehicle?

14 A. (No response).

15 Q. If you don't, that's fine.

16 A. I can't say for sure.

17 Q. That's fine. I don't want you to say if you don't
18 know.

19 What happened?

20 A. When the officers arrived and drew weapons and ordered
21 them --

22 Q. What, if anything, did you tell the officers when they
23 got there?

24 A. When I got there, I told the officers "be careful, they
25 have a gun."

1 Q. You wanted them to know that?

2 A. Yes, sir.

3 Q. What did you observe next, using 9, State's 9?

4 A. State's 9?

5 Q. Excuse me, I apologize.

6 A. The -- Helton fled through the woods behind Jones'
7 house and the dam.

8 This Second Mill Pond is in this white area over here
9 on the other side of this house.

10 And then -- let's see, this -- this house belongs to
11 Mindy Lowman, who is terminally ill.

12 And then this house belongs to Lowders.

13 And defendant Godbolt, he ran between Lowman's and
14 Lowder's house and he couldn't get very far, because Second
15 Mill Pond, you can see it here, it kind of extends along
16 here. And these houses, their backyard is on Second Mill
17 Pond.

18 Q. And you saw law enforcement go after Mr. Godbolt and
19 one of them go after Mr. Helton?

20 A. One officer after each, yes, sir.

21 (Witness back on the witness stand)

22 THE COURT: Beg the court's indulgence.

23 (Off the record)

24 (Back on the record)

25 BY MR. MEADORS:

1 Q. State's -- I think you testified -- I think you
2 testified earlier about your phone, correct?

3 A. Yes, sir.

4 Q. It was in what pocket on you?

5 A. It was in my front pocket of my trousers.

6 Q. It was in your pants pocket?

7 A. Yes, sir.

8 Q. Look at State's 4 and see if you recognize that.

9 A. Yes, sir, this is my cell phone. It's an LG.

10 Q. Were you there when law enforcement recovered this?

11 A. Yes, sir.

12 Q. Did you see where they recovered it from?

13 A. Yes, sir.

14 Q. Where?

15 A. They found it on Mr. Godbolt.

16 Q. Had you given this to him?

17 A. I didn't.

18 Q. Did you want him to take your phone?

19 A. No, sir, he took it under force.

20 MR. MEADORS: Your Honor, State's 4 without
21 objection.

22 THE COURT: All right.

23 MR. SMALDONE: No objection.

24 THE COURT: It's in..

25 (State's Exhibit No. 4 was entered into the record

1 as evidence)

2 BY MR. MEADORS:

3 Q. I'm going to show you State's 5, Dr. Funke. Do you
4 recognize what's in State's 5?

5 A. Yes, sir.

6 Q. Does it relate to this?

7 A. It does, because --

8 MR. MEADORS: Your Honor, State's 5 without
9 objection, I believe.

10 MR. SMALDONE: Without objection.

11 THE COURT: 5 is in.

12 (State's Exhibit No. 5 was entered into the record
13 as evidence)

14 BY MR. MEADORS:

15 Q. Go ahead.

16 A. The camera is a little pocket camera that belongs to my
17 wife.

18 And the coins are some foreign money that we had
19 collected in our travels.

20 Q. Work and travel and --

21 A. Yeah, being in the military for twenty-eight years we
22 have traveled extensively around the world. We usually
23 brought a few coins home as souvenirs.

24 Q. And do you usually keep these inside your house?

25 A. Yes, sir.

1 Q. Okay. Were you there when these were recovered by law
2 enforcement?

3 A. I'm not sure.

4 MR. MEADORS: Beg the court's indulgence.

5 (Off the record)

6 (Back on the record)

7 (Cardboard Box Containing Clothing marked as
8 State's Exhibit No. 12 for identification)

9 MR. MEADORS: Thank you, Your Honor.

10 May I approach again, judge?

11 THE COURT: Yes, sir.

12 BY MR. MEADORS:

13 Q. I'm going to show you what's marked State's 12. I
14 believe you have described what Reco Godbolt was wearing
15 earlier?

16 A. Yes, sir.

17 Q. If you look at State's 12, tell me does this -- do you
18 recognize this?

19 A. Yes, sir.

20 Q. Tell the jury what this is.

21 A. That's the clothing that Mr. Godbolt was wearing when
22 he assaulted me.

23 MR. MEADORS: Your Honor, State's 12 without
24 objection.

25 THE COURT: Any objection?

1 MR. SMALDONE: No, sir.

2 (State's Exhibit No. 12 was entered into the
3 record as evidence)

4 MR. MEADORS: Your Honor, just one second.

5 (Photograph marked as State's Exhibit No. 13 for
6 identification)

7 (Photograph marked as State's Exhibit No. 14 for
8 identification)

9 (Photograph marked as State's Exhibit No. 15 for
10 identification)

11 MR. MEADORS: Your Honor, I just got a few more
12 and we will be through.

13 THE COURT: All right.

14 BY MR. MEADORS:

15 Q. I'm going to show you what's marked State's 13, 14 and
16 15.

17 MR. MEADORS: Without objection, Your Honor.

18 THE COURT: 13, 14, 15, is that correct?

19 MR. SMALDONE: Yes, sir, no objection.

20 THE COURT: Okay. They are in.

21 (State's Exhibit No. 13 was entered into the
22 record as evidence)

23 (State's Exhibit No. 14 was entered into the
24 record as evidence)

25 (State's Exhibit No. 15 was entered into the

1 record as evidence)

2 BY MR. MEADORS:

3 Q. 15 is what?

4 A. No. 15 is a picture of Maureen Cox's front yard and the
5 front of her house.

6 Q. And would 13 be another picture of that?

7 A. I believe that's another picture of Mrs. Cox's front
8 yard.

9 Q. And in that front yard, State's 14, is what?

10 A. It's a picture of that blue pipe, the watering wand,
11 that the defendants used to hit me.

12 Q. And whose wand was that?

13 A. It was my personal belonging.

14 Q. And you usually kept it where?

15 A. In my backyard behind the house. Next to my
16 screened-in porch there is a water spigot and a hose reel
17 box.

18 Q. Did you notice whether or not either one of these
19 individuals had gloves on?

20 A. I don't recall. However, I did find a glove in my
21 master bedroom.

22 Q. Where did you find the glove?

23 A. In the master bedroom.

24 When I went into the house after the detectives had
25 finished processing my home, I noticed that they had rifled

1 through our belongings in the master bedroom and the drawers
2 were pulled out.

3 And in my nightstand I keep -- I have some military
4 patches from when I was in the Air Force. I saved the
5 little patches and velcro. And one of the velcro patches,
6 they are very sticky, had stuck to one of -- to a glove that
7 the defendants had left behind that wasn't ours.

8 Q. Say that one more time. I apologize.

9 A. Well, I -- there was a glove left at the scene which
10 had apparently gotten stuck to one of my patches that I keep
11 in my nightstand top drawer.

12 Q. Doctor, I'm just going to show you just a couple of
13 pictures of your bedroom.

14 MR. MEADORS: And if the court will allow, I'm
15 about through.

16 I beg the court's indulgence.

17 (Photograph marked as State's Exhibit No. 16 for
18 identification)

19 (Photograph marked as State's Exhibit No. 17 for
20 identification)

21 (Photograph marked as State's Exhibit No. 18 for
22 identification)

23 (Photograph marked as State's Exhibit No. 19 for
24 identification)

25 (Photograph marked as State's Exhibit No. 20 for

1 identification)

2 MR. MEADORS: Your Honor, State's 16 through --
3 16, 17, 18, 19, 20 are without objection.

4 THE COURT: All right, those are in.

5 (State's Exhibit No. 16 was entered into the
6 record as evidence)

7 (State's Exhibit No. 17 was entered into the
8 record as evidence)

9 (State's Exhibit No. 18 was entered into the
10 record as evidence)

11 (State's Exhibit No. 19 was entered into the
12 record as evidence)

13 (State's Exhibit No. 20 was entered into the
14 record as evidence)

15 BY MR. MEADORS:

16 Q. 16 through 20, are -- let me just go --

17 Is it fair to say that you and your wife -- does your
18 wife keep a neat bedroom? Not to pry, but --

19 A. Yes, sir.

20 Q. Doors closed in your dresser?

21 A. Normally, yes, sir.

22 Q. All right. State's 16, when you went in your bedroom,
23 just -- you may have described it, but how did you find it?
24 Was it in like you usually leave it?

25 A. No, sir, the room was quite disheveled with the drawers

1 opened and things pulled out and thrown about.

2 Q. And State's 16 shows the drawer open?

3 A. Yes, sir.

4 Q. All right. State's 17?

5 A. State's 17 shows my tall dresser, as well as my wife's
6 dresser, again drawers open and items scattered on the
7 floor.

8 Q. State's 18?

9 A. State's 18 shows our long dresser in our master bedroom
10 with the drawers pulled open and items pulled out.

11 Q. And y'all hadn't left them like this?

12 A. No, sir.

13 Q. State's 19?

14 A. 19 shows -- could I see that again?

15 This is a picture on the left side, if you are looking
16 at the headboard of our master bed, with my nightstand,
17 telephone.

18 There are drawers opened and there is various items
19 from that top drawer, military scarf, and that, and I
20 believe that's the glove with the patch on it on the floor
21 at the front of the photo.

22 Q. And that's not your glove?

23 A. No, sir, I don't own such a glove.

24 MR. MEADORS: And that was State's 19 for the
25 record.

1 BY MR. MEADORS:

2 Q. And State's 20, what is that?

3 A. State's 20 is a picture in our kitchen showing the oven
4 and the little work desk that normally has a computer with a
5 computer missing, and the drawers pulled open on the work
6 desk.

7 Q. So that's where your computer was?

8 A. Yes, sir.

9 Q. And had you seen that computer prior to going into your
10 house that morning?

11 A. Yes, sir, that computer was in the back of the
12 defendants vehicle.

13 (Off the record)

14 (Back on the record)

15 BY MR. MEADORS:

16 Q. Just a couple more questions and we appreciate you
17 being here.

18 You got how close to Mr. Godbolt?

19 A. Face to face.

20 Q. Okay. This close?

21 A. Yes, sir.

22 Q. Now, what time of day was it?

23 A. It was approximately 12:15, so it was noon. It was the
24 middle of the day. It was a cold rainy day.

25 Q. Could you see?

1 A. I could see clearly.

2 Q. It sounds crazy, but could you see?

3 A. Yes, I could see the defendant clearly.

4 Q. Was there anything obstructing your view when you said
5 that you were face to face with Mr. Godbolt?

6 A. No, sir.

7 Q. Were you this close?

8 A. We were this close.

9 Q. Were you --

10 A. A foot from one another.

11 Q. Were you looking at each other?

12 A. Yes, sir.

13 Q. I mean, were you looking at him?

14 A. Yes, sir. In fact, I made a --

15 In front of Maureen Cox's house I was terrified. I
16 thought I wasn't going to survive, but I said, you know, I
17 want to remember this for just this day and I took a mental
18 note of both Mr. Godbolt and Mr. Helton so I could later
19 identify them.

20 Q. And how close were you to who you say it was Mr.
21 Godbolt when he showed you the weapon in his jacket?

22 A. Again, we were face to face right in front of one
23 another.

24 Q. How close were you to him when he said "we are going to
25 kill you? We are going to shoot you?"

1 A. Again, face to face right in front of one another. It
2 was terrifying.

3 Q. Based on that time, doctor, the time that -- the time
4 that he decided that you were going to be with him, and
5 based on the time that you were -- that confrontation, the
6 initial confrontation, and based on the time that you were
7 marched back down to look for the key, based on that time,
8 is the person in this courtroom who showed you the gun, said
9 "I'm going to kill you," who was one of the individuals
10 running behind you when you heard the gunshots fired?

11 A. Yes, sir.

12 Q. He tackled you?

13 A. Yes, sir.

14 Q. Is that person in the courtroom?

15 A. Yes, sir.

16 Q. Would you please tell the ladies and gentlemen of this
17 jury who that is?

18 A. Ladies and gentlemen, that person is the defendant, Mr.
19 Reco Godbolt.

20 Q. Sitting by Mr. Smaldone?

21 A. Yes, sir.

22 Q. You did not give him permission to go in your house?

23 A. I did not give him permission.

24 Q. Did you give him permission to take your stuff?

25 A. I did not give him permission to take my belongings.

1 Q. Did you tell him to shoot at you?

2 A. I did not tell him to shoot at me.

3 (Photograph marked as State's Exhibit No. 21 for
4 identification)

5 MR. MEADORS: Yes, sir, without objection, judge.

6 THE COURT: Is that right, Mr. Smaldone?

7 MR. SMALDONE: Yes, sir, no objection.

8 (State's Exhibit No. 21 was entered into the
9 record as evidence)

10 BY MR. MEADORS:

11 Q. Is that the same individual that you saw that day? Is
12 that Mr. Reco Godbolt?

13 A. Yes, that's Mr. Reco Godbolt.

14 Q. And is that the shirt jacket he was wearing?

15 A. That appears to be the gray sweatshirt that he was
16 wearing.

17 Q. That man right there?

18 A. Yes, sir.

19 (Off the record)

20 (Back on the record)

21 (CD of 911 Call marked as State's Exhibit No. 22
22 for identification)

23 THE COURT: Everybody on the jury okay? All
24 right.

25 MR. MEADORS: While we are waiting, the 911 phone

1 call I believe without objection.

2 THE COURT: No. 21?

3 MR. MEADORS: 22, Your Honor.

4 21 was the picture.

5 THE COURT: Any objection?

6 MR. SMALDONE: No, sir.

7 (State's Exhibit No. 22 was entered into the
8 record as evidence)

9 MR. MEADORS: Your Honor, now we are going to
10 present the 911 call, Dr. Funke's call to the 911 dispatch
11 operator.

12 (Whereupon, the 911 Call was played to the jury
13 panel)

14 BY MR. MEADORS:

15 Q. Was that you? Was that your voice?

16 A. That was my voice.

17 Q. And the "ch, ch, ch," I don't know how the court
18 reporter can take down, but that sound was what?

19 A. Well, when I first called 911, I wasn't sure if they
20 heard me because I couldn't understand the dispatcher, so I
21 kept the connection alive. And as the defendants were
22 chasing me, I hid the phone in my pocket and I pulled it out
23 of my pocket and I urgently pleaded with them to hurry up to
24 come save me. I was a terrified for my life.

25 Q. Were you running?

1 A. I was running.

2 Q. Okay. And at some point you said there was a gunshot,
3 correct?

4 A. Yes, sir.

5 Q. And when was that in the process of you running? Do
6 you hear it on there at the end?

7 A. I can't -- I can't tell from the audio recording in
8 here, but --

9 Q. When were you shot at -- or when did you hear the
10 gunshot?

11 A. That was when -- shortly after I left my residence and
12 began going down the street, I was at the next house over
13 and I heard that and I turned around and then I saw the
14 defendants chasing me.

15 I'm just thankful that the police came so quickly.

16 Q. Dr. Funke, thank you.

17 MR. MEADORS: Judge, that's all I have.

18 THE COURT: All right, ladies and gentlemen, what
19 we are going to do now is take a recess for lunch. We are
20 going to break now.

21 If you would please be back --

22 Stay right there, please.

23 If you would please be back in your jury room at
24 two o'clock. That's a little bit less than an hour and a
25 half from now. That will give you time to get lunch and get

1 back without rushing too much.

2 Obviously, in accordance with my earlier
3 instruction, you may not discuss this case at all amongst
4 yourselves or with anyone else.

5 Also do not read anything about it, listen to
6 anything about it, or obtain any information about it at
7 all. Should you be in a setting where that is a
8 possibility, just remove yourself from that that, and we
9 will see you back at two o'clock this afternoon.

10 Thank you very much for your patience.

11 (The following takes place outside the presence of
12 the jury panel)

13 THE COURT: All right, Dr. Funke, you may not know
14 this, but during the lunch recess you may not discuss your
15 testimony with anyone, and that includes Mr. Meadors. It
16 includes your wife. You can't talk to any officers about
17 it. In short, you can't discuss it with anyone at all. Do
18 you understand that?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: Okay. Thank you. You can step down.

21 Mr. Smaldone, you said there was something that
22 you wanted to put on the record, and you did this at a bench
23 conference before the jury was sworn. I would let you do
24 that now.

25 MR. SMALDONE: Thank you, Your Honor.

1 I wanted to move -- and I don't know if it's
2 technically a mistrial, because the trial hadn't started at
3 that point, but I guess for lack of a better term a
4 mistrial.

5 As the record may or may not reflect during the
6 qualification of the jury, when panel was in here, someone
7 stood up and you asked how long he had known the defendants
8 and instead of answering your question, he explained that he
9 was their bondsman, that he bonded them out some months ago.

10 THE COURT: That's fairly accurate.

11 Actually what I said is is there anyone who knows
12 any -- and I said either Mr. Godbolt, Mr. Helton, or Dr.
13 Funke, and a gentleman stood up and I said which one do you
14 know, and that's when he said well, I'm a bondsman. I know
15 both of the defendants.

16 MR. SMALDONE: Right.

17 THE COURT: And that's -- and obviously he was not
18 following my instructions, but you are asking for a
19 mistrial?

20 MR. SMALDONE: Yes, sir, I think the jury -- the
21 whole jury pool was tainted.

22 You know, obviously the defense lawyers, the
23 solicitors, and the judges, you know, in here as a bondsman
24 but, you know, I don't think that the jury pool can
25 understand the concept of that. I think that when they hear

1 they have got a bondsman, he's already guilty. He's already
2 in jail, because obviously he's got a bond and he's in jail,
3 so that's why I move for a mistrial.

4 THE COURT: Mr. Meadors?

5 MR. MEADORS: Judge, I don't think it's
6 prejudicial at all. Clearly he didn't respond to your
7 instructions, but I don't think it was intentional. Your
8 Honor, there is testimony that they had been arrested.
9 Bonding is part of the process, and I don't think he went
10 beyond that. I would respectfully ask you not to grant a
11 mistrial.

12 THE COURT: All right. Anything else, Mr.
13 Smaldone?

14 MR. SMALDONE: No, sir.

15 THE COURT: All right. First of all, whether or
16 not it was inadvertent or not, he did say it. I don't think
17 it unduly prejudices Mr. Godbolt.

18 In any event, I would certainly entertain a
19 request from you, if you want one, an instruction to the
20 jury that they not consider anything that's occurred outside
21 the immediate confines of the presentation of evidence; that
22 means beginning with Dr. Funke through the end.

23 If you want me to specifically mention that
24 exchange, I would, but if you want me to just -- as part of
25 my general charge I will tell the jury that nothing but the

1 evidence that has been presented in this trial is what they
2 should consider. And that may help here, but in any event,
3 I'm going to deny your motion for either a mistrial or
4 quashing the panel. And you turn that over and if you think
5 there is something you want me to present, either
6 specifically or generally, I'll certainly consider it.

7 MR. SMALDONE: I'll let you know, Your Honor.

8 THE COURT: Thank you.

9 If the lawyers could be back at ten minutes until
10 two. And all of the parties who are pertinent to the case
11 can be back at ten minutes until two, just in case there is
12 anything you need to put on the record beforehand.

13 Of course, have Mr. Godbolt out at about ten
14 minutes to two also.

15 All right, thank you.

16 MR. SMALDONE: Thank you, Your Honor.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 THE COURT: Are you ready for the jury.

20 (Whereupon, proceedings were recessed).

21 (Whereupon, proceedings were reconvened)

22 (Photograph marked as State's Exhibit No. 23 for
23 identification)

24 (Photograph marked as State's Exhibit No. 24 for
25 identification)

1 (Photograph marked as State's Exhibit No. 25 for
2 identification)

3 (Photograph marked as State's Exhibit No. 26 for
4 identification)

5 (Photograph marked as State's Exhibit No. 27 for
6 identification)

7 (Photograph marked as State's Exhibit No. 28 for
8 identification)

9 THE COURT: Are you ready for the jury?

10 MR. MEADORS: Just for the record, State's Exhibit
11 No. 23, 24, 25, 26, 27, and 28 are being offered and there
12 is no objection.

13 THE COURT: Is that right?

14 MR. SMALDONE: Yes, sir.

15 THE COURT: Number 25 through what?

16 MR. MEADORS: 23 through 28.

17 THE COURT: Okay.

18 (State's Exhibit No. 23 was entered into the
19 record as evidence)

20 (State's Exhibit No. 24 was entered into the
21 record as evidence)

22 (State's Exhibit No. 25 was entered into the
23 record as evidence)

24 (State's Exhibit No. 26 was entered into the
25 record as evidence)

1 (State's Exhibit No. 27 was entered into the
2 record as evidence)

3 (State's Exhibit No. 28 was entered into the
4 record as evidence)

5 MR. MEADORS: Pictures of the three -- just for
6 the record, 28 is where the car got stuck underneath and
7 they removed the car what it was stuck on.

8 THE COURT: All right.

9 MR. MEADORS: 27 is the inside of the car when
10 they were searching it. It shows the camera from the door's
11 bedroom.

12 26, 25 and 24 -- 24, 25 and 26 are of the do rag
13 which Johanna Aleck recovered.

14 And 23 is just another picture of where the car
15 got stuck.

16 THE COURT: All right.

17 MR. MEADORS: Thank you.

18 THE COURT: Okay, Mr. Smaldone, are you ready?

19 MR. SMALDONE: Yes, sir.

20 THE COURT: All right, you can bring in the jury.

21 THE CLERK: Your Honor, we have all the jurors
22 present in the courtroom)

23 (The following takes place in the presence of the
24 jury panel)

25 THE COURT: Thank you, sir.

1 All right, ladies and gentlemen, we are ready to
2 continue.

3 Mr. Smaldone, you can cross-examine the witness.

4 MR. SMALDONE: Thank you, judge.

5 CROSS EXAMINATION BY MR. SMALDONE:

6 Q. Good afternoon, doctor.

7 A. Good afternoon.

8 Q. It is afternoon, okay.

9 It was your testimony that you saw Mr. Godbolt and Mr.
10 Helton around your house, correct?

11 A. That's correct.

12 Q. Okay. And what was Mr. Godbolt wearing?

13 A. Mr. Godbolt was wearing a gray sweat suit.

14 Q. Okay. And was your testimony that you thought Mr.
15 Godbolt had a gun?

16 A. That's correct.

17 Q. What made you think that?

18 A. He showed me the gun in the pocket of the sweatshirt.
19 I could clearly see from the outline that it was a --

20 Q. Are you sure?

21 A. Yes.

22 Q. Are you sure it was a gun?

23 A. I believed it was a gun and I was fearful for my life.
24 I was scared to death.

25 Q. All right.

1 A. He told me he was going to kill me with it.

2 Q. All right. You described the gun as possibly a
3 semiautomatic, is that right?

4 A. It wasn't a revolver. It was a semiautomatic style of
5 handgun.

6 Q. Semiautomatic style of handgun.

7 Now, what is the difference between a semiautomatic
8 handgun and a revolver? How do you know that?

9 A. I served in the military.

10 A revolver is just that, it has a barrel with chambers
11 in it and it spins around, whereas a semiautomatic has a
12 magazine and a slide.

13 Q. So is it fair to say that the revolver is, for lack of
14 a better comparison, almost like an old west cowboy type
15 gun?

16 A. If you will, counselor.

17 Q. What -- with a semiautomatic handgun -- well, let me
18 back up.

19 Did you see any other guns?

20 A. That was the only gun that I saw.

21 Q. Okay. Now, this semiautomatic gun, I don't know a
22 whole lot about guns, is there -- there is not a lever or
23 anything? You just pull the trigger to fire it, right?

24 A. I think you should defer that to a weapons expert.

25 Q. Okay. I mean, you testified earlier you were in the

1 military and you are not a weapons expert?

2 A. I didn't say that. You did.

3 Q. So you don't know what kind of gun it was?

4 A. I told you what it looked like.

5 Q. Okay. Well, you explained it was a semiautomatic,
6 correct?

7 A. That's what it appeared to be.

8 Q. Okay. Did it have a lever?

9 A. What's a lever?

10 Q. A lever is on like -- let's say like a 30/30 rifle, you
11 pull it, pull the trigger, cock it back like the old BB
12 guns?

13 A. I did not see that.

14 Q. Okay. What happened with the semiautomatic gun when
15 it's shot? You pull the trigger and what happens?

16 A. It loads the next round.

17 Q. What happened to the old round?

18 A. It's ejected.

19 Q. Okay. Is there a --

20 It's true that you say that one of the main differences
21 between a revolver and semiautomatic is a revolver does not
22 eject a round, correct?

23 A. That's correct.

24 Q. All right.

25 MR. SMALDONE: Beg the court's indulgence for just

1 one minute.

2 THE COURT: All right.

3 (Off the record)

4 (Back on the record)

5 BY MR. SMALDONE:

6 Q. You testified that you heard a gunshot?

7 A. I did.

8 Q. How many gunshots did you hear?

9 A. I heard one.

10 Q. Where were you when you heard the gunshot?

11 A. Running away from my house.

12 Q. Were you running-- where were the -- where was Mr.
13 Godbolt and Mr. Helton?

14 A. They were coming around from the side of the house
15 where the garage is towards the front yard.

16 Q. Is it fair to say they were behind you?

17 A. That's correct.

18 Q. Did you see the gun either immediately before, during,
19 or immediately after it was fired?

20 A. I did not.

21 Q. Can you tell which direction they were firing?

22 A. I cannot tell you that.

23 Q. So you don't know if they were firing at you or the
24 air, right?

25 A. That's correct.

1 Q. Okay. And this -- what time of day was all this?

2 A. It was approximately 12:15 p.m..

3 Q. And now -- is it fair to say it was daylight?

4 A. It was an overcast rainy day.

5 Q. Was it nighttime?

6 A. It was daytime.

7 Q. Okay. How long did this whole -- I know -- I'll
8 forgive you if you don't remember, but kind of fuzzy, but
9 how long do you think this whole ordeal --

10 From the time that you first laid eyes on Jamal and
11 Reco until the end of the whole incident, how long do you
12 think that took?

13 A. It's hard to say because when you are terrified by
14 somebody and you are scared, things often seem temporarily
15 distorted, but my best guess is fifteen minutes.

16 Q. Okay. Fifteen minutes from --

17 Let's say the end -- if you have the same answer,
18 that's fine. Let's say the end is when the cops arrived.
19 Is that still fifteen minutes?

20 I just didn't give you a really good end point for what
21 I meant by the incident ending, and I apologize.

22 From the time that you laid eyes on Reco and Jamal
23 until the cops arrived, how long was that?

24 A. You could check the transcripts to be sure.

25 MR. SMALDONE: Read it back for me, please.

1 A. No, I'm talking about the police --

2 BY MR. SMALDONE:

3 Q. Oh, I'm sorry --

4 A. -- records.

5 Q. Okay. Now, when you said fifteen minutes, what did you
6 mean earlier? What did you think I meant by the end of the
7 incident?

8 A. I don't understand what are getting at, counselor.

9 Q. When you said fifteen minutes is how long the whole
10 ordeal lasted.

11 A. That's an approximation of the time involved from when
12 I first entered my house until the police arrived and
13 rescued me.

14 Q. Okay. Why didn't you answer that when I asked you the
15 second time?

16 A. You weren't clear about that, counselor.

17 Q. I apologize.

18 Let's see.

19 MR. SMALDONE: Beg the court's indulgence.

20 THE COURT: All right.

21 (Off the record)

22 (Back on the record)

23 BY MR. SMALDONE:

24 Q. So you know for a fact that it was the fellow in the
25 gray sweatshirt that had the gun, right?

1 A. That's correct.

2 Q. Did you ever see him give the gun to Jamal Helton?

3 A. No.

4 Q. So it's your belief that he had the gun the whole time?

5 A. I saw the outline of the weapon through the pocket of
6 the sweatshirt when they were attacking me.

7 Q. And you are pretty sure that it wasn't this number,
8 right? It wasn't the hand in a pocket?

9 A. No, he pointed it out and said "you see this? I'm
10 going to kill you."

11 And what the -- when the defendant fled from the police
12 and escaped behind Lowery's yard, he had plenty of
13 opportunity to dispose of any weapon that he may have been
14 carrying, because there is a lake there and there is bushes
15 there.

16 Q. All right, you said it had a square shaped handle?

17 A. That's what it appeared to be.

18 Q. How big do you think it was?

19 A. It was your average semiautomatic handgun.

20 Q. About the size of a -- I mean, there is -- what do you
21 find as an average a semiautomatic handgun?

22 A. Well, they're seven, eight inches long, usually along
23 the slide.

24 Q. Okay. All right.

25 MR. SMALDONE: I don't have any further questions.

1 THE COURT: All right.

2 Redirect?

3 MR. MEADORS: Very briefly.

4 REDIRECT EXAMINATION BY MR. MEADORS:

5 Q. Did you hear a gunshot?

6 A. Yes, sir.

7 Q. Did you tell the officers they had a gun?

8 A. Yes, sir.

9 Q. Did you tell your wife he had a gun and you were shot
10 at?

11 A. After the officers responded to the scene, a neighbor
12 came to help me out. I made a phone call to my wife and I
13 told her I had been shot at.

14 Q. Did you see an outline of the gun in Mr. Reco Godbolt's
15 jacket?

16 A. Yes, sir.

17 Q. Did he point it out to you?

18 A. Yes, sir.

19 Q. Did he represent to you that it was a firearm?

20 A. Yes, sir.

21 Q. Did he say "I have got a gun?"

22 A. I don't recall the exact words, but he pointed it out
23 and said "see this?"

24 Q. Did it look like a gun to you?

25 A. Yes, sir.

1 Q. Thank you.

2 THE COURT: All right. You can step down. Thank
3 you.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Next witness.

6 MR. MEADORS: Ricky Morse.

7 THE CLERK: Place your left hand on the Bible and
8 raise your right hand.

9 State your name, please.

10 THE WITNESS: Ricky Morse.

11 DETECTIVE RICKY MORSE, having been first duly
12 sworn, testified as follows:

13 THE CLERK: Have a seat up here, please. Watch
14 your step coming up.

15 Please state your full name and spell your first
16 and last name for the record.

17 THE WITNESS: Ricky Lee Morse.

18 First name is R-I-C-K-Y. Last name is M-O-R-S-E.

19 DIRECT EXAMINATION BY MR. MEADORS:

20 Q. Can you pronounce your last name?

21 A. Morse.

22 Q. Morse.

23 A. Yes, sir.

24 Q. Detective, will you please tell the ladies and
25 gentlemen of this jury a little bit about yourself,

1 specifically where you were born and raised, your education,
2 and in particular your education in law enforcement?

3 A. Yes, sir.

4 Originally from California, where I entered the Air
5 Force. I spent twenty years in the Air Force.

6 My wife and I came here in the nineties. We left and
7 actually came back here, retired here in 2007, and at that
8 point I obtained a job with the Sumter Police Department.

9 I went to the police academy.

10 After the police academy I was assigned to the patrol
11 division.

12 And then in 2010 I made detective and was assigned to
13 Investigative Services Division, and assigned to the
14 property crimes unit where I'm currently assigned.

15 Q. How long have you been in property crimes?

16 A. I have been there since October of 2010.

17 Q. And you are there today?

18 A. Yes, sir.

19 Q. What shift do y'all -- do y'all rotate shifts?

20 A. Well, we typically run a day shift with -- there is a
21 detective that works sort of a night shift, the two to ten
22 shift. We rotate that, and we rotate an on-call schedule
23 where you can be called out at night at any time.

24 Q. Let's go back to October of last year, specifically
25 Halloween of 2011. Where were you working?

1 A. We were actually on day shift. My partner Brian
2 Christmas and I, we had left the law enforcement center in
3 order to go out and canvass neighborhoods due to the fact
4 that we had had --

5 Q. You were patrolling neighborhoods?

6 A. Yes, sir.

7 Q. And were you actually near this incident location when
8 this happened?

9 A. Yes, sir, we were actually just turned into the
10 Timberline Meadows Subdivision, which is across the street
11 on Loring Mill and just down more towards Wise Drive area,
12 so we weren't too far away at all.

13 Q. And did you receive a call to respond to 555
14 Canvasback?

15 A. Yes, sir, dispatch had put out a basic call to all city
16 units stating that there was a burglary in progress on
17 Canvasback and we responded.

18 Q. And when you hear a burglary in progress, this is real
19 time? You might roll up on it --

20 A. Yes, sir.

21 Q. -- in progress --

22 A. Yes, sir.

23 Q. -- right?

24 A. Yes, sir.

25 Q. Who was driving your police unit?

1 A. Detective Christmas was driving.

2 Q. That's Detective Christmas right back here?

3 A. Yes, sir.

4 Q. And you were with him?

5 A. Yes, sir.

6 Q. And approximately what time was this, detective?

7 A. It was around noontime.

8 Q. Please tell the ladies and gentlemen of the jury as you
9 are heading to 555, what were observations as you are
10 rolling up on 555?

11 A. As we were rolling up the scene, we had come around
12 onto Canvasback. I observed a gold in color Altima. It
13 seemed to be high centered on either a bush or one of the
14 power boxes, whether it be a cable box or -- I'm not sure
15 which kind of box it was.

16 I observed two black males. They seemed to be
17 struggling to move the car. Kind of one of them -- the
18 passenger, I believe, he was kind of in and out of the
19 vehicle. The door was open, you know what I'm saying, and
20 he's kind of stepped out of it in a position -- it seemed
21 like they were kind of like rocking it on the passenger side
22 and that was actually our defendant here today, Mr. Godbolt.

23 Q. Okay. So it appeared to you they were rocking the
24 vehicle?

25 A. Yeah, they were definitely trying to flee the scene.

1 MR. MEADORS: Beg the court's indulgence.

2 (Off the record)

3 (Back on the record)

4 BY MR. MEADORS:

5 Q. I'll show you what's marked State's 10. Do you
6 recognize that, detective?

7 A. Yes, sir, I do. That would be the defendant's vehicle.

8 Q. It was in progress. You arrived at 555 Canvasback.
9 You see the vehicle was there, appeared to be rocking
10 the vehicle. What do you do next? What do you observe
11 next?

12 A. As we get closer, I exit the vehicle. As I exit the
13 vehicle, right there as I am exiting, or shortly there
14 within seconds after, we actually hear the victim states
15 that "he's got a gun." At the same time -- all this is
16 happening at the same time, the two defendants are running
17 away from the scene.

18 Mr. Godbolt runs -- it's a cove. He runs across the
19 pavement in between two other homes, and the other suspect
20 ran into the woods. I chased after -- yes, sir.

21 Q. You said a minute ago you heard the victim say -- is
22 this who you are talking about, Dr. Funke?

23 A. Yes, sir, he was standing more towards -- I guess
24 towards the front of the vehicle and I remember him
25 distinctly saying --

1 MR. SMALDONE: Objection?

2 A. -- "they have a gun."

3 THE COURT: Yes, sir?

4 MR. SMALDONE: Hearsay, Your Honor.

5 THE COURT: Mr. Meadors?

6 MR. MEADORS: Your Honor, it's a spontaneous
7 utterance when the police get there.

8 THE COURT: The objection is overruled.

9 BY MR. MEADORS:

10 Q. You hear him say "he's got a gun?"

11 A. Yes, I do.

12 Q. Now, is that information as a law enforcement when you
13 are responding to a burglary in progress, do you want to
14 know?

15 A. Oh, absolutely.

16 Q. And I interrupted you earlier. If you would go back to
17 that?

18 A. Yes, sir.

19 Q. Please proceed. What did these individuals do?

20 A. They run away from the scene.

21 Q. Okay. And what did you do?

22 A. I chased after Mr. Godbolt.

23 Q. And you say Mr. Godbolt got out of which side?

24 A. He was on the passenger's side of the vehicle.

25 Q. Tell the jury what happened after that.

1 A. We chased him -- or I should say I chased him across
2 the pavement and behind some houses. And then there is
3 water behind the house. And at one point there was just
4 nowhere else for him to go and he was apprehended.

5 Q. I'm going to ask you just to briefly step down, please.

6 A. Oh, yes, sir.

7 Q. With His Honor's permission, if you will just --

8 (Witness off the witness stand)

9 THE COURT: If you will just please keep your
10 voice up for our court reporter.

11 Stand off to the side, please.

12 Mr. Smaldone, you can get wherever you need to be.

13 BY MR. MEADORS:

14 Q. This is State's 9, detective?

15 A. Yes, sir.

16 Q. Again, if you will just speak up so the court reporter
17 and everybody can hear you.

18 Can you show the jury kind of where you and Detective
19 Christmas drove up?

20 A. Oh, absolutely. This is the house at 555 Canvasback.
21 We had actually come in -- we come in through here.

22 As we turn into Canvasback Cove, it's kind of hard to
23 see because of the trees and things here, and then the road
24 comes around just like that. This is a little cul-de-sac.

25 Mr. Godbolt exited -- you know, as he -- like I said,

1 he's kind inside and out of the vehicle. He leaves the
2 vehicle and runs across this pavement. And you will see
3 that there is bushes and things here. He runs in between
4 these bushes and this house. And as he runs this way
5 towards this water in this direction here, he runs -- there
6 is -- this is actually I guess you would call it a
7 landscaping island. You know, landscapers put, you know,
8 pine straw down and bushes and things like that. At that
9 point he runs past that and more down towards this water,
10 and that is the point where I believe he just realized he
11 had nowhere else to go and I ordered him to the ground.
12 Again, I had to order him to the ground. We had already
13 ordered him out when we exited our vehicles, and, of course,
14 they fled. I ordered him to the ground at that point and
15 then put handcuffs on him.

16 Q. So when you first ordered him to stop or get on the
17 ground, they fled?

18 A. Originally when we got out, I mean, we came out with
19 our weapons drawn and ordered them to the ground. They did
20 not go to the ground. They fled the scene.

21 Q. They ran?

22 A. Yes, sir.

23 Q. Okay. And then a short distance later is when you
24 caught him?

25 A. Yes, sir.

1 Q. Are there places out there, based on you being out
2 there yourself, where an object could be thrown?

3 A. Yes, sir, all these bushes that he ran by, this island
4 here, as well the water.

5 Q. How long -- well, you caught him?

6 A. Yes, sir.

7 Q. You tell him to stop?

8 A. Yes, sir.

9 Q. Go get on the ground?

10 A. Yes, sir.

11 Q. What did you do next?

12 A. I put handcuffs on him. I rolled him over to get him
13 back up, and we then walked back pretty much the same path
14 that he ran and we come back around.

15 By that time marked patrol units have arrived. I
16 walked him to one of the patrol units and at that point a
17 search was conducted on this person.

18 Q. I do not mean this bad.

19 A. No.

20 Q. Don't take bad what I'm fixing to ask you. He is a
21 little younger than you are?

22 A. Yes.

23 Q. Perhaps faster than you are?

24 A. Oh, absolutely.

25 Q. It took you a while -- I don't mean to --

1 A. No, no. I -- it took us -- of course, I'm more slower
2 and he is, and for other reasons I won't -- but, yeah, I
3 mean, he was ahead of me.

4 Q. Okay. That was my question. He was ahead of you and
5 you had to catch up to him?

6 A. That's correct.

7 Q. He had plenty of opportunity to pull himself away from
8 you?

9 A. Yes, sir.

10 Q. How far a distance is that when you --
11 Go back and I'll take care of it.

12 A. Okay.

13 (Witness back on the witness stand)

14 BY MR. MEADORS:

15 Q. Can you give us an approximate from how far Mr. Godbolt
16 exited the vehicle to where you finally apprehended him?

17 A. It was a few hundred yards.

18 Q. What did you do with him then? You got him handcuffed?

19 A. We walked -- I walked him back, back around the same
20 path that we had run back to the house. But, like I said,
21 by that time patrol units had arrived. I walked him over to
22 one of the patrol cars and at that point a search was
23 conducted.

24 Q. You have been around, and I don't mean that in a bad
25 way, but you have been in law enforcement, you are now a

1 detective, is that what you do when you arrest somebody, you
2 then search them?

3 A. Absolutely.

4 Q. Search incident to arrest?

5 A. Yes, sir.

6 Q. And what, if anything, did you find on the defendant
7 Reco Godbolt when you searched him?

8 A. I pulled out a cell phone, camera, and I believe some
9 coins.

10 Q. This has already been entered as State's 4. Do you
11 recognize that?

12 A. Yes, sir, absolutely. That was the cell phone that was
13 taken off of him.

14 Q. And do you remember where you took it off Mr. Godbolt?

15 A. It was in a pocket, but I do not remember which pocket
16 it was in.

17 Q. Okay. And State's 5, do you recognize these?

18 A. Yes, sir, they appear to be the same foreign coins that
19 were taken, and the camera -- I do recognize the camera as
20 well.

