

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

TYRONE WHATLEY,

APPELLANT

APPELLATE CASE NO. 2014-001127

APPENDIX

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Tyrone Whatley, Appellant.

Appellate Case No. 2011-185486

Appeal From Florence County
D. Craig Brown, Circuit Court Judge

Opinion No. 5209
Heard November 15, 2013 – Filed March 19, 2014

AFFIRMED

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Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General Jennifer Ellis Roberts, all of Columbia;
and Solicitor Edgar Lewis Clements, III, of Florence, for
Respondent.

CURETON, A.J.: Following convictions for first-degree burglary, two counts of armed robbery, and conspiracy, Tyrone Whatley was sentenced to life imprisonment without the possibility of parole (LWOP). He appeals, arguing the

trial court erred in improperly limiting the scope of his cross-examination of a witness concerning the mandatory minimum sentences she avoided by testifying against him. We affirm.

FACTS

After two motel patrons in Florence were robbed at gunpoint in July 2009, Whatley was indicted for first-degree burglary, two counts of armed robbery, and conspiracy. Police also arrested John Barfield and Jessica Ussery. Whatley was tried in February 2011.

At trial, the State presented testimony from the victims, Brandon Cross and Ciera Davis, who stated that on July 21, 2009, the couple was robbed and their motel room was burglarized by two men and a woman. One man was white and carried a shotgun; the other man was black and did not appear armed.

Moments after Cross and Davis escaped and called 911, police officers pulled over a car matching the descriptions given by Cross and Davis. Two men ran from the passenger side of the car and escaped. Officers discovered Davis's bags in the back seat and a shotgun in the trunk, and arrested the driver, Ussery.

Ussery testified her boyfriend, Barfield, had threatened her if she told police about him. She admitted that, during her arrest, she had lied to police, claiming two men with a gun had approached her in the parking lot and forced her to participate in the robbery. However, Ussery stated after she spent some time in jail and realized she was safe from retribution, she modified her story. Ultimately, Ussery explained she had driven Barfield to pick up an acquaintance she knew as "Rom" or "Jamal Bryant" and then to the motel.

Using information gained from Ussery, the police arrested Barfield about a week after the robbery. After approximately seven months in jail, Barfield, in turn, provided them with sufficient information to locate and arrest Whatley, who used the nickname Rom. While in jail, Barfield identified Whatley as Rom in a photographic lineup. At trial, both Ussery and Barfield testified Whatley was the man they knew as Rom, who had participated in the robbery.

Ussery admitted she was initially charged with two counts of armed robbery with a deadly weapon, failure to stop for a blue light, and falsification of information to the police. However, she stated after Barfield's and Whatley's arrests, the armed

robbery charges against her were reduced to accessory before and after the fact of armed robbery. Those charges were pending at the time of Whatley's trial. Barfield testified he was initially charged with first-degree burglary, two counts of armed robbery, conspiracy, and possession of a weapon, but pled guilty to two counts of attempted armed robbery. By the time of Whatley's trial, the other charges against Barfield had been dismissed, and he had received sentences totaling seven years' imprisonment.

During Whatley's cross-examinations of Ussery and Barfield, the trial court sustained the State's objections to questions about the potential sentences they faced. Specifically, after Whatley elicited from Ussery that accessory charges were pending against her, the following exchange between Whatley and Ussery occurred:

Q. . . . You know what your exposure is on those charges?

A. What is what?

Q. What you could get?

A. No, sir.

Q. What kind of time you could get?

[The trial court sustained the State's objection "to any amount of time that she may be able to catch on those charges."]

Q. Okay. You were charged with armed robbery; is that correct?

A. Yes, sir.

Q. All right. Now, are you aware of what kind of time you were looking at on arm[ed] robbery?

A. No, sir, not of the full extent, no sir. . . . I just know it carries a long sentence.

Q. Okay. So nobody's ever told you what arm[ed] robbery carries?

A. I'm not aware of or how long the year term is.

Ussery explained she did not know when the charges against her were reduced, but she knew the reduction occurred sometime after Barfield and Whatley were arrested. Ussery denied having made a plea deal in exchange for her testimony.

Subsequently, Whatley established Barfield had received a seven-year sentence after pleading guilty to reduced charges and asked him:

Q. So your arm[ed] robbery charges were both dismissed?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Did you know what you were facing for arm[ed] robbery?

[The trial court sustained the State's objection concerning "any amount of time that the [witness] was subjected to."]

Q. Mr. Barfield, let me ask you this, were you aware that you could receive substantially more time than you got for --

A. Yes.

Q. -- for attempted arm[ed] robbery?

A. Yes.

Q. And your burglary first charge[,] are you aware you could receive substantially more time for that as well?

A. Yes.

The following day, after further consideration, the trial court reversed its ruling on the State's objection and offered Whatley the opportunity to fully question Barfield.¹ The trial court reasoned the answer "could possibly go to the bias or prejudice of this witness." Whatley then cross-examined Barfield concerning his knowledge that the sentence for armed robbery ranged from ten to thirty years and the sentence for burglary ranged from fifteen years to life. However, neither the parties nor the trial court raised the possibility of re-examining Ussery.

After deliberations, the jury convicted Whatley of all charges. Due to a prior conviction for armed robbery, the trial court imposed LWOP sentences on Whatley for first-degree burglary and each of the armed-robbery convictions. He received a concurrent sentence of five years' imprisonment for conspiracy. This appeal followed.

STANDARD OF REVIEW

As a general rule, a trial court's ruling on the proper scope of cross-examination will not be disturbed on appeal absent a manifest abuse of discretion. *State v. Quattlebaum*, 338 S.C. 441, 450, 527 S.E.2d 105, 109 (2000).

LAW/ANALYSIS

Whatley asserts the trial court erred in improperly limiting the scope of his cross-examination of Ussery regarding the mandatory minimum sentences she avoided by testifying against him. We agree but find the error was non-prejudicial.

A person who commits robbery while armed with a firearm or other deadly weapon "is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years."

¹ The trial court indicated it reversed its ruling after reviewing *State v. Gillian*, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004), *aff'd as modified*, 373 S.C. 601, 646 S.E.2d 872 (2007).

S.C. Code Ann. § 16-11-330(A) (2003). "A person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony . . . is guilty of a felony and, upon conviction, must be punished in the manner prescribed for the punishment of the principal felon." S.C. Code Ann. § 16-1-40 (2003). The punishment for a person who commits the offense of accessory after the fact has no mandatory minimum. S.C. Code Ann. §§ 16-1-20, -55 (2003).

"The right to a meaningful cross-examination of an adverse witness is included in the defendant's Sixth Amendment right to confront his accusers." *State v. Aleksey*, 343 S.C. 20, 33, 538 S.E.2d 248, 255 (2000); see U.S. Const. amend. VI (stating "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him"). "This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination." *Aleksey*, 343 S.C. at 33-34, 538 S.E.2d at 255. "On the contrary, trial [courts] retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant." *Id.* at 34, 538 S.E.2d at 255 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)). "The limitation of cross-examination is reversible error if the defendant establishes he was unfairly prejudiced." *State v. Brown*, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991).

A criminal defendant may show a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.

State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (quoting *Van Arsdall*, 475 U.S. at 680) (internal quotation marks omitted). The *Mizzell* court highlighted the competing concerns with regard to certain witnesses:

The jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence. However, other constitutional concerns, such as the Confrontation

Clause, limit the applicability of this rule in circumstances where the defendant's right to effectively cross-examine a co-conspirator witness of possible bias outweighs the need to exclude the evidence.

Id. at 331-32, 563 S.E.2d at 318.

Recently, our supreme court revisited limitations on the scope of cross-examination in light of the Confrontation Clause and concluded: "The fact that a cooperating witness avoided a *mandatory minimum* sentence is critical information that a defendant must be allowed to present to the jury." *State v. Gracely*, 399 S.C. 363, 374-75, 731 S.E.2d 880, 886 (2012). "It is of no moment that at some point during the proceedings one of the witnesses confirmed the existence of a mandatory minimum sentence. The fact remains that Appellant was unable to fully develop this information through the cross-examination . . ." *Id.* at 375 n.4, 731 S.E.2d at 886 n.4. "In a case built on circumstantial evidence, including testimony from witnesses with such suspect credibility, a ruling preventing a full picture of the possible bias of those witnesses cannot be harmless." *Id.* at 377, 731 S.E.2d at 887.

However, the *Gracely* court acknowledged "[a] violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis." *Id.* at 375, 731 S.E.2d at 886.

Whether such an error is harmless in a particular case depends upon a host of factors The factors include [1] the *importance of the witness's testimony* in the prosecution's case, [2] whether the testimony was *cumulative*, [3] the presence or absence of evidence *corroborating* or contradicting the testimony of the witness on material points, [4] the *extent of cross[-] examination* otherwise permitted, and, of course, [5] the *overall strength* of the prosecution's case.

Id. (quoting *Van Arsdall*, 475 U.S. at 684 (emphasis added in *Gracely*)).

Gracely requires the trial court to allow an accused to develop evidence that (1) a cooperating witness, (2) avoided, (3) a mandatory minimum sentence. 399 S.C. at 374-75, 731 S.E.2d at 886. Although Ussery provided eyewitness testimony, she

was also implicated in the crime and, after her arrest, faced two different sets of charges. After her arrest, she was charged with two counts of armed robbery, each of which carried a mandatory minimum sentence of ten years. See § 16-11-330(A). After Barfield's and Whatley's arrests, Ussery's charges were reduced to accessory before and after the fact. For the charge of accessory to an armed robbery before the fact, Ussery still faced a mandatory minimum sentence of ten years. See *id.*; § 16-1-40. However, a charge of accessory after the fact does not carry a mandatory minimum sentence. See §§ 16-1-20, -55 (establishing maximum sentences but no minimum sentences for persons convicted of accessory after the fact). During Whatley's cross-examination of Ussery, the trial court excluded questions concerning the sentences Ussery faced for the reduced charges. Because at least one of the charges against Ussery was reduced from an offense with a mandatory minimum sentence to an offense without such a sentence, the trial court erred in precluding Whatley from questioning her on the sentences she faced for the reduced charges.

Nevertheless, we find Whatley suffered no prejudice. The limitation the trial court imposed upon Whatley's cross-examination of Ussery, though improper, did not "prevent[] a full picture of [her] possible bias." See *Gracely*, 399 S.C. at 377, 731 S.E.2d at 887. Analyzing the evidence in this case in view of the first three *Van Arsdall* factors, the importance of a witness's testimony to the prosecution's case and whether it was cumulative to or corroborated by other evidence, we find Whatley suffered no prejudice. See *id.* at 375, 731 S.E.2d at 886. The State presented the testimony of six witnesses, including the two victims and the law enforcement officers who pursued the robbers. Of those six witnesses, only Ussery and Barfield identified Whatley as one of the robbers. However, Barfield's testimony established the same material facts as Ussery's, and more. Moreover, Ussery's testimony did not contradict Barfield's on any essential point. Both Barfield and Ussery recalled picking up Whatley and driving to the motel. Both testified Whatley supplied the gun, Barfield carried it, and Barfield and Whatley left Ussery to fend for herself after she pulled over for the police. In addition, both witnesses described Barfield's, Whatley's, and Ussery's respective roles in the robbery up to the time the men entered the motel room. Without Ussery's testimony, the State presented evidence of all those events through Barfield. Furthermore, Barfield corroborated the victims' testimony concerning events in the motel room that Ussery had not witnessed. Thus, although Ussery's testimony was important to the State's case against Whatley, it was cumulative to, and corroborated by, Barfield's testimony.

The evidence relevant to the fourth *Van Arsdall* factor, the extent of cross-examination allowed, also does not support a finding of prejudice. Aside from sustaining the State's objection to Whatley's question concerning the sentences Ussery faced for her accessory charges, the trial court did not restrict Whatley's cross-examination of Ussery in any way.

With regard to the final factor, the overall strength of the State's case, Whatley correctly observes the State presented no physical evidence tying him to the robbery, and several months elapsed between the robbery and Whatley's arrest. Additionally, neither the victims nor the officer who responded to the robbery could identify him. In fact, the only evidence identifying Whatley as one of the robbers came from Barfield and Ussery.

Notwithstanding, Whatley suffered no prejudice from the improper limitation of his cross-examination of Ussery. He availed himself of extensive opportunities to delve into Ussery's bias and poor credibility, capitalizing on her inconsistent statements to the police. Furthermore, although Ussery avoided a mandatory minimum sentence of ten years for armed robbery by agreeing to testify against Whatley, she still faced the same mandatory minimum sentence for the reduced charge of accessory before the fact. In view of this evidence, we find the trial court's error in restricting the scope of Whatley's cross-examination of Ussery did not result in prejudice to Whatley.

CONCLUSION

We find the trial court erred in preventing Whatley from cross-examining Ussery concerning the mandatory minimum sentence she faced for the reduced charges pending against her at the time of Whatley's trial. However, under the facts present in this case, we find Whatley had ample opportunity to demonstrate Ussery's bias and, therefore, suffered no prejudice. Accordingly, the decision of the trial court is

AFFIRMED.

FEW, C.J., concurs.

PIEPER, J., concurs in result only.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

TYRONE WHATLEY,

APPELLANT

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

Opinion No. 5209

Appellate Case No. 2011-185486

PETITION FOR REHEARING

On March 19, 2014, this Court affirmed Petitioner's convictions for first-degree burglary, two counts of armed robbery, and conspiracy and life sentence in a published opinion. State v. Whatley, Op. No. 5209 (S.C. Ct. App. filed Mar. 19, 2014). This Court found the trial court erred in preventing Appellant from cross-examining a cooperating co-defendant concerning the mandatory minimum sentence she faced for reduced charges pending at the time of Appellant's trial, but found Appellant suffered no prejudice because he had ample opportunity to demonstrate the cooperating co-defendant's bias. Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court

rehear the matter limited to whether Appellant suffered prejudice based upon the following points overlooked or misapprehended by the Court.

Without question, Ussery faced mandatory minimum sentence, which she avoided by testifying against Appellant. The South Carolina Supreme Court held that such a fact was "critical information that a defendant must be allowed to present to the jury." State v. Gracely, 399 S.C. 363, 374-375, 731 S.E.2d 880, 886 (2012). Harmless error analysis is fact-specific. The United States Supreme Court delineated a list of factors for courts to consider in determining whether an error was harmless. These factors include, but are not limited to:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course, the overall strength of the prosecution's case.

Van Arsdall, 475 U.S. at 684; see also Gracely, 399 S.C. at 375, 731 S.E.2d at 886; Mizell, 349 S.C. at 333, 563 S.E.2d at 318-19. Although this Court applied the Van Arsdall factors to the instant matter, Appellant respectfully disagrees with this Court's application and assessment of those factors.

This Court's determination that the limitation placed upon Appellant's cross-examination of Ussery did not prevent a full picture of her possible bias overlooked or misapprehended the facts as presented by the prosecution, the limited evidence against Appellant, and the governing legal principles. As this Court acknowledged, the only witnesses who placed Appellant at the crime scene were cooperating co-defendants, one of whom was Ussery. Therefore, the testimony of Ussery was vital to the prosecution. However, this Court determined Appellant suffered no harm due to the trial judge's erroneous limitation on cross-examination because Barfield, the other cooperating witness, provided the same material facts as Ussery. Thus, this Court determined it was

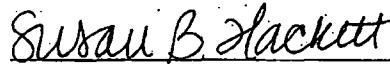
cumulative to Barfield's testimony, and as a result, Appellant was not harmed by the limitation to explore Ussery's bias. This was error.

In Gracely, 399 S.C. at 376-377, 731 S.E.2d at 887, the Court found the Confrontation Clause violation was not harmless even where the evidence presented was cumulative regarding Gracely's involvement in drug trafficking. The Court explained that the testimony "only corroborated other testimony," and the prosecution presented no physical evidence connecting Gracely to the charged offenses. This "enhanced the importance of that testimony, and the necessity that [Gracely] be permitted to demonstrate any bias on the part of the State's witnesses." Id. at 376, 731 S.E.2d at 887. The Gracely Court also expressed that the background of the witnesses "should have cautioned the trial court against limiting [Gracely]'s cross examination." Id. at 377, 731 S.E.2d at 887. The witnesses in Gracely had significant involvement in criminal activity and cooperated only after arrest and the prospect of long prison terms. "In a case built on circumstantial evidence, including testimony from witnesses with such suspect credibility, a ruling preventing a full picture of the possible bias of those witnesses cannot be harmless." Id.

The prosecution presented Ussery as an unbiased witness who had been taken advantage of by her boyfriend, Barfield. She had been bullied and pressured by her boyfriend to participate in the robberies. She was simply the getaway driver with little to no responsibility for the crimes. As such, her testimony was more than simply cumulative to Barfield's testimony. Further, as this Court acknowledged, the state's case against Appellant was weak. No physical or forensic evidence linked Appellant to the robbery. The victims were unable to identify Appellant. The officer who chased the individuals from the car was unable to identify Appellant. No items from the robbery were found with Appellant. The only evidence against Appellant was the testimony of Ussery and Barfield. Ussery testified that the third individual involved was named Jamal Bryant and used the

nickname Rom. Barfield testified the third individual went by the name of Rom. The state introduced no evidence, except the in-court identifications made by Ussery and Barfield, that "Rom" and Appellant were one in the same. Therefore, the credibility of Ussery and Barfield was paramount as their testimony was the entire prosecution case against Appellant. Ussery's credibility was suspect, just as the cooperating co-defendants' in Gracely exhibited highly suspect credibility. Ussery had been charged and only decided to cooperate with police after she had been sitting in jail for a substantial amount of time and faced several substantial terms of imprisonment.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

This 3rd day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYRONE WHATLEY,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Tyrone Whatley, #208735, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 3rd day of April, 2014.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 3rd day
of April, 2014.

[Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent

v.

Tyrone Whatley, Appellant.

Appellate Case No. 2011-185486

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

John Cannon, Jr. C.J.

Daniel G. Pieper J.

Joseph M. Curator A.J.

Columbia, South Carolina

cc: Susan Barber Hackett
 Jennifer Ellis Roberts

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SC OFFICE OF
 APPELLATE COUNSEL

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STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM FLORENCE COUNTY

No Respondent's Brief Filed

D. Craig Brown, Circuit Court Judge

ANDERS RESPONSE BRIEF

THE STATE,

RESPONDENT,

V.

TYRONE WHATLEY,

APPELLANT

RECORD ON APPEAL

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))
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vs.) TRANSCRIPT OF RECORD
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))
Tyrone Joseph Whatley))
DEFENDANT) January 31-February 2, 2011
) Florence, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, JUDGE; and a jury.

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Attorney for the State

SCOTT P. FLOYD, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED
Official Court Reporter

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1 THE COURT: State ready to proceed?

2 MR. MCEACHIN: State ready to proceed.

3 THE COURT: Defense ready to proceed?

4 MR. FLOYD: Yes, Your Honor.

5 THE COURT: Mr. Solicitor, call your first case.

6 MR. MCEACHIN: Your Honor, the State of South
7 Carolina will call the case of The State vs. Tyrone Joseph
8 Whatley indictment number 2010-GS-21-1008.

9 THE COURT: All right. Ladies and gentlemen,
10 the State has called indictment of The State of South
11 Carolina State vs. Tyrone Joseph Whatley, under indictment
12 2010-GS-21-1008. Under this particular indictment,
13 Mr. Whatley is charge with burglary first degree, two
14 counts of arm robbery and one count of conspiracy.

15 Let me emphasize, ladies and gentlemen, that an
16 indictment is simply the charging document by which a case
17 is brought into this court. It is only a charging
18 document by which a case is brought into this court. It
19 is not in anyway shape or form evidence at all. The State
20 of South Carolina has called this case and the State of
21 South Carolina bears the burden of proving Mr. Whatley
22 guilty of each of these charges. The State bears the
23 burden of proving him guilty beyond a reasonable doubt as
24 to each of these charges. And before we move forward in
25 selecting a jury in this case, there several questions.

1 that I must ask you, so please listen very carefully. Is
2 there any member of the jury panel or has any member of
3 the jury panel ever been related by blood or marriage to
4 Mr. Tyrone Joseph Whatley, if so please stand?

5 (WHEREUPON, there were none.)

6 THE COURT: Has anyone on the jury panel ever
7 had a close personal or social relationship with
8 Mr. Tyrone Joseph Whatley, if so please stand?

9 (WHEREUPON, there were none.)

10 THE COURT: All right. Ladies and gentlemen,
11 the following is a list of possible witnesses in this case
12 please listen carefully: Ciera Davis, Brandon Cross,
13 Alvin Powell, Jay McLaurin, Jessica Ussery, John Barfield,
14 Veronica Harrison, David Allen Jr. Has anyone on the jury
15 panel ever been related by blood or marriage to any of
16 those people that I just listed or has anyone ever had a
17 close personal or social relationship with any of those
18 individuals, if so please stand?

19 (WHEREUPON, there are none.)

20 THE COURT: Okay. Mr. McEachin, at this time,
21 if you would stand and introduce yourself.

22 Followed by you, Mr. Floyd, introducing yourself
23 and your client and those individuals in each of your
24 offices please.

25 MR. MCEACHIN: Thank you, Your Honor. My name

1 is Fitzlee McEachin. I'm the assistant prosecutor in this
2 case, seated with me is the Solicitor Ed Clements. In
3 addition, we have Deputy Solicitors John Jepertinger and
4 Bob Wells in the office, Assistant Solicitors Pat Parr,
5 Stephen Hill, David Richardson, Catherine Anderson,
6 Barbara Haywood, Stephen Deberry. I believe that wraps it
7 up for our office.

8 THE COURT: Thank you, Mr. McEachin.

9 MR. FLOYD: I'm Scott Floyd with the Florence
10 County Public Defender's office. This is Mr. Tyrone
11 Whatley. And also in my office are Grayson Smith, young
12 man seated here in front of me, Karen Parrott, Jack
13 Lawson, Michael Bell, Scott Suggs, who does our juvenile
14 cases, Vick Meetze and I believe that's it.

15 THE COURT: All right. All right. Ladies and
16 gentlemen of the jury panel, you have heard the attorneys
17 introduce themselves along with attorneys that work in
18 their office. Is any member of the jury panel ever been
19 represented by any of the attorneys involved in this case,
20 if so please stand?

21 (WHEREUPON, there were none.)

22 THE COURT: Has any member of the jury panel
23 ever been related by blood or marriage or had a close
24 personal or social relationship with any of the attorneys
25 involved in this case, if so please stand?

1 (WHEREUPON, there were none.)

2 THE COURT: Okay. Has any member of your family
3 have excuse me -- have you or any member of your family
4 ever been charged with a crime or prosecuted for a crime
5 in Marion County or Florence County, if so please stand?

6 (WHEREUPON, there were none.)

7 THE COURT: Okay. Next question, do you or any
8 member of your immediate family have any criminal charges
9 pending in Marion County or Florence County, if so please
10 stand?

11 (WHEREUPON, there were none.)

12 THE COURT: Okay. Does any member of the jury
13 panel -- is there any member of the jury panel employed by
14 any city, county, state or federal law enforcement agency
15 either at the present time or in the past, if so please
16 stand?

17 (WHEREUPON, there were none.)

18 THE COURT: Okay. Is there any member of the
19 jury panel related by blood or marriage or a close
20 personal friend to any individual employed by any city,
21 county, state or federal law enforcement agency either at
22 the present time or in the past, if so please stand?
23 Starting at my far left, yes, ma'am, your name and number?

24 PROSPECTIVE JUROR: Theresa Wells.

25 THE COURT: Juror number 151. You have a family

1 member employed?

2 PROSPECTIVE JUROR: My husband works at -- he is
3 a Senior Center manager for the county.

4 THE COURT: Would that affect your ability to be
5 fair and impartial to both the State and the defense in
6 this case?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Thank you, ma'am, you may be seated.
9 Yes, ma'am, your name and number in the white.

10 PROSPECTIVE JUROR: Ashley Neal 106. My husband
11 has worked at the Florence County Sheriff's office for
12 about 17 years.

13 THE COURT: Seventeen years, what does he do out
14 there?

15 PROSPECTIVE JUROR: He does the I.T. now. He is
16 the I.T. coordinator.

17 THE COURT: Mrs. Neal, would that affect your
18 ability to be fair and impartial to both the State and the
19 defense in this case?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: All right. Does he have arrest
22 power?

23 PROSPECTIVE JUROR: Uh-huh.

24 THE COURT: I'm going to set her aside on this
25 case since the Florence County Sheriff's department is

1 involved in the prosecution of this case. Thank you for
2 standing, Mrs. Neal. 106.

3 Yes, ma'am, to my right your name and number.

4 PROSPECTIVE JUROR: Dina Camlin number 20.

5 THE COURT: Ms. Camlin, who do you have?

6 PROSPECTIVE JUROR: My brother-in-law is a city
7 policeman.

8 THE COURT: Would that affect your ability to be
9 fair and impartial both to the State and the defense in
10 this case?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: Thank you, ma'am, you may be seated.
13 Yes, sir, in the green shirt.

14 PROSPECTIVE JUROR: Brian Thompson.

15 THE COURT: Hold a minute, Mr. Thompson. Juror
16 number 142.

17 PROSPECTIVE JUROR: I have two uncles that work
18 at the Florence County Sheriff's Department and my mother
19 and my aunt use to work up there.

20 THE COURT: They don't work there anymore?

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: When did they leave there?

23 PROSPECTIVE JUROR: I'm not sure.

24 THE COURT: And you have an uncle that works
25 there now?

1 PROSPECTIVE JUROR: Two uncles.

2 THE COURT: Would that affect your ability to be
3 fair and impartial to both the State and the defense in
4 this case?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Thank you, sir. You may be seated.
7 Yes, ma'am, your name and number?

8 PROSPECTIVE JUROR: Judith Kelly number 72. I
9 have three brothers that are in law enforcement.

10 THE COURT: In law enforcement in Florence
11 County?

12 PROSPECTIVE JUROR: No, sir, they are in
13 Clarendon County.

14 THE COURT: Okay. Would that affect your
15 ability to be fair and impartial to the State and the
16 defense in this case?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: Thank you, ma'am. You may be
19 seated.

20 Yes, sir, your name and number.

21 PROSPECTIVE JUROR: Luther Hyman 65. I have a
22 question about the criminal charge. Would that been
23 included in molestation?

24 THE COURT: Hold on a minute. Just have a seat,
25 sir, and I'll come back to you in just a minute.

1 Yes, ma'am, your name and number.

2 PROSPECTIVE JUROR: Shirley Bacote number eight.

3 I have a cousin -- first cousin that work in Effingham,

4 Mr. Redding. I also have a cousin that's in the

5 magistrate office here in Florence County, Ms. Charles.

6 THE COURT: Ms. Bacote, would that affect your
7 ability to be fair and impartial to both the State and the
8 defense?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Thank you for standing. You may be
11 seated.

12 Mr. Hyman, I will come back to you in a minute,
13 okay.

14 Is any member of the jury panel volunteer with
15 any law enforcement agency or prosecutor's office either
16 the present time or in the past, if so please stand?

17 (WHEREUPON, there were none.)

18 THE COURT: Okay. Does any member of the jury
19 panel related to or have a close personal friend to any
20 person who volunteers with any law enforcement agency or
21 prosecutor's office, if so please stand?

22 (WHEREUPON, there are none.)

23 THE COURT: Okay. Is there any member of the
24 jury panel a member of or does any member of the jury
25 panel contribute money to any organization such MADD

1 mothers against drunk, SADD students against drunk
2 driving, CAV citizens against violence, ACLU American
3 Civil Liberties Union or Community Action or any other
4 organization such as these, if so please stand?

5 (WHEREUPON, there are none.)

6 THE COURT: Okay. Do any member of the jury
7 panel, a member of or contribute money to any law
8 enforcement organizations such as the Fraternal Order of
9 Police or South Carolina Law Enforcement Officers
10 Association, if so please stand?

11 (WHEREUPON, there are none.)

12 THE COURT: Okay. Has any member of the jury
13 panel or any member of the jury panel's immediate family
14 ever been a victim of a violent crime, if so please stand?

15 (WHEREUPON, there are none.)

16 THE COURT: Okay. Has any member of the jury
17 panel formed or expressed an opinion about any issue or
18 matter involved in this case, if so please stand?

19 (WHEREUPON, there are none.)

20 THE COURT: Okay. Is any member of the jury
21 panel aware of any bias or prejudice toward either the
22 State or the defendant in this case, if so please stand?

23 (WHEREUPON, there are none.)

24 THE COURT: Okay. Is there any member of the
25 jury panel who has a religious or moral opposition that

1 would preclude you from passing judgment or rendering a
2 verdict in this case, if so please stand?

3 (WHEREUPON, there are none.)

4 THE COURT: Is there any member of the jury
5 panel or does any member of the jury panel know of any
6 reason whatsoever why he or she should not serve as a
7 juror in this case with particular emphasis being placed
8 on your ability to be fair and impartial to both the
9 Stated and the defendant, if so please stand?

10 (WHEREUPON, there are none.)

11 THE COURT: Okay. The attorney for the State
12 and the attorney for the defendant would you approach
13 please?

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury panel, but out of the hearing of
16 the jury panel.)

17 THE COURT: Mr. Hyman, could you come forward
18 please, sir. This is juror number 65.

19 PROSPECTIVE JUROR: I had a nephew that was
20 charged with molestation. He just fondled a young child.
21 And I have no objection or anything. I just wanted to
22 make sure this was clear.

23 THE COURT: You don't believe that would affect
24 your ability to be fair and impartial to both the State
25 and the defense?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: You think you can be fair to both?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Thank you for letting us know that.

5 PROSPECTIVE JUROR: I just wanted to be sure.

6 (WHEREUPON, a bench conference was held in the
7 presence of the jury panel, but out of the hearing of
8 the jury panel.)

9 THE COURT: Ms. Donna Altman. How you doing,
10 Ms. Altman?

11 PROSPECTIVE JUROR: Good how are you?

12 THE COURT: Good. It has been brought to my
13 attention you have a child under the age of seven years
14 old that you have primary principal care and custody
15 control of.

16 PROSPECTIVE JUROR: Uh-huh.

17 THE COURT: I need a yes or a no?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: I'm going to excuse you from service
20 this week. It just been brought to my attention, so I'm
21 going to let you go.

22 PROSPECTIVE JUROR: I was scared to open up in
23 front of everybody.

24 THE COURT: That's okay. We're not going to
25 bite you up here. I appreciate you letting the clerk

1 know. I'm going excuse you from service this week. Thank
2 you. You can go out this door right here.

3 (WHEREUPON, a bench conference was held in the
4 presence of the jury, but out of the hearing of the
5 jury.)

6 THE COURT: Anything further from the state or
7 the defense before we proceed with jury selection? Mr.
8 McEachin.

9 MR. MCEACHIN: Nothing from the State.

10 THE COURT: Mr. Floyd?

11 MR. FLOYD: Nothing further, Your Honor.

12 THE COURT: For purposes of efficiency, do y'all
13 have any objection to the potential jurors standing where
14 they are?

15 MR. MCEACHIN: Your Honor, I'd prefer that they
16 came up.

17 THE COURT: Okay. All right. Ladies and
18 gentlemen, what we are doing right now is we've gone
19 through this qualification process. You've noticed that
20 some people have been excused for various reasons. The
21 clerk as I am talking to you all right now is generating a
22 juror list excluding those individuals that have been
23 excused for various reasons, which takes a couple minutes.
24 And what the process will be once this juror list is
25 generated, your name will be called and I would ask that

1 you gather all of your belongings when and if your name is
 2 called to come forward, come through the gate over here.
 3 It's pretty much right in front of me, stand and face the
 4 audience and the attorneys will either ask that you be
 5 sworn or excuse you from the trial of this particular
 6 case.

7 State five and defense ten, Mr. McEachin?

8 MR. MCEACHIN: Correct, Your Honor.

9 THE COURT: Defense in agreement with that?

10 MR. FLOYD: That is correct, Your Honor. Thank
 11 you.

12 THE CLERK: 65 Luther Hyman. If you'll come to
 13 the microphone, sir, and face the back of the courtroom.

14 (WHEREUPON, Luther Hyman, a white male, came
 15 forward.)

16 THE CLERK: What say the State?

17 MR. MCEACHIN: Please present, Pastor Hyman.

18 THE CLERK: What say the defendant?

19 MR. FLOYD: Please excuse the juror for purposes
 20 of this trial.

21 THE CLERK: You been excuse from this trial
 22 only. Sir, you may return to your seat.

23 123 Elliott Rogers.

24 (WHEREUPON, Elliott Rogers, a white male, came
 25 forward.)

1 THE CLERK: What say the State?

2 MR. MCEACHIN: Please present, Mr. Rogers.

3 THE CLERK: What say the defendant?

4 MR. FLOYD: Please swear the juror.

5 THE CLERK: Please have a seat in the jury box,
6 sir.

7 15 Milton Brown.

8 (WHEREUPON, Milton Brown, a black male, came
9 forward.)

10 THE CLERK: What say the State?

11 MR. MCEACHIN: Beg the Court's indulgence for
12 just a moment.

13 (WHEREUPON, a pause in the proceedings.)

14 MR. MCEACHIN: Please excuse Mr. Brown for
15 purposes of this trial only.

16 THE CLERK: You been excuse from this trial
17 only. You may return to your seat.

18 124 Donald Ross.

19 (WHEREUPON, Donald Ross, a black male, came
20 forward.)

21 THE CLERK: What say the State?

22 MR. MCEACHIN: Please excuse Mr. Ross for
23 purposes of this trial only.

24 THE CLERK: You been excuse from this trial
25 only. You may return to your seat.

1 THE CLERK: What say the defendant?

2 MR. FLOYD: Please excuse the juror for purpose
3 of this trial.

4 THE CLERK: You been excuse from this trial
5 only, sir.

6 44 James Floyd.

7 (WHEREUPON, James Floyd, a white male, came
8 forward.)

9 THE CLERK: What say the State?

10 MR. MCEACHIN: Please excuse Mr. Floyd for
11 purposes of this trial only.

12 THE CLERK: You been excuse from this trial
13 only, sir. You may return to your seat.

14 20 Dina Camlin.

15 (WHEREUPON, Dina Camlin, a white female, came
16 forward.)

17 THE CLERK: What say the State?

18 MR. MCEACHIN: Please present Ms. Camlin.

19 THE CLERK: What say the defendant?

20 MR. FLOYD: Please excuse the juror for purpose
21 of this trial.

22 THE CLERK: You been excuse from this trial
23 only.

24 64 Jennifer Hunter.

25 (WHEREUPON, Jennifer Hunter, a white female,

1 came forward.)

2 THE CLERK: What say the State?

3 MR. MCEACHIN: Please present Ms. Hunter.

4 THE CLERK: What say the defendant?

5 MR. FLOYD: Please swear Ms. Hunter.

6 THE CLERK: Please have a seat in the jury box,

7 ma'am.

8 53 Darlene Graham.

9 (WHEREUPON, Darlene Graham, a black female, came
10 forward.)

11 THE CLERK: What say the State?

12 MR. MCEACHIN: Please present Ms. Graham.

13 THE CLERK: What say defendant?

14 MR. FLOYD: Please swear Ms. Graham.

15 THE CLERK: Please have a seat in the jury box,

16 ma'am.

17 99 Judy Mitchell.

18 (WHEREUPON, Judy Mitchell, a white female, came
19 forward.)

20 THE CLERK: What say the State?.

21 MR. MCEACHIN: Please present Ms. Mitchell.

22 THE CLERK: What say the defendant?

23 MR. FLOYD: Please swear Ms. Mitchell.

24 THE CLERK: Please have a seat in the jury box.

25 46 Donald Frierson.

1 (WHEREUPON, Donald Frierson, a black male, came
2 forward.)

3 THE CLERK: What say the State?

4 MR. MCEACHIN: Please present Mr. Frierson.

5 THE CLERK: What say the defendant?

6 MR. FLOYD: Please swear Mr. Frierson.

7 THE CLERK: Please have a seat in the jury box,
8 sir.

9 74 Andrew Leroux.

10 (WHEREUPON, Andrew Leroux, a white male, came
11 forward.)

12 THE CLERK: What say the State?

13 MR. MCEACHIN: Please present Mr. Leroux.

14 THE CLERK: What say defendant?

15 MR. FLOYD: Please excuse Mr. Leroux for purpose
16 of this trial.

17 THE CLERK: You been excuse from this trial
18 only, sir. You may return to your seat.

19 18 John Bullock.

20 (WHEREUPON, a white male, came forward.)

21 THE CLERK: What say the State?

22 MR. MCEACHIN: Please present Mr. Bullock.

23 THE CLERK: What say the defendant?

24 MR. FLOYD: Please swear Mr. Bullock.

25 THE CLERK: Please have a seat in the jury box,

1 sir?

2 61 Theron Hickson.

3 (WHEREUPON, Theron Hickson, a white male, came
4 forward.)

5 THE CLERK: What say the State?

6 MR. MCEACHIN: Please present Mr. Hickson.

7 THE CLERK: What say the defendant?

8 MR. FLOYD: Please excuse Mr. Hickson for
9 purpose of this trial.

10 THE CLERK: You been excuse from this trial
11 only, sir.

12 14 Henry Brown.

13 (WHEREUPON, Henry Brown, a white male, came
14 forward.)

15 THE CLERK: What say the State?

16 MR. MCEACHIN: Please present Mr. Brown.

17 THE CLERK: What say the defendant?

18 MR. FLOYD: Please excuse Mr. Brown for purpose
19 of this trial.

20 THE CLERK: You been excuse from this trial
21 only, sir.

22 102 Eddie Morris.

23 (WHEREUPON, Eddie Morris, a white male, came
24 forward.)

25 THE CLERK: What say the State?

1 MR. MCEACHIN: Please present Mr. Morris.

2 THE CLERK: What say the defendant?

3 MR. FLOYD: Please excuse Mr. Morris for purpose
4 of this trial.

5 THE CLERK: You been excuse from this trial
6 only, sir.

7 Eight Shirley Becoate..

8 (WHEREUPON, Shirley Becoate, a black female,
9 came forward.)

10 THE CLERK: What say the State?

11 MR. MCEACHIN: Please present Ms. Becoate.

12 THE CLERK: What say the defendant?

13 MR. FLOYD: Please excuse the juror for purposes
14 of this trial.

15 THE CLERK: You been excuse from this trial
16 only.

17 129 Vergonel Scott.

18 (WHEREUPON, Vergonel Scott, a black male, came
19 forward.)

20 THE CLERK: What say the State?

21 MR. MCEACHIN: Please present Mr. Scott.

22 THE CLERK: Does the defendant wish to challenge
23 this juror for cause?

24 MR. FLOYD: No.

25 THE CLERK: Please have a seat in the jury box,

1 sir.

2 138 Ruthie Strickland.

3 (WHEREUPON, Ruthie Strickland, a white female,
4 came forward.)

5 THE CLERK: What say the State?

6 MR. MCEACHIN: Please present Ms. Strickland.

7 THE CLERK: Does the defendant wish to challenge
8 this juror for cause?

9 MR. FLOYD: No.

10 THE CLERK: Please have a seat in the jury box.
11 152 Justin Wharton.

12 THE COURT: Hold on, Mr. Wharton, have a seat
13 right there.

14 You skipped one.

15 THE CLERK: 30 Caleb Conner.

16 (WHEREUPON, a white male, came forward.)

17 THE CLERK: What say the State?

18 MR. MCEACHIN: Please present Mr. Conner.

19 THE CLERK: Does the defendant wish to challenge
20 this juror for cause?

21 MR. FLOYD: No.

22 THE CLERK: Please have a seat in the jury box.
23 152 Justin Wharton.

24 (WHEREUPON, a white male, came forward.)

25 THE CLERK: What say the State?

1 MR. MCEACHIN: Beg the Court's indulgence for
2 just a moment.

3 (WHEREUPON, a pause in the proceedings.)

4 MR. MCEACHIN: Please present Mr. Wharton.

5 THE CLERK: Does the defendant wish to challenge
6 this juror for cause?

7 MR. FLOYD: No.

8 THE CLERK: Please have a seat in the jury box,
9 sir.

10 43 William Fleming.

11 (WHEREUPON, William Fleming, a black male, came
12 forward.)

13 THE CLERK: What say the State?

14 MR. MCEACHIN: Please present Mr. Fleming.

15 THE CLERK: Does the defendant wish to challenge
16 this juror for cause?

17 MR. FLOYD: No.

18 THE CLERK: Please have a seat in the jury box,
19 sir.

20 59 Laketra Harrell.