21 Q. And you got these from where?

22 A. From him.

23 Q. From his body?

24 A. Yes, sir.

25 Q. Person?

1 A. Yes, sir.

2 Q. After you had searched him, him being Reco Godbolt,
3 excuse me, what did you do next with him?

4 A. He was placed in a patrol car to be secured.

5 MR. MEADORS: Beg the court's indulgence.

6 (Off the record)

7 (Back on the record)

8 BY MR. MEADORS:

9 Q. Can you describe Dr. Funke's demeanor when you first
10 got there?

11 A. Very, for lack of a better term, excitable, scared.
12 Definitely -- you know, he was scared.

13 Q. And I will show you what's State's 21. Do you
14 recognize that?

15 A. Yes, sir, I do.

16 Q. And is that what Reco Godbolt was wearing the day that
17 you arrested him?

18 A. Yes, sir.

19 Q. And is the person that you chased, the person that you
20 ultimately caught, the person that you got the cell phone,
21 State's 4, and the coins and the digital camera, State's 5,
22 is that person in this courtroom?

23 A. Yes, sir.

24 Q. Would you please point him out for these ladies and
25 gentlemen?

1 A. Yes, sir. Mr. Godbolt, right there.

2 Q. With the red tie next to Mr. Smaldone?

3 A. Yes, sir.

4 MR. MEADORS: We would like the record to so
5 reflect.

6 BY MR. MEADORS:

7 Q. I do have a couple other things I forgot.

8 You had mentioned the car was -- they were kind of
9 rocking it?

10 A. Yes, sir.

11 Q. Do you recognize State's 23 and 28, which are already
12 in evidence?

13 A. Yes, sir, that appears to be the cable or electrical
14 boxes, as well as the bush or grass that the car was on.

15 Q. Is that what the car got stuck on?

16 A. Yes.

17 Q. You did not search the vehicle itself?

18 A. No, sir.

19 MR. MEADORS: Beg the court's indulgence.

20 (Off the record)

21 (Back on the record)

22 BY MR. MEADORS:

23 Q. Thank you, sir.

24 MR. MEADORS: Judge, that's all the questions.

25 THE COURT: Cross-examination.

1 CROSS EXAMINATION BY MR. SMALDONE:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. How far away were you from Mr. Godbolt when the
5 chase -- well, let's say when it started?

6 A. Maybe our car stopped probably from me to I guess where
7 the -- I guess to where the gate is right there, maybe that
8 far at the most.

9 Q. Okay. So about, I guess for the court reporter, maybe
10 thirty feet, or so?

11 A. Right, yeah.

12 Q. I don't know if she has right to write that down or not
13 but, I try to help.

14 How many times did you lose sight of him?

15 A. I didn't really -- he went around the house, maybe for
16 a split second. There was -- and at that point he had gone
17 around some bushes. I didn't lose complete sight of him,
18 meaning I could see part of his body through the bushes, but
19 not complete -- I did not lose complete sight.

20 Q. All right. And when you found him, you didn't find a
21 gun on him, did you?

22 A. No, sir, I didn't find a gun on him.

23 Q. Did you check the area for a gun?

24 A. The area was checked for a gun.

25 Q. Did you find one?

1 A. Not during my search I did not find one.

2 Q. Was the area checked for any spent shell casings?

3 A. I can't say that -- I didn't check for any spent
4 casings, so I'm not sure what the officers did back at the
5 house.

6 Q. Okay.

7 MR. SMALDONE: I don't think I have any further
8 questions for you. Thank you.

9 THE COURT: Redirect?

10 MR. MEADORS: No, sir, thank you.

11 THE COURT: Thank you, sir. You can step down.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Mr. Meadors?

14 MR. MEADORS: Detective Brian Christmas.

15 THE CLERK: Place your left hand on the Bible and
16 raise your right hand.

17 State your name, please?

18 THE WITNESS: Brian Christmas.

19 DETECTIVE BRIAN CHRISTMAS, having been first duly
20 sworn, testified as follows:

21 THE CLERK: Have a seat up here, please.

22 Please state your full name and spell your first
23 name and last name for the record.

24 THE WITNESS: Brian Christmas. B-R-I-A-N,
25 C-H-R-I-S-T-M-A-S.

1 THE COURT: Go ahead, Mr. Meadors.

2 MR. MEADORS: Thank you, sir.

3 DIRECT EXAMINATION BY MR. MEADORS:

4 Q. Detective, please tell these ladies and gentlemen of
5 this jury about you, Brian Christmas, where you are from,
6 your background, your education and your training,
7 particularly your training in law enforcement.

8 A. Yes, sir.

9 I was born and raised in Sumter, South Carolina, and in
10 1991 joined the U.S. Air Force. I moved to Florida for four
11 years in the Air Force as a firefighter.

12 Once I finished my four years I got out and came back
13 to Sumter and pursued the firefighter career.

14 Again, I was hired at the fire department in 1997, and
15 they offered a public safety training, which was through the
16 law enforcement in 2000.

17 So in 2000, I actually went through the police academy
18 and became a certified police officer and started working
19 for the Sumter Police Department.

20 2001, I was assigned to the detective division in the
21 property crimes division of investigative services division.

22 Since 2001, I have been a detective with the police
23 department and have worked in property crimes work and, you
24 know, car break-ins. Also do fire investigations and stuff
25 from the fire department side.

1 And, you know, other education, I have had a couple
2 years of college. I have been to Francis Marion for two
3 years, and also I went to Central Carolina for a year, and
4 graduated from Sumter High School, and I have been back here
5 since '97 -- '95 is actually when I moved back to Sumter.

6 Q. Thank you.

7 And in October the last year, 2011, your job was a
8 detective for the Sumter Police Department?

9 A. Yes, sir.

10 Q. Okay. And on October 31st, 2011, that afternoon were
11 you with Detective Morse on patrol, as you say?

12 A. Detective Morse and I were out patrolling.

13 Q. Did y'all receive a message from dispatch to respond to
14 555 Canvasback for a burglary in progress?

15 A. Yes, sir, we had a -- dispatch came over and said there
16 was an active burglary on -- at 555 Canvasback and we were
17 in that area.

18 Q. You were driving?

19 A. Yes, sir, I was driving.

20 Q. As you pull up to Canvasback, and y'all have seen a
21 picture of it now, what were your observations, either
22 heard, saw, as soon as you got there?

23 A. As we turned the corner, seen a gold Altima with two
24 black males near the car. One of them was on the driver's
25 side down like in the car. The other one was on the

1 passenger's side kind of in and out of the car.

2 It appeared that the car was stuck where it had
3 bottomed out and it was kind of rocking. It looked like
4 they were trying to get it unstuck. I know it was right
5 around a telephone box and some other -- and there was
6 bushes there. It seemed like it was close to the mailbox,
7 but they were trying to move it, you know, as we -- as we
8 pulled up, I see them and I see a white male standing, you
9 know, kind of off to the side in front of the car.

10 Q. Would that be Dr. Bryan Funke?

11 A. Yes, sir, that would have been Mr. Funke.

12 Q. Did you hear anything when you got there?

13 A. I heard Mr. Funke stated that they had -- "they have a
14 gun."

15 Q. He said that when he got out, "they got a gun?"

16 A. Yeah, he said "they have a gun," which immediately, you
17 know, puts us thinking, well, we got to watch out if we go
18 and if we chase after them, so we need to be careful. Not
19 that we wouldn't be careful anyway, because we don't -- you
20 know, most of the time we assume that they have one,
21 regardless if we know that, but when he said that, that kind
22 of raised our elevation to where we was being a little more
23 careful.

24 Q. So you arrive and you see two suspects at a car that
25 looks like it's stuck?

1 A. That's correct.

2 Q. Did you tell them to stop, or you are under arrest, or
3 do you --

4 A. Yeah, we tell them to stop, but they pretty much paid
5 no attention to us, you know, as we got out of the car and
6 told them to stop. Both of them fled the scene.

7 Mr. Godbolt is the one that was wearing the gray sweat
8 suit actually was on the passenger's side of the vehicle
9 when we pulled up. He immediately took off across the
10 cul-de-sac across the roadway and ran between two houses.
11 Of course, Detective Morse took off after him.

12 The other individual took off running away. He was on
13 the opposite side of the car from us. He took off running
14 straight behind that down into the right of another house,
15 and as he ran down, he kind of went down into a wooded area,
16 so I had to secure the car so I didn't want to leave it
17 open, so I got my keys, so it was a little bit of delay for
18 me to go behind him.

19 I chased behind him and I ran as far as the back of
20 that house, which was, you know, a pretty good run, but once
21 I got there, I noticed in the backyard that they had, you
22 know, a lot of trees and like stepping stones going back
23 through like a greenscape area. So when I seen that, there
24 was a lot of places he could have hid, you know, and Mr.
25 Funke had said he had a gun. So at that point I decided it

1 would have been safer for me to pull back, so I backed back
2 up and I went back towards the car and went to find
3 Detective Morse to see where he was at to make sure he was
4 okay.

5 Q. Could you show us on here where you ran on State's 9?

6 A. Yes, sir.

7 MR. MEADORS: With the court's permission?

8 THE COURT: All right.

9 (Witness off the witness stand)

10 BY MR. MEADORS:

11 Q. Detective, I know you will, but keep your voice up for
12 the court reporter and the ladies and gentlemen can hear
13 you.

14 MR. MEADORS: This is State's 9 for the record.

15 BY MR. MEADORS:

16 Q. Point to the ladies and gentlemen, first of all, where
17 you and Detective Morse arrived.

18 A. We pulled into here. This is the little cul-de-sac
19 here. We actually turned into here.

20 Their vehicle is right in this area.

21 Whenever they run, Mr. Godbolt, the one in the gray
22 sweat suit, actually runs across here. I watched him as I'm
23 securing the car. I see him running this way.

24 The other individual runs straight back through a house
25 here. Once he goes behind the property, I believe it's this

1 house here. He went to the right of this house. He goes
2 back into kind of it's like a little stream running back
3 there, but I didn't -- I only went as deep as here to the
4 back of the house just because of what Mr. Funke had said
5 that they had had a gun, and I didn't have a vest on at the
6 time, because we don't typically wear it, you know, when we
7 are riding around. So we kind of a, you know -- so I
8 decided it would be a better option for me to just go ahead
9 and wait and hang in there because of the canine.

10 Q. So when you got to this point, the second suspect, you
11 don't know where he went?

12 A. I don't know where he went from there.

13 Q. And describe this area up in here.

14 A. It's a -- there is a wooded area in here. You know,
15 when you get back in here there was like, I said, there was
16 stepping stones kind of came around through like a
17 greenscape area and there is water over this way.

18 Q. What type of water?

19 A. Actually the end of this pond comes down here. To the
20 left here there is a pond.

21 Q. Okay.

22 A. You know, later on as I went through the woods, when we
23 were going with the canine, we come back through here there
24 is a branch of woods through here maybe about sixty yards
25 from where we were at here. And then there is a house back

1 here with more wooded area. We come up to the back of that
2 house and the water kind of goes all the way back up to that
3 house.

4 Q. So at this point you didn't know where the other
5 suspect had gone?

6 A. No, I didn't know where he had gone.

7 Q. And if this other suspect had thrown a weapon around,
8 you wouldn't have known where it was at?

9 A. I would not.

10 Q. Either in the pond or in the woods?

11 A. No. No, sir.

12 Q. You mentioned about going back out there. Did you
13 subsequently go back out there?

14 A. Yeah, after -- after I came back and checked on
15 Detective Morse, we ended up getting a canine out there.
16 Once the canine got on the scene, I actually went myself and
17 Detective Melton and patrolman -- or Corporal Bonner. He's
18 the one that -- the canine handler. He actually came and we
19 actually tracked through the woods with the canine tracking.

20 Q. And how far did you track?

21 A. If I could have guessed, maybe two or three miles that
22 we tracked. It was a pretty good ways through the woods.

23 Q. And was this the same day?

24 A. That was the same day.

25 Q. Later on that day, obviously?

1 A. Yes, sir.

2 Q. And describe the conditions as you were tracking the
3 three of y'all, the dogs.

4 A. It was a lot of briers going through the woods. Pretty
5 much -- not shoes. Probably all the way up at least like
6 that tracking through the woods.

7 Q. And this pond, how far does this bond go around?

8 A. This pond actually comes on around and it kind of
9 branches back this way. I think it runs all the way back
10 out. If I'm not mistaken, it runs kind of parallel to
11 Loring Mills going back down.

12 Q. This young lady right here, Detective Aleck, did she
13 come back to there and help?

14 A. She did.

15 As we were going through here, we went behind this
16 house. Before we got there, there is another house about
17 right here which happened to be a guy that I know. We come
18 up just before we got to the back of his house in the woods,
19 which is probably about sixty or seventy yards from where we
20 started over here. We actually come across a blue bandana
21 in the wooded area kind of hanging up on a limb. And when
22 we come to that, we actually stopped and we called on the
23 radio and said that we needed a forensic person out here and
24 Detective Aleck actually responded and we stayed with it
25 until she arrived.

1 Q. So y'all stayed there until she arrived and does
2 whatever she does with it?

3 A. That's correct.

4 Q. Is that also known as a do rag?

5 A. Yes, sir, a do rag, yes, sir.

6 Q. Is that when the search ended?

7 A. No, sir, we continued on.

8 Q. And how much longer did y'all search?

9 A. We went on for a ways. We actually came all the way --
10 almost back out to Loring Mill, which would be -- I guess
11 this here is Loring Mill here.

12 Q. I apologize for the map.

13 A. Back here, but we actually come almost back out to
14 Loring Mill on --

15 I think this would be the driveway that goes to that
16 house. The house would be up here. This is the driveway,
17 so we come back up here and we actually cut all the way back
18 down through -- all the way to where it paves at. It
19 actually crosses over I think on the road there in the cove.

20 Q. You never found anybody that day as a result of your
21 search?

22 A. No, sir.

23 Q. Thank you.

24 (Witness back on the witness stand)

25 BY MR. MEADORS:

1 Q. When you came back to the -- after the first time you
2 went out after this second suspect, when you came back to
3 the car, this is when you stopped for the search for the
4 dog, did you come back and did you see Mr. Godbolt was back
5 at the police car?

6 A. Yes, sir, Detective Morse had detained Mr. Godbolt and
7 I did see him when I came back.

8 (Off the record)

9 (Back on the record)

10 BY MR. MEADORS:

11 Q. Detective Christmas, thank you.

12 MR. MEADORS: That's all I have.

13 A. Thank you.

14 THE COURT: Cross?

15 CROSS EXAMINATION BY MR. SMALDONE:

16 Q. So you said -- I'm going to keep it brief.

17 You said that you went for a few miles of woods and
18 whatnot, correct?

19 A. That's correct.

20 Q. And you never found a gun?

21 A. At the time when we were going through we were not
22 specifically looking for a gun. We were worried more about,
23 you know, coming up on him with a gun and shooting at us.

24 Q. You never found a gun?

25 A. No, we never found a gun.

1 Q. All right. Did you -- were you -- I'm trying to figure
2 out who was in charge of the canvassing of the area directly
3 around the house. Was that you?

4 A. No, sir.

5 Q. Okay.

6 MR. SMALDONE: That's all. Thank you.

7 THE COURT: Redirect?

8 MR. MEADORS: No, sir, thank you.

9 THE COURT: Thank you, sir.

10 THE WITNESS: Thank you.

11 MR. MEADORS: Detective Aleck.

12 THE CLERK: Put your left hand on the Bible and
13 raise your right hand.

14 State your name, please.

15 THE WITNESS: Detective Johanna Aleck.

16 DETECTIVE JOHANNA ALECK, having been first duly
17 sworn, testified as follows:

18 THE CLERK: Thank you. Have a seat, please.
19 Watch your step coming up.

20 Please state your full name and spell your first
21 and last name for the record.

22 THE WITNESS: Johanna, J-O-H-A-N-N-A, Aleck,
23 A-L-E-C-K.

24 (Do Rag marked as State's Exhibit No. 29 for
25 identification)

1 MR. MEADORS: May it please the court?

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION BY MR. MEADORS:

4 Q. Good afternoon, detective.

5 A. Good afternoon.

6 Q. You know what I'm going to ask you. Tell these folks
7 about yourself, where you are from -- where you were born,
8 where you are from, background, education, and in
9 particularly your education in law enforcement, please.

10 A. I'm from Kansas.

11 I joined the Air Force after graduating from high
12 school and a year of college.

13 I traveled the world for twenty-one years and I retired
14 from Shaw Air Force Base.

15 I liked the community, decided to stay here and decided
16 I wanted to be a police officer.

17 After retirement I went to the academy. After
18 graduation from the academy I worked the roads for awhile.
19 I worked mounted patrol for four years, and then I was
20 assigned to the detective division as a crime scene
21 detective and evidence technician, where I'm currently
22 assigned.

23 Q. How long have you been there?

24 A. About three and a half years.

25 Q. Now, did you respond to Canvasback, 555 Canvasback, on

1 October 31st of 2011?

2 A. I did. I was there for a short while when a call came
3 out for another burglary and then I went to that burglary.

4 Q. And did you later go back to Canvasback?

5 A. I did, after nearly -- at the end of the processing of
6 the scene.

7 Q. So that wasn't your seen initially?

8 A. Not initially.

9 Q. And you went back after the dogs had been out there, is
10 that fair to say?

11 A. Right. When I was coming up the burglary, the other
12 burglary that I went to, the dogs were on the track and they
13 found something on the track and they called me to that
14 area.

15 Q. Unrelated to this, obviously, you went somewhere else
16 in your job and then you came back to this particular
17 incident, correct?

18 A. Correct.

19 Q. Did you have an occasion to go out and were you shown
20 where a potential item of evidence might have been located
21 by the dog trackers?

22 A. Yes.

23 Q. And once you did that, did you take a picture of it?

24 A. Yes, I did.

25 Q. And I want to show you -- it's actually 24, 25, and 26.

1 Look at them and tell me do they -- do you recognize them
2 and does it relate to your testimony?

3 A. Yes, that's the item I photographed.

4 Q. 26, 25 and 24?

5 A. Yes.

6 Q. And before you had had -- before you pick something up,
7 what are you taught to do?

8 A. Photograph it. We also document its location.

9 Q. So you could show, like we are doing real time right
10 now, where you found it before you touched it, right?

11 A. Yes, sir.

12 Q. And is that what you did?

13 A. Yes, sir.

14 Q. After you did that, did you collect it?

15 A. Yes, sir.

16 Q. And I'm showing you what's marked State's 29.

17 MR. MEADORS: Without objection, Your Honor.

18 THE COURT: Any objection?

19 MR. SMALDONE: No, Your Honor.

20 THE COURT: 29 in is the next number, correct?

21 COURT REPORTER: Yes.

22 THE COURT: All right.

23 (State's Exhibit No. 29 was entered into the
24 record as evidence)

25 BY MR. MEADORS:

1 Q. Can you tell what this is?

2 A. That's my handwriting. It says a do rag. That's what
3 I collected.

4 Q. And I know you write it in your handwriting, but if you
5 look in here, is it, in fact, the do rag?

6 A. Okay. It's sealed, but that is my handwriting there.

7 Q. And does it actually say do, you can see through there
8 and the rag inside?

9 A. It says do rag, yes.

10 Q. After you collected this, what did you do with it?

11 A. I placed it in a clean bag for DNA purposes and then we
12 took it back to the lab where I packaged it to send to SLED.

13 Q. And you sent it to SLED for analysis, correct?

14 A. Yes, sir.

15 MR. MEADORS: And I believe without objection,
16 Your Honor, for saving a couple of witnesses.

17 BY MR. MEADORS:

18 Q. Was that actually sent to SLED and Mr. Jamal Helton's
19 DNA was discovered on that do rag?

20 A. Yes, sir.

21 MR. MEADORS: And, Your Honor, I discussed that
22 previously before I asked the question and there is no
23 objection to that.

24 THE COURT: All right.

25 MR. SMALDONE: No, sir.

1 THE COURT: Thank you.

2 MR. MEADORS: And, Your Honor, may we approach?

3 THE COURT: Yes, sir.

4 (Whereupon, the lawyers approached the bench for
5 an off-the-record discussion)

6 BY MR. MEADORS:

7 Q. Did you collect any of the items from the car at the
8 scene, the suspects car?

9 A. A TV from what I -- when I returned back to the scene,
10 there was a TV that had been pulled out of the car. It had
11 a tarp over it. I did process the TV.

12 Q. And were you able to discover prints or anything?

13 A. There -- I didn't have -- I had collected ridge detail
14 off of that, but that was turned over to our fingerprinting
15 expert and it was not useable.

16 Q. Not useable for identification?

17 A. That's correct.

18 Q. But you tried?

19 A. I tried.

20 I also DNA'd it, but that turned out that it was not
21 suitable.

22 Q. You also DNA'd it?

23 A. I swabbed it, yes.

24 Q. And that --

25 A. It's not suitable.

1 Q. That did not turn --

2 A. No human DNA.

3 MR. MEADORS: Beg the court's indulgence.

4 (Off the record)

5 (Back on the record)

6 BY MR. MEADORS:

7 Q. Detective, that's all I have. Thank you.

8 THE COURT: Mr. Smaldone?

9 CROSS EXAMINATION BY MR. SMALDONE:

10 Q. Can you describe what --

11 Basically, you know, there are some police at the
12 scene. What were you in charge of?

13 A. Like I said, I responded to the scene. And right after
14 I got to the scene I was called away to another burglary, so
15 I -- I worked very little of that scene.

16 Q. Okay. But did you search the car?

17 A. No, sir.

18 Q. Okay. So you didn't find a gun anywhere, correct?

19 A. No, sir.

20 Q. All right. Thank you.

21 MR. SMALDONE: That's all I have.

22 THE COURT: Redirect?

23 MR. MEADORS: No redirect.

24 THE COURT: Ma'am, you can step down. Thank you.

25 All right, ladies and gentlemen, we are going to

1 take a recess. We typically do at some point in the
2 afternoon.

3 If you would do a couple of things for me. The
4 only person that can't be the foreperson of this jury will
5 be Ms. McMillan, but what I would like for the other twelve
6 of you to do -- of course, you can join in that too, if you
7 would like, is discuss amongst who of you might be the
8 foreperson of this jury. I'm going to let you pick your own
9 foreperson.

10 To give you a little idea of what that is, it will
11 be someone who is basically in charge of conducting the
12 deliberations at the conclusion of the case; also is
13 responsible for relaying any messages to a bailiff or to the
14 court; and also would be responsible for completing the
15 verdict form after making sure that the verdict is
16 unanimous. So talk about that amongst yourselves.

17 And also if you would like some refreshments that
18 aren't in your jury room, tap on the door and let the
19 bailiff know what you might need. I think what they
20 basically have here is Coca Colas and Diet Cokes, right?

21 THE CLERK: Yes, sir.

22 THE COURT: And when you do come back out, you can
23 bring that with you, if you would like.

24 All right. You may not discuss the case during
25 this break in any manner whatsoever. And thank you for your

1 patience. We will take about a fifteen minute break.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: All right, we will take a recess.

5 And, Mr. Meadors, if you are ready to go in
6 fifteen minutes, let me know. Make sure Mr. Godbolt is back
7 out. Of course, Mr. Smaldone, if you need to speak with
8 him, you certainly will have access to him. Thank you.

9 MR. SMALDONE: Thank you.

10 (Photograph marked as State's Exhibit No. 30 for
11 identification)

12 (Photograph marked as State's Exhibit No. 31 for
13 identification)

14 (Photograph marked as State's Exhibit No. 32 for
15 identification)

16 (Photograph marked as State's Exhibit No. 33 for
17 identification)

18 (Photograph marked as State's Exhibit No. 34 for
19 identification)

20 (Photograph marked as State's Exhibit No. 35 for
21 identification)

22 (Photograph marked as State's Exhibit No. 36 for
23 identification)

24 (Photograph marked as State's Exhibit No. 37 for
25 identification)

1 (Screwdriver marked as State's Exhibit No. 38 for
2 identification)

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion)

7 THE COURT: Is the State ready for the jury?

8 MR. MEADORS: Yes, sir.

9 THE COURT: Is the defendant?

10 MR. SMALDONE: Yes, sir.

11 THE COURT: Your Honor, while we are -- during the
12 break Mr. Smaldone reviewed State's 30, 31, 32, 33, 34, 35,
13 36, and 37 without objection.

14 THE COURT: 30 through 37?

15 MR. MEADORS: Yes, sir.

16 THE COURT: Is that right, Mr. Smaldone?

17 MR. SMALDONE: Yes, sir.

18 MR. MEADORS: And 38 without objection, the
19 screwdriver.

20 THE COURT: Is that right, Mr. Smaldone?

21 MR. SMALDONE: Yes, sir.

22 THE COURT: Okay.

23 (State's Exhibit No. 30 was entered into the
24 record as evidence)

25 (State's Exhibit No. 31 was entered into the

1 record as evidence)

2 (State's Exhibit No. 32 was entered into the
3 record as evidence)

4 (State's Exhibit No. 33 was entered into the
5 record as evidence).

6 (State's Exhibit No. 34 was entered into the
7 record as evidence)

8 (State's Exhibit No. 35 was entered into the
9 record as evidence)

10 (State's Exhibit No. 36 was entered into the
11 record as evidence)

12 (State's Exhibit No. 37 was entered into the
13 record as evidence)

14 (State's Exhibit No. 38 was entered into the
15 record as evidence)

16 (The following takes place in the presence of the
17 jury panel)

18 THE CLERK: Your Honor, we have all the jurors
19 present in the courtroom.

20 THE COURT: Mr. Hatfield, I understand that you
21 have been selected to be the foreperson of the jury. I will
22 talk with you later, of course, along with the rest of the
23 jury about your responsibilities.

24 In many other counties -- most other counties, the
25 foreman just sits anywhere, but in Sumter and a good many

1 other counties the bailiffs like to have you in that chair
2 so they will know which one you are. And the alternate, of
3 course, you have an assigned seat too.

4 We are ready to continue.

5 Mr. Meadors, you can call your next witness.

6 MR. MEADORS: May it please the court, the State
7 calls James Trey Tallon.

8 THE CLERK: Place your left hand on the Bible and
9 raise your right hand.

10 State your name, please.

11 THE WITNESS: James Tallon.

12 JAMES TALLON, III, having been first duly sworn,
13 testified as follows:

14 THE CLERK: Have a seat up here, please. Watch
15 your step.

16 Please state your full name and spell your first
17 and last name for the record.

18 THE WITNESS: James Bradley Tallon, III. James,
19 J-A-M-E-S. Tallon, T-A-L-L-O-N.

20 DIRECT EXAMINATION BY MR. MEADORS:

21 Q. You go by Trey?

22 A. Yes, sir.

23 Q. And you are a detective?

24 A. Yes, sir.

25 Q. Would you please tell the ladies and gentlemen of this

1 jury about James Trey Tallon, III, where you were born,
2 where you were raised, your background, your education, your
3 training, and in particular your training in the field of
4 law enforcement, please?

5 A. Yes, sir.

6 I was born and raised in Lee County, and graduated from
7 high school.

8 I went to the Savannah College of Art and Design,
9 obtained a Bachelors of Fine Arts Degree in Visual Effects.
10 I left there, worked for myself for a few years. Then I
11 began to get into law enforcement. My whole family is law
12 enforcement, so it was inevitable.

13 I got into law enforcement in 2009. I have been with
14 the City of Sumter ever since. Was originally assigned to
15 patrol. Made forensic technician in March of 2011, and made
16 detective just a few days prior to this incident in October
17 2011.

18 Q. And currently your job at the Sumter Police Department
19 is what?

20 A. Crime scene detective.

21 Q. Let's go back to Halloween of last year, 2011,
22 detective. Did you have an occasion to respond to this
23 scene, 555 Canvasback?

24 A. Yes, sir, I did.

25 Q. And when you arrived there what was your observations?

1 A. Once I arrived on the scene, patrol had already had
2 control of the scene, keep it secure, had already wrapped it
3 off with crime scene tape, at which time I became the lead
4 detective on the scene. I was the first one there out of
5 our forensic unit.

6 When I got there, I talked with Mr. Funke and got a
7 quick overview of what had happened and made sure that the
8 other officers that were there, made sure that they had --
9 two officers had cleared the house. And that other than
10 that, no one else had been in the residence, except for me,
11 when I go in to process the scene.

12 The car was still outside teetering on that phone box,
13 electrical box area, and no one had been in it. We did take
14 a tarp and put over the television, because as Mr. Funke
15 stated, it was raining and overcast that day.

16 Q. Do you like to find out a little bit or general
17 background? You said you talked to Dr. Funke about what
18 happened, generally, so you can -- it might help you with
19 what you are particularly looking for?

20 A. Very much so.

21 Q. And is a part of that preserving or investigating the
22 crime scene taking pictures?

23 A. Yes, sir.

24 Q. And who took the pictures at 555 Canvasback?

25 A. I took some and Lieutenant Duggin also took some.

1 Q. That's Trooper Duggin?

2 A. Correct.

3 Q. And y'all work together?

4 A. Yes, sir.

5 Q. Now, specifically tell the ladies and gentlemen of the
6 jury did you have an occasion to look at the car that was in
7 the driveway, State's 11?

8 A. Yes, sir.

9 Q. And that's what you said was teetering?

10 A. Correct.

11 Q. Did you have an occasion to take some pictures inside
12 the car?

13 A. Yes, sir.

14 Q. And State's 30, do you recognize that?

15 A. Yes, sir.

16 Q. What's that?

17 A. That is the Nikon D-3000 camera that was in the back
18 seat.

19 Q. And through the course of your investigation was it
20 discovered that was the Funkes?

21 A. Yes, sir, it was.

22 Q. State's 31?

23 A. That is the keyboard that was also in the back seat of
24 the vehicle and was also identified as the Funkes.

25 Q. Funke stuff in this vehicle?

1 A. Correct.

2 Q. State's 32?

3 A. Sir, that is some twist ties and a mouse that matched
4 the keyboard that was also identified as the Funkes.

5 Q. Now, so you can eventually return some of this property
6 to the victims, is that another reason that you take
7 pictures, so that we can do like we are doing right now, be
8 showing these folks what was taken?

9 A. Yes, sir, it is.

10 Q. After you took the pictures of the car and the -- I
11 guess did you inventory or take pictures of these other
12 items that were actually in evidence here, the gun -- excuse
13 me, the phone in State's 4 that was taken off Mr. Godbolt?

14 A. Yes, sir, after the scene was already secured and we
15 returned back to our lab.

16 Q. State's 5, the camera which has CF, which has been
17 identified as Carolyn Funke?

18 A. Correct, yes, sir.

19 Q. And these coins?

20 A. Yes, sir.

21 Q. Do you actually take these back to your department?

22 A. I did not turn those into the department. Detective
23 Morse turned those in after he collected them from Mr.
24 Godbolt.

25 Q. What else did you do with the car?

1 A. The car was towed to our secure impound area, at which
2 time we obtained a search warrant for the vehicle and I
3 executed the search warrant on the vehicle to get all the
4 items out of the vehicle.

5 Q. And you did that before you take them out, right?

6 A. Correct.

7 Q. Took a picture of them and then you executed a search
8 warrant so you could go in and retrieve them?

9 A. Correct.

10 Q. And you knew at this point, or did you, that the
11 suspects were at the scene and one of them was actually
12 caught at the scene, correct?

13 A. I did know that one of them had been caught at the
14 scene.

15 Q. And, in fact, from their investigation, this vehicle
16 come back to Mr. Godbolt's girlfriend?

17 A. I believe it did, yes, sir.

18 Q. What processing did you do to the car once you had it,
19 wherever you had it?

20 A. We it at our secure impound. And once we executed the
21 search warrant on it, we fingerprinted the vehicle and also
22 collected all the items inside, but the fingerprinting
23 showed no results.

24 Q. Okay. So you tried, but you didn't get any results?

25 A. Correct.

1 Q. Even though you found the person who was in the car at
2 the scene?

3 A. Yes, sir. That is standard practice.

4 Q. But negative results on the fingerprints?

5 A. Correct.

6 Q. And was that unusual?

7 A. No, sir, it's not.

8 Q. Why? Tell the ladies and gentlemen.

9 A. Well, there is several different reasons. One, we --
10 by Mr. Funke's statement, he said that there was gloves at
11 the scene. They could have been wearing the gloves at the
12 time. If you are wearing those type of gloves, especially
13 the type of gloves that he mentioned, you are not going to
14 leave fingerprints with those.

15 Also it had been raining. If your hand is really wet
16 and you slide across it, instead of actually placing your
17 fingers down, you are not going to leave a fingerprint.

18 Q. So you processed the car, took pictures of it.

19 Let's go back to 555 Canvasback, okay?

20 What did you do there in your job as a detective and
21 the scene?

22 A. I secured the area, made sure that no one, other than
23 the previous officers who secured, and cleared the
24 residence. Had gone in and that I was the only one allowed
25 into the residence.

1 I went in myself, collected DNA swabs from several
2 different items.

3 Also I fingerprinted areas in which could have been
4 touched by the suspects, like drawers when they pull out the
5 drawers, things like that.

6 I did collect one of the gloves, the actual glove that
7 Mr. Funke was talking about, I did collect that.

8 And I took overall photos at the scene, tried to
9 determine a point of entry, and also used what we commonly
10 use as a magnetic fingerprint powder. It uses a very strong
11 magnet to pick the dust up and go around the floor looking
12 for shoe impressions and things of that sort.

13 Q. Where did you do that?

14 A. The shoe impressions? That was at the back door where
15 I tried to do that.

16 The garage door --

17 There is two possible points of entry on the residence.
18 One was the back door, which Ms. Funke says it very well
19 could have been unlocked, because she may not have locked
20 it.

21 The other would have been through that garage area; or,
22 it could have been the exact opposite, where the suspects
23 could have come in through the back and exited the garage
24 door while they were toting stuff to the car, because it
25 would have been easier to just go straight to the car that

1 way.

2 Q. I'll show you what is State's 37. Do you recognize
3 that?

4 A. Yes, sir, that is a door at the garage.

5 Q. Anything, based on your training and expertise and just
6 your good old eyes looking at it, that made you notice it?

7 A. Yes, sir, the reason why I took the picture of this is
8 because there are pry marks on this top part here that are
9 consistent with someone trying to pry open a door.

10 Q. Would that be consistent with an unauthorized entry?

11 A. Very much so.

12 Q. And you saw it and took a picture of it?

13 A. Yes, sir.

14 Q. Let me show you this. State's 33, 34, 35 and 36, and
15 if you will read out before you say which one it is, the
16 number is, but what is that? What are those a picture of?

17 A. A screwdriver.

18 Q. Okay. And where was that screwdriver in relationship
19 to 37?

20 A. That was at the -- the screwdriver was located at the
21 front of the residence in the direction that Mr. Funke
22 stated that he was being chased.

23 Q. This screwdriver could have made those marks?

24 A. Yes, sir.

25 Q. Is that why you took a picture of it?

1 A. Yes, sir.

2 Q. Did you photograph the inside of the house?

3 A. Yes, sir.

4 Q. And we have got pictures over here about drawers taken
5 out and things in disarray. You took all those pictures?

6 A. Yes, sir.

7 Q. I think you mentioned the glove earlier. Were there
8 two gloves that were found?

9 A. There were two gloves that were found. One of the
10 gloves was found where Mr. Funke stated.

11 The other one was found I believe it was in the
12 driver's side floorboard of the vehicle.

13 (Glove marked as State's Exhibit No. 39 for
14 identification)

15 (Glove marked as State's Exhibit No. 40 for
16 identification)

17 BY MR. MEADORS:

18 Q. Are these those gloves what's marked State's 39 and 40?

19 A. Yes, sir, those are the boxes that I placed them in and
20 sent them to SLED and they are sealed by SLED's tape.

21 MR. MEADORS: Without objection, Your Honor, 39
22 and 40.

23 MR. SMALDONE: No objection, sir.

24 THE COURT: Okay, 39 and 40.

25 (State's Exhibit No. 39 was entered into the

1 record as evidence)

2 (State's Exhibit No. 40 was entered into the
3 record as evidence)

4 BY MR. MEADORS:

5 Q. What, if anything, or information did you learn about
6 whether or not the suspects had a weapon?

7 A. I was told at the scene that a shot was fired and that
8 Mr. Funke had stated that one of the subjects had a weapon.

9 Q. And what did you do as an investigator to attempt to
10 either locate that or any potential evidence? What did you
11 do. Tell us that.

12 A. Well, first we did a visual examination of the yard,
13 tried to determine the possible path in which the suspects
14 would have run to chase after Mr. Funke.

15 Q. Did you know where they would have fired that shot?

16 A. I would not have, no, sir.

17 Q. Could Mr. Funke tell you exactly where they fired it?

18 A. No, sir, he could not.

19 Q. What did you do after you learned that there was a gun
20 involved?

21 A. We started with a visual examination of the yard
22 looking for any type of signs, shell casings, or even a
23 possible gun, if they would have maybe tossed it in the
24 front yard.

25 Like I said, the yard and the residence was my scene,

1 so I visually examined the front yard looking for shell
2 casings. And also we then went and got a metal detector and
3 came back and tried to go across the yard looking for shell
4 casings, or even a firearm.

5 Q. And how far did you go back? Did you -- as the agent
6 who investigated this case, the documents, you did you learn
7 where either one of the subjects, the directions they may
8 have run?

9 A. Yes, sir.

10 Q. Did you do anything to follow up on that to help you
11 with your part of this investigation?

12 A. Yes, sir, I then walked those paths. I did not go as
13 far as Detective Christmas went with the canine unit, but we
14 went down a little piece of that path.

15 And we also followed Mr. Godbolt's path through --
16 between the woods and the pond.

17 Q. And you say a pond. How large is the pond?

18 A. It was pretty good size.

19 Q. And at this point did you know if there was one gun or
20 two guns?

21 A. No, sir.

22 Q. Did you know who had the gun?

23 A. No, sir.

24 Q. But did you check both paths that both suspects had
25 left in attempt to try to find a gun?

1 A. Yes, sir.

2 Q. And was the pond close enough to the path where
3 something could have than thrown in it?

4 A. Yes, sir. As a matter of fact, I almost slipped in it
5 and fell in it myself.

6 Q. You did not go where the do rag was?

7 A. No, sir, I did not follow that far.

8 MR. MEADORS: Beg court's indulgence.

9 (Off the record)

10 (Back on the record)

11 BY MR. MEADORS:

12 Q. I don't think I have asked you this. If I have, I
13 apologize to everybody, but did you process the inside of
14 the house?

15 A. Yes, sir.

16 Q. Okay. And how did you do that?

17 A. We fingerprinted certain areas, took DNA swabs from
18 where they tried to take the TV, and they took the cable
19 connectors loose from the back of the television.

20 Also fingerprinted all the areas in which the suspects
21 may have touched while they were trying to pull the drawers
22 out.

23 Q. And did you find any identifiable prints or any --

24 A. No, sir.

25 Q. Any other forensic evidence there?

1 A. No, sir.

2 I did lift a fingerprint off of a laptop that was
3 located in the front bedroom, but the fingerprint came back
4 not AFIS quality, which means that it did not have enough
5 detail in it to be able to submit to the FBI.

6 Q. So nothing identifiable?

7 A. No, sir.

8 Q. But you tried?

9 A. Yes, sir.

10 (Photograph marked as State's Exhibit No. 41 for
11 identification)

12 MR. MEADORS: State's 41 without objection, Your
13 Honor.

14 MR. SMALDONE: No objection.

15 (State's Exhibit No. 41 was entered into the
16 record as evidence)

17 BY MR. MEADORS:

18 Q. Do you recognize that?

19 A. Yes, sir, that's where the television would have been.

20 Q. So it's just gone, right?

21 A. Yes, sir.

22 Q. Thank you, detective.

23 MR. MEADORS: That's all I have.

24 THE COURT: Mr. Smaldone?

25

1 CROSS EXAMINATION BY MR. SMALDONE:

2 Q. Good afternoon, sir.

3 A. Good afternoon.

4 Q. As I have asked before, what were you -- when you are
5 at the -- when you were at the scene, what were you in
6 charge of? What was your mission at the house, at 555
7 Canvasback?

8 A. Collect and preserve evidence.

9 Q. Okay. Was part of that evidence possibly a firearm?

10 A. Yes, sir.

11 Q. Did you find a firearm?

12 A. No, sir.

13 Q. Did you find any shell casing?

14 A. No, sir.

15 Q. And could you explain to the jury what a shell casing
16 is? I don't know if they know anything about guns or not.

17 A. Sure. When you fire a weapon, especially if it's a
18 semiautomatic weapon, when you fire the weapon, the slide
19 comes back and will eject the spent cartridge, which means
20 it's just a cartridge. Obviously the bullet has traveled
21 its path, and the cartridge will either fall to the ground
22 or possibly even get stove piped into the weapon and not
23 fall out at all.

24 Q. How often in your experience do they get stove piped?

25 A. Around Sumter, pretty good.

1 Q. All right. You did not find a gun at the scene?

2 A. No, sir.

3 Q. Did you look for one?

4 A. Yes, sir.

5 Q. And you didn't find it?

6 A. No, sir.

7 Q. Or shell casing.

8 MR. SMALDONE: That's all I have.

9 THE COURT: Redirect?

10 MR. MEADORS: Nothing.

11 THE COURT: Thank you, sir. You may step down.

12 Next witness.

13 MR. MEADORS: Judge, I need to mark these, please?

14 THE COURT: Yes, sir.

15 (Miranda Waiver Form marked as State's Exhibit No.