21 (WHEREUPON, a black female, came forward.)

22 THE CLERK: What say the State?

23 MR. MCEACHIN: Please excuse Miss Harrell For
24 purpose of this trial only.

25 THE CLERK: You been excuse for this trial only,

1 ma'am.

2 119 Vera Price.

3 (WHEREUPON, Vera Price, a black female, came
4 forward.)

5 THE CLERK: What say the State?

6 MR. MCEACHIN: Please present Ms. Price.

7 THE CLERK: Does the defendant wish to challenge
8 this juror for cause?

9 MR. FLOYD: No.

10 THE CLERK: Please have a seat in the jury box,
11 ma'am.

12 THE COURT: Gentlemen, we're going to pick two
13 alternates, two alternates, one, two.

14 THE CLERK: 23 Lillian Campbell.

15 (WHEREUPON, Lillian Campbell, a white female,
16 came forward.)

17 THE CLERK: What say the State?

18 MR. MCEACHIN: Please present Ms. Campbell.

19 THE CLERK: What say the defendant?

20 MR. FLOYD: Please excuse the juror for purposes
21 of this trial.

22 THE CLERK: You been excuse from this trial
23 only.

24 36 Bunty Desai.

25 (WHEREUPON, Bunty Desai, an Indian male, came

1 forward.)

2 THE CLERK: What say the State?

3 MR. MCEACHIN: Please present Mr. Desai.

4 THE CLERK: What say the defendant?

5 MR. FLOYD: Please swear Mr. Dasai.

6 THE CLERK: Please have a seat in the jury box,
7 sir.

8 Ten Mary Broach.

9 (WHEREUPON, Mary Broach, a white female, came
10 forward.)

11 THE CLERK: What say the State?

12 MR. MCEACHIN: Please present Ms. Broach.

13 THE CLERK: What say the defendant?

14 MR. FLOYD: Please swear Ms. Broach.

15 THE CLERK: Please have a seat in the jury box.

16 THE COURT: Are there any matters of law we need
17 to take up with regard to jury selection from the State?

18 MR. MCEACHIN: None from the State, Your Honor?

19 THE COURT: From the defense?

20 MR. FLOYD: None from the defendant, Your Honor.

21 THE COURT: Could the attorneys approach just a
22 minute for scheduling.

23 (WHEREUPON, a bench conference was held in the
24 presence of the jury, but out of the hearing of the
25 jury.)

1 THE COURT: Okay. All right. Ladies and
2 gentlemen, those of you who are on the jury panel who are
3 seated out in the audience still you are not select to
4 serve as jurors in this particular case, but I am going to
5 do at this time I told you earlier that Judge Nettles was
6 going to come in here and select a jury. But I been
7 informed to excuse you all at this time. Those of you who
8 are still seated out in front of me to excuse you at this
9 time and ask that you be back on the tenth floor in the
10 tenth floor courtroom at two o'clock, tenth floor
11 courtroom at two o'clock. So those of you who are seated
12 out in the audience, those on the jury panel only in the
13 audience, you are free to leave at this time. But you
14 must be back at two o'clock the tenth floor courtroom.
15 Everybody else remain seated.

16 (WHEREUPON, remaining jury panel excused.)

17 THE COURT: All right. Ladies and gentlemen of
18 the jury, you all have been selected as fair and impartial
19 jurors in the trial of this case. I want to excuse the
20 other jury panel because I had a few things I wanted to go
21 over with you before I let you go to lunch. In just a few
22 minutes, I'm going to let you go to lunch and I'm going to
23 ask that you be back at two o'clock. And we're going to
24 start the trial of this case at two p.m. During our
25 breaks, ladies and gentlemen, and throughout the trial of

1 this case, I will instruct you that you are not to discuss
2 this case at all. Not to discuss this case at all until
3 you are instructed to do so. Not to discuss it with your
4 fellow jurors in the jury room, not to discuss it with
5 family, friends or anybody else outside of this courtroom
6 until you are instructed to do so by this Court. As I
7 said a minute ago, you all have been selected as fair and
8 impartial jurors. And at the appropriate time when I tell
9 you to or when I instruct you to, you will decide this
10 case based upon the testimony that you hear from this
11 witness stand and any exhibits that are admitted into
12 evidence and that is what you are to base your decision
13 on, nothing else. It is based upon what you hear the
14 evidence presented in this courtroom. You are not to go
15 out and do any investigation on your own. You're not to
16 get on the internet whether it be on your home computer,
17 laptop, your cell phone or anything and do any
18 investigation of your own. You are to decide this case
19 based upon evidence and testimony in this courtroom.

20 Now, another matter, ladies and gentlemen, you
21 are not to have any contacts with any of the attorneys or
22 parties involved in this case whether it's just simply a
23 hello or anything. The mere appearance of it could be
24 misconstrued or misunderstood, so I have instructed the
25 attorneys involved in this case and parties involved in

1 this case. Likewise, they're not to have any contact with
2 you. So you see them outside of this courtroom during the
3 course of this trial and they don't look at you or speak
4 to you, they're following my instructions because I don't
5 want any perception, any improper perception in anything
6 misconstrued as you all are listening or throughout the
7 trial of this case.

8 I would ask you, ladies and gentlemen, during
9 this week that you serve as jurors that you be prompt when
10 I ask you to return here. This -- our judicial system
11 which has been called the greatest system in the world
12 can't work without you all here, can't work without you
13 all here. And if you are not here, then we can't go
14 forward. So I'll ask that you be prompt when I ask you to
15 be back here. I am very much aware or try to be cognizant
16 of the fact that you all have lives outside of this
17 courtroom and outside of this facility and I understand
18 that. However, once again, this system can't work without
19 people like you all.

20 During the course of this trial and while you're
21 in here, I know you're instructed to turn cell phones off.
22 And I would just remind you of that to make sure your cell
23 phones are off during -- while you're in here, okay. Our
24 Supreme Court Chief Justice Toal has issued an order on
25 that about cell phones in the courtroom, so make sure that

1 those cell phones are either on vibrate, silent or either
2 off when you're in the courtroom please. I don't want to
3 keep you from having any contact outside -- from the
4 outside world so to speak and recognize that emergencies
5 may come up, but would ask that you have a concern about
6 somebody may be needing to get in touch with you, that
7 they call the clerk's office here at the Florence County
8 complex and they can get a message up to me and in turn
9 get it to you if necessary. All right.

10 Anything further from the State or the defense
11 before I excuse the jurors until two o'clock, Mr.
12 McEachin?

13 MR. MCEACHIN: No, sir, Your Honor, nothing from
14 the State.

15 THE COURT: Mr. Floyd.

16 MR. FLOYD: Nothing from the defense.

17 THE COURT: Ladies and gentlemen, I'm going to
18 excuse you at this time for lunch and ask that you be back
19 in your jury room at two o'clock. The bailiff, Ms.
20 Olivia, here will tell you where you need to be back, so
21 I'm going to excuse you at this time and ask that you be
22 back promptly at two o'clock and begin as promptly at two
23 as we can. Everybody else please remain seated.

24 (WHEREUPON, the jury was excused for a lunch
25 break.)

1 THE COURT: Anything from the State before we
2 break for lunch, Mr. McEachin?

3 MR. MCEACHIN: Your Honor, there may be just a
4 brief motion prior to putting our first two witnesses up
5 on the stand, so we might want to get back just a little
6 earlier for that.

7 THE COURT: What is that?

8 MR. MCEACHIN: Just prior records for the first
9 two witnesses.

10 THE COURT: All right. Have you talk with
11 Mr. Floyd about it?

12 MR. MCEACHIN: Not yet, Your Honor.

13 THE COURT: All right. Y'all need to talk and
14 let me know what the issue is so we can deal with it.
15 Y'all be here at 1:30. Court personnel 1:30.

16 (WHEREUPON, a lunch break was taken.)

17 THE COURT: Come on around, Ms. Graham. How you
18 doing?

19 JUROR: I'm good. And you?

20 THE COURT: Doing good. You are juror number
21 53.

22 JUROR: Fifty-three.

23 THE COURT: It has been brought to my attention
24 that your dad has been taken to the hospital. I hope
25 everything is okay. Do you need to go?

1 JUROR: I would like to check on him to make
2 sure he's all right.

3 THE COURT: I'm going to excuse you, that's why
4 we pick alternates for things like this when emergencies
5 come up. I'm going to excuse you. You have any
6 belongings in the back?

7 JUROR: No, I have everything.

8 THE COURT: I'm going to let you go ahead and
9 go. I hope your father is okay.

10 JUROR: Thank you.

11 MR. FLOYD: And that's without objection by the
12 State or the defense?

13 MR. MCEACHIN: That's correct.

14 THE COURT: Mr. Floyd, is that correct?

15 MR. FLOYD: That's correct, Your Honor.

16 (WHEREUPON, juror number 53 Darlene Graham is
17 excused.)

18 THE COURT: I'm getting ready to pull out Mr.
19 Wharton. We've come to a conclusion on him?

20 MR. MCEACHIN: Your Honor, the State's position
21 is given his demeanor and given -- what he said to court
22 personnel, I'm not sure that he could be fair and
23 impartial in this case. The State has no objection from
24 him being removed from the jury and seating alternate
25 number two.

1 THE COURT: Mr. Floyd, any objection?

2 MR. FLOYD: Your Honor, I don't have any
3 objections to that.

4 THE COURT: And let me put on the record too,
5 before we pick the jury while I was qualifying the jury,
6 this young man came up and conveyed to the Court that he
7 was suppose to be in North Carolina for his brother's 18th
8 birthday, which I did feel was not a sufficient excuse to
9 excuse him or transfer him to another term of court. So
10 he was place back in the jury panel, he was selected on
11 this jury. And it was apparent during my discussions or
12 in talking to the jury before I excuse him for lunch, it
13 appeared to me he wasn't listening to the Court. He was
14 not -- didn't appear that he was listening to the Court.
15 And based upon not that, but I just wanted to put that on
16 the record. But based upon what's been conveyed to me
17 here today, I'm going to pull him out of the jury room.
18 And I'm going to excuse him for any further service.

19 Anything else, Mr. McEachin?

20 MR. MCEACHIN: That's all from the State, Judge.

21 THE COURT: Mr. Floyd, anything further?

22 MR. FLOYD: Nothing further.

23 THE COURT: All right. If you'll pull
24 Mr. Wharton out here.

25 (WHEREUPON, a pause in the proceedings.)

1 THE COURT: How are you, Mr. Wharton?

2 JUROR: I'm doing well. How are you doing?

3 THE COURT: I'm doing all right. It's my
4 understanding that you wanted to talk to me.

5 JUROR: Yes, sir. I -- my biggest problem right
6 now is the way that I got cheated with my summons.

7 Everyone I talk to -- I mean, I had six days.

8 THE COURT: Well -- go ahead.

9 JUROR: But, I mean, like for the address even
10 though my address is wrong on my license and I have to get
11 that fixed. It went back five years. It wasn't until
12 last week that I even got a phone call and ---

13 THE COURT: Here's the process ---

14 JUROR: I mean, with all of my medication I take
15 ---

16 THE COURT: What kind of medication are you on?

17 JUROR: I'm on antidepressants, antipsychotics.
18 I'm on a lot of medication.

19 THE COURT: I wished you would have conveyed to
20 me when ---

21 JUROR: See, I wasn't when you said it earlier,
22 I didn't catch all of it. And I didn't but ---

23 THE COURT: What is this called?

24 JUROR: Celexa, that's my antidepressant.

25 THE COURT: Celexa.

1 JUROR: I take Xanax for anxiety. Seroquel is
2 for sleeping and antipsychotic. That problem runs very
3 huge throughout my family.

4 THE COURT: And I appreciate you letting me know
5 that. And if you get called for jury duty again, you need
6 to let the judge know when we go through that process of
7 qualifying and ask about medical conditions and those kind
8 of things.

9 JUROR: I took a vacation week from work so I
10 can go spend time with family and now that's gone.

11 THE COURT: I'm going to let you go, okay. I'm
12 going to excuse you from service.

13 JUROR: And what's your name again, sir?

14 THE COURT: Craig Brown.

15 JUROR: Craig Brown. All right. Thank you very
16 much, sir. You been the nicest person I met in a long
17 time when I come here.

18 THE COURT: Well, let me remind you of this
19 please go get your driver's license updated, that's the
20 law and get your current address put on there.

21 JUROR: Okay, Judge, thank you very much. And
22 I'm sorry for any -- and thank you for letting me know
23 that next time with medical. I should have asked you
24 earlier because I was very unclear about that.

25 THE COURT: That's okay, we got it taken care of

1 now. Good luck to you, sir.

2 (WHEREUPON, Justin Wharton, juror 152, was
3 excused.)

4 THE COURT: Based upon what I heard here today,
5 I mean, it's obvious that he had some problems and
6 somethings that were not conveyed to the Court when he
7 came up here initially and that is that he was on several
8 different types of medication. And I don't know if you
9 all -- could you all hear him out there, Mr. Floyd?

10 MR. MCEACHIN: I could.

11 THE COURT: Mr. McEachin?

12 MR. MCEACHIN: Yes, sir, Your Honor.

13 THE COURT: So I think based upon what I heard
14 hear today without question that that was the right thing
15 to do in excusing that young man from any further service
16 this week. Any objection by the State?

17 MR. MCEACHIN: No, sir, Your Honor.

18 THE COURT: Mr. Floyd?

19 MR. FLOYD: None, Your Honor.

20 THE COURT: All right. The only other matter I
21 think we had as it relates to prior record of some
22 witnesses?

23 MR. MCEACHIN: That's correct, Your Honor. I
24 have given defense counsel a copy as well. I'll hand mine
25 up to Your Honor as well. The records of the first two

1 witnesses the State intends to call Brandon Davis excuse
2 me -- Ciera Davis and Brandon Cross.

3 THE COURT: Have you seen this, Mr. Floyd?

4 MR. FLOYD: Yes, Your Honor, I looked at this in
5 Mr. McEachin's office. He gave me a copy.

6 MR. MCEACHIN: Your Honor, I think we can
7 probably streamline this. With regards to Ciera Davis,
8 her only record consist of driving offenses.

9 THE COURT: All right.

10 MR. MCEACHIN: I don't believe that any of that
11 would be admissible. With regards to ---

12 THE COURT: Is that correct, Mr. Floyd, you
13 agree with that?

14 MR. FLOYD: I agree with that, Your Honor.

15 THE COURT: All right.

16 MR. MCEACHIN: With regard to Mr. Cross, Your
17 Honor, he has a number of arrests.

18 THE COURT: And we not getting into any arrests.

19 MR. MCEACHIN: Yes, sir, Judge. With regard to
20 Mr. Cross, Your Honor, I've gone over that particular file
21 for that NCIC with Mr. Floyd too. And it's the State's
22 opinion that the only two convictions that will be
23 admissible in this trial for impeachment purposes -- I beg
24 the Court's indulgence for just a moment. Would be a --
25 giving false information misdemeanor in 2003. I believe

1 that falls under crime of dishonesty pursuant to the rule,
2 Your Honor. And then in addition to that, he had an
3 assault and battery of a high and aggravated nature charge
4 in October of 2006. Upon my review of the record, the
5 witnesses record I believe those are the only two crimes
6 that would be admissible pursuant to the rules of
7 evidence.

8 THE COURT: Mr. Floyd.

9 MR. FLOYD: Your Honor, I agree with that as
10 well. I believe those are the two that will be
11 admissible.

12 THE COURT: And you all are in agreement with
13 that, Mr. McEachin?

14 MR. FLOYD: Yes, sir, Your Honor.

15 THE COURT: Mr. Floyd.

16 MR. MCEACHIN: Yes sir, Your Honor.

17 THE COURT: So be it, that makes it easy
18 enough. Mr. Floyd, you all talked about pre-marking
19 evidence?

20 MR. FLOYD: Yes, Your Honor.

21 MR. MCEACHIN: I want to mark this as State's 1.
22 I don't know about as far as stipulation, but I want to go
23 ahead and mark these, Judge.

24 THE COURT: All right. What do we have that we
25 can put on this gun as far as -- I still want something on

1 there.

2 MR. MCEACHIN: Judge, I guess I can remove that
3 sticker.

4 (WHEREUPON, a pause in the proceedings.)

5 (WHEREUPON, State's Exhibits Nos. 1-5 was marked
6 for identification only.)

7 THE COURT: The two ladies that are seated in
8 the back, if y'all would stand and identify yourselves.

9 PATSY FLOYD: I'm Patsy Floyd. My husband is in
10 here for jury duty this morning and then he had to go to
11 the tenth floor. They wouldn't let us go down there.

12 THE COURT: So he's not involved in this case?

13 PATSY FLOYD: No, no, uh-uh.

14 THE COURT: And your name, ma'am?

15 DEBORAH BARRON: Deborah Barron. I got my son
16 here. He's at the tenth floor.

17 THE COURT: Okay. You all can sit down. The
18 reason I was asking is I didn't know if you all were here
19 with somebody that was seated on this jury. If that were
20 the case, I was gone instruct you that what you seen here
21 is not to be discussed in anyway, shape or form with
22 anybody on this jury, your husband, wife, child, daughter,
23 momma, daddy, anybody, okay. But thank you for letting us
24 know. That's what I wanted to know. Thank you very much.

25 You all ready to go?

1 MR. MCEACHIN: I just need to run and grab an
2 easel. Well, Scott got a quick motion. It will take two
3 seconds.

4 MR. FLOYD: Your Honor, I just want to sequester
5 the witnesses.

6 THE COURT: Hold on.

7 (WHEREUPON, a pause in the proceedings.)

8 THE COURT: All right. Mr. McEachin, anything?

9 MR. MCEACHIN: No objection from the State, Your
10 Honor. We would ask that Investigator Alvin Powell will
11 be allowed to remain in the courtroom as the lead
12 investigator in the case. Additionally, I know that the
13 defense has given us two witnesses they listed. The state
14 would ask that that also apply to those witnesses.

15 MR. FLOYD: Certainly, Your Honor.

16 THE COURT: All right. I will sequester the
17 witnesses and instruct them that they are not to discuss
18 this case and their testimony with anybody. Five minutes
19 we will start.

20 (WHEREUPON, a break was taken.)

21 THE COURT: All right. Is the State ready to
22 proceed, Mr. McEachin?

23 MR. MCEACHIN: Ready to proceed, Your Honor.

24 THE COURT: Mr. Floyd.

25 MR. FLOYD: Ready, Your Honor.

1 THE COURT: Anything further before we bring the
2 jury in?

3 MR. MCEACHIN: Nothing from the State, Judge.
4 (WHEREUPON, the jury came into open court.)

5 THE COURT: Good afternoon, ladies and
6 gentlemen. Before we go any further, I'm going to ask my
7 two on the end here to fill in on down. We got one seat
8 down here. You all can go ahead and slid down. If you
9 will notice, ladies and gentlemen, we are down to 12 of
10 you now, okay. And this is why we select alternates in
11 cases. Two individuals were excused for various reasons.
12 Those of you who were selected as alternates initially,
13 Mr. Dasai and Ms. Broach, you are now no longer
14 alternates.

15 THE CLERK: If you will stand to be sworn and
16 raise your right hand.

17 (WHEREUPON, the jury was sworn.)

18 THE COURT: Ladies and gentlemen, we are about
19 to begin the trial of the case of the State vs. Tyrone
20 Joseph Whatley. Before we begin this trial however, I
21 want to tell you that this trial probably will be
22 different from what you might expect. Many people do not
23 have the chance to attend actual court sessions as you are
24 doing now. You may think from watching television or
25 movies or reading books that trials are always full of

1 high drama, intense action and riveting circumstances.

2 While all of these things may be true, at times
3 this trial is not for entertainment. It is a fundamental
4 part of our democracy. A search for the truth in an
5 effort to make sure that justice is done between the
6 parties before the Court, searching for the truth in
7 making sure that justice is done is often slow, deliberate
8 and repetitive. The opposite of what you may have seen on
9 television or in movies or read in books. This courtroom
10 is a place of honor dedicated to the protection and
11 preservation of citizens rights through what many have
12 called the greatest justice system ever created.

13 The attorneys appearing before you are advocates
14 for the parties that they represent. But first and
15 foremost, they're officers of the Court sworn to uphold
16 the integrity and fairness of our judicial system and to
17 help you in the search for the truth. You should expect
18 them to be professional, competent and ethical and the
19 representation of their client's interest. Remember, that
20 you have taken an oath to try this case and reach a fair
21 and just verdict and you are also to be expected to be
22 professional, reasonable and ethical. Thank you, ladies
23 and gentlemen, for accepting this important responsibility
24 of jury service and for your contribution today for our
25 justice system.

1 What I will now say to you is intended to serve
2 as an introduction to the trial of this case. These
3 remarks are not a charge on the law in this case. I will
4 instruct you on the law applicable to this case at the end
5 of the trial before you retire to consider your verdict.
6 This is merely an explanation of the procedure that we
7 will follow in the trial of this case, so that you may
8 better understand what may be happening.

9 The defendant is charged by an indictment filed
10 in this court with the crimes of burglary first degree,
11 arm robbery, another count of arm robbery and criminal
12 conspiracy. The elements of which will be explain to you
13 later. The indictment is simply the charge by which this
14 case is brought into court and it is not in any sense
15 evidence of any of the allegations it contains.

16 The defendant has pled not guilty to this
17 indictment and the State therefore has the burden of
18 proving each of the elements of the indictment beyond a
19 reasonable doubt. And it will be your duty, ladies and
20 gentlemen, to decide whether the State has met that
21 burden. Your purpose as jurors is to find and determine
22 the facts. You are the sole judge of the facts. If at
23 any time I make any comment regarding the facts, you must
24 disregard it. You are to determine the facts from the
25 testimony you hear and the other evidence introduced in

1 court. It is up to you to determine the inferences which
2 you feel may properly be drawn from the evidence. It is
3 especially important that you perform your duty of
4 determining the facts diligently and conscientiously
5 because ordinarily there is no way to correct an erroneous
6 determination of the facts by a jury.

7 On the other hand and with equal emphasis, the
8 same law that makes you the judges of the facts makes me
9 the judge of the law. The law is given by the Court is
10 the only law you may consider. You must accept and follow
11 it even though you may disagree with it. I cannot tell
12 you what the facts are. And you cannot tell me or you
13 cannot disagree with me about what the law should be.
14 Your job is to take the law as I give it to you and apply
15 it to the facts as you find them from the testimony of the
16 witnesses and any other evidence that is introduced.
17 After doing that, you will render your verdict. A true
18 and just verdict under the solemn oath that you just took
19 as jurors.

20 Until I advise you to begin your deliberations,
21 you must not discuss this case with anyone including your
22 fellow jurors friends, family members and anyone involved
23 in the case. After the case is submitted to you, you must
24 discuss it only in the jury room with your fellow jurors.

25 The attorneys and parties in this case have been

1 advised that they are not to talk to you at all. So if
2 you see anyone involved in this case and they don't speak
3 to you, they are not being unfriendly, they are just
4 following my instructions.

5 During the trial, do not read -- again, I don't
6 think there is anything on the news or on the internet,
7 but I'm instructing you not to read, listen to, watch any
8 news reports or do any research on your own about this
9 case. This includes anything that may be in the
10 newspaper, on the internet, radio or television. You must
11 not consider anything you may have read or heard about the
12 case outside the courtroom whether before or during the
13 trial. It is important that you keep an open mind and not
14 decide any issue in the case until all of the evidence has
15 been presented, the parties have made their closing
16 arguments and I have instructed you on the law in this
17 case. It is your solemn responsibility to determine the
18 guilt or innocence of a defendant. And your verdict must
19 be based solely on the evidence as it is presented to you
20 in this trial and on the law as I instruct you during and
21 at the close of the trial.

22 Now, in just a moment, the solicitor will make
23 what is called an opening statement in which the solicitor
24 will explain to you the issues in this case or at least
25 what he believes the issues are in this case. The

1 attorney for the defendant may also make an opening
2 statement, although he is not required to do so. What the
3 attorneys tell you during their opening statements is not
4 evidence in this case. It is only their contention as to
5 what the issues are. The evidence in this case will be
6 presented to you by the testimony of sworn witnesses from
7 this witness stand and or by exhibits that may be
8 introduce into evidence.

9 From time to time during the trial, you may hear
10 one of the lawyers say something such as Your Honor, I
11 believe, we have a question of law or a matter of law to
12 discuss with you or Your Honor may we approach the bench
13 or sometimes, I, myself, might find it necessary to excuse
14 you from the courtroom for a short while, so that the
15 attorneys and I can discuss a matter of law. The reason
16 for this is because you are judge of the facts in this
17 case and sometimes when I am discussing matters of law
18 with the attorneys, it may be necessary for me to make
19 some comment as to the facts in connection with a ruling
20 whether or not a particular law applies. I am not suppose
21 to tell you what I think the facts are, so I will excuse
22 you from the courtroom while these discussions take place.
23 So that in no way will you be influenced by anything that
24 I might say or do in connection with the facts.

25 In determining what the true facts are in this

1 case, you must decide whether or not the testimony of the
2 witness is believable. It will be my responsibility to
3 rule as a matter of law as to whether certain testimony is
4 admissible at all or not. But once the testimony is
5 admitted whether or not you believe, it is solely for you
6 to determine. In deciding whether to believe a witness,
7 you have the right to consider the interest of any
8 witness, the bias of any witness, the prejudice of any
9 witness. The opportunity for the witness to have seen the
10 matters and things about which the witness may testify and
11 the way the witness acts on the witness stand. You have a
12 right to consider anything that is in the record that will
13 help you evaluate the testimony of the witnesses. That
14 means it is your duty, ladies and gentlemen, to pay close
15 attention to these witnesses, to observe the witnesses, to
16 listen to the witnesses and to pay close attention to the
17 attorneys and to the Court.

18 Please don't let your thoughts wonder but give
19 strict attention to the testimony in this case. So that
20 at the end of all the testimony, after the arguments of
21 counsel and the charge on the law by the Court, you will
22 then be in a position to determine what the true facts are
23 and to apply the law to those facts and thus render a true
24 and just verdict. It is your added duty -- and when I
25 appoint a foreperson, I have not appointed a foreperson

1 yet, but I will appoint a foreperson. And it will be that
2 individuals responsibility to preside in the jury room and
3 be the juries spokesperson here in court. It will also be
4 that individuals duty to write the verdict. But I will
5 give you, the foreperson, further instructions about that
6 at the conclusion of this case. Now, in order to preserve
7 everyone's rights, I will give the parties an opportunity
8 to object to anything I have said.

9 Any exception to anything that I have said from
10 the State, Mr. McEachin?

11 MR. MCEACHIN: No, sir, Your Honor.

12 THE COURT: By the defense?

13 MR. FLOYD: No, sir, Your Honor.

14 THE COURT: The State ready to proceed?

15 MR. MCEACHIN: State's ready, Your Honor.

16 THE COURT: Mr. Floyd, you ready to proceed,
17 sir?

18 MR. FLOYD: Yes, sir, Your Honor.

19 THE COURT: Mr. McEachin, you recognize.

20 MR. MCEACHIN: Thank you, Your Honor, may it
21 please the Court.

22 THE COURT: Yes, sir.

23 MR. MCEACHIN: Mr. Floyd, ladies and gentlemen
24 of the jury, on the evening of July 21st 2009, Brandon
25 Cross and Ciera Davis were getting into their bed in their

1 at the Days Inn out on They were
2 going to sleep for the night. A short time after they
3 went to bed, a knock came on their bed room door, on the
4 motel room door. Ms. Davis got out of bed and peeked out,
5 there was a woman standing outside. So she cracked the
6 door and that's when it happened, two men came barging in
7 the room, one of them is armed. The question that you, as
8 jurors, are going to have to answer in this case is who
9 were those two men that came barging into that room armed.

10 A criminal case is like a jigsaw puzzle. Each
11 piece of evidence you get is like a piece to that puzzle.
12 And you put all of the pieces of evidence you hear
13 together to form a picture of what happened that night on
14 July 21st into the morning of July 22nd 2009. That's what
15 your role is as jurors in this case.

16 Again, my name is Fitzlee McEachin and I
17 represent the State of South Carolina and the County of
18 Florence in this case. The defendant, Tyrone Whatley, as
19 the judge has already told you is charged with four
20 separate counts in his indictment. First count is for
21 burglary in the first degree. The second and third counts
22 on that indictment are arm robbery. One of those arm
23 robberies deals with the victim, Miss Ciera Davis. The
24 other arm robbery deals with Brandon Cross the other
25 individual that was in the room. And the forth and final

1 charge on the indictment is a charge for criminal
2 conspiracy or conspiracy as it is otherwise known.

3 Now, as a prosecutor or the assistant solicitor
4 in this case, it is my job to prove to you that Tyrone
5 Whatley is guilty of these charges beyond a reasonable
6 doubt. And you may ask yourselves, well, what does that
7 mean, what does it mean beyond a reasonable doubt. Well,
8 it simply means this if after hearing and seeing the
9 evidence in this case you were firmly convinced that
10 Tyrone Whatley did what he's accused of doing, then you
11 find him guilty. It's as simple as that. On the other
12 hand if you are not firmly convinced, you find him not
13 guilty.

14 Now, how am I going to prove my case to you?
15 I'm going to do it through evidence and there's two forms
16 of evidence. And the judge already hit on it briefly, but
17 the two forms of evidence in this case are one exhibits
18 and the best way to describe exhibits are those tangible
19 items you can touch, feel, see, taste. There want be any
20 testing in this case, but things you can use your five
21 senses to observe.

22 The other type of evidence is going to be
23 testimony and testimony comes from this witness stand
24 right there. It is the spoken word. It is going to come
25 from individuals who were there that night. You are going

1 to hear from individuals who know what happened that
2 night. You are going to hear from Ciera Davis. You are
3 going to hear from Brandon Cross. They're going to tell
4 you what happened that night when the knock came on the
5 door. You are going to hear from Investigator Alvin
6 Powell who's seated here in the courtroom. You're also
7 going to hear from Sergeant Jay McLaurin with the Florence
8 County sheriff's office. He was the first responding
9 officer. And there two other individuals you're going to
10 hear from as well. You're going to hear from Jessica
11 Ussery, who was the girl who knock on the door that night.
12 And you are going to hear from John Barfield. He was one
13 of the two individuals who went into that room that night.

14 Listen very carefully to what these witnesses
15 have to tell you. After hearing what they have to tell
16 you and after seeing the exhibits in this case, I believe
17 that you will be firmly convinced, that you will be firmly
18 convinced that Tyrone Whatley, who is seated right over
19 there, is guilty of burglary in the first degree, two
20 separate counts of arm robbery and one count of criminal
21 conspiracy.

22 This is an important case. It is important to
23 the defendant. It's important to the County of Florence.
24 It is important to the State of South Carolina. I want to
25 thank you in advance for the time and effort and

1 consideration that you 12 individuals are going to put
2 into this case. The judge is right there's no greater
3 duty that a particular individual can do for their country
4 aside from perhaps serving in a time of war than to serve
5 on a jury. Thank you for taking up this cause. Thank
6 you.

7 THE COURT: Mr. Floyd.

8 MR. FLOYD: Thank you, Your Honor, may it please
9 the Court.

10 THE COURT: Yes, sir.

11 MR. FLOYD: Good afternoon, ladies and
12 gentlemen, I'm Scott Floyd and I represent Mr. Whatley
13 who's seated there beside me at the table. You've heard
14 the allegations the judge read the indictment to you, the
15 charges Mr. Whatley is charged with. Mr. McEachin has
16 alluded to those charges. And you know quite often as
17 people when we hear something bad about somebody whether
18 it's through gossip or we read something in the paper or
19 we hear it on the news, we kind of tend to believe it. I
20 think a lot of us do that. I know I am guilty of it in my
21 personal life. Sometimes I hear something about somebody.
22 Well, how could he do that or how could she do that. I
23 don't know whether it is true, I just heard it. But I
24 think it is human nature. It's an accusation is made,
25 that accusation itself has power because it gets in your

1 mind. It is there. But in a criminal trial like we are
2 in today, power of accusation has no place, has no place
3 in this courtroom. Just because Mr. Whatley is accused,
4 don't let it in your mind that it is true. Our system is
5 built on a presumption of innocence that every defendant
6 in every criminal case is presumed to be innocent.
7 Whether it's a traffic stop or whether it's murder, okay.
8 Every criminal defendant in every case has a right to be
9 under that presumption of innocence.

10 And, of course, the Court alluded to earlier
11 that the State who has the burden of proof in this case.
12 It's the State's responsibility to produce evidence to
13 you. The defendant, Mr. Whatley, and I don't have to
14 prove anything. The State has to produce all the evidence
15 to you. And if you think about it, that makes sense.
16 Because the State has the power, they have people with
17 badges who are authorize to investigate crimes. They have
18 at their deposal laboratories. They have money. They
19 have all the things the power of the government behind
20 them. So, of course, they should be required to bring
21 proof to the courtroom somebody that keeps. The defendant
22 certainly or a lot of defendants we can say would have
23 none of those things with having -- would have no
24 capability to do those kinds of things. And it is very
25 important under our system that the State produce the

1 evidence to you. And, of course, the standard of proof
2 that they have to prove is beyond a reasonable doubt.

3 This isn't a case where we're arguing about
4 money. This isn't a car wreck. We're not arguing about
5 whether or not an insurance company has to pay a
6 chiropractor bill, that's not what we're arguing about
7 here. We are arguing about whether or not a man is guilty
8 of a crime. In this case, several crimes. In a civil
9 case, one side or the other only has to prove their case
10 just by a preponderance of the evidence. In other words,
11 more likely than not it's true. Of course, in a criminal
12 trial like this where freedom could be on the line,
13 obviously the burden of proof is and should be much
14 higher. It is beyond a reasonable doubt. And I would
15 just ask that you, as jurors, and I know that you will
16 consider all the evidence that you hear. You will hear
17 witnesses. But I would ask that you consider the nature
18 of those witnesses when you hear them what they might have
19 personally to gain by saying what they say. And ask that
20 you just consider everything and when you do, I'm
21 confident that you'll find the defendant not guilty.
22 Thank you very much.

23 THE COURT: Mr. McEachin.

24 MR. MCEACHIN: Your Honor, Ms. Braddock has gone
25 to get the first witness. May we approach?

1 THE COURT: Yes, sir.

2 (WHEREUPON, a bench conference was held on the
3 record in the presence of the jury, but out of the
4 hearing of the jury.)

5 MR. MCEACHIN: I think we can do this right here
6 without taking the jury back. For the record, State's 1
7 through 5 were admitted into evidence without objection.

8 THE COURT: Is that correct, Mr. Floyd?

9 MR. FLOYD: That's correct.

10 (WHEREUPON, the bench conference has concluded.)

11 (WHEREUPON, State's Exhibit Nos. 1-5 were
12 admitted into evidence.)

13 MR. MCEACHIN: Call Brandon Cross.

14 THE CLERK: If you will, sir, go to the witness
15 stand. Place your left hand on the Bible and raise your
16 right hand. Do you swear to tell the truth, the whole
17 truth, and nothing but the truth so help you God?

18 THE WITNESS: Yes, ma'am.

19 THE CLERK: Please be seated and state your full
20 name for the record.

21 THE WITNESS: Brandon Thomas Cross.

22 WHEREUPON,

23 Brandon T. Cross,

24 after first having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. MCEACHIN:

2 Q All right, Brandon, and that's perfect. I need to
3 make sure you speak up loud enough so this woman on the
4 very back of the jury can hear you, okay.

5 A Okay.

6 Q Brandon, where do you work?

7 A Hardee's at the Florence Mall.

8 Q And how long have you worked at the Hardee's at the
9 Florence Mall?

10 A Since 2005.

11 Q So you been working there almost six years now?

12 A Yes, sir.

13 Q And are you married or single?

14 A Neither.

15 Q What's your relationship status?

16 A I have a girlfriend.

17 Q And what's her name?

18 A Ciera Davis.

19 Q How long have you and Ciera been together?

20 A Going on four years.

21 Q Okay. So that would be back in 2007?

22 A Yes, sir.

23 Q 2006, 2007 that y'all been dating for that long.

24 Now, Brandon, you know the reason we are here today?

25 A Yes, sir.

1 Q Where were you living back in July of 2009?

2 A Days Inn.

3 Q And where is that Days Inn located?

4 A On

5 Q What county is Days Inn?

6 A Florence County.

7 Q Okay. And was there anyone living at the Days Inn
8 with you at the time?

9 A Yes, sir.

10 Q Who was that?

11 A My girlfriend Ciera Davis.

12 Q The same girlfriend that you been dating for about, I
13 think, you said four or five years?

14 A Yes, sir.

15 Q And what room were y'all living in at the time July
16 of 2009?

17 A

18 Q And is that on the first floor or the second floor of
19 the Days Inn?

20 A Second floor.

21 Q All right. Now, Brandon, did you remember the day of
22 July 21st, 2009?

23 A Yes, sir.

24 Q And why is it that you remember that day?

25 A I got robbed.

1 Q Okay. What were you doing -- how did you start your
2 day on the first?

3 A I went to work.

4 Q At Hardee's?

5 A Yes, sir.

6 Q What shift were you working at Hardee's that day?

7 A First shift.

8 Q And what time is first shift run?

9 A I went to work at five o'clock, got off around about
10 two.

11 Q All right. You say you got off at two o'clock in the
12 afternoon or in the morning?

13 A In the afternoon.

14 Q And once you left Hardee's, where did you go?

15 A I went to my grandma's house.

16 Q And where did your grandma live?

17 A North Florence.

18 Q All right. And how long do you think you stayed over
19 at your grandmamma's house?

20 A Probably about an hour, hour and a half.

21 Q Okay. What was the reason for going to your
22 grandma's house?

23 A To get out the house.

24 Q Okay. So after you ended up leaving your
25 grandmother's, so you said about an hour or an hour and a

1 half from there?

2 A Yes, sir.

3 Q So you stayed until approximately four o'clock that
4 afternoon?

5 A Yes, sir.

6 Q Where did you go when you left your grandmother's?

7 A Days Inn.

8 Q Back to the Days Inn?

9 A Yes, sir.

10 Q And about what time do you think you got there?

11 A Around about five.

12 Q Okay. Once you got to the Days Inn was anybody else
13 there when you got there?

14 A No, sir.

15 Q What about Ciera?

16 A She was at work.

17 Q And where does she work?

18 A Foxy Videos.

19 Q Where is that located?

20 A In Darlington.

21 Q Now, you say you got back to the Days Inn. What did
22 you do when you got to the room?

23 A Took a shower and watch a little bit of TV.

24 Q All right. And did Ciera ever come back to the room?

25 A Yes, sir.

1 Q About what time did she get back if you can remember?

2 A Around about six.

3 Q All right. And when she got back to the room, what
4 did y'all do?

5 A Got something to eat.

6 Q Where did y'all go?

7 A Shoney's.

8 Q Okay. And did y'all sit down at Shoney's and eat?

9 A No, sir, take out.

10 Q Take out and you took it back to the room.

11 A Yes, sir.

12 Q All right. About what time do you think you got back
13 to the hotel room that night?

14 A Probably around about seven.

15 Q Seven.

16 A Yeah, seven o'clock.

17 Q All right. And once y'all got back to the room, what
18 did y'all do?

19 A Just relax and eat and watch a little bit of TV?

20 Q What time did you end up going to bed that night?

21 A Probably around about 11:20.

22 Q Okay, so it was after 11 o'clock but before midnight?

23 A Yes, sir, before midnight.

24 Q All right. And was Ciera still up when you went to
25 bed?

1 A Yes, sir.

2 Q And once you went to sleep, what's the next thing you
3 remember happening?

4 A I open my eyes to two dudes rushing in the room.

5 Q Two dudes rushing in the room?

6 A Yes, two men.

7 Q And what did they look like?

8 A A white guy and a black guy.

9 Q So there was a white fellow and a black fellow came
10 rushing in the room?

11 A Yes, sir.

12 Q What, if anything, did you notice about these two
13 individuals?

14 A The white guy had a gun.

15 Q Okay. And can you describe the gun?

16 A A shotgun, it was big.

17 Q It was a long barrel?

18 A Yes, sir, a big one.

19 MR. MCEACHIN: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes, sir.

22 BY MR. MCEACHIN:

23 Q Okay. Mr. Cross, I'm going to show you what's been
24 entered into evidence as State's Exhibit Number 5 holding
25 that upside down. Do you recognize State's Exhibit Number

1 5?

2 A Yes, sir.

3 Q And what is State's Exhibit Number 5?

4 A The shotgun.

5 Q Is this the gun that you saw that night?

6 A Yes, that's the gun.

7 Q And this the gun the white fellow was holding?

8 A Yes, sir.

9 Q Okay. Once they came in, once they rushed into the
10 room, what did you do?

11 A Run in the bathroom.

12 Q All right. And, Brandon, I'm going to have you step
13 down if it's all right with the Court.

14 MR. MCEACHIN: Judge, will it be all right if he
15 step down?

16 THE COURT: Yes, sir.

17 Make sure you speak loud enough so everybody on
18 the jury can hear you.

19 MR. CROSS: All right, thank you.

20 BY MR. MCEACHIN:

21 Q Brandon, I'm actually going to have you stand right
22 over here so the court reporter could hear you as well.
23 I'm going to give you this. And I want you to kind of
24 show the jury -- can you show the jury where the two men
25 came rushing in from.

1 THE COURT: Hold on a minute.

2 Mr. Floyd, if you need to get up, so you can
3 see, please feel free to do so.

4 MR. FLOYD: Thank you.

5 THE COURT: Go ahead, sir.

6 MR. MCEACHIN: Hold on one second.

7 BY MR. MCEACHIN:

8 Q All right. If you could please show the jury where
9 the two men came rushing in from?

10 A From the front door.

11 Q Okay. And when they came rushing in, can you show
12 the jury where you were and where you went?

13 A I was laying in the bed. I jumped out and ran in the
14 bathroom.

15 Q And once you got in the bathroom, what did you do?

16 A It was right there at the end peeping at them.

17 Q Okay. And what, if anything, did you notice? Did
18 you hear them say anything?

19 A Yes, sir.

20 Q What did they say?

21 A Where is the money?

22 Q Okay. And once that comment was made, what did you
23 do?

24 A I told them they ain't getting none.

25 Q And at any point, did you leave the bathroom?

1 A No, sir, later on.

2 Q How long do you think you're in the bathroom?

3 A A while. They was throwing my girl around, searching
4 around trying to find something. And I say I end up
5 saying that I know where it at and I came out the room --
6 I came out the bathroom.

7 Q And when you say you knew where it was at, what are
8 you referring to?

9 A The money.

10 Q Okay. And if you could show the jury when you came
11 out of the bathroom, where did you go?

12 A I went straight to the recliner.

13 Q Okay. Once you were at the recliner, what happened?

14 A I grabbed the doorknob and ran out.

15 Q Okay, so you were able to get out of the room?

16 A Yes, sir.

17 Q And when you ran out of the room, show the jury which
18 direction you were headed?

19 A I ran and jumped down a flight of stairs barefoot.

20 Q Okay. About how high is that?

21 A Probably eight stairs and then a flat plat form.

22 Q Once you jump down the stairs, what did you do?

23 A I ran to the guy that was in the Explorer, the gray
24 Explorer.

25 Q I will let you grab a seat back up there for me.

1 MR. MCEACHIN: And for the record, Your Honor,
2 he was showing that on State's Exhibit Number 1.

3 BY MR. MCEACHIN:

4 Q You say there was a fellow outside in a gray
5 Explorer?

6 A Yes, sir, and I told him to call the police.

7 Q Okay. And I'm not asking you what he said. Did he
8 make a phone call?

9 A Yes, sir.

10 Q Okay. And while he was a making phone call, could
11 you still see the area where your room was?

12 A No, sir.

13 Q Okay. At any point -- better yet let me take that
14 back. What did you end up seeing after you spoke to the
15 fellow about making a phone call to the police?

16 A I say about three or fives minutes later the two guys
17 came down with bags and a gun.

18 Q Okay, and did you recognize those bags?

19 A Yes, sir.

20 Q And whose bags were those?

21 A My girl clothes bags.

22 Q And where did they go with those bags?

23 A They jumped in the car.

24 Q All right. What kind of car did they jump in?

25 A It was a burgundy small little two-door car.

- 1 Q Like a little sedan?
- 2 A Yes, sir.
- 3 Q Okay. So a burgundy two-door car?
- 4 A Yes, sir.
- 5 Q And they jumped into that?
- 6 A Yes, sir.
- 7 Q And once they jumped into that, what happened?
- 8 A They roll off.
- 9 Q When you say roll off ---
- 10 A They ride off, yes, sir.
- 11 Q And could you see where they went?
- 12 A Yes, sir.
- 13 Q Where did they go?
- 14 A They made a right going towards Darlington County.
- 15 Q So right on to 52?
- 16 A Yes, sir.
- 17 Q Towards Darlington county?
- 18 A Yes, sir.
- 19 Q After you saw that happened, what did you do?
- 20 A I went to the front desk.
- 21 Q And who did you find at the front desk?
- 22 A My girlfriend Ciera Davis.
- 23 Q Ciera Davis was at first desk?
- 24 A Yes, sir.
- 25 Q Was there anyone up there with her?

1 A The cashier.

2 Q And when you got up there, what did you and Ciera do
3 once you got back up with her?

4 A The police -- talk to the police.

5 Q Okay. At any point, did y'all go back up to your
6 room?

7 A Yes, sir.

8 Q Was that before or after you spoke to law
9 enforcement?

10 A That was before.

11 Q And when you went back up to your room, did you
12 notice any of your personal belongings missing?

13 A No, sir.

14 Q All right. And once you got to the room, what did
15 y'all do when y'all got into the room?

16 A I put my clothes on.

17 Q Okay..

18 A I ain't had nothing but my boxers and T-shirt on.

19 Q Okay. So you got back up there so you can put some
20 clothes on?

21 A Yes, sir.

22 Q After you got your clothes on ---

23 A I return back to the front desk.

24 Q Okay. Was any of your stuff missing?

25 A Yes, sir.

1 Q What was missing of your stuff?

2 A My cell phone, my baby bracelet I just bought for her
3 birthday and that was it for my stuff.

4 Q Okay. And when you say your baby's bracelet, what
5 are you referring to?

6 A My baby's bracelet I bought for her birthday, a gold
7 bracelet.

8 Q What's your daughter's ---

9 A Braynasha.

10 Q Okay. And you said it was a gold bracelet?

11 A Yes, sir.

12 Q And you said that and your cell phone and some
13 clothes were missing?

14 A Yes, sir.

15 Q All right. Once y'all got out of the room and back
16 down to the front desk, did you speak with law
17 enforcement?

18 A Yes, sir.

19 Q And about how long did you think that conversation
20 lasted?

21 A Probably about 15 to 20 minutes.

22 Q What did y'all relate to them?

23 A Tell them that somebody came to our door, somebody
24 came to our door -- somebody knocked on our door which is
25 a white girl. And then when my girl opened the door, two

1 guys ran in with the guns and they robbed us.

2 Q So you pretty much told them what you told us?

3 A Yes, sir.

4 Q After speaking to law enforcement that night, did you
5 end up speaking to law enforcement again?

6 A No, sir.

7 Q Okay, that was the only time you spoke to them?

8 A Yes, sir.

9 Q All right. Brandon, is what you told this jury today
10 to the best of your recollection what happened on that
11 night of July 21st into the 22nd 2009?

12 A Yes, sir.

13 MR. MCEACHIN: Thank you. Please answer any
14 question Mr. Floyd may have.

15 THE COURT: Mr. Floyd.

16 MR. FLOYD: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. FLOYD:

19 Q I'll be very brief. Mr. Cross, you said that the two
20 men who went inside the room were talking. Who said what?
21 The white guy is he the one who asked where is the money?

22 A Yes, both of them, yes, sir.

23 Q So is that all they said?

24 A Yeah, where the money at.

25 Q Okay. All right. That was the extent of your

1 conversations with either one?

2 A Yes, sir, other than me telling them they ain't
3 getting nothing.

4 Q Okay. How long had you been living there at the
5 time?

6 A Probably about six months.

7 Q About six months?

8 A Yes, sir.

9 Q Okay. And you and your girlfriend were living there
10 together the whole time?

11 A Yes, sir.

12 Q Do you know anybody name Rose?

13 A Yes, sir.

14 Q You do. And who is that?

15 A That's an old schoolmate.

16 Q Had you been in touch with her during that time?

17 A No.

18 Q Okay. That's the only person you know name Rose?

19 A Yeah.

20 MR. FLOYD: Thank you. I appreciate it.

21 REDIRECT EXAMINATION

22 BY MR. MCEACHIN:

23 Q You say you been living at the Days Inn for six
24 months. Why were y'all living at the Days Inn there?

25 A Cause we just left our house on Hicks Drive, got kind

1 of behind on payments, so we went to the room.

2 Q Okay, were y'all looking for somewhere else to live?

3 A Yes, sir, we was looking for another place to live.

4 Q So y'all were in a transition period?

5 A Yes, sir, basically.

6 MR. MCEACHIN: No further questions, Your Honor.

7 THE COURT: Mr. Floyd, anything else?

8 MR. FLOYD: Nothing further, Your Honor.

9 THE COURT: Sir, you may step down.

10 (WHEREUPON, the witness leaves the witness
11 stand.)

12 MR. MCEACHIN: Your Honor, I would ask that he
13 be released from his subpoena if he needs to go to work.

14 THE COURT: Any objection by the defense?

15 MR. FLOYD: No, objection, Your Honor.

16 THE COURT: All right, sir, you are released
17 from any obligation that you had under this subpoena.

18 THE CLERK: If you will, ma'am, stop right
19 there. Place your left hand on the Bible, raise your
20 right hand. Do you swear to tell the truth, the whole
21 truth, and nothing but the truth so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Please be seated and state your name
24 for the record.

25 THE WITNESS: Ciera Davis.

1 WHEREUPON,

2 Ciera Davis,

3 after first having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MCEACHIN:

6 Q All right, Ms. Davis, I'm going to have you slid up
7 close to that microphone because we got to make sure
8 everybody on the jury can hear you, all right. Ciera,
9 where do you work?

10 A At Foxy Video.

11 Q Where is that located?

12 A 1629 South Main Street in Darlington.

13 Q Okay. And how far is that from Florence?

14 A A couple minutes.

15 Q A couple minutes. Is it all the way into downtown
16 Darlington?

17 A No.

18 Q Is it on

19 A Yeah.

20 Q Or close to it?

21 A Yeah.

22 Q Okay. And about -- well, let me take that back. Are
23 you married?

24 A No.

25 Q Single?

1 A No.

2 Q Are you in a relationship?

3 A Yeah.

4 Q And who are you in a relationship with?

5 A Brandon Cross.

6 Q And how long have you and Brandon been in a
7 relationship?

8 A Since 2007.

9 Q So going on four years now?

10 A Yeah.

11 Q Ciera, you know the reason we are here today. Where
12 were you living back on July of 2009?

13 A At the Days Inn.

14 Q And who -- were you living there with anybody?

15 A Brandon.

16 Q You were living there with Brandon?

17 A Uh-huh.

18 Q And why were y'all living there at the Days Inn?

19 A Cause we just move out our place and we wanted to
20 stay together. We didn't have another place to stay.

21 Q Okay. So it was -- y'all had moved out of your old
22 place and you wanted to stay together and that's why you
23 went to the Days Inn. And about how long had y'all been
24 staying at the Days Inn up until July of 2009?

25 A Probably about six months, I think.

1 Q About six months. In July, what room were y'all
2 staying in?

3 A

4 Q And is that upstairs or downstairs?

5 A Upstairs.

6 Q All right. Now, Ciera, I want to talk to you. Do
7 you remember the day of July 21st, 2009?

8 A Uh-huh.

9 Q And were you working on that day?

10 A Uh-huh.

11 Q What time did you go into work that day?

12 A Around 10:30 or 11 o'clock.

13 Q And is that in the morning or in the evening?

14 A In the morning.

15 Q And once you went into work, how long did you work on
16 the 21st?

17 A Probably about five, 5:30, six o'clock.

18 Q Or six that evening. And when you left Foxy Video
19 where did you end up going?

20 A To the room to the Days Inn.

21 Q All right. And when you got there was anybody there?

22 A Brandon.

23 Q Brandon was in the room. And once y'all got there,
24 what did y'all end up doing?

25 A I probably change clothes and went to get something

1 to eat.

2 Q Okay. Do you remember where you went to eat?

3 A I knew it was somewhere close to the Days Inn
4 probably Shoney's or the Pilot or somewhere like that.

5 Q Okay. And wherever y'all went to eat, did you sit
6 down and eat there or...

7 A Took it to go.

8 Q Where did y'all take it?

9 A To the room, back to the room.

10 Q Took it back to the room at Days Inn. Do you
11 remember about what time you think that was y'all got
12 back?

13 A Probably about a little after seven, seven o'clock a
14 little after.

15 Q Okay. And once y'all got back to the room, what did
16 y'all do?

17 A Eat and relax.

18 Q And relax. Now, relax y'all watch some TV?

19 A Uh-huh.

20 Q Okay. And y'all eventually went to sleep. Who went
21 to sleep first that night?

22 A Brandon.

23 Q Okay. And about what time do you think Brandon went
24 to bed?

25 A Probably close to 12.

1 Q Okay. Was it -- you know if it was before 12?

2 A It was little before 12.

3 Q And once Brandon went to sleep, how long after he
4 went to sleep did you go to sleep?

5 A Probably five minutes after, not that long after.

6 Q So pretty much he went to bed and then you went to
7 bed after he did?

8 A Uh-huh.

9 Q Once you went to sleep, what's the next thing you
10 remember happening that night?

11 A Somebody was knocking at our door.

12 Q Okay. And did one of y'all go up and see who was
13 knocking at the door?

14 A I did.

15 Q You did. And tell the jury about y'all going up to
16 the door. Did you try and find out who was outside?

17 A Yeah, I looked out the peep hole of the window -- out
18 of the door first.

19 Q And what did you see?

20 A A white lady.

21 Q Okay. And once you saw her, what did you do?

22 A I crack the door.

23 Q And when you cracked the door what was the next thing
24 that happened?

25 A She backed away from the door and two guys came from

1 -- one guy came from the right side and one guy came from
2 the left and they bombarded the door.

3 Q Okay. And when you say two guys, can you give me a
4 description of what they look like?

5 A The white guy came from the left and the black guy
6 came from right.

7 Q And what else did you notice about those two
8 individuals?

9 A The left -- the white guy had on a cap and the black
10 guy -- both of them had on caps.

11 Q Okay. And you say they came rushing in. Did they
12 have anything else?

13 A A shotgun, the white guy.

14 Q He had a shotgun on him. So it was a long barrel
15 gun?

16 A Yes, sir.

17 Q Ciera, I'm going to show you what's been marked and
18 admitted into evidence as State's Exhibit Number 5. Do
19 you recognize State's Exhibit Number 5?

20 A Uh-huh.

21 Q And what is State's Exhibit Number 5?

22 A The gun that was used to rob us.

23 Q That's the gun that the white fellow was holding when
24 he came in?

25 A Yes, sir.

1 Q Once they came barging in the room, what did they do?

2 A They were yelling asking for the money.

3 Q They were asking for the money. Were both of them
4 doing that?

5 A No, just the white guy?

6 Q Just the white was doing that. What was the African
7 American or the black fellow doing?

8 A Whatever the white guy told him.

9 Q Okay. And what were you doing while all this was
10 going on?

11 A I was trying to find my money. I was so scared that
12 I forgot where I put my money, so that's what I was doing
13 trying to find the money.

14 Q All right. And where was Brandon at this time?

15 A In the bathroom.

16 Q And while you were looking for money, what were the
17 two other fellows doing?

18 A The black guy was keeping an eye on Brandon and the
19 white guy was keeping an eye on me.

20 Q And what's the next thing you remember happening
21 while all of this was going on?

22 A They try to force me into the bathroom with Brandon,
23 but he wouldn't allow them to push me in the bathroom with
24 him. So I was asking the white guy to let me just look
25 for my money, so I can give it to him and they could

1 leave. So I was still looking for the money.

2 Q Okay. And after that after they tried to get you in
3 the bathroom and you told them you would look for the
4 money, what happened next?

5 A Brandon told him -- Brandon yell out and told him
6 that he know where the money is.

7 Q Okay. And then what happened?

8 A He -- they let him come out of the bathroom and he
9 went over to the recliner to act like he knew where the
10 money was. And once he realize all their attention was on
11 me, he shot out the door.

12 Q Okay. And once he shot out the door, what happened
13 next?

14 A The guys -- they were distracted, I guess, you could
15 say and he loaded the gun and I just ran out the door
16 after Brandon.

17 Q You ran out the door, too. Ciera, I'm going to have
18 you step down.

19 MR. MCEACHIN: Judge, is that all right?

20 THE COURT: Yes, sir.

21 BY MR. MCEACHIN:

22 Q I'm going to have you step down here for a minute.
23 Now, where were you looking for the money when you say you
24 were looking for the money?

25 A I was up in this area cause my purse was siting on

1 top of the desk.

2 Q Okay. And you say you ran out of the room after they
3 got distracted by Brandon running out of the room?

4 A Uh-huh.

5 Q All right. And once Brandon ran out of the room, can
6 you show the jury where you went when you came out the
7 door?

8 A I ran straight out the door.

9 Q Okay. And when you came out, did you go right or
10 left when you came out the door?

11 A I went right.

12 Q Okay. You went right. And did you go downstairs or
13 where did you?

14 A I went downstairs and then I made a left to go to the
15 front desk?

16 Q You can have a seat back on the witness stand. Once
17 you went to the front desk, what did you do?

18 A Well, their door was lock, so I had to bang to get
19 in. The girl was outside taking a cigarette break cause
20 this little part they can go out the back door. And she
21 seen me running pass her, so she let me in the door she
22 heard me banging and she let me around the desk and we
23 called 9-1-1.

24 Q Okay. And what did y'all tell the 9-1-1 operator?

25 A That we just been robbed and that the people that

1 were robbing us were leaving pulling out the parking lot
2 now.

3 Q Do you know what kind of car they were in?

4 A I don't know specifically what kind of car, but I
5 know it was burgundy.

6 Q It was burgundy, dark red color car?

7 A Like a mix a red and a purple.

8 Q And y'all told the operator that y'all saw them going
9 out the door -- I mean, going out the driveway?

10 A Yes, sir.

11 Q And which direction were they headed?

12 A They turn right going to Darlington.

13 Q Okay. And once y'all relayed this information, what
14 was the next thing that you did?

15 A I stayed at the desk until Brandon got to the front
16 desk. And then I went to go put them on some clothes
17 cause I didn't have any clothes on.

18 Q Okay. And while you were up in the room, did you
19 notice any of your belongings were missing?

20 A Uh-huh.

21 Q What was missing?

22 A I had a bag full of clothes, my cell phones and the
23 chargers. Brandon's daughter's bracelet and that's about
24 it.

25 Q Ciera, can you describe to me -- you say your bags

1 were missing. How many bags were missing?

2 A Two.

3 Q Can you describe to me what those bags look like?

4 A The one with the clothes were -- is a light pink and
5 a dark pink color bag?

6 Q Okay. And what was the other bag that was missing?

7 A It's a Dooney & Bourke bag, it's light brown and dark
8 brown.

9 Q Okay. And I'm going to show you what's been entered
10 into evidence as State's Exhibit Number 3. Do you
11 recognize the contents of that photograph?

12 A Yes, sir.

13 Q And what are those contents?

14 A My two bags.

15 Q Those are your two bags that you see there?

16 A Uh-huh.

17 Q Okay. I'm also going to show you what's been marked
18 and admitted into evidence as State's Exhibit Number 2.

19 Do you recognize that?

20 A Yeah.

21 Q And what is that?

22 A That's the car they were driving?

23 Q That's the car that the individuals who went into
24 your room were in?

25 A Yes, sir.

1 Q Okay. Once you went back up into your room and got
2 dress, what was the next thing you did?

3 A We ran back to--- well, I went back to the front
4 desk.

5 Q And once you got to the front desk, what did you do?

6 A We waited on the police.

7 Q And how long before law enforcement officers arrived?

8 A Well, we saw them chasing the car. It wasn't that
9 long before they got up with the car, but by the time they
10 got back to the room, it had been a couple minutes and
11 they handled the situation.

12 Q Okay. So when you say you saw them chasing the car,
13 when y'all saw the car turn out, y'all saw a law
14 enforcement vehicle as well?

15 A Uh-huh. Probably, it wasn't even that long after
16 they pulled out that law enforcement was after them.

17 Q Less than a minute?

18 A Probably so.

19 Q Okay. And you say you waited. Did y'all wait at the
20 front desk for law enforcement to arrive?

21 A Yeah, because we also had to get another room closer
22 to the front desk.

23 Q Okay. And once law enforcement arrived, did y'all
24 speak to them?

25 A Uh-huh.

1 Q And what did you tell them?

2 A We told them what had happen that the guys bombarded
3 into the room and robbed us.

4 Q Okay. And this was -- would have been early in the
5 morning on July 22nd after midnight on the 21st?

6 A Uh-huh.

7 Q And you relayed to law enforcement pretty much what
8 you're relaying for us here today?

9 A Yes, sir.

10 Q After meeting with them on that particular day, did
11 you meet with law enforcement again?

12 A Yes, because they had to show us a lineup of the guy.

13 Q Okay. After that particular instance, did you have
14 to meet with them again?

15 A Yeah, because I had to get my bags.

16 Q Okay. So you got your stuff back from them?

17 A Uh-huh.

18 Q They got the stuff back to you?

19 A Some of it.

20 Q Okay. They got some of it back. Well, after
21 receiving that stuff back, did you have any other
22 involvement with law enforcement?

23 A No, only on checking up on the case to see what was
24 going on with it.

25 Q Ciera, is what you've told us here today to the best

1 of your recollection what occurred on the night of
2 July 21st and 22nd of 2009?

3 A Yes, sir.

4 MR. MCEACHIN: Thank you. Please answer any
5 questions Mr. Floyd may have for you.

6 THE COURT: Mr. Floyd.

7 MR. FLOYD: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. FLOYD:

10 Q Good afternoon, Miss Davis?

11 A Hello.

12 Q The black guy and the white guy that went in your
13 room, you said only the white guy was talking; is that
14 correct?

15 A Uh-huh.

16 Q Okay, the black guy didn't say anything?

17 THE COURT: Miss Davis, I need for you to give
18 us a yes or no response, okay.

19 THE WITNESS: Okay, I'm sorry.

20 THE COURT: Please, ma'am. Thank you.

21 A Yes, sir.

22 Q The black guy didn't say anything to you?

23 A He didn't say anything to me.

24 Q Okay. You didn't recognize the voices or anything?

25 A No, sir.

1 Q Okay, thank you. Did you tell the police that the
2 black guy was about five six and weighed about 130 pounds
3 is that what you told them that night?

4 A I think that's what I told him.

5 Q Okay. So he was kind of skinny?

6 A Yeah.

7 Q Okay. Did he have long hair?

8 A I couldn't really tell at that time because he had a
9 cap on. One of those durags. He had a durag on and a
10 cap on top of the durag on his head.

11 Q So like a baseball cap?

12 A Uh-huh.

13 Q On top of ---

14 A On top of the durag.

15 Q Okay. So you couldn't tell how long his hair was?

16 A No, sir.

17 Q Do you know anybody name Rose or Debbie?

18 A No, sir.

19 Q You don't know anybody with those names?

20 A No, sir.

21 MR. FLOYD: Thank you very much.

22 THE COURT: Mr. McEachin, any redirect?

23 MR. MCEACHIN: Nothing further, Your Honor. I'd
24 ask that she also be released from her subpoena?

25 THE COURT: Any objection, Mr. Floyd?

1 MR. MCEACHIN: I don't have any objections, Your
2 Honor.

3 THE COURT: Ma'am, you may step down and you are
4 excused from your obligation under the subpoena. You free
5 to leave. Thank you for being here.

6 (WHEREUPON, the witness leaves the witness
7 stand.)

8 MR. MCEACHIN: Your Honor, may we approach.

9 THE COURT: Yes, sir.

10 (WHEREUPON, a bench conference was held in the
11 presence of the jury, but out of the hearing of the
12 jury.)

13 MR. MCEACHIN: Your Honor, the next witness the
14 State would call would be Sergeant Jay McLaurin of the
15 Florence County Sheriff's Office. Ms. Braddock is going
16 to get him.

17 THE COURT: Sir, put your left hand on the Bible
18 and raise your right hand. Do you swear to tell the
19 truth, the whole truth, and nothing but the truth so help
20 you God?

21 THE WITNESS: I do.

22 THE COURT: Put your hand down and state your
23 full name for the record.

24 THE WITNESS: John Franklin McLaurin, IV.

25 WHEREUPON,

1 A I was a deputy sheriff.

2 Q And when did you start with the sheriff's office,
3 what year?

4 A August 2007.

5 Q So you started with them in August of 2007. Prior to
6 that, what did you do?

7 A I was a probation and parole agent here in Florence
8 County.

9 Q And then you switched over to the sheriff's office?

10 A Uh-huh.

11 Q Now, Sergeant McLaurin, do you know why we are here
12 today?

13 A I do.

14 Q And do you recall whether or not you were working on
15 July 21st of 2009?

16 A I was.

17 Q What shift were you working on that day?

18 A I was working night shift from seven p.m. to seven
19 a.m.

20 Q So it's a 12-hour shift?

21 A Yes.

22 Q And at that time, you were a deputy?

23 A I was.

24 Q As a deputy, do you have occasion to respond to
25 calls, 9-1-1 calls?

1 A All the time.

2 Q That's kind of the purpose of law enforcement; right?

3 A Uh-huh.

4 Q And do you recall responding to a call that evening?

5 A I do.

6 Q And what was that in reference to?

7 A It was in reference to an armed robbery at the Days
8 Inn on

9 Q At the time you received the call, where were you?

10 A I was at Irby and

11 Q And upon receiving the call, what did you do?

12 A I just started driving towards the location because
13 they said the vehicle was headed toward Darlington. What
14 I was going to do was try to drive get there as fast as I
15 could towards the line to see if I could possibly see the
16 vehicle that they given the description of?

17 Q As you were, I guess, coming from Irby you would be
18 going towards Darlington. As you were heading that way,
19 what, if anything, did you notice as you approached the
20 Days Inn?

21 A The vehicle pulled right out in front of me.

22 Q And when you say the vehicle, what vehicle did you
23 see?

24 A It was a burgundy color Saturn.

25 Q Okay. And upon seeing the burgundy in color Saturn,

1 what did you do?

2 A I verified the tag make sure we knew who it was at
3 least in case we got in a chase. And I activated my blue
4 lights and initiated a traffic stop on them.

5 Q And you say you initiated a traffic stop. When you
6 activated your blue lights, did they come to a stop?

7 A They did not.

8 Q What happened?

9 A I activated my siren and let the rest of my shift
10 know what was occurring. And we were headed toward
11 Darlington County and just followed the vehicle.

12 Q And at that time were there any other law enforcement
13 vehicles other than yours in pursuit of the vehicle?

14 A There was a highway patrolman that had seen me come
15 by and I didn't realize he was behind me until the vehicle
16 had stopped and then I saw him.

17 Q Okay. And that's my next question. Did the burgundy
18 Saturn finally come to a stop?

19 A It did stop.

20 Q And where did they stop?

21 A It was behind Merita Bread company inside Darlington
22 County.

23 Q And when they stopped at the Merita Bread company
24 what did you observe?

25 A I tried to keep my distance from the vehicle because

1 they just been involved in a robbery. The vehicle turned
2 where the driver side of the vehicle was facing my
3 vehicle. I put my spotlight on it. I saw the highway
4 patrol car pull up on my left. A white male got out of
5 the front passenger seat and ran toward the back right
6 corner of the parking lot. The black male got out of the
7 back seat passenger side and ran the same direction.

8 Q And what did you do when you saw that guy?

9 A I saw the highway patrolman there and there was still
10 a white female driving the vehicle, I asked him to stay
11 with the car. I pursued them in my vehicle, the white
12 male and the black male they were running through the
13 parking lot. I drove my vehicle behind them until I
14 couldn't drive any further.

15 Q And were they running in the same direction?

16 A They were.

17 Q And once you say you couldn't drive any further, what
18 happened. I mean, why couldn't you drive?

19 A There was a -- parallel to the parking lot there was
20 a long cinder block building and there was a barb wire
21 fence next to that. And then there was another business
22 where the fence and the business met. I chased them into
23 the corner. The white male, went up the corner of the
24 barb wire fence. The black male curved around on the west
25 side and ran the length of the business that was parallel

1 to the parking lot.

2 Q So at the time the two separated?

3 A Yes.

4 Q Okay. And once that happened, what did you end up
5 having to do?

6 A I tried to get over the fence and chase the white
7 male and the barb wire the fence was too high. I couldn't
8 get over the barb wire. And I looked to the left and I
9 saw a black male standing, he was approximately 40 to
10 50 yards to my left. And I yelled for him to stop. I
11 started running towards him. I could make out his size
12 and everything, but when I got close enough to him, it
13 took him a few attempts. I could tell he was a shorter
14 black male, took him a couple of attempts to try to get
15 over the fence, but he eventually got over the fence. And
16 at that time, I secured my vehicle and went back to help
17 the state trooper because there was still a subject inside
18 the vehicle.

19 Q Okay. And when you say you could see him and get a
20 description, what was the description of the black male
21 you saw?

22 A He was shorter. I guesstimated at about five foot
23 six, 130, 140 pounds.

24 Q Okay.

25 A And he had long hair at that time. I do remember

1 that.

2 Q Was it in dreads?

3 A It was -- I think I remember seeing it in like a pony
4 tail that night, but I couldn't make out whether it was
5 dread locks or anything like that.

6 Q But you could tell he did have some sort of long
7 hair?

8 A Yes.

9 Q All right. Once you got back to your car, you said
10 you secured your vehicle and then went back to meet with
11 the state trooper. Once you got back to the state
12 trooper, what did you do?

13 A We executed a felony stop on the vehicle, which is
14 where you bring the driver out of the vehicle at gun
15 point, make them walk back towards your voice. And it's a
16 very safe way of getting the subject out of the vehicle.

17 Q And what was your reason for doing that?

18 A Cause it had just been involved in a robbery was how
19 the call came out and we didn't know whether the weapon --
20 the driver had the weapon and that was for safety reasons.

21 Q And can you please describe to the jury what the
22 driver look like, what the person's appearance was?

23 A It was a white female. I don't remember how she was
24 dressed or anything.

25 Q Were you able to get any sort of identification off

1 of her?

2 A I was. Her name was Jessica Ussery.

3 Q That was the driver of the burgundy Saturn?

4 A And it was also registered to her also Jessica Ann
5 Ussery.

6 Q Okay. Once y'all got her out of the vehicle, what
7 did you do?

8 A We secured her in the back of my patrol car after she
9 was handcuffed and patted down. And we contacted an
10 investigator, secured the vehicle and I began taking
11 photos of the inside of the vehicle.

12 MR. MCEACHIN: Your Honor, may I approach the
13 witness?

14 THE COURT: Yes, sir.

15 BY MR. MCEACHIN:

16 Q Sergeant McLaurin, I keep calling you deputy and I
17 apologize. I'm going to hand you what's been marked as
18 State's Exhibit 2, 3, and 4 that have been entered into
19 evidence. Could you please take a look at those and once
20 you had an opportunity to look at them, please tell the
21 jury what they are? What's State's Exhibit Number 3?

22 A Number three is the backseat of the vehicle.

23 Q What is State's Exhibit Number 2?

24 A That's a picture of the vehicle that I pursued that
25 night that was taken from the front of the vehicle, that's

1 my patrol car in the background.

2 Q Okay. What about State's Exhibit Number 3?

3 A Number three is the backseat of the vehicle.

4 Q And what's in the backseat of the vehicle?

5 A Clothes, a purse, that matches the description of
6 some of the items that were taken from the two victims
7 that was robbed at the Days Inn.

8 Q Okay. And what about State's Exhibit Number 4?

9 A That's a picture of the shotgun located in the trunk
10 of the vehicle.

11 Q And that was in the trunk of the vehicle you stopped?

12 A Yes.

13 Q I'm going to show you what's been marked and entered
14 into evidence as State's Exhibit Number 5. Do you
15 recognize State's Exhibit Number 5?

16 A That's the shotgun located in the trunk of the
17 vehicle.

18 Q And is that the same gun that's shown in State's
19 Exhibit Number 4?

20 A Yes.

21 Q Who ended up taking possession of State's Exhibit
22 Number 5?

23 A I took possession of it.

24 Q And what did you do with it when you took possession
25 of it?

1 A I attempted to locate a serial number and brand so
2 that I could attempt to run records on it and see if it's
3 possibly stolen or anything. I couldn't locate that. I
4 made sure the weapon was safe and unloaded. I breached it
5 the way it is now. I secured it inside my trunk until I
6 was able to get to the office to log it into evidence.

7 Q And the gun was unloaded?

8 A Yes.

9 Q As far as the stuff that we can see in State's
10 Exhibit Number 3 those items that you say were in the
11 backseat the bags, what did you do with those items?

12 A Those items were the -- the item that belong to, I
13 believe, the -- was it Miss Davis was her name. The purse
14 was taken into my control. And I responded with the
15 investigator back to the Days Inn and I gave the property
16 back to her. And I have a property receipt to show where
17 I got her to sign for it.

18 Q And when you say the investigator, who was the
19 investigator?

20 A Investigator Powell.

21 Q Whenever a call comes out, patrol unit arrives and is
22 an investigator also called out?

23 A Not all the time, but a serious crime like that where
24 the investigator is going to be making the charges and
25 it's something that's going to have to be investigated

1 more than a street level officer would do.

2 Q And you say Investigator Powell showed up and met
3 with you?

4 A Yes.

5 Q And did he meet with you prior to getting back to the
6 hotel or when did he meet up with you?

7 A I believe we meet at the hotel.

8 Q Okay. And once you returned the items to Miss Davis
9 that you had recovered, what did you do?

10 A I began getting statements from the victims.

11 Q Okay. And you were the one who took statements from
12 the victims in the case?

13 A I did.

14 Q And upon completing or at the completion of getting
15 those statements, what did you do?

16 A I responded to the detention center in Effingham. I
17 issued Ms. Ussery a citation for failure to stop for a
18 blue light and then I began logging in my evidence.

19 Q Okay. And when you say logging into evidence just if
20 you could explain to the jury what you mean by that?

21 A I took evidence out of my trunk. I brought it in my
22 squad room we had locked lockers. There's special lockers
23 for guns that are large, larger than a handgun. It was
24 logged into box number 12 at the office. I also logged in
25 my pictures they kept on memory chip in our cameras. It

1 was also put into a locked box. And I completed my
2 evidence log sheet to prove chain of custody.

3 Q I just want to briefly go back to the Merita Bread
4 company, Sergeant McLaurin. When you were approaching the
5 black male, how close would you say you got to him prior
6 to him going over the fence.

7 A When I first saw him, he was approximately about 40
8 or 50 yards from me. By the time he got over the fence,
9 probably 30 yards from him.

10 Q Okay. So from here to the back of the courtroom
11 maybe or closer?

12 A Probably about that far.

13 Q Okay. What were you doing at the time?

14 A I was running.

15 Q Were you saying anything?

16 A I was hollering for him to stop.

17 Q Okay. You were hollering that?

18 A Uh-huh.

19 Q And did he?

20 A No.

21 Q Is what you told the jury here today the best of your
22 recollection of what occurred that evening?

23 A Yes, it is.

24 Q And other than once you logged this stuff into
25 evidence and once you, I believe, issued the citation for

1 Ms. Ussery, did you have any involvement in this case?

2 A No, I did not.

3 MR. MCEACHIN: All right, thank you. Please
4 answer any questions Mr. Floyd may have for you.

5 THE COURT: Mr. Floyd.

6 MR. FLOYD: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. FLOYD:

9 Q Good afternoon.

10 A Mr. Floyd.

11 Q When you made the stop of Ms. Ussery's vehicle, she
12 was registered as the owner?

13 A Yes, sir.

14 Q Of that vehicle; is that right?

15 A Yes, sir.

16 Q She was driving. When you gave chase to the two
17 males that jumped out of the car, the white guy went one
18 way and the black guy went the other. You said the black
19 guy actually scaled the fence; is that right?

20 A Well, they ran together through the parking lot. And
21 when they hit the corner where the fence meets this
22 building where I chased him too, the black male ran to the
23 left and the white male just went straight up over the
24 fence.

25 Q Okay. All right.

1 A And there was a business that was next to that and I
2 watched them both run all the way across the parking lot.
3 I couldn't get over the fence.

4 Q All right. And you said it was a barb wire fence?

5 A It was.

6 Q Was it like one of those with two or three strands of
7 barb wire?

8 A I believe there was three strands, but it was facing
9 inward. It wasn't leaning towards.

10 Q Okay. It was facing the end toward you and toward
11 the suspect; is that right?

12 A No, it was facing end toward the business.

13 Q Toward the business. So it was facing out from where
14 you were standing?

15 A From where I was standing, yes.

16 Q Okay. And from where the suspects were standing?

17 A Uh-huh.

18 Q Is that right? Okay. All right. And you said
19 eventually the black male also ended up scaling the fence;
20 is that right?

21 A Yes.

22 Q Was there barb wire there?

23 A Yes.

24 Q Okay. After he jumped off and ran, I know you went
25 back to the car to assist the highway patrol. Later on,

1 did you go back to the fence where it had been scaled to
2 see if there was any clothing torn or any blood or
3 anything like that?

4 A No, because we were bringing the tracking team there
5 and we didn't want to try and ruin any scent.

6 Q Okay. Did you know if anybody else did that?

7 A I'm not aware of. The first person that I saw go in
8 that area was one of the officers with the dog.

9 Q Okay. So the tracking team actually came out there
10 with blood hounds?

11 A Yes.

12 Q How long was that after the suspect scaled the fence?

13 A Probably took them about 15 or 20 minutes.

14 Darlington County also came and assisted us also.

15 Q Okay. Did the -- do you know what the result of that
16 tracking was or did dogs?

17 A I know that we didn't find them that night.

18 Q Okay. Either one of them?

19 A No.

20 Q Okay. And you took the shotgun out of the vehicle,
21 did you take any other items out other than the purse?

22 A There was a cell phone that was, I believe, his name
23 was Mr. Cross. He had described it to me. We got in
24 contact with them through dispatch to see what type of
25 items that they had taken from them, so that I could get

1 them out of the vehicle. And when I responded with the
2 Investigator Powell back to the hotel to speak with them,
3 I gave him his property back and gave him a property
4 receipt. And I also took the purse out of there to give
5 to Miss Davis.

6 Q Okay.

7 A And she identified that as her purse and Mr. Cross'
8 phone.

9 Q Okay. Those are the only things that you took out of
10 the car?

11 A That and the shotgun.

12 Q And the shotgun?

13 A Yes, sir.

14 Q Okay. And I assume you left all the other items in
15 there for the investigator?

16 A Well, the vehicle was being towed to our impound, so
17 that was for the investigators and crime scene whatever
18 they do with that.

19 Q Correct. Okay. You said the black male suspect
20 apparently had you said long hair; is that right?

21 A Yes, sir.

22 Q Okay. How long was it? Was it down to his neck,
23 past his shoulders?

24 A It was up, it was bunched together. All I could see
25 was an outline of the person and I saw that it was

1 together while I was driving my vehicle behind them.

2 Q Okay. Were either of those individuals wearing
3 baseball caps or whatever rags that you saw?

4 A Neither one of them, no, sir.

5 Q Neither one of them. They appeared to bareheaded?

6 A Yes, sir.

7 Q Do you know if any of those items were found inside
8 the vehicle?

9 A I'm not aware of that.

10 Q Baseball caps anything like that?

11 A I don't remember.

12 Q Don't remember.

13 MR. FLOYD: Thank you very much, Sergeant
14 McLaurin.

15 THE COURT: Mr. McEachin.

16 MR. MCEACHIN: No redirect, Your Honor. I ask
17 that he be released from his subpoena.

18 THE COURT: Any objection, Mr. Floyd?

19 MR. FLOYD: No objection, Your Honor.

20 THE COURT: Sir, you may step down. You are
21 relieved of your responsibilities under subpoena. You may
22 go.

23 (WHEREUPON, the witness leaves the witness
24 stand.)

25 THE COURT: All right, ladies and gentlemen, we

1 been going a little over an hour now. There's some
2 matters that we need to take up outside of your presence
3 at this time. I told you these things may happen from
4 time to time and it is approximately 3:30. And what I'm
5 going to do I'm not sure exactly how long this is going to
6 take. So what I'm going to do is excuse you for the
7 balance of today, for the balance of today. I'm going to
8 excuse you for the balance of today. I'm going to ask
9 that you be back in your jury room at 9:30 in the morning.
10 Be back in your jury room at 9:30 in the morning. And we
11 will begin as promptly as possible. I will remind you
12 once again, ladies and gentlemen, not to discuss this
13 case, not to do any independent investigation of your own.
14 Not to discuss the case at all.