16 42 for identification)

17 (Written Statement of Reco Godbolt marked as

18 State's Exhibit No. 43 for identification)

19 MR. MEADORS: Your Honor, at this time the State
20 would call Natalie Kelly.

21 THE COURT: All right, Ms. Kelly.

22 THE CLERK: Put your left hand on the Bible and
23 raise your right hand.

24 State your name, please.

25 THE WITNESS: Detective Natalie Kelly.

1 DETECTIVE NATALIE KELLY, having been first duly
2 sworn, testified as follows:

3 THE CLERK: Watch your step.

4 State your full name and spell your first and last
5 name for the record, please.

6 THE WITNESS: Natalie Kelly. N-A-T-A-L-I-E.
7 K-E-L-L-Y.

8 DIRECT EXAMINATION BY MR. MEADORS:

9 Q. Good afternoon, detective.

10 A. Good afternoon.

11 Q. Would you please tell the -- please tell these members
12 of this jury about Natalie Kelly, where you are from, where
13 you were born, if you don't mind.

14 A. Sure.

15 Q. Your educational training and tell them about --

16 A. Natalie Kelly. I was born and raised here in Sumter.
17 I went to the school Sumter -- I'm sorry, St. Leo University
18 for a period of four years, in which I obtained an
19 Associates Degree, and I'm still working on my Bachelors at
20 this time.

21 I'm in law enforcement for a period of thirteen years,
22 in which two and a half years I have served as a detective.

23 I was first assigned to the Property Crime Division.

24 I'm now assigned to the Violent Crime Division.

25 Q. On October 31st you were in what division, of last

1 year?

2 A. Property crime.

3 Q. Did you have an occasion to come in contact and talk
4 with Reco Godbolt?

5 A. I did.

6 Q. And was that on October 31st of last year?

7 A. It was.

8 Q. And was that at approximately 1:40'ish?

9 A. It was.

10 Q. And tell the ladies and gentlemen of this jury where
11 you spoke with Mr. Godbolt.

12 A. He was transported from the scene of Canvasback Cove to
13 the law enforcement division. I took him -- myself and
14 Detective Robbie Richburg, we took him into the interview
15 room and that's where we talked to him at the law
16 enforcement center.

17 Q. Are we talking about right across the street?

18 A. That's correct.

19 Q. And describe the interview room to these ladies and
20 gentlemen.

21 A. It's a smaller room. We have the table, three chairs.
22 It has a small window, in which one of the windows you can't
23 see out of. It also had a window in the door where you can
24 see in and out.

25 Q. And at this time Mr. Godbolt, you were going to place

1 him under arrest, correct?

2 A. That's correct.

3 Q. And prior to doing that, did you have an occasion to
4 read Mr. Godbolt what is known as his Miranda Rights?

5 THE COURT: I'm sorry, the jury is having trouble
6 hearing.

7 MR. MEADORS: I'm sorry.

8 THE COURT: You can stand there. That's fine.

9 BY MR. MEADORS:

10 Q. Did you have an occasion to read the Miranda -- what is
11 known as Miranda Rights to Reco Godbolt?

12 A. I did.

13 Q. Or were you present when they were read?

14 A. Yes, sir.

15 Q. Which? Did you read them to him or were you present?

16 A. It was Detective Robbie Richburg, but I was in the room
17 with him the entire time.

18 Q. And so you were present when they were read to him?

19 A. That's correct.

20 Q. And I will show you what's marked State's 42.

21 MR. MEADORS: Without objection?

22 MR. SMALDONE: Without objection.

23 THE COURT: All right, 42 is in.

24 (State's Exhibit No. 42 was entered into the
25 record as evidence)

1 BY MR. MEADORS:

2 Q. And --

3 MR. MEADORS: May I approach, judge?

4 THE COURT: Yes, sir.

5 BY MR. MEADORS:

6 Q. This is State's 42. What is this, madam?

7 A. This is the Miranda Right form.

8 Q. And at the top does it have Sumter Police Department?

9 A. It does.

10 Q. And then interview form?

11 A. It does.

12 Q. "And before we ask you any questions, you must
13 understand your rights." Is that kind of bold print?

14 A. That's correct.

15 Q. And tell the ladies and gentlemen of this jury --

16 MR. MEADORS: Beg the court's indulgence.

17 (Off the record)

18 (Back on the record)

19 MR. MEADORS: Your Honor, we are going to try a
20 new technology. It would be just one second.

21 THE COURT: All right.

22 (Off the record)

23 (Back on the record)

24 MR. MEADORS: Your Honor, can you see that?

25 THE COURT: As long as the witness can see it, I

1 think that's fine.

2 BY MR. MEADORS:

3 Q. I think you have the actual document.

4 A. Uh-huh.

5 Q. Which is State's what? 42?

6 A. 42.

7 Q. What is that? That's for ID there, but that's the same
8 document.

9 State's 42, what is that?

10 A. This is a Miranda form.

11 Q. And is this the document that you used prior to
12 interviewing the suspect?

13 A. Yes, sir.

14 Q. And at the top, I think we have already testified this
15 is in bold "before we ask you any questions, you must
16 understand your rights?"

17 A. That's correct.

18 Q. And the -- let's just get back to real time now.

19 You are across the street, okay. So it's you and
20 another detective and Mr. Godbolt, correct?

21 A. Uh-huh.

22 Q. In the interview room?

23 A. That's correct.

24 Q. Do you read him these rights?

25 A. That's correct.

1 Q. Okay. What's the first right that you read him?

2 A. "You have the right to remain silent."

3 Q. And when you are reading him this right, did he
4 indicate to you that he understood it?

5 A. He did.

6 Q. How did you indicate that he understood?

7 A. He initialed it.

8 Q. And did he orally tell you "I understood it?"

9 A. That's correct.

10 Q. Okay. And then you said he initialed it. Is this what
11 this is right here, an RG, are those his initials?

12 A. That's correct.

13 Q. What's the next thing that you read to him?

14 A. "Anything you say can be used against you in court."

15 Q. And when you read him that right, did he appear to
16 understand that?

17 A. Yes, he did.

18 Q. Did he tell you that he understood it?

19 A. He did.

20 Q. When the right was read to him by Detective Richburg,
21 you were present?

22 A. That's correct.

23 Q. And did he indicate by signing his initials that he
24 understood it?

25 A. He did.

1 Q. What's the next right that you read to him?

2 A. "You have the right to talk to a lawyer for advice
3 before we ask you any questions and to have him or her with
4 you during questioning."

5 Q. When that was read to Mr. Godbolt, did he appear to
6 understand it?

7 A. He did.

8 Q. Did he tell you he did and did he initial it?

9 A. He did.

10 Q. Are these his initials, RG?

11 A. That's correct.

12 Q. What's the next right that you read to him?

13 A. "If you cannot afford a lawyer, one will be appointed
14 for you before any questioning, if you wish."

15 Q. Did he indicate to you that had been read to him and
16 that he understood it?

17 A. That's correct.

18 Q. Did he tell you too he understood it?

19 A. That's correct.

20 Q. What's the next right that you read him?

21 A. "If you decide to answer any questions now without a
22 lawyer present, you will still have the right to stop
23 answering at any time until you talk with a lawyer."

24 Q. And when you read him that, or after it was read to him
25 by Detective Richburg, did he appear to you to understand

1 it?

2 A. He did.

3 Q. Did he sign his initials that he understood that right?

4 A. He did.

5 Q. And did he orally tell you "I understand?"

6 A. He did.

7 Q. Did he appear, based on your training and expertise and
8 just being right there in the room with him, Natalie, did he
9 appear to understand it?

10 A. He did.

11 Q. Okay. Now, next is what's referred to on State's 42 on
12 the Miranda Rights as the Waiver of Rights, correct?

13 A. That's correct.

14 Q. Tell the jury about that. Was the Waiver of Rights
15 read to defendant Reco Godbolt?

16 A. It was.

17 Q. And please read it as it was read that day to defendant
18 Reco Godbolt.

19 A. "Before any questioning I was furnished the above
20 statement of my rights at 1:43 p.m. on 10-31-2011 at Sumter
21 P.D.," which is, which is Sumter Police Department, "by
22 Officer Richburg of the Sumter Police Department."

23 Q. And you were present?

24 A. That's correct.

25 Q. Go ahead.

1 A. "I have read or had read to me this statement of my
2 rights. I understand that my rights are; I am willing to
3 answer questions at this time without a lawyer present, no
4 promises or threats have been made to me, and no pressure
5 has been used against me."

6 Q. And did he appear to understand the Waiver of Rights as
7 were read to him on October 31st?

8 A. Yes, sir, he did.

9 Q. And did he indicate to you and/or Detective Richburg
10 that he understood the Waiver of Rights?

11 A. Yes, sir, he did.

12 Q. And how did he indicate to you that he understood that?

13 A. He signed it.

14 Q. Did he tell you "I understand it" too?

15 A. Yes, sir.

16 Q. And whose signature is this right here?

17 A. That's mine.

18 Q. Okay. And that's Reco Godbolt?

19 A. That's correct.

20 Q. And who is this?

21 A. That's Detective Robbie Richburg.

22 Q. At any time during the reading of these rights, either
23 the Miranda Rights or the Waiver of Rights, did he say
24 "Detective Kelly, I don't want to talk to you?"

25 A. No, sir, he didn't.

1 Q. Did he say "I want a lawyer?"

2 A. No, sir, he didn't.

3 Q. If he had done that, what would you have done?

4 A. We would have stopped talking to him at that time.

5 Q. Did he, he being Reco Godbolt, appear to be under the
6 influence of alcohol, drugs, or any other substance or
7 intoxicant, in your opinion?

8 A. No, sir, he didn't.

9 Q. Did you smell anything on him?

10 A. No, sir.

11 Q. Did he appear to understand the questions as you read
12 him and did you understand his answers when he gave them to
13 you?

14 A. Yes, sir.

15 Q. And at this point in time, I mean, if you asked him a
16 question, did he respond in a timely manner, just based
17 on -- did he respond timely?

18 A. Yes, sir, he did.

19 Q. And were they -- were his responses appropriate in
20 content?

21 A. Yes, sir.

22 Q. On the subject?

23 A. Uh-huh, yes, sir.

24 Q. In response to your questions?

25 A. Uh-huh.

1 Q. At any time during the reading of these rights,
2 Detective Natalie Kelly, or the reading of his Waiver of
3 Rights, did you threaten, coerce, hold out any hope of
4 reward to Mr. Godbolt in exchange for him talking to you?

5 A. No, sir.

6 Q. And it's your opinion, based on your training and
7 experience, based primarily on the time that you spent with
8 Mr. Godbolt that he understood those rights?

9 A. Yes, sir.

10 Q. And did he agree to talk to you?

11 A. Yes, sir.

12 Q. Now -- if you will use that.

13 Now I'm going to show you what's marked State's 43. Is
14 that your signature?

15 A. Yes, sir.

16 Q. And Mr. Godbolt's?

17 A. Yes, sir.

18 MR. MEADORS: If I haven't already, Your Honor, I
19 offer 43 without objection, I think.

20 THE COURT: 43 is in, is that correct?

21 MR. SMALDONE: Yes, sir, no objection.

22 THE COURT: All right, 43 is in without objection.

23 (State's Exhibit No. 43 was admitted into the
24 record as evidence)

25 BY MR. MEADORS:

1 Q. This is 43. You got another copy, but this is the
2 original?

3 A. Uh-huh, yes, sir.

4 Q. Okay. State's 43.

5 Now, after you had read the rights and waiver of
6 rights, did you talk to Mr. Godbolt?

7 A. Yes, sir.

8 Q. Now, explain this process to the jury. Were you and
9 Detective Richburg, as you talked to him and then filled out
10 the statement, or was this statement produced as he was
11 talking to you?

12 A. It was produced as he was talking to us.

13 Q. Okay. And would you -- let me just start.

14 At the top you have got Reco Antonio Godbolt, Apollo
15 Road, Litchfield, date of birth, social, phone numbers,
16 okay?

17 A. Uh-huh.

18 Q. Did he provide that information to you?

19 A. He did.

20 Q. And did you have any trouble understanding what he
21 provided?

22 A. No, sir.

23 Q. Like his Social Security Number, did he have any
24 trouble remembering it and reciting it to you?

25 A. No, sir.

1 THE COURT: Did you decide to object to that being
2 redacted from that copy?

3 MR. MEADORS: We so ask. I apologize.

4 THE COURT: That's okay.

5 MR. MEADORS: Thank you.

6 BY MR. MEADORS:

7 Q. After you had taken the statement from him, and I'll
8 get back to it in a minute, did you go over it with him
9 again?

10 A. Yes, sir, we did.

11 Q. And after you went over it, did Mr. Godbolt sign on the
12 back?

13 A. Yes, sir, he did.

14 Q. And you did?

15 A. Yes, sir.

16 Q. And on the front page did he sign his name at the
17 bottom?

18 A. He did.

19 Q. Now, would you publish this to the jury?

20 A. "On today, 10-31-2011, I woke up about seven o'clock
21 a.m.. I got dressed and caught a ride with my friend
22 Shanika, unknown last name, who drives a black Maxima to my
23 girlfriend and my baby momma mother house Jessica Hodge,
24 unknown address, in Maysville. I got to Jessica's house
25 around 7:30 a.m.. I rode with Jessica in her 2006 gold

1 Nissan Altima to drop my daughter off to Ruby J. Johnson
2 School in Sumter. We then dropped her other baby off to her
3 mother's house on Madden Avenue. We left there and I took
4 Jessica to Goldkist to orientation. This is around 8:15
5 a.m.. Shortly after this Jamal Helton," in parenthesis --
6 in quotation there is "Mall" is what he calls him, "called
7 me from a 220 phone number and asked me to pick him up from
8 Southside. I told him I would and I met him at Southside
9 Gym. "Mall" got in the car with me wearing a black
10 sweatshirt, unknown shoes, and a black stocking cap covering
11 his hair. Me and "Mall" just drove around at first. "Mall"
12 told me that he had something set up and all I had to do was
13 drop him off and he would pay me. He told me to give him a
14 price, but I didn't give him an amount. "Mall" was giving
15 me directions to drive. We ended up in Idlewild Subdivision
16 and "Mall" told me to drop him off. I dropped him off near
17 a house with a black SUV parked in the roadway and I circled
18 around the area. "Mall" called me to pick him up about
19 twenty minutes later. When I picked "Mall" up he was
20 walking down the road. He was still in Idlewild
21 Subdivision. "Mall" had something under his hoodie
22 sweatshirt. When "Mall" got into the car he pulled a laptop
23 from under his sweater and put in the back seat of the car.
24 I told "Mall" I was about to ride because I had to pick my
25 girlfriend up. "Mall" told me that he needed to make one

1 more stop. "Mall" pointed me in the direction to go and we
2 ended up at a house where the police got me. When we got to
3 the house "Mall" went into the backyard of the house.
4 "Mall" came back and told me to lock the screen door to the
5 back door so he could, quote, let the dogs dogs out. I got
6 out of the car and went and locked the screen door. "Mall"
7 was in the house by the time I locked the screen door. Then
8 "Mall" yelled to me lock the other screen door to the back
9 porch. There was two screen doors on the back across from
10 each other. I left back" -- I'm sorry, "I left back out of
11 the screen door because I didn't want to lock myself in. I
12 yelled to "Mall" and told him that I wasn't locking myself
13 inside the screen door, so "Mall" told me never mind, just
14 put something on the screen door to keep it closed. By this
15 time I heard a car door shut and the homeowner was yelling
16 get out of my house. I didn't see him. I just heard him.
17 I yelled back to the man that I wasn't in his house. That
18 is when I heard the man come out of the front door. I
19 walked around the side of the house and I saw "Mall" running
20 behind the man. "Mall" was telling the man to come here.
21 Then "Mall" and the man stopped like they were talking.
22 Then I saw "Mall" and the man walking back towards the house
23 where I was. I was telling "Mall" when he was chasing the
24 man stop, don't do that. I walked back to my girlfriend
25 Jessica's car and I got in, but I realized the keys were

1 missing from it, so I was screaming where is my keys, where
2 is my keys. Then "Mall" asked the guy where my keys were
3 and the man said that he threw them. Then the man pointed
4 where he threw the keys at. Then "Mall" got the keys which
5 were by some bushes on the side of the house. At this point
6 I had my back turned to "Mall" and the man because I was
7 taking the man's stuff out of the car that was in the back
8 seat, a TV and a computer monitor. That is when "Mall"
9 jumped in the driver's side, cranked the car and tried to
10 spin off backwards. I thought he was trying to leave me
11 because I wasn't in the car yet. "Mall" backed my
12 girlfriend's car into something in the driveway. "Mall" was
13 still trying to hit the gas after hitting something in the
14 driveway. I was yelling at "Mall" saying he wrecked my
15 girlfriend's car. I was trying to look under the car but by
16 that time I saw a black car pulled up like the police.
17 That's when I looked back, "Mall" was running towards the
18 woods. That's when I tried to run but can't because I was
19 shot in my right leg back in March, so I jogged a little bit
20 and then I threw my hands in the air and gave up. I don't
21 know exactly when "Mall" put all the stuff in the car, but I
22 guess it was when I was on the back porch trying to lock the
23 screen door. I saw that "Mall" was wearing a pair of gloves
24 when he was in the house. About four months ago I dropped
25 Javan Pearson and Jamal Helton off in Twin Lakes Subdivision

1 on Treadmore Circle. They told me that they were going to
2 give me money if I dropped them off. They gave me \$50 when
3 I dropped them off. They called me about an hour later and
4 told me to come and get them from Twin Lakes Subdivision.
5 They were near the same area I dropped them off at. When I
6 picked them up --"

7 Q. Hold on a second, detective.

8 Okay.

9 A. "-- they had a laptop and some jewelry on them. The
10 stuff was stashed by some bushes. When I pulled up Javan
11 got the laptop out of the bushes. I don't know exactly
12 which house they hit, but I knew where I dropped them off at
13 and it was on Treadmore Circle. When they got into the car
14 I asked them where is my money and Javan handed me \$50. I
15 took the both of them on Southside and dropped them off by
16 Southside Gym and then I left."

17 Q. And, again, this is on page two of State's 43.

18 At this time did you initial that?

19 A. Myself and --

20 Q. That's you?

21 A. Uh-huh.

22 Q. And Reco Godbolt?

23 A. That's Reco Godbolt.

24 Q. Now, and on the bottom of page one of State's 43, whose
25 signature is that?

1 A. That's Reco Godbolt's.

2 Q. And after the statement was typed, did you and/or
3 Detective Richburg go back over this statement with Mr.
4 Godbolt?

5 A. Yes, sir, we did.

6 Q. And it's after that that he signed the front and the
7 back and you signed it?

8 A. Yes, sir.

9 Q. At any time during the taking of this statement,
10 Detective Natalie Kelly, the statement itself now after the
11 rights and the Waiver of Rights, at any time during the
12 taking of this statement did he say "I don't want to talk to
13 you, Natalie?"

14 A. No, sir.

15 Q. "Quit asking me questions?"

16 A. No, sir.

17 Q. "Give me a lawyer?"

18 A. No, sir.

19 Q. If he had, would you have done, that you would have
20 stop?

21 A. Yes.

22 Q. You would have stopped talking to him, correct?

23 A. Yes, sir.

24 Q. He was caught at the scene, wasn't he?

25 A. Yes, sir.

1 Q. And this statement, does he basically just puts himself
2 at the scene, right?

3 A. Yes, sir.

4 Q. As far as his contact up close and personal with Dr.
5 Bryan Funke, based on your training and experience, would
6 you say he was minimizing that with this statement?

7 A. Yes, sir.

8 Q. And, as a matter of fact, it distances himself from Dr.
9 Funke, correct?

10 A. Yes, sir.

11 Q. Actually he says that it was "Jamal that went with him
12 up there and I stayed back," right?

13 A. Yes, sir.

14 Q. So he admits he's at the scene?

15 A. Yes, sir.

16 Q. And tries to implicate Jamal as the bigger player,
17 correct?

18 A. Correct.

19 MR. SMALDONE: I'm going to object at this point.
20 We are getting into leading, I think.

21 THE COURT: Sustained.

22 BY MR. MEADORS: .

23 Q. Is it fair to say you felt he was minimizing?

24 A. Yes, sir.

25 MR. SMALDONE: Objection.

1 THE COURT: Sustained.

2 MR. MEADORS: Just one second?

3 THE COURT: Yes, sir.

4 MR. MEADORS: One second.

5 THE COURT: Do you need Mr. Smaldone?

6 MR. MEADORS: No, sir.

7 THE COURT: All right, you can move it.

8 (Off the record)

9 (Back on the record)

10 MR. MEADORS: Beg the court's indulgence for one
11 second.

12 THE COURT: Yes, sir.

13 (Off the record)

14 (Back on the record)

15 BY MR. MEADORS:

16 Q. Do you -- is the person that gave you -- is the person
17 that you read the rights to and waived his rights and the
18 person who gave you that statement in this courtroom?

19 A. Yes, sir.

20 Q. Would you please point him out?

21 A. That's Reco Godbolt.

22 Q. Mr. Reco Godbolt next to Mr. Grant Smaldone --

23 A. That's correct.

24 Q. -- in the red tie?

25 MR. MEADORS: We would like the record to so

1 reflect, please.

2 Judge, I think that's we have. Thank you.

3 THE COURT: Okay. Mr. Smaldone?

4 CROSS EXAMINATION BY MR. SMALDONE:

5 Q. Good afternoon, Ms. -- I didn't get your last name.

6 What was it?

7 A. Kelly.

8 Q. What was it?

9 A. Kelly.

10 Q. Kelly.

11 And are you a detective, or investigator, or what is
12 your --

13 A. Detective.

14 Q. Detective. I'll call you Detective Kelly.

15 Good afternoon, Detective Kelly.

16 A. Good afternoon.

17 Q. When you took Mr. Godbolt's statement, how long did it
18 take for him to start processing and giving the statement
19 from the time where you -- I assume there is a debriefing
20 and whatnot, explain the rights.

21 After he signed the rights form, how long did it take
22 for him to give a statement?

23 A. It was immediately thereafter.

24 Q. Immediately thereafter?

25 A. Uh-huh.

1 Q. Now, you didn't coerce him at all?

2 A. No, sir.

3 Q. All right. So he freely gave the statement?

4 A. Yes, sir.

5 Q. Did he have -- so he didn't have a lot of time to think
6 about it first?

7 A. He could have said no if he wanted to.

8 Q. He could have said no?

9 A. Yeah, he was advised.

10 Q. But instead he didn't say it, did he?

11 A. He did.

12 Q. Is it fair to say the statement doesn't say anything
13 about a gun, does it?

14 A. No, sir, it doesn't.

15 Q. It doesn't say anything about kidnapping?

16 A. No, sir, it doesn't.

17 Q. But it does put himself culpable for the burglary, does
18 it not?

19 A. It does place him at the scene, yes, sir.

20 Q. All right.

21 MR. SMALDONE: No further questions.

22 THE COURT: Redirect?

23 MR. SMALDONE: Oh.

24 THE COURT: Go ahead.

25 BY MR. SMALDONE:

1 Q. One last thing. I apologize.

2 What else occurred -- did anything else occur when you
3 were in the room with Mr. Godbolt, any sort of testing or
4 anything like that?

5 A. Testing?

6 Q. Testing, maybe DNA swabs, GSR?

7 A. He was photographed.

8 Q. He was photographed?

9 A. Uh-huh.

10 Q. Did you conduct a GSR test, or did Mr. Richburg conduct
11 a GSR test in your presence?

12 A. If memory serves me correct, it was Detective Richburg.

13 Q. It was Detective Richburg that conducted the test?

14 A. Yes, sir.

15 Q. And the test came back negative for gunshot residue,
16 didn't it?

17 A. I'm unsure about that.

18 Q. Okay.

19 MR. SMALDONE: I have no further questions.

20 THE COURT: Redirect?

21 MR. MEADORS: No, sir. Thank you.

22 THE COURT: Okay. Thank you, ma'am. You can step
23 down.

24 Let me see the lawyers up here for just a minute.

25 (Whereupon, the lawyers approached the bench for

1 an off-the-record discussion)

2 THE COURT: Okay, ladies and gentlemen, we are
3 going to stop for the day. We are going to use some time
4 this afternoon to go over with the lawyers some points of
5 the jury charge that I will give to minimize the time of a
6 break I will have to take tomorrow, so we are going to stop
7 for the day.

8 If you would please be back in your jury room
9 tomorrow morning at ten o'clock.

10 You know what I'm going to tell you next. You
11 cannot talk about this case with anyone.

12 Likewise, you may not read anything about it,
13 listen to anything about it, or undertake on your own to
14 gather any information about it whatsoever, whether it be
15 Internet, periodicals, newspapers, so forth and so on.

16 If you find yourself in a situation where there may
17 be some information immediately there that has any reference
18 to this case, don't look at it, don't read it, don't discuss
19 it. Please don't allow yourself to be in any setting where
20 anything about this case is discussed at all. I'm going to
21 rely on your good faith and honor in that instruction,
22 because I know you understand how important it is to base
23 your verdict on the evidence that's received in this
24 courtroom and from no other source.

25 So I will see you tomorrow morning at ten o'clock.

1 Thank you.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: All right, Mr. Meadors, you indicated
5 that you would like to make a proffer?

6 MR. MEADORS: Yes, sir. Carolyn Funke.

7 THE COURT: Does anybody need to take a break
8 before we do that? Just raise your hand if you do.

9 (No response).

10 THE COURT: Okay. All right. Come on up, please,
11 ma'am.

12 MR. MEADORS: Carolyn Funke.

13 THE CLERK: Place your left hand on the Bible and
14 raise your right hand.

15 State your name, please.

16 THE WITNESS: Carolyn Funke.

17 CAROLYN FUNKE, having been first duly sworn,
18 testified as follows:

19 THE CLERK: Have a seat. Watch your step coming
20 up.

21 Please state your full name and spell your first
22 and last name for the record.

23 THE WITNESS: Carolyn Funke. It's C-A-R-O-L-Y-N,
24 F-U-N-K-E.

25

1 DIRECT EXAMINATION BY MR. MEADORS:

2 Q. Good afternoon, Ms. Funke.

3 I want to take you right to October 31st, 2011.

4 Where were you, as best you can tell, when this
5 incident was happening?

6 A. Wal-Mart.

7 Q. Okay. And which Wal-Mart?

8 A. Sumter.

9 Q. Okay. And when is the first that you heard about it?

10 A. I received a phone call from Bryan.

11 Q. And that would be Dr. Bryan Funke?

12 A. Yes.

13 Q. He is your husband?

14 A. Yes.

15 Q. And where were you when you received that phone call?

16 A. Like pushing my cart by the frozen food section.

17 Q. Can you describe Dr. Funke --

18 Of course, you know his voice.

19 How long have y'all been together?

20 A. Since -- like we were married in 1989.

21 Q. Okay. Do you know his voice on the phone?

22 A. Yes.

23 Q. When you answered the phone when you were pushing your
24 cart on October 31st, 2011, describe to the judge how your
25 husband sounded.

1 A. It was just really bizarre. It -- it was not his
2 voice. It was almost like someone was playing a joke on me
3 and I at first did not really think that what he was telling
4 me was really happening.

5 Q. Had you ever heard him sound that way before?

6 A. No, never.

7 Q. Okay. What did he say to you?

8 A. Okay. I don't -- it was like "I have been shot," and
9 I'm like "what?" He said "we've been robbed and I have been
10 shot." And I said what -- and then like the connection went
11 dead.

12 And then I started like trying to dial my home number
13 and nobody picked up. I tried to dial his cell phone and
14 nobody picked up and the phone rang again and it was him on
15 a number I didn't know. And then he said "I have been
16 shot."

17 And I'm like "where are you," and he says "I'm at
18 home."

19 I'm like "okay."

20 He's like "you need to come home."

21 I said "okay."

22 So I started walking through Wal-Mart and I got to the
23 parking lot and I got in my car and then I was like, okay --

24 Well, first I called my friend Robin. I said "Robin,
25 Bryan has been shot," because I knew just lived around the

1 corner really close. And I said "can you please run over
2 there and see what's going on?"

3 So she grabbed my cousin and they ran over and they got
4 there before I did.

5 And then as I'm in the parking lot still I called 911
6 and I said who I was and why I was calling.

7 Q. Was that right after you talked to your husband?

8 A. Yeah, it was like I left Wal-Mart. I'm sure I called
9 Robin first --

10 Q. Okay.

11 A. -- and then I called 911 to see what was going on and
12 where I should go, because I'm not --

13 Q. You told them on 911. I think it's the next call that
14 your husband had been shot?

15 A. Right.

16 Q. And then they called you back and said "he hadn't been
17 shot," and you said "well, he must have said shot at."

18 A. Right.

19 Q. That's basically the summary of the 911?

20 A. Right, yeah, because the phone just kept clicking out.

21 Q. Going back to the original call from the doctor to
22 you --

23 A. Uh-huh.

24 Q. -- his voice and his demeanor, was he excited?

25 A. Yeah.

1 Q. How would you describe him?

2 A. It was just like -- it wasn't his normal voice. It
3 wasn't how he sounded. It was just -- it was like -- it
4 wasn't him.

5 Q. And that's when he told you what you thought he said "I
6 have been shot?"

7 A. Yes.

8 Q. Were you concerned?

9 A. Well, yeah.

10 Q. And you may have talked to Robin and right after that
11 is when you called 911?

12 A. Right, I think that's the sequence of events.

13 MR. MEADORS: That's it, judge. That would be the
14 proffer.

15 THE COURT: Are you going to proffer the 911 also?

16 MR. MEADORS: I would like to, if -- yes.

17 (Off the record)

18 (Back on the record)

19 THE COURT: This is number what, just for the
20 record?

21 MR. MEADORS: Your Honor, it is still the same CD
22 as the other.

23 THE COURT: Okay.

24 MR. MEADORS: And it is --

25 COURT REPORTER: It's 22.

1 THE COURT: 22?

2 COURT REPORTER: In the brown envelope, 22.

3 THE COURT: Okay.

4 MR. MEADORS: Beg your patience one more time,
5 Your Honor, to set this up?

6 THE COURT: Yes, sir.

7 (Off the record)

8 (Back on the record)

9 (Whereupon, the 911 tape was played).

10 MR. MEADORS: And that was -- you called them,
11 then they --

12 THE WITNESS: They called me back.

13 MR. MEADORS: They called you back.

14 And in that back they were asking about how
15 excited you were about that you -- that he said that he
16 hadn't been shot, correct?

17 THE WITNESS: Correct.

18 MR. MEADORS: Judge, I think that's the full
19 proffer.

20 THE COURT: Mr. Smaldone, any questions at this
21 point before any argument about the testimony?

22 MR. SMALDONE: No, I don't have any questions.

23 THE COURT: All right. Thank you, ma'am, you can
24 step down.

25 Your objection, Mr. Smaldone?

1 MR. SMALDONE: I'm confused. Are you trying to
2 get in the tape?

3 MR. MEADORS: I'm trying to get in the call first
4 that Dr. Funke gave to Ms. Funke. It would be -- we would
5 argue an excited utterance, which she talked -- he said he
6 had been shot, said she had never heard him sound like that
7 before.

8 THE COURT: Will you be seeking to introduce that
9 recording too?

10 MR. MEADORS: I would like to have it all.

11 THE COURT: All right. Well, what's your --
12 First of all on the issue about Dr. Funke's
13 statement to his wife, what's your position on that?

14 MR. SMALDONE: Well, I don't think it's an excited
15 utterance. He called his wife.

16 I think an excited utterance is "my god, he's got
17 a gun."

18 You know an excited utterance is not --

19 THE COURT: What about "I had been shot," or "I
20 had been shot at?"

21 MR. SMALDONE: And there is no indication of the
22 length of time, and then he gets his phone out, dials his
23 wife and then calls her. I think that's a significant
24 delay, so it's not an excited --

25 Just because he yelled something I don't think

1 makes it an excited utterance. I think there is a
2 significant -- it's not -- I think the Rules of Evidence are
3 designed to keep stuff like this out. It's not a
4 spontaneous declaration, "my god, he's got a gun." It's a
5 premeditated phone call and also it's not true. So --

6 THE COURT: Well, it's not true that he was shot,
7 but let's just assume that -- let's assume for the purposes
8 of argument it was a misunderstanding about what she heard
9 or what he actually said. Assume that at least for right
10 now. Is there any evidence right now, Mr. Meadors, about
11 how -- there is no temporal proximity that's required for
12 excited utterance. I think that's what the case law says,
13 but is there any evidence right now from Dr. Funke as to
14 when he actually called his wife?

15 MR. MEADORS: I think it was right after the
16 police got there. And I think the misunderstanding from her
17 to him kind of adds to the argument how excited he was.
18 It's just he was in the state, he was excited. He conveyed
19 to his loved one after he had called 911 said "hey, this
20 is about as real as it get. I have been shot at," I think
21 is what he said. She took it to mean shot. She described
22 his condition. I think this is -- because of what the rule
23 is supposed to. It's supposed to envision, respectively.

24 THE COURT: All right. Anything else, Mr.
25 Smaldone?

1 MR. SMALDONE: And, again, I just -- and this is
2 just for her testimony saying --

3 THE COURT: For right now.

4 MR. SMALDONE: We are --

5 THE COURT: We are going to the next part about
6 the tape in just a minute.

7 MR. SMALDONE: I mean, it's I guess speculation.
8 I don't really know is the relevant word, but, I mean, he
9 wasn't shot, and there is so much premeditation, it's
10 just -- we haven't heard him say it, so we just have someone
11 else saying, so it's triple, double hearsay. I lose track
12 of the degree of hearsay.

13 MR. MEADORS: Okay. He did say he was shot.

14 THE COURT: Well, it's not double hearsay. It's
15 just single hearsay, if at all, right now, in case there is
16 something different.

17 MR. MEADORS: With the exception of excited
18 utterance, obviously -- but I think his testimony was he did
19 think he was shot and there was a shot.

20 MR. SMALDONE: Shot at.

21 MR. MEADORS: Correct, I believe that's what he
22 conveyed to us and she just misunderstood. As soon as the
23 police get there "they got a gun."

24 MR. SMALDONE: I think he already testified that
25 he called his wife, so I would stipulate there was a phone

1 call. I mean, I don't see what she adds to anything. He
2 already testified to it.

3 THE COURT: Well, the overall problem with it is
4 not -- well, to me -- let me back up.

5 In the old days, and what I call the old days,
6 until the mid-eighties, to get this type of statement in it
7 had to be a present sense impression and excited utterance.
8 It's called the res gestae back then. But now the Rules of
9 Evidence have divided those things into two, kind of defined
10 it.

11 803(1) is a present sense impression.

12 803(2) is an excited utterance.

13 And it says that "the following are not excluded
14 by the hearsay rule, even though the declarant," Dr. Funke,
15 "is available as a witness.

16 "An excited utterance is a statement relating to a
17 startling event or condition made while the declarant was
18 under the stress of excitement caused by the event or
19 condition."

20 That one moved the component of temporal
21 proximity, which number one has, which is a present sense
22 impression, which said it had to be while under -- while
23 perceiving the event or immediately thereafter. I'm pretty
24 sure the case law says for an excited utterance it doesn't
25 have to be within minutes. I don't --

1 I don't -- I think based on this witness'
2 testimony that he sounded like he had never sounded before,
3 and it was just obvious from the context of all of this that
4 this phone call was made at or -- just before or at the time
5 the police had arrived, especially since he made one call
6 from his phone, which I thought Mr. Godbolt had, or number
7 two, from somebody else's phone. I think that I'm satisfied
8 that it was an excited utterance. He may have had another
9 cell phone, I don't know, but, in any event, I think that
10 does qualify as an excited utterance.

11 Conceivably you would have some cross-examination
12 fodder for that about "I have been shot," but aside from
13 that I think it will come in as an exception.

14 So we will move to the 911 recording itself, and
15 that's where the second tier of hearsay comes in.

16 How about that, Mr. Meadors? He's already -- Mr.
17 Smaldone has already touched on that, where the 911 operator
18 says well -- she doesn't say who she got the information
19 from, but "he hasn't been shot." And then Mrs. Funke says
20 "well, maybe he said shot at and I misunderstood him."

21 Did the 911 operator say "he wasn't shot. He's
22 been shot at," or did she just say "he hasn't been shot."

23 MR. MEADORS: My memory and my ears I think it's
24 "he was not shot. He's okay."

25 THE COURT: If the 911 operator says on there that

1 "he was not shot, but he was shot at," you have got a point.
2 But I don't see any --

3 The only thing the 911 operator says is "your
4 husband is okay. He hasn't been shot," which is true. He
5 had not been shot.

6 MR. SMALDONE: So I don't see any relevance to it.

7 THE COURT: Okay. I'll think about that, but I
8 think that's what it boils down to is putting it all more in
9 context and I think it may be relevant and may not be. I'll
10 study that.

11 MR. SMALDONE: There is relevance. There is the
12 hearsay issue. They just want to put it in so the jury
13 could hear, you know, her emotions and whatnot, play on
14 that.

15 MR. MEADORS: That is not true. I mean, I think
16 it's a legitimate excited utterance. I think, respectfully,
17 is an exception to the hearsay rule.

18 THE COURT: Okay.

19 MR. SMALDONE: Well, as far as the 911 tape, the
20 triple, quintuple, whatever hearsay is. I mean, I think
21 it's -- I mean -- I mean, are they just putting in to prove
22 that he hasn't gotten shot?

23 THE COURT: Okay, let me hear that part of the --
24 did Mr. Brown leave?

25 MR. MEADORS: Yes, sir, but I think we can do

1 this. He's got it.

2 THE COURT: I just want to hear it one more time
3 and then I'll think about it.

4 But I will allow Mrs. Funke to testify over your
5 objection as to what her husband said, or what she thought
6 he said.

7 (Off the record)

8 (Back on the record)

9 (Whereupon, the 911 tape was played)

10 THE COURT: Anything else, Mr. Smaldone?

11 MR. SMALDONE: I have made all of my objections.

12 THE COURT: Well, the biggest issue, Mr. Meadors,
13 that I can see is the 403 issue that --

14 What would this recording tend to prove to the
15 jury? What -- what would it prove? It proves that she's
16 understandably in distress. I understand that, but what
17 would it --

18 MR. MEADORS: You mean both consecutive call to
19 911 and the 911 call back?

20 THE COURT: Right, both of them, what would these
21 recordings tend to prove to the jury?

22 MR. MEADORS: Judge, I --

23 Wait a second.

24 (Off the record)

25 (Back on the record)

1 MR. MEADORS: State of mind would be one.

2 I also -- I think he's called into question the
3 doctor's testimony about a gunshot, maybe.

4 THE COURT: Well, that's -- her testimony --

5 MR. MEADORS: More so would be with hers with
6 that.

7 Judge, I think it clarifies the whole first
8 excited utterance, I guess, to when -- just to explain the
9 whole scenario to the jury, okay, he wasn't shot and then
10 she at the end -- unless, I'm crazy, I think at the end
11 she's the one that said "well, maybe he said shot at and not
12 shot," Ms. Carolyn Funke saying that, not the 911
13 dispatcher. So she does say that at the end, which I think
14 is relevant to the excited utterance.

15 He clearly wasn't shot, but he was shot at, and he
16 told her that in the first excited utterance, that she's
17 clarifying that. That's being clarified with the 911
18 operator.

19 THE COURT: How about Mr. Smaldone's argument that
20 the way he put it was well, the real reason you want to get
21 this in is to show the jury that she was extremely upset and
22 that would prompt some sympathy. That's a 403 issue, even
23 though the evidence might be relevant if its introduction
24 would tend to mislead or confuse the jury or make them dwell
25 on things that aren't relevant to the overall proof of the

1 elements of this crime.

2 MR. MEADORS: Yes, I think --

3 THE COURT: That's the biggest danger.

4 MR. MEADORS: I don't -- her excitement in all
5 this, I'm not trying to get that in so they would be
6 prejudiced by how she felt at all.

7 THE COURT: I understand that, but they are going
8 to hear that --

9 MR. MEADORS: Right.

10 THE COURT: -- and there is a danger of that.

11 MR. MEADORS: I understand, and I think it's more
12 probative to the fact that her husband had told her shot at,
13 and he testified that -- he testified that there was a shot
14 as he was running away. He testified that this defendant
15 said "I'm going to kill you" and pointed a gun at him.
16 That's being called into question on cross by Mr. Smaldone
17 as to whether or not he was shot at all, whether a gunshot
18 were there, whether a gun was even involved in it. That's
19 his whole defense. He's going for burglary second because
20 we simply can't prove a weapon.

21 If this case is -- first call to his wife, or
22 second call after 911 "I have been shot at," she thinks
23 shot, but I think clearly his state of mind then, his
24 excited utterance is hey, I was shot. This is real. Like
25 Your Honor said, she never heard him sound like that. Her

1 two phone calls clarify that.

2 THE COURT: I'm going to let -- I'm going to
3 let --

4 MR. MEADORS: I understand.

5 THE COURT: I'm going to let her testimony in.

6 MR. MEADORS: Yes, sir.

7 THE COURT: I'm talking about the recording.

8 MR. MEADORS: And I'm long winded trying to get to
9 that.

10 I think the recording clarifies what he told her.
11 I think it clarifies what he told his wife, which would make
12 a clearer picture to the jury that this is what -- and it's
13 the only thing that makes sense.

14 THE COURT: Okay.

15 MR. MEADORS: That's the only thing that makes
16 sense, because he wasn't shot, and that's -- that really
17 makes it more real to me, and it's because this was
18 pertinent and I'll more question it this way, it makes
19 sense. He was excited, I was excited, I thought shot, but
20 shot at, that's what he immediately conveyed to her.

21 THE COURT: But obviously a jury could conclude
22 that in his state of mind he was even embellishing that to
23 his wife and said "I have been shot." The jury could
24 believe that, unless -- the jury could believe that he said
25 that. Do you agree with that?

1 MR. MEADORS: I -- I would disagree. I would
2 think more than he would know being a doctor whether he was
3 actually shot. So I don't mean that -- I think -- I think
4 he really was conveying shot at and in his excited state to
5 her excited state, I think the at got missing.

6 THE COURT: All right, I'll give you the last word
7 on that.

8 MR. SMALDONE: I don't think there is anything
9 that the tape or the DVD or CD can show that she can't on
10 the stand. I'm not going -- I'm not going to call her a
11 liar and say her husband -- "you did call 911." I'm not --
12 I'll stipulate to that. I just don't think the jury needs
13 to hear that 911 tape of a crime by the wife who wasn't at
14 the scene.

15 THE COURT: Okay. All right.

16 What I will do is I will review 403, and I think
17 it's going to down to whether or not the defendant has
18 established that the probative value of the recording is
19 substantially outweighed by the danger of unfair prejudice
20 or confusion of the issues and the other points under 403.

21 MR. MEADORS: Thank you.

22 THE COURT: All right, if you would be back
23 promptly at 9:30 with the defendant in the courtroom,
24 keeping in mind that he is towards the end of his case.
25 Please speak to your client about the details I'll cover

1 with him as to whether or not he will or will not testify,
2 the Fifth Amendment considerations, so that he can have all
3 of that education between now and then, so we can move
4 pretty promptly on with the case.

5 MR. MEADORS: And a followup on that, just say we
6 have moved pretty quick, you would want to go right into
7 closings?

8 THE COURT: Well, no, we will have to stop and
9 talk about the charge, but --

10 MR. MEADORS: But I mean --

11 THE COURT: -- I hope to do that between 9:30 and
12 ten tomorrow.

13 And your other witness may be Mr. Melton?

14 MR. MEADORS: Yes.

15 THE COURT: How long would you anticipate he would
16 take?

17 MR. MEADORS: Not long.

18 THE COURT: All right.

19 MR. MEADORS: I think we will finish -- even if
20 both of them testified relatively, I don't think it would
21 take that long.

22 THE COURT: Okay. All right. Thank you.

23 If you need me, I will be back in my office.

24 MR. MEADORS: Thank you, judge.

25 MR. SMALDONE: Thank you, Your Honor.

1 (Whereupon, proceedings were adjourned to December
2 5, 2012)
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SUMTER) IN THE COURT OF GENERAL SESSIONS
3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 RECO ANTONIO GODBOLT,) 2012-GS-43-00227
7 DEFENDANT.) DECEMBER 5, 2012
SUMTER, SOUTH CAROLINA

8
9 (VOLUME III)

10 B E F O R E:

11 THE HONORABLE GEORGE C. JAMES, JUDGE. ; And a Jury.
12

13
14 A P P E A R A N C E S:

15 JOHN MEADORS, ASSISTANT SOLICITOR
16 CHIP FINNEY, SOLICITOR
ATTORNEYS FOR THE STATE

17 GRANT SMALDONE, ASSISTANT PUBLIC DEFENDER
18 ATTORNEY FOR THE DEFENDANT
19

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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1 (PROCEEDING, DECEMBER 5, 2012)

2 THE COURT: All right, Mr. Meadors, Mr. Smaldone,
3 I know that when I came in here about 9:30 you indicated
4 that you had something that you wanted to try to work out
5 amongst yourselves, as far as a stipulation is concerned?

6 MR. MEADORS: Yes, sir, judge.

7 I think we had -- she's on her way too, she being
8 Catherine Leisy of SLED, so either way -- if she gets here
9 in time I may present her testimony. If not, he's agreed to
10 stipulate it.

11 Basically -- obviously it's already entered about
12 the do rag DNA belonging to the co-defendant Mr. Helton.

13 This is Agent Leisy's report and it's specifically
14 dealing with State's 40, which is a glove from the car, and
15 State's 39, which is a knit glove from inside.

16 THE COURT: 39 and 40 you said?

17 MR. MEADORS: Yes, sir, 39 from the inside of the
18 residence. 40 is from the vehicle.

19 Her testimony would be her findings were that the
20 DNA profile that was developed from 14.1, which is the
21 house, is a mixture of at least four individuals. Reco
22 Godbolt cannot be excluded as a possible contributor to this
23 mixture.

24 The probability of randomly selecting an unrelated
25 individual who could have contributed to this mixture is

1 approximately one in four.

2 And then she goes on to say no conclusive
3 statement can be made regarding to inclusion or exclusion of
4 Carolyn Funke, Bryan Funke, Jessica Hodge as possible
5 contributors. Those were just some other samples they had,
6 judge.

7 It goes on to say Jamal Helton and two other
8 individuals, who aren't involved in any testimony, are
9 excluded as possible mixtures.

10 THE COURT: All right.

11 MR. MEADORS: And then the other one is 15.1,
12 basically it says no conclusive statement can be made
13 regarding the inclusion or exclusion of Jamal Helton or Reco
14 Godbolt.

15 That's basically it.

16 And, like I say, she's on her way. If not, he's
17 willing to stipulate to that.

18 THE COURT: As far as the final points of the
19 stipulation are concerned, typically a lawyer would publish
20 it, if it's agreed upon, or actually read it, or I would do
21 it.

22 I think that under these circumstances it probably
23 would not be appropriate for me to read it, unless it's
24 something was typed, so I would file it up.

25 So, Mr. Smaldone, you have heard what he said. Is

1 that the essence of the stipulation?

2 MR. SMALDONE: Yes, sir, that's the stipulation in
3 its entirety. What I don't want is to say is it was
4 probably, you know, Mr. Godbolt, because I think that kind
5 of draws --

6 THE COURT: Well --

7 MR. SMALDONE: -- too much from it.

8 THE COURT: That's why the stipulation as
9 presented has to be perfectly agreed upon, so that if he
10 stands up and tells the jury what it is, you don't stand up
11 and say no, that's not what it is. So --

12 MR. SMALDONE: If that's what it is, then I'm
13 completely okay with that.

14 THE COURT: Okay.

15 MR. MEADORS: And further I guess these other --
16 there are other witnesses that were like girlfriends. The
17 samples were all sent to SLED. Is it okay if -- clearly
18 there is no evidence they were in the house. Just none
19 whatsoever. They weren't there. They just got samples --
20 you know how they do, they send them all over there. And in
21 her report she includes all the swabs that she got,
22 basically, the profile of their swab.

23 I could keep it clean and just leave them out and
24 just do Mr. Godbolt and Mr. Helton, which is factually
25 correct, and I think he's okay with that, and that would be

1 the only change I would make to this report.

2 THE COURT: If there is going to be a stipulation,
3 then that's what y'all have to agree on. I won't get
4 involved in that.

5 Now, let's go to the points yesterday about Mrs.
6 Funke's testimony, if we can.

7 The objection to her testimony from the stand from
8 Mr. Smaldone was that her statement as to what her husband
9 told her was hearsay, and I hadn't gotten to the recording
10 yet. Of course, hearsay is defined as an out-of-court
11 statement and it's offered to prove the truth of the matter
12 asserted.

13 It's probably not hearsay for two reasons. One is
14 is that it's not being offered to prove that he was shot,
15 obviously, because the State is not trying to prove that.
16 They are trying to prove that he was shot at. It's being
17 offered to prove that at least at some point while he was in
18 a heightened emotional state, or otherwise, he told his wife
19 at least that there was a shot. In other words, the
20 inference to be derived from that.

21 Under 801, prior consistent statement can come in
22 and it's not even hearsay. If you want, I can go over that,
23 the gist of the rule. A prior statement is not hearsay if
24 the declarant testifies and is subject to cross-examination
25 concerning the statement and it's consistent with his

1 testimony and offered to rebut an express or implied charge
2 of recent fabrication or improper influence or motive.
3 Provided, however, that statement had to have been made
4 before the alleged improper influence or motive arose.

5 I think it comes in -- it's not hearsay for that
6 reason. If it is hearsay, there is certainly an exception,
7 and no doubt in my mind about that. If it is hearsay, it's
8 an excited utterance under 803(2), because it was a
9 statement relating to a startling event made while he was
10 under the stress of excitement caused by these events.
11 There is absolutely no doubt in my mind about that, so it's
12 going to come in one way or the other.

13 Now, as far as the recording of what she told the
14 911 operator, in my view that's not relevant. It doesn't
15 tend to prove anything, and I just don't think it's
16 relevant.

17 If it is relevant, I believe that the probative
18 value of that statement is substantially outweighed by the
19 danger of unfair prejudice, because if I were sitting here
20 listening to it, first of all, if anything in this case, his
21 home, it's her hysterical state talking to that 911
22 operator, and I can -- and I -- she turns right out of
23 Wal-Mart. She's going down the highway, turns left at Bull
24 Motor Company, and says this is where I am and she's
25 understandably about to go to pieces. And especially the

1 911 operator calling her back and saying "he's okay, he has
2 not been shot," to me that will have an untenable tendency
3 to make the jury go off and say "good grief, we have to do
4 something. This lady was thinking in that small window of
5 time that her life was destroyed," and I just don't think
6 that the case has anything to do with that, so that's my
7 ruling.

8 Certainly, Mr. Meadors, if you have any additional
9 points you want to put on the record to protect that
10 finding.

11 Mr. Smaldone, the other ruling, if you have any,
12 that's fine as well.

13 MR. SMALDONE: Thank you, sir.

14 THE COURT: When you get to the stipulation, let
15 met know if it's something that you want to get your office
16 to type and I can read it, that's fine.

17 If you both know what it is and you have
18 confidence in him broadcasting it to the jury, that's fine
19 too. It doesn't matter.

20 MR. MEADORS: Thank you, judge.

21 THE COURT: Okay.

22 Is everybody here?

23 THE CLERK: Yes, sir.

24 THE COURT: I know it's -- well, I don't know what
25 time that clock says. I never have -- it's probably a

1 little bit slow.

2 THE CLERK: Yes, sir. I got a couple minutes
3 after ten.

4 THE COURT: 10:01.

5 Okay, is the State ready?

6 MR. MEADORS: Yes, sir.

7 THE COURT: Defendant?

8 MR. SMALDONE: Yes, sir.

9 THE COURT: Okay. You can bring in the jury.

10 (The following takes place in the presence of the
11 jury panel)

12 THE CLERK: Your Honor, I have all the jurors and
13 the alternate present in the courtroom.

14 THE COURT: Okay. Thank you, ladies and
15 gentlemen, for being here on time. We are ready to move
16 forward.

17 The State is still calling witnesses, presenting
18 evidence.

19 Mr. Meadors, you can call your next witness.

20 MR. MEADORS: If it please the court, Your Honor?

21 THE COURT: Yes, sir.

22 MR. MEADORS: At this time, Your Honor, I would
23 now call Ms. Carolyn Funke.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand.

1 State your name, please.

2 THE WITNESS: Carolyn Funke.

3 CAROLYN FUNKE, having been first duly sworn,
4 testified as follows:

5 THE CLERK: Have a seat up here, please. Watch
6 your step coming up.

7 Please state your full name and spell your first
8 and last name for the record.

9 THE WITNESS: Carolyn Funke, C-A-R-O-L-Y-N
10 F-U-N-K-E.

11 DIRECT EXAMINATION BY MR. MEADORS:

12 Q. Good morning, Ms. Funke.

13 Please tell the ladies and gentlemen of this jury about
14 Ms. Carolyn Funke, please; where were you born and raised
15 and a little bit about your background.

16 A. I was born in Dayton, Ohio, and graduated from the
17 University of Dayton.

18 I met my husband in 1988. We were married in '89, and
19 here we are.

20 Q. Do you have any children?

21 A. We have three children; Andy, Alex and Erica.

22 Q. And when did you and your husband come to Sumter?

23 A. In 2006.

24 Q. And he's a physician?

25 A. Yes.

1 Q. And specifically in October, 2011, where was his
2 practice? What was he doing?

3 A. He was a flight surgeon at Shaw Air Force Base.

4 Q. Okay. And have y'all moved around a fair amount?

5 A. Yes.

6 Q. Where are some of the different places that you have
7 lived?

8 A. Misawa, Japan; Clarke Air Base, the Philippines; Las
9 Vegas, Nevada.

10 Q. Slow down a little bit, if you would.

11 A. Oh, I'm sorry. Clarke Air Base in the Philippines;
12 Misawa, Japan; Las Vegas, Nevada; Hampton, Virginia;
13 Columbus, Mississippi. And there are some more.

14 Q. But once you came to Sumter, you have been here for ten
15 years?

16 A. Yes.

17 Q. Now, I want to take you back to specifically Halloween,
18 October 31st, 2011. Do you remember that day?

19 A. Yes.

20 Q. And midday, approximately, 12-ish, do you remember
21 where you were?

22 A. Yes.

23 Q. And where were you? Where were you?

24 A. Like -- at Wal-Mart?

25 Q. Yeah. Where were you?

1 You were at Wal-Mart?

2 A. Yes.

3 Q. Shopping?

4 A. Yes.

5 Q. Did you and your husband -- does he eat his lunch
6 sometime at home?

7 A. Yes.

8 Q. And sometimes other places?

9 A. Yes.

10 Q. Okay. You were at Wal-Mart at twelve o'clock, did you
11 receive a phone call?

12 A. Yes, I did.

13 Q. And was it your husband?

14 A. Yes, it was.

15 Q. And can you describe to this jury, the best you can
16 remember, how he sounded?

17 A. It was pretty surreal. He wasn't like -- there was
18 this person on the other end of the phone that -- I didn't
19 know the phone number when it came up, and so I really
20 didn't who it was, and so this person was saying -- which it
21 was him, but it was just this really bizarre voice saying
22 "we have been robbed. I have been shot. You need to come
23 home," or -- I mean, it was just like really bizarre and
24 then the phone went dead. And I thought well, what's that
25 about.

1 Q. So he didn't sound like he usually did?

2 A. No. I thought well, somebody like got the wrong
3 number, or, you know, something weird, and that -- okay.
4 And then it rang again. It was almost the same thing and
5 then the phone goes dead.

6 And then I'm trying to call the house phone and I'm
7 trying to call his cell phone and nothing is going through.
8 And I can't remember if I got another phone call or if
9 there -- I don't remember if I had two phone calls or if I
10 had three phone calls. I have no clue.

11 I just remember like pushing my cart through Wal-Mart
12 going okay, I think I better leave now, and so I kind of
13 left my cart and I got to my car.

14 Q. So I guess you said -- did the voice -- it was your
15 husband?

16 A. It was.

17 Q. Okay.

18 A. I mean -- yeah, I mean, it definitely was, but it was
19 just really bizarre.

20 Q. And you said what you heard was he -- you had been
21 robbed and he had been shot?

22 A. Uh-huh.

23 MR. SMALDONE: Objection, counsel is testifying.

24 THE COURT: Overruled.

25 BY MR. MEADORS:

1 Q. And that's what you thought it was?

2 A. That's what I thought at first.

3 Q. And based on that did you -- did you call 911?

4 A. Yes, I did.

5 Q. And as a result of that did you -- did you subsequently
6 learn that he hadn't actually been shot?

7 A. That is true.

8 MR. SMALDONE: Objection, Your Honor. Counsel is
9 testifying.

10 THE COURT: Overruled.

11 MR. MEADORS: Can we approach?

12 THE COURT: Yes, sir.

13 (Whereupon, the lawyers approached the bench for
14 an off-the-record discussion)

15 THE COURT: You can continue.

16 BY MR. MEADORS:

17 Q. Where did you go after that?

18 A. Home.

19 Q. I guess is it fair to say when you first heard him on
20 the phone, you thought he had been shot?

21 A. I did.

22 Q. I'm going to show you what's marked State's 5 and just
23 ask --

24 MR. MEADORS: Can I approach, judge?

25 THE COURT: Yes.

1 That's already in, right?

2 MR. MEADORS: Yes, sir.

3 THE COURT: Okay.

4 BY MR. MEADORS:

5 Q. Did you recognize this?

6 A. Yes.

7 Q. And it's got CF on it. Who is that?

8 A. That is me, because I have to put my initials on most
9 everything or my kids will take it from me.

10 Q. But that's Carolyn Funke?

11 A. Yes.

12 Q. Where was this usually kept?

13 A. It was probably in the kitchen. I mean, it might have
14 been in the family room on the coffee table, but it's
15 usually, you know, right in that area.

16 Q. And also was your daughter's camera taken?

17 A. Yes.

18 Q. And where was that usually kept?

19 A. That was probably on the kitchen table.

20 Q. And there are pictures in here of your bedroom and
21 house with drawers open and things in disarray. Is that how
22 you left the house that morning?

23 A. No. I mean, I did have a big pile of clothes on the
24 bed, but that was about it.

25 Q. State's 16?

1 A. No, I don't know if I left it that like that. Maybe.

2 Q. The drawers. I mean State's --

3 A. No, that was not -- I did not do that.

4 Q. So you didn't leave these drawers like this?

5 A. No.

6 Q. And did you give anyone permission to enter your house
7 that day --

8 A. No.

9 Q. -- or go through your things and steal them?

10 A. No.

11 MR. MEADORS: Beg the court's indulgence?

12 THE COURT: All right.

13 (Off the record)

14 (Back on the record)

15 MR. MEADORS: Nothing further.

16 THE COURT: Mr. Smaldone?

17 MR. SMALDONE: I don't have any questions.

18 THE COURT: Thank you, ma'am. You can step down.

19 MR. MEADORS: John Melton.

20 THE COURT: All right, come on up, please.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 State your name, please.

24 THE WITNESS: John Melton.

25 DETECTIVE JOHN MELTON, having been first duly

1 sworn, testified as follows:

2 THE CLERK: Have a seat up there, please.

3 Please state your full name and spell your first
4 and last name for the record.

5 THE WITNESS: John Melton. J-O-H-N, M-E-L-T-O-N.

6 DIRECT EXAMINATION BY MR. MEADORS:

7 Q. Good morning, investigator.

8 A. Good morning.

9 Q. Please acquaint yourself with this jury, please. Tell
10 them about John Melton, where you were born, where you were
11 raised, your background, your education, your training, and
12 in particular your training in the field of law enforcement,
13 please.

14 A. I was born in Norfolk, Virginia.

15 I kind of moved all over, ended up graduating high
16 school in Tennessee.

17 I joined the military in 2001. I did a four year tour
18 of duty. I finished that in 2005.

19 I became a police officer and went to the police
20 academy. I graduated in January of 2006.

21 I was on patrol for several years, then got assigned in
22 2010 to Investigative Services Division as a detective.

23 I have been through the detective course with the South
24 Carolina Criminal Justice Academy.

25 Also I have attended and do attend St. Leo University.

1 I do have an Associates Degree in the Arts, as well as
2 an Associates Degree in Applied Sciences, which I obtained
3 from the Air Force.

4 Q. Your position now with the police department is what?

5 A. I am a detective. I am currently assigned to the Fraud
6 and Forgeries Division.

7 Q. Let's go back in time to October the 31st, 2011,
8 investigator. What was your position then?

9 A. At the time I was assigned to the Property Crimes
10 Division and my specific task was the burglary area.

11 Q. Did you have an occasion -- did you respond to 555 --
12 how do you pronounce this street?

13 A. Canvasback.

14 Q. Canvasback?

15 A. Yes, sir.

16 Q. Did you have an occasion to respond to Canvasback Cove?

17 A. I did.

18 Q. And approximately what time was that?

19 A. It was -- we left the department as soon as the call
20 had begun to come out. I responded on the scene when
21 everything was still sort of in chaos.

22 Q. What are your observations when you get to the scene?

23 A. When I got to the scene I saw patrol officers, as well
24 Detective Morse, putting somebody in a car. I didn't really
25 pay attention who the person was.

1 I then walked past Detective Morse's car. Our car was
2 parked right behind his and I did observe the suspect
3 vehicle in the driveway. At that point I observed Mr. Funke
4 pulling some items from the vehicle. I told him to stop
5 pulling the items from the vehicle, step back from the car.

6 Q. Did you observe Dr. Funke pulling items from what
7 vehicle?

8 A. From the suspect vehicle, sir.

9 Q. What were they?

10 A. It was the television, to be specific. There is a
11 television that was removed from the car. He was just
12 pulling it out. And I didn't want to disturb any type of
13 potential evidence that might have been on the TV, so I told
14 him to stop messing with the car.

15 Q. Dr. Funke was trying to get his TV back?

16 A. Yes, sir.

17 Q. And so he just went and took it?

18 A. Yes, sir.

19 Q. And you told him to stop?

20 A. Yes, sir.

21 Q. And subsequently was it in the driveway?

22 A. It was sitting kind of on like the little grassy edge.

23 Q. Go ahead.

24 A. I then -- my next thought was to make sure everybody
25 was all right.

1 Detective Christmas had said that one of the suspects
2 had ran and had gotten away, so I then asked him what way
3 they had run, got the canine on the scene. And because of
4 the information we had, that the suspects were armed, I did
5 go to Detective Christmas's car. I did get the shotgun out
6 of his car and I told Detective Christmas to get his vest.
7 And then -- we put the dog on the ground just as soon as we
8 possibly could.

9 Q. Did you participate in the canine search?

10 A. I did.

11 Q. Tell the ladies and gentlemen about that.

12 A. We left out, went down behind the house and behind the
13 next door neighbor's house.

14 We went through a swamp. It was full of briers and
15 weeds. They are probably about waist high in some places.
16 The briers and other places were literally above my chest
17 and we kind of would have to crawl little tunnels.

18 We ran for a long, long way with the dog. We run
19 through swamp, woods, brier patches, thickets.

20 We ended up a couple of times coming up on ponds.

21 At one point we even ran past the little wooden dock
22 behind a house.

23 It was so bad I remember that my shoe came off in the
24 mud in one place. The mud on my pants was about knee high
25 and I actually -- for whatever reason -- my favorite neck

1 tie I had on was ruined by the briers running through the
2 brier patch. I had to throw it away. And my shoes that day
3 were so muddy and stuff I threw them away and my pants.
4 They were tore up real bad so I threw them away as well.
5 Q. Y'all did not apprehend anybody as a result of that
6 search?

7 A. No, sir, we didn't.

8 Q. Did you find any potential items that potentially might
9 be relevant to this case as a result of that canine search?

10 A. We did.

11 Q. What was that?

12 A. We found a skull cap. The skull cap was hanging in a
13 brier patch on a vine in the swamp that was kind of adjacent
14 to the house.

15 When you go behind the neighbor's house, it drops off
16 in a swamp and it's like between two lake areas. There is a
17 real thick brier patch in there and the briers were in
18 places chest high, or better, and hanging on a brier limb
19 was a skull cap.

20 Q. That's what I -- it's already been testified to that
21 Detective Aleck collected?

22 A. That's correct, sir.

23 Q. And is that skull cap that came back with the DNA on it
24 to a Mr. Jamal Helton?

25 A. That is, sir.

1 Q. Who was apprehended at the scene?

2 A. Reco Godbolt.

3 Q. And at what point was --

4 We heard testimony yesterday Mr. Godbolt gave a
5 statement?

6 A. He did.

7 Q. As a result of that, what, if anything, was done with
8 Mr. Helton? Was he arrested?

9 A. He was arrested.

10 Q. What did you do next in your investigation, just for
11 this case?

12 A. For this case, I was -- I was assigned the case. I was
13 I guess what you could call the lead investigator on it. I
14 compiled all the statements that were obtained by other
15 officers, as well as all the case information.

16 Every time we enter a piece of evidence, we do chains
17 of custody. All the documents basically associated with the
18 case. I compiled it. I then used that information to
19 obtain search warrants that are irrelevant to this case at
20 this point today, but we did then go through the process of
21 trying unravel other criminal acts.

22 Q. Let me just state I want to focus on this car, if you
23 will.

24 Were you able to determine the ownership of the car
25 that was stuck at 555 Canvasback?

1 A. Yes, I was.

2 Q. Who did that come back to?

3 A. Jessica Hodge.

4 Q. And were you able to develop through the investigation
5 of whether or not there was a connection between Ms. Hodge
6 and Reco Godbolt?

7 A. Yes. In fact, I was.

8 Q. What was that?

9 A. The connection was that Mr. Godbolt and Ms. Hodge were
10 in what would be considered a cohabitating relationship and
11 they did have children in common.

12 Q. And that car was registered to her?

13 A. That's correct.

14 Q. And were there any other identifying items in the car
15 pertaining to Mr. Godbolt?

16 A. I would have to look back at the pictures. I could not
17 answer at this time. I would have to look back at the
18 pictures.

19 Q. Was his license recovered.

20 A. There was a license in the vehicle.

21 I know for a fact that Jamal Helton's license was in
22 there. I'm not sure about Mr. Godbolt's.

23 MR. MEADORS: Beg the court's indulgence.

24 THE COURT: All right.

25 (Off the record)

1 (Back on the record).

2 (Photograph marked as State's Exhibit No. 44 for
3 identification)

4 BY MR. MEADORS:

5 Q. I'm going to show you what's marked State's 44. Do you
6 recognize that? Does that pertain to the --

7 A. I do.

8 Q. What's that?

9 A. That's the TV that Mr. Funke removed from his vehicle.

10 MR. MEADORS: Without objection, Your Honor.

11 MR. SMALDONE: No objection.

12 THE COURT: That's in.

13 (State's Exhibit No. 44 was entered into the
14 record as evidence).

15 MR. MEADORS: Judge, I'm approaching, if that's
16 okay?

17 THE COURT: All right.

18 BY MR. MEADORS:

19 Q. State's 44, what is it?

20 A. That's the television that Mr. Funke removed from his
21 vehicle.

22 Q. And why is it in the yard?

23 A. It was in the car. Mr. Funke, when I came up, was
24 literally pulling it out.

25 Q. And so then it was just left in the yard?

1 A. I just told them to stop right there and that's right
2 where it was left.

3 MR. MEADORS: Beg the the court's indulgence.

4 (Off the record)

5 (Back on the record)

6 (Cardboard Box Containing Jamal Helton's Clothing
7 marked as State's Exhibit No. 45 for identification)

8 BY MR. MEADORS:

9 Q. How did you get Jamal Helton's clothes?

10 A. Through the process of investigation we were able to
11 locate or identify that Jamal Helton was likely at 11
12 Williams Street in the City of Sumter. We did go there. We
13 made contact with the resident there, a Ms. Richbourg,
14 and --

15 Q. Ronnie Richbourg?

16 A. Yes. In fact, we made contact with another resident
17 there named Diamond Young. They were both there.

18 COURT REPORTER: The name again?

19 THE WITNESS: Diamond Young.

20 COURT REPORTER: Thank you.

21 A. When we knocked on the door, we did, in fact, say we
22 were here looking for Jamal Helton. And when we did, Ms.
23 Young opened the door wide open and said "there he is," and
24 we saw him dash into a side room.

25 The hallway, just so I could describe it, is very long.

1 It goes down the entire length of the house. It's probably
2 about I would say eight feet wide and it's probably from
3 myself to about where Detective Sims is sitting back there
4 in the courtroom.

5 BY MR. MEADORS:

6 Q. You got consent to search?

7 A. We did.

8 Q. Did you locate Jamal Helton's clothes in that
9 residence?

10 A. We did.

11 Q. Where?

12 A. There was like a mop bucket that was inside the house.
13 It was being used as a trash can, and the clothing was up
14 underneath the trash inside this mop bucket. We were told
15 they were there by Ms. Richbourg.

16 Q. What were your observations, just from your own eyes,
17 looking at those clothes?

18 A. When we recovered them, the most notable thing was
19 there was like a -- like a dirt line or something on them
20 about right here in this area, which I thought was
21 significant because of the swamp we had run through and all
22 the big large areas of water, you know, the big ponds, or
23 lakes; or whatever you want to call them that we run up to.

24 Q. Where you messed up your tie?

25 A. Uh-huh.

1 Q. Your own clothes?

2 A. That's correct.

3 Q. I'm going to show you what's State's --

4 MR. MEADORS: State's 45, without objection,
5 judge.

6 THE COURT: Okay.

7 All right, Mr. Smaldone?

8 MR. SMALDONE: No objection.

9 (State's Exhibit No. 45 was entered into the
10 record as evidence)

11 BY MR. MEADORS:

12 Q. What is State's 45?

13 A. It is Gucci pants, the Gucci hoodie, and a tank top,
14 and these are the clothes that we recovered from 11 Williams
15 Street.

16 Q. And these were also sent to SLED?

17 A. They were.

18 Q. And did they come back with results thereto
19 forensically that those clothes belonged to Jamal Helton?

20 A. That is correct.

21 Q. And was through DNA?

22 A. That is correct.

23 MR. MEADORS: And, Your Honor, I had previously
24 discussed that. That was with agreement with Mr. Smaldone.

25 THE COURT: All right.

1 BY MR. MEADORS:

2 Q. When you are going to search with the dogs, describe
3 the area to the jurors when you were leaving Canvass Cove --
4 Canvasback Cove.

5 A. When we left, Dr. Funke's house would be like here.
6 There is a little road that goes like this, and there is
7 another house that sits over here, and behind his house is a
8 pond.

9 And there is like a wooded area that drops off behind
10 the house next door. It drops off kind of gradually into a
11 bottom. In fact, his neighbors had like lemon trees and
12 stuff and I had never seen that, so I thought that was kind
13 of interesting later on when we tried to come back.

14 We dropped off into a swamp area and there was a bridge
15 that led from I guess what would be considered the
16 neighbor's yard into the swamp.

17 When we hit the swamp, it was very thick. At times you
18 literally could not even see the ground in the swamp. And
19 then there were periods of mud that you would be in mud up
20 to here. And there was brier patches that were just
21 ridiculous in the swamp.

22 Then we come up out of the swamp and we come up behind
23 what I later discovered to be a fireman's house. And we
24 went past the fireman's house and then we made a left turn.
25 Now we would be like parallel to Loring Mill Road.

1 When we made left turn we went back into like a wooded
2 area that dropped off into like a marshy bottom. And we
3 come up out of that wooded area on this red clay bank into a
4 subdivision. It was like a newer subdivision. There wasn't
5 hardly any houses in it. I think there was like one.

6 And we come over the red cliff bank, there was
7 like a -- I don't know whether it was a logging road, or
8 what it was, but we went across that, went through another
9 thicket, and this thicket was so thick that you couldn't see
10 from me to y'all in most of the places, and it was inside
11 some pine trees.

12 And we kept coming around and then we come up where you
13 could actually see Loring Mill Road really well, like we
14 were like maybe thirty yards from it, forty yards in the
15 woods, but there would be jacks in the trees where you could
16 see it.

17 We ran back into what was like the start of a new
18 subdivision, a paved road. We hit the paved road. We went
19 across the paved road. There is like a little retaining
20 pond. We made a left at the retaining pond and we went
21 straight back toward what I think is called Mill Pond, or
22 it's the lake that runs out on Liberty Street. We went back
23 that way and then we made a left back and paralleled that
24 back for probably another quarter of a mile.

25 It was -- it was a long, long trek and it was just

1 muddy, tons of weeds and vines and grass and briars and
2 swamp. I don't know any other way to describe it, except it
3 just -- it was not pleasant at all.

4 Q. Let me ask you a couple more questions and I'm about
5 through.

6 After Mr. Godbolt was arrested, were samples taken from
7 his hands for gunshot residue?

8 A. They were.

9 Q. And were you able to do that for Mr. Helton?

10 A. Was not able to do that for Mr. Helton.

11 Q. And was that because of the time factor?

12 A. It was.

13 MR. MEADORS: Beg your indulgence just one more
14 time, Your Honor, and I think we are through.

15 (Off the record)

16 (Back on the record)

17 MR. MEADORS: Judge, I think that's all I have at
18 this time. Thank you.

19 THE COURT: Mr. Smaldone?

20 CROSS EXAMINATION BY MR. SMALDONE:

21 Q. Good morning.

22 A. Good morning.

23 Q. I'll be brief.

24 You traveled through the woods and never found a gun?

25 A. No.

1 Q. Never found a shell casing?

2 A. No.

3 Q. And now -- they didn't seem to mention this. When --

4 MR. MEADORS: Your Honor --

5 THE COURT: Sustained. You can't comment about
6 how he asked the questions.

7 Just ask questions.

8 MR. SMALDONE: Apologize, withdrawn.

9 BY MR. SMALDONE:

10 Q. When the gunshot residue analysis was taken from Reco
11 Godbolt, what were the results?

12 MR. MEADORS: Your Honor, I have no objection if
13 he wants to offer that document which he's trying into
14 evidence, I have no objection.

15 THE COURT: Well --

16 MR. SMALDONE: This is --

17 THE COURT: He's questioning the witness, not you.
18 You can ask him that question as currently framed.

19 BY MR. SMALDONE:

20 Q. What were the results of the gunshot residue analysis?

21 A. They came back negative.

22 Q. Thank you.

23 MR. SMALDONE: No further questions.

24 THE COURT: All right, redirect?

25 MR. MEADORS: No, sir.

1 THE COURT: Step down.

2 Let me see the lawyers up here for just a minute.

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion)

5 THE COURT: All right, ladies and gentlemen, we
6 are going to take a brief recess right now. You may go to
7 your jury room.

8 Obviously you may not discuss the case at all. We
9 will have you back out shortly. If you need anything that's
10 not in the jury room, just tap on the door, Mr. Foreman, and
11 let the bailiff know. Okay?

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: Mr. Meadors, how long do you think we
15 need to firm all that up?

16 MR. MEADORS: Ten minutes.

17 THE COURT: Okay.

18 MR. MEADORS: Please.

19 THE COURT: Yes, sir.

20 (Whereupon, proceedings were recessed)

21 (Whereupon, proceedings were reconvened)

22 THE COURT: Anything that you want to put on the
23 record about what it actually is before we do it, or is
24 there any --

25 MR. MEADORS: Please, sir.

1 Judge, swabs from State's 40 and 39, two knit
2 gloves, one found from the driver's -- the vehicle in
3 question. State's 41 was found from inside the residence at
4 555 Canvasback. 39 was found inside.

5 40 was found in the vehicle.

6 Knit gloves were obtained by law enforcement and
7 sent to SLED. The stipulation would be that they were swabs
8 from inside and out of each glove. These were sent to
9 analyst Catherine Leisy, who quite frankly I think it would
10 benefit us to say if she was here to testify, some
11 miscommunication, it would take an hour to get here, so I
12 think that's another reason that the defendant is
13 stipulating. It would be her results of those two gloves,
14 and I was going to read them and we have gone over it and
15 read them word for word, so there won't be any -- we won't
16 change them at all.

17 THE COURT: All right. What I will do then is I
18 will allow you to put the stipulation on the record and I'll
19 ask Mr. Smaldone when he's done that, if that's correct.
20 And if it is, let me know. If it's not, let me know. I
21 just want to make sure we don't reach this point in the
22 trial and something is inadvertently said that might result
23 in us having to do this again. Okay?

24 MR. MEADORS: Thank you, sir.

25 THE COURT: Are we clear on that?

1 MR. SMALDONE: Yes, sir, thank you.

2 THE COURT: All right.

3 MR. MEADORS: We have looked over the document and
4 both parties do stipulate without question. It's directly
5 from her SLED report word for word.

6 THE COURT: All right.

7 Are we ready for the jury?

8 MR. MEADORS: Yes, sir.

9 MR. SMALDONE: Yes, sir.

10 (The following takes place in the presence of the
11 jury panel)

12 THE CLERK: We have all the jurors present in the
13 courtroom.

14 THE COURT: Thank you.

15 All right, Mr. Meadors?

16 MR. MEADORS: May it please the court, Your Honor,
17 the State of South Carolina would call Special Agent Hue
18 Tang to the stand.

19 THE CLERK: Place your left hand on the Bible and
20 raise your right hand.

21 State your name, please.

22 THE WITNESS: Hue Tang.

23 SLED AGENT HUE TANG, having been first duly sworn,
24 testified as follows:

25 THE CLERK: Have a seat up here, please.

1 Please state your full name and spell your first
2 and last name for the record.

3 THE WITNESS: Hue Tang. First name is spelled
4 H-U-E, last name T-A-N-G.

5 DIRECT EXAMINATION BY MR. MEADORS:

6 Q. And you are Special Agent Hue Tang, correct?

7 A. Yes, sir.

8 Q. I do this with all my witnesses, Special Agent.

9 Would you please, if you listen to me please, sir, tell
10 the jury a little bit about Hue Tang; your background, where
11 you are from, where you were born, but particularly your
12 background and education in the field of expertise that I'm
13 going to ask you to testify about here today, please, sir.

14 A. Yes. My name is Hue Tang.

15 Where I born?

16 Q. Tell us all, please.

17 A. Sure. I was born and raised in Viet Nam. I arrived
18 here in the state in 1980.

19 I received a Bachelors of Science with a Major in
20 Chemistry from the University of South Carolina. And I
21 received training in various discipline in trace evidence,
22 from gunshot residue, arson, paint, glass analysis,
23 explosive, bank dye, duct tape.

24 Q. Specifically trace, and more specifically gunshot
25 residue, what's your background and training in that?

1 A. I complete in-house training with SLED, and I received
2 additional training by attending various seminars sponsored
3 by the American Academy of Forensic Science and other
4 committee.

5 Q. And specifically gunshot residue, what is that
6 generally?

7 A. Gunshot residue is the vaporous cloud of metallic
8 matter when a gun discharge.

9 Q. And does that stay on somebody forever?

10 A. No, sir.

11 Q. And how can gunshot residue, if it is on the hands --
12 well, let me go back.

13 Have you been offered as an expert in the courts of
14 record in this state in the field of trace evidence and
15 gunshot residue before today?

16 A. Yes, sir, I have.

17 Q. How many tests have you done or how many gunshot
18 examinations have you done regarding gunshot residue?

19 A. A few hundred.

20 Q. A few hundred?

21 A. I don't have an exact number.

22 Q. How about trace evidence in general?

23 A. Trace evidence, over a thousand cases.

24 MR. MEADORS: Your Honor, at this time we would
25 offer Special Agent Hue Tang as an expert in the field of

1 trace evidence and specifically gunshot residue.

2 THE COURT: Any questions of the witness at this
3 point?

4 MR. SMALDONE: No, Your Honor.

5 THE COURT: Any objection to him being qualified?

6 MR. SMALDONE: No, Your Honor.

7 THE COURT: All right. Ladies and gentlemen, let
8 me have your attention for a few minutes..

9 Typically under the Rules of Evidence that I
10 mentioned to you earlier in the week a witness cannot give
11 an opinion. In other words, a witness can typically say
12 what they know from what they saw or heard or things of that
13 nature. There is an exception in the rules for what we call
14 an expert witness. If a witness is qualified by reason of
15 education or training or experience as an expert in a
16 particular field, or art, or science, that person can give
17 opinions and that person can also give reasons for those
18 opinions. That does not mean that you are bound by the
19 opinion given by an expert. In other words, you use your
20 common sense and you give it the weight that you believe it
21 deserves.

22 I'll instruct you later on about that, but this
23 witness is qualified as an expert in trace evidence analysis
24 and gunshot residue analysis.

25 Mr. Meadors.

1 MR. MEADORS: If it please the court.

2 BY MR. MEADORS:

3 Q. Let me ask you specifically about your involvement in
4 this case.

5 Do you know Agent John D. Roberts?

6 A. Yes, sir, I do.

7 Q. Who is he?

8 A. He's my co-worker. He's another trace analyst at SLED.

9 Q. And did he actually perform the examination on the
10 gunshot residue kit involving one Reco Godbolt?

11 A. Yes, sir, he did.

12 Q. Is a part of what -- you are accredited, correct, you
13 being SLED?

14 A. Yes, sir.

15 Q. As a part of that in your field of expertise are
16 examinations conducted by you and your fellow special agents
17 peer reviewed?

18 A. That's right.

19 Q. And is that what you did in this case, peer reviewed
20 the examinations and the results that John Roberts got from
21 his examination of the gunshot residue kit of one Reco
22 Godbolt?