15 Anything further from the State or the defense
16 before I excuse the jury for the balance of the day?

17 MR. MCEACHIN: Not at this time, Your Honor.

18 THE COURT: Mr. Floyd.

19 MR. FLOYD: No, Your Honor.

20 THE COURT: Ms. Olivia.

21 She's getting your phones and stuff.

22 If you will help them get out of here.

23 And I will see you all back here in the morning
24 at 9:30. Thank you.

25 (WHEREUPON, the jury was excused for the day.)

1 THE COURT: Anything further from the State or
2 the defense before we break?

3 MR. MCEACHIN: No, sir, Judge.

4 THE COURT: We will stand at ease until 9:30 in
5 the morning. If there's any matters that need to be taken
6 up before that, I will be in my office probably around
7 8:30. Otherwise, we will start promptly at 9:30.

8 (WHEREUPON, the proceedings were concluded for
9 the day to be reconvened on February 1, 2011.)

10 THE COURT: State ready to proceed, Mr.
11 McEachin?

12 MR. MCEACHIN: Yes, sir.

13 THE COURT: Mr. Floyd, defense ready to proceed?

14 MR. FLOYD: Yes, Your Honor.

15 THE COURT: All right. Anything before we bring
16 the jury in? Bring them in.

17 (WHEREUPON, the jury came into open court.)

18 THE COURT: All right. Before we go any
19 further, Mr. Buntly Desai, I'm going to ask that you and
20 this young man seated right here on the end switch places.
21 If you'll just slid over, sir.

22 Mr. Desai, I've appointed you as a foreman of
23 this jury and I will further instruct you on what your
24 responsibilities are as we draw close to the end of this
25 trial. But everybody else on the jury panel can sit

1 anywhere you want to when you come out the jury room, but
2 that is your assign seat from here forward.

3 JUROR: Okay.

4 THE COURT: The State ready to proceed?

5 MR. MCEACHIN: The State is ready, Your Honor.

6 THE COURT: Defense ready to proceed?

7 MR. FLOYD: Yes, Your Honor.

8 THE COURT: Call your next witness please.

9 MR. MCEACHIN: Your Honor, they've gone to
10 get -- the State's next witness will be Jessica Ussery.
11 And we've gone to get her right now.

12 THE COURT: I trust you all had a good evening
13 last night, got a good night sleep. I didn't have anybody
14 on the jury work all night last night, did I? I meant to
15 tell you that last night if you -- I realize that some
16 people work third shift and was hoping that nobody leave
17 here last night and go to work at 11 o'clock this morning
18 and get off at seven and come back this morning. That
19 third shift is not an easy shift to be on. I did it one
20 summer at Tupperware Manufacturing in Hemingway. And I
21 lost about 15 pounds that summer because when I got off
22 every morning, so I was keyed up from being up all night,
23 I couldn't go to sleep. So I got to bike and I go run and
24 then I be able to come back and sleep for about five
25 hours. But that was absolutely a miserable summer, but I

1 have the upmost respect for those people that do that
2 because there are some people who do it for 30 plus years.
3 And I just -- that summer was evident to me that we were
4 not made to stay up all hours of the night.

5 Swear her please.

6 THE CLERK: If you would place your left hand on
7 the Bible and raise your right hand. Do you swear the
8 testimony you give in this case will be the truth, the
9 whole truth, and nothing but the truth so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Please be seated and state your name
12 for the record.

13 MR. MCEACHIN: Your Honor, may we approach for a
14 minute.

15 THE COURT: Yes.

16 (WHEREUPON, a bench conference was held in the
17 presence of the jury, but out of the hearing of the
18 jury.)

19 WHEREUPON,

20 Jessica Ussery,

21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MCEACHIN:

24 Q Good morning, Ms. Ussery.

25 A Good morning.

1 Q You doing all right this morning?

2 A Uh-huh.

3 Q Okay. If you could please one more time state your
4 name for the record and spell your last name for the court
5 reporter.

6 A Jessica Ussery. U-S-S-E-R-Y.

7 Q Ms. Ussery, where do you live?

8 A I live in Coward.

9 Q Here in Florence County?

10 A Uh-huh.

11 Q How long have you lived in Florence County?

12 A I live in Florence County my whole life.

13 Q All right. And, Ms. Ussery, do you know the reason
14 we are here today?

15 A Yes, sir.

16 Q And why is that?

17 A Due to the incident that happened in July '09.

18 Q And because of that incident, you have of some
19 pending charges in this case as well, don't you?

20 A Yes, sir.

21 Q Okay. Back in July of 2009, were you dating anybody?

22 A I was. Johnny Barfield.

23 Q That's who you were dating Johnny Barfield.

24 A Yes, sir.

25 Q And how long had you and Mr. Barfield been together?

1 A We had started dating in April, but we met that
2 previous November.

3 Q So about four months y'all been together?

4 A Yes, sir.

5 Q Okay. And that was four months as of July of 2009?

6 A Right.

7 Q Beg the Courts indulgence. I want to focus your
8 attention, Ms. Ussery, on the events that occurred on
9 July 21st 2009. Do you remember that day?

10 A Yes, sir.

11 Q And do you remember it fairly clearly?

12 A Yes, sir.

13 Q What were you doing that afternoon?

14 A I was at home and that evening my boyfriend at the
15 time said that he had to go do something and we went and
16 dropped a friend of his off. And then we went to go pick
17 up another friend of his and he robbed the hotel room that
18 night.

19 Q Okay. I want to slow you down a little bit because
20 we got to make sure the jury understands what happened on
21 that day. You say your boyfriend called you?

22 A Uh-huh.

23 Q And how did you end up meeting up with your
24 boyfriend?

25 A We were at the house.

1 Q Y'all were at the house together?

2 A Right.

3 Q Okay. And you say you left the house to drop one of
4 his friends off?

5 A We rode together.

6 Q And who drove?

7 A I drove.

8 Q And whose car did you take?

9 A My car.

10 Q What kind of car did you drive back in July of 2008?

11 A It was '01 Saturn.

12 Q Burgundy Saturn.

13 MR. MCEACHIN: May I approach the witness, Your
14 Honor.

15 THE COURT: Yes, sir.

16 BY MR. MCEACHIN:

17 Q Ms. Ussery, I'm going to show you what's been
18 admitted as State's Exhibit Number 2. Do you recognize
19 that?

20 A Yes, sir.

21 Q And what is that?

22 A It is my car, my old car.

23 Q And this was the car you were driving in July of
24 2009?

25 A Yes, sir.

1 Q And this was the car you were driving on July 21st
2 2009?

3 A Yes, sir.

4 Q All right. And you say you and your boyfriend left
5 together. You were driving and he was riding with you?

6 A Right.

7 Q And where did y'all go?

8 A We went and his friend had my car. And when he came
9 back, we had to take him home first, his friend Cee. And
10 we took him home and then we drove down on Darlington
11 Highway. There's a gas station there, there's a trailer
12 park in front of it and we picked up one of his friends.

13 Q Okay. When you say Cee, you had let Cee borrow your
14 car that day?

15 A He had let Cee borrow my car.

16 Q When you say he, you referring to John Barfield?

17 A Yes, sir.

18 Q Okay. So y'all went and dropped Cee off at his
19 house?

20 A Yes, sir.

21 Q And after you dropped him off, it was just you and
22 John?

23 A Yes, sir.

24 Q And you say you went to a gas station?

25 A There's a gas station, there's a trailer park right

1 in front of it. On the trailer park side, his friend was
2 waiting for us to pick him up.

3 Q Okay. And where was that gas station located, do you
4 remember?

5 A It's in Darlington right there at the red light.

6 Q The first red light going into Darlington?

7 A The big red light, yes, sir.

8 Q If you go left, it takes you towards the race track
9 and you go straight it takes you into downtown?

10 A Yes, sir.

11 Q So right there in that area?

12 A Uh-huh.

13 Q Okay. And you say you picked up a fellow, where was
14 he standing?

15 A He was on the outside of the trailer park, like right
16 around the outside edges of the house is where he was.

17 Q And when you picked that individual up, did he have
18 anything with him?

19 A He had something, it was dark and I didn't know if he
20 had a backpack or something whatever it was. But it turn
21 out to be a weapon that he put in the trunk of the car.

22 Q Okay. And do you remember what that weapon look
23 like?

24 A It was an old shotgun, long barrel old shotgun.

25 Q Ms. Ussery, I'm going to show you what's admitted as

1 State's Exhibit Number 5 into evidence. Do you recognize
2 this?

3 A Yes.

4 Q And what is this?

5 A This is the weapon that he had.

6 Q This is the gun? This the gun that the fellow that
7 y'all picked up had with him?

8 A Uh-huh.

9 Q Just take your time. Jessica, who were y'all picking
10 up on the side of the road?

11 A His friend Rom.

12 Q You knew him as Rom?

13 A Uh-huh.

14 Q Did you also know him as another name?

15 A Jamal Bryant. That's what he told me his name was.

16 Q Who told you his name was Jamal Bryant?

17 A Johnny told me that his name was Jamal Bryant.

18 Q And the individual that you knew as Rom or Jamal
19 Bryant do you see him sitting in the courtroom here today?

20 A Yes, sir.

21 Q And where is he seated?

22 A Over there.

23 Q What's he wearing?

24 A A white button up shirt with a red shirt under it.

25 MR. MCEACHIN: Please have the record reflect

1 that the witness has identified the defendant in the case.

2 THE COURT: So noted.

3 BY MR. MCEACHIN:

4 Q Now, y'all picked him up on the side of the road
5 there. And what did he do with the shotgun?

6 A He put it in the trunk. I didn't know that it was a
7 shotgun at the time. But -- cause it was dark, but he put
8 whatever he had with him in the trunk and then later on I
9 found out it was a shotgun.

10 Q Okay. And once you picked him up, where did y'all
11 go?

12 A We drove down to the -- went toward the hotel, the
13 Days Inn hotel going out of Darlington, right there past
14 the Pilot gas station. And we drove around the parking
15 lot for a few minutes and then we went to a truck stop
16 parking lot.

17 Q Okay. And you say the Days Inn going out of
18 Darlington you mean back towards Florence?

19 A Yes, sir.

20 Q Okay. And you went to a truck stop parking lot?

21 A Uh-huh.

22 Q Where was that truck stop parking lot in relation to
23 the Days Inn?

24 A It was like maybe a block or so down. It was right
25 there by it.

1 Q And when did you find out y'all were going to the
2 Days Inn?

3 A That evening -- well, before we left, Johnny said
4 that he had to go to the Days Inn. One of his guys was up
5 there that owed him some money and that he needed to go
6 pick it up.

7 Q Okay. That's why you thought y'all were going up to
8 the Days Inn?

9 A Yes, sir.

10 Q All right. So once y'all drove around the parking
11 lot, was there any sort of conversation that went on in
12 the vehicle at the time?

13 A Not at the time that we were in the parking lot.
14 Johnny just told me to drive around and he was looking.
15 And then he said leave the parking lot and go over there
16 and over there was the truck stop parking lot.

17 Q Okay. And how long do you think y'all were in the
18 truck stop parking lot?

19 A Not long maybe five or ten minutes at the most.

20 Q And when you left the truck stop parking lot, where
21 did you end up going?

22 A Going back to the hotel.

23 Q And when you pulled into the parking lot of the hotel
24 if you're facing the hotel, did y'all go on the right side
25 or the left side?

1 A The left side.

2 Q All right. And once y'all pulled into the hotel
3 parking lot, what did you do?

4 A He told me to park the car. And by the time -- and
5 the truck stop parking lot, he'd already gotten the gun.
6 And I asked him what was going on, why did you have the
7 gun and he told me it be in my best interest just to shut
8 my mouth and listen to him and do what he told me to do.

9 Q Okay. And that was John that told you that?

10 A Yes, sir.

11 Q All right. So once you parked the car at the Days
12 Inn, what was the next thing that happened?

13 A And he told me to get out the car and we all got out
14 the car. And Johnny had the gun and he told me to go up
15 the stairs and we went upstairs. It was on the second
16 floor room. I think it was room 22. And he told me to
17 knock on the door, so I knocked on the door.

18 Q All right.

19 MR. MCEACHIN: Your Honor, may I have the
20 witness step down?

21 THE COURT: Yes, sir.

22 BY MR. MCEACHIN:

23 Q Ms. Ussery, I'm going to have you step down right
24 down here for me. This is State's Exhibit Number 1. How
25 about step right over here so all the jurors can see. All

1 right. This is a schematic as you can tell of the hotel
2 room. Can you show the jury what you did with regard to
3 the room? This the front of the room, this is the back of
4 the room.

5 A All I did was knock on the front door. I never went
6 in the room.

7 Q Okay. And you can have a seat right there.

8 THE COURT: Mr. McEachin, did you identify the
9 exhibit that she was dealing with there.

10 MR. MCEACHIN: Yes, Your Honor, and again for
11 the record, it was State's Exhibit Number 1.

12 THE COURT: Thank you.

13 BY MR. MCEACHIN:

14 Q Now, once you knocked on that door, where were John
15 and the defendant?

16 A They were beside me by the wall and then there's the
17 door right there, so they couldn't be seen.

18 Q All right. And can you tell me what happened once
19 you knocked on the door?

20 A A female open the door and Johnny pushed me out the
21 way and he had the gun. And he push his way through the
22 door and Rom followed him.

23 Q And the defendant followed him into the room?

24 A Yes, sir.

25 Q Once they went into the room, what did you do?

1 A I went walking -- ran down the stairs. And I dropped
2 my keys, so I had to go back up the stairs and grab them.
3 And then I got in the car. And by the time that somebody
4 had already ran out of the room, so Rom had already come
5 back to the car. And he was right behind me whenever I
6 went to get in the car and he told me to wait for Johnny,
7 wait for Johnny. So I did as I was told, I waited for
8 Johnny because I didn't know if he had a weapon on him
9 either, which he didn't. Johnny is the one that still had
10 the shotgun.

11 Q Okay. And did you wait on Mr. Barfield?

12 A Yes, sir.

13 Q And once he got back down to the car, what happened
14 next?

15 A He told me to go. And I pulled out and I took a
16 right out of the driveway of the hotel and he wanted me to
17 turn into back into the truck stop parking lot, so I did.
18 And they were going through stuff and throwing stuff
19 around in the car. And we heard the police sirens and he
20 was telling me to go down the road that leads to Palmers
21 -- the release camp and I didn't. I went down 52 or exit
22 52 right there Darlington Highway.

23 Q The main road?

24 A The main road and that's when we got pulled over.

25 Q When Barfield and the defendant came out of the room,

1 were they carrying anything with them?

2 A They had bags, pocketbooks, clothes.

3 Q I'm going to show you what's been marked as State's
4 Exhibit 3 and admitted into evidence. Do you recognize
5 that?

6 A Yes, sir.

7 Q And what is State's Exhibit 3?

8 A Pocketbooks, clothes, wallet.

9 Q And where is that stuff located?

10 A In the backseat of my car.

11 Q Does any of that stuff belong to you?

12 A No, sir.

13 Q And you say you were riding down the road, down 52
14 back towards Darlington?

15 A Yes, sir.

16 Q And there were blue lights behind you?

17 A There was blue lights and then I saw them cut off.

18 And then, I guess, they cut them off. And then they came
19 right behind me and they cut them back on right there past
20 Darlington Tech. And there's a guard rail there and then
21 I turn into the Merita Bread parking lot.

22 Q Okay. Once you turned into the Merita Bread parking
23 lot, what happened?

24 A Johnny and Jamal jumped out of the car and ran, told
25 me not to say anything. He said don't tell them any

1 information. He said, We'll come back and we'll find you
2 if you tell on us. That's what Johnny told me?

3 Q And who was in the front seat with you? Was there
4 anybody in the front seat?

5 A It was Johnny in the front seat.

6 Q And the defendant was in the backseat?

7 A Yes, sir.

8 Q Okay. Once they got out of the car, did you see
9 where they went?

10 A I saw them jump over a fence and that was it. I
11 don't know where they went from there.

12 Q You don't know where they went from there?

13 A Uh-huh.

14 Q What happened to you?

15 A I got arrested.

16 Q You were arrested. And was that right there at your
17 car that you were arrested?

18 A Yes, sir.

19 Q Okay. And once you were arrested, what ended up --
20 where did you go from there?

21 A I went to Effingham.

22 Q Did you speak to anyone that night?

23 A I did.

24 Q Who did you speak to?

25 A I don't recall his name, but it was an investigator

1 that came that evening during the arrest.

2 Q Do you remember giving the investigator a statement
3 that particular evening?

4 A Yes, sir.

5 Q And what did you tell the investigator that night?

6 A I didn't tell them the whole truth. I told them that
7 the guys came up to me in the parking lot with a gun and
8 made me -- and got the car. And I told them that the man
9 was John Anderson. And that I didn't know who they were.

10 Q And was that the truth?

11 A That wasn't the truth.

12 Q Why didn't you tell the investigator the truth that
13 night?

14 A Because Johnny told me not to and I know what they do
15 to people that tell the truth on them. And I've seen what
16 they done and I was scared.

17 Q And after speaking to the investigator that night, at
18 some point did you decide that you needed to speak to him
19 again?

20 A Yes, sir.

21 Q Did you speak to him again?

22 A Uh-huh.

23 Q And when you spoke to him again, did you give them
24 another statement?

25 A Yes, sir.

1 Q Okay. In that particular statement, what did you
2 tell him?

3 A I told him the truth as I said today.

4 Q You told him pretty much what you told the jury here
5 today?

6 A Yes, sir.

7 Q Okay. And why did you decide to do that on that
8 particular day?

9 A Because I know it wasn't going to benefit to lie
10 because I'm not going to jail for something I didn't do.
11 And he couldn't touch me or harm me because I was in jail.

12 Q Now, Ms. Ussery, please tell the jury who went into
13 that hotel room that night with John Barfield?

14 A Jamal Bryant.

15 Q And you know Jamal Bryant is the defendant that's
16 seated here?

17 A Yes, sir.

18 Q Also you known as Rom. Do you know him by any other
19 name?

20 A I thought his name was Tyrone.

21 Q Did you know that at the time?

22 A I did not.

23 Q And did the defendant look any different on July of
24 2009 than he looks here today?

25 A Yes, sir.

1 Q How did he look different?

2 A He had dread, cornrows in his hair and it was longer
3 then.

4 Q And his hair was longer?

5 A Yes, sir.

6 Q To the best of your recollection, is that what
7 happened on the night of July 21st and 22nd of 2009?

8 A Yes, sir.

9 MR. MCEACHIN: Thank you. Please answer any
10 questions Mr. Floyd may have for you.

11 THE COURT: Mr. Floyd, cross-examination.

12 MR. FLOYD: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. FLOYD:

15 Q Okay. Ms. Ussery, how are you this morning?

16 A Good. Thank you.

17 Q I want to take you back to that night. You said you
18 gave a statement to the investigator that night. I guess,
19 that would have been July the 22nd; is that correct?

20 A Yes.

21 Q And you told him that initially that two people had
22 come up to you with guns basically and made you do what
23 you did; is that right?

24 A Yes, sir.

25 Q Okay. You told him that on the scene where you were

1 pulled over?

2 A Yes, sir.

3 Q Is that correct. Okay. All right. Now, when you
4 went down to the detention center that night, did you give
5 a statement after you got there?

6 A No, sir.

7 Q No. Okay. All right. And so the next time you gave
8 a statement was when in September?

9 A No, sir, it was a couple days after I was in the
10 detention center.

11 Q It was a couple days after you gave the initial
12 statement?

13 A Yes, sir, I think it was maybe the 29th I think is
14 when I spoke with him.

15 Q Okay. And where was that?

16 A I was in Effingham.

17 Q Where were you in the interview room?

18 A Yes, sir.

19 Q Okay. All right. And so that was actually in July?

20 A I believe it was in July.

21 Q Okay. You think it was around the 29th?

22 A I know it was a few days shortly after I was in
23 there.

24 Q Okay. All right. After you gave that statement, the
25 second one did you give any others?

1 A We did a tape recorded statement, but I don't
2 remember if it was during the same time that I spoke with
3 him because I spoke to him on several several occasions.
4 But the tape recorded statement and written statement I
5 gave him after I was incarcerated were one in the same.

6 Q Okay. So you gave him a tape recorded statement and
7 a written statement?

8 A Well, I had to sign off on it and wrote down a
9 statement, yes, sir. But I'm not sure if it was with the
10 same investigator, but it was all in the same statement
11 that I was incarcerated.

12 Q Okay. When did you do that?

13 A It was a few days after I was in jail.

14 Q You gave a taped statement a few days after you were
15 in jail?

16 A I did the written statement a few days after I was in
17 jail. I'm not sure of the exact time frame.

18 Q Okay. How about a tape recorded statement? When did
19 you give that?

20 A After I was in there for a while.

21 Q Okay. Would it have been a couple of months later
22 maybe?

23 A I'm not sure of the time frame because you lose time
24 when you are in there.

25 Q All right. How long were you in there?

1 A Five months.

2 Q Five months. But you're positive you gave a
3 statement that was taped?

4 A Yes, sir.

5 Q Okay. You also gave one that was written?

6 A Right.

7 Q Did you write it out in your hand?

8 A I wrote one of them out, yes, I did.

9 Q How many were written?

10 A I know at least I wrote one out and Mr. Allen Powell
11 was writing the other ones that I sign saying that this is
12 my statement. This is the information that I gave and
13 wrote my name and date on there.

14 Q Okay. So you wrote one and he wrote one or at least
15 one and you signed both of them?

16 A Right.

17 Q Okay. And you had one of those interviews only was
18 on tape?

19 A Yes, sir.

20 Q Is that correct?

21 A Uh-huh.

22 Q All right. The night that you were arrested, what
23 were you -- after you were arrested, what were you
24 eventually charged with?

25 A My original charges?

1 Q Yes, ma'am.

2 A Two counts of arm robbery with a deadly weapon,
3 failure stop for a blue light, and falsification of
4 information to the police.

5 Q So you had two counts of arm robbery; is that
6 correct?

7 A Arm robbery with a deadly weapon.

8 Q Yes, ma'am. And then what else?

9 A Failure to stop for a blue light.

10 Q And there was one other?

11 A Falsification of information to the police.

12 Q Now, are those charges still pending?

13 A I'm charge with before the fact and after the fact
14 and the other two charges failure to stop for a blue light
15 and falsification of information are still pending.

16 Q Okay. And how about the arm robbery charges?

17 A Those were dropped to the accessories.

18 Q So who agreed to drop those charges?

19 A I wasn't made aware when they were dropped, but they
20 were dropped after Johnny and Rom were caught.

21 Q All right. Now, you gave police a name at the
22 initial traffic stop. You said it was Jamal Bryant; is
23 that correct?

24 A Yes, sir.

25 Q Okay. All right. And also John Anderson; is that

1 correct?

2 A Yes, sir.

3 Q And you were asked to pick Mr. Bryant up; is that
4 correct?

5 A Yes, sir.

6 Q Did you know him?

7 A I seen him on occasions before.

8 Q But you didn't really know him?

9 A No, sir.

10 Q All right. You saw him what just briefly at parties
11 and stuff like that?

12 A Yes, sir, that's one of Johnny's acquaintances.

13 Q How many times would you say you seen him two or
14 three times?

15 A Maybe two or three, a few times. It wasn't a lot, so
16 I didn't really know him.

17 Q So you never had any real conversations with this
18 person?

19 A No, sir.

20 Q Now, after you were arrested and booked into
21 Effingham, did you have communications with Mr. Barfield?

22 A Yes, sir.

23 Q You did, okay.

24 A I didn't communicate with him. He wrote me letters
25 while I was in there. And they were immediately given to

1 my lawyer.

2 Q Okay. So the communications you had were in the form
3 of letters that you got from him; is that correct?

4 A Yes, sir.

5 Q Okay.

6 A And there was one phone call when I first got there
7 and it was brief. It wasn't even a whole entire
8 conversation. I called his mom cell phone and he
9 answered. And I told him where I was at and that was it
10 and the phone hung up.

11 Q I think you told the police at one point that
12 Mr. Barfield was with you in the car headed towards the
13 hotel that night, that he was sending text messages?

14 A Yes, sir.

15 Q Is that correct?

16 A Yes, sir.

17 Q Okay. Do you know anyone name Rose or Debbie?

18 A Yes, sir, it was acquaintances of ours. Well, I knew
19 them through Johnny. They were friends of his.

20 Q Friends of Johnny's?

21 A Yes, sir.

22 Q Okay. Did you know them well?

23 A I've seen them a few times. We weren't what you
24 would call friends.

25 Q Okay. Were you reading his text?

1 A I was not allowed to have my own phone. Johnny had
2 control over the phones.

3 MR. FLOYD: Your Honor, I need to take up a
4 matter with the Court if I could?

5 THE COURT: Y'all want to approach for a second.

6 (WHEREUPON, a bench conference was held in the
7 presence of the jury, but out of the hearing of the
8 jury.)

9 THE COURT: Ladies and gentlemen, I'm going to
10 have to ask you to step to the jury room for a minute.
11 There's a matter that we got to take up outside of your
12 presence. Let me remind you again do not discuss the case
13 until you are instructed to do so. Please step to the
14 jury room.

15 (WHEREUPON, the jury retire to the jury room.)

16 (WHEREUPON, a break was taken.)

17 THE COURT: Ma'am, I'm going to let you to step
18 down for a minute, I remind you that you are not to
19 discuss your testimony with anybody, but you can step down
20 for just a minute while we deal with this, okay.

21 (WHEREUPON, the witness leaves the witness
22 stand.)

23 THE COURT: Do you all need a few minutes?

24 MR. MCEACHIN: Judge, I ask we be allowed --

25 MR. FLOYD: Your Honor, if I can have just a

1 couple minutes.

2 THE COURT: Well, let's do this too, I'm going
3 to give you a few minutes, Mr. Floyd, to look at that.
4 You take whatever time you need to look at it. I got to
5 step out and make a phone call. You all had indicated
6 that there was an issue that we needed to take up with
7 regards to one of your other witnesses, I guess, Mr.
8 Barfield; is that correct?

9 MR. MCEACHIN: Yes, sir.

10 THE COURT: What I want to do is let's deal with
11 this. Let's put him on the stand and deal with that
12 issue. So when we bring this jury back out, we don't have
13 to finish her testimony and be sending them right back out
14 again, okay.

15 MR. MCEACHIN: Yes, sir, Judge.

16 (WHEREUPON, a break was taken.)

17 THE COURT: All right. Mr. Floyd, you ready to
18 proceed?

19 MR. FLOYD: I am, Your Honor. Thank you.

20 THE COURT: You need any additional time to
21 review that statement?

22 MR. FLOYD: No, Your Honor.

23 THE COURT: Any motions pursuant to that
24 statement just being given to you?

25 MR. FLOYD: That's fine, Your Honor.

1 THE COURT: You had adequate time to review it?

2 MR. FLOYD: Yes, Your Honor. The statement is
3 very brief. They consist of basically of seven pages. I
4 had ample opportunity to read it. Thank you.

5 THE COURT: Okay. Anything else we need to do
6 other than this defendant? Not the defendant on trial,
7 the co-defendant that's going to testify. Y'all want to
8 go ahead and proceed with that and let's deal with that
9 first?

10 MR. MCEACHIN: That's fine, Judge.

11 THE COURT: Sir, if you'll come over here, put
12 your left hand on the Bible and raise your right hand.
13 You swear to tell the truth, the whole truth, and nothing
14 but the truth so help you God?

15 THE WITNESS: Yes, I do.

16 THE COURT: Have a seat right here.

17 MR. MCEACHIN: Judge, I got a copy of this for
18 you as well.

19 WHEREUPON,

20 John Barfield,
21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MCEACHIN:

24 Q Good morning, Mr. Barfield.

25 A Good morning.

1 Q Mr. Barfield, the purpose of this hearing is simply
2 to determine what your prior record was as far as
3 admissibility in this trial, okay. That's all I'm going
4 to ask you about. In June of 2006, did you have a
5 shoplifting charge?

6 A Yeah.

7 Q In the State of Kentucky in the year of 2006, did you
8 have two separate charges one for fleeing or evading
9 police first degree and also one unlawful transaction with
10 a minor second degree?

11 A Yeah.

12 Q And, Mr. Barfield, I apologize I'm not real familiar
13 with Kentucky records. Other than those two charges, did
14 you have any other charges in the State of Kentucky that
15 you pled to?

16 A Yeah.

17 Q All right. I need to step back a minute. Did you
18 have more than one count of fleeing or evading police?

19 A No.

20 Q So anywhere that that's in your record, did you have
21 a probation violation with regard to that?

22 A Yes.

23 Q In addition with the unlawful transaction of a minor?

24 A Yes.

25 Q Okay. And you had some traffic offenses that went

1 long with it?

2 A Yes.

3 Q Is that your record from the State of Kentucky?

4 A Yes.

5 Q Okay. And then in the State of North Carolina you
6 had a charge of possession of a firearm by a felon; is
7 that correct?

8 A Yes.

9 Q Okay. And was that the only thing you had from the
10 State of North Carolina?

11 A Yes.

12 MR. MCEACHIN: Your Honor, that's all I have for
13 me, if Mr. Floyd would like to ask him any other
14 questions.

15 MR. FLOYD: Your Honor, I don't have anything
16 further.

17 THE COURT: All right. Mr. Barfield, at this
18 time you can step down.

19 Mr. McEachin.

20 MR. MCEACHIN: Your Honor, as far as the State
21 can tell, I believe the defense would certainly be able or
22 allowed to get into the fleeing or evading police,
23 unlawful transaction with a minor second degree out of the
24 State of Kentucky, both of those happen in the past ten
25 years and both of them did carry more than one year as far

1 as the sentence is concern. And in addition, the State of
2 North Carolina, he had the possession of a firearm by a
3 felon charge in 2009. And that state that charge does in
4 fact carry more than a year and I believe the defense be
5 allowed to question the witness for impeachment purpose in
6 regard to that crime as well.

7 THE COURT: Any others in your review of that
8 record that you believe you able to go into, Mr. Floyd?

9 MR. FLOYD: No, Your Honor. I've reviewed the
10 record and the others appear to be misdemeanor traffic
11 offenses and things of that nature.

12 THE COURT: And I believe that makes it easier
13 enough that y'all agree on it. You will be allowed to go
14 into possession of a firearm conviction if you see fit,
15 fleeing or evading police as well as the unlawful
16 transaction with a minor, if the defense so desires.

17 Anything further before we bring the jury back
18 in, Mr. McEachin?

19 MR. MCEACHIN: Your Honor, can we go ahead and
20 have the witness back on the stand.

21 THE COURT: Yes. Anything other than that, Mr.
22 McEachin?

23 MR. MCEACHIN: No, sir, Your Honor.

24 THE COURT: Mr. Floyd, anything further?

25 MR. FLOYD: Nothing further, Your Honor.

1 THE COURT: Ma'am, if you'll come back around.

2 (WHEREUPON, a bench conference was held in the
3 presence of the jury, but out of the hearing of the
4 jury.)

5 THE COURT: All right. We getting ready to
6 bring the jury back in. I just want to remind everybody
7 in the courtroom during the course of this trial that you
8 are expected to act appropriately. If you do not, this
9 Court has authority and will exercise its full authority
10 without hesitation in holding you in contempt and placing
11 you in Florence County detention center for a period of
12 time that I believe is appropriate, if you do not act
13 according. Anybody in this courtroom right now not
14 understand that? All right.

15 Anything further before we bring the jury in,
16 Mr. McEachin?

17 MR. MCEACHIN: No, sir, Your Honor.

18 THE COURT: Mr. Floyd.

19 MR. FLOYD: Nothing further, Your Honor.

20 THE COURT: Ms. Olivia.

21 (WHEREUPON, the jury came into open court.)

22 THE COURT: Mr. Floyd, you may continue.

23 MR. FLOYD: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 WHEREUPON,

1 Jessica Ussery,
2 after first having been duly sworn, testified as follows:

3 CROSS-EXAMINATION CONTINUED

4 BY MR. FLOYD:

5 Q When you gave your recorded statement to the
6 investigator, you reference Mr. Barfield's friend, Cee,
7 being in the car with you; is that correct?

8 A Yes, sir.

9 Q Okay. All right. Now, Cee was his drug dealer?

10 A One of his drug dealer guys.

11 Q Okay. That was Mr. Barfield drug dealer?

12 A Yes, sir.

13 Q So you knew him as Cee; right?

14 A I've seen him on occasions in my car to do his
15 running for him.

16 Q Okay. Now, what time were you together with him that
17 day? You said you were with him that day. What time were
18 y'all ---

19 A Whenever he got back with my car, Johnny was there
20 with us. And then we went from my car or from the house
21 in my car to his house.

22 Q All right. What time was that?

23 A It was in the evening like probably around maybe ten,
24 11:30 or ten or 11 somewhere around in there.

25 Q Ten or 11 that night?

1 A Yes, sir.

2 Q Now, earlier when you testified you were scared of
3 them because you know what they do. You made that
4 statement?

5 A Right.

6 Q You weren't referring to my client, you didn't hardly
7 know him, did you?

8 A Well, I referred to him as in I know what Johnny does
9 and that's an acquaintance of his, so he's associated in
10 that favor.

11 Q You were scared of this drug dealer I suppose?

12 A Yes.

13 Q The Cee guy; right? You scared of him. I want to go
14 back to your charges that you got pending accessory before
15 or after that fact of both; is that correct? Accessory
16 before or after?

17 A Right.

18 Q You been sentence on any of that yet?

19 A I haven't gone to trial for my charges yet.

20 Q You haven't pled yet?

21 A No, sir.

22 Q Okay. You know what your exposure is on those
23 charges?

24 A What is what?

25 Q What you could get?

1 A No, sir.

2 Q What kind of time you could get?

3 MR. MCEACHIN: Your Honor, I object to any
4 amount of time that she may be able to catch on those
5 charges.

6 THE COURT: Sustain.

7 BY MR. FLOYD:

8 Q Okay. You were charged with armed robbery; is that
9 correct?

10 A Yes, sir.

11 Q All right. Now, are you aware of what kind of time
12 you were looking at on arm robbery?

13 A No, sir, not of the full extent, no, sir. It carries
14 a long sentence.

15 THE COURT: I need you to speak up please,
16 ma'am.

17 A I just know it carries a long sentence.

18 Q Okay. So nobody's ever told you what arm robbery
19 carries?

20 A I'm not aware of or how long the year term is.

21 Q Okay. Were you told if you testified today that you
22 would receive those charges that you got now?

23 A Receive.

24 Q That you would be able to plead to those charges that
25 you were talking about accessory before and after the

1 fact?

2 A I'm not aware of any plea bargain.

3 Q You are not aware of any plea bargain?

4 A I just know I have charges. There was no deal or
5 anything for me testifying. I just come to testify.

6 Q Okay.

7 MR. FLOYD: Thank you very much. I appreciate
8 it.

9 THE COURT: Mr. McEachin, any redirect?

10 MR. MCEACHIN: No, sir, Your Honor. I ask that
11 Ms. Ussery be relieved from her subpoena.

12 THE COURT: Any objection, Mr. Floyd?

13 MR. FLOYD: No objection, Your Honor.

14 THE COURT: Ma'am, you may step down. You are
15 excuse with any further responsibility under the subpoena.

16 (WHEREUPON, the witness leaves the witness
17 stand.)

18 MR. MCEACHIN: Your Honor, the State would call
19 John Barfield to the stand.

20 THE COURT: All right.

21 THE CLERK: Do you swear to tell the truth, the
22 whole truth, and nothing but the truth so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please be seated and state your name
25 for the record.

1 THE WITNESS: John Barfield.

2 THE COURT: Thank you, sir. If you'll please
3 listen answer any questions that Mr. McEachin poses.

4 WHEREUPON,

5 John Barfield,

6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MCEACHIN:

9 Q Okay. Good morning, Mr. Barfield.

10 A Good morning.

11 Q Mr. Barfield, if you don't mind, would you please
12 tell the jury where you are currently residing?

13 A Evans Correctional Facility, South Carolina
14 Department of Corrections.

15 Q And why are you residing in the Evans Correctional
16 facility in South Carolina Department of Corrections?

17 A For robbery.

18 Q And when did that robbery occur?

19 A July 21st 2009, I believe it was.

20 Q Now, in addition to serving time for that arm
21 robbery, you do have some things on your prior record; is
22 that correct?

23 A Yes, sir.

24 Q All right. I'm just going to go through those with
25 you briefly so the jury knows, all right. You had some

1 charges out of the State of Kentucky; correct?

2 A Yes.

3 Q You received a sentence for feeing or evading police
4 first degree back in 2006 and also a charge of unlawful
5 transaction with a minor second degree in 2006; is that
6 correct?

7 A Yes.

8 Q And out of the State of North Carolina you had a
9 possession of firearm by a felon charge; is that correct?

10 A Yes.

11 Q Okay. Mr. Barfield, you were telling us that the
12 reason you are in the jump suit here today is because
13 you're serving time for a robbery that occurred back on
14 July 21st 2009.

15 A Yeah.

16 Q Referring back to July of 2009, did you have a
17 girlfriend at that time?

18 A Yes.

19 Q And what was her name?

20 A Jessica Ussery.

21 Q And at that time as of July of 2009, how long have
22 you and Ms. Ussery been dating?

23 A About three months.

24 Q About three months. In addition to Ms. Ussery, do
25 you know the defendant in this case?

1 A Yes.

2 Q And what do you know him as or what name do you know
3 him by?

4 A Rom.

5 Q As Rom. Prior to July 21st 2009, how long had you
6 known Rom?

7 A About four -- two, three months.

8 Q Two or three months?

9 A It ain't been that long.

10 Q How did y'all first become acquainted with one
11 another?

12 A Mutual friend's house.

13 Q Okay. And once y'all became acquainted with one
14 another over that two or three month period prior to
15 July 21st 2009, how often would you hang out with the
16 defendant?

17 A Once or twice a week.

18 Q Once or twice week?

19 A At the other friend's house.

20 Q Now, Mr. Barfield, you know why we are here today?

21 A Yes.

22 Q And can you please tell the jury what you were doing
23 on the afternoon of July 21st of 2009? Make sure you
24 speak up so everybody on the jury can hear you, okay.

25 A The afternoon?

1 Q Yes, sir.

2 A Drinking, smoking crack.

3 Q Okay. And where were you on that afternoon?

4 A I was at my house.

5 Q Who was at the house with you?

6 A Jessica Ussery.

7 Q Okay. Was there anybody else there with you?

8 A My stepfather and my little brother.

9 Q When at some point in the afternoon, did somebody
10 else come to the house?

11 A No.

12 Q Where was Jessica's car at this time?

13 A A friend of mine had it.

14 Q Okay. And at some point, did he come over to the
15 house?

16 A Yeah, he did.

17 Q Is his nickname Cee?

18 A Yeah.

19 Q When Cee came to the house, you remember about what
20 time of day that it was?

21 A It was late about ten.

22 Q Okay. About ten that night?

23 A Yeah.

24 Q Once Cee got over to the house, what did you do?

25 A We went to Rom's.

1 Q And what was the purpose for going over to Rom's?

2 A Talk about this robbery.

3 Q Okay.

4 A And get a gun.

5 Q And get a gun you say?

6 THE COURT: Sir, could you slid up and speak
7 into that mic. I want to make sure everybody on the jury
8 hears you, okay.

9 BY MR. MCEACHIN:

10 Q Okay. At some point, did you leave Rom's?

11 A Yes, we took and dropped Cee off and went back.

12 Q You went back to Rom's?

13 A Yes.

14 Q And what type of neighborhood does Rom live in?

15 A Nice, couple trailers.

16 Q Kind of a trailer park neighborhood?

17 A Yeah.

18 Q Is there a gas station out at the front of it?

19 A Yeah.

20 Q About what time do you think you got back to Rom's?

21 A 11.

22 Q And when you got back there, who was with you?

23 A Jessica.

24 Q And it was just you and Jessica going back to Rom's?

25 A Yeah.

1 Q Now, when you got back to Rom's, what happened when
2 you got there?

3 A We talked about who we was gonna -- the gun trying to
4 find some shells. It wasn't no shells.

5 Q How did the whole idea of a robbery come up?

6 A Well, a friend of mine wanted me to get some weed
7 from one of her buddies over there by my area, smoking
8 dope and run out of money.

9 Q Okay. And where did you find out that information
10 was?

11 A At the Days Inn.

12 Q Now, once you got back to Rom's, you said y'all talk
13 for a little while. And how long do you think you were at
14 his house that second time?

15 A About five minutes.

16 Q Okay. And what did y'all do when y'all got through
17 talking, what did y'all end up doing?

18 A We got in the car and went to Days Inn.

19 Q Okay. And did Rom bring anything with him?

20 A Yeah, we put the gun in the car.

21 Q All right. And who brought the gun?

22 A Rom.

23 Q Rom brought the gun?

24 A Yeah.

25 Q Okay. Mr. Barfield, I'm going to show you what's

1 been entered into evidence as State's Exhibit Number 5.

2 You recognize that?

3 A Yeah.

4 Q What is that?

5 A That's the gun.

6 Q Okay. And I would ask you to speak up just a little
7 bit louder for everyone on the jury can hear you. This is
8 the gun that Rom brought?

9 A Yes.

10 Q Do you know where he got it from?

11 A No.

12 Q Once all three of y'all got into the car, where did
13 y'all go?

14 A We went to Days Inn.

15 Q And whose car were y'all in by the way?

16 A Jessica's.

17 Q What kind of car did she have?

18 A Saturn.

19 Q What color was it?

20 A Burgundy.

21 Q And y'all went to the Days Inn. Where is the Days
22 Inn located?

23 A

24 Q I'm sorry go ahead.

25 A

1 Q Okay. And once y'all got to the Days Inn, what did
2 y'all do?

3 A We hit the parking lot, talk for a minute. We left
4 again into to T.A., went back, pass the gun from the trunk
5 to me. I put the gun in my pants and got out.

6 Q You say the T.A. let me stop you for a minute. Is
7 T.A. is that a truck stop?

8 A Yes, sir.

9 Q And where is that in relation to the Days Inn?

10 A That's a quarter of a mile from there.

11 Q That's a pretty close distance?

12 A Yes.

13 Q All right. After y'all left, how long were y'all in
14 the parking lot of the T.A.?

15 A Not long at all.

16 Q Okay. And you went back to the Days Inn?

17 A Yeah.

18 Q And when you got back to the Days Inn, what happened?

19 A Rom pass the gun from the trunk, I put it in my
20 pants. I went upstairs. Rom kept walking pass the room.
21 Jessica knocked on door. I was posted beside the door.
22 They couldn't see it if they open the door. Jessica
23 stepped back. She let me know the door was open, I just
24 shove the door in, put the gun on her.

25 Q Okay. I'm going to get you to step down right down

1 here for me, Mr. Barfield. How about stand right here
2 because I want you to show the jury on this diagram kind
3 of what happened, okay. I'm going to give you this meter
4 stick to point with. All right. That's a diagram of room
5 224. The room y'all went to. Can you show the jury what
6 happened when y'all got -- when y'all came up the stairs.

7 A Come in the room, put the gun on the dude, on
8 Brandon. He was in bed. The girl had answered the door.
9 So when he pushed the door open, she got bump back. He
10 jumps up and goes in the bathroom. Rom comes in behind
11 me, grabs the girl. He opens the bathroom door back up,
12 so we step back toward the door thinking shoot at us. He
13 didn't, he throws a trash can back out. When he throws
14 the trash can back out, I push back in. Rom comes in, he
15 grabs the girl. He make the dude come out the bathroom.
16 Dude runs by me, Rom let the girl go, she run by. We
17 grabbed the stuff and just took out.

18 Q You can have a seat back in the witness chair. Thank
19 you. When you and Rom first barged into the room, what,
20 if anything, did you say?

21 A Where is the dope and the money?

22 Q What, if anything, did Rom say?

23 A Where is the dope and the money.

24 Q He says the same thing?

25 A Yeah.

1 Q And I heard you refer when I was just talking to you
2 that the victim's name was Brandon. Did you ever meet
3 Brandon before?

4 A No.

5 Q Ever seen him before?

6 A No.

7 Q Never before?

8 A (Shook head in the negative.)

9 Q And you say y'all were going there to steal dope and
10 money?

11 A Uh-huh.

12 Q What did you do once the two victims ran out of the
13 room, what did y'all do?

14 A Started looking at stuff. Open the dresser drawer,
15 grabbed the bags, run downstairs. Rom ran down the stairs
16 with a couple bags and got in the car. I stayed for a
17 second and grabbed the rest of it and went downstairs, got
18 in the car and we went left.

19 Q Mr. Barfield, I'm going to show you what's State's
20 Exhibit Number do. Do you recognize State's Exhibit
21 Number 3?

22 A No.

23 Q And what is that stuff if I could?

24 A That's the stuff I grabbed.

25 Q That's the stuff that was grabbed and taken out of

1 the room?

2 A Yeah.

3 Q Once y'all got in the car with the stuff, where did
4 you get into the car?

5 A Driver front seat passenger seat.

6 Q Where did Rom get?

7 A Backseat behind me.

8 Q Behind you. So he was in the passenger side
9 backseat?

10 A Yeah.

11 Q And once y'all were in the car, what happened?

12 A We left went to back to the T.A. to the truck stop.
13 She look through the stuff, the drugs and the money was
14 not there.

15 Q And why we're talking about drugs, did y'all ever
16 find any drugs in the room or in the ---

17 A No.

18 Q Did you ever see any?

19 A No.

20 Q How long do you think you were in the parking lot of
21 the T.A.?

22 A About a minute and a half, two minutes at that.

23 Q Minute and a half, two minutes max?

24 A Very short period of time.

25 Q And that was just long enough to go through what we

1 saw ---

2 A Put the gun back in the trunk and get on the road and
3 try and get away from them.

4 Q All right. After a minute and a half or so y'all
5 left?

6 A Yeah.

7 Q And when y'all left where did you go?

8 A We went back to the right out of T.A. back toward
9 Darlington, that's when the cops got behind us.

10 Q And once the law enforcement officers got behind you,
11 where did y'all go?

12 A We -- she kept driving. We at Merita Bread. Me and
13 Rom jumped out and ran. And that's been it.

14 Q And when you say you got out and ran where did you
15 go? When y'all got out of the car, where did you go?

16 A I jump the fence and went to the trailer park down
17 from the trailer.

18 Q Okay. Do you know where Rom went?

19 A No.

20 Q Y'all split up?

21 A Uh-huh.

22 Q After that particular evening, did you speak to Rom
23 again?

24 A No.

25 Q Have you spoken to him again since that night?

1 A No.

2 Q You eventually caught?

3 A Yes.

4 Q Okay. Just a couple more questions for you,
5 Mr. Barfield. On the night of July 21st of 2009, who went
6 into that room with you?

7 A Rom.

8 Q Do you see Rom here in this courtroom here today?

9 A Yes.

10 Q Where is he?

11 A Sitting right there.

12 Q What's he wearing?

13 A A white shirt with a red one under it.

14 MR. MCEACHIN: Your Honor, please let the record
15 reflect that the witness has identified the defendant.

16 THE COURT: So noted for the record.

17 BY MR. MCEACHIN:

18 Q Finally, Mr. Barfield, who gave you State's Exhibit
19 Number 5 that night?

20 A Rom.

21 Q Who brought this with them?

22 A Rom.

23 MR. MCEACHIN: Thank you. Please answer any
24 questions defense counsel may have for you.

25 THE COURT: Cross-examination, Mr. Floyd.

1 MR. FLOYD: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. FLOYD:

4 Q How are you, Mr. Barfield?

5 A Couldn't be better.

6 Q Mr. Barfield, the night this happened, you said you
7 had been with your friend Cee; is that correct?

8 A Yes, sir.

9 Q Okay. You said that earlier that day or during that
10 day you were at home drinking and smoking crack; is that
11 right?

12 A Yes, sir.

13 Q And who else was there?

14 A My girlfriend, Jessica, my little brother and my step
15 dad.

16 Q You talking about Jessica Ussery?

17 A Yes.

18 Q She smoking crack and drinking too?

19 A No.

20 Q Your step dad and your brother was there?

21 A Yeah.

22 Q Now, when you left to go to take your friend home
23 Cee; is that his name?

24 A Yes.

25 Q He came back to your house first?

1 A No. Well, Cee got to my house we left and went to
2 Rom's house.

3 Q And that's what time?

4 A Around nine, ten.

5 Q Okay, p.m.?

6 A Yeah, at night.

7 Q All right. And then you went to his house and then
8 you took Cee home?

9 A Yes.

10 Q Okay. All right. Now, when did you actually get
11 arrested?

12 A The 29th of July.

13 Q 29th of July?

14 A Yes, sir.

15 Q So it was about a week after the robbery took place?

16 A Yes.

17 Q Is that correct? Now, you had the gun in your hand
18 that night when you went in the room; is that correct?

19 A Yes.

20 Q Okay. Tell me what you were charged with?

21 A Two counts of arm robbery, conspiracy, weapon
22 possession and burglary first.

23 Q And burglary first?

24 A Yes.

25 Q Okay. Tell me have those charges been disposed of?

1 A Yes.

2 Q Tell me the result?

3 A Attempted arm robbery, two counts of attempted arm
4 robbery.

5 Q So you pled guilty to two counts of attempted arm
6 robbery?

7 A Yes.

8 Q Is that correct? All right. What kind of sentence
9 did you get?

10 A Seven year sentence.

11 Q All right. Now, all your other charges been
12 dismissed?

13 A Yes.

14 Q So your arm robbery charges were both dismissed?

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q Did you know what you were facing for arm robbery?

19 MR. MCEACHIN: Your Honor, I am going to object,
20 same objection as prior witness as far as any amount of
21 time that the defendants was subjected to.

22 THE COURT: If y'all approach for a minute.

23 (WHEREUPON, a bench conference was held in the
24 presence of the jury, but out of the hearing of the
25 jury.)

1 THE COURT: Objection sustained.

2 Mr. Floyd, you may continue.

3 MR. FLOYD: Thank you, Your Honor.

4 CROSS-EXAMINATION CONTINUED

5 BY MR. FLOYD:

6 Q Mr. Barfield, let me ask you this, were you aware
7 that you could receive substantially more time than you
8 got for ---

9 A Yes.

10 Q --- for attempted arm robbery?

11 A Yes.

12 Q And your burglary first charge are you aware you
13 could receive substantially more time for that as well?

14 A Yes, sir.

15 Q And those were both dismissed; is that correct?

16 A Yes.

17 Q All right. You first approached law enforcement or
18 someone with the Solicitor's office with your information
19 it wasn't April or March of 2010; is that right?

20 A Yes.

21 Q You were arrested in July of '09; is that correct?

22 A Yes.

23 Q You approached them up here; is that right? You were
24 up here in the courtroom or one of the courtrooms up in
25 the City County Complex?

1 A No.

2 Q Where did you meet with them?

3 A Man kept coming to get me out of my cell kept coming,
4 kept coming, kept coming. They took a DNA test while we
5 was here, they swab my mouth and that's -- so I figured if
6 I cooperated, they would knock my sentence down instead of
7 sending me up for that long time.

8 Q Okay. And so you were up here and they came swab to
9 you; is that correct take a swab of your cheek?

10 A Yes.

11 Q You know if they did that?

12 A Yes, they did it.

13 Q They did it. So when you started having contact with
14 them, that was in March of 2010; is that right?

15 A Yes.

16 Q All right. So you gave them a name of someone who
17 was with you; is that right?

18 A I never knew his name, I just told them where they
19 might find him.

20 Q Okay. Well, you gave them some sort of name; didn't
21 you? A nickname?

22 A Yeah, a nickname.

23 Q Okay. Now, how well did you say you knew
24 Mr. Rutledge?

25 A We knew each other for two or three months prior to

1 all this.

2 Q And how many times have you met him two or three
3 times or what?

4 A I was going over to a mutual friend's house once or
5 twice a week and he be over there.

6 Q Who was usually there when you went there?

7 A Rom.

8 Q Anybody else?

9 A Mutual friends, father and whoever else was around?

10 Q All right. Now, you were sending some text that
11 night when were you in the car?

12 A Yeah.

13 Q Who were you sending those text to?

14 A To a friend of mine.

15 Q Who was that?

16 A Name is Rose..

17 Q And what was the subject matter and what were y'all
18 texting about?

19 A She was wanting me to pick up some weed from her
20 dude, but I decided to rob him, so you know what I mean.
21 She wanted -- she told me about him, about the weed, about
22 money, got drugs. That's the whole point.

23 Q Okay. She was texting you information about where he
24 was?

25 A Yeah.

1 Q What room number he was in?

2 A Yes.

3 Q And all that sort of stuff?

4 A Yeah.

5 Q Did she tell you he had money up there?

6 A No.

7 Q Told you he had drugs up there.

8 A He had some weed. She wanted me to call him, but I
9 didn't want to call him.

10 Q These charges that you told me that you had had a
11 fleeing or evading police; is that right?

12 A Yes.

13 Q How long did you live in Kentucky?

14 A Thirty-six months.

15 Q Okay. I mean, did you live there because you live
16 there or did you live there because you were in a jail?

17 A I live there because I was in jail.

18 MR. MCEACHIN: Your Honor, at this time I'm
19 going to object irrelevance.

20 THE COURT: I am going to allow it. You can
21 answer the question.

22 BY MR. FLOYD:

23 Q Okay. So you never lived in Kentucky?

24 A I stayed from time to time, but it wasn't no living,
25 I was justing visiting.

1 Q Okay. Then you had an unlawful transaction with a
2 minor charge; is that correct?

3 A Yes.

4 Q The State of North Carolina?

5 A Yes.

6 Q You had a possession of a firearm by a felon; is that
7 correct?

8 A Yes.

9 Q Was that it?

10 A Yeah.

11 Q Okay. Did he ever give a recorded statement or
12 anything like that?

13 A No.

14 Q You just gave a verbal statement with no recording
15 done; is that correct?

16 A There was no recording.

17 Q Were you -- after you talk to I assume it was an
18 investigator with the sheriff's department and first gave
19 them information in March, I think it was in March; is
20 that correct?

21 A Yes.

22 Q Did they bring you a picture of someone?

23 A Yes.

24 Q Okay. And you point that individual out?

25 A Yes.

1 Q You told them who it was?

2 A Yes.

3 Q But as far as providing a name or anything like that,
4 you didn't give them a name?

5 A No.

6 Q Because you didn't know a name?

7 A Uh-uh.

8 Q All right.

9 MR. FLOYD: Thank you, Mr. Barfield, I
10 appreciate it.

11 THE COURT: Any redirect examination?

12 MR. MCEACHIN: Just one question, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. MCEACHIN:

15 Q Mr. Barfield, Mr. Floyd just asked you about seeing
16 -- being brought a picture seeing that picture that was
17 the individual?

18 A Yes.

19 Q That's the same individual that's seated in the
20 courtroom here today?

21 A Yes.

22 MR. MCEACHIN: Thank you, no further questions,
23 Your Honor.

24 THE COURT: Mr. Floyd.

25 MR. FLOYD: Nothing further, Your Honor.

1 THE COURT: Mr. Barfield, sir, you may step
2 down.

3 (WHEREUPON, the witness leaves the witness
4 stand.)

5 THE COURT: Mr. McEachin.

6 MR. MCEACHIN: Your Honor, the State will call
7 Investigator Alvin Powell to the stand.

8 THE CLERK: Place your left hand on the Bible
9 and raise your right hand. Do you swear the testimony you
10 give in this case will be the truth, the whole truth, and
11 nothing but the truth so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please be seated and state your name
14 for the record.

15 THE WITNESS: My name is Alvin Powell.

16 WHEREUPON,

17 Alvin Powell,

18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MCEACHIN:

21 Q Good morning, Investigator Powell.

22 A Good morning.

23 Q How you doing this morning?

24 A All right.

25 Q Good. If you don't mind, would you relay to the jury

1 what your occupation is?

2 A I'm employed as a criminal investigator for the
3 Florence County sheriff's office.

4 Q And how long have you been employed with the Florence
5 County sheriff's office total?

6 A Since September of 1999.

7 Q That's almost 12 years. And how long have you been
8 an investigator with the sheriff's office?

9 A Since January of 2007, approximately three years.

10 Q Now, were you working back in July of 2009 as an
11 investigator with the sheriff's office?

12 A Yes, sir.

13 Q And if you don't mind just -- if you very briefly
14 relay to the jury what an investigator with the sheriff's
15 office does?

16 A An investigator with the sheriff's office responds
17 out to calls where the patrol deputies need an
18 investigator to do a follow up and they also respond to
19 calls. Investigator calls after the fact, investigate
20 incidents after the fact.

21 Q Do you recall or do you remember receiving a call in
22 July 21st of 2009?

23 A Yes, sir, I was on call. I was on call for a
24 seven-day period.

25 Q When you say you're on call, explain that to the

1 jury?

2 A That's where we're on call for seven days. And if --
3 we're on call from three o'clock in the afternoon until
4 7:00 o'clock the next morning. And if patrol gets an
5 incident where they need an investigator, they call us and
6 we respond to the scene.

7 Q So you're not necessarily -- when you're on call,
8 you're not necessarily delegated to a single type of
9 crime, pretty much any type of call that comes in that an
10 investigator's needed, you would respond to that if you
11 were on that day?

12 A That's correct.

13 Q And you say on the 21st a call did come in that
14 evening?

15 A Yes, sir.

16 Q What was that in reference to?

17 A It was in reference to an arm robbery at the Days Inn
18 on in Florence County.

19 Q Once you received that call, what did you do?

20 A When I received the call, I got dressed and responded
21 to the incident location.

22 Q And when you say you responded to the incident
23 location, where exactly did you respond?

24 A I responded initially to the Merita Bread on
25 on the edge of Darlington County.

1 Q And the reason for going to the Merita Bread first
2 was why?

3 A That's where the chase transpired, that's where it
4 come to an end at the edge of Darlington County at Merita
5 Bread.

6 Q What did you do at the Merita Bread company?

7 A I spoke with the responding officer Deputy McLaurin
8 and Lieutenant Hooks. They give me a brief run down of
9 what transpired. I looked through the vehicle and then
10 after that, I respond to the Days Inn to meet with the
11 victim.

12 Q Okay. Did anyone -- any of the other officers go to
13 the Days Inn with you?

14 A Sargent McLaurin or Deputy McLaurin at the time.

15 Q And what's the basis for him going or why would he
16 have gone to the Days Inn?

17 A He was there to speak with the victims and take
18 statements from the victims. And we recovered some of
19 their property in the vehicle and it was returned to them.

20 Q Okay. In addition to speaking to the victims that
21 night at the Days Inn, did you speak to anybody else
22 involved with this?

23 A That night?

24 Q Yes.

25 A I spoke with the victims at the scene. Other than

1 the victims, I spoke with Ms. Ussery.

2 Q And that's Jessica Ussery?

3 A Yes.

4 Q And did Ms. Ussery give you a verbal statement that
5 night?

6 A She did.

7 Q After speaking with Ms. Ussery on that particular
8 evening, did you have occasion to speak to her again?

9 A I did speak with her again in the interview room at
10 the sheriff's office after she requested to speak with me.

11 Q And she was the one who requested to speak to you?

12 A I spoke with her initially the night of the incident
13 or the next morning and she gave me a statement. And
14 after that, I spoke with her again, but she requested to
15 speak with me again after the initial interview.

16 Q And did she say the basis for that second meeting
17 was?

18 A She had said she had some important information. She
19 needed to relay to me in reference to the case and it was
20 very urgent.

21 Q And was that statement recorded in any form or
22 fashion?

23 A I recorded the statement. Yes, it's recorded.

24 Q And that was the one when she requested to speak to
25 you?

1 A Yes, sir.

2 Q Now, after speaking with Ms. Ussery that particular
3 day, what did you do next?

4 A I got warrants on her for the arm robbery and the
5 burglary. And they were served on her and that was pretty
6 much it with her.

7 Q Okay. Now, with regard to Ms. Ussery, you say you
8 got warrants for what?

9 A For arm robbery.

10 Q After speaking with her and after getting the
11 warrants on her, what was your next step or what was the
12 next thing you did in this investigation?

13 A Well, she relayed to me information that the suspect
14 was a John Lawrence in our initial conversation. She told
15 me John Lawrence and she told me John Anderson. I didn't
16 believe that to be true because she had a picture on her
17 phone that was John Barfield, which was her boyfriend.
18 She admitted that in her later interview to be her
19 boyfriend and that's when she admitted that it was John
20 Barfield instead of John Lawrence or John Anderson. And
21 at that time, I done a line up interview and got in
22 contact with Miss Davis, the victim, and showed her the
23 line up.

24 Q That was Miss Ciera Davis?

25 A Ciera Davis correct.

1 Q And you say you did a lineup and that was with regard
2 to John Barfield?

3 A John Barfield, yes, sir.

4 Q Okay. And did you go meet with Miss Davis at that
5 time?

6 A I did meet with her place of employment.

7 Q And did you show her the line up?

8 A I showed her the line up and she did pick out
9 Mr. Barfield as the suspect.

10 Q Okay. Is that the only line up that you did?

11 A That's correct.

12 Q Did you do one with the defendant, Tyrone Whatley?

13 A I did not.

14 Q And why was that?

15 A Because I was unsure -- we were unsure of who he was
16 at the time.

17 Q Y'all didn't know who the other suspect was?

18 A No, sir.

19 Q After meeting with Miss Davis at that particular
20 time, what was the next significant thing that occurred
21 with regard to this investigation?

22 A I obtained the warrants on Mr. Barfield and then he
23 was apprehended on the 28th of July.

24 Q Okay. And after apprehending Mr. Barfield, at any
25 point did you get any information from him with regard to

1 this case?

2 A No, sir.

3 Q Okay. Moving on further down the road.

4 A When we arrested Barfield, he made the comments that
5 he didn't want to talk to me and he wasn't gone tell him
6 anything. So I did not interview him at that time.

7 Q Okay. At some point were you able to sit down and
8 talk to him and interview him?

9 A Yes.

10 Q And after that interview process, what were you able
11 to do or what did you do after you interviewed
12 Mr. Barfield?

13 A After I spoke with Mr. Barfield, he gave me the name
14 of Rom, which was the co-defendant in the case Mr.
15 Whatley. And he gave me a location of where he was living
16 at at the time of the incident, which was a trailer park
17 at the edge Darlington County, gave me some vehicle
18 descriptions that would have been in the yard because one
19 of them was inoperable. I went to Darlington County at
20 that point and obtained the address to the residence and
21 then I run it through a data base we have at the sheriff's
22 office called A.C.U.R.A. (sic) and I obtained the
23 ownership information of the residence. And then I run
24 it -- it had Mr. Whatley listed as one of the occupants at
25 the residence at Mr. Davis' address, that's how I obtain

1 his information. Gathered a photo of him and that's when
2 I showed it to Mr. Barfield.

3 Q Okay. And that was the photo you showed Mr.
4 Barfield?

5 A Yes.

6 Q Okay. After showing the photo to Mr. Barfield and
7 meeting with Mr. Barfield, what did you do at that point?

8 A After I met with Mr. Barfield and he confirmed that
9 the photo I showed him was Rom, Tyrone Whatley, I obtained
10 warrants on Mr. Whatley for the arm robbery.

11 Q Okay. And once you obtained warrants, what's the
12 next step in the process after you obtained the warrants?

13 A To apprehend the suspect.

14 Q Were you involved in the apprehension of the
15 defendant in this case?

16 A It was.

17 Q And where did that take place?

18 A That occurred at his new girlfriend's residence in
19 the edge of Darlington County also at an apartment
20 complex?

21 Q Once the arrest was made of the defendant, at that
22 point what is your role as the investigator in the case?

23 A My role is to gather all facts in the case and put
24 them together in a case file and present them to the
25 Solicitor's office for trial.

1 Q And once you made the arrest of Mr. Whatley in this
2 case, did that end your part of the case?

3 A After I got my case file to the Solicitor's office,
4 that ended my actual work on the case.

5 Q And other than what you testified to here today, have
6 you done anything else with regard to this case?

7 A No, sir.

8 MR. MCEACHIN: Thank you. Please answer any
9 questions Mr. Floyd may have.

10 THE COURT: Cross-examination, Mr. Floyd.

11 MR. FLOYD: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. FLOYD:

14 Q Good morning, Investigator Powell.

15 A Good morning.

16 Q How are you?

17 A Good.

18 Q I want to ask you about the night that you were
19 called out to the Merita Bread place. Is that the first
20 place you went -- you didn't go to the hotel first?

21 A No, I went to the incident location where the vehicle
22 was first to the Merita Bread.

23 Q Merita Bread. Okay. And that's where Ms. Ussery
24 was?

25 A Correct.

1 Q In the car?

2 A Yes, sir.

3 Q Now, obviously, I guess, you question her there?

4 A I spoke with her at the incident location, yes sir.

5 Q In the parking lot ---

6 A Uh-huh.

7 Q --- or wherever she was? And, of course, you weren't

8 involved in the chase ---

9 A No, sir.

10 Q --- of the two suspects getting out of the car; is

11 that right?

12 A No, sir.

13 Q When you got there, did y'all call crime scene people

14 there?

15 A No, sir.

16 Q To that location?

17 A No, sir.

18 Q Do you know if crime scene people ever went there?

19 A No, sir.

20 Q Okay. The deputy -- did you have a report of the

21 individuals scale the fence, barb wire fence?

22 A Initially, when I spoke with Deputy McLaurin, that's

23 the information he relayed to me, yes, sir.

24 Q Did you not have someone check those fences for

25 blood?

1 A They called the sheriff's office tracking team out to
2 the incident location and they attempted to track the
3 suspects.

4 Q With dogs?

5 A Yes, sir.

6 Q Okay. But my question is did they check the fences
7 for blood?

8 A I didn't physically check the fence.

9 Q Okay. Well, do you know if anybody did?

10 A I can't testify to what they did, sir.

11 Q Okay. Well, you were the lead investigator; is that
12 correct?

13 A I am.

14 Q So you don't know whether or not the crime scene
15 checked the fences or not for blood?

16 A No.

17 Q Okay. All right. Now, you had the car with the
18 items in the car; is that correct?

19 A Yes, sir.

20 Q Okay. Did -- other than the items that might have
21 been removed by Sergeant McLaurin, were the other items
22 secured in that car or left in that car until they were
23 towed?

24 A There were some items left, some clothing items and
25 stuff left in the vehicle that was in there when it was

1 towed to the impound, yes, sir.

2 Q Okay. All right. Was anything else removed out of
3 the car?

4 A Yes, sir, there was another bag that was -- that
5 belong to the victims here Ciera Davis and I did return it
6 to her, yes, sir.

7 Q So you took that bag out?

8 A Yes, sir.

9 Q Okay. All right. As far as anything that was put in
10 an evidence bag, did you take out like an bottle?

11 A I took out a beer bottle, yes, sir.

12 Q Was it a beer bottle or a malt liquor bottle?

13 A It was 40-ounce King Cobra bottle.

14 Q So it wasn't like a 12-ounce beer bottle?

15 A No, sir.

16 Q It was a tall one kind of like a quart bottle or
17 something like that?

18 A 40-ounce bottle.

19 Q Okay. That was a glass bottle?

20 A Yes, sir.

21 Q Where did you get that?

22 A Out of the front seat floorboard, the front passenger
23 floorboard.

24 Q Did you dust that bottle for prints or anything?

25 A Forensics did dust it for prints and took some DNA

1 samples from it.

2 Q Okay. Did you actually take DNA samples from any of
3 the defendants in this case and try and match them?

4 A We did take samples from -- DNA samples from the
5 co-defendant John Barfield.

6 Q Okay. Did you ever take any from Mr. Tyrone Whatley?

7 A No, sir. At the time, I wasn't sure who the
8 co-defendant was when we took the samples from John
9 Barfield?

10 Q I understand. When you would have taken those in
11 March of 2010?

12 A Hold on just a second.

13 Q Yes, sir.

14 A Those were taken on in March, yes, sir.

15 Q Okay. And when I say those, I mean the swabs.

16 A The DNA swabs from Mr. Barfield, yes, sir.

17 Q The swabs that would have been taken from the bottle
18 would have been taken earlier than that.

19 A Right. When they arrived at the impound.

20 Q Okay. All right. And Mr. Whatley was actually
21 arrested shortly after March the 10th of 2010; right?

22 A Yes, sir, it should have been shortly after.

23 Q All right. Were there swabs taken off that gun for
24 genetic material?

25 A Yes, sir.

1 Q And that's the gun in evidence; correct?

2 A That's correct.

3 Q Okay. The first time you talk to Ms. Ussery, of
4 course, was in the parking lot of Merita Bread and then
5 she was taken to Effingham. You interviewed her again
6 when next time?

7 A The very next morning when I arrived at work, yes,
8 sir.

9 Q Okay. Is that when you recorded her or was that
10 recording done later?

11 A That recording was done later.

12 Q Okay. All right. So when you spoke to her the
13 following morning, she told you...

14 A She relayed the same information to me that she did
15 at the scene.

16 Q Okay. Same story?

17 A Yes.

18 Q The two men that come up to her with a gun?

19 A Yes, sir.

20 Q Made her drive?

21 A Yes, sir.

22 Q All right. When did she actually tell the story that
23 she basically told in the courtroom today?

24 A She sent me a request to speak with her on August the
25 28th of 2010 and I -- that's when I reinterviewed her.

1 Q Okay. And that was actually done in September, the
2 actual taking?

3 A It was done on August the 28th. My statement was
4 done with her on July the 28th when she requested to speak
5 with me.

6 Q So it was July?

7 A Right.

8 Q All right. Now, I think earlier you testified that
9 you showed a photo to one of the victims, Miss Davis?

10 A Yeah.

11 Q And she picked out John Barfield's photo?

12 A That's correct.

13 Q Did you ever show her a photo of Mr. Tyrone Whatley?

14 A I did not.

15 Q Did you ever show Mr. Cross a photo?

16 A No, sir.

17 Q All right. Did you ever show Ms. Ussery a photo of
18 him before today?

19 A No, sir.

20 Q Or at any time?

21 A No, sir.

22 Q So as far as you know the first time Ms. Ussery's
23 looked and identified him was today in this courtroom?

24 A I have no knowledge of that.

25 Q It wasn't done in your presence?

1 A She hadn't seen him in my presence, no, sir.

2 Q You are the lead investigator in the case?

3 A I am.

4 Q I did you have a cell phone that you got at one point
5 had it in evidence?

6 A I have two cell phones in evidence that belong to Ms.
7 Ussery.

8 Q You still have those?

9 A Those are in evidence, yes, sir.

10 Q And there were text that Mr. Barfield apparently had
11 sent on his phones?

12 A Yes.

13 Q Or receive?

14 A Right.

15 Q He testified earlier about Rose?

16 A Right.

17 Q Did you follow up to see if she had any involvement
18 in this planning?

19 A Ms. Ussery did not -- couldn't tell me who Rose was.
20 And I did not identify Rose.

21 Q How about Mr. Barfield could he identify her?

22 A No. Not to me he didn't.

23 Q Did you ask him about her?

24 A I did ask him about her, but he wouldn't elaborate as
25 to who they were.

1 Q Did you -- were you with the people who actually
2 arrested Mr. Whatley when he was arrested?

3 A Yes, sir.

4 Q And you would have been one of the people to take him
5 to Effingham and book him in?

6 A Yes, sir.

7 MR. FLOYD: Okay. All right. Thank you very
8 much.

9 THE COURT: Mr. McEachin, any redirect
10 examination?

11 MR. MCEACHIN: No, sir, Your Honor. We ask that
12 Investigator Powell be relieved from his subpoena as well.

13 THE COURT: All right. Officer Powell, I'm
14 going to allow you to step down and you're relieved with
15 regards to any further responsibilities under that
16 subpoena. Thank you.

17 (WHEREUPON, the witness leaves the witness
18 stand.)

19 THE COURT: Can the attorneys approach for just
20 a minute please.

21 (WHEREUPON, a bench conference was held in the
22 presence of the jury, but out of the hearing of the
23 jury.)

24 THE COURT: All right. Ladies and gentlemen of
25 the jury, I'm gone allow you to step to your jury room for

1 a minute. There's some matters we need to take up outside
2 of your presence. I remind you not to talk about the case
3 at all until you instructed to do so. I'll get you back
4 out here as quickly as I can. Please step to your jury
5 room.

6 (WHEREUPON, the jury retire to the jury room.)

7 THE COURT: We'll stand at ease for a couple of
8 minutes. I want to see the lawyers please in my office.

9 (WHEREUPON, a break was taken.)

10 THE COURT: All right. What I'm going to do I
11 had previously Mr. Floyd had objected -- well, let me back
12 up a little bit. When the defendant -- co-defendant
13 Barfield was on the stand Mr. Floyd asked him about
14 potential sentence that he was facing and charges that he
15 was charged with. Mr. McEachin on behalf of the State
16 objected to him going into specific amounts of time and
17 the Court sustain that objection and allowed Mr. Floyd to
18 ask him about a substantial amount of time he was facing
19 which Mr. Floyd did. Upon further reflection and upon a
20 little research, I believe that Mr. Floyd could go into
21 the amount of time that this young man is facing under
22 State vs. Gilliam 360 S.C. 433. I believe he could go
23 into that. I think it could possibly go to the bias or
24 prejudice of this witness and therefore, what I'm going to
25 do is I'm going to have Mr. Barfield brought back in here

1 and allow Mr. Floyd to ask him that question. And if he
2 knows the answer, he can answer it. If he doesn't know,
3 he doesn't know. But I'm going to allow him to at least
4 ask him the question and he can answer it if he knows the
5 answer.

6 Mr. McEachin, I know you want to put something
7 on the record on that?

8 MR. MCEACHIN: I do, Your Honor. Respectfully,
9 the State would object to allowing the witness, John
10 Barfield, back on the stand to testify very limited scope
11 of the sentence he could have received in this case. I
12 have briefly been able to look at Gilliam. I haven't read
13 it in great detail. In that case, it dealt with a single
14 co-defendant and the Court reviewed the admission or
15 omission of allowing the testifying witness to stay a way
16 from any sort of time frame sentence. In that case, they
17 did find in fact that there was harmful error. However, I
18 believe in this case it's a little bit different in fact
19 that we have two testifying co-defendants. And a lot of
20 times when you look at harmless error of standard of
21 review the more corroboration, the more evidence you have
22 against a particular defendant, I believe that it's less
23 likely to be found harmful and found harmless error. In
24 this case, of course, we had two separate individuals you
25 who were able to identify the defendant in the case. The

1 defense was allowed to ask the question isn't it true that
2 you could be facing substantially more time on charges
3 that you originally had as oppose to the charges that you
4 now have. And based on that, Your Honor, I believe that
5 it would be highly prejudicial to bring the defendant back
6 or co-defendant back to ask that limited question and
7 leave that as the last thing in the jurors mind prior to
8 the State resting its case. We would respectfully object.
9 I understand, Your Honor, what the case of State vs.
10 Gilliam says, but the State would respectfully object,
11 Your Honor.

12 THE COURT: Well, I can -- I certainly
13 understand your concern Mr. McEachin and I think it could
14 be curred any potential prejudice to the State in this
15 matter could be curred by the fact that I didn't hear
16 anything from the testimony previously that that reduction
17 in time had nothing to do in consideration with y'all
18 negotiations with him and what ultimately happened with
19 him.

20 MR. MCEACHIN: And, Your Honor, just so that the
21 State understands correctly, he is being brought back for
22 the very limited question of simply asking him if he knew
23 how much time he could have received on the other charges.
24 The defense is not going to be allowed to go into anything
25 further that than?

1 THE COURT: That's correct. He's had his
2 opportunity -- Mr. Floyd, you want to be heard on that
3 before I say anything else?

4 MR. FLOYD: Your Honor, I do want to make sure
5 -- I mean, obviously, this is considered cross-examination
6 when I'm doing this.

7 THE COURT: Yes, sir.

8 MR. FLOYD: So, I mean, obviously if I ask him
9 the question and I ask him the question you were facing 10
10 to 30 on arm robbery.

11 THE COURT: If he knows, he knows. If he
12 doesn't -- I mean, like I said ---

13 MR. FLOYD: Your Honor, and I specifically
14 intend to ask him if he knew he was facing 10 to 30 on the
15 arm robbery and 15 to life on the burglary. And I'm going
16 to ask it that way or that's what I intend to ask and I'm
17 not going to ask an open-ended question.

18 THE COURT: Right, it's cross-examination.

19 MR. MCEACHIN: And I understand that, Your
20 Honor, but I just want to make sure it's limited to only
21 -- I mean, not going into anything about anything other
22 than amount of time.

23 THE COURT: And I'm going to instruct the jury
24 when they come back in here that the Court makes decisions
25 on what's admissible -- what evidence is admissible and

1 not. This question was asked of this witness before.
2 Your objection was sustained. In other words, I did not
3 allow him to go into that and he should have been able to.

4 MR. MCEACHIN: Thank you, Your Honor. I just
5 wanted to put that objection on the record.

6 THE COURT: I mean, I understand the concern
7 that the State has about prejudice to the State. However,
8 I want to make sure that this young man that is on trial
9 here today has every fair opportunity in here. He is
10 facing a substantial amount of time himself and I want him
11 to have a fair opportunity during the course of this
12 trial. All right.

13 MR. MCEACHIN: Yes, sir, thank you, Judge.

14 THE COURT: Before I bring the jury back in, I'm
15 going to...

16 Mr. McEachin, do you intend to ask this witness
17 anything?

18 MR. MCEACHIN: No, sir, Your Honor.

19 THE COURT: All right. I'm going to bring the
20 jury back in and I'm going to ask that you call him to the
21 stand. And I'm going to let Mr. Floyd cross-examine him
22 on that, okay.

23 MR. MCEACHIN: Yes, sir, Judge.

24 THE COURT: And I'll give you an opportunity to
25 redirect if you want to.

1 MR. MCEACHIN: I don't anticipate there's going
2 to be any need if the scope is that limited, Your Honor.

3 THE COURT: Okay. Anything else before we bring
4 the jury back in from the State?

5 MR. MCEACHIN: No, sir, Judge.

6 THE COURT: Mr. Floyd.

7 MR. FLOYD: Nothing further, Your Honor.

8 THE COURT: Bring us the jury please.

9 (WHEREUPON, the jury came into open court.)

10 THE COURT: Mr. McEachin.

11 MR. MCEACHIN: May we approach.

12 THE COURT: Yes, sir.

13 (WHEREUPON, a bench conference was held in the
14 presence of the jury, but out of the hearing of the
15 jury.)

16 THE COURT: Ladies and gentlemen, before we go
17 any further, previously during the course of the trial, a
18 question was asked by Mr. Floyd of the defendant regarding
19 the amount of time he was facing on some charges. The
20 State objected and I sustain that objection. And let me
21 instruct you that as a judge, it is up to me to determine
22 what evidence is admissible and what evidence is not
23 admissible. And in sustaining the State's objection, I
24 did not allow defense counsel to ask that question. Upon
25 further reflection and research, the Court's decided that

1 question is a proper question. And therefore, I'm going
2 to allow Mr. Floyd to ask this young man that question on
3 cross-examination and so we going to proceed accordingly.

4 Mr. McEachin.

5 MR. MCEACHIN: Your Honor, well for that purpose
6 the State would recall John Barfield to the stand.

7 THE COURT: All right. Mr. Barfield, you can
8 come around and take a seat. I will remind you you are
9 still under oath okay, sir.

10 MR. BARFIELD: Yes, sir.

11 THE COURT: Mr. Floyd.

12 MR. FLOYD: Thank you, Your Honor.

13 WHEREUPON,

14 John Barfield,

15 after first having been duly sworn, testified as follows:

16 CROSS-EXAMINATION CONTINUED

17 BY MR. FLOYD:

18 Q Mr. Barfield, earlier when we discussed the fact that
19 you were charged with two counts of arm robbery ---

20 A Yes, sir.

21 Q --- did you understand that you were facing from
22 minimum ten to maximum 30 years on those two counts?

23 A At the time of the robbery, no. After I spoke to my
24 lawyer, yes.

25 Q And you were also charge with one count of burglary

1 first; is that correct?

2 A Yes, sir.

3 Q And did you understand that you were facing a minimum
4 of 15 years to life on that charge?

5 A Yes, sir.

6 MR. FLOYD: Okay. Thank you very much.

7 THE COURT: Any redirect examination,

8 Mr. McEachin?

9 MR. MCEACHIN: No, sir, Your Honor.

10 THE COURT: Sir, you may step down. Thank you.

11 (WHEREUPON, the witness leaves the witness
12 stand.)