23 A. That's right.

24 Q. Okay. You basically looked at what he did and said
25 this was done properly?

1 A. That's correct.

2 Q. And that's what peer review is, correct?

3 A. Correct.

4 Q. And so you have actually seen his work in this case and
5 evaluated, agree with it, and he's actually in a detective
6 school this week, correct?

7 A. That's correct.

8 Q. Okay. So you are here today?

9 A. On his behalf.

10 Q. Okay. On his behalf.

11 But you have seen these items, correct?

12 A. Yes, sir.

13 Q. Now, specifically, did you have an occasion --

14 And what's a gunshot residue kit, Agent Tang?

15 A. Gunshot residue kit contains the tubing and the cotton
16 tip swab and solution, diluted natural acid, and particle
17 lifts. And what they do is the officer take the particle
18 lift off the hand and after that he use solution with a
19 cotton tip swab and wipe and clean the hand -- I mean swipe
20 the hand from the palm, the back of each hand.

21 Q. If you don't mind, and if the judge doesn't mind me
22 getting close to you, so do you mind touching me? Show me
23 how these swabs would be done.

24 THE COURT: Maybe back up so all the jurors can
25 see.

1 MR. MEADORS: I'm sorry.

2 A. The solution -- the cotton tip swab put in the solution
3 and then you swipe the hand, the back and the palm off each
4 hand, and you place it in the tubing.

5 BY MR. MEADORS:

6 Q. Are they packaged separately?

7 A. They are put in one package.

8 Q. Okay. Each one of those samples for an individual is
9 then packaged and they sent to you at SLED, or y'all at
10 SLED, correct?

11 A. That's correct.

12 Q. And that's what happened in this case?

13 A. That's right.

14 Q. And is there a time limit where SLED won't -- when
15 samples are taken that y'all won't test?

16 A. Any sample from the time of the shooting to the time of
17 collection is anything above six hours we do not accept.

18 Q. Tell them why. Why is that?

19 A. Based on study the gunshot residue, we will -- the
20 amount will reduce as time go on. And as I indicated,
21 beyond six hours that no gunshot residue probative evidence
22 for the case.

23 Q. Over six hours you won't test it?

24 A. That's right.

25 Q. So y'all have a threshold level you have, Special Agent

1 Tang, that has to be above a certain amount before you will
2 say whether there was or was not gunshot residue?

3 A. That's correct.

4 Q. And after six hours you just won't test a sample that's
5 been collected, correct?

6 A. That's correct.

7 Q. Okay. Now, in this particular case you examined the
8 gunshot residue kit, did you not, of the local police that
9 was sent to y'all? You peer reviewed it?

10 A. That's right.

11 Q. I'm sorry. You peer reviewed it.

12 And was it -- were there any -- what were your -- what
13 were your results? What were John Roberts results that you
14 peer reviewed?

15 A. The results of the item No. 8, right palm, right back,
16 left palm, left back, the result was quantity of metal did
17 not indicate the presence of gunshot residue.

18 Q. All right. And let me talk to you about that a little
19 bit.

20 And do you know what time that the samples were taken
21 from Mr. Godbolt?

22 A. The information from the gunshot residue analysis
23 information form, the collection date is October 31st, 2011.
24 The time is 2:56 p.m..

25 Q. So if this happened roughly a little after twelve, that

1 would be 2:45 hours after a potential gunshot, correct?

2 A. Yeah, nearly three hours.

3 Q. Okay. What are ways that if one had shot a gun that
4 there would not be gunshot residue on him?

5 A. It's possible that you can wash your hand and you can
6 wipe your hand off.

7 And other activities from the time that you discharged
8 the weapon to the time that the GSR kit were collected, you
9 could remove some or all of the gunshot residue from your
10 hand.

11 Q. By wiping your hand?

12 A. Wiping your hand and --

13 Q. What if you just rubbed it like that?

14 A. Yes, sir, you could remove it.

15 Q. Putting your hand in your pocket?

16 A. Yes, sir.

17 Q. Putting your hand in and out of your pocket?

18 A. Yes, sir.

19 Q. Could that remove any potential gunshot residue?

20 A. Yes, sir.

21 Q. Let me ask you something else. If you wore gloves,
22 would you expect to find gunshot residue on your hands?

23 A. Oh, no, sir, since your hands were protected from the
24 gunshot residue.

25 Q. It may sound crazy, but if weren't the shooter and

1 somebody else shot, would you expect to find gunshot
2 residue?

3 A. No, sir.

4 Q. So gunshot -- assuming there was a shot, gunshot
5 residue can be removed any time by the person who shot just
6 if they rubbed themselves?

7 A. By activity from the time of discharge to the time it
8 was collected.

9 Q. If somebody was dead and then fired a weapon, how long
10 would the gunshot residue stay on a dead person's hand?

11 A. It stay on until somebody removed it.

12 Q. And why is that?

13 A. Because you are dead, you don't -- any activity from
14 the time the shooting to the time collected.

15 Q. And that's my point. If you are living and blood is
16 still going on, will sweat take off gunshot residue?

17 A. Yes, sir.

18 Q. Running, sweating could take off gunshot residue?

19 A. Yes, sir.

20 Q. And that's why y'all have your time limit?

21 A. That's correct.

22 Q. You mentioned washing earlier. Would rain potentially
23 take any --

24 MR. SMALDONE: May we approach?

25 THE COURT: Yes, sir. Come on up.

1 (Whereupon, the lawyers approached the bench for
2 an off-the-record discussion)

3 BY MR. MEADORS:

4 Q. Could rain potentially take gunshot residue off?

5 A. Yes, sir, if it come in contact with your hand.

6 Q. Agent Tang, thank you for coming here.

7 A. That's okay.

8 THE COURT: Cross-examination?

9 MR. SMALDONE: I don't have any questions for you.
10 Thank you for coming down.

11 THE COURT: Thank you, sir. You can step down.

12 MR. MEADORS: Beg the court's indulgence.

13 (Off the record)

14 (Back on the record)

15 MR. MEADORS: Your Honor, permission for Special
16 Agent Tang to leave?

17 THE COURT: Thank you, sir, you can leave, if you
18 would like, or you can stay, whichever you want to do.

19 MR. MEADORS: Thank Your Honor for one second.

20 (Off the record)

21 (Back on the record)

22 MR. MEADORS: I'll go over here and talk to the
23 court reporter briefly.

24 THE COURT: Okay. All right.

25 (Off the record)

1 (Back on the record)

2 MR. MEADORS: May it please the court?

3 THE COURT: Yes, sir.

4 MR. MEADORS: Your Honor, there is a stipulation I
5 would like to publish.

6 THE COURT: All right, ladies and gentlemen, as I
7 mentioned to you, evidence can come to you in different
8 ways; testimony, exhibits, and another way is by
9 stipulation.

10 Mr. Meadors is going to publish, which means read
11 or made known to you, a stipulation that he and the
12 defendant through Mr. Smaldone have agreed upon.

13 Mr. Meadors, you can go ahead.

14 MR. MEADORS: Thank you. May it please the court?

15 THE COURT: And this is evidence which you can
16 weigh, just like any other evidence. Give it the weight you
17 believes it deserves.

18 MR. MEADORS: Your Honor, there is a stipulation
19 between the State of South Carolina, by Assistant Solicitor
20 John Meadors, and a stipulation with the defendant Reco
21 Godbolt, through his attorney Mr. Grant Smaldone, that
22 evidence, State's Exhibit No. 39 and State's Exhibit No. 40,
23 were sent to SLED. A sample was obtained from inside and
24 out of the glove by swab. It was then sent to Catherine
25 Leisy, a forensic scientist at SLED, and her results of her

1 examination are as follows:

2 The DNA profile developed from Item 14.1, which is
3 State's 39, is a mixture of at least four individuals. Reco
4 Godbolt cannot be excluded as a possible contributor to this
5 mixture.

6 The probability of randomly selecting an unrelated
7 individual who could have contributed to this mixture is
8 approximately one in four.

9 No conclusive statement can be made regarding the
10 inclusion or exclusion of Carolyn Funke, Bryan Funke and
11 Jessica Hodge as possible contributors to this mixture.

12 Jamal Helton, Spencer Braxton and Brittany Braxton
13 are excluded as possible contributors to this mixture.

14 The DNA profile developed from Item 15.1, which is
15 State's 40, is a mixture of at least four individuals.

16 No conclusive statement can be made regarding
17 inclusion or exclusion of Jamal Helton, Reco Godbolt,
18 Jessica Hodge, Spencer Braxton, and Brittany Braxton as
19 possible contributors to this mixture.

20 Carolyn Funke and Bryan Funke are excluded as
21 possible contributors to this mixture.

22 That concludes the stipulation designed between
23 the State of South Carolina and Reco Godbolt.

24 THE COURT: Is that correct Mr. Smaldone?

25 MR. SMALDONE: Yes, Your Honor.

1 THE COURT: All right.

2 Any other witnesses, Mr. Meadors?

3 (Off the record)

4 (Back on the record)

5 MR. MEADORS: The State of South Carolina rests.

6 THE COURT: All right, thank you.

7 All right, ladies and gentlemen, the rules require
8 us to take a recess at this time to take -- it requires us
9 to take a recess between the State's presentation of
10 evidence and the next stage of the trial. So what I'm going
11 to ask you to do at this point is please go to your jury
12 room. This will not be an extended recess. You may not
13 discuss the case. We will have you back out momentarily.
14 Thank you.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: All right, Mr. Smaldone, any motions
18 at this time?

19 MR. SMALDONE: Yes, Your Honor.

20 First I move for a directed verdict on the
21 attempted murder charge.

22 There is nothing in the record to show that --
23 even if the State's version of the facts taken as true, but
24 there is nothing in the record to show any indication where
25 a gunshot was fired, who it was fired at, whether or not it

1 was fired in the ground, whether or not it was a blank
2 round. And, furthermore, there was no gun recovered, nor a
3 shell casing recovered.

4 THE COURT: All right. Do you want to address
5 these one at a time, Mr. Meadors?

6 MR. MEADORS: Your Honor, he said he thought he
7 was shot at. He was running away, guns coming after him. I
8 don't know how much more evidence we could produce.

9 THE COURT: What's the -- what was the evidence
10 of -- was Dr. Funke's testimony about him seeing the outline
11 of the gun in that jacket, that was after the gunshot was
12 fired, is that correct?

13 MR. MEADORS: I think inferentially that would
14 be -- yes, sir, that's correct.

15 THE COURT: What do you think the law says about
16 an attempted murder charge when you hear a gunshot, because
17 I have to accept the evidence as true at this point that
18 there was a gunshot, but there is no indication that the
19 round was fired at the victim.

20 MR. MEADORS: Well, first of all, we have -- I
21 think Your Honor can consider what happened. We don't know
22 exactly when the gunshot happened, but can consider what
23 happened then and contemporaneously. I think we have got
24 direct evidence that they said they were going to kill him.
25 "I'm going to kill you." I don't know exactly when --

1 THE COURT: Which was afterwards?

2 MR. MEADORS: Right, but, I mean, that -- I think
3 you can take that, respectfully, into consideration that he
4 heard a gunshot before, he's running away from them, they
5 are committing a home invasion. He thinks they shot at him.
6 He tells his wife "I have been shot at" right after it
7 happened, and then they are yelling at him "we are going to
8 kill you. We are going to kill you," and get up and then
9 show a gun. So I think circumstantially that gun, or a gun
10 Mr. Helton had, fired that shot. They -- the sounds, he
11 thinks he shot at and they expressed "we are going to kill.
12 We will kill you." I don't know that -- the evidence is
13 what it is.

14 THE COURT: All right. Anything else on this, Mr.
15 Smaldone?

16 MR. SMALDONE: Yes, Your Honor.

17 Dr. Funke testified he had no idea where the
18 gunshot was -- where it was going. I would ask for the
19 record.

20 THE COURT: All right.

21 MR. SMALDONE: Any acts --

22 THE COURT: Next motion.

23 Well, go ahead.

24 MR. SMALDONE: I was going to say any acts
25 afterwards are irrelevant, because the State has pled the

1 attempted murder happened when the gunshot --

2 MR. MEADORS: But he also got hit with the garden
3 hose, judge, and I just -- for whatever it's worth.

4 THE COURT: Well, what's the indictment say?

5 I don't think you can go to the jury on the
6 garden -- on the wand, because the indictment reads --

7 MR. MEADORS: I agree.

8 THE COURT: Okay.

9 Anything else, Mr. Smaldone, on the attempted
10 murder?

11 MR. SMALDONE: On the attempted murder, I mean --

12 Beg the court's indulgence to make sure I'm not
13 leaving anything out.

14 I guess just basically in conclusion stating he
15 doesn't know where the gunshot is coming from.

16 And, again, even if all the facts are true, the
17 presented a -- they never said "we are going to kill you."
18 Well, I'll leave that out, because it's afterwards, but at
19 the time of the alleged attempted murder he had no idea
20 where the bullet was going or if it was bullet. It could
21 have been a blank.

22 THE COURT: Okay. Next count, or any other
23 counts?

24 MR. SMALDONE: Yes, Your Honor.

25 We move for a directed verdict on the possession

1 of a weapon during a violent crime. I don't think there is
2 anything more than a scintilla of evidence to indicate that
3 there was, in fact, a weapon.

4 THE COURT: Okay.

5 MR. SMALDONE: I believe it's just the outline of
6 the weapon. And, of course, it's in the court's discretion,
7 but I don't think that that is enough to be a possession of
8 a weapon. It could have been --

9 Well, I'll leave it at that.

10 THE COURT: All right. Next one?

11 MR. SMALDONE: I think that's -- that's all I
12 needed to address right now, Your Honor.

13 THE COURT: Okay. All right, of course, as you
14 both know I'm to be concerned only about the existence of
15 evidence and not the weight. I don't want to intrude on the
16 jury's province. If there is any direct or substantial
17 circumstantial evidence that reasonably tends to prove
18 guilt, the directed verdict motion has to be denied.

19 I deny your motion for a directed verdict on
20 possession of a weapon during a violent crime. There is
21 more than a scintilla. Dr. Funke said the defendant, Mr.
22 Godbolt, held out his jacket and he could see the outline of
23 what appeared to be a weapon. He says he heard a gunshot.
24 There is no evidence that anybody else in the neighborhood
25 is firing weapons and that shows that either Mr. Godbolt or

1 Mr. Helton had the weapon. It was an accomplice issue.
2 They are running after him together, if you take the
3 evidence in the light most favorable to the State, which I
4 must do, so there is plenty of evidence upon which a jury
5 could base a conclusion beyond a reasonable doubt that he
6 was in possession of a weapon during a violent crime.

7 Attempted murder is a closer question. I was
8 thinking about that from the beginning of the case.

9 I believe the elements of the crime are such that
10 a jury could circumstantially conclude that there was an
11 attempt made on Dr. Funke's life. And I do believe the jury
12 could consider what he allegedly said after the shot was
13 fired and they caught him, so I'm going to deny that motion
14 as well. The jury may resolve it differently, but I think
15 there is enough to go to the jury.

16 All right, any other motions at this point?

17 MR. SMALDONE: No, Your Honor.

18 THE COURT: If your client could come on up,
19 please, and be sworn.

20 MR. SMALDONE: Sure.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 State your name, please.

24 THE WITNESS: Reco Godbolt.

25 RECO GODBOLT, having been first duly sworn,

1 testified as follows:

2 THE COURT: All right, Mr. Godbolt, we have
3 reached the stage of the trial now which the State has
4 rested. This is the stage of the trial during which you may
5 present your own defense. In that regard that includes the
6 fact that you can testify.

7 Specifically the United States Constitution
8 states, in pertinent part, in the Fifth Amendment that no
9 person in any criminal case shall be compelled to be a
10 witness against himself. That means that no one can make
11 you testify.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: As an example, Mr. Meadors can't call
14 you to the stand against your will. I cannot, nor can even
15 your own lawyer call you to the stand without you
16 consenting. The reason for that is that the right that you
17 have under the Fifth Amendment is a personal right. Since
18 it's a personal right no one can give it up except for you.

19 What I'm going to do right now is make sure that
20 you understand that, and any decision that you make whether
21 or not you do or do not testify is made by you freely and
22 voluntarily, with full knowledge of your rights under the
23 Fifth Amendment and the consequences of your decision to
24 testify.

25 If you testify, you will be subject to the same

1 basic rules that govern the direct and cross-examination of
2 any other witness who testifies.

3 If you have a record of any convictions where you
4 were released from confinement or the conviction occurred,
5 or you were released from confinement within the last ten
6 years and the crime was a crime of dishonesty or false
7 statement, that conviction can be introduced to the jury for
8 it to evaluate as to whether or not they believe you. That
9 would be the sole reason it could be introduced.

10 Likewise, if you have been convicted of a crime
11 that does not involve dishonesty or false statement, but the
12 possible punishment was more than one year, depending on the
13 circumstances, I have to weigh five factors under a string
14 of cases, that conviction could also be introduced to the
15 jury solely for the purpose of whether or not they decide to
16 believe you. Do you understand that?

17 I don't know whether or not there are any such
18 convictions either way, but that is -- that is something
19 that perhaps you could evaluate with your attorney.

20 If you decide not to testify, I will tell the jury
21 very specifically that they cannot consider that at all. In
22 other words, I tell the jury that the fact that you did not
23 testify is something they cannot think about, they cannot
24 discuss it, and it cannot enter into their decision in any
25 way whatsoever. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Likewise, I tell the jury that if you
3 do decide to testify, the fact that you did testify does not
4 mean that you have assumed or taken on the burden of proving
5 or disproving anything. Do you understand that?

6 THE WITNESS: Yes, sir.

7 THE COURT: In other words, the burden at all
8 times remains on the State.

9 In the end the decision is yours whether or not
10 you do or don't testify. You can discuss it further, if you
11 haven't already, with your attorney and anyone else that you
12 think is appropriate to discuss that with, but in the end
13 the decision will be yours.

14 Is all of this clear to you?

15 THE DEEFENDANT: Yes, sir.

16 THE COURT: Do you understand everything that I
17 said?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions at all about
20 what we have just been over?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you made your decision?

23 THE DEFENDANT: Yes, sir, I made my decision.

24 THE COURT: And what is that decision?

25 THE DEFENDANT: Not to testify.

1 THE COURT: Not to testify?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has anyone used any force, threats or
4 intimidation to get you to make that decision?

5 THE DEFENDANT: No, sir.

6 THE COURT: And you made that decision freely and
7 voluntarily?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And has Mr. Smaldone explained to you
10 the in's and out's of whether or not you will or will not or
11 should or should not testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you comfortable with your
14 decision?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. In just a few minutes --

17 And, by the way, Mr. Smaldone, will you be calling
18 any other witnesses?

19 MR. SMALDONE: No, sir.

20 THE COURT: In just a few minutes the jury is
21 going to come in and I'm going to excuse them for lunch. We
22 are going to take an early lunch so we can do the --

23 Does that suit you Mr. Meadors and Mr. Smaldone?

24 MR. MEADORS: Yes, sir.

25 MR. SMALDONE: Yes, sir.

1 THE COURT: We will probably take about an hour,
2 or so, for a lunch break.

3 When the jury comes in I'm going to ask Mr.
4 Smaldone will the defendant be calling any witnesses, and
5 he's going to answer that question. Based on what you said
6 right now it's going to be no and then all the evidence will
7 be in.

8 If while from the time you turn around and walk to
9 that table and the jury starts coming in, if you change your
10 mind and decide well, maybe at least I want to talk to my
11 lawyer more about it, or I do want to testify, you need to
12 let him know. He can come up here and let me know there has
13 been a change and then we can go forward. Do you understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. All right. Again, have you
17 understood everything that I have said to you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. You can have a seat.

20 THE DEFENDANT: Thank you.

21 MR. SMALDONE: Your Honor, just for clarification,
22 did you say I would rest after lunch or before lunch?

23 THE COURT: Well, if we are going to break for
24 lunch now, I want you to rest now.

25 Do you need to make any decisions?

1 MR. SMALDONE: No, I was just -- it was just for
2 scheduling. I didn't want to look sloppy.

3 THE COURT: Well, what I plan to do, unless you
4 want to do your arguments now --

5 MR. MEADORS: I will do whatever you want to do.
6 Lunch is fine with me.

7 THE COURT: Well, what we -- I would rather make
8 use of thirty minutes time going over the jury charge
9 instead of the jury sitting back there for thirty minutes
10 and then we start the arguments at a quarter to twelve.

11 MR. MEADORS: That's fine.

12 THE COURT: That suits you?

13 MR. SMALDONE: Yes, sir.

14 THE COURT: But, again, if Mr. -- if you need more
15 time to talk to Mr. Godbolt, that's fine.

16 MR. SMALDONE: I think we are pretty settled on
17 whether he will testify or not.

18 THE COURT: Okay. Thank you.

19 Now, do you think I have covered everything
20 properly with your client?

21 MR. SMALDONE: Yes, Your Honor.

22 THE COURT: Mr. Meadors, do you think I have
23 covered everything?

24 MR. MEADORS: Without question, thank you.

25 THE COURT: All right. You can have a seat.

1 You can bring in the jury.

2 (The following takes place in the presence of the
3 jury panel)

4 THE CLERK: Your Honor, we have all the jurors
5 back in the courtroom.

6 THE COURT: All right. Thank you, sir.

7 All right, Mr. Smaldone, will the defense be
8 calling any witnesses?

9 MR. SMALDONE: No, Your Honor, the defense rests.

10 THE COURT: All right. Ladies and gentlemen, that
11 basically means that all the evidence that is going to be
12 introduced in this case has been introduced. So, in other
13 words, all the evidence is in.

14 The lawyers indicated that -- when Mr. Smaldone
15 indicated that to me just a few minutes ago, the rules would
16 require us at this point to take another recess to go over
17 the jury charge that I will be giving to you at the
18 conclusion of the arguments. That usually takes -- me
19 discussing all that with the lawyers usually takes about
20 thirty minutes. Sometimes more, sometimes less. So you
21 won't be back in your jury room waiting for that to begin
22 and then we begin the arguments at noon and butt up to
23 whatever time we would butt up to, I'm going to go ahead and
24 stop early for lunch and we will get -- we will get back
25 together, at least on the record, at 1:15. That will do a

1 couple of things. That will get you on or about your way to
2 get lunch. Also I will have the opportunity to talk to the
3 lawyers about what I will be charging, and then everybody in
4 the courtroom can take their lunch that they may need. So
5 that gives everybody plenty of time. So if you would please
6 be back in your jury room at 1:15.

7 Now, guess what? You can't talk about the case
8 yet. It's coming. It will be here this afternoon. You
9 cannot think about it or you cannot begin making up your
10 mind about anything yet. Don't discuss it with anybody.
11 Don't read anything about it. Don't listen to anything
12 about it, and don't undertake to do any research about any
13 issue, parties, or anything remotely involving this case.
14 Be back at 1:15 and we will move forward at that time.
15 Thank you.

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

18 THE COURT: All right, Mr. Smaldone, would you
19 like for the record to note that you have restated your
20 motions for a directed verdict on attempted murder and
21 possession of a weapon during a violent crime?

22 MR. SMALDONE: Yes, Your Honor, I would renew my
23 motions for a directed verdict.

24 THE COURT: Anything else you want to put on the
25 record about those?

1 MR. SMALDONE: No, Your Honor.

2 THE COURT: Okay. I respectfully deny your
3 motions.

4 Can we talk about the charge for a few minutes?

5 MR. SMALDONE: Yes, sir.

6 THE COURT: Do either of you have any written
7 charges that you want to hand up?

8 MR. SMALDONE: I don't.

9 MR. MEADORS: Judge, the armed robbery charge, I'm
10 not sure if I have seen one of Your Honor's before, but I
11 just would like to review that language with you.

12 THE COURT: All right. It says this, and I'll
13 give you a copy of it, it says the defendant is charged with
14 armed robbery.

15 In order to prove this offense, the State -- and
16 I'm going to paraphrase, the State must first prove -- and
17 all of this is beyond a reasonable doubt, that the defendant
18 took personal property from the person or presence of
19 another person, and I define what property is in the
20 presence of a person.

21 The State must also prove the defendant carried
22 the property away intending to permanently deprive the owner
23 of the property, so forth and so on.

24 Possession of the property even for an instant by
25 the defendant is sufficient to show the taking and carrying

1 away.

2 Y'all want to use the word asportation you can,
3 but nobody really knows what that means.

4 The taking and carrying away of the property must
5 have been done with violence or by putting the owner of the
6 property in fear of violence.

7 And the State must prove beyond a reasonable doubt
8 that the defendant was armed with a deadly weapon during the
9 robbery, and I'll define a deadly weapon.

10 Is that pretty much what you expected?

11 MR. MEADORS: Well, also the -- like even the --

12 THE COURT: The appearance?

13 MR. MEADORS: The appearance.

14 And even if there isn't a gun, if they believed
15 there was a gun, there is some -- I would like to maybe get
16 some of that handed to you for consideration.

17 THE COURT: That's fine.

18 MR. SMALDONE: What's the charge on burglary first
19 that I have got here?

20 THE COURT: Well, the one -- the element presented
21 that makes this a burglary first, if the jury concludes, is
22 that being armed with a deadly weapon while in the dwelling
23 or when fleeing the defendant or and an accomplice was armed
24 with a deadly weapon or explosives. I'm not going to talk
25 about explosives, and I'll define a deadly weapon again.

1 But as far as from the beginning, first must prove
2 the defendant entered a dwelling without consent. I'll
3 define a dwelling. I don't think anybody really disputes
4 this was a dwelling.

5 In order to prove the defendant entered the
6 dwelling, the State does not have to show that his entire --
7 a defendant's entire body entered. The smallest entry is
8 sufficient. It may be any part of the body, such as a hand
9 or foot, or even an instrument.

10 Then the State must prove that the defendant
11 intended to commit a crime, either a felony or a
12 misdemeanor. I usually don't use those words, because the
13 jury doesn't know, intended to commit a crime at the time of
14 the entry.

15 The mere entry into a dwelling without consent is
16 not burglary.

17 If the intent to commit a crime is formed after
18 the entry it is not burglary.

19 If the defendant intended to commit a crime at the
20 time of entry, it's burglary, even if that intent was
21 abandoned after entry.

22 It does not matter that the intended crime was not
23 completed.

24 The only other element that I would charge on
25 burglary in the first degree, the State must prove beyond a

1 reasonable doubt that the defendant or an accomplice, while
2 in or while fleeing, became armed with a deadly weapon.

3 That's the only thing that makes this a burglary
4 first, right?

5 MR. MEADORS: This may be outdated. Is armed with
6 a deadly weapon or causes physical injury to a
7 nonparticipant?

8 THE COURT: Well, that's -- that's interesting,
9 because --

10 MR. MEADORS: Or threatens the use of a deadly
11 instrument?

12 THE COURT: That was after exit from the building.
13 Yes, sir.

14 MR. SMALDONE: And, Your Honor, I -- respectfully
15 I -- I don't have a copy of the indictments, but I believe
16 that the only thing the indictment puts me on notice of is
17 the deadly weapon.

18 THE COURT: Yeah, that's -- that's the only
19 component alleged, and I think that -- I think that the
20 firing the shot after they had exited the dwelling and
21 grabbing his injured biceps area, which I don't doubt hurt
22 pretty bad, if you accept the State's evidence on that,
23 which I have to do at this stage, he was injured or he was
24 threatened with death, but I think that was after the
25 burglary -- or, excuse me, after the entry into the dwelling

1 was over. They were -- they had left.

2 MR. MEADORS: Maybe my overview of this old book I
3 have had, I thought it was whether while they were entering
4 or leaving.

5 THE COURT: Well, I can check on that during lunch
6 and if you would do the same.

7 MR. MEADORS: I think -- okay.

8 MR. SMALDONE: And, Your Honor, my -- even if the
9 rule is while fleeing, I believe the indictment only
10 mentions that the weapon, it doesn't put me on notice about
11 any of the other.

12 THE COURT: I think he's correct about that.

13 All right. Does either side want a copy of my
14 full charge? It's going to be unedited, and I don't read
15 it, per say, or word for word, and I don't give the jury a
16 copy.

17 MR. MEADORS: I would like it, if you don't mind.

18 THE COURT: All right.

19 MR. MEADORS: So we know, it's just as indicted?

20 THE COURT: I think the fairly recent case that
21 came out that says I have to go on what is in the --

22 MR. MEADORS: No, no, no, I wasn't talking -- I
23 was talking there are no other -- you are just charging the
24 offenses in the indictment?

25 THE COURT: Lesser included?

1 MR. MEADORS: Nobody has mentioned that. That's
2 what I'm trying --

3 THE COURT: That's what I was going to get to
4 next.

5 MR. MEADORS: Okay, I'm sorry.

6 MR. SMALDONE: I mean, obviously I kind of have to
7 ask for a lesser included.

8 THE COURT: Well, you mentioned to the jury that
9 your client is guilty of burglary in the second degree --

10 MR. SMALDONE: Yes, sir.

11 THE COURT: -- which is entering into a dwelling,
12 in this case, without consent and with the intent to commit
13 a crime therein, and that there was no additional factors
14 that makes it a burglary first, such as possession of a
15 weapon, a deadly weapon.

16 What does the State say about that?

17 It's a double-edged sword for both of you, I
18 guess.

19 MR. MEADORS: I don't know what evidence came in
20 that he wasn't armed.

21 THE COURT: Well, in the statement he said --

22 MR. MEADORS: He just doesn't mention it.

23 THE COURT: He doesn't mention it.

24 The only thing that really challenges that is the
25 cross-examination and the absence of reference to a gun in

1 the statement that was introduced.

2 What's the -- he wants a lesser included on
3 burglary second, nonviolent. What does the State say?

4 MR. MEADORS: Beg the court's indulgence.

5 (Off the record)

6 (Back on the record)

7 MR. MEADORS: Judge, is he going to ask for -- I
8 just thought of this. Is he going to ask for a lesser
9 included of strong armed?

10 THE COURT: All right, I don't know.

11 MR. MEADORS: I mean, I wouldn't -- I wouldn't --
12 if I won't agree, or concede, or whatever, I just want to
13 be -- I want to be consistent.

14 THE COURT: The jury doesn't have to be
15 consistent.

16 MR. MEADORS: I understand.

17 THE COURT: We all know that, but I guess we have
18 to be.

19 I'm just -- right now I'm just trying to find
20 out --

21 Well, do you want a strong armed lesser included?
22 All the elements apply, except there was not a deadly
23 weapon.

24 You guys can certainly think about that and let me
25 know. I have got it in my charge, because I put everything

1 in. It's easier to take out than scramble around trying to
2 find things to put back in.

3 MR. SMALDONE: I guess for both of us it's kind of
4 going all in, so we'll -- well, for me more so.

5 MR. MEADORS: If I agree to one, I wouldn't want
6 one in if the other wasn't in, I guess. I think that's
7 what --

8 THE COURT: Now, there are no other lesser
9 includeds, because the way the intent to murder count is
10 phrased at firing a gunshot, so there is no lesser included
11 of --

12 MR. SMALDONE: Assault.

13 THE COURT: -- ABHAN, or anything like that.

14 And I think from what Mr. Godbolt said in his
15 statement, that he was hollering at Mr. Helton to stop.
16 Okay.

17 So you gentlemen can think about what your final
18 position would be on the lesser included. That will
19 obviously go into how we complete the verdict form.

20 MR. MEADORS: What time do you want to know that
21 by?

22 THE COURT: What time did I tell the jury to come
23 back?

24 MR. MEADORS: 1:15.

25 THE COURT: Why don't you just let me know -- if

1 everybody could be back in the courtroom by a little bit
2 before one.

3 I wouldn't look at that clock.

4 MR. MEADORS: Well, that's going to mess me up.

5 THE COURT: Maybe when we get moved into the new
6 courthouse we will get a new clock.

7 Any -- just for your information, I don't -- when
8 I talk to the jury I don't make them feel like that they and
9 I are on the same team. I think that was specifically ruled
10 inappropriate about two weeks ago.

11 I will talk to them about direct and
12 circumstantial evidence.

13 Credibility.

14 MR. MEADORS: Does that come out of Florence?

15 THE COURT: Yes, sir.

16 Presumption of innocence.

17 Reasonable doubt.

18 I'll give an expert witness charge.

19 The essence of my reasonable doubt charge is that
20 proof beyond a reasonable doubt is proof that leaves you
21 firmly convinced of a defendant's guilt. There are very few
22 things we know with absolute certainty and the law does not
23 require the State to present proof that overcomes every
24 possible doubt.

25 If you are firmly convinced the defendant is

1 guilty, you must find him guilty.

2 If, on the other hand, you are not firmly
3 convinced that he is guilty, you must give him the benefit
4 of the doubt and find him not guilty.

5 I tell them that their verdict on one count does
6 not control their verdict on another one.

7 I guess the unusual thing about criminal cases is
8 that they could conceivably find him not guilty of burglary
9 first but guilty of armed robbery. They can do that, even
10 though we would think logically they couldn't, or vice
11 versa. They could find him guilty of armed robbery and not
12 guilty of possession of a weapon during a violent crime.

13 I'm going to tell them that their verdict on one
14 does not control the verdict on the other. They examine the
15 law separately as far as each count.

16 Certainly I'll talk to them about criminal intent.

17 Does the State want a hand of one charge?

18 MR. MEADORS: Please, sir.

19 THE COURT: Any objection to that? I think it's
20 appropriate.

21 MR. SMALDONE: No, objection.

22 THE COURT: All right. No charge needed on any
23 criminal record of anyone.

24 We have got the kidnapping statute, first degree
25 burglary, attempted murder, armed robbery, possession of a

1 weapon during the commission of a violent crime, conspiracy,
2 and the backup -- if the lesser includeds are in, I'll put
3 the lesser includeds right after the principle one.

4 And the verdict form, I think you have got it. My
5 clerk hasn't completed and he will make -- it would be a
6 very rough copy for you to look at. It may not be the final
7 form, but it would be outline of it.

8 Anything else that you can think of from the
9 State?

10 MR. MEADORS: No, sir.

11 THE COURT: From the defense?

12 MR. SMALDONE: No, sir.

13 THE COURT: Not to hold you to it.

14 It would help me out that even though we are not
15 going to be back on the record until one, if you let me know
16 something -- if you got something in writing or if you want
17 to scribble something down, just -- if I'm not in my office
18 and the door is shut, just slide it under the door.

19 MR. MEADORS: When would we be able to review?

20 THE COURT: He's going to make a copy of this now.

21 MR. MEADORS: Okay.

22 THE COURT: All right.

23 MR. MEADORS: Just for the armed robbery, it may
24 be in there, that's what I'm talking about. That's all
25 I'm --

1 THE COURT: I know what you are talking about, but
2 I don't know if it is or not.

3 Okay, anything else?

4 MR. MEADORS: No, sir.

5 THE COURT: Before you leave, if you would help
6 the court reporter out by making sure that you check the
7 desk that you don't have a picture or a piece of paper on
8 your desk that has an exhibit sticker on it.

9 All right, we will be off the record until about
10 one o'clock.

11 MR. MEADORS: Thank you.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: Okay. Mr. Meadors handed to my clerk.
15 I guess he gave it to Mr. Smaldone --

16 MR. MEADORS: I did.

17 THE COURT: -- the charge on armed robbery, which
18 is a more complete version of the statute. It does come
19 straight from the statute.

20 Do you have any disagreement with that, Mr.
21 Smaldone?

22 MR. SMALDONE: No, sir.

23 THE COURT: All right. As far as the other one
24 that the defendant had an issue, with burglary in the first
25 degree, the indictment is limited to the deadly weapon

1 scenario. No physical injury is alleged in the indictment,
2 so we will just go with being armed with a deadly weapon.

3 Does the State agree or disagree with that?

4 MR. MEADORS: I don't disagree with that. It's
5 not in there, but I would still like to go forward on all of
6 them, coupled with all of them, anyway. I understand.

7 THE COURT: All right. State's position on lesser
8 included?

9 MR. MEADORS: Judge, I don't think there is any
10 evidence that he did not have a gun.

11 THE COURT: Okay. Well, there is evidence from
12 the statement you put in that he wasn't involved in that
13 part, armed robbery. In other words, he said he was back at
14 the house and saw Dr. Funke going down the street and Mr.
15 Helton following after him and at some point he said they
16 came back. So there is evidence from that respect. Maybe
17 not a lesser included, but evidence that he didn't play any
18 part in that, at least as a direct actor.

19 How about that, Mr. Smaldone? What is the
20 evidence that would support giving a charge on the lesser
21 included of strong armed robbery?

22 MR. SMALDONE: I don't think there is any evidence
23 that he didn't have a gun.

24 THE COURT: That he did?

25 MR. SMALDONE: That he did have a gun.

1 THE COURT: Dr. Funke says he had a gun. He saw a
2 gun -- outline of a gun in his pocket. That's -- there
3 is -- how is there not evidence, though?

4 MR. SMALDONE: When he's caught red handed at the
5 scene and no gun was found on him or recovered in the area,
6 I think that weighs to the credibility of -- that's a jury
7 question as to weather or not they want to believe Dr.
8 Funke.

9 THE COURT: Exactly.

10 One of the questions that comes to my mind is if
11 he had the gun in his pocket and showed it to him, where did
12 it go from there? That's a matter for the jury to
13 determine, but I'm talking about lesser included.

14 I know you are talking about there is no evidence
15 he had a gun at all, or at least no credible evidence, you
16 say.

17 Where is the evidence that will allow me to charge
18 the jury or that the jury could conclude well, he
19 participated in the robbery, but he did not have a weapon?

20 MR. SMALDONE: I mean -- I'm sorry, I --

21 THE COURT: In order to support a lesser included
22 charge there has to be evidence in the record.

23 For example, if a witness, whether it be your
24 client or somebody else, were to take the stand and say yes,
25 there was a robbery, but there was no gun.

1 If your client had said in his statement yes, I
2 believe Mr. Helton did rob him, but neither of us had a gun,
3 that would be in evidence, but what's in evidence now that
4 would support a strong armed robbery?

5 MR. SMALDONE: Well, there is no statement and he
6 didn't say neither of us had a gun, I don't believe. I -- I
7 don't have the statement.

8 THE COURT: No, he didn't.

9 MR. SMALDONE: He didn't say anything about a gun,
10 though. So --

11 I mean, if they don't want -- I don't really have
12 too much of a position on it --

13 THE COURT: Strong armed robbery?

14 MR. SMALDONE: -- to be honest.

15 THE COURT: How about the other, burglary second
16 degree?

17 MR. MEADORS: That's what I initially was talking
18 about, that I didn't think there was evidence that there
19 wasn't a gun, as far as the burglary first degree, for a
20 lesser included. That's really what I was addressing to
21 Your Honor. Depending on that, I was going to move onto the
22 second one a little bit.

23 THE COURT: Well, he doesn't -- so you are not
24 necessarily asking for a strong armed robbery?

25 MR. SMALDONE: Not strong armed, no.

1 THE COURT: Okay.

2 How about the burglary second degree, Mr. Meadors?
3 There was -- you say there is no evidence there was no gun?

4 MR. MEADORS: I think there is only -- there is
5 evidence, it was either a burglary first or nothing in the
6 record.

7 THE COURT: All right.

8 Mr. Smaldone, what's your position again?

9 MR. SMALDONE: Well, since his statement doesn't
10 say anything about a gun, like I mentioned before, there is
11 no -- obviously there was no gun found, I don't understand
12 why there wouldn't be a second charge.

13 He entered the dwelling of another without consent
14 with the intent to commit a crime. Whether or not there was
15 a gun, my whole position is that, so I think that's a jury
16 question.

17 THE COURT: All right.

18 MR. SMALDONE: And the indictment says with a gun.
19 It the doesn't even mention the -- I think the whole finger
20 in the pocket thing.

21 THE COURT: Well, we are talking about the robbery
22 now.

23 Burglary in the first degree is entering into a
24 dwelling without consent with the intent to commit a crime
25 therein.

1 And this part, the relevant part, while in the
2 dwelling or while fleeing armed with a deadly weapon.

3 And the State's argument is that there is no
4 evidence in the record that either he or Mr. Helton as the
5 hand of one situation didn't have a gun.

6 And your -- what you are saying, I take it, is
7 that, well, they didn't find one when they looked and there
8 wasn't one on him, so that's evidence that there was no gun.

9 MR. SMALDONE: Right. And not to sound too
10 focusy, but I think the absence of a gun is evidence of not
11 a gun. For example, if I was to break into a house and they
12 were to charge me with burglary first and they would say,
13 oh, there is no evidence there wasn't a gun, if that makes
14 sense, how can I -- what would I argue, just in the
15 hypothetical?

16 THE COURT: A witness saying there wasn't a gun.
17 That's how typically it happens.

18 In other words, the jury cannot just conclude,
19 well, we don't believe parts of what this witness said and
20 that supports a lesser included.

21 I agree with you that there is some relevant pause
22 the jury might give to the fact that they didn't find one on
23 Mr. Godbolt, but if you have a hand of one hand of all
24 scenario, one of the people flees and they don't find him
25 for an extended time, there is -- it's muddled, I

1 understand. I'll give you that.