13 THE COURT: Mr. McEachin.

14 MR. MCEACHIN: Your Honor, that will be the
15 State's case.

16 THE COURT: Okay. Could y'all approach for just
17 a minute for scheduling purposes.

18 (WHEREUPON, a bench conference was held in the
19 presence of the jury, but out of the hearing of the
20 jury.)

21 THE COURT: All right. Ladies and gentlemen of
22 the jury, you have heard all the evidence in this case
23 from the State. It is now about 12:15 and what I'm going
24 to do there's some matters I have to take up outside of
25 your presence again, okay. I'm gone let you go and what

1 I'm gone do is let you go for the balance of the day. And
2 this is why, it's not one of those situations where we
3 work half days up here and then go home. But one of the
4 employee's within the Solicitor's office here mother
5 passed away within last couple days. And that office --
6 the Court is going to allow them to go to that funeral
7 this afternoon and that's why we're not going to have
8 court this afternoon. So I'm gone excuse you for the
9 balance of today. We do have some matters of law that we
10 need to take up outside your presence, but I'm gone excuse
11 you and ask you to be back in your jury room tomorrow
12 morning at 9:30. And we will start promptly at that time.
13 I remind you once again not to discuss the case, not to
14 discuss the case at all until you are instructed to do so.
15 The jury is free to leave. Everybody else please remain
16 seated.

17 (WHEREUPON, the jury is excused for the day.)

18 THE COURT: All right. Mr. Floyd.

19 MR. FLOYD: Thank you, Your Honor. Your Honor,
20 at this time, the defendant would move for a directed
21 verdict on each of the counts in the indictment two counts
22 of arm robbery, count of burglary first degree. And also
23 a count on criminal conspiracy on the grounds of criminal
24 evidence as taken in the light most favorable to the
25 State. There is no evidence to support the conviction in

1 the case, Your Honor.

2 THE COURT: All right. Anything, Mr. McEachin,
3 in reply?

4 MR. MCEACHIN: Certainly, Your Honor. I think
5 there's ample evidence in the record. I think that
6 certainly testimony from Jay McLaurin and the victims and
7 the co-defendants all point out that there was a white
8 male and a black male that went into the room. One of the
9 individuals was harmed. Certainly under the hand of one
10 hand of all, even if this defendant is not the one who
11 possessed the firearm, I certainly believe the jury could
12 find him guilty based on the evidence that's been
13 presented by the State at this point, Your Honor.

14 THE COURT: All right. In ruling on a criminal
15 defendant's motion for directed trial, the trial court is
16 concern with the existence of evidence not its weight.
17 Under State v. Wiggins 330 S.C. 538, if there's any direct
18 or substantial circumstantial evidence reasonably tending
19 to prove the guilt of the accused or from which guilt
20 maybe fairly and logically deduced, the case should be
21 submitted to the jury under State v. Johnson 334 S.C. 78.
22 Based upon the testimony of the allege two co-defendants
23 in this case, I do believe that that there is substantial
24 circumstantial and direct evidence that would warrant all
25 charges, all charges going to the jury in this case. And

1 under State v. Wharton 263 S.C. 437, substantial
2 proposition that a motion for directed verdict is properly
3 refuse where the determination of guilt is dependant upon
4 the credibility of the witnesses which is a question of
5 weight of the evidence to be determine by the fact finder.
6 And I think that's what we have here. Therefore, I'm gone
7 respectfully deny your motion for a directed verdict as to
8 all charges, Mr. Floyd.

9 MR. FLOYD: Thank you, Your Honor.

10 THE COURT: Now, the other issue that we need to
11 take up is your client's -- whether or not he's going to
12 testify. So therefore, if you'll bring him around right
13 here, place him under oath or he can stand right there.
14 He can stand right there, if he'll just stand. Sir, if
15 you'll raise your right hand. You swear to tell the
16 truth, the whole truth, and nothing but the truth so help
17 you God?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. At this time, I am going
20 to explain to you certain of your rights. If you do not
21 understand anything that I say, please let me know. If
22 you want me to explain anything in more detail, please let
23 me know as well. You understand, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. We have now reached the

1 stage of the trial where you may present your defense.
2 You have the right to claim the protections given to you
3 by the Fifth Amendment to the Constitution of the United
4 States. This amendment states in part that no person, no
5 person shall be compelled in any criminal case to be a
6 witness against himself. This means that you cannot be
7 required to testify in this case. You have the right to
8 testify on your own behalf. However, no one can make you
9 testify. This is a personal right and no one can waive
10 this right except you.

11 If you decide to testify, you will be subject to
12 the same rule that govern other witnesses. And you be
13 examined and cross-examined on any relevant issue in this
14 case. In addition, if you have any convictions involving
15 dishonesty or false statement or for crimes punishable by
16 imprisonment for more than one year. And this court
17 determines that the probative value of admitting this
18 evidence outweighs its prejudicial effect to you. The
19 solicitor will be able to introduce your record to attack
20 your credibility. If you decide to testify, this decision
21 on your part must be freely, voluntarily and intelligently
22 made with the knowledge of the protections given to you by
23 the Fifth Amendment and the consequences of your decision
24 to testify.

25 If you decide not to testify, I will instruct

1 the jurors that they cannot give the fact that you did not
2 testify any consideration whatsoever. And that there is
3 to be absolutely no prejudice to you because you did not
4 testify. It is left entirely up to you whether or not you
5 testify. You may talk with your attorney, your family and
6 your friends, but the ultimate decision, the final
7 decision, sir, is left entirely up to you. Do you
8 understand what I've explain to you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have any questions about what
11 I have explain to you?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you discussed with your lawyer
14 whether you should or should not testify?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you wish to talk to your lawyer
17 any more at this time?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. What I'm going to do it's
20 now approximately 12:25. We are going to break for this
21 afternoon in light of the circumstances that I previously
22 explain to the jury, will give you ample opportunity, sir,
23 to further talk with your lawyer regarding whether or not
24 you wish to testify. But let me remind you that the final
25 decision is up to you, the final decision is up to you.

1 And once we reconvene in the morning, a decision will have
2 to be made at that time as to whether or not you intend to
3 testify. Do you understand, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. We'll stand at ease until
6 9:30 in the morning.

7 (WHEREUPON, the proceedings were concluded for
8 the day to be reconvened on February 2, 2011.)

9 THE COURT: Okay.

10 MR. MCEACHIN: Okay.

11 THE COURT: Okay. All right. It's now
12 approximately 9:47 and we're back on the record on The
13 State vs. Tyrone Joseph Whatley, indictment number
14 2010-GS-21-1008.

15 Madam clerk, would you place Mr. Whatley under
16 oath again please.

17 THE CLERK: Do you swear the testimony you give
18 in this case will be truth, the whole truth, and nothing
19 but the truth so help you God?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. Mr. Whatley, I'm going
22 to ask you a few questions. Yesterday, I went through
23 with you your right to testify and what your rights were
24 under the Fifth Amendment to the Constitution. At the
25 conclusion of me going through those rights with you, you

1 indicated would like to talk -- some additional time to
2 talk with your attorney about your decision. Have you had
3 adequate time -- have you had enough time to discuss with
4 your lawyer whether you should or should not testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you wish to talk to your
7 lawyer any more at this time with regards to your right to
8 testify?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you wish to testify in this case?

11 THE DEFENDANT: No, sir.

12 THE COURT: And that decision is being made by
13 you freely and voluntarily?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have any questions?

16 THE DEFENDANT: No, sir.

17 THE COURT: Okay, Mr. Whatley, you may sit down,
18 sir. Thank you.

19 All right. Anything further from the State
20 before we bring the jury back in?

21 MR. MCEACHIN: No, sir, Your Honor.

22 THE COURT: All right. Mr. Floyd.

23 MR. FLOYD: Nothing, Your Honor.

24 THE COURT: All right. Prior to us coming in
25 here this morning as well, I met with the attorneys

1 Mr. McEachin and Mr. Floyd. We had a charging conference.
2 to go over the proposed charge. I will obviously at the
3 conclusion of my charge give each of you an opportunity
4 to -- if there's any suggestions, additions, objections to
5 make those at the conclusion of my charge. But as of
6 right now, it is my understanding there are no objections
7 based upon what we went through in my chambers prior to
8 coming out here. Is that correct, Mr. McEachin?

9 MR. MCEACHIN: That's correct, Your Honor. The
10 State has reviewed the suggested charges. At this time no
11 objection or addition to add, has also reviewed the
12 verdict form and has no objection to that as well, Your
13 Honor.

14 THE COURT: Does that apply to you as well,
15 Mr. Floyd?

16 MR. FLOYD: That's correct, Your Honor, it does.

17 THE COURT: Due to your client deciding not to
18 testify, Mr. Floyd, when the jury comes back in, if you
19 want to go ahead and rest. And what I will do at that
20 time is instruct the jury that they've heard all the
21 testimony that they're going to hear in this case and we
22 will move into closing arguments at that time. And I want
23 to make it abundantly clear on the record for Mr. Floyd,
24 I'll note his -- renewal of his prior motions allow him to
25 renew those prior motions at the conclusion of my charge,

1 so that we don't have to bring the jury in here and run
2 them right back out and bring them right back in and go
3 into closing arguments. Any objection to that, Mr.
4 McEachin?

5 MR. MCEACHIN: No, sir, Your Honor.

6 THE COURT: Is that okay with you, Mr. Floyd?

7 MR. FLOYD: Yes, Your Honor.

8 THE COURT: Anything further before we bring the
9 jury in, Mr. McEachin, Mr. Floyd?

10 MR. MCEACHIN: No, sir.

11 MR. FLOYD: Nothing further.

12 THE COURT: Ms. Olivia.

13 (WHEREUPON, the jury came into open court.)

14 THE COURT: All right, Mr. Floyd.

15 MR. FLOYD: Your Honor, the defense rest.

16 THE COURT: All right. Ladies and gentlemen of
17 the jury, you have now heard all of the testimony that you
18 gone hear in this case. We are now going to move into
19 what is called closing arguments. Now, going to move into
20 closing arguments. Let me remind you that the attorneys
21 -- what the attorneys say in their closing arguments is
22 not evidence. It is not evidence. So we will begin
23 closing arguments at this time.

24 Mr. McEachin, you're recognize.

25 MR. MCEACHIN: Thank you, Your Honor. May it

1 please the Court, Mr. Floyd. Mr. Foreman, ladies and
2 gentlemen of the jury, a man's castle is his home. There
3 is no place that a man should feel safer than in the
4 confines of his own home.

5 In July of 2009, Ciera Davis and Brandon Cross
6 called at the Days Inn their home. They were in
7 a transition period. They were moving from one residence
8 to another residence. And during that transition period,
9 they were living at the Days Inn. On the night of
10 July 21st and into the morning of July 22nd of 2009, that
11 cloak of safety that they had from being in their home was
12 stripped from them by two men.

13 I told you at the beginning of this case that a
14 criminal trial is very similar to a jigsaw puzzle. And
15 like a jigsaw puzzle, you have pieces. You have pieces of
16 evidence in a criminal case. Jigsaw puzzle you have
17 little small pieces. And with a jigsaw puzzle, you can
18 take one of those small pieces and look at it, you don't
19 know what the puzzle shows. You don't know what the whole
20 picture is. Well, the same applies in a criminal trial.
21 If you take one piece of testimony or one of these
22 exhibits and look at them by themselves, they don't show
23 you the whole picture. Like a jigsaw puzzle, you have to
24 take all those pieces of evidence and put them together.
25 And when you put those pieces of evidence together, that's

1 when you see the whole picture. And when you put those
2 pieces of evidence together, you find out what occurred on
3 the night of July 21st in the early morning hours of July
4 22nd 2009. And you find out that John Barfield and Tyrone
5 Whatley went into of the Days Inn and robbed
6 Brandon Cross and Ciera Davis. Mr. Floyd, the defense
7 attorney, in this case is going to ask you to look at
8 these pieces of evidence separately. He is gone say look
9 at this piece of evidence, look at this exhibit and he's
10 going to try and show you holes of that particular piece
11 of evidence. But like I told you, it's imperative that
12 you, as jurors, in this case look at the evidence as a
13 whole. Because when you do put the evidence together,
14 when you take all the testimony and all the exhibits and
15 put them together, there are no holes in the case. And
16 the way you put that evidence together is by using your
17 common sense. So let's talk about those pieces of
18 evidence.

19 John Barfield and Jessica Ussery testified,
20 those were the two co-defendants to Mr. Tyrone Whatley,
21 both of them testified in this case. And what did they
22 testify to? They both testified that they had known the
23 defendant for a while. They were able to identify him
24 because they known him for a while. Ms. Ussery told you
25 that she had met him on three or four occasions, so not as

1 much as Mr. Barfield, but she still met them on three or
2 four occasions. Mr. Barfield, on the other hand had known
3 him for two to three months prior to the night of this
4 incident. And he was asked, well, how often did you see
5 them? Well, I hung out with them two or three time a week
6 leading up to that over that two or three week period.
7 John Barfield knew the defendant. He was able to identify
8 him as well as Jessica Ussery. And both of those
9 individuals told you that Tyrone Whatley, a.k.a. Rom,
10 a.k.a. Jamal Bryant was the individual that went with them
11 that night to at the Days Inn.

12 Mr. Floyd is going to ask you not to believe
13 what those two witnesses say. Mr. Floyd is going to
14 suggest that they had something to gain from testifying.
15 But I remind you what Investigator Alvin Powell told you.
16 Investigator Powell told you that but for John Barfield's
17 assistance, Tyrone Whatley would have never been
18 apprehended. But for John Barfield assistance, the other
19 co-defendant in this case would have never been caught, so
20 bear that in mind too.

21 Mr. Floyd may point out to you well he got to
22 plea to a lesser-included offense. Ladies and gentlemen,
23 that was before this defendant was ever arrested. That
24 was the testimony before this defendant was ever arrested
25 John Barfield pled guilty. He accepted responsibility for

1 his involvement in this case. He was sentence by another
2 judge at another time. John Barfield is not on trial here
3 today. Tyrone Whatley is. What are the other reasons
4 that you can believe what John Barfield and Jessica Ussery
5 told you. In any type of court case, there's the concept
6 of corroboration of witnesses. And that means if one
7 witness tells you something and another witness tell you
8 something similar and they seem to match up, well that's
9 corroborating evidence. If one person saw something and
10 another person saw the same thing and they both say they
11 saw that, well that's corroborating evidence. We have
12 corroboration in this case. It be one thing if Barfield
13 and Ussery got on that witness stand and told y'all a
14 totally different story than the other four witnesses in
15 this case, then I think it would raise a red flag. Then I
16 do believe it would raise a question. But what we have in
17 this case is corroboration.

18 Brandon Cross and Ciera Davis told y'all what
19 happened. They were sleep in their bed, a knock came on
20 the door. A white woman was standing outside the door.
21 She crack open the door. A white man with a gun and a
22 black man came storming in the room. That's what they
23 told you happened. Who else told you that happened?
24 Jessica Ussery and John Barfield. Jessica Ussery told
25 you, yeah, I was the one who knocked on the door. John

1 Barfield said, yeah, I was the one who had the gun. I'm
2 the one who went in the room. Who is behind me? Johnny,
3 Tyrone Whatley. Tyrone Whatley was behind me. Their
4 stories match up with Ciera Davis' and Brandon Cross'
5 story, that's corroboration, that's putting the pieces of
6 the puzzle together.

7 Who else told you something? Sergeant McLaurin
8 was the one who, if y'all remember correctly, was the one
9 who initiated the traffic stop on the defendant's vehicle.
10 And what did he tell you happened? He say he pulled in
11 behind them and went down a ways and turned into the
12 Merita Bread parking lot. What happened once they pulled
13 into the Merita Bread parking lot? Well, two of them
14 jumped out and started running. All right. Where did
15 they jump from? Well, there's a white male he jumped in
16 the front passenger seat. And there's a black male who
17 jumped in the back passenger seat.

18 Now, does that testimony corroborate? Where
19 does John Barfield tell you he was sitting? In the front
20 passenger seat. Where was Tyrone Whatley sitting? In the
21 rear passenger seat. That is corroboration. That's
22 pieces of the puzzle coming together. While we're talking
23 about that traffic stop that Sergeant McLaurin did
24 reminded me of an old adage. The thought that came to
25 mind is that Tyrone Whatley was just there and he was just

1 along for the ride. If you really didn't have anything to
2 do with the arm robbery, why would you have gotten out and
3 taken off running. Why would he have disobeyed the
4 officers orders and jumped over the fence, taken off
5 running. That reminds me of the old adage that the guilty
6 flea where none pursue. You got to take the evidence as a
7 whole. You got to put it together. And in putting it
8 together, it pants a clear picture.

9 Tyrone Whatley is charged with four separate
10 counts in the indictment. I'm going to try and put this
11 over here where everybody can see it. The first count on
12 that indictment is a count of burglary in the first
13 degree. And I apologize if this is too small that is as
14 big as I can print it. The first count is a count of
15 burglary in the first degree. Before I talk to you about
16 the charges in this case, there's something y'all need to
17 know and the judge is going to go into this in more detail
18 when he charges you on the law of the case after Mr. Floyd
19 and I are finished. But there's a concept in the law
20 called the hand of one is the hand of all. And what that
21 concept means is if two individuals commit a crime
22 together regardless of what occurs during the crime, both
23 of them are equally culpable or guilty for the other
24 person's conduct. That's the law in the State of South
25 Carolina and the judge is going to charge you in more

1 depth with regard to that. But keep that in mind as we go
2 through the crimes that we talk about here.

3 The first thing that Mr. Tyrone Whatley was
4 charged with is a count of burglary in the first degree.
5 There's some things I want to bring to your attention
6 here. Section 16-11-311 that's the statute states what
7 burglary in the first degree is. And it states a person
8 is guilty of burglary in the first degree if the person,
9 Tyrone Whatley, in this case enters a dwelling. A motel
10 room or a hotel room is a dwelling, without consent and
11 with intent to commit a crime therein. They went rushing
12 in with a shotgun to rob people, with intent to commit a
13 crime. The crime is robbery. And when effecting entry in
14 addition to that, you have to meet these elements or at
15 least one of these. At least one of these elements right
16 here has to be met. So in addition to going into a
17 dwelling without consent with the intent to commit a
18 crime, you also have to have one of these elements.

19 When effecting entry or while in the dwelling or
20 immediate flight therefrom, he, Tyrone Whatley, or another
21 participant. In our case, the other participant is John
22 Barfield is armed with a deadly weapon, they had a
23 shotgun. And it doesn't matter if that shotgun was
24 loaded, unloaded. They could have gone in there with a BB
25 gun. And if it look like a real gun, it could be

1 considered a deadly weapon. We have the elements for
2 burglary in the first degree. But in addition to those
3 elements, you can actually go a step further. This really
4 doesn't apply. That doesn't apply. But this does. When
5 did they enter that hotel room, at approximately 11 p.m.
6 So not only do you have one of the two elements that's
7 required to prove burglary in the first degree, we have
8 two of them in this case. Tyrone Whatley is guilty of
9 burglary in the first degree per this statute.

10 Now, he's also charged with two separate counts
11 of arm robbery, two separate counts of arm robbery. And
12 the reason there is two separate counts is we have two
13 victims in this case. We have Brandon Cross and we have
14 Ciera Davis. Let's go over the statute. I think
15 everybody can see this. If not, I'll hold it up in a
16 minute. Section 16-11-330 that's the state's statute that
17 defines what arm robbery is. And a person commits a
18 robbery, did they commit a robbery, yes. How many
19 witnesses told you they committed a robbery. You have
20 Brandon Cross and Ciera Davis who said their stuff was
21 taken. You had Jessica Ussery and John Barfield who said,
22 yeah, we took the stuff. You had Jay McLaurin who took
23 the photographs that you will have and be able to take
24 back in the jury room with you. State's Exhibit 2, 3, and
25 4 that show the stuff in the vehicle the defendants were

1 driving.

2 When you have Investigator Alvin Powell who
3 testified that he found more of the victims' clothes in
4 the car. So did we have a robbery, yeah, all the
5 witnesses said there was a robbery. So a person who
6 commits a robbery while armed with a pistol, dirk, sling
7 shot, and metal knuckles, razor or other deadly weapon. A
8 shotgun is a deadly weapon. A shotgun is deadly weapon.
9 Or while either by action of words, he was armed while
10 using for representation of a deadly weapon or any object
11 which a person -- and in this case Ciera Davis and Brandon
12 Cross, which a person present during the commission of a
13 crime or robbery reasonably believe to be a deadly weapon
14 and that's what I'm telling you. If it wasn't loaded, it
15 don't matter. If the victims in the case believe that it
16 is a deadly weapon, then the defendant's guilty of arm
17 robbery. They had a shotgun. They went in those people
18 room. They held them up and they took their stuff.
19 That's arm robbery.

20 One other thing I wanted to mention to you about
21 arm robbery. Where did the shotgun come from in this
22 case? Where was it testified to that the shotgun came
23 from? We know who carried it into the room. John
24 Barfield told you he carried it into the room. Where did
25 the shotgun come from? Who gave John Barfield a shotgun

1 to be used in that robbery? Tyrone Whatley did. When
2 they went and picked him up, he had the gun ready and
3 waiting for him. John Barfield testified when they got to
4 Days Inn, Whatley took the gun from the trunk and handed
5 it to him.

6 Under the hand of one, is the hand of all. It
7 doesn't matter whether Tyrone Whatley had the shotgun in
8 his hands when he went into that room that night. He was
9 with the fellow who did. They both went in there and
10 robbed those people. They both guilty. They both guilty.

11 The last crime the defendant is charge with is
12 the charge of conspiracy and that's a pretty
13 straightforward charge. And that charge deals with when
14 one or more people, two or more individuals get together
15 and plan to commit a crime and they do it, that's
16 conspiracy. It's very basic, very simple. In this case,
17 there are three co-defendants Trone Whatley, John Barfield
18 and I believe Jessica Ussery all conspired to commit arm
19 robbery and to commit a burglary first. Because of that,
20 he is guilty of conspiracy.

21 Ladies and gentlemen, you have the evidence in
22 this case. You have the evidence. And at times, it can
23 seem overwhelming with the amount of evidence, but this
24 doesn't have a lot of evidence. One of the most important
25 things that you can take back in that jury room with you

1 in addition to the evidence that you're going to be given
2 to take back there is your common sense. You need to ask
3 yourself when you're putting pieces to this puzzle
4 together what makes sense, what makes sense and what
5 doesn't make sense. If you don't believe that Tyrone
6 Whatley went into that hotel room that night with John
7 Barfield, then you would have to believe that two law
8 enforcement officers Investigator Alvin Powell and Jay
9 McLaurin, two victims Brandon Cross and Ciera Davis and
10 two co-defendants John Barfield and Jessica Ussery all got
11 together and conspired to frame him. If you don't believe
12 he went in that hotel room that night, you have to believe
13 that all the witnesses got together and for some reason or
14 another decided to point the finger at that guy. Does
15 that make sense? Absolutely not. Absolutely not.

16 In a moment, I'm going to sit down and that will
17 be the last opportunity I have to speak to you 12
18 individuals. And Mr. Floyd is going to be able to get up
19 and like I told you before, he's going to attempt to poke
20 holes in the evidence and looking at it piece by piece.
21 And I want to be able to speak to you again, but that
22 doesn't mean that Mr. Floyd is going to be the last one to
23 speak in this case. And that honor is left up to you 12
24 people. Y'all be the last ones to speak in this case. It
25 will be your verdict that brings this trial and this case

1 to a close. Very few people have the opportunity to serve
2 on a jury and to ultimately decide the case. I ask you to
3 take this opportunity today, to take the evidence that you
4 have before you, to use your common sense and apply it and
5 to find the defendant guilty. Justice demands that you do
6 that.

7 THE COURT: Mr. Floyd.

8 MR. FLOYD: Thank you, Your Honor. May it
9 please the Court.

10 THE COURT: Yes, sir.

11 MR. FLOYD: Mr. McEachin. Good morning, ladies
12 and gentlemen. Mr. McEachin in his closing certainly made
13 the analogy of a puzzle. And you know it's the State's
14 obligation not to give you pieces of the puzzle say here
15 you put them together. They're suppose to have the puzzle
16 put together for you, so you can see what it looks like,
17 okay. They got the burden of proof in this case beyond a
18 reasonable doubt. And when he says that, all these
19 witnesses had to get together and frame Mr. Tyrone
20 Whatley. Well, that's not true. None of the witnesses in
21 this case either one of those police officers or the two
22 victims in this case ever identified Mr. Whatley. The
23 unbiased witnesses who were there in that hotel room, who
24 had absolutely nothing to gain, did they say Mr. Whatley
25 was there. They were in that room that night Mr. Cross

1 and Miss Davis, they sat on that stand. They looked at
2 him in here. I assume they saw him in the hotel room that
3 night. Did either one of those witnesses ever identify
4 Mr. Whatley. They did not. Absolutely not. At no time
5 during this investigation, did they ever identify
6 Mr. Whatley to either of the police officers. And neither
7 did they do it in this courtroom to you.

8 Now, Miss Davis she identified Mr. Barfield.
9 She look yeah that's him, that's the guy that was in my
10 hotel room she told Investigator Powell that. She didn't
11 tell you Mr. Whatley was in that room. She obviously saw
12 both people, they were there. She identified
13 Mr. Barfield. Mr. Cross was there, he didn't identify him
14 either. Never once did he identify him. Do we doubt that
15 those two people were robbed? I don't doubt they were
16 robbed. I don't doubt that someone went in their hotel
17 room that night. They seem like nice people, I'm sure
18 they didn't make that up, but the fact is is that they did
19 not identify Mr. Whatley as being a participant in this
20 crime. That's the question here, it's not whether or not
21 they were robbed or whether or not somebody went in their
22 hotel room. Question is whether or not it was Mr. Whatley
23 that did it. He's on trial. The other two witnesses that
24 have identified him however are the people who were
25 admittedly there and who admittedly participated in it.

1 Mr. Barfield who went in there with that gun in his hand
2 and pointed at the victims in this case. He was there.
3 Ms. Ussery she was certainly there. They said they were
4 there. Ms. Ussery didn't have any choice she was nabbed
5 right on down the street after it happened. Of course,
6 she was there, gun was in her car, goods were in her car.
7 They knew she was there. And as far as Mr. Ussery I'm
8 sorry -- Ms. Ussery and Mr. Barfield's stories being
9 consistent, well, of course, they were consistent. They
10 were both there. He knew what happened. They knew what
11 they had done. But the only reason that Mr. Whatley is
12 sitting here is because Mr. Barfield eight months after
13 the fact gave his nickname, not even his name, but his
14 nickname to Investigator Powell.

15 And the State says, well, you know, he already
16 been sentenced or he's not on trial, but, you know, he got
17 sentenced after he gave them the nickname, okay. And he
18 got sentenced for an attempted arm robbery when he sat
19 here and told you that he was facing ten to 30 on those
20 arm robberies 15 to life on that burglary. What he told
21 you he got seven years on attempted arm robbery because he
22 gave a nickname of someone that he knew. Well, he hadn't
23 given them any name of anyone he knew, they would be
24 sitting here right now. They would be sitting in that
25 chair if he had given them any other name that -- of a

1 black male that he knew, that's the truth. That's all the
2 evidence that the State has in this case. That's what
3 they produce.

4 Now, they brought Ms. Ussery in here, had her
5 sit on the stand and, of course, she hasn't been sentenced
6 yet, okay. Although, she said her charges were being
7 reduced from something other than arm robbery, which is
8 what she was originally charged with. And for the first
9 time ever, she walk in this courtroom knowing what's
10 hanging over her head, sits on that stand and says, yeah,
11 that's the guy that was with us, that guy right there.
12 She never identified him before she walked into this
13 courtroom yesterday, never, not once did she identify him
14 by sight. She was never shown apparently a photograph of
15 him before she walked into this courtroom by the
16 investigator and said is this the guy. Knowing what she
17 had hanging over her head, she walks into this courtroom
18 during trial and is asked who is with me. What do you
19 think she's going to say? No, that's not the guy. Y'all
20 got the wrong man. What kind of pressure do you think
21 she's under? Can you believe beyond a reasonable doubt
22 what those two people say in this case? I don't think so.
23 Would you trust either one of those people with your life?

24 MR. MCEACHIN: Objection, Your Honor.

25 THE COURT: Sustained.

1 MR. FLOYD: Yes, sir, Your Honor. But, ladies
2 and gentlemen, you have to consider those two witnesses
3 credibility and what they have to gain. Now -- and
4 certainly you might ask why would they lie or why would
5 Mr. Barfield lie because basically he's the reason
6 Mr. Whatley is sitting here. Why would he give his name?
7 Well, you know, Ms. Ussery said he hung around with
8 dangerous people. She was afraid of him, hang around drug
9 dealers. She said he was in the car and he said too, he
10 was riding around in the car that very night not long
11 before this happened with some drug dealer friend of his.
12 Maybe, he didn't want to give that name.

13 And then, of course, she comes in the room
14 yesterday. Mr. Whatley sitting there, that's the guy.
15 She told the investigator the guy name Jamal Bryant,
16 that's what she said. Mr. Barfield never called him Jamal
17 Bryant, he call him Rom. I mean -- but that's the
18 evidence that they have given you and asking you to
19 believe it beyond a reasonable doubt. You might ask well
20 what could they have given you.

21 Now, you know, law enforcement personnel and the
22 State knows when they bring a case for trial they got to
23 prove it beyond a reasonable doubt. Now, that night
24 shortly after this occurred Sergeant McLaurin said that
25 two people jumped out of the car, ran through the Merita

1 Bread parking lot came to a fence with barb wire on top of
2 it. Suspects scale the fence, go over barb wire. We all
3 know what barb wire is design to do, it's design to cut if
4 you try to go over it. It's exactly what it's design to
5 do. I ask Investigator Powell did you look for blood,
6 said he could have gotten DNA. Did your crime scene
7 people do that? He said, well, we brought dogs to look
8 for them. But did you get blood? Well, I'm not aware of
9 it. Well, he's the lead investigator on the case. I
10 mean, this is a simple thing to look for blood, that
11 wasn't done. He says they swabbed for genetic material
12 off of that gun, out of a bottle that had alcoholic
13 beverage in it in that car swab the genetic material. You
14 swabbed Mr. Barfield to see if his genetic material
15 matched. Did they ever do that with Mr. Whatley? You
16 see -- I mean, is this really me. Didn't do that either.
17 Did they swab that gun for fingerprints, anything? I
18 don't know. We didn't hear any testimony about it. What
19 concerns me is as I alluded to earlier the only reason
20 Mr. Whatley is here is because John Barfield said his
21 nickname and says this is him and he's here. And given
22 the evidence that they have or haven't produced, like I
23 said he could have given anybody else's name that he knew
24 and he traveled with and they would be sitting here today
25 instead of Mr. Whatley. Is that proof beyond a reasonable

1 doubt? I submit to you that it's not. It's not. And I
2 ask you to consider that as individual jurors. Do your
3 duty to consider the evidence and ask that you find the
4 defendant not guilty. Thank you.

5 THE COURT: All right. Ladies and gentlemen of
6 the jury, it is now my duty as the trial judge under the
7 constitution of the State to charge and instruct you on
8 the law applicable to this case. It is your duty as
9 jurors to accept and apply the law as I am going to state
10 it to you.

11 Furthermore, it is your exclusive duty to decide
12 all the issues of fact in this case and to determine the
13 effect, value, weight and truth of the evidence. Both the
14 State and the defendant have a right to expect that you
15 will carefully consider and evaluate the evidence and
16 apply the law of this case so to that end both the State
17 of South Carolina and the defendant will receive a fair
18 and impartial trial.

19 I want you to understand that when I use the
20 word defendant I refer to Mr. Tyrone Joseph Whatley.
21 Furthermore, it is important to understand that the
22 indictment in this case alleges four different offenses
23 against the defendant. The charges alleged in the
24 indictment are burglary in the first degree and arm
25 robbery of Brandon Cross, arm robbery of Ciera Davis and

1 conspiracy.

2 To these charges, the defendant has entered a
3 plea of not guilty. This plea of not guilty places the
4 burden of proof on the State to prove the guilt of the
5 defendant to you, the jury, beyond a reasonable doubt.
6 The indictment in this case alleges four separate distinct
7 offenses against the defendant. You must decide each
8 charge separately on the evidence in the law applicable
9 to it, uninfluence by your decision as to any other
10 charge. The defendant may be convicted or acquitted on any
11 or all of the offenses charged. You will be ask to write
12 a separate verdict of guilty or not guilty for each charge
13 alleged in the indictment.

14 I remind you, ladies and gentlemen, that the
15 fact that the defendant was arrested, charged and indicted
16 in this case is not evidence in this case and cannot be
17 considered by you as evidence of guilt in this case. Nor
18 does it create any presumption or inference of guilt. The
19 indictment is simply the formal written instrument which
20 contains the charges made against the defendant. It is
21 the formal document by which this case is brought into
22 this court. It is vital to understand that the defendant
23 is presumed innocent under the law of these charges. He's
24 presumed innocent. The defendant has no obligation to
25 prove his innocence. It is a fundamental rule of our law

1 that a defendant irrespective of the seriousness of the
2 charges against him is always presumed innocent of the
3 crime for which he is charged unless and until his guilt
4 has been proven by evidence that satisfies you, the jury,
5 beyond a reasonable doubt. The presumption of innocence
6 is not a mere legal theory or a legal phrase. The
7 presumption of innocence is very important and you need to
8 understand that this presumption accompanies the defendant
9 from the time of his arrest and appearance in this court
10 and continues with the defendant even after you retire to
11 the jury room to deliberate.

12 In other words, the defendant receives the
13 benefit of the presumption of innocence until the very end
14 of this trial when you, the jury, will deliberate upon the
15 evidence and decide whether the State has proven his guilt
16 beyond a reasonable doubt.

17 Proof beyond a reasonable doubt is proof, ladies
18 and gentlemen, that leaves you firmly convinced of the
19 defendant's guilt. There are very few things in this
20 world that we know with absolute certainty. So even in
21 criminal cases, the law does not require proof that
22 overcomes every possible doubt. However, if based on your
23 consideration of the evidence, you are firmly convinced
24 that the defendant is guilty of the crimes charged, you
25 must find him guilty. If on the other hand you think

1 there is a real possibility that he is not guilty, you
2 must give him the benefit of the doubt and find him not
3 guilty.

4 Jurors please understand that reasonable doubt
5 may arise from evidence which has been presented in the
6 case or from the lack of evidence in the case. It is your
7 responsibility to determine whether or not reasonable
8 doubt exist as to the guilt of this defendant. I charge
9 you that the defendant is entitled to every reasonable
10 doubt arising in the whole case. If upon any issues of
11 fact essential to conviction and a verdict of guilty, you
12 have a reasonable doubt as to how that issue should be
13 resolved. It would be your duty to resolve that
14 reasonable doubt in favor of the defendant. Thus in
15 summary, it is important to understand that a defendant is
16 not required to prove his innocence. Instead, the State
17 is required by the law proof of every essential element of
18 the offense charged against the defendant by evidence
19 which satisfies you of his guilt beyond a reasonable
20 doubt, only then can you convict the defendant and find
21 him guilty.

22 There are two types of evidence which are
23 generally presented during a trial direct evidence and
24 circumstantial evidence. Direct evidence is the testimony
25 of a person who claims to have actual knowledge of a fact

1 such as an eye witness. It is evidence which immediately
2 establishes the main fact to be proved. Circumstantial
3 evidence is proof of a chain of facts and circumstances
4 indicating the existence of a fact. It is evidence which
5 immediately establishes collateral facts from which the
6 main fact may be inferred. Circumstantial evidence is
7 based on inference and not on personal knowledge or
8 observation. The law makes absolutely no distinction
9 between the weight or the value to be given to either
10 direct or circumstantial evidence. Nor is a greater
11 degree of certainty required of circumstantial evidence
12 than of direct evidence. You should weigh all of the
13 evidence in the case. If after weighing all the evidence
14 you are not convinced of the guilt of the defendant's
15 beyond a reasonable doubt, you must find the defendant not
16 guilty.

17 During this trial you and I, ladies and
18 gentlemen, have had separate duties and responsibilities
19 to perform. As a trial judge, it is my responsibility to
20 preside over this trial and I also have the duty to rule
21 upon the admissibility of the evidence during the process
22 of this trial. In that regard, you are to consider only
23 the competent evidence before you. And you are to
24 disregard from your mind any testimony ordered stricken
25 from the record of this case during the progress of the

1 trial if there was any. And you are to consider only the
2 testimony which has been presented from the witness stand
3 together with any exhibits admitted into the record of
4 this case and any stipulations of counsel made into the
5 record if there were any.

6 Furthermore, I have the additional duty to
7 charge you on the applicable law of this case. And in
8 that regard, I am the sole judge of the law in this case.
9 It is your duty to accept and apply the law as I state it
10 to you. If you have any preconceived ideas as to what the
11 law is or what the law ought to be and it does not agree
12 with what I tell you the law is, you are obligated under
13 your oath to abandon these preconceptions because you are
14 sworn to accept the law precisely as I state it to you.

15 In this trial, you are the sole and exclusive
16 judge of the facts and I am the judge of the law. Do not
17 infer that I have any opinion about the facts in this case
18 from anything I have said during the course of this trial
19 in ruling upon the admissibility of evidence or otherwise
20 or from anything that I say during the course of this
21 charge to you.

22 In this regard, the law simply does not permit
23 me to have an opinion about the facts. As jurors, it is
24 your duty alone to determine effect, value, weight and
25 truth of the evidence presented during the course of the

1 trial. In determining what the facts in this case are,
2 you must judge the credibility, which simply means the
3 believability of the witnesses and the value of weight to
4 be given to their testimony. You alone must decide the
5 force, effect and truth of the testimony in making this
6 decision.

7 There many things you may and should take into
8 consideration such as the appearance and manner of the
9 witness on the stand, a characteristic often referred to
10 as the demeanor of the witness, was the witness forth
11 right or hesitant, was the witness' testimony consistent
12 or did it contain discrepancies, what was the ability of
13 the witness to know the facts about which he or she
14 testified. Did the witness have a cause or reason to be
15 biased and prejudiced or in favor of the testimony he or
16 she gave. Was the testimony of the witness corroborated
17 or made stronger by other testimony and evidence or was it
18 made weaker or impeached by such other testimony and
19 evidence.

20 As jurors, please understand you have the right
21 to believe a small portion of a witness' testimony and
22 discard a large portion or vice versa. You may believe
23 all of a witness' testimony or none. You may believe the
24 testimony of a single witness against that of many
25 witnesses or the other way around. In exercising your

1 mental processes in attempting to decide the truth, the
2 law simply requires that you exercise your good judgment,
3 your common sense, your sense of logic and reason and your
4 experiences in life. You then apply these attributes to
5 the evidence and apply the law as I state it to you and
6 thus arrive at a verdict.

7 Ladies and gentlemen, during the course of this
8 trial, you heard the testimony of police officers. Please
9 understand that the testimony of a police officer is not
10 entitled to more weight than that of any other witness.
11 You are the sole judges of the credibility of a witness
12 and you are not to give more weight to a police officer's
13 testimony solely because he is a police officer. Rather,
14 you should judge an officer's testimony by the same
15 standards that you apply to all other witnesses.

16 I also want to instruct you and emphasis that
17 the fact that the defendant did not testify is not a
18 factor to be considered by you in any way in your
19 deliberations and in your consideration on the question of
20 the guilt or the innocence of the defendant. It must not
21 be considered by you in any manner whatsoever. A
22 defendant has the Constitutional Right to remain silent.
23 And the assertion of this right must not be considered by
24 you in your deliberations. I repeat under your oath you
25 are to draw no conclusion whatsoever from the fact that

1 the defendant in this case did not testify. The fact that
2 this defendant did not testify should not even be
3 discussed in the jury room. The burden of proof as I have
4 stated to you is on the State. The defendant is not
5 required to prove his innocence. The burden of proof
6 remains on the State to prove guilt beyond a reasonable
7 doubt.

8 Now, ladies and gentlemen, during the course of
9 this trial, you heard testimony of a past criminal record.
10 Let me instruct you that a person who has a past criminal
11 record is competent to testify during trial. A past
12 record does not affect the ability of that witness to
13 testify. The past record may only be considered by you if
14 at all in determining the witnesses believability.
15 Remember, you are the sole judges of the facts in the case
16 and of the believability of any and all of the witnesses.