2 Mr. Meadors, Dr. Funke says that Mr. Godbolt had
3 the gun, is that right?

4 MR. MEADORS: That's the one that showed it to
5 him.

6 THE COURT: Right.

7 Then within a very few minutes the police arrived,
8 Mr. Godbolt was apprehended, and Mr. Helton fled. Where is
9 the evidence that if Mr. Godbolt had the gun within the
10 immediate time frame of making Dr. Funke look for the keys
11 but didn't have it when they got back, where did it go?

12 MR. MEADORS: Judge, I don't think there is one of
13 the things that we can answer. I think it's either in the
14 pond; I think it's in the woods; I think Jamal Helton took
15 it. He ran faster. I think those are things that we could
16 never answer, but I think, respectfully, that there is
17 nothing in this record saying they didn't have a gun, or
18 that he is saying I didn't have a gun, or any witness. The
19 only thing in the record is that there was a gun.

20 THE COURT: Of course, if the jury doesn't believe
21 there was a gun, then he will be not guilty on burglary and
22 there will be no chance on a burglary second, violent.
23 That's the double-edged sword for the State in not at least
24 asking for a lesser included.

25 All right, anything else on that?

1 MR. SMALDONE: I think I have made all my points.

2 THE COURT: Okay. All right, we will get started
3 in a few minutes and I'll make my decision then. I think
4 it's about time for the jury to get here.

5 Anything else before we start?

6 Mr. Meadors, you might -- he's asking for
7 something else.

8 MR. SMALDONE: I thought about it. I don't
9 think -- I think I'm all right.

10 THE COURT: We will be back in a few minutes.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened).

13 THE COURT: After I have considered the points
14 both sides have made, I think that -- I don't really have
15 any doubt that burglary second would be appropriate for a
16 charge as a lesser included.

17 The armed robbery and strong armed robbery is a
18 much closer question, but I believe that based on the
19 evidence in this case, it's a bit unusual as far as that
20 debate is concerned, I'm going to charge the lesser included
21 of strong armed robbery too, unless the defendant is not
22 requesting it. If the defendant is not requesting it, I
23 won't charge it, even though I think I could, even if
24 neither side requested it.

25 MR. MEADORS: If you are going to do burglary

1 second, we would request strong armed.

2 THE COURT: I think the facts would fit it, so I'm
3 going to charge both of those as lesser included.

4 Also just to make clear, Mr. Smaldone, Mr.
5 Meadors, I will charge the part of the armed robbery statute
6 that uses that language that was examined in State v. Jones
7 and the other case. In other words, I'm going to charge
8 what the statute is. It's not in what is printed for you,
9 but it does come from 16-11-330 and it will say -- I will
10 say the State must prove beyond a reasonable doubt, so forth
11 and so on, and that the defendant was armed with a deadly
12 weapon, or by alleging either by actions or words that he
13 was armed while using a representation of a deadly weapon,
14 or any object which if the person present during the
15 commission of the robbery reasonably believed to be a deadly
16 weapon. So that's what I'll say.

17 MR. MEADORS: Thank you.

18 THE COURT: It's the kind of clumsy language, but
19 I can't alter it. I'm going to charge what it says.

20 All right. Is the State going to open on the law
21 or waive opening, or how are you going to approach that?

22 MR. SMALDONE: Your Honor, I'm going to move
23 that --

24 THE COURT: That's right, he goes last anyway.
25 I'm sorry.

1 MR. SMALDONE: I don't know if I need to move for
2 that or not.

3 THE COURT: I'm sorry.

4 MR. SMALDONE: I would like the record to reflect
5 that I officially am not requesting a strong armed charge.

6 THE COURT: Your exception is noted.

7 Okay.

8 MR. MEADORS: Judge, Mr. Smaldone and I have been
9 providing information to each other, discovery. He's had
10 everything and I want the record to reflect that.

11 He disclosed to me while --

12 Well, why don't you put it on the record.

13 He may attempt to -- something in his closing
14 which I would like to address with Your Honor. I don't know
15 if we need to approach, or I can just do it right here on
16 the record.

17 THE COURT: Right here is fine on the record.

18 MR. SMALDONE: Sure, I was thinking about -- I had
19 decided against it and --

20 MR. MEADORS: Well, I didn't know you decided --

21 MR. SMALDONE: I'll bring it to Your Honor's
22 attention. It is in the record that Mr. Godbolt has a wound
23 to his leg. It's in his statement that he was shot and he
24 cannot -- he says he cannot run. My --

25 THE COURT: Well, he didn't say that in his

1 statement. Did he say that in his statement that -- I
2 haven't read it in detail. Maybe he did say it, I don't
3 know.

4 You are not going to ask him to run in the
5 courtroom, are you?

6 MR. MEADORS: Because my objection is anything
7 like that should have been done before he rested.

8 THE COURT: In other words, a demonstration?

9 MR. MEADORS: Yes, sir. I think that would have
10 been the time that he wanted to do something.

11 THE COURT: All right. So what is in the
12 statement?

13 MR. MEADORS: "That's when I tried run but I can't
14 because I was shot in my right leg back in March."

15 THE COURT: I think you can refer to that, but I'm
16 not going to let you present any evidence to that, unless
17 the State doesn't object.

18 MR. SMALDONE: I would say that it would be the
19 same -- it would be the same type of demonstrative display
20 as something like a chart, because he's -- say if he had no
21 hand. I wouldn't really need to move for that.

22 THE COURT: Okay. Well, why don't you proffer to
23 me what you would have him do during your closing. Let me
24 see what you would do.

25 MR. SMALDONE: Sure, I would just have him stand

1 up with --

2 THE COURT: All right. Well, let's do it. Let's
3 just go ahead and do it.

4 Stand up.

5 All right, then what would you do?

6 MR. SMALDONE: Not to give away too much of my
7 closing --

8 THE COURT: No, I'm making you proffer it.

9 MR. SMALDONE: Sure.

10 THE COURT: I might not let you do it at all.

11 MR. SMALDONE: That's understandable.

12 I would say -- I'm on the spot here.

13 That the victim's statement says the two men ran
14 after him, but -- honestly I'm probably not going to do
15 this, but --

16 THE COURT: If you are not going to do it, then we
17 don't need to go through this exercise.

18 MR. SMALDONE: I'm just not -- it's --

19 THE COURT: Okay.

20 MR. SMALDONE: Let's just not do it. I wasn't
21 going to --

22 THE COURT: Okay. So that's a moot point.

23 You can have a seat. Thank you Mr. Godbolt.

24 It's certainly a relevant point for you to argue,
25 should the jury conclude that that is -- that he can't run

1 because he was shot in the leg.

2 All right, anything else before we start?

3 MR. MEADORS: Your Honor, I plan on just starting
4 and ending with the 911 tape, so I think we have it ready.
5 The solicitor, my boss, tells me he can do it. I'm
6 certainly not going to question him, so --

7 THE COURT: He's over forty. He may not be able
8 to handle it.

9 Okay. And how long do you think that you will
10 take?

11 MR. MEADORS: I have no idea.

12 THE COURT: Okay.

13 MR. MEADORS: I don't think it will be that long.

14 THE COURT: That's fine. I will reserve the right
15 to perhaps recess after one argument, two arguments, or
16 either, based on my view of the jury.

17 How long do you think that you will take, Mr.
18 Smaldone?

19 MR. SMALDONE: You know, I really don't know.
20 Time is kind of --

21 MR. MEADORS: I don't think this is going to be a
22 long one.

23 THE COURT: Well, I'm not going to -- I'm not
24 going to tap my knuckles or anything. I'll let you go as
25 long as you want. I'm just trying to get a general idea.

1 Okay. We will move forward.

2 I do have a verdict form, one with -- the verdict
3 form I will use will have the lesser included on it.

4 You may refer to the verdict form, if you would
5 like, but you cannot do a mock completion of the form for
6 the jury. In other words, don't put it up on the screen and
7 have it completed for them.

8 MR. MEADORS: I have never seen that done.

9 THE COURT: I have. It's not a good thing.

10 MR. MEADORS: I wouldn't do that.

11 MR. SMALDONE: And one last thing I just want to
12 clarify. I'm sure he wouldn't do it, but I just want --
13 when the beginning -- I assume the beginning of his closing
14 is going to be on the law.

15 THE COURT: It doesn't have to be.

16 MR. SMALDONE: Since it's the whole thing,
17 obviously it doesn't have to be. I don't want to -- I just
18 don't want the law to be different than the charge,
19 especially on the burglary first.

20 THE COURT: Well, I'll tell the jury that if a
21 lawyer says something about the law that's different from
22 what I charge, then totally disregard what you say.

23 MR. SMALDONE: Not that -- I wasn't saying that he
24 would misinterpret the law, or anything like that. I was
25 saying that I didn't want all the elements of burglary first

1 in there, since the indictment only alleges --

2 THE COURT: The only one that I'm going to read
3 is -- the only aggravated one I'm going to read is being
4 armed with a -- I guess it's a firearm while in or fleeing
5 the premises.

6 MR. MEADORS: I certainly will not do others. We
7 have talked about that.

8 THE COURT: All right.

9 MR. MEADORS: Do you have the indictment I could
10 just hold while --

11 THE COURT: I think it's in my office. I think I
12 left in it my office. I will go get it. My office is
13 locked.

14 (Off the record)

15 (Back on the record)

16 THE COURT: Here you go, Mr. Meadors.

17 MR. MEADORS: Thank you.

18 THE COURT: Okay. Is the State ready?

19 MR. MEADORS: Yes, sir.

20 THE COURT: Defendant?

21 MR. SMALDONE: Yes, sir.

22 THE COURT: All right. You can bring in the jury.

23 (The following takes place in the presence of the
24 jury panel)

25 THE CLERK: Your Honor, we have all the jurors

1 present in the courtroom.

2 THE COURT: Thank you, sir.

3 All right, ladies and gentlemen, as I mentioned
4 before lunch, we are going to move forward now through the
5 closing arguments of the attorneys to you. Under the rules
6 the State will present the first argument, and then after
7 the defendant will present the last argument.

8 Please note that this is an extremely important
9 part of this trial, so it's important that you pay very
10 close attention.

11 Having said that, keep in mind that the attorneys
12 are not witnesses, so what they tell you during the course
13 of their arguments, of course, is not evidence, but they are
14 permitted and certainly they have a responsibility to make
15 these arguments. And in doing that, they may refer to
16 evidence that has been introduced. They will not
17 purposefully mischaracterize it, but if what they say to you
18 as a summary or a recitation to something that's in
19 evidence, if that does not correspond with what your
20 collective memories of what the evidence actually was, of
21 course, you go with your memories.

22 Likewise, they are permitted to incorporate in
23 their argument points of law that we have been discussing
24 before lunch and after lunch that I will be telling you
25 about after they finish. Again, they are allowed to refer

1 to that, those legal points, those legal charges. A charge
2 on the law means I tell you what it is. If they say
3 something different about the law than what I tell you it
4 is, you go with what I tell you it is. Again, they won't do
5 that on purpose, but keep in mind that you go with the facts
6 and evidence as you have interpreted them and evaluated them
7 and the law as I give it to you.

8 Please give the lawyers your undivided attention.
9 I will never set a time limit for argument. I think that's
10 not for me to do. They do need and they all deserve your
11 undivided attention, because the State and the defendant
12 certainly expect and they are entitled to that fair and
13 impartial verdict and this is a very important part of the
14 trial.

15 All right, Mr. Meadors.

16 MR. MEADORS: May it please the court?

17 THE COURT: Yes, sir.

18 (Whereupon, the 911 audiotape was played to the
19 jury panel)

20 MR. MEADORS: "They are chasing after me. They
21 are chasing after me. Which way are they going? They are
22 chasing after me. Please help me."

23 Good afternoon, ladies and gentlemen. I want to
24 thank y'all for being here and thank you for the attention
25 that you have given to myself and Mr. Smaldone.

1 These are not going to be that long of closing
2 arguments. This is the time now for the lawyers to argue to
3 you the facts and the reasonable inferences of those facts,
4 and that's all we are about to do. The 24, 26, or 24 when
5 you get back there ears are all that matters. That's what
6 y'all have heard, what your eyes have seen. That's all that
7 counts. It's a great system, isn't it? That's what y'all
8 will decide based on what all of you have heard and what you
9 decide the facts are. Take the law as the judge is going to
10 give you in just a little bit. Apply the facts as you have
11 heard them from this witness stand, the exhibits that our
12 fine court reporter has been marked and you will decide the
13 truth. That's all any of us can ask you to do. It's really
14 a beautiful system. We are looking for justice. I
15 represent the State of South Carolina, the people, and we
16 are looking for justice, what's right based on the evidence,
17 and you took the oath that you would do that.

18 Criminal conspiracy is an agreement, an agreement
19 between two or more folks to commit a criminal act. Reco
20 Godbolt and Jamal Helton.

21 Now, the agreement doesn't have to be a formed
22 contract. You don't have to write and sign it; "Halloween
23 of October the 31st of 2011, we are going to go out and go
24 rob doctor and Ms. Funke's house." It doesn't have to be
25 executed that way. It doesn't have to be a formal contract.

1 It can be inferred from the actions and going and robbing
2 and doing the deed. And he admits in his statement that's
3 what's going to happen. They were going there to rob the
4 place. That's why they went over there. They got a car
5 full of goods over there. There is no question about the
6 criminal conspiracy between two or more folks to commit a
7 criminal act. So that was the plan. It doesn't have to be
8 planned out in advance. It can be planned at the moment,
9 just were there and two or more people acting in concert
10 together to commit a criminal act. That's called criminal
11 conspiracy..

12 Well, what did they conspire to do? To break into
13 Dr. Funke's house.

14 The judge will tell you what's a burglary. A
15 burglary is the unlawful entry into the dwelling. He will
16 define dwelling. It's just common sense. A dwelling is
17 where somebody lives or resides, and we all own a dwelling.

18 Unlawful entry into a dwelling without consent.
19 And we have to go over these elements. Without consent of
20 the homeowner. You heard both of them say, doctor and Ms.
21 Funke, I didn't give anybody consent to come into my house
22 and open the drawers and violate us by looking through our
23 personal stuff and going in my drawers and taking coins and
24 stuff and a camera.

25 Entering a dwelling without consent with the

1 intent to commit a crime.

2 Now, intent is something that the law is very
3 important. His Honor is going to talk a good bit about
4 intent. Intent can be proven by your actions, your words,
5 the surrounding circumstances, both before and after an
6 incident. That's how you prove intent.

7 Their intent was to go into his house without
8 consent to steal stuff. You can't open somebody's mind and
9 look around at their brain with a machine to see it in
10 there, but you look at it and you determine intent based on
11 their actions, their words, the surrounding circumstances.
12 There is no question here about the intent. It's what the
13 evidence showed.

14 To enter a dwelling without consent with the
15 intent to commit a crime. Larceny, stealing stuff that
16 didn't belong to them.

17 And then the judge will charge you, and it's
18 something that you will have to decide, for burglary first,
19 there are several ways that you can get burglary first. The
20 one that's alleged here in the indictment is that while
21 entering the house, and/or while in the house, and/or after
22 fleeing the house one or more of the defendants were armed
23 with a deadly weapon; burglary first degree.

24 I'm going to talk about it and show you. What did
25 Dr. Funke tell you, and I'm going to go over it again later.

1 "They said they had a gun. Rico Godbolt showed me a gun
2 right here. It looked like the outline of it." He had the
3 gun as he was coming out." He shows the doctor. They are
4 angry because they can't find their car keys because he
5 threw them over there.

6 Burglary in the first degree. It is what it is.

7 Now, the judge will charge you, and you will have
8 the option to come back with burglary second. That's
9 entering a dwelling without consent while you are not armed.
10 That's y'all's decision.

11 I submit to you there is no evidence in this case
12 that's the appropriate charge, respectfully. The evidence
13 is when they came out they were armed with a gun. They
14 showed it. They talked about it. They told him, said "I'm
15 going to kill you." I submit to you that's what the only
16 reasonable evidence will show, but you will have the right
17 to consider burglary second.

18 Mr. Smaldone in his opening has already gotten up
19 here and said "I bet you will never hear a lawyer say this
20 before; I'm guilty." Well, that's part of the defense that
21 was started by Reco Godbolt on October 31st, 2011. It's
22 called the gentle arm of confessing error; "well, I'm caught
23 at the scene. I will give up what I have to. Appear, I'm
24 red handed, but I'll give it all up." And that's continued,
25 respectfully, through this day through Mr. Smaldone. "Yeah,

1 I was there. I'm caught, but they will have to give you
2 that, they will have to take it from me. And that's what
3 this is. They are trying to get you to go there. See
4 through that, and that's what good defense attorneys do.
5 He's a fine defense attorney and that's what he's trying to
6 do. Convict him of burglary second, not burglary first.
7 It's as simple as that what he's trying to tell you.

8 The only evidence is there is a gun. The only
9 evidence -- and I'm going to go over this some more. He
10 said he had a gun and he saw the outline of the gun and he
11 was telling us about it. That's what the evidence is.

12 I was going to go through the indictment with you.

13 What else is he charged with? Criminal
14 conspiracy, burglary in the first degree, possession of a
15 firearm during the commission of a violent offense, if he
16 was convicted.

17 He told you there was a gun, that I heard it, saw
18 the outline of it.

19 Armed robbery. Armed robbery the judge will tell
20 you is you take from the person or presence of another the
21 goods of that person by either force or intimidation while
22 armed with a deadly weapon. A firearm. That's how close
23 the person is in this case.

24 Without consent, take the goods or money from
25 someone else while armed with a deadly weapon. I want you

1 to listen to what the judge charges you too. The law, the
2 law that he will charge you about armed robbery. The State
3 could meet the elements of armed robbery by saying okay,
4 present direct evidence, there was a gun. We did that.
5 That's direct evidence.

6 Direct evidence; Dr. Funke, "yeah, he said he had
7 a gun. He said I'm going to kill you. He showed it to me.
8 I have been in the military and I know what a gun looks
9 like."

10 The judge will also tell you the State may prove
11 armed robbery if the direct testimony or if the defendant
12 alleges, the suspect alleges that somebody tells them "I got
13 a gun," and the person who he tells that to believes it.
14 Even if they didn't have a gun, if he says "I got a gun,"
15 that's enough to prove armed robbery.

16 If you go into a bank, it's the classic example.
17 If you go up to the teller like this and you don't have a
18 gun and you say "give me your money" and it turned out you
19 only had your finger, the law says that's an armed robbery.
20 Doesn't that make sense? You are there behind the teller,
21 the bank teller thinks there is a gun and the teller
22 reasonably believes there is a gun. You go up there and say
23 "I have a gun" and the witness says a gun, the law says
24 that's a gun, it's a gun. It's what the victim reasonably
25 believed.

1 There was a gun in this case. He saw it and he
2 told everybody about it. I'm going to go through that in a
3 minute. He says he told me there was a gun. He saw the
4 outline of the gun, said "I'm going to kill you." He said
5 "I'm going to kill you." He heard the shot. He hears the
6 shot. Do you think he knows what a shot is? Listen to that
7 911 tape. I don't know if you hear it on there or not, but
8 I tell you he heard the shot.

9 What does he do when the police come up? What's
10 the first thing he tells them? "They got a gun." They had
11 a gun. He saw the outline. He told them.

12 Who does he call next? He called his wife. He
13 says "I have been shot." Well, no, you just misunderstood I
14 have been shot at, but the fact is they had a gun. "He's
15 got a gun." She clears up the 911, shot at. Thank God he
16 wasn't hit. The judge will tell you you will have the right
17 to consider.

18 Strong armed robbery. That's a robbery from a
19 person by means or force or intimidation taking goods or
20 money when you don't have a gun. I bet you that's what they
21 want. I say come back not guilty before you give them that,
22 because that's not what the evidence shows, but you will
23 have the right to consider that and that's your decision.

24 Criminal conspiracy, possession of a firearm
25 during the commission of a crime, burglary first degree,

1 armed robbery. Criminal conspiracy.

2 He didn't forget it. He didn't forget it. He got
3 up here and told you about kidnapping. He got up here and
4 told you.

5 What is kidnapping? That's taking control of
6 somebody's body moving to where they go. They got several
7 words for it, inveigle, convey, but the minute you get
8 somebody's body against their will and you take them and you
9 hold them when they don't want to.

10 I'm going to give this case an example of
11 kidnapping from now on, because they grabbed Dr. Funke when
12 they can't get the keys. And he gets up there, grab me, let
13 me touch him. He touched me and both of them. I don't
14 know, took him and marched him back to the car where he gets
15 the car keys. Kidnapping, control of his body, his
16 movements.

17 There's one other body of law and one other charge
18 that I want to go over with you. It's called the hand of
19 one is the hand of all. The act of one is the act of all.

20 The classic example is the two folks -- I'm sorry,
21 I move. I can't help it. That's what I do.

22 Two folks go to rob a place. One is driving, one
23 is going to go in. The person who is going to rob it goes
24 in and robs the cashier, has a gun and kills him. The
25 person driving the car is just as guilty of the robbery and

1 the murder as the person who did that, even if they didn't
2 know they were going to shoot, because the law says it's a
3 natural consequence of the potential act or felony or crime,
4 you are just as guilty driving as the person who did it.
5 It's called the hand of one is the hand of all. The act of
6 one is the act of all. It's a beautiful pure law. When two
7 folks get together with an agreement to do something, they
8 are both responsible for all the results that lead to these
9 crimes and the crimes that develop, which leads me to the
10 final charge, attempted murder.

11 Attempted murder is the attempt to -- attempt is
12 an intent to do something. You take a step in that
13 direction. You fire a gun. You fire a gun at somebody you
14 don't even know, at somebody's house you didn't know. You
15 just fire a gun. You don't know them. They didn't do
16 anything to you. You just fire a gun at them. And it
17 doesn't matter if they could have fired it. It doesn't
18 matter if it was Mr. Helton. It doesn't matter if it's Mr.
19 Godbolt, because they are acting together. The hand of one
20 is the hand of all, the act of one is the act of all. I
21 don't know who fired it. I know somebody fired. He heard
22 the shot. He told people about it. He told them he had a
23 gun. We don't have to show who actually did it. The hand
24 of one is the hand of all. The act of one is the act of
25 all. Is that trying to kill somebody, shooting at you when

1 you are running away? He heard the shot.

2 So what do we have to show for that? Some
3 malicious, malicious, meanness, evilness, wickedness. Is
4 there anything meaner or wicked than shooting at somebody
5 you don't know if they running away and you don't know them?

6 And how do you show malice? Again, you can't open
7 the head. You look at it from the facts and circumstances.
8 Shooting at somebody with a gun.

9 We are allowed to argue that also you can infer
10 malice sometimes -- I started to say we don't have express
11 malice, but we do. You can show malice two ways. Inferred
12 from the use of a deadly weapon is the natural consequence
13 of that bullet, the gun if it hits somebody it might kill
14 them. That's malice.

15 Or you can show malice, the State can, by direct
16 evidence or words, and we have that. We have it. "I will
17 kill you. Show us where the car keys are or we're going to
18 kill you." It doesn't matter who said it, "I'm going to
19 kill. I'm going to kill you. Here is the gun." That's
20 direct evidence.

21 Ladies and gentlemen, His Honor is going to charge
22 you. His Honor is smart and he knows the law. He can do it
23 without reading books. He's going to charge you the law,
24 but what he says is the law.

25 He's all going to tell you about reasonable doubt,

1 and that's our burden as we talk about, beyond a reasonable
2 doubt. It's not beyond all doubt. If that was the burden,
3 Mr. Campbell would stop building the courthouse, because you
4 could never prove that. It's beyond a reasonable doubt.
5 It's beyond a doubt that makes reasonable folks hesitate to
6 act.

7 We are not required, and the judge will tell you,
8 you can't prove anything beyond all doubt. That's not the
9 burden. It's beyond a doubt that would make reasonable
10 folks hesitate to act. I respectfully submit there is no
11 reasonable doubt in this case. I suspect we have proven
12 beyond all doubt, but that's not our burden.

13 There is another beautiful law which I love called
14 presumption of innocence. Everyone is presumed innocent,
15 unless and until, unless and until, the State proves them
16 guilty beyond a reasonable doubt. And the judge will tell
17 you that presumption stays with you. It stays with you.
18 The right stays with you, stays with you after you get to
19 the jury room, and it stays there until you jurors start
20 going over the evidence, evaluating the evidence, listening
21 to stuff, seeing whatever you want, and you start taking the
22 presumption. Strip the presumption of innocence. And
23 that's what you do when you find there is evidence to prove
24 the defendant is guilty beyond a reasonable doubt, and
25 that's where you take it off. That's beautiful. I will

1 come back to that.

2 What's our job? We have got a boat full of
3 evidence. It starts out there at 555 Canvasback.
4 Investigation. We get it and we bring it in here to court.
5 Mr. Smaldone's job is to put holes in the boat and I submit
6 he's still floating. It's for you all to take it back there
7 and pull the evidence out.

8 You know, what are some of the holes that he's
9 tried to poke in or put in this boat to try to get you,
10 quite frankly, to burglary second, strong armed, if it comes
11 down to that? I mean, that's coming down. He's trying to
12 say there is not enough evidence. There was a gun. There
13 is plenty of evidence. There is direct evidence. You heard
14 it. You saw it. It was intimidating with it right there.
15 That's what it boils down to, ladies and gentlemen.

16 So what's he going to argue? There's no gun.
17 Well, the only direct evidence you heard was there was a gun
18 and I saw it, it was right here.

19 Now, you got all these fine guns in question? No,
20 sir. No, ma'am. Could the gun be in the woods? Could the
21 gun be in the pond? It's not a reasonable doubt that there
22 was a gun. He's going to try to argue to you there is.
23 Could just Mr. Jamal Helton have taken the gun that was in
24 the car and put it in the woods or taken it somewhere else?
25 You don't always find a gun. The State doesn't have to

1 answer everything. That's one of those things if you
2 believe all the other facts, there is nothing to argue
3 about. That's like you give, but it's not a reasonable
4 doubt that there wasn't a gun, when Dr. Funke was only a few
5 feet from him and I see the outline of it and I heard the
6 shot. See through that.

7 Shell casing is the other thing that I think he
8 may mention. Shell casing. You heard it might have stuck,
9 I don't know. Could they have picked it up? I don't know.
10 Could it have been kicked around and done everything else?
11 They tried.

12 I guarantee you if they found the shell casing,
13 they would have gone, now, you know what? That came from
14 that gun. You know, that doesn't mean anything. That's a
15 shell casing. It could have been anything, but they tried.

16 The fact that there is a shell casing doesn't mean
17 it didn't happen. He could get up here and argue it didn't
18 happen because they didn't find anything, that's not a
19 reasonable doubt. They tried. They looked. You don't have
20 to answer every question.

21 I don't know, I'm getting old, but sometime in my
22 life I would like sometime questions are just questions.
23 You can't answer every question. And in trial those
24 questions are questions. It doesn't mean a reasonable
25 doubt. A question is a question and he can't answer every

1 one. We don't want everything they didn't find. I know he
2 said he got fired at and he saw a gun and they tried. It
3 was either picked up, kicked around, stomped on. I don't
4 know, but it's not a reasonable doubt there wasn't a gun.

5 Finally, I think the other thing and I'll get on
6 with the facts, is gunshot residue. We saw Special Agent
7 Hue Tang come in here. I have known him for a while. He
8 loves his job. He was peer reviewing the GSR kit on the
9 defendant.

10 First of all, I don't know who fired it. He
11 didn't have to fire it. Helton could have fired it. I know
12 it was fired by someone.

13 Number two, I believe he testified it was three
14 hours after. It was at least two hours since he had been
15 charged after the swabs were taken, based on his report.

16 And is it always going to be on there? No. Well,
17 what cases would it not be? We brought that witness up.

18 I asked the officer before that did you do a GSR
19 kit? We weren't trying to hide it. I came in the
20 courtroom. We brought it all in, stuff that helped us,
21 stuff that might hurt us. If it hurt us, he's going to
22 argue it did.

23 How can you explain that if you can't fire the
24 gun, Agent Tang? Well, you can do this. You can do this.
25 Elements can take it off, the rain. You can do this. What

1 about if you are wearing gloves? That would have done it.
2 It wouldn't be on there then.

3 What about if you wash your hands? It would be
4 gone.

5 What about if he didn't fire it? What about if
6 the other suspect fired it? It wouldn't be on the hands.
7 And that's the only way he can explain that. And we brought
8 him in and explained it. It's not a reasonable doubt that
9 there wasn't gunshot residue. Dr. Funke saw -- of course,
10 he heard and saw the gun. That's what he's going to try to
11 get you to do is put a hole in that, but keep the boat
12 floating.

13 What happens? Dr. Funke comes home for lunch.
14 He's got a right to come to his home for lunch. And he goes
15 in and he sees a car that's not there usually. First
16 doesn't know what the deal is, but he goes up. He knows
17 something up when he sees his computer in the car, knows
18 something up then. He continues into his house. His dogs
19 don't bark. And when you evaluate his credibility and
20 believability and testimony, that's pretty real stuff, isn't
21 it? I come in, my dogs usually greet me. They are not
22 there, so he knows something has happened to his dogs. He
23 comes in and he hears folks upstairs. He hears them
24 upstairs.

25 What else does he do? And I want to tell you all

1 something. State's 4, when you go back there, I want y'all
2 to see State's 4 when you go. State's 4, kind of a side
3 step. Was does he do? He takes State's 4, which is his
4 phone, and he calls 911. Pretty smart, but that's what you
5 do.

6 Still going in the house and then he hears -- I'm
7 going to play it one more time. If you want to hear it when
8 you go back there, I think the judge will say you have to
9 come out, but hear it as many times as you want to, but the
10 judge is will say that, but you can send out a note. He
11 calls 911, burglary in process I think he says. And he just
12 starts -- you get to hear it. This is real stuff. This is
13 a burglary in process -- progress. You get to hear it.

14 "What's going on?

15 "I think I'm being robbed.

16 "Who is it?

17 "I'm not sure" at first and then he says two black
18 males.

19 "What are they doing?

20 "Taking our money. Taking our money," not
21 distancing himself, like he is that in that statement. I'm
22 going to go over that statement with you. I guarantee you
23 that. Not distancing himself like he is in that statement.

24 "They are running at me."

25 She responds, "they are? Which way are they

1 going?"

2 So that's what she heard and thought, they are
3 coming at him, and he does. He takes his phone -- he takes
4 the phone.

5 Sorry. And I'll keep back here, Madam Court
6 Reporter.

7 He takes the phone from State's 4, after he's
8 dialed 911, and he doesn't turn it off. He puts it in his
9 pocket. He puts it in his pocket and he's running. You can
10 actually hear him running. If you decide you can listen to
11 it. And they are coming after him. "I don't have your car
12 keys."

13 You see, they went to the car. You remember he
14 said he locked the car doors? He locked the car doors.
15 They went and checked real quick. He didn't get in here and
16 sit down and look for these keys, like he said he did.
17 That's one of the inconsistencies. "I don't have your car
18 keys." Listen to it.

19 Shots fired. He said he had been shot. Then they
20 grabbed him, "no, help, help me, please. Help me. Help me
21 911."

22 At some point, at some point, State's 4, I don't
23 know which pocket. I got a hole in my pocket. It might
24 drop out of there. At some point right here he said he got
25 it in his pocket. And this is -- I put it in this side

1 right here. At some point -- this is key, ladies and
2 gentlemen, in my opinion, the evidence has shown, he's
3 confronted by the two. Not one, like he said in his
4 statement. "They both come up and grabbed me." And this
5 isn't in here. This isn't in here. This isn't in here.

6 He comes up, he being Reco Godbolt, comes up from
7 Ms. Cox's house, they are over there grabbing him, and he
8 reaches his hand -- do you remember I had him reach in my
9 pocket. He reaches his hand into Dr. Funke's pants. They
10 all knew then it was personal. You don't do that. You
11 don't reach into another man's, but I did it up here wanting
12 you to see that's up close and personal. He reached in and
13 he gets Dr. Funke's phone. Right there is private. That's
14 up close and personal. And why that's important is Dr.
15 Funke says "how close were you to him? I'm this close to
16 him." Well, he had to be close to get that phone out of his
17 pocket.

18 And what's he telling him?

19 "That's when he showed me the gun.

20 "Can you see the outline of it?

21 "Yeah, I can see." It looks like a -- it looks
22 likes a semi, but what did he say? "I'm going to kill you.
23 I'm going to kill you." I don't know you, never seen you,
24 we go in your house without permission, I'm going to kill
25 you. Is that malice? Is that meanness?

1. And guess what? When he's arrested he has Dr.
2 Funke's phone on him. That's pretty good evidence. That's
3 pretty good evidence. It's up close and personal. Well,
4 that's not in here. No, sir, he stayed back at the car to
5 start with. He even says "oh, no, you shouldn't be, you
6 shouldn't be chasing him." Are you kidding me? "You
7 shouldn't be chasing the doctor. This isn't in here. And
8 you know what? It's not in here, because that puts him
9 where the doctor said he was. And that puts him where the
10 doctor said he is, and he can't tell you that. He can't put
11 himself over there where the doctor is and where he reaches
12 in his pants, because that put him where he was when the
13 doctor said he was showed him his gun, and that put him
14 where the doctor said he and Jamal Helton took him back to
15 his house, took him back to the car to get the gun. It's
16 not in here. State's 4.

17 They come back to the house, and I don't know if
18 the doctor did a good thing doing this or not, but he gets
19 there and he sees their car parked. It worked. He gets the
20 car keys and he says he locked it. And I said -- do
21 remember the question, "did you use the keys or is it
22 automatic?

23 "I don't know if I did or I locked the car and
24 then I threw the keys.

25 "Why did you do that?"

1 I guess he didn't want them to get away. I mean,
2 what about the acts of the people in his house? Nothing
3 wrong with doing that.

4 What do they do when they are in the house? And
5 again, credibility and believability is the evidence you
6 heard. You saw Dr. Funke. You listened to him. Don't get
7 mad. 911 said don't do that. This is real stuff here, come
8 to his house and people -- when I said --

9 And do you remember what the faces were? He says
10 "I remember. I didn't know if this was going to be it or
11 not." You can't make it up, "but I was looking at the face.
12 I know it was them. I know who it was. I didn't know if
13 this would be my last day," then he dialed 911. This is
14 real.

15 He puts in here -- you have got to evaluate the
16 credibility, but he got inside the car. And the reason I
17 say that to you he couldn't have because the car doors was
18 locked.

19 This is a made up story to minimize his
20 involvement. Caught at the scene. Okay, I was at the
21 scene. I wasn't the main player. Oh, it was somebody else.
22 No, he did all the stuff. No, he did all the stuff. I came
23 back out to the car, but he couldn't have gotten in the car,
24 and that's the kind of inconsistency. He couldn't have.
25 The phone is not in here. He couldn't have got in that car.

1 He stayed back here, didn't go, Mall was chasing him.
2 "Mall, don't do that, don't chase the man." If you read it
3 like this, "no, sir. No, ma'am." He said they were both
4 there, they both marched him back, they both grabbed him.
5 Somebody has hit him with this, whatever you call this
6 thing, this shower arm. I don't know who hit him on his
7 arms. It's got a -- I'm sorry, with the arm that's got his
8 thing on it, but they hit him. It doesn't matter who hit
9 him. The hand of one is the hand of all. This shower hand
10 is the hand of hand off all, one shower bar. They hit the
11 man. He's got his arm in a sling after they fired a shot at
12 him. That's what this case is about. That ain't right.

13 And it says in there in the statement "Jamal had
14 the gloves on." No, sir. No, ma'am. Is that the reason
15 why we don't have gunshot residue? Did he go up and look at
16 one of these gloves. The only mixture on one of them is any
17 of them is a mixture is on him, and I submit to you it's the
18 one that's found in the house up in the bedroom. That's the
19 one that's got his DNA on it. Guess who is excluded?
20 Jamal. Again, minimizing saying "I just stood outside. I
21 didn't do much, but Jamal did it all." The glove says
22 otherwise. That's your DNA on them, swab inside and
23 outside. It doesn't have Jamal's. The other glove is in
24 the car. That's Reco's stuff. Minimizing. And I don't
25 mean this bad. I'm just trying to present the facts to you.

1 This is bad. It's in there.

2 How about this? And that's the stipulation we
3 read into the record. 14.1, that's the one found in the
4 house. Somebody testified it had some little velcro or
5 something stuck to it. I don't know, it's in the picture in
6 here. Reco Godbolt cannot be excluded. Jamal Helton is.
7 Did he wear that glove? That's good circumstantial
8 evidence, glove in the house. No, he did all that.
9 Minimizing, minimizing, minimizing.

10 We were going to use this projector but I -- and
11 I'll sum it up. Is there any doubt there was a burglary?
12 And that's State's 19, in one's home, where one keeps their
13 personal stuff, their private stuff, his private stuff.
14 Jewelry, coins. Anything more intrusive than breaking into
15 your home when you are not supposed to, going through your
16 stuff? That's what this case is about. Number 18 for that,
17 for the record.

18 One other thing. In his statement he said that --
19 I think this is -- in his statement he says -- after he said
20 "oh, don't do that, don't chase him, I started taking stuff
21 out of the car and putting it back. I started taking stuff
22 out of the car and putting it back." And this is State's
23 44. You talk about minimizing.

24 What did the others say? And I just -- the doctor
25 just -- the doctor come, takes the TV out of the car to take

1 back in the house. No, sir, it doesn't. You can't do that.
2 And they took a picture of it out there. I think somebody
3 said they put a blue tarp over it, the testimony. Do you
4 remember? I can't remember. It was raining. They -- no,
5 sir. He took his own TV out. Doctor in his own -- he just
6 figured they took his TV, he would take it back, but in here
7 he's conveying to the police and the officer well, I was
8 trying to take the stuff back in the house. No, sir. No,
9 ma'am. You didn't. Just like he did not. He put it here
10 and you didn't. You didn't get in the car because it was
11 locked. That's a lie. You have got to decide the
12 believability of Dr. Funke, this statement.

13 Jamal had gloves, but it shows you had gloves.
14 And you had the phone. He put it in here.

15 And, finally, just the other evidence that's in
16 the car to show the evidence they stole them, what the
17 intent was. That's the malice. Here is the daughter's
18 camera. The mouse was number -- just for the record -- I
19 apologize, the TV was 44, the mouse was 32, and this is 30.
20 That's the daughter's camera that was taken without her
21 permission in the back of the car.

22 Ladies and gentlemen, on behalf of Solicitor
23 Finney, the sheriff's office -- excuse me, the Sumter Police
24 Department and the Funkes I want to thank y'all for being
25 here. Thank you for your attention.

1 He will tell you there are plenty of places to put
2 that gun in the pond, if you would. He will tell you he
3 wasn't caught right at the scene.

4 Ladies and gentlemen, when you go back to start
5 reviewing the evidence, take that robe of righteousness off,
6 which we believe the evidence has done, respectfully, and
7 say and come back in here with your guilty verdicts. Put it
8 on Carolyn Funke, kind of add back to some of these drawers
9 so they can say more and get some of that comfort back for
10 being violated in their home. Keep them warm at night when
11 they are back in their home. Save that robe. Give it back
12 to the people, but what was taken to them perhaps forever,
13 the peace, the tranquility, but that's what justice is
14 about.

15 "Please help me. Please help me. Please help
16 me."

17 (Whereupon, the 911 tape was played to the jury
18 panel)

19 MR. MEADORS: Thank you.

20 THE COURT: Mr. Meadors.

21 Mr. Smaldone?

22 MR. SMALDONE: Ladies and gentlemen of the jury,
23 thank y'all for paying close attention to this case.

24 As I said before, two days ago, maybe it was
25 yesterday, this case boils down to one thing and that's

1 whether or not you can believe the words of a hysterical
2 person who is, quite frankly, pretty mad that his house was
3 broken into, and understandably so.

4 The State has shown a lot of evidence. They got
5 this table here. I don't know if y'all can see. They got a
6 table. They got all this stuff. I believe there is
7 forty-five exhibits that -- I think forty-five exhibits they
8 have. They got pictures, gloves, and it's all very
9 convincing. It's all very convincing that there was a
10 burglary, and that's it. All this has to do with burglary.

11 What they're trying to do, and they're trying to
12 play on emotions to say that the burglary he's a bad guy, he
13 must have done it, but the State has the burden to prove
14 beyond a reasonable doubt that all this stuff occurred.

15 So where is the evidence? If all this occurred
16 about noon in a neighborhood like this, Dr. Funke said it
17 lasted about fifteen minutes, where are the witnesses?

18 And he's right, you know, Mr. Meadors is right, he
19 said, oh, they are going to talk about the gun and they are
20 going to try to trick you. Dang right I'm going to talk
21 about the gun, because there wasn't one.

22 The victim in this case said he clearly saw what
23 he believed to be a semiautomatic. He gave details, a
24 semiautomatic pistol in Reco Godbolt's pocket, not Jamal
25 Helton. Definitely Reco Godbolt. He's right there. He saw

1 the gun, a semiautomatic.

2 And then they are talking about the lakes and the
3 rivers and the geography. That was where -- that was where
4 Jamal Helton went through. Reco Godbolt was caught after a
5 short chase at the scene, and you heard one of the fine
6 police officers say he never lost sight of his whole body.
7 He may have lost sight of parts of him for a split second,
8 but he never lost sight of his whole body. That's
9 important. The reason that's important is because if you
10 are saying that he's definitely the one with the gun, where
11 is it? Things don't disappear, I don't think. I don't -- I
12 haven't heard that guns disappear. There is a lot of
13 technology these days, but not disappearing guns. So -- and
14 the reason for that is --

15 And he gave you a brief description about the law.
16 And remember what I tell you about the law is not the law.
17 That's the law right there in the chair. So he'll be very
18 clear with this, but the law is, and again he'll clarify it,
19 that a burglary in the first degree -- and that's kind of
20 another way of saying first and second, burglary plus. You
21 know, it's like a batting (phonetic) burglary.

22 A burglary in the first degree is when you are
23 armed with a deadly weapon. What deadly weapon? They got
24 this table here. He said in the house there was a deadly
25 weapon. Again, there's no deadly weapon.

1 And they are saying, oh, he gave it to Jamal.
2 There is allegedly supposedly this giant grand chase and
3 they are trading guns and whatnot? Now, there are no guns.
4 They are scared. They are probably just as scared as he
5 was, to be honest. They didn't have a right to be as scared
6 as he did. They probably just stood there and they are
7 doing something really stupid and an angry white guy comes
8 home, yeah, they are pretty upset, they are pretty scared
9 too. So they are trying to give this smoke screen, oh, the
10 co-defendant might have had it, that Jamal Helton might have
11 had the gun. No evidence to indicate that.

12 And then there is the gunshot residue, and they
13 kind of brought up that -- and he talked about minimizing in
14 his statement. That witness was another example of
15 minimizing. He was getting up there say, oh, well, you
16 know, if he washed his hands, and you heard him. You
17 remember what he said, all that stuff. When did he do all
18 that stuff? He is running. He was caught at the scene.

19 And, you know, I might not be able to find it
20 right away, my organizational skills are sub-par, but y'all
21 saw a picture of him in his gray sweatshirt. What else do
22 you see? Handcuffs. So he's handcuffed at the scene. He
23 was arrested. I assume he was handcuffed. Where do you --

24 MR. MEADORS: I object. There is no evidence of
25 that whatsoever, a handcuff, or a picture being in the

1 handcuffs.

2 THE COURT: Sustained.

3 MR. SMALDONE: I believe -- okay.

4 All right. He's at the scene. Where does he have
5 a chance to wash off gunshot residue? There is none. They
6 are saying -- again, they caught up in this phantom figure,
7 Jamal Helton, no, he did everything that we can't -- they
8 are saying that Jamal did everything and we can't prove he
9 did it. And that's -- that's what it comes down to. And
10 the reason they are doing that is because there is no
11 evidence we did any of this.

12 Now, there is evidence that a burglary occurred
13 and he was dumb enough to do it. Well, like I said at the
14 beginning, you know, he is probably going to pay the piper
15 for that, and he -- he's accepted that. He deserves to.
16 But what he doesn't deserve is to just get every little
17 thing that there is no evidence to prove thrown at him.
18 So -- and that's this burglary in the first degree.
19 That's -- that's where the dang weapon comes in.

20 And also possession of a weapon during a violent
21 crime, where's the gun? Again, it's the same thing. He's
22 right, I do care about the gun.

23 And, you know, this -- another -- attempted murder
24 charge? There wasn't a gun. They didn't find a gun. They
25 didn't find gunshot residue. And, quite frankly, he heard a

1 sound and he says he thought it was a gunshot. He had no
2 idea what it was.

3 He asked the police that -- to prove any gunshot,
4 and understanding that experience, chasing him - if there
5 was a gun, which there wasn't, but he even if there was, no
6 casing where that bullet go, shot in the air, shot in the
7 ground, but I maintain there wasn't a gun.

8 Armed robbery. Armed with what?

9 So, yeah, he said I'm going to talk to you about
10 the gun. It is important. I am talking about the gun.

11 He said it was a semiautomatic gun. As some of
12 y'all might know, to shoot a semiautomatic gun a shell
13 casing comes out. You know, you might have seen in the
14 movies, you know, you shoot guns, it pops out the side. It
15 kind of flips out. That wasn't there. They looked for it
16 and that wasn't there.

17 So, the only thing that really happened is this
18 burglary charge, which he did. He's stupid. He shouldn't
19 have done it. He admits that. And that's all -- well,
20 that's what all this is about, burglary.

21 So they are trying to throw -- and they got a lot
22 of stuff, this massive pool of evidence on here, but it's
23 all about the same thing. It's all about this burglary.
24 There is just no evidence of anything else.

25 Supposedly a kidnapping occurred. There is

1 nothing to show it. Sorry.

2 And do I think the victim -- is the victim lying?
3 I don't know. Was he a little hysterical at the time? Yes.
4 He said when you are under -- when you are that scared and
5 that terrified, things become temporarily distorted. What
6 does that mean? And I agree. I think that he was so
7 hysterical, no idea, because the evidence, quite frankly,
8 doesn't support anything. The evidence on that table was a
9 burglary.

10 And remember, it's not the burglary in the first
11 degree that he's charged with. That's a burglary with a
12 gun, this -- this magic gun. The burglary he committed, and
13 excuse him for committing, he was wrong for committing, but
14 it's called a burglary second. Burglary second, nonviolent
15 is the type of burglary, technically it was, and that is --
16 and, again, the judge is the judge on the law. I'm just
17 telling you you defer to him if you have any question, but
18 that is a daytime burglary.

19 It's suited. It's done. It's what happened, and
20 that's why I'm going to ask you, all of you, to use your
21 common sense, to use your experience that you have with your
22 jury school, as people call it, your whole life, and that is
23 to find him guilty of what the evidence shows happened;
24 burglary. Something stupid to do.

25 The evidence doesn't show anything else because it

1 didn't happen. That's why I'm asking you to find a just
2 verdict, a true verdict, and not guilty of all this other
3 unfounded stuff.

4 Thank y'all for your time.

5 THE COURT: Thank you, Mr. Smaldone.

6 All right, ladies and gentlemen, we'll take one
7 more brief recess and have you back out in just a few
8 minutes. I'll give you the charge on the law. My charge
9 probably will take thirty minutes, or more, and you will
10 have to bear with me on that.

11 You may not discuss the case yet. That time is
12 coming very shortly. Thank you.

13 If you need anything inside the jury room, just
14 let the bailiff know.

15 All right, we will take just a few minutes. Thank
16 you.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 THE COURT: If you gentlemen would like to have a
20 copy of the verdict form, Ben will bring you one.

21 On the possession of a weapon during commission of
22 a violent crime, I will tell the jury that the following are
23 violent crimes: Burglary in the first degree, kidnapping,
24 and armed robbery.

25 In the context of the lesser included in this

1 case, burglary second would not be, because it doesn't have
2 any of the components of violence.

3 All right. Does that suit the State?

4 MR. MEADORS: It does, I understand.

5 Your Honor, I'm going to call to just see if the
6 solicitor is here, if that's okay.

7 THE COURT: He was in my office a minute ago
8 talking about the jury, so he may be in a small courtroom.

9 MR. MEADORS: I'll see if he -- give me one
10 second.

11 THE COURT: Talking about -- just to make sure Mr.
12 Godbolt understands, when I say the jury, it's the jury
13 panel who is not involved in this case.

14 (Off the record)

15 (Back on the record)

16 THE COURT: Is the State ready for the jury?

17 MR. MEADORS: Yes, sir.

18 THE COURT: Defendant?

19 MR. SMALDONE: Yes, sir.

20 (The following takes place in the presence of the
21 jury panel)

22 THE CLERK: Judge, all the jurors are present and
23 in the courtroom.

24 THE COURT: All right.

25 Thank you, ladies and gentlemen. We are now going

1 to go forward to the last portion of the trial, short of
2 your deliberations, and this is called the jury charge or a
3 charge on the law.

4 This is an opportunity that I take, and I'm
5 certainly required by law to do this, to explain to you what
6 the law is.

7 You have come into the courtroom armed with your
8 common sense, and what you are to do, as I mentioned to you
9 before, is you take your common sense view of the evidence
10 that has been introduced, in addition to the charge on the
11 law, and you put those things together and you reach
12 verdicts that speak the truth.

13 Your deliberations will end with your foreperson's
14 completion of this verdict form, and it has six basic
15 inquiries on it. There's a little bit more to it than that,
16 and I'll go through it with you in detail, but when I give
17 you this charge on the law, it's all going to be aimed at
18 you completing this verdict form in a manner that speaks the
19 truth.

20 It may have been mentioned to you the word verdict
21 does come from the Latin word which literally means speak
22 the truth, and that's what your verdicts must do.

23 And, by the way, I will tell you at the end of
24 this charge your verdicts in the case must be unanimous.
25 That means all of you have to agree. This is not going to

1 be a proposition where it's 7 to 5, or 8 to 4, or 10 to 2,
2 or even an 11 to 1 vote. It's got to be all twelve on the
3 jury agree with what the verdicts are.

4 Now, obviously, ladies and gentlemen, during the
5 course of this charge I'm going to be talking to you about
6 many different things. This is not a time for you to sit
7 back and try to memorize what I tell you about the law.
8 What you are to do is accept the law as I give it to you.
9 And, by the way, you have to accept it exactly as I give it
10 to you and you can't substitute what you think the law is.
11 Don't try to memorize things. I'll guarantee you one thing
12 I can tell you right now, I bet you a million dollars, I
13 will repeat myself.

14 I will be talking to you about the burden of
15 proof, the presumption of innocence. I'll talk to you about
16 criminal intent, direct and circumstantial evidence. I'll
17 talk to you about the elements of kidnapping, the elements
18 of burglary, and the elements of the other offenses at issue
19 in this case, and I will repeat myself. And the reason for
20 that is that in many instances a principle of law that I
21 will discuss with you at the beginning is going to apply to
22 everything else that I talk about. So if I do repeat
23 myself, please bear with me. It doesn't mean I have lost my
24 place or -- I hope it doesn't mean that I don't know what
25 I'm talking about. It's simply I have to repeat myself to

1 remind you how these legal principles do sometimes
2 intertwine with one another.

3 Now, first of all it's obvious to you by now more
4 than likely that you and I have had certain duties to
5 perform during this trial. You are the judges of the facts
6 and I'm the judge of the law.

7 Two examples of you being the judges of the facts.
8 All of the testimony that was introduced was introduced to
9 you. These witnesses were testifying to you, not to me.
10 The exhibits that have been introduced were introduced to
11 you. For the most part, unless I caught a glance at one, I
12 have not even seen them at all. I haven't seen the first
13 photograph. I haven't seen the first document. The reason
14 for that is it does not matter what I think about it. The
15 lawyers know, but it doesn't matter what weight I might give
16 to a particular exhibit. It's for you.

17 Another example of how you are the judge of the
18 facts and I'm the judge of the law is when you go to
19 deliberate in that jury room and you will be the one
20 reaching the verdict, I'm not going to go with you. The
21 lawyers don't. There is no microphone, no camera, no court
22 reporter. There is nothing in there but the jurors who are
23 deliberating and that's because you are the ones who make a
24 difference insofar as to what the verdict is going to be.

25 Now, I do have the duty to charge you the law. As

1 I mentioned, you have to accept it exactly as I give it to
2 you. You may come into the case with a preconceived notion
3 of what you think it is, or what you think the law ought to
4 be, but you have to put that out of your mind. You have to
5 accept the law exactly as I give it to you.

6 Likewise, if I have instructed you -- perhaps I
7 don't know if I have, but if I have instructed you to
8 disregard a question, or answer, or some other evidence that
9 may have been an issue, you have to, under your oath,
10 disregard what I have told you to disregard.

11 What you are permitted to do is you are entitled
12 to base your decision on evidence that has been introduced.
13 In other words, if evidence has come in, you can consider
14 it.

15 Now, the evidence that's come in, again, by
16 stipulation, testimony, and exhibits.

17 It's your duty to determine the effect and the
18 weight and the value to be given to evidence, if any, during
19 the course of this trial.

20 Now, ladies and gentlemen, if I have said or done
21 anything that makes you think I favor one side over the
22 other, you can put that out of your mind, because I don't.
23 I had a juror one time ask me "well, why were you writing
24 things down at certain times?" Well, I write down times;
25 what time was Exhibit 20 introduced; what time did witness

1 so and so take the stand; what time did cross-examination
2 start. That's just in case you want to hear any of that
3 again. I make a note, and hopefully mine and the court
4 reporter's notes correspond with those times, but I'm not
5 taking notes because I think something is important. I'm
6 creating a timeline and that that's why I write those things
7 down.

8 Now, in the indictment, ladies and gentlemen,
9 there are six different offenses alleged. And, as I will
10 mention, the State will have the burden, does have the
11 burden of proving the elements of those offenses beyond a
12 reasonable doubt.

13 As I mentioned, the fact that a person was
14 arrested or charged or indicted for any criminal offense,
15 literally from A to Z, is not evidence of guilt. The case
16 has to get into the courtroom somehow and it gets into the
17 courtroom by way of the indictment process. So the
18 indictment doesn't create any evidence of guilt or any
19 inference of guilt. It's simply a formal written
20 instrument. It's a charging document.

21 All right. Now, you know -- I think I spent some
22 time on this when we began the trial. You decide the
23 credibility of witnesses as one of the things that you do as
24 the fact finder. You can believe every word, nary a word,
25 or believe parts and reject the rest the rest when the

1 witness is testifying. That's entirely up to you.

2 Also you can take into account anything that you
3 think is appropriate in determining whether to believe that
4 witness or not.

5 Was their testimony consistent or inconsistent
6 with other evidence?

7 What was their demeanor? How did they appear;
8 hesitant, or straightforward in answering questions.

9 What was their ability to know what they claim to
10 know?

11 Did they say something the same or different on a
12 prior occasion?

13 Does that witness have a bias or interest or a
14 prejudice in favor of one particular outcome or another?

15 You can take those things into account, along with
16 anything else you think is appropriate, in determining that.

17 You can believe one witness over several, several
18 over one, however you want to do it.

19 Now, as I mentioned, there are different ways
20 evidence comes in; testimony, exhibits, and stipulations.

21 A little bit of a different point on that. There
22 are two types of evidence that typically come in; direct
23 evidence and circumstantial evidence.

24 Direct evidence is evidence that immediately
25 establishes the main fact to be proved.

1 For example, the testimony of a person who claims
2 to have actual knowledge of a fact. An example of that
3 might be an eyewitness; I heard this, I saw this, I smelled
4 this, I touched this. Those are examples of direct
5 evidence.

6 If you believe a witness who says I saw heard,
7 heard, touched, or smelled, if you believe the witness in
8 your evaluation of credibility, that certainly speaks for
9 itself.

10 Now, circumstantial evidence, on the other hand,
11 is proof of a chain of facts and circumstances that indicate
12 the existence of a fact.

13 Circumstantial evidence is evidence that
14 immediately establishes collateral facts from which the main
15 fact may be inferred. So it's based on inference. It's not
16 based on direct knowledge or observation.

17 Now, ladies and gentlemen, the law makes no
18 distinction at all between the weight or value that you are
19 to give to either direct or circumstantial evidence, nor is
20 there a greater degree of certainty required of
21 circumstantial evidence than of direct evidence.

22 In other words, you weigh all the evidence in the
23 case. And after weighing all this evidence, if you are not
24 convinced of the defendant's guilt beyond a reasonable doubt
25 as to the charge you are considering at that time, you must

1 find him not guilty.

2 If, on the other hand, after weighing all that
3 evidence if you are convinced of the defendant's guilt
4 beyond a reasonable doubt, you must find him guilty of the
5 charge that you are considering at that time.

6 I went over this briefly. This is probably
7 self-explanatory. The Rules of Evidence, as I mentioned
8 earlier today, ordinarily do not permit witnesses to give
9 opinion or conclusions. Those witnesses can just say what
10 they saw or what they observed. They cannot give opinions.

11 There is an exception in our rules for expert
12 witnesses, and those are people who by education, training
13 or experience have become an expert in a particular art, or
14 science, or profession. They can give opinions and give the
15 reasons for those opinions. That does not mean that you are
16 bound by the expert's opinion just because it comes from an
17 expert. You consider it, just as you would the testimony of
18 any other witness, and give that expert's opinion the weight
19 that you believe it deserves.

20 If you believe that the expert's opinion is not
21 based on sufficient education or training or experience, or
22 if you believe or conclude that the reasons given in support
23 of that opinion are not sufficient, or if that opinion is
24 outweighed by other evidence, you can disregard the opinion
25 entirely. In other words, you don't give that opinion any

1 greater weight just because it comes from an expert. You
2 take into account all the facts and circumstances and give
3 it the weight you believe it deserves.

4 All right. Now, ladies and gentlemen, I instruct
5 you and I emphasize that the fact that the defendant did not
6 testify in this case is not a factor to be considered by you
7 in any way in your deliberations or in your consideration of
8 the question of guilt or nonguilt of the defendant. The
9 fact that the defendant did not testify is something you may
10 not think about, you may not discuss it at all, and it
11 cannot be considered by you in any manner whatsoever.

12 So under your oath I repeat that you are to draw
13 no conclusion whatsoever from the fact that the defendant
14 did not the testify. The burden of proof is on the State of
15 South Carolina, and the defendant is not required to prove
16 or disprove anything. And, again, the burden remains on the
17 State to prove guilt beyond a reasonable doubt.

18 Now, ladies and gentlemen, the defendant has
19 entered pleas of not guilty to all of the counts in the
20 indictment, and those not guilty pleas puts the burden on
21 the State to prove him guilty; again, beyond a reasonable
22 doubt.

23 A person who is charged with a crime, no matter
24 what the crime is, is never required to prove himself
25 innocent.

1 And I charge you it is a very important rule of
2 law that the defendant in a criminal trial, no matter what
3 the charge, is always presumed to be innocent of the crime
4 for which the indictment was issued, unless guilt has been
5 established by proof satisfying you of guilt beyond a
6 reasonable doubt.

7 Now, that presumption of innocence does not end in
8 just a few minutes when you get up and go to that jury room.
9 The presumption of innocence stays with the defendant,
10 unless and until that presumption has been stripped away by
11 evidence that satisfies you of guilt beyond a reasonable
12 doubt.

13 So, in closing on that point, the presumption of
14 innocence is not a mere legal theory or a catchphrase that
15 we casually toss around. The presumption of innocence is a
16 substantial right to which every defendant is entitled,
17 unless you, the jury, are satisfied from the evidence of
18 guilt beyond a reasonable doubt.

19 Now, I mentioned the words -- so far I mentioned
20 the words reasonable doubt so far probably twenty or thirty
21 times. I'm going to talk to you about that now.

22 You may ask well, what's a reasonable doubt?
23 Well, a reasonable doubt in the law is the kind of doubt
24 that would cause a reasonable, honest, and conscientious
25 person hesitate to take action.

1 As I mentioned, the State does have the burden of
2 proving the elements of the crimes charged beyond a
3 reasonable doubt. If during the course of this charge I say
4 the State has to prove something, the State must prove what
5 I say they have to prove beyond that reasonable doubt.

6 Now, some of you may have served as jurors in a
7 civil case. I know some of you raised your hands at the
8 beginning. Typically in a civil case the party who has the
9 burden of proof has to tip imaginary scales ever so slightly
10 in that person's favor. In other words, they have the
11 burden of proving something by the greater weight of the
12 evidence. In other words, they have to prove that a fact is
13 more likely true than not true.

14 Now, in criminal cases the State's burden is more
15 powerful than that. The State must present proof beyond a
16 reasonable doubt. Proof beyond a reasonable doubt is proof
17 that leaves you firmly convinced of the defendant's guilt.

18 Now, obviously there are not many things that we
19 know on this earth with absolute certainty and the law does
20 not require the State to present proof that overcomes every
21 possible doubt.

22 Based on your view of all the evidence, if you are
23 firmly convinced of the defendant's guilt of the crime that
24 you are considering at that time, you must find him guilty.

25 If, on the other hand, you are not firmly

1 convinced of the defendant's guilt as to that particular
2 charge, you must give him the benefit of the doubt and find
3 him not guilty.

4 All right. Now, ladies and gentlemen, there are
5 multiple counts in this indictment. I'll just read them in
6 order: Kidnapping, burglary in the first degree, attempted
7 murder, armed robbery, possession of a weapon during the
8 commission of a violent crime, and criminal conspiracy.

9 Each one of these counts carries a separate and
10 distinct offense. You decide the issues of guilt or
11 nonguilt separately on the evidence and your decision as to
12 one count is to be dealt with in your mind and considered
13 separately.

14 In other words, the defendant, based on your view
15 of the evidence, may be found guilty of all, may be found
16 not guilty of all, guilty of some, not guilty of others. In
17 other words, your verdict on one count does not control your
18 verdict on another count. And you will be asked -- and you
19 will see it when you see your verdict form, you will be
20 asked to write a separate verdict of guilty or not guilty as
21 to each particular charge.

22 I'm going to get more specific now. I'm going to
23 talk to you about the specific charges in the indictment and
24 I will begin with telling you this, ladies and gentlemen.
25 If a crime is committed by two or more people who are acting

1 together in committing a crime, the act of one is the act of
2 all. A person who joins with another to commit an unlawful
3 act is criminally responsible for everything done by the
4 other person which happens as a probable or natural
5 consequence of the acts done in carrying out the common plan
6 and purpose.

7 For example, two people can be guilty of doing a
8 certain thing when only one of them had the instrument that
9 did it. In other words, in any given case if two or more
10 people are acting together, the law says that the hand of
11 one is the hand of all; that is, when two or more people are
12 together, acting together, assisting each other and
13 committing the offense. Again, the hand of one is the hand
14 of all.

15 I further charge you, ladies and gentlemen, that
16 prior knowledge that a crime is going to be committed,
17 without more, is not sufficient to make a person guilty of
18 that crime. Mere knowledge that another person is going to
19 commit a crime, even if the defendant is present when the
20 crime is committed, is not sufficient to convict the
21 defendant as a principal.

22 Guilt as a principal is shown by actual or
23 constructive presence at the scene as a result of a prior
24 arrangement. And, therefore, a finding of prior arranged
25 plan or common scheme is necessary for finding of guilt as a

1 principal.

2 The State must prove beyond a reasonable doubt by
3 competent evidence the theory of the hand of one is the hand
4 of all.

5 Now, a principal, as I just mentioned in a crime,
6 is one who either actually commits the crime or who is
7 present aiding, abetting, or assisting in committing the
8 crime. When a person does an act in the presence of and
9 with the assistance of another, the act is done by both.

10 Where two or more people acting with a common plan
11 or intent are present at the commission of a crime, it does
12 not matter who actually commits the crime. All are guilty.
13 And, again, the hand of one is the hand of all.

14 To be present at the commission of a crime means
15 to be sufficiently near to aid, abet, and assist in the
16 commission of the crime. However, mere presence at the
17 scene is not sufficient to convict one as a principal on the
18 theory of aiding and abetting.

19 Now, intent, as I will tell you in a few minutes
20 in more detail, intent is also a necessary element, for
21 there must have been a common design or intent to commit the
22 crime and the crime must have been committed pursuant to
23 that common design with the person aiding and abetting by
24 some overt act.

25 The word intent means intending the result that

1 actually occurs, not accidentally or involuntarily.

2 Intent, as I will tell you in more detail, may be
3 shown by acts and conduct of the defendant and other
4 circumstances from which you may naturally and reasonably
5 infer intent. And, again, the State must prove that beyond
6 a reasonable doubt.

7 I'm going to take these in no particular order.
8 I'm just going to go in the order of the indictment.

9 First of all the defendant is charged with
10 kidnapping.

11 The State must prove beyond a reasonable doubt
12 that the defendant knowingly and unlawfully seized,
13 confined, inveigled, decoyed, kidnapped, abducted, or
14 carried away another person without authority of law.

15 To do something unlawfully means to do it
16 willfully against the law.

17 The word knowingly means with knowledge and
18 consciously and not accidentally.

19 The word seize means to take hold of suddenly or
20 forcibly.

21 The word confined means to limit, restrict, or
22 enclose, or shut in, or keep in.

23 To kidnap is to remove a person against his will
24 by unlawful force.

25 The word abduct means to carry off secretly, or by

1 force, or for an illegal purpose.

2 The word carry away means to remove.

3 Now, the State does not have to prove that the
4 defendant did all of those things. Instead, the State has
5 to prove that the defendant did at least one of those
6 things. And, of course, the State has to prove that beyond
7 a reasonable doubt.

8 And something, ladies and gentlemen, that is done
9 without authority of law is something which the law does not
10 sanction, permit, or provide justification for.

11 And a kidnapping does not have to be for any
12 personal or monetary gain, for any illegal purpose, but may
13 be for any reason whatsoever.

14 The defendant is also charged with first degree
15 burglary. It's also called burglary in the first degree.
16 Those things -- those terms mean the same thing.

17 The State must prove beyond a reasonable doubt,
18 first, that the defendant entered a dwelling without
19 consent.

20 A dwelling is defined as a building, or a portion
21 of a building, in which a person ordinarily sleeps.

22 A building can be a dwelling even if the residents
23 are temporarily absent from the building.

24 In order to prove that the defendant entered the
25 dwelling, the State does not have to show that the

1 defendant's entire body entered the dwelling. The smallest
2 entry is sufficient. It may be any part of the body, such
3 as a hand or a foot, or even an instrument, such as a hook
4 or any other type instrument.

5 In addition, ladies and gentlemen, the State does
6 not have to prove that the entry into the building or
7 dwelling was gained by force.

8 Next, the State must prove beyond a reasonable
9 doubt that the defendant intended to commit a crime at the
10 time of the entry.

11 The mere entry into a dwelling, without consent,
12 is not burglary. If the intent to commit a crime was formed
13 after the entry, it is not burglary.

14 On the other hand, if the defendant intended to
15 commit a crime at the time of the entry, it is a burglary,
16 even if the intent was abandoned after the entry. And it
17 does not matter that the intended crime was not completed.

18 As I mentioned to you before, and as I will
19 mention it again, intent in the context of what I have been
20 charging you may be shown by acts and conduct of the
21 defendant and other circumstances from which you may
22 naturally and reasonably infer intent.

23 Also in the context of burglary in the first
24 degree, the State must prove beyond a reasonable doubt that
25 when entering, or while in the dwelling, or when fleeing the

1 dwelling the defendant or an accomplice was armed with a
2 deadly weapon.

3 And a deadly weapon is any article, instrument or
4 substance which is likely to cause death or great bodily
5 harm.

6 And the following are examples of instruments
7 which may be deadly weapons: Pistol, shotgun, knife, rifle,
8 brass knuckles, slingshot, gasoline, razor, Molotov
9 Cocktail.

10 And a gun may be a deadly weapon even if not
11 operating.

12 Now, ladies and gentlemen, I perhaps should have
13 mentioned this before. There is a doctrine in the law
14 called a lesser included offense. And I charge you, and
15 it's on this verdict form, if you find that the State has
16 not proven beyond a reasonable doubt that the defendant is
17 guilty of burglary in the first degree, you must determine
18 whether the State has proven the defendant is guilty of
19 burglary in the second degree.

20 And I'll say that again in case I misspoke. If
21 you find the State has not proven beyond a reasonable doubt
22 that the defendant is guilty of burglary in the first
23 degree, you must consider whether the State has proven him
24 guilty of burglary in the second degree.

25 Burglary in the second degree has all of the

1 elements of burglary in the first degree, except for the
2 element that the defendant or accomplice was armed with a
3 deadly weapon while entering, while in, or while fleeing the
4 dwelling.

5 All right, ladies and gentlemen, the defendant is
6 also charged with attempted murder.

7 In order to prove this offense, the State must
8 prove beyond a reasonable doubt that the defendant attempted
9 to kill another person with malice aforethought, either
10 expressed or implied.

11 Malice is hatred, ill will, or hostility towards
12 another person. It is the intentional doing of a wrongful
13 act without just cause and with an intent to inflict injury,
14 or under circumstances that the law will infer an evil
15 intent.

16 Malice aforethought does not require that malice
17 exists for any particular time before the act is committed,
18 but malice must exist in the mind of the defendant just
19 before and at the time the act is committed. Therefore,
20 there must be a combination of the previous evil intent and
21 the act.

22 Malice aforethought can be express or it can be
23 inferred. These terms express and inferred don't mean
24 different kinds of malice, but merely means the manner in
25 which the malice may be shown to exist, and that's either by

1 direct evidence or by circumstantial evidence.

2 Express malice is shown when a person speaks words
3 which express hatred or ill will for another, or when the
4 person prepared beforehand to do the act that was later
5 accomplished.

6 Malice may be inferred from conduct showing total
7 disregard for human life.

8 Inferred malice may also arise when the deed is
9 done with a deadly weapon.

10 And as I mentioned to you earlier, a deadly weapon
11 is any article, instrument, or substance which is likely to
12 cause death or great bodily harm, and the following, again,
13 are examples which may be deadly weapons: Pistol, shotgun,
14 rifle, knife, slingshot, metal knuckles, firebomb, Molotov
15 Cocktail, razor, gasoline.

16 Now, ladies and gentlemen, if facts are proved
17 beyond a reasonable doubt sufficient to raise an inference
18 of malice to your satisfaction, this inference would be
19 simply an evidentiary fact to be considered by you, along
20 with other evidence in the case, and you may give it the
21 weight you decide it should receive.

22 And, ladies and gentlemen, a specific intent to
23 kill is not an element of attempted murder, but there must
24 be a general intent to commit serious bodily injury.

25 Now, ladies and gentlemen, also the defendant is

1 charged with armed robbery.

2 In order to prove this offense the State must
3 first prove beyond a reasonable doubt that the defendant
4 took personal property from the person or presence of
5 another person.

6 Property is in the presence of a person if it is
7 within the person's reach, inspection, observation or
8 control that the person could, if not overcome with violence
9 or prevented by fear, keep possession of the property.

10 The State must also prove beyond a reasonable
11 doubt that the defendant carried the property away intending
12 to permanently deprive the owner of the property and to keep
13 the property for the defendant's own use.

14 The slightest removal of the property or the
15 complete possession of the property, even for an instant, by
16 the defendant is sufficient to show a taking and carrying
17 away of the property.

18 The taking and carrying away of the property must
19 have been done with violence or by putting the owner of the
20 property in fear of violence.

21 The State must prove beyond a reasonable doubt
22 that the defendant was armed with a deadly weapon during the
23 robbery, or while alleging, either by actions or words, that
24 he was armed while using a representation of a deadly weapon
25 or any object which a person present during the commission

1 of the robbery reasonably believed to be a deadly weapon.

2 And as I mentioned to you before, a deadly weapon
3 is any article, instrument, or substance which is likely to
4 cause death or great bodily harm.

5 And the following are examples which may be deadly
6 weapons: Pistol, shotgun, rifle, knife, slingshot, brass
7 knuckles, razor, gasoline, or firebomb.

8 Now, ladies and gentlemen, on the verdict form
9 there is also reference to a lesser included offense of
10 armed robbery.

11 If you find that the State has failed to prove
12 that the defendant is guilty of armed robbery, you must
13 consider whether or not the State has proven the defendant
14 guilty of the lesser offense of strong armed robbery.

15 In order to prove robbery, the State must prove
16 beyond a reasonable doubt all of the elements of armed
17 robbery, except that the defendant was armed with a deadly
18 weapon.

19 The defendant is also charged with possession of a
20 weapon during the commission of or attempt to commit a
21 violent crime.

22 The State must prove beyond a reasonable doubt
23 that the defendant was in possession of a firearm during the
24 commission of a violent crime.

25 And a firearm means a machine gun, automatic

1 rifle, revolver, pistol, or any other weapon that is
2 designed to or may readily be converted to expel a
3 projectile.

4 Now, in order to find the defendant guilty of
5 possession of a weapon during the commission of a violent
6 crime, you must first find the defendant guilty of either
7 committing a violent crime or attempting to commit a violent
8 crime.

9 Attempted murder is a violent crime.

10 Kidnapping is violent crime.

11 Armed robbery is a violent crime.

12 Burglary in the first degree is a violent crime.

13 Now, lastly the defendant is charged with
14 conspiracy.

15 The State must prove beyond a reasonable doubt
16 that the defendant combined with one or more persons for the
17 purpose of committing an unlawful act, or of committing a
18 lawful act by unlawful means. There must be a mutual
19 understanding, agreement, or common intention and plan.

20 Mere passive knowledge of or consent to the
21 criminal conduct of another is not enough to make that
22 person a conspirator. There must be guilty knowledge and
23 participation.

24 And, similarly, the mere fact that the defendant
25 may have associated with another person or met with another

1 person and discussed common names and interests does not
2 necessarily establish proof of the existence of a conspiracy
3 or that the defendant was involved in a conspiracy.

4 On the other hand, it's not necessary that the
5 agreement be a formal agreement, or that it has to be in
6 writing, or that the persons hold a meeting and expressly
7 state the terms of the common plan, and it's not necessary
8 that the agreement be stated in the words between them. The
9 agreement of a criminal conspiracy may come into being
10 through an implied mutual understanding.

11 The willful, intentional, and knowing adoption by
12 two or more people of a common plan is sufficient.

13 No overt acts need be established to show a
14 conspiracy.

15 A conspiracy may be proven by circumstantial
16 evidence and the conduct of the parties.

17 In order to convict a defendant of conspiracy, the
18 State has to prove beyond a reasonable doubt not only that
19 the defendant knew of the unlawful conduct, but that the
20 defendant agreed to combine with the other person for the
21 purpose of accomplishing that unlawful conduct.

22 Now, ladies and gentlemen, the last thing I will
23 talk to you about before I get to the verdict form is
24 criminal intent.

25 In order to establish criminal liability, whatever

1 the charge is, whatever the count is, whether it's a greater
2 or lesser included offense, in order to establish criminal
3 liability, criminal intent is required.

4 The State must prove criminal intent beyond a
5 reasonable doubt.

6 Criminal intent is always a matter that must be
7 determined by a jury from the facts and circumstances
8 surrounding the situation.

9 There is no way that medical science can take our
10 brains and dissect our brains and look in the brain and
11 decide what, if anything, we intended to do at any given
12 time, so the law says that criminal intent may be inferred
13 from circumstances shown to have existed.

14 It's not necessary to establish criminal intent by
15 direct evidence, but criminal intent may be established by
16 inference, in the same way as any other facts, by taking
17 into consideration the actions of the parties and all of the
18 facts and circumstances of the case.

19 So, in essence, criminal intent is the mental
20 state, the conscious wrongdoing, and it's up to you to
21 determine what, if anything, the defendant intended to do
22 based on the circumstances shown to have existed.

23 Now, ladies and gentlemen, you will have several
24 things in the jury room with you. First of all, you will
25 have your collective memories of the testimony. You will

1 also have your common sense. You will have your exhibits,
2 and you will have this verdict form, and, of course, your
3 recollections of what the charge on the law is that I have
4 given to you.

5 You don't have to take these in any particular
6 order on the verdict form. But, again, Mr. Foreman, your
7 verdict must be unanimous. The only way that you can give
8 these parties what you have sworn to give them is to give
9 these issues a complete and sincere and honest discussion
10 that they deserve. So your job is just, again, I'm not
11 concerned about what your verdicts are going to be, but I do
12 want to make sure that you understand that this is extremely
13 important and perhaps the most important part of the trial
14 is when you make your decisions in that jury room. You will
15 have all the time that you need. And what you are to do is
16 to go through these counts as noted on the verdict form.
17 And just by way of illustration, I will go through these one
18 by one.

19 Number one deals with kidnapping.

20 As to that charge, "we unanimously find the
21 defendant," and you will have two choices; not guilty,
22 guilty. Whatever your unanimous verdict is, you put a check
23 or an X in that particular space.

24 Number two talks about burglary in the first
25 degree; not guilty, guilty.

1 There is -- in bold print it says "if you have
2 found the defendant not guilty of burglary in the first
3 degree," you go to sub-question A, which deals with the
4 lesser offense of burglary in the second degree.

5 "If you have found him guilty of burglary in the
6 first degree," you go to question three, which talks about
7 attempted murder.

8 And then you move from there to number four, which
9 is armed robbery. And that one also says "if you have found
10 the defendant not guilty of armed robbery," then you go to
11 sub-question A, which deals with the lesser offense of
12 strong armed robbery.

13 Then you go to five, which is possession of a
14 weapon during the commission of a violent crime.

15 And number six, criminal conspiracy.

16 Now, during the course of your deliberations if
17 you have any questions, you just write the question down on
18 the note pad in there, tap on the door and let the bailiff
19 know that you have a question. The law dictates if and how
20 I can respond.

21 You will not be receiving any more evidence. No
22 other evidence is going to be introduced.

23 Once you have reached a verdict on all of these
24 counts and have completed the verdict form and signed it and
25 dated it, you tap on the door and let the bailiff know that

1 you have reached a verdict.

2 If someone needs to leave the jury room, first of
3 all you got to get my permission. If you do leave the jury
4 room, then the rest of you have to stop your deliberations.

5 Also if someone does excuse himself or herself to
6 use the restroom, wait until that person comes back into the
7 deliberation area.

8 Now, in evidence are the exhibits that you have
9 noted. Also there is a -- I guess it's called a -- I just
10 call it a compact disc. If you want to listen to what's on
11 that disc, just let us know and we will have you come back
12 out and that will be played for you as many times as you
13 want it played.

14 All right. Your responsibilities are to lay any
15 outside influences, or motives, or passions, or prejudices,
16 or desires aside. Lay all that aside and reach verdicts in
17 these cases which speak the truth. I know that you will do
18 that, and the parties are certainly counting on you to abide
19 by your oath in that regard.

20 What I'm going to do now, ladies and gentlemen, is
21 let you go to your jury room with this one final
22 instruction. You cannot begin talking about the case yet,
23 because the rules that we have require me to inquire of the
24 attorneys if I have said anything incorrectly or if I have
25 left anything out, so please bear with me.

1 Your signal to deliberate will be when the bailiff
2 comes to your door with all these exhibits, and that will
3 take a few minutes to gather those, along with the verdict
4 form and he tells you that you can start. Otherwise if you
5 have to come back out for additional instructions, I'll
6 certainly take care of that.

7 All right. Thank you for your attention and you
8 may go to your jury room.

9 (Whereupon, at 3:19 p.m., the jury went to the
10 jury room, awaiting instructions to begin deliberations).

11 THE COURT: All right, any exceptions or additions
12 from the State?

13 MR. MEADORS: No, sir.

14 THE COURT: Any from the defendant?

15 MR. SMALDONE: No, Your Honor.

16 THE COURT: All right, what's the State position
17 on how I handle the alternate?

18 If you would ask her to step outside. Is it Ms.
19 Cannon or McMillan-Cannon?

20 MR. MEADORS: Besides the gentleman on the second
21 who looks like he's sick, I think the rest of them feel
22 healthy and I think --

23 THE COURT: I couldn't tell whether he was about
24 to cough, about to get sick, but I think he just didn't want
25 to cough on anybody.

1 MR. MEADORS: I think that's all it was, too. No,
2 I'm fine with you letting her go.

3 THE COURT: All right. Mr. Smaldone?

4 MR. SMALDONE: No problem.

5 THE COURT: The way I interpret the statute is
6 once the jury is released to deliberate I have to release
7 the alternate, so I'll do that.

8 If you will have her come in.

9 (Whereupon, Alternate Juror No. 14 was brought
10 into the courtroom)

11 THE COURT: Ms. Cannon or McMillan?

12 ALTERNATE JUROR: McMillan.

13 THE COURT: Okay, you are free to go.

14 ALTERNATE JUROR: Okay.

15 THE COURT: Only twelve can deliberate. And if
16 somebody fell by the wayside, you would have stepped in.

17 Thank you for your attention.

18 Do you have any questions about anything?

19 ALTERNATE JUROR: No.

20 THE COURT: You don't have to come back this week.

21 ALTERNATE JUROR: Good.

22 THE COURT: You are finished.

23 Do you need a work excuse?

24 ALTERNATE JUROR: Uh-huh.

25 THE COURT: Mr. Bradley can help you take care of

1 that. And if you have any questions, I'll be happy to
2 answer those for you outside.

3 One final thing. Don't talk about the case until
4 the week is over.

5 ALTERNATE JUROR: I won't.

6 THE COURT: But after that you can talk about it
7 all you want.

8 ALTERNATE JUROR: Okay.

9 THE COURT: Thank you.

10 ALTERNATE JUROR: Thank you.

11 (Whereupon, the alternate juror was discharged)

12 THE COURT: All right. It's 3:25.

13 Mr. Meadors, let your people know that -- I will
14 certainly tell them now. I'll wait for a reasonable time
15 for them to come back if the jury has a question or verdict,
16 but not inordinately long.