17 Well, ladies and gentlemen, you have also heard
18 testimony concerning the penalty a person can serve for
19 the crimes alleged in the indictment. In determining the
20 guilt or innocence of the defendant, you cannot consider
21 any possible penalty for any particular crime. The
22 punishment for the crime is a matter for me to determine
23 and should never be considered by you in way whatsoever in
24 arriving at a fair and impartial verdict as to the guilt
25 or innocence of the defendant. An issue in this case is

1 also the identification of the defendant as the person who
2 committed the crime charged. The State has the burden of
3 proving identity beyond a reasonable doubt. You must be
4 satisfied beyond a reasonable doubt of the accuracy of the
5 identification of the defendant before you may convict the
6 defendant. Identification testimony is an expression of
7 belief or impression by a witness. You must determine the
8 accuracy of the identification of the defendant. You must
9 consider the believability of each identification witness
10 in the same way as any other witness. You may consider
11 whether the witness had an adequate opportunity to observe
12 the offender at the time of the offense. This be will be
13 affected by things like how long or short a time was
14 available, how far or close the witness was. The lighting
15 conditions and whether the witness had the chance to see
16 or know the person in the past. Once again, I instruct
17 you the burden of proof is on the State extends to every
18 element of the crime charged. And this specifically
19 includes the burden of proving beyond a reasonable doubt
20 the identity of the defendant as the person who committed
21 the crime.

22 If after examining the testimony you have a
23 reasonable doubt as to the accuracy of the identification,
24 you must find the defendant not guilty. In order to
25 establish criminal liability, criminal intent is required.

1 For example, the mental state required to be proven by the
2 State for a particular crime might be purpose, intent,
3 knowledge, recklessness or criminal negligence. Criminal
4 intent must be proven by the State beyond a reasonable
5 doubt. Criminal intent is always a matter that must be
6 determine by the jury from the circumstances surrounding
7 the situation. There is no way to prove intent to a
8 mathematical certainty. There is no way medical science
9 can dissect a person's brain and determine what the person
10 had in mind. So the law says that criminal intent may be
11 inferred from the circumstances shown to have existed.
12 This how you make a determination of whether or not the
13 element requiring intent was present. It is not necessary
14 to establish intent by direct and positive evidence. But
15 intent may be established by inference in the same way as
16 any other fact by taking into consideration the acts of
17 the parties and all the facts and circumstances of the
18 case.

19 Criminal intent is a mental state, a conscious
20 wrongdoing. It is up to you to determine what the
21 defendant intended to do based on the circumstances shown
22 to have existed. Criminal intent can arise from action or
23 a failure to act. It may arise from negligence,
24 recklessness, or an indifference to duty or to consequences
25 that is considered by the law to be the equivalent of

1 criminal intent. Now, if a crime is committed by two or
2 more people who are acting together in committing a crime,
3 the act of one is the act of all. A person who joins with
4 another to commit an unlawful act is criminally
5 responsible for everything done by the other person which
6 happens as a probable or natural consequence of the act
7 done in carrying out the common sense plan or purpose.

8 For example, two people can be guilty of killing
9 another person when only one of the two had a gun. There
10 was only one bullet and only one of the two fired the
11 shot that cause the death. If two or more people are
12 together, acting together, assisting each other in
13 committing the offense, the act of one is the act of all
14 or as it is sometimes said the hand of one is the hand of
15 all.

16 Prior knowledge that a crime is going to be
17 committed without more is not sufficient to make a person
18 guilty of that crime. Mere knowledge that another person
19 is going to commit a crime even if the defendant is
20 present when the crime is committed is not sufficient to
21 convict the defendant as a principle. Guilt as a
22 principle is shown by actual or constructive presence at
23 the scene as a result of prior arrangement. Therefore, a
24 finding of a prior arrange plan or common scheme is
25 necessary for a finding of guilt as a principle.

1 The State must prove beyond a reasonable doubt
2 by competent evidence the theory of the hand of one is the
3 hand of all. A principle in a crime is one who either
4 actually commits the crime or who is present, aiding,
5 abetting or assisting in committing the crime. When a
6 person doesn't act in the presence of and with the
7 assistance of another, the act is done by both. Where two
8 or more are acting with a common plan or intent or present
9 at the commission of a crime, it does not matter who
10 actually commits the crime. All are guilty. The hand of
11 one is the hand of all. Present at the commission of a
12 crime means to be sufficiently near to, aid and abet and
13 assist in the commission of the crime.

14 However, mere presence at the scene of a crime
15 is not sufficient to convict one as a principle on the
16 theory of aiding and abetting. Intent is also a necessary
17 element. For there must have been a common design or
18 intent to commit the crime and the crime must have been
19 committed pursuant thereto with the person aiding and
20 abetting by some overt act. Intent means intending the
21 result which actually occurs not accidentally or
22 involuntarily. Intent may be shown by acts and conduct of
23 the defendant and other circumstances from which you may
24 naturally and reasonably infer intent. The State must
25 prove these elements beyond a reasonable doubt.

1 And, ladies and gentlemen, the defendant is
2 charged with burglary in the first degree. The State must
3 first prove beyond a reasonable doubt that the defendant
4 entered a dwelling without consent. A dwelling is any
5 building or portion of a building in which a person
6 ordinarily sleeps. A building constructed as a dwelling
7 that has never been occupied cannot be considered a
8 dwelling for purposes of burglary. But a building is a
9 dwelling even if the residence are temporarily absent from
10 the building.

11 In order to prove that the defendant entered the
12 dwelling, the State does not have to show that the
13 defendant's entire body entered the dwelling. The
14 smallest entry is sufficient. It may be any part of the
15 body such as a hand or foot or even an instrument such as
16 a hook or other instrument. In addition, the State does
17 not have to prove that force was used to gain entry. If a
18 person enters a building by using deception, artifice,
19 trick or misrepresentation to get consent to enter, this
20 is an entry without consent.

21 Next the State must prove beyond a reasonable
22 doubt that the defendant intended to commit a crime either
23 a felony or a misdemeanor at the time of the entry. The
24 mere entry into a dwelling without consent is not
25 burglary. If the intent to commit a crime is formed after

1 the entry, it is not a burglary. On the other hand, if
2 the defendant intended to commit a crime at the time of
3 the entry, it is a burglary even if the intent was
4 abandoned after the entry. It does not matter that the
5 intended crime was not completed. Intent may be shown by
6 acts and conduct of the defendant and other circumstance
7 from which you may naturally and reasonably infer intent.

8 Finally, the State must prove beyond a
9 reasonable doubt that either when entering while in the
10 dwelling or when fleeing the defendant or an accomplice
11 was armed with a deadly weapon or explosive. A deadly
12 weapon is an article, instrument or substance which is
13 likely to cause death or great bodily harm. Whether an
14 instrument has been used as a deadly weapon, depends on
15 the facts and circumstances of each case. The following
16 are examples of instruments which may be deadly weapons:
17 A pistol, a shotgun, a rifle, a dirk, a dagger, a knife,
18 a sling shot, metal knuckles, a razor, gasoline, a fire
19 boom, or Molotov cocktail and lighter fluid. A gun may be
20 a deadly weapon even if it is not operating. When
21 entering while in the dwelling or when fleeing the
22 defendant or an accomplice displayed what was or appeared
23 to be a knife, pistol, revolver, rifle, shotgun, machine
24 gun or other firearm, the defendant entered or remained in
25 the dwelling in the nighttime. Nighttime is the period

1 between sunset and sunrise during which there is not
2 enough daylight to recognize a person's face except by
3 artificial light or moonlight.

4 The defendant is also charge, ladies and
5 gentlemen, with two separate counts of arm robbery. In
6 order to prove this offense as to each count, the State
7 must first prove beyond a reasonable doubt that the
8 defendant took personal property from the person or
9 presence of another person. Properties in the presence of
10 a person if it is within a person's reach, inspection,
11 observation or control so that the person could, if not
12 overcome with violence or prevented by fear, keep
13 possession of the property. The State must also prove
14 beyond a reasonable doubt that the defendant carried the
15 property away intending to permanently deprive the owner
16 of the property and to keep the property for the
17 defendant's own use. The slightest removal of the
18 property or the complete possession of the property even
19 for an instant by the defendant is sufficient to show a
20 taking and carrying away of the property. The taking and
21 carrying away of the property must have been done with
22 violence or by putting the owner of the property in fear
23 of violence.

24 Finally, the State must prove beyond a
25 reasonable doubt that the defendant was arm with a deadly

1 weapon during the robbery. A deadly weapon is any article
2 instrument or substance which is likely to cause death or
3 great bodily harm whether an instrument has been used as a
4 deadly weapon depends on the facts and circumstances of
5 each case.

6 Previously, in this charge, I mention to you
7 several examples of potential deadly weapons. Once again,
8 ladies and gentlemen, I remind you that the defendant is
9 charged with two separate counts of arm robbery and you
10 are to consider each count separately. The State must
11 prove beyond a reasonable doubt each count of arm robbery
12 against the against the defendant.

13 The State is also charge the defendant with
14 conspiracy. The State must prove beyond a reasonable
15 doubt that the defendant combined with one or more persons
16 for the purpose of committing an unlawful act or if
17 committing a lawful act by unlawful means. There must be
18 a mutual understanding, agreement or common intention and
19 plan. Mere passive knowledge of or consent to the
20 criminal conduct of another is not enough to make a person
21 a conspirator. There must be guilty knowledge and
22 participation.

23 Similarly, the mere fact that the defendant may
24 have associated with another person or met with another
25 person and discuss common names and interest does not

1 necessarily establish proof of the existence of a
2 conspiracy or that the defendant was involved in a
3 conspiracy. On the other hand, it is not necessary that
4 the agreement be a formal one, that it be in writing.
5 That the person's holding median expressly state the terms
6 of the common plan or the agreement be stated in words
7 between them. The agreement of a criminal conspiracy may
8 come into being through an implied mutual understanding.
9 The willful, intentional, knowing adoption by two or more
10 persons of a common plan is sufficient. No overacts need
11 to be shown to establish a conspiracy. A conspiracy may
12 be shown by circumstances excuse me -- circumstantial
13 evidence and the conduct of the parties. In order to
14 convict the defendant of conspiracy, the State must prove
15 beyond a reasonable doubt not only that the defendant knew
16 of the unlawful conduct, but that the defendant agreed to
17 combine with the other persons or person for the purpose
18 of accomplishing the unlawful conduct.

19 Now, ladies and gentlemen, I am now drawing near
20 the end of my charge and I want you to clearly understand
21 that you are not partisans or advocates for the State of
22 South Carolina or this defendant. You do not serve as
23 jurors to reward your friends or punish your enemies. In
24 this regard, you have been selected by both the State and
25 this defendant to be fair and impartial jurors. It is

1 your duty by your jury deliberations to determine the
2 truth in this case giving to this defendant the benefit of
3 every reasonable doubt on each and every issue. Then to
4 the facts which you determine to be true, you should take
5 and apply the law which has been given to you by this
6 Court and thus arrive at a verdict which speaks the truth
7 in this case. In fact, the word verdict which has a Latin
8 derivative means a true saying. Thus, when you have
9 accomplished these responsibilities, you will have
10 satisfied your oath as jurors and you will have discharged
11 your duty to this court.

12 Mr. Foreman, I am going to send a verdict form
13 back with you to the jury room. When you, the jury,
14 arrive at a verdict as to the charges in this case, you,
15 Mr. Foreman, will write the verdict on the form. If the
16 State has failed to prove the guilt of this defendant
17 beyond a reasonable doubt, your verdict will be two words,
18 not guilty. Likewise, if the State has proved the guilt
19 of the defendant beyond a reasonable doubt, your verdict
20 will be one word, guilty. Mr. Foreman, once a decision
21 has been made, check whichever choice is the verdict of
22 the jury. The verdict that you render in this case must
23 be the verdict of each and every juror. It must be your
24 unanimous verdict. All 12 jurors must agree on the
25 verdict which you authorize the foreman to write for the

1 jury.

2 Mr. Foreman and members of the jury, I want you
3 to further understand that the order in which the choices
4 a verdict appear on the verdict form are not suggestive of
5 any verdict on the part of this court. The verdict in
6 this case is to be determine by you, the jury, not the
7 court. Furthermore, please understand that even though I
8 have given the verdict form to the foreman, it is not his
9 verdict alone. It is the verdict of all 12 of you and I
10 emphasis again it must be unanimous. Now, ladies and
11 gentlemen, I'm also going to give you a copy of these
12 instructions in written form. During your deliberations,
13 you may refer to the instructions to guide your decision
14 making. You must consider the instructions as a whole and
15 not follow some and ignore others. Please return the
16 instructions to the Court at the time your verdict is
17 rendered.

18 Now, I ask you to please retire to the jury
19 room, but do not begin your deliberations until you are
20 told to do so. The law requires that I now consult with
21 the attorneys to make sure that I have not left anything
22 out of these instructions. After I have checked with the
23 attorneys, the bailiff will bring in the items of evidence
24 and instruct you to begin your deliberations. Also should
25 you have any questions during your deliberations, you must

1 put those questions in writing and send them to me, send
2 them to the Court by the bailiff. A bailiff will be
3 placed outside immediately outside of the jury room during
4 your deliberations. Once you have reached your verdict,
5 please knock on the jury room door and ask the bailiff to
6 advise the Court that you have reached a verdict. And we
7 will return you to the courtroom as promptly as possible.
8 Before I ask you to retire to the jury room, can the
9 lawyers approach for just a minute please.

10 (WHEREUPON, a bench conference was held in the
11 presence of the jury, but out of the hearing of the
12 jury.)

13 THE COURT: All right. Ladies and gentlemen of
14 the jury, I am going to now ask that you retire to the
15 jury room. And I told you during my charge that we would
16 send the evidence back along with the verdict form and
17 I'll instruct you when to begin your deliberations. Don't
18 begin your deliberations right now. One of the things
19 that I'm not going to send back, I'm not going to send the
20 shotgun back, okay. If you all feel that you need to see
21 the shotgun, I will bring you back in the courtroom and
22 let you look at it. Some people don't like guns, don't
23 like to hold guns, don't want to be around guns and so the
24 Court is cognizant of that. But if you as jurors feel as
25 though you need to see it, put your hands on it and look

1 at it for any reason, let the Court know through the
2 foreman. And we will be happy to bring you back in the
3 courtroom, all of you for that purpose, okay. I'm going
4 to ask you to retire to the jury room right now. But
5 again, do not begin your deliberations until you're
6 instructed to do so.

7 (WHEREUPON, the jury retire to the jury room.)

8 THE COURT: All right. Any objections,
9 exceptions, additions to the charge from the State?

10 MR. MCEACHIN: Nothing from the State, Your
11 Honor.

12 THE COURT: Mr. Floyd.

13 MR. FLOYD: Nothing, Your Honor.

14 THE COURT: All right. If y'all will gather
15 the evidence with the exception of the shotgun. And just
16 for the record, prior to me sending the jury back, there
17 was a side bar conversation between myself and attorney
18 for the State and the defense with regards to sending the
19 shotgun back. And it was agreed upon by both attorney for
20 the State and the defense not to send the shotgun back.
21 And simply allow them, the jury, to come back into the
22 courtroom and view that particular piece of evidence if
23 they felt it was necessary to do so. I am giving the
24 verdict form along with the jury charge to Mr. Floyd to
25 give to Ms. Olivia, the bailiff, to send back. Ms.

1 Olivia, you have a note pad and a pin, please provide that
2 to them. And when you give them these evidence excuse me
3 -- these items of evidence, you can instruct them that
4 they can now begin their deliberations.

5 MR. MCEACHIN: Your Honor, for the record, the
6 State's Exhibits 1 through 4 which are the diagram and
7 three pictures are into evidence and they are being sent
8 back to the jury room.

9 THE COURT: Any objection, Mr. Floyd?

10 MR. FLOYD: No objection.

11 THE COURT: All right. Just for the record,
12 Mr. Floyd, you can renew your motions at this time.

13 MR. FLOYD: Thank you, Your Honor.

14 THE COURT: Please note for the record.

15 THE CLERK: Judge.

16 (WHEREUPON, a pause in the proceedings.)

17 (WHEREUPON, the jury began deliberations at
18 11:03 a.m.)

19 THE COURT: All right. Just for the record,
20 Mr. Floyd, go ahead and renew your motion.

21 MR. FLOYD: Thank you, Your Honor. Your Honor,
22 at this time I would just renew my motions for a directed
23 verdict on each of the counts in the indictment upon the
24 same grounds as State previous, Your Honor.

25 THE COURT: All right. This was being done now

1 by agreement of the attorneys. And, Mr. Floyd, I
2 respectfully on the same grounds as before deny your
3 motion for a directed verdict as to all charges.

4 MR. FLOYD: Yes, Your Honor.

5 THE COURT: Thank you. We will stand at ease.

6 (WHEREUPON, court at ease while the jury
7 deliberates.)

8 THE COURT: The lawyers approach just a minute.

9 (WHEREUPON, bench conference was held.)

10 MR. MCEACHIN: Your Honor, I think just a
11 standard you have the evidence before you.

12 THE COURT: I'm going to bring them back out
13 here and say there was no testimony in the record as to
14 who the alcoholic beverage belong to. As I instructed
15 you, you are to consider only the evidence testimony which
16 is ---

17 MR. MCEACHIN: I mean, there was testimony that
18 it was collected from the front seat where Barfield was
19 sitting.

20 THE COURT: But there was no testimony of who it
21 belonged to.

22 MR. MCEACHIN: I think by you commenting on
23 there's no as to who it belong to, I think ---

24 THE COURT: Well, there's not any, is it? I
25 mean, there's absolutely no testimony as to who it belong

1 to. There was testimony it was collected, but it was none
2 of who it belong to. I mean, Barfield didn't say on the
3 stand I was drinking beer. I mean, he said he was
4 drinking beer and smoking crack earlier in the day.

5 MR. MCEACHIN: Right.

6 THE COURT: There's no testimony about who that
7 beer bottle belong to.

8 MR. FLOYD: It was a quart bottle.

9 THE COURT: The other side of it is is you are
10 to consider only the testimony and reasonable inferences
11 from the testimony ---

12 MR. MCEACHIN: That's what I ask the Judge to
13 not comment on any testimony that was up there.

14 THE COURT: I'm not commenting on it, I'm just
15 telling them.

16 MR. MCEACHIN: If there wasn't any, I feel like
17 certainly respectfully, Your Honor, I feel like that is to
18 a certain extent commenting on cause that's your
19 recollection of the testimony.

20 THE COURT: Okay. What I'm going to say is
21 they're to consider only the evidence that they've heard
22 from the stand along with the reasonable inferences to be
23 drawn from that evidence and that's all I can tell them.

24 Mr. Floyd.

25 MR. FLOYD: That's fine, Your Honor.

1 MR. MCEACHIN: Thank you, Judge.

2 THE COURT: Bring me the jury please, ma'am.

3 I'm going to make this a Court's Exhibit, this note.

4 (WHEREUPON, Court's Exhibit No. 1 was marked for
5 identification only.)

6 (WHEREUPON, the jury came into open court at
7 11:29 a.m.)

8 THE COURT: All right. Ladies and gentlemen of
9 the jury, I receive the note sent out and I have made that
10 Court's Exhibit Number 1. The note asked did the
11 alcoholic beverage belong to Barfield. Sign by Ms. Hunter
12 who is on the jury and then it's sign by Mr. Desai, who is
13 the appointed foreman. Ladies and gentlemen, let me
14 instruct you again that you are to determine this case
15 based upon the evidence admitted or those items admitted
16 into evidence and the testimony heard from this witness
17 stand during the course of this trial along with the
18 reasonable inferences to be drawn from the evidence and
19 the testimony. And that is all I can instruct you on this
20 question. So at this time, I'm going to ask that you
21 return to your jury room and continue your deliberations,
22 okay.

23 (WHEREUPON, the jury retire to the jury room
24 11:30 a.m. to continue deliberations.)

25 THE COURT: All right. Any additions,

1 exceptions, objections by the State as to what I
2 instructed the jury, Mr. McEachin?

3 MR. MCEACHIN: No, sir, Judge.

4 THE COURT: Mr. Floyd.

5 MR. FLOYD: None, Your Honor.

6 THE COURT: We will stand at ease.

7 (WHEREUPON, court at ease awaiting the jury
8 verdict.)

9 THE COURT: All right. I been informed, ladies
10 and gentlemen, that we have a verdict. I will remind
11 everybody regardless of what the verdict is to keep your
12 emotions in check, keep your emotions in check. If not,
13 this court can hold you in contempt of court and sentence
14 you to a term of incarceration.

15 Anything from the State or the defense before we
16 bring the jury back in?

17 MR. MCEACHIN: Nothing, Your Honor.

18 THE COURT: Mr. Floyd.

19 MR. FLOYD: Nothing further, Your Honor.

20 THE COURT: All right.

21 (WHEREUPON, the jury came into open court with a
22 verdict at 11:39 a.m.)

23 THE COURT: Mr. Foreman, and members of the
24 jury, have you agreed upon a verdict?

25 JUROR: Yes.

1 THE COURT: The verdict appears to be in order.
2 Madam clerk, would you please publish the
3 verdict.

4 THE CLERK: As to Count 1 of the indictment
5 burglary in the first degree, we, the, the jury, find the
6 defendant, Tyrone Joseph Whatley, guilty. Count 2 armed
7 robbery of Brandon Cross, we, the jury, find the
8 defendant, Tyrone Joseph Whatley, guilty. Count 3 armed
9 robbery of Ciera Davis, we, the jury, find the defendant,
10 Tyrone Joseph Whatley, guilty. Count 4 conspiracy, we,
11 the jury, find the defendant, Tyrone Joseph Whatley,
12 guilty. Buntly Desai, foreman. Mr. Foreman, and members
13 of the jury, if this is your verdict raise your right
14 hand.

15 (WHEREUPON, all jurors raise their hand.)

16 THE COURT: Anything from the State with regards
17 to verdict?

18 MR. MCEACHIN: Nothing from the State, Your
19 Honor.

20 THE COURT: Mr. Floyd.

21 MR. FLOYD: Nothing further at this time, Your
22 Honor.

23 THE COURT: All right. Ladies and gentlemen of
24 the jury, you all have fulfilled your responsibilities and
25 obligations as jurors in this case. It is now the

1 responsibility of this court to sentence as a result of
2 convictions. You all at this time, ladies and gentlemen,
3 are free to leave if you so desire. I have been
4 instructed to ask you to call back tonight after six
5 o'clock with instructions as far as tomorrow is concern.
6 If you do not have a telephone number, please Ms. Clerk
7 will give you those telephone numbers to call back. If
8 you wish to leave now, you are free to leave. If wish to
9 stay, you can do that as well.

10 Mr. Floyd, if you will bring your client around.

11 Mr. McEachin. Mr. McEachin, do you need a
12 minute?

13 MR. MCEACHIN: Your Honor, I just have to put my
14 signature on the last two sheets.

15 THE COURT: Okay.

16 (WHEREUPON, a pause in the proceedings.)

17 MR. MCEACHIN: May it please the Court, Your
18 Honor.

19 THE COURT: Yes, sir.

20 MR. MCEACHIN: Before you is Tyrone Joseph
21 Whatley, the jury returned a verdict of guilty on the four
22 counts of the indictment one being burglary in the first
23 degree, two counts of arm robbery and one count of
24 conspiracy. At this time, he is before you for
25 sentencing, Judge. And, Your Honor, at the appropriate

1 time, I like to be heard as far as sentence is concern.

2 THE COURT: I'll hear from you now, Mr.
3 McEachin.

4 MR. MCEACHIN: Thank you. On August the 4th
5 2010, the defendant was brought before, Judge Nettles. At
6 that time, the State serve notice on the defendant that we
7 intended to seek life without parole based on the
8 defendant having a prior arm robbery conviction from 1994.
9 At that time, he received a 15-year sentence on the arm
10 robbery conviction and I believe got out approximately two
11 years before this incident occurred, Your Honor. But
12 based on the prior arm robbery conviction, there is a
13 certified copy of that conviction and the sentencing sheet
14 in the clerk's file. I believe the Court under the
15 statute is required to give the defendant life.

16 THE COURT: Anything further, Mr. McEachin?

17 MR. MCEACHIN: That would be all from the State,
18 Your Honor. He has some other record, but nothing
19 pertinent as far as this is concern.

20 THE COURT: Mr. Floyd.

21 MR. FLOYD: Yes, Your Honor, of course, the
22 State has serve the defendant with the LWOP notice, that
23 was done in open court before Judge Nettles. I was
24 present when it was done. And certainly under the
25 statute, Your Honor, it is my understanding that you do

1 have to render a life sentence.

2 THE COURT: Well, this is a most serious offense
3 under our laws and a prior arm robbery is considered a
4 most serious offense. And under our laws in this state,
5 individuals are convicted of two most serious offenses,
6 warrants and a life without parole sentence. Mr. Floyd,
7 our client wish to say anything? If he wishes to say
8 anything -- he's not required to. I don't want him to say
9 anything that could possibly affect his appellate rights,
10 not required to say anything.

11 MR. FLOYD: Your Honor, Mr. Whatley does not
12 wish to say anything.

13 THE COURT: Thank you, Mr. Floyd. Burglary
14 first is also a most serious conviction. And burglary
15 first is also a most serious offense; is that correct, Mr.
16 Solicitor?

17 MR. MCEACHIN: That's correct, Your Honor.

18 THE COURT: By virtue of conviction of arm
19 robbery or burglary first.

20 Mr. McEachin, can you and Mr. Floyd approach for
21 a minute.

22 (WHEREUPON, a bench conference was held in the
23 presence of the jury, but out of the hearing of the
24 jury.)

25 THE COURT: Mr. Floyd, what -- how long has your

1 client been in jail and the reason -- it may or may not
2 matter in this situation. However, if there's a change in
3 the law, it would be beneficial for this young man to get
4 credit for what time he's already done. I want to make
5 sure of that.

6 MR. FLOYD: Your Honor, he was arrested on March
7 the 26th of 2010.

8 THE COURT: March 26?

9 MR. FLOYD: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. FLOYD: And he's been in the detention
12 center continuously since that date.

13 THE COURT: Well, I don't know that it matters
14 at this point, but if it does -- I mean, I'm going to
15 write on this sentence sheet to ensure that he gets credit
16 for it.

17 All right. On indictment 2010-GS-21-1008
18 burglary first conviction, the defendant is hereby
19 committed to the state department of corrections for life.

20 On indictment 2010-GS-21-1008 as it relates to
21 the arm robbery, both counts of arm robbery, I have
22 written on here that they are life sentences. And I have
23 also written on here that they are life sentences pursuant
24 to this being a second conviction for a most serious
25 offense. And I put first conviction being under

1 indictment number 93-GS-21-671 on both of those arm
2 robbery charges. And on the conspiracy, under the same
3 indictment number, it's five years. It's concurrent to
4 all other charges. All these charges in all respect
5 concurrent. The only -- well, I think that's it.

6 Anything further from the State?

7 MR. MCEACHIN: No, sir, Judge.

8 THE COURT: From the defense?

9 MR. FLOYD: Nothing further, Your Honor.

10 THE COURT: Good luck to you, Mr. Whatley.

11 MR. MCEACHIN: Thank you, Your Honor.

12 THE COURT: Ladies and gentlemen of the jury, if
13 y'all will return to the jury room for a minute.

14 MR. FLOYD: Your Honor, just for the record, I
15 suppose I need to renew my motions for a directed verdict
16 on the same grounds as those earlier.

17 THE COURT: And based upon my previous rulings,
18 I just deny those motions. I think there was adequate
19 evidence for each of these charges, adequate evidence for
20 each of these charges, each of the charges burglary first,
21 both counts of arm robbery and the conspiracy with all
22 those charges to go to the jury. And they made a finding
23 based upon the evidence that was presented in here. And
24 therefore, I would respectfully deny your motion,
25 Mr. Floyd, as to all the charges. Anything further?

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MR. MCEACHIN: No, sir, Judge.

MR. FLOYD: Nothing further, Your Honor. Okay.

END OF REQUESTED TRANSCRIPT

WITNESSES

Alvin Powell Florence County Sheriff

DOCKET NO. 2010-GS-21-1008

The State of South Carolina

County of

FLORENCE

FILED

2010 JUL 22 AM 11:56

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

COURT OF GENERAL SESSIONS

JULY TERM 2010

THE STATE

vs.

TYRONE JOSEPH WHATLEY

FITZGEREE H MCEACHIN

ARREST WARRANT NUMBER

2010GS2101008A M271606

M271607 2010GS2101008B

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 7/22/10

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

BURGLARY FIRST DEGREE,
ARMED ROBBERY,
ARMED ROBBERY,
CONSPIRACY

FLORENCE COUNTY, S.C.
CLERK OF COURT C.P. & G.S.

Connie Reel Shearin

CERTIFIED: A TRUE COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
BURGLARY FIRST DEGREE,
ARMED ROBBERY,
ARMED ROBBERY,
CONSPIRACY

JUL 23 2010
CLERK OF DISTRICT COURT
FLORENCE COUNTY

At a Court of General Sessions, convened on JULY 22, 2010 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That TYRONE JOSEPH WHATLEY did in Florence County on or about July 22, 2009, willfully and unlawfully enter the dwelling of BRANDON CROSS and CIERA DAVIS located in Room # at the Days Inn, Florence, South Carolina, without consent and with the intent to commit a crime therein, and the defendant entered or remained during the nighttime, was armed with a deadly weapon and/or has two or more prior convictions of burglary and/or housebreaking, this being in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- ARMED ROBBERY

That TYRONE JOSEPH WHATLEY did in Florence County on or about July 22, 2009, while armed with a deadly weapon, to wit: a gun, take and carry away personal property of BRANDON CROSS from or in the immediate presence of BRANDON CROSS with intent to deprive BRANDON CROSS of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT THREE - ARMED ROBBERY

That TYRONE JOSEPH WHATLEY did in Florence County on or about July 22, 2009, while armed with a deadly weapon, to wit: a gun, take and carry away personal property of CIERA DAVIS from or in the immediate presence of CIERA DAVIS with intent to deprive CIERA DAVIS of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT FOUR- CONSPIRACY

That TYRONE JOSEPH WHATLEY did in Florence County on or about July 22, 2009 did combine with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: ARMED ROBBERY, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF Florence
STATE

(15-412)

IN THE COURT OF GENERAL SESSIONS

255

vs.
Tyrone Joseph Whatley

AKA: _____
Race: _____ Sex: M Age: 37
DOB: _____ SS#: _____
Address: _____
City, State, Zip: Darlington, SC

INDICTMENT/CASE#: 2010-GS-21-1008
AW#: 2010GS2101008A
Date of Offense: 7/22/2009
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

CONVICTED OF or PLEADS

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature] 75437
Solicitor SC Bar # _____ Defendant Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of Life days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: M 27/607, M 27/606 2010-GS-21-1008 B

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	_____
\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
\$56-5-2995 (DUI Assessment)	\$12	\$ _____
\$56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
\$14-1-212 (Law Enforce. Funding)	\$25	\$ _____
\$14-1-213 (Drug Court Surcharge)	\$150	\$ _____
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
\$44-53-450(C) (Conditional Discharge)	\$350	\$ _____
3% to County (if paid in installments)	\$	\$ _____
TOTAL	\$	\$ <u>105.00</u>

Clerk of Court/Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA217 (07/2011)

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. Or Job Corp _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: Second Most Serious conviction
First being under indictment
93-GS-21-671

Conditional Discharge, §44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge [Signature]
Judge Code: 2160
Sentence Date: 9-2-11

VERIFIED: A TRUE COPY
[Signature]
CLERK OF COURT CP & GS
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF Florence
STATE

vs.
Tyrone Joseph Whatley

AKA: _____
Race: _____ Sex: M Age: 37
DOB: _____ SS#: _____

Address: _____
City, State, Zip: Darlington, SC

DL# _____ SID# _____
*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. _____ (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ 75437
Solicitor SC Bar # _____ Defendant Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of Life days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____	
*Fine:	\$ _____
\$14-1-206 (Assessments 107.5%)	\$ _____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100 \$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100 \$ _____
\$56-5-2995 (DUI Assessment)	\$12 \$ _____
\$56-1-286 (DUI Breath Test)	\$25 \$ _____
Proviso 47.9 (Public Def/Prob)	\$500 \$ _____
\$14-1-212 (Law Enforce. Funding)	\$25 \$ _____
\$14-1-213 (Drug Court Surcharge)	\$150 \$ _____
\$50-21-114 (BUI Breath Test Fee)	\$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5 \$ <u>500</u>
\$44-53-450(C). (Conditional Discharge)	\$350 \$ _____
3% to County (if paid in installments)	\$ _____
TOTAL	\$ <u>10500</u>

Clerk of Court/Deputy Clerk: M. Balme
Court Reporter: Reed
SCGA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-21-1008
AW#: M271606
Date of Offense: 7/22/2009
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

CONVICTED OF or PLEADS

Obtain GED
Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: 2nd Most Serious
Conviction. First hearing under
indictment No. 93-GS-21-671.
 Conditional Discharge, §44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge: R. [Signature]
Judge Code: 2160
Sentence Date: 2-2-11

VERIFIED: A TRUE COPY
Clerk of Court
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF Florence
STATE

(10-30)

IN THE COURT OF GENERAL SESSIONS

257

VS.
Tyrone Joseph Whatley

INDICTMENT/CASE#: 2010-GS-21-1008

AKA:
Race: Sex: M Age: 37
DOB: SS#:
Address:
City, State, Zip: Darlington, SC
DL# SID#

AW#: M271607
Date of Offense: 7/22/2009
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor SC Bar # 75437 Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of Life days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 314
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, It is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____
 Set by SCDPPPS

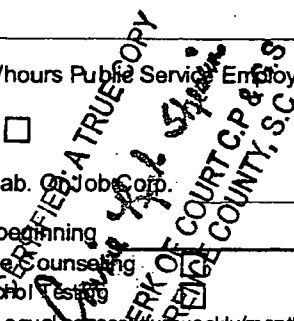
Recipient:	
*Fine:	\$
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100
\$14-1-211 (A)(2)(DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
\$14-1-212 (Law Enforce. Funding)	\$25
\$14-1-213 (Drug Court Surcharge)	\$150
\$50-21-114 (BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
\$44-53-450(C) (Conditional Discharge)	\$350
3% to County (if paid in installments)	\$
TOTAL	\$ 10500

Clerk of Court/Deputy Clerk [Signature]
Court Reporter: [Signature]

_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ Paid to Public Defender Fund

Other: 2nd Conviction for "Most Serious Offense". First Conviction being under Indictment # 93-GS-21-61
 Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature]
Judge Code: 2160
Sentence Date: 2-2-11



(0-5)

STATE OF SOUTH CAROLINA
COUNTY OF Florence
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-21-1008

VS.
Tyrone Joseph Whatley

AW#: 2010GS2101008B
Date of Offense: 7/22/2009
S.C. Code §: 16-17-0410
CDR Code #: 0049

AKA: _____
Race: _____ Sex: M Age: 37
DOB: _____ SS#: _____
Address: _____
City, State, Zip: Darlington, SC
DL# _____ SID# _____
*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

In violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTORNEY: [Signature] Solicitor SC Bar # 75437 Defendant Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service/Employment

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$	_____
§14-1-206 (Assessments 107.5%)		\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	<u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	_____
§56-5-2995 (DUI Assessment)	\$12	\$	_____
§56-1-286 (DUI Breath Test)	\$25	\$	_____
Proviso 47.9 (Public Def/Prob)	\$500	\$	_____
§14-1-212 (Law Enforce. Funding)	\$25	\$	_____
§14-1-213 (Drug Court Surcharge)	\$150	\$	_____
§50-21-114 (BUI Breath Test Fee)	\$50	\$	_____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	_____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	<u>5.00</u>
§44-53-450(C) (Conditional Discharge)	\$350	\$	_____
3% to County (if paid in installments)		\$	_____
TOTAL		\$	<u>105.00</u>

Clerk of Court/Deputy Clerk [Signature]

Court Reporter: [Signature]
SCCA/217 (06/2010)

Obtain GED
Attend Voc. Rehab. Or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund
Other: _____

Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature]

Judge Code: 2160

Sentence Date: 2-2-11

CERTIFIED TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 17th, 2012

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,


V.

TYRONE WHATLEY,

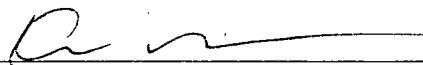
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of January, 2012.


Emily Bryson
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 17th day of January, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013

RECEIVED
JAN 17 2012
SC COURT OF APPEALS

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYRONE WHATLEY,

APPELLANT

Appellate Case No. 2011-185486

BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court improperly limit the scope of Appellant's cross-examination of the State's witness, Jessica Ussery, regarding the mandatory minimum sentences she avoided by testifying against Appellant?

STATEMENT OF THE CASE

A Florence County Grand Jury indicted Appellant on one count of burglary in the first degree, two counts of armed robbery, and one count of conspiracy. R. 253, Indictment. On August 4, 2010, the state served Appellant with its notice to seek life without parole based upon Appellant's prior conviction for armed robbery. R. 247 lines 4-8. On February 2, 2011, the state, represented by Fitzlee H. McEachin, called the case for trial before the Honorable D. Craig Brown and a jury. R. 5 lines 6-8. Scott P. Floyd represented Appellant. R. 1. The state presented testimony from the two victims, two co-defendants, and two police officers. The jury returned its verdict finding Appellant guilty on all counts. R. 245 lines 4-12. Judge Brown sentenced Appellant to life without parole on the burglary and armed robbery convictions and five years on the conspiracy conviction. R. 249 line 17 - R. 250 line 3. He ordered all sentences to run concurrently. R. 250 lines 4-5.

Appellant filed a timely notice of appeal. On January 31, 2012, undersigned counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967) addressing the following issue: Did the trial court err in refusing to permit Appellant to question Ussery, an alleged co-conspirator, regarding the sentencing range for her pending charges where the state dismissed two counts of armed robbery after she cooperated with law enforcement? On September 7, 2012, undersigned counsel provided State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012) as supplemental authority. On December 20, 2012, this Court denied undersigned counsel's petition to be relieved and directed the parties to brief the issue as presented herein.

ARGUMENT

The circuit court improperly limited the scope of Appellant's cross-examination of the State's witness, Jessica Ussery, regarding the mandatory minimum sentences she avoided by testifying against Appellant.

The state's theory of the case was that Appellant along with Jessica Ussery and John Barfield barged into the hotel room of Brandon Cross and Ciera Davis on July 21, 2009 and robbed them at gunpoint. R. 50 line 24 – R. 51 line 7. Police officers apprehended Ussery shortly after the robbery in a car containing items from the robbery. R. 96 line 21- R. 97 line 2; R. 98 lines 2-7. A police officer observed two individuals run from the vehicle, but was unable to apprehend or identify them. R. 94 lines 1-13. Shortly after her arrest, Ussery confessed to her role in the robbery. R. 125 lines 1-3. Although Ussery initially provided a false name for her co-conspirator and boyfriend to officers, she eventually named Barfield. R. 171 lines 13-20. Ussery knew the other individual only as Rom or Jamal Bryant. R. 116 lines 9-17. Almost a year after his arrest, Barfield provided officers with a nickname – Rom - for the third individual involved and the general location of Rom's residence. R. 173 lines 13-19. Officers learned that Appellant was a resident of the trailer in the location generally identified by Barfield. R. 173 line 24 – R. 174 line 1. Barfield then identified a photograph of Appellant as the third co-conspirator. R. 174 lines 1-10.

Ussery testified on behalf of the state. R. 109 lines 9-11. She identified Appellant as an individual involved in the robbery. R. 116 line 18 – R. 117 line 2. She was forced to admit that she had seen Appellant only a few times and did not know him. R. 131 lines 6-9. When pressed, she admitted she had seen Appellant “[m]aybe two or three times” and had no conversations with him. R. 131 lines 13-19. On cross examination, she testified she had

been charged with two counts of armed robbery, failure to stop for a blue light, and false information to police. R. 130 lines 2-4. She also admitted that the armed robbery charges had been dismissed, and she was charged with accessory before and after the fact. R. 130 lines 13-17. Appellant then questioned Ussery about the amount of time she could receive on the pending charges. R. 142 line 2. The state objected, R. 142 lines 3-5, and the judge sustained the objection with no explanation, R. 142 line 6. Appellant then asked Ussery the possible sentence for her original charge of armed robbery. R. 142 lines 11-12. Ussery responded that she was not aware of the "full extent" but recognized it "carrie[d] a long sentence." R. 142 lines 13-14.

The state also called Barfield to testify against Appellant. R. 143 lines 18-19. Barfield identified Appellant in court. R. 145 line 24 – R. 146 line 4. On cross-examination, Barfield admitted that he had been charged with two counts of armed robbery, burglary in the first degree, weapon possession and criminal conspiracy. R. 158 lines 21-22. Barfield testified that he pled guilty to two counts of attempted armed robbery and received a seven-year sentence. R. 159 lines 3-10. All other charges against him were dismissed. R. 159 lines 11-13. When Appellant asked Barfield how much time he was facing on the original charges, the state objected. R. 159 lines 18-21. The trial court sustained the objection. R. 160 line 1. The court permitted Appellant to ask if Barfield could get substantially more time for armed robbery than for attempted armed robbery, R. 160 lines 6-11, and substantially more time for burglary in the first degree than for attempted armed robbery, R. 160 lines 12-14. After another witness testified for the state, the trial judge announced that he was changing his ruling. R. 184 line 10 – R. 185 line 5. He explained that his research revealed that Appellant could question Barfield concerning the amount of time he was

facing. R. 184 line 19-23. The judge ordered the state to recall Barfield and permitted Appellant to question him. R. 184 line 24 – R. 185 line 5. When Barfield testified for the second time, he admitted that he was facing ten years to thirty years on armed robbery charges and fifteen years to life on burglary charges. R. 190 line 18 – R. 191 line 5.

Although the trial judge recognized his error in ruling the questions concerning potential sentences impermissible as to Barfield and allowed re-questioning of him, the trial judge did not permit Appellant to re-question Ussery despite the same ruling having been made during cross-examination of her. This was error.

The Sixth Amendment to the United States Constitution guarantees an accused the right to be confronted with the witnesses against him. “The Confrontation Clause requires a witness to testify under oath and submit to cross-examination so that the jury can observe the witness’s demeanor and assess his credibility.” State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004), aff’d as modified on other grounds, 373 S.C. 601, 646 S.E.2d 872 (2007). This guarantee ensures a defendant has the opportunity to cross-examine a witness concerning bias. Davis v. Alaska, 415 U.S. 308, 316 (1974); State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002); State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). Additionally, Rule 608(c) of the South Carolina Rules of Evidence states that “[b]ias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.” To establish a violation of the Confrontation Clause, Appellant must show that he was prohibited from asking questions designed to show bias on the part of Ussery. See Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986). In addition, the error must not

have been harmless beyond a reasonable doubt. State v. Mitchell, 286 S.C. 572, 574, 336 S.E.2d 150, 151 (1985), State v. Sims, 348 S.C. 16, 26, 558 S.E.2d 518, 523 (2002).

Appellant's question to Ussery concerning the length of sentence she could receive on her pending charges and dismissed charges were appropriate questions. Numerous decisions of South Carolina's appellate courts hold that questions regarding sentences and potential sentencing are probative of witnesses' biases and prejudices. An exploration of several of those cases illustrates Appellant's question was appropriate and the trial court's ruling violated Appellant's rights.

Ussery was charged with two counts of armed robbery and faced mandatory minimum sentences of ten years on each charge. See S.C. Code Ann. § 16-11-330(A). Concerning the charge of failure to stop for a blue light, Ussery faced a mandatory sentence of a fine not less than \$500 or imprisonment for not less than ninety days. See S.C. Code Ann. 56-5-750(B)(1). According to Ussery, the two counts of armed robbery were dismissed, but she testified that she was charged with one count of accessory before the fact and one count of accessory after the fact. However, Ussery did not inform the court of the principal crime. One logical conclusion was that she was charged with accessory before and after the fact of armed robbery. If so, then Ussery faced a mandatory minimum of ten years on the charge of accessory before the fact of an armed robbery because South Carolina law provides that a person convicted of accessory before the fact of a felony "must be punished in the manner prescribed for the punishment of the principal felon." S.C. Code Ann. § 16-1-40. Concerning the second charge of accessory after the fact of an armed robbery, Ussery faced up to fifteen years. Punishment for accessory after the fact of an armed robbery is imprisonment not more than fifteen years. S.C. Code Ann. § 16-1-55 (providing that a

person who commits the offense of accessory after the fact must be punished based upon the classification below the punishment provided for the principal offense, except for Class A, which requires a penalty as prescribed for a Class D felony); S.C. Code Ann. § 16-1-90(A)(robbery while armed with a deadly weapon is a Class A felony); S.C. Code Ann. § 16-1-20(A)(4)(punishment for a Class D felony is not more than fifteen years).

In Gracey, 399 S.C. at 373-374, 731 S.E.2d at 885-886, the South Carolina Supreme Court held the trial court erred in improperly limiting the scope of defense counsel's cross-examination of state's witnesses concerning the witnesses facing mandatory minimum sentences that were significantly longer than the sentences received in exchange for their cooperation. The prosecution made plea deals with multiple cooperating witnesses against Gracely. Those deals permitted the witnesses to avoid several mandatory minimum terms of imprisonment. Id. at 374, 731 S.E.2d at 885-886. The trial court permitted defense counsel to question the witnesses regarding the maximum sentences permissible for the charged offenses, but limited counsel's questioning regarding mandatory minimums. Id. at 374, 731 S.E.2d at 886. This limitation prevented counsel "from demonstrating the possible bias arising from the plea deals through an examination reaching the requisite degree of granularity." Id. The Supreme Court made clear "[t]he fact that a cooperating witness avoided a mandatory minimum sentence is critical information that a defendant must be allowed to present to the jury." Id. at 374-375, 731 S.E.2d at 886 (emphasis in the original).

Additionally relevant to the instant matter, the Court noted that one witness admitted that the drug offense carried a mandatory minimum of twenty-five years' imprisonment, but explained that "[i]t is of no moment that at some point during the proceedings one of the witnesses confirmed the existence of a mandatory minimum sentence ... [because Gracely]

was unable to fully develop this information through cross-examination.” Id. at 375 n. 4, 731 S.E.2d at 886 n. 4.

During Graham’s murder trial, the presiding judge prohibited Graham from asking a witness called by Graham’s co-defendant about an eight-year sentence he received for accessory after the fact of the murder for which Graham was on trial. Graham, 314 S.C. at 385-386, 444 S.E.2d at 527. With little elaboration, the South Carolina Supreme Court held this limitation violated Graham’s Sixth Amendment rights. Id.

In Sims, 348 S.C. at 25-26, 558 S.E.2d at 523, the South Carolina Supreme Court held the trial judge erred when he limited the defendant’s questioning of a state witness about pending charges. The Court was persuaded that the number of the charges pending “and the severity of the potential sentences” was probative as to the witness’ bias. Id. at 25, 558 S.E.2d at 523 (explaining the witness was charged with burglary in the first degree, among other crimes, which exposed the witness to a possible life sentence). According to the Court, “[t]here was the substantial possibility [the witness] would give biased testimony in an effort to have the solicitor highlight to his future trial judge how he had cooperated in the instant case.” Id.

In Mizzell, 349 S.C. at 330, 563 S.E.2d at 317, the South Carolina Supreme Court held the trial court erred in refusing to permit the defendant to question the witness on the potential sentences he faced where the witness was charged with the same crimes as the defendant. The Court was not persuaded by the state’s argument that the testimony was not probative because the witness had neither agreed to a plea bargain nor pled guilty and held this fact should not prevent the admission of such evidence. Id. at 332-333, 563 S.E.2d at 318. The Court held “[t]he lack of a negotiated plea, if anything, creates a situation where

the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency.” Id. at 333, 563 S.E.2d at 318.

In the instant case, Ussery testified that although her charges had been changed or reduced, she had no negotiated plea or plea agreement with the state. The trial judge’s refusal to permit Appellant to ask Ussery about potential sentencing on her pending charges was clear error because the question probed Ussery’s bias, the primary tool of cross-examination. This was particularly egregious because the reduced charges of accessory after the fact of a felony permitted Ussery to avoid the mandatory minimum sentences of armed robbery. Just as the South Carolina Supreme Court held in Mizzell and Sims, the lack of a negotiated plea created a situation where Ussery was more likely to provide biased testimony to curry favor with the state.

The next inquiry is whether the error was harmless beyond a reasonable doubt. Gracely, 399 S.C. at 375, 731 S.E.2d at 886; Gillian, 360 S.C. at 454, 602 S.E.2d at 73; Mizzell, 349 S.C. at 333, 563 S.E.2d at 318; Graham, 314 S.C. at 385, 444 S.E.2d at 527. Harmless error analysis is fact-specific. The United States Supreme Court delineated a list of factors for courts to consider in determining whether an error was harmless. These factors include, but are not limited to:

the importance of the witness’ testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course, the overall strength of the prosecution’s case.

Van Arsdall, 475 U.S. at 684; see also Gracely, 399 S.C. at 375, 731 S.E.2d at 886; Mizzell, 349 S.C. at 333, 563 S.E.2d at 318-19.

In Gracely, 399 S.C. at 376-377, 731 S.E.2d at 887, the Court found the Confrontation Clause violation was not harmless even where the evidence presented was cumulative regarding Gracely's involvement in drug trafficking. The Court explained that the testimony "only corroborated other testimony," and the prosecution presented no physical evidence connecting Gracely to the charged offenses. This "enhanced the importance of that testimony, and the necessity that [Gracely] be permitted to demonstrate any bias on the part of the State's witnesses." Id. at 376, 731 S.E.2d at 887. The Gracely court also expressed that the background of the witnesses "should have cautioned the trial court against limiting [Gracely]'s cross examination." Id. at 377, 731 S.E.2d at 887. The witnesses in Gracely had significant involvement in criminal activity and cooperated only after arrest and the prospect of long prison terms. "In a case built on circumstantial evidence, including testimony from witnesses with such suspect credibility, a ruling preventing a full picture of the possible bias of those witnesses cannot be harmless." Id.

The South Carolina Supreme Court held a violation of the Confrontation Clause was not harmless even where the facts did not fall squarely within the Van Arsdall factors. Graham, 314 S.C. at 385, 444 S.E.2d at 527-528. The witness, Simmons, first invoked his Fifth Amendment right not to incriminate himself where there was still a pending murder indictment against him despite his guilty plea to accessory to murder after the fact. Id. at 386, 444 S.E.2d at 528. The prosecutor claimed the plea agreement was valid only if the state called Simmons and Simmons testified truthfully, which the state defined as consistent with a prior statement that he was drunk and had no knowledge of the surrounding events. Id. at 386-387, 444 S.E.2d at 528. The prosecutor acknowledged he could not prevent Simmons from testifying, but continued to threaten further prosecution unless Simmons

testified truthfully, as defined by the prosecutor. Id. Predictably, Simmons testified he was drunk and had no knowledge of the murder. Id. Graham then proffered the testimony of another witness who stated that Simmons informed the witness that he would have no further problems with the victim and that Simmons had killed the victim. Id. The Court stated that the prosecutor's attempted manipulation of Simmons' testimony and the witness' proffered testimony raised the question of the extent of Simmons' involvement in the murder. Id. The Court held the jury was entitled to know Simmons' sentence of only eight years as murder was a serious crime for which Graham, who was sixteen, received a life sentence and Simmons avoided the heavy penalty "for what may have been his silence." Id.

In Mizzell, the Court held the trial court's error in limiting cross-examination of a witness concerning potential sentencing was not harmless because the witness provided the only evidence of the defendants' participation in the crime. 349 S.C. at 334, 563 S.E.2d at 319. Although some of the testimony from the witness was cumulative, the witness provided the only evidence that the defendants were at the crime scene as there was no physical evidence implicating the defendants. Id.

Also, in State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991), the South Carolina Supreme Court held a trial court's limitation on the defendant's cross examination of a state's witness was not harmless error. The witness testified that in return for her testimony she was allowed to plead guilty to one count of conspiracy for which she could receive a maximum of seven and one-half years. Id. However, the defendant was prevented from asking the witness the punishment for trafficking cocaine, the original charge for the witness. Id. The Court noted that the witness faced a mandatory sentence of at least twenty-five years without parole for the trafficking cocaine charge. Id. The Court held the fact that

the mandatory minimum was more than three times the duration she would face on her plea to conspiracy was critical evidence of potential bias. Id. Additionally, the witness's testimony was critical to the prosecution's case because she provided the only evidence of the defendant's knowing involvement in the drug deal. Id. at 171-172, 399 S.E.2d at 594.

On the other hand, in Sims, the Court held the error was harmless because the prosecution's case against the defendant was strong where the defendant's fingerprints were found at the scene, the victim's mother testified the defendant was angry with the victim, and the defendant confessed to two officers. 348 S.C. at 26, 558 S.E.2d at 523. Similarly, this Court held the error was harmless where the testimony provided by the two witnesses whose cross-examination was limited improperly was not the only evidence of the defendant's involvement in the murder. State v. Curry, 370 S.C. 674, 681, 636 S.E.2d 649, 652-653 (Ct. App. 2006). One of the victims unequivocally identified the defendant as the shooter, and a co-conspirator testified regarding the defendant's discussion about the murder weapon; thus, this Court concluded, the testimony of the two witnesses was cumulative to that given by others. Id. at 681-682, 636 S.E.2d at 653.

The state's case against Appellant was weak. No physical or forensic evidence linked Appellant to the robbery. The victims were unable to identify Appellant. The officer who chased the individuals from the car was unable to identify Appellant. No items from the robbery were found with Appellant. The only evidence against Appellant was the testimony of Ussery and Barfield. Ussery testified that the third individual involved was named Jamal Bryant and used the nickname Rom. Barfield testified the third individual went by the name of Rom. The state introduced no evidence, except the in-court identifications made by Ussery and Barfield, that "Rom" and Appellant were one in the

same. Therefore, the credibility of Ussery and Barfield was paramount as their testimony was the entire prosecution case against Appellant.


Due to the trial court's erroneous limitation on Appellant's cross-examination of Ussery, it is difficult to analyze the nature of the pending charges against Ussery. Although Ussery stated she was charged with accessory before the fact and accessory after the fact, she provided no information regarding the principal crime she was alleged to have aided. Knowing the principal crime is necessary to understanding the potential sentence Ussery faced on the pending charges and any benefit of her bargain. As explained supra, Ussery likely faced one count of accessory before the fact of armed robbery and one count of accessory after the fact of armed robbery. Although the accessory before the fact charge continued to expose Ussery to a mandatory minimum of ten years, she avoided at least one mandatory minimum sentence of ten years because accessory after the fact would permit a judge to sentence her from zero up to fifteen years' imprisonment.

Nevertheless, the fact that Ussery's charges were pending created a situation in which she was more likely to give biased testimony in hopes of later favorable treatment by the prosecution.

CONCLUSION

The trial court erred in refusing to permit Appellant to question Ussery, an alleged co-conspirator, regarding the mandatory minimum sentences for her pending charge and dismissed charge, where the state dismissed two counts of armed robbery after she cooperated with law enforcement. Therefore, this Court should reverse Appellant's convictions and sentences.

Respectfully submitted,


Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of January, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

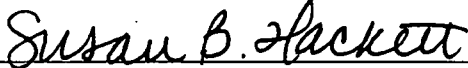
V.

TYRONE WHATLEY,

APPELLANT

CERTIFICATE OF SERVICE

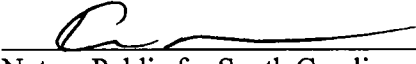
The undersigned attorney hereby certifies that a true copy of the Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Tyrone Whatley, #208735, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 8th day of January, 2013.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of January, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.



SCCID

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Robert M. Dudek, Chief Appellate Defender
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January 8, 2013

Salley W. Elliott, Esquire
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Tyrone Whatley

Dear Salley:

Enclosed are two copies of the Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/eab

Enclosure



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Wanda H. Carter, Deputy Chief Appellate Defender

January 8, 2013

Mr. Tyrone Whatley, #208735
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Your appeal

Dear Mr. Whatley:

Enclosed is a copy of the Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/eab

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
Honorable D. Craig Brown, Trial Court Judge

Appellate Case No: 2011-185486

THE STATE,

Respondent,

v.

TYRONE WHATLEY,

Appellant.

BRIEF OF RESPONDENT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Appellant's argument that the trial court erred in limiting Appellant's cross-examination of Jessica Ussery regarding the minimum sentences she avoided by testifying against Appellant is not preserved for review, but even if preserved, the only limitation concerned Ussery's pending charges, not the mandatory minimum sentences she avoided.

STATEMENT OF THE CASE

A Florence County Grand Jury indicted Appellant on one count of first-degree burglary, two counts of armed robbery, and one count of conspiracy. (R. 253-54.) On August 4, 2010, the State served Appellant with notice to seek life without parole. On February 2, 2011, Appellant proceeded to trial before a jury. Scott P. Floyd represented Appellant, and Fitzlee McEachin represented the State. The jury found Appellant guilty on all counts, and the Honorable D. Craig Brown sentenced Appellant to life for burglary and both counts of armed robbery and five years' imprisonment for conspiracy. (R. 249, lines 17-25; R. 250, lines 1-5.)

On February 9, 2011, Appellant filed a Notice of Appeal. On January 31, 2012, Appellant's counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), on the issue of whether the trial court erred in refusing to permit Appellant to question Jessica Ussery, an alleged co-conspirator, regarding the sentencing range for her pending charges where the State dismissed two counts of armed robbery after she cooperated with law enforcement. On September 7, 2012, Appellant's counsel provided to this Court State v. Gracely, 399 S.C. 363, 731 S.E. 2d 880 (2012). On December 20, 2012, this Court denied Appellant's counsel's petition to be relieved and directed the parties to brief the following issue: Did the circuit court improperly limit the scope of Appellant's cross-examination of the State's witness, Jessica Ussery, regarding the mandatory minimum sentences she avoided by testifying against Appellant?

STATEMENT OF FACTS

On July 21, 2009, Brandon Cross and Ciera Davis were asleep in their hotel room when Davis heard a knock on the door. (R. 59, lines 1-11; R. 76, lines 6-25; R. 77, lines 1-25; R. 78, lines 1-11.) She looked through the peephole and saw a woman. (R. 78, lines 12-20.) As she opened the door, two men burst through. (R. 78, lines 21-25; R. 79, lines 1-2.) One man was carrying a gun and both demanded money. (R. 63, lines 12-18; R. 65, lines 20-21; R. 79, lines 11-25; R. 80, lines 1-5.) Cross was able to get out of the hotel room, and he ran downstairs and asked a man in an Explorer to call the police. (R. 66, lines 14-25; R. 67, lines 4-9.) Cross saw the men come down with bags and a gun and jump into a small, burgundy, two-door car and drive away. (R. 67, lines 16-25; R. 68, lines 1-10.)

As Sergeant John F. McLaurin of the Florence County Sheriff's Office was responding to the 911 call, he saw the burgundy car pull out right in front of him. (R. 92, lines 4-24.) He activated his blue lights and initiated a traffic stop. (R. 93, lines 2-4.) After initially failing to stop, Jessica Ussery, the driver, eventually stopped the car and Appellant and John Barfield ran from the car. (R. 93, lines 5-22; R. 94, lines 1-7; R. 97, lines 21-25; R. 97, lines 1-5.) Ussery was arrested at the scene, and Barfield and Appellant were eventually arrested. (R. 123, lines 14-18; R. 142, lines 8-10; R. 171, lines 2-9; R. 172, lines 22-23; R. 174, lines 8-25.) Appellant was charged with and ultimately indicted on two counts of armed robbery, first-degree burglary, and conspiracy. (R. 253.)

At trial, the State called Ussery to the stand. (R. 109, line 10.) She testified she drove her boyfriend, Barfield, to a trailer park to pick up Barfield's friend, Rom, also known as Jamal Bryant, who Ussery identified as Appellant. (R. 114, lines 4-25; R. 115, lines 1-16; R. 116, lines 9-25; R. 117, lines 1-2; R. 125, lines 12-17.) Ussery testified

that when they picked Appellant up, he had a shotgun with him, which he put in the trunk of Ussery's car. (R. 115, lines 17-24; R. 117, lines 4-9.) She testified Barfield told her he needed to stop at the Days Inn to pick up some money from someone who owed him. (R. 118, lines 1-6.) She recounted that when they arrived at the hotel room, Barfield told her to knock on the door and then Barfield pushed his way into the room and Appellant followed him. (R. 119, lines 13-17; R. 120, lines 14-24.) Ussery testified that both Barfield and Appellant were carrying bags, pocketbooks, and clothes when they came out of the hotel room. (R. 121, line 25; R. 122, lines 1-2.)

On cross-examination, Appellant asked Ussery about her original charges, and she explained she was charged with two counts of armed robbery with a deadly weapon, failure to stop for a blue light, and falsification of information to the police. (R. 129, lines 22-25; R. 130, lines 1-11.) Ussery further testified that her two armed robbery charges were dropped to accessory before the fact and after the fact. (R. 130, lines 12-20.) Appellant did not ask Ussery what the principal crime was for which she was charged with accessory before and after the fact. (R. 130, lines 12-21.) Appellant later asked Ussery if she knew what her exposure was on her pending accessory charges, and she answered that she did not know.¹ (R. 141, lines 22-25; R. 142, line 1.) The State objected to his questioning Ussery regarding the amount of time she faced on those charges, and the trial court sustained the objection. (R. 142, lines 3-6.) Appellant then asked Ussery if she was aware of what kind of time she faced on the armed robbery charges. (R. 142, lines 8-12.) She testified, "No, sir, not of the full extent, no, sir. It carries a long sentence." (R. 142, lines 13-14.) Appellant then asked, "So nobody's ever

¹ When Appellant brought up Ussery's accessory charges a second time, he still did not ask her what the principal crime was for which she was charged with accessory before and after the fact. (R. 141, lines 13-21.)

told you what arm[ed] robbery carries?” (R. 142, lines 18-19.) Ussery answered, “I’m not aware of or how long the year term is.” (R. 142, line 20.) The State made no objection to this line of questioning. Appellant then questioned Ussery about whether she had received a plea bargain in exchange for her testimony and she testified she was not aware of any plea bargain or deal for her testimony. (R. 142, lines 21-25; R. 143, lines 1-6.)

The State then called Barfield. (R. 143, lines 18-19.) Barfield testified that he and Appellant talked about committing a robbery and that Appellant brought a gun with him when Barfield and Ussery picked him up. (R. 148, lines 1-4, 24-25; R. 149, lines 1-24.) He testified he and Appellant entered the hotel room and asked the victims, “Where is the dope and the money?” (R. 151, lines 19-24; R. 152, lines 7-25.) On cross-examination, Appellant asked Barfield about his original charges and what charges had been disposed of. (R. 158, lines 20-25; R. 159, lines 1-17.) Barfield explained he was originally charged with conspiracy, weapon possession, burglary first, and two counts of armed robbery. (R. 158, lines 20-24.) He further testified that all of those charges were dismissed and he pled guilty to two counts of attempted armed robbery, receiving a seven-year sentence. (R. 158, line 25; R. 159, lines 1-17.) Appellant then asked Barfield, “Did you know what you were facing for arm[ed] robbery?” (R. 159, line 18.) At that point, the State objected to his questioning him regarding the amount of time he was subjected to, and the trial court sustained the objection after an off-the-record bench conference. (R. 159, lines 19-25; R. 160, lines 1-2.) Appellant continued with his cross-examination by asking Barfield if he was aware he could receive substantially more time for the armed robbery and burglary charges that were dismissed than what he received for attempted armed robbery, and Barfield testified that he was aware. (R. 160, lines 6-16.)

Next, the State called Investigator Alvin Powell of the Florence County Sheriff's Office. (R. 166, lines 6-7; R. 167, lines 2-3.) He testified he interviewed Ussery and Barfield, and Barfield gave him Appellant's name and address. (R. 173, lines 13-25; R. 174, line 1.) Barfield confirmed Appellant's identity through a photo identification. (R. 174, lines 1-10.) Investigator Powell testified he was the one who arrested Appellant and collected evidence in the case. (R. 174, lines 11-25.)

After Investigator Powell's testimony, the trial judge met with the attorneys in chambers. (R. 184, lines 6-9.) The trial judge then announced on the record that he had determined, based on State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004), aff'd as modified on other grounds, 373 S.C. 601, 646 S.E.2d 872 (2007), that Appellant should have been able to ask about the amount of time Barfield faced. (R. 184, lines 10-23.) Specifically, the trial judge found questioning of that nature could go to the bias or prejudice of the witness, and he decided to allow Appellant to question Barfield regarding the amount of time he was facing. (R. 184, lines 23-25; R. 185, lines 1-5.) The trial judge specifically stated, "And if he knows the answer, he can answer it. If he doesn't know, he doesn't know." (R. 185, lines 1-5.) After the trial court explained to the jury that he had changed his ruling, the following exchange took place:

Q: Mr. Barfield, earlier when we discussed the fact that you were charged with two counts of arm[ed] robbery - - -

A: Yes, sir.

Q: - - - did you understand that you were facing from minimum ten to maximum 30 years on those two counts?

A: At the time of the robbery, no. After I spoke to my lawyer, yes.

Q: And you were also charge[d] with one count of burglary first; is that correct?

A: Yes, sir.

Q: And did you understand that you were facing a minimum of 15 years to life on that charge?

A: Yes, sir.

(R. 189, lines 16-25; R. 190, lines 1-25; R. 191, lines 1-5.)

Ultimately, the jury found Appellant guilty on all counts, and Appellant was sentenced to life for burglary and both counts of armed robbery and five years' imprisonment for conspiracy. (R. 249, lines 17-25; R. 250, lines 1-5.)

ARGUMENT

The issue of whether the trial court erred in limiting Appellant's cross-examination of Jessica Ussery regarding the mandatory minimum sentences she avoided by testifying against Appellant is not preserved, but even if preserved, the only limitation concerned Ussery's pending charges, not the mandatory minimum sentences she avoided.

Appellant argues the trial court erred in limiting the scope of his cross-examination of Jessica Ussery regarding the mandatory minimum sentences she avoided by testifying against Appellant. Specifically, he argues that when the trial judge recognized his error in limiting Appellant's cross-examination of Barfield regarding the amount of time Barfield faced for his original armed robbery charges and allowed Appellant to question him again, the trial judge should also have done the same with Ussery. However, Appellant did not bring this issue to the trial court's attention or otherwise move for additional cross-examination of Ussery, and, thus, the issue is not preserved for appellate review. Furthermore, even if preserved, the trial court's only limitation on Ussery's testimony concerned her *pending* charges, not the mandatory minimum sentences for her original charges that she avoided. Thus, the trial court did not err in this regard. Indeed, Appellant successfully cross-examined Ussery about the original charges.

"This Court will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion." State v. Gracely, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012). Pursuant to the Sixth Amendment of the United States Constitution, every criminal defendant has a right to "to be confronted with the witnesses against him" during trial. U.S. Const. amend. VI. "Specifically included in a

defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses." State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). This right guarantees to a criminal defendant the opportunity to cross-examine the witnesses against him concerning bias. State v. Gillian, 360 S.C. 433, 450, 602 S.E.2d 62, 71 (Ct. App. 2004), aff'd as modified on other grounds, 373 S.C. 601, 646 S.E.2d 872 (2007); see also Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.").

When cross-examining a witness in regards to the potential for bias, considerable latitude must be allowed. Gillian, 360 S.C. at 450, 602 S.E.2d at 71. Any fact may be elicited which tends to show interest, bias, or partiality of the witness. State v. Brewington, 297 S.C. 97, 101, 226 S.E.2d 249, 250 (1976). Limitations placed on a defendant's ability to cross-examine a witness constitute a Confrontation Clause violation when the defendant is prohibited from engaging in "**otherwise appropriate cross-examination**" designed to show a prototypical form of bias from which jurors could draw inferences relating to the reliability of the witness. Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986) (emphasis added). "The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial." Gillian, 360 S.C. at 450, 602 S.E.2d at 71.

However, although a defendant is entitled to an opportunity for meaningful cross-examination, the scope of that cross-examination still rests in the trial judge's sound discretion. State v. Whitner, 380 S.C. 513, 519, 670 S.E.2d 655, 659 (Ct. App. 2008). A defendant's right to confront the witnesses against him does not deprive the trial judge of

his usual discretion in limiting the scope of cross-examination. State v. Turner, 373 S.C. 121, 130, 644 S.E.2d 693, 698 (2007). Trial judges may impose reasonable limitations on cross-examination designed to show bias “based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness’s safety, or interrogation that is repetitive or only marginally relevant.” State v. Jenkins, 322 S.C. 360, 364, 474 S.E.2d 812, 814 (Ct. App. 1996). The limitation of cross-examination constitutes reversible error only if the defendant establishes unfair prejudice resulted from the limitation. State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991).

In the case sub judice, Ussery testified on cross-examination that she was indicted for numerous offenses (two counts of armed robbery with a deadly weapon, failure to stop for a blue light, and falsification of information to the police) based on her participation with Appellant in the armed robbery. Ussery further testified her armed robbery charges were dropped to accessories before and after the fact. Appellant was able to elicit testimony that Ussery was unaware of what her exposure was on her pending charges. At that point, the State objected and the trial court sustained the objection but did not strike her previous answer. Appellant then questioned Ussery on the potential sentence she had faced on the original armed robbery charges without objection. Ussery testified she was unaware of the full extent of time she faced but knew it carried a “long sentence.”

Appellant argues that because the trial court allowed him to recall Barfield in light of the trial court’s similar limitation of cross-examination and subsequent change in its ruling, the same remedy should have been permitted in regards to Ussery. However, the State’s objection to Appellant’s cross-examination of Barfield occurred when Appellant was asking him about what he was facing on his *original* armed robbery charges, not

what he was facing on his *pending* charges. Although the State characterized its objection as the same as the prior witness, Ussery, it was actually a different situation. With Ussery, the State only objected to questions about the amount of time she faced on her *pending* charges, not her *original* charges. When Appellant questioned Ussery about her original charges, the State did not object and he was permitted to cross-examine her on that subject without limitation. Thus, when the trial court changed its ruling as to its sustaining the State's objection during Barfield's cross-examination, the changed ruling only applied to Barfield. It could not have been error for the trial court not to expand its change of ruling to include allowing Appellant to recall Ussery, because Appellant had already been given an unlimited opportunity to cross-examine Ussery about the amount of time she faced on her original armed robbery charges.

If this Court finds the trial court's reconsidered ruling was broad enough to encompass both an inquiry into pending charges and an inquiry into original charges, such that the ruling would apply to both Ussery and Barfield, the issue as to Ussery was nevertheless waived when Appellant did not ask the trial court to recall Ussery to the stand after receiving the ruling regarding Barfield's testimony. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

In State v. Mizzell, the Mizzells and their co-defendant were charged with first-degree burglary, grand larceny, and possession of a firearm during the commission of a violent crime. 349 S.C. 326, 329, 563 S.E.2d 315, 316 (2002). During trial, the co-defendant testified against the Mizzells and was permitted to testify he could receive a "long sentence" for the charged offenses. Id. at 334, 563 S.E.2d at 319. However, the

trial judge prohibited the Mizzells from asking the co-defendant, who had not yet pled guilty and had not agreed to a plea bargain, about the specific potential sentences he was facing for the charges. Id. at 330, 563 S.E.2d at 317. Subsequently, the Mizzells were convicted and appealed based on the limitations placed upon their cross-examination of the co-defendant. Id. at 330, 563 S.E.2d at 317.

On appeal, the Supreme Court reversed, finding the trial judge erred in limiting the Mizzells' ability to cross-examine their co-defendant. Id. at 333, 563 S.E.2d at 318. The Court noted that, under the circumstances of the Mizzells' case, the trial judge erred in limiting the cross-examination of the co-defendant about the potential sentence he was facing because "[t]he lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation of leniency." Id. Because the Mizzells' co-defendant had not pled guilty or reached a plea agreement, the Court determined testimony regarding his possible sentence for his charged offenses was critical to the jury's ability to evaluate his potential for bias. Id.

In State v. Gracely the appellant argued "the trial court erred in refusing to allow defense counsel to cross-examine the State's witnesses regarding the mandatory minimum sentences they avoided by testifying against [him]." 399 S.C. 363, 372, 731 S.E.2d 880, 885 (2012). Gracely discussed State v. Brown, in which a witness testified in exchange for a lesser sentence and "was permitted to *avoid* a mandatory prison term of more than three times the duration she would face on her plea to conspiracy" Id. at 373, 731 S.E.2d at 885 (quoting Brown, 303 S.C. at 171-72, 399 S.E.2d at 594). The Court found this was "critical evidence of potential bias that appellant should have been permitted to present to the jury." Id. The Supreme Court in Gracely clarified Brown by

stating, "The fact that a cooperating witness avoided a *mandatory minimum* sentence is critical information that a defendant must be allowed to present to the jury." *Id.* at 374-75, 731 S.E.2d at 886.

Here, the trial court did not limit the scope of Appellant's cross-examination of Ussery regarding the *mandatory minimum* sentence she avoided by testifying against Appellant. The only limitation the trial court placed on Appellant's cross-examination of Ussery concerned her exposure regarding her *pending* charges, not her original charges. Additionally, during Ussery's testimony, before the State had a chance to object, Appellant had already asked her if she knew what her exposure was on those charges and she answered, "No, sir." The State's objection was untimely and allowed the testimony to be elicited. The State did not ask the trial court to strike the answer, so the objection did not prevent Appellant from attempting to show bias by asking Ussery if she knew what her exposure was on her pending charges. Thus, even though the trial court placed a limitation on Appellant in regards to any further questions about Ussery's potential sentence on her *pending* charges, Appellant had already succeeded in finding out that she did not know. Therefore, even if the trial court had allowed Appellant to reexamine Ussery on this issue, as Appellant argues it should have, no more information would have been gained. When the trial court allowed Appellant to recall Barfield, it limited Appellant's question to the amount of time he was facing. (R. 184, lines 23-25; R. 185, lines 1-5.) The trial judge specifically stated, "And if he knows the answer, he can answer it. If he doesn't know, he doesn't know." (R. 185, lines 1-5.) Ussery had already answered this question in the negative immediately prior to the State's objection and subsequent limitation. According to the trial court's ruling in regards to Barfield, that

answer is all the trial judge would have allowed, even if he had included Ussery in his ruling. Thus, no prejudice exists.

Additionally, Appellant addressed Ussery's bias in his closing argument. Because of the extent of his cross-examination, he was able to develop and emphasize Ussery's potential bias by pointing out that her charges were being reduced from armed robbery and that she had not been sentenced yet. He focused on the fact that she identified Appellant based on "knowing what's hanging over her head." (R. 215, lines 8-18.) He argued to the jury, "What kind of pressure do you think she's under? Can you believe beyond a reasonable doubt what those two people say in this case?" (R. 215, lines 20-22.) Further, he asked the jury "to consider those two witnesses['] credibility and what they have to gain." (R. 216, lines 1-3.) Appellant's use of the information gained through his cross-examination of Ussery to demonstrate bias during closing argument is further evidence that no prejudice exists.

The purpose of Rule 608(c), SCRE, is that a defendant be allowed to explore any "bias, prejudice, or other motive to misrepresent" such that the jury gets a clear picture of a witness with which to judge her credibility. Cross-examination is the tool used to highlight any biases that may exist. Here, the trial court allowed a meaningful cross-examination with numerous opportunities for impeachment, including specifically allowing Appellant to inquire into whether Ussery believed she would get to plead to reduced charges in exchange for testifying. Ussery testified her armed robbery charges had been dropped to accessory charges but that she had not yet been given any deals or plea bargains. Just as the Court pointed out in Mizzell, this particular testimony was highly probative of bias because the jury could have inferred that Ussery would be more likely "to engage in biased testimony in order to obtain a future recommendation for

leniency.” Mizzell at 332-33, 563 S.E.2d at 318.

Contrary to Appellant’s argument, Appellant was allowed to ask Ussery about the potential sentence she avoided. Appellant asked Ussery if she was aware of what kind of time she faced on the armed robbery charges, which were her original charges. (R. 142, lines 8-12.) She testified, “No, sir, not of the full extent, no, sir. It carries a long sentence.” (R. 142, lines 13-14.) The State did not object to this line of questioning. Therefore, the trial court placed no limitation on the examination and Appellant could have continued to ask more specific questions regarding what her exposure would have been. Just as he did when questioning Barfield later, Appellant could have asked whether Ussery understood she was facing from a minimum of ten to a maximum of thirty years on those two counts. No objection from the State nor ruling from the trial court prevented Appellant from asking these questions. Thus, Appellant’s argument that the trial court improperly limited him from exploring the mandatory sentences she avoided by testifying is incorrect.

The only limitation placed on Appellant’s cross-examination of Ussery concerned her *pending* charges. To the extent the trial court erred in limiting cross-examination on this particular issue, the fact that Ussery had already answered Appellant’s question in the negative prior to the State’s objection shows that no more information could have been elicited on this question. Importantly, the cross-examination that was permitted was quite extensive and certainly highlighted Ussery’s potential bias based on her hope for a lighter sentence. Because Ussery did not know what she was facing, nor whether she was going to receive a deal or plea bargain, Appellant had already obtained all known information about Ussery’s pending charges that could have been elicited to show bias. As Appellant notes in his brief, he did not even find out from Ussery to what principal crime her

pending charges of accessory before and after the fact were related. Appellant had ample opportunity to cross-examine further about what the specific charges were as no objection was made during this line of questioning and no limitation was placed on that portion of the cross-examination. Notably, Appellant asked Ussery twice about her accessory charges but never asked her to clarify the nature of the principal crime. (R. 130, lines 12-21; R. 141, lines 13-21.) However, regardless of what Ussery's actual pending charges were, Appellant was able to establish they were less than her original charges as Ussery indicated her armed robbery charges were dropped to accessories. Thus, the jury had enough information to infer Ussery was facing a lighter sentence in exchange for her testimony, which is probative evidence of bias. Consequently, no prejudice existed from the limitation.

Even if the trial court erred in excluding evidence of potential sentences for her pending charges, the inquiry does not end there. "A violation of the defendant's Sixth Amendment right to confront the witness is not *per se* reversible error if the error was harmless beyond a reasonable doubt." Mizzell at 333, 563 S.E.2d at 318 (quoting State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994)). The Mizzell court found the harmless error analysis depends on the particular facts of each case and upon the following factors: "the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case." Mizzell at 333, 563 S.E.2d at 318-19 (citing Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986)).

In addressing the above factors, although Ussery's testimony was important to the State's case, it was cumulative to Barfield's testimony identifying Appellant as a participant in the crime. Importantly, Barfield's testimony, which corroborated Ussery's, was admitted without error considering the trial court changed its own ruling and allowed Appellant to examine Barfield more closely on the potential sentence issue. Also, the extent of cross-examination was sufficient to show Ussery's bias. The cross-examination that was permitted was quite extensive and certainly highlighted Ussery's potential bias based on her hope for a lighter sentence. As for the overall strength of the prosecution's case, Appellant argues the State's case against him was weak and depended heavily on the testimony of Ussery and Barfield. Their testimony was the primary evidence against Appellant. However, established case law in South Carolina has held that a conviction can stand upon the uncorroborated testimony of an accomplice. See State v. Taylor, 255 S.C. 147, 149-150, 177 S.E.2d 550, 551 (1970); State v. Green, 48 S.C. 136, 26 S.E. 234 (1897); State v. Sowell, 85 S.C. 278, 67 S.E. 316 (1910); State v. Whaley, 113 S.C. 103, 101 S.E. 568 (1919); State v. Johnson, 156 S.C. 63, 152 S.E. 825 (1930); State v. Fleming, 228 S.C. 129, 89 S.E.2d 104 (1955). Here, two accomplices identified Appellant.

Because the trial court did not limit Appellant's cross-examination of Ussery regarding the mandatory minimum sentences she avoided by testifying, this issue is not preserved for appellate review. Moreover, Appellant suffered no unfair prejudice as a result of the limitation placed on Appellant's cross-examination of Ussery concerning her pending charges. See State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991) (finding limitation of cross-examination constitutes reversible error only if the defendant establishes unfair prejudice resulted from the limitation). Thus, the trial court did not err.

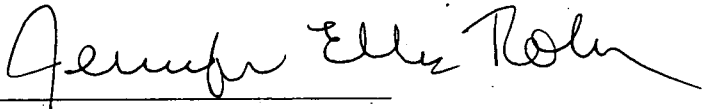
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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February 19, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
Honorable D. Craig Brown, Trial Court Judge

THE STATE,

Respondent,

v.

TYRONE WHATLEY,

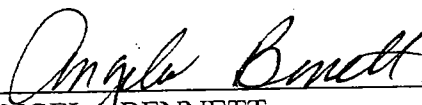
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Brief of Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 19th day of February, 2013.


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