17 MR. MEADORS: I will go ask them not to leave.

18 THE COURT: Okay. And if either of you happen to
19 leave the building -- or anybody leaves the building after
20 five, note that the door will lock behind them. Okay. In
21 many instances people have been banging on the door trying
22 to get back in.

23 Okay, thank you.

24 MR. MEADORS: Thank you, sir.

25 THE COURT: Did y'all get with the court reporter

1 and make sure all the exhibits are in order?

2 (Off the record)

3 (Back on the record)

4 (Whereupon, at 3:23 p.m., the jury panel was
5 instructed to begin deliberations)

6 (Whereupon, at 3:23 p.m., proceedings were
7 recessed, pending the verdict of the jury panel).

8 (Whereupon, at 4:02 p.m., proceedings were
9 reconvened)

10 (Jury Note marked as Court's Exhibit No. 3 for
11 identification)

12 THE COURT: All right, we do have three inquiries,
13 I guess you would call it, not necessarily questions.

14 Number one says clarification for kidnapping.

15 Second one says clarification for first degree
16 burglary.

17 Third one says transcript of Dr. Funke's
18 testimony.

19 Of course, I can handle the first two very easily.
20 I can just say what do you need clarified? Would you like
21 for me to charge the whole thing, and they can say well,
22 yes, or no, what we are talking about is such and such.

23 Dr. Funke, now I'm going by that back clock, but
24 by the back clock he started testimony yesterday at 11:24.
25 I don't note what time we stopped for lunch, but it was some

1 time shortly afternoon. And then the jury came back in at
2 2:05 and cross was for about ten minutes. So does either
3 side have any particular input on clarification of
4 kidnapping and first degree burglary?

5 MR. MEADORS: I should have explained it a little
6 more.

7 I mean, just that Your Honor recharge them, if
8 they want. I don't know what else to say about that.

9 THE COURT: Mr. Smaldone?

10 MR. SMALDONE: I agree.

11 THE COURT: If they want a transcript of Dr.
12 Funke's testimony, they are not going to get a written
13 transcript.

14 MR. MEADORS: Are you going to offer to replay the
15 testimony?

16 THE COURT: That's only thing we can do and
17 that's -- I can't remember -- how long did you have for him
18 on direct? Roughly an hour?

19 COURT REPORTER: I think so.

20 THE COURT: An hour on direct, ten minutes on
21 cross. If they want to hear it, they certainly have the
22 right to hear it.

23 Does either side have any input on whether or not
24 I try to refine that inquiry? Do they want a particular
25 part played, or do they want the whole thing played? I

1 would like to -- I would like to clarify that with them,
2 because if they only want to hear the cross, then we can
3 play the cross. If they want to hear the direct
4 testimony -- well, I don't know how to divide it up, quite
5 frankly.

6 Anybody have any input on that?

7 MR. MEADORS: I think we ought to address that
8 after their response to Your Honor saying there is no
9 transcript, and if they want to hear all, or a part of it --
10 or if they want to hear it, they will have to hear it from
11 the court reporter and then see what response is to that
12 maybe and we could narrow it down.

13 THE COURT: Mr. Smaldone, do you agree with that?

14 MR. SMALDONE: That sounds good to me.

15 THE COURT: But tell me how you would handle that?

16 We would have to go off the record so she can tell me.

17 (Off the record)

18 (Back on the record).

19 THE COURT: All right, are you ready for the jury,
20 Mr. Meadors?

21 MR. MEADORS: Yes, sir.

22 THE COURT: Mr. Smaldone?

23 MR. SMALDONE: Yes, sir.

24 THE COURT: Okay.

25 (Whereupon, at 4:24 p.m., the jury was brought

1 back into the courtroom)

2 THE CLERK: All right, ladies and gentlemen, thank
3 you for your patience. I wanted to lay some groundwork
4 before you came out to address these inquiries that you have
5 sent out. I'm going to go over those very briefly.

6 The first one says clarification for kidnapping.

7 Second, clarification for first degree burglary.

8 Third, transcript of Dr. Funke's testimony.

9 All right. Am I correct in assuming that what you
10 are wanting for is for me to charge you on the law on
11 kidnapping again?

12 JURY FOREMAN: Just clarify the specifics on the
13 law.

14 THE COURT: And the clarification for first degree
15 burglary, the same thing?

16 JURY FOREMAN: Yes.

17 THE COURT: Would you also want me to go into the
18 lesser included part of that too?

19 JURY FOREMAN: Yes, sir.

20 THE COURT: And the last -- and that's -- I can do
21 that, certainly.

22 The transcript of Dr. Funke's testimony, there
23 will not be a written transcript given to you.

24 JURY FOREMAN: Yes, sir.

25 THE COURT: But the testimony can be played back,

1 and that's what we were trying to corral that.

2 The direct examination was roughly an hour and two
3 minutes, and the cross was roughly ten minutes or so. Is
4 that what -- you are wanting to hear all that again?

5 JURY FOREMAN: Would you like for a specific part?

6 THE COURT: I guess what I'm saying is I don't
7 want to give you any less than what you are asking for, but
8 if you don't want anything more than a certain part, I
9 wanted to certainly refine that so that you would not get
10 any more than you were asking for.

11 JURY FOREMAN: Would you like for me to specify
12 that to you now?

13 THE COURT: Do you know what it is?

14 JURY FOREMAN: Yes, sir, they would like the
15 testimony on the part of him actually seeing the weapon.

16 THE COURT: Okay. All right.

17 Well, here is what we are going to do.

18 Let me ask you this. Which one would you like
19 first? Would you like to hear that testimony first, or to
20 me recharge the kidnapping and the burglary first? Would
21 you like me to do it altogether?

22 JURY FOREMAN: Actually let's do it altogether.

23 THE COURT: Okay. So you want me to charge you
24 first on those two legal points and then go into that
25 specific part of his testimony?

1 JURY FOREMAN: Yes, sir.

2 THE COURT: Okay.

3 Could I see the lawyers up here for just a minute?

4 (Whereupon, the lawyers approached the bench for
5 an off-the-record discussion)

6 THE COURT: All right, ladies and gentlemen, what
7 I'm going to do is I'm going to -- this equipment -- the
8 testimony can be located. As a matter of fact, she's
9 already located the whole hour and ten minutes.

10 To get to the point that you want to hear, we will
11 have to go ahead and find that, and that will involve you
12 going back to your jury room until we find it. It's not
13 hard to do, but we just have to do it. Then everybody has
14 to say yeah, that's where he testified to so and so and so
15 and so. It will take a few minutes to do that. The court
16 reporter can't do it while I'm recharging you on kidnapping
17 and burglary, because she has to take down what I say, so
18 she can't stop what she's doing.

19 So what I'm going to do is go ahead and charge you
20 on kidnapping and burglary, send you back out. We can find
21 that testimony you have asked to hear and we will take it
22 from there. How about that?

23 Okay. Now, ladies and gentlemen, I'm not going to
24 repeat it except in general terms that your -- the
25 indictment in this case does allege various criminal

1 offenses. You have heard me charge the law on all six,
2 including the lesser offenses on the burglary and the armed
3 robbery.

4 With regard to kidnapping -- of course, the
5 defendant is charged with kidnapping. In that regard the
6 State must prove beyond a reasonable doubt that the
7 defendant knowingly and unlawfully seized, confined,
8 inveigled, decoyed, kidnapped, abducted, or carried away
9 another person without authority of law.

10 To do something unlawfully is to do it willfully
11 against the law.

12 Knowingly -- that word knowingly means with
13 knowledge and consciously and not accidentally.

14 The word seize means to take ahold of suddenly or
15 forcibly.

16 Confine means to limit, restrict, or enclose
17 within bounds, or imprison, or shut, or keep in.

18 Inveigle means to lure, entice, or lead astray by
19 false representation, promises, or other deceitful means.

20 Decoy means to lure by, or as if by a decoy.

21 Kidnap is to remove a person against his will by
22 unlawful force or by fraud.

23 The word abduct means to carry off secretly or by
24 force for an illegal purpose.

25 The words carry away mean to remove.

1 The State does not have -- in the context of
2 kidnapping, the State does not have to prove the defendant
3 did all of those things. Instead, if you find beyond a
4 reasonable doubt that the defendant did any of those things,
5 you may find the defendant guilty of kidnapping.

6 Something that is done without authority of law is
7 something which the law does not sanction, permit, allow,
8 condone, or provide justification for.

9 The kidnapping does not have to be for any
10 personal or monetary gain for any illegal purpose, but may
11 be for any reason whatsoever.

12 Now, I'll move on to burglary in the first degree,
13 which I told you is the same thing as first degree burglary.

14 The defendant is charged with first degree
15 burglary.

16 The State must first prove beyond a reasonable
17 doubt that the defendant entered a dwelling without consent.

18 A dwelling is any building or portion of a
19 building in which a person ordinarily sleeps.

20 A dwelling is a dwelling even if the residents are
21 temporarily absent from the building.

22 In order to prove the defendant entered the
23 dwelling, the State does not have to show that the
24 defendant's entire body entered the dwelling. The smallest
25 entry is sufficient. It may be any part of the body, such

1 as a hand, or a foot, or even an instrument, such as a hook
2 or other instrument.

3 And the State does not have to prove that force
4 was used to gain entry.

5 The State must also prove beyond a reasonable
6 doubt that the defendant intended to commit a crime at the
7 time of the entry.

8 The mere entry into a dwelling without consent is
9 not burglary.

10 If the intent to commit a crime is formed after
11 the entry it is not burglary.

12 On the other hand, if the defendant intended to
13 commit a crime at the time of the entry, it is a burglary,
14 even if the intent was abandoned after the entry. It does
15 not matter that the intended crime was not completed.

16 Intent, which I will go over in just a few
17 minutes, it may be shown by acts and conduct of the
18 defendant and other circumstances from which you may
19 naturally and reasonably infer intent.

20 Finally, in first degree burglary the State must
21 prove beyond a reasonable doubt that when entering, while in
22 the dwelling, or when fleeing from the dwelling the
23 defendant or an accomplice was armed with a deadly weapon.

24 A deadly weapon is any article, instrument or
25 substance which is likely to cause death or great bodily

1 harm.

2 And whether an instrument is used as a deadly
3 weapon depends on the facts and circumstances of each case.

4 The following are examples of instruments which
5 may be deadly weapons: A pistol, shotgun, rifle, knife,
6 slingshot, brass knuckles, razor, gasoline, or a firebomb.

7 A gun may be a deadly weapon even if it is not
8 operating.

9 Now, if you find that the State has not proven
10 beyond a reasonable doubt that the defendant committed first
11 degree burglary, you must determine whether the State has
12 proven beyond a reasonable doubt that the defendant has
13 committed second degree burglary, also, of course, known as
14 burglary in the second degree.

15 Second degree burglary contains all of the
16 elements of first degree burglary, except for the element
17 that the defendant was armed with a deadly weapon when
18 entering, or while in, or while fleeing from the dwelling.

19 Now, that takes care of those two, I believe. Of
20 course, if you need any clarification, you can certainly let
21 me know.

22 Now, as I mentioned to you, since you have asked
23 for a clarification of those two things, the instructions
24 that I gave on criminal intent also apply, because that
25 element applies to every crime charged.

1 And as I mentioned, I charged you before, in order
2 to establish criminal liability, crime intent is required.

3 The State must prove criminal intent beyond a
4 reasonable doubt. That's always a matter that a jury must
5 determine from the circumstances surrounding the situation.

6 The illustration I gave you is that medical
7 science cannot dissect a person's brain and inspect it and
8 determine what, if anything, somebody intended to do at any
9 given time, so the law does say that criminal intent may be
10 inferred from circumstances shown to have existed.

11 It's not necessary to establish criminal intent by
12 direct evidence, but it may be established by circumstantial
13 evidence, in the same way as any other fact, by taking into
14 consideration the acts of the parties and the facts and
15 circumstances of the case.

16 Criminal intent is a mental state. It's a
17 conscious wrongdoing.

18 It's up to you to determine what, if anything, the
19 defendant intended to do based on the circumstances shown to
20 have existed.

21 And also -- you have not requested it, but the
22 other charges that would deal with all of the crimes charged
23 would also apply, such as burden of proof beyond a
24 reasonable doubt, the presumption of innocence, and the hand
25 of one being the hand of all.

1 Now, if you would, please, ladies and gentlemen,
2 go to your jury room. We can accomplish a couple of things
3 in this break. She's going to pinpoint perhaps what you are
4 looking for with that testimony.

5 And also while you are in there, you can discuss
6 amongst yourselves whether or not you need any more
7 clarification of kidnapping, burglary in the first degree,
8 or anything else. Okay. Thank you.

9 (Whereupon, at 4:35 p.m., the jury returned to the
10 jury room to continue deliberations)

11 THE COURT: All right, first of all, any
12 objections to those comments, Mr. Meadors?

13 MR. MEADORS: Judge, when Your Honor was defining
14 seize means to take over suddenly or forcibly, and then
15 confine means to limit, restrict, or enclose within bounds,
16 imprison, or shut, or -- you didn't -- and then I know you
17 won't get mad at me. I thought I heard you say to limit,
18 restrict, to enclose within, imprison, to shut. I didn't
19 hear or, and if you said it, I apologize.

20 THE COURT: Or?

21 MR. MEADORS: I didn't hear you say or on those.
22 I thought you said too. Maybe I'm wrong.

23 THE COURT: I may have said or to shut or keep in.

24 MR. MEADORS: Okay, maybe I just heard the too and
25 it wasn't, but --

1 THE COURT: In the context of this case, this is a
2 kidnapping, it's a limiting, restricting, or seizing.

3 MR. MEADORS: Correct.

4 THE COURT: The other one kind of surpluses, but
5 we are required to charge it all, but I think -- I think I
6 covered it adequately.

7 Anything else?

8 MR. MEADORS: No, sir.

9 THE COURT: Mr. Smaldone?

10 MR. SMALDONE: No, sir.

11 THE COURT: All right. Well, let's let the -- we
12 will go off the record and let her try to pinpoint that part
13 of either the burned CD, or otherwise.

14 (Off the record)

15 (Back on the record)

16 THE COURT: In the meantime, once we go back on
17 the record, the jury has got two more questions.

18 All right, Mr. Godbolt, you can have a seat.

19 Mr. Smaldone, why don't y'all come up here and
20 look at those while she's getting all of it situated.

21 (Whereupon, the lawyers approached the bench for
22 an off-the-record discussion)

23 (Off the record)

24 (Back on the record).

25 (Jury Note marked as Court's Exhibit No. 4 for

1 identification)

2 THE COURT: All right, in case we got lost in the
3 shuffle, I think the testimony has been pinpointed. That
4 can be played.

5 The jury has also sent out another note that would
6 be the next Court's Exhibit. They want clarification of
7 armed robbery and they want clarification for possession of
8 a weapon during a violent crime.

9 I'll follow the same procedure I did earlier.

10 Any objection to that from the State?

11 MR. MEADORS: No, sir.

12 MR. SMALDONE: No, sir.

13 THE COURT: All right, I'll ask them also which
14 one they want to hear first, the testimony or the recharge.

15 So you can bring out the jury.

16 (Whereupon, at 5:10 p.m., the jury panel returned
17 back to open court)

18 THE CLERK: All the jurors are back in the
19 courtroom.

20 THE COURT: Thank you, sir.

21 All right, we have narrowed the recording down and
22 have the testimony ready to play that you wanted and we will
23 do that in just a moment.

24 I also got your other question about clarification
25 of armed robbery and clarification of possession of a weapon

1 during the commission of a violent crime.

2 Would you like to hear the testimony first or
3 would you like to hear the recharge first?

4 JURY FOREMAN: Recharge -- well, do the testimony
5 first.

6 THE COURT: All right. Some of the audio will
7 be -- it will be played at the appropriate spot that you
8 requested, so please listen carefully, because some of the
9 audio sometimes those questions are not as audible, so
10 please pay very, very close attention.

11 All right.

12 (Whereupon, the requested testimony was replayed
13 to the jury panel)

14 THE COURT: All right, ladies and gentlemen, if
15 that does not satisfactory your inquiry, certainly let us
16 know.

17 I will go forward now with the request or fulfill
18 the request that you have for clarification of armed robbery
19 and possession of a weapon during the commission of a
20 violent crime.

21 I mention from the other request that you had, I
22 take it you would like for me to recharge you on this point?

23 JURY FOREMAN: Yes, sir.

24 THE COURT: So with regard to armed robbery, I
25 will do that. And, of course, included within that was the

1 lesser included of strong armed robbery.

2 The defendant in the case is charged with armed
3 robbery.

4 In order to prove this offense, the State must
5 first prove beyond a reasonable doubt that the defendant
6 took personal property from the person or presence of
7 another person.

8 Property is in the presence of a person if it is
9 within that person's reach, inspection, observation, or
10 control so that the person could have, if not overcome by
11 violence or prevented by fear, keep possession of the
12 property.

13 The State must also prove beyond a reasonable
14 doubt that the defendant carried the property away intending
15 to permanently deprive the owner of the property and keep
16 the property for the defendant's own use.

17 The slightest removal of the property or the
18 complete possession of the property even for an instant by
19 the defendant is sufficient to show a taking and carrying
20 away of the property.

21 The taking and carrying away of the property must
22 have been done with violence or by putting the owner of the
23 property in fear of violence.

24 Finally, the State must prove beyond a reasonable
25 doubt that defendant was armed with a deadly weapon during

1 the robbery; or, while alleging, either by action or words,
2 he was armed while using a representation of a deadly weapon
3 or any object which the person present during the commission
4 of the robbery reasonably believed to be a deadly weapon.

5 A deadly weapon is any article, instrument, or
6 substance which is likely to cause death or great bodily
7 harm, and the following are examples of instruments which
8 may be deadly weapons: Pistol, shotgun, rifle, knife,
9 slingshot, metal knuckles, razor, gasoline, or firebomb.

10 A gun may be a deadly weapon even if it is not
11 operating.

12 If you find -- ladies and gentlemen, on that count
13 of armed robbery if you find the State has failed to prove
14 that the defendant is guilty of armed robbery, you must
15 consider whether the State has proven beyond a reasonable
16 doubt that the defendant committed the lesser offense of
17 strong armed robbery.

18 In order to prove strong armed robbery, the State
19 must prove beyond a reasonable doubt all of the elements
20 that I just explained to you, except that the defendant was
21 armed with a deadly weapon.

22 The defendant is also charged with possession of a
23 weapon during the commission of or attempt to commit a
24 violent crime.

25 The State must prove beyond a reasonable doubt

1 that the defendant was in possession of a firearm or visibly
2 displayed what appeared to be a firearm during the
3 commission of a violent crime.

4 A firearm means any machine gun, automatic rifle,
5 revolver, pistol, or any weapon which will, is designed to,
6 or may be readily converted to expel a projectile.

7 In order to find the defendant guilty of
8 possession of a weapon during the commission of a violent
9 crime, you must first find the defendant guilty of either
10 committing a violent crime or attempting to commit a violent
11 crime.

12 I charge you that attempted murder is a violent
13 crime.

14 Kidnapping is a violent crime.

15 Armed robbery is a violent crime.

16 And burglary in the first degree is a violent
17 crime.

18 As also mentioned, ladies and gentlemen, earlier,
19 and I will now, in order to establish criminal liability, or
20 for any charge, the State must prove criminal intent beyond
21 a reasonable doubt.

22 Criminal intent is a matter that must be
23 determined by the jury from the circumstances surrounding
24 the situation. And as I illustrated, the law does not --
25 excuse me, science cannot dissect a person's brain, look at

1 it and evaluate or tell what someone intended to do, if
2 anything, so the law does say that criminal intent may be
3 inferred from the circumstances shown to have existed.

4 It is not necessary for the State to establish
5 intent by direct evidence, but it may be established by
6 circumstantial evidence, in the same way as any other facts,
7 by taking into consideration the actions of the parties and
8 all the facts and circumstances.

9 Criminal intent is a mental state, a conscious
10 wrongdoing, and it's up to you to determine what, if
11 anything, the defendant intended to do based on the
12 circumstances shown to have existed.

13 As I mentioned to you earlier, the other parts I
14 charged that I did not specifically mention would apply, and
15 that is the presumption of innocence, the burden of proof
16 being beyond a reasonable doubt, and that the theory of the
17 hand of one is the hand of all.

18 If you need any further clarification or any
19 explanation, let me know, and you may continue your
20 deliberations.

21 (Whereupon, at 5:24 p.m., the jury panel returned
22 to the jury room to continue deliberations)

23 THE COURT: Any exceptions from the State?

24 MR. MEADORS: No, sir.

25 THE COURT: Any from the defendant?

1 MR. SMALDONE: No, sir.

2 THE COURT: All right. It's 5:25 and we will
3 continue to wait on the jury.

4 (Whereupon, at 5:25 p.m., proceedings were
5 recessed pending the verdict of the jury panel)

6 (Whereupon, at 5:31 p.m., proceedings were
7 reconvened)

8 THE COURT: Okay, I understand the jury has
9 reached a verdict.

10 Ladies and gentlemen, of course, the lawyers know
11 this. Those of you who aren't familiar with the procedure,
12 whether you are pleased or disappointed with the verdict,
13 there is not to be any, any, anything audible or visible
14 about anybody's reaction. I understand that this is an
15 extremely tense situation, but I don't want there to be any
16 elation or dismay at all shown about the verdict. We will
17 receive it in just a few minutes.

18 The jury is ready?

19 THE CLERK: Yes, sir.

20 THE COURT: Okay. You can bring in the jury.

21 (Whereupon, at 5:34 p.m., the jury panel returned
22 to open court to report its verdict)

23 THE CLERK: All the jurors are present in the
24 courtroom.

25 THE COURT: All right. Thank you, sir.

1 All right, Mr. Foreman, have you reached a
2 verdict?

3 JURY FOREMAN: Yes, sir, we have.

4 THE COURT: And are all the verdicts unanimous?

5 JURY FOREMAN: Yes, sir, they are.

6 THE COURT: You can hand the form to Mr. Bradley.

7 Mr. Godbolt, you can please stand.

8 All right, Mr. Bradley, you can publish it.

9 THE CLERK: Yes, sir.

10 For the State of South Carolina, County of Sumter,
11 in the Court of General Sessions, Docket Number
12 2012-GS-43-0227, State of South Carolina versus Reco Antonio
13 Godbolt, defendant.

14 As to number one, as to the charge of kidnapping,
15 "we, the jury, unanimously find the defendant guilty."

16 As to the charge of burglary first degree, "we,
17 the jury, unanimously find the defendant guilty."

18 As to the charge of attempted murder, "we, the
19 jury, unanimously find the defendant not guilty."

20 As to the charge of armed robbery, "we, the jury,
21 unanimously find the defendant guilty."

22 As to the charge of possession of a weapon during
23 the commission of a violent crime, "we, the jury,
24 unanimously find the defendant guilty."

25 As to the charge of criminal conspiracy, "we, the

1 jury, unanimously find the defendant guilty."

2 Signed by George R.W. Hatfield, foreperson, dated
3 12-5-2012.

4 Ladies and gentlemen of the jury, if this your
5 verdict, so you all by raising your right hand.

6 Thank you.

7 THE COURT: All right, the record will show that
8 all twelve jurors did raise their right hand.

9 You can have a seat.

10 Mr. Smaldone and Mr. Godbolt, may I accept the
11 verdict form, please?

12 MR. MEADORS: Oh, yes, sir.

13 THE COURT: Anything from the State before the
14 jury is dismissed?

15 MR. MEADORS: No, sir. Thank you.

16 THE COURT: Anything from the defendant before the
17 jury is dismissed?

18 MR. SMALDONE: No, sir.

19 THE COURT: All right. Ladies and gentlemen, that
20 does conclude your service in this case and I do thank you
21 for your attention and your conscientious efforts in this
22 case.

23 No one can quarrel with your verdict. You did
24 examine the evidence, you considered it and you based your
25 verdict on what you considered the evidence to be.

1 You are now released, obviously, from this case
2 and also for the rest of the week. Your jury service is
3 over.

4 A couple of things. If there is anyone who needs
5 a work excuse, that would be right outside in the hall.

6 Number two, if any of you need any assistance in
7 getting to your car, all you have to do is let one of the
8 bailiffs know and those arrangements will be made.

9 Is it raining outside? Is it raining? It's not
10 raining? Okay. I thought I had heard it might rain today.

11 Also, you can talk about this case now all that
12 you want. This might be the last thing that you want to
13 talk about, but you can talk about it, if you want to.

14 However, my final instruction to you that you not
15 do that with anyone, other than amongst yourselves, while
16 you are on the courthouse grounds as you leave today. That
17 will allow you to get to your cars without anyone coming up
18 to you wanting to talk to you.

19 In the future if someone wants to talk to you
20 about the case and you want to, you can do that.

21 If someone wants to talk to you about the case and
22 you don't want to, tell the person that. If they don't
23 abide by your direction, you get that person's name, call
24 Mr. Campbell's office, the Clerk of Court, tell Mr. Campbell
25 who that person is and then I'll deal with that. No one

1 should quarrel with your verdict and you have done your
2 civic duty in all respects, as far as this case is and your
3 service this week is concerned.

4 You are free to go. Thank you again for your
5 service.

6 If you do need that work excuse, please speak to
7 Mr. Bradley or Mr. Jones out in the hall.

8 Thank you very much.

9 (Whereupon, at 5:39 p.m., the jury panel was
10 discharged)

11 THE COURT: All right, Mr. Meadors, Mr. Smaldone,
12 does either side have any objection to sentencing taking
13 place sometime tomorrow, or at another time other than
14 tonight?

15 MR. MEADORS: No objection from the State.

16 MR. SMALDONE: No objection.

17 THE COURT: All right.

18 Mr. Smaldone, I'll give you ten days, if you would
19 like, to make your post-trial motions. If you do make those
20 in writing, make sure you do three things. File those,
21 serve Mr. Meadors, and get me a copy.

22 MR. SMALDONE: Okay.

23 THE COURT: All right. Thank you, gentlemen, for
24 the way that you tried the case. I think it was tried very
25 well by both sides.

1 Doctor and Mrs. Funke, thank you for your
2 participation.

3 Law enforcement as well.

4 And, Mr. Godbolt, the jury has made its decision
5 and it's not what you wanted, but the process has come to
6 this conclusion.

7 The sentencing will be sometime tomorrow or the
8 next day, unless there is some unforeseen circumstances.

9 MR. SMALDONE: Thank you.

10 MR. MEADORS: Thank you.

11 THE COURT: Thank you.

12 (CD of Jury' Requested Testimony marked as Court's
13 Exhibit No. 5 for identification)

14 (Whereupon, proceedings were adjourned to December
15 6, 2012)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SUMTER) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 RECO ANTONIO GODBOLT,) 2012-GS-43-00227
7 DEFENDANT.) DECEMBER 6, 2012
SUMTER, SOUTH CAROLINA

8 (VOLUME IV)
9

10 B E F O R E:

11 THE HONORABLE GEORGE C. JAMES, JUDGE. ; And a Jury.
12

13
14 A P P E A R A N C E S:

15 JOHN MEADORS, ASSISTANT SOLICITOR
16 CHIP FINNEY, SOLICITOR
ATTORNEYS FOR THE STATE

17 GRANT SMALDONE, ASSISTANT PUBLIC DEFENDER
18 ATTORNEY FOR THE DEFENDANT
19

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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1 (PROCEEDINGS, DECEMBER 6, 2012)

2 MR. MEADORS: May it please the court?

3 THE COURT: Yes, sir.

4 MR. MEADORS: Before you is Reco Godbolt with his
5 attorney Mr. Grant Smaldone; 2012-GS-43-227, kidnapping,
6 burglary first, armed robbery, criminal conspiracy, and
7 possession of a weapon during a violent crime. Of course,
8 these are the five of the six verdicts that the jury came
9 back with guilty this afternoon.

10 We are here for sentencing, Your Honor.

11 THE COURT: All right, Mr. Meadors, is there --
12 first of all, anything that you or Mr. Finney would like to
13 say, any law enforcement folks, or any of the victims?

14 MR. MEADORS: Your Honor, I think briefly.

15 THE COURT: All right.

16 MR. MEADORS: With your permission, I think we can
17 start with -- of course, you've heard it before. He
18 understands Your Honor has heard the facts and -- and the
19 jury has, but I think Dr. Funke and maybe Ms. Carolyn Funke
20 might have some brief words.

21 THE COURT: Yes, sir.

22 Dr. Funke.

23 BRYAN FUNKE: Good afternoon, Your Honor.

24 I'm Bryan Funke, one of the victims in this crime.
25 You know the facts of the case. You know Mr. Godbolt's

1 history.

2 I just want to give you a little bit from my
3 perspective as a victim, how terrorizing it is to be chased
4 with a weapon and to be held at gunpoint in fear of your
5 life.

6 Not only was that terrifying for me, but for my
7 entire family. My wife has not slept well for a long time
8 after that terrible incident on October 31st. My children,
9 they've become hypervigilant. They don't -- they didn't
10 sleep well for a long time. You know, I -- my teenage son
11 would run around the house, lock all the doors, and close
12 the garage door, even when I was out in the yard working in
13 the yard. It -- it's been quite a terrifying experience for
14 us.

15 But not only for us, our entire neighborhood.
16 Idlewild is an idealic community, or was. It's
17 approximately twenty-five years old, in Sumter. It's a
18 community -- it's a diverse community of teachers, lawyers,
19 businessmen, military, law enforcement. We have a very
20 broad community. It's a neighborhood with small children,
21 where people congregate outside and take care of each other
22 and socialize.

23 We've lost our innocence. Something has changed.
24 We've formed a neighborhood watch. We have block captains.
25 We have recall rosters. We have call-down lists. It's a

1 different neighborhood than it was, and it -- and it's not a
2 different neighborhood in a good way.

3 Our adjoining neighborhood is installing video
4 surveillance that monitors every vehicle going in and out.
5 People have moved out of the neighborhood. We've lost
6 innocence, and we can never get that back. And the actions
7 of Reco Godbolt and his co-defendant changed not only my
8 life and my family's life, but our entire community's life.
9 Thank you, Your Honor.

10 THE COURT: Thank you, Dr. Funke.

11 Mrs. Funke.

12 CAROLYN FUNKE: Carolyn Funke.

13 Just to expound for my family, my kids, they were
14 seventeen years old. They could have come home for lunch
15 that day, because they did that somewhat regularly,
16 depending on what their school schedule was. I -- I just
17 dread what would have happened had they been the ones to
18 walk in on this.

19 My kids, for awhile, would lock their doors in
20 their bedroom and then barricade themselves in with a
21 dresser. And that went on for several months.

22 THE COURT: Their own rooms?

23 CAROLYN FUNKE: Their own rooms. I mean, they
24 were petrified. You know, they knew that these guys were in
25 jail. That really didn't matter to them. They were -- they

1 were petrified. I mean, you know, now we've moved on, we're
2 putting it in the rear-view mirror, but there is always
3 going to be what happened that day in the back of our heads.
4 Thank you.

5 THE COURT: Thank you.

6 MR. MEADORS: Your Honor, I'd just like to
7 acknowledge her presence. Sergeant Gretchen Davis has been
8 here. This wasn't actually the trial that we started to go
9 into Widgeon Way. It was shortly before that. We decided
10 not to for record purposes, but she has been here.

11 Her husband, Master Sergeant Will Davis, was here
12 for awhile, and I just want to acknowledge her presence here
13 in the courtroom and thank her for being here.

14 THE COURT: Thank you, ma'am.

15 MR. MEADORS: In addition to that, judge, very
16 briefly, I have also want to thank my boss, Solicitor
17 Finney. The Sumter Police Department did -- did an
18 outstanding job responding to this. Quite frankly there is
19 very few cases I've been involved in in my career where we
20 basically catch at least one of them at the scene and see
21 both suspects at the scene. So it was very good police
22 work, and I want to commend them publicly for that and the
23 job they did in apprehending these individuals.

24 John Melton, Natalie Kelly, and Trey Tallon are
25 here. I don't know if -- if any of them want to say

1 anything briefly, but if you'd give them the opportunity.

2 THE COURT: Mr. Melton.

3 JOHN MELTON: Hello, judge. Thank you for giving
4 me this opportunity to speak before you today.

5 I would -- I would like just to go back and say
6 that, you know, the response times were great by the Sumter
7 Police Department, because we actually changed our dynamics
8 and everything based on burglaries that were occurring at
9 that time. We split up rotations and shifts. We pulled
10 office personnel. We made a burglary team. We tried to do
11 everything we could to apprehend the suspects.

12 And in this case, judge, I know you've heard the
13 facts. I'm -- I'm thankful that Mr. Funke was not injured
14 any worse than he was. And, you know, part of me in here
15 wants to stand up here today and -- and express my concern
16 for public safety and for the fact that the Funkes have had
17 to go through this whole entire process, in fact, have had
18 to be drug through this entire trial.

19 I would ask -- and -- and -- and -- and I think my
20 fellow officers would agree with me on this, that -- that
21 you do consider the -- the trend of the burglaries, the fact
22 that Mr. Funke was assaulted. They had the opportunity to
23 run away. Mr. Funke ran past his house. They could have
24 just left. Instead he was chased down and he was assaulted.

25 And I would ask you to consider Mr. Godbolt's

1 criminal history. It -- it does show a proclivity for
2 violent offenses.

3 And I -- and in -- in closing, I would just like
4 to say that it's our expression to you that -- that we would
5 like to see substantial time placed on Mr. Godbolt.

6 THE COURT: Thank you.

7 MR. MEADORS: Your Honor, in -- in conclusion, I
8 just -- one thing. I know Dr. Funke's testimony talked
9 about being involved in several conflicts around the world
10 and perhaps the closest he came to a gunshot was in his own
11 front yard in Sumter county.

12 Judge, his prior record, the defendant, is
13 discharging a firearm into a vehicle.

14 THE COURT: When was that?

15 MR. MEADORS: That was in August of 2010.

16 Also at that same time were two assault and
17 battery of a high and aggravating natures. All of those
18 were combined for a YOA sentence in August of 2010.

19 Other than that, he has six ill treatment of
20 animal convictions. And that's in -- December 15th of 2011.
21 He would have already been incarcerated, so I believe those
22 were magistrate offenses, judge.

23 I'm -- I'm sure they all are. Thank you, judge.

24 THE COURT: Anything from the State as far as any
25 sentence demand or requests?

1 MR. MEADORS: Your Honor, considering the -- the
2 facts and the nature and the -- and the closeness of this
3 crime, I guess, if you will, to Dr. Funke, we would ask for
4 a substantial sentence.

5 THE COURT: All right.

6 Mr. Finney, anything?

7 MR. FINNEY: Your Honor, thank you for allowing me
8 to get on the record.

9 I just -- I just think that you've heard
10 throughout the trial that the planning and execution of this
11 was not just happenstance. They did take some steps to
12 prepare themselves.

13 The jury believed they had a weapon. The jury saw
14 evidence of gloves. They were on their way to their second
15 burglary when they ran into Mr. Funke, not the first for the
16 day. So we ask you take those things into consideration.

17 Also, you are aware that the other co-defendant
18 pled guilty and there was a negotiated sentence
19 recommendation by the State of eighteen and a half years on
20 that case. So please use that as a -- as a barometer when
21 you --

22 THE COURT: All right.

23 MR. FINNEY: -- sentence in this case.

24 Thank you very much.

25 THE COURT: Thank you.

1 All right, anything else from the State?

2 MR. MEADORS: No, sir. Thank you.

3 THE COURT: Mr. Smaldone?

4 MR. SMALDONE: Thank you, Your Honor.

5 Obviously the jury has spoken. And, first of all,
6 I think we're all glad that everyone is here today and that
7 nothing, you know, further happened from this.

8 I've met with Reco quite a few times and I really
9 believe that there is some good in him, even despite the
10 horrible things that have happened.

11 He's a high school graduate. He was enrolled at
12 Central Carolina Tech -- technical college. He was -- he
13 had substantial employment. I mean he was an assistant
14 manager at a -- at a restaurant.

15 He was on disability, couldn't work any more, and
16 I believe that's around the time his life crossed paths with
17 Jamal Helton. And -- and from then on I think things kind
18 ever went downhill. And -- and he's -- he's not -- we're
19 not blaming Jamal Helton for what happened, because Reco
20 was -- was involved too, but I think that had he not met
21 someone like that, then who knows what would happen.

22 Since he's been in the Sumter County jail, I
23 really think he's -- he's taken steps to begin to turn his
24 life around. He's completed Bible classes. He has his own
25 Bible with his name engraved on it. He's really dedicated

1 his life, life to God, and he -- he -- he knows -- you know,
2 he knows he's not going home any time soon, and he's ready
3 to -- to pay for what he did.

4 And -- and I'll -- I'll ask Your Honor consider
5 the eighteen and a half year sentence that his co-defendant
6 got out -- out of fairness.

7 THE COURT: All right.

8 MR. SMALDONE: And I'm not sure if anyone would
9 like to speak. They -- they can --

10 THE COURT: Certainly.

11 Ladies, I'd be glad to hear from you if you would
12 like, and Mr. Godbolt, whatever order. The only thing I'll
13 need is your name and then you can speak, if you would like.

14 BETTY GRANT: Well, I'm his -- the grandmother. I
15 am the grandmother -- I'm going to just say the grandmother
16 and the mother.

17 THE COURT: What's your -- what's your name?

18 BETTY GRANT: My name is Betty Grant.

19 THE COURT: Grant?

20 BETTY GRANT: Right.

21 THE COURT: Yes, ma'am.

22 BETTY GRANT: Yes -- yes, sir.

23 Well, I'm the grandmother -- well, I will say the
24 mother, too, of Reco Godbolt, because 2003 he lost his
25 mother. I'm not putting that against what he -- what he

1 did, because I raised my kids to accept what life is.
2 People die every day, but at -- at that time I raised Reco
3 and five more of his sisters. And during the time he was
4 going to school I never had no problem with Reco. He always
5 had -- you know, he set himself up in the army. He passed
6 that test.

7 I tell them, "you stay at my home. You got to
8 work. And if you get in trouble, it's not in my hands no
9 more. It's in the judge hands. The only thing I can do is
10 send you to school, make sure you go to church every day."

11 I prayed every night for the family that my son --
12 the harm that my son did to them. My heart go out to them.

13 But I just -- you know, I don't know what came
14 across Reco. He was doing well until he got the injury. I
15 guess he got frustrated that he didn't have a job.

16 I'm not using that for an excuse, because I have
17 been raised, I never been in no trouble before my life. I
18 don't have no -- of my other children. And I tell -- I tell
19 all my grandkids the same thing I tell Reco. I told them --
20 I don't hide it from them. I let them know that Reco is
21 facing some time. This is what you will get. If you are
22 wrong, you are wrong. And if you come -- if you come in my
23 residence with any type of drugs, I -- I love you, but I'll
24 put you out, but I'll put you out through law enforcement.
25 I'm not just going to say "get out." You out. You out

1 through the court order.

2 And I'm very sorry for what -- what went wrong
3 with the family that he -- that -- you know, and that day
4 when I heard it, it made me -- I just fell in tears, because
5 I didn't raise Reco that way like that. Reco came from a
6 good family.

7 Even though he lost his mother, we had his aunt;
8 he had his grandmother; he had my pastor, Reverend Dixon up
9 at the church, who talk to the young kids. We had people to
10 come to our church with a program and stuff to help with the
11 kid.

12 And he just got -- I'm not going to say that --
13 put it on Jamal, because I teach my kids that you have your
14 own mind. You do your own wrongdoing. I don't care what
15 age they is in my house; five, six, or seven. I even got a
16 disability child that I take care of, but I don't let him
17 feel special. I let him know that you got to work. Your
18 suggest and your seasoning don't have nothing to do with
19 your disability.

20 And I always taught Reco and them to work. He
21 worked and everything until he got injured. And I -- I just
22 don't know what happened after that, but all I'd ask of you,
23 Your Honor, is just to have mercy on him. And like I said,
24 I'm sorry what the family had to go through.

25 THE COURT: Thank you, ma'am.

1 BETTY GRANT: I thank you.

2 THE COURT: Anyone else?

3 Your name, please?

4 BRITTANY GRANT: Brittany Grant.

5 THE COURT: Brittany Grant?

6 BRITTANY GRANT: Yes, sir.

7 THE COURT: Yes, ma'am.

8 BRITTANY GRANT: I'm Reco's sister.

9 And from me, I just want to apologize to the
10 victims -- family. Even though it wasn't me -- even though
11 it wasn't me that committed a crime, I just want to
12 apologize to them. I just want to apologize to them.
13 That's it.

14 THE COURT: Thank you, ma'am.

15 VICKY GODFREY: My name is Vicky Godfrey. I'm
16 Reco's aunt.

17 Reco know I love him. He did do wrong and I know
18 he have to pay for what he did.

19 We know the victims, they are -- you know, we were
20 traumatized and stuff, and they was hurt, and this was --
21 you know, they don't feel safe in their homes. And it also
22 not just affected them, it affected his family as well.

23 I just ask for the court to please just have mercy
24 on him, and I know he's going to have to do some time.

25 And I'm very thankful that the victims didn't --